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SENATE—*Thursday, October 7, 2004*

The Senate met at 9:30 a.m. and was called to order by the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Ruler and redeemer, creator and sustainer, we pause at the beginning of our labors to acknowledge Your majesty. Because of You, we live and move and breathe and prosper. You shower us with undeserved blessing, like a shepherd with his flock. You lead us to green pastures and beside still waters.

As our Senators and staffs do liberty's work today, stand with them. Give them prudence and discretion for their task. Remind them that if You are for us, neither demons nor deviants can prevail.

Help us to focus on today's challenges and trust You to take care of our past and future. Transform discord into harmony and hasten the day when peace will reign. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JOHN E. SUNUNU led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. STEVENS).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 7, 2004.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

Mr. SUNUNU thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning we will have a brief period of morning business for up to 30 minutes, with the first 15 minutes under the control of the minority and the final 15 minutes under the control of the majority.

Following that time, the Senate will resume consideration of the pending resolution regarding Senate intelligence and Homeland Security oversight reform. Our whips are here again today to manage that resolution throughout the day. They will be able to update Members shortly in terms of expectations over the course of the day. I hope Members come forward with their amendments so we can finish this important resolution today.

I remind everyone that last night we filed a cloture motion on that resolution with the purpose of ensuring that we complete consideration of the reform resolution this week. That is the goal that was set out actually weeks ago by the Democratic leader and myself, the leadership on both sides of the aisle. Again our purpose was not in any way to get Senators cut off on their ability to offer amendments, but given our objective of departing tomorrow, we do need to work expeditiously on this legislation which we absolutely must and will finish.

As my colleagues know, rule XXII requires that first-degree amendments be filed at the desk no later than 1 o'clock today. At that point in time we should have a better idea as to how to proceed with the resolution over the course of the afternoon.

In addition to completing the pending reform resolution, we expect the House to act on the FSC/ETI or JOBS conference report today. Real progress was made yesterday. As we all know, the conference completed its action and the House will address the conference report today. Once they address it, we will be able to address it. We will turn to that conference report later today, late today.

I hope we can reach an agreement for debate on that privileged conference report. However, similar to the current bill, if necessary, we would have to file cloture. I hope that is not the case. There has been a lot of discussion over the last several days and I hope that discussion continues and that people do not force us to file cloture.

Again, the leadership on both sides of the aisle agrees and has set out the objective of finishing the FSC legislation before we close out our business.

We have a lot to do. We would also consider any other conference report that does become available during this period.

I thank my colleagues.

NATIONAL INTELLIGENCE REFORM ACT

A brief comment on action yesterday. Once again, I congratulate the Chair and ranking member of the Governmental Affairs Committee for a tremendous effort. A lot of the other committees participated directly through their chairmen and ranking members. Yesterday, we proved the Senate could act very deliberately but expeditiously on a very important bill, a bill that represents the most dramatic and significant reform of our intelligence community in half a century. We delivered that product yesterday. It has been an effort underway for months and months, most significantly since July, the 9/11 Commission Report release date, but which proceeded through August, September, into October, with the final Senate product being produced yesterday.

As mentioned again and again, what we have done the last several weeks is address nearly all 39 of the 41 recommendations put forth by the 9/11 Commission. The business in the Senate after morning business today will be the remaining 2 of those 41 recommendations put forth by the 9/11 Commission. Those two are very important, in part because they focus on

● This "bullet" symbol identifies statements or insertions which are not spoken by a member of the Senate on the floor.

this body, its internal operation of oversight of the intelligence community, and thus we will address that.

Again, I congratulate everyone for their participation. There is no question that the provisions in the bill we passed yesterday will make our Nation safer, it will improve our intelligence community, and will help us immensely in the war on terrorism. That was reflected by the overwhelming support, with only two Senators voting against the bill yesterday.

This is going to be a very busy day but a productive day. Again, we should be able to complete all of our business to be able to depart tomorrow, but if not, we would have to be here into Saturday and whatever time it takes.

I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business for up to 30 minutes, with the first half under the control of the Democratic leader and the second half of the time under the control of the majority leader.

Mr. REID. On behalf of Senator DASCHLE, I yield 15 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

THIRTEEN REASONS WHY AMERICA IS NOT SAFER BECAUSE OF PRESIDENT BUSH'S FOREIGN POLICY

Mr. KENNEDY. Mr. President, it was a Presidential election campaign 24 years ago when Ronald Reagan posed the defining question to the American people in that election when he asked, Are you better off today than you were 4 years ago? That basic question has greater relevance now than when Ronald Reagan asked it.

The defining issue today is our national security. Especially in this post-September 11 world, people have the right to ask Ronald Reagan's question in a very specific and all-important way: Are we safer today because of the policies of President Bush?

Any honest assessment can lead to only one answer and that answer is an emphatic no. President Bush is dead wrong and JOHN KERRY is absolutely right: We are not safer today.

The reason we are not safer is because of President Bush's misguided war in Iraq. The President's handling of the war has been a toxic mix of ignorance, arrogance, and stubborn ideology. No amount of Presidential rhetoric or preposterous campaign spin can conceal the truth about the steady downward spiral in our national security since President Bush made the decision to go to war in Iraq.

President Bush keeps saying that America and the world are safer and better off today because Saddam Hussein is gone. No matter how many rhetorical, double-twisting back flips President Bush performs, his disingenuous claim that the war has made America safer is wrong—and may be catastrophically wrong.

There were no weapons of mass destruction.

Across the country we see the newspapers with headlines like this morning's Washington Post headline: "U.S. 'Almost All Wrong' on Weapons." There were no weapons. Here it is in the New York Times this morning: "U.S. Report Finds Iraqis Eliminated Illicit Arms in 90's." "Weapons Capability Had Eroded Before War, Inspector Says."

Here is the recent report, just released yesterday, by the inspector general, who is over there, Charles Duelfer, who followed Dr. Kay. Very professional individuals with strong teams have spent up to $900 million. This is the central conclusion on page 7:

> Iraq did not possess a nuclear device, nor had it tried to reconstitute a capability to produce nuclear weapons after 1991.

Again, in a New York Times editorial this morning entitled "The Verdict Is In":

> Since any objective observer should by now have digested the idea that Iraq posed no immediate threat to anyone, let alone the United States, it was disturbing to hear President Bush and Vice President DICK CHENEY continue to try to justify the invasion this week on the grounds that after Sept. 11, 2001, Iraq was clearly the most likely place for terrorists to get illicit weapons. Even if Mr. Hussein had wanted to arm groups he could not control a very dubious notion he had nothing to give them.

Those are the facts, Mr. President. And it is important for the administration to finally admit them. Saddam had no nuclear program. He had no stockpiles of weapons of mass destruction. The Iraq Survey Group basically nailed the door shut on the administration's justification for the war. But the President won't hear it. He stubbornly clings to his fiction that "there was a real risk that Saddam Hussein would pass weapons or materials or information to terrorist networks."

President Bush says JOHN KERRY "would weaken America and make the world more dangerous." In fact, it is President Bush who has weakened America and made the world more dangerous. Let's count the ways George Bush's war has not made America safer.

No. 1, Iraq has been a constant perilous distraction from the real war on terrorism. There was no persuasive link between Saddam Hussein and al-Qaida. We should have finished the job in Afghanistan, finished the job on al-Qaida, and finished the job on Osama bin Laden.

No. 2, the mismanagement of the war in Iraq has created a fertile, new, and very dangerous breeding ground for terrorists in Iraq and a powerful recruiting tool for al-Qaida that did not exist before the war. We cannot go a day now without hearing of attacks in Iraq by insurgents and al-Qaida terrorists, and our troops are in far greater danger because of it.

Only this week, Ambassador Paul Bremer specifically stated that the Bush administration erred in not deploying enough troops in Iraq and not containing the violence and looting immediately after the fall of Saddam Hussein. About the looting, he said:

> We paid a big price for not stopping it because it established an atmosphere of lawlessness.

He said:

> We never had enough troops on the ground.

No. 3, Saddam may be behind bars, and that is a plus for America and the world, as President Bush says. But the war in Iraq has clearly distracted us from putting Osama bin Laden behind bars, and that is a huge minus.

No. 4, because of the war in Iraq, the danger of terrorist attacks against America itself has become far greater. Our preoccupation with Iraq has given al-Qaida more than 2 full years to regroup and plan murderous new assaults against us. And we know that al-Qaida will try to attack America again and again here at home, if it possibly can. Yet instead of staying focused on the real war on terror, President Bush rushed headlong into an unnecessary war in Iraq.

No. 5, and most ominously, the Bush administration's focus on Iraq has left us needlessly more vulnerable to an al-Qaida attack with a nuclear weapon. The greatest threat of all to our homeland is a nuclear attack. A mushroom cloud over any American city is the ultimate nightmare, and the risk is all too great. Osama bin Laden calls the acquisition of a nuclear device a "religious duty." Documents captured from a key al-Qaida aide 3 years ago revealed plans even then to smuggle high-grade radioactive materials into the United States in shipping containers.

No. 6, the war in Iraq has provided a powerful new worldwide recruiting tool for al-Qaida. We know al-Qaida is getting stronger, because its attacks in other parts of the world are increasing.

No. 7, because of the war, Afghanistan itself is still unstable. Taliban and al-Qaida elements continue to attack our forces regularly. President Hamid Karzai is frequently forced to negotiate with warlords who control private armies in the tens of thousands. Opium production is at a record level, and is being used to finance terrorism and fund private militias. Our troops there are in greater danger.

No. 8, we have alienated long-time friends and leaders in other nations we heavily depend on for intelligence, for apprehending terrorists, for shutting off funds to al-Qaida, and for many other types of support in the ongoing war against international terrorism. Mistrust of America has soared throughout the world. We are especially hated in the Muslim world. In parts of it, the bottom has fallen out.

Sadly, we remember the goodwill that flowed to America in the aftermath of September 11, and we know we should never have squandered it.

No. 9, our overall military forces are stretched to the breaking point because of the war in Iraq. As the Defense Science Board recently told Secretary Rumsfeld:

> Current and projected force structure will not sustain our current and projected global stabilization commitments.

LTG John Riggs said it clearly:

> I have been in the Army 39 years, and I've never seen the Army as stretched in that 39 years as I have today.

And as our colleague Senator McCAIN warned last month, if we have a problem in some other flash point in the world:

> It's clear, at least to most observers, that we don't have sufficient personnel.

No. 10, the war in Iraq has undermined the basic rule of international law that protects captured Americans. The Geneva Conventions are supposed to protect our forces, but the brutal interrogation techniques used at Abu Ghraib prison in Iraq have lowered the bar for treatment of POWs and endangered our soldiers throughout the world.

No. 11, while President Bush has been preoccupied with Iraq, not just one but two serious nuclear threats have been rising: North Korea and Iran. Four years ago, North Korea's plutonium program was inactive. Its nuclear rods were under seal. Two years ago, as the Iraq debate became intense, North Korea expelled the international inspectors and began turning its fuel rods into nuclear weapons. At the beginning of the Bush administration, North Korea was already thought to have two such weapons. Now they may have eight, and the danger is greater.

Iran too is now on a faster track that could produce nuclear weapons. The international community might be more willing to act if President Bush had not abused the U.N. resolution on Iraq 2 years ago, when he took the words "serious consequences" as a license for launching his unilateral war in Iraq.

No. 12, while we focused on the nonexistent nuclear threat from Saddam, we have not done enough to safeguard the vast amounts of unsecured nuclear materials elsewhere in the world. According to a joint report by the Nuclear Threat Initiative and Harvard's Managing the Atom Project, "scores of nuclear terrorist opportunities lie in wait in countries all around the world," especially at sites in the former Soviet Union. How loudly does the alarm bell have to ring before President Bush wakes up?

No. 13, the neglect of the Bush administration on all aspects of homeland security because of the war is frightening. We are pouring nearly $5 billion a month into Iraq, yet we are grossly shortchanging the urgent needs to strengthen our ability to prevent terrorist attacks here at home and to strengthen our preparedness should they occur.

As former Republican Senator Warren Rudman, chairman of the Independent Task Force on Emergency Responders, said recently:

> Homeland security is terribly under-funded, and we cannot allow that to continue.

You cannot pack all these reasons why America is not safer into a 30-second television response ad or a news story or an editorial. But as anyone who cares about the issue can quickly learn, our President has utterly no credibility when he keeps telling us that America and the world are safer because he went to war in Iraq and rid us of Saddam.

President Bush's record on Iraq is clearly costing American lives and endangering America and the world. Our President will not change or even admit how wrong he has been and still is. Despite the long line of mistakes and blunders and outright deception, there has been no accountability. As election day grows closer, the buck is circling more and more closely over 1600 Pennsylvania Avenue. Only a new President can right the extraordinary wrongs of the Bush administration on our foreign policy and national security.

On November 2, when we ask ourselves the fundamental question whether President Bush has made us safer, there can be only one answer: No, he has not. That is why America needs new leadership. We could have been, and should have been, much safer than we are today.

We cannot afford to stay this very dangerous course. As I have said before, the only thing America has to fear is 4 more years of George Bush.

I withhold the remainder of the time.

The PRESIDING OFFICER (Ms. MURKOWSKI). Without objection, the remainder of the time is reserved.

The Senator from Iowa.

MEDICARE

Mr. GRASSLEY. Mr. President, just over 10 months ago, we passed a bipartisan bill called the Medicare Modernization Act dealing more with the prescription drug issue than anything else. But regardless of what you want to call it, it is the most sweeping improvement in Medicare since its creation. The Medicare Modernization Act delivered on a promise, a promise to provide beneficiaries a much needed prescription drug benefit and to revitalize Medicare so beneficiaries can receive quality care and benefits into the future with no sunset.

The Medicare bill passed with the support of a bipartisan coalition and more than 300 organizations ranging from the AARP to the U.S. Chamber of Commerce. Advocacy groups that did not necessarily support the bill then went on to form an organization called the Access to Benefits Coalition. They worked after passage of the MMA to ensure that low-income beneficiaries enroll in the Medicare drug card and get the real assistance to which every senior is entitled.

Still, on the floor of the Senate, we hear partisan attacks against this Medicare bill, continuing yet 10 months since it was signed into law. This is much to the consternation of organizations such as the Access to Benefits Coalition, which is saying that partisanship ought to be set aside and we ought to concentrate on getting people into the benefits that are in the program, even if you don't necessarily agree with the legislation.

Week after week, month after month, we have heard attack after attack against this Medicare bill. This is despite the fact that study after study shows the drug card program, for example—and that is only a small part of this most comprehensive improvement in Medicare in its 38-year history—is delivering real savings to beneficiaries.

As I listen to these attacks, I am reminded that it is always easier to tear down than to build. But if you tear something down, it seems to me those tearing it down ought to have something to replace it. So what was their plan? I haven't heard about a plan for the future, so I have to look back. What were they suggesting at that time when they had an alternative plan? And this was when the Democratic Party controlled the Senate. They did have a plan to offer, but the Democratic leader bypassed the Finance Committee, where we developed bipartisanship, to bring their proposal to the floor because they didn't want a bipartisan program. They wanted their own program. They knew they couldn't get their own program. They wanted an issue for the 2002 election rather than a product.

This alternative was drafted by Senator GRAHAM and Senator KENNEDY. Their bill was S. 2625. It had 30 Democratic cosponsors, including the Democratic leader. They offered two proposals as amendments on the Senate floor. Fifty Democrats voted in favor of the first proposal. Forty-five Democrats supported the second, which, I might add, was worse than the first. The Democratic Leader as well as Senator KENNEDY and Senator KERRY supported both of these Democratic proposals.

In stark contrast with the bill that the President signed last December, the Democratic proposal, Graham-Kennedy, had a drug benefit that was not permanent. Our legislation is permanent. That is right. Their proposal would have ended at about the time baby boomers were beginning to retire. What a promise: Prescription drugs, and in 2010 you have nothing.

Chart No. 1 has the language of one section of their legislation. I read:

> No obligations shall be incurred, no amounts shall be appropriated, and no amounts expended, for expenses incurred for providing coverage of covered outpatient drugs after December 31, 2010.

You can't be clearer than that. Seniors and individuals with disabilities deserve better than the false hopes of a drug benefit that expires after 6 years. But that is exactly what the first Graham-Kennedy amendment did. It simply rode off into the sunset after 2010, just at the very time that 77 million baby boomers start to retire. The fact that the Graham-Kennedy proposal offered a drug benefit that ended 6 years after it started ought to be unbelievable. You would never think that Senators would think of doing something like that—false promises, a costly program for a few years, and then it ends. But they sunset the benefit to hide the true cost of their proposal. At the time the Congressional Budget Office said it would cost over $100 billion each year to extend the Graham-Kennedy drug benefit past the sunset, $100 billion a year, and they had no plan to pay for this enormous cost.

To make their drug benefit permanent, Congress would have had to cut all other Government programs by more than 10 percent or increase taxes on all working Americans by an amount equal to 2 percent or greater. That is the same as a tax increase of around $1,500.

Besides vanishing in 2010, under the first Graham-Kennedy amendment, the Government could limit beneficiaries to just a single one-size-fits-all plan. The Secretary of Health and Human Services could have simply decided that you could get your coverage through that one plan—period, no choice.

Even more amazing, the first Graham-Kennedy amendment proposed a drug benefit that could only cover up to two brand name drugs in any therapeutic category. What does that mean? It means if your doctor prescribed a different brand name drug and it is not on the preferred list, then you don't get the plan to pay for it.

I will give you some examples. Let's take high cholesterol. There are more than eight well-known brand drugs to lower cholesterol. The single Government plan under Graham-Kennedy could pick Lescol. Say your doctor prescribes Mevacor. Well, you would get no coverage at all. This scenario could have been repeated for arthritis, high blood pressure, any other chronic condition that many beneficiaries have. Does that sound like a plan that is incredibly fair? No. Well, that is the plan, and it is far more restrictive than what the private plans offer today. Certainly the new Medicare law has no such requirement.

The first Graham-Kennedy amendment also set co-payment amounts in law—$10 for generics, $40 for brand drugs. To offer a lower copayment, the plan again had to ask for the Secretary's approval, a bureaucrat in the seniors' medicine cabinets for sure, not something that you are going to see under the bill that the President signed last December.

In addition, just like thousands of drugs could have been shut out, Graham-Kennedy could have shut out thousands of pharmacies because it told the Government to set up a preferred pharmacy network under that one Government plan, and the Secretary had to establish the pharmacy access standards. In contrast, the bill the President signed set strict rules about pharmacy access to make sure that plans include beneficiaries' neighborhood pharmacies in their networks.

So under their plan, there was one choice, with one formulary and one pharmacy network that may or may not cover the drugs beneficiaries need or allow them to use a pharmacy they want. Take it or leave it.

Under Graham-Kennedy, that outcome was the strong possibility facing beneficiaries who have waited long enough for a prescription drug benefit. The MMA established a good program that the President signed last December.

When I think about the Graham-Kennedy prescription for drug coverage, I cannot help but think of those little warning labels that you sometimes find on the side of your prescription bottle. In this case, it should have said this: Warning. This Graham-Kennedy plan may not help you at all because if you take a non-preferred drug, it won't be covered. You will only be guaranteed "reasonable" access to a pharmacy, and the Government will determine what is reasonable. Worst of all, if you need drug coverage after December 31, 2010, there won't be any plan for you or for anybody else.

Again, 50 Democrats, including Senator KERRY, supported this.

When that amendment failed, Senator GRAHAM and Senator KENNEDY came up with an alternative which, hard to believe, was worse. Most seniors would not have even gotten a basic prescription drug benefit under the second Graham-Kennedy plan because it wasn't a universal benefit. And we have a universal benefit signed by the President of the United States.

So that's right, under the Democratic plan, the proposal did not offer a basic drug benefit to 70 percent of the seniors who had incomes above 200 percent of the Federal poverty level at that time.

Seniors across the country would have been left behind. Let me show you. In my State of Iowa—and I am saying this to Iowans if the plan passed by the President doesn't fit just right, it is voluntary, so if they don't want to do it, they don't have to. But under the proposal offered the year before by the Democrats, 64 percent of the people in my State would not have had any basic program whatsoever; 67 percent left behind in Arizona; 72 percent left behind in Washington; and 70 percent left behind in Colorado.

The second Graham-Kennedy amendment violated a fundamental tenet of Medicare—and that is a tenet of the legislation we passed—that it be universal. They called for disqualifying any beneficiary who earned $1—just $1—more than 200 percent of the Federal poverty level. So $1 was the difference between eligibility and ineligibility for this basic coverage.

Under the bill that the President signed, all Medicare beneficiaries are eligible to participate on a voluntary basis in the Medicare prescription drug benefit.

There is also a big gap in coverage. We also have been hearing from opponents of the bipartisan bill that passed the Congress and was signed by the President, about the gap in coverage. They refer to it as the donut hole.

Again, looking at their second attempt—we have it here. After looking at this plan that was put forth, my only conclusion is that this concern about a gap is newly found because most beneficiaries would not have received any basic coverage under their plan. To qualify for catastrophic coverage, a beneficiary would have to pay $3,300 out of pocket.

Talk about a hole. The majority of beneficiaries would not even get a donut.

The Congressional Budget Office estimated that 66 percent of seniors would not meet their catastrophic coverage threshold in 2005.

For a beneficiary who would meet the threshold, and based on average spending, it would take about 10½ months—sometime around Thanksgiving Day—to get any help under the catastrophic benefit.

You know that what most beneficiaries got under the second Graham-Kennedy plan is a 5-percent discount off of their drug costs until they spent $3,300. And they proposed setting the 5 percent discount in law.

I might add that 5 percent is much less than discounts available under the

Medicare-Approved Drug Discount Card Program.

Study after study is showing higher discounts. A recent study by the Centers for Medicare and Medicaid Services (CMS) showed discounts of 12 to 21 percent, and in many instances, even more. Competition among the card sponsors is leading to higher discounts for beneficiaries.

So much for the idea that direct Government involvement rather than market competition would get beneficiaries a better deal.

That is not the end. On top of all this, the last version of Graham-Kennedy did not even really offer a Medicare drug benefit because states would have administered it under their Medicaid programs.

An analysis conducted by the Centers for Medicare and Medicaid Services at that time showed that many States would have had to shoulder a sizable new financial burden if the Graham-Kennedy plan passed—a $70 billion unfunded mandate.

Arizona, Arkansas, California, Colorado, Iowa, Louisiana, Montana, Oregon, South Dakota, Washington, and West Virginia were among the hardest hit States.

At a time when States were already struggling, the second Graham-Kennedy approach would have left them with few other avenues except raising taxes to implement the drug benefit.

So while the opponents of the new Medicare drug benefit have been here on this Senate floor yelling sometimes at the top of their lungs about it, this was their plan, which was supported by 45 Democrats including the Democratic leader and Senator KERRY.

In addition, the second Graham-Kennedy plan—as well as the first—did nothing to strengthen and improve the Medicare program.

The Medicare bill we passed last year added new coverage choices and benefits. It addressed provider payments issues to make sure that beneficiaries have access to physicians and hospitals because otherwise a prescription drug benefit—or any benefit for that matter—would be meaningless.

So I think we can clearly see that the Graham-Kennedy proposals were bad medicine.

Mr. President, as I said, it is one thing to tear something down when you have a better plan. But, as you can see, this was their plan.

Their first plan offered a drug benefit that was not a permanent part of Medicare and it had limited drug coverage, a one-size-fits-all benefit—take it or leave it. Their next plan didn't give 70 percent of seniors even basic coverage, it had a huge gap in benefits, and a Medicare low income benefit that wasn't even run by Medicare.

To me, that was unacceptable in 2002 and it's unacceptable today. Instead, last year a bipartisan coalition worked to give beneficiaries a meaningful and permanent Medicare prescription drug benefit and a revitalized Medicare program.

I yield the floor.

The PRESIDING OFFICER. The time of the Senator has expired.

The Senator from Massachusetts is recognized.

Mr. KENNEDY. Madam President, I yield myself 2½ minutes.

I have great affection and respect for the chairman of the Finance Committee, but I just listened to distortion and misrepresentations on the legislation that I cosponsored with my good friend from Florida. The fact is, every senior group in the United States of America supported our proposal, and they cannot say the same about the Republican proposal.

Why in the world would all the senior groups support our proposal? Because we build on the solemn commitment that was made to the seniors in this country in 1964 and 1965. Lyndon Johnson signed the Medicare bill in 1965, where we guaranteed to every senior citizen good quality health care for the rest of their lives if they paid into the system and played by the rules. We guaranteed hospital care and care by physicians, but we never did it for prescription drugs.

That was the commitment that was made by this Government to the seniors of this Nation. This was a downpayment to meet the commitment Lyndon Johnson made and that every one of us who supported the Medicare Program believes in.

Every day that we fail to provide a real prescription drug program to the seniors is a violation of that commitment. The other side ought to be telling us how we are going to finish that commitment and close the gap for our senior citizens, rather than fly-specking other legislation that has been introduced, which did not have massive giveaways to the HMOs and massive giveaways to the drug companies.

President Bush's Medicare bill is a travesty. That is why it is not being endorsed by the senior citizens of this country.

It is astounding that Republicans think they can defend President Bush's good-for-nothing Medicare bill by attacking the Graham-Miller-Kennedy bill offered more than two years ago. Is especially astounding because that bill—which received a majority of votes in the United States Senate but was blocked by the Republican minority—was so much better than the Bush bill that Republicans passed last year.

Let's look at the record. Our bill provided $600 billion for prescription drugs for senior citizens, not the $400 billion in the Bush bill. The Bush priorities are tax cuts for the wealthy. Our priorities are health care for senior citizens.

Under our bill, every dime of the $600 billion went for prescription drugs. Under the Bush bill, $139 billion is squandered on windfall profits for the drug companies and $46 billion on giveaways to HMOs.

Under our bill, senior citizens got a real benefit, not one as full of holes as a Swiss cheese. Under our bill, senior citizens started receiving benefits on the first prescription they fill. Under the Bush bill, seniors have to pay a $250 deductible before they see a dime's worth of benefits.

Under our bill, seniors citizens had complete coverage. No doughnut holes. No big coverage gaps where seniors must pay the full cost of the drugs they need—or go without. Their bill has a huge coverage gap of almost $3,000. Once a senior has purchased $2,250 worth of drugs, they get no benefits until they spend an additional $2,850. What kind of insurance is that!

Under our bill, senior citizens paid a $25 a month premium for their coverage—and it was guaranteed. Under the Bush bill, the average premium senior citizens would have to pay was estimated at $35—but if insurance companies decided to charge more, it could be $40 or $50 or $60 or $90. There was no guarantee and no limits.

Under our bill, seniors were guaranteed access to any drug they needed—even if it was not on the formulary. Under the Bush bill, if an insurance company decides not to cover a drug the senior citizens needs, the senior citizen is out of luck.

The bottom line is that under the Bush bill, 15 million senior citizens actually will pay more for the drugs they need than they do today. Six million of the poorest of the poor on Medicaid will be forced to pay more out of pocket. Six million more senior citizens will pay more in premiums than they will get in benefits. Three million seniors will lose the good retirement coverage they now enjoy from a former employer and be forced into the inadequate government program the bill creates. Under the Graham-Miller-Kennedy bill, every senior citizen is better off. That is one key reason why every legitimate organization of senior citizens endorsed the Graham-Miller-Kennedy bill, and why the vast majority of senior citizen organizations opposed the Bush bill.

President Bush says in every stump speech that we have a "moral obligation to honor our senior citizens." He is right about that, but it is typical Bush. Right words, wrong deeds. It is wrong to make 15 million senior citizens worse off with his good-for-nothing Medicare bill. It is wrong to impose the highest premium increase in Medicare's entire history on senior citizens. It is wrong to escalate premiums a whopping 72 percent in just 2 years, so that the average senior—with an income of just $15,000—has to pay almost $1,000 in Medicare premiums. It is wrong to tolerate a situation under which, according to the Bush Administration's own estimates, the average 85-year-old will spend more than 40 percent of her Social Security benefits on Medicare premiums and cost-sharing by 2006. It is wrong to give away money to drug companies and HMOs that belongs to senior citizens. It is wrong to try to privatize Medicare and force senior citizens to join HMOs.

George Bush has had 4 years to help senior citizens get the affordable health care Medicare promises. He has failed. Now he wants another chance. He doesn't deserve it.

JOHN KERRY and Democrats in Congress have a better approach. We will repeal and replace the good-for-nothing Bush Medicare bill. We will fight for senior citizens. We will put their interests first, not the interests of big drug companies and HMOs. We will honor our senior citizens with deeds, not just words.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts has 30 seconds remaining.

Mr. KENNEDY. I withhold that.

Mr. GRASSLEY. Mr. President, I ask unanimous consent for 15 seconds.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Madam President, I ask unanimous consent that 15 seconds also be added for the Senator from Massachusetts.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. Madam President, just to remind the Senator from Massachusetts, I was chairman of the committee during this period of time for 4 months—from January until May of 2001. The Democratic Party chaired this committee from June of 2001 through all of the debate on the Medicare issue. I was not in charge of that committee at that time.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. KENNEDY. I yield back my time.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

INTELLIGENCE COMMITTEE REORGANIZATION

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. Res. 445, which the clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 445) to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence.

Pending:

McConnell/Reid/Frist/Daschle Amendment No. 3981, in the nature of a substitute.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Madam President, the reorganization resolution is now the pending business before the Senate. I want to report to our colleagues an agreement that Senator REID and I have reached—he is on the floor as well to discuss the matter—as to how we are going to proceed.

Point No. 1: any amendments will need to be offered. The issue we are dealing with, of course, is sensitive to a number of different committees in the Senate. It is the intention of Senator REID and myself not to have a managers' package. If Members of the Senate feel strongly about a particular amendment, what we recommend to them is they come over to the Senate floor and offer the amendment so that everyone can understand fully what change in the underlying resolution is being proposed.

Senator REID and I have said repeatedly that the underlying resolution is certainly not like the Ten Commandments; it should not be adjusted. We cobbled it together as best we could through a series of bipartisan discussions and compromises. Now it is the pending business before the Senate. We expect amendments. We would like amendments. We received notice last night by hotlining that there could be as many as 50 amendments Members may wish to offer. We are open for business, and we would like for Senators to come over and offer those amendments so we can move forward.

I also remind our colleagues that Senator FRIST and Senator DASCHLE and Senator REID and myself did file a cloture motion last night, not to shut anyone out but because we are about to leave on Friday and so many amendments were indicated as possibilities that we felt we needed to nudge the process forward by creating the possibility of an end time tomorrow.

Let me repeat before turning to my friend and colleague, Senator REID, that if Senators have an amendment, please come and offer it, explain it to the rest of the Senate, lay it before the Senate, explain what it is about, and let's have votes and move the process forward as rapidly as we can.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Madam President, as difficult as this was for us to get to the point where we are now, it is not as if the Senator from Kentucky and the task force just made all this stuff up. Because of 9/11, we created a Department of Homeland Security. We now have a Cabinet-level Secretary of Homeland Security—a former Congressman and Governor—Tom Ridge. There is a Department of Homeland Security, I repeat, of Cabinet status, and because of legislation we passed previously, it has certain obligations within the executive branch of Government. So we had a guideline to follow because that is what Secretary Ridge has been doing in that Department of Homeland Security.

One of the guidelines we had was to try to track that with what will be the organizational prerogatives of the Senate. I believe we have done a pretty good job doing that. As the Senator from Kentucky mentioned, if people think they want to improve upon what we have done, what they need to do is offer an amendment and the body will decide whether that is the right way to do it.

Also, the two leaders have said we are going to finish our work before we leave for the recess prior to the election. That means we are not going to wait around here all day for someone who has a lunch or meeting in their office or a committee hearing. If we go for a period of a half hour, 45 minutes here—and that is an arbitrary number I throw out—and nobody shows up, we are going to move to third reading. We are not going to wait around with the recess, prior to the lameduck session, taking place tomorrow, supposedly. We are not going to wait around here all night for people to work out their schedules to come here. This is their schedule, the floor of the Senate. This is the primary obligation Senators have. Everyone should know—staffs listening, some Senators listening—if we are waiting around here with nothing to do in a quorum call, Senator MCCONNELL and I are going to move to third reading, and we are going to wrap up this resolution.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Madam President, let me also take this opportunity to remind our colleagues what this is all about. The Secretary of Homeland Security and his principal assistants are being dragged around the Capitol continuously. Just this year, there have been 164 hearings, up from 148 last year. There are currently 88 committees or subcommittees in the House and Senate that have at least some part of the Homeland Security Department. Here in the Senate, which we are addressing in this underlying resolution, there are 25 Senate committees or subcommittees that have jurisdiction over the Department of Homeland Security. Secretary Tom Ridge called me on Monday pleading for relief. His job, as important as oversight is, is not to spend all of his time up here.

What we are trying to do in the underlying resolution is to consolidate in one place the jurisdiction over the Department of Homeland Security to simplify oversight for us and to simplify the very necessary process of oversight for the Secretary and his principal assistants.

The resolution is pending. As I said, we are open for business, and we hope to have amendments in the very near future.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAUCUS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AGRICULTURAL DISASTER ASSISTANCE

Mr. BAUCUS. Madam President, at this moment there are several matters pending before the Congress before we recess and/or adjourn. One of them is something that is extremely critical to a lot of people in our country and that is disaster assistance. It is not only the hurricanes in Florida, but it is the droughts farmers and ranchers have faced throughout our country, obviously especially in rural parts of America, and in my State, Montana, quite severely.

Montana has faced a drought, mostly around the southwestern part of our State. There are parts of Montana that are not droughted out. It is precarious. Because of the almost arbitrary patterns of nature, it is hard to know where it is going to rain or where it is not going to rain, but the fact is, a lot of people are in very tough shape. They need disaster assistance just like the folks in Florida. Maybe Louisiana and Alabama need disaster assistance as well.

It is important for us to remember that we are here, frankly, to help Americans. We are not 50 different nations. We are one country. We are one Congress with one Senate and one House. We have one President. It is true that we have 50 States, but we are one country and we have one Congress. The Constitution provides Congress will enact legislation and the executive branch will administer the legislation, but it is up to us to do what is right for our country, for America.

Sometimes an argument is made, and I even heard this argument made on the floor, that hurricanes are sudden and when there is damage those folks deserve assistance, but droughts are over time; therefore, they don't deserve disaster assistance because it is not really a disaster. It is something that is an adverse consequence that happens over time.

Responsible Senators are making that argument to me. Actually, I question whether they are responsible if they are making that argument. It is a totally fallacious argument. It is wrong for a Senator to say, even if it is in private: You folks don't need agricultural disaster assistance because that's over time; that's not a sudden, immediate occurrence.

The problem, obviously, is that whenever there is a hurricane—and it is too bad, the damage it causes—our national networks focus on it because it is a sudden, at that time, at that one moment disaster, so the TV cameras are there, the correspondents are there. How many times did we see the shots of disaster in Florida? And well we should, because it is terrible what those people are going through. There were parts of Florida hit several times and we should help those people who need help. There is no doubt about that.

But, as I said, we should help those people who need help, and there are some other people who need help on account of nature's disastrous occurrences and they are farmers and ranchers. It is true that droughts have occurred every 4 or 5 or 6 years. But that does not diminish the argument that they need help, too. It is nature that caused the problem. They didn't cause the problem. They deserve help just as everybody else deserves help. We are one country, one Congress, one Senate, and one House, and we should very quickly give that aid, not only to the folks in Florida but also to the folks across our country who suffered disaster because of drought.

Many times on the floor Senators have shown photographs of drought in the country. It is real. I ask all Members—of course they don't have the time—to get out of Washington, DC. Get out of the cities. Go across America and see where the drought is. They are droughted out.

There are also floods which have totally destroyed crops. There are floods in eastern North Dakota, for example, near the Mississippi River. Take North Dakota, it is flood at one end of the State and it is drought at the other end of the State—they are both disasters. That is, both phenomena have destroyed the crops.

This is pretty simple stuff. It is very simple. It is basic. I don't know why we can't get together and help folks who suffered losses around the country, natural losses—we are talking about natural losses here—just as folks in the South, particularly Florida, suffered natural losses.

Then there is the other argument: There is a farm bill. The farm bill takes care of farmers. There is a farm bill and it is a pretty big farm bill.

Let's look at the facts. How much of that farm bill actually went to farmers? A very low percentage. Most of the farm bill, I might say, went to other programs—the Food Stamp Program. In fact, only about 18 percent of the total farm bill is dollars allocated to farmers and ranchers, essentially support payments. Why? To fight other countries that have bigger support payments for their farmers which make our crops even less competitive, so we have to have a farm bill to make sure our farmers are competitive, too. Clearly, that is one reason for the next round of the WTO talks, the Doha Round; namely, for producing nations to begin working together to lower some of their price supports, particularly export subsidies. That is the most heinous form of subsidy. Get rid of those export subsidies, as the Europeans have agreed they will begin to do, and then we can address the problems of the farmers.

But the main point is only 18 percent goes to farmers; the rest goes to other programs, mainly food stamp programs.

Add to that, that 18 percent is irrelevant to the phenomenon we are talking about. It is irrelevant. Why is it irrelevant? It is irrelevant because that is a farm program which pays farmers essentially only when they produce crops. It is a support payment program. It depends upon the price of crops. But when farmers do not produce any crops because of a natural disaster, the farm program does not help them. It doesn't help them and that is why we have agricultural disaster assistance programs. We have had several—many in the past. That is the same kind of program we should have right here today.

So I say to my colleagues who are now negotiating agricultural disaster assistance, the real question is, What do we do now? The House passed a $3 billion agricultural disaster assistance bill. It is folded into the hurricane assistance dollars. It is now over here in the Senate. The conferees are trying to decide whether that should be put in the Homeland Security appropriations, which is in conference.

I don't care about the process. That is irrelevant to me. I only care about the result. The result should be that, while we give aid to folks who suffer damage on account of the hurricanes, we should also give aid to our farmers and ranchers across our country who have suffered an equally devastating natural disaster. Let's just do it and do it now.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAUCUS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Madam President, what is the pending business?

The PRESIDING OFFICER. We are on S. Res. 445.

AMENDMENT NO. 3989 TO AMENDMENT NO. 3981

Mr. BAUCUS. Mr. President, I have an amendment to the underlying bill which I send to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Montana [Mr. BAUCUS], for himself, and Mr. GRASSLEY, proposes an amendment numbered 3989 to amendment No. 3981.

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The PRESIDING OFFICER. The Senator's time has expired.

Mr. KENNEDY. I yield back my time.

CONCLUSION OF MORNING BUSINESS

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Mr. REID. Madam President, as difficult as this was for us to get to the point where we are now, it is not as if the Senator from Kentucky and the task force just made all this stuff up. Because of 9/11, we created a Department of Homeland Security. We now have a Cabinet-level Secretary of Homeland Security—a former Congressman and Governor—Tom Ridge. There is a Department of Homeland Security, I repeat, of Cabinet status, and because of legislation we passed previously, it has certain obligations within the executive branch of Government. So we had a guideline to follow because that is what Secretary Ridge has been doing in that Department of Homeland Security.

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Mr. McCONNELL. Madam President, let me also take this opportunity to remind our colleagues what this is all about. The Secretary of Homeland Security and his principal assistants are being dragged around the Capitol continuously. Just this year, there have been 164 hearings, up from 148 last year. There are currently 88 committees or subcommittees in the House and Senate that have at least some part of the Homeland Security Department. Here in the Senate, which we are addressing in this underlying resolution, there are 25 Senate committees or subcommittees that have jurisdiction over the Department of Homeland Security. Secretary Tom Ridge called me on Monday pleading for relief. His job, as important as oversight is, is not to spend all of his time up here.

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The resolution is pending. As I said, we are open for business, and we hope to have amendments in the very near future.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAUCUS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AGRICULTURAL DISASTER ASSISTANCE

Mr. BAUCUS. Madam President, at this moment there are several matters pending before the Congress before we recess and/or adjourn. One of them is something that is extremely critical to a lot of people in our country and that is disaster assistance. It is not only the hurricanes in Florida, but it is the droughts farmers and ranchers have faced throughout our country, obviously especially in rural parts of America, and in my State, Montana, quite severely.

Montana has faced a drought, mostly around the southwestern part of our State. There are parts of Montana that are not droughted out. It is precarious. Because of the almost arbitrary patterns of nature, it is hard to know where it is going to rain or where it is not going to rain, but the fact is, a lot of people are in very tough shape. They need disaster assistance just like the folks in Florida. Maybe Louisiana and Alabama need disaster assistance as well.

It is important for us to remember that we are here, frankly, to help Americans. We are not 50 different nations. We are one country. We are one Congress with one Senate and one House. We have one President. It is true that we have 50 States, but we are one country and we have one Congress. The Constitution provides Congress will enact legislation and the executive branch will administer the legislation, but it is up to us to do what is right for our country, for America.

Sometimes an argument is made, and I even heard this argument made on the floor, that hurricanes are sudden and when there is damage those folks deserve assistance, but droughts are over time; therefore, they don't deserve disaster assistance because it is not really a disaster. It is something that is an adverse consequence that happens over time.

Responsible Senators are making that argument to me. Actually, I question whether they are responsible if they are making that argument. It is a totally fallacious argument. It is wrong for a Senator to say, even if it is in private: You folks don't need agricultural disaster assistance because that's over time; that's not a sudden, immediate occurrence.

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But, as I said, we should help those people who need help, and there are some other people who need help on account of nature's disastrous occurrences and they are farmers and ranchers. It is true that droughts have occurred every 4 or 5 or 6 years. But that does not diminish the argument that they need help, too. It is nature that caused the problem. They didn't cause the problem. They deserve help just as everybody else deserves help. We are one country, one Congress, one Senate, and one House, and we should very quickly give that aid, not only to the folks in Florida but also to the folks across our country who suffered disaster because of drought.

Many times on the floor Senators have shown photographs of drought in the country. It is real. I ask all Members—of course they don't have the time—to get out of Washington, DC. Get out of the cities. Go across America and see where the drought is. They are droughted out.

There are also floods which have totally destroyed crops. There are floods in eastern North Dakota, for example, near the Mississippi River. Take North Dakota, it is flood at one end of the State and it is drought at the other end of the State—they are both disasters. That is, both phenomena have destroyed the crops.

This is pretty simple stuff. It is very simple. It is basic. I don't know why we can't get together and help folks who suffered losses around the country, natural losses—we are talking about natural losses here—just as folks in the South, particularly Florida, suffered natural losses.

Then there is the other argument: There is a farm bill. The farm bill takes care of farmers. There is a farm bill and it is a pretty big farm bill.

Let's look at the facts. How much of that farm bill actually went to farmers? A very low percentage. Most of the farm bill, I might say, went to other programs—the Food Stamp Program. In fact, only about 18 percent of the total farm bill is dollars allocated to farmers and ranchers, essentially support payments. Why? To fight other countries that have bigger support payments for their farmers which make our crops even less competitive, so we have to have a farm bill to make sure our farmers are competitive, too. Clearly, that is one reason for the next round of the WTO talks, the Doha Round; namely, for producing nations to begin working together to lower some of their price supports, particularly export subsidies. That is the most heinous form of subsidy. Get rid of those export subsidies, as the Europeans have agreed they will begin to do, and then we can address the problems of the farmers.

But the main point is only 18 percent goes to farmers; the rest goes to other programs, mainly food stamp programs.

Add to that, that 18 percent is irrelevant to the phenomenon we are talking about. It is irrelevant. Why is it irrelevant? It is irrelevant because that is a farm program which pays farmers essentially only when they produce crops. It is a support payment program. It depends upon the price of crops. But when farmers do not produce any crops because of a natural disaster, the farm program does not help them. It doesn't help them and that is why we have agricultural disaster assistance programs. We have had several—many in the past. That is the same kind of program we should have right here today.

So I say to my colleagues who are now negotiating agricultural disaster assistance, the real question is, What do we do now? The House passed a $3 billion agricultural disaster assistance bill. It is folded into the hurricane assistance dollars. It is now over here in the Senate. The conferees are trying to decide whether that should be put in the Homeland Security appropriations, which is in conference.

I don't care about the process. That is irrelevant to me. I only care about the result. The result should be that, while we give aid to folks who suffer damage on account of the hurricanes, we should also give aid to our farmers and ranchers across our country who have suffered an equally devastating natural disaster. Let's just do it and do it now.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAUCUS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Madam President, what is the pending business?

The PRESIDING OFFICER. We are on S. Res. 445.

AMENDMENT NO. 3989 TO AMENDMENT NO. 3981

Mr. BAUCUS. Mr. President, I have an amendment to the underlying bill which I send to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Montana [Mr. BAUCUS], for himself, and Mr. GRASSLEY, proposes an amendment numbered 3989 to amendment No. 3981.

Mr. BAUCUS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To clarify the provisions relating to the jurisdiction of the Department of Homeland Security)

Strike section 101(b)(1) of the resolution and insert the following:

(b) JURISDICTION.—There shall be referred to the committee all proposed legislation, messages, petitions, memorials, and other matters relating primarily to the following subjects:

(1) Department of Homeland Security, except matters relating to—

(A) the Coast Guard, the Transportation Security Administration, or the Federal Law Enforcement Training Center; and

(B) the following functions performed by any employee of the Department of Homeland Security—

(i) any customs revenue function including any function provided for in section 415 of the Homeland Security Act of 2002 (Public Law 107-296);

(ii) any commercial function or commercial operation of the Bureau of Customs and Border Protection or Bureau of Immigration and Customs Enforcement, including matters relating to trade facilitation and trade regulation; or

(iii) any other function related to clause (i) or (ii) that was exercised by the United States Customs Service on the day before the effective date of the Homeland Security Act of 2002 (Public Law 107-296).

Mr. BAUCUS. Madam President, I offer this technical clarifying amendment to the underlying resolution. It delineates committee jurisdiction. Part of it is with respect to the Customs Service, which the Finance Committee has had jurisdiction over for 188 years. Now the Homeland Security agency appropriately should handle all national security matters in protecting American security. It is appropriate that those functions be transferred to that department which has that jurisdiction.

It is also important that the Finance Committee maintain jurisdiction over not the national security aspects of Customs but the commerce aspects of Customs. This amendment clarifies that distinction. It is in no way intended to have jurisdiction over the security aspects of homeland security—only the commercial side, for which customarily the Finance Committee has the appropriate role.

Mr. REID. Madam President, will the Senator yield for a question?

Mr. BAUCUS. Yes.

Mr. REID. Madam President, it is my understanding that both Senator GRASSLEY and the ranking member are supportive of the amendment.

Mr. BAUCUS. That is correct.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 3989 to Amendment No. 3981) was agreed to.

Mr. BAUCUS. Madam President, I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. REID. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ENSIGN). Without objection, it is so ordered.

Mr. HARKIN. Mr. President, I ask unanimous consent to speak in morning business for up to 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

TOTALLY FALSE

Mr. HARKIN. Mr. President, just when you think things have gotten about as bad as they can get with the situation in Iraq and what got us into Iraq, another shoe drops. This morning we open up our newspapers and we read that the Duelfer report came out yesterday. This is the person whom the Bush administration picked to investigate Iraq's weapons programs. And here is what the headline reads:

U.S. "Almost All Wrong" on Weapons.

It is not that we were just slightly wrong, 50 percent or 60 percent or 40 percent—99.9 percent of everything that President Bush, Vice President CHENEY, Condoleezza Rice, Donald Rumsfeld, and Colin Powell said prior to the war in Iraq and right after it was wrong. Where did they come up with this stuff? Where did they come up with the sayings they had on Iraq?

Here is Colin Powell:

> There can be no doubt that Saddam Hussein has biological weapons and the capability to rapidly produce more, many more. And he has the ability to dispense these lethal poisons and diseases in ways that can cause massive death and destruction.

That was in a February 5, 2003 address to the U.N. Security Council. Where did he get that nonsense? Did he just pluck it out of thin air?

Here is Condoleezza Rice:

> We have found, in Iraq, biological weapons laboratories that look precisely like what Secretary Powell described in his February 5th report to the United Nations.

That was from May 28, 2003. She says: We found them.

Where are they? Don't these people have any shame at all?

Here is President Bush:

> Iraq has stockpiled biological and chemical weapons and is rebuilding facilities used to make more of those weapons.

Absolutely false.

Donald Rumsfeld, March 11, 2003:

> . . . we know that he continues to hide biological or chemical weapons, moving them to different locations as often as every 12 to 24 hours, and placing them in residential neighborhoods.

Totally false.

Here is President Bush before the United Nations, September 16:

> Iraq also possesses a force of Scud-type missiles with ranges beyond the 150 kilometers permitted by the U.N. Work at testing and production facilities shows that Iraq is building more long-range missiles that can inflict mass death throughout the region.

President Bush, United Nations, September 16, 2002. Totally false. Totally false.

Here is Vice President CHENEY:

> Let's talk about the nuclear proposition for a minute . . . We know he's been absolutely devoted to trying to acquire nuclear weapons. And we believe he has, in fact, reconstituted nuclear weapons.

Vice President CHENEY, March 16, 2003—every single one of them telling mistruths to the American people to get us sucked into the Iraq war. Now we have—I don't know what happened yesterday—1,061 dead, 8,000 of our young people casualties, injured for life. How many countless innocent Iraqis, women, children? They didn't like Saddam Hussein either, but they are now injured, many of them killed. The country is in chaos. Iraq is a quagmire.

The rest of the world is looking at this, and we are the laughingstock of the world. They are saying, what happened to you, America? What happened to you?

Mr. REID. Will the Senator yield for a question?

Mr. HARKIN. I am delighted to yield.

Mr. REID. I don't know if the Senator from Iowa heard today, but there was an announcement that 13,000 civilian Iraqis have been killed.

Mr. HARKIN. I didn't hear that.

Mr. REID. That is what I heard on public radio this morning.

Mr. HARKIN. Thirteen thousand Iraqis have been killed?

Mr. REID. Civilian Iraqis.

Mr. HARKIN. Well, I don't know if that is right. We would have to look at that to see if that is right. Thirteen thousand Iraqi civilians killed? How many women, how many children? The rest of the world is asking, what has happened to you, America? America used to be the moral leader in the world. You were the ones we looked to for guidance and direction, to be honest and open, not secretive, not lying to the rest of the world. When we confronted Nikita Khruschev in 1962 when they put missiles in Cuba, we had the photographs. We had the positive proof. The world has looked upon us like that.

And now? Now the rest of the world is looking at the United States and saying: You are just lying. You lied about this. You covered it up. And look at the mess you have created now.

And still President Bush and Vice President CHENEY, Colin Powell, Donald Rumsfeld, Condoleezza Rice, the whole crowd of them still continues to insist that everything they did was right. They still continue to insist that they would do the whole thing just as they did it.

In any other country in this world, if the leadership of that country had done this, they would have to resign in disgrace.

They certainly would not be seeking reelection. I am surprised this President and Vice President and their team are asking the American people to put them there again after this—1,061 Americans dead; several thousand, 8,000, severely injured for the rest of their lives. Now we have this report about 13,000 Iraqi civilians dead. It is a country in chaos.

America is isolated in the world community when, after September 11, 2001, the world was on our side. They were with us. They wanted to help us go after al-Qaida and Osama bin Laden and the terrorists because the rest of the world knew then, as they know now, they have a stake in going after terrorists. But they had no stake in going into a misguided war, a war that we were taken into with falsehoods—absolute, total falsehoods.

I would be the first to say I don't have all the answers on how we get out of Iraq. It is just like dropping a ceramic bowl and it breaks and you have to put it together again. It is very tough. But I do know this: We will never solve our situation in Iraq, we will never get our troops out of Iraq with the leadership we have in the White House right now. This President has burned his bridges; he has poisoned the well with every country in the world. People know they misled us and continued to mislead us in Iraq. I mentioned the lives. How about the money—$200 billion and counting. Well, they say $130 billion or $140 billion. Come on, it is going to be well over $200 billion, and we know that. Yet we cannot provide health care to our people. We cannot fund No Child Left Behind. We cannot pass a highway bill to rebuild our highways because we don't have enough money.

No, I don't have all the answers in Iraq. I am the first to state that. I know one thing: We will never be able to get out of Iraq and solve that mess with the leadership that has so misled us and the world in the past. We need new leadership with fresh credibility to give them a chance to go to the rest of the world and say there is someone new here, and we are going to rebuild those coalitions and alliances. We are not going to continue to go down that road. There is one thing about being consistent; there is another thing about being stubborn and reckless.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HARKIN. I ask unanimous consent for 5 more minutes.

The PRESIDING OFFICER. Without objection——

Mr. GREGG. Mr. President, I object. I ask unanimous consent that the Senator be yielded 5 minutes and that I be given 15 minutes after the Senator.

Mr. REID. Mr. President, parliamentary inquiry: I ask unanimous consent that the Senator from New Hampshire be recognized for 15 minutes in morning business after Senator HARKIN gets his 5 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HARKIN. Mr. President, I wanted to close up anyway. We hear a lot about consistency. I tell people this: Imagine you are a passenger in a car. You are on a steep mountain road, and you want to get to the bottom of the mountain. You look over, and your driver is President Bush. He has his hands gripped tightly on that wheel, and he is looking straight down that road. You see a bend in the road up ahead and you say: Mr. President, there is a bend in that road. But the President is hunched over that wheel, he is gripping it tightly, and he is looking straight ahead and squinting those eyes, and he says: I don't care. I started out straight, and that is the way I am going.

Then he drives you over the cliff. You get to the bottom, but your car is wrecked and you are either dead or severely injured.

Imagine yourself a passenger in a car on that same steep mountain road. You look over and your driver is JOHN KERRY. You say: Look, Mr. KERRY, there is a bend in the road.

He says: I see that bend, and I know how to take it. So he takes that bend and another couple bends, and he gets you safely to the bottom of the mountain. The car is secure and you are safe. That car represents our country, and you are the "passenger"—the people of this country.

I am sorry, Mr. President, it is not enough to be stubborn and reckless. That hurts our country. That hurts our people. It is better to be tough and smart. It is better to know that sometimes our enemies are going to shift their tactics. The terrorists are not always going to do one thing. We better be able to respond.

Yet we are bogged down in one quagmire in Iraq, and that is where we are headed. That is dragging our country down. It is hurting our people. That is stubborn. That is reckless. That is not consistent. That is ignoring the fact that any military leader will tell you that when you go into battle, you have a plan.

But if the enemy does something different, you have to be able to maneuver. George Bush cannot maneuver. He is stuck in the quicksands of Iraq, while al-Qaida and Osama bin Laden go about their business. Better to be tough and smart than to be reckless and stubborn.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from New Hampshire is recognized.

WAR IN IRAQ

Mr. GREGG. Mr. President, I think it is worth a minute or two to respond to some of the comments by the Senator from Iowa. I find them to be so inconsistent with the facts as they exist on the ground that it is difficult not to respond to them.

The Senator from Iowa is doing an excellent job of Monday morning quarterbacking. However, the information that the President made his decisions on, the information that our military made decisions on was the same information available to us in the Senate at the time. It was the exact same information that led the Senator from Massachusetts, the nominee of the Democratic Party, to conclude—I will paraphrase him, and I think it is fairly close—that Saddam Hussein must be removed from office, and anybody who doesn't understand that, he should be removed from office, is not qualified to be President of the United States. He said that in a debate in New Hampshire, or in one of the debates running up to the primary, during the primary process. He went on after that to say that he had seen the information and he presumed that the information was reasonably accurate as to the threat Saddam Hussein presented.

Not only did the Senator from Massachusetts say that, but, of course, President Clinton's administration said exactly that relative to the weapons of mass destruction and relative to the threat of Saddam Hussein. In fact, not only did the Senator from Massachusetts say that, not only did the prior President, President Clinton, say that, but the United Nations, in 17 different resolutions, said exactly that to the people of Iraq. As part of the world community, they told Saddam Hussein to disarm, open up his nation, stop killing his people. But he, of course, did not.

I now find it extraordinarily ironic, extremely inconsistent, and reflective, in my opinion, of poor judgment that we have a nominee for the national party whose positions are being parroted by the Senator from Iowa, who is essentially saying that a policy of appeasement and defeat toward Iraq is the appropriate policy for us to pursue.

They have a nominee for their national party who has said he would rather have Saddam Hussein than the chaos that is there. That is in direct contradiction to what he said before, which was that Saddam Hussein represented a threat that should be removed, and anybody who didn't understand that should not be elected President.

Of course, he has said such things as the war in Iraq is "the wrong war, at the wrong place, at the wrong time."

And we have "taken our eye off of the ball." The problem with that philosophy, which he essentially says as a Monday morning quarterback that he is going to change positions from the original position relative to the war in Iraq, is that it not only undermines his credibility as a potential leader of this Nation, it undermines his ability to be able to communicate effectively with the other world leaders who are relying on our leadership.

One thing we have found over time is that both troops in the field and world leaders like to know that the United States stands for something and that we do not change with the political winds or whoever our opponent happens to be as of that day.

When you have a Presidential nominee of a national party, in the sense of the Senator from Massachusetts, who is essentially adjusting his message as the polling data comes in and adjusting his message as he confronts different opponents, whether it is Howard Dean in the primary when he becomes much more passive or, as he moves through the primary process, he becomes much more aggressive and then becomes much more passive again as the numbers come in, it is very hard to look to that person for the leadership you need if you are going to lead the world community. This President has done an aggressive job leading the world community.

I think it is ironic that so many Members on the other side of the aisle so easily disregard the commitment and basically disrespect the commitment some of our allies have made, especially Britain which has committed thousands of troops and lost many people in this war on terrorism, both in Iraq and around the world, or Australia or Poland or Italy. These are countries which have stood by us.

Granted, France is not there. France is not in Iraq. France is, however, in Afghanistan. France is working with us relative to Iran. France has chosen not to pursue the course we have pursued in Iraq, but I do not think we can let our national policy, our national defense, or our national security be determined by where France is and how France stands on issues. We, obviously, encouraged them to join us, but they decided not to. When it comes to our national security, I do not think we can have our policy decided by the French.

The reason why Iraq is so critical has to be restated. We have a tactical war we have been pursuing which is essentially this: The President, with an incredible amount of energy and expertise of the military and the intelligence community, has chased the terrorists around the globe, has kicked over the rocks under which they live and has tried to bring them to justice. That is called a tactical strategy, and that, unfortunately, is going to go on for a lot of years. We are going to have to continue to hunt these people down.

On the fact which reflects the inconsistency of the position of the Senator from Iowa—and there has been considerable success in this area even though the Senator from Iowa may not be willing to acknowledge it—over 75 percent of the leadership of al-Qaida has been captured or killed, Afghanistan is free, there is no longer a Taliban government there, and they will hold elections this weekend with 10 million registered to vote, 40 percent of whom are women. Those women were not even allowed out of their house prior to action there. That is significant progress. But that is a tactical effort, chasing the terrorists around the globe.

We are not going to succeed in this war unless we convince the Islamic world that Western values are not a threat to the Islamic values, unless we can prove to the Islamic community at large, especially in the Middle East, that being free, that having liberty, that having the right to vote, that having a market economy, that giving the women a right to participate in society is not a negative but is rather a positive. If we are successful in setting up a nation in Iraq which has liberty, which has individual rights, which has the rule of law, which has a form of democracy, which gives women the right to participate in society at a fairly high level of equality with men, we will have fundamentally undermined the capacity of Islamic fundamentalism to recruit throughout the world because we will prove to the mainstream Islamic community in this world that Western values, rather than being a threat, is a plus.

I hope that rather than being sunshine supporters of our efforts in that part of the world, we would recognize that we are involved in what is a major strategic effort to try to win the war on terrorism. We are not in Iraq to benefit the Iraqis. We are in Iraq to keep America safer, and the way we keep America safer is by having Iraq turned into a successful free nation where people have liberty, people have freedom, women have rights, and there is a democracy where people can vote.

They are going to hold elections in January. As Prime Minister Allawi said when he was here, Iraq has become the cutting edge in the area of the fight on terrorism. It is hope which is confronting the fear of the terrorists. We should be supporting people such as Prime Minister Allawi trying to protect their nation.

It is noted that 13,000 Iraqis have died in Iraq. That is a huge number of people, and it is a sad commentary, but those individuals have died in a process to try to obtain freedom for their nation, in many instances. Certainly, that number compares rather dramatically with the hundreds of thousands of Iraqis who were murdered under the Saddam Hussein regime.

Our goal, of course, is to create an Iraq where death is the exception rather than the rule, where the rule of law is the rule, and where liberty exists and where, as a result, the freedoms that encourage people to flourish are allowed to flourish themselves. We will have, in that way, undermined the role of the terrorists, and the hope that Mr. Allawi is seeking will be realized. The accomplishment will significantly improve our safety and lead directly to America being safer.

That is a quick response to the very long statement of the Senator from Iowa. I thought some comment should be made.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 5 minutes remaining.

FSC/ETI CONFERENCE REPORT

Mr. GREGG. Mr. President, I wish to speak to the recent conference which was completed on the FSC bill, which is the foreign tax bill, which is a fairly complicated piece of legislation, a major piece of legislation. Certainly, I congratulate the adeptness of the people who led that bill through both the House and the Senate, because passing a bill through the House and Senate of that size is a challenge, to say the least, and the success of their getting it through is very impressive, especially in light of the fact that so much of the bill that passed the Senate did not appear in the final product as it came out of the House, and vice versa.

The bill was modified significantly. The reason I did not sign the conference report—and I thought I should come to the floor to explain this—is that I do not find the bill compelling on balance. Yes, the bill does something that has to be done, which is to correct the problems the WTO has assessed against us relative to the duty that the European Union assessed against us relative to the duties and our tax law and the fact that many of our manufacturers are now being assessed a fairly significant duty as a result of penalties assessed under that finding. That needed to be corrected.

That, however, was a $50 billion exercise. It could have been done in a revenue-neutral way, and it should have been done. But the bill ended up being about a $140 billion bill, of which the majority, the balance of the tax reductions in this bill are targeted toward interest groups and initiatives which are at the margin, to say the least, relative to need and are significantly, in my opinion, questionable. I will just point to one, and that is the manner in which the ethanol subsidy is proposed in this bill.

Remember, ethanol is alleged to be a renewable fuel which will give us some sort of energy independence, but most of the studies have concluded—at least a major study in this area has concluded—that you actually use as much energy to produce ethanol as you use ethanol and, therefore, it really is a wash relative to whether it is a true renewable that gives us some sort of energy independence. Maybe down the road it can be produced more efficiently, but certainly right now it cannot be produced that way.

It also has huge environmental impacts. In fact, ironically, the recent study by the Oceans Commission, set up by this Congress, concluded that the most significant pollutant in the oceans today is the nitrates runoff from the Midwest which is creating a huge dead zone in the Gulf of Mexico, and that is having a major impact on pollution in the oceans. That is a function of agricultural practices which are basically encouraged, in many ways, by this ethanol subsidy.

The way this ethanol subsidy is handled in this bill is a masterful piece of legislative activity. I do admit to that. It is masterful in that basically they take the ethanol subsidy, and today we pay 13 cents tax on ethanol, 18 cents on a gallon of gas, and they raise the tax to 18 cents for everything.

All ethanol products now are paying the full gasoline tax, so there is a 5 cent per gallon revenue increase to the Federal Government, theoretically—theoretically because it is purely theoretical but beautifully done.

They take that 5 cents which was going into the general fund and they move it over to the highway fund where it is absolutely required to be spent because the highway fund spends under a formula. That 5 cents is actually spent on roads, and I guess one can argue that that is good policy.

Then in a movement of undeniable brilliance when it comes to raiding the American coffers of the taxpayers, they take the 5 cents and they refund it to the ethanol producers through a tax credit. So having raised the tax, they guarantee it will be spent and then they guarantee that on top of spending it they will actually refund it to the producers.

Who are the producers? Well, in this instance one company produces one-third of the ethanol in this country and so they are going to get about a $2 billion windfall out of this proposal.

That may be good policy if one is from the Midwest, but it is not good policy from the standpoint of producing a renewable because as a practical matter ethanol is not defensible as a renewable right now because it costs as much in energy costs to produce it as it does to use it. Its production costs equal its value. It is creating significant pollution concerns. As a result of this bill, we have created a huge new subsidy for the producers which was not there before.

I have more to say on this topic. I appreciate the courtesy of the Senate in allowing me this time, and I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is the McConnell substitute No. 3981.

AMENDMENT NO. 3994

Mr. CHAMBLISS. Mr. President, I send an amendment to the substitute to the desk for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Georgia [Mr. CHAMBLISS], for himself and Mr. KENNEDY, proposes an amendment numbered 3994.

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To clarify the jurisdiction of the Committee on Homeland Security and Governmental Affairs)

At the end of section 101(b)(1) insert the following:

"except matters relating to the U.S Citizenship and Immigration Service and the immigration functions of the U.S. Customs and Border Protection and the U.S. Immigration and Customs Enforcement, and the Directorate of Border and Transportation Security.".

Mr. CHAMBLISS. Mr. President, under the current resolution that is being considered, the Commerce Committee retains Coast Guard jurisdiction and Transportation Security Administration jurisdiction and the Finance Committee retains the revenue side of the Customs Department jurisdiction. This amendment simply allows the Judiciary Committee to receive parity with the other committees that are giving up part of their jurisdiction to the new Homeland Security committee.

I will tell my colleagues specifically what this amendment does. It retains the Immigration and Naturalization functions at the Judiciary Committee, which are in line with Senate rule No. XXV. Specifically, it includes three agencies: Citizenship and Immigration Services, Immigration and Customs Enforcement, as well as Customs and Border Protection. In addition, Judiciary would retain the immigration functions at the border and transportation security directorate.

These functions include the U.S. visit entry/exit program and the Visa Waiver Program. The amendment preserves the language that currently rests in S. Res. 445 that maintains certain customs in the Finance Committee.

What does the new Governmental Affairs and Homeland Security Committee get as a transferee from the Judiciary Committee under this amendment?

First, it receives the information, analysis, and infrastructure protection directorate. It receives the emergency preparedness and response directorate, including FEMA; third, the science and technology directorate; fourth, State and local coordination function; and five, jurisdiction over Secret Service.

In addition, the following agencies would go to the new committee: The Office of Domestic Preparedness under BTS from Judiciary and also would receive domestic emergency support teams under EPR from Judiciary.

This is a balanced approach. This amendment maintains parity with the Commerce Committee, the Finance Committee, and the Judiciary Committee relative to the particular jurisdiction we will maintain.

As the chairman of the Immigration Subcommittee on the Judiciary Committee, daily we deal with various matters involving immigration. Some of that has had to do with terrorist issues. Those issues should rightly go to the new Department of Homeland Security, but the bulk of issues we deal with relative to immigration are dealt with at the State Department, not currently with the Department of Homeland Security.

There will be overlap on every issue that every Federal agency deals with relative to terrorism and homeland security. We cannot cover every single issue and move it to this one particular committee to have sole jurisdiction over it just because it may deal with homeland security; we can not move every single subcommittee and all jurisdiction over every issue to the newly created committee.

What this amendment does is retain in the Judiciary Committee the basic core immigration issues that are judiciary related, not terrorism related.

The Judiciary Committee is made up of individuals who have a legal background, and for the most part there are legal issues involved in the immigration issues we are proposing be retained within the Judiciary Committee.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I stepped off the floor briefly. Through the Chair to the distinguished Senator from Georgia, I ask: Is this amendment offered on behalf of the Senator from Georgia and Senator KENNEDY?

Mr. CHAMBLISS. I should have mentioned that. Senator KENNEDY and I offered this amendment together.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. McCONNELL. Mr. President, we are hoping to get a vote on this amendment in the near future. Is Senator BAYH going to offer an amendment as well?

Mr. REID. Yes.

Mr. McCONNELL. Is there anyone else in the Chamber to speak on the

Chambliss-Kennedy amendment? If not, it might be a good idea to lay that aside and let Senator BAYH offer his amendment.

Mr. REID. I say through the Chair to the manager of the bill, I think that is totally appropriate. He has something to do in a half hour or so, so it would be good to have his amendment taken care of at this time.

Mr. MCCONNELL. I ask unanimous consent that we temporarily lay aside the Chambliss amendment to give Senator BAYH an opportunity to send his amendment forward.

I repeat that we are looking for a time agreement to vote on the Chambliss-Kennedy amendment, we hope in the next 30 to 45 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, the amendment is set aside.

The Senator from Indiana.

AMENDMENT NO. 3995

Mr. BAYH. Mr. President, I have an amendment I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Indiana [Mr. BAYH], for himself, Mr. ROBERTS, Mr. WYDEN, Mrs. FEINSTEIN, Mr. MCCAIN, and Ms. SNOWE proposes an amendment numbered 3995.

Mr. BAYH. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To eliminate sequential referral)

Section 201 is amended by adding at the end the following:

(1) REFERRAL.—Section 3 of S. Res. 400 is amended by—

(1) striking subsection (b); and

(2) redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

Mr. BAYH. Mr. President, I begin my remarks by praising both Senators REID and MCCONNELL for the important work they have done on this underlying amendment. They have accomplished some very good things that will strengthen the intelligence system in this country and, in so doing, strengthen our Nation's security.

I have had the honor of serving on the Intelligence Committee for the last 3 or 4 years. During that time, I have developed some grave concerns about the strength of that committee and our ability to exert the kind of oversight and leadership in the area of strengthening the Nation's intelligence that these difficult times demand.

Senators REID and MCCONNELL have addressed some of those concerns very directly. Tenure on the panel is made permanent, which will allow those of us who serve there to develop the kind of expertise needed for the very intricate, sophisticated decisions that need to be made.

It will also enable us to exert the kind of oversight necessary to make sure the executive branch carries out its functions in the way they need to be carried out.

They also provide resources to the committee to discharge our duties. Currently, the resources are not available and I am afraid that too often the Intelligence Committee gives the appearance of exerting oversight without effective oversight in fact. These things, and many others, are significant steps forward in addressing the concerns about what changes we need to make to have meaningful intelligence oversight and leadership in the intelligence area by the Congress.

I would also like to praise my colleague from Virginia, Senator WARNER. There is not a Member for whom I have more esteem and regard than the Senator from Virginia. It has been my privilege over the last year and a half to serve with him on the Armed Services Committee. In that capacity I have learned firsthand that there is no Member of this body who has a greater devotion to the national well-being and our Nation's security than the distinguished senior Senator from Virginia.

With that by way of background, I would like to extend my remarks in the following way. I know the Senators who worked on this issue have worked hard. In some respects, Senators REID and MCCONNELL have been given by our leaders almost an impossible task. They are asking them to reorganize this Congress in ways that touch upon the prerogatives and institutional interests of the Members. This is a very sensitive topic which often has failed to achieve results in the past. I salute them for their efforts.

It is said by some that this is the best we can do, and perhaps that is so. But I believe there are some ways in which we can do better, and we will not know if we can do better until we try. If we are unable to do better, it is not the fault of Senators REID and MCCONNELL but instead resides with the rest of us who have the privilege of serving in this institution.

It is also occasionally said that we should not make the perfect the enemy of the good, and that is absolutely true. That is an aphorism I have subscribed to on many occasions. This needs to be a practical process, focused upon results. It is what distinguishes us from political scientists, editorial writers, and pundits. We have to get things done.

But during these critical times, it is my heartfelt belief that we should push the envelope on what is possible and insist that we do everything we possibly can to strengthen this country and, along with it, Congress, and our ability to exert oversight and leadership in the area of intelligence. We should not settle for 75 percent or even 90 percent without an effort to do everything humanly possible to safeguard this country. Lives hang in the balance. That is why I am offering the amendment I offer today.

My amendment reflects the recommendations of the 9/11 Commission. Today, former Governor Kean and Congressman Hamilton issued a statement supporting our efforts. I spoke with Congressman Hamilton yesterday, and he characterized our amendment as "much better, much better, a definite step in the right direction."

Our amendment represents the sensible center. I know there may be other amendments that touch upon the topic of consolidating appropriations and authorizations in a single committee. Our amendment does not touch upon that sensitive topic. Instead, it gives full meaning to what Senators REID and MCCONNELL are attempting to do in their amendment, and that is to elevate the Intelligence Committee and the function it discharges to the priority it deserves and to create a process and structure to match that priority.

Their proposal makes the Intelligence Committee what is called an A committee. It is important that we give that full meaning and no longer require that committee to defer to others through what is called "on-demand sequential referral." To the viewers at home, on C SPAN, this sounds like Washington-speak, and essentially it is. What it essentially means is the Intelligence Committee must seek the approval of other committees for its other recommendations, unlike the other A committees that exist in this body. If we stick with this proposal, it will mean that the Intelligence Committee and the function it discharges will have less authority than the Agriculture Committee, less authority than the Banking Committee, less authority than the Commerce Committee, the Energy Committee, the Environmental Committee, the Governmental Affairs Committee, the Health, Education, Labor, and Pensions Committee, and the Judiciary Committee. Certainly these critical times require that the Intelligence Committee and the important national security function that it discharges be placed on a par with these other committees and that it be given a structure and authority to match.

As a practical matter, the current structure means that the appropriations process takes precedence over the authorization of intelligence. As a practical matter, too often it means that the intelligence authorization function itself is subservient to other authorizing committees. This is not the structure these times demand. This is what my amendment addresses.

Finally, this is an important moment for this institution and for each of us as individuals. This is a great institution, and I, among all our Members, have special reason to cherish its prerogatives and its rich tradition, having grown up in the shadow of the Senate.

Everyone who serves in this body is a patriot. Everyone is devoted to the national security interests of this country. All of us seek to do not what is easy but what is right. Yet it is too often the case that we are afflicted by tunnel vision. Too often we get caught up in institutional concerns and prerogatives without stepping back to take the broader view of what is important for the country as a whole. That is what we are attempting to address in this debate today. It requires a sacrifice from us all. That is what this amendment would accomplish—giving up a small amount of our individual power and prerogatives in the greater national interest. It is what the times demand. It is what this amendment would accomplish. It is why I speak strongly in favor of its consideration.

Mr. President, I will yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. ROBERTS. Mr. President, I wish all of my colleagues could have been on the floor to hear the remarks from the distinguished Senator from Indiana, who is a very valued member of the Intelligence Committee. We have some very good members on both sides of the aisle.

Senator BAYH always asks incisive questions. He gets to the bottom of the very comprehensive and complex issues we discuss. I thank him for being a valued member of the Intelligence Committee. I want to thank him for offering this amendment, which, outside the beltway and I suppose on the floor of the Senate and for anybody listening or watching, is pretty mundane, or arcane: What on Earth is he talking about, "on-demand sequential referral of legislation, reporting from the Senate Select Committee on Intelligence"? Were it not for the fact that Senator BAYH is an excellent speaker and a highly appreciated Member of this body, probably nobody would be even understanding this, or paying any attention.

I know this Senate wants to get this bill done. I know we want to go to conference on intelligence reform. I know we have the tax bill. I know we have the omnibus bill. I know people want to leave for the weekend. People are tired, and Lord knows we have been wrestling with this issue on how we reorganize the Intelligence Committee to make it more effective, in line with what the 9/11 Commission has recommended, what every commission has recommended down the years—the Bremer Commission, the Gilmore Commission, the Hart-Rudman Commission, the CIS Study, all these commissions, not to mention the 24 times we have tried reform of the Intelligence Committee since Dwight David Eisenhower and failed in each and every case. I know the fatigue factor, the high-glaze factor has set in in this body, as evidenced by the membership, as evidenced by my dear colleagues and friends across the aisle now talking about something else, even though I could probably talk as loud as the Senator from Massachusetts. But, having said that, let me try to tell Members what this is about.

His amendment would eliminate the current practice, again, of on-demand sequential referral of legislation reported from the Senate Select Committee on Intelligence. This very common sense measure—Mr. President, may I have order?

The PRESIDING OFFICER. The Senate will be in order.

Mr. ROBERTS. I know in normal times this amount of noise is about the best you can get, but I hope people will pay attention to what Senator BAYH is trying to accomplish and, as chairman of the Intelligence Committee, which I support very strongly. It is a commonsense measure.

Speaking of the Intelligence Committee, the very committee that the 9/11 Commission said should be enabled to do a better job instead of the way it is now when we are so fractionalized, it says we should be on the same level playing field as other standing committees in the Senate—just fair play, same level playing field in terms of sequential referral. A committee brings up a subject, they pass a bill, they make an inquiry, they publish it, and another committee says: You know, we are interested in that as well. We would like to have sequential referral.

How do you do that? You do it by unanimous consent or you go to the leaders and you say: You know, we have a dog in this fight. We are interested in it. We have expertise, we have background, and we would like to take a look at it as well.

Not on the Intelligence Committee. Virtually every other committee in the Congress now has on-demand—that means you finish a product, you finish your authorizing bill, and we will grab it by the throat and we will do whatever we want to with it.

That is not right. That is not right with regard to what we are trying to do to empower—and by empower I don't mean to empower over and above other important committees—or enable us to do our job.

Let me give you the classic example. We don't have, despite all of the rhetoric, all of the activity, all of the effort by Senator COLLINS and by Senator LIEBERMAN and the intelligence reform bill, all of the effort by the Joint Inquiry Task Force on 9/11, all of the effort by the Intelligence Committee in regard to the WMD report—now the report by Mr. Duelfer and the Iraq Survey Group, and the group of intelligence not only of the United States globally and the importance that that has for the daily lives and pocketbooks not only of people in America but around the world, and all of this discussion about 9/11, we do not have the intelligence authorization bill passed.

We had a vote yesterday 90 to 7 on my amendment—probably the first time I will ever do that—saying regardless of what happens in intelligence we ought to authorize first and then appropriate. There is a novel thought. But even at this late date, we don't have the intelligence authorization act passed. Why? It is because of this on-demand referral that no other committee has as a millstone around its neck.

Senator BAYH is one of the committee's most serious, capable members, and he and I agree. We worried about this, along with other members on the Intelligence Committee, mostly made up of senior Members who know their job and who have attended. Their attendance record is outstanding. I can't get into that because it takes a decision by the chairman and vice chairman, and also perhaps a vote in committee to get into attendance records. I am not going to do that, simply to say these people have many other duties. They come there and work hard. We have had over 125 hearings in the Intelligence Committee, 60 percent more than at any other time in history, with regard to the WMD report, 521 pages long, which I think is the most thorough study any committee has ever done on the intelligence community.

Senator BAYH's presence on this floor on the issue underlines its importance. It is bipartisan in nature and impacts on the committee's ability to do its work.

What will the amendment of Senator BAYH do if it passes? It will mean that for the first time in history the legislative priorities of the Senate Intelligence Committee will reach the Senate floor without being automatically filtered through the lens of other Senate committees. I must admit that under resolution 400 we have the ability in the Intelligence Committee—if anybody mentions intelligence, there might be another committee which can ask for referral. We don't normally do that. I don't think we have to do that. As a matter of fact, I am trying to think of when we did that in the history of the committee. But certainly that is a lot different than on-demand sequential referral by every other committee.

Interested committees under the Bayh amendment will still be able to request sequential referral to the Intelligence Committee legislation. But just as other authorizing legislation, those committees would have to do so through a unanimous consent agreement instead of a demand letter.

All we want is to be treated as any other committee. My goodness. If we are the ones who are supposed to be empowered and stand up according to the 9/11 Commission and do a better job—and I think we have in the last few years—why on Earth would you force the Intelligence Committee to go through this on-demand sequential referral?

An example of the problems associated with on-demand sequential referral of intelligence—I don't know what to call this. On-demand special referral sounds like a lot of gobbledygook outside the beltway, an arcane thing. It is sort of like cattle rustling; you sort of take that bill and rustle it away from that pasture on demand and the poor owner of that cowherd can't do a doggone thing about it. It is time to end it.

At any rate, an example of problems associated with on-demand sequential referral, or the cattle rustling of Intelligence Committee legislation to the Armed Services Committee, is the fate of intelligence reforms proposed by former Intelligence Committee Chairman Senator SPECTER, who was on the floor a while back, and Vice Chairman Bob Kerrey, who did a splendid job as vice chairman—that was back in 1997 during the Intelligence authorization bill, the Intelligence Committee proposal, what we have debated here for the last 2 weeks—this was back in 1997—direct appropriations of intelligence community funding by the Director of Central Intelligence is something which George Tenet and every other DCI has wanted for a long time. That appropriations would have funded the Central Intelligence Agency, the National Security Agency, the National Reconnaissance Office—what was then called the National Imagery and Mapping Agency. The Armed Services Committee obtained sequential referral of the 1997 intelligence authorization bill. After 30 days of the Armed Services Committee being innovative and forward looking, the Specter-Kerrey reform measure became a computer system to track intelligence expenditures. It didn't have any authority. It became a computer center to track intelligence expenditures.

On-demand sequential referral has had a chilling effect on the introduction of legislative initiatives by the Intelligence Committee.

I see the distinguished former chairman, the distinguished Senator from Pennsylvania, who had a reform measure back in 1997 which would have gone a long way toward intelligence reform that we have been considering on this floor for the last 3 days. I thank him for that effort. But he got sidetracked. His cattle got—well, they were sort of branded, sort of got into another pasture. I think that is unfortunate.

A degree of self-policing occurs about what legislative provisions realistically can survive automatic referral through other committees. As a result, many provisions are dropped or diluted to make the bill as unobjectionable as possible.

Senator COLLINS of Maine said we had a delicate balance. We had a discussion yesterday of the national intelligence director. The thought was that director should be able to move positions, but then we had a compromise. We could move positions and we couldn't move people. What the heck is that? I know that in compromise when you refer to other committees, you make it less objectionable, but sometimes you leave the cutting edge of reform with a very dull knife. This deterrent effect, I will tell you as chairman of the committee, begins prior to the committee markup. I know whatever we do in terms of authorization must go over to the distinguished chairman of the Armed Services Committee. I serve on that committee. I have the utmost respect for the chairman of that committee. It is a privilege to serve on that committee. I am chairman of something called Emerging Threat and Capabilities. I have enjoyed my service on the Armed Services Committee.

But we know even before markup that we are going to have to go to the Armed Services Committee, and we could on demand referral have the same thing happen on Foreign Relations, on Appropriations, on Armed Services, and Judiciary because those are the members who now serve on the committee to make sure there are two people on that committee so it is widely represented.

But I know, and everybody on the committee knows, that before we even do the authorization, we have to go through this Byzantine kind of machination before we get our product on the floor even to pass it.

Again, where is the intelligence authorization bill for this year? I don't know. We have tried to hotline it. We have had objections.

After all this year of reform we cannot even pass an intelligence authorization bill? Do we want to continue that? This deterrent effect, as I said, begins right at the start. We have 22 professional staffers who have backgrounds, analysts with the DIA, CIA throughout the intelligence community. They are the people who put together the 521-page report on the WMD. We let the chips fall where they may.

Senator ROCKEFELLER and I worked together, both sides, and we had a bipartisan vote, 17 to 0. It was tough. Can we do the job? You darn bet you, and we have 22 staffers who can do that job.

I daresay none of the other committees that have on-demand sequential referral have this kind of staff. Yet we end up on the cutting-room floor. Sometimes we do not even get in the room where we end up on the cutting-room floor. I don't think that is right.

Mr. McCONNELL. Could the Senator suspend for one moment?

Mr. ROBERTS. I would be delighted. Maybe my blood pressure would come down. I would be delighted to suspend on behalf of the distinguished Senator from Kentucky, as a fan of the Louisville Cardinals.

Mr. McCONNELL. We have a number of speakers in the Chamber now, and I want to try to get consent to establish some order.

How much more time does the Senator from Kansas wish?

Mr. ROBERTS. I haven't quite figured it out yet. I got wound up pretty good.

I have one more page, and the Senator from Pennsylvania asked how long will that take? How about 2 minutes, 3 minutes.

Mr. McCONNELL. I ask unanimous consent the Senator from Kansas be permitted an additional 3 minutes, to be followed by the Senator from Virginia for 12 minutes.

Mr. ROBERTS. May I inquire of the distinguished Senator, are we getting time limits now? I wanted to have a good colloquy with my dear friend and esteemed chairman of the Armed Services Committee who has a willing offer to make because I am not quite sure in regard to this issue what it will be, and if we put in an artificial time limit—I don't know.

Mr. McCONNELL. There is no time limit on any agreement, but we are seeking a time agreement on the Chambliss amendment. And Senator CORNYN would like to speak on that amendment, as well as Senator SPECTER and Senator KENNEDY.

Mr. WARNER. Mr. President, I see my colleague from Michigan.

Mr. McCONNELL. Senator LEVIN also wishes to speak on the amendment?

Mr. LEVIN. Yes.

Mr. WARNER. May I make a suggestion to the distinguished leader? Quietly, in the rooms off the Chamber, I think a resolution of this matter is about to be achieved. So, therefore, the purpose of my amendment would be to frame for colleagues the issue as I see it, which I think can be explained very simply and calmly.

Then perhaps a few comments, and this amendment, I understand, will be laid aside, and we can proceed to the Chambliss amendment.

Mr. McCONNELL. I am trying to accommodate the Senator on the other amendment, the Chambliss amendment. He must leave town around 1 o'clock. We were hoping to get a vote on that amendment.

Mr. KENNEDY. Will the Senator yield?

Mr. McCONNELL. Yes.

Mr. KENNEDY. I am a cosponsor of the Chambliss amendment, so I would appreciate it if I could have maybe 6 or 7 minutes prior to the time we vote. I, too, want to cooperate with the managers, and particularly the chairman, to make sure he is able to work his program.

If the leader could ensure that.

Mr. McCONNELL. I make this suggestion: I ask unanimous consent Senator ROBERTS complete his remarks. He has asked for an additional 3 minutes. I ask unanimous consent we then return to the Chambliss amendment, and in order, have Senator KENNEDY for 6 minutes, Senator CORNYN for 6 minutes, Senator SPECTER for?

Mr. SPECTER. If I may, I follow Senator ROBERTS for just 3 minutes.

Mr. WARNER. No objection.

Mr. McCONNELL. I am asking consent to accommodate a Member of the Senate who must leave in the not too distant future, to return to the Chambliss-Kennedy amendment, have the discussion on that because that is the amendment we are hoping to get a vote on in the not too distant future.

Since discussions are underway on the Bayh amendment, it would be my hope those involved in that will continue their discussions off the floor, and we will resume that discussion on the floor after that.

Let me ask unanimous consent that at the end of Senator ROBERTS's remarks, we take up the Chambliss, resume consideration of the Chambliss-Kennedy amendment, and Senator KENNEDY be recognized for 6 minutes, Senator CORNYN be recognized for 6 minutes, and Senator SPECTER?

Mr. SPECTER. I won't be here.

Mr. McCONNELL. Anyone else on the Chambliss?

Mr. LEAHY. Mr. President, I want to speak on the Chambliss-Kennedy amendment. So far as we were eviscerating the Judiciary Committee, I thought possibly I might say a word or two.

Mr. McCONNELL. How much time? There is no time agreement.

Mr. LEAHY. I would like to have 10 minutes.

Mr. McCONNELL. And 10 minutes for the chairman.

Mr. SPECTER. Mr. President, at the conclusion I would like 3 minutes.

Mr. McCONNELL. And 3 minutes for Senator SPECTER.

Mr. REID. If I could, reserving the right to object, is everyone speaking on the Chambliss-Kennedy amendment?

Mr. McCONNELL. No.

Mr. ROBERTS. No.

Mr. REID. It has nothing to do with the Judiciary Committee.

Mr. McCONNELL. My consent agreement was related to the Chambliss-Kennedy amendment, and the time for the Senators was related to discussion of that amendment.

Mr. ROBERTS. Will the Senator yield?

Mr. McCONNELL. To which we would return when Senator ROBERTS completes its discussion on the Bayh amendment.

Mr. LEAHY. I assure the Senator from Kentucky I wish to speak on the Chambliss-Kennedy amendment.

Mr. ROBERTS. Mr. President, could I ask the distinguished chairman of the Armed Services Committee whether his 12 minutes will defer to the Bayh amendment or the Chambliss-Kennedy amendment?

Mr. WARNER. I was here early this morning with Senator BAYH, so that is the purpose of my presence, solely for that amendment.

Mr. ROBERTS. It is probable that the chairman of the Select Committee on Intelligence, from time to time recognized by the Armed Services Committee, would like to at least have something to say about what the distinguished chairman will say about the Bayh amendment.

I am not trying to set the record straight because that is not in the realm of possibility of the distinguished chairman, but I don't know how to accomplish that now if we go to the other—I guess we will have time.

Mr. McCONNELL. I might suggest to the Senator from Kansas, there is no time agreement on the Bayh amendment, and the unanimous consent agreement I just propounded was entirely related to the Chambliss-Kennedy amendment which we would like to resume consideration of. I am sure the Senator from Kansas will have more to say about the Bayh amendment later. There are no restrictions.

Mr. REID. Reserving the right to object, this has set the tone in the future. We will not be setting amendments aside. We will dispose of amendments and move to something else. It is too confusing doing it this way.

I have no objection.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). Without objection, it is so ordered.

The Senator from Kansas has the floor for 3 minutes.

Mr. ROBERTS. Mr. President, I guess we started up a fuss by talking about this, which I can understand.

Let me go back to sort of remind anyone that is listening that on-demand sequential referral, as referred to in the Bayh amendment, has had a chilling effect on the introduction of legislative initiatives by the Intelligence Committee.

Why is that important? It is because the joint inquiry task force investigating September 11, it is because the 511-page report on WMD, intelligence on whether there were WMD in Iraq, and the 9/11 Commission's report had this unique idea, and the unique idea was that the Select Committee on Intelligence should be granted at least enabling power, be empowered to be the oversight committee that has independence and leadership and clout and that we do not today.

One of the obstacles is this on-demand sequential referral. Every other committee in the Congress can ask for sequential referral, but they do it by unanimous consent or they ask the leadership. There is nothing wrong with that. But on-demand sequential referral from the very committees that we have two members on the Intelligence Committee representing—Judiciary, Appropriations, Armed Services, and Foreign Relations? They are represented. And as I have indicated, legislative initiatives that we have end up on the cutting-room floor. It is a very fractionalized process, both from the Armed Services Committee and the Appropriations Committee.

I have nothing but admiration for the distinguished Senator from Virginia and the distinguished Senator from Michigan and the work they do on behalf of our military, and for the appropriators and the work they do on behalf of our military. It is just that it is a fractionalized process. Sometimes we are in the room, sometimes we are not. Sometimes we don't know what ends up on the cutting-room floor, sometimes we do. That does not speak well for the recommendations of the 9/11 Commission and the Intelligence Committee.

This process, which the members of the Intelligence Committee believe is unique to the Intelligence Committee, does not permit the committee priorities to reach the Senate floor for full debate. We cannot fully debate it because it is classified. Everybody else who wants sequential referral changes a bill. They come to the floor, argue the points, and then win or lose. We cannot because it is classified.

This provision is a significant obstacle to the full realization of the Intelligence Committee oversight and should be repealed. I support the amendment. I encourage my colleagues to do likewise. I hope we are able to reach some accommodation.

I thank the Presiding Officer and my colleagues and yield the floor.

AMENDMENT NO. 3994

The PRESIDING OFFICER. The Senator from Massachusetts is recognized for 6 minutes.

Mr. KENNEDY. Will the Chair be kind enough to notify me when 5½ minutes is up?

The PRESIDING OFFICER. Yes.

Mr. KENNEDY. Mr. President, first of all, I thank the Senators from Kentucky and Nevada for their help in bringing us to where we are today in terms of meeting our responsibilities under the 9/11 Commission. I again congratulate the Senators from Maine and Connecticut for their outstanding leadership on the floor of the Senate. America must be heartened by the results of their effort. I join in commending all of them for the job they have done.

This amendment, which my friend, the chairman of the Immigration Subcommittee, and I offer is virtually identical in effect to the Grassley-Baucus amendment that was just accepted. That amendment keeps many of the Customs-related functions in the Finance Committee.

The amendment that Senator CHAMBLISS and I offer keeps the immigration-related functions in the Judiciary Committee. What we are seeking is much more modest than the major exemptions written into the base bill for the Coast Guard and the Transportation Security Administration.

Our amendment does not preclude the new Homeland Security Committee from exercising jurisdiction over security issues, such as developing biometric identifiers to enhance national security, upgrading technology, including electronic interoperable data systems, compiling watch list information to screen out terrorists, and enhancing intelligence and law enforcement capabilities. That is appropriately reserved.

But surely we can meet the serious terrorism dangers we are facing from terrorists without obstructing the entry of more than 500 million individuals who go across our borders every year and who legally enter the United States each year as visitors, as students, as temporary workers, crossing legally from Canada and Mexico, on a daily basis, to conduct business or to visit their families.

These immigration issues are about reunifying families, protecting refugees and asylum seekers, welcoming foreign workers when we cannot find American workers to fill our jobs, opening our doors to immigrants who will be future U.S. citizens. These issues are about welcoming international students and visitors, scholars and researchers to our country, so that we can benefit from a climate of open exchange.

Immigration law involves so much more than weeding out the few terrorists. The problem is, the terrorists are the danger, not just the issues of immigration. Transferring total jurisdiction to a new Homeland Security Committee would ignore all the other primary functions of our immigration laws and effectively send a message to the world that terrorists are winning and that our pride in our immigrant heritage and history has turned to fear.

Immigration is a central part of our heritage and history. It is essential to who we are as Americans. Maintaining it is part of our national well-being, our identity as a nation, and our strength in today's world. In defending the Nation, we are also defending the fundamental constitutional principles that have made America strong in the past and will make us even stronger in the future.

Mr. President, for all of these reasons, I believe the Judiciary Committee should retain jurisdiction over the immigration issues unrelated to terrorism. That is what the Chambliss amendment does. I hope it will be accepted by the membership.

Mr. President, I withhold the remainder of the time.

The PRESIDING OFFICER. Under the previous order, the Senator from Texas is recognized for 6 minutes.

Mr. CORNYN. Mr. President, I congratulate Senator CHAMBLISS and Senator KENNEDY on this amendment which I think injects some needed rationality in this process. I certainly support the goal of improving the oversight of our intelligence community and homeland security efforts. But I think what has happened in our haste is that there has been some unintended consequences, and one is attempted to be remedied by this amendment.

Simply stated, this amendment, as Senator KENNEDY and Senator CHAMBLISS have already addressed, would retain the immigration functions at the Border and Transportation Security Directorate in the Judiciary Committee.

Mr. President, I, as does the Presiding Officer, serve on the Judiciary Committee in large part because of my concern about immigration and border security issues as a Senator from Texas, with a 1,200-mile border with Mexico, one of the more problematic borders of this country. I serve with Senators from California and Arizona. The only State not represented on the Southern border is the State of New Mexico.

But as the Presiding Officer knows, immigration issues are exceedingly contentious and complex. Frankly, there are a number of Senators on the Judiciary Committee who have invested an awful lot of time and effort to try to get up to speed. And indeed, there are others, like me, who have introduced immigration reform bills, which I am hopeful will be brought up when we return in January or shortly thereafter.

What I am concerned about is if we make this change now, it will delay long-overdue immigration reform in this country as the new committee to which it is assigned is getting up to speed. It is no slight meant to them. They are very distinguished and competent Senators. But the truth is, the staff and Senators who have been involved in immigration issues on the Judiciary for a long time have learned a lot, developed a lot of the relationships and contacts with the various parties who are interested in this issue, the stakeholders.

Just in terms of injecting some modest bit of rationality in this process, I am pleased to join Senator CHAMBLISS, Senator KENNEDY, and Senator LEAHY, who I know will also speak to this matter, and others on the Senate Judiciary Committee in saying that if common sense and rationality prevail in this process, then this amendment will be accepted, either by agreement, by unanimous consent, or by a vote. And I certainly would urge all of my colleagues to support the amendment in the event a vote is required.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, how much time is reserved for the Senator from Vermont?

The PRESIDING OFFICER. There is 10 minutes.

Mr. LEAHY. I thank the Chair.

Mr. President, I wish to associate myself with the expressions of the Senator from Texas, the Senator from Georgia, and the Senator from Massachusetts. I am a strong supporter of the Chambliss-Kennedy amendment. It would retain the majority of immigration jurisdiction for the Judiciary Committee, not just because we like that but because that is where the experience is and that is where it ties in the best.

As Senator CHAMBLISS pointed out this morning, just as the Commerce Committee retained the Coast Guard because of the long tradition of the Coast Guard being there and the expertise for it, and EPW is retaining the Transportation Security Administration, by the same token, the Judiciary Committee should retain core immigration issues.

We should not burden the Homeland Security Committee with immigration and citizen refugee matters. That is not the purpose of the new committee. There are some aspects of immigration law and policy that will raise homeland security issues—some—but we have to note that immigration is an extraordinarily broad area. It is an important economic issue and, as President after President has said, in one way or the other, it is often a moral issue. This is the country that has the Statue of Liberty beckoning us all. This is the country that brought my grandparents here not speaking any English but making a new life.

The Judiciary Committee has decades of experience in business immigration issues, refugee policy, and naturalization. As written, the resolution before us would take those issues, which are not homeland security issues, and give them to the Governmental Affairs Committee.

I ask: Does it make sense for the Governmental Affairs Committee to oversee and legislate on the H–1B visa program which employers use to bring in highly skilled foreign workers? That is not a homeland security issue. Does it make sense for that committee to be responsible for the refugee program? That is something Judiciary and Foreign Relations oversee and do a very good job of. I don't think it is in the interest of the Senate or, for that matter, of immigrants for sole jurisdiction over immigration matters to be transferred to a committee with a homeland security mandate.

We should be conscious of the security aspects of immigration policy, of course, but we also need to retain our national commitment to legal immigration—the thing that brought my grandparents to this country. Immigrants like my grandfather and grandmother enrich our economy and our culture. It is important for us not to see immigration solely through the prism of national security.

How much time do I have remaining?

The PRESIDING OFFICER. There is 6½ minutes.

Mr. LEAHY. Mr. President, I ask unanimous consent that my remaining time be allocated equally to the Senator from Georgia, Mr. CHAMBLISS, and the Senator from Massachusetts, Mr. KENNEDY.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. I yield the floor.

Mr. MCCONNELL. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, I have sought recognition to speak briefly on the pending amendment offered by the Senator from Georgia. I initially ask unanimous consent that I be listed as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. When I said 3 minutes would be sufficient, I said that in the context of a collective noun, but I shall not take much more than that.

I believe the jurisdiction of the immigration function as embodied in the Chambliss amendment ought to be maintained in the Judiciary Committee. There is very considerable expertise built up in the Judiciary Committee over the years on the very important subjects related to immigration. The President has stated a policy of dealing with the problem of 11 million people in the United States who do not have legalized status. The Subcommittee on Immigration of the Judiciary Committee has done extensive work on this matter. It is a pressing matter and I think will be one of the priority items to be considered by the Congress next year.

The most important issues can best be handled by the current Subcommittee on Immigration of the Judiciary Committee.

Briefly stated, those are the reasons why I support the pending amendment and ask that the traditional jurisdiction in the Judiciary Committee over immigration be maintained.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Nevada is recognized.

Mr. REID. Mr. President, everybody should stay where they are. We are going to have a vote in a few minutes, unless something goes awry. In the next 3 or 4 minutes, there will be a vote.

With that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks of Mr. DASCHLE pertaining to the introduction of S. 2938 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3994

Mr. REID. What is the matter now before the Senate?

The PRESIDING OFFICER. The Chambliss-Kennedy amendment No. 3994.

Mr. CHAMBLISS. I ask for the yeas and nays.

Mr. REID. Will the Senator reconsider?

Mr. CHAMBLISS. I withdraw that request.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 3994.

The amendment (No. 3994) was agreed to.

Mr. MCCONNELL. I move to reconsider the vote.

Mr. KENNEDY. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 3995

Mr. MCCONNELL. Mr. President, the pending business is the Bayh amendment?

The PRESIDING OFFICER. That is correct.

The Senator from Nevada.

Mr. REID. Mr. President, if I can make a suggestion, there are negotiations that need to take place on the Bayh amendment that has been offered. I respectfully suggest that there are two important meetings that are going to take place: one we are having and one the Republicans are having. I am wondering if it wouldn't be in the best interest of all—1 o'clock is the filing deadline for amendments—that the Senate stand in recess from 1 p.m. until 2 p.m. today.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I will not object to that request—in fact, I agree to it—but I also want to make the point that one of the most important amendments we anticipate is an amendment by Senator MCCAIN. I know earlier he had contacted us indicating he wanted to come over and offer it. Since we will be in recess under the consent agreement Senator REID is going to offer from 1 p.m. to 2 p.m., it is my hope Senator MCCAIN will be able to come over and offer that at 2 p.m. and we can get that in the queue.

Mr. REID. I make that request.

The PRESIDING OFFICER. Is there objection to a request for a recess from 1 p.m. to 2 p.m.? Without objection, it is so ordered.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I ask unanimous consent to speak as in morning business for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

USING INDIAN HEALTH SERVICE FACILITIES TO REGISTER NEW VOTERS

Mr. BINGAMAN. Mr. President, I wish to speak briefly about an article that was in yesterday's Washington Post that I thought raised a very disturbing issue of which the Senate needs to be aware. The article is entitled "Indian Health Agency Barred New-Voter Drive." I will read a couple of paragraphs from the article so that people understand the issues.

It says:

> Officials at a federal program that runs hospitals and clinics serving Native Americans this summer prohibited employees from using those facilities to sign up new voters, saying that even nonpartisan voter registration was prohibited on federal property.
>
> Staff members at several Indian Health Service hospitals and clinics in New Mexico, a presidential battleground state where about one-tenth of the population is Native American, were trying to register employees, patients and family members who use the facilities.
>
> In a July e-mail, Ronald C. Wood, executive officer of the program's regional Navajo office, told his hospital and clinic directors that "we are in a very sensitive political season" and he outlined a policy that he said came from Indian Health Service headquarters.
>
> "There have been some recent questions about whether we can do nonpartisan voter registration drives in our IHS facilities during non-duty hours". . . ."The guidance from HQs staff is that we should not allow voter registration in our facilities or on federal property."

This is of concern because of the history of Native Americans being denied the right to vote in my State and perhaps in other parts of the country as well.

The history of this issue in New Mexico, very briefly, is that a returning Marine Corps veteran, someone who served in the Second World War in the Marine Corps, named Miguel Trujillo, was denied the right to vote in our State. In 1948, he had to bring suit in Federal court to obtain the right to vote. He was an Isleta Pueblo Indian member, and he was teaching at Laguna Pueblo in my State and was denied the right to vote as a Native American.

I should point out that his son Michael Trujillo went on to become the head of the Indian Health Service. His daughter Josephine Waconda was the first American Indian woman to be a rear admiral in the career Indian Health Service. So they have a tremendous part of our history in that family.

It is absolutely inexcusable that the Indian Health Service would be giving direction saying that it is inappropriate or illegal or prohibited for people to use Federal property or Indian Health Service facilities to register people to vote on a nonpartisan basis.

Yesterday, I sent a letter to Tommy Thompson, Secretary of Health and Human Services, urging that even though it is not going to affect this year's election since voter registration in our State is essentially over this week in New Mexico, even though it does not affect voter registration, it is imperative that he, as head of that Department, issue a policy and clarify that this is not the policy of the Department of Health and Human Services, this is not the policy of the Indian Health Service.

We have a very strong policy that is recognized in the Defense Department that they encourage military personnel and others who are part of the military family to participate in registering others, either on or off base, to vote. That is as it should be. That is on a nonpartisan basis. I think we all support that. We need to have the very same policy with regard to Indian Health Service facilities and Indian Health Service personnel.

I hope very much that Secretary Thompson will respond to my letter positively, will issue a directive so that it is clear from now on that Indian Health Service personnel are not in any way prohibited from participating in voter registration drives on a nonpartisan basis. This is an issue that deserves attention before it is lost in the shuffle of this campaign. I hope we can get a response from the Secretary in the near future.

Mr. President, I ask unanimous consent to print in the RECORD the letter I sent to Secretary Thompson.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
October 6, 2004.

Hon. TOMMY THOMPSON,
Secretary, Department of Health and Human Services, 200 Independence Ave. SW, Washington, DC.

DEAR SECRETARY THOMPSON: I was dismayed to read a report in the Washington Post this morning that officials at the Indian Health Service were prohibiting employees at several locations in New Mexico from using IHS facilities to register new voters. While it would certainly not be appropriate or legal under the Hatch Act for federal employees to be involved in partisan political activity on federal property, the proposed Indian Health Service (IHS) voter registration program, as described in the Washington Post article, would not be prohibited under the Hatch Act because the program is described as nonpartisan. In addition, according to the article, the activity would take place during non-working hours, which should allay the fears of anyone concerned that the IHS employees would feel coerced to take part in the activity or that the program would interfere with employees' regular duties. As long as the program were conducted in a nonpartisan way, *e.g.* employees leading the effort do not attempt to influence the registrants in any way, and employees were free to choose whether or not to participate, it would be perfectly legal.

It is well known that the Defense Department has undertaken efforts to make sure that as many of its employees are registered to vote and participate in next month's elections as are eligible to do so. The Defense Department's efforts, like those proposed by Indian Health Agency employees, are designed to increase citizen involvement in one of the most important elections in our history. These are admirable goals that should be encouraged, not prohibited.

While it is clearly too late to clarify the Department's policy with regard to this year's election, I would still ask that you act as expeditiously as possible to issue a directive that makes it clear that the Department of Health and Human Services will not prohibit its employees from engaging in nonpartisan voter registration on federal property. In fact, I would hope that you would encourage your Department to engage in the same active voter registration efforts that the Department of Defense does. It is the right thing to do in the service of full participation in the democratic process, a goal that I know you share with me.

Please let me know of your plans to encourage voter registration as soon as possible.

Sincerely,

JEFF BINGAMAN.

Mr. BINGAMAN. Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 1 p.m. having arrived, the Senate stands in recess until 2 p.m.

Thereupon, the Senate, at 1 p.m., recessed until 2:04 p.m. when called to order by the Presiding Officer (Mr. SESSIONS).

INTELLIGENCE COMMITTEE REORGANIZATION—Continued

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. (Mr. ALEXANDER). Without objection, it is so ordered.

The Senator from Arizona.

AMENDMENT NO. 3999 TO AMENDMENT NO. 3981

Mr. McCAIN. Mr. President, I ask unanimous consent that the pending amendment be temporarily set aside, and I call up an amendment which is at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for himself, and Mr. LOTT, Mr. LIEBERMAN, Ms. SNOWE, Mr. ROBERTS, and Mr. BAYH, proposes an amendment numbered 3999 to amendment No. 3981.

Mr. McCAIN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

There being no objection, the material was ordered to be printed in the RECORD, as follows:

(Purpose: To strike section 402 and vest intelligence appropriations jurisdiction in the Select Committee on Intelligence)

Strike section 402 and insert the following:

SEC. 402. JURISDICTION OVER INTELLIGENCE APPROPRIATIONS.

Notwithstanding subparagraph (b) of paragraph 1 of Rule XXV of the Standing Rules of the Senate, the Select Committee on Intelligence shall have jurisdiction over all proposed legislation, messages, petitions, memorials, and other matters relating to appropriation, rescission of appropriations, and new spending authority related to funding for intelligence matters.

Mr. McCAIN. Mr. President, I don't expect that this amendment should require a lot of debate. It is an issue that we have all talked about a lot. It is all a question of turf and jurisdiction. It is something that would never be seriously considered by this body under any other circumstances except that we are talking about the war on terrorism and the overwhelming issue of how we are going to defend this Nation. I will be more than happy to agree to a time agreement with the appropriators who will lead the fight against this amendment which would be agreeable to them.

This Chamber can be very proud of its bipartisan work that resulted in the overwhelming passage of S. 2845, the National Intelligence Reform Act of 2004. That bill addressed 38 of the 9/11 Commission's 41 recommendations to further secure our homeland. Not only the two managers of that bill—Senator COLLINS and Senator LIEBERMAN—deserve our gratitude but the two leaders, as well, worked together to ensure the Senate acted on this important reform legislation prior to adjourning before the elections.

I ask unanimous consent that Senators LIEBERMAN, LOTT, SNOWE, ROBERTS, and BAYH be added as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCAIN. Mr. President, one of the Commission's two options which the Commission recommended for how best Congress can improve congressional structure over intelligence—the underlying resolution does not propose either of the Commission's two options creating either a joint committee modeled after the Joint Atomic Energy Committee or House and Senate committees with combined authorizing and appropriating powers.

Let me tell you what this is all about. The Commission report was clear that along with the need to reform the executive branch, congressional reform is needed. And I quote from the report:

> The other reforms we have suggested for a national counterterrorism center and national intelligence director will not work if congressional oversight does not change too.

I want to repeat that:

> The other reforms . . . will not work if congressional oversight does not change too.
>
> Unity of effort in executive management can be lost if it is fractured by divided congressional oversight.

We can't leave this week with our job incomplete. We have to address the Commission's recommendations regarding the urgent need to reform congressional oversight, intelligence and homeland security. To do this in a meaningful way to carry out the important institutional reforms recommended by the Commission, each of us in Congress must sacrifice our own self-interest. We do not serve the American public well with short-sighted, parochial turf battles.

The Commission acknowledges that this won't be an easy task.

The report states:

> Of all our recommendations, strengthening congressional oversight may be among the most difficult and important. So long as oversight is governed by current congressional rules and resolutions, we believe the American people will not get the security they want and need. The United States needs a strong, stable and capable congressional committee structure to give America's national intelligence agencies oversight, support and leadership.

The Commission also stated:

> Tinkering with the existing structure is not sufficient.

It calls the congressional oversight "dysfunctional."

Their recommendations clearly state that we must have a committee with both authorizing and appropriating authority.

It is not any simpler nor more complicated than that.

I have a letter from the 9/11 Commission which states:

> If Senator McCain offers an amendment in support of Commission recommendations on Congressional oversight, we will support it.
>
> We urge the Senate to adopt provisions for the strongest possible reform of Congressional oversight.

I ask unanimous consent that three letters be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OCTOBER 6, 2004.

Thomas H. Kean and Lee H. Hamilton, former Chair and Vice Chair of the National Commission on Terrorist Attacks Upon the United States (also known as the "9/11 Commission) today released the following statement:

"We continue to believe that reform of Congressional oversight is necessary in order for the Commission's overall recommendation to be effective."

"If Senator McCain offers an amendment in support of Commission recommendations on Congressional oversight, we will support it."

"The proposals of Senator McConnell and Reid constructive, positive and move in the right direction. They are useful and modest steps. They are not as far-reaching as those recommended by the Commission."

"We urge the Senate to adopt provisions for the strongest possible reform of Congressional oversight."

JOHN F. LEHMAN,
New York, NY, October 7, 2004.

Hon. JOHN McCAIN,
U.S. Senate,
Washington, DC.

DEAR JOHN: I am writing to reiterate my strong support for real Congressional reform as recommended by the 9/11 Commission.

As our report makes clear, the important executive branch reforms that passed the Senate yesterday will not work if congressional oversight does not change too. Unfortunately, the McConnell/Reid proposal does not fulfill the Commission's vision for comprehensive reform. The intelligence committee needs real power and prominence, which is why the Commission strongly recommended a new committee structure combining authorizing and appropriating authority, and a simplified and functional homeland security committee structure.

I urge the Senate to make the Commission's recommendations for Congressional reform as high a priority as it made our other recommendations, which received an overwhelming bipartisan vote of 96.2. The Congressional reforms are equally important and necessary.

Sincerely,

JOHN F. LEHMAN.

OCTOBER 7, 2004.

Senator JOHN McCAIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR McCAIN: I write to reaffirm my strong support for Congressional action to implement the recommendation of the 9/11 Commission Report to strengthen Congressional oversight of intelligence and homeland security.

As you know the bipartisan 9/11 Commission was unanimous in its recommendation that serious reform was necessary. In the language of the Commission: "Tinkering with the existing structure is not sufficient. . . . the goal should be a structure—codified by resolution with powers expressly granted and carefully limited—allowing a relatively small group of members of Congress, given time and reason to master the subject and the agencies, to conduct oversight of the intelligence establishment and be clearly accountable for their work."

This is best implemented by establishing a single committee in each house of Congress combining authorizing and appropriating authorities. Therefore, I endorse your amendment to the current bill which will ensure this single authority.

Thank you for your work to ensure that the recommendations of the 9/11 Commission are implemented.

Sincerely,

BOB KERREY.

Mr. McCAIN. Mr. President, Bob Kerrey writes:

> I write to reaffirm my strong support for Congressional action to implement the recommendations of the 9/11 Commission Report to strengthen Congressional oversight of intelligence and homeland security.

Bob Kerrey, by the way, served here for two terms, as I recall, for 12 years.

He further states in his letter:

> This is best implemented by establishing a single committee in each House of Congress combining authorizing and appropriating authorities. Therefore, I endorse your amendment in the current bill which will ensure the single authority.
>
> Thank you for your work to ensure the recommendations of the 9/11 Commission are implemented.
>
> Sincerely, Bob Kerrey.

I would like to point out just as way of background how we got to the proposal we have on the table.

My understanding is both leaders appointed both whips—the Senator from Nevada and the Senator from Kentucky—as part of two 11-person committees to come up with recommendations.

We met a couple times, the 11 Republicans, and discussed various issues, then there was another meeting of both, and then we were told that Senator REID and Senator McCONNELL would come up with some recommendations. That is not exactly what I had in mind when I was asked to serve as part of an 11-Senator committee. Here came these recommendations.

I don't want to digress but, for example, the Transportation Security Administration is left in the Commerce Committee. I am glad to have more discussions with the Senator from Kentucky about that.

I asked, How could the Transportation Security Administration not be made part of the new Homeland Security Committee? The Transportation Security Administration is the heart and soul of it. His answer was—maybe he will have a different answer—it was part of the negotiations. What does that mean?

I digress. The fact is, unless we give the authorizing committee the proper appropriating capability, we will continue to have, as the 9/11 Commission said, a dysfunctional oversight of intelligence. It is a good idea to make Intelligence Committee members permanent members and not have them term limited. I think it is a good idea to have it an A committee, although that may cause significant problems if we do not give the Permanent Committee on Intelligence appropriating authority.

It is sometimes nice to have a real-world example of why we need this. I am not a member of the Intelligence Committee. I have no access to classified information. Frankly, I have never sought any because of the fear that some information I might have I might speak about in a public forum.

There was a very expensive and very controversial intelligence program, and the Intelligence Committee—this is a relatively short time ago—the Intelligence Committee, after many hearings, extensive scrutiny and a thorough scrubbing of this program, determined that the program should be canceled. We are talking about a multibillion-dollar program.

Do you know what happened? The Appropriations Committee funded it.

So if you are the bureaucrat over in Langley or at the National Security Agency or any place else, where do you go? Where do you go when you want your projects done? Do you go to the authorizing committee or do you go to the appropriating committee? The power resides in the purse. The Golden Rule prevails around here. We all know the Golden Rule.

So if we are going to have a truly effective Intelligence Committee oversight that can function with strength and power, we are going to have to give them appropriations authority. I predict after the initial attractiveness of serving on the Intelligence Committee, if they do not have appropriating authority, we will have difficulty getting people to serve on the authorizing committee because, again, the power is not there.

We know why many of the authorizing committees are not nearly as important or as powerful as they used to be. It is because the appropriations process is what drives not only the money but also the policy.

We are going to have an Omnibus appropriations bill sometime. Usually what happens, coincidentally, it is within 24 hours of when we go out of session. It always seems to work out that way. There will be numerous policy changes. There will be numerous moneys and earmarks put in. Last year there were 14,000 earmarks put in the appropriations bills, up from 4,000 in 1994.

We are going to see things that will astonish some Members. For example, I was astonished several years ago when there was a line item in an appropriations bill that called for the leasing of Boeing aircraft. We had never had a hearing in the Senate Armed Services Committee. We never looked at the issue. No one even suggested it, that I know of, and I have been on the committee for 18 years. There was a line item that appeared in an appropriations bill that said we would lease Boeing aircraft.

Do you know what happened since then? The GAO and the Office of Management and Budget determined that it was a $5.7 billion additional cost to the taxpayer. We now ended up, with this long trail that began with a line in an appropriations bill, with one of the former employees of the Department of Defense pleading guilty and receiving a 9-month prison term, saying she had rigged the contract to the benefit of Boeing aircraft.

Now, why do I bring up that example? Because I can tell Members right now that if that had been a subject for the Armed Services Committee, we would have had hearings on it. We would have examined the leasing idea and rejected it as the ridiculous, expensive idea that it was.

I can go with many other examples. Cruise ships that cost the taxpayers $200 million in loan guarantees that were half built at Pascagoula, MS. I can tell Members of line items in appropriations bills that say when the broadcasters reach 85 percent of high-definition television in 85 percent of the homes in America, which the Chairman of the Federal Communications Commission says will never happen—I could go over a long list of items that are not only money but also policy.

What will happen if we do not give the authorizing Intelligence Committee the appropriations power? Exactly what has happened in the past. Projects that cost a great deal of money that the Intelligence Committee either approves or disapproves of are overridden in the appropriations process. It happens time after time after time.

I usually pride myself in straight talk. I would be surprised if I win on this amendment. One of the Commissioners called me and told me, "I'm under intense pressure"—those are his words—"not to support your amendment but I will go ahead and do so."

There are Members of this Senate who are under intense pressure, as well.

If we want to tell the American people with the justified pride that we take in the actions we have achieved in the Senate in the last few days, which is remarkable—at least from my standpoint, one of the prouder moments I have experienced in the number of years I have spent here as we have gone through an incredible process, beginning with hearings before Senator COLLINS's committee back in August, which culminated in a tremendous achievement and the most significant governmental reform since 1947—then we have done about half to three-quarters of the job. If we do not give the authorizing committee either appropriating power or some kind of power, some kind of authority, then we will see a basically dysfunctional and toothless Intelligence Committee.

The Senator from Nevada came to me and said he was going to move to table. I tell the Senator from Nevada, one, I want everyone to be able to talk, so we will just reintroduce the amendment if it is tabled, unless everyone gets to talk. But I also say to the Senator from Nevada that I would be glad to enter into a time agreement for passage of this legislation. I intend to get an up-or-down vote. I will reintroduce it unless the Senator from Nevada allows an up-or-down vote on the amendment. I think it is that important.

Mr. REID. If I could, through the Chair to my friend from Arizona, I have no problem with an up-or-down vote. I would rather he told me he wanted an up-or-down vote. I would say fine. I have no problem.

I also say to my friend, I want to make sure everyone who wants to speak will have the opportunity. I have no problem at all with an up-or-down vote on this.

Mr. McCAIN. I ask unanimous consent that Senator BAYH not be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCAIN. I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. My friend from Hawaii was on the floor first. Does he wish to speak on this matter?

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, today, the Senate is considering the resolution which responds to the recommendations of the 9/11 Commission to revamp the congressional oversight process for intelligence and homeland security. I would like to take this opportunity to say a few words about this matter.

The Commission recommended two options for Congress to consider regarding intelligence oversight. First, they suggested that the Congress could create a joint bicameral committee modeled after the Joint Committee on Atomic Energy, as they said, to streamline the congressional review over intelligence functions. They supported this idea because they believe we need to have a very powerful Intelligence Committee which can stand up to the administration and speak authoritatively for the Congress. I understand there is virtually no support within the Senate for this suggestion.

The other alternative suggested by the Commission was to give the Intelligence Committees the authority to appropriate funds, and this is the matter now being discussed. The Intelligence Committee—some of the members—believes the inability to appropriate funds allows the administration to play the Intelligence Committee off against the Appropriations Committee. They argue this weakens congressional oversight. My colleagues are undoubtedly aware that granting an authorization committee such authority would be unprecedented in modern times.

Chairman STEVENS and I were surprised that neither one of us was contacted by the members of the 9/11 Commission as they conducted their review and prepared their recommendations. We were shocked that, without even consulting us or our House counterparts on the Appropriations Committee, they would recommend that Congress eliminate our role in intelligence oversight. As such, I cannot offer any personal explanation for the Commission's recommendation.

Furthermore, their report provides scant explanation why they believe the Appropriations Committee should be excluded from its mission to fund all Federal agencies. In fact, there is not a single word in the 9/11 Commission's report to suggest that the appropriations subcommittee was at fault in its oversight of the intelligence budget. Never once were we accused of that shortfall.

I believe the Intelligence Committee's role in spending authority is already powerful enough without any new authority. Under the National Security Act of 1947, as amended by section 504, the intelligence community cannot spend appropriated funds unless the funds are specifically authorized. Now, I think this is worth repeating. The intelligence community cannot spend appropriated funds unless the funds are specifically authorized. As such, the Select Intelligence Committee already has more authority than any standing committee.

Let me be clear about what that means. If the Appropriations Committee were to fund programs that were not included in the annual intelligence authorization bill, the appropriated funding for those programs cannot and will not be spent by the executive branch.

This authority is virtually unheard of in other budget functions. The authority was granted to the Intelligence Committee to ensure that the executive branch could not use the wide latitude provided in appropriations law to circumvent the will of the Congress. Appropriations acts are written with broad authority to hide the amounts for classified programs in large lump sums. This ensures that the amounts for these programs remain undisclosed. As such, the limits on spending for classified programs are very broad. The authorization requirement ensures that both committees agree on how much should be spent to provide a better check on the administration.

More important, I believe the idea of centralizing congressional oversight is not only a bad idea, it could be dangerous to the Nation. In all areas of Government, except intelligence, our system requires and allows public scrutiny. The media, nongovernment organizations, and even lobbyists all provide information and insight to Members of Congress on everything except intelligence.

Congress needs to have a system of checks and balances internal to the legislative branch because there are no other checks. We all remember Iran-Contra, which was able to go unchecked even though multiple committees had some degree of intelligence oversight. What chance would we have of uncovering that type of abuse if only one committee were examining intelligence matters?

We know there have been other abuses by the intelligence community. I remember a former chairman of the Senate Intelligence Committee expressing outrage to discover that the National Reconnaissance Office was spending significantly more money to build a new headquarters than the chairman was aware. I recall how Chairman STEVENS uncovered a slush fund in the same agency that had been accumulating outside of the knowledge of the Congress.

Do any of my colleagues really believe that having only one committee perform oversight of the intelligence community's budget will provide more effective oversight?

In addition, a single committee overseeing intelligence for the Senate would create a powerful czar. Little opportunity would exist for meaningful debate on intelligence budgets because so few Members would be aware of the details of intelligence matters. Of equal concern, a more powerful chairman could end up being co-opted or at least overly influenced by the intelligence community and potentially lose objectivity. The Senate would be at his or her mercy with little outside scrutiny. That is not an appropriate or effective form of oversight for the Congress.

Having a few committees cleared for intelligence programs, such as Armed Services, Appropriations, and Intelligence, and each with some role in determining how resources are provided would ensure that fewer bad ideas get legislated, and it would also create more effective oversight and competitive analysis by the Congress.

I also note that maintaining the link to the Appropriations Committee is beneficial to the intelligence community. Intelligence funding is protected by inclusion under the Appropriations Committee. By combining all appropriations resources, the committee has historically solved many intelligence shortfalls.

If the Appropriations Committee is removed from intelligence matters, it will be less likely to support intelligence requirements. First, the committee will not be as knowledgeable of intelligence needs. Second, it is human nature for chairmen and ranking members to care about the programs over which they have jurisdiction. If they do not have some oversight over intelligence programs, they will not have the link to the intelligence providers or necessarily the desire to help.

The Intelligence Committee would be subject to 302 budget reductions and other general reductions levied against all committees by the Budget Committee. To believe that they would be held harmless in across-the-board cuts or other cutbacks I think is very naive. Their funding level is more likely to be decreased than increased.

Linking Defense and Intelligence is critical. DOD cannot operate without good intelligence. The Defense Subcommittee has ensured that intelligence resources support the needs of the warfighter. Today, the Defense Subcommittee reviews the recommendations of both the Armed Services and Intelligence Committees. The Appropriations Committee can minimize redundancies and make sure that the needs of both Defense and Intelligence are met. Separating Defense from Intelligence through the creation of an all-powerful Intelligence Committee would hurt oversight and hurt the community they hope to help.

In recent testimony before the House Intelligence Committee former Deputy Defense Secretary, Defense Comptroller, and staffer to the Senate Armed Services Committee, Dr. John Hamre stated that the Intelligence and Armed Services Committees worry too much about input and not enough about output.

His counsel was to let the Appropriations Committee worry about input in the budget process, to determine what we should spend money on and let the authorizing committees worry about how the agencies are performing with these resources. He noted that the authorizing committees spend far too much time on the budget and therefore had insufficient time for oversight. I am pleased that the leadership has decided to recommend creating an Intelligence subcommittee on oversight to highlight its importance.

Since the Civil War it has been the mission of the Appropriations Committee to balance needs among competing priorities. While the 9/11 tragedy exposed problems with intelligence oversight, it did not expose problems with the appropriations process for intelligence. Certainly, nothing was uncovered that would be resolved by giving the Intelligence Committee the authority to appropriate funds.

The intelligence budget should not be considered in a vacuum. It needs to be considered in conjunction with the Defense budget. While some speculate we can simply separate national intelligence from military intelligence, it is not that simple. Many programs have both national and military, strategic or tactical, components. Military personnel provide a large proportion of the intelligence community workforce. The Defense Department and Intelligence Community both need to support maintaining this relationship and benefit from doing so. It should remain the Appropriations Committee's responsibility to ensure that the needs of both defense and intelligence are met.

The Collins-Lieberman bill that the Senate adopted yesterday recognizes the need for maintaining a close working relationship between DoD and intelligence. Creating an Intelligence Committee that could separate itself from all the other actors in the intelligence support arena would be, quite simply, a colossal mistake.

Some of our colleagues think that the Congress needs to reorganize dramatically to meet the challenges of the 21st century. There are also those that believe that the Intelligence Committee needs to be stronger. The resolution that has been offered by the leadership in fact will provide some significant enhancements to the authority of the Intelligence Committee which will hopefully improve oversight. However, I believe the real key to better oversight is for our authorizing committees to focus on outputs as Dr. Hamre noted and for the Appropriations Committee to focus an allocating resources as efficiently and effectively as possible.

I was the first chairman of the Senate Intelligence Committee. I have great regard for the work of that committee and a great fondness for its chairman and vice chairman. I have also served on the Appropriations Committee for the past 30 years. I understand the critical role that this committee plays in our Nation's security both in defense and intelligence. I can say with no false modesty that the work that Chairman STEVENS and the committee does in overseeing the intelligence budget with the assistance of our very experienced professional staff is unmatched anywhere in Congress.

As powerful as the Joint Committee on Atomic Energy was, it did not control appropriations. Maintaining Appropriations Committee control over funding would preserve a check on unlimited spending by an authorizing committee and would allow at least one other committee to have some review of Intelligence matters. I for one do not think that this is sufficient oversight, but it is clearly the minimum that the Senate should accept.

This is a very important matter. Senator REID and Senator MCCONNELL have spent the past 3 weeks deliberating on this issue. They have consulted with many Members who have competing interests in this arena. The resolution they propose represents a compromise that balances these many and varied views. I cannot say I am completely happy with their recommendation, but I can say this: Their recommendation is far superior to the alternative that is being proposed by the Senator from Arizona.

I urge all my colleagues to vote to support the bipartisan leadership and defeat the McCain amendment.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I ask unanimous consent that following my remarks, the Senator from Florida be recognized. He has kindly agreed to let me proceed because I am due at a conference committee meeting in 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERTS. Will the Senator yield?

Mr. STEVENS. I yield to the Senator from Kansas.

Mr. ROBERTS. I ask unanimous consent that I be recognized after the distinguished Senator from Florida.

Mr. REID. Mr. President, I object. We can't do that. The Senator from Florida has been here since 2 o'clock. I think we should keep our regular order here.

Mr. MCCAIN. Reserving the right to object, and I will not object, the Senator from Florida, with all due respect, is not speaking on the amendment. Usually we go back and forth for and against the amendment.

Mr. REID. He is speaking on the amendment.

The PRESIDING OFFICER. Objection is heard.

Mr. STEVENS. Mr. President, this amendment realigns responsibility for intelligence appropriations from the Appropriations Committee to the Intelligence Committee. This includes all funding relating to intelligence, national, joint military programs, and tactical military funding and classified intelligence matters as in FBI and other Government agencies.

I think it would be a mistake to adopt this amendment. First, it ignores the history of the appropriations process and the lessons we have learned in both Houses of Congress. In 1865, the House created the Appropriations Committee. The Senate followed suit in 1867. Then from 1867 to 1885, the House and Senate Appropriations Committees were stripped of their control over appropriations as one authorization committee after another gained the authority to report appropriations.

In 1885, both Houses realized this ad hoc approach was detrimental, and by 1922 both the House and Senate had reinvested appropriations authority back into one committee in each House. History has proven that moving appropriations to authorization committees creates a decentralized appropriations process that leads to greater spending and less accountability. That would be even more so today under the Budget Act.

In 1910, Congressman James Tawney, Chairman of the House Appropriations Committee from 1905 to 1911, said:

> The division of jurisdiction and responsibility in the matter of initiating appropriations has contributed more than any single cause to the enormous increase in the appropriations during recent years.

Congressman Tawney's conclusions were backed up by a 1987 study that found expenditures for rivers and harbors between 1877 and 1885 rose sharply after the authorizing committee gained the right to appropriate. A book published in 1989 by Charles Stewart III contains similar findings. Even after accounting for price changes, economics, population, and territorial growth, wars and major programmatic changes sponsored by the authorizing committee, Mr. Stewart found the greater decentralization of the appropriations between 1877 and 1885 led to greater spending.

Contrast those to the findings of a 1992 study conducted by James F. Kogan who found that deficits are rare and nonexistent when spending jurisdiction lies within the committee.

Let me go now to the 9/11 Commission recommendations. They are not only ill informed, but they are also unfounded. Not one line in the Commission's report stated that the Senate and House Appropriations Committees were not performing effective intelligence oversight—not one line. Consolidating appropriations and authorization for intelligence matters will undermine nearly 140 years of congressional tradition and ignore our years of experience in such matters.

I have heard some grumblings about how those of us who oppose provisions in this legislation are merely protecting turf. I am not interested in turf. I am interested in function as well as effective oversight. You cannot move the responsibilities for appropriations and authorizations around without having a real impact on function. And you certainly should not make recommendations that aim to do that without even discussing those broad, sweeping changes with the Members of Congress who are familiar with and part of the appropriations process.

My colleague from Hawaii has discussed this at length. I don't want to be redundant, but Dr. Hamre, whom he quoted, is not alone in his assessment that the budget issues are overemphasized when policy and appropriations are jointly considered. Listen to this. Even the 9/11 Commission acknowledged that risk on page 421 of their report, where they write:

> We also recommend that the Intelligence Committee should have a subcommittee specifically dedicated to oversight, freed from the consuming responsibility of working on the budget.

If budget issues pose such all-consuming risk to the entire oversight process, it is the view of this Senator that they should be used within a separate committee that would fully address them. This would encourage collaboration and coordination, the hallmarks of our Government system.

The legislative appropriations process works best where there is friction between the committees and bodies of Congress. That is what the Founding Fathers believed in, a system of checks and balances. It is our suggestion that the organizations of our Government are founded upon that concept, and this amendment doesn't reflect that philosophy.

The insights I offer are not an attempt to protect turf. They are recommendations I would have given to the 9/11 Commission had they talked to me or to my colleague from Hawaii. Given my 36 years in the Senate, 8 of which I have spent as chairman or ranking member of the Appropriations Committee, I think they are very important in this debate.

Mr. President, I will speak against this amendment. I have serious concerns about any effort that would move appropriations responsibilities from the Appropriations Committee to the new Intelligence Committee.

I have spent over 30 years working on defense and intelligence matters. I have served as the Chairman of the Appropriations Committee for 6 years. Those experiences give me a unique perspective on the appropriations process, intelligence organizations, national security and defense. Based on that experience, I am very concerned about any effort that would combine appropriations and policy responsibilities and place them under the jurisdiction of a single committee.

Collapsing appropriations and policy functions and housing them in the new Intelligence Committee would be a mistake.

First, it ignores the history of the appropriations process and the lessons we have learned in both Houses of Congress.

In 1865, the House created the Appropriations Committee. The Senate followed suit in 1867. Then, from 1867 to 1885 the House and Senate Appropriations Committees were stripped of their control over appropriations as one authorization committee after another gained the authority to report appropriations. In 1885 both Houses realized that this ad hoc approach was detrimental, and by 1922, both the House and Senate had vested appropriations authority back in one committee.

History has proven that moving appropriations to authorization committees creates a decentralized appropriations process. And that leads to greater spending and less accountability.

In 1910, Congressman James Tawney, Chairman of the House Appropriations Committee from 1905 to 1911, said the "division of jurisdiction and responsibility in the matter of initiating appropriations has contributed more than any single cause to the enormous increase in appropriations during recent years."

Congressman Tawney's conclusions were backed up by a 1987 study that found that expenditures for rivers and harbors and agriculture between 1877 and 1885 "rose sharply after authorizing committees gained the right to appropriate."

A book published in 1989 by Charles H. Stewart III contained similar findings. Even after accounting for price changes; economic, population, and territorial growth; wars; and major programmatic changes sponsored by the authorizing committees, Mr. Stewart found that greater decentralization of the appropriations process between 1877 and 1885 led to greater spending.

Contrast those findings with a 1992 study conducted by John F. Cogan that found deficits are rare or nonexistent when spending jurisdiction lies within the Appropriations Committee, and I think you will agree, Mr. President, that we are better off with a centralized appropriations process.

Of course, when you look at how the 9/11 Commission conducted its investigation, it's not surprising that their recommendations ignore this history. Not one of the 9/11 commissioners or 9/11 commission staff members interviewed Senator INOUYE or me about intelligence oversight. Nor did they interview the Chairmen and Ranking Members of the House Appropriations Committee.

So, I do not find it surprising that their recommendations ignore decades of "lessons learned" by the House and the Senate. But, I do find it difficult to understand how the Commission could recommend a major realignment of Congressional organization and attempt to change the process for conducting Congressional business without ever speaking to any of the Members of Congress responsible for the appropriations process.

The 9/11 Commission's recommendations are not only ill-informed, they are also unfounded. Not one line in the Commission's report stated that the Senate and House Appropriations Committees were not performing effective intelligence oversight Not one line! And consolidating appropriations and authorization for intelligence matters would undermine nearly 140 years of Congressional tradition and would ignore our years of experience with such matters.

I have heard some grumblings about how those of us who oppose provisions in this legislation are merely protecting their "turf." I'm not interested in "turf." I am intensively interested in function as well as effective oversight. You can't move the responsibilities for appropriations and authorizations around without having a real impact on function. And you certainly shouldn't make recommendations that aim to do that without even discussing those broad and sweeping changes with the members of Congress who are familiar with and part of the appropriations process.

If the 9/11 Commission had asked me about these recommendations I would have told them that Congress has tried to place policy and appropriations functions under the jurisdiction of one committee before, with poor results. We have found that mixing policy legislation with appropriations legislation is inefficient and more importantly, not supportive of the individual processes. Those past experiences led to rules in the House and Senate that institutionalized the separation of policy and appropriations functions.

Every year, Congress needs to fulfill its appropriations responsibilities in a timely manner; if we don't, the government can't keep operating. But the appropriations timetable is completely at odds with the complex and controversial deliberations that surround most policy legislation.

History has shown that combining policy and appropriations functions leads us down one of two paths: either Congress rushes policy deliberations in order to meet fiscal year deadlines and risks adopting bad policy or we must delay the timely passage of appropriations bills in the interest of debating policy issues and we risk disrupting government operations.

Whichever path we follow we shortchange one goal in order to fulfill the other.

The 9/11 Commission hopes that if we combine policy and budget oversight in one committee, policy deliberations will guide our efforts. But my years of experience tell me it will have the opposite effect. Budget decisions will rule the committee and policy oversight will take a back seat.

Former Deputy Secretary of Defense John Hamre expressed concern about the dominance of budget issues in intelligence oversight when he testified before the Appropriations Committee a few weeks ago. He said:

> Frankly, the quality of congressional oversight is not good. It is not as strong as it

> needs to be. I think we are confusing it by this issue of consolidating authorizations and appropriations. I have said to the Armed Service Committees—I used to work there, as you know—that they have made a huge mistake thinking that they are powerful only by trying to do what you do, shape the dollars.
>
> There are reasons you have authorization committees. They are to set the broad trends and directions for the policy goals and to oversee the functioning of the Government. But they spend far too much time wanting to shape the way you appropriate little lines in the budget, and I think that is a mistake.
>
> You play a crucial and indispensable role. They play a crucial and indispensable role, but they are neglecting it, in my view, by putting too much time and attention on budget detail. I would like to see them spend far more time looking at the large purposes, the large policy directions, and overseeing the true functioning of these institutions. That is what I think was intended by having separate authorization and appropriations processes. They can be complementary, but during the last 20 years, frankly, they have been in conflict with each other. And I think that needs to change, and I will be glad to amplify on that further at another time.

But Dr. Hamre is not alone in his assessment that budget issues are overemphasized when policy and appropriations are jointly considered. Even the 9/11 Commission acknowledged this risk. On page 421 of their report they write:

> We also recommend that the Intelligence Committee should have a subcommittee specifically dedicated to oversight, freed from the consuming responsibility of working on the budget.

If budget issues pose such an all-consuming risk to the entire oversight process, it is the view of this Senator that they should be housed within a separate committee that can fully address them, not delegated to subcommittee. This would encourage collaboration and coordination—hallmarks of our system of government.

Those kinds of experiences suggest that the language included in this amendment is the wrong way to address the budget and policy issues facing our nation's intelligence community. Consolidating appropriations and authorization into one committee means fewer members of Congress and staff members will be looking at these complex issues—how does that improve Congressional oversight? It seems to me we would have less oversight, not more.

The legislative and appropriations process works best when there is friction between committees and bodies of Congress. That is what the Founding Fathers believed in—a system of check and balances. Our Constitution and the organization of our government are founded on that concept, and this amendment does not reflect that philosophy.

The insights I am offering are not attempts to protect "turf." They are the recommendations that I would have offered had the 9/11 Commission interviewed me. Given my 36 years in the Senate 8 of which have been spent as chairman or ranking member of the Appropriations Committee—I think they are an important part of this debate.

Mr. COCHRAN. Mr. President, I oppose the amendment offered by the Senator from Arizona. The Senator's amendment would have the effect of harming the Senate's oversight capabilities and making it ineffective.

The Senator from Arizona argues that if we don't combine intelligence oversight and appropriations into a single committee we are wasting our time with reform efforts. I disagree. The resolution authored by the Senators from Kentucky and Nevada accomplishes all of the goals outlined by the 9/11 Commission and it does it in a way that maintains an established system of checks and balances we have had in the Senate since the Appropriations Committee was established in 1867. The appropriations and authorizing committees serve important but distinct and separate roles, and it would be unwise to combine them.

Currently, intelligence funding is shared by five appropriations subcommittees, and intelligence oversight is divided among three committees. Supporters of the Senator's amendment say that if you combine intelligence appropriations and authorization into a single committee, you will centralize and have more powerful oversight.

This is not the case. Not since the early 19th and 20th centuries did congressional committees originate both authorizing and appropriations bills. Programs back then were often authorized permanently. Oversight and appropriations functions were separated because it was determined that having joint authorizing and appropriations committees lead to greater spending and less accountability. We don't need to repeat that mistake of the past.

Another reason for opposing this amendment is a matter of practicality. The Intelligence Committee meets several times a week. I have heard from my colleagues on the committee that it is the most demanding committee assignment they have. Under the resolution their workload and responsibility will significantly increase. We would be asking the Intelligence Committee to take on even more work by adding appropriations responsibility. It would make their workload enormous.

For those who believe the Appropriations Committee divides responsibility for intelligence between too many subcommittees, this resolution addresses that complaint. The resolution would combine all intelligence appropriations into a new Intelligence Appropriations Subcommittee. While I would prefer we leave it to the Appropriations Committee to make the determination on whether this consolidation is warranted, I will support the resolution before us.

We have passed already this year, and the President has signed into law, the Defense Appropriations bill. This bill contains most of funding this year for the intelligence agencies of our government. We have not, however, been able to approve this year an Intelligence Authorization bill for the next fiscal year. I do not believe the Senator's amendment serves us well if intelligence funding would now be held hostage to policy disputes in the Intelligence Committee that are holding up passage of an authorization bill.

The resolution Senator McCONNELL and REID have laid before the Senate is totally consistent with the 9/11 Commission's recommendations and we should approve it.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from Florida is recognized.

Mr. GRAHAM of Florida. Mr. President, I am honored to have served 10 years on the Senate Select Committee on Intelligence, including the opportunity to serve 18 months as its chairman. Today, I will make some comments on the general context of congressional reform in support of reform of the intelligence agencies, including some specific remarks relative to the amendment that is on the floor at this time.

While some of us in Congress had recognized the problems within the Intelligence Community over the years—and we have been working on specific reforms—the tragedy of September 11, 2001, revealed systemic weaknesses that require sweeping changes. In the last few weeks, I have spoken about these issues in floor statements. We have now finished work on an excellent piece of legislation that will establish a strong national intelligence director and lay the groundwork for serious reform of our national intelligence community.

It is my hope the House of Representatives will soon follow our lead, so that we may proceed to conference and turn this legislation into law. Now it is time to turn to one final, critical component of reform: Us.

We in the Congress must be candid and admit that one of the targets of reform must be the current committee structure by which Congress has organized itself to provide oversight to the intelligence community. Our oversight has been proven to be haphazard at best. The 9/11 Commission report states:

> Of all our recommendations, strengthening congressional oversight may be among the most difficult and the most important. So long as oversight is governed by current congressional rules and resolutions, we believe the American people will not get the security that they want and need. The United States needs a strong, stable, capable congressional committee structure to give America's national intelligence agencies oversight, support, and leadership.

The 9/11 Commission goes on:

> The future challenges of America's intelligence agencies are daunting. They include the need to develop leading-edge technologies that give our policymakers and our warfighters a decisive edge in any conflict where the interests of the United States are vital. Not only does good intelligence win wars, but the best intelligence enables us to prevent them from happening altogether.
>
> Under the terms of existing rules and resolutions, the House and Senate Intelligence Committees lack the power, influence, and sustained capability to meet this challenge. . . .
>
> The other reforms we have suggested—for a National counterterrorism Center and a National Intelligence Director—will not work if congressional oversight does not change, too. Unity of effort in executive management can be lost if it is fractured by divided congressional oversight.

To those remarks, I say amen.

I am pleased that many of our colleagues have joined the chorus and cried amen as well. We now have many amendments before us that can accomplish the necessary changes to our Senate committee structure. I thank Senators REID and MCCONNELL, along with their staffs, for the work they have invested in this issue.

The Reid-McConnell working group has come forward with a number of wise recommendations. I want to endorse a few of those recommendations in greater detail, while explaining my reasons for opposing the amendment that is now before us. I also want to make some recommendations that go beyond the resolution, but which I suggest would give the new structure enhanced oversight and direction on the intelligence community.

The first recommendation I strongly support is the abolition of term limits for members of the Intelligence Committees. The terms of Intelligence Committee members should be made permanent so that the accumulated experience and expertise of the committee members can be retained.

When a Member joins almost any other committee in the House or the Senate, he or she typically brings some base of knowledge to the task, such as a lawyer serving on the Judiciary Committee, or a military veteran serving on Armed Services, or someone with a financial services background joining the Banking Committee.

It is a rare Member who has firsthand experience with the intelligence community. The complexity of the issues, the technologies involved in collection analysis, means that it is a very steep learning curve when someone joins the Intelligence Committee. It is not an exaggeration to suggest that it can take as much as half of the current 8-year term before the Member feels confident in their knowledge of the intelligence community and can begin to make wise, informed judgments. That tutorial exhausts half of the time of Members currently serving.

The justification for those term limits dates back to the creation of the Intelligence Committees in the 1970s, following Senator Frank Church's investigation of abuses by the CIA. It was feared that members of the Intelligence Committee would become captives of those they were overseeing, given the general lack of public scrutiny of the workings of the committee.

However, in order to ensure that committee members have the expertise necessary to exercise effective oversight, we must give them adequate time to build up the experience they need. We must hope that their constituents will pay enough attention to their oversight of the intelligence agencies to ensure that the committee members remain independent. I expect this will be the case, given the increasing awareness of the importance of intelligence to our national security.

There is another step that I believe should be taken, and that is an increased emphasis on training of Members who will join or who currently belong to the Intelligence Committee. This is, as our President has said, hard work, serving on the Intelligence Committees. The background, organizational history, financial matters affecting the community, as well as the emerging threats the community is responsible for understanding and assisting in our defense, are difficult. Members of the committee should devote greater time to their personal and collective training so they can better discharge these responsibilities.

The second recommendation I would like to endorse is the distribution of the Intelligence Committee's responsibilities through the use of subcommittees, especially here a subcommittee on oversight that could examine adverse actions within the intelligence community which often require a detailed after-incident report.

One of my principal concerns about the Intelligence Committee during my decade of service was the inordinate amount of time that was spent looking through the rearview mirror at the problems that had already come to fruition, including several significant cases of counterespionage, which left an inadequate amount of time to look through the front windshield at the threats that were coming at us.

I believe the establishment of a subcommittee which had the specific responsibility for oversight, including these after-incident events, would contribute substantially to the committee's capability to look to the future.

Another suggestion within the committee structure, since we will now be reorganizing the intelligence agencies around mission-based intelligence centers, should be the basis for establishing other subcommittees with oversight responsibilities within the Intelligence Committee itself. As an example, in the legislation we just passed, two intelligence centers are established by statute: one counterterrorism, the other counterproliferation of weapons of mass destruction. Clearly, the Intelligence Committee should have subcommittees with specific responsibility to oversee the action of these two critical centers to assure that the threats are being properly identified, the resources are available to respond to those threats, that the centers are accomplishing their objective, and as other centers are created by action of the national intelligence director, they, too, deserve a special focus of a subcommittee within the Intelligence Committee.

Next, I believe it is crucial that the appropriations for the intelligence community be detached from the budget of the Department of Defense so that intelligence funding can respond to intelligence needs and not simply fluctuate with the defense budget.

The reality is that while the intelligence budget is inside the defense budget, that has resulted in, over time, a percentage relationship. And so as happened in the 1990s, when the overall size of the defense budget contracts because the Cold War was over and there was a feeling that we did not need to spend the resources we had when we were face to face with the Soviet Union, the consequence was we were also constricting the size of the intelligence budget at exactly the time the intelligence community needed to be expanding.

We spent 40 years looking at the Soviet Union. We knew a lot about it. We had people who understood the language and the cultures of our adversary. But after the fall of the Berlin Wall, the world did not suddenly declare peace. Rather, a new set of threats emerged from a different part of the world, largely the Middle East and central Asia, and we were grossly deficient, particularly in our human intelligence capability, to understand and react to those new threats.

By divorcing the intelligence budget from the defense budget, we will have a greater opportunity to look specifically at the needs of both of those two important parts of our national security system, but to do so independently on their own merits.

I am familiar with the proposal Senator MCCAIN and others have put forward to give the Intelligence Committee both authorizing and appropriation authority. I respectfully disagree. Having two committees that pay attention to intelligence matters can be very helpful. I will admit that at one time, I was intrigued with the idea of permanently merging the House and Senate Intelligence Committees in the way the old Joint Atomic Energy Committee was merged and in a way for the last Congress the two committees merged for purposes of the 9/11 inquiry.

I have now disabused myself of that suggestion. I believe it is important that, particularly with intelligence where there are so few Americans who have the background to make proper judgments and so many of those do not have the information upon which to make precise judgment, and where there are few eyes outside of the Congress, the press, interest groups, citizens groups, and others who can effectively monitor the intelligence community, it is particularly important that we have a sufficient number of eyes within the Congress that are focused on intelligence issues.

During the runup to the invasion of Iraq, for instance, there were four congressional committees that had some form of oversight over the administration's push for war. Only one of those four—and I see on the floor now the chairman of the Senate Intelligence Committee who, with his colleague Senator ROCKEFELLER, was largely responsible for this—it was only the Senate Select Committee on Intelligence which asked the tough questions which submitted the findings which have accelerated the pace of reform within the intelligence community.

If there are four congressional committees with some oversight over intelligence funding—the two authorizing committees and the two appropriating subcommittees—there is less chance that all relevant congressional committees will be negligent in their oversight of administration action.

I suggest two reforms which would enhance the establishment of a separate subcommittee of appropriations for intelligence. One of those is to increase the authority of the Intelligence Committee over the authorization process. As Senator INOUYE mentioned in his remarks, there is currently law that says funds cannot be appropriated to the intelligence community which have not been authorized. The problem has been that there are sources of authorization other than the intelligence community. So if the Intelligence Committee, which is now invested with the particular responsibility, decides what it believes to be the appropriate priorities, those priorities could be disrupted by authorizations which come from other sources and which, in turn, validate appropriations.

The second point I suggest is that the chair and vice chair of the Intelligence Committees serve on the appropriations subcommittee. There is precedent for this. As an example, in reverse order, the current chairman of the Senate Appropriations Committee serves on the Armed Services Committee. The rationale is that Armed Services represents such a significant part of the total appropriations that it is desirable to have the person most responsible for those appropriations be a member of the Armed Services Committee.

I would recommend that the same type of interlocking relationship should exist between the leadership of the Intelligence Committee and the new intelligence appropriations subcommittee.

Finally, I recommend that the Intelligence Committee expand the use of advisory panels, such as the technical task force which has served the Senate Intelligence Committee extremely well over the last 5 years.

I would like to recognize my colleague, Senator SHELBY, who was very instrumental in the initial establishment of that technical committee. This advisory panel has reduced the tendency toward group think, which has afflicted the intelligence agencies themselves, as we witnessed so clearly in the report of Senator ROBERTS and the Intelligence Committee on the runup to the Iraq war.

One possibility would be to have an advisory panel for each of the subcommittees, locking the Intelligence Committee into the pattern that mirrors and supports mission-based intelligence centers.

There has been a term in the military referred to as incestuous amplification, which is a condition of warfare where one only listens to those who are already in lockstep agreement, reinforcing set beliefs, creating a situation ripe for miscalculation.

Current events have offered powerful evidence that the intelligence community has been engaged in incestuous amplification. It is therefore especially important that the oversight committees of the Congress avoid that temptation.

While I regret to say it, in many ways the Congress deserves the comments which have been made by the 9/11 Commission, but I believe the action we are considering today will go a long way toward assuring that the Congress will be a full partner in reforming the intelligence community of the United States, and the intelligence community in turn can be a fuller partner in assuring the safety of Americans.

The PRESIDING OFFICER. The Senator from Kansas.

AMENDMENT NO. 3999

Mr. ROBERTS. Mr. President, I rise to support Senator MCCAIN and his amendment to the McConnell-Reid measure amending S. Res. 445.

First, I pay tribute to the former chairman of the Senate Intelligence Committee, Mr. GRAHAM. I thank him for his service to our country. He is retiring, although that certainly does not describe the Senator, but I thank him for his leadership and his suggestions as we go through this very difficult task of reforming how we do our oversight responsibilities in reference to our intelligence obligations.

Back to Senator MCCAIN and his amendment, if we approve the McCain amendment, Senators will implement what is the most important recommendation of the 9/11 Commission for improvement of congressional oversight of intelligence activities—most important by the 9/11 Commission.

Now, why is JOHN MCCAIN getting in the middle of what would have to be termed a sheep and cattle war, if one goes back to the history of Arizona, and taking on the challenge of suggesting that the Intelligence Committee, or any authorizing committee, have appropriations power? That is tough. I mean, that really is tough.

I think everybody knows there is more than one way to skin a cat that is sticking his head in a bootjack than simply pulling on his tail. That is hard work. That is where nobody wants to reach their hand into, but there again that is JOHN MCCAIN.

JOHN is from Arizona. I used to reside in Arizona. There is a lot of cactus in Arizona. One does not have to sit on each and every one of them. Sometimes people think that Senator MCCAIN does that. Why is he doing this? Why is he fighting this sometimes lonely battle? Well, on page 420 of the 9/11 report, the Commissioners wrote this:

> Under the terms of existing rules and resolutions the House and Senate intelligence committees lack the power, influence and sustained capability to meet this challenge.

He is right. He is dead on. He is pulling that cat by the tail in the bootjack. And in terms of being right, there are times that one can take on tough measures and sort of let them go and slide or one can do the right thing. The truth of it is that I can tell my colleagues, as chairman of the Intelligence Committee and an 8-year veteran of that committee—and it has been a privilege—we are fractionalized when we talk to Lee Hamilton, Governor Kean, Bob Kerrey, the former Secretary of the Navy, John Lehman, and others. They came to visit before the Intelligence Committee with Senator ROCKEFELLER and myself, Senator ROCKEFELLER being the distinguished vice chairman and my bipartisan partner in trying to do what is right on behalf of our national security—and we think we have done a good job, by the way, backed up by 22 professional staffers, the most of any committee. So, consequently, what happens to us is that when we do our work as quoted by the 9/11 Commission—and after the visit by the 9/11 Commission to the Committee, they agreed with us that we are fractionalized, that our job is pretty tough, that in terms of being an authorizing committee we probably are expected to have the most obligation, independence, leadership, clout in regards to oversight in reference to intelligence and national security of any committee in the Congress, but we have the least.

Why is that? It is because we are fractionalized in terms of sequential referral on demand. I am not going to get into that speech again because I think we are trying to work it out. I think we have a compromise, or I hope we have a compromise, and I thank

Senator ROCKEFELLER for being a leader in this instance.

Whatever we do, we know that we have to then first go to the Armed Services Committee and then, of course, we have to go to the Appropriations Committee.

Now, that is not a bad thing because we have many fine people serving on the Appropriations Committee. I do not mean to perjure the Appropriations Committee. Far from it. They have many obligations. They have their constitutional authority to do this. But what happens? The intelligence community comes before us during the long session of 6 months, 8 months, 9 months when we do our authorization and make priority changes and make recommended changes and make reform changes, some of which have been very dramatic. And I think they understand that, obviously, then we are going to have to go to the Armed Services Committee and then, obviously, we are going to have to go to the Subcommittee on Defense of the Appropriations Committee where they have done, I might add, a splendid job of doing their very best in terms of their obligations to meet our national security obligations vis-a-vis the intelligence community.

Now, what would someone do if they were a member of the intelligence community? They would appear before the authorizing committee, the Senate Intelligence Committee—and I am not saying it was wink them, blink them, and nod to a committee that has no authority, but one can sort of make that case—and I do not perjure anybody who has come before the committee because they are great people. They are laying their lives on the line. They are dedicated people. That is not my point.

What they do, however, is go to the Senate Armed Services Committee and then they also go to two primary members of this Senate whom I personally call friends and admire and respect, and there have been no two people in the Congress of the United States, perhaps in the history of the United States, who have done more for the military and done more during those times where we were stretched thin and hollow and addressing the tremendous problems we have today. I am talking about the distinguished Senator from Alaska, who is chairman of the committee, TED STEVENS and his counterpart, the Senator from Hawaii, DAN INOUYE. I do not know who has been the stagecoach driver and who has ridden shotgun. During these particular years, they both worked equally well.

But what happens to them is that time demands come in and the intelligence community comes in and says: Wow, we have a problem. We have just had an "Oh, my God" hearing before the Intelligence Committee. Oh, my God, how did this happen? Khobar Towers, embassy bombings, USS *Cole*, the lack of really trying to figure out what happened when we missed the India nuclear explosion, 9/11, Somalia—do you know what. It was all tied together.

So the Appropriations Committee is faced with this urgent need, and they respond. And the intelligence community pretty well gets what they want. That is not all bad, especially when we are facing some kind of emergency, but it basically cuts out the Intelligence Committee's authorization process to some degree. It cuts out what the Armed Services Committee does as well. It is time based.

The 9/11 Commission took a look at this and said: Congressional oversight for intelligence and counterterrorism is now dysfunctional. Congress should address this problem. We have considered various alternatives. The primary suggestion: a single committee in each House of Congress combining authorizing and appropriating authorities. The McCain amendment will accomplish this alternative. The McCain amendment will accomplish this by giving appropriations authority to the Senate Intelligence Committee.

The distinguished chairman of the Appropriations Committee, a man whom I admire, a man who has been a great friend, basically cited the example between 1865 and 1885 that when they took away powers from the Appropriations Committee, storm clouds arrived, lightning struck, and it was doom and gloom time until they restored that authority.

Let me suggest another number. It is called 9/11. Let me suggest all the hearings we have held in the Intelligence Committee—I call them "Oh, my God" hearings: Oh, my God, how did this happen?—indicated the systemic failure of the global intelligence community in regard to WMD and the situation in Iraq—not just the United States, everyone, including the United Nations.

The chairman of the Appropriations Committee and his counterpart, the ranking member—when he says there is no turf battle, I believe him. I don't know of any two Members who would put turf over conscience and turf over performance and the obligations of what they have already done. I know the chairman has mentioned that he and the members and the qualified staff of the Appropriations Committee have gone the world over, and they have. I know. I have been with them on many occasions, looking at intelligence and looking to see how the money is spent on the ground, taking a hard look. I understand that.

But we have 22 staffers, 22 professional staffers who have background and experience in regard to being an analyst at the DIA, being an analyst at the CIA with at least 10 years' experience. We have the staffers who put together the 521-page WMD report, where the chips fell where they may. Guess what happened. The intelligence was wrong. Some people try to put that at the foot of the President. He made very declarative and aggressive comments. Others in this Congress received the same intelligence and made the same statements. Now, of course, a lot of that has changed because it is an even-numbered year, and you know what kind of situation we are in.

But I am trying to say your Intelligence Committee stands ready to do a professional job in regard to budget authority, should we be granted that privilege, with 22 professional staffers. We have done that. There have been occasions where we have been granted access. I don't mean that in a cynical way because the Appropriations Committee usually is in a big hurry with what they have to do, meeting obligations that are emergencies—where we have made our suggestions. Some of them, not all of them—as a matter of fact, not very many of them—were accepted by the Appropriations Committee or, for that matter, the Armed Services Committee. Some of them, a lot of them, ended up on the cutting-room floor.

In some cases we were not granted access because of the time equation, and wouldn't you know that many of the recommendations of the 9/11 Commission and many of the problems we have experienced that nobody wants to see that we have had hearings on are the same kinds of things we have tried to fix in the Intelligence Committee and maybe could have had we not had this fractionalized process that the 9/11 Commission has talked about.

I have talked about what a hard job this is. I talked about the courage Senator McCAIN has had to approach this topic. It is a tough topic. Really, this is not hard. Members have a choice. They have a choice to make. A vote for the McCain amendment enhances the congressional oversight by addressing the findings of the 9/11 Commission, period. The amendment will enhance the power, influence, and sustained capability of the Senate Intelligence Committee; that is, to conduct oversight of this Nation's intelligence activities. It couldn't be any more simple.

Members, you should vote for the measure if you want to enhance the Senate Intelligence Committee's ability to conduct congressional oversight as recommended by the 9/11 Commission and, by the way, virtually every other commission that has studied this. So the McCain amendment is in harmony with the 9/11 Commission's major recommendation for improving congressional oversight and intelligence activities.

I am not saying the appropriators or the Armed Services Committee has done anything wrong, egregious, dysfunctional, whatever. They have done a great job under the circumstances with the setup of the Congress as it has been. But we stand ready with 22 professional staffers to do the job. I believe we can do the job.

I am voting for the McCain amendment. In behalf of our national security, I urge my colleagues to do the same.

I yield the floor.

Mr. BYRD. Mr. President, Senator McCAIN has introduced an amendment to address the 9/11 Commission's recommendation for the creation of a committee on intelligence with appropriations powers.

I have a great respect for the 9/11 Commission. They are dedicated members who have the Nation's best interests in heart and mind, and, for the most part, they have done an excellent job. Like the Commission members, I want our Government to take steps that will help ensure that our Nation will never again suffer a catastrophe like 9/11. But, I fail to comprehend how giving a legislative committee its own checkbook will help avoid another such disaster. Legislative committees have their plates quite full with evaluating policy. They should not take on the heavy lifting of appropriating public monies as well.

The fact that the Commission made this recommendation left me wondering just how it came up with such a proposal.

First, I looked at the Commission's report to see what evidence they cited for making this recommendation. I was startled to find that the Commission provides no specifics in its report to substantiate or justify this revolutionary proposal. The Commission offers no examples, no rationales, no justifications, no explanations. In short, the Commission provides no evidence that the appropriations process is flawed when it comes to intelligence matters. There simply is no substantive rationale for the need for this kind of drastic recommendation.

According to the Commission, this recommendation was garnered from interviews with "numerous members of Congress from both parties, as well as congressional staff members. . . . We found that dissatisfaction with congressional oversight remains widespread." But curiously the report never mentions any specific member or any staffer by name or position. Who are these phantom critics? Why were they especially qualified to comment? The point is, unspecified dissatisfaction from unidentified Members of Congress and unidentified congressional staff offers very little basis for embracing such a precedent-setting proposal.

While I do not know who the Commission interviewed to reach this determination, I do know who they did not interview. They did not speak to Senator STEVENS, the chairman of the Senate Appropriations Committee and chairman of its Defense Subcommittee. I know they did not talk to Senator INOUYE, the ranking member of the Defense Subcommittee. Both Senators STEVENS and INOUYE are long experienced legislators and appropriators in the field of intelligence. Why weren't they interviewed? Nor did they talk to me, and I am the ranking Democrat on the Appropriations Committee and the former chairman of the committee.

Knowing just whom the Commission did and did not interview is important because of the makeup of the Commission. While undoubtedly sincere, well-meaning, and honorable, only 4 of the members of the 10 individuals on the 9/11 Commission had ever served in Congress, and only 2 of them had experience with the appropriations process. This recommendation, to grant both appropriation and authorization powers to a legislative committee, in my judgment reflects this lack of experience. Moreover, it belies a lack of familiarity with the history of the appropriations process.

This particular recommendation would blur the existing oversight process which tends to ensure a more thorough examination of intelligence matters because of a focus on policy matters which is separate from the focus on budgetary matters. In other words, the commission wants to increase oversight of intelligence matters by paradoxically lessening and collapsing oversight on intelligence operations.

The Commission's recommendation would limit the watchdog duties over secret intelligence functions to a tiny group of Senators, thereby fomenting an environment that would probably promote "group think," and secrecy. In other words, the Commission wants to end, or, at the least, reduce "group think" and incestuous oversight in intelligence matters, but it is making a recommendation that would create an environment that would likely promote both.

Most importantly, the historian in me marvels at the degree to which the Commission's recommendation flies in the face of history. The current Appropriations Committee just happens to be the carefully considered antidote to several past failures of the same sort of decentralized appropriation's fixes which the 9/11 Commission now incredibly recommends. There is nothing new or innovative in this Commission recommendation. It has been tried before, and it has failed miserably.

In 1816 the Senate established the Committee on Finance and assigned it appropriations responsibilities in an effort to enhance congressional fiscal control. But as the country grew, the problems did too.

The War with Mexico, 1846–1848, for example, caused Federal spending to nearly triple, and this dramatic explosion placed great pressures on Congress to revamp its appropriations process. In 1850, the Senate adopted its first rule governing appropriations. It banned amendments for additional appropriations not previously authorized by law.

The Civil War, 1861–1865, as one might expect, vastly expanded and complicated Federal spending. Congress abruptly learned how the lack of centralized control in the Senate played to the strong advantage of the President. Congressional control of the power of the purse went out the window as President Lincoln spent millions of dollars without even bothering to secure formal congressional appropriations. He could be forgiven because he was trying to hold the union together, but the Constitution was circumvented and congressional power of the purse was, for a time, effectively seized.

Following the Civil War on March 6, 1867, the Senate established a Committee on Appropriations in an effort to bring unity, authority, conformity, and order to the Federal spending process.

As soon as the Appropriations Committee was established, however, authorizing committees began a vigorous struggle to regain their lost appropriations authority. Several House committees first grabbed appropriations authority. Soon, Senate committees were demanding the same. Everybody wanted a piece of the action. What kind of Pandora's box are we opening if we grant appropriations power to the Intelligence Committee? Why not also the Department of Homeland Security? Once the box is opened, the grabbing begins. In the late nineteenth century the grabbing gathered steam even amid stern warnings.

Congressman Samuel Randall, D-Pa, the chairman of the House Appropriations Committee at the time, warned that combining authorizing and appropriating authorities under one committee's jurisdiction would lead to greater Federal spending. "Experience and observation," he pointed out, "demonstrate such distribution leads to continually increasing appropriations, and renders it more difficult to keep expenditures within the limits of receipts." In other words, blending authority and appropriating leads to deficits.

When the Senate debated granting the Committee on the District of Columbia the right to make appropriations in 1883, members of the Appropriations Committee argued against the move. Pointing out that the Appropriations Committee serves as a necessary, coordinating agent with the legislative committees, Senator Beck of Kentucky argued, "it is not wise legislation to vest any committee with absolute power as to the amount of money necessary to carry those laws into effect. . . . We ought to have one committee as a check upon another, one guard placed upon another, so that no body of men sitting as a committee of Congress should have absolute power over the money of the people."

Again, that is another important lesson for us today. The Appropriations Committee is a needed, important partner with Congress's legislative committees. When the 9/11 Commission argues for more supervision of intelligence matters, it is bogus to suggest that we start by decreasing oversight.

But, in the late 19th century, these members of the Appropriations Committee were ignored. After the DC Committee had sought appropriations powers, more and more authorizing committees began seeking appropriations authority. Responding to pressure, the Senate returned appropriations authority to most Senate committees. The result, a repetition of all of the past problems. Without central authority, oversight and a central controlling mechanism, Federal finances again fell into disarray. Legislative committees were off pursuing their own individual agendas. Budget requests were submitted piecemeal. The practice known as "coercive deficiencies," wherein executive agencies went through their year's appropriation within a matter of months, and then appealed to Congress for additional funds to get them through the year, again became common. Most importantly, the decentralized system of appropriations was simply not capable of managing the expenditures of a Federal Government that was growing large in size and in expense. No one was minding the fiscal store.

I would urge any Senator who thinks that giving appropriation power to an authorizing committee will help restrain spending or increase discipline to study Congressional history. Congressman James Tawney, the chairman of the House Appropriations Committee from 1905 to 1911, concluded that "division of jurisdiction and responsibility in the matter of initiating appropriations has contributed more than any other single cause to the enormous increase in appropriations during recent years." Everyone always wants to get an oar in the water.

A number of scholarly studies support Congressman Tawney's observation, including the 1987 study by David Brady and Mark Morgan, Reforming the Structure of the House Appropriations Process, and the book by Charles Stewart, Budget Reform Politics. These works document that without a central authority to impose overall budgetary discipline on the legislative committees, accountability all but vanished, and the public's money was spent with abandon.

World War I, like both the Mexican and Civil Wars, forced the Congress to confront the financial mess that decentralized funding had created, and to establish a supervisory control over the appropriations process. In 1922, the Senate returned jurisdiction over all appropriations measures to the Appropriations Committee. Thus, they created the system that has now served us well for more than 80 years.

Now, the 9/11 Commission proposes to return to the failed system of the past, and I adamantly oppose it. It is a formula for less accountability over public funds and for even larger deficits.

The lessons of history must not be brushed aside.

Most of us probably know the historical truism that those who do not remember the past are condemned to repeat it. History really does repeat itself because human nature does not change. In our desire to correct the reasons for our intelligence failures, let us avoid past mistakes. In our understandable desire to improve our intelligence system following 9/11, at least, we can try to avoid so-called solutions which have a proven track record of disaster.

While it also endeavors to preserve its Constitutional purpose and traditions the U.S. Senate has an obligation to adapt to new challenges.

I know that Senators REID and McCONNELL examined the recommendations of the 9/11 Commission with those thoughts in mind. I know that the Working Group they cochaired has proposed changes that will implement many of the reforms of the 9/11 Commission, while respecting the rights of Senators and the institution of the Senate.

I cannot say the same about this amendment.

Authorization committees and appropriation committees have very different mandates, one to oversee policy, the other to oversee budgets. Different authorization and appropriations committees ensure checks and balances and better oversight.

The amendment would result in fewer Senators looking into intelligence matters. It would eliminate the double punch of oversight with an authorization committee focused on policy matters and the Appropriations Committee focused on budget matters.

The message of the 9/11 Commission was to increase, not decrease, the role of the Congress in intelligence matters. It asked the Congress to pursue more vigorous oversight and to ask tougher questions. This amendment would take us in the opposite direction.

I urge the defeat of this amendment.

Mr. LEVIN. Mr. President, I do not support the McCain amendment to grant appropriation powers, in addition to oversight powers, on intelligence matters to the Senate Intelligence Committee.

I am a member of the Intelligence Committee and I support the effort in this resolution to strengthen the oversight capabilities of the Senate Intelligence Committee. However, I cannot support this amendment. Because much of the work done by the Intelligence Committee is necessarily done in closed session, it is all the more important to have the checks and balances of additional committees involved in the review and funding decisions concerning intelligence activities. Intelligence matters, by their nature, require secrecy. However, democracy works best with active and open debate. For this reason, it is critical that this process, while secret, involve more than a small number of Senators.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, after conversation with the managers, I believe we have other issues to address. I think everybody is familiar with this issue. If it is agreeable to the managers, perhaps we could have an agreement.

How much time does the Senator from Connecticut want?

Mr. LIEBERMAN. Five minutes.

Mr. McCAIN. Five minutes. The Senator from Pennsylvania wants 5 minutes; the Senator from Missouri, 5 minutes; and I be allowed 5 minutes.

Mr. REID. I would like to be able to speak for a few minutes.

Mr. McCAIN. Two minutes?

Mr. REID. A few minutes. I will do it as quickly as I can.

Mr. McCAIN. The Senator from Nevada, 5 minutes?

Mr. REID. I may need 10.

Mr. McCAIN. The Senator from Nevada, 10 minutes, and that followed by a rollcall vote?

Mr. REID. The Senator from Arizona should be the last speaker?

Mr. McCAIN. Yes. Part of that unanimous consent request is that I be the last speaker, for 5 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Mr. President, there would be no amendments in order prior to the vote up or down as the sponsor of the amendment wants.

Mr. McCAIN. For the benefit of Members, Mr. President, would you repeat the terms of the unanimous consent agreement?

The PRESIDING OFFICER. Under the unanimous consent agreement, the Senator from Connecticut will have 5 minutes, the Senator from Pennsylvania will have 5 minutes, the Senator from Missouri will have 5 minutes, the Senator from Nevada will have 10 minutes, the Senator from Arizona will be the concluding speaker with 5 minutes, and there will be no amendments allowed before the final vote on this amendment.

Mr. McCAIN. Followed by a rollcall vote?

The PRESIDING OFFICER. There will be a rollcall vote.

The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I rise to support the McCain amendment. The McCain amendment is part of the package of legislation Senator McCAIN and I and others introduced on September 7 to implement all of the recommendations of the 9/11 Commission. That is why I am pleased to be a cosponsor of the amendment.

Governor Kean, Congressman Hamilton, members of the Commission made clear to Congress that they had three major and most urgent recommendations. The first was to create a national intelligence director, the second was to create a National Counterterrorism Center, and the third was to reform the way in which Congress oversees intelligence.

The first two, the national intelligence director and counterterrorism center, we accomplished yesterday in passing the bill that came out of our Governmental Affairs Committee. Senator COLLINS and I joked along the way that maybe we got the easier assignment than Senator REID and Senator McCONNELL, who had to deal with Congress's own internal organization. I believe they have done well.

I do want to say a few things, and I will have more to say about this in a bit.

With regard to homeland security, the legislation Senator McCAIN and I introduced embracing the 9/11 Commission said that Congress should either establish a new committee with sole jurisdiction over homeland security or give that jurisdiction to another existing committee.

Senator REID and Senator McCONNELL and the working group chose to give that jurisdiction to the Governmental Affairs Committee on which I am privileged to serve. At the same time, it is significant to note that it is now going to be called the Committee on Homeland Security but at same time large chunks of the homeland security jurisdiction—the Coast Guard and Transportation Security Administration, now part of the Immigration and Naturalization Service—have been taken back by the other committees. That is the kind of action that encourages those who are cynical about this Chamber, and I hope we can try to do better on that.

With regard to the oversight of intelligence, the working group made a significant reform proposal which sponsors have described. But the McCain amendment embraces the recommendation of the 9/11 Commission, which I still respectfully believe is the better course to follow, which is to combine the expertise of the intelligence community and their considerable staff in authorizing with the power to appropriate and in that sense to make sure that this most critical aspect of the war on terrorism, intelligence, has the most active and informed and aggressive oversight from Congress.

The enormous achievement that the legislation we adopted yesterday represents in reforming our intelligence and homeland security apparatus will not fully be realized, or may go astray, unless there is the strongest possible congressional involvement in oversight. I believe this amendment will provide for that. That is why I rise to support it.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I have sought recognition to speak in opposition to the amendment offered by the Senator from Arizona for a number of reasons.

First, the Intelligence Committee, with its current responsibilities, has a very heavy workload. I was on the Intelligence Committee for 8 years and chaired the Intelligence Committee in the 104th Congress. It is a very time-consuming job. I think it would be unwise to give them the additional burden of deciding appropriations.

As a member of the Appropriations Committee—and I do not make this argument on a turf basis—we spend a lot of time making the allocations among the 13 subcommittees which we have. We have a budget resolution. We have a specific amount of money and we have to make the allocations.

If we have a committee such as the Intelligence Committee not a part of the appropriations process, to evaluate intelligence appropriations in contrast to the other appropriations functions, it simply does not give the full picture.

We, obviously, never have as much money as the individual members would like to have for their respective subcommittees, but when the committee makes a decision as to allocations, it is keeping the entire budget in mind. That would be lost if you had the Intelligence Committee with the authority simply to carve out whatever amount of money they chose without regard to the other appropriations processes.

In addition, the experience as detailed by the chairman of the Appropriations Committee, the Senator from Alaska, has been that when authorization and appropriations were combined, there were enormous appropriations. At a time of deficits and at a time of large national debt, we ought not create another structure which would add to the burden of additional funding.

The separateness of an intelligence appropriations subcommittee from the intelligence authorizing committee also lends for more congressional Senate oversight. With all of the work we have to do, there is insufficient time to give appropriate oversight to the intelligence functions. A separate appropriations subcommittee would have an opportunity to add to that oversight and would have an opportunity to add as a check and balance to what the authorizers may do.

We are proposing some very far-reaching changes here. I believe the resolution is a sound one in that it strengthens the hand of the intelligence authorizing committee by taking away term limits so the members of that committee will develop real expertise. But we should not abandon the traditional division of responsibility between authorizers and appropriators.

I have great respect for what the Senator from Arizona seeks to do. He has made very cogent critiques of the Appropriations Committee from time to time when the Appropriations Committee seeks to take on the authorizing role. There are not supposed to be authorizations on the appropriations bill.

We know, as a practical matter, that happens on occasion. Really, it happens with excessive frequency. But just as the separateness ought to be maintained with appropriators not authorizing; so, too, the separators ought to be made with authorizers not appropriating.

It is for these reasons that I oppose the amendment offered by the Senator from Arizona.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I rise in opposition to the McCain amendment.

I joined the Senate Select Committee on Intelligence knowing full well that our system needed reform. Since that time, I have worked very hard with our distinguished chairman and members on both sides to try to bring about real reform that will enhance our Nation's ability to fight the war on terror by assuring we have the most accurate, actionable, and timely intelligence available.

I applaud the provisions of the Collins-Lieberman bill, and commend my colleagues for coming together on that important piece of legislation. It is now time, however, for Congress to get into the really difficult battle; that is, reorganizing and reforming ourselves. That is necessary so long as such reform makes sense. The 9/11 Commission concluded:

> The House and Senate intelligence committees lack the power, influence and sustained capability to meet the challenge of overseeing the United States intelligence community, and executive branch reform will not work if congressional oversight does not change too.

That doesn't mean that a commission to investigate the facts and circumstances relating to the terrorist attacks of September 11, 2001, should become the only basis for intelligence reform and we must adopt every recommendation. We have spent a good bit of time in this body—I have personally and I know my other members on the Intelligence Committee have worked on these issues far longer than the 9/11 Commission worked on them. I know from my experience on the Appropriations Committee how important that responsibility is, and I daresay that those of us on the Appropriations Committee have lots of experience on how the appropriations process works.

I feel very strongly in the case of this amendment and the Commissions's recommendation to combine authorization and appropriations powers that we need to reject it.

A longstanding lesson in the Congress that we have observed, I think wisely, is that it is inefficient and undesirable to mix policy legislation with appropriations legislation. Appropriations are required on a timely basis to keep the Government operating with as little disruption as possible, particularly funds for the intelligence community which are paramount to the day-to-day operations in continuity of our national security. It should not get stalled or held up as a result of potential policy disagreements.

Every year on the appropriations bills which we process, we work hard to get the appropriations out on time and try to focus on those issues that need to be resolved in appropriating.

Combining this legislation with appropriations can result in undesirable situations such as a rush job on policy deliberations in order to meet fiscal year deadlines, and thus potentially shortchanging the policy changes we need to make as a result of our oversight, or delays in appropriations, thus disrupting Government operations as we get involved in controversial policy debates.

The longstanding lesson and separation has been institutionalized in rules for both the House and Senate. Over the years, various attempts have been made in history to mix policy and appropriations functions into a single committee. In the past, this has been judged as undesirable.

If we want to get rid of the Appropriations Committees and spread appropriations throughout all the authorizing committees, that is a long and much more extended debate than we are having here. I do not think we can or should single out intelligence and say in intelligence alone they will have the appropriations functions along with the authorizing functions.

Congress already has a mixed policy budget oversight model adopted in the 1980s for intelligence, the past legislation that provides the Intelligence Committees with powerful control over the budget. Section 504 says no funds may be obligated unless authorized, and over time the Intelligence Committee began to authorize at the level of detail of appropriations.

I was very happy to support our chairman's position in Collins-Lieberman that protects our jurisdiction and enhances the power of the Intelligence Committee. The Intelligence Committee as an authorizing committee ought to have greater powers. The need to authorize funding at the detailed budgetary levels would compel the Intelligence Committee to behave like an Appropriations Committee.

I am familiar with how they work. It is better that the Intelligence Committee not get into this field. It is undesirable if our intent is to make our Intelligence Committee more effective. The Senate Intelligence Committee potentially becomes dominated and consumed by budget review and arguing over specific appropriations items.

The question we have before the Senate is, should Congress reorganize. That would be a bad idea. We heard, as the Senator from Pennsylvania has discussed, objections to legislating on an appropriations bill. I object to appropriating on an authorizing bill. I hope my colleagues support that point of view.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Before my friend leaves, we have served together for many years. We do things in that committee that are so important for the State of Nevada. We authorize programs dealing with flood control, which Nevada has tremendous problems with, with the growth taking place. We do things there to help flood control in Las Vegas and the Appropriations Committee will not give us the money we feel we need.

Superfund is a program I believe in, but we authorize things in that committee and the Appropriations Committee lets us down almost every time. We do it with the Corps of Engineers. We do it with the endangered species.

I say, why shouldn't we have the Environment and Public Works Committee do their own appropriating? Then we would not have to worry about Las Vegas flooding. We would take care of it. I would go each year as quickly as I could to get the first bill passed and get all the money so there is none left for the rest of the committees.

The fact is programs that are within that jurisdiction—FEMA is an example—these are programs that are essential. I get upset at the Appropriations Committee, even though I am a member, for not getting money to the things I support, as someone who has been chairman of that committee on two separate occasions.

I know the good intentions of my friend from Arizona. He and I came to the House together. We came to the Senate together. I never like to get involved in a legislative battle with Senator McCAIN because of his passion with legislative battles and life in general. The fact is, even though I don't like to get involved, and I rarely do, he is wrong this time. He is wrong.

What would happen if this amendment is passed? There would be more secrecy. There would be too much power consolidated, as the former chairman who served on the committee 10 years, BOB GRAHAM, has said. He has served as chairman and wrote a book on the Intelligence Committee. He said it would be the wrong thing to do. It would reduce the number of people and staff looking at the critical matters.

The appropriations and authorization process has been separate for 170 years. Why? This is not by accident. It is because there has to be some control, ultimately, of money. That is why we do not allow Senator REID of the Environment and Public Works Committee, Senator REID and others who serve on authorizing committees to have a free hand in the money.

Now, the authorizers look at matters of policy. That is the way it should be. The appropriators are spending the people's money the way the law states.

The solution we have come up with is a better solution that strengthens the Intelligence Committee and creates a new intelligence appropriations subcommittee.

Governor Kean, the cochair of the 9/11 Commission, said:

> I think [an intelligence appropriations subcommittee] would be very much in my mind within the spirit of our recommendations.

I know my friend from Arizona wrote a letter saying this is fine, maybe, but what we want is better. I don't want to get in a nitpicking "he said, they said," but I am reading from page 421 of the 9/11 Commission:

> We also recommend that the intelligence committee should have a subcommittee specifically dedicated to oversight, freed from the consuming responsibility of working on the budget.

I don't know if it was an oversight, but I wrote a book once and they sent it to an editor, someone who worked at the University of Texas. She was a professional editor. This is my book, a history book, and she came back with all of the contradictions that I had made myself right in my book. I was so stunned how good she was.

Whoever was doing the editing of this report made a mistake, because you cannot have it both ways. You cannot have limited budget authority and have them do the appropriation and the authorizing all at one time.

This is something that is very important. Senator McCAIN is wrong. It would not be hard, for example, to find someone to serve on the Intelligence Committee. He said we cannot find people to serve on the Intelligence Committee and this will make it worse.

Walk through those doors and through another set of doors and you wind up in Senator DASCHLE's office. The most sought-after committee by Democrats in the Senate is the Intelligence Committee. There is a long line of people wanting to serve on that committee. Why? Because it deals with the most important aspects of what goes on in this country. It deals with the intelligence aspects of our Federal Government. They deal with what no one else deals with. Senator ROBERTS and

Senator ROCKEFELLER have done a wonderful job with very few tools to do it with. What we did yesterday and what we are doing here today is creating an Intelligence Committee that has the tools to do work that they have done in a very difficult way. We are giving the Intelligence Committee superpower authority.

I suggest to my friend Senator MCCAIN, it is going to be easy to find people to serve on this committee. It has been easy in the past and it will be easier now because the committee is better than ever.

He describes the lack of oversight in the current intelligence process, but his process is to give only a handful of Senators unprecedented power. We propose more checks and balances. That is what we need—more, not less.

This amendment is an amendment that is offered in good faith. I know my friend from Arizona feels he is doing the right thing, but it is the wrong thing to do. It would be bad; it would consolidate power. This is exactly what we do not need.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I thank my colleague from Nevada, and especially I thank Senator ROBERTS who brings great expertise to this issue, given his position as chairman of the Committee on Intelligence.

I mention again the families and the Commission fully support this amendment. I have no doubt when we take this vote, my friends, that the Commission unanimously, and the families of September 11 support this amendment.

I will quote from Jim Thompson, former Governor of Illinois, a member of the Commission, who says:

> . . . I urge the Senate to make the Commission's recommendations for Congressional reform as high a priority as it made our other recommendations. The congressional reforms are important and necessary.

That is why the Commission was unanimously strongly recommending a new committee structure combining authorizing and appropriating authority in a simplified and functional Homeland Security committee structure.

Mr. Richard Ben-Veniste:

> I urge the Senate to make the Commission's recommendations for Congressional reform as high a priority as it made our other recommendations.

The Commission strongly recommended new committee structure combining authorizing and appropriating authority in a simplified and functional Homeland Security committee structure.

There is no doubt how the Commission stands or how the families stand. What this is all about is contained on page 419 of the 9/11 Commission report, the bestselling report:

> Of all our recommendations—

"Of all our recommendations"—

> strengthening congressional oversight may be among the most difficult and important. So long as oversight is governed by current congressional rules and resolutions, we believe the American people will not get the security they want and need.

This is really what this amendment is all about.

> . . . the American people will not get the security they want and need.

So we are not talking about a turf battle here. We are not talking about who is going to do what and who is going to have the power of the purse. We are talking about the security that the American people want and need, according to the 9/11 Commission.

Mr. President, I am a bit of a realist. I think it is going to be very difficult to win this vote. "Intense pressure" has been put on Members of the Senate as well as members of the Commission.

I thank the members of the Commission who have stood up to that pressure, but I have no doubt that if this amendment goes down, we will perform two-thirds of our duties, and one-third, which, as the Commission pointed out, is the most difficult and most important, we will have failed that. And that is congressional oversight. That is really what this vote is all about.

Mr. President, I yield the floor and ask for the vote.

The PRESIDING OFFICER. Under the previous order, the vote will now be held on the amendment of the Senator from Arizona. The question is on agreeing to the amendment.

Mr. REID. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Georgia (Mr. CHAMBLISS) is necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

The PRESIDING OFFICER (Mr. SMITH). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 23, nays 74, as follows:

[Rollcall Vote No. 200 Leg.]

YEAS—23

Alexander
Bayh
Biden
Cantwell
Collins
Crapo
DeWine
Ensign
Feingold
Fitzgerald
Graham (SC)
Kyl
Lieberman
Lott
Lugar
McCain
Nickles
Roberts
Santorum
Sessions
Snowe
Sununu
Voinovich

NAYS—74

Akaka
Allard
Allen
Baucus
Bennett
Bingaman
Bond
Boxer
Breaux
Brownback
Bunning
Burns
Byrd
Campbell
Carper
Chafee
Clinton
Cochran
Coleman
Conrad
Cornyn
Corzine
Craig
Daschle
Dayton
Dodd
Dole
Domenici
Dorgan
Durbin
Enzi
Feinstein
Frist
Graham (FL)
Grassley
Gregg
Hagel
Harkin
Hatch
Hollings
Hutchison
Inhofe
Inouye
Jeffords
Johnson
Kennedy
Kohl
Landrieu
Lautenberg
Leahy
Levin
Lincoln
McConnell
Mikulski
Miller
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Pryor
Reed
Reid
Rockefeller
Sarbanes
Schumer
Shelby
Smith
Specter
Stabenow
Stevens
Talent
Thomas
Warner
Wyden

NOT VOTING—3

Chambliss
Edwards
Kerry

The amendment (No. 3999) was rejected.

Mr. STEVENS. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I think it may be important that we pause for a minute and figure out what we have done. I would like to have a colloquy with the Senator from Maine. We are now at a position where we are supposed to be consolidating authority in the homeland security committee. In fact, the distinguished Senator from Kentucky said last night:

> The most sweeping change we recommend is to consolidate congressional jurisdiction over the Department of Homeland Security. If you don't think this is major reform, ask the roughly 25 Senate committee or subcommittee chairmen who currently have jurisdiction over Homeland Security agencies or programs.

Truth in advertising: The homeland security committee has 38 percent of the Department's budget and 8 percent of the Department's employees. That is the great consolidation. Why don't we just stop, why don't we call it a night and say the heck with this farce. This is crazy. This is stupid.

The amendment I am about to propose does, what? Something shocking. It takes the Transportation Security Administration, which is the heart and soul of homeland security, and moves it to, guess what. The homeland security committee from the committee on which I have been proud to serve for 18 years.

Guess where the Coast Guard remains. The Coast Guard remains, guess where. In the Commerce Committee. This is a joke. This is a joke, I say to my dear friends.

Mr. President, I ask unanimous consent to engage in a colloquy with the Senator from Maine.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Reserving the right to object, can this Senator be part of that colloquy?

Mr. McCAIN. Sure.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Maine.

Ms. COLLINS. Mr. President, if we are going to create jurisdiction in one committee for homeland security, let's do it. Let's not pretend that we are doing it. Let's not do it in name only. As a result of the proposal put before the Senate with its exclusions and the amendment adopted this morning, as the Senator from Arizona indicated, the homeland security committee would have exclusive jurisdiction over less than 38 percent of the Department's budget.

It would have exclusive jurisdiction over fewer than 8 percent of the Department's employees. That is 13,000 employees out of 175,000 employees. There are more amendments filed that would take still more agencies away from the committee's jurisdiction.

Mr. McCAIN. If the Senator will yield for a question, it is my memory, if my memory serves me correctly, after 9/11, the first major step that we took was the creation of what agency? The Transportation Security Administration? Is that true?

Ms. COLLINS. The Senator is correct.

Mr. McCAIN. So what are we doing with the TSA, may I ask the Senator from Maine? Are we moving it into her committee so she has jurisdiction over it?

Ms. COLLINS. No.

Mr. McCAIN. Ah, I can hardly believe that. I mean, after all, that is what homeland security is really all about, I thought.

Ms. COLLINS. The fact is that Congress has held 312 hearings over the past 2 years on homeland security. The Department has conducted 2,200 briefings. There are 25 Senate committees and subcommittees with jurisdiction over the Department of Homeland Security. This is an intolerable situation for the Department. It is why the Department and the President are pleading with us to consolidate all of the Department under one authorizing committee.

Mr. McCAIN. If the Senator will yield for a further question, if Secretary Ridge or Deputy Secretary Hutchinson had to testify before Congress as far as the activities of the TSA, to whom would they testify?

Ms. COLLINS. They would testify all over. They testified before 88——

Mr. McCAIN. But what about now?

Ms. COLLINS. Well, that is a good question. I have had hearings. Other hearings have been held. Twenty-five Senate committees and subcommittees have a claim over DHS. It is why Secretary Ridge called up in desperation and said: Please give us some relief from this. This is intolerable. We are supposed to be running the Department. Instead, we are constantly testifying.

Mr. STEVENS. Will the Senator yield to me on that?

Mr. McCAIN. Sure.

Mr. STEVENS. I have a chart of the Department of Homeland Security summary of appropriations, and it shows the total amount is $38,840,000,000. The two items that are not in that jurisdiction that would come out total $11 billion. The total amount the homeland security committee will have is $22,945,000,000.

Now, Mr. Ridge appeared before the Commerce Committee under the chairmanship of the Senator from Arizona only twice.

Mr. McCAIN. Secretary Ridge——

Mr. STEVENS. I am reliably informed the reason it went to the Commerce Committee in the first place was the Senator from Arizona wrote a memorandum for the Parliamentarian saying that is where it should be, in the Commerce Committee, because we have jurisdiction over all the means of transportation and all of the entities TSA deals with.

Now, the Senator's committee—I am a member of that committee—will not have jurisdiction over railroads, trains, buses, boats, all of the entities that TSA affects. TSA has moved into the facilities owned by those entities. They have not built their own buildings; they have moved into those occupied by the airlines, buses, wherever. The conflict we have to resolve is between TSA and entities that provide the transportation.

Now, if we are going to have a consolidation of jurisdiction, that is why we have done this, that is why the Senator from Arizona wrote the memorandum in the first place, because we have the jurisdiction over the means of transportation.

Mr. McCAIN. The Senator from Alaska is probably correct that I asserted jurisdiction over transportation at the time that TSA was created. That was before the 9/11 Commission was formed and made their recommendations and their decision was made. At least we told the American people that we would give those responsibilities to that committee.

Now, maybe Ridge only testified before us twice; Hutchinson, many times. There were a multitude of hearings where we called upon TSA, exercising our oversight responsibilities, to provide us with information, briefings, and hearings.

The TSA belongs under homeland security, I say to the Senator from Alaska, whether they go by bicycle, skateboard, or bus. The fact is that this is a joke when we leave the heart and soul of homeland security in the Commerce Committee, of which I am proud, and I know, according to the recommendations of the 9/11 Commission, must be consolidated.

I do not know what budget the Senator is looking at, but the facts that the Senator from Maine and I have is that it is 38 percent of the homeland security budget and 8 percent of the Department's employees.

My response is, fine, if the Senator from Alaska feels that it belongs in the Commerce Committee, he is entitled to that opinion. Let us just not tell people we are consolidating. Let us tell them the truth. Let us tell them it is business as usual in the Senate, as the last vote just proved. It is business as usual, and let us not waste the time of our colleagues and try to fool the American people that somehow we are making any significant changes when as it stands 8 percent of the Department's employees fall under the committee on homeland security and 38 percent of the budget.

Mr. STEVENS. I asked the Senator from Maine a question. I have not received a response. I am not a part of this dialog. I will make my statement later. I really take offense at the attitude of the Senator from Arizona.

Mr. McCAIN. The Senator usually does.

Mr. STEVENS. Let's keep the personalties out of it.

Mr. McCAIN. The Senator from Alaska asked to join in the colloquy and he was welcome to join the colloquy. If he chooses not to stay in the colloquy, then please do not remain in the colloquy.

Mr. STEVENS. I do not shout as loud as the Senator from Arizona and then interrupt people.

Mr. McCAIN. The Senator is welcome to join in the colloquy. I thought the colloquy was an exchange of views, ideas, and thoughts. I certainly would look forward to engaging in any colloquy with the Senator from Alaska. I have the greatest respect for him and the power and authority that we just saw exercised in the last vote.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, I want to clarify the issue. It is not just TSA and the homeland security functions of the Coast Guard that are not transferred to the new homeland security committee. It is the immigration functions of the bureaus of Customs and Border Protection, Immigration and Customs Enforcement, and the Citizenship and Immigration Services stay now in the Judiciary Committee. Certain functions of the bureaus of Customs and Border Protection and Immigration and Customs Enforcement stay in Finance. So I think if we add in all of the exclusions, then we get to the percentages that I quoted.

I say to my colleagues, my point is this: Are we going to do this or not? If we are not going to consolidate all of the functions of the Department of Homeland Security under one authorizing committee, as they are under one appropriations subcommittee, appropriately so, then let us not pretend that we are.

Mr. McCAIN. Would the Senator yield for a question?

Ms. COLLINS. I would be happy to yield.

Mr. McCAIN. What is the view of the Senator as to the primary role of the U.S. Coast Guard today?

Ms. COLLINS. The primary role of the Coast Guard today is port security. It has in some ways taken away from its many other important functions in fisheries enforcement and regulation, for example.

Mr. McCAIN. Under this proposal that we are contemplating, where does the Coast Guard remain?

Ms. COLLINS. The Coast Guard would remain in the Commerce Committee.

The point is this: The administration has called for this consolidation. Let us either do it or not do it, but let us not pretend we are doing it by changing the name of a committee but only transferring to its exclusive jurisdiction 38 percent of the budget and 8 percent of the people.

If some of the pending amendments are approved, such as one to no longer have the Secret Service transferred, then we are just going to end up with jurisdiction over Tom Ridge's personal staff. That is about what is going to be left.

Mr. McCAIN. If the Senator will yield for another question, I would like to mention as part of this colloquy a recommendation of the 9/11 Commission: Congress should create a single principal point of oversight and review for homeland security. Congressional leaders are best able to judge what committee should have jurisdiction over the Department's duties, but we believe that Congress does have the obligation to choose one in the House and one in the Senate.

Now, is it true that under an amendment that has just been adopted by voice vote earlier, more responsibilities have been taken from the Senator's committee?

Ms. COLLINS. The Senator is correct. The underlying resolution as amended this morning now leaves the vast majority of the homeland security jurisdiction in committees other than in the new homeland security committee. I think that is a mistake. I think, if we are going to take that route, then we have not done the consolidation that the administration has called for.

Perhaps that is the will of this body. I understand these issues are difficult, that committees think they have a special relationship with these agencies. But let's not pretend we are consolidating agencies to parallel the consolidation that we undertook when we created the Department of Homeland Security.

Mr. McCAIN. I ask the Senator from Maine, I am sure she is aware but I think our colleagues should know, that the legislation creating the Transportation Security Administration, under the title "Functions," reads:

> The Under Secretary shall be responsible for security in all modes of transportation including carrying out chapter 449 relating to civil aviation security, related research and development activities, security responsibilities over other modes of transportation, be responsible for day-to-day Federal security screen operations, for passenger air transportation, interstate transportation. . . .

It goes on and on. It is all security. That is the job of the Transportation Security Administration. That is one of the reasons why it is so named.

So rather than take the Transportation Security Administration and put it under the committee on homeland security and governmental affairs, we leave it in the Commerce Committee.

Ms. COLLINS. The Senator is correct. That is the effect of the underlying resolution.

AMENDMENT NO. 4000 TO AMENDMENT NO. 3981

Mr. McCAIN. Mr. President, I perhaps foolishly have an amendment at the desk. I ask for its immediate consideration.

Mr. STEVENS. I object. What was the request?

Mr. McCAIN. No, I didn't make a request. I said I have an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection setting aside the pending amendment?

Hearing none, it is so ordered.

Mr. STEVENS. I still don't understand. Is the Senator now calling up the amendment on Commerce?

The PRESIDING OFFICER. At the present time, yes.

The clerk will report the amendment.

The assistant legislative clerk read as follows:

> The Senator from Arizona [Mr. McCAIN] proposes an amendment numbered 4000 to amendment No. 3981.)

Mr. McCAIN. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

> (Purpose: To ensure that the Committee has jurisdiction over the Transportation Security Administration)
>
> On page 2, beginning in line 13, strike "to the Transportation Security Administration,".

Mr. McCAIN. I pretty well described this amendment just as we were discussing in this colloquy. Basically, it moves the Transportation Security Administration from the Commerce Committee to the new committee on homeland security and governmental affairs. I pretty well described it. I think it is clear, given the responsibilities of the Transportation Security Administration which I read a few minutes ago. They all have to do with transportation security. Obviously, homeland security is the appropriate place for it to be.

I ask consideration of the amendment. I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, this is an important amendment for the Senate. I hope Members will listen because the Transportation Security Agency is the one that manages basically the entities at the airports, the bus stations, wherever they may be where people enter into forms of transportation.

All of those transportation means are under the jurisdiction of Commerce. I don't know about the rest of you, but I went to Nome one time and I found the Transportation Security Administration had moved into the Alaska Airlines terminal, owned by that airline, and said: Move out of the way. We have to put in these security devices. And they did that. They built a wall through that terminal and they proceeded to take it over.

I have had more complaints about the Transportation Security Administration than I have any other entity since I have been in the Senate because of the way they impact the traveling public.

I remind the Senate, there is a provision in the bill that authorized the Transportation Security Agency to transition to private enterprise when the time came that private enterprise could handle it. This is not a permanent Government entity. We sincerely believe that those involved in the transportation mechanisms should transition to the point where they, working with private enterprise, provide these functions. Right now these are temporary functions. We have provided Government employees to do it temporarily, not permanently. So this whole premise is that it should go over to the Governmental Affairs Committee—on which I am proud to serve and was once chairman—and they should oversee this entity, which we in Commerce want to see transition to become a part of the systems of transportation and not something maintained by Government forever.

This is not something that really ought to be done this way at all. I do not disagree with the Senator from Maine. There are a substantial number of entities that are under the jurisdiction of various committees that should come to the governmental affairs and homeland security committee, as it is now to be renamed. But in terms of that transition, those things do not impact the overall commerce of the United States the way this one does.

The Coast Guard, by the way—the Coast Guard's primary mission is not port security. It is to maintain the jurisdiction in the United States in peacetime over the waters that are essential to our commerce and in wartime to become part of the Department of Defense.

What sense does it make to split it up? By the way, a portion of the Coast Guard is already under Homeland Security. It is already there. We agreed to it in the bill that created the Homeland Security Department. This takes the rest of it, the part that deals with fishing, that deals with boat inspection, that deals with the various aspects of using the Coast Guard around the world as it did off Iraq when it had the job of handling interdicting shipping that violated the sanctions against Iraq importing certain goods. That was done by the Coast Guard. This isn't homeland security, either.

Its primary function up my way is to patrol the fisheries, to maintain the maritime border. That has nothing to do with the security of the United States. It has to do with the protection of the basic resources of our oceans.

If anyone has worked with the Coast Guard, they know they are part of the drug interdiction job. Maybe DEA ought to be transferred to homeland security. I am not sure. But it is certainly not the kind of thing we are talking about now.

The Coast Guard has missions beyond ports. It has waterways, coastal security, drug interdiction, migrant interdiction, defense readiness, maritime safety, search and rescue. Search and rescue is absolutely essential to our State, to have the Coast Guard deal with those souls who are at sea, in danger. They do a marvelous job. They do environmental protection. What does environmental protection have to do with homeland security? That is a different matter—oil spills, contamination of the water, ice protections, and whether we can have transit of the vessels that are capable of going through ice. We now have a considerable number of icebreakers up our way. That is what they deal with.

There is an enormous number of categories that have nothing to do with homeland security and those that deal with homeland security we already transferred to homeland security. The idea the Coast Guard is taking now, the rest of it—the amendment would say, take the rest of it and put it over there. I don't know if it is in this one, but that is the proposal, as I understand it.

Admiral Collins, the Commandant of the Coast Guard, when asked about the future asset acquisition of the Commerce Committee this last April, stated:

> To enhanced mission performance, The Coast Guard must optimize its unique authorities and capabilities, accomplishing partnerships while gaining capacity it needs to complete the full range of our missions. New assets will be used to conduct fishery patrols, search and rescue cases, as well as protecting the Nation against terrorist attacks.

We have no problem putting the terrorist activities in. They are already in Homeland Security. You don't need this process to go through to split that jurisdiction up again.

The problem right now is that Commerce Committee, having jurisdiction over all forms of transportation, would be faced with the problem of how to deal with this Transportation Security Agency. I think the committee under the chairmanship of the Senator from Arizona has a great record in dealing with this. As a matter of fact, they approved nine bills this year alone related to transportation security in this Congress and none of them dealt with security. One did—the Aviation Security Improvement Act was enhancement of security with regard to airlines themselves.

I think if one examines the record of this Commerce Committee, it has conducted its jurisdiction under the Senator from Arizona. I look forward to continuing that as chairman in the next Congress.

I want to give my friend from Hawaii time to speak on this.

With regard to the nominations on the TSA and Coast Guard, they have been done in record time in Commerce. As compared to the rest of the Congress, nominations before our committee are expedited, and necessarily so. The impact of this matter obviously is that the confirmations of the Coast Guard will be taken over to homeland security. Those Coast Guard people do a lot more than just port security.

I am getting redundant.

But the difficulty with this is the transportation infrastructure itself should not be broken up. We should aim for the goal that this problem which is handled by TSA will be taken over by private enterprise. It should be. We envisioned that at the time we passed the original bill.

We have jurisdiction, as I said, over aircraft, rail, and highways. There is no question when we look at it that putting those concepts that affect our livelihoods right now and dragging them down is the considerable impact of TSA on their operations—not only on this operation as passengers, but the whole spectrum of the relationship with TSA to the transportation entities, I think, needs to be considered.

The McCain amendment would transfer jurisdiction over there to the homeland security and governmental affairs agency.

We had a hearing this morning about the plight of the airline industry. There is no industry that has been affected as much by TSA as the airline industry. TSA is examining how to counter the threat posed by shoulder-launched missiles. The FAA has that jurisdiction.

We have jurisdiction in Commerce over the FAA. Why should we transfer to Governmental Affairs the jurisdiction over an entity that is dealing with this type of equipment? They also have jurisdiction ultimately over some of the aspects of the transportation mechanisms themselves—design of airplanes, design of buses, design of trucks, cars; the whole thing. I believe all of that ought to stay where it is, with Commerce.

The FAA currently governs baggage weight and rules for lost and damaged baggage. TSA only deals with baggage security. We are going to take baggage security and put a whole entity over there when the problem is the problem of the industry which has the responsibility legally for the baggage no matter who handles it. I think this is absolutely wrong.

Currently, the airline industry pays $14 billion in user fees, according to the air transportation testimony. Those fees have to be reduced. The only way to reduce them is to get TSA's function into the hands of private enterprise related to the entity they serve—not the whole transportation system but the system they are working with. TSA is designed almost as a "one size fits all" for everything. That should not be. We should have a security system that is related to the responsibility of those providing the transportation and let the users of that transportation pay for it and not the taxpayers. This is where in the long run we are going to go, and I believe it is the right thing to do.

I cannot believe we should have two committees dealing with the airline industry. Governmental Affairs has no competence in this area in terms of the impact of entities like TSA on the airline industry. We do. We assert it in the committee under the chairmanship of the Senator from Arizona. It has been a good relationship. I believe it should be continued.

I have talked a little bit about the Coast Guard. I don't think that is covered by this amendment. The current amendment covers only Commerce, as I understand it. Is that correct? I have not seen the amendment yet. Parliamentary inquiry: Does this amendment currently only apply to the Commerce Department? Is it under TSA and the Commerce Committee jurisdiction?

Mr. McCAIN. It only applies to TSA.

Mr. STEVENS. I thank the Senator.

Does the Senator from Hawaii wish to be recognized?

Mr. McCAIN. Mr. President, I don't want to take a lot of time. I wonder if we could get an agreement that perhaps Senator INOUYE be recognized for—how much time would he need?

Mr. INOUYE. Twenty minutes.

Mr. McCAIN. Twenty minutes; followed by Senator LIEBERMAN for 5 minutes; Senator LOTT for 5 minutes; whatever time Senator STEVENS would need; and then 5 minutes for me to wrap up, followed by a rollcall vote.

Mr. REID. Mr. President, I don't know whether I will use any time, but

I would like to be included to speak for up to 5 minutes.

Mr. McCAIN. I ask unanimous consent for that agreement.

How much time does the Senator from Alaska need? Five minutes as well.

Let me repeat: I ask unanimous consent that the Senator from Hawaii be allowed 20 minutes; the Senator from Connecticut 5 minutes; the Senator from Mississippi 5 minutes; the Senator from Alaska 5 minutes; if needed, the Senator from Nevada 5 minutes; and the Senator from Arizona for 5 minutes, followed by a rollcall vote.

Mr. REID. Mr. President, I ask unanimous consent that the request be modified: that there be no amendments in order prior to final passage on this amendment.

The PRESIDING OFFICER (Mr. CORNYN). Without objection, it is so ordered.

Mr. McCAIN. I thank the Chair.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I wish to join my colleague from Alaska in opposition to this amendment to transfer jurisdiction over the TSA to the soon-to-be renamed Governmental Affairs Committee.

As noted by Senator STEVENS, this amendment would effectively strip the Commerce Committee of its ability to oversee and coordinate the safety and security needs of our Nation's transportation system. To consider security in a vacuum, without understanding the impacts of security policy on the safety and operations of the mode of transportation, could give rise to unrealistic, contradictory, and counterproductive policies.

The McCain amendment would sever issues and responsibilities that have enabled the Commerce Committee to craft and enact two of the most significant transportation security measures this body has adopted since the 9/11, 2001 attack on our Nation.

The Aviation and Transportation Security Act created the TSA, the Transportation Security Administration, mandated the Federal takeover of aviation security functions, and created a fee to pay for the new responsibilities.

The Maritime Transportation Security Act created a new regime for maritime security within the TSA and the U.S. Coast Guard.

The Commerce Committee also successfully completed a conference with the House earlier this year on a second port security bill, the Coast Guard and Maritime Security Act.

These efforts were successful because of the Commerce Committee's understanding of the transportation industry, and the integral link between security, safety, and operations.

The committee has worked for more than a decade to improve transportation security and has had to deal with the inertia of the Federal Government as well as fight entrenched interests to change the way we secure the transportation system.

As far back as 1996, attempts were made to transfer security functions from the airlines to the Federal Government. Similarly, the port security act was initiated prior to the terrorist attacks of 9/11. The 9/11 attacks created sufficient public pressure to fundamentally change the way the Federal Government secured our aviation system and the ports.

The problems we are having in improving security are not the result of an outdated committee system; they are the result of "growing pains" of a newly created department with insufficient resources to fulfill its responsibilities.

The 9/11 Commission made many recommendations. However, the recommendations with respect to the transportation sector were very general, with no specifics. An effective approach would require taking operational needs of transportation systems, the funding streams for these systems, the economics of the industries, and the safety regulatory framework that is so crucial to protecting our citizens.

In setting transportation security policy, all of these aspects come into play: safety regulations imposed by the Department of Transportation, safety regulations and recommendations by the National Transportation Safety Board, and the need to efficiently move passengers and cargo.

For example, the Commerce Committee developed legislation to strengthen cockpit doors based on its jurisdictional aviation funding programs, the FAA's certification approval process, and aviation system safety. We had working knowledge of aircraft structure and the carrier maintenance schedules.

The Commerce Committee was able to develop funding streams for the installation of another explosive detection system because of the committee's jurisdiction over airport funding programs and the use of the airport and airways trust fund.

Similarly, the authorization for pilots to carry guns required an understanding of a wide variety of issues, including structural integrity of the aircraft, training programs, and the pilot licensing process.

For example, if you left it up to a gun merchant or gun expert, he might say, give the pilots a .45. If you fired a .45 in one of those aircraft, it will blow the plane apart under the pressure of the atmosphere. So we have some sort of background and knowledge about aircraft structure. So the pilots would be carrying a smaller caliber pistol, something that will not put the aircraft into an explosive position.

You cannot separate safety considerations, security considerations, and the operational theory. Keep in mind that when we passed the Airport Security Act, we initiated a user fee system, a system where the beneficiaries, if you want to call them that, the airlines, pay a fee for the metal detectors, pay a fee for the x-ray machines, pay a fee for the personnel. They have been paying $14 million per year.

If you separate this function to another organization that will have no knowledge about the economics involved in the airlines, not realizing that the airlines are now on the verge of bankruptcy, who knows, we may really put them out of business. And the major mission of our airlines is to carry passengers, to carry on the mobility of the citizens of the United States.

Transportation security decisions cannot be separated from the safety and operational concerns. The Senate leadership, tasked with the mission of developing a reorganization plan, recognized this vital link. That is why the leadership amendment keeps matters relating to the Coast Guard and the transportation security within the jurisdiction of the Commerce Committee.

Even the Department of Homeland Security recognizes that security decisions can have safety and operational ramifications. This link is embodied in a recent memorandum of understanding between the Department of Homeland Security and the Department of Transportation.

Transportation security and safety are so intertwined that separating them, as the McCain amendment would do, could do harm rather than benefit our transportation system.

After we created the Transportation Security Administration, long before we had a Department of Homeland Security, the President put in charge a tough law enforcement official who knew little about transportation. He did not last long because he knew only one side of the equation. He was succeeded by Admiral Loy who understood not only the balance between safety and security but the need to support policies and positions to maintain our safety needs while meeting our security challenges.

Those tasked with the responsibilities of securing our transportation system must take into account the intricacy of the operations of the system, from safety standards to mock in place realities. The two cannot be separated. Without such context, security decisions will be made in a vacuum that at best might produce misguidance and extraneous efforts and at worst could triple the transportation modes that ensure the free flow of commerce and traffic upon which our Nation has been built.

Competition, safety, and security are interrelated and inseparable aspects of interstate transportation, and each element significantly impacts a carrier's operation.

I realize this amendment does not discuss the Coast Guard, so I will not discuss that matter at this moment.

This is not a debate about protecting turf. It is a debate about the best way to do the job our Nation has entrusted to us. It is about our role in transportation safety and security and our ability to craft effective and timely solutions.

Although the report said Congress should create a single board of review for homeland security, I feel certain the commission did not intend that such a consolidation would result in more harm than good. Each of us must look at what is in the best interest of our Nation. Senators REID and McCONNELL have done that. Therefore, I urge my colleagues to vote against the McCain amendment.

Finally, it has been said the homeland security proposal submitted by the leadership of the Senate did not change the status quo. It recommends, as this resolution will point out, that the new homeland security and governmental affairs committee have sole jurisdiction of three of the four directorates in the Department of Homeland Security: directorate of information analysis, science and technology programs under the under secretary, and emergency preparedness and response director.

Yes, we have tried our best to make a change but not at the expense of a good, efficient, safe, and profitable transportation system.

Mr. REID. Mr. President, as we were listening to Senator McCAIN and the unanimous consent request for time, the cloakroom had a call from Senator LAUTENBERG. I ask unanimous consent that the order now before the Senate be amended to allow Senator LAUTENBERG 10 minutes. I am hopeful I will not have to use my 5 minutes, so it would not extend things for more than 5 minutes, 10 at the most. I ask Senator LAUTENBERG be allowed 10 minutes prior to Senator McCAIN speaking.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LIEBERMAN. I rise to support this amendment. When the 9/11 Commission Report came out—and the Commissioners said the top three priorities were the creation of a national intelligence director; second, national counterterrorism center; and, third, reform of congressional oversight of intelligence and homeland security functions—a lot of cynics said none of this is going to be easy; maybe they will be able to reorganize the administrative branch of our Government, but they will never do the job themselves on themselves.

I am afraid the Senate is in the process of proving the cynics right, and it is a shame. We are creating a shell here. This is like a shell game. We are calling a committee a homeland security committee, but if you pick up the shell, there is not much homeland security under it.

I remember when the Department of Homeland Security legislation, in the aftermath of September 11, was brought before our committee and before the Congress. This was originally a recommendation of the Hart-Rudman Commission which some of us picked up and advocated here in the Congress.

During the legislative consideration of the Homeland Security Department, almost every agency that is now a part of the Department came to us and said: We can't go to this Department; it is too big; we can't work together. We appealed to them that they had to put their own interests aside, and in the aftermath of September 11, a national crisis which proved we were not organized to protect our homeland, they had to get together in one department and make it work for the public's benefit. We accomplished that in the Department, and they are now. It has not all been smooth, but I don't think there is anybody who would say we are not safer today than we were before the creation of the Department of Homeland Security because they are all working together.

That is why the 9/11 Commission said, if you want to do effective oversight of homeland security, if you want to make sure the Secretary of Homeland Security is not spending so much time jumping around from committee to committee up here in Congress but actually protecting the homeland, then create one homeland security committee of the Senate and the House.

I have no particular argument to be made about which committee that should be. In the legislation Senator McCAIN and I put in, we mirrored the report of the 9/11 Commission: Either give one existing committee all of the homeland security oversight legislatively or create a whole new committee on homeland security. The Senate is on a path to do neither and, therefore, not meet the challenge of the 9/11 Commission and the challenge of our current circumstances in the war on terrorism to create such a committee.

Here in this amendment, Senator McCAIN is trying to restore to the Governmental Affairs Committee, or being renamed the homeland security committee, the Transportation Security Administration. The total Department of Homeland Security has 175,000 employees. TSA has more than 51,000. Its functions are totally with regard to homeland security. Incidentally, the Coast Guard is totally within the Homeland Security Department. There may have been some misunderstanding about that here. Some of its functions are clearly not directed to homeland security. But TSA is totally homeland security. It belongs in the Department of Homeland Security, and it belongs in the committee designated here in the Senate to do oversight and authorization of homeland security.

So I appeal to my colleagues, if you want to give this title to the Governmental Affairs Committee, fine. Senator COLLINS and I and members of our committee will do the best job we can. But if you are giving us the title, give us the responsibility to do the job right. If not, give it all to another committee or create a new committee. But right now, remembering the famous old saying about "if it walks like a duck and quacks like a duck and looks like a duck, it must be a duck," we are creating a committee that does not have the budgetary authorization for most of the Department of Homeland Security, does not oversee most of the employees of the Department of Homeland Security, and we are calling it the committee on homeland security. It is not. And I do not see a good reason for doing it other than business as usual here in the Senate.

So I appeal to my colleagues, let's do what is right for the country and put all of this in one committee. You can decide which one you want it to be. It does not have to be the one I happen to be ranking Democrat on. But let's do what is right and put it in one committee.

I thank the Chair and yield the floor.

Mr. McCAIN. Mr. President, what is the order?

The PRESIDING OFFICER. The Senator from Mississippi is the next Senator to be recognized.

Mr. McCAIN. When is the Senator from New Jersey to speak?

The PRESIDING OFFICER. The Senator from New Jersey is to speak just before the Senator from Arizona is to close.

Mr. McCAIN. Mr. President, may I be recognized before the Senator from Mississippi? I think it is appropriate for the Senator from Alaska to speak, as the main opponent of the amendment, before I speak, which would be after the Senator from New Jersey. I ask unanimous consent that the Senator from Alaska be allowed to speak prior to me speaking, which would then wrap it up, since the Senator from Alaska is the primary opponent of the amendment and I am the sponsor of the amendment.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. Reserving the right to object, I don't know what that does to the other order.

Mr. McCAIN. It puts the Senator from New Jersey, Mr. LAUTENBERG, prior to you rather than after you.

Mr. STEVENS. That is fine. I have no objection. Senator LOTT precedes that?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENS. Mr. President, there is not a quorum call in effect, is there?

The PRESIDING OFFICER. There is not.

Mr. STEVENS. I am informed Senator LAUTENBERG will not be returning to the floor to speak. Next will be Senator LOTT, right?

Mr. McCAIN. Yes, Senator LOTT.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LOTT. Mr. President, under the time agreement, is this the time that I will have to speak on the amendment?

The PRESIDING OFFICER. That is correct.

Mr. LOTT. Mr. President, first I want to speak on the broader subject, and with only 5 minutes, I don't have much time. But I am really worried that what we are doing here is not enough. I understand that the whips, who have been designated to carry out this task by our leaders, Senator MCCONNELL and Senator REID, have worked very hard to try to accommodate everybody's interests and concerns, but there is something bigger here than just individual interests and concerns or turf or jurisdiction, and I feel a lot of that is still at play.

If we do not do anything more to this resolution than what is already in it, it is worth having. I do not want to complain about that. At least we are making the Intelligence Committee permanent.

There are a number of things that are in this resolution that are worth having, but I am worried it is not enough. I don't like going against my friends and colleagues on the Appropriations Committee, Senator STEVENS, Senator COCHRAN. I have faith in both of them. But I don't have faith in the way the system is set up now. The way things are spread out all over this institution, both on intelligence and homeland security, it is a prescription not to be able to do our job. That really does bother me. I didn't feel this way until I went on the Intelligence Committee.

But I say to my colleagues, after a year and a half on the Intelligence Committee, I am really scared. I am worried that our intelligence community has not done its job and that it is not organized properly. We are trying to do something about that with the legislation we passed yesterday. I don't think we did enough. I still think there are a lot of people trying to protect the status quo. The Pentagon doesn't want to give up 80 percent of the budget. They want to make sure that everything is done the way it has been being done. The Pentagon wants to make sure the Secretary of Defense still controls certain nominations. Again, too many people are worried about trying to keep what they have now when what we ought to be worrying about is how do we do a better job of getting better intelligence, not only for the men and women in the military but across the board in intelligence.

And this is the thing that really bothers me: part of it is our fault. We have not been doing our job. What is the proof? Look at 9/11. Look at the other things that we have found that the intelligence community did not know were about to happen or gave us information that was not accurate. If they failed, we failed.

When these two pieces of legislation are finished, both the intelligence reform in the administration and the congressional reform, are we going to be better off? Are we going to have somebody we can hold accountable? Are we going to be able to make sure the Pentagon is doing its job, the CIA is doing its job? I don't believe so. The intelligence authorization committee is not set up to do the job. Even with this arrangement we are working on now, it is all going to be controlled by appropriations and the black budget.

I want to emphasize, I trust Senator STEVENS, and I know he wants the security of this country to be looked after. But if we are not going to have an Intelligence Committee with the authority to do the job and without the knowledge of what is happening on appropriations, I would recommend we all get off because we are going to be held responsible and we are not going to be able to do the oversight that is necessary.

We are working at it. That is good. I commend everybody. On the homeland security, I debated on this particular point. I am on the Commerce Committee. I want all the jurisdiction we can possibly get. I am very concerned about the Coast Guard. The Coast Guard should be more than port security. The Coast Guard is about search and rescue. The Coast Guard should be about drug interdiction, which it is. It has a big agenda. I think you can make a strong case that it ought to stay in the Commerce Committee, and under the amendment, as I understand it, it would. That is a critical point.

But if we are going to have a separate homeland security committee, or if we are going to put that issue under the Governmental Affairs Committee, we ought to do it in a way where we do cut down this duplication. I, again, am worried that we are talking about doing more than we are really doing.

I have debated about whether we need a separate homeland security committee. But I think if we are going to do it, to only put 38 percent of the homeland security matters before the committee is not accomplishing the job, just like I am worried that on intelligence authorization, we still have not solved the problem with sequential referral to the Armed Services Committee. We still have not solved the problem about how do the authorizers know what the appropriators are doing, and how do the appropriators know what the authorizers are doing. We are not doing enough.

I urge my colleagues, as we to go conference on the other bill, more work needs to be done. As we work toward completion on this legislation, I hope we will strengthen the hand of those who have negotiated on it and those who are going to be held responsible for what is the end result.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, under the order, Senator LAUTENBERG has 10 minutes. He will not need that time so that can be stricken. What is the order of the speaking now?

The PRESIDING OFFICER. The Senator from Nevada has 5 minutes, followed by the Senator from Alaska, followed by the Senator from Arizona, each for 5 minutes.

Mr. REID. Mr. President, I don't have a dog in this fight other than the fact that I have worked for a month to the point where we are now. I don't want anyone here to think the new committee on homeland security-governmental affairs does not have a lot of work to do and a lot of jurisdiction. They are totally responsible for three directorates. The new homeland security-governmental affairs committee will have sole jurisdiction over three of the four primary directorates in the Department of Homeland Security: science and technology directorate, emergency preparedness and response directorate, information analysis and infrastructure protection, and share parts of the directorate of border and transportation security.

For my good friend, the Senator from Maine, to stand and say, We don't have anything to do, basically, is simply not factual.

I would also say we have transferred jurisdiction from 10 standing committees and given jurisdiction to this committee. This is not a numbers game as to how many employees are involved. It is the number of functions they have been asked to take a look at. And if it is any indication that we haven't given them anything, you should understand that every chairman of the 10 committees has been telling us we gave them too much. You can't have it both ways.

I would also say, even though I don't have a dog in this fight, no one should ever suggest that Senator INOUYE and Senator STEVENS are not equipped to handle what has been left with them in Commerce. Remember, Senator INOUYE is a Medal of Honor winner. Senator STEVENS is a World War II veteran. That may not make them better Senators, but it certainly doesn't make them worse Senators.

The only reason I am standing, people can vote however they believe they should, but they should not vote based on the fact that we have given this new homeland security subcommittee no jurisdiction. They have lots of work to do, including all the work they did before. It is not as if they don't have anything to do. They have all they had to do before plus all the other things they have been given as a result of this legislation that we hope will pass soon.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I think the Senate should realize that when you are talking about the Transportation Security Agency, we are talking about 45,000 screeners in the current system. Passenger screening takes about $1.8 billion; baggage screening, $1.3 billion. Security and enforcement takes $703 million. The security part of TSA is very small compared to the manpower looking at passengers and baggage. That is their primary function now. And of this $2 billion, $70 million comes from aviation user fees, and $95 million comes from transfer from carryover for the fiscal year 2003.

This is a function, in terms of this part of the homeland security agency, that is directly related to the transportation mechanisms. We urged and have continued to urge that the aviation industry pay the vast portion of this now because the major portion of TSA affects the airports and airways. We believe, and I sincerely believe, that we should find a way to have airlines collecting these user fees, have them provide the kind of screening that is necessary for the passengers and for their baggage.

As a matter of fact, we have placed in this bill—this is the Homeland Security appropriations bill, of which I am a member of the conference, and they are meeting right now—a substantial amount of taxpayer money to continue this process of getting all of the baggage screening and all the passenger screening done. But the bulk of the money, two-thirds of the money each year is coming from the aviation industry itself, which is currently terribly hampered. They are hiring people still. In the small airports, it is very unique because they still have the people who are handling the passengers, but they have these people hired by TSA who are using a third or more of their buildings. That has to stop. That has to transition to a private enterprise.

If we do this, and we put it in Governmental Affairs, that is not going to happen. They don't have the pressure from the entities that are carrying these passengers. We do in Commerce, and we have tried our best so far to meet the process and to be fair to both the Governmental agencies that have the temporary job and the transportation agencies that are paying the bulk of the cost of that job.

But there has to be a transition. We cannot keep it up. In fact, very soon the airlines are going to be unable to pay those charges. They are going to have to be paid by the taxpayers. We heard this morning they are not even going to be able to make their contribution to the retirement funds. This must be changed.

I will use the remainder of my time to say I agree with Senator LOTT. We had a conversation at noon today about the whole system. It hasn't been since 1977 that we reorganized the Senate. We should do that. We should recognize the changes in the economy, changes in our people, changes in the whole global concept. But we have not done that. This is attempting now—because Homeland Security agencies have come upon us—by the way, it has been on us for a while; we didn't need the 9/11 Commission to tell us what to do. We created Homeland Security before they were created. They took it upon themselves to tell us how to do our own laundry. We can do this ourselves.

By January, we will have to see what the House has done. We have the problem of dealing with 100 people, but they have 435 in the House. We are going to have to change to meet the reorganization they are going to bring about. They have a reorganization group going. We should have a reorganization group. With this group, the two whips have done a marvelous job trying to meet the demands of the 9/11 Commission, which is piecemeal as far as the Senate is concerned.

We should have another reorganization. Whose job is that? That is the job of Rules and the Governmental Affairs Committees to reorganize and find a way to deal with the reorganization that is required for the Senate to meet current and future needs. This isn't the way to do it.

The Senator keeps mentioning that two-thirds somehow or another is in Commerce. That is not so. We have one-third of this budget. We have one-third of the burden from the financing of Homeland Security, which is in TSA. I have the figures.

I have table 3 from the Department of Homeland Security summary of appropriations for fiscal 2004 and 2005. This is prepared by the CRS. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TABLE 3.—DEPARTMENT OF HOMELAND SECURITY: SUMMARY OF APPROPRIATIONS

[In millions of dollars]

Operational component	FY 2004 enacted	FY 2005 request	FY 2005 House	FY 2005 Senate	FY 2005 conf.
Title I: Departmental Management and Operations:					
Subtotal: Title I	453	713	584	562	
Title II: Security, Enforcement, and Investigations:					
Office of the Undersecretary for Border and Transportation Security	8	10	10	9	
Visitor and Immigrant Status Indicator project (US VISIT)	328	340	340	340	
Customs and Border Protection	4,899	5,122	5,154	5,158	
Immigration and Customs Enforcement	3,407	3,307	3,363	3,760	
Transportation Security Administration	2,508	3,152	3,225	3,412	
U.S. Coast Guard	6,764	7,335	7,307	7,469	
U.S. Secret Service	1,134	1,163	1,183	1,163	
Subtotal: Title II	19,048	20,430	20,583	21,311	
Title III: Preparedness and Recovery:					
Office of Domestic Preparedness/Office of State and Local Government Coordination and Preparedness	4,013	3,561	4,115	4,034	
Counterterrorism fund	10	20	10	10	
Emergency Preparedness and Response	9,351	5,625	5,425	5,648	
Subtotal: Title III (current year, net)	13,374	9,206	9,550	9,692	
Title IV: Research and Development, Training, Assessments, and Services:					
Citizenship and Immigration Services	235	140	160	140	
Information analysis and infrastructure protection	834	865	855	856	
Federal Law Enforcement Training Center	192	196	221	224	
Science and technology	913	1,039	1,132	1,059	
Subtotal: Title IV	2,173	2,240	2,368	2,279	
Amount in this bill, for any year	35,048	32,590	33,085	33,085	
Scorekeeping adjustments (rescissions, airline relief) (net)	(−4,786)				
Total, Dept. of Homeland Security	30,262	32,590	33,085	33,844	
Discretionary (current year, this bill)	29,242	31,504	32,000	32,000	
Mandatory	1,020	1,085	1,085	1,085	
Section 302(b) allocation	29,242		32,000	32,000	

TABLE 3.—DEPARTMENT OF HOMELAND SECURITY: SUMMARY OF APPROPRIATIONS—Continued

[In millions of dollars]

Operational component	FY 2004 enacted	FY 2005 request	FY 2005 House	FY 2005 Senate	FY 2005 conf.
Difference, bill and allocation	0		0	0	

Source: H.R. 4567 passed by the House June 18, 2004; S. 2537 introduced by the Senate June 17, 2004; and unofficial House Appropriations Committee tables, April 8, 2004.

Mr. STEVENS. Mr. President, it is very clear. We are talking about one-third, not two-thirds.

The other part of this is the other agencies spread throughout this maze of jurisdiction we have. When we reorganized in 1997, someone used a mixing bowl, and the committees spilled out first. It wasn't a good, sound reorganization. We need a good, sound reorganization. This is not the way to do it.

Mr. MCCAIN. Mr. President, I want to quote from the 9/11 Commission report so we can put this into the perspective that I think this amendment deserves:

> Of all of the recommendations, strengthening congressional oversight may be among the most difficult and important. So long as oversight is governed by current congressional rules and resolutions, we believe the American people will not get the security they want and need.

The underlying resolution, as amended, leaves the vast majority of homeland security jurisdiction in committees other than the new homeland security committee. TSA and the Coast Guard stay in Commerce. By the way, the Coast Guard is under the Department of Homeland Security. The revenue functions of the Bureau of Customs and Border Protection and Immigration and Customs Enforcement stay in Finance. The revenue functions of the Bureau of Customs and Border Protection and Immigration and Customs Enforcement and Citizenship and Immigration Services stay in Judiciary. It goes on and on.

Screeners are responsible for security. The Coast Guard's primary responsibility is our Nation's security. I wish they could return primarily to their old line of work.

So what do we end up with? We end up with a homeland security committee with jurisdiction over less than 38 percent of the Department's budget and fewer than 8 percent of the Department's employees. TSA employs 51,000 people. Those remain under the Commerce Committee. Not only that, but it is clear that what we have done here is essentially nothing. What we ought to do, perhaps, is just say we failed. I am not going to rant and rave anymore about how unfortunate it is that the Appropriations Committee is able to, as they have in the past, fund programs that the Intelligence Committee has thoroughly scrutinized and say should be canceled, at a cost of billions of dollars.

I think we all know what the job of the Transportation Security Administration is. It is security. It is fighting the war on terrorism. Where should it be? It should, obviously, be under our new committee on homeland security and governmental affairs. So I won't bring up an amendment on the Coast Guard. The Coast Guard should be also under this committee because it is under the Department of Homeland Security. It is just logical.

So as I say to my colleagues, if this amendment fails, why don't we just call it a day and say it is business as usual. We have had great success on executive reorganization and I am proud of the work the committee has done. Unfortunately, we have failed to act in any significant manner as far as the reorganization of the Senate is concerned, and that was recognized by the 9/11 Commission.

I yield the remainder of my time, and I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

Mr. MCCONNELL. Before the vote, Mr. President——

Mr. MCCAIN. Mr. President, what is the regular order?

The PRESIDING OFFICER. The regular order is to proceed to a vote.

Mr. MCCAIN. I don't object, Mr. President. I wish the Senator from Kentucky had asked for time during the normal unanimous consent agreement. I don't object.

Mr. REID. He is not going to speak on the amendment.

Mr. MCCONNELL. Mr. President, I was going to say to our colleagues that it is the intention of Senator REID and myself to continue to process amendments into the evening, with the goal of finishing tonight. We still have 30-some-odd amendments. There is certainly no requirement that they all be offered. We intend to keep plowing ahead and try to reach the finish line tonight.

Mr. REID. Mr. President, the two leaders are emphatic that they want to move forward. We have a lot of stuff to do. Tomorrow is the scheduled day for departure. That will be difficult. I wish people would follow the example of the Senator from Arizona, and I say that seriously. He never takes a lot of time. He doesn't waste a lot of time. He sets a tone for how we should move forward. I appreciate his cooperation on these two very important amendments. These are the two most important amendments we will have on this bill now before the body. I appreciate his cooperation.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Arizona.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Georgia (Mr. CHAMBLISS) and the Senator from New Mexico (Mr. DOMENICI) are necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 33, nays 63, as follows:

[Rollcall Vote No. 201 Leg.]

YEAS—33

Alexander
Bayh
Biden
Bingaman
Carper
Chafee
Coleman
Collins
Cornyn
Crapo
Enzi
Feingold
Feinstein
Fitzgerald
Graham (FL)
Graham (SC)
Hagel
Inhofe
Jeffords
Kyl
Levin
Lieberman
Lincoln
Lott
Lugar
McCain
Nickles
Pryor
Santorum
Specter
Sununu
Talent
Voinovich

NAYS—63

Akaka
Allard
Allen
Baucus
Bennett
Bond
Boxer
Breaux
Brownback
Bunning
Burns
Byrd
Campbell
Cantwell
Clinton
Cochran
Conrad
Corzine
Craig
Daschle
Dayton
DeWine
Dodd
Dole
Dorgan
Durbin
Ensign
Frist
Grassley
Gregg
Harkin
Hatch
Hollings
Hutchison
Inouye
Johnson
Kennedy
Kohl
Landrieu
Lautenberg
Leahy
McConnell
Mikulski
Miller
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Reed
Reid
Roberts
Rockefeller
Sarbanes
Schumer
Sessions
Shelby
Smith
Snowe
Stabenow
Stevens
Thomas
Warner
Wyden

NOT VOTING—4

Chambliss
Domenici
Edwards
Kerry

The amendment (No. 4000) was rejected.

Mr. MCCONNELL. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MCCONNELL. Mr. President, I know Senator HATCH has an amendment. I do not see him on the floor at the moment.

I do see him on the floor. I am hopeful that Senator HATCH will shortly be prepared to send his amendment to the desk.

Mr. DURBIN. Will the Senator from Kentucky yield for a question?

Mr. MCCONNELL. I yield the floor.

Mr. DURBIN. I ask the Senator from Kentucky, I have a pending amendment which has been agreed to with a modification by Senator ROBERTS. I am prepared to offer it whenever appropriate so we can take care of it.

Mr. MCCONNELL. It appears as if Senator HATCH may not be quite ready, so why don't we have Senator DURBIN go ahead and offer his amendment.

AMENDMENT NO. 4036 TO AMENDMENT NO. 3981

Mr. DURBIN. Mr. President, I send an amendment to the desk

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN] proposes an amendment numbered 4036 to Amendment No. 3981.

Mr. DURBIN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To modify the provisions relating to the staffing and budget of the select Committee)

In section 201, at the end of subsection (g), add the following:

"(d) Of the funds made available to the select Committee for personnel—

"(1) not more than 55 percent shall be under the control of the Chairman; and

"(2) not less than 45 percent shall be under the control of the Vice Chairman.".

Mr. DURBIN. Mr. President, I have good news for the Chamber. I believe we have reached an agreement on this amendment which will help us move this important resolution along.

I saw Senator ROBERTS on the floor a moment ago. I have had a conversation with Senator ROBERTS and Senator ROCKEFELLER. The purpose of this amendment is to move us closer to the bipartisan model which we want to establish for this important intelligence committee. Yesterday, with an overwhelming vote of 96 to 2, the Members of this Chamber adopted the intelligence reform suggested by the 9/11 Commission, and it is a product of the fine bipartisan cooperation of Senator SUSAN COLLINS of Maine and Senator JOE LIEBERMAN of Connecticut.

I believe in the time I have been fortunate enough to represent Illinois in the Senate, it was one of our finer moments because we responded to a national crisis. We did it in a timely fashion. We did it in an orderly way. We brought together amendments which were substantive and numerous and voted in nonpartisan rollcalls. We came to the floor, and after a week and a half of debate brought this bill out with a vote of 96 to 2 to reform the executive branch. I think the message of the process and the message of the reform bill is that we want to take partisanship out of the intelligence operations of the executive branch.

I believe by the joint effort of the Senator from Nevada, Mr. REID, and the Senator from Kentucky, Mr. MCCONNELL, we are seeing that same thing today about the legislative branch.

This amendment which I propose is an effort to move us closer to parity in staffing. I believe that establishing this by rule is a good thing for the future of the Intelligence Committee. What it says is that regardless of the partisan split of the committee, which is now a split of eight to seven, if I am not mistaken, we are going to divide staff by a 55–45 proportion, 55 percent to the chairman representing the majority of the committee, and 45 percent to the ranking member representing the minority on the committee.

Along with Senator ROBERTS, who is on the majority side of this committee, and Senator ROCKEFELLER, the ranking member, we had a conversation and we have agreed to a new number which I will present as a modification to this amendment shortly. It is a number of 60 percent for the chairman with the majority membership of the committee, 60 percent of the staffing funds in control of the chairman, and 40 percent of the funds in the control of the minority ranking member.

I think this is a fair compromise. I believe it is offered by both sides in the spirit of moving us toward this bipartisanship on the Intelligence Committee. I believe it will have the net effect of improving the product of the committee.

Let me quickly add that I don't believe there are necessarily Democratic or Republican answers to the tough issues we face on the Intelligence Committee. But I believe both sides should be adequately staffed so they can rise to the occasion when we face challenges for investigations and hearings that are held with witnesses being brought before us. By establishing 40 percent of the personnel funds to the ranking member and 60 percent to the chairman, I think we are moving closer to that model.

For those who have been involved, Senator MCCONNELL and Senator REID, let me make it clear this would apply to the committee staff and not to individual member staffs. The effort in the preparation of this resolution was made so that every member of the Intelligence Committee who has personal staff would not be affected by this amendment. The 60–40 would apply strictly to the other committee staff over and above the personal staff of the committee.

Mr. MCCONNELL. Mr. President, will the Senator yield for a question?

Mr. DURBIN. Yes.

Mr. MCCONNELL. I believe the amendment at the desk is 55–45. Is the Senator going to modify the amendment?

Mr. DURBIN. Yes. At this point I will be happy to yield for any other questions or comments.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I would like to verify what the Senator from Illinois has said.

Senator ROBERTS can't be here at this particular time, but he authorized me to say he is in agreement with this. It is a sensible approach. It is bipartisan in nature. As far as we are concerned, there is agreement on both sides. What the managers decide is up to them.

AMENDMENT NO. 4036, AS MODIFIED

Mr. DURBIN. Mr. President, if there are no further comments or questions, I ask unanimous consent that the amendment now pending before the Senate be modified on its face, and in paragraph (d), subparagraph (1), the number 55 be changed to 60; and in paragraph (d), subparagraph (2), the number 45 be changed to 40.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 4036), as modified, is as follows:

In section 201, at the end of subsection (g), add the following:

"(d) Of the funds made available to the select Committee for personnel—

"(1) not more than 60 percent shall be under the control of the Chairman; and

"(2) not less than 40 percent shall be under the control of the Vice Chairman.".

Mr. DURBIN. Mr. President, I urge adoption of the amendment.

Mr. MCCONNELL. Mr. President, I believe we are prepared to move forward.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 4036), as modified, was agreed to.

Mr. MCCONNELL. I move to reconsider the vote.

Mr. ROCKEFELLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MCCONNELL. Mr. President, Senator HATCH is here and ready to offer an amendment.

The PRESIDING OFFICER. The Senator from Utah.

AMENDMENT NO. 4037 TO AMENDMENT NO. 3981

Mr. HATCH. Mr. President, I call up my amendment which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH], for himself, Mr. LEAHY, and Mr. SPECTER, proposes an amendment numbered 4037 to amendment No. 3981.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To retain jurisdiction over the Secret Service in the Committee on the Judiciary)

In section 101(b)(1), after "Service" insert ", and the Secret Service".

Mr. HATCH. Mr. President, I rise to offer a Leahy-Specter-Hatch amendment that would preserve the Judiciary Committee's oversight jurisdiction over the U.S. Secret Service.

The reason for the amendment is not simply the committee's longstanding relationship with the Secret Service, although that relationship is strong and healthy. It is a very good reason why we should retain the status. The Judiciary Committee has had jurisdiction over the Secret Service's title 18 authority since June 25, 1948. I was astonished to hear one of my colleagues say on the floor earlier today that the Judiciary Committee was trying to move jurisdiction to the Judiciary Committee. The committee has had jurisdiction over the Secret Service for the last 56 years.

The more important reason is that a huge percentage of Secret Service operations are authorized by title 18 of the criminal code. That will obviously and appropriately remain under the Judiciary Committee's jurisdiction. If the point of this bill is to reform congressional oversight, then it would make no sense to reduce the Judiciary Committee's ability to examine how title 18 of the criminal code authority is used while continuing to rely upon the Judiciary Committee to make sure that title 18 provides appropriate authority to the Secret Service.

A little bit of history may be helpful. The Secret Service was established as a law enforcement agency in 1865. While most people associate the Secret Service with Presidential protection, its original mandate was to investigate counterfeiting of U.S. currency. Today, the primary investigative mission of the Secret Service is to safeguard the payment and financial systems of the United States.

The Secret Service has exclusive jurisdiction for investigations involving the counterfeiting of U.S. obligations and securities. That authority to investigate counterfeiting is derived from title 18 of the United States Code, section 3056. Some of the counterfeited U.S. obligations and securities commonly dealt with by the Secret Service include U.S. currency and coins, U.S. Treasury checks, Department of Agriculture food coupons, and U.S. postage stamps.

The Secret Service combats counterfeiting by working closely with Federal, State and local law enforcement agencies, as well as foreign law enforcement agencies, to aggressively pursue counterfeiters. Secret Service agents commonly work with Federal prosecutors—employees of the Department of Justice, over which the Judiciary Committee retains jurisdiction.

It is important for Congress to keep up with the times when determining the scope of Title 18. Since 1984, the Secret Service's investigative responsibilities under Title 18 have expanded to include crimes that involve financial institution fraud, computer and telecommunications fraud, false identification documents, access device fraud, advance fee fraud, electronic funds transfers, and money laundering.

People who counterfeit things are creative, and so are those who invent new products that are susceptible to being counterfeited. It is important that Title 18 provide the Secret Service with appropriately updated authority, and therefore it is crucial that the Judiciary Committee have the ability to require the Secret Service to report on its use of authority.

Listen to some of the types of criminal investigations that the Financial Crimes Division of the Secret Service plans and coordinates:

Financial Systems Crimes, including bank fraud; access device fraud; telemarketing; telecommunications fraud; computer fraud; the Federal Deposit Insurance Corporation and Farm Credit Administration violations.

These are all traditional criminal investigations and they are all governed by Title 18. They are at the core of Judiciary Committee jurisdiction and expertise.

Another division of the Secret Service, Forensic Services Division, FSD, is almost entirely focused on providing analysis for questioned documents, fingerprints, false identification, credit cards, and other related forensic science areas. A main purpose of this division is to investigate crimes and provide evidence for prosecutors to use in court. FSD also manages the Secret Service's polygraph program and coordinates photographic, graphic, video, and audio enhancement.

Here's an example of how the Judiciary Committee's relationship with the Secret Service works: As part of the 1994 Crime Bill, Congress mandated the Secret Service to provide forensic/technical assistance in matters involving missing and sexually exploited children. The Forensic Service Division offers this assistance to Federal, State, and local law enforcement agencies, the Morgan P. Hardiman Task Force and the National Center for Missing and Exploited Children. It is important for the Judiciary Committee to continue its relationship with the Secret Service to make sure that its capabilities are utilized in important areas of law enforcement such as these.

For these reasons, I urge my colleagues to vote for keeping the jurisdiction where it belongs, with the people who have to deal with these criminal laws all the time. Frankly, it is a tough process. We should not move the Secret Service out of the Judiciary Committee jurisdiction because that is where this very tough anticrime approach has to occur and has to take place.

I hope my colleagues will listen to me. I have no axes to grind here. I am not just trying to preserve jurisdiction; it doesn't make sense to take it out of the hands of the Judiciary Committee as much as some think it may. I don't think it can make a good case that it should be taken out of the Judiciary Committee.

I ask unanimous consent to have printed in the RECORD what looks like 50 or more jurisdictional aspects of the Secret Service investigational approaches.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

TITLE 18 USC 3056

Secret Service has jurisdiction to investigate the following:

213—Acceptance of loan or gratuity by financial institution examiner

216—Punishments for 213

471—Counterfeiting US obligations

472—Uttering Counterfeiting securities

473—Dealing in Counterfeiting obligations or securities

474—Possession of device to counterfeit obligations

476—Theft of tools used to counterfeiting obligations

477—Selling of tools for counterfeiting obligations

478—Counterfeiting of foreign obligations

479—Uttering Counterfeit foreign obligations

480—Possessing counterfeit foreign obligations

481—Possession of electronic images for counterfeiting foreign obligations

482—Forgery or Counterfeiting Bank Notes

483—Uttering counterfeit foreign bank notes

484—Fraudulently combining multiple United States Instruments

485—Counterfeiting United States coins

486—Unauthorized passing of United States coins

487—Making or possessing counterfeit dies for coins

488—Making or possessing counterfeit dies for foreign coins

489—Making or possessing likeness of United States or foreign coins

492—Forfeiture of counterfeit paraphernalia

493—Bonds and obligations of certain lending agencies

508—Forging United States Transportation Documents

509—Unlawful Possession of Government transportation plates

510—Forging Treasury Check endorsements

657—Misapplication of funds from a Credit Institution

709—False advertising or misuse of names of indicate Federal agency

871—Threats against the President

879—Threats against former Presidents

912—Impersonation of Officer of the United States

981—Civil forfeitures

982—Criminal forfeitures

—1001—False statements

—1006—False statements to credit entries

—1007—Forged/Counterfeit statements to influence the FDIC

—1011—False statements to Federal Land Bank

—1013—Use of forged securities or bonds to defraud Federal Land Bank

—1014—False Statement to influence Farm Credit Administration

—1028—Identity Theft

—1029—credit card fraud

—1030—Computer fraud

—1344—Bank Fraud

—1752—Entering the temporary offices of the President

—1907—Disclosure of private information by a farm credit examiner

—1909—Conflicts of interest for National Bank Examiner

—1956—Money Laundering

—1957—Engaging in Monetary Transactions from specified Unlawful Activities

Mr. HATCH. When you look at these, you cannot conclude anything but this should stick with the Judiciary Committee. I don't have any ax to grind. Everyone knows that. The fact is, this is the right thing to do or I would not be standing here trying to do it. We have had a great relationship with the Secret Service and have done a great deal of work together over my 28 years on the Senate Judiciary Committee. I know this is right, and we have to do this.

I yield the floor.

Mr. LEAHY. Mr. President, I totally agree with the Senior Senator from Utah in this battle. Senator HATCH and I have worked very closely on this issue. This is an amendment cosponsored principally by Senator HATCH and myself and Senators SESSIONS, SPECTER, and BIDEN. It is not a partisan amendment by any means. It is not ideological. It just makes good sense.

In the resolution before the Senate we look at the new committee, the homeland committee and governmental affairs committee, but we have four exceptions for good reasons. Section 101, we take the Coast Guard out of that. We take the Transportation Security Administration, we take the Federal law enforcement training sector, and we take the revenue functions of the Customs Service. But we have to make one other exception, and that exception is the U.S. Secret Service.

The Secret Service operates under Title 18 of the United States Code, that title of the United States Code of criminal law. Every one of these yellow tabs in the criminal code is one more area under criminal law, criminal code, where the Secret Service operates. The distinguished Senator from Utah said it is not just the protection service by any means, even though that is what we see in the news. They enforce many of the criminal laws, many of the laws related to the counterfeiting of U.S. currency and other financial instruments. They carry out criminal investigations. Criminal law enforcement function is the cornerstone of what the Secret Service does.

I first got involved with the Secret Service when I was a State's attorney of Chittenden County in Vermont. That was over 38 years ago. We had a counterfeiting case we were prosecuting under State law. For the expertise, for help in the investigation, we called in the Secret Service. The Secret Service was involved immediately. Even though it was a State case, a State prosecutor, the Vermont State police, the Burlington City Police, the expertise came at a moment's notice from the U.S. Secret Service. They stayed throughout that case. They made sure we had the expertise. They made sure they gave us all their knowledge of how one of these cases would be tried. Incidentally, we won that case.

Years later, when I was a new Member of the Senate, I was walking down the hall and I see the Secretary of State coming down the hall, people from the State Department, and also a couple of Secret Service agents. There was the Secret Service agent, David Lee—I remember his name—standing right there doing the dual things they do. His primary role had been in counterfeiting cases. We talked briefly about the number of counterfeiting cases he went to. I told him how much it meant to my little State of Vermont, which could not handle counterfeiting cases. A lot of crimes had been committed, and the Secret Service came in.

Now, they enforce criminal law. They have full Federal arrest authority, full authority to carry any needed firearms, full authority to use deadly force. We should continue our oversight, and the Judiciary Committee should continue its role. Their dual criminal law enforcement of financial institution investigations and protective operations is inseparable from the proper jurisdictional oversight of the Judiciary Committee. Again, I point to the Federal criminal code rules.

Now, the Coast Guard has been made exempt. It, like the Secret Service, is a distinct entity. Both should be exempted, not just the Coast Guard. The Secret Service has even more reason to be exempt. The success of the Secret Service mission depends on the criminal laws of the United States.

An example of that is that all the criminal fraud law enforcement investigations which the Secret Service handles are within Title 18. Where do they handle it? Within the Department of Justice through the Attorney General and the U.S. Attorney—under, obviously, the jurisdiction of the Judiciary Committee.

I will give another example. The Secret Service is authorized at the request of any State or law enforcement agency or at the request of the National Center for Missing and Exploited Children to provide forensic and investigative assistance in support of investigations involving missing or exploited children.

Let me tell you right now, if you have a missing child, we want everybody involved. All the local authorities will tell you that, especially if they are anywhere near a State line. They want everybody. Again, it comes under our committee.

So I agree, as I said, with the Senator from Utah. This is not a partisan issue. It is not a liberal issue. It is not a conservative issue. It is just good, plain sense.

Mr. President, I would hope my colleagues would be willing to accept the amendment on behalf of myself, Mr. HATCH, Mr. SESSIONS, Mr. SPECTER, Mr. BIDEN, and others.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I rise, with a lot of respect for the Senator from Utah and the Senator from Vermont, to oppose this amendment. I do so because it continues the stripping away of jurisdiction from the newly designated committee on homeland security over more and more of what constitutes the Homeland Security Department.

The recommendation of the 9/11 Commission to improve congressional oversight of homeland security and to allow the leadership of the Homeland Security Department to spend more time protecting our homeland and less time running from committee to committee here in Congress was to create one committee on homeland security with jurisdiction over all aspects of the Homeland Security Department.

The Homeland Security Department includes 175,807 employees. Now, employees are not the only measure of jurisdiction, but let's start with that number and then say that the bill brought before us by the working group immediately took out 45,000 from the Coast Guard, now under the Homeland Security Department, and 51,000 from the Transportation Security Administration. Add to that an amendment offered by my friends from the Judiciary Committee today which took back a good part of Citizenship and Immigration Services, Immigration and Customs Service Enforcement, which will be shared in some part with Homeland Security and Customs & Border Protection, and you are at a point where jurisdiction over well over half—heading toward almost all—of the Department of Homeland Security employees is no longer under the committee we are establishing to oversee the Department of Homeland Security.

I will repeat what I said earlier about the Transportation Security Agency authority. Our committee recommended the creation of a Department of Homeland Security after September 11. Why are we here? We are here because we were attacked on September 11, and we looked back and said: We were not ready. We were not organized to defend our people. So we proposed the creation of the Homeland Security Department.

Almost every agency we wanted to bring together in that Department protested: We want to be on our own turf. We want our own ground. But we pushed forward because there was a larger national interest. We prevailed, and we brought all these agencies together—one department. And it is working. We brought them together for the synergy of them working together to protect our national security in an age of terrorists who hate us more than they love their own lives and have shown that over and over again.

So here comes another amendment to take the Secret Service, which is in the Department of Homeland Security, away from the oversight and jurisdiction of what we are calling the Homeland Security Department. We are beginning to make the homeland security committee look like a house without rooms in it or not as many rooms as are supposed to be there, or like a shell, when you pick it up and there is not much under it even though it says "homeland security" on the top. That is a shell game, and this adds only to that trend.

Now, look, there are a lot of committees that could claim some relationship to different subparts of the Department of Homeland Security.

Mr. LEAHY. Will the Senator yield on that point?

The fact is, they are a distinct entity within homeland security. We have carved out that distinct entity for the Secret Service because of their law enforcement role. The distinguished Senator from Connecticut had no problem with carving out the Coast Guard, and the Coast Guard——

Mr. LIEBERMAN. There is a problem.

Mr. LEAHY. But it has been done. It has been accepted.

Mr. LIEBERMAN. Not done by me.

Mr. LEAHY. It was not objected to by you, and it was accepted.

Mr. LIEBERMAN. It was indeed, and we are still working on an amendment to try to see if we can right that wrong. I say to the Senator from Vermont, with all respect, I understand your question. The point is, if we were doing this right, everything in the Homeland Security Department would be overseen by the homeland security committee. That is what the 9/11 Commission called for.

Mr. LEAHY. If I might respond to that, if we were doing this right, we would not have brought out something put together behind closed doors. I am not accusing the Senator from Connecticut of doing that, but we suddenly have this thing plopped on our desks as people are leaving for the long-promised recess, and we are told: Here, we just have to put this all together right now. It is not the way to do it. We have not had hearings. We have not done anything like that. I think had we had those hearings, had we discussed it, you would have found a vast majority of Americans would assume the Secret Service carries out their law enforcement functions.

Mr. LIEBERMAN. Mr. President, if I may, here is the basic point. The Secret Service is now part of homeland security. The Homeland Security Department should be overseen by the homeland security committee. I was not behind those closed doors, if they existed. My understanding is the working group leadership spoke to the ranking members on each of the committees. I may be wrong. I did not do that. That is what I heard.

But let me explain. The Senator from Vermont and the Senator from Utah have cited context between the Judiciary Committee and the Secret Service. As I say, there are so many committees that can cite context in one way or another with different components of the Homeland Security Department. But let me tell you why the Secret Service was put into the Homeland Security Department.

Obviously, the Secret Service is best known for its mission in protecting the Nation's highest elected leaders as well as visiting heads of state. It is entirely appropriate that the department responsible for safeguarding the security of this Nation includes an agency which is responsible for protecting its top leaders who, tragically, in this age may be targets of terrorism.

Since 1998, when President Clinton issued Presidential Decision Directive 62, the Secret Service has assumed responsibility for planning, coordinating, and implementing security operations at all national special security events. And what is the great fear at such events? Terrorism. These national events, like the Olympics or the political party conventions, are important to our country and, unfortunately, enticing targets to terrorists if they are not defended. It is the Secret Service that is responsible for planning, coordinating, and implementing those security operations—another obvious reason why it should be in the Homeland Security Department.

What has being there allowed the Secret Service to do? To draw on the expertise and resources of the different agencies within the Department of Homeland Security to support the Secret Service's protective missions as well, of course, as to share the Service's own expertise and experience with the other agencies in the Department to help them do their job better.

Some of the unique responsibilities of the Secret Service are particularly relevant to terrorism. The Secret Service has responsibility for identity theft in various forms and methods. This is one of the terrorists' primary tools, assuming identities not their own to break through the defenses our country sets up. The ability to identify and prevent the proliferation of false identifications is critically important to the Department's mission of identifying terrorists and stopping them before they strike us, and that is the Secret Service's responsibility.

The Secret Service also has responsibility for the protection of important national buildings, including the White House, the Vice President's residence, foreign missions, and other important buildings in the Nation's Capital which, tragically, sadly, in our age, are also prime targets for terrorists. Those are the reasons why the Secret Service has been placed in the Department of Homeland Security.

But again, I come back to the main point. Are we going to do what we say we are going to do or are we going to false advertise? We say we are going to respond to the 9/11 Commission's recommendations for a committee on homeland security. I have said before and I will say it again, the Governmental Affairs Committee has had some experience in homeland security so we are a natural place to put it. But I haven't sought it.

What I seek is the willingness to reorganize ourselves to the same extent that we have been willing to reorganize the executive branch, by creating the Department of Homeland Security and now a national intelligence director. With all respect to my friends on Judiciary, this is just another step to stopping us from achieving that mission, from meeting the challenge that the 9/11 Commission has set before us—and the request of the families of 9/11—to organize ourselves in a way that we can perform the kind of oversight that will mean we are doing everything humanly possible to prevent anything such as September 11 from happening again.

I hope we will draw the line on what is sucking out the insides of what we are calling a committee on homeland security.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, the issue before us is really very straightforward. Do we want to reorganize the Senate to consolidate jurisdiction over the Department of Homeland Security within one committee or don't we? What we should not do is to pretend we are consolidating jurisdiction in one committee, as recommended by the 9/11 Commission, and as strongly endorsed by the administration and Secretary Ridge. If we are going to consolidate authority, then let's do it. If we are going to try to address the problem of 25 different Senate committees and subcommittees having a claim on the new Department, requiring testimony from officials in the Department, if we want to continue on that route, then let us not pretend we are undergoing significant reform.

Moreover, the Secret Service has responsibilities ranging from investigations of Presidential threats to protection at major events that go to the heart of the Department of Homeland Security's mission. The Secret Service is a vital part of the mission of securing the homeland. That is why it was moved into the Department of Homeland Security, and that is why if we are going to mirror the Department, it should be under the jurisdiction of whatever committee is given responsibility for homeland security.

There are functions of the Secret Service that clearly fit with the core mission of the Department of Homeland Security. Indeed, at a hearing shortly before passage of the legislation setting up the new Department of Homeland Security, the Director of the Secret Service testified, explaining why it was important to include the Secret Service in the new Department. He stated:

> Our core philosophy mirrors that of the new Department of Homeland Security. Like our agency, the new department will be prepared to respond to incidents and infiltration. Our common goal is to anticipate and prepare through robust threat assessments and analyses of intelligence information that is made available to us.

He also stated:

> Beyond our protective responsibilities, the Secret Service is a major contributor to other aspects of our homeland security.

He concluded his testimony by stating:

> It is clear the Department of Homeland Security will be built on the pillars of prevention and protection. These are the very words found throughout our strategic plan. They define the mission and the culture of the United States Secret Service.

I know that the Secret Service enforces certain criminal laws, and it has a good relationship with the Judiciary Committee. However, the fact is, it is part of the Department of Homeland Security. If we are going to have a committee responsible for the Department of Homeland Security, we should do that. We should not exclude key agencies. Otherwise, we are defeating the whole purpose of creating new jurisdiction and trying to consolidate oversight and responsibility for the Department of Homeland Security.

I yield the floor.

Mr. LEAHY. I wonder if the distinguished Senator from Maine would yield for a question?

Ms. COLLINS. I have yielded the floor.

Mr. LEAHY. I ask the distinguished Senator from Maine, we have the Secret Service in Homeland Security, but carved out is a separate entity, partly because of their criminal jurisdiction and the fact that their oversight is in the Judiciary Committee. I would ask if by the same logic that because they are there, they must suddenly come under this new committee, do we also bring the Attorney General's office under this new committee for oversight because they prosecute the cases brought by the Secret Service? Do we bring the U.S. attorneys? Maybe the Attorney General and the U.S. attorney should be brought into this new homeland security committee for confirmation, for oversight, or budget and everything else because, after all, they have criminal jurisdiction and the Secret Service goes to them.

Or do we have a bifurcated thing where the Secret Service criminal jurisdiction, which does come under the Department of Justice and the U.S. attorneys for prosecution, suddenly say: Well, we can watch what they are doing in the Judiciary Committee, but maybe we shouldn't be watching because maybe it should be somewhere else where there is none of the 56 years of experience watching over it?

It seems to me what we are doing is trying to set up an organizational chart for the sake of organizational charts. I might say, maybe this is one of the problems with putting this thing together behind closed doors, without the input of the people most directly involved, without any hearings. And suddenly as the airplanes are revving up and the smell of jet fuel is in the air, we are saying: Quick, we have to do it, forget the 56 years, forget what has worked. Forget the fact that it is working. Forget the fact that it works extremely well. Forget all those criminal cases that they handle. We have an idea to fill out some new chart and, therefore, go forward with it. Forget the proud tradition of the Secret Service. Forget all the experience, all the things they have done. Forget the prosecutors they have to go to. But, by golly, we are going to have a nice new chart.

There is more I could say but I shan't. I think maybe we ought to vote and see where we stand.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Mr. President, the Senator from Vermont raised a rhetorical question, or at least I think it was a rhetorical question. He said, Should we put the Office of the Attorney General under the jurisdiction of the Governmental Affairs Committee? Of course, the answer to that is obviously no, because the Office of the Attorney General is not part of the Department of Homeland Security.

The issue before us is really straightforward and simple. Do we want to follow the recommendations of the 9/11 Commission and Secretary Ridge and the rest of the administration and have a single authorizing committee in the House and the Senate with responsibility for the Department of Homeland Security, not responsibility for 38 percent of the Department of Homeland Security, not responsibility for 8 percent of the employees of the Department of Homeland Security? No, there isn't a recommendation to have agencies that are not part of the Department added to the jurisdiction.

The idea is to have a single authorizing committee in the House and the Senate to mirror the agencies that are in the Department of Homeland Security, to consolidate jurisdiction between the House and Senate, which is spread over 88 committees and subcommittees; so that the officials of the Department don't have to answer to so many congressional overseers that they are prevented from devoting as much attention as they need to to do their duties. That is what this debate is about.

Mr. LEAHY. Mr. President, the Senator from Maine, in asking the question actually gives my answer, because if the issue is simply where are they sitting, that determines jurisdiction. The Secret Service, for years and years, would have been under the jurisdiction of the Finance Committee because they are in the Treasury Department. They have been in the Treasury Department forever. But the jurisdiction has been under the Judiciary Committee because of their unique law enforcement aspects.

Now, the Senator from Maine says, quite properly, we should not put the Attorney General under this committee, even though these various groups, various entities for criminal prosecution have to go to the U.S. attorney but because the Attorney General is under the Department of Homeland Security.

By the same token, when the Secret Service was in Treasury, everybody knew, because of the criminal jurisdiction and involvement, they would be under the jurisdiction of a committee that deals all the time with criminal law, with the courts, and with title 18. This is title 18 in my hand, the Federal Criminal Code and Rules. Taking up the whole middle part of this is Secret Service jurisdiction.

Do we want to make them better? Do we want proper oversight? Do we want to say, by golly, look at this, we came out with this closed door item and put it out here and immediately the Senate has saved the world—no hearings, nothing? Here it is.

I am far more interested in having the Secret Service be the best it can be. I am far more interested in making sure we are giving them the proper criminal codes they need. I am far more interested in making sure, when they are investigating crime, they can do their best.

I think what Senator HATCH and I are trying to save the Senate from doing is making a very serious mistake with the Secret Service, just to fill out an organizational chart.

I see the distinguished senior Senator from Utah in the Chamber. I will yield in a moment.

But I point out, in talking about the number of places Secretary Ridge may have to appear, he has only come to the Judiciary Committee once in each of the last 2 years. It is not like he is coming often.

But the point is, the Secret Service has 56 years of experience of making sure it works right. We are going to throw that overboard because we got this brand-new color-coded organizational chart for the Senate. My goodness, ladies and gentlemen, you can rest easy tonight, there will be no more terrorism because the Senate has a new organizational chart. Whoop-de-do.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I don't think there is anybody on this floor who respects the chairlady of the appropriate committee and the ranking member more than I do. I think the world of both of them. I think they deserve a commendation for what they have done. I just cannot pay enough tribute to them. I know they are sincere.

I want everybody here to know that I don't have an ax to grind. I have a reputation for trying to do what is right. I am very sincere about this. It is not a question of trying to retain jurisdiction for retention's sake. This is really important. I believe we should have a committee on homeland security. I believe it should have jurisdiction over much of the area that applies to terrorism. But I also sincerely believe—and I think the case is overwhelming—that most of what the Secret Service does is pursuant to the Criminal Code.

The Judiciary Committee is specifically and especially geared to handle oversight of those problems. You don't have to completely develop a whole new system of oversight. It has worked marvelously well for 56 years.

At the end of the day, the Secret Service is a criminal investigative agency. Sure, they may have some peripheral and even very important interests in terrorism, but their interests go way beyond that. Almost everything they do comes because of what the Criminal Code tells them to do.

The Secret Service's criminal authority is much broader than homeland security and counterterrorism. Let me review some of the longstanding criminal laws. I will just review some of them. These are criminal statutes and they are important, and the Secret Service works pursuant to these statutes.

It has jurisdiction to investigate acceptance of loan or gratuity by financial institution examiners; punishment for section 213, the prior section I mentioned; section 471, counterfeiting U.S. obligations; section 472, uttering counterfeit securities; section 473, dealing in counterfeiting obligations of securities; section 474, possession of device to counterfeit obligations; section 476, theft of tools used in counterfeiting obligations; section 477, selling of tools for counterfeiting obligations; section 478, counterfeiting of foreign obligations; section 479, uttering counterfeit foreign obligations; section 480, possessing counterfeit foreign obligations. This is all pursuant to title 18 USC. Section 481, possession of electronic images for counterfeiting foreign obligations; section 482, forgery or counterfeiting bank notes; section 483, uttering counterfeit foreign bank notes; section 484, fraudulently combining multiple U.S. instruments; section 485, counterfeiting U.S. coins; section 486, unauthorized passing of U.S. coins; section 487, making or possessing counterfeit dyes for coins; section 488, making or possessing counterfeit dyes for foreign coins; section 489, making or possessing a likeness of U.S. or foreign coins.

I will not read the rest. But it goes right down the Criminal Code where they spend almost all their time. If you ask virtually anybody in the Secret Service, they believe the jurisdiction ought to be kept with the Judiciary Committee.

I do not think there is any question. I know the head of the Secret Service does. There is no question they have overlapping jurisdiction in some areas where they can help with terrorism, but that is a modest amount of what they do.

Most all of what they do involves technical Criminal Code laws, and that is judiciary, and the Judiciary Committee is especially equipped to handle those type of activities.

The Judiciary Committee has a long history of balancing civil liberties with law enforcement obligations. The Secret Service carries out a host of law enforcement activities.

Let's face it, the Judiciary Committee is uniquely qualified and uniquely structured to vigorously oversee and monitor this balance. My office received a letter from organizations from the ACLU to the American Conservative Union expressing civil liberties concerns with this reorganization.

Look, I understand my two colleagues and their desire to try to bring everything together, but if you use this as an excuse to do that—in fact, one agency or another might have something to do with terrorism, but that is not its major obligation—my gosh, you might as well take over the whole Government.

I think this works well. If it "ain't" broke, why are we trying to fix it? I believe very sincerely that my two esteemed colleagues, as much as I love and respect them, are wrong on this. I can live with anything the Senate decides to do, but I think it would be tragic if the Secret Service is moved over to this Department and this committee that is not particularly the committee that should have jurisdiction over it and over the work that the Secret Service does.

I do not want to keep the Senate any longer. All I can say is, I would feel badly if this amendment is not agreed to by the Senate. It should be agreed to by the Senate. I am prepared to vote on it.

Mr. LEAHY. Mr. President, earlier we discussed Judiciary Committee jurisdiction.

I ask unanimous consent that this letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OCTOBER 7, 2004.

Hon. BILL FRIST,
Capitol Building,
Washington, DC.
Hon. TOM DASCHLE,
Capitol Building,
Washington, DC.
Hon. MITCH MCCONNELL,
Capitol Building,
Washington, DC.
Hon. HARRY REID,
Capitol Building,
Washington, DC.

DEAR SENATORS: We write to raise serious concerns about a provision of S. Res. 445, the McConnell-Reid Senate Intelligence and Homeland Security Oversight Reform Proposal, that would create a new Homeland Security and Governmental Affairs Committee.

While we commend the Senate for taking strong actions to revamp congressional oversight of the Executive Branch's intelligence and homeland security functions, we strongly oppose any action to remove from the Judiciary Committee its jurisdiction over criminal law, law enforcement, domestic intelligence activities, domestic surveillance authorities, the Federal Bureau of Investigation, the Department of Justice, and investigative guidelines issued by the Attorney General. As organizations with longstanding expertise and experience in these areas, we believe it is essential at this critical time in our Nation's history that the Judiciary Committee retain its jurisdiction over these issues and ensure continuity of congressional oversight. Its members and staff have developed years of experience in these complex legal issues, which have serious implications not only for safety and security but also for civil liberties and civil rights. In particular, the Judiciary Committee's deep substantive expertise and historical role in civil liberties issues is increasingly important as government powers expand to fight terrorism.

We urge you to clarify that jurisdiction over these law enforcement and domestic intelligence issues, including oversight of the FBI and Justice Department, remain with the Senate Judiciary Committee.

Sincerely,

American Booksellers Foundation for Free Expression.
American Civil Liberties Union.
American Conservative Union.
American Immigration Lawyers Association.
American Library Association.
Bill of Rights Defense Committee.
Center for American Progress.
Center for Democracy and Technology.
Center for National Security Studies.

Citizens for Health.

Cyber Privacy Project.

Free Congress Foundation.

Friends Committee on National Legislation (Quaker).

Human Rights Watch.

National Association of Criminal Defense Lawyers.

National Coalition of Mental Health Professionals and Consumers, Inc.

Peoople for the American Way.

Private Citizen, Inc.

The Rutherford Institute.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, let me sum up. This amendment poses the question, Are we really going to do what the 9/11 Commission asked us to do, which is to create a committee to oversee the Department of Homeland Security? That is what it is all about.

We reorganized the Federal Government executive branch to better protect our homeland security. The Commission says we have to reorganize our oversight to be able to protect our homeland security. That is what the proposal of the Commission is all about.

We are getting to a point, as we begin to take all these pieces out, where it is a sham, as I have said before. What we are calling a homeland security committee is not really. It is as if you had a cat, and you put a little necklace around its neck with a sign that said, "I am a horse," and expected people to think the cat was a horse.

We are at a point now where we are calling this committee the homeland security committee, and it is not.

Let me go to the numbers in closing. There are 175,000 employees in the Department. The McConnell-Reid proposal takes out the Coast Guard and TSA. That is 97,000 of those 175,000 employees gone. Earlier today, my friends from the Judiciary Committee took back Immigration, Customs enforcement, Customs, and border protection, another almost 19,000 employees gone from what is supposed to be the oversight committee of homeland security.

It was said earlier that what is left is a lot in our committee—three of the four directorates. OK, I know the number of employees does not say everything, but it does say a lot. Three directorates left in the oversight responsibility of the committee we are calling the homeland security committee, three directorates from DHS: emergency preparedness, 4,800 employees; intelligence analysis and infrastructure protection, 700 employees; science and technology, about 200 employees. We have about 5,700 employees left in the three directorates that come under the new committee on homeland security from the Homeland Security Department. That is 5,700 out of a total of 175,000 in the Department.

Let me give this stunning statistic, Mr. President. Are you ready? The Secret Service itself has 6,381 employees. That is about 500 more employees than in the three directorates that are left clearly within the jurisdiction of the committee being called the homeland security committee.

As I have said, if you want to give the responsibility for oversight of homeland security to another committee, do it. If you want to create a new committee on homeland security, do it. But if you are going to call it a committee on homeland security, then give it jurisdiction over homeland security.

A lot of the reality of the promise has already been taken away. I hope my colleagues will draw a line here and say that the Secret Service, which is part of the Department of Homeland Security for very good reasons that I enumerated earlier, should remain under the jurisdiction for oversight of what we will call the Department of Homeland Security.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. McCONNELL. Mr. President, have the yeas and nays been ordered on the Hatch amendment?

The PRESIDING OFFICER. They have not.

Mr. McCONNELL. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to amendment No. 4037. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. McCONNELL. I announce that the Senator from Georgia (Mr. CHAMBLISS), the Senator from New Mexico (Mr. DOMENICI), and the Senator from New Hampshire (Mr. GREGG) are necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 54, nays 41, as follows:

[Rollcall Vote No. 202 Leg.]

YEAS—54

Allard
Allen
Baucus
Bennett
Biden
Bingaman
Boxer
Brownback
Bunning
Byrd
Campbell
Cantwell
Clinton
Cochran
Conrad
Cornyn
Corzine
Craig
Crapo
DeWine
Dodd
Dorgan
Durbin
Feingold
Feinstein
Grassley
Hagel
Harkin
Hatch
Hutchison
Inouye
Jeffords
Johnson
Kennedy
Kohl
Kyl
Leahy
Lott
Mikulski
Miller
Murkowski
Reed
Roberts
Sarbanes
Schumer
Sessions
Shelby
Smith
Specter
Stabenow
Stevens
Thomas
Warner
Wyden

NAYS—41

Akaka
Alexander
Bayh
Bond
Breaux
Burns
Carper
Chafee
Coleman
Collins
Daschle
Dayton
Dole
Ensign
Enzi
Fitzgerald
Frist
Graham (FL)
Graham (SC)
Hollings
Inhofe
Landrieu
Lautenberg
Levin
Lieberman
Lincoln
Lugar
McCain
McConnell
Murray
Nelson (FL)
Nelson (NE)
Nickles
Pryor
Reid
Rockefeller
Santorum
Snowe
Sununu
Talent
Voinovich

NOT VOTING—5

Chambliss
Domenici
Edwards
Gregg
Kerry

The amendment (No. 4037) was agreed to.

Mr. LEAHY. Mr. President, I move to reconsider the vote.

Mr. BENNETT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. McCONNELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. TALENT). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCONNELL. Mr. President, Senator ROBERTS has a couple of amendments that he believes have been cleared with everyone interested in them.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Thank you, Mr. President. The two leaders have indicated they want to press forward on this resolution tonight. We still have a number of amendments. They are completing in the House, as we speak, the FSC conference report, the conference dealing with the drought aid and the hurricane assistance, and we have to deal with those in the next few days, so we need to finish this bill tonight if at all possible. The two leaders have instructed their two loyal assistants to move forward on this resolution, and that is what we are going to do. So everyone who has amendments should bring them forward. If there is a time when no one is offering amendments, we will move to third reading on the bill.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. ROBERTS. Mr. President, I have two amendments to offer. I wish to offer them in sequence, taking 2 minutes at most for each one. I propose to only give a very brief description of each amendment.

AMENDMENT NO. 4019 TO AMENDMENT NO. 3981

Mr. President, I ask unanimous consent that the pending amendment be set aside, and I call up amendment No. 4019.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. ROBERTS] proposes an amendment numbered 4019 to amendment No. 3981.

Mr. ROBERTS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To clarify staff provisions)

In section 201, strike subsection (g) insert the following:

(g) STAFF.—Section 15 of S. Res. 400 is amended to read as follows:

"SEC. 15. (a) In addition to other committee staff selected by the select Committee, the select Committee shall hire or appoint one employee for each member of the select Committee to serve as such Member's designated representative on the select Committee. The select Committee shall only hire or appoint an employee chosen by the respective Member of the select Committee for whom the employee will serve as the designated representative on the select Committee.

"(b) The select Committee shall be afforded a supplement to its budget, to be determined by the Committee on Rules and Administration, to allow for the hire of each employee who fills the position of designated representative to the select Committee. The designated representative shall have office space and appropriate office equipment in the select Committee spaces. Designated personal representatives shall have the same access to Committee staff, information, records, and databases as select Committee staff, as determined by the Chairman and Vice Chairman.

"(c) The designated employee shall meet all the requirements of relevant statutes, Senate rules, and committee security clearance requirements for employment by the select Committee.".

Mr. ROBERTS. Mr. President, this amendment simply clarifies language in the McConnell-Reid amendment regarding the staffing of the Intelligence Committee.

The amendment ensures that the professional staff of the Intelligence Committee and the personal staff now designated by Members to serve on the committee will be provided similar access to committee resources and information as determined by the chairman and vice chairman.

I urge my colleagues to support this amendment. I thank Senator KYL for his assistance. It provides modest but important clarity to the proposals of Senator MCCONNELL and Senator REID.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Kansas.

The amendment (No. 4019) was agreed to.

Mr. MCCONNELL. I move to reconsider the vote.

Mr. ROBERTS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4018 TO AMENDMENT NO. 3981

Mr. ROBERTS. Mr. President, I ask unanimous consent that the pending amendment be set aside, and I call up amendment No. 4018.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kansas [Mr. ROBERTS] proposes an amendment numbered 4018 to amendment No. 3981.

Mr. ROBERTS. Mr. President, I thank the clerk and ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To clarify the nominee referral provisions)

In section 201, strike subsection (h) and insert the following:

(h) NOMINEES.—S. Res. 400 is amended by adding at the end the following:

"SEC. 17. (a) The select Committee shall have final responsibility for reviewing, holding hearings, and reporting the nominations of civilian persons nominated by the President to fill all positions within the intelligence community requiring the advice and consent of the Senate.

"(b) Other committees with jurisdiction over the nominees' executive branch department may hold hearings and interviews with such persons, but only the select Committee shall report such nominations.".

AMENDMENT NO. 4018, AS MODIFIED

Mr. ROBERTS. Mr. President, this amendment makes explicit what is already implicit in the McConnell-Reid substitute amendment; namely, that the Intelligence Committee will have explicit jurisdiction for the consideration and reporting of nominees for civilian intelligence community positions.

I urge my colleagues to support the amendment and hope the managers will agree to incorporate the modification.

The PRESIDING OFFICER. The amendment is so modified.

The amendment, as modified, is as follows:

In section 201, strike subsection (h) and insert the following:

(h) NOMINEES.—S. Res. 400 is amended by adding at the end the following:

"SEC. 17. (a) The select Committee shall have jurisdiction reviewing, holding hearings, and reporting the nominations of civilian persons nominated by the President to fill all positions within the intelligence community requiring the advice and consent of the Senate.

"(b) Other committees with jurisdiction over the nominees' executive branch department may hold hearings and interviews with such persons, but only the select Committee shall report such nominations.".

The PRESIDING OFFICER. The question is on agreeing to the pending amendment, as modified.

The amendment (No. 4018), as modified, was agreed to.

Mr. MCCONNELL. I move to reconsider the vote.

Mr. ROBERTS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MCCONNELL. Mr. President, I also understand that we are close to an agreement between the interested parties on the Intelligence Committee and the Armed Services Committee on the important sequential referral issue that has been under discussion all day long with the principals of those two committees. We are hoping to be able to deal with that amendment shortly.

If anyone else has an amendment they want to offer, now is the time. The majority leader and the minority leader have indicated we are going to press into the evening and finish this proposal. If you have an amendment, we urge you to come over and offer it.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCONNELL. Mr. President, I am told by Senator ROCKEFELLER that the sequential referral issue that has been under discussion all day has now been worked out, and he is prepared to offer it.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

AMENDMENT NO. 4030, AS MODIFIED, TO AMENDMENT NO. 3981

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the pending amendment be set aside, and I call up amendment No. 4030 at the desk and send a modification to the desk and ask that it be considered.

The PRESIDING OFFICER. Without objection, it is so ordered. The pending amendment is set aside. The clerk will report the amendment, as modified.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. ROCKEFELLER] proposes an amendment numbered 4030, as modified, to amendment No. 3981.

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment, as modified, is as follows:

(Purpose: To clarify the jurisdiction of the select Committee on Intelligence)

At the end of section 201, insert the following:

(i) JURISDICTION.—Section 3(b) of S. Res. 400 is amended to read as follows:

"(b)(1) Any proposed legislation reported by the select Committee except any legislation involving matters specified in clause (1) or (4)(A) of subsection (a), containing any matter otherwise within the jurisdiction of any standing committee shall, at the request of the chairman of such standing committee, be referred to such standing committee for its consideration of such matter and be reported to the Senate by such standing committee within 10 days after the day on which such proposed legislation, in its entirety and including annexes, is referred to such standing committee; and any proposed legislation reported by any committee, other than the select Committee, which contains any matter within the jurisdiction of the select Committee shall, at the request of the chairman of the select Committee, be referred to the select Committee for its consideration of such matter and be reported to the Senate by the select Committee within 10 days after the day on which such proposed legislation, in its entirety and including annexes, is referred to such committee.

"(2) In any case in which a committee fails to report any proposed legislation referred to it within the time limit prescribed in this subsection, such Committee shall be automatically discharged from further consideration of such proposed legislation on the 10th day following the day on which such proposed legislation is referred to such committee unless the Senate provides otherwise, or the Majority Leader or Minority Leader request, prior to that date, an additional five days on behalf of the Committee to which the proposed legislation was sequentially referred. At the end of that additional five day period, if the Committee fails to report the proposed legislation within that five day period, the Committee shall be automatically discharged from further consideration of such proposed legislation unless the Senate provides otherwise.

"(3) In computing any 10 or 5-day period under this subsection there shall be excluded from such computation any days on which the Senate is not the session.

"(4) The reporting and referral processes outlined in this subsection shall be conducted in strict accordance with the Standing Rules of the Senate. In accordance with such rules, committees to which legislation is referred are not permitted to make changes or alterations to the text of the referred bill and its annexes, but may propose changes or alterations to the same in the form of amendments.".

Mr. ROCKEFELLER. Mr. President, strengthening the two congressional Intelligence Committees was a fundamental part of the 9/11 Commission recommendations for improving congressional oversight. This is more of that. They made many recommendations, most of which were included in whole or in part in our resolution.

One area where the Commission did not make a specific recommendation but which is very important was the question of shared jurisdiction between the Intelligence Committee and other committees, specifically the Armed Services Committee. Under the current structure, other committees have the automatic right to receive sequential referral of any legislation reported by the Intelligence Committee if it touches on their jurisdiction. And the Intelligence Committee enjoys a reciprocal right of referral. In practice, this authority has been exercised hardly at all—very rarely, infrequently—at least by the Intelligence Committee, but it has become a bit of an annual routine for the Armed Services Committee to seek sequential referral of the intelligence authorization bill. This practice is based upon legitimate interests on the part of the Armed Services Committee. But the system has worked to the detriment of the Intelligence Committee and effective oversight. I will try to explain why.

Every year the intelligence authorization bill is referred to the Armed Services Committee for a period of not more than 30 days of legislative session. The Armed Services Committee almost always holds the bill for a full 30 days which can, in fact, work out to 2 calendar months, when you really carry that math out. This allows them to review the bill, which is important and proper, but it puts the Intelligence Committee far behind in the annual legislative process. By which I mean by the time the bill is reported, after a sequential referral by the Armed Services Committee, acted on by the Senate, and negotiated with the House, the annual appropriations bill often is already enacted into law.

For example, this year our authorization bill has not been dealt with. The appropriations bill has been passed in the Senate. This is an awkward way to do business. So we too often have been unable to provide the appropriators with the benefit of the work of the intelligence oversight committees. Timely passage of the intelligence authorization bill would become even more critical with the creation of a new appropriations subcommittee on intelligence.

In order for this new system to work, the Intelligence Committee has to be integral to the whole process. That is the whole point. We have to make changes in the way the sequential referral authority works. So Senator EVAN BAYH offered an amendment to completely strike the language that provides for automatic sequential referral, and that is certainly one way to approach it. It has some downsides.

The Armed Services Committee and other committees have legitimate interests that need to be protected. Doing away with the provision also would remove the Intelligence Committee's ability to request the referral of legislation reported by other committees when that legislation relates to intelligence matters.

Finally, completely removing the referral authority would have the inevitable result—and this is sort of the soul of this institution—of alienating the Intelligence and Armed Services Committees. This is something we cannot afford and must not do. The committees have to work together constantly on a wide range of issues.

To achieve what Senator BAYH and myself and others want, all of us seeking more effective intelligence oversight, we have worked out a compromise, I am very happy to report. The amendment I have offered significantly reduces the amount of time that another committee has available to review legislation reported by the Intelligence Committee and vice versa. That time goes from 30 days of legislative session down to 10.

But hold on. The amendment also makes clear that the clock does not begin until the committee receiving our bill has all the relevant classified annexes available for review which could be thousands of pages.

According to our compromise, an additional 5 days of sequential referral can be added if requested by the majority or the minority leaders. That struck people as wise and useful. So when there is a legitimate need to have more scrutiny by the Armed Services Committee, they would make that request, and it would, of course, be granted.

This is made easier under the new structure because the chairman and the ranking member of the Armed Services Committee are now ex officio members of the new Intelligence Committee. We welcome their participation. I don't think it will do anything but strengthen our committee more. In fact, I think we will end up with five members of the Armed Services Committee on our Intelligence Committee, and that is good.

So I thank Senator BAYH for bringing this issue to the attention of the Senate. I thank Senators LEVIN and WARNER for their willingness and insistence on finding a middle ground. I really mean I thank them. I thank both the majority and minority leaders who were instrumental in reaching this agreement because we were back and forth all day long.

Finally, I thank, of course, my chairman, Senator ROBERTS, for his help in crafting this compromise. I urge my colleagues to support the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. The amendment has been modified?

The PRESIDING OFFICER. That is the understanding of the Chair.

Mr. REID. I have spoken to the comanager of this bill. We have no objection. We appreciate very much the time and effort of so many involved to get us to this point.

I urge that the amendment be accepted.

The PRESIDING OFFICER. Does any Senator seek recognition on the amendment?

If not, the question is on agreeing to the amendment.

The amendment (No. 4030), as modified, was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote and to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I have tried to be silent tonight. If anyone wants to come and offer an amendment, I will sit down.

People have made statements asking: What is this committee going to have; you have taken everything from them. I am going to read a few of the most important things they have to do. This committee should not be concerned only with the number of employees. They should be concerned with responsibilities.

The first directorate, the Directorate for Information Analysis and Infrastructure Protection: the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection. In general: There shall be in the Department a Directorate for Information Analysis and Infrastructure Protection.

Responsibilities: The Under Secretary shall assist the Secretary in discharging this responsibility. The Assistant Secretary for Information Analysis is under the control of this committee.

The Assistant Secretary for Information Analysis: There shall be in the Department an Assistant Secretary for Information Analysis who shall be appointed by the President.

The Assistant Secretary for Information Analysis and the Assistant Secretary for Infrastructure Protection shall assist the Under Secretary for Information Analysis and Infrastructure Protection in discharging the responsibilities of the Under Secretary.

The Secretary shall ensure that the responsibilities of the Department regarding information analysis and infrastructure protection are carried out through the Under Secretary for Information Analysis and Infrastructure Protection.

Responsibilities of the Under Secretary: To access, receive, and analyze law enforcement information, intelligence information, and other information from agencies of the Federal Government, State and local government agencies, including law enforcement agencies, and private sector entities, and to integrate such information in order to—A, identify and assess the nature and scope of terrorist threats to the homeland; B, detect and identify threats of terrorism against the United States; C, understand such threats in light of actual and potential vulnerabilities to the homeland.

That sounds to me like it is more than nothing. This is the policy of our country over which they have jurisdiction.

No. 2. To carry out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States, including the performance of risk assessments to determine the risks posed by particular types of terrorist attacks within the United States, including an assessment of the probability of success of such attacks and the feasibility and potential efficacy of various countermeasures to such attacks.

No. 3. To integrate relevant information, analyses, and vulnerability assessments, whether such information, analyses, or assessments are provided or produced by the Department or others, in order to identify priorities for protective and support measures by the Department, other agencies of the Federal Government, State and local government agencies and authorities, the private sector, and other entities.

No. 4. To ensure, pursuant to section 202, the timely and efficient access by the Department to all information necessary to discharge the responsibilities under this section, including obtaining such information from other agencies of the Federal Government.

No. 5. To develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States, including power production, generation, and distribution systems, information technology and telecommunications systems (including satellites), electronic financial and property record storage and transmission systems, emergency preparedness communications systems, and the physical and technological assets that support such systems.

No. 6. To recommend measures necessary to protect the key resources and critical infrastructure of the United States in coordination with other agencies of the Federal Government and in cooperation with State and local government agencies and authorities, the private sector, and other entities.

No. 7. To administer the Homeland Security Advisory System, including—

A. exercising primary responsibility for public advisories related to threats to homeland security; and

B. in coordination with other agencies of the Federal Government, providing specific warning information, and advice about appropriate protective measures and countermeasures, to State and local government agencies and authorities, the private sector, other entities, and the public.

No. 8. To review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence information, intelligence-related information, and other information relating to homeland security within the Federal Government and between the Federal Government and State and local government agencies and authorities.

No. 9. To disseminate, as appropriate, information analyzed by the Department within the Department, to other agencies of the Federal Government with responsibilities relating to homeland security, and to agencies of State and local governments and private sector entities with such responsibilities in order to assist in the deterrence, prevention, preemption of, or response to, terrorist attacks against the United States.

No. 10. To consult with the Director of Central Intelligence and other appropriate intelligence, law enforcement, or other elements of the Federal Government to establish collection priorities and strategies for information, including law enforcement-related information, relating to threats of terrorism against the United States through such means as the representation of the Department in discussions regarding requirements and priorities in the collection of such information.

No. 11. To consult with State and local governments and private sector entities to ensure appropriate exchanges of information, including law enforcement-related information, relating to the threats of terrorism against the United States.

No. 12. To ensure that—

A. any material received pursuant to this Act is protected from unauthorized disclosure and handled and used only for the performance of official duties; and

B. any intelligence information under this Act is shared, retained, and disseminated consistent with the authority of the Director of Central Intelligence to protect intelligence sources and methods under the National Security Act of 1947 (50 U.S.C. 401 et seq.) and related procedures and, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

No. 13. To request additional information from other agencies of the Federal Government, State and local government agencies, and the private sector relating to threats of terrorism in the United States, or relating to other areas of responsibility assigned by the Secretary, including the entry into cooperative agreements through the Secretary to obtain such information.

No. 14. To establish and utilize, in conjunction with the chief information officer of the Department, a secure communications and information technology infrastructure, including data-mining and other advanced analytical tools, in order to access, receive, and analyze data and information in furtherance of the responsibilities under this section, and to disseminate information acquired and analyzed by the Department, as appropriate.

No. 15. To ensure, in conjunction with the chief information officer of the Department, that any information databases and analytical tools developed or utilized by the Department—

A. are compatible with one another and with relevant information databases of other agencies of the Federal Government; and

B. treat information in such databases in a manner that complies with applicable Federal law on privacy.

No. 16. To coordinate training and other support to the elements and personnel of the Department, other agencies of the Federal Government, and State and local governments that provide information to the Department, or are consumers of information provided by the Department, in order to facilitate the identification and sharing of information revealed in their ordinary duties and the optimal utilization of information received from the Department.

No. 17. To coordinate with elements of the intelligence community and with Federal, State, and local law enforcement agencies, and the private sector, as appropriate.

No. 18. To provide intelligence and information analysis and support to other elements of the Department.

No. 19. To perform such other duties relating to such responsibilities as the Secretary may provide.

Mr. President, this is a big-time focus on the administration of this new committee. This is only part of it. For someone to come to the floor and say they have not given us anything, I have read some of the most important aspects of setting the policy of this country as it relates to defeating terrorism. They may not have the right number of employees, but their responsibilities for setting the policy of this country are in that committee. Anyone who thinks not, let them see what we have done. This is only the first directorate. There are others. I have not completed reading what is in this directorate.

Here are the agencies covered: The Department of State, the CIA, the FBI, the National Security Agency, the National Imagery and Mapping Agency, and the Defense Intelligence Agency.

I have only read a few things of the first directorate. If they had nothing else to do during the legislative year than deal with what I have completed reading, it would be a massive undertaking. In addition to that, you see, we have not taken any of the responsibilities away from the Governmental Affairs Committee. They had huge responsibilities before we gave them this. For people to come on this floor and whine and cry about they don't have anything to do, it is not in keeping with what we have done with this committee.

I will go to one other directorate. I have only read a few pages from this directorate. I have read three pages. I have about 15 or 20 more here. I don't feel that I want to spend my time reading that, other than to say they have tremendous responsibilities.

Under the Office of Science and Technology, they have another big job. This is to "carry out programs that, through the provision of equipment, training, and technical assistance, improve the safety and effectiveness of law enforcement technology and improve access by Federal, State, and local law enforcement agencies."

That is another huge responsibility they have been given.

In carrying out its mission, the Office shall have the following duties:

No. 1. To provide recommendations and advice to the Attorney General.

No. 2. To establish and maintain advisory groups (which shall be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.)) to assess the law enforcement technology needs of Federal, State, and local law enforcement agencies.

No. 3. To establish and maintain performance standards in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 14 113) for, and test and evaluate law enforcement technologies that may be used by Federal, State, and local law enforcement agencies.

No. 4. To establish and maintain a program to certify, validate, and mark or otherwise recognize law enforcement technology products that conform to standards established and maintained by the Office in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 104-113). The program may, at the discretion of the Office, allow for supplier's declaration of conformity with such standards.

No. 5. To work with other entities within the Department of Justice, other Federal agencies, and the executive office of the President to establish a coordinated Federal approach on issues related to law enforcement technology.

No. 6. To carry out research, development, testing, evaluation, and cost-benefit analyses in fields that would improve the safety, effectiveness, and efficiency of law enforcement technologies used by Federal, State, and local law enforcement agencies, including, but not limited to—

A. weapons capable of preventing use by unauthorized persons, including personalized guns;

B. protective apparel;

C. bullet-resistant and explosion-resistant glass;

D. monitoring systems and alarm systems capable of providing precise location information;

E. wire and wireless interoperable communication technologies;

F. tools and techniques that facilitate investigative and forensic work, including computer forensics;

G. equipment for particular use in counterterrorism, including devices and technologies to disable terrorist devices;

H. guides to assist State and local law enforcement agencies;

I. DNA identification technologies; and

J. tools and techniques that facilitate investigations of computer crime.

No. 7. To administer a program of research, development, testing, and demonstration to improve the interoperability of voice and data public safety communications.

No. 8. To serve on the Technical Support Working Group of the Department of Defense, and on other relevant interagency panels as requested.

No. 9. To develop, and disseminate to State and local law enforcement agencies, technical assistance and training materials for law enforcement personnel, including prosecutors.

No. 10. To operate the regional National Law Enforcement and Corrections Technology Centers and, to the extent necessary, establish additional centers through a competitive process.

No. 11. To administer a program of acquisition, research, development, and dissemination of advanced investigative analysis and forensic tools to assist State and local law enforcement agencies in combating cybercrime.

No. 12. To support research fellowships in support of its mission.

No. 13. To serve as a clearinghouse for information on law enforcement technologies.

No. 14. To represent the United States and State and local law enforcement agencies, as requested, in international activities concerning law enforcement technology.

No. 15. To enter into contracts and cooperative agreements and provide grants, which may require in-kind or cash matches from the recipient, as necessary to carry out its mission.

No. 16. To carry out other duties assigned by the Attorney General to accomplish the mission of the Office.

Mr. President, that is a pretty heavy load. I would say if they think they have more time than this, then they have a lot of time. This is what we believe we have given them, partially. And for anyone to come here and say that these three directorates, plus the fourth—this doesn't give them anything to do, it may not be the number of employees, but there is a large number of employees in the TSA.

They have so much. Committees are there to set policy. That is the whole purpose of it, and I have laid out policy directions that they have on which it would take forever for this body to hold hearings.

It is very unfair to Senator McCONNELL and me and the task force generally to say we did not give them anything. We gave them so much you need a semitruck and trailer to haul the responsibilities alone. I have read only part of them.

Senator McCONNELL will be on the floor shortly. If there are no other amendments, we will go to final passage. Everybody should know it is 8:30 at night, and we waited all day. We want to be patient. As I indicated, we are going to do our very best to finish this legislation as soon as we can.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3986 TO AMENDMENT NO. 3981

Mr. McCONNELL. Mr. President, there is an amendment at the desk by Senator BYRD, No. 3986. I ask that it be considered. It has been cleared on both sides.

The PRESIDING OFFICER. Without objection, the pending amendments are laid aside.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. McCONNELL], for Mr. BYRD, proposes an amendment numbered 3986 to amendment No. 3981.

Mr. McCONNELL. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

AMENDMENT NO. 3986

At the appropriate place in Sec. 402(b) after the word "matters," insert the following:

", as determined by the Senate Committee on Appropriations"

Mr. HARKIN. I didn't hear the request.

The PRESIDING OFFICER. There was a request to dispense with further reading of the amendment.

Mr. HARKIN. What amendment?

Mr. McCONNELL. An amendment by Senator BYRD relating to the resolution we are working.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 3986) was agreed to.

Mr. McCONNELL. I move to reconsider the vote.

Mr. REID. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4038 TO AMENDMENT NO. 3981

Mr. McCONNELL. Mr. President, there is an unnumbered amendment at the desk by Senator SHELBY regarding the National Flood Insurance Act.

The PRESIDING OFFICER. Without objection, the pending amendment is laid aside.

The clerk will report.

The legislative clerk read as follows:

The Senator from Kentucky [Mr. McCONNELL], for Mr. SHELBY and Mr. SARBANES, proposes an amendment numbered 4038 to Amendment No. 3981.

Mr. McCONNELL. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To retain jurisdiction over the National Flood Insurance Act of 1968, with the Committee on Banking, Housing, and Urban Affairs)

At the appropriate place, insert the following: "*Provided*, That the jurisdiction provided under section 101(b)(1) shall not include the National Flood Insurance Act of 1968, or functions of the Federal Emergency Management Agency related thereto.".

Mr. McCONNELL. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCONNELL. I am aware of no opposition to the Shelby amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 4038) was agreed to.

Mr. McCONNELL. I move to reconsider the vote.

Mr. SARBANES. I move to lay that motion on the table.

Mr. McCONNELL. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ENSIGN). Without objection, it is so ordered.

Mr. REID. Mr. President, the distinguished Senator from Delaware has an amendment to offer. He has indicated he would be willing to enter into a time agreement which, as far as I am concerned, is fine. He has indicated he would take—

Mr. BIDEN. Mr. President, unless someone else wishes to speak on this, 15 minutes. I think I can do it in 10, but let's say 15 minutes to protect myself.

Mr. REID. And whoever wishes to speak against him have 15 minutes, and Senator BIDEN have 5 minutes to close if somebody speaks following that.

Would that be appropriate?

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. Could we be informed as to the topic?

Mr. REID. The topic of it is Senator BIDEN and Senator LUGAR wish to add the chairman and ranking member of the Foreign Relations Committee as ex officio members of the Intelligence Committee, having no voting rights or the ability to help establish a quorum.

Ms. COLLINS. I thank the Senator for the explanation.

Mr. REID. Mr. President, I ask unanimous consent that Senator BIDEN have 15 minutes, that someone opposing his amendment have 15 minutes, and Senator BIDEN have 5 minutes to close the debate prior to a vote on the amendment, and that no amendments to the amendment be in order prior to a vote on the amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Delaware.

AMENDMENT NO. 4021 TO AMENDMENT NO. 3981

Mr. BIDEN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendments are laid aside. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Delaware [Mr. BIDEN], for himself and Mr. LUGAR, proposes an amendment numbered 4021 to amendment No. 3981.

Mr. BIDEN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 5, after line 3, insert the following:

"(C) The Chairman and Ranking Member of the Committee on Foreign Relations (if not already a member of the select Committee) shall be ex officio members of the select Committee but shall have no vote in the Committee and shall not be counted for purposes of determining a quorum.".

Mr. BIDEN. Mr. President, this is very straightforward. Right now, the chairman and ranking member of the Armed Services Committee are ex officio members of the Intelligence Committee, with no voting rights, no requirement that they be there to make a quorum. Quite frankly, they are there to be able to listen when they seek to do that.

Senator LUGAR and I are proposing the same exact status be made available for the chairman and ranking member of the Foreign Relations Committee. I know the argument will be, why don't we make everybody, every chairman, every ranking member, ex officio members? But the Foreign Relations Committee does need access to this information.

I know it will come as a shock, but because of the necessary requirement of focusing on certain subject matters, which hopefully we gain some expertise on, the Foreign Relations Committee and its chairman and ranking member, hopefully, have some insights occasionally which other Members may not have because they do not spend the time on that issue. Just as in the Armed Services Committee, the ranking member and the chairman may have access to information that is not intelligence information but is information that would shed light upon judgments being made by the Intelligence Committee as a consequence of information made available by the CIA and other intelligence operations. Because, as we all know, intelligence operations can have major impacts for good or for ill on American foreign policy.

I am necessarily, as we all are, restrained from giving contemporary examples of that, but I have been here a long time and go back to the period of the Cold War. I sat on the Intelligence Committee at the time, but I was not a ranking member. I was on the Intelligence Committee for 10 years, I think as long as anybody who served in this body. There may be somebody who served longer than me on that committee. But one of the things I learned is occasionally the Intelligence Committee would come up with initiatives made available under our special rules, which are necessary, special rules that are applicable only to the Intelligence Committee, and access and brief only the Intelligence Committee, and many members on the committee would not be aware that there were totally different operations going on on a diplomatic front or on an arms control front or on a matter relating to national security that were not explicitly—explicitly—intelligence matters.

Let me give you a few examples without giving, obviously, the details, but generic examples. Intelligence collection and analysis are essential to the verification of compliance with arms control and nonproliferation agreements. A few years ago, we on the Foreign Relations Committee heard that a particular intelligence system that is important to that function—that is, collecting intelligence for compliance on nonproliferation treaties and arms control—we heard that function was in danger of being lost.

We took the initiative. We raised it with the Intelligence Committee because we had heard this. We let them know what we had heard to make sure the executive branch retained this particular system that we believed, in the

Foreign Relations Committee, was essential to a matter relating to nonproliferation, something that most of the members on the Intelligence Committee, understandably, serving on many committees other than Foreign Relations or Armed Services, did not see the particular relevance of. So when briefed by the Intelligence Committee, it seemed all right. It didn't seem like this particular system was critical for a foreign policy initiative that was underway and a treaty that existed. And by the way, we only heard about it from someone in the executive branch who had made it known to a member of the Foreign Relations Committee.

Intelligence is also needed to give warning of new dangers and opportunities around the world. That may require different capabilities from those of us who serve on the Armed Services Committee or who served in the Armed Services. The Armed Services Committee rightly worries about intelligence support for military operations. Why is that unrelated to major diplomatic operations? That can have as much consequence on American security as tactical military operations.

The Foreign Relations Committee has a concern to ensure that there is a balance, that U.S. intelligence resources are not devoted primarily or overwhelmingly to tactical targets. My friend, the chairman of the committee, may disagree with me, but if I translate that, we only have so many assets that can be brought to bear. If I can make an analogy to the FBI, there are only 11,600 FBI agents, I think maybe 11,800. By the way, I might note, before 9/11 there were only 11,300. So we haven't done much there.

But let's assume we say what is going on right now. There is a decision being made that those agents should focus on counterterror. That is a legitimate issue. But what about the Mafia? What about organized crime units that deal in drugs that are not involved in terror? It is a legitimate issue to debate as to where the resources should be placed. Of that 11,800, you have about 4,000 people to be made available. You only have so many satellites. You only have so many agents. You only have so many resources. And, understandably, the Armed Services Committee wants to make sure those resources are focused on those tactical issues that are critically important.

I am not suggesting they should not. But there should be a voice there that is fully informed on the foreign policy side and has access that other members of the Foreign Relations Committee do not have because, as we all know, there are certain things that are made available to the Foreign Relations Committee, under our rules, only to the ranking member and only to the chairman and not the whole membership. And so absent having the fact that we have a member who may be brighter than and more informed than the chairman or the ranking member, they don't have the same access. They don't have the same access to all the diplomatic initiatives that are underway.

So if it makes sense to have Armed Services have tactical input here, it seems to me that this false separation of our foreign policy and our defense policy is one of the reasons we got ourselves in trouble to begin with. What are we doing now? We are agreeing to change the rules. We are about to change the rules, I hope, when we get into reorganizing this body. And we are going to say no longer is a member of the Foreign Relations Committee not able to serve on Armed Services, and no longer is a member of Armed Services not able to serve on the Foreign Relations Committee. Why? We are going around making sure that there are not stovepipes in the Intelligence Committee. We finally figured out there should not be stovepipes in terms of information and access and expertise as it relates to strategic doctrine, foreign policy, and tactical military operations. It is necessary.

I know of one matter on which we were kept in the dark for some months, then briefed earlier this year. And we have gotten no information since. We go back, the chairman and I, and say: We want more information.

They say: We already told the Intelligence Committee.

Then the Intelligence Committee tells us, which is literally true: We can come and read whatever it is that is there.

We all know how this place works. If you are not there in the middle of a hearing, if you are not there in that closed session, if you are not able to probe what is being said and have a perspective that may be different than the members of the committee, you are not likely to get the information.

That is especially true because if we gained information as ex officio members of the Intelligence Committee, we would be bound by the same nondisclosure rules that apply to other members of the Intelligence Committee. I found in my 10 years on the Intelligence Committee—I think that is longer served time than anybody who presently sits on the Intelligence Committee, or as long; I could be wrong about that—I found, as one of my friends said early on when I got put on that committee originally: I don't want to go on because it is like Pac-Man. They will tell you information that you otherwise could learn, but once they have told you, you can't disclose it because if you do, even though it appears in the New York Times, you have violated the law.

One of the things that is useful, I find that people are much more open with me as a junior member of the Intelligence Committee rather than a 31-year member of the Foreign Relations Committee. So we would be bound by the same rules. The Foreign Relations Committee also has a major concern for the safety and security of overseas embassies. We have shared that concern in this regard with the Intelligence Committee, which doesn't want to see intelligence personnel or information put at risk by ineffective security in our embassies. We will be able to pursue that shared interest more effectively if our chairman and ranking member have ready access to the information on this security and security around the world.

And lastly, because I am getting pretty close here, the idea of being able to completely separate the functioning of our State Department and the functioning of the intelligence community in little neat boxes does not comport with reality. That is not how it works.

Other than the present chairman of the committee maybe not wanting the Government expense of adding two more chairs at the table, I quite frankly don't understand what the problem is.

I reserve the remainder of my time and yield the floor.

The PRESIDING OFFICER. Who seeks time in opposition?

The Senator from Kansas.

Mr. ROBERTS. Mr. President, Senator BIDEN, in his usual flare, has offered an amendment to add the chairman and ranking member of the Senate Foreign Relations Committee as ex officio members of the Intelligence Committee. Under S. Res. 400, the organizing resolution for the Senate Intelligence Committee, eight members are already crossovers from other committees: two from the Judiciary Committee, two from Armed Services, two from Appropriations, and two from foreign Relations. This is on purpose, because we believe these four committees should have crossover representation on the committee as it now stands. That is under S. Res. 400.

With all due respect, I think the members of the Foreign Relations Committee—Senator HAGEL, Senator ROCKEFELLER—do an excellent job in representing the Foreign Relations Committee on the Intelligence Committee. These crossover members do perform an invaluable service for the Intelligence Committee.

First, they ensure that the insights and perspectives of the other Senate committees are considered in the oversight of the intelligence activities of the United States. And second, they do already provide the Armed Services Committee and the Judiciary Committee and the Appropriations Committee and, yes, the esteemed members of the Foreign Relations Committee, with a view of the Intelligence Committee on issues that cross jurisdictional boundaries.

Now, under the McConnell-Reid reform proposal, the Intelligence Committee would grow by two ex-officio members already. The chairman and ranking member of the Armed Services Committee, the majority and minority leaders, already serve as ex-officio members of the committee. So following reform, the Intelligence Committee will be composed of eight crossover members. If Senator BIDEN's amendment is successful, there will be six nonvoting ex-officio members.

Now, any chairman or any ranking member who has crossover jurisdiction with any other committee, under this logic, should be an ex-officio member of the committee. After all, we need to keep an eye on one another. I have every trust in thee and me, but I wonder about thee. This is like Bob Barker: Come on down, be an ex-officio member of the Intelligence Committee. This is empowerment? This is further dissolution in terms of the responsibilities and cohesion and pertinence in regard to the Intelligence Committee.

Well, does the Intelligence Committee need that much oversight? Do the guaranteed crossover memberships not really protect sufficiently the equities of the Armed Services and Foreign Relations Committees?

As chairman of the Intelligence Committee, I said on the Senate floor earlier today that I often have concerns with the actions of the Armed Services Committee, Foreign Relations Committee, Appropriations Committee, and the Judiciary Committee—not necessarily in that order.

Given this logic, as such, given the proliferation of ex-officio memberships, perhaps the chairman and vice chairman of the Intelligence Committee should have ex-officio membership on other committees with jurisdiction that overlap the intelligence issues. What is good for the goose is good for the gander. I will leave Members to decide who is the goose and who is the gander. I focus on four primary committees: Armed Services, Foreign Relations, Appropriations, and Judiciary. I was going to have a second-degree amendment to say, why can't Senator ROCKEFELLER and I be ex-officio on these committees if they want to be ex-officio on our committee? I am not sure exactly what they would do other than monitor. We can certainly find something for them to do as they follow the work of the Intelligence Committee. I could go on. We could have ex-officio status for Senator ROCKEFELLER and myself for the new Homeland Security and Governmental Affairs, Banking, Finance, and Agriculture Committees. They all have cross-jurisdictional interests that touch on intelligence issues.

With only limited exceptions, all Senators have access to the information and activity of the Intelligence Committee. As chairman, I and the distinguished vice chairman, Senator ROCKEFELLER, have invited all Senators to come down and take a look at the classified portions of the Iraq review or any other Intelligence Committee product or holding. You are welcome. Just ask. Come on in.

The committee assists in the arrangement of classified briefings for all Senators by our intelligence agencies. Ex-officio membership is an unnecessary requirement and maintains the status of the Intelligence Committee as a weak child of the Senate.

Let's not have any further diminution of the Intelligence Committee. I urge colleagues to oppose the Biden amendment.

I yield the floor.

Mr. BIDEN. Mr. President, you know, one of the problems of being around here a while is that you get in this body and you take things in a personal context. This has nothing to do with overseeing the Intelligence Committee. This is about expanding the capability of the Intelligence Committee.

Let me give my friend an example. I think he totally misses the point. He views this as an assault on the committee, a weakening. We are looking at them. I wonder if the Senator is aware that on the Foreign Relations Committee, there are numerous occasions when the ranking member and chairman are made aware by the Secretary of State and/or the President himself of a diplomatic initiative that they have no idea is about to be undertaken. I wonder if he knows that. It is not about the collection of intelligence, it is about a diplomatic initiative.

Let me make something up. Assume we were having great difficulty with Canada and they are our enemy. The President and Secretary of State call the chairman and ranking member of the Foreign Relations Committee down to get our judgment on whether, if we made the following entree diplomatically to a particular group in Canada—say, Quebec—we might be able to move the ball, and, at the same time, the Intelligence Committee is hearing information that is meat and potatoes, critically important, that there is an initiative underway in the Intelligence Committee to eavesdrop upon the undertakings of the very people who are about to make this initiative. It might be a useful thing, not an assault on the chairman or a diminution of his authority but another access and avenue of, hopefully, an informed person with a different perspective on something that is not banking, or it is not agriculture; it is serious stuff.

We tend, when we think about intelligence, to think only in terms of covert operations and the military. The fact is, that is part of our problem. This false separation of the conduct of American foreign policy and the policy of our strategic doctrine and our tactical doctrine is part of our problem. So this is not about sitting down and babysitting, or whatever the phrase used by my friend was; this is about being collaborative and letting them maybe know a perspective they didn't know.

Lastly, we all have access to all kinds of information. The problem is, unless we are essentially tasked with the responsibility and obligation, there is so much we have to do, we don't get to do it. I know what the chairman is worried about: this guy sitting next to me. I hired him in the Intelligence Committee 20 years ago. He sat there for 10 years. Now he works for me on the Foreign Relations Committee. There is a worry—not about my particular colleague on my left—but we will have staff there that will do what they do in every committee if they attend a hearing: Mr. Chairman, this is about to happen, and it is a small thing and it totally conflicts with what you have been told by the Secretary of State and it may be useful.

The PRESIDING OFFICER. The Senator's opening time has expired.

Mr. BIDEN. Do I have any time beyond that?

The PRESIDING OFFICER. Five minutes to close.

Mr. BIDEN. The bottom line is, I wish we would get together in this place and stop viewing everything as sort of an assault on somebody else's jurisdiction. This is not about that. I got off of the Intelligence Committee. I was on the Intelligence Committee, the Budget Committee, the Foreign Relations Committee, and the Judiciary Committee. I concluded that I could not do all four of those, so I got off. I gave up the chairmanship of the Budget Committee because I didn't think I could do that and my job on the Foreign Relations Committee and the Judiciary Committee.

The strength of this institution lies in our willingness to recognize the contribution that each of us can make, the perspective we bring to the table, and, occasionally, just maybe a degree of expertise that maybe another colleague doesn't have. I clearly do not have the expertise of my colleague on the Intelligence Committee on intelligence matters now. He is fully, contemporaneously, totally informed. I don't have the competence on matters relating to the Banking Committee and the international banking system as the chairman and ranking member do because that is their obligation. I don't have the competence my friend from Alaska has on the Appropriations Committee and how all these pieces fit together, but I respectfully suggest that I might be able to contribute.

Whoever succeeds me—the Senator from Connecticut, I think, is next in line to be chairman or ranking member of the Foreign Relations—I respectfully suggest he has a perspective that might be useful.

Why do we view this in terms of competition? If you hang around this place long enough, you kind of go through a couple phases, one of which is you end up sometimes not recognizing the potential strength that lies here.

Senator HAGEL and Senator ROCKEFELLER are brilliant members of the Foreign Relations Committee. Senator ROCKEFELLER, because he is the cochairman, has not been able to attend one-fifth of our hearings, and he should not be at our hearings. He should be doing the work of the Intelligence Committee because that is his primary responsibility. Senator HAGEL is the same way. They are both incredibly well-informed people. They both serve on the committee, but they do not have the full access Senator LUGAR has to every diplomatic initiative that Senator LUGAR may be aware of or the particular concerns or the sensitivity of a particular initiative and at a particular time.

I conclude by saying, I go back to my days on the Intelligence Committee. I happened to be aware, only because Senator Pell made me aware, of an initiative that was underway in a particular Eastern European country. At the time, Mr. Casey and Ugell were running operations there. Only because I was made aware by the chairman of the committee of what he had been briefed on and was allowed to communicate was I able to say in a hearing and I think—I don't know this for a fact. I know I asked for two hearings, as a member of the Intelligence Committee of the entire Senate. I demanded there be a secret hearing, that we close the doors, only Senators, no staff. It does not often happen because you only have one of two choices when you are informed about what you think is a dangerous initiative that is underway in the intelligence community. You go forward and you blow it and you suffer the consequences, you have broken the law, or under the laws, you can ask for a secret meeting of the Senate.

There was an operation that was proposed. This is years ago in the early days of the Reagan administration, relating to the very country in which there was a serious diplomatic initiative being made, in a sense covertly, not by the intelligence community, but by the State Department and the White House.

When I made the Congress aware of that, it was concluded that maybe it was not a good operation, and I signed on that piece of paper. You still have to sign off: I oppose this action. Whether it is because I did that or not, I cannot say, but the action was jettisoned. It was ill-conceived and totally at odds with the initiative the Reagan administration had going over in another piece of it. I do not know if that was a positive contribution or not, but I can tell you it was a different perspective.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BIDEN. I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. ROBERTS. Mr. President, I believe I have approximately 9 minutes remaining.

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERTS. Mr. President, let me say to the Senator from Delaware, whom I admire for his expertise on foreign policy, I think all of us have an obligation to learn from, to ask, to seek guidance, to seek expertise from other Members, and I hope it is in that spirit that we are able to do this.

As Chairman of the Emerging Threats Capabilities Subcommittee on Armed Services, I work very closely with Senator LUGAR on the Counterthreat Reduction Program. I do not think I can do the job without talking to Senator LUGAR. Senator Nunn and Senator LUGAR put that together, the Nunn-Lugar program. I talk with Senator LUGAR a lot in regard to his perspectives on foreign policy.

I have not taken the opportunity that I probably should have to talk with the Senator from Delaware at great length—we talk about some things but certainly not enough. I welcome the Senator to come to the Intelligence Committee in regard to any desire he might have to go over or to review any of the intelligence material that pertains to foreign policy. All of that does, as a matter of fact. It was the State Department that pretty much got it right in the WMD review in regard to possible WMD in Iraq, and we know that and we respect that. We made a special effort to invite the State Department in, and we will be happy to visit with the Senator from Delaware about that.

I yield the remaining time I have to a member of the Foreign Relations Committee who is always telling me about the need to tie in the relationship with regard to foreign relations and intelligence. He is the distinguished vice chairman of the Intelligence Committee. We work together in a bipartisan way. We have gone through pretty tough times. We achieved a 17-to-0 vote in regard to the WMD inquiry.

We are not trying to deny information to anybody. We want to share it. We want to learn, especially from people such as Senator BIDEN.

I yield my remaining time to Senator ROCKEFELLER.

Mr. ROCKEFELLER. Mr. President, I thank the distinguished chairman, the Senator from Kansas. I say to the Chair, I was downstairs and I had a wonderful opportunity to spend some time talking with Senator BYRD. We do not have that much opportunity to talk with each other—all of us—and I enjoyed it. Then I began to listen to the conversation. I began to think, I don't know of any committee in the Congress which is more specifically and more logically set up with respect to representation from other committees.

We have the Foreign Relations Committee. We have the Judiciary Committee. We have the Appropriations Committee. We have the Armed Services Committee. We have general members. We are actually going to grow somewhat smaller probably as a result of this intelligence reform. So everybody is represented.

One of the things I have also noticed is that there are a number of Senators—unfortunately not the majority of them, but a number of them—who will come in early in the morning, and they will get with my staff or Senator ROBERTS' staff and they will say: I want to read stuff that I can only read inside these closed facilities. It may be a National Intelligence Estimate. It may be parts of a report. But we operate openly within a very discreet and necessarily secreted space.

It does not occur to me that Foreign Relations is denied access. Everybody, by definition of being a Senator, belongs to the Intelligence Committee by way of information. It would be perfectly honest to say sometimes taking the 3 or 4 hours, as a number of Senators do, they come in and read and sometimes those are much more productive than even some of the hearings that we might have where everybody gets 5-minute questioning rounds, and Senators will take that.

Is it true we have a special relationship with the Armed Services Committee? Yes, it is true because a great deal of the Armed Services budget interacts and relates to what is going on in intelligence. This evening, we passed a very carefully crafted compromise between sequential referral because the relationship between Armed Services and Intelligence is necessarily complex and can have tension or less tension, and we want to try and keep it having less tension.

We have a very small space. Our hearing room is the smallest hearing room I have ever been in, in either the State legislature or the Senate. It seems to me the particular committees that have jurisdiction are represented. They are represented under S. Res. 400. It is very formal, it is very exacting, and just as Senator LUGAR—I am so distressed to see Senator LUGAR leave the committee because he was so good at it, but that was the 8-year limit, which is now hopefully going to disappear.

There is representation, I say very honestly to my friend from Delaware. There is representation. The Senator is always welcome. The Senator has as much right and access—equal and not one-quarter of 1 percent less—to what goes on in terms of the intelligence that is available to us, Chairman ROBERTS or myself and other members of our committee—now 17, soon to be 15—have.

I would just hope that that particular relationship of armed services would be understood. The chairman is on the Armed Services Committee and that is a conflict. It tears at him because he is chairman of one and very senior on the other, but we work it out. We simply work it out because we stay with it.

Again, I say that being on Intelligence is sort of like 100 percent of your time, and I think the quickest way to achieve that is to come in and do the reading. I am thinking of a lot of Senators, whose names are going through my head as I speak, who do that. They come in at 7 in the morning. My staff and the chairman's staff are there. They accommodate them. They say: What do you want to read? And they make it available. They sit down and read and they walk away and they have gotten an enormous amount of information.

So I think the system works pretty well.

Mr. BIDEN. Will the Senator yield for a question?

Mr. ROCKEFELLER. I think the committees are accommodating, and I would hope that the Senator would be understanding of that.

Mr. BIDEN. Will the Senator yield for a question? I will be very brief.

Mr. ROCKEFELLER. Yes.

Mr. BIDEN. I used to have a friend who used to say: You have to know how to know.

The Senator has been on the Intelligence Committee long enough to know that unless one is there and they know what has been said, reading the report is not particularly relevant half the time. My question is this: What is the problem? The committee does not have enough seats? The committee does not have enough chairs if we walk in? What is the deal? What is the concern? That we would release the information more than anyone else on the committee might?

I mean, I am a little confused. Like from that line in the movie: What is the story, Richie? What is the problem? What is the downside? Do we breathe too much of the oxygen in the room? Are we going to take up more time? I do not quite get it.

I understand what the Senator says about how we are covering it. What I do not understand is, no one has said to me what is the downside of Senator LUGAR being able to, when he feels like it, show up, sit there and ask questions just like the Senator asks questions because he has a perspective. I am a little curious about that.

I yield the floor.

Mr. ROCKEFELLER. I would be happy to do my best to respond.

The PRESIDING OFFICER. All time has expired.

Mr. BIDEN. I ask unanimous consent that the chairman have 2 minutes to respond.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROCKEFELLER. I say to the distinguished ranking member of the Foreign Relations Committee, that, in fact, to get into the room space is a problem. We do not have a single place to put a single person except in the back of the room. Now, that embarrasses me to say that, but it is a fact.

Secondly, I differ with the ranking member when he says that reading does not count that much. Reading and knowing the material, whether it is WMD or whether it is predictions, or whatever it is, is the greatest part of it.

The hearings are tremendously important and they are the democratic part of it so everybody has a chance to ask questions, but I know of nothing which precludes the ranking member being able to do that. For example, to staff, it is a matter of just saying, I want to know the answers.

The Senator has the same privileges on Intelligence that this Senator does, I would say through the Chair.

Mr. BIDEN. I do not believe that is accurate.

The PRESIDING OFFICER. All time has expired.

The Senator from Kentucky.

Mr. McCONNELL. Before going to the vote, I will say that I am aware of only two, possibly three, amendments remaining. We are still hoping to push forward. I know Senator CRAIG is here, and I believe he is prepared to offer an amendment. It is still our hope that we can press through to final passage tonight.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 4021.

Mr. McCONNELL. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL), the Senator from Georgia (Mr. CHAMBLISS), the Senator from New Mexico (Mr. DOMENICI), the Senator from New Hampshire (Mr. GREGG), and the Senator from Mississippi (Mr. LOTT) are necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 36, nays 54, as follows:

[Rollcall Vote No. 203 Leg.]

YEAS—36

Akaka
Alexander
Biden
Bingaman
Boxer
Breaux
Cantwell
Carper
Chafee
Clinton
Coleman
Conrad
Corzine
Daschle
Dodd
Dorgan
Durbin
Feingold
Feinstein
Hagel
Harkin
Inouye
Jeffords
Johnson
Kennedy
Kohl
Landrieu
Leahy
Lincoln
Lugar
Nelson (FL)
Nelson (NE)
Pryor
Reed
Sarbanes
Stabenow

NAYS—54

Allard
Allen
Baucus
Bayh
Bennett
Bond
Brownback
Bunning
Burns
Byrd
Cochran
Collins
Cornyn
Craig
Crapo
Dayton
DeWine
Dole
Ensign
Enzi
Fitzgerald
Frist
Graham (SC)
Grassley
Hatch
Hutchison
Inhofe
Kyl
Lautenberg
Levin
McCain
McConnell
Mikulski
Miller
Murkowski
Murray
Nickles
Reid
Roberts
Rockefeller
Santorum
Schumer
Sessions
Shelby
Smith
Snowe
Specter
Stevens
Sununu
Talent
Thomas
Voinovich
Warner
Wyden

NOT VOTING—10

Campbell
Chambliss
Domenici
Edwards
Graham (FL)
Gregg
Hollings
Kerry
Lieberman
Lott

The amendment (No. 4021) was rejected.

Mr. FRIST. Mr. President, there will be no more rollcall votes tonight. We will continue to be here for a while. The plan will be to have a cloture vote on this bill tomorrow morning. We will have to start fairly early tomorrow morning. That vote should occur around 9:15. We will come in at 9 and do a little bit of business and have the first rollcall vote tomorrow around 9 o'clock.

We do appreciate everyone's patience and especially appreciate the bill's managers, Senators MCCONNELL and REID. This has been a very long day. I know people are exhausted We have a lot more work to do. We will continue for a while. Again, no more rollcall votes tonight.

Mr. DASCHLE. Our two managers have done a wonderful job in getting us to this point. It is very important now to know what amendments are left. If they can be submitted tonight, we will work on a finite list and try to get that finite list locked in tonight or first thing tomorrow to work through what amendments remain.

Our two managers are to be congratulated for a job well done today. We will try to finish tomorrow.

Mr. FRIST. For planning purposes, because people are asking how long we will be around, we are really having to take this an hour at a time. The plans remain, as the Democratic leader and I have said all week, we will complete this bill. We are going to deal with

FSC/ETI, the jobs manufacturing bill, and we will complete Homeland Security appropriations before we leave.

We have been fairly clear about the schedule, and everyone has worked very hard, but it means we will stay here until we finish. So we will be here tonight, tomorrow, Saturday, Sunday, or whenever we complete our work. I don't know how long that will take. Everyone knows what the bills are. We have again and again asked for people to focus on the bills. Members have done a very good job. People are very tired.

Rather than break and spend all next week or even the week after that, we have decided to go straight through. We know what the business is. The objectives are as I said. And we will again—it is late tonight—we will start early tomorrow morning, and we will complete business before we leave.

No more rollcall votes tonight.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ENSIGN). Without objection, it is so ordered.

AMENDMENT NO. 4040 TO AMENDMENT NO. 3981

Mr. BINGAMAN. On behalf of Senator DOMENICI and myself, I send an amendment to the desk. I understand it has been agreed to by both sides.

The PRESIDING OFFICER. Without objection, the pending amendments are set aside.

The clerk will report.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN], for Mr. DOMENICI, for himself and Mr. BINGAMAN, proposes an amendment numbered 4040 to amendment No. 3981.

Mr. BINGAMAN. Mr. President, I ask unanimous consent that further reading be dispensed with.

The amendment is as follows:

(Purpose: To transfer jurisdiction over organization and management of United States nuclear export policy to the Committee on Energy and Natural Resources)

Section 101(b) is amended by—

(1) striking paragraph (10); and

(2) adding at the end the following:

"Matters relating to organization and management of United States nuclear export policy (except programs in the Department of Homeland Security) shall be referred to the Committee on Energy and Natural Resources.".

Mr. BINGAMAN. I urge my colleagues to support this amendment.

Mr. CRAIG. We support the amendment. It is an excellent, necessary amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 4040) was agreed to.

Mr. BINGAMAN. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SARBANES. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

VITIATION OF VOTE

Mr. REID. Mr. President, I am sure that everyone in good faith offered the amendment, but the action that was taken by the Senate has to be rescinded. The managers of the bill were not aware of what was going on. Anyone interested in this had no knowledge of what was going on. It is simply not the right thing to do.

I ask unanimous consent that the action taken by the Senate on amendment No. 4040 be rescinded.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. Reserving the right to object.

The PRESIDING OFFICER. Is there objection?

Mr. BINGAMAN. Mr. President, I certainly have no objection. I thought this had been agreed to by both managers.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. McCONNELL. Mr. President, both managers of the bill were engaged in conversation here. There was a misunderstanding about whether the Domenici amendment had been approved. Senator REID correctly asked that the vote be vitiated.

The PRESIDING OFFICER (Mr. BENNETT). Is there objection to the request?

Without objection, it is so ordered.

The Senator from Iowa.

Mr. HARKIN. Mr. President, I understand there is no quorum call in progress.

The PRESIDING OFFICER. The Senator is correct.

OVERTIME PAY

Mr. HARKIN. Mr. President, America is stuck in a jobless recovery. This jobless recovery is not an accident. It is in large measure the result of failed economic policies, policies that the Bush administration stubbornly clings to. Despite the loss of millions of private sector jobs over the last 3 and a half years, this administration has embraced offshore outsourcing. It has been against extending unemployment insurance for the long-term unemployed. It is adamant against raising the minimum wage. And it has been determined to eliminate time-and-a-half overtime pay for millions of American workers.

It is time, I believe, for us to chart a new course. It is time for Washington to listen to ordinary working Americans. They are telling us loudly and clearly that their No. 1 issue is economic security. They are telling us that they fear losing their jobs, their health care, and their retirement.

Now they also fear losing their right to time-and-a-half compensation for overtime. They fear, with good reason, that under the Department of Labor's new rules, they will be obliged to work a 50- or 60-hour week with zero additional compensation. For millions of working Americans this is unacceptable, and it is the last straw.

Accordingly, we have repeatedly offered an amendment to stop the Bush administration's new rules to eliminate overtime pay protections for millions of American workers. That amendment was voted on numerous times in the Senate and passed both by strong bipartisan majorities. It also has the overwhelming support of the American public. Yet despite this clear expression of the will of Congress and the public, my overtime amendment was stripped earlier in the year from the Omnibus appropriations bill in conference and again this week in the conference on the FSC/ETI bill.

But my overtime amendment will be back, and it will be back by popular demand. It amazes me, wherever I travel in the United States, people come up to me to talk about this overtime issue. They know what the administration is doing. They are angry. They want action to stop these new overtime rules.

Frankly, at this point, the administration has zero credibility on this issue. The Department of Labor claims that it simply wants to give employers a clearer guide as to who is eligible for overtime pay. But ordinary Americans are not buying this happy talk. They know the administration has put into effect a radical rewrite of the Nation's overtime rules. They know these new rules strip millions of workers from the right to fair compensation.

The American people are right. Plain and simple, the new overtime rules are a frontal attack on the 40-hour workweek, proposed initially by the administration without a single public hearing.

The new rules could effectively end overtime pay in dozens of occupations, including nurses, police officers, clerical workers, air traffic controllers, social workers, even journalists. Indeed, the new criteria for excluding employees from overtime are deliberately vague and elastic, so as to stretch across vast swaths of the workforce.

Listen to Mary Schlichte, a nurse in Cedar Rapids, IA. Here is what she said:

> Many nurses just like me work long hours in a field with very stressful working conditions and little compensation. . . . Our patients rely on us, and our families depend on

> us. We need overtime pay so we can stay in the profession we love and still make ends meet.

Ms. Schlichte told me about her nurse colleagues in Cedar Rapids who also rely on overtime pay. One nurse is married to a struggling farmer, and she relies on overtime pay to cover their insurance premiums. They already fear losing their farm, she says, and now they fear losing their health care, too.

Dixie Harms is a longtime trainer of nurses in Des Moines. Ms. Harms told me:

> If overtime is changed for hospital nurses, we will see a mass exodus of registered nurses from the hospital setting because they will get fed up and refuse to "volunteer" so many hours doing what they love doing.

Three years ago, after the terrible September 11 attacks, many here in Washington spoke eloquently about the heroism of our firefighters, police officers, first responders, and public safety workers. Ever since, America's first responders have worked long hours to protect us from terrorist threats. But the administration even wanted to deny these workers time-and-a-half compensation for those longer hours. This is wrong.

Since passage of the Fair Labor Standards Act of 1938, overtime rights and the 40-hour workweek have been sacrosanct, respected by Presidents of both parties. But alas, it is not sacred to this administration. For 65 years, the 40-hour workweek has allowed workers to spend time with their families instead of toiling past dark and on weekends. At a time when family dinner is becoming an oxymoron, this standard is more important than ever.

These radical revisions are antiworker and antifamily. And given the fact that we are stuck in a jobless recovery, the timing of this attack on overtime could not be worse. It is yet another instance of this administration's economic malpractice. Bear in mind that time-and-a-half pay accounts for some 25 percent of the total income of Americans who work overtime. With average U.S. incomes declining, the proposed changes would slash the paychecks of millions of white-collar workers.

Moreover, the new rules are all but guaranteed to hurt job creation in the United States. Isn't this just basic logic? If employers can more easily deny overtime pay, they will push their current employees to work longer hours without compensation. With millions of Americans currently out of work, why would we give employers yet another disincentive to hire new workers?

It is bad enough to deny 6 million workers their overtime rights, but what is striking is the mean-spiritedness of the Department of Labor. The Department offered employers what amounts to a cheat sheet. It offered employers helpful tips on how to avoid paying overtime to the lowest paid workers, the same workers who are supposedly helped by the new overtime rules.

For example, the Department suggested cutting a worker's hourly wage so that any new overtime payments will not result in a net gain to the employee. It also recommended raising a worker's salary slightly to meet the threshold at which eligibility for time-and-a-half pay ends. This is just disgraceful. But it gets worse. The administration's scheme specifically targeted veterans, categorizing many as professionals even if they do not hold a professional degree or receive the same salary as degreed professionals.

Think about it: The administration opted to deny overtime pay to first responders, police officers, and firefighters who put their lives on the line protecting us here at home. It also aimed to take away overtime from veterans who put their lives on the line overseas. This may seem outrageous to most Americans, but some major employers are very pleased.

Here is a portion of the Boeing Corporation's comments on the Department's rules:

> Many of [Boeing's] most skilled technical workers received a significant portion of their knowledge and training outside the university classroom, typically any branch of the military service . . . Boeing thus supports the department's focus on the knowledge used by the employee performing her job rather than the source of the knowledge or skill . . .

The National Association of Manufacturers made similar comments. Let me quote:

> NAM applauds the department for including this alternative means of establishing that an employee has the knowledge required for the exemption to apply. This addition is entirely consistent with the realities of the current workplace and the purpose of the Fair Labor Standards Act. For example, many people who come out of the military have significant knowledge based on work experience but have not had "a prolonged course of specialized intellectual instruction."

Understandably, veterans were deeply disturbed by the administration's proposed new rules. For example, Vietnam Veterans of America wrote to the Secretary of Labor and said:

> [Veterans] who have received military training equivalent to a specialized degree could now be classified as a professional employee and lose their right to overtime. This will be true even if the veterans in question do not earn the higher pay afforded to those with an advanced degree or with supervisory/management positions.

The organization further complained that this legitimizes the already extensive problems of discrimination against veterans.

And this is from the national president of the Vietnam Veterans of America, Thomas Corey:

> Therefore, we would like to make you aware that the proposed modification of the rules would give employers the ability to prohibit veterans from receiving overtime pay based on the training they received in the military . . . The proposed rule changes will make these veterans and their families unfairly economically vulnerable in comparison with their non-veteran peers. We hope you will agree that the men and women who have served our Nation so well in military service should not be penalized for having served.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. VOINOVICH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. VOINOVICH. Mr. President, I rise to express my sadness with the actions of the Senate these last 2 days and express why I will oppose the resolution to reorganize the Senate. I will vote against the resolution because it was supposed to improve the manner in which this Chamber overseas the intelligence and homeland security issues. As of now, it will do no such thing. In fact, it is a step backward because we have claimed to have taken action when in reality little has changed.

Make no mistake, the status quo rules the day and underscores the observation that the Senate has failed to change the way it conducts oversight of intelligence and homeland security issues as recommended by the 9/11 Commission.

First, the 9/11 Commission recommended we establish a single committee, each House of Congress, combining authorizing and appropriating authorities. However, the Senate overwhelmingly rejected the amendment offered by the Senator from Arizona, which I supported, that would have given the Select Committee on Intelligence appropriating power that would substantially reform the manner in which this body conducts oversight of intelligence. The actions of the Senate fly in the face of the 9/11 Commission recommendations.

Without this power, I anticipate that the problems that have been described by Senator McCAIN and Senator ROBERTS during this debate will continue. In many instances, the executive branch agencies will pay their authorizing committees lip service and go behind their backs to the Appropriations Committee to get what they want. All you have to do is talk to members of the Intelligence Committee and you will understand why it is so important that they have the appropriations power.

If we are going to be asking people to serve on a Select Intelligence Committee and we don't give them the appropriations, then why serve on the committee, because it will be more of the same that we have had around here for the last several years?

I have seen it time and again in my first term. We do a poor job of oversight because authorizing committees lack the power of the purse. The defeat of the McCain amendment will only continue to make oversight of intelligence more difficult than necessary.

Second, the Senate took up this resolution to fulfill the recommendation of the 9/11 Commission that there should be a single authorizing committee in each House of Congress for the Department of Homeland Security, just as we have for the Department of Defense, Department of State, and Department of Justice.

Again, what we did flies in the face of the recommendation. We have seen amendment after amendment offered and accepted by this body, which guts the authorizing jurisdiction of the committee on homeland security and governmental affairs. Instead of having a single authorizing committee, the Department of Homeland Security will have at least four. Many of my colleagues took the floor and insisted the exceptions they were carving out of the jurisdiction of the homeland security committee had nothing to do with turf. Baloney. It had everything to do with turf.

At a time when our national security is in jeopardy, the American people should be upset and concerned with what we have seen on the floor of the Senate when we should be concerned about our homeland security. All of us in the Senate understand that we are in jeopardy from what we are doing in our respective offices to make sure our people are being taken care of here.

As a result of the turn of events, it is a farce to rename the Committee on Governmental Affairs the committee on homeland security and governmental affairs. It is no such thing. It has jurisdiction over a small percentage of the employees of the Department and less than 40 percent of the budget.

Let me repeat that we didn't even give the proposed homeland security committee the jurisdiction over either the majority of the budget or the personnel of the Department.

When we return in November—maybe in January—I will seek to offer an amendment to restore the name of the Committee on Governmental Affairs. If we are not going to create a homeland security committee, let's not pretend that we are. Let's not pretend. Things have not really changed at all, in my opinion. I hope that what the Senate has done is reported across America, so that our constituents can see what we have done and tell us what a lousy job we did. Then maybe we can come back during the lameduck session in November and pass a reorganizing resolution that actually makes a difference and is guided solely by what is in the best interest of our country and not the best interest of each individual Senator.

A few years ago, the Committee on Governmental Affairs held a hearing at which the Comptroller General testified on the preparedness of the executive branch to meet the 21st century challenges facing America. I am reminded of that hearing and I ask, Is the Senate prepared to meet the challenges of the 21st century? Are we capable of making the changes necessary to meet both the great dangers and wonderful opportunities we have before us? These last few days would indicate that we are not.

Shame on the Senate, Mr. President. I yield the floor.

Ms. MIKULSKI. Mr. President, I support the proposed reform to strengthen our oversight of the intelligence community.

We just passed sweeping, historic legislation to reform America's entire intelligence community. It was a very good bill that will greatly strengthen our ability to develop good intelligence and fight terrorism.

The National Intelligence Reform Act fulfills what I consider the priorities for intelligence reform, including many reforms I have been fighting for: A strong National Intelligence Director to lead and manage the intelligence community. A National Counter Terrorism Center so we have unity of effort to combat terrorism. Information sharing so analysts can connect the dots. An Inspector General for the entire intelligence community. Strong alternative analysis or red-teaming. An ombudsman so our intelligence professionals can speak truth to power. And protection for civil liberties and privacy.

But reform of our intelligence community is only half the job. We must also reform our oversight of the intelligence community. As the 9/11 Commissioners said, reforming intelligence without reforming oversight is like one hand clapping.

The 9/11 Commission report says that, "Of all our recommendations, strengthening congressional oversight may be among the most difficult and important." Our leaders gave this "most difficult and important" task to two of our most esteemed colleagues: Senator REID and Senator McCONNELL. I thank them for their leadership. And thank the entire bipartisan working group. I thank them for their creativity, cooperation and consideration to develop the substance of the proposal now before the Senate.

I support all three key recommendations of the bipartisan working group: to create an appropriations subcommittee for Intelligence; to strengthen the Select Committee on Intelligence; and to create a Homeland Security Committee. Let me talk about each of these recommendations.

The bipartisan working group proposal, and the rule we are now considering, will create an appropriations subcommittee for Intelligence. I believe this is one of the most important reforms we can make to strengthen Congressional oversight of the intelligence budget. That's why I wrote to Senator McCONNELL and Senator REID urging them to do this.

Some of my colleagues point out that the 9/11 Commission recommended creating a combined authorization and appropriations committee for intelligence. But that was just one option mentioned in the 9/11 Commission Report.

The 9/11 Commission Report also included two provisions supporting an Intelligence Appropriations subcommittee:

The 9/11 Commission, on page 410 of its report, criticized the intelligence appropriations process, noting that "the final budget review is handled in the Defense Subcommittee of the Appropriations Committees. Those committees have no subcommittees just for intelligence, and only a few members and staff review the requests."

The 9/11 Commission included the following recommendation on page 416 of its report: "Congress should pass a separate appropriations act for intelligence. . . ."

Governor Tom Kean, Chairman of the 9/11 Commission, supports creating an Intelligence Appropriations subcommittee. In the September 7, 2004 Intelligence Committee hearing, I asked him directly what he thought of my idea of an Intelligence Appropriations subcommittee. Chairman Kean said, "I think that would be very much in my mind within the spirit of our recommendations."

Creating an Intelligence Appropriations subcommittee is the best way to strengthen oversight of the intelligence budget. Appropriations subcommittees conduct rigorous oversight of the agencies they fund. Senator BOND and I certainly do for the agencies funded by our VA/HUD bill. An Intelligence subcommittee will make the Appropriations Committee's oversight stronger: intelligence will have the attention of a full subcommittee, and that subcommittee will have sufficient staff for real oversight of intelligence funding. I hope my colleagues will join me in strong support of the proposal to create an Intelligence Appropriations subcommittee.

The working group also recommends strengthening the existing Select Committee on Intelligence. I am proud to serve on the Intelligence Committee. I take that responsibility very seriously. Senator DASCHLE appointed me to the Committee in 2001, before the September 11th attacks. I have always used my role to push for reform and modernization so that we have the best possible intelligence for our decisionmakers and our troops.

The bipartisan working group proposal maintains many of the good things about the way the Intelligence Committee is organized: Including members of the Armed Services, Appropriations, Foreign Relations and Judiciary Committees. Ensuring the majority has only a 1-vote advantage. Having subpoena authority. Having a core nonpartisan professional staff.

The rule would also strengthen the committee: Elevating it to an "A" Committee. Creating at least one subcommittee to strengthen oversight. Giving the committee a stronger role in reviewing civilian intelligence nominees. Creating designated staff positions for each member of the committee.

So I really think this resolution will help the Intelligence Committee to be more effective.

The third reform proposed by the bipartisan working group is to create a Homeland Security Committee. We know that our colleagues on the Government Affairs Committee did a good job with the creation of the Department of Homeland Security, so it's only logical that the current Governmental Affairs Committee would take on responsibility for homeland security. I believe it's important to make sure that other functions within the jurisdiction of Governmental Affairs do not lose out in this reform. I am thinking in particular of the Committee's work on government management and the Federal workforce, to ensure that we support our federal employees who serve the American people in so many ways.

Having an authorizing committee for homeland security should be a real help in the unfinished business of making the Department of Homeland Security an effective agency, to work with our States, counties, cities and towns, as well as other Federal agencies, to protect the American people.

The three reforms proposed by the McConnell-Reid working group, and codified as changes to the Senate Rules in this resolution, meet the challenge of the 9/11 Commission and our obligation to the American people to strengthen congressional oversight. That's why I intend to support the Resolution, and urge my colleagues to support it as well.

Mr. BAUCUS. Mr. President, I am very pleased that the Senate agreed, by unanimous consent, to an amendment that Senator GRASSLEY and I offered to S. Res. 445, the Senate intelligence reform resolution. Our amendment will preserve the jurisdiction of the Finance Committee over the commercial operations of what has historically been known as the United States Customs Service.

The United States Customs Service is one of the oldest agencies in the U.S. Government. It was created in 1789 to collect tariffs which, at that time, were the principal source of revenue funding the Federal Government.

Until 1816, the Senate had no standing committees. Senators established ad-hoc committees to consider specific bills. In his 1815 message to Congress, President Madison recommended a series of controversial economic measures, including tariff revisions and the creation of a second national bank. The Senate responded by creating the Select Committee on Finance and Uniform National Currency.

In his 1816 message, President Madison recommended a further series of economic measures. This time, the Senate responded by creating the Committee on Finance as a standing committee on December 10, 1816. Under the leadership of Chairman George Campbell, Democrat of Tennessee, the committee's very first task was to consider the Tariff Act of 1816. Other original members of the Finance Committee included Senators Chace of Vermont, Bibb of Georgia, King of New York, and Mason of New Hampshire.

Over the ensuing 188 years, the Finance Committee's jurisdiction has come to include not just tariff legislation, but all legislation related to international trade. Up until 1930, trade policy had been set primarily through Congressional establishment of tariffs, under the jurisdiction of the Finance Committee. When, however, the Smoot-Hawley Tariff of 1930 became associated with the Depression, Congress shifted its approach. As the new Roosevelt administration considered proposals to reduce tariffs, Secretary of State Cordell Hull suggested that, instead of reducing tariffs unilaterally, Congress authorize the President to negotiate reciprocal reductions.

When, in 1934, President Roosevelt endorsed this approach and sent it to Congress, the bill was referred to the Finance Committee. The bill was enacted into law as the Trade Act of 1934, establishing the basic model for trade policy ever since. As a result, the committee acquired jurisdiction not only over tariffs, but over a broad range of issues implicated by U.S. trade policy.

Throughout those 188 years, the Finance Committee has retained jurisdiction over the Customs Service. And, like that of the Committee, the mission of Customs has expanded to cover a range of trade issues.

Today, Customs continues to serve a revenue collection function. This year, it will collect nearly $25 billion in import duties, making it the second largest source of government revenue after the income tax.

In today's globalized world, however, Customs has also come to serve a vital role in facilitating trade and, through trade, the nation's economic well-being. For example, in fiscal year 2004, Customs will process approximately 28 million entry summaries, covering imports worth $1.36 trillion. That is more than 56,000 separate merchandise entries every day.

In fiscal year 2003, Customs made 6,500 seizures of goods, worth nearly $1 billion, that were imported in violation of the intellectual property rights of U.S. businesses and individuals.

Customs enforces the U.S. trade remedy laws, collecting $1.5 billion in antidumping and countervailing duties in fiscal year 2004.

In addition, Customs enforces country-of-origin labeling rules, blocks trade in endangered species and conflict diamonds, collects trade data widely relied upon in the government and private sector, fights child pornography, and issues hundreds of classification and valuation rulings every year. Thousands of American businesses and jobs depend on Customs to process imported inputs efficiently, so they can reduce production costs through just-in-time inventory systems.

Over time, Customs has also come to have a national security mission. Customs agents are often the first line of defense at the border. For example, it was a Customs agent who apprehended the so-called "millennium bomber" crossing the border from Canada into Washington State in December 1999.

Until recently, Customs was housed within the Department of the Treasury. Treasury was well-suited to oversee both the revenue collection and commercial facilitation functions of Customs, and to ensure that those functions were carried out in a manner calculated to advance the economic growth and well-being of the United States.

After September 11, 2001, however, things changed. We learned that day how important it is to ensure the strongest possible coordination among the many Federal Agencies charged with our domestic security.

In the Homeland Security Act of 2002, Congress moved the Customs Service from the umbrella of the Treasury Department into the new Department of Homeland Security.

The Customs Service, as such, no longer exists as a single entity. Rather, its many functions were divided among two parts of the Border and Transportation Security Directorate of the Department of Homeland Security—Customs and Border Protection and Immigration and Customs Enforcement.

When Congress created the Department of Homeland Security, there was widespread concern in the business community that moving Customs from Treasury—an agency whose principal mission is the health of the U.S. economy to a new agency principally concerned with national security would lead to a shift in Customs' focus away from trade facilitation—with adverse consequences for those businesses and for the economy as a whole.

For some agencies, this problem was solved by splitting the agency apart and moving to DHS only the people directly working on security issues. For example, this is what happened at APHIS. That solution did not work for Customs, because many Customs employees perform both commercial and security functions as part of their jobs.

Instead, Congress made Customs serve two masters. The employees of Customs were physically moved into the Department of Homeland Security. But the commercial functions of Customs remain under the policy control of the Treasury Department. Section 412 of the Homeland Security Act of 2002 expressly provides that "authority related to Customs revenue functions" that was previously vested in the Secretary of the Treasury "shall not be transferred" to the Secretary of Homeland Security.

There was some flexibility built into the law. That way, over time, the Secretary of Treasury could delegate some responsibilities to the Secretary of Homeland Security if experience demonstrated that a particular Customs function was more closely related to security than to trade facilitation.

As a practical matter, the result has been shared authority over Customs by Treasury and Homeland Security. Similarly, in the Senate, the result has been shared oversight by the Finance Committee and the Committee on Governmental Affairs. One committee focuses on homeland security issues and the other on commercial issues.

In response to the recommendations of the 9/11 Commission, the Senate is now engaged in a debate over how to reorganize our committee structure to provide stronger, more coherent oversight over issues related to homeland security.

In my view, the recommendations of the 9/11 Commission do not justify any changes in committee oversight jurisdiction of Customs. The Commission has recommended centralizing oversight over homeland security issues in one committee in each House. The clear purpose of that recommendation is to centralize oversight over homeland security functions, not over other functions that happen to be performed by individuals employed by the Department of Homeland Security.

The Grassley-Baucus amendment to S. Res. 445 ensures that the Finance Committee will retain the jurisdiction over the commercial facilitation functions of the Customs Service that the committee has held for nearly 200 years.

Everyone understands that in the post-9/11 world, the United States must vigilantly protect our borders. But while we do so, we must ensure that we do not overburden commerce with other Nations. We must strike a delicate balance between protecting the Nation's borders and promoting the nation's economic health. If we lose that balance, American businesses will suffer. So will our ports, because shippers will find it faster and less expensive to send their cargo through Canadian or Mexican ports.

I believe that granting jurisdiction over the business facilitation functions of the Customs Service to the Committee on Homeland Security and Government Affairs would inevitably lead to commercial considerations being discounted heavily in the name of security. That would hurt the U.S. economy in the long run.

On the other hand, retaining jurisdiction over the revenue and commercial functions of Customs in the Finance Committee in no way detracts from the ability of the new Homeland Security and Government Affairs Committee to oversee those functions of Customs that pertain to border security. Separating oversight of these two functions will guarantee that commercial concerns receive a full and fair airing in any debate involving both commerce and security.

So what are the functions over which the Finance Committee would retain jurisdiction under this amendment? Clearly, all the "revenue functions" defined in section 415 of the Homeland Security Act are included. These are generally functions that have virtually no security aspects to them—such as collecting tariffs, regulating country of origin labeling, or enforcing antidumping duty orders.

The amendment also preserves Finance Committee jurisdiction over "any commercial function" of CBP or ICE, "including matters related to trade facilitation and trade regulation."

For example, the Finance Committee would retain jurisdiction over all commercial aspects of the implementation of Customs' new computer system, the Automated Commercial Environment or ACE. ACE was conceived many years ago long before 9/11—as a way to create a paperless environment that reduces paperwork and delays for goods clearing Customs and enhances the efficiency of American businesses that depend on those goods.

ACE has security applications. It can be used to flag entries with suspicious documentation. And the Homeland Security and Government Affairs Committee can certainly look into those issues. But it is not, and never has been, primarily a security-focused project.

A second example is the issue of container security. Customs is engaged in a program of public-private cooperation with shippers to try to balance security concerns with incoming cargo containers and the economic concerns of shippers. Under this amendment, the Finance Committee would retain jurisdiction over the trade facilitation aspects of Customs' inspection and clearance of cargo containers.

Trade is critical to the health of the America economy. Exports alone accounted for 25 percent of U.S. economic growth between 1990 and 2000. Exports support an estimated 12 million jobs. Imports allow businesses and consumers more choice of goods and inputs and foster America's competitiveness in the global economy.

For these reasons, Congress has a responsibility to ensure that Customs continues to serve the needs of the business and trade community. That can only be achieved by safeguarding a balance between Customs' trade facilitation and homeland security functions. The Grassley-Baucus amendment promotes that balance.

AMENDMENT NO. 3995, WITHDRAWN

Mr. REID. Mr. President, earlier today there was a long deliberation and finally adoption of an amendment that had been earlier filed by Senator BAYH. It is my understanding that another amendment superseded that. That amendment is pending. It is No. 3995.

Mr. President, I ask unanimous consent that the amendment be withdrawn.

The PRESIDING OFFICER. Is there objection?

Without objection, the amendment is withdrawn.

Mr. McCONNELL. Mr. President, I ask unanimous consent that, other than conforming and technical managers amendments, the only remaining first-degree amendments be the following, which are filed at the desk: COLLINS, NICKLES, HUTCHISON, FRIST, BINGAMAN-DOMENICI, and ROCKEFELLER.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCONNELL. Mr. President, I further ask unanimous consent that it be in order to file timely second-degree amendments up until 9:15 tomorrow morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, the unanimous consent agreement that was adopted by the Senate a few minutes ago, we want to make sure the RECORD is clear that when we talk about COLLINS, NICKLES, HUTCHISON, FRIST, BINGAMAN, and ROCKEFELLER, we are talking about one amendment per member, and I want the RECORD to reflect that.

The PRESIDING OFFICER. The RECORD will so reflect.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. McCONNELL. Mr. President, I ask unanimous consent there now be a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

JUSTICE THROUGH DNA TECHNOLOGY

Mr. HATCH. Mr. President, I would like to discuss H.R. 5107, the Justice for All Act that was just passed by the House, by an overwhelming bipartisan vote of 393 to 14. The bill is the result of the hard work and dedication of many on both sides of the aisle.

In particular, I would like to commend Chairman of the House Judiciary Committee SENSENBRENNER and Ranking Democrat, Representative DELAHUNT for their outstanding leadership in shepherding this groundbreaking crime bill that will allow us to further unleash the evidentiary power of DNA. It will provide law enforcement the ability to find and punish the guilty and give use the comfort of certainty in criminal prosecutions. Moreover, the House attached Senator KYL'S and Senator FEINSTEIN'S critical Crime Victims Act that ensures victims' rights are protected in criminal prosecutions. That is very important.

This House passed bill is the result of months of intense negotiations and addresses the concerns raised regarding title III of the former DNA bill, including the major concerns, I believe, of Senators KYL, SESSIONS, and CORNYN.

And let me say, the overwhelming support for this bill in the House could not have been achieved without the hard work and dedication of the Department of Justice. I would like to specifically thank Attorney General Ashcroft, Assistant Attorney General William Moschella, and Deputy Assistant Attorney General Sean McLaughlin for bringing the parties together to create a truly bipartisan bill that meets the interests of all parties. Without their constructive input we would have never been able to get to where we are. I personally want to thank them for their support.

But our work is not done. I call upon the Senate to act expeditiously to pass this anticrime bill so we can present it to the President for his signature.

So we all know, there has been a tremendous amount of work done in the 22-page memorandum by Mr. Moschella and the Justice Department. I think we have made a monumental effort to address every one of those concerns. We haven't been able to address every case exactly the way the Justice Department requested, but there has been a good-faith effort on the part of the distinguished Senator from Vermont and Congressman DELAHUNT to be able to bring this Justice for All Act through to completion.

When it passed 393 to 14 yesterday in the House, I think that sent a message to everybody that not only would we get this DNA bill, but we would also get the victims' rights bill for which Senators KYL and FEINSTEIN have worked so long and hard.

Rather than take the time of my distinguished friend from Arizona and any further time from the bill on the floor, I want to compliment the Justice Department.

I hope we can get the last few things resolved so that this bill can pass, and that means working it out with a few of our colleagues in the Senate. I believe when they look at this bill and read it, they will realize almost every one of those concerns have been addressed in good faith. Senator LEAHY and I have worked hand in hand trying to make sure those matters were addressed.

Mr. President, I hope we can get this bill up and out so we can do what should be done for 400,000 rape kits—some of which are 20 years old—to help not only to discover those who are guilty but to put those who are on the streets, who have raped women, in jail where they belong. This bill will do exactly that. It is a very important piece of legislation.

Having said that, however, I want to make it clear that this administration has done a great deal. Thus far, it has committed to doing this, and it is the first administration that has done it. We have known about these rape kits for years. This is the final touch in the bill to help protect women in this country. It will be very important for us to pass it today. I hope we can get it done.

We are working very diligently to try to satisfy the concerns of all of our colleagues. Thus far, we are down to just one major concern, and hopefully when they read the bill they will realize we have addressed that as well and will agree to satisfy this matter.

I thank my colleague from Arizona and my colleague from Kentucky.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, a year ago this month, I stood with a bipartisan group of Senators and Representatives to announce the introduction of the Advancing Justice Through DNA Technology Act of 2003. This is landmark legislation. It provides law enforcement with the training and equipment required to effectively and accurately fight crime in the 21st century. It enacts the President's DNA initiative, as the Chair probably knows, authorizing more than $1 billion over the next 5 years to eliminate the backlog crisis in the Nation's crime labs and fund other DNA-related programs. It also includes the Innocence Protection Act, a death penalty reform effort I launched more than 4 years ago.

We introduced our bill on October 1, 2003. One month later, the House passed it with overwhelming support, 357 to 57. Among those supporting the bill were the chairman of the House Judiciary Committee, Congressman JAMES SENSENBRENNER, and virtually the entire Republican leadership, including Majority Leader DELAY. Clearly there was a broad consensus for action. The House vote marked a major breakthrough in finding solutions to these serious flaws in our criminal justice system.

Unfortunately, while the other body acted, we did not. Despite Chairman HATCH'S sponsorship of the bill and strong support of it, the Senate Judiciary Committee did not begin work on the bill until September, almost a year after the House had passed it. At that point we were slowed by resistance from some Republican members of the panel, but after many hours we succeeded in working through the 20-plus amendments that were offered. All of them were rejected. Then the bill was approved by a strong bipartisan majority.

That was 3 weeks ago. Since then, this critical legislation has been blocked by the same Senators who tried blocking it in committee, and unfortunately they have been buttressed by opposition from President Bush and Attorney General John Ashcroft.

Undeterred by the fact that the Senate has not moved on this very important legislation, the House acted again. Yesterday it voted on the Justice For All Act of 2004, H.R. 5107. This is a criminal justice package that bundles the Senate DNA bill with another bill, already passed in the Senate, that would increase protection for victims of Federal crimes. Yesterday's House margin, 393 to 14, was even larger than it was a year ago. In these times you rarely see such bipartisan support—393 to 14. I believe it sends a loud message to us here in this body of: What are we waiting for? Let's pass this bill.

I want to take a moment to commend the Republican chairman of the House Judiciary Committee, JIM SENSENBRENNER, who spearheaded this effort in the House. The chairman deserves high praise for his leadership. We could never have come as far as we have without his steadfast commitment, and the hard work of his impressive staff.

I also thank my long-term colleagues in this effort, Representative BILL DELAHUNT from Massachusetts—I was honored to serve overlapping time as prosecutors, me in Vermont, Mr. DELAHUNT in Massachusetts—and Representative RAY LAHOOD, Republican of Illinois. They worked tirelessly over many years to pass the Innocence Protection Act. They deserve much of the credit for building the strong bipartisan support for the bill in the House.

The House has spoken, not once but twice. I believe Senate action is long overdue. It should not be threatened by a few holdouts in the Senate, even if they are emboldened by continuing help from the Department of Justice. I remind everybody, none of us here works for the administration—I don't care whether it is a Republican administration or a Democratic administration. We are elected as individual Senators, independent of the executive branch or the judicial branch.

The Bush administration's role in the effort to kill this bill is significant and it is a matter of public record. On April 28 of this year we received a 22-page letter from Assistant Attorney General William Moschella, presenting "the views of the Department of Justice and the administration" regarding the bill the House of Representatives had earlier passed by a vote of 357 to 67. They expressed the Administration's strong opposition to virtually every aspect of the bill.

I have rarely seen a letter—in fact, I cannot remember a time I have seen a letter from an executive branch agency so hostile to a bipartisan legislative effort that had already passed one House of Congress. I was shocked the Department would write such a scathing letter about a bill that had been carefully negotiated by Chairman SENSENBRENNER and Chairman HATCH, working very closely together. In light of the support of the congressional leadership, I thought the President would have supported the bill and worked to make the capital punishment system more fair. Instead, his Administration chose to stonewall the reforms and defend the injustices in current law.

The new House bill contains additional concessions to the Department of Justice and to the handful of Republican opponents in the Senate. But despite these concessions, despite the urgent need for reform, the Bush administration has obstinately refused to support the bill or even to withdraw its formal opposition to the bill. In particular, the Department has pressed its unreasonable demand for an arbitrary 3-year time limit on obtaining a DNA test after conviction.

If the White House kills this bill that has passed so overwhelmingly in the House, it will be a travesty. It has, after all, been supported by key members of the Republican leadership in both the House and the Senate; it has passed by an overwhelming margin in the House. To put this off another year may seem fine to the President and the Attorney General, but another year is a long time if you are a crime victim and you are hoping they may find the person who committed the crime, or if you are wrongly accused and you are waiting on death row for the chance to prove your innocence. Another year will pile more untested rape kits on to the thousands already piled up in labs across the country.

This bill is a rare example of bipartisan cooperation for a good cause, and instead of helping, the White House has actively hindered. They have been unwilling to lead. They have been unwilling to follow. Now, when all it would take is for them to get out of the way, they are even unwilling to stand aside.

I think it is time for them to understand what is happening here, and to become part of the solution instead of part of the problem. An overwhelming bipartisan coalition in both the House and the Senate supports this bill because it will mean more fair and effective criminal justice in this country.

If Congress fails to enact this much-needed law this year, I do not lay the blame on leadership in the House or the Senate, because the leadership in both parties has supported it, just as Senator HATCH and Chairman SENSENBRENNER have. If the Congress fails to enact this law this year, then I lay the responsibility directly at the feet of President Bush and Attorney General Ashcroft. They deserve to be held accountable, and will be if their stubborn opposition to the bill causes it to die. The leaders of their own party support it, as the leaders of my party do. They ought to stand aside.

For all those victims' groups, all those church groups, all the others who have supported this bill—as you know, if it doesn't go forward, it is not the fault of Congress. You should look down toward the other end of Pennsylvania Avenue.

Mr. President, I ask unanimous consent to print a longer statement in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD as follows:

JUSTICE FOR ALL ACT OF 2004

October 7, 2004

A year ago this month, I stood with a bipartisan group of Senators and Representatives to announce the introduction of the Advancing Justice Through DNA Technology Act of 2003. This landmark legislation provides law enforcement with the training and equipment required to effectively, and accurately, fight crime in the 21st Century. It enacts the President's DNA Initiative, which authorizes more than $1 billion over the next five years to eliminate the backlog crisis in the Nation's crime labs, and to fund other DNA-related programs. It also includes the Innocence Protection Act, a death penalty reform effort I launched more than four years ago.

DNA is the miracle forensic tool of our lifetimes. It has the power to convict the guilty and to exonerate the innocent. And as DNA testing has become more and more available, it also has opened a window on the flaws of the death penalty process.

Hearing after hearing before the House and Senate Judiciary Committees has shown beyond any doubt that the death penalty system is broken. These mistakes in our system of justice carry a high personal and social price. They undermine the public's confidence in our judicial system, they produce unbearable anguish for innocent people and their families and for the victims of these crimes, and they compromise public safety because for every wrongly convicted person, there is a real criminal who may still be roaming the streets. Indeed, in dozens of cases in which DNA testing has exonerated a wrongfully convicted person, the same test has identified the real perpetrator.

Our bill would put this powerful tool into greater use in our police departments and our courtrooms. It also takes a modest step toward addressing one of the most frequent causes of wrongful convictions in capital cases—the lack of adequate legal counsel.

BROAD BIPARTISAN SUPPORT IN CONGRESS AND AROUND COUNTRY

We introduced our bill on October 1, 2003. One month later, the House passed it with overwhelming support—357 to 57. Among those supporting the bill were the Chairman of the House Judiciary Committee, Congressman James Sensenbrenner, and virtually the entire Republican leadership, including Majority Leader DeLay. Clearly there was a broad consensus for action. The House vote was a major breakthrough in finding solutions to the serious flaws in our justice system.

Sadly, the House acted, but the Senate did not. Despite Chairman Hatch's sponsorship of the bill, the Senate Judiciary Committee did not begin work on the bill until September, almost a year later. At that point, we were slowed by resistance from three Republican members of the panel. After many hours, we succeeded in working through the 20-plus amendments that were offered—all of which were rejected—and the bill was approved by a strong bipartisan majority.

It speaks volumes about the opposition to this bill that one of the amendments offered in Committee sought to strike the Innocence Protection Act in its entirety. Our opponents want law enforcement to use DNA aggressively to fight crime, and so do I. But they do not want to let those who are wrongly convicted use DNA to prove their innocence. That is wrong. DNA can convict the guilty, but it can also exonerate the innocent. It should be available for both purposes.

That is why victims groups support the whole package of reforms in this bill. They do not want the wrong guy locked up while the real rapist or murderer is out committing other crimes. Throughout the Committee's consideration of this bill, there were two fixtures in the room—Kirk Bloodsworth and Debbie Smith. Kirk was exonerated by DNA testing. In Debbie's case, DNA testing led to the arrest and conviction of her attacker. Both support the whole bill.

The Committee reported the bill to the full Senate three weeks ago. Since then, this critical legislation has been blocked by the same three Republican Senators who held up the bill in Committee, buttressed by opposition from President Bush and Attorney General John Ashcroft.

This week, the House has acted again. It voted yesterday on the Justice For All Act of 2004, H.R. 5107, a criminal justice package that bundles the Advancing Justice Through DNA Technology Act with another bill, already passed in the Senate, which will increase protections for victims of Federal crimes. Wednesday's House margin—393 to 14—was even larger than the vote a year ago, and sends a loud and clear message to the Senate: "Pass this bill!"

I want to take a moment to commend the Republican Chairman of the House Judiciary Committee, Jim Sensenbrenner, who has spearheaded this effort in the House. Chairman Sensenbrenner deserves high praise for his leadership. We could never have come as far as we have without his steadfast commitment and the hard work of his impressive staff.

I also want to thank my longtime colleagues in this endeavor, Representative Bill Delahunt of Massachusetts and Representative Ray LaHood of Illinois. They have worked tirelessly over many years to pass the Innocence Protection Act, and deserve much of the credit for building the strong support for the bill in the House.

The House has now spoken not once, but twice. Senate action is long overdue. Sadly, Senate passage in the waning days of this congressional session continues to be threatened by a few holdout Republicans, emboldened by continuing opposition from Department of Justice.

INACTION HAS REAL CONSEQUENCES

While Congress has failed to act, much has happened in the real world. Over the last year, five more wrongfully convicted individuals were cleared of the crimes that sent them to death row, bringing to 116 the number of death row exonerations since the reinstatement of capital punishment. Also in the past year, another 10 wrongfully convicted individuals were exonerated by DNA testing in non-capital cases. That brings to 151 the number of post-conviction DNA exonerations in this country in little over a decade.

What else has happened in the real world? Just last week, Houston's top police official called for a moratorium on executions of inmates who were convicted based on evidence that was handled or analyzed by the Houston Police Department's crime lab. In a floor statement in March 2003, I described the widespread problems at that lab, which included poorly trained technicians, shoddy recordkeeping, and holes in the ceiling that allowed rain to possibly contaminate samples. It turns out that the situation is even worse than previously imagined.

In May, the Republican Governor of Texas pardoned Josiah Sutton, who spent 4½ years in prison for a crime that he did not commit. He was only a teenager when he was convicted and sentenced to 25 years for rape, based largely on a bogus DNA match by the Houston police lab. More recently, Houston's district attorney admitted that chemical testing used to convict another man was inaccurate. That was after six forensic experts concluded that the lab's analysis of DNA evidence in the case was "scientifically unsound."

The situation in Houston is appalling but it is not without precedent. There have been similar problems in various State crime labs, as well as in the once-distinguished FBI lab. Crime labs across the country are suffering the consequences of years of increased demand and decreased funding.

One consequence is sloppy lab work. Another consequence is massive backlogs. In December 2003, the Department of Justice estimated that there were more than 500,000 criminal cases with biological evidence awaiting DNA testing. This estimate included 52,000 homicide cases and 169,000 rape cases. Ten months later, the situation has only gotten worse. While the Senate has been idle on this bill, rape kits and other crime scene evidence has been sitting on shelves, untested for lack of funding. This bill would authorize the funding that our labs so desperately need.

BUSH ADMINISTRATION'S REPEATED ATTEMPTS TO SABOTAGE BIPARTISAN INITIATIVE

The Bush Administration's role in the effort to kill this bill is a matter of public record. On April 28 of this year, we received a 22-page letter from Assistant Attorney General William Moschella presenting "the views of the Department of Justice and the Administration" regarding the bill that the House of Representatives had earlier passed by a vote of 357 to 67. The letter expressed the Administration's strong opposition to virtually every aspect of the bill.

I have rarely seen a letter from an Executive branch agency so hostile to a bipartisan legislative effort that had already passed one house of Congress. I was shocked that the Department would write such a scathing letter about a bill that had been carefully negotiated by Chairman Sensenbrenner and Chairman Hatch. In light of the support of the Republican congressional leadership, I expected that the President would support this bill and work to make the capital punishment system more fair and effective. Instead, he chose to stonewall reform and defend the injustices in current law.

The Justice Department's criticisms of the bill are all unfounded. Let me respond to just a few of the key claims in the Department's April 28 letter.

The Department claimed that the post-conviction DNA testing provisions in the bill would invite abusive prisoner litigation. In fact, the bill includes numerous checks against frivolous litigation, including the following: An applicant seeking a test must assert his "actual innocence" under penalty of perjury; The applicant must not have waived the right to DNA testing, or knowingly failed to request DNA testing in a prior post-conviction motion; A chain of custody must be established; The proposed DNA testing must be reasonable in scope; The applicant must identify a theory of innocence not inconsistent with any affirmative defense presented at trial; Testing may be ordered only if it could produce "new material evidence" and raise a reasonable probability that the applicant did not commit the offense; And the bill establishes serious sanctions, including new criminal charges, if DNA testing produces inculpatory results.

The Department argued that the bill should bar post-conviction DNA testing unless DNA technology was "unavailable" at the time of the defendant's trial. But witnesses at House and Senate hearings on the bill reported numerous examples of defendants failing to request DNA testing despite its availability at the time of trial because the defense lawyers were incompetent or unfamiliar with the technology, the defendant was mentally ill or retarded, or the defense was simply unaware of the evidence, perhaps due to government misconduct.

The Department complained that the bill would allow prisoners who pleaded guilty to obtain a DNA test. But witnesses at the hearings told Congress of the startling fact that innocent defendants sometimes do plead guilty, due to bad lawyers, mental retardation, or government intimidation. David Vasquez in Virginia, Frank Townsend in Florida, and Chris Ochoa in Texas are just three examples of this disturbing phenomenon.

The Department claimed that the evidence retention requirements in the bill were unduly burdensome. In fact, we took every precaution to make sure that these requirements would not pose an undue burden to law enforcement. Only biological evidence must be preserved. Evidence need not be preserved if the court denies a request for testing, the defendant waives testing, or 180 days pass after the defendant receives notice that the government intends to destroy the evidence. If evidence would be impractical to retain, the government need only take reasonable measures to preserve a portion of the evidence. Finally, the failure to retain evidence does not provide grounds for habeas corpus relief.

The Department claimed that the counsel provisions in the bill amounted to a Federal regulatory system for capital defense. That characterization is grossly unfair. The Capital Representation Improvement Grants authorized in the bill are strictly voluntary. States are under no obligation to participate. At House and Senate hearings on the bill, witnesses enumerated numerous studies over 20 years that document the failure of many States to provide competent counsel in capital cases. In light of these long-standing flaws, it is entirely appropriate for the Federal government to offer financial assistance to those States that seek it.

The Department claimed that the agencies responsible for appointing capital defense lawyers would have limitless resources. This criticism is unsupported and contrary to the experience in states like North Carolina and New York that have established independent defense entities which operate within a budget.

If the White House kills this bill it will be a travesty. Putting this off another year may seem fine to the President or the Attorney General, but another year is a long time if you are a crime victim or if you are wrongly accused, waiting on death row for the chance to prove your innocence. Another year will pile more untested rape kits on to the thousands already piled up in labs across the country.

This bill is a rare example of bipartisan cooperation for a good cause, and instead of helping, the White House has actively hindered. They have been unwilling to lead. They have been unwilling to follow. Now, when all it would take is for them to get out of the way, they're even unwilling to stand aside. The time has come for the President to understand what is happening here, and to become part of the solution instead of part of the problem.

BUSH ADMINISTRATION IGNORES EFFORTS TO COMPROMISE

This bill is the product of years of work and many months of intense negotiations. It reflects a lot of compromises by all the principal sponsors. None of us is entirely happy with everything in the bill. There are plenty of things that I would do differently. There are plenty of things that Senator Hatch and other cosponsors would do differently. Nobody got everything they wanted.

But that is why the bill has such broad bipartisan appeal. That is what the legislative process is all about—finding the middle ground that a broad majority can support. That is why 393 members of the House support this bill, and why a substantial majority of the Senate would vote for it if our opponents would allow it to come to a vote.

The new House bill reflects a number of additional concessions to the Department of Justice and to our Republican opponents in the Senate. Let me briefly describe just a few of the changes that were made.

First, to address concerns raised in Committee by Senator Sessions and others, the Debbie Smith DNA Backlog Grant Program now authorizes the use of grant funds to address non-DNA forensic science backlogs, but only if the State has no significant DNA backlog or lab improvement needs relating to DNA processing.

Second, the bill no longer prevents States from uploading arrestee information into their own DNA databases, although they must expunge such information if the charges are dropped or result in an acquittal.

Third, the standard for getting post-conviction DNA testing has been streamlined by striking unnecessary language that required courts to assume exculpatory test results. Obviously a court considering such an application cannot know for sure what the test results would reveal and must consider the application in a light most favorable to the applicant in light of all the evidence.

Fourth, the bill no longer permits Federal inmates to obtain DNA testing of evidence relating to a State offense, except when that offense may have resulted in a Federal death sentence.

Fifth, it is now presumed that a motion for post-conviction DNA testing is timely if filed within five years of enactment of the bill, or three years after the applicant was convicted, whichever is later. Thereafter, it is presumed that a motion is untimely, except upon good cause shown. The Department has complained that the "good cause" exception is so broad you could drive a truck through it, and its continued opposition turns in large part on the inclusion of this language. But while I agree that the language is broad, it is intentionally so; I would not agree to a presumption of untimeliness that could not be rebutted in most cases. At the same time, this provision should allow courts to deal summarily with the Department's hypothetical bogeyman—the guilty prisoner who "games the system" by waiting until the witnesses against him are dead and retrial is no longer possible, and only then seeking DNA testing.

Sixth, modifications were made to the standard for obtaining a new trial based on an exculpatory DNA test result; instead of establishing by "a preponderance of the evidence" that a new trial would result in an acquittal, applicants must now establish this by "compelling evidence." The point of this change, which I proposed, is to require courts to focus on the quality of the evidence supporting an applicant's new trial motion rather than trying to calculate the odds of a different verdict.

Finally, the bill now specifies that 75 percent of funds awarded under the new capital representation improvement grant program must be aimed at improving trial counsel, unless the Attorney General waives this requirement. This change was included to assuage concerns that this program will somehow resurrect the post-conviction resource centers that Congress de-funded in the mid-1990s.

With few exceptions, these most recent changes to the bill were made at the behest of the Department of Justice, after weeks of negotiations aimed at securing the Department's endorsement of the bill. Yet despite the changes, and despite the urgent need for reform, the Bush Administration has obstinately refused to support the bill or even to withdraw its formal opposition to the bill. As Chairman Sensenbrenner has said, we "bent over backwards" to try to satisfy the Department's concerns, but "no matter how much we bent, nothing could satisfy them." In particular, the Department pressed its unreasonable demand for an arbitrary three-year time limit on obtaining a DNA test after conviction.

Let us be clear what this means. A DNA test is not a get-out-of-jail-free card; it does not even guarantee someone a new trial. All this is about is providing access to evidence in the government possession for purposes of forensic testing. Judge Michael Luttig, one of the most conservative jurists in the country, has written that this is nothing less than a constitutional right. Senator Specter took the same position in the last Congress. A large majority of the States that have passed post-conviction DNA testing laws have rejected time limits, recognizing, as I do, that there should never be a time limit on innocence.

The reforms proposed in the Justice for All Act will mean more fair and effective criminal justice in this country. The few remaining opponents of the bill still wave around the April 28 letter from the Department of Justice. If Congress fails to enact this needed law this year I lay responsibility directly at the feet of President Bush and Attorney General Ashcroft. They deserve to be held accountable if their stubborn opposition to the bill causes it to die.

NATIONAL INTELLIGENCE REFORM BILL

Mr. SARBANES. Mr. President, I rise today to express my pleasure that yesterday the Senate incorporated an important amendment I authored with my colleagues, Senators BINGAMAN and HARKIN, into the National Intelligence Reform Act of 2004. Our amendment strengthens Congress's role in protecting our civil liberties as we move forward with the reform of our intelligence structure. The randomness of the terrorist acts of September 11, and the relative ease with which they were perpetrated, exposed serious gaps and deficiencies in our intelligence and security systems. In the aftermath of those attacks, we established the 9/11 Commission, which through its seminal report and recommendations has helped to clearly identify critical problem areas and recommend solutions to remedy them. And now, through this National Intelligence Reform Act, we are working to implement these recommendations in a way that strengthens the intelligence infrastructure and increases synergy and coordination within our intelligence community.

But in the aftermath of September 11—in our vigilance to protect against future attacks and to comprehensively overhaul our intelligence system—we run the risk of enacting procedures that could diminish or overrun our civil liberties. The Commission recognized this risk and in one of its most important recommendations has wisely suggested the establishment of a civil liberties oversight board within the executive branch. In the spirit of that recommendation the authors of the underlying bill have provided for such a board whose purpose it is to continuously review the impact on civil liberties of intelligence gathering initiatives and operations devised under the new National Intelligence Program, NIP. To that end, the board will be charged with reviewing new proposals under the NIP, advising on the civil rights implications of those proposals, and determining whether proposals will expand powers at the expense of our civil liberties.

The question arises, however, as to what the board can do with a finding that a violation has occurred. Under the bill as currently drafted the Board is not authorized to intervene or put any stopgaps in place through the legislative or regulatory process. I recognize that the intelligence community must have the ability to implement its proposals and operations with a level of flexibility and expedience. But, I also recognize that the board must have the ability to check initiatives that infringe on our most sacred constitutional rights. Our amendment strikes a balance between these two goals by making Congress aware of specific instances in which the board has significant concerns about a given proposal's adverse effect on civil liberties. Specifically, this amendment requires that the board include, within its biannual reports, a detailed accounting of each time the board finds that: No. 1, a proposal to create a new means of gathering intelligence will unnecessarily infringe on civil liberties; and No. 2, that finding is not adequately addressed by those implementing or creating the means.

By receiving this information, Congress will be able to keep pace with the implementation of national intelligence reform as well as provide guidance on ways to refine and calibrate new intelligence gathering initiatives so that we balance security interests with constitutional rights. In short, the amendment provides Congress the information it needs to accomplish a critical part of its oversight function, ensuring that while we work to keep our country safe we also safeguard the constitutional freedoms upon which it was founded. Again, I thank the managers for including this important amendment in the underlying legislation.

PUBLIC DIPLOMACY

Mr. BAYH. Mr. President, I commend the Senator from New York for her work on the section of the McCain-Lieberman-Bayh-Specter amendment to the 9/11 legislation that addresses education in the Muslim world. The provision commits the United States to taking a comprehensive approach to universal basic education in Muslim countries and requires our government to develop a cooperative plan to achieve this visionary goal. The 9/11 Commission understood that expanding education that emphasizes moderation, tolerance and the skills needed to compete in the global economy in these countries will create an alternative to hate and will show that the United States is committed to expanding opportunity in countries where we are often competing with our enemies for hearts and minds. It is only through a long-term public diplomacy strategy that we will win the war on terrorism, and modern education is a foundation of that effort. I would like to thank Senator CLINTON for her assistance in drafting the education provisions in this bill We could not have achieved such a comprehensive approach to education without her involvement, and we appreciate her efforts.

Mrs. CLINTON. I would like to thank Senator BAYH, along with Senators McCAIN, LIEBERMAN and SPECTER, for stepping forward to ensure that the 9/11 Commission's recommendations on education become a key part of our Nation's anti-terrorism strategy. As you know, I have introduced legislation to promote universal basic education in all of the world's developing countries by 2015. I am pleased that the Senators forging this bipartisan bill have accepted many of these recommendations, including creating, for the first time, a strategy to promote universal basic education in the Middle East and other significantly Muslim countries. The bill also encourages countries to come forward with strong national education plans for quality universal basic education and directs our efforts at providing support for such crucial systemic reform. The provisions included in this 9/11 bill represent an important step toward the goal of universal basic education. I want to thank all the leaders on this amendment for working with me on this issue, and I appreciate their leadership on this bill.

PRIVACY AND CIVIL LIBERTIES

Mr. LEAHY. Mr. President, yesterday, we passed an important bill granting enormous additional authority and tools to the government to fight terrorism. We authorized the creation of a vast information sharing network that will allow officials throughout the U.S. government to search databases containing extensive data about American citizens. We also gave broad authority to implement new technologies, standardize identification documents and enhance border security. These are great powers that, as the Commission noted, will have substantial implications for privacy and civil liberties.

This bill was also notable because it balanced this grant of power with the creation of a Privacy and Civil Liberties Oversight Board. I thank Senator LIEBERMAN for including this Board as part of the National Intelligence Reform Act, and for working with Senator DURBIN, me and others to make sure the Board had the necessary authority, mandate and tools to ensure that civil liberties and privacy are safeguarded as we enhance our antiterrorism policies and tools.

Mr. LIEBERMAN. I have been pleased to work with Senator DURBIN, Senator LEAHY and others in creating a Privacy and Civil Liberties Board that is in keeping with the Commission's recommendation. The Commission recommended that we create an entity that could "look across the government at the actions we are taking to protect ourselves to ensure that liberty concerns are appropriately considered." Senator COLLINS and I appreciated the contributions of members of the Judiciary Committee. Their longstanding expertise in these issues was very helpful to us in shaping the key provisions of the Board.

Mr. LEAHY. We all recognized that we were giving this Board substantial responsibility. Given the enormous powers we were granting the government, we needed a Board capable of counter-balancing these powers. But we also know that this does not end our duty.

Mr. LIEBERMAN. I agree. Accountability for this Board is essential. As the 9–11 Commission stated, "strengthening congressional oversight may be among the most difficult and important" of our recommendations. We cannot assign the Board such significant responsibilities without regularly reviewing its progress to ensure that its mandates are being met. We have an obligation to exercise vigorous oversight of its actions.

Mr. LEAHY. The Judiciary Committee and the Governmental Affairs Committee have a shared history of working together to preserve privacy and civil liberties, and to promote open and accountable government. Our committee members have developed substantial expertise and experience in these areas, and we have a duty to continue to oversee these concerns. I thank the distinguished Ranking Member of the Governmental Affairs Committee for working with us to ensure that the Board's work on privacy and civil liberties matters be under the jurisdiction of both these committees so that we can continue to provide effective oversight.

Mr. LIEBERMAN. I agree that joint jurisdiction over the Board's work on privacy and civil liberties matters is the most effective and appropriate way to take advantage of our shared expertise and experience. I thank the Ranking Member of the Judiciary Committee for his commitment and dedication to fighting for the rights and liberties that make this country worth preserving. As the Commission stated, "[w]e must find ways of reconciling security with liberty, since the success of one helps protect the other."

Mr. KYL. Mr. President, I ask unanimous consent that two letters, which I sent to 9/11 Commission member Slade Gorton, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
Washington, DC, May 13, 2004.

Hon. SLADE GORTON,
Member, National Commission on Terrorist Attacks Upon the United States, Washington, DC.

DEAR SLADE: Thank you for sending me the two 9/11 Commission staff statements in response to my April 23 letter to you about the visa-processing policies of the State Department. As you and the other Commissioners prepare to write your final report, I offer what I hope will be taken as constructive criticism of the statements.

What the Commission staff did not note is the most important point of all: if the law had been followed, at least 15 of the 19 9/11 terrorists would not have been in the country on September 11. The visa applications of the hijackers were so flawed that no reasonable person could have believed that they met the standards for entry imposed by the law for all visa applicants. Making matters worse, no matter how deficient the paper applications, most of the Saudi applicants were granted visas without an oral interview, clearly contrary to both the spirit and intent of the law, which makes clear that applicants for nonimmigrant visas are considered ineligible for a visa until they prove their own eligibility. In other words, our law creates a presumption against granting the visa by putting the burden of proof on the applicant.

Under Section 214(b) of the Immigration and Nationality Act an alien applying to enter the U.S. shall be "presume[d] to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for admission, . . . that he is entitled to a nonimmigrant status." In other words, the law is intentionally designed to force applicants to prove eligibility for a nonimmigrant visa. For Saudi nationals, however, visas were all but guaranteed to be issued—directly in conflict with the spirit and intent of the law.

All 15 of the Saudi's applications contained inaccuracies or omissions that should have prevented them from obtaining visas; and, despite initial indications by the State Department that almost all of the Saudi applicants had been interviewed, only two of the 15 Saudi applicants were interviewed by State.

The errors in the applications weren't trivial mistakes, such as punctuation or spelling. Visas were granted to young, single Saudi males who omitted fundamental information such as: means of financial support (and it appears none of the 15 hijackers whose applications survived provided supporting documentation), home address, and destination or address while in the U.S. The October 28, 2002 National Review article by Joel Mowbray, "Visas for Terrorists: They were ill-prepared. They were laughable. They were approved," provides the details about these mistakes.

In his article, Mowbray writes that, "For almost all of the applications, the terrorists filled out the 'Present Occupation' field with 'Student.' Salem al Hamzi boldly wrote 'unemployed,' while Khalid al Mihdhar described himself as a 'businessman.' Only on three forms was the area marked 'Name and Address of Present Employer or School' even filled out. In answering the question, 'Who will furnish financial support,' most of them listed 'Myself,' while the rest cited family—despite a complete failure in most applications to demonstrate the requisite financial means." Mowbray goes on to write, "Unclear destination in the United States. On the visa form, the applicant must identify the address where he will be in the United States . . . But, only one of the 15 applicants lists an actual address, with the rest stating locations . . . such as 'California,' 'New York,' 'Hotel.' Not one of these woefully lacking answers warranted so much as a correction by a consular officer, let alone an outright denial."

Allowing for such incomplete attention to the visa applicants was not uncommon practice in the State Department, particularly in

Saudi Arabia. The GAO's October 2002 report, "Border Security: Visa Process Should be Strengthened as Antiterrorism Tool," said, "At some posts we visited, [consular officers] faced pressures to issue visas." In its report the GAO concluded, "A lack of clear guidance . . . resulted in wide discrepancies among posts in the level of scrutiny of visa applications and in factors used to refuse visas to questionable applicants." In fact, the State Department's written guidelines and resulting practices, as outlined in the GAO report, allowed for widespread discretionary adherence among consular officers in adhering to the burden of proof requirements included in Section 214(b). As stated in the GAO report, the State Department's "Consular Best Practices Handbook" gave consular managers and staff the discretion to:

"waive the personal appearance and interviews for certain nonimmigrant visa applicants, and give the authority to use third parties, such as travel agencies, to help persons complete application. The written guidance did not specify what documentation, if any, consular managers or officers needed [to provide] support about their decisions to waive personal appearances or interviews."

This is exemplified by then-Assistant Secretary for Consular Affairs Mary Ryan's cables and other written notices to embassies telling them that eliminating the visa process wherever possible was "a very worthy goal," and the State Department's design and implementation, under her watch, of "Visa Express," which formalized lax, expedited visa policies for the first and only time for an entire nation, Saudi Arabia.

Mary Ryan believed in the importance of interviews, but not for purposes of screening out those who shouldn't be receiving visas. She wrote in a 2001 cable, "When it comes to judging credibility, there is simply no substitute for a personal interview." Sounds good, but Ryan's emphasis was on admitting more people. She went on to write, "Consular officers should avoid keeping out 'qualified aliens" who appeared weak on paper but could have overcome [that appearance] with a strong showing of credibility." Mary Ryan explains further that the intent of Consular Affair's policy is to "permit a waiver of the interview when it is clear that the alien is eligible for the visa and an interview would be an unnecessary inconvenience." (Emphasis added)

Rather than criticize State's policies, 9/11 Commission staff statements excuse the actions of the State Department, stating the Department followed its own policies. The Commission report remarks, "To our knowledge, State consular officers followed their standard operating procedures in every case." But that begs the question of whether that policy was (a) allowed by the law, and (b) sensible under the circumstances. The State Department should not be judged on whether or not its policies were followed, but on whether its policies followed the law, and whether the 9/11 terrorists, who did not qualify for visas under the law, should have been granted visas to enter the United States. The Commission staff's second report essentially adopts the State Department's assertion that better watchlisting by intelligence agencies would have been the best prevention measure. But this obscures the larger point—if the State Department had followed immigration law, 9/11 would not have happened. The terrorists would have had to find another way to get into the country.

In addition to its silence about Consular Affairs' dereliction of duty with respect to complying with immigration law, that the Commission members did not comment on why the Consular Affairs office of the State Department, the lead agency before 9/11 on terrorism matters, believed that it needed to be "informed . . . that Saudi citizens could pose security risks," is very troubling.

Either blatant disregard, or ignorance of the facts surrounding Saudi Arabia (even though it was the Department's responsibility to know the issues) allowed for the creation of the now-defunct Visa Express program specifically for Saudi Arabia. The formal exemption of Saudis from the interview process and the acceptance of nearly all Saudi applications through travel agents (with a financial interest in the applicants' approval) gave non-governmental agents the de facto ability to shape U.S. immigration policy. Three of the hijackers, in late summer, entered the country through this program.

The Commission staff, however, practically defends the Saudi Visa Express program in its comments by stating that it "was established in part to keep crowds of people from congregating outside the posts, which was a security risk to the posts . . ." The Commission report goes on to say that it "found no evidence that the Visa Express program had any effect on the interview or approval rates for Saudi applicants . . . or reduced scrutiny . . . " Maybe not, but it certainly took everything bad about visa processing policy and rolled it into a formal program for Saudi Arabia, home to many Islamic militants and to 15 of the 19 terrorists. Secretary Lehman and Mr. Ben-Veniste, your Commission members, pointed out during their exchange with Mary Ryan on January 23, that it was common knowledge that Saudi Arabia was home to many radical Islamists and some al Qaeda operatives specifically, and by inference that a program formalizing weak visa processing policies was wrong.

Mary Ryan's lack of common knowledge about the hostility of many Saudi citizens toward the U.S., and, at the least, the Saudi government's complacency about such fanaticism, caused much concern for Lehman and Ben-Veniste. That these exchanges, or at least their implications, did not warrant even a mention from the Commission staff is disturbing.

On January 23, Ben-Veniste asked Mary Ryan the following, " Here, in the summer of '01 and somewhat before, you have recognized that a crowd control at the embassy or at the consular office, offices in Saudi Arabia posed a problem because of the potential harm to individuals from those who meant the United Sates and its interests harm. If we take that just one step further, would you agree that the individuals in the Kingdom of Saudi Arabia who might pose such a threat to cause harm to individuals at or about the embassy would be Saudis rather than foreigners?"

"[O]nce you acknowledge that there is certainly a number of Saudis who might be in a position to do us harm through violence against individuals at or near our consular offices, it doesn't take a whole lot to go to the next step, even without specific information from our intelligence agencies, that such individuals who mean us harm might in fact wish to come to the United Sates. So the notion, would you not agree, of Saudis not posing a particular threat being taken out of that threat matrix really doesn't stand up even on the basis of cursory information that you had available?"

"Saudis mean us harm in Saudi Arabia because they might blow up the embassy or harm individuals in the vicinity of the embassy but the Saudis who might seek entrance to the United States were not considered a problem?"

In her response, Ryan continues to refuse to acknowledge that for a number of reasons, the visas of Saudi citizens should not have automatically been approved. She said, "You know, in the absence of information that someone is a threat to the nation, we are dependent on the information that we have in our system developed by intelligence and law enforcement agencies about people who mean us harm."

In her next interchange, with Secretary Lehman, Ryan's response is similar. Secretary Lehman asked, "In some of the interviewing of some of your officials that were doing the actual consular functions in Saudi Arabia at the time, they said in so many words, gosh, if we only knew. If someone had told us that Saudi Arabia was a threat. We thought that they were our friends and all we were looking for were people who were trying to immigrate and we weren't looking for terrorists. Well, hello. I mean, did anybody read the newspapers? I mean there were books. The literature was rife, you know, books like "Among the Believers" that catalogued this tremendous proselytizing of hatred and of fundamentalism around the world, sourced in Saudi Arabia, with many Saudi Arabian institutions and clerics the source of it. . . . So, I don't think the record supports your view."

Ryan responded, "Before September 11, and I think even after September 11th, until now, I think that this government, our government, does regard Saudi Arabia as an ally. In the current issue of Foreign Affairs, the deputy secretary says that we have every confidence in the crown prince of Saudi Arabia to carry out the reforms that he is trying to carry out. I mean, that doesn't sound like we regard Saudi Arabia as a state sponsor of terrorism. It was never so identified before September 11, it was never so identified after September 11." But the obvious fault in Ryan's logic is that even if one considers the Saudi government an ally, that does not mean that its nationals pose no security threat to the United States.

The State Department has repeatedly claimed that its visa policies in Saudi Arabia were reasonable since it lacked specific intelligence to determine that it should have acted otherwise. This claim, however, is dubious at best, considering that pre-9/11, the State Department was considered the lead agency on counterterrorism. While it is often said that pre-9/11 actions can be excused because terrorism was not deemed a primary concern, the fact is that the top agency for counterterrorism before 9/11, the State Department, knew, or should have known, the risks in deliberately reversing the presumption in the immigration law in order to make it as easy as possible for people to obtain visas in a country with known terrorist elements. Even long after State learned that 15 of the 19 terrorists were Saudi nationals—and that their visa applications were clearly not sufficient under the law—the Department adamantly refused to tighten visa procedures and only began interviewing all nonimmigrant applicants between the ages of 12 and 70, including Saudi citizens, in July of 2002—a full ten months after the terrorist attacks.

Although Saudi Arabia was and is considered a U.S. ally, it was the responsibility of the Consular Affairs assistant secretary to know, even before 9/11, the Saudi-terrorism connection and how it might have been present among individuals trying to get into the U.S. The Commission report should have made this connection, but it did not. It found no real fault of Consular Affairs in this regard.

As I mentioned at the outset, I hope you will use my findings to advance constructively the final report of the 9/11 Commission. I believe that if you are going to provide an accurate picture to the American public about what caused the tragic events of September 11, you must place greater emphasis on our government's approach to visa processing and its compliance with immigration law in this regard, and on processing in Saudi Arabia in particular. As important as it is to examine the intelligence failures before 9/11, it is no less important to discuss how simple enforcement of the law would have prevented at least 15 of the 19 9/11 terrorists from being in the United States on that tragic day.

Sincerely,

JON KYL,
U.S. Senator.

U.S. SENATE,
Washington, DC, April 23, 2004.

Hon. SLADE GORTON,
Member, National Commission on Terrorist Attacks Upon the United States, Washington, DC.

DEAR SLADE: I write to convey how important I believe it is that the 9/11 Commission focus on the State Department's, and to a lesser degree, Immigration and Naturalization Service's, contribution to the dysfunction of our government before September 11.

It is clear to me that the State Department's Office of Consular Affairs, headed then by Mary Ryan, was utterly ineffective in making sure U.S. security interests were protected. Having read Ms. Ryan's January 24, 2004 testimony before the Commission and her responses to its questions, I have concluded, that, even today, she does not understand that, if U.S. laws related to the processing and approving of visa applications had been followed, September 11 could have been prevented.

Section 214(b) of the Immigration and Naturalization Act presumes that an alien who apples for a temporary visa actually intends to stay here permanently "until [the alien] establishes to the satisfaction of the consular officer" that he only intends to come here temporarily. The State Department should not deem an applicant as having established his intent until all processes related to the visa are complete and until a face-to-face interview has been conducted. Before September 11, consular officers were allowed to regularly approve temporary visa applications even when applications were incomplete and no face-to-face interviews were conducted.

On January 24, in response to a question from Commissioner Gorelick about "how and in what circumstances the hijackers got into this country," Mary Ryan declared that consular officials "adjudicated the visas correctly." This is simply false. At a minimum, the applications of the hijackers were incomplete. All 19 had omissions and inconsistencies on their visa applications that should have raised concerns about why they wanted visas (see Mowbray article enclosed). Additionally, personal interviews should, in my view, have been required of all intending immigrants in order for the State Department to have been in compliance with 214(b). Consular Affairs, contrary to its initial statements about this matter, failed to personally interview 13 of the 15 terrorists who were from Saudi Arabia.

Since these processes were not successfully completed, the visas, by law, should have been denied.

In October 2002, Senator Feinstein and I, as ranking member and chairman of the Judiciary Subcommittee on Terrorism, wrote to Secretary of State Powell to impress upon him that the manifest weaknesses of our nation's visa system contributed, and will continue to contribute, to the risk of terrorism against the United States and its citizens. I enclose for your review our letter, a list of 20 additional questions we submitted to Secretary Powell about visa processing, and the State Department's answers. As you will see from its answers, the Department refuses to acknowledge that, if it had exercised its obligations under the law, and refused visas to the terrorists, September 11 might have been prevented.

Enclosed as well is a copy of the additional views Senator Roberts and I appended to the December 2002 Intelligence Committees' Joint Inquiry Staff Report. In our statement, we make clear that these deficiencies, and an evident unwillingness to make existing State Department security mechanisms work properly, contributed to the tragedy.

I also urge you to review the exchange Ms. Ryan had with Commissioners Ben-Veniste and Lehman wherein she shows a lack of comprehension that special treatment of Saudis seeking U.S. visas simply should not have occurred, given the prevalence in Saudi Arabia of Wahhabism, a virulently anti-American strain of Islam. I enclose, in addition, articles by investigative reporter Joel Mowbray that provide details about State Department activities, and particularly about the issuance of visas to Saudi citizens. The State Department's presumption that most Saudis were eligible for visas was inexcusable and, I believe, definitively contributed to the terrorist attacks on our nation.

Bottom line: 9-11 could have been prevented if State Department officials had done their job. What are we doing to ensure they do so in the future?

Sincerely,

JON KYL,
U.S. Senator.

AMERICAN MUSIC MONTH

Mr. ALEXANDER. A few years ago, a New York Times story reported that "Lamar Alexander grew up in a lower, middle class family in the mountains of East Tennessee." The article so offended my mother I found her reading Thessalonians to help deal with what she regarded as a "slur on our family."

"We never thought about ourselves that way," she told me. "You had a library card from the day you were three and a music lesson from the day you were four. You had everything you needed that was important."

I was 4 years old in Maryville, TN, a town of about 10,000 then, when my mother took me to Maryville College to learn how to play the piano. One of the college professors loaned us a battered upright piano which sat in our living room for several years. Every day before school, I would bang away on Czerny, Bach, Beethoven and Mozart—and throw in a little Jerry Lee Lewis when I thought no one was around to correct me.

I participated in annual piano contests sponsored by the National Federation of Music Clubs. I played in the Maryville High School band and played piano at revival meetings while my father—who had a beautiful tenor voice—led the singing.

After working during the day as a law clerk in New Orleans for Judge John Minor Wisdom I played trombone, tuba and washboard in the band at Your Father's Moustache on Bourbon Street to earn a little extra money.

When I walked across the State in a winning campaign for Governor I took four students from the University of Tennessee marching band with me. We performed as Alexander's Washboard Band dozens of times from the back of a flatbed truck.

As Governor, I could think of only one way to unify our State that was made up of so many different climates, political beliefs and people, and that was our music. From the Carter family in Bristol, to Music City in Nashville, to the blues and gospel of Beale Street in Memphis. Tennessee can be said to be the home of American music.

As Education Secretary in the first Bush administration I was asked to be the Republican speaker at the annual Gridiron Dinner, a press gathering where public careers are made or broken. When I found that Texas Governor Ann Richards was the Democrat speaker I decided that was not a contest I was likely to win. So instead of speaking, I wrote some lyrics to country music songs and sang and played the piano.

Music has been throughout my life a source of inspiration and joy. I suspect that is true for most Americans. It is a rare American who does not have some story about how music has made our lives richer and more interesting, how it has changed our moods, brought out the best in our character and even sometimes helped us earn a living.

So I am proud to join with the Senator from Illinois and co-sponsor this important resolution declaring American Music Month. Our music is an integral part of the American character, and we should celebrate it.

NO CHILD LEFT BEHIND

Mr. ENZI. Mr. President, I would like to congratulate the educators, administrators, parents, and children of my home State of Wyoming. Since the implementation of No Child Left Behind in 2001, our students have increased their test scores, proving that our schools are taking the adequate steps needed to ensure academic proficiency for all students, including those who are disadvantaged. The basis of No Child Left Behind is simple. It says that every 4th grader should be able to read, and do mathematics at a 4th grade level; every 8th grader at an 8th grade level, and every 11th grader at an 11th grade level. But making it work calls for the hard work and dedication of all individuals involved with education—from the parents to the teachers, to the legislators and administrators. By putting the children first, our schools are making the progress needed for students to perform at their intended level, which will help them excel later in life.

The 2004 results of the WyCAS, our State's assessment, show that 47 percent of fourth graders in Wyoming tested as advanced or proficient in reading, 40 percent in writing, and 39 percent in mathematics. While there is still room for improvement, all three are increases from last year's scores of 44, 37, and 37 percent respectively. In addition, 57 percent of the 8th grade students tested as advanced or proficient in writing, almost a 10-percent increase from the previous year, when they scored 48 percent.

A few schools that made tremendous growth this year should be especially proud of themselves. Moorcroft Junior High now has 81 percent of their students proficient in writing as compared to only 38 percent last year. Sundance Junior High also produced exceptional results in math, with 74 percent of their students performing at proficient or advanced level, compared to 39 percent last year.

Improvements have not only been made from last year to this year but over time as well. The 11th graders, who took the WyCAS as 8th graders in 2001, improved their mathematics scores from 32 percent being advanced or proficient to 44 percent. In reading, the results were similar. They jumped from 39 percent as 8th graders to 50 percent as 11th graders.

The results are a good indication that our students are learning and our teachers are working hard to leave no child behind. I am pleased with Wyoming's dedication to education, and I look forward to learning the results of other indicators that No Child Left Behind uses to assure schools are making adequate yearly progress. I encourage Wyoming schools to keep up the good work and continue to put the children first.

SPEECH TO THE UNITED NATIONS BY TASSOS PAPADOPOULOS, PRESIDENT OF CYPRUS

Ms. SNOWE. Mr. President, I rise today to speak about the importance of continuing every effort to help achieve a workable and lasting peace for the people of Cyprus.

I would like to read some of the comments recently delivered by Cypriot President Tassos Papadopoulos in his recent address to the United Nations General Assembly.

As President Papadopolous told members of the General Assembly:

> Surely the aspiration of humanity revolves around achieving the full respect of human rights, democracy, and the rule of law. The collective vision and effort required to fulfill this massive endeavor demands the contribution of all, to the extent of their capabilities.

The President further stated:

> We are committed and dedicated to a bizonal, bicommunal federal solution that would bring about the reunification of our homeland which would be workable, viable and make a reality the gradual rapprochement of the communities in Cyprus, the social and economic reunification and which will not institute the division of the communities and institutions.

Cyprus' European Union accession marks a great milestone and the beginning of a new era for the people of Cyprus.

Cyprus and the United States are bound together by common democratic traditions, values, ideas and interests. We have a history of working together effectively to fight threats to global security. We in the United States must continue to push for a peace plan that will be acceptable to the people of Cyprus.

I am firmly convinced that the people of Cyprus want peace. The road to peace will only come through a plan that is fair and that is workable. I join with the leadership of the Greek American national organizations in their commendable efforts to move the peace process ahead in a positive and constructive way.

I ask unanimous consent to print the RECORD, the recent address by the President of Cyprus, Mr. Tassos Papadopoulos to the General Assembly of the United Nations.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ADDRESS BY THE PRESIDENT OF THE REPUBLIC OF CYPRUS, MR. TASSOS PAPADOPOULOS, AT THE GENERAL ASSEMBLY OF THE UNITED NATIONS, SEPTEMBER 23, 2004

Mr. President, I wish to start by conveying to you my most sincere congratulations on your election as President of this session of the General Assembly and wish you every success in steering the work of this august body. I would also like to extend our thanks and appreciation to the President of the 58th Session of the General Assembly, especially for his inspired efforts to promote so vigorously the agenda of United Nations reform and the revitalisation of the General Assembly.

As this is the last Session of the General Assembly ahead of the 2005 Major Event, we must proceed to evaluate the prospect of attaining the ambitious targets we set at the turn of the Millennium. Determining a hierarchy in our priorities and identifying and pursuing specific targets, has been a major step in fostering the values, principles, and objectives embodied in the Millennium Declaration. The Major Event, however, will be the first real assessment of our progress towards the implementation of the Declaration and of the outcome of major world Conferences, and of initiatives such as the one launched by the Presidents of Brazil, France, Chile and the Prime Minister of Spain to eradicate poverty and hunger, as well as the initiative of the Presidents of Finland and Tanzania on the social dimension of globalisation.

Specifically with regard to the Millennium Development Goals, we believe that the ability to make development on the ground an issue of global concern as a result of these pledges, will measure the ability of the United Nations to induce significant change and advances where they are most needed. At the same time, the achievement of these objectives, which form an essential part of the Millennium Declaration, will judge to a great extent the efficacy of the United Nations in pursuing successfully a global and comprehensive agenda, which pertains to the prosperity of the population of a significant number of its member states.

The Republic of Cyprus supports the strengthening of the United Nations system through the reform process underway, and looks forward to the Report of the High-Level Panel and the recommendations of the Secretary-General. We attach particular importance to the revitalisation of the General Assembly and to the reform of the Security Council, so that, its structure will reflect contemporary political realities and a more balanced geographical representation. In the spirit of these two principles and with the aim of reinforcing the legitimacy and efficacy of the Council, Cyprus is supportive of increasing both permanent and non-permanent membership. In this respect, we believe that the joint French and German position on the enlargement of the Council could provide a basis for achieving the above mentioned objectives.

We share the assessment of the Secretary-General in his Report that our endeavour of consolidating effective multilateralism in a flexible and versatile United Nations, is the best way to address the complete spectrum of global crises and ensure that there exist preventive mechanisms to avert each one. Such consolidation also applies to security deficits and particularly terrorism the underlying causes of which, we have been unable to eliminate despite our concerted efforts. We consider that the conclusion of a United Nations comprehensive convention against terrorism is important in order to facilitate the elimination of the threat posed by terrorism, in the framework of international legality.

Addressing other deficiencies in the international system, particularly the ones which give rise to crisis situations and humanitarian disasters, should also be considered a matter of both urgency and priority. Darfur is one such crisis, which, following many others like it, keeps Africa at the heart of our concerns. It manifests why we should not only focus the majority of our humanitarian resources and peace-keeping efforts to it but why we should make every possible effort to make sustainable development a global reality. We welcome also the expanding co-operation between the United Nations and regional Organisations, which we consider to be the most effective method of addressing such issues. Of course, we attach particular significance to the collaboration between the United Nations and the European Union in managing crisis situations.

The Middle East is another region which remains volatile despite growing global concern and in spite of many attempts to restore the Peace Process in the Israeli-Palestinian conflict. So long as violence remains a vivid reality in the region it will not be possible to create those conditions under which peace building can be accomplished. We deem necessary a more active involvement of the Quartet in the efforts to implement the road map and intercept the cycle of violence. More emphasis should also be given to the task of improving living conditions in order to normalise people's lives to the greatest possible extent. Our support remains focused on the end of the occupation and on a just and viable settlement, based on UN Resolutions and for the realisation of the aspirations of the Palestinian people for the establishment of an independent state, living side by side with Israel, in conditions of sustainable peace and security.

Surely the aspiration of humanity revolves around achieving the full respect of human rights, democracy, and the rule of law. The collective vision and effort required to fulfil this massive endeavour demands the contribution of all, to the extent of their capabilities. Cyprus is prepared to play its part from its vantage point in the European Union whilst drawing upon its traditional participation in Fora dedicated to promoting agendas pertaining to these values. This affiliation has been a source of support for us since Cyprus' independence, and its impact not only makes us grateful but has also endowed us with sensitivities that will continue to be an integral part of our approach.

I would like to emphasise how proud we are that Cyprus is now a full member of the European Union. The European Union has outlined an extensive set of priorities for this Session of the General Assembly. As the statement delivered by the Dutch Presidency has delineated these priorities, I will not elaborate on them any further.

This year marks 30 years since the occupation of 37% of Cyprus' territory as a result of the invasion of the island by Turkish troops. It also marks 30 years of relentless efforts by the Greek Cypriots to achieve a just and peaceful settlement, with the support of the international community, to which I would like here to express our deep appreciation.

The Greek Cypriot side has repeatedly demonstrated in the past thirty years, its readiness to move forward by making many painful sacrifices and concessions, while the Turkish Cypriot leadership always lacked the necessary political will. The quest and eagerness of Greek Cypriots for a solution never meant, however, that they would accept any settlement proposed to them nor that they would be ready to embark on an adventure, in all probability condemned to failing, with irreversible consequences.

The latest effort by the UN Secretary-General to solve the Cyprus problem resulted in a Plan, which, by some was described as a historic opportunity to solve one of the longest standing international problems. I will only briefly outline why, despite the hard work invested in the process by all involved, the end product of this effort was judged to be inadequate and fell short of minimum expectations from a settlement for Greek Cypriots.

Firstly, the Annan Plan was not the product of negotiation nor did it constitute an agreed solution between the parties. Secondly, the Plan did not place the necessary emphasis on achieving a one State solution with a central government able to guarantee the single sovereign character of Cyprus. Thirdly, it failed to address the serious concerns of the Greek Cypriot Community regarding their security and effective implementation of the Plan.

In rejecting the Plan as a settlement for the Cyprus problem the Greek Cypriots did not reject the solution or the reunification of their country. They have rejected this particular Plan as not effectively achieving this objective. We remain committed to a solution which will ensure the reunification of the country, its economy, and its people.

We are committed to reaching a solution on the basis of a bizonal, bicommunal federation. However, there are a number of essential parameters the Greek Cypriot Community insist this solution to be founded on. The withdrawal of troops and settlers and the respect of human rights for all Cypriots, the underlying structures for a functioning economy, the functionality and workability of the new state of affairs, the just resolution of land and property issues in accordance with the decisions of the European Court of Human Rights, and the respect of the right of return of refugees. To this end, we welcome the recent Pinheiro Progress Report on property restitution in the context of the return of refugees and internally displaced persons.

Simultaneously, it pains me to bring to your attention, Mr. President, that certain provisions of the Annan Plan have encouraged an unprecedented unlawful exploitation of occupied properties in northern Cyprus, something alluded to even in statements by officials of the occupying power itself.

The most paramount feature of any settlement is the ability to install a sense of security to the people. The mistakes of the past must not be repeated. Cyprus must in its future course, proceed without any grey areas with regard to its sovereignty or its relation to third states. If the people feel that their needs have not formed the basis of any solution reached or that the characteristics of this solution have been dictated by the interests of third parties, then this solution will unsurprisingly be bypassed. Indeed, the spirit and practice of effective multilateralism not only encompasses, but also derives from, the comprehension and consideration of local realities and particulars, on which it must then proceed to formulate proposals.

This should not be interpreted by third parties as a lack of will to solve the Cyprus problem. Instead, it must be unequivocally understood that the people who will have to live with this solution are in the best position to judge what is suitable for them, that it is imperative for the people to be called upon to ratify any plans that are drawn to this effect, and that their verdict must be respected.

In the framework of the European Union, and with the aim of promoting reunification and reconciliation, my Government, despite the obstacles placed by the current status quo, is consistently pursuing policies aiming to enhance the economic development of the Turkish Cypriots. While not intended to serve as a substitute for a solution, such policies are in our view the most effective way to foster the maximum economic integration of the two Communities, and increase contact between them, so as to ensure the viability of a future solution.

Responding to the expanding possibilities on the ground, we have intensified our efforts to ameliorate the situation and seek ways to benefit citizens. In this context, my Government has recently proposed the withdrawal of military forces from sensitive areas and refraining from military exercises, the opening of eight additional crossing points across the cease fire line and the facilitation of the movement of persons, goods and services across the Green Line, as well as the extension of the so far unilateral demining process initiated by my Government.

We have also declared our readiness to make special arrangements whereby Turkish Cypriots will utilise Larnaca Port for the export of their goods. Furthermore, subject to the area of Varosha being returned under the control of the Government of Cyprus and to its legitimate inhabitants, we could accommodate the lawful operation of the port of Famagusta.

The Cyprus problem is not always perceived in its correct parameters. The fact remains that this problem is the result of a military invasion and continued occupation of part of the territory of a sovereign state. This fact should not be conveniently overlooked in people's perception, by concentrating on peripheral parameters. Any initiative to solve the problem must have at its core, this most basic and fundamental fact and be based on the premise that international legality must be served and the occupation lifted.

Unfortunately, the fundamentals of the situation on the ground remain unchanged for the past 30 years since the Turkish invasion in Cyprus. This situation is one comprising of severe violations of the most fundamental human rights. The yet unresolved issues of the missing persons, an issue of a purely humanitarian nature, as well as that of the enclaved of the Karpass peninsula, are in themselves an indication of Cyprus' enduring suffering. This should not only point towards the specifics of the solution to be pursued but must also guide our actions with regard to managing the current status quo. For instance, the United Nations Force in Cyprus (UNFICYP), assigned with the task to manage the status quo inflicted 30 years ago, should remain specific to the situation on the ground.

The accession of Cyprus to the European Union, in conjunction with the lack of an agreement on the settlement of the Cyprus problem, in spite of our efforts and our preference for a settlement prior to accession, signifies the end of an era and the beginning of a new one. I firmly believe that the new context defined by the accession of my country to the EU and by the expressed will of Turkey to advance on the European path offers a unique opportunity and could have a catalytic effect in reaching a settlement in Cyprus. Our vocation is to be partners and not enemies.

Hence, in this new era, we plea to Turkey, to join us in turning the page and seeking ways to mutually discover, mutually beneficial solutions to the various aspects that compose the Cyprus problem. The mere realisation that peace and stability in our region serve the interests of both our countries is ample evidence to prove that what unites us is stronger than what divides us.

CBO COST ESTIMATE—S. 2773

Mr. INHOFE. Mr. President, I ask unanimous consent that a cost estimate prepared by the Congressional Budget Office to accompany Senate Report 108-314, the committee report to S. 2773, the Water Resources Development Act of 2004, be printed in the Record. The estimate was not available when the report was filed by the Committee on Environment and Public Works on August 25, 2004.

There being no objection, the material was ordered to be printed in the Record, as follows:

Cost of Legislation

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

CONGRESSIONAL BUDGET OFFICE

S. 2773, Water Resources Development Act of 2004, as reported by the Senate Committee on Environment and Public Works on August 25, 2004.

Summary

S. 2773 would authorize the Army Corps of Engineers (Corps) to conduct water resource studies and undertake specified projects and programs for flood control, inland navigation, shoreline protection, and environmental restoration. The bill would authorize the agency to conduct studies on water resource needs and feasibility studies for specified projects and to convey ownership of certain Federal properties. Finally, the bill would extend, terminate, or modify existing authorizations for various water projects and would authorize new programs to develop water resources and protect the environment.

Assuming appropriation of the necessary amounts, including adjustments for increases in anticipated inflation, CBO estimates that implementing S. 2773 would cost about $2.9 billion over the 2005–2009 period and an additional $4 billion over the 10 years after 2009. (Some construction costs and operations and maintenance would continue or occur after this period.)

S. 2773 also would allow for the spending of certain receipts from hydroelectricity sales associated with Army Corps of Engineers projects for facility planning, operation, maintenance, and upgrades, without further appropriation. Most of the receipts would come from electricity sold by the government's power marketing administrations (PMAs), including the Bonneville Power Administration (BPA). This provision also would direct the PMAs to reduce the maintenance component of the electricity rate charged to customers. The bill would convey parcels of land to various nonFederal entities and would forgive the obligation of some local government agencies to pay certain project costs. Finally, the bill would allow the Corps to collect and spend fees related to training courses and permit processing. CBO estimates that enacting those provisions would increase direct spending by $803 million in 2005, $5.3 billion over the 2005–2009 period, and $10.8 billion over the 2005–2014 period. Enacting the bill would not affect revenues.

S. 2773 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Federal participation in water resources projects and programs authorized by this bill would benefit state, local, and tribal governments, and any costs to those governments to comply with the conditions of this Federal assistance would be incurred voluntarily.

Estimated Cost to the Federal Government

The estimated budgetary impact of S. 2773 is shown in the following table. The costs of this legislation fall within budget functions 300 (natural resources and the environment) and 270 (energy).

TABLE 1. ESTIMATED BUDGETARY IMPACT OF S. 2773 OVER THE 2005–2009 PERIOD

By Fiscal Year, in Millions of Dollars

	2005	2006	2007	2008	2009
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	599	623	619	593	604
Estimated Outlays	419	609	614	595	595
CHANGES IN DIRECT SPENDING					
Estimated Budget Authority	1,065	1,071	1,134	1,198	1,311
Estimated Outlays	803	981	1,109	1,170	1,274

Basis of Estimate

For this estimate, CBO assumes that S. 2773 will be enacted near the beginning of fiscal year 2005 and that the necessary amounts will be appropriated for each fiscal year.

Spending Subject to Appropriation

S. 2773 would authorize new projects related to environmental restoration, shoreline protection, and navigation. This bill also would modify many existing Corps projects and programs by increasing the amounts authorized to be appropriated to construct or maintain them or by increasing the Federal share of project costs. Assuming appropriation of the necessary funds, CBO estimates that implementing this bill would cost $2.8 billion over the 2005–2009 period and an additional $4 billion over the 10 years after 2009. For ongoing construction costs of previously authorized projects, the Corps received a 2004 appropriation of $1.6 billion.

For new water projects specified in the bill, the Corps provided CBO with estimates of annual budget authority needed to meet design and construction schedules. CBO adjusted those estimates to reflect the impact of anticipated inflation during the time between project authorization and appropriation of construction costs. Estimated outlays are based on historical spending rates for Corps projects.

Significant New Authorizations. S. 2773 would authorize the Army Corps of Engineers to conduct water resource studies and undertake specified projects and programs for flood control, inland navigation, shoreline protection, and environmental restoration. For example, the bill includes authorizations for enhanced navigation improvements on the Upper Mississippi River at an estimated Federal cost of $1.7 billion and an ecosystem restoration project, also on the Upper Mississippi River, at an estimated Federal cost of $1.46 billion. Another large project authorized by this bill is the Indian River Lagoon project in the Florida Everglades at an estimated Federal cost of $604 million. Construction of those projects would likely take more than 15 years.

Fish and Wildlife Mitigation. Section 1011 would amend the Water Resources Act of 1986 to establish a standard for fish and wildlife habitat mitigation on certain Corps projects. S. 2773 would require the Corps to develop a mitigation plan that restores the same number of acres of habitat that would fully replace the hydrologic and ecological functions that are lost because of construction of a Corps project. For this estimate, CBO assumes that this provision would apply to potential projects that are being studied but have not yet been submitted to the Congress for authorization. CBO estimates this provision would have no significant cost. However, it is possible that the Administration could interpret this provision to be applicable to authorized projects that have not yet begun or completed construction. Under that interpretation, this provision would increase future construction costs significantly.

Deauthorizations. S. 2773 would withdraw the authority for the Corps to build over 55 projects authorized in previous legislation. Based on information from the Corps, however, CBO does not expect that the agency would begin most of those projects over the next 5 years. Some do not have a local sponsor to pay nonFederal costs, others do not pass certain tests for economic viability, and still others do not pass certain tests for environmental protection. Consequently, CBO estimates that canceling the authority to build those projects would provide no significant savings over the next several years.

Direct Spending

Based on information from affected agencies, CBO estimates that enacting S. 2773 would increase direct spending by about $800 million in 2005 and $10.8 billion over the 2005–2014 period. Table 2 presents the direct spending components of the bill. Most of the direct spending under the bill would stem from provisions to allow for the spending of certain receipts associated with Corps projects for facility planning, operation, maintenance, and upgrades without further appropriation.

Improvement of Water Management at Corps of Engineers Reservoirs. Section 1006 of the bill would designate that all receipts associated with Corps projects be spent, without further appropriation, on operations, maintenance, and upgrades at its facilities. The Federal power marketing administrations (including the Bonneville Power Administration) collect receipts from the sale of hydroelectric power at Corps dams. The Corps also collects fees associated with other activities at its projects. Overall, the bill would make available for spending, on average, about $1 billion per year of those receipts. Because those receipts would otherwise be deposited in the Treasury, CBO estimates that enacting section 1006 would increase direct spending by $595 million in 2005 and $9.7 billion over the 2005–2014 period.

The bill specifies how the funds would be spent. Most of the funds, 80 percent, would be spent within the same Corps district from which they are collected. The remaining 20 percent would be available agencywide for any Corps project.

Spending of Receipts Collected by the Bonneville Power Administration. The bill would make receipts collected by BPA from the sale of hydroelectric power at Corps dams available for spending by the Corps. Unlike hydroelectricity receipts collected by the other PMAs, all receipts collected by BPA go into a revolving fund and are spent for operating its electricity system and repaying previous appropriations and Treasury borrowing. Because a portion of BPA's generating revenues from Corps dams are used to keep its system functioning, CBO assumes that only those receipts that would be used to repay previous appropriations and Treasury borrowing, that is, BPA's intergovernmental payments, would be available for spending by the Corps.

Under current law, CBO estimates that BPA's intergovernmental payments will be, on average, about $730 million per year over the 2005–2014 period. Under S. 2773, we assume that such payments would continue to made but would be spent without further appropriation for operations and maintenance at Corps facilities. BPA's Treasury payments fluctuate from year to year based on how much cash is available at the end of each fiscal year (changing water conditions and electricity prices can swing BPA's annual revenues significantly) and the maturities and interest rates of Treasury bonds issued on BPA's behalf. CBO estimates that spending of BPA receipts by the Corps would total $457 million in 2005 and $7.1 billion over the 2005–2014 period.

Spending of Receipts Collected by the Other Power Marketing Administrations. Receipts collected by the Southwestern, Southeastern, and Western Power Administrations from the sale of hydroelectric power at Corps dams are currently deposited in the Treasury. Under this bill, those funds would be spent by the Corps, without further appropriation, for operations and maintenance at its facilities. CBO estimates that spending of PMA receipts by the Corps would total $117 million in 2005 and $2.4 billion over the 2005–2014 period.

TABLE 2. CHANGES IN DIRECT SPENDING UNDER S. 2773

By Fiscal Year, in Millions of Dollars

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
CHANGES IN DIRECT SPENDING										
Improvement of Water Management at Corps Reservoirs										
Estimated Budget Authority	849	889	959	1,028	1,129	909	1,093	1,100	1,107	1,114
Estimated Outlays	595	792	934	1,000	1,092	965	1,060	1,080	1,104	1,111
Loss of Power Marketing Administration Receipts										
Estimated Budget Authority	173	176	180	184	189	192	0	0	0	0
Estimated Outlays	173	176	180	184	189	192	0	0	0	0
Recreation Fees										
Estimated Budget Authority	34	6	−5	−7	−7	−7	−7	−7	−7	−7
Estimated Outlays	27	13	−5	−7	−7	−7	−7	−7	−7	−7
Land Conveyances and Other Direct Spending										
Estimated Budget Authority	8	*	*	−7	*	*	*	*	*	*
Estimated Outlays	8	*	*	−7	*	*	*	*	*	*
Total Changes										
Estimated Budget Authority	1,065	1,071	1,134	1,198	1,311	1,094	1,086	1,093	1,100	1,107
Estimated Outlays	803	981	1,109	1,170	1,274	1,150	1,053	1,073	1,097	1,104

NOTE: * = less than $500,000.

Spending of Receipts Collected by the Corps. S. 2773 also would allow the Corps to spend any proceeds that it collects in grazing fees, shoreline management permit fees, and municipal and industrial water supply fees. The Corps could spend such funds for operations and maintenance at its facilities. CBO estimates that spending of such receipts would total $21 million in 2005 and $288 million over the 2005–2014 period.

Impact on Future Corps Appropriations. By making about $1 billion a year available for operations and maintenance at Corps facilities without further appropriation, the bill could lead to future reductions in the amounts appropriated for such purposes. In fiscal year 2004, the Corps received an appropriation of almost $2 billion for operations and maintenance costs. Enacting this bill could result in a reduction in future appropriations if the Congress chose to maintain total Corps spending at a level similar to the amount appropriated in 2004. For this estimate, however, CBO assumes that Corps appropriations would remain at current levels and that new spending authorized by the bill would be in addition to what is annually made available.

Reduction in the Maintenance Component of Electricity Rates. CBO assumes that section 1006 of S. 2773 would result in an overall reduction in electricity receipts collected by the PMAs. Under current law, electricity sales rates charged by the PMAs are set to recover the cost of generating electricity, including operations and maintenance expenses associated with hydroelectricity generation at Corps projects. Over the 2005–2010 period, the bill would lower the portion of electricity rates charged to PMA customers for Corps-related expenses to 0.22 cents per kilowatt-hour. (BPA rates are explicitly exempted by that provision.)

The PMAs currently charge their electricity customers for Corps-related expenses more than the 0.22 cents per kilowatt-hour that would be mandated by the bill. Such rates range from as much as 1.2 cents per kilowatt-hour to 0.4 cents per kilowatt-hour for the various Corps projects associated with the Western Area Power Administration. CBO estimates that this provision would reduce electricity receipts collected by the PMAs by an average of about $180 million a year, over the 2005–2010 period.

Spending of Recreation Fees. Section 1004 would direct the Corps to establish a new system of recreation fees, including charges for admission to Corps recreationsites and for the use of recreation facilities, visitor centers, equipment, and services. Under the bill, the new fees (which would be based on the value of the admission or service purchased) would replace charges authorized under the more-restrictive fee authority contained in the Land and Water Conservation Fund Act (LWCFA), which currently governs the Corps' recreation fee program. The bill also would authorize the agency to provide recreational services through contractors by leasing Federal land or establishing other concession-like arrangements with non-Federal entities. Finally, section 1004 would allow the Corps to retain and spend without further appropriation all recreation user and admission fees it collects under the LWCFA. CBO estimates that enacting this provision would have a net cost of $27 million in 2005 and $21 million over the 2005–2009 period. We estimate the provision would result in a net reduction in direct spending of $14 million over the next 10 years.

CBO estimates that, once the fee authority that would be provided by this section has been fully implemented, Corps offsetting receipts would increase by $7 million a year from the current annual level of about $34 million. (We estimate that the increase would begin in fiscal year 2006 and would initially amount to $4 million to $5 million a year because of delays in determining the market value of similar local recreation opportunities and establishing appropriate fee schedules.) We estimate that the contracting and leasing provisions of this section would have no effect on the budget because such authorities already exist.

CBO further estimates that the authority that would be provided by the bill to spend without appropriation any offsetting receipts earned under the LWCFA would increase direct spending by $27 million in fiscal year 2005 and by $17 million in 2006. After the Corps implements the new fee program mandated by the bill (in mid-2006), no additional receipts would be earned under the LWCFA, and the authority to spend such amounts would no longer be in effect. Because the bill would not specifically authorize the appropriation of, or spending of, any fees collected under the new program, CBO assumes that those recreation receipts would be deposited into the general fund of the Treasury.

Various Land Conveyances. S. 2773 would authorize the Corps to convey certain land in Alabama, Pennsylvania, Georgia, and Missouri. CBO estimates that those conveyances would have no significant impact on the Federal budget.

The bill also would convey at fair market value 13 acres of land and the structures on the land, including a loading dock with mooring facilities, in Alabama. In addition, S. 2773 would convey at fair market value 650 acres at the Richard B. Russell Lake in South Carolina to the state. Based on information from the Corps, CBO estimates that the Federal Government would receive about $7 million in 2008 from this sale.

Arcadia Lake, Oklahoma. Section 5303 would eliminate the obligation of the city of Edmond, Oklahoma, to pay outstanding interest due on its water storage contract with the Corps. CBO estimates that this provision would result in a loss of receipts of about $8 million in 2005.

Waurika Lake Project. Section 5304 would eliminate the obligation of the Waurika Project Master Conservancy District in Oklahoma to pay its outstanding debt related to the construction of a water conveyance project. Due to an accounting error, the Corps inadvertently undercharged the district for costs associated with a land purchase related to the water project in the early 1980's. Under terms of the construction contract, the district is required to pay all costs associated with building the project, including the full cost of the land purchases. CBO estimates that enacting this section would cost less than $200,000 a year over the 2005–2014 period.

Funding to Process Permits. Section 5401 would extend the Corps' current authority for two more years to accept and spend funds contributed by private firms to expedite the evaluation of permit applications submitted to the Corps. CBO estimates that the Corps would accept and spend less than $500,000 during each year of this extension and that the net budgetary impact of this provision would be negligible.

Training Funds. Section 1003 would allow the Corps to collect and spend fees collected from the private sector for training courses. CBO estimates that the Corps would accept and spend less than $500,000 annually and that the net budgetary impact would be negligible.

Intergovernmental and Private-Sector Impact

S. 2773 contains no intergovernmental or private-sector mandates as defined in UMRA.

Federal participation in water resources projects and programs authorized by this bill would benefit state, local, and tribal governments, and any costs to those governments to comply with the conditions of this Federal assistance would be incurred voluntarily.

Previous CBO Estimate

On September 3, 2003, CBO transmitted a cost estimate for H.R. 2557, the Water Resources Development Act of 2003, as ordered reported by the House Committee on Transportation and Infrastructure on July 23, 2003. CBO estimated that enacting H.R. 2557 would increase direct spending by $32 million over the 2004–2013 period. In addition, assuming appropriation of the necessary amounts, CBO estimated that implementing H.R. 2557 would cost about $2.6 billion over the 2004–2008 period. The differences in the cost estimates stem from different levels of authorized funding.

Estimate Prepared By: Federal Costs: Julie Middleton, Lisa Cash Driskill, Deb Reis, and Mike Waters; Impact on State, Local, and Tribal Governments: Marjorie Miller; Impact on the Private Sector: Karen Raupp.

Estimate Approved By: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

Mr. INHOFE. I would also like to take this opportunity to note for the record that I believe there are several unrealistic sections of the CBO score that appear to be based on several unconventional interpretations of the Committee reported bill.

CBO estimates that the recreation fee program will result in $27 million in estimated outlays for 2005 and $13 million in estimated outlays for 2006, at which point CBO assumes that the outlays become a $7 million annual revenue. The recreation user fee program established in the bill, creates a program to directly fund the operation and maintenance needs associated with recreation at Corps reservoirs. The committee reported bill amends section 225 of WRDA 1999. That particular section of WRDA 99 provides the Secretary of the Army a temporary authority under the Land and Water Conservation Fund, to withhold a limited portion of recreation user fees and provides authority to spend those revenues on the operation and maintenance of recreation facilities at Corps reservoirs. The committee bill further amended this authority to allow the Corps to withhold 100 percent of the recreation fees, on a permanent basis and directed the Corps to establish a progrm to facilitate the efficient collection of revenues. The CBO interpretation of this section assumes that the Corps will withhold the recreation fees it currently collects and spend them directly on O&M. However, when the Corps implements the program for fees CBO assumes that the agaency's authority for withholding such fees disappears, and the agency will blithely turn them over to the General Treasury leaving their O&M budget in shambles. Such an outcome is in direct contravention of the obvious purpose of the entire section. And while such an interpretation of the section is possible, I have yet to encounter a situation where an agency turned funds over to the Treasury when they were authorized to withhold and spend them directly.

Section 1006 authorizes the Corps to deposit revenues collected in conjunction with operations at Corps reservoirs. With respect to the generation of hydro-power, the Corps does not currently collect any fees from the Power Marketing Administrations, PMAs. In the case of PMA revenue, the PMAs send a portion of their revenue to the Treasury. In order to provide direct funding for the Corps, the committee bill provides for a 0.22 cent charge per kilowatt of electricity produced. Bonneville Power Administration is specifically exempt from the 0.22 cent per kilowat hour fee. Despite this exemption, CBO assumes that Bonneville Power will ignore it's other authorizing statutes and turn over more than $800 million a year to the Corps. I would point out that the 0.22 cent per kilowatt fee, was the committee's best estimate at the size of a fee that would be required to directly fund $150 million for O&M, which was the amount recommended in the president's budget. Excluding Bonneville Power Administration, CBO estimated that the 0.22 cent per kilowatt hour would result in $173 million in direct O&M outlays. I believe that CBO erroneous included Bonneville Power Administration in the estimate of direct spending. Bonneville Power Administration receipts, if collected by the Corps, would total $7.1 billion over a 10-year period.

While CBO erroneously overestimates, the direct spending associated with O&M at Corps reservoirs, it completely underestimates the direct spending that will likely be required should the Fish and Wildlife mitigation provision become enacted. Section 1011 establishes a new standard for fish and wildlife mitigation for Corps of Engineers projects. Because the standard specifically amends WRDA 1986 with changing the dates specified in WRDA 86 with respect to the applicability of the standard to completed and on going projects, a strict reading of the new standard makes it applicable to all projects authorized after November 17, 1986. Moreover, the standard sets a very high bar by requiring the Corps to "acquire and restore the same number of acres of habitat" to fully replace the hydrologic and ecological functions of "each acre of habitat adversely affected." While on its face such a requirement may seem innocuous, there is no deminimus level for the determination of an adverse effect. Strictly speaking, even relatively minor changes to land use or hydrology would trigger the requirement for the Corps to acquire an equal number of acres as those that are modified, and restore all of those acres. The liability that this imposes on the Corps for mitigation of projects to this standard for everything since 1986 is likely substantial. Given that most non-Federal sponsors are local and State governments, this potentially represents a significant unfunded mandate as well.

NATIONAL RUNAWAY PREVENTION MONTH

Mr. HATCH. Mr. President, I rise today to commend the Senate for passing S. Res. 430, a resolution designating November 2004 as National Runaway Prevention Month. National Runaway Prevention Month is a public education initiative to increase awareness of issues facing runaways. This resolution will sensitize the public about solutions to the runaway dilemma and educate them on the role they play in preventing youth from running away.

Runaway and "throwaway" episodes among our Nation's youth are a widespread problem, with one out of every seven children and youth in the United States running away or being turned out of their home before the age of 18. A recent study by the Department of Justice's Office of Juvenile Justice and Delinquency Prevention estimates that nearly 1.7 million youth experienced a runaway or throwaway episode in a single year. The primary causal factors of running away or being turned out are severe family conflict, abuse and neglect, and parental abuse of alcohol and drugs.

All of the conditions that lead young people to leave or be turned out of their homes are preventable. However, we need to make interventions available to strengthen families and support youth in high-risk situations. Successful interventions are grounded in partnerships among families, community-based human service agencies, law enforcement agencies, schools, faith-based organizations, and businesses.

Preventing young people from running away and supporting youth in high-risk situations are a family, community, and national responsibility. Please join us in increasing public attention to the challenges that youth are facing today and in encouraging all Americans to play a role in supporting the millions of young people who have run away from their home environments or who are at-risk of doing so each year.

NATIONAL SEVERE STORMS LABORATORY 40TH ANNIVERSARY

Mr. INHOFE. Mr. President, in Oklahoma, we know the importance of predicting and tracking severe weather. Each spring, during tornado season, people in Oklahoma brace themselves for dangerous storms. However, instead of hiding in the dark, like they used to do, today, they can depend on a stellar source for up-to-date, real-time information. The National Severe Storms

Labs NSSL has played a vital role in providing research for predicting and tracking this harmful weather. In light of this, I rise today to recognize the 40th anniversary of the vital office of the NSSL within the Department of Commerce/National Oceanic and Atmoheric Administration, in Norman, Oklahoma.

The National Severe Storms Laboratory was established in 1964 and leads the way in investigations of all aspects of severe and hazardous weather. NSSL is a vital part of NOAA Research and the only federally supported laboratory focused on severe weather. The lab's scientists and staff constantly explore new ways to improve understanding of the causes of severe weather and ways to use weather information to assist National Weather Service, NWS, forecasters, as well as Federal, uiversity and private sector partners.

These scientists are working on ways to improve short-term weather forecasting computer models for the National Weather Service's basic tornado research to understand how tornadoes form, as well as real-time delivery of radar data to the meteorological community and interested partners. Research at NSSL has led to greater knowledge and improved forecasts of tornadoes, flash floods, damaging winds, hail, lightning, heavy snow, ice and freezing rain.

Early on, NSSL researchers recognized the potential of Doppler radar to improve the detection and warning of severe weather. NSSL built the first real-time displays of Doppler velocity data, which led to discoveries of tornado-related radar "signatures." The successful demonstration that Doppler radar could help forecasters provide much improved severe thunderstorm and tornado warnings led to the deployment of the Next Generation Weather Radar, NEXRAD, WSR-88D, network of Doppler radars throughout the United States. This important contribution to the Nation was recognized by a Department of Commerce gold medal award, and was the only NOAA research laboratory so recognized.

NSSL continues to be a pioneer in the development of weather radar. The lab is working with the NWS to deploy dual polarization, a planned upgrade to the current NEXRAD Doppler radar hardware that provides more information about precipitation in clouds to better distinguish between rain, ice, hail and mixtures. Such information will help forecasters provide better forecasts and warnings for flash floods, the number one severe weather threat to human life.

In addition, NSSL researchers are adapting state-of-the-art radar technology currently deployed on Navy ships for use in tracking severe weather. Phased array radar reduces the scan or data collection time from 5 or 6 minutes to less than 1 minute, potentially extending the lead time for tornado warnings beyond the current average of 12 minutes. When combined with other technology being developed at NSSL, warning lead times may be extended even farther.

Recently, NSSL collaborated with the University of Oklahoma, Texas Tech, and Texas A&M University to build two new 5-cm mobile Doppler radars. These SMART-Radars—Shared Mobile Atmospheric Research and Teaching Radars—are capable of scanning and penetrating an entire tornadic storm or hurricane, providing critical data needed to understand the mysteries of how tornadoes form and for eventually improving severe storm forecasts and warnings.

During the past few years, scientists from NSSL completed several field experiments to study severe and hazardous weather. In 2003 and 2004, researchers launched weather balloons loaded with instruments into thunderstorms during the Thunderstorm Electrification and Lightning Experiment, or TELEX. The lightning observations they made will be used to improve forecasts and warnings of hazardous weather. In 2002, NSSL hosted the International H2O Project or IHOP, one of the largest weather-related studies ever conducted in the U.S.

NSSL has a research partnership with the Cooperative Institute for Mesoscale Meteorological Studies, a cooperative institute between the National Oceanic and Atmospheric Administration and the University of Oklahoma. Additionally, NSSL conducts collaborative research with other NOAH laboratories including the Forecast Systems Laboratory, the Environmental Technologies Laboratory, and the Great Lakes Environmental Research Laboratory, as well as the U.S. Navy, Air Force, Army, Department of Transportation, Federal Aviation Administration, Texas A&M, Texas Tech University, Lockheed Martin, Basic Commerce and Industries, Weather Decision Technologies, WeatherNews International, Inc., WeatherData, Inc., and Salt River Project.

I congratulate the National Severe Storms Laboratory in Norman, OK, on their first 40 years. Based on their performance since 1964, I believe we can expect many more years of pioneering scientific research from this outstanding institution, their academic, government and private sector partners, and their many scientists and technicians.

LOSING GROUND

Mr. LEVIN. Mr. President, it has been nearly a month since Republican congressional leadership and the President allowed the assault weapons ban to expire. This lack of action made it potentially easier for criminals and terrorists to acquire 19 previously banned assault weapons that could be used to harm innocent Americans. Adding insult to injury, the House of Representatives last week passed legislation that would make families in the Nation's capital even more susceptible to gun crime.

The misnamed District of Columbia Personal Protection Act, which passed the House last week, would repeal a local law in Washington, DC that bans the sale and possession of unregistered firearms, requires firearm registration, imposes commonsense safe storage requirements, and bans semiautomatic weapons in the District. Should this bill become law, tourists and especially those who live and work in our Nation's capital will face a considerably greater threat of gun violence.

According to the Brady Campaign To Prevent Gun Violence, this bill would roll back gun laws in D.C. to a point that it would be legal to possess a loaded assault rifle on city streets without a permit. Over the strong objections of local leaders, the Republican-controlled House made the unwise decision to take up and pass this legislation even as we face the increased threat of terrorism. Hopefully the Senate will not make the same mistake.

Unfortunately, instead of making progress on the issue of gun safety, we seem to be retreating. Instead of strengthening laws that would help prevent future gun crimes and terrorist attacks, they are being weakened giving potential criminals and terrorists easier access to weapons that have no place on our streets. I will continue to work toward reversing this course and toward passing sensible gun safety legislation that will make our communities more, instead of less, safe.

ANABOLIC STEROID CONTROL ACT

Mr. McCAIN. Mr. President, I am pleased that the Senate has passed S. 2195, the Anabolic Steroid Control Act, and I commend my colleagues Senators HATCH and BIDEN for their commitment to this important legislation.

While S. 2195 is a positive first step toward protecting the public health, our work is not complete. We must continue to explore ways to improve the Dietary Supplements Health and Education Act, DSHEA, which has provided safe harbor for substances like those made illegal by S. 2195. We must make it more difficult for dietary supplement manufacturers to place harmful substances into the stream of commerce, and require that such manufacturers report to the Food and Drug Administration, FDA, adverse health events suffered by consumers when using their products. We must also demand that best practices for the manufacture of dietary supplements be developed by the FDA and followed by the supplement industry to ensure the efficacy and safety of these products.

RWANDA AND SUDAN: SIMPLY RECOGNIZING GENOCIDE IS NOT ENOUGH

Mr. DURBIN. Mr. President, this summer and fall, a lot of us have been drawing comparisons between Sudan today and Rwanda a decade ago. The October 4, 2004 edition of the New York Times contains a piece furthering this argument by one who is uniquely qualified to do so: retired General Roméo Dallaire, who was the commander of the United Nations forces in Rwanda during the genocide.

Ten years ago, General Dallaire pleaded for more troops to stem the rising tide of murders that were sweeping across Rwanda. Instead of sending reinforcements, the United Nations cut his peacekeeping force from 3,000 to 500, leaving Dallaire and his troops to witness the mass killings that they did not have a prayer of stopping. In the aftermath of this decision, 800,000 people died in 100 days.

Ten years ago, the African Union promised battalions to stop the killing but lacked the equipment and logistical support to come to the assistance of Dallaire and the people of Rwanda. Those forces never arrived in any numbers.

Today, genocide is again taking place, this time in Sudan. Secretary General Kofi Annan has recognized it. President Bush has recognized it. But again the world is essentially standing by.

Last month, the Senate passed an amendment to the Foreign Operations appropriations bill which provided $75 million to support an expanded African Union mission in Darfur, Sudan. This bill is now in conference. It is vitally important that it pass with this measure and additional assistance for Sudan relief efforts intact.

President Clinton has said that failure to act in Rwanda constitutes his greatest regret as president. That is not a failure that we can bear to repeat. It is not enough for the international community to recognize genocide. This time, we actually have to stop it.

I ask unanimous consent that General Dallaire's op-ed from the New York Times be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Oct. 4, 2004]

LOOKING AT DARFUR, SEEING RWANDA

(By Romeo Dallaire)

MONTREAL.—Each day the world is confronted by new reports of atrocities in the Darfur region of Sudan. President Bush, in his address to the United Nations General Assembly last month, referred to the situation as "genocide," and he and Secretary General Kofi Annan pledged support for sanctions against the Sudanese government and a Security Council resolution to expand the African Union force on the ground there. But I am afraid that moral condemnation, trade penalties and military efforts by African countries are simply not going to be enough to stop the killing—not nearly enough.

I know, because I've seen it all happen before. A decade ago, I was the Canadian general in command of the United Nations forces in Rwanda when that civil war began and quickly turned into genocide. The conflict was often portrayed as nothing more than an age-old feud between African tribes, a situation that the Western world could do little to stop. All that was left to do was wait to pick up the pieces when the killing stopped and to provide support to rebuild the country.

Although the early stages of the Darfur situation received more news coverage than the Rwanda genocide did, at some level the Western governments are still approaching it with the same lack of priority. In the end, it receives the same intuitive reaction: "What's in it for us? Is it in our 'national' interest?"

Sudan, an underdeveloped, orphan nation, with no links to colonial masters of its past, is essentially being left to its own devices. The Islamic Janjaweed militias of Darfur, with the complicit approval of the government, are bent on ridding the region of its residents, primarily black Africans—killing, raping and driving refugees into camps along the border with Chad.

The United Nations, emasculated by the self-interested maneuverings of the five permanent members of the Security Council, fails to intervene. Its only concrete step, the Security Council resolution passed in July, all but plagiarized the resolutions on Rwanda 10 years earlier. When I read phrases like "reaffirming its commitment to the sovereignty, unity, territorial integrity and independence of Sudan" and "expressing its determination to do everything possible to halt a humanitarian catastrophe, including by taking further action if required," I can't help but think of the stifling directives that were imposed on the United Nations' department of peacekeeping operations in 1994 and then passed down to me in the field.

I recall all too well the West's indifference to the horrors that unfolded in Rwanda beginning in April 1994. Early warnings had gone unheeded, intervention was ruled out and even as the bodies piled up on the streets of Kigali and across the countryside, world leaders quibbled over the definition of what was really happening. The only international forces they sent during those first days and weeks of the massacres were paratroopers to evacuate the foreigners. Before long, we were burning the bodies with diesel fuel to ward off disease, and the smell that would cling to your skin like an oil.

Several African countries promised me battalions of troops and hundreds of observers to help come to grips with the relentless carnage. But they had neither the equipment nor the logistical support to sustain themselves, and no way to fly in the vehicles and ammunition needed to conduct sustained operations.

Today, to be sure, the international community is caught in the vicissitudes of complex political problems—particularly the fragile cease-fire between the Islamic government and the largely Christian population in southern Sudan. Powerful nations like the United States and Britain have lost much of their credibility because of the quagmire of Iraq. And infighting at the United Nations has bogged down an American proposed second resolution that probably wouldn't do much more than the one passed in July.

So in the end we get nothing more than pledges to support the international monitoring team of a few hundred observers from the African Union (on Friday, Sudan agreed that this force could expand to 3,500 soldiers). Nigeria and other countries are willing to send a larger intervention force, but they can't do so effectively without the kind of logistical and transportation support Western countries could provide.

Sudan is a huge country with a harsh terrain and a population unlikely to welcome outside intervention. Still, I believe that a mixture of mobile African Union troops supported by NATO soldiers equipped with helicopters, remotely piloted vehicles, night-vision devices and long-range special forces could protect Darfur's displaced people in their camps and remaining villages, and eliminate or incarcerate the Janjaweed.

If NATO is unable to act adequately, manpower could perhaps come individually from the so-called middle nations—countries like Germany and Canada that have more political leeway and often more credibility in the developing world than the Security Council members.

In April, on the 10th anniversary of the start of his country's genocide, President Paul Kagame told his people and the world that if any country ever suffered genocide, Rwanda would willingly come to its aid. He chastised the international community for its callous response to the killing spree of 1994, during which 800,000 people were slaughtered and three million lost their homes and villages. And sure enough, Rwanda sent a small contingent to Darfur. President Kagame kept his word. Having called what is happening in Darfur genocide and having vowed to stop it, it is time for the West to keep its word as well.

MAKING THE MOST OF FOREIGN ASSISTANCE: FAMILY PLANNING AND DEVELOPMENT

Mr. DURBIN. Mr. President, today I would like to talk about a critical subject, the need to support family planning as part of our international development agenda.

Family planning saves lives. It is a basic health service, especially in parts of the world such as Malawi where 1 in 7 mothers die in childbirth or Mozambique where 137 infants die per 1,000 live births and where life expectancy is just 37 years.

This is a health issue and it is a development issue because the two are virtually always related.

Ten years ago, members of the United Nations met in Cairo to draft a 20-year action plan to alleviate poverty through women's empowerment and universal access to reproductive healthcare.

Recently, a new report by UNFPA has come out, "The Cairo Consensus at Ten: Population, Reproductive Health, and the Global Effort to End Poverty." This report assesses how far we have come and how far we have to go and argues that we have to mobilize political will and international assistance if we are going to build on previous gains.

This report revealed that, a decade after the Cairo meeting, more than 350 million couples still lack access to a full range of family planning services. It found that almost 530,000 women die each year from complications of pregnancy and childbirth, mostly from preventable causes. It also found that 2 out of every 5 people on the planet still struggle to survive on less than $2 a day, and many of them earn less than half that tiny amount.

The report concluded:

> Policy makers have been slow to address the inequitable distribution of health information and services that helps keep people poor. . . . Developing countries that have reduced fertility and mortality by investing in health and education have higher productivity, more savings and more productive investment, resulting in faster economic growth. Enabling people to have fewer children, if they want to, helps to stimulate development and reduce poverty, both in individual households and in societies. Smaller families have more to invest in children's education and health. Rapid population growth contributes to environmental stress, uncontrolled urbanization and rural and urban poverty.

However, United States funding for UNFPA, which Congress has repeatedly passed, has not been distributed because the administration has refused to do so. Releasing the funds for UNFPA, which the administration has cancelled for the last 3 years, is a great way to help countries alter this template of maternal and child mortality, poverty, and under development.

This issue isn't about coercive abortion in China. UNFPA has a program to end coercive abortion in China. It is not about abortion at all. The UNFPA does not provide any support for abortion.

This is about providing health services for desperately poor women and their families.

The administration's own investigative team looked into UNFPA and found no evidence of wrongdoing and urged immediate and unconditional release of these funds.

Study after study has shown that development is fundamentally about women: dollars go further and programs mean more when they reach women. Increasing women's access to education, health care, and human rights brings enhanced child health, improved food production, lower population growth rates, and higher incomes—in short, better quality of life for women and their families.

Reproductive health is an important component of this agenda, especially when we look at maternal and child mortality rates. That is why it is so important that we support the UNFPA and in the process advance our other foreign assistance goals.

NUCLEAR ENERGY FOR A BALANCED ENERGY PORTFOLIO

Ms. LANDRIEU. Mr. President, I rise to endorse S. Con. Res. 141 offered by Senator DOMENICI recognizing the essential role that nuclear power plays in our society.

The U.S. Senate must recognize the important role that nuclear energy plays in our Nation's economy, our Nation's energy independence and security, and our Nation's environmental goals. And, we need to acknowledge that like nearly every other source of energy, nuclear power needs our help to continue playing its important role in our Nation's energy policy.

Nuclear energy currently generates electricity for one in every five homes and businesses today. It is important not only in Louisiana, where two nuclear plants produce nearly 17 percent of my State's electricity, but also in States such as Connecticut, Illinois, New Hampshire, New Jersey, South Carolina and Vermont where nuclear generates more electricity than any other source. Nationwide, 103 reactors provide 20 percent of our electricity—the largest source of U.S. emission-free power provided 24-7.

Nuclear energy is also vitally important for our environment and our Nation's clean air goals. Nuclear power is the Nation's largest clean air source of electricity, generating three-fourths of all emission-free electricity. For future generations of Americans, whose reliance on electricity will increase and who rightfully want a cleaner environment and the health benefits that cleaner air will provide nuclear energy will be an essential partner.

Just this past Sunday, the Washington Post highlighted the problems that the Shenandoah National Forest now faces with pollution. Think how much worse our Nation's air pollution would be if nuclear energy did not generate one fifth of our electricity.

According to the Department of Energy the demand for electricity is expected to grow by 40 percent by 2020. In order to continue producing at least one-third of our total electricity generation from emission-free sources, we must build 50,000 megawatts of new nuclear energy production. If we do that, we are just preserving our current levels of emission-free generation, not improving them.

And, we need to recognize that nuclear power, by providing a stable, dependable source of electricity, is vital to our Nation's energy security and independence. Nuclear power is essentially an American invention. We generate nearly a fourth of the world's total nuclear power and we can do so with domestic energy sources. Hydrogen holds the promise of helping us lessen our dependence on imported oil and nuclear power is one of the most promising ways that we can produce hydrogen economically and efficiently.

There is a nuclear power renaissance in the making. Three of the Nation's leading nuclear power operators have already applied for an early site permit to build a new nuclear plant next door to an existing nuclear plant they operate, testing the Nuclear Regulatory Commission's new licensing process for the first time. Also, just a few months ago, nine nuclear operating companies and the two major U.S. power reactor manufacturers formed the NuStart Energy consortium to apply for a construction and operating license, COL, to test the regulatory process for actually building and operating the next generation of nuclear power plants.

These are positive signs that the U.S. nuclear power industry is alive and ready to build and operate the next generation of nuclear power—still without emitting any air pollutants, increasing our energy independence, and using the safest designs ever.

Today 29 new plants are being built around the world in 16 counties—most using a design that originated here in America—but not one of them is in the U.S. That must change.

I urge my colleagues to support this critical resolution which will further promote a vital source of energy while helping to pave the way towards improving our Nation's energy security.

ART THERAPISTS VITAL TO THE CARE OF VETERANS

Mr GRAHAM of Florida. Mr. President, today I bring attention to the impressive work that art therapists do with our Nation's veterans and the significant accomplishments they have made in this field. Art therapists provide effective treatment and health maintenance intervention for veterans, focusing on all of their life challenges, such as mental, physical, and cognitive impairments. Intense emotion and memory, often difficult to convey in words, often are more easily expressed in images with the guidance of a trained clinician.

Art therapists are master's level mental health practitioners trained in psychology, psychotherapy, and the interface with the arts modality. The American Art Therapy Association establishes national academic standards of education and clinical practice. After September 11, art therapists assisted both survivors and the bereaved, drawing out their traumatic experiences and dealing pictorially with the horror as they moved through the various stages of grief. Similarly, art therapy is used with veterans who struggle with Post Traumatic Stress Disorder (PTSD).

Research has demonstrated that traumatic memory is not stored in a fashion that can be expressed only through words. Instead, it is retained as visual, auditory, olfactory, and other sense mechanisms. Images may return as flashbacks or nightmares that the veteran is unable to integrate as memory. As a result, these impressions remain a toxic force, causing intense fear and leading the veteran to try to shut off all memory and emotion and possibly leading to depression, the inability to properly function day to day, and estrangement from family. The traumatic experiences that a veteran is unable to discuss or confront, however, can instead surface through artwork. The process of creating the artwork and externalizing intense issues help the veteran to regain control, integrate horrors into manageable memory, and allow feelings to be experienced again.

For example, a former Marine who served in Vietnam and struggled for years with feelings of inadequacy and fear in crowds benefitted considerably from art therapy. He has said that it enabled him to address problems he otherwise did not have access to, thereby helping him to "mourn the pain. . . overcome . . . and feel comfortable within" himself. Another serviceman drew out his dreams as a way of placing combat experiences into the past and therefore to function more effectively in the present. Such life-enhancing and cost-efficient intervention is not only viable as a treatment option, but may be preventive by forestalling full-blown PTSD. Given the number of veterans gradually returning from the current war in Iraq, art therapy has the potential to assist them as a form of rehabilitation. The American Art Therapy Association is currently investigating possible sites and funding sources for conducting outcome studies on the efficacy of art therapy with veterans.

I would also like to mention with pride that more than 100 registered art therapists live and work in my home State of Florida. These therapists practice all across the State, from my hometown of Miami all the way up to the Panhandle. I am so pleased that almost every veteran—or anyone else—residing in Florida has access to the benefits art therapy can offer.

As ranking member of the Committee on Veterans' Affairs, I support the use of art therapy programs in the Department of Veterans Affairs health care facilities, and I recognize the contribution of art therapists to the effective reintegration, enhanced coping, and quality of life for our veterans. During this crucial time in the history of our Nation, I encourage my colleagues in Congress to do the same.

SUPPORTING DEMOCRACY IN BELARUS

Mr. CAMPBELL. Mr. President, I welcome the unanimous passage of the Belarus Democracy Act, BDA, by the United States Senate last night following similar action by the House of Representatives earlier this week. As co-chairman of the Helsinki Commission, I am particularly pleased at timely adoption of this important legislation. I thank Chairman LUGAR and Senator BIDEN for their assistance in facilitating consideration of this bill by the full Senate.

Repression and stagnation have been the hallmarks of the regime of Aleksandr Lukashenka, the leader of Belarus who increasingly tightened the noose around those who express independent views. A series of fundamentally flawed elections have left Belarus without legitimate executive and parliamentary leadership. Against this backdrop, preparations are underway for parliamentary elections and a referendum later this month. The elections take place in an environment in which the regime has intensified its repression of the remaining independent media and vilification of the opposition and their supporters. Lukashenka is also seeking to manipulate the situation to extend his rule by eliminating constitutional term limits for president, possibly paving the way for him to become a "president-for-life."

As co-chairman of the Helsinki Commission, I have maintained a strong interest in Belarus and have tried to inform my Senate colleagues about the increasingly troubling developments in that strategically located country, whose 10 million people have suffered cruelty at the hands of czars, Nazis, Communists and now, Aleksandr Lukashenka. During my service on the Commission, I have met and come to know many of the courageous individuals, who often at personal risk have spoken out in support of democracy in the face of Europe's last dictatorship, including the spouses of opposition leaders and a journalist who disappeared in 1999 and 2000 because they dared speak to the truth.

Belarus, under Lukashenka, has the worst human rights record in Europe. His regime has increasingly violated basic human rights and freedoms. The goal of the Belarus Democracy Act is to help put an end to repression and human rights violations in Belarus and to promote Belarus' entry into a democratic Euro-Atlantic community of nations following years of self-imposed isolation.

The Belarus Democracy Act authorizes additional assistance for democracy-building activities such as support for NGOs, independent media, including radio broadcasting to Belarus, and international exchanges. It also encourages free and fair parliamentary elections, which have been notably absent in Belarus and which look to be highly problematic when they are held on October 17, judging by the pre-election environment and the regime's tight control over the electoral process.

The BDA includes sense of the Congress language that would prohibit U.S. Government financing, except for humanitarian reasons and U.S. executive directors of the international financial institutions would be encouraged to vote against financial assistance to the Government of Belarus except for loans and assistance for humanitarian needs. The bill also requires a report from the President concerning the sale of delivery of weapons or weapons-related technologies from Belarus to rogue states and on the personal wealth and assets of Lukashenka.

Nearly 2 years after the introduction of the Belarus Democracy Act the situation in that country has spiraled downward. Adoption and implementation of the Belarus Democracy Act will offer hope that the current period of political, economic and social stagnation will indeed end. It shows our concrete support for the courageous individuals, non-governmental organizations, independent media and independent trade unions struggling mightily against the machine of repression. And it shows our support for the people of Belarus, who deserve a chance for a brighter future.

DISPERSAL BARRIER

Mr. DEWINE. Mr. President, I want to thank Senator JEFFORDS from Vermont for his recognition of the situation we are facing in the Great Lakes with Asian carp. We are currently trying to keep this invasive species out of the Great Lakes ecosystem by constructing a dispersal barrier in the Chicago Sanitary and Ship Canal. It is very important that this barrier be completed soon before this destructive invasive species makes it way to the Lakes. I know that my colleague from Vermont has the same problem in Lake Champlain, and I plan to do everything I can in the next Congress to work with him to authorize and fund a dispersal barrier for Lake Champlain.

Mr. JEFFORDS. Invasive species are a problem in Lake Champlain in my home State of Vermont. The Lake Champlain ecosystem and regional economy have been seriously impacted already by invasive species, many of which dispersed to the lake from the Hudson River by way of the Champlain Canal. Eurasian Milfoil and Water chestnut have rendered much of southern Lake Champlain unusable for recreation and stripped value from waterfront properties. Hundreds of thousands of dollars each year are spent to control these plants. The sea lamprey has devastated our sport fishery, and large amounts of money are being spent on control, with only mixed results. These are just a few species. Once here it is nearly impossible to eliminate these invaders and even marginally controlling them is hugely expensive.

Other invasive species have not yet reached Lake Champlain but have spread widely throughout the Hudson and/or Great lakes drainages. We know they are coming and must act now to keep them out. These include fish like the Asian carp, Eurasian ruff, round goby, alewife and tench. Any one of these could change the Lake Champlain ecosystem in catastrophic ways, and each is moving toward the basin. Invertebrate species such as the spiny waterflea and fish hook flea, as well as aquatic plants are also of concern.

Because of the success of the dispersal barrier in the Chicago Sanitary and Ship Canal, we are looking for a similar barrier for the Lake Champlain Canal to keep more invasive species out of Lake Champlain. A barrier will also protect the Hudson River drainage from invasive species that may arrive first from the north, like a particularly damaging fish, the tench.

We must move quickly to complete design, and to construct a dispersal barrier in the Lake Champlain Canal. Time is of essence.

Mr. VOINOVICH. I thank the Senator from Vermont and recognize that his State is facing similar problems and I pledge to work with him and the Environment and Public Works Committee to advance authorization for a Lake Champlain Canal dispersal barrier through both the Water Resources Development Act and the National Aquatic Invasive Species Act in the next Congress.

Mr. LEVIN. I would like to join my colleagues in supporting the need for the Chicago Sanitary and Ship Canal dispersal barrier and pledge to work with my Great Lakes colleagues and Senator JEFFORDS to address the invasive species problems in Lake Champlain through the authorization of a dispersal barrier. I also am pleased to join my colleagues in our pledge to move the National Aquatic Invasive Species Act forward in the next Congress.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

On January 25, 2001 in Washington, D.C., police arrested a 17-year-old in a gay bashing incident in the Dupont Circle area after the youth and another young man followed two men leaving a gay bar while shouting ant-gay epithets at them. After attacking the victims, the youths fled when passerby said they had called the police.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

HONORING FAVORITE TEACHERS

Mr. DAYTON. Mr. President, nearly 4,000 Minnesotans honored their favorite teacher at my Minnesota State Fair booth this summer. I would like to honor these teachers further by submitting their names to the CONGRESSIONAL RECORD as follows:

Lanesboro Elementary—Helen Simen; LaPorte High School—Joyce Stillwater; Las Virgenes Unified School—Larry Sandirs; Laura MacArthur Elementary School—Larry Yadlowski; Le Center Elementary School—Mary Spartz; Le Center Secondary School—Erik Buckman; Le Maison D'Enfant—Cecile Gaultier, Sandrine Perigaud; Learning Center for Children (Minneapolis)—Barbara Novy; LeCenter Elementary—Elizabeth Traxler; LeCenter High School—Tony Boyer, LeRoy Edlund, Robyn Menk; Lehman Center—Heather Turngren; LeRoy High School—Barb Payne; Leroy-Ostrander High School—Norm Hansen; LeSueur Elementary—Patti Doshan, Tom Quiram, Rachel Sorenson; L'Etoile du Nord French Immersion—Laura Handley, Madam Keil, Maureen Peltier, Mary Rddad, Peggy Russel, Ms. Stevens, Tammy Trouchu; Lewiston-Altura—Julie Schneider; Liberty High Charter School—Gary Knox; Lily Lake Elementary—Laine Belter, Sally Davis, Mrs. Kocian, Mrs. Lein, Ricky Michels, Joan Teppen, Brad Utzman; Lincoln at Mann Elementary—Jane Barton, Stephanie Koenig; Lincoln Center Elementary—Gretchen Brandt, Mrs. Christenson; Lincoln Elementary (Anoka)—Mr. Dickens, Mr. Koenig, Karen Krantz, Baiying Wu; Lincoln Elementary (Elk River)—Cherly Howard, Mrs. Ostroot; Lincoln Elementary (Fairbault)—KeriJo Kielmeyer; Lincoln Elementary (Minneapolis)—Mr. Lundquist; Lincoln Elementary (White Bear Lake)—Teri Beckers, Ms. Gahm, Mr. Healy, Mary Ellen Mieure, Debbie Thiebalt; Lincoln H.I. Elementary (Hendricks)—Barbara Nelson; Lincoln High School (Esko)—Jen Hoffman; Lincoln High School (Lake City)—Becky Kearns; Lincoln High School (Thief River Falls)—Calvin Lindberg, Regina Olson; Lincoln K-8 Choice School (Rochester)—Linnea Archer, Elizabeth Koehler, Stephanie Koenig, Beth Napton; Lincoln Secondary School (Ivanhoe)—Mr. Nelson; Lindbergh Elementary—Mary Jo Schultz; Lino Lakes Elementary—Mary Jfortney; Linwood A+ Elementary School (St. Paul)—Kimberly Kroetsch; Linwood Elementary (Wyoming)—Mr. Knox, Heather Peterson, Jan Peterson, Mr. and Mrs. Urness; Litchfield High School—Gary Hein, Jo Carlson, Linda Heggedal-Hart, Keith Johnson, Greg Mathews; Little Canada Elementary—Jerene Mortensen, Barbara Schochenmaier; Little Falls High School—John Ahlin, Carolyn McGrath, Luverne Powers; Little Falls Public Schools—Anne Rebischke; Little Mountain Elementary—Lee Tracy; Living Hope Lutheran School—Nicole Dub; Lomarena Elementary (Laguna Hills, CA)—Sharon Hinds; Long Prairie Grey Eagle Elementary—Brach Czech, Mr. Gustafson, Darlene Mareck; Longfellow Elementary (Minneapolis)—Ms. Abrahamson, Jan Nethercut; Longfellow Humanities Magnet School (St. Paul)—Ms. Filipek-Johnson; Longfellow Middle School (LaCrosse, WI)—Laurie Strand; Loring-Nicollet Alternative High School—Marin Peplinski; Los Angeles, CA—Margaret Truppi; Lourdes High School—Mr. Rhabe; Lower East Side, NY, NY—Goldie Brown; Lucy Laney at Cleveland Park Elementary—Lisa Brown, John Cearnal, Janice Evans, Trina Mansfield, Ms. Schroeder, Opal Toy; Lutheran High School—Paul Schlif; Luverne High School—Esther Frakes, Jim Sanden; Lyle Elementary School—JoAnn Guthmiller; Lyndale Elementary—Gene Ruder; Mable Barron School, Stockton, CA—Sarah Fleutsch, Eddie Gehrke; Macalaster College—Mahnaz Kousha; Macalaster Plymouth United Church Preschool—Sue McMahan; Maddock Public Schools—Penny Leier, Madelia Elementary—Caryn Anderson; Madelia High School—Terry Arduser, Debra Nelson; Madison Elementary (Blaine)—Mr. Lungee, Jennifer Warner, Linda Anderson, Amy Neuswanger; Madison Elementary (St. Cloud)—Mr. Ellingson; Mahtomedi High School—Joy Ganyo, Shelly Mitchel; Mahtomedi Middle School—Mrs. Bigalk, Claudine Goodrich, Jennifer Och; Main Elementary (Kodiak, AK)—Diane Getten-Langfitt; Manhattan New School, NY, NY—Mindy Gerstenhaber; Mankato East High School—Bob Gospeter, James Manske, Sheri Robinson; Mankato West High School—Scott Urban, Gwen Walz, Tim Walz, Jack Bengston; Mann Elementary—Jan Dixon, Heather Long, Judy Ronnei; Maple Grove High School—Terry Caruso, Susan Hein, Larry Larson, Caroline Mullins, Jane Ruohoniemi, Jutta Schubert; Maple Grove Junior High—Doug Anderson, Amy Bradley, Mike Olson; Maple Lake East Middle School—Mark Jenzen, Dan Kraft; Maple River Central Elementary—Cathy Schroeder; Maple River High School—Susan Goecke, William O'Brian; Maplewood Middle School—Ms. Cartier, Mr. Petermen, Peter Evans, Faye Ormseth, Mrs. Willer; Maranatha Christian Academy—Tim Ford; Marcy Open Elementary—Mariann Bentz, David Bruns, Lynn M. Jay Scoggin, Nicky Sendar, Greg Krueger, Rhonda Geyette; Marine Elementary—Nancy Wisniewski; Marion W. Savage Elementary—Carl Berg, Lisa Christen, Barb Fiola; Martin County West High School—Sylvan Struck; Mary Queen of Peace—Mrs. Leider, Mrs. Nowak; Mason-Rice Elementary—Leslie Kahn Skornik; Maternity of Mary—Mrs. Babineau, Mrs. Fauskee, Gloria Ross; Math and Science Academy—Eric Kaluza, Paul Simone; Maxfield Magnet Elementary—Mrs. Fredrickson; Mayo High School—Steve Brehmer, Marilyn Thompson-Hoerl; McCluer North High School—Mary Pitilangas, Ellen Bowles; McCormick Middle School—Richard Gundlach; McGuire Junior High—Mr. Zeman; McKinley Elementary—Joe Hirte, Kathy Kolle, Gloria Steffenson; Meadow Lake Elementary—Tonya Larson, Matt Phelps; Meadowbrook Elementary—Jack Anderson, Karen Carlson, Angelette Kittrell, Steve Miller, Judy Skalicky, Sue Young, Lesley Hendrickson; Meadowvale Elementary—Darcy Doty, Amy Crocker; Meadowview Elementary—Erica Rach; Medford High School—Mr. Davis; Melrose High School—Dave Anderson; Menahga High School—Mr. Honga, Timothy Wurdock; Mendota Elementary—Deb Manthey, Julie Weisbecker; Mesabi East Elementary—Arnie Nellis, Denise Erchul; Metcalf Junior High School—Mark Challgren, John Jacobson, Steven Orth; Metro Deaf School—Lisa Ewan, Kevin Kovacs; Metro State University—Mary Kirk; Metropolitan Learning Alliance—Stephanie Wheelock; Middleton Elementary—Liz Bergdall, Heather Bestler, Ms. Wetschka; Milaca Elementary—Randy Johnson; Milaca High School—David Dillan, Randy Zimmer, Andrea Rusk; Minniapple

Montessori—Maria Malm; Minneapolis—Michelle Cambrice, Mark Hymen, Chris Jaglo, Norma Johnson, Tom Muelhlbauer, Mrs. Solum, Mark Trumper, Barb Wasmoen, Nate Wayne, Ruben Wenzel; Minneapolis Community Technical College—Gregg Kubera; Minneapolis Educational Service Center—Dorothy Hoffman; Minneapolis Jewish Day School—Lori Bale, Patty Baskin, Andi Cohen, Mrs. Kaplan, Sue Norton, Julie Ziesman; Minneapolis Public School—Mary Jo Meagher, Cheryl Ryan; Minneapolis South High School—Margie Adamsick; Minnesota Business Academy—Mr. Tillman; Minnesota North Star Academy—Mandy Frederickson; Minnehaha Academy—Camella Whaley, Ms. Scholl, Mrs. Ameter, Mrs. Classen, Mr. Erickson, Carolyn Forsell, Deb Fondel, Mrs. George, Renee Hecker, Bob Noble, Naomi Peterson, Nancy Ringling, Mr. Scholl, Paulita Todhunter, Michelle Vitt; Minnesota State University, Moorhead—Sarah Smedman; Minnesota Transitions Charter School—Jennifer Struck; Minnesota Virtual Academy—Jen Ingalls; Minnesota Waldorf School—Mr. Angus, Mrs. Meany, Kirste Riehle; Minnetonka High School—Randy Nelson, Ernie Gulner, Doug Kennedy, Mrs. Pistner, Emily Rosengren, Amy Stafford, Ann Swanson, Judy Trombley; Minnetonka Middle School East—Mary Fenwick, Brian Getter, Rebbecah MacDougal, Rhonda Olson-Lundgren, Minnetonka Middle School West—Carina Grander, Joan Julien, Paul MacKinney, Tony Mosser, Matt Sell; Minnewashta Elementary—Melanie Casiday, Chris Haun, Kathy Larson; Mission Valley—Patricia Olsen; Mississippi Creative Arts Magnet School—Ms. Erno, Judy Sheldon, Judy Ewald, Karyn Wrenshall; Moline High School—Timothy Curry; Monroe Community (St. Paul)—Kath Olson, Anna Stanek; Monroe Elementary (Brooklyn Park)—Carol Allen, Joan Campe, Mrs. Hanson, Monica Magadan, Sue Steel, Carol Allen; Monroe Elementary (North Mankato)—Sandy Hatalstaed; Montevideo High School—Charlie Breest; Montevideo Middle School—Ralph Heidorn, Mark Johnson, John Mader; Montgomery-Lonsdale Elementary—Mrs. Anderson, Mrs. Wondra; Monticello District Offices—Jim Johnson; Monticello High School—Holly Herman; Monticello Middle School—Jennifer Uluen; Moorhead Junior High—Sharon Lucason; Mora High School—JoAnne Schuch; Moreland Elementary—Susan Birkoltz, Debbie Haefel, Maria Pasquerella; Morris Bye Elementary—Mrs. Holm, Nicole Huttner, Gerhardt Mahling, Aaron Olinyk, Ann Sangster, Barbara Nicholls, Besty Quist; Mosinee Middle School—Lynne Helbach; Mound Westonka High—Jim Kaeter; Mounds Park Academy—Maureen Conway, Mark Dallmann; Mounds View High School—Mavis Schwanz, Bonnie Bougie, Dan Butler, Greg Harman, Donna Johnson, Joe Keenan, Fred Kunze, John Madura, Kathy Miller, Bob Nelson, Gretchen Nesset, Philip Richardson, Ruthie Seidenkranz, Graham Wrigth, Ted Bennett, Richard Werner; Murdoch High School—Alice Peterson; Murdock Elementary—Donna Johnson; Murray County Central High School—Janet Opdahl; Murray County Central Secondary School—Dan Willadson; Murray Junior High—Billy Chan, Tim Chase, Mary Crowley, Mr. Hughes, John Krenik, Mr. Pearson; Museum Magnet—Lolita Cox, Mr. Jeffers, Flint Keller, Heather Seifert, Jennifer Keller; National American University—Tony Steblay; Nativity of Mary School—Pat Bohman, Diane Talley, Nativity of Our Lord Elementary—Paula Bernabai, Jill Daley, Michelle Metzdorft, Vi Moser, Mrs. Scanlan; Mouqd-Westonka Secondary School—Mr. Kaeter; Mount Calvary Lutheran School—Karl Schmidt, James Spitzack; Mount Hope Redemption—Lutheran School—David Polzin; Mount Iron-Buhl High School—Ted Louma, Luke Weinens; Mount Olivet Nursery School—Sandra Keuhn; Mountain Lake High School—Jerry Cogue, Wade Nelson; Nellie Stone Johnson Elementary—Jonathan Berry; Neveln Elementary—Maryanne Heimsness, Linda Lind; New City Charter School—Mary Spoar; New Haven Community School—Elaine Arft; New Hope Elementary—Stephanie Hill, Paula Roberge; New London-Spicer High School—Lloyd Bakke; New Prague Intermediate Elementary—Margaret Kartek, Mark Shaughnessey, Mrs. Witt, Irma Langer; New Prague Middle School—Heidi Hagen; New Prague Senior High School—Pat O'Malley, Dan Puls, New Richland-Hartland-Ellendale-Genera Elementary—Sylvia Boettger; New Richmond Senior High School—Jim McCollum;

FIGHTING TERRORISM IN LATIN AMERICA

Mr. COLEMAN. Mr. President, as we contemplate reforms to better equip us to prevent and fight terrorism, I hope we will bear in mind the importance of the Western Hemisphere. As chairman of the Western Hemisphere Subcommittee, I am encouraged by the opportunities we have to work cooperatively with our regional neighbors on issues we all can benefit from. We have shared interests in promoting democracy, human rights, and the rule of law. We are stronger when we stand together as a hemisphere against terrorism, money laundering, and the trafficking of drugs, weapons, and people. Our greatest asset in the war on terror in Latin America and the Caribbean is the fact that we have so many willing partners throughout the region who share our values.

I recently came across an interesting study, written by Michael Johnson of the Council on Hemispheric Affairs, that discusses the threat of international terrorist groups in the Triborder region of Paraguay, Brazil and Argentina. I hope my colleagues will read this study and reflect upon the importance of addressing terrorism wherever it exists around the world.

I ask unanimous consent that study be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. FOREIGN POLICY IN SOUTH AMERICA'S TRIBORDER REGION

A REGION IN NEED OF SECURITY

Unstable institutions, rampant corruption and a struggling economy made Paraguay appear as an attractive venue for would-be terrorists to base their operations just a few years ago. However, with the newly formed Three Plus One Counterterrorism Dialogue consisting of Argentine, Paraguayan, Brazilian and an American intelligence-gathering team, terrorists seem to have decided to shy away from creating havoc in the region. Though no terrorist initiatives seem to have occurred in the tri-border region of Paraguay, Argentina and Brazil, experts from each of the countries feel that significant amounts of money laundering is taking place in the area—ending up funding terrorist acts in the Middle East. Current U.S. foreign policy in the area, therefore, will play an integral role in cleansing the area of terrorists as well as contain other illicit activities endemic to the region.

U.S. agencies have been monitoring clandestine activity in Paraguay for a number of years. However, only recently have they begun to increase their physical presence. According to various reports, the Drug Enforcement Agency (DEA) has more than doubled the size of its office in Asuncion. However, this does not automatically represent any change in the status quo. In the wake of terrorist strikes in the U.S., Paraguay's recent history of allegedly serving as a staging ground for militant Islamic groups such as Hezbollah and the Islamic Jihad certainly is drawing closer scrutiny.

On September 21, 2003, foreign ministers from the Organization of American States (OAS) nations met to discuss terrorism-related hemispheric security concerns. Portions of the talks dealt with the Southern Cone countries' long-standing belief that Paraguay has shown little concern in addressing the terrorist elements operating within its borders. Evidence shows that the U.S. has stepped up pressure on the tri-border countries to clean up the area and eliminate "rogue elements." Hopefully, such an increase in the U.S. presence will yield all the returns that the Pentagon anticipates.

U.S. FOREIGN POLICY IN THE TRI-BORDER REGION

President Bush's call to sustain the war "until every terrorist group of global reach has been found, stopped and defeated" explains U.S. authorities' increase in the monitoring of developments in the tri-border area. For their part, tri-border countries have indicated that they intend to fully cooperate in helping the U.S. eliminate any terrorist threats in the region. Although Brazil and Argentina have increased their border security, Paraguay has perhaps assumed the strongest position in support of U.S. anti-terrorism efforts by asking the OAS to firmly support any U.S.-led retaliation.

Nevertheless, rhetoric and strong anti-terrorism stances by these nations fail to quell fears about the potential terrorist threat posed by illicit forces in the region. Paraguay's Foreign Minister, Jose Antonio Moreno, stated that 40 FBI agents arrived in Paraguay and were headed to Ciudad del Este, a "transit point for shadowy groups." The inevitability of U.S. involvement in the area was reflected in statements made by the State Department and the former director of the FBI, Louis J. Freeh. The FBI's concern was rooted in a trip that Freeh took to South America in 1998 to assess security concerns. At the time, Freeh called for a multinational crackdown on crime, something he saw as an important step to establishing a hemispheric police alliance. He called the tri-border region "a free zone for significant criminal activity, including people who are organized to commit acts of terrorism." Last April, the State Department warned that the governments of Paraguay, Brazil and Argentina are not capable of preventing Islamic terrorist actions originating from Paraguay's hub of militancy, Ciudad del Este.

The U.S. has offered its Special Forces to train and advise the Paraguayan military and national police in anti-terrorism and anti-drug tactics to combat the identified groups. U.S. Special Forces took a first step to making their presence felt in Paraguay earlier this year by participating with the country's military in a "training exercise" focused on combating drug traffickers. At the time, many thought that this maneuver closely resembled an anti-insurgency operation. Such an approach could signal a change in U.S. military policy in Paraguay, as further training could focus on anti-terrorism tactics.

9/11 CONNECTION

Ciudad del Este provides the kind of uncontrolled environment that can sustain criminal organizations—and terrorists. The 1992 Israeli Embassy bombing and the 1994 Argentine-Israeli Community Center bombing cast a spotlight on the baleful role being played by some elements of the Arab community in Ciudad del Este that it has since been unable to avoid. Because much of Paraguay's export business is underground, basically based on contrabanding, the situation leaves the Arab community suspect of helping to financially support Arab terrorist groups, although without clear proof is wanting. Although it may be unwise to assume that all black-market contrabandists are terrorists, police authorities believe that the amount of funds being generated by smuggling and money laundering that is being transferred within Paraguay to overseas banks is far more than any presumptive business activity in the country. It raises some suspicions in the minds of local police officials that some in the Arab community are supporting radical terrorism with the spoils of illegal trade.

Indeed, the U.S. State Department clearly advises that there are individuals and organizations operating in Ciudad de Este and along the tri-border area between Paraguay, Brazil, and Argentina, with ties to extremist groups. Brazilian Judge Walter Fanganiello Maierovitch, former National Drug Enforcement Secretary and now with the Giovanni Falconi Brazilian Criminal Sciences Institute, reports that Osama bin Laden is setting up an al-Qaeda unit near Ciudad del Este under the cover of the Arab community. The U.S. Government cannot confirm an al-Qaeda presence in the tri-border area. However, other radical Islamic extremists routinely rely upon illegal activities, such as drug and arms trafficking, to help fund terrorist activities throughout the world.

To achieve some control, 10 member countries of the OAS Inter-American Committee Against Terrorism (CICTE) participated in exercises in the tri-border area to highlight solidarity against extremist activities. The United States, Argentina, and experts from other countries are providing training to Paraguayan anti-terrorist police and military personnel. The objective is to "maintain a presence in the area and to be able to raid homes of persons suspected of being involved in financing terrorism or of radicalized members of Islam residing in the tri-border area."

THREE PLUS ONE COUNTERTERRORISM DIALOGUE

In 1998, Brazil, Argentina and Paraguay formed the Comando Tripartito—an operational body in which the three countries exchange information and perform work on the ground dealing with specific regional problems. This Tripartite Commission of the Triple Frontier served as a security mechanism, meeting several times a year in each of the member countries. However, due to the sensitive nature of the information exchanged, the data swapped between countries is not available to public scrutiny. In reality, the Comando Tripartito did little more than serve as a nominal organization, doing little to clamp down on money launderers and neutralize drug traffickers in the region.

Talks began to take on a more serious nature in the post 9/11 atmosphere, and the Southern Cone joined the bandwagon of anti-terrorist rhetoric. December of 2002 marked the first 3+1 Counterterrorism Dialogue between the tri-border countries and the U.S. According to official State Department records, dialogue between the countries "serves as a continuing forum for counterterrorism cooperation and prevention among all four countries." Argentine Embassy Political Counselor, José Luis Sútera, in an interview with COHA asserted, "The 3 +1 Counterterrorism Dialogue, without question, is the chief board of exchanging information. The first meeting in Buenos Aires stemmed from American suspicions that Hezbollah and Hamas groups were harbored in the [tri-border region]." The next meeting is scheduled to take place in Washington, DC on December 6, 2004.

"NO OPERATIONAL TERRORIST ORGANIZATIONS, NO AL-QAEDA PRESENCE"

In an interview with COHA. Dr. Jorge Brizuela, a high-ranking official in the Paraguayan Embassy in Washington, DC, stated, "Terrorists have not been found in the zone. No information would indicate that terrorist activities exist in the zone—this has been reiterated on various occasions by the corresponding authorities and the necessary steps are being taken so money obtained in the tri-border region is not being sent to Arab countries." Though he agrees with Brizuela's assertion that "al-Qaeda is not in Ciudad del Este," Argentina's Sútera recognized that "suspicions still loom over Arabs who are sending money to terrorist groups in the Middle East." Such groups pose as charity organizations that seek to aid socially and economically stricken areas of Iran, while what they do is to donate the newly acquired funds to the terrorist cause of Hamas and Hezbollah.

The transcript of the 3+1 Counterterrorism Dialogue's December 3, 2003 meeting held in Asunción emphasized the delegation's stance that "Although there continued to be reports in 2003 of an al-Qaeda presence in the tri-border area, these reports remained uncorroborated by intelligence and law-enforcement officials." Still, those assembled agreed that international terrorist funding and money laundering in the area remained an area of primary concern. Considering the priorities of money launderers and piracy crooks, the 3+1 understandably has organized a Financial Intelligence Organization under the umbrella of the Counterterrorism Dialogue. Last May in Buenos Aires, the four government delegations discussed the threats of banking activities that could lead to funding of terrorist organizations. Sútera has concluded that most of the terrorist-funding organizations had traveled to other parts of South America, though he declined to comment where he believed such groups had gone.

ARGENTINA'S COOPERATION

In separate interviews with COHA, Argentine officials like Sútera and Congressional Liaison, Mariano Enrico, both expressed the belief that Argentine authorities had initiated and bolstered Southern Cone efforts to clean up the tri-border region. According to a recent State Department document, "Argentina continues to express strong support for the global war on terrorism and worked closely with the UN, the OAS, MERCOSUR and the U.S. to ensure full implementation of existing agreements." In particular, Argentine officials have shown their disposition to freeze assets of alleged terrorist-funding organizations/individuals.

Among the channels of communication connecting U.S. and Argentine officials is the line between the CIA and SIDE (Intelligence Sector of the Argentine State). Both SIDE and the CIA work in concert with Brazilian and Paraguayan secret service personnel. Another perhaps more crucial element in the war on terrorism in Latin America began as a result of an Argentine initiative; CICTE was organized in 1998 as a multination security plan for the region. Since then, Paraguay has cooperated openly with the Argentines. But, Brazil has had some reservations about instigating any anti-terrorism plans without proof of terrorism. However, since 9/11 the Brazilian sector of the CICTE team has offered full support for the organization as information among the three countries has passed with little inhibition.

PARAGUAY'S COOPERATION

Paraguay's role in the war on terrorism has never held a more important role than it does now. Though few terrorists per se have surfaced in the region, rumors of the possibility of some al-Qaeda connections to the region simply will not go away. While President Nicanor Duarte Frutos has determined that there is a domestic problem in Paraguay with fundraising that might support terrorist causes, many State Department officials have concluded that Paraguay's greatest impediment to the prosecution of suspected terrorists is the absence of an anti-terrorist law.

BRAZIL'S COOPERATION

President Luiz Inácio Lula has taken a greater initiative than perhaps has been the case of his predecessors in terms of combating terrorism, especially in the tri-border region. Foz do Iguaçu, Brazil's portion of the region, has received considerable scrutiny from the once aloof, but now rather concerned, Lula administration. The Brazilian president has "vigorously condemned terrorism" and calls such acts "the insanity of perpetrators of terrorism."

Though Lula's intentions merit praise, his country's shortage of resources and training have hindered its role in acting as a watchdog over the region. In an exclusive interview with COHA, Brazilian Embassy First Secretary of Political Section, Breno Costa, offered an explanation as to why Brazilian officials appear to act lethargically when it comes to terrorist concerns: "At first it seemed like the U.S. was constantly alleging that the tri-border area harbored criminals and terrorists, yet they never specified where exactly in the region such evidence was forthcoming. So Brazil asked the U.S. for concrete evidence and, of course, not one piece of evidence. Just as the State Department reported last year, no terrorist cells are acting in the region." Costa went on to say that once evidence of money laundering was presented to the Brazilian government, officials in Foz do Iguaçu began to examine cash flow entering and leaving the city. Overall, Brazil has cooperated considerably with the other three countries involved in the counterterrorism dialogue, having signed all of the 12 UN conventions on terrorism and is a party to nine of them.

CONCLUSION

Clearly, the effort to prevent terrorism in Latin America has become a more salient issue since 9/11. With cooperation among the

Southern Cone countries in conjunction with participation of the U.S., terrorist acts have a lower likelihood of occurring. Still, as the Afghanistan mountains provide a haven for terrorists in the Middle East, Ciudad del Este—if not properly monitored—could evolve as yet another hub for terrorism. Whereas the U.S. has supported and participated in the 3+1 Counterterrorism Dialogue, American leaders merit commendation.

TRIBUTE TO PAM BULINE

Mr. THOMAS. Mr. President, I rise today to recognize a key member of my team who I have worked alongside for almost 10 years now and most importantly, to mark a milestone of dedicated service to this body, the U.S. Senate.

On September 24, 2004, Pam Buline marked her 25th anniversary of working for the U.S. Senate. Twenty-five years all spent as a valuable aide to two Senators from the great State of Wyoming.

Pam began her career in the Senate back in 1979, working for former Senator Malcolm Wallop. In those days, Pam worked out of a little office in a town called Lander, WY. Upon my election to the U.S. Senate, Pam agreed to join my staff and continue her efforts to serve constituents in our State. I was extremely pleased to have a person with her degree of knowledge on so many important issues—she is invaluable.

Pam remains a crucial person on my staff. Her domain in Wyoming covers a wide array of issues, from land swaps, to American Indian issues, to snowmachines in Yellowstone and Grand Teton. I can always turn to Pam for good advice and a very thorough explanation of the issue at hand or as she says, "the long and the short of it." Pam loves her job and the people she works with and I am extremely grateful that she is on my staff.

We are part of a team, my staff and I. Along with my wife, Susan, we all feel strongly bound to service for the people of Wyoming. Pam continues to be an invaluable member of that team. Her loyalty, while not rare in this great body, is special nonetheless.

As U.S. Senators, we all know how important it is to have staff around us that are trustworthy, and will do whatever it takes to make things work. I have been particularly fortunate to know Pam and work with her for the past 9 years. Wyoming and the U.S. Senate have been blessed by her service for the past 25 years. I know my colleagues, and her husband Jim, and son Robert, join me in saluting Pam. I look forward to working with her for many years to come.

NATIONAL MENTAL HEALTH WEEK

Mr. JOHNSON. Mr. President, I take this opportunity to note the importance of the week of October 3-9, 2004, which is National Mental Health Week. This annual event was created in the hopes that Americans would recognize and honor the challenge encountered by the mentally ill and their loved ones. This year, the theme of the National Mental Health Week is "unity through disparities".

Mental illnesses affect 22.1 percent of Americans over the age of 18. According to a National Institute of Mental Health 2001 survey, approximately 44.3 million Americans suffer from some form of mental illness. Conditions such as depression, bipolar disorder, schizophrenia, and obsessive compulsive disorder, together are ranked fourth of the ten leading causes of disabilities in the United States. Such statistics clearly indicate that we cannot afford to ignore the needs of those living with a mental illness.

The impact of mental illnesses on the productivity of the United States is greatly underestimated. The Global Burden of Disease study, published by the National Institute of Mental Health, exposed that mental illness, including suicide, accounts for 15 percent of the burden of disease in established market economies. This study reveals that mental illness places a larger burden on the productivity of the United States than all cancers combined. Such findings reemphasize that more attention and resources need to be directed towards supporting the mentally ill.

Today millions of Americans living with some form of mental illness continue to be discriminated against on a daily basis by their insurance companies. Congress passed mental health parity legislation that went into effect January 1, 1998 to try and address this problem. This legislation was intended to require insurance companies that choose to provide coverage for mental health to offer the same lifetime cap as they do for physical illness. This legislation was meant to be a monumental first step in preventing discrimination against individuals with mental illness.

Since enactment of this legislation, insurance companies have not expanded their coverage, but instead have maintained just enough coverage to remain within the legal limits of the law. Today I call on my fellow Senators to support the Senator Paul Wellstone Mental Health Equitable Treatment Act of 2003, S. 486. Under this bill, full coverage equality with respect to health insurance coverage will be provided to those who are mentally ill. It is my hope that in the closing weeks before the close of the 108th Congress, that we can come together in a bipartisan manner and support S. 486, not only for those who suffer from mental illness and their families, but also to pay tribute to our colleague, the late Senator Paul Wellstone, who continuously fought for such parity during his service in the Senate.

ADDITONAL STATEMENTS

IN RECOGNITION OF CARL AND HESTER WHITE

• Mr. BUNNING. Mr. President, today I honor Carl and Hester White of Ludlowe, KY. On this day 60 years ago, they were married and they set out on the path of life together.

The commitment of 60 years of marriage is a truly magnificent accomplishment. This married couple has dedicated themselves to each other through thick and thin for the greater part of a century. This kind of faithfulness in marriage is no less than perseverance in the most important virtue of all, love of your fellow man.

Marriages are the bedrock of society and the foundation of responsible citizenship. I congratulate Carl and Hester on their sixtieth wedding anniversary. I hope they have many more wonderful years together. May God bless them.•

YOGI BHAJAN

• Mr. BINGAMAN. Mr. President, the death of one of New Mexico's most beloved and influential residents on Wednesday night has saddened all of us who knew him. Habhajan Sing Khalsa Yogiji was his full name, but his followers and friends worldwide knew him as Yogi Bhajan.

The spiritual teacher of hundreds of thousands of people, Yogi Bhajan was leader of the Sikhs in the Western Hemisphere. He chose New Mexico as one of several centers of business and residence in the United States, and it was at his home in Espanola that he died with family and friends near.

I have the privilege of Yogi Bhajan's friendship and support for more than 20 years. He was a dynamic, powerful person with a strong devotion to human rights, religious freedom, and good health. He was also a masterful businessman with a degree in economics who intimately understood the connection between food and health, and made health food a foundation for several hugely successful companies. "Yogi Tea," for instance, is found in households around the world.

My thoughts and prayers are with his wife Bibiji and their children, his followers and his other friends. He was a teacher of all who came to know him. We have learned much from this man, and with his death we have lost a great and good friend.•

TULSA HISPANIC COMMISSION 25TH ANNIVERSARY

• Mr. INHOFE. Mr. President, the Greater Tulsa Area Hispanic Affairs Commission was established in 1979 by law by the city of Tulsa and Tulsa County. The commission was established due to the leadership and commitment of its founding members who include Mrs. Aurora Ramierez Helton, Mr. Jack Helton, Rev. Victor Orta, Dr. Luis Reinoso, Dr. Chris Romero, Mr. Joe Rodriguez and Mr. Carlos Vargas. The commission also was established thanks to the unconditional support of the then mayor of the city of Tulsa, James M. Inhofe, his chief of staff, Richard Soudriette, and the members of the Tulsa County Commission.

This year the Greater Tulsa Hispanic Affairs Commission celebrates its 25th anniversary. On this occasion it is important to recognize the accomplishments of the commission such as it was only the second commission of its type to be established in the U.S.A. The commission has helped countless people in the Hispanic community in Tulsa to find help in the areas of health, education and economic development. Also, the commission has played a fundamental role in promoting the values and cultural richness of the Hispanic community in Tulsa. The commission has organized numerous community festivals and cultural programs and has actively promoted teaching of Spanish, as well as English. Finally, the commission aided in the establishment of the sister city program between Tulsa, OK, and San Luis Potosi, Mexico, that to this day promotes friendship and understanding between the people of the United States of America and Mexico.

Today, I, JAMES M. INHOFE, United States Senator (R–OK) on behalf of my colleagues, do hereby congratulate the members of the Greater Tulsa Hispanic Affairs Commission on the occasion of their 25th anniversary. Also, I wish the commission well in its important work to promote greater understanding and appreciation of Hispanic heritage. Furthermore, I want to recognize the work of the commission to promote the cultural diversity of our Hispanic community, which plays such a vital part of the history of the city of Tulsa, the State of Oklahoma, and the United States of America.●

IN RECOGNITION OF CAPTAIN ROBERT C. WILKENS

● Mr. HOLLINGS. Mr. President, I would like to pay tribute to naval officer, and fellow South Carolinian, Captain Robert C. Wilkens. This fall, Captain Wilkens will retire from the United States Navy after 32 years of distinguished leadership, selfless service, and tireless commitment to our Navy and Nation.

Captain Wilkens served right here in the U.S. Capitol, as the Director of Pharmacy in the Office of the Attending Physician to Congress from 1981–1985. He then entered advanced training as a pharmacy resident at the Navy's flagship hospital, National Naval Medical Center, Bethesda, MD, 1986.

Wilkens continued with his career as the Pharmacy Clinical Coordinator and director of inpatient services at the Naval Hospital, Portsmouth, VA. Upon completion of that assignment in 1990, he became a Doctor of Pharmacy Candidate at the Medical College of Virginia in Richmond.

Captain Wilkens then served as the chairman of the Pharmacy Department at Naval Medical Center, San Diego, CA, from 1992–1999. By special request, he next served as the Specialty Leader and Consultant to the Navy Surgeon General for Pharmacy Policy at the Bureau of Medicine and Surgery in Washington, DC. Upon completion of that tour in 2001, Captain Wilkens returned to San Diego, and served once again as chairman of the Pharmacy Department at the Naval Medical Center.

I send best wishes on behalf of the United States Senate, for continued happiness and success to Captain Wilkens and his wife Linda as they begin the next chapter of their lives, with thanks from a grateful Nation for their loyal and dedicated service.●

WILLIAM S. RUPP

● Mr. TALENT. Mr. President, I rise today in honor of William S. Rupp of St. Peters, MO. I join his wife June, the rest of his family and his many friends in honoring and recognizing him on his 80th birthday, October 10, 2004.

A devoted husband, father of five and grandfather of 16, Bill's first 80 years have been rich and full. He has achieved a great deal and has contributed tremendously to his State and his country.

As a United States Marine in the Pacific Theater during World War II, Bill saw some of the fiercest fighting of the war. He served bravely for 3 years until he was honorably discharged in 1945.

Bill chose not to end his devotion to the military when he left the Pacific, and he has been a very active and highly effective veteran. He has served as chairman of the St. Peters Veterans Memorial Commission and helped design and coordinated the city's Veterans' Memorial site. He was also instrumental in the construction of St. Peters' Korean War Memorial. Bill is a member of Congressman TODD AKIN's Veteran Memorial Commission and Veterans of Foreign Wars Post 10838, where he has served as Commander, All-State Quartermaster, Safety Chair, Hospital Chair, Military Assistance Chair and Deputy Inspector.

In addition to veterans' affairs, Mr. Rupp has been involved in other important civic matters. While his children were in school, he served with distinction as president of the McBride High School Father's Club, president of the Rosary High School Parent Teacher Association and as a judge for the Amateur Athletic Union's 75th track meet. In addition, he is a past president of the Summerhill Association.

After his military service, Bill attended Washington University before becoming a marketing representative for Gateway Seed Company and a department manager for Famous-Barr Company. He attended St. Louis University High School and St. Roch's Catholic Grade School.

I am honored to congratulate Mr. Rupp on this special occasion. He has many accomplishments in his long life thus far, and I wish him many more years of happiness and success.●

COMMEMORATING THE INTEGRATION OF HOXIE SCHOOL DISTRICT

● Mrs. LINCOLN. Mr. President, it has been 50 years since the U.S. Supreme Court ruled in the 1954 landmark decision of Brown v. Board of Education that separate was not equal when it came to our children's education. That ruling changed the way that Americans are educated and opened up countless opportunities for all children, both black and white, to learn about and from one another.

Hoxie, AR, is a small town in the northeast corner of my state, with a population of just about 3,000 people. Prior to 1954, like many other schools in Arkansas and across the South, the Hoxie School District was segregated. To get an education, black children had to travel thirty minutes by bus to the neighboring town of Jonesboro where they attended Booker T. Washington School with other black students from around the region.

Following Brown, the Hoxie School Board unanimously voted to become one of the first schools in the South to begin integration. In the fall of 1955, Hoxie School Board members, faculty, students, and citizens stood together with 21 black children who enrolled and became the first black students to attend the Hoxie School system. This courageous step, in the face of opposition from around the state and across the Nation, helped open doors for future generations of students in Arkansas.

I recently had the honor of attending a reunion for the Hoxie Twenty-One, as they have come to be known in Arkansas. It was a wonderful event in which the community gathered to commemorate the integration of Hoxie School District. We paid tribute to the Hoxie Twenty-One and their families, as well as to the school officials and community leaders who paved the way for integration at Hoxie. The courage and resolve that the citizens of Hoxie showed in 1955 is an example of those who are willing to embrace the spirit of equality and to do what is right for every child in the community.

Today, Arkansas' children go to school in a different environment than that confronted by the Hoxie Twenty-One back in 1955. We certainly have more work to do to ensure that all of our children receive the best possible education, but I am pleased with the progress we have made over the last 50 years. It is my hope that America can continue to build on the foundation that Hoxie School District helped to create to ensure that all of our nation's children, no matter their race, are provided with the best educational opportunities available.●

RECOGNIZING THE McLEAN GIRLS LITTLE LEAGUE SOFTBALL TEAM

● Mr. ALLEN. Mr. President, I am very pleased today to recognize the 2004 McLean Girls Little League Softball team for their hard work and determination in representing both Virginia and the South in the 2004 Girls Little League World Series tournament.

These young athletes, under the strong coaching of Jamie Loving, devoted a tremendous amount of time and energy in their efforts to make it to the World Series tournament in Portland, Oregon. Throughout their season, they showed courage and fortitude in winning the State competition with a record of 5-1 and the regional competition with a perfect record of 5-0. The team then went on to compete in the World Series tournament against teams across the United States, Canada, the Philippines, Europe and Puerto Rico. This is a great accomplishment for these Virginia girls, especially since this is the first time in the history of the tournament that a team from Virginia has made it to the World Series.

I would like to congratulate each of the members of the McLean Girls Little League Softball team: Brooke Brown, Sarah Eidt, Michelle Tilson, Lauren Sanata, Megan Sullivan, Brittany McCray, Lauren Sutherland, Madeleine Giaquinto, Adrianne Engel, Jamie Bell, Kukana Ho'opi'i, Shannon Engel, Lauren McColgan, Rachel Ing and their coaches, Jamie Loving, Darrell Tilson and Kurt Brown.

As a former student-athlete, I understand the impact that athletics play in the development of an individual's character and life. Sports teach us important lessons of self-discipline, perseverance, teamwork, sportsmanship and self-confidence. The benefits of participating in athletics can prove valuable in the daily lives of student-athletes whether at school or at work in their communities. I wish all of the members of the team and their coaches continued success in the future. Keep Winning.●

TRIBUTE TO DR. LINDA CRNIC

● Mr. JEFFORDS. Mr. President, I rise to pay tribute to Dr. Linda Crnic, of Denver, CO, who passed away unexpectedly on September 10, 2004.

Dr. Crnic was a professor of pediatrics and psychiatry at the University of Colorado Health Sciences Center and director of the Colorado Mental Retardation and Developmental Disability Research Center. She was also an inspiration to thousands of families across the Nation for her internationally recognized research on Down syndrome and Fragile X.

Down syndrome and Fragile X are the two leading genetic disorders causing mental retardation. Fragile X is an inherited disorder caused by a defect in one gene on the X chromosome. It is also the most common known cause of Autism.

While I did not know Linda personally, many individuals have reached out to me in recent weeks with stories and tributes about the impact Linda made as a mother, as a colleague, as a friend, and through her research.

Dr. Crnic's research helped individuals with Down syndrome and Fragile X become increasingly integrated into society and live fuller and more active lives.

Through the efforts and outreach of professionals like Linda Crnic, all of us benefit as research about these disorders have also led to new medical insights and treatments.

According to those families, whose lives she touched so profoundly, one cannot begin to describe the high regard and affection in which Dr. Crnic was held. She was a researcher to whom parents of children with Fragile X and Down syndrome could always go to with their concerns, regardless of whether or not their concerns were related to Dr. Crnic's area of research. She listened and responded. This loss, for the Fragile X and Down syndrome communities is incalculable.

I send my deepest condolences to Linda Crnic's family. I hope they are comforted with her memory and knowledge that their loss is shared by so many in her community and across this nation.

I ask that the following news story about the life of Linda Crnic from the Rocky Mountain News be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Rocky Mountain News, Sept. 22, 2004]

CRNIC, 56, CHAMPIONED DOWN SYNDROME CAUSES

(By Mark Wolf)

Linda Crnic addressed the National Down Syndrome Congress last month on The Dawn of a New Era in biomedical research, then spent the evening dancing with children with Down syndrome.

"She spent hours on the dance floor," said Lloyd Lewis, of Lafayette, father of a child with Down syndrome, who addressed the association from a parent's perspective. "There was a particularly moving moment when a 50-year-old woman was confused at not being able to find her purse. Linda spent an hour looking under every table for it."

Crnic, an internationally prominent Down syndrome researcher, died Sept. 11 from injuries suffered in a bicycle accident. She was 56.

She was a professor of pediatrics and psychiatry at the University of Colorado Health Sciences Center and, since 2001, director of the Colorado Mental Retardation and Developmental Disabilities Research Center.

"A topic like (Down syndrome and other developmental disabilities) is never something you can approach with one particular line of investigation," said Dr. Doug Jones, chairman of pediatrics at the Health Sciences Center. "You have to look at genetics, what determines behavior, a whole range of things to understand how to help these children be as normal as possible.

"You have to have a psychologist, physician, geneticist. It requires a broad range of disciplines. Linda's great strength was that she saw how to do that, not just within the School of Medicine, but within the entire University of Colorado system and CSU, DU and ultimately across the country."

Born in Fort Wayne, Ind., she moved to Naperville, IL., when she was 12. She earned a bachelor's degree from the University of Chicago and master's and doctoral degrees in experimental psychology from the University of Illinois at Chicago.

She joined the CU Medical School as a postdoctorate fellow in 1975 and became a full professor in 1994.

"She was just the kindest, most loving person that you would ever meet in your life," said Stan Wilks, her husband. "She was actively involved and mentored a lot of people in their scientific careers."

Their son, Michael, 13, plays cello, and his mother would sit with him while he practiced.

"She made that commitment to him," said her husband.

The family loved hiking and camping and had just purchased an A-frame chalet in Hartsell.

"We spent two of the last three weekends up there. We bought it as a little family getaway to have some real private times," Wilks said.

The weekend she died, Mrs. Crnic had traveled to Bend, Ore., for a reunion weekend with several women with whom she had attended leadership training. During a leisurely bike ride she fell and fractured her skull.

"The tragedy of that is that she was an expert bike rider and practiced safety. She would never go biking without a helmet, and here she was without a helmet," Wilks said.

She was in demand as a speaker to professional organizations nationally and internationally and was a strong advocate for increased support and research for Down syndrome families.

"She took the time and was genuinely interested in parents and kids. She stimulated in me the notion that parents could be very active and influential in funding research from various avenues: the National Institutes of Health, Congress and private benefactors," Lewis said.

Surviving in addition to her husband and son are sisters Jacqueline Susmark, of Lakewood, and Janine Bisbee, of Warren, N.J., and brother Brent Smith, of Salida.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations and withdrawals which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 9:30 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 5185. An act to temporarily extend the program under the Higher Education Act of 1965.

H.R. 5212. An act making emergency supplemental appropriations for the fiscal year ending September 30, 2005, for additional disaster assistance relating to storm damage, and for other purposes.

The message also announced that the House has passed the following bills, without amendment.

S. 2415. An act to designate the facility of the United States Postal Service located at 4141 Postmark Drive, Anchorage, Alaska, as the "Robert J. Opinsky Post Office Building".

S. 2742. An act to extend certain authority of the Supreme Court Police, modify the venue of prosecutions relating to the Supreme Court building and grounds, and authorize the acceptance of gifts to the United States Supreme Court.

The message further announced that the House has passed the following bills, with an amendment:

S. 129. An act to provide for reform relating to Federal employment, and for other purposes.

S. 1194. An act to foster local collaborations which will ensure that resources are effectively and efficiently used within the criminal and juvenile justice systems.

The message also announced that the House agree to the amendment of the Senate to the bill (H.R. 2828) to authorize the Secretary of the Interior to implement water supply technology and infrastructure programs aimed at increasing and diversifying domestic water resources.

ENROLLED BILLS SIGNED

The message further announced that Speaker has signed the following enrolled bills:

S. 551. An act to provide for the implementation of air quality programs developed in accordance with an Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado concerning Air Quality Control on the Southern Ute Indian Reservation, and for other purposes.

S. 1421. An act to authorize the subdivision and dedication of restricted land owned by Alaska Natives.

S. 1814. An act to transfer Federal lands between the Secretary of Agriculture and the Secretary of the Interior.

S. 2319. An act to authorize and facilitate hydroelectric power licensing of the Tapoco Project.

H.R. 4850. An act making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 2005, and for other purposes.

H.R. 4011. An act to promote human rights and freedom in the Democratic People's Republic of Korea, and for other purposes.

The enrolled bills were signed subsequently by the President pro tempore (Mr. STEVENS).

At 2:14 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 4232. An act to redesignate the facility of the United States Postal Service located at 4025 Feather Lakes Way in Kingwood, Texas, as the "Congressman Jack Fields Post Office".

H.R. 4302. An act to amend title 21, District of Columbia Official Code, to enact the provisions of the Mental Health Civil Commitment Act of 2002 which affect the Commission on Mental Health and require action by Congress in order to take effect.

H.R. 4306. An act to amend section 274A of the Immigration and Nationality Act to improve the process for verifying an individual's eligibility for employment.

H.R. 4453. An act to improve access to physicians in medically underserved areas.

H.R. 4518. An act to extend the statutory license for secondary transmissions by satellite carriers of transmissions by television broadcast stations under title 17, United States Code, and to amend the Communications Act of 1934 with respect to such transmissions, and for other purposes.

H.R. 4807. An act to designate the facility of the United States Postal Service located at 140 Sacramento Street in Rio Vista, California, as the "Adam G. Kinser Post Office Building".

H.R. 4829. An act to designate the facility of the United States Postal Service located at 103 East Kleberg in Kingsville, Texas, as the "Irma Rangel Post Office Building".

H.R. 4847. An act to designate the facility of the United States Postal Service located at 560 Bay Isles Road in Longboat Key, Florida, as the "Lieutenant General James V. Edmundson Post Office Building".

H.R. 4968. An act to designate the facility of the United States Postal Service located at 25 McHenry Street in Rosine, Kentucky, as the "Bill Monroe Post Office".

H.R. 5051. An act to designate the facility of the United States Postal Service located at 1001 Williams Street in Ignacio, Colorado, as the "Leonard C. Burch Post Office Building".

H.R. 5053. An act to designate the facility of the United States Postal Service located at 1475 Western Avenue, Suite 45, in Albany, New York, as the "Lieutenant John F. Finn Post Office".

H.R. 5107. An act to protect crime victims' rights, to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes.

H.R. 5131. An act to provide assistance to Special Olympics to support expansion of Special Olympics and development of education programs and a Healthy Athletes Program, and for other purposes.

H.R. 5204. An act to amend section 340E of the Public Health Service Act (relating to children's hospitals) to modify provisions regarding the determination of the amount of payments for indirect expenses associated with operating approved graduate medical residency training programs.

The message also announced that the House has passed the following bills, without amendment:

S. 1721. An act to amend the Indian Land Consolidation Act to improve provisions relating to probate of trust and restricted land, and for other purposes.

S. 1791. An act to amend the Lease Lot Conveyance Act of 2002 to provide that the amounts received by the United States under that Act shall be deposited in the reclamation fund, and for other purposes.

S. 2178. An act to make technical corrections to laws relating to certain units of the National Park System and to National Park programs.

S. 2511. An act to direct the Secretary of the Interior to conduct a feasibility study of a Chimayo water supply system, to provide for the planning, design, and construction of a water supply, reclamation, and filtration facility for Espanola, New Mexico, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 464. Concurrent resolution honoring the 10 communities selected to receive the 2004 All-America City Award.

H. Con. Res. 500. Concurrent resolution honoring the goals and ideals of National Nurse Practitioners Week.

At 2:47 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 5186. An act to reduce certain special allowance payments and provide additional teacher loan forgiveness on Federal student loans.

The message also announced that pursuant to the request of July 15, 2004, the House returned the act (S. 2589) to clarify the status of certain retirement plans and the organizations which maintain the plans to the Senate.

The message further announced that the House agree to the amendment of the Senate to the bill (H.R. 5122) to amend the Congressional Accountability Act of 1995 to permit members of the Board of Directors of the Office of Compliance to serve for 2 terms.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 4567) making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2005, and for other purposes, and agree to the conference asked by the Senate on the disagreeing votes of the two Houses thereon and appoints the following members as the managers of the conference on the part of the House: Mr. ROGERS of Kentucky, Mr. YOUNG of Florida, Mr. WOLF, Mr. WAMP, Mr. LATHAM, Mrs. EMERSON, Ms. GRANGER, Mr. SWEENEY, Mr. SHERWOOD, Mr. SABO, Mr. PRICE of North Carolina, Mr. SERRANO, Ms. ROYBAL-ALLARD, Mr. BERRY, Mr. MOLLOHAN, and Mr. OBEY.

At 5:48 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 3242. An act to ensure an abundant and affordable supply of highly nutritious fruits, vegetables, and other specialty crops for American consumers and international markets by enhancing the competitiveness of Untied States-grown specialty crops, and for other purposes.

H.R. 4248. An act to amend title 38, United States Code, to increase the authorization of appropriations for the Secretary of Veterans Affairs to make grants to existing comprehensive service programs for homeless veterans, and for other purposes.

H.R. 4658. An act to amend the Servicemembers Civil Relief Act to make certain improvements and technical corrections to that Act, otherwise to improve legal protections provided to reserve component members called active duty, and for other purposes.

H.R. 4794. An act to amend the Tijuana River Valley Estuary and Beach Sewage Cleanup Act of 2000 to extend the authorization of appropriations, and for other purposes.

H.R. 5163. An act to amend title 49, United States Code, to provide the Department of Transportation a more focused research organization with an emphasis on innovative technology, and for other purposes.

H.J. Res. 108. Joint resolution congratulating and commending the Veterans of Foreign Wars.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 131. Concurrent resolution expressing the sense of the Congress that student travel is a vital component of the educational process.

H. Con. Res. 195. Concurrent resolution expressing the sense of Congress that a minute of silence should be observed annually at 11:00 a.m. on Veterans Day, November 11, in honor of the veterans of all United States wars and to memorialize those members of the Armed Forces who gave their lives in the defense of the United States.

At 9:59 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4520) to amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, services, and high-technology businesses and workers more competitive and productive both at home and abroad.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

S. 2938. A bill to grant a Federal charter to the National American Indian Veterans, Incorporated.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that today, October 7, 2004, she had presented to the President of the United States the following enrolled bills:

S. 551. An act to provide for the implementation of air quality programs developed in accordance with an Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado concerning Air Quality Control on the Southern Ute Indian Reservation, and for other purposes.

S. 1421. An act to authorize the subdivision and dedication of restricted land owned by Alaska Natives.

S. 1537. An act to direct the Secretary of Agriculture to convey to the New Hope Cemetery Association certain land in the State of Arkansas for use as a cemetery.

S. 1663. An act to replace certain Coastal Barrier Resources System maps.

S. 1687. An act to direct the Secretary of the Interior to conduct a study on the preservation and interpretation of the historic sites of the Manhattan Project for potential inclusion in the National Park System.

S. 1778. An act to authorize a land conveyance between the United State and the City of Craig, Alaska, and for other purposes.

S. 1814. An act to transfer Federal lands between the Secretary of Agriculture and the Secretary of the Interior.

S. 2052. An act to amend the National Trails System Act to designate El Camino Real de los Tejas as a National Historic Trail.

S. 2180. An act to direct the Secretary of Agriculture to exchange certain lands in the Arapaho and Roosevelt National Forests in the State of Colorado.

S. 2319. An act to authorize and facilitate hydroelectric power licensing of the Tapoco Project.

S. 2363. An act to revise and extend the Boys and Girls Clubs of America.

S. 2508. An act to redesignate the Ridges Basin Reservoir, Colorado, as Lake Nighthorse.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-516. A resolution adopted by the House of Representatives of the General Assembly of the Commonwealth of Pennsylvania relative to Pennsylvania's Nutrition Education Program; to the Committee on Agriculture, Nutrition, and Forestry.

HOUSE RESOLUTION NO. 770

Whereas, poor nutrition is a serious problem within the Commonwealth of Pennsylvania due to a lack of understanding of the health impact of too much sugar, fat and salt in a persons diet;, and

Whereas, the problem of poor nutrition is particularly acute among low-income households which often lack the resources for a balanced and nutritious diet; and

Whereas, PA NEP has developed an effective program of bringing nutrition education to community food pantries and other community partners and has impacted the dietary practices of low-income households that access food there; and

Whereas, this commendable and important result has been achieved with the support of the United States Department of Agriculture over the past six years, including recognition that a portion of the food provided by the Commonwealth of Pennsylvania through the State Food Purchase Program qualifies as "nutrition education" when that food is used to reinforce and/or replicate a nutrition lesson; and

Whereas, The United States Department of Agriculture has informed the Pennsylvania Department of Public Welfare that it will no longer permit State Food Purchase Program food to qualify as "nutrition education"; and

Whereas improvement, in the dietary practices of Pennsylvania residents is a matter of urgent public health; and

Whereas, the use of food provided by the State Food Purchase Program to reinforce and/or replicate nutrition lessons is a highly appropriate way to impact the dietary practices of low-income households and is fully consistent with legislative intent; and

Whereas, the decision of the United States Department of Agriculture to no longer consider the cost of food used in the manner as "nutrition education" will cause nutrition education in Pennsylvania's food distribution programs to largely cease: Therefore be it

Resolved, That the House of Representatives call upon the United States Department of Agriculture to recognize that food provided to low-income households through the State Food Purchased Program may be properly considered "nutrition education" when used to reinforce and/or replicate a nutrition lesson; and be it further

Resolved, That the United States Department of Agriculture reconsider its recent policy change and once again permit State Food Purchase Program food to qualify as "nutrition education" under Pennsylvania's Nutrition Education Program; and be it further

Resolved, That copies of this resolution be transmitted to the Secretary of the United States Department of Agriculture and to each member of Congress from Pennsylvania.

POM-517. A joint resolution adopted by the Senate of the Legislature of the State of California relative to food marketing and advertising directed to children; to the Committee on Agriculture, Nutrition, and Forestry.

SENATE JOINT RESOLUTION NO. 29

Whereas, California is in the midst of a growing epidemic of overweight children and childhood obesity due to poor diet and physical inactivity, putting growing numbers of California children at increased risk for type II diabetes, hypertension, heart disease, and cancer, along with psychosocial problems including low self-esteem, poor body image, and symptoms of depression; and

Whereas, a recent study showed that 26.5 percent of California youth in grades 5, 7, and 9 are overweight, with rates being even higher for African-American children (28.6 percent) and Latino children (33.7 percent); and

Whereas, in California, annual obesity-attributable medical expenditures were estimated at $7.7 billion in 2003, with approximately one-half of these expenditures financed by Medicare and Medi-Cal; and

Whereas, healthy eating and physical activity, including eating five or more servings of fruits and vegetables every day, are vital to preventing people from being overweight or suffering from heart disease, cancer, or diabetes, and ensuring children's health and well-being; and

Whereas, poor diet and physical inactivity are responsible for 400,000 deaths in the United States annually and may soon overtake tobacco as the leading cause of preventable death; and

Whereas, the growing epidemic of childhood obesity has brought renewed attention to the role that food and beverage advertising and marketing play in negatively influencing eating habits of youth; and

Whereas, the food, beverage, and restaurant industries recognize children as a major market force because of their spending power, purchasing influence, and anticipated brand loyalty as adult consumers, with children under 14 years of age purchasing $24 billion in products and influencing $190 billion in family purchases each year; and

Whereas, children are being exposed to increasing amounts of marketing and advertising, with $15 billion spent marketing to children in the United States in 2002, double the amount spent in 1992; and

Whereas, the food, beverage, and restaurant industries utilize multiple strategies to market their products to children, including television advertising, in-school marketing, the Internet, product placements, toys, books, and clothes with food-brand logos, contests, celebrity and cartoon spokespeople, and child targeted in-store and restaurant promotions; and

Whereas, children view an estimated 40,000 commercials each year, 50 percent of which advertise food products—most often products that are high in calories, fats, sugars, and salt, with almost no references to fruits or vegetables. Children watch an average of one food commercial every five minutes of television viewing time, and as many as three hours of food commercials each week. Latino and African-American children are exposed to more television food advertising than other children; and

Whereas, in-school marketing of food and beverages has become increasingly prevalent in recent years and includes: (1) product sales, including sales through vending machines, a la carte, snack bars, soft drink "pouring-rights" agreements through exclusive contracts, branded fast food, and fundraisers; (2) direct advertising, such as food and beverage ads in schools; and (3) indirect advertising, such as corporate-sponsored educational programs, sports team sponsorships, and incentive programs using contests and coupons; and

Whereas, the majority of the foods and beverages sold in school vending machines and school stores are calorically dense and low in nutrients, which promotes purchasing and consumption of these foods while children are away from their parents in a captive environment that is supposed to be dedicated to education; and

Whereas, studies show that food advertising and marketing result in more favorable attitudes, preferences, and behaviors among children towards the advertised products and that children's food preferences and food purchase requests for high sugar and high fat foods are influenced by television exposure to food advertising; and

Whereas, parents face increasing strain between their desire to feed their children well and the intense marketing of high calorie, low-nutrition food and beverages to their children; and

Whereas, in 2003, the World Health Organization concluded that the extensive marketing to children of fast food and high calorie, micronutrient-poor foods and beverages is a probable causal factor for the accelerating global trend in weight gain obesity; and

Whereas, children are particularly vulnerable to marketing of unhealthy foods and beverages because children under the age of 4 or 5 years cannot distinguish between television programming and advertisements, and children age 8 and under are unable to comprehend the persuasive intent and biased nature of advertising, making advertising to young children fundamentally unfair: Now, therefore, be it

Resolved by the Senate and the Assembly of the State of California, jointly, That the Legislature of the State of California memorializes the Congress and the President of the United States to require the Federal Trade Commission to (1) develop and implement nutrition standards for foods and beverages that are acceptable to advertise or market to children, including foods and beverages that make a positive contribution to children's diets and health by being moderate in portion size, calories, saturated fat, trans fat, refined sugars, and sodium, and provide key nutrients and (2) prohibit advertising and marketing of foods and beverages that do not meet those standards through broadcast, print, Internet, or other marketing venues for which a significant portion of the audience is children; and be it further

Resolved, That the Legislature memorializes the Congress and the President of the United States to require the Federal Communications Commission to ensure that equal time is given during television programs that have a significant youth audience to encourage fruit and vegetable consumption and physical activity, and discourage consumption of low nutrient foods and beverages. These messages must be produced and delivered by individuals and organizations that have no financial interest in the message; and be it further

Resolved, That the Legislature memorializes the Congress and the President of the United States to fund new and existing media campaigns to promote healthy eating and physical activity, such as the Centers for Disease Control and Prevention's VERB campaign and the National 5 A Day program; and be it further

Resolved, That the Legislature memorializes the Centers for Disease Control and Prevention and the National Institutes of Health to fund research studies to further assess the effects of food and beverage advertising and marketing on the diets and health of children and adolescents; and be it further

Resolved, That the Legislature calls on food and beverage companies, restaurants, retail stores, advertising agencies, sports and entertainment industries, and print, broadcast, and Web-based media operating in California to adhere to a voluntary code of practice, developed by experts, that would contain guidelines and standards for responsible food and beverage advertising and marketing aimed at children; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, the Majority Leader of the Senate, and each Senator and Representative from California in Congress.

POM–518. A concurrent resolution adopted by the Senate of the Legislature of the State of Hawaii relative to property in the Waikane Valley, Hawaii; to the Committee on Armed Services.

SENATE CONCURRENT RESOLUTION NO. 212

Whereas, Waikane Valley contains undeveloped land in the ahupuaa of Waikane on Oahu's windward side; and

Whereas, 33 years ago, the United States Marine Corps obtained 187 acres in Waikane Valley, commonly referred to as the "Waikane Training Area," for military jungle and live ordnance training; and

Whereas, the United States Marine Corps has announced its intention to close the Waikane Training Area, but as recently as last year, the United States Marine Corps has sought to use Waikane Valley for more military jungle training; and

Whereas, ironically, Waikane Valley was abandoned as a training site by the United States Marine Corps because of safety concerns over the use of high explosive antitank and bazooka rounds used in the past and the insufficient data to determine the exact number of ammunition rounds fired in the valley; and

Whereas, the United States Marine Corps originally obtained the right to use the Waikane Training Area by a lease from the McCandless Estate and Waiahole Water Company in 1953 and subsequently by a lease from the same parties and the heirs of John Kamaka; and

Whereas, the Kamaka heirs acquired title to the Waikane Training Area by quitclaim deed in June of 1972 and terminated the lease with the United States Marine Corps in 1976; and

Whereas, between 1976 and 1993, the United States Marine Corps conducted several investigations and ordnance removal efforts on the property and concluded that the Waikane Training Area could never be certified as being clear of ordnance; and

Whereas, the United States Navy and Marine Corps acquired title to the Waikane Training Area in 1993 by condemnation as a means to address the problem of not being able to fulfill their lease obligations to return the property to the Kamaka heirs in an ordnance-free and safe condition; and

Whereas, land in Hawaii, and particularly agricultural and conservation land, is Hawaii's most precious and limited resource; and

Whereas, Waikane Valley has served historically as important agricultural area for the island of Oahu and contains precious archaeological and historic sites; and

Whereas, regardless of the 1993 condemnation, members of the Waikane community believe that the United States Marine Corps should live up to their commitment of cleaning up the land, and they have expressed their desire to have the Waikane Training Area restored to a condition that will permit them to return to the aina and engage in farming and other agricultural activities that would be appropriate based on the condition of the remediated property; and

Whereas, the federal government and military have previously demonstrated their will and capacity to honor their obligations to remediate and restore other equally or more severely contaminated installations upon closure under the Formerly Used Defense Site Program, Defense Environmental Restoration Program, Installation Restoration Program, other Department of Defense initiatives and programs, and with special appropriations from Congress; and

Whereas, the current official position of United States Department of Defense is that no ordnance-contaminated site can ever be certified as being clear of unexploded ordnance; and

Whereas, based on the inability to certify the Waikane Training Area as being clear of unexploded ordnance, the United States Navy and Marine Corps are considering permanent closure of the property to the general public by erecting a security fence around the area; and

Whereas, the permanent closure of the Waikane Training Area would be a devastating loss of precious agricultural, historical, cultural, and natural resources to Hawaii; and

Whereas, with sufficient funding from existing restoration programs or special appropriations from Congress, or both, the United States Navy and Marine Corps have the means to clean-up the Waikane Training Area to a condition that is reasonably safe for certain restricted uses, provided long-term monitoring and guidelines are established: Now, therefore, be it

Resolved by the Senate of the Twenty-Second Legislature of the State of Hawaii, Regular Session of 2004, the House of Representatives concurring, That the federal government is requested to conduct a thorough evaluation of the condition of the Waikane Training Area, particularly with regard to environmental and ordnance-related hazards that exist on the property; and be it further

Resolved, That the federal government is requested to plan for and conduct as thorough a clean-up of the Waikane Training Area as is technologically possible, including the remediation or removal of all environmental hazards and contamination and removal of all practice and live ordnance; and be it further

Resolved, That the federal government is requested to conduct a post-clean-up environmental assessment of the Waikane Training Area evaluating the potential risks to human health and safety, for the purpose of determining the types of uses and activities that could appropriately be conducted on the property with minimal risk to potential users and the community at large; and be it further

Resolved, That the federal government is requested to return the Waikane Training Area to the State of Hawaii upon completion of the clean-up; and be it further

Resolved, That the federal government is requested to appropriate sufficient funds to plan for, implement, and complete the rehabilitation and transfer of the Waikane Training Area; and be it further

Resolved, That the members of Hawaii's congressional delegation are requested to assist in seeking and obtaining the relief sought above; and be it further

Resolved, That certified copies of this Concurrent Resolution be transmitted to President of the United States, President of the United States Senate, Speaker of the United States House of Representatives, members of Hawaii's congressional delegation, the Commandant of the Marine Corps, and the Secretary of the Navy.

POM-519. A resolution adopted by the House of Representatives of the General Assembly of the Commonwealth of Pennsylvania relative to passage of the defense appropriations bill; to the Committee on Armed Services.

HOUSE RESOLUTION NO. 114

Whereas, the security of our nation and people is the first and foremost obligation of the Federal Government; and

Whereas, the men and women of our armed forces serving in the Army, Navy, Air Force, Marine Corps, Coast Guard, Merchant Marine, National Guard and Reserves have shown great courage and self-sacrifice and deserve to be equipped with the best weapons and resources to protect our nation; and

Whereas, in past years politicians have delayed passing the defense appropriations bill until late in the budget year so that the defense appropriations bill was misused as a dumping ground for pork-barrel spending and as a political hostage to pork-barrel spending in other appropriations bills; and

Whereas, in the wake of the terrorist attacks on September 11, 2001, the President has asked that the Congress of the United States pass the defense appropriations bill before passing other spending bills; and

Whereas, Congress acted responsibly in Fiscal Years 2002 and 2003 when it passed the defense appropriations bill first, protecting the men and women of our armed forces from becoming political pawns for politicians' spending maneuvers: Therefore be it

Resolved, That the House of Representatives of the Commonwealth of Pennsylvania commend Congress for making our nation's defense its first priority in Fiscal Years 2002 and 2003 and request Congressmen and Senators from Pennsylvania to continue this policy by passing defense appropriations legislation before all other spending bills in 2004 and in the future; and be it further

Resolved, That copies of this resolution be transmitted to the presiding officers of each House of Congress and to each Member of Congress from Pennsylvania.

POM-520. A resolution adopted by the House of Representatives of the General Assembly of the Commonwealth of Pennsylvania relative to the Congressional Medal of Honor; to the Committee on Armed Services.

Whereas, United States Army and Department of Defense officials are reviewing a recommendation to upgrade Major Winters' Distinguished Service Cross to the Congressional Medal of Honor; and

Whereas, Major Winters was originally nominated for the Medal of Honor by Colonel Robert F. Sink, commander of the 506th Regiment, for heroic actions on June 6, 1944, during the Allied invasion of Normandy, France, as 1st Lieutenant, Acting Commanding Officer of E Company, 2nd Battalion, 506th Parachute Infantry Regiment, 101st Airborne Division, VII Corps; and

Whereas, Major Winters' extraordinary planning, fighting and commanding on that day 60 years ago in Nazi-occupied Normandy during his regiment's first combat operation saved countless lives and expedited the Allied inland advance; and

Whereas, with his company outnumbered by German soldiers, Major Winters destroyed German guns at Brecourt Manor and secured causeways for troops coming off Utah Beach; and

Whereas, Major Winters' battle plan for a small-unit assault on German artillery has been taught at the United States Military Academy at West Point; and

Whereas, Major Winters accomplished a hazardous mission with valor, inspired his service colleagues through example and effectively organized his company into support and assault teams on the day of invasion in the campaign for European liberation during World War II: Therefore be it

Resolved, That the House of Representatives of the Commonwealth of Pennsylvania urge the Congress of the United States to award the Congressional Medal of Honor to Major Richard D. Winters without further delay; and be it further

Resolved, That a copy of this resolution be transmitted to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

POM-521. A joint resolution adopted by the Legislature of the State of California relative to the regulation of financial institutions; to the Committee on Banking, Housing, and Urban Affairs.

SENATE JOINT RESOLUTION NO. 20

Whereas, the Senate and Assembly Banking Committees of the California Legislature have held an informational hearing on the doctrine of federal preemption of state laws and the impact on California and its financial regulators; and

Whereas, the California Constitution provides that an administrative agency of the state has no authority to declare a state law unenforceable unless an appellate court determines that the statute is prohibited by federal laws or regulations; and

Whereas, there are two areas where tension exists between federal and state law in the fields of regulation of financial institutions, which are the areas relating to the jurisdiction over the operating subsidiaries of national banks and consumer protection; and

Whereas, operating subsidiaries of national banks engage in various financial services such as mortgages, insurance, and securities-brokerage services that are beyond the scope of the business of banking as originally conceived in the National Bank Act of 1864; and

Whereas, operating subsidiaries of national banks are creatures of state law, not federal law, and are incorporated under state law and in the past have applied for licenses from state regulatory authorities to operate within California; and

Whereas, in August of 2001, and in January of 2004, the Office of the Comptroller of the Currency (OCC) promulgated a regulation that effectively stated that the OCC was the exclusive regulator of national banks and their operating subsidiaries and this regulation placed the OCC on a collision course with California regulators of financial institutions; and

Whereas, the OCC has appeared as amicus curiae in several recent federal court cases opposing consumer protection legislation that has been passed by the California Legislature, on the basis that the legislation interfered with the power of national banks and their operating subsidiaries to engage in the business of banking; and

Whereas, there has been a clear, consistent, and premeditated effort by the federal government, specifically on the part of the OCC, to exercise jurisdiction in financial regulation matters that were previously the jurisdictional domain of the states, and the exercise of the jurisdiction has been assisted by a complacent United States Congress and deferential court system; and

Whereas, certain interpretations of law by the OCC and the Office of Thrift Supervision have prevented the application of state consumer protections to federally-chartered financial institutions, and frustrate the efforts of state regulators and legislators to extend these protections to all citizens; Now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California, recognizing that the authority to resolve these issues rests with the federal courts and the United States Congress, respectfully requests that the United States Congress disapprove the rule submitted by the Office of Comptroller of the Currency relating to bank activities and regulations published at 69 Federal Register 1895 (January 13, 2004), so the rule will have no force or effect, and if necessary, consider legislation that will prevent the unilateral expansion of jurisdiction over financial institutions by federal regulators without the specific endorsement of the elected representatives of the United States Congress; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to each Senator and Representative from California in the Congress of the United States, to the Office of the Comptroller of the Currency, and to the Office of Thrift Supervision.

POM-522. A resolution adopted by the General Assembly of the State of New Jersey relative to federal Section 8 funding; to the Committee on Baking, Housing, and Urban Affairs.

ASSEMBLY RESOLUTION NO. 185

Whereas, since established in 1974, the Section 8 housing assistance program has been an integral part of one of our nation's most important social goals, that of providing housing opportunities for low-income families, the elderly and the disabled; and

Whereas, today, the Section 8 housing voucher program is the principal federal housing assistance program for low-income household, helping 2 million families across the country to secure modest, decent housing in the private housing market; and

Whereas, the 2005 federal budget proposes to reduce Section 8 voucher funding by $1 billion below the 2004 level, and also proposes radical changes in the program's structure that would leave Section 8 vulnerable to further reductions in federal funding over time; and

Whereas, in 2005, the proposed cuts could reduce the number of families currently assisted nationwide by 250,000, and the funding currently projected by this Administration could eventually reduce the number of vouchers by 600,000 in 2009; and

Whereas, in New Jersey alone, the existing 64,160 Section 8 housing vouchers could be reduced by 7,780 in 2005, and by 18,660 in 2009; and

Whereas, given these circumstances, it is fitting and proper for this House to respectfully urge Congress and President George W. Bush not to reduce funding for the Section 8 program, as thousands of families in New Jersey and nationwide depend on Section 8 in order to secure affordable housing and avoid homelessness: Now, therefore, be it

Resolved by the General Assembly of the State of New Jersey:

1. This House urges Congress and President George W. Bush to fully fund the Section 8 housing voucher program, in recognition of the integral part this program plays in providing decent and affordable housing for thousands of our nation's low-income families, the elderly and the disabled.

2. Duly authenticated copies of this resolution, signed by the Speaker of the General Assembly and attested by the Clerk thereof, shall be transmitted to the President of the United States, the President of the United States Senate, the Speaker Of the United States House of Representatives, the Majority and Minority Leaders of the United States Senate and House of Representatives, and every member of the New Jersey Congressional Delegation.

This Assembly resolution urges Congress and President George W. Bush to fully fund the Section 8 housing assistance program.

The proposed 2005 federal budget reduces funding for this program by $1 billion below 2004 levels. According to the Center on Budget and Policy Priorities and housing advocates across the country, this reduction could lead to a decrease of 250,000 vouchers from the current 2 million in use nationwide. Furthermore, the budget proposes a transformation of the Section 8 program from a so-called "unit-based" to a "dollar-based" funding system, which would leave the program vulnerable to further reductions in federal funding over the years. It is estimated that these changes could further reduce the number of vouchers nationwide by 30% in 2009, a reduction of 600,000 vouchers below 2004 levels.

In New Jersey alone, the 2005 cuts could reduce the current 64,160 vouchers by 7,780, and further reductions could lead to an 18,660 decrease in 2009.

POM-523. A concurrent resolution adopted by the Legislature of the State of Michigan relative to the dredging of canals around the city of Gibraltar; to the Committee on Commerce, Science, and Transportation.

SENATE CONCURRENT RESOLUTION NO. 41

Whereas, the city of Gibraltar in Wayne County is a unique community, with more than five miles of canals bisecting the city and its four islands of residences. These public transportation routes include access to public and private facilities, including boat ramps and marinas. Thousands of people use the canals each year; and

Whereas, with no dredging of the Gibraltar canals since the late 1950s, the use of the canals is today significantly threatened by the buildup of sediment throughout the system. Boating traffic is hampered by the buildup. The task of dealing with the Gibraltar canals is made more complex by the results of testing that has identified contamination in the sediment. This fact will greatly increase the costs of dredging and disposal of the sediment; and

Whereas, the costs of dredging the canals is far beyond the resources available within the community of Gibraltar, and the canals are available to and used by many more people than residents of Gibraltar. This work clearly needs to be completed. The Gibraltar canals are notable components of the Detroit River system, and maintaining the quality of the canals is work that is strongly related to the quality of this vital part of our water transportation network. It is essential that necessary resources be directed to this task: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That we memorialize the Congress of the United States to provide funding for the dredging of canals around the city of Gibraltar; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM-524. A resolution adopted by the General Assembly of the State of New Jersey relative to competition in the cable television industry; to the Committee on Commerce, Science, and Transportation.

ASSEMBLY RESOLUTION NO. 156

Whereas, cable television is an important source of state and local news, public affairs programming, emergency information and other broadcast services critical to an informed and safe electorate; and

Whereas, the cable television industry has become highly concentrated in New Jersey with most areas having only one cable service provider and such concentration can be a barrier to entry for new programmers resulting in fewer choices of programming for New Jersey consumers; and

Whereas, the rates for cable service in New Jersey have increased by over 60 percent since 1996 according to the New Jersey Board of Public Utilities and none of this increase is attributable to State legislation or regulation; and

Whereas, cable television companies are allowed to construct and maintain cables, conduits, poles, and other equipment upon, under or over highways and other public places and are permitted to use utility easements on private property; and

Whereas, there are significant societal benefits, especially the freedom of speech, in having multiple providers of programming services because a cable television provider controls much of the programming available to its subscribers; and

Whereas, competition in the cable television industry will encourage the availability of a wider array of ideas and information, better rates, and improved services for New Jersey consumers; and

Whereas, it is in the public interest to further competition in the cable television industry in New Jersey in order to promote the availability of diverse views and information, to ensure cable service providers expand their capacity and program offerings, to ensure cable service providers do not have undue market power or undue influence over the distribution of information and to protect the best interests of consumer: Now, therefore, be it

Resolved by the General Assembly of the State of New Jersey:

1. The General Assembly urges the President and Congress of the United States to allow the states to require that cable television companies shall not receive consent to operate in their municipalities or franchise territories, at issuance or renewal of that consent, until a cable television company has:

a. certified that there is another cable television company operating in the municipality; or

b. designated channels for commercial use as set forth in 47 U.S.C. s.532 and has leased two-thirds or more of the channels required to be set aside to persons unaffiliated with the cable television company; or

c. implemented an open video system in accordance with 47 U.S.C. s.573, where "open video system" means a facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming which is provided to multiple subscribers within a community and which has been certified by the Federal Communications Commission as being in compliance with Part 76 "Multichannel Video and Cable Television Service" of Title 47 of the Code of Federal Regulations.

2. Duly authenticated copies of this resolution, signed by the Speaker of the General Assembly and attested to by the Clerk thereof, shall be transmitted to the President of the United States, the presiding officers of the United States Senate and House of Representatives, and to each member of Congress elected from this State.

This Assembly resolution urges the President and Congress of the United States to allow the states to require that cable television companies shall not receive consent to operate in their municipalities or franchise territories at issuance or renewal of that consent until a cable television company has: certified that there is another cable television company operating in the municipality or territory; or designated channels for commercial use as set forth in 47 U.S.C. s.532 and has leased two-thirds or more of the channels required to be set aside to persons unaffiliated with the cable television company; or implemented an open video system in accordance with 47 U.S.C. s.573.

The leased commercial access provisions of 47 U.S.C. s.532 require a television cable company to designate channel capacity for commercial use by persons unaffiliated with the cable television company. Smaller companies must designate 10 percent of their channel capacity and larger companies must designate 15 percent of their channel capacity. Channels designated for public, educational, or governmental use may not satisfy the requirement for leased commercial access channels. If the designated channels are not leased, the television cable company may continue to use them for its own programming. Consumers do not receive a separate charge for the programming on leased commercial access channels. An example of leased commercial access channel use would be an "informercial" channel.

In an open access video system, as established in 47 U.S.C. s.573, the operator of an open video system is released from certain federal regulatory burdens in exchange for opening up one-third of its activated channel capacity to bidding by those who wish to contract for carriage of specific video programming on an open video system. Consumers would have the choice to receive and pay for this specific video programming.

The states' ability to regulate these aspects of the cable television industry will lead to greater competition and will encourage the availability of a wider array of ideas and information, better rates, and improved services for New Jersey consumers.

POM 525. A concurrent resolution adopted by the Legislature of the State of Hawaii relative to the Marshall Islands Nuclear Claims Tribunal; to the Committee on Energy and Natural Resources.

Whereas, fifty years ago on March 1, 1954, at 6:45 a.m., the United States of America tested the "Bravo" hydrogen bomb on Bikini Atoll in the Republic of the Marshall Islands, resulting in an explosion that is now acknowledged as by far the most destructive nuclear detonation ever; and

Whereas, scientists involved in the test known as "Bravo" have maintained that they expected a yield equivalent to five megatons; and

Whereas, the "Bravo" bomb actually yielded 15 megatons, or a thousand times more powerful than the Hiroshima bomb; and

Whereas, while U.S. servicemen on Rongerik Atoll were evacuated within hours of the blast, Marshallese residents of Utirik and Rongelap, all within the hazardous range of the explosion, were left on their contaminated islands for at least a day longer, resulting in their exposure to significant radiation; and

Whereas, the men, women, and children of these atolls were already suffering burns and loss of hair at the time of their removal from their homes; and

Whereas, 23 crewmembers of the Japanese fishing boat, Lucky Dragon, were also exposed to severe radiation from Bravo; and

Whereas, a total of 67 nuclear tests were conducted in Bikini and Enewetak between 1946 and 1958, exposing the people of the Marshall Islands to severe health problems and genetic anomalies during the tests and for generations to come; and

Whereas, if one were to calculate the net yield of all the tests conducted in the Marshall Islands, it would be equivalent to the detonation of 1.7 Hiroshima bombs every day for 12 years; and

Whereas, Enewetak Atoll served as ground zero for 43 tests including the first-ever hydrogen device, resulting in the loss of eight percent of their land, and even after a massive cleanup program by the United States, the Marshallese have no safe access to more than 57 percent of their land; and

Whereas, the people of Enewetak were exiled from their home for more than 33 years in spite of assurances from U.S. officials that they would be repatriated in three to five years after their original removal in 1946; and

Whereas, similar promises made to Bikini residents forced the surrender of their land supposedly for the "betterment of mankind"; and

Whereas, on advice from the United States, the people of Bikini were repatriated in 1967 only to be evacuated seven years later when high levels of radionuclides were discovered in their bodies; and

Whereas, the people of Rongelap and Utirik were returned prematurely to their atolls and received additional exposure, causing many to believe that they were used to study the effects of radiation on human being as contemplated in the Atomic Energy Commission's now infamous Project 4.1; and

Whereas, recently declassified information contains strong indications that human experimentation using the people of the exposed atolls was indeed part of the nuclear testing program in the Marshall Islands; and

Whereas, in its Compact of Free Association (Compact), the United States of America accepts the responsibility for compensation owing to the citizens of the Marshall Islands . . . for loss or damage to property and person . . . resulting from the nuclear testing program which the Government of the United States conducted in the Northern Marshall Islands between June 30, 1946 and August 18, 1959": and

Whereas, the pertinent provisions of the Compact were negotiated based on limited and misleading information provided by the United States Government to the Marshallese representatives, a fact exposed only recently in material declassified by the United States and acknowledged by their officials; and

Whereas, the funds provided under the Compact agreement are grossly inadequate to provide for health care and environmental monitoring, personal injury claims, or land and property damage; and

Whereas, the "changed circumstances" provision of section 177 of the Compact provides that if the agreement on nuclear matters is manifestly inadequate to meet the technological and financial requirements anticipated during the negotiations, or if new information emerges which renders those agreements insufficient for the purpose of concluding full and just compensation, the Congress of the United States would consider a request for proper compensation; and

Whereas, the Government of the Marshall Islands submitted such a petition on September 11, 2000; and

Whereas, just compensation and continued funding for promised medical and health programs for survivors of the atomic tests depend upon Congress' favorable consideration of this petition; and

Whereas, over the past 15 years Hawaii has provided medical, educational, and other supportive services to lawful nonimmigrants from the Republic of the Marshall Islands, without reimbursement from the United States: Now, therefore, be it

Resolved by the Senate of the Twenty-second Legislature of the State of Hawaii, Regular Session of 2004, the House of Representatives concurring, That the United States Congress is respectfully requested to take appropriate measures to provide for the compensation of awards including property damage claims, to the fullest extent, as determined by the Marshall Islands Nuclear Claims Tribunal, and to provide for the costs of cleaning up nuclear sites in the Marshall Islands; and be it further

Resolved, That the Legislature expresses deep regret for the nuclear testing legacy which the people of the Marshall Islands have inherited, and hereby requests the Governor to declare March 1 as a Day of Remembrance for the survivors of the United States nuclear tests in the Marshall Islands; and be it further

Resolved, That certified copies of this Concurrent Resolution be transmitted to the President of the United States, President of the United States Senate, Speaker of the United States House of Representatives, Governor of Hawaii, Speaker of the Marshall Islands Nitijela, and Mayor of Bikini Atoll.

POM 526. A resolution adopted by the House of Representatives of the Legislature of the State of Michigan relative to gasoline types; to the Committee on Environment and Public Works.

HOUSE RESOLUTION No. 272

Whereas, while there are many factors that are contributing to the recent swift rise in pump prices for gasoline, a significant element is the number of gasoline types refineries must produce to meet environmental standards of various metropolitan regions across the country. Over the years, federal mandates to improve air quality in areas with problems have resulted in a complicated patchwork of fuel requirements. The Large number of fuels is also the result of the strategies individual states have developed to meet federal standards; and

Whereas, while the goals of cleaner air are important challenges that must be met, it seems inefficient on many levels for refineries to have to develop, produce, and deliver so many different types of gasoline. In the Midwest alone, at least seven types of fuel must be made. The impact of these requirements is to raise costs, delay production, disrupt distribution, and reduce the supply. These problems, as Michigan has learned all too well, become far more severe when any unforeseen events, such as a gasoline pipeline accident or a refinery fire, take place; and

Whereas, although the ultimate goal of a single gasoline type for the entire country at any given time may not be attainable because of the enormous variations in geographical and climatic conditions across America, requiring the country to sharply reduce the number of gasoline types can bring great benefits. In addition, using cleaner fuels may enhance air quality not only in ozone nonattainment areas, but everywhere: Now, therefore, be it

Resolved by the House of Representatives, That we memorialize the Congress of the United States to review the issue of the number of gasoline types refined across the country and to enact legislation that will sharply reduce the number of gasoline types required to meet local environmental standards; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and the members of the Michigan congressional delegation.

POM 527. A joint resolution adopted by the General Assembly of the State of Rhode Island relative to the Medicare Prescription

Drug, Improvement and Modernization Act of 2003; to the Committee on Finance.

JOINT RESOLUTION

Whereas, the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) will result in significant savings for only a minority of beneficiaries with extremely large drug bills and may cost some beneficiaries more in premiums, deductibles and co-pays than they will get back in benefits; and

Whereas, the Medicare Prescription Drug, Improvement and Modernization At of 2003 (MMA) provides no substantive drug benefits until 2006 other than a discount card that will provide minimal discounts on prescription drugs for most beneficiaries; and

Whereas, the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) creates a "doughnut hole" by suspending coverage for drug costs between $2,250 and $5,100 a year; and

Whereas, the average beneficiary is projected to spend $3,155 on drugs when the program starts, placing many of them within this large gap in prescription drug coverage caused by the "doughnut hole"; and

Whereas, the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) specifically prohibits the federal government from directly negotiating with drug manufacturers to obtain lower prices for covered drugs; and

Whereas, low-income Medicaid beneficiaries will lose protections and benefits they currently enjoy under Medicaid and will be subject to higher co-payments and lose any wrap-around coverage under Medicaid; and

Whereas, the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) requires non-Medicaid eligible low-income beneficiaries to be subject to a rigorous assets test; and

Whereas, while states are being relieved of their responsibility of offering drug coverage to 'dual eligibles,' they will be required to reimburse the federal government for a significant percent of the cost of drug benefits for these beneficiaries and states will also lose this group in their own negotiating pool for Medicaid drugs; and

Whereas, the deductible beneficiaries pay for drug coverage will be indexed to growth in aggregate Part D (prescription drug) expenditures; and

Whereas, the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) reduces home health reimbursement rates by an estimated $6.5 billion over 10 years and these lower reimbursement rates threaten beneficiaries' access to critical home health services: Now, therefore be it

Resolved, That this General Assembly of the State of Rhode Island and Providence Plantations hereby respectfully urges the United States Congress to amend the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) to address the serious gaps and issues raised in this resolution including: eliminating the prohibition on the federal government negotiating lower prices for drugs, narrowing the gap in the "doughnut hole," liberalizing the restrictive asset test for persons with low incomes, changing the index for beneficiary contributions from drug price inflation to the consumer price index for beneficiary contributions from drug price inflation to the consumer price index, and restoring scheduled reductions in home care reimbursement; and be it further

Resolved, That the secretary of state be and he hereby is authorized and directed to transmit duly certified copies of this resolution to the Honorable George W. Bush, President of the United States, the President of the Senate, and the Speaker of the House of Representatives of the Congress of the United States, and to each member of the Rhode Island Congressional Delegation

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POM 528. A resolution adopted by the House of Representatives of the General Assembly of the State of Rhode Island relative to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003; to the Committee on Finance.

HOUSE RESOLUTION

Whereas, the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) will result in significant savings for only a minority of beneficiaries with extremely large drugs bills and may cost some beneficiaries more in premiums, deductibles and co-pays than they will get back in benefits; and

Whereas, the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) provides no substantive drug benefits until 2006 other than a discount card that will provide minimal discounts on prescription drugs for most beneficiaries; and

Whereas, the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) creates a "doughnut hole" by suspending coverage for drug costs between $2,250 and $5,100 a year; and

Whereas, the average beneficiary is projected to spend $3,155 on drugs when the program starts, placing many of them within this large gap in prescription drug coverage caused by the "doughnut hole"; and

Whereas, the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) specifically prohibits the federal government from directly negotiating with drug manufacturers to obtain lower prices for covered drugs; and

Whereas, low-income Medicaid beneficiaries will lose protections and benefits they currently enjoy under Medicaid and will be subject to higher co-payments and lose any wrap-around coverage under Medicaid; and

Whereas, the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) requires non-Medicaid eligible low-income beneficiaries to be subject to a rigorous asset test; and

Whereas, while states are being relieved of their responsibility of offering drug coverage to "dual eligibles," they will be required to reimburse the federal government for a significant percent of the cost of drug benefits for these beneficiaries and states will also lose this group in their own negotiating pool for Medicaid drugs; and

Whereas, the deductible beneficiaries pay for drug coverage will be indexed to growth in aggregate Part D (prescription drug) expenditures; and

Whereas, the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) reduces home health reimbursement rates by an estimated $6.5 billion over 10 years and these lower reimbursement rates threaten beneficiaries' access to critical home health services: Now, and therefore be it

Resolved, That this House of Representatives of the State of Rhode Island and Providence Plantations hereby respectfully urges the United States Congress to amend the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) to address the serious gaps and issues raised in this resolution including: eliminating the prohibition on the federal government negotiating lower prices for drugs, narrowing the gap in the "doughnut hole", liberalizing the restrictive asset test for persons with low incomes, changing the index for beneficiary contributions from drug price inflation to the consumer price index, and restoring scheduled reductions in home care reimbursement; and be it further

Resolved, That the Secretary of State be and he hereby is authorized and directed to transmit duly certified copies of this resolution to the Honorable George W. Bush, President of the United States, the President of the Senate, and the Speaker of the House of Representatives of the Congress of the United States, and to each member of the Rhode Island Congressional Delegation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. INHOFE, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 2550. A bill to amend the Federal Water Pollution Control Act and the Safe Drinking Water Act to improve water and wastewater infrastructure in the United States (Rept. No. 108–386).

By Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 518. A bill to increase the supply of pancreatic islet cells for research, to provide better coordination of Federal efforts and information on islet cell transplantation, and to collect the data necessary to move islet cell transplantation from an experimental procedure to a standard therapy (Rept. No. 108–387).

S. 2526. A bill to reauthorize the Children's Hospitals Graduate Medical Education Program (Rept. No. 108–388).

By Mr. CAMPBELL, from the Committee on Indian Affairs, with an amendment in the nature of a substitute:

S. 2605. A bill to direct the Secretary of the Interior and the heads of other Federal agencies to carry out an agreement resolving major issues relating to the adjudication of water rights in the Snake River Basin, Idaho, and for other purposes (Rept. No. 108–389).

By Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 423. A bill to promote health care coverage parity for individuals participating in legal recreational activities or legal transportation activities (Rept. No. 108–390).

By Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, without amendment:

S. 2940. An original bill to amend the Older Americans Act of 1965 to assist States in preventing, detecting, treating, intervening in, and responding to elder abuse, neglect, and exploitation, and for other purposes (Rept. No. 108–391).

By Mr. HATCH, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

H.R. 2391. To amend title 35, United States Code, to promote cooperative research involving universities, the public sector, and private enterprises.

By Mr. JOHNSON, from the Committee on Banking, Housing, and Urban Affairs, with an amendment in the nature of a substitute:

S. 1379. A bill to require the Secretary of the Treasury to mint coins in commemoration of veterans who became disabled for life while serving in the Armed Forces of the United States.

By Mr. HATCH, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 2302. A bill to improve access to physicians in medically underserved areas.

By Mr. HATCH, from the Committee on the Judiciary, without amendment:

S. 2668. A bill for the relief of Griselda Lopez Negrete.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. WARNER for the Committee on Armed Services.

*Francis J. Harvey, of California, to be Secretary of the Army.

*Richard Greco, Jr., of New York, to be an Assistant Secretary of the Navy.

Air Force nominations beginning Brig. Gen. David A. Brubaker and ending Colonel Stephen M. Sischo, which nominations were received by the Senate and appeared in the Congressional Record on September 23, 2004.

Army nomination of Maj. Gen. Raymond T. Odierno.

Army nominations beginning Colonel Rodney O. Anderson and ending Colonel James C. Yarbrough, which nominations were received by the Senate and appeared in the Congressional Record on September 23, 2004.

Navy nomination of Capt. Edward T. Reidy III.

Navy nomination of Capt. Gregory A. Timberlake.

Navy nomination of Capt. Edward H. Deets III.

Navy nomination of Rear Adm. (lh) Andrew M. Singer.

Mr. WARNER. Mr. President, for the Committee on Armed Services I report favorably the following nomination list which was printed in the RECORD on the date indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that this nomination lie at the Secretary's desk for the information of Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

Air Force nominations beginning Lauren F. *Aase and ending Susan E. * Young, which nominations were received by the Senate and appeared in the Congressional Record on March 12, 2004.

Army nominations beginning Julia A. Adams and ending Janet L. Wilson, which nominations were received by the Senate and appeared in the Congressional Record on November 17, 2003.

Army nomination of Graeme J. Boyett.

Navy nominations beginning Blaine E. Mowrey and ending Victoria A. Yoder, which nominations were received by the Senate and appeared in the Congressional Record on September 23, 2004.

Navy nominations beginning Jerris L. Bennett and ending Jesse J. Zimbauer, which nominations were received by the Senate and appeared in the Congressional Record on September 23, 2004.

By Mr. SHELBY for the Committee on Banking, Housing, and Urban Affairs.

*Pamela Hughes Patenaude, of New Hampshire, to be an Assistant Secretary of Housing and Urban Development.

By Mr. HATCH for the Committee on the Judiciary.

Robert Cramer Balfe III, of Arkansas, to be United States Attorney for the Western District of Arkansas for the term of four years.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. DURBIN:

S. 2910. A bill to establish the Food Safety Administration to protect the public health by preventing food-borne illness, ensuring the safety of food intended for human consumption, improving research on contaminants leading to food-borne illness, and improving security of food from intentional contamination; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. GRAHAM of Florida:

S. 2911. A bill to amend title XVIII of the Social Security Act to make improvements in the medicare competitive acquisition programs for certain items and services; to the Committee on Finance.

By Mr. NELSON of Nebraska:

S. 2912. A bill to award grants for the support of full-service community schools, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. FEINGOLD:

S. 2913. A bill to establish a demonstration project to train unemployed workers for employment as health care professionals, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Ms. MIKULSKI:

S. 2914. A bill to amend the Internal Revenue Code of 1986 to provide incentives for alternative fuels and alternative fuel vehicles; to the Committee on Finance.

By Ms. SNOWE (for herself and Mr. BOND):

S. 2915. A bill to reauthorize programs under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) through September 30, 2005; to the Committee on Small Business and Entrepreneurship.

By Mr. CORNYN (for himself, Mr. SCHUMER, and Mr. SPECTER):

S. 2916. A bill to combat unlawful commercial sex activities by targeting demand, to protect children from being exploited by such activities, to prohibit the operation of sex tours, to assist State and local governments to enforce laws dealing with commercial sex activities, and for other purposes; to the Committee on the Judiciary.

By Mr. BROWNBACK (for himself and Mr. MCCAIN):

S. 2917. A bill to amend the National Aeronautics and Space Act of 1958 to establish a centennial challenge program and establish a National Aeronautics and Space Foundation; to the Committee on Commerce, Science, and Transportation.

By Mr. ALLEN:

S. 2918. A bill to amend the Internal Revenue Code of 1986 to provide that distributions from an individual retirement plan, a section 401(k) plan, or a section 403(b) contract shall not be includible in gross income to the extent used to pay long-term care insurance premiums; to the Committee on Finance.

By Mr. BAUCUS (for himself and Mr. DASCHLE):

S. 2919. A bill to amend the Internal Revenue Code of 1986 to provide funding for Indian tribal prison facilities, and for other purposes; to the Committee on Finance.

By Mr. ENSIGN:

S. 2920. A bill to amend the Internal Revenue Code of 1986 to restore the deduction for the travel expenses of a taxpayer's spouse who accompanies the taxpayer on business travel; to the Committee on Finance.

By Mr. CORNYN (for himself, Mr. BREAUX, Mrs. FEINSTEIN, Mrs. HUTCHISON, and Mr. SESSIONS):

S. 2921. A bill to require the Secretary of the Treasury to mint coins in commemoration of the 50th aniversary of the establishment of the National Aeronautics and Space Administration and the Jet Propulsion Laboratory; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. CORNYN:

S. 2922. A bill to amend the Public Health Service Act to provide for the expansion, intensification, and coordination of the activities of the National Heart, Lung, and Blood Institute with respect to research on pulmonary hypertension; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BIDEN (for himself, Mr. SPECTER, Mr. BINGAMAN, and Ms. LANDRIEU):

S. 2923. A bill to reauthorize the grant program of the Department of Justice for reentry of offenders into the community, to establish a task force on Federal programs and activities relating to the reentry of offenders into the community, and for other purposes; to the Committee on the Judiciary.

By Mr. SANTORUM:

S. 2924. A bill to amend the Public Health Service Act to provide for clinical research support grants, clinical research infrastructure grants, and a demonstration program on partnerships in clinical research, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SANTORUM (for himself and Mrs. LINCOLN):

S. 2925. A bill to amend the Internal Revenue Code of 1986 to expand the tip credit to certain employers and to promote tax compliance; to the Committee on Finance.

By Mr. VOINOVICH (for himself and Mr. COLEMAN):

S. 2926. A bill to amend the internal Revenue Code of 1986 to allow taxpayers a credit against income tax for expenditures to remediate contaminated sites; to the Committee on Finance.

By Mr. SCHUMER (for himself, Mr. GRAHAM of South Carolina, Mr. DURBIN, Ms. STABENOW, and Mr. DODD):

S. 2927. A bill to amend the Exchange Rates and International Economic Policy Coordination Act of 1988 to clarify the definition of manipulation with respect to currency, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SMITH (for himself and Mr. WYDEN):

S. 2928. A bill to clarify the status of certain employee benefit plans under the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974; to the Committee on Finance.

By Mr. ROCKEFELLER:

S. 2929. A bill to amend title XVIII of the Social Security Act to extend the minimum medicare deadlines for filing claims to take into account delay in processing adjustments from secondary payor status to primary payor status; to the Committee on Finance.

By Ms. CANTWELL:

S. 2930. A bill to require the establishment of a Consumer Price Index for Elderly Consumers to compute cost-of-living increases for Social Security benefits under title II of the Social Security Act; to the Committee on Finance.

By Mr. CORNYN (for himself, Mr. MCCONNELL, and Mr. MCCAIN):

S. 2931. A bill to enable drivers to choose a more affordable form of auto insurance that also provides for more adequate and timely compensation for accident victims, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. SMITH:

S. 2932. A bill to establish the Mark O. Hatfield-Elizabeth Furse Scholarship and Excellence in Tribal Governance Foundation, and for other purposes; to the Committee on Indian Affairs.

By Mr. DODD (for himself, Mr. KENNEDY, Mr. JOHNSON, and Mr. WYDEN):

S. 2933. A bill to amend the Public Health Service Act to expand the clinical trials drug data bank; to the Committee on Health, Education, Labor, and Pensions.

By Ms. CANTWELL:

S. 2934. A bill to combat methamphetamine abuse in the United States; to the Committee on the Judiciary.

By Mr. ROCKEFELLER:

S. 2935. A bill to amend section 35 of the Internal Revenue Code of 1986 to improve the health coverage tax credit, and for other purposes; to the Committee on Finance.

By Mr. CAMPBELL:

S. 2936. A bill to restore land to the Enterprise Rancheria to rectify an inequitable taking of the land; to the Committee on Indian Affairs.

By Mr. DURBIN (for himself and Mr. REED):

S. 2937. A bill to amend the Public Health Service Act to establish a grant program to provide supportive services in permanent supportive housing for chronically homeless individuals, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DASCHLE (for himself, Mr. CAMPBELL, Mr. INOUYE, Mr. JOHNSON, Mr. BINGAMAN, and Ms. LANDRIEU):

S. 2938. A bill to grant a Federal charter to the National American Indian Veterans, Incorporated; read the first time.

By Mr. LUGAR (for himself, Mrs. BOXER, Mr. CHAFEE, Mr. FEINGOLD, and Mr. COLEMAN):

S. 2939. A bill to amend the Foreign Assistance Act of 1961 to provide assistance for orphans and other vulnerable children in developing countries, and for other purposes; to the Committee on Foreign Relations.

By Mr. GREGG:

S. 2940. An original bill to amend the Older Americans Act of 1965 to assist States in preventing, detecting, treating, intervening in, and responding to elder abuse, neglect, and exploitation, and for other purposes; from the Committee on Health, Education, Labor, and Pensions; placed on the calendar.

By Mr. CORNYN:

S. 2941. A bill to authorize the President to negotiate the creation of a North American Investment Fund to promote economic and infrastructure integration among Canada, Mexico, and the United States, and for other purposes; to the Committee on Foreign Relations.

By Mr. PRYOR (for himself, Mrs. LINCOLN, Mr. AKAKA, Mr. BAUCUS, Mr. BAYH, Mr. BINGAMAN, Mrs. BOXER, Ms. CANTWELL, Mrs. CLINTON, Mr. CORZINE, Mr. DASCHLE, Mr. DAYTON, Mr. DODD, Mr. DORGAN, Mr. DURBIN, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. GRAHAM of Florida, Mr. JEFFORDS, Mr. JOHNSON, Mr. KENNEDY, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Ms. MIKULSKI, Mr. MILLER, Mrs. MURRAY, Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mr. REID, Mr. ROCKEFELLER, Mr. SARBANES, Mr. SCHUMER, and Ms. STABENOW):

S. 2942. A bill to amend the Internal Revenue Code of 1986 to provide that combat pay be treated as earned income for purposes of the earned income credit; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LAUTENBERG:

S. Res. 451. A resolution expressing the sense of the Senate that a postage stamp should be issued honoring Oskar Schindler; to the Committee on Governmental Affairs.

By Mr. CAMPBELL:

S. Res. 452. A resolution designating December 13, 2004, as "National Day of the Horse" and encouraging the people of the United States to be mindful of the contribution of horses to the economy, history, and character of the United States; to the Committee on the Judiciary.

By Mr. JEFFORDS (for himself, Mr. CHAFEE, Mr. SARBANES, Ms. SNOWE, Mr. LIEBERMAN, Mr. LEAHY, Mr. DAYTON, and Mr. LAUTENBERG):

S. Res. 453. A resolution expressing the sense of the Senate that the United States should prepare a comprehensive strategy for advancing and entering into international negotiations on a binding agreement that would swiftly reduce global mercury use and pollution to levels sufficient to protect public health and the environment; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 91

At the request of Mr. GRASSLEY, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 91, a bill to amend title 9, United States Code, to provide for greater fairness in the arbitration process relating to livestock and poultry contracts.

S. 453

At the request of Mrs. HUTCHISON, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 453, a bill to authorize the Health Resources and Services Administration and the National Cancer Institute to make grants for model programs to provide to individuals of health disparity populations prevention, early detection, treatment, and appropriate follow-up care services for cancer and chronic diseases, and to make grants regarding patient navigators to assist individuals of health disparity populations in receiving such services.

S. 1349

At the request of Mr. SMITH, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 1349, a bill to amend the Internal Revenue Code of 1986 with respect to the eligibility of veterans for mortgage bond financing, and for other purposes.

S. 1379

At the request of Mr. JOHNSON, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 1379, a bill to require the Secretary of the Treasury to mint coins in commemoration of veterans who became disabled for life while serving in the Armed Forces of the United States.

S. 2038

At the request of Mr. BAYH, the names of the Senator from Maryland (Ms. MIKULSKI), the Senator from New York (Mr. SCHUMER) and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of S. 2038, a bill to amend the Public Health Service Act to provide for influenza vaccine awareness campaign, ensure a sufficient influenza vaccine supply, and prepare for an influenza pandemic or epidemic, to amend the Internal Revenue Code of 1986 to encourage vaccine production capacity, and for other purposes.

S. 2158

At the request of Ms. COLLINS, the name of the Senator from Missouri (Mr. TALENT) was added as a cosponsor of S. 2158, a bill to amend the Public Health Service Act to increase the supply of pancreatic islet cells for research, and to provide for better coordination of Federal efforts and information on islet cell transplantation.

S. 2174

At the request of Mr. BUNNING, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 2174, a bill to amend title XIX of the Social Security Act to include podiatrists as physicians for purposes of covering physicians services under the medicaid program.

S. 2422

At the request of Mr. SMITH, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 2422, a bill to amend the Internal Revenue Code of 1986 to allow certain modifications to be made to qualified mortgages held by a REMIC or a grantor trust.

S. 2437

At the request of Mr. ENSIGN, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 2437, a bill to amend the Help America Vote Act of 2002 to require a voter-verified permanent record or hardcopy under title III of such Act, and for other purposes.

S. 2565

At the request of Mr. CRAPO, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 2565, a bill to amend the Agriculture Adjustment Act to convert the dairy forward pricing program into a permanent program of the Department of Agriculture.

S. 2602

At the request of Mr. DODD, the names of the Senator from Michigan (Ms. STABENOW), the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from Florida (Mr. GRAHAM), the Senator from Oregon (Mr. WYDEN) and the Senator from New York (Mrs. CLINTON) were added as cosponsors of S. 2602, a bill to provide for a circulating quarter dollar coin program to honor the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, and for other purposes.

S. 2695

At the request of Mr. SANTORUM, his name was added as a cosponsor of S. 2695, a bill to amend the Omnibus Crime Control and Safe Streets Act of 1968 to expand the definition of firefighter to include apprentices and trainees, regardless of age or duty limitations.

At the request of Mr. LEAHY, his name was added as a cosponsor of S. 2695, supra.

S. 2722

At the request of Mr. DURBIN, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 2722, a bill to maintain and expand the steel import licensing and monitoring program.

S. 2844

At the request of Mr. SANTORUM, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 2844, a bill to designate Poland as a program country under the visa waiver program established under section 217 of the Immigration and Nationality Act.

S. 2869

At the request of Mr. TALENT, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 2869, a bill to respond to the illegal production, distribution, and use of methamphetamines in the United States, and for other purposes.

S. 2877

At the request of Mr. GREGG, the name of the Senator from Missouri (Mr. TALENT) was added as a cosponsor of S. 2877, a bill to reduce the special allowance for loans from the proceeds of tax exempt issues, and to provide additional loan forgiveness for teachers who teach mathematics, science, or special education.

S. CON. RES. 8

At the request of Ms. COLLINS, the names of the Senator from Louisiana (Ms. LANDRIEU), the Senator from Kansas (Mr. BROWNBACK), the Senator from New Hampshire (Mr. SUNUNU), the Senator from Rhode Island (Mr. REED), the Senator from Illinois (Mr. DURBIN) and the Senator from Alaska (Ms. MURKOWSKI) were added as cosponsors of S. Con. Res. 8, a concurrent resolution designating the second week in May each year as "National Visiting Nurse Association Week".

S. CON. RES. 67

At the request of Mr. COCHRAN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. Con. Res. 67, a concurrent resolution expressing the need for enhanced public awareness of traumatic brain injury and supporting the designation of a National Brain Injury Awareness Month.

S. CON. RES. 122

At the request of Ms. SNOWE, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. Con. Res. 122, a concurrent resolution expressing the sense of the Congress regarding the policy of the United States at the 56th Annual Meeting of the International Whaling Commission.

S. CON. RES. 136

At the request of Mr. CONRAD, the names of the Senator from Colorado (Mr. CAMPBELL), the Senator from Hawaii (Mr. AKAKA), the Senator from Texas (Mr. CORNYN) and the Senator from Alaska (Ms. MURKOWSKI) were added as cosponsors of S. Con. Res. 136, a concurrent resolution honoring and memorializing the passengers and crew of United Airlines Flight 93.

S. RES. 164

At the request of Mr. ENSIGN, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of S. Res. 164, a resolution reaffirming support of the Convention on the Prevention and Punishment of the Crime of Genocide and anticipating the commemoration of the 15th anniversary of the enactment of the Genocide Convention Implementation Act of 1987 (the Proxmire Act) on November 4, 2003.

S. RES. 392

At the request of Mr. BINGAMAN, the names of the Senator from Nevada (Mr. ENSIGN) and the Senator from Arkansas (Mrs. LINCOLN) were added as cosponsors of S. Res. 392, a resolution conveying the sympathy of the Senate to the families of the young women murdered in the State of Chihuahua, Mexico, and encouraging increased United States involvement in bringing an end to these crimes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DURBIN:

S. 2910. A bill to establish the Food Safety Administration to protect the public health by preventing food-borne illness, ensuring the safety of food intended for human consumption, improving research on contaminants leading to food-borne illness, and improving security of food from intentional contamination; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. DURBIN. Mr. President, when Americans sit down at the dinner table, their confidence in the safety of the food they are eating is based in part on the knowledge that the Federal Government is working hard to ensure their food is not contaminate. Right now, our food is the safest in the world, but there are widening gaps in our food safety net due to emerging threats and the fact that food safety oversight has evolved over time to spread over several government agencies. This mismatched, piecemeal approach to food safety could spell disaster if we do not act quickly and decisively.

A single food safety agency with authority based on sound scientific principles would provide this country with the greatest hope of reducing foodborne illnesses and preparing for a bioterrorist attack on our food supply.

The Centers for Disease Control and Prevention (CDC) estimates that as many as 76 million people suffer from food poisoning each year. Of those individuals, approximately 325,000 will be hospitalized, and more than 5,000 will die. Factors such as emerging pathogens, an aging population at high risk for foodborne illnesses, an increasing volume of food imports, and people eating outside their homes more often underscore the need for us to take charge and shed the old bureaucratic shackles that have tied us to the overlapping and inefficient ad hoc food safety system of the past.

I rise today to introduce the Safe Food Act of 2004. This legislation would create a single, independent Federal food safety agency to administer all aspects of Federal food safety inspections, enforcement, standards-setting and research in order to protect public health. The components of the agencies now charged with protecting the food supply, primarily housed at the Food and Drug Administration and the Agriculture Department, would be transferred to this new agency.

The new Food Safety Administrator would be responsible for the safety of the food supply and would carry out that charge by implementing the registration and recordkeeping requirements of the Bioterrorism Act of 2002; ensuring slaughterhouses and food processing plants have procedures in place to prevent and reduce food contamination; regularly inspecting domestic food facilities, with inspection frequency based on risk; and centralizing the authority to detain, seize, condemn and recall food that is adulterated or misbranded. The Administrator would be charged with requiring food producers to make it possible for their products to be traced in the event of a foodborne illness outbreak in order to minimize the health impact of such an event.

The Administrator would also have the power to examine the food safety practices of foreign countries and work with the states to enforce food safety laws, including the ability to seek various civil and criminal penalties for serious violations of the food safety laws. The Administrator would also actively oversee public education and research programs on foodborne illness.

In this era of limited budgets, it is our responsibility to streamline the Federal food safety system. The United States simply cannot afford to continue operating multiple redundant systems. This is not about more regulation, a super agency, or increased bureaucracy. It is about common sense and the more effective marshaling of our existing resources.

I urge my colleagues to join me in supporting this important piece of legislation.

By Mr. FEINGOLD:

S. 2913. A bill to establish a demonstration project to train unemployed workers for employment as health care professionals, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. FEINGOLD. Mr. President, over the past year, I have come to this floor on a number of occasions to discuss the loss of manufacturing jobs in Wisconsin and around the country and ways in which I think that Congress should act to stem the flow of these jobs to foreign countries.

According to the Wisconsin Department of Workforce Development, Wisconsin has lost more than 80,000 manufacturing jobs since 2000. Nationally, according to the Bureau of Labor Statistics, the country has lost more than 2.8 million manufacturing jobs during that same time period. In addition to the loss of manufacturing jobs, I am deeply troubled by the Bush administration's contention that the outsourcing of American service sector and other jobs is good for the economy. I am concerned about the message that this policy sends to Wisconsinites and all Americans who are currently employed in these sectors.

There is something of a silver lining to the looming cloud of manufacturing and other jobs loss: the country's workforce development system.

In spite of stretched resources and long waiting lists for services, our workforce development boards are making a tremendous effort to retrain laid-off workers and other job seekers for new jobs. And this effort is clearly evident in Wisconsin, where my State's 11 workforce development boards are leading the way in finding innovative solutions to retraining workers for new careers on shoestring budgets.

I strongly support the work of these agencies, and have urged the administration and Senate appropriators to provide adequate funding for the job training programs authorized by the Workforce Investment Act. I regret that the administration's budget request for fiscal year 2005 does not provide adequate funding for WIA, and I will continue to work to ensure that the workforce development boards in my State and across our country receive the resources that they need to help job seekers get the training they need to be successful.

I am committed to finding resources to retrain those who have been laid off from the manufacturing and service sectors and who wish to find new jobs in high-demand fields such as health care.

As most of my colleagues know all too well, we are facing a significant shortage of health care workers. Congress has made some progress in addressing the nursing shortage, but we need to expand our efforts. Shortages of health professionals pose a real threat to the health of our communities by impacting access to timely, high-quality health care. Studies have shown that shortages of nurses in our hospitals and health facilities increase medical errors, which directly affects patient health.

As our population ages, and the baby-boomers need more health care, our need for all types of health professionals is only going to increase. This is particularly true for the field of long-term care. According to the Bureau of Labor Statistics, we are going to need an additional 1.2 million nursing aides, home health aides, and other health professionals in long-term care before the year 2010.

As our demand for health care workers grows, so does the number of jobs available within this sector. Currently, health services is the largest industry in the country, providing 12.9 million jobs in 2002. It is estimated that 16 percent of all new jobs created between 2002 and 2012 will be in health services. This accounts for 3.5 million new jobs—more than any other industry.

Workforce development agencies in my home State of Wisconsin are already working to support displaced workers in their communities by training them for health care jobs, since there is a real need for workers in these fields. These agencies are helping communities get and maintain access to high-quality health care by ensuring that there are enough health care workers to care for their communities.

As the executive director of one of the workforce development boards in my State put it, "[t]here are simply not many good quality jobs to replace manufacturing jobs lost to rural communities. The medical professions, by offering a 'living wage' and good benefits, provide an excellent alternative to manufacturing for sustaining a higher, family-oriented standard of living."

I believe we need to support our communities in these efforts by providing them with the resources they need to establish, sustain, or expand these important programs. For that reason, today I am introducing the Community-Based Health Care Retraining Act. This bill would amend the Workforce Investment Act to authorize a demonstration project to provide grants to community-based coalitions, led by local workforce development boards, to create programs to retrain unemployed workers who wish to obtain new jobs in the health care professions. My bill would authorize a total of $25 million for grants between $100,000 and $500,000, and, in the interest of fiscal responsibility, it ensures that these grants would be offset.

This bill will help provide communities with the resources they need to run retraining programs for the health professions. The funds could be used for a variety of purposes—from increasing the capacity of our schools and training facilities, to providing financial and social support for workers who are in retraining programs. This bill is flexible in what the grant funds could be used for, because I believe that communities know best about the resources they need to run an efficient program.

This bill represents a nexus in my efforts to support workers whose jobs have been shipped overseas and to ensure that all Americans have access to the high-quality health care that they deserve. By providing targeted assistance to train laid-off workers who wish to obtain new jobs in the health care sector, we can both help unemployed Americans and improve the availability and quality of health care that is available in our communities.

I am pleased that this bill is supported by a variety of organizations that are committed to providing high-quality job training and health care services, including: the National Association of Workforce Boards, the American Health Care Association, the Wisconsin Association of Job Training Executives, Northwest Wisconsin Concentrated Employment Program, the Northwest Wisconsin Workforce Investment Board, and the Southwestern Wisconsin Workforce Development Board.

I ask unanimous consent that the full text of this bill, and the text of the letters of support from the above-mentioned groups, be printed in the RECORD at the conclusion of my remarks.

In order to ensure that our workers are able to compete in the new economy, we must ensure that they have the tools they need to be trained or retrained for high-demand jobs such as those in the health care field. My bill is a small step toward providing the resources necessary to achieve this goal. I will continue to work to strengthen the American manufacturing sector and to support those workers who have been displaced due to bad trade agreements and other policies that have led to the loss of American jobs.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2913

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Community-Based Health Care Retraining Act".

SEC. 2. HEALTH PROFESSIONS TRAINING DEMONSTRATION PROJECT.

Section 171 of the Workforce Investment Act of 1998 (29 U.S.C. 2916) is amended by adding at the end the following:

"(e) HEALTH PROFESSIONS TRAINING DEMONSTRATION PROJECT.—

"(1) DEFINITIONS.—In this subsection:

"(A) COVERED COMMUNITY.—The term 'covered community' means a community or region that—

"(i) has experienced a significant percentage decline in positions in the manufacturing or service sectors; and

"(ii)(I) is eligible for designation under section 332 of the Public Health Service Act (42 U.S.C. 254e) as a health professional shortage area;

"(II) is eligible to be served by a health center under section 330 or a grantee under section 330(h) (relating to homeless individuals) of the Public Health Service Act (42 U.S.C. 254b, 254b(h));

"(III) has a shortage of personal health services, as determined under criteria issued by the Secretary of Health and Human Services under section 1861(aa)(2) of the Social Security Act (relating to rural health clinics) (42 U.S.C. 1395x(aa)(2)); or

"(IV) is designated by a Governor (in consultation with the medical community) as a shortage area or medically underserved community.

"(B) COVERED WORKER.—The term 'covered worker' means an individual who—

"(i)(I) has been terminated or laid off, or who has received a notice of termination or layoff, from employment in a manufacturing or service sector;

"(II)(aa) is eligible for or has exhausted entitlement to unemployment compensation; or

"(bb) has been employed for a duration sufficient to demonstrate, to the appropriate entity at a one-stop center referred to in section 134(c), attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under a State unemployment compensation law; and

"(III) is unlikely to return to a previous industry or occupation; or

"(ii)(I) has been terminated or laid off, or has received a notice of termination or layoff, from employment in a manufacturing or service sector as a result of any permanent closure of, or any substantial layoff at, a plant, facility, or enterprise; or

"(II) is employed in a manufacturing or service sector at a facility at which the employer has made a general announcement that such facility will close within 180 days.

"(C) HEALTH CARE PROFESSIONAL.—The term 'health care professional'—

"(i) means an individual who is involved with—

"(I) the delivery of health care services, or related services, pertaining to—

"(aa) the identification, evaluation, and prevention of diseases, disorders, or injuries; or

"(bb) home-based or community-based long-term care;

"(II) the delivery of dietary and nutrition services; or

"(III) rehabilitation and health systems management; and

"(ii) includes nurses, home health aides, nursing assistants, physician assistants, dental hygienists, diagnostic medical sonographers, dietitians, medical technologists, occupational therapists, physical therapists, radiographers, respiratory therapists, emergency medical service technicians, and speech-language pathologists.

"(2) ESTABLISHMENT OF PROJECT.—In accordance with subsection (b), the Secretary shall establish and carry out a health professions training demonstration project.

"(3) GRANTS.—In carrying out the project, the Secretary, after consultation with the Secretary of Health and Human Services, shall make grants to eligible entities to enable the entities to carry out programs in covered communities to train covered workers for employment as health care professionals. The Secretary shall make each grant in an amount of not less than $100,000 and not more than $500,000.

"(4) ELIGIBLE ENTITIES.—Notwithstanding subsection (b)(2)(B), to be eligible to receive a grant under this subsection to carry out a program in a covered community, an entity shall be a partnership that is—

"(A) under the direction of a local workforce investment board established under section 117 that is serving the covered community; and

"(B) composed of members serving the covered community, such as—

"(i) a community college;

"(ii) a vocational or technical school;

"(iii) a health clinic or hospital;

"(iv) a home-based or community-based long-term care facility or program; or

"(v) a health care facility administered by the Secretary of Veterans Affairs.

"(5) APPLICATIONS.—To be eligible to receive a grant under this subsection, an entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including, at a minimum—

"(A) a proposal to use the grant funds to establish or expand a training program in order to train covered workers for employment as health care professionals or paraprofessionals;

"(B) information demonstrating the need for the training and support services to be provided through the program;

"(C) information describing the manner in which the entity will expend the grant funds, and the activities to be carried out with the funds; and

"(D) information demonstrating that the entity meets the requirements of paragraph (4).

"(6) SELECTION.—In making grants under paragraph (3), the Secretary, after consultation with the Secretary of Health and Human Services, shall select—

"(A) eligible entities submitting applications that meet such criteria as the Secretary of Labor determines to be appropriate; and

"(B) among such entities, the eligible entities serving the covered communities with the greatest need for the grants and the greatest potential to benefit from the grants.

"(7) USE OF FUNDS.—

"(A) IN GENERAL.—An entity that receives a grant under this subsection shall use the funds made available through the grant for training and support services that meet the needs described in the application submitted under paragraph (5), which may include—

"(i) increasing capacity at an educational institution or training center to train individuals for employment as health professionals, such as by—

"(I) expanding a facility, subject to subparagraph (B);

"(II) expanding course offerings;

"(III) hiring faculty;

"(IV) providing a student loan repayment program for the faculty;

"(V) establishing or expanding clinical education opportunities;

"(VI) purchasing equipment, such as computers, books, clinical supplies, or a patient simulator; or

"(VII) conducting recruitment; or

"(ii) providing support services for covered workers participating in the training, such as—

"(I) providing tuition assistance;

"(II) establishing or expanding distance education programs;

"(III) providing transportation assistance; or

"(IV) providing child care.

"(B) LIMITATION.—To be eligible to use the funds to expand a facility, the eligible entity shall demonstrate to the Secretary in an application submitted under paragraph (5) that the entity can increase the capacity described in subparagraph (A)(i) only by expanding the facility.

"(8) FUNDING.—Of the amounts appropriated to, and available at the discretion of, the Secretary or the Secretary of Health and Human Services for programmatic and administrative expenditures, a total of $25,000,000 shall be used to establish and carry out the demonstration project described in paragraph (2) in accordance with this subsection.".

NATIONAL ASSOCIATION OF
WORKFORCE BOARDS,
Washington, DC, September 28, 2004.

Hon. RUSSELL FEINGOLD,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINGOLD: This letter is in regards to your bill, the Community-Based Health Care Retraining Act, which seeks to establish a demonstration project to train unemployed workers for employment as health care professionals. The National Association of Workforce Boards (NAWB) would like to support your efforts in linking America's workforce investment boards with health care training. Our members can be a valuable resource in the transition of manufacturing workers to the numerous employment opportunities in the health care field.

NAWB is the national association that represents the interests of the 650 workforce investment boards across the country. These boards consist of over 15,000 private sector business leaders, appointed by their Governors and local elected officials, who provide leadership and governance for the public workforce development system. In existence since 1979, NANWB has been a leader in the effort to create a public workforce system. that is responsive to businesses and job seekers alike.

As you know, meeting the ever-increasing needs of America's workers and employers is critical for prosperity in the United States. Developing an educated and skilled workforce to attract and retain business is a challenge facing all communities. The growing education and workforce skills mismatch between what the current American workforce offers and what employers need is particularly acute in high-skill industry sectors. However, these are the very industries that hold the most economic promise for our current workers and the emerging workforce, our nation's young people. The challenge posed for policy makers is aligning America's workforce with rapidly changing economic conditions and opportunities, while simultaneously maintaining competitiveness to minimize off-shoring.

Four of five U.S. manufacturers struggled to find candidates for skilled jobs, according to a 2003 survey by the National Association of Manufacturers. Ironically, this search for skilled workers occurred while many plants were going thorough layoffs. The United States has seen 3 million manufacturing jobs disappear.

Workers have permanently lost the jobs they once held at these factories. New opportunities must be made to allow a transition into new employment, especially for those who cannot recover their job if demand increases. But in order to do this, training dollars must be made available to those employees who cannot regain employment within the manufacturing industry.

Through your bill, employers in the health care industry that desperately need skilled workers can find the human capital they desire in those who have been permanently laid off from their manufacturing job. There has been an enormous increase in the number of nursing and direct care professional opportunities within the long-term care arena, particularly within home-based care. These opportunities are not only based on the number of employees needed. They require a high level of skill, knowledge and compassion to work in long-term care. Training dollars must be available to introduce educated employees to the health care industry.

Employers on the lay-off end of manufacturing employment and employers on the hiring end of health care industries need to tap all available employment and training resources. NAWB can assist both sides of the equation by connecting employers with their local workforce boards. Investing in training our workers is critical.

Our CEO, Ms. Stephanie Powers, is available to provide your staff with any information you may require (phone: (202) 775–0960 or email: powerss@nawb.org). Thank you for your interest in our organization and the members we represent. The National Association of Workforce Boards remains committed to working with Congress as we continue our mission to build a stronger, more competitive American workforce.

Sincerely,

J. MICHAEL ZELLEY,
President, The Disability Network, Flint, MI, and Co-Chair, Policy Committee, National Association of Workforce Boards.
JEFFREY HOWE,
Vice President, Manager, Indiana Commercial Banking, First Indiana Bank, N.A., Indianapolis, IN, and Chair, National Association of Workforce Boards.

AMERICAN HEALTH CARE ASSOCIATION,
Washington, DC, September 29, 2004.
Hon. RUSSELL D. FEINGOLD,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINGOLD: On behalf of the American Health Care Association, the nation's largest association of long term care providers, and the National Center for Assisted Living, I am writing you to offer our support for enactment of the "Community-Based Health Care Retraining Act" you are introducing.

Today, there is a critical shortage of health and long term care professionals and paraprofessionals and it is growing. In our nation's nursing facilities, there is a need for more than 90,000 nurses and certified nursing assistants right now to provide the hands-on care needed by the frail and elderly. The need for these direct care workers will grow dramatically in the future as the baby boom population moves into retirement. America's high standard for quality can only be maintained if there are enough front-line workers to provide the direct hands-on care that will be needed. This is not a job that can be handled off-shore.

Your legislation will help to address this shortage by providing the means for a growing number of displaced manufacturing and service sector workers to begin building new careers in the health and long term care sectors. It does so by utilizing federal dollars to redirect these displaced workers into health care careers. It provides for expanding the nation's training capacity and by increasing number of educators that are and will be needed to make this transition successful.

Senator Feingold, we commend you for the leadership you are providing with the introduction of this legislation and look forward to working with you to see this legislation passed and enacted at the earliest opportunity.

Sincerely,

HAL DAUB,
President & CEO.

WISCONSIN ASSOCIATION OF
JOB TRAINING EXECUTIVES,
August 10, 2004.
Senator RUSS FEINGOLD,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINGOLD: On behalf of the Wisconsin Association of Job Training Executives (WAJTE), I am writing to express our strong support for the proposed legislation designed to address two significant workforce issues—the loss of large numbers of manufacturing and service sector jobs and the critical shortage of health care professionals. As you know, both of these issues currently challenge the workforce development delivery systems in Wisconsin.

Our association members are the chief executives of each of Wisconsin's eleven Workforce Development Boards who have the responsibility for overseeing the health of the local economies in partnership with business, education, and local governments. The proposed legislation offers these specific strengths.

Ensures that eligible entities shall be a partnership under the direction of a local board.

Limits grant funds to training programs for health care professionals.

Allows for the use of grant funds for support services as well as training.

Allows for capacity expansion in educational institutions.

If WAJTE members can be of assistance to you as this legislation is introduced, please do not hesitate to contact us.

Sincerely,

FRANCISCO SANCHEZ,
Chairman.

CEP—WIB,
Ashland, WI, September 30, 2004.
Senator RUSS FEINGOLD,
Hart Senate Building, Washington, DC.

DEAR SENATOR FEINGOLD: On behalf of the Northwest Wisconsin Concentrated Employment Program, Inc. and the Northwest Wisconsin Workforce Investment Board, Inc., I want to express our enthusiastic support in the Community-Based Health Care Retraining Act in Wisconsin.

This initiative will help to strengthen the economy of our area. Some of our counties in Northwest Wisconsin are experiencing high labor shortages particularly in the health care industries. Further, our area wages are approximately 24% less than the State average, which adds to a poverty situation made worse by rural isolation. This Community-Based Health Care Retraining Act will address these serious economic issues and help to alleviate the severe shortage of health care workers.

This Act provides hope for the future economy and people of our State. Please contact me if we can be of any further assistance.

Sincerely yours,

FRED SCHNOOK,
Executive Director.

SOUTHWEST WISCONSIN
WORKFORCE DEVELOPMENT BOARD,
Dodgeville, WI, August 4, 2004.
Hon. RUSS FEINGOLD,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINGOLD: I would like to take this opportunity to comment on your proposed legislation regarding health-care retraining. I believe it is an excellent proposal that will address a serious need particularly within rural communities. Please allow me to elaborate on several points that support this legislation.

First, as executive director for a primarily rural workforce development area, I can tell you how difficult it is to replace manufacturing jobs. There simply are not many good quality jobs to replace manufacturing jobs lost to rural communities. The medical professions, by offering a "living wage" and good benefits, provide an excellent alternative to manufacturing for sustaining a higher, family-oriented standard of living. Health-care is also a regional scope providing job opportunities for workers in surrounding communities. Furthermore, medical professions are not exportable and there is virtually no chance that health-care jobs will be shipped out-of-country or overseas.

Second, I am chairperson of a small, rural community hospital. For many years we have struggled to survive in a very competitive market surrounded by large, corporate medical organizations/hospitals in Janesville and Madison. I believe that our hospital has a unique role within our community—as a community-based facility we are closer to our patients and can provide personalized "hometown" care. One of our biggest problems is our ability to attract and retain qualified, experienced health-care workers. With the impending shortage caused by the retirement of "baby boomers" we will find ourselves in an even more difficult role as larger facilities offer higher salaries, better benefits, incentive and sign-on bonuses, etc. to attract and retain the workers they need.

Rural hospitals will find themselves left out and unable to compete for the caregivers we need.

Third, there are several key organizations that lie at the core of any community that are vital to the quality of life within that community. Schools are one example of this type of organizations. Hospitals, nursing homes and other types of medical facilities are other examples of key organizations that support a higher standard of life within a rural community.

And finally, I would like to thank the Senator for recognizing the vital role that Workforce Development Boards (WDBs) play in our areas. The WDBs are regional organizations providing oversight and coordination for economic and workforce development activities. Furthermore, there are few organizations today that are advocates for the "worker". I believe that WDBs are an example of such an organization. And, I believe it is critical to the success of a program that the WDBs serve as the coordinating agency for the delivery of this type of program.

For the reasons stated above, I strongly support your proposed Health-Care Retraining Bill. Thank you for the chance to offer my comments. I look forward to the opportunity to participate in, what I believe to be, a meaningful and critically important program particularly for the rural communities.

Sincerely,

ROBERT T. BORREMANS,
Executive Director.

By Ms. MIKULSKI:

S. 2914. A bill to amend the Internal Revenue Code of 1986 to provide incentives for alternative fuels and alternative fuel vehicles; to the Committee on Finance.

Ms. MIKULSKI. Mr. President, I rise today to introduce the "Common Sense Automobile Affordability Act Of 2004". My colleagues from Maryland introduced a similar bill in the House. I believe in energy conservation. I also believe in job conservation. We can improve the fuel efficiency of our cars without sticking a knife through the hearts of our Nation's auto workers. That is what I am going to keep standing up for in the U.S. Senate.

When I consider any energy proposal, I apply four criteria. First, the proposal must achieve real savings in oil consumption. Secondly, the proposal also must preserve U.S. jobs. Next, the proposal must be realizable and achievable. And, lastly, it must create incentives to help companies achieve these goals.

I agree with the goals of energy efficient vehicle tax breaks—fuel efficiency and energy conservation. I believe we need to reduce our dependence on foreign oil. The U.S. imports about twenty million barrels of oil a day, roughly 40 percent of that goes to fuel cars and light trucks. Half of our oil is imported and a quarter of our oil is imported from the Persian Gulf. Reducing our dependence on foreign oil would make us more flexible in the war against terror.

That's why I support the provisions of the energy bill that provide incentives for energy efficiency and fuel conservation. But, we need to be more fuel efficient in a way that doesn't cost American jobs.

Our current tax breaks for energy efficient vehicles provides more help for foreign car manufacturers than U.S. car manufacturers. Small cars receive more tax breaks, and small cars are often made by foreign auto companies.

Our current tax breaks penalize U.S. automakers, because current tax incentives are not geared toward the SUV's or light trucks that American consumers want and American companies make.

Our domestic automakers have been weakened by the current recession. And, we can't rely on foreign manufacturers to provide American jobs. The United Auto Workers (UAW) has seen its membership drop significantly from 1980 through 2000 from 1.4 million members in 1980 down to 670,000 today. That means that our auto workers are being left behind.

I have seen it in Baltimore. Over 1,000 workers were recently laid off at the GM plant, and the plant went through another shutdown after slow sales. This is not just happening in Maryland. GM shut down fourteen of its twenty-nine North American assembly plans for at least a week last year.

American workers are being laid off because, while automobile imports are rising, and our domestic auto share is falling, only 64 percent of cars bought in America are built in America. That's down from 73.9 percent in 1994.

We need common sense tax breaks that provide Americans with good jobs, reduce our dependence on foreign oil and help clean up the environment.

That's why I'm introducing legislation that would repeal the sunsets on existing clean vehicle tax breaks and replace the existing clean fuels tax breaks after 2006 with a comprehensive set of new tax credits of up to $4,000. These tax breaks could be used to buy energy efficient vehicles, including hybrid vehicles, fuel cell vehicles, diesel "lean burn" vehicles, and alternative fuel vehicles. There are also additional bonuses for increased fuel conservation and fuel efficiency. My bill includes incentives for all the major clean fuel technologies. There are larger credits for trucks and transit buses that are often American made.

I also support the Hydrogen Fuel Cell Act introduced by my colleague from North Dakota. This bill would provide research money for a hydrogen fuel cell vehicle tax research and development programs.

We can have both energy conservation and job conservation. That's what I'm fighting for. It will take innovative solutions, improved technology, and the setting of realistic, achievable goals. That's what my legislation encourages. With the right incentives to increase demand for cutting edge technologies, to increase U.S. manufacturing capacity of fuel efficient vehicles, and to provide good paying jobs for Americans.

I urge my colleagues to join me in supporting these goals and this bill.

I ask unanimous consent that the text of my bill be inserted in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2914

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

(a) SHORT TITLE.—This Act may be cited as the "Common Sense Automobile Efficiency Act of 2004".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. 2. REPEAL OF PHASEOUTS FOR QUALIFIED ELECTRIC VEHICLE CREDIT AND DEDUCTION FOR CLEAN-FUEL VEHICLES.

(a) CREDIT FOR QUALIFIED ELECTRIC VEHICLES.—Subsection (b) of section 30 (relating to limitations) is amended by striking paragraph (2) and redesignating paragraph (3) as paragraph (2).

(b) DEDUCTION FOR CLEAN-FUEL VEHICLES AND CERTAIN REFUELING PROPERTY.—Paragraph (1) of section 179A(b) (relating to qualified clean-fuel vehicle property) is amended to read as follows:

"(1) QUALIFIED CLEAN-FUEL VEHICLE PROPERTY.—The cost which may be taken into account under subsection (a)(1)(A) with respect to any motor vehicle shall not exceed—

"(A) in the case of a motor vehicle not described in subparagraph (B) or (C), $2,000,

"(B) in the case of any truck or van with a gross vehicle weight rating greater than 10,000 pounds but not greater than 26,000 pounds, $5,000, or

"(C) $50,000 in the case of—

"(i) a truck or van with a gross vehicle weight rating greater than 26,000 pounds, or

"(ii) any bus which has a seating capacity of at least 20 adults (not including the driver).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 3. ALTERNATIVE MOTOR VEHICLE CREDIT.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.) is amended by adding at the end the following:

"SEC. 30B. ALTERNATIVE MOTOR VEHICLE CREDIT.

"(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

"(1) the new qualified fuel cell motor vehicle credit determined under subsection (b),

"(2) the new advanced lean burn technology motor vehicle credit determined under subsection (c),

"(3) the new qualified hybrid motor vehicle credit determined under subsection (d), and

"(4) the new qualified alternative fuel motor vehicle credit determined under subsection (e).

"(b) New Qualified Fuel Cell Motor Vehicle Credit.—

"(1) In general.—For purposes of subsection (a), the new qualified fuel cell motor vehicle credit determined under this subsection with respect to a new qualified fuel cell motor vehicle placed in service by the taxpayer during the taxable year shall be determined in accordance with the following table:

"In the case of a vehicle which has a gross vehicle weight rating of—	**The new qualified fuel cell motor vehicle credit is—**
Not more than 8,500 lbs	$4,000
More than 8,500 lbs but not more than 14,000 lbs.	$10,000
More than 14,000 lbs but not more than 26,000 lbs.	$20,000
More than 26,000 lbs	$40,000.

"(2) Increase for fuel efficiency.—

"(A) In general.—The amount determined under paragraph (1) with respect to a new qualified fuel cell motor vehicle which is a passenger automobile or light truck shall be increased by the additional credit amount.

"(B) Additional credit amount.—For purposes of subparagraph (A), the additional credit amount shall be determined in accordance with the following table:

"In the case of a vehicle which achieves a fuel economy (expressed as a percentage of the 2002 model year city fuel economy) of—	**The additional credit amount is—**
At least 150 percent but less than 175 percent.	$1,000
At least 175 percent but less than 200 percent.	$1,500
At least 200 percent but less than 225 percent.	$2,000
At least 225 percent but less than 250 percent.	$2,500
At least 250 percent but less than 275 percent.	$3,000
At least 275 percent but less than 300 percent.	$3,500
At least 300 percent	$4,000.

"(3) New qualified fuel cell motor vehicle.—For purposes of this subsection, the term 'new qualified fuel cell motor vehicle' means a motor vehicle—

"(A) which is propelled by power derived from one or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle in any form and may or may not require reformation prior to use,

"(B) which, in the case of a passenger automobile or light truck, has received—

"(i) a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

"(ii) a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission standard established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,

"(C) the original use of which commences with the taxpayer,

"(D) which is acquired for use or lease by the taxpayer and not for resale, and

"(E) which is made by a manufacturer.

"(c) New Advanced Lean Burn Technology Motor Vehicle Credit.—

"(1) In general.—For purposes of subsection (a), the new advanced lean burn technology motor vehicle credit determined under this subsection with respect to a new advanced lean burn technology motor vehicle placed in service by the taxpayer during the taxable year is the credit amount determined under paragraph (2).

"(2) Credit amount.—

"(A) Fuel economy.—The credit amount determined under this paragraph shall be determined in accordance with the following table:

"In the case of a vehicle which achieves a fuel economy (expressed as a percentage of the 2002 model year city fuel economy) of—	**The credit amount is—**
At least 125 percent but less than 150 percent.	$400
At least 150 percent but less than 175 percent.	$800
At least 175 percent but less than 200 percent.	$1,200
At least 200 percent but less than 225 percent.	$1,600
At least 225 percent but less than 250 percent.	$2,000
At least 250 percent	$2,400.

"(B) Conservation credit.—The amount determined under subparagraph (A) with respect to a new advanced lean burn technology motor vehicle shall be increased by the conservation credit amount determined in accordance with the following table:

"In the case of a vehicle which achieves a lifetime fuel savings (expressed in gallons of gasoline) of—	The conservation credit amount is—
At least 1,200 but less than 1,800	$250
At least 1,800 but less than 2,400	$500
At least 2,400 but less than 3,000	$750
At least 3,000	$1,000.

"(3) New advanced lean burn technology motor vehicle.—For purposes of this subsection, the term 'new advanced lean burn technology motor vehicle' means a passenger automobile or a light truck—

"(A) with an internal combustion engine which—

"(i) is designed to operate primarily using more air than is necessary for complete combustion of the fuel,

"(ii) incorporates direct injection,

"(iii) achieves at least 125 percent of the 2002 model year city fuel economy, and

"(iv) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds—

"(I) in the case of a vehicle having a gross vehicle weight rating of 6,000 pounds or less, the Bin 5 Tier II emission standard established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle, and

"(II) in the case of a vehicle having a gross vehicle weight rating of more than 6,000 pounds but not more than 8,500 pounds, the Bin 8 Tier II emission standard which is so established,

"(B) the original use of which commences with the taxpayer,

"(C) which is acquired for use or lease by the taxpayer and not for resale, and

"(D) which is made by a manufacturer.

"(4) Lifetime fuel savings.—For purposes of this subsection, the term 'lifetime fuel savings' means, in the case of any new advanced lean burn technology motor vehicle, an amount equal to the excess (if any) of—

"(A) 120,000 divided by the 2002 model year city fuel economy for the vehicle inertia weight class, over

"(B) 120,000 divided by the city fuel economy for such vehicle.

"(d) New Qualified Hybrid Motor Vehicle Credit.—

"(1) In general.—For purposes of subsection (a), the new qualified hybrid motor vehicle credit determined under this subsection with respect to a new qualified hybrid motor vehicle placed in service by the taxpayer during the taxable year is the credit amount determined under paragraph (2).

"(2) Credit amount.—

"(A) Credit amount for passenger automobiles and light trucks.—In the case of a new qualified hybrid motor vehicle which is a passenger automobile or light truck and which has a gross vehicle weight rating of not more than 8,500 pounds, the amount determined under this paragraph is the sum of the amounts determined under clauses (i) and (ii).

"(i) Fuel economy.—The amount determined under this clause is the amount which would be determined under subsection (c)(2)(A) if such vehicle were a vehicle referred to in such subsection.

"(ii) Conservation credit.—The amount determined under this clause is the amount which would be determined under subsection (c)(2)(B) if such vehicle were a vehicle referred to in such subsection.

"(B) Credit amount for other motor vehicles.—

"(i) In general.—In the case of any new qualified hybrid motor vehicle to which subparagraph (A) does not apply, the amount determined under this paragraph is the amount equal to the applicable percentage of the qualified incremental hybrid cost of the vehicle as certified under clause (v).

"(ii) Applicable percentage.—For purposes of clause (i), the applicable percentage is—

"(I) 20 percent if the vehicle achieves an increase in city fuel economy relative to a comparable vehicle of at least 30 percent but less than 40 percent,

"(II) 30 percent if the vehicle achieves such an increase of at least 40 percent but less than 50 percent, and

"(III) 40 percent if the vehicle achieves such an increase of at least 50 percent.

"(iii) Qualified incremental hybrid cost.—For purposes of this subparagraph, the qualified incremental hybrid cost of any vehicle is equal to the amount of the excess of the manufacturer's suggested retail price for such vehicle over such price for a comparable vehicle, to the extent such amount does not exceed—

"(I) $10,000, if such vehicle has a gross vehicle weight rating of not more than 14,000 pounds,

"(II) $25,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

"(III) $40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

"(iv) Comparable vehicle.—For purposes of this subparagraph, the term 'comparable vehicle' means, with respect to any new qualified hybrid motor vehicle, any vehicle which is powered solely by a gasoline or diesel internal combustion engine and which is comparable in weight, size, and use to such vehicle.

"(v) Certification.—A certification described in clause (i) shall be made by the manufacturer and shall be determined in accordance with guidance prescribed by the

Secretary. Such guidance shall specify procedures and methods for calculating fuel economy savings and incremental hybrid costs.

“(3) NEW QUALIFIED HYBRID MOTOR VEHICLE.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘new qualified hybrid motor vehicle’ means a motor vehicle—

“(i) which draws propulsion energy from onboard sources of stored energy which are both—

“(I) an internal combustion or heat engine using consumable fuel, and

“(II) a rechargeable energy storage system,

“(ii) which, in the case of a vehicle to which paragraph (2)(A) applies, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

“(I) in the case of a vehicle having a gross vehicle weight rating of 6,000 pounds or less, the Bin 5 Tier II emission standard established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle, and

“(II) in the case of a vehicle having a gross vehicle weight rating of more than 6,000 pounds but not more than 8,500 pounds, the Bin 8 Tier II emission standard which is so established,

“(iii) which has a maximum available power of at least—

“(I) 4 percent in the case of a vehicle to which paragraph (2)(A) applies,

“(II) 10 percent in the case of a vehicle which has a gross vehicle weight rating or more than 8,500 pounds and not than 14,000 pounds, and

“(III) 15 percent in the case of a vehicle in excess of 14,000 pounds,

“(iv) which, in the case of a vehicle to which paragraph (2)(B) applies, has an internal combustion or heat engine which has received a certificate of conformity under the Clean Air Act as meeting the emission standards set in the regulations prescribed by the Administrator of the Environmental Protection Agency for 2004 through 2007 model year diesel heavy duty engines or ottocycle heavy duty engines, as applicable,

“(v) the original use of which commences with the taxpayer,

“(vi) which is acquired for use or lease by the taxpayer and not for resale, and

“(vii) which is made by a manufacturer.

Such term shall not include any vehicle which is not a passenger automobile or light truck if such vehicle has a gross vehicle weight rating of less than 8,500 pounds.

“(B) CONSUMABLE FUEL.—For purposes of subparagraph (A)(i)(I), the term ‘consumable fuel’ means any solid, liquid, or gaseous matter which releases energy when consumed by an auxiliary power unit.

“(C) MAXIMUM AVAILABLE POWER.—

“(i) CERTAIN PASSENGER AUTOMOBILES AND LIGHT TRUCKS.—In the case of a vehicle to which paragraph (2)(A) applies, the term ‘maximum available power’ means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by such maximum power and the SAE net power of the heat engine.

“(ii) OTHER MOTOR VEHICLES.—In the case of a vehicle to which paragraph (2)(B) applies, the term ‘maximum available power’ means the maximum power available from the rechargeable energy storage system, during a standard 10 second pulse power or equivalent test, divided by the vehicle's total traction power. For purposes of the preceding sentence, the term ‘total traction power’ means the sum of the peak power from the rechargeable energy storage system and the heat engine peak power of the vehicle, except that if such storage system is the sole means by which the vehicle can be driven, the total traction power is the peak power of such storage system.

“(e) NEW QUALIFIED ALTERNATIVE FUEL MOTOR VEHICLE CREDIT.—

“(1) ALLOWANCE OF CREDIT.—Except as provided in paragraph (5), the new qualified alternative fuel motor vehicle credit determined under this subsection is an amount equal to the applicable percentage of the incremental cost of any new qualified alternative fuel motor vehicle placed in service by the taxpayer during the taxable year.

“(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage with respect to any new qualified alternative fuel motor vehicle is—

“(A) 40 percent, plus

“(B) 30 percent, if such vehicle—

“(i) has received a certificate of conformity under the Clean Air Act and meets or exceeds the most stringent standard available for certification under the Clean Air Act for that make and model year vehicle (other than a zero emission standard), or

“(ii) has received an order certifying the vehicle as meeting the same requirements as vehicles which may be sold or leased in California and meets or exceeds the most stringent standard available for certification under the State laws of California (enacted in accordance with a waiver granted under section 209(b) of the Clean Air Act) for that make and model year vehicle (other than a zero emission standard).

For purposes of the preceding sentence, in the case of any new qualified alternative fuel motor vehicle which has a gross vehicle weight rating of more than 14,000 pounds, the most stringent standard available shall be such standard available for certification on the date of this act.

“(3) INCREMENTAL COST.—For purposes of this subsection, the incremental cost of any new qualified alternative fuel motor vehicle is equal to the amount of the excess of the manufacturer's suggested retail price for such vehicle over such price for a gasoline or diesel fuel motor vehicle of the same model, to the extent such amount does not exceed—

“(A) $5,000, if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

“(B) $10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

“(C) $25,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

“(D) $40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

“(4) NEW QUALIFIED ALTERNATIVE FUEL MOTOR VEHICLE.—For purposes of this subsection—

“(A) IN GENERAL.—The term ‘new qualified alternative fuel motor vehicle’ means any motor vehicle—

“(i) which is only capable of operating on an alternative fuel,

“(ii) the original use of which commences with the taxpayer,

“(iii) which is acquired by the taxpayer for use or lease, but not for resale, and

“(iv) which is made by a manufacturer.

“(B) ALTERNATIVE FUEL.—The term ‘alternative fuel’ means compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid at least 85 percent of the volume of which consists of methanol.

“(5) CREDIT FOR MIXED-FUEL VEHICLES.—

“(A) IN GENERAL.—In the case of a mixed-fuel vehicle placed in service by the taxpayer during the taxable year, the credit determined under this subsection is an amount equal to—

“(i) in the case of a 75/25 mixed-fuel vehicle, 70 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle, and

“(ii) in the case of a 90/10 mixed-fuel vehicle, 90 percent of the credit which would have been allowed under this subsection if such vehicle was a qualified alternative fuel motor vehicle.

“(B) MIXED-FUEL VEHICLE.—For purposes of this subsection, the term ‘mixed-fuel vehicle’ means any motor vehicle described in subparagraph (C) or (D) of paragraph (3), which—

“(i) is certified by the manufacturer as being able to perform efficiently in normal operation on a combination of an alternative fuel and a petroleum-based fuel,

“(ii) either—

“(I) has received a certificate of conformity under the Clean Air Act, or

“(II) has received an order certifying the vehicle as meeting the same requirements as vehicles which may be sold or leased in California and meets or exceeds the low emission vehicle standard under section 88.105-94 of title 40, Code of Federal Regulations, for that make and model year vehicle,

“(iii) the original use of which commences with the taxpayer,

“(iv) which is acquired by the taxpayer for use or lease, but not for resale, and

“(v) which is made by a manufacturer.

“(C) 75/25 MIXED-FUEL VEHICLE.—For purposes of this subsection, the term ‘75/25 mixed-fuel vehicle’ means a mixed-fuel vehicle which operates using at least 75 percent alternative fuel and not more than 25 percent petroleum-based fuel.

“(D) 90/10 MIXED-FUEL VEHICLE.—For purposes of this subsection, the term ‘90/10 mixed-fuel vehicle’ means a mixed-fuel vehicle which operates using at least 90 percent alternative fuel and not more than 10 percent petroleum-based fuel.

“(f) LIMITATION ON NUMBER OF NEW QUALIFIED HYBRID AND ADVANCED LEAN-BURN TECHNOLOGY VEHICLES ELIGIBLE FOR CREDIT.—

“(1) IN GENERAL.—In the case of a qualified vehicle sold during the phaseout period, only the applicable percentage of the credit otherwise allowable under subsection (c) or (d) shall be allowed.

“(2) PHASEOUT PERIOD.—For purposes of this subsection, the phaseout period is the period beginning with the second calendar quarter following the calendar quarter which includes the first date on which the number of qualified vehicles manufactured by the manufacturer of the vehicle referred to in paragraph (1) sold for use in the United States after the date of the enactment of this section is at least 80,000.

“(3) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage is—

“(A) 50 percent for the first 2 calendar quarters of the phaseout period,

“(B) 25 percent for the 3d and 4th calendar quarters of the phaseout period, and

"(C) 0 percent for each calendar quarter thereafter.

"(4) CONTROLLED GROUPS.—

"(A) IN GENERAL.—For purposes of this subsection, all persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as a single manufacturer.

"(B) INCLUSION OF FOREIGN CORPORATIONS.—For purposes of subparagraph (A), in applying subsections (a) and (b) of section 52 to this section, section 1563 shall be applied without regard to subsection (b)(2)(C) thereof.

"(5) QUALIFIED VEHICLE.—For purposes of this subsection, the term 'qualified vehicle' means any new qualified hybrid motor vehicle and any new advanced lean burn technology motor vehicle.

"(g) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

"(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(2) the sum of the credits allowable under subpart A and sections 27 and 30 for the taxable year.

"(h) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) MOTOR VEHICLE.—The term 'motor vehicle' has the meaning given such term by section 30(c)(2).

"(2) OTHER TERMS.—The terms 'automobile', 'passenger automobile', 'light truck', and 'manufacturer' have the meanings given such terms in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

"(3) 2002 MODEL YEAR CITY FUEL ECONOMY.—

"(A) IN GENERAL.—The 2002 model year city fuel economy with respect to a vehicle shall be determined in accordance with the following tables:

"(i) In the case of a passenger automobile:

"If vehicle inertia weight class is:	**The 2002 model year city fuel economy is:**
1,500 or 1,750 lbs	45.2 mpg
2,000 lbs	39.6 mpg
2,250 lbs	35.2 mpg
2,500 lbs	31.7 mpg
2,750 lbs	28.8 mpg
3,000 lbs	26.4 mpg
3,500 lbs	22.6 mpg
4,000 lbs	19.8 mpg
4,500 lbs	17.6 mpg
5,000 lbs	15.9 mpg
5,500 lbs	14.4 mpg
6,000 lbs	13.2 mpg
6,500 lbs	12.2 mpg
7,000 to 8,500 lbs	11.3 mpg.

"(ii) In the case of a light truck:

"If vehicle inertia weight class is:	**The 2002 model year city fuel economy is:**
1,500 or 1,750 lbs	39.4 mpg
2,000 lbs	35.2 mpg
2,250 lbs	31.8 mpg
2,500 lbs	29.0 mpg
2,750 lbs	26.8 mpg
3,000 lbs	24.9 mpg
3,500 lbs	21.8 mpg
4,000 lbs	19.4 mpg
4,500 lbs	17.6 mpg
5,000 lbs	16.1 mpg
5,500 lbs	14.8 mpg
6,000 lbs	13.7 mpg
6,500 lbs	12.8 mpg
7,000 to 8,500 lbs	12.1 mpg.

"(B) VEHICLE INERTIA WEIGHT CLASS.—For purposes of subparagraph (A), the term 'vehicle inertia weight class' has the same meaning as when defined in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

"(4) FUEL ECONOMY.—Fuel economy with respect to any vehicle shall be measured under rules similar to the rules under section 4064(c).

"(5) REDUCTION IN BASIS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this paragraph) result from such expenditure shall be reduced by the amount of the credit so allowed.

"(6) NO DOUBLE BENEFIT.—The amount of any deduction or credit allowable under this chapter (other than the credits allowable under this section and section 30) shall be reduced by the amount of credit allowed under subsection (a) for such vehicle for the taxable year.

"(7) RECAPTURE.—The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit (including recapture in the case of a lease period of less than the economic life of a vehicle).

"(8) PROPERTY USED OUTSIDE UNITED STATES, ETC., NOT QUALIFIED.—No credit shall be allowed under subsection (a) with respect to any property referred to in section 50(b) or with respect to the portion of the cost of any property taken into account under section 179.

"(9) ELECTION NOT TO TAKE CREDIT.—No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

"(10) BUSINESS CARRYOVERS ALLOWED.—If the credit allowable under subsection (a) for a taxable year exceeds the limitation under subsection (g) for such taxable year, such excess (to the extent of the credit allowable with respect to property subject to the allowance for depreciation) shall be allowed as a credit carryback and carryforward under rules similar to the rules of section 39.

"(11) INTERACTION WITH MOTOR VEHICLE SAFETY STANDARDS.—Unless otherwise provided in this section, a motor vehicle shall not be considered eligible for a credit under this section unless such vehicle is in compliance with the motor vehicle safety provisions of sections 30101 through 30169 of title 49, United States Code.

"(i) REGULATIONS.—

"(1) IN GENERAL.—The Secretary shall promulgate such regulations as necessary to carry out the provisions of this section.

"(2) DETERMINATION OF MOTOR VEHICLE ELIGIBILITY.—The Secretary, after coordination with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall prescribe such regulations as necessary to determine whether a motor vehicle meets the requirements to be eligible for a credit under this section.

"(j) TERMINATION.—This section shall not apply to any property placed in service after—

"(1) in the case of a new qualified alternative fuel motor vehicle, December 31, 2006,

"(2) in the case of a new advanced lean burn technology motor vehicle or a new qualified hybrid motor vehicle, December 31, 2008, and

"(3) in the case of a new qualified fuel cell motor vehicle, December 31, 2012.".

(b) CONFORMING AMENDMENTS.—

(1) Section 30(d) (relating to special rules) is amended by adding at the end the following new paragraphs:

"(5) NO DOUBLE BENEFIT.—No credit shall be allowed under this section for any motor vehicle for which a credit is also allowed under section 30B.".

(2) Section 1016(a) is amended by striking "and" at the end of paragraph (27), by striking the period at the end of paragraph (28) and inserting ", and", and by adding at the end the following:

"(29) to the extent provided in section 30B(h)(5).".

(3) Section 6501(m) is amended by inserting "30B(h)(9)," after "30(d)(4),".

(4) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 30A the following:

"Sec. 30B. Alternative motor vehicle credit.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

(d) STICKER INFORMATION REQUIRED AT RETAIL SALE.—

(1) IN GENERAL.—The Secretary of the Treasury shall issue regulations under which each qualified vehicle sold at retail shall display a notice—

(A) that such vehicle is a qualified vehicle, and

(B) that the buyer may not benefit from the credit allowed under section 30B of the Internal Revenue Code of 1986 if such buyer has insufficient tax liability.

(2) QUALIFIED VEHICLE.—For purposes of paragraph (1), the term "qualified vehicle" means a vehicle with respect to which a credit is allowed under section 30B of the Internal Revenue Code of 1986.

SEC. 4. SMALL ETHANOL PRODUCER CREDIT.

(a) ALLOCATION OF ALCOHOL FUELS CREDIT TO PATRONS OF A COOPERATIVE.—Section 40(g) (relating to definitions and special rules for eligible small ethanol producer credit) is amended by adding at the end the following new paragraph:

"(6) ALLOCATION OF SMALL ETHANOL PRODUCER CREDIT TO PATRONS OF COOPERATIVE.—

"(A) ELECTION TO ALLOCATE.—

"(i) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a)(3) for the taxable year may, at the election of the organization, be apportioned pro rata among patrons of the organization on the basis of the quantity or value of business done with or for such patrons for the taxable year.

"(ii) FORM AND EFFECT OF ELECTION.—An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

"(B) TREATMENT OF ORGANIZATIONS AND PATRONS.—The amount of the credit apportioned to patrons under subparagraph (A)—

"(i) shall not be included in the amount determined under subsection (a) with respect to the organization for the taxable year, and

"(ii) shall be included in the amount determined under subsection (a) for the taxable year of each patron for which the patronage dividends for the taxable year described in subparagraph (A) are included in gross income.

"(C) SPECIAL RULE.—If the amount of a credit which has been apportioned to any patron under this paragraph is decreased for any reason—

"(i) such amount shall not increase the tax imposed on such patron, and

"(ii) the tax imposed by this chapter on such organization shall be increased by such amount.

The increase under clause (ii) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.".

(b) DEFINITION OF SMALL ETHANOL PRODUCER.—Section 40(g) (relating to definitions and special rules for eligible small ethanol producer credit) is amended by striking "30,000,000" each place it appears and inserting "60,000,000".

(c) CONFORMING AMENDMENT.—Section 1388 (relating to definitions and special rules for cooperative organizations) is amended by adding at the end the following new subsection:

"(k) CROSS REFERENCE.—

"For provisions relating to the apportionment of the alcohol fuels credit between cooperative organizations and their patrons, see section 40(g)(6).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 5. INCENTIVES FOR BIODIESEL.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by inserting after section 40 the following new section:

"SEC. 40A. BIODIESEL USED AS FUEL.

"(a) GENERAL RULE.—For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the sum of—

"(1) the biodiesel mixture credit, plus

"(2) the biodiesel credit.

"(b) DEFINITION OF BIODIESEL MIXTURE CREDIT AND BIODIESEL CREDIT.—For purposes of this section—

"(1) BIODIESEL MIXTURE CREDIT.—

"(A) IN GENERAL.—The biodiesel mixture credit of any taxpayer for any taxable year is 50 cents for each gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture.

"(B) QUALIFIED BIODIESEL MIXTURE.—The term 'qualified biodiesel mixture' means a mixture of biodiesel and a taxable fuel (within the meaning of section 4083(a)(1)) which—

"(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

"(ii) is used as a fuel by the taxpayer producing such mixture.

"(C) SALE OR USE MUST BE IN TRADE OR BUSINESS, ETC.—Biodiesel used in the production of a qualified biodiesel mixture shall be taken into account—

"(i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and

"(ii) for the taxable year in which such sale or use occurs.

"(D) CASUAL OFF-FARM PRODUCTION NOT ELIGIBLE.—No credit shall be allowed under this section with respect to any casual off-farm production of a qualified biodiesel mixture.

"(2) BIODIESEL CREDIT.—

"(A) IN GENERAL.—The biodiesel credit of any taxpayer for any taxable year is 50 cents for each gallon of biodiesel which is not in a mixture and which during the taxable year—

"(i) is used by the taxpayer as a fuel in a trade or business, or

"(ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle.

"(B) USER CREDIT NOT TO APPLY TO BIODIESEL SOLD AT RETAIL.—No credit shall be allowed under subparagraph (A)(i) with respect to any biodiesel which was sold in a retail sale described in subparagraph (A)(ii).

"(3) CREDIT FOR AGRI-BIODIESEL.—In the case of any biodiesel which is agri-biodiesel, paragraphs (1)(A) and (2)(A) shall be applied by substituting '$1.00' for '50 cents'.

"(4) CERTIFICATION FOR BIODIESEL.—No credit shall be allowed under this section unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

"(c) COORDINATION WITH CREDIT AGAINST EXCISE TAX.—The amount of the credit determined under this section with respect to any biodiesel shall be properly reduced to take into account any benefit provided with respect to such biodiesel solely by reason of the application of section 6426.

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) BIODIESEL.—The term 'biodiesel' means the monoalkyl esters of long chain fatty acids derived from plant or animal matter which meet—

"(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

"(B) the requirements of the American Society of Testing and Materials D6751.

"(2) AGRI-BIODIESEL.—The term 'agri-biodiesel' means biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, and mustard seeds, and from animal fats.

"(3) MIXTURE OR BIODIESEL NOT USED AS A FUEL, ETC.—

"(A) MIXTURES.—If—

"(i) any credit was determined under this section with respect to biodiesel used in the production of any qualified biodiesel mixture, and

"(ii) any person—

"(I) separates the biodiesel from the mixture, or

"(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(1)(A) and the number of gallons of such biodiesel in such mixture.

"(B) BIODIESEL.—If—

"(i) any credit was determined under this section with respect to the retail sale of any biodiesel, and

"(ii) any person mixes such biodiesel or uses such biodiesel other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(2)(A) and the number of gallons of such biodiesel.

"(C) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A) or (B) as if such tax were imposed by section 4081 and not by this chapter.

"(4) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations .prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

"(e) TERMINATION.—This section shall not apply to any sale or use after December 31, 2005.".

(b) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit) is amended by striking "plus" at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting ", plus", and by adding at the end the following new paragraph:

"(18) the biodiesel fuels credit determined under section 40A(a).".

(c) CONFORMING AMENDMENTS.—

(1)(A) Section 87 is amended to read as follows:

"SEC. 87. ALCOHOL AND BIODIESEL FUELS CREDITS.

"Gross income includes—

"(1) the amount of the alcohol fuels credit determined with respect to the taxpayer for the taxable year under section 40(a), and

"(2) the biodiesel fuels credit determined with respect to the taxpayer for the taxable year under section 40A(a).".

(B) The item relating to section 87 in the table of sections for part II of subchapter B of chapter 1 is amended by striking "fuel credit" and inserting "and biodiesel fuels credits".

(2) Section 196(c) is amended by striking "and" at the end of paragraph (9), by striking the period at the end of paragraph (10) and inserting ", and", and by adding at the end the following new paragraph:

"(11) the biodiesel fuels credit determined under section 40A(a).".

(3) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding after the item relating to section 40 the following new item:

"Sec. 40A. Biodiesel used as fuel.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel produced, and sold or used, after December 31, 2003, in taxable years ending after such date.

SEC. 6. ALCOHOL FUEL AND BIODIESEL MIXTURES EXCISE TAX CREDIT.

(a) IN GENERAL.—Subchapter B of chapter 65 (relating to rules of special application) is amended by inserting after section 6425 the following new section:

"SEC. 6426. CREDIT FOR ALCOHOL FUEL AND BIODIESEL MIXTURES.

"(a) ALLOWANCE OF CREDITS.—There shall be allowed as a credit against the tax imposed by section 4081 an amount equal to the sum of—

"(1) the alcohol fuel mixture credit, plus

"(2) the biodiesel mixture credit.

"(b) ALCOHOL FUEL MIXTURE CREDIT.—

"(1) IN GENERAL.—For purposes of this section, the alcohol fuel mixture credit is the product of the applicable amount and the number of gallons of alcohol used by the taxpayer in producing any alcohol fuel mixture for sale or use in a trade or business of the taxpayer.

"(2) APPLICABLE AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 52 cents (51 cents in the case of any sale or use after 2004).

"(B) MIXTURES NOT CONTAINING ETHANOL.—In the case of an alcohol fuel mixture in which none of the alcohol consists of ethanol, the applicable amount is 60 cents.

"(3) ALCOHOL FUEL MIXTURE.—For purposes of this subsection, the term 'alcohol fuel mixture' means a mixture of alcohol and a taxable fuel which—

"(A) is sold by the taxpayer producing such mixture to any person for use as a fuel,

"(B) is used as a fuel by the taxpayer producing such mixture, or

"(C) is removed from the refinery by a person producing such mixture.

"(4) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) ALCOHOL.—The term 'alcohol' includes methanol and ethanol but does not include—

"(i) alcohol produced from petroleum, natural gas, or coal (including peat), or

"(ii) alcohol with a proof of less than 190 (determined without regard to any added denaturants).

Such term also includes an alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from such alcohol.

"(B) TAXABLE FUEL.—The term 'taxable fuel' has the meaning given such term by section 4083(a)(1).

"(5) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after December 31, 2010.

"(c) BIODIESEL MIXTURE CREDIT.—

"(1) IN GENERAL.—For purposes of this section, the biodiesel mixture credit is the product of the applicable amount and the number of gallons of biodiesel used by the taxpayer in producing any biodiesel mixture for sale or use in a trade or business of the taxpayer.

"(2) APPLICABLE AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 50 cents.

"(B) AMOUNT FOR AGRI-BIODIESEL.—In the case of any biodiesel which is agri-biodiesel, the applicable amount is $1.00.

"(3) BIODIESEL MIXTURE.—For purposes of this section, the term 'biodiesel mixture' means a mixture of biodiesel and a taxable fuel which—

"(A) is sold by the taxpayer producing such mixture to any person for use as a fuel,

"(B) is used as a fuel by the taxpayer producing such mixture, or

"(C) is removed from the refinery by a person producing such mixture.

"(4) CERTIFICATION FOR BIODIESEL.—No credit shall be allowed under this section unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

"(5) OTHER DEFINITIONS.—Any term used in this subsection which is also used in section 40A shall have the meaning given such term by section 40A.

"(6) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after December 31, 2005.

"(d) MIXTURE NOT USED AS A FUEL, ETC.—

"(1) IMPOSITION OF TAX.—If—

"(A) any credit was determined under this section with respect to alcohol or biodiesel used in the production of any alcohol fuel mixture or biodiesel mixture, respectively, and

"(B) any person—

"(i) separates the alcohol or biodiesel from the mixture, or

"(ii) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the applicable amount and the number of gallons of such alcohol or biodiesel.

"(2) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under paragraph (1) as if such tax were imposed by section 4081 and not by this section.

"(e) COORDINATION WITH EXEMPTION FROM EXCISE TAX.—Rules similar to the rules under section 40(c) shall apply for purposes of this section.".

(b) REGISTRATION REQUIREMENT.—Section 4101(a) (relating to registration) is amended by inserting "and every person producing biodiesel (as defined in section 40A(d)(1)) or alcohol (as defined in section 6426(b)(4)(A))" after "4091".

(c) ADDITIONAL AMENDMENTS.—

(1) Section 40(c) is amended by striking "or section 4091(c)" and inserting "section 4091(c), or section 6426".

(2) Section 40(e)(1) is amended—

(A) by striking "2007" in subparagraph (A) and inserting "2010", and

(B) by striking "2008" in subparagraph (B) and inserting "2011".

(3) Section 40(h) is amended—

(A) by striking "2007" in paragraph (1) and inserting "2010", and

(B) by striking ", 2006, or 2007" in the table contained in paragraph (2) and inserting "through 2010".

(4)(A) Subpart C of part III of subchapter A of chapter 32 is amended by adding at the end the following new section:

"SEC. 4104. INFORMATION REPORTING FOR PERSONS CLAIMING CERTAIN TAX BENEFITS.

"(a) IN GENERAL.—The Secretary shall require any person claiming tax benefits under the provisions of section 34, 40, 40A, 4041(b)(2), 4041(k), 4081(c), 6426, or 6427(f) to file a quarterly return (in such manner as the Secretary may prescribe) providing such information relating to such benefits and the coordination of such benefits as the Secretary may require to ensure the proper administration and use of such benefits.

"(b) ENFORCEMENT.—With respect to any person described in subsection (a) and subject to registration requirements under this title, rules similar to rules of section 4222(c) shall apply with respect to any requirement under this section.".

(B) The table of sections for subpart C of part III of subchapter A of chapter 32 is amended by adding at the end the following new item:

"Sec. 4104. Information reporting for persons claiming certain tax benefits.".

(5) Section 6427(i)(3) is amended—

(A) by adding at the end of subparagraph (A) the following new flush sentence:

"In the case of an electronic claim, this subparagraph shall be applied without regard to clause (i).", and

(B) by striking "20 days of the date of the filing of such claim" in subparagraph (B) and inserting "45 days of the date of the filing of such claim (20 days in the case of an electronic claim)".

(6) Section 9503(b)(1) is amended by adding at the end the following new flush sentence:

"For purposes of this paragraph, taxes received under sections 4041 and 4081 shall be determined without reduction for credits under section 6426.".

(d) CLERICAL . AMENDMENT.—The table of sections for subchapter B of chapter 65 is amended by inserting after the item relating to section 6425 the following new item:

"Sec. 6426. Credit for alcohol fuel and biodiesel mixtures.".

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to fuel sold, used, or removed after December 31, 2003.

(2) SUBSECTION (c)(4).—The amendments made by subsection (c)(4) shall take effect on January 1, 2004.

(3) SUBSECTION (c)(5).—The amendments made by subsection (c)(5) shall apply to claims filed after December 31, 2004.

(f) FORMAT FOR FILING.—The Secretary of the Treasury shall prescribe the electronic format for filing claims described in section 6427(i)(3)(B) of the Internal Revenue Code of 1986 (as amended by subsection (c)(5)(A)) not later than December 31, 2004.

SEC. 7. NONAPPLICATION OF EXPORT EXEMPTION TO DELIVERY OF FUEL TO MOTOR VEHICLES REMOVED FROM UNITED STATES.

(a) IN GENERAL.—Section 4221(d)(2) (defining export) is amended by adding at the end the following new sentence: "Such term does not include the delivery of a taxable fuel (as defined in section 4083(a)(1)) into a fuel tank of a motor vehicle which is shipped or driven out of the United States.".

(b) CONFORMING AMENDMENTS.—

(1) Section 4041(g) (relating to other exemptions) is amended by adding at the end the following new sentence: "Paragraph (3) shall not apply to the sale for delivery of a liquid into a fuel tank of a motor vehicle which is shipped or driven out of the United States.".

(2) Clause (iv) of section 4081(a)(1)(A) (relating to tax on removal, entry, or sale) is amended by inserting "or at a duty-free sales enterprise (as defined in section 555(b)(8) of the Tariff Act of 1930)" after "section 4101".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales or deliveries made after the date of the enactment of this Act.

By Mr. ALLEN:

S. 2918. A bill to amend the Internal Revenue Code of 1986 to provide that distributions from an individual retirement plan, a section 401(k) plan, or a section 403(b) contract shall not be includible in gross income to the extent used to pay long-term care insurance premiums; to the Committee on Finance.

Mr. ALLEN. Mr. President, I rise to bring the Senate's attention to a bill I introduced today, the Long-Term Care Act of 2004.

Baby boomers will begin to turn 65 years old in 2010 and by 2030, all 77 million baby boomers will have reached retirement age and the over 65 population will have doubled. The practicality of these conditions will require the Federal Government and most State governments to spend more money on health care. Presently, Federal and State governments are spending billions of dollars to ensure the health and well being of our fellow citizens.

In one sector of the health care arena where costs are dramatically rising is in the area of long-term care. In 2000, spending on long-term care was estimated at $123.1 billion and it is expected to triple to $346.1 billion by 2040. Currently, 70 percent of long-term care costs are spent on nursing home care. The average cost of nursing home care is $178 per day or $60,000 per year. That is a significant burden on Federal and State governments as well as the thousands of individuals who pay for that care out of pocket.

In addition, almost 75 percent of nursing home care is publicly funded. Medicaid spends about 58.7 percent on long-term care while Medicare spends 14.7 percent. According to the Council for Affordable Health Insurance, by the year 2030, Medicaid's nursing home expenditures are expected to reach $130 billion a year.

If more people purchased private long-term care insurance, we could reduce Medicaid's future institutional-care expenses by more than $40 billion each year, while giving those who are insured alternatives to nursing homes: including home care, adult day care, foster care and assisted living. Congress has taken steps to give individuals more power to pay for their health care services such as long-term care. One such outstanding measure was the creation of Health Savings Accounts (HSAs).

Last year, I was pleased to support the passage of the Medicare Modernization Act. This landmark legislation created Health Savings Accounts, which are a new way that people can pay for unreimbursed medical expenses such as deductibles, co-payments, and services not covered by insurance like long-term care. Eligible individuals can establish and fund these accounts when they have a qualifying high deductible health plan and no other health plan, with some exceptions. The beauty of these plans is that they have tax advantages such as deductible contributions; tax-exempt withdrawals if the individual uses the money for medical expenses; and tax-exempt account earnings.

I am confident that with the creation of Health Savings Accounts, individuals and families will be encouraged to set money aside for their health care expenses and give individuals the means to pay for health care services of their own choosing, without being constrained by insurers or employers. Unfortunately, Health Savings Accounts are relatively new and most individuals will not have the built up funds in their HSA to pay for a number of costly health care expenses such as long-term care insurance and that is why we need to provide other options to help pay for this important investment.

Currently, thousands of Virginians and millions of Americans are saving in their retirement plans to have a comfortable life once they become seniors, be it IRA, 401(k), and 403(b) accounts. These savings plans help prepare individuals for their future retirement or any unforeseen circumstance that may arise. Indeed, over 43 million Americans own IRAs with total savings of $2.5 trillion, while more than 47 million Americans have 401(k) accounts with $1.8 trillion saved. In addition, 6.4 million Americans have 403(b) accounts, amounting to over $590 billion saved.

These are untapped funds that individuals should be allowed to use to help pay for their future health care needs. Current tax law and some retirement plans allow individuals, in extreme circumstances, to withdraw funds from their retirement accounts, but more often than not, a 10 percent excise tax applies for early withdrawal. In my opinion, that tax precludes the ability or desirability of individuals to provide for their and their families well-being and that is why I have introduced legislation to provide a new health care option to help address this unfortunate circumstance.

My legislation, the Long-Term Care Act of 2004 will allow individuals to use their IRAs, 401(k), and 403(b) plans to purchase long-term care insurance with pretax dollars at any age and without early withdrawal penalty. Under the Long-Term Care Act, the consumer has the option to purchase long-term care insurance at the most appropriate amounts for their own needs and their spouses.

Today, only six percent of Americans own a long-term care policy. One of the reasons behind this dismally low figure is that individuals wait too long to purchase long-term care insurance. In fact, purchasing long-term care insurance at age 65 is about twice expensive as purchasing it age 55. That is why we must encourage individuals to plan for their future health care needs and purchase long-term care insurance at an early age. By purchasing long-term care insurance at a younger age, individuals will be saving money in the long run and not depleting their life savings.

Our country is heading towards a demographic melt down on long-term care costs. It is simply unsustainable for individuals and the government to maintain the current rate of spending without further endangering the state of health care in the United States.

Preparing for future costs of health care is something that every American should be doing. Long-term care insurance is one way for Americans to plan for periods of extended disability without burdening their families, going bankrupt or relying on government assistance.

Every American should be preparing for future health care costs and it is important that we encourage people to take responsibility today for those costs, be it with the purchase of long-term care insurance or investment in a Health Savings Account. If Virginians and Americans fail to act, it will result in an increased and unsustainable financial burden on the Federal Government and taxpayers.

My legislation, the Long-Term Care Act of 2004, is a commonsense approach that will encourage individuals to plan for their future health care needs and help make long-term care insurance more affordable. While this may not be the solution for some people, it is another option for the millions of Virginians and Americans to help provide for their health and well-being or the health and well-being of loved ones. I look forward to the Senate's action on this legislation early on in the 109th Congress because it not only encourages Americans to plan for their future health needs but will also help sustain the viability of our Nation's health care system.

By Mr. BAUCUS (for himself and Mr. DASCHLE):

S. 2919. A bill to amend the Internal Revenue Code of 1986 to provide funding for Indian tribal prison facilities, and for other purposes; to the Committee on Finance.

Mr. BAUCUS. Mr. President, I rise today to talk about a crisis occurring today in Indian country—and offer a solution. This crisis is not something new. It has been decades in the making. For too long we have neglected to adequately address this issue. This crisis is the condition of Indian jails.

We held a hearing on the Finance Committee this fall to bring attention to the problem. We heard testimony from the Inspector General of the Interior Department, Mr. Earl Devaney. He issued a report that was absolutely shocking. Mr. Devaney said the conditions of Indian jails are comparable to conditions found in third-world countries. He said the jails are a natural disgrace.

There are over seventy Indian jails in America. Almost all of them suffer from the same problems. They are highly understaffed and overpopulated. There are extremely high rates of suicides and escapes. Officers are undertrained or not trained at all. Many of these jails don't even have locking doors. We are talking about jails used to detain criminals and they don't have locking doors. These conditions are unacceptable. They must be fixed. It is our duty to address this problem.

In my home State of Montana, we have eleven Indian jails. They are staffed with hardworking, good people. But they are not miracle workers. They cannot be faulted for the deplorable condition of their jails. Let me give you are example.

On one day in June of 2002, nine of the eleven Montana Indian jails were overpopulated. The Crow Indian jail was 429 percent overcapacity. At the Blackfeet Indian jail, every single detention officer was assaulted last year.

One major reason these jails are in such poor condition is they are terribly underfunded. Tribal officers don't have the money to address the problems. Their hands are tied. We can do something about this. We must provide adequate funding for Indian jails.

Today I offer a proposal to the Senate to give tribes the authority to issue tax credit bonds for the construction, maintenance, and operation of their detention facilities. These bonds give off tax credits rather than interest to their investors, allowing tribes with little resources to earn interest off the proceeds. The bonds will provide a steady stream of income to the Tribal governments.

The legislation will provide money that is so desperately needed to address the problems facing Indian jails. I urge my colleagues to support this legislation. I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2919

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CREDIT TO HOLDERS OF INDIAN TRIBAL PRISON FACILITY BONDS.

(a) IN GENERAL.—Part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to credits against tax) is amended by adding at the end the following new subpart:

"Subpart H—Nonrefundable Credit for Holders of Indian Tribal Prison Facility Bonds

"Sec. 54. Credit to holders of Indian tribal prison facility bonds.

"SEC. 54. CREDIT TO HOLDERS OF INDIAN TRIBAL PRISON FACILITY BONDS.

"(a) ALLOWANCE OF CREDIT.—In the case of a taxpayer who holds an Indian tribal prison facility bond on a credit allowance date of such bond which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to credit allowance dates during such year on which the taxpayer holds such bond.

"(b) AMOUNT OF CREDIT.—

"(1) IN GENERAL.—The amount of the credit determined under this subsection with respect to any Indian tribal prison facility bond is the amount equal to the product of—

"(A) the credit rate determined by the Secretary under paragraph (2) for the month in which such bond was issued, multiplied by

"(B) the face amount of the bond held by the taxpayer on the credit allowance date.

"(2) DETERMINATION.—During each calendar month, the Secretary shall determine a credit rate which shall apply to bonds issued during the following calendar month. The credit rate for any month is the percentage which the Secretary estimates will permit the issuance of Indian tribal prison facility bonds without discount and without interest cost to the issuer.

"(c) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

"(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(2) the sum of the credits allowable under this part (other than this subpart and subpart C).

"(d) CREDIT INCLUDED IN GROSS INCOME.—Gross income includes the amount of the credit allowed to the taxpayer under this section (determined without regard to subsection (c)) and the amount so included shall be treated as interest income.

"(e) INDIAN TRIBAL PRISON FACILITY BOND. For purposes of this part, the term 'Indian tribal prison facility bond' means any bond issued as part of an issue if—

"(1) 95 percent or more of the proceeds of such issue are to be invested in investment grade obligations and the proceeds from such investment are used for the construction, acquisition, rehabilitation, expansion, or operating expanses of a qualified Indian tribal prison facility,

"(2) the bond is issued by the Indian tribe within the jurisdiction of which such facility is located,

"(3) the bond is issued pursuant to a plan developed by the Indian tribe,

"(4) the issuer designates such bond for purposes of this section,

"(5) the term of each bond which is part of such issue does not exceed 10 years, and

"(6) no amount of proceeds of such issue (including proceeds from any investment under paragraph (1)) may be used to pay the costs of issuance to the extent such amount exceeds 2 percent of the sale proceeds of such issue.

"(f) QUALIFIED INDIAN TRIBAL PRISON FACILITY.—For purposes of this section, the term 'qualified Indian tribal prison facility' means any residential correctional or detention facility located on the qualified Indian land of the issuing Indian tribe substantially all of the inmates of which are adult or juvenile members of such Indian tribe.

"(g) LIMITATION ON AMOUNT OF BONDS DESIGNATED; ALLOCATION OF BONDS.—

"(1) NATIONAL LIMITATION.—There is an Indian tribal prison facility bond limitation for each calendar year. Such limitation is—

"(A) $200,000,000 for 2005,

"(B) $200,000,000 for 2006,

"(C) $200,000,000 for 2007, and

"(D) except as provided in paragraph (3), zero thereafter.

"(2) ALLOCATION OF BONDS.—

"(A) IN GENERAL.—The Secretary, after consultation with the Secretary of the Interior, shall allocate the Indian tribal prison facility bond limitation among those Indian tribes which submit a plan which contains a description of the proposed use of investment proceeds, assurances that such proceeds will be used only for such use, a proposed expenditure schedule, information relevant to the criteria described in subparagraph (B), and any other information determined appropriate by the Secretary.

"(B) APPROVAL CRITERIA.—In allocating the limitation among plan requests of Indian tribes under subparagraph (A), the Secretary shall consider—

"(i) the percentage of prison overcrowding in excess of the facility occupancy level as determined by the Bureau of Indian Affairs,

"(ii) the condition of existing facilities,

"(iii) the health and safety of both inmates and prison employees,

"(iv) the type of offenders incarcerated, and

"(v) other financial resources available to the Indian tribe.

"(3) CARRYOVER OF UNUSED ISSUANCE LIMITATION.—If for any calendar year the limitation amount imposed by paragraph (1) exceeds the amount of Indian tribal prison facility bonds issued during such year, such excess shall be carried forward to one or more succeeding calendar years as an addition to the limitation imposed by paragraph (1) and until used by issuance of such bonds.

"(h) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) CREDIT ALLOWANCE DATE.—The term 'credit allowance date' means, with respect to any issue, the last day of the 1-year period beginning on the date of the issuance of such issue and the last day of each successive 1-year period thereafter.

"(2) BOND.—The term 'bond' includes any obligation.

"(3) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given such term by section 7871(c)(3)(E)(ii).

"(4) QUALIFIED INDIAN LANDS.—The term 'qualified Indian lands' has the meaning given such term by section 7871(c)(3)(E)(i).

"(5) PARTNERSHIP; S CORPORATION; AND OTHER PASS-THRU ENTITIES.—In the case of a partnership, trust, S corporation, or other pass-thru entity, rules similar to the rules of section 41(g) shall apply with respect to the credit allowable under subsection (a).

"(6) BONDS HELD BY REGULATED INVESTMENT COMPANIES.—If any Indian tribal prison facility bond is held by a regulated investment company, the credit determined under subsection (a) shall be allowed to shareholders of such company under procedures prescribed by the Secretary.

"(7) REPORTING.—Each Indian tribe with an allocation of Indian tribal prison facility bonds under an approved plan shall submit reports similar to the reports required under section 149(e).".

(b) CONFORMING AMENDMENTS.—

(1) REPORTING.—Subsection (d) of section 6049 of the Internal Revenue Code of 1986 (relating to returns regarding payments of interest) is amended by adding at the end the following new paragraph:

"(8) REPORTING OF CREDIT ON INDIAN TRIBAL PRISON FACILITY BONDS.—

"(A) IN GENERAL.—For purposes of subsection (a), the term 'interest' includes amounts includible in gross income under section 54(d) and such amounts shall be treated as paid on the credit allowance date (as defined in section 54(h)(1)).

"(B) REPORTING TO CORPORATIONS, ETC.—Except as otherwise provided in regulations, in the case of any interest described in subparagraph (A), subsection (b)(4) shall be applied without regard to subparagraphs (A), (H), (I), (J), (K), and (L)(i) of such subsection.

"(C) REGULATORY AUTHORITY.—The Secretary may prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which require more frequent or more detailed reporting.".

(2) TREATMENT FOR ESTIMATED TAX PURPOSES.—

(A) INDIVIDUAL.—Section 6654 of such Code (relating to failure by individual to pay estimated income tax) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) SPECIAL RULE FOR HOLDERS OF INDIAN TRIBAL PRISON FACILITY BONDS.—For purposes of this section, the credit allowed by section 54 to a taxpayer by reason of holding an Indian tribal prison facility bond on a credit allowance date shall be treated as if it were a payment of estimated tax made by the taxpayer on such date.".

(B) CORPORATE.—Subsection (g) of section 6655 of such Code (relating to failure by corporation to pay estimated income tax) is amended by adding at the end the following new paragraph:

"(5) SPECIAL RULE FOR HOLDERS OF INDIAN TRIBAL PRISON FACILITY BONDS.—For purposes of this section, the credit allowed by section 54 to a taxpayer by reason of holding an Indian tribal prison facility bond on a credit allowance date shall be treated as if it were a payment of estimated tax made by the taxpayer on such date.".

(c) CLERICAL AMENDMENTS.—

(1) The table of subparts for part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"Subpart H. Nonrefundable Credit for Holders of Indian Tribal Prison Facility Bonds.".

(2) Section 6401(b)(1) of such Code is amended by striking "and G" and inserting "G, and H".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after December 31, 2004.

Mr. DASCHLE. Mr. President, today I am pleased to join Senator MAX BAUCUS in introducing legislation that addresses the longstanding problem of dilapidated tribal detention facilities on Indian reservations. There is a tremendous need for replacement construction of Bureau of Indian Affairs (BIA) operated and funded facilities, and I am pleased that this legislation offers a creative and innovative bonding approach to address the construction backlog.

USA Today reported that Federal investigators have uncovered evidence of abuse, neglect and inhumane conditions in Native American prisons and jails. This troubling report suggests that the conditions in Indian detention facilities are not improving and, in fact, appear to be getting worse. It is my hope that this hearing will help shed additional light on these allegations, and lead to solutions to improve conditions in facilities across Indian country.

According to recent statistics from the Department of Justice report on Indian jails and prisons, there are 70 detention facilities in Indian country, supervising approximately 2,100 inmates. Many of these facilities are in an appalling state of disrepair, and face problems that range from overcrowding and understaffing to sheer neglect and abuse.

According to the most recent statistics from the Department of Justice, over half of all detention facilities in Indian country were operating at 100-percent capacity in 2002, and nineteen were operating at 150-percent or higher capacity. Of those nineteen, three are located in my state of South Dakota: Pine Ridge's Medicine Root Detention Center, operating at 250-percent capacity; Crow Creek's Fort Thompson Jail, operating at 242-percent capacity; and the Pine Ridge Correctional Facility, which is operating at a staggering 400 percent of its capacity.

Inmates in South Dakota's BIA facilities are housed in dilapidated buildings and are forced to endure extraordinarily harsh conditions. Even though the Lower Brule tribal detention facility was condemned by the BIA in 1987, it was still being used to house inmates as recently as two years ago. Because the new facility is still under construction, Lower Brule prisoners are sent 13 miles away, across the Missouri River, to the Crow Creek facility in Fort Thompson. Because there aren't enough BIA officers to transport them back to Lower Brule, detainees released from Crow Creek are often forced to make the return trip to Lower Brule on foot. It is shocking that this is allowed to happen at all, but especially in South Dakota where harsh winters and sub-zero temperatures are routine. Moreover, the Fort Thompson facility is equally understaffed. One person serves as both police dispatcher and detention officer in a facility that houses up to 30 prisoners.

These conditions have a devastating impact on prisoners. Nationally, between July 1, 2001, and June 30, 2002, 282 inmates in tribal jails attempted suicide, up from 169 the previous year. In the last five years, the number of admissions rose 32 percent, and the annual number of attempted suicides more than doubled, from 133 to 282. On Crow Creek, which is located in one of the most impoverished counties in the U.S. and experiences inordinate suicide rates among its general population, several suicides have occurred in the local jail.

Even more troubling, inadequate detention facilities pose a serious threat to the surrounding communities. With a limited number of officers responsible for large inmate populations, the risk of prisoner violence—against both prison staff and, in the event of an escape, local citizens—is much greater. Moreover, the culture of neglect and abuse found in many of our Indian jails is indicative of broader trends within the communities. The Lower Brule jail doubles as a suicide-watch center for troubled teens, since there is nowhere else in the community to take them. Several Emergency Medical Technicians (EMTs) have either resigned, or are on the brink of resigning, due to the stress of the situation. Law enforcement officials are at a loss about how to address this disturbing pattern, and are overwhelmed by the feelings of hopelessness that accompany it.

Clearly, the impact that overcrowding, dilapidated conditions, and neglect are having on inmates in these facilities, as well as local communities, is reaching a critical mass—both in South Dakota and across the Nation—and we must act now to reverse the trend. While addressing the problems that exist in jails and prisons clearly isn't the whole answer, such an approach will meet a critical need in Indian country, and will represent an important step toward increasing public safety and reducing incidences of abuse and neglect.

We can start by increasing funding for BIA facilities. Unfortunately, this Administration has demonstrated a complete unwillingness to give Indian detention facilities the resources they need, and has actually reduced funding for jails and prisons in Indian country. It wasn't always so bad. Under the Clinton Administration, then-Attorney General Janet Reno created the Department of Justice—Department of Interior Indian Law Enforcement initiative with the objective of creating an effective way to address law enforcement, facilities, juvenile justice, and rehabilitation efforts in Indian country. Although funding for these programs, which increased under the Clinton administration and was consistent until the FY2002 appropriations cycle, was not enough to meet all of Indian country's needs, the initiative represented an unprecedented step toward addressing some of these problems.

Unfortunately, the current Administration, while budgeting hundreds of millions of dollars for Federal prison construction, has proposed eliminating the tribal facility program for the second year in a row. While Congress appropriated $35 million per year for construction of BIA detention facilities between 2000 and 2002, we appropriated only $2 million in FY2004. Now, with an even tighter budget to work with, the outlook for this year is especially bleak, and conditions at BIA facilities are likely to get even worse.

For too long, we have neglected our obligations to Native Americans. We are seeing the effects of that neglect in South Dakota. These are once again examples of the abrogation of the trust responsibility by the Federal Government to the tribes and its people.

We need to do a better job of funding Indian detention centers, and we need to do more to address public safety, tribal courts, and rehabilitation efforts. We cannot ask tribes to choose between funding crisis intervention and law enforcement. We cannot force tribes to make the choice between funding education and after school programs for their children, and repairing cracked walls and inoperable surveillance cameras in their jails.

While national rates are the lowest in years, crime on Indian lands continues to rise. Particularly disturbing is the violent nature of this crime; violence against women, juvenile and gang crime, and child abuse remain serious problems. The Bureau of Justice Statistics reports that American Indians experience the highest crime victimization rates in the nation—almost twice the national average.

The law enforcement, public safety, and tribal detention facility issues are of critical importance to Indian country and surrounding communities. If this were happening in any other part of the country, it would be met with public outrage and swift government action. However, in Indian country, it is met with silence and reduced funding. For the safety of our Indian people and the well-being of their communities, we must take action.

I am pleased that on September 21, 2004, the Senate Finance Committee held an oversight hearing on these issues, and that this legislation has emerged as a step in the right direction to address the construction backlog of much-needed facilities in rural, tribal communities.

I support this legislation which authorizes eligible Indian tribes to issue tax-exempt bonds to finance tribal prison facilities, "tribal prison facility bonds". I look forward to working with my colleagues to address these important issues and to advance this legislation.

By Mr. CORNYN:

S. 2922. A bill to amend the Public Health Service Act to provide for the expansion, intensification, and coordination of the activities of the National Heart, Lung, and Blood Institute with respect to research on pulmonary hypertension; to the Committee on Health, Education, Labor, and Pensions.

Mr. CORNYN. Mr. President, I rise today to introduce legislation designed to enhance Federal research on an emerging chronic disease in the U.S. known as pulmonary hypertension. PH is a serious and often fatal condition where the blood pressure in the lungs rises to dangerously high levels. In PH patients, the walls of the arteries that take blood from the right side of the heart to the lungs thicken and constrict. As a result, the right side of the heart has to pump harder to move blood into the lungs, causing it to enlarge and ultimately fail.

PH can occur without a known cause or be secondary to other conditions such as; collagen vascular diseases, i.e., scleroderma and lupus, blood clots, HIV, sickle cell, and liver disease. PH does not discriminate based on race, gender or age. Patients develop symptoms of shortness of breath, fatigue, chest pain, dizziness, and fainting. Unfortunately, these symptoms are frequently misdiagnosed, leaving patients with the false impression that they have a minor pulmonary or cardiovascular condition. By the time many patients receive an accurate diagnosis, the disease has progressed to a late stage, making it impossible to receive a necessary heart or lung transplant.

With this legislation, I am proud to join the Pulmonary Hypertension Association in the fight against this deadly illness. PHA is the Nation's oldest and largest organization dedicated to finding a cure for PH and improving the quality of life for PH patients and their families. I would particularly like to recognize the contributions of four PHA members from my home State of Texas who have contributed so much to this worthy cause—Leo and Bobbie Fields, and Jack Stibbs and his daughter Emily. Their commitment to improving the quality of life for PH patients and pursuing a cure for this disease is truly inspiring. I would also like to recognize our colleague Congressman KEVIN BRADY for his leadership in introducing the "PH Research Act" in the other body.

A few years ago the scientifc community discovered the first gene associated with pulmonary hypertension. This was a landmark discovery in the battle to unravel the mystery surrounding this disease. The "PH Research Act" seeks to capitalize on this exciting advancement by establishing "Centers of Excellence" on pulmonary hypertension through the National Heart, Lung and Blood Institute at the National Institutes of Health. These Centers would focus on: 1. basic and clinical research into the cause, diagnosis, and treatment of PH; 2. the training of new investigators in PH research; 3. continuing education for health care professionals regarding PH with a focus on early diagnosis and 4. the dissemination of information regarding the disease to the general public.

This is an important bill that has the potential to help tens of thousands of Americans and their families, who are struggling with this devastating disease. I look forward to working with the Health, Education, Labor and Pensions Committee to advance the "PH Research Act."

By Mr. BIDEN (for himself, Mr. SPECTER, Mr. BINGAMAN, and Ms. LANDRIEU):

S. 2923. A bill to reauthorize the grant program of the Department of Justice for reentry of offenders into the community, to establish a task force on Federal programs and activities relating to the reentry of offenders into the community, and for other purposes; to the Committee on the Judiciary.

Mr. BIDEN. Mr. President, Senator SPECTER and I introduce today the Enhanced Second Chance Act of 2004, which takes direct aim at reducing recidivism rates for our Nation's ex-offenders and improving the transition for these offenders from prison back into the community.

All too often we think about today, but not tomorrow. We look to short-term solutions for long- term problems. We need to have a change in thinking and approach. It's time we face the dire situation of prisoners reentering our communities with insufficient monitoring, little or no job skills, inadequate drug treatment, insufficient housing, lack of positive influences, a paucity of basic physical and mental health services, and deficient basic life skills.

The bill we introduce today is about providing a second chance for these ex-offenders, and the children and families that depend on them. It's about strengthening communities and ensuring safe neighborhoods.

Since my 1994 Crime Bill passed, we've had great success in cutting down on crime rates in this country. Under the Community Oriented Policing Services (COPS) program, we've funded over 114,000 officers all across the country. And our crime rate has plummeted. Murder is down 37.8 percent, rape 19.1 percent, and aggravated assaults 28 percent. The overall crime rate sharply declined by 28 percent.

But now, we are seeing some troubling indicators that crime is back on the rise. Murder was up 2.5 percent in 2001, 1 percent in 2002, and 1.3 percent in 2003. Forcible rape is up as is robbery. Car theft is up 10 percent over the last four years.

If we are going to ensure that these latest numbers are only a blip on the continued downward trend of crime rates, as opposed to the beginning of a comeback in crime, we simply have to make strong, concerted, and commonsense efforts now to help ex-prisoners successfully reenter and reintegrate into their communities.

There's a record number of people currently serving time in our country—over two million. This translates into 1 out of every 143 U.S. residents. In its latest statistics on the matter, the Bureau of Justice Statistics found that the Nation's overall prison population increased by over 40,000 from midyear 2002 to midyear 2003, the largest increase in 4 years.

Also vital to realize is that 95 percent of all these millions we lock up will eventually get out. That equals nearly 650,000 being released from Federal or State prisons to communities each year. In a State like Delaware, that's over 4,000 inmates per year. And here's the kicker—a staggering ⅔ of these released state prisoners are expected to be rearrested for a felony or serious misdemeanor within 3 years of release. Two out of every three! You're talking about hundreds of thousands of re-offending ex-offenders each year and hundreds of thousands of serious crimes being committed by people who have already served time in jail.

And, unfortunately, it's not too difficult to see why such a huge portion of our released prisoners recommit serious crimes. Up to 60 percent of former inmates are not employed; 15 to 27 percent of prisoners expect to go to homeless shelters upon release; and 57 percent of Federal and 70 percent of State inmates used drugs regularly before prison, with some estimates of involvement with drugs or alcohol around the time of the offense as high as 84 percent.

These huge numbers of released prisoners each year and the out-of-control recidivism rates are a recipe for disaster—leading to untold damage, hardship, and death for victims; ruined futures and lost potential for re-offenders; and a huge drain on society at large. One particularly vulnerable group is the children of these offenders. We simply cannot be resigned to allowing generation after generation entering and reentering our prisons. This pernicious cycle must come to an end.

My 1994 Crime Bill recognized these extraordinarily high rates of recidivism as a real problem. My bill, for example, created innovative drug treatment programs for State and Federal inmates to help them kick their habit.

But this is only one piece of the puzzle. I introduced a bill in 2000 that would have built on my 1994 Crime Bill—the "Offender Reentry and Community Safety Act of 2000", S. 2908. This bill would have created demonstration reentry programs for Federal, State, and local prisoners. These programs were designed to assist high-risk, high-need offenders who served their prison sentences, but who pose the greatest risk of reoffending upon release because they lack the education, job skills, stable family or living arrangements, and the health services they need to successfully reintegrate into society.

Senator SPECTER has also been a dedicated and tireless leader on crime and public safety issues throughout his career and has, for many years, seen the serious public safety ramifications of high recidivism rates. For example, my colleague from Pennsylvania has been the leader on the effort to ensure that offenders who are being released back into our communities have adequate education and work training to become productive members of our society. I couldn't be more pleased than to join efforts with Senator SPECTER on the Enhanced Second Chance Act of 2004.

While we have made some progress on offender reentry efforts since 1994, much more needs to be done. In the current session of Congress, I am pleased that colleagues of mine—from both sides of Capitol Hill and from both sides of the aisle—are also focusing their attention on this vital issue.

I am proud to have worked with Representatives ROB PORTMAN, DANNY DAVIS, and JOHN CONYERS, just to name a few, in the House or Representatives. In the Senate, a number of my colleagues, in addition to Senator SPECTER, have shown strong interest in offender reentry issues, including Senators BROWNBACK, DEWINE, LEAHY, KENNEDY, LANDRIEU, BINGAMAN, HATCH, GRASSLEY, and SANTORUM.

The Second Chance Act of 2004 was introduced in the House and Senate recently, and I was proud to have worked extensively on that bipartisan, bicameral process. The bill Senator SPECTER and I introduce today builds on those efforts. Like the Second Chance Act, the central component of our bill provides a competitive grant program to promote innovative programs to test out a variety of methods aimed at reducing recidivism rates. Efforts would be focused on post-release housing, education and job training, substance abuse and mental health services, and mentoring programs, just to name a few.

Because the scope of the problem is so large—with 650,000 prisoners being released from state and federal prisons each year—our bill provides more than three times as much funding than the House bill. While the House bill contains $40 million per year for the main grant program, our bill provides $130 million. This isn't being wasteful with our scarce federal resources, it's just an acknowledgment of the scope of the problem we're faced with.

A relatively modest investment in offender reentry efforts compares very well with the alternative, building more and more prisons for these ex-offenders to return to if they are unable to successfully reenter their communities and instead are rearrested and reconvicted of more crimes. We must remember that the average cost of incarcerating each prisoner exceeds $20,000 per year. In Delaware, this translates into over $200 per resident just to pay for jail and prison operating expenses.

In constant 2001 dollars, state prison costs in our country have increased from $11.7 billion per year in 1986 to $29.5 billion in 2001. And even with these kinds of resources being spent, by the end of 2002, 25 States and the Federal prison system reported operating at 100 percent or more of their highest capacity. My own home State of Delaware continues to see a prison system bulging at the seams. We have tried, but simply cannot build our way out of this problem. We need tough—but smart—strategies to stop the revolving door of prisoners being released from prison, only to re-offend and land right back behind bars. We simply can't be penny-wise but pound-foolish.

The Enhanced Second Chance Act of 2004 also requires that Federal departments with a role in offender reentry efforts coordinate and work together; to make sure there aren't duplicative efforts or funding gaps; and to coordinate reentry research. Our bill would raise the profile of this issue within the executive branch and secure the sustained and coordinated federal attention offender reentry efforts deserve.

We also need to examine existing Federal and state reentry barriers—laws, regulations, rules, and practices that make it more difficult for former inmates to successfully reintegrate back into their communities; laws that confine ex-offenders to society's margins, making it even more likely that they will recommit serious crimes and return to prison.

Turning over a new leaf and going from a life of crime to becoming a productive member of society is tough enough. We shouldn't have Federal and State laws on the books that make this even more challenging. That's not to say that we don't want to restrict former drug addicts from working in pharmacies, for example, or to bar sex offenders from working in day care centers. But many communities across the country currently exclude ex-prisoners from virtually every occupation requiring a state license, like chiropractic care, engineering, and real estate. Lifting these senselessly punitive bans would make it easier for ex-offenders to stay out of prison.

Our bill provides for a robust analysis of these Federal and State barriers with recommendations on what next steps we need to take. And these reviews are mandated to take place out in the open under public scrutiny.

The Enhanced Second Chance Act also spurs state-of-the-art research and study on offender reentry issues. We need to know who is most likely to recommit crimes when they are released, to better target our limited resources where they can do the most good. We need to study why some ex-offenders who seem to have the entire deck stacked against them are able to become successful and productive members of our society. We need to know what works and how we can replicate what works for others.

Our bill also provides a whole slew of common-sense proposals in the areas of job training, employment, education, post-release housing, civic rights, substance abuse, and prisoner mentoring—efforts and changes in law that we can do now. Some of these important provisions are included in the House bill, others are in addition to those efforts, but all are common-sense efforts in the art of the possible. Our goal is to do as much as possible right now.

Our Enhanced Second Chance Act is a next, natural step in our campaign against crime. Making a dent in recidivism rates is an enormous undertaking; one that requires action now and continued focus in the future. I commit to vigorously pushing this legislation as well as keeping an eye on what steps we need to take in the future. We need to realize that the problems facing ex-offenders are enormous and require sustained focus. The safety of our neighbors, our children, and our communities depends on it.

I'm proud today to introduce the Enhanced Second Chance Act with Senator SPECTER and ask our colleagues to join with us in this vital effort.

I ask unanimous consent to have the text of our bill printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2923

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Enhanced Second Chance Act of 2004: Community Safety Through Recidivism Prevention" or the "Enhanced Second Chance Act of 2004".

SEC. 2. FINDINGS.

Congress finds the following:

(1) In 2002, 2,000,000 people were incarcerated in Federal or State prisons or in local jails. Nearly 650,000 people are released from incarceration to communities nationwide each year.

(2) There are over 3,200 jails throughout the United States, the vast majority of which are operated by county governments. Each year, these jails will release in excess of 10,000,000 people back into the community.

(3) Nearly ⅔ of released State prisoners are expected to be rearrested for a felony or serious misdemeanor within 3 years after release.

(4) In recent years, a number of States and local governments have begun to establish improved systems for reintegrating former prisoners. Under such systems, corrections officials begin to plan for a prisoner's release while the prisoner is incarcerated and provide a transition to needed services in the community.

(5) Faith leaders and parishioners have a long history helping ex-offenders transform their lives. Through prison ministries and outreach in communities, churches and faith-based organizations have pioneered reentry services to prisoners and their families.

(6) Successful reentry protects those who might otherwise be crime victims. It also improves the likelihood that individuals released from prison or juvenile detention facilities can pay fines, fees, restitution, and family support.

(7) According to the Bureau of Justice Statistics, expenditures on corrections alone increased from $9,000,000,000 in 1982 to $44,000,000,000 in 1997. These figures do not include the cost of arrest and prosecution, nor do they take into account the cost to victims.

(8) Increased recidivism results in profound collateral consequences, including public health risks, homelessness, unemployment, and disenfranchisement.

(9) The high prevalence of infectious disease, substance abuse, and mental health disorders that has been found in incarcerated populations demands that a recovery model of treatment should be used for handling the more than ⅔ of all offenders with such needs.

(10) One of the most significant costs of prisoner reentry is the impact on children, the weakened ties among family members, and destabilized communities. The long-term generational effects of a social structure in which imprisonment is the norm and law-abiding role models are absent are difficult to measure but undoubtedly exist.

(11) According to the 2001 national data from the Bureau of Justice Statistics, 3,500,000 parents were supervised by the correctional system. Prior to incarceration, 64 percent of female prisoners and 44 percent of male prisoners in State facilities lived with their children.

(12) Between 1991 and 1999, the number of children with a parent in a Federal or State correctional facility increased by more than 100 percent, from approximately 900,000 to approximately 2,000,000. According to the Bureau of Prisons, there is evidence to suggest that inmates who are connected to their children and families are more likely to avoid negative incidents and have reduced sentences.

(13) Approximately 100,000 juveniles (ages 17 and under) leave juvenile correctional facilities, State prison, or Federal prison each year. Juveniles released from confinement still have their likely prime crime years ahead of them. Juveniles released from secure confinement have a recidivism rate ranging from 55 to 75 percent. The chances that young people will successfully transition into society improve with effective reentry and aftercare programs.

(14) Studies have shown that from 15 percent to 27 percent of prisoners expect to go to homeless shelters upon release from prison.

(15) The National Institute of Justice has found that after 1 year of release, up to 60 percent of former inmates are not employed.

(16) Fifty-seven percent of Federal and 70 percent of State inmates used drugs regularly before prison, with some estimates of involvement with drugs or alcohol around the time of the offense as high as 84 percent (BJS Trends in State Parole, 1990-2000).

(17) According to the Bureau of Justice Statistics, 60 to 83 percent of the Nation's correctional population have used drugs at some point in their lives. This is twice the estimated drug use of the total United States population of 40 percent.

(18) Family based treatment programs have proven results for serving the special population of female offenders and substance abusers with children. An evaluation by the Substance Abuse and Mental Health Services Administration of family based treatment for substance abusing mothers and children found that at 6 months post treatment, 60 percent of the mothers remain alcohol and drug free, and drug related offenses declined from 28 to 7 percent. Additionally, a 2003 evaluation of residential family based treatment programs revealed that 60 percent of mothers remained clean and sober 6 months after treatment, criminal arrests declined by 43 percent, and 88 percent of the children treated in the program with their mothers remain stabilized.

(19) A Bureau of Justice Statistics analysis indicated that only 33 percent of Federal and 36 percent of State inmates had participated in residential inpatient treatment programs for alcohol and drug abuse 12 months before their release. Further, over ⅓ of all jail inmates have some physical or mental disability and 25 percent of jail inmates have been treated at some time for a mental or emotional problem.

(20) According to the National Institute of Literacy, 70 percent of all prisoners function at the 2 lowest literacy levels.

(21) The Bureau of Justice Statistics has found that 27 percent of Federal inmates, 40 percent of State inmates, and 47 percent of local jail inmates have never completed high school or its equivalent. Furthermore, the Bureau of Justice Statistics has found that less educated inmates are more likely to be recidivists. Only 1 in 4 local jails offer basic adult education programs.

(22) In his 2004 State of the Union Address, President Bush correctly stated: "We know from long experience that if former prisoners can't find work, or a home, or help, they are much more likely to commit more crimes and return to prison America is the land of the second chance, and when the gates of the prison open, the path ahead should lead to a better life".

(23) Participation in State correctional education programs lowers the likelihood of reincarceration by 29 percent, according to a recent United States Department of Education study. A Federal Bureau of Prisons study found a 33 percent drop in recidivism among Federal prisoners who participated in vocational and apprenticeship training.

SEC. 3. REAUTHORIZATION OF ADULT AND JUVENILE OFFENDER STATE AND LOCAL REENTRY DEMONSTRATION PROJECTS.

(a) ADULT OFFENDER DEMONSTRATION PROJECTS AUTHORIZED.—Section 2976(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797w(b)) is amended by striking paragraphs (1) through (4) and inserting the following:

"(1) establishing or improving the system or systems under which—

"(A) the correctional agency of the State or local government develops and carries out plans to facilitate the reentry into the community of each offender in State or local custody;

"(B) the supervision and services provided to offenders in State or local custody are coordinated with the supervision and services provided to offenders after reentry into the community;

"(C) the efforts of various public and private entities to provide supervision and services to offenders after reentry into the community, and to family members of such offenders, are coordinated; and

"(D) offenders awaiting reentry into the community are provided with documents (such as identification papers, referrals to services, medical prescriptions, job training certificates, apprenticeship papers, and information on obtaining public assistance) useful in achieving a successful transition from prison;

"(2) carrying out programs and initiatives by units of local government to strengthen reentry services for individuals released from local jails;

"(3) enabling prison mentors of offenders to remain in contact with those offenders, including through the use of such technology as videoconferencing, during incarceration and after reentry into the community and encouraging the involvement of prison mentors in the reentry process;

"(4) providing structured post-release housing and transitional housing, including group homes for recovering substance abusers, through which offenders are provided supervision and services immediately following reentry into the community;

"(5) assisting offenders in securing permanent housing upon release or following a stay in transitional housing;

"(6) providing continuity of health services (including mental health services, substance abuse treatment and aftercare, and treatment for contagious diseases) to offenders in custody and after reentry into the community;

"(7) providing offenders with education, job training, English as a second language programs, work experience programs, self-respect and life skills training, and other skills useful in achieving a successful transition from prison;

"(8) facilitating collaboration among corrections and community corrections, technical schools, community colleges, and the workforce development and employment service sectors to—

"(A) promote, where appropriate, the employment of people released from prison and jail, through efforts such as educating employers about existing financial incentives and facilitate the creation of job opportunities, including transitional jobs, for this population that will benefit communities;

"(B) connect inmates to employment, including supportive employment and employment services, before their release to the community;

"(C) address barriers to employment, including licensing; and

"(D) identify labor market needs to ensure that education and training are appropriate;

"(9) assessing the literacy and educational needs of offenders in custody and identifying and providing services appropriate to meet those needs, including followup assessments and long-term services;

"(10) systems under which family members of offenders are involved in facilitating the successful reentry of those offenders into the community, including removing obstacles to the maintenance of family relationships while the offender is in custody, strengthening the family's capacity to function as a stable living situation during reentry where appropriate to the safety and well-being of any children involved, and involving family members in the planning and implementation of the reentry process;

"(11) programs under which victims are included, on a voluntary basis, in the reentry process;

"(12) programs that facilitate visitation and maintenance of family relationships with respect to offenders in custody by addressing obstacles such as travel, telephone costs, mail restrictions, and restrictive visitation policies;

"(13) identifying and addressing barriers to collaborating with child welfare agencies in the provision of services jointly to offenders in custody and to the children of such offenders;

"(14) implementing programs in correctional agencies to include the collection of information regarding any dependent children of an incarcerated person as part of intake procedures, including the number of children, age, and location or jurisdiction, and connect identified children with appropriate services;

"(15) addressing barriers to the visitation of children with an incarcerated parent, and maintenance of the parent-child relationship, such as the location of facilities in remote areas, telephone costs, mail restrictions, and visitation policies;

"(16) creating, developing, or enhancing prisoner and family assessments curricula, policies, procedures, or programs (including mentoring programs) to help prisoners with a history or identified risk of domestic violence, dating violence, sexual assault, or stalking reconnect with their families and communities, as appropriate (or when it is safe to do so), and become mutually respectful, nonabusive parents or partners, under which particular attention is paid to the safety of children affected and the confidentiality concerns of victims, and efforts are coordinated with existing victim service providers;

"(17) developing programs and activities that support parent-child relationships, as appropriate to the health and well-being of the child, such as—

"(A) using telephone conferencing to permit incarcerated parents to participate in parent-teacher conferences;

"(B) using videoconferencing to allow virtual visitation when incarcerated persons are more than 100 miles from their families;

"(C) the development of books on tape programs, through which incarcerated parents read a book into a tape to be sent to their children;

"(D) the establishment of family days, which provide for longer visitation hours or family activities; or

"(E) the creation of children's areas in visitation rooms with parent-child activities;

"(18) expanding family based treatment centers that offer family based comprehensive treatment services for parents and their children as a complete family unit;

"(19) conducting studies to determining who is returning to prison or jail and which of those returning prisoners represent the greatest risk to community safety;

"(20) developing or adopting procedures to ensure that dangerous felons are not released from prison prematurely;

"(21) developing and implementing procedures to assist relevant authorities in determining when release is appropriate and in the use of data to inform the release decision;

"(22) developing and implementing procedures to identify efficiently and effectively those violators of probation or parole who should be returned to prison;

"(23) utilizing validated assessment tools to assess the risk factors of returning inmates and prioritizing services based on risk;

"(24) conducting studies to determine who is returning to prison or jail and which of those returning prisoners represent the greatest risk to community safety;

"(25) facilitating and encouraging timely and complete payment of restitution and fines by ex-offenders to victims and the community;

"(26) establishing or expanding the use of reentry courts to—

"(A) monitor offenders returning to the community;

"(B) provide returning offenders with—

"(i) drug and alcohol testing and treatment; and

"(ii) mental and medical health assessment and services;

"(C) facilitate restorative justice practices and convene family or community impact panels, family impact educational classes, victim impact panels, or victim impact educational classes;

"(D) provide and coordinate the delivery of other community services to offenders, including—

"(i) housing assistance;

"(ii) education;

"(iii) employment training;

"(iv) children and family support;

"(v) conflict resolution skills training;

"(vi) family violence intervention programs; and

"(vii) other appropriate social services; and

"(E) establish and implement graduated sanctions and incentives; and

"(27) providing technology and other tools necessary to advance post release supervision.".

(b) JUVENILE OFFENDER DEMONSTRATION PROJECTS AUTHORIZED.—Section 2976(c) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797w(c)) is amended by striking "may be expended for" and all that follows through the period at the end and inserting "may be expended for any activity referred to in subsection (b).".

(c) APPLICATIONS; PRIORITIES; PERFORMANCE MEASUREMENTS.—Section 2976 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797w) is amended—

(1) by redesignating subsection (h) as subsection (o); and

(2) by striking subsections (d) through (g) and inserting the following:

"(d) APPLICATIONS.—A State, unit of local government, territory, or Indian tribe desiring a grant under this section shall submit an application to the Attorney General that—

"(1) contains a reentry strategic plan, which describes the long-term strategy, and a detailed implementation schedule, including the jurisdiction's plans to pay for the program after the Federal funding is discontinued;

"(2) identifies the governmental agencies and community and faith-based organizations that will be coordinated by, and collaborate on, the applicant's prisoner reentry strategy and certifies their involvement; and

"(3) describes the methodology and outcome measures that will be used in evaluating the program.

"(e) PRIORITY CONSIDERATION.—The Attorney General shall give priority to grant applications that best—

"(1) focus initiatives on geographic areas with a substantiated high population of ex-offenders;

"(2) include partnerships with community-based organizations, including faith-based organizations;

"(3) provide consultations with crime victims and former incarcerated prisoners and their families;

"(4) review the process by which the State adjudicates violations of parole or supervised release and consider reforms to maximize the use of graduated, community-based sanctions for minor and technical violations of parole or supervised release;

"(5) establish prerelease planning procedures for prisoners to ensure that a prisoner's eligibility for Federal or State benefits (including Medicaid, Medicare, Social Security, and Veterans benefits) upon release is established prior to release, subject to any limitations in law, and to ensure that prisoners are provided with referrals to appropriate social and health services or are linked to appropriate community-based organizations;

"(6) target high-risk offenders for reentry programs through validated assessment tools; and

"(7) provide returning offenders with information on how they can restore their voting rights, and any other civil or civic rights denied to them due to their offender status, under the laws of the State where they are released.

"(f) REQUIREMENTS.—The Attorney General may make a grant to an applicant only if the application—

"(1) reflects explicit support of the chief executive officer of the State or unit of local government, territory, or Indian tribe applying for a grant under this section;

"(2) provides extensive discussion of the role of State corrections departments, community corrections agencies, juvenile justice systems, or local jail systems in ensuring successful reentry of ex-offenders into their communities;

"(3) provides extensive evidence of collaboration with State and local government agencies overseeing health, housing, child welfare, education, and employment services, and local law enforcement;

"(4) in the case of a State grantee, the State provides a plan for the analysis of existing State statutory, regulatory, rules-based, and practice-based hurdles to a prisoner's reintegration into the community; in case of a local grantee, the local grantee provides a plan for the analysis of existing local statutory, regulatory, rules-based, and practice-based hurdles to a prisoner's reintegration into the community; and in the case of a territorial grantee, the territory provides a plan for the analysis of existing territorial statutory, regulatory, rules-based, and practice-based hurdles to a prisoner's reintegration into the community that—

"(A) takes particular note of laws, regulations, rules, and practices that disqualify former prisoners from obtaining professional licenses or other requirements for certain types of employment, and that hinder full civic participation;

"(B) identifies those laws, regulations, rules, or practices that are not directly connected to the crime committed and the risk that the ex-offender presents to the community; and

"(C) affords members of the public an opportunity to participate in the process described in this subsection; and

"(5) includes the use of a State or local task force to carry out the activities funded under the grant.

"(g) USES OF GRANT FUNDS.—

"(1) FEDERAL SHARE.—The Federal share of a grant received under this section may not exceed 75 percent of the project funded under the grant, unless the Attorney General—

"(A) waives, in whole or in part, the requirement of this paragraph; and

"(B) publicly delineates the rationale for the waiver.

"(2) SUPPLEMENT NOT SUPPLANT.—Federal funds received under this section shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for the activities funded under this section.

"(h) REENTRY STRATEGIC PLAN.—

"(1) IN GENERAL.—As a condition of receiving financial assistance under this section, each applicant shall develop a comprehensive strategic reentry plan that contains measurable annual and 5- to 10-year performance outcomes. The plan shall have as a goal to reduce the rate of recidivism of incarcerated persons served with funds from this section within the State by 50 percent over a period of 10 years.

"(2) COORDINATION.—In developing reentry plans under this subsection, applicants shall coordinate with communities and stakeholders, including experts in the fields of public safety, corrections, housing, health, education, employment, and members of community and faith-based organizations that provide reentry services.

"(3) MEASUREMENTS OF PROGRESS.—Each reentry plan developed under this subsection shall measure the applicant's progress toward increasing public safety by reducing rates of recidivism and enabling released offenders to transition successfully back into their communities.

"(i) REENTRY TASK FORCE.—

"(1) IN GENERAL.—As a condition of receiving financial assistance under this section, each State or local government receiving a grant shall establish or empower a Reentry Task Force, or other relevant convening authority, to examine ways to pool existing resources and funding streams to promote lower recidivism rates for returning prisoners, and to minimize the harmful effects of incarceration on families and communities by collecting data and best practices in offender reentry from demonstration grantees and other agencies and organizations.

"(2) MEMBERSHIP.—The task force or other authority shall be comprised of relevant State or local leaders, agencies, service providers, community-based organizations, and stakeholders.

"(j) STRATEGIC PERFORMANCE OUTCOMES.—

"(1) IN GENERAL.—Each applicant shall identify specific performance outcomes related to the long-term goals of increasing public safety and reducing recidivism.

"(2) PERFORMANCE OUTCOMES.—The performance outcomes identified under paragraph (1) shall include, with respect to offenders released back into the community—

"(A) recommitment rates;

"(B) reduction in crime;

"(C) employment and education;

"(D) violations of conditions of supervised release;

"(E) child support;

"(F) housing;

"(G) drug and alcohol abuse; and

"(H) participation in mental health services.

"(3) OPTIONAL MEASURES.—States may also report on other activities that increase the success rates of offenders who transition from prison, such as programs that foster effective risk management and treatment programming, offender accountability, and community and victim participation.

"(4) COORDINATION.—Applicants should coordinate with communities and stakehoiders about the selection of performance outcomes identified by the applicants and with the Department of Justice for assistance with data collection and measurement activities.

"(5) REPORT.—Each grantee shall submit an annual report to the Department of Justice that—

"(A) identifies the grantee's progress toward achieving its strategic performance outcomes; and

"(B) describes other activities conducted by the grantee to increase the success rates of the reentry population.

"(k) PERFORMANCE MEASUREMENT.—

"(1) IN GENERAL.—The Department of Justice, in consultation with the States, shall—

"(A) identify primary and secondary sources of information to support the measurement of the performance indicators identified under this section;

"(B) identify sources and methods of data collection in support of performance measurement required under this section;

"(C) provide to all grantees technical assistance and training on performance measures and data collection for purposes of this section; and

"(D) coordinate with the Substance Abuse and Mental Health Services Administration on strategic performance outcome measures and data collection for purposes of this section relating to substance abuse and mental health.

"(2) COORDINATION.—The Department of Justice shall coordinate with other Federal agencies to identify national sources of information to support State performance measurement.

"(l) FUTURE ELIGIBILITY.—To be eligible to receive a grant under this section for fiscal years after the first receipt of such a grant, a State shall submit to the Attorney General such information as is necessary to demonstrate that—

"(1) the State has adopted a reentry plan that reflects input from community-based and faith-based organizations;

"(2) the public has been afforded an opportunity to provide input in the development of the plan;

"(3) the State's reentry plan includes performance measures to assess the State's progress toward increasing public safety by reducing by 10 percent over the 2-year period the rate at which individuals released from prison who participate in the reentry system supported by Federal funds are recommitted to prison; and

"(4) the State will coordinate with the Department of Justice, community-based and faith-based organizations, and other experts regarding the selection and implementation of the performance measures described in subsection (k).

"(m) NATIONAL ADULT AND JUVENILE OFFENDER REENTRY RESOURCE CENTER.—

"(1) AUTHORITY.—The Attorney General may, using amounts made available to carry out this subsection, make a grant to an eligible organization to provide for the establishment of a National Adult and Juvenile Offender Reentry Resource Center.

"(2) ELIGIBLE ORGANIZATION.—An organization eligible for the grant under paragraph (1) is any national nonprofit organization approved by the Federal task force established under the Enhanced Second Chance Act of 2004 that represents, provides technical assistance and training to, and has special expertise and broad, national-level experience in offender reentry programs, training, and research.

"(3) USE OF FUNDS.—The organization receiving the grant shall establish a National Adult and Juvenile Offender Reentry Resource Center to—

"(A) provide education, training, and technical assistance for States, local governments, territories, Indian tribes, service providers, faith based organizations, and corrections institutions;

"(B) collect data and best practices in offender reentry from demonstration grantees and others agencies and organizations;

"(C) develop and disseminate evaluation tools, mechanisms, and measures to better assess and document coalition performance measures and outcomes;

"(D) disseminate knowledge to States and other relevant entities about best practices, policy standards, and research findings;

"(E) develop and implement procedures to assist relevant authorities in determining when release is appropriate and in the use of data to inform the release decision;

"(F) develop and implement procedures to identify efficiently and effectively those violators of probation or parole who should be returned to prison and those who should receive other penalties based on defined, graduated sanctions;

"(G) collaborate with the Federal task force established under the Enhanced Second Chance Act of 2004 and the Federal Resource Center for Children of Prisoners;

"(H) develop a national research agenda; and

"(I) bridge the gap between research and practice by translating knowledge from research into practical information.

"(4) Of amounts made available to carry out this section, not more than 4 percent shall be available to carry out this subsection.

"(n) ADMINISTRATION.—Of amounts made available to carry out this section, not more than 2 percent shall be available for administrative expenses in carrying out this section.".

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 2976 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797w) is amended in subsection (o)(1), as redesignated by subsection (c), by striking "and $16,000,000 for fiscal year 2005" and inserting "$130,000,000 for fiscal year 2005, and $130,000,000 for fiscal year 2006".

SEC. 4. TASK FORCE ON FEDERAL PROGRAMS AND ACTIVITIES RELATING TO REENTRY OF OFFENDERS.

(a) TASK FORCE REQUIRED.—The Attorney General, in consultation with the Secretary of Housing and Urban Development, the Secretary of Labor, the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Agriculture, the Secretary of Veterans Affairs, and the heads of such other elements of the Federal Government as the Attorney General considers appropriate, and in collaboration with stakeholders, service providers, community-based organizations, States, territories, Indian tribes, and local governments, shall establish an interagency task force on programs and activities relating to the reentry of offenders into the community.

(b) DUTIES.—The task force established under subsection (a) shall—

(1) identify such programs and activities that may be resulting in overlapping or duplication of services, the scope of such overlapping or duplication, and the relationship of such overlapping and duplication to public safety, public health, and effectiveness and efficiency;

(2) identify methods to improve collaboration and coordination of such programs and activities;

(3) identify areas of responsibility in which improved collaboration and coordination of such programs and activities would result in increased effectiveness or efficiency;

(4) develop innovative interagency or intergovernmental programs, activities, or procedures that would improve outcomes of reentering offenders and children of offenders;

(5) develop methods for increasing regular communication that would increase interagency program effectiveness;

(6) identify areas of research that can be coordinated across agencies with an emphasis on applying science-based practices to support treatment and intervention programs for reentering offenders;

(7) identify funding areas that should be coordinated across agencies and any gaps in funding; and

(8) in conjunction with the National Adult and Juvenile Offender Reentry Resource Center, identify successful programs currently operating and collect best practices in offender reentry from demonstration grantees and other agencies and organizations, determine the extent to which such programs and practices can be replicated, and make information on such programs and practices available to States, localities, community-based organizations, and others.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the task force established under subsection (a) shall submit a report, including recommendations, to Congress on barriers to reentry. The task force shall provide for public input in preparing the report. The report shall identify Federal and other barriers to successful reentry of offenders into the community and analyze the effects of such barriers on offenders and on children and other family members of offenders, including barriers to—

(1) parental incarceration as a consideration for purposes of family reunification under the Adoption and Safe Families Act of 1997;

(2) admissions in and evictions from Federal housing programs;

(3) child support obligations and procedures;

(4) Social Security benefits, veterans benefits, food stamps, and other forms of Federal public assistance;

(5) Medicaid and Medicare procedures, requirements, regulations, and guidelines;

(6) education programs, financial assistance, and full civic participation;

(7) TANF program funding criteria and other welfare benefits;

(8) employment;

(9) laws, regulations, rules, and practices that restrict Federal employment licensure and participation in Federal contracting programs;

(10) reentry procedures, case planning, and the transition of persons from the custody of the Federal Bureau of Prisons to a Federal parole or probation program or community corrections;

(11) laws, regulations, rules, and practices that may require a parolee to return to the same county that the parolee was living in prior to his or her arrest, and the potential for changing such laws, regulations, rules, and practices so that a parolee may change his or her setting upon release, and not settle in the same location with persons who may be a negative influence; and

(12) pre-release planning procedures for prisoners to ensure that a prisoner's eligibility for Federal or State benefits (including Medicaid, Medicare, Social Security, and veteran's benefits) upon release is established prior to release, subject to any limitations under the law, and the provision of referrals to appropriate social and health services or are linked to appropriate community-based organizations.

(d) ANNUAL REPORTS.—On an annual basis, the task force required by subsection (a) shall submit to Congress a report on the activities of the task force, including specific recommendations of the task force on matters referred to in subsection (b).

SEC. 5. OFFENDER REENTRY RESEARCH.

(a) NATIONAL INSTITUTE OF JUSTICE.—From amounts made available to carry out this Act, the National Institute of Justice may conduct research on offender reentry, including—

(1) a study identifying the number and characteristics of children who have had a parent incarcerated and the likelihood of these minors becoming involved in the criminal justice system some time in their lifetime;

(2) a study identifying a mechanism to compare rates of recidivism (including re-arrest, violations of parole and probation, and re-incarceration) among States; and

(3) a study on the population of individuals released from custody who do not engage in recidivism and the characteristics (housing, employment, treatment, family connection) of that population.

(b) BUREAU OF JUSTICE STATISTICS.—From amounts made available to carry out this Act, the Bureau of Justice Statistics may conduct research on offender reentry, including—

(1) an analysis of special populations, including prisoners with mental illness or substance abuse disorders, female offenders, juvenile offenders, and the elderly, that present unique reentry challenges;

(2) studies to determine who is returning to prison or jail and which of those returning prisoners represent the greatest risk to community safety;

(3) annual reports on the profile of the population coming out of prisons, jails, and juvenile justice facilities;

(4) a national recidivism study every 3 years; and

(5) a study of parole violations and revocations.

SEC. 6. CHILDREN OF INCARCERATED PARENTS AND FAMILIES.

(a) INTAKE PROCEDURES AND EDUCATION PROGRAMS.—

(1) PILOT PROGRAM.—The Federal Bureau of Prisons shall, using amounts made available to carry out this subsection, carry out a pilot program to—

(A) collect information regarding the dependent children of an incarcerated person as part of standard intake procedures, including the number, age, and residence of such children;

(B) review all policies, practices, and facilities to ensure that, as appropriate to the health and well-being of the child, they support the relationship between family and child;

(C) identify the training needs of staff with respect to the impact of incarceration on children, families, and communities, age-appropriate interactions, and community resources for the families of incarcerated persons; and

(D) take such steps as are necessary to encourage State correctional agencies to implement the requirements of subparagraphs (A) through (C).

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection $1,500,000 for each of fiscal years 2005 and 2006.

(b) DUTIES OF SECRETARY.—The Secretary of Health and Human Services shall—

(1) review, and make available to States a report on any recommendations regarding, the role of State child protective services at the time of the arrest of a person; and

(2) by regulation, establish such services as the Secretary determines necessary, as appropriate to the health and well-being of any child involved, for the preservation of families that have been impacted by the incarceration of a family member.

SEC. 7. ENCOURAGEMENT OF EMPLOYMENT OF FORMER PRISONERS.

The Secretary of Labor shall take such steps as are necessary to implement a program, including but not limited to the Employment and Training Administration, to educate employers about existing incentives, including bonding, to the hiring of former Federal, State, or county prisoners.

SEC. 8. FEDERAL RESOURCE CENTER FOR CHILDREN OF PRISONERS.

There are authorized to be appropriated to the Secretary of Health and Human Services for each of fiscal years 2005 and 2006, such sums as may be necessary for the continuing activities of the Federal Resource Center for Children of Prisoners, including conducting a review of the policies and practices of State and Federal corrections agencies to support parent-child relationships, as appropriate for the health and well-being of the child.

SEC. 9. ELIMINATION OF AGE REQUIREMENT FOR RELATIVE CAREGIVER UNDER NATIONAL FAMILY CAREGIVER SUPPORT PROGRAM.

Section 372 of the National Family Caregiver Support Act (part E of title III of the

Older Americans Act of 1965; 42 U.S.C. 3030s) is amended in paragraph (3) by striking "who is 60 years of age or older and—" and inserting "who—".

SEC. 10. CLARIFICATION OF AUTHORITY TO PLACE PRISONER IN COMMUNITY CORRECTIONS.

Section 3624(c) of title 18, United States Code, is amended to read as follows:

"(c) PRE-RELEASE CUSTODY.—

"(1) IN GENERAL.—The Bureau of Prisons shall, to the extent practicable, assure that a prisoner serving a term of imprisonment spends a reasonable part of the final portion of the term to be served, not to exceed 1 year, under conditions that will afford the prisoner a reasonable opportunity to adjust to and prepare for the prisoner's reentry into the community. Such conditions may include a community correctional facility.

"(2) AUTHORITY.—This subsection authorizes the Bureau of Prisons to place a prisoner in home confinement for the last 10 per centum of the term to be served, not to exceed 6 months.

"(3) ASSISTANCE.—The United States Probation System shall, to the extent practicable, offer assistance to a prisoner during such pre-release custody.

"(4) NO LIMITATIONS.—Nothing in this subsection shall be construed to limit or restrict the authority of the Bureau of Prisons granted under section 3621 of this title.".

SEC. 11. USE OF VIOLENT OFFENDER TRUTH-IN-SENTENCING GRANT FUNDING FOR DEMONSTRATION PROJECT ACTIVITIES.

Section 20102(a) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13702(a)) is amended—

(1) in paragraph (2), by striking "and" at the end;

(2) in paragraph (3), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(4) to carry out any activity referred to in subsections (b) and (c) of section 2976 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3797w(b)-(c)).".

SEC. 12. GRANTS TO STUDY PAROLE OR POST INCARCERATION SUPERVISION VIOLATIONS AND REVOCATIONS.

(a) GRANTS AUTHORIZED.—From amounts made available to carry out this section, the Attorney General may award grants to States to study, and to improve the collection of data with respect to, individuals whose parole or post incarceration supervision is revoked and which such individuals represent the greatest risk to community safety.

(b) APPLICATION.—As a condition of receiving a grant under this section, a State shall—

(1) certify that the State has, or intends to establish, a program that collects comprehensive and reliable data with respect to individuals described in subsection (a), including data on—

(A) the number and type of parole or post incarceration supervision violations that occur within the State;

(B) the reasons for parole or post incarceration supervision revocation;

(C) the underlying behavior that led to the revocation; and

(D) the term of imprisonment or other penalty that is imposed for the violation; and

(2) provide the data described in paragraph (1) to the Bureau of Justice Statistics, in a form prescribed by the Bureau.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $1,000,000 for each of fiscal years 2005 and 2006.

SEC. 13. REAUTHORIZATION OF RESIDENTIAL SUBSTANCE ABUSE TREATMENT FOR STATE PRISONERS PROGRAM.

(a) IN GENERAL.—The Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3701 et seq.) is amended by inserting after section 1905 the following:

"SEC. 1906. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated such sums as are necessary to carry out the purposes of this part for each of fiscal years 2005 through 2010.".

(b) IMPROVEMENTS TO PROGRAM.—Section 1902 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796ff-1) is amended—

(1) in subsection (c)—

(A) in the subsection heading, by striking "ELIGIBILITY FOR PREFERENCE WITH" and inserting "REQUIREMENT FOR";

(B) by striking paragraph (1) and inserting the following:

"(1) To be eligible for funding under this part, a State shall ensure that individuals who participate in the evidence-based substance abuse treatment program established or implemented with assistance provided under this part will be provided with aftercare services."; and

(C) by adding at the end the following:

"(4) Aftercare services required under paragraph (1) shall be funded by amounts made available under this part.";

(2) by redesignating subsections (c) through (f) as (d) through (g), respectively; and

(3) by inserting after subsection (b) the following:

"(c) DEFINITION OF RESIDENTIAL SUBSTANCE ABUSE TREATMENT.—The term 'residential substance abuse treatment' means a course of evidence-based individual and group activities and treatment, lasting not less than 6 months, in residential treatment facilities set apart from the general prison population. Such treatment can include the use of pharmacotherapies, where appropriate, that may be administered for more than 6 months.".

SEC. 14. REAUTHORIZATION OF SUBSTANCE ABUSE TREATMENT PROGRAM UNDER TITLE 18.

Section 3621(e) of title 18, United States Code, is amended—

(1) by striking paragraph (4) and inserting the following:

"(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this subsection for each of fiscal years 2005 through 2010."; and

(2) in paragraph (5), by striking subparagraph (A) and inserting the following:

"(A) the term 'residential substance abuse treatment' means a course of evidence-based individual and group activities and treatment, lasting not less than 6 months, in residential treatment facilities set apart from the general prison population, and such treatment can include the use of pharmacotherapies, where appropriate, that may be administered for more than 6 months;".

SEC. 15. REMOVAL OF LIMITATION ON AMOUNT OF FUNDS AVAILABLE FOR CORRECTIONS EDUCATION PROGRAMS UNDER THE ADULT EDUCATION AND FAMILY LITERACY ACT.

(a) IN GENERAL.—Section 222(a)(1) of the Adult Education and Family Literacy Act (20 U.S.C. 9222(a)(1)) is amended by striking ", of which not more than 10 percent" and inserting "of which not less than 10 percent".

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary of Education shall submit to Congress a report on the use of literacy funds to correctional intuitions, as defined in section 225(d)(2) of the Adult Education and Family Literacy Act (20 U.S.C. 9224(d)(2)). The report shall specify the amount of literacy funds that are provided to each category of correctional institution in each State, and identify whether funds are being sufficiently allocated among the various types of institutions.

SEC. 16. TECHNICAL AMENDMENT TO DRUG-FREE STUDENT LOANS PROVISION TO ENSURE THAT IT APPLIES ONLY TO OFFENSES COMMITTED WHILE RECEIVING FEDERAL AID.

Section 4840(r)(1) of the Higher Education Act of 1965 (20 U.S.C. 1091(r)(1)) is amended by striking "A student" and all that follows through "table:" and inserting the following: "A student who is convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance for conduct that occurred during a period of enrollment for which the student was receiving any grant, loan, or work assistance under this title shall not be eligible to receive any grant, loan, or work assistance under this title from the date of that conviction for the period of time specified in the following table:".

SEC. 17. MENTORING GRANTS TO COMMUNITY-BASED ORGANIZATIONS.

(a) AUTHORITY TO MAKE GRANTS.—From amounts made available under this section, the Secretary of Labor shall make grants to community-based organizations for the purpose of providing mentoring and other transitional services essential to reintegrating ex-offenders and incarcerated persons into society.

(b) USE OF FUNDS.—Grant funds awarded under subsection (a) may be used for—

(1) mentoring adult and juvenile offenders; and

(2) transitional services to assist in the reintegration of ex-offenders into the community.

(c) APPLICATION.—To be eligible to receive a grant under this section, a community-based organization shall submit an application to the Secretary of Labor, based upon criteria developed by the Secretary of Labor in consultation with the Attorney General and the Secretary of Housing and Urban Development.

(d) STRATEGIC PERFORMANCE OUTCOMES.—The Secretary of Labor may require each applicant to identify specific performance outcomes related to the long-term goal of stabilizing communities by reducing recidivism and re-integrating ex-offenders and incarcerated persons into society.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $15,000,000 for each of fiscal years 2005 and 2006.

SEC. 18. GROUP HOMES FOR RECOVERING SUBSTANCE ABUSERS.

Section 1925 of the Public Health Service Act (42 U.S.C. 300x-25) is amended—

(1) in subsection (a)(4), by striking "$4,000" and inserting "$6,000"; and

(2) by adding at the end the following:

"(d) RECOVERY HOME OUTREACH WORKERS.—

"(1) IN GENERAL.—The Secretary shall award a grant to an eligible entity to enable such entity to establish group homes for recovering substance abusers in accordance with this section.

"(2) ELIGIBILITY.—To be eligible to receive a grant under paragraph (1), an entity shall—

"(A) be a national nonprofit organization that has established at least 500 self-administered, self-supported substance abuse recovery homes; and

"(B) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

"(3) USE OF FUNDS.—An entity shall use amounts received under the grant under paragraph (1) to—

"(A) establish group homes for recovering substance abusers that conform to the requirements of subparagraphs (A) through (D) of subsection (a)(6), through activities including—

"(i) locating a suitable facility to use as the group home;

"(ii) the execution of a lease for the use of such home; and

"(iii) obtaining a charter for the operation of such home from a national non-profit organization;

"(B) recruit recovering substance abusers to reside in the group home by working with criminal justice officials and substance abuse treatment providers, including through activities targeting individuals being released from incarceration; and

"(C) carry out other activities related to establishing a group home for recovering substance abusers.

"(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection, $1,000,000 for each of fiscal years 2005 through 2009. Amounts appropriated under this paragraph shall be in addition to amounts otherwise appropriated to carry out this subpart.".

SEC. 19. IMPROVED REENTRY PROCEDURES FOR FEDERAL PRISONERS.

(a) GENERAL REENTRY PROCEDURES.—The Department of Justice shall take such steps as are necessary to modify existing procedures and policies to enhance case planning and to improve the transition of persons from the custody of the Bureau of Prisons to the community, including placement of such individuals in community corrections facilities.

(b) PROCEDURES REGARDING BENEFITS.—The Bureau of Prisons shall establish pre-release planning procedures for Federal prisoners to ensure that a prisoner's eligibility for Federal or State benefits (including Medicaid, Medicare, Social Security and veterans benefits) upon release is established prior to release, subject to any limitations in law. The Bureau shall also coordinate with inmates to ensure that inmates have medical appointments scheduled and have plans to secure needed and sufficient medications, particularly with regard to the treatment of mental illness. The Bureau shall provide each ex-offender released from Federal prisons information on how the reentering offender can restore voting rights, and other civil or civic rights, denied to the reentering offender based upon their offender status in the State to which that reentering offender shall be returning. This information shall be provided to each reentering offender in writing, and in a language that the reentering offender can understand.

SEC. 20. FAMILY UNIFICATION IN PUBLIC HOUSING.

Section 576 of the Quality Housing and Work Responsibility Act of 1988 (Public Law 105-276; 42 U.S.C. 13661) is amended—

(1) by striking subsection (c) and inserting the following:

"(c) AUTHORITY TO DENY ADMISSION TO CRIMINAL OFFENDERS.—

"(1) IN GENERAL.—Except as provided in subsections (a) and (b) of this section and in addition to any other authority to screen applicants, in selecting among applicants for admission to the program or to federally assisted housing, if the public housing agency or owner of such housing, as applicable, determines that an applicant or any member of the applicant's household is engaged in or was convicted of, during a reasonable time preceding the date when the applicant household would otherwise be selected for admission, any drug-related or violent criminal activity or other criminal activity which would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents, the owner, or public housing agency employees, the public housing agency or owner may—

"(A) deny such applicant admission to the program or to federally assisted housing; and

"(B) after the expiration of the reasonable period beginning upon such activity, require the applicant, as a condition of admission to the program or to federally assisted housing, to submit to the public housing agency or owner evidence sufficient (as the Secretary shall by regulation provide) to ensure that the individual or individuals in the applicant's household who engaged in criminal activity for which denial was made under paragraph (1) have not engaged in any criminal activity during such reasonable period.

"(2) CONSIDERATION OF REHABILITATION.—In determining whether, pursuant to paragraph (1), to deny admission to the program or federally assisted housing to any household, a public housing agency or an owner shall, prior to an initial denial of eligibility, consider the following factors:

"(A) The effect of denial on the applicant's family, particularly minor children.

"(B) Whether such household member has successfully completed a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable) to the extent that such use would constitute a threat to the health, safety, or well-being of other residents.

"(C) Whether such household member has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable) to the extent that such use would constitute a threat to the health, safety, or well-being of other residents.

"(D) Whether such household member is participating in a supervised drug or alcohol rehabilitation program (as applicable) and is no longer engaging in the illegal use of a controlled substance or abuse of alcohol (as applicable) to the extent that such use would constitute a threat to the health, safety, or well-being of other residents.

"(E) Other mitigating circumstances such as—

"(i) the applicant's involvement in the community;

"(ii) the applicant's enrollment in or completion of a job training program;

"(iii) the employment status of the applicant;

"(iv) any other circumstances which reflect the efforts the applicant has made toward rehabilitation; and

"(v) the availability of other housing options."; and

(2) by adding at the end the following:

"(d) CONDITIONAL ELIGIBILITY.—A public housing agency or owner of such housing may condition an applicant's or a household's eligibility for federally assisted housing on the participation of the applicant, or a member of the applicant's household, in a supervised rehabilitation program, or other appropriate social services.".

Mr. SPECTER. Mr. President, I have sought recognition to speak in support of legislation which I am sponsoring with the Senator from Delaware, Mr. BIDEN—the Enhanced Second Chance Act of 2004. This year, more than 650,000 inmates will be released from the United States' prisons. Nearly two-thirds of released prisoners are re-arrested for either a felony or a serious misdemeanor within 3 years of release. This "revolving door" of criminals endangers our communities. Yet, it should really come as no surprise that an individual who is released and who is illiterate or lacks the necessary skills to get a job returns to a life of crime. The need to address the issue of recidivism to protect the public is apparent and the Enhanced Second Chance Act is designed to address that need and stop the "revolving door" at our Nation's correctional facilities. This bill gives criminal offenders a second chance at rehabilitation and gainful employment by creating successful reentry programs focused on education and job training.

There are two categories of individuals that we must focus our concern on in our fight to reduce recidivism—the career criminal and the person who will one day return back to his or her community. As for the career criminal, I wrote the Armed Career Criminal Bill that was adopted in 1984, which provides for life sentences for career criminals. These individuals, who have committed three or more major offenses and caught in possession of a firearm, receive mandatory sentences up to life.

The second category of individuals—individuals who will one day be released—are a special circumstance because this is not about locking them up forever but about making sure they have an opportunity to turn their life around. It is about focusing on literacy and job training in order to reduce recidivism and prevent those individuals from becoming career criminals.

The Enhanced Second Chance Act is aimed at better equipping the community, increasing public safety, and helping States and communities address the growing population of ex-offenders returning to communities. The act authorizes a $130 million a year grant program for State and local governments aimed at creating programs to help reduce recidivism rates and to create procedures to ensure that dangerous felons are not released from prison prematurely. It also calls for either establishing or expanding the use of State reentry courts to monitor ex-offenders returning to the community and to provide them with drug and alcohol treatment as well as necessary mental and medical services.

One of the most significant concerns that our communities face with regards to prisoners is the impact on their children and communities. Between 1991 and 1999, the number of children with a parent in a Federal or State correction facility increased by more than 100 percent from approximately 900,000 to approximately 2 million. This legislation deals with the issues and obstacles that these children face. The Enhanced Second Chance Act of 2004 creates a new program designed to support the relationship between parent and child while the parent is incarcerated and to help with family unification when the parent is released. It also instructs the Secretary of Health and Human Services to re-examine the current programs that are in place to help support the parent-child relationship while the parent is incarcerated and to establish the necessary services to help preserve the family relationship.

Another major concern is incarcerated juveniles. Juveniles have a recidivism rate ranging from 55 to 75 percent. These figures are staggering and that is why I have pushed for so many years for legislation aimed at educating these young offenders prior to their release. I have consistently sponsored legislation that would provide for workplace and community transition training for incarcerated youth offenders while in prison and would provide employment counseling and other services that would continue while the individual was on parole. The Enhanced Second Chance Act of 2004 builds upon my earlier efforts and provides effective reentry and aftercare programs so that these young individuals will have a chance at a successful transition back into the community. This bill encourages State and local governments to assess the literacy and educational needs of incarcerated individuals and to identify appropriate services to meet those needs while they are incarcerated. Moreover, this bill provides for collaboration with community colleges and employment services to connect inmates with employment opportunities before they are released back into the community.

The New York Times recently reported that 5 million people, or roughly 2.3 percent of the electorate, will be barred from voting in November by State laws that strip felons of voting rights. However many ex-felons are in fact eligible to vote but do not do so simply because they are not aware that they have this right. The Enhanced Second Chance Act helps remove the confusion and mandates that prison officials provide each ex-offender released from Federal prison information on how the reentering offender can restore his or her voting rights. Information must be provided to each ex-offender in writing and in a language that he or she can understand. This will allow ex-offenders to feel more connected to their communities and is another important tool in the fight to reduce recidivism.

I am pleased to join the distinguished Senator from Delaware in introducing this important and much-needed legislation. The Enhanced Second Chance Act of 2004 is a very positive step forward in providing realistic rehabilitation to individuals needing a second chance. I wholeheartedly agree with President Bush's statement that "America is the land of second chance, and when the gates of the prison open, the path ahead should lead to a better life." The President urged us to work in a bipartisan fashion and I believe that this bill is the first step in the right direction.

Mr. BINGAMAN. Mr. President, I rise today, along with Senators BIDEN, SPECTER, and LANDRIEU, to introduce the Enhanced Second Chance Act of 2004.

I believe this is an important bill that will significantly improve public safety by providing $130 million a year for a competitive grant program to State, local, and tribal governments to reduce recidivism rates and improve the transition of offenders back into society. In addition to the adult and juvenile demonstration projects, the bill would create a Federal reentry task force, reauthorize funding for drug treatment programs in State and Federal correctional facilities, establish a program within the Bureau of Prisons to promote family reunification, bring additional literacy funds to correctional institutions, and establish a mentoring grant program for community-based organizations to assist inmates with their reentry back into the community.

We as a society have an interest in ensuring that when prisoners are released that they be reintegrated back into the community in a manner that reduces the likelihood of them committing additional crimes. Providing assistance to these individuals is not a charity, it is a matter of good public policy. Without employment, without housing, without basic life skills, without help in treating drug addiction or mental illness, offenders are likely to relapse into criminal behavior. It is insufficient to just punish offenders; we also need to look for ways that we can rehabilitate offenders and create an environment that fosters their ability to make a positive contribution to society.

There are programs in State and Federal detention facilities that are beginning to address some of these issues, but frankly, I believe we need to be doing more—especially with regard to jails across the country. By neglecting to focus on inmates in local jails we are also losing out on targeting the largest population of offenders that is returning to the community—it is estimated that jails return 10 to 20 times the number of people into the community as do Federal and State prisons, approximately 10 million releases a year. I am very pleased that my suggestions regarding recognizing the role of local jails in the reentry process were incorporated into this bill.

I also believe we need to pay more attention to the issue of illiteracy among inmates. According to the National Institute of Literacy, 70 percent of all prisoners function at the two lowest literacy levels. Considering that studies have consistently demonstrated that correctional educational programs reduce recidivism rates by up to 30 percent, I strongly believe this is an area which deserves attention, and I am happy that this bill will bring additional resources for literacy programs.

If we are going to reduce the recidivism rate, we can't overlook the importance of getting these offenders the tools necessary to succeed in the community without recourse to crime. With over 2 million people incarcerated in the United States, if punishment is all we do, without any effort to rehabilitate and reintegrate offenders into the community, society will bear a heavy burden. Over 650,000 offenders are released from State and Federal facilities each year, in addition to 100,000 juveniles and the numerous individuals coming in and out of local jails that I previously mentioned. It makes sense to do all we can to ensure that these people are rehabilitated and have the skills necessary to successfully change course.

In recent years, many States and localities have begun to improve ways to transition offenders back into communities, and I believe that this bill provides the resources necessary to continue this effort.

By Mr. VOINOVICH (for himself and Mr. COLEMAN):

S. 2926. A bill to amend the Internal Revenue Code of 1986 to allow taxpayers a credit against income tax for expenditures to remediate contaminated sites; to the Committee on Finance.

Mr. VOINOVICH. Mr. President, revitalizing our urban areas has been an issue I have been passionate about for many years. As former Mayor of Cleveland, I experienced firsthand the difficulties that cities face in redeveloping these sites for reuse.

The legislation I am introducing today with Senator COLEMAN, the Brownfields Revitalization Act of 2004, will provide incentives to clean up abandoned industrial sites—or brownfields—across the country and put them back into productive use and preserve our green spaces. I am pleased to be working on this important legislation with my colleague from Ohio, Congressman MIKE TURNER.

I have been working on brownfields issues at the national level since I became Governor of Ohio in 1990 and through my involvement with the National Governors' Association and the

Republican Governors' Association. For almost 15 years, I have worked closely with congressional leaders to develop legislation that would encourage cleanup and redevelopment of these sites nationwide.

In 2001, I was closely involved in the Senate Environment and Public Works Committee's work on the Brownfields Revitalization and Environmental Restoration Act which, in part, provided grants to local governments to remediate and redevelop brownfields sites. Grants such as these are important because they provide incentives to clean up existing sites, which will provide better protection for the health and safety of our citizens and the environment. I believe the tax incentives in the bill I'm introducing today will work hand in hand with the grants that are already authorized to encourage private remediation and redevelopment efforts.

To enhance and encourage cleanup efforts, my State of Ohio has implemented a private sector-based program to clean up brownfields sites. When I was Governor, Ohio EPA, Republicans and Democrats in the Ohio General Assembly and I worked hard to implement a program that we believe works for Ohio. Our program is already successful in improving Ohio's environment and economy. In fact, 141 sites have been cleaned up under Ohio's voluntary cleanup program in 8 years. And many more cleanups are underway.

The legislation I am introducing today will build upon the success of State programs such as Ohio's by providing even more incentives to clean up brownfield sites in order to provide better protection for the health and safety of our citizens and the environment.

This legislation will provide additional tools to recycle our urban wastelands, prevent urban sprawl and preserve our farmland and greenspaces. We will be able to clean up industrial eyesores in our cities and make them more desirable places to live. Because they are putting abandoned sites back into productive use, they are a key element to providing economic rebirth to many urban areas, and good-paying jobs to local residents.

This bill makes sense for our environment and it makes sense for our economy. It is supported by the mayors of Ohio's major cities, the U.S. Conference of Mayors, the International Council of Shopping Centers, Empower America, American Council of Engineering Companies, and the National Association of Home Builders.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2926

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Brownfields Revitalization Act of 2004".

SEC. 2. CREDIT FOR EXPENDITURES TO REMEDIATE CONTAMINATED SITES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end the following new section:

"SEC. 45G. ENVIRONMENTAL REMEDIATION CREDIT.

"(a) IN GENERAL.—For purposes of section 38, the environmental remediation credit determined under this section is 50 percent of the qualified remediation expenditures paid or incurred by the taxpayer during the taxable year with respect to a qualified contaminated site located in an eligible area.

"(b) QUALIFIED REMEDIATION EXPENDITURES.—For purposes of this section, the term 'qualified remediation expenditures' means expenditures, whether or not chargeable to capital account, in connection with—

"(1) the abatement or control of any hazardous substance (as defined in section 198(d)), petroleum, or any petroleum by-product at the qualified contaminated site in accordance with an approved remediation and redevelopment plan,

"(2) the complete demolition of any structure on such site if any portion of such structure is demolished in connection with such abatement or control,

"(3) the removal and disposal of property in connection with the activities described in paragraphs (1) and (2), and

"(4) the reconstruction of utilities in connection with such activities.

For purposes of this section, the term 'approved remediation and redevelopment plan' means any plan for such abatement, control, and redevelopment of a qualified contaminated site which is approved by the State development agency for the State in which the qualified contaminated site is located.

"(c) CREDIT MAY NOT EXCEED ALLOCATION.—

"(1) IN GENERAL.—The environmental remediation credit determined under this section with respect to any qualified contaminated site shall not exceed the credit amount allocated under this section by the State development agency to the taxpayer for the remediation and redevelopment plan submitted by the taxpayer with respect to such site.

"(2) TIME FOR MAKING ALLOCATION.—An allocation shall be taken into account under paragraph (1) for any taxable year only if made before the close of the calendar year in which such taxable year begins.

"(3) MANNER OF ALLOCATION.—

"(A) ALLOCATION MUST BE PURSUANT TO PLAN.—No amount may be allocated under this subsection to any qualified contaminated site unless such amount is allocated pursuant to a qualified allocation plan of the State development agency of the State in which such site is located.

"(B) QUALIFIED ALLOCATION PLAN.—For purposes of this paragraph, the term 'qualified allocation plan' means any plan—

"(i) which sets forth selection criteria to be used to determine priorities of the State development agency in allocating credit amounts under this section, and

"(ii) which gives preference in allocating credit amounts under this section to qualified contaminated sites based on—

"(I) the extent of poverty,

"(II) whether the site is located in an enterprise zone or renewal community,

"(III) whether the site is located in the central business district of the local jurisdiction,

"(IV) the extent of the required environmental remediation,

"(V) the extent of the commercial, industrial, or residential redevelopment of the site in addition to environmental remediation,

"(VI) the extent of the financial commitment to such redevelopment, and

"(VII) the amount of new employment expected to result from such redevelopment.

"(4) STATES MAY IMPOSE OTHER CONDITIONS.—Nothing in this section shall be construed to prevent any State from requiring assurances, including bonding, that any project for which a credit amount is allocated under this section will be properly completed or that the financial commitments of the taxpayer are actually carried out.

"(d) STATE ENVIRONMENTAL REMEDIATION CREDIT CEILING.—

"(1) IN GENERAL.—The State environmental remediation credit ceiling applicable to any State for any calendar year shall be an amount equal to the sum of—

"(A) the unused State environmental remediation credit ceiling (if any) of such State for the preceding calendar year,

"(B) such State's share of the national environmental remediation credit limitation for the calendar year,

"(C) the amount of State environmental remediation credit ceiling returned in the calendar year, plus

"(D) the amount (if any) allocated under paragraph (3) to such State by the Secretary.

For purposes of subparagraph (A), the unused State environmental remediation credit ceiling for any calendar year is the excess (if any) of the sum of the amounts described in subparagraphs (B), (C), and (D) over the aggregate environmental remediation credit amount allocated for such year.

"(2) NATIONAL ENVIRONMENTAL REMEDIATION CREDIT LIMITATION.—

"(A) IN GENERAL.—The national environmental remediation credit limitation for each calendar year is $1,000,000,000.

"(B) STATE'S SHARE OF LIMITATION.—A State's share of such limitation is the amount which bears the same ratio to the limitation applicable under subparagraph (A) for the calendar year as such State's population bears to the population of the United States.

"(3) UNUSED ENVIRONMENTAL REMEDIATION CREDIT CARRYOVERS ALLOCATED AMONG CERTAIN STATES.—

"(A) IN GENERAL.—The unused environmental remediation credit carryover of a State for any calendar year shall be assigned to the Secretary for allocation among qualified States for the succeeding calendar year.

"(B) UNUSED ENVIRONMENTAL REMEDIATION CREDIT CARRYOVER.—For purposes of this paragraph, the unused environmental remediation credit carryover of a State for any calendar year is the excess (if any) of—

"(i) the unused State environmental remediation credit ceiling for the year preceding such year, over

"(ii) the aggregate environmental remediation credit amount allocated for such year.

"(C) FORMULA FOR ALLOCATION OF UNUSED ENVIRONMENTAL REMEDIATION CREDIT CARRYOVERS AMONG QUALIFIED STATES.—Rules similar to the rules of clauses (iii) and

(iv) of section 42(h)(3)(D) shall apply for purposes of this paragraph.

"(4) Population.—For purposes of this subsection, population shall be determined in accordance with section 146(j).

"(5) Inflation adjustment.—In the case of any calendar year after 2004, the $1,000,000,000 amount contained in paragraph (2) shall be increased by an amount equal to—

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting 'calendar year 2003' for 'calendar year 1992' in subparagraph (B) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of $500,000.

"(e) Eligible Area; Other Definitions.—For purposes of this section—

"(1) Eligible area.—

"(A) In general.—The term 'eligible area' means the entire area encompassed by a local governmental unit if such area contains at least 1 census tract having a poverty rate of at least 20 percent.

"(B) Areas not within census tracts.—In the case of an area which is not tracted for population census tracts, the equivalent county divisions (as defined by the Bureau of the Census for purposes of defining poverty areas) shall be used for purposes of determining poverty rates.

"(C) Use of census data.—Population and poverty rate shall be determined by the most recent decennial census data available.

"(2) Qualified contaminated site.—The term 'qualified contaminated site' has the meaning given to such term by section 198, determined by treating petroleum and petroleum by-products as hazardous substances.

"(3) Possessions treated as states.—The term 'State' includes a possession of the United States.

"(f) Credit May Be Assigned.—

"(1) In general.—If a taxpayer elects the application of this subsection for any taxable year, the amount of credit determined under this section for such year which would (but for this subsection) be allowable to the taxpayer shall be allowable to the person designated by the taxpayer. The person so designated shall be treated as the taxpayer for purposes of subsection (h).

"(2) Treatment of amounts paid for assignment.—If any amount is paid to the person who assigns the credit determined under this section, no portion of such amount or such credit shall be includible in the payee's gross income.

"(g) Treatment of Potential Responsible Parties.—

"(1) In general.—No credit shall be allowed under this section to any potential responsible party (within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980) with respect to any qualified contaminated site (including by reason of receiving an assignment of the credit under subsection (f)) unless at least 25 percent of the cost of remediating such site is borne by such party.

"(2) Relief from liability for other 75 percent.—If the requirement of paragraph (1) is met by a potential responsible party, such party shall not be liable under any Federal law for any cost taken into account in determining whether such requirement is met.

"(3) Amounts paid for credit assignment not eligible.—Amounts paid by a potential responsible party to any person for the assignment by such person of the credit under subsection (f)) shall not be taken into account in determining whether the requirement of paragraph (1) is met.

"(h) Recapture of Credit if Environmental Remediation Not Properly Completed.—

"(1) In general.—If the State development agency of the State in which the qualified contaminated site is located determines that the environmental remediation which is part of the approved remediation and redevelopment plan for such site was not properly completed, then the taxpayer's tax under this chapter for the taxable year in which such determination is made shall be increased by the credit recapture amount.

"(2) Credit recapture amount.—For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of—

"(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if the credit allowable by reason of this section were not allowed, plus

"(B) interest at the overpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

"(3) Special rules.—

"(A) Tax benefit rule.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

"(B) No credits against tax.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit or the tax imposed by section 55.

"(i) Denial of Double Benefit.—

"(1) In general.—No deduction shall be allowed for that portion of the qualified remediation expenditures otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for such taxable year under this section.

"(2) Similar rule where taxpayer capitalizes rather than deducts expenses.—If—

"(A) the amount of the credit determined for the taxable year under this section, exceeds

"(B) the amount allowable as a deduction for such taxable year for qualified remediation expenditures (determined without regard to paragraph (1)),

the amount chargeable to capital account for the taxable year for such expenditures shall be reduced by the amount of such excess.

"(3) Controlled groups.—In the case of a corporation which is a member of a controlled group of corporations (within the meaning of section 52(a)) or a trade or business which is treated as being under common control with other trades or businesses (within the meaning of section 52(b)), this subsection shall be applied under rules prescribed by the Secretary similar to the rules applicable under subsections (a) and (b) of section 52."

(b) Credit Treated as Business Credit.—Section 38(b) of such Code is amended by striking "plus" at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting ", plus", and by adding at the end the following new paragraph:

"(16) the environmental remediation credit determined under section 45G(a).".

(c) No Carrybacks Before Effective Date.—Subsection (d) of section 39 of such Code (relating to carryback and carryforward of unused credits) is amended by adding at the end the following:

"(11) No carryback of section 45G credit before effective date.—No portion of the unused business credit for any taxable year which is attributable to the environmental remediation credit determined under section 45G may be carried back to a taxable year ending before the date of the enactment of section 45G.".

(d) Conforming Amendment.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by adding at the end the following new item:

"Sec. 45G. Environmental remediation credit.".

(e) Effective Date.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

By Mr. CORNYN (for himself, Mr. McConnell, and Mr. McCain):

S. 2931. A bill to enable drivers to choose a more affordable form of auto insurance that also provides for more adequate and timely compensation for accident victims, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. CORNYN. Mr. Chairman, on behalf of my co-sponsors, Senators McConnell and McCain, I rise today to introduce legislation that I believe has the potential to improve profoundly the lives of millions of Americans across the country.

The Auto Choice Reform Act of 2004 offers a real solution to a very real problem faced by those of us who drive every day—the high cost and inadequate compensation of the current tort and liability automotive insurance system.

The tort system ought to ideally compensate people injured by negligence and deter others from acting irresponsibly. With respect to auto accidents, the system fails miserably on both counts.

Numerous studies over the past 75 years document just how poorly the tort system compensates injured people. Almost one-third of injured people recover nothing at all, and many injured persons who do recover compensation must wait years to receive payment from the other person's insurer.

Worst of all, people with minor injuries recover compensation far in excess of their actual losses while many people with serious injuries are grossly underpaid. The RAND Institute for Civil Justice has found that people with economic losses between $500 and $1,000 recover on average 2½ times their economic loss. This is largely due to the fact that it is cheaper for an insurer to pay a questionable claim than to pay the costs of going to court, where they risk paying a multiplier of economic damages for pain and suffering.

The perverse incentives generated by pain-and-suffering damage awards also cause rampant fraud and abuse in auto insurance claims. A study by the RAND Institute for Civil Justice confirms that between 35 and 42 percent of medical costs claimed in auto accidents occur in response to the incentives of the tort liability system. In other words, more than one-third of all medical losses claimed in auto accidents are fraudulent or exaggerated—attempts to nab the pain-and-suffering jackpot.

On the other hand, people with the highest economic losses, in excess of $100,000, recover only 9 percent of their economic loss on average. To add injury to insult, that amount doesn't even include their lawyers' standard one-third fee. Because most drivers don't carry enough insurance to even pay this level of economic loss, particularly after attorneys' fees are deducted, people with the most serious injuries rarely recover anything for pain-and-suffering.

In short, we would be hard pressed to design a worse compensation system if we tried.

Indeed, the system is so bankrupt that lawyers in the auto insurance litigation currently consume more than 25 cents out of every premium dollar spent, an amount that is significantly more than the amount received by those actually injured for medical bills and lost wages. In total, more than $16 billion went to lawyers in 2001 for automobile related personal injury cases.

What about deterrence? Perhaps it is worth paying for a poor compensation system if people are deterred from driving badly, thereby avoiding injuries in the first place. Some studies have made this argument but the most comprehensive analysis of accident data, again by the RAND Institute for Civil Justice, has found that the tort system has little or no deterrent impact. This conclusion is a logical one. If a driver is not deterred by the threat of personal danger from reckless driving, then surely that driver is not deterred by the penalty for reckless driving—simply a modest increase in one's insurance premium.

The current system is also unnecessarily expensive, as is clearly demonstrated by the fact that the Joint Economic Committee estimates that switching to the new Personal Injury Protection system, discussed below, which relies primarily on the payment of economic losses for all injured persons without regard to fault and largely without the need for lawsuits, could save drivers a total of $48 billion a year in unnecessary premiums.

Excessive premiums disproportionately impact low income Americans and welfare recipients. Families in the bottom 20 percent of incomes who buy auto insurance spend 16 percent of their household income on that insurance. That percentage is seven times the proportion that families in the top 20 percent spend. Lower premiums would enable many low income workers to afford the cars they need to travel to better-paying jobs. The Auto Choice reform legislation we are proposing today would reduce premiums for low income people by more than it would reduce them for the average driver—both in terms of percentages and often in terms of absolute dollars. And all drivers would see significantly lower premiums.

Auto Choice is designed to allow consumers to choose the type of insurance that meets their needs and to opt out of the pain-and-suffering litigation lottery associated with the current system.

Essentially, drivers are permitted under Auto Choice to choose a new Personal Injury Protection, "PIP", Insurance under which they would be compensated without regard to fault for all economic losses up to their policy limits by their own insurance company, with nothing available for pain and suffering. Alternatively, for those who remain in the current tort system, they will select a small amount of additional coverage similar to an uninsured motorist for situations involving another motorist that opted for the PIP system—a premium offset by the savings realized by everyone as a result of the overall shift away from the lawsuit system.

The system does not abolish lawsuits. By design, there will be reduced incentives to head straight to court, but the right to sue remains firmly intact—as injured parties not fully compensated can sue to recover excess economic losses over and above that covered by the PIP coverage and other sources of first party insurance. They can also sue for all damages, including pain and suffering, when the accident is caused by a driver who is drunk or on drugs.

In summary, if a driver wants to maintain the possibility of recovering for pain and suffering, he will stay in essentially the current system. On the other hand, if he wants to opt-out of the current system in exchange for lower premiums with prompt compensation for economic losses—then he instead will choose the personal injury protection system.

The idea is not a new one. Indeed, this idea has been discussed—and even introduced in one form or another—for over thirty years now. Several versions of Auto Choice reform have enjoyed broad support on both sides of the aisle. Senator Daniel Patrick Moynihan, Steve Forbes, Michael Dukakis, Mayor Rudy Guliani, Congressman Dick Armey—just to name a few—have all opined in support of giving drivers a way out of the current ineffective system.

The time has come for Congress to act. The results of our action are clear and tangible: were Congress to enact Auto Choice Reform legislation now, motorists would stand to save as much as $48 billion next year.

Think about that for just one moment. Over 5 years, Americans would be able to save almost $250 billion—savings tantamount to a massive tax cut with absolutely no negative impact to the Federal deficit.

And what does this mean for the average American? The average American family with two cars will be able to save nearly $380 a year, according to Joint Economic Committee estimates.

Particularly encouraging is the effect these savings will have for low income families. Lower auto insurance premiums will make owning a car more affordable for poor Americans, allowing them to find and keep better-paying jobs and have longer commutes. Auto Choice would allow low-income drivers to save almost 37 percent on their overall automobile premium. For a low-income household, these savings are the equivalent of 5 weeks of groceries or nearly 4 months of electric bills.

Auto Choice Reform can provide immediate and real relief for average, mainstream American families across the country. Those are real savings, resulting from a sound system that offers legitimate choice—a choice between guaranteed upfront savings on insurance premiums on one hand; and on the other, the right to sue for non-economic damages such as pain and suffering in the event an accident one day occurs.

For most Americans, I believe the choice is an easy one. Unfortunately, for most Americans today, that choice is unavailable.

The Auto Choice Reform Act of 2004 gives the American people that choice. Let's get government back to doing what it ought to—protecting the rights of all Americans to have the freedom to make choices about how they live their lives.

By Mr. DODD (for himself, Mr. KENNEDY, Mr. JOHNSON, and Mr. WYDEN):

S. 2933. A bill to amend the Public Health Service Act to expand the clinical trials drug data bank; to the Committee on Health, Education, Labor, and Pensions.

Mr. DODD. Mr. President, I rise today to introduce the Fair Access to Clinical Trials (FACT) Act. I want to begin by thanking Senator KENNEDY, Senator JOHNSON, and Senator WYDEN for joining me in introducing this legislation. Our bill will create a clinical trials registry—an electronic database—for drugs, biological products, and medical devices. Such a registry will ensure that physicians, the general public, and patients seeking to enroll in clinical trials have access to basic information about those trials. It will require manufacturers and other researchers to reveal the results of clinical trials so that clinically important information will be available to all Americans, and physicians will have all the necessary information to make appropriate treatment decisions for their patients.

Events of the past several months have made it clear that such a registry is needed. Serious questions have been raised about the effectiveness and safety of antidepressants when used in children and youth. It has now become clear that the existing data indicates that these drugs may very well put children at risk. However, because the data from antidepressant clinical trials was not publicly available, it took years for this risk to be realized. In the meantime, millions of children have been prescribed antidepressants by well-meaning physicians. While these drugs undoubtedly helped many of these children, they also led to greater suffering for others.

Unfortunately, antidepressants are just one example of a story that has become all too common. In the case of antidepressants, negative data might actually have been suppressed, and if this is discovered to be the case, those responsible should be dealt with harshly. However, because of what is known as "publication bias," the information available to the public and physicians can be misleading even without nefarious motives. The simple fact is that a study with a positive result is far more likely to be published, and thus publicly available, than a study with a negative result. Physicians and patients hear the good news, but rarely the bad news. In the end, the imbalance of available information hurts patients.

Our bill would correct the imbalance of information, and prevent manufacturers from suppressing negative data. It would do so by expanding clinicaltrials.gov, an existing registry that is operated by the National Library of Medicine (NLM). Currently, clinicaltrials.gov includes information for patients seeking to enroll in clinical trials for drugs to treat serious or life-threatening conditions. The FACT Act would expand the registry to include all trials (except for preliminary safety trials), and would also require the submission of results data. At the same time, the bill would ensure that clinicaltrials.gov continues to operate as a resource for patients seeking to enroll in trials.

Our legislation would enforce the requirement to register trials in two ways. First, by requiring registration as a condition of Institutional Review Board (IRB) approval, no trial could begin without submitting preliminary information to the registry. This information would include the purpose of the trial, the estimated date of trial completion, as well as all of the information necessary to help patients to enroll in the trial.

Once the trial is completed, the researcher or manufacturer is required to submit the results to the registry. If they refuse to do so, they are subject to monetary penalties or, in the case of federally funded research, a restriction on future funding. It is my belief that these enforcement mechanisms will ensure broad compliance. However, in the rare case where a manufacturer does not comply, this legislation also gives the Food and Drug Administration (FDA) the authority to publicize the required information.

Let me also say that any time you are collecting large amounts of data and making it public, protecting patient privacy and confidentiality must be paramount. Our legislation would in no way threaten that privacy. The simple fact is that under this bill, no individually identifiable information would be available to the public.

I believe that the establishment of a clinical trials registry is absolutely necessary for the health and well-being of the American public. But I would also like to highlight two other benefits that such a registry will have. First, it has the potential to reduce health care costs. Studies have shown that publication bias also leads to a bias towards new and more expensive treatment options. A registry could help make it clear that, in some cases, less expensive treatments are just as effective for patients.

In addition, a registry will ensure that the sacrifice made by patients who enroll in clinical trials is not squandered. Many patients would be less willing to participate in trials if they understood that the data are unlikely to be made public if the results of the trial are negative. We owe it to patients to make sure that their participation in a trial will benefit other individuals suffering from the same illness or condition.

The problems associated with publication bias have recently drawn more attention from the medical community, and there is broad consensus that a clinical trials registry is one of the best ways to address the issue. Accordingly, the American Medical Association (AMA) has recommended the creation of such a registry, and the major medical journals have established a policy that they will only publish the results of trials that were registered in a public database before the trial began. Our legislation meets all of the minimum criteria for a trial registry set out by the International Committee of Medical Journal Editors.

To its credit, the pharmaceutical industry has also acknowledged the problem, and has created a registry to which manufacturers can voluntarily submit clinical trials data. I applaud this step. However, if our objective is to provide the public with a complete and consistent supply of information, a voluntary registry is unlikely to achieve that goal. Some companies will provide information, but others may decide not to participate. We need a clinical trials framework that is not just fair to all companies, but provides patients with peace of mind that they will receive complete information about the medicines they rely on.

The American drug industry is an extraordinary success story. As a result of the innovations that this industry has spawned, millions of lives have been improved and saved in our country and around the globe. Because of the importance of these medicines to our health and well-being, I have consistently supported sound public policies to help the industry to succeed. This legislation aims to build upon the successes of this industry, and help ensure that the positive changes to our health care system that prescription drugs have brought are not undermined by controversies such as the one now surrounding antidepressants, which is at least in part based on a lack of public information. This bill will help ensure that new and innovative medicines will be used by well-informed patients.

I look forward to working with industry, physicians, the medical journals, patient groups, and my colleagues to move this legislation forward. This bill has already been endorsed by the National Organization for Rare Disorders, Consumers Union, the Elizabeth Glaser Pediatric AIDS Foundation, and the American Academy of Child and Adolescent Psychiatry. I thank these organizations for lending their expertise as we crafted this legislation, and I ask that a copy of their letters of endorsement be included in the RECORD after this statement.

Clinical trials are critical to protecting the safety and health of the American public, and for this reason, trial results must not be treated as information that can be hidden from scrutiny. Recent events have made it clear that a clinical trials registry is needed. Patients and physicians agree that such a registry is in the interest of the public health. I urge my colleagues to support this legislation, and I am hopeful that it will become law as soon as possible.

Mr. President, I ask unanimous consent that letters of support be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

NATIONAL ORGANIZATION FOR
RARE DISORDERS, INC.,
Danbury, CT, October 7, 2004.

Hon. CHRISTOPHER DODD,
U.S. Senate, Washington, DC.

DEAR SENATOR DODD: The National Organization for Rare Disorders (NORD) is honored to support your efforts to establish a centralized and comprehensive registry of both public and privately funded clinical research. The "Fair Access to Clinical Trials Act of 2004" will provide the mechanism whereby patients, including those living with rare diseases, will have access to ALL clinical research data—both positive and negative—something NORD has supported for many years.

There are over 25 million Americans currently living with one of the 6,000 known rare diseases. Unfortunately, for most of these diseases, little, if any, research is conducted. Thus, finding a trial is like trying to locate a needle in a massive haystack. Without your help, patients will continue to struggle to somehow find a clinical trial in the hopes that a therapy to alleviate symptoms or cure their disease may someday be found.

NORD also applauds the "FACT Act" because it will penalize industry when they purposefully and willfully hide negative data only to their bottom line. It is unconscionable to think that harmful information has been shielded from patients and healthcare providers, causing irreparable harm, and sometimes death.

Senator Dodd, NORD thanks you for your continuing concern about the health and welfare of all Americans. We will work with you to ensure that the "Fair Access to Clinical Trials Act of 2004" becomes a reality.

Sincerely,

DIANE E. DORMAN,
Vice President.

CONSUMERS UNION,
October 7, 2004.

Hon. CHRISTOPHER J. DODD,
Hon. EDWARD M. KENNEDY,
Hon. TIM JOHNSON,
Hon. RON WYDEN,
U.S. Senate, Washington, DC.

DEAR SENATORS DODD, KENNEDY, JOHNSON, AND WYDEN: Consumers Union, the non-profit publisher of Consumer Reports magazine, commends you for introducing the "Fair Access to Clinical Trials Act of 2004" (FACT Act). The legislation would create a mandatory publicly available national registry of all clinical trials involving drugs, biological products, and devices. This bill would enable consumers, doctors, and other health care providers to make appropriate decisions about care based upon more complete and accurate safety, efficacy, and comparative-effectiveness data.

The recent episode involving Paxil, one of the most popular antidepressants on the market, underscores a potentially dangerous information gap in drug regulation: the ability of drug manufacturers to effectively conceal study results that reveal their products to be ineffective or potentially hazardous. The number of U.S. children taking antidepressants has more than doubled since the early 1990s. In the past year, new evidence has emerged suggesting a possible connection between children starting antidepressant treatment and an increase in suicide risk. The public was disturbed to learn that Paxil's manufacturer, GlaxoSmithKline, submitted three studies to the FDA when it sought approval for pediatric use. The only one of the three studies that showed that Paxil worked for depression was published in the Journal of the American Academy of Child and Adolescent Psychiatry. This article disguised evidence of potential suicidal thoughts by calling them "emotional lability." However the two additional negative Paxil studies were never published in any journal. Meanwhile, doctors continued to prescribe Paxil for children—an estimated 2.1 million prescriptions in 2002 alone.

Your legislation would begin to close the gap in the disclosure of information discovered during clinical trials. It would require trial sponsors to register publicly and privately funded clinical trials of drugs, biological products, and medical devices. The registry will further the goal of transparency by making information publicly available about trials, including: the purpose of the trial; whether the trial focuses on an unapproved use; a description of primary and secondary outcomes to be studied; the estimated completion date; the actual completion date (and the reasons for any difference from the estimated completion date); a summary of the trial results; adverse events observed during the investigation; and a description of the protocol followed in the trial.

Under the bill, before receiving Federal funding, a principal investigator would be required to certify that it will comply with the bill's registration requirements. Failure to submit trial result information could result in its inability to receive future federally funded contracts. Sponsors of privately funded trials also would be required to disclose the same information, or face potential civil penalties. If any trial sponsor fails to comply with the registration requirements, the Secretary of the Department of Health and Human Services is directed to disclose in the registry that the sponsor has failed to turn over trial results.

Strong incentives and penalties must be in place in order to ensure that pharmaceutical companies do not suppress negative safety or efficacy information in order to boost their profits. These practices are unacceptable, and we look forward to working with you to ensure transparency for clinical trial results, and to create even stronger incentives and penalties in the legislation to remove any financial motive clinical trial sponsors may have to hide important health information from consumers.

Sincerely,

JANELL MAYO DUNCAN,
Legislative and Regulatory Counsel,
Washington Office.

ELIZABETH GLASER PEDIATRIC
AIDS FOUNDATION,
October 7, 2004.

Hon. CHRISTOPHER J. DODD,
U.S. Senate, Washington, DC.
Hon. TIM JOHNSON,
U.S. Senate, Washington, DC.
Hon. EDWARD M. KENNEDY,
U.S. Senate, Washington, DC.
Hon. RON WYDEN,
U.S. Senate, Washington, DC.

DEAR SENATORS DODD, KENNEDY, JOHNSON AND WYDEN: On behalf of the Elizabeth Glaser Pediatric AIDS Foundation, I would like to commend your leadership in introducing the "Fair Access to Clinical Trials Act of 2004" (The FACT Act) and offer our strong endorsement of your efforts to establish a publicly accessible registry of clinical trials, including important pediatric studies.

The Foundation was created more than 15 years ago to help children with HIV/AIDS and is now the worldwide leader in the fight against pediatric AIDS and other serious and life-threatening diseases affecting children. In 2000, the Glaser Pediatric Research Network was founded as an affiliate of the Foundation, with the goal of advancing vital clinical discoveries on behalf of all children. Through a partnership among five pre-eminent academic medical centers, the Network is currently supporting clinical drug trials and other pediatric studies on a range of conditions affecting children such as obesity, cancer, osteoporosis, and rare bleeding disorders.

As longstanding advocates of testing drugs for use in children, we welcome the dramatic increase in pediatric studies that has resulted from the enactment of both incentives and a pediatric testing requirement. However, simply conducting pediatric research is insufficient if the results of that research are not made fully available to pediatricians, parents, and researchers. By making clinical trial information publicly accessible in a timely way, the FACT Act will serve as a critical next step in improving the safety and efficacy of medicines used by children.

We are particularly pleased that the FACT Act acknowledges the unique circumstances and contributions of non-profit sponsors of research. Your attention to the need to ensure the continued viability of critical research partnerships between non-profit and for-profit funders is very much appreciated. In addition, as we continue our efforts to improve the availability of medical devices designed for children's unique needs, we applaud your inclusion of device clinical trials in the scope of the registry.

Thank you again for your commitment to ensuring that important safety data from pediatric and adult clinical trials is available to improve public health. We look forward to working with you in the 109th Congress to secure bipartisan support for and passage of this important legislation.

Sincerely,

MARK ISAAC,
Vice President, Policy and Communication.

AMERICAN ACADEMY OF CHILD &
ADOLESCENT PSYCHIATRY,
Washington, DC, October 7, 2004.

Hon. CHRISTOPHER DODD
U.S. Senate, Washington, DC.

DEAR SENATOR DODD: On behalf of the American Academy of Child and Adolescent Psychiatry (AACAP), thank you for your efforts to improve the health of children, adolescents and adults through better access to clinical trial data. Legislation that you are sponsoring, the Fair Access to Clinical Trials (FACT) Act, will ensure that physicians, including child and adolescent psychiatrists, patients and parents have all available knowledge about a medication's safety and effectiveness, so that they can make informed decisions about treatment options.

The AACAP is pleased to have been at the forefront of calling for a national clinical trails registry. Research is key to understanding the cause of depression, especially in children and adolescents, and access to all research findings will help clinicians develop the most effective treatment plans. It is this principle that led the AACAP and the American Psychiatric Association (APA) to urge the American Medical Association to join their call for a national registry, which it did earlier this year.

Again, we thank you for sponsoring the Fair Access to Clinical Trials Act. We are encouraged by the support for this bill and are eager to work with you to ensure its passage. Please contact Nuala S. Moore, Asst. Director of Government Affairs, at 202.966.7300, x. 126, if you have any questions concerning clinical research or other children's mental illness issues.

Sincerely,

RICHARD SARLES, M.D.,
President.

Mr. JOHNSON. Mr. President, today I join several of my colleagues in introducing a very important piece of legislation that will improve access to information about prescription drugs for patients and their doctors. Today Senators DODD, KENNEDY and WYDEN and I are introducing the Fair Access to Clinical Trials Act, or FACT Act. I want to commend my colleagues for their hard work on this legislation. I also want to thank them for their commitment to ensuring that finally, objective, unbiased information can be put in the hands of consumers and doctors, reducing negative outcomes, improving patient care and ultimately reducing costs of medications.

It is unacceptable that today, much of the information consumers and doctors rely on to make decisions about the medications they use are based on incomplete information. Patients are often swayed by direct-to-consumer drug advertisements. Doctors must rely on the information they learn at drug company sponsored conferences, and in peer reviewed journals that publish largely the success stories. But what about the untold stories? What about the clinical trials that were discontinued by drug companies because the data appeared to not be going in the right direction? What about the studies that are part of an application for a new drug that may show a negative result? And what about trials that have been conducted to study the appropriateness of an off-label use? Today, physicians and their patients do not have access to any of this important information, and that must change now.

The lack of access to this information can have real, devastating effects on patients. We have all heard the stories in the papers in recent months. We have heard about New York Attorney General Eliot Spitzer's lawsuit, which charged GlaxoSmithKline with suppressing the publication of studies suggesting that its antidepressant drug Paxil could increase the risk of suicide among adolescents. Further investigation of this issue has found that some manufacturers of antidepressants highlighted positive findings in tests on youngsters while playing down negative or inconclusive ones.

We have just recently learned that the arthritis medication Vioxx was pulled off the market, due to negative study findings, and just yesterday learned that over 27,000 sudden cardiac deaths and heart attacks may have been caused. While Merck did the right thing by pulling the drug after learning of clinical trial, they were under no obligation to share this information with consumers or the medical profession. Drug companies have lobbied to ensure that only the Food and Drug Administration gets this information and, even then, some drug companies simply discontinue studies that they do not think will reflect favorably on their product.

What doctors advocating the development of a comprehensive clinical trial registry have indicated is that without ready access to all experimental data, good, bad and indifferent, they cannot hope to know what is the best treatment for their patients. Our legislation will get at that very issue, by requiring that clinical trials are registered in a database that is accessible to the public.

This bill will create a comprehensive clinical trial database, which will require that all trials for drugs, biologics, and medical devices be registered in the database in order to obtain approval from a U.S. Institutional Review Board to move forward with any study. Researchers will be required to disclose basic information about a study initially, so that consumers can be aware of studies while they are underway.

Once trials are completed, the bill requires that the results of those studies be made available to doctors and patients. There is significant time allowed in the bill for researchers to publish their results, prior to them being made public in the database. Submission to this database will be mandatory for all federally funded and non-federally funded trials, and strong enforcement mechanisms are incorporated into the bill.

Making the results of clinical drug trials public is not only a good consumer right-to-know or rather need-to-know issue, but it is also the ethically responsible thing to do. Patients enter trials for the good of science. It is our obligation to ensure that their sacrifices provide for the greater good of the public health. Publicizing the results of those studies is a step in that direction. Patients enrolling in clinical trials often know up front that the likely chance of directly benefiting from a treatment is unknown. But patients are also told that even if they do not experience a positive outcome, doctors can learn from the results, which will advance science in the long term.

This legislation is strongly supported by the National Organization for Rare Disorders, Consumers Union and the Academy of Child and Adolescent Psychiatry. I urge my colleagues to support this important legislation which is long overdue.

Mr. KENNEDY. I am pleased today to introduce the Fair Access to Clinical Trials or FACT Act. This needed legislation will improve the information available to patients and their families about the medical treatments they receive. For too long, drug companies have been able to hide damaging data that show their new wonder drug is not really the wonder they claim it to be. That practice ends on the day the FACT Act is enacted. From that day forward, consumers, doctors and researchers will have access to the results of clinical trials, so they can make informed decisions about treatment options.

No patient should ever die because they didn't get the information they needed on the medications they rely on to protect their health.

The legislation we introduce today is offered by a strong group of Senators and Representatives from across the nation. I commend my colleague, Senator DODD, for his leadership in the Senate on this important measure. Senator DODD has a strong and lasting commitment to improving the health and health care of all our citizens, and particularly for the youngest and most vulnerable. I am also pleased to join Senator RON WYDEN and Senator TIM JOHNSON in introducing this proposal, and I commend them for their commitment and skillful leadership in this area.

Our colleagues in the House of Representatives are today introducing almost identical legislation, and I commend our colleagues, Representative ED MARKEY and Representative HENRY WAXMAN, for their tireless efforts on this important issue.

As part of the FDA Modernization Act, Congress directed the Department of Health and Human Services to establish a registry of clinical trials. This provision was well timed, because it coincided with the rapid expansion of internet use. As a result, the National Library of Medicine has established a web site, clinicaltrials.gov, that is intended to contain information on all clinical trials for serious and life threatening diseases.

Sadly, recent studies show that drug manufacturers are not complying with the requirement to list even basic information on the trials they conduct. A recent study showed that only 48 percent of the required cancer trials were properly submitted to the registry, and rates for other serious diseases were in the single digits. As a result of this shameful failure, patients are being denied important information on clinical trials in which they may be eligible to participate.

Action is long overdue to give the NIH and the FDA better ways to see that companies and researchers properly register the trials they conduct. The FACT Act will assure that any researcher or sponsor seeking to conduct a clinical trial will be required, as a condition for approval to conduct the trial, to submit information on that trial to the clinical trial registry. This common-sense provision will see that patients seeking to enroll in clinical trials will have access to a complete set of information on the trials for which they may be eligible. No patient should be denied access to a lifesaving clinical trial because the sponsor of the trial shirked their responsibility to submit information to the national registry.

Ensuring that all trials are registered is important, but registration alone is not enough to see that patients get the information they need on the treatments they receive. We must also see that the results of clinical trials are included in the registry.

The FACT Act requires researchers and clinical trial sponsors to submit the results of their trials to the registry. With a complete and comprehensive set of information, patients will be better able to evaluate the treatments they receive, and physicians will have access to complete information on the treatments they prescribe. The FACT Act requires companies to list the results of trials—even when they show that a product is less effective than its manufacturers want to claim.

All of us are familiar with the way that drug companies hid information on potentially harmful side effects in children of antidepressants. Many of our Republican colleagues in the House forcefully criticized the FDA for failing to release information they possessed showing that these pills sometimes cause suicidal tendencies in the children who received them.

The FACT Act addresses both of these serious concerns. It requires companies to list the results of their trials, and gives FDA the authority to impose civil monetary penalties on those who fail to do so. It also gives FDA the clear legal authority to release information on the results of a clinical trial if a company fails to do so. No longer will FDA face the terrible dilemma of knowing that it possesses information crucial to assuring public health and safety, but is unable to release that information to the public because of legal constraints. The FACT Act assures that FDA has the clear authority to take the steps it needs to take to protect public health.

I urge Congress to take swift action on the proposals introduced today in the House and Senate. We have little time left in this session, but the measures introduced today have broad support from medical professional, consumer organizations and the publishers of professional journals.

Some companies have already taken voluntary steps to release information on clinical trials. These voluntary efforts are commendable, but they are inadequate to give the public the comprehensive information they need and deserve. Voluntary reporting efforts on the companies' own web sites will not result in a single, central database that every patient can consult. Sporadic efforts by individual companies will not elicit the comprehensive information needed on all clinical trials—not just those of the few companies that participate in the voluntary initiative. And voluntary efforts undertaken now may not be sustained in the future, when the hot glare of public attention fades from this issue.

To give patients and health professionals the information they need to improve the quality of medical care, we need a strong legal requirement to list comprehensive information on clinical trials in a single publicly accessible database. Patients and their families deserve the FACT Act, and I urge my colleagues to support it.

Mr. WYDEN. Mr. President, today I join Senators DODD, KENNEDY, and JOHNSON in introducing the Fair Access to Clinical Trials Act of 2004. This legislation is an important milestone for patients and doctors around this country because it would create a centralized clinical trials registry by expanding the current clinical trials.gov website to provide not only information about clinical trials they might want to be part of, but also the results of those trials. If information is not provided so it can be posted on the website, serious penalties could be imposed, including a researcher losing their ability to get future Federal grants.

It is vitally important that patients and their doctors have the information they need to decide upon the best treatment for them. As we all know, drugs are often the key treatment for many health problems. Good results about the safety and effectiveness of treatments are often trumpeted by drug companies and the media, but Americans are less likely to hear about clinical trial results that are not so good or truly negative. This legislation will ensure that everyone can get a fair picture of all results of clinical trials.

I believe that this legislation strikes the delicate balance needed so that companies which create breakthrough drugs can keep their trade secrets, the important process of assuring peer review in medical literature can continue, and consumers, doctors and researchers can have access to the information they need to make sound decisions about their health care.

Research is key in assuring health care improvements. Knowing the results of research is key in assuring better health care quality and improving decision-making by doctors and their patients. I believe that the expanded website created by this legislation will be an important tool in improving doctors' and patients' knowledge and decision-making that might well mean life or death for some patients.

By Ms. CANTWELL:

S. 2934. A bill to combat methamphetamine abuse in the United States; to the Committee on the Judiciary.

Ms. CANTWELL. Mr. President, I rise today to introduce the Confronting Methamphetamines Act of 2004.

Methamphetamine, meth, use is growing exponentially in parts of our country and is spreading across the country at an alarming rate. We must act aggressively to attack the meth problem with a long-term commitment of resources or we will soon have a national drug crisis on the scale of an epidemic.

Meth is an extremely dangerous and highly addictive drug. Individuals who use meth risk becoming addicted to this life-destroying drug with just one use. Meth use has ruined the lives of many people who prior to their addiction to meth were successful contributors to our society and our economy.

Meth use triggers an avalanche of other problems for addicts' families and our communities. The use of meth is often linked to child abuse and the destruction of families. It contributes substantially to the perpetration of violent crimes, particularly burglary and crimes of substantial cost and personal pain to the victims, including identity theft. The stories I have heard about meth users are horrible—parents so focused on feeding their habit that they forget their children are right there with them, hungry, and without any love or care. Users become aggressive, violent and unstable. Often, the kids end up users as well.

Sadly, our children are discovering meth, and the results will be devastating. According to a 2001 study by the Centers for Disease Control and Prevention, nearly one in ten high school students have used meth. The statistics are clear: the problem is bad, and it's getting worse. The National Center on Addiction and Substance Abuse at Columbia University reports that while the proportion of teens who know users of LSD, cocaine, and heroin has dropped sharply from last year, the percentage of teens who know a user of methamphetamines has risen from 12 percent in 2003 to 15 percent this year.

The devastation to our kids' lives is hitting our rural communities first. The Columbia University researchers also found that eighth graders living in rural America are 104 percent more likely to use amphetamines than eighth graders in urban areas.

And meth is not just a health and social problem; it is also an enormous environmental problem. There are two types of local meth labs: so-called "super-labs," which are capable of manufacturing large volumes of methamphetamines and clandestine labs set up by users to manufacture small amounts of the drug for personal use. These clandestine labs can be set up in the woods, in hotel rooms or even in the back seat of a car. They can be set up anywhere, but are usually located where there is little traffic or population.

These hazardous "labs" can go unnoticed for years, but they produce major chemical hazards and pose severe fire risk. Meth production generates extremely hazardous byproducts, such as anhydrous ammonia, ether, sulfuric acid, as well as other toxins that are volatile, corrosive, and poisonous. When these substances are illegally disposed of in rivers, streams and other dump areas, explosions and serious environmental damage can and does result. Our State and local environmental agencies are responsible to cleanup these hazardous sites and it is taking a toll on their resources.

The use of meth is spreading rapidly from the western region of the United States across the rural Midwest and to the east. The spreading availability of methamphetamine is illustrated by increasing numbers of meth seizures, arrests, indictments, and sentences. And those numbers are rising across the country. According to the National Drug Intelligence Center, methamphetamine is widely available throughout the Pacific, Southwest, and West Central regions and is increasingly available in the Great Lakes and the Southeast.

Similarly, the National Institute on Drug Abuse's Community Epidemiology Working Group reports that, in 2002, methamphetamine indicators remained highest in West Coast areas and parts of the Southwest, as well as Hawaii. Meth abuse and the crimes associated with it are spreading in areas such as Atlanta, Chicago, Detroit, St. Louis, and Texas, as well as the East Coast and mid-Atlantic regions. This problem, once perceived as a "western state" problem, has become a nationwide problem, growing at an extraordinary rate.

My State has shown that a cooperative effort—law enforcement working side-by-side with those handling clean-up, intervention, treatment, child and family support, drug courts and family drug courts, and education—is effective at addressing this problem. Thanks to the Washington Methamphetamine Initiative and the "Methamphetamine Action Teams," multi-disciplinary teams situated in each county across the State, meth production was cut back by 25 percent last year. Washington State has dropped from second in the Nation to sixth in the production of meth. The comprehensive, holistic approach my State has taken to combat meth is working well, and I believe that our program can be a model for the national fight.

By making intervention, treatment and family support as important as arrests and prosecution, we are effectively overcoming the secondary problems that meth creates by addressing the root causes, not just the social symptoms. By taking this approach we are not simply growing prison populations and pushing the problem to regions not previously impacted by meth, but attacking the growth of the use of this terrible drug.

We in Washington State have also learned that laws restricting the sale of large quantities of precursor drugs such as ephedrine make it more difficult for users to produce meth, and this tactic has reduced the number of clandestine labs in the State.

This approach to fighting meth use has been very successful, but it takes money. And although there has been an explosion in the use of meth, Federal funding has been cut. Each year, States with a growing meth problem are required to go through a politicized process seeking Federal funding through the earmark process. And each year, the funds are being cut.

These challenges to our States mean only one thing: we need to make funding to combat meth permanent. Permanent Federal funding support for meth enforcement and clean-up is critical to the efforts of State and local law enforcement to reduce the use, manufacture and sale of meth.

That is why I am introducing the Confronting Methamphetamines Act of 2004. This bill will create a supplemental grant to augment the Department of Justice's Byrne Formula Grant Program to provide block grants to help States confront their meth problems.

Under my bill, States will be able to apply for a formula grant if they meet two prerequisites: the State must have a comprehensive, long term plan to address methamphetamine use, manufacture and sale; and the State legislature must commit to enacting laws to limit the sales of precursor products (the commercially available products used to make meth, such as ephedrine). Where a State has met these two requirements, that State will be eligible to receive a Federal formula grant.

States have discretion as to how to use the funds. The activities funded may include arrest, lab seizures and clean up, child and family support services, community based education, awareness and prevention, intervention, treatment, Drug Court and Family Drug Court, community policing, the hiring of specially trained law enforcement, State and local health and environmental department support, and prosecution.

The Confronting Methamphetamines Act also provides for planning grants, $100,000 per State, so States can develop long-term strategies to address meth. We have seen in Washington and in other States that comprehensive plans to address all aspects of meth—from use to manufacture to sale—have the best and most efficient results. Through this provision, I want to encourage States to consider the long-term situation when they take the initial steps in combating meth.

To assure that the best practices to confront meth deployed in our local communities are shared across the country, my bill requires the U.S. Attorney General to collect data, to establish a national clearinghouse for best practices in addressing the meth problem, and to provide technical assistance to States or local agencies.

Like the Byrne Formula Grants, distribution to eligible States will be based on State population. The supplemental allocation to an eligible State will be no less than the base amount of $250,000 or 0.25 percent of the amount available for the program, whichever is greater, with the remaining funds allocated to the other eligible States on the basis of the state's relative share of total U.S. population.

The bill authorizes $100 million per fiscal year 2005 and 2006, elevating the funding to $200 million for the subsequent three years, assuring that the funds are available as the meth problem grows and more States become plagued by the problem of meth.

I have received letters supporting this legislation from the Fraternal Order of Police, National Association of Drug Court Professionals, the Police Executive Research Forum, the Washington State's Governor's office, representing State law enforcement, environmental protection, health and human services and the Washington State Methamphetamine Initiative, and the Pierce County Alliance, essentially the epicenter of Washington State's response to methamphetamines. These letters reflect the level and breadth of concern for our law enforcement, drug addiction care providers, the courts and environmental protection agencies.

We have to give a strong signal to the State and local governments that we recognize the meth problems that they are facing, we are committed to support long-term comprehensive strategies to confront the problem, and will assure availability of substantial federal funds to help confront this startlingly rapidly growing problem.

This legislation assures the funding and continuity of Federal support desperately needed by our State and local governments. It assures that States have the opportunity to develop a long-term comprehensive strategy to combat meth, and gives those on the front lines in this battle the flexibility to use the federal dollars as they see fit, consistent with their long-term plan. I urge the Senate to support this bill and plan to work aggressively with the other body to bring it into law as promptly as possible.

Mr. President, I ask unanimous consent that the four letters of support be printed in the RECORD.

There being no objection, the additional material was ordered to be printed in the RECORD, as follows:

NATIONAL ASSOCIATION OF DRUG
COURT PROFESSIONALS,
Alexandria, VA, October 6, 2004.

Re Confronting Meth Act of 2004.

Hon. MARIA CANTWELL,
U.S. Senate, Hart Senate Office Building,
Washington, DC.

DEAR SENATOR CANTWELL: I am writing this letter in support of the Confronting Meth Act of 2004 on behalf of the entire drug court field and the professionals and clients we serve. As active workers in the areas of treatment, law enforcement and the judiciary, we see the devastation of methamphetamine use. We understand the debilitating effect meth has on its users and the overwhelming impact it has on families and communities. Our members contact us weekly and describe in detail the special challenges that accompany addiction to meth and the additional resources needed to meet these challenges. It is important that communities all over the country have an avenue to address this issue. The Act has the unique ability to equip states with that ability.

The funding formula that is proposed will encourage local solutions to a problem that differs from jurisdiction to jurisdiction. The Act also lends itself to a multi-faceted approach to a pervasive challenge. We wholly support this legislation and pledge the expertise of our organization to its passage and implementation. Thank you for your vision in introducing this important legislation.

Sincerely,

JUDGE KAREN FREEMAN-WILSON (ret.),
Chief Executive Officer.

GRAND LODGE
FRATERNAL ORDER OF POLICE,
Washington, DC, October 6, 2004.

Hon. MARIA CANTWELL,
U.S. Senate,
Washington, DC.

DEAR SENATOR CANTWELL: I am writing on behalf of the membership of the Fraternal Order of Police to advise you of our support for legislation you intend to introduce entitled the "Confronting Methamphetamine Act."

The bill creates a supplemental grant program at the U.S. Department of Justice for States that develop a comprehensive, long-term plan to address the use, manufacture, and sale of methamphetamines, and has enacted or will enact a law to limit the sale of precursor products that are used to make this dangerous drug. States that meet this criteria will be able to apply for funds to fight the growing problem of methamphetamines and will have discretion as to how to use the funds, be it for community policing, lab seizures and clean up, awareness and prevention, intervention, treatment, and prosecution. The bill authorizes $100 million for the program in fiscal years 2005 and 2006, and then elevates the funding to $200 million for the subsequent three years.

Law enforcement needs additional resources to fight the spread of methamphetamine abuse, and the bill you intend to introduce will do just that. The F.O.P. welcomes the opportunity to work with you and your staff on this legislation. If we can be of any further assistance, please do not hesitate to contact me or Executive Director Jim Pasco through my Washington office.

Sincerely,

CHUCK CANTERBURY,
National President.

POLICE EXECUTIVE
RESEARCH FORUM,
October 7, 2004.

Hon. MARIA CANTWELL,
Hart Senate Office Building,
U.S. Senate, Washington, DC.

DEAR SENATOR CANTWELL: On behalf of the Police Executive Research Forum (PERF), a national organization of police executive professionals who collectively serve more than 50 percent of the nation's population, I would like to thank you for your continued leadership on law enforcement and public issues. The men and women of law enforcement face tremendous challenges in combating the manufacturing, trafficking, sale, and use of illicit drugs, as well as drug-related violence and crime in our streets. PERF commends your efforts to introduce effective legislation to help provide law enforcement with the resources to reduce the presence of methamphetamine drugs and laboratories across the nation, and to investigate and prosecute the criminals who corrupt our children and endanger our communities.

The Confronting Methamphetamine Act of 2004 presents a comprehensive, cooperative, multi-agency approach to addressing the methamphetamine problem in the United States, and PERF believes this to be the best course of action for achieving long-term solutions. It is crucial to involve federal, state, local, and private entities in this fight, and to supplement that fight with grants that will enable law enforcement, prosecutors, treatment facilities, and community-based organizations to carry out their respective missions effectively.

PERF members see first-hand the ravaging effect that methamphetamine and other illicit drugs have on communities nationwide. They recognize and applaud your efforts to provide them with the resources to attack this problem head-on. If you have any additional questions, please feel free to contact PERF Legislative Director Martha Plotkin at mplotkin@policeforum.org or PERF Legislative Assistant Steve Loyka at sloyka@policeforum.org. I look forward to working with you and your staff on this legislation.

Sincerely,

CHUCK WEXLER,
Executive Director.

STATE OF WASHINGTON,
GOVERNOR'S EXECUTIVE POLICY OFFICE,
Olympia, WA, October 5, 2004.

Senator MARIA CANTWELL,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR CANTWELL: On behalf of members of the Governor's Methamphetamine Coordinating Committee, I am writing to thank you for your continued support of Washington's comprehensive strategy to reduce methamphetamine trafficking and use. You have been a champion for funding over five years, and I appreciate your willingness to introduce legislation establishing an ongoing federal grant program for this purpose.

Your proposed "Confronting Methamphetamines Act" would help states like Washington implement effective strategies including prevention, law enforcement, treatment, services to affected children and families, and cleanup. It would recognize the need for multi-disciplinary coalitions, local and tribal involvement, and state laws restricting the sale of precursor chemicals. It would provide planning grants to help states develop strategies, as well as larger grants for implementation.

I appreciate the chance to work with your staff in developing this legislation. It deserves broad support among members of Congress from the many states where the methamphetamine epidemic has spread. Our Methamphetamine Coordinating Committee members look forward to working with your office as the bill is considered. Thank you again for your leadership and support.

Sincerely,

RICHARD D. VAN WAGENEN,
Executive Policy Advisor.

PIERCE COUNTY ALLIANCE,
Tacoma, WA, June 17, 2004.

Senator MARIA CANTWELL,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR CANTWELL: On behalf of the Pierce County Alliance and the Washington State Methamphetamine Initiative, I want to express my sincere appreciation for your outstanding support and efforts to bring about the essential funding that makes our efforts possible. Your work has been crucial to the continuance of the battle to abate the methamphetamine crisis in our state.

Of course, I also fully endorse and support your sponsorship of the "Confronting Methamphetamines Act of 2004" that would further assist states like ours to deal with the multi-faceted problems of methamphetamine production, distribution, and use. I am pleased to note that it builds on the model that we have evolved here in Washington State, encompassing a multi-disciplinary approach with broad collaborations at all governmental levels and across all social sectors. Please do not hesitate to contact me if I can be of any assistance in this endeavor.

Again, my thanks to you for your continued leadership and support on this critical issue.

Sincerely,

TERREE SCHMIDT-WHELAN,
Executive Director.

By Mr. ROCKEFELLER:

S. 2935. A bill to amend section 35 of the Internal Revenue Code of 1986 to improve the health coverage tax credit, and for other purposes; to the Committee on Finance.

Mr. ROCKEFELLER. On Monday, the Government Accountability Office (GAO) released a report on the Trade Adjustment Assistance health coverage tax credit, HCTC. The report confirms what many in Congress have been saying since the HCTC program began—the credit is not enough, the program has several barriers to enrollment, the premiums are prohibitively high for some workers because of medical underwriting, and the program is very expensive to administer.

It is long past time for Congress to focus on the problems with the TAA health coverage tax credit. That is why I am introducing legislation today that will make much-needed improvements to the HCTC program. The TAA Health Coverage Improvement Act of 2004 offers solutions to many of the problems with the HCTC identified by GAO. This legislation will go a long way to make the TAA health care tax credit a realistic option for displaced workers and their families.

When Congress passed the Trade Act of 2002, we made a promise to American workers that the potential loss of jobs will not equal the loss of health care coverage. Unfortunately, Congress has failed to make good on that promise. For the last two years, I have heard from steel retirees and widows in my State about how unaffordable the TAA health care tax credit is. And I have been very frustrated, just as I was when this bill passed, that we were not able to make the credit more affordable and accessible for people who need it the most—laid-off workers and retirees who have very limited income.

For a good number of supporters of the Trade Act of 2002, the health insurance tax credit was the single most important factor in overcoming their concerns about giving the President fast-track authority to move trade agreements through Congress. In my own judgment, the fast-track would not have passed Congress without the health care tax credit. The TAA health credit was the trade-off to balance the President's authority.

Yet, the success many of us envisioned for the health care tax credit has not been realized through implementation. The number of people who have been able to access the health care tax credit over the last two years is extremely disappointing. As of July 2004, only 13,194 out of 229,044 who are eligible for the credit are enrolled in the program. That is less than six percent, which means that over 94 percent of those eligible are not participating.

I must say to my colleagues that Congress has had a hand in these disappointing enrollment figures. We have ignored every opportunity to improve the health coverage tax credit and enhance the lives of workers displaced by trade. Most recently, the members of this body voted against the Wyden-Coleman-Rockefeller-Baucus TAA amendment to the FSC/ETI bill. Not only would this amendment have extended Trade Adjustment Assistance to service workers, it also would have addressed some of the problems GAO has identified with the health coverage credit.

The TAA Health Coverage Improvement Act makes long overdue improvements to the TAA health care tax credit. First, this legislation addresses the issue of affordability. In addition to GAO, several consumer advocacy groups and research organizations—including the Commonwealth Fund, the Center on Budget and Policy Priorities, and Families USA—have cited affordability of the credit as the primary reason for low participation in the HCTC program. The bottom line is that a 65 percent subsidy is not enough. With a 65 percent credit, an eligible individual still has to pay an average of $1,714 out-of-pocket per year for single coverage. This figure is particularly astounding given the fact that the average worker, while actively employed and earning a paycheck, paid just $508 in 2003 for single employer-sponsored health insurance coverage. The TAA Health Coverage Improvement Act makes the credit more affordable by increasing the subsidy amount to 95 percent.

This legislation also addresses the issue of affordability by placing limits on the use of the individual market, as Congress intended under the original law. The Trade Act of 2002 specified that the health insurance credit could not be used for the purchase of health insurance coverage in the individual market except for HCTC-eligible workers who previously had a private, nongroup coverage policy 30 days prior to separation from employment. However, States have been allowed by this Administration to create state-based coverage options in the individual market for any HCTC beneficiaries, including those who did not have individual market coverage one month prior to separation from employment.

Because of the Administration's interpretation of the law, there are people who had employer-based coverage prior to separation from employment who are now being covered in the individual market. This was not the intent of the law. To make matters worse, this interpretation undermines the consumer protections set forth in the law because individual market plans are allowed to vary premiums based on age and medical status. In one State GAO reviewed for its report, because of medical underwriting, HCTC recipients in less-than-perfect health were charged almost six times the premiums charged to recipients rated in the healthiest category. The legislation I am introducing today addresses this problem by clarifying that states can only designate individual market coverage within guidelines of 30-day restriction and by requiring individual market plans to be community-rated.

Second, this legislation guarantees that eligible workers will have access to comprehensive group health coverage. Group coverage is what people know. The vast majority of laid-off workers and PBGC retirees had employer-sponsored group coverage prior to losing their jobs or pension benefits. The TAA Health Coverage Improvement Act designates the Federal Employees Health Benefit Plan (FEHBP) as a qualified group option in every State, so that displaced workers nationwide will have access to the same type of affordable, comprehensive coverage they were used to when they were employed.

Third, the TAA Health Coverage Act clarifies the three month continuous coverage requirement. Under the original TAA statute, displaced workers are required to maintain three months of continuous health insurance coverage in order to qualify for certain consumer protections. Those protections are guaranteed issue, no preexisting condition exclusion, comparable premiums, and comparable benefits. Congress intended this 3 month period to be counted as the 3 months prior to separation from employment. However, the Administration has interpreted the 3 month requirement as 3 months of health insurance coverage prior to enrollment in the new health plan, which usually is after separation from employment and after certification of TAA eligibility. Many laid-off workers and PBGC recipients cannot afford to maintain health coverage in the months between losing their jobs and TAA certification and, therefore, lose eligibility for the statutorily provided consumer protections. This legislation corrects this problem by clarifying that 3 months of continuous coverage means 3 months prior to separation from employment.

Fourth, this bill allows spouses and dependents to receive the health coverage tax credit. Over the last 2 years, younger spouses and dependents of Medicare-eligible individuals have not been able to receive the subsidy because eligibility runs through the worker or retiree. This technicality is unfair to individuals who rely on health coverage through their spouses or parents. The TAA Health Coverage Improvement Act allows younger spouses and dependent children to retain eligibility for the health coverage tax credit in the event the qualified beneficiary becomes eligible for Medicare.

Finally, this legislation streamlines the HCTC enrollment process and makes it easier for trade-displaced workers to access health insurance coverage. According to GAO, two of the factors contributing to low participation include a complicated and fragmented enrollment process and the inability of workers to pay 100 percent of the premium during the 3 to 6 months they are waiting to enroll in advance payment. This legislation includes a presumptive eligibility provision that allows displaced workers to enroll in a qualified health plan and receive the HCTC immediately upon application to the Department of Labor for certification. There is also a provision which directs the Treasury Secretary to pay 100 percent of the cost of premiums directly to the health plans during the months TAA-eligible workers are waiting for advance payment to begin.

As a former Governor, I know how important Trade Adjustment Assistance is to individuals who have lost their jobs due to trade. In West Virginia, thousands of workers have lost their jobs as a result of trade policy. While adjusting to the loss of employment, these individuals still have to pay mortgages, put food on the table, and care for their families. Finding affordable health care adds a significant burden to their worries. The TAA health coverage tax credit is designed to help American workers retain health insurance coverage during this very difficult transition.

Unfortunately, the HCTC program is not living up to its potential. The Government Accountability Office has given us a very specific diagnosis of the problems. Now, it is up to us to fix them. The TAA Health Coverage Improvement Act builds upon the Trade Act of 2002 and the lessons we have learned since in order to make the health coverage credit workable for eligible individuals and their families. I look forward to working with my colleagues to pass this important legislation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2935

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "TAA Health Coverage Improvement Act of 2004".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Improvement of the affordability of the credit.
Sec. 3. 100 percent credit and payment for monthly premiums paid prior to certification of eligibility for the credit.
Sec. 4. Eligibility for certain pension plan participants; presumptive eligibility.
Sec. 5. Clarification of 3-month creditable coverage requirement.
Sec. 6. TAA pre-certification period rule for purposes of determining whether there is a 63-day lapse in creditable coverage.
Sec. 7. Continued qualification of family members after certain events.
Sec. 8. Offering of Federal group coverage.
Sec. 9. Additional requirements for individual health insurance costs.
Sec. 10. Alignment of COBRA coverage with TAA period for TAA-eligible individuals.
Sec. 11. Notice requirements.
Sec. 12. Annual report on enhanced TAA benefits.
Sec. 13. Extension of national emergency grants.
Sec. 14. Extension of funding for operation of State high risk health insurance pools.

SEC. 2. IMPROVEMENT OF THE AFFORDABILITY OF THE CREDIT.

(a) IMPROVEMENT OF AFFORDABILITY.—

(1) IN GENERAL.—Section 35(a) of the Internal Revenue Code of 1986 (relating to credit for health insurance costs of eligible individuals) is amended by striking "65" and inserting "95".

(2) CONFORMING AMENDMENT.—Section 7527(b) of such Code (relating to advance payment of credit for health insurance costs of eligible individuals) is amended by striking "65" and inserting "95".

(b) EFFECTIVE DATE.—The amendments made by this section apply to taxable years beginning after December 31, 2004.

SEC. 3. 100 PERCENT CREDIT AND PAYMENT FOR MONTHLY PREMIUMS PAID PRIOR TO CERTIFICATION OF ELIGIBILITY FOR THE CREDIT.

(a) IN GENERAL.—Subsection (a) of section 35 of the Internal Revenue Code of 1986, as amended by section 2(a)(1), is amended—

(1) by striking the subsection heading and all that follows through "In case" and inserting "AMOUNT OF CREDIT.—

"(1) IN GENERAL.—In case"; and

(2) by adding at the end the following new paragraph:

"(2) 100 PERCENT CREDIT FOR MONTHS PRIOR TO ISSUANCE OF ELIGIBILITY CERTIFICATE.—The amount allowed as a credit against the tax imposed by subtitle A shall be equal to 100 percent in the case of the taxpayer's first eligible coverage months occurring prior to the issuance of a qualified health insurance costs credit eligibility certificate.".

(b) PAYMENT FOR PREMIUMS DUE PRIOR TO CERTIFICATION OF ELIGIBILITY FOR THE CREDIT.—Section 7527 of the Internal Revenue Code of 1986 (relating to advance payment of credit for health insurance costs of eligible individuals) is amended by adding at the end the following new subsection:

"(e) PAYMENT FOR PREMIUMS DUE PRIOR TO ISSUANCE OF CERTIFICATE.—The program established under subsection (a) shall provide—

"(1) that the Secretary shall make payments on behalf of a certified individual of an amount equal to 100 percent of the premiums for coverage of the taxpayer and qualifying family members under qualified health insurance for eligible coverage months (as defined in section 35(b)) occurring prior to the issuance of a qualified health insurance costs credit eligibility certificate; and

"(2) that any payments made under paragraph (1) shall not be included in the gross income of the taxpayer on whose behalf such payments were made.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to months beginning after the date of the enactment of this Act in taxable years ending after such date.

SEC. 4. ELIGIBILITY FOR CERTAIN PENSION PLAN RECIPIENTS; PRESUMPTIVE ELIGIBILITY.

(a) ELIGIBILITY FOR CERTAIN PENSION PLAN RECIPIENTS.—Subsection (c) of section 35 of the Internal Revenue Code of 1986 is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by striking "and" at the end;

(B) in subparagraph (C), by striking the period and inserting ", and"; and

(C) by adding at the end the following:

"(D) an eligible multiemployer pension participant."; and

(2) by adding at the end the following new paragraph:

"(5) ELIGIBLE MULTIEMPLOYER PENSION RECIPIENT.—The term 'eligible multiemployer pension recipient' means, with respect to any month, any individual—

"(A) who has attained age 55 as of the first day of such month,

"(B) who is receiving a benefit from a multiemployer plan (as defined in section 3(37)(A) of the Employee Retirement Income Security Act of 1974), and

"(C) whose former employer has withdrawn from such multiemployer plan pursuant to section 4203(a) of such Act.".

(b) PRESUMPTIVE ELIGIBILITY FOR PETITIONERS FOR TRADE ADJUSTMENT ASSISTANCE.—Subsection (c) of section 35 of the Internal Revenue Code of 1986, as amended by subsection (a), is amended by adding at the end the following new paragraph:

"(6) PRESUMPTIVE STATUS AS A TAA RECIPIENT.—The term 'eligible individual' shall include any individual who is covered by a petition filed with the Secretary of Labor under section 221 of the Trade Act of 1974. This paragraph shall apply to any individual only with respect to months which—

"(A) end after the date that such petition is so filed, and

"(B) begin before the earlier of—

"(i) the 90th day after the date of filing of such petition, or

"(ii) the date on which the Secretary of Labor makes a final determination with respect to such petition.".

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 7527(d) of such Code is amended by striking "or an eligible alternative TAA recipient (as defined in section 35(c)(3))" and inserting ", an eligible alternative TAA recipient (as defined in section 35(c)(3)), an eligible multiemployer pension recipient (as defined in section 35(c)(5), or an individual who is an eligible individual by reason of section 35(c)(6)".

(2) Section 173(f)(4) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)(4)) is amended—

(A) in subparagraph (B), by striking "and" at the end;

(B) in subparagraph (C), by striking the period and inserting a comma; and

(C) by inserting after subparagraph (C), the following new subparagraphs:

"(D) an eligible multiemployer pension recipient (as defined in section 35(c)(5) of the Internal Revenue Code of 1986), and

"(E) an individual who is an eligible individual by reason of section 35(c)(6) of the Internal Revenue Code of 1986.".

(d) TECHNICAL AMENDMENT CLARIFYING ELIGIBILITY OF CERTAIN DISPLACED WORKERS RECEIVING A BENEFIT UNDER A DEFINED BENEFIT PENSION PLAN.—The first sentence of section 35(c)(2) of the Internal Revenue Code of 1986 is amended by inserting before the period the following: ", and shall include any such individual who would be eligible to receive such an allowance but for the fact that the individual is receiving a benefit under a defined benefit plan (as defined in section 3(35) of the Employee Retirement Income Security Act of 1974).".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to months beginning after the date of the enactment of this Act in taxable years ending after such date.

SEC. 5. CLARIFICATION OF 3-MONTH CREDITABLE COVERAGE REQUIREMENT.

(a) IN GENERAL.—Clause (i) of section 35(e)(2)(B) of the Internal Revenue Code of 1986 (defining qualifying individual) is amended by inserting "(prior to the employment separation necessary to attain the status of an eligible individual)" after "9801(c)".

(b) CONFORMING AMENDMENT.—Section 173(f)(2)(B)(ii)(I) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)(2)(B)(ii)(I)) is amended by inserting "(prior to the employment separation necessary to attain the status of an eligible individual)" after "1986".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to months beginning after the date of the enactment of this Act in taxable years ending after such date.

SEC. 6. TAA PRE-CERTIFICATION PERIOD RULE FOR PURPOSES OF DETERMINING WHETHER THERE IS A 63-DAY LAPSE IN CREDITABLE COVERAGE.

(a) ERISA AMENDMENT.—Section 701(c)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1181(c)(2)) is amended by adding at the end the following new subparagraph:

"(C) TAA-ELIGIBLE INDIVIDUALS.—

"(i) TAA PRE-CERTIFICATION PERIOD RULE.—In the case of a TAA-eligible individual, the period beginning on the date the individual has a TAA-related loss of coverage and ending on the date that is 5 days after the postmark date of the notice by the Secretary (or by any person or entity designated by the Secretary) that the individual is eligible for a qualified health insurance costs credit eligibility certificate for purposes of section

7527 of the Internal Revenue Code of 1986 shall not be taken into account in determining the continuous period under subparagraph (A).

"(ii) DEFINITIONS.—The terms 'TAA-eligible individual', and 'TAA-related loss of coverage' have the meanings given such terms in section 605(b)(4)(C).".

(b) PHSA AMENDMENT.—Section 2701(c)(2) of the Public Health Service Act (42 U.S.C. 300gg(c)(2)) is amended by adding at the end the following new subparagraph:

"(C) TAA-ELIGIBLE INDIVIDUALS.—

"(i) TAA PRE-CERTIFICATION PERIOD RULE.—In the case of a TAA-eligible individual, the period beginning on the date the individual has a TAA-related loss of coverage and ending on the date that is 5 days after the postmark date of the notice by the Secretary (or by any person or entity designated by the Secretary) that the individual is eligible for a qualified health insurance costs credit eligibility certificate for purposes of section 7527 of the Internal Revenue Code of 1986 shall not be taken into account in determining the continuous period under subparagraph (A).

"(ii) DEFINITIONS.—The terms 'TAA-eligible individual', and 'TAA-related loss of coverage' have the meanings given such terms in section 2205(b)(4)(C).".

(c) IRC AMENDMENT.—Section 9801(c)(2) of the Internal Revenue Code of 1986 (relating to not counting periods before significant breaks in creditable coverage) is amended by adding at the end the following new subparagraph:

"(D) TAA-ELIGIBLE INDIVIDUALS.—

"(i) TAA PRE-CERTIFICATION PERIOD RULE.—In the case of a TAA-eligible individual, the period beginning on the date the individual has a TAA-related loss of coverage and ending on the date which is 5 days after the postmark date of the notice by the Secretary (or by any person or entity designated by the Secretary) that the individual is eligible for a qualified health insurance costs credit eligibility certificate for purposes of section 7527 shall not be taken into account in determining the continuous period under subparagraph (A).

"(ii) DEFINITIONS.—The terms 'TAA-eligible individual', and 'TAA-related loss of coverage' have the meanings given such terms in section 4980B(f)(5)(C)(iv).".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to months beginning after the date of the enactment of this Act in taxable years ending after such date.

SEC. 7. CONTINUED QUALIFICATION OF FAMILY MEMBERS AFTER CERTAIN EVENTS.

(a) IN GENERAL.—Subsection (g) of section 35 of the Internal Revenue Code of 1986 is amended by redesignating paragraph (9) as paragraph (10) and inserting after paragraph (8) the following new paragraph:

"(9) CONTINUED QUALIFICATION OF FAMILY MEMBERS AFTER CERTAIN EVENTS.—

"(A) ELIGIBLE INDIVIDUAL BECOMES MEDICARE ELIGIBLE.—In the case of a month which would be an eligible coverage month with respect to an eligible individual but for subsection (f)(2)(A), such month shall be treated as an eligible coverage month with respect to any qualifying family member of such eligible individual (but not with respect to such eligible individual).

"(B) DIVORCE.—In the case of a month which would be an eligible coverage month with respect to a former spouse of a taxpayer but for the finalization of a divorce between the spouse and the taxpayer that occurs during the period in which the taxpayer is an eligible individual, such month shall be treated as an eligible coverage month with respect to such former spouse.

"(C) DEATH.—In the case of a month which would be an eligible coverage month with respect to an eligible individual but for the death of such individual, such month shall be treated as an eligible coverage month with respect to any qualifying family of such eligible individual.".

(b) CONFORMING AMENDMENT.—Section 173(f) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)) is amended by adding at the end the following:

"(8) CONTINUED QUALIFICATION OF FAMILY MEMBERS AFTER CERTAIN EVENTS.—

"(A) ELIGIBLE INDIVIDUAL BECOMES MEDICARE ELIGIBLE.—In the case of a month which would be an eligible coverage month with respect to an eligible individual but for subsection (f)(2)(A), such month shall be treated as an eligible coverage month with respect to any qualifying family member of such eligible individual (but not with respect to such eligible individual).

"(B) DIVORCE.—In the case of a month which would be an eligible coverage month with respect to a former spouse of a taxpayer but for the finalization of a divorce between the spouse and the taxpayer that occurs during the period in which the taxpayer is an eligible individual, such month shall be treated as an eligible coverage month with respect to such former spouse.

"(C) DEATH.—In the case of a month which would be an eligible coverage month with respect to an eligible individual but for the death of such individual, such month shall be treated as an eligible coverage month with respect to any qualifying family of such eligible individual.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to months beginning after the date of the enactment of this Act in taxable years ending after such date.

SEC. 8. OFFERING OF FEDERAL GROUP COVERAGE.

(a) PROVISION OF GROUP COVERAGE.—

(1) IN GENERAL.—The Director of the Office of Personnel Management jointly with the Secretary of the Treasury shall establish a program under which eligible individuals (as defined in section 35(c) of the Internal Revenue Code of 1986) are offered enrollment under health benefit plans that are made available under FEHBP.

(2) TERMS AND CONDITIONS.—The terms and conditions of health benefits plans offered under paragraph (1) shall be the same as the terms and coverage offered under FEHBP, except that the percentage of the premium charged to eligible individuals (as so defined) for such health benefit plans shall be equal to 5 percent.

(3) STUDY.—The Director of the Office of Personnel Management jointly with the Secretary of the Treasury shall conduct a study of the impact of the offering of health benefit plans under this subsection on the terms and conditions, including premiums, for health benefit plans offered under FEHBP and shall submit to Congress, not later than 2 years after the date of the enactment of this Act, a report on such study. Such report may contain such recommendations regarding the establishment of separate risk pools for individuals covered under FEHBP and eligible individuals covered under health benefit plans offered under paragraph (1) as may be appropriate to protect the interests of individuals covered under FEHBP and alleviate any adverse impact on FEHBP that may result from the offering of such health benefit plans.

(4) FEHBP DEFINED.—In this section, the term "FEHBP" means the Federal Employees Health Benefits Program offered under chapter 89 of title 5, United States Code.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 35(e) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

"(K) Coverage under a health benefits plan offered under section 8(a)(1) of the TAA Health Care Tax Credit Improvement Act of 2004.".

(2) Section 173(f)(2)(A) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)(2)(A)) is amended by adding at the end the following new clause:

"(xi) Coverage under a health benefits plan offered under section 8(a)(1) of the TAA Health Care Tax Credit Improvement Act of 2004.".

SEC. 9. ADDITIONAL REQUIREMENTS FOR INDIVIDUAL HEALTH INSURANCE COSTS.

(a) IN GENERAL.—Subparagraph (A) of section 35(e)(2) of such Code is amended by striking "subparagraphs (B) through (H) of paragraph (1)" and inserting "paragraph (1) (other than subparagraphs (A), (I), and (K) thereof)".

(b) RATING SYSTEM REQUIREMENT.—Subparagraph (J) of section 35(e)(1) of such Code is amended by adding at the end the following: "For purposes of this subparagraph and clauses (ii), (iii), and (iv) of subparagraph (F), such term does not include any insurance unless the premiums for such insurance are restricted based on a community rating system (determined other than on the basis of age).".

(c) CLARIFICATION OF CONGRESSIONAL INTENT TO LIMIT USE OF INDIVIDUAL HEALTH INSURANCE COVERAGE OPTION.—Section 35(e)(1)(J) (relating to qualified health insurance) is amended in the matter preceding clause (i), by inserting ", but only" after "under individual health insurance".

(d) CONFORMING AMENDMENTS.—Section 173(f)(2) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)(2)) is amended—

(1) in subparagraph (A)(x), by adding at the end the following: "Such term does not include any insurance unless the premiums for such insurance are restricted based on a community rating system (determined other than on the basis of age)."; and

(2) in subparagraph (B)—

(A) in the matter preceding subclause (I), by inserting ", but only" after "under individual health insurance"; and

(B) in clause (i), by striking "clauses (ii) through (viii) of subparagraph (A)" and inserting "subparagraph (A) (other than clauses (i), (x), and (xi) thereof)".

SEC. 10. ALIGNMENT OF COBRA COVERAGE WITH TAA PERIOD FOR TAA-ELIGIBLE INDIVIDUALS.

(a) ERISA.—Section 605(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1165(b)) is amended—

(1) in the subsection heading, by inserting "AND COVERAGE" after "ELECTION"; and

(2) in paragraph (2)—

(A) in the paragraph heading, by inserting "AND PERIOD" after "COMMENCEMENT";

(B) by striking "and shall" and inserting ", shall"; and

(C) by inserting ", and in no event shall the maximum period required under section 602(2)(A) be less than the period during which the individual is a TAA-eligible individual" before the period at the end.

(b) INTERNAL REVENUE CODE OF 1986.—Section 4980B(f)(5)(C) of the Internal Revenue Code of 1986 is amended—

(1) in the subparagraph heading, by inserting "AND COVERAGE" after "ELECTION"; and

(2) in clause (ii)—

(A) in the clause heading, by inserting "AND PERIOD" after "COMMENCEMENT";

(B) by striking "and shall" and inserting ", shall"; and

(C) by inserting ", and in no event shall the maximum period required under paragraph (2)(B)(i) be less than the period during which the individual is a TAA-eligible individual" before the period at the end.

(c) PUBLIC HEALTH SERVICE ACT.—Section 2205(b) of the Public Health Service Act (42 U.S.C. 300bb-5(b)) is amended—

(1) in the subsection heading, by inserting "AND COVERAGE" after "ELECTION"; and

(2) in paragraph (2)—

(A) in the paragraph heading, by inserting "AND PERIOD" after "COMMENCEMENT";

(B) by striking "and shall" and inserting ", shall"; and

(C) by inserting ", and in no event shall the maximum period required under section 2202(2)(A) be less than the period during which the individual is a TAA-eligible individual" before the period at the end.

SEC. 11. NOTICE REQUIREMENTS.

Section 7527 of the Internal Revenue Code of 1986 (relating to advance payment of credit for health insurance costs of eligible individuals), as amended by section 3(b), is amended by adding at the end the following new subsection:

"(f) INCLUSION OF CERTAIN INFORMATION.—The notice by the Secretary (or by any person or entity designated by the Secretary) that an individual is eligible for a qualified health insurance costs credit eligibility certificate shall include—

"(1) the name, address, and telephone number of the State office or offices responsible for determining that the individual is eligible for such certificate and for providing the individual with assistance with enrollment in qualified health insurance (as defined in section 35(e)),

"(2) a list of the coverage options that are treated as qualified health insurance (as so defined) by the State in which the individual resides, and

"(3) in the case of a TAA-eligible individual (as defined in section 4980B(f)(5)(C)(iv)(II)), a statement informing the individual that the individual has 63 days from the date that is 5 days after the postmark date of such notice to enroll in such insurance without a lapse in creditable coverage (as defined in section 9801(c)).".

SEC. 12. ANNUAL REPORT ON ENHANCED TAA BENEFITS.

Not later than October 1 of each year (beginning in 2004) the Secretary of the Treasury, after consultation with the Secretary of Labor, shall report to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means and the Committee on Education and the Workforce of the House of Representatives the following information with respect to the most recent taxable year ending before such date:

(1) The total number of participants utilizing the health insurance tax credit under section 35 of the Internal Revenue Code of 1986, including a measurement of such participants identified—

(A) by State, and

(B) by coverage under COBRA continuation provisions (as defined in section 9832(d)(1) of such Code) and by non-COBRA coverage (further identified by group and individual market).

(2) The range of monthly health insurance premiums offered and the average and median monthly health insurance premiums offered to TAA-eligible individuals (as defined in section 4980B(f)(5)(C)(iv)(II) of such Code) under COBRA continuation provisions (as defined in section 9832(d)(1) of such Code), State-based continuation coverage provided under a State law that requires such coverage, and each category of coverage described in section 35(e)(1) of such Code, identified by State and by the actuarial value of such coverage and the specific benefits provided and cost-sharing imposed under such coverage.

(3) The number of States applying for and receiving national emergency grants under section 173(f) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)) and the time necessary for application approval of such grants.

(4) The cost of administering the health credit program under section 35 of such Code, by function, including the cost of subcontractors.

SEC. 13. EXTENSION OF NATIONAL EMERGENCY GRANTS.

(a) IN GENERAL.—Section 173(f) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)) is amended—

(1) by striking paragraph (1) and inserting the following new paragraph:

"(1) USE OF FUNDS.—

"(A) HEALTH INSURANCE COVERAGE FOR ELIGIBLE INDIVIDUALS IN ORDER TO OBTAIN QUALIFIED HEALTH INSURANCE THAT HAS GUARANTEED ISSUE AND OTHER CONSUMER PROTECTIONS.—Funds made available to a State or entity under paragraph (4)(A) of subsection (a) shall be used to provide an eligible individual described in paragraph (4)(C) and such individual's qualifying family members with health insurance coverage for the 3-month period that immediately precedes the first eligible coverage month (as defined in section 35(b) of the Internal Revenue Code of 1986) in which such eligible individual and such individual's qualifying family members are covered by qualified health insurance that meets the requirements described in clauses (i) through (iv) of section 35(e)(2)(A) of the Internal Revenue Code of 1986 (or such longer minimum period as is necessary in order for such eligible individual and such individual's qualifying family members to be covered by qualified health insurance that meets such requirements).

"(B) ADDITIONAL USES.—Funds made available to a State or entity under paragraph (4)(A) of subsection (a) may be used by the State or entity for the following:

"(i) HEALTH INSURANCE COVERAGE.—To assist an eligible individual and such individual's qualifying family members with enrolling in health insurance coverage and qualified health insurance or paying premiums for such coverage or insurance.

"(ii) ADMINISTRATIVE EXPENSES AND START-UP EXPENSES TO ESTABLISH GROUP HEALTH PLAN COVERAGE OPTIONS FOR QUALIFIED HEALTH INSURANCE.—To pay the administrative expenses related to the enrollment of eligible individuals and such individuals' qualifying family members in health insurance coverage and qualified health insurance, including—

"(I) eligibility verification activities;

"(II) the notification of eligible individuals of available health insurance and qualified health insurance options;

"(III) processing qualified health insurance costs credit eligibility certificates provided for under section 7527 of the Internal Revenue Code of 1986;

"(IV) providing assistance to eligible individuals in enrolling in health insurance coverage and qualified health insurance;

"(V) the development or installation of necessary data management systems; and

"(VI) any other expenses determined appropriate by the Secretary, including start-up costs and on going administrative expenses, in order for the State to treat the coverage described in subparagraph (C), (D), (E), or (F)(i) of section 35(e)(1) of the Internal Revenue Code of 1986, or, only if the coverage is under a group health plan, the coverage described in subparagraph (F)(ii), (F)(iii), (F)(iv), (G), or (H) of such section, as qualified health insurance under that section.

"(iii) OUTREACH.—To pay for outreach to eligible individuals to inform such individuals of available health insurance and qualified health insurance options, including outreach consisting of notice to eligible individuals of such options made available after the date of enactment of this clause and direct assistance to help potentially eligible individuals and such individual's qualifying family members qualify and remain eligible for the credit established under section 35 of the Internal Revenue Code of 1986 and advance payment of such credit under section 7527 of such Code.

"(iv) BRIDGE FUNDING.—To assist potentially eligible individuals purchase qualified health insurance coverage prior to issuance of a qualified health insurance costs credit eligibility certificate under section 7527 of the Internal Revenue Code of 1986 and commencement of advance payment, and receipt of expedited payment, under subsections (a) and (e), respectively, of that section.

"(C) RULE OF CONSTRUCTION.—The inclusion of a permitted use under this paragraph shall not be construed as prohibiting a similar use of funds permitted under subsection (g)."; and

(2) by striking paragraph (2) and inserting the following new paragraph:

"(2) QUALIFIED HEALTH INSURANCE.—For purposes of this subsection and subsection (g), the term 'qualified health insurance' has the meaning given that term in section 35(e) of the Internal Revenue Code of 1986.".

(b) FUNDING.—Section 174(c)(1) of the Workforce Investment Act of 1998 (29 U.S.C. 2919(c)(1)) is amended—

(1) in the paragraph heading, by striking "AUTHORIZATION AND APPROPRIATION FOR FISCAL YEAR 2002" and inserting "APPROPRIATIONS"; and

(2) by striking subparagraph (A) and inserting the following new subparagraph:

"(A) to carry out subsection (a)(4)(A) of section 173—

"(i) $10,000,000 for fiscal year 2002; and

"(ii) $300,000,000 for the period of fiscal years 2005 through 2007; and".

(c) REPORT REGARDING FAILURE TO COMPLY WITH REQUIREMENTS FOR EXPEDITED APPROVAL PROCEDURES.—Section 173(f) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)) is amended by adding at the end the following new paragraph:

"(8) REPORT FOR FAILURE TO COMPLY WITH REQUIREMENTS FOR EXPEDITED APPROVAL PROCEDURES.—If the Secretary fails to make the notification required under clause (i) of paragraph (3)(A) within the 15-day period required under that clause, or fails to provide the technical assistance required under clause (ii) of such paragraph within a timely manner so that a State or entity may submit an approved application within 2 months of the date on which the State or entity's previous application was disapproved, the Secretary shall submit a report to Congress explaining such failure.".

(d) TECHNICAL AMENDMENT.—Effective as if included in the enactment of the Trade Act of 2002 (Public Law 107-210; 116 Stat. 933), subsection (f) of section 203 of that Act is repealed.

SEC. 14. EXTENSION OF FUNDING FOR OPERATION OF STATE HIGH RISK HEALTH INSURANCE POOLS.

(a) EXTENSION OF SEED GRANTS.—Section 2745 of the Public Health Service Act (42 U.S.C. 300gg-45) is amended—

(1) in subsection (a), in the subsection heading by inserting "EXTENSION OF" before "SEED"; and

(2) in subsection (c)(1), by striking "$20,000,000" and all that follows through "2003" and inserting "$15,000,000 for the period of fiscal years 2005 and 2006".

(b) FUNDS FOR OPERATIONS.—Section 2745 of the Public Health Service Act (42 U.S.C. 300gg-45) is amended—

(1) in subsection (b)—

(A) in the subsection heading by striking "MATCHING"; and

(B) by striking paragraph (2) and inserting the following new paragraph:

"(2) ALLOTMENT.—The amounts appropriated under subsection (c)(2) for a fiscal year shall be made available to the States (or the entities that operate the high risk pool under applicable State law) as follows:

"(A) An amount equal to 50 percent of the appropriated amount for the fiscal year shall be allocated in equal amounts among each eligible State that applies for assistance under this subsection.

"(B) An amount equal to 25 percent of the appropriated amount for the fiscal year shall be allocated among the States so that the amount provided to a State bears the same ratio to such available amount as the number of uninsured individuals in the State bears to the total number of uninsured individuals in all States (as determined by the Secretary).

"(C) An amount equal to 25 percent of the appropriated amount for the fiscal year shall be allocated among the States so that the amount provided to a State bears the same ratio to such available amount as the number of individuals enrolled in health care coverage through the qualified high risk pool of the State bears to the total number of individuals so enrolled through qualified high risk pools in all States (as determined by the Secretary)."; and

(2) in subsection (c)(2), by striking "$40,000,000" and all that follows through the period and inserting "$75,000,000 for each of fiscal years 2005 through 2009 to make allotments under subsection (b)(2).".

(c) DEFINITIONS.—Section 2745 of the Public Health Service Act (42 U.S.C. 300gg-45) is amended—

(1) in subsection (d), by inserting after "2744(c)(2)" the following: ", except that with respect to subparagraph (A) of such section a State may elect to provide for the enrollment of eligible individuals through an acceptable alternative mechanism,"; and

(2) by adding at the end the following new subsection:

"(e) STANDARD RISK RATE.—In subsection (b)(1)(A), the term 'standard risk rate' means a rate—

"(1) determined under the State high risk pool by considering the premium rates charged by other health insurers offering health insurance coverage to individuals in the insurance market served;

"(2) that is established using reasonable actuarial techniques; and

"(3) that reflects anticipated claims experience and expenses for the coverage involved.".

By Mr. CAMPBELL:

S. 2936. A bill to restore land to the Enterprise Rancheria to rectify an inequitable taking of the land; to the Committee on Indian Affairs.

Mr. CAMPBELL. Mr. President, today I am pleased to introduce the Enterprise Rancheria Land Restoration Act of 2004, a bill that would restore lands to the Enterprise Rancheria, a Federally recognized Indian tribe. The tribe seeks this restoration to rectify an inequitable taking of their lands for the Oroville Dam in 1964.

I am introducing this bill, at the request of the tribe, primarily to initiate a discussion regarding the tribe's efforts to obtain an equitable resolution among all the interested parties, including the tribe, local communities, and the tribe's congressional delegation.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2936

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Enterprise Rancheria Land Restoration Act of 2004".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the Enterprise Rancheria is 1 of several Federally recognized tribes of Maidu Indians in the State of California that function under a government-to-government relationship with the Federal Government;

(2) the Maidu people lived for thousands of years along the watershed of the Feather River drainage area in north central California, near what is now known as the Sacramento Valley floor, and near the confluence of the south, middle, north, and west branches of the Feather River;

(3) in 1916, pursuant to section 3 of the Act of August 1, 1914 (38 Stat. 589, chapter 222), and other Federal laws relating to homeless Indians, a parcel of land comprising approximately 40.64 acres was purchased for Enterprise Rancheria;

(4) in 1915, the Secretary of the Interior developed a census of approximately 51 Maidu Indians, which is now used for the purpose of establishing the base membership roll for the Enterprise Rancheria;

(5) Enterprise Rancheria has been continuously federally recognized since 1915 and was again recognized by virtue of voting in an election on June 12, 1935, pursuant to section 19 of the Act of June 18, 1934 (commonly known as the "Indian Reorganization Act") (48 Stat. 984, chapter 576);

(6) Enterprise Rancheria has a constitution recognized by the Bureau of Indian Affairs, a functioning governing body, and approximately 664 enrolled members;

(7) on August 20, 1964, Public Law 88-453 was enacted, which authorized the Secretary of the Interior to sell Enterprise Rancheria No. 2 parcel to the State of California for the approximate sum of $12,196, for the sole purpose of construction of Oroville Dam;

(8) the State of California requested the law described in paragraph (7) because Enterprise Rancheria No. 2 parcel would be within the reservoir area of the Oroville Dam, an important element of the California water plan;

(9) as a result of Public Law 88-453, Enterprise Rancheria No. 2 parcel is nearly all under water within the reservoir of the Oroville Dam;

(10) pursuant to Public Law 88-453, $11,175 was paid as consideration for the 40.46 acres of Enterprise Rancheria No. 2 parcel, along with $1,020 for appraised personal property, for a total purchase price of $12,196.00;

(11) the payment was distributed to 4 individuals, Henry B. Martin, Vera Martin Kiras, Stanley Martin, and Ralph G. Martin, who received a pro rata share of the proceeds;

(12) the remaining heirs and members of the Tribe received no compensation for the sale of the land;

(13) subsequent to the sale of the Enterprise Rancheria No. 2 parcel, the Enterprise Rancheria members, having lost their homes, community, and traditional homeland, were forced to scatter throughout the surrounding foothill communities and the Sacramento Valley area, which has caused a continuing decay of their culture, language, and traditions;

(14) recognizing that the final resolution of any equitable compensation claims based on the inequitable taking of Enterprise Rancheria No. 2 parcel will take many years and entail great expense to all parties, rectifying the loss of the Enterprise Rancheria is imperative at this time;

(15) the uncertainty as to the availability of Enterprise Rancheria land taken in 1964 should be settled as soon as practicable to avoid further damage to the long-term economic, social, cultural planning, and development of the Enterprise Rancheria;

(16) to advance and fulfill the goals of Federal Indian policy and the responsibility of the United States to protect the land base and members of Enterprise Rancheria, it is appropriate that the United States participate in the implementation of restoring the land in accordance with this Act; and

(17) this Act settles all claims Enterprise Rancheria may have regarding any equitable compensation based on the taking of the original Enterprise Rancheria No. 2 parcel in 1964.

(b) PURPOSES.—The purposes of this Act are—

(1) to rectify an inequitable taking of land owned by Enterprise Rancheria, specifically that parcel known as Enterprise Rancheria No. 2 parcel, which comprised approximately 40.64 acres, in a manner that is consistent with the trust responsibility of the United States toward Federally recognized Indian tribes;

(2) to restore land to the Enterprise Rancheria and improve the socioeconomic, cultural, and traditional aspects of the Maidu people of the Enterprise Rancheria, through land that can be used for economic development to improve the social, cultural, governmental, educational, health, and general welfare of Enterprise Rancheria and members of the Enterprise Rancheria; and

(3) to require that land not to exceed 41 acres acquired by Enterprise Rancheria within the 40-mile radius of Enterprise Rancheria No. 2 parcel and within the Estom Yumeka Maidu aboriginal boundaries, if approved for trust status pursuant to part 151 of title 25, Code of Federal Regulations (or a successor regulation), be treated for all legal purposes as the restoration of land for an Indian tribe that is restored to Federal recognition.

SEC. 3. DEFINITIONS.

In this Act:

(1) ABORIGINAL BOUNDARIES.—The term "aboriginal boundaries" means the boundaries of the land occupied and possessed by the Maidu people prior to conquest, as a defined area of what is now California, designated as the land near and around the confluence of the Feather River within the Sacramento Valley.

(2) ACQUIRED LAND.—The term "acquired land" means that land purchased on or after the date of enactment of this Act to restore land taken from the Enterprise Rancheria for the State of California, pursuant to Public Law 88-453.

(3) ENTERPRISE RANCHERIA.—The term "Enterprise Rancheria" means the Rancheria Tribe that was federally recognized on April 20, 1915, with a governing constitution, approved April 12, 1995.

(4) ENTERPRISE RANCHERIA NO. 2 PARCEL.—The term "Enterprise Rancheria No. 2 parcel" means the original 40.64 acre land base parcel belonging to the Maidu Indians that was established and purchased by the United States and placed in trust status for the homeless Maidu people in the area of the parcel.

(5) FEATHER RIVER DRAINAGE AREA.—The term "Feather River drainage area" means the area near and around the confluence of the south, middle, north, and west branches of the Feather River and drainage area below the confluence.

(6) RANCHERIA ACT.—The term "Rancheria Act" means Public Law 85-671 (commonly known as the "California Rancheria Act"), which terminated 38 California Rancherias.

(7) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(8) TRUST STATUS.—The term "trust status" means the status of land, the title of which is held by the United States on behalf and for the beneficial use of recognized Indian tribes in accordance with part 151 of title 25, Code of Federal Regulations (or a successor regulation).

SEC. 4. PLACEMENT OF ACQUIRED LAND IN TRUST STATUS.

The Secretary may place into trust status not to exceed 41 acres of land of the Enterprise Rancheria, if the land is approved for trust status.

SEC. 5. REPLACEMENT LAND.

(a) PURCHASE.—To restore the Enterprise Rancheria No. 2 parcel, the Enterprise Rancheria may purchase not to exceed 41 acres of replacement land within the 40-mile radius of Enterprise Rancheria No. 2 parcel and within the aboriginal boundaries of the Estom Yumeka Maidu.

(b) TRUST STATUS.—The Secretary may place the replacement land into trust status, the title to which shall be held in trust by the United States for the benefit of Enterprise Rancheria, if all Federal requirements of placing the land into trust status are satisfied.

(c) TREATMENT OF REPLACEMENT LAND.—The acquisition of land under subsection (a) shall be treated as the restoration of land for an Indian tribe that is recognized by the Federal Government.

SEC. 6. EFFECT ON TRUST STATUS.

This Act does not limit the authority of the Secretary to approve or deny any land application for trust status.

SEC. 7. FULL SATISFACTION OF CLAIMS.

On the placement of the land described in section 5 into trust status, the Enterprise Rancheria shall be considered to have relinquished all equitable compensation claims the Enterprise Rancheria may have against the United States and the State of California arising from the sale of Enterprise Rancheria No. 2 parcel.

By Mr. DURBIN (for himself and Mr. REED):

S. 2937. A bill to amend the Public Health Service Act to establish a grant program to provide supportive services in permanent supportive housing for chronically homeless individuals, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. DEWINE. Mr. President, today I rise with my colleague, Senator JACK REED, to introduce the Services for Ending Long-Term Homelessness Act. I would like to thank Senator REED for his support in introducing this bill. I appreciate his dedication and commitment to this issue.

The chronically homeless are about 10 percent of the entire homeless population, but consume a majority of the services. There are approximately 200,000 to 250,000 people who experience chronic homelessness. Those numbers include the heads of families, as well.

Tragically, for these individuals, the periods of homelessness are measured in years—not weeks and months. They tend to have disabling health and behavioral health problems: 40 percent have substance abuse disorders, 25 percent have a physical disability, and 20 percent have serious mental illness. These factors often contribute to a person becoming homeless, in the first place, and are certainly an impediment to overcoming it.

The President has set a goal of ending chronic homelessness in 10 years. The President's New Freedom Commission on Mental Health, chaired by the Ohio Department of Mental Health Director, Mike Hogan, recommended that a comprehensive program be created to facilitate access to permanent supportive housing for individuals and families who are chronically homeless. This recommendation is so important because affordable housing, alone, is not enough for this hard to reach group. And, temporary shelter-housing does not provide the stability and services needed to provide long-term positive outcomes. Only supportive housing, where the chronically homeless can receive shelter and services, such as mental health and substance abuse treatment, has been effective in decreasing their chances of returning to the streets and increasing their chances for leading productive lives.

Not only is it right to help this group of hard to reach individuals, but it is also fiscally responsible. This group is one of the most expensive groups to serve. As I mentioned previously, they represent 10 percent of the overall homeless population, however they consume a majority of the services for the homeless. They consume the most emergency housing and health care services, which are also the most costly to provide. By encouraging supportive housing, we are providing the services necessary for these individuals and families to really get back on their feet. We can either continue to provide expensive emergency services to these needy people or we can give them the right kind of help—the type of help they need for their long-term well-being and long-term well-being of our communities.

Unfortunately, current programs for funding services in permanent supportive housing, other than those administered by the Department of Housing and Urban Development (HUD), were not designed to be coordinated with housing programs. These programs were also not designed to meet the challenging needs of this specific subgroup of the homeless. That is why the bill we are introducing today would provide the authorization to fund services to the chronically homeless in supportive housing by providing grants which can be used with existing programs through HUD and State and local communities.

This bill also would encourage those who provide services to the chronically homeless, such as SAMHSA within the Department of Health and Human Services, to work with and coordinate their efforts with those who provide the physical housing, such as HUD. Under the current administration, these two departments have started to truly coordinate their efforts and this bill would encourage and support that continued collaboration.

This is a good bill, and it could make a real difference in the lives of so many individuals in need. I ask my colleagues to join us in support.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2937

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Services for Ending Long-Term Homelessness Act".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Nationally, there are approximately 200,000 to 250,000 people who experience chronic homelessness, including some families with children. Chronically homeless people often live in shelters or on the streets for years at a time, experience repeated episodes of homelessness without achieving housing stability, or cycle between homelessness, jails, mental health facilities, and hospitals.

(2) The President's New Freedom Commission on Mental Health recommended the development and implementation of a comprehensive plan designed to facilitate access to 150,000 units of permanent supportive housing for consumers and families who are chronically homeless. The Commission found that affordable housing alone is insufficient for many people with severe mental illness, and that flexible, mobile, individualized support services are also necessary to support and sustain consumers in their housing.

(3) Congress and the President have set a goal of ending chronic homelessness in 10 years.

(4) Permanent supportive housing is a proven and cost effective solution to chronic homelessness. A recent study by the University of Pennsylvania found that each unit of supportive housing for homeless people with mental illness in New York City resulted in public savings of $16,281 per year in systems of care such as mental health, human services, health care, veterans' affairs, and corrections.

(5) Current programs for funding services in permanent supportive housing, other than those administered by the Department of Housing and Urban Development, were not designed to be closely coordinated with housing resources, nor were they designed to meet the multiple needs of people who are chronically homeless.

SEC. 3. DUTIES OF ADMINISTRATOR OF SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION.

Section 501(d) of the Public Health Service Act (42 U.S.C. 290aa(d)) is amended—

(1) in paragraph (17), by striking "and" at the end;

(2) in paragraph (18), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(19) collaborate with Federal departments and programs that are part of the President's Interagency Council on Homelessness, particularly the Department of Housing and Urban Development, the Department of Labor, and the Department of Veterans Affairs, and with other agencies within the Department of Health and Human Services, particularly the Health Resources and Services Administration, the Administration on Children and Families, and the Centers for Medicare and Medicaid Services, to design national strategies for providing services in supportive housing that will assist in ending chronic homelessness and to implement programs that address chronic homelessness.".

SEC. 4. GRANTS FOR SERVICES FOR CHRONICALLY HOMELESS INDIVIDUALS IN SUPPORTIVE HOUSING.

Title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended by adding at the end the following:

"PART J—GRANTS FOR SERVICES TO END CHRONIC HOMELESSNESS

"SEC. 596. GRANTS FOR SERVICES TO END CHRONIC HOMELESSNESS.

"(a) IN GENERAL.—

"(1) GRANTS.—The Secretary shall make grants to entities described in paragraph (2) for the purpose of carrying out projects to provide the services described in subsection (c) to chronically homeless individuals in permanent supportive housing.

"(2) ELIGIBLE ENTITIES.—For purposes of paragraph (1), an entity described in this paragraph is—

"(A) a State or political subdivision of a State, an Indian tribe or tribal organization, or a public or nonprofit private entity, including a community-based provider of homelessness services, health care, housing, or other services important to individuals experiencing chronic homelessness; or

"(B) a consortium composed of entities described in subparagraph (A), which consortium includes a public or nonprofit private entity that serves as the lead applicant and has responsibility for coordinating the activities of the consortium.

"(b) PRIORITIES.—In making grants under subsection (a), the Secretary shall give priority to applicants demonstrating that the applicants—

"(1) target funds to individuals or families who—

"(A) have been homeless for longer periods of time or have experienced more episodes of homelessness than are required to meet the definition of chronic homelessness under this section;

"(B) have high rates of utilization of emergency public systems of care; or

"(C) have a history of interactions with law enforcement and the criminal justice system;

"(2) have greater funding commitments from State or local government agencies responsible for overseeing mental health treatment, substance abuse treatment, medical care, and employment (including commitments to provide Federal funds in accordance with subsection (d)(2)(B)(ii)); and

"(3) will provide for an increase in the number of units of permanent supportive housing that would serve chronically homeless individuals in the community as a result of an award of a grant under subsection (a).

"(c) SERVICES.—The services referred to in subsection (a) are the following:

"(1) Services provided by the grantee or by qualified subcontractors that promote recovery and self-sufficiency and address barriers to housing stability, including but not limited to the following:

"(A) Mental health services, including treatment and recovery support services.

"(B) Substance abuse treatment and recovery support services, including counseling, treatment planning, recovery coaching, and relapse prevention.

"(C) Integrated, coordinated treatment and recovery support services for co-occurring disorders.

"(D) Health education, including referrals for medical and dental care.

"(E) Services designed to help individuals make progress toward self-sufficiency and recovery, including benefits advocacy, money management, life-skills training, self-help programs, and engagement and motivational interventions.

"(F) Parental skills and family support.

"(G) Case management.

"(H) Other supportive services that promote an end to chronic homelessness.

"(2) Services, as described in paragraph (1), that are delivered to individuals and families who are chronically homeless and who are scheduled to become residents of permanent supportive housing within 90 days pending the location or development of an appropriate unit of housing.

"(3) For individuals and families who are otherwise eligible, and who have voluntarily chosen to seek other housing opportunities after a period of tenancy in supportive housing, services, as described in paragraph (1), that are delivered, for a period of 90 days after exiting permanent supportive housing or until the individuals have transitioned to comprehensive services adequate to meet their current needs, provided that the purpose of the services is to support the individuals in their choice to transition into housing that is responsive to their individual needs and preferences.

"(d) MATCHING FUNDS.—

"(1) IN GENERAL.—A condition for the receipt of a grant under subsection (a) is that, with respect to the cost of the project to be carried out by an applicant pursuant to such subsection, the applicant agree as follows:

"(A) In the case of the initial grant pursuant to subsection (i)(1)(A), the applicant will, in accordance with paragraphs (2) and (3), make available contributions toward such costs in an amount that is not less than $1 for each $3 of Federal funds provided in the grant.

"(B) In the case of a renewal grant pursuant to subsection (i)(1)(B), the applicant will, in accordance with paragraphs (2) and (3), make available contributions toward such costs in an amount that is not less than $1 for each $1 of Federal funds provided in the grant.

"(2) SOURCE OF CONTRIBUTION.—For purposes of paragraph (1), contributions made by an applicant are in accordance with this paragraph if made as follows:

"(A) The contribution is made from funds of the applicant or from donations from public or private entities.

"(B) Of the contribution—

"(i) not less than 80 percent is from non-Federal funds; and

"(ii) not more than 20 percent is from Federal funds provided under programs that—

"(I) are not expressly directed at services for homeless individuals, but whose purposes are broad enough to include the provision of a service or services described in subsection (c) as authorized expenditures under such program; and

"(II) do not prohibit Federal funds under the program from being used to provide a contribution that is required as a condition for obtaining Federal funds.

"(3) DETERMINATION OF AMOUNT CONTRIBUTED.—Contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of non-Federal contributions required in paragraph (2)(B)(i).

"(e) ADMINISTRATIVE EXPENSES.—A condition for the receipt of a grant under subsection (a) is that the applicant involved agree that not more than 6 percent of the grant will be expended for administrative expenses with respect to the grant.

"(f) CERTAIN USES OF FUNDS.—Notwithstanding other provisions of this section, a grantee under subsection (a) may expend not more than 20 percent of the grant to provide the services described in subsection (c) to homeless individuals who are not chronically homeless.

"(g) APPLICATION FOR GRANT.—A grant may be made under subsection (a) only if an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

"(h) CERTAIN REQUIREMENTS.—A condition for the receipt of a grant under subsection (a) is that the applicant involved demonstrate the following:

"(1) The applicant and all direct providers of services have the experience, infrastructure, and expertise needed to ensure the quality and effectiveness of services, which may be demonstrated by any of the following:

"(A) Compliance with all local, city, county, or State requirements for licensing, accreditation, or certification (if any) which are applicable to the proposed project.

"(B) A minimum of two years experience providing comparable services that do not require licensing, accreditation, or certification.

"(C) Certification as a Medicaid service provider, including health care for the homeless programs and community health centers.

"(D) An executed agreement with a relevant State or local government agency that will provide oversight over the mental health, substance abuse, or other services that will be delivered by the project.

"(2) There is a mechanism for determining whether residents are chronically homeless. Such a mechanism may rely on local data systems or records of shelter admission. If there are no sources of data regarding the duration or number of homeless episodes, or if such data are unreliable for the purposes of this subsection, an applicant must demonstrate that the project will implement appropriate procedures, taking into consideration the capacity of local homeless service providers to document episodes of homelessness and the challenges of engaging persons who have been chronically homeless, to verify that an individual or family meets the definition for being chronically homeless under this section.

"(3) The applicant participates in a local, regional, or statewide homeless management information system.

"(i) DURATION OF INITIAL AND RENEWAL GRANTS; ADDITIONAL PROVISIONS REGARDING RENEWAL GRANTS.—

"(1) IN GENERAL.—Subject to paragraphs (2) and (3), the period during which payments are made to a grantee under subsection (a) shall be in accordance with the following:

"(A) In the case of the initial grant, the period of payments shall be not less than three years and not more than five years.

"(B) In the case of a subsequent grant (referred to in this subsection as a 'renewal grant'), the period of payments shall be not more than five years.

"(2) ANNUAL APPROVAL; AVAILABILITY OF APPROPRIATIONS; NUMBER OF GRANTS.—The provision of payments under an initial or renewal grant is subject to annual approval by the Secretary of the payments and to the availability of appropriations for the fiscal year involved to make the payments. This subsection may not be construed as establishing a limitation on the number of grants under subsection (a) that may be made to an entity.

"(3) ADDITIONAL PROVISIONS REGARDING RENEWAL GRANTS.—

"(A) PRIORITY IN MAKING GRANTS.—In making grants under subsection (a), the Secretary shall give priority to renewal grants.

"(B) COMPLIANCE WITH MINIMUM STANDARDS.—A renewal grant may be made by the Secretary only if the Secretary determines that the applicant involved has, in the project carried out with the grant, maintained compliance with minimum standards for quality and successful outcomes for housing retention, as determined by the Secretary.

"(C) AMOUNT.—The maximum amount of a renewal grant under this subsection shall not exceed an amount equal to—

"(i) 75 percent of the amount of Federal funds provided in the final year of the initial grant period; or

"(ii) 50 percent of the total costs of sustaining the program funded under the grant at the level provided for in the year preceding the year for which the renewal grant is being awarded;

as determined by the Secretary.

"(j) STRATEGIC PERFORMANCE OUTCOMES AND REPORTS.—

"(1) IN GENERAL.—The Secretary shall, as a condition of the receipt of grants under subsection (a), require grantees to report data regarding the performance outcomes of the projects carried out pursuant to such subsection. Consistent with the requirement of the preceding sentence, each applicant shall measure and report specific performance outcomes related to the long-term goals of increasing stability within the community for individuals who have been chronically homeless, and decreasing recurrence of periods of homelessness.

"(2) PERFORMANCE OUTCOMES.—The performance outcomes identified by a grantee under paragraph (1) shall include, with respect to individuals who have been chronically homeless, improvements in—

"(A) housing stability;

"(B) employment and education;

"(C) problems related to substance abuse;

"(D) participation in mental health services; and

"(E) other areas as the Secretary determines appropriate.

"(3) COORDINATION AND CONSISTENCY WITH OTHER HOMELESS ASSISTANCE PROGRAMS.—

"(A) PROCEDURES.—In establishing strategic performance outcomes and reporting requirements under paragraph (1), the Secretary shall develop and implement procedures that minimize the costs and burdens to grantees and program participants, and that are practical, streamlined, and designed for consistency with the requirements of the homeless assistance programs administered by the Secretary of Housing and Urban Development.

"(B) APPLICANT COORDINATION.—Applicants under this section shall coordinate with community stakeholders, including participants in the local homeless management information system, concerning the development of systems to measure performance outcomes and with the Secretary for assistance with data collection and measurements activities.

"(4) REPORT.—A grantee shall submit an annual report to the Secretary that—

"(A) identifies the grantee's progress towards achieving its strategic performance outcomes; and

"(B) describes other activities conducted by the grantee to increase the participation, housing stability, and other improvements in outcomes for individuals who have been chronically homeless.

"(k) TRAINING AND TECHNICAL ASSISTANCE.—The Secretary, directly or through awards of grants or contracts to public or nonprofit private entities, shall provide training and technical assistance regarding the planning, development, and provision of services in projects under subsection (a).

"(l) BIENNIAL REPORTS TO CONGRESS.—Not later than two years after the date of the enactment of the Services for Ending Long-Term Homelessness Act, and biennially thereafter, the Secretary shall submit to the Congress a report on projects under subsection (a) that includes a summary of information received by the Secretary under subsection (j), and that describes the impact of the program under subsection (a) as part of a comprehensive strategy for ending long term homelessness and improving outcomes for individuals with mental illness and substance abuse problems.

"(m) DEFINITIONS.—For purposes of this section:

"(1) The term 'chronically homeless' means an individual or family who—

"(A) is currently homeless;

"(B) has been homeless continuously for at least one year or has been homeless on at least four separate occasions in the last three years; and

"(C) has an adult head of household with a disabling condition, defined as a diagnosable substance use disorder, serious mental illness, developmental disability, or chronic physical illness or disability, including the co-occurrence of two or more of these conditions.

"(2) The term 'disabling condition' means a condition that limits an individual's ability to work or perform one or more activities of daily living.

"(3) The term 'homeless' means sleeping in a place not meant for human habitation or in an emergency homeless shelter.

"(4)(A) The term 'permanent supportive housing' means permanent, affordable housing with flexible support services that are available and designed to help the tenants stay housed and build the necessary skills to live as independently as possible. Such term does not include housing that is time-limited. Supportive housing offers residents assistance in reaching their full potential, which may include opportunities to secure other housing that meets their needs and preferences, based on individual choice instead of the requirements of time-limited transitional programs. Under this section, permanent affordable housing includes but is not limited to permanent housing funded or assisted through title IV of the McKinney-Vento Homeless Assistance Act and section (8) of the United States Housing Act of 1937.

"(B) For purposes of subparagraph (A), the term 'affordable' means within the financial means of individuals who are extremely low income, as defined by the Secretary of Housing and Urban Development.

"(n) FUNDING.—

"(1) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2005 through 2009.

"(2) ALLOCATION FOR TRAINING AND TECHNICAL ASSISTANCE.—Of the amount appropriated under paragraph (1) for a fiscal year, the Secretary may reserve not more than 3 percent for carrying out subsection (k).".

Mr. REED. Mr. President, I am proud to join my colleague from Ohio, the Chairman of the Substance Abuse and Mental Health Subcommittee of the Senate HELP Committee, to introduce a bill that we believe will bring us closer to helping people who experience chronic homelessness get off the streets, out of shelters and into permanent housing. The Services for Ending Long-Term Homelessness Act (SELHA) will help local communities provide health care, mental health and substance abuse services in conjunction with safe, decent and affordable housing. This bill is another essential component in the continuum of housing and supportive service programs geared towards people who have become homeless in our society.

Nationwide, as many as 3.5 million people experience homelessness every year. Between 200,000 and 250,000 of them—including at least 12,000 children—experience chronic homelessness. They live on the streets and in emergency shelters for years on end or cycle between homelessness, jails, emergency rooms, and other institutions. Many also confront mental illness, substance addiction or other serious chronic health conditions. Moreover, because they don't get appropriate and regular care, these people exact a substantial toll on our public health systems.

The legislation the Senior Senator from Ohio and I are proposing today would authorize funding for grants to state and local entities to offer services to individuals and families in supportive housing to help bring them out of the downward spiral of homelessness and onto the road to recovery and self-sufficiency. Permanent supportive housing combines safe, decent and affordable housing with needed services such as mental health, substance abuse, employment, health care, and other services.

Research indicates that supportive housing represents a cost-effective investment toward the goal of ending long-term homelessness. In one California supportive housing program, residents experienced a 57 percent decline in emergency room visits, a 58 percent decline in the number of inpatient hospital days, and a near elimination of their need for residential mental-health facilities. A study in New York City found that each unit of supportive housing saved $16,282 per person per year in public expenditures for emergency care, court and jail costs, and other public services. After deducting the public benefits, the average supportive housing unit in New York City cost only $995 per year. In other words, it costs little more to house and offer supportive services to people than it does to leave them homeless.

These remarkable findings have led the bipartisan Millennial Housing Commission, the President's New Freedom Mental Health Commission, the U.S. Conference of Mayors and the National League of Cities to endorse the goal of creating 150,000 units of permanent supportive housing.

As the Ranking Member of the Senate Subcommittee on Housing of the Senate Banking Committee, I am deeply interested in tackling the challenge of homelessness on several fronts. I have been working on a bill to reauthorize the McKinney-Vento Homeless Assistance Act. My legislation would realign the incentives behind HUD's homelessness assistance programs, while more funding would flow to communities that actually demonstrate a commitment to accomplishing the goals of preventing and ending homelessness. It would also simplify and consolidate the three competitive HUD homeless assistance programs into one program and provide new flexibility in using McKinney-Vento funds.

The Services for Ending Long-Term Homelessness Act perfectly compliments these efforts by making sure that communities offering permanent housing are also able to provide health, education and other supportive services that are so critical to the ultimate success of these efforts.

I believe we have the ingenuity and dedication to ensure that everyone has a safe decent and affordable place to call home. We need to support innovative solutions, and this bill does just that. It gives communities some of the resources they need to develop more supportive housing and move towards ending chronic homelessness, and I am proud to join my colleague from Ohio in spearheading this initiative.

By Mr. DASCHLE (for himself, Mr. CAMPBELL, Mr. INOUYE, Mr. JOHNSON, Mr. BINGAMAN, and Ms. LANDRIEU):

S. 2938. A bill to grant a Federal charter to the National American Indian Veterans, Incorporated; read the first time.

FEDERAL CHARTER FOR NATIONAL AMERICAN INDIAN VETERANS ASSOCIATION

Mr. DASCHLE. Mr. President, every American knows this photograph. It is one of the great iconic images of American courage and determination: the Marines raising the flag at Iwo Jima. What many Americans probably do not know is that one of the six Marines in this photo was a Native American. His name was Ira Hayes. He was a full-blooded Pima Indian, raised on a small farm on the Gila River Indian Community in Arizona.

Raising the flag with Ira Hayes that day on Iwo Jima were: a coal miner's son from Pennsylvania who came to America as an infant from Czechoslovakia; a farm boy from the Rio Grande Valley of Texas; a mill worker's son from New Hampshire; a former altar boy from Wisconsin, and a poor kid from eastern Kentucky.

One writer has called this photo " a triumphant metaphor for the very soul of the (Marine) Corps." It is also something else. It is a reflection of every war our Nation has ever fought. In every major military conflict in our Nation's history, Indians have fought side-by-side with non-Indians. Native Americans served with honor and distinction in the Revolutionary War and the War of 1812. They served on both sides in the Civil War. Stand Watie, a Cherokee, was the last Confederate brigadier general to surrender to the Union troops. And Eli Parker, a Seneca from New York, was at Appomattox, serving as an aide to General Ulysses S. Grant when Robert E. Lee surrendered.

Native American soldiers rode with Teddy Roosevelt's Rough Riders in the charge on San Juan Hill in the Spanish-American War. Twelve-thousand Indians served in World War I. Even though Native Americans were denied U.S. citizenship at the time, many were so eager to serve that they went to Canada to enlist before the U.S. even entered the war. Their tremendous demonstration of patriotism finally moved Congress to pass the Indian Citizenship Act in 1924.

In World War II, more than one-third of all able-bodied Indian men between the ages of 18 and 50 served. The most famous were the "Code Talkers" from the Navajo Nation and other tribes—including the Lakota, Dakota and Nakota tribes of the Great Sioux Nation. During the Korean War, two Native American soldiers were awarded posthumous Congressional Medals of Honor. Another Korean War veteran, a Northern Cheyenne from Colorado, served with distinction in the Air Force and later in the United States Senate. He is our friend and colleague, the chairman of the Senate Indian Affairs Committee, Senator BEN NIGHTHORSE CAMPBELL.

In Vietnam, nearly 42,000 Native Americans served—90 percent of them volunteers. Native Americans served with honor in Grenada, Panama, the Persian Gulf war, Somalia, Bosnia and Kosovo. And they are serving our Nation today in Afghanistan and Iraq.

Given the tragic history between Indian tribes and the U.S. military, some might regard it as remarkable that Native Americans choose to serve in the military at all. Yet, not only do Native Americans serve, they have the highest rate of military service of any ethnic group in America. Today, one in four Native American men is a military veteran, as are nearly half of all tribal leaders.

Incredibly, despite this extraordinary history of service and sacrifice for our Nation, there has never been a national American Indians veterans organization. Until now.

Last week, a new organization, the National American Indian Veterans Association, held its first annual meeting in Arizona. At that meeting, members voted unanimously to approve the organization's charter. Today, I am introducing a bipartisan proposal to grant the National American Indian Veterans Association a Federal charter. I am proud to sponsor this proposal, along with four great champions of Indian people and tribes: my fellow South Dakotan, Senator JOHNSON; Senator BINGAMAN; Senator CAMPBELL, the distinguished chairman of the Indian Affairs Committee; and the committee's ranking member, Senator INOUYE, a noble warrior himself and a Medal of Honor recipient.

The National American Indian Veterans Association is long overdue, and it is desperately needed. Native Americans are the most likely of all Americans to volunteer for military service. But they are the least likely of all veterans to apply for the benefits they have earned. When they do try to claim those benefits, too often, the First Americans find themselves last in line.

Too many Native American veterans go without urgently needed medical care because they can't get appointments or they can't overcome bureaucratic hurdles at the VA or the nearest clinic is too far away. Too many Native American veterans are living in crowded apartments and crumbling houses and trailers, partly because homeownership assistance programs that work for most veterans don't take into account the specific needs of many Indian veterans. Many Native American veterans don't claim the education benefits they have earned. Too many Native American veterans don't get the retirement benefits they deserve. And when they die, too many of their families don't get the survivors' benefits they should.

A Federal charter does not grant the National American Indian Veterans Association any special legal status or favors. It will simply enable Native American veterans from all tribes to speak with one voice to Congress and to the Nation.

The National Commander of the National American Indian Veterans Association is a man I am proud to know. Don Loudner is from Mitchell, SD. He is a member of the Crow Creek Sioux Tribe and a Korean War veteran with 35 years in the Army Reserves. He is also a member of the VA's Advisory Committee on Minority Veterans, a former Commissioner of Indian Affairs for the State of South Dakota, a former superintendent of the Crow Creek Sioux Reservation, and one of the most tireless, articulate advocates for Native American veterans I have ever known.

Congress has chartered many veterans organizations representing specific groups: the American War Mothers, the Blinded Veterans Association, Catholic War Veterans, Italian American War Veterans of the USA, Jewish War Veterans of the USA, the National Association for Black Veterans, Polish Legion of American Veterans.

I believe the guidance and collected wisdom of the National American Indian Veterans Association will enable America to better honor its commitments to Native American veterans and their families. In doing so, it will strengthen Native Americans' long and exceptional tradition of military service to our Nation. And that will make America even safer and stronger.

Five Native American warriors have already given their lives in Iraq. They include three members of the Navajo Nation: Army Private First Class Lori Piestewa, a young Hopi mother and the first Native American woman soldier ever killed in combat; and a young Army Private First Class from the Cheyenne River Sioux Reservation in South Dakota. Sheldon Hawk Eagle was a member of the Army's 101st Airborne Division, the famed "Screaming Eagles," the same unit that parachuted into Normandy on D-Day. He was also a descendant of the legendary Lakota warrior leader, Crazy Horse.

There are many reasons that these young warriors and so many other Native Americans have risked—and given—their lives for this Nation. Clarence Wolf Guts may have said it best. Mr. Wolf Guts is from the Oglala Sioux Tribe and one of the last two surviving Lakota Code Talkers from World War II. Two weeks ago, he testified before the Senate Committee on Indian Affairs about a bill I am sponsoring to honor all Native American Code Talkers, from all tribes. In Clarence Wolf Guts' words, "Indian people love America, and we will do whatever it takes to protect our freedom from all aggressors."

By formally recognizing the National American Indian Veterans Association—America's first and only Native American veterans organization—America will be better able to honor the extraordinary patriotism of these heroes and provide them with the respect and benefits they have earned. I urge my colleagues to join us. Let's pass this bill this year.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2938

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RECOGNITION AS CORPORATION AND GRANT OF FEDERAL CHARTER FOR NATIONAL AMERICAN INDIAN VETERANS, INCORPORATED.

(a) IN GENERAL.—Part B of subtitle II of title 36, United States Code, is amended by inserting after chapter 1503 the following new chapter:

"CHAPTER 1504—NATIONAL AMERICAN INDIAN VETERANS, INCORPORATED

"**Sec.**
"150401. Organization.
"150402. Purposes.
"150403. Membership.
"150404. Board of directors.
"150405. Officers.
"150406. Nondiscrimination.
"150407. Powers.
"150408. Exclusive right to name, seals, emblems, and badges.
"150409. Restrictions.
"150410. Duty to maintain tax-exempt status.
"150411. Records and inspection.
"150412. Service of process.
"150413. Liability for acts of officers and agents.
"150414. Failure to comply with requirements.
"150415. Annual report.

"§ 150401. Organization

"The National American Indian Veterans, Incorporated, a nonprofit corporation organized in the United States (in this chapter referred to as the 'corporation'), is a federally chartered corporation.

"§ 150402. Purposes

"The purposes of the corporation are those stated in its articles of incorporation, constitution, and bylaws, and include a commitment—

"(1) to uphold and defend the Constitution of the United States while respecting the sovereignty of the American Indian, Alaska Native, and Native Hawaiian Nations;

"(2) to unite under one body all American Indian, Alaska Native, and Native Hawaiian veterans who served in the Armed Forces of United States;

"(3) to be an advocate on behalf of all American Indian, Alaska Native, and Native Hawaiian veterans without regard to whether they served during times of peace, conflict, or war;

"(4) to promote social welfare (including educational, economic, social, physical, cultural values, and traditional healing) in the United States by encouraging the growth and development, readjustment, self-respect, self-confidence, contributions, and self-identity of American Indian veterans;

"(5) to serve as an advocate for the needs of American Indian, Alaska Native, and Native Hawaiian veterans, their families, or survivors in their dealings with all Federal and State government agencies;

"(6) to promote, support, and utilize research, on a nonpartisan basis, pertaining to the relationship between the American Indian, Alaska Native, and Native Hawaiian veterans and American society; and

"(7) to provide technical assistance to the 12 regional areas without veterans committees or organizations and programs by—

"(A) providing outreach service to those Tribes in need; and

"(B) training and educating Tribal Veterans Service Officers for those Tribes in need.

"§ 150403. Membership

"Subject to section 150406 of this title, eligibility for membership in the corporation, and the rights and privileges of members, shall be as provided in the constitution and by-laws of the corporation.

"§ 150404. Board of directors

"Subject to section 150406 of this title, the board of directors of the corporation, and the responsibilities of the board, shall be as provided in the constitution and bylaws of the corporation and in conformity with the laws under which the corporation is incorporated.

"§ 150405. Officers

"Subject to section 150406 of this title, the officers of the corporation, and the election of such officers, shall be as provided in the constitution and bylaws of the corporation and in conformity with the laws of the jurisdiction under which the corporation is incorporated.

"§ 150406. Nondiscrimination

"In establishing the conditions of membership in the corporation, and in determining the requirements for serving on the board of directors or as an officer of the corporation, the corporation may not discriminate on the basis of race, color, religion, sex, national origin, handicap, or age.

"§ 150407. Powers

"The corporation shall have only those powers granted the corporation through its articles of incorporation and its constitution and bylaws which shall conform to the laws of the jurisdiction under which the corporation is incorporated.

"§ 150408. Exclusive right to name, seals, emblems, and badges

"(a) IN GENERAL.—The corporation shall have the sole and exclusive right to use the names 'National American Indian Veterans, Incorporated' and 'National American Indian Veterans', and such seals, emblems, and badges as the corporation may lawfully adopt.

"(b) CONSTRUCTION.—Nothing in this section shall be construed to interfere or conflict with established or vested rights.

"§ 150409. Restrictions

"(a) STOCK AND DIVIDENDS.—The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

"(b) DISTRIBUTION OF INCOME OR ASSETS.—(1) No part of the income or assets of the corporation shall inure to any person who is a member, officer, or director of the corporation or be distributed to any such person during the life of the charter granted by this chapter.

"(2) Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers of the corporation, or reimbursement for actual and necessary expenses, in amounts approved by the board of directors.

"(c) LOANS.—The corporation shall not make any loan to any officer, director, member, or employee of the corporation.

"(d) NO FEDERAL ENDORSEMENT.—The corporation shall not claim congressional approval or Federal Government authority by virtue of the charter granted by this chapter for any of its activities.

"§ 150410. Duty to maintain tax-exempt status

"The corporation shall maintain its status as an organization exempt from taxation as provided in the Internal Revenue Code of 1986.

"§ 150411. Records and inspection

"(a) RECORDS.—The corporation shall keep—

"(1) correct and complete books and records of accounts;

"(2) minutes of any proceeding of the corporation involving any of its members, the board of directors, or any committee having authority under the board of directors; and

"(3) at its principal office, a record of the names and addresses of all members having the right to vote.

"(b) INSPECTION.—(1) All books and records of the corporation may be inspected by any member having the right to vote, or by any agent or attorney of such member, for any proper purpose, at any reasonable time.

"(2) Nothing in this section shall be construed to contravene the laws of the jurisdiction under which the corporation is incorporated or the laws of those jurisdictions within which the corporation carries on its activities in furtherance of its purposes within the United States and its territories.

"§ 150412. Service of process

"With respect to service of process, the corporation shall comply with the laws of the jurisdiction under which the corporation is incorporated and those jurisdictions within which the corporation carries on its activities in furtherance of its purposes within the United States and its territories.

"§ 150413. Liability for acts of officers and agents

"The corporation shall be liable for the acts of the officers and agents of the corporation when such individuals act within the scope of their authority.

"§ 150414. Failure to comply with requirements

"If the corporation fails to comply with any of the restrictions or provisions of this chapter, including the requirement under section 150410 of this title to maintain its status as an organization exempt from taxation, the charter granted by this chapter shall expire.

"§ 150415. Annual report

"(a) IN GENERAL.—The corporation shall report annually to Congress concerning the activities of the corporation during the preceding fiscal year.

"(b) SUBMITTAL DATE.—Each annual report under this section shall be submitted at the same time as the report of the audit of the corporation required by section 10101(b) of this title.

"(c) REPORT NOT PUBLIC DOCUMENT.—No annual report under this section shall be printed as a public document.".

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of subtitle II of title 36, United States Code, is amended by insert after the item relating to chapter 1503 the following new item:

"1504. National American Indian Veterans, Incorporated .... 150401".

By Mr. LUGAR (for himself, Mrs. BOXER, Mr. CHAFEE, Mr. FEINGOLD, and Mr. COLEMAN):

S. 2939. A bill to amend the Foreign Assistance Act of 1961 to provide assistance for orphans and other vulnerable children in developing countries, and for other purposes; to the Committee on Foreign Relations.

Mr. LUGAR. Mr. President, I rise to introduce the Assistance for Orphans and Other Vulnerable Children in Developing Countries Act of 2004.

The unprecedented AIDS orphan crisis in sub-Saharan Africa has profound implications for political stability, development, and human welfare that extend far beyond the region. Sub-Saharan African nations stand to lose generations of educated and trained professionals who can contribute meaningfully to their countries' development. Orphaned children, many of whom are homeless, are more likely to resort to prostitution and other criminal behavior to survive. Most frighteningly, these uneducated, poorly socialized, and stigmatized young adults are extremely vulnerable to being recruited into criminal gangs, rebel groups, or extremist organizations that offer shelter and food and act as "surrogate" families. It is imperative that the international community respond to this crisis that threatens stability within individual countries, the region, and around the world.

An estimated 110 million orphans live in sub-Saharan Africa, Asia, Latin America, and the Caribbean. The HIV/AIDS pandemic is rapidly expanding the orphan population. Currently an estimated 14 million children have been orphaned by AIDS, most of whom live in sub-Saharan Africa. This number is projected to soar to more than 25 million by 2010. The pandemic is orphaning generations of African children and is compromising the overall development prospects of their countries.

Most orphans in the developing world live in extremely disadvantaged circumstances. Poor communities in the developing world struggle to meet the basic food, clothing, health care, and educational needs of orphans. Experts recommend supporting community-based organizations to assist these children. Such an approach enables the children to remain connected to their communities, traditionals, rituals, and extended families.

My bill seeks to improve assistance to orphans and other vulnerable children in developing countries. It would require the United States Government to develop a comprehensive strategy for providing such assistance and would authorize the President to support community-based organizations that provide basic care for orphans and vulnerable children.

Orphans are less likely to be in school, and more likely to be working full time. Yet only education can help children acquire the knowledge and develop the skills they need to build a better future. Studies have shown that school food programs provide an incentive for children to stay in school. School meals provide basic nutrition to children who otherwise do not have access to reliable food.

For many children, the primary barrier to an education is the expense of school fees, uniforms, supplies, and other costs. My bill aims to improve enrollment and access to primary school education by supporting programs that reduce the negative impact of school fees and other expenses. It also would affirm our commitment to international school lunch programs.

Many children who lose one or both parents often face difficulty in asserting their inheritance rights. Even when the inheritance rights of women and children are spelled out in law, such rights are difficult to claim and are seldom enforced. In many countries it is difficult or impossible for a widow—even if she has small children—to claim property after the death of her husband. This often leaves the most vulnerable children impoverished and homeless. My bill seeks to support programs that protect the inheritance rights of orphans and widows with children.

The AIDS orphan crisis in sub-Saharan Africa has implications for political stability, development, and human welfare that extend far beyond the region, affecting governments and people worldwide. Every 14 seconds another child is orphaned by AIDS. Turning the tide on this crisis will require a coordinated, comprehensive, and swift response. I am hopeful that Senators will join me in backing this legislation, and I ask consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2939

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Assistance for Orphans and Other Vulnerable Children in Developing Countries Act of 2004".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) More than 110,000,000 orphans live in sub-Saharan Africa, Asia, Latin America, and the Caribbean. These children often are disadvantaged in numerous and devastating ways and most households with orphans cannot meet the basic needs of health care, food, clothing, and educational expenses.

(2) It is estimated that 121,000,000 children worldwide do not attend school and that the majority of such children are young girls. According to the United Nations Children's Fund (UNICEF), orphans are less likely to be in school and more likely to be working full time.

(3) School food programs, including take-home rations, in developing countries provide strong incentives for children to remain in school and continue their education. School food programs can reduce short-term hunger, improve cognitive functions, and enhance learning, behavior, and achievement.

(4) Financial barriers, such as school fees and other costs of education, prevent many orphans and other vulnerable children in developing countries from attending school. Providing children with free primary school education, while simultaneously ensuring that adequate resources exist for teacher training and infrastructure, would help more orphans and other vulnerable children obtain a quality education.

(5) The trauma that results from the loss of a parent can trigger behavior problems of aggression or emotional withdrawal and negatively affect a child's performance in school and the child's social relations. Children living in families affected by HIV/AIDS or who have been orphaned by AIDS often face stigmatization and discrimination. Providing culturally appropriate psychosocial support to such children can assist them in successfully accepting and adjusting to their circumstances.

(6) Orphans and other vulnerable children in developing countries routinely are denied their inheritance or encounter difficulties in claiming the land and other property which they have inherited. Even when the inheritance rights of women and children are spelled out in law, such rights are difficult to claim and are seldom enforced. In many countries it is difficult or impossible for a widow, even if she has young children, to claim property after the death of her husband.

(7) The HIV/AIDS pandemic has had a devastating affect on children and is deepening poverty in entire communities and jeopardizing the health, safety, and survival of all children in affected areas.

(8) The HIV/AIDS pandemic has increased the number of orphans worldwide and has exacerbated the poor living conditions of the world's poorest and most vulnerable children. AIDS has created an unprecedented orphan crisis, especially in sub-Saharan Africa, where children have been hardest hit. An estimated 14,000,000 orphans have lost 1 or both parents to AIDS. By 2010, it is estimated that over 25,000,000 children will have been orphaned by AIDS.

(9) Approximately 2,500,000 children under the age of 15 worldwide have HIV/AIDS. Every day another 2,000 children under the age of 15 are infected with HIV. Without treatment, most children born with HIV can expect to die by age two, but with sustained drug treatment through childhood, the chances of long-term survival and a productive adulthood improve dramatically.

(10) Few international development programs specifically target the treatment of children with HIV/AIDS in developing countries. Reasons for this include the perceived low priority of pediatric treatment, a lack of pediatric health care professionals, lack of expertise and experience in pediatric drug dosing and monitoring, the perceived complexity of pediatric treatment, and mistaken beliefs regarding the risks and benefits of pediatric treatment.

(11) Although a number of organizations seek to meet the needs of orphans or other vulnerable children, extended families and local communities continue to be the primary providers of support for such children.

(12) The HIV/AIDS pandemic is placing huge burdens on communities and is leaving many orphans with little support. Alternatives to traditional orphanages, such as community-based resource centers, continue to evolve in response to the massive number of orphans that has resulted from the pandemic.

(13) The AIDS orphans crisis in sub-Saharan Africa has implications for political stability, human welfare, and development that extend far beyond the region, affecting governments and people worldwide, and this crisis requires an accelerated response from the international community.

(14) Although section 403(b) of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (22 U.S.C. 7673(b)) establishes the requirement that not less than 10 percent of amounts appropriated for HIV/AIDS assistance for each of fiscal years 2006 through 2008 shall be expended for assistance for orphans and other vulnerable children affected by HIV/AIDS, there is an urgent need to provide assistance to such children prior to 2006.

(15) Numerous United States and indigenous private voluntary organizations, including faith-based organizations, provide assistance to orphans and other vulnerable children in developing countries. Many of these organizations have submitted applications for grants to the Administrator of the United States Agency for International Development to provide increased levels of assistance for orphans and other vulnerable children in developing countries.

(16) Increasing the amount of assistance that is provided by the Administrator of the United States Agency for International Development through United States and indigenous private voluntary organizations, including faith-based organizations, will provide greater protection for orphans and other vulnerable children in developing countries.

(17) It is essential that the United States Government adopt a comprehensive approach for the provision of assistance to orphans and other vulnerable children in developing countries. A comprehensive approach would ensure that important services, such as basic care, psychosocial support, school food programs, increased educational opportunities and employment training and related services, the protection and promotion of inheritance rights for such children, and the treatment of orphans and other vulnerable children with HIV/AIDS, are made more accessible.

(18) Assistance for orphans and other vulnerable children can best be provided by a comprehensive approach of the United States Government that—

(A) ensures that Federal agencies and the private sector coordinate efforts to prevent and eliminate duplication of efforts and waste in the provision of such assistance; and

(B) to the maximum extent possible, focuses on community-based programs that allow orphans and other vulnerable children to remain connected to the traditions and rituals of their families and communities.

SEC. 3. ASSISTANCE FOR ORPHANS AND OTHER VULNERABLE CHILDREN IN DEVELOPING COUNTRIES.

Chapter 1 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) is amended by adding at the end the following section:

"SEC. 135. ASSISTANCE FOR ORPHANS AND OTHER VULNERABLE CHILDREN.

"(a) FINDINGS.—Congress finds the following:

"(1) There are more than 110,000,000 orphans living in sub-Saharan Africa, Asia, Latin America, and the Caribbean.

"(2) The HIV/AIDS pandemic has created an unprecedented orphan crisis, especially in sub-Saharan Africa, where children have been hardest hit. The pandemic is deepening poverty in entire communities, and is jeopardizing the health, safety, and survival of all children in affected countries. It is estimated that 14,000,000 children have lost one or both parents to AIDS.

"(3) The orphans crisis in sub-Saharan Africa has implications for human welfare, development, and political stability that extend far beyond the region, affecting governments and people worldwide.

"(4) Extended families and local communities are struggling to meet the basic needs of orphans and vulnerable children by providing food, health care including treatment of children living with HIV/AIDS, education expenses, and clothing.

"(5) Providing assistance to such children is an important expression of the humanitarian concern and tradition of the people of the United States.

"(b) DEFINITIONS.—In this section:

"(1) AIDS.—The term 'AIDS' has the meaning given the term in section 104A(g)(1) of this Act.

"(2) CHILDREN.—The term 'children' means persons who have not attained the age of 18.

"(3) HIV/AIDS.—The term 'HIV/AIDS' has the meaning given the term in section 104A(g)(3) of this Act.

"(4) ORPHAN.—The term 'orphan' means a child deprived by death of one or both parents.

"(5) PSYCHOSOCIAL SUPPORT.—The term 'psychosocial support' includes care that addresses the ongoing psychological and social problems that affect individuals, their partners, families, and caregivers in order to alleviate suffering, strengthen social ties and integration, provide emotional support, and promote coping strategies.

"(c) ASSISTANCE.—The President is authorized to provide assistance, including providing such assistance through international or nongovernmental organizations, for programs in developing countries to provide basic care and services for orphans and other vulnerable children. Such programs should provide assistance—

"(1) to support families and communities to mobilize their own resources through the establishment of community-based organizations to provide basic care for orphans and other vulnerable children;

"(2) for school food programs, including the purchase of local or regional foodstuffs where appropriate;

"(3) to increase primary school enrollment through the elimination of school fees, where appropriate, or other barriers to education while ensuring that adequate resources exist for teacher training and infrastructure;

"(4) to provide employment training and related services for orphans and other vulnerable children who are of legal working age;

"(5) to protect and promote the inheritance rights of orphans, other vulnerable children, and widows;

"(6) to provide culturally appropriate psychosocial support to orphans and other vulnerable children; and

"(7) to treat orphans and other vulnerable children with HIV/AIDS through the provision of pharmaceuticals, the recruitment and training of individuals to provide pediatric treatment, and the purchase of pediatric-specific technologies.

"(d) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—There is authorized to be appropriated to the President to carry out this section such sums as may be necessary for each of the fiscal years 2005 and 2006.

"(2) AVAILABILITY OF FUNDS.—Amounts made available under paragraph (1) are authorized to remain available until expended and are in addition to amounts otherwise available for such purposes.

"(3) RELATIONSHIP TO OTHER LAWS.—Amounts made available for assistance pursuant to this subsection, and amounts made available for such assistance pursuant to any other provision of law, may be used to provide such assistance notwithstanding any other provision of law.".

SEC. 4. STRATEGY OF THE UNITED STATES.

(a) REQUIREMENT FOR STRATEGY.—Not later than 180 days after the date of enactment of this Act, the President shall develop, and submit to the appropriate congressional committees, a strategy for coordinating, implementing, and monitoring assistance programs for orphans and vulnerable children.

(b) CONSULTATION.—The President should consult with employees of the field missions of the United States Agency for International Development in developing the strategy required by subsection (a) to ensure that such strategy—

(1) will not impede the efficiency of implementing assistance programs for orphans and vulnerable children; and

(2) addresses the specific needs of indigenous populations.

(c) CONTENT.—The strategy required by subsection (a) shall include—

(1) the identity of each agency or department of the Federal Government that is providing assistance for orphans and vulnerable children in foreign countries;

(2) a description of the efforts of the head of each such agency or department to coordinate the provision of such assistance with other agencies or departments of the Federal Government or nongovernmental entities;

(3) a description of a coordinated strategy, including coordination with other bilateral and multilateral donors, to provide the assistance authorized in section 135 of the Foreign Assistance Act of 1961, as added by section 3 of this Act;

(4) an analysis of additional coordination mechanisms or procedures that could be implemented to carry out the purposes of such section;

(5) a description of a monitoring system that establishes performance goals for the provision of such assistance and expresses such goals in an objective and quantifiable form, to the extent feasible; and

(6) a description of performance indicators to be used in measuring or assessing the achievement of the performance goals described in paragraph (5).

SEC. 5. ANNUAL REPORT.

Not later than one year after the date on which the President submits the strategy required by section 4(a) to the appropriate congressional committees, and annually thereafter, the President shall submit a report to the appropriate congressional committees on the implementation of this Act.

SEC. 6. APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.

In this Act, the term "appropriate congressional committees" means the Committee on Appropriations and the Committee on Foreign Relations of the Senate and the Committee on Appropriations and the Committee on International Relations of the House of Representatives.

By Mr. PRYOR (for himself, Mrs. LINCOLN, Mr. AKAKA, Mr. BAUCUS, Mr. BAYH, Mr. BINGAMAN, Mrs. BOXER, Ms. CANTWELL, Mrs. CLINTON, Mr. CORZINE, Mr. DASCHLE, Mr. DAYTON, Mr. DODD, Mr. DORGAN, Mr. DURBIN, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. GRAHAM of Florida, Mr. JEFFORDS, Mr. JOHNSON, Mr. KENNEDY, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Ms. MIKULSKI, Mr. MILLER, Mrs. MURRAY, Mr. NELSON of Florida, Mr. NELSON of Nebraska, Mr. REID, Mr. ROCKEFELLER, Mr. SARBANES, Mr. SCHUMER, and Ms. STABENOW):

S. 2942. A bill to amend the Internal Revenue Code of 1986 to provide that combat pay be treated as earned income for purposes of the earned income credit; to the Committee on Finance.

Mr. PRYOR. Mr. President, I know the hour is late, and I will try to keep my comments fairly brief. I promise I will not take more than an hour or two.

What I am showing tonight is a picture of some American heroes. Oftentimes we look at a person in uniform and say: That's a hero. Certainly, the folks injured and killed in combat we see them as heroes. But you are really just a hero if you serve, if you put on your uniform and do your duty to your country.

The other heroes in this picture are this soldier's family. We can see they are hugging him and supporting him, and that is really part of the definition of a hero as well. Certainly, the folks who are not pictured here—this man's employer because he is probably in the Guard or Reserve, and folks in the community, people in his church or his neighborhood—whatever the circumstances may be—they are heroes in this picture.

We thank all of our soldiers who are serving bravely for our country, wherever they may be tonight. I want to thank the conferees, who worked so hard on the Working Families Tax Relief Act last week, for including the provisions of S. 2417, the Tax Relief for Americans in Combat Act or, as some people call it, TRAC.

One thing that TRAC was designed to do was eliminate the combat pay penalty. I introduced TRAC back in May of this year. The rationale for introducing TRAC was to help our men and women in combat. In fact, in my work on the Armed Services Committee, and with the help of Chairman GRASSLEY and Ranking Member BAUCUS, the committee requested a GAO report. We became concerned in the Armed Services Committee about the tax package that is available to our soldiers, Marines, airmen and seamen. So Chairman GRASSLEY and Ranking Member BAUCUS were gracious enough to request a GAO report.

In essence, what the GAO report found was a glitch in the Tax Code, an unintended consequence. Basically, what they found is that if one is a soldier and receives combat pay, which means they are in theater and they are in harm's way every day, they receive their combat pay and they want to claim their earned income tax credit, which many of these individuals are entitled to under our Tax Code, they actually can lose money on their taxes by receiving their combat pay. That is why I call it the "combat pay penalty," because it really does disadvantage some people on their taxes.

I have a chart that illustrates what I am talking about. If someone is working in a hardware store 12 months out of the year, let's say they were making $16,000 a year annually, under the earned income tax system that we have on our books right now, $4,100 may possibly come back to him under the EITC. If that same person works in a hardware store, say, for 4 months, and he is in the guard or reserve and he gets 8 months for his military service and he makes the same $16,000, by the time he does the math and he fills out his tax form he is only entitled to $2,100 under the earned income tax credit.

What we are doing is, inadvertently we are putting our soldiers at a disadvantage. In other words, this soldier in this example has lost on his taxes about $2,000. Clearly, this is not the intent of Congress.

The way I feel about it—and I know a lot of my colleagues on both sides of the aisle feel about this—is while our brave soldiers are overseas fighting for us, we need to be in Washington fighting for them and their families. I think it is just incumbent upon us to recognize the principle that we need to take care of those who take care of us. There is no one in the world who is doing a better job taking care of us than our men and women in combat.

Under the provisions of a bill that I will file this evening, the provisions are very simple. What it will do is allow men and women in uniform serving in combat to include combat pay for the purpose of calculating their earned income and their child tax credit benefits. If that calculation works in their best interest, it gives them control over their taxes and allows them to make the determination for what is in their best interest on their taxes.

Again, I want to thank the conference, and the Senate, House, and the President for signing it, because we did win a short-term victory on this. We got this provision on the earned income tax credit for 2 years. Everything else in the bill was 5 years, but we did get 2 years. It is a short-term victory, something I hope we will be able to go back and change and make it a long-term solution for these brave Americans.

I do not want to speak to all the intricacies of the earned income tax credit because I have heard Senators in this Chamber say that it is basically a Tax Code for a welfare program. I disagree with that. We may have an honest disagreement about that. Clearly, our men and women in uniform receiving combat pay are working hard. We know this is not a welfare program for them. We know they are not going to abuse this or they are not going to miscalculate it. We have a high degree of confidence that this is going to be good for them and good for all of us.

Anyway, I want to draw the attention of my colleagues to the next chart, which is the earned income tax credit. This chart shows how it is structured. Depending on a person's situation, if they have no child, one child, two or more children, it shows a sort of range of possibilities, depending on what one's income is. Obviously, it is like a formula where the numbers have to be plugged in. It is different for different people.

As we can see, a soldier who is making, say, about $6,300 ought to get about $390 from the earned income tax credit. Whereas a soldier who is down on the income scale, making $1,400, should get about $2,600 in earned income tax credit. So, again, this will change depending on the situation.

What we are proposing would allow our soldiers, our men and women in uniform, to take advantage of an existing provision of the Tax Code and maximize it to their full advantage.

I am not saying that we can get this done this week. We certainly understand that we are out of legislative days, but I hope sincerely that we can come back in the lame duck session or whenever we reconvene and really get serious about helping our men and women in uniform.

We fixed the earned income tax credit for 2004 and 2005.

Here is another chart showing some of the numbers and how it would work, again, depending on how many months one is in combat. Just depending on the various losses that one might have, we can see based on this chart and the numbers here, the soldiers who are impacted the most are the enlisted men. Officers can be penalized under this, but the enlisted men and women are the ones who are probably at the greatest danger of losing their tax benefit.

One reason that Senators have decided to help me on this—we have, I believe 36 cosponsors now who have signed up to help out on this—is because it is a cheap fix. When we look at the numbers for 2 years, 2006 and 2007, we are only talking about $15 million. When we talk about taxes in this country, we talk about billions or trillions, but over 2 years this is only $15 million. Over 10 years it is only $68 million. That is not a lot of money. That is really peanuts in the grand scheme of things when we are talking about our Tax Code and other numbers that we talk about, when we talk about fixing our taxes in this country. This is real money for these soldiers in uniform.

I close with another picture of some heroes to remind us what this is all about, who we are trying to help. These soldiers, most of them, are relatively low-income because one has to be relatively low-income to even qualify for the earned income tax credit. They are leaving their families behind. Many of them are leaving jobs, homes, all kinds of economic security. Like I said, these are the folks who are taking care of us, and I think in the Senate and in the Congress we ought to do our part to take care of them.

Mrs. LINCOLN: Mr. President, I rise to join my colleagues Senators PRYOR and BAUCUS in introducing legislation to ensure members of the military who serve in combat are not treated unfairly under the tax code. I believe strongly that we have an obligation in Congress to take care of the brave men and women in uniform who risk their lives to take care of us.

As my friend and colleague Senator PRYOR mentioned, the provision in the Tax Code we are seeking to amend affects the ability of military personnel who serve in combat zones to benefit from the Earned Income Tax Credit. Due to an unintended consequence in the tax code, those affected may loose up to $4,000 in tax relief simply because they have volunteered to defend our freedom.

This is wrong.

We corrected the problem for 2 years—until 2006—in the Working Families Tax Relief Act which Congress recently approved but we didn't resolve the matter appropriately in my judgement. I offered an amendment during the conference report to bring tax relief for military families in line with the other provisions in the bill but that amendment was rejected.

I hope my colleagues will reconsider.

The men and women in uniform who serve in harm's way and their families here at home are the last people we should burden with uncertainty in the Tax Code. I think we should fix this problem without delay and that is why I am proud to join in this effort.

I applaud Senator PRYOR for his leadership and hard work on this issue, and I yield the floor.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 451—EXPRESSING THE SENSE OF THE SENATE THAT A POSTAGE STAMP SHOULD BE ISSUED HONORING OSKAR SCHINDLER

Mr. LAUTENBERG submitted the following resolution; which was referred to the Committee on Governmental Affairs:

S. RES. 451

Whereas during the Nazi occupation of Poland, Oskar Schindler personally risked his life and that of his wife to provide food and medical care and saved the lives of over 1,000 Jews, many of whom later made their homes in the United States;

Whereas Oskar Schindler also rescued about 100 Jewish men and women from the Golezow concentration camp, who lay trapped and partly frozen in 2 sealed train cars stranded near Brunnlitz;

Whereas millions of Americans have been made aware of the story of Schindler's bravery;

Whereas on April 28, 1962, Oskar Schindler was named a "Righteous Gentile" by Yad Vashem; and

Whereas Oskar Schindler is a true hero and humanitarian deserving of honor by the United States Government: Now, therefore, be it

Resolved, That it is the sense of the Senate that the Postal Service should issue a stamp honoring the life of Oskar Schindler.

Mr. LAUTENBERG. Mr. President, I rise today to ask the Senate to honor an individual who stands in high esteem in America and throughout the world. I am pleased to submit a resolution calling on the Postal Service to issue a stamp commemorating the life of Oskar Schindler. Postage stamps are often reserved for individuals who have offered especially significant contributions—Oskar Schindler demonstrates how one person truly can make a difference in the world.

The stories of Oskar Schindler and his heroism are well-documented and must never be forgotten. To speak against Hitler's genocide during the Holocaust was rare; to help Jews escape from persecution was perilous. Yet Oskar Schindler selflessly risked his own life to save the lives of over 1200 Jewish men, women, and children. He also rescued from the Golezow concentration camp approximately 100 Jewish men and women who were trapped in a sealed and freezing railroad car.

I have had the benefit of learning about these heroics first-hand from a New Jersey resident and friend of mine, Abraham Zuckerman. In 1942, Abraham was sent to the Plaszow concentration camp, where he faced certain death—until the day he was told that he was on Schindler's List. He attests: "I am one of the Survivors and I owe my life to the courage and strength of this great man. His life was always in danger but still he persisted to do what he knew to be the right thing, he saved the Jews anyway he could." Since the day Abraham immigrated to the United States, he has made it a mission to keep Oskar Schindler's contributions alive in the minds of Americans, and I thank him for his efforts.

A "general policy" of the Citizens' Stamp Advisory Committee, which decides the subject matter of postage stamps, is that U.S. postage stamps and stationery "primarily will feature Americans or American-related subjects." Oskar Schindler rescued many Jewish people who fled areas ruled by Hitler and made America their home. His valor and selflessness exhibit attributes that parallel the founding principles of America and all democracies. He devoted much of his life in the pursuit of freedom and humanitarianism. That is the ultimate American-related subject.

Oskar Schindler's bravery and contributions make him worthy of honor and recognition. Issuing a stamp in his memory would assure that his story is told to a new generation.

SENATE RESOLUTION 452—DESIGNATING DECEMBER 13, 2004, AS "NATIONAL DAY OF THE HORSE" AND ENCOURAGING THE PEOPLE OF THE UNITED STATES TO BE MINDFUL OF THE CONTRIBUTION OF HORSES TO THE ECONOMY, HISTORY, AND CHARACTER OF THE UNITED STATES

Mr. CAMPBELL submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 452

Whereas the horse is a living link to the history of the United States;

Whereas without horses, the economy, history, and character of the United States would be profoundly different;

Whereas horses continue to permeate the society of the United States, as witnessed on movie screens, on open land, and in our own backyards;

Whereas horses are a vital part of the collective experience of the United States and deserve protection and compassion;

Whereas because of increasing pressure from modern society, wild and domestic horses rely on humans for adequate food, water, and shelter; and

Whereas the Congressional Horse Caucus estimates that the horse industry contributes much more than $100,000,000,000 each year to the economy of the United States: Now, therefore, be it

Resolved, That the Senate—

(1) designates December 13, 2004, as "National Day of the Horse", in recognition of the importance of horses to the security, economy, recreation, and heritage of the United States;

(2) encourages all people of the United States to be mindful of the contribution of horses to the economy, history, and character of the United States; and

(3) requests that the President issue a proclamation calling on the people of the United States and interested organizations to observe the day with appropriate programs and activities.

Mr. CAMPBELL. Mr. President, I am today submitting a resolution to designate December 13, 2004 as "The National Day of the Horse."

The image of the horse is a fixture of American society, an icon whose role has changed greatly through the history of our Nation, but whose status has never wavered. Even for the very forefathers of our country, the horse has meant not only transportation and utility, but companionship and a way of life.

Who can forget the indelible images to which horses have given rise? Mere mention of the American West conjures pictures of Plains Indians hunting buffalo, dusty ranchers and cowboys on the trail for the great cattle drives, and vast herds of wild mustangs roaming free across the undiscovered frontier. Horses have been used in military campaigns, police operations, to say nothing of their roles in agricultural labor as beasts of burden.

Modern interest in horses ranges from the serious thoroughbred horse breeders, trainers, and jockeys whose work we enjoy at events such as the Breeder's Cup, which will be run later this month, to the thousands of Americans who enjoy riding horses with no concern for ribbons or money, but as a welcome respite from their otherwise hectic lives and a link to the past.

The horse industry is highly diverse, and supports a wide variety of activities in all regions of the country; from the pastoral activities of breeding, training, and riding horses to more urban pursuits such as horse shows and competitive racing.

In terms of economic impact, the horse industry directly employs more people than railroads, radio and television broadcasting, petroleum and coal, and tobacco. In fact, the industry's contribution to the U.S. Gross Domestic Product is estimated at over $100 billion, only slightly less than the apparel and textile manufacturing industries.

While the role of the horse in the daily life and economy of the United States has changed much over the past two hundred years, it still remains a strong and influential force in both our collective imagination and daily lives.

SENATE RESOLUTION 453—EXPESSING THE SENSE OF THE SENATE THAT THE UNITED STATES SHOULD PREPARE A COMPREHENSIVE STRATEGY FOR ADVANCING AND ENTERING INTO INTERNATIONAL NEGOTIATIONS ON A BINDING AGREEMENT THAT WOULD SWIFTLY REDUCE GLOBAL MERCURY USE AND POLLUTION TO LEVELS SUFFICIENT TO PROTECT PUBLIC HEALTH AND THE ENVIRONMENT

Mr. JEFFORDS (for himself, Mr. CHAFEE, Mr. SARBANES, Ms. SNOWE, Mr. LIEBERMAN, Mr. LEAHY, Mr. DAYTON, and Mr. LAUTENBERG) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 453

Whereas mercury is a persistent, bioaccumulative, and toxic heavy metal;

Whereas mercury is found naturally in the environment but is also emitted into the air, land, and water in various forms in the United States and around the world during fossil fuel combustion, waste incineration, chlor-alkali production, mining, and other industrial processes, as well as during the production, use, and disposal of various products;

Whereas mercury air pollution has the ability to both deposit locally and travel thousands of miles in a global atmospheric pool of emissions before eventual deposition, crossing national boundaries and becoming a shared global burden;

Whereas the United Nations Environment Programme reported that, on average, anthropogenic emissions of mercury since preindustrial times have resulted in 50- to 300-percent increases in deposition rates around the world;

Whereas the United Nations Environment Programme reported that global consumption of mercury equaled 3,337 tons in 1996, and that all mercury releases to the global environment total approximately 5,000 tons each year;

Whereas mercury air pollution can deposit into lakes, streams, and the oceans where it is transformed into toxic methylmercury and bioaccumulates in fish and fish-eating wildlife;

Whereas the National Academy of Sciences confirmed that consumption of mercury-contaminated fish and seafood by pregnant women can cause serious neurodevelopmental harm in the fetus, including such detrimental effects as intelligence quotient deficits, abnormal muscle tone, decreases in motor function, attention, or visuospatial performance, mental retardation, seizure disorders, cerebral palsy, blindness, and deafness;

Whereas the 1997 Mercury Study Report submitted by the Administrator of the Environmental Protection Agency to Congress found that every region of the United States is adversely affected by mercury deposition;

Whereas the Food and Drug Administration, the Environmental Protection Agency, and 48 States currently have advisories warning the public to limit consumption of certain fish that are high in mercury content;

Whereas, of the 4,000,000 children born every year in the United States, scientists at the Environmental Protection Agency estimate that approximately 630,000 are exposed to mercury levels in the womb above the safe health threshold, caused primarily by maternal consumption of mercury-tainted fish;

Whereas these health and environmental effects of mercury contamination can impose significant social and economic costs in the form of increased medical care, special educational and occupational needs, reduced economic performance, and disruptions in recreational and commercial fishing and hunting, and can create disproportionate health, social, and economic impacts among subpopulations dependent on subsistence fishing;

Whereas the Environmental Protection Agency has estimated that the United States is a net emitter of mercury in that the United States contributes 3 times as much mercury to the global atmospheric pool of air emissions as it receives through deposition;

Whereas the United States Geological Survey has not reported mercury consumption figures for key sectors in the United States economy since 1996, thereby creating important information gaps relating to domestic mercury use and trade;

Whereas the quantity of domestic fugitive chlor-alkali sector emissions has been labeled an enigma by the Environmental Protection Agency;

Whereas, in accordance with Public Law 101-549 (commonly known as the "Clean Air Act Amendments of 1990") (42 U.S.C. 7401 et seq.), the Environmental Protection Agency determined in December 2000 that a maximum achievable control technology standard for mercury and other air toxic emissions for electric utility steam generating units in the United States is appropriate and necessary, and listed coal- and oil-fired electric utility steam generating units for regulation, thereby triggering a statutory requirement that maximum achievable controls be implemented at every existing coal- and oil-fired electric utility steam generating unit by not later than December 2005;

Whereas other major stationary sources have already implemented maximum achievable control technology standards for mercury and other air toxics, as required by the Clean Air Act (42 U.S.C. 7401 et seq.);

Whereas effective mercury and other heavy metal removal techniques have been demonstrated and are available on an industrial scale in the major stationary source categories;

Whereas the lack of effective emission control standards in other countries can give foreign industries a competitive advantage over United States businesses;

Whereas alternatives and substitutes have been demonstrated and are available to reduce or eliminate mercury use in most products and processes;

Whereas the European Commission reports that mercury mining, the closing of mercury cell chlor-alkali facilities, and the phasing out of other outmoded industrial processes in the United States and Europe are contributing significantly to imports of mercury in the developing world;

Whereas the Department of Defense announced in April 2004 that it will consolidate and store its stockpile of approximately 5,000 tons of mercury rather than allow the surplus to enter the global marketplace;

Whereas from 1996 through 2004, the Environmental Council of the States adopted or renewed 9 resolutions highlighting the importance of substantially reducing mercury use and releases in the United States and around the world, and of managing excess supplies of mercury so that they do not enter the global marketplace;

Whereas many States, including California, Connecticut, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and Wisconsin, are already implementing their own laws, regulations, and other strategies for tracking or reducing various forms of mercury use and pollution, and the Governors of States in New England have set a goal of virtually eliminating mercury emissions in that region;

Whereas the European Commission is developing a mercury strategy that is aimed at comprehensively addressing all aspects of the mercury cycle, including the use, trade, and release of mercury;

Whereas the United States is a party to the Protocol on Heavy Metals of the Convention on Long-Range Transboundary Air Pollution, done at Aarhus, Denmark on June 24, 1998, which entered into force in December 2003 and commits the United States to a basic obligation to limit air emissions of mercury and other heavy metals from new and existing sources, within 2 and 8 years respectively, using the best available techniques;

Whereas the current parties to the Convention and the Protocol represent only a portion of anthropogenic emissions of heavy metals annually that are subject to transboundary atmospheric transport and are likely to have significant adverse effects on human health or the environment;

Whereas the 22nd session of the United Nations Environment Programme Governing Council concluded that there is sufficient evidence in the Programme's Global Mercury Assessment of significant global adverse impacts to warrant international action to reduce the risks to human health and the environment from releases of mercury;

Whereas the United Nations Environment Programme invited submission of governmental views on medium- and long-term actions on mercury and other heavy metals, which will be synthesized into a report for presentation at the 23rd session of the Governing Council occurring February 21 to 25, 2005, with a view to developing a legally binding instrument, a non-legally binding instrument, or other measures or actions; and

Whereas the United States has taken no position on any such instrument: Now, therefore, be it

Resolved, That it is the Sense of the Senate that

(1) the United States should engage constructively and proactively in international dialogue regarding mercury pollution, use, mining, and trade; and

(2) the President should prepare a comprehensive strategy—

(A) to advance and enter into international negotiations on a binding agreement that would—

(i) reduce global use, trade, and releases of mercury to levels sufficient to protect public health and the environment, including steps to—

(I) establish specific and stringent targets and schedules for reductions in mercury use in the United States, and emissions below levels for calendar year 2000, beyond current domestic and global efforts;

(II) end primary mercury mining in the near future and establish a system to ensure excess mercury supplies do not enter the global marketplace; and

(III) require countries to develop regional and national action plans to address mercury sources and uses;

(ii) include all countries that use, trade, or release significant quantities of mercury into the environment from anthropogenic sources;

(iii) require the application of the best available control technologies and strategies to control releases from industrial sectors in the very near future, including minimizing releases from coal-fired power plants and replacing obsolete mercury products and processes, including the mercury cell chlor-alkali process;

(iv) contain mechanisms for promoting and funding the transfer and adoption of less emitting technologies and mercury-free processes, and for facilitating the safe cleanup of mercury contamination;

(v) establish a standardized system to document and track the use, production, and trade of mercury and mercury-containing products, including a licensing requirement for mercury traders; and

(vi) incorporate explicit mechanisms for adding toxic air pollutants with similar characteristics in the future;

(B) to delineate the preferred structure, format, participants, mechanisms, and resources necessary for achieving and implementing the agreement described in subparagraph (A);

(C) to enter into bilateral and multilateral agreements to align global mercury production with reduced global demand and minimize global mercury releases, while negotiating the agreement described in subparagraph (A);

(D) to initiate and support a parallel international research effort that does not delay current or planned mercury pollution or use reduction efforts—

(i) to collect global data to support the development of a comprehensive inventory of mercury use, mining, trade, and releases; and

(ii) to develop less emitting technologies and technologies to reduce the need for, and use of, mercury in commerce;

(E) to review monitoring capabilities and data collection efforts of the United States for domestic mercury use, trade, and releases to ensure there is sufficient information available for any implementing legislation that may be necessary for compliance with existing protocols and future global mercury agreements;

(F) to work through existing international organizations, such as the United Nations, the International Standards Organization, and the World Trade Organization, to encourage the development of programs, standards, and trade agreements that will result in reduced use and trade of mercury, the elimination of primary mercury mining, and reductions in releases of mercury and other long-range transboundary air pollutants; and

(G) not later than February 11, 2005, to submit to the Committee on Foreign Relations and the Committee on Environment and Public Works of the Senate a report on that strategy, including a description of the ways in which the strategy will be used and communicated at the 23rd Session of the United Nations Environment Programme Governing Council.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3986. Mr. REID (for Mr. BYRD) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence.

SA 3987. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 3988. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 3989. Mr. BAUCUS (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra.

SA 3990. Mr. KENNEDY (for Mr. CHAMBLISS (for himself and Mr. KENNEDY)) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 3991. Mr. HAGEL (for himself and Mr. CHAMBLISS) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 3992. Mr. CORNYN (for himself and Mr. LEAHY) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 3993. Mr. CORNYN (for himself and Mr. LEAHY) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 3994. Mr. CHAMBLISS (for himself, Mr. KENNEDY, and Mr. SPECTER) proposed an amendment to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra.

SA 3995. Mr. BAYH (for himself, Mr. ROBERTS, Mr. WYDEN, Mrs. FEINSTEIN, Mr. McCAIN, and Ms. SNOWE) proposed an amendment to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra.

SA 3996. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 3997. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 3998. Mr. McCAIN submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 3999. Mr. McCAIN (for himself, Mr. LIEBERMAN, Mr. LOTT, Ms. SNOWE, and Mr. ROBERTS) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra.

SA 4000. Mr. McCAIN submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra.

SA 4001. Mr. McCAIN submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4002. Mr. McCAIN submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4003. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4004. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4005. Mr. LEAHY (for himself and Mr. CORNYN) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4006. Mr. LEAHY (for himself and Mr. CORNYN) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4007. Mr. LEAHY (for himself, Mr. HATCH, Mr. SESSIONS, Mr. SPECTER, and Mr. BIDEN) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4008. Mr. LEAHY submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4009. Mr. LEAHY submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4010. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4011. Mr. DOMENICI (for himself and Mr. BINGAMAN) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4012. Mr. DOMENICI (for himself and Mr. BINGAMAN) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4013. Mr. KYL submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4014. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4015. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4016. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4017. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4018. Mr. ROBERTS submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra.

SA 4019. Mr. ROBERTS submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra.

SA 4020. Mr. ROBERTS submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4021. Mr. BIDEN (for himself and Mr. LUGAR) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra.

SA 4022. Mr. LOTT submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4023. Mr. HATCH submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4024. Mr. HATCH submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4025. Mr. McCONNELL (for himself and Mr. REID) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4026. Mr. NICKLES (for himself and Mr. CONRAD) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4027. Mr. NICKLES (for himself and Mr. CONRAD) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4028. Mr. NICKLES (for himself and Mr. CONRAD) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4029. Mr. NICKLES (for himself and Mr. CONRAD) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr.

REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4030. Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra.

SA 4031. Mr. ROCKEFELLER (for himself and Mr. BIDEN) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4032. Mr. REID submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4033. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4034. Ms. COLLINS submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4035. Mr. FRIST submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4036. Mr. DURBIN proposed an amendment to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra.

SA 4037. Mr. HATCH (for Mr. LEAHY (for himself, Mr. SPECTER, and Mr. HATCH)) proposed an amendment to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra.

SA 4038. Mr. MCCONNELL (for Mr. SHELBY (for himself and Mr. SARBANES)) proposed an amendment to the resolution S. Res. 445, supra.

SA 4039. Mr. SHELBY (for himself and Mr. SARBANES) submitted an amendment intended to be proposed by him to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4040. Mr. BINGAMAN (for Mr. DOMENICI (for himself and Mr. BINGAMAN)) proposed an amendment to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra.

SA 4041. Mr. NICKLES (for himself and Mr. CONRAD) submitted an amendment intended to be proposed to amendment SA 4027 submitted by Mr. NICKLES (for himself and Mr. CONRAD) and intended to be proposed to the amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

SA 4042. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 4015 submitted by Mrs. HUTCHISON and intended to be proposed to the amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3986. Mr. REID (for Mr. BYRD) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; as follows:

At the appropriate place in Sec. 402(b) after the word "matters" insert the following: ", as determined by the Senate Committee on Appropriations".

SA 3987. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

Strike section 101(b)(1) of the resolution and insert the following:

(b) JURISDICTION.—There shall be referred to the committee all proposed legislation, messages, petitions, memorials, and other matters relating primarily to the following subjects:

(1) Department of Homeland Security, except matters relating to—

(A) the Coast Guard, the Transportation Security Administration, or the Federal Law Enforcement Training Center; and

(B) the following functions performed by any employee of the Department of Homeland Security—

(i) any customs revenue function including any function provided for in section 415 of the Homeland Security Act of 2002 (Public Law 107-296);

(ii) any commercial function or commercial operation of the Bureau of Customs and Border Protection or Bureau of Immigration and Customs Enforcement, including matters relating to trade facilitation and trade regulation; or

(iii) any other function related to clause (i) or (ii) that was exercised by the United States Customs Service on the day before the effective date of the Homeland Security Act of 2002 (Public Law 107-296).

SA 3988. Mr. GRASSLEY submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

At the appropriate place in the resolution, insert the following:

SEC. ___. CLARIFICATION OF SENATE RULE XVI.

Notwithstanding the provisions of paragraph 2 of rule XVI of the Standing Rules of the Senate, the Committee on Appropriations shall not report an appropriation bill proposing new or general legislation or any restriction on the expenditure of the funds appropriated which proposes a limitation not authorized by law if such restriction is to take effect or cease to be effective upon the happening of a contingency, and if an appropriation bill is reported to the Senate proposing new or general legislation or any such restriction, a point of order may be made against the bill, and if the point is sustained, the bill shall be recommitted to the Committee on Appropriations.

SA 3989. Mr. BAUCUS (for Mr. GRASSLEY (for himself and Mr. BAUCUS)) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; as follows:

Strike section 101(b)(1) of the resolution and insert the following:

(b) JURISDICTION.—There shall be referred to the committee all proposed legislation, messages, petitions, memorials, and other matters relating primarily to the following subjects:

(1) Department of Homeland Security, except matters relating to—

(A) the Coast Guard, the Transportation Security Administration, or the Federal Law Enforcement Training Center; and

(B) the following functions performed by any employee of the Department of Homeland Security—

(i) any customs revenue function including any function provided for in section 415 of the Homeland Security Act of 2002 (Public Law 107-296);

(ii) any commercial function or commercial operation of the Bureau of Customs and Border Protection or Bureau of Immigration and Customs Enforcement, including matters relating to trade facilitation and trade regulation; or

(iii) any other function related to clause (i) or (ii) that was exercised by the United States Customs Service on the day before the effective date of the Homeland Security Act of 2002 (Public Law 107-296).

SA 3990. Mr. KENNEDY (for Mr. CHAMBLISS (for himself and Mr. KENNEDY)) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

At the end of section 101(b)(1) insert the following: "except matters relating to the U.S. Citizenship and Immigration Service, and the immigration functions of the U.S. Customs and Border Protection, the U.S. Immigration and Customs Enforcement, and the Directorate of Border and Transportation Security.".

SA 3991. Mr. HAGEL (for himself and Mr. CHAMBLISS) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Rès. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

Section 301(b) is amended by adding at the end the following: "The service of a member selected pursuant to section 2(a)(1) of S. Res. 400 (94th Congress) shall not be counted for purposes of paragraph 4(a)(1) of rule XXV of the Standing Rules of the Senate.".

SA 3992. Mr. CORNYN (for himself and Mr. LEAHY) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Inelligence; which was ordered to lie ont eh table; as follows:

In section 101(d), insert "(1)" after "subsection (b)".

SA 3993. Mr. CORNYN (for himself and Mr. LEAHY) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

In section 101(d), insert ", except that the Committee on the Judiciary shall continue to have joint jurisdiction over government information" before the period at the end.

SA 3994. Mr. CHAMBLISS (for himself, Mr. KENNEDY, and Mr. SPECTER) proposed an amendment to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; as follows:

At the end of section 101(b)(1) insert the following: "except matters relating to the U.S. Citizenship and Immigration Service and the immigration functions of the U.S. Customs and Border Protection and the U.S. Immigration and Customs Enforcement, the Directorate of Border and Transportation Security.".

SA 3995. Mr. BAYH (for himself, Mr. ROBERTS, Mr. WYDEN, Mrs. FEINSTEIN, Mr. MCCAIN, and Ms. SNOWE) proposed an amendment to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; as follows:

Section 201 is amended by adding at the end the following:

(i) REFERRAL.—Section 3 of S. Res. 400 is amended by—

(1) striking subsection (b); and

(2) redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

SA 3996. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

In section 101, strike subsections (b) and (c) and insert the following:

(b) JURISDICTION.—

(1) COMMITTEE.—There shall be referred to the committee all proposed legislation, messages, petitions, memorials, and other matters relating primarily to the following subjects:

(A) Department of Homeland Security, except matters relating to the Coast Guard, the Transportation Security Administration, the Federal Law Enforcement Training Center, and the revenue functions of the Customs Service.

(B) Archives of the United States.

(C) Federal Civil Service.

(D) Government information.

(E) Intergovernmental relations.

(F) Municipal affairs of the District of Columbia, except appropriations therefor.

(G) Organization and reorganization of the executive branch of the Government.

(H) Postal Service.

(I) Status of officers and employees of the United States, including their classification, compensation, and benefits, except for retirement and pensions.

(2) OTHER COMMITTEES.—

(A) COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS.—There shall be referred to the Committee on Banking, Housing, and Urban Affairs all proposed legislation, messages, petitions, memorials, and other matters relating primarily to budget and accounting measures, other than appropriations, except as provided in the Congressional Budget Act of 1974.

(B) COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION.—There shall be referred to the Committee on Commerce, Science, and Transporation all proposed legislation, messages, petitions, memorials, and other matters relating primarily to the census and collection of statistics, including economic and social statistics.

(C) COMMITTEE ON RULES AND ADMINISTRATION.—There shall be referred to the Committee on Rules and Administration all proposed legislation, messages, petitions, memorials, and other matters relating primarily to congressional organization.

(D) COMMITTEE ON ENERGY AND NATURAL RESOURCES.—There shall be referred to the Committee on Energy and Natural Resources all proposed legislation, messages, petitions, memorials, and other matters relating primarily to organization and management of United States nuclear export policy.

(E) COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS.—There shall be referred to the Committee on Health, Education, Labor, and Pensions all proposed legislation, messages, petitions, memorials, and other matters relating primarily to Federal workforce retirement and pension benefits.

(F) COMMITTEE ON FOREIGN RELATIONS.—There shall be referred to the Committee on Foreign Relations all proposed legislation, messages, petitions, memorials, and other matters relating primarily to studying the intergovernmental relationships between the United States and international organizations of which the United States is a member.

(c) ADDITIONAL DUTIES.—The committee shall have the duty of—

(1) receiving and examining reports of the Comptroller General of the United States and of submitting such recommendations to the Senate as it deems necessary or desirable in connection with the subject matter of such reports;

(2) studying the efficiency, economy, and effectiveness of all agencies and departments of the Government;

(3) evaluating the effects of laws enacted to reorganize the legislative and executive branches of the Government; and

(4) studying the intergovernmental relationships between the United States and the States and municipalities.

SA 3997. Mr. ENZI submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

In section 101, strike subsections (b) and (c) and insert the following:

(b) JURISDICTION.—

(1) COMMITTEE.—There shall be referred to the committee all proposed legislation, messages, petitions, memorials, and other matters relating primarily to the following subjects:

(A) Department of Homeland Security, except matters relating to the Coast Guard, the Transportation Security Administration, the Federal Law Enforcement Training Center, and the revenue functions of the Customs Service.

(B) Archives of the United States.

(C) Federal Civil Service.

(D) Government information.

(E) Intergovernmental relations.

(F) Municipal affairs of the District of Columbia, except appropriations therefor.

(G) Organization and reorganization of the executive branch of the Government.

(H) Postal Service.

(I) Status of officers and employees of the United States, including their classification, compensation, and benefits, except for retirement and pensions.

(2) OTHER COMMITTEES.—

(A) COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS.—There shall be referred to the Committee on Banking, Housing, and Urban Affairs all proposed legislation, messages, petitions, memorials, and other matters relating primarily to the following:

(i) Budget and accounting measures, other than appropriations, except as provided in the Congressional Budget Act of 1974.

(ii) Compliance or noncompliance of corporations, companies, or individual or other entities with the rules, regulations, and law governing the various governmental agencies.

(B) COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION.—There shall be referred to the Committee on Commerce, Science, and Transporation all proposed legislation, messages, petitions, memorials, and other matters relating primarily to the census and collection of statistics, including economic and social statistics.

(C) COMMITTEE ON RULES AND ADMINISTRATION.—There shall be referred to the Committee on Rules and Administration all proposed legislation, messages, petitions, memorials, and other matters relating primarily to congressional organization.

(D) COMMITTEE ON ENERGY AND NATURAL RESOURCES.—There shall be referred to the

Committee on Energy and Natural Resources all proposed legislation, messages, petitions, memorials, and other matters relating primarily to the following:

(i) Organization and management of United States nuclear export policy.

(ii) Efficiency, economy, and effectiveness of all agencies and departments of the Government involved in the control and management of energy resources and relations with other oil producing and consuming countries with respect to Government involvement in the control and management of energy shortages.

(E) COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS.—There shall be referred to the Committee on Health, Education, Labor, and Pensions all proposed legislation, messages, petitions, memorials, and other matters relating primarily to Federal workforce retirement and pension benefits.

(F) COMMITTEE ON FOREIGN RELATIONS.—There shall be referred to the Committee on Foreign Relations all proposed legislation, messages, petitions, memorials, and other matters relating primarily to studying the intergovernmental relationships between the United States and international organizations of which the United States is a member.

(G) COMMITTEE ON THE JUDICIARY.—There shall be referred to the Committee on the Judiciary all proposed legislation, messages, petitions, memorials, and other matters relating primarily to the following:

(i) Syndicated or organized crime which may operate in or otherwise utilize the facilities of interstate and international commerce.

(ii) All other aspects of crime and lawlessness within the United States which have an impact upon or affect the national health, welfare, and safety.

(c) ADDITIONAL DUTIES.—The committee shall have the duty of—

(1) receiving and examining reports of the Comptroller General of the United States and of submitting such recommendations to the Senate as it deems necessary or desirable in connection with the subject matter of such reports;

(2) studying the efficiency, economy, and effectiveness of all agencies and departments of the Government;

(3) evaluating the effects of laws enacted to reorganize the legislative and executive branches of the Government; and

(4) studying the intergovernmental relationships between the United States and the States and municipalities.

SA 3998. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

On page 7, between lines 20 and 21, insert the following:

SEC. 202. SENATE CONFERENCE PROCESS FOR INTELLIGENCE APPROPRIATIONS.

(a) CONFERENCE REQUIREMENT AND PROCEDURE.—

(1) IN GENERAL.—It shall not be in order for the Senate to proceed to the consideration of a bill making an intelligence appropriation unless—

(A) it is a bill that has been reported by the Committee on Appropriations;

(B) the bill has been subsequently referred to the Select Committee on Intelligence;

(C) there has been a conference between the Committees on any difference between the bill reported by the Committee on Appropriations and the bill subsequently reported by the Select Committee on Intelligence;

(E) each committee has been represented at that conference by an equal number of conferees; and

(F) the committee of conference, after full and free conference, has recommended to the Senate a bill in lieu of the bill reported by either Committee.

(2) SEQUENTIAL REFERRAL REQUIRED.—Notwithstanding any provision of the Standing Rules of the Senate to the contrary, whenever the Committee on Appropriations reports a bill making an intelligence appropriation, that bill shall be referred to the Select Committee on Intelligence for a period of not more than 30 days (disregarding any day on which the Senate is not in session).

(3) 30-DAY PERIOD.—If the Select Committee on Intelligence does not report the bill within 30 days (disregarding any day on which the Senate is not in session) after the bill is referred to it under paragraph (2), then—

(A) the Select Committee on Intelligence shall be discharged from further consideration of the bill; and

(B) no point of order under subsection (b) shall lie against the Senate's proceeding to its consideration.

(b) ENFORCEMENT.—On a point of order made by any Senator the Senate may not proceed to the consideration of a bill making an intelligence appropriation except as provided in subsection (a).

(c) SUPERMAJORITY REQUIRED FOR WAIVER.—A point of order under subsection (b) may be waived only by a motion agreed to by the affirmative vote of three-fifths of the Senators duly chosen and sworn. If an appeal is taken from the ruling of the Presiding Officer with respect to such a point of order, the ruling of the Presiding Officer shall be sustained absent an affirmative vote of three-fifths of the Senators duly chosen and sworn.

(d) INTELLIGENCE APPROPRIATION DEFINED.—In this section, the term "intelligence appropriation" means an appropriation to provide funds for foreign or domestic intelligence operations, equipment, salaries, expenses, or other intelligence-related activities of the United States, other than an amount appropriated to the Secretary of Defense or to or for the use of an agency or office of the Department of Defense.

SA 3999. Mr. MCCAIN (for himself, Mr. LIEBERMAN, Mr. LOTT, Ms. SNOWE, and Mr. ROBERTS) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; as follows:

Strike section 402 and insert the following:

SEC. 402. JURISDICTION OVER INTELLIGENCE APPROPRIATIONS.

Notwithstanding subparagraph (b) of paragraph 1 of Rule XXV of the Standing Rules of the Senate, the Select Committee on Intelligence shall have jurisdiction over all proposed legislation, messages, petitions, memorials, and other matters relating to appropriation, rescission of appropriations, and new spending authority related to funding for intelligence matters.

SA 4000. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; as follows:

On page 2, beginning in line 13, strike "to the Transportation Security Administration,".

SA 4001. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

On page 2, line 13, strike "Coast Guard," and insert "Coast Guard (other than functions of the Coast Guard related to homeland security),".

SA 4002. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

In section 101(b)(1), strike "Coast Guard, to the Transportation Security Administration," and insert "Coast Guard (other than functions of the Coast Guard related to homeland securty),".

SA 4003. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

In section 101(b)(1), insert after "Customs Service" the following:

", and energy infrastructure".

SA 4004. Mr. BINGAMAN submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

In section 101(b)(1), insert after "Customs Service" the following:

", and energy infrastructure".

SA 4005. Mr. LEAHY (for himself and Mr. CORNYN) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

Section 101 is amended by striking subsection (d).

SA 4006. Mr. LEAHY (for himself and Mr. CORNYN) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

Section 101(b) is amended by striking paragraph (7).

SA 4007. Mr. LEAHY (for himself, Mr. HATCH, Mr. SESSIONS, Mr. SPECTER, and Mr. BIDEN) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

In section 101(b)(1), after "administration," strike "and", and after "Center," insert "to the United States Secret Service,".

SA 4008. Mr. LEAHY submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

At the end of title I, insert the following:

SEC. 102. CLARIFICATION OF JURISDICTION.

Nothing in this resolution shall diminish the jurisdiction of the Committee on the Judiciary over matters relating to privacy and civil liberties.

SA 4009. Mr. LEAHY submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

In section 101(b)(1), after "Service" insert ", the Bureau of Customs and Border Protection, the Bureau of Citizenship and Immigration Services, the Bureau of Immigration and Customs Enforcement, and matters relating to the immigration functions of the Directorate of Border and Transportation Security".

SA 4010. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

In section 201, at the end of subsection (g), add the following:

"(d) Of the funds made available to the select Committee for personnel—

"(1) not more than 55 percent shall be under the control of the Chairman; and

"(2) not less than 45 percent shall be under the control of the Vice Chairman.".

SA 4011. Mr. DOMENICI (for himself and Mr. BINGAMAN) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

In section 101(b), strike paragraph (10) and insert the following:

(10) Matters relating to organization and management of United States nuclear export policy shall be referred to the Committee on Energy and Natural Resources.

SA 4012. Mr. DOMENICI (for himself and Mr. BINGAMAN) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

Section 101(b) is amended by—

(1) striking paragraph (10); and

(2) adding at the end the following:

"Matters relating to organization and management of United States nuclear export policy shall be referred to the Committee on Energy and Natural Resources.".

SA 4013. Mr. KYL submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

On page 7, line 4, strike ", and shall have full" and all that follows through line 6, and insert the following: ". Personal designated representatives shall have the same access to select Committee staff, information, records, and databases as select Committee staff, as determined by the Chairman and Vice Chairman.".

SA 4014. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

In section 402, strike the second sentence.

SA 4015. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

In section 402, strike the second sentence and insert the following: "The Committee on Appropriations shall reorganize into 13 subcommittees not later than 2 weeks after the convening of the 109th Congress.".

SA 4016. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

In section 402, strike the second sentence and insert "The Subcommittee on the Legislative Branch shall be combined with the Subcommittee on Commerce, Justice, State, and the Judiciary into 1 subcommittee.".

SA 4017. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

In section 402, strike the second sentence and insert "The Subcommittee on the Legislative Branch shall be combined with the Subcommittee on VA, HUD, and Independent Agencies into 1 subcommittee.".

SA 4018. Mr. ROBERTS submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; as follows:

In section 201, strike subsection (h) and insert the following:

(h) NOMINEES.—S. Res. 400 is amended by adding at the end the following:

"SEC. 17. (a) The select Committee shall have final responsibility for reviewing, holding hearings, and reporting the nominations of civilian persons nominated by the President to fill all positions within the intelligence community requiring the advice and consent of the Senate.

"(b) Other committees with jurisdiction over the nominees' executive branch department may hold hearings and interviews with such persons, but only the select Committee shall report such nominations.".

SA 4019. Mr. ROBERTS submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; as follows:

In section 201, strike subsection (g) insert the following:

(g) STAFF.—Section 15 of S. Res. 400 is amended to read as follows:

"SEC. 15. (a) In addition to other committee staff selected by the select Committee, the select Committee shall hire or appoint one employee for each member of the select Committee to serve as such Member's designated representative on the select Committee. The select Committee shall only hire or appoint an employee chosen by the respective Member of the select Committee for whom the employee will serve as the designated representative on the select Committee.

"(b) The select Committee shall be afforded a supplement to its budget, to be determined by the Committee on Rules and Administration, to allow for the hire of each employee who fills the position of designated representative to the select Committee. The designated representative shall have office space and appropriate office equipment in the select Committee spaces. Designated personal representatives shall have the same access to Committee staff, information, records, and databases as select Committee staff, as determined by the Chairman and Vice Chairman.

"(c) The designated employee shall meet all the requirements of relevant statutes, Senate rules, and committee security clearance requirements for employment by the select Committee.".

SA 4020. Mr. ROBERTS submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

. In section 201, add at the end the following:

(i) ELIMINATION OF REFERRAL.—

(1) REFERRAL.—Section 3 of S. Res. 400 is amended by—

(A) striking subsection (b); and

(B) redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date of adoption of this resolution.

SA 4021. Mr. BIDEN (for himself and Mr. LUGAR) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; as follows:

On page 5, after line 3, insert the following:

"(C) The Chairman and Ranking Member of the Committee on Foreign Relations (if not already a member of the select Committee) shall be ex officio members of the select Committee but shall have no vote in the Committee and shall not be counted for purposes of determining a quorum.".

SA 4022. Mr. LOTT submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. . JOINT REFERRAL.

(a) When the Senate receives from the House a bill making an intelligence appropriation the bill then be jointly referred to the Committee on Appropriations and the Select Committee on Intelligence;

(b) If the Committee on Appropriations reports a bill making an intelligence appropriation the bill then will be jointly referred to the Committee on Appropriations and the Select Committee on Intelligence;

SEC. . POINT OF ORDER.

(a) IN GENERAL.—It shall not be in order for the Senate to proceed to the consideration of a bill making intelligence appropriation unless it has been referred to the Committee on Appropriations and the Select Committee on Intelligence;

(b) SUPERMAJORITY REQUIRED FOR WAIVER.—A point of order under subsection (a) of this section may be waived only by a motion to proceed which is agreed to by the affirmative vote of three-fifths of the Senators duly chosen and sworn.

SEC. . INTELLIGENCE APPROPRIATIONS.

DEFINED.—The term "intelligence appropriation" means an appropriation to provide funds for foreign or domestic intelligence operations, equipment, salaries, expenses, or other intelligence-related activities of the United States.

SA 4023. Mr. HATCH submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

At the end of title I, insert the following:

SEC. 102. CLARIFICATION OF JURISDICTION.

Nothing in this resolution shall be construed to grant the Committee on Homeland Security and Governmental Affairs primary jurisdiction over any federal governmental entity whose primary responsibility is enforcement of Title 18, including the Department of Justice, Federal bureau of Investigation, or other criminal law enforcement entity currently under the jurisdiction of the Committee on the Judiciary unless otherwise modified by this resolution.

SA 4024. Mr. HATCH submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

At the end of title I, insert the following:

SEC. 102. CLARIFICATION OF JURISDICTION.

Nothing in this resolution shall diminish the primary jurisdiction of the Committee on the Judiciary over matters relating to the administration of justice, including the criminal law and law enforcement entities including the Department of Justice and the Federal Bureau of Investigation.

SA 4025. Mr. MCCONNELL (for himself and Mr. REID) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 100. PURPOSE.

It is the purpose of titles I through V of this resolution to improve the effectiveness of the Senate Select Committee on Intelligence, especially with regard to its oversight of the Intelligence Community of the United States Government, and to improve the Senate's oversight of homeland security.

TITLE I—HOMELAND SECURITY OVERSIGHT REFORM

SEC. 101. HOMELAND SECURITY.

(a) COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS.—The Committee on Governmental Affairs is renamed as the Committee on Homeland Security and Governmental Affairs.

(b) JURISDICTION.—There shall be referred to the committee all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

(1) Department of Homeland Security, except matters relating to the Coast Guard, the Transportation Security Administration, the Federal Law Enforcement Training Center, and the revenue functions of the Customs Service.

(2) Archives of the United States.

(3) Budget and accounting measures, other than appropriations, except as provided in the Congressional Budget Act of 1974.

(4) Census and collection of statistics, including economic and social statistics.

(5) Congressional organization, except for any part of the matter that amends the rules or orders of the Senate.

(6) Federal Civil Service.

(7) Government information.

(8) Intergovernmental relations.

(9) Municipal affairs of the District of Columbia, except appropriations therefor.

(10) Organization and management of United States nuclear export policy.

(11) Organization and reorganization of the executive branch of the Government.

(12) Postal Service.

(13) Status of officers and employees of the United States, including their classification, compensation, and benefits.

(c) ADDITIONAL DUTIES.—The committee shall have the duty of—

(1) receiving and examining reports of the Comptroller General of the United States and of submitting such recommendations to

the Senate as it deems necessary or desirable in connection with the subject matter of such reports;

(2) studying the efficiency, economy, and effectiveness of all agencies and departments of the Government;

(3) evaluating the effects of laws enacted to reorganize the legislative and executive branches of the Government; and

(4) studying the intergovernmental relationships between the United States and the States and municipalities, and between the United States and international organizations of which the United States is a member.

(d) JURISDICTION OF SENATE COMMITTEES.—The jurisdiction of the Committee on Homeland Security and Governmental Affairs provided in subsection (b)(1) shall supersede the jurisdiction of any other committee of the Senate provided in the rules of the Senate.

TITLE II—INTELLIGENCE OVERSIGHT REFORM

SEC. 201. INTELLIGENCE OVERSIGHT.

(a) COMMITTEE ON ARMED SERVICES MEMBERSHIP.—Section 2(a)(3) of Senate Resolution 400, agreed to May 19, 1976 (94th Congress) (referred to in this section as "S. Res. 400") is amended by—

(1) inserting "(A)" after "(3)"; and

(2) inserting at the end the following:

"(B) The Chairman and Ranking Member of the Committee on Armed Services (if not already a member of the select Committee) shall be ex officio members of the select Committee but shall have no vote in the Committee and shall not be counted for purposes of determining a quorum.".

(b) NUMBER OF MEMBERS.—Section 2(a) of S. Res. 400 is amended—

(1) in paragraph (1), by inserting "not to exceed" before "fifteen members";

(2) in paragraph (1)(E), by inserting "not to exceed" before "seven"; and

(3) in paragraph (2), by striking the second sentence and inserting "Of any members appointed under paragraph (1)(E), the majority leader shall appoint the majority members and the minority leader shall appoint the minority members, with the majority having a one vote margin.".

(c) ELIMINATION OF TERM LIMITS.—Section 2 of Senate Resolution 400, 94th Congress, agreed to May 19, 1976, is amended by striking subsection (b) and by redesignating subsection (c) as subsection (b).

(d) APPOINTMENT OF CHAIRMAN AND VICE CHAIRMAN.—Section 2(b) of S. Res. 400, as redesignated by subsection (c) of this section, is amended by striking the first sentence and inserting the following: "At the beginning of each Congress, the Majority Leader of the Senate shall select a chairman of the select Committee and the Minority Leader shall select a vice chairman for the select Committee.".

(e) SUBCOMMITTEES.—Section 2 of S. Res. 400, as amended by subsections (a) through (d), is amended by adding at the end the following:

"(c) The select Committee may be organized into subcommittees. Each subcommittee shall have a chairman and a vice chairman who are selected by the Chairman and Vice Chairman of the select Committee, respectively.".

(f) REPORTS.—Section 4(a) of S. Res. 400 is amended by inserting ", but not less than quarterly," after "periodic".

(g) STAFF.—Section 15 of S. Res. 400 is amended to read as follows:

"SEC. 15. (a) The select Committee shall hire or appoint one employee for each member of the select Committee to serve as such Member's designated representative on the select Committee. The select Committee shall only hire or appoint an employee chosen by the respective Member of the select Committee for whom the employee will serve as the designated representative on the select Committee.

"(b) The select Committee shall be afforded a supplement to its budget, to be determined by the Committee on Rules and Administration, to allow for the hire of each employee who fills the position of designated representative to the select Committee. The designated representative shall have office space and appropriate office equipment in the select Committee spaces, and shall have full access to select Committee staff, information, records, and databases.

"(c) The designated employee shall meet all the requirements of relevant statutes, Senate rules, and committee clearance requirements for employment by the select Committee.".

(h) NOMINEES.—S. Res. 400 is amended by adding at the end the following:

"SEC. 17. (a) The select Committee shall have jurisdiction for reviewing, holding hearings, and voting on civilian persons nominated by the President to fill a position within the intelligence community that requires the advice and consent of the Senate.

"(b) Other committees with jurisdiction over the nominees' executive branch department may hold hearings and interviews with that person.".

TITLE III—COMMITTEE STATUS

SEC. 301. COMMITTEE STATUS.

(a) HOMELAND SECURITY.—The Committee on Homeland Security and Governmental Affairs shall be treated as the Committee on Governmental Affairs listed under paragraph 2 of rule XXV of the Standing Rules of the Senate for purposes of the Standing Rules of the Senate.

(b) INTELLIGENCE.—The Select Committee on Intelligence shall be treated as a committee listed under paragraph 2 of rule XXV of the Standing Rules of the Senate for purposes of the Standing Rules of the Senate.

TITLE IV—INTELLIGENCE-RELATED SUBCOMMITTEES

SEC. 401. SUBCOMMITTEE RELATED TO INTELLIGENCE OVERSIGHT.

(a) ESTABLISHMENT.—There is established in the Select Committee on Intelligence a Subcommittee on Oversight which shall be in addition to any other subcommittee established by the select Committee.

(b) RESPONSIBILITY.—The Subcommittee on Oversight shall be responsible for ongoing oversight of intelligence activities.

SEC. 402. SUBCOMMITTEE RELATED TO INTELLIGENCE APPROPRIATIONS.

(a) ESTABLISHMENT.—There is established in the Committee on Appropriations a Subcommittee on Intelligence. The Subcommittee on Military Construction shall be combined with the Subcommittee on Defense into 1 subcommittee.

(b) JURISDICTION.—The Subcommittee on Intelligence of the Committee on Appropriations shall have jurisdiction over funding for intelligence matters.

TITLE V—EFFECTIVE DATE

SEC. 501. EFFECTIVE DATE.

This resolution shall take effect on the convening of the 109th Congress.

SA 4026. Mr. NICKLES (for himself and Mr. CONRAD) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

At the end of Section 101, insert the following:

"(e) JURISDICTION OF BUDGET COMMITTEE.—Notwithstanding paragraph (b)(3) of this section, the Committee on the Budget shall have exclusive jurisdiction over measures affecting the congressional budget process, including:

(1) the functions, duties, and powers of the Budget Committee;

(2) the functions, duties, and powers of the Congressional Budget Office;

(3) the process by which Congress annually establishes the appropriate levels of budget authority, outlays, revenues, deficits or surpluses, and public debt—including subdivisions thereof—and including the establishment of mandatory ceilings on spending and appropriations, a floor on revenues, timetables for congressional action on concurrent resolutions, on the reporting of authorization bills, and on the enactment of appropriation bills, and enforcement mechanisms for budgetary limits and timetables;

(4) the limiting of backdoor spending devices;

(5) the timetables of Presidential submission of appropriations and authorization requests;

(6) the definitions of what constitutes impoundment—such as "rescissions" and "deferrals";

(7) the process and determination by which impoundments must be reported to and considered by Congress;

(8) the mechanisms to insure Executive compliance with the provisions of the Impoundment Control Act, title X—such as GAO review and lawsuits; and

(9) the provisions which affect the content or determination of amounts included in or excluded from the congressional budget or the calculation of such amounts, including the definition of terms provided by the Budget Act.

"(f) OMB NOMINEES.—The Committee on the Budget and the Governmental Affairs Committee shall have joint jurisdiction over reviewing, holding hearings, and voting on persons nominated by the President to fill positions within the Office of Management and Budget that require the advice and consent of the Senate, and if one committee acts on such a nomination, the other must act within 30 calendar days of continuous possession, or be automatically discharged.

SA 4027. Mr. NICKLES (for himself and Mr. CONRAD) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence, which was ordered to lie on the table; as follows:

At the end of Section 101, insert the following:

"(e) JURISDICTION OF BUDGET COMMITTEE.—Notwithstanding paragraph (b)(3) of this section, the Committee on the Budget shall have exclusive jurisdiction over measures affecting the congressional budget process, including:

(1) the functions, duties, and power of the Budget Committee;

(2) the function, duties, and powers of the Congressional Budget Office;

(3) the process by which Congress annually establishes the appropriate levels of budget authority, outlays, revenues, deficits or surpluses, and public debt—including subdivisions thereof—and including the establishment of mandatory ceilings on spending and appropriations, a floor on revenues, timetables for congressional action on concurrent resolutions, on the reporting of authorization bills, and on the enactment of appropriation bills, and enforcement mechanisms for budgetary limits and timetables;

(4) the limiting of backdoor spending devices;

(5) the timetables for Presidential submission of appropriations and authorization requests;

(6) the definitions of what constitutes impoundment—such as "rescissions" and "deferrals";

(7) the process and determination by which impoundments must be reported to and considered by Congress;

(8) the mechanisms to insure Executive compliance with the provisions of the Impoundment Control Act, title X—such as GAO review and lawsuits; and

(9) the provisions which affect the content or determination of amounts included in or excluded from the congressional budget or the calculation of such amounts, including the definition of terms provided by the Budget Act."

SA 4028. Mr. NICKLES (for himself and Mr. CONRAD) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

In Section 101(b), strike paragraph (3), and insert in its place the following:

"(3) Management and accounting measures; and the Committee on the Budget and the Governmental Affairs Committee shall have joint jurisdiction over reviewing, holding hearings, and voting on persons nominated by the President to fill positions within the Office of Management and Budget that require the advice and consent of the Senate, and if one committee acts on such a nomination, the other must act within 30 calendar days of continuous possession, or be automatically discharged."

SA 4029. Mr. NICKLES (for himself and Mr. CONRAD) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

In Section 101(b), strike paragraph (3), and insert in its place the following:

"(3) Management and accounting measures."

SA 4030. Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; as follows:

At the end of section 201, insert the following:

(i) JURISDICTION.—Section 3(b) of S. Res. 400 is amended to read as follows:

"(b)(1) Any proposed legislation reported by the select Committee except any legislative involving matters specified in paragraph (1) or (4)(A) of subsection (a), containing any legislative actions or budgetary provisions directly affecting any agencies, departments, activities, or programs of the United States Government within the jurisdiction of any standing committee shall, at the request of the chairman of such standing committee, be referred to such standing committee for its consideration of such matter and be reported to the Senate by such standing committee within 10 days after the day on which such proposed legislation, in its entirety and including annexes, is referred to such standing committee; and any proposed legislation reported by any committee, other than the select Committee, which contains any legislative involving matters specified in clause (i) or paragraph (4)(A) of subsection (a), containing any legislative actions or budgetary provisions directly affecting any agencies, departments, activities, or programs of the United States Government within the jurisdiction of the select Committee shall, at the request of the chairman of the select Committee, be referred to the select Committee for its consideration of such matter and be reported to the Senate by the select Committee within 10 days after the day on which such proposed legislation, in its entirety and including annexes, is referred to such committee.

"(2) In any case in which a committee fails to report any proposed legislation referred to it within the time limit prescribed in this subsection, such Committee shall be automatically discharged from further consideration of such proposed legislation on the 10th day following the day on which such proposed legislation is referred to such committee unless the Senate provides otherwise.

"(3) In computing any 10-day period under this subsection there shall be excluded from such computation any days on which the Senate is not the session.

"(4) The reporting and referral processes outlined in this subsection shall be conducted in strict accordance with the Standing Rules of the Senate. In accordance with such rules, committees to which legislation is referred are not permitted to make changes or alterations to the text of the referred bill and its annexes, but may propose changes or alterations to the same in the form of amendments.".

SA 4031. Mr. ROCKEFELLER (for himself and Mr. BIDEN) submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

On page 6, line 11, of the amendment, strike "quarterly" and insert "annual".

SA 4032. Mr. REID submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

In section 201, strike subsection (a) and insert the following:

(a) EX OFFICIO MEMBERSHIP.—Section 2(a)(3) of Senate Resolution 400 is amended by—

(1) inserting "(A)" after "(3)"; and

(2) inserting at the end the following:

"(B) The Chairman and Ranking Member of the Committee on Armed Services and the Committee on Foreign Relations (if not already a member of the select Committee) shall be ex officio members of the select Committee but shall have no vote in the select Committee and shall not be counted for purposes of determining a quorum.".

SA 4033. Mr. GREGG submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

Strike section 101(b)(1) of the resolution and insert the following:

(b) JURISDICTION.—There shall be referred to the committee all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:

(1) Department of Homeland Security except matters relating to—

(A) the Coast Guard, the Transportation Security Administration, the Federal Law Enforcement Training Center, the revenue functions of the Customs Service,

(B) the Strategic National Stockpile as authorized by section 319F-2 of the Public Health Service Act,

(C) the National Disaster Medical System as authorized by section 2811(b) of the Public Health Service Act, and

(D) the office of the Assistant Secretary for Public Health Emergency Preparedness (ASPHEP) as authorized by section 2811(a) of the Public Health Service Act.

SA 4034. Ms. COLLINS submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. McCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

In section 101(b), strike paragraph (1) and insert the following:

(1) Department of Homeland Security, except matters relating to the functions of the Coast Guard not related to homeland security, the Federal Law Enforcement Training Center, and the revenue functions of the Customs Service.

SA 4035. Mr. FRIST submitted an amendment intended to be proposed to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

At the end of section 201, insert the following:

(i) SECURITY PROCEDURES.—Section 7 of S. Res. 400 is amended to read as follows:

"SEC. 7. (a) At the beginning of each Congress, the select Committee also shall formulate and carry out such rules and procedures as it deems necessary to prevent the disclosure, without the consent of the person or persons concerned, of information in the possession of such committee which unduly infringes upon the privacy or which violates the constitutional rights of such person or persons. The rules and procedures of the select Committee shall be formulated jointly with the Office of Senate Security and shall be subject to the approval of that office.

"(b) The select Committee shall inform the Office of Senate Security not later than 30 days prior to making any changes to the rules and procedures of the select Committee, which shall be contingent upon the approval of the Office of Senate Security.

"(c) Nothing in this section shall be construed to prevent such committee from publicly disclosing any such information in any case in which such committee determines the national interest in the disclosure of such information clearly outweighs any infringement on the privacy of any person or persons.".

(j) PUBLIC DISCLOSURE.—Section 8 of S. Res. 400 is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking "shall notify the President of such vote" and inserting "shall—

"(A) first, notify the Majority Leader and Majority Leader of the Senate of such vote; and

"(B) second, notify the President of such vote.";

(B) in paragraph (2), by striking "transmitted to the President" and inserting "transmitted to the Majority Leader and the Minority Leader and the President"; and

(C) by amending paragraph (3) to read as follows:

"(3) If the President, personally, in writing, notifies the majority leader of the Senate or select committee of his objections to the disclosure of such information as provided in paragraph (2), such the majority leader of th committee may, refer to the question of the disclosure of such information to the Senate for consideration. The committee shall not publicly disclose such information without leave of the Senate.";

(2) by redesignating subsections (d) and (e) as subsections (e) and (f) and inserting after subsection (c) the following:

"(d) Any known or possible loss or compromise of classified material which comes to the attention of the Select Committee or its personnel shall be immediately reported to the Office of Senate Security. The Office of Senate Security shall investigate the reported incident in accordance with the procedures set forth in the Senate Security Manual, and shall report the results of said investigation to the Committee and to the Joint Leadership.";

(3) in subsection (e), as redesignated by paragraph (2) (old (d)), by striking "Senate Select Committee on Ethics" and inserting "Office of Senate Security"; and

(4) in subsection (f), as redesignated by paragraph (2) (old (e)), is amended to read as follows:

"(f) Upon the request of any person who is subject to any such investigation, the Office of Senate Security shall release to such individual at the conclusion of its investigation a summary of its investigation together with its findings. If, at the conclusion of its investigation, the Office of Senate Security determines that there has been a breach of confidentiality or unauthorized disclosure by a Member, officer, or employee of the Senate, it shall report its findings to the majority leader and minority leader of the Senate.".

SA 4036. Mr. DURBIN proposed an amendment to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; as follows:

In section 201, at the end of subsection (g), add the following:

"(d) Of the funds made available to the select Committee for personnel—

"(1) not more than 55 percent shall be under the control of the Chairman; and

"(2) not less than 45 percent shall be under the control of the Vice Chairman.".

SA 4037. Mr. HATCH (for Mr. LEAHY (for himself, Mr. SPECTER, and Mr. HATCH)) proposed an amendment to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; as follows:

In section 101(b)(1), after "Service" insert ", and the Secret Service".

SA 4038. Mr. MCCONNELL (for Mr. SHELBY (for himself and Mr. SARBANES)) proposed an amendment to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; as follows:

At the appropriate place, insert the following:

"*Provided*, That the jurisdiction provided under section 101(b)(1) shall not include the National Flood Insurance Act of 1968, or functions of the Federal Emergency Management Agency related thereto.".

SA 4039. Mr. SHELBY (for himself and Mr. SARBANES) submitted an amendment intended to be proposed by him to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

At the appropriate place insert the following: "*Provided*, That the jurisdiction provided under section 101(b)(1) shall not include the Currency and Financial Transaction Reporting Act.

SA 4040. Mr. BINGAMAN (for Mr. DOMENICI (for himself and Mr. BINGAMAN)) proposed an amendment to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; as follows:

Section 101(b) is amended by—

(1) striking paragraph (10); and

(2) adding at the end the following:

"Matters relating to organization and management of United States nuclear export policy (except programs in the Homeland Security) shall be referred to the Committee on Energy and Natural Resources.".

SA 4041. Mr. NICKLES (for himself and Mr. CONRAD) submitted an amendment intended to be proposed to amendment SA 4027 submitted by Mr. NICKLES (for himself and Mr. CONRAD) and intended to be proposed to the amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

Strike all after the first word, and insert the following:

JURISDICTION OF BUDGET COMMITTEE.—Notwithstanding paragraph (b)(3) of this section, and except as otherwise provided in the Congressional Budget Act of 1974, the Committee on the Budget shall have exclusive jurisdiction over measures affecting the congressional budget process, which are:

(1) the functions, duties, and powers of the Budget Committee;

(2) the functions, duties, and powers of the Congressional budget Office;

(3) the process by which Congress annually establishes the appropriate levels of budget authority, outlays, revenues, deficits or surpluses, and public debt—including subdivisions thereof—and including the establishment of mandatory ceilings on spending and appropriations, a floor on revenues, timetables for congressional action on concurrent resolutions, on the reporting of authorization bills, and on the enactment of appropriation bills, and enforcement mechanisms for budgetary limits and timetables;

(4) the limiting of backdoor spending devices;

(5) the timetables for Presidential submission of appropriations and authorization requests;

(6) the definitions of what constitutes impoundment—such as "rescissions" and "deferrals";

(7) the process and determination by which impoundments must be reported to and considered by Congress;

(8) the mechanisms to insure Executive compliance with the provisions of the Impoundment Control Act, title X—such as GAO review and lawsuits; and

(9) the provisions which affect the content or determination of amounts included in our excluded from the congressional budget or the calculation of such amounts, including the definition of terms provided by the Budget Act.

(f) OMB NOMINEES.—the Committee on the Budget and the Governmental Affairs Committee shall have joint jurisdiction over the nominations of persons nominated by the President to fill the positions of Director and Deputy Director for Budget within the Office of Management and Budget, and if one committee votes to order reported such a nomination, the other must report within 30 calendar days session, or be automatically discharged.

SA 4042. Mrs. HUTCHISON submitted an amendment intended to be proposed to amendment SA 4015 submitted by Mrs. HUTCHISON and intended to be proposed to the amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; which was ordered to lie on the table; as follows:

Strike "not later than 2 weeks" and insert "as soon as possible".

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on October 7, 2004, at a time to be determined, for the purposes of conducting a vote on pending committee business.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Commerce, Science, and Transportation Committee be authorized to meet on Thursday, October 7, 2004, at 9:30 a.m., on the Effect of Federal Bankruptcy and Pension Policy on the Financial Situation of the Airlines.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Thursday, October 7, 2004 in Dirksen Senate Office Room 226.

Agenda:

I. Nominations: Claude A. Allen to be U.S. Circuit Judge for the Fourth Circuit and Robert Cramer Balfe to be U.S. Attorney for the Western District of Arkansas.

II. Legislation: S. 2396, Federal Courts Improvement Act of 2004, Hatch, Leahy, Chambliss, Durbin, Schumer; S. 2204, A bill to provide criminal penalties for false information and hoaxes relating to terrorism Act of 2004, Hatch, Schumer, Cornyn, Feinstein, DeWine; S. 1860, A bill to reauthorize the Office of National Drug Control Policy Act of 2003, Hatch, Biden, Grassley; S. 2560, A bill to amend chapter 5 of title 17, United States Code, relating to inducement of copyright infringement, and for other purposes Act 2004, Hatch, Leahy, Graham; S.J. Res. 23, A joint resolution proposing an amendment to the Constitution of the United States providing for the event that one-fourth of the members of either the House of Representatives or the Senate are killed or incapacitated Act of 2003, Cornyn, Chambliss; S. 2373, A bill to modify the prohibition on recognition by United States courts of certain rights relating to certain marks, trade names, or commercial names Act of 2004, Domenici, Graham, Sessions; S. 2863, A bill to reauthorize the Department of Justice Act of 2004, Hatch, Leahy, DeWine, Schumer; H.R. 2391, To amend title 35, United States Code, to promote cooperative research involving universities, the public sector, and private enterprises Act of 2003, Smith—TX; S. 2760, A bill to limit and expedite Federal collateral review of convictions for killing a public safety officer Act of 2004, Kyl, Hatch, Craig, Cornyn, Sessions, Chambliss; S. 1297, A bill to amend title 28, United State Code, with respect to the jurisdiction of Federal courts inferior to the Supreme Court over certain cases and controversies involving the Pledge of Allegiance to the Flag Act of 2003, Hatch, Talent, Kyl; S. 2302, A bill to improve access to physicians in medically underserved areas Act of 2004, Conrad, Feingold, Kennedy, Schumer, DeWine, Kohl; S. 989, A bill to provide death and disability benefits for aerial firefighters who work on a contract basis for a public agency and suffer death or disability in the line of duty, and for other purposes Act of 2003, Enzi, Reid; S. 1728, Terrorism Victim Compensation Equity Act of 2003, Specter, Leahy, Schumer; S. 1740, Anthrax Victims Fund Fairness Act of 2003, Leahy, Feingold; S. 549, A bill to amend the September 11th Victim Compensation Fund of 2001 (49 U.S.C. 40101 note; Public Law 107-42) to provide compensation for victims killed in the bombing of the World Trade Center in 1993, and for other purposes Act of 2003, Schumer; and S. 2268, Private Bill; A bill for the relief of Griselda Lopez Negrete, Graham—SC.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGES OF THE FLOOR

Mr. GRASSLEY. Mr. President, I ask unanimous consent that Wade Glover, a member of my Finance Committee staff, be granted the privileges of the floor during today's session.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, I ask unanimous consent that Paul Kovac, a detailee from the Department of Justice, and Nicholas Rossi, a detailee from the Federal Bureau of Investigation, be granted the privilege of the floor for the remainder of the 108th session.

The PRESIDING OFFICER. Without objection, it is so ordered.

MEASURE READ THE FIRST TIME—S. 2938

Mr. McCONNELL. I understand there is a bill at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2938) to grant a Federal charter to the National American Indian Veterans, Incorporated.

Mr. McCONNELL. I now ask for its second reading, and in order to place the bill on the calendar under the provisions of rule XIV, I object to my own request.

The PRESIDING OFFICER. Objection is heard. The bill will receive its second reading on the next legislative day.

APPOINTMENTS

The PRESIDING OFFICER. The Chair on behalf of the Vice President, in accordance with 22 U.S.C. 1928a-1928d, as amended, appoints the following Senators as members of the Senate Delegation to the NATO Parliamentary Assembly during the Second Session of the 108th Congress: Senator PATRICK LEAHY of Vermont and Senator DIANE FEINSTEIN of California.

The Chair, on behalf of the majority leader, after consultation with the Democratic leader, pursuant to Public Law 93-415, as amended by Public Law 102-586, appoints the following individuals to serve as members of the Coordinating Council on Juvenile Justice and Delinquency Prevention: The Honorable Steven H. Jones of Tennessee, Mr. Bill Gibbons of Tennessee and, Mr. Larry K. Brendtro of South Dakota.

ORDERS FOR FRIDAY, OCTOBER 8, 2004

Mr. McCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9 a.m. tomorrow, Friday, October 8. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved; provided further, that the Senate then immediately proceed to the consideration of the conference report to accompany H.R. 4520, the FSC/ETI JOBS bill, provided it is available. I further ask unanimous consent that the majority leader then be recognized in order to file a cloture motion on the conference report. I further ask unanimous consent that following the filing of that cloture motion, the Senate proceed to a cloture vote on the pending substitute amendment to S. Res. 445.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. McCONNELL. Mr. President, tomorrow morning, the Senate will begin consideration of the FSC/ETI JOBS conference report. We will be unable to reach a limited time for debate; therefore, cloture will be filed on the conference report. At approximately 9:15 a.m., the Senate will begin the first cloture vote on the pending substitute amendment to the intelligence resolution. It is my expectation that cloture will be invoked, and we should be able to adopt the substitute shortly thereafter and then proceed to the cloture vote on the underlying resolution.

I also encourage Senators who wish to offer the amendments that are listed on the amendment list approved earlier tonight to come forward and offer those amendments. We hope to dispose of those tomorrow. Following the disposition of the resolution, the Senate will resume consideration of the FSC/ETI JOBS conference report.

Again, we have been unable to lock in a time certain for a vote on the conference report, and it appears cloture will be necessary. We will continue to work with all Members to move forward on our remaining work. As I mentioned earlier, we will finish both the Senate intelligence reform resolution and the FSC conference report prior to adjourning, as well as the Homeland Security appropriations conference report and/or Defense conference report as they are available.

Mr. REID. Will the Senator yield to me for a brief minute?

Mr. McCONNELL. Mr. President, I ask unanimous consent to waive the live quorum vote prior to cloture.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Nevada.

Mr. REID. Mr. President, this second part of the 9/11 Commission recommendations is winding down. I know there has been a lot of hurt feelings today: You took too much from my committee; you are not giving enough to my committee.

People are very protective of what they have around here and what they fear they might lose. I have been chairman of the Environment and Public Works Committee on two separate occasions, and transferred from the Environment and Public Works Committee today was a very important aspect of the Public Works Committee, FEMA, the Federal Emergency Management Administration.

I only indicate that because when the dust settles, we will find that we have created a much more powerful Intelligence Committee, a much more powerful intelligence apparatus, and we will find that the homeland security committee, which we have created, merged with the Governmental Affairs Committee, is going to be one of the most powerful committees in the Congress of the United States.

As I said, there are a lot of hurt feelings. This has been very difficult for Senator McCONNELL and I. We did not run for this assignment to manage this bill, but this is part of the responsibilities we have, and we have done the very best we can.

I hope tomorrow people will sit back and rather than lamenting what they did not get or what they felt they should get, they will understand what we are doing. This is part of the recommendations of the 9/11 Commission. Always remember this is legislation, it is not perfection. Legislation is the art of compromise, and I believe that includes consensus building, which we have done.

I want to again, through the Chair, extend my appreciation to the distinguished Senator from Kentucky. This has been extremely difficult for him and for me, but this is part of our responsibilities. I want to express my admiration and appreciation for his cooperation in allowing us to move forward on this legislation.

Mr. McCONNELL. Mr. President, I thank my friend from Nevada for his kind comments. I will have a good deal more to say about him tomorrow as well because this has been a challenging undertaking. I do think we have made substantial progress, if not having achieved everything we hoped, but I think we have come a long way in the right direction.

ORDER FOR ADJOURNMENT

Mr. McCONNELL. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order, following the remarks of Senator PRYOR.

The PRESIDING OFFICER (Mr. COLEMAN). Without objection, it is so ordered.

The Senator from Arkansas is recognized.

Mr. PRYOR. I thank the Chair.

(The remarks of Mr. PRYOR pertaining to the introduction of S. 2941 are printed in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

ADJOURNMENT UNTIL 9 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until Friday, October 8 at 9 a.m.

There being no objection, the Senate, at 11:29 p.m., adjourned until Friday, October 8, 2004, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate October 7, 2004:

COMMODITY FUTURES TRADING COMMISSION

FEDERICK WILLIAM HATFIELD, OF CALIFORNIA, TO BE A COMMISSIONER OF THE COMMODITY FUTURES TRADING COMMISSION FOR A TERM EXPIRING APRIL 13, 2008, VICE THOMAS J. ERICKSON, TERM EXPIRED.

DEPARTMENT OF THE TREASURY

HAROLD DAMELIN, OF VIRGINIA, TO BE INSPECTOR GENERAL, DEPARTMENT OF THE TREASURY, VICE JEFFREY RUSH, JR., RESIGNED.

EXECUTIVE OFFICE OF THE PRESIDENT

JORGE A. PLASENCIA, OF FLORIDA, TO BE A MEMBER OF THE ADVISORY BOARD FOR CUBA BROADCASTING FOR A TERM EXPIRING OCTOBER 27, 2006, VICE JOSEPH FRANCIS GLENNON, TERM EXPIRED.

GENERAL SERVICES ADMINISTRATION

BRIAN DAVID MILLER, OF VIRGINIA, TO BE INSPECTOR GENERAL, GENERAL SERVICES ADMINISTRATION, VICE DANIEL R. LEVINSON.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

EDWARD L. FLIPPEN, OF VIRGINIA, TO BE INSPECTOR GENERAL, CORPORATION FOR NATIONAL AND COMMUNITY SERVICE, VICE J. RUSSELL GEORGE.

FOREIGN SERVICE

THE FOLLOWING NAMED CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE DEPARTMENT OF STATE FOR PROMOTION IN THE SENIOR FOREIGN SERVICE TO THE CLASSES INDICATED:

CAREER MEMBERS OF THE SENIOIR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF CAREER MINISTER:

RALPH L. BOYCE JR., OF VIRGINIA
MAURA A. HARTY, OF MARYLAND
RICHARD H. JONES, OF VIRGINIA
NANCY J. POWELL, OF IOWA

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF MINISTER-COUNSELOR:

BERNARD ALTER, OF COLORADO
PERRY EDWIN BALL, OF VIRGINIA
MARSHA E. BARNES, OF FLORIDA
JOHN ROSS BEYRLE, OF THE DISTRICT OF COLUMBIA
ROBERT O. BLAKE JR., OF THE DISTRICT OF COLUMBIA
TERRY ALAN BREESE, OF CALIFORNIA
JEFFERSON T. BROWN, OF NEW JERSEY
DONALD CAMP, OF VIRGINIA
DOUGLAS A. DAVIDSON, OF VIRGINIA
MILTON K. DRUCKER, OF VIRGINIA
JAMES BRENDAN FOLEY, OF NEW YORK
BURLEY P. FUSELIER JR., OF VIRGINIA
RICHARD F. GONZALEZ, OF CALIFORNIA
GORDON GRAY III, OF VIRGINIA
DEBORAH E. GRAZE, OF VIRGINIA
SUNETA LYN HALLIBURTON, OF NEW YORK
ROSEMARY ELLEN HANSEN, OF VIRGINIA
LAWRENCE N. HILL, OF CALIFORNIA
KATHLEEN V. HODAI, OF WASHINGTON
JEANINE ELIZABETH JACKSON, OF WYOMING
ANDREW C. KOSS, OF VIRGINIA
GEORGE ALBERT KROL, OF NEW JERSEY
DUNCAN H. MACINNES, OF VIRGINIA
GAIL DENNISE MATHIEU, OF NEW JERSEY
JAMES D. NEALON JR., OF NEW HAMPSHIRE
ANDREA J. NELSON, OF NEW YORK
KAREN L. PEREZ, OF MARYLAND
GARY B. PERGL, OF CALIFORNIA
JUNE CARTER PERRY, OF THE DISTRICT OF COLUMBIA
EUNICE S. REDDICK, OF NEW YORK
JOHN G. RENDEIRO JR., OF PENNSYLVANIA
NICHOLAS J. RIESLAND, OF WASHINGTON
JAMES E. ROBERTSON, OF MARYLAND
JOSIAH B. ROSENBLATT, OF NEW YORK
PAUL J. SAXTON, OF VIRGINIA
STEPHEN A. SECHE, OF NEW HAMPSHIRE
PAMELA JO H. SLUTZ, OF TEXAS
RICHARD HENRY SMYTH, OF VIRGINIA
GREGORY BCWNE STARR, OF VIRGINIA
DAVID C. STEWART, OF TEXAS
MARK TAPLIN, OF CALIFORNIA
HARRY KEELS THOMAS JR., OF NEW YORK
J. PATRICK TRUHN, OF THE DISTRICT OF COLUMBIA
CAROL LEE VAN VOORST, OF VIRGINIA
PHILIP R. WALL, OF WASHINGTON
JACOB WALLES, OF THE DISTRICT OF COLUMBIA
DON QUINTIN WASHINGTON, OF CALIFORNIA
DONALD EUGENE WELLS, OF TEXAS
CHARLES D. WISECARVER JR., OF VIRGINIA

THE FOLLOWING-NAMED CAREER MEMBERS OF THE FOREIGN SERVICE FOR PROMOTION INTO THE SENIOR FOREIGN SERVICE, AND FOR APPOINTMENT AS CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE, AS INDICATED:

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE OF THE UNITED STATES OF AMERICA, CLASS OF COUNSELOR:

GINA ABERCROMBIE WINSTANLEY, OF OHIO
BARBARA S. AYCOCK, OF OREGON
CHARLES V. BARCLAY JR., OF CALIFORNIA
ROBERT C. BRYSON, OF SOUTH DAKOTA
THOMAS R. CARMICHAEL, OF FLORIDA
PHILLIP CARTER III, OF VIRGINIA
LEIGH G. CARTER, OF FLORIDA

PETER CLAUSSEN, OF SOUTH DAKOTA
MAURA CONNELLY, OF NEW JERSEY
MICHAEL HUGH CORBIN, OF CALIFORNIA
ELIZABETH A. CORWIN, OF FLORIDA
RICHARD DE VILLAFRANCA, OF CONNECTICUT
MICHAEL JOHN DELANEY, OF MISSOURI
GREGORY TORRENCE DELAWIE, OF VIRGINIA
JAMES C. DICKMEYER, OF OHIO
LINDA L. DONAHUE, OF VIRGINIA
KAARA NICOLE ETTESVOID, OF NEW YORK
KENNETH J. FAIRFAX, OF CALIFORNIA
ANTHONY O. FISHER, OF FLORIDA
LMICHAEL GFOELLER, OF VIRGINIA
DAVID M. HALE, OF NEW JERSEY
PATRICIA MCMAHON HAWKINS, OF NEW HAMPSHIRE
JOHN ASHWOOD HEFFERN, OF VIRGINIA
KENNETH M. HILLAS JR., OF VIRGINIA
PHILLIP P. HOFFMAN, OF NEW YORK
STUART E. JONES, OF PENNSYLVANIA
ALEXANDER KARAGIANNIS, OF MISSOURI
DAVID JOSEPH KEEGAN, OF FLORIDA
DANIEL F. KELLER, OF TEXAS
MARTHA NOVICK KELLEY, OF VIRGINIA
THOMAS PATRICK KELLY, OF CALIFORNIA
THOMAS M. LEARY, OF FLORIDA
JESSICA LECROY, OF TEXAS
THERESA MARY LEECH, OF VIRGINIA
STEVEN SCULLY MALONEY, OF MARYLAND
MARY F. MARTINEZ, OF CALIFORNIA
CHRISTOPHER J. MARUT, OF CONNECTICUT
LESLIE W. MCBEE, OF CALIFORNIA
CAMERON PHELPS MUNTER, OF CALIFORNIA
EFFRY R. OLESEN, OF VIRGINIA
RICHARD GUSTAVE OLSON JR., OF MARYLAND
MICHAEL S. OWEN, OF TENNESSEE
WALTER PFLAUMER, OF VIRGINIA
CONSTANCE A. PHLIPOT, OF VIRGINIA
DANIEL WILLIAM PICCUTA II, OF CALIFORNIA
ROBERTO POWERS, OF CALIFORNIA
EDWARD JAMES RAMOTOWSKI, OF CONNECTICUT
FRANKIE ANNETTE REED, OF CALIFORNIA
KEVIN RICHARDSON, OF NEW JERSEY
DONNA J. ROGINSKI, OF TEXAS
DOUGLAS ROHN, OF VIRGINIA
DANIEL RICHARD RUSSEL, OF CALIFORNIA
WAYNE STEVEN SALISBURY, OF WASHINGTON
DUANE E. SAMS, OF CONNECTICUT
ROBERT C. SCHMIDT, OF HAWAII
DAVID SAMUEL SEDNEY, OF MASSACHUSETTS
DANIEL L. SHIELDS III, OF PENNSYLVANIA
MARC J. SIEVERS, OF MARYLAND
DOUGLAS A. SILLIMAN, OF TEXAS
SANDRA RUGHT SMITH, OF MISSOURI
JULIA REEVES STANLEY, OF NEW YORK
KAREN CLARK STANTON, OF VIRGINIA
RICHARD W. STITES, OF CALIFORNIA
JAMES C. SWAN, OF CALIFORNIA
MATTHEW HEYWOOD TUELLER, OF UTAH
KRISHNA R. URS, OF TEXAS
HUGH FLOYD WILLIAMS, OF MARYLAND
JAMES L. WILLIAMS, OF FLORIDA
STEPHAN BRYAN WILLIAMS, OF VIRGINIA
THOMAS M. YOUNG, OF CALIFORNIA
MARIE L. YOVANOVITCH, OF CONNECTICUT

CAREER MEMBERS OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, AND CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

ISMAIL G. ASMAL, OF VIRGINIA
DARWIN D. CADOGAN, OF NEW YORK
MICHAEL ALLEN CESENA, OF WASHINGTON
JAMES L. CLEVELAND, OF CALIFORNIA
MICHAEL GREGORY CONSIDINE, OF NEW YORK
NACE B. CRAWFORD, OF FLORIDA
JEFFREY W. CULVER, OF VIRGINIA
MICHAEL JOSEPH DARMIENTO, OF VIRGINIA
DEBORAH P. GLASS, OF WASHINGTON
ROBERT A. HARTUNG, OF VIRGINIA
PETER KINCAID JENSEN, OF NEW HAMPSHIRE
STANLEY J. JOSEPH, OF VIRGINIA
DANNY DUANE LOCKWOOD, OF VIRGINIA
HARRY WAYNE LUMLEY, OF TEXAS
BRADLEY C. LYNCH, OF CALIFORNIA
ROBERT MCKINNIE, OF TENNESSEE
MARCIA A. MECKLER, OF PENNSYLVANIA
KIMBERLY K. OTTWELL, OF ARIZONA
CHARLES H. ROSENFARB, OF MARYLAND
SAMUEL B. THEILMAN, OF NORTH CAROLINA
BRUCE W. TULLY, OF MARYLAND
MARILYN M. WANNER, OF VIRGINIA
JAMES C. WELLMAN, OF WEST VIRGINIA
ROBERT J. WHIGHAM, OF NEW YORK

THE FOLLOWING NAMED PERSONS OF THE AGENCIES INDICATED FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF THE CLASS STATED.

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS ONE, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

AGENCY FOR INTERNATIONAL DEVELOPMENT

ROBERT M. CLAY, OF VIRGINIA

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS TWO, COUNSULAR OFFICE AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA

AGENCY FOR INTERNATIONAL DEVELOPMENT

JENNIFER M. ADAMS, OF NEW YORK
SUSAN L. ANTHONY, OF SOUTH DAKOTA
BEVERLY A. HADLEY, OF NEW JERSEY
JOHN R. NIEMEYER, OF ILLINOIS
TANYA J. NUNN, OF THE DISTRICT OF COLUMBIA
M. BABETTE PREVOT, OF TEXAS
DEAN P. SALPINI, OF VIRGINIA
MARGARET KINKOPF WITHERSPOON, OF VIRGINIA
ROSEMARY T. RAKAS, OF THE DISTRICT OF COLUMBIA

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS THREE, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

AGENCY FOR INTERNATIONAL DEVELOPMENT

BRUCE N. ABRAMS, OF CONNECTICUT
ARTHUR W. BROWN JR., OF FLORIDA
ELIZABETH ARIEVA CHAMBERS, OF VIRGINIA
CLAY WILLIAM EPPERSON, OF CALIFORNIA
YVETTE MARIE FEURTADO, OF FLORIDA
SEAN PATRICK HALL, OF NEW YORK
ANDREW DAVID HOLLAND, OF CALIFORNIA
JAMES MICHAEL HOPE, OF VIRGINIA
CHERYL KIM, OF CALIFORNIA
COURTNEY IVES, OF MARYLAND
REBECCA OTTKE KRZYWDA, OF VIRGINIA
DANIEL C. MOORE II, OF CALIFORNIA
DEBORAH I. MOSEL, OF CALIFORNIA
MARISA ANN PARENTE, OF RHODE ISLAND
NEIL GERARD PRICE, OF VIRGINIA
THOMAS E. RHODES, OF FLORIDA
KATHRYN DAVIS STEVENS, OF TEXAS
NATALIE JOY THUNBERG, OF PENNSYLVANIA
JESSICA ROSEN TULODO, OF NEW HAMPSHIRE
KAREN LEA WELCH, OF FLORIDA
ANNE NADIA WILLIAMS, OF FLORIDA
ALLAN JOSEPH ALONZO WIND, OF FLORIDA

DEPARTMENT OF STATE

DAVID S. ELMO, OF NEW YORK

FOR APPOINTMENT AS FOREIGN SERVICE OFFICERS OF CLASS FOUR, CONSULAR OFFICER AND SECRETARY IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF STATE

ALISON VAL AREIAS, OF CALIFORNIA
STEPHEN MICHAEL ASHBY, OF FLORIDA
WILLIAM M. AYALA, OF CALIFORNIA
CHRISTINA N. BOILER, OF CALIFORNIA
ANN ELIZABETH DONICK, OF NEW YORK
JAY DOUGLAS DYKHOUSE, OF MICHIGAN
ANDREW LANE FLASHBERG, OF CALIFORNIA
MARC WILLIAM FUNGARD, OF VIRGINIA
SILVIO I. GONZALEZ, OF TEXAS
SHERMAN L. GRANDY, OF IDAHO
KAREN LOUISE GUSTAFSON DE ANDRADE, OF COLORADO
KERRI STRENG HANNAN, OF FLORIDA
ELIZABETH KATHRYN HORST, OF MINNESOTA
KEITH E. HUGHES, OF NEW YORK
KENNETH ANDREW LKERO, OF VERMONT
ANGELA M. KERWIN, OF PENNSYLVANIA
KATHERINE E. LAWSON, OF MARYLAND
PANFILO MARQUEZ, OF CALIFORNIA
CRYSTAL KATHRYN MERIWETHER, OF MINNESOTA
LISA L. MEYER, OF MARYLAND
DAVID MUNIZ, OF VIRGINIA
CARRIE LYNN MUNTEAN, OF VIRGINIA
WILLIAM G. MUNTEAN III, OF VIRGINIA
JEREMY M. NEITZKE, OF OHIO
MICHAEL ANTHONY NEWBILL, OF ILLINOIS
MICHAEL THOMAS PASCUAL, OF MARYLAND
TERESA D. PEREZ, OF TEXAS
STEPHEN J. POSIVAK JR., OF VIRGINIA
VAN E. REIDHEAD, OF MISSOURI
DAVID JAMES ROVINSKY, OF PENNSYLVANIA
MICHAEL J. SCHREUDER, OF MICHIGAN
SAMEER VIJAY SHETH, OF FLORIDA
DAVID BRYANT TULLOCH, OF CALIFORNIA
DEREK HARRY WESTFALL, OF TEXAS
ELIZABETH SOPHIA WHARTON, OF CALIFORNIA

THE FOLLOWING NAMED MEMBERS OF THE FOREIGN SERVICE TO BE CONSULAR OFFICERS AND/OR SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA, AS INDICATED:

CONSULAR OFFICERS AND SECRETARIES IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

DEPARTMENT OF COMMERCE

DONALD P. PEARCE, OF NEW YORK

DEPARTMENT OF STATE

AMIR A. ABBOUND, OF VIRGINIA
S. NAJLAA ABDUS-SAMAD, OF NEW YORK
CORI ANN ALSTON, OF TEXAS
DANIEL H. AMBROSE, OF PENNSYLVANIA
FOREST G. ATKINSON, OF CALIFORNIA
JOHN D. BAILS, OF MICHIGAN
CHELSEA M. H. BAKKEN, OF VIRGINIA
DANIELA A. BALLARD, OF CALIFORNIA
GAURAV BANSAL, OF OHIO
ANN BARROW, OF FLORIDA
TODD M. BATE FOXON, OF FLORIDA
RALPH F. BEAHM, OF VIRGINIA
MATTHEW KENNETH BEH, OF NEW YORK
ANNE M. BENNETT, OF NEVADA
MARIJU LIBO ON BOFILL, OF WEST VIRGINIA
JAMES B. BONGIOLATTI, OF VIRGINIA
JOANIE BROOKS-LINDSAY, OF CALIFORNIA
STACI A. BROTHERS JACKSON, OF MARYLAND
D. A. BROWN, OF FLORIDA
BRIAN CARBAUGH, OF THE DISTRICT OF COLUMBIA
CASSANDRA CARRAWAY, OF CALIFORNIA
LAWRENCE R. CARSON, OF MARYLAND
ERIC CATALFAMO, OF FLORIDA
ETHAN DANIEL CHORIN, OF CALIFORNIA
GORDON S. CHURCH, OF TENNESSEE
JEANNE L. CLARK, OF NEW YORK
BOBBY CLAYTON, OF VIRGINIA
CHRISOPHER T. CORTESE, OF FLORIDA
FRANCES JUANITA CRESPO, OF TEXAS
DEEPIKA DAYAL, OF THE DISTRICT OF COLUMBIA
YAHYH AHMAD DEHQANZADA, OF VIRGINIA
PETER L. DELACY, OF VIRGINIA
SHELLY J. DITTMAR, OF NEW YORK
KATYA DMITRIEVA, OF NEW YORK
REBECCA EVE DODDS, OF OHIO
ERIN LYNN EDDY, OF SOUTH DAKOTA
JUSTIN M. ELICKER, OF THE DISTRICT OF COLUMBIA
JOSEPH T. FARRELLY, OF THE DISTRICT OF COLUMBIA
REES M. FISCHER, OF FLORIDA
RICHARD BRADLEY FISHER, OF VIRGINIA
MICHAEL FITZPATRICK, OF MARYLAND
JAMIE FETNER FORD, OF TEXAS
PHILIP B. GALE, OF MARYLAND
PETER PAUL GALUS, OF CALIFORNIA
ANITA GHILDYAL, OF MISSOURI
EMILY A. GLOYD, OF MARYLAND
AARON GREENSTONE, OF THE DISTRICT OF COLUMBIA
JANINE E. GUSTAFSON, OF THE DISTRICT OF COLUMBIA
NOAH N. HARDIE, OF VIRGINIA
DANIEL E. HALL, OF ARIZONA
LESLEY M. HAYDEN, OF MINNESOTA
MARIA HERBST, OF ALASKA
SAUL ANTONIO HERNANDEZ, OF GEORGIA
ERIN C. HILLIARD COMBS, OF VIRGINIA
KARY I. HINTZ TATE, OF VIRGINIA
ROBERT L. HOLBY, OF FLORIDA
COURTNEY B. HOUK, OF FLORIDA
MICHAEL C. HUGHES, OF VIRGINIA
VIVIAN IMAIZUMI, OF VIRGINIA
RICHARD C. JAO, OF NEW YORK
JUDITH M. JOHNSON, OF TEXAS
THOMAS KALINA, OF VIRGINIA
YOONAH KANG, OF VIRGINIA
CATHERINE L. KEANE, OF VIRGINIA
SAMUEL E. KING JR., OF VIRGINIA
BRYAN K. KOONTZ JR., OF WISCONSIN
MARYBETH KRUMM, OF THE DISTRICT OF COLUMBIA
SUSANNE GRACE KUESTER, OF FLORIDA
BENJAMIN N. LEE, OF VIRGINIA
JOHN C. LETVIN, OF FLORIDA
DREA LEWIS, OF MASSACHUSETTS
ALEXANDER LIPSCOMB III, OF VIRGINIA
TODD LUDEKE, OF TEXAS
BENJAMIN M. LUDLOW, OF VIRGINIA
ERIC T. LUND, OF UTAH
CHRISTIAN J. LYNCH, OF NEW YORK
WILLIAM P. MANDROS, OF VIRGINIA
JENNIFER J. MCALPINE, OF MINNESOTA
EVAN MCCARTHY, OF RHODE ISLAND
PATRICK JOSEPH MCCARTHY, OF VIRGINIA
ROBERT A. MCCUTCHEON, OF MARYLAND
JOHN T. MCNAMARA, OF NEW YORK
RICHARD CONRAD MICHAELS, OF GEORGIA
REBECCA SHIRA MORGAN, OF ILLINOIS
ERIC GENE ANDRE MORIN, OF FLORIDA
JOSH MORRIS, OF CALIFORNIA
OLIVER JOHN MOSS III, OF FLORIDA
JENNIFER ANN MUSGROVE, OF VIRGINIA
JOHN C. NEELY, OF VIRGINIA
PHILLIP NERVIG, OF NEW YORK
MICHAEL I. NEWMAN, OF THE DISTRICT OF COLUMBIA
MARY JANE O'BRIEN, OF VIRGINIA
SEAN PATRICK O'HARA, OF VIRGINIA
FILEMON R. PALERO JR., OF CALIFORNIA
DANA MARIE PANGER, OF VIRGINIA
WALTER PARRS III, OF NEW YORK
CYNTHIA H. PLATH, OF CALIFORNIA
MARY ELIZABETH R. POLLEY, OF VIRGINIA
JOHN R. POWELL, OF VIRGINIA
APRIL PRICE, OF THE DISTRICT OF COLUMBIA
SCOTT ALAN REESE, OF VERMONT
SARA MARIE REVELL, OF TEXAS
BERNADETTE EILEEN ROBERTS, OF THE DISTRICT OF COLUMBIA
BENEDICT ROBINETTE, OF VIRGINIA
RUTH RUDZINSKI, OF COLORADO
RUTHANNA MARIA RUFFER, OF VIRGINIA
EMMETT JEROME RYAN JR., OF MONTANA
KAREN P. SCHINNERER, OF MICHIGAN
ALEXANDER SCHRANK, OF MASSACHUSETTS
DAWN M. SCHREPEL, OF TEXAS
VANESSA ANNA SCHULZ, OF THE DISTRICT OF COLUMBIA
SHELLY ANN SEAVER, OF VIRGINIA
JUNE A. SHIN, OF CALIFORNIA
JOHN SILSON, OF OHIO
BETH MOSER SMITH, OF VIRGINIA
MAKEESHA LYNN SOVA, OF VIRGINIA
ALISON C. STACY, OF OHIO
CHRISTY MELICIA WATKINS STONER, OF VIRGINIA
JACOB M. STUDLEY, OF VIRGINIA
MARCI J. STUDLEY, OF VIRGINIA
MATTHEW ALAN TAYLOR, OF FLORIDA
ANTHONY MICHAEL DEAN TRANCHINA, OF NEW YORK
ELIZABETH KENNEDY TRUDEAU, OF NEW HAMPSHIRE
HELENE N. TULING, OF WASHINGTON
MICHAEL TURNER, OF CALIFORNIA
SUSAN L. UNRUH, OF TEXAS
YOLANDA A. URBANSKI, OF VIRGINIA
EDWARD L. USHER, OF NEW YORK
JASON VORDERSTRASSE, OF CALIFORNIA

JOCELYN ANN VOSSLER, OF CALIFORNIA
BRIGID REILLY WEILLER, OF NEW YORK
MARY K. WELSH, OF VIRGINIA
KAREN MARIE WHALEN, OF VIRGINIA
KIMBERLY S. WHITWORTH, OF VIRGINIA
EMILY L. WILLIAMS, OF MINNESOTA
MELANIE ANNE ZIMMERMAN, OF MARYLAND

THE FOLLOWING-NAMED CAREER MEMBER OF FOREIGN SERVICE OF THE DEPARTMENT OF STATE FOR PROMOTION IN THE SENIOR FOREIGN SERVICE TO THE CLASS INDICATED:

CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, IN THE DIPLOMATIC SERVICE OF THE UNITED STATES OF AMERICA:

MARCIA L. NORMAN, OF CALIFORNIA

IN THE NAVY

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT AS PERMANENT LIMITED DUTY OFFICERS IN THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTIONS 531 AND 5589.

To be lieutenant

ARMAND P ABAD, 9967
DANIEL E ADAMS, 4167
LEONARD L ADAMS JR., 3504
TIMOTHY R ADAMS, 6320
CHERYL E AIMESTILLMAN, 1362
AARRON S ALEXANDER, 5683
BRIAN R ALLEN, 7608
MITCHELL R ALLEN, 0263
KENNETH G ALLISON, 2130
KENNETH O ALLISON JR., 7995
BRAD S ANDERSON, 7859
CHRISTOPHER A ANDERSON, 7023
DAVID C ANDERSON JR., 7601
ROSS M ANDERSON, 8224
NORLANDO F ANTONIO, 7695
ALFRED F APPLEWHAITE, 0004
LESLIE E ASLARONA, 5638
TODD A ATKINSON, 4513
FABIO O AUSTRIA JR., 4131
PETER J AVITTO, 3285
GEORGE D BALDWIN, 6830
JAMES S BALDWIN, 2865
LANCE O G BARKER, 5471
DEREK A BARKSDALE, 1929
ROBERT J BAST, 6381
RUSSELL P BATES, 9624
BRAD A BAUER, 2707
ALAN D BEATY, 6545
BRYAN K BEECHER, 5068
WILLIAM L BEITZ, 9888
JAMES L BELL, 7228
MATTHEW J BELLAIR, 5178
CHARLES J BERGSTOL, 2737
WILLIE J BERNARD, 3114
MARY L BERRIAN, 5849
SAM BETHUNE, 0553
JONATHAN F BIELAR, 9151
MARK J BISH, 3948
CHRISTOPHER BISHOP, 2938
DOWAYNE BISTLINE, 1206
STEVEN M BOATWRIGHT, 6579
JOHNNY D BOBO, 5018
LESTER F BOERNER, 7965
DONZALEIGH M BOLDEN, 5589
IVAN R BORJA, 1071
BARRY E BOWERS, 9524
JAMES C BRADLEY, 3824
PAUL A BRADLEY, 0151
TERRELLE C BRADSHAW, 0216
RICHARD W BRANCH III, 7020
KENNETH A BRANDON, 5304
JAMES S BRANT JR., 7777
ANDREW D BROLLIAR, 1495
CRAIG M BROUSSARD, 8029
THOMAS A BROUWER, 5104
CURTIS BROWN, 7869
JAMES A BROWN, 9951
JOHN T BROWN, 4132
ROBERT A BROWN, 9488
RUSSELL W BROWN, 8691
ARNULFO C BUELA, 5233
ROBERT W BURGETT, 0071
TERRELL A BURNETT, 4334
ZEVERICK L BUTTS, 5241
DAVID Q BUXTON, 4348
KYLE A CALDWELL, 1615
MICHAEL CANAVATI JR., 0921
TONY D CANOY, 1233
STEVEN S CARPENTER, 8464
JOYCE D CARRIERE, 0646
BRIAN N CARROLL, 3424
MARK A CARSTENS, 5944
ROBERT D CARTER JR., 8641
TROY L CARTER, 0113
YOLANDA M CARTER, 7275
JOEL A CASTILLO, 3675
JAMES M CATTEAU, 4193
MICHEAL L CAWYER, 1961
MICHAEL A CETNAROWSKI, 7693
ROLLIE L CHANCE JR., 3512
DANIEL E CHARLTON, 9792
PATRICK R CHELL, 8731
HARRY A CHENG, 0542
NADINE A CHUBA, 6492
MICHAEL J CHURCH, 6203
JAMES C CLARK, 5914
JOHN F CLARK, 1136
GAIL M CLIFTON, 3821
JOHN W CLINE, 4820
LORI L CODY, 8463
FREDIRICK R CONNER, 4505
DAVID A CONTI, 6946
FRANK D COON III, 6814
ALDRIN J A CORDOVA, 4847
RALPH M CORONADO III, 0241
DELWYN A COSBY, 1858
STEPHEN L COX, 3389
CHRISTOPHER K CRIDER, 3503
ROBERT P CROCETTA III, 0332
EARL W CULLUM, 6822
ROBERT J DAFOE, 3258
KEVIN J DALY, 1185
JEROLD E DAVIS, 0089
JON R DAVIS, 3062
MARC T DAVIS, 3080
RANSOM A DAVIS JR., 0989
WILLIAM J DAVIS, 9650
JASON A DAVY, 0274
TRAVIS W DAWSON, 5529
TIMOTHY J DEBELAK, 1474
KENGE A DEBOLD, 0521
ANDY P DELEON, 3031
WILLIAM A DENNIS, 8668
CHARLES A DEPALMA II, 9886
JAMES W DESROSIERS JR., 4405
MARCUS A DEVINE, 9579
ANDREA M DEWDNEY, 9740
GRETCHEN E DOANE, 2015
ALBERTO DONES, 0311
DAVID M DONSELAR, 5705
RUSTIN J DOZEMAN, 8418
BRYAN D DRECKMAN, 3549
MARK R DUMAS, 5752
LYNOR A DUNCAN, 6607
STEPHEN J DURHAM, 6367
FRANK A DURSO, 7940
MICHAEL B EDQUIST, 8359
JEFFREY S EIDENBERGER, 5745
MICHAEL J ENCINIA, 0281
VICTORIO M ENRIQUEZ, 2064
AARON C ERICKSON, 3307
ANTONIO ERVIN, 8851
RICARDO ERVIN JR., 1856
SHERRY L EVANS, 7717
GEORGE J EZELL, 4045
JOHN S FAIRWEATHER, 1142
DARRIN E FALLER, 1044
DAVID M FERRER, 5424
ROBERT H FINCH, 8938
SHAUN W FISCHER, 9284
PRESTON FLEMING, 9112
STANLEY E FLEMING, 8976
NOEL A FONTANILLA, 7197
TAYLOR R FORESTER, 7020
BRYAN K FORSHEY, 3657
KEITH B FOSTER, 7751
ROOSEVELT FRANKLIN JR., 5723
MARTY P FRIGAARD, 4136
ROBERT C FRY, 2654
HENRY FUENTES, 9799
TAWANNA A GALLASSERO, 9683
CHRISTOPHER M GARCIA, 2832
JOHN F GARY, 7842
CLEMENTE V GATTANO, 3563
STEPHEN J GENOSHE, 2666
DANA S GIBSON, 5174
DAN M GLESENER, 6493
RUSSELL J GOFF JR., 2270
JOSEPH P GONZALES, 3735
JOHN W GOOLSBY, 3299
LELON V GRAY, 5687
MICHAEL B GREEN, 9904
MATTHEW T GRIFFIN, 8079
KAY E GSCHWIND, 5215
ALBERT GUAJARDO, 7597
PARRISH P GUERRERO, 0318
DUNCAN K GUISHARD, 0335
BRETT B GUNDERSON, 0210
TYRONE F GUZMAN, 7208
HOPE D HAIR, 4390
RICHARD E HALL, 0516
KIRBY A HALLAS, 9818
CHRISTOPHER M HALSAN, 2517
SCOTT R HALSEY, 7509
BRUCE A HAMILTON, 8356
BRIAN K HARBIN, 6374
JOHN A HARDESTY, 6010
RONALD A HARMON JR., 5675
ROBERT L HARRIS, 6344
JOSEPH B HARRISON II, 0454
ERIC W HASS, 3325
CURTIN K HAUG, 1225
ERIC E HAYES, 0255
BRIAN HEASLEY, 4161
GERALD R HEGWOOD, 0149
CHRISTOPHER D HEINZ, 7872
JAY C HENSON, 5029
DURWARD HICKENBOTTOM, 5531
MILES G HICKS, 5914
TERESA M HICKS, 6671
WILLIAM E HIERONIMUS, 8505
HARLAN C HILL, 1877
ROBERT C HILTON, 03630
CHRISTINA HINES, 5913
THOMAS L HINNANT III, 6466
RICHARD C HIRN, 8748
RHYSS B HIZON, 3894
CHAD A HOLINGER, 9866
HAROLD E HONEYCUTT, 9206
JAMES J HORNEF, 5745
GARY R HORSEY, 3684
ANTHONY W HUGHES, 1883
JAMES L HUGHES JR., 1035
JON B HUGHES, 0723
DAVID A HUMPEL, 2966
ROBERT K HUTCHINS, 3468
TRACY V HUTCHISON, 1757
ROBERT L HYLTON JR., 6827
DOUGLAS E JACKSON, 1980
GREGORY J JACOBS, 8860
REYMUNDO C JAVIER, 6686
BRANDON L JOHNSON, 0202
RICHARD W JOHNSON, 9851
MITCHELL R JONES, 9377
JAMES R JOYNER JR., 4737
ROBERT A KALLMAN, 9445
LOYAL A KAMM JR., 8593
STEPHEN E KASHUBA, 4229
ARTHUR C KEENAN II, 9952
TIMOTHY J KELLY, 4648
MARK A KENNEDY, 4578
TERRY L KERR, 7570
RICHARD B KILLIAN, 9608
GEORGE H KIPP, 1202
GREGORY A KLITGARD, 2654
TERRY L KNAPP, 8136
FREDDIE B KOONCE, 3060
KEVIN M KURTZ, 3790
WILLIAM R KUZMA, 2875
STEVEN T LAATSCH, 4538
EVAN J LAFRANCE, 4072
ARTHURRLLOYD G LAMBINICIO, 9581
MARK J LAMBRECHT, 1009
GARY L LANE, 6021
JAMES M LANGLOIS, 1448
KENNETH R LARSON JR., 8473
BLAINE A LAURION, 2224
RUSSELL A LAWRENCE, 4856
JOHN C LEITNER, 2694
MICHAEL A LINCOLN, 7722
CHARLES D LINNEMANN, 5445
JEFFREY P LITTLE, 8356
RODERICK V LITTLE, 8108
JAMES F LOCKMAN, 4175
THOMAS L LOOP, 3923
MANUEL LOPEZ JR., 7018
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WALTER F MANUEL, 5417
WAYNE E MARK, 7263
MICHAEL J MARTIN, 8360
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JAMES S MATHUS, 8794
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JONATHAN M MCCOMB, 7841
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BARRY D MCCULLOCH, 2063
CHARLES G MCDERMOTT, 1918
BRUCE A MCDONALD, 6817
GEORGE A MCLAUGHLIN, 7354
SEAN P MCMICHAEL, 8790
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LAURENCE E MCPHERSON, 5210
GLEN A MECKES, 2590
GILBERTO MENDIOLA JR, 2414
JOSEPH E MIKOLAJCZAK, 0652
DAVID M MINNICK JR, 3149
TERETHA A MINTZ, 0867
DIOMEDES L MIRANDA, 3459
MARK D MISENER, 3517
DONNIE W MIZE, 1499
ALBERT L MOORE, 6362
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JOSEPH T MORRISON, 0558
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ROBERT J NAIFEH, 8710
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TIMOTHY G NASELLO, 6634
JIMMY S NELSON JR, 8642
TODD D NELSON, 7297
ELROY L NEWTON, 1585
DANIEL K NICHOLS, 5330
KELLY S NICHOLS, 4397
SHAUN A NIDIFFER, 7288
JACOB R NORMAN II, 5824
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DERRICK C OBRIEN, 2203
RONALD K OCHELTREE, 2990
JOHN A ODLE, 7318
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ROLANDO R PAGADUAN, 1043
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WILLIAM R PARKER, 9239
JAMES H PASLEY JR, 1799
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JEFFREY P PETERSON, 7756
SYLVESTER L PFARR, 0805
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ANTHONY D PINK, 2273
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JAMES S PIRGER, 3415
BLAINE C PITKIN, 9051
BRIAN PONCE, 4565
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GERARDO S PRUDENCIO, 7962
MARK A PUTTKAMMER, 5964
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CHRIS J REEDY, 9574
WESLEY D REEDY, 8553
RANDY R REID, 5699
RAYMOND A REID, 1688
JAMES L REMINGTON JR, 1152
MICHAEL J REYNOLDS, 8040
STEVEN R REYNOLDS, 3029
MARSHALL G RIGGALL, 5567
MATTHEW T RIGGINS, 2886
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JOSE RIVAS JR, 2424
JERRY RIVERA, 4820
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DENVER D ROBB, 5271
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BRYAN C ROBERTSON, 9568
CECIL L ROBINSON JR, 0232
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ERIK J ROBINSON, 2902
PAUL V ROCK, 8912
MARK V ROLLSTON, 3568
JEFFERY N RONEY, 2822
JERALD L ROOKS, 1521
WILLIAM L ROSENBERRY, 6841
STEPHEN P RUSHLEY, 4292
WAYNE N SALGADO JR, 6916
CESAR A SALINAS, 7374
JESSIE L SANCHEZ, 5261
RAUL SANTOSPIEVE, 6390
CHRISTOPHER SAUNDERS, 6170
ANTHONY D SCHERMERHORN, 8850
VAUGHN L SCHNEIDER, 4432
MURRAY L SCHULTZ, 1462
STEPHEN H SCHULTZ, 1902
JAMES P SCOTT JR, 0653
GERALD M SELLERS, 8075
ANDREW J SERVAES, 9652
GARY M SHELLEY, 3328
SCOTT N SHENK, 4900
JAMES R SHIRLEY, 7923
JAMES C SHORT, 5690
RICHARD W SIMMONS, 2465
MICHAEL K SIMS, 9718
ALEXANDER SINGLETON, 5103
JOE P SMITH JR, 7719
RONALD D SMITH, 6354
TODD M SMITH, 8823
DONNA L SMOAK, 4372
RAYMOND SNYDER III, 7345
TONY L SNYDER, 7043
DENYSE F SPRINGER, 9059
JAMES H STACEY, 6458
MARK O STACK, 3111
JOHN A STAHLEY II, 3056
JOHNNY L STAMBERGER, 8727
BOBBY C STANCIL, 3307
JULIA M STANTON, 2988
WILLIAM C STCLAIR, 3602
STERLING M STEDMAN, 7359
JEFFREY L STEWART, 5437
ANDRE M STONE, 8566
CLINTON STONEWALL III, 6823
SCOTT M SUCY, 7464
KEVIN M SULLIVAN, 4870
ROBERT E SWANSON, 9534
TIMOTHY TARAFAS, 9820
LARRY E TARVER, 5770
MARK A TATCH, 2855
CLAUDE E TAYLOR III, 8694
MONTE R TEMPLE, 7457
JOHN T THOMPSON, 6187
JOSEPH L THOMPSON, 4061
MATTHEW D THOMPSON, 2543
HENRY S THRIFT III, 3878
JEFFREY A TIDD, 0441
WILLIAM G TIMKO, 3763
CLARENCE H TOLLIVER, 5101
WALTER TONEY, 9545
JORGE L TORRES, 4752
TROY D TOWNSEND, 0467
ERIC A TRAINI, 9886
TERRY N TRAWEEK JR., 8832
AROL B. TREWIN, 5720
SHAWN A TRISLER, 4648
SCOTT TROJAHN, 0736
ROBERT TRUJILLO, 5872
JEFFREY A TUCKER, 9288
JENNIFER A TUCKER, 6327
DAVID J TULOWIECKI, 1739
JASON L TUMLINSON, 3080
VYRON T TURNER, 3790
JAMES T UNCAPHER, 4259
ANTHONY R UNIEWSKI JR., 8121
MICHAEL J URICH, 5157
JOHN M VANCE, 0834
RICHARD VANDRIESEN, 3979
JUNE H VELEZ, 9336
RONALD VIGGIANI JR., [illegible]433
GARY J VOROUS, 6439
STEPHEN M VOSSLER, 4402
BOBBY W WALKER, 1392
JAMES M WALKER, 7489
GREGORY J WARD, 0211
THOMAS S WARE, 2844
JANTREICE H WASHINGTON, 7171
STEVEN R WHEATLEY, 6928
CLARENCE M WHITE JR., 3704
DAVID W WHITSITT, 4601
BENJAMIN J WIECHERT III, 4057
ANTHONY C WILDER, 1204
DWAYNE E WILLIAMS, 0645
MICHAEL L WILLIAMS, 7565
RICHARD G WILLIAMS, 0269
RORY A WIUFF, 0221
MICHAEL J WORKS, 5710
DONOVAN B WORTHAM, 0356
RICHARD D WRIGHT, 2974
FELIX O WYATT, 8745
CLARENCE E XANDER, 9490
MICHAEL L YBARRA, 0261
TIMOTHY L YEICH, 6208
MATTHEW A YOUNG, 1953
ELLIOTT W YOUNGBLOOD, 6372
MATTHEW P ZENTZ, 9354

WITHDRAWALS

Executive messages transmitted by the President to the Senate on October 7, 2004, withdrawing from further Senate consideration the following nominations:

JAMES B. CUNNINGHAM, OF PENNSYLVANIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE VIENNA OFFICE OF THE UNITED NATIONS, WITH THE RANK OF AMBASSADOR, WHICH WAS SENT TO THE SENATE ON APRIL 8, 2004.

JAMES B. CUNNINGHAM, OF PENNSYLVANIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE INTERNATIONAL ATOMIC ENERGY AGENCY, WITH THE RANK OF AMBASSADOR, WHICH WAS SENT TO THE SENATE ON APRIL 8, 2004.

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601, WHICH WAS SENT TO THE SENATE ON SEPTEMBER 7, 2004:

To be general

GEN. GREGORY S. MARTIN, 6337

HOUSE OF REPRESENTATIVES—*Thursday, October 7, 2004*

The House met at 10 a.m.

The Reverend Dan Remus, Senior Pastor, First Assembly of God, Kenosha, Wisconsin, offered the following prayer:

Father, we thank You for this day. We declare with the Psalmist, "This is the day the Lord hath made; we will rejoice and be glad in it."

Lord, I thank You for our great Nation. I thank You for the freedoms we enjoy in America.

Today we pray for Your protection for every man and woman serving in our armed forces. We pray for strength for their families. May they know the peace of God that passes all understanding.

Lord, today I pray that You will give wisdom to these men and women who are elected representatives. I know that they want what is best for America. I thank You that Your word tells us, "If any of you lack wisdom, let him ask of God, who gives to all liberally, and it will be given to him."

We ask these things in Your precious name. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Texas (Mr. TURNER) come forward and lead the House in the Pledge of Allegiance.

Mr. TURNER of Texas led the Pledge of Allegiance as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

WELCOMING THE REVEREND DAN REMUS

(Mr. RYAN of Wisconsin asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RYAN of Wisconsin. Mr. Speaker, I want to welcome Pastor Dan Remus of the First Assembly of God Church in Kenosha to the floor of the House today. This is a very special moment for all of us.

Pastor Dan began serving the First Assembly in 1980 as their youth pastor. He became the senior associate pastor in 1985 and the senior pastor in 1997. And yes, as you can see, he is a young man.

The Church of the First Assembly of God supports many community efforts: homeless shelters, prison ministries, shelters for unwed mothers. Two of the ways the church reaches out to the community are school supply handouts to the inner city and a Queen For a Day program, a ministry to single moms who are taken in and pampered for a day of women's activities.

I have had the privilege of joining Pastor Dan in worship at the First Assembly of God, and I have got to say it is a wonderful church. It is a church that is growing. Their average attendance at their ceremonies and sermons are about 1,900 people. It is a church that is growing. They have about 790 children in their school.

The First Assembly is a very, very warm place that brings with open arms an invitation to all people to enjoy and worship Jesus Christ our Saviour.

One of the things that I enjoy so much about Pastor Dan's church are the great productions they put on at Easter and the 4th of July. It is something that many people from all around come to enjoy. Most importantly, he has been married to his wife Alexia for 25 years. He has 3 children, Heidi, Heather, and Danny, Jr.

Mr. Speaker, I appreciate this opportunity, and I want to thank Pastor Dan for traveling from Kenosha, Wisconsin to join us and give us such an uplifting prayer this morning.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair will entertain 10, 1-minutes on each side.

SUING THEIR WAY TO THE WHITE HOUSE

(Mr. PITTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PITTS. Mr. Speaker, most people think this election will be close. Already, the Democrat party has assembled a legal team and campaign account to file a series of lawsuits on Election Day. Democrats are again preparing to sue their way to the White House by raising money to challenge election results.

This is not a new tactic for liberals, and that is what JOHN KERRY and JOHN EDWARDS are, the first and fourth most liberal Members of the Senate.

This political strategy has been used by liberals for years, to win by litigation what they cannot win through legislation. They have used this method to enact a large part of their social agenda in past years.

Mr. Speaker, it is easier to manipulate words, to dupe a few liberal unelected judges than to collectively fool the American people, but the American people are on to it. We hold elections for a reason: to allow the people to choose their own leaders, not lawyers and judges.

This should not be another ploy to challenge our democratic process.

BAD CHOICES MAKE AMERICA LESS SAFE

(Mr. TURNER of Texas asked and was given permission to address the House for 1 minute.)

Mr. TURNER of Texas. Mr. Speaker, as we begin the debate on the 9/11 Commission recommendations today, we must ask the central question: are we as safe as we need to be. The answer is no, and it is all about the choices that we have made.

In the 2 years before 9/11, we secured more loose nuclear material than we did in the 2 years after 9/11. We have yet to install the radiation portals we need at our ports to detect nuclear material. We still do not have a unified terrorist watch list. Mr. Speaker, 120,000 hours of untranslated terrorist-related wiretaps remain untranslated at the FBI. Mr. Speaker, 20,000 illegal immigrants from places other than Mexico were released into our own country last year because of a lack of detention space.

In 2004, we invested about $20 billion more in homeland security than we did in the year of 9/11, but we granted 4 times that in tax relief to the wealthiest 1 percent of Americans.

It is all about choices, and we have made the wrong choices because our leadership has not committed us to making America as safe as we need to be.

TROOPS VOTE FOR BUSH

(Mr. WILSON of South Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WILSON of South Carolina. Mr. Speaker, as a 31-year veteran of the Army National Guard and the parent of 3 children serving in the military, including a son in Iraq, I am glad to report our troops are clearly supporting

☐This symbol represents the time of day during the House proceedings, e.g., ☐1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

the reelection of President Bush. According to the independent Army Times, America's troops are voting today for President Bush by a margin of over 4 to 1.

Our troops know firsthand President Bush is courageously leading the successful fight against the terrorists on the global war on terrorism. He is the commander-in-chief to trust with their lives. American service members know in a time of war, we need a clear message to the murderers of children. President Bush has a hopeful vision of victory established by our competent troops who have liberated over 50 million people from Afghanistan to Iraq.

In my three visits to Iraq, I have seen and met the new greatest generation who are making history for democracy. President Bush clearly understands with our troops that the best way to protect American families is to take the war to the terrorists. We must fight at the source to reduce the potential for warfare in the streets of America.

In conclusion, God bless our troops. We will never forget September 11.

RECOGNIZING NATIONAL MENTAL ILLNESS AWARENESS WEEK

(Ms. HERSETH asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. HERSETH. Mr. Speaker, I rise today to recognize National Mental Illness Awareness Week, an opportunity to educate ourselves and our constituents about mental illness in America.

One of the first pieces of legislation I cosponsored in this body was the Mental Health Equitable Treatment Act, which requires parity for mental health services under private insurance plans. But this legislation would do something else. It would move us one step closer to eradicating the undue stigma often associated with mental illness.

As many as 1 in 5 children and adolescents suffer from mental illness in the United States, but many go untreated because of feelings of shame or guilt, or because parents, schools, and communities lack the information and resources essential to prevent the worsening of mental health problems and for early detection, and to improve treatment outcomes.

Many Americans, when diagnosed with a mental illness, confront both a frightening disease and a public that can be uninformed about the nature of their illness. Through educational campaigns like the National Mental Illness Awareness Week and smart, targeted policy initiatives, we can look forward to overcoming the stigma associated with mental illness in our communities and make life a little easier for all Americans suffering from mental illness and for their families as well.

IN HONOR OF SERGEANT RUSSELL L. COLLIER

(Mr. BOOZMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BOOZMAN. Mr. Speaker, I rise today to honor one of America's bravest, Sergeant Russell L. Collier from the Third District of Arkansas.

Sergeant Collier, an Army National Guard medic from Harrison, Arkansas, was killed in action in Iraq earlier this week. He died when he came under enemy fire while aiding fellow soldier Sergeant Chris Potts who had been wounded in ambush. Sergeant Collier and Sergeant Potts became the first casualties of the 206th Field Artillery Battalion of Arkansas's 39th Infantry Brigade.

Sergeant Collier spent most of his adult life sacrificing for our country. In 1975 he enlisted in the U.S. Army, later transferred to the U.S. Navy, and then joined the Arkansas National Guard in September 1999.

Mr. Speaker, Sergeant Russell L. Collier is a true American hero who made the ultimate sacrifice for his country. I ask my colleagues to keep Russell's family and friends, especially his wife and 9-year-old son, in their prayers during this difficult time

BORDER SECURITY INFRASTRUCTURE

(Mr. PASCRELL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PASCRELL. Mr. Speaker, I am deeply concerned about the State of our Nation's border security. If we cannot secure our land borders where 80 percent of all people enter our country, then we are simply not safe as a Nation.

In 1994, there were 2.7 million truck crossings on the southern border. In 2003, this traffic increased to 4.2 million crossings. In 1994, there were 66 million personal vehicles crossing into the United States from Mexico. In 2003, the number of personal vehicles rose to 88 million, carrying 194 million passengers.

These numbers cry out for a substantial investment in our borders, and what do we get? The administration has failed to meet our security and commercial needs by investing in our Nation's port of entry.

In 2003, the Department of Homeland Security's own Data Management Improvement Act Task Force reported that more than 70 percent of the 166 land ports of entry have inadequate infrastructure. What is the response? More investment? No. Typically, the administration shut down the task force. They are famous for that.

We need a substantial investment in border infrastructure tied to a vulnerability assessment to ensure national security.

HONORING BEN GAMACHE

(Mr. BRADLEY of New Hampshire asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BRADLEY of New Hampshire. Mr. Speaker, I rise today to pay tribute to Ben Gamache upon being named the 2004 Small Businessperson of the Year by the Greater Manchester Chamber of Commerce.

Ben is the owner and chief executive officer of Gamache Enterprises, a commercial real estate investment firm in Manchester, New Hampshire. The company has proven its staying power as an established business and presence in the community for the last 27 years. Even though there have been tough economic times, Gamache enterprises has continued to invest in the community and refurbish unused or run-down mill and retail space to become thriving commercial properties.

Ben is a member of the Board of Directors for the Commercial Realtors and has invested thousands of dollars of his own money for revitalization projects on one of downtown Manchester side streets.

Ben has invested himself personally in the community with as much vigor and passion as he invests in himself as a businessperson. His most notable contribution to the community has been his dedication to Easter Seals New Hampshire.

Ben's efforts have made Manchester a better business and residential community. I am honored to represent concerned and conscientious citizens like Ben Gamache in the United States House of Representatives.

HOMELAND SECURITY SHOULD BRING UNITY IN HOUSE

(Mr. BLUMENAUER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BLUMENAUER. Mr. Speaker, as an ethical cloud hovers over the House of Representatives, as the fog of misrepresentation on the war in Iraq is slowly lifting, homeland security should be one thing that unites this country. But sadly, the greatest failure of the Republican leadership is the inability to bring us together around this issue.

The squabbling on a flawed bill later this morning is just one more example. It is not just its bad provisions; it ducks entirely the issue of unifying our fractured intelligence service. The 9/11 Commission under Governor Kean and Lee Hamilton did their job in a bipartisan manner. The Senate, working together with every, every Republican supporting it, did theirs. The tragedy for the House and the American people is that the House Republican leadership is unable to do their job with this critical task. The good news is the Senate and the 9/11 Commission did their job.

Mr. Speaker, it is more important than ever that the American people do their job on Election Day.

☐ 1015

AMERICANS MISLED

(Ms. BERKLEY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. BERKLEY. Mr. Speaker, the Duelfer report submitted by the chief U.S. weapons inspector to Congress yesterday confirms what we already knew: Iraq has no weapons of mass destruction, no nuclear weapons, no weapons programs. There is no evidence that Saddam Hussein had a plan to recruit or the capabilities to rebuild his arsenal of chemical and biological weapons.

Yet, George Bush, DICK CHENEY continue to mislead the American people by ignoring the facts and trying to justify the invasion of a nation that we now know posed no imminent threat to the United States. It is bad enough that we went to war based on the worst intelligence in this Nation's history. What is shameful and unforgivable is that the President who led us into this unnecessary war refuses to acknowledge our profound mistake and take responsibility for it.

The smirk, the swagger, the unbending stubbornness of this President has worn thin in the face of the reality of what is going on on the ground in Iraq. It is time that we elect a President with true leadership characteristics who will not lie to the American people and who can restore the respect and honor we once enjoyed in the world community.

HONORING FIRE CAPTAIN RICK BENNETT

(Mr. GINGREY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GINGREY. Mr. Speaker, today I rise to pay tribute to Fire Captain Rick Bennett, a man whose selfless service keeps the citizens of Georgia's 11th district safe each and every day.

This past Monday morning, I had the privilege of attending a Public Safety Appreciation Breakfast to honor Captain Bennett of the Cobb County Fire and Emergency Service. The award, Public Safety Employee of the Year, is given annually to an individual who has performed with exceptional skill, expertise, and innovation.

Captain Bennett has worked for Cobb County for 13 years and is assigned to one of the busiest stations in the county. Fire Station No. 8 in Kennesaw, Georgia, where he is responsible for eight fire and hazmat personnel. Captain Bennett is considered an expert in the field of hazardous material response and training and recently was invited to instruct at the State Fire Academy.

Mr. Speaker, our Nation's first responders are the brave souls risking their lives to prevent catastrophe, and Captain Bennett exemplifies the type of quality public safety employee that Georgia's 11th Congressional District has to offer, and he deserves our heartfelt thanks.

Mr. Speaker, I ask that you join in congratulating Captain Bennett for his fine work.

CHANGE IS NEEDED

(Ms. WATSON asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. WATSON. Mr. Speaker, we as Americans have been victims of lies, deceptions, and distractions. Today's LA Times reported that Saddam Hussein did not produce or possess any weapons of mass destruction for more than a decade before the U.S.-led invasion of Iraq.

Last year it was said, and it has been said repeatedly, that there were weapons of mass destruction. The Iraqi regime had no formal written strategy to revise the banned programs after sanctions and no staff or infrastructure in place to do so.

Mr. Speaker, more than a thousand U.S. troops have been killed and thousands more have been wounded for a bogus reason. We have broken a country, and we need billions of dollars to rebuild while we are neglecting our own needs here at home. The House leadership has been rebuked and the administration has led us in the wrong direction. A change is definitely needed.

CBS' MEDIA BIAS

(Mr. SMITH of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Texas. Mr. Speaker, 2 weeks ago the "CBS Evening News with Dan Rather" broadcast a story about alleged Bush administration efforts to revive the draft. This story was based on a phony anonymous e-mail that claimed a new draft was imminent, and it featured a mother who said she was fearful her children would be drafted, but CBS did not reveal she is a leader in a group that opposes the draft.

Two days ago the House rejected legislation that would have revived the draft by a vote of 402 to 2. CBS apparently is not aware of the House vote because last night's broadcast made no mention of it.

Mr. Speaker, so after airing a major story about the possibility of a draft, CBS failed to report an overwhelming vote of the Congress not to resume the draft and, unfortunately, made no efforts to provide the American people with the facts.

Mr. Speaker, this week's media bias award again goes to the "CBS Evening News."

THE TRUTH WILL SET YOU FREE

(Mr. LEWIS of Georgia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEWIS of Georgia. Mr. Speaker, each and every day more and more information comes to light, and every single day we see more and more proof that there was no justification for this war in Iraq, no justification.

Did this administration and this President mislead, deceive, lie; or did they just fail to tell the truth? There was never ever any growing threat or any growing danger to our Nation. This President and his administration owe the community of nations, members of Congress, the American people, and the families of those who lost their lives in Iraq an apology.

This administration should come clean and tell the truth, nothing but the truth, the whole truth.

Now we learn that Iraq's weapons of mass destruction were destroyed after the first Gulf War. At the time we invaded Iraq, Iraq not only lacked any weapons of mass destruction; it lacked the capability to build them, and this administration knew it. They knew it. It is time to tell the truth and nothing but the whole truth. The truth will set you free.

HONORING FIRST LADY HOVAH HALL UNDERWOOD

(Mrs. CAPITO asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. CAPITO. Mr. Speaker, I rise today to mark the passing and honor the life of and contributions of a former first lady of the State of West Virginia, Hovah Hall Underwood. Hovah was a young wife and mother when she and her husband, Cecil, moved into the Governor's mansion in 1956. Cecelia was a toddler, and Craig and Sharon were both born while the family lived in the mansion. She served as a gracious first lady, all the while focusing her energies on the task of raising three very young children.

In 1996 the citizens of West Virginia once again elected Cecil Underwood as Governor, and Hova was once again our First Lady. Building upon a lifelong dedication to the work of Big Brothers/Big Sisters, she always liked to say that this term she focused her energies on all the children of West Virginia. She was the driving force behind new programs to strengthen early learning and volunteerism in our State.

She took seriously the charge to serve others each day of our lives, and her legacy is the many thousands of lives that she touched. Our thoughts today are with Governor Underwood, their children, Cecelia Baker, Craig Underwood and Sharon Underwood, grandchildren Christopher and Coleman Richardson, Mary and Quinton Baker, and Jordan and Myles Underwood.

All West Virginians have indeed lost a very special friend.

HONORING OAK HARBOR SCHOOL DISTRICT AND NAS WHIDBEY

(Mr. LARSEN of Washington asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LARSEN of Washington. Mr. Speaker, I rise today to express my appreciation for the outstanding work for the Oak Harbor School District and Naval Air Station Whidbey Island, both of which are in my district.

Currently, NAS Whidbey has five squadrons and one logistical unit deployed, roughly 1,000 servicewomen and -men, many who have children in the Oak Harbor School District.

This week representatives from the Oak Harbor School District visited my office to discuss how deployment impacts schools and students. Last year almost 60 percent of their students were children of active Navy personnel, 70 percent of which had at least one parent deployed overseas.

Teachers, counselors, and staff have taken on the additional task of helping those dealing with the incredible stress of having a loved one deployed.

NAS Whidbey has partnered with the Oak Harbor School District in this endeavor. Through ongoing communication, training for school staff and tutoring, they have contributed thousands of volunteer hours to work with the Oak Harbor School District to ease the burden placed on these families.

Military families are making honorable sacrifices for our Nation and deserve our heartfelt thanks and support. We must also thank the individuals like those at the Oak Harbor School District at NAS Whidbey who are doing their part to help families through this challenging time.

MONTGOMERY COUNTY SHERIFF NORMAN LEWIS, SHERIFF OF THE YEAR

(Mrs. BLACKBURN asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BLACKBURN. Mr. Speaker, today we are talking about homeland security; and it is an honor for me to stand here and honor one of those unsung heroes, our law enforcement officers. This is a gentleman who is a hero in our community, in Tennessee's Seventh Congressional District. He has been named Tennessee's Sheriff of the Year. And it is our Montgomery County Sheriff, Sheriff Norman Lewis.

Sheriff Lewis is a 48-year veteran of law enforcement. He began his career as sheriff after retiring from the Tennessee Highway Patrol. He has dedicated 4 decades of his life to keeping us safe, and we really cannot thank him enough. Not only has the sheriff set an example for his colleagues in the field, Sheriff Lewis has also worked to ensure that our State's laws are sufficient to protect our citizens and our law enforcement officials.

He has consistently gone above and beyond the call of duty for his community. And today I join many who are congratulating him and extending thanks to Sheriff Lewis, our Tennessee Sheriff of the Year.

DAY OF RECKONING

(Mr. McDERMOTT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McDERMOTT. Mr. Speaker, by now everyone has heard the latest revelations that Saddam destroyed his stockpile of chemical and biological munitions in 1991, 13 years before the President needlessly took us into war. Saddam disarmed himself in 1991 because the economic sanctions were working. The evidence was there but the die had been cast.

The President was going to war. The details were merely inconvenient. The American people have hard new evidence proving once again that there was no justification for taking the U.S. to war against Iraq. Americans will believe it. The administration will deny it as usual. Every time he does, the President faces a fundamental issue in this campaign: it is the credibility of the Commander in Chief. The President can deny that he blundered into war. He cannot deny that more Americans know it.

The day of reckoning is coming. In 26 days this President will not be able to deny that he was just voted out of office.

SUGAR REFORM CAUCUS

(Mr. KIRK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KIRK. Mr. Speaker, today a bipartisan group of Democrats and Republicans is forming the Congressional Sugar Reform Caucus. Our caucus will form a bipartisan effort to reform the sugar program through legislation, when appropriate, but also working with the President, manufacturing employers, and union leaders.

The sugar program currently forces Americans to pay sugar prices at twice the world level. It kills manufacturing and union jobs. The sugar program cost over $400 million alone in fiscal year 2000 and this cost to the taxpayer is in addition to the lost jobs and higher grocery prices. By forcing sugar prices at two or three times the market price, our law not only inflates consumer costs, it creates an incentive to move manufacturing jobs offshore. No one knows this better than Chicago where thousands of people in manufacturing jobs were thrown out of work because of the sugar program.

Mr. Speaker, our sugar policy is a mess, and we need to defend manufacturing jobs by reforming this program.

WEAPONS OF MASS DESTRUCTION REPORT

(Ms. DELAURO asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. DELAURO. Mr. Speaker, listen to these words: "There can be no doubt that Saddam Hussein has biological and chemical weapons." Secretary of State Colin Powell. "Iraq could have nuclear weapons in less than one year." President Bush. "Iraq is rebuilding chemical and biological weapons facilities. We believe, in fact, he has reconstituted nuclear weapons." Vice President CHENEY.

These are the words used by the Bush administration to convince the world that Saddam Hussein was an imminent threat to the American people; but as confirmed by the President's own weapons inspector, the administration was "almost all wrong in every aspect of its case for war." There was no "grave and gathering threat." And the only smoking gun found is evidence that this administration knew this intelligence was shaky, and at worst, wrong.

□ 1030

If U.N. inspectors had been given a few more months in Iraq, we would have known that Iraq was no serious threat. Now, the best case scenario we can achieve in Iraq is, and I quote, "tenuous stability;" the worst case, civil war.

President Bush gave two speeches on the campaign trail yesterday. Neither mentioned the report. When is this administration going to admit to grievous errors of misjudgment?

CELEBRATING THE LIFE OF DR. JAMES RICHARD RUTLEDGE

(Mr. ADERHOLT asked and was given permission to address the House for 1 minute.)

Mr. ADERHOLT. Mr. Speaker, it is with sadness that I rise this morning to remember the life of Dr. James Rutledge, who recently passed away at the age of 65. I am honored to stand before this body of Congress and this Nation to recognize some of his many accomplishments.

He was born in Ironton, Ohio. He was educated in Kentucky. He joined the air force after receiving his degree in medicine. He served his country honorably, and for his service in Thailand during the Vietnam War, he attained the National Defense Service Medal, the Vietnam Service Medal and the Republic of Vietnam Campaign Medal.

Jim and his wife Rhonda moved their family to Jasper, Alabama, which is located in the Fourth Congressional District in February of 1980, and he served as the medical director of laboratory medicine at Walker Baptist Medical Center.

Dr. Jim Rutledge was a man who loved his God, his wife Rhonda, his family and his country. He was a true American hero to so many during his life. He was a man many depended upon, a man of little fanfare but deep wisdom and compassion.

Our prayers continue to go out to Jim's family, friends and community at this difficult time.

Mr. Speaker, I could go on much longer about this man but time does not permit. However, I will put an extended tribute to Dr. Rutledge in the RECORD.

ADMINISTRATION MUST ADMIT MISTAKES

(Mr. EMANUEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EMANUEL. Mr. Speaker, Saturday, October 10, will mark the 2-year anniversary of the House of Representatives passing the war resolution. Let me give my colleagues some of the highlights in the last 48 hours and news.

Iraqis eliminated illicit arms in the 1990s. Paul Bremer criticizes troop levels: "We never had enough troops on the ground." France was ready to send troops to Iraq, 15,000, but did not because of the relationship with President Bush.

White House embraced disputed arms intelligence. The White House claimed Iraq was buying aluminum tubes to facilitate its nuclear capability, even though their own experts told them otherwise.

Funds to rebuild Iraq are drifting away from their target. Only 20 cents on the dollar are going to rebuilding Iraq.

Secretary of Defense Rumsfeld said there was no relationship between Iraq and al Qaeda.

Mr. Speaker, the house of cards that this administration built for the case for going to war and how to prosecute this war is collapsing. In going to war, this administration allowed etiology to trump reality. Iraq was not an imminent threat, but with the costs and casualties mounting, candor would be a welcome addition to this White House. You cannot fix a problem if you do not acknowledge that you have one.

TIMES WHEN WAR IS THE ONLY OPTION

(Mr. HAYES asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HAYES. Mr. Speaker, I rise today in thanks and tribute to our wonderful troops and a volunteer Army in Iraq who are making the world safer, and I quote my friend Gary Bauer about Senator KERRY: Moreover, wind surfing is not a policy; it is an excuse or inability to act. He sounds like Neville Chamberlain clinging to a scrap of paper after accepting the lies of a lunatic and declaring peace in our time, the terrorists had been there all along.

But Winston Churchill understood there are times when war is the only option. One more U.N. resolution, one more scrap of paper from Saddam Hussein would not have made America safer. Our President understood that and he stood up for America.

SANCTIONING IRAN

(Mr. SHERMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SHERMAN. Mr. Speaker, during the presidential debate, both candidates agreed that nuclear weapons in the wrong hands were the greatest threat to America. President Bush described his policy by saying we have sanctioned Iran; we cannot sanction them anymore. What an incredible falsehood.

This Congress last decade passed the Iran-Libya Sanctions Act, which prevents any oil company investing in Iranian oil infrastructure from doing business in the United States. Yet the President has refused to apply this law. He gave a wink, a nod and a consent to a consortium of Japanese oil companies, revealed in the financial press, which allowed them to go forward with $2 billion of investments in Iranian oil fields.

The State Department wrote to me and said that we will continue to import nonenergy items from Iran. We will continue to do business with Iran because we want them to do business with us.

Who is Iran doing business with? Halliburton, doing business with Iran through its foreign subsidiaries.

So when the President says we have already sanctioned Iran, we cannot sanction them anymore, what he really means is, we are going to continue to do business with Iran and we want them to do business with Halliburton.

GENERAL LEAVE

Mr. ROGERS of Kentucky. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the motion to instruct on the conference on H.R. 4567, and that I may include tabular material on the same.

The SPEAKER pro tempore (Mr. HAYES). Is there objection to the request of the gentleman from Kentucky?

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 4567, DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2005

Mr. ROGERS of Kentucky. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4567) making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2005, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kentucky?

There was no objection.

MOTION TO INSTRUCT OFFERED BY MR. SABO

Mr. SABO. Mr. Speaker, I offer a motion to instruct conferees.

The Clerk read as follows:

> Mr. SABO moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill, H.R. 4567, be instructed to insist on inclusion of the highest possible level of funding for each homeland security, first responder, domestic preparedness, emergency management performance grant, fire grant, flood map, and disaster mitigation program within Titles II and III.

The SPEAKER pro tempore. Under rule XX, the gentleman from Minnesota (Mr. SABO) and the gentleman from Kentucky (Mr. ROGERS) each will control 30 minutes.

The Chair recognizes the gentleman from Minnesota (Mr. SABO).

Mr. SABO. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this motion to instruct House conferees is straightforward. It is a motion to insist on the highest possible level of funding for each homeland security first responder, domestic preparedness, flood map and disaster mitigation program in the bill.

In the conference on the fiscal 2005 Homeland Security appropriations bill, we have the opportunity to provide additional homeland security resources to close known security gaps and to strengthen our first responders.

Going to the higher funding levels for each of these programs means that we would provide $945 million more than the House-passed bill. We should instruct our conferees to do just that.

We all know that first responders, our local police, firefighters, the emergency response personnel, will be the first at the scene of a terrorist attack. We know only too well how many of them lost their lives on 9/11.

Yet, the Senate bill provides $400 million less for the Office of Domestic Preparedness grant programs than the House bill does. This motion would direct conferees to include the highest level for each of the programs funded under ODP.

The conferees should insist on the $1.25 billion provided by the House for the formula-based preparedness grants to all States.

The conferees should insist on $500 million provided by the House for law enforcement preparedness grants to all States.

The conferees should insist on the $1.3 billion provided by the Senate for urban area security grants.

The conferees should insist on the $50 million provided by the House for metropolitan medical response system grants.

We should insist on the $236 million the Senate provided for emergency management performance grants. These grants directly support the States' emergency management programs.

The conferees should also insist on the additional $100 million provided by the Senate for fire grant programs, which would still only fund our fire departments at this year's level.

A year ago, the Council on Foreign Relations released a report entitled, First Responders: Drastically Underfunded, Dangerously Unprepared. The report stated that billions of dollars, $98 billion specifically, are needed to properly equip first responders. Yet, the Bush administration and the Congress continues to cut this funding, not increase it.

Another recent survey shows that fire department needs are immense and are not being met. Is this where we should be 3 years after 9/11?

The motion also addresses funding for our border patrol and immigration investigation operations. A recent Time magazine cover story entitled, "Who left the door open?" exposes the weaknesses in our land border security efforts. These are troubling homeland security gaps that we must fix.

While these problems cannot be solved by money alone, additional funding is critical to help harden our security barriers, increase our deportation efforts, and expand our border patrols. We should provide these resources.

House conferees should be instructed to insist on the additional $211 million that the Senate provided for northern border air surveillance operations. We have not yet done what we need to do to protect our northern border.

House conferees should be instructed to insist on the $136 million the Senate provided for increased alien detention efforts, including additional bed space and detention alternatives.

As the 9/11 Commission noted, we have an immigration system that is "not able to deliver on its basic commitments, much less support counterterrorism."

The Air Marshal program is also critical to enhancing our aviation security. The Bush administration has allowed the number of air marshals to fall below the levels they recommended after 9/11. The Senate bill contains an additional $50 million to increase the number of air marshals. House conferees should be instructed to insist on this higher funding.

At the current rate, it will take over 10 years to install checked baggage explosive detection systems in airports with the most critical problems. While TSA is trying to replace unwieldy temporary systems with permanent explosive screening solutions, our progress in this effort is directly related to resources. The Senate bill contains $96 million more than the House. Conferees should be instructed to insist on the higher funding level.

The recent hurricane and flooding reminded us how important it is for communities to have accurately mapped flood areas and funding to mitigate disasters so they do not recur. The Senate bill provides $100 million more than the House for these efforts. Our conferees should be instructed to insist on this higher funding.

All of these programs are needed to close homeland security gaps and better prepare our Nation. The motion to instruct directs the House conferees to agree to the highest funding levels possible for homeland security, first responder, domestic preparedness, flood map and disaster mitigation programs.

We should be doing all we can to close known security gaps today so that we are not sorry tomorrow.

Mr. Speaker, I urge adoption of this motion to instruct.

Mr. Speaker, I reserve the balance of my time.

Mr. ROGERS of Kentucky. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the conference report for the fiscal year 2005 Department of Homeland Security appropriations bill, which we will be considering on the House floor soon, will provide $32 billion for the Department of Homeland Security. This funding level is consistent with the subcommittee's spending allocation, and it is $496 million above the amounts proposed by the President and $1.1 billion above fiscal year 2004 enacted levels.

The conference allocation will allow us to aggressively support critical homeland security missions identified in the gentleman's motion, including first responder, domestic preparedness, emergency management, firefighter assistance and disaster mitigation and relief programs.

□ 1045

The motion offered by the gentleman from Minnesota is consistent with my intentions to secure our Nation's homeland by providing the most robust funding possible for all aspects of homeland security: Protection, preparedness and response. But we must do this within our spending allocation.

For the 22 agencies that now make up the new department, Congress has provided more than $73 billion through fiscal 2004. With the additional $32 billion in this bill, the totals provided to the Department is more than $105 billion in fiscal years 2002 through 2005.

Tremendous progress has been made in making our Nation more secure using the right mixture of people and technology to strengthen our borders and close security gaps. Let me give some success stories:

Since its creation, the Department has inventoried the Nation's critical infrastructure to include more than 33,000 facilities and begun identifying and reducing vulnerabilities at chemical plants and facilities, nuclear power plants, national monuments, subway and light rail systems, and commercial sites, among others.

Two, the Department has streamlined the process used to get money out to first responders by setting up a new one-stop shop and eliminating choke points so that money can flow where it is needed more rapidly.

Three, we have enhanced aviation security by searching all checked bags for explosives, modifying airports to install explosive detection machines in-line, improving air cargo security through increased screening and enhancements of the known shipper program, and developing antimissile devices for commercial aircraft.

Four, we have increased the presence of the container security initiative to more than 38 foreign ports which ship us over 80 percent of our container freight, meaning that we are prescreening most high-threat cargo before it ever reaches our shore.

The next point. We have made capital improvements, investments in innovative technologies, including radiation detection for our ports and nonintrusive inspection technologies for cargo screening which are deployed at our busiest land and seaports.

And we have created standards for first responder equipment, established three Homeland Security Centers of Excellence and expanded the presence of sensors in high-risk cities for detailing biohazards.

Those are just some of the accomplishments that we can count on and be thankful for since 9/11.

Mr. Speaker, I support the highest possible funding levels for the critical functions of the Department of Homeland Security. I also believe in the responsible use of taxpayer money. As we move towards conference, my goal is to do all we can to ensure both our Homeland Security operators as well as our first responders get the tools they need to keep our hometowns safe and secure.

I certainly believe in doing all we can to make this country safe, and in that spirit, I accept the gentleman's motion as a good one.

Mr. Speaker, I reserve the balance of my time.

Mr. SABO. Mr. Speaker, I yield 5 minutes to the distinguished ranking Democrat on the House Committee on Appropriations, the gentleman from Wisconsin (Mr. OBEY).

Mr. OBEY. Mr. Speaker, I thank the gentleman for yielding me this time, and I am pleased that the gentleman from Kentucky has accepted the Sabo motion, but I want to express a caution. It does the country no good, it does this institution no good if that motion is accepted for purposes of moving us to conference and then discarded the moment we move into conference.

I do not want anybody to vote for this motion to accept today unless they intend to oppose any bill that comes back from conference which short-sheets the funding levels described in the Sabo amendment. To do that would be legislative hypocrisy.

Mr. Speaker, I think a number of things need to be pointed out. This President and this administration have a long history of trying to prevent this Congress from providing all of the funding that we think is necessary to protect Homeland Security. After we were hit by anthrax, and our committee on a bipartisan basis put together a list of crucial additions to the Homeland Security budget, we went down to the White House and tried to show them to the President. Before we could say one word, the President said, "Well, I want you to know that if you appropriate a dollar more than I have asked for for Homeland Security I will veto the bill," without even listening to what it was that we had to say. We had to point out to him that there were four different Federal installations that his own security people had said were under grave threat of terrorist attack, which his budget was not doing one blessed thing to protect, and he still resisted us.

So we had to come back to the Congress and, despite the President's threat of veto, we had to add several billion dollars to the bill that year.

The next year, the President pocket vetoed $1.5 billion in additional funding for Homeland Security that this Congress had provided on a bipartisan basis. Ninety-eight percent of the Republicans and the Democrats in both Houses had voted for those add-ons, yet the President declined to allow that money to go forward.

So today we are still far behind where we should be in protecting our courts, far behind where we should be in protecting the northern border. We have 2,000 fewer inspectors on the northern border than the PATRIOT Act itself said we ought to have.

So I am frankly amazed at the footdragging that this administration has done or has engaged in when it comes to providing adequate funding for these items. We have only 13 percent of America's fire departments who are fully equipped to respond to a full-blown HAZMAT incident. We only have one-third of firefighters per shift who are adequately equipped with self-contained breathing apparatuses, and we still have a minuscule percentage of cargo inspected as they come into our ports.

The gentleman from Kentucky talks about how we have 38 ports we are now trying to put the new Customs system in. There are 38 ports we are trying to get that done in, but it is not done yet. And as far as China is concerned, we are barely off the ground at inspecting the huge amount of cargo that comes into this country from China. So we have huge additional holes.

So I hope this House and this committee will not be disingenuous in accepting this amendment now and then walking away from its requirements as soon as we get to conference later today.

What we have been doing consistently is moving bureaucratic boxes around, rather than providing adequate resources to do the job. What we did 2 years ago on Homeland Security, we had 133 agencies that had something to do with homeland security. This Congress took 22 of them, not including the FBI, not including the CIA, the two most important agencies, we took 22 out of 133 agencies, lumped them together, called that the Homeland Security agency. We still had 111 agencies on the outside looking in. They were not included in the reorganization. As a result, we have a huge percentage of key personnel positions in the Homeland Security agency today that are still not filled, and almost 25 percent of the positions that are filled, are filled with political appointees.

Mr. Speaker, what we have not done, while we have rearranged the boxes, is to provide enough adequate financial resources to this agency. So I hope we are serious in accepting this motion today.

Mr. ROGERS of Kentucky. Mr. Speaker, I yield myself such time as I may consume.

The gentleman from Wisconsin knows that our subcommittee does a lot of closed-door briefings. They are not hearings, they are briefings. They are behind closed doors because we are dealing with classified materials and procedures and practices. Therefore, there is a lot we cannot talk about here in these surroundings. There is a lot going on that we cannot describe. And I really resent those who would take advantage of the fact that we cannot describe all that we are doing to say we are not doing enough.

I resent that. If the gentleman would attend some of those closed briefings, he would know better.

Mr. OBEY. Mr. Speaker, will the gentleman yield?

Mr. ROGERS of Kentucky. I yield to the gentleman from Wisconsin.

Mr. OBEY. I have attended a lot of briefings that I have never seen you at, with the CIA, the Homeland Security Agency, and a number of others.

Mr. ROGERS of Kentucky. Well, if you would attend one closed Homeland Security briefing, I would appreciate it.

Mr. OBEY. You don't know the briefings I have attended.

Mr. ROGERS of Kentucky. Reclaiming my time.

Mr. OBEY. Get your facts straight.

Mr. ROGERS of Kentucky. Reclaiming my time.

The SPEAKER pro tempore (Mr. HAYES). The gentlemen will direct their comments to the Chair.

Mr. ROGERS of Kentucky. Reclaiming my time, Mr. Speaker.

Suffice it to say on, for example container security, there is a lot more going on than the gentleman has described, or perhaps even knows about. And I would hope that we could keep this discussion based on facts, and based on the fact that we cannot talk about publicly a lot of the classified procedures and operations that are being done and easily demagogued by those who want to buy some political insurance in case we have an unfortunate incident in the future.

Mr. Speaker, I reserve the balance of my time.

Mr. SABO. Mr. Speaker, I yield myself such time as I may consume, before I yield to the gentleman from Texas, to make just a couple of comments.

I am not sure we get anyplace by talking about who has been at meetings or who has not. I have been at lots of meetings with the ranking member as it relates to Homeland Security. I also have been at lots of meetings that do not relate to Homeland Security but relate to another subcommittee I am on in which Mr. OBEY has been at. Frankly, it is interesting to hear intelligence from two different perspectives. It is helpful at times. Other times, they still leave you wishing you knew more.

But let me just make this observation. It is true we have limited dollars. It is also true we have an immense new challenge. I hear all this rhetoric that we are in a war on terrorism and that we are and have potential targets in this country. It only strikes me from open and closed hearings that I have been at that we are pretty casual about the threat we face in this country.

Clearly, we have spent billions, and some progress has been made. But the gaps are there, and they are large and they are substantial. It is always impossible to deal with every potential gap that someone can think of. That is impossible in a free society. On the other hand, we know that there are large targets in this country that, frankly, we have not done enough about. We also know that there are significant gaps in the funding of our first responders, and we know that in the last couple of years, rather than going forward, we are going backwards in the funding of first responders in this country.

□ 1100

This committee and this House have been better than the administration. The administration has regularly cut funding in their budgets for first responders. We have added, but have not been able to add back everything they are cutting. And we are into this same pattern again. The bills that we have will be significantly better than what the administration requested. But what the administration requests as it relates to first responders in this country is simply tragic.

Mr. Speaker, I yield 5 minutes to my good friend, the gentleman from Texas (Mr. TURNER), the ranking Democrat on the Select Committee on Homeland Security.

Mr. TURNER of Texas. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I think Members on both sides of the aisle have the same intention, that is, to make America as safe as it needs to be, but I do think there is a very different view of what it will take to ensure the safety of the American people against the threat of al Qaeda and the threat from bin Laden.

When we look at the current level of expenditures for homeland security, what we see is there is much that we have not done. We have not secured the loose nuclear material that is around the world and which represents the greatest threat to our security, that is, the possibility and likelihood that a terrorist would try to detonate a nuclear bomb within one of our cities. We spent more money trying to secure loose nukes in the 2 years prior to 9/11 than we did in the 2 years after 9/11.

We look at the results of the efforts that have been made and how they fall far short of our goal. We do not yet have a unified terrorist watch list. We had 120,000 hours of untranslated wiretaps at the FBI that was reported in the newspaper just this week. We know there are 20,000 illegal immigrants who were caught and released into our country last fiscal year because there was no funding for the detention space to hold them, illegal immigrants from places other than Mexico.

We know that in 2004, last year, we had invested about $20 billion more in homeland security than we did in the year prior to 9/11. We know that is a lot of money, and yet we also know that in terms of our priorities and in terms of our $850 billion discretionary spending budget, it was not a major change in commitment.

The truth of the matter is, we need to do better. We must make America safer. It is all about choices. It is all about priorities.

When you look at the tax cuts that were given to the top 1 percent of Americans in fiscal year 2004, they totaled four times more than the additional investments we made in homeland security over the year prior to 9/11.

We have a whole list of unmet needs. We are told we need $2.7 billion to secure our rail and public transit systems. We are told we need at least $200 million more to install all of the radiation portal detectors this year to make sure we do not have a nuclear weapon shipped into our country by land or sea or air. We know that we need $100 million to hire additional security personnel on the northern border and an estimated $1 billion to truly secure the southern border. We know that in this appropriations bill we have zeroed out the funding for interoperable communications grants, such a critical issue to our first responders all across this country.

I recognize that the gentleman from Kentucky (Chairman ROGERS) has made his best effort and worked within the constraints that he was handed, and I am pleased that we have close to half a billion dollars more in this bill than the President has requested. But it was very telling to me the other night during the debate when JOHN KERRY enumerated several of these needs that we have to improve our homeland security, and the President replied, "He doesn't tell you how he is going to pay for this." He said it is like a big tax gap.

Mr. Speaker, today we are borrowing half of our discretionary spending, and if the President really believes that we are in a war on terror, as I do, I think he would place homeland security as a priority in terms of what we do.

So, yes, under the leadership of the gentleman from Kentucky (Chairman ROGERS), we are appropriating more money than the President even asked for to protect the homeland, and yet it is still far from meeting the needs that we have.

When you look at the amount we are spending and you compare it to what we are spending in other places in our budget, the spending for fiscal year 2005 is about $1 billion above the level for last year. That $1 billion is equal to about a week of what we spend in Iraq.

I would say to you, if the threat is, as I believe, a threat of international terrorists attacking us on our own soil and this is a war we must win, I would suggest that we change our priorities. We will make different choices, and we will ensure that America is safe.

Mr. ROGERS of Kentucky. Mr. Speaker, I reserve my time.

Mr. SABO. Mr. Speaker, I yield 2 minutes to the gentleman from Wisconsin (Mr. OBEY).

Mr. OBEY. Mr. Speaker, the gentleman from Kentucky says that he resents the fact that I have raised some of these shortcomings on the House floor. I am sorry he takes so many things personally. We all recognize that his committee has added $800 million to the administration budget; and as far as it goes, that is fine. But that does not mean that we are meeting the needs of this country.

He likes to talk about things that people do not know, "classified information." Rather than hiding behind that classified information, I would simply say I will tell you what is not classified: the fact that we have fewer air marshals today patrolling the skies than the President and the Congress promised in 2001.

I will tell you what is not classified: the fact that the President of the United States himself said that 40 percent of people who are in this country illegally have overstayed their visas, and yet that backlog of cases has grown by 40,000 a year.

I will tell you something else that is not classified: the gentleman says we need to be fiscally responsible. The President in the debate with Mr. KERRY last week said, "Well, it is interesting to see how much Mr. KERRY wants to provide for homeland security, but where is he going to get the money?"

I will tell you where we tried to get it. We tried to say, instead of giving people who make $1 million a year a $128,000 tax cut next year, let's cut that back for those folks who make over $1 million and put that money into additional port security, put that money into airline security, put that money into screeners. And do you know what? The gentleman from Kentucky voted against that. So he had a choice between homeland security and additional tax cuts for millionaires, and he made the wrong choice.

Mr. SABO. Mr. Speaker, I yield back the balance of my time.

Mr. ROGERS of Kentucky. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. HAYES). Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentleman from Minnesota (Mr. SABO).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. SABO. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, this 15-minute vote on the motion to instruct on H.R. 4567 will be followed by 5-minute votes on the motion to suspend the rules and pass H.R. 4661, as amended; on the motion to suspend the rules and pass H.R. 5213, as amended; and on the motion to suspend the rules and pass H.R. 5186, as amended.

The vote was taken by electronic device, and there were—yeas 395, nays 16, not voting 21, as follows:

[Roll No. 502]

YEAS—395

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Baird
Baker
Baldwin
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole
Collins
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Edwards
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Ferguson
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hunter
Hyde
Inslee
Isakson
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kind
King (IA)
King (NY)
Kirk
Kline
Knollenberg
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Myrick
Nadler
Napolitano
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tierney
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)
Slaughter
Sullivan
Tauzin
Towns
Vitter
Weldon (PA)

NAYS—16

Bachus
Duncan
Dunn
Ehlers
Feeney
Flake
Garrett (NJ)
Jones (NC)
Kingston
Kolbe
Linder
Musgrave
Pearce
Shadegg
Tiberi
Toomey

NOT VOTING—21

Boehlert
Culberson
Filner
Gephardt
Hulshof
Israel
Johnson (CT)
Kilpatrick
Kleczka
Majette
Millender-McDonald
Neal (MA)
Norwood
Paul
Radanovich

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. HAYES) (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1133

Messrs. GARRETT of New Jersey, BACHUS, and EHLERS changed their vote from "yea" to "nay."

Mrs. CUBIN, Mrs. MILLER of Michigan, and Messrs. TERRY, GRAVES and HOSTETTLER changed their vote from "nay" to "yea."

So the motion to instruct was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. FILNER. Mr. Speaker, on rollcall No. 502, I was in my Congressional District on official business. Had I been present, I would have voted "yea."

INTERNET SPYWARE (I–SPY) PREVENTION ACT OF 2004

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 4661, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. GOODLATTE) that the House suspend the rules and pass the bill, H.R. 4661, as amended, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 415, nays 0, not voting 17, as follows:

[Roll No. 503]

YEAS—415

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole
Collins
Conyers
Cooper
Costello
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette

Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (TX)
Green (WI)
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Toomey
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)

NOT VOTING—17

Boehlert
Cox
Filner
Gephardt
Greenwood
Kilpatrick
Kleczka
Majette
Millender-McDonald
Neal (MA)
Norwood
Paul
Scott (GA)
Slaughter
Tauzin
Towns
Young (FL)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LATHAM) (during the vote). Members are advised that 2 minutes remain in this vote.

☐ 1143

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. FILNER. Mr. Speaker, on rollcall Vote No. 503, I was in my Congressional District on official business. Had I been present, I would have voted "yea."

RESEARCH REVIEW ACT OF 2004

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 5213, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. BILIRAKIS) that the House suspend the rules and pass the bill, H.R. 5213, as amended, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 418, nays 0, not voting 14, as follows:

[Roll No. 504]

YEAS—418

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole
Collins
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (TX)
Green (WI)
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood

Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Toomey
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—14

Boehlert
Filner
Gephardt
Greenwood
Kilpatrick
Kleczka
Majette
Millender-McDonald
Neal (MA)
Norwood
Paul
Slaughter
Tauzin
Towns

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised that 2 minutes remain in this vote.

☐ 1152

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. FILNER. Mr. Speaker, on rollcall No. 504, I was in my Congressional District on official business. Had I been present, I would have voted "yea."

TAXPAYER-TEACHER PROTECTION ACT OF 2004

The SPEAKER pro tempore (Mr. LATHAM). The unfinished business is the question of suspending the rules and passing the bill, H.R. 5186, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. BOEHNER) that the House suspend the rules and pass the bill, H.R. 5186, as amended, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 414, nays 0, not voting 18, as follows:

[Roll No. 505]

YEAS—414

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole
Collins
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Feeney
Ferguson
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (TX)
Green (WI)
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Toomey
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—18

Boehlert
Brown-Waite, Ginny
Fattah
Filner
Gephardt
Greenwood
Hunter
Kilpatrick
Kleczka
Majette
Millender-McDonald
Neal (MA)
Norwood
Paul
Slaughter
Tauzin
Taylor (NC)
Towns

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised there are 2 minutes remaining in this vote.

☐ 1200

So (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. FILNER. Mr. Speaker, on rollcall No. 505, I was in my Congressional District on official business. Had I been present, I would have voted "yea."

PRIVILEGED REPORT ON H. RES. 776, INQUIRY REQUESTING THE PRESIDENT AND DIRECTING SECRETARY OF HEALTH AND HUMAN SERVICES PROVIDE CERTAIN DOCUMENTS RELATING TO ESTIMATES AND ANALYSES OF COST OF MEDICARE PRESCRIPTION DRUG LEGISLATION

Mrs. JOHNSON of Connecticut, from the Committee on Ways and Means, submitted a privileged report (Rept. No. 108 754 Part I), on the resolution (H. Res. 776) of inquiry requesting the President and directing the Secretary of Health and Human Services provide certain documents to the House of Representatives relating to estimates and analyses of the cost of the Medicare prescription drug legislation, which was referred to the House Calendar and ordered to be printed.

APPOINTMENT OF CONFEREES ON H.R. 4567, DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2005

The SPEAKER pro tempore. Without objection, the Chair appoints the following conferees: Messrs. ROGERS of Kentucky, YOUNG of Florida, WOLF, WAMP, LATHAM, Mrs. EMERSON, Mrs. GRANGER, Messrs. SWEENEY, SHERWOOD, SABO, PRICE of North Carolina, SERRANO, Ms. ROYBAL-ALLARD, and Messrs. BERRY, MOLLOHAN and OBEY.

There was no objection.

☐ 1200

WAIVING REQUIREMENT OF CLAUSE 6(a) OF RULE XIII WITH RESPECT TO CONSIDERATION OF CERTAIN RESOLUTIONS REPORTED FROM COMMITTEE ON RULES

Mr. REYNOLDS. By direction of the Committee on Rules, I call up House Resolution 828 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 828

Resolved, That the requirement of clause 6(a) of rule XIII for a two-thirds vote to consider a report from the Committee on Rules on the same day it is presented to the House is waived with respect to any resolution reported on the legislative day of October 7, 2004, providing for consideration or disposition of a conference report to accompany the bill (H.R. 4520) to amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service, and high-technology businesses and workers more competitive and productive both at home and abroad.

The SPEAKER pro tempore (Mrs. BIGGERT). The gentleman from New York (Mr. REYNOLDS) is recognized for 1 hour.

Mr. REYNOLDS. Madam Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts (Mr. MCGOVERN); pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for purposes of debate only.

Madam Speaker, House Resolution 828 is a same-day rule that provides for consideration of the rule to accompany the conference report to H.R. 4520, the American Jobs Creation Act of 2004. The rule waives clause 6(a) of rule XIII requiring a two-thirds vote to consider a rule on the same day it is reported from the Committee on Rules.

Madam Speaker, this Congress has been debating the American Jobs Creation Act of 2004 throughout this summer, all the while European Union sanctions on American exports have been quickly rising at a rate of 1 percent per month and now stand at a staggering 12 percent. They will continue their constant uptick at an additional 1 percent per month until the FSC-ETI is repealed or the rate reaches 17 percent.

Madam Speaker, these sanctions are unnecessarily costing domestic manufacturers, small businesses, and farmers billions upon billions of dollars. They are raising the price of 1,600 categories of U.S. goods sold outside the United States, and they are hindering the exporting capability of multiple industries. Farm products, jewelry, steel, tools, glass, toys, and clothing are among the goods subject to the penalty tariff. We simply cannot delay in delivering the needed relief to the producers and manufacturers of these products who have been subjected to the true financial hardship of this situation. Without our swift action, many small businesses and other employers face financial devastation and we risk job losses.

A conference report has been prepared that answers the call by repealing this export tax subsidy and providing tax incentives for domestic purposes. It simplifies complex international tax law, provides businesses with more resources to create new jobs, and is revenue neutral, so it will not add to the Federal deficit.

This Congress must continue its commitment to provide strong economic policies that spur growth and encourage domestic manufacturing while generating jobs and protecting our small businesses and farmers.

The answer is clear, Madam Speaker, passing the American Job Creation Act today is of the utmost importance to American workers and their families. I urge my colleagues to support this rule and the underlying conference report as it later comes about.

Madam Speaker, I reserve the balance of my time.

Mr. MCGOVERN. Madam Speaker, I thank the gentleman from New York (Mr. REYNOLDS) for yielding me the 30 minutes, and I yield myself such time as I may consume.

Madam Speaker, my friend from New York has introduced a martial law rule to allow the House to consider the FSC-ETI and corporate tax giveaway bill at some point today. This bill has been lingering in legislative limbo for months, and we could have fixed this problem a long time ago for a lot less money. But now, one day before we have been told by the Republican leadership that we are going to adjourn until after the election, we have been rushed to the floor to consider a martial law rule to debate and vote on a bill that has barely been filed.

Let me repeat that, Madam Speaker. We are considering a rule for a bill that was just filed. We are considering a rule for a bill that has been available for just a few minutes. The American people do not know what is in the bill, but we are here rushing it through at the eleventh hour.

I cannot say I am surprised by the Republican leadership's actions. Unfortunately, the outrageousness of the Republican leadership's actions in the 108th Congress, from the Medicare vote, to the energy bill, to the continued fiscal irresponsibility, just to name a few, has made transgressions like this one pale in comparison.

But this martial law rule is not a trivial matter. It is important for my colleagues and the American people to know and understand exactly what the Republican leadership is forcing this body to do today. Madam Speaker, what we are doing right now on the floor of this great institution is flying blind, and that is par for the course for what takes place under this Republican leadership.

We can read in the newspaper reports that this bill is loaded up with goodies for special interests and friends of the Republican leadership. The Washington Post today editorializes that this bill should be vetoed. But I ask you, Madam Speaker, who other than the Republican leadership has seen the final version of this bill? Can the Republican leadership provide a copy of this bill for every Member right now so they can actually read it before we start this process? Why are we starting this process before every Member has had the opportunity to read and examine this important conference report—so we make sure it is exactly what we expect it to be?

I will tell you why, Madam Speaker. Because the Republican leadership did not finish writing the conference report before they filed this martial law rule. They are rushing through this process when they should be doing this carefully and deliberately. Madam Speaker, we should follow the rules of this House. Let every Member read the conference report before we vote on it.

Madam Speaker, there is an arrogance in this House that permeates from the top down. It is an arrogance that flaunts the committee process and thumbs its nose at the 431 Members of Congress who do not happen to be part of the Republican leadership. This arrogant attitude has reached a point that it is now common practice for major pieces of legislation to be written behind closed doors by just a handful of Members of the Republican leadership and then shoved down the throats of this body.

This is not just election-year rhetoric. Let us look at the evidence. The energy bill was written in the back rooms of the Capitol and the White House to benefit big energy companies and wealthy corporate contributors. It was introduced with little time to examine the bill and then forced through this institution by a heavy-handed leadership.

The Medicare prescription drug bill was written by a handful of Republican Members of the House for the benefit of HMOs and the big drug industry. It was brought to the floor of this distinguished body in the dead of night and the vote was held open for over 3 hours while the Republican leadership did everything it could to twist arms to their breaking point in order to win the vote.

The bill to enact the recommendations of the 9/11 Commission, a bill that should be among the most bipartisan bills considered in this Congress, was written in the Speaker's office. The 9/11 Commission held public hearings. The other body developed bipartisan legislation and openly debated their version on the floor this last week, yet the Republican leadership here in the House decided it was in their best interest to secretly craft this bill behind closed doors.

Important provisions that are approved by a bipartisan majority of this House and with recorded votes in this body are routinely stripped away behind closed doors. How many times, Madam Speaker, has this body voted in favor of amendments to close tax loopholes that benefit the Benedict Arnold companies that open up a post office box overseas so they can avoid paying taxes here in the United States? How many times has this body voted to allow the reimportation of prescription drugs from Canada only to have the Republican leadership kill these bills in the dead of night when no one is looking?

Instead of fostering debate and Democratic action, the Republican leadership has turned the rules of this House from a tool to guarantee orderly democratic process into a weapon that quashes informed democratic debate. It is indeed, in every sense of the word, a disgrace.

Madam Speaker, we all know the United States is the greatest democracy in history, and this House is a great and noble institution. But it is the people's House, not the leadership's House, and the Republican leadership should treat it as such.

Madam Speaker, I urge my colleagues to consider carefully their rights when they vote on this martial law rule. Members have the right to know and understand exactly what we will be debating and voting on, and in this case, I believe few of us will enjoy that right.

Madam Speaker, I reserve the balance of my time.

Mr. REYNOLDS. Madam Speaker, I yield myself such time as I may consume.

I can see, just listening to the observations of the gentleman from Massachusetts that maybe he and I should go and observe the conferees, because what I just heard is not what I am hearing from some of the majority members of the conferees. I understand that all the provisions that were considered by the conferees either were in the House side or in the Senate side of the bill, so that both those versions were what they worked on. There are absolutely no new versions.

My understanding is there was a motion to instruct which failed that called for an open session, and yet the conferees that wanted that, got what they wanted. We had an open session on Monday and Tuesday and Wednesday of this week.

I also understand the Senate finance rules of the other body seemed to be what was happening, where members of the conference committee were able to submit amendments that they wanted in the Chair's markup of what they wanted to do, and there were just numerous expressions of what they were based on conferees doing that.

I also understand that ranking members and other members of the Committee on Ways and Means, which has jurisdiction, participated as conferees in this. So there has certainly been an open process.

Madam Speaker, this has been around a long time. We knew that FSC-ETI, based on the WTO sanctions would require us to move forward. We have had ample debate and passage of legislation here. It has occurred in the other body. As the conferees has met, we have seen them work through an open process that seems to be acceptable to the conferees in the submission of amendments, in the Chair's mark on those, and in the completing of our work.

Madam Speaker, there are no new versions of anything. It is either in the other body's bill or it is in the House bill that they have worked on. So I think that as we look, at a sense, in a bipartisan fashion, to see if we can continue to work hard this week and, if we can, complete our work, that we would be able to return to our districts, that we are moving there.

I understand, at least from the other body, that there is bipartisan support from the conferees on this legislation as it continues through the day.

Madam Speaker, I reserve the balance of my day.

Mr. McGOVERN. Madam Speaker, I yield 5 minutes to the distinguished gentleman from New York (Mr. RANGEL), the ranking member on the Committee on Ways and Means and a conferee.

Mr. RANGEL. Madam Speaker, I think most New York Members in the Congress probably have more self-esteem than we need in order to negotiate ourselves around this Congress, but my friend from upper New York is really better than all of us because he is telling us what is involved in a 600-page bill that has just been filed 5 minutes ago. Now that is extraordinary.

What is not extraordinary is that the leadership on the Republican side are using an extraordinary provision to avoid the rules, which only say that the Members of Congress ought to know what the gentleman from New York knows. He knows everything that is in the bill. Members of the Congress ought to know what is in the bill. They should understand the feeling of fishing tackles, and bows and arrows, and tax credits for animal manures. They should be able to understand how you are taking away charitable contribution, how we are converting the collection of taxes from the Internal Revenue Service to private corporations. They should understand that we are putting $42 billion in tax credits to allow our jobs to be exported overseas, which is something that we were trying so desperately hard not to do.

Martial law? How would the people understand what we are doing here? What are we rushing off to do? The bill costs $140 billion. They will come and say to us that it is paid for. Well, how are we to argue that if we do not have a bill to see how you pay for it? And the truth of the matter is, they call it paid for, but it is called phase-ins, it is called delaying the time it comes into operation, it is called sunsetting. There are so many things in this bill that, if they were so proud of it, they should let us know.

□ 1215

He called the bill FSC. FSC is a short-term expression of foreign service corporations in which we have been alleged by the World Trade Organization that we give some $70 billion in tax subsidies to exporters. What does it really mean? We could have really made ourselves look good in the eyes of the world by adding the $70 billion and, if we wanted, give a cut. Instead, we spend twice that much for items that are so unrelated to the bill in front of us. The bill is so bad that the Secretary Treasurer condemned the bill in a letter that he sent to my chairman, BILL THOMAS, saying it has taken care of everything else except the tax issues that the bill was there before us.

We have everybody here telling us that this thing is so important. I stand to be corrected because the gentleman from New York is far more a genius than I thought. I thought the bill was filed. He now understands bills that are not filed. And he is asking us to please inherit the genius he has to be prepared to vote on a $600 billion bill. This is $146 billion and then you take the $140 billion that we borrowed before, we would have a $286 billion bill that we borrowed the money for so that we could give it back to the corporations. It may sound good on the eve of an election.

If I understand this procedure correctly, we have to have martial law to avoid having 3 days for Members of Congress, who are not as smart as the proponent of avoiding the rule, to be able in 1 hour to vote on this bill. That is so truly unfair, not to Democrats, but to Democrats and Republicans.

It could be in the speed to go home and not to fulfill our responsibility that one taxpayer, one old lady, one young person that may just want to know what his future is going to be with the deficits the Republicans are leaving on them, what did you vote for? I have been in conference. We voted on bundles of amendments, 15 of them with one vote. We wiped them out. Was it open? Yes. But crimes are sometimes committed in the open. It is not all done in the darkness of night.

But at the end of the day, conferees are asking me, What finally ended up in conference? Because we do not know. Nobody in the House of Representatives today will know why we needed martial law, what is in this $600 billion borrowed bill, if you combine it with the other preelection tax cut; and we should have at least time, no matter how badly Republicans need to go home, especially to stop the rumors about the draft, but that is another subject; but you have to get home for whatever reason. But you should really give Members of Congress, new Members, older Members, time enough to know what is in the bill.

Mr. REYNOLDS. Madam Speaker, I yield myself such time as I may consume.

I think it is important that while the debate may go wherever it is that is germane to debate, that what I have come to this floor to do as a member of the Committee on Rules is to bring forth consideration of a same-day rule of legislation as it is filed for consideration today.

I outlined in my opening remarks that there is that opportunity that as we pass this rule, if it is passed today, which I believe it will be, that it affords us the opportunity to consider a rule later of a conference report on the American Jobs Creation Act conference report. As I understand it, the legislation has been circulated to the conferees in final stead and that in a bipartisan aspect, at least in the other body, we have a number of Democratic Senators who have already signed and a number of Republicans. I cannot speak for what they are in this body.

But I know in regular order that as the legislation is filed, it will come up on the Ways and Means Web site, and it will again allow everyone to review it. And I know that before this legislation can come to the floor of this great body, it will require a Rules Committee meeting to also have a hearing which affords an ample opportunity for Rules members to listen and for those who choose to come up to the Rules Committee an opportunity to explain or answer questions on the legislation. And then we will have an hour debate on the rule, and then we will have whatever time the Rules Committee determines the debate will be on the conference report.

And so we certainly are not looking at the discussion we are having today, while it brings healthy debate on the floor of the House of Representatives, that this is a final act of anything. It is an opportunity to engage in the same-day consideration of the American Jobs Creation Act conference report which has been out there.

I understand that documents are now available on the Ways and Means Web site. That would mean not only all the Members in this body today but throughout our great institution can now see this legislation. To my knowledge, I do not have a time that Rules will convene, so I know we are not rushing it right after consideration of this legislation.

I urge my colleagues to begin to once again look at some facts: that there has been an open process of the conferees, even though a motion was defeated to instruct relative to open session, there has been one, on Monday and Tuesday and Wednesday of this week, of conferees; that a model of the Senate Finance markup submitted amendments as conferees saw fit and the chairman's mark came from a result of that. We know that there has been a bipartisan signing of the conference report in the other body. We know that there has been certainly signing of at least majority Members in this body and that all this rule does is give us the opportunity to continue moving to get our work done and to level the playing field on the WTO sanctions which will mean jobs for Americans as that comes about.

Madam Speaker, I reserve the balance of my time.

Mr. McGOVERN. Madam Speaker, I yield myself such time as I may consume.

Let me just say to my friend from New York a couple of things. He began his opening statement talking in great detail about all the things that are in this legislation. Yet we have learned that it has not been filed. So until it is filed, we do not have the final product. He has now told us that it is on the Web page, documents are on the Web page that were made available about 3 minutes ago. I guess we should be grateful for that.

Let me ask the gentleman, is that supposed to replace the 3-day layover that conference reports are supposed to have under the rules of this House? That is the rules of this House, that we are supposed to have 3 days to look at this stuff. Instead, we do not have a bill that is filed; but we are told, be happy, don't worry, because there is all kinds of things coming over on people's Web pages and that is supposed to suffice.

What has us on this side frustrated is that you do not follow the rules. The leadership of this House on a regular basis breaks the rules. What we are simply saying is on a bill of this significance and a bill that has a whole bunch of goodies that have been added on, that you should follow the rules so that everybody in this House, not just a few select groups of the elite in the leadership, but there are 435 Members of this House, and every one of them is entitled to know what they are voting on before they go to vote.

Madam Speaker, I yield 3 minutes to the gentleman from Washington (Mr. MCDERMOTT).

Mr. McDERMOTT. Madam Speaker, today's martial law bill is necessary because we need to pass this Republican tax bill which is a cookie jar of tax cuts for corporate interests.

The bill contains goodies for the restaurant association, the ethanol producers, the big timber companies. It provides sweets for those who have enough money to own their own corporate jets. It even dishes out rewards to the railroads like Treasury Secretary Snow's former company, CSX.

What is appalling, Madam Speaker, is not that the bill provides goodies for U.S. firms. The Republican Congress does that all the time. What is appalling is that most of the cookies here in the jar are U.S. companies that take their profits and their operations and American jobs overseas. This is an overseas cookie jar.

Some of the biggest winners in this jar are multinational corporations. There is a cookie here for big oil and a cookie here for big tobacco and a cookie here for the alcoholic beverage industry and a cookie for the pharmaceutical industry. Imagine that. They have been doing so badly, you know.

These companies enjoy record profits. Oil is $52 a barrel today. American consumers are getting gouged. But instead of passing an excess profits tax, this Congress is going to give the oil companies another tax break. No wonder ExxonMobil's stock is now up 30 percent. If you sniff real carefully, you can see why Wall Street can smell these cookies. They have been hanging around in the halls up above my office for the last couple of days. This bill is going to raise taxes on America's biggest exporters and lower taxes for businesses that go offshore. For those firms that move offshore, we are going to give you some cookies.

Republicans think that passage of this bill the day before the President's debate on domestic issues with Mr. KERRY will somehow either get lost in that or will be used in it about how I gave big tax breaks to the companies. I do not know what they are going to do with it, but they have got something planned for tomorrow. It did not come up today under martial law because they had not planned it for 6 months.

Now, come the 2nd of November, Madam Speaker, this Congress is going to learn that that is not how the cookies crumble. I urge my colleagues to vote against this rule and against the conference agreement and get the special interests' grubby hands out of their cookie jar. If you did not get a cookie in your area, you can have one from my jar. Just come on over and get it.

Mr. REYNOLDS. Madam Speaker, I yield myself such time as I may consume.

I am not so sure my colleague has read the whole bill, though I realize it has just been on the Web site a short time. But as I listened to some of his description, he did not really talk about the fact that small business, that this bill extends and enhances section 179 of expensing for 2 additional years so small businesses can write off the cost of their investments up to $100,000 annually. I have been a small businessman. I know how big debt is. Maybe some others that have not had that opportunity do not really know how important that is to small business. Partnerships and S corporations receive a deduction for domestic production activities. It offers S corporations 10 reforms providing $1.2 billion in tax relief. It provides for faster depreciation on leasehold and restaurant improvements.

I come from some communities that they do not have chains in there. That is a small businessman on Main Street that is looking for a little expensing, an opportunity to have their building and a leasehold written off a little faster. Sometimes it gets lost in my great State of New York, the number one industry is agriculture like it is in many of my colleagues', but the deduction for domestic production activities is extended to farmers as well as to agricultural and horticultural cooperatives.

The bill provides for AMT relief for farmers and fishermen who income average. It extends an ethanol subsidy under current law through 2010, thus improving farmers' incomes. It extends double tax and triple taxation on farmer cooperatives. It provides capital gains relief when livestock is sold and replaced on account of drought or other weather-related disasters. It extends capital gains treatment to outright sales of timber.

When we look at our domestic manufacturers, the bill provides manufacturing companies, farms, and small businesses with $76.5 billion in stimulative tax relief through a deduction for income attributed for production activities in the United States. More tax relief is provided for business with proportionately more U.S. production operations. The deduction is available for domestic production activities only. The deduction is limited to 50 percent of wages paid to workers in America. The bill does not move jobs overseas.

I want to also cite to my colleagues, particularly those from the States of Washington, Nevada, Wyoming, South Dakota, Texas, Alaska, and Florida that I know of, you can deduct your sales tax if you do not have income tax like the gentleman from New York (Mr. RANGEL) and my great State has to pay. I look forward to the consideration of this body for a same-day rule which is all this is right now.

□ 1230

It is an opportunity to continue the debate and the rule later today, if the Committee on Rules grants one, and for debate on the floor of all the Members as we look at this legislation. Again, I want to remind my colleagues that I have been informed, and they can verify as they go to the Committee on Ways and Means website themselves, nothing was considered in the conference report other than provisions that were in this body's legislation or the other body's legislation and that we have received bipartisan support on conferees' signing the conference report as it comes to this great body for its consideration.

Madam Speaker, I reserve the balance of my time.

Mr. MCGOVERN. Madam Speaker, I yield myself such time as I may consume.

I just want to pay a compliment to my colleague from New York, with whom I am on the Committee on Rules, for his eloquence in describing all the great things that are in the bill that has not been filed and nobody has read yet. I am looking at my watch, and it is almost 12:30, and the bill has not been filed. I would hold my breath, but I am afraid I would die waiting for this bill to be filed.

I am on the Committee on Rules, and we are supposed to meet on this later today. We have not gotten a copy of the bill. We do not even know when we are going to meet. This is not the way this process is supposed to work. And while I have nothing but the greatest respect for the gentleman from New York and I want to believe everything he says, that everything is great and there is nothing bad or sinister about this bill, I have learned long ago that I need to verify everything here. Every Member of this House has an obligation to know what they are voting on. And again, they have undermined this process, which I think does a great disservice not only to the Members of this House but to the people we represent.

Madam Speaker, I yield 4 minutes to the distinguished gentleman from Ohio (Mr. BROWN).

Mr. BROWN of Ohio. Madam Speaker, I thank the gentleman for yielding me this time.

The FSC conference report is the wrong solution for America's manufacturing sector. This stack of fliers and literally hundreds of others was given to me by a group of people, the Akron machine shop operators in Akron, Ohio. They represent literally thousands of manufacturing companies in this country going out of business. "Complete Liquidation," Dover, Ohio; "Something for Everyone," Piqua, Ohio; another going out of business, Pettisville, Ohio; Independence, Ohio; Tallmadge, Ohio. All of these represent companies that are cannibalizing themselves, that are selling their equipment, that are going out of business, that simply are closing their doors and laying off American workers.

Ohio, my State, has lost 170,000 manufacturing jobs under President Bush. The Nation has lost 2.7 million jobs. It is not ancient history. It is currently reality. In my State in August, Ohio lost 4,000 more manufacturing jobs. During the Bush administration, one out of six manufacturing jobs in Ohio has disappeared, one out of six; 150 jobs every day in my State alone have disappeared during the Bush administration. President Bush will be the first President since Herbert Hoover to have a net loss of jobs during his administration. And all of these tax bills that the gentleman from California (Mr. THOMAS) and the gentleman from New York (Mr. REYNOLDS) bring in front of this body, they have promised, President Bush promised, 6 million new jobs in this country. So far, we are 7 million short of that 6 million job goal.

President Bush, during the Republican convention, during his speech that all the pundits said was tough because the President stood there strong, mentioned the word "jobs" once, one time; he also did not mention Osama bin Laden at all. But he mentioned the word "jobs" once during that speech.

My mom taught me, if I am going to stand up and criticize, I ought to have something to say in its place; I ought to suggest something else. There is a bill that offers hope to small manufacturers, that will help States like Ohio and Michigan and New York rebuild their manufacturing base. The bipartisan Crane-Rangel bill that the gentleman from New York (Mr. RANGEL) worked on would reward companies that produce in America and employ U.S. workers. If they do 100 percent of their production in the U.S., they get 100 percent of the tax benefits. It was endorsed by the Manufacturers Association, by the AFL/CIO. It helps also proprietorships and partnerships. It is budget-neutral, adding nothing to the national debt. If has 170 cosponsors, roughly even number of Republicans and Democrats.

Let me be clear to my Republican friends, if they cosponsored Crane-Rangel and they turn around and vote for this conference report, they are selling out America's small manufacturers and they are selling out our communities. If they turn around and vote for this special interest bill instead of the bipartisan Crane-Rangel bill, they are selling out American manufacturing and selling out American jobs because the conference report takes us in the exact opposite direction.

Instead of rewarding investment in America, this conference bill continues to encourage giant multinationals to ship more jobs overseas. Instead of supporting the small business community, the conference bill rewards special interests, friends of particular Members of Congress, as the gentleman from Massachusetts (Mr. McGOVERN) and the gentleman from Washington (Mr. McDERMOTT) and the gentleman from New York (Mr. RANGEL) pointed out. Instead of using honest policy to reach budget neutrality, it fudges the numbers to hide its multibillion dollar cost to American taxpayers. So not only is this a special interest bill that is going to undercut jobs today, it is also going to load even more debt on our children and grandchildren. It is the wrong direction to take the country. It is more of the failed economic policies we have seen out of this Congress and out of this President. It is time we change direction and help rebuild U.S. manufacturing.

Mr. REYNOLDS. Madam Speaker, I yield myself such time as I may consume.

I just listened, and I realize that a couple things need to come about, and that is that, months and months ago; it reinforces my original statements that we have had ample time as we have been debating this throughout the summer; there was a Crane-Rangel piece of legislation. There was a Thomas piece of legislation, and now there is an American Jobs Creation Act of 2004. I just want to remind the gentleman from Ohio, the previous speaker, that my understanding is the gentleman from Illinois (Mr. CRANE), who is the number two in seniority man and an individual who had authored legislation previously, has signed this conference report. If the gentleman were still in the Chambers, he would know that my previous remarks talked about the fact that this is all about small business and small manufacturing and farmers as we look at expensing vital everyday assistance to our small businesses, our small manufacturers and our farmers. And that is what this bill has got in it.

I want to remind my colleagues, as all the hysteria comes out here on the question of what it does to the federal deficit, again, I will put on the RECORD that the conference agreement is revenue-neutral. It does not increase the federal deficit. The manufacturing firms and the farms and the small businesses receive $76.5 billion in stimulative tax relief through a deduction, not a corporate rate cut, and tax relief is provided for all these businesses and farmers and small manufacturers and co-ops, subcorporations, and other unincorporated businesses. It is all about helping America's small businesses. It is all about helping businesses compete fair and globally across the globe.

So, again, I want to remind my colleagues that this is a rule to consider a same-day legislation under the rules' permission for later today. I want to remind my colleagues that it is available on the Committee on Ways and Means' website, and I look forward to later in the day that we might have an opportunity to move forward on this legislation, that, again, I will remind them has bipartisan support and has had a fair and open process as conferees have moved forward with legislation, as I have repeatedly said.

Madam Speaker, I yield 5 minutes to the gentleman from California (Mr. THOMAS), the chairman of the prestigious Committee on Ways and Means.

Mr. THOMAS. Madam Speaker, I thank the gentleman for yielding me this time.

I could not help but hear some of the discussion, which is obviously tied to the underlying matters rather than the question of a same-day rule. And the argument that someone has not seen it, I find it ironic that this particular conference, the first conference in my memory, was held entirely with the public permitted complete access, televised over the internal television structure for the entire time of the conference. There were no separate conference meetings. All of the conference meetings were public.

As the gentleman from New York said, the Committee on Ways and Means' website is now available. We have just filed a conference report, and under the rules, hard copies are required and hard copies are available.

The one point I want to make is, the constant and the only word that comes to mind is "harping," the constant harping about the fact that we are not bipartisan. Bipartisanship is a two-way street. The Senate had 23 Senators on this conference. Twelve of them were Republicans. Ten of them were Democrats. And one was an Independent. Of the 12 Republicans, 11 supported the conference; i.e., they signed the conference report. Of the ten Democrats, six supported the conference report, including, I might tell the Members, the minority leader of the United States Senate and the ranking Democrat on the Senate Finance Committee. The Independent member on the Senate side chose to pass. So 17 of the 23 Senate conferees, a majority of both the Republican and the Democrat conferees, support the conference report.

Now let us take a look at the House side. Submitted for the entire House were three Republicans from the Committee on Ways and Means and the majority leader and two Democrats. For the Committee on Agriculture, two Republicans and one Democrat. For the Committee on Energy and Commerce, three Republicans and one Democrat. For the Committee on Education and the Workforce, two Republicans and one Democrat. And for the Committee on the Judiciary, two Republicans and one Democrat.

The four Republicans from the Committee on Ways and Means and the majority leader supported the conference report. None of the Democrats supported the conference report. From the Committee on Agriculture, two Republicans supported it, and the Democrat supported the conference report. From the Committee on Energy and Commerce, the three Republicans supported the conference report; the Democrat did not. From the Committee on Education and the Workforce, the Republicans supported it; the Democrat did not. The Committee on the Judiciary, one of the two Republicans supported it; the Democrat did not.

When we look at what the House does, it is not bipartisan because the people who were appointed by the gentlewoman from California (Ms. PELOSI) and the Democrats do not want to be bipartisan. They are the hardnosed partisans. If, in fact, the House would appoint people who want to come to a reasonable resolution, as the Senate does, it would be bipartisan in the Senate and bipartisan in the House.

I chaired that conference to produce a bipartisan conference. The only group that did not seem to want to be bipartisan is the same group that argues we ought to be bipartisan over and over and over again, and as one might guess, they are the partisans.

I thank the gentleman for yielding me this time.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mrs. BIGGERT). The Chair would like to remind all Members that while a Member may reference those Senators who signed a conference report that has been filed, it is a violation of rule XVII to characterize the position of the Senate or individual Senators.

Mr. McGOVERN. Madam Speaker, I yield 30 seconds to the distinguished gentleman from New York (Mr. RANGEL), a member of the Committee on Ways and Means.

Mr. RANGEL. Madam Speaker, I rise to compliment the distinguished chairman of the Committee on Ways and Means, indeed of the conference, for his eloquent remarks on the subject of partisanship and this Congress and assure him that, in the next Congress, I hope that the Democratic majority would be able to be more bipartisan.

□ 1245

The question I thought was on the floor was not of being partisan, but the question of why are you suspending the rules of this House bringing in marshal law for a 600-page bill that is so complex that lawyers around the country are going to call it the lawyers' welfare bill?

Mr. REYNOLDS. Madam Speaker, I reserve the balance of my time.

Mr. McGOVERN. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, first I want to thank the distinguished chairman of the Committee on Ways and Means for finally filing the bill. I am glad somebody is listening to us and has been responsive. But the fact of the matter is, and I will say this again, the rules of this House matter, at least they are supposed to, and we are supposed to have 3 days to review conference reports, the final product.

In the good old days, the gentleman from New York (Mr. RANGEL) will tell you, the conference reports routinely laid over for 3 days. People had a chance to read them. Members of both sides of the aisle had a chance to read them.

The fact is that the Republican leadership continues to ignore and to violate and to break the rules of this House, and no matter how you try to sugarcoat it and change the subject, the facts are the facts.

Madam Speaker, I yield 4 minutes to the gentleman from Michigan (Mr. LEVIN).

Mr. LEVIN. Madam Speaker, I want to spend just 30 seconds on process. It has been covered well.

If I can lift this bill, here it is. No speed reader can read this, I would say to the gentleman from New York (Mr. REYNOLDS), nobody.

On partisanship, this bill was handled in this House without a stitch of effort at bipartisanship. The two of us who were conferees and our Democratic colleagues on the Committee on Ways and Means never had a chance to participate in the creation of the House bill.

I want to talk about the substance. This is a $5 billion problem with a solution that is three times that in terms of the 10 year result. Five times ten is 50. This bill is $150 billion.

Who are going to be the main beneficiaries? Not the workers who are going to lose their overtime, because the House Republicans stripped the overtime provision that had been passed by the Senate, stripped it on a partisan basis. Not the kids who are going to end up smoking and the families who will also suffer with them. Why? Because the House Republicans stripped the FDA provision out of this bill that was part of the Senate bill. And not the workers in communities who are going to lose because of jobs going overseas.

I want to say a word to the gentleman from New York about some of the provisions he mentioned. Small business, the sales tax provision, these are sunsetted. It is dishonest budgeting, because we know they will not be sunsetted, and when you take all the sunsets out, the bill is really not revenue-neutral; there is an $80 billion deficit.

Madam Speaker, this continues to the pattern of Republicans talking one way and acting another. I think you can call it flip-flopping.

Let me read the letter from Secretary Snow that the gentleman from New York (Mr. RANGEL) referred to. This is his letter a couple days ago: "The administration believes a conference report to replace FSC-ETI should be budget neutral. Both the House and Senate-passed bill include a myriad of special interest tax provisions that benefit few taxpayers and increase the complexity of the Tax Code. Legislation taking up more than 1,000 pages of statutory language or even 400 pages goes far beyond the bill's core objective of replacing the FSC-ETI tax provisions with broadbased tax relief that is WTO compliant. The administration will work with the conferees to eliminate these narrowly-crafted provisions."

Madam Speaker, that has not happened. The administration essentially has flip-flopped, has caved in. So all of these special interest provisions that have been mentioned have stayed in—for railroads, for shipbuilders, for bow-and-arrow manufacturers, for importers of Chinese ceiling fans, for the horse- and dog-racing industries.

Madam Speaker, we could have done better. We needed to replace FSC with a bill that the four of us introduced relating to manufacturing. Instead, we have this huge monstrosity of a bill. We should go back to the original purpose.

I urge we turn down this provision here of martial law and then turn down the rule and then turn down the conference report, and come back quickly and do the work that is necessary to preserve manufacturing in the United States of America.

Mr. REYNOLDS. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I took a look at that 12-inch set of legislation, and I just want to alert my colleagues, because it is on the Committee on Ways and Means Web site. If you go to waysandmeans.house.gov and take a look and see what is new and look for the conference documents, you are going to find that. So you do not have to carry that anywhere; it is going to be right on your computer, right in your office.

For those who are looking for some specific things, I urge them to consider the Adobe Acrobat so they can word search anything they are interested in.

But, as I said earlier, and I am sure the gentleman did not hear my predecessor speaking, I come from a small-business world. I took a look to see what small business said.

Over 250 companies and organizations have supported this legislation as this body considered it. So you get the U.S. Chamber of Commerce, the National Association of Manufacturing or the Business Roundtable. But we get right down into main street and that village of USA when NFIB and the other small businesses talk about how important expensing and other opportunities that are in this legislation to be considered are.

But I cannot let someone address the fact that the Republican majority is not interested in tax simplification. Quite frankly, it is the opposite. We have been resolute in our commitment to small business, to farmers, to manufacturers and just plain old tax simplification. Not only by action in the House, but in this election season across America, I have heard it time and time again by my Republican colleagues as they talk about the push and the resolute objective of having tax simplification here in the United States Tax Code.

Madam Speaker, I reserve the balance of my time.

Mr. MCGOVERN. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, what I object to is the fact that the Republican leadership does not want to follow the rules of this House.

Madam speaker, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Madam Speaker, I thank the gentleman for yielding me time, and I thank the ranking member and everyone who believes they come from certain communities.

I come from a small-business community, and I remember, just a few weeks ago, standing with my bipartisan colleagues on the single focus that is crucial for a State like Texas, and that is the ability to deduct our sales tax in Federal income tax filings.

Madam Speaker, I enthusiastically support that, but in flipping through this bill, it is a maze, and it is almost impossible to determine where that provision is. If there was a freestanding response to the small-business community and a freestanding response on the sales tax, we would have bipartisan unity.

I stood alongside of a bipartisan House and supported tax child credits for Americans and the marriage penalty relief for Americans, but the question to my colleagues is, how are you going to pay for it? And let me tell those who will vote for it, this relief on sales tax is only a 2-year relief. What family can plan their income, can plan their future, knowing that they can only deduct sales tax for 2 years. I wish we could have had a clean vote on this single relief for small businesses and working families.

So I would simply argue, if someone can give to me the reason why we could not go in a bipartisan manner on giving relief to those who are suffering under the burden of sales tax and cannot deduct them, why you could not do that without the enormous loopholes, the overburden of taxation, and when I say overburden of taxation, the ability to give others the ability not to pay taxes?

Let me remind my colleagues on this marshal law, we are paying $5 billion a month in Iraq, and I understand $1 billion a month in Afghanistan, and we do not know where it is going to end. There have to be choices in this House.

We are about to debate homeland security, and I expect that that is going to be a mighty penny, no matter how much and what we ultimately pass, unfortunately, not with the kind of consensus we need. I argue, tell me, where are we giving relief to our families in Texas? I will give further consideration to this bill, however, I believe further deliberation is necessary. I want most of all to give relief to the working families and small business tax payers of Texas. My constituents really need this relief.

The SPEAKER pro tempore (Mrs. BIGGERT). The gentleman from Massachusetts (Mr. MCGOVERN) has 2 minutes remaining and the gentleman from New York (Mr. REYNOLDS) has 7 minutes remaining.

Mr. MCGOVERN. Madam Speaker, I yield 1 minute to the gentleman from California (Mr. SHERMAN).

Mr. SHERMAN. Madam Speaker, this is bad procedure to adopt bad tax policy. I want to get parochial and address my fellow southern Californians. This bill shafts southern California.

Take a look at Roll Call. "Studios Take a Hit in the Tax Bill." The article explains how America's number-one exporter, how the underpinning of our southern California economy, gets shafted in this bill. It quotes Mr. FOLEY by saying, "I am sure it is not entirely based on the fact that the motion picture industry hired Dan Glickman." Well, it is substantially based on that.

The article goes on to say that the bill neglects our number-one exporter, even though it is supposed to be an export-promotion bill, because of the hiring of Glickman. It quotes a lobbyist as saying, "No Republican will fight for the movie industry."

My fellow southern Californians, prove them wrong. Vote against the martial law rule, vote against the rule and vote against the bill. This is not just a shafting of southern California; it is the entry of corruption into the congressional process. It is a corrupt shafting of southern California.

Mr. REYNOLDS. Madam Speaker, I reserve the balance of my time.

Mr. MCGOVERN. Madam Speaker, to close, I yield 1 minute to the distinguished gentleman from New York (Mr. RANGEL), the ranking Democrat on the Committee on Ways and Means and also a conferee.

Mr. RANGEL. Madam Speaker, I thank the gentleman so much for giving me this opportunity to close, and I suggest to my colleagues that they vote against this marshal law. Marshal law means there is an emergency, that we have to get this bill on the floor. It does not mean that you take a complex 600-page tax bill and tell the Members, "go to the Web site."

Believe it or not, this is not a partisan thing, because I would be on this floor to protect the jurisdiction of the Committee on Rules if we were in the majority. You keep cutting away from the responsibilities of the committees and the subcommittees, and especially the Committee on Rules.

The Committee on Rules, they are the traffic cops. They are supposed to have an equitable distribution of the time and allow for Members to know what they are going to debate. If you do not have a bill filed, if you do not know what is going to be in front of you, you are caught in the embarrassing position of saying, I do not know.

Go to the Website? How can you go to the Website and be on the floor? How can you ask the Website a question? You are supposed to want to pull up this Tax Code, which we got today, by the roots. Instead, you bring 600 pages of fertilizer and make it more complicated.

This is not simplification. People may ask you what is in the bill. I want to give you a chance.

Mr. REYNOLDS. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, we certainly know that the legislative calendar for this year was set to complete our work on October 1. We are now here on October 7 and working to get our work done. And it is my hope that we continue on the 9/11 debate today and other important matters pending.

It is also my hope that we are able to consider the legislation dealing with the American Jobs Act of 2004.

☐ 1300

We know that since this last hour, that we are asking the body to consider a same-day rule so that we can consider the legislation if and when the Committee on Rules meets and sends to this floor a rule for consideration of the underlying legislation. We know that the gentleman from California (Chairman THOMAS) has personally come and filed the report for the conference report before this body, and we have seen in the last hour both what the bill looks like, with some 1,300 pages and 12, 13 inches thick, and we heard me previously say that the Committee on Ways and Means Web site address, waysandmeans.house.gov, if you go to "What's New" and you look for conference documents, you will find the conference report, which is bipartisanly signed, in its entirety. And, if you want, the Adobe Acrobat has the word search so that you can find anything you are interested in finding.

This legislation has been around for a while. Again, I will repeat myself, as I have several times in this debate: It has nothing in it within the provisions that was not considered in this body or the other body by as the conferees came together. It was an open conference, even though the motion to instruct was defeated, and we followed the Senate rules whereby members of the conference could file numerous and countless amendments, which were considered, and we now have a final word product.

I know the debate on the floor, as we get through this, either today or this early evening or if it ends up tomorrow, will have all sorts of interpretations. We will get down to the fact that it is going to help American business, and that includes small business, farmers, and small manufacturers.

The Republican leadership and the Committee on Rules has met. They are not acting against the rules of this House. Quite frankly, we have asked for consideration of the body by majority vote to determine if we can have a same-day consideration, and that is what is going to happen as we have a vote here shortly.

Mr. Speaker, I move the previous question on the resolution, which is same-day consideration of the legislation before us, and I yield back the balance of time.

The previous question was ordered.

The SPEAKER pro tempore (Mr. BONILLA). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. MCGOVERN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this motion will be postponed.

CONFERENCE REPORT ON H.R. 4520, AMERICAN JOBS CREATION ACT OF 2004

Mr. THOMAS (during consideration of H. Res. 828) submitted the following conference report and statement on the bill (H.R. 4520) to amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service, and high-technology businesses and workers more competitive and productive both at home and abroad:

CONFERENCE REPORT (H. REPT. 108-755)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4520), to amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service, and high-technology businesses and workers more competitive and productive both at home and abroad, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the "American Jobs Creation Act of 2004".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

(c) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—PROVISIONS RELATING TO REPEAL OF EXCLUSION FOR EXTRATERRITORIAL INCOME

Sec. 101. Repeal of exclusion for extraterritorial income.
Sec. 102. Deduction relating to income attributable to domestic production activities.

TITLE II—BUSINESS TAX INCENTIVES

Subtitle A—Small Business Expensing

Sec. 201. 2-year extension of increased expensing for small business.

Subtitle B—Depreciation

Sec. 211. Recovery period for depreciation of certain leasehold improvements and restaurant property.

Subtitle C—Community Revitalization

Sec. 221. Modification of targeted areas and low-income communities for new markets tax credit.
Sec. 222. Expansion of designated renewal community area based on 2000 census data.
Sec. 223. Modification of income requirement for census tracts within high migration rural counties.

Subtitle D—S Corporation Reform and Simplification

Sec. 231. Members of family treated as 1 shareholder.
Sec. 232. Increase in number of eligible shareholders to 100.
Sec. 233. Expansion of bank S corporation eligible shareholders to include IRAs.
Sec. 234. Disregard of unexercised powers of appointment in determining potential current beneficiaries of ESBT.
Sec. 235. Transfer of suspended losses incident to divorce, etc.
Sec. 236. Use of passive activity loss and at-risk amounts by qualified subchapter S trust income beneficiaries.
Sec. 237. Exclusion of investment securities income from passive income test for bank S corporations.
Sec. 238. Relief from inadvertently invalid qualified subchapter S subsidiary elections and terminations.
Sec. 239. Information returns for qualified subchapter S subsidiaries.
Sec. 240. Repayment of loans for qualifying employer securities.

Subtitle E—Other Business Incentives

Sec. 241. Phaseout of 4.3-cent motor fuel excise taxes on railroads and inland waterway transportation which remain in general fund.
Sec. 242. Modification of application of income forecast method of depreciation.
Sec. 243. Improvements related to real estate investment trusts.
Sec. 244. Special rules for certain film and television productions.
Sec. 245. Credit for maintenance of railroad track.
Sec. 246. Suspension of occupational taxes relating to distilled spirits, wine, and beer.
Sec. 247. Modification of unrelated business income limitation on investment in certain small business investment companies.
Sec. 248. Election to determine corporate tax on certain international shipping activities using per ton rate.

Subtitle F—Stock Options and Employee Stock Purchase Plan Stock Options

Sec. 251. Exclusion of incentive stock options and employee stock purchase plan stock options from wages.

TITLE III—TAX RELIEF FOR AGRICULTURE AND SMALL MANUFACTURERS

Subtitle A—Volumetric Ethanol Excise Tax Credit

Sec. 301. Alcohol and biodiesel excise tax credit and extension of alcohol fuels income tax credit.
Sec. 302. Biodiesel income tax credit.
Sec. 303. Information reporting for persons claiming certain tax benefits.

Subtitle B—Agricultural Incentives

Sec. 311. Special rules for livestock sold on account of weather-related conditions.
Sec. 312. Payment of dividends on stock of cooperatives without reducing patronage dividends.
Sec. 313. Apportionment of small ethanol producer credit.
Sec. 314. Coordinate farmers and fishermen income averaging and the alternative minimum tax.
Sec. 315. Capital gain treatment under section 631(b) to apply to outright sales by landowners.
Sec. 316. Modification to cooperative marketing rules to include value added processing involving animals.
Sec. 317. Extension of declaratory judgment procedures to farmers' cooperative organizations.
Sec. 318. Certain expenses of rural letter carriers.
Sec. 319. Treatment of certain income of cooperatives.
Sec. 320. Exclusion for payments to individuals under National Health Service Corps loan repayment program and certain State loan repayment programs.
Sec. 321. Modification of safe harbor rules for timber REITs.
Sec. 322. Expensing of certain reforestation expenditures.

Subtitle C—Incentives for Small Manufacturers

Sec. 331. Net income from publicly traded partnerships treated as qualifying income of regulated investment companies.
Sec. 332. Simplification of excise tax imposed on bows and arrows.
Sec. 333. Reduction of excise tax on fishing tackle boxes.
Sec. 334. Sonar devices suitable for finding fish.
Sec. 335. Charitable contribution deduction for certain expenses incurred in support of Native Alaskan subsistence whaling.
Sec. 336. Modification of depreciation allowance for aircraft.
Sec. 337. Modification of placed in service rule for bonus depreciation property.
Sec. 338. Expensing of capital costs incurred in complying with Environmental Protection Agency sulfur regulations.
Sec. 339. Credit for production of low sulfur diesel fuel.
Sec. 340. Expansion of qualified small-issue bond program.
Sec. 341. Oil and gas from marginal wells.

TITLE IV—TAX REFORM AND SIMPLIFICATION FOR UNITED STATES BUSINESSES

Sec. 401. Interest expense allocation rules.
Sec. 402. Recharacterization of overall domestic loss.
Sec. 403. Look-thru rules to apply to dividends from noncontrolled section 902 corporations.
Sec. 404. Reduction to 2 foreign tax credit baskets.
Sec. 405. Attribution of stock ownership through partnerships to apply in determining section 902 and 960 credits.
Sec. 406. Clarification of treatment of certain transfers of intangible property.
Sec. 407. United States property not to include certain assets of controlled foreign corporation.
Sec. 408. Translation of foreign taxes.
Sec. 409. Repeal of withholding tax on dividends from certain foreign corporations.
Sec. 410. Equal treatment of interest paid by foreign partnerships and foreign corporations.
Sec. 411. Treatment of certain dividends of regulated investment companies.
Sec. 412. Look-thru treatment for sales of partnership interests.
Sec. 413. Repeal of foreign personal holding company rules and foreign investment company rules.
Sec. 414. Determination of foreign personal holding company income with respect to transactions in commodities.
Sec. 415. Modifications to treatment of aircraft leasing and shipping income.
Sec. 416. Modification of exceptions under subpart F for active financing.
Sec. 417. 10-year foreign tax credit carryover; 1-year foreign tax credit carryback.
Sec. 418. Modification of the treatment of certain REIT distributions attributable to gain from sales or exchanges of United States real property interests.
Sec. 419. Exclusion of income derived from certain wagers on horse races and dog races from gross income of nonresident alien individuals.
Sec. 420. Limitation of withholding tax for Puerto Rico corporations.
Sec. 421. Foreign tax credit under alternative minimum tax.
Sec. 422. Incentives to reinvest foreign earnings in United States.
Sec. 423. Delay in effective date of final regulations governing exclusion of income from international operation of ships or aircraft.
Sec. 424. Study of earnings stripping provisions.

TITLE V—DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES

Sec. 501. Deduction of State and local general sales taxes in lieu of State and local income taxes.

TITLE VI—FAIR AND EQUITABLE TOBACCO REFORM

Sec. 601. Short title.

Subtitle A—Termination of Federal Tobacco Quota and Price Support Programs

Sec. 611. Termination of tobacco quota program and related provisions.
Sec. 612. Termination of tobacco price support program and related provisions.
Sec. 613. Conforming amendments.
Sec. 614. Continuation of liability for 2004 and earlier crop years.

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TITLE I—PROVISIONS RELATING TO REPEAL OF EXCLUSION FOR EXTRATERRITORIAL INCOME

SEC. 101. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL INCOME.

(a) IN GENERAL.—Section 114 is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Subpart E of part III of subchapter N of chapter 1 (relating to qualifying foreign trade income) is hereby repealed.

(2) The table of subparts for such part III is amended by striking the item relating to subpart E.

(3) The table of sections for part III of subchapter B of chapter 1 is amended by striking the item relating to section 114.

(4) The second sentence of section 56(g)(4)(B)(i) is amended by striking "114 or".

(5) Section 275(a) is amended—

(A) by inserting "or" at the end of paragraph (4)(A), by striking "or" at the end of paragraph (4)(B) and inserting a period, and by striking subparagraph (C), and

(B) by striking the last sentence.

(6) Paragraph (3) of section 864(e) is amended—

(A) by striking:

"(3) TAX-EXEMPT ASSETS NOT TAKEN INTO ACCOUNT.—

"(A) IN GENERAL.—For purposes of"; and inserting:

"(3) TAX-EXEMPT ASSETS NOT TAKEN INTO ACCOUNT.—For purposes of", and

(B) by striking subparagraph (B).

(7) Section 903 is amended by striking "114, 164(a)," and inserting "164(a)".

(8) Section 999(c)(1) is amended by striking "941(a)(5),".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions after December 31, 2004.

(d) TRANSITIONAL RULE FOR 2005 AND 2006.—

(1) IN GENERAL.—In the case of transactions during 2005 or 2006, the amount includible in gross income by reason of the amendments made by this section shall not exceed the applicable percentage of the amount which would have been so included but for this subsection.

(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage shall be as follows:

(A) For 2005, the applicable percentage shall be 20 percent.

(B) For 2006, the applicable percentage shall be 40 percent.

(e) REVOCATION OF ELECTION TO BE TREATED AS DOMESTIC CORPORATION.—If, during the 1-year period beginning on the date of the enactment of this Act, a corporation for which an election is in effect under section 943(e) of the Internal Revenue Code of 1986 revokes such election, no gain or loss shall be recognized with respect to property treated as transferred under clause (ii) of section 943(e)(4)(B) of such Code to the extent such property—

(1) was treated as transferred under clause (i) thereof, or

(2) was acquired during a taxable year to which such election applies and before May 1, 2003, in the ordinary course of its trade or business.

The Secretary of the Treasury (or such Secretary's delegate) may prescribe such regulations as may be necessary to prevent the abuse of the purposes of this subsection.

(f) BINDING CONTRACTS.—The amendments made by this section shall not apply to any transaction in the ordinary course of a trade or business which occurs pursuant to a binding contract—

(1) which is between the taxpayer and a person who is not a related person (as defined in section 943(b)(3) of such Code, as in effect on the day before the date of the enactment of this Act), and

(2) which is in effect on September 17, 2003, and at all times thereafter.

For purposes of this subsection, a binding contract shall include a purchase option, renewal option, or replacement option which is included in such contract and which is enforceable against the seller or lessor.

SEC. 102. DEDUCTION RELATING TO INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by adding at the end the following new section:

"SEC. 199. INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION ACTIVITIES.

"(a) ALLOWANCE OF DEDUCTION.—

"(1) IN GENERAL.—There shall be allowed as a deduction an amount equal to 9 percent of the lesser of—

"(A) the qualified production activities income of the taxpayer for the taxable year, or

"(B) taxable income (determined without regard to this section) for the taxable year.

"(2) PHASEIN.—In the case of any taxable year beginning after 2004 and before 2010, paragraph (1) and subsections (d)(1) and (d)(6) shall be applied by substituting for the percentage contained therein the transition percentage determined under the following table:

"For taxable years beginning in:	The transition percentage is:
2005 or 2006	3
2007, 2008, or 2009	6.

"(b) DEDUCTION LIMITED TO WAGES PAID.—

"(1) IN GENERAL.—The amount of the deduction allowable under subsection (a) for any taxable year shall not exceed 50 percent of the W-2 wages of the employer for the taxable year.

"(2) W-2 WAGES.—For purposes of paragraph (1), the term 'W-2 wages' means the sum of the aggregate amounts the taxpayer is required to include on statements under paragraphs (3) and (8) of section 6051(a) with respect to employment of employees of the taxpayer during the calendar year ending during the taxpayer's taxable year.

"(3) ACQUISITIONS AND DISPOSITIONS.—The Secretary shall provide for the application of this subsection in cases where the taxpayer acquires, or disposes of, the major portion of a trade or business or the major portion of a separate unit of a trade or business during the taxable year.

"(c) QUALIFIED PRODUCTION ACTIVITIES INCOME.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified production activities income' for any taxable year means an amount equal to the excess (if any) of—

"(A) the taxpayer's domestic production gross receipts for such taxable year, over

"(B) the sum of—

"(i) the cost of goods sold that are allocable to such receipts,

"(ii) other deductions, expenses, or losses directly allocable to such receipts, and

"(iii) a ratable portion of other deductions, expenses, and losses that are not directly allocable to such receipts or another class of income.

"(2) ALLOCATION METHOD.—The Secretary shall prescribe rules for the proper allocation of items of income, deduction, expense, and loss for purposes of determining income attributable to domestic production activities.

"(3) SPECIAL RULES FOR DETERMINING COSTS.—

"(A) IN GENERAL.—For purposes of determining costs under clause (i) of paragraph (1)(B), any item or service brought into the United States shall be treated as acquired by purchase, and its cost shall be treated as not less than its value immediately after it entered the United States. A similar rule shall apply in determining the adjusted basis of leased or rented property where the lease or rental gives rise to domestic production gross receipts.

"(B) EXPORTS FOR FURTHER MANUFACTURE.—In the case of any property described in subparagraph (A) that had been exported by the taxpayer for further manufacture, the increase in cost or adjusted basis under subparagraph (A) shall not exceed the difference between the value of the property when exported and the value of the property when brought back into the United States after the further manufacture.

"(4) DOMESTIC PRODUCTION GROSS RECEIPTS.—

"(A) IN GENERAL.—The term 'domestic production gross receipts' means the gross receipts of the taxpayer which are derived from—

"(i) any lease, rental, license, sale, exchange, or other disposition of—

"(I) qualifying production property which was manufactured, produced, grown, or extracted by the taxpayer in whole or in significant part within the United States,

"(II) any qualified film produced by the taxpayer, or

"(III) electricity, natural gas, or potable water produced by the taxpayer in the United States,

"(ii) construction performed in the United States, or

"(iii) engineering or architectural services performed in the United States for construction projects in the United States.

"(B) EXCEPTIONS.—Such term shall not include gross receipts of the taxpayer which are derived from—

"(i) the sale of food and beverages prepared by the taxpayer at a retail establishment, and

"(ii) the transmission or distribution of electricity, natural gas, or potable water.

"(5) QUALIFYING PRODUCTION PROPERTY.—The term 'qualifying production property' means—

"(A) tangible personal property,

"(B) any computer software, and

"(C) any property described in section 168(f)(4).

"(6) QUALIFIED FILM.—The term 'qualified film' means any property described in section 168(f)(3) if not less than 50 percent of the total compensation relating to the production of such property is compensation for services performed in the United States by actors, production personnel, directors, and producers. Such term does not include property with respect to which records are required to be maintained under section 2257 of title 18, United States Code.

"(7) RELATED PERSONS.—

"(A) IN GENERAL.—The term 'domestic production gross receipts' shall not include any gross receipts of the taxpayer derived from property leased, licensed, or rented by the taxpayer for use by any related person.

"(B) RELATED PERSON.—For purposes of subparagraph (A), a person shall be treated as related to another person if such persons are treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414, except that determinations under subsections (a) and (b) of section 52 shall be made without regard to section 1563(b).

"(d) DEFINITIONS AND SPECIAL RULES.—

"(1) APPLICATION OF SECTION TO PASS-THRU ENTITIES.—

"(A) IN GENERAL.—In the case of an S corporation, partnership, estate or trust, or other pass-thru entity—

"(i) subject to the provisions of paragraphs (2) and (3), this section shall be applied at the shareholder, partner, or similar level, and

"(ii) the Secretary shall prescribe rules for the application of this section, including rules relating to—

"(I) restrictions on the allocation of the deduction to taxpayers at the partner or similar level, and

"(II) additional reporting requirements.

"(B) APPLICATION OF WAGE LIMITATION.—Notwithstanding subparagraph (A)(i), for purposes of applying subsection (b), a shareholder, partner, or similar person which is allocated qualified production activities income from an S corporation, partnership, estate, trust, or other pass-thru entity shall also be treated as having been allocated W–2 wages from such entity in an amount equal to the lesser of—

"(i) such person's allocable share of such wages (without regard to this subparagraph), as determined under regulations prescribed by the Secretary, or

"(ii) 2 times 9 percent of the qualified production activities income allocated to such person for the taxable year.

"(2) APPLICATION TO INDIVIDUALS.—In the case of an individual, subsection (a)(1)(B) shall be applied by substituting 'adjusted gross income' for 'taxable income'. For purposes of the preceding sentence, adjusted gross income shall be determined—

"(A) after application of sections 86, 135, 137, 219, 221, 222, and 469, and

"(B) without regard to this section.

"(3) PATRONS OF AGRICULTURAL AND HORTICULTURAL COOPERATIVES.—

"(A) IN GENERAL.—If any amount described in paragraph (1) or (3) of section 1385(a)—

"(i) is received by a person from an organization to which part I of subchapter T applies which is engaged—

"(I) in the manufacturing, production, growth, or extraction in whole or significant part of any agricultural or horticultural product, or

"(II) in the marketing of agricultural or horticultural products, and

"(ii) is allocable to the portion of the qualified production activities income of the organization which, but for this paragraph, would be deductible under subsection (a) by the organization and is designated as such by the organization in a written notice mailed to its patrons during the payment period described in section 1382(d),

then such person shall be allowed a deduction under subsection (a) with respect to such amount. The taxable income of the organization shall not be reduced under section 1382 by reason of any amount to which the preceding sentence applies.

"(B) SPECIAL RULES.—For purposes of applying subparagraph (A), in determining the qualified production activities income which would be deductible by the organization under subsection (a)—

"(i) there shall not be taken into account in computing the organization's taxable income any deduction allowable under subsection (b) or (c) of section 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions), and

"(ii) in the case of an organization described in subparagraph (A)(i)(II), the organization shall be treated as having manufactured, produced, grown, or extracted in whole or significant part any qualifying production property marketed by the organization which its patrons have so manufactured, produced, grown, or extracted.

"(4) SPECIAL RULE FOR AFFILIATED GROUPS.—

"(A) IN GENERAL.—All members of an expanded affiliated group shall be treated as a single corporation for purposes of this section.

"(B) EXPANDED AFFILIATED GROUP.—For purposes of this section, the term 'expanded affiliated group' means an affiliated group as defined in section 1504(a), determined—

"(i) by substituting '50 percent' for '80 percent' each place it appears, and

"(ii) without regard to paragraphs (2) and (4) of section 1504(b).

"(C) ALLOCATION OF DEDUCTION.—Except as provided in regulations, the deduction under subsection (a) shall be allocated among the members of the expanded affiliated group in proportion to each member's respective amount (if any) of qualified production activities income.

"(5) TRADE OR BUSINESS REQUIREMENT.—This section shall be applied by only taking into account items which are attributable to the actual conduct of a trade or business.

"(6) COORDINATION WITH MINIMUM TAX.—The deduction under this section shall be allowed for purposes of the tax imposed by section 55; except that for purposes of section 55, the deduction under subsection (a) shall be 9 percent of the lesser of—

"(A) qualified production activities income (determined without regard to part IV of subchapter A), or

"(B) alternative minimum taxable income (determined without regard to this section) for the taxable year.

In the case of an individual, subparagraph (B) shall be applied by substituting 'adjusted gross income' for 'alternative minimum taxable income'. For purposes of the preceding sentence, adjusted gross income shall be determined in the same manner as provided in paragraph (2).

"(7) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to carry out the purposes of this section.".

(b) MINIMUM TAX.—Section 56(g)(4)(C) (relating to disallowance of items not deductible in computing earnings and profits) is amended by adding at the end the following new clause:

"(v) DEDUCTION FOR DOMESTIC PRODUCTION.—Clause (i) shall not apply to any amount allowable as a deduction under section 199.".

(c) SPECIAL RULE RELATING TO ELECTION TO TREAT CUTTING OF TIMBER AS A SALE OR EXCHANGE.—Any election under section 631(a) of the Internal Revenue Code of 1986 made for a taxable year ending on or before the date of the enactment of this Act may be revoked by the taxpayer for any taxable year ending after such date. For purposes of determining whether such taxpayer may make a further election under such section, such election (and any revocation under this section) shall not be taken into account.

(d) TECHNICAL AMENDMENTS.—

(1) Sections 86(b)(2)(A), 135(c)(4)(A), 137(b)(3)(A), and 219(g)(3)(A)(ii) are each amended by inserting "199," before "221".

(2) Clause (i) of section 221(b)(2)(C) is amended by inserting by inserting "199," before "222".

(3) Clause (i) of section 222(b)(2)(C) is amended by inserting "199," before "911".

(4) Paragraph (1) of section 246(b) is amended by inserting "199," after "172,".

(5) Clause (iii) of section 469(i)(3)(F) is amended by inserting "199," before "219,".

(6) Subsection (a) of section 613 is amended by inserting "and without the deduction under section 199" after "without allowances for depletion".

(7) Subsection (a) of section 1402 is amended by striking "and" at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting ", and", and by inserting after paragraph (15) the following new paragraph:

"(16) the deduction provided by section 199 shall not be allowed.".

(8) The table of sections for part VI of subchapter B of chapter 1 is amended by adding at the end the following new item:

"Sec. 199. Income attributable to domestic production activities.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

TITLE II—BUSINESS TAX INCENTIVES

Subtitle A—Small Business Expensing

SEC. 201. 2-YEAR EXTENSION OF INCREASED EXPENSING FOR SMALL BUSINESS.

Subsections (b), (c), and (d) of section 179 are each amended by striking "2006" each place it appears and inserting "2008".

Subtitle B—Depreciation

SEC. 211. RECOVERY PERIOD FOR DEPRECIATION OF CERTAIN LEASEHOLD IMPROVEMENTS AND RESTAURANT PROPERTY.

(a) 15-YEAR RECOVERY PERIOD.—Subparagraph (E) of section 168(e)(3) (relating to classification of certain property) is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting a comma, and by adding at the end the following new clauses:

"(iv) any qualified leasehold improvement property placed in service before January 1, 2006, and

"(v) any qualified restaurant property placed in service before January 1, 2006.".

(b) QUALIFIED LEASEHOLD IMPROVEMENT PROPERTY.—Subsection (e) of section 168 is amended by adding at the end the following new paragraph:

"(6) QUALIFIED LEASEHOLD IMPROVEMENT PROPERTY.—The term 'qualified leasehold improvement property' has the meaning given such term in section 168(k)(3) except that the following special rules shall apply:

"(A) IMPROVEMENTS MADE BY LESSOR.—In the case of an improvement made by the person who was the lessor of such improvement when such improvement was placed in service, such improvement shall be qualified leasehold improvement property (if at all) only so long as such improvement is held by such person.

"(B) EXCEPTION FOR CHANGES IN FORM OF BUSINESS.—Property shall not cease to be qualified leasehold improvement property under subparagraph (A) by reason of—

"(i) death,

"(ii) a transaction to which section 381(a) applies,

"(iii) a mere change in the form of conducting the trade or business so long as the property is retained in such trade or business as qualified leasehold improvement property and the taxpayer retains a substantial interest in such trade or business,

"(iv) the acquisition of such property in an exchange described in section 1031, 1033, or 1038 to the extent that the basis of such property includes an amount representing the adjusted basis of other property owned by the taxpayer or a related person, or

"(v) the acquisition of such property by the taxpayer in a transaction described in section 332, 351, 361, 721, or 731 (or the acquisition of such property by the taxpayer from the transferee or acquiring corporation in a transaction described in such section), to the extent that the basis of the property in the hands of the taxpayer is determined by reference to its basis in the hands of the transferor or distributor.".

(c) QUALIFIED RESTAURANT PROPERTY.—Subsection (e) of section 168 (as amended by subsection (b)) is further amended by adding at the end the following new paragraph:

"(7) QUALIFIED RESTAURANT PROPERTY.—The term 'qualified restaurant property' means any section 1250 property which is an improvement to a building if—

"(A) such improvement is placed in service more than 3 years after the date such building was first placed in service, and

"(B) more than 50 percent of the building's square footage is devoted to preparation of, and seating for on-premises consumption of, prepared meals.".

(d) REQUIREMENT TO USE STRAIGHT LINE METHOD.—

(1) Paragraph (3) of section 168(b) is amended by adding at the end the following new subparagraphs:

"(G) Qualified leasehold improvement property described in subsection (e)(6).

"(H) Qualified restaurant property described in subsection (e)(7).".

(2) Subparagraph (A) of section 168(b)(2) is amended by inserting before the comma "not referred to in paragraph (3)".

(e) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) is amended by adding at the end the following new items:

"(E)(iv) 39
"(E)(v) .... 39".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

Subtitle C—Community Revitalization

SEC. 221. MODIFICATION OF TARGETED AREAS AND LOW-INCOME COMMUNITIES FOR NEW MARKETS TAX CREDIT.

(a) TARGETED AREAS.—Paragraph (2) of section 45D(e) (relating to targeted areas) is amended to read as follows:

"(2) TARGETED POPULATIONS.—The Secretary shall prescribe regulations under which 1 or more targeted populations (within the meaning of section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702(20))) may be treated as low-income communities. Such regulations shall include procedures for determining which entities are qualified active low-income community businesses with respect to such populations.".

(b) TRACTS WITH LOW POPULATION.—Subsection (e) of section 45D (defining low-income community) is amended by adding at the end the following:

"(4) TRACTS WITH LOW POPULATION.—A population census tract with a population of less than 2,000 shall be treated as a low-income community for purposes of this section if such tract—

"(A) is within an empowerment zone the designation of which is in effect under section 1391, and

"(B) is contiguous to 1 or more low-income communities (determined without regard to this paragraph).".

(c) EFFECTIVE DATES.—

(1) TARGETED AREAS.—The amendment made by subsection (a) shall apply to designations made by the Secretary of the Treasury after the date of the enactment of this Act.

(2) TRACTS WITH LOW POPULATION.—The amendment made by subsection (b) shall apply to investments made after the date of the enactment of this Act.

SEC. 222. EXPANSION OF DESIGNATED RENEWAL COMMUNITY AREA BASED ON 2000 CENSUS DATA.

(a) IN GENERAL.—Section 1400E (relating to designation of renewal communities) is amended by adding at the end the following new subsection:

"(g) EXPANSION OF DESIGNATED AREA BASED ON 2000 CENSUS.—

"(1) IN GENERAL.—At the request of all governments which nominated an area as a renewal community, the Secretary of Housing and Urban Development may expand the area of such community to include any census tract if—

"(A)(i) at the time such community was nominated, such community would have met the requirements of this section using 1990 census data even if such tract had been included in such community, and

"(ii) such tract has a poverty rate using 2000 census data which exceeds the poverty rate for such tract using 1990 census data, or

"(B)(i) such community would be described in subparagraph (A)(i) but for the failure to meet one or more of the requirements of paragraphs (2)(C)(i), (3)(C), and (3)(D) of subsection (c) using 1990 census data,

"(ii) such community, including such tract, has a population of not more than 200,000 using either 1990 census data or 2000 census data,

"(iii) such tract meets the requirement of subsection (c)(3)(C) using 2000 census data, and

"(iv) such tract meets the requirement of subparagraph (A)(ii).

"(2) EXCEPTION FOR CERTAIN CENSUS TRACTS WITH LOW POPULATION IN 1990.—In the case of any census tract which did not have a poverty rate determined by the Bureau of the Census using 1990 census data, paragraph (1)(B) shall be applied without regard to clause (iv) thereof.

"(3) SPECIAL RULE FOR CERTAIN CENSUS TRACTS WITH LOW POPULATION IN 2000.—At the request of all governments which nominated an area as a renewal community, the Secretary of Housing and Urban Development may expand the area of such community to include any census tract if—

"(A) either—

"(i) such tract has no population using 2000 census data, or

"(ii) no poverty rate for such tract is determined by the Bureau of the Census using 2000 census data,

"(B) such tract is one of general distress, and

"(C) such community, including such tract, meets the requirements of subparagraphs (A) and (B) of subsection (c)(2).

"(4) PERIOD IN EFFECT.—Any expansion under this subsection shall take effect as provided in subsection (b).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 101 of the Community Renewal Tax Relief Act of 2000.

SEC. 223. MODIFICATION OF INCOME REQUIREMENT FOR CENSUS TRACTS WITHIN HIGH MIGRATION RURAL COUNTIES.

(a) IN GENERAL.—Section 45D(e) (relating to low-income community), as amended by this Act, is amended by inserting after paragraph (4) the following new paragraph:

"(5) MODIFICATION OF INCOME REQUIREMENT FOR CENSUS TRACTS WITHIN HIGH MIGRATION RURAL COUNTIES.—

"(A) IN GENERAL.—In the case of a population census tract located within a high migration rural county, paragraph (1)(B)(i) shall be applied by substituting '85 percent' for '80 percent'.

"(B) HIGH MIGRATION RURAL COUNTY.—For purposes of this paragraph, the term 'high migration rural county' means any county which, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect as if included in the amendment made by section 121(a) of the Community Renewal Tax Relief Act of 2000.

Subtitle D—S Corporation Reform and Simplification

SEC. 231. MEMBERS OF FAMILY TREATED AS 1 SHAREHOLDER.

(a) IN GENERAL.—Paragraph (1) of section 1361(c) (relating to special rules for applying subsection (b)) is amended to read as follows:

"(1) MEMBERS OF FAMILY TREATED AS 1 SHAREHOLDER.—

"(A) IN GENERAL.—For purpose of subsection (b)(1)(A)—

"(i) except as provided in clause (ii), a husband and wife (and their estates) shall be treated as 1 shareholder, and

"(ii) in the case of a family with respect to which an election is in effect under subparagraph (D), all members of the family shall be treated as 1 shareholder.

"(B) MEMBERS OF THE FAMILY.—For purpose of subparagraph (A)(ii)—

"(i) IN GENERAL.—The term 'members of the family' means the common ancestor, lineal descendants of the common ancestor, and the spouses (or former spouses) of such lineal descendants or common ancestor.

"(ii) COMMON ANCESTOR—For purposes of this paragraph, an individual shall not be considered a common ancestor if, as of the later of the effective date of this paragraph or the time the election under section 1362(a) is made, the individual is more than 6 generations removed from the youngest generation of shareholders who would (but for this clause) be members of the family. For purposes of the preceding sentence, a spouse (or former spouse) shall be treated as being of the same generation as the individual to which such spouse is (or was) married.

"(C) EFFECT OF ADOPTION, ETC.—In determining whether any relationship specified in subparagraph (B) exists, the rules of section 152(b)(2) shall apply.

"(D) ELECTION.—An election under subparagraph (A)(ii)—

"(i) may, except as otherwise provided in regulations prescribed by the Secretary, be made by any member of the family, and

"(ii) shall remain in effect until terminated as provided in regulations prescribed by the Secretary.".

(b) RELIEF FROM INADVERTENT INVALID ELECTION OR TERMINATION.—Section 1362(f) (relating to inadvertent invalid elections or terminations), as amended by this Act, is amended—

(1) by inserting "or section 1361(c)(1)(A)(ii)" after "section 1361(b)(3)(B)(ii)," in paragraph (1), and

(2) by inserting "or section 1361(c)(1)(D)(iii)" after "section 1361(b)(3)(C)," in paragraph (1)(B).

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2004.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to elections and terminations made after December 31, 2004.

SEC. 232. INCREASE IN NUMBER OF ELIGIBLE SHAREHOLDERS TO 100.

(a) IN GENERAL.—Section 1361(b)(1)(A) (defining small business corporation) is amended by striking "75" and inserting "100".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 233. EXPANSION OF BANK S CORPORATION ELIGIBLE SHAREHOLDERS TO INCLUDE IRAS.

(a) IN GENERAL.—Section 1361(c)(2)(A) (relating to certain trusts permitted as shareholders) is amended by inserting after clause (v) the following new clause:

"(vi) In the case of a corporation which is a bank (as defined in section 581), a trust which constitutes an individual retirement account under section 408(a), including one designated as a Roth IRA under section 408A, but only to the extent of the stock held by such trust in such bank as of the date of the enactment of this clause.".

(b) TREATMENT AS SHAREHOLDER.—Section 1361(c)(2)(B) (relating to treatment as shareholders) is amended by adding at the end the following new clause:

"(vi) In the case of a trust described in clause (vi) of subparagraph (A), the individual for whose benefit the trust was created shall be treated as a shareholder.".

(c) SALE OF BANK STOCK IN IRA RELATING TO S CORPORATION ELECTION EXEMPT FROM PROHIBITED TRANSACTION RULES.—Section 4975(d) (relating to exemptions) is amended by striking "or" at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting "; or", and by adding at the end the following new paragraph:

"(16) a sale of stock held by a trust which constitutes an individual retirement account under section 408(a) to the individual for whose benefit such account is established if—

"(A) such stock is in a bank (as defined in section 581),

"(B) such stock is held by such trust as of the date of the enactment of this paragraph,

"(C) such sale is pursuant to an election under section 1362(a) by such bank,

"(D) such sale is for fair market value at the time of sale (as established by an independent appraiser) and the terms of the sale are otherwise at least as favorable to such trust as the terms that would apply on a sale to an unrelated party,

"(E) such trust does not pay any commissions, costs, or other expenses in connection with the sale, and

"(F) the stock is sold in a single transaction for cash not later than 120 days after the S corporation election is made.".

(d) CONFORMING AMENDMENT.—Section 512(e)(1) is amended by inserting "1361(c)(2)(A)(vi) or" before "1361(c)(6)".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 234. DISREGARD OF UNEXERCISED POWERS OF APPOINTMENT IN DETERMINING POTENTIAL CURRENT BENEFICIARIES OF ESBT.

(a) IN GENERAL.—Section 1361(e)(2) (defining potential current beneficiary) is amended—

(1) by inserting "(determined without regard to any power of appointment to the extent such power remains unexercised at the end of such period)" after "of the trust" in the first sentence, and

(2) by striking "60-day" in the second sentence and inserting "1-year".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 235. TRANSFER OF SUSPENDED LOSSES INCIDENT TO DIVORCE, ETC.

(a) IN GENERAL.—Section 1366(d)(2) (relating to indefinite carryover of disallowed losses and deductions) is amended to read as follows:

"(2) INDEFINITE CARRYOVER OF DISALLOWED LOSSES AND DEDUCTIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), any loss or deduction which is disallowed for any taxable year by reason of paragraph (1) shall be treated as incurred by the corporation in the succeeding taxable year with respect to that shareholder.

"(B) TRANSFERS OF STOCK BETWEEN SPOUSES OR INCIDENT TO DIVORCE.—In the case of any transfer described in section 1041(a) of stock of an S corporation, any loss or deduction described in subparagraph (A) with respect such stock shall be treated as incurred by the corporation in the succeeding taxable year with respect to the transferee."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 236. USE OF PASSIVE ACTIVITY LOSS AND AT-RISK AMOUNTS BY QUALIFIED SUBCHAPTER S TRUST INCOME BENEFICIARIES.

(a) IN GENERAL.—Section 1361(d)(1) (relating to special rule for qualified subchapter S trust) is amended—

(1) by striking "and" at the end of subparagraph (A),

(2) by striking the period at the end of subparagraph (B) and inserting ", and", and

(3) by adding at the end the following new subparagraph:

"(C) for purposes of applying sections 465 and 469 to the beneficiary of the trust, the disposition of the S corporation stock by the trust shall be treated as a disposition by such beneficiary.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers made after December 31, 2004.

SEC. 237. EXCLUSION OF INVESTMENT SECURITIES INCOME FROM PASSIVE INCOME TEST FOR BANK S CORPORATIONS.

(a) IN GENERAL.—Section 1362(d)(3) (relating to where passive investment income exceeds 25 percent of gross receipts for 3 consecutive taxable years and corporation has accumulated earnings and profits) is amended by adding at the end the following new subparagraph:

"(F) EXCEPTION FOR BANKS; ETC.—In the case of a bank (as defined in section 581), a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a))), or a financial holding company (within the meaning of section 2(p) of such Act), the term 'passive investment income' shall not include—

"(i) interest income earned by such bank or company, or

"(ii) dividends on assets required to be held by such bank or company, including stock in the Federal Reserve Bank, the Federal Home Loan Bank, or the Federal Agricultural Mortgage Bank or participation certificates issued by a Federal Intermediate Credit Bank.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 238. RELIEF FROM INADVERTENTLY INVALID QUALIFIED SUBCHAPTER S SUBSIDIARY ELECTIONS AND TERMINATIONS.

(a) IN GENERAL.—Section 1362(f) (relating to inadvertent invalid elections or terminations) is amended—

(1) by inserting ", section 1361(b)(3)(B)(ii)," after "subsection (a)" in paragraph (1),

(2) by inserting ", section 1361(b)(3)(C)," after "subsection (d)" in paragraph (1)(B),

(3) by amending paragraph (3)(A) to read as follows:

"(A) so that the corporation for which the election was made or the termination occurred is a small business corporation or a qualified subchapter S subsidiary, as the case may be, or",

(4) by amending paragraph (4) to read as follows:

"(4) the corporation for which the election was made or the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with the treatment of such corporation as an S corporation or a qualified subchapter S subsidiary, as the case may be) as may be required by the Secretary with respect to such period,", and

(5) by inserting "or a qualified subchapter S subsidiary, as the case may be" after "S corporation" in the matter following paragraph (4).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to elections made and terminations made after December 31, 2004.

SEC. 239. INFORMATION RETURNS FOR QUALIFIED SUBCHAPTER S SUBSIDIARIES.

(a) IN GENERAL.—Section 1361(b)(3)(A) (relating to treatment of certain wholly owned subsidiaries) is amended by inserting "and in the case of information returns required under part III of subchapter A of chapter 61" after "Secretary".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 240. REPAYMENT OF LOANS FOR QUALIFYING EMPLOYER SECURITIES.

(a) IN GENERAL.—Subsection (f) of section 4975 (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

"(7) S CORPORATION REPAYMENT OF LOANS FOR QUALIFYING EMPLOYER SECURITIES.—A plan shall not be treated as violating the requirements of section 401 or 409 or subsection (e)(7), or as engaging in a prohibited transaction for purposes of subsection (d)(3), merely by reason of any distribution (as described in section 1368(a)) with respect to S corporation stock that constitutes qualifying employer securities, which in accordance with the plan provisions is used to make payments on a loan described in subsection (d)(3) the proceeds of which were used to acquire such qualifying employer securities (whether or not allocated to participants). The preceding sentence shall not apply in the case of a distribution which is paid with respect to any employer security which is allocated to a participant unless the plan provides that employer securities with a fair market value of not less than the amount of such distribution are allocated to such participant for the year which (but for the preceding sentence) such distribution would have been allocated to such participant.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions with respect to S corporation stock made after December 31, 1997.

Subtitle E—Other Business Incentives

SEC. 241. PHASEOUT OF 4.3-CENT MOTOR FUEL EXCISE TAXES ON RAILROADS AND INLAND WATERWAY TRANSPORTATION WHICH REMAIN IN GENERAL FUND.

(a) TAXES ON TRAINS.—

(1) IN GENERAL.—Clause (ii) of section 4041(a)(1)(C) is amended by striking subclauses (I), (II), and (III) and inserting the following new subclauses:

"(I) 3.3 cents per gallon after December 31, 2004, and before July 1, 2005,

"(II) 2.3 cents per gallon after June 30, 2005, and before January 1, 2007, and

"(III) 0 after December 31, 2006.".

(2) CONFORMING AMENDMENTS.—

(A) Subsection (d) of section 4041 is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) DIESEL FUEL USED IN TRAINS.—In the case of any sale for use or use after December 31, 2006, there is hereby imposed a tax of 0.1 cent per gallon on any liquid other than gasoline (as defined in section 4083)—

"(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

"(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such fuel under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081.".

(B) Subsection (f) of section 4082 is amended by striking "section 4041(a)(1)" and inserting "subsections (a)(1) and (d)(3) of section 4041".

(C) Subparagraph (B) of section 6421(f)(3) is amended to read as follows:

"(B) so much of the rate specified in section 4081(a)(2)(A) as does not exceed the rate applicable under section 4041(a)(1)(C)(ii).".

(D) Subparagraph (B) of section 6427(l)(3) is amended to read as follows:

"(B) so much of the rate specified in section 4081(a)(2)(A) as does not exceed the rate applicable under section 4041(a)(1)(C)(ii).".

(b) FUEL USED ON INLAND WATERWAYS.—Subparagraph (C) of section 4042(b)(2) is amended to read as follows:

"(C) The deficit reduction rate is—

"(i) 3.3 cents per gallon after December 31, 2004, and before July 1, 2005, "(ii) 2.3 cents per gallon after June 30, 2005, and before January 1, 2007, and

"(iii) 0 after December 31, 2006.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2005.

SEC. 242. MODIFICATION OF APPLICATION OF INCOME FORECAST METHOD OF DEPRECIATION.

(a) IN GENERAL.—Section 167(g) (relating to depreciation under income forecast method) is amended by adding at the end the following new paragraph:

"(7) TREATMENT OF PARTICIPATIONS AND RESIDUALS.—

"(A) IN GENERAL.—For purposes of determining the depreciation deduction allowable with respect to a property under this subsection, the taxpayer may include participations and residuals with respect to such property in the adjusted basis of such property for the taxable year in which the property is placed in service, but only to the extent that such participations and residuals relate to income estimated (for purposes of this subsection) to be earned in connection with the property before the close of the 10th taxable year referred to in paragraph (1)(A).

"(B) PARTICIPATIONS AND RESIDUALS.—For purposes of this paragraph, the term 'participations and residuals' means, with respect to any property, costs the amount of which by contract varies with the amount of income earned in connection with such property.

"(C) SPECIAL RULES RELATING TO RECOMPUTATION YEARS.—If the adjusted basis of any property is determined under this paragraph, paragraph (4) shall be applied by substituting 'for each taxable year in such period' for 'for such period'.

"(D) OTHER SPECIAL RULES.—

"(i) PARTICIPATIONS AND RESIDUALS.—Notwithstanding subparagraph (A), the taxpayer may exclude participations and residuals from the adjusted basis of such property and deduct such participations and residuals in the taxable year that such participations and residuals are paid.

"(ii) COORDINATION WITH OTHER RULES.—Deductions computed in accordance with this paragraph shall be allowable notwithstanding paragraph (1)(B) or sections 263, 263A, 404, 419, or 461(h).

"(E) AUTHORITY TO MAKE ADJUSTMENTS.—The Secretary shall prescribe appropriate adjustments to the basis of property and to the look-back method for the additional amounts allowable as a deduction solely by reason of this paragraph.".

(b) DETERMINATION OF INCOME.—Section 167(g)(5) (relating to special rules) is amended by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively, and inserting after subparagraph (D) the following new subparagraph:

"(E) TREATMENT OF DISTRIBUTION COSTS.—For purposes of this subsection, the income with respect to any property shall be the taxpayer's gross income from such property.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 243. IMPROVEMENTS RELATED TO REAL ESTATE INVESTMENT TRUSTS.

(a) EXPANSION OF STRAIGHT DEBT SAFE HARBOR.—Section 856 (defining real estate investment trust) is amended—

(1) in subsection (c) by striking paragraph (7), and

(2) by adding at the end the following new subsection:

"(m) SAFE HARBOR IN APPLYING SUBSECTION (c)(4).—

"(1) IN GENERAL.—In applying subclause (III) of subsection (c)(4)(B)(iii), except as otherwise determined by the Secretary in regulations, the following shall not be considered securities held by the trust:

"(A) Straight debt securities of an issuer which meet the requirements of paragraph (2).

"(B) Any loan to an individual or an estate.

"(C) Any section 467 rental agreement (as defined in section 467(d)), other than with a person described in subsection (d)(2)(B).

"(D) Any obligation to pay rents from real property (as defined in subsection (d)(1)).

"(E) Any security issued by a State or any political subdivision thereof, the District of Columbia, a foreign government or any political subdivision thereof, or the Commonwealth of Puerto Rico, but only if the determination of any payment received or accrued under such security does not depend in whole or in part on the profits of any entity not described in this subparagraph or payments on any obligation issued by such an entity.

"(F) Any security issued by a real estate investment trust.

"(G) Any other arrangement as determined by the Secretary.

"(2) SPECIAL RULES RELATING TO STRAIGHT DEBT SECURITIES.—

"(A) IN GENERAL.—For purposes of paragraph (1)(A), securities meet the requirements of this paragraph if such securities are straight debt, as defined in section 1361(c)(5) (without regard to subparagraph (B)(iii) thereof).

"(B) SPECIAL RULES RELATING TO CERTAIN CONTINGENCIES.—For purposes of subparagraph (A), any interest or principal shall not be treated as failing to satisfy section 1361(c)(5)(B)(i) solely by reason of the fact that—

"(i) the time of payment of such interest or principal is subject to a contingency, but only if—

"(I) any such contingency does not have the effect of changing the effective yield to maturity, as determined under section 1272, other than a change in the annual yield to maturity which does not exceed the greater of ¼ of 1 percent or 5 percent of the annual yield to maturity, or

"(II) neither the aggregate issue price nor the aggregate face amount of the issuer's debt instruments held by the trust exceeds $1,000,000 and not more than 12 months of unaccrued interest can be required to be prepaid thereunder, or

"(ii) the time or amount of payment is subject to a contingency upon a default or the exercise of a prepayment right by the issuer of the debt, but only if such contingency is consistent with customary commercial practice.

"(C) SPECIAL RULES RELATING TO CORPORATE OR PARTNERSHIP ISSUERS.—In the case of an issuer which is a corporation or a partnership, securities that otherwise would be described in paragraph (1)(A) shall be considered not to be so described if the trust holding such securities and any of its controlled taxable REIT subsidiaries (as defined in subsection (d)(8)(A)(iv)) hold any securities of the issuer which—

"(i) are not described in paragraph (1) (prior to the application of this subparagraph), and

"(ii) have an aggregate value greater than 1 percent of the issuer's outstanding securities determined without regard to paragraph (3)(A)(i).

"(3) LOOK-THROUGH RULE FOR PARTNERSHIP SECURITIES.—

"(A) IN GENERAL.—For purposes of applying subclause (III) of subsection (c)(4)(B)(iii)—

"(i) a trust's interest as a partner in a partnership (as defined in section 7701(a)(2)) shall not be considered a security, and

"(ii) the trust shall be deemed to own its proportionate share of each of the assets of the partnership.

"(B) DETERMINATION OF TRUST'S INTEREST IN PARTNERSHIP ASSETS.—For purposes of subparagraph (A), with respect to any taxable year beginning after the date of the enactment of this subparagraph—

"(i) the trust's interest in the partnership assets shall be the trust's proportionate interest in any securities issued by the partnership (determined without regard to subparagraph (A)(i) and paragraph (4), but not including securities described in paragraph (1)), and

"(ii) the value of any debt instrument shall be the adjusted issue price thereof, as defined in section 1272(a)(4).

"(4) CERTAIN PARTNERSHIP DEBT INSTRUMENTS NOT TREATED AS A SECURITY.—For purposes of applying subclause (III) of subsection (c)(4)(B)(iii)—

"(A) any debt instrument issued by a partnership and not described in paragraph (1) shall not be considered a security to the extent of the trust's interest as a partner in the partnership, and

"(B) any debt instrument issued by a partnership and not described in paragraph (1) shall not be considered a security if at least 75 percent of the partnership's gross income (excluding gross income from prohibited transactions) is derived from sources referred to in subsection (c)(3).

"(5) SECRETARIAL GUIDANCE.—The Secretary is authorized to provide guidance (including through the issuance of a written determination, as defined in section 6110(b)) that an arrangement shall not be considered a security held by the trust for purposes of applying subclause (III) of subsection (c)(4)(B)(iii) notwithstanding that such arrangement otherwise could be considered a security under subparagraph (F) of subsection (c)(5).".

(b) CLARIFICATION OF APPLICATION OF LIMITED RENTAL EXCEPTION.—Subparagraph (A) of section 856(d)(8) (relating to special rules for taxable REIT subsidiaries) is amended to read as follows:

"(A) LIMITED RENTAL EXCEPTION.—

"(i) IN GENERAL.—The requirements of this subparagraph are met with respect to any property if at least 90 percent of the leased space of the property is rented to persons other than taxable REIT subsidiaries of such trust and other than persons described in paragraph (2)(B).

"(ii) RENTS MUST BE SUBSTANTIALLY COMPARABLE.—Clause (i) shall apply only to the extent that the amounts paid to the trust as rents from real property (as defined in paragraph (1) without regard to paragraph (2)(B)) from such property are substantially comparable to such rents paid by the other tenants of the trust's property for comparable space.

"(iii) TIMES FOR TESTING RENT COMPARABILITY.—The substantial comparability requirement of clause (ii) shall be treated as met with respect to a lease to a taxable REIT subsidiary of the trust if such requirement is met under the terms of the lease—

"(I) at the time such lease is entered into,

"(II) at the time of each extension of the lease, including a failure to exercise a right to terminate, and

"(III) at the time of any modification of the lease between the trust and the taxable REIT subsidiary if the rent under such lease is effectively increased pursuant to such modification.

With respect to subclause (III), if the taxable REIT subsidiary of the trust is a controlled taxable REIT subsidiary of the trust, the term 'rents from real property' shall not in any event include rent under such lease to the extent of the increase in such rent on account of such modification.

"(iv) CONTROLLED TAXABLE REIT SUBSIDIARY.—For purposes of clause (iii), the term 'controlled taxable REIT subsidiary' means, with respect to any real estate investment trust, any taxable REIT subsidiary of such trust if such trust owns directly or indirectly—

"(I) stock possessing more than 50 percent of the total voting power of the outstanding stock of such subsidiary, or

"(II) stock having a value of more than 50 percent of the total value of the outstanding stock of such subsidiary.

"(v) CONTINUING QUALIFICATION BASED ON THIRD PARTY ACTIONS.—If the requirements of clause (i) are met at a time referred to in clause (iii), such requirements shall continue to be treated as met so long as there is no increase in the space leased to any taxable REIT subsidiary of such trust or to any person described in paragraph (2)(B).

"(vi) CORRECTION PERIOD.—If there is an increase referred to in clause (v) during any calendar quarter with respect to any property, the requirements of clause (iii) shall be treated as met during the quarter and the succeeding quarter if such requirements are met at the close of such succeeding quarter.".

(c) DELETION OF CUSTOMARY SERVICES EXCEPTION.—Subparagraph (B) of section 857(b)(7) (relating to redetermined rents) is amended by striking clause (ii) and by redesignating clauses (iii), (iv), (v), (vi), and (vii) as clauses (ii), (iii), (iv), (v), and (vi), respectively.

(d) CONFORMITY WITH GENERAL HEDGING DEFINITION.—Subparagraph (G) of section 856(c)(5) (relating to treatment of certain hedging instruments) is amended to read as follows:

"(G) TREATMENT OF CERTAIN HEDGING INSTRUMENTS.—Except to the extent provided by regulations, any income of a real estate investment trust from a hedging transaction (as defined in clause (ii) or (iii) of section 1221(b)(2)(A)) which is clearly identified pursuant to section 1221(a)(7), including gain from the sale or disposition of such a transaction, shall not constitute gross income under paragraph (2) to the extent that the transaction hedges any indebtedness incurred or to be incurred by the trust to acquire or carry real estate assets.".

(e) CONFORMITY WITH REGULATED INVESTMENT COMPANY RULES.—Clause (i) of section 857(b)(5)(A) (relating to imposition of tax in case of failure to meet certain requirements) is amended by striking "90 percent" and inserting "95 percent".

(f) SAVINGS PROVISIONS.—

(1) RULES OF APPLICATION FOR FAILURE TO SATISFY SECTION 856(c)(4).—Section 856(c) (relating to definition of real estate investment trust) is amended by inserting after paragraph (6) the following new paragraph:

"(7) RULES OF APPLICATION FOR FAILURE TO SATISFY PARAGRAPH (4).—

"(A) DE MINIMIS FAILURE.—A corporation, trust, or association that fails to meet the requirements of paragraph (4)(B)(iii) for a particular quarter shall nevertheless be considered to have satisfied the requirements of such paragraph for such quarter if—

"(i) such failure is due to the ownership of assets the total value of which does not exceed the lesser of—

"(I) 1 percent of the total value of the trust's assets at the end of the quarter for which such measurement is done, and

"(II) $10,000,000, and

"(ii)(I) the corporation, trust, or association, following the identification of such failure, disposes of assets in order to meet the requirements of such paragraph within 6 months after the last day of the quarter in which the corporation, trust or association's identification of the failure to satisfy the requirements of such paragraph occurred or such other time period prescribed by the Secretary and in the manner prescribed by the Secretary, or

"(II) the requirements of such paragraph are otherwise met within the time period specified in subclause (I).

"(B) FAILURES EXCEEDING DE MINIMIS AMOUNT.—A corporation, trust, or association that fails to meet the requirements of paragraph (4) for a particular quarter shall nevertheless be considered to have satisfied the requirements of such paragraph for such quarter if—

"(i) such failure involves the ownership of assets the total value of which exceeds the de minimis standard described in subparagraph (A)(i) at the end of the quarter for which such measurement is done,

"(ii) following the corporation, trust, or association's identification of the failure to satisfy the requirements of such paragraph for a particular quarter, a description of each asset that causes the corporation, trust, or association to fail to satisfy the requirements of such paragraph at the close of such quarter of any taxable year is set forth in a schedule for such quarter filed in accordance with regulations prescribed by the Secretary,

"(iii) the failure to meet the requirements of such paragraph for a particular quarter is due to reasonable cause and not due to willful neglect,

"(iv) the corporation, trust, or association pays a tax computed under subparagraph (C), and

"(v)(I) the corporation, trust, or association disposes of the assets set forth on the schedule specified in clause (ii) within 6 months after the last day of the quarter in which the corporation, trust or association's identification of the failure to satisfy the requirements of such paragraph occurred or such other time period prescribed by the Secretary and in the manner prescribed by the Secretary, or

"(II) the requirements of such paragraph are otherwise met within the time period specified in subclause (I).

"(C) TAX.—For purposes of subparagraph (B)(iv)—

"(i) TAX IMPOSED.—If a corporation, trust, or association elects the application of this subparagraph, there is hereby imposed a tax on the failure described in subparagraph (B) of such corporation, trust, or association. Such tax shall be paid by the corporation, trust, or association.

"(ii) TAX COMPUTED.—The amount of the tax imposed by clause (i) shall be the greater of—

"(I) $50,000, or

"(II) the amount determined (pursuant to regulations promulgated by the Secretary) by multiplying the net income generated by the assets described in the schedule specified in subparagraph (B)(ii) for the period specified in clause (iii) by the highest rate of tax specified in section 11.

"(iii) PERIOD.—For purposes of clause (ii)(II), the period described in this clause is the period beginning on the first date that the failure to satisfy the requirements of such paragraph (4) occurs as a result of the ownership of such assets and ending on the earlier of the date on which the trust disposes of such assets or the end of the first quarter when there is no longer a failure to satisfy such paragraph (4).

"(iv) ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, the taxes imposed by this subparagraph shall be treated as excise taxes with respect to which the deficiency procedures of such subtitle apply.".

(2) MODIFICATION OF RULES OF APPLICATION FOR FAILURE TO SATISFY SECTIONS 856(c)(2) OR 856(c)(3).—Paragraph (6) of section 856(c) (relating to definition of real estate investment trust) is amended by striking subparagraphs (A) and (B), by redesignating subparagraph (C) as subparagraph (B), and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

"(A) following the corporation, trust, or association's identification of the failure to meet the requirements of paragraph (2) or (3), or of both such paragraphs, for any taxable year, a description of each item of its gross income described in such paragraphs is set forth in a schedule for such taxable year filed in accordance with regulations prescribed by the Secretary, and".

(3) REASONABLE CAUSE EXCEPTION TO LOSS OF REIT STATUS IF FAILURE TO SATISFY REQUIREMENTS.—Subsection (g) of section 856 (relating to termination of election) is amended—

(A) in paragraph (1) by inserting before the period at the end of the first sentence the following: "unless paragraph (5) applies", and

(B) by adding at the end the following new paragraph:

"(5) ENTITIES TO WHICH PARAGRAPH APPLIES.—This paragraph applies to a corporation, trust, or association—

"(A) which is not a real estate investment trust to which the provisions of this part apply for the taxable year due to one or more failures to comply with one or more of the provisions of this part (other than subsection (c)(6) or (c)(7) of section 856),

"(B) such failures are due to reasonable cause and not due to willful neglect, and

"(C) if such corporation, trust, or association pays (as prescribed by the Secretary in regulations and in the same manner as tax) a penalty of $50,000 for each failure to satisfy a provision of this part due to reasonable cause and not willful neglect.".

(4) DEDUCTION OF TAX PAID FROM AMOUNT REQUIRED TO BE DISTRIBUTED.—Subparagraph (E) of section 857(b)(2) is amended by striking "(7)" and inserting "(7) of this subsection, section 856(c)(7)(B)(iii), and section 856(g)(1).".

(5) EXPANSION OF DEFICIENCY DIVIDEND PROCEDURE.—Subsection (e) of section 860 is amended by striking "or" at the end of paragraph (2), by striking the period at the end of paragraph (3) and inserting "; or", and by adding at the end the following new paragraph:

"(4) a statement by the taxpayer attached to its amendment or supplement to a return of tax for the relevant tax year.".

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2000.

(2) SUBSECTIONS (c) THROUGH (f).—The amendments made by subsections (c), (d), (e), and (f) shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 244. SPECIAL RULES FOR CERTAIN FILM AND TELEVISION PRODUCTIONS.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 is amended by inserting after section 180 the following new section:

"SEC. 181. TREATMENT OF CERTAIN QUALIFIED FILM AND TELEVISION PRODUCTIONS.

"(a) ELECTION TO TREAT COSTS AS EXPENSES.—

"(1) IN GENERAL.—A taxpayer may elect to treat the cost of any qualified film or television production as an expense which is not chargeable to capital account. Any cost so treated shall be allowed as a deduction.

"(2) DOLLAR LIMITATION.—

"(A) IN GENERAL.—Paragraph (1) shall not apply to any qualified film or television production the aggregate cost of which exceeds $15,000,000.

"(B) HIGHER DOLLAR LIMITATION FOR PRODUCTIONS IN CERTAIN AREAS.—In the case of any qualified film or television production the aggregate cost of which is significantly incurred in an area eligible for designation as—

"(i) a low-income community under section 45D, or

"(ii) a distressed county or isolated area of distress by the Delta Regional Authority established under section 2009aa-1 of title 7, United States Code, *subparagraph (A) shall be applied by substituting '$20,000,000' for '$15,000,000'.*

"(b) NO OTHER DEDUCTION OR AMORTIZATION DEDUCTION ALLOWABLE.—With respect to the basis of any qualified film or television production to which an election is made under subsection (a), no other depreciation or amortization deduction shall be allowable.

"(c) ELECTION.—

"(1) IN GENERAL.—An election under this section with respect to any qualified film or television production shall be made in such manner as prescribed by the Secretary and by the due date (including extensions) for filing the taxpayer's return of tax under this chapter for the taxable year in which costs of the production are first incurred.

"(2) REVOCATION OF ELECTION.—Any election made under this section may not be revoked without the consent of the Secretary.

"(d) QUALIFIED FILM OR TELEVISION PRODUCTION.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified film or television production' means any production described in paragraph (2) if 75 percent of the total compensation of the production is qualified compensation.

"(2) PRODUCTION.—

"(A) IN GENERAL.—A production is described in this paragraph if such production is property described in section 168(f)(3). For purposes of a television series, only the first 44 episodes of such series may be taken into account.

"(B) EXCEPTION.—A production is not described in this paragraph if records are required under section 2257 of title 18, United States Code, to be maintained with respect to any performer in such production.

"(3) QUALIFIED COMPENSATION.—For purposes of paragraph (1)—

"(A) IN GENERAL.—The term 'qualified compensation' means compensation for services performed in the United States by actors, directors, producers, and other relevant production personnel.

"(B) PARTICIPATIONS AND RESIDUALS EXCLUDED.—The term 'compensation' does not include participations and residuals (as defined in section 167(g)(7)(B)).

"(e) APPLICATION OF CERTAIN OTHER RULES.—For purposes of this section, rules similar to the rules of subsections (b)(2) and (c)(4) of section 194 shall apply.

"(f) TERMINATION.—This section shall not apply to qualified film and television productions commencing after December 31, 2008.".

(b) CONFORMING AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 is amended by inserting after the item relating to section 180 the following new item:

"Sec. 181. Treatment of certain qualified film and television productions.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to qualified film and television productions (as defined in section 181(d)(1) of the Internal Revenue Code of 1986, as added by this section) commencing after the date of the enactment of this Act.

SEC. 245. CREDIT FOR MAINTENANCE OF RAILROAD TRACK.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits) is amended by adding at the end the following new section:

"SEC. 45G. RAILROAD TRACK MAINTENANCE CREDIT.

"(a) GENERAL RULE.—For purposes of section 38, the railroad track maintenance credit determined under this section for the taxable year is an amount equal to 50 percent of the qualified railroad track maintenance expenditures paid or incurred by an eligible taxpayer during the taxable year.

"(b) LIMITATION.—The credit allowed under subsection (a) for any taxable year shall not exceed the product of—

"(1) $3,500, and

"(2) the number of miles of railroad track owned or leased by the eligible taxpayer as of the close of the taxable year.

A mile of railroad track may be taken into account by a person other than the owner only if such mile is assigned to such person by the owner for purposes of this subsection. Any mile which is so assigned may not be taken into account by the owner for purposes of this subsection.

"(c) ELIGIBLE TAXPAYER.—For purposes of this section, the term 'eligible taxpayer' means—

"(1) any Class II or Class III railroad, and

"(2) any person who transports property using the rail facilities of a person described in paragraph (1) or who furnishes railroad-related property or services to such a person.

"(d) QUALIFIED RAILROAD TRACK MAINTENANCE EXPENDITURES.—For purposes of this section, the term 'qualified railroad track maintenance expenditures' means expenditures (whether or not otherwise chargeable to capital account) for maintaining railroad track (including roadbed, bridges, and related track structures) owned or leased as of January 1, 2005, by a Class II or Class III railroad.

"(e) OTHER DEFINITIONS AND SPECIAL RULES.—

"(1) CLASS II OR CLASS III RAILROAD.—For purposes of this section, the terms 'Class II railroad' and 'Class III railroad' have the respective meanings given such terms by the Surface Transportation Board.

"(2) CONTROLLED GROUPS.—Rules similar to the rules of paragraph (1) of section 41(f) shall apply for purposes of this section.

"(3) BASIS ADJUSTMENT.—For purposes of this subtitle, if a credit is allowed under this section with respect to any railroad track, the basis of such track shall be reduced by the amount of the credit so allowed.

"(f) APPLICATION OF SECTION.—This section shall apply to qualified railroad track maintenance expenditures paid or incurred during taxable years beginning after December 31, 2004, and before January 1, 2008.".

(b) LIMITATION ON CARRYBACK.—

(1) IN GENERAL.—Subsection (d) of section 39 is amended to read as follows:

"(d) TRANSITIONAL RULE.—No portion of the unused business credit for any taxable year which is attributable to a credit specified in section 38(b) or any portion thereof may be carried back to any taxable year before the first taxable year for which such specified credit or such portion is allowable (without regard to subsection (a)).".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to taxable years ending after December 31, 2003.

(c) CONFORMING AMENDMENTS.—

(1) Section 38(b) (relating to general business credit) is amended by striking "plus" at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting ", plus", and by adding at the end the following new paragraph:

"(16) the railroad track maintenance credit determined under section 45G(a).".

(2) Subsection (a) of section 1016 is amended by striking "and" at the end of paragraph (27), by striking the period at the end of paragraph (28) and inserting ", and", and by inserting after paragraph (28) the following new paragraph:

"(29) in the case of railroad track with respect to which a credit was allowed under section 45G, to the extent provided in section 45G(e)(3).".

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 45F the following new item:

"Sec. 45G. Railroad track maintenance credit.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 246. SUSPENSION OF OCCUPATIONAL TAXES RELATING TO DISTILLED SPIRITS, WINE, AND BEER.

(a) IN GENERAL.—Subpart G of part II of subchapter A of chapter 51 is amended by redesignating section 5148 as section 5149 and by inserting after section 5147 the following new section:

"SEC. 5148. SUSPENSION OF OCCUPATIONAL TAX.

"(a) IN GENERAL.—Notwithstanding sections 5081, 5091, 5111, 5121, and 5131, the rate of tax imposed under such sections for the suspension period shall be zero. During such period, persons engaged in or carrying on a trade or business covered by such sections shall register under section 5141 and shall comply with the recordkeeping requirements under this part.

"(b) SUSPENSION PERIOD.—For purposes of subsection (a), the suspension period is the period beginning on July 1, 2005, and ending on June 30, 2008.".

(b) CONFORMING AMENDMENT.—Section 5117 is amended by adding at the end the following new subsection:

"(d) SPECIAL RULE DURING SUSPENSION PERIOD.—Except as provided in subsection (b) or by the Secretary, during the suspension period (as defined in section 5148) it shall be unlawful for any dealer to purchase distilled spirits for resale from any person other than a wholesale dealer in liquors who is required to keep records under section 5114.".

(c) CLERICAL AMENDMENT.—The table of sections for subpart G of part II of subchapter A of chapter 51 is amended by striking the last item and inserting the following new items:

"Sec. 5148. Suspension of occupational tax.

"Sec. 5149. Cross references.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 247. MODIFICATION OF UNRELATED BUSINESS INCOME LIMITATION ON INVESTMENT IN CERTAIN SMALL BUSINESS INVESTMENT COMPANIES.

(a) IN GENERAL.—Paragraph (6) of section 514(c) (relating to acquisition indebtedness) is amended to read as follows:

"(6) CERTAIN FEDERAL FINANCING.—

"(A) IN GENERAL.—For purposes of this section, the term 'acquisition indebtedness' does not include—

"(i) an obligation, to the extent that it is insured by the Federal Housing Administration, to finance the purchase, rehabilitation, or construction of housing for low and moderate income persons, or

"(ii) indebtedness incurred by a small business investment company licensed after the date of the enactment of the American Jobs Creation Act of 2004 under the Small Business Investment Act of 1958 if such indebtedness is evidenced by a debenture—

"(I) issued by such company under section 303(a) of such Act, and

"(II) held or guaranteed by the Small Business Administration.

"(B) LIMITATION.—Subparagraph (A)(ii) shall not apply with respect to any small business investment company during any period that—

"(i) any organization which is exempt from tax under this title (other than a governmental unit) owns more than 25 percent of the capital or profits interest in such company, or

"(ii) organizations which are exempt from tax under this title (including governmental units

other than any agency or instrumentality of the United States) own, in the aggregate, 50 percent or more of the capital or profits interest in such company.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to indebtedness incurred after the date of the enactment of this Act by a small business investment company licensed after the date of the enactment of this Act.

SEC. 248. ELECTION TO DETERMINE CORPORATE TAX ON CERTAIN INTERNATIONAL SHIPPING ACTIVITIES USING PER TON RATE.

(a) IN GENERAL.—Chapter 1 is amended by inserting after subchapter Q the following new subchapter:

"Subchapter R—Election To Determine Corporate Tax on Certain International Shipping Activities Using Per Ton Rate

"Sec. 1352. Alternative tax on qualifying shipping activities.
"Sec. 1353. Notional shipping income.
"Sec. 1354. Alternative tax election; revocation; termination.
"Sec. 1355. Definitions and special rules.
"Sec. 1356. Qualifying shipping activities.
"Sec. 1357. Items not subject to regular tax; depreciation; interest.
"Sec. 1358. Allocation of credits, income, and deductions.
"Sec. 1359. Disposition of qualifying vessels.

"SEC. 1352. ALTERNATIVE TAX ON QUALIFYING SHIPPING ACTIVITIES.

"In the case of an electing corporation, the tax imposed by section 11 shall be the amount equal to the sum of—

"(1) the tax imposed by section 11 determined after the application of this subchapter, and

"(2) a tax equal to—

"(A) the highest rate of tax specified in section 11, multiplied by

"(B) the notional shipping income for the taxable year.

"SEC. 1353. NOTIONAL SHIPPING INCOME.

"(a) IN GENERAL.—For purposes of this subchapter, the notional shipping income of an electing corporation shall be the sum of the amounts determined under subsection (b) for each qualifying vessel operated by such electing corporation.

"(b) AMOUNTS.—

"(1) IN GENERAL.—For purposes of subsection (a), the amount of notional shipping income of an electing corporation for each qualifying vessel for the taxable year shall equal the product of—

"(A) the daily notional shipping income, and

"(B) the number of days during the taxable year that the electing corporation operated such vessel as a qualifying vessel in United States foreign trade.

"(2) TREATMENT OF VESSELS THE INCOME FROM WHICH IS NOT OTHERWISE SUBJECT TO TAX.—In the case of a qualifying vessel any of the income from which is not included in gross income by reason of section 883 or otherwise, the amount of notional shipping income from such vessel for the taxable year shall be the amount which bears the same ratio to such shipping income (determined without regard to this paragraph) as the gross income from the operation of such vessel in the United States foreign trade bears to the sum of such gross income and the income so excluded.

"(c) DAILY NOTIONAL SHIPPING INCOME.—For purposes of subsection (b), the daily notional shipping income from the operation of a qualifying vessel is—

"(1) 40 cents for each 100 tons of so much of the net tonnage of the vessel as does not exceed 25,000 net tons, and

"(2) 20 cents for each 100 tons of so much of the net tonnage of the vessel as exceeds 25,000 net tons.

"(d) MULTIPLE OPERATORS OF VESSEL.—If for any period 2 or more persons are operators of a qualifying vessel, the notional shipping income from the operation of such vessel for such period shall be allocated among such persons on the basis of their respective ownership and charter interests in such vessel or on such other basis as the Secretary may prescribe by regulations.

"SEC. 1354. ALTERNATIVE TAX ELECTION; REVOCATION; TERMINATION.

"(a) IN GENERAL.—A qualifying vessel operator may elect the application of this subchapter.

"(b) TIME AND MANNER; YEARS FOR WHICH EFFECTIVE.—An election under this subchapter—

"(1) shall be made in such form as prescribed by the Secretary, and

"(2) shall be effective for the taxable year for which made and all succeeding taxable years until terminated under subsection (d).

Such election may be effective for any taxable year only if made before the due date (including extensions) for filing the corporation's return for such taxable year.

"(c) CONSISTENT ELECTIONS BY MEMBERS OF CONTROLLED GROUPS.—An election under subsection (a) by a member of a controlled group shall apply to all qualifying vessel operators that are members of such group.

"(d) TERMINATION.—

"(1) BY REVOCATION.—

"(A) IN GENERAL.—An election under subsection (a) may be terminated by revocation.

"(B) WHEN EFFECTIVE.—Except as provided in subparagraph (C)—

"(i) a revocation made during the taxable year and on or before the 15th day of the 3d month thereof shall be effective on the 1st day of such taxable year, and

"(ii) a revocation made during the taxable year but after such 15th day shall be effective on the 1st day of the following taxable year.

"(C) REVOCATION MAY SPECIFY PROSPECTIVE DATE.—If the revocation specifies a date for revocation which is on or after the day on which the revocation is made, the revocation shall be effective for taxable years beginning on and after the date so specified.

"(2) BY PERSON CEASING TO BE QUALIFYING VESSEL OPERATOR.—

"(A) IN GENERAL.—An election under subsection (a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an electing corporation) such corporation ceases to be a qualifying vessel operator.

"(B) WHEN EFFECTIVE.—Any termination under this paragraph shall be effective on and after the date of cessation.

"(C) ANNUALIZATION.—The Secretary shall prescribe such annualization and other rules as are appropriate in the case of a termination under this paragraph.

"(e) ELECTION AFTER TERMINATION.—If a qualifying vessel operator has made an election under subsection (a) and if such election has been terminated under subsection (d), such operator (and any successor operator) shall not be eligible to make an election under subsection (a) for any taxable year before its 5th taxable year which begins after the 1st taxable year for which such termination is effective, unless the Secretary consents to such election.

"SEC. 1355. DEFINITIONS AND SPECIAL RULES.

"(a) DEFINITIONS.—For purposes of this subchapter—

"(1) ELECTING CORPORATION.—The term 'electing corporation' means any corporation for which an election is in effect under this subchapter.

"(2) ELECTING GROUP; CONTROLLED GROUP.—

"(A) ELECTING GROUP.—The term 'electing group' means a controlled group of which one or more members is an electing corporation.

"(B) CONTROLLED GROUP.—The term 'controlled group' means any group which would be treated as a single employer under subsection (a) or (b) of section 52 if paragraphs (1) and (2) of section 52(a) did not apply.

"(3) QUALIFYING VESSEL OPERATOR.—The term 'qualifying vessel operator' means any corporation—

"(A) who operates one or more qualifying vessels, and

"(B) who meets the shipping activity requirement in subsection (c).

"(4) QUALIFYING VESSEL.—The term 'qualifying vessel' means a self-propelled (or a combination self-propelled and non-self-propelled) United States flag vessel of not less than 10,000 deadweight tons used exclusively in the United States foreign trade during the period that the election under this subchapter is in effect.

"(5) UNITED STATES FLAG VESSEL.—The term 'United States flag vessel' means any vessel documented under the laws of the United States.

"(6) UNITED STATES DOMESTIC TRADE.—The term 'United States domestic trade' means the transportation of goods or passengers between places in the United States.

"(7) UNITED STATES FOREIGN TRADE.—The term 'United States foreign trade' means the transportation of goods or passengers between a place in the United States and a foreign place or between foreign places.

"(8) CHARTER.—The term 'charter' includes an operating agreement.

"(b) OPERATING A VESSEL.—For purposes of this subchapter—

"(1) IN GENERAL.—Except as provided in paragraph (2), a person is treated as operating any vessel during any period if such vessel is—

"(A) owned by, or chartered (including a time charter) to, the person, and

"(B) is in use as a qualifying vessel during such period.

"(2) BAREBOAT CHARTERS.—A person is treated as operating and using a vessel that it has chartered out on bareboat charter terms only if—

"(A)(i) the vessel is temporarily surplus to the person's requirements and the term of the charter does not exceed 3 years, or

"(ii) the vessel is bareboat chartered to a member of a controlled group which includes such person or to an unrelated person who sub-bareboats or time charters the vessel to such a member (including the owner of the vessel), and

"(B) the vessel is used as a qualifying vessel by the person to whom ultimately chartered.

"(c) SHIPPING ACTIVITY REQUIREMENT.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, a corporation meets the shipping activity requirement of this subsection for any taxable year only if the requirement of paragraph (4) is met for each of the 2 preceding taxable years.

"(2) SPECIAL RULE FOR 1ST YEAR OF ELECTION.—A corporation meets the shipping activity requirement of this subsection for the first taxable year for which the election under section 1354(a) is in effect only if the requirement of paragraph (4) is met for the preceding taxable year.

"(3) CONTROLLED GROUPS.—A corporation who is a member of a controlled group meets the shipping activity requirement of this subsection only if such requirement is met determined—

"(A) by treating all members of such group as 1 person, and

"(B) by disregarding vessel charters between members of such group.

"(4) REQUIREMENT.—The requirement of this paragraph is met for any taxable year if, on average during such year, at least 25 percent of

the aggregate tonnage of qualifying vessels used by the corporation were owned by such corporation or chartered to such corporation on bareboat charter terms.

‘‘(d) ACTIVITIES CARRIED ON PARTNERSHIPS, ETC.—In applying this subchapter to a partner in a partnership—

‘‘(1) each partner shall be treated as operating vessels operated by the partnership,

‘‘(2) each partner shall be treated as conducting the activities conducted by the partnership, and

‘‘(3) the extent of a partner's ownership or charter interest in any vessel owned by or chartered to the partnership shall be determined on the basis of the partner's interest in the partnership.

A similar rule shall apply with respect to other pass-thru entities.

‘‘(e) EFFECT OF TEMPORARILY CEASING TO OPERATE A QUALIFYING VESSEL.—

‘‘(1) IN GENERAL.—For purposes of subsections (b) and (c), an electing corporation shall be treated as continuing to use a qualifying vessel during any period of temporary cessation if the electing corporation gives timely notice to the Secretary stating—

‘‘(A) that it has temporarily ceased to operate the qualifying vessel, and

‘‘(B) its intention to resume operating the qualifying vessel.

‘‘(2) NOTICE.—Notice shall be deemed timely if given not later than the due date (including extensions) for the corporation's tax return for the taxable year in which the temporary cessation begins.

‘‘(3) PERIOD DISREGARD IN EFFECT.—The period of temporary cessation under paragraph (1) shall continue until the earlier of the date on which—

‘‘(A) the electing corporation abandons its intention to resume operation of the qualifying vessel, or

‘‘(B) the electing corporation resumes operation of the qualifying vessel.

‘‘(f) EFFECT OF TEMPORARILY OPERATING A QUALIFYING VESSEL IN THE UNITED STATES DOMESTIC TRADE.—

‘‘(1) IN GENERAL.—For purposes of this subchapter, an electing corporation shall be treated as continuing to use a qualifying vessel in the United States foreign trade during any period of temporary use in the United States domestic trade if the electing corporation gives timely notice to the Secretary stating—

‘‘(A) that it temporarily operates or has operated in the United States domestic trade a qualifying vessel which had been used in the United States foreign trade, and

‘‘(B) its intention to resume operation of the vessel in the United States foreign trade.

‘‘(2) NOTICE.—Notice shall be deemed timely if given not later than the due date (including extensions) for the corporation's tax return for the taxable year in which the temporary cessation begins.

‘‘(3) PERIOD DISREGARD IN EFFECT.—The period of temporary use under paragraph (1) continues until the earlier of the date of which—

‘‘(A) the electing corporation abandons its intention to resume operations of the vessel in the United States foreign trade, or

‘‘(B) the electing corporation resumes operation of the vessel in the United States foreign trade.

‘‘(4) NO DISREGARD IF DOMESTIC TRADE USE EXCEEDS 30 DAYS.—Paragraph (1) shall not apply to any qualifying vessel which is operated in the United States domestic trade for more than 30 days during the taxable year.

‘‘(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

“SEC. 1356. QUALIFYING SHIPPING ACTIVITIES.

‘‘(a) QUALIFYING SHIPPING ACTIVITIES.—For purposes of this subchapter, the term ‘qualifying shipping activities’ means—

‘‘(1) core qualifying activities,

‘‘(2) qualifying secondary activities, and

‘‘(3) qualifying incidental activities.

‘‘(b) CORE QUALIFYING ACTIVITIES.—For purposes of this subchapter, the term ‘core qualifying activities’ means activities in operating qualifying vessels in United States foreign trade.

‘‘(c) QUALIFYING SECONDARY ACTIVITIES.—For purposes of this section—

‘‘(1) IN GENERAL.—The term ‘qualifying secondary activities’ means secondary activities but only to the extent that, without regard to this subchapter, the gross income derived by such corporation from such activities does not exceed 20 percent of the gross income derived by the corporation from its core qualifying activities.

‘‘(2) SECONDARY ACTIVITIES.—The term ‘secondary activities’ means—

‘‘(A) the active management or operation of vessels other than qualifying vessels in the United States foreign trade,

‘‘(B) the provision of vessel, barge, container, or cargo-related facilities or services to any person,

‘‘(C) other activities of the electing corporation and other members of its electing group that are an integral part of its business of operating qualifying vessels in United States foreign trade, including—

‘‘(i) ownership or operation of barges, containers, chassis, and other equipment that are the complement of, or used in connection with, a qualifying vessel in United States foreign trade,

‘‘(ii) the inland haulage of cargo shipped, or to be shipped, on qualifying vessels in United States foreign trade, and

‘‘(iii) the provision of terminal, maintenance, repair, logistical, or other vessel, barge, container, or cargo-related services that are an integral part of operating qualifying vessels in United States foreign trade, and

‘‘(D) such other activities as may be prescribed by the Secretary pursuant to regulations.

‘‘(3) COORDINATION WITH CORE ACTIVITIES.—

‘‘(A) IN GENERAL.—Such term shall not include any core qualifying activities.

‘‘(B) NONELECTING CORPORATIONS.—In the case of a corporation (other than an electing corporation) which is a member of an electing group, any core qualifying activities of the corporation shall be treated as qualifying secondary activities (and not as core qualifying activities).

‘‘(d) QUALIFYING INCIDENTAL ACTIVITIES.—For purposes of this section, the term ‘qualified incidental activities’ means shipping-related activities if—

‘‘(1) they are incidental to the corporation's core qualifying activities,

‘‘(2) they are not qualifying secondary activities, and

‘‘(3) without regard to this subchapter, the gross income derived by such corporation from such activities does not exceed 0.1 percent of the corporation's gross income from its core qualifying activities.

‘‘(e) APPLICATION OF GROSS INCOME TESTS IN CASE OF ELECTING GROUP.—In the case of an electing group, subsections (c)(1) and (d)(3) shall be applied as if such group were 1 entity, and the limitations under such subsections shall be allocated among the corporations in such group.

“SEC. 1357. ITEMS NOT SUBJECT TO REGULAR TAX; DEPRECIATION; INTEREST.

‘‘(a) EXCLUSION FROM GROSS INCOME.—Gross income of an electing corporation shall not include its income from qualifying shipping activities.

‘‘(b) ELECTING GROUP MEMBER.—Gross income of a corporation (other than an electing corporation) which is a member of an electing group shall not include its income from qualifying shipping activities conducted by such member.

‘‘(c) DENIAL OF LOSSES, DEDUCTIONS, AND CREDITS.—

‘‘(1) GENERAL RULE.—Subject to paragraph (2), each item of loss, deduction (other than for interest expense), or credit of any taxpayer with respect to any activity the income from which is excluded from gross income under this section shall be disallowed.

‘‘(2) DEPRECIATION.—

‘‘(A) IN GENERAL.—Notwithstanding paragraph (1), the adjusted basis (for purposes of determining gain) of any qualifying vessel shall be determined as if the deduction for depreciation had been allowed.

‘‘(B) METHOD.—

‘‘(i) IN GENERAL.—Except as provided in clause (ii), the straight-line method of depreciation shall apply to qualifying vessels the income from operation of which is excluded from gross income under this section.

‘‘(ii) EXCEPTION.—Clause (i) shall not apply to any qualifying vessel which is subject to a charter entered into before the date of the enactment of this subchapter.

‘‘(3) INTEREST.—

‘‘(A) IN GENERAL.—Except as provided in subparagraph (B), the interest expense of an electing corporation shall be disallowed in the ratio that the fair market value of such corporation's qualifying vessels bears to the fair market value of such corporation's total assets.

‘‘(B) ELECTING GROUP.—In the case of a corporation which is a member of an electing group, the interest expense of such corporation shall be disallowed in the ratio that the fair market value of such corporation's qualifying vessels bears to the fair market value of the electing groups total assets.

“SEC. 1358. ALLOCATION OF CREDITS, INCOME, AND DEDUCTIONS.

‘‘(a) QUALIFYING SHIPPING ACTIVITIES.—For purposes of this chapter, the qualifying shipping activities of an electing corporation shall be treated as a separate trade or business activity distinct from all other activities conducted by such corporation.

‘‘(b) EXCLUSION OF CREDITS OR DEDUCTIONS.—

‘‘(1) No deduction shall be allowed against the notional shipping income of an electing corporation, and no credit shall be allowed against the tax imposed by section 1352(a)(2).

‘‘(2) No deduction shall be allowed for any net operating loss attributable to the qualifying shipping activities of any person to the extent that such loss is carried forward by such person from a taxable year preceding the first taxable year for which such person was an electing corporation.

‘‘(c) TRANSACTIONS NOT AT ARM'S LENGTH.—Section 482 applies in accordance with this subsection to a transaction or series of transactions—

‘‘(1) as between an electing corporation and another person, or

‘‘(2) as between an person's qualifying shipping activities and other activities carried on by it.

“SEC. 1359. DISPOSITION OF QUALIFYING VESSELS.

‘‘(a) IN GENERAL.—If any qualifying vessel operator sells or disposes of any qualifying vessel in an otherwise taxable transaction, at the election of such operator, no gain shall be recognized if any replacement qualifying vessel is acquired during the period specified in subsection (b), except to the extent that the amount realized upon such sale or disposition exceeds the cost of the replacement qualifying vessel.

"(b) PERIOD WITHIN WHICH PROPERTY MUST BE REPLACED.—The period referred to in subsection (a) shall be the period beginning one year prior to the disposition of the qualifying vessel and ending—

"(1) 3 years after the close of the first taxable year in which the gain is realized, or

"(2) subject to such terms and conditions as may be specified by the Secretary, on such later date as the Secretary may designate on application by the taxpayer.

Such application shall be made at such time and in such manner as the Secretary may by regulations prescribe.

"(c) APPLICATION OF SECTION TO NONCORPORATE OPERATORS.—For purposes of this section, the term 'qualifying vessel operator' includes any person who would be a qualifying vessel operator were such person a corporation.

"(d) TIME FOR ASSESSMENT OF DEFICIENCY ATTRIBUTABLE TO GAIN.—If a qualifying vessel operator has made the election provided in subsection (a), then—

"(1) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by such operator (in such manner as the Secretary may by regulations prescribe) of the replacement qualifying vessel or of an intention not to replace, and

"(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212(c) or the provisions of any other law or rule of law which would otherwise prevent such assessment.

"(e) BASIS OF REPLACEMENT QUALIFYING VESSEL.—In the case of any replacement qualifying vessel purchased by the qualifying vessel operator which resulted in the nonrecognition of any part of the gain realized as the result of a sale or other disposition of a qualifying vessel, the basis shall be the cost of the replacement qualifying vessel decreased in the amount of the gain not so recognized; and if the property purchased consists of more than one piece of property, the basis determined under this sentence shall be allocated to the purchased properties in proportion to their respective costs."

(b) TECHNICAL AMENDMENTS.—

(1) The second sentence of section 56(g)(4)(B)(i), as amended by this Act, is further amended by inserting "or 1357" after "section 139A".

(2) The table of subchapters for chapter 1 is amended by inserting after the item relating to subchapter S the following new item:

"Subchapter R. Election to determine corporate tax on certain international shipping activities using per ton rate."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

Subtitle F—Stock Options and Employee Stock Purchase Plan Stock Options

SEC. 251. EXCLUSION OF INCENTIVE STOCK OPTIONS AND EMPLOYEE STOCK PURCHASE PLAN STOCK OPTIONS FROM WAGES.

(a) EXCLUSION FROM EMPLOYMENT TAXES.—

(1) SOCIAL SECURITY TAXES.—

(A) Section 3121(a) (relating to definition of wages) is amended by striking "or" at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting "; or", and by inserting after paragraph (21) the following new paragraph:

"(22) remuneration on account of—

"(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

"(B) any disposition by the individual of such stock.".

(B) Section 209(a) of the Social Security Act is amended by striking "or" at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting "; or", and by inserting after paragraph (18) the following new paragraph:

"(19) Remuneration on account of—

"(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b) of the Internal Revenue Code of 1986) or under an employee stock purchase plan (as defined in section 423(b) of such Code), or

"(B) any disposition by the individual of such stock.".

(2) RAILROAD RETIREMENT TAXES.—Subsection (e) of section 3231 is amended by adding at the end the following new paragraph:

"(12) QUALIFIED STOCK OPTIONS.—The term 'compensation' shall not include any remuneration on account of—

"(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

"(B) any disposition by the individual of such stock.".

(3) UNEMPLOYMENT TAXES.—Section 3306(b) (relating to definition of wages) is amended by striking "or" at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting "; or", and by inserting after paragraph (18) the following new paragraph:

"(19) remuneration on account of—

"(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

"(B) any disposition by the individual of such stock.".

(b) WAGE WITHHOLDING NOT REQUIRED ON DISQUALIFYING DISPOSITIONS.—Section 421(b) (relating to effect of disqualifying dispositions) is amended by adding at the end the following new sentence: "No amount shall be required to be deducted and withheld under chapter 24 with respect to any increase in income attributable to a disposition described in the preceding sentence.".

(c) WAGE WITHHOLDING NOT REQUIRED ON COMPENSATION WHERE OPTION PRICE IS BETWEEN 85 PERCENT AND 100 PERCENT OF VALUE OF STOCK.—Section 423(c) (relating to special rule where option price is between 85 percent and 100 percent of value of stock) is amended by adding at the end the following new sentence: "No amount shall be required to be deducted and withheld under chapter 24 with respect to any amount treated as compensation under this subsection.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to stock acquired pursuant to options exercised after the date of the enactment of this Act.

TITLE III—TAX RELIEF FOR AGRICULTURE AND SMALL MANUFACTURERS

Subtitle A—Volumetric Ethanol Excise Tax Credit

SEC. 301. ALCOHOL AND BIODIESEL EXCISE TAX CREDIT AND EXTENSION OF ALCOHOL FUELS INCOME TAX CREDIT.

(a) IN GENERAL.—Subchapter B of chapter 65 (relating to rules of special application) is amended by inserting after section 6425 the following new section:

"SEC. 6426. CREDIT FOR ALCOHOL FUEL AND BIODIESEL MIXTURES.

"(a) ALLOWANCE OF CREDITS.—There shall be allowed as a credit against the tax imposed by section 4081 an amount equal to the sum of—

"(1) the alcohol fuel mixture credit, plus

"(2) the biodiesel mixture credit.

"(b) ALCOHOL FUEL MIXTURE CREDIT.—

"(1) IN GENERAL.—For purposes of this section, the alcohol fuel mixture credit is the product of the applicable amount and the number of gallons of alcohol used by the taxpayer in producing any alcohol fuel mixture for sale or use in a trade or business of the taxpayer.

"(2) APPLICABLE AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 51 cents.

"(B) MIXTURES NOT CONTAINING ETHANOL.—In the case of an alcohol fuel mixture in which none of the alcohol consists of ethanol, the applicable amount is 60 cents.

"(3) ALCOHOL FUEL MIXTURE.—For purposes of this subsection, the term 'alcohol fuel mixture' means a mixture of alcohol and a taxable fuel which—

"(A) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

"(B) is used as a fuel by the taxpayer producing such mixture.

For purposes of subparagraph (A), a mixture produced by any person at a refinery prior to a taxable event which includes ethyl tertiary butyl ether or other ethers produced from alcohol shall be treated as sold at the time of its removal from the refinery (and only at such time) to another person for use as a fuel.

"(4) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) ALCOHOL.—The term 'alcohol' includes methanol and ethanol but does not include—

"(i) alcohol produced from petroleum, natural gas, or coal (including peat), or

"(ii) alcohol with a proof of less than 190 (determined without regard to any added denaturants).

Such term also includes an alcohol gallon equivalent of ethyl tertiary butyl ether or other ethers produced from such alcohol.

"(B) TAXABLE FUEL.—The term 'taxable fuel' has the meaning given such term by section 4083(a)(1).

"(5) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after December 31, 2010.

"(c) BIODIESEL MIXTURE CREDIT.—

"(1) IN GENERAL.—For purposes of this section, the biodiesel mixture credit is the product of the applicable amount and the number of gallons of biodiesel used by the taxpayer in producing any biodiesel mixture for sale or use in a trade or business of the taxpayer.

"(2) APPLICABLE AMOUNT.—For purposes of this subsection—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the applicable amount is 50 cents.

"(B) AMOUNT FOR AGRI-BIODIESEL.—In the case of any biodiesel which is agri-biodiesel, the applicable amount is $1.00.

"(3) BIODIESEL MIXTURE.—For purposes of this section, the term 'biodiesel mixture' means a mixture of biodiesel and diesel fuel (as defined in section 4083(a)(3)), determined without regard to any use of kerosene, which—

"(A) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

"(B) is used as a fuel by the taxpayer producing such mixture.

"(4) CERTIFICATION FOR BIODIESEL.—No credit shall be allowed under this subsection unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from

the producer of the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

"(5) OTHER DEFINITIONS.—Any term used in this subsection which is also used in section 40A shall have the meaning given such term by section 40A.

"(6) TERMINATION.—This subsection shall not apply to any sale, use, or removal for any period after December 31, 2006.

"(d) MIXTURE NOT USED AS A FUEL, ETC.—

"(1) IMPOSITION OF TAX.—If—

"(A) any credit was determined under this section with respect to alcohol or biodiesel used in the production of any alcohol fuel mixture or biodiesel mixture, respectively, and

"(B) any person—

"(i) separates the alcohol or biodiesel from the mixture, or

"(ii) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the applicable amount and the number of gallons of such alcohol or biodiesel.

"(2) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under paragraph (1) as if such tax were imposed by section 4081 and not by this section.

"(e) COORDINATION WITH EXEMPTION FROM EXCISE TAX.—Rules similar to the rules under section 40(c) shall apply for purposes of this section.".

(b) REGISTRATION REQUIREMENT.—Section 4101(a)(1) (relating to registration), as amended by section 861, is amended by inserting "and every person producing or importing biodiesel (as defined in section 40A(d)(1)) or alcohol (as defined in section 6426(b)(4)(A))" before "shall register with the Secretary".

(c) ADDITIONAL AMENDMENTS.—

(1) Section 40(c) is amended by striking "subsection (b)(2), (k), or (m) of section 4041, section 4081(c), or section 4091(c)" and inserting "section 4041(b)(2), section 6426, or section 6427(e)".

(2) Paragraph (4) of section 40(d) is amended to read as follows:

"(4) VOLUME OF ALCOHOL.—For purposes of determining under subsection (a) the number of gallons of alcohol with respect to which a credit is allowable under subsection (a), the volume of alcohol shall include the volume of any denaturant (including gasoline) which is added under any formulas approved by the Secretary to the extent that such denaturants do not exceed 5 percent of the volume of such alcohol (including denaturants).".

(3) Section 40(e)(1) is amended—

(A) by striking "2007" in subparagraph (A) and inserting "2010", and

(B) by striking "2008" in subparagraph (B) and inserting "2011".

(4) Section 40(h) is amended—

(A) by striking "2007" in paragraph (1) and inserting "2010", and

(B) by striking ", 2006, or 2007" in the table contained in paragraph (2) and inserting "through 2010".

(5) Section 4041(b)(2)(B) is amended by striking "a substance other than petroleum or natural gas" and inserting "coal (including peat)".

(6) Section 4041 is amended by striking subsection (k).

(7) Section 4081 is amended by striking subsection (c).

(8) Paragraph (2) of section 4083(a) is amended to read as follows:

"(2) GASOLINE.—The term 'gasoline'—

"(A) includes any gasoline blend, other than qualified methanol or ethanol fuel (as defined in section 4041(b)(2)(B)), partially exempt methanol or ethanol fuel (as defined in section 4041(m)(2)), or a denatured alcohol, and

"(B) includes, to the extent prescribed in regulations—

"(i) any gasoline blend stock, and

"(ii) any product commonly used as an additive in gasoline (other than alcohol).

For purposes of subparagraph (B)(i), the term 'gasoline blend stock' means any petroleum product component of gasoline.".

(9) Section 6427 is amended by inserting after subsection (d) the following new subsection:

"(e) ALCOHOL OR BIODIESEL USED TO PRODUCE ALCOHOL FUEL AND BIODIESEL MIXTURES.—Except as provided in subsection (k)—

"(1) USED TO PRODUCE A MIXTURE.—If any person produces a mixture described in section 6426 in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the alcohol fuel mixture credit or the biodiesel mixture credit with respect to such mixture.

"(2) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under paragraph (1) with respect to any mixture with respect to which an amount is allowed as a credit under section 6426.

"(3) TERMINATION.—This subsection shall not apply with respect to—

"(A) any alcohol fuel mixture (as defined in section 6426(b)(3)) sold or used after December 31, 2010, and

"(B) any biodiesel mixture (as defined in section 6426(c)(3)) sold or used after December 31, 2006.".

(10) Section 6427(i)(3) is amended—

(A) by striking "subsection (f)" both places it appears in subparagraph (A) and inserting "subsection (e)(1)",

(B) by striking "gasoline, diesel fuel, or kerosene used to produce a qualified alcohol mixture (as defined in section 4081(c)(3))" in subparagraph (A) and inserting "a mixture described in section 6426",

(C) by adding at the end of subparagraph (A) the following new flush sentence:

"In the case of an electronic claim, this subparagraph shall be applied without regard to clause (i).",

(D) by striking "subsection (f)(1)" in subparagraph (B) and inserting "subsection (e)(1)",

(E) by striking "20 days of the date of the filing of such claim" in subparagraph (B) and inserting "45 days of the date of the filing of such claim (20 days in the case of an electronic claim)", and

(F) by striking "ALCOHOL MIXTURE" in the heading and inserting "ALCOHOL FUEL AND BIODIESEL MIXTURE".

(11) Section 9503(b)(1) is amended by adding at the end the following new flush sentence:

"For purposes of this paragraph, taxes received under sections 4041 and 4081 shall be determined without reduction for credits under section 6426.".

(12) Section 9503(b)(4) is amended—

(A) by adding "or" at the end of subparagraph (C),

(B) by striking the comma at the end of subparagraph (D)(iii) and inserting a period, and

(C) by striking subparagraphs (E) and (F).

(13) Section 9503(c)(2)(A) is amended by adding at the end the following: "Clauses (i)(III) and (ii) shall not apply to claims under section 6427(e).".

(14) The table of sections for subchapter B of chapter 65 is amended by inserting after the item relating to section 6425 the following new item:

"Sec. 6426. Credit for alcohol fuel and biodiesel mixtures.".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to fuel sold or used after December 31, 2004.

(2) REGISTRATION REQUIREMENT.—The amendment made by subsection (b) shall take effect on April 1, 2005.

(3) EXTENSION OF ALCOHOL FUELS CREDIT.—The amendments made by paragraphs (3), (4), and (14) of subsection (c) shall take effect on the date of the enactment of this Act.

(4) REPEAL OF GENERAL FUND RETENTION OF CERTAIN ALCOHOL FUELS TAXES.—The amendments made by subsection (c)(12) shall apply to fuel sold or used after September 30, 2004.

(e) FORMAT FOR FILING.—The Secretary of the Treasury shall describe the electronic format for filing claims described in section 6427(i)(3)(B) of the Internal Revenue Code of 1986 (as amended by subsection (c)(10)(C)) not later than December 31, 2004.

SEC. 302. BIODIESEL INCOME TAX CREDIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by inserting after section 40 the following new section:

"SEC. 40A. BIODIESEL USED AS FUEL.

"(a) GENERAL RULE.—For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the sum of—

"(1) the biodiesel mixture credit, plus

"(2) the biodiesel credit.

"(b) DEFINITION OF BIODIESEL MIXTURE CREDIT AND BIODIESEL CREDIT.—For purposes of this section—

"(1) BIODIESEL MIXTURE CREDIT.—

"(A) IN GENERAL.—The biodiesel mixture credit of any taxpayer for any taxable year is 50 cents for each gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture.

"(B) QUALIFIED BIODIESEL MIXTURE.—The term 'qualified biodiesel mixture' means a mixture of biodiesel and diesel fuel (as defined in section 4083(a)(3)), determined without regard to any use of kerosene, which—

"(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

"(ii) is used as a fuel by the taxpayer producing such mixture.

"(C) SALE OR USE MUST BE IN TRADE OR BUSINESS, ETC.—Biodiesel used in the production of a qualified biodiesel mixture shall be taken into account—

"(i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and

"(ii) for the taxable year in which such sale or use occurs.

"(D) CASUAL OFF-FARM PRODUCTION NOT ELIGIBLE.—No credit shall be allowed under this section with respect to any casual off-farm production of a qualified biodiesel mixture.

"(2) BIODIESEL CREDIT.—

"(A) IN GENERAL.—The biodiesel credit of any taxpayer for any taxable year is 50 cents for each gallon of biodiesel which is not in a mixture with diesel fuel and which during the taxable year—

"(i) is used by the taxpayer as a fuel in a trade or business, or

"(ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle.

"(B) USER CREDIT NOT TO APPLY TO BIODIESEL SOLD AT RETAIL.—No credit shall be allowed under subparagraph (A)(i) with respect to any biodiesel which was sold in a retail sale described in subparagraph (A)(ii).

"(3) CREDIT FOR AGRI-BIODIESEL.—In the case of any biodiesel which is agri-biodiesel, paragraphs (1)(A) and (2)(A) shall be applied by substituting '$1.00' for '50 cents'.

"(4) CERTIFICATION FOR BIODIESEL.—No credit shall be allowed under this section unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from

the producer or importer of the biodiesel which identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

"(c) COORDINATION WITH CREDIT AGAINST EXCISE TAX.—The amount of the credit determined under this section with respect to any biodiesel shall be properly reduced to take into account any benefit provided with respect to such biodiesel solely by reason of the application of section 6426 or 6427(e).

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) BIODIESEL.—The term 'biodiesel' means the monoalkyl esters of long chain fatty acids derived from plant or animal matter which meet—

"(A) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

"(B) the requirements of the American Society of Testing and Materials D6751.

"(2) AGRI-BIODIESEL.—The term 'agri-biodiesel' means biodiesel derived solely from virgin oils, including esters derived from virgin vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, and mustard seeds, and from animal fats.

"(3) MIXTURE OR BIODIESEL NOT USED AS A FUEL, ETC.—

"(A) MIXTURES.—If—

"(i) any credit was determined under this section with respect to biodiesel used in the production of any qualified biodiesel mixture, and

"(ii) any person—

"(I) separates the biodiesel from the mixture, or

"(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(1)(A) and the number of gallons of such biodiesel in such mixture.

"(B) BIODIESEL.—If—

"(i) any credit was determined under this section with respect to the retail sale of any biodiesel, and

"(ii) any person mixes such biodiesel or uses such biodiesel other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the rate applicable under subsection (b)(2)(A) and the number of gallons of such biodiesel.

"(C) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A) or (B) as if such tax were imposed by section 4081 and not by this chapter.

"(4) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

"(e) TERMINATION.—This section shall not apply to any sale or use after December 31, 2006.".

(b) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (relating to current year business credit), as amended by this Act, is amended by striking "plus" at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting ", plus", and by inserting after paragraph (16) the following new paragraph:

"(17) the biodiesel fuels credit determined under section 40A(a).".

(c) CONFORMING AMENDMENTS.—

(1)(A) Section 87 is amended to read as follows:

"SEC. 87. ALCOHOL AND BIODIESEL FUELS CREDITS.

"Gross income includes—

"(1) the amount of the alcohol fuel credit determined with respect to the taxpayer for the taxable year under section 40(a), and

"(2) the biodiesel fuels credit determined with respect to the taxpayer for the taxable year under section 40A(a).".

(B) The item relating to section 87 in the table of sections for part II of subchapter B of chapter 1 is amended by striking "fuel credit" and inserting "and biodiesel fuels credits".

(2) Section 196(c) is amended by striking "and" at the end of paragraph (9), by striking the period at the end of paragraph (10) and inserting ", and", and by adding at the end the following new paragraph:

"(11) the biodiesel fuels credit determined under section 40A(a).".

(3) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding after the item relating to section 40 the following new item:

"Sec. 40A. Biodiesel used as fuel.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel produced, and sold or used, after December 31, 2004, in taxable years ending after such date.

SEC. 303. INFORMATION REPORTING FOR PERSONS CLAIMING CERTAIN TAX BENEFITS.

(a) IN GENERAL.—Subpart C of part III of subchapter A of chapter 32 is amended by adding at the end the following new section:

"SEC. 4104. INFORMATION REPORTING FOR PERSONS CLAIMING CERTAIN TAX BENEFITS.

"(a) IN GENERAL.—The Secretary shall require any person claiming tax benefits—

"(1) under the provisions of section 34, 40, and 40A, to file a return at the time such person claims such benefits (in such manner as the Secretary may prescribe), and

"(2) under the provisions of section 4041(b)(2), 6426, or 6427(e) to file a quarterly return (in such manner as the Secretary may prescribe).

"(b) CONTENTS OF RETURN.—Any return filed under this section shall provide such information relating to such benefits and the coordination of such benefits as the Secretary may require to ensure the proper administration and use of such benefits.

"(c) ENFORCEMENT.—With respect to any person described in subsection (a) and subject to registration requirements under this title, rules similar to rules of section 4222(c) shall apply with respect to any requirement under this section.".

(b) CONFORMING AMENDMENT.—The table of sections for subpart C of part III of subchapter A of chapter 32 is amended by adding at the end the following new item:

"Sec. 4101. Information reporting for persons claiming certain tax benefits.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2005.

Subtitle B—Agricultural Incentives

SEC. 311. SPECIAL RULES FOR LIVESTOCK SOLD ON ACCOUNT OF WEATHER-RELATED CONDITIONS.

(a) REPLACEMENT OF LIVESTOCK WITH OTHER FARM PROPERTY.—Subsection (f) of section 1033 (relating to involuntary conversions) is amended—

(1) by inserting "drought, flood, or other weather-related conditions, or" after "because of",

(2) by inserting "in the case of soil contamination or other environmental contamination" after "including real property", and

(3) by striking "WHERE THERE HAS BEEN ENVIRONMENTAL CONTAMINATION" in the heading and inserting "IN CERTAIN CASES".

(b) EXTENSION OF REPLACEMENT PERIOD OF INVOLUNTARILY CONVERTED LIVESTOCK.—Subsection (e) of section 1033 (relating to involuntary conversions) is amended—

(1) by striking "CONDITIONS.—For purposes" and inserting "CONDITIONS.—

"(1) IN GENERAL.—For purposes", and

(2) by adding at the end the following new paragraph:

"(2) EXTENSION OF REPLACEMENT PERIOD.—

"(A) IN GENERAL.—In the case of drought, flood, or other weather-related conditions described in paragraph (1) which result in the area being designated as eligible for assistance by the Federal Government, subsection (a)(2)(B) shall be applied with respect to any converted property by substituting '4 years' for '2 years'.

"(B) FURTHER EXTENSION BY SECRETARY.—The Secretary may extend on a regional basis the period for replacement under this section (after the application of subparagraph (A)) for such additional time as the Secretary determines appropriate if the weather-related conditions which resulted in such application continue for more than 3 years.".

(c) INCOME INCLUSION RULES.—Section 451(e) (relating to special rule for proceeds from livestock sold on account of drought, flood, or other weather-related conditions) is amended by adding at the end the following new paragraph:

"(3) SPECIAL ELECTION RULES.—If section 1033(e)(2) applies to a sale or exchange of livestock described in paragraph (1), the election under paragraph (1) shall be deemed valid if made during the replacement period described in such section.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any taxable year with respect to which the due date (without regard to extensions) for the return is after December 31, 2002.

SEC. 312. PAYMENT OF DIVIDENDS ON STOCK OF COOPERATIVES WITHOUT REDUCING PATRONAGE DIVIDENDS.

(a) IN GENERAL.—Subsection (a) of section 1388 (relating to patronage dividend defined) is amended by adding at the end the following: "For purposes of paragraph (3), net earnings shall not be reduced by amounts paid during the year as dividends on capital stock or other proprietary capital interests of the organization to the extent that the articles of incorporation or bylaws of such organization or other contract with patrons provide that such dividends are in addition to amounts otherwise payable to patrons which are derived from business done with or for patrons during the taxable year.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions in taxable years beginning after the date of the enactment of this Act.

SEC. 313. APPORTIONMENT OF SMALL ETHANOL PRODUCER CREDIT.

(a) ALLOCATION OF ALCOHOL FUELS CREDIT TO PATRONS OF A COOPERATIVE.—Section 40(g) (relating to definitions and special rules for eligible small ethanol producer credit) is amended by adding at the end the following new paragraph:

"(6) ALLOCATION OF SMALL ETHANOL PRODUCER CREDIT TO PATRONS OF COOPERATIVE.—

"(A) ELECTION TO ALLOCATE.—

"(i) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a)(3) for the taxable year may, at the election of the organization, be apportioned pro rata among patrons of the organization on the basis of the quantity or value of business done with or for such patrons for the taxable year.

"(ii) FORM AND EFFECT OF ELECTION.—An election under clause (i) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

"(B) TREATMENT OF ORGANIZATIONS AND PATRONS.—

"(i) ORGANIZATIONS.—The amount of the credit not apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under subsection (a)(3) for the taxable year of the organization.

"(ii) PATRONS.—The amount of the credit apportioned to patrons pursuant to subparagraph (A) shall be included in the amount determined under such subsection for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

"(iii) SPECIAL RULES FOR DECREASE IN CREDITS FOR TAXABLE YEAR.—If the amount of the credit of the organization determined under such subsection for a taxable year is less than the amount of such credit shown on the return of the organization for such year, an amount equal to the excess of—

"(I) such reduction, over

"(ii) the amount not apportioned to such patrons under subparagraph (A) for the taxable year,

shall be treated as an increase in tax imposed by this chapter on the organization. Such increase shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 314. COORDINATE FARMERS AND FISHERMEN INCOME AVERAGING AND THE ALTERNATIVE MINIMUM TAX.

(a) IN GENERAL.—Section 55(c) (defining regular tax) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) COORDINATION WITH INCOME AVERAGING FOR FARMERS AND FISHERMEN.—Solely for purposes of this section, section 1301 (relating to averaging of farm and fishing income) shall not apply in computing the regular tax.".

(b) ALLOWING INCOME AVERAGING FOR FISHERMEN.—

(1) IN GENERAL.—Section 1301(a) is amended by striking "farming business" and inserting "farming business or fishing business".

(2) DEFINITION OF ELECTED FARM INCOME.—

(A) IN GENERAL.—Clause (i) of section 1301(b)(1)(A) is amended by inserting "or fishing business" before the semicolon.

(B) CONFORMING AMENDMENT.—Subparagraph (B) of section 1301(b)(1) is amended by inserting "or fishing business" after "farming business" both places it occurs.

(3) DEFINITION OF FISHING BUSINESS.—Section 1301(b) is amended by adding at the end the following new paragraph:

"(4) FISHING BUSINESS.—The term 'fishing business' means the conduct of commercial fishing as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 315. CAPITAL GAIN TREATMENT UNDER SECTION 631(b) TO APPLY TO OUTRIGHT SALES BY LANDOWNERS.

(a) IN GENERAL.—The first sentence of section 631(b) (relating to disposal of timber with a retained economic interest) is amended by striking "retains an economic interest in such timber" and inserting "either retains an economic interest in such timber or makes an outright sale of such timber".

(b) CONFORMING AMENDMENTS.—

(1) The third sentence of section 631(b) is amended by striking "The date of disposal" and inserting "In the case of disposal of timber with a retained economic interest, the date of disposal".

(2) The heading for section 631(b) is amended by striking "WITH A RETAINED ECONOMIC INTEREST".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after December 31, 2004.

SEC. 316. MODIFICATION TO COOPERATIVE MARKETING RULES TO INCLUDE VALUE ADDED PROCESSING INVOLVING ANIMALS.

(a) IN GENERAL.—Section 1388 (relating to definitions and special rules) is amended by adding at the end the following new subsection:

"(k) COOPERATIVE MARKETING INCLUDES VALUE-ADDED PROCESSING INVOLVING ANIMALS.—For purposes of section 521 and this subchapter, the marketing of the products of members or other producers shall include the feeding of such products to cattle, hogs, fish, chickens, or other animals and the sale of the resulting animals or animal products.".

(b) CONFORMING AMENDMENT.—Section 521(b) is amended by adding at the end the following new paragraph:

"(7) CROSS REFERENCE.—

"For treatment of value-added processing involving animals, see section 1388(k).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 317. EXTENSION OF DECLARATORY JUDGMENT PROCEDURES TO FARMERS' COOPERATIVE ORGANIZATIONS.

(a) IN GENERAL.—Section 7428(a)(1) (relating to declaratory judgments of tax exempt organizations) is amended by striking "or" at the end of subparagraph (B) and by adding at the end the following new subparagraph:

"(D) with respect to the initial classification or continuing classification of a cooperative as an organization described in section 521(b) which is exempt from tax under section 521(a), or".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to pleadings filed after the date of the enactment of this Act.

SEC. 318. CERTAIN EXPENSES OF RURAL LETTER CARRIERS.

(a) IN GENERAL.—Section 162(o) (relating to treatment of certain reimbursed expenses of rural mail carriers) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following:

"(2) SPECIAL RULE WHERE EXPENSES EXCEED REIMBURSEMENTS.—Notwithstanding paragraph (1)(A), if the expenses incurred by an employee for the use of a vehicle in performing services described in paragraph (1) exceed the qualified reimbursements for such expenses, such excess shall be taken into account in computing the miscellaneous itemized deductions of the employee under section 67.".

(b) CONFORMING AMENDMENT.—The heading for section 162(o) is amended by striking "REIMBURSED".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 319. TREATMENT OF CERTAIN INCOME OF COOPERATIVES.

(a) INCOME FROM OPEN ACCESS AND NUCLEAR DECOMMISSIONING TRANSACTIONS.—

(1) IN GENERAL.—Subparagraph (C) of section 501(c)(12) is amended by striking clause (ii) and adding at the end the following:

"(ii) from any provision or sale of electric energy transmission services or ancillary services if such services are provided on a nondiscriminatory open access basis under an open access transmission tariff approved or accepted by FERC or under an independent transmission provider agreement approved or accepted by FERC (other than income received or accrued directly or indirectly from a member),

"(iii) from the provision or sale of electric energy distribution services or ancillary services if such services are provided on a nondiscriminatory open access basis to distribute electric energy not owned by the mutual or electric cooperative company—

"(I) to end-users who are served by distribution facilities not owned by such company or any of its members (other than income received or accrued directly or indirectly from a member), or

"(II) generated by a generation facility not owned or leased by such company or any of its members and which is directly connected to distribution facilities owned by such company or any of its members (other than income received or accrued directly or indirectly from a member),

"(iv) from any nuclear decommissioning transaction, or

"(v) from any asset exchange or conversion transaction.

Clauses (ii) through (v) shall not apply to taxable years beginning after December 31, 2006.".

(2) DEFINITIONS AND SPECIAL RULES.—Paragraph (12) of section 501(c) is amended by adding at the end the following new subparagraphs:

"(E) For purposes of subparagraph (C)(ii), the term 'FERC' means the Federal Energy Regulatory Commission and references to such term shall be treated as including the Public Utility Commission of Texas with respect to any ERCOT utility (as defined in section 212(k)(2)(B) of the Federal Power Act (16 U.S.C. 824k(k)(2)(B))).

"(F) For purposes of subparagraph (C)(iii), the term 'nuclear decommissioning transaction' means—

"(i) any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the mutual or cooperative electric company's interest in a nuclear power plant or nuclear power plant unit,

"(ii) any distribution from any trust, fund, or instrument established to pay any nuclear decommissioning costs, or

"(iii) any earnings from any trust, fund, or instrument established to pay any nuclear decommissioning costs.

"(G) For purposes of subparagraph (C)(iv), the term 'asset exchange or conversion transaction' means any voluntary exchange or involuntary conversion of any property related to generating, transmitting, distributing, or selling electric energy by a mutual or cooperative electric company, the gain from which qualifies for deferred recognition under section 1031 or 1033, but only if the replacement property acquired by such company pursuant to such section constitutes property which is used, or to be used, for—

"(i) generating, transmitting, distributing, or selling electric energy, or

"(ii) producing, transmitting, distributing, or selling natural gas.".

(b) TREATMENT OF INCOME FROM LOAD LOSS TRANSACTIONS, ETC.—Paragraph (12) of section 501(c), as amended by subsection (a)(2), is amended by adding after subparagraph (G) the following new subparagraph:

"(H)(i) In the case of a mutual or cooperative electric company described in this paragraph or an organization described in section 1381(a)(2)(C), income received or accrued from a load loss transaction shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

"(ii) For purposes of clause (i), the term 'load loss transaction' means any wholesale or retail sale of electric energy (other than to members) to the extent that the aggregate sales during the recovery period do not exceed the load loss mitigation sales limit for such period.

"(iii) For purposes of clause (ii), the load loss mitigation sales limit for the recovery period is the sum of the annual load losses for each year of such period.

"(iv) For purposes of clause (iii), a mutual or cooperative electric company's annual load loss for each year of the recovery period is the amount (if any) by which—

"(I) the megawatt hours of electric energy sold during such year to members of such electric company are less than

"(II) the megawatt hours of electric energy sold during the base year to such members.

"(v) For purposes of clause (iv)(II), the term 'base year' means—

"(I) the calendar year preceding the start-up year, or

"(II) at the election of the mutual or cooperative electric company, the second or third calendar years preceding the start-up year.

"(vi) For purposes of this subparagraph, the recovery period is the 7-year period beginning with the start-up year.

"(vii) For purposes of this subparagraph, the start-up year is the first year that the mutual or cooperative electric company offers nondiscriminatory open access or the calendar year which includes the date of the enactment of this subparagraph, if later, at the election of such company.

"(viii) A company shall not fail to be treated as a mutual or cooperative electric company for purposes of this paragraph or as a corporation operating on a cooperative basis for purposes of section 1381(a)(2)(C) by reason of the treatment under clause (i).

"(ix) For purposes of subparagraph (A), in the case of a mutual or cooperative electric company, income received, or accrued, indirectly from a member shall be treated as an amount collected from members for the sole purpose of meeting losses and expenses.

"(x) This subparagraph shall not apply to taxable years beginning after December 31, 2006.".

(c) EXCEPTION FROM UNRELATED BUSINESS TAXABLE INCOME.—Subsection (b) of section 512 (relating to modifications) is amended by adding at the end the following new paragraph:

"(18) TREATMENT OF MUTUAL OR COOPERATIVE ELECTRIC COMPANIES.—In the case of a mutual or cooperative electric company described in section 501(c)(12), there shall be excluded income which is treated as member income under subparagraph (H) thereof.".

(d) CROSS REFERENCE.—Section 1381 is amended by adding at the end the following new subsection:

"(c) CROSS REFERENCE.—

"For treatment of income from load loss transactions of organizations described in subsection (a)(2)(C), see section 501(c)(12)(H).".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 320. EXCLUSION FOR PAYMENTS TO INDIVIDUALS UNDER NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM AND CERTAIN STATE LOAN REPAYMENT PROGRAMS.

(a) IN GENERAL.—Section 108(f) (relating to student loans) is amended by adding at the end the following new paragraph:

"(4) PAYMENTS UNDER NATIONAL HEALTH SERVICE CORPS LOAN REPAYMENT PROGRAM AND CERTAIN STATE LOAN REPAYMENT PROGRAMS.—In the case of an individual, gross income shall not include any amount received under section 338B(g) of the Public Health Service Act or under a State program described in section 338I of such Act.".

(b) TREATMENT FOR PURPOSES OF EMPLOYMENT TAXES.—Each of the following provisions is amended by inserting "108(f)(4)," after "74(c),":

(1) Section 3121(a)(20).

(2) Section 3231(e)(5).

(3) Section 3306(b)(16).

(4) Section 3401(a)(19).

(5) Section 209(a)(17) of the Social Security Act.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received by an individual in taxable years beginning after December 31, 2003.

SEC. 321. MODIFICATION OF SAFE HARBOR RULES FOR TIMBER REITS.

(a) EXPANSION OF PROHIBITED TRANSACTION SAFE HARBOR.—Section 857(b)(6) (relating to income from prohibited transactions) is amended by redesignating subparagraphs (D) and (E) as subparagraphs (E) and (F), respectively, and by inserting after subparagraph (C) the following new subparagraph:

"(D) CERTAIN SALES NOT TO CONSTITUTE PROHIBITED TRANSACTIONS.—For purposes of this part, the term 'prohibited transaction' does not include a sale of property which is a real estate asset (as defined in section 856(c)(5)(B)) if—

"(i) the trust held the property for not less than 4 years in connection with the trade or business of producing timber,

"(ii) the aggregate expenditures made by the trust, or a partner of the trust, during the 4-year period preceding the date of sale which—

"(I) are includible in the basis of the property (other than timberland acquisition expenditures), and

"(II) are directly related to operation of the property for the production of timber or for the preservation of the property for use as timberland,

do not exceed 30 percent of the net selling price of the property,

"(iii) the aggregate expenditures made by the trust, or a partner of the trust, during the 4-year period preceding the date of sale which—

"(I) are includible in the basis of the property (other than timberland acquisition expenditures), and

"(II) are not directly related to operation of the property for the production of timber, or for the preservation of the property for use as timberland,

do not exceed 5 percent of the net selling price of the property,

"(iv)(I) during the taxable year the trust does not make more than 7 sales of property (other than sales of foreclosure property or sales to which section 1033 applies), or

"(II) the aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property (other than sales of foreclosure property or sales to which section 1033 applies) sold during the taxable year does not exceed 10 percent of the aggregate bases (as so determined) of all of the assets of the trust as of the beginning of the taxable year,

"(v) in the case that the requirement of clause (iv)(I) is not satisfied, substantially all of the marketing expenditures with respect to the property were made through an independent contractor (as defined in section 856(d)(3)) from whom the trust itself does not derive or receive any income, and

"(vi) the sales price of the property sold by the trust is not based in whole or in part on income or profits, including income or profits derived from the sale or operation of such property.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 322. EXPENSING OF CERTAIN REFORESTATION EXPENDITURES.

(a) IN GENERAL.—So much of subsection (b) of section 194 (relating to amortization of reforestation expenditures) as precedes paragraph (2) is amended to read as follows:

"(b) TREATMENT AS EXPENSES.—

"(1) ELECTION TO TREAT CERTAIN REFORESTATION EXPENDITURES AS EXPENSES.—

"(A) IN GENERAL.—In the case of any qualified timber property with respect to which the taxpayer has made (in accordance with regulations prescribed by the Secretary) an election under this subsection, the taxpayer shall treat reforestation expenditures which are paid or incurred during the taxable year with respect to such property as an expense which is not chargeable to capital account. The reforestation expenditures so treated shall be allowed as a deduction.

"(B) DOLLAR LIMITATION.—The aggregate amount of reforestation expenditures which may be taken into account under subparagraph (A) with respect to each qualified timber property for any taxable year shall not exceed $10,000 ($5,000 in the case of a separate return by a married individual (as defined in section 7703)).".

(b) NET AMORTIZABLE BASIS.—Section 194(c)(2) (defining amortizable basis) is amended by inserting "which have not been taken into account under subsection (b)" after "expenditures".

(c) CONFORMING AMENDMENTS.—

(1) Section 194(b) is amended by striking paragraphs (3) and (4).

(2) Section 194(b)(2) is amended by striking "paragraph (1)" both places it appears and inserting "paragraph (1)(B)".

(3) Section 194(c) is amended by striking paragraph (4) and inserting the following new paragraphs:

"(4) TREATMENT OF TRUSTS AND ESTATES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), this section shall not apply to trusts and estates.

"(B) AMORTIZATION DEDUCTION ALLOWED TO ESTATES.—The benefit of the deduction for amortization provided by subsection (a) shall be allowed to estates in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiary and the fiduciary under regulations prescribed by the Secretary. Any amount so apportioned to a beneficiary shall be taken into account for purposes of determining the amount allowable as a deduction under subsection (a) to such beneficiary.

"(5) APPLICATION WITH OTHER DEDUCTIONS.—No deduction shall be allowed under any other provision of this chapter with respect to any expenditure with respect to which a deduction is allowed or allowable under this section to the taxpayer.".

*(4) The heading for section 194 is amended by striking "**AMORTIZATION**" and inserting "**TREATMENT**".*

(5) The item relating to section 194 in the table of sections for part VI of subchapter B of chapter 1 is amended by striking "Amortization" and inserting "Treatment".

(d) REPEAL OF REFORESTATION CREDIT.—

(1) IN GENERAL.—Section 46 (relating to amount of credit) is amended—

(A) by adding "and" at the end of paragraph (1),

(B) by striking ", and" at the end of paragraph (2) and inserting a period, and

(C) by striking paragraph (3).

(2) CONFORMING AMENDMENTS.—

(A) Section 48 is amended—

(i) by striking subsection (b),

(ii) by striking "this subsection" in paragraph (5) of subsection (a) and inserting "subsection (a)", and

(iii) by redesignating such paragraph (5) as subsection (b).

*(B) The heading for section 48 is amended by striking "; **REFORESTATION CREDIT**".*

(C) The item relating to section 48 in the table of sections for subpart E of part IV of subchapter A of chapter 1 is amended by striking ", reforestation credit".

(D) Section 50(c)(3) is amended by striking "or reforestation credit".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to expenditures paid or incurred after the date of the enactment of this Act.

Subtitle C—Incentives for Small Manufacturers

SEC. 331. NET INCOME FROM PUBLICLY TRADED PARTNERSHIPS TREATED AS QUALIFYING INCOME OF REGULATED INVESTMENT COMPANIES.

(a) IN GENERAL.—Paragraph (2) of section 851(b) (defining regulated investment company) is amended to read as follows:

"(2) at least 90 percent of its gross income is derived from—

"(A) dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended) or foreign currencies, or other income (including but not limited to gains from options, futures or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies, and

"(B) net income derived from an interest in a qualified publicly traded partnership (as defined in subsection (h)); and".

(b) SOURCE FLOW-THROUGH RULE NOT TO APPLY.—The last sentence of section 851(b) is amended by inserting "(other than a qualified publicly traded partnership as defined in subsection (h))" after "derived from a partnership".

(c) LIMITATION ON OWNERSHIP.—Subsection (c) of section 851 is amended by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following new paragraph:

"(5) The term 'outstanding voting securities of such issuer' shall include the equity securities of a qualified publicly traded partnership (as defined in subsection (h)).".

(d) DEFINITION OF QUALIFIED PUBLICLY TRADED PARTNERSHIP.—Section 851 is amended by adding at the end the following new subsection:

"(h) QUALIFIED PUBLICLY TRADED PARTNERSHIP.—For purposes of this section, the term 'qualified publicly traded partnership' means a publicly traded partnership described in section 7704(b) other than a partnership which would satisfy the gross income requirements of section 7704(c)(2) if qualifying income included only income described in subsection (b)(2)(A).".

(e) DEFINITION OF QUALIFYING INCOME.—Section 7704(d)(4) is amended by striking "section 851(b)(2)" and inserting "section 851(b)(2)(A)".

(f) LIMITATION ON COMPOSITION OF ASSETS.—Subparagraph (B) of section 851(b)(3) is amended to read as follows:

"(B) not more than 25 percent of the value of its total assets is invested in—

"(i) the securities (other than Government securities or the securities of other regulated investment companies) of any one issuer,

"(ii) the securities (other than the securities of other regulated investment companies) of two or more issuers which the taxpayer controls and which are determined, under regulations prescribed by the Secretary, to be engaged in the same or similar trades or businesses or related trades or businesses, or

"(iii) the securities of one or more qualified publicly traded partnerships (as defined in subsection (h)).".

(g) APPLICATION OF SPECIAL PASSIVE ACTIVITY RULE TO REGULATED INVESTMENT COMPANIES.—Subsection (k) of section 469 (relating to separate application of section in case of publicly traded partnerships) is amended by adding at the end the following new paragraph:

"(4) APPLICATION TO REGULATED INVESTMENT COMPANIES.—For purposes of this section, a regulated investment company (as defined in section 851) holding an interest in a qualified publicly traded partnership (as defined in section 851(h)) shall be treated as a taxpayer described in subsection (a)(2) with respect to items attributable to such interest.".

(h) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 332. SIMPLIFICATION OF EXCISE TAX IMPOSED ON BOWS AND ARROWS.

(a) BOWS.—Paragraph (1) of section 4161(b) (relating to bows) is amended to read as follows:

"(1) BOWS.—

"(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any bow which has a peak draw weight of 30 pounds or more, a tax equal to 11 percent of the price for which so sold.

"(B) ARCHERY EQUIPMENT.—There is hereby imposed on the sale by the manufacturer, producer, or importer—

"(i) of any part or accessory suitable for inclusion in or attachment to a bow described in subparagraph (A), and

"(ii) of any quiver or broadhead suitable for use with an arrow described in paragraph (2),

a tax equal to 11 percent of the price for which so sold.".

(b) ARROWS.—Subsection (b) of section 4161 (relating to bows and arrows, etc.) is amended by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following:

"(3) ARROWS.—

"(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any arrow, a tax equal to 12 percent of the price for which so sold.

"(B) EXCEPTION.—In the case of any arrow of which the shaft or any other component has been previously taxed under paragraph (1) or (2)—

"(i) section 6416(b)(3) shall not apply, and

"(ii) the tax imposed by subparagraph (A) shall be an amount equal to the excess (if any) of—

"(I) the amount of tax imposed by this paragraph (determined without regard to this subparagraph), over

"(II) the amount of tax paid with respect to the tax imposed under paragraph (1) or (2) on such shaft or component.

"(C) ARROW.—For purposes of this paragraph, the term 'arrow' means any shaft described in paragraph (2) to which additional components are attached.".

(c) CONFORMING AMENDMENTS.—Section 4161(b)(2) is amended—

(1) by inserting "(other than broadheads)" after "point", and

(2) by striking "ARROWS.—" in the heading and inserting "ARROW COMPONENTS.—".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after the date which is 30 days after the date of the enactment of this Act.

SEC. 333. REDUCTION OF EXCISE TAX ON FISHING TACKLE BOXES.

(a) IN GENERAL.—Subsection (a) of section 4161 (relating to sport fishing equipment) is amended by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) 3 PERCENT RATE OF TAX FOR TACKLE BOXES.—In the case of fishing tackle boxes, paragraph (1) shall be applied by substituting '3 percent' for '10 percent'.".

(b) EFFECTIVE DATE.—The amendments made this section shall apply to articles sold by the manufacturer, producer, or importer after December 31, 2004.

SEC. 334. SONAR DEVICES SUITABLE FOR FINDING FISH.

(a) NOT TREATED AS SPORT FISHING EQUIPMENT.—Subsection (a) of section 4162 (relating to sport fishing equipment defined) is amended by inserting "and" at the end of paragraph (8), by striking ", and" at the end of paragraph (9) and inserting a period, and by striking paragraph (10).

(b) CONFORMING AMENDMENT.—Section 4162 is amended by striking subsection (b) and by redesignating subsection (c) as subsection (b).

(c) EFFECTIVE DATE.—The amendments made this section shall apply to articles sold by the manufacturer, producer, or importer after December 31, 2004.

SEC. 335. CHARITABLE CONTRIBUTION DEDUCTION FOR CERTAIN EXPENSES INCURRED IN SUPPORT OF NATIVE ALASKAN SUBSISTENCE WHALING.

(a) IN GENERAL.—Section 170 (relating to charitable, etc., contributions and gifts), as amended by this Act, is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) EXPENSES PAID BY CERTAIN WHALING CAPTAINS IN SUPPORT OF NATIVE ALASKAN SUBSISTENCE WHALING.—

"(1) IN GENERAL.—In the case of an individual who is recognized by the Alaska Eskimo Whaling Commission as a whaling captain charged with the responsibility of maintaining and carrying out sanctioned whaling activities and who engages in such activities during the taxable year, the amount described in paragraph (2) (to the extent such amount does not exceed $10,000 for the taxable year) shall be treated for purposes of this section as a charitable contribution.

"(2) AMOUNT DESCRIBED.—

"(A) IN GENERAL.—The amount described in this paragraph is the aggregate of the reasonable and necessary whaling expenses paid by the taxpayer during the taxable year in carrying out sanctioned whaling activities.

"(B) WHALING EXPENSES.—For purposes of subparagraph (A), the term 'whaling expenses' includes expenses for—

"(i) the acquisition and maintenance of whaling boats, weapons, and gear used in sanctioned whaling activities,

"(ii) the supplying of food for the crew and other provisions for carrying out such activities, and

"(iii) storage and distribution of the catch from such activities.

"(3) SANCTIONED WHALING ACTIVITIES.—For purposes of this subsection, the term 'sanctioned whaling activities' means subsistence bowhead whale hunting activities conducted pursuant to the management plan of the Alaska Eskimo Whaling Commission.

"(4) SUBSTANTIATION OF EXPENSES.—The Secretary shall issue guidance requiring that the taxpayer substantiate the whaling expenses for which a deduction is claimed under this subsection, including by maintaining appropriate written records with respect to the time, place, date, amount, and nature of the expense, as well as the taxpayer's eligibility for such deduction, and that (to the extent provided by the Secretary) such substantiation be provided as part of the taxpayer's return of tax.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to contributions made after December 31, 2004.

SEC. 336. MODIFICATION OF DEPRECIATION ALLOWANCE FOR AIRCRAFT.

(a) AIRCRAFT TREATED AS QUALIFIED PROPERTY.—

(1) IN GENERAL.—Paragraph (2) of section 168(k) is amended by redesignating subparagraphs (C) through (F) as subparagraphs (D) through (G), respectively, and by inserting after subparagraph (B) the following new subparagraph:

"(C) CERTAIN AIRCRAFT.—The term 'qualified property' includes property—

"(i) which meets the requirements of clauses (ii) and (iii) of subparagraph (A),

"(ii) which is an aircraft which is not a transportation property (as defined in subparagraph (B)(iii)) other than for agricultural or firefighting purposes,

"(iii) which is purchased and on which such purchaser, at the time of the contract for purchase, has made a nonrefundable deposit of the lesser of—

"(I) 10 percent of the cost, or

"(II) $100,000, and

"(iv) which has—

"(I) an estimated production period exceeding 4 months, and

"(II) a cost exceeding $200,000.".

(2) PLACED IN SERVICE DATE.—Clause (iv) of section 168(k)(2)(A) is amended by striking "subparagraph (B)" and inserting "subparagraphs (B) and (C)".

(b) CONFORMING AMENDMENTS.—

(1) Section 168(k)(2)(B) is amended by adding at the end the following new clause:

"(iv) APPLICATION OF SUBPARAGRAPH.—This subparagraph shall not apply to any property which is described in subparagraph (C).".

(2) Section 168(k)(4)(A)(ii) is amended by striking "paragraph (2)(C)" and inserting "paragraph (2)(D)".

(3) Section 168(k)(4)(B)(iii) is amended by inserting "and paragraph (2)(C)" after "of this paragraph)".

(4) Section 168(k)(4)(C) is amended by striking "subparagraphs (B) and (D)" and inserting "subparagraphs (B), (C), and (E)".

(5) Section 168(k)(4)(D) is amended by striking "Paragraph (2)(E)" and inserting "Paragraph (2)(F)".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 101 of the Job Creation and Worker Assistance Act of 2002.

SEC. 337. MODIFICATION OF PLACED IN SERVICE RULE FOR BONUS DEPRECIATION PROPERTY.

(a) IN GENERAL.—Subclause (II) of section 168(k)(2)(E)(iii) (relating to syndication), as amended by the Working Families Tax Relief Act of 2004 and as redesignated by this Act, is amended by inserting before the comma at the end the following: "(or, in the case of multiple units of property subject to the same lease, within 3 months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months)".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property sold after June 4, 2004.

SEC. 338. EXPENSING OF CAPITAL COSTS INCURRED IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS.

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by inserting after section 179A the following new section:

"SEC. 179B. DEDUCTION FOR CAPITAL COSTS INCURRED IN COMPLYING WITH ENVIRONMENTAL PROTECTION AGENCY SULFUR REGULATIONS.

"(a) ALLOWANCE OF DEDUCTION.—In the case of a small business refiner (as defined in section 45H(c)(1)) which elects the application of this section, there shall be allowed as a deduction an amount equal to 75 percent of qualified capital costs (as defined in section 45H(c)(2)) which are paid or incurred by the taxpayer during the taxable year.

"(b) REDUCED PERCENTAGE.—In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on December 31, 2002, in excess of 155,000 barrels, the number of percentage points described in subsection (a) shall be reduced (not below zero) by the product of such number (before the application of this subsection) and the ratio of such excess to 50,000 barrels.

"(c) BASIS REDUCTION.—

"(1) IN GENERAL.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

"(2) ORDINARY INCOME RECAPTURE.—For purposes of section 1245, the amount of the deduction allowable under subsection (a) with respect to any property which is of a character subject to the allowance for depreciation shall be treated as a deduction allowed for depreciation under section 167.".

"(d) COORDINATION WITH OTHER PROVISIONS.—Section 280B shall not apply to amounts which are treated as expenses under this section.".

(b) CONFORMING AMENDMENTS.—

(1) Section 263(a)(1), as amended by this Act, is amended by striking "or" at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting ", or", and by adding at the end the following new subparagraph:

"(I) expenditures for which a deduction is allowed under section 179B.".

(2) Section 263A(c)(3) is amended by inserting "179B," after "section".

(3) Section 312(k)(3)(B) is amended by striking "or 179A" each place it appears in the heading and text and inserting "179A, or 179B".

(4) Section 1016(a) is amended by striking "and" at the end of paragraph (28), by striking the period at the end of paragraph (29) and inserting ", and", and by inserting after paragraph (29) the following new paragraph:

"(30) to the extent provided in section 179B(c)."

(5) Paragraphs (2)(C) and (3)(C) of section 1245(a) are each amended by inserting "179B," after "179A,".

(6) The table of sections for part VI of subchapter B of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 179A the following new item:

"Sec. 179B. Deduction for capital costs incurred in complying with Environmental Protection Agency sulfur regulations.".

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to expenses paid or incurred after December 31, 2002, in taxable years ending after such date.

SEC. 339. CREDIT FOR PRODUCTION OF LOW SULFUR DIESEL FUEL.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business-related credits), as amended by this Act, is amended by inserting after section 45G the following new section:

"SEC. 45H. CREDIT FOR PRODUCTION OF LOW SULFUR DIESEL FUEL.

"(a) IN GENERAL.—For purposes of section 38, the amount of the low sulfur diesel fuel production credit determined under this section with respect to any facility of a small business refiner is an amount equal to 5 cents for each gallon of low sulfur diesel fuel produced during the taxable year by such small business refiner at such facility.

"(b) MAXIMUM CREDIT.—

"(1) IN GENERAL.—The aggregate credit determined under subsection (a) for any taxable year with respect to any facility shall not exceed—

"(A) 25 percent of the qualified capital costs incurred by the small business refiner with respect to such facility, reduced by

"(B) the aggregate credits determined under this section for all prior taxable years with respect to such facility.

"(2) REDUCED PERCENTAGE.—In the case of a small business refiner with average daily domestic refinery runs for the 1-year period ending on December 31, 2002, in excess of 155,000 barrels, the number of percentage points described in paragraph (1) shall be reduced (not below zero) by the product of such number (before the application of this paragraph) and the ratio of such excess to 50,000 barrels.

"(c) DEFINITIONS AND SPECIAL RULE.—For purposes of this section—

"(1) SMALL BUSINESS REFINER.—The term 'small business refiner' means, with respect to any taxable year, a refiner of crude oil—

"(A) with respect to which not more than 1,500 individuals are engaged in the refinery operations of the business on any day during such taxable year, and

"(B) the average daily domestic refinery run or average retained production of which for all facilities of the taxpayer for the 1-year period ending on December 31, 2002, did not exceed 205,000 barrels.

"(2) QUALIFIED CAPITAL COSTS.—The term 'qualified capital costs' means, with respect to any facility, those costs paid or incurred during the applicable period for compliance with the applicable EPA regulations with respect to such facility, including expenditures for the construction of new process operation units or the dismantling and reconstruction of existing process units to be used in the production of low sulfur diesel fuel, associated adjacent or offsite equipment (including tankage, catalyst, and power supply), engineering, construction period interest, and sitework.

"(3) APPLICABLE EPA REGULATIONS.—The term 'applicable EPA regulations' means the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency.

"(4) APPLICABLE PERIOD.—The term 'applicable period' means, with respect to any facility, the period beginning on January 1, 2003, and ending on the earlier of the date which is 1 year after the date on which the taxpayer must comply with the applicable EPA regulations with respect to such facility or December 31, 2009.

"(5) LOW SULFUR DIESEL FUEL.—The term 'low sulfur diesel fuel' means diesel fuel with a sulfur content of 15 parts per million or less.

"(d) REDUCTION IN BASIS.—For purposes of this subtitle, if a credit is determined under this section for any expenditure with respect to any property, the increase in basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so determined.

"(e) SPECIAL RULE FOR DETERMINATION OF REFINERY RUNS.—For purposes this section and section 179B(b), in the calculation of average daily domestic refinery run or retained production, only refineries which on April 1, 2003, were refineries of the refiner or a related person (within the meaning of section 613A(d)(3)), shall be taken into account.

"(f) CERTIFICATION.—

"(1) REQUIRED.—No credit shall be allowed unless, not later than the date which is 30 *months after the first day of the first taxable year in which the low sulfur diesel fuel production credit is determined with respect to a facility, the small business refiner obtains certification from the Secretary, after consultation with the Administrator of the Environmental Protection Agency, that the taxpayer's qualified capital costs with respect to such facility will result in compliance with the applicable EPA regulations.*

"(2) CONTENTS OF APPLICATION.—An application for certification shall include relevant information regarding unit capacities and operating characteristics sufficient for the Secretary, after consultation with the Administrator of the Environmental Protection Agency, to determine that such qualified capital costs are necessary for compliance with the applicable EPA regulations.

"(3) REVIEW PERIOD.—Any application shall be reviewed and notice of certification, if applicable, shall be made within 60 days of receipt of such application. In the event the Secretary does not notify the taxpayer of the results of such certification within such period, the taxpayer may presume the certification to be issued until so notified.

"(4) STATUTE OF LIMITATIONS.—With respect to the credit allowed under this section—

"(A) the statutory period for the assessment of any deficiency attributable to such credit shall not expire before the end of the 3-year period ending on the date that the review period described in paragraph (3) ends with respect to the taxpayer, and

"(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

"(g) COOPERATIVE ORGANIZATIONS.—

"(1) APPORTIONMENT OF CREDIT.—

"(A) IN GENERAL.—In the case of a cooperative organization described in section 1381(a), any portion of the credit determined under subsection (a) for the taxable year may, at the election of the organization, be apportioned among patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for such patrons for the taxable year.

"(B) FORM AND EFFECT OF ELECTION.—An election under subparagraph (A) for any taxable year shall be made on a timely filed return for such year. Such election, once made, shall be irrevocable for such taxable year.

"(2) TREATMENT OF ORGANIZATIONS AND PATRONS.—

"(A) ORGANIZATIONS.—The amount of the credit not apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the taxable year of the organization.

"(B) PATRONS.—The amount of the credit apportioned to patrons pursuant to paragraph (1) shall be included in the amount determined under subsection (a) for the first taxable year of each patron ending on or after the last day of the payment period (as defined in section 1382(d)) for the taxable year of the organization or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

"(3) SPECIAL RULE.—If the amount of a credit which has been apportioned to any patron under this subsection is decreased for any reason—

"(A) such amount shall not increase the tax imposed on such patron, and

"(B) the tax imposed by this chapter on such organization shall be increased by such amount. The increase under subparagraph (B) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.".

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 (relating to general business credit), as amended by this Act, is amended by striking "plus" at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting ", plus", and by inserting after paragraph (17) the following new paragraph:

"(18) the low sulfur diesel fuel production credit determined under section 45H(a).".

(c) DENIAL OF DOUBLE BENEFIT.—Section 280C (relating to certain expenses for which credits are allowable) is amended by adding at the end the following new subsection:

"(d) LOW SULFUR DIESEL FUEL PRODUCTION CREDIT.—No deduction shall be allowed for that portion of the expenses otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for the taxable year under section 45H(a).".

(d) BASIS ADJUSTMENT.—Section 1016(a) (relating to adjustments to basis), as amended by this Act, is amended by striking "and" at the end of paragraph (29), by striking the period at the end of paragraph (30) and inserting ", and", and by inserting after paragraph (30) the following new paragraph:

"(31) in the case of a facility with respect to which a credit was allowed under section 45H, to the extent provided in section 45H(d).".

(e) DEDUCTION FOR CERTAIN UNUSED BUSINESS CREDITS.—Section 196(c) (defining qualified business credits), as amended by this Act, is amended by striking "and" at the end of paragraph (10), by striking the period at the end of paragraph (11) and inserting ", and", and by adding after paragraph (11) the following new paragraph:

"(12) the low sulfur diesel fuel production credit determined under section 45H(a).".

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after the item relating to section 45G the following new item:

"Sec. 45H. Credit for production of low sulfur diesel fuel.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid or incurred after December 31, 2002, in taxable years ending after such date.

SEC. 340. EXPANSION OF QUALIFIED SMALL-ISSUE BOND PROGRAM.

(a) IN GENERAL.—Section 144(a)(4) (relating to $10,000,000 limit in certain cases) is amended by adding at the end the following new subparagraph:

"(G) ADDITIONAL CAPITAL EXPENDITURES NOT TAKEN INTO ACCOUNT.—With respect to bonds issued after September 30, 2009, in addition to any capital expenditure described in subparagraph (C), capital expenditures of not to exceed $10,000,000 shall not be taken into account for purposes of applying subparagraph (A)(ii).".

(b) CONFORMING AMENDMENT.—Subparagraph (F) of section 144(a)(4) is amended by adding at the end the following new sentence: "This subparagraph shall not apply to bonds issued after September 30, 2009.".

SEC. 341. OIL AND GAS FROM MARGINAL WELLS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business credits), as amended by this Act, is amended by inserting after section 45H the following:

"SEC. 45I. CREDIT FOR PRODUCING OIL AND GAS FROM MARGINAL WELLS.

"(a) GENERAL RULE.—For purposes of section 38, the marginal well production credit for any taxable year is an amount equal to the product of—

"(1) the credit amount, and

"(2) the qualified credit oil production and the qualified natural gas production which is attributable to the taxpayer.

"(b) CREDIT AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—The credit amount is—

"(A) $3 per barrel of qualified crude oil production, and

"(B) 50 cents per 1,000 cubic feet of qualified natural gas production.

"(2) REDUCTION AS OIL AND GAS PRICES INCREASE.—

"(A) IN GENERAL.—The $3 and 50 cents amounts under paragraph (1) shall each be reduced (but not below zero) by an amount which bears the same ratio to such amount (determined without regard to this paragraph) as—

"(i) the excess (if any) of the applicable reference price over $15 ($1.67 for qualified natural gas production), bears to

"(ii) $3 ($0.33 for qualified natural gas production).

The applicable reference price for a taxable year is the reference price of the calendar year preceding the calendar year in which the taxable year begins.

"(B) INFLATION ADJUSTMENT.—In the case of any taxable year beginning in a calendar year after 2005, each of the dollar amounts contained in subparagraph (A) shall be increased to an amount equal to such dollar amount multiplied by the inflation adjustment factor for such calendar year (determined under section 43(b)(3)(B) by substituting '2004' for '1990').

"(C) REFERENCE PRICE.—For purposes of this paragraph, the term 'reference price' means, with respect to any calendar year—

"(i) in the case of qualified crude oil production, the reference price determined under section 29(d)(2)(C), and

"(ii) in the case of qualified natural gas production, the Secretary's estimate of the annual average wellhead price per 1,000 cubic feet for all domestic natural gas.

"(c) QUALIFIED CRUDE OIL AND NATURAL GAS PRODUCTION.—For purposes of this section—

"(1) IN GENERAL.—The terms 'qualified crude oil production' and 'qualified natural gas production' mean domestic crude oil or natural gas which is produced from a qualified marginal well.

"(2) LIMITATION ON AMOUNT OF PRODUCTION WHICH MAY QUALIFY.—

"(A) IN GENERAL.—Crude oil or natural gas produced during any taxable year from any well shall not be treated as qualified crude oil production or qualified natural gas production to the extent production from the well during the taxable year exceeds 1,095 barrels or barrel-of-oil equivalents (as defined in section 29(d)(5)).

"(B) PROPORTIONATE REDUCTIONS.—

"(i) SHORT TAXABLE YEARS.—In the case of a short taxable year, the limitations under this paragraph shall be proportionately reduced to reflect the ratio which the number of days in such taxable year bears to 365.

"(ii) WELLS NOT IN PRODUCTION ENTIRE YEAR.—In the case of a well which is not capable of production during each day of a taxable year, the limitations under this paragraph applicable to the well shall be proportionately reduced to reflect the ratio which the number of days of production bears to the total number of days in the taxable year.

"(3) DEFINITIONS.—

"(A) QUALIFIED MARGINAL WELL.—The term 'qualified marginal well' means a domestic well—

"(i) the production from which during the taxable year is treated as marginal production under section 613A(c)(6), or

"(ii) which, during the taxable year—

"(I) has average daily production of not more than 25 barrel-of-oil equivalents (as so defined), and

"(II) produces water at a rate not less than 95 percent of total well effluent.

"(B) CRUDE OIL, ETC.—The terms 'crude oil', 'natural gas', 'domestic', and 'barrel' have the meanings given such terms by section 613A(e).

"(d) OTHER RULES.—

"(1) PRODUCTION ATTRIBUTABLE TO THE TAXPAYER.—In the case of a qualified marginal well in which there is more than one owner of operating interests in the well and the crude oil or natural gas production exceeds the limitation under subsection (c)(2), qualifying crude oil production or qualifying natural gas production attributable to the taxpayer shall be determined on the basis of the ratio which taxpayer's revenue interest in the production bears to the aggregate of the revenue interests of all operating interest owners in the production.

"(2) OPERATING INTEREST REQUIRED.—Any credit under this section may be claimed only on production which is attributable to the holder of an operating interest.

"(3) PRODUCTION FROM NONCONVENTIONAL SOURCES EXCLUDED.—In the case of production from a qualified marginal well which is eligible for the credit allowed under section 29 for the taxable year, no credit shall be allowable under this section unless the taxpayer elects not to claim the credit under section 29 with respect to the well.".

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b), as amended by this Act, is amended by striking "plus" at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting ", plus", and by inserting after paragraph (18) the following:

"(19) the marginal oil and gas well production credit determined under section 45I(a).".

(c) CARRYBACK.—Subsection (a) of section 39 (relating to carryback and carryforward of unused credits generally) is amended by adding at the end the following:

"(3) 5-YEAR CARRYBACK FOR MARGINAL OIL AND GAS WELL PRODUCTION CREDIT.—Notwithstanding subsection (d), in the case of the marginal oil and gas well production credit—

"(A) this section shall be applied separately from the business credit (other than the marginal oil and gas well production credit),

"(B) paragraph (1) shall be applied by substituting '5 taxable years' for '1 taxable years' in subparagraph (A) thereof, and

"(C) paragraph (2) shall be applied—

"(i) by substituting '25 taxable years' for '21 taxable years' in subparagraph (A) thereof, and

"(ii) by substituting '24 taxable years' for '20 taxable years' in subparagraph (B) thereof.".

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by this Act, is amended by inserting after section 45H the following:

"Sec. 45I. Credit for producing oil and gas from marginal wells.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to production in taxable years beginning after December 31, 2004.

TITLE IV—TAX REFORM AND SIMPLIFICATION FOR UNITED STATES BUSINESSES

SEC. 401. INTEREST EXPENSE ALLOCATION RULES.

(a) ELECTION TO ALLOCATE ON WORLDWIDE BASIS.—Section 864 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) ELECTION TO ALLOCATE INTEREST, ETC. ON WORLDWIDE BASIS.—For purposes of this subchapter, at the election of the worldwide affiliated group—

"(1) ALLOCATION AND APPORTIONMENT OF INTEREST EXPENSE.—

"(A) IN GENERAL.—The taxable income of each domestic corporation which is a member of a worldwide affiliated group shall be determined by allocating and apportioning interest expense of each member as if all members of such group were a single corporation.

"(B) TREATMENT OF WORLDWIDE AFFILIATED GROUP.—The taxable income of the domestic members of a worldwide affiliated group from sources outside the United States shall be determined by allocating and apportioning the interest expense of such domestic members to such income in an amount equal to the excess (if any) of—

"(i) the total interest expense of the worldwide affiliated group multiplied by the ratio which the foreign assets of the worldwide affiliated group bears to all the assets of the worldwide affiliated group, over

"(ii) the interest expense of all foreign corporations which are members of the worldwide affiliated group to the extent such interest expense of such foreign corporations would have been allocated and apportioned to foreign source income if this subsection were applied to a group consisting of all the foreign corporations in such worldwide affiliated group.

"(C) WORLDWIDE AFFILIATED GROUP.—For purposes of this paragraph, the term 'worldwide affiliated group' means a group consisting of—

"(i) the includible members of an affiliated group (as defined in section 1504(a), determined without regard to paragraphs (2) and (4) of section 1504(b)), and

"(ii) all controlled foreign corporations in which such members in the aggregate meet the ownership requirements of section 1504(a)(2) either directly or indirectly through applying paragraph (2) of section 958(a) or through applying rules similar to the rules of such paragraph to stock owned directly or indirectly by domestic partnerships, trusts, or estates.

"(2) ALLOCATION AND APPORTIONMENT OF OTHER EXPENSES.—Expenses other than interest which are not directly allocable or apportioned to any specific income producing activity shall be allocated and apportioned as if all members of the affiliated group were a single corporation. For purposes of the preceding sentence, the term 'affiliated group' has the meaning given such term by section 1504 (determined without regard to paragraph (4) of section 1504(b)).

"(3) TREATMENT OF TAX-EXEMPT ASSETS; BASIS OF STOCK IN NONAFFILIATED 10-PERCENT OWNED CORPORATIONS.—The rules of paragraphs (3) and (4) of subsection (e) shall apply for purposes of this subsection, except that paragraph (4) shall be applied on a worldwide affiliated group basis.

"(4) TREATMENT OF CERTAIN FINANCIAL INSTITUTIONS.—

"(A) IN GENERAL.—For purposes of paragraph (1), any corporation described in subparagraph (B) shall be treated as an includible corporation for purposes of section 1504 only for purposes of applying this subsection separately to corporations so described.

"(B) DESCRIPTION.—A corporation is described in this subparagraph if—

"(i) such corporation is a financial institution described in section 581 or 591,

"(ii) the business of such financial institution is predominantly with persons other than related persons (within the meaning of subsection (d)(4)) or their customers, and

"(iii) such financial institution is required by State or Federal law to be operated separately from any other entity which is not such an institution.

"(C) TREATMENT OF BANK AND FINANCIAL HOLDING COMPANIES.—To the extent provided in regulations—

"(i) a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a)),

"(ii) a financial holding company (within the meaning of section 2(p) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(p)), and

"(iii) any subsidiary of a financial institution described in section 581 or 591, or of any such bank or financial holding company, if such subsidiary is predominantly engaged (directly or indirectly) in the active conduct of a banking, financing, or similar business,

shall be treated as a corporation described in subparagraph (B).

"(5) ELECTION TO EXPAND FINANCIAL INSTITUTION GROUP OF WORLDWIDE GROUP.—

"(A) IN GENERAL.—If a worldwide affiliated group elects the application of this subsection, all financial corporations which—

"(i) are members of such worldwide affiliated group, but

"(ii) are not corporations described in paragraph (4)(B),

shall be treated as described in paragraph (4)(B) for purposes of applying paragraph (4)(A). This subsection (other than this paragraph) shall apply to any such group in the same manner as this subsection (other than this paragraph) applies to the pre-election worldwide affiliated group of which such group is a part.

"(B) FINANCIAL CORPORATION.—For purposes of this paragraph, the term 'financial corporation' means any corporation if at least 80 percent of its gross income is income described in section 904(d)(2)(D)(ii) and the regulations thereunder which is derived from transactions with persons who are not related (within the meaning of section 267(b) or 707(b)(1)) to the corporation. For purposes of the preceding sentence, there shall be disregarded any item of income or gain from a transaction or series of transactions a principal purpose of which is the qualification of any corporation as a financial corporation.

"(C) ANTI-ABUSE RULES.—In the case of a corporation which is a member of an electing financial institution group, to the extent that such corporation—

"(i) distributes dividends or makes other distributions with respect to its stock after the date of the enactment of this paragraph to any member of the pre-election worldwide affiliated group (other than to a member of the electing financial institution group) in excess of the greater of—

"(I) its average annual dividend (expressed as a percentage of current earnings and profits) during the 5-taxable-year period ending with the taxable year preceding the taxable year, or

"(II) 25 percent of its average annual earnings and profits for such 5-taxable-year period, or

"(ii) deals with any person in any manner not clearly reflecting the income of the corporation (as determined under principles similar to the principles of section 482),

an amount of indebtedness of the electing financial institution group equal to the excess distribution or the understatement or overstatement of income, as the case may be, shall be recharacterized (for the taxable year and subsequent taxable years) for purposes of this paragraph as indebtedness of the worldwide affiliated group (excluding the electing financial institution group). If a corporation has not been in existence for 5 taxable years, this subparagraph shall be applied with respect to the period it was in existence.

"(D) ELECTION.—An election under this paragraph with respect to any financial institution group may be made only by the common parent of the pre-election worldwide affiliated group and may be made only for the first taxable year beginning after December 31, 2008, in which such affiliated group includes 1 or more financial corporations. Such an election, once made, shall apply to all financial corporations which are members of the electing financial institution group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.

"(E) DEFINITIONS RELATING TO GROUPS.—For purposes of this paragraph—

"(i) PRE-ELECTION WORLDWIDE AFFILIATED GROUP.—The term 'pre-election worldwide affiliated group' means, with respect to a corporation, the worldwide affiliated group of which such corporation would (but for an election under this paragraph) be a member for purposes of applying paragraph (1).

"(ii) ELECTING FINANCIAL INSTITUTION GROUP.—The term 'electing financial institution group' means the group of corporations to which this subsection applies separately by reason of the application of paragraph (4)(A) and which includes financial corporations by reason of an election under subparagraph (A).

"(F) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this subsection, including regulations—

"(i) providing for the direct allocation of interest expense in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection,

"(ii) preventing assets or interest expense from being taken into account more than once, and

"(iii) dealing with changes in members of any group (through acquisitions or otherwise) treated under this paragraph as an affiliated group for purposes of this subsection.

"(6) ELECTION.—An election to have this subsection apply with respect to any worldwide affiliated group may be made only by the common parent of the domestic affiliated group referred to in paragraph (1)(C) and may be made only for the first taxable year beginning after December 31, 2008, in which a worldwide affiliated group exists which includes such affiliated group and at least 1 foreign corporation. Such an election, once made, shall apply to such common parent and all other corporations which are members of such worldwide affiliated group for such taxable year and all subsequent years unless revoked with the consent of the Secretary.".

(b) EXPANSION OF REGULATORY AUTHORITY.—Paragraph (7) of section 864(e) is amended—

(1) by inserting before the comma at the end of subparagraph (B) "and in other circumstances where such allocation would be appropriate to carry out the purposes of this subsection", and

(2) by striking "and" at the end of subparagraph (E), by redesignating subparagraph (F) as subparagraph (G), and by inserting after subparagraph (E) the following new subparagraph:

"(F) preventing assets or interest expense from being taken into account more than once, and".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 402. RECHARACTERIZATION OF OVERALL DOMESTIC LOSS.

(a) GENERAL RULE.—Section 904 is amended by redesignating subsections (g), (h), (i), (j), and (k) as subsections (h), (i), (j), (k), and (l) respectively, and by inserting after subsection (f) the following new subsection:

"(g) RECHARACTERIZATION OF OVERALL DOMESTIC LOSS.—

"(1) GENERAL RULE.—For purposes of this subpart and section 936, in the case of any taxpayer who sustains an overall domestic loss for any taxable year beginning after December 31, 2006, that portion of the taxpayer's taxable income from sources within the United States for each succeeding taxable year which is equal to the lesser of—

"(A) the amount of such loss (to the extent not used under this paragraph in prior taxable years), or

"(B) 50 percent of the taxpayer's taxable income from sources within the United States for such succeeding taxable year, shall be treated as income from sources without the United States (and not as income from sources within the United States).

"(2) OVERALL DOMESTIC LOSS DEFINED.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'overall domestic loss' means any domestic loss to the extent such loss offsets taxable income from sources without the United States for the taxable year or for any preceding taxable year by reason of a carryback. For purposes of the preceding sentence, the term 'domestic loss' means the amount by which the gross income for the taxable year from sources within the United States is exceeded by the sum of the deductions properly apportioned or allocated thereto (determined without regard to any carryback from a subsequent taxable year).

"(B) TAXPAYER MUST HAVE ELECTED FOREIGN TAX CREDIT FOR YEAR OF LOSS.—The term 'overall domestic loss' shall not include any loss for any taxable year unless the taxpayer chose the benefits of this subpart for such taxable year.

"(3) CHARACTERIZATION OF SUBSEQUENT INCOME.—

"(A) IN GENERAL.—Any income from sources within the United States that is treated as income from sources without the United States under paragraph (1) shall be allocated among and increase the income categories in proportion to the loss from sources within the United States previously allocated to those income categories.

"(B) INCOME CATEGORY.—For purposes of this paragraph, the term 'income category' has the meaning given such term by subsection (f)(5)(E)(i).

"(4) COORDINATION WITH SUBSECTION (f).—The Secretary shall prescribe such regulations as may be necessary to coordinate the provisions of this subsection with the provisions of subsection (f).".

(b) CONFORMING AMENDMENTS.—

(1) Section 535(d)(2) is amended by striking "section 904(g)(6)" and inserting "section 904(h)(6)".

(2) Subparagraph (A) of section 936(a)(2) is amended by striking "section 904(f)" and inserting "subsections (f) and (g) of section 904".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to losses for taxable years beginning after December 31, 2006.

SEC. 403. LOOK-THRU RULES TO APPLY TO DIVIDENDS FROM NONCONTROLLED SECTION 902 CORPORATIONS.

(a) IN GENERAL.—Section 904(d)(4) (relating to look-thru rules apply to dividends from noncontrolled section 902 corporations) is amended to read as follows:

"(4) LOOK-THRU APPLIES TO DIVIDENDS FROM NONCONTROLLED SECTION 902 CORPORATIONS.—

"(A) IN GENERAL.—For purposes of this subsection, any dividend from a noncontrolled section 902 corporation with respect to the taxpayer shall be treated as income described in a subparagraph of paragraph (1) in proportion to the ratio of—

"(i) the portion of earnings and profits attributable to income described in such subparagraph, to

"(ii) the total amount of earnings and profits.

"(B) EARNINGS AND PROFITS OF CONTROLLED FOREIGN CORPORATIONS.—In the case of any distribution from a controlled foreign corporation to a United States shareholder, rules similar to the rules of subparagraph (A) shall apply in determining the extent to which earnings and profits of the controlled foreign corporation which are attributable to dividends received from a noncontrolled section 902 corporation may be treated as income in a separate category.

"(C) SPECIAL RULES.—For purposes of this paragraph—

"(i) EARNINGS AND PROFITS.—

"(I) IN GENERAL.—The rules of section 316 shall apply.

"(II) REGULATIONS.—The Secretary may prescribe regulations regarding the treatment of distributions out of earnings and profits for periods before the taxpayer's acquisition of the stock to which the distributions relate.

"(ii) INADEQUATE SUBSTANTIATION.—If the Secretary determines that the proper subparagraph of paragraph (1) in which a dividend is described has not been substantiated, such dividend shall be treated as income described in paragraph (1)(A).

"(iii) COORDINATION WITH HIGH-TAXED INCOME PROVISIONS.—Rules similar to the rules of paragraph (3)(F) shall apply for purposes of this paragraph.

"(iv) LOOK-THRU WITH RESPECT TO CARRYOVER OF CREDIT.—Rules similar to subparagraph (A) also shall apply to any carryforward under subsection (c) from a taxable year beginning before January 1, 2003, of tax allocable to a dividend from a noncontrolled section 902 corporation with respect to the taxpayer. The Secretary may by regulations provide for the allocation of any carryback of tax allocable to a dividend from a noncontrolled section 902 corporation from a taxable year beginning on or after January 1, 2003, to a taxable year beginning before such date for purposes of allocating such dividend among the separate categories in effect for the taxable year to which carried.".

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (E) of section 904(d)(1) is hereby repealed.

(2) Section 904(d)(2)(C)(iii) is amended by adding "and" at the end of subclause (I), by striking subclause (II), and by redesignating subclause (III) as subclause (II).

(3) The last sentence of section 904(d)(2)(D) is amended to read as follows: "Such term does not include any financial services income.".

(4) Section 904(d)(2)(E) is amended—

(A) by inserting "or (4)" after "paragraph (3)" in clause (i), and

(B) by striking clauses (ii) and (iv) and by redesignating clause (iii) as clause (ii).

(5) Section 904(d)(3)(F) is amended by striking "(D), or (E)" and inserting "or (D)".

(6) Section 864(d)(5)(A)(i) is amended by striking "(C)(iii)(III)" and inserting "(C)(iii)(II)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 404. REDUCTION TO 2 FOREIGN TAX CREDIT BASKETS.

(a) IN GENERAL.—Paragraph (1) of section 904(d) (relating to separate application of section with respect to certain categories of income) is amended to read as follows:

"(1) IN GENERAL.—The provisions of subsections (a), (b), and (c) and sections 902, 907, and 960 shall be applied separately with respect to—

"(A) passive category income, and

"(B) general category income."

(b) CATEGORIES.—Paragraph (2) of section 904(d) is amended by striking subparagraph (B), by redesignating subparagraph (A) as subparagraph (B), and by inserting before subparagraph (B) (as so redesignated) the following new subparagraph:

"(A) CATEGORIES.—

"(i) PASSIVE CATEGORY INCOME.—The term 'passive category income' means passive income and specified passive category income.

"(ii) GENERAL CATEGORY INCOME.—The term 'general category income' means income other than passive category income.".

(c) SPECIFIED PASSIVE CATEGORY INCOME.—Subparagraph (B) of section 904(d)(2), as so redesignated, is amended by adding at the end the following new clause:

"(v) SPECIFIED PASSIVE CATEGORY INCOME.—The term 'specified passive category income' means—

"(I) dividends from a DISC or former DISC (as defined in section 992(a)) to the extent such dividends are treated as income from sources without the United States,

"(II) taxable income attributable to foreign trade income (within the meaning of section 923(b)), and

"(III) distributions from a FSC (or a former FSC) out of earnings and profits attributable to foreign trade income (within the meaning of section 923(b)) or interest or carrying charges (as defined in section 927(d)(1)) derived from a transaction which results in foreign trade income (as defined in section 923(b)).".

(d) TREATMENT OF FINANCIAL SERVICES.—Paragraph (2) of section 904(d), as amended by section 403(b)(3), is amended by striking subparagraph (D), by redesignating subparagraph (C) as subparagraph (D), and by inserting before subparagraph (D) (as so redesignated) the following new subparagraph:

"(C) TREATMENT OF FINANCIAL SERVICES INCOME AND COMPANIES.—

"(i) IN GENERAL.—Financial services income shall be treated as general category income in the case of—

"(I) a member of a financial services group, and

"(II) any other person if such person is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business.

"(ii) FINANCIAL SERVICES GROUP.—The term 'financial services group' means any affiliated group (as defined in section 1504(a) without regard to paragraphs (2) and (3) of section 1504(b)) which is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business. In determining whether such a group is so engaged, there shall be taken into account only the income of members of the group that are—

"(I) United States corporations, or

"(II) controlled foreign corporations in which such United States corporations own, directly or indirectly, at least 80 percent of the total voting power and value of the stock.

"(iii) PASS-THRU ENTITIES.—The Secretary shall by regulation specify for purposes of this subparagraph the treatment of financial services income received or accrued by partnerships and by other pass-thru entities which are not members of a financial services group.".

(e) TREATMENT OF INCOME TAX BASE DIFFERENCES.—Paragraph (2) of section 904(d) is amended by redesignating subparagraphs (H) and (I) as subparagraphs (I) and (J), respectively, and by inserting after subparagraph (G) the following new subparagraph:

"(H) TREATMENT OF INCOME TAX BASE DIFFERENCES.—

"(i) IN GENERAL.—In the case of taxable years beginning after December 31, 2006, tax imposed under the law of a foreign country or possession of the United States on an amount which does not constitute income under United States tax principles shall be treated as imposed on income described in paragraph (1)(B).

"(ii) SPECIAL RULE FOR YEARS BEFORE 2007.—

"(I) IN GENERAL.—In the case of taxes paid or accrued in taxable years beginning after December 31, 2004, and before January 1, 2007, a taxpayer may elect to treat tax imposed under the law of a foreign country or possession of the United States on an amount which does not constitute income under United States tax principles as tax imposed on income described in subparagraph (C) or (I) of paragraph (1).

"(II) ELECTION IRREVOCABLE.—Any such election shall apply to the taxable year for which made and all subsequent taxable years described in subclause (I) unless revoked with the consent of the Secretary.".

(f) CONFORMING AMENDMENTS.—

(1) Clause (iii) of section 904(d)(2)(B) (relating to exceptions from passive income), as so redesignated, is amended by striking subclause (I) and by redesignating subclauses (II) and (III) as subclauses (I) and (II), respectively.

(2) Clause (i) of section 904(d)(2)(D) (defining financial services income), as so redesignated, is amended by adding "or" at the end of subclause (I) and by striking subclauses (II) and (III) and inserting the following new subclause:

"(II) passive income (determined without regard to subparagraph (B)(iii)(II))."

(3) Section 904(d)(2)(D) (defining financial services income), as so redesignated and amended by section 404(b)(3), is amended by striking clause (iii).

(4) Paragraph (3) of section 904(d) is amended to read as follows:

"(3) LOOK-THRU IN CASE OF CONTROLLED FOREIGN CORPORATIONS.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, dividends, interest, rents, and royalties received or accrued by the taxpayer from a controlled foreign corporation in which the taxpayer is a United States shareholder shall not be treated as passive category income.

"(B) SUBPART F INCLUSIONS.—Any amount included in gross income under section 951(a)(1)(A) shall be treated as passive category income to the extent the amount so included is attributable to passive category income.

"(C) INTEREST, RENTS, AND ROYALTIES.—Any interest, rent, or royalty which is received or accrued from a controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as passive category income to the extent it is properly allocable (under regulations prescribed by the Secretary) to passive category income of the controlled foreign corporation.

"(D) DIVIDENDS.—Any dividend paid out of the earnings and profits of any controlled foreign corporation in which the taxpayer is a United States shareholder shall be treated as passive category income in proportion to the ratio of—

"(i) the portion of the earnings and profits attributable to passive category income, to

"(ii) the total amount of earnings and profits.

"(E) LOOK-THRU APPLIES ONLY WHERE SUBPART F APPLIES.—If a controlled foreign corporation meets the requirements of section 954(b)(3)(A) (relating to de minimis rule) for any taxable year, for purposes of this paragraph, none of its foreign base company income (as defined in section 954(a) without regard to section 954(b)(5)) and none of its gross insurance income (as defined in section 954(b)(3)(C)) for such taxable year shall be treated as passive category income, except that this sentence shall not apply to any income which (without regard to this sentence) would be treated as financial services income. Solely for purposes of applying subparagraph (D), passive income of a controlled foreign corporation shall not be treated as passive category income if the requirements of section 954(b)(4) are met with respect to such income.

"(F) COORDINATION WITH HIGH-TAXED INCOME PROVISIONS.—

"(i) In determining whether any income of a controlled foreign corporation is passive category income, subclause (II) of paragraph (2)(B)(iii) shall not apply.

"(ii) Any income of the taxpayer which is treated as passive category income under this paragraph shall be so treated notwithstanding any provision of paragraph (2); except that the determination of whether any amount is high-taxed income shall be made after the application of this paragraph.

"(G) DIVIDEND.—For purposes of this paragraph, the term 'dividend' includes any amount included in gross income in section 951(a)(1)(B). Any amount included in gross income under section 78 to the extent attributable to amounts included in gross income in section 951(a)(1)(A) shall not be treated as a dividend but shall be treated as included in gross income under section 951(a)(1)(A).

"(H) LOOK-THRU APPLIES TO PASSIVE FOREIGN INVESTMENT COMPANY INCLUSION.—If—

"(i) a passive foreign investment company is a controlled foreign corporation, and

"(ii) the taxpayer is a United States shareholder in such controlled foreign corporation,

any amount included in gross income under section 1293 shall be treated as income in a separate category to the extent such amount is attributable to income in such category.".

(5) Paragraph (2) of section 904(d) is amended by adding at the end the following new subparagraph:

"(K) TRANSITIONAL RULES FOR 2007 CHANGES.—For purposes of paragraph (1)—

"(i) taxes carried from any taxable year beginning before January 1, 2007, to any taxable year beginning on or after such date, with respect to any item of income, shall be treated as described in the subparagraph of paragraph (1) in which such income would be described were such taxes paid or accrued in a taxable year beginning on or after such date, and

"(ii) the Secretary may by regulations provide for the allocation of any carryback of taxes with respect to income from a taxable year beginning on or after January 1, 2007, to a taxable year beginning before such date for purposes of allocating such income among the separate categories in effect for the taxable year to which carried.".

(6) Section 904(j)(3)(A)(i) is amended by striking "subsection (d)(2)(A)" and inserting "subsection (d)(2)(B)".

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

(2) TRANSITIONAL RULE RELATING TO INCOME TAX BASE DIFFERENCE.—Section 904(d)(2)(H)(ii) of the Internal Revenue Code of 1986, as added by subsection (e), shall apply to taxable years beginning after December 31, 2004.

SEC. 405. ATTRIBUTION OF STOCK OWNERSHIP THROUGH PARTNERSHIPS TO APPLY IN DETERMINING SECTION 902 AND 960 CREDITS.

(a) IN GENERAL.—Subsection (c) of section 902 is amended by redesignating paragraph (7) as paragraph (8) and by inserting after paragraph (6) the following new paragraph:

"(7) CONSTRUCTIVE OWNERSHIP THROUGH PARTNERSHIPS.—Stock owned, directly or indirectly, by or for a partnership shall be considered as being owned proportionately by its partners. Stock considered to be owned by a person by reason of the preceding sentence shall, for purposes of applying such sentence, be treated as actually owned by such person. The Secretary may prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including rules to account for special partnership allocations of dividends, credits, and other incidents of ownership of stock in determining proportionate ownership.".

(b) CLARIFICATION OF COMPARABLE ATTRIBUTION UNDER SECTION 901(b)(5).—Paragraph (5) of section 901(b) is amended by striking "any individual" and inserting "any person".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxes of foreign corporations for taxable years of such corporations beginning after the date of the enactment of this Act.

SEC. 406. CLARIFICATION OF TREATMENT OF CERTAIN TRANSFERS OF INTANGIBLE PROPERTY.

(a) IN GENERAL.—Subparagraph (C) of section 367(d)(2) is amended by adding at the end the

following new sentence: "For purposes of applying section 904(d), any such amount shall be treated in the same manner as if such amount were a royalty.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts treated as received pursuant to section 367(d)(2) of the Internal Revenue Code of 1986 on or after August 5, 1997.

SEC. 407. UNITED STATES PROPERTY NOT TO INCLUDE CERTAIN ASSETS OF CONTROLLED FOREIGN CORPORATION.

(a) IN GENERAL.—Section 956(c)(2) (relating to exceptions from property treated as United States property) is amended by striking "and" at the end of subparagraph (J), by striking the period at the end of subparagraph (K) and inserting a semicolon, and by adding at the end the following new subparagraphs:

"(L) securities acquired and held by a controlled foreign corporation in the ordinary course of its business as a dealer in securities if—

"(i) the dealer accounts for the securities as securities held primarily for sale to customers in the ordinary course of business, and

"(ii) the dealer disposes of the securities (or such securities mature while held by the dealer) within a period consistent with the holding of securities for sale to customers in the ordinary course of business; and

"(M) an obligation of a United States person which—

"(i) is not a domestic corporation, and

"(ii) is not—

"(I) a United States shareholder (as defined in section 951(b)) of the controlled foreign corporation, or

"(II) a partnership, estate, or trust in which the controlled foreign corporation, or any related person (as defined in section 954(d)(3)), is a partner, beneficiary, or trustee immediately after the acquisition of any obligation of such partnership, estate, or trust by the controlled foreign corporation.".

(b) CONFORMING AMENDMENT.—Section 956(c)(2) is amended by striking "and (K)" in the last sentence and inserting ", (K), and (L)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 408. TRANSLATION OF FOREIGN TAXES.

(a) ELECTIVE EXCEPTION FOR TAXES PAID OTHER THAN IN FUNCTIONAL CURRENCY.—Paragraph (1) of section 986(a) (relating to determination of foreign taxes and foreign corporation's earnings and profits) is amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

"(D) ELECTIVE EXCEPTION FOR TAXES PAID OTHER THAN IN FUNCTIONAL CURRENCY.—

"(i) IN GENERAL.—At the election of the taxpayer, subparagraph (A) shall not apply to any foreign income taxes the liability for which is denominated in any currency other than in the taxpayer's functional currency.

"(ii) APPLICATION TO QUALIFIED BUSINESS UNITS.—An election under this subparagraph may apply to foreign income taxes attributable to a qualified business unit in accordance with regulations prescribed by the Secretary.

"(iii) ELECTION.—Any such election shall apply to the taxable year for which made and all subsequent taxable years unless revoked with the consent of the Secretary.".

(b) SPECIAL RULE FOR REGULATED INVESTMENT COMPANIES.—

(1) IN GENERAL.—Section 986(a)(1), as amended by subsection (a), is amended by redesignating subparagraph (E) as subparagraph (F) and by inserting after subparagraph (D) the following:

"(E) SPECIAL RULE FOR REGULATED INVESTMENT COMPANIES.—In the case of a regulated investment company which takes into account income on an accrual basis, subparagraphs (A) through (D) shall not apply and foreign income taxes paid or accrued with respect to such income shall be translated into dollars using the exchange rate as of the date the income accrues.".

(2) CONFORMING AMENDMENT.—Section 986(a)(2) is amended by inserting "or (E)" after "subparagraph (A)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 409. REPEAL OF WITHHOLDING TAX ON DIVIDENDS FROM CERTAIN FOREIGN CORPORATIONS.

(a) IN GENERAL.—Paragraph (2) of section 871(i) (relating to tax not to apply to certain interest and dividends) is amended by adding at the end the following new subparagraph:

"(D) Dividends paid by a foreign corporation which are treated under section 861(a)(2)(B) as income from sources within the United States.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after December 31, 2004.

SEC. 410. EQUAL TREATMENT OF INTEREST PAID BY FOREIGN PARTNERSHIPS AND FOREIGN CORPORATIONS.

(a) IN GENERAL.—Paragraph (1) of section 861(a) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following new subparagraph:

"(C) in the case of a foreign partnership, which is predominantly engaged in the active conduct of a trade or business outside the United States, any interest not paid by a trade or business engaged in by the partnership in the United States and not allocable to income which is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 411. TREATMENT OF CERTAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES.

(a) TREATMENT OF CERTAIN DIVIDENDS.—

(1) NONRESIDENT ALIEN INDIVIDUALS.—Section 871 (relating to tax on nonresident alien individuals) is amended by redesignating subsection (k) as subsection (l) and by inserting after subsection (j) the following new subsection:

"(k) EXEMPTION FOR CERTAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES.—

"(1) INTEREST-RELATED DIVIDENDS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1)(A) of subsection (a) on any interest-related dividend received from a regulated investment company.

"(B) EXCEPTIONS.—Subparagraph (A) shall not apply—

"(i) to any interest-related dividend received from a regulated investment company by a person to the extent such dividend is attributable to interest (other than interest described in subparagraph (E) (i) or (iii)) received by such company on indebtedness issued by such person or by any corporation or partnership with respect to which such person is a 10-percent shareholder,

"(ii) to any interest-related dividend with respect to stock of a regulated investment company unless the person who would otherwise be required to deduct and withhold tax from such dividend under chapter 3 receives a statement (which meets requirements similar to the requirements of subsection (h)(5)) that the beneficial owner of such stock is not a United States person, and

"(iii) to any interest-related dividend paid to any person within a foreign country (or any interest-related dividend payment addressed to, or for the account of, persons within such foreign country) during any period described in subsection (h)(6) with respect to such country.

Clause (iii) shall not apply to any dividend with respect to any stock which was acquired on or before the date of the publication of the Secretary's determination under subsection (h)(6).

"(C) INTEREST-RELATED DIVIDEND.—For purposes of this paragraph, the term 'interest-related dividend' means any dividend (or part thereof) which is designated by the regulated investment company as an interest-related dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including amounts so designated with respect to dividends paid after the close of the taxable year described in section 855) is greater than the qualified net interest income of the company for such taxable year, the portion of each distribution which shall be an interest-related dividend shall be only that portion of the amounts so designated which such qualified net interest income bears to the aggregate amount so designated. Such term shall not include any dividend with respect to any taxable year of the company beginning after December 31, 2007.

"(D) QUALIFIED NET INTEREST INCOME.—For purposes of subparagraph (C), the term 'qualified net interest income' means the qualified interest income of the regulated investment company reduced by the deductions properly allocable to such income.

"(E) QUALIFIED INTEREST INCOME.—For purposes of subparagraph (D), the term 'qualified interest income' means the sum of the following amounts derived by the regulated investment company from sources within the United States:

"(i) Any amount includible in gross income as original issue discount (within the meaning of section 1273) on an obligation payable 183 days or less from the date of original issue (without regard to the period held by the company).

"(ii) Any interest includible in gross income (including amounts recognized as ordinary income in respect of original issue discount or market discount or acquisition discount under part V of subchapter P and such other amounts as regulations may provide) on an obligation which is in registered form; except that this clause shall not apply to—

"(I) any interest on an obligation issued by a corporation or partnership if the regulated investment company is a 10-percent shareholder in such corporation or partnership, and

"(II) any interest which is treated as not being portfolio interest under the rules of subsection (h)(4).

"(iii) Any interest referred to in subsection (i)(2)(A) (without regard to the trade or business of the regulated investment company).

"(iv) Any interest-related dividend includable in gross income with respect to stock of another regulated investment company.

"(F) 10-PERCENT SHAREHOLDER.—For purposes of this paragraph, the term '10-percent shareholder' has the meaning given such term by subsection (h)(3)(B).

"(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1)(A) of subsection (a) on any short-term capital gain dividend received from a regulated investment company.

"(B) EXCEPTION FOR ALIENS TAXABLE UNDER SUBSECTION (a)(2).—Subparagraph (A) shall not apply in the case of any nonresident alien individual subject to tax under subsection (a)(2).

"(C) SHORT-TERM CAPITAL GAIN DIVIDEND.—For purposes of this paragraph, the term 'short-term capital gain dividend' means any dividend (or part thereof) which is designated by the regulated investment company as a short-term capital gain dividend in a written notice mailed to its shareholders not later than 60 days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company (including amounts so designated with respect to dividends paid after the close of the taxable year described in section 855) is greater than the qualified short-term gain of the company for such taxable year, the portion of each distribution which shall be a short-term capital gain dividend shall be only that portion of the amounts so designated which such qualified short-term gain bears to the aggregate amount so designated. Such term shall not include any dividend with respect to any taxable year of the company beginning after December 31, 2007.

"(D) QUALIFIED SHORT-TERM GAIN.—For purposes of subparagraph (C), the term 'qualified short-term gain' means the excess of the net short-term capital gain of the regulated investment company for the taxable year over the net long-term capital loss (if any) of such company for such taxable year. For purposes of this subparagraph—

"(i) the net short-term capital gain of the regulated investment company shall be computed by treating any short-term capital gain dividend includible in gross income with respect to stock of another regulated investment company as a short-term capital gain, and

"(ii) the excess of the net short-term capital gain for a taxable year over the net long-term capital loss for a taxable year (to which an election under section 4982(e)(4) does not apply) shall be determined without regard to any net capital loss or net short-term capital loss attributable to transactions after October 31 of such year, and any such net capital loss or net short-term capital loss shall be treated as arising on the 1st day of the next taxable year.

To the extent provided in regulations, clause (ii) shall apply also for purposes of computing the taxable income of the regulated investment company."

(2) FOREIGN CORPORATIONS.—Section 881 (relating to tax on income of foreign corporations not connected with United States business) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) TAX NOT TO APPLY TO CERTAIN DIVIDENDS OF REGULATED INVESTMENT COMPANIES.—

"(1) INTEREST-RELATED DIVIDENDS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), no tax shall be imposed under paragraph (1) of subsection (a) on any interest-related dividend (as defined in section 871(k)(1)) received from a regulated investment company.

"(B) EXCEPTION.—Subparagraph (A) shall not apply—

"(i) to any dividend referred to in section 871(k)(1)(B), and

"(ii) to any interest-related dividend received by a controlled foreign corporation (within the meaning of section 957(a)) to the extent such dividend is attributable to interest received by the regulated investment company from a person who is a related person (within the meaning of section 864(d)(4)) with respect to such controlled foreign corporation.

"(C) TREATMENT OF DIVIDENDS RECEIVED BY CONTROLLED FOREIGN CORPORATIONS.—The rules of subsection (c)(5)(A) shall apply to any (within the meaning of section 957(a)) to the extent such dividend is attributable to interest received by the regulated investment company which is described in clause (ii) of section 871(k)(1)(E) (and not described in clause (i) or (iii) of such section).

"(2) SHORT-TERM CAPITAL GAIN DIVIDENDS.—No tax shall be imposed under paragraph (1) of subsection (a) on any short-term capital gain dividend (as defined in section 871(k)(2)) received from a regulated investment company.".

(3) WITHHOLDING TAXES.—

(A) Section 1441(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

"(12) CERTAIN DIVIDENDS RECEIVED FROM REGULATED INVESTMENT COMPANIES.—

"(A) IN GENERAL.—No tax shall be required to be deducted and withheld under subsection (a) from any amount exempt from the tax imposed by section 871(a)(1)(A) by reason of section 871(k).

"(B) SPECIAL RULE.—For purposes of subparagraph (A), clause (i) of section 871(k)(1)(B) shall not apply to any dividend unless the regulated investment company knows that such dividend is a dividend referred to in such clause. A similar rule shall apply with respect to the exception contained in section 871(k)(2)(B).".

(B) Section 1442(a) (relating to withholding of tax on foreign corporations) is amended—

(i) by striking "and the reference in section 1441(c)(10)" and inserting "the reference in section 1441(c)(10)", and

(ii) by inserting before the period at the end the following: ", and the references in section 1441(c)(12) to sections 871(a) and 871(k) shall be treated as referring to sections 881(a) and 881(e) (except that for purposes of applying subparagraph (A) of section 1441(c)(12), as so modified, clause (ii) of section 881(e)(1)(B) shall not apply to any dividend unless the regulated investment company knows that such dividend is a dividend referred to in such clause)".

(b) ESTATE TAX TREATMENT OF INTEREST IN CERTAIN REGULATED INVESTMENT COMPANIES.—Section 2105 (relating to property without the United States for estate tax purposes) is amended by adding at the end the following new subsection:

"(d) STOCK IN A RIC.—

"(1) IN GENERAL.—For purposes of this subchapter, stock in a regulated investment company (as defined in section 851) owned by a nonresident not a citizen of the United States shall not be deemed property within the United States in the proportion that, at the end of the quarter of such investment company's taxable year immediately preceding a decedent's date of death (or at such other time as the Secretary may designate in regulations), the assets of the investment company that were qualifying assets with respect to the decedent bore to the total assets of the investment company.

"(2) QUALIFYING ASSETS.—For purposes of this subsection, qualifying assets with respect to a decedent are assets that, if owned directly by the decedent, would have been—

"(A) amounts, deposits, or debt obligations described in subsection (b) of this section,

"(B) debt obligations described in the last sentence of section 2104(c), or

"(C) other property not within the United States.

"(3) TERMINATION.—This subsection shall not apply to estates of decedents dying after December 31, 2007."

(c) TREATMENT OF REGULATED INVESTMENT COMPANIES UNDER SECTION 897.—

(1) Paragraph (1) of section 897(h) is amended by striking "REIT" each place it appears and inserting "qualified investment entity".

(2) Paragraphs (2) and (3) of section 897(h) are amended to read as follows:

"(2) SALE OF STOCK IN DOMESTICALLY CONTROLLED ENTITY NOT TAXED.—The term 'United States real property interest' does not include any interest in a domestically controlled qualified investment entity.

"(3) DISTRIBUTIONS BY DOMESTICALLY CONTROLLED QUALIFIED INVESTMENT ENTITIES.—In the case of a domestically controlled qualified investment entity, rules similar to the rules of subsection (d) shall apply to the foreign ownership percentage of any gain."

(3) Subparagraphs (A) and (B) of section 897(h)(4) are amended to read as follows:

"(A) QUALIFIED INVESTMENT ENTITY.—

"(i) IN GENERAL.—The term 'qualified investment entity' means—

"(I) any real estate investment trust, and

"(II) any regulated investment company.

"(ii) TERMINATION.—Clause (i)(II) shall not apply after December 31, 2007.

"(B) DOMESTICALLY CONTROLLED.—The term 'domestically controlled qualified investment entity' means any qualified investment entity in which at all times during the testing period less than 50 percent in value of the stock was held directly or indirectly by foreign persons."

(4) Subparagraphs (C) and (D) of section 897(h)(4) are each amended by striking "REIT" and inserting "qualified investment entity".

(5) The subsection heading for subsection (h) of section 897 is amended by striking "REITS" and inserting "CERTAIN INVESTMENT ENTITIES".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to dividends with respect to taxable years of regulated investment companies beginning after December 31, 2004.

(2) ESTATE TAX TREATMENT.—The amendment made by subsection (b) shall apply to estates of decedents dying after December 31, 2004.

(3) CERTAIN OTHER PROVISIONS.—The amendments made by subsection (c) (other than paragraph (1) thereof) shall take effect after December 31, 2004.

SEC. 412. LOOK-THRU TREATMENT FOR SALES OF PARTNERSHIP INTERESTS.

(a) IN GENERAL.—Section 954(c) (defining foreign personal holding company income) is amended by adding after paragraph (3) the following new paragraph:

"(4) LOOK-THRU RULE FOR CERTAIN PARTNERSHIP SALES.—

"(A) IN GENERAL.—In the case of any sale by a controlled foreign corporation of an interest in a partnership with respect to which such corporation is a 25-percent owner, such corporation shall be treated for purposes of this subsection as selling the proportionate share of the assets of the partnership attributable to such interest. The Secretary shall prescribe such regulations as may be appropriate to prevent abuse of the purposes of this paragraph, including regulations providing for coordination of this paragraph with the provisions of subchapter K.

"(B) 25-PERCENT OWNER.—For purposes of this paragraph, the term '25-percent owner' means a controlled foreign corporation which owns directly 25 percent or more of the capital or profits interest in a partnership. For purposes of the preceding sentence, if a controlled foreign corporation is a shareholder or partner of a corporation or partnership, the controlled foreign corporation shall be treated as owning directly its proportionate share of any such capital or profits interest held directly or indirectly by such corporation or partnership.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 413. REPEAL OF FOREIGN PERSONAL HOLDING COMPANY RULES AND FOREIGN INVESTMENT COMPANY RULES.

(a) GENERAL RULE.—The following provisions are hereby repealed:

(1) Part III of subchapter G of chapter 1 (relating to foreign personal holding companies).

(2) Section 1246 (relating to gain on foreign investment company stock).

(3) Section 1247 (relating to election by foreign investment companies to distribute income currently).

(b) EXEMPTION OF FOREIGN CORPORATIONS FROM PERSONAL HOLDING COMPANY RULES.—

(1) IN GENERAL.—Subsection (c) of section 542 (relating to exceptions) is amended—

(A) by striking paragraph (5) and inserting the following:

"(5) a foreign corporation,",

(B) by striking paragraphs (7) and (10) and by redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively,

(C) by inserting "and" at the end of paragraph (7) (as so redesignated), and

(D) by striking "; and" at the end of paragraph (8) (as so redesignated) and inserting a period.

(2) TREATMENT OF INCOME FROM PERSONAL SERVICE CONTRACTS.—Paragraph (1) of section 954(c) is amended by adding at the end the following new subparagraph:

"(I) PERSONAL SERVICE CONTRACTS.—

"(i) Amounts received under a contract under which the corporation is to furnish personal services if—

"(I) some person other than the corporation has the right to designate (by name or by description) the individual who is to perform the services, or

"(II) the individual who is to perform the services is designated (by name or by description) in the contract, and

"(ii) amounts received from the sale or other disposition of such a contract.

This subparagraph shall apply with respect to amounts received for services under a particular contract only if at some time during the taxable year 25 percent or more in value of the outstanding stock of the corporation is owned, directly or indirectly, by or for the individual who has performed, is to perform, or may be designated (by name or by description) as the one to perform, such services.".

(c) CONFORMING AMENDMENTS.—

(1) Section 1(h) is amended—

(A) in paragraph (10), by inserting "and" at the end of subparagraph (F), by striking subparagraph (G), and by redesignating subparagraph (H) as subparagraph (G), and

(B) by striking "a foreign personal holding company (as defined in section 552), a foreign investment company (as defined in section 1246(b)), or" in paragraph (11)(C)(iii).

(2) Paragraph (2) of section 171(c) is amended—

(A) by striking ", or by a foreign personal holding company, as defined in section 552", and

(B) by striking ", or foreign personal holding company".

(3) Paragraph (2) of section 245(a) is amended by striking "foreign personal holding company or".

(4) Section 312 is amended by striking subsection (j).

(5) Subsection (m) of section 312 is amended by striking ", a foreign investment company (within the meaning of section 1246(b)), or a foreign personal holding company (within the meaning of section 552)".

(6) Subsection (e) of section 443 is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(7) Subparagraph (B) of section 465(c)(7) is amended by adding "or" at the end of clause (i), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

(8) Paragraph (1) of section 543(b) is amended by inserting "and" at the end of subparagraph (A), by striking ", and" at the end of subparagraph (B) and inserting a period, and by striking subparagraph (C).

(9) Paragraph (1) of section 562(b) is amended by striking "or a foreign personal holding company described in section 552".

(10) Section 563 is amended—

(A) by striking subsection (c),

(B) by redesignating subsection (d) as subsection (c), and

(C) by striking "subsection (a), (b), or (c)" in subsection (c) (as so redesignated) and inserting "subsection (a) or (b)".

(11) Subsection (d) of section 751 is amended by adding "and" at the end of paragraph (2), by striking paragraph (3), by redesignating paragraph (4) as paragraph (3), and by striking "paragraph (1), (2), or (3)" in paragraph (3) (as so redesignated) and inserting "paragraph (1) or (2)".

(12) Paragraph (2) of section 864(d) is amended by striking subparagraph (A) and by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(13)(A) Subparagraph (A) of section 898(b)(1) is amended to read as follows:

"(A) which is treated as a controlled foreign corporation for any purpose under subpart F of part III of this subchapter, and".

(B) Subparagraph (B) of section 898(b)(2) is amended by striking "and sections 551(f) and 554, whichever are applicable,".

(C) Paragraph (3) of section 898(b) is amended to read as follows:

"(3) UNITED STATES SHAREHOLDER.—The term 'United States shareholder' has the meaning given to such term by section 951(b), except that, in the case of a foreign corporation having related person insurance income (as defined in section 953(c)(2)), the Secretary may treat any person as a United States shareholder for purposes of this section if such person is treated as a United States shareholder under section 953(c)(1).".

(D) Subsection (c) of section 898 is amended to read as follows:

"(c) DETERMINATION OF REQUIRED YEAR.—

"(1) IN GENERAL.—The required year is—

"(A) the majority U.S. shareholder year, or

"(B) if there is no majority U.S. shareholder year, the taxable year prescribed under regulations.

"(2) 1-MONTH DEFERRAL ALLOWED.—A specified foreign corporation may elect, in lieu of the taxable year under paragraph (1)(A), a taxable year beginning 1 month earlier than the majority U.S. shareholder year.

"(3) MAJORITY U.S. SHAREHOLDER YEAR.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'majority U.S. shareholder year' means the taxable year (if any) which, on each testing day, constituted the taxable year of—

"(i) each United States shareholder described in subsection (b)(2)(A), and

"(ii) each United States shareholder not described in clause (i) whose stock was treated as owned under subsection (b)(2)(B) by any shareholder described in such clause.

"(B) TESTING DAY.—The testing days shall be—

"(i) the first day of the corporation's taxable year (determined without regard to this section), or

"(ii) the days during such representative period as the Secretary may prescribe.".

(14) Clause (ii) of section 904(d)(2)(A) is amended to read as follows:

"(ii) CERTAIN AMOUNTS INCLUDED.—Except as provided in clause (iii), the term 'passive income' includes, except as provided in subparagraph (E)(iii) or paragraph (3)(I), any amount includible in gross income under section 1293 (relating to certain passive foreign investment companies).".

(15)(A) Subparagraph (A) of section 904(h)(1), as redesignated by this Act, is amended by adding "or" at the end of clause (i), by striking clause (ii), and by redesignating clause (iii) as clause (ii).

(B) The paragraph heading of paragraph (2) of section 904(h), as so redesignated, is amended by striking "FOREIGN PERSONAL HOLDING OR".

(16) Section 951 is amended by striking subsections (c) and (d) and by redesignating subsections (e) and (f) as subsections (c) and (d), respectively.

(17) Paragraph (3) of section 989(b) is amended by striking ", 551(a),".

(18) Paragraph (5) of section 1014(b) is amended by inserting "and before January 1, 2005," after "August 26, 1937,".

(19) Subsection (a) of section 1016 is amended by striking paragraph (13).

(20)(A) Paragraph (3) of section 1212(a) is amended to read as follows:

"(3) SPECIAL RULES ON CARRYBACKS.—A net capital loss of a corporation shall not be carried back under paragraph (1)(A) to a taxable year—

"(A) for which it is a regulated investment company (as defined in section 851), or

"(B) for which it is a real estate investment trust (as defined in section 856).".

(B) The amendment made by subparagraph (A) shall apply to taxable years beginning after December 31, 2004.

(21) Section 1223 is amended by striking paragraph (10) and by redesignating the following paragraphs accordingly.

(22) Subsection (d) of section 1248 is amended by striking paragraph (5) and by redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively.

(23) Paragraph (2) of section 1260(c) is amended by striking subparagraphs (H) and (I) and by redesignating subparagraph (J) as subparagraph (H).

(24)(A) Subparagraph (F) of section 1291(b)(3) is amended by striking "551(d), 959(a)," and inserting "959(a)".

(B) Subsection (e) of section 1291 is amended by inserting "(as in effect on the day before the date of the enactment of the American Jobs Creation Act of 2004)" after "section 1246".

(25) Paragraph (2) of section 1294(a) is amended to read as follows:

"(2) ELECTION NOT PERMITTED WHERE AMOUNTS OTHERWISE INCLUDIBLE UNDER SECTION 951.—The taxpayer may not make an election under paragraph (1) with respect to the undistributed PFIC earnings tax liability attributable to a qualified electing fund for the taxable year if any amount is includible in the gross income of the taxpayer under section 951 with respect to such fund for such taxable year.".

(26) Section 6035 is hereby repealed.

(27) Subparagraph (D) of section 6103(e)(1) is amended by striking clause (iv) and redesignating clauses (v) and (vi) as clauses (iv) and (v), respectively.

(28) Subparagraph (B) of section 6501(e)(1) is amended to read as follows:

"(B) CONSTRUCTIVE DIVIDENDS.—If the taxpayer omits from gross income an amount properly includible therein under section 951(a), the tax may be assessed, or a proceeding in court for the collection of such tax may be done without assessing, at any time within 6 years after the return was filed.".

(29) Subsection (a) of section 6679 is amended—

(A) by striking "6035, 6046, and 6046A" in paragraph (1) and inserting "6046 and 6046A", and

(B) by striking paragraph (3).

(30) Sections 170(f)(10)(A), 508(d), 4947, and 4948(c)(4) are each amended by striking "556(b)(2)," each place it appears.

(31) The table of parts for subchapter G of chapter 1 is amended by striking the item relating to part III.

(32) The table of sections for part IV of subchapter P of chapter 1 is amended by striking the items relating to sections 1246 and 1247.

(33) The table of sections for subpart A of part III of subchapter A of chapter 61 is amended by striking the item relating to section 6035.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

(2) SUBSECTION (c)(27).—The amendments made by subsection (c)(27) shall apply to disclosures of return or return information with respect to taxable years beginning after December 31, 2004.

SEC. 414. DETERMINATION OF FOREIGN PERSONAL HOLDING COMPANY INCOME WITH RESPECT TO TRANSACTIONS IN COMMODITIES.

(a) IN GENERAL.—Clauses (i) and (ii) of section 954(c)(1)(C) (relating to commodity transactions) are amended to read as follows:

"(i) arise out of commodity hedging transactions (as defined in paragraph (4)(A)),

"(ii) are active business gains or losses from the sale of commodities, but only if substantially all of the controlled foreign corporation's commodities are property described in paragraph (1), (2), or (8) of section 1221(a), or".

(b) DEFINITION AND SPECIAL RULES.—Subsection (c) of section 954, as amended by this Act, is amended by adding after paragraph (4) the following new paragraph:

"(5) DEFINITION AND SPECIAL RULES RELATING TO COMMODITY TRANSACTIONS.—

"(A) COMMODITY HEDGING TRANSACTIONS.—For purposes of paragraph (1)(C)(i), the term 'commodity hedging transaction' means any transaction with respect to a commodity if such transaction—

"(i) is a hedging transaction as defined in section 1221(b)(2), determined—

"(I) without regard to subparagraph (A)(ii) thereof,

"(II) by applying subparagraph (A)(i) thereof by substituting 'ordinary property or property described in section 1231(b)' for 'ordinary property', and

"(III) by substituting 'controlled foreign corporation' for 'taxpayer' each place it appears, and

"(ii) is clearly identified as such in accordance with section 1221(a)(7).

"(B) TREATMENT OF DEALER ACTIVITIES UNDER PARAGRAPH (1)(C).—Commodities with respect to which gains and losses are not taken into account under paragraph (2)(C) in computing a controlled foreign corporation's foreign personal holding company income shall not be taken into account in applying the substantially all test under paragraph (1)(C)(ii) to such corporation.

"(C) REGULATIONS.—The Secretary shall prescribe such regulations as are appropriate to carry out the purposes of paragraph (1)(C) in the case of transactions involving related parties.".

(c) MODIFICATION OF EXCEPTION FOR DEALERS.—Clause (i) of section 954(c)(2)(C) is amended by inserting "and transactions involving physical settlement" after "(including hedging transactions".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after December 31, 2004.

SEC. 415. MODIFICATIONS TO TREATMENT OF AIRCRAFT LEASING AND SHIPPING INCOME.

(a) ELIMINATION OF FOREIGN BASE COMPANY SHIPPING INCOME.—Section 954 (relating to foreign base company income) is amended—

(1) by striking paragraph (4) of subsection (a) (relating to foreign base company shipping income), and

(2) by striking subsection (f) (relating to foreign base company shipping income).

(b) SAFE HARBOR FOR CERTAIN LEASING ACTIVITIES.—Subparagraph (A) of section 954(c)(2) is amended by adding at the end the following new sentence: "For purposes of the preceding sentence, rents derived from leasing an aircraft or vessel in foreign commerce shall not fail to be treated as derived in the active conduct of a trade or business if, as determined under regulations prescribed by the Secretary, the active leasing expenses are not less than 10 percent of the profit on the lease.".

(c) CONFORMING AMENDMENTS.—

(1) Section 952(c)(1)(B)(iii) is amended by striking subclause (I) and redesignating subclauses (II) through (VI) as subclauses (I) through (V), respectively.

(2) Subsection (b) of section 954 is amended—

(A) by striking "the foreign base company shipping income," in paragraph (5),

(B) by striking paragraphs (6) and (7), and

(C) by redesignating paragraph (8) as paragraph (6).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

SEC. 416. MODIFICATION OF EXCEPTIONS UNDER SUBPART F FOR ACTIVE FINANCING.

(a) IN GENERAL.—Section 954(h)(3) is amended by adding at the end the following:

"(E) DIRECT CONDUCT OF ACTIVITIES.—For purposes of subparagraph (A)(ii)(II), an activity shall be treated as conducted directly by an eligible controlled foreign corporation or qualified business unit in its home country if the activity is performed by employees of a related person and—

"(i) the related person is an eligible controlled foreign corporation the home country of which is the same as the home country of the corporation or unit to which subparagraph (A)(ii)(II) is being applied,

"(ii) the activity is performed in the home country of the related person, and

"(iii) the related person is compensated on an arm's-length basis for the performance of the activity by its employees and such compensation is treated as earned by such person in its home country for purposes of the home country's tax laws.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years of such foreign corporations beginning after December 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of such foreign corporations end.

SEC. 417. 10-YEAR FOREIGN TAX CREDIT CARRYOVER; 1-YEAR FOREIGN TAX CREDIT CARRYBACK.

(a) GENERAL RULE.—Section 904(c) (relating to carryback and carryover of excess tax paid) is amended—

(1) by striking "in the second preceding taxable year,", and

(2) by striking ", and in the first, second, third, fourth, or fifth" and inserting "and in any of the first 10".

(b) EXCESS EXTRACTION TAXES.—Paragraph (1) of section 907(f) is amended—

(1) by striking "in the second preceding taxable year,",

(2) by striking ", and in the first, second, third, fourth, or fifth" and inserting "and in any of the first 10", and

(3) by striking the last sentence.

(c) EFFECTIVE DATE.—

(1) CARRYBACK.—The amendments made by subsections (a)(1) and (b)(1) shall apply to excess foreign taxes arising in taxable years beginning after the date of the enactment of this Act.

(2) CARRYOVER.—The amendments made by subsections (a)(2) and (b)(2) shall apply to excess foreign taxes which (without regard to the amendments made by this section) may be carried to any taxable year ending after the date of the enactment of this Act.

SEC. 418. MODIFICATION OF THE TREATMENT OF CERTAIN REIT DISTRIBUTIONS ATTRIBUTABLE TO GAIN FROM SALES OR EXCHANGES OF UNITED STATES REAL PROPERTY INTERESTS.

(a) IN GENERAL.—Paragraph (1) of section 897(h) (relating to look-through of distributions) is amended by adding at the end the following new sentence: "Notwithstanding the preceding sentence, any distribution by a REIT with respect to any class of stock which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if the shareholder did not own more than 5 percent of such class of stock at any time during the taxable year.".

(b) CONFORMING AMENDMENT.—Paragraph (3) of section 857(b) (relating to capital gains) is amended by adding at the end the following new subparagraph:

"(F) CERTAIN DISTRIBUTIONS.—In the case of a shareholder of a real estate investment trust to whom section 897 does not apply by reason of the second sentence of section 897(h)(1), the amount which would be included in computing long-term capital gains for such shareholder under subparagraph (B) or (D) (without regard to this subparagraph)—

"(i) shall not be included in computing such shareholder's long-term capital gains, and

"(ii) shall be included in such shareholder's gross income as a dividend from the real estate investment trust.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 419. EXCLUSION OF INCOME DERIVED FROM CERTAIN WAGERS ON HORSE RACES AND DOG RACES FROM GROSS INCOME OF NONRESIDENT ALIEN INDIVIDUALS.

(a) IN GENERAL.—Subsection (b) of section 872 (relating to exclusions) is amended by redesignating paragraphs (5), (6), and (7) as paragraphs (6), (7), and (8), respectively, and inserting after paragraph (4) the following new paragraph:

"(5) INCOME DERIVED FROM WAGERING TRANSACTIONS IN CERTAIN PARIMUTUEL POOLS.—Gross income derived by a nonresident alien individual from a legal wagering transaction initiated outside the United States in a parimutuel pool with respect to a live horse race or dog race in the United States.".

(b) CONFORMING AMENDMENT.—Section 883(a)(4) is amended by striking "(5), (6), and (7)" and inserting "(6), (7), and (8)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to wagers made after the date of the enactment of this Act.

SEC. 420. LIMITATION OF WITHHOLDING TAX FOR PUERTO RICO CORPORATIONS.

(a) IN GENERAL.—Subsection (b) of section 881 is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) COMMONWEALTH OF PUERTO RICO.—

"(A) IN GENERAL.—If dividends are received during a taxable year by a corporation—

"(i) created or organized in, or under the law of, the Commonwealth of Puerto Rico, and

"(ii) with respect to which the requirements of subparagraphs (A), (B), and (C) of paragraph (1) are met for the taxable year,

subsection (a) shall be applied for such taxable year by substituting '10 percent' for '30 percent'.

"(B) APPLICABILITY.—If, on or after the date of the enactment of this paragraph, an increase in the rate of the Commonwealth of Puerto Rico's withholding tax which is generally applicable to dividends paid to United States corporations not engaged in a trade or business in the Commonwealth to a rate greater than 10 percent takes effect, this paragraph shall not apply to dividends received on or after the effective date of the increase.".

(b) WITHHOLDING.—Subsection (c) of section 1442 (relating to withholding of tax on foreign corporations) is amended—

(1) by striking "For purposes" and inserting the following:

"(1) GUAM, AMERICAN SAMOA, THE NORTHERN MARIANA ISLANDS, AND THE VIRGIN ISLANDS.—For purposes", and

(2) by adding at the end the following new paragraph:

"(2) COMMONWEALTH OF PUERTO RICO.—

"(A) IN GENERAL.—If dividends are received during a taxable year by a corporation—

"(i) created or organized in, or under the law of, the Commonwealth of Puerto Rico, and

"(ii) with respect to which the requirements of subparagraphs (A), (B), and (C) of section 881(b)(1) are met for the taxable year,

subsection (a) shall be applied for such taxable year by substituting '10 percent' for '30 percent'.

"(B) APPLICABILITY.—If, on or after the date of the enactment of this paragraph, an increase in the rate of the Commonwealth of Puerto Rico's withholding tax which is generally applicable to dividends paid to United States corporations not engaged in a trade or business in the Commonwealth to a rate greater than 10 percent takes effect, this paragraph shall not apply to dividends received on or after the effective date of the increase.".

(c) CONFORMING AMENDMENTS.—

(1) Subsection (b) of section 881 is amended by striking "GUAM AND VIRGIN ISLANDS CORPORATIONS" in the heading and inserting "POSSESSIONS".

(2) Paragraph (1) of section 881(b) is amended by striking "IN GENERAL" in the heading and inserting "GUAM, AMERICAN SAMOA, THE NORTHERN MARIANA ISLANDS, AND THE VIRGIN ISLANDS".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to dividends paid after the date of the enactment of this Act.

SEC. 421. FOREIGN TAX CREDIT UNDER ALTERNATIVE MINIMUM TAX.

(a) IN GENERAL.—

(1) Subsection (a) of section 59 is amended by striking paragraph (2) and by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(2) Section 53(d)(1)(B)(i)(II) is amended by striking "and if section 59(a)(2) did not apply".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 422. INCENTIVES TO REINVEST FOREIGN EARNINGS IN UNITED STATES.

(a) IN GENERAL.—Subpart F of part III of subchapter N of chapter 1 (relating to controlled foreign corporations) is amended by adding at the end the following new section:

"SEC. 965. TEMPORARY DIVIDENDS RECEIVED DEDUCTION.

"(a) DEDUCTION.—

"(1) IN GENERAL.—In the case of a corporation which is a United States shareholder and for which the election under this section is in effect for the taxable year, there shall be allowed as a deduction an amount equal to 85 percent of the cash dividends which are received during such taxable year by such shareholder from controlled foreign corporations.

"(2) DIVIDENDS PAID INDIRECTLY FROM CONTROLLED FOREIGN CORPORATIONS.—If, within the taxable year for which the election under this section is in effect, a United States shareholder receives a cash distribution from a controlled foreign corporation which is excluded from gross income under section 959(a), such distribution shall be treated for purposes of this section as a cash dividend to the extent of any amount included in income by such United States shareholder under section 951(a)(1)(A) as a result of any cash dividend during such taxable year to—

"(A) such controlled foreign corporation from another controlled foreign corporation that is in a chain of ownership described in section 958(a), or

"(B) any other controlled foreign corporation in such chain of ownership, but only to the extent of cash distributions described in section 959(b) which are made during such taxable year to the controlled foreign corporation from which such United States shareholder received such distribution.

"(b) LIMITATIONS.—

"(1) IN GENERAL.—The amount of dividends taken into account under subsection (a) shall not exceed the greater of—

"(A) $500,000,000,

"(B) the amount shown on the applicable financial statement as earnings permanently reinvested outside the United States, or

"(C) in the case of an applicable financial statement which fails to show a specific amount of earnings permanently reinvested outside the United States and which shows a specific amount of tax liability attributable to such earnings, the amount equal to the amount of such liability divided by 0.35.

The amounts described in subparagraphs (B) and (C) shall be treated as being zero if there is no such statement or such statement fails to show a specific amount of such earnings or liability, as the case may be.

"(2) DIVIDENDS MUST BE EXTRAORDINARY.—The amount of dividends taken into account under subsection (a) shall not exceed the excess (if any) of—

"(A) the dividends received during the taxable year by such shareholder from controlled foreign corporations, over

"(B) the annual average for the base period years of—

"(i) the dividends received during each base period year by such shareholder from controlled foreign corporations,

"(ii) the amounts includible in such shareholder's gross income for each base period year under section 951(a)(1)(B) with respect to controlled foreign corporations, and

"(iii) the amounts that would have been included for each base period year but for section 959(a) with respect to controlled foreign corporations.

The amount taken into account under clause (iii) for any base period year shall not include any amount which is not includible in gross income by reason of an amount described in clause (ii) with respect to a prior taxable year. Amounts described in subparagraph (B) for any base period year shall be such amounts as shown on the most recent return filed for such year; except that amended returns filed after June 30, 2003, shall not be taken into account.

"(3) REDUCTION OF BENEFIT IF INCREASE IN RELATED PARTY INDEBTEDNESS.—The amount of dividends which would (but for this paragraph) be taken into account under subsection (a) shall be reduced by the excess (if any) of—

"(A) the amount of indebtedness of the controlled foreign corporation to any related person (as defined in section 954(d)(3)) as of the close of the taxable year for which the election under this section is in effect, over

"(B) the amount of indebtedness of the controlled foreign corporation to any related person (as so defined) as of the close of October 3, 2004.

All controlled foreign corporations with respect to which the taxpayer is a United States shareholder shall be treated as 1 controlled foreign corporation for purposes of this paragraph.

"(4) REQUIREMENT TO INVEST IN UNITED STATES.—Subsection (a) shall not apply to any dividend received by a United States shareholder unless the amount of the dividend is invested in the United States pursuant to a domestic reinvestment plan which—

"(A) is approved by the taxpayer's president, chief executive officer, or comparable official before the payment of such dividend and subsequently approved by the taxpayer's board of directors, management committee, executive committee, or similar body, and

"(B) provides for the reinvestment of such dividend in the United States (other than as payment for executive compensation), including as a source for the funding of worker hiring and training, infrastructure, research and development, capital investments, or the financial stabilization of the corporation for the purposes of job retention or creation.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) APPLICABLE FINANCIAL STATEMENT.—The term 'applicable financial statement' means, with respect to a United States shareholder, the most recently audited financial statement (including notes and other documents which accompany such statement) which includes such shareholder—

"(A) which is certified on or before June 30, 2003, as being prepared in accordance with generally accepted accounting principles, and

"(B) which is used for the purposes of a statement or report—

"(i) to creditors,

"(ii) to shareholders, or

"(iii) for any other substantial nontax purpose.

In the case of a corporation required to file a financial statement with the Securities and Exchange Commission, such term means the most recent such statement filed on or before June 30, 2003.

"(2) BASE PERIOD YEARS.—

"(A) IN GENERAL.—The base period years are the 3 taxable years—

"(i) which are among the 5 most recent taxable years ending on or before June 30, 2003, and

"(ii) which are determined by disregarding—

"(I) 1 taxable year for which the sum of the amounts described in clauses (i), (ii), and (iii) of subsection (b)(2)(B) is the largest, and

"(II) 1 taxable year for which such sum is the smallest.

"(B) SHORTER PERIOD.—If the taxpayer has fewer than 5 taxable years ending on or before June 30, 2003, then in lieu of applying subparagraph (A), the base period years shall include all the taxable years of the taxpayer ending on or before June 30, 2003.

"(C) MERGERS, ACQUISITIONS, ETC.—

"(i) IN GENERAL.—Rules similar to the rules of subparagraphs (A) and (B) of section 41(f)(3) shall apply for purposes of this paragraph.

"(ii) SPIN-OFFS, ETC.—If there is a distribution to which section 355 (or so much of section 356 as relates to section 355) applies during the 5-year period referred to in subparagraph (A)(i) and the controlled corporation (within the meaning of section 355) is a United States shareholder—

"(I) the controlled corporation shall be treated as being in existence during the period that the distributing corporation (within the meaning of section 355) is in existence, and

"(II) for purposes of applying subsection (b)(2) to the controlled corporation and the distributing corporation, amounts described in subsection (b)(2)(B) which are received or includible

by the distributing corporation or controlled corporation (as the case may be) before the distribution referred to in subclause (I) from a controlled foreign corporation shall be allocated between such corporations in proportion to their respective interests as United States shareholders of such controlled foreign corporation immediately after such distribution.

Subclause (II) shall not apply if neither the controlled corporation nor the distributing corporation is a United States shareholder of such controlled foreign corporation immediately after such distribution.

"(3) DIVIDEND.—The term 'dividend' shall not include amounts includible in gross income as a dividend under section 78, 367, or 1248. In the case of a liquidation under section 332 to which section 367(b) applies, the preceding sentence shall not apply to the extent the United States shareholder actually receives cash as part of the liquidation.

"(4) COORDINATION WITH DIVIDENDS RECEIVED DEDUCTION.—No deduction shall be allowed under section 243 or 245 for any dividend for which a deduction is allowed under this section.

"(5) CONTROLLED GROUPS.—

"(A) IN GENERAL.—All United States shareholders which are members of an affiliated group filing a consolidated return under section 1501 shall be treated as one United States shareholder.

"(B) APPLICATION OF $500,000,000 LIMIT.—All corporations which are treated as a single employer under section 52(a) shall be limited to one $500,000,000 amount in subsection (b)(1)(A), and such amount shall be divided among such corporations under regulations prescribed by the Secretary.

"(C) PERMANENTLY REINVESTED EARNINGS.—If a financial statement is an applicable financial statement for more than 1 United States shareholder, the amount applicable under subparagraph (B) or (C) of subsection (b)(1) shall be divided among such shareholders under regulations prescribed by the Secretary.

"(d) DENIAL OF FOREIGN TAX CREDIT; DENIAL OF CERTAIN EXPENSES.—

"(1) FOREIGN TAX CREDIT.—No credit shall be allowed under section 901 for any taxes paid or accrued (or treated as paid or accrued) with respect to the deductible portion of—

"(A) any dividend, or

"(B) any amount described in subsection (a)(2) which is included in income under section 951(a)(1)(A).

No deduction shall be allowed under this chapter for any tax for which credit is not allowable by reason of the preceding sentence.

"(2) EXPENSES.—No deduction shall be allowed for expenses properly allocated and apportioned to the deductible portion described in paragraph (1).

"(3) DEDUCTIBLE PORTION.—For purposes of paragraph (1), unless the taxpayer otherwise specifies, the deductible portion of any dividend or other amount is the amount which bears the same ratio to the amount of such dividend or other amount as the amount allowed as a deduction under subsection (a) for the taxable year bears to the amount described in subsection (b)(2)(A) for such year.

"(e) INCREASE IN TAX ON INCLUDED AMOUNTS NOT REDUCED BY CREDITS, ETC.—

"(1) IN GENERAL.—Any tax under this chapter by reason of nondeductible CFC dividends shall not be treated as tax imposed by this chapter for purposes of determining—

"(A) the amount of any credit allowable under this chapter, or

"(B) the amount of the tax imposed by section 55.

Subparagraph (A) shall not apply to the credit under section 53 or to the credit under section 27(a) with respect to taxes attributable to such dividends.

"(2) LIMITATION ON REDUCTION IN TAXABLE INCOME, ETC.—

"(A) IN GENERAL.—The taxable income of any United States shareholder for any taxable year shall in no event be less than the amount of nondeductible CFC dividends received during such year.

"(B) COORDINATION WITH SECTION 172.—The nondeductible CFC dividends for any taxable year shall not be taken into account—

"(i) in determining under section 172 the amount of any net operating loss for such taxable year, and

"(ii) in determining taxable income for such taxable year for purposes of the 2nd sentence of section 172(b)(2).

"(3) NONDEDUCTIBLE CFC DIVIDENDS.—For purposes of this subsection, the term 'nondeductible CFC dividends' means the excess of the amount of dividends taken into account under subsection (a) over the deduction allowed under subsection (a) for such dividends.

"(f) ELECTION.—The taxpayer may elect to apply this section to—

"(1) the taxpayer's last taxable year which begins before the date of the enactment of this section, or

"(2) the taxpayer's first taxable year which begins during the 1-year period beginning on such date.

Such election may be made for a taxable year only if made before the due date (including extensions) for filing the return of tax for such taxable year."

(b) ALTERNATIVE MINIMUM TAX.—Subparagraph (C) of section 56(g)(4) is amended by inserting after clause (v) the following new clause:

"(vi) SPECIAL RULE FOR CERTAIN DISTRIBUTIONS FROM CONTROLLED FOREIGN CORPORATIONS.—Clause (i) shall not apply to any deduction allowable under section 965.".

(c) CLERICAL AMENDMENT.—The table of sections for subpart F of part III of subchapter N of chapter 1 is amended by adding at the end the following new item:

"Sec. 965. Temporary dividends received deduction.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending on or after the date of the enactment of this Act.

SEC. 423. DELAY IN EFFECTIVE DATE OF FINAL REGULATIONS GOVERNING EXCLUSION OF INCOME FROM INTERNATIONAL OPERATION OF SHIPS OR AIRCRAFT.

Notwithstanding the provisions of Treasury regulation §1.883-5, the final regulations issued by the Secretary of the Treasury relating to income derived by foreign corporations from the international operation of ships or aircraft (Treasury regulations §1.883-1 through §1.883-5) shall apply to taxable years of a foreign corporation seeking qualified foreign corporation status beginning after September 24, 2004.

SEC. 424. STUDY OF EARNINGS STRIPPING PROVISIONS.

(a) IN GENERAL.—The Secretary of the Treasury or the Secretary's delegate shall conduct a study of the effectiveness of the provisions of the Internal Revenue Code of 1986 applicable to earnings stripping, including a study of—

(1) the effectiveness of section 163(j) of such Code in preventing the shifting of income outside the United States,

(2) whether any deficiencies of such provisions place United States-based businesses at a competitive disadvantage relative to foreign-based businesses,

(3) the impact of earnings stripping activities on the United States tax base,

(4) whether laws of foreign countries facilitate stripping of earnings out of the United States, and

(5) whether changes to the earning stripping rules would affect jobs in the United States.

(b) REPORT.—Not later than June 30, 2005, the Secretary shall submit to the Congress a report of the study conducted under this section, including specific recommendations as to how to improve the provisions of such Code applicable to earnings stripping.

TITLE V—DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES

SEC. 501. DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES IN LIEU OF STATE AND LOCAL INCOME TAXES.

(a) IN GENERAL.—Subsection (b) of section 164 (relating to definitions and special rules) is amended by adding at the end the following:

"(5) GENERAL SALES TAXES.—For purposes of subsection (a)—

"(A) ELECTION TO DEDUCT STATE AND LOCAL SALES TAXES IN LIEU OF STATE AND LOCAL INCOME TAXES.—

"(i) IN GENERAL.—At the election of the taxpayer for the taxable year, subsection (a) shall be applied—

"(I) without regard to the reference to State and local income taxes, and

"(II) as if State and local general sales taxes were referred to in a paragraph thereof.

"(B) DEFINITION OF GENERAL SALES TAX.—The term 'general sales tax' means a tax imposed at one rate with respect to the sale at retail of a broad range of classes of items.

"(C) SPECIAL RULES FOR FOOD, ETC.—In the case of items of food, clothing, medical supplies, and motor vehicles—

"(i) the fact that the tax does not apply with respect to some or all of such items shall not be taken into account in determining whether the tax applies with respect to a broad range of classes of items, and

"(ii) the fact that the rate of tax applicable with respect to some or all of such items is lower than the general rate of tax shall not be taken into account in determining whether the tax is imposed at one rate.

"(D) ITEMS TAXED AT DIFFERENT RATES.—Except in the case of a lower rate of tax applicable with respect to an item described in subparagraph (C), no deduction shall be allowed under this paragraph for any general sales tax imposed with respect to an item at a rate other than the general rate of tax.

"(E) COMPENSATING USE TAXES.—A compensating use tax with respect to an item shall be treated as a general sales tax. For purposes of the preceding sentence, the term 'compensating use tax' means, with respect to any item, a tax which—

"(i) is imposed on the use, storage, or consumption of such item, and

"(ii) is complementary to a general sales tax, but only if a deduction is allowable under this paragraph with respect to items sold at retail in the taxing jurisdiction which are similar to such item.

"(F) SPECIAL RULE FOR MOTOR VEHICLES.—In the case of motor vehicles, if the rate of tax exceeds the general rate, such excess shall be disregarded and the general rate shall be treated as the rate of tax.

"(G) SEPARATELY STATED GENERAL SALES TAXES.—If the amount of any general sales tax is separately stated, then, to the extent that the amount so stated is paid by the consumer (other than in connection with the consumer's trade or business) to the seller, such amount shall be treated as a tax imposed on, and paid by, such consumer.

"(H) AMOUNT OF DEDUCTION MAY BE DETERMINED UNDER TABLES.—

"(i) IN GENERAL.—At the election of the taxpayer for the taxable year, the amount of the deduction allowed under this paragraph for such year shall be—

"(I) the amount determined under this paragraph (without regard to this subparagraph) with respect to motor vehicles, boats, and other items specified by the Secretary, and

"(II) the amount determined under tables prescribed by the Secretary with respect to items to which subclause (I) does not apply.

"(ii) REQUIREMENTS FOR TABLES.—The tables prescribed under clause (i)—

"(I) shall reflect the provisions of this paragraph,

"(II) shall be based on the average consumption by taxpayers on a State-by-State basis (as determined by the Secretary) of items to which clause (i)(I) does not apply, taking into account filing status, number of dependents, adjusted gross income, and rates of State and local general sales taxation, and

"(III) need only be determined with respect to adjusted gross incomes up to the applicable amount (as determined under section 68(b)).

"(I) APPLICATION OF PARAGRAPH.—This paragraph shall apply to taxable years beginning after December 31, 2003, and before January 1, 2006.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

TITLE VI—FAIR AND EQUITABLE TOBACCO REFORM

SEC. 601. SHORT TITLE.

This title may be cited as the "Fair and Equitable Tobacco Reform Act of 2004".

Subtitle A—Termination of Federal Tobacco Quota and Price Support Programs

SEC. 611. TERMINATION OF TOBACCO QUOTA PROGRAM AND RELATED PROVISIONS.

(a) MARKETING QUOTAS.—Part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.) is repealed.

(b) TOBACCO INSPECTIONS.—Section 213 of the Tobacco Adjustment Act of 1983 (7 U.S.C. 511r) is repealed.

(c) TOBACCO CONTROL.—The Act of April 25, 1936 (commonly known as the Tobacco Control Act; 7 U.S.C. 515 et seq.), is repealed.

(d) PROCESSING TAX.—Section 9(b) of the Agricultural Adjustment Act (7 U.S.C. 609(b)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended—

(1) in paragraph (2), by striking "tobacco,"; and

(2) in paragraph (6)(B)(i), by striking ", or, in the case of tobacco, is less than the fair exchange value by not more than 10 per centum,".

(e) DECLARATION OF POLICY.—Section 2 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1282) is amended by striking "tobacco,".

(f) DEFINITIONS.—Section 301(b) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1301(b)) is amended—

(1) in paragraph (3)—

(A) by striking subparagraph (C); and

(B) by redesignating subparagraph (D) as subparagraph (C);

(2) in paragraph (6)(A), by striking "tobacco,";

(3) in paragraph (10)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(4) in paragraph (11)(B), by striking "and tobacco";

(5) in paragraph (12), by striking "tobacco,";

(6) in paragraph (14)—

(A) in subparagraph (A), by striking "(A)"; and

(B) by striking subparagraphs (B), (C), and (D);

(7) by striking paragraph (15);

(8) in paragraph (16)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B);

(9) by striking paragraph (17); and

(10) by redesignating paragraph (16) as paragraph (15).

(g) PARITY PAYMENTS.—Section 303 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1303) is amended in the first sentence by striking "rice, or tobacco," and inserting "or rice,".

(h) ADMINISTRATIVE PROVISIONS.—Section 361 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1361) is amended by striking "tobacco,".

(i) ADJUSTMENT OF QUOTAS.—Section 371 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1371) is amended—

(1) in the first sentence of subsection (a), by striking "rice, or tobacco" and inserting "or rice"; and

(2) in the first sentence of subsection (b), by striking "rice, or tobacco" and inserting "or rice".

(j) REPORTS AND RECORDS.—Section 373 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1373) is amended—

(1) by striking "rice, or tobacco" each place it appears in subsections (a) and (b) and inserting "or rice"; and

(2) in subsection (a)—

(A) in the first sentence, by striking "all persons engaged in the business of redrying, prizing, or stemming tobacco for producers,"; and

(B) in the last sentence, by striking "$500;" and all that follows through the period at the end of the sentence and inserting "$500.".

(k) REGULATIONS.—Section 375 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1375) is amended—

(1) in subsection (a), by striking "peanuts, or tobacco" and inserting "or peanuts"; and

(2) by striking subsection (c).

(l) EMINENT DOMAIN.—Section 378 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1378) is amended—

(1) in the first sentence of subsection (c), by striking "cotton, and tobacco" and inserting "and cotton"; and

(2) by striking subsections (d), (e), and (f).

(m) BURLEY TOBACCO FARM RECONSTITUTION.—Section 379 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1379) is amended—

(1) in subsection (a)—

(A) by striking "(a)"; and

(B) in paragraph (6), by striking ", but this clause (6) shall not be applicable in the case of burley tobacco"; and

(2) by striking subsections (b) and (c).

(n) ACREAGE-POUNDAGE QUOTAS.—Section 4 of the Act of April 16, 1955 (Public Law 89–12; 7 U.S.C. 1314c note), is repealed.

(o) BURLEY TOBACCO ACREAGE ALLOTMENTS.—The Act of July 12, 1952 (7 U.S.C. 1315), is repealed.

(p) TRANSFER OF ALLOTMENTS.—Section 703 of the Food and Agriculture Act of 1965 (7 U.S.C. 1316) is repealed.

(q) ADVANCE RECOURSE LOANS.—Section 13(a)(2)(B) of the Food Security Improvements Act of 1986 (7 U.S.C. 1433c–1(a)(2)(B)) is amended by striking "tobacco and".

(r) TOBACCO FIELD MEASUREMENT.—Section 1112 of the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203; 101 Stat. 1330–8) is amended by striking subsection (c).

(s) BURLEY TOBACCO IMPORT REVIEW.—Section 3 of Public Law 98–59 (7 U.S.C. 625) is repealed.

SEC. 612. TERMINATION OF TOBACCO PRICE SUPPORT PROGRAM AND RELATED PROVISIONS.

(a) TERMINATION OF TOBACCO PRICE SUPPORT AND NO NET COST PROVISIONS.—Sections 106, 106A, and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445, 1445–1, 1445–2) are repealed.

(b) PARITY PRICE SUPPORT.—Section 101 of the Agricultural Act of 1949 (7 U.S.C. 1441) is amended—

(1) in the first sentence of subsection (a), by striking "tobacco (except as otherwise provided herein), corn," and inserting "corn";

(2) by striking subsections (c), (g), (h), and (i);

(3) in subsection (d)(3)—

(A) by striking ", except tobacco,"; and

(B) by striking "and no price support shall be made available for any crop of tobacco for which marketing quotas have been disapproved by producers;"; and

(4) by redesignating subsections (d) and (e) as subsections (c) and (d), respectively.

(c) DEFINITION OF BASIC AGRICULTURAL COMMODITY.—Section 408(c) of the Agricultural Act of 1949 (7 U.S.C. 1428(c)) is amended by striking "tobacco,".

(d) POWERS OF COMMODITY CREDIT CORPORATION.—Section 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714c) is amended by inserting "(other than tobacco)" after "agricultural commodities" each place it appears.

SEC. 613. CONFORMING AMENDMENTS.

Section 320B(c)(1) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314h(c)(1)) is amended—

(1) by inserting "(A)" after "(1)";

(2) by striking "by" at the end and inserting "or"; and

(3) by adding at the end the following:

"(B) in the case of the 2004 marketing year, the price support rate for the kind of tobacco involved in effect under section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445) at the time of the violation; by".

SEC. 614. CONTINUATION OF LIABILITY FOR 2004 AND EARLIER CROP YEARS.

The amendments made by this subtitle shall not affect the liability of any person under any provision of law so amended with respect to the 2004 or an earlier crop of each kind of tobacco.

Subtitle B—Transitional Payments to Tobacco Quota Holders and Producers of Tobacco

SEC. 621. DEFINITIONS.

In this subtitle and subtitle C:

(1) AGRICULTURAL ACT OF 1949.—The term "Agricultural Act of 1949" means the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.), as in effect on the day before the date of the enactment of this title.

(2) AGRICULTURAL ADJUSTMENT ACT OF 1938.—The term "Agricultural Adjustment Act of 1938" means the Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.), as in effect on the day before the date of the enactment of this title.

(3) CONSIDERED PLANTED.—The term "considered planted" means tobacco that was planted, but failed to be produced as a result of a natural disaster, as determined by the Secretary.

(4) CONTRACT.—The term "contract" means a contract entered into under section 622 or 623.

(5) CONTRACT PAYMENT.—The term "contract payment" means a payment made under section 622 or 623 pursuant to a contract.

(6) PRODUCER OF QUOTA TOBACCO.—The term "producer of quota tobacco" means an owner, operator, landlord, tenant, or sharecropper that shared in the risk of producing tobacco on a farm where tobacco was produced or considered planted pursuant to a tobacco farm poundage quota or farm acreage allotment established under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.).

(7) QUOTA TOBACCO.—The term 'quota tobacco' means a kind of tobacco that is subject to a farm marketing quota or farm acreage allotment for the 2004 tobacco marketing year under a marketing quota or allotment program established under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.).

(8) TOBACCO.—The term "tobacco" means each of the following kinds of tobacco:

(A) Flue-cured tobacco, comprising types 11, 12, 13, and 14.

(B) Fire-cured tobacco, comprising types 22 and 23.

(C) Dark air-cured tobacco, comprising types 35 and 36.

(D) Virginia sun-cured tobacco, comprising type 37.

(E) Virginia fire-cured tobacco, comprising type 21.

(F) Burley tobacco, comprising type 31.

(G) Cigar-filler and cigar-binder tobacco, comprising types 42, 43, 44, 53, 54, and 55.

(9) TOBACCO QUOTA HOLDER.—The term "tobacco quota holder" means a person that was an owner of a farm, as of the date of enactment of this title, for which a basic tobacco farm marketing quota or farm acreage allotment for quota tobacco was established for the 2004 tobacco marketing year.

(10) TOBACCO TRUST FUND.—The term "Tobacco Trust Fund" means the Tobacco Trust Fund established under section 626.

(11) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

SEC. 622. CONTRACT PAYMENTS TO TOBACCO QUOTA HOLDERS.

(a) CONTRACT OFFERED.—The Secretary shall offer to enter into a contract with each tobacco quota holder under which the tobacco quota holder shall be entitled to receive payments under this section in exchange for the termination of tobacco marketing quotas and related price support under the amendments made by sections 611 and 612. The contract payments shall constitute full and fair consideration for the termination of such tobacco marketing quotas and related price support.

(b) ELIGIBILITY.—To be eligible to enter into a contract to receive a contract payment under this section, a person shall submit to the Secretary an application containing such information as the Secretary may require to demonstrate to the satisfaction of the Secretary that the person is a tobacco quota holder. The application shall be submitted within such time, in such form, and in such manner as the Secretary may require.

(c) BASE QUOTA LEVEL.—

(1) ESTABLISHMENT.—The Secretary shall establish a base quota level applicable to each tobacco quota holder identified under subsection (b).

(2) POUNDAGE QUOTAS.—Subject to adjustment under subsection (d), for each kind of tobacco for which the marketing quota is expressed in pounds, the base quota level for each tobacco quota holder shall be equal to the basic quota for quota tobacco established for the 2002 tobacco marketing year under a marketing quota program established under part I of subtitle B of title III of the Agriculture Adjustment Act of 1938 on the farm owned by the tobacco quota holder.

(3) MARKETING QUOTAS OTHER THAN POUNDAGE QUOTAS.—Subject to adjustment under subsection (d), for each kind of tobacco for which there is marketing quota or allotment on an acreage basis, the base quota level for each tobacco quota holder shall be the quantity equal to the product obtained by multiplying—

(A) the basic tobacco farm marketing quota or allotment for the 2002 marketing year established by the Secretary for quota tobacco owned by the tobacco quota holder; by

(B) the average production yield, per acre, for the period covering the 2001, 2002, and 2003 crop years for that kind of tobacco in the county in which the quota tobacco is located.

(d) TREATMENT OF CERTAIN CONTRACTS AND AGREEMENTS.—

(1) EFFECT OF PURCHASE CONTRACT.—If there was an agreement for the purchase of all or part of a farm described in subsection (c) as of the date of the enactment of this title, and the parties to the sale are unable to agree to the disposition of eligibility for contract payments, the Secretary, taking into account any transfer of quota that has been agreed to, shall provide for the equitable division of the contract payments among the parties by adjusting the determination of who is the tobacco quota holder with respect to particular pounds or allotment of the quota.

(2) EFFECT OF AGREEMENT FOR PERMANENT QUOTA TRANSFER.—If the Secretary determines that there was in existence, as of the day before the date of the enactment of this title, an agreement for the permanent transfer of quota, but that the transfer was not completed by that date, the Secretary shall consider the tobacco quota holder to be the party to the agreement that, as of that date, was the owner of the farm to which the quota was to be transferred.

(e) CONTRACT PAYMENTS.—

(1) CALCULATION OF TOTAL PAYMENT AMOUNT.—The total amount of contract payments to which an eligible tobacco quota holder is entitled under this section, with respect to a kind of tobacco, shall be equal to the product obtained by multiplying—

(A) $7.00 per pound; by

(B) the base quota level of the tobacco quota holder determined under subsection (c) with respect to that kind of tobacco.

(2) ANNUAL PAYMENT.—During each of fiscal years 2005 through 2014, the Secretary shall make a contract payment under this section to each eligible tobacco quota holder, with respect to a kind of tobacco, in an amount equal to $\frac{1}{10}$ of the amount determined under paragraph (1) for the tobacco quota holder for that kind of tobacco.

(f) DEATH OF TOBACCO QUOTA HOLDER.—If a tobacco quota holder who is entitled to contract payments under this section dies and is survived by a spouse or one or more dependents, the right to receive the payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the estate of the tobacco quota holder.

SEC. 623. CONTRACT PAYMENTS FOR PRODUCERS OF QUOTA TOBACCO.

(a) CONTRACT OFFERED.—The Secretary shall offer to enter into a contract with each producer of quota tobacco under which the producer of quota tobacco shall be entitled to receive payments under this section in exchange for the termination of tobacco marketing quotas and related price support under the amendments made by sections 611 and 612. The contract payments shall constitute full and fair consideration for the termination of such tobacco marketing quotas and related price support.

(b) ELIGIBILITY.—

(1) APPLICATION AND DETERMINATION.—To be eligible to enter into a contract to receive a contract payment under this section, a person shall submit to the Secretary an application containing such information as the Secretary may require to demonstrate to the satisfaction of the Secretary that the person is a producer of quota tobacco. The application shall be submitted within such time, in such form, and in such manner as the Secretary may require.

(2) EFFECT OF MULTIPLE PRODUCERS FOR SAME QUOTA TOBACCO.—If, on the basis of the applications submitted under paragraph (1) or other information, the Secretary determines that two or more persons are a producer of the same quota tobacco, the Secretary shall provide for an equitable distribution among the persons of the contract payments made under this section with respect to that quota tobacco, based on relative share of such persons in the risk of producing the quota tobacco and such other factors as the Secretary considers appropriate.

(c) BASE QUOTA LEVEL.—

(1) ESTABLISHMENT.—The Secretary shall establish a base quota level applicable to each producer of quota tobacco, as determined under this subsection.

(2) FLUE-CURED AND BURLEY TOBACCO.—In the case of Flue-cured tobacco (types 11, 12, 13, and 14) and Burley tobacco (type 31), the base quota level for each producer of quota tobacco shall be equal to the effective tobacco marketing quota (irrespective of disaster lease and transfers) under part I of subtitle B of title III of the Agriculture Adjustment Act of 1938 for the 2002 marketing year for quota tobacco produced on the farm.

(3) OTHER KINDS OF TOBACCO.—In the case of each kind of tobacco (other than tobacco covered by paragraph (2)), for the purpose of calculating a contract payment to a producer of quota tobacco, the base quota level for the producer of quota tobacco shall be the quantity obtained by multiplying—

(A) the basic tobacco farm acreage allotment for the 2002 marketing year established by the Secretary for quota tobacco produced on the farm; by

(B) the average annual yield, per acre, of quota tobacco produced on the farm for the period covering the 2001, 2002, and 2003 crop years.

(d) CONTRACT PAYMENTS.—

(1) CALCULATION OF TOTAL PAYMENT AMOUNT.—Subject to subsection (b)(2), the total amount of contract payments to which an eligible producer of quota tobacco is entitled under this section, with respect to a kind of tobacco, shall be equal to the product obtained by multiplying—

(A) subject to paragraph (2), $3.00 per pound; by

(B) the base quota level of the producer of quota tobacco determined under subsection (c) with respect to that kind of tobacco.

(2) ANNUAL PAYMENT.—During each of fiscal years 2005 through 2014, the Secretary shall make a contract payment under this section to each eligible producer of tobacco, with respect to a kind of tobacco, in an amount equal to $\frac{1}{10}$ of the amount determined under paragraph (1) for the producer for that kind of tobacco.

(3) VARIABLE PAYMENT RATES.—The rate for payments to a producer of quota tobacco under paragraph (1)(A) shall be equal to—

(A) in the case of a producer of quota tobacco that produced quota tobacco marketed, or considered planted, under a marketing quota in all three of the 2002, 2003, or 2004 tobacco marketing years, the rate prescribed under paragraph (1)(A);

(B) in the case of a producer of quota tobacco that produced quota tobacco marketed, or considered planted, under a marketing quota in only two of those tobacco marketing years, $\frac{2}{3}$ of the rate prescribed under paragraph (1)(A);

(C) in the case of a producer of quota tobacco that produced quota tobacco marketed, or considered planted, under a marketing quota in only one of those tobacco marketing years, $\frac{1}{3}$ of the rate prescribed under paragraph (1)(A).

(e) DEATH OF TOBACCO PRODUCER.—If a producer of quota tobacco who is entitled to contract payments under this section dies and is survived by a spouse or one or more dependents, the right to receive the contract payments shall transfer to the surviving spouse or, if there is no surviving spouse, to the estate of the producer.

SEC. 624. ADMINISTRATION.

(a) TIME FOR PAYMENT OF CONTRACT PAYMENTS.—Contract payments required to be made for a fiscal year shall be made by the Secretary as soon as practicable.

(b) USE OF COUNTY COMMITTEES TO RESOLVE DISPUTES.—Any dispute regarding the eligibility of a person to enter into a contract or to receive contract payments, and any dispute regarding the amount of a contract payment, may be appealed to the county committee established under section 8 of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h) for the *county or other area in which the farming operation of the person is located.*

(c) ROLE OF NATIONAL APPEALS DIVISION.—Any adverse determination of a county committee under subsection (b) may be appealed to the National Appeals Division established under subtitle H of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6991 et seq.).

(d) USE OF FINANCIAL INSTITUTIONS.—The Secretary may use a financial institution to manage assets, make contract payments, and otherwise carry out this title.

(e) PAYMENT TO FINANCIAL INSTITUTIONS.—The Secretary shall permit a tobacco quota holder or producer of quota tobacco entitled to contract payments to assign to a financial institution the right to receive the contract payments. Upon receiving notification of the assignment, the Secretary shall make subsequent contract payments for the tobacco quota holder or producer of quota tobacco directly to the financial institution designated by the tobacco quota holder or producer of quota tobacco. The Secretary shall make information available to tobacco quota holders and producers of quota tobacco regarding their ability to elect to have the Secretary make payments directly to a financial institution under this subsection so that they may obtain a lump sum or other payment.

SEC. 625. USE OF ASSESSMENTS AS SOURCE OF FUNDS FOR PAYMENTS.

(a) DEFINITIONS.—In this section:

(1) BASE PERIOD.—The term "base period" means the one-year period ending the June 30 before the beginning of a fiscal year.

(2) GROSS DOMESTIC VOLUME.—The term "gross domestic volume" means the volume of tobacco products—

(A) removed (as defined by section 5702 of the Internal Revenue Code of 1986); and

(B) not exempt from tax under chapter 52 of the Internal Revenue Code of 1986 at the time of their removal under that chapter or the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(3) MARKET SHARE.—The term "market share" means the share of each manufacturer or importer of a class of tobacco product (expressed as a decimal to the fourth place) of the total volume of domestic sales of the class of tobacco product during the base period for a fiscal year for an assessment under this section.

(b) QUARTERLY ASSESSMENTS.—

(1) IMPOSITION OF ASSESSMENT.—The Secretary, acting through the Commodity Credit Corporation, shall impose quarterly assessments during each of fiscal years 2005 through 2014, calculated in accordance with this section, on each tobacco product manufacturer and tobacco product importer that sells tobacco products in domestic commerce in the United States during that fiscal year.

(2) AMOUNTS.—Beginning with the calendar quarter ending on December 31 of each of fiscal years 2005 through 2014, the assessment payments over each four-calendar quarter period shall be sufficient to cover—

(A) the contract payments made under sections 622 and 623 during that period; and

(B) other expenditures from the Tobacco Trust Fund made during the base quarter periods corresponding to the four calendar quarters of that period.

(3) DEPOSIT.—Assessments collected under this section shall be deposited in the Tobacco Trust Fund.

(c) ASSESSMENTS FOR CLASSES OF TOBACCO PRODUCTS.—

(1) INITIAL ALLOCATION.—The percentage of the total amount required by subsection (b) to be assessed against, and paid by, the manufacturers and importers of each class of tobacco product in fiscal year 2005 shall be as follows:

(A) For cigarette manufacturers and importers, 96.331 percent.

(B) For cigar manufacturers and importers, 2.783 percent.

(C) For snuff manufacturers and importers, 0.539 percent.

(D) For roll-your-own tobacco manufacturers and importers, 0.171 percent.

(E) For chewing tobacco manufacturers and importers, 0.111 percent.

(F) For pipe tobacco manufacturers and importers, 0.066 percent.

(2) SUBSEQUENT ALLOCATIONS.—For subsequent fiscal years, the Secretary shall periodically adjust the percentage of the total amount required under subsection (b) to be assessed against, and paid by, the manufacturers and importers of each class of tobacco product specified in paragraph (1) to reflect changes in the share of gross domestic volume held by that class of tobacco product.

(3) EFFECT OF INSUFFICIENT AMOUNTS.—If the Secretary determines that the assessment imposed under subsection (b) will result in insufficient amounts to carry out this subtitle during a fiscal year, the Secretary shall assess such additional amounts as the Secretary determines to be necessary to carry out this subtitle during that fiscal year. The additional amount shall be allocated to manufacturers and importers of each class of tobacco product specified in paragraph (1) in the same manner and based on the same percentages applicable under paragraph (1) or (2) for that fiscal year.

(d) NOTIFICATION AND TIMING OF ASSESSMENTS.—

(1) NOTIFICATION OF ASSESSMENTS.—The Secretary shall provide each manufacturer or importer subject to an assessment under subsection (b) with written notice setting forth the amount to be assessed against the manufacturer or importer for each quarterly payment period. The notice for a quarterly period shall be provided not later than 30 days before the date payment is due under paragraph (3).

(2) CONTENT.—The notice shall include the following information with respect to the quarterly period used by the Secretary in calculating the amount:

(A) The total combined assessment for all manufacturers and importers of tobacco products.

(B) The total assessment with respect to the class of tobacco products manufactured or imported by the manufacturer or importer.

(C) Any adjustments to the percentage allocations among the classes of tobacco products made pursuant to paragraph (2) or (3) of subsection (c).

(D) The volume of gross sales of the applicable class of tobacco product treated as made by the manufacturer or importer for purposes of calculating the manufacturer's or importer's market share under subsection (f).

(E) The total volume of gross sales of the applicable class of tobacco product that the Secretary treated as made by all manufacturers and importers for purposes of calculating the manufacturer's or importer's market share under subsection (f).

(F) The manufacturer's or importer's market share of the applicable class of tobacco product, as determined by the Secretary under subsection (f).

(G) The market share, as determined by the Secretary under subsection (f), of each other manufacturer and importer, for each applicable class of tobacco product.

(3) TIMING OF ASSESSMENT PAYMENTS.—

(A) COLLECTION DATE.—Assessments shall be collected at the end of each calendar year quarter, except that the Secretary shall ensure that the final assessment due under this section is collected not later than September 30, 2014.

(B) BASE PERIOD QUARTER.—The assessment for a calendar year quarter shall correspond to the base period quarter that ended at the end of the preceding calendar year quarter.

(e) ALLOCATION OF ASSESSMENT WITHIN EACH CLASS OF TOBACCO PRODUCT.—

(1) PRO RATA BASIS.—The assessment for each class of tobacco product specified in subsection (c)(1) shall be allocated on a pro rata basis among manufacturers and importers based on each manufacturer's or importer's share of gross domestic volume.

(2) LIMITATION.—No manufacturer or importer shall be required to pay an assessment that is based on a share that is in excess of the manufacturer's or importer's share of domestic volume.

(f) ALLOCATION OF TOTAL ASSESSMENTS BY MARKET SHARE.—The amount of the assessment for each class of tobacco product specified in subsection (c)(1) to be paid by each manufacturer or importer of that class of tobacco product shall be determined for each quarterly payment period by multiplying—

(1) the market share of the manufacturer or importer, as calculated with respect to that payment period, of the class of tobacco product; by

(2) the total amount of the assessment for that quarterly payment period under subsection (c), for the class of tobacco product.

(g) DETERMINATION OF VOLUME OF DOMESTIC SALES.—

(1) IN GENERAL.—The calculation of the volume of domestic sales of a class of tobacco product by a manufacturer or importer, and by all manufacturers and importers as a group, shall be made by the Secretary based on information provided by the manufacturers and importers pursuant to subsection (h), as well as any other relevant information provided to or obtained by the Secretary.

(2) GROSS DOMESTIC VOLUME.—The volume of domestic sales shall be calculated based on gross domestic volume.

(3) MEASUREMENT.—For purposes of the calculations under this subsection and the certifications under subsection (h) by the Secretary, the volumes of domestic sales shall be measured by—

(A) in the case of cigarettes and cigars, the number of cigarettes and cigars; and

(B) in the case of the other classes of tobacco products specified in subsection (c)(1), in terms of number of pounds, or fraction thereof, of those products.

(h) MEASUREMENT OF VOLUME OF DOMESTIC SALES.—

(1) SUBMISSION OF INFORMATION.—Each manufacturer and importer of tobacco products shall submit to the Secretary a certified copy of each of the returns or forms described by paragraph (2) that are required to be filed with a Federal agency on the same date that those returns or forms are filed, or required to be filed, with the agency.

(2) RETURNS AND FORMS.—The returns and forms described by this paragraph are those returns and forms that relate to—

(A) the removal of tobacco products into domestic commerce (as defined by section 5702 of the Internal Revenue Code of 1986); and

(B) the payment of the taxes imposed under charter 52 of the Internal Revenue Code of 1986, including AFT Form 5000.24 and United States Customs Form 7501 under currently applicable regulations.

(3) EFFECT OF FAILURE TO PROVIDE REQUIRED INFORMATION.—Any person that knowingly fails to provide information required under this subsection or that provides false information under this subsection shall be subject to the penalties described in section 1003 of title 18, United States Code. The Secretary may also assess against the person a civil penalty in an amount not to exceed two percent of the value of the kind of tobacco products manufactured or imported by the person during the fiscal year in

which the violation occurred, as determined by the Secretary.

(i) CHALLENGE TO ASSESSMENT.—

(1) APPEAL TO SECRETARY.—A manufacturer or importer subject to this section may contest an assessment imposed on the manufacturer or importer under this section by notifying the Secretary, not later than 30 business days after receiving the assessment notification required by subsection (d), that the manufacturer or importer intends to contest the assessment.

(2) INFORMATION.—Not later than 180 days after the date of the enactment of this title, the Secretary shall establish by regulation a procedure under which a manufacturer or importer contesting an assessment under this subsection may present information to the Secretary to demonstrate that the assessment applicable to the manufacturer or importer is incorrect. In challenging the assessment, the manufacturer or importer may use any information that is available, including third party data on industry or individual company sales volumes.

(3) REVISION.—If a manufacturer or importer establishes that the initial determination of the amount of an assessment is incorrect, the Secretary shall revise the amount of the assessment so that the manufacturer or importer is required to pay only the amount correctly determined.

(4) TIME FOR REVIEW.—Not later than 30 days after receiving notice from a manufacturer or importer under paragraph (1), the Secretary shall—

(A) decide whether the information provided to the Secretary under paragraph (2), and any other information that the Secretary determines is appropriate, is sufficient to establish that the original assessment was incorrect; and

(B) make any revisions necessary to ensure that each manufacturer and importer pays only its correct pro rata share of total gross domestic volume from all sources.

(5) IMMEDIATE PAYMENT OF UNDISPUTED AMOUNTS.—The regulations promulgated by the Secretary under paragraph (2) shall provide for the immediate payment by a manufacturer or importer challenging an assessment of that portion of the assessment that is not in dispute. The manufacturer and importer may place into escrow, in accordance with such regulations, only the portion of the assessment being challenged in good faith pending final determination of the claim.

(j) JUDICIAL REVIEW.—

(1) IN GENERAL.—Any manufacturer or importer aggrieved by a determination of the Secretary with respect to the amount of any assessment may seek review of the determination in the United States District Court for the District of Columbia or for the district in which the manufacturer or importer resides or has its principal place of business at any time following exhaustion of the administrative remedies available under subsection (i).

(2) TIME LIMITS.—Administrative remedies shall be deemed exhausted if no decision by the Secretary is made within the time limits established under subsection (i)(4).

(3) EXCESSIVE ASSESSMENTS.—The court shall restrain collection of the excessive portion of any assessment or order a refund of excessive assessments already paid, along with interest calculated at the rate prescribed in section 3717 of title 31, United States Code, if it finds that the Secretary's determination is not supported by a preponderance of the information available to the Secretary.

(k) TERMINATION DATE.—The authority provided by this section to impose assessments terminates on September 30, 2014.

SEC. 626. TOBACCO TRUST FUND.

(a) ESTABLISHMENT.—There is established in the Commodity Credit Corporation a revolving trust fund, to be known as the "Tobacco Trust Fund", which shall be used in carrying out this subtitle. The Tobacco Trust Fund shall consist of the following:

(1) Assessments collected under section 625.

(2) Such amounts as are necessary from the Commodity Credit Corporation.

(3) Any interest earned on investment of amounts in the Tobacco Trust Fund under subsection (c).

(b) EXPENDITURES.—

(1) AUTHORIZED EXPENDITURES.—Subject to paragraph (2), and notwithstanding any other provision of law, the Secretary shall use amounts in the Tobacco Trust Fund, in such amounts as the Secretary determines are necessary—

(A) to make payments under sections 622 and 623;

(B) to provide reimbursement under section 641(c);

(C) to reimburse the Commodity Credit Corporation for costs incurred by the Commodity Credit Corporation under paragraph (2); and

(D) to make payments to financial institutions to satisfy contractual obligations under section 622 or 623.

(2) EXPENDITURES BY COMMODITY CREDIT CORPORATION.—Notwithstanding any other provision of law, the Secretary shall use the funds, facilities., and authorities of the Commodity Credit Corporation to make payments described in paragraph (1). Not later than January 1, 2015, the Secretary shall use amounts in the Tobacco Trust Fund to fully reimburse, with interest, the Commodity Credit Corporation for all funds of the Commodity Credit Corporation expended under the authority of this paragraph. Administrative costs incurred by the Secretary or the Commodity Credit Corporation to carry out this title may not be paid using amounts in the Tobacco Trust Fund.

(c) INVESTMENT OF AMOUNTS.—

(1) IN GENERAL.—The Commodity Credit Corporation shall invest such portion of the amounts in the Tobacco Trust Fund as are not, in the judgment of the Commodity Credit Corporation, required to meet current expenditures.

(2) INTEREST-BEARING OBLIGATIONS.—Investments may be made only in interest-bearing obligations of the United States.

(3) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under paragraph (1), obligations may be acquired—

(A) on original issue at the issue price; or

(B) by purchase of outstanding obligations at the market price.

(4) SALE OF OBLIGATIONS.—Any obligation acquired by the Tobacco Trust Fund may be sold by the Commodity Credit Corporation at the market price.

(5) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Tobacco Trust Fund shall be credited to and form a part of the Fund.

SEC. 627. LIMITATION ON TOTAL EXPENDITURES.

The total amount expended by the Secretary from the Tobacco Trust Fund to make payments under sections 622 and 623 and for the other authorized purposes of the Fund shall not exceed $10,140,000,000.

Subtitle C—Implementation and Transition

SEC. 641. TREATMENT OF TOBACCO LOAN POOL STOCKS AND OUTSTANDING LOAN COSTS.

(a) DISPOSAL OF STOCKS.—To provide for the orderly disposition of quota tobacco held by an association that has entered into a loan agreement with the Commodity Credit Corporation under section 106A or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445-1, 1445-2) (referred to in this section as an "association"), loan pool stocks for each kind of tobacco held by the association shall be disposed of in accordance with this section.

(b) DISPOSAL BY ASSOCIATIONS.—For each kind of tobacco held by an association, the association shall be responsible for the disposal of a specific quantity of the loan pool stocks for that kind of tobacco held by the association. The quantity transferred to the association for disposal shall be equal to the quantity determined by dividing—

(1) the amount of funds held by the association in the No Net Cost Tobacco Fund and the No Net Cost Tobacco Account established under sections 106A and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445-1, 1445-2) for the kind of tobacco; by

(2) the average list price per pound for the kind of tobacco, as determined by the Secretary.

(c) DISPOSAL OF REMAINDER BY COMMODITY CREDIT CORPORATION.—

(1) DISPOSAL.—Any loan pool stocks of a kind of tobacco of an association that are not transferred to the association under subsection (b) for disposal shall be disposed of by Commodity Credit Corporation in a manner determined by the Secretary.

(2) REIMBURSEMENT.—As required by section 626(b)(1)(B), the Secretary shall transfer from the Tobacco Trust Fund to the No Net Cost Tobacco Fund or the No Net Cost Tobacco Account of an association established under section 106A or 106B of the Agricultural Act of 1949 (7 U.S.C. 1445-1, 1445-2) such amounts as the Secretary determines will be adequate to reimburse the Commodity Credit Corporation for any net losses that the Corporation may sustain under its loan agreements with the association.

(d) TRANSFER OF REMAINING NO NET COST FUNDS.—Any funds in the No Net Cost Tobacco Fund or the No Net Cost Tobacco Account of an association established under sections 106A and 106B of the Agricultural Act of 1949 (7 U.S.C. 1445-1, 1115-2) that remain after the application of subsections (b) and (c) shall be transferred to the association for distribution to producers of quota tobacco in accordance with a plan approved by the Secretary.

SEC. 642. REGULATIONS.

(a) IN GENERAL.—The Secretary may promulgate such regulations as are necessary to implement this title and the amendments made by this title.

(b) PROCEDURE.—The promulgation of the regulations and administration of this title and the amendments made by this title shall be made without regard to—

(1) the notice and comment provisions of section 553 of title 5, United States Code;

(2) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 Fed. Reg. 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and

(3) chapter 35 of title 44, United States Code (commonly known as the "Paperwork Reduction Act").

(c) CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.—In carrying out this section, the Secretary shall use the authority provided under section 808 of title 5, United States Code.

SEC. 643. EFFECTIVE DATE.

This title and the amendments made by this title shall apply to the 2005 and subsequent crops of each kind of tobacco.

TITLE VII—MISCELLANEOUS PROVISIONS

SEC. 701. BROWNFIELDS DEMONSTRATION PROGRAM FOR QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.

(a) TREATMENT AS EXEMPT FACILITY BOND.—Subsection (a) of section 142 (relating to the definition of exempt facility bond) is amended by striking "or" at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting ", or", and by inserting at the end the following new paragraph:

"(14) qualified green building and sustainable design projects.".

(b) QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.—Section 142 (relating to exempt facility bonds) is amended by adding at the end thereof the following new subsection:

"(l) QUALIFIED GREEN BUILDING AND SUSTAINABLE DESIGN PROJECTS.—

"(1) IN GENERAL.—For purposes of subsection (a)(14), the term 'qualified green building and sustainable design project' means any project which is designated by the Secretary, after consultation with the Administrator of the Environmental Protection Agency, as a qualified green building and sustainable design project and which meets the requirements of clauses (i), (ii), (iii), and (iv) of paragraph (4)(A).

"(2) DESIGNATIONS.—

"(A) IN GENERAL.—Within 60 days after the end of the application period described in paragraph (3)(A), the Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall designate qualified green building and sustainable design projects. At least one of the projects designated shall be located in, or within a 10-mile radius of, an empowerment zone as designated pursuant to section 1391, and at least one of the projects designated shall be located in a rural State. No more than one project shall be designated in a State. A project shall not be designated if such project includes a stadium or arena for professional sports exhibitions or games.

"(B) MINIMUM CONSERVATION AND TECHNOLOGY INNOVATION OBJECTIVES.—The Secretary, after consultation with the Administrator of the Environmental Protection Agency, shall ensure that, in the aggregate, the projects designated shall—

"(i) reduce electric consumption by more than 150 megawatts annually as compared to conventional generation,

"(ii) reduce daily sulfur dioxide emissions by at least 10 tons compared to coal generation power,

"(iii) expand by 75 percent the domestic solar photovoltaic market in the United States (measured in megawatts) as compared to the expansion of that market from 2001 to 2002, and

"(iv) use at least 25 megawatts of fuel cell energy generation.

"(3) LIMITED DESIGNATIONS.—A project may not be designated under this subsection unless—

"(A) the project is nominated by a State or local government within 180 days of the enactment of this subsection, and

"(B) such State or local government provides written assurances that the project will satisfy the eligibility criteria described in paragraph (4).

"(4) APPLICATION.—

"(A) IN GENERAL.—A project may not be designated under this subsection unless the application for such designation includes a project proposal which describes the energy efficiency, renewable energy, and sustainable design features of the project and demonstrates that the project satisfies the following eligibility criteria:

"(i) GREEN BUILDING AND SUSTAINABLE DESIGN.—At least 75 percent of the square footage of commercial buildings which are part of the project is registered for United States Green Building Council's LEED certification and is reasonably expected (at the time of the designation) to receive such certification. For purposes of determining LEED certification as required under this clause, points shall be credited by using the following:

"(I) For wood products, certification under the Sustainable Forestry Initiative Program and the American Tree Farm System.

"(II) For renewable wood products, as credited for recycled content otherwise provided under LEED certification.

"(III) For composite wood products, certification under standards established by the American National Standards Institute, or such other voluntary standards as published in the Federal Register by the Administrator of the Environmental Protection Agency.

"(ii) BROWNFIELD REDEVELOPMENT.—The project includes a brownfield site as defined by section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), including a site described in subparagraph (D)(ii)(II)(aa) thereof.

"(iii) STATE AND LOCAL SUPPORT.—The project receives specific State or local government resources which will support the project in an amount equal to at least $5,000,000. For purposes of the preceding sentence, the term 'resources' includes tax abatement benefits and contributions in kind.

"(iv) SIZE.—The project includes at least one of the following:

"(I) At least 1,000,000 square feet of building.

"(II) At least 20 acres.

"(v) USE OF TAX BENEFIT.—The project proposal includes a description of the net benefit of the tax-exempt financing provided under this subsection which will be allocated for financing of one or more of the following:

"(I) The purchase, construction, integration, or other use of energy efficiency, renewable energy, and sustainable design features of the project.

"(II) Compliance with certification standards cited under clause (i).

"(III) The purchase, remediation, and foundation construction and preparation of the brownfields site.

"(vi) PROHIBITED FACILITIES.—An issue shall not be treated as an issue described in subsection (a)(14) if any proceeds of such issue are used to provide any facility the principal business of which is the sale of food or alcoholic beverages for consumption on the premises.

"(vii) EMPLOYMENT.—The project is projected to provide permanent employment of at least 1,500 full time equivalents (150 full time equivalents in rural States) when completed and construction employment of at least 1,000 full time equivalents (100 full time equivalents in rural States).

The application shall include an independent analysis which describes the project's economic impact, including the amount of projected employment.

"(B) PROJECT DESCRIPTION.—Each application described in subparagraph (A) shall contain for each project a description of—

"(i) the amount of electric consumption reduced as compared to conventional construction,

"(ii) the amount of sulfur dioxide daily emissions reduced compared to coal generation,

"(iii) the amount of the gross installed capacity of the project's solar photovoltaic capacity measured in megawatts, and

"(iv) the amount, in megawatts, of the project's fuel cell energy generation.

"(5) CERTIFICATION OF USE OF TAX BENEFIT.—No later than 30 days after the completion of the project, each project must certify to the Secretary that the net benefit of the tax-exempt financing was used for the purposes described in paragraph (4).

"(6) DEFINITIONS.—For purposes of this subsection—

"(A) RURAL STATE.—The term 'rural State' means any State which has—

"(i) a population of less than 4,500,000 according to the 2000 census,

"(ii) a population density of less than 150 people per square mile according to the 2000 census, and

"(iii) increased in population by less than half the rate of the national increase between the 1990 and 2000 censuses.

"(B) LOCAL GOVERNMENT.—The term 'local government' has the meaning given such term by section 1393(a)(5).

"(C) NET BENEFIT OF TAX-EXEMPT FINANCING.—The term 'net benefit of tax-exempt financing' means the present value of the interest savings (determined by a calculation established by the Secretary) which result from the tax-exempt status of the bonds.

"(7) AGGREGATE FACE AMOUNT OF TAX-EXEMPT FINANCING.—

"(A) IN GENERAL.—An issue shall not be treated as an issue described in subsection (a)(14) if the aggregate face amount of bonds issued by the State or local government pursuant thereto for a project (when added to the aggregate face amount of bonds previously so issued for such project) exceeds an amount designated by the Secretary as part of the designation.

"(B) LIMITATION ON AMOUNT OF BONDS.—The Secretary may not allocate authority to issue qualified green building and sustainable design project bonds in an aggregate face amount exceeding $2,000,000,000.

"(8) TERMINATION.—Subsection (a)(14) shall not apply with respect to any bond issued after September 30, 2009.

"(9) TREATMENT OF CURRENT REFUNDING BONDS.—Paragraphs (7)(B) and (8) shall not apply to any bond (or series of bonds) issued to refund a bond issued under subsection (a)(14) before October 1, 2009, if—

"(A) the average maturity date of the issue of which the refunding bond is a part is not later than the average maturity date of the bonds to be refunded by such issue,

"(B) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

"(C) the net proceeds of the refunding bond are used to redeem the refunded bond not later than 90 days after the date of the issuance of the refunding bond.

For purposes of subparagraph (A), average maturity shall be determined in accordance with section 147(b)(2)(A).".

(c) EXEMPTION FROM GENERAL STATE VOLUME CAPS.—Paragraph (3) of section 146(g) (relating to exception for certain bonds) is amended—

(1) by striking "or (13)" and inserting "(13), or (14)", and

(2) by striking "and qualified public educational facilities" and inserting "qualified public educational facilities, and qualified green building and sustainable design projects".

(d) ACCOUNTABILITY.—Each issuer shall maintain, on behalf of each project, an interest bearing reserve account equal to 1 percent of the net proceeds of any bond issued under this section for such project. Not later than 5 years after the date of issuance, the Secretary of the Treasury, after consultation with the Administrator of the Environmental Protection Agency, shall determine whether the project financed with such bonds has substantially complied with the terms and conditions described in section 142(l)(4) of the Internal Revenue Code of 1986 (as added by this section). If the Secretary, after such consultation, certifies that the project has substantially complied with such terms and conditions and meets the commitments set forth in the application for such project described in section 142(l)(4) of such Code, amounts in the reserve account, including all interest, shall be released to the project. If the Secretary determines that the project has not substantially complied with such terms and conditions, amounts in the reserve account, including all interest, shall be paid to the United States Treasury.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after December 31, 2004.

SEC. 702. EXCLUSION OF GAIN OR LOSS ON SALE OR EXCHANGE OF CERTAIN BROWNFIELD SITES FROM UNRELATED BUSINESS TAXABLE INCOME.

(a) IN GENERAL.—Subsection (b) of section 512 (relating to unrelated business taxable income) is amended by adding at the end the following new paragraph:

"(18) TREATMENT OF GAIN OR LOSS ON SALE OR EXCHANGE OF CERTAIN BROWNFIELD SITES.—

"(A) IN GENERAL.—Notwithstanding paragraph (5)(B), there shall be excluded any gain or loss from the qualified sale, exchange, or other disposition of any qualifying brownfield property by an eligible taxpayer.

"(B) ELIGIBLE TAXPAYER.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'eligible taxpayer' means, with respect to a property, any organization exempt from tax under section 501(a) which—

"(I) acquires from an unrelated person a qualifying brownfield property, and

"(II) pays or incurs eligible remediation expenditures with respect to such property in an amount which exceeds the greater of $550,000 or 12 percent of the fair market value of the property at the time such property was acquired by the eligible taxpayer, determined as if there was not a presence of a hazardous substance, pollutant, or contaminant on the property which is complicating the expansion, redevelopment, or reuse of the property.

"(ii) EXCEPTION.—Such term shall not include any organization which is—

"(I) potentially liable under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 with respect to the qualifying brownfield property,

"(II) affiliated with any other person which is so potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship which is created by the instruments by which title to any qualifying brownfield property is conveyed or financed or by a contract of sale of goods or services), or

"(III) the result of a reorganization of a business entity which was so potentially liable.

"(C) QUALIFYING BROWNFIELD PROPERTY.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'qualifying brownfield property' means any real property which is certified, before the taxpayer incurs any eligible remediation expenditures (other than to obtain a Phase I environmental site assessment), by an appropriate State agency (within the meaning of section 198(c)(4)) in the State in which such property is located as a brownfield site within the meaning of section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph).

"(ii) REQUEST FOR CERTIFICATION.—Any request by an eligible taxpayer for a certification described in clause (i) shall include a sworn statement by the eligible taxpayer and supporting documentation of the presence of a hazardous substance, pollutant, or contaminant on the property which is complicating the expansion, redevelopment, or reuse of the property given the property's reasonably anticipated future land uses or capacity for uses of the property (including a Phase I environmental site assessment and, if applicable, evidence of the property's presence on a local, State, or Federal list of brownfields or contaminated property) and other environmental assessments prepared or obtained by the taxpayer.

"(D) QUALIFIED SALE, EXCHANGE, OR OTHER DISPOSITION.—For purposes of this paragraph—

"(i) IN GENERAL.—A sale, exchange, or other disposition of property shall be considered as qualified if—

"(I) such property is transferred by the eligible taxpayer to an unrelated person, and

"(II) within 1 year of such transfer the eligible taxpayer has received a certification from the Environmental Protection Agency or an appropriate State agency (within the meaning of section 198(c)(4)) in the State in which such property is located that, as a result of the eligible taxpayer's remediation actions, such property would not be treated as a qualifying brownfield property in the hands of the transferee.

For purposes of subclause (II), before issuing such certification, the Environmental Protection Agency or appropriate State agency shall respond to comments received pursuant to clause (ii)(V) in the same form and manner as required under section 117(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph).

"(ii) REQUEST FOR CERTIFICATION.—Any request by an eligible taxpayer for a certification described in clause (i) shall be made not later than the date of the transfer and shall include a sworn statement by the eligible taxpayer certifying the following:

"(I) Remedial actions which comply with all applicable or relevant and appropriate requirements (consistent with section 121(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980) have been substantially completed, such that there are no hazardous substances, pollutants, or contaminants which complicate the expansion, redevelopment, or reuse of the property given the property's reasonably anticipated future land uses or capacity for uses of the property.

"(II) The reasonably anticipated future land uses or capacity for uses of the property are more economically productive or environmentally beneficial than the uses of the property in existence on the date of the certification described in subparagraph (C)(i). For purposes of the preceding sentence, use of property as a landfill or other hazardous waste facility shall not be considered more economically productive or environmentally beneficial.

"(III) A remediation plan has been implemented to bring the property into compliance with all applicable local, State, and Federal environmental laws, regulations, and standards and to ensure that the remediation protects human health and the environment.

"(IV) The remediation plan described in subclause (III), including any physical improvements required to remediate the property, is either complete or substantially complete, and, if substantially complete, sufficient monitoring, funding, institutional controls, and financial assurances have been put in place to ensure the complete remediation of the property in accordance with the remediation plan as soon as is reasonably practicable after the sale, exchange, or other disposition of such property.

"(V) Public notice and the opportunity for comment on the request for certification was completed before the date of such request. Such notice and opportunity for comment shall be in the same form and manner as required for public participation required under section 117(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this paragraph). For purposes of this subclause, public notice shall include, at a minimum, publication in a major local newspaper of general circulation.

"(iii) ATTACHMENT TO TAX RETURNS.—A copy of each of the requests for certification described in clause (ii) of subparagraph (C) and this subparagraph shall be included in the tax return of the eligible taxpayer (and, where applicable, of the qualifying partnership) for the taxable year during which the transfer occurs.

"(iv) SUBSTANTIAL COMPLETION.—For purposes of this subparagraph, a remedial action is substantially complete when any necessary physical construction is complete, all immediate threats have been eliminated, and all long-term threats are under control.

"(E) ELIGIBLE REMEDIATION EXPENDITURES.—For purposes of this paragraph—

"(i) IN GENERAL.—The term 'eligible remediation expenditures' means, with respect to any qualifying brownfield property, any amount paid or incurred by the eligible taxpayer to an unrelated third person to obtain a Phase I environmental site assessment of the property, and any amount so paid or incurred after the date of the certification described in subparagraph (C)(i) for goods and services necessary to obtain a certification described in subparagraph (D)(i) with respect to such property, including expenditures—

"(I) to manage, remove, control, contain, abate, or otherwise remediate a hazardous substance, pollutant, or contaminant on the property,

"(II) to obtain a Phase II environmental site assessment of the property, including any expenditure to monitor, sample, study, assess, or otherwise evaluate the release, threat of release, or presence of a hazardous substance, pollutant, or contaminant on the property,

"(III) to obtain environmental regulatory certifications and approvals required to manage the remediation and monitoring of the hazardous substance, pollutant, or contaminant on the property, and

"(IV) regardless of whether it is necessary to obtain a certification described in subparagraph (D)(i)(II), to obtain remediation cost-cap or stop-loss coverage, re-opener or regulatory action coverage, or similar coverage under environmental insurance policies, or financial guarantees required to manage such remediation and monitoring.

"(ii) EXCEPTIONS.—Such term shall not include—

"(I) any portion of the purchase price paid or incurred by the eligible taxpayer to acquire the qualifying brownfield property,

"(II) environmental insurance costs paid or incurred to obtain legal defense coverage, owner/operator liability coverage, lender liability coverage, professional liability coverage, or similar types of coverage,

"(III) any amount paid or incurred to the extent such amount is reimbursed, funded, or otherwise subsidized by grants provided by the United States, a State, or a political subdivision of a State for use in connection with the property, proceeds of an issue of State or local government obligations used to provide financing for the property the interest of which is exempt from tax under section 103, or subsidized financing provided (directly or indirectly) under a Federal, State, or local program provided in connection with the property, or

"(IV) any expenditure paid or incurred before the date of the enactment of this paragraph.

For purposes of subclause (III), the Secretary may issue guidance regarding the treatment of government-provided funds for purposes of determining eligible remediation expenditures.

"(F) DETERMINATION OF GAIN OR LOSS.—For purposes of this paragraph, the determination of gain or loss shall not include an amount treated as gain which is ordinary income with respect to section 1245 or section 1250 property, including amounts deducted as section 198 expenses which are subject to the recapture rules of section 198(e), if the taxpayer had deducted such amounts in the computation of its unrelated business taxable income.

"(G) SPECIAL RULES FOR PARTNERSHIPS.—

"(i) IN GENERAL.—In the case of an eligible taxpayer which is a partner of a qualifying

partnership which acquires, remediates, and sells, exchanges, or otherwise disposes of a qualifying brownfield property, this paragraph shall apply to the eligible taxpayer's distributive share of the qualifying partnership's gain or loss from the sale, exchange, or other disposition of such property.

"(ii) QUALIFYING PARTNERSHIP.—The term 'qualifying partnership' means a partnership which—

"(I) has a partnership agreement which satisfies the requirements of section 514(c)(9)(B)(vi) at all times beginning on the date of the first certification received by the partnership under subparagraph (C)(i),

"(II) satisfies the requirements of subparagraphs (B)(i), (C), (D), and (E), if 'qualified partnership' is substituted for 'eligible taxpayer' each place it appears therein (except subparagraph (D)(iii)), and

"(III) is not an organization which would be prevented from constituting an eligible taxpayer by reason of subparagraph (B)(ii).

"(iii) REQUIREMENT THAT TAX-EXEMPT PARTNER BE A PARTNER SINCE FIRST CERTIFICATION.—This paragraph shall apply with respect to any eligible taxpayer which is a partner of a partnership which acquires, remediates, and sells, exchanges, or otherwise disposes of a qualifying brownfield property only if such eligible taxpayer was a partner of the qualifying partnership at all times beginning on the date of the first certification received by the partnership under subparagraph (C)(i) and ending on the date of the sale, exchange, or other disposition of the property by the partnership.

"(iv) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to prevent abuse of the requirements of this subparagraph, including abuse through—

"(I) the use of special allocations of gains or losses, or

"(II) changes in ownership of partnership interests held by eligible taxpayers.

"(H) SPECIAL RULES FOR MULTIPLE PROPERTIES.—

"(i) IN GENERAL.—An eligible taxpayer or a qualifying partnership of which the eligible taxpayer is a partner may make a 1-time election to apply this paragraph to more than 1 qualifying brownfield property by averaging the eligible remediation expenditures for all such properties acquired during the election period. If the eligible taxpayer or qualifying partnership makes such an election, the election shall apply to all qualified sales, exchanges, or other dispositions of qualifying brownfield properties the acquisition and transfer of which occur during the period for which the election remains in effect.

"(ii) ELECTION.—An election under clause (i) shall be made with the eligible taxpayer's or qualifying partnership's timely filed tax return (including extensions) for the first taxable year for which the taxpayer or qualifying partnership intends to have the election apply. An election under clause (i) is effective for the period—

"(I) beginning on the date which is the first day of the taxable year of the return in which the election is included or a later day in such taxable year selected by the eligible taxpayer or qualifying partnership, and

"(II) ending on the date which is the earliest of a date of revocation selected by the eligible taxpayer or qualifying partnership, the date which is 8 years after the date described in subclause (I), or, in the case of an election by a qualifying partnership of which the eligible taxpayer is a partner, the date of the termination of the qualifying partnership.

"(iii) REVOCATION.—An eligible taxpayer or qualifying partnership may revoke an election under clause (i)(II) by filing a statement of revocation with a timely filed tax return (including extensions). A revocation is effective as of the first day of the taxable year of the return in which the revocation is included or a later day in such taxable year selected by the eligible taxpayer or qualifying partnership. Once an eligible taxpayer or qualifying partnership revokes the election, the eligible taxpayer or qualifying partnership is ineligible to make another election under clause (i) with respect to any qualifying brownfield property subject to the revoked election.

"(I) RECAPTURE.—If an eligible taxpayer excludes gain or loss from a sale, exchange, or other disposition of property to which an election under subparagraph (H) applies, and such property fails to satisfy the requirements of this paragraph, the unrelated business taxable income of the eligible taxpayer for the taxable year in which such failure occurs shall be determined by including any previously excluded gain or loss from such sale, exchange, or other disposition allocable to such taxpayer, and interest shall be determined at the overpayment rate established under section 6621 on any resulting tax for the period beginning with the due date of the return for the taxable year during which such sale, exchange, or other disposition occurred, and ending on the date of payment of the tax.

"(J) RELATED PERSONS.—For purposes of this paragraph, a person shall be treated as related to another person if—

"(i) such person bears a relationship to such other person described in section 267(b) (determined without regard to paragraph (9) thereof), or section 707(b)(1), determined by substituting '25 percent' for '50 percent' each place it appears therein, and

"(ii) in the case such other person is a nonprofit organization, if such person controls directly or indirectly more than 25 percent of the governing body of such organization.

"(K) TERMINATION.—Except for purposes of determining the average eligible remediation expenditures for properties acquired during the election period under subparagraph (H), this paragraph shall not apply to any property acquired by the eligible taxpayer or qualifying partnership after December 31, 2009.".

(b) EXCLUSION FROM DEFINITION OF DEBT-FINANCED PROPERTY.—Section 511(b)(1) (defining debt-financed property) is amended by striking "or" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting "; or", and by inserting after subparagraph (D) the following new subparagraph:

"(E) any property the gain or loss from the sale, exchange, or other disposition of which would be excluded by reason of the provisions of section 512(b)(18) in computing the gross income of any unrelated trade or business.".

(c) SAVINGS CLAUSE.—Nothing in the amendments made by this section shall affect any duty, liability, or other requirement imposed under any other Federal or State law. Notwithstanding section 128(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, a certification provided by the Environmental Protection Agency or an appropriate State agency (within the meaning of section 198(c)(4) of the Internal Revenue Code of 1986) shall not affect the liability of any person under section 107(a) of such Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any gain or loss on the sale, exchange, or other disposition of any property acquired by the taxpayer after December 31, 2004.

SEC. 703. CIVIL RIGHTS TAX RELIEF.

(a) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of section 62 (defining adjusted gross income) is amended by inserting after paragraph (18) the following new item:

"(19) COSTS INVOLVING DISCRIMINATION SUITS, ETC.—Any deduction allowable under this chapter for attorney fees and court costs paid by, or on behalf of, the taxpayer in connection with any action involving a claim of unlawful discrimination (as defined in subsection (e)) or a claim of a violation of subchapter III of chapter 37 of title 31, United States Code or a claim made under section 1862(b)(3)(A) of the Social Security Act (42 U.S.C. 1395y(b)(3)(A)). The preceding sentence shall not apply to any deduction in excess of the amount includible in the taxpayer's gross income for the taxable year on account of a judgment or settlement (whether by suit or agreement and whether as lump sum or periodic payments) resulting from such claim.".

(b) UNLAWFUL DISCRIMINATION DEFINED.—Section 62 is amended by adding at the end the following new subsection:

"(e) UNLAWFUL DISCRIMINATION DEFINED.—For purposes of subsection (a)(19), the term 'unlawful discrimination' means an act that is unlawful under any of the following:

"(1) Section 302 of the Civil Rights Act of 1991 (2 U.S.C. 1202).

"(2) Section 201, 202, 203, 204, 205, 206, or 207 of the Congressional Accountability Act of 1995 (2 U.S.C. 1311, 1312, 1313, 1314, 1315, 1316, or 1317).

"(3) The National Labor Relations Act (29 U.S.C. 151 et seq.).

"(4) The Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

"(5) Section 4 or 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623 or 633a).

"(6) Section 501 or 504 of the Rehabilitation Act of 1973 (29 U.S.C. 791 or 794).

"(7) Section 510 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1140).

"(8) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

"(9) The Employee Polygraph Protection Act of 1988 (29 U.S.C. 2001 et seq.).

"(10) The Worker Adjustment and Retraining Notification Act (29 U.S.C. 2102 et seq.).

"(11) Section 105 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2615).

"(12) Chapter 43 of title 38, United States Code (relating to employment and reemployment rights of members of the uniformed services).

"(13) Section 1977, 1979, or 1980 of the Revised Statutes (42 U.S.C. 1981, 1983, or 1985).

"(14) Section 703, 704, or 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2, 2000e-3, or 2000e-16).

"(15) Section 804, 805, 806, 808, or 818 of the Fair Housing Act (42 U.S.C. 3604, 3605, 3606, 3608, or 3617).

"(16) Section 102, 202, 302, or 503 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112, 12132, 12182, or 12203).

"(17) Any provision of Federal law (popularly known as whistleblower protection provisions) prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted under Federal law.

"(18) Any provision of Federal, State, or local law, or common law claims permitted under Federal, State, or local law—

"(i) providing for the enforcement of civil rights, or

"(ii) regulating any aspect of the employment relationship, including claims for wages, compensation, or benefits, or prohibiting the discharge of an employee, the discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted by law.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fees and costs paid after the date of the enactment of this Act with respect to any judgment or settlement occurring after such date.

SEC. 704. MODIFICATION OF CLASS LIFE FOR CERTAIN TRACK FACILITIES.

(a) 7-YEAR PROPERTY.—Subparagraph (C) of section 168(e)(3) (relating to classification of certain property) is amended by redesignating clause (ii) as clause (iii) and by inserting after clause (i) the following new clause:

"(ii) any motorsports entertainment complex, and".

(b) DEFINITION.—Section 168(i) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

"(15) MOTORSPORTS ENTERTAINMENT COMPLEX.—

"(A) IN GENERAL.—The term 'motorsports entertainment complex' means a racing track facility which—

"(i) is permanently situated on land, and

"(ii) during the 36-month period following the first day of the month in which the asset is placed in service, hosts 1 or more racing events for automobiles (of any type), trucks, or motorcycles which are open to the public for the price of admission.

"(B) ANCILLARY AND SUPPORT FACILITIES.—Such term shall include, if owned by the taxpayer who owns the complex and provided for the benefit of patrons of the complex—

"(i) ancillary facilities and land improvements in support of the complex's activities (including parking lots, sidewalks, waterways, bridges, fences, and landscaping),

"(ii) support facilities (including food and beverage retailing, souvenir vending, and other nonlodging accommodations), and

"(iii) appurtenances associated with such facilities and related attractions and amusements (including ticket booths, race track surfaces, suites and hospitality facilities, grandstands and viewing structures, props, walls, facilities that support the delivery of entertainment services, other special purpose structures, facades, shop interiors, and buildings).

"(C) EXCEPTION.—Such term shall not include any transportation equipment, administrative services assets, warehouses, administrative buildings, hotels, or motels.

"(D) TERMINATION.—This paragraph shall not apply to any property placed in service after December 31, 2007.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to any property placed in service after the date of the enactment of this Act.

(2) SPECIAL RULE FOR ASSET CLASS 80.0.—In the case of race track facilities placed in service after the date of the enactment of this Act, such facilities shall not be treated as theme and amusement facilities classified under asset class 80.0.

(3) NO INFERENCE.—Nothing in this section or the amendments made by this section shall be construed to affect the treatment of property placed in service on or before the date of the enactment of this Act.

SEC. 705. SUSPENSION OF POLICYHOLDERS SURPLUS ACCOUNT PROVISIONS.

(a) DISTRIBUTIONS TO SHAREHOLDERS FROM PRE-1984 POLICYHOLDERS SURPLUS ACCOUNT.—Section 815 (relating to distributions to shareholders from pre-1984 policyholders surplus account) is amended by adding at the end the following:

"(g) SPECIAL RULES APPLICABLE DURING 2005 AND 2006.—In the case of any taxable year of a stock life insurance company beginning after December 31, 2004, and before January 1, 2007—

"(1) the amount under subsection (a)(2) for such taxable year shall be treated as zero, and

"(2) notwithstanding subsection (b), in determining any subtractions from an account under subsections (c)(3) and (d)(3), any distribution to shareholders during such taxable year shall be treated as made first out of the policyholders surplus account, then out of the shareholders surplus account, and finally out of other accounts.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2004.

SEC. 706. CERTAIN ALASKA NATURAL GAS PIPELINE PROPERTY TREATED AS 7-YEAR PROPERTY.

(a) IN GENERAL.—Section 168(e)(3)(C) (defining 7-year property), as amended by this Act, is amended by striking "and" at the end of clause (ii), by redesignating clause (iii) as clause (iv), and by inserting after clause (ii) the following new clause:

"(iii) any Alaska natural gas pipeline, and".

(b) ALASKA NATURAL GAS PIPELINE.—Section 168(i) (relating to definitions and special rules), as amended by this Act, is amended by inserting after paragraph (15) the following new paragraph:

"(16) ALASKA NATURAL GAS PIPELINE.—The term 'Alaska natural gas pipeline' means the natural gas pipeline system located in the State of Alaska which—

"(A) has a capacity of more than 500,000,000,000 Btu of natural gas per day, and

"(B) is—

"(i) placed in service after December 31, 2013, or

"(ii) treated as placed in service on January 1, 2014, if the taxpayer who places such system in service before January 1, 2014, elects such treatment.

Such term includes the pipe, trunk lines, related equipment, and appurtenances used to carry natural gas, but does not include any gas processing plant.".

(c) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) (relating to special rule for certain property assigned to classes) is amended by inserting after the item relating to subparagraph (C)(ii) the following new item:

"(C)(iii)......... 22".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after December 31, 2004.

SEC. 707. EXTENSION OF ENHANCED OIL RECOVERY CREDIT TO CERTAIN ALASKA FACILITIES.

(a) IN GENERAL.—Section 43(c)(1) (defining qualified enhanced oil recovery costs) is amended by adding at the end the following new subparagraph:

"(D) Any amount which is paid or incurred during the taxable year to construct a gas treatment plant which—

"(i) is located in the area of the United States (within the meaning of section 638(1)) lying north of 64 degrees North latitude,

"(ii) prepares Alaska natural gas for transportation through a pipeline with a capacity of at least 2,000,000,000,000 Btu of natural gas per day, and

"(iii) produces carbon dioxide which is injected into hydrocarbon-bearing geological formations.".

(b) ALASKA NATURAL GAS.—Section 43(c) is amended by adding at the end the following new paragraph:

"(5) ALASKA NATURAL GAS.—For purposes of paragraph (1)(D)—

"(1) IN GENERAL.—The term 'Alaska natural gas' means natural gas entering the Alaska natural gas pipeline (as defined in section 168(i)(16) (determined without regard to subparagraph (B) thereof)) which is produced from a well—

"(A) located in the area of the State of Alaska lying north of 64 degrees North latitude, determined by excluding the area of the Alaska National Wildlife Refuge (including the continental shelf thereof within the meaning of section 638(1)), and

"(B) pursuant to the applicable State and Federal pollution prevention, control, and permit requirements from such area (including the continental shelf thereof within the meaning of section 638(1)).

"(2) NATURAL GAS.—The term 'natural gas' has the meaning given such term by section 613A(e)(2).".

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to costs paid or incurred in taxable years beginning after December 31, 2004.

SEC. 708. METHOD OF ACCOUNTING FOR NAVAL SHIPBUILDERS.

(a) IN GENERAL.—In the case of a qualified naval ship contract, the taxable income of such contract during the 5-taxable year period beginning with the taxable year in which the contract commencement date occurs shall be determined under a method identical to the method used in the case of a qualified ship contract (as defined in section 10203(b)(2)(B) of the Revenue Act of 1987).

(b) RECAPTURE OF TAX BENEFIT.—In the case of a qualified naval ship contract to which subsection (a) applies, the taxpayer's tax imposed by chapter 1 of the Internal Revenue Code of 1986 for the first taxable year following the 5-taxable year period described in subsection (a) shall be increased by the excess (if any) of—

(1) the amount of tax which would have been imposed during such period if this section had not been enacted, over

(2) the amount of tax so imposed during such period.

(c) QUALIFIED NAVAL SHIP CONTRACT.—For purposes of this section—

(1) IN GENERAL.—The term "qualified naval ship contract" means any contract or portion thereof that is for the construction in the United States of 1 ship or submarine for the Federal Government if the taxpayer reasonably expects the acceptance date will occur no later than 9 years after the construction commencement date.

(2) ACCEPTANCE DATE.—The term "acceptance date" means the date 1 year after the date on which the Federal Government issues a letter of acceptance or other similar document for the ship or submarine.

(3) CONSTRUCTION COMMENCEMENT DATE.—The term "construction commencement date" means the date on which the physical fabrication of any section or component of the ship or submarine begins in the taxpayer's shipyard.

(d) EFFECTIVE DATE.—This section shall apply to contracts for ships or submarines with respect to which the construction commencement date occurs after the date of the enactment of this Act.

SEC. 709. MODIFICATION OF MINIMUM COST REQUIREMENT FOR TRANSFER OF EXCESS PENSION ASSETS.

(a) AMENDMENTS OF ERISA.—

(1) Section 101(e)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(e)(3)) is amended by striking "Pension Funding Equity Act of 2004" and inserting "American Jobs Creation Act of 2004".

(2) Section 403(c)(1) of such Act (29 U.S.C. 1103(c)(1)) is amended by striking "Pension Funding Equity Act of 2004" and inserting "American Jobs Creation Act of 2004".

(3) Paragraph (13) of section 408(b) of such Act (29 U.S.C. 1108(b)(3)) is amended by striking "Pension Funding Equity Act of 2004" and inserting "American Jobs Creation Act of 2004".

(b) MINIMUM COST REQUIREMENTS.—

(1) IN GENERAL.—Section 420(c)(3)(E) is amended by adding at the end the following new clause:

"(ii) INSIGNIFICANT COST REDUCTIONS PERMITTED.—

"(I) IN GENERAL.—An eligible employer shall not be treated as failing to meet the requirements of this paragraph for any taxable year if,

in lieu of any reduction of retiree health coverage permitted under the regulations prescribed under clause (i), the employer reduces applicable employer cost by an amount not in excess of the reduction in costs which would have occurred if the employer had made the maximum permissible reduction in retiree health coverage under such regulations. In applying such regulations to any subsequent taxable year, any reduction in applicable employer cost under this clause shall be treated as if it were an equivalent reduction in retiree health coverage.

"(II) ELIGIBLE EMPLOYER.—For purposes of subclause (I), an employer shall be treated as an eligible employer for any taxable year if, for the preceding taxable year, the qualified current retiree health liabilities of the employer were at least 5 percent of the gross receipts of the employer. For purposes of this subclause, the rules of paragraphs (2), (3)(B), and (3)(C) of section 448(c) shall apply in determining the amount of an employer's gross receipts.".

(2) CONFORMING AMENDMENT.—Section 420(c)(3)(E) is amended by striking "The Secretary" and inserting:

"(i) IN GENERAL.—The Secretary".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 710. EXPANSION OF CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN RENEWABLE RESOURCES.

(a) EXPANSION OF QUALIFIED ENERGY RESOURCES.—Subsection (c) of section 45 (relating to electricity produced from certain renewable resources) is amended to read as follows:

"(c) QUALIFIED ENERGY RESOURCES AND REFINED COAL.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified energy resources' means—

"(A) wind,

"(B) closed-loop biomass,

"(C) open-loop biomass,

"(D) geothermal energy,

"(E) solar energy,

"(F) small irrigation power, and

"(G) municipal solid waste.

"(2) CLOSED-LOOP BIOMASS.—The term 'closed-loop biomass' means any organic material from a plant which is planted exclusively for purposes of being used at a qualified facility to produce electricity.

"(3) OPEN-LOOP BIOMASS.—

"(A) IN GENERAL.—The term 'open-loop biomass' means—

"(i) any agricultural livestock waste nutrients, or

"(ii) any solid, nonhazardous, cellulosic waste material which is segregated from other waste materials and which is derived from—

"(I) any of the following forest-related resources: mill and harvesting residues, precommercial thinnings, slash, and brush,

"(II) solid wood waste materials, including waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings, but not including municipal solid waste, gas derived from the biodegradation of solid waste, or paper which is commonly recycled, or

"(III) agriculture sources, including orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues.

Such term shall not include closed-loop biomass or biomass burned in conjunction with fossil fuel (cofiring) beyond such fossil fuel required for startup and flame stabilization.

"(B) AGRICULTURAL LIVESTOCK WASTE NUTRIENTS.—

"(i) IN GENERAL.—The term 'agricultural livestock waste nutrients' means agricultural livestock manure and litter, including wood shavings, straw, rice hulls, and other bedding material for the disposition of manure.

"(ii) AGRICULTURAL LIVESTOCK.—The term 'agricultural livestock' includes bovine, swine, poultry, and sheep.

"(4) GEOTHERMAL ENERGY.—The term 'geothermal energy' means energy derived from a geothermal deposit (within the meaning of section 613(e)(2)).

"(5) SMALL IRRIGATION POWER.—The term 'small irrigation power' means power—

"(A) generated without any dam or impoundment of water through an irrigation system canal or ditch, and

"(B) the nameplate capacity rating of which is not less than 150 kilowatts but is less than 5 megawatts.

"(6) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste' has the meaning given the term 'solid waste' under section 2(27) of the Solid Waste Disposal Act (42 U.S.C. 6903).

"(7) REFINED COAL.—

"(A) IN GENERAL.—The term 'refined coal' means a fuel which—

"(i) is a liquid, gaseous, or solid synthetic fuel produced from coal (including lignite) or high carbon fly ash, including such fuel used as a feedstock,

"(ii) is sold by the taxpayer with the reasonable expectation that it will be used for purpose of producing steam,

"(iii) is certified by the taxpayer as resulting (when used in the production of steam) in a qualified emission reduction, and

"(iv) is produced in such a manner as to result in an increase of at least 50 percent in the market value of the refined coal (excluding any increase caused by materials combined or added during the production process), as compared to the value of the feedstock coal.

"(B) QUALIFIED EMISSION REDUCTION.—The term 'qualified emission reduction' means a reduction of at least 20 percent of the emissions of nitrogen oxide and either sulfur dioxide or mercury released when burning the refined coal (excluding any dilution caused by materials combined or added during the production process), as compared to the emissions released when burning the feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2003.".

(b) EXPANSION OF QUALIFIED FACILITIES.—

(1) IN GENERAL.—Section 45 is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

"(d) QUALIFIED FACILITIES.—For purposes of this section—

"(1) WIND FACILITY.—In the case of a facility using wind to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after December 31, 1993, and before January 1, 2006.

"(2) CLOSED-LOOP BIOMASS FACILITY.—

"(A) IN GENERAL.—In the case of a facility using closed-loop biomass to produce electricity, the term 'qualified facility' means any facility—

"(i) owned by the taxpayer which is originally placed in service after December 31, 1992, and before January 1, 2006, or

"(ii) owned by the taxpayer which before January 1, 2006, is originally placed in service and modified to use closed-loop biomass to co-fire with coal, with other biomass, or with both, but only if the modification is approved under the Biomass Power for Rural Development Programs or is part of a pilot project of the Commodity Credit Corporation as described in 65 Fed. Reg. 63052.

"(B) SPECIAL RULES.—In the case of a qualified facility described in subparagraph (A)(ii)—

"(i) the 10-year period referred to in subsection (a) shall be treated as beginning no earlier than the date of the enactment of this clause,

"(ii) the amount of the credit determined under subsection (a) with respect to the facility shall be an amount equal to the amount determined without regard to this clause multiplied by the ratio of the thermal content of the closed-loop biomass used in such facility to the thermal content of all fuels used in such facility, and

"(iii) if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

"(3) OPEN-LOOP BIOMASS FACILITIES.—

"(A) IN GENERAL.—In the case of a facility using open-loop biomass to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which—

"(i) in the case of a facility using agricultural livestock waste nutrients—

"(I) is originally placed in service after the date of the enactment of this subclause and before January 1, 2006, and

"(II) the nameplate capacity rating of which is not less than 150 kilowatts, and

"(ii) in the case of any other facility, is originally placed in service before January 1, 2006.

"(B) CREDIT ELIGIBILITY.—In the case of any facility described in subparagraph (A), if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) shall be the lessee or the operator of such facility.

"(4) GEOTHERMAL OR SOLAR ENERGY FACILITY.—In the case of a facility using geothermal or solar energy to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, 2006. Such term shall not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48.

"(5) SMALL IRRIGATION POWER FACILITY.—In the case of a facility using small irrigation power to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, 2006.

"(6) LANDFILL GAS FACILITIES.—In the case of a facility producing electricity from gas derived from the biodegradation of municipal solid waste, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, 2006.

"(7) TRASH COMBUSTION FACILITIES.—In the case of a facility which burns municipal solid waste to produce electricity, the term 'qualified facility' means any facility owned by the taxpayer which is originally placed in service after the date of the enactment of this paragraph and before January 1, 2006.

"(8) REFINED COAL PRODUCTION FACILITY.—The term 'refined coal production facility' means a facility which is placed in service after the date of the enactment of this paragraph and before January 1, 2009.".

(2) RULES FOR REFINED COAL PRODUCTION FACILITIES.—Subsection (e) of section 45, as so redesignated, is amended by adding at the end the following new paragraph:

"(8) REFINED COAL PRODUCTION FACILITIES.—

"(A) DETERMINATION OF CREDIT AMOUNT.—In the case of a producer of refined coal, the credit determined under this section (without regard to this paragraph) for any taxable year shall be increased by an amount equal to $4.375 per ton of qualified refined coal—

"(i) produced by the taxpayer at a refined coal production facility during the 10-year period beginning on the date the facility was originally placed in service, and

"(ii) sold by the taxpayer—

"(I) to an unrelated person, and

"(II) during such 10-year period and such taxable year.

"(B) PHASEOUT OF CREDIT.—The amount of the increase determined under subparagraph (A) shall be reduced by an amount which bears the same ratio to the amount of the increase (determined without regard to this subparagraph) as—

"(i) the amount by which the reference price of fuel used as a feedstock (within the meaning of subsection (c)(7)(A)) for the calendar year in which the sale occurs exceeds an amount equal to 1.7 multiplied by the reference price for such fuel in 2002, bears to

"(ii) $8.75.

"(C) APPLICATION OF RULES.—Rules similar to the rules of the subsection (b)(3) and paragraphs (1) through (5) and (9) of this subsection shall apply for purposes of determining the amount of any increase under this paragraph.".

(3) CONFORMING AMENDMENTS.—

(A) Section 45(e), as so redesignated, is amended by striking "subsection (c)(3)(A)" in paragraph (7)(A)(i) and inserting "subsection (d)(1)".

(B) The heading of section 45 and the item relating to such section in the table of sections for subpart D of part IV of subchapter A of chapter 1 are each amended by inserting before the period at the end ", etc".

(C) Paragraph (2) of section 45(b) is amended by striking "The 1.5 cent amount" and all that follows through "paragraph (1)" and inserting "The 1.5 cent amount in subsection (a), the 8 cent amount in paragraph (1), the $4.375 amount in subsection (e)(8)(A), and in subsection (e)(8)(B)(i) the reference price of fuel used as a feedstock (within the meaning of subsection (c)(7)(A)) in 2002".

(c) SPECIAL CREDIT RATE AND PERIOD FOR ELECTRICITY PRODUCED AND SOLD AFTER ENACTMENT DATE.—Section 45(b) is amended by adding at the end the following new paragraph:

"(4) CREDIT RATE AND PERIOD FOR ELECTRICITY PRODUCED AND SOLD FROM CERTAIN FACILITIES.—

"(A) CREDIT RATE.—In the case of electricity produced and sold in any calendar year after 2003 at any qualified facility described in paragraph (3), (5), (6), or (7) of subsection (d), the amount in effect under subsection (a)(1) for such calendar year (determined before the application of the last sentence of paragraph (2) of this subsection) shall be reduced by one-half.

"(B) CREDIT PERIOD.—

"(i) IN GENERAL.—Except as provided in clause (ii), in the case of any facility described in paragraph (3), (4), (5), (6), or (7) of subsection (d), the 5-year period beginning on the date the facility was originally placed in service shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).

"(ii) CERTAIN OPEN-LOOP BIOMASS FACILITIES.—In the case of any facility described in subsection (d)(3)(A)(ii) placed in service before the date of the enactment of this paragraph, the 5-year period beginning on the date of the enactment of this Act shall be substituted for the 10-year period in subsection (a)(2)(A)(ii).".

(d) COORDINATION WITH OTHER CREDITS.—Section 45(e), as redesignated and amended by this section, is amended by inserting after paragraph (8) the following new paragraph:

"(9) COORDINATION WITH CREDIT FOR PRODUCING FUEL FROM A NONCONVENTIONAL SOURCE.—The term 'qualified facility' shall not include any facility the production from which is allowed as a credit under section 29 for the taxable year or any prior taxable year.".

(e) COORDINATION WITH SECTION 48.—Section 48(a)(3) (defining energy property) is amended by adding at the end the following new sentence: "Such term shall not include any property which is part of a facility the production from which is allowed as a credit under section 45 for the taxable year or any prior taxable year.".

(f) ELIMINATION OF CERTAIN CREDIT REDUCTIONS.—Section 45(b)(3) (relating to credit reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits) is amended—

(1) by inserting "the lesser of ½ or" before "a fraction" in the matter preceding subparagraph (A), and

(2) by adding at the end the following new sentence: "This paragraph shall not apply with respect to any facility described in subsection (d)(2)(A)(ii).".

(g) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to electricity produced and sold after the date of the enactment of this Act, in taxable years ending after such date.

(2) CERTAIN BIOMASS FACILITIES.—With respect to any facility described in section 45(d)(3)(A)(ii) of the Internal Revenue Code of 1986, as added by subsection (b)(1), which is placed in service before the date of the enactment of this Act, the amendments made by this section shall apply to electricity produced and sold after December 31, 2004, in taxable years ending after such date.

(3) CREDIT RATE AND PERIOD FOR NEW FACILITIES:—The amendments made by subsection (c) shall apply to electricity produced and sold after December 31, 2004, in taxable years ending after such date.

(4) NONAPPLICATION OF AMENDMENTS TO PREEFFECTIVE DATE POULTRY WASTE FACILITIES.—The amendments made by this section shall not apply with respect to any poultry waste facility (within the meaning of section 45(c)(3)(C), as in effect on the day before the date of the enactment of this Act) placed in service before January 1, 2004.

(5) REFINED COAL PRODUCTION FACILITIES.—Section 45(e)(8) of the Internal Revenue Code of 1986, as added by this section, shall apply to refined coal produced and sold after the date of the enactment of this Act.

SEC. 711. CERTAIN BUSINESS RELATED CREDITS ALLOWED AGAINST REGULAR AND MINIMUM TAX.

(a) IN GENERAL.—Subsection (c) of section 38 (relating to limitation based on amount of tax) is amended by redesignating paragraph (4) as paragraph (5) and by inserting after paragraph (3) the following new paragraph:

"(4) SPECIAL RULES FOR SPECIFIED CREDITS.—

"(A) IN GENERAL.—In the case of specified credits—

"(i) this section and section 39 shall be applied separately with respect to such credits, and

"(ii) in applying paragraph (1) to such credits—

"(I) the tentative minimum tax shall be treated as being zero, and

"(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the specified credits).

"(B) SPECIFIED CREDITS.—For purposes of this subsection, the term 'specified credits' includes—

"(i) for taxable years beginning after December 31, 2004, the credit determined under section 40,

"(ii) the credit determined under section 45 to the extent that such credit is attributable to electricity or refined coal produced—

"(I) at a facility which is originally placed in service after the date of the enactment of this paragraph, and

"(II) during the 4-year period beginning on the date that such facility was originally placed in service".

(b) CONFORMING AMENDMENTS.—Paragraph (2)(A)(ii)(II) and (3)(A)(ii)(II) of section 38(c) are each amended by inserting "or the specified credits" after "employee credit".

(c) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 712. INCLUSION OF PRIMARY AND SECONDARY MEDICAL STRATEGIES FOR CHILDREN AND ADULTS WITH SICKLE CELL DISEASE AS MEDICAL ASSISTANCE UNDER THE MEDICAID PROGRAM.

(a) OPTIONAL MEDICAL ASSISTANCE.—

(1) IN GENERAL.—Section 1905 of the Social Security Act (42 U.S.C. 1396d) is amended—

(A) in subsection (a)—

(i) by striking "and" at the end of paragraph (26);

(ii) by redesignating paragraph (27) as paragraph (28); and

(iii) by inserting after paragraph (26), the following:

"(27) subject to subsection (x), primary and secondary medical strategies and treatment and services for individuals who have Sickle Cell Disease; and"; and

(B) by adding at the end the following:

"(x) For purposes of subsection (a)(27), the strategies, treatment, and services described in that subsection include the following:

"(1) Chronic blood transfusion (with deferoxamine chelation) to prevent stroke in individuals with Sickle Cell Disease who have been identified as being at high risk for stroke.

"(2) Genetic counseling and testing for individuals with Sickle Cell Disease or the sickle cell trait to allow health care professionals to treat such individuals and to prevent symptoms of Sickle Cell Disease.

"(3) Other treatment and services to prevent individuals who have Sickle Cell Disease and who have had a stroke from having another stroke.".

(2) RULE OF CONSTRUCTION.—Nothing in subsections (a)(27) or (x) of section 1905 of the Social Security Act (42 U.S.C. 1396d), as added by paragraph (1), shall be construed as implying that a State medicaid program under title XIX of such Act could not have treated, prior to the date of enactment of this Act, any of the primary and secondary medical strategies and treatment and services described in such subsections as medical assistance under such program, including as early and periodic screening, diagnostic, and treatment services under section 1905(r) of such Act.

(b) FEDERAL REIMBURSEMENT FOR EDUCATION AND OTHER SERVICES RELATED TO THE PREVENTION AND TREATMENT OF SICKLE CELL DISEASE.—Section 1903(a)(3) of the Social Security Act (42 U.S.C. 1396b(a)(3)) is amended—

(1) in subparagraph (D), by striking "plus" at the end and inserting "and"; and

(2) by adding at the end the following:

"(E) 50 percent of the sums expended with respect to costs incurred during such quarter as are attributable to providing—

"(i) services to identify and educate individuals who are likely to be eligible for medical assistance under this title and who have Sickle Cell Disease or who are carriers of the sickle cell gene, including education regarding how to identify such individuals; or

"(ii) education regarding the risks of stroke and other complications, as well as the prevention of stroke and other complications, in individuals who are likely to be eligible for medical *assistance under this title and who have Sickle Cell Disease; plus''.*

(c) DEMONSTRATION PROGRAM FOR THE DEVELOPMENT AND ESTABLISHMENT OF SYSTEMIC MECHANISMS FOR THE PREVENTION AND TREATMENT OF SICKLE CELL DISEASE.—

(1) AUTHORITY TO CONDUCT DEMONSTRATION PROGRAM.—

(A) IN GENERAL.—The Administrator, through the Bureau of Primary Health Care and the Maternal and Child Health Bureau, shall conduct a demonstration program by making grants to up to 40 eligible entities for each fiscal year in which the program is conducted under this section for the purpose of developing and establishing systemic mechanisms to improve the prevention and treatment of Sickle Cell Disease, including through—

(i) the coordination of service delivery for individuals with Sickle Cell Disease;

(ii) genetic counseling and testing;

(iii) bundling of technical services related to the prevention and treatment of Sickle Cell Disease;

(iv) training of health professionals; and

(v) identifying and establishing other efforts related to the expansion and coordination of education, treatment, and continuity of care programs for individuals with Sickle Cell Disease.

(B) GRANT AWARD REQUIREMENTS.—

(i) GEOGRAPHIC DIVERSITY.—The Administrator shall, to the extent practicable, award grants under this section to eligible entities located in different regions of the United States.

(ii) PRIORITY.—In awarding grants under this subsection, the Administrator shall give priority to awarding grants to eligible entities that are—

(I) Federally-qualified health centers that have a partnership or other arrangement with a comprehensive Sickle Cell Disease treatment center that does not receive funds from the National Institutes of Health; or

(II) Federally-qualified health centers that intend to develop a partnership or other arrangement with a comprehensive Sickle Cell Disease treatment center that does not receive funds from the National Institutes of Health.

(2) ADDITIONAL REQUIREMENTS.—An eligible entity awarded a grant under this subsection shall use funds made available under the grant to carry out, in addition to the activities described in paragraph (1)(A), the following activities:

(A) To facilitate and coordinate the delivery of education, treatment, and continuity of care for individuals with Sickle Cell Disease under—

(i) the entity's collaborative agreement with a community-based Sickle Cell Disease organization or a nonprofit entity that works with individuals who have Sickle Cell Disease;

(ii) the Sickle Cell Disease newborn screening program for the State in which the entity is located; and

(iii) the maternal and child health program under title V of the Social Security Act (42 U.S.C. 701 et seq.) for the State in which the entity is located.

(B) To train nursing and other health staff who provide care for individuals with Sickle Cell Disease.

(C) To enter into a partnership with adult or pediatric hematologists in the region and other regional experts in Sickle Cell Disease at tertiary and academic health centers and State and county health offices.

(D) To identify and secure resources for ensuring reimbursement under the medicaid program, State children's health insurance program, and other health programs for the prevention and treatment of Sickle Cell Disease.

(3) NATIONAL COORDINATING CENTER.—

(A) ESTABLISHMENT.—The Administrator shall enter into a contract with an entity to serve as the National Coordinating Center for the demonstration program conducted under this subsection.

(B) ACTIVITIES DESCRIBED.—The National Coordinating Center shall—

(i) collect, coordinate, monitor, and distribute data, best practices, and findings regarding the activities funded under grants made to eligible entities under the demonstration program;

(ii) develop a model protocol for eligible entities with respect to the prevention and treatment of Sickle Cell Disease;

(iii) develop educational materials regarding the prevention and treatment of Sickle Cell Disease; and

(iv) prepare and submit to Congress a final report that includes recommendations regarding the effectiveness of the demonstration program conducted under this subsection and such direct outcome measures as—

(I) the number and type of health care resources utilized (such as emergency room visits, hospital visits, length of stay, and physician visits for individuals with Sickle Cell Disease); and

(II) the number of individuals that were tested and subsequently received genetic counseling for the sickle cell trait.

(4) APPLICATION.—An eligible entity desiring a grant under this subsection shall submit an application to the Administrator at such time, in such manner, and containing such information as the Administrator may require.

(5) DEFINITIONS.—In this subsection:

(A) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Health Resources and Services Administration.

(B) ELIGIBLE ENTITY.—The term ''eligible entity'' means a Federally-qualified health center, a nonprofit hospital or clinic, or a university health center that provides primary health care, that—

(i) has a collaborative agreement with a community-based SickleCell Disease organization or a nonprofit entity with experience in working with individuals who have Sickle Cell Disease; and

(ii) demonstrates to the Administrator that either the Federally-qualified health center, the nonprofit hospital or clinic, the university health center, the organization or entity described in clause (i), or the experts described in paragraph (2)(C), has at least 5 years of experience in working with individuals who have Sickle Cell Disease.

(C) FEDERALLY-QUALIFIED HEALTH CENTER.—The term "Federally-qualified health center" has the meaning given that term in section 1905(l)(2)(B) of the Social Security Act (42 U.S.C. 1396d(l)(2)(B)).

(6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection, $10,000,000 for each of fiscal years 2005 through 2009.

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) take effect on the date of enactment of this Act and apply to medical assistance and services provided under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) on or after that date.

SEC. 713. CEILING FANS.

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

''	9902.84.14	Ceiling fans for permanent installation (provided for in subheading 8414.51.00)	Free	No change	No change	On or before 12/31/2006 ''.

(b) EFFECTIVE DATE.—The amendment made by this section applies to goods entered, or withdrawn from warehouse, for consumption on or after the 15th day after the date of enactment of this Act.

SEC. 714. CERTAIN STEAM GENERATORS, AND CERTAIN REACTOR VESSEL HEADS AND PRESSURIZERS, USED IN NUCLEAR FACILITIES.

(a) CERTAIN STEAM GENERATORS.—Heading 9902.84.02 of the Harmonized Tariff Schedule of the United States is amended by striking ''12/31/2006'' and inserting ''12/31/2008''.

(b) CERTAIN REACTOR VESSEL HEADS AND PRESSURIZERS.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

''	9902.84.03	Reactor vessel heads and pressurizers for nuclear reactors (provided for in subheading 8401.40.00)	Free	No change	No change	On or before 12/31/2008 ''.

(c) EFFECTIVE DATE.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

(2) SUBSECTION (b).—The amendment made subsection (b) shall apply to goods entered, or withdrawn from warehouse, for consumption on or after the 15th day after the date of the enactment of this Act.

TITLE VIII—REVENUE PROVISIONS

Subtitle A—Provisions to Reduce Tax Avoidance Through Individual and Corporate Expatriation

SEC. 801. TAX TREATMENT OF EXPATRIATED ENTITIES AND THEIR FOREIGN PARENTS.

(a) IN GENERAL.—Subchapter C of chapter 80 (relating to provisions affecting more than one subtitle) is amended by adding at the end the following new section:

"SEC. 7874. RULES RELATING TO EXPATRIATED ENTITIES AND THEIR FOREIGN PARENTS.

''(a) TAX ON INVERSION GAIN OF EXPATRIATED ENTITIES.—

''(1) IN GENERAL.—The taxable income of an expatriated entity for any taxable year which includes any portion of the applicable period shall in no event be less than the inversion gain of the entity for the taxable year.

''(2) EXPATRIATED ENTITY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'expatriated entity' means—

"(i) the domestic corporation or partnership referred to in subparagraph (B)(i) with respect to which a foreign corporation is a surrogate foreign corporation, and

"(ii) any United States person who is related (within the meaning of section 267(b) or 707(b)(1)) to a domestic corporation or partnership described in clause (i).

"(B) SURROGATE FOREIGN CORPORATION.—A foreign corporation shall be treated as a surrogate foreign corporation if, pursuant to a plan (or a series of related transactions)—

"(i) the entity completes after March 4, 2003, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership,

"(ii) after the acquisition at least 60 percent of the stock (by vote or value) of the entity is held—

"(I) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation, or

"(II) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership, and

"(iii) after the acquisition the expanded affiliated group which includes the entity does not have substantial business activities in the foreign country in which, or under the law of which, the entity is created or organized, when compared to the total business activities of such expanded affiliated group.

An entity otherwise described in clause (i) with respect to any domestic corporation or partnership trade or business shall be treated as not so described if, on or before March 4, 2003, such entity acquired directly or indirectly more than half of the properties held directly or indirectly by such corporation or more than half of the properties constituting such partnership trade or business, as the case may be.

"(3) COORDINATION WITH SUBSECTION (b).—Paragraph (1) shall not apply to any entity which is treated as a domestic corporation under subsection (b).

"(b) INVERTED CORPORATIONS TREATED AS DOMESTIC CORPORATIONS.—Notwithstanding section 7701(a)(4), a foreign corporation shall be treated for purposes of this title as a domestic corporation if such corporation would be a surrogate foreign corporation if subsection (a)(2) were applied by substituting '80 percent' for '60 percent'.

"(c) DEFINITIONS AND SPECIAL RULES.—

"(1) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group as defined in section 1504(a) but without regard to section 1504(b)(3), except that section 1504(a) shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

"(2) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership under subsection (a)(2)(B)(ii)—

"(A) stock held by members of the expanded affiliated group which includes the foreign corporation, or

"(B) stock of such foreign corporation which is sold in a public offering related to the acquisition described in subsection (a)(2)(B)(i).

"(3) PLAN DEEMED IN CERTAIN CASES.—If a foreign corporation acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (a)(2)(B)(ii) are met, such actions shall be treated as pursuant to a plan.

"(4) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

"(5) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (a)(2)(B)(ii) to the acquisition of a trade or business of a domestic partnership, except as provided in regulations, all partnerships which are under common control (within the meaning of section 482) shall be treated as 1 partnership.

"(6) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to determine whether a corporation is a surrogate foreign corporation, including regulations—

"(A) to treat warrants, options, contracts to acquire stock, convertible debt interests, and other similar interests as stock, and

"(B) to treat stock as not stock.

"(d) OTHER DEFINITIONS.—For purposes of this section—

"(1) APPLICABLE PERIOD.—The term 'applicable period' means the period—

"(A) beginning on the first date properties are acquired as part of the acquisition described in subsection (a)(2)(B)(i), and

"(B) ending on the date which is 10 years after the last date properties are acquired as part of such acquisition.

"(2) INVERSION GAIN.—The term 'inversion gain' means the income or gain recognized by reason of the transfer during the applicable period of stock or other properties by an expatriated entity, and any income received or accrued during the applicable period by reason of a license of any property by an expatriated entity—

"(A) as part of the acquisition described in subsection (a)(2)(B)(i), or

"(B) after such acquisition if the transfer or license is to a foreign related person.

Subparagraph (B) shall not apply to property described in section 1221(a)(1) in the hands of the expatriated entity.

"(3) FOREIGN RELATED PERSON.—The term 'foreign related person' means, with respect to any expatriated entity, a foreign person which—

"(A) is related (within the meaning of section 267(b) or 707(b)(1)) to such entity, or

"(B) is under the same common control (within the meaning of section 482) as such entity.

"(e) SPECIAL RULES.—

"(1) CREDITS NOT ALLOWED AGAINST TAX ON INVERSION GAIN.—Credits (other than the credit allowed by section 901) shall be allowed against the tax imposed by this chapter on an expatriated entity for any taxable year described in subsection (a) only to the extent such tax exceeds the product of—

"(A) the amount of the inversion gain for the taxable year, and

"(B) the highest rate of tax specified in section 11(b)(1).

For purposes of determining the credit allowed by section 901, inversion gain shall be treated as from sources within the United States.

"(2) SPECIAL RULES FOR PARTNERSHIPS.—In the case of an expatriated entity which is a partnership—

"(A) subsection (a)(1) shall apply at the partner rather than the partnership level,

"(B) the inversion gain of any partner for any taxable year shall be equal to the sum of—

"(i) the partner's distributive share of inversion gain of the partnership for such taxable year, plus

"(ii) gain recognized for the taxable year by the partner by reason of the transfer during the applicable period of any partnership interest of the partner in such partnership to the surrogate foreign corporation, and

"(C) the highest rate of tax specified in the rate schedule applicable to the partner under this chapter shall be substituted for the rate of tax referred to in paragraph (1).

"(3) COORDINATION WITH SECTION 172 AND MINIMUM TAX.—Rules similar to the rules of paragraphs (3) and (4) of section 860E(a) shall apply for purposes of subsection (a).

"(4) STATUTE OF LIMITATIONS.—

"(A) IN GENERAL.—The statutory period for the assessment of any deficiency attributable to the inversion gain of any taxpayer for any pre-inversion year shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of the acquisition described in subsection (a)(2)(B)(i) to which such gain relates and such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

"(B) PRE-INVERSION YEAR.—For purposes of subparagraph (A), the term 'pre-inversion year' means any taxable year if—

"(i) any portion of the applicable period is included in such taxable year, and

"(ii) such year ends before the taxable year in which the acquisition described in subsection (a)(2)(B)(i) is completed.

"(f) SPECIAL RULE FOR TREATIES.—Nothing in section 894 or 7852(d) or in any other provision of law shall be construed as permitting an exemption, by reason of any treaty obligation of the United States heretofore or hereafter entered into, from the provisions of this section.

"(g) REGULATIONS.—The Secretary shall provide such regulations as are necessary to carry out this section, including regulations providing for such adjustments to the application of this section as are necessary to prevent the avoidance of the purposes of this section, including the avoidance of such purposes through—

"(1) the use of related persons, pass-through or other noncorporate entities, or other intermediaries, or

"(2) transactions designed to have persons cease to be (or not become) members of expanded affiliated groups or related persons.".

(b) CONFORMING AMENDMENT.—The table of sections for subchapter C of chapter 80 is amended by adding at the end the following new item:

"Sec. 7874. Rules relating to expatriated entities and their foreign parents.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after March 4, 2003.

SEC. 802. EXCISE TAX ON STOCK COMPENSATION OF INSIDERS IN EXPATRIATED CORPORATIONS.

(a) IN GENERAL.—Subtitle D is amended by inserting after chapter 44 end the following new chapter:

"CHAPTER 45—PROVISIONS RELATING TO EXPATRIATED ENTITIES

"Sec. 4985. Stock compensation of insiders in expatriated corporations.

"SEC. 4985. STOCK COMPENSATION OF INSIDERS IN EXPATRIATED CORPORATIONS.

"(a) IMPOSITION OF TAX.—In the case of an individual who is a disqualified individual with respect to any expatriated corporation, there is hereby imposed on such person a tax equal to—

"(1) the rate of tax specified in section 1(h)(1)(C), multiplied by

"(2) the value (determined under subsection (b)) of the specified stock compensation held (directly or indirectly) by or for the benefit of such individual or a member of such individual's family (as defined in section 267) at any time during the 12-month period beginning on the date which is 6 months before the expatriation date.

"(b) VALUE.—For purposes of subsection (a)—

"(1) IN GENERAL.—The value of specified stock compensation shall be—

"(A) in the case of a stock option (or other similar right) or a stock appreciation right, the fair value of such option or right, and

"(B) in any other case, the fair market value of such compensation.

"(2) DATE FOR DETERMINING VALUE.—The determination of value shall be made—

"(A) in the case of specified stock compensation held on the expatriation date, on such date,

"(B) in the case of such compensation which is canceled during the 6 months before the expatriation date, on the day before such cancellation, and

"(C) in the case of such compensation which is granted after the expatriation date, on the date such compensation is granted.

"(c) TAX TO APPLY ONLY IF SHAREHOLDER GAIN RECOGNIZED.—Subsection (a) shall apply to any disqualified individual with respect to an expatriated corporation only if gain (if any) on any stock in such corporation is recognized in whole or part by any shareholder by reason of the acquisition referred to in section 7874(a)(2)(B)(i) with respect to such corporation.

"(d) EXCEPTION WHERE GAIN RECOGNIZED ON COMPENSATION.—Subsection (a) shall not apply to—

"(1) any stock option which is exercised on the expatriation date or during the 6-month period before such date and to the stock acquired in such exercise, if income is recognized under section 83 on or before the expatriation date with respect to the stock acquired pursuant to such exercise, and

"(2) any other specified stock compensation which is exercised, sold, exchanged, distributed, cashed-out, or otherwise paid during such period in a transaction in which income, gain, or loss is recognized in full.

"(e) DEFINITIONS.—For purposes of this section—

"(1) DISQUALIFIED INDIVIDUAL.—The term 'disqualified individual' means, with respect to a corporation, any individual who, at any time during the 12-month period beginning on the date which is 6 months before the expatriation date—

"(A) is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation or any member of the expanded affiliated group which includes such corporation, or

"(B) would be subject to such requirements if such corporation or member were an issuer of equity securities referred to in such section.

"(2) EXPATRIATED CORPORATION; EXPATRIATION DATE.—

"(A) EXPATRIATED CORPORATION.—The term 'expatriated corporation' means any corporation which is an expatriated entity (as defined in section 7874(a)(2)). Such term includes any predecessor or successor of such a corporation.

"(B) EXPATRIATION DATE.—The term 'expatriation date' means, with respect to a corporation, the date on which the corporation first becomes an expatriated corporation.

"(3) SPECIFIED STOCK COMPENSATION.—

"(A) IN GENERAL.—The term 'specified stock compensation' means payment (or right to payment) granted by the expatriated corporation (or by any member of the expandea affiliated group which includes such corporation) to any person in connection with the performance of services by a disqualified individual for such corporation or member if the value of such payment or right is based on (or determined by reference to) the value (or change in value) of stock in such corporation (or any such member).

"(B) EXCEPTIONS.—Such term shall not include—

"(i) any option to which part II of subchapter D of chapter 1 applies, or

"(ii) any payment or right to payment from a plan referred to in section 280G(b)(6).

"(4) EXPANDED AFFILIATED GROUP.—The term 'expanded affiliated group' means an affiliated group (as defined in section 1504(a) without regard to section 1504(b)(3)); except that section 1504(a) shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

"(f) SPECIAL RULES.—For purposes of this section—

"(1) CANCELLATION OF RESTRICTION.—The cancellation of a restriction which by its terms will never lapse shall be treated as a grant.

"(2) PAYMENT OR REIMBURSEMENT OF TAX BY CORPORATION TREATED AS SPECIFIED STOCK COMPENSATION.—Any payment of the tax imposed by this section directly or indirectly by the expatriated corporation or by any member of the expanded affiliated group which includes such corporation—

"(A) shall be treated as specified stock compensation, and

"(B) shall not be allowed as a deduction under any provision of chapter 1.

"(3) CERTAIN RESTRICTIONS IGNORED.—Whether there is specified stock compensation, and the value thereof, shall be determined without regard to any restriction other than a restriction which by its terms will never lapse.

"(4) PROPERTY TRANSFERS.—Any transfer of property shall be treated as a payment and any right to a transfer of property shall be treated as a right to a payment.

"(5) OTHER ADMINISTRATIVE PROVISIONS.—For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.".

(b) DENIAL OF DEDUCTION.—

(1) IN GENERAL.—Paragraph (6) of section 275(a) is amended by inserting "45," before "46,".

(2) $1,000,000 LIMIT ON DEDUCTIBLE COMPENSATION REDUCED BY PAYMENT OF EXCISE TAX ON SPECIFIED STOCK COMPENSATION.—Paragraph (4) of section 162(m) is amended by adding at the end the following new subparagraph:

"(G) COORDINATION WITH EXCISE TAX ON SPECIFIED STOCK COMPENSATION.—The dollar limitation contained in paragraph (1) with respect to any covered employee shall be reduced (but not below zero) by the amount of any payment (with respect to such employee) of the tax imposed by section 4985 directly or indirectly by the expatriated corporation (as defined in such section) or by any member of the expanded affiliated group (as defined in such section) which includes such corporation.".

(c) CONFORMING AMENDMENTS.—

(1) The last sentence of section 3121(v)(2)(A) is amended by inserting before the period "or to any specified stock compensation (as defined in section 4985) on which tax is imposed by section 4985".

(2) The table of chapters for subtitle D is amended by inserting after the item relating to chapter 44 the following new item:

"Chapter 45. Provisions relating to expatriated entities.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on March 4, 2003; except that periods before such date shall not be taken into account in applying the periods in subsections (a) and (e)(1) of section 4985 of the Internal Revenue Code of 1986, as added by this section.

SEC. 803. REINSURANCE OF UNITED STATES RISKS IN FOREIGN JURISDICTIONS.

(a) IN GENERAL.—Section 845(a) (relating to allocation in case of reinsurance agreement involving tax avoidance or evasion) is amended by striking "source and character" and inserting "amount, source, or character".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any risk reinsured after the date of the enactment of this Act.

SEC. 804. REVISION OF TAX RULES ON EXPATRIATION OF INDIVIDUALS.

(a) EXPATRIATION TO AVOID TAX.—

(1) IN GENERAL.—Subsection (a) of section 877 (relating to treatment of expatriates) is amended to read as follows:

"(a) TREATMENT OF EXPATRIATES.—

"(1) IN GENERAL.—Every nonresident alien individual to whom this section applies and who, within the 10-year period immediately preceding the close of the taxable year, lost United States citizenship shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection (after any reduction in such tax under the last sentence of such subsection) exceeds the tax which, without regard to this section, is imposed pursuant to section 871.

"(2) INDIVIDUALS SUBJECT TO THIS SECTION.—This section shall apply to any individual if—

"(A) the average annual net income tax (as defined in section 38(c)(1)) of such individual for the period of 5 taxable years ending before the date of the loss of United States citizenship is greater than $124,000,

"(B) the net worth of the individual as of such date is $2,000,000 or more, or

"(C) such individual fails to certify under penalty of perjury that he has met the requirements of this title for the 5 preceding taxable years or fails to submit such evidence of such compliance as the Secretary may require.

In the case of the loss of United States citizenship in any calendar year after 2004, such $124,000 amount shall be increased by an amount equal to such dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting '2003' for '1992' in subparagraph (B) thereof. Any increase under the preceding sentence shall be rounded to the nearest multiple of $1,000.".

(2) REVISION OF EXCEPTIONS FROM ALTERNATIVE TAX.—Subsection (c) of section 877 (relating to tax avoidance not presumed in certain cases) is amended to read as follows:

"(c) EXCEPTIONS.—

"(1) IN GENERAL.—Subparagraphs (A) and (B) of subsection (a)(2) shall not apply to an individual described in paragraph (2) or (3).

"(2) DUAL CITIZENS.—

"(A) IN GENERAL.—An individual is described in this paragraph if—

"(i) the individual became at birth a citizen of the United States and a citizen of another country and continues to be a citizen of such other country, and

"(ii) the individual has had no substantial contacts with the United States.

"(B) SUBSTANTIAL CONTACTS.—An individual shall be treated as having no substantial contacts with the United States only if the individual—

"(i) was never a resident of the United States (as defined in section 7701(b)),

"(ii) has never held a United States passport, and

"(iii) was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual's loss of United States citizenship.

"(3) CERTAIN MINORS.—An individual is described in this paragraph if—

"(A) the individual became at birth a citizen of the United States,

"(B) neither parent of such individual was a citizen of the United States at the time of such birth,

"(C) the individual's loss of United States citizenship occurs before such individual attains age 18½, and

"(D) the individual was not present in the United States for more than 30 days during any calendar year which is 1 of the 10 calendar years preceding the individual's loss of United States citizenship.".

(3) CONFORMING AMENDMENT.—Section 2107(a) is amended to read as follows:

"(a) TREATMENT OF EXPATRIATES.—A tax computed in accordance with the table contained in section 2001 is hereby imposed on the transfer of the taxable estate, determined as provided in section 2106, of every decedent nonresident not a citizen of the United States if the date of death occurs during a taxable year with respect to which the decedent is subject to tax under section 877(b).".

(b) SPECIAL RULES FOR DETERMINING WHEN AN INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN OR LONG-TERM RESIDENT.—Section 7701 (relating to definitions) is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) SPECIAL RULES FOR DETERMINING WHEN AN INDIVIDUAL IS NO LONGER A UNITED STATES CITIZEN OR LONG-TERM RESIDENT.—An individual who would (but for this subsection) cease to be treated as a citizen or resident of the United States shall continue to be treated as a citizen or resident of the United States, as the case may be, until such individual—

"(1) gives notice of an expatriating act or termination of residency (with the requisite intent to relinquish citizenship or terminate residency) to the Secretary of State or the Secretary of Homeland Security, and

"(2) provides a statement in accordance with section 6039G.".

(c) PHYSICAL PRESENCE IN THE UNITED STATES FOR MORE THAN 30 DAYS.—Section 877 (relating to expatriation to avoid tax) is amended by adding at the end the following new subsection:

"(g) PHYSICAL PRESENCE.—

"(1) IN GENERAL.—This section shall not apply to any individual to whom this section would otherwise apply for any taxable year during the 10-year period referred to in subsection (a) in which such individual is physically present in the United States at any time on more than 30 days in the calendar year ending in such taxable year, and such individual shall be treated for purposes of this title as a citizen or resident of the United States, as the case may be, for such taxable year.

"(2) EXCEPTION.—

"(A) IN GENERAL.—In the case of an individual described in any of the following subparagraphs of this paragraph, a day of physical presence in the United States shall be disregarded if the individual is performing services in the United States on such day for an employer. The preceding sentence shall not apply if—.

"(i) such employer is related (within the meaning of section 267 and 707) to such individual, or

"(ii) such employer fails to meet such requirements as the Secretary may prescribe by regulations to prevent the avoidance of the purposes of this paragraph.

Not more than 30 days during any calendar year may be disregarded under this subparagraph.

"(B) INDIVIDUALS WITH TIES TO OTHER COUNTRIES.—An individual is described in this subparagraph if—

"(i) the individual becomes (not later than the close of a reasonable period after loss of United States citizenship or termination of residency) a citizen or resident of the country in which—

"(I) such individual was born,

"(II) if such individual is married, such individual's spouse was born, or

"(III) either of such individual's parents were born, and

"(ii) the individual becomes fully liable for income tax in such country.

"(C) MINIMAL PRIOR PHYSICAL PRESENCE IN THE UNITED STATES.—An individual is described in this subparagraph if, for each year in the 10-year period ending on the date of loss of United States citizenship or termination of residency, the individual was physically present in the United States for 30 days or less. The rule of section 7701(b)(3)(D)(ii) shall apply for purposes of this subparagraph.".

(d) TRANSFERS SUBJECT TO GIFT TAX.—

(1) IN GENERAL.—Subsection (a) of section 2501 (relating to taxable transfers) is amended by striking paragraph (4), by redesignating paragraph (5) as paragraph (4), and by striking paragraph (3) and inserting the following new paragraph:

"(3) EXCEPTION.—

"(A) CERTAIN INDIVIDUALS.—Paragraph (2) shall not apply in the case of a donor to whom section 877(b) applies for the taxable year which includes the date of the transfer.

"(B) CREDIT FOR FOREIGN GIFT TAXES.—The tax imposed by this section solely by reason of this paragraph shall be credited with the amount of any gift tax actually paid to any foreign country in respect of any gift which is taxable under this section solely by reason of this paragraph.".

(2) TRANSFERS OF CERTAIN STOCK.—Subsection (a) of section 2501 is amended by adding at the end the following new paragraph:

"(5) TRANSFERS OF CERTAIN STOCK.—

"(A) IN GENERAL.—In the case of a transfer of stock in a foreign corporation described in subparagraph (B) by a donor to whom section 877(b) applies for the taxable year which includes the date of the transfer—

"(i) section 2511(a) shall be applied without regard to whether such stock is situated within the United States, and

"(ii) the value of such stock for purposes of this chapter shall be its U.S.-asset value determined under subparagraph (C).

"(B) FOREIGN CORPORATION DESCRIBED.—A foreign corporation is described in this subparagraph with respect to a donor if—

"(i) the donor owned (within the meaning of section 958(a)) at the time of such transfer 10 percent or more of the total combined voting power of all classes of stock entitled to vote of the foreign corporation, and

"(ii) such donor owned (within the meaning of section 958(a)), or is considered to have owned (by applying the ownership rules of section 958(b)), at the time of such transfer, more than 50 percent of—

"(I) the total combined voting power of all classes of stock entitled to vote of such corporation, or

"(II) the total value of the stock of such corporation.

"(C) U.S.-ASSET VALUE.—For purposes of subparagraph (A), the U.S.-asset value of stock shall be the amount which bears the same ratio to the fair market value of such stock at the time of transfer as—

"(i) the fair market value (at such time) of the assets owned by such foreign corporation and situated in the United States, bears to

"(ii) the total fair market value (at such time) of all assets owned by such foreign corporation.".

(e) ENHANCED INFORMATION REPORTING FROM INDIVIDUALS LOSING UNITED STATES CITIZENSHIP.—

(1) IN GENERAL.—Subsection (a) of section 6039G is amended to read as follows:

"(a) IN GENERAL.—Notwithstanding any other provision of law, any individual to whom section 877(b) applies for any taxable year shall provide a statement for such taxable year which includes the information described in subsection (b).".

(2) INFORMATION TO BE PROVIDED.—Subsection (b) of section 6039G is amended to read as follows:

"(b) INFORMATION TO BE PROVIDED.—Information required under subsection (a) shall include—

"(1) the taxpayer's TIN,

"(2) the mailing address of such individual's principal foreign residence,

"(3) the foreign country in which such individual is residing,

"(4) the foreign country of which such individual is a citizen,

"(5) information detailing the income, assets, and liabilities of such individual,

"(6) the number of days during any portion of which that the individual was physically present in the United States during the taxable year, and

"(7) such other information as the Secretary may prescribe.".

(3) INCREASE IN PENALTY.—Subsection (d) of section 6039G is amended to read as follows:

"(d) PENALTY.—If—

"(1) an individual is required to file a statement under subsection (a) for any taxable year, and

"(2) fails to file such a statement with the Secretary on or before the date such statement is required to be filed or fails to include all the information required to be shown on the statement or includes incorrect information,

such individual shall pay a penalty of $10,000 unless it is shown that such failure is due to reasonable cause and not to willful neglect.".

(4) CONFORMING AMENDMENT.—Section 6039G is amended by striking subsections (c), (f), and (g) and by redesignating subsections (d) and (e) as subsection (c) and (d), respectively.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who expatriate after June 3, 2004.

SEC. 805. REPORTING OF TAXABLE MERGERS AND ACQUISITIONS.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 is amended by inserting after section 6043 the following new section:

"SEC. 6043A. RETURNS RELATING TO TAXABLE MERGERS AND ACQUISITIONS.

"(a) IN GENERAL.—According to the forms or regulations prescribed by the Secretary, the acquiring corporation in any taxable acquisition shall make a return setting forth—

"(1) a description of the acquisition,

"(2) the name and address of each shareholder of the acquired corporation who is required to recognize gain (if any) as a result of the acquisition,

"(3) the amount of money and the fair market value of other property transferred to each such shareholder as part of such acquisition, and

"(4) such other information as the Secretary may prescribe.

To the extent provided by the Secretary, the requirements of this section applicable to the acquiring corporation shall be applicable to the acquired corporation and not to the acquiring corporation.

"(b) NOMINEES.—According to the forms or regulations prescribed by the Secretary—

"(1) REPORTING.—Any person who holds stock as a nominee for another person shall furnish in the manner prescribed by the Secretary to such other person the information provided by the corporation under subsection (d).

"(2) REPORTING TO NOMINEES.—In the case of stock held by any person as a nominee, references in this section (other than in subsection (c)) to a shareholder shall be treated as a reference to the nominee.

"(c) TAXABLE ACQUISITION.—For purposes of this section, the term 'taxable acquisition' means any acquisition by a corporation of stock in or property of another corporation if any

shareholder of the acquired corporation is required to recognize gain (if any) as a result of such acquisition.

"(d) STATEMENTS TO BE FURNISHED TO SHAREHOLDERS.—According to the forms or regulations prescribed by the Secretary, every person required to make a return under subsection (a) shall furnish to each shareholder whose name is required to be set forth in such return a written statement showing—

"(1) the name, address, and phone number of the information contact of the person required to make such return,

"(2) the information required to be shown on such return with respect to such shareholder, and

"(3) such other information as the Secretary may prescribe.

The written statement required under the preceding sentence shall be furnished to the shareholder on or before January 31 of the year following the calendar year during which the taxable acquisition occurred.".

(b) ASSESSABLE PENALTIES.—

(1) Subparagraph (B) of section 6724(d)(1) (relating to definitions) is amended by redesignating clauses (ii) through (xviii) as clauses (iii) through (xix), respectively, and by inserting after clause (i) the following new clause:

"(ii) section 6043A(a) (relating to returns relating to taxable mergers and acquisitions),".

(2) Paragraph (2) of section 6724(d) is amended by redesignating subparagraphs (F) through (BB) as subparagraphs (G) through (CC), respectively, and by inserting after subparagraph (E) the following new subparagraph:

"(F) subsections (b) and (d) of section 6043A (relating to returns relating to taxable mergers and acquisitions).".

(c) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6043 the following new item:

"Sec. 6043A. Returns relating to taxable mergers and acquisitions.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to acquisitions after the date of the enactment of this Act.

SEC. 806. STUDIES.

(a) TRANSFER PRICING RULES.—The Secretary of the Treasury or the Secretary's delegate shall conduct a study regarding the effectiveness of current transfer pricing rules and compliance efforts in ensuring that cross-border transfers and other related-party transactions, particularly transactions involving intangible assets, service contracts, or leases cannot be used improperly to shift income out of the United States. The study shall include a review of the contemporaneous documentation and penalty rules under section 6662 of the Internal Revenue Code of 1986, a review of the regulatory and administrative guidance implementing the principles of section 482 of such Code to transactions involving intangible property and services and to cost-sharing arrangements, and an examination of whether increased disclosure of cross-border transactions should be required. The study shall set forth specific recommendations to address all abuses identified in the study. Not later than June 30, 2005, such Secretary or delegate shall submit to the Congress a report of such study.

(b) INCOME TAX TREATIES.—The Secretary of the Treasury or the Secretary's delegate shall conduct a study of United States income tax treaties to identify any inappropriate reductions in United States withholding tax that provide opportunities for shifting income out of the United States, and to evaluate whether existing anti-abuse mechanisms are operating properly. The study shall include specific recommendations to address all inappropriate uses of tax treaties. Not later than June 30, 2005, such Secretary or delegate shall submit to the Congress a report of such study.

(c) EFFECTIVENESS OF CORPORATE EXPATRIATION PROVISIONS.—The Secretary of the Treasury or the Secretary's delegate shall conduct a study of the effectiveness of the provisions of this title on corporate expatriation. The study shall include such recommendations as such Secretary or delegate may have to improve the effectiveness of such provisions in carrying out the purposes of this title. Not later than December 31, 2006, such Secretary or delegate shall submit to the Congress a report of such study.

Subtitle B—Provisions Relating to Tax Shelters

Part I—Taxpayer-Related Provisions

SEC. 811. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

"SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN.

"(a) IMPOSITION OF PENALTY.—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

"(b) AMOUNT OF PENALTY.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amount of the penalty under subsection (a) shall be—

"(A) $10,000 in the case of a natural person, and

"(B) $50,000 in any other case.

"(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be—

"(A) $100,000 in the case of a natural person, and

"(B) $200,000 in any other case.

"(c) DEFINITIONS.—For purposes of this section—

"(1) REPORTABLE TRANSACTION.—The term 'reportable transaction' means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

"(2) LISTED TRANSACTION.—The term 'listed transaction' means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

"(d) AUTHORITY TO RESCIND PENALTY.—

"(1) IN GENERAL.—The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

"(A) the violation is with respect to a reportable transaction other than a listed transaction, and

"(B) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

"(2) NO JUDICIAL APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any judicial proceeding.

"(3) RECORDS.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner with respect to the determination, including—

"(A) a statement of the facts and circumstances relating to the violation,

"(B) the reasons for the rescission, and

"(C) the amount of the penalty rescinded.

"(e) PENALTY REPORTED TO SEC.—In the case of a person—

"(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

"(2) which—

"(A) is required to pay a penalty under this section with respect to a listed transaction,

"(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c), or

"(C) is required to pay a penalty under section 6662(h) with respect to any reportable transaction and would (but for section 6662A(e)(2)(C)) have been subject to penalty under section 6662A at a rate prescribed under section 6662A(c);

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

"(f) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section shall be in addition to any other penalty imposed by this title."

(b) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

"Sec. 6707A. Penalty for failure to include reportable transaction information with return.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and statements the due date for which is after the date of the enactment of this Act.

(d) REPORT.—The Commissioner of Internal Revenue shall annually report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

(1) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under section 6707A of the Internal Revenue Code of 1986, and

(2) a description of each penalty rescinded under section 6707(c) of such Code and the reasons therefor.

SEC. 812. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS, OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE, ETC.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662 the following new section:

"SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERSTATEMENTS WITH RESPECT TO REPORTABLE TRANSACTIONS.

"(a) IMPOSITION OF PENALTY.—If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of such understatement.

"(b) REPORTABLE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

"(1) IN GENERAL.—The term 'reportable transaction understatement' means the sum of—

"(A) the product of—

"(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer's treatment of such item (as shown on the taxpayer's return of tax), and "(ii) the highest rate of tax imposed by section 1 (section 11 in the case of a taxpayer which is a corporation), and

"(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer's treatment of an item to which this section applies (as shown on the taxpayer's return of tax) and the proper tax treatment of such item.

For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

"(2) ITEMS TO WHICH SECTION APPLIES.—This section shall apply to any item which is attributable to—

"(A) any listed transaction, and

"(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

"(c) HIGHER PENALTY FOR NONDISCLOSED LISTED AND OTHER AVOIDANCE TRANSACTIONS.—Subsection (a) shall be applied by substituting '30 percent' for '20 percent' with respect to the portion of any reportable transaction understatement with respect to which the requirement of section 6664(d)(2)(A) is not met.

"(d) DEFINITIONS OF REPORTABLE AND LISTED TRANSACTIONS.—For purposes of this section, the terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).

"(e) SPECIAL RULES.—

"(1) COORDINATION WITH PENALTIES, ETC., ON OTHER UNDERSTATEMENTS.—In the case of an understatement (as defined in section 6662(d)(2))—

"(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

"(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements.

"(2) COORDINATION WITH OTHER PENALTIES.—

"(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable transaction understatement.

"(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6663.

"(C) COORDINATION WITH VALUATION PENALTIES.—

"(i) SECTION 6662(E).—Section 6662(e) shall not apply to any portion of an understatement on which a penalty is imposed under this section.

"(ii) SECTION 6662(H).—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6662(h).

"(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.".

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

"The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies.".

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—Section 6664 is amended by adding at the end the following new subsection:

"(d) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—

"(1) IN GENERAL.—No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

"(2) SPECIAL RULES.—Paragraph (1) shall not apply to any reportable transaction understatement unless—

"(A) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under section 6011,

"(B) there is or was substantial authority for such treatment, and

"(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).

"(3) RULES RELATING TO REASONABLE BELIEF.—For purposes of paragraph (2)(C)—

"(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

"(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

"(ii) relates solely to the taxpayer's chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

"(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

"(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

"(I) the tax advisor is described in clause (ii), or

"(II) the opinion is described in clause (iii).

"(ii) DISQUALIFIED TAX ADVISORS.—A tax advisor is described in this clause if the tax advisor—

"(I) is a material advisor (within the meaning of section 6111(b)(1)) and participates in the organization, management, promotion, or sale of the transaction or is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

"(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

"(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained, or

"(IV) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

"(iii) DISQUALIFIED OPINIONS.—For purposes of clause (i), an opinion is disqualified if the opinion—

"(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

"(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

"(III) does not identify and consider all relevant facts, or

"(IV) fails to meet any other requirement as the Secretary may prescribe.".

(2) CONFORMING AMENDMENTS.—

(A) Paragraph (1) of section 6664(c) is amended by striking "this part" and inserting "section 6662 or 6663".

(B) The heading for subsection (c) of section 6664 is amended by inserting "FOR UNDERPAYMENTS" after "EXCEPTION".

(d) REDUCTION IN PENALTY FOR SUBSTANTIAL UNDERSTATEMENT OF INCOME TAX NOT TO APPLY TO TAX SHELTERS.—Subparagraph (C) of section 6662(d)(2) (relating to substantial understatement of income tax) is amended to read as follows:

"(C) REDUCTION NOT TO APPLY TO TAX SHELTERS.—

"(i) IN GENERAL.—Subparagraph (B) shall not apply to any item attributable to a tax shelter.

"(ii) TAX SHELTER.—For purposes of clause (i), the term 'tax shelter' means—

"(I) a partnership or other entity,

"(II) any investment plan or arrangement, or

"(III) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.".

(e) CLERICAL AMENDMENTS.—

(1) The heading for section 6662 is amended to read as follows:

"SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERPAYMENTS.".

(2) The table of sections for part II of subchapter A of chapter 68 is amended by striking the item relating to section 6662 and inserting the following new items:

"Sec. 6662. Imposition of accuracy-related penalty on underpayments.

"Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 813. TAX SHELTER EXCEPTION TO CONFIDENTIALITY PRIVILEGES RELATING TO TAXPAYER COMMUNICATIONS.

(a) IN GENERAL.—Section 7525(b) (relating to section not to apply to communications regarding corporate tax shelters) is amended to read as follows:

"(b) SECTION NOT TO APPLY TO COMMUNICATIONS REGARDING TAX SHELTERS.—The privilege under subsection (a) shall not apply to any written communication which is—

"(1) between a federally authorized tax practitioner and—

"(A) any person,

"(B) any director, officer, employee, agent, or representative of the person, or

"(C) any other person holding a capital or profits interest in the person, and

"(2) in connection with the promotion of the direct or indirect participation of the person in any tax shelter (as defined in section 6662(d)(2)(C)(ii)).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to communications made on or after the date of the enactment of this Act.

SEC. 814. STATUTE OF LIMITATIONS FOR TAXABLE YEARS FOR WHICH REQUIRED LISTED TRANSACTIONS NOT REPORTED.

(a) IN GENERAL.—Section 6501(c) (relating to exceptions) is amended by adding at the end the following new paragraph:

"(10) LISTED TRANSACTIONS.—If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, the time for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 1 year after the earlier of—

"(A) the date on which the Secretary is furnished the information so required, or

"(B) the date that a material advisor (as defined in section 6111) meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years with respect to which the period for assessing a deficiency did not expire before the date of the enactment of this Act.

SEC. 815. DISCLOSURE OF REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 6111 (relating to registration of tax shelters) is amended to read as follows:

"SEC. 6111. DISCLOSURE OF REPORTABLE TRANSACTIONS.

"(a) IN GENERAL.—Each material advisor with respect to any reportable transaction shall make a return (in such form as the Secretary may prescribe) setting forth—

"(1) information identifying and describing the transaction,

"(2) information describing any potential tax benefits expected to result from the transaction, and

"(3) such other information as the Secretary may prescribe.

Such return shall be filed not later than the date specified by the Secretary.

"(b) DEFINITIONS.—For purposes of this section—

"(1) MATERIAL ADVISOR.—

"(A) IN GENERAL.—The term 'material advisor' means any person—

"(i) who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and

"(ii) who directly or indirectly derives gross income in excess of the threshold amount (or such other amount as may be prescribed by the Secretary) for such advice or assistance.

"(B) THRESHOLD AMOUNT.—For purposes of subparagraph (A), the threshold amount is—

"(i) $50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons, and

"(ii) $250,000 in any other case.

"(2) REPORTABLE TRANSACTION.—The term 'reportable transaction' has the meaning given to such term by section 6707A(c).

"(c) REGULATIONS.—The Secretary may prescribe regulations which provide—

"(1) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,

"(2) exemptions from the requirements of this section, and

"(3) such rules as may be necessary or appropriate to carry out the purposes of this section.".

(b) CONFORMING AMENDMENTS.—

(1) The item relating to section 6111 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

"Sec. 6111. Disclosure of reportable transactions.".

(2) So much of section 6112 as precedes subsection (c) thereof is amended to read as follows:

"SEC. 6112. MATERIAL ADVISORS OF REPORTABLE TRANSACTIONS MUST KEEP LISTS OF ADVISEES, ETC.

"(a) IN GENERAL.—Each material advisor (as defined in section 6111) with respect to any reportable transaction (as defined in section 6707A(c)) shall (whether or not required to file a return under section 6111 with respect to such transaction) maintain (in such manner as the Secretary may by regulations prescribe) a list—

"(1) identifying each person with respect to whom such advisor acted as a material advisor with respect to such transaction, and

"(2) containing such other information as the Secretary may by regulations require.".

(3) Section 6112 is amended—

(A) by redesignating subsection (c) as subsection (b),

(B) by inserting "written" before "request" in subsection (b)(1) (as so redesignated), and

(C) by striking "shall prescribe" in subsection (b)(2) (as so redesignated) and inserting "may prescribe".

(4) The item relating to section 6112 in the table of sections for subchapter B of chapter 61 is amended to read as follows:

"Sec. 6112. Material advisors of reportable transactions must keep lists of advisees, etc.".

(5)(A) The heading for section 6708 is amended to read as follows:

"SEC. 6708. FAILURE TO MAINTAIN LISTS OF ADVISEES WITH RESPECT TO REPORTABLE TRANSACTIONS."

(B) The item relating to section 6708 in the table of sections for part I of subchapter B of chapter 68 is amended to read as follows:

"Sec. 6708. Failure to maintain lists of advisees with respect to reportable transactions.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions with respect to which material aid, assistance, or advice referred to in section 6111(b)(1)(A)(i) of the Internal Revenue Code of 1986 (as added by this section) is provided after the date of the enactment of this Act.

SEC. 816. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 6707 (relating to failure to furnish information regarding tax shelters) is amended to read as follows:

"SEC. 6707. FAILURE TO FURNISH INFORMATION REGARDING REPORTABLE TRANSACTIONS.

"(a) IN GENERAL.—If a person who is required to file a return under section 6111(a) with respect to any reportable transaction—

"(1) fails to file such return on or before the date prescribed therefor, or

"(2) files false or incomplete information with the Secretary with respect to such transaction, such person shall pay a penalty with respect to such return in the amount determined under subsection (b).

"(b) AMOUNT OF PENALTY.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the penalty imposed under subsection (a) with respect to any failure shall be $50,000.

"(2) LISTED TRANSACTIONS.—The penalty imposed under subsection (a) with respect to any listed transaction shall be an amount equal to the greater of—

"(A) $200,000, or

"(B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return is filed under section 6111.

Subparagraph (B) shall be applied by substituting '75 percent' for '50 percent' in the case of an intentional failure or act described in subsection (a).

"(c) RESCISSION AUTHORITY.—The provisions of section 6707A(d) (relating to authority of Commissioner to rescind penalty) shall apply to any penalty imposed under this section.

"(d) REPORTABLE AND LISTED TRANSACTIONS.—For purposes of this section, the terms 'reportable transaction' and 'listed transaction' have the respective meanings given to such terms by section 6707A(c).".

(b) CLERICAL AMENDMENT.—The item relating to section 6707 in the table of sections for part I of subchapter B of chapter 68 is amended by striking "tax shelters" and inserting "reportable transactions".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to returns the due date for which is after the date of the enactment of this Act.

SEC. 817. MODIFICATION OF PENALTY FOR FAILURE TO MAINTAIN LISTS OF INVESTORS.

(a) IN GENERAL.—Subsection (a) of section 6708 is amended to read as follows:

"(a) IMPOSITION OF PENALTY.—

"(1) IN GENERAL.—If any person who is required to maintain a list under section 6112(a) fails to make such list available upon written request to the Secretary in accordance with section 6112(b) within 20 business days after the date of such request, such person shall pay a penalty of $10,000 for each day of such failure after such 20th day.

"(2) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed by paragraph (1) with respect to the failure on any day if such failure is due to reasonable cause.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests made after the date of the enactment of this Act.

SEC. 818. PENALTY ON PROMOTERS OF TAX SHELTERS.

(a) PENALTY ON PROMOTING ABUSIVE TAX SHELTERS.—Section 6700(a) is amended by adding at the end the following new sentence: "Notwithstanding the first sentence, if an activity with respect to which a penalty imposed under this subsection involves a statement described in paragraph (2)(A), the amount of the penalty shall be equal to 50 percent of the gross income derived (or to be derived) from such activity by the person on which the penalty is imposed."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to activities after the date of the enactment of this Act.

SEC. 819. MODIFICATIONS OF SUBSTANTIAL UNDERSTATEMENT PENALTY FOR NONREPORTABLE TRANSACTIONS.

(a) SUBSTANTIAL UNDERSTATEMENT OF CORPORATIONS.—Section 6662(d)(1)(B) (relating to special rule for corporations) is amended to read as follows:

"(B) SPECIAL RULE FOR CORPORATIONS.—In the case of a corporation other than an S corporation or a personal holding company (as defined in section 542), there is a substantial understatement of income tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of—

"(i) 10 percent of the tax required to be shown on the return for the taxable year (or, if greater, $10,000), or

"(ii) $10,000,000.".

(b) SECRETARIAL LIST.—

(1) IN GENERAL.—Section 6662(d) is amended by adding at the end the following new paragraph:

"(3) SECRETARIAL LIST.—The Secretary may prescribe a list of positions which the Secretary believes do not meet the 1 or more of the standards specified in paragraph (2)(B)(i), section 6664(d)(2), and section 6694(a)(1). Such list (and any revisions thereof) shall be published in the Federal Register or the Internal Revenue Bulletin.".

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 6662(d) is amended by striking subparagraph (D).

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 820. MODIFICATION OF ACTIONS TO ENJOIN CERTAIN CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS.

(a) In General.—Section 7408 (relating to action to enjoin promoters of abusive tax shelters, etc.) is amended by redesignating subsection (c) as subsection (d) and by striking subsections (a) and (b) and inserting the following new subsections:

"(a) Authority To Seek Injunction.—A civil action in the name of the United States to enjoin any person from further engaging in specified conduct may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in specified conduct. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

"(b) Adjudication and Decree.—In any action under subsection (a), if the court finds—

"(1) that the person has engaged in any specified conduct, and

"(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under this title.

"(c) Specified Conduct.—For purposes of this section, the term 'specified conduct' means any action, or failure to take action, which is—

"(1) subject to penalty under section 6700, 6701, 6707, or 6708, or

"(2) in violation of any requirement under regulations issued under section 330 of title 31, United States Code.".

(b) Conforming Amendments.—

(1) The heading for section 7408 is amended to read as follows:

"SEC. 7408. ACTIONS TO ENJOIN SPECIFIED CONDUCT RELATED TO TAX SHELTERS AND REPORTABLE TRANSACTIONS."

(2) The table of sections for subchapter A of chapter 76 is amended by striking the item relating to section 7408 and inserting the following new item:

"Sec. 7408. Actions to enjoin specified conduct related to tax shelters and reportable transactions.".

(c) Effective Date.—The amendment made by this section shall take effect on the day after the date of the enactment of this Act.

SEC. 821. PENALTY ON FAILURE TO REPORT INTERESTS IN FOREIGN FINANCIAL ACCOUNTS.

(a) In General.—Section 5321(a)(5) of title 31, United States Code, is amended to read as follows:

"(5) Foreign Financial Agency Transaction Violation.—

"(A) Penalty Authorized.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

"(B) Amount of Penalty.—

"(i) In General.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed $10,000.

"(ii) Reasonable Cause Exception.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—

"(I) such violation was due to reasonable cause, and

"(II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.

"(C) Willful Violations.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—

"(i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—

"(I) $100,000, or

"(II) 50 percent of the amount determined under subparagraph (D), and

"(ii) subparagraph (B)(ii) shall not apply.

"(D) Amount.—The amount determined under this subparagraph is—

"(i) in the case of a violation involving a transaction, the amount of the transaction, or

"(ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.".

(b) Effective Date.—The amendment made by this section shall apply to violations occurring after the date of the enactment of this Act.

SEC. 822. REGULATION OF INDIVIDUALS PRACTICING BEFORE THE DEPARTMENT OF TREASURY.

(a) Censure; Imposition of Penalty.—

(1) In General.—Section 330(b) of title 31, United States Code, is amended—

(A) by inserting ", or censure," after "Department", and

(B) by adding at the end the following new flush sentence:

"The Secretary may impose a monetary penalty on any representative described in the preceding sentence. If the representative was acting on behalf of an employer or any firm or other entity in connection with the conduct giving rise to such penalty, the Secretary may impose a monetary penalty on such employer, firm, or entity if it knew, or reasonably should have known, of such conduct. Such penalty shall not exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty and may be in addition to, or in lieu of, any suspension, disbarment, or censure of the representative.".

(2) Effective Date.—The amendments made by this subsection shall apply to actions taken after the date of the enactment of this Act.

(b) Tax Shelter Opinions, Etc.—Section 330 of such title 31 is amended by adding at the end the following new subsection:

"(d) Nothing in this section or in any other provision of law shall be construed to limit the authority of the Secretary of the Treasury to impose standards applicable to the rendering of written advice with respect to any entity, transaction plan or arrangement, or other plan or arrangement, which is of a type which the Secretary determines as having a potential for tax avoidance or evasion.".

Part II—Other Provisions

SEC. 831. TREATMENT OF STRIPPED INTERESTS IN BOND AND PREFERRED STOCK FUNDS, ETC.

(a) In General.—Section 1286 (relating to tax treatment of stripped bonds) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) Treatment of Stripped Interests in Bond and Preferred Stock Funds, Etc.—In the case of an account or entity substantially all of the assets of which consist of bonds, preferred stock, or a combination thereof, the Secretary may by regulations provide that rules similar to the rules of this section and 305(e), as appropriate, shall apply to interests in such account or entity to which (but for this subsection) this section or section 305(e), as the case may be, would not apply.".

(b) Cross Reference.—Subsection (e) of section 305 is amended by adding at the end the following new paragraph:

"(7) Cross Reference.—

"For treatment of stripped interests in certain accounts or entities holding preferred stock, see section 1286(f).".

(c) Effective Date.—The amendments made by this section shall apply to purchases and dispositions after the date of the enactment of this Act.

SEC. 832. MINIMUM HOLDING PERIOD FOR FOREIGN TAX CREDIT ON WITHHOLDING TAXES ON INCOME OTHER THAN DIVIDENDS.

(a) In General.—Section 901 is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

"(l) Minimum Holding Period for Withholding Taxes on Gain and Income Other Than Dividends Etc.—

"(1) In General.—In no event shall a credit be allowed under subsection (a) for any withholding tax (as defined in subsection (k)) on any item of income or gain with respect to any property if—

"(A) such property is held by the recipient of the item for 15 days or less during the 31-day period beginning on the date which is 15 days before the date on which the right to receive payment of such item arises, or

"(B) to the extent that the recipient of the item is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

This paragraph shall not apply to any dividend to which subsection (k) applies.

"(2) Exception for Taxes Paid by Dealers.—

"(A) In General.—Paragraph (1) shall not apply to any qualified tax with respect to any property held in the active conduct in a foreign country of a business as a dealer in such property.

"(B) Qualified Tax.—For purposes of subparagraph (A), the term 'qualified tax' means a tax paid to a foreign country (other than the foreign country referred to in subparagraph (A)) if—

"(i) the item to which such tax is attributable is subject to taxation on a net basis by the country referred to in subparagraph (A), and

"(ii) such country allows a credit against its net basis tax for the full amount of the tax paid to such other foreign country.

"(C) Dealer.—For purposes of subparagraph (A), the term 'dealer' means—

"(i) with respect to a security, any person to whom paragraphs (1) and (2) of subsection (k) would not apply by reason of paragraph (4) thereof if such security were stock, and

"(ii) with respect to any other property, any person with respect to whom such property is described in section 1221(a)(1).

"(D) Regulations.—The Secretary may prescribe such regulations as may be appropriate to carry out this paragraph, including regulations to prevent the abuse of the exception provided by this paragraph and to treat other taxes as qualified taxes.

"(3) Exceptions.—The Secretary may by regulation provide that paragraph (1) shall not apply to property where the Secretary determines that the application of paragraph (1) to such property is not necessary to carry out the purposes of this subsection.

"(4) Certain Rules to Apply.—Rules similar to the rules of paragraphs (5), (6), and (7) of subsection (k) shall apply for purposes of this subsection.

"(5) Determination of Holding Period.—Holding periods shall be determined for purposes of this subsection without regard to section 1235 or any similar rule.".

(b) Conforming Amendment.—The heading of subsection (k) of section 901 is amended by inserting "on Dividends" after "Taxes".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or accrued more than 30 days after the date of the enactment of this Act.

SEC. 833. DISALLOWANCE OF CERTAIN PARTNERSHIP LOSS TRANSFERS.

(a) TREATMENT OF CONTRIBUTED PROPERTY WITH BUILT-IN LOSS.—Paragraph (1) of section 704(c) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following:

"(C) if any property so contributed has a built-in loss—

"(i) such built-in loss shall be taken into account only in determining the amount of items allocated to the contributing partner, and

"(ii) except as provided in regulations, in determining the amount of items allocated to other partners, the basis of the contributed property in the hands of the partnership shall be treated as being equal to its fair market value at the time of contribution.

For purposes of subparagraph (C), the term 'built-in loss' means the excess of the adjusted basis of the property (determined without regard to subparagraph (C)(ii)) over its fair market value at the time of contribution.".

(b) SPECIAL RULES FOR TRANSFERS OF PARTNERSHIP INTEREST IF THERE IS SUBSTANTIAL BUILT-IN LOSS.—

(1) ADJUSTMENT OF PARTNERSHIP BASIS REQUIRED.—Subsection (a) of section 743 (relating to optional adjustment to basis of partnership property) is amended by inserting before the period "or unless the partnership has a substantial built-in loss immediately after such transfer".

(2) ADJUSTMENT.—Subsection (b) of section 743 is amended by inserting "or which has a substantial built-in loss immediately after such transfer" after "section 754 is in effect".

(3) SUBSTANTIAL BUILT-IN LOSS.—Section 743 is amended by adding at the end the following new subsection:

"(d) SUBSTANTIAL BUILT-IN LOSS.—

"(1) IN GENERAL.—For purposes of this section, a partnership has a substantial built-in loss with respect to a transfer of an interest in a partnership if the partnership's adjusted basis in the partnership property exceeds by more than $250,000 the fair market value of such property.

"(2) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of paragraph (1) and section 734(d), including regulations aggregating related partnerships and disregarding property acquired by the partnership in an attempt to avoid such purposes.".

(4) ALTERNATIVE RULES FOR ELECTING INVESTMENT PARTNERSHIPS.—

(A) IN GENERAL.—Section 743 is amended by adding after subsection (d) the following new subsection:

"(e) ALTERNATIVE RULES FOR ELECTING INVESTMENT PARTNERSHIPS.—

"(1) NO ADJUSTMENT OF PARTNERSHIP BASIS.—For purposes of this section, an electing investment partnership shall not be treated as having a substantial built-in loss with respect to any transfer occurring while the election under paragraph (6)(A) is in effect.

"(2) LOSS DEFERRAL FOR TRANSFEREE PARTNER.—In the case of a transfer of an interest in an electing investment partnership, the transferee partner's distributive share of losses (without regard to gains) from the sale or exchange of partnership property shall not be allowed except to the extent that it is established that such losses exceed the loss (if any) recognized by the transferor (or any prior transferor to the extent not fully offset by a prior disallowance under this paragraph) on the transfer of the partnership interest.

"(3) NO REDUCTION IN PARTNERSHIP BASIS.—Losses disallowed under paragraph (2) shall not decrease the transferee partner's basis in the partnership interest.

"(4) EFFECT OF TERMINATION OF PARTNERSHIP.—This subsection shall be applied without regard to any termination of a partnership under section 708(b)(1)(B).

"(5) CERTAIN BASIS REDUCTIONS TREATED AS LOSSES.—In the case of a transferee partner whose basis in property distributed by the partnership is reduced under section 732(a)(2), the amount of the loss recognized by the transferor on the transfer of the partnership interest which is taken into account under paragraph (2) shall be reduced by the amount of such basis reduction.

"(6) ELECTING INVESTMENT PARTNERSHIP.—For purposes of this subsection, the term 'electing investment partnership' means any partnership if—

"(A) the partnership makes an election to have this subsection apply,

"(B) the partnership would be an investment company under section 3(a)(1)(A) of the Investment Company Act of 1940 but for an exemption under paragraph (1) or (7) of section 3(c) of such Act,

"(C) such partnership has never been engaged in a trade or business,

"(D) substantially all of the assets of such partnership are held for investment,

"(E) at least 95 percent of the assets contributed to such partnership consist of money,

"(F) no assets contributed to such partnership had an adjusted basis in excess of fair market value at the time of contribution,

"(G) all partnership interests of such partnership are issued by such partnership pursuant to a private offering before the date which is 24 months after the date of the first capital contribution to such partnership,

"(H) the partnership agreement of such partnership has substantive restrictions on each partner's ability to cause a redemption of the partner's interest, and

"(I) the partnership agreement of such partnership provides for a term that is not in excess of 15 years.

The election described in subparagraph (A), once made, shall be irrevocable except with the consent of the Secretary.

"(7) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including regulations for applying this subsection to tiered partnerships.".

(B) INFORMATION REPORTING.—Section 6031 is amended by adding at the end the following new subsection:

"(f) ELECTING INVESTMENT PARTNERSHIPS.—In the case of any electing investment partnership (as defined in section 743(e)(6)), the information required under subsection (b) to be furnished to any partner to whom section 743(e)(2) applies shall include such information as is necessary to enable the partner to compute the amount of losses disallowed under section 743(e).".

(5) SPECIAL RULE FOR SECURITIZATION PARTNERSHIPS.—Section 743 is amended by adding after subsection (e) the following new subsection:

"(f) EXCEPTION FOR SECURITIZATION PARTNERSHIPS.—

"(1) NO ADJUSTMENT OF PARTNERSHIP BASIS.—For purposes of this section, a securitization partnership shall not be treated as having a substantial built-in loss with respect to any transfer.

"(2) SECURITIZATION PARTNERSHIP.—For purposes of paragraph (1), the term 'securitization partnership' means any partnership the sole business activity of which is to issue securities which provide for a fixed principal (or similar) amount and which are primarily serviced by the cash flows of a discrete pool (either fixed or revolving) of receivables or other financial assets that by their terms convert into cash in a finite period, but only if the sponsor of the pool reasonably believes that the receivables and other financial assets comprising the pool are not acquired so as to be disposed of."

(6) CLERICAL AMENDMENTS.—

(A) The section heading for section 743 is amended to read as follows:

"SEC. 743. SPECIAL RULES WHERE SECTION 754 ELECTION OR SUBSTANTIAL BUILT-IN LOSS."

(B) The table of sections for subpart C of part II of subchapter K of chapter 1 is amended by striking the item relating to section 743 and inserting the following new item:

"Sec. 743. Special rules where section 754 election or substantial built-in loss.".

(c) ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY IF THERE IS SUBSTANTIAL BASIS REDUCTION.—

(1) ADJUSTMENT REQUIRED.—Subsection (a) of section 734 (relating to optional adjustment to basis of undistributed partnership property) is amended by inserting before the period "or unless there is a substantial basis reduction".

(2) ADJUSTMENT.—Subsection (b) of section 734 is amended by inserting "or unless there is a substantial basis reduction" after "section 754 is in effect".

(3) SUBSTANTIAL BASIS REDUCTION.—Section 734 is amended by adding at the end the following new subsection:

"(d) SUBSTANTIAL BASIS REDUCTION.—

"(1) IN GENERAL.—For purposes of this section, there is a substantial basis reduction with respect to a distribution if the sum of the amounts described in subparagraphs (A) and (B) of subsection (b)(2) exceeds $250,000.

"(2) REGULATIONS.—

"For regulations to carry out this subsection, see section 743(d)(2).".

(4) EXCEPTION FOR SECURITIZATION PARTNERSHIPS.—Section 734 is amended by inserting after subsection (d) the following new subsection:

"(e) EXCEPTION FOR SECURITIZATION PARTNERSHIPS.—For purposes of this section, a securitization partnership (as defined in section 743(f)) shall not be treated as having a substantial basis reduction with respect to any distribution of property to a partner.".

(5) CLERICAL AMENDMENTS.—

(A) The section heading for section 734 is amended to read as follows:

"SEC. 734. ADJUSTMENT TO BASIS OF UNDISTRIBUTED PARTNERSHIP PROPERTY WHERE SECTION 754 ELECTION OR SUBSTANTIAL BASIS REDUCTION."

(B) The table of sections for subpart B of part II of subchapter K of chapter 1 is amended by striking the item relating to section 734 and inserting the following new item:

"Sec. 734. Adjustment to basis of undistributed partnership property where section 754 election or substantial basis reduction.".

(d) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to contributions made after the date of the enactment of this Act.

(2) SUBSECTION (b).—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (b) shall apply to transfers after the date of the enactment of this Act.

(B) TRANSITION RULE.—In the case of an electing investment partnership which is in existence on June 4, 2004, section 743(e)(6)(H) of the Internal Revenue Code of 1986, as added by this section, shall not apply to such partnership and

section 743(e)(6)(I) of such Code, as so added, shall be applied by substituting "20 years" for "15 years".

(3) SUBSECTION (c).—The amendments made by subsection (c) shall apply to distributions after the date of the enactment of this Act.

SEC. 834. NO REDUCTION OF BASIS UNDER SECTION 734 IN STOCK HELD BY PARTNERSHIP IN CORPORATE PARTNER.

(a) IN GENERAL.—Section 755 is amended by adding at the end the following new subsection:

"(c) NO ALLOCATION OF BASIS DECREASE TO STOCK OF CORPORATE PARTNER.—In making an allocation under subsection (a) of any decrease in the adjusted basis of partnership property under section 734(b)—

"(1) no allocation may be made to stock in a corporation (or any person related (within the meaning of sections 267(b) and 707(b)(1)) to such corporation) which is a partner in the partnership, and

"(2) any amount not allocable to stock by reason of paragraph (1) shall be allocated under subsection (a) to other partnership property.

Gain shall be recognized to the partnership to the extent that the amount required to be allocated under paragraph (2) to other partnership property exceeds the aggregate adjusted basis of such other property immediately before the allocation required by paragraph (2).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after the date of the enactment of this Act.

SEC. 835. REPEAL OF SPECIAL RULES FOR FASITS.

(a) IN GENERAL.—Part V of subchapter M of chapter 1 (relating to financial asset securitization investment trusts) is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (6) of section 56(g) is amended by striking "REMIC, or FASIT" and inserting "or REMIC".

(2) Clause (ii) of section 382(l)(4)(B) is amended by striking "a REMIC to which part IV of subchapter M applies, or a FASIT to which part V of subchapter M applies," and inserting "or a REMIC to which part IV of subchapter M applies,".

(3) Paragraph (1) of section 582(c) is amended by striking ", and any regular interest in a FASIT,".

(4) Subparagraph (E) of section 856(c)(5) is amended by striking the last sentence.

(5)(A) Section 860G(a)(1) is amended by adding at the end the following new sentence: "An interest shall not fail to qualify as a regular interest solely because the specified principal amount of the regular interest (or the amount of interest accrued on the regular interest) can be reduced as a result of the nonoccurrence of 1 or more contingent payments with respect to any reverse mortgage loan held by the REMIC if, on the startup day for the REMIC, the sponsor reasonably believes that all principal and interest due under the regular interest will be paid at or prior to the liquidation of the REMIC.".

(B) The last sentence of section 860G(a)(3) is amended by inserting ", and any reverse mortgage loan (and each balance increase on such loan meeting the requirements of subparagraph (A)(iii)) shall be treated as an obligation secured by an interest in real property" before the period at the end.

(6) Paragraph (3) of section 860G(a) is amended by adding "and" at the end of subparagraph (B), by striking ", and" at the end of subparagraph (C) and inserting a period, and by striking subparagraph (D).

(7) Section 860G(a)(3), as amended by paragraph (6), is amended by adding at the end the following new sentence: "For purposes of subparagraph (A), if more than 50 percent of the obligations transferred to, or purchased by, the REMIC are originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) and are principally secured by an interest in real property, then each obligation transferred to, or purchased by, the REMIC shall be treated as secured by an interest in real property.".

(8)(A) Section 860G(a)(3)(A) is amended by striking "or" at the end of clause (i), by inserting "or" at the end of clause (ii), and by inserting after clause (ii) the following new clause:

"(iii) represents an increase in the principal amount under the original terms of an obligation described in clause (i) or (ii) if such increase—

"(I) is attributable to an advance made to the obligor pursuant to the original terms of the obligation,

"(II) occurs after the startup day, and

"(III) is purchased by the REMIC pursuant to a fixed price contract in effect on the startup day.".

(B) Section 860G(a)(7)(B) is amended to read as follows:

"(B) QUALIFIED RESERVE FUND.—For purposes of subparagraph (A), the term 'qualified reserve fund' means any reasonably required reserve to—

"(i) provide for full payment of expenses of the REMIC or amounts due on regular interests in the event of defaults on qualified mortgages or lower than expected returns on cash flow investments, or

"(ii) provide a source of funds for the purchase of obligations described in clause (ii) or (iii) of paragraph (3)(A).

The aggregate fair market value of the assets held in any such reserve shall not exceed 50 percent of the aggregate fair market value of all of the assets of the REMIC on the startup day, and the amount of any such reserve shall be promptly and appropriately reduced to the extent the amount held in such reserve is no longer reasonably required for purposes specified in clause (i) or (ii) of this subparagraph.".

(9) Subparagraph (C) of section 1202(e)(4) is amended by striking "REMIC, or FASIT" and inserting "or REMIC".

(10) Clause (xi) of section 7701(a)(19)(C) is amended—

(A) by striking "and any regular interest in a FASIT,", and

(B) by striking "or FASIT" each place it appears.

(11) Subparagraph (A) of section 7701(i)(2) is amended by striking "or a FASIT".

(12) The table of parts for subchapter M of chapter 1 is amended by striking the item relating to part V.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on January 1, 2005.

(2) EXCEPTION FOR EXISTING FASITS.—Paragraph (1) shall not apply to any FASIT in existence on the date of the enactment of this Act to the extent that regular interests issued by the FASIT before such date continue to remain outstanding in accordance with the original terms of issuance.

SEC. 836. LIMITATION ON TRANSFER OR IMPORTATION OF BUILT-IN LOSSES.

(a) IN GENERAL.—Section 362 (relating to basis to corporations) is amended by adding at the end the following new subsection:

"(e) LIMITATIONS ON BUILT-IN LOSSES.—

"(1) LIMITATION ON IMPORTATION OF BUILT-IN LOSSES.—

"(A) IN GENERAL.—If in any transaction described in subsection (a) or (b) there would (but for this subsection) be an importation of a net built-in loss, the basis of each property described in subparagraph (B) which is acquired in such transaction shall (notwithstanding subsections (a) and (b)) be its fair market value immediately after such transaction.

"(B) PROPERTY DESCRIBED.—For purposes of subparagraph (A), property is described in this subparagraph if—

"(i) gain or loss with respect to such property is not subject to tax under this subtitle in the hands of the transferor immediately before the transfer, and

"(ii) gain or loss with respect to such property is subject to such tax in the hands of the transferee immediately after such transfer.

In any case in which the transferor is a partnership, the preceding sentence shall be applied by treating each partner in such partnership as holding such partner's proportionate share of the property of such partnership.

"(C) IMPORTATION OF NET BUILT-IN LOSS.—For purposes of subparagraph (A), there is an importation of a net built-in loss in a transaction if the transferee's aggregate adjusted bases of property described in subparagraph (B) which is transferred in such transaction would (but for this paragraph) exceed the fair market value of such property immediately after such transaction.

"(2) LIMITATION ON TRANSFER OF BUILT-IN LOSSES IN SECTION 351 TRANSACTIONS.—

"(A) IN GENERAL.—If—

"(i) property is transferred by a transferor in any transaction which is described in subsection (a) and which is not described in paragraph (1) of this subsection, and

"(ii) the transferee's aggregate adjusted bases of such property so transferred would (but for this paragraph) exceed the fair market value of such property immediately after such transaction,

then, notwithstanding subsection (a), the transferee's aggregate adjusted bases of the property so transferred shall not exceed the fair market value of such property immediately after such transaction.

"(B) ALLOCATION OF BASIS REDUCTION.—The aggregate reduction in basis by reason of subparagraph (A) shall be allocated among the property so transferred in proportion to their respective built-in losses immediately before the transaction.

"(C) ELECTION TO APPLY LIMITATION TO TRANSFEROR'S STOCK BASIS.—

"(i) IN GENERAL.—If the transferor and transferee of a transaction described in subparagraph (A) both elect the application of this subparagraph—

"(I) subparagraph (A) shall not apply, and

"(II) the transferor's basis in the stock received for property to which subparagraph (A) does not apply by reason of the election shall not exceed its fair market value immediately after the transfer.

"(ii) ELECTION.—An election under clause (i) shall be included with the return of tax for the taxable year in which the transaction occurred, shall be in such form and manner as the Secretary may prescribe, and, once made, shall be irrevocable.".

(b) COMPARABLE TREATMENT WHERE LIQUIDATION.—Paragraph (1) of section 334(b) (relating to liquidation of subsidiary) is amended to read as follows:

"(1) IN GENERAL.—If property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies (or in a transfer described in section 337(b)(1)), the basis of such property in the hands of such distributee shall be the same as it would be in the hands of the transferor; except that the basis of such property in the hands of such distributee shall be the fair market value of the property at the time of the distribution—

"(A) in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, or

"(B) in any case in which the liquidating corporation is a foreign corporation, the corporate distributee is a domestic corporation, and the corporate distributee's aggregate adjusted bases of property described in section 362(e)(1)(B) which is distributed in such liquidation would (but for this subparagraph) exceed the fair market value of such property immediately after such liquidation.".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to transactions after the date of the enactment of this Act.

(2) LIQUIDATIONS.—The amendment made by subsection (b) shall apply to liquidations after the date of the enactment of this Act.

SEC. 837. CLARIFICATION OF BANKING BUSINESS FOR PURPOSES OF DETERMINING INVESTMENT OF EARNINGS IN UNITED STATES PROPERTY.

(a) IN GENERAL.—Subparagraph (A) of section 956(c)(2) is amended to read as follows:

"(A) obligations of the United States, money, or deposits with—

"(i) any bank (as defined by section 2(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c)), without regard to subparagraphs (C) and (G) of paragraph (2) of such section), or

"(ii) any corporation not described in clause (i) with respect to which a bank holding company (as defined by section 2(a) of such Act) or financial holding company (as defined by section 2(p) of such Act) owns directly or indirectly more than 80 percent by vote or value of the stock of such corporation;".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 838. DENIAL OF DEDUCTION FOR INTEREST ON UNDERPAYMENTS ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS.

(a) IN GENERAL.—Section 163 (relating to deduction for interest) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) INTEREST ON UNPAID TAXES ATTRIBUTABLE TO NONDISCLOSED REPORTABLE TRANSACTIONS.—No deduction shall be allowed under this chapter for any interest paid or accrued under section 6601 on any underpayment of tax which is attributable to the portion of any reportable transaction understatement (as defined in section 6662A(b)) with respect to which the requirement of section 6664(d)(2)(A) is not met.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions in taxable years beginning after the date of the enactment of this Act.

SEC. 839. CLARIFICATION OF RULES FOR PAYMENT OF ESTIMATED TAX FOR CERTAIN DEEMED ASSET SALES.

(a) IN GENERAL.—Paragraph (13) of section 338(h) (relating to tax on deemed sale not taken into account for estimated tax purposes) is amended by adding at the end the following: "The preceding sentence shall not apply with respect to a qualified stock purchase for which an election is made under paragraph (10).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to transactions occurring after the date of the enactment of this Act.

SEC. 840. RECOGNITION OF GAIN FROM THE SALE OF A PRINCIPAL RESIDENCE ACQUIRED IN A LIKE-KIND EXCHANGE WITHIN 5 YEARS OF SALE.

(a) IN GENERAL.—Section 121(d) (relating to special rules for exclusion of gain from sale of principal residence) is amended by adding at the end the following new paragraph:

"(10) PROPERTY ACQUIRED IN LIKE-KIND EXCHANGE.—If a taxpayer acquired property in an exchange to which section 1031 applied, subsection (a) shall not apply to the sale or exchange of such property if it occurs during the 5-year period beginning with the date of the acquisition of such property.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales or exchanges after the date of the enactment of this Act.

SEC. 841. PREVENTION OF MISMATCHING OF INTEREST AND ORIGINAL ISSUE DISCOUNT DEDUCTIONS AND INCOME INCLUSIONS IN TRANSACTIONS WITH RELATED FOREIGN PERSONS.

(a) ORIGINAL ISSUE DISCOUNT.—Section 163(e)(3) (relating to special rule for original issue discount on obligation held by related foreign person) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.—

"(i) IN GENERAL.—In the case of any debt instrument having original issue discount which is held by a related foreign person which is a controlled foreign corporation (as defined in section 957) or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the issuer with respect to such original issue discount for any taxable year before the taxable year in which paid only to the extent such original issue discount is includible (determined without regard to properly allocable deductions and qualified deficits under section 952(c)(1)(B)) during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

"(ii) SECRETARIAL AUTHORITY.—The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged.".

(b) INTEREST AND OTHER DEDUCTIBLE AMOUNTS.—Section 267(a)(3) is amended—

(1) by striking "The Secretary" and inserting: "(A) IN GENERAL.—The Secretary", and

(2) by adding at the end the following new subparagraph:

"(B) SPECIAL RULE FOR CERTAIN FOREIGN ENTITIES.—

"(i) IN GENERAL.—Notwithstanding subparagraph (A), in the case of any item payable to a controlled foreign corporation (as defined in section 957) or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the payor with respect to such amount for any taxable year before the taxable year in which paid only to the extent that an amount attributable to such item is includible (determined without regard to properly allocable deductions and qualified deficits under section 952(c)(1)(B)) during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

"(ii) SECRETARIAL AUTHORITY.—The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged and in which the payment of the accrued amounts occurs within 8½ months after accrual or within such other period as the Secretary may prescribe.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments accrued on or after the date of the enactment of this Act.

SEC. 842. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS.

(a) IN GENERAL.—Subchapter A of chapter 67 (relating to interest on underpayments) is amended by adding at the end the following new section:

"SEC. 6603. DEPOSITS MADE TO SUSPEND RUNNING OF INTEREST ON POTENTIAL UNDERPAYMENTS, ETC.

"(a) AUTHORITY TO MAKE DEPOSITS OTHER THAN AS PAYMENT OF TAX.—A taxpayer may make a cash deposit with the Secretary which may be used by the Secretary to pay any tax imposed under subtitle A or B or chapter 41, 42, 43, or 44 which has not been assessed at the time of the deposit. Such a deposit shall be made in such manner as the Secretary shall prescribe.

"(b) NO INTEREST IMPOSED.—To the extent that such deposit is used by the Secretary to pay tax, for purposes of section 6601 (relating to interest on underpayments), the tax shall be treated as paid when the deposit is made.

"(c) RETURN OF DEPOSIT.—Except in a case where the Secretary determines that collection of tax is in jeopardy, the Secretary shall return to the taxpayer any amount of the deposit (to the extent not used for a payment of tax) which the taxpayer requests in writing.

"(d) PAYMENT OF INTEREST.—

"(1) IN GENERAL.—For purposes of section 6611 (relating to interest on overpayments), except as provided in paragraph (4), a deposit which is returned to a taxpayer shall be treated as a payment of tax for any period to the extent (and only to the extent) attributable to a disputable tax for such period. Under regulations prescribed by the Secretary, rules similar to the rules of section 6611(b)(2) shall apply.

"(2) DISPUTABLE TAX.—

"(A) IN GENERAL.—For purposes of this section, the term 'disputable tax' means the amount of tax specified at the time of the deposit as the taxpayer's reasonable estimate of the maximum amount of any tax attributable to disputable items.

"(B) SAFE HARBOR BASED ON 30-DAY LETTER.—In the case of a taxpayer who has been issued a 30-day letter, the maximum amount of tax under subparagraph (A) shall not be less than the amount of the proposed deficiency specified in such letter.

"(3) OTHER DEFINITIONS.—For purposes of paragraph (2)—

"(A) DISPUTABLE ITEM.—The term 'disputable item' means any item of income, gain, loss, deduction, or credit if the taxpayer—

"(i) has a reasonable basis for its treatment of such item, and

"(ii) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer's treatment of such item.

"(B) 30-DAY LETTER.—The term '30-day letter' means the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

"(4) RATE OF INTEREST.—The rate of interest under this subsection shall be the Federal short-term rate determined under section 6621(b), compounded daily.

"(e) USE OF DEPOSITS.—

"(1) PAYMENT OF TAX.—Except as otherwise provided by the taxpayer, deposits shall be treated as used for the payment of tax in the order deposited.

"(2) RETURNS OF DEPOSITS.—Deposits shall be treated as returned to the taxpayer on a last-in, first-out basis.".

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 67 is amended by adding at the end the following new item:

"Sec. 6603. Deposits made to suspend running of interest on potential underpayments, etc.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to deposits made after the date of the enactment of this Act.

(2) COORDINATION WITH DEPOSITS MADE UNDER REVENUE PROCEDURE 84-58.—In the case of an amount held by the Secretary of the Treasury or his delegate on the date of the enactment of this Act as a deposit in the nature of a cash bond deposit pursuant to Revenue Procedure 84-58, the date that the taxpayer identifies such amount as a deposit made pursuant to section 6603 of the Internal Revenue Code (as added by this Act) shall be treated as the date such amount is deposited for purposes of such section 6603.

SEC. 843. PARTIAL PAYMENT OF TAX LIABILITY IN INSTALLMENT AGREEMENTS.

(a) IN GENERAL.—

(1) Section 6159(a) (relating to authorization of agreements) is amended—

(A) by striking "satisfy liability for payment of" and inserting "make payment on", and

(B) by inserting "full or partial" after "facilitate".

(2) Section 6159(c) (relating to Secretary required to enter into installment agreements in certain cases) is amended in the matter preceding paragraph (1) by inserting "full" before "payment".

(b) REQUIREMENT TO REVIEW PARTIAL PAYMENT AGREEMENTS EVERY TWO YEARS.—Section 6159 is amended by redesignating subsections (d) and (e) as subsections (e) and (f), respectively, and inserting after subsection (c) the following new subsection:

"(d) SECRETARY REQUIRED TO REVIEW INSTALLMENT AGREEMENTS FOR PARTIAL COLLECTION EVERY TWO YEARS.—In the case of an agreement entered into by the Secretary under subsection (a) for partial collection of a tax liability, the Secretary shall review the agreement at least once every 2 years.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to agreements entered into on or after the date of the enactment of this Act.

SEC. 844. AFFIRMATION OF CONSOLIDATED RETURN REGULATION AUTHORITY.

(a) IN GENERAL.—Section 1502 is amended by adding at the end the following new sentence: "In carrying out the preceding sentence, the Secretary may prescribe rules that are different from the provisions of chapter 1 that would apply if such corporations filed separate returns.".

(b) RESULT NOT OVERTURNED.—Notwithstanding the amendment made by subsection (a), the Internal Revenue Code of 1986 shall be construed by treating Treasury Regulation §1.1502-20(c)(1)(iii) (as in effect on January 1, 2001) as being inapplicable to the factual situation in Rite Aid Corporation and Subsidiary Corporations v. United States, 255 F.3d 1357 (Fed. Cir. 2001).

(c) EFFECTIVE DATE.—This section, and the amendment made by this section, shall apply to taxable years beginning before, on, or after the date of the enactment of this Act.

SEC. 845. EXPANDED DISALLOWANCE OF DEDUCTION FOR INTEREST ON CONVERTIBLE DEBT.

(a) IN GENERAL.—Paragraph (2) of section 163(l) is amended by inserting "or equity held by the issuer (or any related party) in any other person" after "or a related party".

(b) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—Section 163(l) is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6) and by inserting after paragraph (3) the following new paragraph:

"(4) CAPITALIZATION ALLOWED WITH RESPECT TO EQUITY OF PERSONS OTHER THAN ISSUER AND RELATED PARTIES.—If the disqualified debt instrument of a corporation is payable in equity held by the issuer (or any related party) in any other person (other than a related party), the basis of such equity shall be increased by the amount not allowed as a deduction by reason of paragraph (1) with respect to the instrument.".

(c) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—Section 163(l), as amended by subsection (b), is amended by redesignating paragraphs (5) and (6) as paragraphs (6) and (7) and by inserting after paragraph (4) the following new paragraph:

"(5) EXCEPTION FOR CERTAIN INSTRUMENTS ISSUED BY DEALERS IN SECURITIES.—For purposes of this subsection, the term 'disqualified debt instrument' does not include indebtedness issued by a dealer in securities (or a related party) which is payable in, or by reference to, equity (other than equity of the issuer or a related party) held by such dealer in its capacity as a dealer in securities. For purposes of this paragraph, the term 'dealer in securities' has the meaning given such term by section 475.".

(d) CONFORMING AMENDMENT.—Paragraph (3) of section 163(l) is amended by striking "or a related party" in the material preceding subparagraph (A) and inserting "or any other person".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to debt instruments issued after October 3, 2004.

Part III—Leasing

SEC. 847. REFORM OF TAX TREATMENT OF CERTAIN LEASING ARRANGEMENTS.

(a) CLARIFICATION OF RECOVERY PERIOD FOR TAX-EXEMPT USE PROPERTY SUBJECT TO LEASE.—Subparagraph (A) of section 168(g)(3) (relating to special rules for determining class life) is amended by inserting "(notwithstanding any other subparagraph of this paragraph)" after "shall".

(b) LIMITATION ON DEPRECIATION AND AMORTIZATION PERIODS FOR INTANGIBLES LEASED TO TAX-EXEMPT ENTITY.—

(1) COMPUTER SOFTWARE.—Paragraph (1) of section 167(f) is amended by adding at the end the following new subparagraph:

"(C) TAX-EXEMPT USE PROPERTY SUBJECT TO LEASE.—In the case of computer software which would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to computer software, the useful life under subparagraph (A) shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).".

(2) CERTAIN INTERESTS OR RIGHTS ACQUIRED SEPARATELY.—Paragraph (2) of section 167(f) is amended by adding at the end the following new sentence: "If such property would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to such property, the useful life under such regulations shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).".

(3) SECTION 197 INTANGIBLES.—Section 197(f) (relating to special rules) is amended by adding at the end the following new paragraph:

"(10) TAX-EXEMPT USE PROPERTY SUBJECT TO LEASE.—In the case of any section 197 intangible which would be tax-exempt use property as defined in subsection (h) of section 168 if such section applied to such intangible, the amortization period under this section shall not be less than 125 percent of the lease term (within the meaning of section 168(i)(3)).".

(c) LEASE TERM TO INCLUDE RELATED SERVICE CONTRACTS.—Subparagraph (A) of section 168(i)(3) (relating to lease term) is amended by striking "and" at the end of clause (i), by redesignating clause (ii) as clause (iii), and by inserting after clause (i) the following new clause:

"(ii) the term of a lease shall include the term of any service contract or similar arrangement (whether or not treated as a lease under section 7701(e))—

"(I) which is part of the same transaction (or series of related transactions) which includes the lease, and

"(II) which is with respect to the property subject to the lease or substantially similar property, and".

(d) EXPANSION OF SHORT-TERM LEASE EXEMPTION FOR QUALIFIED TECHNOLOGICAL EQUIPMENT.—Subparagraph (A) of section 168(h)(3) is amended by adding at the end the following new sentence: "Notwithstanding subsection (i)(3)(A)(i), in determining a lease term for purposes of the preceding sentence, there shall not be taken into account any option of the lessee to renew at the fair market value rent determined at the time of renewal; except that the aggregate period not taken into account by reason of this sentence shall not exceed 24 months.".

(e) TREATMENT OF CERTAIN INDIAN TRIBAL GOVERNMENTS AS TAX-EXEMPT ENTITIES.—Section 168(h)(2)(A) is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", and", and by inserting at the end the following:

"(iv) any Indian tribal government described in section 7701(a)(40).

For purposes of applying this subsection, any Indian tribal government referred to in clause (iv) shall be treated in the same manner as a State."

SEC. 848. LIMITATION ON DEDUCTIONS ALLOCABLE TO PROPERTY USED BY GOVERNMENTS OR OTHER TAX-EXEMPT ENTITIES.

(a) IN GENERAL.—Subpart C of part II of subchapter E of chapter 1 (relating to taxable year for which deductions taken) is amended by adding at the end the following new section:

"SEC. 470. LIMITATION ON DEDUCTIONS ALLOCABLE TO PROPERTY USED BY GOVERNMENTS OR OTHER TAX-EXEMPT ENTITIES.

"(a) LIMITATION ON LOSSES.—Except as otherwise provided in this section, a tax-exempt use loss for any taxable year shall not be allowed.

"(b) DISALLOWED LOSS CARRIED TO NEXT YEAR.—Any tax-exempt use loss with respect to any tax-exempt use property which is disallowed under subsection (a) for any taxable year shall be treated as a deduction with respect to such property in the next taxable year.

"(c) DEFINITIONS.—For purposes of this section—

"(1) TAX-EXEMPT USE LOSS.—The term 'tax-exempt use loss' means, with respect to any taxable year, the amount (if any) by which—

"(A) the sum of—

"(i) the aggregate deductions (other than interest) directly allocable to a tax-exempt use property, plus

"(ii) the aggregate deductions for interest properly allocable to such property, exceed

"(B) the aggregate income from such property.

"(2) TAX-EXEMPT USE PROPERTY.—The term 'tax-exempt use property' has the meaning given to such term by section 168(h), except that such section shall be applied—

"(A) without regard to paragraphs (1)(C) and (3) thereof, and

"(B) as if property described in—

"(i) section 167(f)(1)(B),

"(ii) section 167(f)(2), and

"(iii) section 197 intangible,

were tangible property.

Such term shall not include property which would (but for this sentence) be tax-exempt use property solely by reason of section 168(h)(6) if any credit is allowable under section 42 or 47 with respect to such property.

"(d) EXCEPTION FOR CERTAIN LEASES.—This section shall not apply to any lease of property which meets the requirements of all of the following paragraphs:

"(1) AVAILABILITY OF FUNDS.—

"(A) IN GENERAL.—A lease of property meets the requirements of this paragraph if (at any time during the lease term) not more than an allowable amount of funds are—

"(i) subject to any arrangement referred to in subparagraph (B), or

"(ii) set aside or expected to be set aside,

to or for the benefit of the lessor or any lender, or to or for the benefit of the lessee to satisfy the lessee's obligations or options under the lease. For purposes of clause (ii), funds shall be treated as set aside or expected to be set aside only if a reasonable person would conclude, based on the facts and circumstances, that such funds are set aside or expected to be set aside.

"(B) ARRANGEMENTS.—The arrangements referred to in this subparagraph include a defeasance arrangement, a loan by the lessee to the lessor or any lender, a deposit arrangement, a letter of credit collateralized with cash or cash equivalents, a payment undertaking agreement, prepaid rent (within the meaning of the regulations under section 467), a sinking fund arrangement, a guaranteed investment contract, financial guaranty insurance, and any similar arrangement (whether or not such arrangement provides credit support).

"(C) ALLOWABLE AMOUNT.—

"(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the term 'allowable amount' means an amount equal to 20 percent of the lessor's adjusted basis in the property at the time the lease is entered into.

"(ii) HIGHER AMOUNT PERMITTED IN CERTAIN CASES.—To the extent provided in regulations, a higher percentage shall be permitted under clause (i) where necessary because of the creditworthiness of the lessee. In no event may such regulations permit a percentage of more than 50 percent.

"(iii) OPTION TO PURCHASE.—If under the lease the lessee has the option to purchase the property for a fixed price or for other than the fair market value of the property (determined at the time of exercise), the allowable amount at the time such option may be exercised may not exceed 50 percent of the price at which such option may be exercised.

"(iv) NO ALLOWABLE AMOUNT FOR CERTAIN ARRANGEMENTS.—The allowable amount shall be zero with respect to any arrangement which involves—

"(I) a loan from the lessee to the lessor or a lender,

"(II) any deposit received, letter of credit issued, or payment undertaking agreement entered into by a lender otherwise involved in the transaction, or

"(III) in the case of a transaction which involves a lender, any credit support made available to the lessor in which any such lender does not have a claim that is senior to the lessor.

For purposes of subclause (I), the term 'loan' shall not include any amount treated as a loan under section 467 with respect to a section 467 rental agreement.

"(2) LESSOR MUST MAKE SUBSTANTIAL EQUITY INVESTMENT.—

"(A) IN GENERAL.—A lease of property meets the requirements of this paragraph if—

"(i) the lessor—

"(I) has at the time the lease is entered into an unconditional at-risk equity investment (as determined by the Secretary) in the property of at least 20 percent of the lessor's adjusted basis in the property as of that time, and

"(II) maintains such investment throughout the term of the lease, and

"(ii) the fair market value of the property at the end of the lease term is reasonably expected to be equal to at least 20 percent of such basis.

"(B) RISK OF LOSS.—For purposes of clause (ii), the fair market value at the end of the lease term shall be reduced to the extent that a person other than the lessor bears a risk of loss in the value of the property.

"(C) PARAGRAPH NOT TO APPLY TO SHORT-TERM LEASES.—This paragraph shall not apply to any lease with a lease term of 5 years or less.

"(3) LESSEE MAY NOT BEAR MORE THAN MINIMAL RISK OF LOSS.—

"(A) IN GENERAL.—A lease of property meets the requirements of this paragraph if there is no arrangement under which the lessee bears—

"(i) any portion of the loss that would occur if the fair market value of the leased property were 25 percent less than its reasonably expected fair market value at the time the lease is terminated, or

"(ii) more than 50 percent of the loss that would occur if the fair market value of the leased property at the time the lease is terminated were zero.

"(B) EXCEPTION.—The Secretary may by regulations provide that the requirements of this paragraph are not met where the lessee bears more than a minimal risk of loss.

"(C) PARAGRAPH NOT TO APPLY TO SHORT-TERM LEASES.—This paragraph shall not apply to any lease with a lease term of 5 years or less.

"(4) PROPERTY WITH MORE THAN 7-YEAR CLASS LIFE.—In the case of a lease—

"(A) of property with a class life (as defined in section 168(i)(1)) of more than 7 years, other than fixed-wing aircraft and vessels, and

"(B) under which the lessee has the option to purchase the property,

the lease meets the requirements of this paragraph only if the purchase price under the option equals the fair market value of the property (determined at the time of exercise).

"(e) SPECIAL RULES.—

"(1) TREATMENT OF FORMER TAX-EXEMPT USE PROPERTY.—

"(A) IN GENERAL.—In the case of any former tax-exempt use property—

"(i) any deduction allowable under subsection (b) with respect to such property for any taxable year shall be allowed only to the extent of any net income (without regard to such deduction) from such property for such taxable year, and

"(ii) any portion of such unused deduction remaining after application of clause (i) shall be treated as a deduction allowable under subsection (b) with respect to such property in the next taxable year.

"(B) FORMER TAX-EXEMPT USE PROPERTY.—For purposes of this subsection, the term 'former tax-exempt use property' means any property which—

"(i) is not tax-exempt use property for the taxable year, but

"(ii) was tax-exempt use property for any prior taxable year.

"(2) DISPOSITION OF ENTIRE INTEREST IN PROPERTY.—If during the taxable year a taxpayer disposes of the taxpayer's entire interest in tax-exempt use property (or former tax-exempt use property), rules similar to the rules of section 469(g) shall apply for purposes of this section.

"(3) COORDINATION WITH SECTION 469.—This section shall be applied before the application of section 469.

"(4) COORDINATION WITH SECTIONS 1031 AND 1033.—

"(A) IN GENERAL.—Sections 1031(a) and 1033(a) shall not apply if—

"(i) the exchanged or converted property is tax-exempt use property subject to a lease which was entered into before March 13, 2004, and which would not have met the requirements of subsection (d) had such requirements been in effect when the lease was entered into, or

"(ii) the replacement property is tax-exempt use property subject to a lease which does not meet the requirements of subsection (d).

"(B) ADJUSTED BASIS.—In the case of property acquired by the lessor in a transaction to which section 1031 or 1033 applies, the adjusted basis of such property for purposes of this section shall be equal to the lesser of—

"(i) the fair market value of the property as of the beginning of the lease term, or

"(ii) the amount which would be the lessor's adjusted basis if such sections did not apply to such transaction.

"(f) OTHER DEFINITIONS.—For purposes of this section—

"(1) RELATED PARTIES.—The terms 'lessor', 'lessee', and 'lender' each include any related party (within the meaning of section 197(f)(9)(C)(i)).

"(2) LEASE TERM.—The term 'lease term' has the meaning given to such term by section 168(i)(3).

"(3) LENDER.—The term 'lender' means, with respect to any lease, a person that makes a loan to the lessor which is secured (or economically similar to being secured) by the lease or the leased property.

"(4) LOAN.—The term 'loan' includes any similar arrangement.

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations which—

"(1) allow in appropriate cases the aggregation of property subject to the same lease, and

"(2) provide for the determination of the allocation of interest expense for purposes of this section.".

(b) CONFORMING AMENDMENT.—The table of sections for subpart C of part II of subchapter E of chapter 1 is amended by adding at the end the following new item:

"Sec. 470. Limitation on deductions allocable to property used by governments or other tax-exempt entities.".

SEC. 849. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in this section, the amendments made by this part shall apply to leases entered into after March 12, 2004.

(b) EXCEPTION.—

(1) IN GENERAL.—The amendments made by this part shall not apply to qualified transportation property.

(2) QUALIFIED TRANSPORTATION PROPERTY.—For purposes of paragraph (1), the term "qualified transportation property" means domestic property subject to a lease with respect to which a formal application—

(A) was submitted for approval to the Federal Transit Administration (an agency of the Department of Transportation) after June 30, 2003, and before March 13, 2004,

(B) is approved by the Federal Transit Administration before January 1, 2006, and

(C) includes a description of such property and the value of such property.

(3) EXCHANGES AND CONVERSION OF TAX-EXEMPT USE PROPERTY.—Section 470(e)(4) of the Internal Revenue Code of 1986, as added by section 848, shall apply to property exchanged or converted after the date of the enactment of this Act.

(4) INTANGIBLES AND INDIAN TRIBAL GOVERNMENTS.—The amendments made subsections (b)(2), (b)(3), and (e) of section 847, and the treatment of property described in clauses (ii) and (iii) of section 470(c)(2)(B) of the Internal Revenue Code of 1986 (as added by section 848) as tangible property, shall apply to leases entered into after October 3, 2004.

Subtitle C—Reduction of Fuel Tax Evasion

SEC. 851. EXEMPTION FROM CERTAIN EXCISE TAXES FOR MOBILE MACHINERY.

(a) EXEMPTION FROM TAX ON HEAVY TRUCKS AND TRAILERS SOLD AT RETAIL.—

(1) IN GENERAL.—Section 4053 (relating to exemptions) is amended by adding at the end the following new paragraph:

"(8) MOBILE MACHINERY.—Any vehicle which consists of a chassis—

"(A) to which there has been permanently mounted (by welding, bolting, riveting, or other

means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

"(B) which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and

"(C) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on the day after the date of the enactment of this Act.

(b) EXEMPTION FROM TAX ON USE OF CERTAIN VEHICLES.—

(1) IN GENERAL.—Section 4483 (relating to exemptions) is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

"(g) EXEMPTION FOR MOBILE MACHINERY.—No tax shall be imposed by section 4481 on the use of any vehicle described in section 4053(8).".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the day after the date of the enactment of this Act.

(c) EXEMPTION FROM TAX ON TIRES.—

(1) IN GENERAL.—Section 4072(b)(2) is amended by adding at the end the following flush sentence: "Such term shall not include tires of a type used exclusively on vehicles described in section 4053(8).".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect on the day after the date of the enactment of this Act.

(d) REFUND OF FUEL TAXES.—

(1) IN GENERAL.—Section 6421(e)(2) (defining off-highway business use) is amended by adding at the end the following new subparagraph:

"(C) USES IN MOBILE MACHINERY.—

"(i) IN GENERAL.—The term 'off-highway business use' shall include any use in a vehicle which meets the requirements described in clause (ii).

"(ii) REQUIREMENTS FOR MOBILE MACHINERY.—The requirements described in this clause are—

"(I) the design-based test, and

"(II) the use-based test.

"(iii) DESIGN-BASED TEST.—For purposes of clause (ii)(I), the design-based test is met if the vehicle consists of a chassis—

"(I) to which there has been permanently mounted (by welding, bolting, riveting, or other means) machinery or equipment to perform a construction, manufacturing, processing, farming, mining, drilling, timbering, or similar operation if the operation of the machinery or equipment is unrelated to transportation on or off the public highways,

"(II) which has been specially designed to serve only as a mobile carriage and mount (and a power source, where applicable) for the particular machinery or equipment involved, whether or not such machinery or equipment is in operation, and

"(III) which, by reason of such special design, could not, without substantial structural modification, be used as a component of a vehicle designed to perform a function of transporting any load other than that particular machinery or equipment or similar machinery or equipment requiring such a specially designed chassis.

"(iv) USE-BASED TEST.—For purposes of clause (ii)(II), the use-based test is met if the use of the vehicle on public highways was less than 7,500 miles during the taxpayer's taxable year. This clause shall be applied without regard to use of the vehicle by any organization which is described in section 501(c) and exempt from tax under section 501(a).".

(2) NO TAX-FREE SALES.—Subsection (b) of section 4082 is amended by inserting before the period at the end "and such term shall not include any use described in section 6421(e)(2)(C)".

(3) ANNUAL REFUND OF TAX PAID.—Section 6427(i)(2) (relating to exceptions) is amended by adding at the end the following new subparagraph:

"(C) NONAPPLICATION OF PARAGRAPH.—This paragraph shall not apply to any fuel used solely in any off-highway business use described in section 6421(e)(2)(C).".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 852. MODIFICATION OF DEFINITION OF OFF-HIGHWAY VEHICLE.

(a) IN GENERAL.—Section 7701(a) (relating to definitions) is amended by adding at the end the following new paragraph:

"(48) OFF-HIGHWAY VEHICLES.—

"(A) OFF-HIGHWAY TRANSPORTATION VEHICLES.—

"(i) IN GENERAL.—A vehicle shall not be treated as a highway vehicle if such vehicle is specially designed for the primary function of transporting a particular type of load other than over the public highway and because of this special design such vehicle's capability to transport a load over the public highway is substantially limited or impaired.

"(ii) DETERMINATION OF VEHICLE'S DESIGN.—For purposes of clause (i), a vehicle's design is determined solely on the basis of its physical characteristics.

"(iii) DETERMINATION OF SUBSTANTIAL LIMITATION OR IMPAIRMENT.—For purposes of clause (i), in determining whether substantial limitation or impairment exists, account may be taken of factors such as the size of the vehicle, whether such vehicle is subject to the licensing, safety, and other requirements applicable to highway vehicles, and whether such vehicle can transport a load at a sustained speed of at least 25 miles per hour. It is immaterial that a vehicle can transport a greater load off the public highway than such vehicle is permitted to transport over the public highway.

"(B) NONTRANSPORTATION TRAILERS AND SEMITRAILERS.—A trailer or semitrailer shall not be treated as a highway vehicle if it is specially designed to function only as an enclosed stationary shelter for the carrying on of an off-highway function at an off-highway site.".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section shall take effect on the date of the enactment of this Act.

(2) FUEL TAXES.—With respect to taxes imposed under subchapter B of chapter 31 and part III of subchapter A of chapter 32, the amendment made by this section shall apply to taxable periods beginning after the date of the enactment of this Act.

SEC. 853. TAXATION OF AVIATION-GRADE KEROSENE.

(a) RATE OF TAX.—

(1) IN GENERAL.—Subparagraph (A) of section 4081(a)(2) is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", and", and by adding at the end the following new clause:

"(iv) in the case of aviation-grade kerosene, 21.8 cents per gallon.".

(2) COMMERCIAL AVIATION.—Paragraph (2) of section 4081(a) is amended by adding at the end the following new subparagraph:

"(C) TAXES IMPOSED ON FUEL USED IN COMMERCIAL AVIATION.—In the case of aviation-grade kerosene which is removed from any refinery or terminal directly into the fuel tank of an aircraft for use in commercial aviation, the rate of tax under subparagraph (A)(iv) shall be 4.3 cents per gallon.".

(3) CERTAIN REFUELER TRUCKS, TANKERS, AND TANK WAGONS TREATED AS TERMINAL.—

(A) IN GENERAL.—Subsection (a) of section 4081 is amended by adding at the end the following new paragraph:

"(3) CERTAIN REFUELER TRUCKS, TANKERS, AND TANK WAGONS TREATED AS TERMINAL.—

"(A) IN GENERAL.—For purposes of paragraph (2)(C), a refueler truck, tanker, or tank wagon shall be treated as part of a terminal if—

"(i) such terminal is located within a secured area of an airport,

"(ii) any aviation-grade kerosene which is loaded in such truck, tanker, or wagon at such terminal is for delivery only into aircraft at the airport in which such terminal is located,

"(iii) such truck, tanker, or wagon meets the requirements of subparagraph (B) with respect to such terminal, and

"(iv) except in the case of exigent circumstances identified by the Secretary in regulations, no vehicle registered for highway use is loaded with aviation-grade kerosene at such terminal.

"(B) REQUIREMENTS.—A refueler truck, tanker, or tank wagon meets the requirements of this subparagraph with respect to a terminal if such truck, tanker, or wagon—

"(i) has storage tanks, hose, and coupling equipment designed and used for the purposes of fueling aircraft,

"(ii) is not registered for highway use, and

"(iii) is operated by—

"(I) the terminal operator of such terminal, or

"(II) a person that makes a daily accounting to such terminal operator of each delivery of fuel from such truck, tanker, or wagon.

"(C) REPORTING.—The Secretary shall require under section 4101(d) reporting by such terminal operator of—

"(i) any information obtained under subparagraph (B)(iii)(II), and

"(ii) any similar information maintained by such terminal operator with respect to deliveries of fuel made by trucks, tankers, or wagons operated by such terminal operator.".

(B) LIST OF AIRPORTS WITH SECURED TERMINALS.—Not later than December 15, 2004, the Secretary of the Treasury shall publish and maintain a list of airports which include a secured area in which a terminal is located (within the meaning of section 4081(a)(3)(A)(i) of the Internal Revenue Code of 1986, as added by this paragraph).

(4) LIABILITY FOR TAX ON AVIATION-GRADE KEROSENE USED IN COMMERCIAL AVIATION.—Subsection (a) of section 4081 is amended by adding at the end the following new paragraph:

"(4) LIABILITY FOR TAX ON AVIATION-GRADE KEROSENE USED IN COMMERCIAL AVIATION.—For purposes of paragraph (2)(C), the person who uses the fuel for commercial aviation shall pay the tax imposed under such paragraph. For purposes of the preceding sentence, fuel shall be treated as used when such fuel is removed into the fuel tank.".

(5) NONTAXABLE USES.—

(A) IN GENERAL.—Section 4082 is amended by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and by inserting after subsection (d) the following new subsection:

"(e) AVIATION-GRADE KEROSENE.—In the case of aviation-grade kerosene which is exempt from the tax imposed by section 4041(c) (other than by reason of a prior imposition of tax) and which is removed from any refinery or terminal

directly into the fuel tank of an aircraft, the rate of tax under section 4081(a)(2)(A)(iv) shall be zero.''.

(B) CONFORMING AMENDMENTS.—

(i) Subsection (b) of section 4082 is amended by adding at the end the following new flush sentence:

''The term 'nontaxable use' does not include the use of aviation-grade kerosene in an aircraft.''.

(ii) Section 4082(d) is amended by striking paragraph (1) and by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(6) NONAIRCRAFT USE OF AVIATION-GRADE KEROSENE.—

(A) IN GENERAL.—Subparagraph (B) of section 4041(a)(1) is amended by adding at the end the following new sentence: ''This subparagraph shall not apply to aviation-grade kerosene.''.

(B) CONFORMING AMENDMENT.—The heading for paragraph (1) of section 4041(a) is amended by inserting ''AND KEROSENE'' after ''DIESEL FUEL''.

(b) COMMERCIAL AVIATION.—Section 4083 is amended by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and by inserting after subsection (a) the following new subsection:

''(b) COMMERCIAL AVIATION.—For purposes of this subpart, the term 'commercial aviation' means any use of an aircraft in a business of transporting persons or property for compensation or hire by air, unless properly allocable to any transportation exempt from the taxes imposed by sections 4261 and 4271 by reason of section 4281 or 4282 or by reason of section 4261(h).''.

(c) REFUNDS.—

(1) IN GENERAL.—Paragraph (4) of section 6427(l) is amended to read as follows:

''(4) REFUNDS FOR AVIATION-GRADE KEROSENE.—

''(A) NO REFUND OF CERTAIN TAXES ON FUEL USED IN COMMERCIAL AVIATION.—In the case of aviation-grade kerosene used in commercial aviation (as defined in section 4083(b)) (other than supplies for vessels or aircraft within the meaning of section 4221(d)(3)), paragraph (1) shall not apply to so much of the tax imposed by section 4081 as is attributable to—

''(i) the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section, and

''(ii) so much of the rate of tax specified in section 4081(a)(2)(A)(iv) as does not exceed 4.3 cents per gallon.

''(B) PAYMENT TO ULTIMATE, REGISTERED VENDOR.—With respect to aviation-grade kerosene, if the ultimate purchaser of such kerosene waives (at such time and in such form and manner as the Secretary shall prescribe) the right to payment under paragraph (1) and assigns such right to the ultimate vendor, then the Secretary shall pay the amount which would be paid under paragraph (1) to such ultimate vendor, but only if such ultimate vendor—

''(i) is registered under section 4101, and

''(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).''.

(2) TIME FOR FILING CLAIMS.—Subparagraph (A) of section 6427(i)(4) is amended—

(A) by striking ''subsection (l)(5)'' both places it appears and inserting ''paragraph (4)(B) or (5) of subsection (l)'', and

(B) by striking ''the preceding sentence'' and inserting ''subsection (l)(5)''.

(3) CONFORMING AMENDMENT.—Subparagraph (B) of section 6427(l)(2) is amended to read as follows:

''(B) in the case of aviation-grade kerosene—

''(i) any use which is exempt from the tax imposed by section 4041(c) other than by reason of a prior imposition of tax, or

''(ii) any use in commercial aviation (within the meaning of section 4083(b)).''.

(d) REPEAL OF PRIOR TAXATION OF AVIATION FUEL.—

(1) IN GENERAL.—Part III of subchapter A of chapter 32 is amended by striking subpart B and by redesignating subpart C as subpart B.

(2) CONFORMING AMENDMENTS.—

(A) Section 4041(c) is amended to read as follows:

''(c) AVIATION-GRADE KEROSENE.—

''(1) IN GENERAL.—There is hereby imposed a tax upon aviation-grade kerosene—

''(A) sold by any person to an owner, lessee, or other operator of an aircraft for use in such aircraft, or

''(B) used by any person in an aircraft unless there was a taxable sale of such fuel under subparagraph (A).

''(2) EXEMPTION FOR PREVIOUSLY TAXED FUEL.—No tax shall be imposed by this subsection on the sale or use of any aviation-grade kerosene if tax was imposed on such liquid under section 4081 and the tax thereon was not credited or refunded.

''(3) RATE OF TAX.—The rate of tax imposed by this subsection shall be the rate of tax applicable under section 4081(a)(2)(A)(iv) which is in effect at the time of such sale or use.''.

(B) Section 4041(d)(2) is amended by striking ''section 4091'' and inserting ''section 4081''.

(C) Section 4041 is amended by striking subsection (e).

(D) Section 4041 is amended by striking subsection (i).

(E) Section 4041(m)(1) is amended to read as follows:

''(1) IN GENERAL.—In the case of the sale or use of any partially exempt methanol or ethanol fuel the rate of the tax imposed by subsection (a)(2) shall be—

''(A) after September 30, 1997, and before October 1, 2005—

''(i) in the case of fuel none of the alcohol in which consists of ethanol, 9.15 cents per gallon, and

''(ii) in any other case, 11.3 cents per gallon, and

''(B) after September 30, 2005—

''(i) in the case of fuel none of the alcohol in which consists of ethanol, 2.15 cents per gallon, and

''(ii) in any other case, 4.3 cents per gallon.''.

(F) Sections 4101(a), 4103, 4221(a), and 6206 are each amended by striking '', 4081, or 4091'' and inserting ''or 4081''.

(G) Section 6416(b)(2) is amended by striking ''4091 or''.

(H) Section 6416(b)(3) is amended by striking ''or 4091'' each place it appears.

(I) Section 6416(d) is amended by striking ''or to the tax imposed by section 4091 in the case of refunds described in section 4091(d)''.

(J) Section 6427(j)(1) is amended by striking '', 4081, and 4091'' and inserting ''and 4081''.

(K)(i) Section 6427(l)(1) is amended to read as follows:

''(1) IN GENERAL.—Except as otherwise provided in this subsection and in subsection (k), if any diesel fuel or kerosene on which tax has been imposed by section 4041 or 4081 is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under section 4041 or 4081, as the case may be, reduced by any payment made to the ultimate vendor under paragraph (4)(B).''.

(ii) Paragraph (5)(B) of section 6427(l) is amended by striking ''Paragraph (1)(A) shall not apply to kerosene'' and inserting ''Paragraph (1) shall not apply to kerosene (other than aviation-grade kerosene)''.

(L) Subparagraph (B) of section 6724(d)(1), as amended by section 805, is amended by striking clause (xvi) and by redesignating the succeeding clauses accordingly.

(M) Paragraph (2) of section 6724(d), as amended by section 805, is amended by striking subparagraph (X) and by redesignating the succeeding subparagraphs accordingly.

(N) Paragraph (1) of section 9502(b) is amended by adding ''and'' at the end of subparagraph (B) and by striking subparagraphs (C) and (D) and inserting the following new subparagraph:

''(C) section 4081 with respect to aviation gasoline and aviation-grade kerosene, and''.

(O) The last sentence of section 9502(b) is amended to read as follows:

''There shall not be taken into account under paragraph (1) so much of the taxes imposed by section 4081 as are determined at the rate specified in section 4081(a)(2)(B).''.

(P) Subsection (b) of section 9508 is amended by striking paragraph (3) and by redesignating paragraphs (4) and (5) as paragraphs (3) and (4), respectively.

(Q) Section 9508(c)(2)(A) is amended by striking ''sections 4081 and 4091'' and inserting ''section 4081''.

(R) The table of subparts for part III of subchapter A of chapter 32 is amended to read as follows:

''Subpart A. Motor and aviation fuels.

''Subpart B. Special provisions applicable to fuels tax.''.

(S) The heading for subpart A of part III of subchapter A of chapter 32 is amended to read as follows:

''Subpart A—Motor and Aviation Fuels''.

(T) The heading for subpart B of part III of subchapter A of chapter 32, as redesignated by paragraph (1), is amended to read as follows:

''Subpart B—Special Provisions Applicable to Fuels Tax''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to aviation-grade kerosene removed, entered, or sold after December 31, 2004.

(f) FLOOR STOCKS TAX.—

(1) IN GENERAL.—There is hereby imposed on aviation-grade kerosene held on January 1, 2005, by any person a tax equal to—

(A) the tax which would have been imposed before such date on such kerosene had the amendments made by this section been in effect at all times before such date, reduced by

(B) the sum of—

(i) the tax imposed before such date on such kerosene under section 4091 of the Internal Revenue Code of 1986, as in effect on such date, and

(ii) in the case of kerosene held exclusively for such person's own use, the amount which such person would (but for this clause) reasonably expect (as of such date) to be paid as a refund under section 6427(l) of such Code with respect to such kerosene.

(2) EXCEPTION FOR FUEL HELD IN AIRCRAFT FUEL TANK.—Paragraph (1) shall not apply to kerosene held in the fuel tank of an aircraft on January 1, 2005.

(3) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—The person holding the kerosene on January 1, 2005, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD AND TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid at such time and in such manner as the Secretary of the Treasury (or the Secretary's delegate) shall prescribe, including the nonapplication of such tax on de minimis amounts of kerosene.

(4) TRANSFER OF FLOOR STOCK TAX REVENUES TO TRUST FUNDS.—For purposes of determining the amount transferred to any trust fund, the tax imposed by this subsection shall be treated as imposed by section 4081 of the Internal Revenue Code of 1986—

(A) in any case in which tax was not imposed by section 4091 of such Code, at the Leaking Underground Storage Tank Trust Fund financing rate under such section to the extent of 0.1 cents per gallon, and

(B) at the rate under section 4081(a)(2)(A)(iv) of such Code to the extent of the remainder.

(5) HELD BY A PERSON.—For purposes of this subsection, kerosene shall be considered as held by a person if title thereto has passed to such person (whether or not delivery to the person has been made).

(6) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the tax imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock tax imposed by paragraph (1) to the same extent as if such tax were imposed by such section.

SEC. 854. DYE INJECTION EQUIPMENT.

(a) IN GENERAL.—Section 4082(a)(2) (relating to exemptions for diesel fuel and kerosene) is amended by inserting "by mechanical injection" after "indelibly dyed".

(b) DYE INJECTOR SECURITY.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall issue regulations regarding mechanical dye injection systems described in the amendment made by subsection (a), and such regulations shall include standards for making such systems tamper resistant.

(c) PENALTY FOR TAMPERING WITH OR FAILING TO MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL DYE INJECTION SYSTEMS.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding after section 6715 the following new section:

"SEC. 6715A. TAMPERING WITH OR FAILING TO MAINTAIN SECURITY REQUIREMENTS FOR MECHANICAL DYE INJECTION SYSTEMS.

"(a) IMPOSITION OF PENALTY—

"(1) TAMPERING.—If any person tampers with a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082, such person shall pay a penalty in addition to the tax (if any).

"(2) FAILURE TO MAINTAIN SECURITY REQUIREMENTS.—If any operator of a mechanical dye injection system used to indelibly dye fuel for purposes of section 4082 fails to maintain the security standards for such system as established by the Secretary, then such operator shall pay a penalty in addition to the tax (if any).

"(b) AMOUNT OF PENALTY.—The amount of the penalty under subsection (a) shall be—

"(1) for each violation described in paragraph (1), the greater of—

"(A) $25,000, or

"(B) $10 for each gallon of fuel involved, and

"(2) for each—

"(A) failure to maintain security standards described in paragraph (2), $1,000, and

"(B) failure to correct a violation described in paragraph (2), $1,000 per day for each day after which such violation was discovered or such person should have reasonably known of such violation.

"(c) JOINT AND SEVERAL LIABILITY.—

"(1) IN GENERAL.—If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

"(2) AFFILIATED GROUPS.—If a business entity described in paragraph (1) is part of an affiliated group (as defined in section 1504(a)), the parent corporation of such entity shall be jointly and severally liable with such entity for the penalty imposed under this section.".

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by adding after the item related to section 6715 the following new item:

"Sec. 6715A. Tampering with or failing to maintain security requirements for mechanical dye injection systems.".

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (c) shall take effect on the 180th day after the date on which the Secretary issues the regulations described in subsection (b).

SEC. 855. ELIMINATION OF ADMINISTRATIVE REVIEW FOR TAXABLE USE OF DYED FUEL.

(a) IN GENERAL.—Section 6715 is amended by inserting at the end the following new subsection:

"(e) NO ADMINISTRATIVE APPEAL FOR THIRD AND SUBSEQUENT VIOLATIONS.—In the case of any person who is found to be subject to the penalty under this section after a chemical analysis of such fuel and who has been penalized under this section at least twice after the date of the enactment of this subsection, no administrative appeal or review shall be allowed with respect to such finding except in the case of a claim regarding—

"(1) fraud or mistake in the chemical analysis, or

"(2) mathematical calculation of the amount of the penalty.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to penalties assessed after the date of the enactment of this Act.

SEC. 856. PENALTY ON UNTAXED CHEMICALLY ALTERED DYED FUEL MIXTURES.

(a) IN GENERAL.—Section 6715(a) (relating to dyed fuel sold for use or used in taxable use, etc.) is amended by striking "or" in paragraph (2), by inserting "or" at the end of paragraph (3), and by inserting after paragraph (3) the following new paragraph:

"(4) any person who has knowledge that a dyed fuel which has been altered as described in paragraph (3) sells or holds for sale such fuel for any use which the person knows or has reason to know is not a nontaxable use of such fuel,".

(b) CONFORMING AMENDMENT.—Section 6715(a)(3) is amended by striking "alters, or attempts to alter," and inserting "alters, chemically or otherwise, or attempts to so alter,".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 857. TERMINATION OF DYED DIESEL USE BY INTERCITY BUSES.

(a) IN GENERAL.—Paragraph (3) of section 4082(b) (relating to nontaxable use) is amended to read as follows:

"(3) any use described in section 4041(a)(1)(C)(iii)(II).".

(b) ULTIMATE VENDOR REFUND.—Subsection (b) of section 6427 is amended by adding at the end the following new paragraph:

"(4) REFUNDS FOR USE OF DIESEL FUEL IN CERTAIN INTERCITY BUSES.—With respect to any fuel to which paragraph (2)(A) applies, if the ultimate purchaser of such fuel waives (at such time and in such form and manner as the Secretary shall prescribe) the right to payment under paragraph (1) and assigns such right to the ultimate vendor, then the Secretary shall pay the amount which would be paid under paragraph (1) to such ultimate vendor, but only if such ultimate vendor—

"(A) is registered under section 4101, and

"(B) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1).".

(c) PAYMENT OF REFUNDS.—Subparagraph (A) of section 6427(i)(4), as amended by this Act, is amended by inserting "subsections (b)(4) and" after "filed under".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold after December 31, 2004.

SEC. 858. AUTHORITY TO INSPECT ON-SITE RECORDS.

(a) IN GENERAL.—Section 4083(d)(1)(A) (relating to administrative authority), as amended by this Act, is amended by striking "and" at the end of clause (i) and by inserting after clause (ii) the following new clause:

"(iii) inspecting any books and records and any shipping papers pertaining to such fuel, and".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 859. ASSESSABLE PENALTY FOR REFUSAL OF ENTRY.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by this Act, is amended by inserting after section 6716 the following new section:

"SEC. 6717. REFUSAL OF ENTRY.

"(a) IN GENERAL.—In addition to any other penalty provided by law, any person who refuses to admit entry or refuses to permit any other action by the Secretary authorized by section 4083(d)(1) shall pay a penalty of $1,000 for such refusal.

"(b) JOINT AND SEVERAL LIABILITY.—

"(1) IN GENERAL.—If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty.

"(2) AFFILIATED GROUPS.—If a business entity described in paragraph (1) is part of an affiliated group (as defined in section 1504(a)), the parent corporation of such entity shall be jointly and severally liable with such entity for the penalty imposed under this section.

"(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.".

(b) CONFORMING AMENDMENTS.—

(1) Section 4083(d)(3), as amended by this Act, is amended—

(A) by striking "ENTRY.—The penalty" and inserting: "ENTRY.—

"(A) FORFEITURE.—The penalty", and

(B) by adding at the end the following new subparagraph:

"(B) ASSESSABLE PENALTY.—For additional assessable penalty for the refusal to admit entry or other refusal to permit an action by the Secretary authorized by paragraph (1), see section 6717.".

(2) The table of sections for part I of subchapter B of chapter 68, as amended by this Act, is amended by inserting after the item relating to section 6716 the following new item:

"Sec. 6717. Refusal of entry.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2005.

SEC. 860. REGISTRATION OF PIPELINE OR VESSEL OPERATORS REQUIRED FOR EXEMPTION OF BULK TRANSFERS TO REGISTERED TERMINALS OR REFINERIES.

(a) IN GENERAL.—Section 4081(a)(1)(B) (relating to exemption for bulk transfers to registered terminals or refineries) is amended—

(1) by inserting "by pipeline or vessel" after "transferred in bulk", and

(2) by inserting ", the operator of such pipeline or vessel," after "the taxable fuel".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on March 1, 2005.

(c) PUBLICATION OF REGISTERED PERSONS.—Beginning on January 1, 2005, the Secretary of the Treasury (or the Secretary's delegate) shall periodically publish under section 6103(k)(7) of the Internal Revenue Code of 1986 a current list of persons registered under section 4101 of such Code who are required to register under such section.

SEC. 861. DISPLAY OF REGISTRATION.

(a) IN GENERAL.—Subsection (a) of section 4101 (relating to registration) is amended—

(1) by striking "Every" and inserting the following:

"(1) IN GENERAL.—Every", and

(2) by adding at the end the following new paragraph:

"(2) DISPLAY OF REGISTRATION.—Every operator of a vessel required by the Secretary to register under this section shall display proof of registration through an identification device prescribed by the Secretary on each vessel used by such operator to transport any taxable fuel.".

(b) CIVIL PENALTY FOR FAILURE TO DISPLAY REGISTRATION.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by this Act, is amended by inserting after section 6717 the following new section:

"SEC. 6718. FAILURE TO DISPLAY TAX REGISTRATION ON VESSELS.

"(a) FAILURE TO DISPLAY REGISTRATION.—Every operator of a vessel who fails to display proof of registration pursuant to section 4101(a)(2) shall pay a penalty of $500 for each such failure. With respect to any vessel, only one penalty shall be imposed by this section during any calendar month.

"(b) MULTIPLE VIOLATIONS.—In determining the penalty under subsection (a) on any person, subsection (a) shall be applied by increasing the amount in subsection (a) by the product of such amount and the aggregate number of penalties (if any) imposed with respect to prior months by this section on such person (or a related person or any predecessor of such person or related person).

"(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.".

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68, as amended by this Act, is amended by inserting after the item relating to section 6717 the following new item:

"Sec. 6718. Failure to display tax registration on vessels.".

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall take effect on January 1, 2005.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to penalties imposed after December 31, 2004.

SEC. 862. REGISTRATION OF PERSONS WITHIN FOREIGN TRADE ZONES, ETC.

(a) IN GENERAL.—Section 4101(a), as amended by this Act, is amended by redesignating paragraph (2) as paragraph (3), and by inserting after paragraph (1) the following new paragraph:

"(2) REGISTRATION OF PERSONS WITHIN FOREIGN TRADE ZONES, ETC.—The Secretary shall require registration by any person which—

"(A) operates a terminal or refinery within a foreign trade zone or within a customs bonded storage facility, or

"(B) holds an inventory position with respect to a taxable fuel in such a terminal.".

(b) TECHNICAL AMENDMENT.—Section 6718(a), as added by this Act, is amended by striking "section 4101(a)(2)" and inserting "section 4101(a)(3)".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2005.

SEC. 863. PENALTIES FOR FAILURE TO REGISTER AND FAILURE TO REPORT.

(a) INCREASED PENALTY.—Subsection (a) of section 7272 (relating to penalty for failure to register) is amended by inserting "($10,000 in the case of a failure to register under section 4101)" after "$50".

(b) INCREASED CRIMINAL PENALTY.—Section 7232 (relating to failure to register under section 4101, false representations of registration status, etc.) is amended by striking "$5,000" and inserting "$10,000".

(c) ASSESSABLE PENALTY FOR FAILURE TO REGISTER.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by this Act, is amended by inserting after section 6718 at the end the following new section:

"SEC. 6719. FAILURE TO REGISTER.

"(a) FAILURE TO REGISTER.—Every person who is required to register under section 4101 and fails to do so shall pay a penalty in addition to the tax (if any).

"(b) AMOUNT OF PENALTY.—The amount of the penalty under subsection (a) shall be—

"(1) $10,000 for each initial failure to register, and

"(2) $1,000 for each day thereafter such person fails to register.

"(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.".

(2) CLERICAL AMENDMENT.—The table of sections for part I of subchapter B of chapter 68, as amended by this Act, is amended by inserting after the item relating to section 6718 the following new item:

"Sec. 6719. Failure to register.".

(d) ASSESSABLE PENALTY FOR FAILURE TO REPORT.—

(1) IN GENERAL.—Part II of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end the following new section:

"SEC. 6725. FAILURE TO REPORT INFORMATION UNDER SECTION 4101.

"(a) IN GENERAL.—In the case of each failure described in subsection (b) by any person with respect to a vessel or facility, such person shall pay a penalty of $10,000 in addition to the tax (if any).

"(b) FAILURES SUBJECT TO PENALTY.—For purposes of subsection (a), the failures described in this subsection are—

"(1) any failure to make a report under section 4101(d) on or before the date prescribed therefor, and

"(2) any failure to include all of the information required to be shown on such report or the inclusion of incorrect information.

"(c) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause.".

(2) CLERICAL AMENDMENT.—The table of sections for part II of subchapter B of chapter 68 is amended by adding at the end the following new item:

"Sec. 6725. Failure to report information under section 4101.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to penalties imposed after December 31, 2004.

SEC. 864. ELECTRONIC FILING OF REQUIRED INFORMATION REPORTS.

(a) IN GENERAL.—Section 4101(d) is amended by adding at the end the following new flush sentence:

"Any person who is required to report under this subsection and who has 25 or more reportable transactions in a month shall file such report in electronic format.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply on January 1, 2006.

SEC. 865. TAXABLE FUEL REFUNDS FOR CERTAIN ULTIMATE VENDORS.

(a) IN GENERAL.—Paragraph (4) of section 6416(a) (relating to abatements, credits, and refunds) is amended to read as follows:

"(4) REGISTERED ULTIMATE VENDOR TO ADMINISTER CREDITS AND REFUNDS OF GASOLINE TAX.—

"(A) IN GENERAL.—For purposes of this subsection, if an ultimate vendor purchases any gasoline on which tax imposed by section 4081 has been paid and sells such gasoline to an ultimate purchaser described in subparagraph (C) or (D) of subsection (b)(2) (and such gasoline is for a use described in such subparagraph), such ultimate vendor shall be treated as the person (and the only person) who paid such tax, but only if such ultimate vendor is registered under section 4101.

"(B) TIMING OF CLAIMS.—The procedure and timing of any claim under subparagraph (A) shall be the same as for claims under section 6427(i)(4), except that the rules of section 6427(i)(3)(B) regarding electronic claims shall not apply unless the ultimate vendor has certified to the Secretary for the most recent quarter of the taxable year that all ultimate purchasers of the vendor are certified and entitled to a refund under subparagraph (C) or (D) of subsection (b)(2).".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2005.

SEC. 866. TWO-PARTY EXCHANGES.

(a) IN GENERAL.—Subpart C of part III of subchapter A of chapter 32, as amended by this Act, is amended by inserting after section 4104 the following new section:

"SEC. 4105. TWO-PARTY EXCHANGES.

"(a) IN GENERAL.—In a two-party exchange, the delivering person shall not be liable for the tax imposed under of section 4081(a)(1)(A)(ii).

"(b) TWO-PARTY EXCHANGE.—The term 'two-party exchange' means a transaction, other than a sale, in which taxable fuel is transferred from a delivering person registered under section 4101 as a taxable fuel registrant to a receiving person who is so registered where all of the following occur:

"(1) The transaction includes a transfer from the delivering person, who holds the inventory position for taxable fuel in the terminal as reflected in the records of the terminal operator.

"(2) The exchange transaction occurs before or contemporaneous with completion of removal across the rack from the terminal by the receiving person.

"(3) The terminal operator in its books and records treats the receiving person as the person that removes the product across the terminal rack for purposes of reporting the transaction to the Secretary.

"(4) The transaction is the subject of a written contract.".

(b) CONFORMING AMENDMENT.—The table of sections for subpart C of part III of subchapter A of chapter 32, as amended by of this Act, is amended by adding after the last item the following new item:

"Sec. 4105. Two-party exchanges.".

(c) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 867. MODIFICATIONS OF TAX ON USE OF CERTAIN VEHICLES.

(a) PRORATION OF TAX WHERE VEHICLE SOLD.—

(1) IN GENERAL.—Subparagraph (A) of section 4481(c)(2) (relating to where vehicle destroyed or stolen) is amended by striking "destroyed or stolen" both places it appears and inserting "sold, destroyed, or stolen".

(2) CONFORMING AMENDMENT.—The heading for section 4481(c)(2) is amended by striking "DESTROYED OR STOLEN" and inserting "SOLD, DESTROYED, OR STOLEN".

(b) REPEAL OF INSTALLMENT PAYMENT.—

(1) Section 6156 (relating to installment payment of tax on use of highway motor vehicles) is repealed.

(2) The table of sections for subchapter A of chapter 62 is amended by striking the item relating to section 6156.

(c) ELECTRONIC FILING.—Section 4481 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) ELECTRONIC FILING.—Any taxpayer who files a return under this section with respect to 25 or more vehicles for any taxable period shall file such return electronically.".

(d) REPEAL OF REDUCTION IN TAX FOR CERTAIN TRUCKS.—Section 4483 is amended by striking subsection (f).

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable periods beginning after the date of the enactment of this Act.

SEC. 868. DEDICATION OF REVENUES FROM CERTAIN PENALTIES TO THE HIGHWAY TRUST FUND.

(a) IN GENERAL.—Subsection (b) of section 9503 (relating to transfer to Highway Trust Fund of amounts equivalent to certain taxes) is amended by redesignating paragraph (5) as paragraph (6) and inserting after paragraph (4) the following new paragraph:

"(5) CERTAIN PENALTIES.—There are hereby appropriated to the Highway Trust Fund amounts equivalent to the penalties paid under sections 6715, 6715A, 6717, 6718, 6719, 6725, 7232, and 7272 (but only with regard to penalties under such section related to failure to register under section 4101).".

(b) CONFORMING AMENDMENTS.—

(1) The heading of subsection (b) of section 9503 is amended by inserting "AND PENALTIES" after "TAXES".

(2) The heading of paragraph (1) of section 9503(b) is amended by striking "IN GENERAL" and inserting "CERTAIN TAXES".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to penalties assessed on or after the date of the enactment of this Act.

SEC. 869. SIMPLIFICATION OF TAX ON TIRES.

(a) IN GENERAL.—Subsection (a) of section 4071 is amended to read as follows:

"(a) IMPOSITION AND RATE OF TAX.—There is hereby imposed on taxable tires sold by the manufacturer, producer, or importer thereof a tax at the rate of 9.45 cents (4.725 cents in the case of a biasply tire or super single tire) for each 10 pounds so much of the maximum rated load capacity thereof as exceeds 3,500 pounds."

(b) BIASPLY AND SUPER SINGLE TIRES.—Section 4072 is amended by adding at the end the following new subsections:

"(c) BIASPLY.—For purposes of this part, the term 'biasply tire" means a pneumatic tire on which the ply cords that extend to the beads are laid at alternate angles substantially less than 90 degrees to the centerline of the tread.

"(d) SUPER SINGLE TIRE.—For purposes of this part, the term 'super single tire' means a single tire greater than 13 inches in cross section width designed to replace 2 tires in a dual fitment.".

(b) TAXABLE TIRE.—Section 4072, as amended by subsection (a), is amended by redesignating subsections (a), (b), (c), and (d) as subsections (b), (c), (d), and (e) respectively, and by inserting before subsection (b) (as so redesignated) the following new subsection:

"(a) TAXABLE TIRE.—For purposes of this chapter, the term 'taxable tire' means any tire of the type used on highway vehicles if wholly or in part made of rubber and if marked pursuant to Federal regulations for highway use."

(c) EXEMPTION FOR TIRES SOLD TO DEPARTMENT OF DEFENSE.—Section 4073 is amended to read as follows:

"SEC. 4073. EXEMPTIONS.

"The tax imposed by section 4071 shall not apply to tires sold for the exclusive use of the Department of Defense or the Coast Guard.".

(d) CONFORMING AMENDMENTS.—

(1) Section 4071 is amended by striking subsection (c) and by moving subsection (e) after subsection (b) and redesignating subsection (e) as subsection (c).

(2) The item relating to section 4073 in the table of sections for part II of subchapter A of chapter 32 is amended to read as follows:

"Sec. 4073. Exemptions.".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales in calendar years beginning more than 30 days after the date of the enactment of this Act.

SEC. 870. TRANSMIX AND DIESEL FUEL BLEND STOCKS TREATED AS TAXABLE FUEL.

(a) IN GENERAL.—Paragraph (3) of section 4083(a) is amended to read as follows:

"(3) DIESEL FUEL.—

"(A) IN GENERAL.—The term 'diesel fuel' means—

"(i) any liquid (other than gasoline) which is suitable for use as a fuel in a diesel-powered highway vehicle, or a diesel-powered train,

"(ii) transmix, and

"(iii) diesel fuel blend stocks identified by the Secretary.

"(B) TRANSMIX.—For purposes of subparagraph (A), the term 'transmix' means a byproduct of refined products pipeline operations created by the mixing of different specification products during pipeline transportation.".

(b) CONFORMING AMENDMENT.—Subsection (h) of section 6427 is amended to read as follows:

"(h) BLEND STOCKS NOT USED FOR PRODUCING TAXABLE FUEL.—

"(1) GASOLINE BLEND STOCKS OR ADDITIVES NOT USED FOR PRODUCING GASOLINE.—Except as provided in subsection (k), if any gasoline blend stock or additive (within the meaning of section 4083(a)(2)) is not used by any person to produce gasoline and such person establishes that the ultimate use of such gasoline blend stock or additive is not to produce gasoline, the Secretary shall pay (without interest) to such person an amount equal to the aggregate amount of the tax imposed on such person with respect to such gasoline blend stock or additive.

"(2) DIESEL FUEL BLEND STOCKS OR ADDITIVES NOT USED FOR PRODUCING DIESEL.—Except as provided in subsection (k), if any diesel fuel blend stock is not used by any person to produce diesel fuel and such person establishes that the ultimate use of such diesel fuel blend stock is not to produce diesel fuel, the Secretary shall pay (without interest) to such person an amount equal to the aggregate amount of the tax imposed on such person with respect to such diesel fuel blend stock.".

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to fuel removed, sold, or used after December 31, 2004.

SEC. 871. STUDY REGARDING FUEL TAX COMPLIANCE.

(a) IN GENERAL.—Not later than January 31, 2005, the Secretary of the Treasury shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report regarding compliance with the tax imposed under subchapter B of chapter 31 and part III of subchapter A of chapter 32 of the Internal Revenue Code of 1986. Such report shall include the information, analysis, and recommendations specified in subsections (b), (c), and (d).

(b) TAXABLE FUEL BLENDSTOCKS.—The Secretary shall identify chemical products to be added to the list of blendstocks from lab analysis of fuel samples collected by the Internal Revenue Service which have been blended with taxable fuel but are not treated as blendstocks. The Secretary shall include statistics regarding the frequency in which a chemical product has been collected, and whether the sample contained an above normal concentration of the chemical product.

(c) WASTE PRODUCTS ADDED TO TAXABLE FUELS.—The report shall include a discussion of Internal Revenue Service findings regarding the addition of waste products to taxable fuel and any recommendations to address the taxation of such products.

(d) ERRONEOUS CLAIMS OF FUEL TAX EXEMPTIONS.—The report shall include a discussion of Internal Revenue Service findings regarding sales of taxable fuel to entities claiming exempt status as a State or local government and the frequency of erroneous certifications of tax exempt status. The Secretary, in consultation with representatives of State and local governments, shall provide recommendations to address such erroneous claims, including recommendations on the feasibility of a State maintained list of exempt governmental entities within the State.

Subtitle D—Other Revenue Provisions

SEC. 881. QUALIFIED TAX COLLECTION CONTRACTS.

(a) CONTRACT REQUIREMENTS.—

(1) IN GENERAL.—Subchapter A of chapter 64 (relating to collection) is amended by adding at the end the following new section:

"SEC. 6306. QUALIFIED TAX COLLECTION CONTRACTS.

"(a) IN GENERAL.—Nothing in any provision of law shall be construed to prevent the Secretary from entering into a qualified tax collection contract.

"(b) QUALIFIED TAX COLLECTION CONTRACT.—For purposes of this section, the term 'qualified tax collection contract' means any contract which—

"(1) is for the services of any person (other than an officer or employee of the Treasury Department)—

"(A) to locate and contact any taxpayer specified by the Secretary,

"(B) to request full payment from such taxpayer of an amount of Federal tax specified by the Secretary and, if such request cannot be met by the taxpayer, to offer the taxpayer an installment agreement providing for full payment of such amount during a period not to exceed 5 years, and

"(C) to obtain financial information specified by the Secretary with respect to such taxpayer,

"(2) prohibits each person providing such services under such contract from committing any act or omission which employees of the Internal Revenue Service are prohibited from committing in the performance of similar services,

"(3) prohibits subcontractors from—

"(A) having contacts with taxpayers,

"(B) providing quality assurance services, and

"(C) composing debt collection notices, and

"(4) permits subcontractors to perform other services only with the approval of the Secretary.

"(c) FEES.—The Secretary may retain and use—

"(1) an amount not in excess of 25 percent of the amount collected under any qualified tax collection contract for the costs of services performed under such contract, and

"(2) an amount not in excess of 25 percent of such amount collected for collection enforcement activities of the Internal Revenue Service.

The Secretary shall keep adequate records regarding amounts so retained and used. The amount credited as paid by any taxpayer shall be determined without regard to this subsection.

"(d) NO FEDERAL LIABILITY.—The United States shall not be liable for any act or omission of any person performing services under a qualified tax collection contract.

"(e) APPLICATION OF FAIR DEBT COLLECTION PRACTICES ACT.—The provisions of the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) shall apply to any qualified tax collection contract, except to the extent superseded by section 6304, section 7602(c), or by any other provision of this title.

"(f) CROSS REFERENCES.—

"(1) For damages for certain unauthorized collection actions by persons performing services under a qualified tax collection contract, see section 7433A.

"(2) For application of Taxpayer Assistance Orders to persons performing services under a qualified tax collection contract, see section 7811(g).".

(2) CONFORMING AMENDMENTS.—

(A) Section 7809(a) is amended by inserting "6306," before "7651".

(B) The table of sections for subchapter A of chapter 64 is amended by adding at the end the following new item:

"Sec. 6306. Qualified tax collection contracts.".

(b) CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS BY PERSONS PERFORMING SERVICES UNDER QUALIFIED TAX COLLECTION CONTRACTS.—

(1) IN GENERAL.—Subchapter B of chapter 76 (relating to proceedings by taxpayers and third parties) is amended by inserting after section 7433 the following new section:

"SEC. 7433A. CIVIL DAMAGES FOR CERTAIN UNAUTHORIZED COLLECTION ACTIONS BY PERSONS PERFORMING SERVICES UNDER QUALIFIED TAX COLLECTION CONTRACTS.

"(a) IN GENERAL.—Subject to the modifications provided by subsection (b), section 7433 shall apply to the acts and omissions of any person performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as if such person were an employee of the Internal Revenue Service.

"(b) MODIFICATIONS.—For purposes of subsection (a)—

"(1) Any civil action brought under section 7433 by reason of this section shall be brought against the person who entered into the qualified tax collection contract with the Secretary and shall not be brought against the United States.

"(2) Such person and not the United States shall be liable for any damages and costs determined in such civil action.

"(3) Such civil action shall not be an exclusive remedy with respect to such person.

"(4) Subsections (c), (d)(1), and (e) of section 7433 shall not apply.".

(2) CLERICAL AMENDMENT.—The table of sections for subchapter B of chapter 76 is amended by inserting after the item relating to section 7433 the following new item:

"Sec. 7433A. Civil damages for certain unauthorized collection actions by persons performing services under qualified tax collection contracts.".

(c) APPLICATION OF TAXPAYER ASSISTANCE ORDERS TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—Section 7811 (relating to taxpayer assistance orders) is amended by adding at the end the following new subsection:

"(g) APPLICATION TO PERSONS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—Any order issued or action taken by the National Taxpayer Advocate pursuant to this section shall apply to persons performing services under a qualified tax collection contract (as defined in section 6306(b)) to the same extent and in the same manner as such order or action applies to the Secretary.".

(d) INELIGIBILITY OF INDIVIDUALS WHO COMMIT MISCONDUCT TO PERFORM UNDER CONTRACT.—Section 1203 of the Internal Revenue Service Restructuring Act of 1998 (relating to termination of employment for misconduct) is amended by adding at the end the following new subsection:

"(e) INDIVIDUALS PERFORMING SERVICES UNDER A QUALIFIED TAX COLLECTION CONTRACT.—An individual shall cease to be permitted to perform any services under any qualified tax collection contract (as defined in section 6306(b) of the Internal Revenue Code of 1986) if there is a final determination by the Secretary of the Treasury under such contract that such individual committed any act or omission described under subsection (b) in connection with the performance of such services.".

(e) BIENNIAL REPORT.—The Secretary of the Treasury shall biennially submit (beginning in 2005) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report with respect to qualified tax collection contracts under section 6306 of the Internal Revenue Code of 1986 (as added by this section) which includes—

(1) a complete cost benefit analysis,

(2) the impact of such contracts on collection enforcement staff levels in the Internal Revenue Service,

(3) the impact of such contracts on the total number and amount of unpaid assessments, and on the number and amount of assessments collected by Internal Revenue Service personnel after initial contact by a contractor,

(4) the amounts collected and the collection costs incurred (directly and indirectly) by the Internal Revenue Service,

(5) an evaluation of contractor performance,

(6) a disclosure safeguard report in a form similar to that required under section 6103(p)(5) of such Code, and

(7) a measurement plan which includes a comparison of the best practices used by the private collectors with the Internal Revenue Service's own collection techniques) and mechanisms to identify and capture information on successful collection techniques used by the contractors which could be adopted by the Internal Revenue Service.

(f) EFFECTIVE DATE.—The amendments made to this section shall take effect on the date of the enactment of this Act.

SEC. 882. TREATMENT OF CHARITABLE CONTRIBUTIONS OF PATENTS AND SIMILAR PROPERTY.

(a) IN GENERAL.—Subparagraph (B) of section 170(e)(1) is amended by striking "or" at the end of clause (i), by adding "or" at the end of clause (ii), and by inserting after clause (ii) the following new clause:

"(iii) of any patent, copyright (other than a copyright described in section 1221(a)(3) or 1231(b)(1)(C)), trademark, trade name, trade secret, know-how, software (other than software described in section 197(e)(3)(A)(i)), or similar property, or applications or registrations of such property,".

(b) CERTAIN DONEE INCOME FROM INTELLECTUAL PROPERTY TREATED AS AN ADDITIONAL CHARITABLE CONTRIBUTION.—Section 170 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) CERTAIN DONEE INCOME FROM INTELLECTUAL PROPERTY TREATED AS AN ADDITIONAL CHARITABLE CONTRIBUTION.—

"(1) TREATMENT AS ADDITIONAL CONTRIBUTION.—In the case of a taxpayer who makes a qualified intellectual property contribution, the deduction allowed under subsection (a) for each taxable year of the taxpayer ending on or after the date of such contribution shall be increased (subject to the limitations under subsection (b)) by the applicable percentage of qualified donee income with respect to such contribution which is properly allocable to such year under this subsection.

"(2) REDUCTION IN ADDITIONAL DEDUCTIONS TO EXTENT OF INITIAL DEDUCTION.—With respect to any qualified intellectual property contribution, the deduction allowed under subsection (a) shall be increased under paragraph (1) only to the extent that the aggregate amount of such increases with respect to such contribution exceed the amount allowed as a deduction under subsection (a) with respect to such contribution determined without regard to this subsection.

"(3) QUALIFIED DONEE INCOME.—For purposes of this subsection, the term 'qualified donee income' means any net income received by or accrued to the donee which is properly allocable to the qualified intellectual property.

"(4) ALLOCATION OF QUALIFIED DONEE INCOME TO TAXABLE YEARS OF DONOR.—For purposes of this subsection, qualified donee income shall be treated as properly allocable to a taxable year of the donor if such income is received by or accrued to the donee for the taxable year of the donee which ends within or with such taxable year of the donor.

"(5) 10-YEAR LIMITATION.—Income shall not be treated as properly allocable to qualified intellectual property for purposes of this subsection if such income is received by or accrued to the donee after the 10-year period beginning on the date of the contribution of such property.

"(6) BENEFIT LIMITED TO LIFE OF INTELLECTUAL PROPERTY.—Income shall not be treated as properly allocable to qualified intellectual property for purposes of this subsection if such income is received by or accrued to the donee after the expiration of the legal life of such property.

"(7) APPLICABLE PERCENTAGE.—For purposes of this subsection, the term 'applicable percentage' means the percentage determined under the following table which corresponds to a taxable year of the donor ending on or after the date of the qualified intellectual property contribution:

"**Taxable Year of Donor Ending on or After Date of Contribution:**	**Applicable Percentage:**
1st	100
2nd	100
3rd	90
4th	80
5th	70
6th	60
7th	50
8th	40
9th	30
10th	20
11th	10
12th	10.

"(8) QUALIFIED INTELLECTUAL PROPERTY CONTRIBUTION.—For purposes of this subsection, the term 'qualified intellectual property contribution' means any charitable contribution of qualified intellectual property—

"(A) the amount of which taken into account under this section is reduced by reason of subsection (e)(1), and

"(B) with respect to which the donor informs the donee at the time of such contribution that the donor intends to treat such contribution as a qualified intellectual property contribution for purposes of this subsection and section 6050L.

"(9) QUALIFIED INTELLECTUAL PROPERTY.—For purposes of this subsection, the term 'qualified intellectual property' means property described in subsection (e)(1)(B)(iii) (other than property contributed to or for the use of an organization described in subsection (e)(1)(B)(ii)).

"(10) OTHER SPECIAL RULES.—

"(A) APPLICATION OF LIMITATIONS ON CHARITABLE CONTRIBUTIONS.—Any increase under this subsection of the deduction provided under subsection (a) shall be treated for purposes of subsection (b) as a deduction which is attributable to a charitable contribution to the donee to which such increase relates.

"(B) NET INCOME DETERMINED BY DONEE.—The net income taken into account under paragraph (3) shall not exceed the amount of such income reported under section 6050L(b)(1).

"(C) DEDUCTION LIMITED TO 12 TAXABLE YEARS.—Except as may be provided under subparagraph (D)(i), this subsection shall not apply with respect to any qualified intellectual property contribution for any taxable year of the donor after the 12th taxable year of the donor which ends on or after the date of such contribution.

"(D) REGULATIONS.—The Secretary may issue regulations or other guidance to carry out the purposes of this subsection, including regulations or guidance—

"(i) modifying the application of this subsection in the case of a donor or donee with a short taxable year, and

"(ii) providing for the determination of an amount to be treated as net income of the donee which is properly allocable to qualified intellectual property in the case of a donee who uses such property to further a purpose or function constituting the basis of the donee's exemption under section 501 (or, in the case of a governmental unit, any purpose described in section 170(c)) and does not possess a right to receive any payment from a third party with respect to such property.".

(c) REPORTING REQUIREMENTS.—

(1) IN GENERAL.—Section 6050L (relating to returns relating to certain dispositions of donated property) is amended to read as follows:

"SEC. 6050L. RETURNS RELATING TO CERTAIN DONATED PROPERTY.

"(a) DISPOSITIONS OF DONATED PROPERTY.—

"(1) IN GENERAL.—If the donee of any charitable deduction property sells, exchanges, or otherwise disposes of such property within 2 years after its receipt, the donee shall make a return (in accordance with forms and regulations prescribed by the Secretary) showing—

"(A) the name, address, and TIN of the donor,

"(B) a description of the property,

"(C) the date of the contribution,

"(D) the amount received on the disposition, and

"(E) the date of such disposition.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) CHARITABLE DEDUCTION PROPERTY.—The term 'charitable deduction property' means any property (other than publicly traded securities) contributed in a contribution for which a deduction was claimed under section 170 if the claimed value of such property (plus the claimed value of all similar items of property donated by the donor to 1 or more donees) exceeds $5,000.

"(B) PUBLICLY TRADED SECURITIES.—The term 'publicly traded securities' means securities for which (as of the date of the contribution) market quotations are readily available on an established securities market.

"(b) QUALIFIED INTELLECTUAL PROPERTY CONTRIBUTIONS.—

"(1) IN GENERAL.—Each donee with respect to a qualified intellectual property contribution shall make a return (at such time and in such form and manner as the Secretary may by regulations prescribe) with respect to each specified taxable year of the donee showing—

"(A) the name, address, and TIN of the donor,

"(B) a description of the qualified intellectual property contributed,

"(C) the date of the contribution, and

"(D) the amount of net income of the donee for the taxable year which is properly allocable to the qualified intellectual property (determined without regard to paragraph (10)(B) of section 170(m) and with the modifications described in paragraphs (5) and (6) of such section).

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) IN GENERAL.—Terms used in this subsection which are also used in section 170(m) have the respective meanings given such terms in such section.

"(B) SPECIFIED TAXABLE YEAR.—The term 'specified taxable year' means, with respect to any qualified intellectual property contribution, any taxable year of the donee any portion of which is part of the 10-year period beginning on the date of such contribution.

"(c) STATEMENT TO BE FURNISHED TO DONORS.—Every person making a return under subsection (a) or (b) shall furnish a copy of such return to the donor at such time and in such manner as the Secretary may by regulations prescribe.".

(2) CLERICAL AMENDMENT.—The table of sections for subpart A of part II of subchapter A of chapter 61 is amended by striking the item relating to section 6050L and inserting the following new item:

"Sec. 6050L. Returns relating to certain donated property.".

(d) COORDINATION WITH APPRAISAL REQUIREMENTS.—Subclause (I) of section 170(f)(11)(A)(ii), as added by this Act, is amended by inserting "subsection (e)(1)(B)(iii) or" before "section 1221(a)(1)".

(e) ANTI-ABUSE RULES.—The Secretary of the Treasury may prescribe such regulations or other guidance as may be necessary or appropriate to prevent the avoidance of the purposes of section 170(e)(1)(B)(iii) of the Internal Revenue Code of 1986 (as added by subsection (a)), including preventing—

(1) the circumvention of the reduction of the charitable deduction by embedding or bundling the patent or similar property as part of a charitable contribution of property that includes the patent or similar property,

(2) the manipulation of the basis of the property to increase the amount of the charitable deduction through the use of related persons, pass-thru entities, or other intermediaries, or through the use of any provision of law or regulation (including the consolidated return regulations), and

(3) a donor from changing the form of the patent or similar property to property of a form for which different deduction rules would apply.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after June 3, 2004.

SEC. 883. INCREASED REPORTING FOR NONCASH CHARITABLE CONTRIBUTIONS.

(a) IN GENERAL.—Subsection (f) of section 170 (relating to disallowance of deduction in certain cases and special rules) is amended by adding after paragraph (10) the following new paragraph:

"(11) QUALIFIED APPRAISAL AND OTHER DOCUMENTATION FOR CERTAIN CONTRIBUTIONS.—

"(A) IN GENERAL.—

"(i) DENIAL OF DEDUCTION.—In the case of an individual, partnership, or corporation, no deduction shall be allowed under subsection (a) for any contribution of property for which a deduction of more than $500 is claimed unless such person meets the requirements of subparagraphs (B), (C), and (D), as the case may be, with respect to such contribution.

"(ii) EXCEPTIONS.—

"(I) READILY VALUED PROPERTY.—Subparagraphs (C) and (D) shall not apply to cash, property described in section 1221(a)(1), publicly traded securities (as defined in section 6050L(a)(2)(B)), and any qualified vehicle described in paragraph (12)(A)(ii) for which an acknowledgement under paragraph (12)(B)(iii) is provided.

"(II) REASONABLE CAUSE.—Clause (i) shall not apply if it is shown that the failure to meet such requirements is due to reasonable cause and not to willful neglect.

"(B) PROPERTY DESCRIPTION FOR CONTRIBUTIONS OF MORE THAN $500.—In the case of contributions of property for which a deduction of more than $500 is claimed, the requirements of this subparagraph are met if the individual, partnership or corporation includes with the return for the taxable year in which the contribution is made a description of such property and such other information as the Secretary may require. The requirements of this subparagraph shall not apply to a C corporation which is not a personal service corporation or a closely held C corporation.

"(C) QUALIFIED APPRAISAL FOR CONTRIBUTIONS OF MORE THAN $5,000.—In the case of contributions of property for which a deduction of more than $5,000 is claimed, the requirements of this subparagraph are met if the individual, partnership, or corporation obtains a qualified appraisal of such property and attaches to the return for the taxable year in which such contribution is made such information regarding such property and such appraisal as the Secretary may require.

"(D) SUBSTANTIATION FOR CONTRIBUTIONS OF MORE THAN $500,000.—In the case of contributions of property for which a deduction of more than $500,000 is claimed, the requirements of this subparagraph are met if the individual, partnership, or corporation attaches to the return for the taxable year a qualified appraisal of such property.

"(E) QUALIFIED APPRAISAL.—For purposes of this paragraph, the term 'qualified appraisal' means, with respect to any property, an appraisal of such property which is treated for purposes of this paragraph as a qualified appraisal under regulations or other guidance prescribed by the Secretary.

"(F) AGGREGATION OF SIMILAR ITEMS OF PROPERTY.—For purposes of determining thresholds under this paragraph, property and all similar items of property donated to 1 or more donees shall be treated as 1 property.

"(G) SPECIAL RULE FOR PASS-THRU ENTITIES.—In the case of a partnership or S corporation, this paragraph shall be applied at the entity level, except that the deduction shall be denied at the partner or shareholder level.

"(H) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations that may provide that some or all of the requirements of this paragraph do not apply in appropriate cases.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made after June 3, 2004.

SEC. 884. DONATIONS OF MOTOR VEHICLES, BOATS, AND AIRPLANES.

(a) IN GENERAL.—Subsection (f) of section 170 (relating to disallowance of deduction in certain cases and special rules), as amended by this Act, is amended by inserting after paragraph (11) the following new paragraph:

"(12) CONTRIBUTIONS OF USED MOTOR VEHICLES, BOATS, AND AIRPLANES.—

"(A) IN GENERAL.—In the case of a contribution of a qualified vehicle the claimed value of which exceeds $500—

"(i) paragraph (8) shall not apply and no deduction shall be allowed under subsection (a) for such contribution unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgement of the contribution by the donee organization that meets the requirements of subparagraph (B) and includes the acknowledgement with the taxpayer's return of tax which includes the deduction, and "(ii) if the organization sells the vehicle without any significant intervening use or material improvement of such vehicle by the organization, the amount of the deduction allowed under subsection (a) shall not exceed the gross proceeds received from such sale.

"(B) CONTENT OF ACKNOWLEDGEMENT.—An acknowledgement meets the requirements of this subparagraph if it includes the following information:

"(i) The name and taxpayer identification number of the donor.

"(ii) The vehicle identification number or similar number.

"(iii) In the case of a qualified vehicle to which subparagraph (A)(ii) applies—

"(I) a certification that the vehicle was sold in an arm's length transaction between unrelated parties,

"(II) the gross proceeds from the sale, and

"(III) a statement that the deductible amount may not exceed the amount of such gross proceeds.

"(iv) In the case of a qualified vehicle to which subparagraph (A)(ii) does not apply—

"(I) a certification of the intended use or material improvement of the vehicle and the intended duration of such use, and

"(II) a certification that the vehicle would not be transferred in exchange for money, other property, or services before completion of such use or improvement.

"(C) CONTEMPORANEOUS.—For purposes of subparagraph (A), an acknowledgement shall be considered to be contemporaneous if the donee organization provides it within 30 days of—

"(i) the sale of the qualified vehicle, or

"(ii) in the case of an acknowledgement including a certification described in subparagraph (B)(iv), the contribution of the qualified vehicle.

"(D) INFORMATION TO SECRETARY.—A donee organization required to provide an acknowledgement under this paragraph shall provide to the Secretary the information contained in the acknowledgement. Such information shall be provided at such time and in such manner as the Secretary may prescribe.

"(E) QUALIFIED VEHICLE.—For purposes of this paragraph, the term 'qualified vehicle' means any—

"(i) motor vehicle manufactured primarily for use on public streets, roads, and highways,

"(ii) boat, or

"(iii) airplane.

Such term shall not include any property which is described in section 1221(a)(1).

"(F) REGULATIONS OR OTHER GUIDANCE.—The Secretary shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of this paragraph. The Secretary may prescribe regulations or other guidance which exempts sales by the donee organization which are in direct furtherance of such organization's charitable purpose from the requirements of subparagraphs (A)(ii) and (B)(iv)(II).".

(b) PENALTY FOR FRAUDULENT ACKNOWLEDGMENTS.—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties), as amended by this Act, is amended by inserting after section 6719 the following new section:

"SEC. 6720. FRAUDULENT ACKNOWLEDGMENTS WITH RESPECT TO DONATIONS OF MOTOR VEHICLES, BOATS, AND AIRPLANES.

"Any donee organization required under section 170(f)(12)(A) to furnish a contemporaneous written acknowledgment to a donor which knowingly furnishes a false or fraudulent acknowledgment, or which knowingly fails to furnish such acknowledgment in the manner, at the time, and showing the information required under section 170(f)(12), or regulations prescribed thereunder, shall for each such act, or for each such failure, be subject to a penalty equal to—

"(1) in the case of an acknowledgment with respect to a qualified vehicle to which section 170(f)(12)(A)(ii) applies, the greater of—

"(A) the product of the highest rate of tax specified in section 1 and the sales price stated on the acknowledgment, or

"(B) the gross proceeds from the sale of such vehicle, and

"(2) in the case of an acknowledgment with respect to any other qualified vehicle to which section 170(f)(12) applies, the greater of—

"(A) the product of the highest rate of tax specified in section 1 and the claimed value of the vehicle, or

"(B) $5,000.".

(2) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68, as amended by this Act, is amended by inserting after the item relating to section 6719 the following new item:

"Sec. 6720. Fraudulent acknowledgments with respect to donations of motor vehicles, boats, and airplanes.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after December 31, 2004.

SEC. 885. TREATMENT OF NONQUALIFIED DEFERRED COMPENSATION PLANS.

(a) IN GENERAL.—Subpart A of part I of subchapter D of chapter 1 is amended by adding at the end the following new section:

"SEC. 409A. INCLUSION IN GROSS INCOME OF DEFERRED COMPENSATION UNDER NONQUALIFIED DEFERRED COMPENSATION PLANS.

"(a) RULES RELATING TO CONSTRUCTIVE RECEIPT.—

"(1) PLAN FAILURES.—

"(A) GROSS INCOME INCLUSION.—

"(i) IN GENERAL.—If at any time during a taxable year a nonqualified deferred compensation plan—

"(I) fails to meet the requirements of paragraphs (2), (3), and (4), or

"(II) is not operated in accordance with such requirements,

all compensation deferred under the plan for the taxable year and all preceding taxable years shall be includible in gross income for the taxable year to the extent not subject to a substantial risk of forfeiture and not previously included in gross income.

"(ii) APPLICATION ONLY TO AFFECTED PARTICIPANTS.—Clause (i) shall only apply with respect to all compensation deferred under the plan for participants with respect to whom the failure relates.

"(B) INTEREST AND ADDITIONAL TAX PAYABLE WITH RESPECT TO PREVIOUSLY DEFERRED COMPENSATION.—

"(i) IN GENERAL.—If compensation is required to be included in gross income under subparagraph (A) for a taxable year, the tax imposed by this chapter for the taxable year shall be increased by the sum of—

"(I) the amount of interest determined under clause (ii), and

"(II) an amount equal to 20 percent of the compensation which is required to be included in gross income.

"(ii) INTEREST.—For purposes of clause (i), the interest determined under this clause for any taxable year is the amount of interest at the underpayment rate plus 1 percentage point on the underpayments that would have occurred had the deferred compensation been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such deferred compensation is not subject to a substantial risk of forfeiture.

"(2) DISTRIBUTIONS.—

"(A) IN GENERAL.—The requirements of this paragraph are met if the plan provides that compensation deferred under the plan may not be distributed earlier than—

"(i) separation from service as determined by the Secretary (except as provided in subparagraph (B)(i)),

"(ii) the date the participant becomes disabled (within the meaning of subparagraph (C)),

"(iii) death,

"(iv) a specified time (or pursuant to a fixed schedule) specified under the plan at the date of the deferral of such compensation,

"(v) to the extent provided by the Secretary, a change in the ownership or effective control of the corporation, or in the ownership of a substantial portion of the assets of the corporation, or

"(vi) the occurrence of an unforeseeable emergency.

"(B) SPECIAL RULES.—

"(i) SPECIFIED EMPLOYEES.—In the case of any specified employee, the requirement of subparagraph (A)(i) is met only if distributions may not be made before the date which is 6 months after the date of separation from service (or, if earlier, the date of death of the employee). For purposes of the preceding sentence, a specified employee is a key employee (as defined in section 416(i) without regard to paragraph (5) thereof) of a corporation any stock in which is publicly traded on an established securities market or otherwise.

"(ii) UNFORESEEABLE EMERGENCY.—For purposes of subparagraph (A)(vi)—

"(I) IN GENERAL.—The term 'unforeseeable emergency' means a severe financial hardship to the participant resulting from an illness or accident of the participant, the participant's spouse, or a dependent (as defined in section 152(a)) of the participant, loss of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

"(II) LIMITATION ON DISTRIBUTIONS.—The requirement of subparagraph (A)(vi) is met only if, as determined under regulations of the Secretary, the amounts distributed with respect to an emergency do not exceed the amounts necessary to satisfy such emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such hardship is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the participant's assets (to the extent the liquidation of such assets would not itself cause severe financial hardship).

"(C) DISABLED.—For purposes of subparagraph (A)(ii), a participant shall be considered disabled if the participant—

"(i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or

"(ii) is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering employees of the participant's employer.

"(3) ACCELERATION OF BENEFITS.—The requirements of this paragraph are met if the plan does not permit the acceleration of the time or schedule of any payment under the plan, except as provided in regulations by the Secretary.

"(4) ELECTIONS.—

"(A) IN GENERAL.—The requirements of this paragraph are met if the requirements of subparagraphs (B) and (C) are met.

"(B) Initial Deferral Decision.—

"(i) In General.—The requirements of this subparagraph are met if the plan provides that compensation for services performed during a taxable year may be deferred at the participant's election only if the election to defer such compensation is made not later than the close of the preceding taxable year or at such other time as provided in regulations.

"(ii) First Year of Eligibility.—In the case of the first year in which a participant becomes eligible to participate in the plan, such election may be made with respect to services to be performed subsequent to the election within 30 days after the date the participant becomes eligible to participate in such plan.

"(iii) Performance-Based Compensation.—In the case of any performance-based compensation based on services performed over a period of at least 12 months, such election may be made no later than 6 months before the end of the period.

"(C) Changes in Time and Form of Distribution.—The requirements of this subparagraph are met if, in the case of a plan which permits under a subsequent election a delay in a payment or a change in the form of payment—

"(i) the plan requires that such election may not take effect until at least 12 months after the date on which the election is made,

"(ii) in the case of an election related to a payment not described in clause (ii), (iii), or (vi) of paragraph (2)(A), the plan requires that the first payment with respect to which such election is made be deferred for a period of not less than 5 years from the date such payment would otherwise have been made, and

"(iii) the plan requires that any election related to a payment described in paragraph (2)(A)(iv) may not be made less than 12 months prior to the date of the first scheduled payment under such paragraph.

"(b) Rules Relating to Funding.—

"(1) Offshore Property in a Trust.—In the case of assets set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary) for purposes of paying deferred compensation under a nonqualified deferred compensation plan, for purposes of section 83 such assets shall be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors—

"(A) at the time set aside if such assets (or such trust or other arrangement) are located outside of the United States, or

"(B) at the time transferred if such assets (or such trust or other arrangement) are subsequently transferred outside of the United States.

This paragraph shall not apply to assets located in a foreign jurisdiction if substantially all of the services to which the nonqualified deferred compensation relates are performed in such jurisdiction.

"(2) Employer's Financial Health.—In the case of compensation deferred under a nonqualified deferred compensation plan, there is a transfer of property within the meaning of section 83 with respect to such compensation as of the earlier of—

"(A) the date on which the plan first provides that assets will become restricted to the provision of benefits under the plan in connection with a change in the employer's financial health, or

"(B) the date on which assets are so restricted,

whether or not such assets are available to satisfy claims of general creditors.

"(3) Income Inclusion for Offshore Trusts and Employer's Financial Health.—For each taxable year that assets treated as transferred under this subsection remain set aside in a trust or other arrangement subject to paragraph (1) or (2), any increase in value in, or earnings with respect to, such assets shall be treated as an additional transfer of property under this subsection (to the extent not previously included in income).

"(4) Interest on Tax Liability Payable With Respect to Transferred Property.—

"(A) In General.—If amounts are required to be included in gross income by reason of paragraph (1) or (2) for a taxable year, the tax imposed by this chapter for such taxable year shall be increased by the sum of—

"(i) the amount of interest determined under subparagraph (B), and

"(ii) an amount equal to 20 percent of the amounts required to be included in gross income.

"(B) Interest.—For purposes of subparagraph (A), the interest determined under this subparagraph for any taxable year is the amount of interest at the underpayment rate plus 1 percentage point on the underpayments that would have occurred had the amounts so required to be included in gross income by paragraph (1) or (2) been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such amounts are not subject to a substantial risk of forfeiture.

"(c) No Inference on Earlier Income Inclusion or Requirement of Later Inclusion.—Nothing in this section shall be construed to prevent the inclusion of amounts in gross income under any other provision of this chapter or any other rule of law earlier than the time provided in this section. Any amount included in gross income under this section shall not be required to be included in gross income under any other provision of this chapter or any other rule of law later than the time provided in this section.

"(d) Other Definitions and Special Rules.—For purposes of this section—

"(1) Nonqualified Deferred Compensation Plan.—The term 'nonqualified deferred compensation plan' means any plan that provides for the deferral of compensation, other than—

"(A) a qualified employer plan, and

"(B) any bona fide vacation leave, sick leave, compensatory time, disability pay, or death benefit plan.

"(2) Qualified Employer Plan.—The term 'qualified employer plan' means—

"(A) any plan, contract, pension, account, or trust described in subparagraph (A) or (B) of section 219(g)(5) (without regard to subparagraph (A)(iii)),

"(B) any eligible deferred compensation plan (within the meaning of section 457(b)), and

"(C) any plan described in section 415(m).

"(3) Plan Includes Arrangements, Etc.—The term 'plan' includes any agreement or arrangement, including an agreement or arrangement that includes one person.

"(4) Substantial Risk of Forfeiture.—The rights of a person to compensation are subject to a substantial risk of forfeiture if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.

"(5) Treatment of Earnings.—References to deferred compensation shall be treated as including references to income (whether actual or notional) attributable to such compensation or such income.

"(6) Aggregation Rules.—Except as provided by the Secretary, rules similar to the rules of subsections (b) and (c) of section 414 shall apply.

"(e) Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

"(1) providing for the determination of amounts of deferral in the case of a nonqualified deferred compensation plan which is a defined benefit plan,

"(2) relating to changes in the ownership and control of a corporation or assets of a corporation for purposes of subsection (a)(2)(A)(v),

"(3) exempting arrangements from the application of subsection (b) if such arrangements will not result in an improper deferral of United States tax and will not result in assets being effectively beyond the reach of creditors,

"(4) defining financial health for purposes of subsection (b)(2), and

"(5) disregarding a substantial risk of forfeiture in cases where necessary to carry out the purposes of this section.".

(b) Treatment of Deferred Amounts.—

(1) W-2 Forms.—

(A) In General.—Subsection (a) of section 6051 (relating to receipts for employees) is amended by striking "and" at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting ", and", and by inserting after paragraph (12) the following new paragraph:

"(13) the total amount of deferrals for the year under a nonqualified deferred compensation plan (within the meaning of section 409A(d)).".

(B) Threshold.—Subsection (a) of section 6051 is amended by adding at the end the following: "In the case of the amounts required to be shown by paragraph (13), the Secretary may (by regulation) establish a minimum amount of deferrals below which paragraph (13) does not apply.".

(2) Wage Withholding.—Section 3401(a) (defining wages) is amended by adding at the end the following flush sentence: "The term 'wages' includes any amount includible in gross income of an employee under section 409A and payment of such amount shall be treated as having been made in the taxable year in which the amount is so includible.".

(3) Other Reporting.—Section 6041 (relating to information at source) is amended by adding at the end the following new subsection:

"(g) Nonqualified Deferred Compensation.—Subsection (a) shall apply to—

"(1) any deferrals for the year under a nonqualified deferred compensation plan (within the meaning of section 409A(d)), whether or not paid, except that this paragraph shall not apply to deferrals which are required to be reported under section 6051(a)(13) (without regard to any de minimis exception), and

"(2) any amount includible under section 409A and which is not treated as wages under section 3401(a).".

(c) Clerical Amendment.—The table of sections for such subpart A of part I of subchapter D of chapter 1 is amended by adding at the end the following new item:

"Sec. 409A. Inclusion in gross income of deferred compensation under nonqualified deferred compensation plans.".

(d) Effective Date.—

(1) In General.—The amendments made by this section shall apply to amounts deferred after December 31, 2004.

(2) Special Rules.—

(A) Earnings.—The amendments made by this section shall apply to earnings on deferred compensation only to the extent that such amendments apply to such compensation.

(B) Material Modifications.—For purposes of this subsection, amounts deferred in taxable years beginning before January 1, 2005, shall be treated as amounts deferred in a taxable year beginning on or after such date if the plan under which the deferral is made is materially modified after October 3, 2004, unless such modification is pursuant to the guidance issued under subsection (f).

(3) Exception for Nonelective Deferred Compensation.—The amendments made by this

section shall not apply to any nonelective deferred compensation to which section 457 of the Internal Revenue Code of 1986 does not apply by reason of section 457(e)(12) of such Code, but only if such compensation is provided under a nonqualified deferred compensation plan—

(A) which was in existence on May 1, 2004,

(B) which was providing nonelective deferred compensation described in such section 457(e)(12) on such date, and

(C) which is established or maintained by an organization incorporated on July 2, 1974.

If, after May 1, 2004, a plan described in the preceding sentence adopts a plan amendment which provides a material change in the classes of individuals eligible to participate in the plan, this paragraph shall not apply to any nonelective deferred compensation provided under the plan on or after the date of the adoption of the amendment.

(e) GUIDANCE RELATING TO CHANGE OF OWNERSHIP OR CONTROL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury shall issue guidance on what constitutes a change in ownership or effective control for purposes of section 409A of the Internal Revenue Code of 1986, as added by this section.

(f) GUIDANCE RELATING TO TERMINATION OF CERTAIN EXISTING ARRANGEMENTS.—Not later than 60 days after the date of the enactment of this Act, the Secretary of the Treasury shall issue guidance providing a limited period during which a nonqualified deferred compensation plan adopted before December 31, 2004, may, without violating the requirements of paragraphs (2), (3), and (4) of section 409A(a) of the Internal Revenue Code of 1986 (as added by this section), be amended—

(1) to provide that a participant may terminate participation in the plan, or cancel an outstanding deferral election with regard to amounts deferred after December 31, 2004, but only if amounts subject to the termination or cancellation are includible in income of the participant as earned (or, if later, when no longer subject to substantial risk of forfeiture), and

(2) to conform to the requirements of such section 409A with regard to amounts deferred after December 31, 2004.

SEC. 886. EXTENSION OF AMORTIZATION OF INTANGIBLES TO SPORTS FRANCHISES.

(a) IN GENERAL.—Section 197(e) (relating to exceptions to definition of section 197 intangible) is amended by striking paragraph (6) and by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(b) CONFORMING AMENDMENTS.—

(1)(A) Section 1056 (relating to basis limitation for player contracts transferred in connection with the sale of a franchise) is repealed.

(B) The table of sections for part IV of subchapter O of chapter 1 is amended by striking the item relating to section 1056.

(2) Section 1245(a) (relating to gain from disposition of certain depreciable property) is amended by striking paragraph (4).

(3) Section 1253 (relating to transfers of franchises, trademarks, and trade names) is amended by striking subsection (e).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property acquired after the date of the enactment of this Act.

(2) SECTION 1245.—The amendment made by subsection (b)(2) shall apply to franchises acquired after the date of the enactment of this Act.

SEC. 887. MODIFICATION OF CONTINUING LEVY ON PAYMENTS TO FEDERAL VENDERS.

(a) IN GENERAL.—Section 6331(h) (relating to continuing levy on certain payments) is amended by adding at the end the following new paragraph:

"(3) INCREASE IN LEVY FOR CERTAIN PAYMENTS.—Paragraph (1) shall be applied by substituting '100 percent' for '15 percent' in the case of any specified payment due to a vendor of goods or services sold or leased to the Federal Government.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 888. MODIFICATION OF STRADDLE RULES.

(a) RULES RELATING TO IDENTIFIED STRADDLES.—

(1) IN GENERAL.—Subparagraph (A) of section 1092(a)(2) (relating to special rule for identified straddles) is amended to read as follows:

"(A) IN GENERAL.—In the case of any straddle which is an identified straddle—

"(i) paragraph (1) shall not apply with respect to identified positions comprising the identified straddle,

"(ii) if there is any loss with respect to any identified position of the identified straddle, the basis of each of the identified offsetting positions in the identified straddle shall be increased by an amount which bears the same ratio to the loss as the unrecognized gain with respect to such offsetting position bears to the aggregate unrecognized gain with respect to all such offsetting positions, and

"(iii) any loss described in clause (ii) shall not otherwise be taken into account for purposes of this title.".

(2) IDENTIFIED STRADDLE.—Section 1092(a)(2)(B) (defining identified straddle) is amended—

(A) by striking clause (ii) and inserting the following:

"(ii) to the extent provided by regulations, the value of each position of which (in the hands of the taxpayer immediately before the creation of the straddle) is not less than the basis of such position in the hands of the taxpayer at the time the straddle is created, and", and

(B) by adding at the end the following new flush sentence:

"The Secretary shall prescribe regulations which specify the proper methods for clearly identifying a straddle as an identified straddle (and the positions comprising such straddle), which specify the rules for the application of this section for a taxpayer which fails to properly identify the positions of an identified straddle, and which specify the ordering rules in cases where a taxpayer disposes of less than an entire position which is part of an identified straddle.".

(3) UNRECOGNIZED GAIN.—Section 1092(a)(3) (defining unrecognized gain) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

"(B) SPECIAL RULE FOR IDENTIFIED STRADDLES.—For purposes of paragraph (2)(A)(ii), the unrecognized gain with respect to any identified offsetting position shall be the excess of the fair market value of the position at the time of the determination over the fair market value of the position at the time the taxpayer identified the position as a position in an identified straddle.".

(4) CONFORMING AMENDMENT.—Section 1092(c)(2) is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(b) PHYSICALLY SETTLED POSITIONS.—Section 1092(d) (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

"(8) SPECIAL RULES FOR PHYSICALLY SETTLED POSITIONS.—For purposes of subsection (a), if a taxpayer settles a position which is part of a straddle by delivering property to which the position relates (and such position, if terminated, would result in a realization of a loss), then such taxpayer shall be treated as if such taxpayer—

"(A) terminated the position for its fair market value immediately before the settlement, and

"(B) sold the property so delivered by the taxpayer at its fair market value.".

(c) REPEAL OF STOCK EXCEPTION.—

(1) IN GENERAL.—Paragraph (3) of section 1092(d) (relating to definitions and special rules) is amended to read as follows:

"(3) SPECIAL RULES FOR STOCK.—For purposes of paragraph (1)—

"(A) IN GENERAL.—In the case of stock, the term 'personal property' includes stock only if—

"(i) such stock is of a type which is actively traded and at least 1 of the positions offsetting such stock is a position with respect to such stock or substantially similar or related property, or

"(ii) such stock is of a corporation formed or availed of to take positions in personal property which offset positions taken by any shareholder.

"(B) RULE FOR APPLICATION.—For purposes of determining whether subsection (e) applies to any transaction with respect to stock described in subparagraph (A)(ii), all includible corporations of an affiliated group (within the meaning of section 1504(a)) shall be treated as 1 taxpayer.".

(2) CONFORMING AMENDMENT.—Section 1258(d)(1) is amended by striking "; except that the term 'personal property' shall include stock".

(d) HOLDING PERIOD FOR DIVIDEND EXCLUSION.—The last sentence of section 246(c) is amended by inserting: ", other than a qualified covered call option to which section 1092(f) applies" before the period at the end.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to positions established on or after the date of the enactment of this Act.

SEC. 889. ADDITION OF VACCINES AGAINST HEPATITIS A TO LIST OF TAXABLE VACCINES.

(a) IN GENERAL.—Paragraph (1) of section 4132(a) (defining taxable vaccine) is amended by redesignating subparagraphs (I), (J), (K), and (L) as subparagraphs (J), (K), (L), and (M), respectively, and by inserting after subparagraph (H) the following new subparagraph:

"(I) Any vaccine against hepatitis A."

(b) EFFECTIVE DATE.—

(1) SALES, ETC.—The amendments made by subsection (a) shall apply to sales and uses on or after the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act.

(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.

SEC. 890. ADDITION OF VACCINES AGAINST INFLUENZA TO LIST OF TAXABLE VACCINES.

(a) IN GENERAL.—Section 4132(a)(1) (defining taxable vaccine), as amended by this Act, is amended by adding at the end the following new subparagraph:

"(N) Any trivalent vaccine against influenza.".

(b) EFFECTIVE DATE.—

(1) SALES, ETC.—The amendment made by this section shall apply to sales and uses on or after the later of—

(A) the first day of the first month which begins more than 4 weeks after the date of the enactment of this Act, or

(B) the date on which the Secretary of Health and Human Services lists any vaccine against

influenza for purposes of compensation for any vaccine-related injury or death through the Vaccine Injury Compensation Trust Fund.

(2) DELIVERIES.—For purposes of paragraph (1) and section 4131 of the Internal Revenue Code of 1986, in the case of sales on or before the effective date described in such paragraph for which delivery is made after such date, the delivery date shall be considered the sale date.

SEC. 891. EXTENSION OF IRS USER FEES.

(a) IN GENERAL.—Section 7528(c) (relating to termination) is amended by striking "December 31, 2004" and inserting "September 30, 2014".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to requests after the date of the enactment of this Act.

SEC. 892. COBRA FEES.

(a) USE OF MERCHANDISE PROCESSING FEE.—Section 13031(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—

(1) in paragraph (1), by aligning subparagraph (B) with subparagraph (A); and

(2) in paragraph (2), by striking "commercial operations" and all that follows through "processing." and inserting "customs revenue functions as defined in section 415 of the Homeland Security Act of 2002 (other than functions performed by the Office of International Affairs referred to in section 415(8) of that Act), and for automation (including the Automation Commercial Environment computer system), and for no other purpose. To the extent that funds in the Customs User Fee Account are insufficient to pay the costs of such customs revenue functions, customs duties in an amount equal to the amount of such insufficiency shall be available, to the extent provided for in appropriations Acts, to pay the costs of such customs revenue functions in the amount of such insufficiency, and shall be available for no other purpose. The provisions of the first and second sentences of this paragraph specifying the purposes for which amounts in the Customs User Fee Account may be made available shall not be superseded except by a provision of law which specifically modifies or supersedes such provisions.".

(b) REIMBURSEMENT OF APPROPRIATIONS FROM COBRA FEES.—Section 13031(f)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(3)) is amended by adding at the end the following:

"(E) Nothing in this paragraph shall be construed to preclude the use of appropriated funds, from sources other than the fees collected under subsection (a), to pay the costs set forth in clauses (i), (ii), and (iii) of subparagraph (A).".

(c) SENSE OF CONGRESS; EFFECTIVE PERIOD FOR COLLECTING FEES; STANDARD FOR SETTING FEES.—

(1) SENSE OF CONGRESS.—The Congress finds that—

(A) the fees set forth in paragraphs (1) through (8) of subsection (a) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 have been reasonably related to the costs of providing customs services in connection with the activities or items for which the fees have been charged under such paragraphs; and

(B) the fees collected under such paragraphs have not exceeded, in the aggregate, the amounts paid for the costs described in subsection (f)(3)(A) incurred in providing customs services in connection with the activities or items for which the fees were charged under such paragraphs.

(2) EFFECTIVE PERIOD; STANDARD FOR SETTING FEES.—Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended to read as follows:

"(3)(A) Fees may not be charged under paragraphs (9) and (10) of subsection (a) after September 30, 2014.

"(B)(i) Subject to clause (ii), Fees may not be charged under paragraphs (1) through (8) of subsection (a) after September 30, 2014.

"(ii) In fiscal year 2006 and in each succeeding fiscal year for which fees under paragraphs (1) through (8) of subsection (a) are authorized—

"(I) the Secretary of the Treasury shall charge fees under each such paragraph in amounts that are reasonably related to the costs of providing customs services in connection with the activity or item for which the fee is charged under such paragraph, except that in no case may the fee charged under any such paragraph exceed by more than 10 percent the amount otherwise prescribed by such paragraph;

"(II) the amount of fees collected under such paragraphs may not exceed, in the aggregate, the amounts paid in that fiscal year for the costs described in subsection (f)(3)(A) incurred in providing customs services in connection with the activity or item for which the fees are charged under such paragraphs;

"(III) a fee may not be collected under any such paragraph except to the extent such fee will be expended to pay the costs described in subsection (f)(3)(A) incurred in providing customs services in connection with the activity or item for which the fee is charged under such paragraph; and

"(IV) any fee collected under any such paragraph shall be available for expenditure only to pay the costs described in subsection (f)(3)(A) incurred in providing customs services in connection with the activity or item for which the fee is charged under such paragraph.".

(d) CLERICAL AMENDMENTS.—Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended—

(1) in subsection (a)(5)(B), by striking "$1.75" and inserting "$1.75.";

(2) in subsection (b)—

(A) in paragraph (1)(A), by aligning clause (iii) with clause (ii);

(B) in paragraph (7), by striking "paragraphs" and inserting "paragraph"; and

(C) in paragraph (9), by aligning subparagraph (B) with subparagraph (A); and

(3) in subsection (e)(2), by aligning subparagraph (B) with subparagraph (A).

(e) STUDY OF ALL FEES COLLECTED BY DEPARTMENT OF HOMELAND SECURITY.—The Secretary of the Treasury shall conduct a study of all the fees collected by the Department of Homeland Security, and shall submit to the Congress, not later than September 30, 2005, a report containing the recommendations of the Secretary on—

(1) what fees should be eliminated;

(2) what the rate of fees retained should be; and

(3) any other recommendations with respect to the fees that the Secretary considers appropriate.

SEC. 893. PROHIBITION ON NONRECOGNITION OF GAIN THROUGH COMPLETE LIQUIDATION OF HOLDING COMPANY.

(a) IN GENERAL.—Section 332 is amended by adding at the end the following new subsection:

"(d) RECOGNITION OF GAIN ON LIQUIDATION OF CERTAIN HOLDING COMPANIES.—

"(1) IN GENERAL.—In the case of any distribution to a foreign corporation in complete liquidation of an applicable holding company—

"(A) subsection (a) and section 331 shall not apply to such distribution, and

"(B) such distribution shall be treated as a distribution to which section 301 applies.

"(2) APPLICABLE HOLDING COMPANY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'applicable holding company' means any domestic corporation—

"(i) which is a common parent of an affiliated group,

"(ii) stock of which is directly owned by the distributee foreign corporation,

"(iii) substantially all of the assets of which consist of stock in other members of such affiliated group, and

"(iv) which has not been in existence at all times during the 5 years immediately preceding the date of the liquidation.

"(B) AFFILIATED GROUP.—For purposes of this subsection, the term 'affiliated group' has the meaning given such term by section 1504(a) (without regard to paragraphs (2) and (4) of section 1504(b)).

"(3) COORDINATION WITH SUBPART F.—If the distributee of a distribution described in paragraph (1) is a controlled foreign corporation (as defined in section 957), then notwithstanding paragraph (1) or subsection (a), such distribution shall be treated as a distribution to which section 331 applies.

"(4) REGULATIONS.—The Secretary shall provide such regulations as appropriate to prevent the abuse of this subsection, including regulations which provide, for the purposes of clause (iv) of paragraph (2)(A), that a corporation is not in existence for any period unless it is engaged in the active conduct of a trade or business or owns a significant ownership interest in another corporation so engaged.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions in complete liquidation occurring on or after the date of the enactment of this Act.

SEC. 894. EFFECTIVELY CONNECTED INCOME TO INCLUDE CERTAIN FOREIGN SOURCE INCOME.

(a) IN GENERAL.—Section 864(c)(4)(B) (relating to treatment of income from sources without the United States as effectively connected income) is amended by adding at the end the following new flush sentence:

"Any income or gain which is equivalent to any item of income or gain described in clause (i), (ii), or (iii) shall be treated in the same manner as such item for purposes of this subparagraph.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 895. RECAPTURE OF OVERALL FOREIGN LOSSES ON SALE OF CONTROLLED FOREIGN CORPORATION.

(a) IN GENERAL.—Section 904(f)(3) (relating to dispositions) is amending by adding at the end the following new subparagraph:

"(D) APPLICATION TO CERTAIN DISPOSITIONS OF STOCK IN CONTROLLED FOREIGN CORPORATION.—

"(i) IN GENERAL.—This paragraph shall apply to an applicable disposition in the same manner as if it were a disposition of property described in subparagraph (A), except that the exception contained in subparagraph (C)(i) shall not apply.

"(ii) APPLICABLE DISPOSITION.—For purposes of clause (i), the term 'applicable disposition' means any disposition of any share of stock in a controlled foreign corporation in a transaction or series of transactions if, immediately before such transaction or series of transactions, the taxpayer owned more than 50 percent (by vote or value) of the stock of the controlled foreign corporation. Such term shall not include a disposition described in clause (iii) or (iv), except that clause (i) shall apply to any gain recognized on any such disposition.

"(iii) EXCEPTION FOR CERTAIN EXCHANGES WHERE OWNERSHIP PERCENTAGE RETAINED.—A disposition shall not be treated as an applicable disposition under clause (ii) if it is part of a transaction or series of transactions—

"(I) to which section 351 or 721 applies, or under which the transferor receives stock in a foreign corporation in exchange for the stock in the controlled foreign corporation and the stock received is exchanged basis property (as defined in section 7701(a)(44)), and

"(II) immediately after which, the transferor owns (by vote or value) at least the same percentage of stock in the controlled foreign corporation (or, if the controlled foreign corporation is not in existence after such transaction or series of transactions, in another foreign corporation stock in which was received by the transferor in exchange for stock in the controlled foreign corporation) as the percentage of stock in the controlled foreign corporation which the taxpayer owned immediately before such transaction or series of transactions.

"(iv) EXCEPTION FOR CERTAIN ASSET ACQUISITIONS.—A disposition shall not be treated as an applicable disposition under clause (ii) if it is part of a transaction or series of transactions in which the taxpayer (or any member of a controlled group of corporations filing a consolidated return under section 1501 which includes the taxpayer) acquires the assets of a controlled foreign corporation in exchange for the shares of the controlled foreign corporation in a liquidation described in section 332 or a reorganization described in section 368(a)(1).

"(v) CONTROLLED FOREIGN CORPORATION.—For purposes of this subparagraph, the term 'controlled foreign corporation' has the meaning given such term by section 957.

"(vi) STOCK OWNERSHIP.—For purposes of this subparagraph, ownership of stock shall be determined under the rules of subsections (a) and (b) of section 958.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to dispositions after the date of the enactment of this Act.

SEC. 896. RECOGNITION OF CANCELLATION OF INDEBTEDNESS INCOME REALIZED ON SATISFACTION OF DEBT WITH PARTNERSHIP INTEREST.

(a) IN GENERAL.—Paragraph (8) of section 108(e) (relating to general rules for discharge of indebtedness (including discharges not in title 11 cases or insolvency)) is amended to read as follows:

"(8) INDEBTEDNESS SATISFIED BY CORPORATE STOCK OR PARTNERSHIP INTEREST.—For purposes of determining income of a debtor from discharge of indebtedness, if—

"(A) a debtor corporation transfers stock, or

"(B) a debtor partnership transfers a capital or profits interest in such partnership,

to a creditor in satisfaction of its recourse or nonrecourse indebtedness, such corporation or partnership shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock or interest. In the case of any partnership, any discharge of indebtedness income recognized under this paragraph shall be included in the distributive shares of taxpayers which were the partners in the partnership immediately before such discharge.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to cancellations of indebtedness occurring on or after the date of the enactment of this Act.

SEC. 897. DENIAL OF INSTALLMENT SALE TREATMENT FOR ALL READILY TRADABLE DEBT.

(a) IN GENERAL.—Section 453(f)(4)(B) (relating to purchaser evidences of indebtedness payable on demand or readily tradable) is amended by striking "is issued by a corporation or a government or political subdivision thereof and".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales occurring on or after the date of the enactment of this Act.

SEC. 898. MODIFICATION OF TREATMENT OF TRANSFERS TO CREDITORS IN DIVISIVE REORGANIZATIONS.

(a) IN GENERAL.—Section 361(b)(3) (relating to treatment of transfers to creditors) is amended by adding at the end the following new sentence: "In the case of a reorganization described in section 368(a)(1)(D) with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355, this paragraph shall apply only to the extent that the sum of the money and the fair market value of other property transferred to such creditors does not exceed the adjusted bases of such assets transferred.".

(b) LIABILITIES IN EXCESS OF BASIS.—Section 357(c)(1)(B) is amended by inserting "with respect to which stock or securities of the corporation to which the assets are transferred are distributed in a transaction which qualifies under section 355" after "section 368(a)(1)(D)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers of money or other property, or liabilities assumed, in connection with a reorganization occurring on or after the date of the enactment of this Act.

SEC. 899. CLARIFICATION OF DEFINITION OF NONQUALIFIED PREFERRED STOCK.

(a) IN GENERAL.—Section 351(g)(3)(A) is amended by adding at the end the following: "Stock shall not be treated as participating in corporate growth to any significant extent unless there is a real and meaningful likelihood of the shareholder actually participating in the earnings and growth of the corporation.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to transactions after May 14, 2003.

SEC. 900. MODIFICATION OF DEFINITION OF CONTROLLED GROUP OF CORPORATIONS.

(a) IN GENERAL.—Section 1563(a)(2) (relating to brother-sister controlled group) is amended by striking "possessing—" and all that follows through "(B)" and inserting "possessing".

(b) APPLICATION OF EXISTING RULES TO OTHER CODE PROVISIONS.—Section 1563(f) (relating to other definitions and rules) is amended by adding at the end the following new paragraph:

"(5) BROTHER-SISTER CONTROLLED GROUP DEFINITION FOR PROVISIONS OTHER THAN THIS PART.—

"(A) IN GENERAL.—Except as specifically provided in an applicable provision, subsection (a)(2) shall be applied to an applicable provision as if it read as follows:

"'(2) BROTHER-SISTER CONTROLLED GROUP.—Two or more corporations if 5 or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2) stock possessing—

"'(A) at least 80 percent of the total combined voting power of all classes of stock entitled to vote, or at least 80 percent of the total value of shares of all classes of stock, of each corporation, and

"'(B) more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.'

"(B) APPLICABLE PROVISION.—For purposes of this paragraph, an applicable provision is any provision of law (other than this part) which incorporates the definition of controlled group of corporations under subsection (a).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 901. CLASS LIVES FOR UTILITY GRADING COSTS.

(a) GAS UTILITY PROPERTY.—Section 168(e)(3)(E) (defining 15-year property), as amended by this Act, is amended by striking "and" at the end of clause (iv), by striking the period at the end of clause (v) and inserting ", and", and by adding at the end the following new clause:

"(vi) initial clearing and grading land improvements with respect to gas utility property.".

(b) ELECTRIC UTILITY PROPERTY.—Section 168(e)(3) is amended by adding at the end the following new subparagraph:

"(F) 20-YEAR PROPERTY.—The term '20-year property' means initial clearing and grading land improvements with respect to any electric utility transmission and distribution plant.".

(c) CONFORMING AMENDMENT.—The table contained in section 168(g)(3)(B), as amended by this Act, is amended by inserting after the item relating to subparagraph (E)(v) the following new items:

"(E)(vi) .... 20".
"(F) .... 25".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

SEC. 902. CONSISTENT AMORTIZATION OF PERIODS FOR INTANGIBLES.

(a) START-UP EXPENDITURES.—

(1) ALLOWANCE OF DEDUCTION.—Paragraph (1) of section 195(b) (relating to start-up expenditures) is amended to read as follows:

"(1) ALLOWANCE OF DEDUCTION.—If a taxpayer elects the application of this subsection with respect to any start-up expenditures—

"(A) the taxpayer shall be allowed a deduction for the taxable year in which the active trade or business begins in an amount equal to the lesser of—

"(i) the amount of start-up expenditures with respect to the active trade or business, or

"(ii) $5,000, reduced (but not below zero) by the amount by which such start-up expenditures exceed $50,000, and

"(B) the remainder of such start-up expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the active trade or business begins.".

(2) CONFORMING AMENDMENT.—Subsection (b) of section 195 is amended by striking "AMORTIZE" and inserting "DEDUCT" in the heading.

(b) ORGANIZATIONAL EXPENDITURES.—Subsection (a) of section 248 (relating to organizational expenditures) is amended to read as follows:

"(a) ELECTION TO DEDUCT.—If a corporation elects the application of this subsection (in accordance with regulations prescribed by the Secretary) with respect to any organizational expenditures—

"(1) the corporation shall be allowed a deduction for the taxable year in which the corporation begins business in an amount equal to the lesser of—

"(A) the amount of organizational expenditures with respect to the taxpayer, or

"(B) $5,000, reduced (but not below zero) by the amount by which such organizational expenditures exceed $50,000, and

"(2) the remainder of such organizational expenditures shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the corporation begins business.".

(c) TREATMENT OF ORGANIZATIONAL AND SYNDICATION FEES OR PARTNERSHIPS.—

(1) IN GENERAL.—Section 709(b) (relating to amortization of organization fees) is amended by redesignating paragraph (2) as paragraph (3) and by amending paragraph (1) to read as follows:

"(1) ALLOWANCE OF DEDUCTION.—If a taxpayer elects the application of this subsection (in accordance with regulations prescribed by *the Secretary) with respect to any organizational expenses—*

“(A) the taxpayer shall be allowed a deduction for the taxable year in which the partnership begins business in an amount equal to the lesser of—

“(i) the amount of organizational expenses with respect to the partnership, or

“(ii) $5,000, reduced (but not below zero) by the amount by which such organizational expenses exceed $50,000, and

“(B) the remainder of such organizational expenses shall be allowed as a deduction ratably over the 180-month period beginning with the month in which the partnership begins business.

“(2) DISPOSITIONS BEFORE CLOSE OF AMORTIZATION PERIOD.—In any case in which a partnership is liquidated before the end of the period to which paragraph (1)(B) applies, any deferred expenses attributable to the partnership which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.”.

(2) CONFORMING AMENDMENT.—Subsection (b) of section 709 is amended by striking “AMORTIZATION” and inserting “DEDUCTION” in the heading.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act.

SEC. 903. FREEZE OF PROVISIONS REGARDING SUSPENSION OF INTEREST WHERE SECRETARY FAILS TO CONTACT TAXPAYER.

(a) IN GENERAL.—Section 6404(g) (relating to suspension of interest and certain penalties where Secretary fails to contact taxpayer) is amended by striking “1-year period (18-month period in the case of taxable years beginning before January 1, 2004)” both places it appears and inserting “18-month period”.

(b) EXCEPTION FOR GROSS MISSTATEMENT.—Section 6404(g)(2) (relating to exceptions) is amended by striking “or” at the end of subparagraph (C), by redesignating subparagraph (D) as subparagraph (E), and by inserting after subparagraph (C) the following new subparagraph:

“(D) any interest, penalty, addition to tax, or additional amount with respect to any gross misstatement; or”.

(c) EXCEPTION FOR LISTED AND REPORTABLE TRANSACTIONS.—Section 6404(g)(2) (relating to exceptions), as amended by subsection (b), is amended by striking “or” at the end of subparagraph (D), by redesignating subparagraph (E) as subparagraph (F), and by inserting after subparagraph (D) the following new subparagraph:

“(E) any interest, penalty, addition to tax, or additional amount with respect to any reportable transaction with respect to which the requirement of section 6664(d)(2)(A) is not met and any listed transaction (as defined in 6707A(c)); or”.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2003.

(2) EXCEPTION FOR REPORTABLE OR LISTED TRANSACTIONS.—The amendments made by subsection (c) shall apply with respect to interest accruing after October 3, 2004.

SEC. 904. INCREASE IN WITHHOLDING FROM SUPPLEMENTAL WAGE PAYMENTS IN EXCESS OF $1,000,000.

(a) IN GENERAL.—If an employer elects under Treasury Regulation 31.3402(g)-1 to determine the amount to be deducted and withheld from any supplemental wage payment by using a flat percentage rate, the rate to be used in determining the amount to be so deducted and withheld shall not be less than 28 percent (or the corresponding rate in effect under section 1(i)(2) of the Internal Revenue Code of 1986 for taxable years beginning in the calendar year in which the payment is made).

(b) SPECIAL RULE FOR LARGE PAYMENTS.—

(1) IN GENERAL.—Notwithstanding subsection (a), if the supplemental wage payment, when added to all such payments previously made by the employer to the employee during the calendar year, exceeds $1,000,000, the rate used with respect to such excess shall be equal to the maximum rate of tax in effect under section 1 of such Code for taxable years beginning in such calendar year.

(2) AGGREGATION.—All persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as a single employer for purposes of this subsection.

(c) CONFORMING AMENDMENT.—Section 13273 of the Revenue Reconciliation Act of 1993 (Public Law 103-66) is repealed.

(d) EFFECTIVE DATE.—The provisions of, and the amendment made by, this section shall apply to payments made after December 31, 2004.

SEC. 905. TREATMENT OF SALE OF STOCK ACQUIRED PURSUANT TO EXERCISE OF STOCK OPTIONS TO COMPLY WITH CONFLICT-OF-INTEREST REQUIREMENTS.

(a) IN GENERAL.—Section 421 (relating to general rules for certain stock options) is amended by adding at the end the following new subsection:

“(d) CERTAIN SALES TO COMPLY WITH CONFLICT-OF-INTEREST REQUIREMENTS.—If—

“(1) a share of stock is transferred to an eligible person (as defined in section 1043(b)(1)) pursuant to such person's exercise of an option to which this part applies, and

“(2) such share is disposed of by such person pursuant to a certificate of divestiture (as defined in section 1043(b)(2)),

such disposition shall be treated as meeting the requirements of section 422(a)(1) or 423(a)(1), whichever is applicable.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to sales after the date of the enactment of this Act.

SEC. 906. APPLICATION OF BASIS RULES TO NONRESIDENT ALIENS.

(a) IN GENERAL.—Section 72 (relating to annuities and certain proceeds of endowment and life insurance contracts) is amended by redesignating subsection (w) as subsection (x) and by inserting after subsection (v) the following new subsection:

“(w) APPLICATION OF BASIS RULES TO NONRESIDENT ALIENS.—

“(1) IN GENERAL.—Notwithstanding any other provision of this section, for purposes of determining the portion of any distribution which is includible in gross income of a distributee who is a citizen or resident of the United States, the investment in the contract shall not include any applicable nontaxable contributions or applicable nontaxable earnings.

“(2) APPLICABLE NONTAXABLE CONTRIBUTION.—For purposes of this subsection, the term ‘applicable nontaxable contribution’ means any employer or employee contribution—

“(A) which was made with respect to compensation—

“(i) for labor or personal services performed by an employee who, at the time the labor or services were performed, was a nonresident alien for purposes of the laws of the United States in effect at such time, and

“(ii) which is treated as from sources without the United States, and

“(B) which was not subject to income tax (and would have been subject to income tax if paid as cash compensation when the services were rendered) under the laws of the United States or any foreign country.

“(3) APPLICABLE NONTAXABLE EARNINGS.—For purposes of this subsection, the term ‘applicable nontaxable earnings’ means earnings—

“(A) which are paid or accrued with respect to any employer or employee contribution which was made with respect to compensation for labor or personal services performed by an employee,

“(B) with respect to which the employee was at the time the earnings were paid or accrued a nonresident alien for purposes of the laws of the United States, and

“(C) which were not subject to income tax under the laws of the United States or any foreign country.

“(4) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this subsection, including regulations treating contributions and earnings as not subject to tax under the laws of any foreign country where appropriate to carry out the purposes of this subsection.”

(b) BASIS.—Section 83 (relating to property transferred in connection with the performance of services is amended by adding after paragraph (3) of subsection (c) the following new paragraph:

“(4) For purposes of determining an individual's basis in property transferred in connection with the performance of services, rules similar to the rules of section 72(w) shall apply.”

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions on or after the date of the enactment of this Act.

SEC. 907. LIMITATION OF EMPLOYER DEDUCTION FOR CERTAIN ENTERTAINMENT EXPENSES.

(a) IN GENERAL.—Paragraph (2) of section 274(e) (relating to expenses treated as compensation) is amended to read as follows:

“(2) EXPENSES TREATED AS COMPENSATION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), expenses for goods, services, and facilities, to the extent that the expenses are treated by the taxpayer, with respect to the recipient of the entertainment, amusement, or recreation, as compensation to an employee on the taxpayer's return of tax under this chapter and as wages to such employee for purposes of chapter 24 (relating to withholding of income tax at source on wages).

“(B) SPECIFIED INDIVIDUALS.—

“(i) IN GENERAL.—In the case of a recipient who is a specified individual, subparagraph (A) and paragraph (9) shall each be applied by substituting ‘to the extent that the expenses do not exceed the amount of the expenses which’ for ‘to the extent that the expenses’.

“(ii) SPECIFIED INDIVIDUAL.—For purposes of clause (i), the term ‘specified individual’ means any individual who—

“(I) is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to the taxpayer, or

“(II) would be subject to such requirements if the taxpayer were an issuer of equity securities referred to in such section.”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to expenses incurred after the date of the enactment of this Act.

SEC. 908. RESIDENCE AND SOURCE RULES RELATING TO UNITED STATES POSSESSIONS.

(a) RESIDENCE AND SOURCE RULES.—Subpart D of part III of subchapter N of chapter 1 (relating to possessions of the United States) is amended by adding at the end the following new section:

“SEC. 937. RESIDENCE AND SOURCE RULES INVOLVING POSSESSIONS.

“(a) BONA FIDE RESIDENT.—For purposes of this subpart, section 865(g)(3), section 876, section 881(b), paragraphs (2) and (3) of section 901(b), section 957(c), section 3401(a)(8)(C), and section 7654(a), except as provided in regulations, the term ‘bona fide resident’ means a person—

“(1) who is present for at least 183 days during the taxable year in Guam, American Samoa,

the Northern Mariana Islands, Puerto Rico, or the Virgin Islands, as the case may be, and

"(2) who does not have a tax home (determined under the principles of section 911(d)(3) without regard to the second sentence thereof) outside such specified possession during the taxable year and does not have a closer connection (determined under the principles of section 7701(b)(3)(B)(ii)) to the United States or a foreign country than to such specified possession.

For purposes of paragraph (1), the determination as to whether a person is present for any day shall be made under the principles of section 7701(b).

"(b) SOURCE RULES.—Except as provided in regulations, for purposes of this title—

"(1) except as provided in paragraph (2), rules similar to the rules for determining whether income is income from sources within the United States or is effectively connected with the conduct of a trade or business within the United States shall apply for purposes of determining whether income is from sources within a possession specified in subsection (a)(1) or effectively connected with the conduct of a trade or business within any such possession, and

"(2) any income treated as income from sources within the United States or as effectively connected with the conduct of a trade or business within the United States shall not be treated as income from sources within any such possession or as effectively connected with the conduct of a trade or business within any such possession.

"(c) REPORTING REQUIREMENT.—

"(1) IN GENERAL.—If, for any taxable year, an individual takes the position for United States income tax reporting purposes that the individual became, or ceases to be, a bona fide resident of a possession specified in subsection (a)(1), such individual shall file with the Secretary, at such time and in such manner as the Secretary may prescribe, notice of such position.

"(2) TRANSITION RULE.—If, for any of an individual's 3 taxable years ending before the individual's first taxable year ending after the date of the enactment of this subsection, the individual took a position described in paragraph (1), the individual shall file with the Secretary, at such time and in such manner as the Secretary may prescribe, notice of such position.".

(b) PENALTY.—Section 6688 is amended—

(1) by inserting "under section 937(c) or" before "by regulations", and

(2) by striking "$100" and inserting "$1,000".

(c) CONFORMING AND CLERICAL AMENDMENTS.—

(1) Section 931(d) is amended to read as follows:

"(d) EMPLOYEES OF THE UNITED STATES.—Amounts paid for services performed as an employee of the United States (or any agency thereof) shall be treated as not described in paragraph (1) or (2) of subsection (a)."

(2) Section 932 is amended by striking "at the close of the taxable year" and inserting "during the entire taxable year" each place it appears.

(3) Section 934(b)(4) is amended by striking "the Virgin Islands or" each place it appears.

(4) Section 935, as in effect before the effective date of its repeal, is amended—

(A) by striking "for the taxable year who" in subsection (a) and inserting "who, during the entire taxable year",

(B) by inserting "bona fide" before "resident" in subsection (a)(1),

(C) in subsection (b)(1)—

(i) by inserting "(other a bona fide resident of Guam during the entire taxable year)" after "United States" in subparagraph (A), and

(ii) by inserting "bona fide" before "resident" in subparagraph (B), and

(D) in subsection (b)(2) by striking "residence and".

(5) Section 957(c) is amended—

(A) in paragraph (2)(B) by striking "conduct of an active" and inserting "active conduct of a", and

(B) in the last sentence by striking "derived from sources within a possession, was effectively connected with the conduct of a trade or business within a possession, or".

(6) The table of sections of subpart D of part III of subchapter N of chapter 1 is amended by adding at the end the following new item:

"Sec. 937. Residence and source rules involving possessions.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

(2) 183-DAY RULE.—Section 937(a)(1) of the Internal Revenue Code of 1986 (as added by this section) shall apply to taxable years beginning after the date of the enactment of this Act.

(3) SOURCING.—Section 937(b)(2) of such Code (as so added) shall apply to income earned after the date of the enactment of this Act.

SEC. 909. SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.

(a) IN GENERAL.—Section 451 (relating to general rule for taxable year of inclusion) is amended by adding at the end the following new subsection:

"(i) SPECIAL RULE FOR SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.—

"(1) IN GENERAL.—In the case of any qualifying electric transmission transaction for which the taxpayer elects the application of this section, qualified gain from such transaction shall be recognized—

"(A) in the taxable year which includes the date of such transaction to the extent the amount realized from such transaction exceeds—

"(i) the cost of exempt utility property which is purchased by the taxpayer during the 4-year period beginning on such date, reduced (but not below zero) by

"(ii) any portion of such cost previously taken into account under this subsection, and

"(B) ratably over the 8-taxable year period beginning with the taxable year which includes the date of such transaction, in the case of any such gain not recognized under subparagraph (A).

"(2) QUALIFIED GAIN.—For purposes of this subsection, the term 'qualified gain' means, with respect to any qualifying electric transmission transaction in any taxable year—

"(A) any ordinary income derived from such transaction which would be required to be recognized under section 1245 or 1250 for such taxable year (determined without regard to this subsection), and

"(B) any income derived from such transaction in excess of the amount described in subparagraph (A) which is required to be included in gross income for such taxable year (determined without regard to this subsection).

"(3) QUALIFYING ELECTRIC TRANSMISSION TRANSACTION.—For purposes of this subsection, the term 'qualifying electric transmission transaction' means any sale or other disposition before January 1, 2007, of—

"(A) property used in the trade or business of providing electric transmission services, or

"(B) any stock or partnership interest in a corporation or partnership, as the case may be, whose principal trade or business consists of providing electric transmission services,

but only if such sale or disposition is to an independent transmission company.

"(4) INDEPENDENT TRANSMISSION COMPANY.—For purposes of this subsection, the term 'independent transmission company' means—

"(A) an independent transmission provider approved by the Federal Energy Regulatory Commission,

"(B) a person—

"(i) who the Federal Energy Regulatory Commission determines in its authorization of the transaction under section 203 of the Federal Power Act (16 U.S.C. 824b) or by declaratory order is not a market participant within the meaning of such Commission's rules applicable to independent transmission providers, and

"(ii) whose transmission facilities to which the election under this subsection applies are under the operational control of a Federal Energy Regulatory Commission-approved independent transmission provider before the close of the period specified in such authorization, but not later than the close of the period applicable under subsection (a)(2)(B) as extended under paragraph (2), or

"(C) in the case of facilities subject to the jurisdiction of the Public Utility Commission of Texas—

"(i) a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission provider, or

"(ii) a political subdivision or affiliate thereof whose transmission facilities are under the operational control of a person described in clause (i).

"(5) EXEMPT UTILITY PROPERTY.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'exempt utility property' means property used in the trade or business of—

"(i) generating, transmitting, distributing, or selling electricity, or

"(ii) producing, transmitting, distributing, or selling natural gas.

"(B) NONRECOGNITION OF GAIN BY REASON OF ACQUISITION OF STOCK.—Acquisition of control of a corporation shall be taken into account under this subsection with respect to a qualifying electric transmission transaction only if the principal trade or business of such corporation is a trade or business referred to in subparagraph (A).

"(6) SPECIAL RULE FOR CONSOLIDATED GROUPS.—In the case of a corporation which is a member of an affiliated group filing a consolidated return, any exempt utility property purchased by another member of such group shall be treated as purchased by such corporation for purposes of applying paragraph (1)(A).

"(7) TIME FOR ASSESSMENT OF DEFICIENCIES.—If the taxpayer has made the election under paragraph (1) and any gain is recognized by such taxpayer as provided in paragraph (1)(B), then—

"(A) the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain on the transaction is realized, attributable to such gain shall not expire prior to the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of the purchase of exempt utility property or of an intention not to purchase such property, and

"(B) such deficiency may be assessed before the expiration of such 3-year period notwithstanding any law or rule of law which would otherwise prevent such assessment.

"(8) PURCHASE.—For purposes of this subsection, the taxpayer shall be considered to have purchased any property if the unadjusted basis of such property is its cost within the meaning of section 1012.

"(9) ELECTION.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary may require and, once made, shall be irrevocable.

"(10) NONAPPLICATION OF INSTALLMENT SALES TREATMENT.—Section 453 shall not apply to any qualifying electric transmission transaction with respect to which an election to apply this subsection is made.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions occurring after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 910. EXPANSION OF LIMITATION ON DEPRECIATION OF CERTAIN PASSENGER AUTOMOBILES.

(a) IN GENERAL.—Section 179(b) (relating to limitations) is amended by adding at the end the following new paragraph:

"(6) LIMITATION ON COST TAKEN INTO ACCOUNT FOR CERTAIN PASSENGER VEHICLES.—

"(A) IN GENERAL.—The cost of any sport utility vehicle for any taxable year which may be taken into account under this section shall not exceed $25,000.

"(B) SPORT UTILITY VEHICLE.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—The term 'sport utility vehicle' means any 4-wheeled vehicle—

"(I) which is primarily designed or which can be used to carry passengers over public streets, roads, or highways (except any vehicle operated exclusively on a rail or rails),

"(II) which is not subject to section 280F, and

"(III) which is rated at not more than 14,000 pounds gross vehicle weight.

"(ii) CERTAIN VEHICLES EXCLUDED.—Such term does not include any vehicle which—

"(I) is designed to have a seating capacity of more than 9 persons behind the driver's seat,

"(II) is equipped with a cargo area of at least 6 feet in interior length which is an open area or is designed for use as an open area but is enclosed by a cap and is not readily accessible directly from the passenger compartment, or

"(III) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver's seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after the date of the enactment of this Act.

And the Senate agree to the same.

From the Committee on Ways and Means, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

WILLIAM THOMAS,
PHIL CRANE,
JIM MCCRERY,

From the Committee on Agriculture, for consideration of Title VII of the House bill, and subtitle B of Title XI of the Senate amendment, and modifications committed to conference:

BOB GOODLATTE,
JOHN BOEHNER,
CHARLIE STENHOLM,

From the Committee on Education and the Workforce, for consideration of sections 489, 489, 616, 701, and 719 of the Senate amendment, and modifications committed to conference:

JOHN BOEHNER,
SAM JOHNSON,

From the Committee on Energy and Commerce, for consideration of sections 662 and subtitle A of Title XI of the Senate amendment, and modifications committed to conference:

JOE BARTON,
RICHARD BURR,

From the Committee on the Judiciary, for consideration of sections 422, 442, 1111, 1151, and 1161 of the Senate amendment, and modifications committed to conference:

LAMAR SMITH,

For consideration of the House bill and the Senate amendment, and modifications committed to conference:

TOM DELAY,
Managers on the Part of the House.

CHUCK GRASSLEY,
ORRIN HATCH,
DON NICKLES,
TRENT LOTT,
OLYMPIA SNOWE,
JON KYL,
CRAIG THOMAS,
RICK SANTORUM,
GORDON SMITH,
JIM BUNNING,
MITCH MCCONNELL,
MAX BAUCUS,
TOM DASCHLE,
JOHN BREAUX,
KENT CONRAD,
JEFF BINGAMAN,
BLANCHE L. LINCOLN,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4520), to amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing service, and high-technology businesses and workers more competitive and productive both at home and abroad, submit the following joint statement to the House and the Senate in explantion of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changtes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

TITLE I—PROVISIONS RELATING TO REPEAL OF EXCLUSION FOR EXTRATERRITORIAL INCOME

A. REPEAL OF EXTRATERRITORIAL INCOME REGIME

(Sec. 101 of the House bill, sec. 101 of the Senate amendment, and secs. 114 and 941 through 943 of the Code)

PRESENT LAW

Like many other countries, the United States has long provided export-related benefits under its tax law. In the United States, for most of the last two decades, these benefits were provided under the foreign sales corporation ("FSC") regime. In 2000, the European Union succeeded in having the FSC regime declared a prohibited export subsidy by the World Trade Organization ("WTO"). In response to this WTO finding, the United States repealed the FSC rules and enacted a new regime, under the FSC Repeal and Extraterritorial Income Exclusion Act of 2000.[1] The European Union immediately challenged the extraterritorial income ("ETI") regime in the WTO, and in January of 2002 the WTO Appellate Body held that the ETI regime also constituted a prohibited export subsidy under the relevant trade agreements.

Under the ETI regime, an exclusion from gross income applies with respect to "extraterritorial income," which is a taxpayer's gross income attributable to "foreign trading gross receipts." This income is eligible for the exclusion to the extent that it is "qualifying foreign trade income." Qualifying foreign trade income is the amount of gross income that, if excluded, would result in a reduction of taxable income by the greatest of: (1) 1.2 percent of the foreign trading gross receipts derived by the taxpayer from the transaction; (2) 15 percent of the "foreign trade income" derived by the taxpayer from the transaction;[2] or (3) 30 percent of the "foreign sale and leasing income" derived by the taxpayer from the transaction.[3]

Foreign trading gross receipts are gross receipts derived from certain activities in connection with "qualifying foreign trade property" with respect to which certain economic processes take place outside of the United States. Specifically, the gross receipts must be: (1) from the sale, exchange, or other disposition of qualifying foreign trade property; (2) from the lease or rental of qualifying foreign trade property for use by the lessee outside the United States; (3) for services which are related and subsidiary to the sale, exchange, disposition, lease, or rental of qualifying foreign trade property (as described above); (4) for engineering or architectural services for construction projects located outside the United States; or (5) for the performance of certain managerial services for unrelated persons. A taxpayer may elect to treat gross receipts from a transaction as not foreign trading gross receipts. As a result of such an election, a taxpayer may use any related foreign tax credits in lieu of the exclusion.

Qualifying foreign trade property generally is property manufactured, produced, grown, or extracted within or outside the United States that is held primarily for sale, lease, or rental in the ordinary course of a trade or business for direct use, consumption, or disposition outside the United States. No more than 50 percent of the fair market value of such property can be attributable to the sum of: (1) the fair market value of articles manufactured outside the United States; and (2) the direct costs of labor performed outside the United States. With respect to property that is manufactured outside the United States, certain rules are provided to ensure consistent U.S. tax treatment with respect to manufacturers.

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[1] Transition rules delayed the repeal of the FSC rules and the effective date of ETI for transactions before January 1, 2002. An election was provided, however, under which taxpayers could adopt ETI at an earlier date for transactions after September 30, 2000. This election allowed the ETI rules to apply to transactions after September 30, 2000, including transactions occurring pursuant to pre-existing binding contracts.

[2] "Foreign trade income" is the taxable income of the taxpayer (determined without regard to the exclusion of qualifying foreign trade income) attributable to foreign trading gross receipts.

[3] "Foreign sale and leasing income" is the amount of the taxpayer's foreign trade income (with respect to a transaction) that is properly allocable to activities that constitute foreign economic processes. Foreign sale and leasing income also includes foreign trade income derived by the taxpayer in connection with the lease or rental of qualifying foreign trade property for use by the lessee outside the United States.

HOUSE BILL

The provision repeals the ETI exclusion. For transactions prior to 2005, taxpayers retain 100 percent of their ETI benefits. For transactions after 2004, the provision provides taxpayers with 80 percent of their otherwise-applicable ETI benefits for transactions during 2005 and 60 percent of their otherwise-applicable ETI benefits for transactions during 2006. However, the provision provides that the ETI exclusion provisions remain in effect for transactions in the ordinary course of a trade or business if such transactions are pursuant to a binding contract[4] between the taxpayer and an unrelated person and such contract is in effect on January 14, 2002, and at all times thereafter.

In addition, foreign corporations that elected to be treated for all Federal tax purposes as domestic corporations in order to facilitate the claiming of ETI benefits are allowed to revoke such elections within one year of the date of enactment of the provision without recognition of gain or loss, subject to anti-abuse rules.

Effective date.—The provision is effective for transactions after December 31, 2004.

SENATE AMENDMENT

The provision repeals the exclusion for extraterritorial income. However, the provision provides that the extraterritorial income exclusion provisions remain in effect for transactions in the ordinary course of a trade or business if such transactions are pursuant to a binding contract between the taxpayer and an unrelated person and such contract is in effect on September 17, 2003, and at all times thereafter.

The provision permits foreign corporations that have elected to be treated as U.S. corporations pursuant to the extraterritorial income exclusion provisions to revoke their elections. Such revocations are effective on the date of enactment of this provision. A corporation revoking its election is treated as a U.S. corporation that transfers all of its property to a foreign corporation in connection with an exchange described in section 354 of the Code. In general, the corporation shall not recognize any gain or loss on such deemed transfer. However, a revoking corporation shall recognize any gain on any asset held by the corporation if: (1) the basis of such asset is determined (in whole or in part) by reference to the basis of such asset in the hands of the person from whom the corporation acquired such asset; (2) the asset was acquired by an actual transfer (rather than as a result of the U.S. corporation election by the corporation) occurring on or after the first day on which the U.S. corporation election by the corporation was effective; and (3) a principal purpose of the acquisition was the reduction or avoidance of tax.

The provision also provides a deduction for taxable years of certain corporations ending after the date of enactment of the provision and beginning before January 1, 2007.[5] The amount of the deduction for each such taxable year is equal to a specified percentage of the amount that, for the taxable year of a corporation beginning in 2002, was excludable from the gross income of the corporation under the extraterritorial income exclusion provisions or was treated by the corporation as exempt foreign trade income of related FSCs from property acquired by the FSCs from the corporation.[6] However, this aggregate amount does not include any amount attributable to a transaction involving a lease by the corporation unless the corporation manufactured or produced (in whole or in part) the leased property.

The specified percentage to be used in determining the deduction is: 80 percent for calendar years 2004 and 2005; 60 percent for calendar year 2006; and 0 percent for calendar years 2007 and thereafter. For calendar year 2003, the specified percentage is the amount that bears the same ratio to 100 percent as the number of days after the date of enactment of this provision bears to 365. In the case of a corporation with a taxable year that is not the calendar year (i.e., a fiscal year corporation), a special rule is provided for determining a weighted average specified percentage based upon the calendar years that are included in the taxable year.

The deduction for a taxable year generally is reduced by the specified percentage of exempted FSC income and excluded extraterritorial income of the corporation for the taxable year from transactions pursuant to a binding contract.

Effective date.—The provision is effective for transactions occurring after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, except that under the conference agreement the ETI exclusion provisions remain in effect for transactions in the ordinary course of a trade or business if such transactions are pursuant to a binding contract[7] between the taxpayer and an unrelated person and such contract is in effect on September 17, 2003, and at all times thereafter.

Effective date.—The effective date is the same as the House bill.

B. DEDUCTION RELATING TO INCOME ATTRIBUTABLE TO UNITED STATES PRODUCTION ACTIVITIES

(Sec. 102 of the House bill, secs. 102 and 103 of the Senate amendment, and sec. 11 of the Code)

PRESENT LAW

A corporation's regular income tax liability is determined by applying the following tax rate schedule to its taxable income.

TABLE 1.—MARGINAL FEDERAL CORPORATE INCOME TAX RATES FOR 2004

Taxable income:	Income tax rate:
$0–$50,000	15 percent of taxable income.
$50,001–$75,000	25 percent of taxable income.
$75,001–$10,000,000	34 percent of taxable income.
Over $10,000,000	35 percent of taxable income.

The benefit of the first two graduated rates described above is phased out by a five-percent surcharge for corporations with taxable income between $100,000 and $335,000. Also, the benefit of the 34-percent rate is phased out by a three-percent surcharge for corporations with taxable income between $15 million and $18,333,333; a corporation with taxable income of $18,333,333 or more effectively is subject to a flat rate of 35 percent.

Under present law, there is no provision that reduces the corporate income tax for taxable income attributable to domestic production activities.

HOUSE BILL

In general

The House bill provides that the corporate tax rate applicable to qualified production activities income may not exceed 32 percent (34 percent for taxable years beginning before 2007) of the qualified production activities income.

Qualified production activities income

"Qualified production activities income" is the income attributable to domestic production gross receipts, reduced by the sum of: (1) the costs of goods sold that are allocable to such receipts; (2) other deductions, expenses, or losses that are directly allocable to such receipts; and (3) a proper share of other deductions, expenses, and losses that are not directly allocable to such receipts or another class of income.[8]

DOMESTIC PRODUCTION GROSS RECEIPTS

Under the House bill, "domestic production gross receipts" generally are gross receipts of a corporation that are derived from: (1) any sale, exchange or other disposition, or any lease, rental or license, of qualifying production property that was manufactured, produced, grown or extracted (in whole or in significant part) by the corporation within the United States;[9] (2) any sale, exchange or other disposition, or any lease, rental or license, of qualified film produced by the taxpayer; or (3) construction, engineering or architectural services performed in the United States for construction projects located in the United States. However, domestic production gross receipts do not include any gross receipts of the taxpayer derived from property that is leased, licensed or rented by the taxpayer for use by any related person.[10]

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[4] This rule also applies to a purchase option, renewal option, or replacement option that is included in such contract. For this purpose, a replacement option will be considered enforceable against a lessor notwithstanding the fact that a lessor retained approval of the replacement lessee.

[5] The deduction also is available to cooperatives engaged in the marketing of agricultural or horticultural products.

[6] In the case of a short taxable year that ends after the date of enactment and begins before January 1, 2007, the Treasury Secretary shall prescribe guidance for determining the amount of the deduction, including guidance that limits the amount of the deduction for a short taxable year based upon the proportion that the number of days in the short taxable year bears to 365.

[7] This rule also applies to a purchase option, renewal option, or replacement option that is included in such contract. For this purpose, a replacement option will be considered enforceable against a lessor notwithstanding the fact that a lessor retained approval of the replacement lessee.

[8] The House bill provides that Secretary shall prescribe rules for the proper allocation of items of income, deduction, expense, and loss for purposes of determining income attributable to domestic production activities. Where appropriate, such rules shall be similar to and consistent with relevant present-law rules (e.g., secs. 263A and 861).

[9] Domestic production gross receipts under the House bill include gross receipts of a taxpayer derived from any sale, exchange or other disposition of agricultural products with respect to which the taxpayer performs storage, handling or other processing activities (other than transportation activities) within the United States, provided such products are consumed in connection with, or incorporated into, the manufacturing, production, growth or extraction of qualifying production property (whether or not by the taxpayer). Domestic production gross receipts also include gross receipts of a taxpayer derived from any sale, exchange or other disposition of food products with respect to which the taxpayer performs processing activities (in whole or in significant part) within the United States.

[10] It is intended under the House bill that principles similar to those under the present-law extraterritorial income regime apply for this purpose. See Temp. Treas. Reg. sec. 1.927(a)-1T(f)(2)(i). For example, this exclusion generally does not apply to property leased by the taxpayer to a related person if the property is held for sublease, or is subleased, by the related person to an unrelated person for the ultimate use of such unrelated person. Similarly, the license of computer software to a related person for reproduction and sale, exchange, lease, rental or sublicense to an unrelated person for the ultimate use of such unrelated person is not treated

"Qualifying production property" under the House bill generally is any tangible personal property, computer software, or property described in section 168(f)(4) of the Code. "Qualified film" is any property described in section 168(f)(3) of the Code (other than certain sexually explicit productions) if 50 percent or more of the total compensation relating to the production of such film (other than compensation in the form of residuals and participations) constitutes compensation for services performed in the United States by actors, production personnel, directors, and producers.

Under the House bill, an election under section 631(a) made by a corporate taxpayer for a taxable year ending on or before the date of enactment to treat the cutting of timber as a sale or exchange, may be revoked by the taxpayer without the consent of the IRS for any taxable year ending after that date. The prior election (and revocation) is disregarded for purposes of making a subsequent election.

Effective date.—The House bill provision is effective for taxable years beginning after December 31, 2004.

SENATE AMENDMENT

In general

The Senate amendment provides a deduction equal to a portion of the taxpayer's qualified production activities income. For taxable years beginning after 2008, the Senate amendment deduction is nine percent of such income. For taxable years beginning in 2004, 2005, 2006, 2007 and 2008, the deduction is five, five, five, six, and seven percent of income, respectively. However, the deduction for a taxable year is limited to 50 percent of the wages paid by the taxpayer during such taxable year.[11] In the case of corporate taxpayers that are members of certain affiliated groups, the deduction is determined by treating all members of such groups as a single taxpayer.

Qualified production activities income

In general, "qualified production activities income" under the Senate amendment is the modified taxable income[12] of a taxpayer that is attributable to domestic production activities. Income attributable to domestic production activities generally is equal to domestic production gross receipts, reduced by the sum of: (1) the costs of goods sold that are allocable to such receipts;[13] (2) other deductions, expenses, or losses that are directly allocable to such receipts; and (3) a proper share of other deductions, expenses, and losses that are not directly allocable to such receipts or another class of income.[14]

For taxable years beginning before 2013, the Senate amendment provides that qualified production activities income is reduced by virtue of a fraction (not to exceed one), the numerator of which is the value of the domestic production of the taxpayer and the denominator of which is the value of the worldwide production of the taxpayer (the "domestic/worldwide fraction").[15] For taxable years beginning in 2010, 2011, and 2012, the reduction in qualified production activities income by virtue of this fraction is reduced by 25, 50, and 75 percent, respectively. For taxable years beginning after 2012, there is no reduction in qualified production activities income by virtue of this fraction.

Domestic production gross receipts

Under the Senate amendment, "domestic production gross receipts" are gross receipts of a taxpayer that are derived in the actual conduct of a trade or business from any sale, exchange or other disposition, or any lease, rental or license, of qualifying production property that was manufactured, produced, grown or extracted (in whole or in significant part) by the taxpayer within the United States or any possession of the United States.[16] Such term also includes a percentage of gross receipts derived from engineering or architectural services performed in the United States for construction projects in the United States.[17] Finally, such term includes gross receipts derived by the taxpayer from the use of film and videotape property produced in whole or in significant part by the taxpayer within the United States. "Qualifying production property" generally is any tangible personal property, computer software, or property described in section 168(f)(3) or (4) of the Code.[18] However, qualifying production property does not include: (1) consumable property that is sold, leased or licensed as an integral part of the provision of services; (2) oil or gas (other than certain primary products thereof);[19] (3) electricity; (4) water supplied by pipeline to the consumer; (5) utility services; and (6) any film, tape, recording, book, magazine, newspaper or similar property the market for which is primarily topical or otherwise essentially transitory in nature.[20]

Other rules

Qualified production activities income of passthrough entities (other than cooperatives)

With respect to domestic production activities of an S corporation, partnership, estate, trust or other passthrough entity (other than an agricultural or horticultural cooperative), the deduction under the Senate amendment generally is determined at the shareholder, partner or similar level by taking into account at such level the proportionate share of qualified production activities income of the entity.[21] The Senate amendment directs the Secretary to prescribe rules for the application of the deduction to passthrough entities, including reporting requirements and rules relating to restrictions on the allocation of the deduction to taxpayers at the partner or similar level.

Qualified production activities income of agricultural and horticultural cooperatives

With regard to member-owned agricultural and horticultural cooperatives formed under Subchapter T of the Code, the Senate amendment provides the same treatment of qualified production activities income derived

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as excluded property by reason of the license to the related person.

[11] For purposes of the Senate amendment, "wages" include the sum of the aggregate amounts of wages (as defined in section 3401(a) without regard to exclusions for remuneration paid for services performed in possessions of the United States) and elective deferrals that the taxpayer is required to include on statements with respect to the employment of employees of the taxpayer during the taxpayer's taxable year. Elective deferrals include elective deferrals as defined in section 402(g)(3), amounts deferred under section 457, and, for taxable years beginning after December 31, 2005, designated Roth contributions (as defined in section 402A). Any wages taken into account for purposes of determining the wage limitation under the Senate amendment cannot also be taken into account for purposes of determining any credit allowable under sections 30A or 936.

[12] "Modified taxable income" under the Senate amendment is taxable income of the taxpayer computed without regard to the deduction provided by the Senate amendment. Qualified production activities income is limited to the modified taxable income of the taxpayer.

[13] For purposes of determining such costs under the Senate amendment, any item or service that is imported into the United States without an arm's length transfer price shall be treated as acquired by purchase, and its cost shall be treated as not less than its fair market value when it entered the United States. A similar rule shall apply in determining the adjusted basis of leased or rented property where the lease or rental gives rise to domestic production gross receipts. With regard to property previously exported by the taxpayer for further manufacture, the increase in cost or adjusted basis shall not exceed the difference between the fair market value of the property when exported and the fair market value of the property when re-imported into the United States after further manufacture.

[14] The Senate amendment provides that the Secretary shall prescribe rules for the proper allocation of items of income, deduction, expense, and loss for purposes of determining income attributable to domestic production activities. Where appropriate, such rules shall be similar to and consistent with relevant present-law rules (e.g., secs. 263A and 861).

[15] For purposes of the domestic/worldwide fraction under the Senate amendment, the value of domestic production is the excess of domestic production gross receipts (as defined below) over the cost of deductible purchased inputs that are allocable to such receipts. Similarly, the value of worldwide production is the excess of worldwide production gross receipts over the cost of deductible purchased inputs that are allocable to such receipts. For purposes of determining the domestic/worldwide fraction, purchased inputs include: purchased services (other than employees) used in manufacture, production, growth, or extraction activities; purchased items consumed in connection with such activities; and purchased items incorporated as part of the property being manufactured, produced, grown, or extracted. In the case of corporate taxpayers that are members of certain affiliated groups, the domestic/worldwide fraction is determined by treating all members of such groups as a single taxpayer.

[16] Under the Senate amendment, domestic production gross receipts include gross receipts of a taxpayer derived from any sale, exchange or other disposition of agricultural products with respect to which the taxpayer performs storage, handling or other processing activities (but not transportation activities) within the United States, provided such products are consumed in connection with, or incorporated into, the manufacturing, production, growth or extraction of qualifying production property (whether or not by the taxpayer).

[17] For taxable years beginning in 2004 through 2008, the applicable percentage is 25%. For taxable years beginning in 2009 through 2012, the applicable percentage is 50%. For taxable years beginning after 2012, the applicable percentage is 100%.

[18] For purposes of the definition of qualified production property under the Senate amendment, property described in section 168(f)(3) or (4) of the Code includes underlying copyrights and trademarks. In addition, gross receipts from the sale, exchange, lease, rental, license or other disposition of property described in section 168(f)(3) or (4) are treated as domestic production gross receipts if more than 50 percent of the aggregate development and production costs of such property are incurred by the taxpayer within the United States. For this purpose, property that is acquired by the taxpayer after development or production has commenced, but before such property generates substantial gross receipts, shall be treated as developed or produced by the taxpayer.

[19] Under the Senate amendment, qualifying production property does not include extracted but unrefined oil or gas, but generally includes primary products of oil and gas that are produced by the taxpayer. Examples of primary products for this purpose include motor fuels, chemical feedstocks and fertilizer. However, primary products do not include the output of a natural gas processing plant. Natural gas processing plants generally are located at or near the producing gas field that supplies the facility, and the facility serves to separate impurities from the natural gas liquids recovered from the field for the purpose of selling the liquids for future production and preparation of the natural gas for pipeline transportation.

[20] The topical and transitory exclusion does not apply to the extent of the gross receipts from the use of film and videotape property produced in whole or in significant part by the taxpayer within the United States.

[21] However, the wage limitation described above is determined at the entity level in computing the deduction with respect to qualified production activities income of a passthrough entity.

from products marketed through cooperatives as it provides for qualified production activities income of other taxpayers (i.e., the cooperative may claim a deduction from qualified production activities income). In addition, the Senate amendment provides that the amount of any patronage dividends or per-unit retain allocations paid to a member of an agricultural or horticultural cooperative (to which Part I of Subchapter T applies), which is allocable to the portion of qualified production activities income of the cooperative that is deductible under the Senate amendment, is excludible from the gross income of the member. In order to qualify, such amount must be designated by the organization as allocable to the deductible portion of qualified production activities income in a written notice mailed to its patrons not later than the payment period described in section 1382(d). The cooperative cannot reduce its income under section 1382 (e.g., cannot claim a dividends-paid deduction) for such amounts.

Separate application to films and videotape

Under the Senate amendment, the deduction provided by this provision with respect to films and videotape is determined separately with respect to qualified production activities income of the taxpayer allocable to each of three markets: theatrical, broadcast television, and home video. The Senate amendment provides rules for making a separate determination of qualified production activities allocable to each market.

Alternative minimum tax

The deduction provided by the Senate amendment is allowed for purposes of the alternative minimum tax (including adjusted current earnings). The deduction is determined by reference to modified alternative minimum taxable income.

Coordination with ETI repeal

For purposes of the Senate amendment, domestic production gross receipts does not include gross receipts from any transaction that produces excluded extraterritorial income pursuant to the binding contract exception to the ETI repeal provisions of the Senate amendment.

Qualified production activities income is determined without regard to any deduction provided by the ETI repeal provisions of the Senate amendment.

Effective date.—The Senate amendment provision is effective for taxable years ending after the date of enactment.

CONFERENCE AGREEMENT

In general

The conference agreement provides a deduction from taxable income (or, in the case of an individual, adjusted gross income) that is equal to a portion of the taxpayer's qualified production activities income. For taxable years beginning after 2009, the deduction is equal to nine percent of the lesser of (1) the qualified production activities income of the taxpayer for the taxable year, or (2) taxable income (determined without regard to this provision) for the taxable year. For taxable years beginning in 2005 and 2006, the deduction is three percent of income and, for taxable years beginning in 2007, 2008 and 2009, the deduction is six percent of income. However, the deduction for a taxable year is limited to 50 percent of the wages paid by the taxpayer during the calendar year that ends in such taxable year.[22] In the case of corporate taxpayers that are members of certain affiliated groups, the deduction is determined by treating all members of such groups as a single taxpayer and the deduction is allocated among such members in proportion to each member's respective amount (if any) of qualified production activities income.

Qualified production activities income

In general, "qualified production activities income" is equal to domestic production gross receipts, reduced by the sum of: (1) the costs of goods sold that are allocable to such receipts;[23] (2) other deductions, expenses, or losses that are directly allocable to such receipts; and (3) a proper share of other deductions, expenses, and losses that are not directly allocable to such receipts or another class of income.[24]

Domestic production gross receipts

"Domestic production gross receipts" generally are gross receipts of a taxpayer that are derived from: (1) any sale, exchange or other disposition, or any lease, rental or license, of qualifying production property that was manufactured, produced, grown or extracted by the taxpayer in whole or in significant part within the United States;[25] (2) any sale, exchange or other disposition, or any lease, rental or license, of qualified film produced by the taxpayer; (3) any sale, exchange or other disposition electricity, natural gas, or potable water produced by the taxpayer in the United States; (4) construction activities performed in the United States;[26] or (5) engineering or architectural services performed in the United States for construction projects located in the United States.

However, domestic production gross receipts do not include any gross receipts of the taxpayer that are derived from (1) the sale of food or beverages prepared by the taxpayer at a retail establishment,[27] or (2) the transmission or distribution of electricity, natural gas, or potable water.[28] In addition, domestic production gross receipts do not include any gross receipts of the taxpayer derived from property that is leased, licensed or rented by the taxpayer for use by any related person.[29]

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[22] For purposes of the conference agreement, "wages" include the sum of the aggregate amounts of wages and elective deferrals that the taxpayer is required to include on statements with respect to the employment of employees of the taxpayer during the taxpayer's taxable year. Elective deferrals include elective deferrals as defined in section 402(g)(3), amounts deferred under section 457, and, for taxable years beginning after December 31, 2005, designated Roth contributions (as defined in section 402A).

[23] For purposes of determining such costs, any item or service that is imported into the United States without an arm's length transfer price shall be treated as acquired by purchase, and its cost shall be treated as not less than its value when it entered the United States. A similar rule shall apply in determining the adjusted basis of leased or rented property where the lease or rental gives rise to domestic production gross receipts. With regard to property previously exported by the taxpayer for further manufacture, the increase in cost or adjusted basis shall not exceed the difference between the value of the property when exported and the value of the property when re-imported into the United States after further manufacture. Except as provided by the Secretary, the value of property for this purpose shall be its customs value (as defined in section 1059A(b)(1)).

[24] The Secretary shall prescribe rules for the proper allocation of items of income, deduction, expense, and loss for purposes of determining income attributable to domestic production activities. Where appropriate, such rules shall be similar to and consistent with relevant present-law rules (e.g., sec. 263A, in determining the cost of goods sold, and sec. 861, in determining the source of such items). Other deductions, expenses or losses that are directly allocable to such receipts include, for example, selling and marketing expenses. A proper share of other deductions, expenses, and losses that are not directly allocable to such receipts or another class of income include, for example, general and administrative expenses allocable to selling and marketing expenses.

[25] Domestic production gross receipts include gross receipts of a taxpayer derived from any sale, exchange or other disposition of agricultural products with respect to which the taxpayer performs storage, handling or other processing activities (other than transportation activities) within the United States, provided such products are consumed in connection with, or incorporated into, the manufacturing, production, growth or extraction of qualifying production property (whether or not by the taxpayer).

[26] For this purpose, construction activities include activities that are directly related to the erection or substantial renovation of residential and commercial buildings and infrastructure. Substantial renovation would include structural improvements, but not mere cosmetic changes, such as painting.

[27] The conferees intend that food processing, which generally is a qualified production activity under the conference agreement, does not include activities carried out at retail establishment. Thus, under the conference agreement while the gross receipts of a meat packing establishment are qualified domestic production gross receipts, the activities of a master chef who creates a venison sausage for his or her restaurant menu cannot be construed as a qualified production activity.

The conferees recognize that some taxpayers may own facilities at which the predominant activity is domestic production as defined in the conference agreement and other facilities at which they engage in the retail sale of the taxpayer's produced goods and also sell food and beverages. For example, assume that the taxpayer buys coffee beans and roasts those beans at a facility, the primary activity of which is the roasting and packaging of roasted coffee. The taxpayer sells the roasted coffee through a variety of unrelated third-party vendors and also sells roasted coffee at the taxpayer's own retail establishments. In addition, at the taxpayer's retail establishments, the taxpayer prepares brewed coffee and other foods. The conferees intend that to the extent that the gross receipts of the taxpayer's retail establishment represent receipts from the sale of its roasted coffee beans to customers, the receipts are qualified domestic production gross receipts, but to the extent that the gross receipts of the taxpayer's retail establishment represent receipts from the sale of brewed coffee or food prepared at the retail establishment, the receipts are not qualified domestic production gross receipts. However, the conferees intend that, in this case, the taxpayer may allocate part of the receipts from the sale of the brewed coffee as qualified domestic production gross receipts to the extent of the value of the roasted coffee beans used to brew the coffee. The conferees intend that the Secretary provide guidance drawing on the principles of section 482 by which such a taxpayer can allocate gross receipts between qualified and nonqualified gross receipts. The conferees observe that in this example, the taxpayer's sales of roasted coffee beans to unrelated third parties would provide a value for the beans used in brewing a cup of coffee for retail sale.

The conferees intend that the disqualification of gross receipts derived from the sale of food and beverage prepared by the taxpayer at a retail establishment not be construed narrowly to apply only to establishments at which customers dine on premises. The receipts of a facility that prepares food and beverage solely for take out service would not be qualified production gross receipts. Likewise, the conferees intend that the disqualification of gross receipts derived from the sale of food and beverages prepared by the taxpayer need not be limited to retail establishments primarily engaged in the dining trade. For example, if a taxpayer operates a supermarket and as part of the supermarket the taxpayer operates an in-store bakery, the same allocation described above would apply to determine the extent to which the taxpayer's gross receipts represent qualified domestic production gross receipts.

[28] The conference agreement provides that domestic production gross receipts include the gross receipts from the production in the United States of electricity, gas, and potable water, but excludes the gross receipts from the transmission or distribution of electricity, gas, and potable water. Thus, in the case of a taxpayer who owns a facility for the production of electricity, whether the taxpayer's facility is part of a regulated utility or an independent power facility, the taxpayer's gross receipts from the production of electricity at that facility are

"Qualifying production property" generally includes any tangible personal property, computer software, or sound recordings. "Qualified film" includes any motion picture film or videotape[30] (including live or delayed television programming, but not including certain sexually explicit productions) if 50 percent or more of the total compensation relating to the production of such film (including compensation in the form of residuals and participations[31]) constitutes compensation for services performed in the United States by actors, production personnel, directors, and producers.[32]

Other rules

Qualified production activities income of passthrough entities (other than cooperatives)

With respect to domestic production activities of an S corporation, partnership, estate, trust or other passthrough entity (other than an agricultural or horticultural cooperative), although the wage limitation is applied first at the entity level, the deduction under the conference agreement generally is determined at the shareholder, partner or similar level by taking into account at such level the proportionate share of qualified production activities income of the entity. The Secretary is directed to prescribe rules for the application of the conference agreement to passthrough entities, including reporting requirements and rules relating to restrictions on the allocation of the deduction to taxpayers at the partner or similar level.

For purposes of applying the wage limitation at the level of a shareholder, partner, or similar person, each person who is allocated qualified production activities income from a passthrough entity also is treated as having been allocated wages from such entity in an amount that is equal to the lesser of: (1) such person's allocable share of wages, as determined under regulations prescribed by the Secretary; or (2) twice the appropriate deductible percentage of qualified production activities income that actually is allocated to such person for the taxable year.

Qualified production activities income of agricultural and horticultural cooperatives

With regard to member-owned agricultural and horticultural cooperatives formed under Subchapter T of the Code, the conference agreement provides the same treatment of qualified production activities income derived from agricultural or horticultural products that are manufactured, produced, grown, or extracted by cooperatives,[33] or that are marketed through cooperatives, as it provides for qualified production activities income of other taxpayers (i.e., the cooperative may claim a deduction from qualified production activities income).

In addition, the conference agreement provides that the amount of any patronage dividends or per-unit retain allocations paid to a member of an agricultural or horticultural cooperative (to which Part I of Subchapter T applies), which is allocable to the portion of qualified production activities income of the cooperative that is deductible under the conference agreement, is deductible from the gross income of the member. In order to qualify, such amount must be designated by the organization as allocable to the deductible portion of qualified production activities income in a written notice mailed to its patrons not later than the payment period described in section 1382(d). The cooperative cannot reduce its income under section 1382 (e.g., cannot claim a dividends-paid deduction) for such amounts.

Alternative minimum tax

The deduction provided by the conference agreement is allowed for purposes of computing alternative minimum taxable income (including adjusted current earnings). The deduction in computing alternative minimum taxable income is determined by reference to the lesser of the qualified production activities income (as determined for the regular tax) or the alternative minimum taxable income (in the case of an individual, adjusted gross income as determined for the regular tax) without regard to this deduction.

Timber cutting

Under the conference agreement, an election made for a taxable year ending on or before the date of enactment, to treat the cutting of timber as a sale or exchange, may be revoked by the taxpayer without the consent of the IRS for any taxable year ending after that date. The prior election (and revocation) is disregarded for purposes of making a subsequent election.

Exploration of fundamental tax reform

The conferees acknowledge that Congress has not reduced the statutory corporate income tax rate since 1986. According to the Organisation of Economic Cooperation and Development ("OECD"), the combined corporate income tax rate, as defined by the OECD, in most instances is lower than the U.S. corporate income tax rate.[34] Higher corporate tax rates factor into the United States' ability to attract and retain economically vibrant industries, which create good jobs and contribute to overall economic growth.

This legislation was crafted to repeal an export tax benefit that was deemed inconsistent with obligations of the United States under the Agreement on Subsidies and Countervailing Measures and other international trade agreements. This legislation replaces the benefit with tax relief specifically designed to be economically equivalent to a 3-percentage point reduction in U.S.-based manufacturing.

The conferees recognize that manufacturers are a segment of the economy that has faced significant challenges during the nation's recent economic slowdown. The conferees recognize that trading partners of the United States retain subsidies for domestic manufacturers and exports through their indirect tax systems. The conferees are concerned about the adverse competitive impact of these subsidies on U.S. manufacturers.

These concerns should be considered in the context of the benefits of a unified top tax rate for all corporate taxpayers, including manufacturing, in terms of efficiency and fairness. The conferees also expect that the tax-writing committees will explore a unified top corporate tax rate in the context of fundamental tax reform.

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qualified domestic production gross receipts. However, to the extent that the taxpayer is an integrated producer that generates electricity and delivers electricity to end users, any gross receipts properly attributable to the transmission of electricity from the generating facility to a point of local distribution and any gross receipts properly attributable to the distribution of electricity to final customers are not qualified domestic production gross receipts. For example, assume taxpayer A owns a wind turbine that generates electricity and taxpayer B owns a high-voltage transmission line that passes near taxpayer A's wind turbine and ends near the system of local distribution lines of taxpayer C. Taxpayer A sells the electricity produced at the wind turbine to taxpayer C and contracts with taxpayer B to transmit the electricity produced at the wind turbine to taxpayer C who sells the electricity to his or her customers using taxpayer C's distribution network. The gross receipts received by taxpayer A for the sale of electricity produced at the wind turbine constitute qualifying domestic production gross receipts. The gross receipts of taxpayer B from transporting taxpayer A's electricity to taxpayer C are not qualifying domestic production gross receipts. Likewise the gross receipts of taxpayer C from distributing the electricity are not qualifying domestic production gross receipts. Also, if taxpayer A made direct sales of electricity to customers in taxpayer C's service area and taxpayer C receives remuneration for the distribution of electricity, the gross receipts of taxpayer C are not qualifying domestic production gross receipts. If taxpayers A, B, and C are all related taxpayer, then taxpayers A, B, and C must allocate gross receipts to production activities, transmission activities, and distribution activities in a manner consistent with the preceding example.

The conference agreement provides that the same principles apply in the case of the natural gas and water supply industries. In the case of natural gas, production activities generally are all activities involved in extracting natural gas from the ground and processing the gas into pipeline quality gas. Such activities would produce qualifying domestic production gross receipts. However gross receipts of a taxpayer attributable to transmission of pipeline quality gas from a natural gas field (or from a natural gas processing plant) to a local distribution company's citygate (or to another customer) are not qualified domestic production gross receipts. Likewise gas purchased by a local gas distribution company and distributed from the citygate to the local customers does not give rise to domestic production gross receipts.

In the case of the production of potable water the conferees intend that activities involved in the production of potable water include the acquisition, collection, and storage of raw water (untreated water). It also includes the transportation of raw water to a water treatment facility and treatment of raw water at such a facility. However, any gross receipts from the storage of potable water after the water treatment facility or delivery of potable water to customers does not give rise to qualifying domestic production gross receipts. The conferees intend that a taxpayer that both produces potable water and distributes potable water will properly allocate gross receipts across qualifying and nonqualifying activities.

[29] It is intended that principles similar to those under the present-law extraterritorial income regime apply for this purpose. See Temp. Treas. Reg. sec. 1.927(a)-1T(f)(2)(i). For example, this exclusion generally does not apply to property leased by the taxpayer to a related person if the property is held for sublease, or is subleased, by the related person to an unrelated person for the ultimate use of such unrelated person. Similarly, the license of computer software to a related person for reproduction and sale, exchange, lease, rental or sublicense to an unrelated person for the ultimate use of such unrelated person is not treated as excluded property by reason of the license to the related person.

[30] The conferees intend that the nature of the material on which properties described in section 168(f)(3) are embodied and the methods and means of distribution of such properties shall not affect their qualification under this provision.

[31] To the extent that a taxpayer has included an estimate of participations and/or residuals in its income forecast calculation under section 167(g), such taxpayer must use the same estimate of participations and/or residuals for purposes of determining total compensation.

[32] It is intended that the Secretary will provide appropriate rules governing the determination of total compensation for services performed in the United States.

[33] For this purpose, agricultural or horticultural products also include fertilizer, diesel fuel and other supplies used in agricultural or horticultural production that are manufactured, produced, grown, or extracted by the cooperative.

[34] Organisation of Economic Cooperation and Development, Table 1.5, Tax Data Base Statistics, Tax Policy and Administration, Summary Tables (2003).

Effective date.—The conference agreement is effective for taxable years beginning after December 31, 2004.

C. REDUCED CORPORATE INCOME TAX RATE FOR SMALL CORPORATIONS

(Sec. 103 of the House bill and sec. 11 of the Code)

PRESENT LAW

A corporation's regular income tax liability is determined by applying the following tax rate schedule to its taxable income.

TABLE 1.—MARGINAL FEDERAL CORPORATE INCOME TAX RATES FOR 2004

Taxable income	Income tax rate
$0–$50,000	15 percent of taxable income
$50,001–$75,000	25 percent of taxable income
$75,001–$10,000,000	34 percent of taxable income
Over $10,000,000	35 percent of taxable income

The benefit of the first two graduated rates described above is phased out by a five-percent surcharge for corporations with taxable income between $100,000 and $335,000. Also, the benefit of the 34-percent rate is phased out by a three-percent surcharge for corporations with taxable income between $15 million and $18,333,333; a corporation with taxable income of $18,333,333 or more effectively is subject to a flat rate of 35 percent.

HOUSE BILL

Under the House bill, a corporation's regular income tax liability is determined by applying the following tax rate schedules to its taxable income.

TABLE 2.—MARGINAL FEDERAL CORPORATE INCOME TAX RATES FOR 2013 AND THEREAFTER

Taxable income	Income tax rate
$0–$50,000	15 percent of taxable income
$50,001–$75,000	25 percent of taxable income
$75,001–$20,000,000	32 percent of taxable income
Over $20,000,000	35 percent of taxable income

The benefit of the graduated rates described above is phased out by a three-percent surcharge for corporations with taxable income between $20 million and $40,341,667; a corporation with taxable income of $40,341,667 or more effectively is subject to a flat rate of 35 percent.

TABLE 3.—MARGINAL FEDERAL CORPORATE INCOME TAX RATES FOR 2011–2012

Taxable income	Income tax rate
$0–$50,000	15 percent of taxable income
$50,001–$75,000	25 percent of taxable income
$75,001–$5,000,000	32 percent of taxable income
$5,000,001–$10,000,000	34 percent of taxable income
Over $10,000,000	35 percent of taxable income

The benefit of the first three graduated rates described above is phased out by a five-percent surcharge for corporations with taxable income between $5,000,000 and $7,205,000. Also, the benefit of the 34-percent rate is phased out by a three-percent surcharge for corporations with taxable income between $15 million and $18,333,333; a corporation with taxable income of $18,333,333 or more effectively is subject to a flat rate of 35 percent.

TABLE 4.—MARGINAL FEDERAL CORPORATE INCOME TAX RATES FOR 2008–2010

Taxable income	Income tax rate
$0–$50,000	15 percent of taxable income
$50,001–$75,000	25 percent of taxable income
$75,001–$1,000,000	32 percent of taxable income
$1,000,001–$10,000,000	34 percent of taxable income
Over $10,000,000	35 percent of taxable income

The benefit of the first three graduated rates described above is phased out by a five-percent surcharge for corporations with taxable income between $1,000,000 and $1,605,000. Also, the benefit of the 34-percent rate is phased out by a three-percent surcharge for corporations with taxable income between $15 million and $18,333,333; a corporation with taxable income of $18,333,333 or more effectively is subject to a flat rate of 35 percent.

TABLE 5.—MARGINAL FEDERAL CORPORATE INCOME TAX RATES FOR 2005–2007

Taxable income	Income tax rate
$0–$50,000	15 percent of taxable income
$50,001–$75,000	25 percent of taxable income
$75,001–$1,000,000	33 percent of taxable income
$1,000,001–$10,000,000	34 percent of taxable income
Over $10,000,000	35 percent of taxable income

The benefit of the first three graduated rates described above is phased out by a five-percent surcharge for corporations with taxable income between $1,000,000 and $1,420,000. Also, the benefit of the 34-percent rate is phased out by a three-percent surcharge for corporations with taxable income between $15 million and $18,333,333; a corporation with taxable income of $18,333,333 or more effectively is subject to a flat rate of 35 percent.

Effective date.—The provision applies to taxable years beginning after December 31, 2004.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

TITLE II—PROVISIONS RELATING TO JOB CREATION TAX INCENTIVES FOR MANUFACTURERS, SMALL BUSINESSES, AND FARMERS

A. SECTION 179 EXPENSING

(Sec. 201 of the House bill, sec. 309 of the Senate amendment and sec. 179 of the Code)

PRESENT LAW

Present law provides that, in lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment may elect to deduct such costs. The Jobs and Growth Tax Relief Reconciliation Act (JGTRRA) of 2003[35] increased the amount a taxpayer may deduct, for taxable years beginning in 2003 through 2005, to $100,000 of the cost of qualifying property placed in service for the taxable year.[36] In general, qualifying property is defined as depreciable tangible personal property (and certain computer software) that is purchased for use in the active conduct of a trade or business. The $100,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $400,000. The $100,000 and $400,000 amounts are indexed for inflation.

Prior to the enactment of JGTRRA (and for taxable years beginning in 2006 and thereafter) a taxpayer with a sufficiently small amount of annual investment could elect to deduct up to $25,000 of the cost of qualifying property placed in service for the taxable year. The $25,000 amount was reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $200,000. In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business.

The amount eligible to be expensed for a taxable year may not exceed the taxable income for a taxable year that is derived from the active conduct of a trade or business (determined without regard to this provision). Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to similar limitations). No general business credit under section 38 is allowed with respect to any amount for which a deduction is allowed under section 179.

Under present law, an expensing election is made under rules prescribed by the Secretary.[37] Applicable Treasury regulations provide that an expensing election generally is made on the taxpayer's original return for the taxable year to which the election relates.[38]

Prior to the enactment of JGTRRA (and for taxable years beginning in 2006 and thereafter), an expensing election may be revoked only with consent of the Commissioner.[39] JGTRRA permits taxpayers to revoke expensing elections on amended returns without the consent of the Commissioner with respect to a taxable year beginning after 2002 and before 2006.[40]

HOUSE BILL

The provision extends the increased amount that a taxpayer may deduct, and other changes that were made by JGTRRA, for an additional two years. Thus, the provision provides that the maximum dollar amount that may be deducted under section 179 is $100,000 for property placed in service in taxable years beginning before 2008 ($25,000 for taxable years beginning in 2008 and thereafter). In addition, the $400,000 amount applies for property placed in service in taxable years beginning before 2008 ($200,000 for taxable years beginning in 2008 and thereafter). The provision extends, through 2007 (from 2005), the indexing for inflation of both the maximum dollar amount that may be deducted and the $400,000 amount. The provision also includes off-the-shelf computer software placed in service in taxable years beginning before 2008 as qualifying property. The provision permits taxpayers to revoke expensing elections on amended returns without the consent of the Commissioner with respect to a taxable year beginning before 2008. The Committee expects that the

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[35] Pub. L. No. 108-27, sec. 202 (2003).

[36] Additional section 179 incentives are provided with respect to a qualified property used by a business in the New York Liberty Zone (sec. 1400L(f)), an empowerment zone (sec. 1397A), or a renewal community (sec. 1400J).

[37] Sec. 179(c)(1).

[38] Under Treas. Reg. sec. 1.179-5, applicable to property placed in service in taxable years ending after Jan. 25, 1993 (but not including property placed in service in taxable years beginning after 2002 and before 2006), a taxpayer may make the election on the original return (whether or not the return is timely), or on an amended return filed by the due date (including extensions) for filing the return for the tax year the property was placed in service. If the taxpayer timely filed an original return without making the election, the taxpayer may still make the election by filing an amended return within six months of the due date of the return (excluding extensions).

[39] Sec. 179(c)(2).

[40] Id. Under Prop. and Temp. Treas. Reg. sec. 179-5T, applicable to property placed in service in taxable years beginning after 2002 and before 2006, a taxpayer is permitted to make or revoke an election under section 179 without the consent of the Commissioner on an amended Federal tax return for that taxable year. This amended return must be filed within the time prescribed by law for filing an amended return for the taxable year. T.D. 9146, Aug. 3, 2004.

Secretary will prescribe regulations to permit a taxpayer to make an expensing election on an amended return without the consent of the Commissioner.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The provision provides that the $100,000 amount ($25,000 for taxable years beginning in 2006 and thereafter) is reduced (but not below zero) by only one half of the amount by which the cost of qualifying property placed in service during the taxable year exceeds $400,000 ($200,000 for taxable years beginning 2006 and thereafter).[41]

For example, under the provision, if in 2004 an eligible taxpayer places in service qualifying property costing $500,000, the $100,000 amount is reduced by $50,000 (i.e., one half the amount by which the $500,000 cost of qualifying property placed in service during the taxable year exceeds $400,000). Thus, the maximum amount eligible for section 179 expensing by this taxpayer for 2004 is $50,000.

Effective date.—The provision is effective for taxable years beginning after December 31, 2002.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

B. DEPRECIATION

1. Recovery period for depreciation of certain leasehold improvements (sec. 211 of the House bill and sec. 168 of the Code)

PRESENT LAW

In general

A taxpayer generally must capitalize the cost of property used in a trade or business and recover such cost over time through annual deductions for depreciation or amortization. Tangible property generally is depreciated under the modified accelerated cost recovery system ("MACRS"), which determines depreciation by applying specific recovery periods, placed-in-service conventions, and depreciation methods to the cost of various types of depreciable property (sec. 168). The cost of nonresidential real property is recovered using the straight-line method of depreciation and a recovery period of 39 years. Nonresidential real property is subject to the mid-month placed-in-service convention. Under the mid-month convention, the depreciation allowance for the first year property is placed in service is based on the number of months the property was in service, and property placed in service at any time during a month is treated as having been placed in service in the middle of the month.

Depreciation of leasehold improvements

Depreciation allowances for improvements made on leased property are determined under MACRS, even if the MACRS recovery period assigned to the property is longer than the term of the lease.[42] This rule applies regardless of whether the lessor or the lessee places the leasehold improvements in service.[43] If a leasehold improvement constitutes an addition or improvement to nonresidential real property already placed in service, the improvement is depreciated using the straight-line method over a 39-year recovery period, beginning in the month the addition or improvement was placed in service.[44]

Qualified leasehold improvement property

The Job Creation and Worker Assistance Act of 2002[45] ("JCWAA"), as amended by JGTRRA, generally provides an additional first-year depreciation deduction equal to either 30 percent or 50 percent of the adjusted basis of qualified property placed in service before January 1, 2005. Qualified property includes qualified leasehold improvement property. For this purpose, qualified leasehold improvement property is any improvement to an interior portion of a building that is nonresidential real property, provided certain requirements are met. The improvement must be made under or pursuant to a lease either by the lessee (or sublessee), or by the lessor, of that portion of the building to be occupied exclusively by the lessee (or sublessee). The improvement must be placed in service more than three years after the date the building was first placed in service. Qualified leasehold improvement property does not include any improvement for which the expenditure is attributable to the enlargement of the building, any elevator or escalator, any structural component benefiting a common area, or the internal structural framework of the building.

Treatment of dispositions of leasehold improvements

A lessor of leased property that disposes of a leasehold improvement that was made by the lessor for the lessee of the property may take the adjusted basis of the improvement into account for purposes of determining gain or loss if the improvement is irrevocably disposed of or abandoned by the lessor at the termination of the lease. This rule conforms the treatment of lessors and lessees with respect to leasehold improvements disposed of at the end of a term of lease.

HOUSE BILL

The House bill provides a statutory 15-year recovery period for qualified leasehold improvement property placed in service before January 1, 2006.[46] The provision requires that qualified leasehold improvement property be recovered using the straight-line method.

Qualified leasehold improvement property is defined as under present law for purposes of the additional first-year depreciation deduction,[47] with the following modification. If a lessor makes an improvement that qualifies as qualified leasehold improvement property, such improvement does not qualify as qualified leasehold improvement property to any subsequent owner of such improvement. An exception to the rule applies in the case of death and certain transfers of property that qualify for non-recognition treatment.

Effective date.—The House bill provision is effective for property placed in service after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

2. Recovery period for depreciation of certain restaurant improvements (sec. 211 of the House bill and sec. 168 of the Code)

PRESENT LAW

A taxpayer generally must capitalize the cost of property used in a trade or business and recover such cost over time through annual deductions for depreciation or amortization. Tangible property generally is depreciated under the modified accelerated cost recovery system ("MACRS"), which determines depreciation by applying specific recovery periods, placed-in-service conventions, and depreciation methods to the cost of various types of depreciable property (sec. 168). The cost of nonresidential real property is recovered using the straight-line method of depreciation and a recovery period of 39 years. Nonresidential real property is subject to the mid-month placed-in-service convention. Under the mid-month convention, the depreciation allowance for the first year property is placed in service is based on the number of months the property was in service, and property placed in service at any time during a month is treated as having been placed in service in the middle of the month.

HOUSE BILL

The House bill provides a statutory 15-year recovery period for qualified restaurant property placed in service before January 1, 2006.[48] For purposes of the provision, qualified restaurant property means any improvement to a building if such improvement is placed in service more than three years after the date such building was first placed in service and more than 50 percent of the building's square footage is devoted to the preparation of, and seating for, on-premises consumption of prepared meals. The provision requires that qualified restaurant property be recovered using the straight-line method.

Effective date.—The House bill provision is effective for property placed in service after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

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[41] As a result of the reduced phase-out percentage, the deductible amount in the New York Liberty Zone, an enterprise zone or a renewal community is correspondingly increased. See sec. 1400L(f), sec. 1397A and sec. 1400J.

[42] Sec. 168(i)(8). The Tax Reform Act of 1986 modified the Accelerated Cost Recovery System ("ACRS") to institute MACRS. Prior to the adoption of ACRS by the Economic Recovery Tax Act of 1981, taxpayers were allowed to depreciate the various components of a building as separate assets with separate useful lives. The use of component depreciation was repealed upon the adoption of ACRS. The Tax Reform Act of 1986 also denied the use of component depreciation under MACRS.

[43] Former sections 168(f)(6) and 178 provided that, in certain circumstances, a lessee could recover the cost of leasehold improvements made over the remaining term of the lease. The Tax Reform Act of 1986 repealed these provisions.

[44] Secs. 168(b)(3), (c), (d)(2), and (i)(6). If the improvement is characterized as tangible personal property, ACRS or MACRS depreciation is calculated using the shorter recovery periods, accelerated methods, and conventions applicable to such property. The determination of whether improvements are characterized as tangible personal property or as nonresidential real property often depends on whether or not the improvements constitute a "structural component" of a building (as defined by Treas. Reg. sec. 1.48-1(e)(1)). See, e.g., *Metro National Corp* v. *Commissioner*, 52 TCM (CCH) 1440 (1987); *King Radio Corp Inc.* v. *U.S.*, 486 F.2d 1091 (10th Cir. 1973); *Mallinckrodt, Inc.* v. *Commissioner*, 778 F.2d 402 (8th Cir. 1985) (with respect to various leasehold improvements).

[45] Pub. L. No. 107-147, sec. 101 (2002), as amended by Pub. L. No. 108-27, sec. 201 (2003).

[46] Qualified leasehold improvement property continues to be eligible for the additional first-year depreciation deduction under sec. 168(k).

[47] Sec. 168(k).

[48] Qualified restaurant property would become eligible for the additional first-year depreciation deduction under sec. 168(k) by virtue of the assigned 15-year recovery period.

3. Extended placed in service date for bonus depreciation for certain aircraft (excluding aircraft used in the transportation industry) (sec. 212 of the House bill, sec. 622 of the Senate amendment, and sec. 168 of the Code)

PRESENT LAW

In general

A taxpayer is allowed to recover, through annual depreciation deductions, the cost of certain property used in a trade or business or for the production of income. The amount of the depreciation deduction allowed with respect to tangible property for a taxable year is determined under the modified accelerated cost recovery system ("MACRS"). Under MACRS, different types of property generally are assigned applicable recovery periods and depreciation methods. The recovery periods applicable to most tangible personal property range from three to 25 years. The depreciation methods generally applicable to tangible personal property are the 200-percent and 150-percent declining balance methods, switching to the straight-line method for the taxable year in which the depreciation deduction would be maximized.

Thirty-percent additional first year depreciation deduction

JCWAA allows an additional first-year depreciation deduction equal to 30 percent of the adjusted basis of qualified property.[49] The amount of the additional first-year depreciation deduction is not affected by a short taxable year. The additional first-year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes for the taxable year in which the property is placed in service.[50] The basis of the property and the depreciation allowances in the placed-in-service year and later years are appropriately adjusted to reflect the additional first-year depreciation deduction. In addition, there are generally no adjustments to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to property to which the provision applies. A taxpayer is allowed to elect out of the additional first-year depreciation for any class of property for any taxable year.[51]

In order for property to qualify for the additional first-year depreciation deduction, it must meet all of the following requirements. First, the property must be (1) property to which MACRS applies with an applicable recovery period of 20 years or less, (2) water utility property (as defined in section 168(e)(5)), (3) computer software other than computer software covered by section 197, or (4) qualified leasehold improvement property (as defined in section 168(k)(3)).[52] Second, the original use[53] of the property must commence with the taxpayer on or after September 11, 2001. Third, the taxpayer must acquire the property within the applicable time period. Finally, the property must be placed in service before January 1, 2005.

An extension of the placed-in-service date of one year (i.e., January 1, 2006) is provided for certain property with a recovery period of ten years or longer and certain transportation property.[54] Transportation property is defined as tangible personal property used in the trade or business of transporting persons or property.

The applicable time period for acquired property is (1) after September 10, 2001 and before January 1, 2005, but only if no binding written contract for the acquisition is in effect before September 11, 2001, or (2) pursuant to a binding written contract which was entered into after September 10, 2001, and before January 1, 2005.[55] With respect to property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer, the taxpayer must begin the manufacture, construction, or production of the property after September 10, 2001. For property eligible for the extended placed-in-service date, a special rule limits the amount of costs eligible for the additional first year depreciation. With respect to such property, only the portion of the basis that is properly attributable to the costs incurred before January 1, 2005 ("progress expenditures") is eligible for the additional first-year depreciation.[56]

Fifty-percent additional first year depreciation

JGTRRA provides an additional first-year depreciation deduction equal to 50 percent of the adjusted basis of qualified property. Qualified property is defined in the same manner as for purposes of the 30-percent additional first-year depreciation deduction provided by the JCWAA except that the applicable time period for acquisition (or self construction) of the property is modified. Property eligible for the 50-percent additional first-year depreciation deduction is not eligible for the 30-percent additional first-year depreciation deduction.

In order to qualify, the property must be acquired after May 5, 2003 and before January 1, 2005, and no binding written contract for the acquisition can be in effect before May 6, 2003.[57] With respect to property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer, the taxpayer must begin the manufacture, construction, or production of the property after May 5, 2003. For property eligible for the extended placed-in-service date (i.e., certain property with a recovery period of ten years or longer and certain transportation property), a special rule limits the amount of costs eligible for the additional first-year depreciation. With respect to such property, only progress expenditures properly attributable to the costs incurred before January 1, 2005 are eligible for the additional first-year depreciation.[58]

HOUSE BILL

Due to the extended production period, the House bill provides criteria under which certain non-commercial aircraft can qualify for the extended placed-in-service date. Qualifying aircraft are eligible for the additional first-year depreciation deduction if placed in service before January 1, 2006. In order to qualify, the aircraft must:

(1) Be acquired by the taxpayer during the applicable time period as under present law;

(2) Meet the appropriate placed-in-service date requirements;

(3) Not be tangible personal property used in the trade or business of transporting persons or property (except for agricultural or firefighting purposes);

(4) Be purchased[59] by a purchaser who, at the time of the contract for purchase, has made a nonrefundable deposit of the lesser of ten percent of the cost or $100,000; and

(5) Have an estimated production period exceeding four months and a cost exceeding $200,000.

Effective date.—The House bill provision is effective as if included in the amendments made by section 101 of JCWAA, which applies to property placed in service after September 10, 2001. However, because the property described by the provision qualifies for the additional first-year depreciation deduction under present law if placed in service prior to January 1, 2005, the provision will modify the treatment only of property placed in service during calendar year 2005.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except for the effective date.

Effective date.—The Senate amendment is effective for taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

4. Special placed in service rule for bonus depreciation for certain property subject to syndication (sec. 213 of the House bill, sec. 621 of the Senate amendment, and sec. 168 of the Code)

PRESENT LAW

Section 101 of JCWAA provides generally for 30-percent additional first-year depreciation, and provides a binding contract rule in determining property that qualifies for it. The requirements that must be satisfied in order for property to qualify include that (1) the original use of the property must commence with the taxpayer on or after September 11, 2001, and (2) the taxpayer must acquire the property (i) after September 10, 2001 and before January 1, 2005, but only if no binding written contract for the acquisition is in effect before September 11, 2001, or (ii) pursuant to a binding contract which was entered into after September 10, 2001, and before January 1, 2005. In addition, JCWAA provides a special rule in the case of certain leased property. In the case of any property that is originally placed in service by a person and that is sold to the taxpayer and leased back to such person by the taxpayer within three months after the date that the property was placed in service, the property is treated as originally placed in service by the taxpayer not earlier than the date that the property is used under the leaseback. JCWAA did not specifically address the syndication of a lease by the lessor.

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[49] The additional first-year depreciation deduction is subject to the general rules regarding whether an item is deductible under section 162 or subject to capitalization under section 263 or section 263A.

[50] However, the additional first-year depreciation deduction is not allowed for purposes of computing earnings and profits.

[51] A taxpayer may elect out of the 50-percent additional first-year depreciation (discussed below) for any class of property and still be eligible for the 30-percent additional first-year depreciation.

[52] A special rule precludes the additional first-year depreciation deduction for any property that is required to be depreciated under the alternative depreciation system of MACRS.

[53] The term "original use" means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer.

If, in the normal course of its business, a taxpayer sells fractional interests in property to unrelated third parties, then the original use of such property begins with the first user of each fractional interest (i.e., each fractional owner is considered the original user of its proportionate share of the property).

[54] In order for property to qualify for the extended placed-in-service date, the property must be subject to section 263A and have an estimated production period exceeding two years or an estimated production period exceeding one year and a cost exceeding $1 million.

[55] Property does not fail to qualify for the additional first-year depreciation merely because a binding written contract to acquire a component of the property is in effect prior to September 11, 2001.

[56] For purposes of determining the amount of eligible progress expenditures, it is intended that rules similar to sec. 46(d)(3) as in effect prior to the Tax Reform Act of 1986 shall apply.

[57] Property does not fail to qualify for the additional first-year depreciation merely because a binding written contract to acquire a component of the property is in effect prior to May 6, 2003. However, no 50-percent additional first-year depreciation is permitted on any such component. No inference is intended as to the proper treatment of components placed in service under the 30-percent additional first-year depreciation provided by the JCWAA.

[58] For purposes of determining the amount of eligible progress expenditures, it is intended that rules similar to sec. 46(d)(3) as in effect prior to the Tax Reform Act of 1986 shall apply.

[59] For this purpose, it is intended that the term "purchase" be interpreted as it is defined in sec. 179(d)(2).

The Working Families Tax Relief Act of 2004 ("H.R. 1308") included a technical correction regarding the syndication of a lease by the lessor. The technical correction provides that if property is originally placed in service by a lessor (including by operation of the special rule for self-constructed property), such property is sold within three months after the date that the property was placed in service, and the user of such property does not change, then the property is treated as originally placed in service by the taxpayer not earlier than the date of such sale.

JGTRRA provides an additional first-year depreciation deduction equal to 50 percent of the adjusted basis of qualified property. Qualified property is defined in the same manner as for purposes of the 30-percent additional first-year depreciation deduction provided by the JCWAA except that the applicable time period for acquisition (or self construction) of the property is modified. Property with respect to which the 50-percent additional first-year depreciation deduction is claimed is not also eligible for the 30-percent additional first-year depreciation deduction. In order to qualify, the property must be acquired after May 5, 2003 and before January 1, 2005, and no binding written contract for the acquisition can be in effect before May 6, 2003. With respect to property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer, the taxpayer must begin the manufacture, construction, or production of the property after May 5, 2003.

HOUSE BILL[60]

The House bill provides that if property is originally placed in service by a lessor (including by operation of the special rule for self-constructed property), such property is sold within three months after the date that the property was placed in service, and the user of such property does not change, then the property is treated as originally placed in service by the taxpayer not earlier than the date of such sale. The provision also provides a special rule in the case of multiple units of property subject to the same lease. In such cases, property will qualify as placed in service on the date of sale if it is sold within three months after the final unit is placed in service, so long as the period between the time the first and last units are placed in service does not exceed 12 months.

Effective date. The House bill provision is generally effective as if included in the amendments made by section 101 of JCWAA (i.e., generally for property placed in service after September 10, 2001, in taxable years ending after that date). However, the special rule in the case of multiple units of property subject to the same lease applies to property sold after June 4, 2004.

SENATE AMENDMENT[61]

The Senate amendment is the same as the House bill, except for the effective date.

Effective date. The Senate amendment is effective for sales occurring after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill with the following modification. The clauses that were duplicative of the provisions enacted as part of H.R. 1308 were removed. Thus, the conference agreement provision provides only for the special rule in the case of multiple units of property subject to the same lease.

C. S CORPORATION REFORM AND SIMPLIFICATION

(Secs. 221-231 of the House bill, sec. 654 of the Senate amendmentand secs. 1361-1379 and 4975 of the Code)

In general, an S corporation is not subject to corporate-level income tax on its items of income and loss. Instead, an S corporation passes through its items of income and loss to its shareholders. The shareholders take into account separately their shares of these items on their individual income tax returns. To prevent double taxation of these items when the stock is later disposed of, each shareholder's basis in the stock of the S corporation is increased by the amount included in income (including tax-exempt income) and is decreased by the amount of any losses (including nondeductible losses) taken into account. A shareholder's loss may be deducted only to the extent of his or her basis in the stock or debt of the S corporation. To the extent a loss is not allowed due to this limitation, the loss generally is carried forward with respect to the shareholder.

1. Members of family treated as one shareholder

PRESENT LAW

A small business corporation may elect to be an S corporation with the consent of all its shareholders, and may terminate its election with the consent of shareholders holding more than 50 percent of the stock. A "small business corporation" is defined as a domestic corporation which is not an ineligible corporation and which has (1) no more than 75 shareholders, all of whom are individuals (and certain trusts, estates, charities, and qualified retirement plans)[62] who are citizens or residents of the United States, and (2) only one class of stock. For purposes of the 75-shareholder limitation, a husband and wife are treated as one shareholder. An "ineligible corporation" means a corporation that is a financial institution using the reserve method of accounting for bad debts, an insurance company, a corporation electing the benefits of the Puerto Rico and possessions tax credit, or a Domestic International Sales Corporation ("DISC") or former DISC.

HOUSE BILL

The bill provides an election to allow all members of a family be treated as one shareholder in determining the number of shareholders in the corporation (for purposes of section 1361(b)(1)(A)).

A family is defined as the common ancestor and all lineal descendants of the common ancestor, as well as the spouses, or former spouses, of these individuals. An individual shall not be a common ancestor if, as of the later of the time of the election or the effective date of this provision, the individual is more than three generations removed from the youngest generation of shareholders who would (but for this rule) be members of the family. For purposes of this rule, a spouse or former spouse is treated as in the same generation as the person to whom the individual is (or was) married.

Except as provided by Treasury regulations, the election for a family may be made by any family member and remains in effect until terminated.

Effective date. The provision applies to taxable years beginning after December 31, 2004.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes the provision in the House bill, except that the number of generations is increased from three to six.

The conferees wish to clarify that members of a family may be treated as one shareholder, for the purpose of determining the number of shareholders, whether a family member holds stock directly or is treated as a shareholder (under section 1361(c)(2)(B)) by reason being a beneficiary of an electing small business trust or qualified subchapter S trust.

2. Increase in number of eligible shareholders to 100

PRESENT LAW

A small business corporation may elect to be an S corporation with the consent of all its shareholders, and may terminate its election with the consent of shareholders holding more than 50 percent of the stock. A "small business corporation" is defined as a domestic corporation which is not an ineligible corporation and which has (1) no more than 75 shareholders, all of whom are individuals (and certain trusts, estates, charities, and qualified retirement plans)[63] who are citizens or residents of the United States, and (2) only one class of stock. For purposes of the 75-shareholder limitation, a husband and wife are treated as one shareholder. An "ineligible corporation" means a corporation that is a financial institution using the reserve method of accounting for bad debts, an insurance company, a corporation electing the benefits of the Puerto Rico and possessions tax credit, or a Domestic International Sales Corporation ("DISC") or former DISC.

HOUSE BILL

The bill increases the maximum number of eligible shareholders from 75 to 100.

Effective date. The provision applies to taxable years beginning after December 31, 2004.

SENATE AMENDMENT

No provision.

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[60] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of technical corrections.

[61] The Senate amendment predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of technical corrections.

[62] If a qualified retirement plan (other than an employee stock ownership plan) or a charity holds stock in an S corporation, the interest held is treated as an interest in an unrelated trade or business, and the plan or charity's share of the S corporation's items of income, loss, or deduction, and gain or loss on the disposition of the S corporation stock, are taken into account in computing unrelated business taxable income.

[63] If a qualified retirement plan (other than an employee stock ownership plan) or a charity holds stock in an S corporation, the interest held is treated as an interest in an unrelated trade or business, and the plan or charity's share of the S corporation's items of income, loss, or deduction, and gain or loss on the disposition of the S corporation stock, are taken into account in computing unrelated business taxable income.

CONFERENCE AGREEMENT

The conference agreement includes the provision in the House bill.

3. Expansion of bank S corporation eligible shareholders to include IRAs

PRESENT LAW

An individual retirement account ("IRA") is a trust or account established for the exclusive benefit of an individual and his or her beneficiaries. There are two general types of IRAs: traditional IRAs, to which both deductible and nondeductible contributions may be made, and Roth IRAs, contributions to which are not deductible. Amounts held in a traditional IRA are includible in income when withdrawn (except to the extent the withdrawal is a return of nondeductible contributions). Amounts held in a Roth IRA that are withdrawn as a qualified distribution are not includible in income; distributions from a Roth IRA that are not qualified distributions are includible in income to the extent attributable to earnings. A qualified distribution is a distribution that (1) is made after the five-taxable year period beginning with the first taxable year for which the individual made a contribution to a Roth IRA, and (2) is made after attainment of age 59½, on account of death or disability, or is made for first-time homebuyer expenses of up to $10,000.

Under present law, an IRA cannot be a shareholder of an S corporation.

Certain transactions are prohibited between an IRA and the individual for whose benefit the IRA is established, including a sale of property by the IRA to the individual. If a prohibited transaction occurs between an IRA and the IRA beneficiary, the account ceases to be an IRA, and an amount equal to the fair market value of the assets held in the IRA is deemed distributed to the beneficiary.

HOUSE BILL

The bill allows an IRA (including a Roth IRA) to be a shareholder of a bank that is an S corporation, but only to the extent of bank stock held by the IRA on the date of enactment of the provision.[64]

The bill also provides an exemption from prohibited transaction treatment for the sale by an IRA to the IRA beneficiary of bank stock held by the IRA on the date of enactment of the provision. Under the bill, a sale is not a prohibited transaction if: (1) the sale is pursuant to an S corporation election by the bank; (2) the sale is for fair market value (as established by an independent appraiser) and is on terms at least as favorable to the IRA as the terms would be on a sale to an unrelated party; (3) the IRA incurs no commissions, costs, or other expenses in connection with the sale; and (4) the stock is sold in a single transaction for cash not later than 120 days after the S corporation election is made.

Effective date.—The provision takes effect on date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes the provision in the House bill.

4. Disregard of unexercised powers of appointment in determining potential current beneficiaries of ESBT

PRESENT LAW

An electing small business trust ("ESBT") holding stock in an S corporation is taxed at the maximum individual tax rate on its ratable share of items of income, deduction, gain, or loss passing through from the S corporation. An ESBT generally is an electing trust all of whose beneficiaries are eligible S corporation shareholders. For purposes of determining the maximum number of shareholders, each person who is entitled to receive a distribution from the trust ("potential current beneficiary") is treated as a shareholder during the period the person may receive a distribution from the trust.

An ESBT has 60 days to dispose of the S corporation stock after an ineligible shareholder becomes a potential current beneficiary to avoid disqualification.

HOUSE BILL

Under the bill, powers of appointment to the extent not exercised are disregarded in determining the potential current beneficiaries of an electing small business trust.

The bill increases the period during which an ESBT can dispose of S corporation stock, after an ineligible shareholder becomes a potential current beneficiary, from 60 days to one year.

Effective date.—The provision applies to taxable years beginning after December 31, 2004.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes the provision in the House bill.

5. Transfers of suspended losses incident to divorce, etc.

PRESENT LAW

Under present law, any loss or deduction that is not allowed to a shareholder of an S corporation, because the loss exceeds the shareholder's basis in stock and debt of the corporation, is treated as incurred by the S corporation with respect to that shareholder in the subsequent taxable year.

HOUSE BILL

Under the bill, if a shareholder's stock in an S corporation is transferred to a spouse, or to a former spouse incident to a divorce, any suspended loss or deduction with respect to that stock is treated as incurred by the corporation with respect to the transferee in the subsequent taxable year.

Effective date.—The provision applies to transfers after December 31, 2004.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes the provision in the House bill.

6. Use of passive activity loss and at-risk amounts by qualified subchapter S trust income beneficiaries

PRESENT LAW

Under present law, the share of income of an S corporation whose stock is held by a qualified subchapter S trust ("QSST"), with respect to which the beneficiary makes an election, is taxed to the beneficiary. However, the trust, and not the beneficiary, is treated as the owner of the S corporation stock for purposes of determining the tax consequences of the disposition of the S corporation stock by the trust. A QSST generally is a trust with one individual income beneficiary for the life of the beneficiary.

HOUSE BILL

Under the bill, the beneficiary of a qualified subchapter S trust is generally allowed to deduct suspended losses under the at-risk rules and the passive loss rules when the trust disposes of the S corporation stock.

Effective date.—The provision applies to taxable years beginning after December 31, 2004.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes the provision in the House bill.

7. Exclusion of investment securities income from passive investment income test for bank S corporations

. PRESENT LAW

An S corporation is subject to corporate-level tax, at the highest corporate tax rate, on its excess net passive income if the corporation has (1) accumulated earnings and profits at the close of the taxable year and (2) gross receipts more than 25 percent of which are passive investment income.

Excess net passive income is the net passive income for a taxable year multiplied by a fraction, the numerator of which is the amount of passive investment income in excess of 25 percent of gross receipts and the denominator of which is the passive investment income for the year. Net passive income is defined as passive investment income reduced by the allowable deductions that are directly connected with the production of that income. Passive investment income generally means gross receipts derived from royalties, rents, dividends, interest, annuities, and sales or exchanges of stock or securities (to the extent of gains). Passive investment income generally does not include interest on accounts receivable, gross receipts that are derived directly from the active and regular conduct of a lending or finance business, gross receipts from certain liquidations, or gain or loss from any section 1256 contract (or related property) of an options or commodities dealer.[65]

In addition, an S corporation election is terminated whenever the S corporation has accumulated earnings and profits at the close of each of three consecutive taxable years and has gross receipts for each of those years more than 25 percent of which are passive investment income.

HOUSE BILL

The bill provides that, in the case of a bank (as defined in section 581), a bank holding company (as defined in section 2(a) of the Bank Holding Company Act of 1956), or a financial holding company (as defined in section 2(p) of that Act), interest income and dividends on assets required to be held by the bank or holding company are not treated as passive investment income for purposes of the S corporation passive investment income rules.

Effective date.—The provision applies to taxable years beginning after December 31, 2004.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes the provision in the House bill.

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[64] Under the bill, the present-law rules treating S corporation stock held by a qualified retirement plan (other than an employee stock ownership plan) or a charity as an interest in an unrelated trade or business apply to an IRA holding S corporation stock of a bank.

[65] Notice 97-5, 1997-1 C.B. 352, sets forth guidance relating to passive investment income on banking assets.

8. Treatment of bank director shares

PRESENT LAW

An S corporation may have no more than 75 shareholders and may have only one outstanding class of stock.[66]

An S corporation has one class of stock if all outstanding shares of stock confer identical rights to distribution and liquidation proceeds. Differences in voting rights are disregarded.[67]

National banking law requires that a director of a national bank own stock in the bank and that a bank have at least five directors.[68] A number of States have similar requirements for State-chartered banks. Apparently, it is common practice for a bank director to enter into an agreement under which the bank (or a holding company) will reacquire the stock upon the director's ceasing to hold the office of director, at the price paid by the director for the stock.[69]

HOUSE BILL

Under the bill, restricted bank director stock is not taken into account as outstanding stock in applying the provisions of subchapter S. Thus, the stock is not treated as a second class of stock; a director is not treated as a shareholder of the S corporation by reason of the stock; the stock is disregarded in allocating items of income, loss, etc. among the shareholders; and the stock is not treated as outstanding for purposes of determining whether an S corporation holds 100 percent of the stock of a qualified subchapter S subsidiary.

Restricted bank director stock is stock in a bank (as defined in section 581), a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956), or a financial holding company (as defined in section 2(p) of that Act), registered with the Federal Reserve System, if the stock is required to be held by an individual under applicable Federal or State law in order to permit the individual to serve as a director of the bank or holding company and which is subject to an agreement with the bank or holding company (or corporation in control of the bank or company) pursuant to which the holder is required to sell the stock back upon ceasing to be a director at the same price the individual acquired the stock.

A distribution (other than a payment in exchange for the stock) with respect to the restricted stock is includible in the gross income of the director and is deductible by the S corporation for the taxable year that includes the last day of the director's taxable year in which the distribution is included in income.

Effective date.—The provision applies to taxable years beginning after December 31, 2004.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the provision in the House bill.

9. Relief from inadvertently invalid qualified subchapter S subsidiary elections and terminations

PRESENT LAW

Under present law, inadvertent invalid subchapter S elections and terminations may be waived.

HOUSE BILL

The bill allows inadvertent invalid qualified subchapter S subsidiary elections and terminations to be waived by the IRS.

Effective date.—The provision applies to taxable years beginning after December 31, 2004.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes the provision in the House bill, effective for elections and terminations after December 31, 2004.

10. Information returns for qualified subchapter S subsidiaries

PRESENT LAW

Under present law, a corporation all of whose stock is held by an S corporation is treated as a qualified subchapter S subsidiary if the S corporation so elects. The assets, liabilities, and items of income, deduction, and credit of the subsidiary are treated as assets, liabilities, and items of the parent S corporation.

HOUSE BILL

The bill provides authority to the Secretary to provide guidance regarding information returns of qualified subchapter S subsidiaries.

Effective date.—The provision applies to taxable years beginning after December 31, 2004.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes the provision in the House bill.

11. Repayment of loans for qualifying employer securities

PRESENT LAW

An employee stock ownership plan (an "ESOP") is a defined contribution plan that is designated as an ESOP and is designed to invest primarily in qualifying employer securities. For purposes of ESOP investments, a "qualifying employer security" is defined as: (1) publicly traded common stock of the employer or a member of the same controlled group; (2) if there is no such publicly traded common stock, common stock of the employer (or member of the same controlled group) that has both voting power and dividend rights at least as great as any other class of common stock; or (3) noncallable preferred stock that is convertible into common stock described in (1) or (2) and that meets certain requirements. In some cases, an employer may design a class of preferred stock that meets these requirements and that is held only by the ESOP. Special rules apply to ESOPs that do not apply to other types of qualified retirement plans, including a special exemption from the prohibited transaction rules.

Certain transactions between an employee benefit plan and a disqualified person, including the employer maintaining the plan, are prohibited transactions that result in the imposition of an excise tax.[70] Prohibited transactions include, among other transactions, (1) the sale, exchange or leasing of property between a plan and a disqualified person, (2) the lending of money or other extension of credit between a plan and a disqualified person, and (3) the transfer to, or use by or for the benefit of, a disqualified person of the income or assets of the plan. However, certain transactions are exempt from prohibited transaction treatment, including certain loans to enable an ESOP to purchase qualifying employer securities.[71] In such a case, the employer securities purchased with the loan proceeds are generally pledged as security for the loan. Contributions to the ESOP and dividends paid on employer securities held by the ESOP are used to repay the loan. The employer securities are held in a suspense account and released for allocation to participants' accounts as the loan is repaid.

A loan to an ESOP is exempt from prohibited transaction treatment if the loan is primarily for the benefit of the participants and their beneficiaries, the loan is at a reasonable rate of interest, and the collateral given to a disqualified person consists of only qualifying employer securities. No person entitled to payments under the loan can have the right to any assets of the ESOP other than (1) collateral given for the loan, (2) contributions made to the ESOP to meet its obligations on the loan, and (3) earnings attributable to the collateral and the investment of contributions described in (2).[72] In addition, the payments made on the loan by the ESOP during a plan year cannot exceed the sum of those contributions and earnings during the current and prior years, less loan payments made in prior years.

An ESOP of a C corporation is not treated as violating the qualification requirements of the Code or as engaging in a prohibited transaction merely because, in accordance with plan provisions, a dividend paid with respect to qualifying employer securities held by the ESOP is used to make payments on a loan (including payments of interest as well as principal) that was used to acquire the employer securities (whether or not allocated to participants).[73] In the case of a dividend paid with respect to any employer security that is allocated to a participant, this relief does not apply unless the plan provides that employer securities with a fair market value of not less than the amount of the dividend is allocated to the participant for the year which the dividend would have been allocated to the participant.[74]

Effective for taxable years beginning after December 31, 1997, a qualified retirement plan (including an ESOP) may be a shareholder of an S corporation.[75] As a result, an S corporation may maintain an ESOP.

HOUSE BILL

Under the provision, an ESOP maintained by an S corporation is not treated as violating the qualification requirements of the Code or as engaging in a prohibited transaction merely because, in accordance with plan provisions, a distribution made with respect to S corporation stock that constitutes qualifying employer securities held by the

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[66] Another provision of the bill increases the maximum number of shareholders to 100.

[67] Sec. 1361(c)(4). Treasury regulations provide that buy-sell and redemption agreements are disregarded in determining whether a corporation's outstanding shares confer identical distribution and liquidation rights unless (1) a principal purpose of the agreement is to circumvent the one class of stock requirement and (2) the agreement establishes a purchase price that, at the time the agreement is entered into, is significantly in excess of, or below, the fair market value of the stock. Treas. Reg. sec. 1.1361-1(l).

[68] 12 U.S.C. secs. 71-72.

[69] See Private Letter Ruling 200217048 (January 24, 2002) describing such an agreement and holding that it creates a second class of stock. Nonetheless, the ruling concluded that the election to be an S corporation was inadvertently invalid and that an amended agreement did not create a second class of stock so that the corporation's election was validated.

[70] Sec. 4975.

[71] Sec. 4975(d)(3). An ESOP that borrows money to purchase employer stock is referred to as a "leveraged" ESOP.

[72] Treas. Reg. sec. 54.4975-7(b)(5).

[73] Sec. 404(k)(5)(B).

[74] Sec. 404(k)(2)(B).

[75] Sec. 1361(c)(6).

ESOP is used to make payments on a loan that was used to acquire the securities (whether or not allocated to participants). This relief does not apply in the case of a distribution with respect to S corporation stock that is allocated to a participant unless the plan provides that stock with a fair market value of not less than the amount of such distribution is allocated to the participant for the year which the distribution would have been allocated to the participant.

Effective date.—The provision is effective for distributions made with respect to S corporation stock after December 31, 2004.

SENATE AMENDMENT

The Senate amendment is the same as House bill (other than the effective date).

Effective date.—The provision is effective on January 1, 1998.

CONFERENCE AGREEMENT

The conference agreement contains the provision in the House bill and Senate amendment, with a modification of the effective date. Thus, an ESOP maintained by an S corporation is not treated as violating the qualification requirements of the Code or as engaging in a prohibited transaction merely because, in accordance with plan provisions, a distribution made with respect to S corporation stock that constitutes qualifying employer securities held by the ESOP is used to make payments on a loan (including payments of interest as well as principal) that was used to acquire the securities (whether or not allocated to participants). This relief does not apply in the case of a distribution with respect to S corporation stock that is allocated to a participant unless the plan provides that stock with a fair market value of not less than the amount of such distribution is allocated to the participant for the year which the distribution would have been allocated to the participant.

Effective date.—The provision is effective for distributions made with respect to S corporation stock after December 31, 1997.

D. ALTERNATIVE MINIMUM TAX RELIEF

1. Repeal limitation on use of foreign tax credit (sec. 241 of the House bill, sec. 203 of the Senate amendment, and sec. 59 of the Code)

PRESENT LAW

In general

Under present law, taxpayers are subject to an alternative minimum tax ("AMT"), which is payable, in addition to all other tax liabilities, to the extent that it exceeds the taxpayer's regular income tax liability. The tax is imposed at a flat rate of 20 percent, in the case of corporate taxpayers, on alternative minimum taxable income ("AMTI") in excess of an exemption amount that phases out. AMTI is the taxpayer's taxable income increased for certain tax preferences and adjusted by determining the tax treatment of certain items in a manner that limits the tax benefits resulting from the regular tax treatment of such items.

Foreign tax credit

Taxpayers are permitted to reduce their AMT liability by an AMT foreign tax credit. The AMT foreign tax credit for a taxable year is determined under principles similar to those used in computing the regular tax foreign tax credit, except that (1) the numerator of the AMT foreign tax credit limitation fraction is foreign source AMTI and (2) the denominator of that fraction is total AMTI. Taxpayers may elect to use as their AMT foreign tax credit limitation fraction the ratio of foreign source regular taxable income to total AMTI.

The AMT foreign tax credit for any taxable year generally may not offset a taxpayer's entire pre-credit AMT. Rather, the AMT foreign tax credit is limited to 90 percent of AMT computed without any AMT net operating loss deduction and the AMT foreign tax credit. For example, assume that a corporation has $10 million of AMTI, has no AMT net operating loss deduction, and has no regular tax liability. In the absence of the AMT foreign tax credit, the corporation's tax liability would be $2 million. Accordingly, the AMT foreign tax credit cannot be applied to reduce the taxpayer's tax liability below $200,000. Any unused AMT foreign tax credit may be carried back two years and carried forward five years for use against AMT in those years under the principles of the foreign tax credit carryback and carryover rules set forth in section 904(c).

HOUSE BILL

The House bill repeals the 90-percent limitation on the utilization of the AMT foreign tax credit.

Effective date.—The provision applies to taxable years beginning after December 31, 2004.

SENATE AMENDMENT

Same as House bill.

CONFERENCE AGREEMENT

The conference agreement includes the provision in the House bill and Senate amendment.

2. Expansion of exemption from alternative minimum tax for small corporations (sec. 242 of the House bill and sec. 55 of the Code)

PRESENT LAW

Corporations with average gross receipts of less than $7.5 million for the prior three taxable years are exempt from the corporate AMT. The $7.5 million threshold is reduced to $5 million for the corporation's first 3-taxable year period.

HOUSE BILL

The House bill increases the amount of average gross receipts that an exempt corporation may receive from $7.5 million to $20 million.

Effective date.—The provision applies to taxable years beginning after December 31, 2005.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the provision in the House bill.

3. Coordinate farmer and fisherman income averaging and the alternative minimum tax (sec. 243 of the House bill and secs. 55 and 1301 of the Code)

PRESENT LAW

An individual taxpayer engaged in a farming business (as defined by section 263A(e)(4)) may elect to compute his or her current year regular tax liability by averaging, over the prior three-year period, all or portion of his or her taxable income from the trade or business of farming. Because farmer income averaging reduces the regular tax liability, the AMT may be increased. Thus, the benefits of farmer income averaging may be reduced or eliminated for farmers subject to the AMT.

HOUSE BILL

The House bill provides that, in computing AMT, a farmer's regular tax liability is determined without regard to farmer income averaging. Thus, a farmer receives the full benefit of income averaging because averaging reduces the regular tax while the AMT (if any) remains unchanged.

Effective date.—The provision applies to taxable years applies to taxable years beginning after December 31, 2003.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement extends the benefits of income averaging to fishermen. The provision also includes the provision in the House bill relating to the AMT, applicable to both farmers and fishermen.

Effective date.—Taxable years beginning after December 31, 2003.

E. RESTRUCTURING OF INCENTIVES FOR ALCOHOL FUELS, ETC.

1. Incentives for alcohol and biodiesel fuels (secs. 251 and 252 of the House bill, sec. 861 of the Senate amendment, and secs. 4041, 4081, 4091, 6427, 9503 and new section 6426 of the Code)

PRESENT LAW

Alcohol fuels income tax credit

The alcohol fuels credit is the sum of three credits: the alcohol mixture credit, the alcohol credit, and the small ethanol producer credit. Generally, the alcohol fuels credit expires after December 31, 2007.[76]

A taxpayer (generally a petroleum refiner, distributor, or marketer) who mixes ethanol with gasoline (or a special fuel[77]) is an "ethanol blender." Ethanol blenders are eligible for an income tax credit of 52 cents per gallon of ethanol used in the production of a qualified mixture (the "alcohol mixture credit"). A qualified mixture means a mixture of alcohol and gasoline (or of alcohol and a special fuel) sold by the blender as fuel or used as fuel by the blender in producing the mixture. The term alcohol includes methanol and ethanol but does not include (1) alcohol produced from petroleum, natural gas, or coal (including peat), or (2) alcohol with a proof of less than 150. Businesses also may reduce their income taxes by 52 cents for each gallon of ethanol (not mixed with gasoline or other special fuel) that they sell at the retail level as vehicle fuel or use themselves as a fuel in their trade or business ("the alcohol credit"). The 52-cents-per-gallon income tax credit rate is scheduled to decline to 51 cents per gallon during the period 2005 through 2007. For blenders using an alcohol other than ethanol, the rate is 60 cents per gallon.[78]

A separate income tax credit is available for small ethanol producers (the "small ethanol producer credit"). A small ethanol producer is defined as a person whose ethanol production capacity does not exceed 30 million gallons per year. The small ethanol producer credit is 10 cents per gallon of ethanol produced during the taxable year for up to a maximum of 15 million gallons.

The credits that comprise the alcohol fuels tax credit are includible in income. The credit may not be used to offset alternative minimum tax liability. The credit is treated as a general business credit, subject to the ordering rules and carryforward/carryback rules that apply to business credits generally.

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[76] The alcohol fuels credit is unavailable when, for any period before January 1, 2008, the tax rates for gasoline and diesel fuels drop to 4.3 cents per gallon.

[77] A special fuel includes any liquid (other than gasoline) that is suitable for use in an internal combustion engine.

[78] In the case of any alcohol (other than ethanol) with a proof that is at least 150 but less than 190, the credit is 45 cents per gallon (the "low-proof blender amount"). For ethanol with a proof that is at least 150 but less than 190, the low-proof blender amount is 38.52 cents for sales or uses during calendar year 2004, and 37.78 cents for calendar years 2005, 2006, and 2007.

Excise tax reductions for alcohol mixture fuels

In general

Generally, motor fuels tax rates are as follows:[79]

Gasoline	18.3 cents per gallon.
Diesel fuel and kerosene	24.3 cents per gallon.
Special motor fuels	18.3 cents per gallon generally.

Alcohol-blended fuels are subject to a reduced rate of tax. The benefits provided by the alcohol fuels income tax credit and the excise tax reduction are integrated such that the alcohol fuels credit is reduced to take into account the benefit of any excise tax reduction.

Gasohol

Registered ethanol blenders may forgo the full income tax credit and instead pay reduced rates of excise tax on gasoline that they purchase for blending with ethanol. Most of the benefit of the alcohol fuels credit is claimed through the excise tax system.

The reduced excise tax rates apply to gasohol upon its removal or entry. Gasohol is defined as a gasoline/ethanol blend that contains 5.7 percent ethanol, 7.7 percent ethanol, or 10 percent ethanol. For the calendar year 2004, the following reduced rates apply to gasohol:[80]

5.7 percent ethanol	15.436 cents per gallon.
7.7 percent ethanol	14.396 cents per gallon.
10.0 percent ethanol	13.200 cents per gallon.

Reduced excise tax rates also apply when gasoline is purchased for the production of "gasohol." When gasoline is purchased for blending into gasohol, the rates above are multiplied by a fraction (e.g., 10/9 for 10-percent gasohol) so that the increased volume of motor fuel will be subject to tax. The reduced tax rates apply if the person liable for the tax is registered with the IRS and (1) produces gasohol with gasoline within 24 hours of removing or entering the gasoline or (2) gasoline is sold upon its removal or entry and such person has an unexpired certificate from the buyer and has no reason to believe the certificate is false.[81]

Qualified methanol and ethanol fuels

Qualified methanol or ethanol fuel is any liquid that contains at least 85 percent methanol or ethanol or other alcohol produced from a substance other than petroleum or natural gas. These fuels are taxed at reduced rates.[82] The rate of tax on qualified methanol is 12.35 cents per gallon. The rate on qualified ethanol in 2004 is 13.15 cents. From January 1, 2005, through September 30, 2007, the rate of tax on qualified ethanol is 13.25 cents.

Alcohol produced from natural gas

A mixture of methanol, ethanol, or other alcohol produced from natural gas that consists of at least 85 percent alcohol is also taxed at reduced rates.[83] For mixtures not containing ethanol, the applicable rate of tax is 9.25 cents per gallon before October 1, 2005. In all other cases, the rate is 11.4 cents per gallon. After September 30, 2005, the rate is reduced to 2.15 cents per gallon when the mixture does not contain ethanol and 4.3 cents per gallon in all other cases.

Blends of alcohol and diesel fuel or special motor fuels

A reduced rate of tax applies to diesel fuel or kerosene that is combined with alcohol as long as at least 10 percent of the finished mixture is alcohol. If none of the alcohol in the mixture is ethanol, the rate of tax is 18.4 cents per gallon. For alcohol mixtures containing ethanol, the rate of tax in 2004 is 19.2 cents per gallon and 19.3 cents per gallon for 2005 through September 30, 2007. Fuel removed or entered for use in producing a 10 percent diesel-alcohol fuel mixture (without ethanol), is subject to a tax of 20.44 cents per gallon. The rate of tax for fuel removed or entered for use to produce a 10 percent diesel-ethanol fuel mixture is 21.333 cents per gallon for 2004 and 21.444 cents per gallon for the period January 1, 2005, through September 30, 2007.[84]

Special motor fuel (nongasoline) mixtures with alcohol also are taxed at reduced rates.

Aviation fuel

Noncommercial aviation fuel is subject to a tax of 21.9 cents per gallon.[85] Fuel mixtures containing at least 10 percent alcohol are taxed at lower rates.[86] In the case of 10 percent ethanol mixtures, for any sale or use during 2004, the 21.9 cents is reduced by 13.2 cents (for a tax of 8.7 cents per gallon), for 2005, 2006, and 2007 the reduction is 13.1 cents (for a tax of 8.8 cents per gallon) and is reduced by 13.4 cents in the case of any sale during 2008 or thereafter. For mixtures not containing ethanol, the 21.9 cents is reduced by 14 cents for a tax of 7.9 cents. These reduced rates expire after September 30, 2007.[87]

When aviation fuel is purchased for blending with alcohol, the rates above are multiplied by a fraction (10/9) so that the increased volume of aviation fuel will be subject to tax.

Refunds and payments

If fully taxed gasoline (or other taxable fuel) is used to produce a qualified alcohol mixture, the Code permits the blender to file a claim for a quick excise tax refund. The refund is equal to the difference between the gasoline (or other taxable fuel) excise tax that was paid and the tax that would have been paid by a registered blender on the alcohol fuel mixture being produced. Generally, the IRS pays these quick refunds within 20 days. Interest accrues if the refund is paid more than 20 days after filing. A claim may be filed by any person with respect to gasoline, diesel fuel, or kerosene used to produce a qualified alcohol fuel mixture for any period for which $200 or more is payable and which is not less than one week.

Ethyl tertiary butyl ether (ETBE)

Ethyl tertiary butyl ether ("ETBE") is an ether that is manufactured using ethanol. Unlike ethanol, ETBE can be blended with gasoline before the gasoline enters a pipeline because ETBE does not result in contamination of fuel with water while in transport. Treasury regulations provide that gasohol blenders may claim the income tax credit and excise tax rate reductions for ethanol used in the production of ETBE. The regulations also provide a special election allowing refiners to claim the benefit of the excise tax rate reduction even though the fuel being removed from terminals does not contain the requisite percentages of ethanol for claiming the excise tax rate reduction.

Highway Trust Fund

With certain exceptions, the taxes imposed by section 4041 (relating to retail taxes on diesel fuels and special motor fuels) and section 4081 (relating to tax on gasoline, diesel fuel and kerosene) are credited to the Highway Trust Fund. In the case of alcohol fuels, 2.5 cents per gallon of the tax imposed is retained in the General Fund.[88] In the case of a taxable fuel taxed at a reduced rate upon removal or entry prior to mixing with alcohol, 2.8 cents of the reduced rate is retained in the General Fund.[89]

Biodiesel

If biodiesel is used in the production of blended taxable fuel, the Code imposes tax on the removal or sale of the blended taxable fuel.[90] In addition, the Code imposes tax on any liquid other than gasoline sold for use or used as a fuel in a diesel-powered highway vehicle or diesel-powered train unless tax was previously imposed and not refunded or credited.[91] If biodiesel that was not previously taxed or exempt is sold for use or used as a fuel in a diesel-powered highway vehicle or a diesel-powered train, tax is imposed.[92] There are no reduced excise tax rates for biodiesel.

Taxes from gasoline and special motor fuels used in motorboats and gasoline used in the nonbusiness use of small-engine outdoor power equipment

The Aquatic Resources Trust Fund is funded by a portion of the receipts from the excise tax imposed on motorboat gasoline and special motor fuels, as well as small-engine fuel taxes, that are first deposited into the Highway Trust Fund. As a result, transfers to the Aquatic Resources Trust Fund are governed in part by Highway Trust Fund provisions.[93]

A total tax rate of 18.4 cents per gallon is imposed on gasoline and special motor fuels used in motorboats. Of this rate, 0.1 cent per gallon is dedicated to the Leaking Underground Storage Tank Trust Fund. Of the remaining 18.3 cents per gallon, the Code currently transfers 13.5 cents per gallon from the Highway Trust Fund to the Aquatics Resources Trust Fund and Land and Water Conservation Fund. The remainder, 4.8 cents per gallon, is retained in the General Fund. In addition, the Sport Fish Restoration Account of the Aquatics Resources Trust Fund receives 13.5 cents per gallon of the revenues from the tax imposed on gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment. The balance of 4.8 cents per gallon is retained in the General Fund.[94]

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[79] These fuels are also subject to an additional 0.1 cent-per-gallon excise tax to fund the Leaking Underground Storage Tank Trust Fund. See secs. 4041(d) and 4081(a)(2)(B). In addition, the basic fuel tax rate will drop to 4.3 cents per gallon beginning on October 1, 2005.

[80] These rates include the additional 0.1 cent-per-gallon excise tax to fund the Leaking Underground Storage Tank Trust Fund. These special rates will terminate after September 30, 2007 (sec. 4081(c)(8)).

[81] Treas. Reg. sec. 48.4081-6(c). A certificate from the buyer assures that the gasoline will be used to produce gasohol within 24 hours after purchase. A copy of the registrant's letter of registration cannot be used as a gasohol blender's certificate.

[82] These reduced rates terminate after September 30, 2007. Included in these rates is the 0.05-cent-per-gallon Leaking Underground Storage Tank Trust Fund tax imposed on such fuel. (sec. 4041(b)(2)).

[83] These rates include the additional 0.1 cent-per-gallon excise tax to fund the Leaking Underground Storage Tank Trust Fund (sec. 4041(d)(1)).

[84] These rates include the additional 0.1 cent-per-gallon excise tax to fund the Leaking Underground Storage Tank Trust Fund.

[85] This rate includes the additional 0.1 cent-per-gallon tax for the Leaking Underground Storage Tank Trust fund.

[86] Secs. 4041(k)(1) and 4091(c).

[87] Sec. 4091(c)(1).

[88] Sec. 9503(b)(4)(E).

[89] Sec. 9503(b)(4)(F).

[90] Sec. 4081(b); Rev. Rul. 2002-76, 2002-46 I.R.B. 841 (2002). "Taxable fuels" are gasoline, diesel and kerosene (sec. 4083). Biodiesel, although suitable for use as a fuel in a diesel-powered highway vehicle or diesel-powered train, contains less than four percent normal paraffins and, therefore, is not treated as diesel fuel under the applicable Treasury regulations. Treas. Reg. secs. 48.4081-1(c)(2)(i) and (ii), and 48.4081-1(b); Rev. Rul. 2002-76, 2002-46 I.R.B. 841 (2002). As a result, biodiesel alone is not a taxable fuel for purposes of section 4081. As noted above, however, tax is imposed upon the removal or entry of blended taxable fuel made with biodiesel.

[91] Sec. 4041. The tax imposed under section 4041 also will not apply if an exemption from tax applies.

[92] Rev. Rul. 2002-76, 2002-46 I.R.B. 841 (2002).

[93] Sec. 9503(c)(4) and 9503(c)(5).

HOUSE BILL

Overview

The provision eliminates reduced rates of excise tax for alcohol-blended fuels and imposes the full rate of excise tax on alcohol-blended fuels (18.4 cents per gallon on gasoline blends and 24.4 cents per gallon of diesel blended fuel). In place of reduced rates, the provision permits the section 40 alcohol mixture credit, with certain modifications, to be applied against excise tax liability. The credit may be taken against the tax imposed on taxable fuels (by section 4081). To the extent a person does not have section 4081 liability, the provision allows taxpayers to file a claim for payment equal to the amount of the credit for the alcohol used to produce an eligible mixture. Under certain circumstances, a tax is imposed if an alcohol fuel mixture credit is claimed with respect to alcohol used in the production of any alcohol mixture, which is subsequently used for a purpose for which the credit is not allowed or changed into a substance that does not qualify for the credit. The provision eliminates the General Fund retention of certain taxes on alcohol fuels, and credits these taxes to the Highway Trust Fund.

Alcohol fuel mixture excise tax credit and payment provisions

Alcohol fuel mixture excise tax credit

The provision eliminates the reduced rates of excise tax for alcohol-blended fuels and taxable fuels used to produce an alcohol fuel mixture. Under the provision, the full rate of tax for taxable fuels is imposed on both alcohol fuel mixtures and the taxable fuel used to produce an alcohol fuel mixture.

In lieu of the reduced excise tax rates, the provision provides that the alcohol mixture credit provided under section 40 may be applied against section 4081 excise tax liability (hereinafter referred to as "the alcohol fuel mixture credit"). The credit is treated as a payment of the taxpayer's tax liability received at the time of the taxable event. The alcohol fuel mixture credit is 52 cents for each gallon of alcohol used by a person in producing an alcohol fuel mixture for sale or use in a trade or business of the taxpayer. The credit declines to 51 cents per gallon after calendar year 2004. For mixtures not containing ethanol (renewable source methanol), the credit is 60 cents per gallon. As discussed further below, the excise tax credit is refundable in order to provide a benefit equivalent to the reduced tax rates, which are being repealed under the provision.

For purposes of the alcohol fuel mixture credit, an "alcohol fuel mixture" is a mixture of alcohol and gasoline or alcohol and a special fuel which is sold for use or used as a fuel by the taxpayer producing the mixture. Alcohol for this purpose includes methanol, ethanol, and alcohol gallon equivalents of ETBE or other ethers produced from such alcohol. It does not include alcohol produced from petroleum, natural gas, or coal (including peat), or alcohol with a proof of less than 190 (determined without regard to any added denaturants). Special fuel is any liquid fuel (other than gasoline) which is suitable for use in an internal combustion engine. The benefit obtained from the excise tax credit is coordinated with the alcohol fuels income tax credit. For refiners making an alcohol fuel mixture with ETBE, the mixture is treated as sold to another person for use as a fuel only upon removal from the refinery. The excise tax credit is available through December 31, 2010.

Payments with respect to qualified alcohol fuel mixtures

To the extent the alcohol fuel mixture credit exceeds any section 4081 liability of a person, the Secretary is to pay such person an amount equal to the alcohol fuel mixture credit with respect to such mixture. These payments are intended to provide an equivalent benefit to replace the partial exemption for fuels to be blended with alcohol and alcohol fuels being repealed by the provision. If claims for payment are not paid within 45 days, the claim is to be paid with interest. The provision also provides that in the case of an electronic claim, if such claim is not paid within 20 days, the claim is to be paid with interest. If claims are filed electronically, the claimant may make a claim for less than $200.

The provision does not apply with respect to alcohol fuel mixtures sold after December 31, 2010.

Alcohol fuel subsidies borne by General Fund

The provision eliminates the requirement that 2.5 and 2.8 cents per gallon of excise taxes be retained in the General Fund with the result that the full amount of tax on alcohol fuels is credited to the Highway Trust Fund. The provision also authorizes the full amount of fuel taxes to be appropriated to the Highway Trust Fund without reduction for amounts equivalent to the excise tax credits allowed for alcohol fuel mixtures, and the Trust Fund is not required to reimburse any payments with respect to qualified alcohol fuel mixtures.

Motorboat and small engine fuel taxes

The provision eliminates the General Fund retention of the 4.8 cents per gallon of the taxes imposed on gasoline and special motor fuels used in motorboats and gasoline used as a fuel in the nonbusiness use of small-engine outdoor power equipment.

Effective dates

The provisions generally are effective for fuel sold or used after September 30, 2004. The repeal of the General Fund retention of the 2.5/2.8 cents per gallon of tax regarding alcohol fuels is effective for taxes imposed after September 30, 2003. The repeal of the 4.8 cents per gallon General Fund retention of the taxes imposed on fuels used in motorboats and small engine equipment is effective for taxes imposed after September 30, 2006. The provision regarding the crediting of the full amount of tax to the Highway Trust Fund without regard to credits and payments is effective for taxes received after September 30, 2004, and payments made after September 30, 2004.

SENATE AMENDMENT

Alcohol fuels

The Senate amendment is similar to the House bill with respect to alcohol fuels, except that it also provides that outlay payments are available for neat alcohol used as fuel. In addition, the Senate amendment also extends the alcohol fuels income tax credit (sec. 40) through December 31, 2010. The Senate amendment requires importers and producers of alcohol to be registered with the Secretary. Finally, the provision extends the temporary additional duty on ethanol through January 1, 2011.

Biodiesel fuels

The Senate amendment creates a refundable excise tax credit for biodiesel fuel mixtures similar to that created for alcohol fuel mixtures. The excise tax credit for biodiesel mixtures is 50 cents for each gallon of biodiesel used by the taxpayer in producing a qualified biodiesel mixture for sale or use in a trade or business of the taxpayer. A qualified biodiesel mixture is a mixture of biodiesel and diesel fuel (determined without regard to any use of kerosene) that is (1) sold for use or used by the taxpayer producing such mixture as a fuel, or (2) removed from the refinery by a person producing the mixture. In the case of agri-biodiesel, the credit is $1.00 per gallon. No credit is allowed unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the biodiesel that identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product. The Senate amendment also provides for outlay payments for biodiesel, not in a mixture, used as a fuel.

The credit is not available for any sale or use for any period after December 31, 2006. Credits and outlay payments are paid out of the General Fund, rather than the Highway Trust Fund. The excise tax credit is coordinated with the income tax credit for biodiesel such that credit for the same biodiesel cannot be claimed for both income and excise tax purposes.

The Senate amendment requires importers and producers of biodiesel to be registered with the Secretary.

Motorboat and small engine fuel taxes

The Senate amendment does not change the General Fund's retention of the 4.8 cents per gallon imposed on motorboat and small engine fuel.

Effective date

The provisions generally are effective for fuel sold or used after September 30, 2004. The repeal of the General Fund retention of the 2.5/2.8 cents per gallon regarding alcohol fuels is effective for fuel sold or used after September 30, 2003. The Secretary is to provide electronic filing instructions by September 30, 2004. The extension of the section 40 alcohol fuels credit is effective on the date of enactment. The requirement that producers and importers of alcohol and biodiesel be registered is effective April 1, 2005.

CONFERENCE AGREEMENT

Overview

The conference agreement generally follows the Senate amendment. The conference agreement does not include outlay payments for neat alcohol and 100 percent biodiesel fuels. The conference agreement does not change the temporary duty on ethanol. In addition, the conference agreement does not change the General Fund's retention of the 4.8 cents per gallon imposed on motorboat and small engine fuel.

The conference agreement eliminates reduced rates of excise tax for most alcohol-blended fuels and imposes the full rate of excise tax on most alcohol-blended fuels (18.3 cents per gallon on gasoline blends and 24.3

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[94] The Sport Fish Restoration Account also is funded with receipts from an ad valorem manufacturers excise tax on sport fishing equipment.

cents per gallon of diesel blended fuel). In place of reduced rates, the conference agreement creates two new excise tax credits: the alcohol fuel mixture credit and the biodiesel mixture credit. The sum of these credits may be taken against the tax imposed on taxable fuels (by section 4081). The conference agreement allows taxpayers to file a claim for payment equal to the amount of these credits for biodiesel or alcohol used to produce an eligible mixture.

Under certain circumstances, a tax is imposed if an alcohol fuel mixture credit or biodiesel fuel mixture credit is claimed with respect to alcohol or biodiesel used in the production of any alcohol or biodiesel mixture, which is subsequently used for a purpose for which the credit is not allowed or changed into a substance that does not qualify for the credit.

The conference agreement eliminates the General Fund retention of certain taxes on alcohol fuels, and credits these taxes to the Highway Trust Fund. The Highway Trust Fund is credited with the full amount of tax imposed on alcohol and biodiesel fuel mixtures.

The conference agreement also extends the present-law alcohol fuels income tax credit through December 31, 2010.

Alcohol fuel mixture excise tax credit

The provision eliminates the reduced rates of excise tax for most alcohol-blended fuels.[95] Under the provision, the full rate of tax for taxable fuels is imposed on both alcohol fuel mixtures and the taxable fuel used to produce an alcohol fuel mixture.

In lieu of the reduced excise tax rates, the provision provides for an excise tax credit, the alcohol fuel mixture credit. The alcohol fuel mixture credit is 51 cents for each gallon of alcohol used by a person in producing an alcohol fuel mixture for sale or use in a trade or business of the taxpayer. For mixtures not containing ethanol (renewable source methanol), the credit is 60 cents per gallon.

For purposes of the alcohol fuel mixture credit, an "alcohol fuel mixture" is a mixture of alcohol and a taxable fuel that (1) is sold by the taxpayer producing such mixture to any person for use as a fuel or (2) is used as a fuel by the taxpayer producing the mixture. Alcohol for this purpose includes methanol, ethanol, and alcohol gallon equivalents of ETBE or other ethers produced from such alcohol. It does not include alcohol produced from petroleum, natural gas, or coal (including peat), or alcohol with a proof of less than 190 (determined without regard to any added denaturants). Taxable fuel is gasoline, diesel, and kerosene.[96] A mixture that includes ETBE or other ethers produced from alcohol produced by any person at a refinery prior to a taxable event is treated as sold at the time of its removal from the refinery (and only at such time) to another person for use as a fuel.

The excise tax credit is coordinated with the alcohol fuels income tax credit and is available through December 31, 2010.

Biodiesel mixture excise tax credit

The provision provides an excise tax credit for biodiesel mixtures.[97] The credit is 50 cents for each gallon of biodiesel used by the taxpayer in producing a qualified biodiesel mixture for sale or use in a trade or business of the taxpayer. A qualified biodiesel mixture is a mixture of biodiesel and diesel fuel that (1) is sold by the taxpayer producing such mixture to any person for use as a fuel, or (2) is used as a fuel by the taxpayer producing such mixture. In the case of agri-biodiesel, the credit is $1.00 per gallon. No credit is allowed unless the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer of the biodiesel that identifies the product produced and the percentage of biodiesel and agri-biodiesel in the product.

The credit is not available for any sale or use for any period after December 31, 2006. This excise tax credit is coordinated with the income tax credit for biodiesel such that credit for the same biodiesel cannot be claimed for both income and excise tax purposes.

Payments with respect to qualified alcohol and biodiesel fuel mixtures

To the extent the alcohol fuel mixture credit exceeds any section 4081 liability of a person, the Secretary is to pay such person an amount equal to the alcohol fuel mixture credit with respect to such mixture. Thus, if the person has no section 4081 liability, the credit is totally refundable. These payments are intended to provide an equivalent benefit to replace the partial exemption for fuels to be blended with alcohol and alcohol fuels being repealed by the provision. Similar rules apply to the biodiesel fuel mixture credit.

If claims for payment are not paid within 45 days, the claim is to be paid with interest. The provision also provides that in the case of an electronic claim, if such claim is not paid within 20 days, the claim is to be paid with interest. If claims are filed electronically, the claimant may make a claim for less than $200. The Secretary is to describe the electronic format for filing claims by December 31, 2004.

The payment provision does not apply with respect to alcohol fuel mixtures sold after December 31, 2010, and biodiesel fuel mixtures sold after December 31, 2006.

Alcohol and biodiesel fuel subsidies borne by General Fund

The provision eliminates the requirement that 2.5 and 2.8 cents per gallon of excise taxes be retained in the General Fund with the result that the full amount of tax on alcohol fuels is credited to the Highway Trust Fund. The provision also authorizes the full amount of fuel taxes to be appropriated to the Highway Trust Fund without reduction for amounts equivalent to the excise tax credits allowed for alcohol or biodiesel fuel mixtures and the Highway Trust Fund is not required to reimburse the General Fund for any credits or payments taken or made with respect to qualified alcohol fuel mixtures or biodiesel fuel mixtures.

Registration requirement

Every person producing or importing biodiesel or alcohol is required to register with the Secretary.

Alcohol fuels income tax credit

The provision extends the alcohol fuels credit (sec. 40) through December 31, 2010.

Effective dates

The provisions generally are effective for fuel sold or used after December 31, 2004. The repeal of the General Fund retention of the 2.5/2.8 cents per gallon regarding alcohol fuels is effective for fuel sold or used after September 30, 2004. The Secretary is to provide electronic filing instructions by December 31, 2004. The registration requirement is effective April 1, 2005.

2. Biodiesel income tax credit (sec. 862 of the bill and new sec. 40A of the Code)

PRESENT LAW

No income tax credit or excise tax rate reduction is provided for biodiesel fuels under present law. However, a 52-cents-per-gallon income tax credit (the "alcohol fuels credit") is allowed for ethanol and methanol (derived from renewable sources) when the alcohol is used as a highway motor fuel. Registered blenders may forgo the full income tax credit and instead pay reduced rates of excise tax on gasoline that they purchase for blending with alcohol. These present law provisions are scheduled to expire in 2007.

HOUSE BILL

No provision.

SENATE AMENDMENT

In general

The Senate amendment provides a new income tax credit for biodiesel and qualified biodiesel mixtures, the biodiesel fuels credit. The biodiesel fuels credit is the sum of the biodiesel mixture credit plus the biodiesel credit and is treated as a general business credit. The amount of the biodiesel fuels credit is includable in gross income. The biodiesel fuels credit is coordinated to take into account benefits from the biodiesel excise tax credit and payment provisions discussed above. The credit may not be carried back to a taxable year ending before or on September 30, 2004. The provision does not apply to fuel sold or used after December 31, 2006.

Biodiesel is monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet (1) the registration requirements established by the Environmental Protection Agency under section 211 of the Clean Air Act and (2) the requirements of the American Society of Testing and Materials D6751. Agri-biodiesel is biodiesel derived solely from virgin oils including oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, mustard seeds, or animal fats.

Biodiesel may be taken into account for purposes of the credit only if the taxpayer obtains a certification (in such form and manner as prescribed by the Secretary) from the producer or importer of the biodiesel which identifies the product produced and the percentage of the biodiesel and agri-biodiesel in the product.

Biodiesel mixture credit

The biodiesel mixture credit is 50 cents for each gallon of biodiesel used by the taxpayer in the production of a qualified biodiesel mixture. For agri-biodiesel, the credit is $1.00 per gallon. A qualified biodiesel mixture is a mixture of biodiesel and diesel fuel that is (1) sold by the taxpayer producing such mixture to any person for use as a fuel, or (2) is used as a fuel by the taxpayer producing such mixture. The sale or use must be in the trade or business of the taxpayer and is to be taken into account for the taxable year in which such sale or use occurs. No credit is allowed with respect to any casual off-farm production of a qualified biodiesel mixture.

Biodiesel credit

The biodiesel credit is 50 cents for each gallon of 100 percent biodiesel which is not in a mixture with diesel fuel and which during the taxable year is (1) used by the taxpayer as a fuel in a trade or business or (2) sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle. For agri-biodiesel, the credit is $1.00 per gallon.

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[95] The provision does not change the present-law treatment of fuels blended with alcohol derived from natural gas (under sec. 4041(m)), or alcohol derived from coal or peat (under sec. 4041(b)(2)). The provision does not change the taxes imposed to fund the Leaking Underground Storage Tank Trust Fund.

[96] Sec. 4083(a)(1). Under present law, dyed fuels are taxable fuels that have been exempted from tax.

[97] The excise tax credit uses the same definitions as the biodiesel fuels income tax credit.

Later separation or failure to use as fuel

In a manner similar to the treatment of alcohol fuels, a tax is imposed if a biodiesel fuels credit is claimed with respect to biodiesel that is subsequently used for a purpose for which the credit is not allowed or that is changed into a substance that does not qualify for the credit.

Effective date

The biodiesel fuel income tax credit provision is effective for fuel produced, and sold or used after September 30, 2004, in taxable years ending after such date.

CONFERENCE AGREEMENT

The conference agreement generally follows the Senate amendment, except for the effective date.

Effective date.—The provision is effective for fuel produced, and sold or used after December 31, 2004, in taxable years ending after such date.

F. EXCLUSION OF INCENTIVE STOCK OPTIONS AND EMPLOYEE STOCKPURCHASE PLAN STOCK OPTIONS FROM WAGES

(Sec. 261 of the House bill and secs. 421(b), 423(c), 3121(a), 3231, and 3306(b) of the Code)

PRESENT LAW

Generally, when an employee exercises a compensatory option on employer stock, the difference between the option price and the fair market value of the stock (i.e., the "spread") is includible in income as compensation. In the case of an incentive stock option or an option to purchase stock under an employee stock purchase plan (collectively referred to as "statutory stock options"), the spread is not included in income at the time of exercise.[98]

If the statutory holding period requirements are satisfied with respect to stock acquired through the exercise of a statutory stock option, the spread, and any additional appreciation, will be taxed as capital gain upon disposition of such stock. Compensation income is recognized, however, if there is a disqualifying disposition (i.e., if the statutory holding period is not satisfied) of stock acquired pursuant to the exercise of a statutory stock option.

Federal Insurance Contribution Act ("FICA") and Federal Unemployment Tax Act ("FUTA") taxes (collectively referred to as "employment taxes") are generally imposed in an amount equal to a percentage of wages paid by the employer with respect to employment.[99] The applicable Code provisions[100] do not provide an exception from FICA and FUTA taxes for wages paid to an employee arising from the exercise of a statutory stock option.

There has been uncertainty in the past as to employer withholding obligations upon the exercise of statutory stock options. On June 25, 2002, the IRS announced that until further guidance is issued, it would not assess FICA or FUTA taxes, or impose Federal income tax withholding obligations, upon either the exercise of a statutory stock option or the disposition of stock acquired pursuant to the exercise of a statutory stock option.[101]

HOUSE BILL

The House bill provides specific exclusions from FICA and FUTA wages for remuneration on account of the transfer of stock pursuant to the exercise of an incentive stock option or under an employee stock purchase plan, or any disposition of such stock. Thus, under the House bill, FICA and FUTA taxes do not apply upon the exercise of a statutory stock option.[102] The House bill also provides that such remuneration is not taken into account for purposes of determining Social Security benefits.

Additionally, the House bill provides that Federal income tax withholding is not required on a disqualifying disposition, nor when compensation is recognized in connection with an employee stock purchase plan discount. Present law reporting requirements continue to apply.

Effective date.—The House bill is effective for stock acquired pursuant to options exercised after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

G. INCENTIVES TO REINVEST FOREIGN EARNINGS IN THE UNITED STATES

(Sec. 271 of the House bill, sec. 231 of the Senate amendment, and new sec. 965 of the Code)

PRESENT LAW

The United States employs a "worldwide" tax system, under which domestic corporations generally are taxed on all income, whether derived in the United States or abroad. Income earned by a domestic parent corporation from foreign operations conducted by foreign corporate subsidiaries generally is subject to U.S. tax when the income is distributed as a dividend to the domestic corporation. Until such repatriation, the U.S. tax on such income generally is deferred, and U.S. tax is imposed on such income when repatriated. However, under anti-deferral rules, the domestic parent corporation may be taxed on a current basis in the United States with respect to certain categories of passive or highly mobile income earned by its foreign subsidiaries, regardless of whether the income has been distributed as a dividend to the domestic parent corporation. The main anti-deferral provisions in this context are the controlled foreign corporation rules of subpart F[103] and the passive foreign investment company rules.[104] A foreign tax credit generally is available to offset, in whole or in part, the U.S. tax owed on foreign-source income, whether earned directly by the domestic corporation, repatriated as a dividend from a foreign subsidiary, or included in income under the anti-deferral rules.[105]

HOUSE BILL

Under the provision, certain dividends received by a U.S. corporation from a controlled foreign corporation are eligible for an 85-percent dividends-received deduction. At the taxpayer's election, this deduction is available for dividends received either: (1) during the first six months of the taxpayer's first taxable year beginning on or after the date of enactment of the bill; or (2) during any six-month or shorter period after the date of enactment of the bill, during the taxpayer's last taxable year beginning before such date. Dividends received after the election period will be taxed in the normal manner under present law.

The deduction applies only to dividends and other amounts included in gross income as dividends (e.g., amounts described in section 1248(a)). The deduction does not apply to items that are not included in gross income as dividends, such as subpart F inclusions or deemed repatriations under section 956. Similarly, the deduction does not apply to distributions of earnings previously taxed under subpart F, except to the extent that the subpart F inclusions result from the payment of a dividend by one controlled foreign corporation to another controlled foreign corporation within a certain chain of ownership during the election period. This exception enables multinational corporate groups to qualify for the deduction in connection with the repatriation of earnings from lower-tier controlled foreign corporations.

The deduction is subject to a number of limitations. First, it applies only to repatriations in excess of the taxpayer's average repatriation level over three of the five most recent taxable years ending on or before March 31, 2003, determined by disregarding the highest-repatriation year and the lowest-repatriation year among such five years (the "base-period average"). In addition to actual dividends, deemed repatriations under section 956 and distributions of earnings previously taxed under subpart F are included in the base-period average.

Second, the amount of dividends eligible for the deduction is limited to the greatest of: (1) $500 million; (2) the amount of earnings shown as permanently invested outside the United States on the taxpayer's most recent audited financial statement which is certified on or before March 31, 2003; or (3) in the case of an applicable financial statement that fails to show a specific amount of such earnings, but that does show a specific amount of tax liability attributable to such earnings, the amount of such earnings determined in such manner as the Treasury Secretary may prescribe.

Third, dividends qualifying for the deduction must be invested in the United States pursuant to a plan approved by the senior management and board of directors of the corporation claiming the deduction.

No foreign tax credit (or deduction) is allowed for foreign taxes attributable to the deductible portion of any dividend received during the taxable year for which an election under the provision is in effect. For this purpose, the taxpayer may specifically identify which dividends are treated as carrying the deduction and which are not; in the absence of such identification, a pro rata amount of foreign tax credits will be disallowed with respect to every dividend received during the taxable year.

In addition, the income attributable to the nondeductible portion of a qualifying dividend may not be offset by net operating losses, and the tax attributable to such income generally may not be offset by credits (other than foreign tax credits and AMT credits) and may not reduce the alternative minimum tax otherwise owed by the taxpayer. No deduction under sections 243 or 245 is allowed for any dividend for which a deduction is allowed under the provision.

Effective date.—The House bill provision is effective for a taxpayer's first taxable year beginning on or after the date of enactment of the bill, or the taxpayer's last taxable year beginning before such date, at the taxpayer's election.

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[98] Sec. 421. For purposes of the individual alternative minimum tax, the transfer of stock pursuant to an incentive stock option is generally treated as the transfer of stock pursuant to a nonstatutory option. Sec. 56(b)(3).

[99] Secs. 3101, 3111 and 3301.

[100] Secs. 3121 and 3306.

[101] Notice 2002-47, 2002-28 I.R.B. 97.

[102] The provision also provides a similar exclusion under the Railroad Retirement Tax Act.

[103] Secs. 951-964.

[104] Secs. 1291-1298.

[105] Secs. 901, 902, 960, 1291(g).

SENATE AMENDMENT

Under the provision, certain actual and deemed dividends received by a U.S. corporation from a controlled foreign corporation are subject to tax at a reduced rate of 5.25 percent. For corporations taxed at the top corporate income tax rate of 35 percent, this rate reduction is equivalent to an 85-percent dividends-received deduction. This rate reduction is available only for the first taxable year of an electing taxpayer ending 120 days or more after the date of enactment of the provision.

The reduced rate applies only to repatriations in excess of the taxpayer's average repatriation level over 3 of the 5 most recent taxable years ending on or before December 31, 2002, determined by disregarding the highest-repatriation year and the lowest-repatriation year among such 5 years.[106] The taxpayer may designate which of its dividends are treated as meeting the base-period average level and which of its dividends are treated as comprising the excess.

In order to qualify for the reduced rate, dividends must be described in a "domestic reinvestment plan" approved by the taxpayer's senior management and board of directors. This plan must provide for the reinvestment of the repatriated dividends in the United States, "including as a source for the funding of worker hiring and training; infrastructure; research and development; capital investments; or the financial stabilization of the corporation for the purposes of job retention or creation."

The provision disallows 85 percent of the foreign tax credits attributable to dividends subject to the reduced rate and removes 85 percent of the underlying income from the taxpayer's foreign tax credit limitation fraction under section 904. In addition, any expenses, losses, or deductions of the taxpayer may not be used to reduce the tax on dividends qualifying for the benefits of the provision.

In the case of an affiliated group, an election under the provision is made by the common parent on a group-wide basis, and all members of the group are treated as a single taxpayer. The election applies to all controlled foreign corporations with respect to which an electing taxpayer is a United States shareholder.

Effective date.—The Senate amendment provision is effective for the first taxable year of an electing taxpayer ending 120 days or more after the provision's date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, with modifications.

Under the conference agreement, certain dividends received by a U.S. corporation from controlled foreign corporations are eligible for an 85-percent dividends-received deduction. At the taxpayer's election, this deduction is available for dividends received either during the taxpayer's first taxable year beginning on or after the date of enactment of the bill, or during the taxpayer's last taxable year beginning before such date.[107] Dividends received after the election period will be taxed in the normal manner under present law. The conferees emphasize that this is a temporary economic stimulus measure, and that there is no intent to make this measure permanent, or to "extend" or enact it again in the future.

The deduction applies only to cash dividends and other cash amounts included in gross income as dividends, such as cash amounts treated as dividends under sections 302 or 304 (but not to amounts treated as dividends under Code sections 78, 367, or 1248).[108] The deduction does not apply to items that are not included in gross income as dividends, such as subpart F inclusions or deemed repatriations under section 956. Similarly, the deduction does not apply to distributions of earnings previously taxed under subpart F, except to the extent that the subpart F inclusions result from the payment of a dividend by one controlled foreign corporation to another controlled foreign corporation within a certain chain of ownership during the election period, with the result that cash travels through a chain of controlled foreign corporations to the taxpayer within the election period. The amount of dividends eligible for the deduction is reduced by any increase in related-party indebtedness on the part of a controlled foreign corporation between October 3, 2004 and the close of the taxable year for which the deduction is being claimed, determined by treating all controlled foreign corporations with respect to which the taxpayer is a U.S. shareholder as one controlled foreign corporation.[109] This rule is intended to prevent a deduction from being claimed in cases in which the U.S. shareholder directly or indirectly (e.g., through a related party) finances the payment of a dividend from a controlled foreign corporation. In such a case, there may be no net repatriation of funds, and thus it would be inappropriate to provide the deduction.

The deduction is subject to a number of general limitations. First, it applies only to repatriations in excess of the taxpayer's average repatriation level over three of the five most recent taxable years ending on or before June 30, 2003, determined by disregarding the highest-repatriation year and the lowest-repatriation year among such five years (the "base-period average"). If the taxpayer has fewer than five such years, then all taxable years ending on or before June 30, 2003 are included in the base period.[110] Repatriation levels are determined by reference to base-period tax returns as filed, including any amended returns that were filed on or before June 30, 2003. U.S. shareholders that file a consolidated tax return are treated as one U.S. shareholder for all purposes of this dividends-received deduction provision. Thus, all such shareholders are aggregated in determining the base-period average (as are all controlled foreign corporations). In addition to cash dividends, dividends of property, deemed repatriations under section 956, and distributions of earnings previously taxed under subpart F are included in the base-period average.

Second, the amount of dividends eligible for the deduction is limited to the greatest of: (1) $500 million; (2) the amount of earnings shown as permanently invested outside the United States on the taxpayer's most recent audited financial statement which is certified on or before June 30, 2003;[111] or (3) in the case of an applicable financial statement that does not show a specific amount of such earnings, but that does show a specific amount of tax liability attributable to such earnings, the amount of such earnings determined by grossing up the tax liability at a 35-percent rate. If there is no applicable financial statement, or if such statement does not show a specific earnings or tax liability amount, then the $500 million limit applies. This $500 million amount is divided among corporations that are members of a controlled group, using a 50-percent standard of common control. The two financial statement amounts described above are divided among the U.S. shareholders that are included on such statements.

Third, in order to qualify for the deduction, dividends must be described in a domestic reinvestment plan approved by the taxpayer's senior management and board of directors. This plan must provide for the reinvestment of the repatriated dividends in the United States, including as a source for the funding of worker hiring and training, infrastructure, research and development, capital investments, and the financial stabilization of the corporation for the purposes of job retention or creation. The conferees note that this list of permitted uses is not exclusive. The reinvestment plan cannot, however, designate repatriated funds for use as payment for executive compensation. Dividends with respect to which the deduction is not being claimed are not required to be included in any domestic reinvestment plan.

No foreign tax credit (or deduction) is allowed for foreign taxes attributable to the deductible portion of any dividend. For this purpose, the taxpayer may specifically identify which dividends are treated as carrying the deduction and which dividends are not.[112] In other words, the taxpayer is allowed to choose which of its dividends are treated as meeting the base-period repatriation level (and thus carry foreign tax credits, to the extent otherwise allowable), and which of its dividends are treated as comprising the excess eligible for the deduction (and thus entail proportional disallowance of any associated foreign tax credits). The deduction itself will have the effect of appropriately reducing the taxpayer's foreign tax credit limitation.

Deductions are disallowed for expenses that are properly allocated and apportioned to the deductible portion of any dividend.

The income attributable to the nondeductible portion of a qualifying dividend may not be offset by expenses, losses, or deductions, and the tax attributable to such income generally may not be offset by credits (other than foreign tax credits and AMT credits).[113] The tax on this amount also cannot reduce the alternative minimum tax that otherwise would be owed by the taxpayer. However, the deduction available under this provision is not treated as a preference item for purposes of computing the AMT. Thus, the deduction is allowed in computing alternative minimum taxable income notwithstanding the fact that it may not be deductible in computing earnings and profits. No deduction under sections 243 or 245 is allowed for any dividend for which a deduction is allowed under the provision.

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[106] If the taxpayer has fewer than 5 taxable years ending on or before December 31, 2002, then the base period consists of all such taxable years, with none disregarded.

[107] The election is to be made on a timely filed return (including extensions) for the taxable year with respect to which the deduction is claimed.

[108] However, to the extent that the taxpayer actually receives cash in an inbound liquidation that is described in Code section 332 and treated as a dividend under Code section 367(b), such amount is treated as a dividend for these purposes. The conferees note that a deemed liquidation effectuated by means of a "check the box" election under the entity classification regulations will not involve an actual receipt of cash that is reinvested in the United States as required for purposes of this provision.

[109] Thus, indebtedness between such controlled foreign corporations is disregarded for purposes of this determination.

[110] A corporation that was spun off from another corporation during the five-year period is treated for this purpose as having been in existence for the same period that such other corporation has been in existence. The pre-spin-off dividend history of the two corporations is generally allocated between them on the basis of their interests in the dividend-paying controlled foreign corporations immediately after the spin-off. In other cases involving companies entering and exiting corporate groups, the principles of Code section 41(f)(3)(A) and (B) apply.

[111] This rule refers to elements of Accounting Principles Board Opinion 23 ("APB 23"), which provides an exception to the general rule of comprehensive recognition of deferred taxes for temporary book-tax differences. The exception is for temporary differences related to undistributed earnings of foreign subsidiaries and foreign corporate joint ventures that meet the indefinite reversal criterion in APB 23.

[112] In the absence of such a specification, a pro rata amount of foreign tax credits will be disallowed with respect to every dividend repatriated during the taxable year.

Effective date.—The provision is effective only for a taxpayer's first taxable year beginning on or after the date of enactment of the bill, or the taxpayer's last taxable year beginning before such date, at the taxpayer's election. The deduction available under the provision is not allowed for dividends received in any taxable year beginning one year or more after the date of enactment.

H. OTHER INCENTIVE PROVISIONS

1. Special rules for livestock sold on account of weather-related conditions (sec. 281 of the House bill, sec. 649 of the Senate amendment, and secs. 1033 and 451 of the Code)

PRESENT LAW

Generally, a taxpayer realizes gain to the extent the sales price (and any other consideration received) exceeds the taxpayer's basis in the property. The realized gain is subject to current income tax unless the gain is deferred or not recognized under a special tax provision.

Under section 1033, gain realized by a taxpayer from an involuntary conversion of property is deferred to the extent the taxpayer purchases property similar or related in service or use to the converted property within the applicable period. The taxpayer's basis in the replacement property generally is the cost of such property reduced by the amount of gain not recognized.

The applicable period for the taxpayer to replace the converted property begins with the date of the disposition of the converted property (or if earlier, the earliest date of the threat or imminence of requisition or condemnation of the converted property) and ends two years after the close of the first taxable year in which any part of the gain upon conversion is realized (the "replacement period"). Special rules extend the replacement period for certain real property and principal residences damaged by a Presidentially declared disaster to three years and four years, respectively, after the close of the first taxable year in which gain is realized.

Section 1033(e) provides that the sale of livestock (other than poultry) that is held for draft, breeding, or dairy purposes in excess of the number of livestock that would have been sold but for drought, flood, or other weather-related conditions is treated as an involuntary conversion. Consequently, gain from the sale of such livestock could be deferred by reinvesting the proceeds of the sale in similar property within a two-year period.

In general, cash-method taxpayers report income in the year it is actually or constructively received. However, section 451(e) provides that a cash-method taxpayer whose principal trade or business is farming who is forced to sell livestock due to drought, flood, or other weather-related conditions may elect to include income from the sale of the livestock in the taxable year following the taxable year of the sale. This elective deferral of income is available only if the taxpayer establishes that, under the taxpayer's usual business practices, the sale would not have occurred but for drought, flood, or weather-related conditions that resulted in the area being designated as eligible for Federal assistance. This exception is generally intended to put taxpayers who receive an unusually high amount of income in one year in the position they would have been in absent the weather-related condition.

HOUSE BILL

The House bill extends the applicable period for a taxpayer to replace livestock sold on account of drought, flood, or other weather-related conditions from two years to four years after the close of the first taxable year in which any part of the gain on conversion is realized. The extension is only available if the taxpayer establishes that, under the taxpayer's usual business practices, the sale would not have occurred but for drought, flood, or weather-related conditions that resulted in the area being designated as eligible for Federal assistance. In addition, the Secretary of the Treasury is granted authority to further extend the replacement period on a regional basis should the weather-related conditions continue longer than three years. Also, for property eligible for the provision's extended replacement period, the provision provides that the taxpayer can make an election under section 451(e) until the period for reinvestment of such property under section 1033 expires.

Effective date.—The House bill provision is effective for any taxable year with respect to which the due date (without regard to extensions) for the return is after December 31, 2002.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that it also permits the taxpayer to replace compulsorily or involuntarily converted livestock with other farm property if, due to drought, flood, or other weather-related conditions, it is not feasible for the taxpayer to reinvest the proceeds in property similar or related in use to the livestock so converted.

Effective date.—The Senate amendment provision is effective for taxable years beginning after December 31, 2001.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except for the effective date.

Effective date.—The conference agreement provision is effective for any taxable year with respect to which the due date (without regard to extensions) for the return is after December 31, 2002.

2. Payment of dividends on stock of cooperatives without reducing patronage dividends (sec. 282 of the House bill, sec. 648 of the Senate amendment, and sec. 1388 of the Code)

PRESENT LAW

Under present law, cooperatives generally are entitled to deduct or exclude amounts distributed as patronage dividends in accordance with Subchapter T of the Code. In general, patronage dividends are comprised of amounts that are paid to patrons (1) on the basis of the quantity or value of business done with or for patrons, (2) under a valid and enforceable obligation to pay such amounts that was in existence before the cooperative received the amounts paid, and (3) which are determined by reference to the net earnings of the cooperative from business done with or for patrons.

Treasury Regulations provide that net earnings are reduced by dividends paid on capital stock or other proprietary capital interests (referred to as the "dividend allocation rule").[114] The dividend allocation rule has been interpreted to require that such dividends be allocated between a cooperative's patronage and nonpatronage operations, with the amount allocated to the patronage operations reducing the net earnings available for the payment of patronage dividends.

HOUSE BILL

The House bill provides a special rule for dividends on capital stock of a cooperative. To the extent provided in organizational documents of the cooperative, dividends on capital stock do not reduce patronage income and do not prevent the cooperative from being treated as operating on a cooperative basis.

Effective date.—The House bill provision is effective for distributions made in taxable years ending after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

Effective date.—The Senate amendment provision is effective for distributions made in taxable years ending after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

3. Manufacturing relating to timber

a. Capital gains treatment to apply to outright sales of timber by landowner (sec. 283 of the House bill, sec. 333 of the Senate amendment, and sec. 631(b) of the Code)

PRESENT LAW

Under present law, a taxpayer disposing of timber held for more than one year is eligible for capital gains treatment in three situations. First, if the taxpayer sells or exchanges timber that is a capital asset (sec. 1221) or property used in the trade or business (sec. 1231), the gain generally is long-term capital gain; however, if the timber is held for sale to customers in the taxpayer's business, the gain will be ordinary income. Second, if the taxpayer disposes of the timber with a retained economic interest, the gain is eligible for capital gain treatment (sec. 631(b)). Third, if the taxpayer cuts standing timber, the taxpayer may elect to treat the cutting as a sale or exchange eligible for capital gains treatment (sec. 631(a)).

HOUSE BILL

Under the House bill, in the case of a sale of timber by the owner of the land from which the timber is cut, the requirement that a taxpayer retain an economic interest in the timber in order to treat gains as capital gain under section 631(b) does not apply. Outright sales of timber by the landowner will qualify for capital gains treatment in the same manner as sales with a retained economic interest qualify under present law, except that the usual tax rules relating to the timing of the income from the sale of the timber will apply (rather than the special rule of section 631(b) treating the disposal as occurring on the date the timber is cut).

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[113] These expenses, losses, and deductions may, however, have the effect of reducing other income of the taxpayer.

[114] Treas. Reg. sec. 1.1388-1(a)(1).

Effective date.—The provision is effective for sales of timber after December 31, 2004.

SENATE AMENDMENT

The provision in the Senate amendment is the same as House bill.

Effective date.—The provision is effective for sales of timber after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement includes the provision in the House bill and Senate amendment.

Effective date.—The provision is effective for sales of timber after December 31, 2004.

b. Expensing of reforestation expenditures (sec. 331 of the Senate amendment and secs. 48 and 194 of the Code)

PRESENT LAW

Section 194 provides for an 84-month amortization period for up to $10,000 of qualified reforestation expenditures. Section 48(b) provides a 10-percent credit on up to $10,000 of qualified amortizable basis in timber property. The amount amortized under section 194 is reduced by one half of the amount of credit claimed under section 48(b).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment permits up to $10,000 of qualified reforestation expenditures to be deducted in the year paid or incurred (i.e., expensed). The Senate amendment permits qualified reforestation expenditures above $10,000 to be amortized over 84 months. The Senate amendment also repeals the reforestation tax credit.

Effective date.—Expenditures paid or incurred after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment provision.

c. Election to treat cutting of timber as a sale or exchange (sec. 102(b) of the House bill, sec. 332 of the Senate amendment, and sec. 631(a) of the Code)

PRESENT LAW

Under present law, a taxpayer may elect to treat the cutting of timber as a sale or exchange of the timber. If an election is made, the gain or loss is recognized in an amount equal to the difference between the fair market value of the timber and the basis of the timber. An election, once made, is effective for the taxable year and all subsequent taxable years, unless the IRS, upon a showing of undue hardship by the taxpayer, permits the revocation of the election. If an election is revoked, a new election may be made only with the consent of the IRS.

HOUSE BILL

Under the House bill, an election made by a corporation for a taxable year ending on or before the date of enactment, to treat the cutting of timber as a sale or exchange, may be revoked by the taxpayer without the consent of the IRS for any taxable year ending after that date. The prior election (and revocation) is disregarded for purposes of making a subsequent election.

Effective date.—The provision applies to taxable years ending after the date of enactment.

SENATE AMENDMENT

The provision is the same as the House bill, except the provision applies to all taxpayers.

Effective date.—The provision applies to taxable years ending after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement includes the provision in the Senate amendment.

d. Modified safe harbor rules for timber REITs (sec. 334 of the Senate amendment and sec. 857 of the Code)

PRESENT LAW

In general

Under present law, real estate investment trusts ("REITs") are subject to a special taxation regime. Under this regime, a REIT is allowed a deduction for dividends paid to its shareholders. As a result, REITs generally do not pay tax on distributed income. REITs are generally restricted to earning certain types of passive income, primarily rents from real property and interests on mortgages secured by real property.

To qualify as a REIT, a corporation must satisfy a number of requirements, among which are four tests: organizational structure, source of income, nature of assets, and distribution of income.

Income or loss from prohibited transactions

A 100-percent tax is imposed on the net income of a REIT from "prohibited transactions". A prohibited transaction is the sale or other disposition of property held for sale in the ordinary course of a trade or business,[115] other than foreclosure property.[116] A safe harbor is provided for certain sales of rent-producing real property. To qualify for the safe harbor, three criteria generally must be met. First, the REIT must have held the property for at least four years for rental purposes. Second, the aggregate expenditures made by the REIT during the four-year period prior to the date of the sale must not exceed 30 percent of the net selling price of the property. Third, either (i) the REIT must make seven or fewer sales of property during the taxable year or (ii) the aggregate adjusted basis of the property sold must not exceed 10 percent of the aggregate bases of all the REIT's assets at the beginning of the REIT's taxable year. In the latter case, substantially all of the marketing and development expenditures with respect to the property must be made through an independent contractor.

Certain timber income

Some REITs have been formed to hold land on which trees are grown. Upon maturity of the trees, the standing trees are sold by the REIT. The Internal Revenue Service has issued private letter rulings in particular instances stating that the income from the sale of the trees can qualify as REIT real property income because the uncut timber and the timberland on which the timber grew is considered real property and the sale of uncut trees can qualify as capital gain derived from the sale of real property.[117]

Limitation on investment in other entities

A REIT is limited in the amount that it can own in other corporations. Specifically, a REIT cannot own securities (other than Government securities and certain real estate assets) in an amount greater than 25 percent of the value of REIT assets. In addition, it cannot own such securities of any one issuer representing more than five percent of the total value of REIT assets or more than 10 percent of the voting securities or 10 percent of the value of the outstanding securities of any one issuer. Securities for purposes of these rules are defined by reference to the Investment Company Act of 1940.[118]

Special rules for taxable REIT subsidiaries

Under an exception to the general rule limiting REIT securities ownership of other entities, a REIT can own stock of a taxable REIT subsidiary ("TRS"), generally, a corporation other than a REIT[119] with which the REIT makes a joint election to be subject to special rules. A TRS can engage in active business operations that would produce income that would not be qualified income for purposes of the 95-percent or 75-percent income tests for a REIT, and that income is not attributed to the REIT. Transactions between a TRS and a REIT are subject to a number of specified rules that are intended to prevent the TRS (taxable as a separate corporate entity) from shifting taxable income from its activities to the pass-through entity REIT or from absorbing more than its share of expenses. Under one rule, a 100-percent excise tax is imposed on rents, deductions, or interest paid by the TRS to the REIT to the extent such items would exceed an arm's length amount as determined under section 482.[120]

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the provision, a sale of a real estate asset by a REIT will not be a prohibited transaction if the following six requirements are met:

(1) The asset must have been held for at least four years in the trade or business of producing timber;

(2) The aggregate expenditures made by the REIT (or a partner of the REIT) during the four-year period preceding the date of sale that are includible in the basis of the property (other than timberland acquisition expenditures[121]) and that are directly related to the operation of the property for the production of timber or for the preservation of the property for use as timberland must not exceed 30 percent of the net selling price of the property;

(3) The aggregate expenditures made by the REIT (or a partner of the REIT) during the four-year period preceding the date of

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[115] Sec. 1221(a)(1)

[116] Thus, the 100-percent tax on prohibited transactions helps to ensure that the REIT is a passive entity and may not engage in ordinary retailing activities such as sales to customers of condominium units or subdivided lots in a development project.

[117] See, e.g., PLR 200052021, PLR 199945055, PLR 19927021, PLR 8838016. A private letter ruling may be relied upon only by the taxpayer to which the ruling is issued. However, such rulings provide an indication of administrative practice.

[118] Certain securities that are within a safe-harbor definition of "straight debt" are not taken into account for purposes of the limitation to no more than 10 percent of the value of an issuer's outstanding securities.

[119] Certain corporations are not eligible to be a TRS, such as a corporation which directly or indirectly operates or manages a lodging facility or a health care facility or directly or indirectly provides to any other person rights to a brand name under which any lodging facility or health care facility is operated. Sec. 856(l)(3).

[120] If the excise tax applies, the item is not also reallocated back to the TRS under section 482.

[121] The timberland acquisition expenditures that are excluded for this purpose are those expenditures that are related to timberland other than the specific timberland that is being sold under the safe harbor, but costs of which may be combined with costs of such property in the same "management block" under Treas. Reg. sec. 1.611-3(d). Any specific timberland being sold must meet the requirement that it has been held for at least four years by the REIT in order to qualify for the safe harbor.

sale that are includible in the basis of the property and that are not directly related to the operation of the property for the production of timber or the preservation of the property for use as timberland must not exceed five percent of the net selling price of the property;

(4) The REIT either (a) does not make more than seven sales of property (other than sales of foreclosure property or sales to which 1033 applies) or (b) the aggregate adjusted bases (as determined for purposes of computing earnings and profits) of property sold during the year (other than sales of foreclosure property or sales to which 1033 applies) does not exceed 10 percent of the aggregate bases (as determined for purposes of computing earnings and profits) of property of all assets of the REIT as of the beginning of the year;

(5) Substantially all of the marketing expenditures with respect to the property are made by persons who are independent contractors (as defined by section 856(d)(3)) with respect to the REIT and from whom the REIT does not derive any income; and

(6) The sales price on the sale of the property cannot be based in whole or in part on income or profits of any person, including income or profits derived from the sale of such properties.

Capital expenditures counted towards the 30-percent limit are those expenditures that are includible in the basis of the property (other than timberland acquisition expenditures), and that are directly related to operation of the property for the production of timber, or for the preservation of the property for use as timberland. These capital expenditures are those incurred directly in the operation of raising timber (i.e., silvi culture), as opposed to capital expenditures incurred in the ownership of undeveloped land. In general, these capital expenditures incurred directly in the operation of raising timber include capital expenditures incurred by the REIT to create an established stand of growing trees. A stand of trees is considered established when a target stand exhibits the expected growing rate and is free of non-target competition (e.g., hardwoods, grasses, brush, etc.) that may significantly inhibit or threaten the target stand survival. The costs commonly incurred during stand establishment are: (1) site preparation including manual or mechanical scarification, manual or mechanical cutting, disking, bedding, shearing, raking, piling, broadcast and windrow/pile burning (including slash disposal costs as required for stand establishment); (2) site regeneration including manual or mechanical hardwood coppice; (3) chemical application via aerial or ground to eliminate or reduce vegetation; (4) nursery operating costs including personnel salaries and benefits, facilities costs, cone collection and seed extraction, and other costs directly attributable to the nursery operations (to the extent such costs are allocable to seedlings used by the REIT); (5) seedlings including storage, transportation and handling equipment; (6) direct planting of seedlings; and (7) initial stand fertilization, up through stand establishment. Other examples of capital expenditures incurred directly in the operation of raising timber include construction cost of road to be used for managing the timber land (including for removal of logs or fire protection), environmental costs (i.e., habitat conservation plans), and any other post stand establishment capital costs (e.g., "mid-term fertilization costs)."

Capital expenditures counted towards the five-percent limit are those capital expenditures incurred in the ownership of undeveloped land that are not incurred in the direct operation of raising timber (i.e., silviculture). This category of capital expenditures includes: (1) expenditures to separate the REIT's holdings of land into separate parcels; (2) costs of granting leases or easements to cable, cellular or similar companies; (3) costs in determining the presence or quality of minerals located on the land; (4) costs incurred to defend changes in law that would limit future use of the land by the REIT or a purchaser from the REIT; (5) costs incurred to determine alternative uses of the land (e.g., recreational use); and (6) development costs of the property incurred by the REIT (e.g., engineering, surveying, legal, permit, consulting, road construction, utilities, and other development costs for use other than to grow timber).

Costs that are not includible in the basis of the property are not counted towards either the 30-percent or five-percent requirements.

Effective date.—The provision is effective for taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

4. Net income from publicly traded partnerships treated as qualifying income of regulated investment company (sec. 284 of the House bill, sec. 899 of the Senate amendment, and secs. 851(b), 469(k), 7704(d) and new sec. 851(h) of the Code)

PRESENT LAW

Treatment of RICs

A regulated investment company ("RIC") generally is treated as a conduit for Federal income tax purposes. In computing its taxable income, a RIC deducts dividends paid to its shareholders to achieve conduit treatment.[122] In order to qualify for conduit treatment, a RIC must be a domestic corporation that, at all times during the taxable year, is registered under the Investment Company Act of 1940 as a management company or as a unit investment trust, or has elected to be treated as a business development company under that Act.[123] In addition, the corporation must elect RIC status, and must satisfy certain other requirements.[124]

One of the RIC qualification requirements is that at least 90 percent of the RIC's gross income is derived from dividends, interest, payments with respect to securities loans, and gains from the sale or other disposition of stock or securities or foreign currencies, or other income (including but not limited to gains from options, futures, or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies.[125] Income derived from a partnership is treated as meeting this requirement only to the extent such income is attributable to items of income of the partnership that would meet the requirement if realized by the RIC in the same manner as realized by the partnership (the "look-through" rule for partnership income).[126] Under present law, no distinction is made under this rule between a publicly traded partnership and any other partnership.

The RIC qualification rules include limitations on the ownership of assets and on the composition of the RIC's assets.[127] Under the ownership limitation, at least 50 percent of the value of the RIC's total assets must be represented by cash, government securities and securities of other RICs, and other securities; however, in the case of such other securities, the RIC may invest no more than five percent of the value of the total assets of the RIC in the securities of any one issuer, and may hold no more than 10 percent of the outstanding voting securities of any one issuer. Under the limitation on the composition of the RIC's assets, no more than 25 percent of the value of the RIC's total assets may be invested in the securities of any one issuer (other than Government securities), or in securities of two or more controlled issuers in the same or similar trades or businesses. These limitations generally are applied at the end of each quarter.[128]

Treatment of publicly traded partnerships

Present law provides that a publicly traded partnership means a partnership, interests in which are traded on an established securities market, or are readily tradable on a secondary market (or the substantial equivalent thereof). In general, a publicly traded partnership is treated as a corporation, but an exception to corporate treatment is provided if 90 percent or more of its gross income is interest, dividends, real property rents, or certain other types of qualifying income.[129]

A special rule for publicly traded partnerships applies under the passive loss rules. The passive loss rules limit deductions and credits from passive trade or business activities.[130] Deductions attributable to passive activities, to the extent they exceed income from passive activities, generally may not be deducted against other income. Deductions and credits that are suspended under these rules are carried forward and treated as deductions and credits from passive activities in the next year. The suspended losses from a passive activity are allowed in full when a taxpayer disposes of his entire interest in the passive activity to an unrelated person. The special rule for publicly traded partnerships provides that the passive loss rules are applied separately with respect to items attributable to each publicly traded partnership.[131] Thus, income or loss from the publicly traded partnership is treated as separate from income or loss from other passive activities.

HOUSE BILL

The House bill modifies the 90-percent test with respect to income of a RIC to include net income derived from an interest in a publicly traded partnership. The House bill also modifies the look-through rule for partnership income of a RIC so that it applies only to income from a partnership other than a publicly traded partnership.

The House bill provides that the limitation on ownership and the limitation on composition of assets that apply to other investments of a RIC also apply to RIC investments in publicly traded partnership interests.

The House bill provides that the special rule for publicly traded partnerships under the passive loss rules (requiring separate treatment) applies to a RIC holding an interest in a publicly traded partnership, with respect to items attributable to the interest in the publicly traded partnership.

Effective date.—The House bill provision is effective for taxable years beginning after the date of enactment.

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[122] Sec. 852(b).

[123] Sec. 851(a).

[124] Sec. 851(b).

[125] Sec. 851(b)(2).

[126] Sec. 851(b).

[127] Sec. 851(b)(3).

[128] Sec. 851(d).

[129] Sec. 7704(a), (c), and (d).

[130] Sec. 469.

[131] Sec. 469(k).

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and Senate amendment. In addition, the conference agreement provides that net income from an interest in a publicly traded partnership is used for purposes of both the numerator and denominator of the 90-percent test. As under present law, the conference agreement also provides that gains from the sale or other disposition of interests in publicly traded partnerships constitute qualifying income of regulated investment companies.

5. Improvements related to real estate investment trusts (sec. 285 of the House bill and secs. 856, 857 and 860 of the Code)

PRESENT LAW

In general

Real estate investment trusts ("REITs") are treated, in substance, as pass-through entities under present law. Pass-through status is achieved by allowing the REIT a deduction for dividends paid to its shareholders. REITs are generally restricted to investing in passive investments primarily in real estate and securities.

A REIT must satisfy four tests on a year-by-year basis: organizational structure, source of income, nature of assets, and distribution of income. Whether the REIT meets the asset tests is generally measured each quarter.

Organizational structure requirements

To qualify as a REIT, an entity must be for its entire taxable year a corporation or an unincorporated trust or association that would be taxable as a domestic corporation but for the REIT provisions, and must be managed by one or more trustees. The beneficial ownership of the entity must be evidenced by transferable shares or certificates of ownership. Except for the first taxable year for which an entity elects to be a REIT, the beneficial ownership of the entity must be held by 100 or more persons, and the entity may not be so closely held by individuals that it would be treated as a personal holding company if all its adjusted gross income constituted personal holding company income. A REIT is required to comply with regulations to ascertain the actual ownership of the REIT's outstanding shares.

Income requirements

In order for an entity to qualify as a REIT, at least 95 percent of its gross income generally must be derived from certain passive sources (the "95-percent income test"). In addition, at least 75 percent of its income generally must be from certain real estate sources (the "75-percent income test"), including rents from real property (as defined) and gain from the sale or other disposition of real property, and income and gain derived from foreclosure property.

Qualified rental income

Amounts received as impermissible "tenant services income" are not treated as rents from real property.[132] In general, such amounts are for services rendered to tenants that are not "customarily furnished" in connection with the rental of real property.[133]

Rents from real property, for purposes of the 95-percent and 75-percent income tests, generally do not include any amount received or accrued from any person in which the REIT owns, directly or indirectly, 10 percent or more of the vote or value.[134] An exception applies to rents received from a taxable REIT subsidiary ("TRS") (described further below) if at least 90 percent of the leased space of the property is rented to persons other than a TRS or certain related persons, and if the rents from the TRS are substantially comparable to unrelated party rents.[135]

Certain hedging instruments

Except as provided in regulations, a payment to a REIT under an interest rate swap or cap agreement, option, futures contract, forward rate agreement, or any similar financial instrument, entered into by the trust in a transaction to reduce the interest rate risks with respect to any indebtedness incurred or to be incurred by the REIT to acquire or carry real estate assets, and any gain from the sale or disposition of any such investment, is treated as income qualifying for the 95-percent income test.

Tax if qualified income tests not met

If a REIT fails to meet the 95-percent or 75-percent income tests but has set out the income it did receive in a schedule and any error in the schedule is not due to fraud with intent to evade tax, then the REIT does not lose its REIT status provided that the failure to meet the 95-percent or 75-percent test is due to reasonable cause and not due to willful neglect. If the REIT qualifies for this relief, the REIT must pay a tax measured by the greater of the amount by which 90 percent[136] of the REIT's gross income exceeds the amount of items subject to the 95-percent test, or the amount by which 75 percent of the REIT's gross income exceeds the amount of items subject to the 75-percent test.[137]

Asset requirements

75-percent asset test

To satisfy the asset requirements to qualify for treatment as a REIT, at the close of each quarter of its taxable year, an entity must have at least 75 percent of the value of its assets invested in real estate assets, cash and cash items, and government securities (the "75-percent asset test"). The term real estate asset is defined to mean real property (including interests in real property and mortgages on real property) and interests in REITs.

Limitation on investment in other entities

A REIT is limited in the amount that it can own in other corporations. Specifically, a REIT cannot own securities (other than Government securities and certain real estate assets) in an amount greater than 25 percent of the value of REIT assets. In addition, it cannot own such securities of any one issuer representing more than 5 percent of the total value of REIT assets or more than 10 percent of the voting securities or 10 percent of the value of the outstanding securities of any one issuer. Securities for purposes of these rules are defined by reference to the Investment Company Act of 1940.

"Straight debt" exception

Securities of an issuer that are within a safe-harbor definition of "straight debt" (as defined for purposes of subchapter S)[138] are not taken into account in applying the limitation that a REIT may not hold more than 10 percent of the value of outstanding securities of a single issuer, if: (1) the issuer is an individual; (2) the only securities of such issuer held by the REIT or a taxable REIT subsidiary of the REIT are straight debt; or (3) the issuer is a partnership and the trust holds at least a 20 percent profits interest in the partnership.

Straight debt for purposes of the REIT provision[139] is defined as a written or unconditional promise to pay on demand or on a specified date a sum certain in money if (i) the interest rate (and interest payment dates) are not contingent on profits, the borrower's discretion, or similar factors, and (ii) there is no convertibility (directly or indirectly) into stock.

Certain subsidiary ownership permitted with income treated as income of the REIT

Under one exception to the rule limiting a REIT's securities holdings to no more than 10 percent of the vote or value of a single issuer, a REIT can own 100 percent of the stock of a corporation, but in that case the income and assets of such corporation are treated as income and assets of the REIT.

Special rules for taxable REIT subsidiaries

Under another exception to the general rule limiting REIT securities ownership of other entities, a REIT can own stock of a taxable REIT subsidiary ("TRS"), generally, a corporation other than a real estate investment trust[140] with which the REIT makes a joint election to be subject to special rules. A TRS can engage in active business operations that would produce income that would not be qualified income for purposes of the 95-percent or 75-percent income tests for a REIT, and that income is not attributed to the REIT. For example, a TRS could provide noncustomary services to REIT tenants, or it could engage directly in the active operation and management of real estate (without use of an independent contractor); and the income the TRS derived from these nonqualified activities would not be treated as disqualified REIT income. Transactions between a TRS and a REIT are subject to a number of specified rules that are intended to prevent the TRS (taxable as a separate corporate entity) from shifting taxable income from its activities to the pass-through entity REIT or from absorbing more than its share of expenses. Under one rule, a 100-percent excise tax is imposed on rents to the extent that the amount of the rents would be reduced on distribution, apportionment, or allocation under section 482 to clearly reflect income as a result of services furnished by a TRS of the REIT to a tenant of the REIT.[141]

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[132] A REIT is not treated as providing services that produce impermissible tenant services income if such services are provided by an independent contractor from whom the REIT does not derive or receive any income. An independent contractor is defined as a person who does not own, directly or indirectly, more than 35 percent of the shares of the REIT. Also, no more than 35 percent of the total shares of stock of an independent contractor (or of the interests in net assets or net profits, if not a corporation) can be owned directly or indirectly by persons owning 35 percent or more of the interests in the REIT.

[133] Rents for certain personal property leased in connection with the rental of real property are treated as rents from real property if the fair market value of the personal property does not exceed 15 percent of the aggregate fair market values of the real and personal property

[134] Sec. 856(d)(2)(B).

[135] Sec. 856(d)(8).

[136] Prior to 1999, the rule had applied to the amount by which 95 percent of the income exceeded the items subject to the 95 percent test.

[137] The ratio of the REIT's net to gross income is applied to the excess amount, to determine the amount of tax (disregarding certain items otherwise subject to a 100-percent tax). In effect, the formula seeks to require that all of the REIT net income attributable to the failure of the income tests will be paid as tax. Sec. 857(b)(5).

[138] Sec. 1361(c)(5), without regard to paragraph (B)(iii) thereof.

[139] Sec. 856(c)(7).

[140] Certain corporations are not eligible to be a TRS, such as a corporation which directly or indirectly operates or manages a lodging facility or a health care facility, or directly or indirectly provides to any other person rights to a brand name under which any lodging facility or health care facility is operated. Sec. 856(l)(3).

The 100 percent excise tax does not apply to amounts received directly or indirectly by a REIT from a TRS that would be excluded from unrelated taxable income if received by an organization described in section 511(a)(2). Such amounts are defined in section 512(b)(3).

Rents paid by a TRS to a REIT generally are treated as rents from real property if at least 90 percent of the leased space of the property is rented to persons other than the REIT's TRSs and other than persons related to the REIT. In such a case, the rent paid by the TRS to the REIT is treated as rent from real property only to the extent that it is substantially comparable to rents from other tenants of the REIT's property for comparable space.

Income distribution requirements

A REIT is generally required to distribute 90 percent of its income before the end of its taxable year, as deductible dividends paid to shareholders. This rule is similar to a rule for regulated investment companies ("RICs") that requires distribution of 90 percent of income. If a REIT declares certain dividends after the end of its taxable year but before the time prescribed for filing its return for that year and distributes those amounts to shareholders within the 12 months following the close of that taxable year, such distributions are treated as made during such taxable year for this purpose. As described further below, a REIT can also make certain "deficiency dividends" after the close of the taxable year after a determination that it has not distributed the correct amount for qualification as a REIT.

Consequences of failure to meet requirements

A REIT loses its status as a REIT, and becomes subject to tax as a C corporation, if it fails to meet specified tests regarding the sources of its income, the nature and amount of its assets, its structure, and the amount of its income distributed to shareholders.

If a REIT fails to meet the source of income requirements, but has set out the income it did receive in a schedule and any error in the schedule is not due to fraud with intent to evade tax, then the REIT does not lose its REIT status, provided that the failure to meet the 95-percent or 75-percent test is due to reasonable cause and not to willful neglect. If the REIT qualifies for this relief, the REIT must pay the disallowed income as a tax to the Treasury.[142]

Failure to satisfy the asset test is excused if the REIT eliminates the discrepancy within 30 days. Failure to meet distribution requirements may also be excused if the REIT was unable to meet such requirement by reason of distributions previously made to meet the requirements of section 4981.

There are no similar provisions that allow a REIT to pay a penalty and avoid disqualification in the case of other qualification failures.

A REIT may make a deficiency dividend after a determination is made that it has not distributed the correct amount of its income, and avoid disqualification. The Code provides only for determinations involving a controversy with the IRS and does not provide for a REIT to make such a distribution on its own initiative. Deficiency dividends may be declared on or after the date of "determination". A determination is defined to include only (i) a final decision by the Tax Court or other court of competent jurisdiction, (ii) a closing agreement under section 7121, or (iii) under Treasury regulations, an agreement signed by the Secretary and the REIT.

HOUSE BILL

The provision makes a number of modifications to the REIT rules.

Straight debt modification

The provision modifies the definition of "straight debt" for purposes of the limitation that a REIT may not hold more than 10 percent of the value of the outstanding securities of a single issuer, to provide more flexibility than the present law rule. In addition, except as provided in regulations, neither such straight debt nor certain other types of securities are considered "securities" for purposes of this rule.

Straight debt securities

As under present law, "straight-debt" is still defined by reference to section 1361(c)(5), without regard to subparagraph (B)(iii) thereof (limiting the nature of the creditor).

Special rules are provided permitting certain contingencies for purposes of the REIT provision. Any interest or principal shall not be treated as failing to satisfy section 1361(c)(5)(B)(i) solely by reason of the fact that the time of payment of such interest or principal is subject to a contingency, but only if one of several factors applies. The first type of contingency that is permitted is one that does not have the effect of changing the effective yield to maturity, as determined under section 1272, other than a change in the annual yield to maturity, but only if (i) any such contingency does not exceed the greater of ¼ of one percent or five percent of the annual yield to maturity, or (ii) neither the aggregate issue price nor the aggregate face amount of the debt instruments held by the REIT exceeds $1,000,000 and not more than 12 months of unaccrued interest can be required to be prepaid thereunder.

Also, the time or amount of any payment is permitted to be subject to a contingency upon a default or the exercise of a prepayment right by the issuer of the debt, provided that such contingency is consistent with customary commercial practice.[143]

The provision eliminates the present law rule requiring a REIT to own a 20 percent equity interest in a partnership in order for debt to qualify as "straight debt". The bill instead provides new "look-through" rules determining a REIT partner's share of partnership securities, generally treating debt to the REIT as part of the REIT's partnership interest for this purpose, except in the case of otherwise qualifying debt of the partnership.

Certain corporate or partnership issues that otherwise would be permitted to be held without limitation under the special straight debt rules described above will not be so permitted if the REIT holding such securities, and any of its taxable REIT subsidiaries, holds any securities of the issuer which are not permitted securities (prior to the application of this rule) and have an aggregate value greater than one percent of the issuer's outstanding securities.

Other securities

Except as provided in regulations, the following also are not considered "securities" for purposes of the rule that a REIT cannot own more than 10 percent of the value of the outstanding securities of a single issuer: (i) any loan to an individual or an estate, (ii) any section 467 rental agreement, (as defined in section 467(d)), other than with a person described in section 856(d)(2)(B), (iii) any obligation to pay rents from real property, (iv) any security issued by a State or any political subdivision thereof, the District of Columbia, a foreign government, or any political subdivision thereof, or the Commonwealth of Puerto Rico, but only if the determination of any payment received or accrued under such security does not depend in whole or in part on the profits of any entity not described in this category, or payments on any obligation issued by such an entity, (v) any security issued by a real estate investment trust; and (vi) any other arrangement that, as determined by the Secretary, is excepted from the definition of a security.

Safe harbor testing date for certain rents

The provision provides specific safe-harbor rules regarding the dates for testing whether 90 percent of a REIT property is rented to unrelated persons and whether the rents paid by related persons are substantially comparable to unrelated party rents. These testing rules are provided solely for purposes of the special provision permitting rents received from a TRS to be treated as qualified rental income for purposes of the income tests.[144]

Customary services exception

The provision prospectively eliminates the safe harbor allowing rents received by a REIT to be exempt from the 100 percent excise tax if the rents are for customary services performed by the TRS[145] or are from a TRS and are described in section 512(b)(3). Instead, such payments are free of the excise tax if they satisfy the present law safe-harbor that applies if the REIT pays the TRS at least 150 percent of the cost to the TRS of providing any services.

Hedging rules

The rules governing the tax treatment of arrangements engaged in by a REIT to reduce certain interest rate risks are prospectively generally conformed to the rules included in section 1221. Also, the defined income of a REIT from such a hedging transaction is excluded from gross income for purposes of the 95-percent of gross income requirement.

95-percent of gross income requirement

The provision prospectively amends the tax liability owed by the REIT when it fails to meet the 95-percent of gross income test by applying a taxable fraction based on 95 percent, rather than 90 percent, of the REIT's gross income.

Consequences of failure to meet REIT requirements

Under the provision, a REIT may avoid disqualification in the event of certain failures of the requirements for REIT status, provided that (1) the failure was due to reasonable cause and not willful neglect, (2) the failure is corrected, and (3) except for certain failures not exceeding a specified de minimis amount, a penalty amount is paid.

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[141] If the excise tax applies, then the item is not reallocated back to the TRS under section 482.

[142] Secs. 856(c)(6) and 857(b)(5).

[143] The present law rules that limit qualified interest income to amounts the determination of which do not depend, in whole or in part, on the income or profits of any person, continue to apply to such contingent interest. See, e.g., secs. 856(c)(2)(G), 856(c)(3)(G) and 856(f).

[144] The provision does not modify any of the standards of section 482 as they apply to REITs and to TRSs.

[145] Although a REIT could itself provide such service and receive the income without receiving any disqualified income, in that case the REIT itself would be bearing the cost of providing the service. Under the present law exception for a TRS providing such service, there is no explicit requirement that the TRS be reimbursed for the full cost of the service.

Certain de minimis asset failures of 5-percent or 10-percent tests

One requirement of present law is that, with certain exceptions, (i) not more than 5 percent of the value of total REIT assets may be represented by securities of one issuer, and (ii) a REIT may not hold securities possessing more than 10 percent of the total voting power or 10 percent of the total value of the outstanding securities of any one issuer.[146] The requirements must be satisfied each quarter.

The provision provides that a REIT will not lose its REIT status for failing to satisfy these requirements in a quarter if the failure is due to the ownership of assets the total value of which does not exceed the lesser of (i) one percent of the total value of the REIT's assets at the end of the quarter for which such measurement is done or (ii) 10 million dollars; provided in either case that the REIT either disposes of the assets within six months after the last day of the quarter in which the REIT identifies the failure (or such other time period prescribed by the Treasury), or otherwise meets the requirements of those rules by the end of such time period.[147]

Larger asset test failures (whether of 5-percent or 10-percent tests, or of 75-percent or other asset tests)

Under the provision, if a REIT fails to meet any of the asset test requirements for a particular quarter and the failure exceeds the de minimis threshold described above, then the REIT still will be deemed to have satisfied the requirements if: (i) following the REIT's identification of the failure, the REIT files a schedule with a description of each asset that caused the failure, in accordance with regulations prescribed by the Treasury; (ii) the failure was due to reasonable cause and not to willful neglect, (iii) the REIT disposes of the assets within 6 months after the last day of the quarter in which the identification occurred or such other time period as is prescribed by the Treasury (or the requirements of the rules are otherwise met within such period), and (iv) the REIT pays a tax on the failure.

The tax that the REIT must pay on the failure is the greater of (i) $50,000, or (ii) an amount determined (pursuant to regulations) by multiplying the highest rate of tax for corporations under section 11, by the net income generated by the assets for the period beginning on the first date of the failure and ending on the date the REIT has disposed of the assets (or otherwise satisfies the requirements).

Such taxes are treated as excise taxes, for which the deficiency provisions of the excise tax subtitle of the Code (subtitle F) apply.

Conforming reasonable cause and reporting standard for failures of income tests

The provision conforms the reporting and reasonable cause standards for failure to meet the income tests to the new asset test standards. However, the provision does not change the rule under section 857(b)(5) that for income test failures, all of the net income attributed to the disqualified gross income is paid as tax.

Other failures

The bill adds a provision under which, if a REIT fails to satisfy one or more requirements for REIT qualification, other than the 95-percent and 75-percent gross income tests and other than the new rules provided for failures of the asset tests, the REIT may retain its REIT qualification if the failures are due to reasonable cause and not willful neglect, and if the REIT pays a penalty of $50,000 for each such failure.

Taxes and penalties paid deducted from amount required to be distributed

Any taxes or penalties paid under the provision are deducted from the net income of the REIT in determining the amount the REIT must distribute under the 90-percent distribution requirement.

Expansion of deficiency dividend procedure

The provision expands the circumstances in which a REIT may declare a deficiency dividend, by allowing such a declaration to occur after the REIT unilaterally has identified a failure to pay the relevant amount. Thus, the declaration need not await a decision of the Tax Court, a closing agreement, or an agreement signed by the Secretary of the Treasury.

Effective date

The provision is generally effective for taxable years beginning after December 31, 2000.

However, some of the provisions are effective for taxable years beginning after the date of enactment. These are: the new "look through" rules determining a REIT partner's share of partnership securities for purposes of the "straight debt" rules; the provision changing the 90-percent of gross income reference to 95 percent, for purposes of the tax liability if a REIT fails to meet the 95-percent of gross income test; the new hedging definition; the rule modifying the treatment of rents with respect to customary services; and the new rules for correction of certain failures to satisfy the REIT requirements.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

6. Treatment of certain dividends of regulated investment companies (sec. 286 of the House bill and secs. 871 and 881 of the Code)

PRESENT LAW

Regulated investment companies

A regulated investment company ("RIC") is a domestic corporation that, at all times during the taxable year, is registered under the Investment Company Act of 1940 as a management company or as a unit investment trust, or has elected to be treated as a business development company under that Act (sec. 851(a)).

In addition, to qualify as a RIC, a corporation must elect such status and must satisfy certain tests (sec. 851(b)). These tests include a requirement that the corporation derive at least 90 percent of its gross income from dividends, interest, payments with respect to certain securities loans, and gains on the sale or other disposition of stock or securities or foreign currencies, or other income derived with respect to its business of investment in such stock, securities, or currencies.

Generally, a RIC pays no income tax because it is permitted to deduct dividends paid to its shareholders in computing its taxable income. The amount of any distribution generally is not considered as a dividend for purposes of computing the dividends paid deduction unless the distribution is pro rata, with no preference to any share of stock as compared with other shares of the same class (sec. 562(c)). For distributions by RICs to shareholders who made initial investments of at least $10,000,000, however, the distribution is not treated as non-pro rata or preferential solely by reason of an increase in the distribution due to reductions in administrative expenses of the company.

A RIC generally may pass through to its shareholders the character of its long-term capital gains. It does this by designating a dividend it pays as a capital gain dividend to the extent that the RIC has net capital gain (i.e., net long-term capital gain over net short-term capital loss). These capital gain dividends are treated as long-term capital gain by the shareholders. A RIC generally also can pass through to its shareholders the character of tax-exempt interest from State and local bonds, but only if, at the close of each quarter of its taxable year, at least 50 percent of the value of the total assets of the RIC consists of these obligations. In this case, the RIC generally may designate a dividend it pays as an exempt-interest dividend to the extent that the RIC has tax-exempt interest income. These exempt-interest dividends are treated as interest excludable from gross income by the shareholders.

U.S. source investment income of foreign persons

In general

The United States generally imposes a flat 30-cent tax, collected by withholding, on the gross amount of U.S.-source investment income payments, such as interest, dividends, rents, royalties or similar types of income, to nonresident alien individuals and foreign corporations ("foreign persons") (secs. 871(a), 881, 1441, and 1442). Under treaties, the United States may reduce or eliminate such taxes. Even taking into account U.S. treaties, however, the tax on a dividend generally is not entirely eliminated. Instead, U.S.-source portfolio investment dividends received by foreign persons generally are subject to U.S. withholding tax at a rate of at least 15 percent.

Interest

Although payments of U.S.-source interest that is not effectively connected with a U.S. trade or business generally are subject to the 30-cent withholding tax, there are exceptions to that rule. For example, interest from certain deposits with banks and other financial institutions is exempt from tax (secs. 871(i)(2)(A) and 881(d)). Original issue discount on obligations maturing in 183 days or less from the date of original issue (without regard to the period held by the taxpayer) is also exempt from tax (sec. 871(g)). An additional exception is provided for certain interest paid on portfolio obligations (secs. 871(h) and 881(c)). "Portfolio interest" generally is defined as any U.S.-source interest (including original issue discount), not effectively connected with the conduct of a U.S. trade or business, (i) on an obligation that satisfies certain registration requirements or specified exceptions thereto (i.e., the obligation is "foreign targeted"), and (ii) that is not received by a 10-cent shareholder (secs. 871(h)(3) and 881(c)(3)). With respect to a registered obligation, a statement that the beneficial owner is not a U.S. person is required

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[146] Sec. 856(c)(4)(B)(iii). These rules do not apply to securities of a TRS, or to securities that qualify for the 75 percent asset test of section 856(c)(4)(A), such as real estate assets, cash items (including receivables), or Government securities.

[147] A REIT might satisfy the requirements without a disposition, for example, by increasing its other assets in the case of the 5 percent rule; or by the issuer modifying the amount or value of its total securities outstanding in the case of the 10 percent rule.

(secs. 871(h)(2), (5) and 881(c)(2)). This exception is not available for any interest received either by a bank on a loan extended in the ordinary course of its business (except in the case of interest paid on an obligation of the United States), or by a controlled foreign corporation from a related person (sec. 881(c)(3)). Moreover, this exception is not available for certain contingent interest payments (secs. 871(h)(4) and 881(c)(4)).

Capital gains

Foreign persons generally are not subject to U.S. tax on gain realized on the disposition of stock or securities issued by a U.S. person (other than a "U.S. real property holding corporation," as described below), unless the gain is effectively connected with the conduct of a trade or business in the United States. This exemption does not apply, however, if the foreign person is a nonresident alien individual present in the United States for a period or periods aggregating 183 days or more during the taxable year (sec. 871(a)(2)). A RIC may elect not to withhold on a distribution to a foreign person representing a capital gain dividend. (Treas. Reg. sec. 1.1441–3(c)(2)(D)).

Gain or loss of a foreign person from the disposition of a U.S. real property interest is subject to net basis tax as if the taxpayer were engaged in a trade or business within the United States and the gain or loss were effectively connected with such trade or business (sec. 897). In addition to an interest in real property located in the United States or the Virgin Islands, U.S. real property interests include (among other things) any interest in a domestic corporation unless the taxpayer establishes that the corporation was not, during a 5–year period ending on the date of the disposition of the interest, a U.S. real property holding corporation (which is defined generally to mean a corporation the fair market value of whose U.S. real property interests equals or exceeds 50 percent of the sum of the fair market values of its real property interests and any other of its assets used or held for use in a trade or business).

Estate taxation

Decedents who were citizens or residents of the United States are generally subject to Federal estate tax on all property, wherever situated.[148] Nonresidents who are not U.S. citizens, however, are subject to estate tax only on their property which is within the United States. Property within the United States generally includes debt obligations of U.S. persons, including the Federal government and State and local governments (sec. 2104(c)), but does not include either bank deposits or portfolio obligations, the interest on which would be exempt from U.S. income tax under section 871 (sec. 2105(b)). Stock owned and held by a nonresident who is not a U.S. citizen is treated as property within the United States only if the stock was issued by a domestic corporation (sec. 2104(a); Treas. Reg. sec. 20.2104–1(a)(5)).

Treaties may reduce U.S. taxation on transfers by estates of nonresident decedents who are not U.S. citizens. Under recent treaties, for example, U.S. tax may generally be eliminated except insofar as the property transferred includes U.S. real property or business property of a U.S. permanent establishment.

HOUSE BILL

In general

Under the House bill, a RIC that earns certain interest income that would not be subject to U.S. tax if earned by a foreign person directly may, to the extent of such income, designate a dividend it pays as derived from such interest income. A foreign person who is a shareholder in the RIC generally would treat such a dividend as exempt from gross-basis U.S. tax, as if the foreign person had earned the interest directly. Similarly, a RIC that earns an excess of net short-term capital gains over net long-term capital losses, which excess would not be subject to U.S. tax if earned by a foreign person, generally may, to the extent of such excess, designate a dividend it pays as derived from such excess. A foreign person who is a shareholder in the RIC generally would treat such a dividend as exempt from gross-basis U.S. tax, as if the foreign person had realized the excess directly. The House bill also provides that the estate of a foreign decedent is exempt from U.S. estate tax on a transfer of stock in the RIC in the proportion that the assets held by the RIC are debt obligations, deposits, or other property that would generally be treated as situated outside the United States if held directly by the estate.

Interest-related dividends

Under the House bill, a RIC may, under certain circumstances, designate all or a portion of a dividend as an "interest-related dividend," by written notice mailed to its shareholders not later than 60 days after the close of its taxable year. In addition, an interest-related dividend received by a foreign person generally is exempt from U.S. gross-basis tax under sections 871(a), 881, 1441 and 1442.

However, this exemption does not apply to a dividend on shares of RIC stock if the withholding agent does not receive a statement, similar to that required under the portfolio interest rules, that the beneficial owner of the shares is not a U.S. person. The exemption does not apply to a dividend paid to any person within a foreign country (or dividends addressed to, or for the account of, persons within such foreign country) with respect to which the Treasury Secretary has determined, under the portfolio interest rules, that exchange of information is inadequate to prevent evasion of U.S. income tax by U.S. persons.

In addition, the exemption generally does not apply to dividends paid to a controlled foreign corporation to the extent such dividends are attributable to income received by the RIC on a debt obligation of a person with respect to which the recipient of the dividend (i.e., the controlled foreign corporation) is a related person. Nor does the exemption generally apply to dividends to the extent such dividends are attributable to income (other than short-term original issue discount or bank deposit interest) received by the RIC on indebtedness issued by the RIC-dividend recipient or by any corporation or partnership with respect to which the recipient of the RIC dividend is a 10–percent shareholder. However, in these two circumstances the RIC remains exempt from its withholding obligation unless the RIC knows that the dividend recipient is such a controlled foreign corporation or 10–percent shareholder. To the extent that an interest-related dividend received by a controlled foreign corporation is attributable to interest income of the RIC that would be portfolio interest if received by a foreign corporation, the dividend is treated as portfolio interest for purposes of the de minimis rules, the high-tax exception, and the same country exceptions of subpart F (see sec. 881(c)(5)(A)).

The aggregate amount designated as interest-related dividends for the RIC's taxable year (including dividends so designated that are paid after the close of the taxable year but treated as paid during that year as described in section 855) generally is limited to the qualified net interest income of the RIC for the taxable year. The qualified net interest income of the RIC equals the excess of: (1) the amount of qualified interest income of the RIC; over (2) the amount of expenses of the RIC properly allocable to such interest income.

Qualified interest income of the RIC is equal to the sum of its U.S.-source income with respect to: (1) bank deposit interest; (2) short term original issue discount that is currently exempt from the gross-basis tax under section 871; (3) any interest (including amounts recognized as ordinary income in respect of original issue discount, market discount, or acquisition discount under the provisions of sections 1271–1288, and such other amounts as regulations may provide) on an obligation which is in registered form, unless it is earned on an obligation issued by a corporation or partnership in which the RIC is a 10–percent shareholder or is contingent interest not treated as portfolio interest under section 871(h)(4); and (4) any interest-related dividend from another RIC.

If the amount designated as an interest-related dividend is greater than the qualified net interest income described above, the portion of the distribution so designated which constitutes an interest-related dividend will be only that proportion of the amount so designated as the amount of the qualified net interest income bears to the amount so designated.

Short-term capital gain dividends

Under the House bill, a RIC also may, under certain circumstances, designate all or a portion of a dividend as a "short-term capital gain dividend," by written notice mailed to its shareholders not later than 60 days after the close of its taxable year. For purposes of the U.S. gross-basis tax, a short-term capital gain dividend received by a foreign person generally is exempt from U.S. gross-basis tax under sections 871(a), 881, 1441 and 1442. This exemption does not apply to the extent that the foreign person is a nonresident alien individual present in the United States for a period or periods aggregating 183 days or more during the taxable year. However, in this circumstance the RIC remains exempt from its withholding obligation unless the RIC knows that the dividend recipient has been present in the United States for such period.

The aggregate amount qualified to be designated as short-term capital gain dividends for the RIC's taxable year (including dividends so designated that are paid after the close of the taxable year but treated as paid during that year as described in sec. 855) is equal to the excess of the RIC's net short-term capital gains over net long-term capital losses. The short-term capital gain includes short-term capital gain dividends from another RIC. As provided under present law for purposes of computing the amount of a capital gain dividend, the amount is determined (except in the case where an election under sec. 4982(e)(4) applies) without regard to any net capital loss or net short-term capital loss attributable to transactions after October 31 of the year. Instead, that loss is treated as arising on the first day of the next taxable year. To the extent provided in regulations, this rule also applies for purposes of computing the taxable income of the RIC.

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[148] The Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") repealed the estate tax for estates of decedents dying after December 31, 2009. However, EGTRRA included a "sunset" provision, pursuant to which EGTRRA's provisions (including estate tax repeal) do not apply to estates of decedents dying after December 31, 2010.

In computing the amount of short-term capital gain dividends for the year, no reduction is made for the amount of expenses of the RIC allocable to such net gains. In addition, if the amount designated as short-term capital gain dividends is greater than the amount of qualified short-term capital gain, the portion of the distribution so designated which constitutes a short-term capital gain dividend is only that proportion of the amount so designated as the amount of the excess bears to the amount so designated.

As under present law for distributions from REITs, the House bill provides that any distribution by a RIC to a foreign person shall, to the extent attributable to gains from sales or exchanges by the RIC of an asset that is considered a U.S. real property interest, be treated as gain recognized by the foreign person from the sale or exchange of a U.S. real property interest. The House bill also extends the special rules for domestically-controlled REITs to domestically-controlled RICs.

Estate tax treatment

Under the House bill, a portion of the stock in a RIC held by the estate of a nonresident decedent who is not a U.S. citizen is treated as property without the United States. The portion so treated is based upon the proportion of the assets held by the RIC at the end of the quarter immediately preceding the decedent's death (or such other time as the Secretary may designate in regulations) that are "qualifying assets". Qualifying assets for this purpose are bank deposits of the type that are exempt from gross-basis income tax, portfolio debt obligations, certain original issue discount obligations, debt obligations of a domestic corporation that are treated as giving rise to foreign source income, and other property not within the United States.

Effective date

The House bill provision generally applies to dividends with respect to taxable years of RICs beginning after December 31, 2004. With respect to the treatment of a RIC for estate tax purposes, the House bill provision applies to estates of decedents dying after December 31, 2004. With respect to the treatment of RICs under section 897 (relating to U.S. real property interests), the House bill provision is effective after December 31, 2004.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, except the conference agreement only applies: (1) to dividends with respect to taxable years of RICs beginning after December 31, 2004 and before January 1, 2008; (2) with respect to the treatment of a RIC for estate tax purposes, to estates of decedents dying after December 31, 2004 and before January 1, 2008; and (3) with respect to the treatment of RICs under section 897 (relating to U.S. real property interests), after December 31, 2004 and before January 1, 2008.

7. Taxation of certain settlement funds (sec. 287 of the House bill and sec. 468B of the Code)

PRESENT LAW

In general, section 468B provides that a payment to a designated settlement fund that extinguishes a tort liability of the taxpayer will result in a deduction to the taxpayer. A designated settlement fund means a fund which is established pursuant to a court order, extinguishes the taxpayer's tort liability, is managed and controlled by persons unrelated to the taxpayer, and in which the taxpayer does not have a beneficial interest in the trust.

Generally, a designated or qualified settlement fund is taxed as a separate entity at the maximum trust rate on its modified income. Modified income is generally gross income less deductions for administrative costs and other incidental expenses incurred in connection with the operation of the settlement fund.

The cleanup of hazardous waste sites is sometimes funded by environmental "settlement funds" or escrow accounts. These escrow accounts are established in consent decrees between the Environmental Protection Agency ("EPA") and the settling parties under the jurisdiction of a Federal district court. The EPA uses these accounts to resolve claims against private parties under Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA").

Present law provides that nothing in any provision of law is to be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax.

HOUSE BILL

The House bill provides that certain settlement funds established in consent decrees for the sole purpose of resolving claims under CERCLA are to be treated as beneficially owned by the United States government and therefore not subject to Federal income tax.

To qualify the settlement fund must be: (1) established pursuant to a consent decree entered by a judge of a United States District Court; (2) created for the receipt of settlement payments for the sole purpose of resolving claims under CERCLA; (3) controlled (in terms of expenditures of contributions and earnings thereon) by the government or an agency or instrumentality thereof; and (4) upon termination, any remaining funds will be disbursed to such government entity and used in accordance with applicable law. For purposes of the provision, a government entity means the United States, any State of political subdivision thereof, the District of Columbia, any possession of the United States, and any agency or instrumentality of the foregoing.

Effective date.—The House bill provision is effective for taxable years beginning after December 31, 2004.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

8. Expand human clinical trials expenses qualifying for the orphan drug tax credit (sec. 288 of the House bill and sec. 45C of the Code)

PRESENT LAW

Taxpayers may claim a 50-percent credit for expenses related to human clinical testing of drugs for the treatment of certain rare diseases and conditions, generally those that afflict less than 200,000 persons in the United States. Qualifying expenses are those paid or incurred by the taxpayer after the date on which the drug is designated as a potential treatment for a rare disease or disorder by the Food and Drug Administration ("FDA") in accordance with section 526 of the Federal Food, Drug, and Cosmetic Act.

HOUSE BILL

The House bill expands qualifying expenses to include those expenses related to human clinical testing paid or incurred after the date on which the taxpayer files an application with the FDA for designation of the drug under section 526 of the Federal Food, Drug, and Cosmetic Act as a potential treatment for a rare disease or disorder, if certain conditions are met. Under the provision, qualifying expenses include those expenses paid or incurred after the date on which the taxpayer files an application with the FDA for designation as a potential treatment for a rare disease or disorder, if the drug receives FDA designation before the due date (including extensions) for filing the tax return for the taxable year in which the application was filed with the FDA. As under present law, the credit may only be claimed for such expenses related to drugs designated as a potential treatment for a rare disease or disorder by the FDA in accordance with section 526 of such Act.

Effective date.—The provision is effective for expenditures paid or incurred after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

9. Simplification of excise tax imposed on bows and arrows (sec. 289 of the House bill, sec. 305 of the Senate amendment, and sec. 4161 of the Code)

PRESENT LAW

The Code imposes an excise tax of 11 percent on the sale by a manufacturer, producer or importer of any bow with a draw weight of 10 pounds or more.[149] An excise tax of 12.4 percent is imposed on the sale by a manufacturer or importer of any shaft, point, nock, or vane designed for use as part of an arrow which after its assembly (1) is over 18 inches long, or (2) is designed for use with a taxable bow (if shorter than 18 inches).[150] No tax is imposed on finished arrows. An 11-percent excise tax also is imposed on any part of an accessory for taxable bows and on quivers for use with arrows (1) over 18 inches long or (2) designed for use with a taxable bow (if shorter than 18 inches).[151]

HOUSE BILL

The provision increases the draw weight for a taxable bow from 10 pounds or more to a peak draw weight of 30 pounds or more.[152] The provision also imposes an excise tax of 12 percent on arrows generally. An arrow for this purpose is defined as a taxable arrow shaft to which additional components are attached. The present law 12.4-percent excise tax on certain arrow components is unchanged by the bill. In the case of any arrow comprised of a shaft or any other component upon which tax has been imposed, the amount of the arrow tax is equal to the excess of (1) the arrow tax that would have been imposed but for this exception, over (2) the amount of tax paid with respect to such components.[153] Finally, the provision subjects certain broadheads (a type of arrow

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[149] Sec. 4161(b)(1)(A).

[150] Sec. 4161(b)(2).

[151] Sec. 4161(b)(1)(B).

[152] Draw weight is the maximum force required to bring the bowstring to a full-draw position not less than 26¼-inches, measured from the pressure point of the hand grip to the nocking position on the bowstring.

[153] A credit or refund may be obtained when an item was taxed and it is used in the manufacture or production of another taxable item. Sec. 6416(b)(3). As arrow components and finished arrows are both taxable, in lieu of a refund of the tax paid on components, the provision suspends the application of sec. 6416(b)(3) and permits the taxpayer to reduce the tax

Continued

(secs. 871(h)(2), (5) and 881(c)(2)). This exception is not available for any interest received either by a bank on a loan extended in the ordinary course of its business (except in the case of interest paid on an obligation of the United States), or by a controlled foreign corporation from a related person (sec. 881(c)(3)). Moreover, this exception is not available for certain contingent interest payments (secs. 871(h)(4) and 881(c)(4)).

Capital gains

Foreign persons generally are not subject to U.S. tax on gain realized on the disposition of stock or securities issued by a U.S. person (other than a "U.S. real property holding corporation," as described below), unless the gain is effectively connected with the conduct of a trade or business in the United States. This exemption does not apply, however, if the foreign person is a nonresident alien individual present in the United States for a period or periods aggregating 183 days or more during the taxable year (sec. 871(a)(2)). A RIC may elect not to withhold on a distribution to a foreign person representing a capital gain dividend. (Treas. Reg. sec. 1.1441-3(c)(2)(D)).

Gain or loss of a foreign person from the disposition of a U.S. real property interest is subject to net basis tax as if the taxpayer were engaged in a trade or business within the United States and the gain or loss were effectively connected with such trade or business (sec. 897). In addition to an interest in real property located in the United States or the Virgin Islands, U.S. real property interests include (among other things) any interest in a domestic corporation unless the taxpayer establishes that the corporation was not, during a 5-year period ending on the date of the disposition of the interest, a U.S. real property holding corporation (which is defined generally to mean a corporation the fair market value of whose U.S. real property interests equals or exceeds 50 percent of the sum of the fair market values of its real property interests and any other of its assets used or held for use in a trade or business).

Estate taxation

Decedents who were citizens or residents of the United States are generally subject to Federal estate tax on all property, wherever situated.[148] Nonresidents who are not U.S. citizens, however, are subject to estate tax only on their property which is within the United States. Property within the United States generally includes debt obligations of U.S. persons, including the Federal government and State and local governments (sec. 2104(c)), but does not include either bank deposits or portfolio obligations, the interest on which would be exempt from U.S. income tax under section 871 (sec. 2105(b)). Stock owned and held by a nonresident who is not a U.S. citizen is treated as property within the United States only if the stock was issued by a domestic corporation (sec. 2104(a); Treas. Reg. sec. 20.2104-1(a)(5)).

Treaties may reduce U.S. taxation on transfers by estates of nonresident decedents who are not U.S. citizens. Under recent treaties, for example, U.S. tax may generally be eliminated except insofar as the property transferred includes U.S. real property or business property of a U.S. permanent establishment.

HOUSE BILL

In general

Under the House bill, a RIC that earns certain interest income that would not be subject to U.S. tax if earned by a foreign person directly may, to the extent of such income, designate a dividend it pays as derived from such interest income. A foreign person who is a shareholder in the RIC generally would treat such a dividend as exempt from gross-basis U.S. tax, as if the foreign person had earned the interest directly. Similarly, a RIC that earns an excess of net short-term capital gains over net long-term capital losses, which excess would not be subject to U.S. tax if earned by a foreign person, generally may, to the extent of such excess, designate a dividend it pays as derived from such excess. A foreign person who is a shareholder in the RIC generally would treat such a dividend as exempt from gross-basis U.S. tax, as if the foreign person had realized the excess directly. The House bill also provides that the estate of a foreign decedent is exempt from U.S. estate tax on a transfer of stock in the RIC in the proportion that the assets held by the RIC are debt obligations, deposits, or other property that would generally be treated as situated outside the United States if held directly by the estate.

Interest-related dividends

Under the House bill, a RIC may, under certain circumstances, designate all or a portion of a dividend as an "interest-related dividend," by written notice mailed to its shareholders not later than 60 days after the close of its taxable year. In addition, an interest-related dividend received by a foreign person generally is exempt from U.S. gross-basis tax under sections 871(a), 881, 1441 and 1442.

However, this exemption does not apply to a dividend on shares of RIC stock if the withholding agent does not receive a statement, similar to that required under the portfolio interest rules, that the beneficial owner of the shares is not a U.S. person. The exemption does not apply to a dividend paid to any person within a foreign country (or dividends addressed to, or for the account of, persons within such foreign country) with respect to which the Treasury Secretary has determined, under the portfolio interest rules, that exchange of information is inadequate to prevent evasion of U.S. income tax by U.S. persons.

In addition, the exemption generally does not apply to dividends paid to a controlled foreign corporation to the extent such dividends are attributable to income received by the RIC on a debt obligation of a person with respect to which the recipient of the dividend (i.e., the controlled foreign corporation) is a related person. Nor does the exemption generally apply to dividends to the extent such dividends are attributable to income (other than short-term original issue discount or bank deposit interest) received by the RIC on indebtedness issued by the RIC-dividend recipient or by any corporation or partnership with respect to which the recipient of the RIC dividend is a 10-percent shareholder. However, in these two circumstances the RIC remains exempt from its withholding obligation unless the RIC knows that the dividend recipient is such a controlled foreign corporation or 10-percent shareholder. To the extent that an interest-related dividend received by a controlled foreign corporation is attributable to interest income of the RIC that would be portfolio interest if received by a foreign corporation, the dividend is treated as portfolio interest for purposes of the de minimis rules, the high-tax exception, and the same country exceptions of subpart F (see sec. 881(c)(5)(A)).

The aggregate amount designated as interest-related dividends for the RIC's taxable year (including dividends so designated that are paid after the close of the taxable year but treated as paid during that year as described in section 855) generally is limited to the qualified net interest income of the RIC for the taxable year. The qualified net interest income of the RIC equals the excess of: (1) the amount of qualified interest income of the RIC; over (2) the amount of expenses of the RIC properly allocable to such interest income.

Qualified interest income of the RIC is equal to the sum of its U.S.-source income with respect to: (1) bank deposit interest; (2) short term original issue discount that is currently exempt from the gross-basis tax under section 871; (3) any interest (including amounts recognized as ordinary income in respect of original issue discount, market discount, or acquisition discount under the provisions of sections 1271–1288, and such other amounts as regulations may provide) on an obligation which is in registered form, unless it is earned on an obligation issued by a corporation or partnership in which the RIC is a 10-percent shareholder or is contingent interest not treated as portfolio interest under section 871(h)(4); and (4) any interest-related dividend from another RIC.

If the amount designated as an interest-related dividend is greater than the qualified net interest income described above, the portion of the distribution so designated which constitutes an interest-related dividend will be only that proportion of the amount so designated as the amount of the qualified net interest income bears to the amount so designated.

Short-term capital gain dividends

Under the House bill, a RIC also may, under certain circumstances, designate all or a portion of a dividend as a "short-term capital gain dividend," by written notice mailed to its shareholders not later than 60 days after the close of its taxable year. For purposes of the U.S. gross-basis tax, a short-term capital gain dividend received by a foreign person generally is exempt from U.S. gross-basis tax under sections 871(a), 881, 1441 and 1442. This exemption does not apply to the extent that the foreign person is a nonresident alien individual present in the United States for a period or periods aggregating 183 days or more during the taxable year. However, in this circumstance the RIC remains exempt from its withholding obligation unless the RIC knows that the dividend recipient has been present in the United States for such period.

The aggregate amount qualified to be designated as short-term capital gain dividends for the RIC's taxable year (including dividends so designated that are paid after the close of the taxable year but treated as paid during that year as described in sec. 855) is equal to the excess of the RIC's net short-term capital gains over net long-term capital losses. The short-term capital gain includes short-term capital gain dividends from another RIC. As provided under present law for purposes of computing the amount of a capital gain dividend, the amount is determined (except in the case where an election under sec. 4982(e)(4) applies) without regard to any net capital loss or net short-term capital loss attributable to transactions after October 31 of the year. Instead, that loss is treated as arising on the first day of the next taxable year. To the extent provided in regulations, this rule also applies for purposes of computing the taxable income of the RIC.

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[148] The Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") repealed the estate tax for estates of decedents dying after December 31, 2009. However, EGTRRA included a "sunset" provision, pursuant to which EGTRRA's provisions (including estate tax repeal) do not apply to estates of decedents dying after December 31, 2010.

In computing the amount of short-term capital gain dividends for the year, no reduction is made for the amount of expenses of the RIC allocable to such net gains. In addition, if the amount designated as short-term capital gain dividends is greater than the amount of qualified short-term capital gain, the portion of the distribution so designated which constitutes a short-term capital gain dividend is only that proportion of the amount so designated as the amount of the excess bears to the amount so designated.

As under present law for distributions from REITs, the House bill provides that any distribution by a RIC to a foreign person shall, to the extent attributable to gains from sales or exchanges by the RIC of an asset that is considered a U.S. real property interest, be treated as gain recognized by the foreign person from the sale or exchange of a U.S. real property interest. The House bill also extends the special rules for domestically-controlled REITs to domestically-controlled RICs.

Estate tax treatment

Under the House bill, a portion of the stock in a RIC held by the estate of a nonresident decedent who is not a U.S. citizen is treated as property without the United States. The portion so treated is based upon the proportion of the assets held by the RIC at the end of the quarter immediately preceding the decedent's death (or such other time as the Secretary may designate in regulations) that are "qualifying assets". Qualifying assets for this purpose are bank deposits of the type that are exempt from gross-basis income tax, portfolio debt obligations, certain original issue discount obligations, debt obligations of a domestic corporation that are treated as giving rise to foreign source income, and other property not within the United States.

Effective date

The House bill provision generally applies to dividends with respect to taxable years of RICs beginning after December 31, 2004. With respect to the treatment of a RIC for estate tax purposes, the House bill provision applies to estates of decedents dying after December 31, 2004. With respect to the treatment of RICs under section 897 (relating to U.S. real property interests), the House bill provision is effective after December 31, 2004.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, except the conference agreement only applies: (1) to dividends with respect to taxable years of RICs beginning after December 31, 2004 and before January 1, 2008; (2) with respect to the treatment of a RIC for estate tax purposes, to estates of decedents dying after December 31, 2004 and before January 1, 2008; and (3) with respect to the treatment of RICs under section 897 (relating to U.S. real property interests), after December 31, 2004 and before January 1, 2008.

7. Taxation of certain settlement funds (sec. 287 of the House bill and sec. 468B of the Code)

PRESENT LAW

In general, section 468B provides that a payment to a designated settlement fund that extinguishes a tort liability of the taxpayer will result in a deduction to the taxpayer. A designated settlement fund means a fund which is established pursuant to a court order, extinguishes the taxpayer's tort liability, is managed and controlled by persons unrelated to the taxpayer, and in which the taxpayer does not have a beneficial interest in the trust.

Generally, a designated or qualified settlement fund is taxed as a separate entity at the maximum trust rate on its modified income. Modified income is generally gross income less deductions for administrative costs and other incidental expenses incurred in connection with the operation of the settlement fund.

The cleanup of hazardous waste sites is sometimes funded by environmental "settlement funds" or escrow accounts. These escrow accounts are established in consent decrees between the Environmental Protection Agency ("EPA") and the settling parties under the jurisdiction of a Federal district court. The EPA uses these accounts to resolve claims against private parties under Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA").

Present law provides that nothing in any provision of law is to be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax.

HOUSE BILL

The House bill provides that certain settlement funds established in consent decrees for the sole purpose of resolving claims under CERCLA are to be treated as beneficially owned by the United States government and therefore not subject to Federal income tax.

To qualify the settlement fund must be: (1) established pursuant to a consent decree entered by a judge of a United States District Court; (2) created for the receipt of settlement payments for the sole purpose of resolving claims under CERCLA; (3) controlled (in terms of expenditures of contributions and earnings thereon) by the government or an agency or instrumentality thereof; and (4) upon termination, any remaining funds will be disbursed to such government entity and used in accordance with applicable law. For purposes of the provision, a government entity means the United States, any State of political subdivision thereof, the District of Columbia, any possession of the United States, and any agency or instrumentality of the foregoing.

Effective date.—The House bill provision is effective for taxable years beginning after December 31, 2004.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

8. Expand human clinical trials expenses qualifying for the orphan drug tax credit (sec. 288 of the House bill and sec. 45C of the Code)

PRESENT LAW

Taxpayers may claim a 50-percent credit for expenses related to human clinical testing of drugs for the treatment of certain rare diseases and conditions, generally those that afflict less than 200,000 persons in the United States. Qualifying expenses are those paid or incurred by the taxpayer after the date on which the drug is designated as a potential treatment for a rare disease or disorder by the Food and Drug Administration ("FDA") in accordance with section 526 of the Federal Food, Drug, and Cosmetic Act.

HOUSE BILL

The House bill expands qualifying expenses to include those expenses related to human clinical testing paid or incurred after the date on which the taxpayer files an application with the FDA for designation of the drug under section 526 of the Federal Food, Drug, and Cosmetic Act as a potential treatment for a rare disease or disorder, if certain conditions are met. Under the provision, qualifying expenses include those expenses paid or incurred after the date on which the taxpayer files an application with the FDA for designation as a potential treatment for a rare disease or disorder, if the drug receives FDA designation before the due date (including extensions) for filing the tax return for the taxable year in which the application was filed with the FDA. As under present law, the credit may only be claimed for such expenses related to drugs designated as a potential treatment for a rare disease or disorder by the FDA in accordance with section 526 of such Act.

Effective date.—The provision is effective for expenditures paid or incurred after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

9. Simplification of excise tax imposed on bows and arrows (sec. 289 of the House bill, sec. 305 of the Senate amendment, and sec. 4161 of the Code)

PRESENT LAW

The Code imposes an excise tax of 11 percent on the sale by a manufacturer, producer or importer of any bow with a draw weight of 10 pounds or more.[149] An excise tax of 12.4 percent is imposed on the sale by a manufacturer or importer of any shaft, point, nock, or vane designed for use as part of an arrow which after its assembly (1) is over 18 inches long, or (2) is designed for use with a taxable bow (if shorter than 18 inches).[150] No tax is imposed on finished arrows. An 11-percent excise tax also is imposed on any part of an accessory for taxable bows and on quivers for use with arrows (1) over 18 inches long or (2) designed for use with a taxable bow (if shorter than 18 inches).[151]

HOUSE BILL

The provision increases the draw weight for a taxable bow from 10 pounds or more to a peak draw weight of 30 pounds or more.[152] The provision also imposes an excise tax of 12 percent on arrows generally. An arrow for this purpose is defined as a taxable arrow shaft to which additional components are attached. The present law 12.4-percent excise tax on certain arrow components is unchanged by the bill. In the case of any arrow comprised of a shaft or any other component upon which tax has been imposed, the amount of the arrow tax is equal to the excess of (1) the arrow tax that would have been imposed but for this exception, over (2) the amount of tax paid with respect to such components.[153] Finally, the provision subjects certain broadheads (a type of arrow

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[149] Sec. 4161(b)(1)(A).

[150] Sec. 4161(b)(2).

[151] Sec. 4161(b)(1)(B).

[152] Draw weight is the maximum force required to bring the bowstring to a full-draw position not less than 26¼-inches, measured from the pressure point of the hand grip to the nocking position on the bowstring.

[153] A credit or refund may be obtained when an item was taxed and it is used in the manufacture or production of another taxable item. Sec. 6416(b)(3). As arrow components and finished arrows are both taxable, in lieu of a refund of the tax paid on components, the provision suspends the application of sec. 6416(b)(3) and permits the taxpayer to reduce the tax

Continued

point) to an excise tax equal to 11 percent of the sales price instead of 12.4 percent.

Effective date.—The provision is effective for articles sold by the manufacturer, producer or importer after December 31, 2004.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

Effective date.—The provision is effective for articles sold by the manufacturer, producer or importer 30 days after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and Senate amendment with the effective date of the Senate amendment.

Effective date.—The conference agreement follows the Senate amendment.

10. Reduce rate of excise tax on fishing tackle boxes to three percent (sec. 290 of the House bill and sec. 4162 of the Code)

PRESENT LAW

A 10-percent manufacturer's excise tax is imposed on specified sport fishing equipment. Examples of taxable equipment include fishing rods and poles, fishing reels, artificial bait, fishing lures, line and hooks, and fishing tackle boxes. Revenues from the excise tax on sport fishing equipment are deposited in the Sport Fishing Account of the Aquatic Resources Trust Fund. Monies in the fund are spent, subject to an existing permanent appropriation, to support Federal-State sport fish enhancement and safety programs.

HOUSE BILL

The provision repeals the excise tax on fishing tackle boxes.

Effective date.—The provision is effective for articles sold by the manufacturer, producer, or importer after December 31, 2004.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill with modifications. Under the provision as modified, the rate of excise tax imposed on fishing tackle boxes is reduced to three percent.

11. Repeal of excise tax on sonar devices suitable for finding fish (sec. 291 of the House bill and secs. 4161 and 4162 of the Code)

PRESENT LAW

In general, the Code imposes a 10 percent tax on the sale by the manufacturer, producer, or importer of specified sport fishing equipment.[154] A three percent rate, however, applies to the sale of electric outboard motors and sonar devices suitable for finding fish.[155] Further, the tax imposed on the sale of sonar devices suitable for finding fish is limited to $30. A sonar device suitable for finding fish does not include any device that is a graph recorder, a digital type, a meter readout, a combination graph recorder or combination meter readout.[156]

Revenues from the excise tax on sport fishing equipment are deposited in the Sport Fishing Account of the Aquatic Resources Trust Fund. Monies in the fund are spent, subject to an existing permanent appropriation, to support Federal-State sport fish enhancement and safety programs.

HOUSE BILL

The provision repeals the excise tax on all sonar devices suitable for finding fish.

Effective date.—The provision is effective for articles sold by the manufacturer, producer, or importer after December 31, 2004.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

12. Income tax credit for cost of carrying tax-paid distilled spirits in wholesale inventories (sec. 292 of the House bill)

PRESENT LAW

As is true of most major Federal excise taxes, the excise tax on distilled spirits is imposed at a point in the chain of distribution before the product reaches the retail (consumer) level. Tax on domestically produced and/or bottled distilled spirits arises upon production (receipt) in a bonded distillery and is collected based on removals from the distillery during each semi-monthly period. Distilled spirits that are bottled before importation into the United States are taxed on removal from the first U.S. warehouse where they are landed (including a warehouse located in a foreign trade zone).

No tax credits are allowed under present law for business costs associated with having tax-paid products in inventory. Rather, excise tax that is included in the purchase price of a product is treated the same as the other components of the product cost, i.e., deductible as a cost of goods sold.

HOUSE BILL

The provision creates a new income tax credit for eligible wholesale distributors of distilled spirits. An eligible wholesaler is any person who holds a permit under the Federal Alcohol Administration Act as a wholesaler of distilled spirits.

The credit is calculated by multiplying the number of cases of bottled distilled spirits by the average tax-financing cost per case for the most recent calendar year ending before the beginning of such taxable year. A case is 12 80-proof 750-milliliter bottles. The average tax-financing cost per case is the amount of interest that would accrue at corporate overpayment rates during an assumed 60-day holding period on an assumed tax rate of $22.83 per case of 12 750-milliliter bottles.

The credit only applies to domestically bottled distilled spirits[157] purchased directly from the bottler of such spirits. The credit is in addition to present-law rules allowing tax included in inventory costs to be deducted as a cost of goods sold.

The credit cannot be carried back to a taxable year beginning before January 1, 2005.

Effective date.—The provision is effective for taxable years beginning after December 31, 2004.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

3. Suspension of occupational taxes relating to distilled spirits, wine, and beer (sec. 293 of the House bill and new sec. 5148 of the Code)

PRESENT LAW

Under present law, special occupational taxes are imposed on producers and others engaged in the marketing of distilled spirits, wine, and beer. These excise taxes are imposed as part of a broader Federal tax and regulatory engine governing the production and marketing of alcoholic beverages. The special occupational taxes are payable annually, on July 1 of each year. The present tax rates are as follows:

Producers:[158]	
Distilled spirits and wines (sec. 5081).	$1,000 per year, per premise.
Brewers (sec. 5091)	$1,000 per year, per premise.
Wholesale dealers (sec. 5111): Liquors, wines, or beer.	$500 per year.
Retail dealers (sec. 5121): Liquors, wines, or beer.	$250 per year.
Nonbeverage use of distilled spirits (sec. 5131).	$500 per year.
Industrial use of distilled spirits (sec. 5276).	$250 per year.

The Code requires every wholesale or retail dealer in liquors, wine or beer to keep records of their transactions.[159] A delegate of the Secretary of the Treasury is authorized to inspect the records of any dealer during business hours.[160] There are penalties for failing to comply with the recordkeeping requirements.[161]

The Code limits the persons from whom dealers may purchase their liquor stock intended for resale. Under the Code, a dealer may only purchase from:

(1) A wholesale dealer in liquors who has paid the special occupational tax as such dealer to cover the place where such purchase is made; or

(2) A wholesale dealer in liquors who is exempt, at the place where such purchase is made, from payment of such tax under any provision chapter 51 of the Code; or

(3) A person who is not required to pay special occupational tax as a wholesale dealer in liquors.[162]

In addition, a limited retail dealer (such as a charitable organization selling liquor at a picnic) may lawfully purchase distilled spirits for resale from a retail dealer in liquors.[163]

Violation of this restriction is punishable by $1,000 fine, imprisonment of one year, or both.[164] A violation also makes the alcohol subject to seizure and forfeiture.[165]

HOUSE BILL

Under the provision, the special occupational taxes on producers and marketers of alcoholic beverages are suspended for a three-year period, July 1, 2004 through June 30, 2007. Present law recordkeeping and registration requirements continue to apply, notwithstanding the suspension of the special occupation taxes. In addition, during the suspension period, it shall be unlawful for any dealer to purchase distilled spirits for resale from any person other than a wholesale dealer in liquors who is subject to the recordkeeping requirements, except that a limited retail dealer may purchase distilled spirits for resale from a retail dealer in liquors, as permitted under present law.

Effective date.—The provision is effective on the date of enactment.

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due on the finished arrow by the amount of the previous tax paid on the components used in the manufacture of such arrow.

[154] Sec. 4161(a)(1).

[155] Sec. 4161(a)(2).

[156] Sec. 4162(b).

[157] Distilled spirits that are imported in bulk and then bottled domestically qualify as domestically bottled distilled spirits.

[158] A reduced rate of tax in the amount of $500 is imposed on small proprietors. Secs. 5081(b), 5091(b).

[159] Secs. 5114, 5124.

[160] Sec. 5146.

[161] Sec. 5603.

[162] Sec. 5117. For example, purchases from a proprietor of a distilled spirits plant at his principal business office would be covered under item (2) since such a proprietor is not subject to the special occupational tax on account of sales at his principal business office. Sec. 5113(a). Purchases from a State-operated liquor store would be covered under item (3). Sec. 5113(b).

[163] Sec. 5117(b).

[164] Sec. 5687.

[165] Sec. 7302.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill except as follows. Under the provision as modified, the three-year suspension period is July 1, 2005 through June 30, 2008.

14. Modification of unrelated business income limitation on investment in certain small business investment companies (sec. 294 of the House bill, sec. 642 of the Senate amendment, and sec. 514 of the Code)

PRESENT LAW

In general, an organization that is otherwise exempt from Federal income tax is taxed on income from a trade or business regularly carried on that is not substantially related to the organization's exempt purposes. Certain types of income, such as rents, royalties, dividends, and interest, generally are excluded from unrelated business taxable income except when such income is derived from "debt-financed property." Debt-financed property generally means any property that is held to produce income and with respect to which there is acquisition indebtedness at any time during the taxable year.

In general, income of a tax-exempt organization that is produced by debt-financed property is treated as unrelated business income in proportion to the acquisition indebtedness on the income-producing property. Acquisition indebtedness generally means the amount of unpaid indebtedness incurred by an organization to acquire or improve the property and indebtedness that would not have been incurred but for the acquisition or improvement of the property. Acquisition indebtedness does not include, however, (1) certain indebtedness incurred in the performance or exercise of a purpose or function constituting the basis of the organization's exemption, (2) obligations to pay certain types of annuities, (3) an obligation, to the extent it is insured by the Federal Housing Administration, to finance the purchase, rehabilitation, or construction of housing for low and moderate income persons, or (4) indebtedness incurred by certain qualified organizations to acquire or improve real property.

Special rules apply in the case of an exempt organization that owns a partnership interest in a partnership that holds debt-financed income-producing property. An exempt organization's share of partnership income that is derived from such debt-financed property generally is taxed as debt-financed income unless an exception provides otherwise.

HOUSE BILL

The House bill modifies the debt-financed property provisions by excluding from the definition of acquisition indebtedness any indebtedness incurred by a small business investment company licensed under the Small Business Investment Act of 1958 that is evidenced by a debenture (1) issued by such company under section 303(a) of said Act, and (2) held or guaranteed by the Small Business Administration. The exclusion shall not apply during any period that any exempt organization (other than a governmental unit) owns more than 25 percent of the capital or profits interest in the small business investment company, or exempt organizations (including governmental units other than any agency or instrumentality of the United States) own, in the aggregate, 50 percent or more of the capital or profits interest in such company.

Effective date.—The provision is effective for small business investment companies formed after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill except that the Senate amendment does not contain any individual or aggregate ownership percentage limitations with respect to exempt organizations or government units.

Effective date.—The provision is effective for acquisitions made on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, modified to apply to small business investment companies licensed after (rather than formed after) the date of enactment.

Effective date.—The conference agreement provision is effective for debt incurred after the date of enactment by small business investment companies licensed after the date of enactment.

15. Election to determine taxable income from certain international shipping activities using per ton rate (sec. 295 of the House bill and new secs. 1352–1359 of the Code)

PRESENT LAW

The United States employs a "worldwide" tax system, under which domestic corporations generally are taxed on all income, including income from shipping operations, whether derived in the United States or abroad. In order to mitigate double taxation, a foreign tax credit for income taxes paid to foreign countries is provided to reduce or eliminate the U.S. tax owed on such income, subject to certain limitations.

Generally, the United States taxes foreign corporations only on income that has a sufficient nexus to the United States. Thus, a foreign corporation is generally subject to U.S. tax only on income, including income from shipping operations, which is "effectively connected" with the conduct of a trade or business in the United States (sec. 882). Such "effectively connected income" generally is taxed in the same manner and at the same rates as the income of a U.S. corporation.

The United States imposes a four percent tax on the amount of a foreign corporation's U.S. gross transportation income (sec. 887). Transportation income includes income from the use (or hiring or leasing for use) of a vessel and income from services directly related to the use of a vessel. Fifty percent of the transportation income attributable to transportation that either begins or ends (but not both) in the United States is treated as U.S. source gross transportation income. The tax does not apply, however, to U.S. gross transportation income that is treated as income effectively connected with the conduct of a U.S. trade or business. U.S. gross transportation income is not treated as effectively connected income unless (1) the taxpayer has a fixed place of business in the United States involved in earning the income, and (2) substantially all the income is attributable to regularly scheduled transportation.

The taxes imposed by section 882 and 887 on income from shipping operations may be limited by an applicable U.S. income tax treaty or by an exemption of a foreign corporation's international shipping operations income in instances where a foreign country grants an equivalent exemption (sec. 883).

Under present law, there is no provision that provides an alternative to the corporate income tax for taxable income attributable to international shipping activities.

HOUSE BILL

In general

The provision generally allows corporations to elect a "tonnage tax" on their taxable income from certain shipping activities in lieu of the U.S. corporate income tax. Accordingly, a corporation's income from qualifying shipping activities is no longer taxable under sections 11, 55, 882, 887 or 1201(a) under the regime, and electing entities are only subject to tax at the maximum corporate income tax rate on a notional amount based on the net tonnage of a corporation's qualifying vessels. However, a foreign corporation is not subject to tax under the tonnage tax regime to the extent its income from qualifying shipping activities is subject to an exclusion for certain shipping operations by foreign corporations pursuant to section 883(a)(1) or pursuant to a treaty obligation of the United States.

Taxable income from qualifying shipping activities

Generally, the taxable income of an electing corporation from qualifying shipping activities is the corporate income percentage[166] of the sum of the taxable income from each of its qualifying vessels. The taxable income from each qualifying vessel is the product of (1) the daily notional taxable income[167] from the operation of the qualifying vessel in United States foreign trade,[168] and (2) the number of days during the taxable year that the electing entity operated such vessel as a qualifying vessel in U.S. foreign trade.[169] A "qualifying vessel" is described as a self-propelled U.S.-flag vessel of not less than 10,000 deadweight tons used in U.S. foreign trade.

An entity's qualifying shipping activities consist of its (1) core qualifying activities, (2) qualifying secondary activities, and (3) qualifying incidental activities. Generally, core qualifying activities are activities from operating vessels in U.S. foreign trade and other activities of an electing entity and an electing group that are an integral part of the business of operating qualifying vessels in U.S. foreign trade. Qualifying secondary activities generally consist of the active management or operation of vessels in U.S. foreign trade and provisions for vessel, container and cargo-related facilities or such other activities as may be prescribed by the Secretary (which are not core activities), and may not exceed 20 percent of the aggregate gross income derived from electing entities and other members of its electing group from their core qualifying activities. Qualifying incidental activities are activities that are incidental to core qualifying activities and are not qualifying secondary activities. The aggregate gross income from qualifying incidental activities cannot exceed one-tenth of one percent of the aggregate gross income from the core qualifying activities of the electing entities and other members of its electing group.

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[166] The "corporate income percentage" is the least aggregate share, expressed as a percentage, of any item of income or gain of an electing corporation, or an electing group (i.e., a controlled group of which one or more members is an electing entity) of which such corporation is a member from qualifying shipping activities that would otherwise be required to be reported on the U.S. Federal income tax return of an electing corporation during any taxable period. A "controlled group" is any group of trusts and business entities whose members would be treated as a single employer under the rules of section 52(a) (without regard to paragraphs (1) and (2)) and section 52(b)(1)).

[167] The "daily notional taxable income" from the operation of a qualifying vessel is 40 cents for each 100 tons of the net tonnage of the vessel (up to 25,000 net tons), and 20 cents for each 100 tons of the net tonnage of the vessel, in excess of 25,000 net tons.

[168] "U.S. foreign trade" means the transportation of goods or passengers between a place in the United States and a foreign place or between foreign places. As a general rule, the temporary operation in the U.S. domestic trade (i.e., the transportation of goods or passengers between places in the United States) of any qualifying vessel is disregarded. However, a vessel that is no longer used for operations in U.S. foreign trade (unless such non-use is on a temporary basis) ceases to be a qualifying vessel when such non-use begins.

[169] If there are multiple operators of a vessel, the taxable income of such vessel must be allocated among such persons on the basis of their ownership and charter interests or another basis that Treasury may prescribe in regulations.

Items not subject to corporate income tax

Generally, gross income from an electing entity does not include the corporate income percentage of an entity's (1) income from qualifying shipping activities in U.S. foreign trade, (2) income from money, bank deposits and other temporary investments which are reasonably necessary to meet the working capital requirements of its qualifying shipping activities, and (3) income from money or other intangible assets accumulated pursuant to a plan to purchase qualifying shipping assets.[170] Generally, the corporate loss percentage[171] of each item of loss, deduction, or credit is disallowed with respect to any activity the income from which is excluded from gross income under the provision. The corporate loss percentage of an electing entity's interest expense is disallowed in the ratio that the fair market value of its qualifying shipping assets bears to the fair market value of its total assets.

Allocation of credits, income, and deductions

No deductions are allowed against the taxable income of an electing corporation from qualifying shipping activities, and no credit is allowed against the tax imposed under the tonnage tax regime. No deduction is allowed for any net operating loss attributable to the qualifying shipping activities of a corporation to the extent that such loss is carried forward by the corporation from a taxable year preceding the first taxable year for which such corporation was an electing corporation. For purposes of the provision, section 482 applies to a transaction or series of transactions between an electing entity and another person or between an entity's qualifying shipping activities and other activities carried on by it. The qualifying shipping activities of an electing entity shall be treated as a separate trade or business activity from all other activities conducted by the entity.

Qualifying shipping assets

If an electing entity sells or disposes of qualifying shipping assets in an otherwise taxable transaction, at the election of the entity no gain is recognized if replacement qualifying shipping assets are acquired during a limited replacement period except to the extent that the amount realized upon such sale or disposition exceeds the cost of the replacement qualifying shipping assets. In the case of replacement qualifying shipping assets purchased by an electing entity which results in the nonrecognition of any part of the gain realized as the result of a sale or other disposition of qualifying shipping assets, the basis is the cost of such replacement property decreased in the amount of gain not recognized. If the property purchased consists of more than one piece of property, the basis is allocated to the purchased properties in proportion to their respective costs.

The election not to recognize gain on the disposition and replacement of qualifying shipping assets is not available if the replacement qualifying shipping assets are acquired from a related person except to the extent that the related person (as defined under section 267(b) or 707(b)(1)) acquired the replacement qualifying shipping assets from an unrelated person during a limited replacement period.

Election

Generally, any qualifying entity may elect into the tonnage tax regime by filing an election with the qualifying entity's income tax return for the first taxable year to which the election applies. However, a qualifying entity, which is a member of a controlled group, may only make an election into the tonnage tax regime if all qualifying entities that are members of the controlled group make such an election. Once made, an election is effective for the taxable year in which it was made and for all succeeding taxable years of the entity until the election is terminated. An election may be terminated if the entity ceases to be a qualifying entity or if the election is revoked. In the event that a qualifying entity elects into the tonnage tax regime and subsequently revokes the election, such entity is barred from electing back into the regime until the fifth taxable year after the termination is effective, unless the Secretary of the Treasury consents to the election.

A qualifying entity means a trust or business entity that (1) operates one or more qualifying vessels and (2) meets the "shipping activity requirement."[172] The shipping activity requirement is met for a taxable year only by an entity that meets one of the following requirements: (1) in the first taxable year of its election into the tonnage tax regime, for the preceding taxable year on average at least 25 percent of the aggregate tonnage of the qualifying vessels which were operated by the entity were owned by the entity or bareboat chartered to the entity; (2) in the second or any subsequent taxable year of its election into the tonnage tax regime, in each of the two preceding taxable years on average at least 25 percent of the aggregate tonnage of the qualifying vessels which were operated by the entity were owned by the entity or bareboat chartered to the entity; or (3) requirements (1) or (2) above would be met if the 25 percent average tonnage requirement was applied on an aggregate basis to the controlled group of which such entity is a member, and vessel charters between members of the controlled group were disregarded.

Effective date.—The provision is effective for taxable years beginning after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill with modifications.

In general

The proposal generally allows corporations to elect a "tonnage tax" in lieu of the corporate income tax on taxable income from certain shipping activities. Accordingly, an electing corporation's gross income does not include its income from qualifying shipping activities, and electing corporations are only subject to tax on these activities at the maximum corporate income tax rate on their notional shipping income, which is based on the net tonnage of the corporation's qualifying vessels. An electing corporation is treated as a separate trade or business activity distinct from all other activities conducted by such corporation.

Notional shipping income

An electing corporation's notional shipping income for the taxable year is the sum of the following amounts for each of the qualifying vessels it operates: (1) the daily notional shipping income[173] from the operation of the qualifying vessel in United States foreign trade,[174] and (2) the number of days during the taxable year that the electing corporation operated such vessel as a qualifying vessel in United States foreign trade.[175] However, in the case of a qualifying vessel any of the income of which is not included in gross income, the amount of notional shipping income from such vessel is equal to the notional shipping income from such vessel (determined without regard to this provision) that bears the same ratio as the gross income from the operation of such vessel in the United States foreign trade bears to the sum of such gross income and the income so excluded. Generally, a "qualifying vessel" is described as a self-propelled U.S.-flag vessel of not less than 10,000 deadweight tons used exclusively in U.S. foreign trade.

Items not subject to corporate income tax

Generally, a corporate member of an electing group[176] does not include in gross income its income from qualifying shipping activities. Qualifying shipping activities consist of (1) core qualifying activities, (2) qualifying secondary activities, and (3) qualifying incidental activities. All of an electing entity's core qualifying activities are excluded from gross income. However, only a portion of an electing corporation's secondary and incidental activities are treated as qualifying income and thus, are excluded from gross income.

Core qualifying activities consist of the operation of qualifying vessels.[177] Secondary activities generally consist of (1) the active management or operation of vessels in U.S. foreign trade; (2) the provision of vessels, barge, container or cargo-related facilities or services; and (3) other activities of the electing corporation and other members of its electing group that are an integral part of its business of operating qualifying vessels in United States foreign trade. Secondary activities do not include any core qualifying activities. In addition, any activities that would otherwise constitute core qualifying activities of a corporation, who is a member of an electing group but is not an electing corporation, are treated as qualifying secondary activities. Incidental activities are activities that are incidental to core qualifying activities and are not qualifying secondary activities.

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[170] "Qualifying shipping assets" means any qualifying vessel and other assets which are used in core qualifying activities.

[171] "Corporate loss percentage" means the greatest aggregate share, expressed as a percentage, of any item of loss, deduction or credit of an electing corporation or electing group of which such corporation is a member from qualifying shipping activities that would otherwise be required to be reported on the U.S. Federal income tax return of an electing corporation during any taxable period.

[172] An entity is generally treated as operating any vessel owned by or chartered to the entity. However, an entity is treated as operating a vessel that it has chartered out on bareboat basis only if: (1) the vessel is temporarily surplus to the entity's requirements and the term of the charter does not exceed three years or (2) the vessel is bareboat chartered to a member of a controlled group which includes such entity or to an unrelated third party that sub-bareboats or time charters the vessel to a member of such controlled group (including the owner). Special rules apply in an instance in which an electing entity temporarily ceases to operate a qualifying vessel.

[173] The daily notional shipping income from the operation of a qualifying vessel is 40 cents for each 100 tons of the net tonnage of the vessel (up to 25,000 net tons), and 20 cents for each 100 tons of the net tonnage of the vessel, in excess of 25,000 net tons.

[174] "United States foreign trade" means the transportation of goods or passengers between a place in the United States and a foreign place or between foreign places. The temporary use in the United States domestic trade (i.e., the transportation of goods or passengers between places in the United States) of any qualifying vessel is deemed to be the use in the United States foreign trade of such vessel, if such use does not exceed 30 days in a taxable year.

[175] Special rules apply in the case of multiple operators of a vessel.

[176] An electing group means any group that would be treated as a single employer under subsection (a) or (b) of section 52 if paragraphs (1) and (2) of section 52(a) did not apply.

[177] It is intended that the operation of a lighter-aboard-ship be treated as the operation of a vessel and not the operation of a barge.

Denial of credits, income and deductions

Each item of loss, deduction, or credit of any taxpayer is disallowed with respect to the income that is excluded from gross income under the proposal. An electing corporation's interest expense is disallowed in the ratio that the fair market value of its qualifying vessels bears to the fair market value of its total assets; special rules apply for disallowing interest expense in the context of an electing group.

No deductions are allowed against the notional shipping income of an electing corporation, and no credit is allowed against the notional tax imposed under the tonnage tax regime. No deduction is allowed for any net operating loss attributable to the qualifying shipping activities of a corporation to the extent that such loss is carried forward by the corporation from a taxable year preceding the first taxable year for which such corporation was an electing corporation.

Dispositions of qualifying vessels

Generally, if an qualifying vessel operator sells or disposes of a qualifying vessel in an otherwise taxable transaction, at the election of the operator no gain is recognized if a replacement qualifying vessel is acquired during a limited replacement period except to the extent that the amount realized upon such sale or disposition exceeds the cost of the replacement qualifying vessels. Generally, in the case of the replacement of a qualifying vessel that results in the nonrecognition of any part of the gain under the rule above, the basis of the replacement vessel is the cost of such replacement property decreased in the amount of gain not recognized.

Generally, a qualifying vessel operator is a corporation that (1) operates one or more qualifying vessels and (2) meets certain requirements with respect to its shipping activities.[178] Special rules apply in determining whether corporate partners in pass-through entities are treated as qualifying vessel operators.

Election

Generally, any qualifying vessel operator may elect into the tonnage tax regime and such election is made in the form prescribed by Treasury. An election is only effective if made before the due date (including extensions) for filing the corporation's return for such taxable year. However, a qualifying vessel operator, which is a member of a controlled group, may only make an election into the tonnage tax regime if all qualifying vessel operators that are members of the controlled group make such an election. Once made, an election is effective for the taxable year in which it was made and for all succeeding taxable years of the entity until the election is terminated.

Effective date

The provision is effective for taxable years beginning after the date of enactment.

16. Charitable contribution deduction for certain expenses in support of Native Alaskan subsistence whaling (sec. 296 of the House bill and sec. 170 of the Code)

PRESENT LAW

In computing taxable income, individuals who do not elect the standard deduction may claim itemized deductions, including a deduction (subject to certain limitations) for charitable contributions or gifts made during the taxable year to a qualified charitable organization or governmental entity. Individuals who elect the standard deduction may not claim a deduction for charitable contributions made during the taxable year.

No charitable contribution deduction is allowed for a contribution of services. However, unreimbursed expenditures made incident to the rendition of services to an organization, contributions to which are deductible, may constitute a deductible contribution.[179] Specifically, section 170(j) provides that no charitable contribution deduction is allowed for traveling expenses (including amounts expended for meals and lodging) while away from home, whether paid directly or by reimbursement, unless there is no significant element of personal pleasure, recreation, or vacation in such travel.

HOUSE BILL

The House bill allows individuals to claim a deduction under section 170 not exceeding $10,000 per taxable year for certain expenses incurred in carrying out sanctioned whaling activities. The deduction is available only to an individual who is recognized by the Alaska Eskimo Whaling Commission as a whaling captain charged with the responsibility of maintaining and carrying out sanctioned whaling activities. The deduction is available for reasonable and necessary expenses paid by the taxpayer during the taxable year for: (1) the acquisition and maintenance of whaling boats, weapons, and gear used in sanctioned whaling activities; (2) the supplying of food for the crew and other provisions for carrying out such activities; and (3) the storage and distribution of the catch from such activities. It is intended that the Secretary shall require that the taxpayer substantiate deductible expenses by maintaining appropriate written records that show, for example, the time, place, date, amount, and nature of the expense, as well as the taxpayer's eligibility for the deduction, and that such substantiation be provided as part of the taxpayer's income tax return, to the extent provided by the Secretary.

For purposes of the provision, the term "sanctioned whaling activities" means subsistence bowhead whale hunting activities conducted pursuant to the management plan of the Alaska Eskimo Whaling Commission.

Effective date.—The provision is effective for contributions made after December 31, 2004.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes the House bill provision, modified to provide that the Secretary shall issue guidance regarding substantiation of amounts claimed as deductible whaling expenses.

I. GENERAL PROVISIONS

1. Modification to qualified small issue bonds (sec. 301 of the Senate amendment and sec. 144 of the Code)

PRESENT LAW

Qualified small-issue bonds are tax-exempt State and local government bonds used to finance private business manufacturing facilities (including certain directly related and ancillary facilities) or the acquisition of land and equipment by certain farmers. In both instances, these bonds are subject to limits on the amount of financing that may be provided, both for a single borrowing and in the aggregate. In general, no more than $1 million of small-issue bond financing may be outstanding at any time for property of a business (including related parties) located in the same municipality or county. Generally, this $1 million limit may be increased to $10 million if all other capital expenditures of the business in the same municipality or county are counted toward the limit over a six-year period that begins three years before the issue date of the bonds and ends three years after such date. Outstanding aggregate borrowing is limited to $40 million per borrower (including related parties) regardless of where the property is located.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment increases the maximum allowable amount of total capital expenditures by an eligible business or a related party in the same municipality or county during the six-year measurement period from $10 million to $20 million. As under present law, no more than $10 million of bond financing may be outstanding at any time for property of an eligible business (including related parties) located in the same municipality or county. Other present-law limits (e.g., the $40 million per borrower limit) continue to apply.

Effective date.—The provision is effective for bonds issued after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except with respect to the effective date. The conference agreement increases the maximum allowable amount of total capital expenditures by an eligible business (or related party) in the same municipality or county from $10 million to $20 million for bonds issued after September 30, 2009.

Effective date.—The provision is effective for bonds issued after September 30, 2009.

2. Expensing of investment in broadband equipment (sec. 302 of the Senate amendment and new sec. 191 of the Code)

PRESENT LAW

Under present law, a taxpayer generally must capitalize the cost of property used in a trade or business and recover such cost over time through annual deductions for depreciation or amortization. Tangible property generally is depreciated under the Modified Accelerated Cost Recovery System (MACRS) of section 168, which determines depreciation by applying specific recovery periods, placed-in-service conventions, and depreciation methods to the cost of various types of depreciable property.

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[178] A person is generally treated as operating and using any vessel owned by or chartered to it and that is used as a qualifying vessel during such period. Special rules apply in the case of pass-through entities, and special rules apply in an instance in which an electing entity temporarily ceases to operate a qualifying vessel due to dry-docking, surveying, inspection, repairs and the like.

[179] Treas. Reg. sec. 1.170A-1(g).

Personal property is classified under MACRS based on the property's "class life" unless a different classification is specifically provided in section 168. The class life applicable for personal property is the asset guideline period (midpoint class life as of January 1, 1986). Based on the property's classification, a recovery period is prescribed under MACRS. In general, there are six classes of recovery periods to which personal property can be assigned. For example, personal property that has a class life of four years or less has a recovery period of three years, whereas personal property with a class life greater than four years but less than 10 years has a recovery period of five years. The class lives and recovery periods for most property are contained in Revenue Procedure 87-56.[180]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that the taxpayer may elect to treat qualified broadband expenditures paid or incurred during the one-year period beginning after the date of enactment as a deduction in the taxable year in which the equipment is placed in service.

Qualified expenditures are expenditures incurred with respect to equipment with which the taxpayer offers current generation broadband services to qualified subscribers. In addition, qualified expenditures include qualified expenditures incurred by the taxpayer with respect to qualified equipment with which the taxpayer offers next generation broadband services to qualified subscribers. Current generation broadband services are defined as the transmission of signals at a rate of at least 1 million bits per second to the subscriber and at a rate of at least 128,000 bits per second from the subscriber. Next generation broadband services are defined as the transmission of signals at a rate of at least 22 million bits per second to the subscriber and at a rate of at least 5 million bits per second from the subscriber.

Qualified subscribers for the purposes of the current generation broadband deduction include nonresidential subscribers in rural or underserved areas, and residential subscribers in rural or underserved areas that are not in a saturated market. A saturated market is defined as a census tract in which current generation broadband services have been provided by a single provider to 85 percent or more of the total number of potential residential subscribers residing within such census tracts. For the purposes of the next generation broadband deduction, qualified subscribers include nonresidential subscribers in rural or underserved areas or any residential subscriber. In the case of a taxpayer who incurs expenditures for equipment capable of serving both subscribers in qualifying areas and other areas, qualifying expenditures are determined by multiplying otherwise qualifying expenditures by the ratio of the number of potential qualifying subscribers to all potential subscribers the qualifying equipment would be capable of serving.

Qualifying equipment must be capable of providing broadband services a majority of the time during periods of maximum demand. Qualifying equipment is equipment that extends from (1) the last point of switching to the outside of the building in which the subscriber is located, (2) the customer side of a mobile telephone switching office to a transmission/reception antenna (including the antenna) of the subscriber, (3) the customer side of the headend to the outside of the building in which the subscriber is located, or (4) a transmission/reception antenna to a transmission/reception antenna on the outside of the building used by the subscriber. Any packet switching equipment deployed in connection with other qualifying equipment is qualifying equipment, regardless of location, provided that it is the last such equipment in a series as part of transmission of a signal to a subscriber or the first in a series in the transmission of a signal from a subscriber. Also, multiplexing and demultiplexing equipment are qualified equipment.

A rural area is any census tract which is not within 10 miles of any incorporated or census designated place with a population of more than 25,000 and which is not within a county with a population density of more than 500 people per square mile. An underserved area is any census tract located in an empowerment zone or enterprise community or any census tract in which the poverty level is greater than or equal to 30 percent and in which the median family income is less than 70 percent of the greater of metropolitan area median family income or Statewide median family income. A residential subscriber is any individual who purchases broadband service to be delivered to his or her dwelling.

Effective date. The provision is effective for expenditures incurred after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

3. Exemption for natural aging process from interest capitalization (sec. 303 of the Senate amendment and sec. 263A of the Code)

PRESENT LAW

Section 263A provides uniform rules for capitalization of certain costs. In general, section 263A requires the capitalization of the direct costs and an allocable portion of the indirect costs of real or tangible personal property produced by a taxpayer or real or personal property that is acquired by a taxpayer for resale. Costs attributable to producing or acquiring property generally must be capitalized by charging such costs to basis or, in the case of property which is inventory in the hands of the taxpayer, by including such costs in inventory.

Special rules apply for the allocation of interest expense to property produced by the taxpayer.[181] In general, interest paid or incurred during the production period of certain types of property that is allocable to the production of the property must be capitalized. Property subject to the interest capitalization requirement includes property produced by the taxpayer for use in its trade or business or in an activity for profit, but only if it (1) is real property, (2) has an estimated production period exceeding two years (one year if the cost of the property exceeds $1 million), or (3) has a class life of 20 years or more (as defined under section 168). The production period of property for this purpose begins when construction or production is commenced and ends when the property is ready to be placed in service or is ready to be held for sale. For example, in the case of property such as tobacco, wine, or whiskey that is aged before it is sold, the production period includes the aging period. Activities such as planning or design generally do not cause the production period to begin.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that for purposes of determining the production period for purposes of capitalization of interest expense under section 263A(f) that the production period for distilled spirits shall be determined without regard to any period allocated to the natural aging process.[182]

Effective date. The Senate amendment applies to production periods beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

4. Section 355 "active business test" applied to chains of affiliated corporations (sec. 304 of the Senate amendment and sec. 355 of the Code)

PRESENT LAW

A corporation generally is required to recognize gain on the distribution of property (including stock of a subsidiary) to its shareholders as if such property had been sold for its fair market value. An exception to this rule applies if the distribution of the stock of a controlled corporation satisfies the requirements of section 355 of the Code. To qualify for tax-free treatment under section 355, both the distributing corporation and the controlled corporation must be engaged immediately after the distribution in the active conduct of a trade or business that has been conducted for at least five years and was not acquired in a taxable transaction during that period.[183] For this purpose, a corporation is engaged in the active conduct of a trade or business only if (1) the corporation is directly engaged in the active conduct of a trade or business, or (2) the corporation is not directly engaged in an active business, but substantially all of its assets consist of stock and securities of a corporation it controls that is engaged in the active conduct of a trade or business.[184]

In determining whether a corporation satisfies the active trade or business requirement, the IRS position for advance ruling purposes is that the value of the gross assets of the trade or business being relied on must ordinarily constitute at least 5 percent of the total fair market value of the gross assets of the corporation directly conducting the trade or business.[185] However, if the corporation is not directly engaged in an active trade or business, then the IRS takes the position that the "substantially all" test requires that at least 90 percent of the fair market value of the corporation's gross assets consist of stock and securities of a controlled corporation that is engaged in the active conduct of a trade or business.[186]

HOUSE BILL

No provision.

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[180] 1987-2 C.B. 674 (as clarified and modified by Rev. Proc. 88-22, 1988-1 C.B. 785).

[181] Sec. 263A(f).

[182] It is intended that, for purposes of the provision, the natural aging process begin when the distilled spirits are placed in charred barrels to lie for an extended period of time to allow such product to obtain its color, much of its distinctive flavor, and to mellow. The natural aging process concludes when the distilled spirits are removed from the barrel.

[183] Section 355(b).

[184] Section 355(b)(2)(A).

[185] Rev. Proc. 2003-3, sec. 4.01(30), 2003-1 I.R.B. 113.

[186] Rev. Proc. 96-30, sec. 4.03(5), 1996-1 C.B. 696; Rev. Proc. 77-37, sec. 3.04, 1977-2 C.B. 568.

SENATE AMENDMENT

Under the bill, the active business test is determined by reference to the relevant affiliated group. For the distributing corporation, the relevant affiliated group consists of the distributing corporation as the common parent and all corporations affiliated with the distributing corporation through stock ownership described in section 1504(a)(1)(B) (regardless of whether the corporations are includible corporations under section 1504(b)), immediately after the distribution. The relevant affiliated group for a controlled corporation is determined in a similar manner (with the controlled corporation as the common parent).

Effective date. The bill applies to distributions after the date of enactment, with three exceptions. The bill does not apply to distributions (1) made pursuant to an agreement which is binding on the date of enactment and at all times thereafter, (2) described in a ruling request submitted to the IRS on or before the date of enactment, or (3) described on or before the date of enactment in a public announcement or in a filing with the Securities and Exchange Commission. The distributing corporation may irrevocably elect not to have the exceptions described above apply.

The bill also applies to any distribution prior to the date of enactment, but solely for the purpose of determining whether, after the date of enactment, the taxpayer continues to satisfy the requirements of section 355(b)(2)(A).[187]

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

5. Modification to cooperative marketing rules to include value-added processing involving animals (sec. 306 of the Senate amendment and sec. 1388 of the Code)

PRESENT LAW

Under present law, cooperatives generally are treated similarly to pass-through entities in that the cooperative is not subject to corporate income tax to the extent the cooperative timely pays patronage dividends. Farmers' cooperatives are tax-exempt and include cooperatives of farmers, fruit growers, and like organizations that are organized and operated on a cooperative basis for the purpose of marketing the products of members or other producers and remitting the proceeds of sales, less necessary marketing expenses, on the basis of either the quantity or the value of products furnished by them (sec. 521). Farmers' cooperatives may claim a limited amount of additional deductions for dividends on capital stock and patronage-based distributions of nonpatronage income.

In determining whether a cooperative qualifies as a tax-exempt farmers' cooperative, the IRS has apparently taken the position that a cooperative is not marketing certain products of members or other producers if the cooperative adds value through the use of animals (e.g., farmers sell corn to a cooperative which is fed to chickens that produce eggs sold by the cooperative).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that marketing products of members or other producers includes feeding products of members or other producers to cattle, hogs, fish, chickens, or other animals and selling the resulting animals or animal products.

Effective date. The Senate amendment provision is effective for taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

6. Extension of declaratory judgment procedures to farmers' cooperative organizations (sec. 307 of the Senate amendment and sec. 7428 of the Code)

PRESENT LAW

In limited circumstances, the Code provide declaratory judgment procedures, which generally permit a taxpayer to seek judicial review of an IRS determination prior to the issuance of a notice of deficiency and prior to payment of tax. Examples of declaratory judgment procedures that are available include disputes involving the initial or continuing classification of a tax-exempt organization described in section 501(c)(3), a private foundation described in section 509(a), or a private operating foundation described in section 4942(j)(3), the qualification of retirement plans, the value of gifts, the status of certain governmental obligations, or eligibility of an estate to pay tax in installments under section 6166.[188] In such cases, taxpayers may challenge adverse determinations by commencing a declaratory judgment action. For example, where the IRS denies an organization's application for recognition of exemption under section 501(c)(3) or fails to act on such application, or where the IRS informs a section 501(c)(3) organization that it is considering revoking or adversely modifying its tax-exempt status, present law authorizes the organization to seek a declaratory judgment regarding its tax exempt status.

Declaratory judgment procedures are not available under present law to a cooperative with respect to an IRS determination regarding its status as a farmers' cooperative under section 521.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment extends the declaratory judgment procedures to cooperatives. Such a case may be commenced in the U.S. Tax Court, a U.S. district court, or the U.S. Court of Federal Claims, and such court would have jurisdiction to determine a cooperative's initial or continuing qualification as a farmers' cooperative described in section 521.

Effective date. The Senate amendment provision is effective for pleadings filed after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

7. Temporary suspension of personal holding company tax (sec. 308 of the Senate amendment and sec. 541 of the Code)

PRESENT LAW

Under present law, a tax is imposed on the taxable income of corporations. The rates are as follows:

TABLE 1.—MARGINAL FEDERAL CORPORATE INCOME TAX RATES

If taxable income is	Then the income tax rate is
$0–$50,000	15 percent of taxable income
$50,001–$75,000	25 percent of taxable income
$75,001–$10,000,000	34 percent of taxable income
Over $10,000,000	35 percent of taxable income

The first two graduated rates described above are phased out by a five-percent surcharge for corporations with taxable income between $100,000 and $335,000. Also, the application of the 34 percent rate is phased out by a three-percent surcharge for corporations with taxable income between $15 million and $18,333,333.

When a corporation distributes its after-tax earnings to individual shareholders as dividends, a tax is imposed on the shareholders at rates up to 15 percent.[189] If a corporation receives a dividend from another corporation, the recipient corporation is entitled to a dividends-received deduction that excludes a significant part of the dividend from the recipient's income. The percentage of a dividend received that is deducted varies from 70 percent to 100 percent, depending on the level of ownership of the recipient corporation in the distributing corporation.[190] Thus, with a 70 percent dividends received deduction, the tax rate imposed on a dividend received by a corporation in the 35-percent tax bracket is 10.5 percent.[191] For corporations at lower rate brackets, the tax rates on these dividends are lower.

In addition to the regular corporate income tax, a corporate level penalty tax, the "personal holding company tax" is currently imposed at 15 percent[192] on certain corporate earnings of personal holding companies that are not distributed to shareholders. The personal holding company tax was originally enacted to prevent so-called "incorporated pocketbooks" that could be formed by individuals to hold assets that could have been held directly by the individuals, such as passive investment assets, and retain the income at corporate rates that were then significantly lower than individual tax rates.

Corporations are personal holding companies only if they are closely held and have substantial passive income. A corporation is closely held if, at any time during the last half of the taxable year, more than 50 percent of the value of the stock of the corporation is owned, directly or indirectly, by five or fewer individuals (determined with the application of specified attribution rules). A corporation has substantial passive income if at least 60 percent of the corporation's adjusted ordinary gross income (as defined for this purpose) is "personal holding company income," generally, income from interest, dividends, rents, royalties, compensation for use of corporate property by certain shareholders, and income under contracts giving someone other than the corporation the right to designate the individual service provider. Numerous adjustments apply in specified situations where there are specified indicia that the income is active rather than passive.

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[187] For example, a holding company taxpayer that had distributed a controlled corporation in a spin-off prior to the date of enactment, in which spin-off the taxpayer satisfied the "substantially all" active business stock test of present law section 355(b)(2)(A) immediately after the distribution, would not be deemed to have failed to satisfy any requirement that it continue that same qualified structure for any period of time after the distribution, solely because of a restructuring that occurs after the date of enactment and that would satisfy the requirements of new section 355(b)(2)(A).

[188] For disputes involving the initial or continuing qualification of an organization described in sections 501(c)(3), 509(a), or 4942(j)(3), declaratory judgment actions may be brought in the U.S. Tax Court, a U.S. district court, or the U.S. Court of Federal Claims. For all other Federal tax declaratory judgment actions, proceedings may be brought only in the U.S. Tax Court.

[189] The 15-percent rate applies to dividends received in taxable years beginning before January 1, 2009. Dividends received on or after that date are scheduled to be taxed at the rates applicable to ordinary income, which range up to 35 percent (39.6 percent for taxable years beginning after December 31, 2010).

[190] If the recipient corporation owns less than 20 percent of the distributing corporation, the dividends-received deduction is 70 percent. If the recipient corporation owns less than 80 percent but at least 20 percent of the distributing corporation, the dividends-received deduction is 80 percent. If the recipient corporation owns 80 percent or more of the distributing corporation, the dividends received deduction is generally 100 percent.

[191] This is the 35 percent tax rate, applied to the 30 percent of the dividend that is taxable after a 70 percent dividends-received deduction.

[192] This rate is scheduled to return to the highest individual tax rate when the lower dividend tax rate expires.

A corporation that otherwise would be subject to personal holding company tax can distribute, or can agree to be deemed to have distributed, its modified taxable income and avoid the tax. A corporation may make such an actual dividend distribution during its taxable year or, up to a specified limited amount, until the 15th day of the third month following the close of its taxable year. In addition, if an election is filed with its return for the year, its shareholders may agree to include a deemed amount in their income as if a dividend had been paid ("consent dividend"). A corporation may also make a "deficiency dividend" distribution within 90 days following a determination by the IRS or a court that personal holding company tax liability is due. That distribution can eliminate the personal holding company tax itself, though interest (and penalties, if any) with respect to such tax would still be owed to the IRS.[193]

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision repeals the personal holding company tax until 2009, the period of time the 15 percent rate on dividends received by individuals is scheduled to be in effect.

Effective date.—The provision is effective for taxable years beginning after December 31, 2003.

The provision would be treated, for purposes of section 303 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 as enacted by Title III of that Act (relating to lower rates on capital gains and dividends), so that the provision terminates when those provisions terminate (currently scheduled to be for taxable years beginning after December 31, 2008).

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

8. 5-year NOL carryback for 2003 NOLs if taxpayer elects out of bonus depreciation as modified; extend temporary suspension of 90-percent limit on minimum tax NOLs (sec. 310 of the Senate amendment and sec. 172 of the Code)

PRESENT LAW

In general, a net operating loss ("NOL") may be carried back two years and carried forward 20 years to offset taxable income in such years. The Job Creation and Worker Assistance Act of 2002 ("JCWAA") provides a temporary extension of the general NOL carryback period to five years (from two years) for NOLs arising in taxable years ending in 2001 and 2002.

The alternative minimum tax ("AMT") rules provide that a taxpayer's NOL deduction cannot reduce the taxpayer's alternative minimum taxable income ("AMTI") by more than 90 percent of the AMTI (determined without regard to the NOL deduction). JCWAA also provides that an NOL deduction attributable to NOL carrybacks arising in taxable years ending in 2001 and 2002, as well as NOL carryforwards to these taxable years, may offset 100 percent of a taxpayer's AMTI.

JCWAA provides generally for an elective 30-percent additional first-year depreciation deduction. The requirements that must be satisfied in order for property to qualify include that (1) the original use of the property must commence with the taxpayer on or after September 11, 2001, (2) the taxpayer must acquire the property after September 10, 2001 and before September 11, 2004, and (3) no binding written contract for the acquisition of the property is in effect before September 11, 2001 (or, in the case of self-constructed property, manufacture, construction, or production of the property does not begin before September 11, 2001).

The Jobs and Growth Tax Relief Reconciliation Act of 2003 ("JGTRRA") provides an elective additional first-year depreciation deduction equal to 50 percent of the adjusted basis of qualified property. Qualified property is defined in the same manner as for purposes of the 30-percent additional first-year depreciation deduction provided by the JCWAA except that the applicable time period for acquisition (or self construction) of the property is modified. Property with respect to which the 50-percent additional first-year depreciation deduction is claimed is not also eligible for the 30-percent additional first-year depreciation deduction. In order to qualify, the property must be acquired after May 5, 2003 and before January 1, 2005.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment extends the application of the five-year carryback period to NOLs arising in taxable years ending in 2003, provided that the taxpayer elects not to apply the bonus depreciation provisions of section 168(k). Under the provision, taxpayers with taxable years ending during January are permitted to apply the provision to tax years ending during January of 2004 rather than tax years ending during January of 2003. The provision also allows an NOL deduction attributable to NOL carrybacks arising in taxable years ending in 2003, as well as NOL carryforwards to these taxable years, to offset 100 percent of a taxpayer's AMTI.

Effective date.—The Senate amendment applies to net operating losses for taxable years ending after December 31, 2002.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

9. Manufacturer's jobs credit (sec. 313 of the Senate amendment)

PRESENT LAW

There is no present law credit for a manufacturer's employment of eligible Trade Adjustment Act ("TAA") recipients.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides a 50-percent tax credit for W-2 wages paid by the taxpayer to eligible TAA recipients (as defined in sec. 35(c)(2) of the Code). The credit may not exceed 50 percent of the lesser of: (1) the excess of the W-2 wages paid by the taxpayer during the taxable year over the W-2 wages paid by the taxpayer during the preceding taxable year, (2) the W-2 wages paid by the taxpayer during the taxable year to any employee who is an eligible TAA recipient for any month during such taxable year, or (3) 22.4 percent of the W-2 wages paid by the taxpayer during the taxable year. The amount of W-2 wages taken into account with respect to any employee for any taxable year shall not exceed $50,000.

The otherwise allowable credit is limited if the value of the taxpayer's non-domestic production increased from the preceding taxable year. In such case, the credit is (1) reduced to zero for taxpayers whose value of domestic production does not exceed that from the preceding taxable year, or (2) reduced by a percentage equal to the non-domestic share of the increase in the value of worldwide production from the preceding taxable year.

A taxpayer eligible for the credit is any taxpayer that has domestic production gross receipts for the taxable year and the preceding taxable year, and is not treated at any time during the taxable year as an inverted domestic corporation under section 7874 of the Senate amendment.

Effective date.—The provision applies to taxable years beginning after December 31, 2003, and before January 1, 2006.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

10. Brownfields demonstration program for qualified green building and sustainable design projects (sec. 314 of the Senate amendment and secs. 142 and 146 of the Code)

PRESENT LAW

In general

Interest on debt incurred by States or local governments is excluded from income if the proceeds of the borrowing are used to carry out governmental functions of those entities or the debt is repaid with governmental funds. Interest on bonds that nominally are issued by States or local governments, but the proceeds of which are used (directly or indirectly) by a private person and payment of which is derived from funds of such a private person is taxable unless the purpose of the borrowing is approved specifically in the Code or in a non-Code provision of a revenue Act. These bonds are called "private activity bonds." The term "private person" includes the Federal Government and all other individuals and entities other than States or local governments.

Private activities eligible for financing with tax-exempt private activity bonds

Present law includes several exceptions permitting States or local governments to act as conduits providing tax-exempt financing for private activities. For example, interest on bonds issued to benefit section 501(c)(3) organizations is generally tax-exempt ("qualified 501(c)(3) bonds"). Both capital expenditures and limited working capital expenditures of section 501(c)(3) organizations may be financed with qualified 501(c)(3) bonds.

In addition, States or local governments may issue tax-exempt "exempt-facility bonds" to finance property for certain private businesses.[194] Business facilities eligible for this financing include transportation (airports, ports, local mass commuting, and high speed intercity rail facilities); privately owned and/or privately operated public works facilities (sewage, solid waste disposal, local district heating or cooling, hazardous waste disposal facilities, and public educational facilities); privately owned and/or operated low-income rental housing;[195] and certain private facilities for the local furnishing of electricity or gas. A further provision allows tax-exempt financing for "environmental enhancements of hydro-electric generating facilities." Tax-exempt financing also is authorized for capital expenditures for small manufacturing facilities and land and equipment for first-time farmers ("qualified small-issue bonds"), local redevelopment activities ("qualified redevelopment bonds"), and eligible empowerment zone and enterprise community businesses. Tax-exempt private activity bonds also may be issued to finance limited non-business purposes: certain student loans and mortgage loans for owner-occupied housing ("qualified mortgage bonds" and "qualified veterans" mortgage bonds").

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[193] Section 547.

[194] Secs. 141(e) and 142(a).

Generally, tax-exempt private activity bonds are subject to restrictions that do not apply to other bonds issued by State or local governments. For example, most tax-exempt private activity bonds are subject to annual volume limits on the aggregate face amount of such bonds that may be issued.[196]

HOUSE BILL

No provision.

SENATE AMENDMENT

In general

The Senate amendment creates a new category of exempt-facility bond, the qualified green building and sustainable design project bond ("qualified green bond"). A qualified green bond is defined as any bond issued as part of an issue that finances a project designated by the Secretary, after consultation with the Administrator of the Environmental Protection Agency (the "Administrator") as a green building and sustainable design project that meets the following eligibility requirements: (1) at least 75 percent of the square footage of the commercial buildings that are part of the project is registered for the U.S. Green Building Council's LEED[197] certification and is reasonably expected (at the time of designation) to meet such certification; (2) the project includes a brownfield site;[198] (3) the project receives at least $5 million dollars in specific State or local resources; and (4) the project includes at least one million square feet of building or at least 20 acres of land.

Under the provision, qualified green bonds are not subject to the State bond volume limitations. Rather, there is a national limitation of $2 billion of qualified green bonds that the Secretary may allocate, in the aggregate, to qualified green building and sustainable design projects. Qualified green bonds may be currently refunded if certain conditions are met, but cannot be advance refunded. The authority to issue qualified green bonds terminates after September 30, 2009.

Application and designation process

The provision requires the submission of an application that meets certain requirements before a project may be designated for financing with qualified green bonds. In addition to the eligibility requirements listed above, each project application must demonstrate that the net benefit of the tax-exempt financing provided will be allocated for (i) the purchase, construction, integration or other use of energy efficiency, renewable energy and sustainable design features of the project, (ii) compliance with LEED certification standards, and/or (iii) the purchase, remediation, foundation construction, and preparation of the brownfield site. The application also must demonstrate that the project is expected, based on independent analysis, to provide the equivalent of at least 1,500 full-time permanent employees (150 full-time employees in rural States) when completed and the equivalent of at least 1,000 construction employees (100 full-time employees in rural States). In addition, each project application shall contain a description of: (1) the amount of electric consumption reduced as compared to conventional construction; (2) the amount of sulfur dioxide daily emissions reduced compared to coal generation; (3) the amount of gross installed capacity of the project's solar photovoltaic capacity measured in megawatts; and (4) the amount of the project's fuel cell energy generation, measured in megawatts.

Under the Senate Amendment, each project must be nominated by a State or local government within 180 days of enactment of this Act and such State or local government must provide written assurances that the project will satisfy certain eligibility requirements. Within 60 days after the end of the application period, the Secretary, after consultation with the Administrator, will designate the qualified green building and sustainable design projects eligible for financing with qualified green bonds. At least one of the projects must be in or within a ten-mile radius of an empowerment zone (as defined under section 1391 of the Code) and at least one project must be in a rural State.[199] No more than one project is permitted in a State. A project shall not be designated for financing with qualified green bonds if such project includes a stadium or arena for professional sports exhibitions or games.

The provision requires the Secretary, after consultation with the Administrator, to ensure that the projects designated shall, in the aggregate: (1) reduce electric consumption by more than 150 megawatts annually as compared to conventional construction; (2) reduce daily sulfur dioxide emissions by at least 10 tons compared to coal generation power; (3) expand by 75 percent the domestic solar photovoltaic market in the United States (measured in megawatts) as compared to the expansion of that market from 2001 to 2002; and (4) use at least 25 megawatts of fuel cell energy generation.

Each project must certify to the Secretary, no later than 30 days after the completion of the project, that the net benefit of the tax-exempt financing was used for the purposes described in the project application. In addition, no bond proceeds can be used to provide any facility the principal business of which is the sale of food or alcoholic beverages for consumption on the premises.

Special rules

The provision requires each issuer to maintain, on behalf of each project, an interest bearing reserve account equal to one percent of the net proceeds of any qualified green bond issued for such project. Not later than five years after the date of issuance, the Secretary, after consultation with the Administrator, shall determine whether the project financed with the proceeds of qualified green bonds has substantially complied with the requirements and goals described in the project application. If the Secretary, after such consultation, certifies that the project has substantially complied with the requirements and goals, amounts in the reserve account, including all interest, shall be released to the project. If the Secretary determines that the project has not substantially complied with such requirements and goals, amounts in the reserve account, including all interest, shall be paid to the United States Treasury.

Effective date.—The provision is effective for bonds issued after December 31, 2004, and before October 1, 2009.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

J. MANUFACTURING RELATING TO FILMS

1. Special rules for certain film and television production (sec. 321 of the Senate amendment and new sec. 181 of the Code)

PRESENT LAW

The modified Accelerated Cost Recovery System ("MACRS") does not apply to certain property, including any motion picture film, video tape, or sound recording, or to any other property if the taxpayer elects to exclude such property from MACRS and the taxpayer properly applies a unit-of-production method or other method of depreciation not expressed in a term of years. Section 197 does not apply to certain intangible property, including property produced by the taxpayer or any interest in a film, sound recording, video tape, book or similar property not acquired in a transaction (or a series of related transactions) involving the acquisition of assets constituting a trade or business or substantial portion thereof. Thus, the recovery of the cost of a film, video tape, or similar property that is produced by the taxpayer or is acquired on a "stand-alone" basis by the taxpayer may not be determined under either the MACRS depreciation provisions or under the section 197 amortization provisions. The cost recovery of such property may be determined under section 167, which allows a depreciation deduction for the reasonable allowance for the exhaustion, wear and tear, or obsolescence of the property. A taxpayer is allowed to recover, through annual depreciation deductions, the cost of certain property used in a trade or business or for the production of income. Section 167(g) provides that the cost of motion picture films, sound recordings, copyrights, books, and patents are eligible to be recovered using the income forecast method of depreciation.

HOUSE BILL

No provision.

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[195] Residential rental projects must satisfy low-income tenant occupancy requirements for a minimum period of 15 years.

[196] Sec. 146.

[197] The LEED ("Leadership in Energy and Environmental Design") Green Building Rating System is a voluntary, consensus-based national standard for developing high-performance sustainable buildings. Registration is the first step toward LEED certification. Actual certification requires that the applicant project satisfy a number of requirements. Commercial buildings, as defined by standard building codes are eligible for certification. Commercial occupancies include, but are not limited to, offices, retail and service establishments, institutional buildings (e.g. libraries, schools, museums, churches, etc.), hotels, and residential buildings of four or more habitable stories.

[198] For this purpose, a brownfield site is defined by section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), including a site described in subparagraph (D)(ii)(II)(aa) thereof (relating to a site that is contaminated by petroleum or a petroleum product excluded from the definition of 'hazardous substance' under section 101).

[199] The term "rural State" means any State that has (1) a population of less than 4.5 million according to the 2000 census; (2) a population density of less than 150 people per square mile according to the 2000 census; and (3) increased in population by less than half the rate of the national increase between the 1990 and 2000 censuses.

SENATE AMENDMENT

The Senate amendment permits qualifying film and television productions to elect to deduct certain production expenditures in the year the expenditure is incurred in lieu of capitalizing the cost and recovering it through depreciation allowances.[200]

The provision limits the amount of production expenditures that may be expensed to $15 million for each qualifying production.[201] An additional $5 million of production expenditures may be deducted (up to $20 million in total) if a significant amount of the production expenditures are incurred in areas eligible for designation as a low-income community or eligible for designation by the Delta Regional Authority as a distressed county or isolated area of distress. Expenditures in excess of $15 million ($20 million in distressed areas) are required to be recovered over a three-year period using the straight-line method beginning in the month such property is placed in service.

The provision defines a qualified film or television production as any production of a motion picture (whether released theatrically or directly to video cassette or any other format); miniseries; scripted, dramatic television episode; or movie of the week if at least 75 percent of the total compensation expended on the production are for services performed in the United States.[202] With respect to property which is one or more episodes in a television series, only the first 44 episodes qualify under the provision. Qualified property does not include sexually explicit productions as defined by section 2257 of title 18 of the U.S. Code.

Effective date.—The Senate amendment is effective for qualified productions commencing after the date of enactment and sunsets for qualifying productions commencing after December 31, 2008.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except that the provision does not apply to qualified productions the aggregate cost of which exceeds the $15 million threshold. The threshold is increased to $20 million if a significant amount of the production expenditures are incurred in areas eligible for designation as a low-income community or eligible for designation by the Delta Regional Authority as a distressed county or isolated area of distress.

Effective date.—The provision is effective for qualified productions commencing after the date of enactment and before January 1, 2009.[203]

2. Modification of application of income forecast method of depreciation (sec. 322 of the Senate amendment and sec. 167 of the Code)

PRESENT LAW

The modified Accelerated Cost Recovery System ("MACRS") does not apply to certain property, including any motion picture film, video tape, or sound recording, or to any other property if the taxpayer elects to exclude such property from MACRS and the taxpayer properly applies a unit-of-production method or other method of depreciation not expressed in a term of years. Section 197 does not apply to certain intangible property, including property produced by the taxpayer or any interest in a film, sound recording, video tape, book or similar property not acquired in a transaction (or a series of related transactions) involving the acquisition of assets constituting a trade or business or substantial portion thereof. Thus, the recovery of the cost of a film, video tape, or similar property that is produced by the taxpayer or is acquired on a "stand-alone" basis by the taxpayer may not be determined under either the MACRS depreciation provisions or under the section 197 amortization provisions. The cost recovery of such property may be determined under section 167, which allows a depreciation deduction for the reasonable allowance for the exhaustion, wear and tear, or obsolescence of the property. A taxpayer is allowed to recover, through annual depreciation deductions, the cost of certain property used in a trade or business or for the production of income. Section 167(g) provides that the cost of motion picture films, sound recordings, copyrights, books, and patents are eligible to be recovered using the income forecast method of depreciation.

Income forecast method of depreciation

Under the income forecast method, a property's depreciation deduction for a taxable year is determined by multiplying the adjusted basis of the property by a fraction, the numerator of which is the income generated by the property during the year and the denominator of which is the total forecasted or estimated income expected to be generated prior to the close of the tenth taxable year after the year the property was placed in service. Any costs that are not recovered by the end of the tenth taxable year after the property was placed in service may be taken into account as depreciation in such year.

The adjusted basis of property that may be taken into account under the income forecast method only includes amounts that satisfy the economic performance standard of section 461(h). In addition, taxpayers that claim depreciation deductions under the income forecast method are required to pay (or receive) interest based on a recalculation of depreciation under a "look-back" method.

The "look-back" method is applied in any "recomputation year" by (1) comparing depreciation deductions that had been claimed in prior periods to depreciation deductions that would have been claimed had the taxpayer used actual, rather than estimated, total income from the property; (2) determining the hypothetical overpayment or underpayment of tax based on this recalculated depreciation; and (3) applying the overpayment rate of section 6621 of the Code. Except as provided in Treasury regulations, a "recomputation year" is the third and tenth taxable year after the taxable year the property was placed in service, unless the actual income from the property for each taxable year ending with or before the close of such years was within 10 percent of the estimated income from the property for such years.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment clarifies that, solely for purposes of computing the allowable deduction for property under the income forecast method of depreciation, participations and residuals may be included in the adjusted basis of the property beginning in the year such property is placed in service, but only if such participations and residuals relate to income to be derived from the property before the close of the tenth taxable year following the year the property is placed in service (as defined in section 167(g)(1)(A)). For purposes of the provision, participations and residuals are defined as costs the amount of which, by contract, varies with the amount of income earned in connection with such property. The provision also clarifies that the income from the property to be taken into account under the income forecast method is the gross income from such property.

The provision also grants authority to the Treasury Department to prescribe appropriate adjustments to the basis of property (and the look-back method) to reflect the treatment of participations and residuals under the provision.

In addition, the provision clarifies that, in the case of property eligible for the income forecast method that the holding in the Associated Patentees[204] decision will continue to constitute a valid method. Thus, rather than accounting for participations and residuals as a cost of the property under the income forecast method of depreciation, the taxpayer may deduct those payments as they are paid as under the Associated Patentees decision. This may be done on a property-by-property basis and shall be applied consistently with respect to a given property thereafter. The provision also clarifies that distribution costs are not taken into account for purposes of determining the taxpayer's current and total forecasted income with respect to a property.

Effective date.—The Senate amendment applies to property placed in service after date of enactment. No inference is intended as to the appropriate treatment under present law. It is intended that the Treasury Department and the IRS expedite the resolution of open cases. In resolving these cases in an expedited and balanced manner, the Treasury Department and IRS are encouraged to take into account the principles of the provision.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

TITLE III—PROVISIONS RELATING TO TAX REFORM AND SIMPLIFICATION FOR UNITED STATES BUSINESSES

1. Interest expense allocation rules (sec. 301 of the House bill, sec. 205 of the Senate amendment, and sec. 864 of the Code)

PRESENT LAW

In general

In order to compute the foreign tax credit limitation, a taxpayer must determine the amount of its taxable income from foreign sources. Thus, the taxpayer must allocate and apportion deductions between items of U.S.-source gross income, on the one hand, and items of foreign-source gross income, on the other.

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[200] An election to deduct such costs shall be made in such manner as prescribed by the Secretary and by the due date (including extensions of time) for filing the taxpayer's return of tax for the taxable year in which production costs of such property are first incurred. An election may not be revoked without the consent of the Secretary. The Committee intends that, in the absence of specific guidance by the Secretary, deducting qualifying costs on the appropriate tax return shall constitute a valid election.

[201] Thus, a qualifying film that is co-produced is limited to $15 million of deduction. The benefits of this provision shall be allocated among the owners of a film in a manner that reasonably reflects each owner's proportionate investment in and economic interest in the film.

[202] The term compensation does not include participations and residuals.

[203] For this purpose, a production is treated as commencing on the first date of principal photography.

[204] *Associated Patentees, Inc.* v. *Commissioner*, 4 T.C. 979 (1945).

In the case of interest expense, the rules generally are based on the approach that money is fungible and that interest expense is properly attributable to all business activities and property of a taxpayer, regardless of any specific purpose for incurring an obligation on which interest is paid.[205] For interest allocation purposes, the Code provides that all members of an affiliated group of corporations generally are treated as a single corporation (the so-called "one-taxpayer rule") and allocation must be made on the basis of assets rather than gross income.

Affiliated group

In general

The term "affiliated group" in this context generally is defined by reference to the rules for determining whether corporations are eligible to file consolidated returns. However, some groups of corporations are eligible to file consolidated returns yet are not treated as affiliated for interest allocation purposes, and other groups of corporations are treated as affiliated for interest allocation purposes even though they are not eligible to file consolidated returns. Thus, under the one-taxpayer rule, the factors affecting the allocation of interest expense of one corporation may affect the sourcing of taxable income of another, related corporation even if the two corporations do not elect to file, or are ineligible to file, consolidated returns.

Definition of affiliated group consolidated return rules

For consolidation purposes, the term "affiliated group" means one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation, but only if: (1) the common parent owns directly stock possessing at least 80 percent of the total voting power and at least 80 percent of the total value of at least one other includible corporation; and (2) stock meeting the same voting power and value standards with respect to each includible corporation (excluding the common parent) is directly owned by one or more other includible corporations.

Generally, the term "includible corporation" means any domestic corporation except certain corporations exempt from tax under section 501 (for example, corporations organized and operated exclusively for charitable or educational purposes), certain life insurance companies, corporations electing application of the possession tax credit, regulated investment companies, real estate investment trusts, and domestic international sales corporations. A foreign corporation generally is not an includible corporation.

Definition of affiliated group—special interest allocation rules

Subject to exceptions, the consolidated return and interest allocation definitions of affiliation generally are consistent with each other.[206] For example, both definitions generally exclude all foreign corporations from the affiliated group. Thus, while debt generally is considered fungible among the assets of a group of domestic affiliated corporations, the same rules do not apply as between the domestic and foreign members of a group with the same degree of common control as the domestic affiliated group.

Banks, savings institutions, and other financial affiliates

The affiliated group for interest allocation purposes generally excludes what are referred to in the Treasury regulations as "financial corporations" (Treas. Reg. sec. 1.861-11T(d)(4)). These include any corporation, otherwise a member of the affiliated group for consolidation purposes, that is a financial institution (described in section 581 or section 591), the business of which is predominantly with persons other than related persons or their customers, and which is required by State or Federal law to be operated separately from any other entity which is not a financial institution (sec. 864(e)(5)(C)). The category of financial corporations also includes, to the extent provided in regulations, bank holding companies (including financial holding companies), subsidiaries of banks and bank holding companies (including financial holding companies), and savings institutions predominantly engaged in the active conduct of a banking, financing, or similar business (sec. 864(e)(5)(D)).

A financial corporation is not treated as a member of the regular affiliated group for purposes of applying the one-taxpayer rule to other non-financial members of that group. Instead, all such financial corporations that would be so affiliated are treated as a separate single corporation for interest allocation purposes.

HOUSE BILL

In general

The provision modifies the present-law interest expense allocation rules (which generally apply for purposes of computing the foreign tax credit limitation) by providing a one-time election under which the taxable income of the domestic members of an affiliated group from sources outside the United States generally is determined by allocating and apportioning interest expense of the domestic members of a worldwide affiliated group on a worldwide-group basis (i.e., as if all members of the worldwide group were a single corporation). If a group makes this election, the taxable income of the domestic members of a worldwide affiliated group from sources outside the United States is determined by allocating and apportioning the third-party interest expense of those domestic members to foreign-source income in an amount equal to the excess (if any) of (1) the worldwide affiliated group's worldwide third-party interest expense multiplied by the ratio which the foreign assets of the worldwide affiliated group bears to the total assets of the worldwide affiliated group,[207] over (2) the third-party interest expense incurred by foreign members of the group to the extent such interest would be allocated to foreign sources if the provision's principles were applied separately to the foreign members of the group.[208]

For purposes of the new elective rules based on worldwide fungibility, the worldwide affiliated group means all corporations in an affiliated group (as that term is defined under present law for interest allocation purposes)[209] as well as all controlled foreign corporations that, in the aggregate, either directly or indirectly,[210] would be members of such an affiliated group if section 1504(b)(3) did not apply (i.e., in which at least 80-percent of the vote and value of the stock of such corporations is owned by one or more other corporations included in the affiliated group). Thus, if an affiliated group makes this election, the taxable income from sources outside the United States of domestic group members generally is determined by allocating and apportioning interest expense of the domestic members of the worldwide affiliated group as if all of the interest expense and assets of 80-percent or greater owned domestic corporations (i.e., corporations that are part of the affiliated group under present-law section 864(e)(5)(A) as modified to include insurance companies) and certain controlled foreign corporations were attributable to a single corporation.

In addition, if an affiliated group elects to apply the new elective rules based on worldwide fungibility, the present-law rules regarding the treatment of tax-exempt assets and the basis of stock in nonaffiliated 10-percent owned corporations apply on a worldwide affiliated group basis.

The common parent of the domestic affiliated group must make the worldwide affiliated group election. It must be made for the first taxable year beginning after December 31, 2008, in which a worldwide affiliated group exists that includes at least one foreign corporation that meets the requirements for inclusion in a worldwide affiliated group. Once made, the election applies to the common parent and all other members of the worldwide affiliated group for the taxable year for which the election was made and all subsequent taxable years, unless revoked with the consent of the Secretary of the Treasury.

Financial institution group election

The provision allows taxpayers to apply the present-law bank group rules to exclude certain financial institutions from the affiliated group for interest allocation purposes under the worldwide fungibility approach. The provision also provides a one-time "financial institution group" election that expands the present-law bank group. Under the provision, at the election of the common parent of the pre-election worldwide affiliated group, the interest expense allocation rules are applied separately to a subgroup of the worldwide affiliated group that consists of (1) all corporations that are part of the present-law bank group, and (2) all "financial corporations." For this purpose, a corporation is a financial corporation if at least 80 percent of its gross income is financial services income (as described in section 904(d)(2)(C)(i) and the regulations thereunder) that is derived from transactions with unrelated persons.[211] For these purposes, items of income or gain from a transaction or series of transactions are disregarded if a principal purpose for the transaction or transactions is to qualify any corporation as a financial corporation.

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[205] However, exceptions to the fungibility principle are provided in particular cases, some of which are described below.

[206] One such exception is that the affiliated group for interest allocation purposes includes section 936 corporations that are excluded from the consolidated group.

[207] For purposes of determining the assets of the worldwide affiliated group, neither stock in corporations within the group nor indebtedness (including receivables) between members of the group is taken into account. It is anticipated that the Treasury Secretary will adopt regulations addressing the allocation and apportionment of interest expense on such indebtedness that follow principles analogous to those of existing regulations. Income from holding stock or indebtedness of another group member is taken into account for all purposes under the present-law rules of the Code, including the foreign tax credit provisions.

[208] Although the interest expense of a foreign subsidiary is taken into account for purposes of allocating the interest expense of the domestic members of the electing worldwide affiliated group for foreign tax credit limitation purposes, the interest expense incurred by a foreign subsidiary is not deductible on a U.S. return.

[209] The provision expands the definition of an affiliated group for interest expense allocation purposes to include certain insurance companies that are generally excluded from an affiliated group under section 1504(b)(2) (without regard to whether such companies are covered by an election under section 1504(c)(2)).

[210] Indirect ownership is determined under the rules of section 958(a)(2) or through applying rules similar to those of section 958(a)(2) to stock owned directly or indirectly by domestic partnerships, trusts, or estates.

The common parent of the pre-election worldwide affiliated group must make the election for the first taxable year beginning after December 31, 2008, in which a worldwide affiliated group includes a financial corporation. Once made, the election applies to the financial institution group for the taxable year and all subsequent taxable years. In addition, the provision provides anti-abuse rules under which certain transfers from one member of a financial institution group to a member of the worldwide affiliated group outside of the financial institution group are treated as reducing the amount of indebtedness of the separate financial institution group. The provision provides regulatory authority with respect to the election to provide for the direct allocation of interest expense in circumstances in which such allocation is appropriate to carry out the purposes of the provision, prevent assets or interest expense from being taken into account more than once, or address changes in members of any group (through acquisitions or otherwise) treated as affiliated under this provision.

Effective date.—The House bill provision is effective for taxable years beginning after December 31, 2008.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

2. Recharacterize overall domestic loss (sec. 302 of the House bill, sec. 204 of the Senate amendment, and sec. 904 of the Code)

PRESENT LAW

The United States provides a credit for foreign income taxes paid or accrued. The foreign tax credit generally is limited to the U.S. tax liability on a taxpayer's foreign-source income, in order to ensure that the credit serves the purpose of mitigating double taxation of foreign-source income without offsetting the U.S. tax on U.S.-source income. This overall limitation is calculated by prorating a taxpayer's pre-credit U.S. tax on its worldwide income between its U.S.-source and foreign-source taxable income. The ratio (not exceeding 100 percent) of the taxpayer's foreign-source taxable income to worldwide taxable income is multiplied by its pre-credit U.S. tax to establish the amount of U.S. tax allocable to the taxpayer's foreign-source income and, thus, the upper limit on the foreign tax credit for the year.

In addition, this limitation is calculated separately for various categories of income, generally referred to as "separate limitation categories." The total amount of the foreign tax credit used to offset the U.S. tax on income in each separate limitation category may not exceed the proportion of the taxpayer's U.S. tax which the taxpayer's foreign-source taxable income in that category bears to its worldwide taxable income.

If a taxpayer's losses from foreign sources exceed its foreign-source income, the excess ("overall foreign loss," or "OFL") may offset U.S.-source income. Such an offset reduces the effective rate of U.S. tax on U.S.-source income.

In order to eliminate a double benefit (that is, the reduction of U.S. tax previously noted and, later, full allowance of a foreign tax credit with respect to foreign-source income), present law includes an OFL recapture rule. Under this rule, a portion of foreign-source taxable income earned after an OFL year is recharacterized as U.S.-source taxable income for foreign tax credit purposes (and for purposes of the possessions tax credit). Unless a taxpayer elects a higher percentage, however, generally no more than 50 percent of the foreign-source taxable income earned in any particular taxable year is recharacterized as U.S.-source taxable income. The effect of the recapture is to reduce the foreign tax credit limitation in one or more years following an OFL year and, therefore, the amount of U.S. tax that can be offset by foreign tax credits in the later year or years.

Losses for any taxable year in separate foreign limitation categories (to the extent that they do not exceed foreign income for the year) are apportioned on a proportionate basis among (and operate to reduce) the foreign income categories in which the entity earns income in the loss year. A separate limitation loss recharacterization rule applies to foreign losses apportioned to foreign income pursuant to the above rule. If a separate limitation loss was apportioned to income subject to another separate limitation category and the loss category has income for a subsequent taxable year, then that income (to the extent that it does not exceed the aggregate separate limitation losses in the loss category not previously recharacterized) must be recharacterized as income in the separate limitation category that was previously offset by the loss. Such recharacterization must be made in proportion to the prior loss apportionment not previously taken into account.

A U.S.-source loss reduces pre-credit U.S. tax on worldwide income to an amount less than the hypothetical tax that would apply to the taxpayer's foreign-source income if viewed in isolation. The existence of foreign-source taxable income in the year of the U.S.-source loss reduces or eliminates any net operating loss carryover that the U.S.-source loss would otherwise have generated absent the foreign income. In addition, as the pre-credit U.S. tax on worldwide income is reduced, so is the foreign tax credit limitation. Moreover, any U.S.-source loss for any taxable year is apportioned among (and operates to reduce) foreign income in the separate limitation categories on a proportionate basis. As a result, some foreign tax credits in the year of the U.S.-source loss must be credited, if at all, in a carryover year. Tax on U.S.-source taxable income in a subsequent year may be offset by a net operating loss carryforward, but not by a foreign tax credit carryforward. There is currently no mechanism for recharacterizing such subsequent U.S.-source income as foreign-source income.

For example, suppose a taxpayer generates a $100 U.S.-source loss and earns $100 of foreign-source income in Year 1, and pays $30 of foreign tax on the $100 of foreign-source income. Because the taxpayer has no net taxable income in Year 1, no foreign tax credit can be claimed in Year 1 with respect to the $30 of foreign taxes. If the taxpayer then earns $100 of U.S.-source income and $100 of foreign-source income in Year 2, present law does not recharacterize any portion of the $100 of U.S.-source income as foreign-source income to reflect the fact that the previous year's $100 U.S.-source loss reduced the taxpayer's ability to claim foreign tax credits.

HOUSE BILL

The provision applies a re-sourcing rule to U.S.-source income in cases in which a taxpayer's foreign tax credit limitation has been reduced as a result of an overall domestic loss. Under the provision, a portion of the taxpayer's U.S.-source income for each succeeding taxable year is recharacterized as foreign-source income in an amount equal to the lesser of: (1) the amount of the unrecharacterized overall domestic losses for years prior to such succeeding taxable year, and (2) 50 percent of the taxpayer's U.S.-source income for such succeeding taxable year.

The provision defines an overall domestic loss for this purpose as any domestic loss to the extent it offsets foreign-source taxable income for the current taxable year or for any preceding taxable year by reason of a loss carryback. For this purpose, a domestic loss means the amount by which the U.S.-source gross income for the taxable year is exceeded by the sum of the deductions properly apportioned or allocated thereto, determined without regard to any loss carried back from a subsequent taxable year. Under the provision, an overall domestic loss does not include any loss for any taxable year unless the taxpayer elected the use of the foreign tax credit for such taxable year.

Any U.S.-source income recharacterized under the provision is allocated among and increases the various foreign tax credit separate limitation categories in the same proportion that those categories were reduced by the prior overall domestic losses, in a manner similar to the recharacterization rules for separate limitation losses.

It is anticipated that situations may arise in which a taxpayer generates an overall domestic loss in a year following a year in which it had an overall foreign loss, or vice versa. In such a case, it would be necessary for ordering and other coordination rules to be developed for purposes of computing the foreign tax credit limitation in subsequent taxable years. The provision grants the Secretary of the Treasury authority to prescribe such regulations as may be necessary to coordinate the operation of the OFL recapture rules with the operation of the overall domestic loss recapture rules added by the provision.

Effective date.—The provision applies to losses incurred in taxable years beginning after December 31, 2006.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

3. Foreign tax credit baskets and "base differences" (sec. 303 of the House bill, sec. 225 of the Senate amendment, and sec. 904 of the Code)

PRESENT LAW

In general

The United States taxes its citizens and residents on their worldwide income. Because the countries in which income is earned also may assert their jurisdiction to tax the same income on the basis of source, foreign-source income earned by U.S. persons may be subject to double taxation. In order to mitigate this possibility, the United States provides a credit against U.S. tax liability for foreign income taxes paid, subject to a number of limitations. The foreign tax credit generally is limited to the U.S. tax liability on a taxpayer's foreign-source income, in order to ensure that the credit serves its purpose of mitigating double taxation of cross-border income without offsetting the U.S. tax on U.S.-source income.

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[211] See Treas. Reg. sec. 1.904-4(e)(2).

The foreign tax credit limitation is applied separately to the following categories of income: (1) passive income, (2) high withholding tax interest, (3) financial services income, (4) shipping income, (5) certain dividends received from noncontrolled section 902 foreign corporations ("10/50 companies"),[212] (6) certain dividends from a domestic international sales corporation or former domestic international sales corporation, (7) taxable income attributable to certain foreign trade income, (8) certain distributions from a foreign sales corporation or former foreign sales corporation, and (9) any other income not described in items (1) through (8) (so-called "general basket" income). In addition, a number of other provisions of the Code and U.S. tax treaties effectively create additional separate limitations in certain circumstances.[213]

Financial services income

In general, the term "financial services income" includes income received or accrued by a person predominantly engaged in the active conduct of a banking, insurance, financing, or similar business, if the income is derived in the active conduct of a banking, financing or similar business, or is derived from the investment by an insurance company of its unearned premiums or reserves ordinary and necessary for the proper conduct of its insurance business (sec. 904(d)(2)(C)). The Code also provides that financial services income includes income, received or accrued by a person predominantly engaged in the active conduct of a banking, insurance, financing, or similar business, of a kind which would generally be insurance income (as defined in section 953(a)), among other items.

Treasury regulations provide that a person is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business for any year if for that year at least 80 percent of its gross income is "active financing income."[214] The regulations further provide that a corporation that is not predominantly engaged in the active conduct of a banking, insurance, financing, or similar business under the preceding definition can derive financial services income if the corporation is a member of an affiliated group (as defined in section 1504(a), but expanded to include foreign corporations) that, as a whole, meets the regulatory test of being "predominantly engaged."[215] In determining whether an affiliated group is "predominantly engaged," only the income of members of the group that are U.S. corporations, or controlled foreign corporations in which such U.S. corporations own (directly or indirectly) at least 80 percent of the total voting power and value of the stock, are counted.

"Base difference" items

Under Treasury regulations, foreign taxes are allocated and apportioned to the same limitation categories as the income to which they relate.[216] In cases in which foreign law imposes tax on an item of income that does not constitute income under U.S. tax principles (a "base difference" item), the tax is treated as imposed on income in the general limitation category.[217]

HOUSE BILL

In general

The provision generally reduces the number of foreign tax credit limitation categories to two: passive category income and general category income. Other income is included in one of the two categories, as appropriate. For example, shipping income generally falls into the general limitation category, whereas high withholding tax interest generally could fall into the passive income or the general limitation category, depending on the circumstances. Dividends from a domestic international sales corporation or former domestic international sales corporation, income attributable to certain foreign trade income, and certain distributions from a foreign sales corporation or former foreign sales corporation all are assigned to the passive income limitation category. The provision does not affect the separate computation of foreign tax credit limitations under special provisions of the Code relating to, for example, treaty-based sourcing rules or specified countries under section 901(j).

Financial services income

In the case of a member of a financial services group or any other person predominantly engaged in the active conduct of a banking, insurance, financing or similar business, the provision treats income meeting the definition of financial services income as general category income. Under the provision, a financial services group is an affiliated group that is predominantly engaged in the active conduct of a banking, insurance, financing or similar business. For this purpose, the definition of an affiliated group under section 1504(a) is applied, but expanded to include certain insurance companies (without regard to whether such companies are covered by an election under section 1504(c)(2)) and foreign corporations. In determining whether such a group is predominantly engaged in the active conduct of a banking, insurance, financing, or similar business, only the income of members of the group that are U.S. corporations or controlled foreign corporations in which such U.S. corporations own (directly or indirectly) at least 80 percent of total voting power and value of the stock are taken into account.

The provision does not alter the present law interpretation of what it means to be a "person predominantly engaged in the active conduct of a banking, insurance, financing, or similar business."[218] Thus, other provisions of the Code that rely on this same concept of a "person predominantly engaged in the active conduct of a banking, insurance, financing, or similar business" are not affected by the provision. For example, under the "accumulated deficit rule" of section 952(c)(1)(B), subpart F income inclusions of a U.S. shareholder attributable to a "qualified activity" of a controlled foreign corporation may be reduced by the amount of the U.S. shareholder's pro rata share of certain prior year deficits attributable to the same qualified activity. In the case of a qualified financial institution, qualified activity consists of any activity giving rise to foreign personal holding company income, but only if the controlled foreign corporation was predominantly engaged in the active conduct of a banking, financing, or similar business in both the year in which the corporation earned the income and the year in which the corporation incurred the deficit. Similarly, in the case of a qualified insurance company, qualified activity consists of activity giving rise to insurance income or foreign personal holding company income, but only if the controlled foreign corporation was predominantly engaged in the active conduct of an insurance business in both the year in which the corporation earned the income and the year in which the corporation incurred the deficit. For this purpose, "predominantly engaged in the active conduct of a banking, insurance, financing, or similar business" is defined under present law by reference to the use of the term for purposes of the separate foreign tax credit limitations.[219] The present-law meaning of "predominantly engaged" for purposes of section 952(c)(1)(B) remains unchanged under the provision.

The provision requires the Treasury Secretary to specify the treatment of financial services income received or accrued by pass-through entities that are not members of a financial services group. The Committee expects these regulations to be generally consistent with regulations currently in effect.

"Base difference" items

Creditable foreign taxes that are imposed on amounts that do not constitute income under U.S. tax principles are treated as imposed on general limitation income.

Effective date. The provision is effective for taxable years beginning after December 31, 2006. Taxes paid or accrued in a taxable year beginning before January 1, 2007, and carried to any subsequent taxable year are treated as if this provision were in effect on the date such taxes were paid or accrued. Thus, such taxes are assigned to one of the two foreign tax credit limitation categories, as appropriate. The Treasury Secretary is given authority to provide by regulations for the allocation of income with respect to taxes carried back to pre-effective-date years (in which more than two limitation categories are in effect).

SENATE AMENDMENT

Under the provision, creditable foreign taxes that are imposed on amounts that do not constitute income under U.S. tax principles are treated as imposed either on general limitation income or on financial services income, at the taxpayer's election. Once made, this election applies to all such taxes and is revocable only with the consent of the Secretary.

Effective date. The provision is effective for taxable years ending after date of enactment.

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[212] Subject to certain exceptions, dividends paid by a 10/50 company in taxable years beginning after December 31, 2002 are subject to either a look-through approach in which the dividend is attributed to a particular limitation category based on the underlying earnings which gave rise to the dividend (for post-2002 earnings and profits), or a single-basket limitation approach for dividends from all 10/50 companies that are not passive foreign investment companies (for pre-2003 earnings and profits). Under the conference agreement, these dividends are subject to a look-through approach, irrespective of when the underlying earnings and profits arose.

[213] See, e.g., sec. 56(g)(4)(C)(iii)(IV) (relating to certain dividends from corporations eligible for the sec. 936 credit); sec. 245(a)(10) (relating to certain dividends treated as foreign source under treaties); sec. 865(h)(1)(B) (relating to certain gains from stock and intangibles treated as foreign source under treaties); sec. 901(j)(1)(B) (relating to income from certain specified countries); and sec. 904(g)(10)(A) (relating to interest, dividends, and certain other amounts derived from U.S.-owned foreign corporations and treated as foreign source under treaties).

[214] Treas. Reg. sec. 1.904-4(e)(3)(i) and (2)(i).

[215] Treas. Reg. sec. 1.904-4(e)(3)(ii).

[216] Treas. Reg. sec. 1.904-6.

[217] Treas. Reg. sec. 1.904-6(a)(1)(iv).

[218] See Treas. Reg. sec. 1.904-4(e).

[219] See H.R. Rep. No. 99-841, 99th Cong., 2d Sess. II-621 (1986); Staff of the Joint Committee on Taxation, 100th Cong., 1st Sess., General Explanation of the Tax Reform Act of 1986, at 984 (1987).

CONFERENCE AGREEMENT

The conference agreement follows the House bill, with a modification relating to base differences. As in the House bill, creditable foreign taxes that are imposed on amounts that do not constitute income under U.S. tax principles are treated as imposed on general limitation income, as of the general effective date of the House bill provision. The conference agreement adds a provision under which any such taxes arising in taxable years beginning after December 31, 2004, but before January 1, 2007 (when the number of limitation categories is reduced to two), are treated as imposed on either general limitation income or financial services income, at the taxpayer's election. Once made, this election applies to all such taxes for the taxable years described above and is revocable only with the consent of the Treasury Secretary.

4. Apply look-through rules for dividends from noncontrolled section 902 corporations (sec. 304 of the House bill, sec. 202 of the Senate amendment, and sec. 904 of the Code)

PRESENT LAW

U.S. persons may credit foreign taxes against U.S. tax on foreign-source income. In general, the amount of foreign tax credits that may be claimed in a year is subject to a limitation that prevents taxpayers from using foreign tax credits to offset U.S. tax on U.S.-source income. Separate limitations are also applied to specific categories of income.

Special foreign tax credit limitations apply in the case of dividends received from a foreign corporation in which the taxpayer owns at least 10 percent of the stock by vote and which is not a controlled foreign corporation (a so-called "10/50 company"). Dividends paid by a 10/50 company that is not a passive foreign investment company out of earnings and profits accumulated in taxable years beginning before January 1, 2003 are subject to a single foreign tax credit limitation for all 10/50 companies (other than passive foreign investment companies).[220] Dividends paid by a 10/50 company that is a passive foreign investment company out of earnings and profits accumulated in taxable years beginning before January 1, 2003 continue to be subject to a separate foreign tax credit limitation for each such 10/50 company. Dividends paid by a 10/50 company out of earnings and profits accumulated in taxable years after December 31, 2002 are treated as income in a foreign tax credit limitation category in proportion to the ratio of the 10/50 company's earnings and profits attributable to income in such foreign tax credit limitation category to its total earnings and profits (a "look-through" approach).

For these purposes, distributions are treated as made from the most recently accumulated earnings and profits. Regulatory authority is granted to provide rules regarding the treatment of distributions out of earnings and profits for periods prior to the taxpayer's acquisition of such stock.

HOUSE BILL

The provision generally applies the look-through approach to dividends paid by a 10/50 company regardless of the year in which the earnings and profits out of which the dividend is paid were accumulated.[221] If the Treasury Secretary determines that a taxpayer has inadequately substantiated that it assigned a dividend from a 10/50 company to the proper foreign tax credit limitation category, the dividend is treated as passive category income for foreign tax credit basketing purposes.[222]

Effective date.—The provision is effective for taxable years beginning after December 31, 2002. The provision also provides transition rules regarding the use of pre-effective-date foreign tax credits associated with a 10/50-company separate limitation category in post-effective-date years. Look-through principles similar to those applicable to post-effective-date dividends from a 10/50 company apply to determine the appropriate foreign tax credit limitation category or categories with respect to carrying forward foreign tax credits into future years. The provision allows the Treasury Secretary to issue regulations addressing the carryback of foreign tax credits associated with a dividend from a 10/50 company to pre-effective-date years.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

5. Attribution of stock ownership through partnerships in determining section 902 and 960 credits (sec. 305 of the House bill, sec. 213 of the Senate amendment, and sec. 902 of the Code)

PRESENT LAW

Under section 902, a domestic corporation that receives a dividend from a foreign corporation in which it owns 10 percent or more of the voting stock is deemed to have paid a portion of the foreign taxes paid by such foreign corporation. Thus, such a domestic corporation is eligible to claim a foreign tax credit with respect to such deemed-paid taxes. The domestic corporation that receives a dividend is deemed to have paid a portion of the foreign corporation's post-1986 foreign income taxes based on the ratio of the amount of the dividend to the foreign corporation's post-1986 undistributed earnings and profits.

Foreign income taxes paid or accrued by lower-tier foreign corporations also are eligible for the deemed-paid credit if the foreign corporation falls within a qualified group (sec. 902(b)). A "qualified group" includes certain foreign corporations within the first six tiers of a chain of foreign corporations if, among other things, the product of the percentage ownership of voting stock at each level of the chain (beginning from the domestic corporation) equals at least five percent. In addition, in order to claim indirect credits for foreign taxes paid by certain fourth-, fifth-, and sixth-tier corporations, such corporations must be controlled foreign corporations (within the meaning of sec. 957) and the shareholder claiming the indirect credit must be a U.S. shareholder (as defined in sec. 951(b)) with respect to the controlled foreign corporations. The application of the indirect foreign tax credit below the third tier is limited to taxes paid in taxable years during which the payor is a controlled foreign corporation. Foreign taxes paid below the sixth tier of foreign corporations are ineligible for the indirect foreign tax credit.

Section 960 similarly permits a domestic corporation with subpart F inclusions from a controlled foreign corporation to claim deemed-paid foreign tax credits with respect to foreign taxes paid or accrued by the controlled foreign corporation on its subpart F income.

The foreign tax credit provisions in the Code do not specifically address whether a domestic corporation owning 10 percent or more of the voting stock of a foreign corporation through a partnership is entitled to a deemed-paid foreign tax credit.[223] In Rev. Rul. 71-141,[224] the IRS held that a foreign corporation's stock held indirectly by two domestic corporations through their interests in a domestic general partnership is attributed to such domestic corporations for purposes of determining the domestic corporations' eligibility to claim a deemed-paid foreign tax credit with respect to the foreign taxes paid by such foreign corporation. Accordingly, a general partner of a domestic general partnership is permitted to claim deemed-paid foreign tax credits with respect to a dividend distribution from the foreign corporation to the partnership.

However, in 1997, the Treasury Department issued final regulations under section 902, and the preamble to the regulations states that "[t]he final regulations do not resolve under what circumstances a domestic corporate partner may compute an amount of foreign taxes deemed paid with respect to dividends received from a foreign corporation by a partnership or other pass-through entity."[225] In recognition of the holding in Rev. Rul. 71-141, the preamble to the final regulations under section 902 states that a "domestic shareholder" for purposes of section 902 is a domestic corporation that "owns" the requisite voting stock in a foreign corporation rather than one that "owns directly" the voting stock. At the same time, the preamble states that the IRS is still considering under what other circumstances Rev. Rul. 71-141 should apply. Consequently, uncertainty remains regarding whether a domestic corporation owning 10 percent or more of the voting stock of a foreign corporation through a partnership is entitled to a deemed-paid foreign tax credit (other than through a domestic general partnership).

HOUSE BILL

The provision clarifies that a domestic corporation is entitled to claim deemed-paid foreign tax credits with respect to a foreign corporation that is held indirectly through a foreign or domestic partnership, provided that the domestic corporation owns (indirectly through the partnership) 10 percent or more of the foreign corporation's voting stock. No inference is intended as to the treatment of such deemed-paid foreign tax credits under present law. The provision also clarifies that both individual and corporate partners (or estate or trust beneficiaries) may claim direct foreign tax credits with respect to their proportionate shares of taxes paid or accrued by a partnership (or estate or trust).

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[220] Dividends paid by a 10/50 company in taxable years beginning before January 1, 2003 are subject to a separate foreign tax credit limitation for each 10/50 company.

[221] This look-through treatment also applies to dividends that a controlled foreign corporation receives from a 10/50 company and then distributes to a U.S. shareholder.

[222] It is anticipated that the Treasury Secretary will reconsider the operation of the foreign tax credit regulations to ensure that the high-tax income rules apply appropriately to dividends treated as passive category income because of inadequate substantiation.

[223] Under section 901(b)(5), an individual member of a partnership or a beneficiary of an estate or trust generally may claim a direct foreign tax credit with respect to the amount of his or her proportionate share of the foreign taxes paid or accrued by the partnership, estate, or trust. This rule does not specifically apply to corporations that are either members of a partnership or beneficiaries of an estate or trust. However, section 702(a)(6) provides that each partner (including individuals or corporations) of a partnership must take into account separately its distributive share of the partnership's foreign taxes paid or accrued. In addition, under section 703(b)(3), the election under section 901 (whether to credit the foreign taxes) is made by each partner separately.

[224] 1971-1 C.B. 211.

[225] T.D. 8708, 1997-1 C.B. 137.

Effective date.—The provision applies to taxes of foreign corporations for taxable years of such corporations beginning after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

6. Foreign tax credit treatment of deemed payments under section 367(d) of the Code (sec. 306 of the House bill, sec. 229 of the Senate amendment, and sec. 367(d) of the Code)

PRESENT LAW

In the case of transfers of intangible property to foreign corporations by means of contributions and certain other nonrecognition transactions, special rules apply that are designed to mitigate the tax avoidance that may arise from shifting the income attributable to intangible property offshore. Under section 367(d), the outbound transfer of intangible property is treated as a sale of the intangible for a stream of contingent payments. The amounts of these deemed payments must be commensurate with the income attributable to the intangible. The deemed payments are included in gross income of the U.S. transferor as ordinary income, and the earnings and profits of the foreign corporation to which the intangible was transferred are reduced by such amounts.

The Taxpayer Relief Act of 1997 (the "1997 Act") repealed a rule that treated all such deemed payments as giving rise to U.S.-source income. Because the foreign tax credit is generally limited to the U.S. tax imposed on foreign-source income, the prior-law rule reduced the taxpayer's ability to claim foreign tax credits. As a result of the repeal of the rule, the source of payments deemed received under section 367(d) is determined under general sourcing rules. These rules treat income from sales of intangible property for contingent payments the same as royalties, with the result that the deemed payments may give rise to foreign-source income.[226]

The 1997 Act did not address the characterization of the deemed payments for purposes of applying the foreign tax credit separate limitation categories.[227] If the deemed payments are treated like proceeds of a sale, then they could fall into the passive category; if the deemed payments are treated like royalties, then in many cases they could fall into the general category (under look-through rules applicable to payments of dividends, interest, rents, and royalties received from controlled foreign corporations).[228]

HOUSE BILL

The provision specifies that deemed payments under section 367(d) are treated as royalties for purposes of applying the separate limitation categories of the foreign tax credit.

Effective date.—The provision is effective for amounts treated as received on or after August 5, 1997 (the effective date of the relevant provision of the 1997 Act).

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

7. United States property not to include certain assets of controlled foreign corporations (sec. 307 of the House bill, sec. 227 of the Senate amendment, and sec. 956 of the Code)

PRESENT LAW

In general, the subpart F rules[229] require U.S. shareholders with a 10-percent or greater interest in a controlled foreign corporation ("U.S. 10-percent shareholders") to include in taxable income their pro rata shares of certain income of the controlled foreign corporation (referred to as "subpart F income") when such income is earned, whether or not the earnings are distributed currently to the shareholders. In addition, the U.S. 10-percent shareholders of a controlled foreign corporation are subject to U.S. tax on their pro rata shares of the controlled foreign corporation's earnings to the extent invested by the controlled foreign corporation in certain U.S. property in a taxable year.[230]

A shareholder's income inclusion with respect to a controlled foreign corporation's investment in U.S. property for a taxable year is based on the controlled foreign corporation's average investment in U.S. property for such year. For this purpose, the U.S. property held (directly or indirectly) by the controlled foreign corporation must be measured as of the close of each quarter in the taxable year.[231] The amount taken into account with respect to any property is the property's adjusted basis as determined for purposes of reporting the controlled foreign corporation's earnings and profits, reduced by any liability to which the property is subject. The amount determined for inclusion in each taxable year is the shareholder's pro rata share of an amount equal to the lesser of: (1) the controlled foreign corporation's average investment in U.S. property as of the end of each quarter of such taxable year, to the extent that such investment exceeds the foreign corporation's earnings and profits that were previously taxed on that basis; or (2) the controlled foreign corporation's current or accumulated earnings and profits (but not including a deficit), reduced by distributions during the year and by earnings that have been taxed previously as earnings invested in U.S. property.[232] An income inclusion is required only to the extent that the amount so calculated exceeds the amount of the controlled foreign corporation's earnings that have been previously taxed as subpart F income.[233]

For purposes of section 956, U.S. property generally is defined to include tangible property located in the United States, stock of a U.S. corporation, an obligation of a U.S. person, and certain intangible assets including a patent or copyright, an invention, model or design, a secret formula or process or similar property right which is acquired or developed by the controlled foreign corporation for use in the United States.[234]

Specified exceptions from the definition of U.S. property are provided for: (1) obligations of the United States, money, or deposits with persons carrying on the banking business; (2) certain export property; (3) certain trade or business obligations; (4) aircraft, railroad rolling stock, vessels, motor vehicles or containers used in transportation in foreign commerce and used predominantly outside of the United States; (5) certain insurance company reserves and unearned premiums related to insurance of foreign risks; (6) stock or debt of certain unrelated U.S. corporations; (7) moveable property (other than a vessel or aircraft) used for the purpose of exploring, developing, or certain other activities in connection with the ocean waters of the U.S. Continental Shelf; (8) an amount of assets equal to the controlled foreign corporation's accumulated earnings and profits attributable to income effectively connected with a U.S. trade or business; (9) property (to the extent provided in regulations) held by a foreign sales corporation and related to its export activities; (10) certain deposits or receipts of collateral or margin by a securities or commodities dealer, if such deposit is made or received on commercial terms in the ordinary course of the dealer's business as a securities or commodities dealer; and (11) certain repurchase and reverse repurchase agreement transactions entered into by or with a dealer in securities or commodities in the ordinary course of its business as a securities or commodities dealer.[235]

HOUSE BILL

The House bill adds two new exceptions from the definition of U.S. property for determining current income inclusion by a U.S. 10-percent shareholder with respect to an investment in U.S. property by a controlled foreign corporation.

The first exception generally applies to securities acquired and held by a controlled foreign corporation in the ordinary course of its trade or business as a dealer in securities. The exception applies only if the controlled foreign corporation dealer: (1) accounts for the securities as securities held primarily for sale to customers in the ordinary course of business; and (2) disposes of such securities (or such securities mature while being held by the dealer) within a period consistent with the holding of securities for sale to customers in the ordinary course of business.

The second exception generally applies to the acquisition by a controlled foreign corporation of obligations issued by a U.S. person that is not a domestic corporation and that is not (1) a U.S. 10-percent shareholder of the controlled foreign corporation, or (2) a partnership, estate or trust in which the controlled foreign corporation or any related person is a partner, beneficiary or trustee immediately after the acquisition by the controlled foreign corporation of such obligation.

Effective date.—The House bill provision is effective for taxable years of foreign corporations beginning after December 31, 2004, and for taxable years of United States shareholders with or within which such taxable years of such foreign corporations end.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

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[226] Secs. 865(d), 862(a).

[227] Sec. 904(d).

[228] Sec. 904(d)(3).

[229] Secs. 951–964.

[230] Sec. 951(a)(1)(B).

[231] Sec. 956(a).

[232] Secs. 956 and 959.

[233] Secs. 951(a)(1)(B) and 959.

[234] Sec. 956(c)(1).

[235] Sec. 956(c)(2).

8. Election not to use average exchange rate for foreign tax paid other than in functional currency (sec. 308 of the House bill, sec. 224 of the Senate amendment, and sec. 986 of the Code)

PRESENT LAW

For taxpayers that take foreign income taxes into account when accrued, present law provides that the amount of the foreign tax credit generally is determined by translating the amount of foreign taxes paid in foreign currencies into a U.S. dollar amount at the average exchange rate for the taxable year to which such taxes relate.[236] This rule applies to foreign taxes paid directly by U.S. taxpayers, which taxes are creditable in the year paid or accrued, and to foreign taxes paid by foreign corporations that are deemed paid by a U.S. corporation that is a shareholder of the foreign corporation, and hence creditable in the year that the U.S. corporation receives a dividend or has an income inclusion from the foreign corporation. This rule does not apply to any foreign income tax: (1) that is paid after the date that is two years after the close of the taxable year to which such taxes relate; (2) of an accrual-basis taxpayer that is actually paid in a taxable year prior to the year to which the tax relates; or (3) that is denominated in an inflationary currency (as defined by regulations).

Foreign taxes that are not eligible for translation at the average exchange rate generally are translated into U.S. dollar amounts using the exchange rates as of the time such taxes are paid. However, the Secretary is authorized to issue regulations that would allow foreign tax payments to be translated into U.S. dollar amounts using an average exchange rate for a specified period.[237]

HOUSE BILL

For taxpayers that are required under present law to translate foreign income tax payments at the average exchange rate, the House bill provides an election to translate such taxes into U.S. dollar amounts using the exchange rates as of the time such taxes are paid, provided the foreign income taxes are denominated in a currency other than the taxpayer's functional currency.[238] Any election under the provision applies to the taxable year for which the election is made and to all subsequent taxable years unless revoked with the consent of the Secretary. The House bill authorizes the Secretary to issue regulations that apply the election to foreign income taxes attributable to a qualified business unit.

Effective date.—The House bill provision is effective with respect to taxable years beginning after December 31, 2004.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

Effective date.—The Senate amendment provision is effective with respect to taxable years beginning after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment. In addition, the conference agreement provides that the election does not apply to regulated investment companies that take into account income on an accrual basis. Instead, the conference agreement provides that foreign income taxes paid or accrued by a regulated investment company with respect to such income are translated into U.S. dollar amounts using the exchange rate as of the date the income accrues.

9. Eliminate secondary withholding tax with respect to dividends paid by certain foreign corporations (sec. 309 of the House bill, sec. 215 of the Senate amendment, and sec. 871 of the Code)

PRESENT LAW

Nonresident individuals who are not U.S. citizens and foreign corporations (collectively, foreign persons) are subject to U.S. tax on income that is effectively connected with the conduct of a U.S. trade or business; the U.S. tax on such income is calculated in the same manner and at the same graduated rates as the tax on U.S. persons (secs. 871(b) and 882). Foreign persons also are subject to a 30-percent gross basis tax, collected by withholding, on certain U.S.-source passive income (e.g., interest and dividends) that is not effectively connected with a U.S. trade or business. This 30-percent withholding tax may be reduced or eliminated pursuant to an applicable tax treaty. Foreign persons generally are not subject to U.S. tax on foreign-source income that is not effectively connected with a U.S. trade or business.

In general, dividends paid by a domestic corporation are treated as being from U.S. sources and dividends paid by a foreign corporation are treated as being from foreign sources. Thus, dividends paid by foreign corporations to foreign persons generally are not subject to withholding tax because such income generally is treated as foreign-source income.

An exception from this general rule applies in the case of dividends paid by certain foreign corporations. If a foreign corporation derives 25 percent or more of its gross income as income effectively connected with a U.S. trade or business for the three-year period ending with the close of the taxable year preceding the declaration of a dividend, then a portion of any dividend paid by the foreign corporation to its shareholders will be treated as U.S.-source income and, in the case of dividends paid to foreign shareholders, will be subject to the 30-percent withholding tax (sec. 861(a)(2)(B)). This rule is sometimes referred to as the "secondary withholding tax." The portion of the dividend treated as U.S.-source income is equal to the ratio of the gross income of the foreign corporation that was effectively connected with its U.S. trade or business over the total gross income of the foreign corporation during the three-year period ending with the close of the preceding taxable year. The U.S.-source portion of the dividend paid by the foreign corporation to its foreign shareholders is subject to the 30-percent withholding tax.

Under the branch profits tax provisions, the United States taxes foreign corporations engaged in a U.S. trade or business on amounts of U.S. earnings and profits that are shifted out of the U.S. branch of the foreign corporation. The branch profits tax is comparable to the second-level taxes imposed on dividends paid by a domestic corporation to its foreign shareholders. The branch profits tax is 30 percent of the foreign corporation's "dividend equivalent amount," which generally is the earnings and profits of a U.S. branch of a foreign corporation attributable to its income effectively connected with a U.S. trade or business (secs. 884(a) and (b)).

If a foreign corporation is subject to the branch profits tax, then no secondary withholding tax is imposed on dividends paid by the foreign corporation to its shareholders (sec. 884(e)(3)(A)). If a foreign corporation is a qualified resident of a tax treaty country and claims an exemption from the branch profits tax pursuant to the treaty, the secondary withholding tax could apply with respect to dividends it pays to its shareholders. Several tax treaties (including treaties that prevent imposition of the branch profits tax), however, exempt dividends paid by the foreign corporation from the secondary withholding tax.

HOUSE BILL

The provision eliminates the secondary withholding tax with respect to dividends paid by certain foreign corporations.

Effective date.—The provision is effective for payments made after December 31, 2004.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

10. Equal treatment for interest paid by foreign partnerships and foreign corporations (sec. 310 of the House bill, sec. 228 of the Senate amendment, and sec. 861 of the Code)

PRESENT LAW

In general, interest income from bonds, notes or other interest-bearing obligations of noncorporate U.S. residents or domestic corporations is treated as U.S.-source income.[239] Other interest (e.g., interest on obligations of foreign corporations and foreign partnerships) generally is treated as foreign-source income. However, Treasury regulations provide that a foreign partnership is a U.S. resident for purposes of this rule if at any time during its taxable year it is engaged in a trade or business in the United States.[240] Therefore, any interest received from such a foreign partnership is U.S.-source income.

Notwithstanding the general rule described above, in the case of a foreign corporation engaged in a U.S. trade or business (or having gross income that is treated as effectively connected with the conduct of a U.S. trade or business), interest paid by such U.S. trade or business is treated as if it were paid by a domestic corporation (i.e., such interest is treated as U.S.-source income).[241]

HOUSE BILL

The House bill treats interest paid by foreign partnerships in a manner similar to the treatment of interest paid by foreign corporations. Thus, interest paid by a foreign partnership is treated as U.S.-source income only if the interest is paid by a U.S. trade or business conducted by the partnership or is allocable to income that is treated as effectively connected with the conduct of a U.S. trade or business. The House bill applies only to foreign partnerships that are predominantly engaged in the active conduct of a trade or business outside the United States.

Effective date.—This House bill provision is effective for taxable years beginning after December 31, 2003.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

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[236] Sec. 986(a)(1).

[237] Sec. 986(a)(2).

[238] Electing taxpayers translate foreign income tax payments pursuant to the same present-law rules that apply to taxpayers that are required to translate foreign income taxes using the exchange rates as of the time such taxes are paid.

[239] Sec. 861(a)(1).

[240] Treas. Reg. sec. 1.861-2(a)(2).

[241] Sec. 884(f)(1).

11. Look-through treatment of payments between related controlled foreign corporations (sec. 311 of the House bill, sec. 222 of the Senate amendment, and sec. 954 of the Code)

PRESENT LAW

In general, the rules of subpart F (secs. 951–964) require U.S. shareholders with a 10-percent or greater interest in a controlled foreign corporation to include certain income of the controlled foreign corporation (referred to as "subpart F income") on a current basis for U.S. tax purposes, regardless of whether the income is distributed to the shareholders.

Subpart F income includes foreign base company income. One category of foreign base company income is foreign personal holding company income. For subpart F purposes, foreign personal holding company income generally includes dividends, interest, rents and royalties, among other types of income. However, foreign personal holding company income does not include dividends and interest received by a controlled foreign corporation from a related corporation organized and operating in the same foreign country in which the controlled foreign corporation is organized, or rents and royalties received by a controlled foreign corporation from a related corporation for the use of property within the country in which the controlled foreign corporation is organized. Interest, rent, and royalty payments do not qualify for this exclusion to the extent that such payments reduce the subpart F income of the payor.

HOUSE BILL

Under the provision, dividends, interest, rents, and royalties received by one controlled foreign corporation from a related controlled foreign corporation are not treated as foreign personal holding company income to the extent attributable or properly allocable to non-subpart-F income of the payor. For these purposes, a related controlled foreign corporation is a controlled foreign corporation that controls or is controlled by the other controlled foreign corporation, or a controlled foreign corporation that is controlled by the same person or persons that control the other controlled foreign corporation. Ownership of more than 50 percent of the controlled foreign corporation's stock (by vote or value) constitutes control for these purposes.

Effective date.—The provision is effective for taxable years of foreign corporations beginning after December 31, 2004, and taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or Senate amendment provision.

12. Look-through treatment under subpart F for sales of partnership interests (sec. 312 of the House bill, sec. 223 of the Senate amendment, and sec. 954 of the Code)

PRESENT LAW

In general, the subpart F rules (secs. 951–964) require U.S. shareholders with a 10-percent or greater interest in a controlled foreign corporation to include in income currently for U.S. tax purposes certain types of income of the controlled foreign corporation, whether or not such income is actually distributed currently to the shareholders (referred to as "subpart F income"). Subpart F income includes foreign personal holding company income. Foreign personal holding company income generally consists of the following: (1) dividends, interest, royalties, rents, and annuities; (2) net gains from the sale or exchange of (a) property that gives rise to the preceding types of income, (b) property that does not give rise to income, and (c) interests in trusts, partnerships, and real estate mortgages investment conduits ("REMICs"); (3) net gains from commodities transactions; (4) net gains from foreign currency transactions; (5) income that is equivalent to interest; (6) income from notional principal contracts; and (7) payments in lieu of dividends. Thus, if a controlled foreign corporation sells a partnership interest at a gain, the gain generally constitutes foreign personal holding company income and is included in the income of 10-percent U.S. shareholders of the controlled foreign corporation as subpart F income.

HOUSE BILL

The provision treats the sale by a controlled foreign corporation of a partnership interest as a sale of the proportionate share of partnership assets attributable to such interest for purposes of determining subpart F foreign personal holding company income. This rule applies only to partners owning directly, indirectly, or constructively at least 25 percent of a capital or profits interest in the partnership. Thus, the sale of a partnership interest by a controlled foreign corporation that meets this ownership threshold constitutes subpart F income under the provision only to the extent that a proportionate sale of the underlying partnership assets attributable to the partnership interest would constitute subpart F income. The Treasury Secretary is directed to prescribe such regulations as may be appropriate to prevent the abuse of this provision.

Effective date.—The provision is effective for taxable years of foreign corporations beginning after December 31, 2004, and taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

13. Repeal of foreign personal holding company rules and foreign investment company rules (sec. 313 of the House bill, sec. 211 of the Senate amendment, and secs. 542, 551–558, 954, 1246, and 1247 of the Code)

PRESENT LAW

Income earned by a foreign corporation from its foreign operations generally is subject to U.S. tax only when such income is distributed to any U.S. persons that hold stock in such corporation. Accordingly, a U.S. person that conducts foreign operations through a foreign corporation generally is subject to U.S. tax on the income from those operations when the income is repatriated to the United States through a dividend distribution to the U.S. person. The income is reported on the U.S. person's tax return for the year the distribution is received, and the United States imposes tax on such income at that time. The foreign tax credit may reduce the U.S. tax imposed on such income.

Several sets of anti-deferral rules impose current U.S. tax on certain income earned by a U.S. person through a foreign corporation. Detailed rules for coordination among the anti-deferral rules are provided to prevent the U.S. person from being subject to U.S. tax on the same item of income under multiple rules.

The Code sets forth the following anti-deferral rules: the controlled foreign corporation rules of subpart F (secs. 951–964); the passive foreign investment company rules (secs. 1291–1298); the foreign personal holding company rules (secs. 551–558); the personal holding company rules (secs. 541–547); the accumulated earnings tax rules (secs. 531–537); and the foreign investment company rules (secs. 1246–1247).

HOUSE BILL

The provision: (1) eliminates the rules applicable to foreign personal holding companies and foreign investment companies; (2) excludes foreign corporations from the application of the personal holding company rules; and (3) includes as subpart F foreign personal holding company income personal services contract income that is subject to the present-law foreign personal holding company rules.

Effective date.—The provision is effective for taxable years of foreign corporations beginning after December 31, 2004, and taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

SENATE AMENDMENT

The Senate amendment provision is the same as the House bill provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

14. Determination of foreign personal holding company income with respect to transactions in commodities (sec. 314 of the House bill, sec. 206 of the Senate amendment, and sec. 954 of the Code)

PRESENT LAW

Subpart F foreign personal holding company income

Under the subpart F rules, U.S. shareholders with a 10-percent or greater interest in a controlled foreign corporation ("U.S. 10-percent shareholders") are subject to U.S. tax currently on certain income earned by the controlled foreign corporation, whether or not such income is distributed to the shareholders. The income subject to current inclusion under the subpart F rules includes, among other things, "foreign personal holding company income."

Foreign personal holding company income generally consists of the following: dividends, interest, royalties, rents and annuities; net gains from sales or exchanges of (1) property that gives rise to the foregoing types of income, (2) property that does not give rise to income, and (3) interests in trusts, partnerships, and real estate mortgage investment conduits ("REMICs"); net gains from commodities transactions; net gains from foreign currency transactions; income that is equivalent to interest; income from notional principal contracts; and payments in lieu of dividends.

With respect to transactions in commodities, foreign personal holding company income does not consist of gains or losses which arise out of bona fide hedging transactions that are reasonably necessary to the conduct of any business by a producer, processor, merchant, or handler of a commodity in the manner in which such business is customarily and usually conducted by others.[242]

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[242] For hedging transactions entered into on or after January 31, 2003, Treasury regulations provide

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In addition, foreign personal holding company income does not consist of gains or losses which are comprised of active business gains or losses from the sale of commodities, but only if substantially all of the controlled foreign corporation's business is as an active producer, processor, merchant, or handler of commodities.[243]

Hedging transactions

Under present law, the term "capital asset" does not include any hedging transaction which is clearly identified as such before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe).[244] The term "hedging transaction" means any transaction entered into by the taxpayer in the normal course of the taxpayer's trade or business primarily: (1) to manage risk of price changes or currency fluctuations with respect to ordinary property which is held or to be held by the taxpayer; (2) to manage risk of interest rate or price changes or currency fluctuations with respect to borrowings made or to be made, or ordinary obligations incurred or to be incurred, by the taxpayer; or (3) to manage such other risks as the Secretary may prescribe in regulations.[245]

HOUSE BILL

The House bill modifies the requirements that must be satisfied for gains or losses from a commodities hedging transaction to qualify for exclusion from the definition of subpart F foreign personal holding company income. Under the House bill, gains or losses from a transaction with respect to a commodity are not treated as foreign personal holding company income if the transaction satisfies the general definition of a hedging transaction under section 1221(b)(2). For purposes of the House bill, the general definition of a hedging transaction under section 1221(b)(2) is modified to include any transaction with respect to a commodity entered into by a controlled foreign corporation in the normal course of the controlled foreign corporation's trade or business primarily: (1) to manage risk of price changes or currency fluctuations with respect to ordinary property or property described in section 1231(b) which is held or to be held by the controlled foreign corporation; or (2) to manage such other risks as the Secretary may prescribe in regulations. Gains or losses from a transaction that satisfies the modified definition of a hedging transaction are excluded from the definition of foreign personal holding company income only if the transaction is clearly identified as a hedging transaction in accordance with the hedge identification requirements that apply generally to hedging transactions under section 1221(b)(2).[246]

The House bill also changes the requirements that must be satisfied for active business gains or losses from the sale of commodities to qualify for exclusion from the definition of foreign personal holding company income. Under the House bill, such gains or losses are not treated as foreign personal holding company income if substantially all of the controlled foreign corporation's commodities are comprised of: (1) stock in trade of the controlled foreign corporation or other property of a kind which would properly be included in the inventory of the controlled foreign corporation if on hand at the close of the taxable year, or property held by the controlled foreign corporation primarily for sale to customers in the ordinary course of the controlled foreign corporation's trade or business; (2) property that is used in the trade or business of the controlled foreign corporation and is of a character which is subject to the allowance for depreciation under section 167; or (3) supplies of a type regularly used or consumed by the controlled foreign corporation in the ordinary course of a trade or business of the controlled foreign corporation.[247]

For purposes of applying the requirements for active business gains or losses from commodities sales to qualify for exclusion from the definition of foreign personal holding company income, the House bill also provides that commodities with respect to which gains or losses are not taken into account as foreign personal holding company income by a regular dealer in commodities (or financial instruments referenced to commodities) are not taken into account in determining whether substantially all of the dealer's commodities are comprised of the property described above.

Effective date.—The House bill provision is effective with respect to transactions entered into after December 31, 2004.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

15. Modifications to treatment of aircraft leasing and shipping income (sec. 315 of the House bill, sec. 221 of the Senate amendment, and sec. 954 of the Code)

PRESENT LAW

In general, the subpart F rules (secs. 951-964) require U.S. shareholders with a 10-percent or greater interest in a controlled foreign corporation ("CFC") to include currently in income for U.S. tax purposes certain income of the CFC (referred to as "subpart F income"), without regard to whether the income is distributed to the shareholders (sec. 951(a)(1)(A)). In effect, the Code treats the U.S. 10-percent shareholders of a CFC as having received a current distribution of their pro rata shares of the CFC's subpart F income. The amounts included in income by the CFC's U.S. 10-percent shareholders under these rules are subject to U.S. tax currently. The U.S. tax on such amounts may be reduced through foreign tax credits.

Subpart F income includes foreign base company shipping income (sec. 954(f)). Foreign base company shipping income generally includes income derived from the use of an aircraft or vessel in foreign commerce, the performance of services directly related to the use of any such aircraft or vessel, the sale or other disposition of any such aircraft or vessel, and certain space or ocean activities (e.g., leasing of satellites for use in space). Foreign commerce generally involves the transportation of property or passengers between a port (or airport) in the U.S. and a port (or airport) in a foreign country, two ports (or airports) within the same foreign country, or two ports (or airports) in different foreign countries. In addition, foreign base company shipping income includes dividends and interest that a CFC receives from certain foreign corporations and any gains from the disposition of stock in certain foreign corporations, to the extent the dividends, interest, or gains are attributable to foreign base company shipping income. Foreign base company shipping income also includes incidental income derived in the course of active foreign base company shipping operations (e.g., income from temporary investments in or sales of related shipping assets), foreign exchange gain or loss attributable to foreign base company shipping operations, and a CFC's distributive share of gross income of any partnership and gross income received from certain trusts to the extent that the income would have been foreign base company shipping income had it been realized directly by the corporation.

Subpart F income also includes foreign personal holding company income (sec. 954(c)). For subpart F purposes, foreign personal holding company income generally consists of the following: (1) dividends, interest, royalties, rents and annuities; (2) net gains from the sale or exchange of (a) property that gives rise to the preceding types of income, (b) property that does not give rise to income, and (c) interests in trusts, partnerships, and real estate mortgage investment conduits ("REMICs"); (3) net gains from commodities transactions; (4) net gains from foreign currency transactions; (5) income that is equivalent to interest; (6) income from notional principal contracts; and (7) payments in lieu of dividends.

Subpart F foreign personal holding company income does not include rents and royalties received by a CFC in the active conduct of a trade or business from unrelated persons (sec. 954(c)(2)(A)). The determination of whether rents or royalties are derived in the active conduct of a trade or business is based on all the facts and circumstances. However, the Treasury regulations provide certain types of rents are treated as derived in the active conduct of a trade or business. These include rents derived from property that is leased as a result of the performance of marketing functions by the lessor if the lessor (through its own officers or employees located in a foreign country) maintains and operates an organization in such country that regularly engages in the business of

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that gains or losses from a commodities hedging transaction generally are excluded from the definition of foreign personal holding company income if the transaction is with respect to the controlled foreign corporation's business as a producer, processor, merchant or handler of commodities, regardless of whether the transaction is a hedge with respect to a sale of commodities in the active conduct of a commodities business by the controlled foreign corporation. The regulations also provide that, for purposes of satisfying the requirements for exclusion from the definition of foreign personal holding company income, a producer, processor, merchant or handler of commodities includes a controlled foreign corporation that regularly uses commodities in a manufacturing, construction, utilities, or transportation business (Treas. Reg. sec. 1.954-2(f)(2)(v)). However, the regulations provide that a controlled foreign corporation is not a producer, processor, merchant or handler of commodities (and therefore would not satisfy the requirements for exclusion) if its business is primarily financial (Treas. Reg. sec. 1.954-2(f)(2)(v)).

[243] Treasury regulations provide that substantially all of a controlled foreign corporation's business is as an active producer, processor, merchant or handler of commodities if: (1) the sum of its gross receipts from all of its active sales of commodities in such capacity and its gross receipts from all of its commodities hedging transactions that qualify for exclusion from the definition of foreign personal holding company income, equals or exceeds (2) 85 percent of its total receipts for the taxable year (computed as though the controlled foreign corporation was a domestic corporation) (Treas. Reg. sec. 1.954-2(f)(2)(iii)(C)).

[244] Sec. 1221(a)(7).

[245] Sec. 1221(b)(2)(A).

[246] Sec. 1221(a)(7) and (b)(2)(B).

[247] For purposes of determining whether substantially all of the controlled foreign corporation's commodities are comprised of such property, it is intended that the 85-percent requirement provided in the current Treasury regulations (as modified to reflect the changes made by the House bill) continue to apply.

marketing, or marketing and servicing, the leased property and that is substantial in relation to the amount of rents derived from the leasing of such property. An organization in a foreign country is substantial in relation to rents if the active leasing expenses[248] equal at least 25 percent of the adjusted leasing profit.[249]

Also generally excluded from subpart F foreign personal holding company income are rents and royalties received by the CFC from a related corporation for the use of property within the country in which the CFC was organized (sec. 954(c)(3)). However, rent and royalty payments do not qualify for this exclusion to the extent that such payments reduce subpart F income of the payor.

HOUSE BILL

The provision repeals the subpart F rules relating to foreign base company shipping income. The bill also amends the exception from foreign personal holding company income applicable to rents or royalties derived from unrelated persons in an active trade or business by providing a safe harbor for rents derived from leasing an aircraft or vessel in foreign commerce. Such rents are excluded from foreign personal holding company income if the active leasing expenses comprise at least 10 percent of the profit on the lease. This provision is to be applied in accordance with existing regulations under section 954(c)(2)(A) by comparing the lessor's "active leasing expenses" for its pool of leased assets to its "adjusted leasing profit."

The safe harbor will not prevent a lessor from otherwise showing that it actively carries on a trade or business. In this regard, the requirements of section 954(c)(2)(A) will be met if a lessor regularly and directly performs active and substantial marketing, remarketing, management and operational functions with respect to the leasing of an aircraft or vessel (or component engines). This will be the case regardless of whether the lessor engages in marketing of the lease as a form of financing (versus marketing the property as such) or whether the lease is classified as a finance lease or operating lease for financial accounting purposes. If a lessor acquires, from an unrelated or related party, a ship or aircraft subject to an existing FSC or ETI lease, the requirements of section 954(c)(2)(A) will be satisfied if, following the acquisition, the lessor performs active and substantial management, operational, and remarketing functions with respect to the leased property. If such a lease is transferred to a CFC lessor, it will no longer be eligible for FSC or ETI benefits.

An aircraft or vessel is considered to be leased in foreign commerce if it is used for the transportation of property or passengers between a port (or airport) in the United States and one in a foreign country or between foreign ports (or airports), provided the aircraft or vessel is used predominantly outside the United States. An aircraft or vessel will be considered used predominantly outside the United States if more than 50 percent of the miles during the taxable year are traversed outside the United States or the aircraft or vessel is located outside the United States more than 50 percent of the time during such taxable year.

It is expected that the Secretary of the Treasury will issue timely guidance to make conforming changes to existing regulations, including guidance that aircraft or vessel leasing activity that satisfies the requirements of section 954(c)(2)(A) shall also satisfy the requirements for avoiding income inclusion under section 956 and section 367(a).

It is anticipated that taxpayers now eligible for the benefits of the ETI exclusion (or the FSC provisions pursuant to the FSC Repeal and Extraterritorial Income Exclusion Act of 2000), will find it appropriate, as matter of sound business judgment, to restructure their business operations to take into account the tax law changes brought about by the bill. It is noted that courts have recognized the validity of structuring operations for the purpose of obtaining the benefit of tax regimes expressly intended by Congress. It is intended that structuring or restructuring of operations for the purposes of adapting to the repeal of the ETI exclusion (or the FSC regime) will be considered to serve a valid business purpose and will not constitute tax avoidance, where the restructured operations conform to the requirements expressly mandated by Congress for obtaining tax benefits that remain available. For example, it is intended that a restructuring undertaken to transfer aircraft subject to existing FSC or ETI leases to a CFC lessor, to take advantage of the amendments made by this bill, would serve a valid business purpose and would not constitute tax avoidance, for purposes of determining whether a particular tax treatment (such as nonrecognition of gain) applies to such restructuring. It is intended, for example, that if such a restructuring meets the other requirements necessary to qualify as a "reorganization" under section 368, the transaction will also be deemed to meet the "business purpose" requirements under section 368, and thus, qualify as a reorganization under that section.

Effective date.—The provision is effective for taxable years of foreign corporations beginning after December 31, 2004, and taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

SENATE AMENDMENT

The provision provides that "qualified leasing income" derived from or in connection with the leasing or rental of any aircraft or vessel is not treated as foreign personal holding company income or foreign base company shipping income of a controlled foreign corporation. The provision defines "qualified leasing income" as rents or gains derived in the active conduct of a leasing trade or business with respect to which the controlled foreign corporation conducts substantial activity, provided that the leased property is used by the lessee or other end-user in foreign commerce and predominantly outside the United States, and such lessee or other end-user is not related to the controlled foreign corporation (within the meaning of sec. 954(d)(3)).

In determining whether an aircraft or vessel is used in foreign commerce, it is intended that foreign commerce encompass the use of an aircraft or vessel in the transportation of property or passengers: (1) between an airport or port in the United States (including for this purpose any possession of the United States) and an airport or port in a foreign country; (2) between an airport or port in a foreign country and another in the same country; or (3) between an airport or port in a foreign country and another in a different foreign country. It is intended that an aircraft or vessel be considered as used predominantly outside the United States if more than 70 percent of its miles traveled during the taxable year are traveled outside the United States, or if the aircraft or vessel is located outside the United States for more than 70 percent of the time during the taxable year.

Effective date.—The provision is effective for taxable years of foreign corporations beginning after December 31, 2006, and taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.

CONFERENCE AGREEMENT

The conference agreement follows the House bill with the following clarifications. First, the terms "aircraft or vessels" include engines that are leased separately from an aircraft or vessel. Second, if a lessor acquires (from a related or unrelated party) or aircraft or vessel subject to an existing lease, the requirements of section 954(c)(2)(A) are satisfied if, following the acquisition, the lessor performs active and substantial management, operational, and remarketing functions with respect to the leased property. However, if an existing FSC or ETI lease is transferred to a CFC lessor, the lease will no longer be eligible for FSC or ETI benefits.

116. Modification of exceptions under subpart F for active financing (sec. 316 of the House bill, sec. 226 of the Senate amendment, and sec. 954 of the Code)

PRESENT LAW

Under the subpart F rules, U.S. shareholders with a 10-percent or greater interest in a controlled foreign corporation ("CFC") are subject to U.S. tax currently on certain income earned by the CFC, whether or not such income is distributed to the shareholders. The income subject to current inclusion under the subpart F rules includes, among other things, foreign personal holding company income and insurance income. In addition, 10-percent U.S. shareholders of a CFC are subject to current inclusion with respect to their shares of the CFC's foreign base company services income (i.e., income derived from services performed for a related person outside the country in which the CFC is organized).

Foreign personal holding company income generally consists of the following: (1) dividends, interest, royalties, rents, and annuities; (2) net gains from the sale or exchange of (a) property that gives rise to the preceding types of income, (b) property that does not give rise to income, and (c) interests in trusts, partnerships, and real estate mortgage investment conduits ("REMICs"); (3) net gains from commodities transactions; (4) net gains from foreign currency transactions; (5) income that is equivalent to interest; (6) income from notional principal contracts; and (7) payments in lieu of dividends.

Insurance income subject to current inclusion under the subpart F rules includes any income of a CFC attributable to the issuing or reinsuring of any insurance or annuity contract in connection with risks located in a country other than the CFC's country of organization. Subpart F insurance income also includes income attributable to an insurance contract in connection with risks located within the CFC's country of organization, as the result of an arrangement under which another corporation receives a substantially equal amount of consideration for insurance of other country risks. Investment income of a CFC that is allocable to any insurance or annuity contract related to risks located outside the CFC's country of organization is taxable as subpart F insurance income (Treas. Reg. sec. 1.953–1(a)).

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[248] "Active-leasing expenses" are section 162 expenses properly allocable to rental income other than (1) deductions for compensation for personal services rendered by the lessor's shareholders or a related person, (2) deductions for rents, (3) section 167 and 168 expenses, and (4) deductions for payments to independent contractors with respect to leased property. Treas. Reg. sec. 1.954-2(c)(2)(iii).

[249] Generally, "adjusted leasing profit" is rental income less the sum of (1) rents paid or incurred by the CFC with respect to such rental income; (2) section 167 and 168 expenses with respect to such rental income; and (3) payments to independent contractors with respect to such rental income. Treas. Reg. sec. 1.954-2(c)(2)(iv).

Temporary exceptions from foreign personal holding company income, foreign base company services income, and insurance income apply for subpart F purposes for certain income that is derived in the active conduct of a banking, financing, or similar business, or in the conduct of an insurance business (so-called "active financing income").[250]

With respect to income derived in the active conduct of a banking, financing, or similar business, a CFC is required to be predominantly engaged in such business and to conduct substantial activity with respect to such business in order to qualify for the exceptions. In addition, certain nexus requirements apply, which provide that income derived by a CFC or a qualified business unit ("QBU") of a CFC from transactions with customers is eligible for the exceptions if, among other things, substantially all of the activities in connection with such transactions are conducted directly by the CFC or QBU in its home country, and such income is treated as earned by the CFC or QBU in its home country for purposes of such country's tax laws. Moreover, the exceptions apply to income derived from certain cross border transactions, provided that certain requirements are met. Additional exceptions from foreign personal holding company income apply for certain income derived by a securities dealer within the meaning of section 475 and for gain from the sale of active financing assets.

In the case of insurance, in addition to temporary exceptions from insurance income and from foreign personal holding company income for certain income of a qualifying insurance company with respect to risks located within the CFC's country of creation or organization, temporary exceptions from insurance income and from foreign personal holding company income apply for certain income of a qualifying branch of a qualifying insurance company with respect to risks located within the home country of the branch, provided certain requirements are met under each of the exceptions. Further, additional temporary exceptions from insurance income and from foreign personal holding company income apply for certain income of certain CFCs or branches with respect to risks located in a country other than the United States, provided that the requirements for these exceptions are met.

HOUSE BILL

The House bill modifies the present-law temporary exceptions from subpart F foreign personal holding company income and foreign base company services income for income derived in the active conduct of a banking, financing, or similar business. For purposes of determining whether a CFC or QBU has conducted directly in its home country substantially all of the activities in connection with transactions with customers, the House bill provides that an activity is treated as conducted directly by the CFC or QBU in its home country if the activity is performed by employees of a related person and: (1) the related person is itself an eligible CFC the home country of which is the same as that of the CFC or QBU; (2) the activity is performed in the home country of the related person; and (3) the related person is compensated on an arm's length basis for the performance of the activity by its employees and such compensation is treated as earned by such person in its home country for purposes of the tax laws of such country. For purposes of determining whether a CFC or QBU is eligible to earn active financing income, such activity may not be taken into account by any CFC or QBU (including the employer of the employees performing the activity) other than the CFC or QBU for which the activities are performed.

Effective date.—The House bill provision is effective for taxable years of foreign corporations beginning after December 31, 2004, and taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

17. Ten-year foreign tax credit carryover; one-year foreign tax credit carryback (sec. 201 of the Senate amendment and sec. 904 of the Code)

PRESENT LAW

U.S. persons may credit foreign taxes against U.S. tax on foreign-source income. The amount of foreign tax credits that may be claimed in a year is subject to a limitation that prevents taxpayers from using foreign tax credits to offset U.S. tax on U.S.-source income. The amount of foreign tax credits generally is limited to a portion of the taxpayer's U.S. tax which portion is calculated by multiplying the taxpayer's total U.S. tax by a fraction, the numerator of which is the taxpayer's foreign-source taxable income (i.e., foreign-source gross income less allocable expenses or deductions) and the denominator of which is the taxpayer's worldwide taxable income for the year.[251]

In addition, this limitation is calculated separately for various categories of income, generally referred to as "separate limitation categories." The total amount of the foreign tax credit used to offset the U.S. tax on income in each separate limitation category may not exceed the proportion of the taxpayer's U.S. tax which the taxpayer's foreign-source taxable income in that category bears to its worldwide taxable income.

The amount of creditable taxes paid or accrued (or deemed paid) in any taxable year which exceeds the foreign tax credit limitation is permitted to be carried back to the two immediately preceding taxable years (to the earliest year first) and carried forward five taxable years (in chronological order) and credited (not deducted) to the extent that the taxpayer otherwise has excess foreign tax credit limitation for those years. Excess credits that are carried back or forward are usable only to the extent that there is excess foreign tax credit limitation in such carryover or carryback year. Consequently, foreign tax credits arising in a taxable year are utilized before excess credits from another taxable year may be carried forward or backward. In addition, excess credits are carried forward or carried back on a separate limitation basis. Thus, if a taxpayer has excess foreign tax credits in one separate limitation category for a taxable year, those excess credits may be carried back and forward only as taxes allocable to that category, notwithstanding the fact that the taxpayer may have excess foreign tax credit limitation in another category for that year. If credits cannot be so utilized, they are permanently disallowed.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision extends the excess foreign tax credit carryforward period to twenty years and limits the carryback period to one year.

Effective date.—The extension of the carryforward period is effective for excess foreign tax credits that may be carried to any taxable years ending after the date of enactment of the provision; the limited carryback period is effective for excess foreign tax credits arising in taxable years beginning after the date of enactment of the provision.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, with the modification that the foreign tax credit carryforward period is extended to 10 years.

18. Expand the subpart F de minimis rule to the lesser of five percent of gross income or $5 million (sec. 212 of the Senate amendment and sec. 954 of the Code)

PRESENT LAW

Under the rules of subpart F (secs. 951–964), U.S. 10-percent shareholders of a controlled foreign corporation are required to include in income currently for U.S. tax purposes certain types of income of the controlled foreign corporation, whether or not such income is actually distributed currently to the shareholders (referred to as "subpart F income"). Subpart F income includes foreign base company income and certain insurance income. Foreign base company income includes five categories of income: foreign personal holding company income, foreign base company sales income, foreign base company services income, foreign base company shipping income, and foreign base company oil-related income (sec. 954(a)). Under a de minimis rule, if the gross amount of a controlled foreign corporation's foreign base company income and insurance income for a taxable year is less than the lesser of five percent of the controlled foreign corporation's gross income or $1 million, then no part of the controlled foreign corporation's gross income is treated as foreign base company income or insurance income (sec. 954(b)(3)(A)).

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision expands the subpart F de minimis rule to provide that, if the gross amount of a controlled foreign corporation's foreign base company income and insurance income for a taxable year is less than the lesser of five percent of the controlled foreign corporation's gross income or $5 million, then no part of the controlled foreign corporation's gross income is treated as foreign base company income or insurance income.

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[250] Temporary exceptions from the subpart F provisions for certain active financing income applied only for taxable years beginning in 1998. Those exceptions were modified and extended for one year, applicable only for taxable years beginning in 1999. The Tax Relief Extension Act of 1999 (Pub.L. No. 106–170) clarified and extended the temporary exceptions for two years, applicable only for taxable years beginning after 1999 and before 2002. The Job Creation and Worker Assistance Act of 2002 (Pub.L. No. 107–147) extended the temporary exceptions for five years, applicable only for taxable years beginning after 2001 and before 2007, with a modification relating to insurance reserves.

[251] Section 904(a).

Effective date.—The provision is effective for taxable years of foreign corporations beginning after December 31, 2004, and taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.

CONFERENCE AGREEMENT

The conference agreement does not contain the Senate amendment provision.

19. Limit application of uniform capitalization rules in the case of foreign persons (sec. 214 of the Senate amendment and sec. 263A of the Code)

PRESENT LAW

Taxpayers generally may not currently deduct the costs incurred in producing property or acquiring property for resale. In general, the uniform capitalization rules require that a portion of the direct and indirect costs of producing property or acquiring property for resale be capitalized or included in the cost of inventory (sec. 263A). Consequently, such costs must be recovered through an offset to the sales price if the property is produced for sale, or through depreciation or amortization if the property is produced for the taxpayer's own use in a business or investment activity. The purpose of this requirement is to match the costs of producing or acquiring goods with the revenues realized from their sale or use in the business or investment activity.

The uniform capitalization rules apply to foreign corporations, whether or not engaged in business in the United States. In the case of a foreign corporation carrying on a U.S. trade or business, for example, the uniform capitalization rules apply for purposes of computing the corporation's U.S. effectively connected taxable income, as well as computing its effectively connected earnings and profits for purposes of the branch profits tax.

When a foreign corporation is not engaged in a trade or business in the United States, its taxable income and earnings and profits may nonetheless be relevant under the Code. For example, the subpart F income of a controlled foreign corporation may be currently includible on the return of a U.S. shareholder of the controlled foreign corporation. Regardless of whether or not a foreign corporation is U.S.-controlled, its accumulated earnings and profits must be computed in order to determine the amount of taxable dividends and the indirect foreign tax credit carried by distributions from the foreign corporation to any domestic corporation that owns at least 10 percent of its voting stock.

The earnings and profits surplus or deficit of any foreign corporation for any taxable year generally is determined according to rules substantially similar to those applicable to domestic corporations. However, proposed regulations provide that, for purposes of computing a foreign corporation's earnings and profits, the amount of expenses that must be capitalized into inventory under the uniform capitalization rules may not exceed the amount capitalized in keeping the taxpayer's books and records.[252] For this purpose, the taxpayer's books and records must be prepared in accordance with U.S. generally accepted accounting principles for purposes of reflecting in the financial statements of a domestic corporation the operations of its foreign affiliates. This proposed regulation applies only for purposes of determining a foreign corporation's earnings and profits and does not apply for purposes of determining subpart F income or income effectively connected with a U.S. trade or business of a foreign corporation.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides that, in lieu of the uniform capitalization rules, costs incurred in producing property or acquiring property for resale are capitalized using U.S. generally accepted accounting principles (i.e., the method used to ascertain income, profit, or loss for purposes of reports or statements to shareholders, partners, other proprietors, or beneficiaries, or for credit purposes) for purposes of determining a U.S.-owned foreign corporation's earnings and profits and subpart F income. The uniform capitalization rules continue to apply to foreign corporations for purposes of determining income effectively connected with a U.S. trade or business and the related earnings and profits therefrom. Any change in the taxpayer's method of accounting required as a result of this provision is treated as a voluntary change initiated by the taxpayer and is deemed made with the consent of the Secretary of the Treasury (i.e., no application for change in method of accounting is required to be filed with the Secretary). Any resultant section 481(a) adjustment required to be taken into account is to be taken into account in the first year.

Effective date.—The provision applies to taxable years beginning after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement does not contain the Senate amendment provision.

20. Eliminate the 30-percent tax on certain U.S.-source capital gains of nonresident individuals (sec. 216 of the Senate amendment and sec. 871 of the Code)

PRESENT LAW

In general, resident aliens are taxed in the same manner as U.S. citizens. Nonresident aliens are subject to (1) U.S. tax on income from U.S. sources that are effectively connected with a U.S. trade or business, and (2) a 30-percent withholding tax on the gross amount of certain types of passive income derived from U.S. sources, such as interest, dividends, rents, and other fixed or determinable annual or periodical income (sec. 871(a)(1)). Bilateral income tax treaties may modify these tax rules.

Income derived from the sale of personal property other than inventory property generally is sourced based on the residence of the seller (sec. 865(a)). Thus, nonresident aliens generally are not taxable on capital gains because the gains generally are considered to be foreign-source income.[253]

Special rules apply in the case of sales of personal property by certain foreign persons. In this regard, an individual who is otherwise treated as a nonresident is treated as a U.S. resident for purposes of sourcing income from the sale of personal property if the individual has a tax home in the United States (sec. 865(g)(1)(A)(i)(II)). An individual's U.S. tax home generally is the place where the individual has his or her principal place of business. For example, if a nonresident individual with a tax home in the United States sells stocks or other securities for a gain, the individual will be treated as a U.S. resident with respect to the sale such that the gain will be treated as U.S.-source income potentially subject to U.S. tax.

Under the special capital gains tax of section 871(a)(2), a nonresident individual who is physically present in the United States for 183 days or more during a taxable year is subject to a 30-percent tax on the excess of U.S.-source capital gains over U.S.-source capital losses. This 30-percent tax is not a withholding tax. The tax under section 871(a)(2) does not apply to gains and losses subject to the gross 30-percent withholding tax under section 871(a)(1) or to gains effectively connected with a U.S. trade or business. Capital gains and losses are taken into account only to the extent that they would be recognized and taken into account if such gains and losses were effectively connected with a U.S. trade or business. Capital loss carryovers are not taken into account.

As a practical matter, the special rule under section 871(a)(2) applies only in a very limited set of cases. In order for the rule to apply, two conditions must be satisfied: (1) the individual must spend at least 183 days in the United States during a taxable year without being treated as a U.S. resident, and (2) the individual's capital gains must be from U.S. sources. If these conditions are satisfied, then the 30-percent tax applies to the excess of U.S.-source capital gains over U.S.-source capital losses. However, section 871(a)(2) generally is not applicable because if the individual spends 183 days or more in the United States in most cases he or she would be treated as a U.S. resident, or if not treated as a U.S. resident, would generally not have U.S.-source capital gains.

An individual who is not a citizen and who spends 183 days or more in the United States during a calendar year generally would be treated as a U.S. resident under the substantial presence test of section 7701(b). Thus, in most cases, the individual who spends at least 183 days in the United States would not be subject to section 871(a)(2).[254] However, under the substantial presence test under section 7701(b), certain days of physical presence in the United States are not counted for purposes of meeting the 183-day rule. This includes days spent in the United States in which the individual regularly commutes to employment (or self-employment) in the United States from Canada or Mexico; the individual is in transit between two points outside the United States and is physically present in the United States for less than 24 hours; the individual is temporarily present in the United States as a regular member of the crew of a foreign vessel engaged in transportation between the United States and a foreign country or U.S. possession; and certain exempt individuals. These exceptions from counting physical presence in the United States do not apply, however, for purposes of the special rule under section 871(a)(2). Thus, it is possible in certain cases for an individual to be present in the United States for at least 183 days without being treated as a U.S. resident under the substantial presence test of section 7701(b).[255]

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[252] Treas. Prop. Reg. sec. 1.964-1(c)(1)(ii)(B).

[253] Nonresident individuals are subject to the 30-percent gross withholding tax, for example, with respect to gains from the sale or exchange of intangible property if the payments are contingent on the productivity, use, or disposition of the property. Secs. 871(a)(1)(D) and 881(a)(4).

[254] See the American Law Institute, Federal Income Tax Project, International Aspects of United States Income Taxation, Proposals of the American Law Institute on United States Taxation of Foreign Persons and of the Foreign Income of United States Persons, at 112-113 (1987) (recommending that sec. 871(a)(2) be eliminated and stating "[u]nder Section 7701(b), enacted in 1984, an individual physically present in the U.S. for 183 days in a calendar year is considered a resident, taxable at net income rates on all of his income; and accordingly the justification for Section 871(a)(2) no longer exists." [footnotes omitted]).

Even if an individual spends at least 183 days in the United States but is not treated as a U.S. resident under section 7701(b), the nonresident individual's capital gains generally will be treated as foreign-source income and, thus, not subject to section 871(a)(2). In this regard, capital gains generally are from foreign sources if the individual is a nonresident, and from U.S. sources if the individual is a U.S. resident. Under a special rule, an individual is treated as a U.S. resident for sales of personal property (including sales giving rise to capital gains) if the individual has a tax home in the United States. This rule applies even if the individual is treated as a nonresident for other U.S. tax purposes. An individual's capital gains would be treated as U.S.-source income and potentially subject to section 871(a)(2) if the individual is treated as a U.S. resident under this special rule.[256]

Even in the limited cases in which the special rule under section 871(a)(2) could potentially apply, a tax treaty might prevent its application.[257]

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision repeals the special tax on certain capital gains of nonresident aliens under section 871(a)(2).

Effective date.—The provision is effective for taxable years beginning after December 31, 2003.

CONFERENCE AGREEMENT

The conference agreement does not contain the Senate amendment provision.

21. Modify FIRPTA rules for real estate investment trusts (sec. 230 of the Senate amendment and secs. 857 and 897 of the Code)

PRESENT LAW

A real estate investment trust ("REIT") is a U.S. entity that derives most of its income from passive real estate-related investments. A REIT must satisfy a number of tests on an annual basis that relate to the entity's organizational structure, the source of its income, and the nature of its assets. If an electing entity meets the requirements for REIT status, the portion of its income that is distributed to its investors each year generally is treated as a dividend deductible by the REIT, and includible in income by its investors. In this manner, the distributed income of the REIT is not taxed at the entity level. The distributed income is taxed only at the investor level. A REIT generally is required to distribute 90 percent of its income to its investors before the end of its taxable year.

Special U.S. tax rules apply to gains of foreign persons attributable to dispositions of interests in U.S. real property, including certain transactions involving REITs. The rules governing the imposition and collection of tax on such dispositions are contained in a series of provisions that were enacted in 1980 and that are collectively referred to as the Foreign Investment in Real Property Tax Act ("FIRPTA").

In general, FIRPTA provides that gain or loss of a foreign person from the disposition of a U.S. real property interest is taken into account for U.S. tax purposes as if such gain or loss were effectively connected with a U.S. trade or business during the taxable year. Accordingly, foreign persons generally are subject to U.S. tax on any gain from a disposition of a U.S. real property interest at the same rates that apply to similar income received by U.S. persons. For these purposes, the receipt of a distribution from a REIT is treated as a disposition of a U.S. real property interest by the recipient to the extent that it is attributable to a sale or exchange of a U.S. real property interest by the REIT. These capital gains distributions from REITs generally are subject to withholding tax at a rate of 35 percent (or a lower treaty rate). In addition, the recipients of these capital gains distributions are required to file Federal income tax returns in the United States, since the recipients are treated as earning income effectively connected with a U.S. trade or business.

In addition, foreign corporations that have effectively connected income generally are subject to the branch profits tax at a 30 percent rate (or a lower treaty rate).

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision removes from treatment as effectively connected income for a foreign investor a capital gain distribution from a REIT, provided that (1) the distribution is received with respect to a class of stock that is regularly traded on an established securities market located in the United States and (2) the foreign investor does not own more than five percent of the class of stock at any time during the taxable year within which the distribution is received.

Thus, a foreign investor is not required to file a U.S. Federal income tax return by reason of receiving such a distribution. The distribution is to be treated as a REIT dividend to that investor, taxed as a REIT dividend that is not a capital gain. Also, the branch profits tax no longer applies to such a distribution.

Effective date. The provision applies to taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

22. Exclusion of certain horse-racing and dog-racing gambling winnings from the income of nonresident alien individuals (sec. 232 of the Senate amendment and sec. 872 of the Code)

PRESENT LAW

Under section 871, certain items of gross income received by a nonresident alien from sources within the United States are subject to a flat 30-percent withholding tax. Gambling winnings received by a nonresident alien from wagers placed in the United States are U.S.-source and thus generally are subject to this withholding tax, unless exempted by treaty. Currently, several U.S. income tax treaties exempt U.S.-source gambling winnings of residents of the other treaty country from U.S. withholding tax. In addition, no withholding tax is imposed under section 871 on the non-business gambling income of a nonresident alien from wagers on the following games (except to the extent that the Secretary determines that collection of the tax would be administratively feasible): blackjack, baccarat, craps, roulette, and big-6 wheel. Various other (non-gambling-related) items of income of a nonresident alien are excluded from gross income under section 872(b) and are thereby exempt from the 30-percent withholding tax, without any authority for the Secretary to impose the tax by regulation. In cases in which a withholding tax on gambling winnings applies, section 1441(a) of the Code requires the party making the winning payout to withhold the appropriate amount and makes that party responsible for amounts not withheld.

With respect to gambling winnings of a nonresident alien resulting from a wager initiated outside the United States on a pari-mutuel[258] event taking place within the United States, the source of the winnings, and thus the applicability of the 30-percent U.S. withholding tax, depends on the type of wagering pool from which the winnings are paid. If the payout is made from a separate foreign pool, maintained completely in a foreign jurisdiction (e.g., a pool maintained by a racetrack or off-track betting parlor that is showing in a foreign country a simulcast of a horse race taking place in the United States), then the winnings paid to a nonresident alien generally would not be subject to withholding tax, because the amounts received generally would not be from sources within the United States. However, if the payout is made from a "merged" or "commingled" pool, in which betting pools in the United States and the foreign country are combined for a particular event, then the portion of the payout attributable to wagers placed in the United States could be subject to withholding tax. The party making the payment, in this case a racetrack or off-track betting parlor in a foreign country, would be responsible for withholding the tax.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides an exclusion from gross income under section 872(b) for winnings paid to a nonresident alien resulting from a legal wager initiated outside the United States in a pari-mutuel pool on a live horse or dog race in the United States, regardless of whether the pool is a separate foreign pool or a merged U.S.-foreign pool.

Effective date.—The provision is effective for wagers made after the date of enactment of the provision.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

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[255] It should be noted that there also is a difference with respect to the year over which the 183-day rule is measured for purposes of the substantial presence test and the rule under sec. 871(a)(2). The sec. 871(a)(2) tax applies to 183 days or more of presence in the United States during the taxable year, while the substantial presence test under sec. 7701(b) applies to 183 days or more of presence in the United States during the calendar year. In most cases, however, a nonresident individual's taxable year is the calendar year. Secs. 7701(b)(9) and 871(a)(2).

[256] The individual's income also could be treated as U.S.-source income under sec. 865(e)(2) if the individual derives income from the sale of personal property that is attributable to an office or other fixed place of business that the individual maintains in the United States. However, sec. 871(a)(2) would not apply if the income is effectively connected with a U.S. trade or business, or if the sale qualifies for the exception from U.S.-source treatment as a result of a material participation in the sale by a foreign office of the taxpayer.

[257] Under Article 13(5) of the U.S. model income tax treaty, subject to certain exceptions, the capital gains of a nonresident individual are exempt from U.S. taxation.

[258] In pari-mutuel wagering (common in horse racing), odds and payouts are determined by the aggregate bets placed. The money wagered is placed into a pool, the party maintaining the pool takes a percentage of the total, and the bettors effectively bet against each other. Pari-mutuel wagering may be contrasted with fixed-odds wagering (common in sports wagering), in which odds (or perhaps a point spread) are agreed to by the bettor and the party taking the bet and are not affected by the bets placed by other bettors.

23. Limitation of withholding on U.S.-source dividends paid to Puerto Rico corporation (sec. 233 of the Senate amendment and secs. 881 and 1442 of the Code)

PRESENT LAW

In general, dividends paid by corporations organized in the United States[259] to corporations organized outside of the United States and its possessions are subject to U.S. income tax withholding at the flat rate of 30 percent. The rate may be reduced or eliminated under a tax treaty. Dividends paid by U.S. corporations to corporations organized in certain U.S. possessions are subject to different rules.[260] Corporations organized in the U.S. possessions of the Virgin Islands, Guam, American Samoa or the Northern Mariana Islands are not subject to withholding tax on dividends from corporations organized in the United States, provided that certain local ownership and activity requirements are met. Each of those possessions have adopted local internal revenue codes that provide a zero rate of withholding tax on dividends paid by corporations organized in the possession to corporations organized in the United States.

Under the tax laws of Puerto Rico, which is also a U.S. possession, a 10 percent withholding tax is imposed on dividends paid by Puerto Rico corporations to non-Puerto Rico corporations.[261] Dividends paid by corporations organized in the United States to Puerto Rico corporations are subject to U.S. withholding tax at a 30 percent rate. Under Puerto Rico law, Puerto Rico corporations may elect to credit their U.S. income taxes against their Puerto Rico income taxes. Creditable income taxes include the 30 percent dividend withholding tax and the underlying U.S. corporate tax attributable to the dividends. However, a Puerto Rico corporation's tax credit for U.S. income taxes may be limited because the sum of the U.S. withholding tax and the underlying U.S. corporate tax generally exceeds the amount of Puerto Rico corporate income tax imposed on the dividend. Consequently, Puerto Rico corporations with subsidiaries organized in the United States may be subject to some degree of double taxation on their U.S. subsidiaries' earnings.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision lowers the withholding income tax rate on U.S. source dividends paid to a corporation created or organized in Puerto Rico from 30 percent to 10 percent, to create parity with the generally applicable 10 percent withholding tax imposed by Puerto Rico on dividends paid to U.S. corporations. The lower rate applies only if the same local ownership and activity requirements are met that are applicable to corporations organized in other possessions receiving dividends from corporations organized in the United States.

Effective date.—The provision is effective for dividends paid after date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with modifications. Under the provision as modified, if the generally applicable withholding tax rate imposed by Puerto Rico on dividends paid to U.S. corporations increases to greater than 10 percent, the U.S. withholding rate on dividends to Puerto Rico corporations reverts to 30 percent.

24. Require Commerce Department report on adverse decisions of the World Trade Organization (sec. 234 of the Senate amendment)

PRESENT LAW

The Secretary of Commerce does not have an obligation to transmit any future report to the Senate Committee on Finance and the House of Representatives Committee on Ways and Means, in consultation with the United States Trade Representative, regarding whether dispute settlement panels or the Appellate Body of the World Trade Organization have (1) added to or diminished the rights of the United States by imposing obligations and restrictions on the use of antidumping, countervailing, or safeguard measures not agreed to under the World Trade Organization Antidumping Agreement, the Agreement on Subsidies and Countervailing Measures, or the Agreement on Safeguards; (2) appropriately applied the standard of review contained in Article 17.6 of the Antidumping Agreement; or (3) exceeded its authority or terms of reference.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision requires that by no later than March 31, 2004, the Secretary of Commerce, in consultation with the United States Trade Representative, shall transmit a report to the Senate Committee on Finance and the House of Representatives Committee on Ways and Means regarding whether dispute settlement panels or the Appellate Body of the World Trade Organization have (1) added to or diminished the rights of the United States by imposing obligations and restrictions on the use of antidumping, countervailing, or safeguard measures not agreed to under the World Trade Organization Antidumping Agreement, the Agreement on Subsidies and Countervailing Measures, or the Agreement on Safeguards; (2) appropriately applied the standard of review contained in Article 17.6 of the Antidumping Agreement; or (3) exceeded its authority or terms of reference.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not contain the Senate amendment provision.

25. Study of impact of international tax law on taxpayers other than large corporations (sec. 235 of the Senate amendment)

PRESENT LAW

The United States employs a "worldwide" tax system, under which U.S. persons (including domestic corporations) generally are taxed on all income, whether derived in the United States or abroad. In contrast, foreign persons (including foreign corporations) are subject to U.S. tax only on U.S.-source income and income that has a sufficient nexus to the United States. The United States generally provides a credit to U.S. persons for foreign income taxes paid or accrued.[262] The foreign tax credit generally is limited to the U.S. tax liability on a taxpayer's foreign-source income, in order to ensure that the credit serves its purpose of mitigating double taxation of foreign-source income without offsetting the U.S. tax on U.S.-source income.[263]

Within this basic framework, there are a variety of rules that affect the U.S. taxation of cross-border transactions. Detailed rules govern the determination of the source of income and the allocation and apportionment of expenses between foreign-source and U.S.-source income. Such rules are relevant not only for purposes of determining the U.S. taxation of foreign persons (because foreign persons are subject to U.S. tax only on income that is from U.S. sources or otherwise has sufficient U.S. nexus), but also for purposes of determining the U.S. taxation of U.S. persons (because the U.S. tax on a U.S. person's foreign-source income may be reduced or eliminated by foreign tax credits). Authority is provided for the reallocation of items of income and deductions between related persons in order to ensure the clear reflection of the income of each person and to prevent the avoidance of tax. Although U.S. tax generally is not imposed on a foreign corporation that operates abroad, several anti-deferral regimes apply to impose current U.S. tax on certain income from foreign operations of certain U.S.-owned foreign corporations.

A cross-border transaction potentially gives rise to tax consequences in two (or more) countries. The tax treatment in each country generally is determined under the tax laws of the respective country. However, an income tax treaty between the two countries may operate to coordinate the two tax regimes and mitigate the double taxation of the transaction. In this regard, the United States' network of bilateral income tax treaties includes provisions affecting both U.S. and foreign taxation of both U.S. persons with foreign income and foreign persons with U.S. income.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision requires the Secretary of the Treasury or the Secretary's delegate to conduct a study of the impact of Federal international tax rules on taxpayers other than large corporations, including the burdens placed on such taxpayers in complying with such rules. In addition, not later than 180 days after the date of the enactment of this provision, the Secretary shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives the results of the study conducted as a result of this provision, including any recommendations for legislative or administrative changes to reduce the compliance burden on taxpayers other than large corporations and for such other purposes as the Secretary determines appropriate.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not contain the Senate amendment provision.

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[259] The term "United States" does not include its possessions. Sec. 7701(a)(9).

[260] The usual method of effecting a mitigation of the flat 30 percent rate—an income tax treaty providing for a lower rate—is not possible in the case of a possession. See S. Rep. No. 1707, 89th Cong., 2d Sess. 34 (1966).

[261] The 10 percent withholding rate may be subject to exemption or elimination if the dividend is paid out of income that is subject to certain tax incentives offered by Puerto Rico. These tax incentives may also reduce the rate of underlying Puerto Rico corporate tax to a flat rate of between two and seven percent.

[262] Sec. 901.

[263] Secs. 901, 904.

26. Delay in effective date of final regulations governing exclusion of income from international operations of ships and aircraft (sec. 236 of the Senate amendment and sec. 883 of the Code)

PRESENT LAW

Section 883 generally provides an exemption from gross income for earnings of a foreign corporation derived from the international operation of ships and aircraft if an equivalent exemption from tax is granted by the applicable foreign country to corporations organized in the United States.

Treasury has issued regulations implementing the rules of section 883 that are effective for taxable years beginning 30 days or more after August 26, 2003. The regulations provide, in general, that a foreign corporation organized in a qualified foreign country and engaged in the international operation of ships or aircraft shall exclude qualified income from gross income for purposes of United States Federal income taxation, provided that the corporation can satisfy certain ownership and related documentation requirements. The proposed rules explain when a foreign country is a qualified foreign country and what income is considered to be qualified income.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision delays the effective date for the Treasury regulations so that they apply to taxable years of foreign corporations seeking qualified foreign corporation status beginning after December 31, 2004.

Effective date.—The provision is effective after date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except the regulations apply to taxable years of foreign corporations seeking qualified foreign corporation status beginning after September 24, 2004.

27. Interest payments deductible where taxpayer could have borrowed without a guarantee (sec. 237 of the Senate amendment and sec. 163(j) of the Code)

PRESENT LAW

Present law provides rules to limit the ability of U.S. corporations to reduce the U.S. tax on their U.S.-source income through earnings stripping transactions. These rules limit the deductibility of interest paid to certain related parties ("disqualified interest"), if the payor's debt-equity ratio exceeds 1.5 to 1 and the payor's net interest expense exceeds 50 percent of its "adjusted taxable income" (generally taxable income computed without regard to deductions for net interest expense, net operating losses, and depreciation, amortization, and depletion).

Disqualified interest for these purposes also may include interest paid to unrelated parties in certain cases in which a related party guarantees the debt.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the provision, a foreign related-party guarantee does not trigger the earnings stripping rules to the extent of the amount of debt that the taxpayer establishes (to the satisfaction of the Treasury Secretary) that it could have borrowed without the guarantee.

Effective date.—The provision is effective for guarantees issued on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not contain the Senate amendment provision.

TITLE IV—EXTENSION OF CERTAIN EXPIRING PROVISIONS

28. Nonrefundable personal credits allowed against the alternative minimum tax ("AMT") (sec. 401 of the House bill, sec. 713 of the Senate amendment, and sec. 26 of the Code)

PRESENT LAW

Present law provides for certain nonrefundable personal tax credits (i.e., the dependent care credit, the credit for the elderly and disabled, the adoption credit, the child tax credit,[264] the credit for interest on certain home mortgages, the HOPE Scholarship and Lifetime Learning credits, the credit for savers, and the D.C. first-time homebuyer credit).

For taxable years beginning before 2006, all the nonrefundable personal credits are allowed to the extent of the full amount of the individual's regular tax and alternative minimum tax.

For taxable years beginning after 2005, the credits (other than the adoption credit, child credit and credit for savers) are allowed only to the extent that the individual's regular income tax liability exceeds the individual's tentative minimum tax, determined without regard to the minimum tax foreign tax credit. The adoption credit, child credit, and IRA credit are allowed to the full extent of the individual's regular tax and alternative minimum tax.

HOUSE BILL[265]

The House bill allows all nonrefundable personal credits against the AMT.

Effective date.—Taxable years beginning in 2004 and 2005.

SENATE AMENDMENT[266]

The Senate amendment allows all nonrefundable personal credits against the AMT.

Effective date.—Taxable years beginning in 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or the Senate amendment provision.

29. Extension and modification of the research credit (sec. 402 of the House bill, secs. 311 and 312 of the Senate amendment, and sec. 41 of the Code)

PRESENT LAW

Section 41 provides for a research tax credit equal to 20 percent of the amount by which a taxpayer's qualified research expenses for a taxable year exceed its base amount for that year. Taxpayers may elect an alternative incremental research credit regime in which the taxpayer is assigned a three-tiered fixed-base percentage and the credit rate likewise is reduced. Under the alternative credit regime, a credit rate of 2.65 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of one percent but do not exceed a base amount computed by using a fixed-base percentage of 1.5 percent. A credit rate of 3.2 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of 1.5 percent but do not exceed a base amount computed by using a fixed-base percentage of two percent. A credit rate of 3.75 percent applies to the extent that a taxpayer's current-year research expenses exceed a base amount computed by using a fixed-base percentage of two percent.

The research tax credit generally applies to amounts paid or incurred before January 1, 2006.

HOUSE BILL[267]

The House bill extends the present-law research credit to qualified amounts paid or incurred before January 1, 2006.

Effective date.—The provision is effective for amounts paid or incurred after June 30, 2004.

SENATE AMENDMENT[268]

The Senate amendment is the same as the House bill with respect to extension of the present-law research credit. In addition, the Senate amendment makes the following modifications:

(4) Increases the credit rates of the alternative incremental credit to three percent, four percent, and five percent.

(5) Creates a third alternative for taxpayers, the alternative simplified credit. The taxpayer may elect to claim a credit equal to 12 percent of qualified research expenses in excess of 50 percent of the average qualified research expenses for the preceding three taxable years.

(6) Permits taxpayers to claim a credit equal to 20 percent of amounts paid to certain research consortia.

The provision also permits taxpayers to include 100 percent of contract research expenses (rather than 65 percent) if the contractor is an eligible small business, a college or university, or a Federal laboratory.

Effective date.—With respect to extension of the present-law research credit, the provision is effective for amounts paid or incurred after the date of enactment.

With respect to the increase in the alternative incremental credit and the alternative simplified credit, the provisions are effective for taxable years beginning after December 31, 2004.

With respect to payments to research consortia and certain contract research, the provisions are effective for amounts paid or incurred after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or Senate amendment provision.

30. Extension of credit for electricity produced from certain renewable resources (sec. 403 of the House bill, secs. 714 and 801 of the Senate amendment, and sec. 45 of the Code)

PRESENT LAW

An income tax credit is allowed for the production of electricity from either qualified wind energy, qualified "closed-loop" biomass, or qualified poultry waste facilities. The amount of the credit is 1.8 cents per kilowatt hour for 2004. The credit amount is indexed for inflation.

The credit applies to electricity produced by a wind energy facility placed in service after December 31, 1993, and before January

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[264] A portion of the child credit may be refundable.

[265] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[266] The Senate amendment predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[267] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[268] The Senate amendment predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

1, 2006, to electricity produced by a closed-loop biomass facility placed in service after December 31, 1992, and before January 1, 2006, and to a poultry waste facility placed in service after December 31, 1999, and before January 1, 2006. The credit is allowable for production during the 10-year period after a facility is originally placed in service.

HOUSE BILL[269]

Extends the placed-in-service date for wind facilities and closed-loop biomass facilities to facilities placed in service after December 31, 1993 (December 31, 1992 in the case of closed-loop biomass facilities) and before January 1, 2006. Does not extend the placed-in-service date for poultry waste facilities.

Effective date.—The provision is effective for facilities placed in service after December 31, 2003.

SENATE AMENDMENT[270]

With respect to extension of the present-law credit, the Senate amendment extends the placed-in-service date for wind, closed-loop biomass, and poultry waste facilities to facilities placed in service prior to January 1, 2007.

(The Senate amendment would also expand the definition of qualified facilities and make certain other modifications to the operation of credit. These expansions and modifications are described later in this document.)

Effective date.—With respect to the extension of the placed-in-service dates, the provision is generally effective for facilities placed in service after December 31, 2003.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or Senate amendment provision with respect to the extension of present law, but it does make modifications to present law that are described later in this document.

31. Indian employment tax credit (sec. 404 of the House bill, sec. 716 of the Senate amendment, and sec. 45A of the Code)

PRESENT LAW

In general, a credit against income tax liability is allowed to employers for the first $20,000 of qualified wages and qualified employee health insurance costs paid or incurred by the employer with respect to certain employees. The credit is equal to 20 percent of the excess of eligible employee qualified wages and health insurance costs during the current year over the amount of such wages and costs incurred by the employer during 1993. The credit is an incremental credit, such that an employer's current-year qualified wages and qualified employee health insurance costs (up to $20,000 per employee) are eligible for the credit only to the extent that the sum of such costs exceeds the sum of comparable costs paid during 1993. No deduction is allowed for the portion of the wages equal to the amount of the credit.

Qualified wages means wages paid or incurred by an employer for services performed by a qualified employee. A qualified employee means any employee who is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe, who performs substantially all of the services within an Indian reservation, and whose principal place of abode while performing such services is on or near the reservation in which the services are performed. An employee will not be treated as a qualified employee for any taxable year of the employer if the total amount of wages paid or incurred by the employer with respect to such employee during the taxable year exceeds an amount determined at an annual rate of $30,000 (adjusted for inflation after 1993).

The wage credit is available for wages paid or incurred on or after January 1, 1994, in taxable years that begin before January 1, 2006.

HOUSE BILL[271]

The provision extends the Indian employment credit incentive for one year (to taxable years beginning before January 1, 2006).

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT[272]

Same as the House bill.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or the Senate amendment provision.

32. Extension of the work opportunity tax credit (sec. 405 of the House bill, sec. 702 of the Senate amendment, and sec. 51 of the Code)

PRESENT LAW

Work opportunity tax credit

Targeted groups eligible for the credit

The work opportunity tax credit is available on an elective basis for employers hiring individuals from one or more of eight targeted groups. The eight targeted groups are: (1) certain families eligible to receive benefits under the Temporary Assistance for Needy Families Program; (2) high-risk youth; (3) qualified ex-felons; (4) vocational rehabilitation referrals; (5) qualified summer youth employees; (6) qualified veterans; (7) families receiving food stamps; and (8) persons receiving certain Supplemental Security Income (SSI) benefits.

A qualified ex-felon is an individual certified as: (1) having been convicted of a felony under State or Federal law; (2) being a member of an economically disadvantaged family; and (3) having a hiring date within one year of release from prison or conviction.

Qualified wages

Generally, qualified wages are defined as cash wages paid by the employer to a member of a targeted group. The employer's deduction for wages is reduced by the amount of the credit.

Calculation of the credit

The credit equals 40 percent (25 percent for employment of 400 hours or less) of qualified first-year wages. Generally, qualified first-year wages are qualified wages (not in excess of $6,000) attributable to service rendered by a member of a targeted group during the one-year period beginning with the day the individual began work for the employer. Therefore, the maximum credit per employee is $2,400 (40 percent of the first $6,000 of qualified first-year wages). With respect to qualified summer youth employees, the maximum credit is $1,200 (40 percent of the first $3,000 of qualified first-year wages).

Minimum employment period

No credit is allowed for qualified wages paid to employees who work less than 120 hours in the first year of employment.

Coordination of the work opportunity tax credit and the welfare-to-work tax credit

An employer cannot claim the work opportunity tax credit with respect to wages of any employee on which the employer claims the welfare-to-work tax credit.

Other rules

The work opportunity tax credit is not allowed for wages paid to a relative or dependent of the taxpayer. Similarly wages paid to replacement workers during a strike or lockout are not eligible for the work opportunity tax credit. Wages paid to any employee during any period for which the employer received on-the-job training program payments with respect to that employee are not eligible for the work opportunity tax credit. The work opportunity tax credit generally is not allowed for wages paid to individuals who had previously been employed by the employer. In addition, many other technical rules apply.

Expiration

The credit is effective for wages paid or incurred to a qualified individual who begins work for an employer before January 1, 2006.

HOUSE BILL[273]

The House bill extends the WOTC for two years (through December 31, 2005).

Effective date.—Wages paid or incurred for individuals beginning work after December 31, 2003.

SENATE AMENDMENT[274]

The Senate amendment permanently extends the WOTC.

The Senate amendment also makes the following modifications to the WOTC:

(1) repeals the requirement that a qualified ex-felon be a member of an economically disadvantaged family for purposes of eligibility for the tax credit;

(2) expands the category of vocational rehabilitation referrals to include certain individuals who have a physical or mental disability that constitutes a substantial handicap to employment and who are receiving vocational services or have completed an individual work plan developed by a private employment network as defined under section 1148(f) of the Social Security Act qualify as members of the vocational rehabilitation referral targeted group.

(3) increases the age limit for qualified food stamp recipients. Therefore a food stamp recipient is an individual aged 18 but not aged 40 certified as being a member of a family either currently or recently receiving assistance under an eligible food stamp program.

(4) increases the age limit for high-risk youths. Therefore a high-risk youth is an individual aged 18 but not aged 40 having a principal place of abode within an empowerment zone, enterprise community, or renewal community.

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[269] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[270] The Senate amendment predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[271] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[272] The Senate amendment predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[273] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[274] The Senate amendment predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"),which included a number of extensions to expiring provisions.

Effective date.—The extension is effective for wages paid or incurred for individuals beginning work after December 31, 2003. The modifications are effective for wages paid or incurred for individuals beginning work after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or the Senate amendment provision.

33. Extension of the welfare-to-work tax credit (sec. 406 of the House bill, sec. 702 of the Senate amendment, and sec. 51A of the Code)

PRESENT LAW

Welfare-to-work tax credit

Targeted group eligible for the credit

The welfare-to-work tax credit is available on an elective basis to employers of qualified long-term family assistance recipients. Qualified long-term family assistance recipients are: (1) members of a family that has received family assistance for at least 18 consecutive months ending on the hiring date; (2) members of a family that has received such family assistance for a total of at least 18 months (whether or not consecutive) after August 5, 1997 (the date of enactment of the welfare-to-work tax credit) if they are hired within 2 years after the date that the 18-month total is reached; and (3) members of a family who are no longer eligible for family assistance because of either Federal or State time limits, if they are hired within 2 years after the Federal or State time limits made the family ineligible for family assistance.

Qualified wages

Qualified wages for purposes of the welfare-to-work tax credit are defined more broadly than the work opportunity tax credit. Unlike the definition of wages for the work opportunity tax credit which includes simply cash wages, the definition of wages for the welfare-to-work tax credit includes cash wages paid to an employee plus amounts paid by the employer for: (1) educational assistance excludable under a section 127 program (or that would be excludable but for the expiration of sec. 127); (2) health plan coverage for the employee, but not more than the applicable premium defined under section 4980B(f)(4); and (3) dependent care assistance excludable under section 129. The employer's deduction for wages is reduced by the amount of the credit.

Calculation of the credit

The welfare-to-work tax credit is available on an elective basis to employers of qualified long-term family assistance recipients during the first two years of employment. The maximum credit is 35 percent of the first $10,000 of qualified first-year wages and 50 percent of the first $10,000 of qualified second-year wages. Qualified first-year wages are defined as qualified wages (not in excess of $10,000) attributable to service rendered by a member of the targeted group during the one-year period beginning with the day the individual began work for the employer. Qualified second-year wages are defined as qualified wages (not in excess of $10,000) attributable to service rendered by a member of the targeted group during the one-year period beginning immediately after the first year of that individual's employment for the employer. The maximum credit is $8,500 per qualified employee.

Minimum employment period

No credit is allowed for qualified wages paid to a member of the targeted group unless they work at least 400 hours or 180 days in the first year of employment.

Coordination of the work opportunity tax credit and the welfare-to-work tax credit

An employer cannot claim the work opportunity tax credit with respect to wages of any employee on which the employer claims the welfare-to-work tax credit.

Other rules

The welfare-to-work tax credit incorporates directly or by reference many of these other rules contained on the work opportunity tax credit.

Expiration

The welfare to work credit is effective for wages paid or incurred to a qualified individual who begins work for an employer before January 1, 2006.

HOUSE BILL[275]

The House bill extends the WWTC for two years (through December 31, 2005).

Effective date. The provision is effective for wages paid or incurred for individuals beginning work after December 31, 2003.

SENATE AMENDMENT[276]

The Senate amendment permanently extends the WWTC.

Effective date.—Wages paid or incurred for individuals beginning work after December 31, 2003.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or the Senate amendment provision.

34. Combination and modification of the work opportunity tax credit and the welfare-to-work tax credit (sec. 703 of the Senate amendment and sec. 51 of the Code)

PRESENT LAW

Same as items 5 and 6, above.

HOUSE BILL[277]

No provision.

SENATE AMENDMENT[278]

The Senate amendment combines and modifies the work opportunity and welfare-to-work tax credits with the following modifications:

The combined credit uses the WOTC definition of wages; in the case of first-year wages for long-term family assistance recipients the maximum credit is increased to $4,000 (40 percent of the first $10,000 of qualified first-year wages);

The combined credit uses the WOTC definition for the minimum employment period (i.e., the combined credit is not allowed for qualified wages paid to employees who work less than 120 hours in the first year of employment).

Effective date.—The provision is effective for wages paid or incurred for individuals beginning work after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

35. Certain expenses of elementary and secondary school teachers (sec. 407 of the House bill, sec. 707 of the Senate amendment, and sec. 62 of the Code)

PRESENT LAW

In general, ordinary and necessary business expenses are deductible (sec. 162). However, in general, unreimbursed employee business expenses are deductible only as an itemized deduction and only to the extent that the individual's total miscellaneous deductions (including employee business expenses) exceed two percent of adjusted gross income. An individual's otherwise allowable itemized deductions may be further limited by the overall limitation on itemized deductions, which reduces itemized deductions for taxpayers with adjusted gross income in excess of $142,700 (for 2004). In addition, miscellaneous itemized deductions are not allowable under the alternative minimum tax.

Certain expenses of eligible educators are allowed an above-the-line deduction. Specifically, for taxable years beginning prior to January 1, 2006, an above-the-line deduction is allowed for up to $250 annually of expenses paid or incurred by an eligible educator for books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom. To be eligible for this deduction, the expenses must be otherwise deductible under section 162 as a trade or business expense. A deduction is allowed only to the extent the amount of expenses exceeds the amount excludable from income under section 135 (relating to education savings bonds), section 529(c)(1) (relating to qualified tuition programs), and section 530(d)(2) (relating to Coverdell education savings accounts).

An eligible educator is a kindergarten through grade 12 teacher, instructor, counselor, principal, or aide in a school for at least 900 hours during a school year. A school means any school which provides elementary education or secondary education, as determined under State law.

The above-the-line deduction for eligible educators is not allowed for taxable years beginning after December 31, 2005.

HOUSE BILL[279]

The House bill allows the above-the-line deduction for taxable years beginning prior to January 1, 2006.

Effective date.—The provision is effective for taxable years beginning in 2004 and 2005.

SENATE AMENDMENT[280]

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or the Senate amendment provision.

36. Accelerated depreciation for business property on Indian reservations (sec. 408 of the House bill, sec. 717 of the Senate amendment, and sec. 168 of the Code)

PRESENT LAW

With respect to certain property used in connection with the conduct of a trade or business within an Indian reservation, depreciation deductions under section 168(j) will be determined using the following recovery periods:

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[275] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[276] The Senate amendment predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[277] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[278] The Senate amendment predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[279] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[280] The Senate amendment predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

	Years
3-year property	2
5-year property	3
7-year property	4
10-year property	6
15-year property	9
20-year property	12
Nonresidential real property	22

"Qualified Indian reservation property" eligible for accelerated depreciation includes property which is (1) used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation, (2) not used or located outside the reservation on a regular basis, (3) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section 465(b)(3)(C)), and (4) described in the recovery-period table above. In addition, property is not "qualified Indian reservation property" if it is placed in service for purposes of conducting gaming activities. Certain "qualified infrastructure property" may be eligible for the accelerated depreciation even if located outside an Indian reservation, provided that the purpose of such property is to connect with qualified infrastructure property located within the reservation (e.g., roads, power lines, water systems, railroad spurs, and communications facilities).

The depreciation deduction allowed for regular tax purposes is also allowed for purposes of the alternative minimum tax. The accelerated depreciation for Indian reservations is available with respect to property placed in service on or after January 1, 1994, and before January 1, 2006.

HOUSE BILL[281]

The provision extends eligibility for the special depreciation periods to property placed in service before January 1, 2006.

Effective date. The provision is effective on the date of enactment.

SENATE AMENDMENT[282]

Same as the House bill.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or the Senate amendment provision.

37. Charitable contributions of computer technology and equipment used for educational purposes and of scientific property used for research (sec. 409 of the House bill, sec. 706 of the Senate amendment, and sec. 170 of the Code)

PRESENT LAW

A deduction for charitable contributions of computer technology and equipment and of scientific property used for research generally is limited to the taxpayer's basis in the property. However, certain corporations may claim a deduction in excess of basis for a qualified computer contribution or a qualified research contribution. To be eligible for the enhanced deduction, the contributed property must be constructed by the taxpayer, among other requirements. The enhanced deduction for qualified computer contributions expires for contributions made during any taxable year beginning after December 31, 2005.

HOUSE BILL[283]

The House bill extends the enhanced deduction for qualified computer contributions to contributions made during any taxable year beginning before January 1, 2006.

Effective date. Taxable years beginning after December 31, 2003.

SENATE AMENDMENT[284]

The Senate amendment expands the enhanced deduction for qualified computer contributions and qualified research contributions to apply to property assembled by the taxpayer as well as property constructed by the taxpayer.

The extension of the enhanced deduction for qualified computer contributions is the same as the House bill.

Effective date. The Senate amendment is effective for taxable years beginning after December 31, 2003.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or the Senate amendment provision.

38. Expensing of environmental remediation costs (sec. 410 of the House bill, sec. 708 of the Senate amendment, and sec. 198 of the Code)

PRESENT LAW

Taxpayers can elect to treat certain environmental remediation expenditures that would otherwise be chargeable to capital account as deductible in the year paid or incurred. The deduction applies for both regular and alternative minimum tax purposes. The expenditure must be incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site (so called "brownfields").

Eligible expenditures are those paid or incurred before January 1, 2006.

HOUSE BILL[285]

The House bill extends the present law expensing provision for two years (through December 31, 2005).

Effective date. The provision is effective for expenses paid or incurred after December 31, 2003.

SENATE AMENDMENT[286]

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or Senate amendment provision.

39. Availability of Archer medical savings accounts (sec. 411 of the House bill and sec. 220 of the Code)

PRESENT LAW

In general

Within limits, contributions to an Archer medical savings account ("Archer MSA") are deductible in determining adjusted gross income if made by an eligible individual and are excludable from gross income and wages for employment tax purposes if made by the employer of an eligible individual. Earnings on amounts in an Archer MSA are not currently taxable. Distributions from an Archer MSA for medical expenses are not includible in gross income. Distributions not used for medical expenses are includible in gross income. In addition, distributions not used for medical expenses are subject to an additional 15-percent tax unless the distribution is made after age 65, death, or disability.

Eligible individuals

Archer MSAs are available to employees covered under an employer-sponsored high deductible plan of a small employer and self-employed individuals covered under a high deductible health plan.[287] An employer is a small employer if it employed, on average, no more than 50 employees on business days during either the preceding or the second preceding year. An individual is not eligible for an Archer MSA if he or she is covered under any other health plan in addition to the high deductible plan.

Tax treatment of and limits on contributions

Individual contributions to an Archer MSA are deductible (within limits) in determining adjusted gross income (i.e., "above-the-line"). In addition, employer contributions are excludable from gross income and wages for employment tax purposes (within the same limits), except that this exclusion does not apply to contributions made through a cafeteria plan. In the case of an employee, contributions can be made to an Archer MSA either by the individual or by the individual's employer.

The maximum annual contribution that can be made to an Archer MSA for a year is 65 percent of the deductible under the high deductible plan in the case of individual coverage and 75 percent of the deductible in the case of family coverage.

Definition of high deductible plan

A high deductible plan is a health plan with an annual deductible of at least $1,700 and no more than $2,600 in the case of individual coverage and at least $3,450 and no more than $5,150 in the case of family coverage. In addition, the maximum out-of-pocket expenses with respect to allowed costs (including the deductible) must be no more than $3,450 in the case of individual coverage and no more than $6,300 in the case of family coverage.[288] A plan does not fail to qualify as a high deductible plan merely because it does not have a deductible for preventive care as required by State law. A plan does not qualify as a high deductible health plan if substantially all of the coverage under the plan is for permitted coverage (as described above). In the case of a self-insured plan, the plan must in fact be insurance (e.g., there must be appropriate risk shifting) and not merely a reimbursement arrangement.

Cap on taxpayers utilizing Archer MSAs and expiration of pilot program

The number of taxpayers benefiting annually from an Archer MSA contribution is limited to a threshold level (generally 750,000 taxpayers). The number of Archer MSAs established has not exceeded the threshold level.

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[281] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108–311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[282] The Senate amendment predated the enactment of H.R. 1308, Pub. L. No. 108–311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[283] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108–311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[284] The Senate amendment predated the enactment of H.R. 1308, Pub. L. No. 108–311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[285] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108–311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[286] The Senate amendment predated the enactment of H.R. 1308, Pub. L. No. 108–311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[287] Self-employed individuals include more than two-percent shareholders of S corporations who are treated as partners for purposes of fringe benefit rules pursuant to section 1372.

[288] These dollar amounts are for 2004. These amounts are indexed for inflation, rounded to the nearest $50.

After 2005, no new contributions may be made to Archer MSAs except by or on behalf of individuals who previously made (or had made on their behalf) Archer MSA contributions and employees who are employed by a participating employer.

Trustees of Archer MSAs are generally required to make reports to the Treasury by August 1 regarding Archer MSAs established by July 1 of that year. If any year is a cutoff year, the Secretary is required to make and publish such determination by October 1 of such year.

The reports required by MSA trustees for 2004 are treated as timely if made within 90 days after October 4, 2004. In addition, the determination of whether 2004 is a cut-off year and the publication of such determination is to be made within 120 days of October 4, 2004. If 2004 is a cut-off year, the cut-off date will be the last day of such 120-day period.

HOUSE BILL[289]

The House bill extends Archer MSAs through December 31, 2005.

Effective date.—The provision is effective for January 1, 2004.

SENATE AMENDMENT[290]

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or Senate amendment provision.

40. Suspension of 100-percent-of-net-income limitation on percentage depletion for oil and gas from marginal wells (sec. 412 of the House bill, secs. 715 and 846 of the Senate amendment, and sec. 613A of the Code)

PRESENT LAW

Overview of depletion

Depletion, like depreciation, is a form of capital cost recovery. In both cases, the taxpayer is allowed a deduction in recognition of the fact that an asset—in the case of depletion for oil or gas interests, the mineral reserve itself—is being expended in order to produce income. Certain costs incurred prior to drilling an oil or gas property are recovered through the depletion deduction. These include costs of acquiring the lease or other interest in the property and geological and geophysical costs (in advance of actual drilling).

Depletion is available to any person having an economic interest in a producing property. An economic interest is possessed in every case in which the taxpayer has acquired by investment any interest in minerals in place, and secures, by any form of legal relationship, income derived from the extraction of the mineral, to which it must look for a return of its capital.[291] Thus, for example, both working interests and royalty interests in an oil- or gas-producing property constitute economic interests, thereby qualifying the interest holders for depletion deductions with respect to the property. A taxpayer who has no capital investment in the mineral deposit does not possess an economic interest merely because it possesses an economic or pecuniary advantage derived from production through a contractual relation.

Cost depletion

Two methods of depletion are currently allowable under the Code: (1) the cost depletion method, and (2) the percentage depletion method.[292] Under the cost depletion method, the taxpayer deducts that portion of the adjusted basis of the depletable property which is equal to the ratio of units sold from that property during the taxable year to the number of units remaining as of the end of the taxable year plus the number of units sold during the taxable year. Thus, the amount recovered under cost depletion may never exceed the taxpayer's basis in the property.

Percentage depletion and related income limitations

The Code generally limits the percentage depletion method for oil and gas properties to independent producers and royalty owners.[293] Generally, under the percentage depletion method, 15 percent of the taxpayer's gross income from an oil- or gas-producing property is allowed as a deduction in each taxable year.[294] The amount deducted generally may not exceed 100 percent of the net income from that property in any year (the "net-income limitation").[295] The 100-percent net-income limitation for marginal wells has been suspended for taxable years beginning after December 31, 1997, and before January 1, 2006.

HOUSE BILL[296]

The provision extends the suspension of the net-income limitation for marginal wells for taxable years beginning before January 1, 2006.

Effective date.—The provision is effective for taxable years beginning after December 31, 2003.

SENATE AMENDMENT[297]

The Senate amendment extends the suspension of the net-income limitation for marginal wells for taxable years beginning before January 1, 2007.

Effective date.—Same as the House bill.

CONFERENCE AGREEMENT

The conference agreement does not contain the House bill or Senate amendment provision.

41. Qualified zone academy bonds (sec. 413 of the House bill, secs. 612 and 704 of the Senate amendment, and sec. 1397E of the Code)

PRESENT LAW

Generally, "qualified zone academy bonds" are bonds issued by a State or local government, provided that at least 95 percent of the proceeds are used for one or more qualified purposes with respect to a "qualified zone academy" and private entities have promised to contribute to the qualified zone academy certain equipment, technical assistance or training, employee services, or other property or services with a value equal to at least 10 percent of the bond proceeds. Qualified purposes with respect to any qualified zone academy are: (1) rehabilitating or repairing the public school facility in which the academy is established; (2) providing equipment for use at such academy; (3) developing course materials for education at such academy, and (4) training teachers and other school personnel. A total of $400 million of qualified zone academy bonds may be issued annually in calendar years 1998 through 2005.

HOUSE BILL[298]

The House bill authorizes $400 million of qualified zone academy bonds to be issued in 2004 and 2005.

Effective date.—The House bill provision is effective for obligations issued after the date of enactment.

SENATE AMENDMENT[299]

The Senate amendment expands the qualified purposes for which qualified zone academy bonds may be issued to include construction of the public school facility in which the qualified zone academy is established, and the acquisition of land on which the facility is to be constructed.

The Senate amendment authorizes $400 million of qualified zone academy bonds to be issued in 2004 and 2005.

Effective date.—The Senate amendment is effective for obligations issued after December 31, 2003.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or the Senate amendment provision.

42. Tax Incentives for Investment in the District of Columbia (sec. 414 of the House bill, sec. 711 of the Senate amendment, and secs. 1400, 1400A, and 1400C of the Code)

PRESENT LAW

Certain economically depressed census tracts within the District of Columbia are designated as the District of Columbia Enterprise Zone (the "D.C. Zone") within which businesses and individual residents are eligible for special tax incentives. The designation expires on December 31, 2005.

First-time homebuyers of a principal residence in the District of Columbia are eligible for a nonrefundable tax credit of up to $5,000 of the amount of the purchase price. The credit expires for property purchased after December 31, 2005.

HOUSE BILL[300]

The House bill extends the D.C. Zone designation and related tax incentives for two years, and extends the first-time homebuyer credit for two years.

Effective date.—The provision takes effect on the date of enactment, except that the provision relating to tax-exempt financing incentives, which applies to obligations issued after December 31, 2003.

SENATE AMENDMENT[301]

Same as the House bill.

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[289] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[290] The Senate amendment predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[291] Treas. Reg. sec. 1.611-1(b)(1).

[292] Secs. 611-613.

[293] Sec. 613A.

[294] Sec. 613A(c).

[295] Sec. 613(a).

[296] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[297] The Senate amendment predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[298] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[299] The Senate amendment predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[300] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[301] The Senate amendment predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

Effective date.—The provision takes effect on January 1, 2004, except that the provision relating to tax-exempt financing incentives applies to obligations issued after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or the Senate amendment provision.

43. Modifications to New York Liberty Zone bond provisions (sec. 415 of the House bill, secs. 611 and 709 of the Senate amendment, and sec. 1400L of the Code)

PRESENT LAW

An aggregate of $8 billion in tax-exempt private activity bonds is authorized for the purpose of financing the construction and repair of infrastructure in New York City ("Liberty Zone bonds"). The bonds must be issued before January 1, 2010.

Certain bonds used to fund facilities located in New York City are permitted one additional advance refunding before January 1, 2006 ("advance refunding bonds"). In addition to satisfying other requirements, the bond refunded must be (1) a State or local bond that is a general obligation of New York City, (2) a State or local bond issued by the New York Municipal Water Finance Authority or Metropolitan Transportation Authority of the City of New York, or (3) a qualified 501(c)(3) bond which is a qualified hospital bond issued by or on behalf of the State of New York or the City of New York.[302] The maximum amount of advance refunding bonds is $9 billion.

HOUSE BILL[303]

The House bill provision extends authority to issue Liberty Zone bonds through December 31, 2009.

Effective date.—The provision is effective for bonds issued after the date of enactment and before January 1, 2010.

SENATE AMENDMENT[304]

The Senate amendment extends authority to issue Liberty Zone bonds through December 31, 2009, and extends the additional advance refunding authority through December 31, 2005. The Senate amendment provides that bonds issued by the Municipal Assistance Corporation are eligible for advance refunding.

Effective date.—The provisions extending authority to issue Liberty Zone bonds and an additional advance refunding are effective on the date of enactment. The provision relating to the advance refunding of bonds of the Municipal Assistance Corporation is effective as if included in the amendments made by section 301 of the Job Creation and Worker Assistance Act of 2002.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or the Senate amendment provision.

44. Qualified New York Liberty Zone leasehold improvement election out (sec. 709(c) of the Senate amendment)

PRESENT LAW

Qualified New York Liberty Zone leasehold improvements placed in service after September 10, 2001 and before January 1, 2007 are depreciable over five years (rather than 39 years) using the straight line method of depreciation. There is no election out of this provision.

Liberty Zone leasehold improvements that are eligible for a five-year recovery period are not also eligible for the 30-percent first-year bonus depreciation under section 168(k) or 1400L(b). A taxpayer may elect out of bonus depreciation. The election out is made at the property class level. Section 168(k)(2)(C)(iii) provides that the election applies to all property in the class or classes for which the election out is made that is placed in service for the tax year of the election.

HOUSE BILL[305]

No provision.

SENATE AMENDMENT[306]

The Senate amendment permits a taxpayer to elect out of the five-year recovery period for qualified New York Liberty Zone leasehold improvement property under rules similar to section 168(k)(2)(C)(iii).

Effective date.—The Senate amendment is effective as if included in the amendments made by section 301 of the Job Creation and Worker Assistance Act of 2002.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

45. Disclosures relating to terrorist activities (sec. 416 of the House bill and sec. 6103 of the Code)

PRESENT LAW

In connection with terrorist activities, the IRS is permitted to disclose return information, other than taxpayer return information, to officers and employees of Federal law enforcement upon a written request. The Code requires the request to be made by the head of the Federal law enforcement agency (or his delegate) involved in the response to or investigation of terrorist incidents, threats, or activities, and set forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity. Disclosure of the information is permitted to officers and employees of the Federal law enforcement agency who are personally and directly involved in the response to or investigation of terrorist incidents, threats, or activities. The information is to be used by such officers and employees solely for such response or investigation.[307] A taxpayer's identity is not treated as taxpayer return information for purposes of disclosures to law enforcement agencies regarding terrorist activities.

The Code permits the head of the Federal law enforcement agency to redisclose the information to officers and employees of State and local law enforcement personally and directly engaged in the response to or investigation of the terrorist incident, threat, or activity. The State or local law enforcement agency is required to be part of an investigative or response team with the Federal law enforcement agency for these disclosures to be made.[308]

The Code also allows the IRS to disclose return information (other than taxpayer return information) upon the written request of an officer or employee of the Department of Justice or Treasury who is appointed by the President with the advice and consent of the Senate, or who is the Director of the U.S. Secret Service, if such individual is responsible for the collection and analysis of intelligence and counterintelligence concerning any terrorist incident, threat, or activity.[309] Taxpayer identity information for this purpose is not considered taxpayer return information. Such written request is required to set forth the specific reason or reasons why such disclosure may be relevant to a terrorist incident, threat, or activity. Disclosures under this authority are permitted to be made to those officers and employees of the Department of Justice, Treasury, and Federal intelligence agencies who are personally and directly engaged in the collection or analysis of intelligence and counterintelligence information or investigation concerning any terrorist incident, threat, or activity. Such disclosures are permitted solely for the use of such officers and employees in such investigation, collection, or analysis.

The IRS, on its own initiative, is permitted to disclose in writing return information (other than taxpayer return information) that may be related to a terrorist incident, threat, or activity to the extent necessary to apprise the head of the appropriate investigating Federal law enforcement agency.[310] Taxpayer identity information for this purpose is not considered taxpayer return information. The head of the agency is permitted to redisclose such information to officers and employees of such agency to the extent necessary to investigate or respond to the terrorist incident, threat, or activity.

If taxpayer return information is sought, the disclosure is required to be made pursuant to the ex parte order of a Federal district court judge or magistrate.

No disclosures may be made under these provisions after December 31, 2005.

HOUSE BILL[311]

The House bill provision extends all disclosure authority relating to terrorist activities through December 31, 2005. The House bill provision permits the disclosure of taxpayer identity upon receiving a proper written request from the head of a Federal law enforcement agency.

Effective date.—The House bill generally applies to disclosures made on or after the date of enactment. The provision permitting the disclosure of taxpayer identity upon receiving a proper written request from the head of a Federal law enforcement agency is effective as if included in section 201 of the Victims of Terrorism Tax Relief Act of 2001.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or the Senate amendment provision.

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[302] On July 8, 2002, the IRS issued Notice 2002-42, which provides that bonds issued by the Municipal Assistance Corporation for the City of New York are eligible for the advance refunding provisions of section 1400L(e) if they otherwise satisfy the requirements of that section.

[303] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[304] The Senate amendment predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[305] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[306] The Senate amendment predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[307] Sec. 6103(i)(7)(A).

[308] Sec. 6103(i)(7)(A)(ii).

[309] Sec. 6103(i)(7)(B).

[310] Sec. 6103(i)(3)(C).

[311] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

46. Disclosure of return information relating to student loans (sec. 417 of the House bill, sec. 718 of the Senate amendment, and sec. 6103(l) of the Code)

PRESENT LAW

Present law prohibits the disclosure of returns and return information, except to the extent specifically authorized by the Code.[312] An exception is provided for disclosure to the Department of Education (but not to contractors thereof) of a taxpayer's filing status, adjusted gross income and identity information (i.e., name, mailing address, taxpayer identifying number) to establish an appropriate repayment amount for an applicable student loan.[313] The Department of Education disclosure authority is scheduled to expire after December 31, 2005.[314]

An exception to the general rule prohibiting disclosure is also provided for the disclosure of returns and return information to a designee of the taxpayer.[315] Because the Department of Education utilizes contractors for the income-contingent loan verification program, the Department of Education obtains taxpayer information by consent under section 6103(c), rather than under the specific exception.[316] The Department of Treasury has reported that the Internal Revenue Service processes approximately 100,000 consents per year for this purpose.[317]

HOUSE BILL[318]

The House bill extends the disclosure authority relating to the disclosure of return information to carry out income-contingent repayment of student loans. No disclosures can be made after December 31, 2005.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT[319]

Same as the House bill.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or the Senate 'amendment provision.

47. Extension of cover over of excise tax on distilled spirits to Puerto Rico and Virgin Islands (sec. 418 of the House bill, sec. 705 of the Senate amendment, and sec. 7652 of the Code)

PRESENT LAW

A $13.50 per proof gallon (a proof gallon is a liquid gallon consisting of 50 percent alcohol) excise tax is imposed on distilled spirits produced in or imported into the United States.

The Code provides for cover over (payment) to Puerto Rico and the Virgin Islands of the excise tax imposed on rum imported into the United States, without regard to the country of origin. The amount of the cover over is limited under section 7652(f) to $10.50 per proof gallon ($13.25 per proof gallon during the period July 1, 1999 through December 31, 2003).

Thus, tax amounts attributable to rum produced in Puerto Rico are covered over to Puerto Rico. Tax amounts attributable to rum produced in the Virgin Islands are covered over to the Virgin Islands. Tax amounts attributable to rum produced in neither Puerto Rico nor the Virgin Islands are divided and covered over to the two possessions under a formula. All of the amounts covered over are subject to the limitation.

Section 305 of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004") temporarily suspended the $10.50 per proof gallon limitation on the amount of excise taxes on rum covered over to Puerto Rico and the Virgin Islands. That law extended the cover over amount of $13.25 per proof gallon for rum brought into the United States after December 31, 2003, and before January 1, 2006. After December 31, 2005, the cover over amount reverts to $10.50 per proof gallon.

HOUSE BILL[320]

The provision temporarily suspends the $10.50 per proof gallon limitation on the amount of excise taxes on rum covered over to Puerto Rico and the Virgin Islands. Under the provision, the cover over amount of $13.25 per proof gallon is extended for rum brought into the United States after December 31, 2003, and before January 1, 2006. After December 31, 2005, the cover over amount reverts to $10.50 per proof gallon.

Effective date.—The provision applies to articles brought into the United States after December 31, 2003.

SENATE AMENDMENT[321]

Same as the House bill.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill and the Senate amendment provision.

48. Joint review of strategic plans and budget for the IRS (sec. 419 of the House bill and secs. 8021 and 8022 of the Code)

PRESENT LAW

The Joint Committee on Taxation is required to conduct a joint review[322] of the strategic plans and budget of the IRS from 1999 through 2004.[323] The joint review required in 2004 is considered as timely if conducted before June 1, 2005. The Joint Committee was required to provide an annual report[324] from 1999 through 2003 with respect to:

Strategic and business plans for the IRS;

Progress of the IRS in meeting its objectives;

The budget for the IRS and whether it supports its objectives;

Progress of the IRS in improving taxpayer service and compliance;

Progress of the IRS on technology modernization; and

The annual filing season.

With respect to the annual report for the joint review required in 2004, the report must cover the matters addressed in the joint review.

HOUSE BILL[325]

The Joint Committee on Taxation is required to conduct a joint review before June 1, 2005, and to provide an annual report with respect to such joint review. The content of the annual report is the matters addressed in the joint review.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

49. Extension of parity in the application of certain limits to mental health benefits (sec. 420 of the House bill, sec. 701 of the Senate amendment, sec. 9812 of the Code, sec. 712 of ERISA, and section 2705 of the PHSA)

PRESENT LAW

The Mental Health Parity Act of 1996 amended the Employee Retirement Income Security Act of 1974 ("ERISA") and the Public Health Service Act ("PHSA") to provide that group health plans that provide both medical and surgical benefits and mental health benefits cannot impose aggregate lifetime or annual dollar limits on mental health benefits that are not imposed on substantially all medical and surgical benefits. The provisions of the Mental Health Parity Act were initially effective with respect to plan years beginning on or after January 1, 1998, for a temporary period. Since enactment, the mental health parity requirements in ERISA and the PHSA have been extended on more than one occasion and were most recently extended to apply with respect to benefits for services furnished before January 1, 2006, by the Working Families Tax Relief Act of 2004 ("WFTRA").[326]

The Taxpayer Relief Act of 1997 added to the Code the requirements imposed under the Mental Health Parity Act, and imposed an excise tax on group health plans that fail to meet the requirements. The excise tax is equal to $100 per day during the period of noncompliance and is generally imposed on the employer sponsoring the plan if the plan fails to meet the requirements. The maximum tax that can be imposed during a taxable year cannot exceed the lesser of 10 percent of the employer's group health plan expenses for the prior year or $500,000. No tax is imposed if the Secretary determines that the employer did not know, and exercising reasonable diligence would not have known, that the failure existed.

The mental health parity requirements in the Code were initially effective with respect to plan years beginning on or after January 1, 1998, for a temporary period. Since enactment, the mental health parity requirements in the Code have been extended on more than one occasion and were most recently extended to apply with respect to benefits for services furnished before January 1, 2006, by the WFTRA.

HOUSE BILL[327]

The House bill extends the Code provisions relating to mental health parity to benefits for services furnished on or after the date of enactment and before January 1, 2006. The excise tax on failures to meet the requirements imposed by the Code provisions does not apply after December 31, 2003, and before the date of enactment.

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[312] Sec. 6103.

[313] Sec. 6103(l)(13).

[314] Pub. L. No. 108-311 (2004).

[315] Sec. 6103(c).

[316] Department of Treasury, Report to the Congress on Scope and Use of Taxpayer Confidentiality and Disclosure Provisions, Volume I: Study of General Provisions (October 2000) at 91.

[317] Department of Treasury, General Explanations of the Administration's Fiscal Year 2004 Revenue Proposals (February 2003) at 133.

[318] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[319] The Senate amendment predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[320] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[321] The Senate amendment predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[322] The joint review is required to include two members of the majority and one member of the minority of the Senate Committees on Finance, Appropriations, and Governmental Affairs, and of the House Committees on Ways and Means, Appropriations, and Government Reform and Oversight.

[323] Sec. 8021(f).

[324] Sec. 8022(3)(C).

[325] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[326] Pub. L. No. 108-311 (2004).

[327] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax

Effective date. The provision is effective for benefits for services furnished on or after December 31, 2003.

SENATE AMENDMENT[328]

The Senate amendment extends the ERISA and PHSA provisions relating to mental health parity to benefits for services furnished before January 1, 2006. The Senate amendment also extends the Code provisions relating to mental health parity to benefits for services furnished on or after the date of enactment and before January 1, 2006. The excise tax on failures to meet the requirements imposed by the Code provisions does not apply after December 31, 2003, and before the date of enactment.

Effective date. The Senate amendment provision extending the Code provision applies to benefits for services furnished on or after December 31, 2003. The ERISA and PHSA provisions apply to benefits for services furnished on or after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or the Senate amendment provision.

50. Combined employment tax reporting (sec. 421 of the House bill and sec. 712 of the Senate amendment)

PRESENT LAW

Traditionally, Federal tax forms are filed with the Federal government and State tax forms are filed with individual States. This necessitates duplication of items common to both returns.

The Taxpayer Relief Act of 1997 permits implementation of a limited demonstration project to assess the feasibility and desirability of expanding combined Federal and State reporting. As enacted, it was limited to the sharing of information between the State of Montana and the IRS, but any State may participate in a combined reporting program under present law. However, the project is limited to employment tax reporting. In addition, it is limited to disclosure of the name, address, TIN, and signature of the taxpayer. The authority for the demonstration project expired on the date five years after the date of enactment (August 5, 2002).

The Working Families Tax Relief Act of 2004 expanded to all States the authority to participate in a combined Federal and State employment tax reporting program. The authority for this expanded program expires December 31, 2005.

HOUSE BILL[329]

The House bill provision extends the demonstration project through December 31, 2005.

Effective date. The House bill provision takes effect on the date of enactment.

SENATE AMENDMENT[330]

The Senate amendment provides permanent authority for any State to participate in a combined Federal and State employment tax reporting program, provided that the program has been approved by the Secretary.

Effective date. The Senate amendment takes effect on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or the Senate amendment provision.

51. Deduction for qualified clean fuel vehicle property (sec. 422 of the House bill, sec. 721 of the Senate amendment, and sec. 179 of the Code)

PRESENT LAW

Certain costs of qualified clean-fuel vehicles may be expensed and deducted when such property is placed in service. Qualified clean-fuel vehicle property includes motor vehicles that use certain clean-burning fuels (natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, electricity and any other fuel at least 85 percent of which is methanol, ethanol, any other alcohol or ether). The maximum amount of the deduction is $50,000 for a truck or van with a gross vehicle weight over 26,000 pounds or a bus with seating capacities of at least 20 adults; $5,000 in the case of a truck or van with a gross vehicle weight between 10,000 and 26,000 pounds; and $2,000 in the case of any other motor vehicle. The deduction is one quarter of the otherwise allowable amount in 2006, and is unavailable for purchases after December 31, 2006.

HOUSE BILL[331]

The House bill repeals the phase down of the allowable deduction for clean-fuel vehicles in 2004 and 2005. Thus, a taxpayer who purchases a qualifying vehicle may claim 100 percent of the otherwise allowable deduction for vehicles purchased in 2004 and 2005. For vehicles purchased in 2006 the deduction remains at 25 percent of the otherwise allowable amount as under present law.

Effective date. The provision is effective for vehicles placed in service after December 31, 2003.

SENATE AMENDMENT[332]

The Senate amendment repeals the phase down for each of 2004, 2005, and 2006.

(Other sections of the Senate amendment create new credits for the purchase of certain vehicles that would be qualified clean fuel vehicles under present law. These modifications are not described in this document.)

Effective date. The provision is effective for vehicles placed in service after December 31, 2003.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or the Senate amendment provision.

52. Credit for qualified electric vehicles (sec. 422 of the House bill, sec. 720 of the Senate amendment, and sec. 30 of the Code)

PRESENT LAW

A ten-percent tax credit is provided for the cost of a qualified electric vehicle, up to a maximum credit of $4,000. A qualified electric vehicle generally is a motor vehicle that is powered primarily by an electric motor drawing current from rechargeable batteries, fuel cells, or other portable sources of electrical current. The full amount of the credit is available for purchases prior to 2006. The credit is reduced for purchases in 2006, and is unavailable for purchases after December 31, 2006.

HOUSE BILL[333]

The House bill repeals the phase down of allowable tax credit for electric vehicles in 2004 and 2005. Thus, a taxpayer who purchases a qualifying vehicle may claim 100 percent of the otherwise allowable credit for vehicles purchased in 2004 and 2005. For vehicles purchased in 2006 the credit remains at 25 percent of the otherwise allowable amount as under present law.

Effective date. The provision is effective for vehicles placed in service after December 31, 2003.

SENATE AMENDMENT[334]

The Senate amendment repeals the phase down for each of 2004, 2005, and 2006.

(Other sections of the Senate amendment modify the credit. These modifications are not described in this document.)

Effective date. The provision is effective for vehicles placed in service after December 31, 2003.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill or the Senate amendment provision.

53. Repeal of reduction of deductions for mutual life insurance companies (sec. 710 of the Senate amendment and sec. 809 of the Code)

PRESENT LAW

The Pension Funding Equity Act of 2004[335] repealed the rule requiring reduction in certain deductions of a mutual life insurance company (sec. 809), effective for taxable years beginning after 2004.

For taxable years beginning in 2004, under section 809, a mutual life insurance company is required to reduce its deduction for policyholder dividends by the company's differential earnings amount. If the company's differential earnings amount exceeds the amount of its deductible policyholder dividends, the company is required to reduce its deduction for changes in its reserves by the excess of its differential earnings amount over the amount of its deductible policyholder dividends. The differential earnings amount is the product of the differential earnings rate and the average equity base of a mutual life insurance company.

The differential earnings rate is based on the difference between the average earnings rate of the 50 largest stock life insurance companies and the earnings rate of all mutual life insurance companies. The mutual earnings rate applied under the provision is the rate for the second calendar year preceding the calendar year in which the taxable year begins. Under present law, the differential earnings rate cannot be a negative number.

A company's equity base equals the sum of: (1) its surplus and capital increased by 50

Relief Act of 2004''), which included a number of extensions to expiring provisions.

[328] The Senate amendment predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the ''Working Families Tax Relief Act of 2004''), which included a number of extensions to expiring provisions.

[329] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the ''Working Families Tax Relief Act of 2004''), which included a number of extensions to expiring provisions.

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[334] The Senate amendment predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the ''Working Families Tax Relief Act of 2004''), which included a number of extensions to expiring provisions.

[335] Pub. L. No. 108-218.

percent of the amount of any provision for policyholder dividends payable in the following taxable year; (2) the amount of its nonadmitted financial assets; (3) the excess of its statutory reserves over its tax reserves; and (4) the amount of any mandatory security valuation reserves, deficiency reserves, and voluntary reserves. A company's average equity base is the average of the company's equity base at the end of the taxable year and its equity base at the end of the preceding taxable year.

A recomputation or "true-up" in the succeeding year is required if the differential earnings amount for the taxable year either exceeds, or is less than, the recomputed differential earnings amount. The recomputed differential earnings amount is calculated taking into account the average mutual earnings rate for the calendar year (rather than the second preceding calendar year, as above). The amount of the true-up for any taxable year is added to, or deducted from, the mutual company's income for the succeeding taxable year.

For taxable years beginning in 2001, 2002, or 2003, the differential earnings amount is treated as zero for purposes of computing both the differential earnings amount and the recomputed differential earnings amount (true-up).

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision repeals the rule requiring reduction in certain deductions of a mutual life insurance company (sec. 809) for taxable years beginning in 2004.

Effective date.—The provision is effective for taxable years beginning after December 31, 2003.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

54. Study of earnings stripping provisions (sec. 163(j) of the Code)

PRESENT LAW

Present law provides rules to limit the ability of U.S. corporations to reduce the U.S. tax on their U.S.-source income through certain earnings stripping transactions. These rules limit the deductibility of interest paid to certain related parties ("disqualified interest"), if the payor's debt-equity ratio exceeds 1.5 to 1 and the payor's net interest expense exceeds 50 percent of its "adjusted taxable income" (generally taxable income computed without regard to deductions for net interest expense, net operating losses, and depreciation, amortization, and depletion). Disqualified interest for these purposes also may include interest paid to unrelated parties in certain cases in which a related party guarantees the debt.

HOUSE BILL

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement requires the Treasury Department to conduct a study of the earnings stripping rules, including a study of the effectiveness of these rules in preventing the shifting of income outside the United States, whether any deficiencies in these rules have the effect of placing U.S.-based businesses at a competitive disadvantage relative to foreign-based businesses, the impact of earnings stripping activities on the U.S. tax base, whether laws of foreign countries facilitate the stripping of earnings out of the United States, and whether changes to the earnings stripping rules would affect jobs in the United States. This study is to include specific recommendations for improving these rules and is to be submitted to the Congress not later than June 30, 2005.

Effective date.—The provision is effective on the date of enactment.

TITLE V—DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES

A. DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES

(sec. 501 of the House bill and sec. 164 of the Code)

PRESENT LAW

An itemized deduction is permitted for certain State and local taxes paid, including individual income taxes, real property taxes, and personal property taxes. No itemized deduction is permitted for State or local general sales taxes.

HOUSE BILL

The provision provides that, at the election of the taxpayer, an itemized deduction may be taken for State and local general sales taxes in lieu of the itemized deduction provided under present law for State and local income taxes. The allowable deduction would be determined under tables prescribed by the Secretary. The tables would be based on the average consumption of taxpayers on a State-by-State basis, and would take into account filing status, number of dependents, adjusted gross income, and rates of State and local general sales taxes.

The term 'general sales tax' means a tax imposed at one rate with respect to the sale at retail of a broad range of classes of items. However, in the case of items of food, clothing, medical supplies, and motor vehicles, the fact that the tax does not apply with respect to some or all of such items is not taken into account in determining whether the tax applies with respect to a broad range of classes of items, and the fact that the rate of tax applicable with respect to some or all of such items is lower than the general rate of tax is not taken into account in determining whether the tax is imposed at one rate. Except in the case of a lower rate of tax applicable with respect to food, clothing, medical supplies, or motor vehicles, no deduction is allowed for any general sales tax imposed with respect to an item at a rate other than the general rate of tax. However, in the case of motor vehicles, if the rate of tax exceeds the general rate, such excess shall be disregarded and the general rate is treated as the rate of tax.

A compensating use tax with respect to an item is treated as a general sales tax, provided such tax is complimentary to a general sales tax and a deduction for sales taxes is allowable with respect to items sold at retail in the taxing jurisdiction that are similar to such item.

Effective date.—The provision is effective for taxable years beginning after December 31, 2003, and prior to January 1, 2006.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill with the following modification.

Rather than requiring that taxpayers use tables prescribed by the Secretary to determine their allowable sales tax deduction, taxpayers would instead have two options with respect to the determination of the sales tax deduction amount. Taxpayers would be able to deduct the total amount of general State and local sales taxes paid by accumulating receipts showing general sales taxes paid. Alternatively, taxpayers may use tables created by the Secretary of the Treasury. The tables are to be based on average consumption by taxpayers on a State-by-State basis taking into account filing status, number of dependents, adjusted gross income and rates of State and local general sales taxation. Taxpayers who use the tables created by the Secretary may, in addition to the table amounts, deduct eligible general sales taxes paid with respect to the purchase of motor vehicles, boats and other items specified by the Secretary. Sales taxes for items that may be added to the tables would not be reflected in the tables themselves.

The IRS is currently in the process of finalizing tax forms for 2004. The Code has not contained an itemized deduction for State and local sales taxes for a number of years. Developing the tables required by the provision will in general require a significant amount of time and effort. The conferees anticipate that IRS will do the best they can to reasonably and accurately implement this statutory provision in order to effectuate the deduction for the 2005 filing season.

TITLE VI—FAIR AND EQUITABLE TOBACCO REFORM

A. TOBACCO REFORM

(Secs. 701–725 of the House bill and title XI of the Senate amendment)

PRESENT LAW

The current tobacco program has two main components: a supply management component and a price support component. In addition, in 1982, Congress passed the "No-Net-Cost Tobacco Program Act"[336] that assured the tobacco program would run at no net cost to the Federal government.

Supply management

The supply management component limits and stabilizes the quantity of tobacco marketed by farmers. This is achieved through marketing quotas. The Secretary of Agriculture raises or lowers the national marketing quota on an annual basis. The Secretary establishes the national marketing quota for each type of tobacco based upon domestic and export demand, but at a price above the government support price. The purpose of matching supply with demand is to keep the price of tobacco high. There is a secondary market in tobacco quota. Tobacco growers who do not have sufficient quota may purchase or rent one.

Support price

Given the numerous variables that affect tobacco supply and demand, marketing quotas alone have not always been able to guarantee tobacco prices. Therefore, in addition to marketing quotas, Federal support prices are established and guaranteed through the mechanism of nonrecourse loans available on each farmer's marketed crop. The loan price for each type of tobacco is announced each year by the Department of Agriculture using the formula specified in the law to calculate loan levels. This system guarantees minimum prices for the different types of tobacco.

The national loan price on 2004 crop flue-cured tobacco is $1.69 per pound; the burley loan price is $1.873 per pound.

No-net-cost assessment

In 1982, Congress passed the "No-Net-Cost Tobacco Program Act." The purpose of this program is to ensure that the nonrecourse loan program is run at no net cost to the Federal government.

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[336] Pub. L. No. 97–218 (1982).

When tobacco is not contracted, it is sold at an auction sale barn. At the auction sale barn, each lot of tobacco goes to the highest bidder, unless that bid does not exceed the government's loan price. When the bid does not exceed this price, the farmer may choose to be paid the loan price by a cooperative, with money borrowed from the Commodity Credit Corporation ("CCC"). In such cases, the tobacco is consigned to the cooperative (known as a price stabilization cooperative), which redries, packs, and stores the tobacco as collateral for the CCC. The cooperative, acting as an agent for the CCC, later sells the tobacco, with the proceeds going to repay the loan plus interest. If the cooperative does not recover the cost of the loan plus interest, the Secretary of Agriculture assesses growers, purchasers and importers of tobacco in order to repay the difference. All growers, purchasers and importers of tobacco participate in paying these assessments, regardless of whether or not they participate in the loan program.

The no-net-cost assessment on 2004 crop flue-cured is $0.10 per pound; the burley assessment is $0.02 per pound. The no-net-cost assessment funds are deposited in an escrow account that is held to reimburse the government for any financial losses resulting from tobacco loan operations.

Currently, over 80 percent of growers market their tobacco through contracts with tobacco companies, and thus these growers do not participate in the loan program. However, they must still pay the no-net-cost assessment when the Secretary levies it. The remaining 20 percent of growers market their tobacco through the auction system, and are eligible for participation in the loan program. Of this group, over 60 percent have consistently participated in the loan program during the past several years.

HOUSE BILL

The House bill repeals the Federal tobacco support program, including marketing quotas and nonrecourse marketing loans. The House bill also provides quota holders $7.00 per pound based on their 2002 quota allotment paid in equal installments over five years. Additionally, the House bill provides producers transition payments of $3.00 per pound based on their 2002 quota levels paid in equal installments over five years. The House bill caps payments to quota holders and growers at $9.6 billion over fiscal years 2005 through 2009. The House bill applies to the 2005 and subsequent crops of tobacco.

Effective date.—The House bill is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment ends the current Federal tobacco program. The Senate amendment also provides quota holders $8.00 per pound based on their 2002 quota levels paid over a 10-year period. Additionally, the Senate amendment provides tobacco growers with of $4.00 per pound based on their 2002 quota levels, paid over a 10 year period. The payments are funded by assessments on tobacco companies. The Senate amendment also restricts tobacco production to traditional tobacco producing counties and provides poundage and acreage limitations on how much tobacco can be produced in the future as determined by production boards for each type of tobacco. The Senate amendment applies to the 2004 and subsequent crops of tobacco.

Additionally, the Senate amendment gives the Food and Drug Administration regulatory authority over the content and marketing of tobacco products.

Effective date.—The Senate amendment is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement repeals all aspects of the Federal tobacco support program, including marketing quotas and nonrecourse marketing loans. The conference agreement provides eligible quota holders $7 per pound on their basic quota allotment paid in equal installments over 10 years. Additionally, the conference agreement provides eligible producers transition payments of $3 per pound based on their effective quota paid in equal installments over 10 years.

The Managers intend the payments to producers and quota holders to be made as quickly and effectively as possible. The Managers expect the Secretary to evaluate and consider the utilization of the proven financial and administrative expertise of the Phase II settlement system to achieve effective and prompt payment. The Managers further expect the Secretary to use the facilities of the Farm Service Agency to furnish information relating to accelerated payment options offered by financial institutions.

Manufacturers and importers of tobacco products will pay a quarterly assessment into a newly formed Tobacco Trust Fund. These assessments will be on the following classes of tobacco: Cigarettes, Snuff, Chewing Tobacco, Pipe Tobacco, Roll-your-own tobacco, and Cigars. Assessment allocations will then be divided into manufacturers' and importers' market share. Funds from the Tobacco Trust Fund will be used to provide payments to quota holders and eligible producers as well as pay for program losses incurred by the U.S. Department of Agriculture.

The conference agreement applies to the 2005 and subsequent crops of tobacco.

Effective date.—The conference agreement is effective on the date of enactment.

TITLE VII—PROTECTION OF UNITED STATES WORKERS FROM COMPETITION OF FOREIGN WORKFORCES

The Senate amendment contained a provision relating to protection of United States workers from competition of foreign workforces. The conference agreement does not include the Senate amendment provision.

TITLE VIII—OTHER PROVISIONS

A. PROVISIONS RELATING TO HOUSING

1. Treatment of qualified mortgage revenue bonds (sec. 601 of the Senate amendment and sec. 143 of the Code)

PRESENT LAW

Under present law, qualified mortgage bonds are tax-exempt bonds used to finance owner-occupied residences. Among other requirements, these bonds are subject to income and purchase price limitations, as well as a requirement that the homebuyer not have an ownership interest in the principal residence in the preceding three years.

Generally, in order for a bond to be a qualified mortgage bond, the mortgagor's family income cannot exceed 115 percent of the applicable median family income. Adjustments are made for targeted area residences, for areas that have high housing costs in relation to income, and for family size. Further, 95 percent or more of the net proceeds of qualified mortgage bonds must be used to finance residences for first-time homebuyers. Exceptions are made for financing of targeted area residences, qualified home improvement loans, and qualified rehabilitation loans.

A residence financed with a mortgage funded by qualified mortgage bonds may not have a purchase price in excess of 90 percent of the average area purchase price for that residence. Adjustments are made for residences located in certain low-income or economically distressed areas, and for the number of families for which a residence is designed.

Part or all of the interest subsidy provided by qualified mortgage bonds is recaptured if the borrower experiences substantial increases in income and disposes of the subsidized residence within nine years after purchase. The annual volume limitations imposed on most qualified private activity bonds limits the aggregate face amount of qualified mortgage bonds that may be issued. In addition, repayments of mortgage principal received after 10 years from the date of issue must be used to retire outstanding bonds (the "10-year rule").

HOUSE BILL.

No provision.

SENATE AMENDMENT

The Senate amendment suspends the 10-year rule for one year for outstanding bonds, allowing repayments of principal received during this period to be used to finance new mortgage loans rather than retiring outstanding bonds. The Senate amendment repeals the 10-year rule for bonds originally issued after the date of enactment.

Effective date.—The provision repeals the 10-year rule for bonds issued after the date of enactment and suspends the 10-year rule for outstanding bonds for a one-year period beginning on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

2. Premiums for mortgage insurance (sec. 602 of the Senate amendment and secs. 163(h) and 6050H of the Code)

PRESENT LAW

Present law provides that qualified residence interest is deductible notwithstanding the general rule that personal interest is nondeductible (sec. 163(h)).

Qualified residence interest is interest on acquisition indebtedness and home equity indebtedness with respect to a principal and a second residence of the taxpayer. The maximum amount of home equity indebtedness is $100,000. The maximum amount of acquisition indebtedness is $1 million. Acquisition indebtedness means debt that is incurred in acquiring constructing, or substantially improving a qualified residence of the taxpayer, and that is secured by the residence. Home equity indebtedness is debt (other than acquisition indebtedness) that is secured by the taxpayer's principal or second residence, to the extent the aggregate amount of such debt does not exceed the difference between the total acquisition indebtedness with respect to the residence, and the fair market value of the residence.

HOUSE BILL.

No provision.

SENATE AMENDMENT

The Senate amendment provision provides that premiums paid or accrued for qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness on a qualified residence of the taxpayer are treated as qualified residence interest and thus deductible. The amount allowable as a deduction under the provision is phased out ratably by 10 percent for each $1,000 by which the taxpayer's adjusted gross income exceeds $100,000 ($500 and $50,000, respectively, in the case of a married individual filing a separate return). Thus, the deduction is not allowed if the taxpayer's adjusted gross income exceeds $110,000 ($55,000 in the case of married individual filing a separate return).

For this purpose, qualified mortgage insurance means the Home Loan Guaranty Program of the Department of Veterans Affairs, and mortgage insurance provided by the Federal Housing Administration, or the Rural Housing Administration, and private mortgage insurance (defined in section 2 of the Homeowners Protection Act of 1998).

Amounts paid for qualified mortgage insurance that are properly allocable to periods after the close of the taxable year are treated as paid in the period to which it is allocated. No deduction is allowed for the unamortized balance if the mortgage is paid before its term (except in the case of qualified mortgage insurance provided by the Department of Veterans Affairs or Rural Housing Administration).

Reporting rules apply under the provision.

Effective date.—The Senate amendment provision is effective for amounts paid or accrued after the date of enactment in taxable years beginning after December 31, 2004, and ending before January 1, 2006.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

3. Increase in historic rehabilitation credit for residential housing for the elderly (sec. 603 of the Senate amendment and secs. 42 and 47 of the Code)

PRESENT LAW

Rehabilitation credit

Present law provides a credit for rehabilitation expenditures (sec. 47). A 20-percent credit is provided for rehabilitation expenditures with respect to a certified historic structure. For this purpose, a certified historic structure means any building that is listed in the National Register, or that is located in a registered historic district and is certified by the Secretary of the Interior to the Secretary of the Treasury as being of historic significance to the district.

A building is treated as having been substantially rehabilitated only if the rehabilitation expenditures during the 24-month period selected by the taxpayer and ending within the taxable year exceed the greater of the adjusted basis of the building (and its structural components), or $5,000. The taxpayer's depreciable basis in the property is reduced by any rehabilitation credit claimed.

Low-income housing credit

The low-income housing tax credit (sec. 42) may be claimed over a 10-year period for the cost of rental housing occupied by tenants having incomes below specified levels. The credit percentage for newly constructed or substantially rehabilitated housing that is not Federally subsidized is adjusted monthly by the Internal Revenue Service so that the 10 annual installments have a present value of 70 percent of the total qualified expenditures. The credit percentage for new substantially rehabilitated housing that is Federally subsidized and for existing housing that is substantially rehabilitated is calculated to have a present value of 30 percent of qualified expenditures. The aggregate credit authority provided annually to each State is $1.75 per resident, except in the case of projects that also receive financing with proceeds of tax-exempt bonds issued subject to the private activity bond volume limit and certain carry-over amounts. The $1.75 per resident cap is indexed for inflation.

Qualified basis with respect to which the credit may be computed is generally determined as the portion of the eligible basis of the qualified low-income building attributable to the low-income rental units. Qualified basis generally is the taxpayer's depreciable basis in a qualified low-income building. In the case of a taxpayer who claims the rehabilitation credit for a qualified low-income building, the taxpayer's depreciable basis in the building is reduced by the amount of the rehabilitation credit claimed. In addition, eligible basis is reduced by any Federal grant received with respect to the building. A qualified low-income building is a building that meets certain compliance criteria and is depreciable under the modified accelerated cost recovery system ("MACRS").

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment increases the present-law 20-percent credit for historic rehabilitation expenses to 25 percent in the case of rehabilitation expenses incurred with respect to a building which is also a low-income housing credit property in which substantially all of the tenants, both those tenants in rent-restricted units and in other residential units, are age 65 or greater. The Senate amendment permits the 25-percent rehabilitation credit to be claimed with respect to all parts of the building, not only those parts on which the taxpayer also claims the low-income housing credit.[337]

Effective date.—The Senate amendment provision is effective for property placed in service after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

B. PROVISIONS RELATING TO BONDS

1. Modification of the authority of Indian tribal governments to issue tax-exempt bonds (sec. 613 of the Senate amendment and sec. 7871 of the Code)

PRESENT LAW

Under present law, the interest on bonds issued by an Indian tribal government is tax-exempt if substantially all of the proceeds of are to be used in the exercise of an essential government function. The term essential government function does not include any function that is not customarily performed by State or local governments with general taxing powers. In addition, Indian tribal governments are prohibited from issuing private activity bonds, with the exception of bonds issued to finance certain manufacturing facilities.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment expands the tax-exemption for Indian tribal government bonds to include obligations 95 percent or more of the proceeds of which are used to finance any facility located on an Indian reservation. The tax-exemption does not include any obligations used to finance any portion of a building in which class II or class III gaming (as defined in section 4 of the Indian Gaming Regulatory Act) is conducted or housed.

For purposes of the Senate amendment, an Indian reservation means: (1) a reservation as defined in section 4(10) of the Indian Child Welfare Act of 1978, and (2) lands held under the provisions of the Alaska Native Claims Settlement Act by a Native corporation as defined in section 3(m) of that Act.

Effective date.—The provision is effective for bonds issued after the date of enactment and before January 1, 2006.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

2. Definition of manufacturing facility for qualified small issue bonds (sec. 614 of the Senate amendment and sec. 144 of the Code)

PRESENT LAW

Qualified small-issue bonds are bonds used to finance private business manufacturing facilities or the acquisition of land and equipment by certain farmers. Generally, no more than $1 million of small-issue bond financing may be outstanding at any time for property of a business (including related parties) in the same municipality or county. This $1 million limit may be increased to $10 million if all other capital expenditures of the business (including related parties) in the same municipality or county over a six-year period are counted toward the limit. In addition, 95 percent or more of the net proceeds of qualified small-issue bonds must be used for the acquisition, construction, reconstruction, or improvement of land or property of a character subject to the allowance for depreciation, or to redeem a prior issue that was used for those purposes.

Under present law, a manufacturing facility is defined as any facility used in the manufacturing or production of tangible personal property. Facilities that are directly related and ancillary to a manufacturing facility may be financed with small-issue bonds if such facilities are located on the same site as the manufacturing facility and no more than 25 percent of the net proceeds of the bonds are used to finance such facilities.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment expands the definition of manufacturing facilities eligible for small-issue bond financing to include facilities: (1) used in the manufacture or development of software products or processes, if it takes more than six months to manufacture or develop such products or processes, such manufacture or development could not with due diligence be reasonably expected to occur in less than six months, and the software product or process comprises programs, routines, and attendant documentation developed and maintained for use in computer and telecommunications technology; and (2) used in the manufacture or development of any biobased product or bioenergy, if it takes more than six months to manufacture or develop and the manufacture or development could not with due diligence be reasonably expected to occur in less than six months. The term biobased product means a commercial or industrial product which utilizes biological products or renewable domestic agricultural or forestry materials. The term bioenergy means biomass used in the production of energy, including liquid, solid, or gaseous fuels, electricity, and heat.

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[337] The Senate amendment also repeals a transition rule to the Tax Reform Act of 1986 permitting the taxpayers who own the property described as the Warrior Hotel, Ltd., the first two floors of the Martin Hotel, and the 105,000 square foot warehouse constructed in 1910, all in Sioux City, Iowa, to use ACRS depreciation, in lieu of MACRS depreciation. This change enables such property to qualify for the provision.

The Senate amendment expands the definition of eligible facilities to include directly and functionally related offices and research and development facilities located on the same site as the manufacturing facilities. Such office and research and development facilities may not constitute more than 40 percent of the net proceeds of the issue used to finance the facility.

Effective date.--The provision is effective for bonds issued after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

3. Qualified forest conservation bonds (sec. 615 of the Senate amendment and sec. 142 of the Code)

PRESENT LAW

Tax-exempt bonds

In general

Interest on debt incurred by States or local governments is excluded from income if the proceeds of the borrowing are used to carry out governmental functions of those entities or the debt is repaid with governmental funds. Interest on bonds that nominally are issued by States or local governments, but the proceeds of which are used (directly or indirectly) by a private person and payment of which is derived from funds of such a private person is taxable unless the purpose of the borrowing is approved specifically in the Code or in a non-Code provision of a revenue Act. These bonds are called "private activity bonds." The term "private person" includes the Federal Government and all other individuals and entities other than States or local governments.

Private activities eligible for financing with tax-exempt private activity bonds

Present law includes several exceptions permitting States or local governments to act as conduits providing tax-exempt financing for private activities. Generally, interest on bonds issued to benefit section 501(c)(3) organizations is tax-exempt ("qualified 501(c)(3) bonds"). In addition, States or local governments may issue tax-exempt "exempt-facility bonds" to finance property for certain private businesses. Business facilities eligible for this financing include transportation (airports, ports, local mass commuting, and high speed intercity rail facilities); privately owned and/or privately operated public works facilities (sewage, solid waste disposal, local district heating or cooling, hazardous waste disposal facilities and public educational facilities); privately owned and/or operated low-income rental housing; and certain private facilities for the local furnishing of electricity or gas.

Tax-exempt private activity bonds are subject to restrictions that generally do not apply to other bonds issued by State or local governments. In most cases, the aggregate face amount of tax-exempt private activity bonds that may be issued is restricted by annual volume limits. Moreover, most tax-exempt private activity bonds are subject to a term-to-maturity rule. Under that rule, the average maturity of most tax-exempt private activity bond cannot exceed 120 percent of the economic life of the property being financed.

Section 501(c)(3) organizations generally may not obtain the benefits of exempt facility bonds for debt issued and used to acquire forests and forest lands. In addition, qualified 501(c)(3) bonds may not be issued to acquire forests and forest lands to the extent such lands are used to finance a trade or business that is unrelated to the exempt purposes of the organization. Whether income derived by a section 501(c)(3) organization from timber harvesting is unrelated trade or business income depends upon a variety of factors.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that qualified forest conservation bonds are treated as exempt facility bonds. Qualified forest conservation bonds are bonds issued for a qualified organization if 95 percent or more of the net proceeds of such bonds are used for qualified project costs, including acquisition of forests and forest land, capitalized interest, and credit enhancement fees that constitute qualified guarantee fees (within the meaning of section 148 of the Code). The costs of acquiring forests and forest land are qualified project costs if such land is acquired by a qualified organization from an unrelated party and at the time of acquisition or immediately thereafter such land is subject to a conservation restriction. Among other requirements, a qualified organization must be a nonprofit organization more than half the value of which consists of forests and forest land acquired with the proceeds of qualified forest conservation bonds.

The volume limitation on tax-exempt private activity bonds does not apply to qualified forest conservation bonds. Rather, the maximum aggregate face amount of qualified forest conservation bonds that may be issued is $1.5 billion, to be allocated by the Secretary of Treasury among qualified organizations. For purposes of the term-to-maturity rule, the land and timber acquired with qualified forest conservation bonds shall have an economic life of 35 years.

The Senate amendment provides that certain timber harvesting income derived by a qualified organization from forest lands acquired with proceeds from the qualified forest conservation bonds is excludable from income to the extent such income is used to pay debt service on the bonds and satisfies other conservation restrictions.

Effective date.--The provision is effective for bonds issued on or after the date that is 180 days after the date of enactment and before December 31, 2006.

CONFERENCE AGREEMENT

The conference agreement does not contain the Senate amendment provision.

4. Qualified tribal school modernization bonds (sec. 616 of the Senate amendment)

PRESENT LAW

Under present law, the interest on bonds issued by an Indian tribal government is tax-exempt if substantially all of the proceeds of are to be used in the exercise of an essential government function. The term essential government function does not include any function that is not customarily performed by State or local governments with general taxing powers. In addition, Indian tribal governments are prohibited from issuing private activity bonds, with the exception of bonds issued for certain manufacturing facilities.

There is no present law provision that permits Indian tribal governments to issue tax-credit bonds.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment authorizes the Secretary of the Interior to establish a program under which eligible Indian tribes may issue qualified tribal school modernization bonds ("tribal school bonds"). A tribal school bond means any bond issued under the program if: (1) 95 percent of the proceeds of the issue are used for the construction, rehabilitation, or repair of a school facility funded by the Bureau of Indian Affairs of the Department of the Interior or for the acquisition of land on which such a school facility is to be constructed; (2) the bond is issued by an Indian tribe; (3) the issuer designates the bond for purposes of the program; and (4) the term of each bond that is part of such an issue does not exceed 15 years. For purposes of the provision, the term Indian tribe has the same meaning as the term Indian tribal government under section 7701(a)(40) of the Code (including the application of section 7871(d)) and any consortium of tribes approved by the Secretary of the Interior.

Under the provision, the holder of a tribal school bond receives a nonrefundable tax credit, in lieu of interest. The amount of the credit allowed is included in the holder's gross income as interest income. Unused credits may be carried forward to the succeeding taxable year.

The Senate amendment authorizes the Secretary of the Interior to establish an escrow fund to secure repayment of tribal school bonds. Principal payments on tribal school bonds may only be made from amounts in the escrow fund and such bonds are not guaranteed by the United States, the issuing Indian tribe, or the tribal school for which the bond was issued.

The Senate amendment establishes a national limitation of $200 million on the amount of tribal school bonds that may be designated in each of the years 2005 and 2006. The authority to issue tribal school bonds shall be allocated to Indian tribes by the Secretary of the Interior.

Effective date.---The provision is effective on the date of enactment with respect to bonds issued after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

C. PROVISIONS RELATING TO DEPRECIATION

1. 7-year recovery period for certain track facilities (sec. 623 of the Senate amendment and sec. 168 of the Code)

PRESENT LAW

A taxpayer generally must capitalize the cost of property used in a trade or business and recover such cost over time through annual deductions for depreciation or amortization. Tangible property generally is depreciated under the modified accelerated cost recovery system ("MACRS"), which determines depreciation by applying specific recovery periods, placed-in-service conventions, and depreciation methods to the cost of various types of depreciable property (sec. 168). The cost of nonresidential real property is recovered using the straight-line method of depreciation and a recovery period of 39 years. Nonresidential real property is subject to the mid-month placed-in-service convention. Under the mid-month convention, the depreciation allowance for the first year property is placed in service is based on the number of months the property was in service, and property placed in service at any time during a month is treated as having been placed in service in the middle of the month. Land improvements (such as roads and fences) are recovered over 15 years. An exception exists for the theme and amusement park industry, whose assets are assigned a recovery period of seven years.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides a statutory 7-year recovery period for permanent motorsports racetrack complexes. For this purpose, motorsports racetrack complexes include land improvements and support facilities but do not include transportation equipment, warehouses, administrative buildings, hotels, or motels.

Effective date.—The Senate amendment is effective for property placed in service after date of enactment and before January 1, 2008. No inference is intended with respect to the treatment of expenses incurred prior to the effective date.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with the following modification to the effective date provisions.

Effective date.—The conference agreement is effective for property placed in service after the date of enactment and before January 1, 2008. The conference agreement also excludes racetrack facilities placed in service after the date of enactment from the definition of theme and amusement facilities classified under Asset Class 80.0. The conferees do not intend for this provision to create any inference as to the treatment of property placed in service on or before the date of enactment. Accordingly, the conferees do not intend for the provision to affect the interpretation of the scope of Asset Class 80.0 for assets placed in service prior to the date of enactment. The conferees strongly urge the Secretary to resolve expeditiously any taxpayer disputes with respect to the scope of Class 80.0.

2. Alternative minimum tax and credits (sec. 624 of the Senate amendment and secs. 38 and 53 of the Code)

PRESENT LAW

Election to Increase Minimum Tax Credit Limitation in Lieu of Bonus Depreciation

Under present law, corporations are entitled to a minimum tax credit for the minimum tax imposed in prior taxable years. The amount of the credit is limited to the excess of the taxpayer's regular tax over the tentative minimum tax ("minimum tax credit limitation").

Under present law, certain property is allowed an additional depreciation allowance for the taxable year placed in service. This additional allowance is known as "bonus depreciation". Bonus depreciation is a temporary provision.

Use of General Business Credits Against the Alternative Minimum Tax

Under present law, the general business credit for any taxable year is limited to the excess of the taxpayer's income tax over the tentative minimum tax (or, if greater, 25 percent of the regular tax liability in excess of $25,000).[338]

HOUSE BILL

No provision.

SENATE AMENDMENT

Election to Increase Minimum Tax Credit Limitation in Lieu of Bonus Depreciation

The Senate amendment provides an election by a corporation to increase its minimum tax credit limitation for a taxable year by one half of the bonus depreciation amount. If a corporation makes an election for any taxable year, no bonus depreciation is allowed with respect to any property placed in service by the corporation for the taxable year. The bonus depreciation amount for a taxable year is an amount (not in excess of $25 million) equal to 30 percent of the aggregate bonus depreciation that would have been allowable but for the election. Any minimum tax credit allowable by reason of the election may be refundable to the extent it exceeds the corporation's tax liability.

Effective date.—Taxable years ending after December 31, 2003.

Use of General Business Credits Against the Alternative Minimum Tax

The Senate amendment provides that the general business credit for any taxable year beginning in 2004 shall not be less than 50 percent of the lesser of (1) the amount of credit that would be allowed if the tentative minimum tax were zero for the taxable year or (2) the current year business credit. In no event shall the credit be less than the amount otherwise allowable under present law.

Effective date.—Taxable years beginning in 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the provisions in the Senate amendment.

D. EXPANSION OF BUSINESS CREDIT

1. New markets tax credit for Native American reservations (sec. 631 of the Senate amendment)

PRESENT LAW

Section 45D provides a new markets tax credit for qualified equity investments made to acquire stock in a corporation, or a capital interest in a partnership, that is a qualified community development entity ("CDE").[339] The amount of the credit allowed to the investor (either the original purchaser or a subsequent holder) is (1) a five-percent credit for the year in which the equity interest is purchased from the CDE and for each of the following two years, and (2) a six-percent credit on each anniversary date thereafter for the following four years. The credit is determined by applying the applicable percentage (five or six percent) to the amount paid to the CDE for the investment at its original issue, and is available to the taxpayer who holds the qualified equity investment on the date of the initial investment or on the respective anniversary dates. The credit is recaptured if at any time during the seven-year period that begins on the date of the initial issue of the investment the entity ceases to be a qualified CDE, the proceeds of the investment cease to be used as required, or the interest is redeemed.

A qualified CDE is any domestic corporation or partnership: (1) whose primary mission is serving or providing investment capital for low-income communities or low-income persons; (2) that maintains accountability to residents of low-income communities by their representation on any governing board or any advisory board of the CDE; and (3) that is certified by the Secretary as being a qualified CDE. A qualified equity investment means stock or a similar equity interest acquired directly from a CDE for cash. Substantially all of the investment proceeds must be used by the CDE to make qualified low-income community investments. For this purpose, qualified low-income community investments include: (1) capital or equity investments in, or loans to, qualified active businesses located in low-income communities; (2) certain financial counseling and other services to businesses and residents in low-income communities; (3) the purchase from another CDE of any loan made by such entity that is a qualified low-income community investment; or (4) an equity investment in, or loan to, another CDE.

A "low-income community" is defined as a census tract with either (1) a poverty rate of at least 20 percent or (2) median family income which does not exceed 80 percent of the greater of metropolitan area median family income or statewide median family income (for a non-metropolitan census tract, does not exceed 80 percent of statewide median family income). The Secretary may designate any area within any census tract as a low-income community provided that (1) the boundary is continuous, (2) the area (if it were a census tract) would otherwise satisfy the poverty rate or median income requirements, and (3) an inadequate access to investment capital exists in the area.

A qualified active business is defined as a business that satisfies, with respect to a taxable year, the following requirements: (1) at least 50 percent of the total gross income of the business is derived from the active conduct of trade or business activities in low-income communities; (2) a substantial portion of the tangible property of such business is used in a low-income community; (3) a substantial portion of the services performed for such business by its employees is performed in a low-income community; and (4) less than five percent of the average of the aggregate unadjusted bases of the property of such business is attributable to certain financial property or to certain collectibles.

The maximum annual amount of qualified equity investments is capped at $2.0 billion per year for calendar years 2004 and 2005, and $3.5 billion per year for calendar years 2006 and 2007.

No special rules apply to investments in community development entities that serve or provide investment capital with respect to low-income Native American reservations.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides special new markets tax credit rules for qualified equity investments in a "reservation development entity." In general, the present-law requirements applicable to the new markets tax credit apply for purposes of the new credit, with special requirements established to define the qualified investment entity (i.e., for purposes of this credit, the present-law "community development entity" is replaced with "reservation development entity"). Under the Senate amendment, a reservation development entity is a domestic corporation or partnership if: (A) the primary mission of the entity is serving, or providing investment capital for, low-income reservations; (B) the entity maintains accountability to residents of low-income reservations through their representation on any governing board or any advisory board of the entity; and (C) the entity is certified by the Secretary as being a reservation development entity. A low-income reservation means an Indian reservation (as defined in section 168(j)(6)) that has a poverty rate of at least 40 percent.

The maximum annual amount of qualified equity investments in reservation development entities is $50 million for each of calendar years 2004 through 2007. The limitation shall be allocated by the Secretary among reservation development entities selected by the Secretary, giving priority to any entity with a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities, or that intends to make qualified low-income reservation investments in one or more unrelated businesses.

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[338] Special rules apply to the empowerment zone employment credit and the New York Liberty Zone business credit.

[339] Section 45D was added by section 121(a) of the Community Renewal Tax Relief Act of 2000, P.L. No. 106–554 (December 21, 2000).

The Senate amendment provides that not later than January 31 of 2007 and 2010, the Comptroller General of the United States shall, pursuant to an audit, report to Congress on the new credit program, including all reservation development entities that receive an allocation under the program. In addition, the Senate amendment authorizes the Secretary to award a grant of not more than one million dollars to the First Nations Oweesta Corporation, and authorizes appropriations of one million dollars for fiscal years 2004 through 2014.

Effective date.—The provision is effective for investments made after December 31, 2003.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

2. Ready Reserve-National Guard employee credit and Ready Reserve-National Guard replacement employee credit (sec. 632 of the Senate amendment)

PRESENT LAW

There is no employer tax credit for wages paid to Ready Reserve and National Guard employees called to active duty, or for wages paid to their replacements.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides an employer credit for wages paid to Ready Reserve-National Guard employees called to active duty. A Ready Reserve-National Guard employee means an employee who is a member of the Ready Reserve of a reserve component of an Armed Force of the United States as described in sections 10142 and 10101 of title 10, United States Code. The credit equals 50 percent of the compensation paid while the employee is called up to active duty up to a maximum of $30,000 of compensation. Special rules allowing refundability of the credit, up to the amount of employer payroll taxes, apply to employers of first responders called up to active duty. Qualified first responders are persons employed as a law enforcement official, a firefighter, or a paramedic, and who are a Ready Reserve-National Guard employee.

In addition, for "small business employers" of Ready Reserve-National Guard employees called up to active duty, the Senate amendment creates a replacement employee credit equal to 50 percent of the wages paid to any replacement employee up to a maximum credit of $6,000. Small business employers are employers that employ an average of 50 or fewer employees on business days during the taxable year. For small business manufacturing employers, the credit rate is increased to 100 percent and the maximum credit is increased to $20,000.

Self-employed contract workers called to active duty are eligible for the self employed portion of the credit, but businesses purchasing the services of contract workers are not eligible for the replacement employee credit.

The credits could be carried back 3 years and carried forward 20 years. Rules similar to section 280C apply to deny a deduction for the amount of the credits.

Effective date.—The provision is effective for investments made after September 30, 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

3. Rural investment tax credit (sec. 633 of the Senate amendment and new sec. 42A of the Code)

PRESENT LAW

There is no present-law provision specifically targeted to encourage investment in high-migration rural areas.

HOUSE BILL

No provision.

SENATE AMENDMENT

The proposal provides a tax credit that may be claimed by owners of certain rural residential property (i.e., qualified rural investment buildings). The credit is claimed annually, generally for a period of ten years. Taxpayers are eligible for a maximum present-value tax credit equal to 70 percent of the eligible basis of a new building and qualified rehabilitation expenses (30 percent in the case of an existing building).

A qualified rural investment building is defined as any building that is part of a qualified rural investment project at all times during the credit period. A qualified rural investment project is defined as any investment project of one or more buildings; (1) located in a qualifying county (and, if necessary to the project, a contiguous county); and (2) selected by the State in which the county is located, according to the State's qualified rural investment plan. Rehabilitation expenditures are treated as a separate building for purposes of the credit. A qualifying county is defined as a county which: (1) is located outside a metropolitan statistical area (as defined by the Office of Management and Budget); and (2) during the 20 year period ending with the year the most recent census was conducted, has experienced a net out-migration of inhabitants of the county of at least 10-percent of the population of the county. Generally, the credit and compliance periods are each ten years and the credit period for an existing building may not begin before the credit period for the related rehabilitation expenditures.

For purposes of this credit, the eligible basis of any qualified rural investment building shall be determined under rules similar to the rules of section 42 (the "low income rental housing credit") except that: (1) the determination of the adjusted basis of any building shall be made at the beginning of the credit period; and (2) such basis shall include development costs properly attributable to such building. Development costs are limited to: (1) site preparation costs; (2) State and local impact fees; (3) reasonable development fees; (4) professional fees related to basis items; (5) construction financing costs related to basis items other than land; and (6) on-site and adjacent improvements required by State or local governments.

Generally, any building eligible for the credit must receive an allocation of rural investment credit authority from the State rural investment credit agency in whose jurisdiction the building is located. The aggregate amount of such credits allocated within a State is limited by the State's annual rural investment credit ceiling. The ceiling for each calendar year is the sum of: (1) the unused State rural investment credit ceiling (if any) of such State for the preceding calendar year; (2) $185,000 for each qualifying county of the State; (3) the amount of State rural investment credit ceiling returned in the calendar year; and (4) the amount (if any) allocated to the State by the Secretary of the Treasury from the pool of unallocated rural investment credits unused by other States. The allocation is made by a formula provided in the statute. The $185,000 amount is indexed for inflation. At least 10 percent of each State's rural investment credit ceiling is set aside for projects in which a qualified non-profit organization is to materially participate (within the meaning of section 469(h) of the Code) in the development and operation of the project throughout the compliance period. A qualified non-profit organization generally means any organization if: (1) the organization is described in section 501(c) and exempt from tax under 501(a); (2) it is determined by the State rural investment credit agency not to be affiliated with or controlled by a for-profit organization; and (3) one or more of its exempt purposes includes the fostering of rural investment.

Effective date.—The provision is effective for expenditures made in taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate Amendment.

4. Qualified small business rural investment tax credit (sec. 634 of the Senate amendment and new sec. 42B of the Code)

PRESENT LAW

There is no present-law provision specifically targeted to encourage rural small business investment.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides a 30-percent tax credit for certain qualified expenditures paid or incurred by qualified rural small businesses. A qualified taxpayer's maximum credit for any taxable year may not exceed the lesser of: (1) $5,000; or (2) $25,000 minus the sum of the taxpayer's previous qualified rural small business investment credit claimed for all prior taxable years. For purposes of this credit, qualified expenditures are defined as expenditures normally associated with starting or expanding a business and included in a qualified business plan, including costs for capital, plant and equipment, inventory expenses, and wages but not including interest costs. In the case of a qualified rural small business with respect to which a small business rural investment credit was claimed in any previous years, qualified expenditures for each taxable year are limited to qualified small business expenditures for the year only to the extent that those total expenditures exceed the total expenditures for the immediately preceding taxable year. For example, assume Taxpayer A incurs qualified expenditures of $3000, in year 1, $0 in year 2, and $4,000 in year 3. Taxpayer A will be eligible for a qualified rural investment tax credit of $900 in year 1, $0 in year 2, and $1,200 in year 3.

A qualified rural small business is defined as any person, if such person; (1) employed not more than five full-time employees during the taxable year; (2) materially and substantially participates in management; (3) is located in a qualifying county; and (4) submitted a qualified business plan with respect to which an allocation of a rural investment tax credit was received. For these purposes, an employee is considered full-time if such employee is employed at least 30 hours per week for 20 or more calendar weeks in the taxable year. A qualifying county is defined as a county which: (1) is located outside a metropolitan statistical area (as defined by the Office of Management and Budget); and (2) during the 20-year period ending with the year the most recent census was conducted, has experienced a net out-migration of inhabitants of the county of at least 10-percent of the population of the county. A qualified business plan is a business plan which: (1) has been approved by the rural investment credit agency with jurisdiction over the qualifying county in which the qualified rural small business is located pursuant to such agency's rural investment plan; and (2) meets such requirements as the agency may specify.

Any otherwise allowable deduction or credit is reduced by the amount of this credit.

Effective date.—The provision is effective for expenditures made in taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate Amendment.

5. Provide a tax credit for maintenance of railroad track (sec. 635 of the Senate amendment and new sec. 45I of the Code)

PRESENT LAW

There is no provision that provides for a railroad track maintenance tax credit.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides a 30-percent business tax credit for qualified railroad track maintenance expenditures paid or incurred in a taxable year by eligible taxpayers. The credit is limited to the product of $3,500 times the number of miles of railroad track owned or leased by an eligible taxpayer as of the close of its taxable year. Qualified railroad track maintenance expenditures are defined as amounts expended (whether or not chargeable to a capital account) for maintaining railroad track (including roadbed, bridges, and related track structures) owned or leased as of January 1, 2005, by a Class II or Class III railroad. An eligible taxpayer is defined as: (1) any Class II or Class III railroad; and (2) any person who transports property using the rail facilities of a Class II or Class III railroad or who furnishes railroad-related property or services to such person. The taxpayer's basis in railroad track is reduced by the amount of the credit allowed. No portion of the credit may be carried back to any taxable year beginning before January 1, 2005. Other rules apply.

This credit applies to qualified railroad track maintenance expenditures paid or incurred during taxable years beginning after December 31, 2004, and before January 1, 2008.

Effective date.—The Senate amendment is effective for taxable years beginning after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment provision with the following modification. The conference agreement increases the credit percentage from 30-percent to 50-percent. In addition, the conference agreement clarifies that each mile of railroad track may be taken into account only once, either by the owner of such mile or by the owner's assignee, in computing the per-mile limitation.

6. Railroad revitalization and security investment credit (sec. 636 of the Senate amendment)

PRESENT LAW

There is no provision in present law for railroad revitalization.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides a 50-percent business tax credit for qualified project expenditures paid or incurred in a taxable year by eligible taxpayers. Qualified project expenditures generally are defined as expenditures (whether or not chargeable to a capital account) for: (1) planning; (2) environmental review and environmental impact mitigation; (3) track and track structure rehabilitation, relocation, improvement and development; (4) railroad safety and security improvements; (5) communications and signaling improvements; (6) intercity passenger rail equipment acquisition; and (7) rail station and intermodal facilities development. Such expenditures are limited to expenditures for a project with respect to intercity passenger rail transportation (as defined in 49 U.S.C. 24102) that is included in a State rail plan.

The railroad revitalization and security investment credit is subject to a national cap of $165 million per calendar year. The annual national cap is allocated pro rata to the States based on the each State's share of the national total of: (1) railroad and public road grade crossings on intercity passenger rail routes; (2) intercity passenger train miles; and (3) intercity embarkations and disembarkations for each passenger. Any credit allocations unused for a calendar year will be carried-over and allocated between those States that used their allocation for the calendar year and requested a share of the carryover. All projects must have an allocation to claim the credit.

The taxpayer's basis in such property is reduced by the amount of the credit allowed. No portion of the credit may be carried back to any taxable year beginning before January 1, 2005. A credit under this section may be transferred (but no more than once) if the taxpayer is a tax-exempt entity or if the credit exceeds the taxpayer's tax liability for the year. Other rules apply.

Effective date.—The Senate amendment is effective for taxable years beginning after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

7. Special allocation of the railroad revitalization and security investment credit for New York city rail projects (sec. 636 of the Senate amendment)

PRESENT LAW

There is no provision in present law that provides a special allocation of the railroad revitalization and security investment credit.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides an additional allocation of $200 million dollars to New York City for qualified project expenditures within the New York Liberty Zone (as defined in Code section 1400L(h). This allocation is in addition to the allocation allowed under the general railroad revitalization and security investment credit, described above. Under a special rule, the $200 million will be allocated as follows: (1) $100 million to projects designated by the mayor of New York City; and (2) $100 million to projects designated by the Governor of New York. Qualified project expenditures are limited to expenditures for improvements to subway systems, for commuter rail systems, for rail links to airports, and for public infrastructure improvements in the vicinity of rail or subway stations. The taxpayer's basis in such property is reduced by the amount of the credit for which this credit is allowed. No portion of the credit may be carried back to any taxable year beginning before January 1, 2005. A credit under this section may be transferred (but no more than once) if the taxpayer is a tax-exempt entity or if the credit exceeds the taxpayer's tax liability for the year. Other rules apply.

Effective date.—The Senate amendment is effective for taxable years beginning after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

8. Modification of targeted areas and low-income communities designated for new markets tax credit (sec. 637 of the Senate amendment and sec. 45D of the Code)

PRESENT LAW

Section 45D provides a new markets tax credit for qualified equity investments made to acquire stock in a corporation, or a capital interest in a partnership, that is a qualified community development entity ("CDE").[340] The amount of the credit allowable to the investor (either the original purchaser or a subsequent holder) is (1) a five-percent credit for the year in which the equity interest is purchased from the CDE and for each of the following two years, and (2) a six-percent credit for each of the following four years. The credit is determined by applying the applicable percentage (five or six percent) to the amount paid to the CDE for the investment at its original issue, and is available for a taxable year to the taxpayer who holds the qualified equity investment on the date of the initial investment or on the respective anniversary date that occurs during the taxable year. The credit is recaptured if at any time during the seven-year period that begins on the date of the original issue of the investment the entity ceases to be a qualified CDE, the proceeds of the investment cease to be used as required, or the equity investment is redeemed.

A qualified CDE is any domestic corporation or partnership: (1) whose primary mission is serving or providing investment capital for low-income communities or low-income persons; (2) that maintains accountability to residents of low-income communities by their representation on any governing board of or any advisory board to the CDE; and (3) that is certified by the Secretary as being a qualified CDE. A qualified equity investment means stock (other than nonqualified preferred stock) in a corporation or a capital interest in a partnership that is acquired directly from a CDE for cash, and includes an investment of a subsequent purchaser if such investment was a qualified equity investment in the hands of the prior holder. Substantially all of the investment proceeds must be used by the CDE to make qualified low-income community investments. For this purpose, qualified low-income community investments include: (1)

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[340] Section 45D was added by section 121(a) of the Community Renewal Tax Relief Act of 2000, P.L. No. 106-554 (December 21, 2000).

capital or equity investments in, or loans to, qualified active low-income community businesses; (2) certain financial counseling and other services to businesses and residents in low-income communities; (3) the purchase from another CDE of any loan made by such entity that is a qualified low-income community investment; or (4) an equity investment in, or loan to, another CDE.

A "low-income community" is defined as a population census tract with either (1) a poverty rate of at least 20 percent or (2) median family income which does not exceed 80 percent of the greater of metropolitan area median family income or statewide median family income (for a non-metropolitan census tract, does not exceed 80 percent of statewide median family income). The Secretary may designate any area within any census tract as a low-income community provided that (1) the boundary is continuous, (2) the area (if it were a census tract) would otherwise satisfy the poverty rate or median income requirements, and (3) an inadequate access to investment capital exists in the area.

A qualified active low-income community business is defined as a business that satisfies, with respect to a taxable year, the following requirements: (1) at least 50 percent of the total gross income of the business is derived from the active conduct of trade or business activities in any low-income community; (2) a substantial portion of the tangible property of such business is used in a low-income community; (3) a substantial portion of the services performed for such business by its employees is performed in a low-income community; and (4) less than five percent of the average of the aggregate unadjusted bases of the property of such business is attributable to certain financial property or to certain collectibles.

The maximum annual amount of qualified equity investments is capped at $2.0 billion per year for calendar years 2004 and 2005, and at $3.5 billion per year for calendar years 2006 and 2007.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment modifies the Secretary's authority to designate certain areas as low-income communities to provide that the Secretary shall prescribe regulations to designate "targeted populations" as low-income communities for purposes of the new markets tax credit. For this purpose, a "targeted population" is defined by reference to section 103(20) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702(20)) to mean individuals, or an identifiable group of individuals, including an Indian tribe, who (A) are low-income persons; or (B) otherwise lack adequate access to loans or equity investments. Under the Senate amendment, "low-income" means (1) for a targeted population within a metropolitan area, less than 80 percent of the area median family income; and (2) for a targeted population within a non-metropolitan area, less than the greater of 80 percent of the area median family income or 80 percent of the statewide non-metropolitan area median family income.[341] Under the Senate amendment, a targeted population is not required to be within any census tract.

Effective date.—The provision is effective for designations made after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with respect to targeted population designations, modified to provide that a population census tract with a population of less than 2,000 shall be treated as a low-income community for purposes of the credit if such tract is within an empowerment zone, the designation of which is in effect under section 1391, and is contiguous to one or more low-income communities.

Effective date.—The targeted population provision is effective for designations made after the date of enactment. The low-population provision is effective for investments made after the date of enactment.

9. Modification of income requirement for census tracts within high migration rural counties for new markets tax credit (sec. 638 of the Senate amendment and sec. 45D of the Code)

PRESENT LAW

Section 45D provides a new markets tax credit for qualified equity investments made to acquire stock in a corporation, or a capital interest in a partnership, that is a qualified community development entity ("CDE").[342] The amount of the credit allowable to the investor (either the original purchaser or a subsequent holder) is (1) a five-percent credit for the year in which the equity interest is purchased from the CDE and for each of the following two years, and (2) a six-percent credit for each of the following four years. The credit is determined by applying the applicable percentage (five or six percent) to the amount paid to the CDE for the investment at its original issue, and is available for the taxable year to the taxpayer who holds the qualified equity investment on the date of the initial investment or on the respective anniversary date that occurs during the taxable year. The credit is recaptured if at any time during the seven-year period that begins on the date of the original issue of the investment the entity ceases to be a qualified CDE, the proceeds of the investment cease to be used as required, or the equity investment is redeemed.

A qualified CDE is any domestic corporation or partnership: (1) whose primary mission is serving or providing investment capital for low-income communities or low-income persons; (2) that maintains accountability to residents of low-income communities by their representation on any governing board of or any advisory board to the CDE; and (3) that is certified by the Secretary as being a qualified CDE. A qualified equity investment means stock (other than nonqualified preferred stock) in a corporation or a capital interest in a partnership that is acquired directly from a CDE for cash, and includes an investment of a subsequent purchaser if such investment was a qualified equity investment in the hands of the prior holder. Substantially all of the investment proceeds must be used by the CDE to make qualified low-income community investments. For this purpose, qualified low-income community investments include: (1) capital or equity investments in, or loans to, qualified active low-income community businesses; (2) certain financial counseling and other services to businesses and residents in low-income communities; (3) the purchase from another CDE of any loan made by such entity that is a qualified low-income community investment; or (4) an equity investment in, or loan to, another CDE.

A "low-income community" is defined as a population census tract with either (1) a poverty rate of at least 20 percent or (2) median family income which does not exceed 80 percent of the greater of metropolitan area median family income or statewide median family income (for a non-metropolitan census tract, does not exceed 80 percent of statewide median family income). The Secretary may designate any area within any census tract as a low-income community provided that (1) the boundary is continuous, (2) the area (if it were a census tract) would otherwise satisfy the poverty rate or median income requirements, and (3) an inadequate access to investment capital exists in the area.

A qualified active low-income community business is defined as a business that satisfies, with respect to a taxable year, the following requirements: (1) at least 50 percent of the total gross income of the business is derived from the active conduct of trade or business activities in any low-income community; (2) a substantial portion of the tangible property of such business is used in a low-income community; (3) a substantial portion of the services performed for such business by its employees is performed in a low-income community; and (4) less than five percent of the average of the aggregate unadjusted bases of the property of such business is attributable to certain financial property or to certain collectibles.

The maximum annual amount of qualified equity investments is capped at $2.0 billion per year for calendar years 2004 and 2005, and at $3.5 billion per year for calendar years 2006 and 2007.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment modifies the low-income test for high migration rural counties. Under the Senate amendment, in the case of a population census tract located within a high migration rural county, low-income is defined by reference to 85 percent (rather than 80 percent) of statewide median family income. For this purpose, a high migration rural county is any county that, during the 20-year period ending with the year in which the most recent census was conducted, has a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.

Effective date.—The provision is effective as if included in the amendment made by section 121(a) of the Community Renewal Tax Relief Act of 2000.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

10. Provide a tax credit for expenditures on closed captioning technology in movies (sec. 639 of the Senate amendment and new sec. 45T of the Code)

PRESENT LAW

There is no provision that allows a tax credit for expenditures made for closed captioning technology in motion pictures.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides a 50-percent business tax credit (the "motion picture accessibility credit") for certain qualified expenditures made in a taxable year by an eligible taxpayer. Qualified expenditures are defined as amounts paid or incurred for making motion pictures accessible to deaf or hard-of-hearing individuals through the use of captioning technology. An eligible taxpayer is defined as a taxpayer who is in the business of showing motion pictures to the public in theaters or producing or distributing those motion pictures. The taxpayer's basis in property with respect to which the credit is allowed is reduced by the amount of the credit allowed. No deduction or credit is permitted under any other provision of Chapter 1 (Normal Taxes and Surtaxes) of Subtitle A (Income Taxes) of the Code for the amount of any motion picture accessibility credit allowed. No portion of the credit may be carried back to any taxable year beginning before January 1, 2004. Other rules apply.

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[341] 12. U.S.C. 4702(17) (used to define "low-income" for purposes of 12. U.S.C. 4702(20)).

[342] Section 45D was added by section 121(a) of the Community Renewal Tax Relief Act of 2000, P.L. No. 106–554 (December 21, 2000).

Effective date.—The Senate amendment is effective for taxable years beginning after December 31, 2003.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

E. MISCELLANEOUS PROVISIONS

1. Exclusion of gain or loss on sale or exchange of certain brownfield sites from unrelated business taxable income (sec. 641 of the Senate amendment and secs. 512 and 514 of the Code)

PRESENT LAW

In general, an organization that is otherwise exempt from Federal income tax is taxed on income from a trade or business regularly carried on that is not substantially related to the organization's exempt purposes. Gains or losses from the sale, exchange, or other disposition of property, other than stock in trade, inventory, or property held primarily for sale to customers in the ordinary course of a trade or business, generally are excluded from unrelated business taxable income. Gains or losses are treated as unrelated business taxable income, however, if derived from "debt-financed property." Debt-financed property generally means any property that is held to produce income and with respect to which there is acquisition indebtedness at any time during the taxable year.

In general, income of a tax-exempt organization that is produced by debt-financed property is treated as unrelated business income in proportion to the acquisition indebtedness on the income-producing property. Acquisition indebtedness generally means the amount of unpaid indebtedness incurred by an organization to acquire or improve the property and indebtedness that would not have been incurred but for the acquisition or improvement of the property. Acquisition indebtedness does not include: (1) certain indebtedness incurred in the performance or exercise of a purpose or function constituting the basis of the organization's exemption; (2) obligations to pay certain types of annuities; (3) an obligation, to the extent it is insured by the Federal Housing Administration, to finance the purchase, rehabilitation, or construction of housing for low and moderate income persons; or (4) indebtedness incurred by certain qualified organizations to acquire or improve real property.

Special rules apply in the case of an exempt organization that owns a partnership interest in a partnership that holds debt-financed property. An exempt organization's share of partnership income that is derived from debt-financed property generally is taxed as debt-financed income unless an exception provides otherwise.

HOUSE BILL

No provision.

SENATE AMENDMENT

In general

The Senate amendment provides an exclusion from unrelated business taxable income for the gain or loss from the qualified sale, exchange, or other disposition of a qualifying brownfield property by an eligible taxpayer. The exclusion from unrelated business taxable income generally is available to an exempt organization that acquires, remediates, and disposes of the qualifying brownfield property. In addition, the Senate amendment provides an exception from the debt-financed property rules for such properties.

In order to qualify for the exclusions from unrelated business income and the debt-financed property rules, the eligible taxpayer is required to: (a) acquire from an unrelated person real property that constitutes a qualifying brownfield property; (b) pay or incur a minimum level of eligible remediation expenditures with respect to the property; and (c) transfer the remediated site to an unrelated person in a transaction that constitutes a sale, exchange, or other disposition for purposes of Federal income tax law.[343]

Qualifying brownfield properties

Under the Senate amendment, the exclusion from unrelated business taxable income applies only to real property that constitutes a qualifying brownfield property. A qualifying brownfield property means real property that is certified, before the taxpayer incurs any eligible remediation expenditures (other than to obtain a Phase I environmental site assessment), by an appropriate State agency (within the meaning of section 198(c)(4)) in the State in which the property is located as a brownfield site within the meaning of section 101(39) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (as in effect on the date of enactment of the proposal). The Senate amendment provision requires that the taxpayer's request for certification include a sworn statement of the taxpayer and supporting documentation of the presence of a hazardous substance, pollutant, or contaminant on the property that is complicating the expansion, redevelopment, or reuse of the property given the property's reasonably anticipated future land uses or capacity for uses of the property (including a Phase I environmental site assessment and, if applicable, evidence of the property's presence on a local, State, or Federal list of brownfields or contaminated property) and other environmental assessments prepared or obtained by the taxpayer.

Eligible taxpayer

An eligible taxpayer with respect to a qualifying brownfield property is an organization exempt from tax under section 501(a) that acquired such property from an unrelated person and paid or incurred a minimum amount of eligible remediation expenditures with respect to such property. The exempt organization (or the qualifying partnership of which it is a partner) is required to pay or incur eligible remediation expenditures with respect to a qualifying brownfield property in an amount that exceeds the greater of: (a) $550,000; or (b) 12 percent of the fair market value of the property at the time such property is acquired by the taxpayer, determined as if the property were not contaminated.

An eligible taxpayer does not include an organization that is: (1) potentially liable under section 107 of CERCLA with respect to the property; (2) affiliated with any other person that is potentially liable thereunder through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by the instruments by which title to a qualifying brownfield property is conveyed or financed by a contract of sale of goods or services); or (3) the result of a reorganization of a business entity which was so potentially liable.[344]

Qualified sale, exchange, or other disposition

Under the Senate amendment, a sale, exchange, or other disposition of a qualifying brownfield property shall be considered as qualified if such property is transferred by the eligible taxpayer to an unrelated person, and within one year of such transfer the taxpayer has received a certification (a "remediation certification") from the Environmental Protection Agency or an appropriate State agency (within the meaning of section 198(c)(4)) in the State in which the property is located that, as a result of the taxpayer's remediation actions, such property would not be treated as a qualifying brownfield property in the hands of the transferee. A taxpayer's request for a remediation certification shall be made no later than the date of the transfer and shall include a sworn statement by the taxpayer certifying that: (1) remedial actions that comply with all applicable or relevant and appropriate requirements (consistent with section 121(d) of CERCLA) have been substantially completed, such that there are no hazardous substances, pollutants or contaminants that complicate the expansion, redevelopment, or reuse of the property given the property's reasonably anticipated future land uses or capacity for uses of the property; (2) the reasonably anticipated future land uses or capacity for uses of the property are more economically productive or environmentally beneficial than the uses of the property in existence on the date the property was certified as a qualifying brownfield property;[345] (3) a remediation plan has been implemented to bring the property in compliance with all applicable local, State, and Federal environmental laws, regulations, and standards and to ensure that remediation protects human health and the environment; (4) the remediation plan, including any physical improvements required to remediate the property, is either complete or substantially complete, and if substantially complete,[346] sufficient monitoring, funding, institutional controls, and financial assurances have been put in place to ensure the complete remediation of the site in accordance with the remediation plan as soon as is reasonably practicable after the disposition of the property by the taxpayer; and (5) public notice and the opportunity for comment on the request for certification (in the same form and manner as required for public participation required under section 117(a) of CERCLA (as in effect on the date of enactment of the provision)) was completed before the date of such request. Public notice shall include, at a minimum, publication in a major local newspaper of general circulation.

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[343] For purposes of the provision, a person is related to another person if (1) such person bears a relationship to such other person that is described in section 267(b) (determined without regard to paragraph (9)), or section 707(b)(1), determined by substituting 25 percent for 50 percent each place it appears therein; or (2) if such other person is a nonprofit organization, if such person controls directly or indirectly more than 25 percent of the governing body of such organization.

[344] In general, a person is potentially liable under section 107 of CERCLA if: (1) it is the owner and operator of a vessel or a facility; (2) at the time of disposal of any hazardous substance it owned or operated any facility at which such hazardous substances were disposed of; (3) by contract, agreement, or otherwise it arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances; or (4) it accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance. 42 U.S.C. sec. 9607(a) (2004).

[345] For this purpose, use of the property as a landfill or other hazardous waste facility shall not be considered more economically productive or environmentally beneficial.

A copy of each of the requests for certification that the property was a brownfield site, and that it would no longer be a qualifying brownfield property in the hands of the transferee, shall be included in the tax return of the eligible taxpayer (and, where applicable, of the qualifying partnership) for the taxable year during which the transfer occurs.

Eligible remediation expenditures

Under the Senate amendment, eligible remediation expenditures means, with respect to any qualifying brownfield property: (1) expenditures that are paid or incurred by the taxpayer to an unrelated person to obtain a Phase I environmental site assessment of the property; (2) amounts paid or incurred by the taxpayer after receipt of the certification that the property is a qualifying brownfield property for goods and services necessary to obtain the remediation certification; and (3) expenditures to obtain remediation cost-cap or stop-loss coverage, re-opener or regulatory action coverage, or similar coverage under environmental insurance policies,[347] or to obtain financial guarantees required to manage the remediation and monitoring of the property. Eligible remediation expenditures include expenditures to (1) manage, remove, control, contain, abate, or otherwise remediate a hazardous substance, pollutant, or contaminant on the property; (2) obtain a Phase II environmental site assessment of the property, including any expenditure to monitor, sample, study, assess, or otherwise evaluate the release, threat of release, or presence of a hazardous substance, pollutant, or contaminant on the property, or (3) obtain environmental regulatory certifications and approvals required to manage the remediation and monitoring of the hazardous substance, pollutant, or contaminant on the property. Eligible remediation expenditures do not include (1) any portion of the purchase price paid or incurred by the eligible taxpayer to acquire the qualifying brownfield property; (2) environmental insurance costs paid or incurred to obtain legal defense coverage, owner/operator liability coverage, lender liability coverage, professional liability coverage, or similar types of coverage;[348] (3) any amount paid or incurred to the extent such amount is reimbursed, funded or otherwise subsidized by: (a) grants provided by the United States, a State, or a political subdivision of a State for use in connection with the property; (b) proceeds of an issue of State or local government obligations used to provide financing for the property, the interest of which is exempt from tax under section 103; or (c) subsidized financing provided (directly or indirectly) under a Federal, State, or local program in connection with the property; or (4) any expenditure paid or incurred before the date of enactment of the proposal.[349]

Qualified gain or loss

The Senate amendment generally excludes from unrelated business taxable income the exempt organization's gain or loss from the sale, exchange, or other disposition of a qualifying brownfield property. Income, gain, or loss from other transfers does not qualify under the provision.[350] The amount of gain or loss excluded from unrelated business taxable income is not limited to or based upon the increase or decrease in value of the property that is attributable to the taxpayer's expenditure of eligible remediation expenditures. Further, the exclusion does not apply to an amount treated as gain that is ordinary income with respect to section 1245 or section 1250 property, including any amount deducted as a section 198 expense that is subject to the recapture rules of section 198(e), if the taxpayer had deducted such amount in the computation of its unrelated business taxable income.[351]

Special rules for qualifying partnerships

In general

In the case of a tax-exempt organization that is a partner of a qualifying partnership that acquires, remediates, and disposes of a qualifying brownfield property, the Senate amendment provision applies to the tax-exempt partner's distributive share of the qualifying partnership's gain or loss from the disposition of the property.[352] A qualifying partnership is a partnership that (1) has a partnership agreement that satisfies the requirements of section 514(c)(9)(B)(vi) at all times beginning on the date of the first certification received by the partnership that one of its properties is a qualifying brownfield property; (2) satisfies the requirements of the proposal if such requirements are applied to the partnership (rather than to the eligible taxpayer that is a partner of the partnership); and (3) is not an organization that would be prevented from constituting an eligible taxpayer by reason of it or an affiliate being potentially liable under CERCLA with respect to the property.

The exclusion is available to a tax-exempt organization with respect to a particular property acquired, remediated, and disposed of by a qualifying partnership only if the exempt organization is a partner of the partnership at all times during the period beginning on the date of the first certification received by the partnership that one of its properties is a qualifying brownfield property, and ending on the date of the disposition of the property by the partnership.[353]

Under the Senate amendment, the Secretary shall prescribe such regulations as are necessary to prevent abuse of the requirements of the provision, including abuse through the use of special allocations of gains or losses, or changes in ownership of partnership interests held by eligible taxpayers.

Certifications and multiple property elections

If the property is acquired and remediated by a qualifying partnership of which the exempt organization is a partner, it is intended that the certification as to status as a qualified brownfield property and the remediation certification will be obtained by the qualifying partnership, rather than by the tax-exempt partner, and that both the eligible taxpayer and the qualifying partnership will be required to make available such copies of the certifications to the IRS. Any elections or revocations regarding the application of the eligible remediation expenditure rules to multiple properties (as described below) acquired, remediated, and disposed of by a qualifying partnership must be made by the partnership. A tax-exempt partner is bound by an election made by the qualifying partnership of which it is a partner.

Special rules for multiple properties

The eligible remediation expenditure determinations generally are made on a property-by-property basis. An exempt organization (or a qualifying partnership of which the exempt organization is a partner) that acquires, remediates, and disposes of multiple qualifying brownfield properties, however, may elect to make the eligible remediation expenditure determinations on a multiple-property basis. In the case of such an election, the taxpayer satisfies the eligible remediation expenditures test with respect to all qualifying brownfield properties acquired during the election period if the average of the eligible remediation expenditures for all such properties exceeds the greater of: (a) $550,000; or (b) 12 percent of the average of the fair market value of the properties, determined as of the dates they were acquired by the taxpayer and as if they were not contaminated. If the eligible taxpayer elects to make the eligible remediation expenditure determination on a multiple property basis, then the election shall apply to all qualifying sales, exchanges, or other dispositions of qualifying brownfield properties the acquisition and transfer of which occur during the period for which the election remains in effect.[354]

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[346] For these purposes, substantial completion means any necessary physical construction is complete, all immediate threats have been eliminated, and all long-term threats are under control.

[347] Cleanup cost-cap or stop-loss coverage is coverage that places an upper limit on the costs of cleanup that the insured may have to pay. Re-opener or regulatory action coverage is coverage for costs associated with any future government actions that require further site cleanup, including costs associated with the loss of use of site improvements.

[348] For this purpose, professional liability insurance is coverage for errors and omissions by public and private parties dealing with or managing contaminated land issues, and includes coverage under policies referred to as owner-controlled insurance. Owner/operator liability coverage is coverage for those parties that own the site or conduct business or engage in cleanup operations on the site. Legal defense coverage is coverage for lawsuits associated with liability claims against the insured made by enforcement agencies or third parties, including by private parties.

[349] The provision authorizes the Secretary of the Treasury to issue guidance regarding the treatment of government-provided funds for purposes of determining eligible remediation expenditures.

[350] For example, rent income from leasing the property does not qualify under the proposal.

[351] Depreciation or section 198 amounts that the taxpayer had not used to determine its unrelated business taxable income are not treated as gain that is ordinary income under sections 1245 or 1250 (secs. 1.1245-2(a)(8) and 1.1250-2(d)(6)), and are not recognized as gain or ordinary income upon the sale, exchange, or disposition of the property. Thus, an exempt organization would not be entitled to a double benefit resulting from a section 198 expense deduction and the proposed exclusion from gain with respect to any amounts it deducts under section 198.

[352] The provision's exclusions do not apply to a tax-exempt partner's gain or loss from the tax-exempt partner's sale, exchange, or other disposition of its partnership interest. Such transactions continue to be governed by present-law.

[353] The provision subjects a tax-exempt partner to tax on gain previously excluded by the partner (plus interest) if a property subsequently becomes ineligible for exclusion under the qualifying partnership's multiple-property election.

[354] If the taxpayer fails to satisfy the averaging test for the properties subject to the election, then the taxpayer may not apply the exclusion on a separate property basis with respect to any of such properties.

An acquiring taxpayer makes a multiple-property election with its timely filed tax return (including extensions) for the first taxable year for which it intends to have the election apply. A timely filed election is effective as of the first day of the taxable year of the return in which the election is included or a later day in such taxable year selected by the taxpayer. An election remains effective until the earliest of a date selected by the taxpayer, the date which is eight years after the effective date of the election, the effective date of a revocation of the election, or, in the case of a partnership, the date of the termination of the partnership.

A taxpayer may revoke a multiple-property election by filing a statement of revocation with a timely filed tax return (including extensions). A revocation is effective as of the first day of the taxable year of the return in which the revocation is included or a later day in such taxable year selected by the eligible taxpayer or qualifying partnership. Once a taxpayer revokes the election, the taxpayer is ineligible to make another multiple-property election with respect to any qualifying brownfield property subject to the revoked election.[355]

Debt-financed property

The Senate amendment provides that debt-financed property, as defined by section 514(b), does not include any property the gain or loss from the sale, exchange, or other disposition of which is excluded by reason of the provisions of the proposal that exclude such gain or loss from computing the gross income of any unrelated trade or business of the taxpayer. Thus, gain or loss from the sale, exchange, or other disposition of a qualifying brownfield property that otherwise satisfies the requirements of the provision is not taxed as unrelated business taxable income merely because the taxpayer incurred debt to acquire or improve the site.

Effective date.—The Senate amendment provision applies to gain or loss on the sale, exchange, or other disposition of a property acquired by the taxpayer after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, modified to provide a termination date of December 31, 2009. The conference agreement provision applies to gain or loss on the sale, exchange, or other disposition of property that is acquired by the eligible taxpayer or qualifying partnership during the period beginning January 1, 2005, and ending December 31, 2009. Property acquired during the five-year acquisition period need not be disposed of by the termination date in order to qualify for the exclusion. For purposes of the multiple property election, gain or loss on property acquired after December 31, 2009, is not eligible for the exclusion from unrelated business taxable income, although properties acquired after the termination date (but during the election period) are included for purposes of determining average eligible remediation expenditures.

Effective date.—The conference agreement provision applies to gain or loss on property that is acquired after December 31, 2004.

2. Civil rights tax relief (sec. 643 of the Senate amendment and sec. 62 of the Code)

PRESENT LAW

Under present law, gross income generally does not include the amount of any damages (other than punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic payments) by individuals on account of personal physical injuries (including death) or physical sickness.[356] Expenses relating to recovering such damages are generally not deductible.[357]

Other damages are generally included in gross income. The related expenses to recover the damages, including attorneys' fees, are generally deductible as expenses for the production of income,[358] subject to the two-percent floor on itemized deductions.[359] Thus, such expenses are deductible only to the extent the taxpayer's total miscellaneous itemized deductions exceed two percent of adjusted gross income. Any amount allowable as a deduction is subject to reduction under the overall limitation of itemized deductions if the taxpayer's adjusted gross income exceeds a threshold amount.[360] For purposes of the alternative minimum tax, no deduction is allowed for any miscellaneous itemized deduction.

In some cases, claimants will engage an attorney to represent them on a contingent fee basis. That is, if the claimant recovers damages, a prearranged percentage of the damages will be paid to the attorney; if no damages are recovered, the attorney is not paid a fee. The proper tax treatment of contingent fee arrangements with attorneys has been litigated in recent years. Some courts[361] have held that the entire amount of damages is income and that the claimant is entitled to a miscellaneous itemized deduction subject to both the two-percent floor as an expense for the production of income for the portion paid to the attorney and to the overall limitation on itemized deductions. Other courts have held that the portion of the recovery that is paid directly to the attorney is not income to the claimant, holding that the claimant has no claim of right to that portion of the recovery.[362]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides an above-the-line deduction for attorneys' fees and costs paid by, or on behalf of, the taxpayer in connection with any action involving a claim of unlawful discrimination, certain claims against the Federal Government, or a private cause of action under the Medicare Secondary Payer statute. The amount that may be deducted above-the-line may not exceed the amount includible in the taxpayer's gross income for the taxable year on account of a judgment or settlement (whether by suit or agreement and whether as lump sum or periodic payments) resulting from such claim.

Under the proposal, "unlawful discrimination" means an act that is unlawful under certain provisions of any of the following: the Civil Rights Act of 1991; the Congressional Accountability Act of 1995; the National Labor Relations Act; the Fair Labor Standards Act of 1938; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973; the Employee Retirement Income Security Act of 1974; the Education Amendments of 1972; the Employee Polygraph Protection Act of 1988; the Worker Adjustment and Retraining Notification Act; the Family and Medical Leave Act of 1993; chapter 43 of Title 38 of the United States Code; the Revised Statutes; the Civil Rights Act of 1964; the Fair Housing Act; the Americans with Disabilities Act of 1990; any provision of Federal law (popularly known as whistleblower protection provisions) prohibiting the discharge of an employee, discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted under Federal law; or any provision of Federal, State or local law, or common law claims permitted under Federal, State, or local law providing for the enforcement of civil rights or regulating any aspect of the employment relationship, including claims for wages, compensation, or benefits, or prohibiting the discharge of an employee, discrimination against an employee, or any other form of retaliation or reprisal against an employee for asserting rights or taking other actions permitted by law.

Effective date.—The Senate amendment provision applies to fees and costs paid after December 31, 2002, with respect to any judgment or settlement occurring after such date.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment except for the effective date.

Effective date.—The conference agreement applies to fees and costs paid after the date of enactment with respect to any judgment or settlement occurring after such date.

3. Exclusion from gross income for amounts paid under National Health Service Corps loan repayment program (sec. 644 of the Senate amendment and sec. 108 of the Code)

PRESENT LAW

The National Health Service Corps Loan Repayment Program (the "NHSC Loan Repayment Program") provides education loan repayments to participants on condition that the participants provide certain services. In the case of the NHSC Loan Repayment Program, the recipient of the loan repayment is obligated to provide medical services in a geographic area identified by the Public Health Service as having a shortage of health-care professionals. Loan repayments may be as much as $35,000 per year of service plus a tax assistance payment of 39 percent of the repayment amount.

States may also provide for education loan repayment programs for persons who agree to provide primary health services in health professional shortage areas. Under the Public Health Service Act, such programs may receive Federal grants with respect to such repayment programs if certain requirements are satisfied.

Generally, gross income means all income from whatever source derived including income for the discharge of indebtedness. However, gross income does not include discharge of indebtedness income if: (1) the discharge occurs in a Title 11 case; (2) the discharge occurs when the taxpayer is insolvent; (3) the indebtedness discharged is qualified farm indebtedness; or (4) except in the case of a C corporation, the indebtedness discharged is qualified real property business indebtedness.

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[355] The provision subjects a taxpayer to tax on gain previously excluded (plus interest) in the event a site subsequently becomes ineligible for gain exclusion under the multiple-property election.

[356] Sec. 104(a)(2).

[357] Sec. 265(a)(1).

[358] Sec. 212.

[359] Sec. 67.

[360] Sec. 68.

[361] *Kenseth* v. *Commissioner*, 114 T.C. 399 (2000), aff'd 259 F.3d 881 (7th Cir. 2001); *Coady* v. *Commissioner*, 213 F.3d 1187 (9th Cir. 2000); *Benci-Woodward* v. *Commissioner*, 219 F.3d 941 (9th Cir. 2000); *Baylin* v. *United States*, 43 F.3d 1451 (Fed. Cir. 1995).

[362] *Cotnam* v. *Commissioner*, 263 F.2d 119 (5th Cir. 1959); *Estate of Arthur Clarks* v. *United States*, 202 F.3d 854 (6th Cir. 2000); *Srivastava* v. *Commissioner*, 220 F.3d 353 (5th Cir. 2000). In some of these cases, such as *Cotnam*, State law has been an important consideration in determining that the claimant has no claim of right to the recovery.

Because the loan repayments provided under the NHSC Loan Repayment Program or similar State programs under the Public Health Service Act are not specifically excluded from gross income, they are gross income to the recipient. There is also no exception from employment taxes (FICA and FUTA) for such loan repayments.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision excludes from gross income and employment taxes education loan repayments provided under the NHSC Loan Repayment Program and State programs eligible for funds under the Public Health Service Act. The provision also provides that such repayments are not taken into account as wages in determining benefits under the Social Security Act.

Effective date.—The provision is effective with respect to amounts received in taxable years beginning after December 31, 2003.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

4. Certain expenses of rural letter carriers (sec. 645 of the Senate amendment and sec. 162(o) of the Code)

PRESENT LAW

The deductible automobile expenses of rural letter carriers equal the reimbursements that such carriers receive from the U.S. Postal Service. Carriers are not allowed to document their actual costs and claim itemized deductions for costs in excess of reimbursements,[363] nor are carriers required to include in income reimbursements in excess of their actual costs.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, if the reimbursements a rural letter carrier receives from the U.S. Postal Service fall short of the carrier's actual costs, the costs in excess of reimbursements qualify as a miscellaneous itemized deduction subject to the two-percent floor. Reimbursements in excess of their actual costs continue not to be required to be included in gross income.

Effective date.—The provisions is effective for taxable years beginning after December 31, 2003.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

5. Method of accounting for naval shipbuilders (sec. 646 of the Senate amendment)

PRESENT LAW

Generally, taxpayers must use the percentage-of-completion method to determine taxable income from long-term contracts.[364] Under sec. 10203(b)(2)(B) of the Revenue Act of 1987,[365] an exception exists for certain ship construction contracts, which may be accounted for using the 40/60 percentage-of-completion/ capitalized cost method ("PCCM"). Under the 40/60 PCCM, 60 percent of a taxpayer's long-term contract income is exempt from the requirement to use the percentage-of-completion method while 40 percent remains subject to the requirement. The exempt 60 percent of long-term contract income must be reported by consistently using the taxpayer's exempt contract method. Permissible exempt contract methods include the percentage of completion method, the exempt-contract percentage-of-completion method, and the completed contract method.[366]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that qualified naval ship contracts may be accounted for using the 40/60 PCCM during the first five taxable years of the contract. The cumulative reduction in tax resulting from the provision over the five-year period is recaptured and included in the taxpayer's tax liability in the sixth year. Qualified naval ship contracts are defined as any contract or portion thereof that is for the construction in the United States of one ship or submarine for the Federal Government if the taxpayer reasonably expects the acceptance date will occur no later than nine years after the construction commencement date.

Effective date.—The Senate amendment is effective for contracts with respect to which the construction commencement date occurs after date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with the following modification. The provision specifies that the construction commencement date is the date on which the physical fabrication of any section or component of the ship or submarine begins in the taxpayer's shipyard.

Effective date.—The provision is effective for contracts with respect to which the construction commencement date occurs after date of enactment.

6. Distributions to shareholders from policyholders surplus account of life insurance companies (sec. 647 of the Senate amendment and sec. 815 of the Code)

PRIOR AND PRESENT LAW

Under the law in effect from 1959 through 1983, a life insurance company was subject to a three-phase taxable income computation under Federal tax law. Under the three-phase system, a company was taxed on the lesser of its gain from operations or its taxable investment income (Phase I) and, if its gain from operations exceeded its taxable investment income, 50 percent of such excess (Phase II). Federal income tax on the other 50 percent of the gain from operations was deferred, and was accounted for as part of a policyholder's surplus account and, subject to certain limitations, taxed only when distributed to stockholders or upon corporate dissolution (Phase III). To determine whether amounts had been distributed, a company maintained a shareholders surplus account, which generally included the company's previously taxed income that would be available for distribution to shareholders. Distributions to shareholders were treated as being first out of the shareholders surplus account, then out of the policyholders surplus account, and finally out of other accounts.

The Deficit Reduction Act of 1984 included provisions that, for 1984 and later years, eliminated further deferral of tax on amounts (described above) that previously would have been deferred under the three-phase system. Although for taxable years after 1983, life insurance companies may not enlarge their policyholders surplus account, the companies are not taxed on previously deferred amounts unless the amounts are treated as distributed to shareholders or subtracted from the policyholders surplus account (sec. 815).

Under present law, any direct or indirect distribution to shareholders from an existing policyholders surplus account of a stock life insurance company is subject to tax at the corporate rate in the taxable year of the distribution. Present law (like prior law) provides that any distribution to shareholders is treated as made (1) first out of the shareholders surplus account, to the extent thereof, (2) then out of the policyholders surplus account, to the extent thereof, and (3) finally, out of other accounts.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provision suspends for a stock life insurance company's taxable years beginning after December 31, 2003, and before January 1, 2006, the application of the rules imposing income tax on distributions to shareholders from the policyholders surplus account of a life insurance company (sec. 815). The provision also reverses the order in which distributions reduce the various accounts, so that distributions would be treated as first made out of the policyholders surplus account, to the extent thereof, and then out of the shareholders surplus account, and lastly out of other accounts.

Effective date.—The Senate amendment provision is effective for taxable years beginning after December 31, 2003.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, with a modification.

The conference agreement provision suspends for a stock life insurance company's taxable years beginning after December 31, 2004, and before January 1, 2007, the application of the rules imposing income tax on distributions to shareholders from the policyholders surplus account of a life insurance company (sec. 815). The conference agreement includes the Senate amendment provision reversing the order in which distributions reduce the various accounts, so that distributions would be treated as first made out of the policyholders surplus account, to the extent thereof, and then out of the shareholders surplus account, and lastly out of other accounts.

Effective date.—The conference agreement provision is effective for taxable years beginning after December 31, 2004.

7. Motor vehicle dealer transitional assistance (sec. 650 of the Senate amendment)

PRESENT LAW

Under present law, no gain or loss is recognized on the exchange of property used in a trade or business or held for investment if the property is exchanged solely for property of like kind.[367] To qualify for nonrecognition treatment, the replacement property must be identified within 45 days and the exchange must be completed within 180 days after the transfer of the exchanged property. The basis of the replacement property is determined by reference to the basis of the exchanged property.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides an election (on either an original or amended return) to defer the gain on termination payments received by a taxpayer from a motor vehicle manufacturer on account of the termination of a motor vehicle sales and service agreement, provided the proceeds are reinvested within two years in property used in a domestic motor vehicle dealership. Under the provision, a dealership in which the proceeds are reinvested within two years is treated as like kind replacement property under sec. 1031, without regard to the time limitations on identification of and acquisition of such replacement property under present law. The provision extends the statute of limitations for assessment of any deficiency attributable to gain on termination payments until three years after the taxpayer notifies the Secretary of the like-kind replacement property or an intention not to replace.

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[363] 363 Section 162(o).

[364] Sec. 460(a).

[365] Pub. Law No. 100-203 (1987).

[366] Treas. Reg. 1.460-4(c)(1).

[367] Sec. 1031(a)(1).

The Senate amendment applies only with respect to termination payments from a motor vehicle manufacturer who announced in December 2000 that it would phase out the motor vehicle brand to which the agreement relates.

Effective date.—The Senate amendment is effective for amounts received after December 12, 2000, in taxable years ending after that date.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

8. Expansion of designated renewal community area based on 2000 census data (sec. 651 of the Senate amendment and sec. 1400E of the Code)

PRESENT LAW

Section 1400E provides for the designation of certain communities as renewal communities.[368] An area designated as a renewal community is eligible for the following tax incentives: (1) a zero-percent rate for capital gain from the sale of qualifying assets; (2) a 15-percent wage credit to employers for the first $10,000 of qualified wages; (3) a "commercial revitalization deduction" that allows taxpayers (to the extent allocated by the appropriate State agency) to deduct either (a) 50 percent of qualifying expenditures for the taxable year in which a qualified building is placed in service, or (b) all of the qualifying expenditures ratably over a 10-year period beginning with the month in which such building is placed in service; (4) an additional $35,000 of section 179 expensing for qualified property; and (5) an expansion of the work opportunity tax credit with respect to individuals who live in a renewal community.

To be designated as a renewal community, a nominated area was required to meet the following criteria: (1) each census tract must have a poverty rate of at least 20 percent; (2) in the case of an urban area, at least 70 percent of the households have incomes below 80 percent of the median income of households within the local government jurisdiction; (3) the unemployment rate is at least 1.5 times the national unemployment rate; and (4) the area is one of pervasive poverty, unemployment, and general distress. There are no geographic size limitations placed on renewal communities. Instead, the boundary of a renewal community must be continuous. In addition, the renewal community must have a minimum population of 4,000 if the community is located within a metropolitan statistical area (at least 1,000 in all other cases), and a maximum population of not more than 200,000. The population limitations do not apply to any renewal community that is entirely within an Indian reservation.

The designations of renewal communities were required to be made by December 31, 2001, using 1990 census data to determine relevant populations and poverty rates.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment permits the Secretary of Housing and Urban Development to expand a renewal community to include: (1) any census tract that at the time such community was nominated, satisfied the requirements for inclusion in such community but for the failure of such tract to satisfy one or more of the population and poverty rate requirements using 1990 census data, and that satisfies all failed population and poverty rate requirements using 2000 census data; or (2) an area that is adjacent to at least one other area designated as a renewal community and that has a population less than the generally applicable population requirement, if the area is one of pervasive poverty, unemployment, and general distress that is within the jurisdiction of one or more local governments and the boundary of the area is continuous, or the area contains a population of less than 100 people.

Effective date.—The provision is effective as if included in the amendments made by section 101 of the Community Renewal Tax Relief Act of 2000.

CONFERENCE AGREEMENT

The conference agreement modifies the Senate amendment to authorize the Secretary of Housing and Urban Development, at the request of all of the governments that nominated a renewal community, to add a contiguous census tract to a renewal community in the following circumstances. First, the renewal community, including any tract to be added, would have met the renewal community eligibility requirements at the time of the community's original nomination, and any tract to be added has a poverty rate using 2000 census data that exceeds the poverty rate of such tract using 1990 census data. Second, a tract may be added to a renewal community even if the addition of such tract to such community would have caused the community to fail one or more eligibility requirements when originally nominated using 1990 census data, provided that: (1) the renewal community after the inclusion of such tract does not have a population that exceeds 200,000 using either 1990 or 2000 census data; (2) such tract has a poverty rate of at least 20 percent using 2000 census data; and (3) such tract has a poverty rate using 2000 census data that exceeds the poverty rate of such tract using 1990 census data. Census tracts that did not have a poverty rate determined by the Bureau of the Census using 1990 data may be added to an existing renewal community without satisfying requirement (3) above. Third, a tract may be added to an existing renewal community if such tract: (1) has no population using 2000 census data or no poverty rate for such tract is determined by the Bureau of the Census using 2000 census data; (2) such tract is one of general distress; and (3) the renewal community, including such tract, is within the jurisdiction of one or more local governments and has a continuous boundary.

Effective date.—The conference agreement provision is effective as if included in the amendments made by section 101 of the Community Renewal Tax Relief Act of 2000.

9. Reduction of holding period to 12 months for purposes of determining whether horses are section 1231 assets (sec. 652 of the Senate amendment and sec. 1231 of the Code)

PRESENT LAW

Under present law, gain from the sale or exchange of horses held for draft, breeding, or sporting purposes qualify for long-term capital gain if the horse has been held for 24 months or more.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment reduces the holding period for horses to 12 months or more.

Effective date.—The Senate amendment is effective for taxable years beginning after December 31, 2003.

CONFERENCE AGREEMENT

The conference agreement does not include the provision in the Senate amendment.

10. Blue ribbon commission on comprehensive tax reform (sec. 653 of the Senate amendment)

PRESENT LAW

Under present law, there is no specially-appointed commission designated to study and report on comprehensive tax reform.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment establishes a commission to study and report on comprehensive tax reform. Members of the commission are to be appointed by Congressional leadership and the President.

Effective date.—Members must be appointed by October 30, 2004. The report is due no later than 18 months after all members are appointed.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

11. Temporary accumulated earnings tax safe harbor (sec. 655 of the Senate amendment and sec. 537 of the Code)

PRESENT LAW

Present law imposes an accumulated earnings tax on the accumulated taxable income of a corporation that is formed or availed of for the purpose of avoiding the income tax with respect to its shareholders or the shareholders of any other corporation, by permitting earnings and profits to accumulate instead of being distributed.[369]

The accumulated earnings tax is in addition to the regular corporate level tax and is imposed at the maximum rate that would be imposed on a dividend to an individual shareholder. A corporation is generally permitted to accumulate an exempted amount of $250,000 ($150,000 in the case of certain service corporations); the tax is then imposed on accumulated taxable income above that amount.

The fact that earnings and profits are permitted to accumulate beyond the reasonable needs of the business is determinative of the purpose to avoid tax with respect to shareholders, unless the corporation by the preponderance of the evidence shall prove to the contrary. If a corporation is a "mere holding or investment company," that fact is prima facie evidence of the prohibited purpose.[370] Treasury regulations provide that even in cases of accumulation of earnings beyond the reasonable needs of the business or where a corporation is a mere holding or investment company, such facts are not absolutely conclusive against the taxpayer if the taxpayer satisfies the Commissioner that the corporation was neither formed not availed of for the purpose of avoiding income tax with respect to shareholders.[371]

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[368] Section 1400E was added by section 101(a) of the Community Renewal Tax Relief Act of 2000, P.L. No. 106-554 (December 21, 2000).

[369] Under present law, corporate income is taxed at graduated rates ranging from 15 percent to 35 percent. A corporation is also entitled to a dividends-received deduction of at least 70 percent for dividends received from other corporations. Thus, the maximum corporate rate on dividends received from other corporations is 10.5 percent. Individual income is generally taxed at graduated rates up to 35 percent. However, dividends are taxed at a maximum rate of 15 percent. The maximum individual rates are scheduled to return to 39.6 percent on dividends as well as on other ordinary income after the year 2009.

The determination whether earnings and profits have been accumulated beyond the reasonable needs of the business is based on facts and circumstances. The reasonable needs of the business include "reasonably anticipated" needs of the business.[372] Some courts have applied a business cycle approach in determining the basic working capital needs of a business, to which additional reasonably anticipated future needs may be added. Disputes have arisen regarding the choice of business cycle and the proper addition of future needs.[373]

HOUSE BILL

No provision.

SENATE AMENDMENT

The bill provides that the reasonably anticipated needs of a business for any taxable year shall include working capital for the business in an amount which is not less than the sum of the cost of goods, operating expenses, and interest expense which the business incurred during the preceding taxable year. Any amounts incurred as part of a plan a principal purpose of which is to increase the limitation under this provision is not taken into account.

Effective date.—The provision applies to taxable years beginning after December 31, 2003 and before January 1, 2009.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

12. Tax Treatment of State Ownership of Railroad REIT (sec. 656 of the Senate amendment and secs. 103, 115, 336 and 337 of the Code)

PRESENT LAW

A real estate investment trust ("REIT") is an electing entity that is engaged primarily in passive real estate activities (as specifically defined) and that, among other requirements, must have at least 100 shareholders. If a qualified entity elects REIT status, it can be taxed essentially as a pass-through entity, since it can obtain a deduction for amounts distributed to its shareholders and it is required to distribute at least 90 percent of its income to shareholders annually.

If an entity does not qualify to be treated as a REIT, it would generally be treated as a regular C corporation subject to tax under subchapter C of the Code and section 11 at the corporate entity level, unless it elected to be taxed as a partnership or disregarded entity under Treasury regulations. Even if it made such an election, the C corporation would be treated as if it had liquidated and distributed its assets to shareholders, with a resulting corporate tax on the excess of fair market value over basis of any corporate assets. A C corporation that becomes a tax-exempt entity also must pay corporate tax on the excess of the fair market value over the basis of its assets.

A State or local government is not subject to Federal income tax on income from an activity that is an essential governmental function.[374]

Interest on a State or local bond is excluded from gross income, with certain exceptions.[375] Special rules are also provided as requirements for tax exemption for State and local bonds.[376]

HOUSE BILL

No provision.

SENATE AMENDMENT

The bill provides that a qualified railroad corporation that is a REIT that meets certain qualified activity requirements (described further below) and that becomes 100 percent owned by a State after December 31, 2003 and before December 31, 2005, will not be treated as a taxable C corporation, but will be taxed as if its income from the qualified activities accrued directly to the State. To the extent its described railroad activities qualify under present law as essential governmental functions, income from such activities shall be tax exempt under section 115 of the Code.

Under the bill, no gain or loss shall be recognized from the deemed conversion of such a REIT to a C corporation which is tax-exempt, and no change in the basis of the property of the entity shall occur.

Also, any obligation issued by an entity described above is treated as an obligation of a State for purposes of applying the tax exempt bond provisions.

A qualified railroad corporation that is a REIT must be a non-operating Class III railroad, and substantially all of its activities must consist of the ownership, leasing, and operation by such corporation of facilities, equipment, and other property used by the corporation or other persons in railroad transportation.

Effective date.—The bill applies on and after the date a State becomes the owner of all the outstanding stock of a qualified corporation, provided that the State becomes the owner of all the voting stock of the corporation on or before December 31, 2003 and becomes the owner of all the outstanding stock of the corporation on or before December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

13. Contribution in aid of construction (sec. 657 of the Senate amendment and sec. 118 of the Code)

PRESENT LAW

Section 118(a) provides that gross income of a corporation does not include a contribution to its capital. In general, section 118(b) provides that a contribution to the capital of a corporation does not include any contribution in aid of construction or any other contribution as a customer or potential customer and, as such, is includible in gross income of the corporation. However, for any amount of money or property received by a regulated public utility that provides water or sewerage disposal services, such amount shall be considered a contribution to capital (excludible from gross income) so long as such amount: (1) is a contribution in aid of construction, and (2) is not included in the taxpayer's rate base for rate-making purposes. If the contribution is in property other than water or sewerage disposal facilities, the amount is generally excludible from gross income only if the amount is expended to acquire or construct water or sewerage disposal facilities within a specified time period. A contribution in aid of construction does not include a customer connection fee or amounts paid as service charges for starting or stopping services.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment clarifies that water and sewer service laterals (amounts paid to connect the customer's water service line or sewer lateral line to the utility's distribution or collection system, or to extend a main water or sewer line to provide service to a customer) received by a regulated public utility that provides water or sewerage disposal services is considered a contribution to capital and excludible from gross income of such utility.

Effective date.—The Senate amendment provision is effective for contributions made after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

14. Credit for purchase and installation of agricultural water conservation systems (sec. 658 of the Senate amendment)

PRESENT LAW

There is no provision that provides for a credit for agricultural water systems.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides a 30-percent credit (not to exceed $500 per acre) for water conservation system expenses for taxpayers who normally derive at least 50 percent of their gross income from land. The term 'water conservation system expenses' means expenses for the purchase and installation of a water conservation system but only if (1) the land served by the water conservation system is entirely in a county or county-equivalent area which has received, in the taxable year the expenses were paid or incurred or in any of the three preceding taxable years, a primary-county designation due to drought by the Secretary of Agriculture, and (2) such system is certified as saving at least 5 percent more irrigation water than the irrigation system which was used on such land immediately prior to the installation of such water conservation system.

The term 'water conservation system' means (1) new or replacement irrigation equipment and machinery, including sprinklers, pipes, siphons, nozzles, pumps, motors, and engines, and (2) computer systems for irrigation and water management.

The irrigation water savings shall be determined and certified under regulations prescribed jointly by the Natural Resources Conservation Service of the Department of Agriculture and the Bureau of Reclamation of the Department of the Interior. Such regulations shall include a list of individuals or organizations qualified to make such certification.

No deduction is allowed with respect to any expenses taken into account in determining the credit, and any increase in the basis of any property which would result from such expense shall be reduced by the amount of credit allowed for such expense.

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[370] Sec. 533.

[371] Treas. Reg. sec. 1.533-1(a).

[372] Treas. Reg. secs. 1. 537-1, 1.537-2 and 1.537-3.

[373] See, e.g., *Bardahl Manufacturing Corp.*, 24 TCM 1030 (1965); *Bardahl International Corp.*, 25 TCM 935 (1966); *Empire Steel Castings, Inc.*, 33 TCM 155 (1974); *Alma-Piston Co.* v. *Commissioner*, 579 F.2d 1000 (6th Cir. 1978); *C.E. Hooper, Inc.* 76-1 USTC par. 9185(Ct. Cl. 1976).

[374] Sec. 115.

[375] Sec. 103.

[376] Secs. 141-150.

Effective date.—The credit is available for expenses occurred after date of enactment with respect to systems completed after December 31, 2004 and prior to January 1, 2006.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

15. Modification of involuntary conversion rules for businesses affected by the September 11th terrorist attacks (sec. 659 of the Senate amendment and sec. 1400L of the Code)

PRESENT LAW

Generally, a taxpayer realizes gain to the extent the sales price (and any other consideration received) exceeds the taxpayer's basis in the property. The realized gain is subject to current income tax unless the gain is deferred or not recognized under a special tax provision.

Under section 1033, gain realized by a taxpayer from an involuntary conversion of property is deferred to the extent the taxpayer purchases property similar or related in service or use to the converted property within the applicable period. The taxpayer's basis in the replacement property generally is the same as the taxpayer's basis in the converted property, decreased by the amount of any money or loss recognized on the conversion, and increased by the amount of any gain recognized on the conversion.

The applicable period for the taxpayer to replace the converted property begins with the date of the disposition of the converted property (or if earlier, the earliest date of the threat or imminence of requisition or condemnation of the converted property) and ends two years after the close of the first taxable year in which any part of the gain upon conversion is realized (the "replacement period"). Special rules extend the replacement period for certain real property and principle residences damaged by a Presidentially declared disaster to three years and four years, respectively, after the close of the first taxable year in which gain is realized.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides special rules for property which is compulsorily or involuntarily converted as a result of the terrorist attacks on September 11, 2001, in the New York Liberty Zone. The special rules provide that a corporation which is a member of an affiliated group filing a consolidated tax return shall be treated as satisfying the repurchase requirement of section 1033 with respect to such property to the extent the requirement is satisfied by another member of the corporation's affiliated group. In addition, the provision extends the replacement period for such property to five years after the close of the first taxable year in which gain is realized, if substantially all the use of the replacement property is in New York City.

Effective date.—The Senate amendment is effective for involuntary conversions occurring on or after September 11, 2001.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

16. Repeal of application of below-market loan rules to amounts paid to certain continuing care facilities (sec. 660 of the Senate amendment and sec. 7872 of the Code)

PRESENT LAW

Certain loans that bear interest at a below-market interest rate are treated as loans bearing interest at the market rate accompanied by a payment or payments from the lender to the borrower which are characterized in accordance with the substance of the particular transaction (e.g., gift, compensation, dividend, etc.).[377] The market rate of interest for purposes of the below-market loan rules is assumed to be 100 percent of the applicable Federal rate ("AFR") at the time the loan is made in the case of a term loan or, in the case of a demand loan, 100 percent of the AFR in effect over the time that the loan is outstanding.

In general, the below-market loan rules apply to (1) loans where the foregone (i.e., below-market) interest is in the nature of a gift, (2) loans between an employee and an employer or between an independent contractor and one for whom the independent contractor provides services, (3) loans between a corporation and a shareholder of the corporation, (4) loans of which one of the principal purposes of the interest arrangement is the avoidance of Federal tax, (5) to the extent provided in Treasury regulations, any other below-market loans if the interest arrangement of such loan has a significant effect on any Federal tax liability of either the lender or borrower, and (6) loans to any qualified continuing care facility pursuant to a continuing care contract.

In the case of loans made to qualified continuing care facilities,[378] an exception from the below-market loan rules is provided for any loan as of the calendar year in which the lender has attained age 65, provided the loan is made by the lender to the qualified continuing care facility pursuant to a continuing care contract.[379] However, the exception applies only to the extent that the principal amount of the loan, when added to the aggregate outstanding amount of all other previous loans between the lender (or the lender's spouse) and any qualified continuing care facility, does not exceed $90,000. This amount is indexed for inflation, and the amount for calendar year 2004 is $154,500.[380]

With regard to continuing care facilities that are not qualified continuing care facilities, the IRS takes the position that loans made to such facilities by residents are not subject to the below-market loan rules until and unless Treasury regulations are issued that treat such loans as having a significant effect on any Federal tax liability of either the facility or the resident.[381]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment repeals the application of the below-market loan rules to loans that are made to any qualified continuing care facility pursuant to a continuing care contract, without regard to the principal amount of the loan (including the aggregate outstanding amount of any other previous loans between the resident or resident's spouse and any qualified continuing care facility). The Senate amendment also clarifies that the determination of whether a facility is a qualified continuing care facility is to be made on an annual basis at the end of each calendar year, rather than only when the continuing care contract is entered into. In addition, the Senate amendment modifies the definition of a continuing care contract to (1) not exclude contracts that require additional substantial payment for increased personal care services required by the resident or resident's spouse, and (2) provide authority for the Treasury to issue guidance that limits such definition to contracts that provide to the resident or resident's spouse only facilities, care and services that are customarily offered by continuing care facilities. The Senate amendment also clarifies that the definition of a qualified continuing care facility requires substantially all of the independent living unit residents of the facility to be covered by continuing care contracts.

The Senate amendment does not affect the present-law application of the below-market loan rules to loans made to any continuing care facility that is not a qualified continuing care facility.

Effective date.—The Senate amendment provision applies to calendar years beginning after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

17. Maximum capital gain rates of individuals for gold, silver, platinum, and palladium (sec. 661 of the Senate amendment and sec. 1(h) of the Code)

PRESENT LAW

Under present law, the net capital gain of an individual is generally taxed at a maximum rate of 15 percent (five percent for gain otherwise taxed at the 10- or 15-percent rate). However, the maximum tax rate for individuals from the sale or exchange of a collectible is 28 percent. Gold, silver, platinum or palladium bullion is defined as a collectible for this purpose.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, gold, silver, platinum and palladium bullion is not treated as a "collectible" for purposes of applying the individual capital gain rates. Thus, gain or loss from the sale of the bullion will qualify for the lower five- and 15-percent capital gain rates.

Effective date.—Taxable years beginning after December 31, 2003.

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[377] Sec. 7872.

[378] A "qualified continuing care facility" is defined as one or more facilities (1) which are designed to provide services under continuing care contracts, and (2) substantially all of the residents of which are covered by continuing care contracts. However, a facility is not a qualified continuing care facility unless substantially all facilities which are used to provide services that are required to be provided under a continuing care contract are owned or operated by the borrower. In addition, nursing homes do not constitute continuing care facilities (sec. 7872(g)(4)).

[379] A "continuing care contract" is defined as a written contract between an individual and a qualified continuing care facility under which (1) the individual or individual's spouse may use a qualified continuing care facility for their life or lives, (2) the individual or individual's spouse (a) will first reside in a separate, independent living unit with additional facilities outside such unit for the providing of meals and other personal care, and (b) then will be provided long-term and skilled nursing care as the health of such individual or individual's spouse requires, and (3) no additional substantial payment is required if such individual or individual's spouse requires increased personal care services or long-term and skilled nursing care.

[380] Rev. Rul. 2003-118, 2003-47 I.R.B. 1095.

[381] Tech. Adv. Mem. 9521001 (Dec. 7, 1994).

CONFERENCE AGREEMENT

The conference agreement does not include the provision in the Senate amendment.

18. Inclusion of primary and secondary medical strategies for children and adults with sickle cell disease as medical assistance under the medicaid program (sec. 662 of the Senate amendment)

PRESENT LAW

Medicaid programs are generally operated by the States, in part with funds received from the Federal government. Within broad Federal guidelines, States can design the scope and availability of Medicaid benefits. Medicaid law requires States to provide certain services including, for example, hospital and physician services. Federal funds are available for additional optional services if States choose to include them in their Medicaid plans. Within Federal guidelines, States may limit the amount, duration of any Medicaid service. Under present law, States may have covered some of the primary and secondary medical strategies, treatments, and services for Sickle Cell Disease, however such services are not specifically listed in the Medicaid statute as either mandatory or optional services.

The Federal government shares in States' Medicaid service costs by means of a statutory formula designed to provide a higher Federal matching rate to States with lower per capita incomes. The Federal share is referred to as the Federal Medical Assistance Percentage ("FMAP"). For some Medicaid services and activities, such as costs associated with program administration, the FMAP rate is set in statute. Because Medicaid is an individual entitlement, there is no annual ceiling on Federal expenditures; however, in order to continue receiving Federal payments, States must contribute their share of the matching funds.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment amends Title XIX of the Social Security Act to add primary and secondary medical strategies, treatment and services for individuals who have Sickle Cell Disease as a new optional medical assistance category under the Medicaid program. Such strategies, treatment, and services include: (1) chronic blood transfusion (with deferoxamine chelation) to prevent stroke in individuals with Sickle Cell Disease who have been identified as being at high risk for stroke; (2) genetic counseling, testing, and treatment for individuals with Sickle Cell Disease or the Sickle Cell trait; and (3) other treatment and services to prevent individuals who have Sickle Cell Disease and who have had a stroke having another stroke. The amendment sets the FMAP rate at 50 percent for costs attributable to providing: (1) services to identify and educate likely Medicaid enrollees who have or are carriers of Sickle Cell Disease; or (2) education regarding the risks of stroke and other complications, as well as the prevention of stroke and complications for likely Medicaid enrollees with Sickle Cell Disease.

The Senate amendment also authorizes an appropriation in the amount of $10,000,000 for each of fiscal years 2005 through 2009 for a demonstration program under which the Administrator of the Health Resources and Services Administration (through the Bureau of Primary Health Care and the Maternal Child Health Bureau) would make grants up to 40 eligible entities in each such fiscal year for the development and establishment of systemic mechanisms for the prevention and treatment of the Sickle Cell Disease. Eligible entities include Federally-qualified health centers as defined in the Medicaid statute; nonprofit hospitals or clinics, or university health centers that provide primary health care that: (1) have a collaborative agreement with a community-based Sickle Cell Disease organization or a nonprofit entity with experience in working with individuals who have the Sickle Cell Disease; and (2) demonstrate that they have at least five years of experience in working with individuals who have the Sickle Cell Disease. Systematic mechanisms for the prevention and treatment of the Sickle Cell Disease include: (1) coordination of service delivery for individuals with the disease; (2) genetic counseling and testing; (3) bundling of technical services related to the prevention and treatment of the disease; (4) training health professionals; and (5) identifying and establishing efforts related to the expansion and coordination of education, treatment, and continuity of care programs for individuals with the disease.

In awarding such grants to eligible entities, the Administrator of Health Resources and Services Administration is to take into consideration geographic diversity and to give priority to: (1) Federally-qualified health centers that have a partnership or other arrangement with a comprehensive Sickle Cell Disease treatment center and does not receive funds from the National Institutes of Health; or (2) Federally-qualified health centers that intend to develop a partnership or other arrangement with a comprehensive Sickle Cell Disease treatment center, and that does not receive funds from the National Institutes of Health. Eligible entities that are awarded grants are required to use the funds for the following activities: (1) to facilitate and coordinate the delivery of education, treatment, and continuity of care under: (a) the entity's collaborative agreement with a community-based Sickle Cell Disease organization or a nonprofit entity that works with individuals who have Sickle Cell Disease; (b) the Sickle Cell Disease newborn screening program for the State in which the entity is located; and (c) the Maternal and Child Health program for the State in which the entity is located; (2) to train nursing and other health staff who provide care for individuals with Sickle Cell Disease; (3) to enter into a partnership with adult or pediatric hematologists in the region and other regional experts in the Sickle Cell Disease at tertiary or academic health centers and State and county health offices; and (4) to identify and secure resources for ensuring reimbursement under the Medicaid program, State children's health insurance program, and other health programs for the prevention and treatment of Sickle Cell Disease.

The Senate amendment also requires the Administrator of Health Resources and Services Administration to enter into a contract with an entity and to serve as a National Coordinating Center for the demonstration program. The center is to: (1) collect, coordinate, monitor and distribute data, best practices, and findings regarding the activities funded under grants made to eligible entities under the demonstration program; (2) develop a model protocol for eligible entities with respect to prevention and treatment of the disease; (3) develop educational materials regarding the prevention and treatment of the disease; and (4) submit a written report to Congress. The written report to Congress should include recommendations on the effectiveness of the demonstration program direct outcome measures, such as the number and type of health care resources utilized (such as emergency room visits, hospital visits, length of stay, and physician visits for individuals with Sickle Cell Disease) and the number of individuals that were tested and subsequently received genetic counseling for the sickle cell trait.

Effective date.—The Senate amendment is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment provision.

19. Mortgage payment assistance (secs. 901 and 902 of the Senate amendment)

PRESENT LAW

There is no provision in present law that authorizes the Secretary of Housing and Urban Development to award low-interest loans to individuals adversely affected by international economic activity to enable such individuals to make mortgage payments with respect to their primary residences.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment requires the Secretary of Housing and Urban Development (the "Secretary") to establish a program for awarding low-interest loans to eligible individuals to enable such individuals to continue making mortgage payments with respect to their primary residences. The provision provides that the Secretary shall issue regulations no later than six weeks after the date of enactment to implement this program.

An individual eligible to receive a loan under the program must be: (1) a worker that is adversely affected by international economic activity, as determined by the Secretary; (2) a borrower on a loan that requires monthly mortgage payments with respect to the primary residence of the individual; and (3) enrolled in a training or assistance program. The amount of a loan provided under the program cannot exceed the aggregate amount of monthly mortgage payments the borrower would owe during a 12-month period. In addition, a loan provided under the program must have an applicable interest rate of four percent and must provide for monthly repayments over a five-year period.

The provision authorizes appropriations of $10 million for each of the years 2005 through 2009 to carry out the purposes of the provision.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

20. Protection of overtime pay (secs. 489-490 of the Senate amendment and sec. 13 of the Fair Labor Standards Act of 1938)

PRESENT LAW

The Fair Labor Standards Act of 1938 ("FLSA") establishes minimum wage and overtime pay requirements that apply to employees, subject to certain exemptions.[382] On April 23, 2004, the Department of Labor issued revised regulations implementing exemptions from the FLSA minimum wage and overtime pay requirements.[383] Among other changes, the regulations increased the salary threshold for employees to be exempt from these requirements.

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[382] See, sections 6, 7, and 13 of the FLSA, 29 U.S.C. sections 206, 207, and 213 (2004).

[383] 69 Fed. Reg. 22,122 (April 23, 2004).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment contains provisions relating to the authority of the Secretary of Labor to issue regulations implementing the overtime pay requirement and the effect of recently issued regulations.

Under the Senate amendment, the Secretary of Labor may not issue any regulation that exempts from the overtime pay requirement any employee who earns less than $23,660 per year. In addition, the Secretary of Labor may not issue any regulation concerning the right to overtime pay that is not as protective, or more protective, of the overtime pay rights of employees in certain specified occupations or job classifications (as listed in the provision) as the protections provided for such employees under the regulations in effect on March 31, 2003. Any portion of a regulation issued after March 31, 2003, that modifies the overtime pay requirement in a manner that is inconsistent with the provisions of the Senate amendment will have no force or effect as it relates to the occupation or job classification involved.

The Senate amendment also provides that, notwithstanding the Administrative Procedures Act or any other provision of law, any portion of the Labor regulations issued on April 23, 2004, that exempts from the overtime pay requirement any employee who would not otherwise be exempt if the regulations in effect on March 31, 2003, remained in effect, will have no force or effect. In addition, the portion of the regulations (as in effect on March 31, 2003) that would prevent any employee from being exempt shall remain in effect. Nonetheless, the increased salary requirements provided for in the regulations issued on April 23, 2004, will remain in effect.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provisions.

21. Report on acquisitions of goods from foreign sources (sec. 1001 of the Senate amendment and sec. 43 of the Office of Federal Procurement Policy Act)

PRESENT LAW

Public Law 93-400, "The Office of Federal Procurement Policy Act", as amended, created the Office of Federal Procurement Policy ("OFPP") in 1974 and placed it in the Office of Management and Budget ("OMB"). The OFPP was created, among other purposes, to provide Government-wide procurement policies which are to be followed by Executive agencies in procurement activities.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that, not later than 60 days after the end of each fiscal year, each executive agency is to submit to the Congress a report on the acquisitions that were made of articles, materials, or supplies by the agency in that fiscal year from sources outside the United States. The report is to separately include the following information: (1) the dollar value of any articles, materials, or supplies that were manufactured outside the United States; (2) an itemized list of all waivers granted with respect to such articles, materials, or supplies under the Buy American Act; and (2) a summary of the (a) the total procurement funds expended on articles, materials and supplies manufactured outside the United States and (b) the total procurement funds expended on articles, materials, and supplies manufactured outside the Untied States. The agency is to make the report publicly available by posting the report on the Internet.

The reporting requirement does not apply to any procurement for national security purposes entered into by: (1) the Department of Defense or any agency or entity thereof; (2) the Departments of the Army, Navy, and Air Force or any agency or entity of any of the military departments; (3) the Department of Homeland Security; (4) the Department of Energy or any agency or entity thereof, with respect to the national security programs of the Department of Energy; or (5) any element of the intelligence community.

The Senate amendment also provides that, not later than 60 days after the end of each fiscal year ending after the date of enactment, the Secretary of Commerce is to submit to Congress a report on the acquisitions by foreign governments of articles, materials, or supplies that were manufactured or extracted in the United States in that fiscal year. The report is to indicate the dollar value of such articles, materials, or supplies and is to be made publicly available by posting on the Internet.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

22. Minimum cost requirement for excess asset transfers (sec. 719 of the Senate amendment and sec. 420 of the Code)

PRESENT LAW

Defined benefit plan assets generally may not revert to an employer prior to termination of the plan and satisfaction of all plan liabilities. In addition, a reversion may occur only if the plan so provides. A reversion prior to plan termination may constitute a prohibited transaction and may result in plan disqualification. Any assets that revert to the employer upon plan termination are includible in the gross income of the employer and subject to an excise tax. The excise tax rate is 20 percent if the employer maintains a replacement plan or makes certain benefit increases in connection with the termination; if not, the excise tax rate is 50 percent. Upon plan termination, the accrued benefits of all plan participants are required to be 100-percent vested.

A pension plan may provide medical benefits to retired employees through a separate account that is part of such plan. A qualified transfer of excess assets of a defined benefit plan to such a separate account within the plan may be made in order to fund retiree health benefits.[384] A qualified transfer does not result in plan disqualification, is not a prohibited transaction, and is not treated as a reversion. Thus, transferred assets are not includible in the gross income of the employer and are not subject to the excise tax on reversions. No more than one qualified transfer may be made in any taxable year. No qualified transfer may be made after December 31, 2013.

Excess assets generally means the excess, if any, of the value of the plan's assets[385] over the greater of (1) the accrued liability under the plan (including normal cost) or (2) 125 percent of the plan's current liability.[386] In addition, excess assets transferred in a qualified transfer may not exceed the amount reasonably estimated to be the amount that the employer will pay out of such account during the taxable year of the transfer for qualified current retiree health liabilities. No deduction is allowed to the employer for (1) a qualified transfer or (2) the payment of qualified current retiree health liabilities out of transferred funds (and any income thereon).

Transferred assets (and any income thereon) must be used to pay qualified current retiree health liabilities for the taxable year of the transfer. Transferred amounts generally must benefit pension plan participants, other than key employees, who are entitled upon retirement to receive retiree medical benefits through the separate account. Retiree health benefits of key employees may not be paid out of transferred assets.

Amounts not used to pay qualified current retiree health liabilities for the taxable year of the transfer are to be returned to the general assets of the plan. These amounts are not includible in the gross income of the employer, but are treated as an employer reversion and are subject to a 20-percent excise tax.

In order for a transfer to be qualified, accrued retirement benefits under the pension plan generally must be 100-percent vested as if the plan terminated immediately before the transfer (or in the case of a participant who separated in the one-year period ending on the date of the transfer, immediately before the separation).

In order for a transfer to be qualified, the transfer must meet the minimum cost requirement. To satisfy the minimum cost requirement, an employer generally must maintain retiree health benefits at the same level for the taxable year of the transfer and the following four years (referred to as the cost maintance period). The applicable employer cost during the cost maintenance period cannot be less than the higher of the applicable employer costs for each of the two taxable years preceding the taxable year of the transfer. The applicable employer cost is generally determined by dividing the current retiree health liabilities by the number of individuals provided coverage for applicable health benefits during the year. The Secretary is directed to prescribe regulations as may be necessary to prevent an employer who significantly reduces retiree health coverage during the period from being treated as satisfying the minimum cost requirement.

Under Treasury regulations,[387] the minimum cost requirement is not satisfied if the employer significantly reduces retiree health coverage during the cost maintenance period. Under the regulations, an employer significantly reduces retiree health coverage for a year (beginning after 2001) during the cost maintenance period if either (1) the employer-initiated reduction percentage for that taxable year exceeds 10 percent, or (2) the sum of the employer-initiated reduction percentages for that taxable year and all prior taxable years during the cost maintenance period exceeds 20 percent.[388] The employer-initiated reduction percentage is percentage of the number of individuals receiving coverage for applicable health benefits as of the day before the first day of the taxable year over the total number of such individuals whose coverage for applicable health benefits ended during the taxable year by reason of employer action.[389]

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[384] Sec. 420.

[385] The value of plan assets for this purpose is the lesser of fair market value or actuarial value.

[386] In the case of plan years beginning before January 1, 2004, excess assets generally means the excess, if any, of the value of the plan's assets over the greater of (1) the lesser of (a) the accrued liability under the plan (including normal cost) or (b) 170 percent of the plan's current liability (for 2003), or (2) 125 percent of the plan's current liability. The current liability full funding limit was repealed for years beginning after 2003. Under the general sunset provision of EGTRRA, the limit is reinstated for years after 2010.

[387] Treas. Reg. sec. 1.420–1(a).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that an eligible employer does not fail the minimum cost requirement if, in lieu of any reduction of health coverage permitted by Treasury regulations, the employer reduces applicable employer cost by an amount not in excess of the reduction in costs which would have occurred if the employer had made the maximum permissible reduction in retiree health coverage under such regulations. An employer is an eligible employer if, for the preceding taxable year, the qualified current retiree health liabilities of the employer were at least five percent of gross receipts.

In applying such regulations to any subsequent taxable year, any reduction in applicable employer cost under the proposal is treated as if it were an equivalent reduction in retiree health coverage.

Effective date.—The provision is effective for taxable years ending after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

TITLE IX—ENERGY TAX INCENTIVES

A. CREDIT FOR ELECTRICITY PRODUCED FROM CERTAIN SOURCES

(Sec. 801 of the Senate amendment and sec. 45 of the Code)

PRESENT LAW

An income tax credit is allowed for the production of electricity from either qualified wind energy, qualified "closed-loop" biomass, or qualified poultry waste facilities (sec. 45). The amount of the credit is 1.5 cents per kilowatt-hour (indexed for inflation) of electricity produced. The amount of the credit is 1.8 cents per kilowatt-hour for 2004. The credit is reduced for grants, tax-exempt bonds, subsidized energy financing, and other credits.

The credit applies to electricity produced by a wind energy facility placed in service after December 31, 1993, and before January 1, 2006, to electricity produced by a closed-loop biomass facility placed in service after December 31, 1992, and before January 1, 2006, and to a poultry waste facility placed in service after December 31, 1999, and before January 1, 2006. The credit is allowable for production during the 10-year period after a facility is originally placed in service. In order to claim the credit, a taxpayer must own the facility and sell the electricity produced by the facility to an unrelated party. In the case of a poultry waste facility, the taxpayer may claim the credit as a lessee/operator of a facility owned by a governmental unit.

HOUSE BILL

No provision.

SENATE AMENDMENT

Extension of placed in service date for existing facilities

The Senate amendment extends the placed in service date for wind facilities, closed-loop biomass facilities, and poultry waste facilities to facilities placed in service after December 31, 1993 (December 31, 1992, in the case of closed-loop biomass facilities and December 31, 1999, in the case of poultry waste facilities) and before January 1, 2007.

Modification of credit amount

The Senate amendment modifies the credit rate applicable to electricity produced from after December 31, 2004 from facilities placed in service after December 31, 2004 to be 1.8 cents per kilowatt hour and repeals the indexing of the credit amount.

Additional qualifying facilities

The Senate amendment also defines six new qualifying energy resources: open-loop biomass including agricultural livestock waste nutrients, geothermal energy, solar energy, municipal biosolids and sludge, small irrigation, and municipal solid waste.

Open-loop biomass is defined as any solid, nonhazardous, cellulosic waste material which is segregated from other waste materials and which is derived from any of forest-related resources, solid wood waste materials, or agricultural sources. Eligible forest-related resources are mill residues, other than spent chemicals from pulp manufacturing, precommercial thinnings, slash, and brush. Solid wood waste materials include waste pallets, crates, dunnage, manufacturing and construction wood wastes (other than pressure-treated, chemically-treated, or painted wood wastes), and landscape or right-of-way tree trimmings. Agricultural sources include orchard tree crops, vineyard, grain, legumes, sugar, and other crop by-products or residues. However, qualifying open-loop biomass does not include municipal solid waste (garbage), gas derived from biodegradation of solid waste, or paper that is commonly recycled. In addition, open-loop biomass does not include closed-loop biomass or any biomass burned in conjunction with fossil fuel (cofiring) beyond such fossil fuel required for start up and flame stabilization.

Agricultural livestock waste nutrients are defined as agricultural livestock manure and litter, including bedding material for the disposition of manure.

Geothermal energy is energy derived from a geothermal deposit which is a geothermal reservoir consisting of natural heat which is stored in rocks or in an aqueous liquid or vapor (whether or not under pressure).

Municipal biosolids and sludge are the residue or solids removed by a municipal wastewater treatment facility. Sludge is the recycled residue byproduct created in the treatment of commercial, industrial, municipal, or navigational wastewater, but not including residues from incineration.

A small irrigation power facility is a facility that generates electric power through an irrigation system canal or ditch without any dam or impoundment of water. The installed capacity of a qualified facility is less than five megawatts.

Qualifying open-loop biomass facilities, other than qualifying agricultural livestock waste nutrient facilities are facilities using open-loop biomass to produce electricity that are placed in service prior to January 1, 2005. Qualifying agricultural livestock waste nutrient facilities are facilities using agricultural livestock waste nutrients to produce electricity that are placed in service after December 31, 2004 and before January 1, 2007. Qualifying geothermal energy facilities are facilities using geothermal deposits to produce electricity that are placed in service after December 31, 2004 and before January 1, 2007. Qualifying solar energy facilities are facilities using solar energy to generate electricity that are placed in service December 31, 2004 and before January 1, 2007. Qualifying municipal biosolids and sludge facilities are facilities using municipal biosolids or sludge to generate electricity that are originally placed in service after December 31, 2004, and before January 1, 2007. Qualifying small irrigation power facilities are facilities using small irrigation power systems to generate electricity that are originally placed in service after December 31, 2004 and before January 1, 2007. Qualifying municipal solid waste facilities are facilities or units incinerating municipal solid waste placed in service after December 31, 2004 and before January 1, 2007.

In the case of qualifying open-loop biomass facilities placed in service prior to January 1, 2005, taxpayers may claim a credit of 1.2 cents per kilowatt hour, rather than 1.8 cents per kilowatt hour for the five-year period beginning on January 1, 2005. the otherwise allowable credit for a three-year period. For a facility placed in service after the date of enactment, the three-year period commences when the facility is placed in service.

In addition, the Senate amendment modifies present law to provide that qualifying closed-loop biomass facilities include any facility originally placed in service before December 31, 1992 and modified to use closed-loop biomass to co-fire with coal, with other biomass, or both, before January 1, 2007. The amount of credit the taxpayer may claim credit is adjusted for the thermal value of the qualifying closed-loop biomass relative to the thermal value of the closed-loop biomass and the coal. The ten-year credit period for such a qualifying facility commences no earlier than January 1, 2005.

Credit claimants and treatment of other subsidies

In the case of qualifying open-loop biomass facilities and qualifying closed-loop biomass facilities modified to use closed-loop biomass to co-fire with coal, the Senate amendment permits a lessee operator to claim the credit in lieu of the owner of the facilities.

The Senate amendment provides that certain persons (public utilities, electric cooperatives, rural electric cooperatives, and Indian tribes) may sell, trade, or assign to any taxpayer any credits that would otherwise be allowable to that person, if that person were a taxpayer, for production of electricity from a qualified facility owned by such person. However, any credit sold, traded, or assigned may only be sold, traded, or assigned once. Subsequent trades are not permitted. In addition, any credits that would otherwise be allowable to such person, to the extent provided by the Administrator of the Rural Electrification Administration, may be applied as a prepayment to certain loans or obligations undertaken by such person under the Rural Electrification Act of 1936.

The Senate amendment repeals the present-law reduction in allowable credit for facilities financed with tax-exempt bonds or with certain loans received under the Rural Electrification Act of 1936.

Effective date.—The Senate amendment is generally is effective for electricity sold from qualifying facilities after December 31, 2004. For electricity produced from qualifying open-loop biomass facilities originally placed in service prior to the date of enactment, the provision is effective January 1, 2005.

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[388] Treas. Reg. sec. 1.420-1(b)(1).

[389] Treas. Reg. sec. 1.420-1(b)(2).

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with modifications.

Extension of placed in service date for existing facilities

The conference agreement does not include the provisions of the Senate amendment with respect to the extension of placed in service dates for qualifying wind, closed-loop, and poultry waste facilities.

Modification of placed in service date for existing facilities

The conference agreement includes the Senate amendment provision with respect to qualifying closed-loop biomass facilities modified to use closed-loop biomass to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass, with the modification that the 10-year credit period begin no earlier than the date of enactment of the provision.

Additional qualifying resource and facilities

The conference agreement also defines five new qualifying resources for the production of electricity: open-loop biomass (including agricultural livestock waste nutrients), geothermal energy, solar energy, small irrigation power, and municipal solid waste. Two different qualifying facilities use municipal solid waste as a qualifying resource: landfill gas facilities and trash combustion facilities. In addition, the conference agreement defines refined coal as a qualifying resource.

Qualifying open-loop biomass facilities are facilities using biomass to produce electricity that are placed in service prior to January 1, 2006. Qualifying agricultural livestock waste nutrient facilities are facilities using agricultural livestock waste nutrients to produce electricity that are placed in service after the date of enactment and before January 1, 2006. The installed capacity of a qualified agricultural livestock waste nutrient facility is not less than 150 kilowatts.

Qualifying geothermal energy facilities are facilities using geothermal deposits to produce electricity that are placed in service after the date of enactment and before January 1, 2006. Qualifying solar energy facilities are facilities using solar energy to generate electricity that are placed in service after the date of enactment and before January 1, 2006. A qualifying geothermal energy facility or solar energy facility may not have claimed any credit under sec. 48 of the Code.[390]

A qualified small irrigation power facility is a facility originally placed in service after the date of enactment and before January 1, 2006. A small irrigation power facility is a facility that generates electric power through an irrigation system canal or ditch without any dam or impoundment of water. The installed capacity of a qualified facility is not less than 150 kilowatts and less than five megawatts.

Landfill gas is defined as methane gas derived from the biodegradation of municipal solid waste. Trash combustion facilities are facilities that burn municipal solid waste (garbage) to produce steam to drive a turbine for the production of electricity. Qualifying landfill gas facilities and qualifying trash combustion facilities include facilities used to produce electricity placed in service after the date of enactment and before January 1, 2006.

Refined coal is a qualifying liquid, gaseous, or solid synthetic fuel produced from coal (including lignite) or high-carbon fly ash, including such fuel used as a feedstock. A qualifying fuel is a fuel that when burned emits 20 percent less SO_2 and nitrogen oxides than the burning of feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2003, and if the fuel sells at prices at least 50 percent greater than the prices of the feedstock coal or comparable coal. In addition, to be qualified refined coal the fuel must be sold by the taxpayer with the reasonable expectation that it will be used for the primary purpose of producing steam. A qualifying refined coal facility is a facility producing refined coal that is placed in service after the date of enactment and before January 1, 2009.

Credit period and credit rates

In general, as under present law, taxpayers may claim the credit at a rate of 1.5 cents per kilowatt-hour (indexed for inflation and currently 1.8 cents per kilowatt-hour) for 10 years of production commencing on the date the facility is placed in service. In the case of open-loop biomass facilities, (including agricultural livestock waste nutrients), geothermal energy, solar energy, small irrigation power, landfill gas facilities, and trash combustion facilities the 10-year credit period is reduced to five years commencing on the date the facility is placed in service. In general, for facilities placed in service prior to January 1, 2005, the credit period commences on January 1, 2005. In the case of a closed-loop biomass facilities modified to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass, the credit period shall begin no earlier than the date of enactment.

In the case of open-loop biomass facilities (including agricultural livestock waste nutrients), small irrigation power, landfill gas facilities, and trash combustion facilities, the otherwise allowable credit amount is reduced by one half.

An alternative credit applies for the production of refined coal. A qualified refined coal facility may claim credit at a rate of $4.375 per ton (indexed for inflation after 1992) of refined coal sold to a unrelated person. As is the case for facilities that produce electricity, the credit a taxpayer may claim for the production of refined coal is phased out as the market price of refined coal exceeds certain threshold levels. The threshold is defined by reference to the price of feedstock fuel used to produce refined coal. Thus if a producer of refined coal uses Powder River Basin coal as a feedstock, the threshold price is determined by reference to prices of Powder River Basin coal. If the producer uses Appalachian coal, the threshold price is determined by reference to prices of Appalachian coal.

Credit claimants and treatment of other subsidies

A lessee or operator may claim the credit in lieu of the owner of the qualifying facility in the case of qualifying open-loop biomass facilities originally placed in service on or before the date of enactment and in the case of a closed-loop biomass facilities modified to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass.

In addition, for all qualifying facilities, other than closed-loop biomass facilities modified to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass, any reduction in credit by reason of grants, tax-exempt bonds, subsidized energy financing, and other credits cannot exceed 50 percent. In the case of closed-loop biomass facilities modified to co-fire with coal, to co-fire with other biomass, or to co-fire with coal and other biomass, there is no reduction in credit by reason of grants, tax-exempt bonds, subsidized energy financing, and other credits.

The amendments made by the conference report do not apply with respect to any poultry waste facility placed in service prior to January 1, 2005. Such facilities placed in service after December 31, 2004 generally may qualify for credit as animal livestock waste nutrient facilities.

No facility that previously claimed or currently claims credit under section 29 of the Code is a qualifying facility for purposes of section 45.

Effective date.—The provision is effective for electricity produced and sold from qualifying facilities after the date of enactment in taxable years ending after the date of enactment. With respect to open-loop biomass facilities placed in service prior to January 1, 2005, the provisions are effective for electricity produced and sold after December 31, 2004.

B. ALTERNATIVE MOTOR VEHICLES AND FUELS INCENTIVES

1. Alternative motor vehicle credit (sec. 811 of Senate amendment)

PRESENT LAW

Certain costs of qualified clean-fuel vehicle may be expensed and deducted when such property is placed in service (sec. 179A). Qualified clean-fuel vehicle property includes motor vehicles that use certain clean-burning fuels (natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, electricity and any other fuel at least 85 percent of which is methanol, ethanol, any other alcohol or ether).[391] The maximum amount of the deduction is $50,000 for a truck or van with a gross vehicle weight over 26,000 pounds or a bus with seating capacities of at least 20 adults; $5,000 in the case of a truck or van with a gross vehicle weight between 10,000 and 26,000 pounds; and $2,000 in the case of any other motor vehicle. Qualified electric vehicles do not qualify for the clean-fuel vehicle deduction. The deduction allowed is 25 percent of the otherwise allowable amount in 2006, and is unavailable for purchases after December 31, 2006.

HOUSE BILL

No provision.

SENATE AMENDMENT

Fuel cell motor vehicles

The Senate amendment provides a credit for the purchase of qualified fuel cell motor vehicles. The base credit for the purchase of new qualified fuel cell motor vehicles ranges between $4,000 and $40,000 depending upon the weight class of the vehicle. For automobiles and light trucks, the otherwise allowable credit amount ($4,000) is increased by an amount from $1,000 to $4,000 if the vehicle meets certain fuel economy increases compared to a stated standard. Credit may not be claimed for qualified fuel cell motor vehicles purchased after December 31, 2011.

Hybrid motor vehicles

The Senate amendment provides a credit for the purchase of qualified hybrid motor vehicles. The base credit for the purchase of a new qualified hybrid motor vehicle ranges from $250 to $10,000 depending upon the weight of the vehicle and the maximum power available from the vehicle's rechargeable energy storage system. For automobiles and light trucks, the otherwise allowable credit amount ($250 to $1,000) is increased by an amount from $500 to $3,000 if the vehicle meets certain fuel economy increases. For heavy duty hybrid motor vehicles, the otherwise allowable credit ($1,000 to $10,000) is increased depending upon the vehicle's weight and provided the vehicle meets certain 2007 (and beyond) emissions standards. The amount of credit is increased by between $2,500 and $10,000 for vehicles placed in service in 2004; is increased by between $2,500 and $10,000 for vehicles placed in service in 2004, is increased by between $2,000 and $8,000 for vehicles placed in service in 2005, and is increased by between $1,500 and $6,000 for vehicles placed in service in 2006. Credit may not be claimed for qualified hybrid motor vehicles purchased after December 31, 2006.

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[390] If a geothermal facility or solar facility claims credit for any year under section 45 of the Code, the facility is precluded from claiming any investment credit under section 48 of the Code in the future.

[391] A hybrid-electric vehicle may qualify as a clean-fuel vehicle under present law.

Alternative fuel motor vehicles

The Senate amendment provides a credit for the purchase of qualified alternative fuel motor vehicles. The base credit for the purchase of a new alternative fuel motor vehicle equals 40 percent of the incremental cost of such vehicle. The otherwise allowable credit for 40 percent of the incremental cost is increased by an additional 30 percent of the incremental cost of the vehicle if the vehicle meets certain emissions standards. For computation of the credit, the incremental cost of the vehicle may not exceed between $5,000 and $40,000 (resulting in a maximum total credit of between $3,500 and $28,000) depending upon the weight of the vehicle. For this purpose, incremental cost generally is defined as the amount of the increase of the manufacturer's suggested retail price of such a vehicle compared to the manufacturer's suggested retail price of a comparable gasoline or diesel model. Qualifying alternative fuel motor vehicles are vehicles that operate only on qualifying alternative fuels and are incapable of operating on gasoline or diesel (except in the extent gasoline or diesel fuel is part of a qualified mixed fuel). Qualifying alternative fuels are compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, and any liquid mixture consisting of at least 85 percent methanol.

Taxpayers purchasing certain mixed-fuel vehicles also may claim the alternative fuel motor vehicle credit, at a reduced rate. A mixed-fuel vehicle is a vehicle with gross weight of seven tons or more and is certified by the manufacturer as being able to operate on a combination of alternative fuel and a petroleum-based fuel. A qualifying mixed-fuel vehicle must use at least 75 percent alternative fuel (a "75/25 mixed-fuel vehicle") or 90 percent alternative fuel (a "90/10 mixed-fuel vehicle") and be incapable of operating on a mixture containing less than 75 percent alternative fuel in the case of a 75/25 vehicle (less than 90 percent alternative fuel in the case of a 90/10 vehicle). A taxpayer purchasing a 75/25 mixed-fuel vehicle may claim 70 percent of the otherwise allowable credit. A taxpayer purchasing a 90/10 mixed-fuel vehicle may claim 90 percent of the otherwise allowable credit.

Credit may not be claimed for qualified alternative fuel motor vehicles purchased after December 31, 2006. The taxpayer's basis in the property is reduced by the amount of credit claimed.

Provisions of general application

The Senate amendment provides that unused credits may be carried forward for 20 years and three years (but not into taxable years beginning before January 1, 2005).

If a tax-exempt person purchases or leases a qualifying vehicle, the seller or lessor may claim the credit.

Effective date.—The Senate amendment is effective for property placed in service after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

2. Modification of credit for electric vehicles (sec. 812 of Senate amendment and sec. 30 of the Code)

PRESENT LAW

A 10-percent tax credit is provided for the cost of a qualified electric vehicle, up to a maximum credit of $4,000 (sec. 30). A qualified electric vehicle is a motor vehicle that is powered primarily by an electric motor drawing current from rechargeable batteries, fuel cells, or other portable sources of electrical current, the original use of which commences with the taxpayer, and that is acquired for the use by the taxpayer and not for resale. The full amount of the credit is available for purchases prior to 2006. The credit allowed is 25 percent of the otherwise allowable amount for 2006, and is unavailable for purchases after December 31, 2006. There is no carry forward or carryback of the credit for electric vehicles.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment modifies the present-law credit for electric vehicles to provide that the credit for qualifying vehicles generally ranges between $3,500 and $40,000 depending upon the weight of the vehicle and, for certain vehicles, the driving range of the vehicle. In the case of property purchased by tax-exempt persons, the seller may claim the credit. The taxpayer would be ineligible for the deduction allowable under present-law section 179A for a qualified battery electric vehicle on which a credit is allowable. The provision would repeal the reduce rate of credit for vehicles purchased in 2006, permitting taxpayer to claim the full amount of credit otherwise allowable for 2006. The taxpayer would be able to carry forward unused credits for 20 years or carry unused credits back for three years (but not carried back to taxable years beginning before the January 1, 2005).

Effective date.—The Senate amendment is effective for property placed in service after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

3. Modifications of deduction for refueling property (sec. 813 of Senate amendment and sec. 179A of the Code)

PRESENT LAW

Certain costs of qualified clean-fuel vehicle refueling property may be expensed and deducted when such property is placed in service (sec. 179A). Up to $100,000 of such property at each location owned by the taxpayer may be expensed with respect to that location. Natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, electricity and any other fuel at least 85 percent of which is methanol, ethanol, or any other alcohol or ether comprise clean-burning fuels.

The deduction is unavailable for property placed in service after December 31, 2006.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provision permits taxpayers to claim a 50-percent credit for the cost of installing clean-fuel vehicle refueling property to be used in a trade or business of the taxpayer or installed at the principal residence of the taxpayer. In the case of retail clean-fuel vehicle refueling property the allowable credit may not exceed $30,000. In the case of residential clean-fuel vehicle refueling property the allowable credit may not exceed $1,000. The taxpayer's basis in the property is reduced by the amount of the credit and the taxpayer may not claim deductions under section 179A with respect to property for which the credit is claimed.

In the case of refueling property installed on property owned or used by a tax-exempt person, the taxpayer that installs the property may claim the credit. To be eligible for the credit, the property must be placed in service before January 1, 2007 (before January 1, 2012 in the hydrogen refueling property). The credit allowable in the taxable year cannot exceed the difference between the taxpayer's regular tax (reduced by certain other credits) and the taxpayer's tentative minimum tax. The taxpayer may carry forward unused credits for 20 years.

Effective date.—The Senate amendment is effective for property placed in service after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

4. Credit for retail sale of alternative motor vehicle fuels (sec. 814 of Senate amendment)

PRESENT LAW

There is no retail credit for the sale of alternative motor vehicle fuels. However, a 52-cents-per-gallon income tax credit is allowed for alcohol fuels for 2003 and 2004 (51 cents for 2005–2007). The alcohol fuels credit may be claimed as a reduction in excise tax payments. Such tax payments generally are made before the retail level. In the case of ethanol, the Code provides a separate 10-cents-per-gallon credit for small producers.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment permits taxpayers to claim a credit equal to the gasoline gallon equivalent of 50 cents per gallon of alternative fuel sold in 2005 and 2006. Qualifying alternative fuels are compressed natural gas, liquefied natural gas, liquefied petroleum gas, hydrogen, any liquid mixture consisting of at least 85 percent methanol, and any liquid mixture consisting of at least 85 percent ethanol. The credit may be claimed for sales prior to January 1, 2007. Under the provision, the credit is part of the general business credit.

Effective date.—The Senate amendment is effective for fuel sold at retail after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

5. Small ethanol producer credit (sec. 815 of the Senate amendment and sec. 40 of the Code)

PRESENT LAW

Small ethanol producer credit

Present law provides several tax benefits for ethanol and methanol produced from renewable sources (e.g., biomass) that are used as a motor fuel or that are blended with other fuels (e.g., gasoline) for such a use. In the case of ethanol, a separate 10-cents-per-gallon credit is provided for small producers, defined generally as persons whose production does not exceed 15 million gallons per year and whose production capacity does not exceed 30 million gallons per year. The small producer credit is part of the alcohol fuels tax credit under section 40 of the Code. The alcohol fuels tax credits are includible in income. This credit, like tax credits generally, may not be used to offset alternative minimum tax liability. The credit is treated as a general business credit, subject to the ordering rules and carryforward/carryback rules that apply to business credits generally. The alcohol fuels tax credit is scheduled to expire after December 31, 2007.

Taxation of cooperatives and their patrons

Under present law, cooperatives in essence are treated as pass-through entities in that the cooperative is not subject to corporate income tax to the extent the cooperative timely pays patronage dividends. Under present law (sec. 38(d)(4)), the only excess credits that may be passed through to cooperative patrons are the rehabilitation credit (sec. 47), the energy property credit (sec. 48(a)), and the reforestation credit (sec. 48(b)).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment makes several modifications to the rules governing the small producer ethanol credit. First, the provision liberalizes the definition of an eligible small producer to include persons whose production capacity does not exceed 60 million gallons. Second, the provision allows cooperatives to elect to pass through the small ethanol producer credits to its patrons. The credit is apportioned pro rata among patrons of the cooperative on the basis of the quantity or value of the business done with or for such patrons for the taxable year. An election to pass through the credit is made on a timely filed return for the taxable year and is irrevocable for such taxable year.

Third, the provision repeals the rule that includes the small producer credit in income of taxpayers claiming it. Finally, the provision provides that the small producer ethanol credit is not treated as derived from a passive activity under the Code rules restricting credits and deductions attributable to such activities.

Effective date.—The provision is effective for taxable years ending after date of enactment.

CONFERENCE AGREEMENT

The conference agreement allows cooperatives to elect to pass the small ethanol producer credit through to their patrons. Specifically, the credit is to be apportioned among patrons eligible to share in patronage dividends on the basis of the quantity or value of business done with or for such patrons for the taxable year. The election must be made on a timely filed return for the taxable year, and once made, is irrevocable for such taxable year.

The amount of the credit not apportioned to patrons is included in the organization's credit for the taxable year of the organization. The amount of the credit apportioned to patrons is to be included in the patron's credit for the first taxable year of each patron ending on or after the last day of the payment period for the taxable year of the organization, or, if earlier, for the taxable year of each patron ending on or after the date on which the patron receives notice from the cooperative of the apportionment.

If the amount of the credit shown on the cooperative's return for a taxable year is in excess of the actual amount of the credit for that year, an amount equal to the excess of the reduction in the credit over the amount not apportioned to patrons for the taxable year is treated as an increase in the cooperative's tax. The increase is not treated as tax imposed for purposes of determining the amount of any tax credit or for purposes of the alternative minimum tax.

The conference agreement does not contain any of the other modifications from the Senate amendment.

Effective date.—The provision is effective for taxable years ending after date of enactment.

C. CONSERVATION AND ENERGY EFFICIENCY PROVISIONS

1. Energy efficient new homes (sec. 821 of the Senate amendment)

PRESENT LAW

A nonrefundable, 10-percent business energy credit is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above $25,000 or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law credit for the construction of new energy-efficient homes.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides a credit to an eligible contractor of an amount equal to the aggregate adjusted bases of all energy-efficient property installed in a qualified new energy-efficient home during construction. The credit cannot exceed $1,000 ($2,000) in the case of a new home that has a projected level of annual heating and cooling costs that is 30 percent (50 percent) less than a comparable dwelling constructed in accordance with the latest standards of chapter 4 of the International Energy Conservation Code approved by the Department of Energy before the construction of such qualifying new home and any applicable Federal minimum efficiency standards for equipment.

The eligible contractor is the person who constructed the home, or in the case of a manufactured home, the producer of such home. Energy efficiency property is any energy-efficient building envelope component (insulation materials or system specifically and primarily designed to reduce heat loss or gain, and exterior windows, including skylights, and doors) and any energy-efficient heating or cooling equipment or system that can, individually or in combination with other components, meet the standards for the home.

To qualify as an energy-efficient new home, the home must be: (1) a dwelling located in the United States, (2) the principal residence of the person who acquires the dwelling from the eligible contractor or manufacturer, and (3) certified to have a projected level of annual heating and cooling energy consumption that meets the standards for either the 30-percent or 50-percent reduction in energy usage. The home may be certified according to a component-based method, an energy performance based method, a guarantee-based method, or, in the case of a qualifying new home which is a manufactured home, by a method prescribed by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program. Manufactured homes certified by a method prescribed by the Administrator of the Environmental Protection Agency under the Energy Star Labeled Homes program are eligible for the $1,000 credit provided criteria (1) and (2) are met.

A component-based method of certification is a method which uses the applicable technical energy efficiency specifications or ratings (including product labeling requirements) for the energy efficient building envelope component or energy efficient heating or cooling equipment. The Secretary shall, in consultation with the Administrator of the Environmental Protection Agency, develop prescriptive component-based packages which are equivalent in energy performance to properties which qualify under the performance-based method. The certification under the component-based method shall be provided by a local building regulatory authority, a utility, or a home energy rating organization.

A performance-based method of certification is a method which calculates projected energy usage and cost reductions in the qualifying new home in relation to a new home heated by the same fuel type and constructed in accordance with (1) the latest standards of chapter 4 of the International Energy Conservation Code approved by the Department of Energy before the construction of such qualifying new home, and (2) any applicable Federal minimum efficiency standards for equipment. Computer software shall be used in support of a performance-based method certification under clause. Such software shall meet procedures and methods for calculating energy and cost savings in regulations promulgated by the Secretary of Energy. The certification under the performance-based method shall be provided by an individual recognized by an organization recognized by the Secretary for such purposes.

A guarantee-based method of certification is a method that guarantees in writing to the homeowner energy savings of either 30 percent or 50 percent over the 2000 International Energy Conservation Code for heating and cooling costs. The guarantee shall be provided for a minimum of 2 years and shall fully reimburse the homeowner any heating and cooling costs in excess of the guaranteed amount. Computer software shall be selected by the provider of the guarantee to support the guarantee-based method certification. Such software shall meet procedures and methods for calculating energy and cost savings in regulations promulgated by the Secretary of Energy. The certification under the guarantee-based method shall be provided by an individual recognized by an organization recognized by the Secretary for such purposes.

In prescribing regulations for performance-based and guarantee-based certification methods, the Secretary shall prescribe procedures for calculating annual energy usage and cost reductions for heating and cooling and for the reporting of the results. Such regulations shall provide that any calculation procedures be fuel neutral such that the same energy efficiency measures allow a qualifying new home to be eligible for the credit under this section regardless of whether such home uses a gas or oil furnace or boiler or an electric heat pump, and require that any computer software allow for the printing of the Federal tax forms necessary for the credit under this section and for the printing of forms for disclosure to the homebuyer. Other rules apply relating to the form of the certification and the manner in which it is provided to the buyer of the home.

In the case of a qualifying new home which is a manufactured home, certification of compliance with energy efficiency standards shall be provided by a manufactured home primary inspection agency.

The credit will be part of the general business credit. No credits attributable to energy efficient homes may be carried back to any taxable year ending on or before the effective date of the credit. No deduction shall be allowed for that portion of expenses for a qualifying new home otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit for such taxable year.

Effective date.—The credit applies to homes whose construction is substantially completed after December 31, 2004, and which are purchased during the period beginning on December 31, 2004, and ending on December 31, 2007 (December 31, 2005 in the case of the $1,000 credit).

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

2. Energy efficient appliances (sec. 822 of the Senate amendment)

PRESENT LAW

A nonrefundable, 10-percent business energy credit is allowed for the cost of new property that is equipment: (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat; or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of: (1) 25 percent of net regular tax liability above $25,000 or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law credit for the manufacture of energy-efficient appliances.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides a credit for the production of certain energy-efficient clothes washers and refrigerators. The credit equals $50 per appliance for (1) energy-efficient clothes washers produced before December 31, 2007 with a modified energy factor ("MEF") of 1.42 MEF or greater, and (2) refrigerators produced before December 31, 2005 that consume 10 percent fewer kilowatt-hours per year than the energy conservation standards promulgated by the Department of Energy that took effect on July 1, 2001. The credit equals $100 for (1) energy-efficient clothes washers produced before December 31, 2007 with a MEF of 1.5 or greater, and (2) refrigerators produced before December 31, 2007 that consume at least 15 percent fewer kilowatt-hours per year (at least 20 percent less for production in 2007) than the energy conservation standards promulgated by the Department of Energy that took effect on July 1, 2001. The credit is $150 for refrigerators produced before January 1, 2007 that consume at least 20 percent fewer kilowatt-hours per year than the energy conservation standards promulgated by the Department of Energy that took effect on July 1, 2001. A refrigerator must be an automatic defrost refrigerator-freezer with an internal volume of at least 16.5 cubic feet to qualify for the credit. A clothes washer is any residential clothes washer, including a residential style coin operated washer, that satisfies the relevant efficiency standard.

For each category of appliances (e.g., washers that meet the $50 standard, washers that meet the $100 standard, refrigerators that meet the $50 standard, refrigerators that meet the $100 standard, and refrigerators that meet the $150 standard), only production in excess of average production for each such category during calendar years 2001–2003 would be eligible for the credit.

The taxpayer may not claim credits in excess of $60 million for all taxable years, and may not claim credits in excess of $30 million with respect to appliances that only qualify for the $50 credit. Additionally, the credit allowed for all appliances may not exceed two percent of the average annual gross receipts of the taxpayer for the three taxable years preceding the taxable year in which the credit is determined.

The credit would be part of the general business credit.

EFFECTIVE DATE

The credit applies to appliances produced after December 31, 2004, and prior to January 1, 2008

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

3. Residential solar hot water, photovoltaics and other energy efficient property (sec. 823 of the Senate amendment)

PRESENT LAW

A nonrefundable, 10-percent business energy credit is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above $25,000 or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law personal tax credit for energy efficient residential property.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides a personal tax credit for the purchase of qualified wind energy property, qualified photovoltaic property, and qualified solar water heating property that is used exclusively for purposes other than heating swimming pools and hot tubs. The credit is equal to 15 percent for solar water heating property and photovoltaic property, and 30 percent for wind energy property. The maximum credit for each of these systems of property is $2,000. The provision also provides a 30 percent credit for the purchase of qualified fuel cell power plants. The credit for any fuel cell may not exceed $500 for each 0.5 kilowatt of capacity.

Qualifying solar water heating property means an expenditure for property to heat water for use in a dwelling unit located in the United States and used as a residence if at least half of the energy used by such property for such purpose is derived from the sun. Qualified photovoltaic property is property that uses solar energy to generate electricity for use in a dwelling unit. Qualified wind energy property is property that uses wind energy to generate electricity for use in a dwelling unit located in the United States and used as a principal residence by the taxpayer. A qualified fuel cell power plant is an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means, and which has an electricity-only generation efficiency of greater than 30 percent and that generates at least 0.5 kilowatts of electricity. The qualified fuel cell power plant must be installed on or in connection with a dwelling unit located in the United States and used by the taxpayer as a principal residence.

The provision also provides a credit for the purchase of other qualified energy efficient property, as described below:

Electric heat pump water heater with an energy factor of at least 1.7. The maximum credit is $150 per unit.

Advanced natural gas, oil, propane furnace, or hot water boiler that achieves at least 95 percent annual fuel utilization efficiency. The maximum credit is $125 per unit.

Advanced natural gas, oil, propane water heater that has an energy factor of at least

0.80 in the standard Department of Energy test procedure. The maximum credit is $150 per unit.

Natural gas, oil, propane water heater that has an energy factor of at least 0.65 but less than 0.80 in the standard Department of Energy test procedure. The maximum credit is $50 per unit.

Advanced main air circulating fan used in a new natural gas, propane, or oil-fired furnace, including main air circulating fans that use a brushless permanent magnet motor or another type of motor which achieves similar or higher efficiency at half and full speed, as determined by the Secretary. The maximum credit is $50.

Advanced combination space and water heating system that has a combined energy factor of at least 0.80 and a combined annual fuel utilization efficiency (AFUE) of at least 78 percent in the standard Department of Energy test procedure. The maximum credit is $150.

Combination space and water heating system that has a combined energy factor of at least 0.65 but less than 0.80 and a combined annual fuel utilization efficiency (AFUE) of at least 78 percent in the standard Department of Energy test procedure. The maximum credit is $50.

Geothermal heat pumps that have an EER of at least 21. The maximum credit is $250 per unit.

The credit is nonrefundable, and the depreciable basis of the property is reduced by the amount of the credit. Expenditures for labor costs allocable to onsite preparation, assembly, or original installation of property eligible for the credit are eligible expenditures. The credit is allowed against the regular and alternative minimum tax.

Certain equipment safety requirements need to be met to qualify for the credit. Special proration rules apply in the case of jointly owned property, condominiums, and tenant-stockholders in cooperative housing corporations. With the exception of wind energy property, if less than 80 percent of the property is used for nonbusiness purposes, only that portion of expenditures that is used for nonbusiness purposes is taken into account.

EFFECTIVE DATE

The credit applies to expenditures after December 31, 2004, and prior to January 1, 2008.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

4. Credit for business installation of qualified fuel cells and stationary microturbine power plants (sec. 824 of the Senate amendment and sec. 48 of the Code)

PRESENT LAW

A nonrefundable, 10-percent business energy credit is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general business credit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above $25,000 or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

There is no present-law credit for fuel cell or microturbine power plant property.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides a 30 percent business energy credit for the purchase of qualified fuel cell power plants for businesses. A qualified fuel cell power plant is an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means, and which has an electricity-only generation efficiency of greater than 30 percent and generates at least 0.5 kilowatts of electricity. The credit for any fuel cell may not exceed $500 for each 0.5 kilowatts of capacity.

Additionally, the provision provides a 10 percent credit for the purchase of qualifying stationary microturbine power plants. A qualified stationary microturbine power plant is an integrated system comprised of a gas turbine engine, a combustor, a recuperator or regenerator, a generator or alternator, and associated balance of plant components which converts a fuel into electricity and thermal energy. Such system also includes all secondary components located between the existing infrastructure for fuel delivery and the existing infrastructure for power distribution, including equipment and controls for meeting relevant power standards, such as voltage, frequency and power factors. Such system must have an electricity-only generation efficiency of not less that 26 percent at International Standard Organization conditions and a capacity of less than 2,000 kilowatts. The credit is limited to the lesser of 10 percent of the basis of the property or $200 for each kilowatt of capacity.

The credit is nonrefundable. The taxpayer's basis in the property is reduced by the amount of the credit claimed.

Effective date.—The credit for businesses applies to property placed in service after December 31, 2004, and before January 1, 2008 (January 1, 2007 in the case of microturbines), under rules similar to rules of section 48(m) of the Code (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990).

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

5. Energy efficient commercial building deduction (sec. 825 of Senate amendment)

PRESENT LAW

No special deduction is currently provided for expenses incurred for energy-efficient commercial building property.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides a deduction equal to energy-efficient commercial building property expenditures made by the taxpayer. Energy-efficient commercial building property expenditures are defined as amounts paid or incurred for energy-efficient property installed in connection with the construction or reconstruction of property: (1) which is depreciable property; (2) which is located in the United States, and (3) which is the type of structure to which the Standard 90.1-2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America ("ASHRAE/IESNA") is applicable. The deduction is limited to an amount equal to $2.25 per square foot of the property for which such expenditures are made. The deduction is allowed in the year in which the property is placed in service.

Energy-efficient commercial building property generally means any property that reduces total annual energy and power costs with respect to the lighting, heating, cooling, ventilation, and hot water supply systems of the building by 50 percent or more in comparison to a building which minimally meets the requirements of Standard 90.1-2001 of ASHRAE/IESNA. Because of the requirement that, in order to qualify, a building must fall within the scope of the ASHRAE/IESNA Standard 90.1-2001, residential rental property that is less than four stories does not qualify.

Certain certification requirements must be met in order to qualify for the deduction. The Secretary, in consultation with the Secretary of Energy, will promulgate regulations that describe methods of calculating and verifying energy and power costs using qualified computer software. The methods for calculation shall be fuel neutral, such that the same energy efficiency features shall qualify a building for the deduction under this subsection regardless of whether the heating source is a gas or oil furnace or boiler or an electric heat pump.

The Secretary shall prescribe procedures for the inspection and testing for compliance of buildings that are comparable, given the difference between commercial and residential buildings, to the requirements in the Mortgage Industry National Home Energy Rating Standards. Individuals qualified to determine compliance shall only be those recognized by one or more organizations certified by the Secretary for such purposes.

For energy-efficient commercial building property expenditures made by a public entity, such as public schools, the Secretary shall promulgate regulations that will allow the value of the deduction (determined without regard to the tax-exempt status of such entity) to be allocated to the person primarily responsible for designing the property in lieu of the public entity.

In the case of lighting systems, until such time as the Secretary issues final regulations, a partial deduction shall be allowed for a reduction in Lighting Power Density of 40 percent (50 percent in the case of a warehouse) of the minimum requirements in Table 9.3.1.1 or Table 9.3.1.2 of ASHRAE/IESNA Standard 90.1-2001. A pro-rated partial deduction is allowed in the case of a lighting system that reduces lighting power density between 25 percent and 40 percent. Certain lighting level and lighting control requirements must also be met in order to qualify for the partial lighting deductions.

Effective date.—The provision is effective for taxable years beginning after December 31, 2004 for expenditures in connection with a building whose construction is completed on or before December 31, 2009.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

6. Three-year applicable recovery period for depreciation of qualified energy management devices and qualified water submetering devices (secs. 826 and 827 of the Senate amendment and sec. 168 of the Code)

PRESENT LAW

No special recovery period is currently provided for depreciation of qualified energy management devices or water submetering devices.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides a three-year recovery period for qualified energy management devices placed in service by any taxpayer who is a supplier of electric energy or is a provider of electric energy services. A qualified energy management device is any energy management device that is used by the taxpayer to measure and record electricity usage data on a time-differentiated basis in at least four separate time segments per day, and to provide such data on at least a monthly basis to both consumers and the taxpayer.

Additionally, the Senate amendment provides a three-year recovery period for qualified water submetering devices placed in service by any taxpayer who is an eligible resupplier. An eligible resupplier is any taxpayer who purchases and installs qualified water submetering devices in every unit in any multi-unit property. A qualified water submetering device is any water submetering device that is used by the taxpayer to measure and record water usage data and to provide such data on at least a monthly basis to both consumers and the taxpayer.

Effective date.—The provision is effective for any qualified energy management device or water submetering device placed in service after December 31, 2004, and before January 1, 2008.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

7. Energy credit for combined heat and power system property (sec. 828 of the Senate amendment and sec. 48 of the Code)

PRESENT LAW

A nonrefundable, 10-percent business energy credit is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage.

The business energy tax credits are components of the general businesscredit (sec. 38(b)(1)). The business energy tax credits, when combined with all other components of the general business credit, generally may not exceed for any taxable year the excess of the taxpayer's net income tax over the greater of (1) 25 percent of net regular tax liability above $25,000 or (2) the tentative minimum tax. For credits arising in taxable years beginning after December 31, 1997, an unused general business credit generally may be carried back one year and carried forward 20 years (sec. 39).

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present-law credit for combined heat and power ("CHP") property.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides a 10-percent credit for the purchase of CHP property.

CHP property is property: (1) that uses the same energy source for the simultaneous or sequential generation of electrical power, mechanical shaft power, or both, in combination with the generation of steam or other forms of useful thermal energy (including heating and cooling applications); (2) that has an electrical capacity of not more than 15 megawatts or a mechanical energy capacity of no more than 2000 horsepower or an equivalent combination of electrical and mechanical energy capacities; (3) that produces at least 20 percent of its total useful energy in the form of thermal energy that is not used to produce electrical or mechanical power, and produces at least 20 percent of its total useful energy in the form of electrical or mechanical power (or a combination thereof); and (4) the energy efficiency percentage of which exceeds 60 percent. CHP property does not include property used to transport the energy source to the generating facility or to distribute energy produced by the facility.

Additionally, the Senate amendment provides that systems whose fuel source is at least 90 percent bagasse and that would qualify for the credit but for the failure to meet the efficiency standard are eligible for a credit that is reduced in proportion to the degree to which the system fails to meet the efficiency standard. For example, a system that would otherwise be required to meet the 60-percent efficiency standard, but which only achieves 30-percent efficiency, would be permitted a credit equal to one-half of the otherwise allowable credit (i.e., a 5-percent credit).

Effective date.—The credit applies to property placed in service after December 31, 2004, and before January 1, 2007.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

8. Energy efficient improvements to existing homes (sec. 829 of the Senate amendment)

PRESENT LAW

A taxpayer may exclude from income the value of any subsidy provided by a public utility for the purchase or installation of an energy conservation measure. An energy conservation measure means any installation or modification primarily designed to reduce consumption of electricity or natural gas or to improve the management of energy demand with respect to a dwelling unit (sec. 136).

There is no present law credit for energy efficiency improvements to existing homes.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision would provide a 10 percent nonrefundable credit for the purchase of qualified energy efficiency improvements. The maximum credit for a taxpayer with respect to the same dwelling for all taxable years is $300. Unused credits may be carried forward to succeeding taxable years.

A qualified energy efficiency improvement would be any energy efficiency building envelope component that is certified to meet or exceed the latest prescriptive criteria for such component in the International Energy Conservation Code approved by the Department of Energy before the installation of such component, or any combination of energy efficiency measures that is certified to achieve at least a 30 percent reduction in heating and cooling energy usage for the dwelling and that is installed in or on a dwelling that (1) is located in the United States; (2) is owned and used by the taxpayer as the taxpayer's principal residence; (3) has not been treated as a qualifying new home for purposes of the energy-efficient new homes credit . Additionally, the original use of such component or combination of measures commences with the taxpayer, and such component or combination of measures can reasonably be expected to remain in use for at least five years.

Building envelope components are: (1) insulation materials or systems which are specifically and primarily designed to reduce the heat loss or gain for a dwelling, and (2) exterior windows (including skylights) and doors.

Homes shall be certified according to a component-based method or a performance-based method. The component-based method shall be based on applicable energy-efficiency ratings, including current product labeling requirements. Certification by the component method shall be provided by a third party, such as a local building regulatory authority, a utility, a manufactured home primary inspection agency, or a home energy rating organization. The performance-based method shall be based on a comparison of the projected energy consumption of the dwelling in its original condition and after the completion of energy efficiency measures. The performance-based method of certification shall be conducted by an individual or organization recognized by the Secretary of the Treasury for such purposes.

In prescribing regulations for performance-based certification methods, the Secretary shall prescribe procedures for calculating annual energy usage and cost reductions for heating and cooling and for the reporting of the results. Such regulations shall provide that any calculation procedures be fuel neutral such that the same energy efficiency measures allow a qualifying new home to be eligible for the credit under this section regardless of whether such home uses a gas or oil furnace or boiler or an electric heat pump, and require that any computer software allow for the printing of the Federal tax forms necessary for the credit under this section and for the printing of forms for disclosure to the owner of the dwelling.

The taxpayer's basis in the property would be reduced by the amount of the credit. Special rules would apply in the case of condominiums and tenant-stockholders in cooperative housing corporations.

The credit is allowed against the regular and alternative minimum tax.

Effective date.—The credit is effective for qualified energy efficiency improvements installed after December 31, 2004, and before January 1, 2007.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

D. CLEAN COAL INCENTIVES

1. Credit for production from a clean coal technology unit (secs. 831 and 834 of Senate amendment)

PRESENT LAW

Present law does not provide a production credit for electricity generated at units that use coal as a fuel. However, an income tax credit is allowed for the production of electricity from either qualified wind energy, qualified "closed-loop" biomass, or qualified poultry waste units placed in service prior to January 1, 2006 (sec. 45). The credit allowed equals 1.5 cents per kilowatt-hour of electricity sold. The 1.5-cent figure is indexed for inflation and equals 1.8 cents for 2004. The credit is allowable for production during the 10-year period after a unit is originally placed in service. The production tax credit is a component of the general business credit (sec. 38(b)(1)).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides a production credit for electricity produced from certain units that have been retrofitted, repowered, or replaced with a clean coal technology during the ten-year period beginning on January 1, 2005. The value of the credit is 0.34 cents per kilowatt-hour of electricity produced and is indexed for inflation for calendar years after 2005.

A qualifying clean coal technology unit must meet certain capacity standards, thermal efficiency standards, and emissions standards for SO2, nitrous oxides, particulate emissions, and source emissions standards as provided in the Clean Air Act. To be a qualified clean coal technology unit, the taxpayer must receive a certificate from the Secretary of the Treasury. The Secretary may grant certificates to units only to the point that 4,000 megawatts of electricity production capacity qualifies for the credit. However, no qualifying unit would be eligible if the unit's capacity exceeded 300 megawatts.

Certain persons (public utilities, electric cooperatives, Indian tribes, and the Tennessee Valley Authority) are eligible to obtain certifications from the Secretary for these credits and sell, trade, or assign the credit to any taxpayer. However, any credit sold, traded, or assigned may only be sold, traded, or assigned once. Subsequent trades are not permitted.

Effective date.—The Senate amendment is effective for production after December 31, 2004, in taxable years ending after such date.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

2. Investment credit for clean coal technology units (secs. 832 and 834 of Senate amendment)

PRESENT LAW

Present law does not provide an investment credit for electricity generating units that use coal as a fuel. However, a nonrefundable, 10-percent investment tax credit ("business energy credit") is allowed for the cost of new property that is equipment (1) that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) that is used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage (sec. 48). The business energy tax credit is a component of the general business credit (sec. 38(b)(1)).

HOUSE BILL

No provision.

SENATE AMENDMENT

In general

The Senate amendment provides a 10-percent investment tax credit for qualified investments in advanced clean coal technology units. Certain persons (public utilities, electric cooperatives, Indian tribes, and the Tennessee Valley Authority) will be eligible to obtain certifications from the Secretary of the Treasury (as described below) for these credits and sell, trade, or assign the credit to any taxpayer. However, any credit sold, traded, or assigned may only be sold, traded, or assigned once. Subsequent trades are not permitted.

Qualifying advanced clean coal technology units

Qualifying advanced clean coal technology units must utilize advanced pulverized coal or atmospheric fluidized bed combustion technology, pressurized fluidized bed combustion technology, integrated gasification combined cycle technology, or some other technology certified by the Secretary of Energy. Any qualifying advanced clean coal technology unit must meet certain capacity standards, thermal efficiency standards, and emissions standards for SO2, nitrous oxides, particulate emissions, and source emissions standards as provided in the Clean Air Act. In addition, a qualifying advanced clean coal technology unit must meet certain carbon emissions requirements.

If the advanced clean coal technology unit is an advanced pulverized coal or atmospheric fluidized bed combustion technology unit, a pressurized fluidized bed combustion technology unit, or an integrated gasification combined cycle technology unit and if the unit uses a design coal with a heat content of not more than 9,000 Btu per pound, the unit must have a carbon emission rate less than 0.60 pound of carbon per kilowatt hour of electricity produced. If the advanced clean coal technology unit is an advanced pulverized coal or atmospheric fluidized bed combustion technology unit, a pressurized fluidized bed combustion technology unit, or an integrated gasification combined cycle technology unit and if the unit uses a design coal with a heat content greater than 9,000 Btu per pound, the unit must have a carbon emission rate less than 0.54 pound of carbon per kilowatt hour of electricity produced. In the case of an advanced clean coal technology unit that uses another eligible technology and if the unit uses a design coal with a heat content of not more than 9,000 Btu per pound, the unit must have a carbon emission rate less than 0.51 pound of carbon per kilowatt hour of electricity produced. In the case of an advanced clean coal technology unit that uses another eligible technology and if the unit uses a design coal with a heat content greater than 9,000 Btu per pound, the unit must have a carbon emission rate less than 0.459 pound of carbon per kilowatt hour of electricity produced.

Allocation of credits

To be a qualified investment in advanced clean coal technology, the taxpayer must receive a certificate from the Secretary of the Treasury. The Secretary may grant certificates to investments only to the point that 4,000 megawatts of electricity production capacity qualifies for the credit. From the potential pool of 4,000 megawatts of capacity, not more than 1,000 megawatts in total and not more than 500 megawatts in years prior to 2009 shall be allocated to units using advanced pulverized coal or atmospheric fluidized bed combustion technology. From the potential pool of 4,000 megawatts of capacity, not more than 500 megawatts in total and not more than 250 megawatts in years prior to 2009 shall be allocated to units using pressurized fluidized bed combustion technology. From the potential pool of 4,000 megawatts of capacity, not more than 2,000 megawatts in total and not more than 1,000 megawatts in years prior to 2009 and not more than 1,500 megawatts in year prior to 2013 shall be allocated to units using integrated gasification combined cycle technology, with or without fuel or chemical co-production. From the potential pool of 4,000 megawatts of capacity, not more than 500 in total and not more than 250 megawatts in years prior to 2009 shall be allocated to any other technology certified by the Secretary of Energy.

Effective date.—The Senate amendment is effective for periods after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

3. Credit for production from advanced clean coal technology (secs. 833 and 834 of the Senate amendment)

PRESENT LAW

Present law does not provide a production credit for electricity generated at units that use coal as a fuel. However, an income tax credit is allowed for the production of electricity from either qualified wind energy, qualified "closed-loop" biomass, or qualified poultry waste units placed in service prior to January 1, 2006 (sec. 45). The credit allowed equals 1.5 cents per kilowatt-hour of electricity sold. The 1.5-cent figure is indexed for inflation and equals 1.8 cents for 2004. The credit is allowable for production during the 10-year period after a unit is originally placed in service. The production tax credit is a component of the general business credit (sec. 38(b)(1)).

HOUSE BILL

No provision.

SENATE AMENDMENT

In general

The Senate amendment creates a production credit for electricity produced from any qualified advanced clean coal technology electricity generation unit that qualifies for the investment credit for qualifying clean coal technology units, as described above. Certain persons (public utilities, electric cooperatives, Indian tribes, and the Tennessee Valley Authority) will be eligible to obtain certifications from the Secretary of the Treasury (as described below) for each of these credits and sell, trade, or assign the credit to any taxpayer. However, any credit sold, traded, or assigned may only be sold, traded, or assigned once. Subsequent trades are not permitted.

Value of production credit for electricity produced from qualifying advanced clean coal technology

The taxpayer may claim a production credit on the sum of each kilowatt-hour of electricity produced and the heat value of other fuels or chemicals produced by the taxpayer at the unit.[392] The taxpayer may claim the production credit for the 10-year period commencing with the date the qualifying unit is placed in service (or the date on which a conventional unit was retrofitted or repowered). The value of the credit varies depending upon the year the unit is placed in service, whether the unit produces solely electricity or electricity and fuels or chemicals, and the rated thermal efficiency of the unit. In addition, the value of the credit is reduced for the second five years of eligible production. The maximum value of the production credit from any qualifying unit during the first five years of production is $0.014 per kilowatt-hour and the minimum value is $0.001. During the second five years of production from a qualifying unit, the maximum value of the production credit is $0.0115 and the minimum value is $0.001. The value of the credit is indexed for inflation for calendar years after 2005.

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[392] Each 3,413 Btu of heat content of the fuel or chemical is treated as equivalent to one kilowatt-hour of electricity.

Effective date.—The Senate amendment is effective for production after December 31, 2004, in taxable years ending after such date.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

E. OIL AND GAS PROVISIONS

1. Oil and gas production from marginal wells (sec. 841 of the Senate amendment and new sec. 45I of the Code)

PRESENT LAW

There is no credit for the production of oil and gas from marginal wells. The costs of such production may be recovered under the Code's depreciation and depletion rules and in other cases as a deduction for ordinary and necessary business expenses.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment would create a new, $3-per-barrel credit for the production of crude oil and a $0.50 credit per 1,000 cubic feet of qualified natural gas production. In both cases, the credit is available only for production from a "qualified marginal well." A qualified marginal well is defined as domestic well: (1) production from which is treated as marginal production for purposes of the Code percentage depletion rules; or (2) that during the taxable year had average daily production of not more than 25 barrel equivalents and produces water at a rate of not less than 95 percent of total well effluent. Production from any well during any period in which such well is not in compliance with applicable Federal pollution prevention, control, and permit requirements is not considered a qualified marginal well during such period. The maximum amount of production on which credit could be claimed is 1,095 barrels or barrel equivalents.

The credit is not available to production occurring if the reference price of oil exceeds $18 ($2.00 for natural gas). The credit is reduced proportionately as for reference prices between $15 and $18 ($1.67 and $2.00 for natural gas). Reference prices are determined on a one-year look-back basis.

In the case of production from a qualified marginal well which is eligible for the credit allowed under section 29 for the taxable year, no marginal well credit is allowable unless the taxpayer elects not to claim the credit under section 29 with respect to the well. The credit is treated as a general business credit.

Effective date.—The Senate amendment is effective for production in taxable years beginning after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement modifies the Senate amendment. The conference agreement does not include the Federal pollution prevention, control, and permit requirement provisions of the Senate amendment. The conference agreement treats the credit as part of the general business credit; however, unused credits can be carried back for up to five years rather than the generally applicable carryback period of one year. The credit is indexed for inflation for taxable years beginning in a calendar year after 2005.

Effective date—The provision is effective for production in taxable years beginning after December 31, 2004.

2. Natural gas gathering lines treated as seven-year property (sec. 842 of the Senate amendment and sec. 168 of the Code)

PRESENT LAW

The applicable recovery period for assets placed in service under the Modified Accelerated Cost Recovery System is based on the "class life of the property." The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87-56.[393] Revenue Procedure 87-56 includes two asset classes that could describe natural gas gathering lines owned by nonproducers of natural gas. Asset class 46.0, describing pipeline transportation, provides a class life of 22 years and a recovery period of 15 years. Asset class 13.2, describing assets used in the exploration for and production of petroleum and natural gas deposits, provides a class life of 14 years and a depreciation recovery period of seven years. The uncertainty regarding the appropriate recovery period of natural gas gathering lines has resulted in litigation between taxpayers and the IRS. The 10th Circuit Court of Appeals and the 6th Circuit Court of Appeals have held that natural gas gathering lines owned by nonproducers falls within the scope of Asset class 13.2 (i.e., seven-year recovery period).[394] The Tax Court has held that natural gas gathering lines owned by nonproducers falls within the scope of Asset class 46.0 (i.e., 15-year recovery period).[395]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment establishes a statutory seven-year recovery period and a class life of 14 years for natural gas gathering lines. A natural gas gathering line is defined to include any pipe, equipment, and appurtenance that is (1) determined to be a gathering line by the Federal Energy Regulatory Commission, or (2) used to deliver natural gas from the wellhead or a common point to the point at which such gas first reaches (a) a gas processing plant, (b) an interconnection with an interstate transmission line, (c) an interconnection with an intrastate transmission line, or (d) a direct interconnection with a local distribution company, a gas storage facility, or an industrial consumer.

Effective date.—The Senate amendment is effective for property placed in service after December 31, 2004, in taxable years ending after that date. No inference is intended as to the proper treatment of natural gas gathering lines placed in service before the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

3. Expensing of capital costs incurred for production in complying with environmental protection agency sulfur regulations for small refiners (sec. 843 of the Senate amendment and new sec. 179B of the Code)

PRESENT LAW

Taxpayers generally may recover the costs of investments in refinery property through annual depreciation deductions.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment permits small business refiners to immediately deduct as an expense up to 75 percent of the costs paid or incurred for the purpose of complying with the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency ("EPA"). Costs qualifying for the deduction are those costs paid or incurred with respect to any facility of a small business refiner during the period beginning on January 1, 2003 and ending on the earlier of the date that is one year after the date on which the taxpayer must comply with the applicable EPA regulations or December 31, 2009.

For these purposes a small business refiner is a taxpayer who is in the business of refining petroleum products and employs not more than 1,500 employees directly in refining and has less than 205,000 barrels per day (average) of total refinery capacity. The deduction is reduced, pro rata, for taxpayers with capacity in excess of 155,000 barrels per day.

Effective date.—The Senate amendment is effective for expenses paid or incurred after December 31, 2002, in taxable years ending after that date.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment provision. With respect to the definition of a small business refiner, the conferees intend that, in any case in which refinery through-put or retained production of the refinery differs substantially from its average daily output or refined product, capacity be measured by reference to the average daily output of refined product.

4. Credit for small refiners for production of diesel fuel in compliance with Environmental Protection Agency sulfur regulations for small refiners (sec. 844 of Senate amendment and new sec. 45H of the Code)

PRESENT LAW

Present law does not provide a credit for the production of low-sulfur diesel fuel.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that a small business refiner may claim credit equal to five cents per gallon for each gallon of low sulfur diesel fuel produced during the taxable year that is in compliance with the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency ("EPA"). The total production credit claimed by the taxpayer is limited to 25 percent of the capital costs incurred to come into compliance with the EPA diesel fuel requirements. Costs qualifying for the credit are those costs paid or incurred with respect to any facility of a small business refiner during the period beginning on January 1, 2003 and ending on the earlier of the date that is one year after the date on which the taxpayer must comply with the applicable EPA regulations or December 31, 2009. The taxpayer's basis in property with respect to which the credit applies is reduced by the amount of production credit claimed.

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[393] 1987-2 C.B. 674 (as clarified and modified by Rev. Proc. 88-22, 1988-1 C.B. 785).

[394] *Duke Energy* v. *Commissioner*, 172 F.3d 1255 (10th Cir. 1999), rev'g 109 T.C. 416 (1997). *Saginaw Bay Pipeline Co.* v. *United States*, 2003 FED App. 0259P (6th Cir.) rev'g 124 F. Supp. 2d 465 (E.D. Mich. 2001). See also *True* v. *United States*, 97-2 U.S. Tax Cas. (CCH) par. 50,946 (D. Wyo. 1997).

[395] *Clajon Gas Co., L.P.* v. *Commissioner*, 119 T.C. 197 (2002).

In the case of a qualifying small business refiner that is owned by a cooperative, the cooperative is allowed to elect to pass any production credits to patrons of the organization.

For these purposes a small business refiner is a taxpayer who is in the business of refining petroleum products, employs not more than 1,500 employees directly in refining, and has less than 205,000 barrels per day (average) of total refinery capacity. The credit is reduced, pro rata, for taxpayers with capacity in excess of 155,000 barrels per day.

Effective date.—The Senate amendment is effective for expenses paid or incurred after December 31, 2002, in taxable years ending after that date.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment provision with modification as follows. The conference agreement makes the low sulfur diesel fuel credit a qualified business credit under section 169(c). Therefore, if any portion of the credit has not been allowed to the taxpayer as a general business credit (sec. 38) for any taxable year, an amount equal to that portion may be deducted by the taxpayer in the first taxable year following the last taxable year for which such portion could have been allowed as a credit under the carryback and carryforward rules (sec. 39). With respect to the definition of a small business refiner, the conferees intend that, in any case where refinery through-put or retained production of the refinery differs substantially from its average daily output of refined product, capacity be measured by reference to the average daily output of refined product.

5. Determination of small refiner exception to oil depletion deduction (sec. 845 of the Senate amendment and sec. 613A of the Code)

PRESENT LAW

Present law classifies oil and gas producers as independent producers or integrated companies. The Code provides numerous special tax rules for operations by independent producers. One such rule allows independent producers to claim percentage depletion deductions rather than deducting the costs of their asset, a producing well, based on actual production from the well (i.e., cost depletion).

A producer is an independent producer only if its refining and retail operations are relatively small. For example, an independent producer may not have refining operations the runs from which exceed 50,000 barrels on any day in the taxable year during which independent producer status is claimed.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment increases the current 50,000-barrel-per-day limitation to 60,000. In addition, the provision changes the refinery limitation on claiming independent producer status from a limit based on actual daily production to a limit based on average daily production for the taxable year. Accordingly, the average daily refinery run for the taxable year may not exceed 60,000 barrels. For this purpose, the taxpayer calculates average daily production by dividing total production for the taxable year by the total number of days in the taxable year.

Effective date.—The Senate amendment is effective for taxable years ending after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

6. Suspension of 100-percent-of-net-income limitation on percentage depletion for oil and gas from marginal wells (sec. 412 of the House bill, sec. 846 of the Senate amendment, and sec. 613A of the Code)

PRESENT LAW

Overview of depletion

Depletion, like depreciation, is a form of capital cost recovery. In both cases, the taxpayer is allowed a deduction in recognition of the fact that an asset-in the case of depletion for oil or gas interests, the mineral reserve itself-is being expended in order to produce income. Certain costs incurred prior to drilling an oil or gas property are recovered through the depletion deduction. These include costs of acquiring the lease or other interest in the property and geological and geophysical costs (in advance of actual drilling).

Depletion is available to any person having an economic interest in a producing property. An economic interest is possessed in every case in which the taxpayer has acquired by investment any interest in minerals in place, and secures, by any form of legal relationship, income derived from the extraction of the mineral, to which it must look for a return of its capital.[396] Thus, for example, both working interests and royalty interests in an oil- or gas-producing property constitute economic interests, thereby qualifying the interest holders for depletion deductions with respect to the property. A taxpayer who has no capital investment in the mineral deposit does not possess an economic interest merely because it possesses an economic or pecuniary advantage derived from production through a contractual relation.

Cost depletion

Two methods of depletion are currently allowable under the Code: (1) the cost depletion method, and (2) the percentage depletion method.[397] Under the cost depletion method, the taxpayer deducts that portion of the adjusted basis of the depletable property which is equal to the ratio of units sold from that property during the taxable year to the number of units remaining as of the end of taxable year plus the number of units sold during the taxable year. Thus, the amount recovered under cost depletion may never exceed the taxpayer's basis in the property.

Percentage depletion and related income limitations

The Code generally limits the percentage depletion method for oil and gas properties to independent producers and royalty owners.[398] Generally, under the percentage depletion method, 15 percent of the taxpayer's gross income from an oil- or gas-producing property is allowed as a deduction in each taxable year.[399] The amount deducted generally may not exceed 100 percent of the net income from that property in any year (the "net-income limitation").[400] The 100-percent net-income limitation for marginal wells has been suspended for taxable years beginning after December 31, 1997, and before January 1, 2006.

HOUSE BILL[401]

The provision extends the suspension of the net-income limitation for marginal wells for taxable years beginning before January 1, 2006.

Effective date.—The provision is effective for taxable years beginning after December 31, 2003.

SENATE AMENDMENT[402]

The Senate amendment extends the suspension of the net-income limitation for marginal wells for taxable years beginning before January 1, 2007.

Effective date.—Same as the House bill.

CONFERENCE AGREEMENT

The conference agreement does not contain the House bill or Senate amendment provision.

7. Delay rental payments (sec. 847 of the Senate amendment and sec. 167 of the Code)

PRESENT LAW

Present law generally requires costs associated with inventory and property held for resale to be capitalized rather than currently deducted as they are incurred. (sec. 263). Oil and gas producers typically contract for mineral production in exchange for royalty payments. If mineral production is delayed, these contracts provide for "delay rental payments" as a condition of their extension. A delay rental is an amount paid for the privilege of deferring development of the property and which could have been avoided by abandonment of the lease, or by commencement of development of operations or by obtaining production. The Treasury Department has taken the position that the uniform capitalization rules of section 263A require delay rental payments to be capitalized.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that delay rental payments incurred in connection with the development of oil or gas be amortized over two years. In the case of abandoned property, remaining basis may no longer be recovered in the year of abandonment of a property as all basis is recovered over the two-year amortization period.

Effective date.—The Senate amendment is effective for amounts paid or incurred in taxable years beginning after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

8. Geological and geophysical costs (sec. 848 of the Senate amendment and sec. 167 of the Code)

PRESENT LAW

Under present law, geological and geophysical expenditures are costs incurred by a taxpayer for the purpose of obtaining and accumulating data that will serve as the basis for the acquisition and retention of mineral properties by taxpayers exploring for minerals. Capital expenditures are not currently deductible as ordinary and necessary expenses, but are allocated to the cost of the property (sec. 263). Courts have held that geological and geophysical costs are capital, and therefore are allocable to the cost of property acquired or retained. The costs attributable to such exploration are allocable to the cost of the property acquired or retained. In the case of abandoned property, exploration expenditures are allowable as a loss when such property is abandoned.

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[396] Treas. Reg. sec. 1.611-1(b)(1).

[397] Secs. 611-613.

[398] Sec. 613A.

[399] Sec. 613A(c).

[400] Sec. 613(a).

[401] The House bill predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

[402] The Senate amendment predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a number of extensions to expiring provisions.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that geological and geophysical costs incurred in connection with domestic oil and gas exploration be amortized over two years. In the case of abandoned property, remaining basis may no longer be recovered in the year of abandonment of a property as all basis is recovered over the two-year amortization period.

Effective date.—The Senate amendment is effective for costs paid or incurred in taxable years beginning after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

9. Extension and modification of credit for producing fuel from a non-conventional source (sec. 849 of the Senate amendment and sec. 29 of the Code)

PRESENT LAW

An income tax credit is allowed for certain fuels produced from "non-conventional sources" and sold to unrelated parties. The amount of the credit is equal to $3 (generally adjusted for inflation[403]) per barrel or Btu oil barrel equivalent (sec. 29). Qualified fuels must be produced within the United States, and include: oil produced from shale and tar sands; gas produced from geopressured brine, Devonian shale, coal seams, tight formations ("tight sands"), or biomass; and liquid, gaseous, or solid synthetic fuels produced from coal (including lignite).

The credit applies to fuels produced from wells drilled or facilities placed in service after December 31, 1979, and before January 1, 1993. An exception extends the January 1, 1993 expiration date for facilities producing gas from biomass and synthetic fuel from coal if the facility producing the fuel is placed in service before July 1, 1998, pursuant to a binding contract entered into before January 1, 1997.

The credit applies to qualified fuels produced and sold before January 1, 2003 (in the case of non-conventional sources subject to the January 1, 1993, expiration date) or January 1, 2008 (in the case of biomass gas and synthetic fuel facilities eligible for the extension period).

HOUSE BILL

No provision.

SENATE AMENDMENT

Extension of placed in service date for certain new facilities

For new wells or facilities producing qualifying fuels that are oil from shale or tar sands, and gas from geopressured brine, Devonian shale, coal seams, a tight formation, or biomass, the credit can be claimed for production from such new facilities placed in service after December 31, 2004 and before January 1, 2007. The credit may be claimed for the three-year period beginning on the date such well or facility is placed in service. For all qualifying wells and facilities the value of the credit is $3.00 per barrel or Btu equivalent for production in 2003 and is indexed for inflation commencing with the credit amount for 2004.

Extension and modification for "refined coal"

The Senate amendment provides a credit for production of "refined coal" from facilities placed in service after December 31, 2004, and before January 1, 2007. Credit may be claimed for fuel produced during the five-year period beginning on the date such facility is placed in service. The amount of the credit is $3.00 per barrel or Btu equivalent for production in 2003 and is indexed for inflation commencing with the credit amount for 2004. Refined coal is a fuel that is a liquid, gaseous, or solid synthetic fuel produced from coal (including lignite) or high-carbon fly ash, including such fuel used as a feedstock. A facility qualifies for the credit only if it produces refined coal that: (1) when burned emits 20 percent less SO2 and nitrogen oxides than the burning of feedstock coal or comparable coal predominantly available in the marketplace as of January 1, 2004, and (2) sells at prices at least 50 percent greater than the prices of the feedstock coal or comparable coal. However, no fuel produced at a qualifying advanced clean coal technology unit (as defined elsewhere) is a qualifying fuel.

Expansion for "viscous oil"

The Senate amendment provides a credit for production of certain viscous oil produced at wells placed in service after December 31, 2004, and before January 1, 2007. "Viscous oil" is domestic crude oil produced from any property if the crude oil has a weighted average gravity of 22 degrees API or less (corrected to 60 degrees Fahrenheit). The credit may be claimed for fuel produced during the three-year period beginning on the date such well is placed in service. The amount of the credit is $3.00 per barrel or Btu equivalent for production in 2003 and is indexed for inflation commencing with the credit amount for 2004. The Senate amendment provides that qualifying sales to related parties for consumption not in the immediate vicinity of the wellhead qualify for the credit.

Credit for coalmine methane gas

The Senate amendment provides a credit for production of "coalmine methane gas" captured or extracted from a coalmine and sold after December 31, 2004, and before January 1, 2007. The amount of the credit is $3.00 (indexed for inflation from 2002) per barrel or Btu oil for gas utilized captured or sold during the applicable period. Qualifying coalmine gas is any methane gas liberated during coal mining operations or extracted up to ten years in advance of coal mining operations as part of a specific plan to mine a coal deposit. In the case of coalmine methane gas that is captured in advance of coal mining operations, the credit is allowed only after the date the coal extraction occurs in the immediate area where the coalmine methane gas was removed. The capture or extraction of coalmine gas from coal mining operations is required to be in compliance with applicable State and Federal pollution prevention, control, and permit requirements in order to qualify for the credit.

Expansion for agricultural and animal wastes

The Senate amendment adds facilities producing liquid, gaseous, or solid fuels from agricultural and animal wastes (including such fuels when used as feedstocks) placed in service after December 31, 2004, and before January 1, 2007, to the list of qualified facilities for purposes of the non-conventional fuel credit. The credit may be claimed for fuel produced during the three-year period beginning on the date such facility is placed in service. The amount of the credit is $3.00 per barrel or Btu equivalent for production in 2003 and is indexed for inflation commencing with the credit amount for 2004. Agricultural and animal waste includes by-products, packaging, and any materials associated with processing, feeding, selling, transporting, or disposal of agricultural or animal products or wastes.

Extension of credit for certain existing facilities

The Senate amendment extends the present law credit ($3.00 indexed for inflation from 1979) through December 31, 2005, for production from existing facilities producing coke, coke gas, or natural gas and by-products produced by coal gasification from lignite. For persons (or subsidiaries of such persons) engaged in furnishing electric energy, or providing telephone service, to persons in rural areas, any credit claimed for this purpose may be applied as a prepayment of any loan, debt, or other obligation to the extent provided by the Secretary of Agriculture and to the extent provided by the Secretary of Energy, as a prepayment not to exceed 50 percent of any obligation incurred pursuant to an asset purchase agreement entered into with the Secretary and dated October 7, 1988. Such credit is not considered income for these purposes.

Daily limit

Under the Senate amendment, with respect to qualifying facilities placed in service under the extended placed in service dates, a taxpayer would not be able to claim any credit for production in excess of a daily average[404] of 200,000 cubic feet of natural gas or barrel of oil equivalent (200,000 cubic feet is equivalent to approximately 35.4 barrels of oil) of such gas with respect to: (1) oil produced from shale and tar sands and (2) gas produced from geopressured brine, Devonian shale, coal seems, or a tight formation. Days before the date the project is placed in service are not taken into account in determining such average.

New phaseout adjustment

In the case of fuels sold after 2003, with the exception of fuel produced at existing facilities and for any gas from a tight formation: (1) the dollar amount of the credit is $3.00 indexed for inflation from 2002 (without regard to a phaseout adjustment), and (2) the threshold for purposes of the phaseout of the credit is increased from $23.50 to $35.00 (indexed for inflation from 2002).

General business credit

The provision adds section 29 to the list of general business credits and re-labels present section 29 of the Code as new Code section 45R.

Study of coalbed methane gas

The Senate amendment provides that the Secretary of Treasury undertake a study of the effect of section 29 on the production of coalbed methane. The study should estimate the total amount of credit claimed annually and in aggregate related to the production of coalbed methane since the date of enactment of section 29. The study should report the annual value of the credit allowable for coalbed methane compared to the average annual wellhead price of natural gas (per thousand cubic feet of natural gas). The study should estimate the incremental increase in production of coalbed methane that has resulted from the enactment of section 29. The study should also estimate the cost to the Federal government, in terms of the net tax benefits claimed, per thousand cubic feet of incremental coalbed methane produced annually and in aggregate since the enactment of section 29.

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[403] The value of the section 29 credit for production in 2003 was $6.40 per barrel of oil equivalent. The $3.00 credit for gas from a tight formation is not adjusted for inflation.

[404] The daily average is computed as total production divided by the total number of days the well or facility was in production during the year. Days before the date the project is placed in service are not taken into account in determining the daily average.

Effective date

In general, except as provided below, the provision is effective for fuel sold from qualifying facilities after December 31, 2004, in taxable years ending after such date.

For existing facilities, the provision is effective for fuel sold after December 31, 2002, in taxable years ending after such date.

For application of the general business credit, the provision is effective for taxable years ending after December 31, 2003.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

10. Natural gas distribution lines treated as 15-year property (sec. 850 of the Senate amendment and sec. 168 of the Code)

PRESENT LAW

The applicable recovery period for assets placed in service under the Modified Accelerated Cost Recovery System is based on the "class life of the property." The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87-56.[405] Natural gas distribution pipelines are assigned a 20-year recovery period and a class life of 35 years.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment establishes a statutory 15-year recovery period and a class life of 35 years for natural gas distribution lines.

Effective date.—The Senate amendment is effective for property placed in service after December 31, 2004, in taxable years ending after such date.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

11. Credit for production of Alaska natural gas (sec. 851 of Senate amendment)

PRESENT LAW

Present law does not provide a credit for conventional production of natural gas or delivery of fuels to a pipeline. However, certain fuels produced from "non-conventional sources" and sold to unrelated parties are eligible for an income tax credit equal to $3 (generally adjusted for inflation) per barrel or BTU oil barrel equivalent (sec. 29). Qualified fuels must be produced within the United States.

Qualified fuels include:

(1) gas produced from geopressured brine, Devonian shale, coal seams, tight formations ("tight sands"), or biomass; and

(2) liquid, gaseous, or solid synthetic fuels produced from coal (including lignite).

In general, the credit is available only with respect to fuels produced from wells drilled or facilities placed in service after December 31, 1979, and before January 1, 1993. An exception extends the January 1, 1993 expiration date for facilities producing gas from biomass and synthetic fuel from coal if the facility producing the fuel is placed in service before July 1, 1998, pursuant to a binding contract entered into before January 1, 1997.

The credit may be claimed for qualified fuels produced and sold before January 1, 2003 (in the case of non-conventional sources subject to the January 1, 1993 expiration date) or January 1, 2008 (in the case of biomass gas and synthetic fuel facilities eligible for the extension period).

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides a credit per million British thermal units (Btu) of natural gas for Alaska natural gas entering a pipeline[406] during the 25-year period beginning the later of January 1, 2010 or the initial date for the interstate transportation of Alaska natural gas. Taxpayers may claim the credit against both the regular and minimum tax.

The credit amount for any month is a maximum of 52 cents per million Btu of natural gas. The credit phases out as the reference price of Alaska natural gas rises above 83 cents per million Btu, at a rate of one cent of credit lost per each cent by which the reference price of Alaska natural gas exceeds 83 cents per million Btu. The credit is not available if the reference price of Alaska natural gas rises above $1.35 per million Btu. The 52-cent and 83-cent figures are indexed for inflation after 2004, with the first adjustment for calendar year 2006.[407]

The bill provides that the Secretary of Treasury calculate the reference price of Alaska natural gas as the average price of natural gas delivered in the lower 48 States less certain transportation costs and gas processing costs. Alaska natural gas is any gas derived from an area of the State of Alaska lying north of 64 degrees North latitude, but not including the Alaska National Wildlife Refuge.

The credit is part of the general business credit.

Effective date.—The proposal is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

12. Treat certain Alaska pipeline property as seven-year property (sec. 852 of the Senate amendment and sec. 168 of the Code)

PRESENT LAW

The applicable recovery period for assets placed in service under the Modified Accelerated Cost Recovery System is based on the "class life of the property." The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87-56.[408] Asset class 46.0, describing assets used in the private, commercial, and contract carrying of petroleum, gas and other products by means of pipes and conveyors, are assigned a class life of 22 years and a recovery period of 15 years.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment establishes a statutory seven-year recovery period and a class life of 22 years for any Alaska natural gas pipeline. The term "Alaska natural gas pipeline" is defined as any natural gas pipeline system (including the pipe, trunk lines, related equipment, and appurtenances used to carry natural gas, but not any gas processing plant) located in the State of Alaska that has a capacity of more than 500 billion Btu of natural gas per day and is placed in service after December 31, 2012. A taxpayer who places an otherwise qualifying system in service before January 1, 2013 may elect to treat the system as placed in service on January 1, 2013, thus qualifying for the seven-year recovery period.

Effective date.—The Senate amendment is effective for property placed in service after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with the following modification. In order to qualify for the seven-year recovery period, otherwise qualifying property must be placed in service after December 31, 2013. A taxpayer who places an otherwise qualifying system in service before January 1, 2014 may elect to treat the system as placed in service on January 1, 2014, thus qualifying for the seven-year recovery period.

Effective date.—The provision is effective for property placed in service after December 31, 2004.

13. Enhanced oil recovery credit for certain gas processing facilities (sec. 853 of the Senate amendment and sec. 43 of the Code)

PRESENT LAW

The taxpayer may claim a credit equal to 15 percent of enhanced oil recovery costs. Qualified enhanced oil recovery costs include costs of depreciable tangible property that is part of an enhanced oil recovery project, intangible drilling and development costs with respect to an enhanced oil recovery project, and tertiary injectant expenses incurred with respect to an enhanced oil recovery project. The credit is phased out when oil prices exceed a threshold amount.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that expenses in connection with the construction of any qualifying natural gas processing plant capable of processing two trillion British thermal units of Alaskan natural gas into a natural gas pipeline system on a daily basis are qualified enhanced oil recovery costs eligible for the enhanced oil recovery credit. A qualifying natural gas processing plant also must produce carbon dioxide for re-injection into a producing oil or gas field.

Effective date.—The provision is effective for costs paid or incurred in taxable years beginning after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

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[405] 1987-2 C.B. 674 (as clarified and modified by Rev. Proc. 88-22, 1988-1 C.B. 785).

[406] Natural gas entering a gas processing facility is not considered to have entered a pipeline. Rather, the credit applies only to pipeline quality gas at the time of entry into the pipeline.

[407] In practice, the $1.35-figure also is indexed for inflation, as $1.35 is the sum of the 52-cent credit and the 83-cent price.The bill provides that the Secretary can compute the inflation adjustment factor for a calendar year in the fourth quarter of the preceding year. For example, the adjustment for 2006 is calculated as the 2005 GDP deflator over the 2004 GDP deflator, where the 2004 GDP deflator is the value of the GDP deflator on June 30, 2004 (as determined by the latest available revision from the Department of Commerce prior to October 1, 2004). Likewise, the 2005 deflator is the value of the GDP deflator on June 30, 2005.

[408] 1987-2 C.B. 674 (as clarified and modified by Rev. Proc. 88-22, 1988-1 C.B. 785).

14. Exempt certain prepayments for natural gas from tax-exempt bond arbitrage rules (sec. 854 of the Senate amendment and secs. 141 and 148 of the Code)

PRESENT LAW

Interest on bonds issued by States or local governments to finance activities carried out or paid for by those entities generally is exempt from income tax. Restrictions are imposed on the ability of States or local governments to invest the proceeds of these bonds for profit (the "arbitrage restrictions"). One such restriction limits the use of bond proceeds to acquire "investment-type property." The term investment-type property includes the acquisition of property in a transaction involving a prepayment if a principal purpose of the prepayment is to receive an investment return from the time the prepayment is made until the time payment otherwise would be made. A prepayment can produce prohibited arbitrage profits when the discount received for prepaying the costs exceeds the yield on the tax-exempt bonds. In general, prohibited prepayments include all prepayments that are not customary in an industry by both beneficiaries of tax-exempt bonds and other persons using taxable financing for the same transaction.

On August 4, 2003, the Treasury Department issued final regulations deeming to be customary, and not in violation of the arbitrage rules, certain prepayments for natural gas and electricity.[409] Generally, a qualified prepayment under the regulations requires that 90 percent of the natural gas or electricity purchased with the prepayment be used for a qualifying use. Generally, natural gas is used for a qualifying use if it is to be (1) furnished to retail gas customers of the issuing municipal utility who are located in the natural gas service area of the issuing municipal utility, however, gas used to produce electricity for sale is not included under this provision (2) used by the issuing municipal utility to produce electricity that will be furnished to retail electric service area customers of the issuing utility, (3) used by the issuing municipal utility to produce electricity that will be sold to a utility owned by a governmental person and furnished to the service area retail electric customers of the purchaser, (4) sold to a utility that is owned by a governmental person if the requirements of (1), (2) or (3) are satisfied by the purchasing utility (treating the purchaser as the issuing utility) or (5) used to fuel the pipeline transportation of the prepaid gas supply. Electricity is used for a qualifying use if it is to be (1) furnished to retail service area electric customers of the issuing municipal utility or (2) sold to a municipal utility and furnished to retail electric customers of the purchaser who are located in the electricity service area of the purchaser. Both governmental gas and electric utilities may take advantage of this regulatory provision.

State and local bonds may be classified as either governmental bonds or private activity bonds. Governmental bonds are bonds the proceeds of which are primarily used to finance governmental functions or the debt is repaid with governmental funds. Private activity bonds are bonds where the State or local government serves as a conduit providing financing to private businesses or individuals. The exclusion from income for State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain purposes permitted by the Code. Section 141(D) of the Code provides that the term "private activity bond" includes any bond issued as part of an issue if the amount of the proceeds of the issue which are to be used (directly or indirectly) for the acquisition by a governmental unit of nongovernmental output property exceeds the lesser of five percent of such proceeds or $5 million. "Nongovernmental output property" generally means any property (or interest therein) which before such acquisition was used (or held for use) by a person other than a governmental unit in connection with an output facility (other than a facility for the furnishing of water). An exception applies to output property which is to be used in connection with an output facility 95 percent or more of the output of which will be consumed in (1) a qualified service area of the governmental unit acquiring the property, or (2) a qualified annexed area of such unit.

HOUSE BILL

No provision.

SENATE AMENDMENT

In general

The provision creates a safe harbor exception to the general rule that tax-exempt bond-financed prepayments violate the arbitrage restrictions. The term "investment type property" does not include a prepayment under a qualified natural gas supply contract. The provision also provides that such prepayments are not treated as private loans for purposes of the private business tests.

Under the provision, a prepayment financed with tax-exempt bond proceeds for the purpose of obtaining a supply of natural gas for service area customers of a governmental utility is not treated as the acquisition of investment-type property. A contract is a qualified natural gas contract if the volume of natural gas secured for any year covered by the prepayment does not exceed the sum of (1) the average annual natural gas purchased (other than for resale) by customers of the utility within the service area of the utility ("retail natural gas consumption") during the testing period, and (2) the amount of natural gas that is needed to fuel transportation of the natural gas to the governmental utility. The testing period is the 5-calendar-year period immediately preceding the calendar year in which the bonds are issued. A retail customer is one who does not purchase natural gas for resale. Natural gas used to generate electricity by a utility owned by a governmental unit is counted as retail natural gas consumption if the electricity was sold to retail customers within the service area of the governmental electric utility.

Adjustments

The volume of gas permitted by the general rule is reduced by natural gas otherwise available on the date of issuance. Specifically, the amount of natural gas permitted to be acquired under a qualified natural gas contract for any period is to be reduced by natural gas held by the utility on the date of issuance of the bonds and natural gas that the utility has a right to acquire for the prepayment period (determined as of the date of issuance). For purposes of the preceding sentence, applicable share means, with respect to any period, the natural gas allocable to such period if the gas were allocated ratably over the period to which the prepayment relates.

For purposes of the safe harbor, if after the close of the testing period and before the issue date of the bonds (1) the government utility enters into a contract to supply natural gas (other than for resale) for a commercial person for use at a property within the service area of such utility and (2) the gas consumption for such property was not included in the testing period or the ratable amount of natural gas to be supplied under the contract is significantly greater than the ratable amount of gas supplied to such property during the testing period, then the amount of gas permitted to be purchased may be increased to accommodate the contract.

The average annual retail natural gas consumption calculation for purposes of the safe harbor, however, is not to exceed the annual amount of natural gas reasonably expected to be purchased (other than for resale) by persons who are located within the service area of such utility and who, as of the date of issuance of the issue, are customers of such utility.

Intentional acts

The safe harbor does not apply if the utility engages in intentional acts to render (1) the volume of natural gas covered by the prepayment to be in excess of that needed for retail natural gas consumption, and (2) the amount of natural gas that is needed to fuel transportation of the natural gas to the governmental utility.

Definition of service area

Service area is defined as (1) any area throughout which the governmental utility provided (at all times during the testing period) in the case of a natural gas utility, natural gas transmission or distribution service, or in the case of an electric utility, electric distribution service; (2) limited areas contiguous to such areas; and (3) any area recognized as the service area of the governmental utility under State or Federal law. Contiguous areas are limited to any area within a county contiguous to the area described in (1) in which retail customers of the utility are located if such area is not also served by another utility providing the same service.

Ruling request for higher prepayment amounts

Upon written request, the Secretary may allow an issuer to prepay for an amount of gas greater than that allowed by the safe harbor based on objective evidence of growth in gas consumption or population that demonstrates that the amount permitted by the exception is insufficient.

Nongovernmental output property restrictions

A qualified natural gas supply contract as defined in the Senate amendment is not nongovernmental output property for purposes of subsection (d) of section 141. Subsection (d) of section 141 does not apply to prepayment contracts for natural gas or electricity that either under the Treasury regulations or statutory safe harbor are not investment-type property for purposes of the arbitrage rules under section 148. No inference is intended regarding the application of subsection 141(d) to prepayment contracts not covered by the statutory safe harbor or Treasury regulations.

Effective date

The provision is effective for obligations issued after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

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[409] Treas. Reg. sec. 1.148-1(e)(2)(iii).

F. ELECTRIC UTILITY RESTRUCTURING AND RELIABILITY PROVISIONS

1. Modification to special rules for nuclear decommissioning costs (sec. 855 of the Senate amendment and sec. 468A of the Code)

PRESENT LAW

Overview

Special rules dealing with nuclear decommissioning reserve funds were adopted by Congress in the Deficit Reduction Act of 1984 ("1984 Act"), when tax issues regarding the time value of money were addressed generally. Under general tax accounting rules, a deduction for accrual basis taxpayers is deferred until there is economic performance for the item for which the deduction is claimed. However, the 1984 Act contains an exception under which a taxpayer responsible for nuclear powerplant decommissioning may elect to deduct contributions made to a qualified nuclear decommissioning fund for future decommissioning costs. Taxpayers who do not elect this provision are subject to general tax accounting rules.

Qualified nuclear decommissioning fund

A qualified nuclear decommissioning fund (a "qualified fund") is a segregated fund established by a taxpayer that is used exclusively for the payment of decommissioning costs, taxes on fund income, management costs of the fund, and for making investments. The income of the fund is taxed at a reduced rate of 20 percent for taxable years beginning after December 31, 1995.[410]

Contributions to a qualified fund are deductible in the year made to the extent that these amounts were collected as part of the cost of service to ratepayers (the "cost of service requirement").[411] Funds withdrawn by the taxpayer to pay for decommissioning costs are included in the taxpayer's income, but the taxpayer also is entitled to a deduction for decommissioning costs as economic performance for such costs occurs.

Accumulations in a qualified fund are limited to the amount required to fund decommissioning costs of a nuclear powerplant for the period during which the qualified fund is in existence (generally post-1984 decommissioning costs of a nuclear powerplant). For this purpose, decommissioning costs are considered to accrue ratably over a nuclear powerplant's estimated useful life. In order to prevent accumulations of funds over the remaining life of a nuclear powerplant in excess of those required to pay future decommissioning costs of such nuclear powerplant and to ensure that contributions to a qualified fund are not deducted more rapidly than level funding (taking into account an appropriate discount rate), taxpayers must obtain a ruling from the IRS to establish the maximum annual contribution that may be made to a qualified fund (the "ruling amount"). In certain instances (e.g., change in estimates), a taxpayer is required to obtain a new ruling amount to reflect updated information.

A qualified fund may be transferred in connection with the sale, exchange or other transfer of the nuclear powerplant to which it relates. If the transferee is a regulated public utility and meets certain other requirements, the transfer will be treated as a nontaxable transaction. No gain or loss will be recognized on the transfer of the qualified fund and the transferee will take the transferor's basis in the fund.[412] The transferee is required to obtain a new ruling amount from the IRS or accept a discretionary determination by the IRS.[413]

Nonqualified nuclear decommissioning funds

Federal and State regulators may require utilities to set aside funds for nuclear decommissioning costs in excess of the amount allowed as a deductible contribution to a qualified fund. In addition, taxpayers may have set aside funds prior to the effective date of the qualified fund rules.[414] The treatment of amounts set aside for decommissioning costs prior to 1984 varies. Some taxpayers may have received no tax benefit while others may have deducted such amounts or excluded such amounts from income. Since 1984, taxpayers have been required to include in gross income customer charges for decommissioning costs (sec. 88), and a deduction has not been allowed for amounts set aside to pay for decommissioning costs except through the use of a qualified fund. Income earned in a nonqualified fund is taxable to the fund's owner as it is earned.

HOUSE BILL

No provision.

SENATE AMENDMENT

Repeal of cost of service requirement

The Senate amendment repeals the cost of service requirement for deductible contributions to a nuclear decommissioning fund. Thus, all taxpayers, including unregulated taxpayers, would be allowed a deduction for amounts contributed to a qualified fund.

Permit contributions to a qualified fund for pre-1984 decommissioning costs

The Senate amendment also repeals the limitation that a qualified fund only accumulate an amount sufficient to pay for a nuclear powerplant's decommissioning costs incurred during the period that the qualified fund is in existence (generally post-1984 decommissioning costs). Thus, any taxpayer is permitted to accumulate an amount sufficient to cover the present value of 100 percent of a nuclear powerplant's estimated decommissioning costs in a qualified fund. The Senate amendment does not change the requirement that contributions to a qualified fund not be deducted more rapidly than level funding.

Exception to ruling amount for certain decommissioning costs

The Senate amendment permits a taxpayer to make contributions to a qualified fund in excess of the ruling amount in one circumstance. Specifically, a taxpayer is permitted to contribute up to the present value of the amount required to fund a nuclear powerplant's decommissioning costs which under present law section 468A(d)(2)(A) is not permitted to be accumulated in a qualified fund (generally pre-1984 decommissioning costs).[415] It is anticipated that an amount that is permitted to be contributed under this special rule shall be determined using the estimate of total decommissioning costs used for purposes of determining the taxpayer's most recent ruling amount. Any amount transferred to the qualified fund under this special rule that has not previously been deducted or excluded from gross income is allowed as a deduction over the remaining useful life of the nuclear powerplant.[416] If a qualified fund that has received amounts under this rule is transferred to another person, the transferor will be permitted a deduction for any remaining deductible amounts at the time of transfer.

Contributions to a qualified fund after useful life of powerplant

The Senate amendment also allows deductible contributions to a qualified fund subsequent to the end of a nuclear powerplant's estimated useful life. Such payments are permitted to the extent they do not cause the assets of the qualified fund to exceed the present value of the taxpayer's allocable share (current or former) of the nuclear decommissioning costs of such nuclear powerplant.

Clarify treatment of transfers of qualified funds

The Senate amendment clarifies the Federal income tax treatment of the transfer of a qualified fund. No gain or loss would be recognized to the transferor or the transferee as a result of the transfer of a qualified fund in connection with the transfer of the power plant with respect to which such fund was established

Effective date.

The Senate amendment is effective for taxable years beginning after December 31, 2002.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

2. Treatment of certain income of electric cooperatives (sec. 856 of the Senate amendment and sec. 501 of the Code)

PRESENT LAW

In general

Under present law, an entity must be operated on a cooperative basis in order to be treated as a cooperative for Federal income tax purposes. Although not defined by statute or regulation, the two principal criteria for determining whether an entity is operating on a cooperative basis are: (1) ownership of the cooperative by persons who patronize the cooperative; and (2) return of earnings to patrons in proportion to their patronage. The Internal Revenue Service requires that cooperatives must operate under the following principles: (1) subordination of capital in control over the cooperative undertaking and in ownership of the financial benefits from ownership; (2) democratic control by the members of the cooperative; (3) vesting in and allocation among the members of all excess of operating revenues over the expenses incurred to generate revenues in proportion to their participation in the cooperative (patronage); and (4) operation at cost (not operating for profit or below cost).[417]

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[410] As originally enacted in 1984, a qualified fund paid tax on its earnings at the top corporate rate and, as a result, there was no present-value tax benefit of making deductible contributions to a qualified fund. Also, as originally enacted, the funds in the trust could be invested only in certain low risk investments. Subsequent amendments to the provision have reduced the rate of tax on a qualified fund to 20 percent and removed the restrictions on the types of permitted investments that a qualified fund can make.

[411] Taxpayers are required to include in gross income customer charges for decommissioning costs (sec. 88).

[412] Treas. reg. sec. 1.468A-6.

[413] Treas. reg. sec. 1.468A-6(f).

[414] These funds are generally referred to as "nonqualified funds."

[415] The ability to transfer property into a qualified fund under this special rule is available only to the extent the taxpayer has not obtained a new ruling amount incorporating the repeal of the limitation that a qualified fund only accumulate an amount sufficient to pay for decommissioning costs of a nuclear powerplant incurred during the period that the fund is in existence (generally post-1984 decommissioning costs).

[416] A taxpayer recognizes no gain or loss on the contribution of property to a qualified fund under this special rule. The qualified fund will take a transferred (carryover) basis in such property. Correspondingly, a taxpayer's deduction (over the estimated life of the nuclear powerplant) is to be based on the adjusted tax basis of the property contributed rather than the fair market value of such property.

In general, cooperative members are those who participate in the management of the cooperative and who share in patronage capital. As described below, income from the sale of electric energy by an electric cooperative may be member or non-member income to the cooperative, depending on the membership status of the purchaser. A municipal corporation may be a member of a cooperative.

For Federal income tax purposes, a cooperative generally computes its income as if it were a taxable corporation, with one exception-the cooperative may exclude from its taxable income distributions of patronage dividends. In general, patronage dividends are the profits of the cooperative that are rebated to its patrons pursuant to a pre-existing obligation of the cooperative to do so. The rebate must be made in some equitable fashion on the basis of the quantity or value of business done with the cooperative.

Except for tax-exempt farmers' cooperatives, cooperatives that are subject to the cooperative tax rules of subchapter T of the Code (sec. 1381, et seq.) are permitted a deduction for patronage dividends from their taxable income only to the extent of net income that is derived from transactions with patrons who are members of the cooperative (sec. 1382). The availability of such deductions from taxable income has the effect of allowing the cooperative to be treated like a conduit with respect to profits derived from transactions with patrons who are members of the cooperative.

Cooperatives that qualify as tax-exempt farmers' cooperatives are permitted to exclude patronage dividends from their taxable income to the extent of all net income, including net income that is derived from transactions with patrons who are not members of the cooperative, provided the value of transactions with patrons who are not members of the cooperative does not exceed the value of transactions with patrons who are members of the cooperative (sec. 521).

TAXATION OF ELECTRIC COOPERATIVES EXEMPT FROM SUBCHAPTER T

In general, the cooperative tax rules of subchapter T apply to any corporation operating on a cooperative basis (except mutual savings banks, insurance companies, other tax-exempt organizations, and certain utilities), including tax-exempt farmers' cooperatives (described in sec. 521(b)). However, subchapter T does not apply to an organization that is "engaged in furnishing electric energy, or providing telephone service, to persons in rural areas" (sec. 1381(a)(2)(C)). Instead, electric cooperatives are taxed under rules that were generally applicable to cooperatives prior to the enactment of subchapter T in 1962. Under these rules, an electric cooperative can exclude patronage dividends from taxable income to the extent of all net income of the cooperative, including net income derived from transactions with patrons who are not members of the cooperative.[418]

TAX EXEMPTION OF RURAL ELECTRIC COOPERATIVES

Section 501(c)(12) provides an income tax exemption for rural electric cooperatives if at least 85 percent of the cooperative's income consists of amounts collected from members for the sole purpose of meeting losses and expenses of providing service to its members. The IRS takes the position that rural electric cooperatives also must comply with the fundamental cooperative principles described above in order to qualify for tax exemption under section 501(c)(12).[419] The 85-percent test is determined without taking into account any income from qualified pole rentals and cancellation of indebtedness income from the prepayment of a loan under sections 306A, 306B, or 311 of the Rural Electrification Act of 1936 (as in effect on January 1, 1987). The exclusion for cancellation of indebtedness income applies to such income arising in 1987, 1988, or 1989 on debt that either originated with, or is guaranteed by, the Federal Government.

The receipt by a rural electric cooperative of contributions in aid of construction and connection charges is taken into account for purposes of applying the 85-percent test.

Rural electric cooperatives generally are subject to the tax on unrelated trade or business income under section 511.

HOUSE BILL

No provision.

SENATE AMENDMENT

Treatment of income from open access transactions

The Senate amendment provides that income received or accrued by a rural electric cooperative from any "open access transaction" (other than income received or accrued directly or indirectly from a member of the cooperative) is excluded in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12). The term "open access transaction" is defined as

(1) The provision or sale of electric energy transmission services or ancillary services on a nondiscriminatory open access basis: (i) pursuant to an open access transmission tariff filed with and approved by the Federal Energy Regulatory Commission ("FERC") (including acceptable reciprocity tariffs), but only if (in the case of a voluntarily filed tariff) the cooperative files a report with FERC within 90 days of enactment of this provision relating to whether or not the cooperative will join a regional transmission organization ("RTO"); or (ii) under an RTO agreement approved by FERC (including an agreement providing for the transfer of control-but not ownership-of transmission facilities);[420]

(2) The provision or sale of electric energy distribution services or ancillary services on a nondiscriminatory open access basis to end-users served by distribution facilities owned by the cooperative or its members; or (3) The delivery or sale of electric energy on a nondiscriminatory open access basis, provided that such electric energy is generated by a generation facility that is directly connected to distribution facilities owned by the cooperative (or its members) which owns the generation facility.

For purposes of the 85-percent test, the Senate amendment also provides that income received or accrued by a rural electric cooperative from any "open access transaction" is treated as an amount collected from members for the sole purpose of meeting losses and expenses if the income is received or accrued indirectly from a member of the cooperative.

Treatment of income from nuclear decommissioning transactions

The Senate amendment provides that income received or accrued by a rural electric cooperative from any "nuclear decommissioning transaction" also is excluded in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12). The term "nuclear decommissioning transaction" is defined as—

(1) Any transfer into a trust, fund, or instrument established to pay any nuclear decommissioning costs if the transfer is in connection with the transfer of the cooperative's interest in a nuclear powerplant or nuclear powerplant unit;

(2) Any distribution from a trust, fund, or instrument established to pay any nuclear decommissioning costs; or

(3) Any earnings from a trust, fund, or instrument established to pay any nuclear decommissioning costs.

Treatment of income from asset exchange or conversion transactions

The Senate amendment provides that gain realized by a tax-exempt rural electric cooperative from a voluntary exchange or involuntary conversion of certain property is excluded in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12). This provision only applies to the extent that: (1) the gain would qualify for deferred recognition under section 1031 (relating to exchanges of property held for productive use or investment) or section 1033 (relating to involuntary conversions); and (2) the replacement property that is acquired by the cooperative pursuant to section 1031 or section 1033 (as the case may be) constitutes property that is used, or to be used, for the purpose of generating, transmitting, distributing, or selling electricity or natural gas.

Treatment of cancellation of indebtedness income from prepayment of certain loans

The Senate amendment provides that income from the prepayment of any loan, debt, or obligation of a tax-exempt rural electric cooperative that is originated, insured, or guaranteed by the Federal Government under the Rural Electrification Act of 1936 is excluded in determining whether the cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12).

Treatment of income from load loss transactions

Tax-exempt rural electric cooperatives.—The Senate amendment provides that income received or accrued by a tax-exempt rural electric cooperative from a "load loss transaction" is treated under 501(c)(12) as income collected from members for the sole purpose of meeting losses and expenses of providing service to its members. Therefore, income from load loss transactions is treated as member income in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12). The bill also provides that income from load loss transactions does not cause a tax-exempt electric cooperative to fail to be treated for Federal income tax purposes as a mutual or cooperative company under the fundamental cooperative principles described above.

The term "load loss transaction" is generally defined as any wholesale or retail sale of electric energy (other than to a member of the cooperative) to the extent that the aggregate amount of such sales during a seven-year period beginning with the "start-up year" does not exceed the reduction in the amount of sales of electric energy during such period by the cooperative to members. The "start-up year" is defined as the calendar year which includes the date of enactment of this provision or, if later, at the election of the cooperative: (1) the first year that the cooperative offers nondiscriminatory open access; or (2) the first year in which at least 10 percent of the cooperative's sales of electric energy are to patrons who are not members of the cooperative.

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[417] Announcement 96-24, "Proposed Examination Guidelines Regarding Rural Electric Cooperatives," 1996-16 I.R.B. 35.

[418] See Rev. Rul. 83-135, 1983-2 C.B. 149.

[419] Rev. Rul. 72-36, 1972-1 C.B. 151.

[420] Under the Senate amendment, references to FERC are treated as including references to the Public Utility Commission of Texas or the Rural Utilities Service.

The Senate amendment also excludes income received or accrued by rural electric cooperatives from load loss transactions from the tax on unrelated trade or business income.

Taxable electric cooperatives.—The Senate amendment provides that the receipt or accrual of income from load loss transactions by taxable electric cooperatives is treated as income from patrons who are members of the cooperative. Thus, income from a load loss transaction is excludible from the taxable income of a taxable electric cooperative if the cooperative distributes such income pursuant to a pre-existing contract to distribute the income to a patron who is not a member of the cooperative. The Senate amendment also provides that income from load loss transactions does not cause a taxable electric cooperative to fail to be treated for Federal income tax purposes as a mutual or cooperative company under the fundamental cooperative principles described above.

Effective date

The Senate amendment provision is effective for taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with the following modifications.

Treatment of income from open access transactions

Income received or accrued by a rural electric cooperative (other than income received or accrued directly or indirectly from a member of the cooperative) from the provision or sale of electric energy transmission services or ancillary services on a nondiscriminatory open access basis under an open access transmission tariff approved or accepted by FERC or under an independent transmission provider agreement approved or accepted by FERC (including an agreement providing for the transfer of control-but not ownership-of transmission facilities)[421] is excluded in determining whether a rural electric cooperative satisfies the 85-percent test for tax exemption under section 501(c)(12).

In addition, income is excluded for purposes of the 85-percent test if it is received or accrued by a rural electric cooperative (other than income received or accrued directly or indirectly from a member of the cooperative) from the provision or sale of electric energy distribution services or ancillary services, provided such services are provided on a nondiscriminatory open access basis to distribute electric energy not owned by the cooperative: (1) to end-users who are served by distribution facilities not owned by the cooperative or any of its members; or (2) generated by a generation facility that is not owned or leased by the cooperative or any of its members and that is directly connected to distribution facilities owned by the cooperative or any of its members.

Treatment of cancellation of indebtedness income from prepayment of certain loans

The conference agreement does not include this provision.

Treatment of income from load loss transactions

For purposes of this provision, the "start-up year" is defined in the conference agreement as the first year that the cooperative offers nondiscriminatory open access or, if later and at the election of the cooperative, the calendar year that includes the date of enactment of this provision.

Effective date

The conference agreement provision is effective for taxable years beginning after the date of enactment and before January 1, 2007.

3. Dispositions of transmission property to implement Federal Energy Regulatory Commission restructuring policy (no reinvestment obligation) (sec. 857 of the Senate amendment and sec. 451 of the Code)

PRESENT LAW

Generally, a taxpayer recognizes gain to the extent the sales price (and any other consideration received) exceeds the seller's basis in the property. The recognized gain is subject to current income tax unless the gain is deferred or not recognized under a special tax provision.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment permits a taxpayer to elect to recognize gain from a qualifying electric transmission transaction ratably over an eight-year period beginning in the year of sale.

A qualifying electric transmission transaction is the sale or other disposition of property used by the taxpayer in the trade or business of providing electric transmission services, or any stock or partnership interest in a corporation or partnership whose principal trade or business consists of providing electrical services. In order to qualify, the transaction must occur before January 1, 2008 and the sale or disposition must be to an independent transmission company.

In general, an independent transmission company is defined as: (1) a regional transmission organization approved by the Federal Entergy Regulatory Commission ("FERC"); (2) a person (i) who the FERC determines under section 203 of the Federal Power Act (or by declaratory order) is not a "market participant" and (ii) whose transmission facilities are placed under the operational control of a FERC-approved independent transmission provider before the close of the period specified in such authorization, but not later than January 1, 2008; or (3) in the case of facilities subject to the jurisdiction of the Public Utility Commission of Texas, a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission organization.

An electing taxpayer is required to attach a statement to that effect in the tax return for the taxable year in which the transaction takes place in such manner as the Secretary shall prescribe. The election shall be binding for that taxable year and all subsequent taxable years. Finally, the provision provides that the installment sale rules shall not apply to any qualifying electric transmission transaction for which a taxpayer elects the application of this provision.

Effective date.—The Senate amendment is effective for transactions occurring after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with the following modifications. The provision permits taxpayers to elect to recognize gain from qualifying electric transmission transactions ratably over an eight-year period beginning in the year of sale if the amount realized from such sale is used to purchase exempt utility property within the applicable period[422] (the "reinvestment property"). If the amount realized exceeds the amount used to purchase reinvestment property, any realized gain shall be recognized to the extent of such excess in the year of the qualifying electric transmission transaction. Any remaining realized gain is recognized ratably over the eight-year period.

A qualifying electric transmission transaction is the sale or other disposition of property used by the taxpayer in the trade or business of providing electric transmission services, or an ownership interest in such an entity, to an independent transmission company prior to January 1, 2007. In general, an independent transmission company is defined as: (1) an independent transmission provider[423] approved by the FERC; (2) a person (i) who the FERC determines under section 203 of the Federal Power Act (or by declaratory order) is not a "market participant" and (ii) whose transmission facilities are placed under the operational control of a FERC-approved independent transmission provider before the close of the period specified in such authorization, but not later than January 1, 2007; or (3) in the case of facilities subject to the jurisdiction of the Public Utility Commission of Texas, (i) a person which is approved by that Commission as consistent with Texas State law regarding an independent transmission organization, or (ii) a political subdivision, or affiliate thereof, whose transmission facilities are under the operational control of an organization described in (i).

Exempt utility property is defined as: (1) property used in the trade or business of generating, transmitting, distributing, or selling electricity or producing, transmitting, distributing, or selling natural gas, or (2) stock in a controlled corporation whose principal trade or business consists of the activities described in (1).

If a taxpayer is a member of an affiliated group of corporations filing a consolidated return, the proposal permits the reinvestment property to be purchased by any member of the affiliated group (in lieu of the taxpayer).

If a taxpayer elects the application of the provision, then the statutory period for the assessment of any deficiency, for any taxable year in which any part of the gain eligible for the provision is realized, attributable to such gain shall not expire prior to the expiration of three years from the date the Secretary of the Treasury is notified by the taxpayer of the reinvestment property or an intention not to reinvest.

An electing taxpayer is required to attach a statement to that effect in the tax return for the taxable year in which the transaction takes place in the manner as the Secretary shall prescribe. The election shall be binding for that taxable year and all subsequent taxable years.[424] In addition, an electing taxpayer is required to attach a statement that identifies the reinvestment property in the manner as the Secretary shall prescribe.

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[421] Under the conference agreement, references to FERC are treated as including references to the Public Utility Commission of Texas.

[422] The applicable period for a taxpayer to reinvest the proceeds is four years after the close of the taxable year in which the qualifying electric transmission transaction occurs.

[423] For example, a regional transmission organization, an independent system operator, or and independent transmission company.

Effective date.—The provision is effective for transactions occurring after the date of enactment, in taxable years ending after such date.

G. ADDITIONAL PROVISIONS

1. GAO Study (sec. 897 of the Senate amendment)

PRESENT LAW

Present law does not require study of the present law provisions relating to clean fuel vehicles and electric vehicles.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment directs the Comptroller General to undertake an ongoing analysis of the (1) effectiveness of the amendment's alternative motor vehicles, fuel incentives, and conservation and energy efficiency provisions and (2) the recipients of the tax benefits contained in those provisions, including an identification of the recipients by income and other appropriate measurements. The analysis must quantify the effectiveness of the provisions by examining and comparing the Federal Government's forgone revenue to the aggregate amount of energy actually conserved and tangible environmental benefits gained as a result of the provisions.

The Senate amendment directs the Comptroller General to report the required analysis to Congress not later than December 31, 2004 and annually thereafter.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

2. Repeal certain excise taxes on rail diesel fuel and inland waterway barge fuels (sec. 898 of the Senate amendment and secs. 4041, 4042, 6421, and 6427 of the Code)

PRESENT LAW

Under present law, diesel fuel used in trains is subject to a 4.4-cents-per gallon excise tax. Revenues from 4.3 cents per gallon of this excise tax are retained in the General Fund of the Treasury. The remaining 0.1 cent per gallon is deposited in the Leaking Underground Storage Tank ("LUST") Trust Fund.

Similarly, fuels used in barges operating on the designated inland waterways system are subject to a 4.3-cents-per-gallon General Fund excise tax. This tax is in addition to the 20.1-cents-per-gallon tax rates that are imposed on fuels used in these barges to fund the Inland Waterways Trust Fund and the Leaking Underground Storage Tank Trust Fund.

In both cases, the 4.3-cents-per-gallon excise tax rates are permanent. The LUST Trust Fund tax is scheduled to expire after March 31, 2005.

HOUSE BILL

No provision.

SENATE AMENDMENT

The 4.3-cents-per-gallon General Fund excise tax rate on diesel fuel used in trains and fuels used in barges operating on the designated inland waterways system is repealed. The 0.1 cent per gallon tax for the LUST Trust Fund is unchanged by the provision.

Effective date.—The Senate amendment is effective on October 1, 2004.

CONFERENCE AGREEMENT

The conference agreement repeals the 4.3-cents-per-gallon General Fund excise tax rates on diesel fuel used in trains and fuels used in barges operating on the designated inland waterways system over a prescribed phase-out period. The 4.30-cent-per-gallon tax is reduced by 1 cent per gallon for the first six months of calendar year 2005 (January 1, 2005 through June 30, 2005). The reduction is 2 cents per gallon from July 1, 2005 through December 31, 2006, and 4.3 cents/gallon thereafter. Thus, the tax would be fully repealed effective January 1, 2007. The 0.1 cent per gallon tax for the LUST Trust Fund is unchanged by the provision.

Effective date.—The provision is effective on January 1, 2005.

3. Transmission property treated as fifteen-year property (sec. 899C of the Senate amendment and sec. 168 of the Code)

PRESENT LAW

The applicable recovery period for assets placed in service under the Modified Accelerated Cost Recovery System is based on the "class life of the property." The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87-56. Assets used in the transmission and distribution of electricity for sale and related land improvements are assigned a 20-year recovery period and a class life of 30 years.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment establishes a statutory 15-year recovery period and a class life of 30 years for certain assets used in the transmission of electricity for sale and related land improvements. For purposes of the provision, section 1245 property used in the transmission of electricity for sale at 69 kilovolts and above, the original use[425] of which commences after the date of enactment, will qualify for the new recovery period.

Effective date.—The Senate amendment is effective for property placed in service after the date of enactment and prior to July 1, 2006.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

4. Qualifying pollution control equipment credit (sec. 899B of the Senate amendment)

PRESENT LAW

The investment credit is the sum of three credits: (1) the rehabilitation credit, (2) the energy credit, and (3) the reforestation credit.[426] The investment credit is part of the general business credit.[427]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment adds a credit for qualifying pollution control equipment to the investment credit. The qualifying pollution control equipment credit provides a 15-percent tax credit for qualifying pollution control equipment placed-in-service at a qualifying facility during the taxable year.Qualifying pollution control equipment means any technology that is installed in or on a qualifying facility to reduce air emissions of any pollutant regulated by the Environmental Protection Agency under the Clean Air Act. A qualifying facility is a facility that produces not less than 1,000,000 gallons of ethanol during the taxable year. A qualifying facility includes any facility that produces ethanol. For depreciation purposes, the basis of qualifying pollution control equipment would be reduced by 50 percent of the value of the credit.

Effective date.—The credit would be available for property placed-in-service after December 31, 2003, in taxable years ending after such date.[428]

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

TITLE X—REVENUE PROVISIONS

A. PROVISIONS TO REDUCE TAX AVOIDANCE THROUGH INDIVIDUAL AND CORPORATE EXPATRIATION

1. Tax treatment of expatriated entities and their foreign parents (sec. 601 of the House bill, sec. 441 of the Senate amendment, and new sec. 7874 of the Code)

PRESENT LAW

Determination of corporate residence

The U.S. tax treatment of a multinational corporate group depends significantly on whether the parent corporation of the group is domestic or foreign. For purposes of U.S. tax law, a corporation is treated as domestic if it is incorporated under the law of the United States or of any State. All other corporations (i.e., those incorporated under the laws of foreign countries) are treated as foreign.

U.S. taxation of domestic corporations

The United States employs a "worldwide" tax system, under which domestic corporations generally are taxed on all income, whether derived in the United States or abroad. In order to mitigate the double taxation that may arise from taxing the foreign-source income of a domestic corporation, a foreign tax credit for income taxes paid to foreign countries is provided to reduce or eliminate the U.S. tax owed on such income, subject to certain limitations.

Income earned by a domestic parent corporation from foreign operations conducted by foreign corporate subsidiaries generally is subject to U.S. tax when the income is distributed as a dividend to the domestic corporation. Until such repatriation, the U.S. tax on such income generally is deferred, and U.S. tax is imposed on such income when repatriated. However, certain anti-deferral regimes may cause the domestic parent corporation to be taxed on a current basis in the United States with respect to certain categories of passive or highly mobile income earned by its foreign subsidiaries, regardless of whether the income has been distributed as a dividend to the domestic parent corporation. The main anti-deferral regimes in this context are the controlled foreign corporation rules of subpart F (secs. 951–964) and the passive foreign investment company rules (secs. 1291–1298). A foreign tax credit is generally available to offset, in whole or in part, the U.S. tax owed on this foreign-source income, whether repatriated as an actual dividend or included under one of the anti-deferral regimes.

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[424] The provision also provides that the installment sale rules shall not apply to any qualifying electric transmission transaction for which a taxpayer elects the application of this provision.

[425] The term "original use" means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer. It is intended that, when evaluating whether property qualifies as "original use," the factors used to determine whether property qualified as "new section 38 property" for purposes of the investment tax credit would apply. See Treasury Regulation 1.48-2. Thus, it is intended that additional capital expenditures incurred to recondition or rebuild acquired property (or owned property) would satisfy the "original use" requirement. However, the cost of reconditioned or rebuilt property acquired by the taxpayer would not satisfy the "original use" requirement. For example, if on August 11, 2005, a taxpayer buys from RCM for $200,000 transmission lines that have been previously used by RCM. Subsequent to the purchase, the taxpayer makes an expenditure on the property of $50,000 of the type that must be capitalized. Regardless of whether the $50,000 is added to the basis of such property or is capitalized as a separate asset, such amount would be treated as satisfying the "original use" requirement and would be eligible for the reduced recovery period. No part of the $200,000 purchase price qualifies for the reduced recovery period.

[426] Sec. 46.

[427] Sec. 38(b)(1).

[428] Rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of enactment of the Revenue Reconciliation Act of 1990) apply.

U.S. taxation of foreign corporations

The United States taxes foreign corporations only on income that has a sufficient nexus to the United States. Thus, a foreign corporation is generally subject to U.S. tax only on income that is "effectively connected" with the conduct of a trade or business in the United States. Such "effectively connected income" generally is taxed in the same manner and at the same rates as the income of a U.S. corporation. An applicable tax treaty may limit the imposition of U.S. tax on business operations of a foreign corporation to cases in which the business is conducted through a "permanent establishment" in the United States.

In addition, foreign corporations generally are subject to a gross-basis U.S. tax at a flat 30-percent rate on the receipt of interest, dividends, rents, royalties, and certain similar types of income derived from U.S. sources, subject to certain exceptions. The tax generally is collected by means of withholding by the person making the payment. This tax may be reduced or eliminated under an applicable tax treaty.

U.S. tax treatment of inversion transactions

Under present law, a U.S. corporation may reincorporate in a foreign jurisdiction and thereby replace the U.S. parent corporation of a multinational corporate group with a foreign parent corporation. These transactions are commonly referred to as inversion transactions. Inversion transactions may take many different forms, including stock inversions, asset inversions, and various combinations of and variations on the two. Most of the known transactions to date have been stock inversions. In one example of a stock inversion, a U.S. corporation forms a foreign corporation, which in turn forms a domestic merger subsidiary. The domestic merger subsidiary then merges into the U.S. corporation, with the U.S. corporation surviving, now as a subsidiary of the new foreign corporation. The U.S. corporation's shareholders receive shares of the foreign corporation and are treated as having exchanged their U.S. corporation shares for the foreign corporation shares. An asset inversion reaches a similar result, but through a direct merger of the top-tier U.S. corporation into a new foreign corporation, among other possible forms. An inversion transaction may be accompanied or followed by further restructuring of the corporate group. For example, in the case of a stock inversion, in order to remove income from foreign operations from the U.S. taxing jurisdiction, the U.S. corporation may transfer some or all of its foreign subsidiaries directly to the new foreign parent corporation or other related foreign corporations.

In addition to removing foreign operations from the U.S. taxing jurisdiction, the corporate group may derive further advantage from the inverted structure by reducing U.S. tax on U.S.-source income through various earnings stripping or other transactions. This may include earnings stripping through payment by a U.S. corporation of deductible amounts such as interest, royalties, rents, or management service fees to the new foreign parent or other foreign affiliates. In this respect, the post-inversion structure enables the group to employ the same tax-reduction strategies that are available to other multinational corporate groups with foreign parents and U.S. subsidiaries, subject to the same limitations (e.g., secs. 163(j) and 482).

Inversion transactions may give rise to immediate U.S. tax consequences at the shareholder and/or the corporate level, depending on the type of inversion. In stock inversions, the U.S. shareholders generally recognize gain (but not loss) under section 367(a), based on the difference between the fair market value of the foreign corporation shares received and the adjusted basis of the domestic corporation stock exchanged. To the extent that a corporation's share value has declined, and/or it has many foreign or tax-exempt shareholders, the impact of this section 367(a) "toll charge" is reduced. The transfer of foreign subsidiaries or other assets to the foreign parent corporation also may give rise to U.S. tax consequences at the corporate level (e.g., gain recognition and earnings and profits inclusions under secs. 1001, 311(b), 304, 367, 1248 or other provisions). The tax on any income recognized as a result of these restructurings may be reduced or eliminated through the use of net operating losses, foreign tax credits, and other tax attributes.

In asset inversions, the U.S. corporation generally recognizes gain (but not loss) under section 367(a) as though it had sold all of its assets, but the shareholders generally do not recognize gain or loss, assuming the transaction meets the requirements of a reorganization under section 368.

HOUSE BILL

The bill applies special tax rules to corporations that undertake certain defined inversion transactions. For this purpose, an inversion is a transaction in which, pursuant to a plan or a series of related transactions: (1) a U.S. corporation becomes a subsidiary of a foreign-incorporated entity or otherwise transfers substantially all of its properties to such an entity after March 4, 2003; (2) the former shareholders of the U.S. corporation hold (by reason of holding stock in the U.S. corporation) 60 percent or more (by vote or value) of the stock of the foreign-incorporated entity after the transaction; and (3) the foreign-incorporated entity, considered together with all companies connected to it by a chain of greater than 50-percent ownership (i.e., the "expanded affiliated group") does not conduct substantial business activities in the entity's country of incorporation compared to the total worldwide business activities of the expanded affiliated group.

In such a case, any applicable corporate-level "toll charges" for establishing the inverted structure are not offset by tax attributes such as net operating losses or foreign tax credits. Specifically, any applicable corporate-level income or gain required to be recognized under sections 304, 311(b), 367, 1001, 1248, or any other provision with respect to the transfer of controlled foreign corporation stock or the transfer or license of other assets by a U.S. corporation as part of the inversion transaction or after such transaction to a related foreign person is taxable, without offset by any tax attributes (e.g., net operating losses or foreign tax credits). This rule does not apply to certain transfers of inventory and similar property. These measures generally apply for a 10-year period following the inversion transaction.

In determining whether a transaction meets the definition of an inversion under the provision, stock held by members of the expanded affiliated group that includes the foreign incorporated entity is disregarded. For example, if the former top-tier U.S. corporation receives stock of the foreign incorporated entity (e.g., so-called "hook" stock), the stock would not be considered in determining whether the transaction meets the definition. Similarly, if a U.S. parent corporation converts an existing wholly owned U.S. subsidiary into a new wholly owned controlled foreign corporation, the stock of the new foreign corporation would be disregarded. Stock sold in a public offering related to the transaction also is disregarded for these purposes.

Transfers of properties or liabilities as part of a plan a principal purpose of which is to avoid the purposes of the provision are disregarded. In addition, the Treasury Secretary is granted authority to prevent the avoidance of the purposes of the provision, including avoidance through the use of related persons, pass-through or other noncorporate entities, or other intermediaries, and through transactions designed to qualify or disqualify a person as a related person or a member of an expanded affiliated group. Similarly, the Treasury Secretary is granted authority to treat certain non-stock instruments as stock, and certain stock as not stock, where necessary to carry out the purposes of the provision.

Under the provision, inversion transactions include certain partnership transactions. Specifically, the provision applies to transactions in which a foreign-incorporated entity acquires substantially all of the properties constituting a trade or business of a domestic partnership, if after the acquisition at least 60 percent of the stock of the entity is held by former partners of the partnership (by reason of holding their partnership interests), provided that the other terms of the basic definition are met. For purposes of applying this test, all partnerships that are under common control within the meaning of section 482 are treated as one partnership, except as provided otherwise in regulations. In addition, the modified "toll charge" provisions apply at the partner level.

A transaction otherwise meeting the definition of an inversion transaction is not treated as an inversion transaction if, on or before March 4, 2003, the foreign-incorporated entity had acquired directly or indirectly more than half of the properties held directly or indirectly by the domestic corporation, or more than half of the properties constituting the partnership trade or business, as the case may be.

Effective date.—The provision applies to taxable years ending after March 4, 2003.

SENATE AMENDMENT

In general

The provision defines two different types of corporate inversion transactions and establishes a different set of consequences for each type. Certain partnership transactions also are covered.

Transactions involving at least 80 percent identity of stock ownership

The first type of inversion is a transaction in which, pursuant to a plan or a series of related transactions: (1) a U.S. corporation becomes a subsidiary of a foreign-incorporated entity or otherwise transfers substantially all of its properties to such an entity;[429] (2) the former shareholders of the U.S. corporation hold (by reason of holding stock in the U.S. corporation) 80 percent or more (by vote or value) of the stock of the foreign-incorporated entity after the transaction; and (3) the foreign-incorporated entity, considered together with all companies connected to it by a chain of greater than 50 percent ownership (i.e., the "expanded affiliated group"), does not have substantial business activities in the entity's country of incorporation, compared to the total worldwide business activities of the expanded affiliated group. The provision denies the intended tax benefits of this type of inversion by deeming the top-tier foreign corporation to be a domestic corporation for all purposes of the Code.[430]

Except as otherwise provided in regulations, the provision does not apply to a direct or indirect acquisition of the properties of a U.S. corporation no class of the stock of which was traded on an established securities market at any time within the four-year period preceding the acquisition. In determining whether a transaction would meet the definition of an inversion under the provision, stock held by members of the expanded affiliated group that includes the foreign incorporated entity is disregarded. For example, if the former top-tier U.S. corporation receives stock of the foreign incorporated entity (e.g., so-called "hook" stock), the stock would not be considered in determining whether the transaction meets the definition. Stock sold in a public offering (whether initial or secondary) or private placement related to the transaction also is disregarded for these purposes. Acquisitions with respect to a domestic corporation or partnership are deemed to be "pursuant to a plan" if they occur within the four-year period beginning on the date which is two years before the ownership threshold under the provision is met with respect to such corporation or partnership.

Transfers of properties or liabilities as part of a plan a principal purpose of which is to avoid the purposes of the provision are disregarded. In addition, the Treasury Secretary is granted authority to prevent the avoidance of the purposes of the provision, including avoidance through the use of related persons, pass-through or other noncorporate entities, or other intermediaries, and through transactions designed to qualify or disqualify a person as a related person, a member of an expanded affiliated group, or a publicly traded corporation. Similarly, the Treasury Secretary is granted authority to treat certain non-stock instruments as stock, and certain stock as not stock, where necessary to carry out the purposes of the provision.

Transactions involving greater than 50 percent but less than 80 percent identity of stock ownership

The second type of inversion is a transaction that would meet the definition of an inversion transaction described above, except that the 80-percent ownership threshold is not met. In such a case, if a greater-than-50-percent ownership threshold is met, then a second set of rules applies to the inversion. Under these rules, the inversion transaction is respected (i.e., the foreign corporation is treated as foreign), but: (1) any applicable corporate-level "toll charges" for establishing the inverted structure may not be offset by tax attributes such as net operating losses or foreign tax credits; (2) the accuracy-related penalty is increased; and (3) section 163(j), relating to "earnings stripping" through related-party debt, is strengthened. These measures generally apply for a 10-year period following the inversion transaction. In addition, inverting entities are required to provide information to shareholders or partners and the IRS with respect to the inversion transaction.

With respect to "toll charges," any applicable corporate-level income or gain required to be recognized under sections 304, 311(b), 367, 1001, 1248, or any other provision with respect to the transfer of controlled foreign corporation stock or other assets by a U.S. corporation as part of the inversion transaction or after such transaction to a related foreign person is taxable, without offset by any tax attributes (e.g., net operating losses or foreign tax credits). To the extent provided in regulations, this rule will not apply to certain transfers of inventory and similar transactions conducted in the ordinary course of the taxpayer's business.

The 20-percent penalty for negligence or disregard of rules or regulations, substantial understatement of income tax, and substantial valuation misstatement is increased to 30 percent with respect to taxpayers related to the inverted entity. In addition, the 40-percent penalty for gross valuation misstatement is increased to 50 percent with respect to such taxpayers.

The "earnings stripping" rules of section 163(j), which deny or defer deductions for certain interest paid to foreign related parties, are strengthened for inverted corporations. With respect to such corporations, the provision eliminates the debt-equity threshold generally applicable under section 163(j) and reduces the 50-percent thresholds for "excess interest expense" and "excess limitation" to 25 percent.

In cases in which a U.S. corporate group acquires subsidiaries or other assets from an unrelated inverted corporate group, the provisions described above generally do not apply to the acquiring U.S. corporate group or its related parties (including the newly acquired subsidiaries or assets) by reason of acquiring the subsidiaries or assets that were connected with the inversion transaction. The Treasury Secretary is given authority to issue regulations appropriate to carry out the purposes of this provision and to prevent its abuse.

Partnership transactions

Under the provision, both types of inversion transactions include certain partnership transactions. Specifically, both parts of the provision apply to transactions in which a foreign-incorporated entity acquires substantially all of the properties constituting a trade or business of a domestic partnership (whether or not publicly traded), if after the acquisition at least 80 percent (or more than 50 percent but less than 80 percent, as the case may be) of the stock of the entity is held by former partners of the partnership (by reason of holding their partnership interests), and the "substantial business activities" test is not met. For purposes of determining whether these tests are met, all partnerships that are under common control within the meaning of section 482 are treated as one partnership, except as provided otherwise in regulations. In addition, the modified "toll charge" provisions apply at the partner level.

Effective date

The regime applicable to transactions involving at least 80 percent identity of ownership applies to inversion transactions completed after March 20, 2002. The rules for inversion transactions involving greater-than-50-percent identity of ownership apply to inversion transactions completed after 1996 that meet the 50-percent test and to inversion transactions completed after 1996 that would have met the 80-percent test but for the March 20, 2002 date.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and Senate amendment with modifications.

In general

The provision defines two different types of corporate inversion transactions and establishes a different set of consequences for each type. Certain partnership transactions also are covered.

Transactions involving at least 80 percent identity of stock ownership

The first type of inversion is a transaction in which, pursuant to a plan[431] or a series of related transactions: (1) a U.S. corporation becomes a subsidiary of a foreign-incorporated entity or otherwise transfers substantially all of its properties to such an entity in a transaction completed after March 4, 2003; (2) the former shareholders of the U.S. corporation hold (by reason of holding stock in the U.S. corporation) 80 percent or more (by vote or value) of the stock of the foreign-incorporated entity after the transaction; and (3) the foreign-incorporated entity, considered together with all companies connected to it by a chain of greater than 50 percent ownership (i.e., the "expanded affiliated group"), does not have substantial business activities in the entity's country of incorporation, compared to the total worldwide business activities of the expanded affiliated group. The provision denies the intended tax benefits of this type of inversion by deeming the top-tier foreign corporation to be a domestic corporation for all purposes of the Code.[432]

In determining whether a transaction meets the definition of an inversion under the proposal, stock held by members of the expanded affiliated group that includes the foreign incorporated entity is disregarded. For example, if the former top-tier U.S. corporation receives stock of the foreign incorporated entity (e.g., so-called "hook" stock), the stock would not be considered in determining whether the transaction meets the definition. Similarly, if a U.S. parent corporation converts an existing wholly owned

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[429] It is expected that the Treasury Secretary will issue regulations applying the term "substantially all" in this context and will not be bound in this regard by interpretations of the term in other contexts under the Code.

[430] Since the top-tier foreign corporation is treated for all purposes of the Code as domestic, the shareholder-level "toll charge" of sec. 367(a) does not apply to these inversion transactions. However, with respect to inversion transactions completed before 2004, regulated investment companies and certain similar entities are allowed to elect to recognize gain as if sec. 367(a) did apply.

[431] Acquisitions with respect to a domestic corporation or partnership are deemed to be "pursuant to a plan" if they occur within the four-year period beginning on the date which is two years before the ownership threshold under the provision is met with respect to such corporation or partnership.

[432] Since the top-tier foreign corporation is treated for all purposes of the Code as domestic, the shareholder-level "toll charge" of sec. 367(a) does not apply to these inversion transactions.

U.S. subsidiary into a new wholly owned controlled foreign corporation, the stock of the new foreign corporation would be disregarded. Stock sold in a public offering related to the transaction also is disregarded for these purposes.

Transfers of properties or liabilities as part of a plan a principal purpose of which is to avoid the purposes of the proposal are disregarded. In addition, the Treasury Secretary is granted authority to prevent the avoidance of the purposes of the proposal, including avoidance through the use of related persons, pass-through or other noncorporate entities, or other intermediaries, and through transactions designed to qualify or disqualify a person as a related person or a member of an expanded affiliated group. Similarly, the Treasury Secretary is granted authority to treat certain non-stock instruments as stock, and certain stock as not stock, where necessary to carry out the purposes of the proposal.

Transactions involving at least 60 percent but less than 80 percent identity of stock ownership

The second type of inversion is a transaction that would meet the definition of an inversion transaction described above, except that the 80-percent ownership threshold is not met. In such a case, if at least a 60-percent ownership threshold is met, then a second set of rules applies to the inversion. Under these rules, the inversion transaction is respected (i.e., the foreign corporation is treated as foreign), but any applicable corporate-level "toll charges" for establishing the inverted structure are not offset by tax attributes such as net operating losses or foreign tax credits. Specifically, any applicable corporate-level income or gain required to be recognized under sections 304, 311(b), 367, 1001, 1248, or any other provision with respect to the transfer of controlled foreign corporation stock or the transfer or license of other assets by a U.S. corporation as part of the inversion transaction or after such transaction to a related foreign person is taxable, without offset by any tax attributes (e.g., net operating losses or foreign tax credits). This rule does not apply to certain transfers of inventory and similar property. These measures generally apply for a 10-year period following the inversion transaction.

Under the proposal, inversion transactions include certain partnership transactions. Specifically, the proposal applies to transactions in which a foreign-incorporated entity acquires substantially all of the properties constituting a trade or business of a domestic partnership, if after the acquisition at least 60 percent of the stock of the entity is held by former partners of the partnership (by reason of holding their partnership interests), provided that the other terms of the basic definition are met. For purposes of applying this test, all partnerships that are under common control within the meaning of section 482 are treated as one partnership, except as provided otherwise in regulations. In addition, the modified "toll charge" proposals apply at the partner level.

A transaction otherwise meeting the definition of an inversion transaction is not treated as an inversion transaction if, on or before March 4, 2003, the foreign-incorporated entity had acquired directly or indirectly more than half of the properties held directly or indirectly by the domestic corporation, or more than half of the properties constituting the partnership trade or business, as the case may be.

Effective date

The provision applies to taxable years ending after March 4, 2003.

2. Excise tax on stock compensation of insiders in expatriated corporations (sec. 602 of the House bill, sec. 443 of the Senate amendment, and secs. 162(m), 275(a), and new sec. 4985 of the Code)

PRESENT LAW

The income taxation of a nonstatutory[433] compensatory stock option is determined under the rules that apply to property transferred in connection with the performance of services (sec. 83). If a nonstatutory stock option does not have a readily ascertainable fair market value at the time of grant, which is generally the case unless the option is actively traded on an established market, no amount is included in the gross income of the recipient with respect to the option until the recipient exercises the option.[434] Upon exercise of such an option, the excess of the fair market value of the stock purchased over the option price is generally included in the recipient's gross income as ordinary income in such taxable year.[435]

The tax treatment of other forms of stock-based compensation (e.g., restricted stock and stock appreciation rights) is also determined under section 83. The excess of the fair market value over the amount paid (if any) for such property is generally includable in gross income in the first taxable year in which the rights to the property are transferable or are not subject to substantial risk of forfeiture.

Shareholders are generally required to recognize gain upon stock inversion transactions. An inversion transaction is generally not a taxable event for holders of stock options and other stock-based compensation.

HOUSE BILL

In general

Under the House bill, specified holders of stock options and other stock-based compensation are subject to an excise tax upon certain inversion transactions. The provision imposes a 15-percent excise tax on the value of specified stock compensation held (directly or indirectly) by or for the benefit of a disqualified individual, or a member of such individual's family, at any time during the 12-month period beginning six months before the corporation's expatriation date. Specified stock compensation is treated as held for the benefit of a disqualified individual if such compensation is held by an entity, e.g., a partnership or trust, in which the individual, or a member of the individual's family, has an ownership interest.

Disqualified individuals

A disqualified individual is any individual who, with respect to a corporation, is, at any time during the 12-month period beginning on the date which is six months before the expatriation date, subject to the requirements of section 16(a) of the Securities and Exchange Act of 1934 with respect to the corporation, or any member of the corporation's expanded affiliated group,[436] or would be subject to such requirements if the corporation (or member) were an issuer of equity securities referred to in section 16(a). Disqualified individuals generally include officers (as defined by section 16(a)),[437] directors, and 10-percent-or-greater owners of private and publicly-held corporations.

Application of excise tax

The excise tax is imposed on a disqualified individual of an expatriated corporation (as defined in the bill) only if gain (if any) is recognized in whole or part by any shareholder by reason of a corporate inversion transaction as previously defined in the bill.

Specified stock compensation

Specified stock compensation subject to the excise tax includes any payment[438] (or right to payment) granted by the expatriated corporation (or any member of the corporation's expanded affiliated group) to any person in connection with the performance of services by a disqualified individual for such corporation (or member of the corporation's expanded affiliated group) if the value of the payment or right is based on, or determined by reference to, the value or change in value of stock of such corporation (or any member of the corporation's expanded affiliated group). In determining whether such compensation exists and valuing such compensation, all restrictions, other than a non-lapse restriction, are ignored. Thus, the excise tax applies, and the value subject to the tax is determined, without regard to whether the specified stock compensation is subject to a substantial risk of forfeiture or is exercisable at the time of the inversion transaction.

Specified stock compensation includes compensatory stock and restricted stock grants, compensatory stock options, and other forms of stock-based compensation, including stock appreciation rights, phantom stock, and phantom stock options. Specified stock compensation also includes nonqualified deferred compensation that is treated as though it were invested in stock or stock options of the expatriating corporation (or member). For example, the provision applies to a disqualified individual's nonqualified deferred compensation if company stock is one of the actual or deemed investment options under the nonqualified deferred compensation plan.

Specified stock compensation includes a compensation arrangement that gives the disqualified individual an economic stake substantially similar to that of a corporate shareholder. A payment directly tied to the value of the stock is specified stock compensation. The excise tax does not apply if a payment is simply triggered by a target value of the corporation's stock or where a payment depends on a performance measure other than the value of the corporation's stock. Similarly, the tax does not apply if the amount of the payment is not directly measured by the value of the stock or an increase in the value of the stock. For example, an arrangement under which a disqualified individual would be paid a cash bonus equal to $10,000 for every $1 increase in the share price of the corporation's stock is subject to the provision because the direct connection between the compensation amount and the value of the corporation's stock gives the disqualified individual an economic stake substantially similar to that of a shareholder. By contrast, an arrangement under which a disqualified individual would be paid a cash bonus of $500,000 if the corporation's stock increased in value by 25 percent over two years or $1,000,000 if the stock increased by 33 percent over two years is not specified stock compensation, even though the amount of the bonus generally is keyed to an increase in the value of the stock.

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[433] Nonstatutory stock options refer to stock options other than incentive stock options and employee stock purchase plans, the taxation of which is determined under sections 421–s424.

[434] If an individual receives a grant of a nonstatutory option that has a readily ascertainable fair market value at the time the option is granted, the excess of the fair market value of the option over the amount paid for the option is included in the recipient's gross income as ordinary income in the first taxable year in which the option is either transferable or not subject to a substantial risk of forfeiture.

[435] Under section 83, such amount is includable in gross income in the first taxable year in which the rights to the stock are transferable or are not subject to substantial risk of forfeiture.

[436] An expanded affiliated group is an affiliated group (under section 1504) except that such group is determined without regard to the exceptions for certain corporations and is determined applying a greater than 50 percent threshold, in lieu of the 80-percent test.

[437] An officer is defined as the president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions.

[438] Under the provision, any transfer of lproperty is treated as a payment and any right to a transfer of property is treated as a right to a payment.

The excise tax applies to any specified stock compensation previously granted to a disqualified individual but cancelled or cashed-out within the six-month period ending with the expatriation date, and to any specified stock compensation awarded in the six-month period beginning with the expatriation date. As a result, for example, if a corporation cancels outstanding options three months before the inversion transaction and then reissues comparable options three months after the transaction, the tax applies both to the cancelled options and the newly granted options. It is intended that the Secretary issue guidance to avoid double counting with respect to specified stock compensation that is cancelled and then regranted during the applicable 12-month period.

Specified stock compensation subject to the tax does not include a statutory stock option or any payment or right from a qualified retirement plan or annuity, tax-sheltered annuity, simplified employee pension, or SIMPLE. In addition, under the provision, the excise tax does not apply to any stock option that is exercised during the six-month period before the expatriation date or to any stock acquired pursuant to such exercise, if income is recognized under section 83 on or before the expatriation date with respect to the stock acquired pursuant to such exercise. The excise tax also does not apply to any specified stock compensation that is exercised, sold, exchanged, distributed, cashed out, or otherwise paid during such period in a transaction in which income, gain, or loss is recognized in full.

Determination of amount subject to tax

For specified stock compensation held on the expatriation date, the amount of the tax is determined based on the value of the compensation on such date. The tax imposed on specified stock compensation cancelled during the six-month period before the expatriation date is determined based on the value of the compensation on the day before such cancellation, while specified stock compensation granted after the expatriation date is valued on the date granted. Under the provision, the cancellation of a non-lapse restriction is treated as a grant.

The value of the specified stock compensation on which the excise tax is imposed is the fair value in the case of stock options (including warrants or other similar rights to acquire stock) and stock appreciation rights and the fair market value for all other forms of compensation. For purposes of the tax, the fair value of an option (or a warrant or other similar right to acquire stock) or a stock appreciation right is determined using an appropriate option-pricing model, as specified or permitted by the Secretary, that takes into account (1) the stock price at the valuation date; (2) the exercise price under the option; (3) the remaining term of the option; (4) the volatility of the underlying stock and the expected dividends on it; and (5) the risk-free interest rate over the remaining term of the option. Options that have no intrinsic value (or "spread") because the exercise price under the option equals or exceeds the fair market value of the stock at valuation nevertheless have a fair value and are subject to tax under the provision. The value of other forms of compensation, such as phantom stock or restricted stock, is the fair market value of the stock as of the date of the expatriation transaction. The value of any deferred compensation that can be valued by reference to stock is the amount that the disqualified individual would receive if the plan were to distribute all such deferred compensation in a single sum on the date of the expatriation transaction (or the date of cancellation or grant, if applicable). It is expected that the Secretary issue guidance on valuation of specified stock compensation, including guidance similar to the guidance issued under section 280G, except that the guidance would not permit the use of a term other than the full remaining term and would be modified as necessary or appropriate to carry out the purposes of the provision. Pending the issuance of guidance, it is intended that taxpayers can rely on the guidance issued under section 280G (except that the full remaining term must be used and recalculation is not permitted).

Other rules

The excise tax also applies to any payment by the expatriated corporation or any member of the expanded affiliated group made to an individual, directly or indirectly, in respect of the tax. Whether a payment is made in respect of the tax is determined under all of the facts and circumstances. Any payment made to keep the individual in the same after-tax position that the individual would have been in had the tax not applied is a payment made in respect of the tax. This includes direct payments of the tax and payments to reimburse the individual for payment of the tax. It is expected that the Secretary issue guidance on determining when a payment is made in respect of the tax and that such guidance include certain factors that give rise to a rebuttable presumption that a payment is made in respect of the tax, including a rebuttable presumption that if the payment is contingent on the inversion transaction, it is made in respect to the tax. Any payment made in respect of the tax is includible in the income of the individual, but is not deductible by the corporation.

To the extent that a disqualified individual is also a covered employee under section 162(m), the $1,000,000 limit on the deduction allowed for employee remuneration for such employee is reduced by the amount of any payment (including reimbursements) made in respect of the tax under the provision. As discussed above, this includes direct payments of the tax and payments to reimburse the individual for payment of the tax.

The payment of the excise tax has no effect on the subsequent tax treatment of any specified stock compensation. Thus, the payment of the tax has no effect on the individual's basis in any specified stock compensation and no effect on the tax treatment for the individual at the time of exercise of an option or payment of any specified stock compensation, or at the time of any lapse or forfeiture of such specified stock compensation. The payment of the tax is not deductible and has no effect on any deduction that might be allowed at the time of any future exercise or payment.

Under the provision, the Secretary is authorized to issue regulations as may be necessary or appropriate to carry out the purposes of the provision.

Effective date

The provision is effective as of March 4, 2003, except that periods before March 4, 2003, are not taken into account in applying the excise tax to specified stock compensation held or cancelled during the six-month period before the expatriation date.

SENATE AMENDMENT

The Senate amendment follows the House bill except that excise tax is equal to 20 percent of the value of the specified stock compensation. Under the Senate amendment, the excise tax does not apply to executives of the expanded affiliated group.

Effective date.—The Senate amendment is effective as of July 11, 2002, except that periods before July 11, 2002, are not taken into account in applying the excise tax to specified stock compensation held or cancelled during the six-month period before the expatriation date.

CONFERENCE AGREEMENT

The conference agreement follows the House bill except that the excise tax is imposed at a rate equal to the maximum rate of tax on the adjusted net capital gain of an individual (i.e., the rate of the excise tax would be 15 percent for 2005 through 2008 and 20 percent for taxable years beginning after December 31, 2008).

3. Reinsurance of U.S. risks in foreign jurisdictions (sec. 603 of the House bill, sec. 444 of the Senate amendment, and sec. 845(a) of the Code)

PRESENT LAW

In the case of a reinsurance agreement between two or more related persons, present law provides the Treasury Secretary with authority to allocate among the parties or recharacterize income (whether investment income, premium or otherwise), deductions, assets, reserves, credits and any other items related to the reinsurance agreement, or make any other adjustment, in order to reflect the proper source and character of the items for each party.[439] For this purpose, related persons are defined as in section 482. Thus, persons are related if they are organizations, trades or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) that are owned or controlled directly or indirectly by the same interests. The provision may apply to a contract even if one of the related parties is not a domestic company.[440] In addition, the provision also permits such allocation, recharacterization, or other adjustments in a case in which one of the parties to a reinsurance agreement is, with respect to any contract covered by the agreement, in effect an agent of another party to the agreement, or a conduit between related persons.

HOUSE BILL

The bill clarifies the rules of section 845, relating to authority for the Treasury Secretary to allocate items among the parties to a reinsurance agreement, recharacterize items, or make any other adjustment, in order to reflect the proper source and character of the items for each party. The bill authorizes such allocation, recharacterization, or other adjustment, in order to reflect the proper source, character or amount of the item. It is intended that this authority[441] be exercised in a manner similar to the authority under section 482 for the Treasury Secretary to make adjustments between related parties. It is intended that this authority be applied in situations in which the related persons (or agents or conduits) are engaged in cross-border transactions that require allocation, recharacterization, or other adjustments in order to reflect the proper source, character or amount of the item or items. No inference is intended that present law does not provide this authority with respect to reinsurance agreements.

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[439] Sec. 845(a).

[440] See S. Rep. No. 97-494, 97th Cong., 2d Sess., 337 (1982) (describing provisionss relating to the repeal of modified coinsurance provisions).

No regulations have been issued under section 845(a). It is expected that the Treasury Secretary will issue regulations under section 845(a) to address effectively the allocation of income (whether investment income, premium or otherwise) and other items, the recharacterization of such items, or any other adjustment necessary to reflect the proper amount, source or character of the item.

Effective date.—The provision is effective for any risk reinsured after the date of enactment of the provision.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

Effective date.—The provision is effective for any risk reinsured after April 11, 2002.

CONFERENCE AGREEMENT

The Conference agreement follows the House bill.

4. Revision of tax rules on expatriation of individuals (sec. 604 of the House bill, sec. 442 of the Senate amendment, and secs. 877, 2107, 2501 and 6039G of the Code)

PRESENT LAW

In general

U.S. citizens and residents generally are subject to U.S income taxation on their worldwide income. The U.S. tax may be reduced or offset by a credit allowed for foreign income taxes paid with respect to foreign source income. Nonresident aliens are taxed at a flat rate of 30 percent (or a lower treaty rate) on certain types of passive income derived from U.S. sources, and at regular graduated rates on net profits derived from a U.S. trade or business. The estates of nonresident aliens generally are subject to estate tax on U.S.-situated property (e.g., real estate and tangible property located within the United States and stock in a U.S. corporation). Nonresident aliens generally are subject to gift tax on transfers by gift of U.S.-situated property (e.g., real estate and tangible property located within the United States, but excluding intangibles, such as stock, regardless of where they are located).

Income tax rules with respect to expatriates

For the 10 taxable years after an individual relinquishes his or her U.S. citizenship or terminates his or her U.S. residency[442] with a principal purpose of avoiding U.S. taxes, the individuals is subject to an alternative method of income taxation than that generally applicable to nonresident aliens (the "alternative tax regime"). Generally, the individual is subject to income tax only on U.S.-source income[443] at the rates applicable to U.S. citizens for the 10-year period.

An individual who relinquishes citizenship or terminates residency is treated as having done so with a principal purpose of tax avoidance and is generally subject to the alternative tax regime if: (1) the individual's average annual U.S. Federal income tax liability for the five taxable years preceding citizenship relinquishment or residency termination exceeds $100,000; or (2) the individual's net worth on the date of citizenship relinquishment or residency termination equals or exceeds $500,000. These amounts are adjusted annually for inflation.[444] Certain categories of individuals (e.g., dual residents) may avoid being deemed to have a tax avoidance purpose for relinquishing citizenship or terminating residency by submitting a ruling request to the IRS regarding whether the individual relinquished citizenship or terminated residency principally for tax reasons.

Anti-abuse rules are provided to prevent the circumvention of the alternative tax regime.

Estate tax rules with respect to expatriates

Special estate tax rules apply to individual's who relinquish their citizenship or long-term residency within the 10 years prior to the date of death, unless he or she did not have a tax avoidance purpose (as determined under the test above). Under these special rules, certain closely-held foreign stock owned by the former citizen or former long-term resident is includible in his or her gross estate to the extent that the foreign corporation owns U.S.-situated assets.

Gift tax rules with respect to expatriates

Special gift tax rules apply to individual's who relinquish their citizenship or long-term residency within the 10 years prior to the date of death, unless he or she did not have a tax avoidance purpose (as determined under the rules above). The individual is subject to gift tax on gifts of U.S.-situated intangibles made during the 10 years following citizenship relinquishment or residency termination.

Information reporting

Under present law, U.S. citizens who relinquish citizenship and long-term residents who terminate residency generally are required to provide information about their assets held at the time of expatriation. However, this information is only required once.

HOUSE BILL

In general

The bill provides: (1) objective standards for determining whether former citizens or former long-term residents are subject to the alternative tax regime; (2) tax-based (instead of immigration-based) rules for determining when an individual is no longer a U.S. citizen or long-term resident for U.S. Federal tax purposes; (3) the imposition of full U.S. taxation for individuals who are subject to the alternative tax regime and who return to the United States for extended periods; (4) imposition of U.S. gift tax on gifts of stock of certain closely-held foreign corporations that hold U.S.-situated property; and (5) an annual return-filing requirement for individuals who are subject to the alternative tax regime, for each of the 10 years following citizenship relinquishment or residency termination.[445]

Objective rules for the alternative tax regime

The bill replaces the subjective determination of tax avoidance as a principal purpose for citizenship relinquishment or residency termination under present law with objective rules. Under the bill, a former citizen or former long-term resident would be subject to the alternative tax regime for a 10-year period following citizenship relinquishment or residency termination, unless the former citizen or former long-term resident: (1) establishes that his or her average annual net income tax liability for the five preceding years does not exceed $124,000 (adjusted for inflation after 2004) and his or her net worth does not exceed $2 million, or alternatively satisfies limited, objective exceptions for dual citizens and minors who have had no substantial contact with the United States; and (2) certifies under penalties of perjury that he or she has complied with all U.S. Federal tax obligations for the preceding five years and provides such evidence of compliance as the Secretary of the Treasury may require.

The monetary thresholds under the bill replace the present-law inquiry into the taxpayer's intent. In addition, the bill eliminates the present-law process of IRS ruling requests.

If a former citizen exceeds the monetary thresholds, that person is excluded from the alternative tax regime if he or she falls within the exceptions for certain dual citizens and minors (provided that the requirement of certification and proof of compliance with Federal tax obligations is met). These exceptions provide relief to individuals who have never had substantial connections with the United States, as measured by certain objective criteria, and eliminate IRS inquiries as to the subjective intent of such taxpayers.

In order to be excepted from the application of the alternative tax regime under the bill, whether by reason of falling below the net worth and income tax liability thresholds or qualifying for the dual-citizen or minor exceptions, the former citizen or former long-term resident also is required to certify, under penalties of perjury, that he or she has complied with all U.S. Federal tax obligations for the five years preceding the relinquishment of citizenship or termination of residency and to provide such documentation as the Secretary of the Treasury may require evidencing such compliance (e.g., tax returns, proof of tax payments). Until such time, the individual remains subject to the alternative tax regime. It is intended that the IRS will continue to verify that the information submitted was accurate, and it is intended that the IRS will randomly audit such persons to assess compliance.

Termination of U.S. citizenship or long-term resident status for U.S. Federal income tax purposes

Under the bill, an individual continues to be treated as a U.S. citizen or long-term resident for U.S. Federal tax purposes, including for purposes of section 7701(b)(10), until the individual: (1) gives notice of an expatriating act or termination of residency (with the requisite intent to relinquish citizenship or terminate residency) to the Secretary of State or the Secretary of Homeland Security, respectively; and (2) provides a statement in accordance with section 6039G.

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[441] The authority to allocate, recharacterize or make other adjustments was granted in connection with the repeal of provisions relating to modified coinsurance transactions.

[442] Under present law, an individual's U.S. residency is considered terminated for U.S. Federal tax purposes when the individual ceases to be a lawful permanent resident under the immigration law (or is treated as a resident of another country under a tax treaty and does not waive the benefits of such treaty).

[443] For this purpose, however, U.S.-source income has a broader scope than it does typically in the Code.

[444] The income tax liability and net worth thresholds under section 877(a)(2) for 2004 are $124,000 and $622,000, respectively. See Rev. Proc. 2003-85, 2003-49 I.R.B. 1184.

[445] These provisions reflect recommendations contained in Joint Committee on Taxation, Review of the Present Law Tax and Immigration Treatment of Relinquishment of Citizenship and Termination of Long-Term Residency, (JCS-2-03), February 2003.

Sanction for individuals subject to the individual tax regime who return to the United States for extended periods

The alternative tax regime does not apply to any individual for any taxable year during the 10-year period following citizenship relinquishment or residency termination if such individual is present in the United States for more than 30 days in the calendar year ending in such taxable year. Such individual is treated as a U.S. citizen or resident for such taxable year and therefore is taxed on his or her worldwide income.

Similarly, if an individual subject to the alternative tax regime is present in the United States for more than 30 days in any calendar year ending during the 10-year period following citizenship relinquishment or residency termination, and the individual dies during that year, he or she is treated as a U.S. resident, and the individual's worldwide estate is subject to U.S. estate tax. Likewise, if an individual subject to the alternative tax regime is present in the United States for more than 30 days in any year during the 10-year period following citizenship relinquishment or residency termination, the individual is subject to U.S. gift tax on any transfer of his or her worldwide assets by gift during that taxable year.

For purposes of these rules, an individual is treated as present in the United States on any day if such individual is physically present in the United States at any time during that day. The present-law exceptions from being treated as present in the United States for residency purposes[446] generally do not apply for this purpose. However, for individuals with certain ties to countries other than the United States[447] and individuals with minimal prior physical presence in the United States,[448] a day of physical presence in the United States is disregarded if the individual is performing services in the United States on such day for an unrelated employer (within the meaning of sections 267 and 707(b)), who meets the requirements the Secretary of the Treasury may prescribe in regulations. No more than 30 days may be disregarded during any calendar year under this rule.

Imposition of gift tax with respect to stock of certain closely held foreign corporations

Gifts of stock of certain closely-held foreign corporations by a former citizen or former long-term resident who is subject to the alternative tax regime are subject to gift tax under this bill, if the gift is made within the 10-year period after citizenship relinquishment or residency termination. The gift tax rule applies if: (1) the former citizen or former long-term resident, before making the gift, directly or indirectly owns 10 percent or more of the total combined voting power of all classes of stock entitled to vote of the foreign corporation; and (2) directly or indirectly, is considered to own more than 50 percent of (a) the total combined voting power of all classes of stock entitled to vote in the foreign corporation, or (b) the total value of the stock of such corporation. If this stock ownership test is met, then taxable gifts of the former citizen or former long-term resident include that proportion of the fair market value of the foreign stock transferred by the individual, at the time of the gift, which the fair market value of any assets owned by such foreign corporation and situated in the United States (at the time of the gift) bears to the total fair market value of all assets owned by such foreign corporation (at the time of the gift).

This gift tax rule applies to a former citizen or former long-term resident who is subject to the alternative tax regime and who owns stock in a foreign corporation at the time of the gift, regardless of how such stock was acquired (e.g., whether issued originally to the donor, purchased, or received as a gift or bequest).

Annual return

The bill requires former citizens and former long-term residents to file an annual return for each year following citizenship relinquishment or residency termination in which they are subject to the alternative tax regime. The annual return is required even if no U.S. Federal income tax is due. The annual return requires certain information, including information on the permanent home of the individual, the individual's country of residence, the number of days the individual was present in the United States for the year, and detailed information about the individual's income and assets that are subject to the alternative tax regime. This requirement includes information relating to foreign stock potentially subject to the special estate tax rule of section 2107(b) and the gift tax rules of this bill.

If the individual fails to file the statement in a timely manner or fails correctly to include all the required information, the individual is required to pay a penalty of $5,000. The $5,000 penalty does not apply if it is shown that the failure is due to reasonable cause and not to willful neglect.

Effective date

The provision applies to individuals who relinquish citizenship or terminate long-term residency after June 3, 2004.

SENATE AMENDMENT

In general

The provision generally subjects certain U.S. citizens who relinquish their U.S. citizenship and certain long-term U.S. residents who terminate their U.S. residence to tax on the net unrealized gain in their property as if such property were sold for fair market value on the day before the expatriation or residency termination. Gain from the deemed sale is taken into account at that time without regard to other Code provisions; any loss from the deemed sale generally would be taken into account to the extent otherwise provided in the Code. Any net gain on the deemed sale is recognized to the extent it exceeds $600,000 ($1.2 million in the case of married individuals filing a joint return, both of whom relinquish citizenship or terminate residency). The $600,000 amount is increased by a cost of living adjustment factor for calendar years after 2002.

Individuals covered

Under the provision, the mark-to-market tax applies to U.S. citizens who relinquish citizenship and long-term residents who terminate U.S. residency. An individual is a long-term resident if he or she was a lawful permanent resident for at least eight out of the 15 taxable years ending with the year in which the termination of residency occurs. An individual is considered to terminate long-term residency when either the individual ceases to be a lawful permanent resident (i.e., loses his or her green card status), or the individual is treated as a resident of another country under a tax treaty and the individual does not waive the benefits of the treaty.

Exceptions from the mark-to-market tax are provided in two situations. The first exception applies to an individual who was born with citizenship both in the United States and in another country; provided that (1) as of the expatriation date the individual continues to be a citizen of, and is taxed as a resident of, such other country, and (2) the individual was not a resident of the United States for the five taxable years ending with the year of expatriation. The second exception applies to a U.S. citizen who relinquishes U.S. citizenship before reaching age 18 and a half, provided that the individual was a resident of the United States for no more than five taxable years before such relinquishment.

Election to be treated as a U.S. citizen

Under the provision, an individual is permitted to make an irrevocable election to continue to be taxed as a U.S. citizen with respect to all property that otherwise is covered by the expatriation tax. This election is an "all or nothing" election; an individual is not permitted to elect this treatment for some property but not for other property. The election, if made, would apply to all property that would be subject to the expatriation tax and to any property the basis of which is determined by reference to such property. Under this election, the individual would continue to pay U.S. income taxes at the rates applicable to U.S. citizens following expatriation on any income generated by the property and on any gain realized on the disposition of the property. In addition, the property would continue to be subject to U.S. gift, estate, and generation-skipping transfer taxes. In order to make this election, the taxpayer would be required to waive any treaty rights that would preclude the collection of the tax.

The individual also would be required to provide security to ensure payment of the tax under this election in such form, manner, and amount as the Secretary of the Treasury requires. The amount of mark-to-market tax that would have been owed but for this election (including any interest, penalties, and certain other items) shall be a lien in favor of the United States on all U.S.-situs property owned by the individual. This lien shall arise on the expatriation date and shall continue until the tax liability is satisfied, the tax liability has become unenforceable by reason of lapse of time, or the Secretary is satisfied that no further tax liability may arise by reason of this provision. The rules of section 6324A(d)(1), (3), and (4) (relating to liens arising in connection with the deferral of estate tax under section 6166) apply to liens arising under this provision.

Date of relinquishment of citizenship

Under the provision, an individual is treated as having relinquished U.S. citizenship on the earliest of four possible dates: (1) the date that the individual renounces U.S. nationality before a diplomatic or consular officer of the United States (provided that the voluntary relinquishment is later confirmed by the issuance of a certificate of loss of nationality); (2) the date that the individual furnishes to the State Department a signed statement of voluntary relinquishment of U.S. nationality confirming the performance of an expatriating act (again, provided that the voluntary relinquishment is later confirmed by the issuance of a certificate of loss of nationality); (3) the date that the State Department issues a certificate of loss of nationality; or (4) the date that a U.S. court cancels a naturalized citizen's certificate of naturalization.

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[446] Secs. 7701(b)(3)(D), 7701(b)(5) and 7701(b)(7)(B)-(D).

[447] An individual has such a relationship to a foreign country if the individual becomes a citizen or resident of the country in which (1) the individual becomes fully liable for income tax or (2) the individual was born, such individual's spouse was born, or either of the individual's parents was born.

[448] An individual has a minimal prior physical presence in the United States if the individual was physically present for no more than 30 days during each year in the ten-year period ending on the date of loss of United States citizenship or termination of residency. However, an individual is not treated as being present in the United States on a day if (1) the individual is a teacher or trainee, a student, a professional athlete in certain circumstances, or a foreign government-related individual or (2) the individual remained in the United States because of a medical condition that arose while the individual was in the United States. Sec. 7701(b)(3)(D)(ii).

Deemed sale of property upon expatriation or residency termination

The deemed sale rule of the provision generally applies to all property interests held by the individual on the date of relinquishment of citizenship or termination of residency. Special rules apply in the case of trust interests, as described below. U.S. real property interests, which remain subject to U.S. tax in the hands of nonresident noncitizens, generally are excepted from the provision. Regulatory authority is granted to the Treasury to except other types of property from the provision.

Under the provision, an individual who is subject to the mark-to-market tax is required to pay a tentative tax equal to the amount of tax that would be due for a hypothetical short tax year ending on the date the individual relinquished citizenship or terminated residency. Thus, the tentative tax is based on all income, gain, deductions, loss, and credits of the individual for the year through such date, including amounts realized from the deemed sale of property. The tentative tax is due on the 90th day after the date of relinquishment of citizenship or termination of residency.

Retirement plans and similar arrangements

Subject to certain exceptions, the provision applies to all property interests held by the individual at the time of relinquishment of citizenship or termination of residency. Accordingly, such property includes an interest in an employer-sponsored retirement plan or deferred compensation arrangement as well as an interest in an individual retirement account or annuity (i.e., an IRA).[449] However, the provision contains a special rule for an interest in a "qualified retirement plan." For purposes of the provision, a "qualified retirement plan" includes an employer-sponsored qualified plan (sec. 401(a)), a qualified annuity (sec. 403(a)), a tax-sheltered annuity (sec. 403(b)), an eligible deferred compensation plan of a governmental employer (sec. 457(b)), or an IRA (sec. 408). The special retirement plan rule applies also, to the extent provided in regulations, to any foreign plan or similar retirement arrangement or program. An interest in a trust that is part of a qualified retirement plan or other arrangement that is subject to the special retirement plan rule is not subject to the rules for interests in trusts (discussed below).

Under the special rule, an amount equal to the present value of the individual's vested, accrued benefit under a qualified retirement plan is treated as having been received by the individual as a distribution under the plan on the day before the individual's relinquishment of citizenship or termination of residency. It is not intended that the plan would be deemed to have made a distribution for purposes of the tax-favored status of the plan, such as whether a plan may permit distributions before a participant has severed employment. In the case of any later distribution to the individual from the plan, the amount otherwise includible in the individual's income as a result of the distribution is reduced to reflect the amount previously included in income under the special retirement plan rule. The amount of the reduction applied to a distribution is the excess of: (1) the amount included in income under the special retirement plan rule over (2) the total reductions applied to any prior distributions. However, under the provision, the retirement plan, and any person acting on the plan's behalf, will treat any later distribution in the same manner as the distribution would be treated without regard to the special retirement plan rule.

It is expected that the Treasury Department will provide guidance for determining the present value of an individual's vested, accrued benefit under a qualified retirement plan, such as the individual's account balance in the case of a defined contribution plan or an IRA, or present value determined under the qualified joint and survivor annuity rules applicable to a defined benefit plan (sec. 417(e)).

Deferral of payment of tax

Under the provision, an individual is permitted to elect to defer payment of the mark-to-market tax imposed on the deemed sale of the property. Interest is charged for the period the tax is deferred at a rate two percentage points higher than the rate normally applicable to individual underpayments. Under this election, the mark-to-market tax attributable to a particular property is due when the property is disposed of (or, if the property is disposed of in whole or in part in a nonrecognition transaction, at such other time as the Secretary may prescribe). The mark-to-market tax attributable to a particular property is an amount that bears the same ratio to the total mark-to-market tax for the year as the gain taken into account with respect to such property bears to the total gain taken into account under these rules for the year. The deferral of the mark-to-market tax may not be extended beyond the individual's death.

In order to elect deferral of the mark-to-market tax, the individual is required to provide adequate security to the Treasury to ensure that the deferred tax and interest will be paid. Other security mechanisms are permitted provided that the individual establishes to the satisfaction of the Secretary that the security is adequate. In the event that the security provided with respect to a particular property subsequently becomes inadequate and the individual fails to correct the situation, the deferred tax and the interest with respect to such property will become due. As a further condition to making the election, the individual is required to consent to the waiver of any treaty rights that would preclude the collection of the tax.

The deferred amount (including any interest, penalties, and certain other items) shall be a lien in favor of the United States on all U.S.-situs property owned by the individual. This lien shall arise on the expatriation date and shall continue until the tax liability is satisfied, the tax liability has become unenforceable by reason of lapse of time, or the Secretary is satisfied that no further tax liability may arise by reason of this provision. The rules of section 6324A(d)(1), (3), and (4) (relating to liens arising in connection with the deferral of estate tax under section 6166) apply to liens arising under this provision.

Interests in trusts

Under the provision, detailed rules apply to trust interests held by an individual at the time of relinquishment of citizenship or termination of residency. The treatment of trust interests depends on whether the trust is a qualified trust. A trust is a qualified trust if a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust.

Constructive ownership rules apply to a trust beneficiary that is a corporation, partnership, trust, or estate. In such cases, the shareholders, partners, or beneficiaries of the entity are deemed to be the direct beneficiaries of the trust for purposes of applying these provision. In addition, an individual who holds (or who is treated as holding) a trust instrument at the time of relinquishment of citizenship or termination of residency is required to disclose on his or her tax return the methodology used to determine his or her interest in the trust, and whether such individual knows (or has reason to know) that any other beneficiary of the trust uses a different method.

Nonqualified trusts.—If an individual holds an interest in a trust that is not a qualified trust, a special rule applies for purposes of determining the amount of the mark-to-market tax due with respect to such trust interest. The individual's interest in the trust is treated as a separate trust consisting of the trust assets allocable to such interest. Such separate trust is treated as having sold its net assets as of the date of relinquishment of citizenship or termination of residency and having distributed the assets to the individual, who then is treated as having recontributed the assets to the trust. The individual is subject to the mark-to-market tax with respect to any net income or gain arising from the deemed distribution from the trust.

The election to defer payment is available for the mark-to-market tax attributable to a nonqualified trust interest. Interest is charged for the period the tax is deferred at a rate two percentage points higher than the rate normally applicable to individual underpayments. A beneficiary's interest in a nonqualified trust is determined under all the facts and circumstances, including the trust instrument, letters of wishes, and historical patterns of trust distributions.

Qualified trusts.—If an individual has an interest in a qualified trust, the amount of unrealized gain allocable to the individual's trust interest is calculated at the time of expatriation or residency termination. In determining this amount, all contingencies and discretionary interests are assumed to be resolved in the individual's favor (i.e., the individual is allocated the maximum amount that he or she could receive). The mark-to-market tax imposed on such gains is collected when the individual receives distributions from the trust, or if earlier, upon the individual's death. Interest is charged for the period the tax is deferred at a rate two percentage points higher than the rate normally applicable to individual underpayments.

If an individual has an interest in a qualified trust, the individual is subject to the mark-to-market tax upon the receipt of distributions from the trust. These distributions also may be subject to other U.S. income taxes. If a distribution from a qualified trust is made after the individual relinquishes citizenship or terminates residency, the mark-to-market tax is imposed in an amount equal to the amount of the distribution multiplied by the highest tax rate generally applicable to trusts and estates, but in no event will the tax imposed exceed the deferred tax amount with respect to the trust interest. For this purpose, the deferred tax amount is equal to (1) the tax calculated with respect to the unrealized gain allocable to the trust interest at the time of expatriation or residency termination, (2) increased by interest thereon, and (3) reduced by any mark-to-market tax imposed on prior trust distributions to the individual.

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[449] Application of the provision is not limited to an interest that meets the definition of property under section 83 (relating to property transferred in connection with the performance of services).

If any individual's interest in a trust is vested as of the expatriation date (e.g., if the individual's interest in the trust is non-contingent and non-discretionary), the gain allocable to the individual's trust interest is determined based on the trust assets allocable to his or her trust interest. If the individual's interest in the trust is not vested as of the expatriation date (e.g., if the individual's trust interest is a contingent or discretionary interest), the gain allocable to his or her trust interest is determined based on all of the trust assets that could be allocable to his or her trust interest, determined by resolving all contingencies and discretionary powers in the individual's favor. In the case where more than one trust beneficiary is subject to the expatriation tax with respect to trust interests that are not vested, the rules are intended to apply so that the same unrealized gain with respect to assets in the trust is not taxed to both individuals.

Mark-to-market taxes become due if the trust ceases to be a qualified trust, the individual disposes of his or her qualified trust interest, or the individual dies. In such cases, the amount of mark-to-market tax equals the lesser of (1) the tax calculated under the rules for nonqualified trust interests as of the date of the triggering event, or (2) the deferred tax amount with respect to the trust interest as of that date.

The tax that is imposed on distributions from a qualified trust generally is deducted and withheld by the trustees. If the individual does not agree to waive treaty rights that would preclude collection of the tax, the tax with respect to such distributions is imposed on the trust, the trustee is personally liable for the tax, and any other beneficiary has a right of contribution against such individual with respect to the tax. Similar rules apply when the qualified trust interest is disposed of, the trust ceases to be a qualified trust, or the individual dies.

Coordination with present-law alternative tax regime

The provision provides a coordination rule with the present-law alternative tax regime. Under the provision, the expatriation income tax rules under section 877, and the expatriation estate and gift tax rules under sections 2107 and 2501(a)(3) (described above), do not apply to a former citizen or former long-term resident whose expatriation or residency termination occurs on or after February 5, 2003.

Treatment of gifts and inheritances from a former citizen or former long-term resident

Under the provision, the exclusion from income provided in section 102 (relating to exclusions from income for the value of property acquired by gift or inheritance) does not apply to the value of any property received by gift or inheritance from a former citizen or former long-term resident (i.e., an individual who relinquished U.S. citizenship or terminated U.S. residency), subject to the exceptions described above relating to certain dual citizens and minors. Accordingly, a U.S. taxpayer who receives a gift or inheritance from such an individual is required to include the value of such gift or inheritance in gross income and is subject to U.S. tax on such amount. Having included the value of the property in income, the recipient would then take a basis in the property equal to that value. The tax does not apply to property that is shown on a timely filed gift tax return and that is a taxable gift by the former citizen or former long-term resident, or property that is shown on a timely filed estate tax return and included in the gross U.S. estate of the former citizen or former long-term resident (regardless of whether the tax liability shown on such a return is reduced by credits, deductions, or exclusions available under the estate and gift tax rules). In addition, the tax does not apply to property in cases in which no estate or gift tax return is required to be filed, where no such return would have been required to be filed if the former citizen or former long-term resident had not relinquished citizenship or terminated residency, as the case may be. Applicable gifts or bequests that are made in trust are treated as made to the beneficiaries of the trust in proportion to their respective interests in the trust.

Information reporting

The provision provides that certain information reporting requirements under present law (sec. 6039G) applicable to former citizens and former long-term residents also apply for purposes of the provision.

Immigration rules

The provision amends the immigration rules that deny tax-motivated expatriates reentry into the United States by removing the requirement that the expatriation be tax-motivated, and instead denies former citizens reentry into the United States if the individual is determined not to be in compliance with his or her tax obligations under the provision's expatriation tax provisions (regardless of the subjective motive for expatriating). For this purpose, the provision permits the IRS to disclose certain items of return information of an individual, upon written request of the Attorney General or his delegate, as is necessary for making a determination under section 212(a)(10)(E) of the Immigration and Nationality Act. Specifically, the provision would permit the IRS to disclose to the agency administering section 212(a)(10)(E) whether such taxpayer is in compliance with section 877A and identify the items of noncompliance. Recordkeeping requirements, safeguards, and civil and criminal penalties for unauthorized disclosure or inspection would apply to return information disclosed under this provision.

Effective date

The provision generally is effective for U.S. citizens who relinquish citizenship or long-term residents who terminate their residency on or after February 5, 2003. The provisions relating to gifts and inheritances are effective for gifts and inheritances received from former citizens and former long-term residents on or after February 5, 2003, whose expatriation or residency termination occurs on or after such date. The provisions relating to former citizens under U.S. immigration laws are effective on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

5. Reporting of taxable mergers and acquisitions (sec. 605 of the House bill, sec. 445 of the Senate amendment, and new sec. 6043A of the Code)

PRESENT LAW

Under section 6045 and the regulations thereunder, brokers (defined to include stock transfer agents) are required to make information returns and to provide corresponding payee statements as to sales made on behalf of their customers, subject to the penalty provisions of sections 6721-6724. Under the regulations issued under section 6045, this requirement generally does not apply with respect to taxable transactions other than exchanges for cash (e.g., stock inversion transactions taxable to shareholders by reason of section 367(a)).[450]

HOUSE BILL

Under the bill, if gain or loss is recognized in whole or in part by shareholders of a corporation by reason of a second corporation's acquisition of the stock or assets of the first corporation, then the acquiring corporation (or the acquired corporation, if so prescribed by the Treasury Secretary) is required to make a return containing:

(1) A description of the transaction;

(2) The name and address of each shareholder of the acquired corporation that recognizes gain as a result of the transaction (or would recognize gain, if there was a built-in gain on the shareholder's shares);

(3) The amount of money and the value of stock or other consideration paid to each shareholder described above; and

(4) Such other information as the Treasury Secretary may prescribe.

Alternatively, a stock transfer agent who records transfers of stock in such transaction may make the return described above in lieu of the second corporation.

In addition, every person required to make a return described above is required to furnish to each shareholder (or the shareholder's nominee[451]) whose name is required to be set forth in such return a written statement showing:

(1) The name, address, and phone number of the information contact of the person required to make such return;

(2) The information required to be shown on that return; and

(3) Such other information as the Treasury Secretary may prescribe.

This written statement is required to be furnished to the shareholder on or before January 31 of the year following the calendar year during which the transaction occurred.

The present-law penalties for failure to comply with information reporting requirements are extended to failures to comply with the requirements set forth under this bill.

Effective date.—The provision is effective for acquisitions after the date of enactment.

SENATE AMENDMENT

Same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows both the House bill and the Senate amendment.

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[450] Recently issued temporary regulations under section 6043 (relating to information reporting with respect to liquidations, recapitalizations, and changes in control) impose information reporting requirements with respect to certain taxable inversion transactions, and proposed regulations would expand these requirements more generally to taxable transactions occurring after the proposed regulations are finalized.

[451] In the case of a nominee, the nominee must furnish the information to the shareholder in the manner prescribed by the Treasury Secretary.

the earliest of four possible dates: (1) the date that the individual renounces U.S. nationality before a diplomatic or consular officer of the United States (provided that the voluntary relinquishment is later confirmed by the issuance of a certificate of loss of nationality); (2) the date that the individual furnishes to the State Department a signed statement of voluntary relinquishment of U.S. nationality confirming the performance of an expatriating act (again, provided that the voluntary relinquishment is later confirmed by the issuance of a certificate of loss of nationality); (3) the date that the State Department issues a certificate of loss of nationality; or (4) the date that a U.S. court cancels a naturalized citizen's certificate of naturalization.

Deemed sale of property upon expatriation or residency termination

The deemed sale rule of the provision generally applies to all property interests held by the individual on the date of relinquishment of citizenship or termination of residency. Special rules apply in the case of trust interests, as described below. U.S. real property interests, which remain subject to U.S. tax in the hands of nonresident noncitizens, generally are excepted from the provision. Regulatory authority is granted to the Treasury to except other types of property from the provision.

Under the provision, an individual who is subject to the mark-to-market tax is required to pay a tentative tax equal to the amount of tax that would be due for a hypothetical short tax year ending on the date the individual relinquished citizenship or terminated residency. Thus, the tentative tax is based on all income, gain, deductions, loss, and credits of the individual for the year through such date, including amounts realized from the deemed sale of property. The tentative tax is due on the 90th day after the date of relinquishment of citizenship or termination of residency.

Retirement plans and similar arrangements

Subject to certain exceptions, the provision applies to all property interests held by the individual at the time of relinquishment of citizenship or termination of residency. Accordingly, such property includes an interest in an employer-sponsored retirement plan or deferred compensation arrangement as well as an interest in an individual retirement account or annuity (i.e., an IRA).[449] However, the provision contains a special rule for an interest in a "qualified retirement plan." For purposes of the provision, a "qualified retirement plan" includes an employer-sponsored qualified plan (sec. 401(a)), a qualified annuity (sec. 403(a)), a tax-sheltered annuity (sec. 403(b)), an eligible deferred compensation plan of a governmental employer (sec. 457(b)), or an IRA (sec. 408). The special retirement plan rule applies also, to the extent provided in regulations, to any foreign plan or similar retirement arrangement or program. An interest in a trust that is part of a qualified retirement plan or other arrangement that is subject to the special retirement plan rule is not subject to the rules for interests in trusts (discussed below).

Under the special rule, an amount equal to the present value of the individual's vested, accrued benefit under a qualified retirement plan is treated as having been received by the individual as a distribution under the plan on the day before the individual's relinquishment of citizenship or termination of residency. It is not intended that the plan would be deemed to have made a distribution for purposes of the tax-favored status of the plan, such as whether a plan may permit distributions before a participant has severed employment. In the case of any later distribution to the individual from the plan, the amount otherwise includible in the individual's income as a result of the distribution is reduced to reflect the amount previously included in income under the special retirement plan rule. The amount of the reduction applied to a distribution is the excess of: (1) the amount included in income under the special retirement plan rule over (2) the total reductions applied to any prior distributions. However, under the provision, the retirement plan, and any person acting on the plan's behalf, will treat any later distribution in the same manner as the distribution would be treated without regard to the special retirement plan rule.

It is expected that the Treasury Department will provide guidance for determining the present value of an individual's vested, accrued benefit under a qualified retirement plan, such as the individual's account balance in the case of a defined contribution plan or an IRA, or present value determined under the qualified joint and survivor annuity rules applicable to a defined benefit plan (sec. 417(e)).

Deferral of payment of tax

Under the provision, an individual is permitted to elect to defer payment of the mark-to-market tax imposed on the deemed sale of the property. Interest is charged for the period the tax is deferred at a rate two percentage points higher than the rate normally applicable to individual underpayments. Under this election, the mark-to-market tax attributable to a particular property is due when the property is disposed of (or, if the property is disposed of in whole or in part in a nonrecognition transaction, at such other time as the Secretary may prescribe). The mark-to-market tax attributable to a particular property is an amount that bears the same ratio to the total mark-to-market tax for the year as the gain taken into account with respect to such property bears to the total gain taken into account under these rules for the year. The deferral of the mark-to-market tax may not be extended beyond the individual's death.

In order to elect deferral of the mark-to-market tax, the individual is required to provide adequate security to the Treasury to ensure that the deferred tax and interest will be paid. Other security mechanisms are permitted provided that the individual establishes to the satisfaction of the Secretary that the security is adequate. In the event that the security provided with respect to a particular property subsequently becomes inadequate and the individual fails to correct the situation, the deferred tax and the interest with respect to such property will become due. As a further condition to making the election, the individual is required to consent to the waiver of any treaty rights that would preclude the collection of the tax.

The deferred amount (including any interest, penalties, and certain other items) shall be a lien in favor of the United States on all U.S.-situs property owned by the individual. This lien shall arise on the expatriation date and shall continue until the tax liability is satisfied, the tax liability has become unenforceable by reason of lapse of time, or the Secretary is satisfied that no further tax liability may arise by reason of this provision. The rules of section 6324A(d)(1), (3), and (4) (relating to liens arising in connection with the deferral of estate tax under section 6166) apply to liens arising under this provision.

Interests in trusts

Under the provision, detailed rules apply to trust interests held by an individual at the time of relinquishment of citizenship or termination of residency. The treatment of trust interests depends on whether the trust is a qualified trust. A trust is a qualified trust if a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust.

Constructive ownership rules apply to a trust beneficiary that is a corporation, partnership, trust, or estate. In such cases, the shareholders, partners, or beneficiaries of the entity are deemed to be the direct beneficiaries of the trust for purposes of applying these provision. In addition, an individual who holds (or who is treated as holding) a trust instrument at the time of relinquishment of citizenship or termination of residency is required to disclose on his or her tax return the methodology used to determine his or her interest in the trust, and whether such individual knows (or has reason to know) that any other beneficiary of the trust uses a different method.

Nonqualified trusts.—If an individual holds an interest in a trust that is not a qualified trust, a special rule applies for purposes of determining the amount of the mark-to-market tax due with respect to such trust interest. The individual's interest in the trust is treated as a separate trust consisting of the trust assets allocable to such interest. Such separate trust is treated as having sold its net assets as of the date of relinquishment of citizenship or termination of residency and having distributed the assets to the individual, who then is treated as having recontributed the assets to the trust. The individual is subject to the mark-to-market tax with respect to any net income or gain arising from the deemed distribution from the trust.

The election to defer payment is available for the mark-to-market tax attributable to a nonqualified trust interest. Interest is charged for the period the tax is deferred at a rate two percentage points higher than the rate normally applicable to individual underpayments. A beneficiary's interest in a nonqualified trust is determined under all the facts and circumstances, including the trust instrument, letters of wishes, and historical patterns of trust distributions.

Qualified trusts.—If an individual has an interest in a qualified trust, the amount of unrealized gain allocable to the individual's trust interest is calculated at the time of expatriation or residency termination. In determining this amount, all contingencies and discretionary interests are assumed to be resolved in the individual's favor (i.e., the individual is allocated the maximum amount that he or she could receive). The mark-to-market tax imposed on such gains is collected when the individual receives distributions from the trust, or if earlier, upon the individual's death. Interest is charged for the period the tax is deferred at a rate two percentage points higher than the rate normally applicable to individual underpayments.

If an individual has an interest in a qualified trust, the individual is subject to the mark-to-market tax upon the receipt of distributions from the trust. These distributions also may be subject to other U.S. income taxes. If a distribution from a qualified trust is made after the individual relinquishes citizenship or terminates residency, the mark-to-market tax is imposed in an amount equal to the amount of the distribution multiplied by the highest tax rate generally applicable to trusts and estates, but in no event will the tax imposed exceed the deferred tax amount with respect to the trust interest. For this purpose, the deferred tax amount is equal to (1) the tax calculated with respect to the unrealized gain allocable to the trust interest at the time of expatriation or residency termination, (2) increased by interest thereon, and (3) reduced by any mark-to-market tax imposed on prior trust distributions to the individual.

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[449] Application of the provision is not limited to an interest that meets the definition of property under section 83 (relating to property transferred in connection with the performance of services).

If any individual's interest in a trust is vested as of the expatriation date (e.g., if the individual's interest in the trust is non-contingent and non-discretionary), the gain allocable to the individual's trust interest is determined based on the trust assets allocable to his or her trust interest. If the individual's interest in the trust is not vested as of the expatriation date (e.g., if the individual's trust interest is a contingent or discretionary interest), the gain allocable to his or her trust interest is determined based on all of the trust assets that could be allocable to his or her trust interest, determined by resolving all contingencies and discretionary powers in the individual's favor. In the case where more than one trust beneficiary is subject to the expatriation tax with respect to trust interests that are not vested, the rules are intended to apply so that the same unrealized gain with respect to assets in the trust is not taxed to both individuals.

Mark-to-market taxes become due if the trust ceases to be a qualified trust, the individual disposes of his or her qualified trust interest, or the individual dies. In such cases, the amount of mark-to-market tax equals the lesser of (1) the tax calculated under the rules for nonqualified trust interests as of the date of the triggering event, or (2) the deferred tax amount with respect to the trust interest as of that date.

The tax that is imposed on distributions from a qualified trust generally is deducted and withheld by the trustees. If the individual does not agree to waive treaty rights that would preclude collection of the tax, the tax with respect to such distributions is imposed on the trust, the trustee is personally liable for the tax, and any other beneficiary has a right of contribution against such individual with respect to the tax. Similar rules apply when the qualified trust interest is disposed of, the trust ceases to be a qualified trust, or the individual dies.

Coordination with present-law alternative tax regime

The provision provides a coordination rule with the present-law alternative tax regime. Under the provision, the expatriation income tax rules under section 877, and the expatriation estate and gift tax rules under sections 2107 and 2501(a)(3) (described above), do not apply to a former citizen or former long-term resident whose expatriation or residency termination occurs on or after February 5, 2003.

Treatment of gifts and inheritances from a former citizen or former long-term resident

Under the provision, the exclusion from income provided in section 102 (relating to exclusions from income for the value of property acquired by gift or inheritance) does not apply to the value of any property received by gift or inheritance from a former citizen or former long-term resident (i.e., an individual who relinquished U.S. citizenship or terminated U.S. residency), subject to the exceptions described above relating to certain dual citizens and minors. Accordingly, a U.S. taxpayer who receives a gift or inheritance from such an individual is required to include the value of such gift or inheritance in gross income and is subject to U.S. tax on such amount. Having included the value of the property in income, the recipient would then take a basis in the property equal to that value. The tax does not apply to property that is shown on a timely filed gift tax return and that is a taxable gift by the former citizen or former long-term resident, or property that is shown on a timely filed estate tax return and included in the gross U.S. estate of the former citizen or former long-term resident (regardless of whether the tax liability shown on such a return is reduced by credits, deductions, or exclusions available under the estate and gift tax rules). In addition, the tax does not apply to property in cases in which no estate or gift tax return is required to be filed, where no such return would have been required to be filed if the former citizen or former long-term resident had not relinquished citizenship or terminated residency, as the case may be. Applicable gifts or bequests that are made in trust are treated as made to the beneficiaries of the trust in proportion to their respective interests in the trust.

Information reporting

The provision provides that certain information reporting requirements under present law (sec. 6039G) applicable to former citizens and former long-term residents also apply for purposes of the provision.

Immigration rules

The provision amends the immigration rules that deny tax-motivated expatriates reentry into the United States by removing the requirement that the expatriation be tax-motivated, and instead denies former citizens reentry into the United States if the individual is determined not to be in compliance with his or her tax obligations under the provision's expatriation tax provisions (regardless of the subjective motive for expatriating). For this purpose, the provision permits the IRS to disclose certain items of return information of an individual, upon written request of the Attorney General or his delegate, as is necessary for making a determination under section 212(a)(10)(E) of the Immigration and Nationality Act. Specifically, the provision would permit the IRS to disclose to the agency administering section 212(a)(10)(E) whether such taxpayer is in compliance with section 877A and identify the items of noncompliance. Recordkeeping requirements, safeguards, and civil and criminal penalties for unauthorized disclosure or inspection would apply to return information disclosed under this provision.

Effective date

The provision generally is effective for U.S. citizens who relinquish citizenship or long-term residents who terminate their residency on or after February 5, 2003. The provisions relating to gifts and inheritances are effective for gifts and inheritances received from former citizens and former long-term residents on or after February 5, 2003, whose expatriation or residency termination occurs on or after such date. The provisions relating to former citizens under U.S. immigration laws are effective on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

5. Reporting of taxable mergers and acquisitions (sec. 605 of the House bill, sec. 445 of the Senate amendment, and new sec. 6043A of the Code)

PRESENT LAW

Under section 6045 and the regulations thereunder, brokers (defined to include stock transfer agents) are required to make information returns and to provide corresponding payee statements as to sales made on behalf of their customers, subject to the penalty provisions of sections 6721-6724. Under the regulations issued under section 6045, this requirement generally does not apply with respect to taxable transactions other than exchanges for cash (e.g., stock inversion transactions taxable to shareholders by reason of section 367(a)).[450]

HOUSE BILL

Under the bill, if gain or loss is recognized in whole or in part by shareholders of a corporation by reason of a second corporation's acquisition of the stock or assets of the first corporation, then the acquiring corporation (or the acquired corporation, if so prescribed by the Treasury Secretary) is required to make a return containing:

(1) A description of the transaction;

(2) The name and address of each shareholder of the acquired corporation that recognizes gain as a result of the transaction (or would recognize gain, if there was a built-in gain on the shareholder's shares);

(3) The amount of money and the value of stock or other consideration paid to each shareholder described above; and

(4) Such other information as the Treasury Secretary may prescribe.

Alternatively, a stock transfer agent who records transfers of stock in such transaction may make the return described above in lieu of the second corporation.

In addition, every person required to make a return described above is required to furnish to each shareholder (or the shareholder's nominee[451]) whose name is required to be set forth in such return a written statement showing:

(1) The name, address, and phone number of the information contact of the person required to make such return;

(2) The information required to be shown on that return; and

(3) Such other information as the Treasury Secretary may prescribe.

This written statement is required to be furnished to the shareholder on or before January 31 of the year following the calendar year during which the transaction occurred.

The present-law penalties for failure to comply with information reporting requirements are extended to failures to comply with the requirements set forth under this bill.

Effective date.—The provision is effective for acquisitions after the date of enactment.

SENATE AMENDMENT

Same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows both the House bill and the Senate amendment.

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[450] Recently issued temporary regulations under section 6043 (relating to information reporting with respect to liquidations, recapitalizations, and changes in control) impose information reporting requirements with respect to certain taxable inversion transactions, and proposed regulations would expand these requirements more generally to taxable transactions occurring after the proposed regulations are finalized.

[451] In the case of a nominee, the nominee must furnish the information to the shareholder in the manner prescribed by the Treasury Secretary.

6. Studies (Sec. 606 of the House bill)

PRESENT LAW

Due to the variation in tax rates and tax systems among countries, a multinational enterprise, whether U.S.-based or foreign-based, may have an incentive to shift income, deductions, or tax credits in order to arrive at a reduced overall tax burden. Such a shifting of items could be accomplished by establishing artificial, non-arm's-length prices for transactions between group members.

Under section 482, the Treasury Secretary is authorized to reallocate income, deductions, or credits between or among two or more organizations, trades, or businesses under common control if he determines that such a reallocation is necessary to prevent tax evasion or to clearly reflect income. Treasury regulations adopt the arm's-length standard as the standard for determining whether such reallocations are appropriate. Thus, the regulations provide rules to identify the respective amounts of taxable income of the related parties that would have resulted if the parties had been uncontrolled parties dealing at arm's length. Transactions involving intangible property and certain services may present particular challenges to the administration of the arm's-length standard, because the nature of these transactions may make it difficult or impossible to compare them with third-party transactions.

In addition to the statutory rules governing the taxation of foreign income of U.S. persons and U.S. income of foreign persons, bilateral income tax treaties limit the amount of income tax that may be imposed by one treaty partner on residents of the other treaty partner. For example, treaties often reduce or eliminate withholding taxes imposed by a treaty country on certain types of income (e.g., dividends, interest and royalties) paid to residents of the other treaty country. Treaties also contain provisions governing the creditability of taxes imposed by the treaty country in which income was earned in computing the amount of tax owed to the other country by its residents with respect to such income. Treaties further provide procedures under which inconsistent positions taken by the treaty countries with respect to a single item of income or deduction may be mutually resolved by the two countries.

HOUSE BILL

The bill requires the Treasury Secretary to conduct and submit to the Congress three studies. The first study will examine the effectiveness of the transfer pricing rules of section 482, with an emphasis on transactions involving intangible property. The second study will examine income tax treaties to which the United States is a party, with a view toward identifying any inappropriate reductions in withholding tax or opportunities for abuse that may exist. The third study will examine the impact of the provisions of this bill on inversion transactions.

Effective date.—The tax treaty study required under the provision is due no later than June 30, 2005. The transfer pricing study required under the provision is due no later than June 30, 2005. The inversions study required under the provision is due no later than December 31, 2005.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, except the inversions study required under the provision is due no later than December 31, 2006.

B. PROVISIONS RELATING TO TAX SHELTERS

1. Penalty for failure to disclose reportable transactions (sec. 611 of the House bill, sec. 402 of the Senate amendment, and new sec. 6707A of the Code)

PRESENT LAW

Regulations under section 6011 require a taxpayer to disclose with its tax return certain information with respect to each "reportable transaction" in which the taxpayer participates.[452]

There are six categories of reportable transactions. The first category is any transaction that is the same as (or substantially similar to)[453] a transaction that is specified by the Treasury Department as a tax avoidance transaction whose tax benefits are subject to disallowance under present law (referred to as a "listed transaction").[454]

The second category is any transaction that is offered under conditions of confidentiality. In general, a transaction is considered to be offered to a taxpayer under conditions of confidentiality if the advisor who is paid a minimum fee places a limitation on disclosure by the taxpayer of the tax treatment or tax structure of the transaction and the limitation on disclosure protects the confidentiality of that advisor's tax strategies (irrespective if such terms are legally binding).[455]

The third category of reportable transactions is any transaction for which (1) the taxpayer has the right to a full or partial refund of fees if the intended tax consequences from the transaction are not sustained or, (2) the fees are contingent on the intended tax consequences from the transaction being sustained.[456]

The fourth category of reportable transactions relates to any transaction resulting in a taxpayer claiming a loss (under section 165) of at least (1) $10 million in any single year or $20 million in any combination of years by a corporate taxpayer or a partnership with only corporate partners; (2) $2 million in any single year or $4 million in any combination of years by all other partnerships, S corporations, trusts, and individuals; or (3) $50,000 in any single year for individuals or trusts if the loss arises with respect to foreign currency translation losses.[457]

The fifth category of reportable transactions refers to any transaction done by certain taxpayers[458] in which the tax treatment of the transaction differs (or is expected to differ) by more than $10 million from its treatment for book purposes (using generally accepted accounting principles) in any year.[459]

The final category of reportable transactions is any transaction that results in a tax credit exceeding $250,000 (including a foreign tax credit) if the taxpayer holds the underlying asset for less than 45 days.[460]

Under present law, there is no specific penalty for failing to disclose a reportable transaction; however, such a failure can jeopardize a taxpayer's ability to claim that any income tax understatement attributable to such undisclosed transaction is due to reasonable cause, and that the taxpayer acted in good faith.[461]

HOUSE BILL

In general

The House bill creates a new penalty for any person who fails to include with any return or statement any required information with respect to a reportable transaction. The new penalty applies without regard to whether the transaction ultimately results in an understatement of tax, and applies in addition to any accuracy-related penalty that may be imposed.

Transactions to be disclosed

The House bill does not define the terms "listed transaction"[462] or "reportable transaction," nor does it explain the type of information that must be disclosed in order to avoid the imposition of a penalty. Rather, the House bill authorizes the Treasury Department to define a "listed transaction" and a "reportable transaction" under section 6011.

Penalty rate

The penalty for failing to disclose a reportable transaction is $10,000 in the case of a natural person and $50,000 in any other case. The amount is increased to $100,000 and $200,000, respectively, if the failure is with respect to a listed transaction. The penalty cannot be waived with respect to a listed transaction. As to reportable transactions, the IRS Commissioner or his delegate can rescind (or abate) the penalty only if rescinding the penalty would promote compliance with the tax laws and effective tax administration. The decision to rescind a penalty must be accompanied by a record describing the facts and reasons for the action and the amount rescinded. There will be no taxpayer right to judicially appeal a refusal to rescind a penalty.[463] The IRS also is required to submit an annual report to Congress summarizing the application of the disclosure penalties and providing a description of each penalty rescinded under this provision and the reasons for the rescission.

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[452] On February 27, 2003, the Treasury Department and the IRS released final regulations regarding the disclosure of reportable transactions. In general, the regulations are effective for transactions entered into on or after February 28, 2003.

The discussion of present law refers to the new regulations. The rules that apply with respect to transactions entered into on or before February 28, 2003, are contained in Treas. Reg. sec. 1.6011-4T in effect on the date the transaction was entered into.

[453] The regulations clarify that the term "substantially similar" includes any transaction that is expected to obtain the same or similar types of tax consequences and that is either factually similar or based on the same or similar tax strategy. Further, the term must be broadly construed in favor of disclosure. Treas. Reg. sec. 1.6011-4(c)(4).

[454] Treas. Reg. sec. 1.6011-4(b)(2).

[455] Treas. Reg. sec. 1.6011-4(b)(3).

[456] Treas. Reg. sec. 1.6011-4(b)(4).

[457] Treas. Reg. sec. 1.6011-4(b)(5). Rev. Proc. 2003-24, 2003-11 I.R.B. 599, exempts certain types of losses from this reportable transaction category.

[458] The significant book-tax category applies only to taxpayers that are reporting companies under the Securities Exchange Act of 1934 or business entities that have $250 million or more in gross assets.

[459] Treas. Reg. sec. 1.6011-4(b)(6). Rev. Proc. 2003-25, 2003-11 I.R.B. 601, exempts certain types of transactions from this reportable transaction category.

[460] Treas. Reg. sec. 1.6011-4(b)(7).

[461] Section 6664(c) provides that a taxpayer can avoid the imposition of a section 6662 accuracy-related penalty in cases where the taxpayer can demonstrate that there was reasonable cause for the underpayment and that the taxpayer acted in good faith. Regulations under sections 6662 and 6664 provide that a taxpayer's failure to disclose a reportable transaction is a strong indication that the taxpayer failed to act in good faith, which would bar relief under section 6664(c).

[462] The House bill provides that, except as provided in regulations, a listed transaction means a reportable transaction, which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011. For this purpose, it is expected that the definition of "substantially similar" will be the definition used in Treas. Reg. sec. 1.6011-4(c)(4). However, the Secretary may modify this definition (as well as the definitions of "listed transaction" and "reportable transactions") as appropriate.

Effective date

The House bill provision is effective for returns and statements the due date for which is after the date of enactment.

SENATE AMENDMENT

In general

The Senate amendment is the same as the House bill, with certain modifications.

Transactions to be disclosed

Like the House bill, the Senate amendment does not define the terms "listed transaction" or "reportable transaction" but, rather, authorizes the Treasury Department to define a "listed transaction" and a "reportable transaction" under section 6011.

Penalty rate

Under the Senate amendment, the penalty for failing to disclose a reportable transaction generally is $50,000. The amount is increased to $100,000 if the failure is with respect to a listed transaction. For large entities and high net worth individuals, the penalty amount is doubled (i.e., $100,000 for a reportable transaction and $200,000 for a listed transaction).

The penalty cannot be waived with respect to a listed transaction. As to reportable transactions, the penalty can be rescinded (or abated) only if: (1) the taxpayer on whom the penalty is imposed has a history of complying with the Federal tax laws, (2) it is shown that the violation is due to an unintentional mistake of fact, (3) imposing the penalty would be against equity and good conscience, and (4) rescinding the penalty would promote compliance with the tax laws and effective tax administration. The authority to rescind the penalty can only be exercised by the IRS Commissioner personally or the head of the Office of Tax Shelter Analysis. Thus, the penalty cannot be rescinded by a revenue agent, an Appeals officer, or any other IRS personnel. The decision to rescind a penalty must be accompanied by a record describing the facts and reasons for the action and the amount rescinded. There will be no taxpayer right to appeal a refusal to rescind a penalty. The IRS also is required to submit an annual report to Congress summarizing the application of the disclosure penalties and providing a description of each penalty rescinded under this provision and the reasons for the rescission.

A "large entity" is defined as any entity with gross receipts in excess of $10 million in the year of the transaction or in the preceding year. A "high net worth individual" is defined as any individual whose net worth exceeds $2 million, based on the fair market value of the individual's assets and liabilities immediately before entering into the transaction.

A public entity that is required to pay a penalty for failing to disclose a listed transaction (or is subject to an understatement penalty attributable to a non-disclosed listed transaction, a non-disclosed reportable avoidance transaction,[464] or a transaction that lacks economic substance) must disclose the imposition of the penalty in reports to the Securities and Exchange Commission for such period as the Secretary shall specify. The provision applies without regard to whether the taxpayer determines the amount of the penalty to be material to the reports in which the penalty must appear, and treats any failure to disclose a transaction in such reports as a failure to disclose a listed transaction. A taxpayer must disclose a penalty in reports to the Securities and Exchange Commission once the taxpayer has exhausted its administrative and judicial remedies with respect to the penalty (or if earlier, when paid). In addition, the Secretary is required to make public the name of any person that is required to pay a penalty for failing to disclose a listed transaction (or is subject to an understatement penalty attributable to a non-disclosed listed transaction, a non-disclosed reportable avoidance transaction, or a transaction that lacks economic substance), as well as the amount of such penalty.

Effective date

The Senate amendment provision is effective for returns and statements the due date for which is after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, with the following modifications.

In determining whether to rescind (or abate) the penalty for failing to disclose a reportable transaction on the grounds that doing so would promote compliance with the tax laws and effective tax administration, the conferees intend that the IRS Commissioner take into account whether: (1) the person on whom the penalty is imposed has a history of complying with the tax laws; (2) the violation is due to an unintentional mistake of fact; and (3) imposing the penalty would be against equity and good conscience.

In addition, the conference agreement provides that a public entity that is required to pay a penalty for failing to disclose a listed transaction (or is subject to an understatement penalty attributable to a non-disclosed listed transaction or a non-disclosed reportable avoidance transaction) must disclose the imposition of the penalty in reports to the Securities and Exchange Commission for such period as the Secretary shall specify. This requirement applies without regard to whether the taxpayer determines the amount of the penalty to be material to the reports in which the penalty must appear, and treats any failure to disclose a transaction in such reports as a failure to disclose a listed transaction. A taxpayer must disclose a penalty in reports to the Securities and Exchange Commission once the taxpayer has exhausted its administrative and judicial remedies with respect to the penalty (or if earlier, when paid). However, the taxpayer is only required to report the penalty one time. The conference agreement further provides that this requirement also applies to a public entity that is subject to a gross valuation misstatement penalty under section 6662(h) attributable to a non-disclosed listed transaction or non-disclosed reportable avoidance transaction.

2. Modifications to the accuracy-related penalties for listed transactions and reportable transactions having a significant tax avoidance purpose (sec. 612 of the House bill, sec. 403 of the Senate amendment, and new sec. 6662A of the Code)

PRESENT LAW

The accuracy-related penalty applies to the portion of any underpayment that is attributable to (1) negligence, (2) any substantial understatement of income tax, (3) any substantial valuation misstatement, (4) any substantial overstatement of pension liabilities, or (5) any substantial estate or gift tax valuation understatement. If the correct income tax liability exceeds that reported by the taxpayer by the greater of 10 percent of the correct tax or $5,000 ($10,000 in the case of corporations), then a substantial understatement exists and a penalty may be imposed equal to 20 percent of the underpayment of tax attributable to the understatement.[465] The amount of any understatement generally is reduced by any portion attributable to an item if (1) the treatment of the item is or was supported by substantial authority, or (2) facts relevant to the tax treatment of the item were adequately disclosed and there was a reasonable basis for its tax treatment.[466]

Special rules apply with respect to tax shelters.[467] For understatements by non-corporate taxpayers attributable to tax shelters, the penalty may be avoided only if the taxpayer establishes that, in addition to having substantial authority for the position, the taxpayer reasonably believed that the treatment claimed was more likely than not the proper treatment of the item. This reduction in the penalty is unavailable to corporate tax shelters.

The understatement penalty generally is abated (even with respect to tax shelters) in cases in which the taxpayer can demonstrate that there was "reasonable cause" for the underpayment and that the taxpayer acted in good faith.[468] The relevant regulations provide that reasonable cause exists where the taxpayer "reasonably relies in good faith on an opinion based on a professional tax advisor's analysis of the pertinent facts and authorities [that] . . . unambiguously concludes that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged" by the IRS.[469]

HOUSE BILL

In general

The House bill modifies the present-law accuracy related penalty by replacing the rules applicable to tax shelters with a new accuracy-related penalty that applies to listed transactions and reportable transactions with a significant tax avoidance purpose (hereinafter referred to as a "reportable avoidance transaction").[470] The penalty rate and defenses available to avoid the penalty vary depending on whether the transaction was adequately disclosed.

Disclosed transactions

In general, a 20-percent accuracy-related penalty is imposed on any understatement attributable to an adequately disclosed listed transaction or reportable avoidance transaction. The only exception to the penalty is if the taxpayer satisfies a more stringent reasonable cause and good faith exception (hereinafter referred to as the "strengthened reasonable cause exception"), which is described below. The strengthened reasonable cause exception is available only if the relevant facts affecting the tax treatment are adequately disclosed, there is or was substantial authority for the claimed tax treatment, and the taxpayer reasonably believed that the claimed tax treatment was more likely than not the proper treatment.

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[463] This does not limit the ability of a taxpayer to challenge whether a penalty is appropriate (e.g., a taxpayer may litigate the issue of whether a transaction is a reportable transaction (and thus subject to the penalty if not disclosed) or not a reportable transaction (and thus not subject to the penalty)).

[464] A reportable avoidance transaction is a reportable transaction with a significant tax avoidance purpose.

[465] Sec. 6662.

[466] Sec. 6662(d)(2)(B).

[467] Sec. 6662(d)(2)(C).

[468] Sec. 6664(c).

[469] Treas. Reg. sec. 1.6662-4(g)(4)(i)(B); Treas. Reg. sec. 1.6664-4(c).

[470] The terms "reportable transaction" and "listed transaction" have the same meanings as used for purposes of the penalty for failing to disclose reportable transactions.

Undisclosed transactions

If the taxpayer does not adequately disclose the transaction, the strengthened reasonable cause exception is not available (i.e., a strict-liability penalty applies), and the taxpayer is subject to an increased penalty equal to 30 percent of the understatement.

Determination of the understatement amount

The penalty is applied to the amount of any understatement attributable to the listed or reportable avoidance transaction without regard to other items on the tax return. For purposes of this provision, the amount of the understatement is determined as the sum of (1) the product of the highest corporate or individual tax rate (as appropriate) and the increase in taxable income resulting from the difference between the taxpayer's treatment of the item and the proper treatment of the item (without regard to other items on the tax return),[471] and (2) the amount of any decrease in the aggregate amount of credits which results from a difference between the taxpayer's treatment of an item and the proper tax treatment of such item.

Except as provided in regulations, a taxpayer's treatment of an item shall not take into account any amendment or supplement to a return if the amendment or supplement is filed after the earlier of when the taxpayer is first contacted regarding an examination of the return or such other date as specified by the Secretary.

Strengthened reasonable cause exception

A penalty is not imposed under the provision with respect to any portion of an understatement if it shown that there was reasonable cause for such portion and the taxpayer acted in good faith. Such a showing requires (1) adequate disclosure of the facts affecting the transaction in accordance with the regulations under section 6011,[472] (2) that there is or was substantial authority for such treatment, and (3) that the taxpayer reasonably believed that such treatment was more likely than not the proper treatment. For this purpose, a taxpayer will be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief (1) is based on the facts and law that exist at the time the tax return (that includes the item) is filed, and (2) relates solely to the taxpayer's chances of success on the merits and does not take into account the possibility that (a) a return will not be audited, (b) the treatment will not be raised on audit, or (c) the treatment will be resolved through settlement if raised.

A taxpayer may (but is not required to) rely on an opinion of a tax advisor in establishing its reasonable belief with respect to the tax treatment of the item. However, a taxpayer may not rely on an opinion of a tax advisor for this purpose if the opinion (1) is provided by a "disqualified tax advisor," or (2) is a "disqualified opinion."

Disqualified tax advisor

A disqualified tax advisor is any advisor who (1) is a material advisor[473] and who participates in the organization, management, promotion or sale of the transaction or is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates, (2) is compensated directly or indirectly[474] by a material advisor with respect to the transaction, (3) has a fee arrangement with respect to the transaction that is contingent on all or part of the intended tax benefits from the transaction being sustained, or (4) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

Organization, management, promotion or sale of a transaction.—A material advisor is considered as participating in the "organization" of a transaction if the advisor performs acts relating to the development of the transaction. This may include, for example, preparing documents (1) establishing a structure used in connection with the transaction (such as a partnership agreement), (2) describing the transaction (such as an offering memorandum or other statement describing the transaction), or (3) relating to the registration of the transaction with any federal, state or local government body.[475] Participation in the "management" of a transaction means involvement in the decision-making process regarding any business activity with respect to the transaction. Participation in the "promotion or sale" of a transaction means involvement in the marketing or solicitation of the transaction to others. Thus, an advisor who provides information about the transaction to a potential participant is involved in the promotion or sale of a transaction, as is any advisor who recommends the transaction to a potential participant.

Disqualified opinion

An opinion may not be relied upon if the opinion (1) is based on unreasonable factual or legal assumptions (including assumptions as to future events), (2) unreasonably relies upon representations, statements, finding or agreements of the taxpayer or any other person, (3) does not identify and consider all relevant facts, or (4) fails to meet any other requirement prescribed by the Secretary.

Coordination with other penalties

Any understatement upon which a penalty is imposed under the House bill is not subject to the accuracy-related penalty under section 6662. However, such understatement is included for purposes of determining whether any understatement (as defined in sec. 6662(d)(2)) is a substantial understatement as defined under section 6662(d)(1).

The penalty imposed under the House bill shall not apply to any portion of an understatement to which a fraud penalty is applied under section 6663.

Effective date

The House bill provision is effective for taxable years ending after the date of enactment.

SENATE AMENDMENT

In general

The Senate amendment is the same as the House bill, with certain modifications.

Disclosed transactions

The Senate amendment is the same as the House bill with regard to accuracy-related penalties for understatements attributable to an adequately disclosed listed transaction or reportable avoidance transaction.

Undisclosed transactions

Like the House bill, the Senate amendment provides that a taxpayer is subject to an increased accuracy-related penalty equal to 30 percent of the understatement, and the strengthened reasonable cause exception is not available (i.e., a strict-liability penalty applies), if the taxpayer does not adequately disclose the transaction.

Under the Senate amendment, a public entity that is required to pay the 30-percent penalty also must disclose the imposition of the penalty in reports to the SEC for such periods as the Secretary shall specify. The disclosure to the SEC applies without regard to whether the taxpayer determines the amount of the penalty to be material to the reports in which the penalty must appear, and any failure to disclose such penalty in the reports is treated as a failure to disclose a listed transaction. A taxpayer must disclose a penalty in reports to the SEC once the taxpayer has exhausted its administrative and judicial remedies with respect to the penalty (or if earlier, when paid).

The Senate amendment also provides that, once the 30-percent penalty has been included in the Revenue Agent Report, the penalty cannot be compromised for purposes of a settlement without approval of the Commissioner personally or the head of the Office of Tax Shelter Analysis. Furthermore, the IRS is required to submit an annual report to Congress summarizing the application of this penalty and providing a description of each penalty compromised under this provision and the reasons for the compromise.

Disqualified tax advisor

The Senate amendment provides that a disqualified tax advisor also includes ad advisor who has an arrangement with respect to the transaction which provides that contractual disputes between the taxpayer and the advisor are to be settled by arbitration or which limits damages by reference to fees paid to the advisor for such transaction.

Determination of the understatement amount

The Senate amendment is the same as the House bill with regard to determining the amount of an understatement that is subject to this provision.

Strengthened reasonable cause exception

The Senate amendment is the same as the House bill with regard to the reasonable cause exception to accuracy-related penalties under this provision.[476]

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[471] For this purpose, any reduction in the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

[472] See the previous discussion regarding the penalty for failing to disclose a reportable transaction.

[473] Under the House bill, the term "material advisor" (defined below in connection with the new information filing requirements for material advisors) means any person who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, or carrying out any reportable transaction, and who derives gross income in excess of $50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons ($250,000 in any other case).

[474] This situation could arise, for example, when an advisor has an arrangement or understanding (oral or written) with an organizer, manager, or promoter of a reportable transaction that such party will recommend or refer potential participants to the advisor for an opinion regarding the tax treatment of the transaction.

[475] An advisor should not be treated as participating in the organization of a transaction if the advisor's only involvement with respect to the organization of the transaction is the rendering of an opinion regarding the tax consequences of such transaction. However, such an advisor may be a "disqualified tax advisor" with respect to the transaction if the advisor participates in the management, promotion or sale of the transaction (or if the advisor is compensated by a material advisor, has a fee arrangement that is contingent on the tax benefits of the transaction, or as determined by the Secretary, has a continuing financial interest with respect to the transaction).

Coordination with other penalties

The Senate amendment is the same as the House bill with regard to coordination between the penalty imposed under this provision and other penalties.

Effective date

The Senate amendment provision is effective for taxable years ending after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, except the conference agreement also provides that any understatement upon which a penalty is imposed under the conference agreement is not subject to the valuation misstatement penalties under sections 6662(e) or 6662(h).

3. Tax shelter exception to confidentiality privileges relating to taxpayer communications (sec. 613 of the House bill, sec. 406 of the Senate amendment, and sec. 7525 of the Code)

PRESENT LAW

In general, a common law privilege of confidentiality exists for communications between an attorney and client with respect to the legal advice the attorney gives the client. The Code provides that, with respect to tax advice, the same common law protections of confidentiality that apply to a communication between a taxpayer and an attorney also apply to a communication between a taxpayer and a federally authorized tax practitioner to the extent the communication would be considered a privileged communication if it were between a taxpayer and an attorney. This rule is inapplicable to communications regarding corporate tax shelters.

HOUSE BILL

The House bill modifies the rule relating to corporate tax shelters by making it applicable to all tax shelters, whether entered into by corporations, individuals, partnerships, tax-exempt entities, or any other entity. Accordingly, communications with respect to tax shelters are not subject to the confidentiality provision of the Code that otherwise applies to a communication between a taxpayer and a federally authorized tax practitioner.

Effective date.—The House bill provision is effective with respect to communications made on or after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

4. Statute of limitations for unreported listed transactions (sec. 614 of the House bill, sec. 416 of the Senate amendment, and sec. 6501 of the Code)

PRESENT LAW

In general, the Code requires that taxes be assessed within three years[477] after the date a return is filed.[478] If there has been a substantial omission of items of gross income that totals more than 25 percent of the amount of gross income shown on the return, the period during which an assessment must be made is extended to six years.[479] If an assessment is not made within the required time periods, the tax generally cannot be assessed or collected at any future time. Tax may be assessed at any time if the taxpayer files a false or fraudulent return with the intent to evade tax or if the taxpayer does not file a tax return at all.[480]

HOUSE BILL

The House bill extends the statute of limitations with respect to a listed transaction if a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction[481] which is required to be included (under section 6011) with such return or statement. The statute of limitations with respect to such a transaction will not expire before the date which is one year after the earlier of (1) the date on which the Secretary is furnished the information so required, or (2) the date that a material advisor (as defined in 6111) satisfies the list maintenance requirements (as defined by section 6112) with respect to a request by the Secretary. For example, if a taxpayer engaged in a transaction in 2005 that becomes a listed transaction in 2007 and the taxpayer fails to disclose such transaction in the manner required by Treasury regulations, then the transaction is subject to the extended statute of limitations.[482]

Effective date.—The House bill provision is effective for taxable years with respect to which the period for assessing a deficiency did not expire before the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

5. Disclosure of reportable transactions by material advisors (secs. 615 and 616 of the House bill, secs. 407 and 408 of the Senate amendment, and secs. 6111 and 6707 of the Code)

PRESENT LAW

Registration of tax shelter arrangements

An organizer of a tax shelter is required to register the shelter with the Secretary not later than the day on which the shelter is first offered for sale.[483] A "tax shelter" means any investment with respect to which the tax shelter ratio[484] for any investor as of the close of any of the first five years ending after the investment is offered for sale may be greater than two to one and which is: (1) required to be registered under Federal or State securities laws, (2) sold pursuant to an exemption from registration requiring the filing of a notice with a Federal or State securities agency, or (3) a substantial investment (greater than $250,000 and involving at least five investors).[485]

Other promoted arrangements are treated as tax shelters for purposes of the registration requirement if: (1) a significant purpose of the arrangement is the avoidance or evasion of Federal income tax by a corporate participant; (2) the arrangement is offered under conditions of confidentiality; and (3) the promoter may receive fees in excess of $100,000 in the aggregate.[486]

In general, a transaction has a "significant purpose of avoiding or evading Federal income tax" if the transaction: (1) is the same as or substantially similar to a "listed transaction,"[487] or (2) is structured to produce tax benefits that constitute an important part of the intended results of the arrangement and the promoter reasonably expects to present the arrangement to more than one taxpayer.[488] Certain exceptions are provided with respect to the second category of transactions.[489]

An arrangement is offered under conditions of confidentiality if: (1) an offeree has an understanding or agreement to limit the disclosure of the transaction or any significant tax features of the transaction; or (2) the promoter knows, or has reason to know, that the offeree's use or disclosure of information relating to the transaction is limited in any other manner.[490]

Failure to register tax shelter

The penalty for failing to timely register a tax shelter (or for filing false or incomplete information with respect to the tax shelter registration) generally is the greater of one percent of the aggregate amount invested in the shelter or $500.[491] However, if the tax shelter involves an arrangement offered to a corporation under conditions of confidentiality, the penalty is the greater of $10,000 or 50 percent of the fees payable to any promoter with respect to offerings prior to the date of late registration. Intentional disregard of the requirement to register increases the penalty to 75 percent of the applicable fees.

Section 6707 also imposes (1) a $100 penalty on the promoter for each failure to furnish the investor with the required tax shelter identification number, and (2) a $250 penalty on the investor for each failure to include the tax shelter identification number on a return.

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[476] Under the Senate amendment, the term "material advisor" (defined below in connection with the new information filing requirements for material advisors) means any person who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring or carrying out any reportable transaction, and who derives gross income in excess of $50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons ($250,000 in any other case).

[477] Sec. 6501(a).

[478] For this purpose, a return that is filed before the date on which it is due is considered to be filed on the required due date (sec. 6501(b)(1)).

[479] Sec. 6501(e).

[480] Sec. 6501(c).

[481] The term "listed transaction" has the same meaning as described in a previous provision regarding the penalty for failure to disclose reportable transactions.

[482] If the Treasury Department lists a transaction in a year subsequent to the year in which a taxpayer entered into such transaction and the taxpayer's tax return for the year the transaction was entered into is closed by the statute of limitations prior to the date the transaction became a listed transaction, this provision does not re-open the statute of limitations with respect to such transaction for such year. However, if the purported tax benefits of the transaction are recognized over multiple tax years, the provision's extension of the statute of limitations shall apply to such tax benefits in any subsequent tax year in which the statute of limitations had not closed prior to the date the transaction became a listed transaction.

[483] Sec. 6111(a).

[484] The tax shelter ratio is, with respect to any year, the ratio that the aggregate amount of the deductions and 350 percent of the credits, which are represented to be potentially allowable to any investor, bears to the investment base (money plus basis of assets contributed) as of the close of the tax year.

[485] Sec. 6111(c).

[486] Sec. 6111(d).

[487] Treas. Reg. sec. 301.6111-2(b)(2).

[488] Treas. Reg. sec. 301.6111-2(b)(3).

[489] Treas. Reg. sec. 301.6111-2(b)(4).

[490] The regulations provide that the determination of whether an arrangement is offered under conditions of confidentiality is based on all the facts and circumstances surrounding the offer. If an offeree's disclosure of the structure or tax aspects of the transaction are limited in any way by an express or implied understanding or agreement with or for the benefit of a tax shelter promoter, an offer is considered made under conditions of confidentiality, whether or not such understanding or agreement is legally binding. Treas. Reg. sec. 301.6111-2(c)(1).

[491] Sec. 6707.

HOUSE BILL

Disclosure of reportable transactions by material advisors

The House bill repeals the present law rules with respect to registration of tax shelters. Instead, the House bill requires each material advisor with respect to any reportable transaction (including any listed transaction)[492] to timely file an information return with the Secretary (in such form and manner as the Secretary may prescribe). The return must be filed on such date as specified by the Secretary.

The information return will include (1) information identifying and describing the transaction, (2) information describing any potential tax benefits expected to result from the transaction, and (3) such other information as the Secretary may prescribe. It is expected that the Secretary may seek from the material advisor the same type of information that the Secretary may request from a taxpayer in connection with a reportable transaction.[493]

A "material advisor" means any person (1) who provides material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, or carrying out any reportable transaction, and (2) who directly or indirectly derives gross income for such assistance or advice in excess of $250,000 ($50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons) or such other amount as may be prescribed by the Secretary.

The Secretary may prescribe regulations which provide (1) that only one material advisor has to file an information return in cases in which two or more material advisors would otherwise be required to file information returns with respect to a particular reportable transaction, (2) exemptions from the requirements of this section, and (3) other rules as may be necessary or appropriate to carry out the purposes of this section (including, for example, rules regarding the aggregation of fees in appropriate circumstances).

Penalty for failing to furnish information regarding reportable transactions

The House bill repeals the present-law penalty for failure to register tax shelters. Instead, the House bill imposes a penalty on any material advisor who fails to file an information return, or who files a false or incomplete information return, with respect to a reportable transaction (including a listed transaction).[494] The amount of the penalty is $50,000. If the penalty is with respect to a listed transaction, the amount of the penalty is increased to the greater of (1) $200,000, or (2) 50 percent of the gross income of such person with respect to aid, assistance, or advice which is provided with respect to the transaction before the date the information return that includes the transaction is filed. Intentional disregard by a material advisor of the requirement to disclose a listed transaction increases the penalty to 75 percent of the gross income.

The penalty cannot be waived with respect to a listed transaction. As to reportable transactions, the penalty can be rescinded (or abated) only in exceptional circumstances.[495] All or part of the penalty may be rescinded only if rescinding the penalty would promote compliance with the tax laws and effective tax administration. The decision to rescind a penalty must be accompanied by a record describing the facts and reasons for the action and the amount rescinded. There will be no right to judicially appeal a refusal to rescind a penalty. The IRS also is required to submit an annual report to Congress summarizing the application of the disclosure penalties and providing a description of each penalty rescinded under this provision and the reasons for the rescission.

Effective date

The House bill provision requiring disclosure of reportable transactions by material advisors applies to transactions with respect to which material aid, assistance or advice is provided after the date of enactment.

The House bill provision imposing a penalty for failing to disclose reportable transactions applies to returns the due date for which is after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except the Senate amendment also includes in the definition of a "material advisor" any person who provides material aid, assistance, or advice with respect to insuring any reportable transaction (and who derives gross income for such assistance or advice in excess of the amounts specified in the House bill).

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

6. Investor lists and modification of penalty for failure to maintain investor lists (secs. 615 and 617 of the House bill, secs. 407 and 409 of the Senate amendment, and secs. 6112 and 6708 of the Code)

PRESENT LAW

Investor lists

Any organizer or seller of a potentially abusive tax shelter must maintain a list identifying each person who was sold an interest in any such tax shelter with respect to which registration was required under section 6111 (even though the particular party may not have been subject to confidentiality restrictions).[496] Recently issued regulations under section 6112 contain rules regarding the list maintenance requirements.[497] In general, the regulations apply to transactions that are potentially abusive tax shelters entered into, or acquired after, February 28, 2003.[498]

The regulations provide that a person is an organizer or seller of a potentially abusive tax shelter if the person is a material advisor with respect to that transaction.[499] A material advisor is defined as any person who is required to register the transaction under section 6111, or expects to receive a minimum fee of (1) $250,000 for a transaction that is a potentially abusive tax shelter if all participants are corporations, or (2) $50,000 for any other transaction that is a potentially abusive tax shelter.[500] For listed transactions (as defined in the regulations under section 6011), the minimum fees are reduced to $25,000 and $10,000, respectively.

A potentially abusive tax shelter is any transaction that (1) is required to be registered under section 6111, (2) is a listed transaction (as defined under the regulations under section 6011), or (3) any transaction that a potential material advisor, at the time the transaction is entered into, knows is or reasonably expects will become a reportable transaction (as defined under the new regulations under section 6011).[501]

The Secretary is required to prescribe regulations which provide that, in cases in which two or more persons are required to maintain the same list, only one person would be required to maintain the list.[502]

Penalty for failing to maintain investor lists

Under section 6708, the penalty for failing to maintain the list required under section 6112 is $50 for each name omitted from the list (with a maximum penalty of $100,000 per year).

HOUSE BILL

Investor lists

Each material advisor[503] with respect to a reportable transaction (including a listed transaction)[504] is required to maintain a list that (1) identifies each person with respect to whom the advisor acted as a material advisor with respect to the reportable transaction, and (2) contains other information as may be required by the Secretary. In addition, the provision authorizes (but does not require) the Secretary to prescribe regulations which provide that, in cases in which two or more persons are required to maintain the same list, only one person would be required to maintain the list.

Penalty for failing to maintain investor lists

The provision modifies the penalty for failing to maintain the required list by making it a time-sensitive penalty. Thus, a material advisor who is required to maintain an investor list and who fails to make the list available upon written request by the Secretary within 20 business days after the request will be subject to a $10,000 per day penalty. The penalty applies to a person who fails to maintain a list, maintains an incomplete list, or has in fact maintained a list but does not make the list available to the Secretary. The penalty can be waived if the failure to make the list available is due to reasonable cause.[505]

Effective date

The House bill provision requiring a material advisor to maintain an investor list applies to transactions with respect to which material aid, assistance or advice is provided after the date of enactment. The House bill provision imposing a penalty for failing to maintain investor lists applies to requests made after the date of enactment.

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[492] The terms "reportable transaction" and "listed transaction" have the same meaning as previously described in connection with the taxpayer-related provisions.

[493] See the previous discussion regarding the disclosure requirements under new section 6707A.

[494] The terms "reportable transaction" and "listed transaction" have the same meaning as previously described in connection with the taxpayer-related provisions.

[495] The Secretary's present-law authority to postpone certain tax-related deadlines because of Presidentially-declared disasters (sec. 7508A) will also encompass the authority to postpone the reporting deadlines established by the provision.

[496] Sec. 6112.

[497] Treas. Reg. sec. 301.6112-1.

[498] A special rule applies the list maintenance requirements to transactions entered into after February 28, 2000 if the transaction becomes a listed transaction (as defined in Treas. Reg. 1.6011-4) after February 28, 2003.

[499] Treas. Reg. sec. 301.6112-1(c)(1).

[500] Treas. Reg. sec. 301.6112-1(c)(2) and (3).

[501] Treas. Reg. sec. 301.6112-1(b).

[502] Sec. 6112(c)(2).

[503] The term "material advisor" has the same meaning as when used in connection with the requirement to file an information return under section 6111.

[504] The terms "reportable transaction" and "listed transaction" have the same meaning as previously described in connection with the taxpayer-related provisions.

[505] In no event will failure to maintain a list be considered reasonable cause for failing to make a list available to the Secretary.

SENATE AMENDMENT

The Senate amendment is the same as the House bill. In addition, the Senate amendment clarifies that, for purposes of section 6112, the identity of any person is not privileged under the common law attorney-client privilege (or, consequently, the section 7525 federally authorized tax practitioner confidentiality provision).

Effective date.—The Senate amendment provision clarifying that the identity of any person is not privileged for purposes of section 6112 is effective as if included in the amendments made by section 142 of the Deficit Reduction Act of 1984.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

7. Penalty on promoters of tax shelters (sec. 618 of the House bill, sec. 415 of the Senate amendment, and sec. 6700 of the Code)

PRESENT LAW

A penalty is imposed on any person who organizes, assists in the organization of, or participates in the sale of any interest in, a partnership or other entity, any investment plan or arrangement, or any other plan or arrangement, if in connection with such activity the person makes or furnishes a qualifying false or fraudulent statement or a gross valuation overstatement.[506] A qualified false or fraudulent statement is any statement with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax benefit by reason of holding an interest in the entity or participating in the plan or arrangement which the person knows or has reason to know is false or fraudulent as to any material matter. A "gross valuation overstatement" means any statement as to the value of any property or services if the stated value exceeds 200 percent of the correct valuation, and the value is directly related to the amount of any allowable income tax deduction or credit.

The amount of the penalty is $1,000 (or, if the person establishes that it is less, 100 percent of the gross income derived or to be derived by the person from such activity). A penalty attributable to a gross valuation misstatement can be waived on a showing that there was a reasonable basis for the valuation and it was made in good faith.

HOUSE BILL

The House bill modifies the penalty amount to equal 50 percent of the gross income derived by the person from the activity for which the penalty is imposed. The new penalty rate applies to any activity that involves a statement regarding the tax benefits of participating in a plan or arrangement if the person knows or has reason to know that such statement is false or fraudulent as to any material matter. The enhanced penalty does not apply to a gross valuation overstatement.

Effective date.—The House bill provision is effective for activities occurring after the date of enactment.

SENATE AMENDMENT

The Senate amendment modifies the penalty amount to equal 100 percent of the gross income derived by the person from the activity for which the penalty is imposed. The new penalty rate applies to (1) each instance of any activity that involves a statement (including a gross valuation overstatement) regarding the tax benefits of participating in a plan or arrangement if the person knows or has reason to know that such statement is false or fraudulent as to any material matter, (2) each instance in which income was derived from such activity, and (3) each person who participated in such activity. In addition, the Senate amendment imposes joint and several liability upon all persons who are subject to a penalty for such activity. The Senate amendment also provides that the payment of a penalty under this provision, or the payment of any amount to settle or avoid the imposition of such a penalty, is not deductible for tax purposes.

Effective date.—The Senate amendment provision is effective for activities occurring after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

8. Penalty for aiding and abetting the understatement of tax liability (sec. 419 of the Senate amendment and sec. 6701 of the Code)

PRESENT LAW

A penalty is imposed on a person who: (1) aids or assists in or advises with respect to a tax return or other document; (2) knows (or has reason to believe) that such document will be used in connection with a material tax matter; and (3) knows that this would result in an understatement of tax of another person. In general, the amount of the penalty is $1,000. If the document relates to the tax return of a corporation, the amount of the penalty is $10,000.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment expands the scope of this penalty in several ways. First, it applies the penalty to aiding or assisting with respect to tax liability. Second, it applies the penalty to each instance of aiding or abetting. Third, it increases the amount of the penalty to a maximum of 100 percent of the gross income derived (or to be derived) from the aiding or abetting. Fourth, if more than one person is liable for the penalty, all such persons are jointly and severally liable for the penalty. Fifth, the penalty, as well as amounts paid to settle or avoid the imposition of the penalty, is not deductible for tax purposes.

Effective date.—The Senate amendment provision is effective for activities after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

9. Modifications of substantial understatement penalty for nonreportable transactions (sec. 619 of the House bill, sec. 405 of the Senate amendment, and sec. 6662 of the Code)

PRESENT LAW

An accuracy-related penalty equal to 20 percent applies to any substantial understatement of tax. A "substantial understatement" exists if the correct income tax liability for a taxable year exceeds that reported by the taxpayer by the greater of 10 percent of the correct tax or $5,000 ($10,000 in the case of most corporations).[507]

HOUSE BILL

The House bill modifies the definition of "substantial" for corporate taxpayers. Under the House bill, a corporate taxpayer has a substantial understatement if the amount of the understatement for the taxable year exceeds the lesser of (1) 10 percent of the tax required to be shown on the return for the taxable year (or, if greater, $10,000), or (2) $10 million.

Effective date.—The House bill provision is effective for taxable years beginning after date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill with regard to modifying the definition of "substantial" for corporate taxpayers.

In addition, the Senate amendment elevates the standard that a taxpayer must satisfy in order to reduce the amount of an understatement for undisclosed items. With respect to the treatment of an item whose facts are not adequately disclosed, a resulting understatement is reduced only if the taxpayer had a reasonable belief that the tax treatment was more likely than not the proper treatment.

The Senate amendment also authorizes (but does not require) the Secretary to publish a list of positions for which it believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper treatment (without regard to whether such positions affect a significant number of taxpayers). The list shall be published in the Federal Register or the Internal Revenue Bulletin.

Effective date.—The Senate amendment provision is effective for taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, except the conference agreement also modifies the requirement of the Secretary to prescribe a list of positions that do not have substantial authority, and authorizes (but does not require) the Secretary to publish such list.

10. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions (sec. 620 of the House bill, sec. 410 of the Senate amendment, and sec. 7408 of the Code)

PRESENT LAW

The Code authorizes civil actions to enjoin any person from promoting abusive tax shelters or aiding or abetting the understatement of tax liability.[508]

HOUSE BILL

The House bill expands this rule so that injunctions may also be sought with respect to the requirements relating to the reporting of reportable transactions[509] and the keeping of lists of investors by material advisors.[510] Thus, under the House bill, an injunction may be sought against a material advisor to enjoin the advisor from (1) failing to file an information return with respect to a reportable transaction, or (2) failing to maintain, or to timely furnish upon written request by the Secretary, a list of investors with respect to each reportable transaction.

Effective date.—The House bill provision is effective on the day after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except the Senate amendment also permits injunctions to be sought with respect to violations of any of the rules under Circular 230, which regulates the practice of representatives of persons before the Department of the Treasury.

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[506] Sec. 6700.

[507] Sec. 6662(a) and (d)(1)(A).

[508] Sec. 7408.

[509] Sec. 6707, as amended by other provisions of this bill.

[510] Sec. 6708, as amended by other provisions of this bill.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

11. Penalty on failure to report interests in foreign financial accounts (sec. 621 of the House bill, sec. 412 of the Senate amendment, and sec. 5321 of Title 31, United States Code)

PRESENT LAW

The Secretary must require citizens, residents, or persons doing business in the United States to keep records and file reports when that person makes a transaction or maintains an account with a foreign financial entity.[511] In general, individuals must fulfill this requirement by answering questions regarding foreign accounts or foreign trusts that are contained in Part III of Schedule B of the IRS Form 1040. Taxpayers who answer "yes" in response to the question regarding foreign accounts must then file Treasury Department Form TD F 90-22.1. This form must be filed with the Department of the Treasury, and not as part of the tax return that is filed with the IRS.

The Secretary may impose a civil penalty on any person who willfully violates this reporting requirement. The civil penalty is the amount of the transaction or the value of the account, up to a maximum of $100,000; the minimum amount of the penalty is $25,000.[512] In addition, any person who willfully violates this reporting requirement is subject to a criminal penalty. The criminal penalty is a fine of not more than $250,000 or imprisonment for not more than five years (or both); if the violation is part of a pattern of illegal activity, the maximum amount of the fine is increased to $500,000 and the maximum length of imprisonment is increased to 10 years.[513]

On April 26, 2002, the Secretary submitted to the Congress a report on these reporting requirements.[514] This report, which was statutorily required,[515] studies methods for improving compliance with these reporting requirements. It makes several administrative recommendations, but no legislative recommendations. A further report was required to be submitted by the Secretary to the Congress by October 26, 2002.

HOUSE BILL

The House bill adds an additional civil penalty that may be imposed on any person who violates this reporting requirement (without regard to willfulness). This new civil penalty is up to $5,000. The penalty may be waived if any income from the account was properly reported on the income tax return and there was reasonable cause for the failure to report.

Effective date.—The House bill provision is effective with respect to failures to report occurring on or after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except the maximum additional civil penalty for a non-willful act is up to $10,000. In addition, the Senate amendment increases the present-law penalty for willful behavior to the greater of $100,000 or 50 percent of the amount of the transaction or account.

Effective date.—The Senate amendment provision is effective with respect to failures to report occurring on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

12. Regulation of individuals practicing before the Department of the Treasury (sec. 622 of the House bill, sec. 414 of the Senate amendment, and sec. 330 of Title 31, United States Code)

PRESENT LAW

The Secretary is authorized to regulate the practice of representatives of persons before the Department of the Treasury.[516] The Secretary is also authorized to suspend or disbar from practice before the Department a representative who is incompetent, who is disreputable, who violates the rules regulating practice before the Department, or who (with intent to defraud) willfully and knowingly misleads or threatens the person being represented (or a person who may be represented). The rules promulgated by the Secretary pursuant to this provision are contained in Circular 230.

HOUSE BILL

The House bill makes two modifications to expand the sanctions that the Secretary may impose pursuant to these statutory provisions. First, the House bill expressly permits censure as a sanction. Second, the House bill permits the imposition of a monetary penalty as a sanction. If the representative is acting on behalf of an employer or other entity, the Secretary may impose a monetary penalty on the employer or other entity if it knew, or reasonably should have known, of the conduct. This monetary penalty on the employer or other entity may be imposed in addition to any monetary penalty imposed directly on the representative. These monetary penalties are not to exceed the gross income derived (or to be derived) from the conduct giving rise to the penalty. These monetary penalties may be in addition to, or in lieu of, any suspension, disbarment, or censure of such individual.

The House bill also confirms the present-law authority of the Secretary to impose standards applicable to written advice with respect to an entity, plan, or arrangement that is of a type that the Secretary determines as having a potential for tax avoidance or evasion.

Effective date.—The House bill modifications to expand the sanctions that the Secretary may impose are effective for actions taken after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill (except for several technical drafting modifications).

Effective date.—The Senate amendment modifications to expand the sanctions that the Secretary may impose are effective for actions taken after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

13. Treatment of stripped bonds to apply to stripped interests in bond and preferred stock funds (sec. 631 of the House bill, sec. 461 of the Senate amendment, and secs. 305 and 1286 of the Code)

PRESENT LAW

Assignment of income in general

In general, an "income stripping" transaction involves a transaction in which the right to receive future income from income-producing property is separated from the property itself. In such transactions, it may be possible to generate artificial losses from the disposition of certain property or to defer the recognition of taxable income associated with such property.

Common law has developed a rule (referred to as the "assignment of income" doctrine) whereby if the right to receive income is transferred without an accompanying transfer of the underlying property, the transfer is not respected. A leading judicial decision relating to the assignment of income doctrine involved a case in which a taxpayer made a gift of detachable interest coupons before their due date while retaining the bearer bond. The U.S. Supreme Court ruled that the donor was taxable on the entire amount of interest when paid to the donee on the grounds that the transferor had "assigned" to the donee the right to receive the income.[517]

In addition to general common law assignment of income principles, specific statutory rules have been enacted to address certain specific types of stripping transactions, such as transactions involving stripped bonds and stripped preferred stock (which are discussed below).[518] However, there are no specific statutory rules that address stripping transactions with respect to common stock or other equity interests (other than preferred stock).[519]

Stripped bonds

Special rules are provided with respect to the purchaser and "stripper" of stripped bonds.[520] A "stripped bond" is defined as a debt instrument in which there has been a separation in ownership between the underlying debt instrument and any interest coupon that has not yet become payable.[521] In general, upon the disposition of either the stripped bond or the detached interest coupons, the retained portion and the portion that is disposed of each is treated as a new bond that is purchased at a discount and is payable at a fixed amount on a future date. Accordingly, section 1286 treats both the stripped bond and the detached interest coupons as individual bonds that are newly issued with original issue discount ("OID") on the date of disposition. Consequently, section 1286 effectively subjects the stripped bond and the detached interest coupons to the general OID periodic income inclusion rules.

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[511] 31 U.S.C. sec. 5314.

[512] 31 U.S.C. sec. 5321(a)(5).

[513] 31 U.S.C. sec. 5322.

[514] A Report to Congress in Accordance with Sec. 361(b) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, April 26, 2002.

[515] Sec. 361(b) of the USA PATRIOT Act of 2001 (Pub. L. 107-56).

[516] 31 U.S.C. sec. 330.

[517] *Helvering* v. *Horst*, 311 U.S. 112 (1940).

[518] Depending on the facts, the IRS also could determine that a variety of other Code-based and common law-based authorities could apply to income stripping transactions, including: (1) sections 269, 382, 446(b), 482, 701, or 704 and the regulations thereunder; (2) authorities that recharacterize certain assignments or accelerations of future payments as financings; (3) business purpose, economic substance, and sham transaction doctrines; (4) the step transaction doctrine; and (5) the substance-over-form doctrine. See Notice 95-53, 1995-2 C.B. 334 (accounting for lease strips and other stripping transactions).

[519] However, in *Estate of Stranahan* v. *Commissioner*, 472 F.2d 867 (6th Cir. 1973), the court held that where a taxpayer sold a carved-out interest of stock dividends, with no personal obligation to produce the income, the transaction was treated as a sale of an income interest.

[520] Sec. 1286.

[521] Sec. 1286(e).

A taxpayer who purchases a stripped bond or one or more stripped coupons is treated as holding a new bond that is issued on the purchase date with OID in an amount that is equal to the excess of the stated redemption price at maturity (or in the case of a coupon, the amount payable on the due date) over the ratable share of the purchase price of the stripped bond or coupon, determined on the basis of the respective fair market values of the stripped bond and coupons on the purchase date.[522] The OID on the stripped bond or coupon is includible in gross income under the general OID periodic income inclusion rules.

A taxpayer who strips a bond and disposes of either the stripped bond or one or more stripped coupons must allocate the taxpayer's basis, immediately before the disposition, in the bond (with the coupons attached) between the retained and disposed items.[523] Special rules apply to require that interest or market discount accrued on the bond prior to such disposition must be included in the taxpayer's gross income (to the extent that it had not been previously included in income) at the time the stripping occurs, and the taxpayer increases the basis in the bond by the amount of such accrued interest or market discount. The adjusted basis (as increased by any accrued interest or market discount) is then allocated between the stripped bond and the stripped interest coupons in relation to their respective fair market values. Amounts realized from the sale of stripped coupons or bonds constitute income to the taxpayer only to the extent such amounts exceed the basis allocated to the stripped coupons or bond. With respect to retained items (either the detached coupons or stripped bond), to the extent that the price payable on maturity, or on the due date of the coupons, exceeds the portion of the taxpayer's basis allocable to such retained items, the difference is treated as OID that is required to be included under the general OID periodic income inclusion rules.[524]

Stripped preferred stock

"Stripped preferred stock'' is defined as preferred stock in which there has been a separation in ownership between such stock and any dividend on such stock that has not become payable.[525] A taxpayer who purchases stripped preferred stock is required to include in gross income, as ordinary income, the amounts that would have been includible if the stripped preferred stock was a bond issued on the purchase date with OID equal to the excess of the redemption price of the stock over the purchase price.[526] This treatment is extended to any taxpayer whose basis in the stock is determined by reference to the basis in the hands of the purchaser. A taxpayer who strips and disposes the future dividends is treated as having purchased the stripped preferred stock on the date of such disposition for a purchase price equal to the taxpayer's adjusted basis in the stripped preferred stock.[527]

HOUSE BILL

The House bill authorizes the Treasury Department to promulgate regulations that, in appropriate cases, apply rules that are similar to the present-law rules for stripped bonds and stripped preferred stock to direct or indirect interests in an entity or account substantially all of the assets of which consist of bonds (as defined in section 1286(e)(1)), preferred stock (as defined in section 305(e)(5)(B)), or any combination thereof. The House bill applies only to cases in which the present-law rules for stripped bonds and stripped preferred stock do not already apply to such interests.

For example, such Treasury regulations could apply to a transaction in which a person effectively strips future dividends from shares in a money market mutual fund (and disposes either the stripped shares or stripped future dividends) by contributing the shares (with the future dividends) to a custodial account through which another person purchases rights to either the stripped shares or the stripped future dividends. However, it is intended that Treasury regulations issued under the House bill would not apply to certain transactions involving direct or indirect interests in an entity or account substantially all the assets of which consist of tax-exempt obligations (as defined in section 1275(a)(3)), such as a tax-exempt bond partnership described in Rev. Proc. 2002-68,[528] modifying and superceeding Rev. Proc. 2002-16.[529]

No inference is intended as to the treatment under the present-law rules for stripped bonds and stripped preferred stock, or under any other provisions or doctrines of present law, of interests in an entity or account substantially all of the assets of which consist of bonds, preferred stock, or any combination thereof. The Treasury regulations, when issued, would be applied prospectively, except in cases to prevent abuse.

Effective date.—The House bill provision is effective for purchases and dispositions occurring after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

14. Minimum holding period for foreign tax credit with respect to withholding taxes on income other than dividends (sec. 632 of the House bill, sec. 456 of the Senate amendment, and sec. 901 of the Code)

PRESENT LAW

In general, U.S. persons may credit foreign taxes against U.S. tax on foreign-source income. The amount of foreign tax credits that may be claimed in a year is subject to a limitation that prevents taxpayers from using foreign tax credits to offset U.S. tax on U.S.-source income. Separate limitations are applied to specific categories of income.

As a consequence of the foreign tax credit limitations of the Code, certain taxpayers are unable to utilize their creditable foreign taxes to reduce their U.S. tax liability. U.S. taxpayers that are tax-exempt receive no U.S. tax benefit for foreign taxes paid on income that they receive.

Present law denies a U.S. shareholder the foreign tax credits normally available with respect to a dividend from a corporation or a regulated investment company ("RIC'') if the shareholder has not held the stock for more than 15 days (within a 30-day testing period) in the case of common stock or more than 45 days (within a 90-day testing period) in the case of preferred stock (sec. 901(k)). The disallowance applies both to foreign tax credits for foreign withholding taxes that are paid on the dividend where the dividend-paying stock is held for less than these holding periods, and to indirect foreign tax credits for taxes paid by a lower-tier foreign corporation or a RIC where any of the required stock in the chain of ownership is held for less than these holding periods. Periods during which a taxpayer is protected from risk of loss (e.g., by purchasing a put option or entering into a short sale with respect to the stock) generally are not counted toward the holding period requirement. In the case of a bona fide contract to sell stock, a special rule applies for purposes of indirect foreign tax credits. The disallowance does not apply to foreign tax credits with respect to certain dividends received by active dealers in securities. If a taxpayer is denied foreign tax credits because the applicable holding period is not satisfied, the taxpayer is entitled to a deduction for the foreign taxes for which the credit is disallowed.

HOUSE BILL

The House bill expands the present-law disallowance of foreign tax credits to include credits for gross-basis foreign withholding taxes with respect to any item of income or gain from property if the taxpayer who receives the income or gain has not held the property for more than 15 days (within a 30-day testing period), exclusive of periods during which the taxpayer is protected from risk of loss. The House bill does not apply to foreign tax credits that are subject to the present-law disallowance with respect to dividends. The House bill also does not apply to certain income or gain that is received with respect to property held by active dealers. Rules similar to the present-law disallowance for foreign tax credits with respect to dividends apply to foreign tax credits that are subject to the House bill. In addition, the House bill authorizes the Treasury Department to issue regulations providing that the House bill does not apply in appropriate cases.

Effective date.—The House bill provision is effective for amounts that are paid or accrued more than 30 days after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment provision, except the 30-day testing period is changed to a 31-day testing period.

In addition, the conferees intend that the Secretary will prescribe regulations to adapt the holding period and hedging rules of section 901(k) to property other than stock. It is anticipated that such regulations will provide that credits are not disallowed merely because a taxpayer eliminates its risk of loss from interest rate or currency fluctuations. In addition, it is intended that such regulations might permit other hedging activities, such as hedging of credit risk, provided that the taxpayer does not hedge most of its risk of loss with respect to the property unless there has been a meaningful and unanticipated change in circumstances.

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[522] Sec. 1286(a).

[523] Sec. 1286(b). Similar rules apply in the case of any person whose basis in any bond or coupon is determined by reference to the basis in the hands of a person who strips the bond.

[524] Special rules are provided with respect to stripping transactions involving tax-exempt obligations that treat OID (computed under the stripping rules) in excess of OID computed on the basis of the bond's coupon rate (or higher rate if originally issued at a discount) as income from a non-tax-exempt debt instrument (sec. 1286(d)).

[525] Sec. 305(e)(5).

[526] Sec. 305(e)(1).

[527] Sec. 305(e)(3).

[528] 2002-43 I.R.B. 753.

[529] 2002-9 I.R.B. 572.

15. Treatment of partnership loss transfers and partnership basis adjustments (sec. 633 of the House bill, sec. 469 of the Senate amendment, and secs. 704, 734, 743, and 754 of the Code)

PRESENT LAW

Contributions of property

Under present law, if a partner contributes property to a partnership, generally no gain or loss is recognized to the contributing partner at the time of contribution.[530] The partnership takes the property at an adjusted basis equal to the contributing partner's adjusted basis in the property.[531] The contributing partner increases its basis in its partnership interest by the adjusted basis of the contributed property.[532] Any items of partnership income, gain, loss and deduction with respect to the contributed property are allocated among the partners to take into account any built-in gain or loss at the time of the contribution.[533] This rule is intended to prevent the transfer of built-in gain or loss from the contributing partner to the other partners by generally allocating items to the noncontributing partners based on the value of their contributions and by allocating to the contributing partner the remainder of each item.[534]

If the contributing partner transfers its partnership interest, the built-in gain or loss will be allocated to the transferee partner as it would have been allocated to the contributing partner.[535] If the contributing partner's interest is liquidated, there is no specific guidance preventing the allocation of the built-in loss to the remaining partners. Thus, it appears that losses can be "transferred" to other partners where the contributing partner no longer remains a partner.

Transfers of partnership interests

Under present law, a partnership does not adjust the basis of partnership property following the transfer of a partnership interest unless the partnership has made a one-time election under section 754 to make basis adjustments.[536] If an election is in effect, adjustments are made with respect to the transferee partner to account for the difference between the transferee partner's proportionate share of the adjusted basis of the partnership property and the transferee's basis in its partnership interest.[537] These adjustments are intended to adjust the basis of partnership property to approximate the result of a direct purchase of the property by the transferee partner. Under these rules, if a partner purchases an interest in a partnership with an existing built-in loss and no election under section 754 is in effect, the transferee partner may be allocated a share of the loss when the partnership disposes of the property (or depreciates the property).

Distributions of partnership property

With certain exceptions, partners may receive distributions of partnership property without recognition of gain or loss by either the partner or the partnership.[538] In the case of a distribution in liquidation of a partner's interest, the basis of the property distributed in the liquidation is equal to the partner's adjusted basis in its partnership interest (reduced by any money distributed in the transaction).[539] In a distribution other than in liquidation of a partner's interest, the distributee partner's basis in the distributed property is equal to the partnership's adjusted basis in the property immediately before the distribution, but not to exceed the partner's adjusted basis in the partnership interest (reduced by any money distributed in the same transaction).[540]

The determination of the basis of individual properties distributed by a partnership is dependent on the adjusted basis of the properties in the hands of the partnership.[541] If a partnership interest is transferred to a partner and the partnership has not elected to adjust the basis of partnership property, a special basis rule provides for the determination of the transferee partner's basis of properties that are later distributed by the partnership.[542] Under this rule, in determining the basis of property distributed by a partnership within 2 years following the transfer of the partnership interest, the transferee may elect to determine its basis as if the partnership had adjusted the basis of the distributed property under section 743(b) on the transfer. The special basis rule also applies to distributed property if, at the time of the transfer, the fair market value of partnership property other than money exceeds 110 percent of the partnership's basis in such property and a liquidation of the partnership interest immediately after the transfer would have resulted in a shift of basis to property subject to an allowance of depreciation, depletion or amortization.[543]

Adjustments to the basis of the partnership's undistributed properties are not required unless the partnership has made the election under section 754 to make basis adjustments.[544] If an election is in effect under section 754, adjustments are made by a partnership to increase or decrease the remaining partnership assets to reflect any increase or decrease in the adjusted basis of the distributed properties in the hands of the distributee partner (or gain or loss recognized by the distributee partner).[545] To the extent the adjusted basis of the distributed properties increases (or loss is recognized) the partnership's adjusted basis in its properties is decreased by a like amount; likewise, to the extent the adjusted basis of the distributed properties decrease (or gain is recognized), the partnership's adjusted basis in its properties is increased by a like amount. Under these rules, a partnership with no election in effect under section 754 may distribute property with an adjusted basis lower than the distributee partner's proportionate share of the adjusted basis of all partnership property and leave the remaining partners with a smaller net built-in gain or a larger net built-in loss than before the distribution.

HOUSE BILL

Contributions of property

Under the provision, a built-in loss may be taken into account only by the contributing partner and not by other partners. Except as provided in regulations, in determining the amount of items allocated to partners other than the contributing partner, the basis of the contributed property is treated as the fair market value at the time of contribution. Thus, if the contributing partner's partnership interest is transferred or liquidated, the partnership's adjusted basis in the property is based on its fair market value at the time of contribution, and the built-in loss is eliminated.[546]

Transfers of partnership interests

The provision provides generally that the basis adjustment rules under section 743 are mandatory in the case of the transfer of a partnership interest with respect to which there is a substantial built-in loss (rather than being elective as under present law). For this purpose, a substantial built-in loss exists if the partnership's adjusted basis in its property exceeds by more than $250,000 the fair market value of the partnership property.

Thus, for example, assume that partner A sells his 25-percent partnership interest to B for its fair market value of $1 million. Also assume that, immediately after the transfer, the fair market value of partnership assets is $4 million and the partnership's adjusted basis in the partnership assets is $4.3 million. Under the bill, section 743(b) applies, so that an adjustment is required to the adjusted basis of the partnership assets with respect to B. As a result, B would recognize no gain or loss if the partnership immediately sold all its assets for their fair market value.

The bill provides that an electing investment partnership is not treated as having a substantial built-in loss, and thus is not required to make basis adjustments to partnership property, in the case of a transfer of a partnership interest. In lieu of the partnership basis adjustments, a partner-level loss limitation rule applies. Under this rule, the transferee partner's distributive share of losses (determined without regard to gains) from the sale or exchange of partnership property is not allowed, except to the extent it is established that the partner's share of such losses exceeds the loss recognized by the transferor partner. In the event of successive transfers, the transferee partner's distributive share of such losses is not allowed, except to the extent that it is established that such losses exceed the loss recognized by the transferor (or any prior transferor to the extent not fully offset by a prior disallowance under this rule). Losses disallowed under this rule do not decrease the transferee partner's basis in its partnership interest. Thus, on subsequent disposition of its partnership interest, the partner's gain is reduced (or loss increased) because the basis of the partnership interest has not been reduced by such losses. The provision is applied without regard to any termination of a partnership under section 708(b)(1)(B). In the case of a basis reduction to property distributed to the transferee partner in a nonliquidating distribution, the amount of the transferor's loss taken into account under this rule is reduced by the amount of the basis reduction.

For this purpose, an electing investment partnership means a partnership that satisfies the following requirements: (1) it makes an election under the provision that is irrevocable except with the consent of the Secretary; (2) it would be an investment company under section 3(a)(1)(A) of the Investment Company Act of 1940[547] but for an exemption under paragraph (1) or (7) of section

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[530] Sec. 721.

[531] Sec. 723.

[532] Sec. 722.

[533] Sec. 704(c)(1)(A).

[534] If there is an insufficient amount of an item to allocate to the noncontributing partners, Treasury regulations allow for curative or remedial allocations to remedy this insufficiency. Treas. Reg. sec. 1.704-3(c) and (d).

[535] Treas. Reg. sec. 1.704-3(a)(7).

[536] Sec. 743(a).

[537] Sec. 743(b).

[538] Sec. 731(a) and (b).

[539] Sec. 732(b).

[540] Sec. 732(a).

[541] Sec. 732 (a)(1) and (c).

[542] Sec. 732(d).

[543] Treas. Reg. sec. 1.732-1(d)(4).

[544] Sec. 734(a).

[545] Sec. 734(b).

[546] It is intended that a corporation succeeding to attributes of the contributing corporate partner under section 381 shall be treated in the same manner as the contributing partner.

[547] Section 3(a)(1)(A) of the Act provides, "when used in this title, 'investment company' means any

3(c) of that Act; (3) it has never been engaged in a trade or business; (4) substantially all of its assets are held for investment; (5) at least 95 percent of the assets contributed to it consist of money; (6) no assets contributed to it had an adjusted basis in excess of fair market value at the time of contribution; (7) all partnership interests are issued by the partnership pursuant to a private offering and during the 24-month period beginning on the date of the first capital contribution to the partnership; (8) the partnership agreement has substantive restrictions on each partner's ability to cause a redemption of the partner's interest, and (9) the partnership agreement provides for a term that is not in excess of 15 years.

The provision requires an electing investment partnership to furnish to any transferee partner the information necessary to enable the partner to compute the amount of losses disallowed under this rule.

Distributions of partnership property

The provision provides that a basis adjustment under section 734(b) is required in the case of a distribution with respect to which there is a substantial basis reduction. A substantial basis reduction means a downward adjustment of more than $250,000 that would be made to the basis of partnership assets if a section 754 election were in effect.

Thus, for example, assume that A and B each contributed $2.5 million to a newly formed partnership and C contributed $5 million, and that the partnership purchased LMN stock for $3 million and XYZ stock for $7 million. Assume that the value of each stock declined to $1 million. Assume LMN stock is distributed to C in liquidation of its partnership interest. Under present law, the basis of LMN stock in C's hands is $5 million. Under present law, C would recognize a loss of $4 million if the LMN stock were sold for $1 million.

Under the provision, there is a substantial basis adjustment because the $2 million increase in the adjusted basis of LMN stock (described in section 734(b)(2)(B)) is greater than $250,000. Thus, the partnership is required to decrease the basis of XYZ stock (under section 734(b)(2)) by $2 million (the amount by which the basis of LMN stock was increased), leaving a basis of $5 million. If the XYZ stock were then sold by the partnership for $1 million, A and B would each recognize a loss of $2 million.

Effective date

The provision applies to contributions, distributions and transfers (as the case may be) after the date of enactment.

In the case of an electing investment partnership in existence on June 4, 2004, the requirement that the partnership agreement have substantive restrictions on redemptions does not apply, and the requirement that the partnership agreement provide for a term not exceeding 15 years is modified to permit a term not exceeding 20 years.

SENATE AMENDMENT

Under the provision, adjustments to the basis of partnership property in the event of a partnership distribution or the transfer of a partnership interest are required, not elective as under present law. However, the basis adjustments are elective, as under present law, in the case of the transfer of a partnership interest by reason of the partner's death. Any election made by a partnership under section 754 that is in effect when the provision becomes effective is treated as an election to adjust the basis of partnership property with respect to the transferee partner in the case of a transfer of a partnership interest upon the death of a partner. The provision repeals the special rule of section 732(d) for determining the transferee partner's basis in property that is later distributed by the partnership in cases in which the partnership did not have a section 754 election in effect with respect to the transfer of the partnership interest.

Effective date.—The provision requiring partnership basis adjustments applies to transfers and distributions after the date of enactment.

The provision repealing section 732(d) applies generally to transfers after the date of enactment, except that it applies to distributions made after the date which is 2 years following the date of enactment in the case of any transfer to which section 732(d) applies that is made on or before the date of enactment.

CONFERENCE AGREEMENT

The conference agreement generally follows the House bill, with modifications.

The conference agreement modifies the qualification requirements for electing investment partnerships that are subject to a partner-level loss limitation rule in lieu of the requirement of partnership basis adjustments following certain transfers of partnership interests. Specifically, the conference agreement requires that all partnership interests be issued by such a partnership pursuant to a private offering prior to the date that is 24 months after the date of the first capital contribution to the partnership. The conferees intend that "dry" closings in which partnership interests are issued without the contribution of capital not start the running of the 24-month period.

It is intended that in applying the requirement (with respect electing investment partnerships) that the partnership agreement have substantive restrictions on each partner's ability to cause a redemption, the following are illustrative examples of substantive restrictions: a violation of Federal or State law (such as ERISA or the Bank Holding Company Act); and imposition of a Federal excise tax on, or a change in the Federal tax-exempt status of, a tax-exempt partner.

The conferees understand that electing investment partnerships will generally include venture capital funds, buyout funds, and funds of funds. These funds are formed to raise capital from investors pursuant to a private offering and to make investments during the limited term of the partnership with the intention of holding the investments for capital appreciation.

With respect to the requirement that an electing investment partnership furnish to any transferee partner the information necessary to enable the partner to compute the amount of losses disallowed under this rule, it is expected that in some cases the transferor of the partnership interest will furnish information relating to the amount of its loss to the transferee partner. It is intended that the requirement that the electing investment partnership furnish necessary information to the transferee partner be administered by the Treasury Secretary in a manner that (to the greatest extent feasible) minimizes the need for the partnership to furnish information to the transferee partner that the transferee partner has obtained from the transferor.

The conference agreement adds an exception for securitization partnerships to the rules requiring partnership basis adjustments in the case of transfers of partnership interests and distributions of property to a partner. The exceptions provide that a securitization partnership is not treated as having a substantial built-in loss in the case of a transfer of a partnership interest, or as having a substantial basis reduction in the case of a partnership distribution, and thus is not required to make basis adjustments to partnership property. Partnership basis adjustments remain elective for such a partnership. Unlike in the case of an electing investment partnership, the partner-level loss limitation rule does not apply in the case of a securitization partnership. For this purpose, a securitization partnership is any partnership the sole business activity of which is to issue securities that provide for a fixed principal (or similar) amount and that are primarily serviced by the cash flows of a discrete pool (either fixed or revolving) of receivables or other financial assets that by their terms convert into cash in a finite period, but only if the sponsor of the pool reasonably believes that the receivables and other financial assets comprising the pool are not acquired so as to be disposed of. It is intended that rules similar to those applicable to sponsors of REMICs apply in determining whether the sponsor's belief is reasonable.[548] It is not intended that the rules requiring partnership basis adjustments on transfers or distributions be avoided through dispositions of pool assets.

It is intended that an electing investment partnership or securitization partnership that subsequently fails to meet the definition of an electing investment partnership or of a securitization partnership will be subject to the partnership basis adjustment rules of the provision with respect to the first transfer of a partnership interest (and, in the case of a securitization partnership, the first distribution) that occurs after the partnership ceases to meet the applicable definition and to each subsequent transfer (and distribution, in the case of a securitization partnership).

It is not intended that the rules of the conference agreement provisions be avoided through the use of tiered partnerships.

It is not intended that the provision relating to contributions of built-in loss property limit the ability of master-feeder structures to apply an aggregate method for making allocations under section 704(c) to the extent the aggregate method is permitted under present law.[549]

Effective date.—The conference agreement follows the House bill.

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issuer which is or hold itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities."

[548] See Treas. Reg. sec. 1.860G-2(a)(3), providing that a sponsor's belief is not reasonable if the sponsor actually knows or has reason to know that the requirement is not met, or if the requirement is later discovered not to have been met.

[549] See Rev. Proc. 2001-36, 2001-1 C.B. 1326. Definitional requirements of a master-feeder structure include that there is a portfolio of assets that is treated as a partnership for Federal tax purposes and that is registered as an investment company under the Investment Company Act of 1940, each partner of which is a feeder fund that is a registered investment company (RIC) for Federal tax purposes, or is an investment advisor, principal underwriter, or manager of the portfolio. The conferees believe that these restrictions (and other applicable restrictions) serve to limit potential avoidance of the section 704(c) provision of the conference agreement through use of the aggregate method in the case of master-feeder structures.

16. No reduction of basis under section 734 in stock held by partnership in corporate partner (sec. 634 of the House bill, sec. 432 of the Senate amendment, and sec. 755 of the Code)

PRESENT LAW

In general

Generally, a partner and the partnership do not recognize gain or loss on a contribution of property to the partnership.[550] Similarly, a partner and the partnership generally do not recognize gain or loss on the distribution of partnership property.[551] This includes current distributions and distributions in liquidation of a partner's interest.

Basis of property distributed in liquidation

The basis of property distributed in liquidation of a partner's interest is equal to the partner's tax basis in its partnership interest (reduced by any money distributed in the same transaction).[552] Thus, the partnership's tax basis in the distributed property is adjusted (increased or decreased) to reflect the partner's tax basis in the partnership interest.

Election to adjust basis of partnership property

When a partnership distributes partnership property, the basis of partnership property generally is not adjusted to reflect the effects of the distribution or transfer. However, the partnership is permitted to make an election (referred to as a 754 election) to adjust the basis of partnership property in the case of a distribution of partnership property.[553] The effect of the 754 election is that the partnership adjusts the basis of its remaining property to reflect any change in basis of the distributed property in the hands of the distributee partner resulting from the distribution transaction. Such a change could be a basis increase due to gain recognition, or a basis decrease due to the partner's adjusted basis in its partnership interest exceeding the adjusted basis of the property received. If the 754 election is made, it applies to the taxable year with respect to which such election was filed and all subsequent taxable years.

In the case of a distribution of partnership property to a partner with respect to which the 754 election is in effect, the partnership increases the basis of partnership property by (1) any gain recognized by the distributee partner and (2) the excess of the adjusted basis of the distributed property to the partnership immediately before its distribution over the basis of the property to the distributee partner, and decreases the basis of partnership property by (1) any loss recognized by the distributee partner and (2) the excess of the basis of the property to the distributee partner over the adjusted basis of the distributed property to the partnership immediately before the distribution.

The allocation of the increase or decrease in basis of partnership property is made in a manner that has the effect of reducing the difference between the fair market value and the adjusted basis of partnership properties.[554] In addition, the allocation rules require that any increase or decrease in basis be allocated to partnership property of a like character to the property distributed. For this purpose, the two categories of assets are (1) capital assets and depreciable and real property used in the trade or business held for more than one year, and (2) any other property.[555]

HOUSE BILL

The provision provides that in applying the basis allocation rules to a distribution in liquidation of a partner's interest, a partnership is precluded from decreasing the basis of corporate stock of a partner or a related person. Any decrease in basis that, absent the provision, would have been allocated to the stock is allocated to other partnership assets. If the decrease in basis exceeds the basis of the other partnership assets, then gain is recognized by the partnership in the amount of the excess.

Effective date.—The provision applies to distributions after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except for the effective date.

Effective date.—The provision applies to distributions after February 13, 2003.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

Effective date.—The conference agreement follows the House bill.

17. Repeal of special rules for FASITs (sec. 635 of the House bill, sec. 433 of the Senate amendment, and secs. 860H through 860L of the Code)

PRESENT LAW

Financial asset securitization investment trusts

In 1996 Congress created a new type of statutory entity called a "financial asset securitization trust" ("FASIT") that facilitates the securitization of debt obligations such as credit card receivables, home equity loans, and auto loans.[556] A FASIT generally is not taxable; the FASIT's taxable income or net loss flows through to the owner of the FASIT.

The ownership interest of a FASIT generally is required to be entirely held by a single domestic C corporation. In addition, a FASIT generally may hold only qualified debt obligations, and certain other specified assets, and is subject to certain restrictions on its activities. An entity that qualifies as a FASIT can issue one or more classes of instruments that meet certain specified requirements and treat those instruments as debt for Federal income tax purposes. Instruments issued by a FASIT bearing yields to maturity over five percentage points above the yield to maturity on specified United States government obligations (i.e., "high-yield interests") must be held, directly or indirectly, only by domestic C corporations that are not exempt from income tax.

Qualification as a FASIT

To qualify as a FASIT, an entity must: (1) make an election to be treated as a FASIT for the year of the election and all subsequent years;[557] (2) have assets substantially all of which (including assets that the FASIT is treated as owning because they support regular interests) are specified types called "permitted assets;" (3) have non-ownership interests be certain specified types of debt instruments called "regular interests"; (4) have a single ownership interest which is held by an "eligible holder"; and (5) not qualify as a regulated investment company ("RIC"). Any entity, including a corporation, partnership, or trust may be treated as a FASIT. In addition, a segregated pool of assets may qualify as a FASIT.

An entity ceases qualifying as a FASIT if the entity's owner ceases being an eligible corporation. Loss of FASIT status is treated as if all of the regular interests of the FASIT were retired and then reissued without the application of the rule that deems regular interests of a FASIT to be debt.

Permitted assets

For an entity or arrangement to qualify as a FASIT, substantially all of its assets must consist of the following "permitted assets": (1) cash and cash equivalents; (2) certain permitted debt instruments; (3) certain foreclosure property; (4) certain instruments or contracts that represent a hedge or guarantee of debt held or issued by the FASIT; (5) contract rights to acquire permitted debt instruments or hedges; and (6) a regular interest in another FASIT. Permitted assets may be acquired at any time by a FASIT, including any time after its formation.

"Regular interests" of a FASIT

"Regular interests" of a FASIT are treated as debt for Federal income tax purposes, regardless of whether instruments with similar terms issued by non-FASITs might be characterized as equity under general tax principles. To be treated as a "regular interest", an instrument must have fixed terms and must: (1) unconditionally entitle the holder to receive a specified principal amount; (2) pay interest that is based on (a) fixed rates, or (b) except as provided by regulations issued by the Treasury Secretary, variable rates permitted with respect to REMIC interests under section 860G(a)(1)(B)(i); (3) have a term to maturity of no more than 30 years, except as permitted by Treasury regulations; (4) be issued to the public with a premium of not more than 25 percent of its stated principal amount; and (5) have a yield to maturity determined on the date of issue of less than five percentage points above the applicable Federal rate ("AFR") for the calendar month in which the instrument is issued.

Permitted ownership holder

A permitted holder of the ownership interest in a FASIT generally is a non-exempt (i.e., taxable) domestic C corporation, other than a corporation that qualifies as a RIC, REIT, REMIC, or cooperative.

Transfers to FASITs

In general, gain (but not loss) is recognized immediately by the owner of the FASIT upon the transfer of assets to a FASIT. Where property is acquired by a FASIT from someone other than the FASIT's owner (or a person related to the FASIT's owner), the property is treated as being first acquired by the FASIT's owner for the FASIT's cost in acquiring the asset from the non-owner and then transferred by the owner to the FASIT.

Valuation rules.—In general, except in the case of debt instruments, the value of FASIT assets is their fair market value. Similarly, in the case of debt instruments that are traded on an established securities market, the market price is used for purposes of determining the amount of gain realized upon contribution of such assets to a FASIT. However, in the case of debt instruments that are not traded on an established securities market, special valuation rules apply for purposes of computing gain on the transfer of such debt instruments to a FASIT. Under these rules, the value of such debt instruments is the sum of the present values of the reasonably expected cash flows from such obligations discounted over the weighted average life of such assets. The discount rate is

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[550] Sec. 721(a).

[551] Sec. 731(a) and (b).

[552] Sec. 732(b).

[553] Sec. 754.

[554] Sec. 755(a).

[555] Sec. 755(b).

[556] Sections 860H through 860L.

[557] Once an election to be a FASIT is made, the election applies from the date specified in the election and all subsequent years until the entity ceases to be a FASIT. If an election to be a FASIT is made after the initial year of an entity, all of the assets in the entity at the time of the FASIT election are deemed contributed to the FASIT at that time and, accordingly, any gain (but not loss) on such assets will be recognized at that time.

120 percent of the AFR, compounded semiannually, or such other rate that the Treasury Secretary shall prescribe by regulations.

Taxation of a FASIT

A FASIT generally is not subject to tax. Instead, all of the FASIT's assets and liabilities are treated as assets and liabilities of the FASIT's owner and any income, gain, deduction or loss of the FASIT is allocable directly to its owner. Accordingly, income tax rules applicable to a FASIT (e.g., related party rules, sec. 871(h), sec. 165(g)(2)) are to be applied in the same manner as they apply to the FASIT's owner. The taxable income of a FASIT is calculated using an accrual method of accounting. The constant yield method and principles that apply for purposes of determining original issue discount ("OID") accrual on debt obligations whose principal is subject to acceleration apply to all debt obligations held by a FASIT to calculate the FASIT's interest and discount income and premium deductions or adjustments.

Taxation of holders of FASIT regular interests

In general, a holder of a regular interest is taxed in the same manner as a holder of any other debt instrument, except that the regular interest holder is required to account for income relating to the interest on an accrual method of accounting, regardless of the method of accounting otherwise used by the holder.

Taxation of holders of FASIT ownership interests

Because all of the assets and liabilities of a FASIT are treated as assets and liabilities of the holder of a FASIT ownership interest, the ownership interest holder takes into account all of the FASIT's income, gain, deduction, or loss in computing its taxable income or net loss for the taxable year. The character of the income to the holder of an ownership interest is the same as its character to the FASIT, except tax-exempt interest is included in the income of the holder as ordinary income.

Although the recognition of losses on assets contributed to the FASIT is not allowed upon contribution of the assets, such losses may be allowed to the FASIT owner upon their disposition by the FASIT. Furthermore, the holder of a FASIT ownership interest is not permitted to offset taxable income from the FASIT ownership interest (including gain or loss from the sale of the ownership interest in the FASIT) with other losses of the holder. In addition, any net operating loss carryover of the FASIT owner shall be computed by disregarding any income arising by reason of a disallowed loss. Where the holder of a FASIT ownership interest is a member of a consolidated group, this rule applies to the consolidated group of corporations of which the holder is a member as if the group were a single taxpayer.

HOUSE BILL

The House bill repeals the special rules for FASITs. The House bill provides a transition period for existing FASITs, pursuant to which the repeal of the FASIT rules generally does not apply to any FASIT in existence on the date of enactment to the extent that regular interests issued by the FASIT prior to such date continue to remain outstanding in accordance with their original terms.

For purposes of the REMIC rules, the House bill also modifies the definitions of REMIC regular interests, qualified mortgages, and permitted investments so that certain types of real estate loans and loan pools can be transferred to, or purchased by, a REMIC. Specifically, the provision modifies the present-law definition of a REMIC "regular interest" to provide that an interest in a REMIC does not fail to qualify as a regular interest solely because the specified principal amount of such interest or the amount of interest accrued on such interest could be reduced as a result of the nonoccurrence of one or more contingent payments with respect to one or more reverse mortgages loans, as defined below, that are held by the REMIC, provided that on the startup day for the REMIC, the REMIC sponsor reasonably believes that all principal and interest due under the interest will be paid at or prior to the liquidation of the REMIC. For this purpose, a reasonable belief concerning ultimate payment of all amounts due under an interest is presumed to exist if, as of the startup day, the interest receives an investment grade rating from at least one nationally recognized statistical rating agency.

In addition, the provision makes three modifications to the present-law definition of a "qualified mortgage." First, the provision modifies the definition to include an obligation principally secured by real property which represents an increase in the principal amount under the original terms of an obligation, provided such increase: (1) is attributable to an advance made to the obligor pursuant to the original terms of the obligation; (2) occurs after the REMIC startup day; and (3) is purchased by the REMIC pursuant to a fixed price contract in effect on the startup day. Second, the provision modifies the definition to generally include reverse mortgage loans and the periodic advances made to obligors on such loans. For this purpose, a "reverse mortgage loan" is defined as a loan that: (1) is secured by an interest in real property; (2) provides for one or more advances of principal to the obligor (each such advance giving rise to a "balance increase"), provided such advances are principally secured by an interest in the same real property as that which secures the loan; (3) may provide for a contingent payment at maturity based upon the value or appreciation in value of the real property securing the loan; (4) provides for an amount due at maturity that cannot exceed the value, or a specified fraction of the value, of the real property securing the loan; (5) provides that all payments under the loan are due only upon the maturity of the loan; and (6) matures after a fixed term or at the time the obligor ceases to use as a personal residence the real property securing the loan. Third, the provision modifies the definition to provide that, if more than 50 percent of the obligations transferred to, or purchased by, the REMIC are (1) originated by the United States or any State (or any political subdivision, agency, or instrumentality of the United States or any State) and (2) principally secured by an interest in real property, then each obligation transferred to, or purchased by, the REMIC shall be treated as secured by an interest in real property.

In addition, the provision modifies the present-law definition of a "permitted investment" to include intangible investment property held as part of a reasonably required reserve to provide a source of funds for the purchase of obligations described above as part of the modified definition of a "qualified mortgage."

Effective date.—Except as provided by the transition period for existing FASITs, the House bill is effective January 1, 2005.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except for the effective date.

Effective date.—Except as provided by the transition period for existing FASITs, the Senate amendment is effective on February 14, 2003.

CONFERENCE AGREEMENT

The conference agreement follows the House bill provision.

18. Limitation on transfer and importation of built-in losses (sec. 636 of the House bill, sec. 431 of the Senate amendment, and secs. 362 and 334 of the Code)

PRESENT LAW

Generally, no gain or loss is recognized when one or more persons transfer property to a corporation in exchange for stock and immediately after the exchange such person or persons control the corporation.[558] The transferor's basis in the stock of the controlled corporation is the same as the basis of the property contributed to the controlled corporation, increased by the amount of any gain (or dividend) recognized by the transferor on the exchange, and reduced by the amount of any money or property received, and by the amount of any loss recognized by the transferor.[559]

The basis of property received by a corporation, whether from domestic or foreign transferors, in a tax-free incorporation, reorganization, or liquidation of a subsidiary corporation is the same as the adjusted basis in the hands of the transferor, adjusted for gain or loss recognized by the transferor.[560]

HOUSE BILL

The House bill provides that if a residual interest (as defined in section 860G(a)(2)) in a real estate mortgage investment conduit ("REMIC") is contributed to a corporation and the transferee corporation's adjusted basis in the REMIC residual interest would (but for the provision) exceed the fair market value of the REMIC residual interest immediately after the contribution, the transferee corporation's adjusted basis in the REMIC residual interest is limited to the fair market value of the REMIC residual interest immediately after the contribution, regardless of whether the fair market value of the REMIC residual interest is less than, equal to, or greater than zero (i.e., the provision may result in the transferee corporation having a negative adjusted basis in the REMIC residual interest).

Effective date.—The House bill provision applies to transactions after the date of enactment.

SENATE AMENDMENT

Importation of built-in losses

The Senate Amendment provides that if a net built-in loss is imported into the U.S in a tax-free organization or reorganization from persons not subject to U.S. tax, the basis of each property so transferred is its fair market value.[561] A similar rule applies in the case of the tax-free liquidation by a domestic corporation of its foreign subsidiary.

Under the Senate amendment, a net built-in loss is treated as imported into the U.S. if the aggregate adjusted bases of property received by a transferee corporation exceed the fair market value of the properties transferred. Thus, for example, if in a tax-free incorporation, some properties are received by a corporation from U.S. persons subject to tax, and some properties are received from foreign persons not subject to U.S. tax, this provision applies to limit the adjusted basis of each property received from the foreign persons to the fair market value of the property. In the case of a transfer by a partnership (either domestic or foreign), this provision applies as if the properties had been transferred by each of the partners in proportion to their interests in the partnership.

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[558] Sec. 351.

[559] Sec. 358.

[560] Secs. 334(b) and 362(a) and (b).

[561] The Senate amendment also applies to transfers from a tax-exempt organization where gain or loss would not be subject to tax if the property were sold by the organization.

Limitation on transfer of built-in losses in section 351 transactions

The Senate amendment provides that if the aggregate adjusted bases of property contributed by a transferor (or by a control group of which the transferor is a member) to a corporation exceed the aggregate fair market value of the property transferred in a tax-free incorporation, the transferee's aggregate basis of the properties is limited to the aggregate fair market value of the transferred property. Under the Senate Amendment, any required basis reduction is allocated among the transferred properties in proportion to their built-in-loss immediately before the transaction. In the case of a transfer in which the transferor owns at least 80 percent of the vote and value of the stock of the transferee corporation, any basis reduction required by the provision is made to the stock received by the transferor and not to the assets transferred.

Effective date

The Senate amendment provision applies to transactions after December 31, 2003.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, with modifications to the limitation on transfer of built-in losses in section 351 transactions. The conference agreement eliminates the provision that requires a basis reduction to be made to stock received by the transferor (rather than to the assets transferred) in the case of a transfer in which the transferor owns at least 80 percent of the vote and value of the stock of the transferee corporation. Thus, the provision that limits the transferee's aggregate basis in the transferred property to the aggregate fair market value of the transferred property generally applies, regardless of the ownership percentage of the transferor in the stock of the transferee corporation.

In addition, the conference agreement permits the transferor and transferee to elect to limit the basis in the stock received by the transferor to the aggregate fair market value of the transferred property, in lieu of limiting the basis in the assets transferred. Such election shall be included with the tax returns of the transferor and transferee for the taxable year in which the transaction occurs and, once made, shall be irrevocable.

19. Clarification of banking business for purposes of determining investment of earnings in U.S. property (sec. 637 of the House bill, sec. 451 of the Senate amendment, and sec. 956 of the Code)

PRESENT LAW

In general, the subpart F rules[562] require the U.S. 10-percent shareholders of a controlled foreign corporation to include in income currently their pro rata shares of certain income of the controlled foreign corporation (referred to as "subpart F income"), whether or not such earnings are distributed currently to the shareholders. In addition, the U.S. 10-percent shareholders of a controlled foreign corporation are subject to U.S. tax currently on their pro rata shares of the controlled foreign corporation's earnings to the extent invested by the controlled foreign corporation in certain U.S. property.[563]

A shareholder's current income inclusion with respect to a controlled foreign corporation's investment in U.S. property for a taxable year is based on the controlled foreign corporation's average investment in U.S. property for such year. For this purpose, the U.S. property held (directly or indirectly) by the controlled foreign corporation must be measured as of the close of each quarter in the taxable year.[564] The amount taken into account with respect to any property is the property's adjusted basis as determined for purposes of reporting the controlled foreign corporation's earnings and profits, reduced by any liability to which the property is subject. The amount determined for current inclusion is the shareholder's pro rata share of an amount equal to the lesser of: (1) the controlled foreign corporation's average investment in U.S. property as of the end of each quarter of such taxable year, to the extent that such investment exceeds the foreign corporation's earnings and profits that were previously taxed on that basis; or (2) the controlled foreign corporation's current or accumulated earnings and profits (but not including a deficit), reduced by distributions during the year and by earnings that have been taxed previously as earnings invested in U.S. property.[565] An income inclusion is required only to the extent that the amount so calculated exceeds the amount of the controlled foreign corporation's earnings that have been previously taxed as subpart F income.[566]

For purposes of section 956, U.S. property generally is defined to include tangible property located in the United States, stock of a U.S. corporation, an obligation of a U.S. person, and certain intangible assets including a patent or copyright, an invention, model or design, a secret formula or process or similar property right which is acquired or developed by the controlled foreign corporation for use in the United States.[567]

Specified exceptions from the definition of U.S. property are provided for: (1) obligations of the United States, money, or deposits with persons carrying on the banking business; (2) certain export property; (3) certain trade or business obligations; (4) aircraft, railroad rolling stock, vessels, motor vehicles or containers used in transportation in foreign commerce and used predominantly outside of the United States; (5) certain insurance company reserves and unearned premiums related to insurance of foreign risks; (6) stock or debt of certain unrelated U.S. corporations; (7) moveable property (other than a vessel or aircraft) used for the purpose of exploring, developing, or certain other activities in connection with the ocean waters of the U.S. Continental Shelf; (8) an amount of assets equal to the controlled foreign corporation's accumulated earnings and profits attributable to income effectively connected with a U.S. trade or business; (9) property (to the extent provided in regulations) held by a foreign sales corporation and related to its export activities; (10) certain deposits or receipts of collateral or margin by a securities or commodities dealer, if such deposit is made or received on commercial terms in the ordinary course of the dealer's business as a securities or commodities dealer; and (11) certain repurchase and reverse repurchase agreement transactions entered into by or with a dealer in securities or commodities in the ordinary course of its business as a securities or commodities dealer.[568]

With regard to the exception for deposits with persons carrying on the banking business, the U.S. Court of Appeals for the Sixth Circuit in *The Limited, Inc.* v. *Commissioner*[569] concluded that a U.S. subsidiary of a U.S. shareholder was "carrying on the banking business" even though its operations were limited to the administration of the private label credit card program of the U.S. shareholder. Therefore, the court held that a controlled foreign corporation of the U.S. shareholder could make deposits with the subsidiary (e.g., through the purchase of certificates of deposit) under this exception, and avoid taxation of the deposits under section 956 as an investment in U.S. property.

HOUSE BILL

The House bill provides that the exception from the definition of U.S. property under section 956 for deposits with persons carrying on the banking business is limited to deposits with persons at least 80-percent of the gross income of which is derived in the active conduct of a banking business from unrelated persons. For purposes of applying the House bill, the deposit recipient and all persons related to the deposit recipient are treated as one person in applying the 80-percent test.

No inference is intended as to the meaning of the phrase "carrying on the banking business" under present law.

Effective date.—The House bill provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except the Senate amendment applies the 80-percent test by reference to financial services income (as defined in section 904(d)(2)(C)(ii) rather than the active conduct of a banking business.

Effective date.—The Senate amendment provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement provides that the exception from the definition of U.S. property under section 956 for deposits with persons carrying on the banking business is limited to deposits with: (1) any bank (as defined by section 2(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(c), without regard to paragraphs (C) and (G) of paragraph (2) of such section); or (2) any other corporation with respect to which a bank holding company (as defined by section 2(a) of such Act) or financial holding company (as defined by section 2(p) of such Act) owns directly or indirectly more than 80 percent by vote or value of the stock of such corporation.

No inference is intended as to the meaning of the phrase "carrying on the banking business" under present law.

Effective date.—The conference agreement provision is effective on the date of enactment.

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[562] Secs. 951-964.

[563] Sec. 951(a)(1)(B).

[564] Sec. 956(a).

[565] Secs. 956 and 959.

[566] Secs. 951(a)(1)(B) and 959.

[567] Sec. 956(c)(1).

[568] Sec. 956(c)(2).

[569] 286 F.3d 324 (6th Cir. 2002), rev'g 113 T.C. 169 (1999).

20. Alternative tax for small insurance companies and modification of exemption from tax for small property and casualty insurance companies (sec. 638 of the House bill, sec. 493 of the Senate amendment, and secs. 501(c)(15) and 831(b) of the Code)

PRESENT LAW

A property and casualty insurance company generally is subject to tax on its taxable income (sec. 831(a)). The taxable income of a property and casualty insurance company is determined as the sum of its underwriting income and investment income (as well as gains and other income items), reduced by allowable deductions (sec. 832).

A property and casualty insurance company may elect to be taxed only on taxable investment income if its net written premiums or direct written premiums (whichever is greater) do not exceed $1.2 million (sec. 831(b)). For purposes of determining the amount of a company's net written premiums or direct written premiums under this rule, premiums received by all members of a controlled group of corporations (as defined in section 831(b)) of which the company is a part are taken into account (including foreign and tax-exempt corporations).

A property and casualty insurance company is eligible to be exempt from Federal income tax if (a) its gross receipts for the taxable year do not exceed $600,000, and (b) the premiums received for the taxable year are greater than 50 percent of its gross receipts.[570] For purposes of determining gross receipts, the gross receipts of all members of a controlled group of corporations of which the company is a part are taken into account (including gross receipts of foreign and tax-exempt corporations).

HOUSE BILL

Under the provision, the $1.2 million ceiling on net written premiums or direct written premiums for purposes of the election to be taxed only on taxable investment income is increased to $1.89 million, and is indexed for taxable years beginning in a calendar year after 2004.

Effective date.—The provision is effective for taxable years beginning after December 31, 2003.

SENATE AMENDMENT

The Senate amendment follows the House bill, except that the $1.89 million amount is indexed for taxable years beginning in a calendar year after 2005. In addition, the Senate amendment modifies one of the present-law requirements for a property and casualty insurance company to eligible to be exempt from Federal income tax by requiring that the premiums received for the taxable year be greater than 60 percent of its gross receipts (rather than 50 percent as under present law).

Effective date.—The provision is effective for taxable years beginning after December 31, 2004.[571]

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision or the Senate amendment provision.

21. Denial of deduction for interest on underpayments attributable to nondisclosed reportable transactions (sec. 639 of the House bill, sec. 417 of the Senate amendment, and sec. 163 of the Code)

PRESENT LAW

In general, corporations may deduct interest paid or accrued within a taxable year on indebtedness.[572] Interest on indebtedness to the Federal government attributable to an underpayment of tax generally may be deducted pursuant to this provision.

HOUSE BILL

The House bill disallows any deduction for interest paid or accrued within a taxable year on any portion of an underpayment of tax that is attributable to an understatement arising from an undisclosed listed transaction or from an undisclosed reportable avoidance transaction (other than a listed transaction).[573]

Effective date.—The House bill provision is effective for underpayments attributable to transactions entered into in taxable years beginning after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except the Senate amendment also disallows any deduction for interest paid or accrued within a taxable year on any portion of an underpayment of tax that is attributable to an understatement arising from a transaction that lacks economic substance.

Effective date.—The Senate amendment provision is effective for underpayments attributable to transactions entered into in taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

22. Clarification of rules for payment of estimated tax for certain deemed asset sales (sec. 640 of the House bill, sec. 481 of the Senate amendment, and sec. 338 of the Code)

PRESENT LAW

In certain circumstances, taxpayers can make an election under section 338(h)(10) to treat a qualifying purchase of 80 percent of the stock of a target corporation by a corporation from a corporation that is a member of an affiliated group (or a qualifying purchase of 80 percent of the stock of an S corporation by a corporation from S corporation shareholders) as a sale of the assets of the target corporation, rather than as a stock sale. The election must be made jointly by the buyer and seller of the stock and is due by the 15th day of the ninth month beginning after the month in which the acquisition date occurs. An agreement for the purchase and sale of stock often may contain an agreement of the parties to make a section 338(h)(10) election.

Section 338(a) also permits a unilateral election by a buyer corporation to treat a qualified stock purchase of a corporation as a deemed asset acquisition, whether or not the seller of the stock is a corporation (or an S corporation is the target). In such a case, the seller or sellers recognize gain or loss on the stock sale (including any estimated taxes with respect to the stock sale), and the target corporation recognizes gain or loss on the deemed asset sale.

Section 338(h)(13) provides that, for purposes of section 6655 (relating to additions to tax for failure by a corporation to pay estimated income tax), tax attributable to a deemed asset sale under section 338(a)(1) shall not be taken into account.

HOUSE BILL

The bill clarifies section 338(h)(13) to provide that the exception for estimated tax purposes with respect to tax attributable to a deemed asset sale does not apply with respect to a qualified stock purchase for which an election is made under section 338(h)(10).

Under the bill if a transaction eligible for the election under section 338(h)(10) occurs, estimated tax would be determined based on the stock sale unless and until there is an agreement of the parties to make a section 338(h)(10) election.

If at the time of the sale there is an agreement of the parties to make a section 338(h)(10) election, then estimated tax is computed based on an asset sale, computed from the date of the sale.

If the agreement to make a section 338(h)(10) election is concluded after the stock sale, such that the original computation was based on a stock sale, estimated tax is recomputed based on the asset sale election.

No inference is intended as to present law.

Effective date.—The bill is effective for qualified stock purchase transactions that occur after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The Conference agreement follows the House bill and the Senate amendment.

23. Exclusion of like-kind exchange property from nonrecognition treatment on the sale or exchange of a principal residence (sec. 641 of the House bill and sec. 492 of the Senate amendment)

PRESENT LAW

A taxpayer may exclude up to $250,000 ($500,000 if married filing a joint return) of gain realized on the sale or exchange of a principal residence. There are no special rules relating to the sale or exchange of a principal residence that was acquired in a like-kind exchange within the prior five years.

HOUSE BILL

The House bill provides that the exclusion for gain on the sale or exchange of a principal residence does not apply if the principal residence was acquired in a like-kind exchange in which any gain was not recognized within the prior five years.

Effective date.—Sales or exchanges of principal residences after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

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[570] A special rule provides that a mutual property and casualty insurance company is eligible to be exempt from Federal income tax under the provision if (a) its gross receipts for the taxable year do not exceed $150,000, and (b) the premiums received for the taxable year are greater than 35 percent of its gross receipts, provided certain requirements are met. The requirements are that no employee of the company or member of the employee's family is an employee of another company that is exempt from tax under section 501(c)(15) (or would be, but for this rule).

[571] The provision preserves the transition rule that was provided under section 206(e) of the Pension Funding Equity Act of 2004 (Pub. L. No. 108-218) relating to companies in receivership or liquidation.

[572] Sec. 163(a).

[573] The definitions of these transactions are the same as those previously described in connection with the provision elsewhere in this bill to modify the accuracy-related penalty for listed and certain reportable transactions.

24. Prevention of mismatching of interest and original issue discount deductions and income inclusions in transactions with related foreign persons (sec. 642 of the House bill, sec. 453 of the Senate amendment, and secs. 163 and 267 of the Code)

PRESENT LAW

Income earned by a foreign corporation from its foreign operations generally is subject to U.S. tax only when such income is distributed to any U.S. person that holds stock in such corporation. Accordingly, a U.S. person that conducts foreign operations through a foreign corporation generally is subject to U.S. tax on the income from such operations when the income is repatriated to the United States through a dividend distribution to the U.S. person. The income is reported on the U.S. person's tax return for the year the distribution is received, and the United States imposes tax on such income at that time. However, certain anti-deferral regimes may cause the U.S. person to be taxed on a current basis in the United States with respect to certain categories of passive or highly mobile income earned by the foreign corporations in which the U.S. person holds stock. The main anti-deferral regimes are the controlled foreign corporation rules of subpart F (secs. 951–964), the passive foreign investment company rules (secs. 1291–1298), and the foreign personal holding company rules (secs. 551–558).

As a general rule, there is allowed as a deduction all interest paid or accrued within the taxable year with respect to indebtedness, including the aggregate daily portions of original issue discount ("OID") of the issuer for the days during such taxable year.[574] However, if a debt instrument is held by a related foreign person, any portion of such OID is not allowable as a deduction to the payor of such instrument until paid ("related-foreign-person rule"). This related-foreign-person rule does not apply to the extent that the OID is effectively connected with the conduct by such foreign related person of a trade or business within the United States (unless such OID is exempt from taxation or is subject to a reduced rate of taxation under a treaty obligation).[575] Treasury regulations further modify the related-foreign-person rule by providing that in the case of a debt owed to a foreign personal holding company ("FPHC"), controlled foreign corporation ("CFC") or passive foreign investment company ("PFIC"), a deduction is allowed for OID as of the day on which the amount is includible in the income of the FPHC, CFC or PFIC, respectively.[576]

In the case of unpaid stated interest and expenses of related persons, where, by reason of a payee's method of accounting, an amount is not includible in the payee's gross income until it is paid but the unpaid amounts are deductible currently by the payor, the amount generally is allowable as a deduction when such amount is includible in the gross income of the payee.[577] With respect to stated interest and other expenses owed to related foreign corporations, Treasury regulations provide a general rule that requires a taxpayer to use the cash method of accounting with respect to the deduction of amounts owed to such related foreign persons (with an exception for income of a related foreign person that is effectively connected with the conduct of a U.S. trade or business and that is not exempt from taxation or subject to a reduced rate of taxation under a treaty obligation).[578] As in the case of OID, the Treasury regulations additionally provide that in the case of stated interest owed to a FPHC, CFC, or PFIC, a deduction is allowed as of the day on which the amount is includible in the income of the FPHC, CFC or PFIC.[579]

HOUSE BILL

The provision provides that deductions for amounts accrued but unpaid (whether by U.S. or foreign persons) to related FPHCs, CFCs, or PFICs are allowable only to the extent that the amounts accrued by the payor are, for U.S. tax purposes, currently includible in the income of the direct or indirect U.S. owners of the related foreign corporation under the relevant inclusion rules.[580] Deductions that have accrued but are not allowable under this provision are allowed when the amounts are paid.

For purposes of determining the amount of the deduction allowable, the extent that an amount attributable to OID or an item is includible in the income of a U.S. person is determined without regard to (1) properly allocable deductions of the related foreign corporation, and (2) qualified deficits of the related foreign corporation under section 952(c)(1)(B). Properly allocable deductions of the related foreign corporation are those expenses, losses, and other deductible amounts of the related foreign corporation that are properly allocated or apportioned, under the principles of section 954(b)(5), to the relevant income item of the related foreign corporation.

The provision grants the Secretary regulatory authority to exempt transactions from these rules, including any transactions entered into by the payor in the ordinary course of a trade or business in which the payor is predominantly engaged, and (in the case of items other than OID) in which the payment of the accrued amounts occurs shortly after its accrual.

Effective date.—The provision is effective for payments accrued on or after date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

The following examples illustrate the operation of this provision. Assume the following facts. A U.S. parent corporation owns 60 percent of the stock of a CFC. An unrelated foreign corporation owns the remaining 40 percent interest in the CFC. The U.S. parent accrues an expense item of 100 to the CFC. The parent would be entitled to a current deduction of 100 for the accrued amount, before taking into account this provision. The item constitutes gross foreign base company income in the hands of the CFC. The item is the only gross income item of the CFC that has the potential to result in the CFC having subpart F income, and has not been paid by the end of the taxable year of the parent. The CFC has deductions of 60 that are properly allocated or apportioned to the 100 of gross foreign base company income under the principles of section 954(b)(5), resulting in 40 (100 – 60) of net foreign base company income. The CFC has earnings and profits for its taxable year in excess of 40, and has 40 of subpart F income. Under these facts, the U.S. parent is allowed a current deduction of 60 (100 60%) under the provision.

If, in the example above, the CFC has deductions of 100 (or more) properly allocated or apportioned to the sole item of 100 of gross foreign base company income under the principles of section 954(b)(5), and has no other income or deductions, the same deduction is allowed to the U.S. parent. Under these circumstances, the parent is allowed a deduction of 60, whether the CFC has positive earnings and profits for its taxable year or has a deficit in earnings and profits for such year.

If the CFC's item of net foreign base company income is positive, and the earnings and profits limitation of section 952(c)(1)(A) reduces what would otherwise be a U.S. shareholder's pro rata share of the CFC's subpart F income, then the deduction will also be reduced under the provision. For example, assume the facts in the first example above, in which the CFC has deductions of 60 that are properly allocated or apportioned to the item of 100 of gross foreign base company income under the principles of section 954(b)(5), resulting in 40 of net foreign base company income. Further assume that, due solely to other losses, the CFC's earnings and profits for its taxable year are 10 instead of 40. In that case, the CFC's subpart F income is limited to 10, and only six is includible in the gross income of the U.S. parent as its pro rata share of subpart F income. Under the provision, the U.S. parent is allowed a current deduction in that case of 42 ((10 + 60) 60%). The conferees intend that, if as a result of such other losses, the CFC has no earnings and profits for its taxable year or has a deficit in earnings and profits for such year, the U.S. parent is instead allowed a current deduction of 36 ((0 + 60) 60%).

25. Exclusion from gross income for interest on overpayments of income tax by individuals (sec. 643 of the House bill)

PRESENT LAW

Overpayment interest

Interest is included in the list of items that are required to be included in gross income (sec. 61(a)(4)). Interest on overpayments of Federal income tax is required to be included in taxable income in the same manner as any other interest that is received by the taxpayer.

Cash basis taxpayers are required to report overpayment interest as income in the period the interest is received. Accrual basis taxpayers are required to report overpayment interest as income when all events fixing the right to the receipt of the overpayment interest have occurred and the amount can be estimated with reasonable accuracy. Generally, this occurs on the date the appropriate IRS official signs the pertinent schedule of overassessments.

Underpayment interest

A corporate taxpayer is allowed to currently take into account interest paid on underpayments of Federal income tax as an ordinary and necessary business expense. Typically, this results in a current deduction. However, the deduction may be deferred if the interest is required to be capitalized or may be disallowed if and to the extent it is determined to be a cost of earning tax exempt income under section 265.

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[574] Sec. 163(e)(1).

[575] Sec. 163(e)(3).

[576] Treas. Reg. sec. 1.163-12(b)(3). In the case of a PFIC, the regulations further require that the person owing the amount at issue have in effect a qualified electing fund election pursuant to section 1295 with respect to the PFIC.

[577] Sec. 267(a)(2).

[578] Treas. Reg. sec. 1.267(a)-3(b)(1), -3(c).

[579] Treas. Reg. sec. 1.267(a)-3(c)(4).

[580] Section 413 of the conference agreement repeals the foreign personal holding company regime, effective for taxable years of foreign corporations beginning after December 31, 2004, and taxable years of U.S. shareholders with or within which such taxable years of foreign corporations end.

Section 163(h) of the Code prohibits the deduction of personal interest by taxpayers other than corporations. Noncorporate taxpayers, including individuals, generally are not allowed to deduct interest on the underpayment of Federal income taxes.

Temporary regulations provide that personal interest includes interest paid on underpayments of individual Federal, State or local income taxes, regardless of the source of the income generating the tax liability. This is consistent with the statement in the General Explanation of the Tax Reform Act of 1986 that "(p)ersonal interest also includes interest on underpayments of individual Federal, State, or local income taxes notwithstanding that all or a portion of the income may have arisen in a trade or business, because such taxes are not considered derived from conduct of a trade or business." The validity of the temporary regulation has been upheld in those Circuits that have considered the issue, including the Fourth, Sixth, Eighth, and Ninth Circuits.

Personal interest also includes interest that is paid by a trust, S corporation, or other pass-through entity on underpayments of State or local income taxes. Personal interest does not include interest that is paid with respect to sales, excise or similar taxes that are incurred in connection with a trade or business or an investment activity.

HOUSE BILL

The bill excludes overpayment interest that is paid to individual taxpayers on overpayments of Federal income tax from gross income. Interest excluded under the provision is not considered disqualified income that could limit the earned income credit. Interest excluded under the provision also is not considered in determining what portion of a taxpayer's social security or tier 1 railroad retirement benefits are subject to tax (sec. 86), whether a taxpayer has sufficient taxable income to be required to file a return (sec. 6012(d)), or for any other computation in which interest exempt from tax is otherwise required to be added to adjusted gross income.

The exclusion from income of overpayment interest does not apply if the Secretary determines that the taxpayer's principal purpose for overpaying his or her tax is to take advantage of the exclusion.

For example, a taxpayer prepares his return without taking into account significant itemized deductions of which he is, or should be, aware. Before the expiration of the statute of limitations, the taxpayer files an amended return claiming these itemized deductions and requesting a refund with interest. Unless the taxpayer can establish a principal purpose for originally overpaying the tax other than collecting excludible interest, the Secretary may determine that the principal purpose of waiting to claim the deductions on an amended return was to earn interest that would be excluded from income. In that case, the interest on the overpayment could not be excluded from income.

It is expected that the Secretary will indicate whether the interest is eligible to be excluded from income on the Form 1099 it provides that taxpayer for taxable year in which the underpayment interest is paid.

Effective date.—Interest received in calendar years beginning after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

26. Deposits made to suspend the running of interest on potential underpayments (sec. 644 of the House bill, sec. 486 of the Senate amendment, and new sec. 6603 of the Code))

PRESENT LAW

Generally, interest on underpayments and overpayments continues to accrue during the period that a taxpayer and the IRS dispute a liability. The accrual of interest on an underpayment is suspended if the IRS fails to notify an individual taxpayer in a timely manner, but interest will begin to accrue once the taxpayer is properly notified. No similar suspension is available for other taxpayers.

A taxpayer that wants to limit its exposure to underpayment interest has a limited number of options. The taxpayer can continue to dispute the amount owed and risk paying a significant amount of interest. If the taxpayer continues to dispute the amount and ultimately loses, the taxpayer will be required to pay interest on the underpayment from the original due date of the return until the date of payment.

In order to avoid the accrual of underpayment interest, the taxpayer may choose to pay the disputed amount and immediately file a claim for refund. Payment of the disputed amount will prevent further interest from accruing if the taxpayer loses (since there is no longer any underpayment) and the taxpayer will earn interest on the resultant overpayment if the taxpayer wins. However, the taxpayer will generally lose access to the Tax Court if it follows this alternative. Amounts paid generally cannot be recovered by the taxpayer on demand, but must await final determination of the taxpayer's liability. Even if an overpayment is ultimately determined, overpaid amounts may not be refunded if they are eligible to be offset against other liabilities of the taxpayer.

The taxpayer may also make a deposit in the nature of a cash bond. The procedures for making a deposit in the nature of a cash bond are provided in Rev. Proc. 84-58.

A deposit in the nature of a cash bond will stop the running of interest on an amount of underpayment equal to the deposit, but the deposit does not itself earn interest. A deposit in the nature of a cash bond is not a payment of tax and is not subject to a claim for credit or refund. A deposit in the nature of a cash bond may be made for all or part of the disputed liability and generally may be recovered by the taxpayer prior to a final determination. However, a deposit in the nature of a cash bond need not be refunded to the extent the Secretary determines that the assessment or collection of the tax determined would be in jeopardy, or that the deposit should be applied against another liability of the taxpayer in the same manner as an overpayment of tax. If the taxpayer recovers the deposit prior to final determination and a deficiency is later determined, the taxpayer will not receive credit for the period in which the funds were held as a deposit. The taxable year to which the deposit in the nature of a cash bond relates must be designated, but the taxpayer may request that the deposit be applied to a different year under certain circumstances.

HOUSE BILL

In general

The provision allows a taxpayer to deposit cash with the IRS that may subsequently be used to pay an underpayment of income, gift, estate, generation-skipping, or certain excise taxes. Interest will not be charged on the portion of the underpayment that is deposited for the period that the amount is on deposit. Generally, deposited amounts that have not been used to pay a tax may be withdrawn at any time if the taxpayer so requests in writing. The withdrawn amounts will earn interest at the applicable Federal rate to the extent they are attributable to a disputable tax.

The Secretary may issue rules relating to the making, use, and return of the deposits.

Use of a deposit to offset underpayments of tax

Any amount on deposit may be used to pay an underpayment of tax that is ultimately assessed. If an underpayment is paid in this manner, the taxpayer will not be charged underpayment interest on the portion of the underpayment that is so paid for the period the funds were on deposit.

For example, assume a calendar year individual taxpayer deposits $20,000 on May 15, 2005, with respect to a disputable item on its 2004 income tax return. On April 15, 2007, an examination of the taxpayer's year 2004 income tax return is completed, and the taxpayer and the IRS agree that the taxable year 2004 taxes were underpaid by $25,000. The $20,000 on deposit is used to pay $20,000 of the underpayment, and the taxpayer also pays the remaining $5,000. In this case, the taxpayer will owe underpayment interest from April 15, 2005 (the original due date of the return) to the date of payment (April 15, 2007) only with respect to the $5,000 of the underpayment that is not paid by the deposit. The taxpayer will owe underpayment interest on the remaining $20,000 of the underpayment only from April 15, 2005, to May 15, 2005, the date the $20,000 was deposited.

Withdrawal of amounts

A taxpayer may request the withdrawal of any amount of deposit at any time. The Secretary must comply with the withdrawal request unless the amount has already been used to pay tax or the Secretary properly determines that collection of tax is in jeopardy. Interest will be paid on deposited amounts that are withdrawn at a rate equal to the short-term applicable Federal rate for the period from the date of deposit to a date not more than 30 days preceding the date of the check paying the withdrawal. Interest is not payable to the extent the deposit was not attributable to a disputable tax.

For example, assume a calendar year individual taxpayer receives a 30-day letter showing a deficiency of $20,000 for taxable year 2004 and deposits $20,000 on May 15, 2006. On April 15, 2007, an administrative appeal is completed, and the taxpayer and the IRS agree that the 2004 taxes were underpaid by $15,000. $15,000 of the deposit is used to pay the underpayment. In this case, the taxpayer will owe underpayment interest from April 15, 2005 (the original due date of the return) to May 15, 2006, the date the $20,000 was deposited. Simultaneously with the use of the $15,000 to offset the underpayment, the taxpayer requests the return of the remaining amount of the deposit (after reduction for the underpayment interest owed by the taxpayer from April 15, 2005, to May 15, 2006). This amount must be returned to the taxpayer with interest determined at the short-term applicable Federal rate from the May 15, 2006, to a date not more than 30 days preceding the date of the check repaying the deposit to the taxpayer.

Limitation on amounts for which interest may be allowed

Interest on a deposit that is returned to a taxpayer shall be allowed for any period only to the extent attributable to a disputable item for that period. A disputable item is any item for which the taxpayer (1) has a reasonable basis for the treatment used on its return and (2) reasonably believes that the Secretary also has a reasonable basis for disallowing the taxpayer's treatment of such item.

All items included in a 30-day letter to a taxpayer are deemed disputable for this purpose. Thus, once a 30-day letter has been issued, the disputable amount cannot be less than the amount of the deficiency shown in the 30-day letter. A 30-day letter is the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals.

Deposits are not payments of tax

A deposit is not a payment of tax prior to the time the deposited amount is used to pay a tax. Similarly, withdrawal of a deposit will not establish a period for which interest was allowable at the short-term applicable Federal rate for the purpose of establishing a net zero interest rate on a similar amount of underpayment for the same period.

Effective date.—Deposits made after date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

27. *Authorize IRS to enter into installment agreements that provide for partial payment (sec. 645 of the House bill, sec. 484 of the Senate amendment, and sec. 6159 of the Code)*

PRESENT LAW

The Code authorizes the IRS to enter into written agreements with any taxpayer under which the taxpayer is allowed to pay taxes owed, as well as interest and penalties, in installment payments if the IRS determines that doing so will facilitate collection of the amounts owed (sec. 6159). An installment agreement does not reduce the amount of taxes, interest, or penalties owed. Generally, during the period installment payments are being made, other IRS enforcement actions (such as levies or seizures) with respect to the taxes included in that agreement are held in abeyance.

Prior to 1998, the IRS administratively entered into installment agreements that provided for partial payment (rather than full payment) of the total amount owed over the period of the agreement. In that year, the IRS Chief Counsel issued a memorandum concluding that partial payment installment agreements were not permitted.

HOUSE BILL

The provision clarifies that the IRS is authorized to enter into installment agreements with taxpayers which do not provide for full payment of the taxpayer's liability over the life of the agreement. The provision also requires the IRS to review partial payment installment agreements at least every two years. The primary purpose of this review is to determine whether the financial condition of the taxpayer has significantly changed so as to warrant an increase in the value of the payments being made.

Effective date.—Installment agreements entered into on or after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

28. Affirmation of consolidated return regulation authority (sec. 646 of the House bill, sec. 421 of the Senate amendment, and sec. 1502 of the Code)

PRESENT LAW

An affiliated group of corporations may elect to file a consolidated return in lieu of separate returns. A condition of electing to file a consolidated return is that all corporations that are members of the consolidated group must consent to all the consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for filing such return.[581]

Section 1502 states: "The Secretary shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group of corporations making a consolidated return and of each corporation in the group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the income-tax liability and the various factors necessary for the determination of such liability, and in order to prevent the avoidance of such tax liability."[582]

Under this authority, the Treasury Department has issued extensive consolidated return regulations.[583]

In the recent case of *Rite Aid Corp.* v. *United States*,[584] the Federal Circuit Court of Appeals addressed the application of a particular provision of certain consolidated return loss disallowance regulations, and concluded that the provision was invalid.[585] The particular provision, known as the "duplicated loss" provision,[586] would have denied a loss on the sale of stock of a subsidiary by a parent corporation that had filed a consolidated return with the subsidiary, to the extent the subsidiary corporation had assets that had a built-in loss, or had a net operating loss, that could be recognized or used later.[587]

The Federal Circuit Court opinion contained language discussing the fact that the regulation produced a result different than the result that would have obtained if the corporations had filed separate returns rather than consolidated returns.[588]

The Federal Circuit Court opinion cited a 1928 Senate Finance Committee Report to legislation that authorized consolidated return regulations, which stated that "many difficult and complicated problems, . . . have arisen in the administration of the provisions permitting the filing of consolidated returns" and that the committee "found it necessary to delegate power to the commissioner to prescribe regulations legislative in character covering them."[589] The Court's opinion also cited a previous decision of the Court of Claims for the proposition, interpreting this legislative history, that section 1502 grants the Secretary "the power to conform the applicable income tax law of the Code to the special, myriad problems resulting from the filing of consolidated income tax returns;" but that section 1502 "does not authorize the Secretary to choose a method that imposes a tax on income that would not otherwise be taxed."[590]

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[581] Sec. 1501.

[582] Sec. 1502.

[583] Regulations issued under the authority of section 1502 are considered to be "legislative" regulations rather than "interpretative" regulations, and as such are usually given greater deference by courts in case of a taxpayer challenge to such a regulation. See, S. Rep. No. 960, 70th Cong., 1st Sess. at 15 (1928), describing the consolidated return regulations as "legislative in character". The Supreme Court has stated that ". . . legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute." *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984) (involving an environmental protection regulation). For examples involving consolidated return regulations, *see, e.g., Wolter Construction Company* v. *Commissioner*, 634 F.2d 1029 (6th Cir. 1980); *Garvey, Inc.* v. *United States*, 1 Ct. Cl. 108 (1983), aff'd 726 F.2d 1569 (Fed. Cir. 1984), cert. denied, 469 U.S. 823 (1984). *Compare, e.g., Audrey J. Walton* v. *Commissioner*, 115 T.C. 589 (2000), describing different standards of review. The case did not involve a consolidated return regulation.

[584] 255 F.3d 1357 (Fed. Cir. 2001), reh'g denied, 2001 U.S. App. LEXIS 23207 (Fed. Cir. Oct. 3, 2001).

[585] Prior to this decision, there had been a few instances involving prior laws in which certain consolidated return regulations were held to be invalid. *See, e.g., American Standard, Inc.* v. *United States*, 602 F.2d 256 (Ct. Cl. 1979), discussed in the text infra. See also Union Carbide *Corp.* v. *United States*, 612 F.2d 558 (Ct. Cl. 1979), and *Allied Corporation* v. *United States*, 685 F. 2d 396 (Ct. Cl. 1982), all three cases involving the allocation of income and loss within a consolidated group for purposes of computation of a deduction allowed under prior law by the Code for Western Hemisphere Trading Corporations. *See also Joseph Weidenhoff* v. *Commissioner*, 32 T.C. 1222, 1242-1244 (1959), involving the application of certain regulations to the excess profits tax credit allowed under prior law, and concluding that the Commissioner had applied a particular regulation in an arbitrary manner inconsistent with the wording of the regulation and inconsistent with even a consolidated group computation. *Cf. Kanawha Gas & Utilities Co.* v. *Commissioner*, 214 F.2d 685 (1954), concluding that the substance of a transaction was an acquisition of assets rather than stock. Thus, a regulation governing basis of the assets of consolidated subsidiaries did not apply to the case. *See also General Machinery Corporation* v. *Commissioner*, 33 B.T.A. 1215 (1936); Lefcourt Realty Corporation, 31 B.T.A. 978 (1935); *Helvering* v. *Morgans, Inc.*, 293 U.S. 121 (1934), interpreting the term "taxable year."

[586] Treas. Reg. sec. 1.1502-20(c)(1)(iii).

[587] Treasury Regulation section 1.1502-20, generally imposing certain "loss disallowance" rules on the disposition of subsidiary stock, contained other limitations besides the "duplicated loss" rule that could limit the loss available to the group on a disposition of a subsidiary's stock. Treasury Regulation section 1.1502-20 as a whole was promulgated in connection with regulations issued under section 337(d), principally in connection with the so-called *General Utilities* repeal of 1986 (referring to the case of *General Utilities & Operating Company* v. *Helvering*, 296 U.S. 200 (1935)). Such repeal generally required a liquidating corporation, or a corporation acquired in a stock acquisition treated as a sale of assets, to pay corporate level tax on the excess of the value of its assets over the basis. Treasury regulation section 1.1502-20 principally reflected an attempt to prevent corporations filing consolidated returns from offsetting income with a loss on the sale of subsidiary stock. Such a loss could result from the unique upward adjustment of a subsidiary's stock basis required under the consolidated return regulations for subsidiary income earned in consolidation, an adjustment intended to prevent taxation of both the subsidiary and the parent on the same income or gain. As one example, absent a denial of certain losses on a sale of subsidiary stock, a consolidated group could obtain a loss deduction with respect to subsidiary stock, the basis of which originally reflected the subsidiary's value at the time of the purchase of the stock, and that had then been adjusted upward on recognition of any built-in income or gain of the subsidiary reflected in that value. The regulations also contained the duplicated loss factor addressed by the court in Rite Aid. The preamble to the regulations stated: "it is not administratively feasible to differentiate between loss attributable to built-in gain and duplicated loss." T.D. 8364, 1991-2 C.B. 43, 46 (Sept. 13, 1991). The government also argued in the Rite Aid case that duplicated loss was a separate concern of the regulations. 255 F.3d at 1360.

[588] For example, the court stated: "The duplicated loss factor . . . addresses a situation that arises from the sale of stock regardless of whether corporations file separate or consolidated returns. With I.R.C. secs. 382 and 383, Congress has addressed this situation by limiting the subsidiary's potential future deduction, not the parent's loss on the sale of stock under I.R.C. sec. 165." 255 F.3d 1357, 1360 (Fed. Cir. 2001).

[589] S. Rep. No. 960, 70th Cong., 1st Sess. 15 (1928). Though not quoted by the court in *Rite Aid*, the same Senate report also indicated that one purpose of the consolidated return authority was to permit treatment of the separate corporations as if they were a single unit, stating "The mere fact that by legal fiction several corporations owned by the same shareholders are separate entities should not obscure the fact that they are in reality one and the same business owned by the same individuals and operated as a unit." S. Rep. No. 960, 70th Cong., 1st Sess. 29 (1928).

The Federal Circuit Court construed these authorities and applied them to invalidate Treas. Reg. Sec. 1.1502-20(c)(1)(iii), stating that: "The loss realized on the sale of a former subsidiary's assets after the consolidated group sells the subsidiary's stock is not a problem resulting from the filing of consolidated income tax returns. The scenario also arises where a corporate shareholder sells the stock of a non-consolidated subsidiary. The corporate shareholder could realize a loss under I.R.C. sec. 1001, and deduct the loss under I.R.C. sec. 165. The subsidiary could then deduct any losses from a later sale of assets. The duplicated loss factor, therefore, addresses a situation that arises from the sale of stock regardless of whether corporations file separate or consolidated returns. With I.R.C. secs. 382 and 383, Congress has addressed this situation by limiting the subsidiary's potential future deduction, not the parent's loss on the sale of stock under I.R.C. sec. 165."[591]

The Treasury Department has announced that it will not continue to litigate the validity of the duplicated loss provision of the regulations, and has issued interim regulations that permit taxpayers for all years to elect a different treatment, though they may apply the provision for the past if they wish.[592]

HOUSE BILL

The provision confirms that, in exercising its authority under section 1502 to issue consolidated return regulations, the Treasury Department may provide rules treating corporations filing consolidated returns differently from corporations filing separate returns.

Thus, under the statutory authority of section 1502, the Treasury Department is authorized to issue consolidated return regulations utilizing either a single taxpayer or separate taxpayer approach or a combination of the two approaches, as Treasury deems necessary in order that the tax liability of any affiliated group of corporations making a consolidated return, and of each corporation in the group, both during and after the period of affiliation, may be determined and adjusted in such manner as clearly to reflect the income-tax liability and the various factors necessary for the determination of such liability, and in order to prevent avoidance of such liability.

Rite Aid is thus overruled to the extent it suggests that the Secretary is required to identify a problem created from the filing of consolidated returns in order to issue regulations that change the application of a Code provision. The Secretary may promulgate consolidated return regulations to change the application of a tax code provision to members of a consolidated group, provided that such regulations are necessary to clearly reflect the income tax liability of the group and each corporation in the group, both during and after the period of affiliation.

The provision nevertheless allows the result of the *Rite Aid* case to stand with respect to the type of factual situation presented in the case. That is, the bill provides for the override of the regulatory provision that took the approach of denying a loss on a deconsolidating disposition of stock of a consolidated subsidiary[593] to the extent the subsidiary had net operating losses or built in losses that could be used later outside the group.[594]

Retaining the result in the *Rite Aid* case with respect to the particular regulation section 1.1502-20(c)(1)(iii) as applied to the factual situation of the case does not in any way prevent or invalidate the various approaches Treasury has announced it will apply or that it intends to consider in lieu of the approach of that regulation, including, for example, the denial of a loss on a stock sale if inside losses of a subsidiary may also be used by the consolidated group, and the possible requirement that inside attributes be adjusted when a subsidiary leaves a group.[595]

Effective date.—The provision is effective for all years, whether beginning before, on, or after the date of enactment of the provision. No inference is intended that the results following from this provision are not the same as the results under present law.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The Conference agreement follows the House bill and the Senate Amendment.

29. Reform of tax treatment of certain leasing arrangements and limitation on deductions allocable to property used by governments or other tax-exempt entities (secs. 647 through 649 of the bill, secs. 475 and 476 of the Senate amendment, secs. 167 and 168 of the Code, and new sec. 470 of the Code)

PRESENT LAW

Overview of depreciation

A taxpayer is allowed to recover, through annual depreciation deductions, the cost of certain property used in a trade or business or for the production of income. The amount of the depreciation deduction allowed with respect to tangible property for a taxable year is determined under the modified accelerated cost recovery system ("MACRS"). Under MACRS, different types of property generally are assigned applicable recovery periods and depreciation methods based on such property's class life. The recovery periods applicable to most tangible personal property (generally tangible property other than residential rental property and nonresidential real property) range from 3 to 25 years and are significantly shorter than the property's class life, which is intended to approximate the economic useful life of the property. In addition, the depreciation methods generally applicable to tangible personal property are the 200-percent and 150-percent declining balance methods, switching to the straight-line method for the taxable year in which the depreciation deduction would be maximized.

Characterization of leases for tax purposes

In general, a taxpayer is treated as the tax owner and is entitled to depreciate property leased to another party if the taxpayer acquires and retains significant and genuine attributes of a traditional owner of the property, including the benefits and burdens of ownership. No single factor is determinative of whether a lessor will be treated as the owner of the property. Rather, the determination is based on all the facts and circumstances surrounding the leasing transaction.

A sale-leaseback transaction is respected for Federal tax purposes if "there is a genuine multiple-party transaction with economic substance which is compelled or encouraged by business or regulatory realities, is imbued with tax-independent considerations, and is not shaped solely by tax-avoidance features that have meaningless labels attached."[596]

Recovery period for tax-exempt use property

Under present law, "tax-exempt use property" must be depreciated on a straight-line basis over a recovery period equal to the longer of the property's class life or 125 percent of the lease term.[597] For purposes of this rule, "tax-exempt use property" is tangible property that is leased (other than under a short-term lease) to a tax-exempt entity.[598] For this purpose, the term "tax-exempt entity" includes Federal, State and local governmental units, charities, and, foreign entities or persons.[599]

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[590] *American Standard, Inc.* v. *United States*, 602 F.2d 256, 261 (Ct. Cl. 1979). That case did not involve the question of separate returns as compared to a single return approach. It involved the computation of a Western Hemisphere Trade Corporation ("WHTC") deduction under prior law (which deduction would have been computed as a percentage of each WHTC's taxable income if the corporations had filed separate returns), in a case where a consolidated group included several WHTCs as well as other corporations. The question was how to apportion income and losses of the admittedly consolidated WHTCs and how to combine that computation with the rest of the group's consolidated income or losses. The court noted that the new, changed regulations approach varied from the approach taken to a similar problem involving public utilities within a group and previously allowed for WHTCs. The court objected that the allocation method adopted by the regulation allowed non-WHTC losses to reduce WHTC income. However, the court did not disallow a method that would net WHTC income of one WHTC with losses of another WHTC, a result that would not have occurred under separate returns. Nor did the court expressly disallow a different fractional method that would net both income and losses of the WHTCs with those of other corporations in the consolidated group. The court also found that the regulation had been adopted without proper notice.

[591] *Rite Aid*, 255 F.3d at 1360.

[592] *See* Temp. Reg. Sec. 1.1502-20T(i)(2), Temp. Reg. Sec. 1.337(d)-2T, and Temp. Reg. Sec. 1.1502-35T. The Treasury Department has also indicated its intention to continue to study all the issues that the original loss disallowance regulations addressed (including issues of furthering single entity principles) and possibly issue different regulations (not including the particular approach of Treas. Reg. Sec. 1.1502-20(c)(1)(iii)) on the issues in the future. See, e.g. Notice 2002-11, 2002-7 I.R.B. 526 (Feb. 19, 2002); T.D. 8984, 67 F.R. 11034 (March 12, 2002); REG-102740-02, 67 F.R. 11070 (March 12, 2002); see also Notice 2002-18, 2002-12 I.R.B. 644 (March 25, 2002); REG-131478-02, 67 F.R. 65060 (October 18, 2002); T.D. 9048, 68 F.R. 12287 (March 14, 2003); and T.D. 9118, REG-153172-03 (March 17, 2004).

[593] Treas. Reg. Sec. 1.1502-20(c)(1)(iii).

[594] The provision is not intended to overrule the current Treasury Department regulations, which allow taxpayers in certain circumstances for the past to follow Treasury Regulations Section 1.1502-20(c)(1)(iii), if they choose to do so. Temp. Reg. Sec. 1.1502-20T(i)(2).

[595] *See, e.g.*, Notice 2002-11, 2002-7 I.R.B. 526 (Feb. 19, 2002); Temp. Reg. Sec. 1.337(d)-2T, (T.D. 8984, 67 F.R. 11034 (March 12, 2002) and T.D. 8998, 67 F.R. 37998 (May 31, 2002)); REG-102740-02, 67 F.R. 11070 (March 12, 2002); *see also* Notice 2002-18, 2002-12 I.R.B. 644 (March 25, 2002); REG-131478-02, 67 F.R. 65060 (October 18, 2002); Temp. Reg. Sec. 1.1502-35T (T.D. 9048, 68 F.R. 12287 (March 14, 2003)); and T.D. 9118, REG-153172-03 (March 17, 2004). In exercising its authority under section 1502, the Secretary is also authorized to prescribe rules that protect the purpose of *General Utilities* repeal using presumptions and other simplifying conventions.

[596] *Frank Lyon Co.* v. *United States*, 435 U.S. 561, 583-84 (1978).

[597] Sec. 168(g)(3)(A). Under present law, section 168(g)(3)(C) states that the recovery period of "qualified technological equipment" is five years.

In determining the length of the lease term for purposes of the 125-percent calculation, several special rules apply. In addition to the stated term of the lease, the lease term includes options to renew the lease or other periods of time during which the lessee could be obligated to make rent payments or assume a risk of loss related to the leased property.

Tax-exempt use property does not include property that is used by a taxpayer to provide a service to a tax-exempt entity. So long as the relationship between the parties is a bona fide service contract, the taxpayer will be allowed to depreciate the property used in satisfying the contract under normal MACRS rules, rather than the rules applicable to tax-exempt use property.[600] In addition, property is not treated as tax-exempt use property merely by reason of a short-term lease. In general, a short-term lease means any lease the term of which is less than three years and less than the greater of one year or 30 percent of the property's class life.[601]

Also, tax-exempt use property generally does not include qualified technological equipment that meets the exception for leases of high technology equipment to tax-exempt entities with lease terms of five years or less.[602] The recovery period for qualified technological equipment that is treated as tax-exempt use property, but is not subject to the high technology equipment exception, is five years.[603]

The term "qualified technological equipment" is defined as computers and related peripheral equipment, high technology telephone station equipment installed on a customer's premises, and high technology medical equipment.[604] In addition, tax-exempt use property does not include computer software because it is intangible property.

HOUSE BILL

Overview

The House bill modifies the recovery period of certain property leased to a tax-exempt entity, alters the definition of lease term for all property leased to a tax-exempt entity, expands the short-term lease exception for qualified technological equipment, and establishes rules to limit deductions associated with leases to tax-exempt entities if the leases do not satisfy specified criteria.

Modify the recovery period of certain property leased to a tax-exempt entity

The House bill modifies the recovery period for qualified technological equipment and computer software leased to a tax-exempt entity[605] to be the longer of the property's assigned class life (or assigned useful life in the case of computer software) or 125 percent of the lease term. The House bill does not apply to short-term leases, as defined under present law with a modification described below for short-term leases of qualified technological equipment.

Modify definition of lease term

In determining the length of the lease term for purposes of the 125-percent calculation, the House bill provides that the lease term includes all service contracts (whether or not treated as a lease under section 7701(e)) and other similar arrangements that follow a lease of property to a tax-exempt entity and that are part of the same transaction (or series of transactions) as the lease.[606]

Under the House bill, service contracts and other similar arrangements include arrangements by which services are provided using the property in exchange for fees that provide a source of repayment of the capital investment in the property.[607]

This requirement applies to all leases of property to a tax-exempt entity.

Expand short-term lease exception for qualified technological equipment

For purposes of determining whether a lease of qualified technological equipment to a tax-exempt entity satisfies the present-law 5-year short-term lease exception for leases of qualified technological equipment, the House bill provides that the term of the lease does not include an option or options of the lessee to renew or extend the lease, provided the rents under the renewal or extension are based upon fair market value determined at the time of the renewal or extension. The aggregate period of such renewals or extensions not included in the lease term under this provision may not exceed 24 months. In addition, this provision does not apply to any period following the failure of a tax-exempt lessee to exercise a purchase option if the result of such failure is that the lease renews automatically at fair market value rents.

Limit deductions for certain leases of property to tax-exempt parties

The House bill also provides that if a taxpayer leases property to a tax-exempt entity, the taxpayer may not claim deductions for a taxable year from the lease transaction in excess of the taxpayer's gross income from the lease for that taxable year. This provision does not apply to certain transactions involving property with respect to which the low-income housing credit or the rehabilitation credit is allowable.

This provision applies to deductions or losses related to a lease to a tax-exempt entity and the leased property.[608] Any disallowed deductions are carried forward and treated as deductions related to the lease in the following taxable year subject to the same limitations. Under rules similar to those applicable to passive activity losses (including the treatment of dispositions of property in which less than all of the gain or loss from the disposition is recognized),[609] a taxpayer generally is permitted to deduct previously disallowed deductions and losses when the taxpayer completely disposes of its interest in the property.

A lease of property to a tax-exempt party is not subject to the deduction limitations of this provision if the lease satisfies all of the following requirements:[610]

(1) Tax-exempt lessee does not monetize its lease obligations

In general, the tax-exempt lessee may not monetize its lease obligations (including any purchase option) in an amount that exceeds 20 percent of the taxpayer's adjusted basis[611] in the leased property at the time the lease is entered into.[612] Specifically, a lease does not satisfy this requirement if the tax-exempt lessee monetizes such excess amount pursuant to an arrangement, set-aside, or expected set-aside, that is to or for the benefit of the taxpayer or any lender, or is to or for the benefit of the tax-exempt lessee, in order to satisfy the lessee's obligations or options under the lease. This determination shall be made at all times during the lease term and shall include the amount of any interest or other income or gain earned on any amount set aside or subject to an arrangement described in this provision. For purposes of determining whether amounts have been set aside or are expected to be set aside, amounts are treated as set aside or expected to be set aside only if a reasonable person would conclude that the facts and circumstances indicate that such amounts are set aside or expected to be set aside.[613]

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[598] Sec. 168(h)(1).

[599] Sec. 168(h)(2).

[600] Sec. 7701(e) provides that a service contract will not be respected, and instead will be treated as a lease of property, if such contract is properly treated as a lease taking into account all relevant factors. The relevant factors include, among others, the service recipient controls the property, the service recipient is in physical possession of the property, the service provider does not bear significant risk of diminished receipts or increased costs if there is nonperformance, the property is not used to concurrently provide services to other entities, and the contract price does not substantially exceed the rental value of the property.

[601] Sec. 168(h)(1)(C).

[602] Sec. 168(h)(3). However, the exception does not apply if part or all of the qualified technological equipment is financed by a tax-exempt obligation, is sold by the tax-exempt entity (or related party) and leased back to the tax-exempt entity (or related party), or the tax-exempt entity is the United States or any agency or instrumentality of the United States.

[603] Sec. 168(g)(3)(C).

[604] Sec. 168(i)(2).

[605] The House bill defines a tax-exempt entity as under present law. Thus, it includes Federal, State, local, and foreign governmental units, charities, foreign entities or persons.

[606] A service contract involving property that previously was leased to the tax-exempt entity is not part of the same transaction as the preceding leasing arrangement (and, thus, is not included in the lease term of such arrangement) if the service contract was not included in the terms and conditions, or contemplated at the inception, of the preceding leasing arrangement.

[607] For purposes of the House bill, a service contract does not include an arrangement for the provision of services if the leased property or substantially similar property is not utilized to provide such services. For example, if at the conclusion of a lease term, a tax-exempt lessee purchases property from the taxpayer and enters into an agreement pursuant to which the taxpayer maintains the property, the maintenance agreement will not be included in the lease term for purposes of the 125-percent computation.

[608] Deductions related to a lease of tax-exempt use property include any depreciation or amortization expense, maintenance expense, taxes or the cost of acquiring an interest in, or lease of, property. In addition, this provision applies to interest that is properly allocable to tax-exempt use property, including interest on any borrowing by a related person, the proceeds of which were used to acquire an interest in the property, whether or not the borrowing is secured by the leased property or any other property.

[609] See Sec. 469(g).

[610] Even if a transaction satisfies each of the following requirements, the taxpayer will be treated as the owner of the leased property only if the taxpayer acquires and retains significant and genuine attributes of an owner of the property under the present-law tax rules, including the benefits and burdens of ownership.

[611] For purposes of this requirement, the adjusted basis of property acquired by the taxpayer in a like-kind exchange or involuntary conversion to which section 1031 or section 1033 applies is equal to the lesser of (1) the fair market value of the property as of the beginning of the lease term, or (2) the amount that would be the taxpayer's adjusted basis if section 1031 or section 1033 did not apply to such acquisition.

[612] Arrangements to monetize lease obligations include defeasance arrangements, loans by the tax-exempt entity (or an affiliate) to the taxpayer (or an affiliate) or any lender, deposit agreements, letters of credit collateralized with cash or cash equivalents, payment undertaking agreements, prepaid rent (within the meaning of the regulations under section 467), sinking fund arrangements, guaranteed investment contracts, financial guaranty insurance, or any similar arrangements.

The Secretary may provide by regulations that this requirement is satisfied, even if a tax-exempt lessee monetizes its lease obligations or options in an amount that exceeds 20 percent of the taxpayer's adjusted basis in the leased property, in cases in which the creditworthiness of the tax-exempt lessee would not otherwise satisfy the taxpayer's customary underwriting standards. Such credit support would not be permitted to exceed 50 percent of the taxpayer's adjusted basis in the property. In addition, if the lease provides the tax-exempt lessee an option to purchase the property for a fixed purchase price (or for other than the fair market value of the property determined at the time of exercise of the option), such credit support at the time that such option may be exercised would not be permitted to exceed 50 percent of the purchase option price.

Certain lease arrangements that involve circular cash flows or insulation of the taxpayer's equity investment from the risk of loss fail this requirement without regard to the amount in which the tax-exempt lessee monetizes its lease obligations or options. Thus, a lease does not satisfy this requirement if the tax-exempt lessee enters into an arrangement to monetize in any amount its lease obligations or options if such arrangement involves (1) a loan (other than an amount treated as a loan under section 467 with respect to a section 467 rental agreement) from the tax-exempt lessee to the taxpayer or a lender, (2) a deposit that is received, a letter of credit that is issued, or a payment undertaking agreement that is entered into by a lender otherwise involved in the transaction, or (3) in the case of a transaction that involves a lender, any credit support made available to the taxpayer in which any such lender does not have a claim that is senior to the taxpayer.

(2) Taxpayer makes and maintains a substantial equity investment in the leased property

The taxpayer must make and maintain a substantial equity investment in the leased property. For this purpose, a taxpayer generally does not make or maintain a substantial equity investment unless (1) at the time the lease is entered into, the taxpayer initially makes an unconditional at-risk equity investment in the property of at least 20 percent of the taxpayer's adjusted basis[614] in the leased property at that time,[615] (2) the taxpayer maintains such equity investment throughout the lease term, and (3) at all times during the lease term, the fair market value of the property at the end of the lease term is reasonably expected to be equal to at least 20 percent of such basis.[616] For this purpose, the fair market value of the property at the end of the lease term is reduced to the extent that a person other than the taxpayer bears a risk of loss in the value of the property.

This requirement does not apply to leases with lease terms of 5 years or less.

(3) Tax-exempt lessee does not bear more than a minimal risk of loss

The tax-exempt lessee generally may not assume or retain more than a minimal risk of loss, other than the obligation to pay rent and insurance premiums, to maintain the property, or other similar conventional obligations of a net lease.[617] For this purpose, a tax-exempt lessee assumes or retains more than a minimal risk of loss if, as a result of obligations assumed or retained by, on behalf of, or pursuant to an agreement with the tax-exempt lessee, the taxpayer is protected from either (1) any portion of the loss that would occur if the fair market value of the leased property were 25 percent less than the leased property's reasonably expected fair market value at the time the lease is terminated, or (2) an aggregate loss that is greater than 50 percent of the loss that would occur if the fair market value of the leased property were zero at lease termination.[618] In addition, the Secretary may provide by regulations that this requirement is not satisfied where the tax-exempt lessee otherwise retains or assumes more than a minimal risk of loss. Such regulations shall be prospective only.

This requirement does not apply to leases with lease terms of 5 years or less.

Coordination with like-kind exchange and involuntary conversion rules

Under this provision, neither the like-kind exchange rules (sec. 1031) nor the involuntary conversion rules (sec. 1033) apply if either (1) the exchanged or converted property is tax-exempt use property subject to a lease that was entered into prior to the effective date of this provision and the lease would not have satisfied the requirements of this provision had such requirements been in effect when the lease was entered into, or (2) the replacement property is tax-exempt use property subject to a lease that does not meet the requirements of this provision.

Other rules

This provision continues to apply throughout the lease term to property that initially was tax-exempt use property, even if the property ceases to be tax-exempt use property during the lease term.[619] In addition, this provision is applied before the application of the passive activity loss rules under section 469.

This provision does not alter the treatment of any Qualified Motor Vehicle Operating Agreement within the meaning of section 7701(h). In the case of any such agreement, the second and third requirements provided by this provision (relating to taxpayer equity investment and tax-exempt lessee risk of loss, respectively) shall be applied without regard to any terminal rental adjustment clause.

Effective date

The House bill provision generally is effective for leases entered into after March 12, 2004.[620] However, the House bill provision does not apply to property located in the United States that is subject to a lease with respect to which a formal application (1) was submitted for approval to the Federal Transit Administration (an agency of the Department of Transportation) after June 30, 2003, and before March 13, 2004, (2) is approved by the Federal Transit Administration before January 1, 2005, and (3) includes a description and the fair market value of such property.

The House bill provisions relating to coordination with the like-kind exchange and involuntary conversion rules are effective with respect to property that is exchanged or converted after the date of enactment.

No inference is intended regarding the appropriate present-law tax treatment of transactions entered into prior to the effective date of the House bill provision. In addition, it is intended that the House bill provision shall not be construed as altering or supplanting the present-law tax rules providing that a taxpayer is treated as the owner of leased property only if the taxpayer acquires and retains significant and genuine attributes of an owner of the property, including the benefits and burdens of ownership. The House bill provision also is not intended to affect the scope of any other present-law tax rules or doctrines applicable to purported leasing transactions.

SENATE AMENDMENT

Overview

The Senate amendment is similar to the House bill in that it modifies the recovery period of certain property leased to a tax-exempt entity, alters the definition of lease term for all property leased to a tax-exempt entity, and establishes rules to limit deductions associated with leases to tax-exempt entities if the leases do not satisfy specified criteria.

Modify the recovery period of certain property leased to a tax-exempt entity

The Senate amendment provision that modifies the recovery period for qualified technological equipment and computer software leased to a tax-exempt entity is the same as the House bill provision.

Modify definition of lease term

The Senate amendment provision that modifies the definition of a lease term is the same as the House bill provision.

Expand short-term lease exception for qualified technological equipment

The Senate amendment does not include the House bill provision that excludes certain renewals and extensions of up to 24 months from the determination of whether a lease of qualified technological equipment to a tax-exempt entity satisfies the present-law 5-year short-term lease exception for leases of qualified technological equipment.

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[613] It is anticipated under the House bill that the customary and budgeted funding by tax-exempt entities of current obligations under a lease through unrestricted accounts or funds for general working capital needs will not be considered arrangements, set-asides, or expected set-asides under this requirement.

[614] For purposes of this requirement, the adjusted basis of property acquired by the taxpayer in a like-kind exchange or involuntary conversion to which section 1031 or section 1033 applies is equal to the lesser of (1) the fair market value of the property as of the beginning of the lease term, or (2) the amount that would be the taxpayer's adjusted basis if section 1031 or section 1033 did not apply to such acquisition.

[615] The taxpayer's at-risk equity investment shall include only consideration paid, and personal liability incurred, by the taxpayer to acquire the property. Cf. Rev. Proc. 2001-28, 2001-2 C.B. 1156.

[616] Cf. Rev. Proc. 2001-28, sec. 4.01(2), 2001-1 C.B. 1156. The fair market value of the property must be determined without regard to inflation or deflation during the lease term and after subtracting the cost of removing the property.

[617] Examples of arrangements by which a tax-exempt lessee might assume or retain a risk of loss include put options, residual value guarantees, residual value insurance, and service contracts. However, leases do not fail to satisfy this requirement solely by reason of lease provisions that require the tax-exempt lessee to pay a contractually stipulated loss value to the taxpayer in the event of an early termination due to a casualty loss, a material default by the tax-exempt lessee (excluding the failure by the tax-exempt lessee to enter into an arrangement described above), or other similar extraordinary events that are not reasonably expected to occur at lease inception.

[618] For purposes of this requirement, residual value protection provided to the taxpayer by a manufacturer or dealer of the leased property is not treated as borne by the tax-exempt lessee if the manufacturer or dealer provides such residual value protection to customers in the ordinary course of its business.

[619] Conversely, however, a lease of property that is not tax-exempt use property does not become subject to this provision solely by reason of requisition or seizure by the Federal government in national emergency circumstances.

[620] If a lease entered into on or before March 12, 2004, is transferred in a transaction that does not materially alter the terms of such lease, the bill shall not apply to the lease as a result of such transfer.

Limit deductions for certain leases of property to tax-exempt parties

The Senate amendment is similar to the House bill in that it limits a taxpayer's deductions for a taxable year from a lease transaction with a tax-exempt entity to the taxpayer's gross income from the lease for that taxable year. However, the Senate amendment does not exclude transactions involving property with respect to which the rehabilitation credit is allowable.

Like the House bill, the Senate amendment provides that a lease of property to a tax-exempt party is not subject to the deduction limitations of this provision if the lease satisfies a series of requirements similar to that provided in the House bill, with the following modifications:

(1) Leased property is not financed with tax-exempt bonds or Federal funds

The Senate amendment provides that the leased property must not have been not directly or indirectly financed with tax-exempt bonds that are outstanding when the lease is entered into, or with Federal funds. This requirement is not included in the House bill.

For example, a lease of rolling stock to a municipality would be subject to the Senate amendment if the proceeds of the municipality's general obligation bond were used to finance the acquisition of the rolling stock (in whole or part) and the bond is outstanding when the lease is entered into.

The Senate amendment permits the Secretary to provide a de minimis exception from this requirement.

(2) Tax-exempt lessee does not monetize its lease obligations

The Senate amendment is similar to the House bill in that it provides that the tax-exempt lessee may not monetize its lease obligations in an amount that exceeds 20 percent of the taxpayer's adjusted basis in the leased property at the time the lease is entered into. However, the Senate amendment also permits the Secretary to identify arrangements (in addition to those specified in the provision) to which the requirement applies.

(3) Taxpayer makes and maintains a substantial equity investment in the leased property

The Senate amendment is similar to the House bill in that it requires the taxpayer to make and maintain a substantial equity investment in the leased property. However, the Senate amendment does not generally exclude from the application of this requirement leases with lease terms of 5 years or less. Instead, the Senate amendment provides that, with respect to short-term leases as defined under present law, the taxpayer is required to make a substantial equity investment, but is not required to maintain a substantial equity investment, and the leased property is not required to be reasonably expected to equal 20 percent of the taxpayer's adjusted basis at the time the lease is entered into.

(4) Tax-exempt lessee does not bear more than a minimal risk of loss

The Senate amendment is similar to the House bill in that it provides that the tax-exempt lessee generally may not assume or retain more than a minimal risk of loss with respect to the lease. However, the Senate amendment does not exclude from the application of this requirement leases with lease terms of 5 years or less.

(5) Lease of certain property does not include a fixed-price purchase option of the tax-exempt lessee

The Senate amendment provides that the tax-exempt lessee may not have an option to purchase the leased property for any stated purchase price other than the fair market value of the property (as determined at the time of exercise of the option). This requirement does not apply to property with a class life (as defined in section 168(i)(1)) of seven years or less. This requirement is not included in the House bill.

(6) Lease meets any other requirement prescribed in regulations

The Senate amendment requires the lease to meet any other requirements that the Secretary prescribes by regulations. This requirement is not included in the House bill.

Coordination with like-kind exchange and involuntary conversion rules

The Senate amendment does not include the House bill provisions that coordinate the like-kind exchange and involuntary conversion rules with the deduction limitation provision.

Effective date

The Senate amendment provision generally is effective for leases entered into after November 18, 2003. However, with respect to tax-exempt use property that is leased to a foreign tax-exempt entity or person in a transaction entered into on or before November 18, 2003, the Senate amendment provision is effective for taxable years beginning after January 31, 2004.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, with the following modifications.

Definition of tax-exempt entity

The conference agreement expands the present-law definition of tax-exempt entity for this purpose to include certain Indian tribal governments in addition to Federal, State, local, and foreign governmental units, charities, foreign entities or persons.

Modify the recovery period of certain property leased to a tax-exempt entity

The conference agreement also modifies the recovery period for certain intangibles leased to a tax-exempt entity to be the no less than 125 percent of the lease term.[621] The conference agreement modification does not apply to short-term leases, as defined under present law with a modification described below for short-term leases of qualified technological equipment.

Limit deductions for leases of property to tax-exempt parties

The conference agreement provides an additional requirement that must be satisfied to avoid the deduction limitations for certain leases of property to tax-exempt parties. This requirement provides that the tax-exempt lessee may not have an option to purchase the leased property for any stated purchase price other than the fair market value of the property (as determined at the time of exercise of the option). This requirement does not apply to (1) property with a class life (as defined in section 168(i)(1)) of seven years or less, or (2) any fixed-wing aircraft or vessels (i.e., ships).

Effective date

The conference agreement modifies the Federal Transit Administration approval deadline to January 1, 2006.

In addition, the conference agreement provides that the provisions relating to intangible assets and Indian tribal governments are effective for leases entered into after October 3, 2004.

30. Clarification of the economic substance doctrine (sec. 401 of the Senate amendment and sec. 7701 of the Code)

PRESENT LAW

In general

The Code provides specific rules regarding the computation of taxable income, including the amount, timing, source, and character of items of income, gain, loss and deduction. These rules are designed to provide for the computation of taxable income in a manner that provides for a degree of specificity to both taxpayers and the government. Taxpayers generally may plan their transactions in reliance on these rules to determine the federal income tax consequences arising from the transactions.

In addition to the statutory provisions, courts have developed several doctrines that can be applied to deny the tax benefits of tax motivated transactions, notwithstanding that the transaction may satisfy the literal requirements of a specific tax provision. The common-law doctrines are not entirely distinguishable, and their application to a given set of facts is often blurred by the courts and the IRS. Although these doctrines serve an important role in the administration of the tax system, invocation of these doctrines can be seen as at odds with an objective, "rule-based" system of taxation. Nonetheless, courts have applied the doctrines to deny tax benefits arising from certain transactions.[622]

A common-law doctrine applied with increasing frequency is the "economic substance" doctrine. In general, this doctrine denies tax benefits arising from transactions that do not result in a meaningful change to the taxpayer's economic position other than a purported reduction in federal income tax.[623]

Economic substance doctrine

Courts generally deny claimed tax benefits if the transaction that gives rise to those benefits lacks economic substance independent of tax considerations—notwithstanding that the purported activity actually occurred. The tax court has described the doctrine as follows: "The tax law . . . requires that the intended transactions have economic substance separate and distinct from economic benefit achieved solely by tax reduction. The doctrine of economic substance becomes applicable, and a judicial remedy is warranted, where a taxpayer seeks to claim tax benefits, unintended by Congress, by means of transactions that serve no economic purpose other than tax savings."[624]

Business purpose doctrine

Another common law doctrine that overlays and is often considered together with (if not part and parcel of) the economic substance doctrine is the business purpose doctrine. The business purpose test is a subjective inquiry into the motives of the taxpayer—that is, whether the taxpayer intended the transaction to serve some useful non-tax purpose. In making this determination, some courts have bifurcated a transaction in which independent activities with non-tax objectives have been combined with an unrelated item having only tax-avoidance objectives in order to disallow the tax benefits of the overall transaction.[625]

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[621] In the case of computer software and intangible assets, this rule is applied by substituting useful life and amortization period, respectively, for class life.

[622] See, e.g., *ACM Partnership* v. *Commissioner*, 157 F.3d 231 (3d Cir. 1998), aff'g 73 T.C.M. (CCH) 2189 (1997), cert. denied 526 U.S. 1017 (1999).

[623] Closely related doctrines also applied by the courts (sometimes interchangeable with the economic substance doctrine) include the "sham transaction doctrine" and the "business purpose doctrine". See, e.g., *Knetsch* v. *United States*, 364 U.S. 361 (1960) (denying interest deductions on a "sham transaction" whose only purpose was to create the deductions).

[624] *ACM Partnership* v. *Commissioner*, 73 T.C.M. at 2215.

Application by the courts

Elements of the doctrine

There is a lack of uniformity regarding the proper application of the economic substance doctrine.[626] Some courts apply a conjunctive test that requires a taxpayer to establish the presence of both economic substance (i.e., the objective component) and business purpose (i.e., the subjective component) in order for the transaction to survive judicial scrutiny.[627] A narrower approach used by some courts is to conclude that either a business purpose or economic substance is sufficient to respect the transaction).[628] A third approach regards economic substance and business purpose as "simply more precise factors to consider" in determining whether a transaction has any practical economic effects other than the creation of tax benefits.[629]

Profit potential

There also is a lack of uniformity regarding the necessity and level of profit potential necessary to establish economic substance. Since the time of *Gregory* v. *Helvering*,[630] several courts have denied tax benefits on the grounds that the subject transactions lacked profit potential.[631] In addition, some courts have applied the economic substance doctrine to disallow tax benefits in transactions in which a taxpayer was exposed to risk and the transaction had a profit potential, but the court concluded that the economic risks and profit potential were insignificant when compared to the tax benefits.[632] Under this analysis, the taxpayer's profit potential must be more than nominal. Conversely, other courts view the application of the economic substance doctrine as requiring an objective determination of whether a "reasonable possibility of profit" from the transaction existed apart from the tax benefits.[633] In these cases, in assessing whether a reasonable possibility of profit exists, it is sufficient if there is a nominal amount of pre-tax profit as measured against expected net tax benefits.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment clarifies and enhances the application of the economic substance doctrine. The Senate amendment provides that, in a case in which a court determines that the economic substance doctrine is relevant to a transaction (or a series of transactions), such transaction (or series of transactions) has economic substance (and thus satisfies the economic substance doctrine) only if the taxpayer establishes that (1) the transaction changes in a meaningful way (apart from Federal income tax consequences) the taxpayer's economic position, and (2) the taxpayer has a substantial non-tax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.[634]

The Senate amendment does not change current law standards used by courts in determining when to utilize an economic substance analysis.[635] Also, the Senate amendment does not alter the court's ability to aggregate, disaggregate or otherwise recharacterize a transaction when applying the doctrine.[636] The Senate amendment provides a uniform definition of economic substance, but does not alter the flexibility of the courts in other respects.

Conjunctive analysis

The Senate amendment clarifies that the economic substance doctrine involves a conjunctive analysis—there must be an objective inquiry regarding the effects of the transaction on the taxpayer's economic position, as well as a subjective inquiry regarding the taxpayer's motives for engaging in the transaction. Under the Senate amendment, a transaction must satisfy both tests—i.e., it must change in a meaningful way (apart from Federal income tax consequences) the taxpayer's economic position, and the taxpayer must have a substantial non-tax purpose for entering into such transaction (and the transaction is a reasonable means of accomplishing such purpose)—in order to satisfy the economic substance doctrine. This clarification eliminates the disparity that exists among the circuits regarding the application of the doctrine, and modifies its application in those circuits in which either a change in economic position or a non-tax business purpose (without having both) is sufficient to satisfy the economic substance doctrine.

Non-tax business purpose

The Senate amendment provides that a taxpayer's non-tax purpose for entering into a transaction (the second prong in the analysis) must be "substantial," and that the transaction must be "a reasonable means" of accomplishing such purpose. Under this formulation, the non-tax purpose for the transaction must bear a reasonable relationship to the taxpayer's normal business operations or investment activities.[637]

In determining whether a taxpayer has a substantial non-tax business purpose, an objective of achieving a favorable accounting treatment for financial reporting purposes will not be treated as having a substantial non-tax purpose.[638] Furthermore, a transaction that is expected to increase financial accounting income as a result of generating tax deductions or losses without a corresponding financial accounting charge (i.e., a permanent book-tax difference)[639] should not be considered to have a substantial non-tax purpose unless a substantial non-tax purpose exists apart from the financial accounting benefits.[640]

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[625] *ACM Partnership* v. *Commissioner*, 157 F.3d at 256 n.48.

[626] "The casebooks are glutted with [economic substance] tests. Many such tests proliferate because they give the comforting illusion of consistency and precision. They often obscure rather than clarify." *Collins* v. *Commissioner*, 857 F.2d 1383, 1386 (9th Cir. 1988).

[627] See, e.g., *Pasternak* v. *Commissioner*, 990 F.2d 893, 898 (6th Cir. 1993) ("The threshold question is whether the transaction has economic substance. If the answer is yes, the question becomes whether the taxpayer was motivated by profit to participate in the transaction.")

[628] See, e.g., *Rice's Toyota World* v. *Commissioner*, 752 F.2d 89, 91-92 (4th Cir. 1985) ("To treat a transaction as a sham, the court must find that the taxpayer was motivated by no business purposes other than obtaining tax benefits in entering the transaction, and, second, that the transaction has no economic substance because no reasonable possibility of a profit exists."); *IES Industries* v. *United States*, 253 F.3d 350, 358 (8th Cir. 2001) ("In determining whether a transaction is a sham for tax purposes [under the Eighth Circuit test], a transaction will be characterized as a sham if it is not motivated by any economic purpose out of tax considerations (the business purpose test), and if it is without economic substance because no real potential for profit exists" (the economic substance test).") As noted earlier, the economic substance doctrine and the sham transaction doctrine are similar and sometimes are applied interchangeably. For a more detailed discussion of the sham transaction doctrine, see, e.g., Joint Committee on Taxation, Study of Present-Law Penalty and Interest Provisions as Required by Section 3801 of the Internal Revenue Service Restructuring and Reform Act of 1998 (including Provisions Relating to Corporate Tax Shelters) (JCS-3-99) at 182.

[629] See, e.g., *ACM Partnership* v. *Commissioner*, 157 F.3d at 247; *James* v. *Commissioner*, 899 F.2d 905, 908 (10th Cir. 1995); *Sacks* v. *Commissioner*, 69 F.3d 982, 985 (9th Cir. 1995) ("Instead, the consideration of business purpose and economic substance are simply more precise factors to consider. . . . We have repeatedly and carefully noted that this formulation cannot be used as a 'rigid two-step analysis'.").

[630] 293 U.S. 465 (1935).

[631] See, e.g., *Knetsch*, 364 U.S. at 361; *Goldstein* v. *Commissioner*, 364 F.2d 734 (2d Cir. 1966) (holding that an unprofitable, leveraged acquisition of Treasury bills, and accompanying prepaid interest deduction, lacked economic substance); *Ginsburg* v. *Commissioner*, 35 T.C.M. (CCH) 860 (1976) (holding that a leveraged cattle-breeding program lacked economic substance).

[632] See, e.g., *Goldstein* v. *Commissioner*, 364 F.2d at 739-40 (disallowing deduction even though taxpayer had a possibility of small gain or loss by owning Treasury bills); *Sheldon* v. *Commissioner*, 94 T.C. 738, 768 (1990) (stating, "potential for gain . . . is infinitesimally nominal and vastly insignificant when considered in comparison with the claimed deductions").

[633] See, e.g., *Rice's Toyota World* v. *Commissioner*, 752 F.2d at 94 (the economic substance inquiry requires an objective determination of whether a reasonable possibility of profit from the transaction existed apart from tax benefits); *Compaq Computer Corp.* v. *Commissioner*, 277 F.3d at 781 (applied the same test, citing *Rice's Toyota World*); *IES Industries* v. *United States*, 253 F.3d at 354 (the application of the objective economic substance test involves determining whether there was a "reasonable possibility of profit . . . apart from tax benefits.").

[634] If the tax benefits are clearly contemplated and expected by the language and purpose of the relevant authority, it is not intended that such tax benefits be disallowed if the only reason for such disallowance is that the transaction fails the economic substance doctrine as defined in this provision.

[635] See, e.g., Treas. Reg. 1.269-2, stating that characteristic of circumstances in which a deduction otherwise allowed will be disallowed are those in which the effect of the deduction, credit, or other allowance would be to distort the liability of the particular taxpayer when the essential nature of the transaction or situation is examined in the light of the basic purpose or plan which the deduction, credit, or other allowance was designed by the Congress to effectuate.

[636] See, e.g., *Minnesota Tea Co.* v. *Helvering*, 302 U.S. 609, 613 (1938) ("A given result at the end of a straight path is not made a different result because reached by following a devious path.").

[637] See, e.g., Treas. reg. sec. 1.269-2(b) (stating that a distortion of tax liability indicating the principal purpose of tax evasion or avoidance might be evidenced by the fact that "the transaction was not undertaken for reasons germane to the conduct of the business of the taxpayer"). Similarly, in *ACM Partnership* v. *Commissioner*, 73 T.C.M. (CCH) 2189 (1997), the court stated: "Key to [the determination of whether a transaction has economic substance] is that the transaction must be rationally related to a useful nontax purpose that is plausible in light of the taxpayer's conduct and useful in light of the taxpayer's economic situation and intentions. Both the utility of the stated purpose and the rationality of the means chosen to effectuate it must be evaluated in accordance with commercial practices in the relevant industry. A rational relationship between purpose and means ordinarily will not be found unless there was a reasonable expectation that the nontax benefits would be at least commensurate with the transaction costs." [citations omitted]

See also Martin McMahon Jr., Economic Substance, Purposive Activity, and Corporate Tax Shelters, 94 Tax Notes 1017, 1023 (Feb. 25, 2002) (advocates "confining the most rigorous application of business purpose, economic substance, and purposive activity tests to transactions outside the ordinary course of the taxpayer's business—those transactions that do not appear to contribute to any business activity or objective that the taxpayer may have had apart from tax planning but are merely loss generators."); Mark P. Gergen, The Common Knowledge of Tax Abuse, 54 SMU L. Rev. 131, 140 (Winter 2001) ("The message is that you can pick up tax gold if you find it in the street while going about your business, but you cannot go hunting for it.").

By requiring that a transaction be a "reasonable means" of accomplishing its non-tax purpose, the Senate amendment reiterates the present-law ability of the courts to bifurcate a transaction in which independent activities with non-tax objectives are combined with an unrelated item having only tax-avoidance objectives in order to disallow the tax benefits of the overall transaction.[641]

Profit potential

Under the Senate amendment, a taxpayer may rely on factors other than profit potential to demonstrate that a transaction results in a meaningful change in the taxpayer's economic position; the Senate amendment merely sets forth a minimum threshold of profit potential if that test is relied on to demonstrate a meaningful change in economic position. If a taxpayer relies on a profit potential, however, the present value of the reasonably expected pre-tax profit must be substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected.[642] Moreover, the profit potential must exceed a risk-free rate of return. In addition, in determining pre-tax profit, fees and other transaction expenses and foreign taxes are treated as expenses.

In applying the profit potential test to a lessor of tangible property, depreciation, applicable tax credits (such as the rehabilitation tax credit and the low income housing tax credit), and any other deduction as provided in guidance by the Secretary are not taken into account in measuring tax benefits.

Transactions with tax-indifferent parties

The Senate amendment also provides special rules for transactions with tax-indifferent parties. For this purpose, a tax-indifferent party means any person or entity not subject to Federal income tax, or any person to whom an item would have no substantial impact on its income tax liability. Under these rules, the form of a financing transaction will not be respected if the present value of the tax deductions to be claimed is substantially in excess of the present value of the anticipated economic returns to the lender. Also, the form of a transaction with a tax-indifferent party will not be respected if it results in an allocation of income or gain to the tax-indifferent party in excess of the tax-indifferent party's economic gain or income or if the transaction results in the shifting of basis on account of overstating the income or gain of the tax-indifferent party.

Other rules

The Secretary may prescribe regulations which provide (1) exemptions from the application of the Senate amendment, and (2) other rules as may be necessary or appropriate to carry out the purposes of the Senate amendment.

No inference is intended as to the proper application of the economic substance doctrine under present law. In addition, except with respect to the economic substance doctrine, the Senate amendment shall not be construed as altering or supplanting any other common law doctrine (including the sham transaction doctrine), and the Senate amendment shall be construed as being additive to any such other doctrine.

Effective date

The Senate amendment provision applies to transactions entered into after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

31. Penalty for understatements attributable to transactions lacking economic substance, etc. (sec. 404 of the Senate amendment and sec. 6662B of the Code)

PRESENT LAW

An accuracy-related penalty applies to the portion of any underpayment that is attributable to (1) negligence, (2) any substantial understatement of income tax, (3) any substantial valuation misstatement, (4) any substantial overstatement of pension liabilities, or (5) any substantial estate or gift tax valuation understatement. If the correct income tax liability exceeds that reported by the taxpayer by the greater of 10 percent of the correct tax or $5,000 ($10,000 in the case of corporations), then a substantial understatement exists and a penalty may be imposed equal to 20 percent of the underpayment of tax attributable to the understatement.[643] The amount of any understatement is reduced by any portion attributable to an item if (1) the treatment of the item is supported by substantial authority, or (2) facts relevant to the tax treatment of the item were adequately disclosed and there was a reasonable basis for its tax treatment.

Special rules apply with respect to tax shelters.[644] For understatements by non-corporate taxpayers attributable to tax shelters, the penalty may be avoided only if the taxpayer establishes that, in addition to having substantial authority for the position, the taxpayer reasonably believed that the treatment claimed was more likely than not the proper treatment of the item. This reduction in the penalty is unavailable to corporate tax shelters.

The penalty generally is abated (even with respect to tax shelters) in cases in which the taxpayer can demonstrate that there was "reasonable cause" for the underpayment and that the taxpayer acted in good faith.[645] The relevant regulations provide that reasonable cause exists where the taxpayer "reasonably relies in good faith on an opinion based on a professional tax advisor's analysis of the pertinent facts and authorities [that] . . . unambiguously concludes that there is a greater than 50-percent likelihood that the tax treatment of the item will be upheld if challenged" by the IRS.[646]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment imposes a penalty for an understatement attributable to any transaction that lacks economic substance (referred to in the statute as a "non-economic substance transaction understatement").[647] The penalty rate is 40 percent (reduced to 20 percent if the taxpayer adequately discloses the relevant facts in accordance with regulations prescribed under section 6011). No exceptions (including the reasonable cause or rescission rules) to the penalty would be available under the Senate amendment (i.e., the penalty is a strict-liability penalty).

A "non-economic substance transaction" means any transaction if (1) the transaction lacks economic substance (as defined in the earlier Senate amendment provision regarding the economic substance doctrine),[648] (2) the transaction was not respected under the rules relating to transactions with tax-indifferent parties (as described in the earlier Senate amendment provision regarding the economic substance doctrine),[649] or (3) any similar rule of law. For this purpose, a similar rule of law would include, for example, an understatement attributable to a transaction that is determined to be a sham transaction.

For purposes of the Senate amendment, the calculation of an "understatement" is made in the same manner as in the separate Senate amendment provision relating to accuracy-related penalties for listed and reportable avoidance transactions (new sec. 6662A). Thus, the amount of the understatement under the Senate amendment provision would be determined as the sum of (1) the product of the highest corporate or individual tax rate (as appropriate) and the increase in taxable income resulting from the difference between the taxpayer's treatment of the item and the proper treatment of the item (without regard to other items on the tax return),[650] and (2) the amount of any decrease in the aggregate amount of credits which results from a difference between the taxpayer's treatment of an item and the proper tax treatment of such item. In essence, the penalty will apply to the amount of any understatement attributable solely to a non-economic substance transaction.

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[638] However, if the tax benefits are clearly contemplated and expected by the language and purpose of the relevant authority, such tax benefits should not be disallowed solely because the transaction results in a favorable accounting treatment. An example is the repealed foreign sales corporation rules.

[639] This includes tax deductions or losses that are anticipated to be recognized in a period subsequent to the period the financial accounting benefit is recognized. For example, FAS 109 in some cases permits the recognition of financial accounting benefits prior to the period in which the tax benefits are recognized for income tax purposes."

[640] Claiming that a financial accounting benefit constitutes a substantial non-tax purpose fails to consider the origin of the accounting benefit (i.e., reduction of taxes) and significantly diminishes the purpose for having a substantial non-tax purpose requirement. See, e.g., *American Electric Power, Inc.* v. *U.S.*, 136 F. Supp. 2d 762, 791-92 (S.D. Ohio, 2001) ("AEP's intended use of the cash flows generated by the [corporate-owned life insurance] plan is irrelevant to the subjective prong of the economic substance analysis. If a legitimate business purpose for the use of the tax savings 'were sufficient to breathe substance into a transaction whose only purpose was to reduce taxes, [then] every sham tax-shelter device might succeed,'" citing *Winn-Dixie* v. *Commissioner*, 113 T.C. 254, 287 (1999)).

[641] See, e.g., *ACM Partnership* v. *Commissioner*, 157 F.3d at 256 n.48.

[642] Thus, a "reasonable possibility of profit" will not be sufficient to establish that a transaction has economic substance.

[643] Sec. 6662.

[644] Sec. 6662(d)(2)(C).

[645] Sec. 6664(c).

[646] Treas. Reg. sec. 1.6662-4(g)(4)(i)(B); Treas. Reg. sec. 1.6664-4(c).

[647] Thus, unlike the new accuracy-related penalty under section 6662A (which applies only to listed and reportable avoidance transactions), the new penalty under this provision applies to any transaction that lacks economic substance.

[648] The provision provides that a transaction has economic substance only if: (1) the transaction changes in a meaningful way (apart from Federal income tax effects) the taxpayer's economic position, and (2) the transaction has a substantial non-tax purpose for entering into such transaction and is a reasonable means of accomplishing such purpose.

[649] The provision provides that the form of a transaction that involves a tax-indifferent party will not be respected in certain circumstances.

[650] For this purpose, any reduction in the excess of deductions allowed for the taxable year over gross

Except as provided in regulations, the taxpayer's treatment of an item will not take into account any amendment or supplement to a return if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted regarding an examination of such return or such other date as specified by the Secretary.

A public entity that is required to pay a penalty under the Senate amendment (regardless of whether the transaction was disclosed) must disclose the imposition of the penalty in reports to the SEC for such periods as the Secretary shall specify. The disclosure to the SEC applies without regard to whether the taxpayer determines the amount of the penalty to be material to the reports in which the penalty must appear, and any failure to disclose such penalty in the reports is treated as a failure to disclose a listed transaction. A taxpayer must disclose a penalty in reports to the SEC once the taxpayer has exhausted its administrative and judicial remedies with respect to the penalty (or if earlier, when paid).

Prior to this penalty being asserted in the first letter of proposed deficiency that allows the taxpayer an opportunity for administrative review in the IRS Office of Appeals (e.g., a Revenue Agent Report), the IRS Chief Counsel or his delegate at the IRS National Office must approve the inclusion in writing. Once a penalty (regardless of whether the transaction was disclosed) has been included in the Revenue Agent Report, the penalty cannot be compromised for purposes of a settlement without approval of the Commissioner personally or the head of the Office of Tax Shelter Analysis. Furthermore, the IRS is required to submit an annual report to Congress summarizing the application of this penalty and providing a description of each penalty compromised under the Senate amendment and the reasons for the compromise.

Any understatement to which a penalty is imposed under the Senate amendment will not be subject to the accuracy-related penalty under section 6662 or under new 6662A (accuracy-related penalties for listed and reportable avoidance transactions). However, an understatement under the Senate amendment would be taken into account for purposes of determining whether any understatement (as defined in sec. 6662(d)(2)) is a substantial understatement as defined under section 6662(d)(1). The penalty imposed under the Senate amendment will not apply to any portion of an understatement to which a fraud penalty is applied under section 6663.

Effective date.—The Senate amendment provision applies to transactions entered into after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

32. Understatement of taxpayer's liability by income tax return preparer (sec. 411 of the Senate amendment)

PRESENT LAW

An income tax return preparer who prepares a return with respect to which there is an understatement of tax that is due to an undisclosed position for which there was not a realistic possibility of being sustained on its merits, or a frivolous position, is liable for a penalty of $250, provided the preparer knew or reasonably should have known of the position. An income tax return preparer who prepares a return and engages in specified willful or reckless conduct with respect to preparing such a return is liable for a penalty of $1,000.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment alters the standards of conduct that must be met to avoid imposition of the first penalty by replacing the realistic possibility standard with a requirement that there be a reasonable belief that the tax treatment of the position was more likely than not the proper treatment. The Senate amendment also replaces the not frivolous standard with the requirement that there be a reasonable basis for the tax treatment of the position, increases the present-law $250 penalty to $1,000, and increases the present-law $1,000 penalty to $5,000.

Effective date. Documents prepared after the date pf enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

33. Frivolous tax submissions (sec. 413 of the Senate amendment and sec. 6702 of the Code)

PRESENT LAW

The Code provides that an individual who files a frivolous income tax return is subject to a penalty of $500 imposed by the IRS (sec. 6702). The Code also permits the Tax Court[651] to impose a penalty of up to $25,000 if a taxpayer has instituted or maintained proceedings primarily for delay or if the taxpayer's position in the proceeding is frivolous or groundless (sec. 6673(a)).

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision modifies the IRS-imposed penalty by increasing the amount of the penalty to up to $5,000 and by applying it to all taxpayers and to all types of Federal taxes.

The provision also modifies present law with respect to certain submissions that raise frivolous arguments or that are intended to delay or impede tax administration. The submissions to which this provision applies are requests for a collection due process hearing, installment agreements, offers-in-compromise, and taxpayer assistance orders. First, the provision permits the IRS to dismiss such requests. Second, the provision permits the IRS to impose a penalty of up to $5,000 for such requests, unless the taxpayer withdraws the request after being given an opportunity to do so.

The provision requires the IRS to publish a list of positions, arguments, requests, and submissions determined to be frivolous for purposes of these provisions.

Effective date. Submissions made and issues raised after the date on which the Secretary first prescribes the required list of frivolous positions.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

34. Authorization of appropriations for tax law enforcement (sec. 418 of the Senate amendment)

PRESENT LAW

There is no explicit authorization of appropriations to the IRS to be used to combat abusive tax avoidance transactions.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision includes an authorization of an additional $300 million to the IRS to be used to combat abusive tax avoidance transactions.

Effective date. Date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

35. Declaration by chief executive officer relating to Federal annual corporate income tax return (sec. 422 of the Senate amendment)

PRESENT LAW

The Code requires[652] that the income tax return of a corporation must be signed by either the president, the vice-president, the treasurer, the assistant treasurer, the chief accounting officer, or any other officer of the corporation authorized by the corporation to sign the return.

The Code also imposes[653] a criminal penalty on any person who willfully signs any tax return under penalties of perjury that that person does not believe to be true and correct with respect to every material matter at the time of filing. If convicted, the person is guilty of a felony; the Code imposes a fine of not more than $100,000[654] ($500,000 in the case of a corporation) or imprisonment of not more than three years, or both, together with the costs of prosecution.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision requires that a corporation's Federal income tax return include a declaration signed under penalties of perjury by the chief executive officer of the corporation that the corporation has in place processes and procedures to ensure that the return complies with the Internal Revenue Code and that the CEO was provided reasonable assurance of the accuracy of all material aspects of the return. This declaration is part of the income tax return. The provision is in addition to the requirement of present law as to the signing of the income tax return itself. Because a CEO's duties generally do not require a detailed or technical understanding of the corporation's tax return, it is anticipated that this declaration of the CEO will be more limited in scope than the declaration of the officer required to sign the return itself.

The Secretary of the Treasury shall prescribe the matters to which the declaration of the CEO applies. It is intended that the declaration help insure that the preparation and completion of the corporation's tax return be given an appropriate level of care. For example, it is anticipated that the CEO would declare that processes and procedures have been implemented to ensure that the return complies with the Internal Revenue Code and all regulations and rules promulgated thereunder. Although appropriate

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income for such year, and any reduction in the amount of capital losses that would (without regard to section 1211) be allowed for such year, would be treated as an increase in taxable income.

[651] Because in general the Tax Court is the only pre-payment forum available to taxpayers, it deals with most of the frivolous, groundless, or dilatory arguments raised in tax cases.

[652] Sec. 6062.

[653] Sec. 7206.

[654] Pursuant to 18 U.S.C. 3571, the maximum fine for an individual convicted of a felony is $250,000.

processes and procedures can vary for each taxpayer depending on the size and nature of the taxpayer's business, in every case the CEO should be briefed on all material aspects of the corporation's tax return by the corporation's chief financial officer (or another person authorized to sign the return under present law).

If the corporation does not have a chief executive officer, the IRS may designate another officer of the corporation; otherwise, no other person is permitted to sign the declaration. It is intended that the IRS issue general guidance, such as a revenue procedure, to: (1) address situations when a corporation does not have a chief executive officer; and (2) define who the chief executive officer is, in situations (for example) when the primary official bears a different title, when a corporation has multiple chief executive officers, or when the corporation is a foreign corporation and the CEO is not a U.S. resident.[655] It is intended that, in every instance, the highest ranking corporate officer (regardless of title) sign this declaration.

The provision does not apply to the income tax returns of mutual funds;[656] they are required to be signed as under present law.

Effective date.—Federal tax returns for taxable years ending after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

36. Denial of deduction for certain fines, penalties, and other amounts (sec. 423 of the Senate amendment and sec. 162 of the Code)

PRESENT LAW

Under present law, no deduction is allowed as a trade or business expense under section 162(a) for the payment of a fine or similar penalty to a government for the violation of any law (sec. 162(f)). The enactment of section 162(f) in 1969 codified existing case law that denied the deductibility of fines as ordinary and necessary business expenses on the grounds that "allowance of the deduction would frustrate sharply defined national or State policies proscribing the particular types of conduct evidenced by some governmental declaration thereof."[657]

Treasury regulation section 1.162-21(b)(1) provides that a fine or similar penalty includes an amount: (1) paid pursuant to conviction or a plea of guilty or nolo contendere for a crime (felony or misdemeanor) in a criminal proceeding; (2) paid as a civil penalty imposed by Federal, State, or local law, including additions to tax and additional amounts and assessable penalties imposed by chapter 68 of the Code; (3) paid in settlement of the taxpayer's actual or potential liability for a fine or penalty (civil or criminal); or (4) forfeited as collateral posted in connection with a proceeding which could result in imposition of such a fine or penalty. Treasury regulation section 1.162-21(b)(2) provides, among other things, that compensatory damages (including damages under section 4A of the Clayton Act (15 U.S.C. 15a), as amended) paid to a government do not constitute a fine or penalty.

HOUSE BILL

No provision.

SENATE AMENDMENT

The bill modifies the rules regarding the determination whether payments are nondeductible payments of fines or penalties under section 162(f). In particular, the bill generally provides that amounts paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government in relation to the violation of any law or the investigation or inquiry into the potential violation of any law[658] are nondeductible under any provision of the income tax provisions.[659] The bill applies to deny a deduction for any such payments, including those where there is no admission of guilt or liability and those made for the purpose of avoiding further investigation or litigation. An exception applies to payments that the taxpayer establishes are restitution.[660]

The bill is intended to apply only where a government (or other entity treated in a manner similar to a government under the bill) is a complainant or investigator with respect to the violation or potential violation of any law.[661]

It is intended that a payment will be treated as restitution only if substantially all of the payment is required to be paid to the specific persons, or in relation to the specific property, actually harmed by the conduct of the taxpayer that resulted in the payment. Thus, a payment to or with respect to a class substantially broader than the specific persons or property that were actually harmed (e.g., to a class including similarly situated persons or property) does not qualify as restitution.[662] Restitution is limited to the amount that bears a substantial quantitative relationship to the harm caused by the past conduct or actions of the taxpayer that resulted in the payment in question. If the party harmed is a government or other entity, then restitution includes payment to such harmed government or entity, provided the payment bears a substantial quantitative relationship to the harm. However, restitution does not include reimbursement of government investigative or litigation costs, or payments to whistleblowers.

Amounts paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, any self-regulatory entity that regulates a financial market or other market that is a qualified board or exchange under section 1256(g)(7), and that is authorized to impose sanctions (e.g., the National Association of Securities Dealers) are likewise subject to the provision if paid in relation to a violation, or investigation or inquiry into a potential violation, of any law (or any rule or other requirement of such entity). To the extent provided in regulations, amounts paid or incurred to, or at the direction of, any other nongovernmental entity that exercises self-regulatory powers as part of performing an essential governmental function are similarly subject to the provision. The exception for payments that the taxpayer establishes are restitution likewise applies in these cases.

No inference is intended as to the treatment of payments as nondeductible fines or penalties under present law. In particular, the Senate amendment is not intended to limit the scope of present-law section 162(f) or the regulations thereunder.

Effective date.—The bill is effective for amounts paid or incurred on or after April 28, 2003; however the proposal does not apply to amounts paid or incurred under any binding order or agreement entered into before such date. Any order or agreement requiring court approval is not a binding order or agreement for this purpose unless such approval was obtained on or before April 27, 2003.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

37. Denial of deduction for punitive damages (sec. 424 of the Senate amendment and sec. 162 of the Code)

PRESENT LAW

In general, a deduction is allowed for all ordinary and necessary expenses that are paid or incurred by the taxpayer during the taxable year in carrying on any trade or business.[663] However, no deduction is allowed for any payment that is made to an official of any governmental agency if the payment constitutes an illegal bribe or kickback or if the payment is to an official or employee of a foreign government and is illegal under Federal law.[664] In addition, no deduction is allowed under present law for any fine or similar payment made to a government for violation of any law.[665] Furthermore, no deduction is permitted for two-thirds of any damage payments made by a taxpayer who is convicted of a violation of the Clayton antitrust law or any related antitrust law.[666]

In general, gross income does not include amounts received on account of personal physical injuries and physical sickness.[667] However, this exclusion does not apply to punitive damages.[668]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment denies any deduction for punitive damages that are paid or incurred by the taxpayer as a result of a judgment or in settlement of a claim. If the liability for punitive damages is covered by insurance, any such punitive damages paid by the insurer are included in gross income of the insured person and the insurer is required to report such amounts to both the insured person and the IRS.

Effective date.—The Senate amendment provision is effective for punitive damages that are paid or incurred on or after the date of enactment.

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[655] With respect to foreign corporations, it is intended that the rules for signing this declaration generally parallel the present-law rules for signing the return. See Treas. Reg. sec. 1.6062-1(a)(3).

[656] The provision does, however, apply to the income tax returns of mutual fund management companies and advisors.

[657] S. Rep. 91-552, 91st Cong, 1st Sess., 273-74 (1969), referring to Tank Truck Rentals, Inc. v. Commissioner, 356 U.S. 30 (1958).

[658] The bill does not affect amounts paid or incurred in performing routine audits or reviews such as annual audits that are required of all organizations or individuals in a similar business sector, or profession, as a requirement for being allowed to conduct business. However, if the government or regulator raised an issue of compliance and a payment is required in settlement of such issue, the bill would affect that payment.

[659] The bill provides that such amounts are nondeductible under chapter 1 of the Internal Revenue Code.

[660] The bill does not affect the treatment of antitrust payments made under section 4 of the Clayton Act, which will continue to be governed by the provisions of section 162(g).

[661] Thus, for example, the bill would not apply to payments made by one private party to another in a lawsuit between private parties, merely because a judge or jury acting in the capacity as a court directs the payment to be made. The mere fact that a court enters a judgement or directs a result in a private dispute does not cause a payment to be made "at the direction of a government" for purposes of the provision.

[662] Similarly, a payment to a charitable organization benefitting a broader class than the persons or property actually harmed, or to be paid out without a substantial quantitative relationship to the harm caused, would not qualify as restitution. Under the provision, such a payment not deductible under section 162 would also not be deductible under section 170.

[663] Sec. 162(a).

[664] Sec. 162(c).

[665] Sec. 162(f).

[666] Sec. 162(g).

[667] Sec. 104(a).

[668] Sec. 104(a)(2).

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

38. Increase in criminal monetary penalty limitation for the underpayment or overpayment of tax due to fraud (sec. 425 of the Senate amendment)

PRESENT LAW

Attempt to evade or defeat tax

In general, section 7201 imposes a criminal penalty on persons who willfully attempt to evade or defeat any tax imposed by the Code. Upon conviction, the Code provides that the penalty is up to $100,000 or imprisonment of not more than five years (or both). In the case of a corporation, the Code increases the monetary penalty to a maximum of $500,000.

Willful failure to file return, supply information, or pay tax

In general, section 7203 imposes a criminal penalty on persons required to make estimated tax payments, pay taxes, keep records, or supply information under the Code who willfully fails to do so. Upon conviction, the Code provides that the penalty is up to $25,000 or imprisonment of not more than one year (or both). In the case of a corporation, the Code increases the monetary penalty to a maximum of $100,000.

Fraud and false statements

In general, section 7206 imposes a criminal penalty on persons who make fraudulent or false statements under the Code. Upon conviction, the Code provides that the penalty is up to $100,000 or imprisonment of not more than three years (or both). In the case of a corporation, the Code increases the monetary penalty to a maximum of $500,000.

Uniform sentencing guidelines

Under the uniform sentencing guidelines established by 18 U.S.C. 3571, a defendant found guilty of a criminal offense is subject to a maximum fine that is the greatest of: (a) the amount specified in the underlying provision, (b) for a felony[669] $250,000 for an individual or $500,000 for an organization, or (c) twice the gross gain if a person derives pecuniary gain from the offense. This Title 18 provision applies to all criminal provisions in the United States Code, including those in the Internal Revenue Code. For example, for an individual, the maximum fine under present law upon conviction of violating section 7206 is $250,000 or, if greater, twice the amount of gross gain from the offense.

HOUSE BILL

No provision.

SENATE AMENDMENT

Attempt to evade or defeat tax

The bill increases the criminal penalty under section 7201 of the Code for individuals to $250,000 and for corporations to $1,000,000. The bill increases the maximum prison sentence to ten years.

Willful failure to file return, supply information, or pay tax

The bill increases the criminal penalty under section 7203 of the Code from a misdemeanor to a felony and increases the maximum prison sentence to ten years.

FRAUD AND FALSE STATEMENTS

The bill increases the criminal penalty under section 7206 of the Code for individuals to $250,000 and for corporations to $1,000,000. Increases the maximum prison sentence to five years. The bill provides that in no event shall the amount of the monetary penalty under this provision be less than the amount of the underpayment or overpayment attributable to fraud.

Effective date

Underpayments and overpayments attributable to actions occurring after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

39. Expanded disallowance of deduction for interest on convertible debt (sec. 434 of the Senate amendment and sec. 163 of the Code)

PRESENT LAW

Whether an instrument qualifies for tax purposes as debt or equity is determined under all the facts and circumstances based on principles developed in case law. If an instrument qualifies as equity, the issuer generally does not receive a deduction for dividends paid and the holder generally includes such dividends in income (although corporate holders generally may obtain a dividends-received deduction of at least 70 percent of the amount of the dividend). If an instrument qualifies as debt, the issuer may receive a deduction for accrued interest and the holder generally includes interest in income, subject to certain limitations.

Original issue discount ("OID") on a debt instrument is the excess of the stated redemption price at maturity over the issue price of the instrument. An issuer of a debt instrument with OID generally accrues and deducts the discount as interest over the life of the instrument even though interest may not be paid until the instrument matures. The holder of such a debt instrument also generally includes the OID in income as it accrues.

Under present law, no deduction is allowed for interest or OID on a debt instrument issued by a corporation (or issued by a partnership to the extent of its corporate partners) that is payable in equity of the issuer or a related party (within the meaning of sections 267(b) and 707(b)), including a debt instrument a substantial portion of which is mandatorily convertible or convertible at the issuer's option into equity of the issuer or a related party.[670] In addition, a debt instrument is treated as payable in equity if a substantial portion of the principal or interest is required to be determined, or may be determined at the option of the issuer or related party, by reference to the value of equity of the issuer or related party.[671] A debt instrument also is treated as payable in equity if it is part of an arrangement that is designed to result in the payment of the debt instrument with or by reference to such equity, such as in the case of certain issuances of a forward contract in connection with the issuance of debt, nonrecourse debt that is secured principally by such equity, or certain debt instruments that are paid in, converted to, or determined with reference to the value of equity if it may be so required at the option of the holder or a related party and there is a substantial certainty that option will be exercised.[672]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment expands the present-law disallowance of interest deductions on certain convertible or equity-linked corporate debt that is payable in, or by reference to the value of, equity. Under the Senate amendment, the disallowance is expanded to include interest on corporate debt that is payable in, or by reference to the value of, any equity held by the issuer (or by any related party) in any other person, without regard to whether such equity represents more than a 50-percent ownership interest in such person. However, the Senate amendment does not apply to debt that is issued by an active dealer in securities (or by a related party) if the debt is payable in, or by reference to the value of, equity that is held by the securities dealer in its capacity as a dealer in securities.

Effective date.—The Senate amendment provision applies to debt instruments that are issued after February 13, 2003.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except the conference agreement applies to debt instruments that are issued after October 3, 2004.

40. Expand authority to disallow tax benefits under section 269 (sec. 435 of the Senate amendment and sec. 269 of the Code)

PRESENT LAW

Section 269 provides that if a taxpayer acquires, directly or indirectly, control (defined as at least 50 percent of vote or value) of a corporation, and the principal purpose of the acquisition is the evasion or avoidance of Federal income tax by securing the benefit of a deduction, credit, or other allowance that would not otherwise have been available, the Secretary may disallow the tax benefits.[673] Similarly, if a corporation acquires, directly or indirectly, property of another corporation (not controlled, directly or indirectly, by the acquiring corporation or its stockholders immediately before the acquisition), the basis of such property is determined by reference to the basis in the hands of the transferor corporation, and the principal purpose of the acquisition is the evasion or avoidance of Federal income tax by securing a tax benefit that would not otherwise have been available, the Secretary may disallow such tax benefits.[674]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment expands section 269 by repealing the requirement that the acquisition of property be from a corporation not controlled by the acquirer. Thus, under the Senate amendment, section 269 disallows the tax benefits of (1) any acquisition of stock sufficient to obtain control of a corporation (as under present law), and (2) any acquisition by a corporation of property from a corporation in which the basis of such property is determined by reference to the basis in the hands of the transferor corporation, if the principal purpose of such acquisition is the evasion or avoidance of Federal income tax.

Effective date.—The Senate amendment applies to stock and property acquired after February 13, 2003.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

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[669] Section 7206 states that making fraudulent or false statements under the Code is a felony. In addition, this offense is a felony pursuant to the classification guidelines of 18 U.S.C. 3559(a)(5).

[670] Sec. 163(l), enacted in the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, sec. 1005(a).

[671] Sec. 163(l)(3)(B).

[672] Sec. 163(l)(3)(C).

[673] Sec. 269(a)(1).

[674] Sec. 269(a)(2).

41. Modification of coordination rules for controlled foreign corporation and passive foreign investment company regimes (sec. 436 of the Senate amendment and sec. 1297 of the Code)

PRESENT LAW

The United States employs a "worldwide" tax system, under which domestic corporations generally are taxed on all income, whether derived in the United States or abroad. Income earned by a domestic parent corporation from foreign operations conducted by foreign corporate subsidiaries generally is subject to U.S. tax when the income is distributed as a dividend to the domestic corporation. Until such repatriation, the U.S. tax on such income generally is deferred. However, certain anti-deferral regimes may cause the domestic parent corporation to be taxed on a current basis in the United States with respect to certain categories of passive or highly mobile income earned by its foreign subsidiaries, regardless of whether the income has been distributed as a dividend to the domestic parent corporation. The main anti-deferral regimes in this context are the controlled foreign corporation rules of subpart F[675] and the passive foreign investment company rules.[676] Deferral of U.S. tax is considered appropriate, on the other hand, with respect to most types of active business income earned abroad. A foreign tax credit generally is available to offset, in whole or in part, the U.S. tax owed on foreign-source income, whether earned directly by the domestic corporation, repatriated as an actual dividend, or included under one of the anti-deferral regimes.[677]

Subpart F,[678] applicable to controlled foreign corporations and their shareholders, is the main anti-deferral regime of relevance to a U.S.-based multinational corporate group. A controlled foreign corporation generally is defined as any foreign corporation if U.S. persons own (directly, indirectly, or constructively) more than 50 percent of the corporation's stock (measured by vote or value), taking into account only those U.S. persons that own at least 10 percent of the stock (measured by vote only).[679] Under the subpart F rules, the United States generally taxes the U.S. 10-percent shareholders of a controlled foreign corporation on their pro rata shares of certain income of the controlled foreign corporation (referred to as "subpart F income"), without regard to whether the income is distributed to the shareholders.[680]

Subpart F income generally includes passive income and other income that is readily movable from one taxing jurisdiction to another. Subpart F income consists of foreign base company income,[681] insurance income,[682] and certain income relating to international boycotts and other violations of public policy.[683] Foreign base company income consists of foreign personal holding company income, which includes passive income (e.g., dividends, interest, rents, and royalties), as well as a number of categories of non-passive income, including foreign base company sales income, foreign base company services income, foreign base company shipping income and foreign base company oil-related income.[684]

In effect, the United States treats the U.S. 10-percent shareholders of a controlled foreign corporation as having received a current distribution out of the corporation's subpart F income. In addition, the U.S. 10-percent shareholders of a controlled foreign corporation are required to include currently in income for U.S. tax purposes their pro rata shares of the corporation's earnings invested in U.S. property.[685]

The Tax Reform Act of 1986 established an additional anti-deferral regime, for passive foreign investment companies. A passive foreign investment company generally is defined as any foreign corporation if 75 percent or more of its gross income for the taxable year consists of passive income, or 50 percent or more of its assets consists of assets that produce, or are held for the production of, passive income.[686] Alternative sets of income inclusion rules apply to U.S. persons that are shareholders in a passive foreign investment company, regardless of their percentage ownership in the company. One set of rules applies to passive foreign investment companies that are "qualified electing funds," under which electing U.S. shareholders currently include in gross income their respective shares of the company's earnings, with a separate election to defer payment of tax, subject to an interest charge, on income not currently received.[687] A second set of rules applies to passive foreign investment companies that are not qualified electing funds, under which U.S. shareholders pay tax on certain income or gain realized through the company, plus an interest charge that is attributable to the value of deferral.[688] A third set of rules applies to passive foreign investment company stock that is marketable, under which electing U.S. shareholders currently take into account as income (or loss) the difference between the fair market value of the stock as of the close of the taxable year and their adjusted basis in such stock (subject to certain limitations), often referred to as "marking to market."[689]

Under section 1297(e), which was enacted in 1997 to address the overlap of the passive foreign investment company rules and subpart F, a controlled foreign corporation generally is not also treated as a passive foreign investment company with respect to a U.S. shareholder of the corporation. This exception applies regardless of the likelihood that the U.S. shareholder would actually be taxed under subpart F in the event that the controlled foreign corporation earns subpart F income. Thus, even in a case in which a controlled foreign corporation's subpart F income would be allocated to a different shareholder under the subpart F allocation rules, a U.S. shareholder would still qualify for the exception from the passive foreign investment company rules under section 1297(e).

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision adds an exception to section 1297(e) for U.S. shareholders that face only a remote likelihood of incurring a subpart F inclusion in the event that a controlled foreign corporation earns subpart F income, thus preserving the potential application of the passive foreign investment company rules in such cases.

Effective date.—The provision is effective for taxable years of foreign corporations beginning after February 13, 2003, and for taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

C. REDUCTION OF FUEL TAX EVASION

1. Exemption from certain excise taxes for mobile machinery vehicles and modification of definition of offhighway vehicle (sec. 651 of the House bill, sec. 896 of the Senate amendment, and secs. 4053, 4072, 4082, 4483, 6421, and 7701 of the Code)

PRESENT LAW

Under present law, the definition of a "highway vehicle" affects the application of the retail tax on heavy vehicles, the heavy vehicle use tax, the tax on tires, and fuel taxes.[690] Section 4051 of the Code provides for a 12-percent retail sales tax on tractors, heavy trucks with a gross vehicle weight ("GVW") over 33,000 pounds, and trailers with a GVW over 26,000 pounds. Section 4071 provides for a tax on highway vehicle tires that weigh more than 40 pounds, with higher rates of tax for heavier tires. Section 4481 provides for an annual use tax on heavy vehicles with a GVW of 55,000 pounds or more, with higher rates of tax on heavier vehicles. All of these excise taxes are paid into the Highway Trust Fund.

Federal excise taxes are also levied on the motor fuels used in highway vehicles. Gasoline is subject to a tax of 18.4 cents per gallon, of which 18.3 cents per gallon is paid into the Highway Trust Fund and 0.1 cent per gallon is paid into the Leaking Underground Storage Tank ("LUST") Trust Fund. Highway diesel fuel is subject to a tax of 24.4 cents per gallon, of which 24.3 cents per gallon is paid into the Highway Trust Fund and 0.1 cent per gallon is paid into the LUST Trust Fund.

The Code does not define a "highway vehicle." For purposes of these taxes, Treasury regulations define a highway vehicle as any self-propelled vehicle or trailer or semitrailer designed to perform a function of transporting a load over the public highway, whether or not also designed to perform other functions. Excluded from the definition of highway vehicle are (1) certain specially designed mobile machinery vehicles for non-transportation functions (the "mobile machinery exception"); (2) certain vehicles specially designed for off-highway transportation for which the special design substantially limits or impairs the use of such vehicle to transport loads over the highway (the "off-highway transportation vehicle" exception); and (3) certain trailers and semitrailers specially designed to function only as an enclosed stationary shelter for the performance of non-transportation functions off the public highways.[691]

The mobile machinery exception applies if three tests are met: (1) the vehicle consists of a chassis to which jobsite machinery (unrelated to transportation) has been permanently mounted; (2) the chassis has been specially designed to serve only as a mobile carriage and mount for the particular machinery; and (3) by reason of such special design, the chassis could not, without substantial structural modification, be used to transport a load other than the particular machinery. An example of a mobile machinery vehicle is a crane mounted on a truck chassis that meets the forgoing factors.

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[675] Secs. 951-964.

[676] Secs. 1291-1298.

[677] Secs. 901, 902, 960, 1291(g).

[678] Secs. 951-964.

[679] Secs. 951(b), 957, 958.

[680] Sec. 951(a).

[681] Sec. 954.

[682] Sec. 953.

[683] Sec. 952(a)(3)-(5).

[684] Sec. 954.

[685] Secs. 951(a)(1)(B), 956.

[686] Sec. 1297.

[687] Sec. 1293-1295.

[688] Sec. 1291.

[689] Sec. 1296.

[690] Secs. 4051, 4071, 4481, 4041 and 4081.

[691] See Treas. Reg. sec. 48.4061-1(d)).

On June 6, 2002, the Treasury Department put forth proposed regulations that would eliminate the mobile machinery exception.[692] The other exceptions from the definition of highway vehicle would continue to apply with some modifications. Under the proposed regulations, the chassis of a mobile machinery vehicle would be subject to the retail sales tax on heavy vehicles unless the vehicle qualified under the off-highway transportation vehicle exception. Also, under the proposed regulations, mobile machinery vehicles may be subject to the heavy vehicle use tax. In addition, the tax credits, refunds, and exemptions from tax may not be available for the fuel used in these vehicles.

On June 6, 2002, the Treasury Department put forth proposed regulations that would modify the off-highway transportation vehicle exception.[693] Under the proposed regulations, a vehicle is not treated as a highway vehicle if it is specially designed for the primary function of transporting a particular type of load other than over the public highway and because of this special design its capability to transport a load over the public highway is substantially limited or impaired. A vehicle's design is determined solely on the basis of its physical characteristics. In determining whether substantial limitation or impairment exists, account may be taken of factors such as the size of the vehicle, whether it is subject to the licensing, safety, and other requirements applicable to highway vehicles, and whether it can transport a load at a sustained speed of at least 25 miles per hour. Under the proposed regulation, it is not material that a vehicle can transport a greater load off the public highway than it is permitted to transport over the public highway.

The proposed regulation provides an exception to the definition of a highway vehicle for nontransportation trailers and semitrailers.[694] Under the proposed regulation, a trailer or semitrailer is not treated as a highway vehicle if it is specially designed to function only as an enclosed stationary shelter for the carrying on of an offhighway function at an offhighway site. For example, a trailer that is capable only of functioning as an office for an offhighway construction operation is not a highway vehicle.

HOUSE BILL

The provision codifies the present-law mobile machinery exemption for purposes of three taxes: the retail tax on heavy vehicles, the heavy vehicle use tax, and the tax on tires. Thus, if a vehicle can satisfy the three-part test, it will not be treated as a highway vehicle and will be exempt from these taxes.

For purposes of the fuel excise tax, the three-part design test is codified and a use test is added by the provision. Specifically, in addition to the three-part design test, the vehicle must not have traveled more than 7,500 miles over public highways during the owner's taxable year. Refunds of fuel taxes are permitted on an annual basis only. For purposes of this rule, a person's taxable year is his taxable year for income tax purposes.

Effective date.—The provision generally is effective after the date of enactment. As to the fuel taxes, the provision is effective for taxable years beginning after the date of enactment.

SENATE AMENDMENT

The Senate amendment provides that mobile machinery vehicles are subject to tax as highway vehicles. The provision provides for the recovery of taxes paid (other than fuel taxes) over a two-year period if such vehicle travels less than 5,000 miles per year. Fuel taxes for mobile machinery vehicles must be paid and then a refund sought if the mileage requirement is met. Refunds of fuel taxes are permitted on an annual basis only. Like the House bill, for purposes of this rule, a person's taxable year is his taxable year for income tax purposes. Vehicles owned by an organization described in section 501(c), exempt from tax under section 501(a), need only satisfy the three-part design test to recover taxes paid with respect to such vehicles.

Effective date.—The provision generally is effective after the date of enactment. As to the fuel taxes, the provision is effective for taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill. Vehicles owned by an organization described in section 501(c), exempt from tax under section 501(a), need only satisfy the three-part design test to recover taxes paid with respect to such vehicles.

The conference agreement adopts the definition of an offhighway transportation vehicle and a nontransportation trailer and semitrailer described in Proposed Treasury Regulation section 48.4051–1(a)(2).

For example, as provided in the proposed regulations,[695] Vehicle C consists of a truck chassis on which an oversize body designed to transport and apply liquid agricultural chemicals on farms has been installed. It is capable of transporting a load over the public highway. It is 132 inches in width, which is considerably in excess of standard highway vehicle width. For travel on uneven and soft terrain, it is equipped with oversize wheels with high-flotation tires, and nonstandard axles, brakes, and transmission. It has a special fuel and carburetor air filtration system that enable it to perform efficiently in an environment of dirt and dust. It is not able to maintain a speed of 25 miles per hour for more than one mile while fully loaded. Because Vehicle C is a self-propelled vehicle capable of transporting a load over the public highway, it would meet the general definition of a highway vehicle. However, its considerable physical characteristics for transporting its load other than over the public highway, when compared with its physical characteristics for transporting the load over the public highway, establish that it is specially designed for the primary function of transporting its load other than over the public highway. Further, the physical characteristics for transporting its load other than over the public highway substantially limit its capability to transport a load over the public highway. Therefore, Vehicle C is an offhighway vehicle and is not treated as a highway vehicle.

Effective date.—(Generally effective after the date of enactment. As to the fuel taxes, effective for taxable years beginning after the date of enactment.

2. Taxation of aviation-grade kerosene (sec. 652 of the House bill, sec. 871 of the Senate amendment, and secs. 4041, 4081, 4082, 4083, 4091, 4092, 4093, 4101, and 6427 of the Code)

PRESENT LAW

In general

Aviation fuel is kerosene and any liquid (other than any product taxable under section 4081) that is suitable for use as a fuel in an aircraft.[696] Unlike other fuels that generally are taxed upon removal from a terminal rack,[697] aviation fuel is taxed upon sale of the fuel by a producer or importer.[698] Sales by a registered producer to another registered producer are exempt from tax, with the result that, as a practical matter, aviation fuel is not taxed until the fuel is used at the airport (or sold to an unregistered person). Use of untaxed aviation fuel by a producer is treated as a taxable sale.[699] The producer or importer is liable for the tax. The rate of tax on aviation fuel is 21.9 cents per gallon.[700]

The tax on aviation fuel is reported by filing Form 720—Quarterly Federal Excise Tax Return. Generally, semi-monthly deposits are required using Form 8109B—Federal Tax Deposit Coupon or by depositing the tax by electronic funds transfer.

Partial exemptions

In general, aviation fuel sold for use or used in commercial aviation is taxed at a reduced rate of 4.4 cents per gallon.[701] Commercial aviation means any use of an aircraft in a business of transporting persons or property for compensation or hire by air (unless the use is allocable to any transportation exempt from certain excise taxes).[702]

In order to qualify for the 4.4 cents per gallon rate, the person engaged in commercial aviation must be registered with the Secretary[703] and provide the seller with a written exemption certificate stating the airline's name, address, taxpayer identification number, registration number, and intended use of the fuel. A person that is registered as a buyer of aviation fuel for use in commercial aviation generally is assigned a registration number with a "Y" suffix (a "Y" registrant), which entitles the registrant to purchase aviation fuel at the 4.4 cents per gallon rate.

Large commercial airlines that also are producers of aviation fuel qualify for registration numbers with an "H" suffix. As producers of aviation fuel, "H" registrants may buy aviation fuel tax free pursuant to a full exemption that applies to sales of aviation fuel by a registered producer to a registered producer. If the "H" registrant ultimately uses such untaxed fuel in domestic commercial aviation, the H registrant is liable for the aviation fuel tax at the 4.4 cents per gallon rate.

Exemptions

Aviation fuel sold by a producer or importer for use by the buyer in a nontaxable use is exempt from the excise tax on sales of aviation fuel.[704] To qualify for the exemption, the buyer must provide the seller with a written exemption certificate stating the buyer's name, address, taxpayer identification number, registration number (if applicable), and intended use of the fuel.

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[692] Prop. Treas. Reg. sec. 48.4051-1(a), 67 Fed. Reg. 38913, 38914-38915 (2002).

[693] Prop. Treas. Reg. sec. 48.4051-1(a)(2)(i).

[694] Prop. Treas. Reg. sec. 48.4051-1(a)(2)(ii).

[695] Prop. Treas. Reg. sec. 48.4051-1(c) Example (3).

[696] Sec. 4093(a).

[697] A rack is a mechanism capable of delivering taxable fuel into a means of transport other than a pipeline or vessel. Treas. Reg. sec. 48.4081-1(b).

[698] Sec. 4091(a)(1).

[699] Sec. 4091(a)(2).

[700] Sec. 4091(b). This rate includes a 0.1 cent per gallon Leaking Underground Storage Tank ("LUST") Trust Fund tax. The LUST Trust Fund tax is set to expire after March 31, 2005, with the result that on April 1, 2005, the tax rate is scheduled to be 21.8 cents per gallon. Secs. 4091(b)(3)(B) and 4081(d)(3). Beginning on October 1, 2007, the rate of tax is reduced to 4.3 cents per gallon. Sec. 4091(b)(3)(A).

[701] Sec. 4092(b). The 4.4 cent rate includes 0.1 cent per gallon that is attributable to the LUST Trust Fund financing rate. A full exemption, discussed below, applies to aviation fuel that is sold for use in commercial aviation as fuel supplies for vessels or aircraft, which includes use by certain foreign air carriers and for the international flights of domestic carriers. Secs. 4092(a), 4092(b), and 4221(d)(3).

[702] Secs. 4092(b) and 4041(c)(2).

[703] Notice 88-132, sec. III(D). See also, Form 637—Application for Registration (For Certain Excise Tax Activities). A bond may be required as a condition of registration.

Nontaxable uses include: (1) use other than as fuel in an aircraft (such as use in heating oil); (2) use on a farm for farming purposes; (3) use in a military aircraft owned by the United States or a foreign country; (4) use in a domestic air carrier engaged in foreign trade or trade between the United States and any of its possessions;[705] (5) use in a foreign air carrier engaged in foreign trade or trade between the United States and any of its possessions (but only if the foreign carrier's country of registration provides similar privileges to United States carriers); (6) exclusive use of a State or local government; (7) sales for export, or shipment to a United States possession; (8) exclusive use by a nonprofit educational organization; (9) use by an aircraft museum exclusively for the procurement, care, or exhibition of aircraft of the type used for combat or transport in World War II, and (10) use as a fuel in a helicopter or a fixed-wing aircraft for purposes of providing transportation with respect to which certain requirements are met.[706]

A producer that is registered with the Secretary may sell aviation fuel tax-free to another registered producer.[707] Producers include refiners, blenders, wholesale distributors of aviation fuel, dealers selling aviation fuel exclusively to producers of aviation fuel, the actual producer of the aviation fuel, and with respect to fuel purchased at a reduced rate, the purchaser of such fuel.

Refunds and credits

A claim for refund of taxed aviation fuel held by a registered aviation fuel producer is allowed[708] (without interest) if: (1) the aviation fuel tax was paid by an importer or producer (the "first producer") and the tax has not otherwise been credited or refunded; (2) the aviation fuel was acquired by a registered aviation fuel producer (the "second producer") after the tax was paid; (3) the second producer files a timely refund claim with the proper information; and (4) the first producer and any other person that owns the fuel after its sale by the first producer and before its purchase by the second producer have met certain reporting requirements.[709] Refund claims should contain the volume and type of aviation fuel, the date on which the second producer acquired the fuel, the amount of tax that the first producer paid, a statement by the claimant that the amount of tax was not collected nor included in the sales price of the fuel by the claimant when the fuel was sold to a subsequent purchaser, the name, address, and employer identification number of the first producer, and a copy of any required statement of a subsequent seller (subsequent to the first producer but prior to the second producer) that the second producer received. A claim for refund is filed on Form 8849, Claim for Refund of Excise Taxes, and may not be combined with any other refunds.[710]

A payment is allowable to the ultimate purchaser of taxed aviation fuel if the aviation fuel is used in a nontaxable use.[711] A claim for payment may be made on Form 8849 or on Form 720, Schedule C. A claim made on Form 720, Schedule C, may be netted against the claimant's excise tax liability.[712] Claims for payment not so taken may be allowable as income tax credits[713] on Form 4136, Credit for Federal Tax Paid on Fuels.

HOUSE BILL

The provision changes the incidence of taxation of aviation fuel from the sale of aviation fuel to the removal of aviation fuel from a refinery or terminal, or the entry into the United States of aviation fuel. Sales of not previously taxed aviation fuel to an unregistered person also are subject to tax.

Under the provision, the full rate of tax—21.9 cents per gallon—is imposed upon removal of aviation fuel from a refinery or terminal (or entry into the United States). Aviation fuel may be removed at a reduced rate—either 4.4 or zero cents per gallon—only if the aviation fuel is: (1) removed directly into the wing of an aircraft (i) that is registered with the Secretary as a buyer of aviation fuel for use in commercial aviation (e.g., a "Y" registrant under current law), (ii) that is a foreign airline entitled to the present law exemption for aviation fuel used in foreign trade, or (iii) for a tax-exempt use; or (2) removed or entered as part of an exempt bulk transfer.[714] An exempt bulk transfer is a removal or entry of aviation fuel transferred in bulk by pipeline or vessel to a terminal or refinery if the person removing or entering the aviation fuel, the operator of such pipeline or vessel, and the operator of such terminal or refinery are registered with the Secretary.

Under a special rule, the provision treats certain refueler trucks, tankers, and tank wagons as a terminal if certain requirements are met. For the special rule to apply, a qualifying truck, tanker, or tank wagon must be loaded with aviation fuel from a terminal: (1) that is located within an airport, and (2) from which no vehicle licensed for highway use is loaded with aviation fuel, except in exigent circumstances identified by the Secretary in regulations. It is intended that a terminal is located within an airport if the terminal is located in a secure facility on airport grounds. For example, if an access road runs between a terminal and an airport's runways, and the terminal, like the runways, is physically located on airport grounds and is part of a secure facility, it is intended that under the provision the terminal is located within the airport. It is intended that an exigent circumstance under which loading a vehicle registered for highway use with fuel would not disqualify a terminal under the special rule would include, for example, the unloading of fuel from bulk storage tanks into highway vehicles in order to repair the storage tanks.

In order to qualify for the special rule, a refueler truck, tanker, or tank wagon must: (1) deliver the aviation fuel directly into the wing of the aircraft at the airport where the terminal is located; (2) have storage tanks, hose, and coupling equipment designed and used for the purposes of fueling aircraft; (3) not be registered for highway use; and (4) be operated by the terminal operator (who operates the terminal rack from which the fuel is unloaded) or by a person that makes a daily accounting to such terminal operator of each delivery of fuel from such truck, tanker, or tank wagon.[715]

The provision does not change the applicable rates of tax under present law, 21.9 cents per gallon for use in noncommercial aviation, 4.4 cents per gallon for use in commercial aviation, and zero cents per gallon for use by domestic airlines in an international flight, by foreign airlines, or other nontaxable use. The provision imposes liability for the tax on aviation fuel removed from a refinery or terminal directly into the wing of an aircraft for use in commercial aviation on the person receiving the fuel, in which case, such person self-assesses the tax on a return. The provision does not change present-law nontaxable uses of aviation fuel, or change the persons or the qualifications of persons who are entitled to purchase fuel at a reduced rate, except that a producer is not permitted to purchase aviation fuel at a reduced rate by reason of such persons' status as a producer.

Under the provision, a refund is allowable to the ultimate vendor of aviation fuel if such ultimate vendor purchases fuel tax paid and subsequently sells the fuel to a person qualified to purchase at a reduced rate and who waives the right to a refund. In such a case, the provision permits an ultimate vendor to net refund claims against any excise tax liability of the ultimate vendor, in a manner similar to the present law treatment of ultimate purchaser payment claims.[716]

As under present law, if previously taxed aviation fuel is used for a nontaxable use, the ultimate purchaser may claim a refund for the tax previously paid. If previously taxed aviation fuel is used for a taxable non aircraft use, the fuel is subject to the tax imposed on kerosene (24.4 cents per gallon) and a refund of the previously paid aviation fuel tax is allowed. Claims by the ultimate vendor or the purchaser that are not taken as refund claims may be allowable as income tax credits.

For example, for an airport that is not served by a pipeline, aviation fuel generally is removed from a terminal and transported to an airport storage facility for eventual use at the airport. In such a case, the aviation fuel will be taxed at 21.9 cents per gallon upon removal from the terminal. At the airport, if the fuel is purchased from a vendor by a person registered with the Secretary to use fuel in commercial aviation, the purchaser may buy the fuel at a reduced rate (generally, 4.4 cents per gallon for domestic flights and zero cents per gallon for international flights) and waive the right to a refund. The ultimate vendor generally may claim a refund for the difference between 21.9 cents per gallon of tax paid upon removal and the rate of tax paid to the vendor by the purchaser. To obtain a zero rate upon purchase, a registered domestic airline must certify to the vendor at the time of purchase that the fuel is for use in an international flight; otherwise, the airline must pay the 4.4 cents per gallon rate and file a claim for refund to the Secretary if the fuel is used for international aviation. If a zero rate is paid and the fuel subsequently is used in domestic and not international travel, the domestic airline is liable for tax at 4.4 cents per gallon. A foreign airline eligible under present law to purchase aviation fuel tax-free would continue to purchase such fuel tax-free.

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[704] Sec. 4092(a).

[705] "Trade" includes the transportation of persons or property for hire. Treas. Reg. sec. 48.4221-4(b)(8).

[706] Secs. 4041(f)(2), 4041(g), 4041(h), 4041(l), and 4092.

[707] Sec. 4092(c).

[708] Sec. 4091(d).

[709] Treas. Reg. sec. 48.4091-3(b).

[710] Treas. Reg. sec. 48.4091-3(d)(1).

[711] Sec. 6427(l)(1).

[712] Treas. Reg. sec. 40.6302(c)-1(a)(3).

[713] Sec. 34.

[714] See sec. 4081(a)(1)(B).

[715] The provision requires that if such delivery of information is provided to a terminal operator (or if a terminal operator collects such information), that the terminal operator provide such information to the Secretary.

[716] For example, X is a commercial airline subsidiary of airline Y. If Y sells fuel to X, X can waive its right to a refund to Y as the ultimate vendor. Y would then be entitled to file for a refund or net the refund against its excise tax liability

As another example, for an airport that is served by a pipeline, aviation fuel generally is delivered to the wing of an aircraft either by a refueling truck or by a "hydrant" that runs directly from the pipeline to the airplane wing. If a refueling truck that is not licensed for highway use loads fuel from a terminal located within the airport (and the other requirements of the provision for such truck and terminal are met), and delivers the fuel directly to the wing of an aircraft for use in commercial aviation, the aviation fuel is taxed at 4.4 cents per gallon upon delivery to the wing and the person receiving the fuel is liable for the tax, which such person would be able to self-assess on a return.[717] If fuel is loaded into a refueling truck that does not meet the requirements of the provision, then the fuel is treated as removed from the terminal into the refueling truck and tax of 21.9 cents per gallon is paid on such removal. The ultimate vendor is entitled to a refund of the difference between 21.9 cents per gallon paid on removal and the rate paid by a commercial airline purchaser (assuming the purchaser waived the refund right). If fuel is removed from a terminal directly to the wing of an aircraft registered to use fuel in commercial aviation by a hydrant or similar device, the person removing the aviation fuel is liable for a tax of 4.4 cents per gallon (or zero in the case of an international flight or qualified foreign airline) and may self-assess such tax on a return.

Under the provision, a floor stocks tax applies to aviation fuel held by a person (if title for such fuel has passed to such person) on October 1, 2004. The tax is equal to the amount of tax that would have been imposed before October 1, 2004, if the provision was in effect at all times before such date, reduced by the tax imposed by section 4091, as in effect on the day before the date of enactment. The Secretary shall determine the time and manner for payment of the tax, including the nonapplication of the tax on de minimis amounts of aviation fuel. Under the provision, 0.1 cents per gallon of such tax is transferred to the LUST Trust Fund. The remainder is transferred to the Airport and Airway Trust Fund.

Effective date.—(Effective for aviation fuel removed, entered, or sold after September 30, 2004.

SENATE AMENDMENT

The Senate amendment is similar to the House bill, except that refueler trucks, tankers, and tank wagons are not subject to special rules, and there is no provision for liability for, and self-assessment of, tax by the person receiving fuel removed from a refinery or terminal directly into the wing of an aircraft (whether by refueling vehicle or otherwise).

Effective date.—Effective for aviation fuel removed, entered, or sold after September 30, 2004.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, with the following modifications. The rule that permits certain refueler trucks to be treated as a terminal for purposes of the provision is modified to require that, in addition to the requirements specified in the House bill, a qualifying truck, tanker, or tank wagon must be loaded with aviation fuel from a terminal that is located within a secured area of an airport. The Secretary is required to publish, by December 15, 2004, and maintain a list of airports that include a secured area in which a terminal is located.[718] In addition, the conference agreement modifes the requirement that in order to qualify for the special rule, a refueler truck, tanker, or tank wagon must deliver the aviation fuel directly into the wing of the aircraft at the airport where the terminal is located to a requirement that a refueler truck, tanker, or tank wagon be loaded with aviation fuel for delivery into aircraft at the airport where the terminal is located.

The conference agreement modifies the floor stocks tax. Under the conference agreement, a floor stocks tax applies to aviation fuel held by a person (if title for such fuel has passed to such person) on January 1, 2004. The tax is equal to the amount of tax that would have been imposed before January 1, 2004, if the proposal was in effect at all times before such date, reduced by (1) the tax imposed by section 4091, as in effect on the day before such date and, (2) in the case of kerosene held exclusively for the holder's own use, the amount which such holder would reasonably expect under the proposal to be paid as a refund for a nontaxable use with respect to the kerosene. The tax does not apply to kerosene held in the fuel tank of an aircraft on January 1, 2004. The Secretary shall determine the time and manner for payment of the tax, including the nonapplication of the tax on de minimis amounts of aviation fuel. Under the conference agreement, 0.1 cents per gallon of such tax is transferred to the LUST Trust Fund. The remainder is transferred to the Airport and Airway Trust Fund.

The conferees expect the Secretary to delay the due date of the excise tax return with respect to aviation fuel for the quarter beginning on January 1, 2005. It is intended that the requirement of semi-monthly deposits of aviation fuel taxes continue unchanged.

Effective date.—(Effective for aviation-grade kerosene removed, entered, or sold after December 31, 2004.

3. Provide for transfer from Airport and Airway Trust Fund to Highway Trust Fund to adjust for continued highway use of aviation fuel (sec. 872 of the Senate amendment and secs. 9502 and 9503 of the Code)

PRESENT LAW

Aviation fuel is kerosene and any liquid (other than any product taxable under section 4081) that is suitable for use as a fuel in an aircraft.[719] In general, the rate of tax on aviation fuel is 21.9 cents per gallon.[720] Aviation fuel sold for use or used in commercial aviation is taxed at a reduced rate of 4.4 cents per gallon.[721] Certain sales of aviation fuel are exempt from tax.[722]

Taxes received for aviation fuel, except for the LUST Trust Fund financing rate, are appropriated to the Airport and Airway Trust Fund.[723] Such appropriation occurs even if aviation fuel is used for non aviation purposes.

Taxes received on taxable fuel for transportation purposes generally are appropriated to the Highway Trust Fund.[724]

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision directs the Secretary to transfer from the Airport and Airway Trust Fund to the Highway Trust Fund annually an amount equivalent to amounts received in the Airport and Airway Trust Fund which are attributable to fuel that is used primarily for highway transportation purposes. The Secretary is directed to transfer 11 percent of such amount to the Mass Transit Account.

Effective date.—(Effective on October 1, 2004.

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[717] Alternatively, if the aviation fuel in the example is for use in noncommercial aviation, the fuel is taxed at 21.9 cents per gallon upon delivery into the wing. Self-assessment of the tax would not apply in such case.

[718] The conferees intend that the following airports, subject to verification by the Secretary, be included on the Secretary's initial list of airports that include a secured area in which a terminal is located. The airports are listed by airport name, and the terminal with respect to the airport is identified by terminal control number. In maintaining the list of qualified airports, the Secretary has the discretion to add or remove airports from the list. Ted Stevens International Airport, T-91-AK-4520; William B. Hartsfield Atlanta International Airport, T-58-GA-2512; William B. Hartsfield Atlanta International Airport, T-58-GA-2513; William B. Hartsfield Atlanta International Airport, T-58-GA-2536; Bradley International Airport, T-06-CT-1271; Nashville Metropolitan Airport, T-62-TN-2222; Logan International Airport, T-04-MA-1171; Baltimore/Washington International Airport, T-52-MD-1569; Cleveland Hopkins International Airport, T-31-OH-3109; Charlotte/Douglas International Airport, T-56-NC-2032; Colorado Springs Airport, T-84-CO-4108; Cincinnati/Northern Kentucky International Airport, T-61-KY-3277; Dallas Love Field Airport, T-75-TX-2663; Ronald Reagan National Airport, T-54-VA-1686; Denver International Airport, T-84-CO-4111; Dallas Fort Worth International Airport, T-75-TX-2673; Wayne County Metropolitan Airport, T-38-MI-3018; Newark Liberty International Airport, T-22-NJ-1532; Fort Lauderdale/Hollywood International Airport; T-65-FL-2158; Piedmont Triad International Airport, T-56-NC-2038; Honolulu International Airport, T-91-HI-4570; Dulles International Airport, T-54-VA-1676; George Bush Intercontinental Airport, T-76-TX-2818; Mid Continent Airport, T-43-KS-3653; John F. Kennedy International Airport, T-11-NY-1334; McCarren International Airport, T-86-NV-4355; Kansas City International Airport, T-43-MO-3723; Orlando International Airport, T-59-FL-2111; Midway Airport, T-36-IL-3376; Memphis International Airport, T-62-TN-2212; General Mitchell International Airport, T-39-WI-3092; Minneapolis-St. Paul International Airport, T-41-MN-3419; Minneapolis-St. Paul International Airport, T-41-MN-3420; Minneapolis-St. Paul International Airport, T-41-MN-3421; Louis Armstrong New Orleans International Airport, T-72-LA-2356; Oakland International Airport, T-94-CA-4702; Eppley Airfield, T-47-NE-3608; Ontario International Airport, T-33-CA-4792; O'Hare International Airport, T-36-IL-3325; Portland International Airport, T-91-OR-4450; Philadelphia International Airport, T-23-PA-1770; Sky Harbor International Airport, T-86-AZ-4302; Pittsburgh International Airport, T-23-PA-1766; Raleigh/Durham International, T-56-NC-2045; Reno Cannon International Airport, T-86-NV-4352; San Diego International Airport, T-33-CA-4788; San Antonio International Airport, pending; Seattle Tacoma International Airport, T-91-WA-4425; San Francisco International Airport, T-94-CA-4701; San Jose Municipal Airport, T-77-CA-4650; Salt Lake City International Airport, T-84-UT-4207; John Wayne Airport/Orange County, T-33-CA-4772; Lambert International Airport, T-43-MO-3722; Tampa/St. Petersburg International Airport, T-59-FL-2110.

[719] Sec. 4093(a).

[720] Sec. 4091(b). This rate includes a 0.1 cent per gallon Leaking Underground Storage Tank ("LUST") Trust Fund tax. The LUST Trust Fund tax is set to expire after March 31, 2005, with the result that on April 1, 2005, the tax rate is scheduled to be 21.8 cents per gallon. Secs. 4091(b)(3)(B) & 4081(d)(3). Beginning on October 1, 2007, the rate of tax is reduced to 4.3 cents per gallon. Sec. 4091(B)(3)(A).

[721] Sec. 4092(b). The 4.4 cent rate includes 0.1 cent per gallon that is attributable to the LUST Trust Fund financing rate. A full exemption, discussed below applies to aviation fuel that is sold for use in commercial aviation as fuel supplies for vessels or aircraft, which includes use by certain foreign air carriers and for the international flights of domestic carriers. Secs. 4092(a), 4092(B), & 4221(d)(3).

[722] Sec. 4092.

[723] Sec. 9502(b).

[724] Sec. 9503(b).

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

4. Mechanical dye injection and related penalties (sec. 653 of the House bill, secs. 873, 874 and 875 of the Senate amendment and secs. 4082 and 6715 and new sec. 6715A of the Code)

PRESENT LAW

Statutory rules

Gasoline, diesel fuel and kerosene are generally subject to excise tax upon removal from a refinery or terminal, upon importation into the United States, and upon sale to unregistered persons unless there was a prior taxable removal or importation of such fuels.[725] However, a tax is not imposed upon diesel fuel or kerosene if all of the following are met: (1) the Secretary determines that the fuel is destined for a nontaxable use, (2) the fuel is indelibly dyed in accordance with regulations prescribed by the Secretary,[726] and (3) the fuel meets marking requirements prescribed by the Secretary.[727] A nontaxable use is defined as (1) any use that is exempt from the tax imposed by section 4041(a)(1) other than by reason of a prior imposition of tax, (2) any use in a train, or (3) certain uses in buses for public and school transportation, as described in section 6427(b)(1) (after application of section 6427(b)(3)).[728]

The Secretary is required to prescribe necessary regulations relating to dyeing, including specifically the labeling of retail diesel fuel and kerosene pumps.[729]

A person who sells dyed fuel (or holds dyed fuel for sale) for any use that such person knows (or has reason to know) is a taxable use, or who willfully alters or attempts to alter the dye in any dyed fuel, is subject to a penalty.[730] The penalty also applies to any person who uses dyed fuel for a taxable use (or holds dyed fuel for such a use) and who knows (or has reason to know) that the fuel is dyed.[731] The penalty is the greater of $1,000 per act or $10 per gallon of dyed fuel involved. In determining the amount of the penalty, the $1,000 is increased by the product of $1,000 and the number of prior penalties imposed upon such person (or a related person or predecessor of such person or related person).[732] The penalty may be imposed jointly and severally on any business entity, each officer, employee, or agent of such entity who willfully participated in any act giving rise to such penalty.[733] For purposes of the penalty, the term "dyed fuel" means any dyed diesel fuel or kerosene, whether or not the fuel was dyed pursuant to section 4082.[734]

Regulations

The Secretary has prescribed certain regulations under this provision, including regulations that specify the allowable types and concentration of dye, that the person claiming the exemption must be a taxable fuel registrant, that the terminal must be an approved terminal (in the case of a removal from a terminal rack), and the contents of the notice to be posted on diesel fuel and kerosene pumps.[735] However, the regulations do not prescribe the time or method of adding the dye to taxable fuel.[736] Diesel fuel is usually dyed at a terminal rack by either manual dyeing or mechanical injection. The regulations also provide that a terminal operator is jointly and severally liable for unpaid tax if undyed diesel fuel or kerosene is removed and the terminal operator provides any person with documentation that such fuel is dyed.[737]

HOUSE BILL

With respect to terminals that offer dyed fuel, the provision eliminates manual dyeing of fuel and requires dyeing by a mechanical system. Not later than 180 days after enactment of this provision, the Secretary of the Treasury is to prescribe regulations establishing standards for tamper resistant mechanical injector dyeing. Such standards shall be reasonable, cost-effective, and establish levels of security commensurate with the applicable facility.

The provision adds an additional set of penalties for violation of the new rules. A penalty, equal to the greater of $25,000 or $10 for each gallon of fuel involved, applies to each act of tampering with a mechanical dye injection system. The person committing the act is also responsible for any unpaid tax on removed undyed fuel. A penalty of $1,000 is imposed upon the operator of a mechanical dye injection system for each failure to maintain the security standards for such system.[738] An additional penalty of $1,000 is imposed upon such operator for each day any such violation remains uncorrected after the first day such violation has been or reasonably should have been discovered. For purposes of the daily penalty, a violation may be corrected by shutting down the portion of the system causing the violation. If any of these penalties are imposed on any business entity, each officer, employee, or agent of such entity or other contracting party who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty. If such business entity is part of an affiliated group, the parent corporation of such entity shall be jointly and severally liable with such entity for the penalty.

Effective date.—The provision is effective 180 days after the date that the Secretary issues the required regulations. The Secretary must issue such regulations no later than 180 days after enactment.

SENATE AMENDMENT

The Senate amendment contains a mechanical dyeing provision similar to the provision in the House bill, except that the Secretary of the Treasury is to prescribe regulations establishing standards by June 30, 2004.

The Senate amendment also contains two additional provisions not in the House bill.

The Senate amendment denies administrative appeal or review for repeat offenders (more than two violations) of present law after a chemical analysis of the fuel, except in the case of a claim regarding fraud or mistake in the chemical analysis or error in the mathematical calculation of the amount of penalty.

The Senate amendment also extends present-law penalties to any person who knows that the strength or composition of any dye or marking in any dyed fuel has been altered, chemically or otherwise, and who sells (or holds for sale) such fuel for any use that the person knows or has reason to know is a taxable use of such fuel.

Effective date.—Penalties relating to mechanical dyeing systems are effective 180 days after the regulations are issued. The prohibition of certain administrative review is effective for penalties assessed after date of enactment. The extension of present law penalties is effective on date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill with respect to mechanical dye injection systems and related penalties. The conference agreement follows the Senate amendment with respect to denying administrative review to repeat offenders and extending present law penalties to any person who knows that the strength or composition of any dye or marking in any dyed fuel has been altered, chemically or otherwise, and who sells (or holds for sale) such fuel for any use that the person knows or has reason to know is a taxable use of such fuel.

5. Authority to inspect on-site records (sec. 654 of the House bill, sec. 877 of the Senate amendment, and sec. 4083 of the Code)

PRESENT LAW

The IRS is authorized to inspect any place where taxable fuel[739] is produced or stored (or may be stored). The inspection is authorized to: (1) examine the equipment used to determine the amount or composition of the taxable fuel and the equipment used to store the fuel; and (2) take and remove samples of taxable fuel. Places of inspection include, but are not limited to, terminals, fuel storage facilities, retail fuel facilities or any designated inspection site.[740]

In conducting the inspection, the IRS may detain any receptacle that contains or may contain any taxable fuel, or detain any vehicle or train to inspect its fuel tanks and storage tanks. The scope of the inspection includes the book and records kept at the place of inspection to determine the excise tax liability under section 4081.[741]

HOUSE BILL

The provision expands the scope of the inspection to include any books, records, or shipping papers pertaining to taxable fuel located in any authorized inspection location.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

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[725] Sec. 4081(a)(1)(A). If such fuel is used for a nontaxable purpose, the purchaser is entitled to a refund of tax paid, or in some cases, an income tax credit. See sec. 6427.

[726] Dyeing is not a requirement, however, for certain fuels under certain conditions, i.e., diesel fuel or kerosene exempted from dyeing in certain States by the EPA under the Clean Air Act, aviation-grade kerosene as determined under regulations prescribed by the Secretary, kerosene received by pipeline or vessel and used by a registered recipient to produce substances (other than gasoline, diesel fuel or special fuels), kerosene removed or entered by a registrant to produce such substances or for resale, and (under regulations) kerosene sold by a registered distributor who sells kerosene exclusively to ultimate vendors that resell it (1) from a pump that is not suitable for fueling any diesel-powered highway vehicle or train, or (2) for blending with heating oil to be used during periods of extreme or unseasonable cold. Sec. 4082(c), (d).

[727] Sec. 4082(a).

[728] Sec. 4082(b)

[729] Sec. 4082(e).

[730] Sec. 6715(a).

[731] Sec. 6715(a).

[732] Sec. 6715(b).

[733] Sec. 6715(d).

[734] Sec. 6715(c)(1).

[735] Treas. Reg. secs. 48.4082-1, -2.

[736] In March 2000, the IRS withdrew its Notice of Proposed Rulemaking PS-6-95 (61 F.R. 10490 (1996)) relating to dye injection systems. Announcement 2000-42, 2000-1 C.B. 949. The proposed regulation established standards for mechanical dye injection equipment and required terminal operators to report nonconforming dyeing to the IRS. See also Treas. Reg. sec. 48.4082-1(c), (d).

[737] Treas. Reg. sec. 48.4081-2(c).

[738] The operator remains liable under current Treas. Reg. sec. 48.4081-2(c) for any unpaid tax on removed undyed fuel.

[739] "Taxable fuel" means gasoline, diesel fuel, and kerosene. Sec. 4083(a).

[740] Sec. 4083(c)(1)(A).

[741] Treas. Reg. sec. 48.4083-1(c)(1).

CONFERENCE AGREEMENT

The conference agreement follows the House bill and Senate amendment.

6. Assessable penalty for refusal of entry (sec. 878 of the Senate amendment and new sec. 6717 of the Code)

PRESENT LAW

The Internal Revenue Service is authorized to inspect any place where taxable fuel is produced or stored (or may be stored). As part of the inspection, the Internal Revenue Service is authorized to: (1) examine the equipment used to determine the amount or composition of the taxable fuel and the equipment used to store the fuel; and (2) take and remove samples of taxable fuel. Places of inspection, include, but are not limited to, terminals, fuel storage facilities, retail fuel facilities or any designated inspection site.[742]

In conducting the inspection, the Internal Revenue Service may detain any receptacle that contains or may contain any taxable fuel, or detain any vehicle or train to inspect its fuel tanks and storage tanks. The scope of the inspection includes the book and records kept to determine the excise tax liability under section 4081.[743] The Internal Revenue Service is authorized to establish inspection sites. A designated inspection site includes any State highway inspection station, weigh station, agricultural inspection station, mobile station or other location designated by the Internal Revenue Service.[744]

Any person that refuses to allow an inspection is subject to a penalty in the amount of $1,000 for each refusal.[745] The IRS is not able to assess this penalty in the same manner as it would a tax. It must first seek the assistance of the Department of Justice to obtain a judgment. Assessable penalties are payable upon notice and demand by the Secretary and are assessed and collected in the same manner as taxes.[746]

HOUSE BILL

No provision.

SENATE AMENDMENT

In addition to the $1,000 penalty under present law, the Senate amendment imposes an assessable penalty with respect to the refusal of entry. The assessable penalty is $1,000 for such refusal. The penalty will not apply if it is shown that such failure is due to reasonable cause. If the penalty is imposed on a business entity, the proposal provides for joint and several liability with respect to each officer, employee, or agent of such entity or other contracting party who willfully participated in the act giving rise to the penalty. If the business entity is part of an affiliated group, the parent corporation also will be jointly and severally liable for the penalty.

Effective date.—The provision is effective on October 1, 2004.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except for effective date.

Effective date.—The provision is effective on January 1, 2005.

7. Registration of pipeline or vessel operators required for exemption of bulk transfers to registered terminals or refineries (sec. 655 of the House bill, sec. 879 of the Senate amendment, and sec. 4081 of the Code)

PRESENT LAW

In general, gasoline, diesel fuel, and kerosene ("taxable fuel") are taxed upon removal from a refinery or a terminal.[747] Tax also is imposed on the entry into the United States of any taxable fuel for consumption, use, or warehousing. The tax does not apply to any removal or entry of a taxable fuel transferred in bulk (a "bulk transfer") to a terminal or refinery if both the person removing or entering the taxable fuel and the operator of such terminal or refinery are registered with the Secretary.[748]

Present law does not require that the vessel or pipeline operator that transfers fuel as part of a bulk transfer be registered in order for the transfer to be exempt. For example, a registered refiner may transfer fuel to an unregistered vessel or pipeline operator who in turn transfers fuel to a registered terminal operator. The transfer is exempt despite the intermediate transfer to an unregistered person.

In general, the owner of the fuel is liable for payment of tax with respect to bulk transfers not received at an approved terminal or refinery.[749] The refiner is liable for payment of tax with respect to certain taxable removals from the refinery.[750]

HOUSE BILL

The provision requires that for a bulk transfer of a taxable fuel to be exempt from tax, any pipeline or vessel operator that is a party to the bulk transfer be registered with the Secretary. Transfer to an unregistered party will subject the transfer to tax.

The Secretary is required to publish periodically a list of all registered persons that are required to register.

Effective date.—(Effective on October 1, 2004, except that the Secretary is required to publish the list of registered persons beginning on July 1, 2004.

SENATE AMENDMENT

Similar to the House bill, except that with respect to a bulk transfer on which no tax is paid, the Senate amendment imposes a penalty on any person who knowingly transfers taxable fuel in bulk to an unregistered person. The penalty is the greater of $10,000 or $1 per gallon and is increased for multiple prior violations. No penalty is imposed upon a showing by the taxpayer of reasonable cause.

Effective date.—Effective on October 1, 2004, except that the Secretary is required to publish the list of persons required to register by June 30, 2004.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, modified to provide that the Secretary shall periodically publish a current list of persons required to register under the authority of section 6103(k)(7).

Effective date.—(Effective on March 1, 2005, except that the Secretary is required to publish the list of persons required to register beginning on January 1, 2005.

8. Display of registration and penalties for failure to display registration and to register (secs. 656 and 657 of the House bill, secs. 880 and 882 of the Senate amendment, and secs. 4101, 7232, 7272 and new secs. 6718 and 6719 of the Code)

PRESENT LAW

Blenders, enterers, pipeline operators, position holders, refiners, terminal operators, and vessel operators are required to register with the Secretary with respect to fuels taxes imposed by sections 4041(a)(1) and 4081.[751] A non-assessable penalty for failure to register is $50.[752] A criminal penalty of $5,000, or imprisonment of not more than five years, or both, together with the costs of prosecution also applies to a failure to register and to certain false statements made in connection with a registration application.[753]

HOUSE BILL

The provision requires that every operator of a vessel who is required to register with the Secretary display on each vessel used by the operator to transport fuel, proof of registration through an electronic identification device prescribed by the Secretary. A failure to display such proof of registration results in a penalty of $500 per month per vessel. The amount of the penalty is increased for multiple prior violations. No penalty is imposed upon a showing by the taxpayer of reasonable cause.

The provision imposes a new assessable penalty for failure to register of $10,000 for each initial failure, plus $1,000 per day that the failure continues. No penalty is imposed upon a showing by the taxpayer of reasonable cause. In addition, the provision increases the present-law non-assessable penalty for failure to register from $50 to $10,000 and the present law criminal penalty for failure to register from $5,000 to $10,000.

Effective date.—(The provision requiring display of registration is effective on October 1, 2004. The provision relating to penalties is effective for penalties imposed after September 30, 2004.

SENATE AMENDMENT

The Senate amendment is similar to House bill, except that the increase in the penalty for multiple prior violations for failure to display proof of registration is determined differently.

Effective date.—Effective on October 1, 2004, except that the penalties for failure to register are effective for failures pending or occurring after September 30, 2004.

CONFERENCE AGREEMENT

The conference agreement follows the House bill except that the identification device is not required to be electronic.

Effective date.—The provision requiring display of registration is effective on January 1, 2005. The provision relating to penalties is effective for penalties imposed after December 31, 2004.

9. Registration of persons within foreign trade zones (sec. 881 of the Senate amendment and sec. 4101 of the Code)

PRESENT LAW

Blenders, enterers, pipeline operators, position holders, refiners, terminal operators, and vessel operators are required to register with the Secretary with respect to fuels taxes imposed by sections 4041(a)(1) and 4081.[754]

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[742] Sec. 4083(c)(1)(A).

[743] Treas. Reg. sec. 48.4083-1(b)(2).

[744] Sec. 4083(c); Treas. Reg. sec. 48.4083-1(b)(1).

[745] Sec. 4083(c)(3) and 7342.

[746] Sec. 6671.

[747] Sec. 4081(a)(1)(A).

[748] Sec. 4081(a)(1)(B). The sale of a taxable fuel to an unregistered person prior to a taxable removal or entry of the fuel is subject to tax. Sec. 4081(a)(1)(A).

[749] Treas. Reg. sec. 48.4081-3(e)(2).

[750] Treas. Reg. sec. 48.4081-3(b).

[751] Sec. 4101; Treas. Reg. sec. 48.4101-1(a) and (c)(1).

[752] Sec. 7272(a).

[753] Sec. 7232.

[754] Sec. 4101; Treas. Reg. sec. 48.4101-1(a) & (c)(1).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Secretary shall require registration by any person that operates a terminal or refinery within a foreign trade zone or within a customs bonded storage facility, or holds an inventory position with respect to a taxable fuel in such a terminal.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment. It is intended that the Secretary shall establish a date by which persons required to register under the provision must be registered.

Effective date.—Effective on January 1, 2005.

10. Penalties for failure to report (sec. 657 of the House bill, sec. 882 of the Senate amendment, and new sec. 6725 of the Code)

PRESENT LAW

A fuel information reporting program, the Excise Summary Terminal Activity Reporting System ("ExSTARS"), requires terminal operators and bulk transport carriers to report monthly on the movement of any liquid product into or out of an approved terminal.[755] Terminal operators file Form 720-TO—Terminal Operator Report, which shows the monthly receipts and disbursements of all liquid products to and from an approved terminal.[756] Bulk transport carriers (barges, vessels, and pipelines) that receive liquid product from an approved terminal or deliver liquid product to an approved terminal file Form 720-CS—Carrier Summary Report, which details such receipts and disbursements. In general, the penalty for failure to file a report or a failure to furnish all of the required information in a report is $50 per report.[757]

HOUSE BILL

The provision imposes a new assessable penalty for failure to file a report or to furnish information required in a report required by the ExSTARS system. The penalty is $10,000 per failure with respect to each vessel or facility (e.g., a terminal or other facility) for which information is required to be furnished. No penalty is imposed upon a showing by the taxpayer of reasonable cause.

Effective date.—Effective for penalties imposed after September 30, 2004.

SENATE AMENDMENT

Similar to House bill, except for technical wording differences.

Effective date.—Effective for failures pending or occurring after September 30, 2004. The electronic reporting provision is effective on October 1, 2004.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

Effective date.—Effective for penalties imposed after December 31, 2004.

11. Electronic filing of required information reports (sec. 895 of the Senate amendment and sec. 4010 of the Code)

PRESENT LAW

A fuel information reporting program, the Excise Summary Terminal Activity Reporting System ("ExSTARS"), requires terminal operators and bulk transport carriers to report monthly on the movement of any liquid product into or out of an approved terminal.[758] Terminal operators file Form 720-TO—Terminal Operator Report, which shows the monthly receipts and disbursements of all liquid products to and from an approved terminal.[759] Bulk transport carriers (barges, vessels, and pipelines) that receive liquid product from an approved terminal or deliver liquid product to an approved terminal file Form 720-CS—Carrier Summary Report, which details such receipts and disbursements.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment requires information reporting with respect to taxable fuels removed, entered, or transferred from any refinery, pipeline, or vessel that is registered. The proposal also requires that any person who must report under the ExSTARs systems and who has 25 or more reportable transactions in a month to report in electronic format.

Effective date.—Effective on October 1, 2005.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment except that the conference agreement does not adopt the information reporting requirement with respect to taxable fuels removed, entered, or transferred from any refinery, pipeline, or vessel that is registered.

Effective date.—Effective on January 1, 2006.

12. Information reporting for persons claiming certain tax benefits (sec. 883 of the Senate amendment and new sec. 4104 of the Code)

PRESENT LAW

The Code provides an income tax credit for each gallon of ethanol and methanol derived from renewable sources (e.g., biomass) used or sold as a fuel, or used to produce a qualified alcohol fuel mixture, such as gasohol. The amount of the credit is equal to 52 cents per gallon (ethanol)[760] and 60 cents per gallon (methanol).[761] This tax credit is provided to blenders of the alcohols with other taxable fuels, or to the retail sellers of unblended alcohol fuels. Part or all of the benefits of the income tax credit may be claimed through reduced excise taxes paid, either in reduced-tax sales or by expedited blender refunds on fully taxed sales of gasoline to obtain the benefit of the reduced rates. The amount of the income tax credit determined with respect to any alcohol is reduced to take into account any benefit provided by the reduced excise tax rates. To obtain a partial refund on fully taxed gasoline, the following requirements apply: (1) the claim must be for gasohol sold or used during a period of at least one week, (2) the claim must be for at least $200, and (3) the claim must be filed by the last day of the first quarter following the earliest quarter included in the claim. If the blender cannot meet these requirements, the blender must claim a credit on the blender's income tax return.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment requires persons claiming the Code benefits related to alcohol fuels and biodiesel fuels to provide such information related to such benefits and the coordination of such benefits as the Secretary may require to ensure the proper administration and use of such benefits. The Secretary may deny, revoke or suspend the registration of any person to enforce this requirement.

Effective date.—The provision is effective October 1, 2004.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment. Persons claiming excise tax benefits are to file quarterly information returns, rather than monthly.

Effective date.—The provision is effective January 1, 2004.

13. Collection from Customs bond where importer not registered (sec. 658 of the House bill and sec. 884 of Senate amendment)

PRESENT LAW

Typically, gasoline, diesel fuel, and kerosene are transferred by pipeline or barge in large quantities ("bulk") to terminal storage facilities that geographically are located closer to destination retail markets. A fuel is taxed when it "breaks bulk," i.e., when it is removed from the refinery or terminal, typically by truck or rail car, for delivery to a smaller wholesale facility or a retail outlet. The party liable for payment of the taxes is the "position holder," i.e., the person shown on the records of the terminal facility as owning the fuel.

Tax is also imposed on the entry into the United States of any taxable fuel for consumption, use, or warehousing.[762] This tax does not apply to any entry of a taxable fuel transferred in bulk to a terminal or refinery if the person entering the taxable fuel and the operator of such terminal or refinery are registered. The "enterer" is liable for the tax. An enterer generally means the importer of record (under customs law) with respect to the taxable fuel. However, if the importer of record is acting as an agent (a broker for example), the person for whom the agent is acting is the enterer. If there is no importer of record for taxable fuel entered into the United States, the owner of the taxable fuel at the time it is brought into the United States is the enterer. An importer's liability for Customs duties includes a liability for any internal revenue taxes that attach upon the importation of merchandise unless otherwise provided by law or regulation.[763]

As a part of the entry documentation, the importer, consignee, or an authorized agent usually is required to file a bond with Customs. The bond, among other things, guarantees that proper entry summary, with payment of estimated duties and taxes when due, will be made for imported merchandise and that any additional duties and taxes subsequently found to be due will be paid.

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[755] Sec. 4010(d); Treas. Reg. sec. 48.4101-2. The reports are required to be filed by the end of the month following the month to which the report relates.

[756] An approved terminal is a terminal that is operated by a taxable fuel registrant that is a terminal operator. Treas. Reg. sec. 48.4081-1(b).

[757] Sec. 6721(a).

[758] Sec. 4101(d); Treas. Reg. sec. 48.4101-2. The reports are required to be filed by the end of the month following the month to which the report relates.

[759] An approved terminal is a terminal that is operated by a taxable fuel registrant that is a terminal operator. Treas. Reg. sec. 48.4081-1(b).

[760] The 52-cents-per-gallon credit is scheduled to decline to 51 cents per gallon beginning in calendar year 2005. The credit is scheduled to expire after the earlier of (1) expiration of the Highway Trust Fund excise taxes or (2) December 31, 2007.

[761] Ethanol produced by certain "small producers" is eligible for an additional producer tax credit of 10 cents per gallon. Eligible small producers are defined as persons whose production capacity does not exceed 30 million gallons and whose annual production does not exceed 15 million gallons.

[762] Sec. 4081(a)(1)(A)(iii).

[763] 19 C.F.R. sec. 141.3 (2004).

As a condition of permitting anyone to be registered with the IRS, under section 4101 of the Code, the Secretary may require that such person give a bond in such sum as the Secretary determines appropriate.

On July 31, 2004, the Department of Treasury issued regulations providing that effective September 28, 2004, importers and enterers are jointly and severally liable for the tax on imported fuel if the importer is not the enterer and the enterer is not registered with the Secretary.

HOUSE BILL

Under the provision, the importer of record is jointly and severally liable for the tax imposed upon entry of fuel into the United States if, under regulations, any other person that is not registered with the Secretary as a taxable fuel registrant is liable for such tax. If the importer of record is liable for the tax and such tax is not paid on or before the last date prescribed for payment, the Secretary may collect such tax from the Customs bond posted with respect to the importation of the taxable fuel to which the tax relates.

For purposes of determining the jurisdiction of any court of the United States or any agency of the United States, any action by the Secretary to collect the tax from the Customs bond is treated as an action to collect tax from a bond authorized by section 4101 of the Code, not as an action to collect from a bond relating to the importation of merchandise.

Effective date.—The provision is effective for fuel entered after September 30, 2004.

SENATE AMENDMENT

Under the Senate amendment, for fuel entering the United States (other than transfers in bulk) for consumption, use, or warehousing, the proposal provides that the tax is immediately due and payable at the time of entry, if the enterer is not registered with the IRS. Upon the failure to pay tax or post bond, the Customs Service is authorized under the proposal to deny entry of the shipment into the United States. The Secretary also may seize the fuel on which the tax is due or detain the vehicle transporting such fuel until such tax is paid. If no tax has been paid or bond filed within five days of the seizure, the Secretary may sell the fuel.

Effective date.—The provision is effective upon date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not contain the House bill or Senate amendment provisions.

14. Reconciliation of on-loaded cargo to entered cargo (sec. 885 of the Senate amendment)

PRESENT LAW

The Trade Act of 2002 directed the Secretary to promulgate regulations pertaining to the electronic transmission to the Bureau of Customs and Border Patrol ("Customs") of information pertaining to cargo destined for importation into the United States or exportation from the United States, prior to such importation or exportation.[764] The Department of the Treasury issued final regulations on October 31, 2002. The regulations require the advance and accurate presentation of certain manifest information prior to lading at the foreign port and encourage the presentation of this information electronically. Customs must receive from the carrier the vessel's Cargo Declaration (Customs Form 1302) or the electronic equivalent within 24 hours before such cargo is laden aboard the vessel at the foreign port.[765] Certain carriers of bulk cargo, however, are exempt from these filing requirements. Such bulk cargo includes that composed of free flowing articles such as oil, grain, coal, ore and the like, which can be pumped or run through a chute or handled by dumping.[766] Thus, taxable fuels are not covered by the Cargo Declaration requirement.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment requires that, not later than one year after the date of enactment, the Secretary of Homeland Security, together with the Secretary, promulgate regulations providing for the transmission to the Internal Revenue Service of information pertaining to cargo of taxable fuels destined for importation into the United States, prior to such importations. The provision requires that imports of taxable fuels be subject to the Cargo Declaration and electronic reporting requirements.

Effective date.—The provision is effective upon date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

15. Modification of the use tax on heavy highway vehicles (sec. 659 of the House bill, sec. 890 of the Senate amendment, and secs. 4481, 4483 and 6165 of the Code)

PRESENT LAW

An annual use tax is imposed on heavy highway vehicles, at the rates below.[767]

Under 55,000 pounds ..	No tax.
55,000-75,000 pounds ..	$100 plus $22 per 1,000 pounds over 55,000.
Over 75,000 pounds	$550.

The annual use tax is imposed for a taxable period of July 1 through June 30. Generally, the tax is paid by the person in whose name the vehicle is registered. In certain cases, taxpayers are allowed to pay the tax in installments.[768] State governments are required to receive proof of payment of the use tax as a condition of vehicle registration.

Exemptions and reduced rates are provided for certain "transit-type buses," trucks used for fewer than 5,000 miles on public highways (7,500 miles for agricultural vehicles), and logging trucks. Any highway motor vehicle that is issued a base plate by Canada or Mexico and is operated on U.S. highways is subject to the highway use tax whether or not the vehicles are required to be registered in the United States. The tax rate for Canadian and Mexican vehicles is 75 percent of the rate that would otherwise be imposed.

HOUSE BILL

The House bill eliminates the ability to pay the tax in installments. It also eliminates the reduced rates for Canadian and Mexican vehicles. The provision requires taxpayers with 25 or more vehicles for any taxable period to file their returns electronically. Finally, the provision permits proration of tax for vehicles sold during the taxable period.

Effective date.—The provision is effective for taxable periods beginning after the date of enactment.

SENATE AMENDMENT

The Senate amendment eliminates the ability to pay the tax in installments and allows no proration of the tax unless the vehicle is destroyed, stolen, or sold. It also eliminates the reduced rates for Canadian and Mexican vehicles. In addition, under regulations to be prescribed by the Secretary, every taxpayer that pays the heavy highway vehicle use tax to receive and display on the vehicle an electronic identification device as prescribed by the Secretary. The device is to be received and displayed not later than one month after the due date of the return of tax with respect to each taxable period.

Effective date.—The Senate amendment is generally effective for taxable periods beginning after the date of enactment. Requires the Secretary to issue regulations regarding electronic identification devices no later than October 1, 2005.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

16. Modification of ultimate vendor refund claims with respect to farming (sec. 660 of the House bill, sec. 887 of the Senate amendment, and sec. 6427 of the Code)

PRESENT LAW

In general, the Code provides that, if diesel fuel, kerosene, or aviation fuel on which tax has been imposed is used by any person in a nontaxable use, the Secretary is to refund (without interest) the amount of tax imposed. The refund is made to the ultimate purchaser of the taxed fuel. However, in the case of diesel fuel or kerosene used on a farm for farming purposes or by a State or local government, refund payments are paid to the ultimate, registered vendors ("ultimate vendors") of such fuels.

HOUSE BILL

In the case of diesel fuel or kerosene used on a farm for farming purposes, the House bill provision limits ultimate vendor claims for refund to sales of such fuel in amounts less than 250 gallons per farmer per claim.

Effective date.—The provision is effective for fuels sold for nontaxable use after the date of enactment.

SENATE AMENDMENT

The Senate amendment provision is the same as the House bill except the limit on ultimate vendor claims is amounts less than 500 gallons per farmer per claim.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision or the Senate amendment provision.

17. Dedication of revenue from certain penalties to the Highway Trust Fund (sec. 661 of the House bill, sec. 891 of the Senate amendment, and sec. 9503 of the Code)

PRESENT LAW

Present law does not dedicate to the Highway Trust Fund any penalties assessed and collected by the Secretary.

HOUSE BILL

The provision dedicates to the Highway Trust Fund amounts equivalent to the penalties paid under sections 6715 (relating to dyed fuel sold for use or used in taxable use), 6715A (penalty for tampering or failing to maintain security requirements for mechanical dye injection systems), 6717 (penalty for failing to display tax registration on vessels), 6718 (penalty for failing to register under section 4101), 6725 (penalty for failing to report information required by the Secretary), 7232 (penalty for failing to register and false representations of registration status), and 7272 (but only with regard to penalties related to failure to register under section 4101).

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[764] Sec. 343(a) of Pub. L. No. 107-210 (2002).

[765] 19 CFR sec. 4.7(b)(2).

[766] 19 CFR sec. 4.7(b)(4)(i)(A).

[767] Sec. 4481.

[768] Sec. 6156.

[769] See generally, sec. 4483.

[770] Sec. 4483(f); Treas. Reg. sec. 41.4483-7(a).

Effective date.—The provision is effective for penalties assessed after October 1, 2004.

SENATE AMENDMENT

The Senate amendment similarly dedicates certain penalties to the Highway Trust Fund.

Effective date.—The provision is effective for penalties assessed after October 1, 2004.

CONFERENCE AGREEMENT

The conference agreement generally follows the House bill and the Senate amendment by dedicating certain penalties to the Highway Trust Fund. The conference agreement dedicates to the Highway Trust Fund amounts equivalent to the penalties paid under sections 6715 (relating to dyed fuel sold for use or used in taxable use), 6715A (penalty for tampering with or failing to maintain security requirements for mechanical dye injection systems), 6717 (assessable penalty for refusal of entry), 6718 (penalty for failing to display tax registration on vessels), 6719 (assessable penalty for failure to register), 6725 (penalty for failing to report information required by the Secretary), 7232 (penalty for failing to register and false representations of registration status), and 7272 (but only with regard to penalties related to failure to register under section 4101).

Effective date.—The provision is effective for penalties assessed on or after the date of enactment.

18. Taxable fuel refunds for certain ultimate vendors (sec. 662 of the House bill, sec. 888 of the Senate amendment, and secs. 6416 and 6427 of the Code)

PRESENT LAW

The Code provides that, in the case of gasoline on which tax has been paid and sold to a State or local government, to a nonprofit educational organization, for supplies for vessels or aircraft, for export, or for the production of special fuels, a wholesale distributor that sells the gasoline for such exempt purposes is treated as the person who paid the tax and thereby is the proper claimant for a credit or refund of the tax paid. In the case of undyed diesel fuel or kerosene used on a farm for farming purposes or by a State or local government, a credit or payment is allowable only to the ultimate, registered vendors ("ultimate vendors") of such fuels.

In general, refunds are paid without interest. However, in the case of overpayments of tax on gasoline, diesel fuel, or kerosene that is used to produce a qualified alcohol mixture and for refunds due ultimate vendors of diesel fuel or kerosene used on a farm for farming purposes or by a State or local government, the Secretary is required to pay interest on certain refunds. The Secretary must pay interest on refunds of $200 or more ($100 or more in the case of kerosene) due to the taxpayer arising from sales over any period of a week or more, if the Secretary does not make payment of the refund within 20 days.

HOUSE BILL

The provision provides that for sales of gasoline to a State or local government or to a nonprofit educational organization for its exclusive use on which tax has been imposed, the provision conforms the payment of refunds to that procedure established under present law in the case of diesel fuel or kerosene. That is, the ultimate vendor claims the refund.

For claims for refund of tax paid on diesel fuel or kerosene sold to State and local governments and for claims for refund of tax paid on gasoline sold to State and local governments or to a nonprofit educational organization and for which the ultimate purchaser utilized a credit card, the provision deems the person extending the credit to the ultimate purchaser to be the ultimate vendor. That is, the credit card company administers claims for refund and is responsible for supplying documentation required from ultimate vendors.

Effective date.—The provision is effective October 1, 2004.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and Senate amendment, with modifications. For sales of gasoline to a State or local government for the exclusive use of a State or local government or to a nonprofit educational organization for its exclusive use on which tax has been imposed, claims for credits or refund are made by the ultimate vendor.

The conference agreement provides that the rules for vendor refunds apply to claims made under this provision, except that the rules regarding electronic claims shall not apply unless the ultimate vendor has certified to the Secretary for the most recent quarter of the taxable year that all ultimate purchasers of the vendor are State or local governments or to a nonprofit educational organizations.[771]

The conference agreement does not include the House bill or Senate amendment provisions that deem the person extending credit via a credit card to the ultimate purchaser to be the ultimate vendor for purposes of refund claims.

Effective date.—The provision is effective on January 1, 2005.

19. Two party exchanges (sec. 663 of the bill and new sec. 4105 of the Code)

PRESENT LAW

Most fuel is taxed when it is removed from a registered terminal.[772] The party liable for payment of this tax is the "position holder." The position holder is the person reflected on the records of the terminal operator as holding the inventory position in the fuel.[773]

It is common industry practice for oil companies to serve customers of other oil companies under exchange agreements, e.g., where Company A's terminal is more conveniently located for wholesale or retail customers of Company B. In such cases, the exchange agreement party (Company B in the example) owns the fuel when the motor fuel is removed from the terminal and sold to B's customer.

HOUSE BILL

The provision permits two registered parties to switch position holder status in fuel within a registered terminal (thereby relieving the person originally owning the fuel[774] of tax liability as the position holder) if all of the following occur:

(1) The transaction includes a transfer from the original owner, i.e., the person who holds the original inventory position for taxable fuel in the terminal as reflected in the records of the terminal operator prior to the transaction.

(2) The exchange transaction occurs before or at the same time as completion of removal across the rack from the terminal by the receiving person or its customer.

(3) The terminal operator in its books and records treats the receiving person as the person that removes the product across a terminal rack for purposes of reporting the transaction to the Internal Revenue Service.

(4) The transaction is the subject of a written contract.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and Senate amendment.

20. Simplification of tax on tires (sec. 664 of the House bill and sec. 4071 of the Code)

PRESENT LAW

A graduated excise tax is imposed on the sale by a manufacturer (or importer) of tires designed for use on highway vehicles (sec. 4071). The tire tax rates are as follows:

Tire Weight	Tax Rate
Not more than 40 lbs	No tax.
More than 40 lbs., but not more than 70 lbs.	15 cents/lb. in excess of 40 lbs.
More than 70 lbs., but not more than 90 lbs.	$4.50 plus 30 cents/lb. in excess of 70 lbs.
More than 90 lbs.	$10.50 plus 50 cents/lb. in excess of 90 lbs.

No tax is imposed on the recapping of a tire that previously has been subject to tax. Tires of extruded tiring with internal wire fastening also are exempt.

The tax expires after September 30, 2005.

HOUSE BILL

The House bill modifies the excise tax applicable to tires. The House bill replaces the present-law tax rates based on the weight of the tire with a tax rate based on the load capacity of the tire. In general, the tax is 9.4 cents for each 10 pounds of tire load capacity in excess of 3,500 pounds. In the case of a biasply tire, the tax rate is 4.7 cents for each 10 pounds of tire load capacity in excess of 3,500 pounds.

The House bill modifies the definition of tires for use on highway vehicles to include any tire marked for highway use pursuant to certain regulations promulgated by the Secretary of Transportation. The provision also exempts from tax any tire sold for the exclusive use of the United States Department of Defense or the United States Coast Guard.

Tire load capacity is the maximum load rating labeled on the tire pursuant to regulations promulgated by the Secretary of Transportation. A biasply tire is any tire manufactured primarily for use on piggyback trailers.

Effective date.—The provision is effective for sales in calendar years beginning more than 30 days after the date of enactment.

SENATE AMENDMENT

No provision.

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[771] Sec. 6416(b)(2)(C) or (D).

[772] A "terminal" is a storage and distribution facility that is supplied by pipeline or vessel, and from which fuel may be removed at a rack. A "rack" is a mechanism capable of delivering taxable fuel into a means of transport other than a pipeline or vessel.

[773] Such person has a contractual agreement with the terminal operator to store and provide services with respect to the fuel. A "terminal operator" is any person who owns, operates, or otherwise controls a terminal. A terminal operator can also be a position holder if that person owns fuel in its terminal.

[774] In the provision, this person is referred to as the "delivering person."

CONFERENCE AGREEMENT

The conference agreement follows the House bill with the following modifications. The conference agreement modifies the rate of tax applicable to 9.45 cents for each 10 pounds of tire load capacity in excess of 3,500 pounds. In the case of a biasply tire, the conference agreement modifies the tax rate is 4.725 cents for each 10 pounds of tire load capacity in excess of 3,500 pounds. The conference agreement also imposes tax at a rate of is 4.725 cents for each 10 pounds of tire load capacity in excess of 3,500 pounds an any super single tire. A super single tire is a single tire greater than 13 inches in cross section width designed to replace two tires in a dual fitment. The conference agreement provides that a biasply tire means a pneumatic tire on which the ply cords that extend to the beads are laid at alternate angles substantially less than 90 degrees to the centerline of the tread.

Nothing in the amendments made by this section shall be construed to have any effect on subsection (d) of section 48.4701–1 of Title 26, Code of Federal Regulations (relating to recapped and retreaded tires). The conferees expect that the Secretary will prescribe regulations implementing the amendment to section 4071 but that such regulations will not affect subsection (d). The conferees believe no tax should be imposed on the recapping of a tire that previously has been subject to tax.

Effective date.—The provision is effective for sales in calendar years beginning more than 30 days after the date of enactment.

21. Tax on sale of diesel fuel whether suitable for use or not in a diesel-powered vehicle or train (sec. 886 of the Senate amendment)

PRESENT LAW

Under section 4081(a)(1), an excise tax is imposed upon (1) the removal of any taxable fuel from a refinery or terminal, (2) the entry of any taxable fuel into the United States, or (3) the sale of any taxable fuel to any person who is not a taxable fuel registrant under section 4101, unless there was a prior taxable removal or entry.

Under section 4083(a), taxable fuel includes diesel fuel. Diesel fuel includes any liquid, other than gasoline, that without further processing or blending, is suitable for use as a fuel in a diesel-powered highway vehicle or train.[775] A liquid is suitable for this use if the liquid has practical and commercial fitness for use in the propulsion engine of a diesel-powered highway vehicle or diesel-powered train. A liquid may possess this practical and commercial fitness even though the specified use is not the liquid's predominant use. However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the propulsion engine of a diesel-powered highway vehicle or diesel-powered train.

A tax is imposed on the removal or sale of blended taxable fuel by the blender thereof.[776] Tax is computed on the difference between the total number of gallons of blended taxable fuel removed or sold and the number of gallons of previously taxed taxable fuel used to produce the blended taxable fuel.[777] Blended taxable fuel means any taxable fuel that is produced outside the bulk transfer/terminal system by mixing (1) taxable fuel with respect to which tax has been imposed under section 4041(a)(1) or 4081(a) (other than taxable fuel for which a credit or payment has been allowed); and (2) any other liquid on which tax has not been imposed under section 4081.[778]

The blender (the person making the blended taxable fuel) is liable for the tax on the increased volume. In addition, on and after April 2, 2003, a person that sells any liquid that is used to produce blended taxable fuel is jointly and severally liable for the tax on the removal or sale of that blended taxable fuel if the liquid is a liquid on which tax has not been imposed under section 4081; and is sold by that person as gasoline, diesel fuel, or kerosene that has been taxed under section 4081.[779]

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision modifies the definition of diesel fuel to include any liquid which is sold as or offered for sale as a fuel in a diesel-powered highway vehicle or diesel-powered train.

Effective date.—The provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

22. Nonapplication of export exemption to delivery of fuel to motor vehicles removed from United States (sec. 892 of the Senate amendment)

PRESENT LAW

A manufacturer's excise tax is imposed upon

(1) The removal of any taxable fuel from a refinery or terminal;

(2) The entry of any taxable fuel into the United States for consumption, use or warehousing; or

(3) The sale of any taxable fuel to any person who is not registered, unless there was a prior taxable removal or entry.[780]

The term "taxable fuel" means gasoline, diesel fuel and kerosene.

Special provisions under the Code provide for a refund of tax to any person who sells gasoline to another for exportation.[781] Section 6421(c) provides "If gasoline is sold to any person for any purpose described in paragraph (2), (3), (4), or (5) of section 4221(a), the Secretary shall pay (without interest) to such person an amount equal to the product of the number of gallons so sold multiplied by the rate at which tax was imposed on such gasoline by section 4081." Section 4221 provides, in pertinent part, "Under regulations prescribed by the Secretary, no tax shall be imposed under this chapter . . . on the sale by the manufacturer . . . of an article—. . . for export, or for resale by the purchaser to a second purchaser for export . . . but only if such exportation or use is to occur before any other use . . ."

It is the IRS administrative position that the exemption from manufacturers excise tax by reason of exportation does not apply to the sale of motor fuel pumped into a fuel tank of a vehicle that is to be driven, or shipped, directly out of the United States.[782]

A duty-free sales facility that meets certain conditions may sell and deliver for export from the customs territory of the United States duty-free merchandise. Duty-free merchandise is merchandise sold by a duty-free sales facility on which neither Federal duty nor Federal tax has been assessed pending exportation from the customs territory of the United States. The statutes covering duty-free facilities do not contain any limitation on what goods may qualify for duty-free treatment.

The United States Court of Federal Claims ("Claims Court") and a District Court in Michigan have taken different positions on whether fuel sold from a duty-free facility and placed into the tank of an automobile that is then driven out of the country is exported fuel.[783] Both cases involved the same duty-free facility, which is near the Canadian border and is configured in such a way that anyone leaving the facility must depart the United States and enter into Canada. The District Court agreed with the IRS position that such fuel is not exported, while the Claims Court reached the opposite conclusion. The Claims Court concluded that the act of exportation began with the consumer's purchase and that the fuel necessarily enters into the stream of exportation at the moment it is placed into the fuel supply tank and the customer drives into Canada.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision reaffirms the long-standing IRS position taken in Rev. Rul. 69–150 and restates present law by amending the Code definition of export to exclude the delivery of a taxable fuel into a fuel tank of a motor vehicle that is shipped or driven out of the United States. It also imposes a tax on the sale of taxable fuel at a duty-free sales enterprise unless there was a prior taxable removal, or entry of such fuel.

Effective date.—The provision applies to sales or deliveries made after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

23. Taxation of transmix and diesel fuel blend stocks and Treasury study on fuel tax compliance (secs. 893, 894 and 895 of the Senate amendment and sec. 4083 of the Code)

PRESENT LAW

Definition of taxable fuels

A "taxable fuel" is gasoline, diesel fuel (including any liquid, other than gasoline, which is suitable for use as a fuel in a diesel-powered highway vehicle or train), and kerosene.[784]

Under the regulations, "gasoline" includes all products commonly or commercially known or sold as gasoline and suited for use as a motor fuel, and that have an octane rating of 75 or more. Gasoline also includes, to the extent provided in regulations, gasoline blendstocks and products commonly used as additives in gasoline. The term "gasoline blendstocks" does not include any product that cannot be blended into gasoline without further processing or fractionation ("off-spec gasoline").[785]

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[775] Sec. 4083(a)(3).

[776] Sec. 4081(b).

[777] Treas. Reg. sec. 48.4081–3(g)(1).

[778] Treas. Reg. sec. 48.4081–1(c)(1)(i).

[779] Treas. Reg. sec. 48.4081–3(g)(2).

[780] Sec. 4081(a)(1).

[781] Secs. 6421(c) and 4221(a)(2).

[782] Rev. Rul. 69–150.

[783] See, *Ammex Inc.* v. *United States*, 52 Fed. Cl. 303 (2002) (on cross-motions for summary judgment, the court found that plaintiff established standing to proceed to trial pursuant to sec. 6421(c) respecting its gasoline purchases only); and *Ammex Inc.* v. *United States*, 2002 U.S. Dist. LEXIS 25771 (E.D. Mich. July 31, 2002) (granting defendant's motion for summary judgment), reconsideration denied, *Ammex, Inc.* v. *United States*, 2002 U.S. Dist. LEXIS 22893 (E.D. Mich. Oct. 22, 2002). Although the Claims Court ruled that Ammex had standing to challenge the excise tax on gasoline, it subsequently held that Ammex was not entitled to a payment pursuant to sec. 6421(c) because it failed to prove at trial that it did not pass the tax on to its customers. *Ammex Inc.* v. *United States*, 2003 U.S. Claims LEXIS 63 (Fed. Cl. Mar. 26, 2003).

[784] Sec. 4083(a).

Diesel fuel is any liquid (other than gasoline) that is suitable for use as a fuel in a diesel-powered highway vehicle or diesel-powered train.[786] By regulation, diesel fuel does not include kerosene, gasoline, No. 5 and No. 6 fuel oils (as described in ASTM Specification D 396), or F–76 (Fuel Naval Distillates MIL–F–16884) any liquid that contains less than four percent normal parafins, or any liquid that has a distillation range of 125 degrees Fahrenheit or less, sulfur content of 10 ppm or less and minimum color of +27 Saybolt (these are known as "excluded liquids").[787]

By regulation, kerosene is defined as the kerosene described in ASTM Specification D 3699 (No. 1–K and No. 2–K), ASTM Specification D 1655 (kerosene-type jet fuel), and military specifications MIL–DTL–5624T (Grade JP–5) and MIL–DTL–83133E (Grade JP–8). Kerosene does not include any liquid that is an excluded liquid.[788]

Taxable events and exemptions

An excise tax is imposed upon (1) the removal of any taxable fuel from a refinery or terminal, (2) the entry of any taxable fuel into the United States, or (3) the sale of any taxable fuel to any person who is not registered with the IRS to receive untaxed fuel, unless there was a prior taxable removal or entry.[789] The tax does not apply to any removal or entry of taxable fuel transferred in bulk to a terminal or refinery if the person removing or entering the taxable fuel and the operator of such terminal or refinery are registered with the Secretary.[790]

Gasoline exemptions

If certain conditions are met, the removal, entry, or sale of gasoline blendstocks is not taxable. Generally, the exemption from tax applies if a gasoline blendstock is not used to produce finished gasoline or is received at an approved terminal or refinery. No tax is imposed on nonbulk removals from a terminal or refinery, or nonbulk entries into the United States or on any gasoline blendstocks if the person liable for the tax is a gasoline registrant, has an unexpired notification certificate, knows of no false information in the certificate, and has verified the accuracy of the notification certificate. The sale of a gasoline blendstock that was not subject to tax on nonbulk removal or entry is taxable unless the seller has an unexpired certificate from the buyer and has no reason to believe that any information in the certificate is false. No tax is imposed on, or purchaser certification required for, off-spec gasoline.

Diesel fuel and kerosene exemptions

Diesel fuel and kerosene that is to be used for a nontaxable purpose will not be taxed upon removal from the terminal if it is dyed to indicate its nontaxable purpose. Undyed aviation-grade kerosene also is exempt from tax at the rack if it is destined for use as a fuel in an aircraft. The tax does not apply to diesel fuel asserted to be "not suitable for use" or kerosene asserted to qualify as an excluded liquid.

Feedstock kerosene that a registered industrial user receives by pipeline or vessel also is exempt from the dyeing requirement. A kerosene feedstock user is defined as a person that receives kerosene by bulk transfer for its own use in the manufacture or production of any substance (other than gasoline, diesel fuel or special fuels subject to tax). Thus, for example, kerosene is used for a feedstock purpose when it is used as an ingredient in the production of paint and is not used for a feedstock purpose when it is used to power machinery at a factory where paint is produced. The person receiving the kerosene must be registered with the IRS and provide a certificate noting that the kerosene will be used for a feedstock purpose in order for the exemption to apply.

Information and tax return reporting

The IRS collects data under the ExSTARS reporting system that tracks all removals across the terminal rack regardless of whether or not the product is technically excluded from the definition of gasoline, diesel or blendstocks. ExSTARS reporting identifies the position holder at the time of removal. Below the rack, no information is gathered for exempt or excluded products or uses.

Taxpayers file quarterly excise tax returns showing only net taxable gallons.[791] Taxpayers do not account for gallons they claim to be exempt on such returns. Although the return is a quarterly return, the excise taxes are paid in semimonthly deposits.[792] If deposits are not made as required, a taxpayer may be required to file returns on a monthly or semimonthly basis instead of quarterly.[793]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment creates a new category of taxable liquids, "reportable liquids". A reportable liquid is any petroleum-based liquid other than a taxable fuel. For purposes of the imposition of tax, the provision treats "reportable liquids" in a manner similar to taxable fuels. Tax is imposed upon the removal, entry, or sale of such liquids, unless the removal, entry, or sale is (1) to a registered person who certifies that such liquid will not be used as a fuel or in the production of a fuel, or (2) the sale is to the ultimate purchaser of such liquid. Under the provision, the current exclusions for distillates not suitable for use in a highway vehicle, excluded liquids, and gasoline blendstocks requiring further processing (off-spec gasoline) are eliminated. The provision also provides that dyed diesel (a taxable fuel) also is taxable unless removed by a taxable fuel registrant (a person registered with the Secretary under section 4101).

The provision authorizes the Secretary to pay (without interest) an amount equal to the tax imposed, if a person establishes that the ultimate use of a gasoline blendstock, or additive, was not to produce gasoline. Similarly, if tax is imposed on a reportable liquid and the person establishes that the liquid was not used to produce a taxable, fuel, the Secretary is authorized to pay (without interest) an amount equal to the tax imposed on such person with respect to the reportable liquid.

Taxpayers are to file a monthly fuel excise tax return. Not earlier than January 1, 2005, such filings shall be in electronic form as prescribed by the Secretary. In addition, under the provision, the Secretary is to require that all persons removing refined product, whether a taxable product or an untaxed product, over the terminal rack to report such products on an excise tax return. The return is to specifically identify the class of product and its quantity.[794]

Effective date.—The provision is effective for fuel sold or used after September 30, 2004.

CONFERENCE AGREEMENT

The conference agreement adds two new categories to the definition of diesel fuel. Under the conference agreement, diesel fuel means: (1) any liquid (other than gasoline) which is suitable for use as a fuel in a diesel-powered highway vehicle, or a diesel-powered train; (2) transmix; and (3) diesel fuel blend stocks as identified by the Secretary. Transmix means a by-product of refined products pipeline operations created by the mixing of different specification products during pipeline transportation. Transmix generally results when one fuel, such as diesel fuel, is placed in a pipeline followed by another taxable fuel, such as kerosene. The mixture created between the two fuels when it is neither all diesel fuel nor all kerosene, is an example of a transmix. Under the conference agreement, all transmix is taxable as diesel fuel, regardless of whether it contains gasoline.

Under the conference agreement, it is intended that the re-refining of tax-paid transmix into gasoline, diesel fuel or kerosene qualify as a nontaxable off-highway business use of such transmix, for purposes of the refund and payment provisions relating to nontaxable uses of diesel fuel.

Not later than January 31, 2005, the Secretary shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report regarding fuel tax compliance, which shall include information, and analysis as specified below, and recommendations to address the issues identified.

The Secretary is to identify chemical products that should be added to the list of blendstocks. The Secretary is to identify those chemical products, as identified by lab analysis of fuel samples taken by the IRS, that have been blended with taxable fuel but are not currently treated as a blendstock. The report should indicate, to the extent possible, any statistics as to the frequency in which such chemical product has been discovered, and whether the samples contained above-normal concentrations of such chemical product. The report also shall include a discussion of IRS findings regarding the addition of waste products to taxable fuel and any recommendations to address the taxation of such products. The report shall include a discussion of IRS findings regarding sales of taxable fuel to entities claiming exempt status as a State or local government. Such discussion shall include the frequency of erroneous certifications as to exempt status determined on audit. The Secretary shall consult with representatives of State and local governments in providing recommendations to address this issue, including the feasibility of State maintained lists of their exempt governmental entities.

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[785] Treas. Reg. sec. 48.4081-1(c)(3)(ii). The term "gasoline blendstocks" means alkylate; butane; catalytically cracked gasoline; coker gasoline; ethyl tertiary butyl ether (ETBE); hexane; hydrocrackate; isomerate; methyl tertiary butyl ether (MTBE); mixed xylene (not including any separated isomer of xylene); natural gasoline; pentane; pentane mixture; polymer gasoline; raffinate; reformate; straight-run gasoline; straight-run naphtha; tertiary amyl methyl ether (TAME); tertiary butyl alcohol (gasoline grade) (TBA); thermally cracked gasoline; toluene; and transmix containing gasoline. Treas. Reg. sec. 48.4081-1(c)(3)(i).

[786] Sec. 4083(a)(3).

[787] Treas. Reg. sec. 48.4081-1(c)(2)(ii).

[788] Treas. Reg. sec. 48.4081-1(b).

[789] Sec. 4081(a)(1).

[790] Sec. 4081(a)(1)(B).

[791] Treas. Reg. sec. 406011(a)-1(a); Form 720, Quarterly Federal Excise Tax Return.

[792] Treas. Reg. 40.6302(c)-1(a).

[793] Treas. Reg. 40.6011(a)-1(b).

[794] Persons not liable for tax, will make their reports in the same manner as taxpayers who file fuel excise tax returns as described above.

Effective date.—The provision regarding the taxation of transmix and diesel fuel blendstocks is effective for fuel removed, sold, or used after December 31, 2004. The requirement for a Treasury study is effective on the date of enactment.

D. NONQUALIFIED DEFERRED COMPENSATION PLANS

1. Treatment of nonqualified deferred compensation plans (sec. 671 of the House bill, section 671 of the Senate amendment, and new sec. 409A and secs. 6040 and 6051 of the Code)

PRESENT LAW

In general

The determination of when amounts deferred under a nonqualified deferred compensation arrangement are includible in the gross income of the individual earning the compensation depends on the facts and circumstances of the arrangement. A variety of tax principles and Code provisions may be relevant in making this determination, including the doctrine of constructive receipt, the economic benefit doctrine,[795] the provisions of section 83 relating generally to transfers of property in connection with the performance of services, and provisions relating specifically to nonexempt employee trusts (sec. 402(b)) and nonqualified annuities (sec. 403(c)).

In general, the time for income inclusion of nonqualified deferred compensation depends on whether the arrangement is unfunded or funded. If the arrangement is unfunded, then the compensation is generally includible in income when it is actually or constructively received. If the arrangement is funded, then income is includible for the year in which the individual's rights are transferable or not subject to a substantial risk of forfeiture.

Nonqualified deferred compensation is generally subject to social security and Medicare taxes when the compensation is earned (i.e., when services are performed), unless the nonqualified deferred compensation is subject to a substantial risk of forfeiture. If nonqualified deferred compensation is subject to a substantial risk of forfeiture, it is subject to social security and Medicare tax when the risk of forfeiture is removed (i.e., when the right to the nonqualified deferred compensation vests). Amounts deferred under a nonaccount balance plan that are not reasonably ascertainable are not required to be taken into account as wages subject to social security and Medicare taxes until the first date that such amounts are reasonably ascertainable. Social security and Medicare tax treatment is not affected by whether the arrangement is funded or unfunded, which is relevant in determining when amounts are includible in income (and subject to income tax withholding).

In general, an arrangement is considered funded if there has been a transfer of property under section 83. Under that section, a transfer of property occurs when a person acquires a beneficial ownership interest in such property. The term "property" is defined very broadly for purposes of section 83.[796] Property includes real and personal property other than money or an unfunded and unsecured promise to pay money in the future. Property also includes a beneficial interest in assets (including money) that are transferred or set aside from claims of the creditors of the transferor, for example, in a trust or escrow account. Accordingly, if, in connection with the performance of services, vested contributions are made to a trust on an individual's behalf and the trust assets may be used solely to provide future payments to the individual, the payment of the contributions to the trust constitutes a transfer of property to the individual that is taxable under section 83. On the other hand, deferred amounts are generally not includible in income if nonqualified deferred compensation is payable from general corporate funds that are subject to the claims of general creditors, as such amounts are treated as unfunded and unsecured promises to pay money or property in the future.

As discussed above, if the arrangement is unfunded, then the compensation is generally includible in income when it is actually or constructively received under section 451.[797] Income is constructively received when it is credited to an individual's account, set apart, or otherwise made available so that it may be drawn on at any time. Income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions. A requirement to relinquish a valuable right in order to make withdrawals is generally treated as a substantial limitation or restriction.

Rabbi trusts

Arrangements have developed in an effort to provide employees with security for nonqualified deferred compensation, while still allowing deferral of income inclusion. A "rabbi trust" is a trust or other fund established by the employer to hold assets from which nonqualified deferred compensation payments will be made. The trust or fund is generally irrevocable and does not permit the employer to use the assets for purposes other than to provide nonqualified deferred compensation, except that the terms of the trust or fund provide that the assets are subject to the claims of the employer's creditors in the case of insolvency or bankruptcy.

As discussed above, for purposes of section 83, property includes a beneficial interest in assets set aside from the claims of creditors, such as in a trust or fund, but does not include an unfunded and unsecured promise to pay money in the future. In the case of a rabbi trust, terms providing that the assets are subject to the claims of creditors of the employer in the case of insolvency or bankruptcy have been the basis for the conclusion that the creation of a rabbi trust does not cause the related nonqualified deferred compensation arrangement to be funded for income tax purposes.[798] As a result, no amount is included in income by reason of the rabbi trust; generally income inclusion occurs as payments are made from the trust.

The IRS has issued guidance setting forth model rabbi trust provisions.[799] Revenue Procedure 92-64 provides a safe harbor for taxpayers who adopt and maintain grantor trusts in connection with unfunded deferred compensation arrangements. The model trust language requires that the trust provide that all assets of the trust are subject to the claims of the general creditors of the company in the event of the company's insolvency or bankruptcy.

Since the concept of rabbi trusts was developed, arrangements have developed which attempt to protect the assets from creditors despite the terms of the trust. Arrangements also have developed which attempt to allow deferred amounts to be available to individuals, while still purporting to meet the safe harbor requirements set forth by the IRS.

HOUSE BILL

Under the House bill, all amounts deferred under a nonqualified deferred compensation plan[800] for all taxable years are currently includible in gross income to the extent not subject to a substantial risk of forfeiture[801] and not previously included in gross income, unless certain requirements are satisfied. If the requirements of the provision are not satisfied, in addition to current income inclusion, interest at the underpayment rate plus one percentage point is imposed on the underpayments that would have occurred had the compensation been includible in income when first deferred, or if later, when not subject to a substantial risk of forfeiture. Actual or notional earnings on amounts deferred are also subject to the provision.

Under the provision, distributions from a nonqualified deferred compensation plan may be allowed only upon separation from service (as determined by the Secretary), death, a specified time (or pursuant to a fixed schedule), change in control in a corporation (to the extent provided by the Secretary), occurrence of an unforeseeable emergency, or if the participant becomes disabled. A nonqualified deferred compensation plan may not allow distributions other than upon the permissible distribution events and may not permit acceleration of a distribution, except as provided in regulations by the Secretary.

In the case of a specified employee, distributions upon separation from service may not be made earlier than six months after the date of the separation from service. Specified employees are key employees[802] of publicly-traded corporations.

Amounts payable at a specified time or pursuant to a fixed schedule must be specified under the plan at the time of deferral. Amounts payable upon the occurrence of an event are not treated as amounts payable at a specified time. For example, amounts payable when an individual attains age 65 are payable at a specified time, while amounts payable when an individual's child begins college are payable upon the occurrence of an event.

Distributions upon a change in the ownership or effective control of a corporation, or in the ownership of a substantial portion of the assets of a corporation, may only be made to the extent provided by the Secretary. It is intended that the Secretary use a similar, but more restrictive, definition of change in control as is used for purposes of the golden parachute provisions of section 280G consistent with the purposes of the provision. The provision requires the Secretary to issue guidance defining change of control within 90 days after the date of enactment.

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[795] See, e.g., *Sproull* v. *Commissioner*, 16 T.C. 244 (1951), aff'd per curiam, 194 F.2d 541 (6th Cir. 1952); Rev. Rul. 60-31, 1960-1 C.B. 174.

[796] Treas. Reg. sec. 1.83-3(e). This definition in part reflects previous IRS rulings on nonqualified deferred compensation.

[797] Treas. Reg. secs. 1.451-1 and 1.451-2.

[798] This conclusion was first provided in a 1980 private ruling issued by the IRS with respect to an arrangeament covering a rabbi; hence the popular name "rabbi trust." Priv. Ltr. Rul. 8113107 (Dec. 31, 1980).

[799] Rev. Proc. 92-64, 1992-2 C.B. 422, modified in part by Notice 2000-56, 2000-2 C.B. 393.

[800] A plan includes an agreement or arrangement, including an agreement or arrangement that includes one person.

[801] As under section 83, the rights of a person to compensation are subject to a substantial risk of forfeiture if the person's rights to such compensation are conditioned upon the performance of substantial services by any individual.

[802] Key employees are defined in section 416(i) and generally include officers having annual compensation greater than $130,000 (adjusted for inflation and limited to 50 employees), five percent owners, and one percent owners having annual compensation from the employer greater than $150,000.

An unforeseeable emergency is defined as a severe financial hardship to the participant resulting from a sudden and unexpected illness or accident of the participant, the participant's spouse, or a dependent (as defined in 152(a)) of the participant; loss of the participant's property due to casualty; or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. The amount of the distribution must be limited to the amount needed to satisfy the emergency plus taxes reasonably anticipated as a result of the distribution. Distributions may not be allowed to the extent that the hardship may be relieved through reimbursement or compensation by insurance or otherwise, or by liquidation of the participant's assets (to the extent such liquidation would not itself cause a severe financial hardship).

A participant is considered disabled if he or she (i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months; or (ii) is, by reason on any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than three months under an accident and health plan covering employees of the participant's employer.

As previously discussed, except as provided in regulations by the Secretary, no accelerations of distributions may be allowed. For example, changes in the form of a distribution from an annuity to a lump sum are not permitted. The provision provides the Secretary authority to provide, through regulations, limited exceptions to the general rule that no accelerations can be permitted. It is intended that exceptions be provided only in limited cases where the accelerated distribution is required for reasons beyond the control of the participant. For example, it is anticipated that an exception could be provided in order to comply with Federal conflict of interest requirements or court-approved settlements.

The provision requires that the plan must provide that compensation for services performed during a taxable year may be deferred at the participant's election only if the election to defer is made no later than the close of the preceding taxable year, or at such other time as provided in Treasury regulations. For example, it is expected that Treasury regulations provide that, in appropriate circumstances, elections to defer incentive bonuses earned over a period of several years may be made after the beginning of the service period, as long as such elections may in no event be made later than 12 months before the earliest date on which such incentive bonus is initially payable. The Secretary may consider other factors in determining the appropriate election period, such as when the amount of the bonus payment is determinable. It is expected that Treasury regulations will not permit any election to defer any bonus or other compensation if the timing of such election would be inconsistent with the purposes of the provision. Under the provision, in the first year that an employee becomes eligible for participation in a nonqualified deferred compensation plan, the election may be made within 30 days after the date that the employee is initially eligible.

The time and form of distributions must be specified at the time of initial deferral. A plan could specify the time and form of payments that are to be made as a result of a distribution event (e.g., a plan could specify that payments upon separation of service will be paid in lump sum within 30 days of separation from service) or could allow participants to elect the time and form of payment at the time of the initial deferral election. If a plan allows participants to elect the time and form of payment, such election is subject to the rules regarding initial deferral elections under the provision.

Under the provision, a plan may allow changes in the time and form of distributions subject to certain requirements. A nonqualified deferred compensation plan may allow a subsequent election to delay the timing or form of distributions only if: (1) the plan requires that such election cannot be effective for at least 12 months after the date on which the election is made; (2) except in the case of elections relating to distributions on account of death, disability or unforeseeable emergency, the plan requires that the additional deferral with respect to which such election is made is for a period of not less than five years from the date such payment would otherwise have been made; and (3) the plan requires that an election related to a distribution to be made upon a specified time may not be made less than 12 months prior to the date of the first scheduled payment. It is expected that in limited cases, the Secretary will issue guidance, consistent with the purposes of the provision, regarding to what extent elections to change a stream of payments are permissible.

If impermissible distributions or elections are made, or if the nonqualified deferred compensation plan allows impermissible distributions or elections, all amounts deferred under the plan (including amounts deferred in prior years) are currently includible in income to the extent not subject to a substantial risk of forfeiture and not previously included in income. In addition, interest at the underpayment rate plus one percentage point is imposed on the underpayments that would have occurred had the compensation been includible in income when first deferred, or if later, when not subject to a substantial risk of forfeiture.

Under the provision, in the case of assets set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary) for purposes of paying nonqualified deferred compensation, such assets are treated as property transferred in connection with the performance of services under section 83 (whether or not such assets are available to satisfy the claims of general creditors) at the time set aside if such assets are located outside of the United States or at the time transferred if such assets are subsequently transferred outside of the United States. Any subsequent increases in the value of, or any earnings with respect to, such assets are treated as additional transfers of property. Interest at the underpayment rate plus one percentage point is imposed on the underpayments that would have occurred had the amounts been includible in income for the taxable year in which first deferred or, if later, the first taxable year not subject to a substantial risk of forfeiture. It is expected that the Secretary will provide rules for identifying the deferrals to which assets set aside are attributable, for situations in which assets equal to less than the full amount of deferrals are set aside. The Secretary has authority to exempt arrangements from the provision if the arrangements do not result in an improper deferral of U.S. tax and will not result in assets being effectively beyond the reach of creditors.

Under the provision, a transfer of property in connection with the performance of services under section 83 also occurs with respect to compensation deferred under a nonqualified deferred compensation plan if the plan provides that upon a change in the employer's financial health, assets will be restricted to the payment of nonqualified deferred compensation. The transfer of property occurs as of the earlier of when the assets are so restricted or when the plan provides that assets will be restricted. It is intended that the transfer of property occurs to the extent that assets are restricted or will be restricted with respect to such compensation. For example, in the case of a plan that provides that upon a change in the employer's financial health, a trust will become funded to the extent of all deferrals, all amounts deferred under the plan are treated as property transferred under section 83. If a plan provides that deferrals of certain individuals will be funded upon a change in financial health, the transfer of property would occur with respect to compensation deferred by such individuals. Any subsequent increases in the value of, or any earnings with respect to, such assets are treated as additional transfers of property. Interest at the underpayment rate plus one percentage point is imposed on the underpayments that would have occurred had the amounts been includible in income for the taxable year in which first deferred or, if later, the first taxable year not subject to a substantial risk of forfeiture.

A nonqualified deferred compensation plan is any plan that provides for the deferral of compensation other than a qualified employer plan or any bona fide vacation leave, sick leave, compensatory time, disability pay, or death benefit plan. A qualified employer plan means a qualified retirement plan, tax-deferred annuity, simplified employee pension, and SIMPLE.[803] A governmental eligible deferred compensation plan (sec. 457) is also a qualified employer plan under the provision.[804] Plans subject to section 457, other than governmental eligible deferred compensation plans, are subject to both the requirements of section 457 and the provision. For example, in addition to the requirements of the provision, an eligible deferred compensation plan of a tax-exempt employer would still be required to meet the applicable dollar limits under section 457.

Interest imposed under the provision is treated as interest on an underpayment of tax. Income (whether actual or notional) attributable to nonqualified deferred compensation is treated as additional deferred compensation and is subject to the provision. The provision is not intended to prevent the inclusion of amounts in gross income under any provision or rule of law earlier than the time provided in the provision. Any amount included in gross income under the provision is not be required to be included in gross income under any provision of law later than the time provided in the provision. The provision does not affect the rules regarding the timing of an employer's deduction for nonqualified deferred compensation.

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[803] A qualified employer plan also includes a section 501(c)(18) trust.

[804] A governmental deferred compensation plan that is not an eligible deferred compensation plan is not a qualified employer plan.

The provision requires annual reporting to the Internal Revenue Service of amounts deferred. Such amounts are required to be reported on an individual's Form W-2 for the year deferred even if the amount is not currently includible in income for that taxable year. Under the provision, the Secretary is authorized, through regulations, to establish a minimum amount of deferrals below which the reporting requirement does not apply. The Secretary may also provide that the reporting requirement does not apply with respect to amounts of deferrals that are not reasonably ascertainable. It is intended that the exception for amounts not reasonable ascertainable only apply to nonaccount balance plans and that amounts be required to be reported when they first become reasonably ascertainable.[805]

The provision provides the Secretary authority to prescribe regulations as are necessary to carry out the purposes of provision, including regulations: (1) providing for the determination of amounts of deferral in the case of defined benefit plans; (2) relating to changes in the ownership and control of a corporation or assets of a corporation; (3) exempting from the provisions providing for transfers of property arrangements that will not result in an improper deferral of U.S. tax and will not result in assets being effectively beyond the reach of creditors; (4) defining financial health; and (5) disregarding a substantial risk of forfeiture.

It is intended that substantial risk of forfeitures may not be used to manipulate the timing of income inclusion. It is intended that substantial risks of forfeiture should be disregarded in cases in which they are illusory or are used inconsistent with the purposes of the provision. For example, if an executive is effectively able to control the acceleration of the lapse of a substantial risk of forfeiture, such risk of forfeiture should be disregarded and income inclusion should not be postponed on account of such restriction.

Effective date.—The House bill is effective for amounts deferred after June 3, 2004. The provision does not apply to amounts deferred after June 3, 2004, and before January 1, 2005, pursuant to an irrevocable election or binding arrangement made before June 4, 2004. Earnings on amounts deferred before the effective date are subject to the provision to the extent that such amounts deferred are subject to the provision.

It is intended that amounts further deferred under a subsequent election with respect to amounts originally deferred before June 4, 2004, are subject to the requirements of the provision.

No later than 90 days after the date of enactment, the Secretary shall issue guidance providing a limited period of time during which an individual participating in a nonqualified deferred compensation plan adopted before June 4, 2004, may, without violating the requirements of the provision, terminate participation or cancel an outstanding deferral election with regard to amounts earned after June 3, 2004, if such amounts are includible in income as earned.

SENATE AMENDMENT

The Senate amendment follows the House bill with the following modifications.

Under the Senate amendment, if the requirements of the provision are not satisfied, in addition to current income inclusion, interest at the underpayment rate is imposed on the underpayments that would have occurred had the compensation been includible in income when first deferred, or if later, when not subject to a substantial risk of forfeiture. The amount required to be included in income is also subject to an additional 10-percent tax.

Under the Senate amendment, in the case of an individual who, with respect to a corporation, is subject to the requirements of section 16(a) of the Securities Act of 1934, distributions upon a change in control may not be made earlier than one year after the date of the change in control of the corporation. Such individuals include officers (as defined by section 16(a)),[806] directors, or 10-percent owners of publicly-held corporations. Under the provision, distributions made to such individuals within one year of the change in control ("applicable payments") are treated as excess parachute payments under section 280G (even if the payment would not otherwise be treated as an excess parachute payment) and therefore subject to the excise tax under section 4999. As under present law, no deduction is allowed for any amount treated as an excess parachute payment.

If, absent the provision, an applicable payment is a payment in the nature of compensation contingent on a change in control, section 280G is applied as if the provision had not been enacted (i.e., the applicable payments continue to be taken into account under section 280G). Any resulting excess parachute payment is also subject to the excise tax under section 4999 (in addition to the tax imposed by the provision). Under the provision, an applicable payment that, absent the provision, is not a payment in the nature of compensation contingent on a change in control is required to be taken into account in determining if the present value of the payments in the nature of compensation contingent on a change in control equal or exceed three times the base amount. Any resulting excess parachute payment is also subject to the excise tax under section 4999 (in addition to the tax imposed by the provision). Applicable payments do not include payments made upon death or if the participant becomes disabled. Treasury regulations shall prescribe rules to prevent a deduction from being disallowed more than once.

Under the Senate amendment, unforeseeable emergency also includes hardship of a beneficiary. Unforeseeable emergency is defined as severe financial hardship of the participant or beneficiary resulting from a sudden and unexpected illness or accident of the participant or beneficiary, the participant's or beneficiary's spouse or the participant's or beneficiary's dependent (as defined in 152(a)); loss of the participant's or beneficiary's property due to casualty; or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or beneficiary. Distributions are not allowed to the extent that the hardship may be relieved by liquidation of the participant's or beneficiary's assets.

Under the Senate amendment, participants must be limited to one subsequent election.

The Senate amendment includes restrictions on investment options. Under the Senate amendment, investment options (including phantom or notional investment options) which a participant may elect under the nonqualified deferred compensation plan must be comparable to those which may be elected by participants of the qualified defined contribution plan of the employer that has the fewest investment options. It is intended that the investment options of the nonqualified deferred compensation plan may be less favorable or more limited than those of the qualified defined contribution employer plan. The Committee intends that open brokerage windows, hedge funds, and investments in which the employer guarantees a rate of return above what is commercially available are prohibited. If there is no qualified defined contribution employer plan, the investment options of the nonqualified deferred compensation plan must meet the requirements prescribed by the Secretary regarding permissible investment options. It is intended that in cases where there is no such qualified defined contribution employer plan, the Secretary issue rules limiting the available investment options.

The Senate amendment includes an exception to the provision requiring assets set aside outside of the U.S. for purposes of paying deferred compensation to be treated as property transferred in connection with the performance of services. The provision does not apply to assets located in a foreign jurisdiction if substantially all of the services to which the nonqualified deferred compensation relates are performed in such foreign jurisdiction. The provision is specifically intended to apply to foreign trusts and arrangements that effectively shield from the claims of general creditors any assets intended to satisfy nonqualified deferred compensation arrangements.

The Senate amendment does not apply to a plan meeting the requirements of section 457(e)(12) if the plan was in existence as of May 1, 2004, and was providing nonelective deferred compensation described in section 457(e)(12) on such date. If the plan has a material change in the class of individuals eligible to participate in the plan after May 1, 2004, the exception does not apply to compensation provided under the plan after the date of such change.

The Senate amendment does not includes an exception from the reporting requirement for deferrals that are not reasonable ascertainable.

Effective date.—The provision is effective for amounts deferred in taxable years beginning after December 31, 2004.

Not later than 90 days after the date of enactment, the Secretary is directed to issue guidance providing a limited period during which an individual participating in a nonqualified deferred compensation plan adopted on or before December 31, 2004, may, without violating the provision, terminate participation or cancel an outstanding deferral election with regard to amounts earned after December 31, 2004, if such amounts are includible in income as earned.

CONFERENCE AGREEMENT

In general

The conference agreement follows the House bill with the following modifications. Under the conference agreement, all amounts deferred under a nonqualified deferred compensation plan[807] for all taxable years are currently includible in gross income to the extent not subject to a substantial risk of forfeiture[808] and not previously included in gross income, unless certain requirements are satisfied.[809] If the requirements of the provision are not satisfied, in addition to current income inclusion, interest at the underpayment rate plus one percentage point is imposed on the underpayments that would have occurred had the compensation been includible in income when first deferred, or if later, when not subject to a substantial risk of forfeiture. The amount required to be included in income is also subject to a 20-percent additional tax.[810]

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[805] It is intended that the exception be similar to that under Treas. Reg. sec. 31.3121(v)(2)-1(e)(4).

[806] An officer is defined as the president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions.

[807] A plan includes an agreement or arrangement, including an agreement or arrangement that includes one person. Amounts deferred also include actual or notional earnings.

Current income inclusion, interest, and the additional tax apply only with respect to the participants with respect to whom the requirements of the provision are not met. For example, suppose a plan covering all executives of an employer (including those subject to section 16(a) of the Securities and Exchange Act of 1934) allows distributions to individuals subject to section 16(a) upon a distribution event that is not permitted under the provision. The individuals subject to section 16(a), rather than all participants of the plan, would be required to include amounts deferred in income and would be subject to interest and the 20-percent additional tax.

Permissible distributions

In general

Under the provision, distributions from a nonqualified deferred compensation plan may be allowed only upon separation from service (as determined by the Secretary), death, a specified time (or pursuant to a fixed schedule), change in control of a corporation (to the extent provided by the Secretary), occurrence of an unforeseeable emergency, or if the participant becomes disabled. A nonqualified deferred compensation plan may not allow distributions other than upon the permissible distribution events and, except as provided in regulations by the Secretary, may not permit acceleration of a distribution.

Separation from service

In the case of a specified employee who separates from service, distributions may not be made earlier than six months after the date of the separation from service or upon death. Specified employees are key employees[811] of publicly-traded corporations.

Specified time

Amounts payable at a specified time or pursuant to a fixed schedule must be specified under the plan at the time of deferral. Amounts payable upon the occurrence of an event are not treated as amounts payable at a specified time. For example, amounts payable when an individual attains age 65 are payable at a specified time, while amounts payable when an individual's child begins college are payable upon the occurrence of an event.

Change in control

Distributions upon a change in the ownership or effective control of a corporation, or in the ownership of a substantial portion of the assets of a corporation, may only be made to the extent provided by the Secretary. It is intended that the Secretary use a similar, but more restrictive, definition of change in control as is used for purposes of the golden parachute provisions of section 280G consistent with the purposes of the provision. The provision requires the Secretary to issue guidance defining change of control within 90 days after the date of enactment.

Unforeseeable emergency

An unforeseeable emergency is defined as a severe financial hardship to the participant: (1) resulting from an illness or accident of the participant, the participant's spouse, or a dependent (as defined in sec. 152(a)); (2) loss of the participant's property due to casualty; or (3) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. The amount of the distribution must be limited to the amount needed to satisfy the emergency plus taxes reasonably anticipated as a result of the distribution. Distributions may not be allowed to the extent that the hardship may be relieved through reimbursement or compensation by insurance or otherwise, or by liquidation of the participant's assets (to the extent such liquidation would not itself cause a severe financial hardship).

Disability

A participant is considered disabled if he or she (1) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months; or (2) is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than three months under an accident and health plan covering employees of the participant's employer.

Prohibition on acceleration of distributions

As mentioned above, except as provided in regulations by the Secretary, no accelerations of distributions may be allowed. In general, changes in the form of distribution that accelerate payments are subject to the rule prohibiting acceleration of distributions. However, it is intended that the rule against accelerations is not violated merely because a plan provides a choice between cash and taxable property if the timing and amount of income inclusion is the same regardless of the medium of distribution. For example, the choice between a fully taxable annuity contract and a lump-sum payment may be permitted. It is also intended that the Secretary provide rules under which the choice between different forms of actuarially equivalent life annuity payments is permitted.

It is intended that the Secretary will provide other, limited, exceptions to the prohibition on accelerated distributions, such as when the accelerated distribution is required for reasons beyond the control of the participant and the distribution is not elective. For example, it is anticipated that an exception could be provided if a distribution is needed in order to comply with Federal conflict of interest requirements or a court-approved settlement incident to divorce. It is intended that Treasury regulations provide that a plan would not violate the prohibition on accelerations by providing that withholding of an employee's share of employment taxes will be made from the employee's interest in the nonqualified deferred compensation plan. It is also intended that Treasury regulations provide that a plan would not violate the prohibition on accelerations by providing for a distribution to a participant to pay income taxes due upon a vesting event subject to section 457(f), provided that such amount is not more than an amount equal to the income tax withholding that would have been remitted by the employer if there had been a payment of wages equal to the income includible by the participant under section 457(f). It is also intended that Treasury regulations provide that a plan would not violate the prohibition on accelerations by providing for automatic distributions of minimal interests in a deferred compensation plan upon permissible distribution events for purposes of administrative convenience. For example, a plan could provide that upon separation from service of a participant, account balances less than $10,000 will be automatically distributed (except in the case of specified employees).

Requirements with respect to elections

The provision requires that a plan must provide that compensation for services performed during a taxable year may be deferred at the participant's election only if the election to defer is made no later than the close of the preceding taxable year, or at such other time as provided in Treasury regulations.[812] In the case of any performance-based compensation based on services performed over a period of at least 12 months, such election may be made no later than six months before the end of the service period. It is not intended that the provision override the constructive receipt doctrine, as constructive receipt rules continue to apply. It is intended that the term "performance-based compensation" will be defined by the Secretary to include compensation to the extent that an amount is: (1) variable and contingent on the satisfaction of preestablished organizational or individual performance criteria and (2) not readily ascertainable at the time of the election. For the purposes of the provision, it is intended that performance-based compensation may be required to meet certain requirements similar to those under section 162(m), but would not be required to meet all requirements under that section. For example, it is expected that the Secretary will provide that performance criteria would be considered preestablished if it is established in writing no later than 90 days after the commencement of the service period, but the requirement of determination by the compensation committee of the board of directors would not be required. It is expected that the Secretary will issue guidance providing coordination rules, as appropriate, regarding the timing of elections in the case when the fiscal year of the employer and the taxable year of the individual are different. It is expected that Treasury regulations will not permit any election to defer any bonus or other compensation if the timing of such election would be inconsistent with the purposes of the provision.

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[808] As under section 83, the rights of a person to compensation are subject to a substantial risk of forefeiture if the person's rights to such compensation are conditioned upon the performance of substantial services by any individual.

[809] It is intended that Treasury regulations will provide guidance regarding when an amount is deferred. It is intended that timing of an election to defer is not determinative of when the deferral is made.

[810] These consequences apply under the provision to amounts deferred after the effective date of the provision.

[811] Key employees are defined in section 416(i) and generally include officers having annual compensation greater than $130,000 (adjusted for inflation and limited to 50 employees), five percent owners, and one percent owners having annual compensation from the employer greater than $150,000.

[812] Under the provision, in the first year that an employee becomes eligible for participation in a nonqualified deferred compensation plan, the election may be made within 30 days after the date that the employee is initially eligible.

The time and form of distributions must be specified at the time of initial deferral. A plan could specify the time and form of payments that are to be made as a result of a distribution event (e.g., a plan could specify that payments upon separation of service will be paid in lump sum within 30 days of separation from service) or could allow participants to elect the time and form of payment at the time of the initial deferral election. If a plan allows participants to elect the time and form of payment, such election is subject to the rules regarding initial deferral elections under the provision. It is intended that multiple payout events are permissible. For example, a participant could elect to receive 25 percent of their account balance at age 50 and the remaining 75 percent at age 60. A plan could also allow participants to elect different forms of payment for different permissible distribution events. For example, a participant could elect to receive a lump-sum distribution upon disability, but an annuity at age 65.

Under the provision, a plan may allow changes in the time and form of distributions subject to certain requirements. A nonqualified deferred compensation plan may allow a subsequent election to delay the timing or form of distributions only if: (1) the plan requires that such election cannot be effective for at least 12 months after the date on which the election is made; (2) except in the case of elections relating to distributions on account of death, disability or unforeseeable emergency, the plan requires that the additional deferral with respect to which such election is made is for a period of not less than five years from the date such payment would otherwise have been made; and (3) the plan requires that an election related to a distribution to be made upon a specified time may not be made less than 12 months prior to the date of the first scheduled payment. It is expected that in limited cases, the Secretary will issue guidance, consistent with the purposes of the provision, regarding to what extent elections to change a stream of payments are permissible. The Secretary may issue regulations regarding elections with respect to payments under nonelective, supplemental retirement plans.

Foreign trusts

Under the provision, in the case of assets set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary) for purposes of paying nonqualified deferred compensation, such assets are treated as property transferred in connection with the performance of services under section 83 (whether or not such assets are available to satisfy the claims of general creditors) at the time set aside if such assets (or trust or other arrangement) are located outside of the United States or at the time transferred if such assets (or trust or other arrangement) are subsequently transferred outside of the United States. Any subsequent increases in the value of, or any earnings with respect to, such assets are treated as additional transfers of property. Interest at the underpayment rate plus one percentage point is imposed on the underpayments that would have occurred had the amounts set aside been includible in income for the taxable year in which first deferred or, if later, the first taxable year not subject to a substantial risk of forfeiture. The amount required to be included in income is also subject to an additional 20-percent tax.

It is expected that the Secretary will provide rules for identifying the deferrals to which assets set aside are attributable, for situations in which assets equal to less than the full amount of deferrals are set aside. The provision does not apply to assets located in a foreign jurisdiction if substantially all of the services to which the nonqualified deferred compensation relates are performed in such foreign jurisdiction. The provision is specifically intended to apply to foreign trusts and arrangements that effectively shield from the claims of general creditors any assets intended to satisfy nonqualified deferred compensation arrangements. The Secretary has authority to exempt arrangements from the provision if the arrangements do not result in an improper deferral of U.S. tax and will not result in assets being effectively beyond the reach of creditors.

Triggers upon financial health

Under the provision, a transfer of property in connection with the performance of services under section 83 also occurs with respect to compensation deferred under a nonqualified deferred compensation plan if the plan provides that upon a change in the employer's financial health, assets will be restricted to the payment of nonqualified deferred compensation. An amount is treated as restricted even if the assets are available to satisfy the claims of general creditors. For example, the provision applies in the case of a plan that provides that upon a change in financial health, assets will be transferred to a rabbi trust.

The transfer of property occurs as of the earlier of when the assets are so restricted or when the plan provides that assets will be restricted. It is intended that the transfer of property occurs to the extent that assets are restricted or will be restricted with respect to such compensation. For example, in the case of a plan that provides that upon a change in the employer's financial health, a trust will become funded to the extent of all deferrals, all amounts deferred under the plan are treated as property transferred under section 83. If a plan provides that deferrals of certain individuals will be funded upon a change in financial health, the transfer of property would occur with respect to compensation deferred by such individuals. The provision is not intended to apply when assets are restricted for a reason other than change in financial health (e.g., upon a change in control) or if assets are periodically restricted under a structured schedule and scheduled restrictions happen to coincide with a change in financial status. Any subsequent increases in the value of, or any earnings with respect to, restricted assets are treated as additional transfers of property. Interest at the underpayment rate plus one percentage point is imposed on the underpayments that would have occurred had the amounts been includible in income for the taxable year in which first deferred or, if later, the first taxable year not subject to a substantial risk of forfeiture. The amount required to be included in income is also subject to an additional 20-percent tax.

Definition of nonqualified deferred compensation plan

A nonqualified deferred compensation plan is any plan that provides for the deferral of compensation other than a qualified employer plan or any bona fide vacation leave, sick leave, compensatory time, disability pay, or death benefit plan.[813] A qualified employer plan means a qualified retirement plan, tax-deferred annuity, simplified employee pension, and SIMPLE.[814] A qualified governmental excess benefit arrangement (sec. 415(m)) is a qualified employer plan. An eligible deferred compensation plan (sec. 457(b)) is also a qualified employer plan under the provision. A tax-exempt or governmental deferred compensation plan that is not an eligible deferred compensation plan is not a qualified employer plan. The application of the provision is not limited to arrangements between an employer and employee.

For purposes of the provision, it is not intended that the term "nonqualified deferred compensation plan" include an arrangement taxable under section 83 providing for the grant of an option on employer stock with an exercise price that is not less than the fair market value of the underlying stock on the date of grant if such arrangement does not include a deferral feature other than the feature that the option holder has the right to exercise the option in the future. The provision is not intended to change the tax treatment of incentive stock options meeting the requirements of 422 or options granted under an employee stock purchase plan meeting the requirements of section 423.

It is intended that the provision does not apply to annual bonuses or other annual compensation amounts paid within 2 1/2 months after the close of the taxable year in which the relevant services required for payment have been performed.

Other rules

Interest imposed under the provision is treated as interest on an underpayment of tax. Income (whether actual or notional) attributable to nonqualified deferred compensation is treated as additional deferred compensation and is subject to the provision. The provision is not intended to prevent the inclusion of amounts in gross income under any provision or rule of law earlier than the time provided in the provision. Any amount included in gross income under the provision is not be required to be included in gross income under any provision of law later than the time provided in the provision. The provision does not affect the rules regarding the timing of an employer's deduction for nonqualified deferred compensation.

Treasury regulations

The provision provides the Secretary authority to prescribe regulations as are necessary to carry out the purposes of provision, including regulations: (1) providing for the determination of amounts of deferral in the case of defined benefit plans; (2) relating to changes in the ownership and control of a corporation or assets of a corporation; (3) exempting from the provisions providing for transfers of property arrangements that will not result in an improper deferral of U.S. tax and will not result in assets being effectively beyond the reach of creditors; (4) defining financial health; and (5) disregarding a substantial risk of forfeiture. It is intended that substantial risk of forfeitures may not be used to manipulate the timing of income inclusion. It is intended that substantial risks of forfeiture should be disregarded in cases in which they are illusory or are used in a manner inconsistent with the purposes of the provision. For example, if an executive is effectively able to control the acceleration of the lapse of a substantial risk of forfeiture, such risk of forfeiture should be disregarded and income inclusion should not be postponed on account of such restriction. The Secretary may also address in regulations issues relating to stock appreciation rights.

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[813] The provision does not apply to a plan meeting the requirements of section 457(e)(12) if the plan was in existence as of May 1, 2004, was providing nonelective deferred compensation described in section 457(e)(12) on such date, and is established or maintained by an organization incorporation on July 2, 1974. If the plan has a material change in the class of individuals eligible to participate in the plan after May 1, 2004, the provision applies to compensation provided under the plan after the date of such change.

[814] A qualified employer plan also includes a section 501(c)(18) trust.

Aggregation rules

Under the provision, except as provided by the Secretary, employer aggregation rules apply. It is intended that the Secretary issue guidance providing aggregation rules as are necessary to carry out the purposes of the provision. For example, it is intended that aggregation rules would apply in the case of separation from service so that the separation from service from one entity within a controlled group, but continued service for another entity within the group, would not be a permissible distribution event. It is also intended that aggregation rules would not apply in the case of change in control so that the change in control of one member of a controlled group would not be a permissible distribution event for participants of a deferred compensation plan of another member of the group.

Reporting requirements

Amounts required to be included in income under the provision are subject to reporting and Federal income tax withholding requirements. Amounts required to be includible in income are required to be reported on an individual's Form W-2 (or Form 1099) for the year includible in income.

The provision also requires annual reporting to the Internal Revenue Service of amounts deferred. Such amounts are required to be reported on an individual's Form W-2 (or Form 1099) for the year deferred even if the amount is not currently includible in income for that taxable year. It is expected that annual reporting of annual amounts deferred will provide the IRS greater information regarding such arrangements for enforcement purposes. It is intended that the information reported would provide an indication of what arrangements should be examined and challenged. Under the provision, the Secretary is authorized, through regulations, to establish a minimum amount of deferrals below which the reporting requirement does not apply. The Secretary may also provide that the reporting requirement does not apply with respect to amounts of deferrals that are not reasonably ascertainable. It is intended that the exception for amounts not reasonable ascertainable only apply to nonaccount balance plans and that amounts be required to be reported when they first become reasonably ascertainable.[815]

Effective date

The provision is effective for amounts deferred in taxable years beginning after December 31, 2004. Earnings on amounts deferred before the effective date are subject to the provision to the extent that such amounts deferred are subject to the provision.

Amounts deferred in taxable years beginning before January 1, 2005, are subject to the provision if the plan under which the deferral is made is materially modified after October 3, 2004. The addition of any benefit, right or feature is a material modification. The exercise or reduction of an existing benefit, right, or feature is not a material modification. For example, an amendment to a plan on November 1, 2004, to add a provision that distributions may be allowed upon request if participants are required to forfeit 10 percent of the amount of the distribution (i.e., a "haircut") would be a material modification to the plan so that the rules of the provision would apply to the plan. Similarly, accelerating vesting under a plan after October 3, 2004, would be a material modification. A change in the plan administrator would not be a material modification. As another example, amending a plan to remove a distribution provision (e.g., to remove a "haircut") would not be considered a material modification.

Operating under the terms of a deferred compensation arrangement that complies with current law and is not materially modified after October 3, 2004, with respect to amounts deferred before January 1, 2005, is permissible, as such amounts would not be subject to the requirements of the provision. For example, subsequent deferrals with respect to amounts deferred before January 1, 2005, under a plan that is not materially modified after October 3, 2004, would be subject to present law and would not be subject to the provision.[816] No inference is intended that all deferrals before the effective date are permissible under present law. It is expected that the IRS will challenge pre-effective date deferral arrangements that do not comply with present law.

For purposes of the effective date, an amount is considered deferred before January 1, 2005, if the amount is earned and vested before such date. To the extent there is no material modification after October 3, 2004, present law applies with respect to vested rights.

No later than 60 days after the date of enactment, the Secretary shall issue guidance providing a limited period of time during which a nonqualified deferred compensation plan adopted before December 31, 2004, may, without violating the requirements of the provision relating to distributions, accelerations, and elections be amended (1) to provide that a participant may terminate participation in the plan, or cancel an outstanding deferral election with respect to amounts deferred after December 31, 2004, if such amounts are includible in income of the participant as earned, or if later, when not subject to a substantial risk of forfeiture, and (2) to conform with the provision with respect to amounts deferred after December 31, 2004. It is expected that the Secretary may provide exceptions to certain requirements of the provision during the transition period (e.g., the rules regarding timing of elections) for plans coming into compliance with the provision. Moreover, it is expected that the Secretary will provide a reasonable time, during the transition period but after the issuance of guidance, for plans to be amended and approved by the appropriate parties in accordance with this provision.

2. Denial of deferral of certain stock option and restricted stock gains (sec. 672 of the Senate amendment and sec. 83 of the Code)

PRESENT LAW

Section 83 applies to transfers of property in connection with the performance of services. Under section 83, if, in connection with the performance of services, property is transferred to any person other than the person for whom such services are performed, the excess of the fair market value of such property over the amount (if any) paid for the property is includible in income at the first time that the property is transferable or not subject to substantial risk of forfeiture.

Stock granted to an employee (or other service provider) is subject to the rules that apply under section 83. When stock is vested and transferred to an employee, the excess of the fair market value of the stock over the amount, if any, the employee pays for the stock is includible in the employee's income for the year in which the transfer occurs.

The income taxation of a nonqualified stock option is determined under section 83 and depends on whether the option has a readily ascertainable fair market value. If the nonqualified option does not have a readily ascertainable fair market value at the time of grant, no amount is includible in the gross income of the recipient with respect to the option until the recipient exercises the option. The transfer of stock on exercise of the option is subject to the general rules of section 83. That is, if vested stock is received on exercise of the option, the excess of the fair market value of the stock over the option price is includible in the recipient's gross income as ordinary income in the taxable year in which the option is exercised. If the stock received on exercise of the option is not vested, the excess of the fair market value of the stock at the time of vesting over the option price is includible in the recipient's income for the year in which vesting occurs unless the recipient elects to apply section 83 at the time of exercise.

Other forms of stock-based compensation are also subject to the rules of section 83.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, gains attributable to stock options (including exercises of stock options), vesting of restricted stock, and other compensation based on employer securities (including employer securities) cannot be deferred by exchanging such amounts for a right to receive a future payment. Except as provided by the Secretary, if a taxpayer exchanges (1) an option to purchase employer securities, (2) employer securities, or (3) any other property based on employer securities for a right to receive future payments, an amount equal to the present value of such right (or such other amount as the Secretary specifies) is required to be included in gross income for the taxable year of the exchange. The provision applies even if the future right to payment is treated as an unfunded and unsecured promise to pay. The provision applies when there is in substance an exchange, even if the transaction is not formally structured as an exchange.

The provision is not intended to imply that such practices result in permissive deferral of income under present law.

Effective date.—The Senate amendment applies to exchanges after December 31, 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment.

E. Other Revenue Provisions

1. Permit private sector debt collection companies to collect tax debts (sec. 681 of the House bill, sec. 487 of the Senate amendment, and new sec. 6306 of the Code)

PRESENT LAW

In fiscal years 1996 and 1997, the Congress earmarked $13 million for IRS to test the use of private debt collection companies. There were several constraints on this pilot project. First, because both IRS and OMB considered the collection of taxes to be an inherently governmental function, only government employees were permitted to collect the taxes.[817] The private debt collection companies were utilized to assist the IRS in locating and contacting taxpayers, reminding them of their outstanding tax liability, and suggesting payment options. If the taxpayer agreed at that point to make a payment, the taxpayer was transferred from the private debt collection company to the IRS. Second, the private debt collection companies were paid a flat fee for services rendered; the amount that was ultimately collected by the IRS was not taken into account in the payment mechanism.

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[815] It is intended that the exception be similar to that under Treas. Reg. sec. 31.3121(v)(2)-1(e)(4).

[816] There is no inference that all subsequent deferral elections under plans that are not materially modified are permissible under present law.

The pilot program was discontinued because of disappointing results. GAO reported[818] that IRS collected $3.1 million attributable to the private debt collection company efforts; expenses were also $3.1 million. In addition, there were lost opportunity costs of $17 million to the IRS because collection personnel were diverted from their usual collection responsibilities to work on the pilot. The pilot program results were disappointing because "IRS' efforts to design and implement the private debt collection pilot program were hindered by limitations that affected the program's results." The limitations included the scope of work permitted to the private debt collection companies, the number and type of cases referred to the private debt collection companies, and the ability of IRS' computer systems to identify, select, and transmit collection cases to the private debt collectors.

The IRS has in the last several years expressed renewed interest in the possible use of private debt collection companies; for example, IRS recently revised its extensive Request for Information concerning its possible use of private debt collection companies.[819] GAO recently reviewed IRS' planning and preparation for the use of private debt collection companies.[820] GAO identified five broad factors critical to the success of using private debt collection companies to collect taxes. GAO concluded: "If Congress does authorize PCA[821] use, IRS's planning and preparations to address the critical success factors for PCA contracting provide greater assurance that the PCA program is headed in the right direction to meet its goals and achieve desired results. Nevertheless, much work and many challenges remain in addressing the critical success factors and helping to maximize the likelihood that a PCA program would be successful."[822]

In general, Federal agencies are permitted to enter into contracts with private debt collection companies for collection services to recover indebtedness owed to the United States.[823] That provision does not apply to the collection of debts under the Internal Revenue Code.[824]

The President's fiscal year 2004 and 2005 budget proposals proposed the use of private debt collection companies to collect Federal tax debts.

HOUSE BILL

The bill permits the IRS to use private debt collection companies to locate and contact taxpayers owing outstanding tax liabilities of any type[825] and to arrange payment of those taxes by the taxpayers. There must be an assessment pursuant to section 6201 in order for there to be an outstanding tax liability. An assessment is the formal recording of the taxpayer's tax liability that fixes the amount payable. An assessment must be made before the IRS is permitted to commence enforcement actions to collect the amount payable. In general, an assessment is made at the conclusion of all examination and appeals processes within the IRS.[826]

Several steps are involved in the deployment of private debt collection companies. First, the private debt collection company contacts the taxpayer by letter.[827] If the taxpayer's last known address is incorrect, the private debt collection company searches for the correct address. Second, the private debt collection company telephones the taxpayer to request full payment.[828] If the taxpayer cannot pay in full immediately, the private debt collection company offers the taxpayer an installment agreement providing for full payment of the taxes over a period of as long as five years. If the taxpayer is unable to pay the outstanding tax liability in full over a five-year period, the private debt collection company obtains financial information from the taxpayer and will provide this information to the IRS for further processing and action by the IRS.

The bill specifies several procedural conditions under which the provision would operate. First, provisions of the Fair Debt Collection Practices Act apply to the private debt collection company. Second, taxpayer protections that are statutorily applicable to the IRS are also made statutorily applicable to the private sector debt collection companies. In addition, taxpayer protections that are statutorily applicable to IRS employees are also made statutorily applicable to employees of private sector debt collection companies. Third, subcontractors are prohibited from having contact with taxpayers, providing quality assurance services, and composing debt collection notices; any other service provided by a subcontractor must receive prior approval from the IRS. In addition, it is intended that the IRS require the private sector debt collection companies to inform every taxpayer they contact of the availability of assistance from the Taxpayer Advocate.

The bill creates a revolving fund from the amounts collected by the private debt collection companies. The private debt collection companies will be paid out of this fund. The bill prohibits the payment of fees for all services in excess of 25 percent of the amount collected under a tax collection contract.[829]

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that it: (1) sunsets the provision in five years; (2) provides that, if the taxpayer cannot pay in full immediately, the private debt collection company may offer the taxpayer an installment agreement providing for full payment of the taxes over three years; (3) provides that up to 25 percent of amount collected may be used for IRS collection enforcement activities; (4) and requires Treasury to provide a biennial report to Congress.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, with the addition of two provisions from the Senate amendment: (1) the conference agreement provides that up to 25 percent of amount collected may be used for IRS collection enforcement activities; and (2) the conference agreement requires Treasury to provide a biennial report to Congress. The conferees expect that, consistent with best management practices and sound tax administration principles, the Secretary will utilize this new debt collection provision to the maximum extent feasible.

The conferees expect that activities conducted by any person under a qualified tax collection contract will be in compliance with the Fair Debt Collection Practices Act, as required by new section 6306(e) of the Code. Accordingly, the conferees anticipate that the Secretary will not impose requirements that would violate this provision of the Code. The conferees believe that this new debt collection provision will protect both taxpayers' rights and the confidentiality of tax information.

2. Modify charitable contribution rules for donations of patents and other intellectual property (sec. 682 of the House bill, sec. 194 of the Senate amendment, and secs. 170 and 6050L of the Code)

PRESENT LAW

In general, a deduction is permitted for charitable contributions, subject to certain limitations that depend on the type of taxpayer, the property contributed, and the donee organization.[830] In the case of non-cash contributions, the amount of the deduction generally equals the fair market value of the contributed property on the date of the contribution.

For certain contributions of property, the taxpayer is required to reduce the deduction amount by any gain, generally resulting in a deduction equal to the taxpayer's basis. This rule applies to contributions of: (1) property that, at the time of contribution, would not have resulted in long-term capital gain if the property was sold by the taxpayer on the contribution date; (2) tangible personal property that is used by the donee in a manner unrelated to the donee's exempt (or governmental) purpose; and (3) property to or for the use of a private foundation (other than a foundation defined in section 170(b)(1)(E)).

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[817] Sec. 7801(a).

[818] GAO/GGD-97-129R Issues Affecting IRS' Collection Pilot (July 18, 1997).

[819] TIRNO-03-H-0001 (February 14, 2003), at www.procurement.irs.treas.gov. The basic request for information is 104 pages, and there are 16 additional attachments.

[820] GAO-04-492 Tax Debt Collection: IRS Is Addressing Critical Success Factors for Contracting Out but Will Need to Study the Best Use of Resources (May 2004).

[821] Private collection agencies.

[822] Page 19 of the May 2004 GAO report.

[823] 31 U.S.C. sec. 3718.

[824] 31 U.S.C. sec. 3718(f).

[825] The provision generally applies to any type of tax imposed under the Internal Revenue Code. It is anticipated that the focus in implementing the provision will be: (a) taxpayers who have filed a return showing a balance due but who have failed to pay that balance in full; and (b) taxpayers who have been assessed additional tax by the IRS and who have made several voluntary payments toward satisfying their obligation but have not paid in full.

[826] An amount of tax reported as due on the taxpayer's tax return is considered to be self-assessed. If the IRS determines that the assessment or collection of tax will be jeopardized by delay, it has the authority to assess the amount immediately (sec. 6861), subject to several procedural safeguards.

[827] Several portions of the provision require that the IRS disclose confidential taxpayer information to the private debt collection company. Section 6103(n) permits disclosure for "the providing of other services . . . for purposes of tax administration." Accordingly, no amendment to section 6103 is necessary to implement the provision. It is intended, however, that the IRS vigorously protect the privacy of confidential taxpayer information by disclosing the least amount of information possible to contractors consistent with the effective operation of the provision.

[828] The private debt collection company is not permitted to accept payment directly. Payments are required to be processed by IRS employees.

[829] It is assumed that there will be competitive bidding for these contracts by private sector tax collection agencies and that vigorous bidding will drive the overhead costs down.

[830] Charitable deductions are provided for income, estate, and gift tax purposes. Secs. 170, 2055, and 2522, respectively.

Charitable contributions of capital gain property generally are deductible at fair market value. Capital gain property means any capital asset or property used in the taxpayer's trade or business the sale of which at its fair market value, at the time of contribution, would have resulted in gain that would have been long-term capital gain. Contributions of capital gain property are subject to different percentage limitations than other contributions of property. Under present law, certain copyrights are not considered capital assets, in which case the charitable deduction for such copyrights generally is limited to the taxpayer's basis.[831]

In general, a charitable contribution deduction is allowed only for contributions of the donor's entire interest in the contributed property, and not for contributions of a partial interest.[832] If a taxpayer sells property to a charitable organization for less than the property's fair market value, the amount of any charitable contribution deduction is determined in accordance with the bargain sale rules.[833] In general, if a donor receives a benefit or quid pro quo in return for a contribution, any charitable contribution deduction is reduced by the amount of the benefit received. For contributions of $250 or more, no charitable contribution deduction is allowed unless the donee organization provides a contemporaneous written acknowledgement of the contribution that describes and provides a good faith estimate of the value of any goods or services provided by the donee organization in exchange for the contribution.[834]

Taxpayers are required to obtain a qualified appraisal for donated property with a value of $5,000 or more, and to attach the appraisal to the tax return in certain cases.[835] Under Treasury regulations, a qualified appraisal means an appraisal document that, among other things, (1) relates to an appraisal that is made not earlier than 60 days prior to the date of contribution of the appraised property and not later than the due date (including extensions) of the return on which a deduction is first claimed under section 170;[836] (2) is prepared, signed, and dated by a qualified appraiser; (3) includes (a) a description of the property appraised; (b) the fair market value of such property on the date of contribution and the specific basis for the valuation; (c) a statement that such appraisal was prepared for income tax purposes; (d) the qualifications of the qualified appraiser; and (e) the signature and taxpayer identification number ("TIN") of such appraiser; and (4) does not involve an appraisal fee that violates certain prescribed rules.[837]

HOUSE BILL

The provision provides that if a taxpayer contributes a patent or other intellectual property (other than certain copyrights or inventory) to a charitable organization, the taxpayer's initial charitable deduction is limited to the lesser of the taxpayer's basis in the contributed property or the fair market value of the property. In addition, the taxpayer is permitted to deduct, as a charitable deduction, certain additional amounts in the year of contribution or in subsequent taxable years based on a specified percentage of the qualified donee income received or accrued by the charitable donee with respect to the contributed property. For this purpose, "qualified donee income" includes net income received or accrued by the donee that properly is allocable to the intellectual property itself (as opposed to the activity in which the intellectual property is used).

The amount of any additional charitable deduction is calculated as a sliding-scale percentage of qualified donee income received or accrued by the charitable donee that properly is allocable to the contributed property to the applicable taxable year of the donor, determined as follows:

Taxable year of donor	Deduction permitted for such taxable year
1st year ending on or after contribution	100 percent of qualified donee income
2nd year ending on or after contribution	100 percent of qualified donee income
3rd year ending on or after contribution	90 percent of qualified donee income
4th year ending on or after contribution	80 percent of qualified donee income
5th year ending on or after contribution	70 percent of qualified donee income
6th year ending on or after contribution	60 percent of qualified donee income
7th year ending on or after contribution	50 percent of qualified donee income
8th year ending on or after contribution	40 percent of qualified donee income
9th year ending on or after contribution	30 percent of qualified donee income
10th year ending on or after contribution	20 percent of qualified donee income
11th year ending on or after contribution	10 percent of qualified donee income
12th year ending on or after contribution	10 percent of qualified donee income
Taxable years thereafter	No deduction permitted

An additional charitable deduction is allowed only to the extent that the aggregate of the amounts that are calculated pursuant to the sliding-scale exceed the amount of the deduction claimed upon the contribution of the patent or intellectual property.

No charitable deduction is permitted with respect to any revenues or income received or accrued by the charitable donee after the expiration of the legal life of the patent or intellectual property, or after the tenth anniversary of the date the contribution was made by the donor.

The taxpayer is required to inform the donee at the time of the contribution that the taxpayer intends to treat the contribution as a contribution subject to the additional charitable deduction provisions of the provision. In addition, the taxpayer must obtain written substantiation from the donee of the amount of any qualified donee income properly allocable to the contributed property during the charity's taxable year.[838] The donee is required to file an annual information return that reports the qualified donee income and other specified information relating to the contribution. In instances where the donor's taxable year differs from the donee's taxable year, the donor bases its additional charitable deduction on the qualified donee income of the charitable donee properly allocable to the donee's taxable year that ends within the donor's taxable year.

Under the provision, additional charitable deductions are not available for patents or other intellectual property contributed to a private foundation (other than a private operating foundation or certain other private foundations described in section 170(b)(1)(E)).

Under the provision, the Secretary may prescribe regulations or other guidance to carry out the purposes of the provision, including providing for the determination of amounts to be treated as qualified donee income in certain cases where the donee uses the donated property to further its exempt activities or functions, or as may be necessary or appropriate to prevent the avoidance of the purposes of the provision.

Effective date.—Effective for contributions made after June 3, 2004.

SENATE AMENDMENT

The Senate amendment is similar to the House bill, except that the taxpayer's initial deduction is equal to: the lesser of the taxpayer's basis in the contributed property or the fair market value of the property (as in the House bill) or, if greater, the lesser of 5 percent of the fair market value of the contributed property or $1 million. Additional charitable deductions are available as in the House bill, except that such additional deductions are not required to be offset by the initial deductible amount.

The Senate amendment imposes a processing fee (credited to the Exempt Organizations unit with the IRS) equal to 1 percent of the claimed deductible amount for contributions of applicable intellectual property.

With respect to applicable intellectual property contributions, the Senate amendment increases the present law thresholds that trigger application of penalties for substantial and gross valuation misstatements. The substantial misstatement penalty applies if the taxpayer's claimed value exceeds the correct amount by 50 percent or more;

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[831] See sec. 1221(a)(3), 1231(b)(1)(C).

[832] Sec. 170(f)(3).

[833] Sec. 1011(b) and Treas. Reg. sec. 1.1011-2.

[834] Sec. 170(f)(8).

[835] Pub. L. No. 98-369, sec. 155(a)(1) through (6) (1984) (providing that not later than December 31, 1984, the Secretary shall prescribe regulations requiring an individual, a closely held corporation, or a personal service corporation claiming a charitable deduction for property (other than publicly traded securities) to obtain a qualified appraisal of the property contributed and attach an appraisal summary to the taxpayer's return if the claimed value of such property (plus the claimed value of all similar items of property donated to one or more donees) exceeds $5,000). Under Pub. L. No. 98-369, a qualified appraisal means an appraisal prepared by a qualified appraiser that includes, among other things, (1) a description of the property appraised; (2) the fair market value of such property on the date of contribution and the specific basis for the valuation; (3) a statement that such appraisal was prepared for income tax purposes; (4) the qualifications of the qualified appraiser; (5) the signature and TIN of such appraiser; and (6) such additional information as the Secretary prescribes in such regulations.

[836] In the case of a deduction first claimed or reported on an amended return, the deadline is the date on which the amended return is filed.

[837] Treas. Reg. sec. 1.170A-13(c)(3).

[838] The net income taken into account by the taxpayer may not exceed the amount of qualified donee income reported by the donee to the taxpayer and the IRS udner the provision's substantiation and reporting requirements.

the gross misstatement penalty applies if the taxpayer's claimed value exceeds the correct amount by 100 percent or more.

The Senate amendment requires that the Secretary shall prescribe guidance on appraisal standards for charitable contributions of intellectual property.

Effective date.—(Contributions after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

Effective date.—(Effective for contributions made after June 3, 2004.

3. Require increased reporting for noncash charitable contributions (sec. 683 of the House bill and sec. 170 of the Code)

PRESENT LAW

In general, a deduction is permitted for charitable contributions, subject to certain limitations that depend on the type of taxpayer, the property contributed, and the donee organization.[839] In the case of non-cash contributions, the amount of the deduction generally equals the fair market value of the contributed property on the date of the contribution.

In general, if the total charitable deduction claimed for non-cash property exceeds $500, the taxpayer must file IRS Form 8283 (Noncash Charitable Contributions) with the IRS. C corporations (other than personal service corporations and closely-held corporations) are required to file Form 8283 only if the deduction claimed exceeds $5,000.

Taxpayers are required to obtain a qualified appraisal for donated property (other than money and publicly traded securities) with a value of more than $5,000.[840] Corporations (other than a closely-held corporation, a personal service corporation, or an S corporation) are not required to obtain a qualified appraisal. Taxpayers are not required to attach a qualified appraisal to the taxpayer's return, except in the case of contributed artwork valued at more than $20,000. Under Treasury regulations, a qualified appraisal means an appraisal document that, among other things, (1) relates to an appraisal that is made not earlier than 60 days prior to the date of contribution of the appraised property and not later than the due date (including extensions) of the return on which a deduction is first claimed under section 170;[841] (2) is prepared, signed, and dated by a qualified appraiser; (3) includes (a) a description of the property appraised; (b) the fair market value of such property on the date of contribution and the specific basis for the valuation; (c) a statement that such appraisal was prepared for income tax purposes; (d) the qualifications of the qualified appraiser; and (e) the signature and taxpayer identification number of such appraiser; and (4) does not involve an appraisal fee that violates certain prescribed rules.[842]

HOUSE BILL

The provision requires increased donor reporting for certain charitable contributions of property other than cash, inventory, or publicly traded securities. The provision extends to all C corporations the present law requirement, applicable to an individual, closely-held corporation, personal service corporation, partnership, or S corporation, that the donor must obtain a qualified appraisal of the property if the amount of the deduction claimed exceeds $5,000. The provision also provides that if the amount of the contribution of property other than cash, inventory, or publicly traded securities exceeds $500,000, then the donor (whether an individual, partnership, or corporation) must attach the qualified appraisal to the donor's tax return. For purposes of the dollar thresholds under the provision, property and all similar items of property donated to one or more donees are treated as one property.

The provision provides that a donor that fails to substantiate a charitable contribution of property, as required by the Secretary, is denied a charitable contribution deduction. If the donor is a partnership or S corporation, the deduction is denied at the partner or shareholder level. The denial of the deduction does not apply if it is shown that such failure is due to reasonable cause and not to willful neglect.

The provision provides that the Secretary may prescribe such regulations as may be necessary or appropriate to carry out the purposes of the provision, including regulations that may provide that some or all of the requirements of the provision do not apply in appropriate cases.

Effective date.—(Effective for contributions made after June 3, 2004.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement follows the House bill, except that appraisals are not required for charitable contributions of certain vehicles that are sold by the donee organization without a significant intervening use or material improvement of the vehicle by such organization, and for which the organization provides an acknowledgement to the donor containing a certification that the vehicle was sold in an arm's length transaction between unrelated parties, and providing the gross sales proceeds from the sale, and a statement that the donor's deductible amount may not exceed the amount of such gross proceeds.

Effective date.—(Effective for contributions made after June 3, 2004.

4. Limit deduction for charitable contributions of vehicles (sec. 684 of the House bill, sec. 731 of the Senate amendment, and new sec. 6720 and sec. 170 of the Code)

PRESENT LAW

In general, a deduction is permitted for charitable contributions, subject to certain limitations that depend on the type of taxpayer, the property contributed, and the donee organization.[843] In the case of non-cash contributions, the amount of the deduction generally equals the fair market value of the contributed property on the date of the contribution.

For certain contributions of property, the taxpayer is required to determine the deductible amount by subtracting any gain from fair market value, generally resulting in a deduction equal to the taxpayer's basis. This rule applies to contributions of: (1) property that, at the time of contribution, would not have resulted in long-term capital gain if the property was sold by the taxpayer on the contribution date; (2) tangible personal property that is used by the donee in a manner unrelated to the donee's exempt (or governmental) purpose; and (3) property to or for the use of a private foundation (other than a foundation defined in section 170(b)(1)(E)).

Charitable contributions of capital gain property generally are deductible at fair market value. Capital gain property means any capital asset or property used in the taxpayer's trade or business the sale of which at its fair market value, at the time of contribution, would have resulted in gain that would have been long-term capital gain. Contributions of capital gain property are subject to different percentage limitations than other contributions of property.

A taxpayer who donates a used automobile to a charitable donee generally deducts the fair market value (rather than the taxpayer's basis) of the automobile. A taxpayer who donates a used automobile generally is permitted to use an established used car pricing guide to determine the fair market value of the automobile, but only if the guide lists a sales price for an automobile of the same make, model and year, sold in the same area, and in the same condition as the donated automobile. Similar rules apply to contributions of other types of vehicles and property, such as boats.

Charities are required to provide donors with written substantiation of donations of $250 or more. Taxpayers are required to report non-cash contributions totaling $500 or more and the method used for determining fair market value.

Taxpayers are required to obtain a qualified appraisal for donated property with a value of $5,000 or more, and to attach the appraisal to the tax return in certain cases.[844] Under Treasury regulations, a qualified appraisal means an appraisal document that, among other things, (1) relates to an appraisal that is made not earlier than 60 days prior to the date of contribution of the appraised property and not later than the due date (including extensions) of the return on which a deduction is first claimed under section 170;[845] (2) is prepared, signed, and dated by a qualified appraiser; (3) includes (a) a description of the property appraised; (b) the fair market value of such property on the date of contribution and the specific basis for the valuation; (c) a statement that such appraisal was prepared for income tax purposes; (d) the qualifications of the qualified appraiser; and (e) the signature and taxpayer identification number ("TIN") of such appraiser; and (4) does not involve an appraisal fee that violates certain prescribed rules.[846]

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[839] Charitable deductions are provided for income, estate, and gift tax purposes. Secs. 170, 2055, and 2522, respectively.

[840] Pub. L. No. 98-369, sec. 155(a)(1) through (6)(1984)(providing that not later than December 31, 1984, the Secretary shall prescribe regulations requiring an individual, a closely held corporation, or a personal service corporation claiming a charitable deduction for property (other than publicly tranded securities) to obtain a qualified appraisal of the property contributed and attaach an appraisal summary to the taxpayer's return if the claimed value of such property (plus the claimed value of all similar items of property donated to one or more donees) exceeds $5,000). Under Pub. L. No. 98-369, a qualified appraisal means an appraisal prepared by a qualified appraiser that includes, among other things, (1) a description of the property appraised; (2) the fair market value of such property on the date of contribution and the specific basis for the valuation; (3) a statement that such appraisal was prepared for income tax purposes; (4) the qualifications of the qualified appraiser; (5) the signature and taxpayer identification number of such appraiser; and (6) such additional information as the Secretary prescribes in such regulations.

[841] In the case of a deduction first claimed or reported on an amended return, the deadline is the date on which the amended return is filed.

[842] Treas. Reg. sec. 1.170A-13(c)(3).

[843] Charitable deductions are provided for income, estate, and gift tax purposes. Secs. 170, 2055, and 2522, respectively.

[844] Pub. L. No. 98-369, sec. 155(a)(1) through (6)(1984) (providing that not later than December 31, 1984, the Secretary shall prescribe regulations requiring an individual, a closely held corporation, or a personal service corporation claiming a charitable deduction for property (other than publicly traded securities) to obtain a qualified appraisal of the property contributed and attach an appraisal summary to the taxpayer's return if the claimed value of such property (plus the claimed value of all similar items of property donated to one or more donees) exceeds $5,000). Under Pub. L. No. 98-369, a qualified appraisal means an appraisal prepared by a qualified appraiser that includes, among other things, (1) a description of the property appraised; (2) the fair market value of such property on the date of contribution and the specific basis for the valuation; (3) a statement that such appraisal was prepared for income tax purposes; (4) the qualifications of the qualified appraiser; (5) the signature and TIN of such appraiser; and (6) such additional information as the Secretary prescribes in such regulations.

Appraisal fees paid by an individual to determine the fair market value of donated property are deductible as miscellaneous expenses subject to the 2 percent of adjusted gross income limit.[847]

HOUSE BILL

The provision allows a charitable deduction for contributions of vehicles for which the taxpayer claims a deduction of more than $250 only if the taxpayer obtains a qualified appraisal of the vehicle. The provision applies to automobiles and other types of motor vehicles manufactured primarily for use on public streets, roads, and highways; boats; and aircraft. The provision does not affect contributions of inventory property. The definition of qualified appraisal generally follows the definition contained in present law, subject to additional regulations or guidance provided by the Secretary. The qualified appraisal of a donated vehicle must be obtained by the taxpayer by the time the contribution is made. Under the provision, the Secretary shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of the provision.

Effective date.—(Effective for contributions made after June 3, 2004.

SENATE AMENDMENT

Under the Senate amendment, the amount of deduction for charitable contributions of vehicles (generally including automobiles, boats, and airplanes for which the claimed value exceeds $500 and excluding inventory property) depends upon the use of the vehicle by the donee organization. If the donee organization sells the vehicle without any significant intervening use or material improvement of such vehicle by the organization, the amount of the deduction shall not exceed the gross proceeds received from the sale.

The proposal imposes new substantiation requirements for contributions of vehicles for which the claimed value exceeds $500 (excluding inventory). A deduction is not allowed unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgement by the donee. The acknowledgement must contain the name and taxpayer identification number of the donor and the vehicle identification number (or similar number) of the vehicle. In addition, if the donee sells the vehicle without performing a significant intervening use or material improvement of such vehicle, the acknowledgement must provide a certification that the vehicle was sold in an arm's length transaction between unrelated parties, and state the gross proceeds from the sale and that the deductible amount may not exceed such gross proceeds. In all other cases, the acknowledgement must contain a certification of the intended use or material improvement of the vehicle and the intended duration of such use, and a certification that the vehicle will not be transferred in exchange for money, other property, or services before completion of such use or improvement. The donee must notify the Secretary of the information contained in an acknowledgement, in a time and manner provided by the Secretary. An acknowledgement is considered contemporaneous if provided within 30 days of sale of a vehicle that is not significantly improved or materially used by the donee, or, in all other cases, within 30 days of the contribution.

A penalty applies if a donee organization knowingly furnishes a false or fraudulent acknowledgement, or knowingly fails to furnish an acknowledgement in the manner, at the time, and showing the required information. In the case of an acknowledgement provided within 30 days of sale of a vehicle which is not significantly used or materially improved by the donee, the penalty is the greater of the value of the tax benefit to the donor or the gross proceeds from the sale of the vehicle. For all other acknowledgements, the penalty is the greater of the value of the tax benefit to the donor or the claimed value of the vehicle or $5,000.

The Senate amendment provides that the Secretary shall prescribe such regulations or other guidance as may be necessary to carry out the purposes of the proposal.

Effective date.—(Contributions after June 30, 2004.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except that the penalty on the donee organization for knowingly furnishing a false or fraudulent acknowledgement is determined differently. With respect to a qualified vehicle sold without a significant intervening use or material improvement, the penalty is the greater of the gross proceeds from the sale of the vehicle or the product of the highest rate of tax specified in section 1 and the sales price stated on the acknowledgement. For all other acknowledgements, the penalty is the greater of $5,000 or the product of the highest rate of tax specified in section 1 and the claimed value of the vehicle.

The conference agreement also provides that the Secretary may prescribe regulations or other guidance that exempts sales of vehicles that are in direct furtherance of the donee's charitable purposes from the requirement that the donor may not deduct an amount in excess of the gross proceeds from the sale, and the requirement that the donee certify that the vehicle will not be transferred in exchange for money, other property, or services before completion of a significant use or material improvement by the donee. The conferees intend that such guidance may be appropriate, for example, if an organization directly furthers its charitable purposes by selling automobiles to needy persons at a price significantly below fair market value.

The conferees intend that in providing guidance on the provision, the Secretary shall strictly construe the requirement of significant use or material improvement. To meet the significant use test, an organization must actually use the vehicle to substantially further the organization's regularly conducted activities and the use must be significant. A donee will not be considered to significantly use a qualified vehicle if, under the facts and circumstances, the use is incidental or not intended at the time of the contribution. Whether a use is significant also depends on the frequency and duration of use. With respect to the material improvement test, the conferees intend that a material improvement would include major repairs to a vehicle, or other improvements to the vehicle that improve the condition of the vehicle in a manner that significantly increases the vehicle's value. Cleaning the vehicle, minor repairs, and routine maintenance are not considered a material improvement.

Example 1.—As part of its regularly conducted activities, an organization delivers meals to needy individuals. The use requirement would be met if the organization actually used a donated qualified vehicle to deliver food to the needy. Use of the vehicle to deliver meals substantially furthers a regularly conducted activity of the organization. However, the use also must be significant, which depends on the nature, extent, and frequency of the use. If the organization used the vehicle only once or a few times to deliver meals, the use would not be considered significant. If the organization used the vehicle to deliver meals every day for one year the use would be considered significant. If the organization drove the vehicle 10,000 miles while delivering meals, such use likely would be considered significant. However, use of a vehicle in such an activity for one week or for several hundreds of miles generally would not be considered a significant use.

Example 2.—An organization uses a donated qualified vehicle to transport its volunteers. The use would not be significant merely because a volunteer used the vehicle over a brief period of time to drive to or from the organization's premises. On the other hand, if at the time the organization accepts the contribution of a qualified vehicle, the organization intends to use the vehicle as a regular and ongoing means of transport for volunteers of the organization, and such vehicle is so used, then the significant use test likely would be met.

Example 3.—The following example is a general illustration of the provision. A taxpayer makes a charitable contribution of a used automobile in good running condition and that needs no immediate repairs to a charitable organization that operates an elder care facility. The donee organization accepts the vehicle and immediately provides the donor a written acknowledgment containing the name and TIN of the donor, the vehicle identification number, a certification that the donee intends to retain the vehicle for a year or longer to transport the facility's residents to community and social events and deliver meals to the needy, and a certification that the vehicle will not be transferred in exchange for money, other property, or services before completion of such use by the organization. A few days after receiving the vehicle, the donee organization commences to use the vehicle three times a week to transport some of its residents to various community events, and twice a week to deliver food to needy individuals. The organization continues to regularly use the vehicle for these purposes for approximately one year and then sells the vehicle. Under the provision, the donee's use of the vehicle constitutes a significant intervening use prior to the sale by the organization, and the donor's deduction is not limited to the gross proceeds received by the organization.

Effective date.—Effective for contributions made after December 31, 2004.

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[845] In the case of a deduction first claimed or reported on an amended return, the deadline is the date on which the amended return is filed.

[846] Treas. Reg. sec. 1.170A-13(c)(3).

[847] Rev. Rul. 67-461, 1967-2 C.B. 125.

5. Extend the present-law intangible amortization provisions to acquisitions of sports franchises (sec. 685 of the House bill, sec. 471 of the Senate amendment, and sec. 197 of the Code)

PRESENT LAW

The purchase price allocated to intangible assets (including franchise rights) acquired in connection with the acquisition of a trade or business generally must be capitalized and amortized over a 15-year period.[848] These rules were enacted in 1993 to minimize disputes regarding the proper treatment of acquired intangible assets. The rules do not apply to a franchise to engage in professional sports and any intangible asset acquired in connection with such a franchise.[849] However, other special rules apply to certain of these intangible assets.

Under section 1056, when a franchise to conduct a sports enterprise is sold or exchanged, the basis of a player contract acquired as part of the transaction is generally limited to the adjusted basis of such contract in the hands of the transferor, increased by the amount of gain, if any, recognized by the transferor on the transfer of the contract. Moreover, not more than 50 percent of the consideration from the transaction may be allocated to player contracts unless the transferee establishes to the satisfaction of the Commissioner that a specific allocation in excess of 50 percent is proper. However, these basis rules may not apply if a sale or exchange of a franchise to conduct a sports enterprise is effected through a partnership.[850] Basis allocated to the franchise or to other valuable intangible assets acquired with the franchise may not be amortizable if these assets lack a determinable useful life.

In general, section 1245 provides that gain from the sale of certain property is treated as ordinary income to the extent depreciation or amortization was allowed on such property. Section 1245(a)(4) provides special rules for recapture of depreciation and deductions for losses taken with respect to player contracts. The special recapture rules apply in the case of the sale, exchange, or other disposition of a sports franchise. Under the special recapture rules, the amount recaptured as ordinary income is the amount of gain not to exceed the greater of (1) the sum of the depreciation taken plus any deductions taken for losses (i.e., abandonment losses) with respect to those player contracts which are initially acquired as a part of the original acquisition of the franchise or (2) the amount of depreciation taken with respect to those player contracts which are owned by the seller at the time of the sale of the sports franchise.

HOUSE BILL

The House bill extends the 15-year recovery period for intangible assets to franchises to engage in professional sports and any intangible asset acquired in connection with the acquisition of such a franchise (including player contracts). Thus, the same rules for amortization of intangibles that apply to other acquisitions under present law will apply to acquisitions of sports franchises. The provision also repeals the special rules under section 1245(a)(4) and makes other conforming changes.

Effective date.—The House bill is effective for property acquired after the date of enactment. The amendment to section 1245(a)(4) applies to franchises acquired after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

6. Increase continuous levy for certain federal payments (sec. 686 of the House bill, sec. 734 of the Senate amendment, and sec. 6331(h) of the Code)

PRESENT LAW

If any person is liable for any internal revenue tax and does not pay it within 10 days after notice and demand[851] by the IRS, the IRS may then collect the tax by levy upon all property and rights to property belonging to the person,[852] unless there is an explicit statutory restriction on doing so. A levy is the seizure of the person's property or rights to property. Property that is not cash is sold pursuant to statutory requirements.[853]

A continuous levy is applicable to specified Federal payments.[854] This includes any Federal payment for which eligibility is not based on the income and/or assets of a payee. Thus, a Federal payment to a vendor of goods or services to the government is subject to continuous levy. This continuous levy attaches up to 15 percent of any specified payment due the taxpayer.

HOUSE BILL

The bill permits a levy of up to 100 percent of a Federal payment to a vendor of goods or services to the Federal Government.

Effective date.—Date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill.

CONFERENCE AGREEMENT

The conference agreement follows the House bill and the Senate amendment.

7. Modification of straddle rules (sec. 687 of the House bill, sec. 464 of the Senate amendment, and sec. 1092 of the Code)

PRESENT LAW

Straddle rules

In general

A "straddle" generally refers to offsetting positions (sometimes referred to as "legs" of the straddle) with respect to actively traded personal property. Positions are offsetting if there is a substantial diminution in the risk of loss from holding one position by reason of holding one or more other positions in personal property. A "position" is an interest (including a futures or forward contract or option) in personal property. When a taxpayer realizes a loss with respect to a position in a straddle, the taxpayer may recognize that loss for any taxable year only to the extent that the loss exceeds the unrecognized gain (if any) with respect to offsetting positions in the straddle.[855] Deferred losses are carried forward to the succeeding taxable year and are subject to the same limitation with respect to unrecognized gain in offsetting positions.

Positions in stock

The straddle rules generally do not apply to positions in stock. However, the straddle rules apply where one of the positions is stock and at least one of the offsetting positions is: (1) an option with respect to the stock, (2) a securities futures contract (as defined in section 1234B) with respect to the stock, or (3) a position with respect to substantially similar or related property (other than stock) as defined in Treasury regulations. In addition, the straddle rules apply to stock of a corporation formed or availed of to take positions in personal property that offset positions taken by any shareholder.

Although the straddle rules apply to offsetting positions that consist of stock and an option with respect to stock, the straddle rules generally do not apply if the option is a "qualified covered call option" written by the taxpayer.[856] In general, a qualified covered call option is defined as an exchange-listed option that is not deep-in-the-money and is written by a non-dealer more than 30 days before expiration of the option.

The stock exception from the straddle rules has been largely curtailed by statutory amendment and regulatory interpretation. Under proposed Treasury regulations, the application of the stock exception essentially would be limited to offsetting positions involving direct ownership of stock and short sales of stock.[857]

Unbalanced straddles

When one position with respect to personal property offsets only a portion of one or more other positions ("unbalanced straddles"), the Secretary is directed to prescribe by regulations the method for determining the portion of such other positions that is to be taken into account for purposes of the straddle rules.[858] To date, no such regulations have been promulgated.

Unbalanced straddles can be illustrated with the following example: Assume the taxpayer holds two shares of stock (i.e., is long) in XYZ corporation—share A with a $30 basis and share B with a $40 basis. When the value of the XYZ stock is $45 per share, the taxpayer pays a $5 premium to purchase a put option on one share of the XYZ stock with an exercise price of $40. The issue arises as to whether the purchase of the put option creates a straddle with respect to share A, share B, or both. Assume that, when the value of the XYZ stock is $100, the put option expires unexercised. Taxpayer incurs a loss of $5 on the expiration of the put option, and sells share B for a $60 gain. On a literal reading of the straddle rules, the $5 loss would be deferred because the loss ($5) does not exceed the unrecognized gain ($70) in share A, which is also an offsetting position to the put option—notwithstanding that the taxpayer recognized more gain than the loss through the sale of share B. This problem is exacerbated when the taxpayer has a large portfolio of actively traded personal property that may be offsetting the loss leg of the straddle.

Although Treasury has not issued regulations to address unbalanced straddles, the IRS issued a private letter ruling in 1999 that addressed an unbalanced straddle situation.[859] Under the facts of the ruling, a taxpayer entered into a costless collar with respect to a portion of the shares of a particular stock held by the taxpayer.[860] Other shares were held in an account as collateral for a loan and still other shares were held in excess of the shares used as collateral and the number of shares specified in the collar. The ruling concluded that the collar offset only a portion of the stock (i.e., the number of shares specified in the costless collar) because that number of shares determined the payoff under each option comprising the collar. The ruling further concluded that: "In the absence of regulations under section 1092(c)(2)(B), we conclude that it is permissible for Taxpayer to identify which shares of Corporation stock are part of the straddles and which shares are used as collateral for the loans using appropriately modified versions of the methods of section 1.1012-1(c)(2) and (3) [providing rules for adequate identification of shares of stock sold or transferred by a taxpayer] or section 1.1092(b)-3T(d)(4) [providing requirements and methods for identification of positions that are part of a section 1092(b)(2) identified mixed straddle]".

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[848] Sec. 197.

[849] Sec. 197(e)(6).

[850] P.D.B. Sports, Ltd. v. Comm., 109 T.C. 423 (1997).

[851] Notice and demand is the notice given to a person liable for tax stating that the tax has been assessed and demanding that payment be made. The notice and demand must be mailed to the person's last known address or left at the person's dwelling or usual place of business (Code sec. 6303).

[852] Code sec. 6331.

[853] Code secs. 6335–6343.

[854] Code sec. 6331(h).

[855] Sec. 1092.

[856] However, if the option written by the taxpayer is a qualified covered call option that is in-the-money, then (1) any loss with respect to such option is treated as long-term capital loss if, at the time such loss is realized, gain on the sale or exchange of the offsetting stock held by the taxpayer would be treated as long-term capital gain, and (2) the holding period of such stock does not include any period during which the taxpayer is the grantor of the option (sec. 1092(f)).

[857] Prop. Treas. Reg. sec. 1.1092(d)-2(c).

[858] Sec. 1092(c)(2)(B).

Holding period for dividends-received deduction

If an instrument issued by a U.S. corporation is classified for tax purposes as stock, a corporate holder of the instrument generally is entitled to a dividends-received deduction for dividends received on that instrument.[861] The dividends-received deduction is allowed to a corporate shareholder only if the shareholder satisfies a 46-day holding period for the dividend-paying stock (or a 91-day holding period for certain dividends on preferred stock).[862] The holding period must be satisfied for each dividend over a period that is immediately before and immediately after the taxpayer becomes entitled to receive the dividend. The 46- or 91-day holding period generally does not include any time during which the shareholder is protected (other than by writing a qualified covered call) from the risk of loss that is otherwise inherent in the ownership of any equity interest.[863]

HOUSE BILL

Straddle rules

The House bill modifies the straddle rules in three respects: (1) permits taxpayers to identify offsetting positions of a straddle; (2) provides a special rule to clarify the present-law treatment of certain physically settled positions of a straddle; and (3) repeals the stock exception from the straddle rules.

Identified straddles

Under the House bill, taxpayers generally are permitted to identify the offsetting positions that are components of a straddle at the time the taxpayer enters into a transaction that creates a straddle, including an unbalanced straddle.[864] If there is a loss with respect to any identified position that is part of an identified straddle, the general straddle loss deferral rules do not apply to such loss. Instead, the basis of each of the identified positions that offset the loss position in the identified straddle is increased by an amount that bears the same ratio to the loss as the unrecognized gain (if any) with respect to such offsetting position bears to the aggregate unrecognized gain with respect to all positions that offset the loss position in the identified straddle.[865] Any loss with respect to an identified position that is part of an identified straddle cannot otherwise be taken into account by the taxpayer or any other person to the extent that the loss increases the basis of any identified positions that offset the loss position in the identified straddle.

In addition, the provision provides the Secretary authority to issue regulations that would specify (1) the proper methods for clearly identifying a straddle as an identified straddle (and identifying positions as positions in an identified straddle), (2) the application of the identified straddle rules for a taxpayer that fails to properly identify the positions of an identified straddle,[866] and (3) provide an ordering rule for dispositions of less than an entire position that is part of an identified straddle.

Physically settled straddle positions

The House bill also clarifies the present-law straddle rules with respect to taxpayers that settle a position that is part of a straddle by delivering property to which the position relates. Specifically, the provision clarifies that the present-law straddle loss deferral rules treat as a two-step transaction the physical settlement of a straddle position that, if terminated, would result in the realization of a loss. With respect to the physical settlement of such a position, the taxpayer is treated as having terminated the position for its fair market value immediately before the settlement. The taxpayer then is treated as having sold at fair market value the property used to physically settle the position.

Stock exception repeal

The House bill also eliminates the exception from the straddle rules for stock (other than the exception relating to qualified covered call options). Thus, offsetting positions comprised of actively traded stock and a position with respect to substantially similar or related property generally constitute a straddle.[867]

Dividends-received deduction holding period

The House bill also modifies the required 46- or 91-day holding period for the dividends-received deduction by providing that the holding period does not include any time during which the shareholder is protected from the risk of loss otherwise inherent in the ownership of any equity interest if the shareholder obtains such protection by writing an in-the-money call option on the dividend-paying stock.

Effective date

The House bill provision is effective for positions established on or after the date of enactment that substantially diminish the risk of loss from holding offsetting positions (regardless of when such offsetting position was established).

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except the Senate amendment also limits the present-law qualified covered call option exception to options traded on a national securities exchange that is registered with the Securities and Exchange Commission.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

8. Add vaccines against Hepatitis A to the list of taxable vaccines (sec. 688 of the House bill, sec. 491 of the Senate amendment, and sec. 4132 of the Code)

PRESENT LAW

A manufacturer's excise tax is imposed at the rate of 75 cents per dose[868] on the following vaccines routinely recommended for administration to children: diphtheria, pertussis, tetanus, measles, mumps, rubella, polio, HIB (haemophilus influenza type B), hepatitis B, varicella (chicken pox), rotavirus gastroenteritis, and streptococcus pneumoniae. The tax applied to any vaccine that is a combination of vaccine components equals 75 cents times the number of components in the combined vaccine.

Amounts equal to net revenues from this excise tax are deposited in the Vaccine Injury Compensation Trust Fund to finance compensation awards under the Federal Vaccine Injury Compensation Program for individuals who suffer certain injuries following administration of the taxable vaccines. This program provides a substitute Federal, "no fault" insurance system for the State-law tort and private liability insurance systems otherwise applicable to vaccine manufacturers. All persons immunized after September 30, 1988, with covered vaccines must pursue compensation under this Federal program before bringing civil tort actions under State law.

HOUSE BILL

The House bill adds any vaccine against hepatitis A to the list of taxable vaccines.

Effective date.—The provision is effective for vaccines sold beginning on the first day of the first month beginning more than four weeks after the date of enactment.

SENATE AMENDMENT

The Senate amendment adds any vaccine against hepatitis A to the list of taxable vaccines. The Senate amendment also makes a conforming amendment to the trust fund expenditure purposes.

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[859] Priv. Ltr. Rul. 199925044 (Feb. 3, 1999).

[860] A costless collar generally is comprised of the purchase of a put option and the sale of a call option with the same trade dates and maturity dates and set such that the premium paid substantially equals the premium received. The collar can be considered as economically similar to a short position in the stock.

[861] Sec. 243. The amount of the deduction is 70 percent of dividends received if the recipient owns less than 20 percent (by vote and value) of stock of the payor. If the recipient owns 20 percent or more of the stock, the deduction is increased to 80 percent. If the recipient owns 80 percent or more of the stock, the deduction is further increased to 100 percent for qualifying dividends.

[862] Sec. 246(c).

[863] Sec. 246(c)(4).

[864] However, to the extent provided by Treasury regulations, taxpayers are not permitted to identify offsetting positions of a straddle if the fair market value of the straddle position already held by the taxpayer at the creation of the straddle is less than its adjusted basis in the hands of the taxpayer.

[865] For this purpose, "unrecognized gain" is the excess of the fair market value of an identified position that is part of an identified straddle at the time the taxpayer incurs a loss with respect to another identified position in the identified straddle, over the fair market value of such position when the taxpayer identified the position as a position in the identified straddle.

[866] For example, although the provision does not require taxpayers to identify any positions of a straddle as an identified straddle, it may be necessary to provide rules requiring all balanced offsetting positions to be included in an identified straddle if a taxpayer elects to identify any of the offsetting positions as an identified straddle.

[867] It is intended that Treasury regulations defining substantially similar or related property for this purpose will continue to apply subsequent to repeal of the stock exception and generally will constitute the exclusive definition of a straddle with respect to offsetting positions involving stock. See Prop. Treas. Reg. sec. 1.1092(d)-2(b). However, the general straddles rules regarding substantial diminution in risk of loss will continue to apply to stock of corporations formed or availed of to take positions in personal property that offset positions taken by the shareholder.

[868] Sec. 4131.

Effective date.—The provision is effective for vaccines sold beginning on the first day of the first month beginning more than four weeks after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement includes the House bill provision.

9. Add vaccines against influenza to the list of taxable vaccines (sec. 689 of the House bill, sec. 732 of the Senate amendment, and sec. 4132 of the Code)

PRESENT LAW

A manufacturer's excise tax is imposed at the rate of 75 cents per dose[869] on the following vaccines routinely recommended for administration to children: diphtheria, pertussis, tetanus, measles, mumps, rubella, polio, HIB (haemophilus influenza type B), hepatitis B, varicella (chicken pox), rotavirus gastroenteritis, and streptococcus pneumoniae. The tax applied to any vaccine that is a combination of vaccine components equals 75 cents times the number of components in the combined vaccine.

Amounts equal to net revenues from this excise tax are deposited in the Vaccine Injury Compensation Trust Fund to finance compensation awards under the Federal Vaccine Injury Compensation Program for individuals who suffer certain injuries following administration of the taxable vaccines. This program provides a substitute Federal, "no fault" insurance system for the State-law tort and private liability insurance systems otherwise applicable to vaccine manufacturers. All persons immunized after September 30, 1988, with covered vaccines must pursue compensation under this Federal program before bringing civil tort actions under State law.

HOUSE BILL

The House bill adds any trivalent vaccine against influenza to the list of taxable vaccines.

Effective date.—The provision is effective for vaccines sold or used beginning on the later of the first day of the first month beginning more than four weeks after the date of enactment or the date on which the Secretary of Health and Human Services lists any such vaccine for purpose of compensation for any vaccine-related injury or death through the Vaccine Injury Compensation Trust Fund.

SENATE AMENDMENT

The Senate amendment is identical to the House bill.

CONFERENCE AGREEMENT

The conference agreement includes the provision of the House bill and the Senate amendment.

10. Extension of IRS user fees (sec. 690 of the House bill, sec. 482 of the Senate amendment, and sec. 7528 of the Code)

PRESENT LAW

The IRS generally charges a fee for requests for a letter ruling, determination letter, opinion letter, or other similar ruling or determination.[870] These user fees are authorized by statute through December 31, 2004.

HOUSE BILL

The House bill extends the statutory authorization for these user fees through September 30, 2014.

Effective date.—Requests made after the date of enactment.

SENATE AMENDMENT

The Senate amendment is the same as the House bill, except that it extends the statutory authorization for these user fees through September 30, 2013.

CONFERENCE AGREEMENT

The conference agreement follows the House bill.

11. Extension of Customs user fees (Sec. 691 of the House bill and sec. 485 of the Senate amendment)

PRESENT LAW

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA")[871] authorized the Secretary of the Treasury to collect certain service fees. Section 412 of the Homeland Security Act of 2002[872] authorized the Secretary of the Treasury to delegate such authority to the Secretary of Homeland Security. Provided for under 19 U.S.C. 58c, these fees include: processing fees for air and sea passengers, commercial trucks, rail cars, private aircraft and vessels, commercial vessels, dutiable mail packages, barges and bulk carriers, merchandise, and Customs broker permits. COBRA was amended on several occasions but most recently by P.L. No. 108–121, which extended authorization for the collection of these fees through March 1, 2005.[873]

HOUSE BILL

The House bill extends the passenger and conveyance processing fees and the merchandise processing fees authorized under COBRA through September 30, 2014. For fiscal years after September 30, 2005, the Secretary is to charge fees in amounts that are reasonably related to the costs of providing customs services in connection with the activity or item for which the fee is charged.

The House bill also includes a sense of the Congress regarding the extent to which fees are related to the costs of providing customs services in connection with the activities or items for which the fees have been charged under such paragraphs. The House bill further provides that the Secretary conduct a study of all the fees collected by the Department of Homeland Security.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

The Senate amendment extends the fees authorized under the COBRA through September 30, 2013.

CONFERENCE AGREEMENT

The conference agreement follows the House bill provision.

12. Prohibition on nonrecognition of gain through complete liquidation of holding company (sec. 452 of the Senate amendment and sec. 332 of the Code)

PRESENT LAW

A U.S. corporation owned by foreign persons is subject to U.S. income tax on its net income. In addition, the earnings of the U.S. corporation are subject to a second tax, when dividends are paid to the corporation's shareholders.

In general, dividends paid by a U.S. corporation to nonresident alien individuals and foreign corporations that are not effectively connected with a U.S. trade or business are subject to a U.S. withholding tax on the gross amount of such income at a rate of 30 percent. The 30-percent withholding tax may be reduced pursuant to an income tax treaty between the United States and the foreign country where the foreign person is resident.

In addition, the United States imposes a branch profits tax on U.S. earnings of a foreign corporation that are shifted out of a U.S. branch of the foreign corporation. The branch profits tax is comparable to the second-level taxes imposed on dividends paid by a U.S. corporation to foreign shareholders. The branch profits tax is 30 percent (subject to possible income tax treaty reduction) of a foreign corporation's dividend equivalent amount. The "dividend equivalent amount" generally is the earnings and profits of a U.S. branch of a foreign corporation attributable to its income effectively connected with a U.S. trade or business.

In general, U.S. withholding tax is not imposed with respect to a distribution of a U.S. corporation's earnings to a foreign corporation in complete liquidation of the subsidiary, because the distribution is treated as made in exchange for stock and not as a dividend. In addition, detailed rules apply for purposes of exempting foreign corporations from the branch profits tax for the year in which it completely terminates its U.S. business conducted in branch form. The exemption from the branch profits tax generally applies if, among other things, for three years after the termination of the U.S. branch, the foreign corporation has no income effectively connected with a U.S. trade or business, and the U.S. assets of the terminated branch are not used by the foreign corporation or a related corporation in a U.S. trade or business.

Regulations under section 367(e) provide that the Commissioner may require a domestic liquidating corporation to recognize gain on distributions in liquidation made to a foreign corporation if a principal purpose of the liquidation is the avoidance of U.S. tax. Avoidance of U.S. tax for this purpose includes, but is not limited to, the distribution of a liquidating corporation's earnings and profits with a principal purpose of avoiding U.S. tax.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision treats as a dividend any distribution of earnings by a U.S. holding company to a foreign corporation in a complete liquidation, if the U.S. holding company was in existence for less than five years.

Effective date.—The provision is effective for distributions occurring on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

13. Effectively connected income to include certain foreign source income (sec. 454 of the Senate amendment and sec. 864 of the Code)

PRESENT LAW

Nonresident alien individuals and foreign corporations (collectively, foreign persons) are subject to U.S. tax on income that is effectively connected with the conduct of a U.S. trade or business; the U.S. tax on such income is calculated in the same manner and at the same graduated rates as the tax on U.S. persons.[874] Foreign persons also are subject to a 30-percent gross-basis tax, collected by withholding, on certain U.S.-source income, such as interest, dividends and other fixed or determinable annual or periodical ("FDAP") income, that is not effectively connected with a U.S. trade or business. This 30-percent withholding tax may be reduced or eliminated pursuant to an applicable tax treaty. Foreign persons generally are not subject to U.S. tax on foreign-source income that is not effectively connected with a U.S. trade or business.

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[869] Sec. 4131.

[870] Sec. 7528.

[871] Pub. L. No. 99-272.

[872] Pub. L. No. 107–296.

[873] Sec. 201, 117 Stat. 1335.

[874] Secs. 871(b) and 882.

Detailed rules apply for purposes of determining whether income is treated as effectively connected with a U.S. trade or business (so-called "U.S.-effectively connected income").[875] The rules differ depending on whether the income at issue is U.S-source or foreign-source income. Under these rules, U.S.-source FDAP income, such as U.S.-source interest and dividends, and U.S.-source capital gains are treated as U.S.-effectively connected income if such income is derived from assets used in or held for use in the active conduct of a U.S. trade or business, or from business activities conducted in the United States. All other types of U.S.-source income are treated as U.S.-effectively connected income (sometimes referred to as the "force of attraction rule").

In general, foreign-source income is not treated as U.S.-effectively connected income.[876] However, foreign-source income, gain, deduction, or loss generally is considered to be effectively connected with a U.S. business only if the person has an office or other fixed place of business within the United States to which such income, gain, deduction, or loss is attributable and such income falls into one of three categories described below.[877] For these purposes, income generally is not considered attributable to an office or other fixed place of business within the United States unless such office or fixed place of business is a material factor in the production of the income, and such office or fixed place of business regularly carries on activities of the type that generate such income.[878]

The first category consists of rents or royalties for the use of patents, copyrights, secret processes, or formulas, good will, trademarks, trade brands, franchises, or other similar intangible properties derived in the active conduct of the U.S. trade or business.[879] The second category consists of interest or dividends derived in the active conduct of a banking, financing, or similar business within the United States, or received by a corporation whose principal business is trading in stocks or securities for its own account.[880] Notwithstanding the foregoing, foreign-source income consisting of dividends, interest, or royalties is not treated as effectively connected if the items are paid by a foreign corporation in which the recipient owns, directly, indirectly, or constructively, more than 50 percent of the total combined voting power of the stock.[881] The third category consists of income, gain, deduction, or loss derived from the sale or exchange of inventory or property held by the taxpayer primarily for sale to customers in the ordinary course of the trade or business where the property is sold or exchanged outside the United States through the foreign person's U.S. office or other fixed place of business.[882] Such amounts are not treated as effectively connected if the property is sold or exchanged for use, consumption, or disposition outside the United States and an office or other fixed place of business of the taxpayer in a foreign country materially participated in the sale or exchange.

The Code provides sourcing rules for enumerated types of income, including interest, dividends, rents, royalties, and personal services income.[883] For example, interest income generally is sourced based on the residence of the obligor. Dividend income generally is sourced based on the residence of the corporation paying the dividend. Thus, interest paid on obligations of foreign persons and dividends paid by foreign corporations generally are treated as foreign-source income.

Other types of income are not specifically covered by the Code's sourcing rules. For example, fees for accepting or confirming letters of credit have been sourced under principles analogous to the interest sourcing rules.[884] In addition, under regulations, payments in lieu of dividends and interest derived from securities lending transactions are sourced in the same manner as interest and dividends, including for purposes of determining whether such income is effectively connected with a U.S. trade or business.[885] Moreover, income from notional principal contracts (such as interest rate swaps) generally is sourced based on the residence of the recipient of the income, but is treated as U.S.-source effectively connected income if it arises from the conduct of a United States trade or business.[886]

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the provision, each category of foreign-source income that is treated as effectively connected with a U.S. trade or business is expanded to include economic equivalents of such income (i.e., economic equivalents of certain foreign-source (1) rents and royalties, (2) dividends and interest, and (3) income on sales or exchanges of goods in the ordinary course of business). Thus, such economic equivalents are treated as U.S.-effectively connected income in the same circumstances that foreign-source rents, royalties, dividends, interest, or certain inventory sales are treated as U.S.-effectively connected income. For example, foreign-source interest and dividend equivalents are treated as U.S.-effectively connected income if the income is attributable to a U.S. office of the foreign person, and such income is derived by such foreign person in the active conduct of a banking, financing, or similar business within the United States, or the foreign person is a corporation whose principal business is trading in stocks or securities for its own account.

Effective date.—The provision is effective for taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

14. Recapture of overall foreign losses on sale of controlled foreign corporation stock (sec. 455 of the Senate amendment and sec. 904 of the Code)

PRESENT LAW

U.S. persons may credit foreign taxes against U.S. tax on foreign-source income. The amount of foreign tax credits that may be claimed in a year is subject to a limitation that prevents taxpayers from using foreign tax credits to offset U.S. tax on U.S.-source income. The amount of foreign tax credits generally is limited to a portion of the taxpayer's U.S. tax which portion is calculated by multiplying the taxpayer's total U.S. tax by a fraction, the numerator of which is the taxpayer's foreign-source taxable income (i.e., foreign-source gross income less allocable expenses or deductions) and the denominator of which is the taxpayer's worldwide taxable income for the year.[887] Separate limitations are applied to specific categories of income.

Special recapture rules apply in the case of foreign losses for purposes of applying the foreign tax credit limitation.[888] Under these rules, losses for any taxable year in a limitation category which exceed the aggregate amount of foreign income earned in other limitation categories (a so-called "overall foreign loss") are recaptured by resourcing foreign-source income earned in a subsequent year as U.S.-source income.[889] The amount resourced as U.S.-source income generally is limited to the lesser of the amount of the overall foreign losses not previously recaptured, or 50 percent of the taxpayer's foreign-source income in a given year (the "50-percent limit"). Taxpayers may elect to recapture a larger percentage of such losses.

A special recapture rule applies to ensure the recapture of an overall foreign loss where property which was used in a trade or business predominantly outside the United States is disposed of prior to the time the loss has been recaptured.[890] In this regard, dispositions of trade or business property used predominantly outside the United States are treated as resulting in the recognition of foreign-source income (regardless of whether gain would otherwise be recognized upon disposition of the assets), in an amount equal to the lesser of the excess of the fair market value of such property over its adjusted basis, or the amount of unrecaptured overall foreign losses. Such foreign-source income is resourced as U.S.-source income without regard to the 50-percent limit. For example, if a U.S. corporation transfers its foreign branch business assets to a foreign corporation in a nontaxable section 351 transaction, the taxpayer would be treated for purposes of the recapture rules as having recognized foreign-source income in the year of the transfer in an amount equal to the excess of the fair market value of the property disposed over its adjusted basis (or the amount of unrecaptured foreign losses, if smaller). Such income would be recaptured as U.S.-source income to the extent of any prior unrecaptured overall foreign losses.[891]

Detailed rules apply in allocating and apportioning deductions and losses for foreign tax credit limitation purposes. In the case of interest expense, such amounts generally are apportioned to all gross income under an asset method, under which the taxpayer's assets are characterized as producing income in statutory or residual groupings (i.e., foreign-source income in the various limitation categories or U.S.-source income).[892] Interest expense is apportioned among these groupings based on the relative asset values in each. Taxpayers may elect to value assets based on either tax book value or fair market value.

Each corporation that is a member of an affiliated group is required to apportion its interest expense using apportionment fractions determined by reference to all assets of the affiliated group. For this purpose, an affiliated group generally is defined to include only domestic corporations. Stock in a foreign subsidiary, however, is treated as a foreign asset that may attract the allocation of U.S. interest expense for these purposes. If tax basis is used to value assets, the adjusted basis of the stock of certain 10-percent or greater owned foreign corporations or other non-affiliated corporations must be increased by the amount of earnings and profits of such corporation accumulated during the period the U.S. shareholder held the stock, for purposes of the interest apportionment.

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[875] Sec. 864(c).

[876] Sec. 864(c)(4).

[877] Sec. 864(c)(4)(B).

[878] Sec. 864(c)(5).

[879] Sec. 864(c)(4)(B)(i).

[880] Sec. 864(c)(4)(B)(ii).

[881] Sec. 864(c)(4)(D)(i).

[882] Sec. 864(c)(4)(B)(iii).

[883] Secs. 861–865.

[884] See Bank of America v. United States, 680 F.2d 142 (Ct. Cl. 1982).

[885] Treas. Reg. sec. 1.864–5(b)(2)(ii).

[886] Treas. Reg. sec. 1.863–7(b)(3).

[887] Sec. 904(a).

[888] Sec. 904(f).

[889] Sec. 904(f)(1).

[890] Sec. 904(f)(3).

[891] Coordination rules apply in the case of losses recaptured under the branch loss recapture rules. Sec. 367(a)(3)(C).

[892] Sec. 864(e) and Temp. Treas. Reg. sec. 1.861–9T.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the provision, the special recapture rule for overall foreign losses that currently applies to dispositions of foreign trade or business assets applies to the disposition of stock in a controlled foreign corporation controlled by the taxpayer. Thus, a disposition of controlled foreign corporation stock by a controlling shareholder results in the recognition of foreign-source income in an amount equal to the lesser of the fair market value of the stock over its adjusted basis, or the amount of prior unrecaptured overall foreign losses. Such income is resourced as U.S.-source income for foreign tax credit limitation purposes without regard to the 50-percent limit.

Although the provision generally extends to all dispositions of such stock, regardless of whether gain or loss is recognized on the transfer, exceptions are made for certain internal restructurings. Contributions to corporations or partnerships under sections 351 and 721, respectively, and certain stock and asset reorganizations do not trigger recapture of overall foreign losses, provided that the transferor's underlying indirect interest in the disposed controlled foreign corporation does not change. However, any gain recognized in connection with a transaction meeting any of these exceptions, such as boot, triggers recapture of overall foreign losses to the extent of such gain.

Effective date.—The provision applies to dispositions after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with modifications. Under the provision as modified, a disposition of controlled foreign corporation stock in a transaction in which the taxpayer or a member of its consolidated group acquires the assets of the controlled foreign corporation in a liquidation under section 332 or a reorganization does not trigger the recapture of overall foreign losses. Any gain recognized in connection with a transaction meeting this exception triggers recapture of overall foreign losses to the extent of such gain.

15. Application of earnings-stripping rules to partnerships and S corporations (sec. 462 of the Senate amendment and sec. 163 of the Code)

PRESENT LAW

Present law provides rules to limit the ability of U.S. corporations to reduce the U.S. tax on their U.S.-source income through earnings stripping transactions. Section 163(j) specifically addresses earnings stripping involving interest payments, by limiting the deductibility of interest paid to certain related parties ("disqualified interest"),[893] if the payor's debt-equity ratio exceeds 1.5 to 1 and the payor's net interest expense exceeds 50 percent of its "adjusted taxable income" (generally taxable income computed without regard to deductions for net interest expense, net operating losses, and depreciation, amortization, and depletion). Disallowed interest amounts can be carried forward indefinitely. In addition, excess limitation (i.e., any excess of the 50-percent limit over a company's net interest expense for a given year) can be carried forward three years.

The present-law earnings stripping provision does not apply to partnerships. Proposed Treasury regulations provide that a corporate partner's proportionate share of the liabilities of a partnership is treated as debt of the corporate partner for purposes of applying the earnings stripping limitation to its own interest payments.[894] In addition, interest paid or accrued by a partnership is treated as interest expense of a corporate partner, with the result that a deduction for the interest expense may be disallowed if that expense would be disallowed under the earnings stripping rules if paid by the corporate partner itself.[895] The proposed regulations also provide that the earnings stripping rules do not apply to subchapter S corporations.[896] Thus, under present law and the proposed regulations, a partnership or S corporation generally is allowed a deduction for interest paid or accrued on indebtedness that it issues that otherwise would be disallowed under the earnings stripping rules in the case of a subchapter C corporation.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment incorporates a rule attributing partnership debt to a corporate partner for purposes of applying the earnings stripping rules to the corporation.[897]

Effective date.—The Senate amendment provision generally is effective for taxable years beginning on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

16. Recognition of cancellation of indebtedness income realized on satisfaction of debt with partnership interest (sec. 463 of the Senate amendment and sec. 108 of the Code)

PRESENT LAW

Under present law, a corporation that transfers shares of its stock in satisfaction of its debt must recognize cancellation of indebtedness income in the amount that would be realized if the debt were satisfied with money equal to the fair market value of the stock.[898] Prior to enactment of this present-law provision in 1993, case law provided that a corporation did not recognize cancellation of indebtedness income when it transferred stock to a creditor in satisfaction of debt (referred to as the "stock-for-debt exception").[899]

When cancellation of indebtedness income is realized by a partnership, it generally is allocated among the partners in accordance with the partnership agreement, provided the allocations under the agreement have substantial economic effect. A partner who is allocated cancellation of indebtedness income is entitled to exclude it if the partner qualifies for one of the various exceptions to recognition of such income, including the exception for insolvent taxpayers or that for qualified real property indebtedness of taxpayers other than subchapter C corporations.[900] The availability of each of these exceptions is determined at the partner, rather than the partnership, level.

In the case of a partnership that transfers to a creditor a capital or profits interest in the partnership in satisfaction of its debt, no Code provision expressly requires the partnership to realize cancellation of indebtedness income. Thus, it is unclear whether the partnership is required to recognize cancellation of indebtedness income under either the case law that established the stock-for-debt exception or the present-law statutory repeal of the stock-for-debt exception. It also is unclear whether any requirement to recognize cancellation of indebtedness income is affected if the cancelled debt is nonrecourse indebtedness.[901]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that when a partnership transfers a capital or profits interest in the partnership to a creditor in satisfaction of partnership debt, the partnership generally recognizes cancellation of indebtedness income in the amount that would be recognized if the debt were satisfied with money equal to the fair market value of the partnership interest. The Senate amendment applies without regard to whether the cancelled debt is recourse or nonrecourse indebtedness. Any cancellation of indebtedness income recognized under the Senate amendment is allocated solely among the partners who held interests in the partnership immediately prior to the satisfaction of the debt.

Under the Senate amendment, no inference is intended as to the treatment under present law of the transfer of a partnership interest in satisfaction of partnership debt.

Effective date.—The Senate amendment is effective for cancellations of indebtedness occurring on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment.

17. Denial of installment sale treatment for all readily tradable debt (Sec. 465 of the Senate amendment and sec. 453 of the Code)

PRESENT LAW

Under present law, taxpayers are permitted to recognize as gain on a disposition of property only that proportion of payments received in a taxable year which is the same as the proportion that the gross profit bears to the total contract price (the "installment method").[902] However, the installment method is not available if the taxpayer sells property in exchange for a readily tradable evidence of indebtedness that is issued by a corporation or a government or political subdivision.[903]

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[893] This interest also may include interest paid to unrelated parties in certain cases in which a related party guarantees the debt.

[894] Prop. Treas. reg. sec. 1.163(j)-3(b)(3).

[895] Prop. Treas. reg. sec. 1.163(j)-2(c)(5).

[896] Prop. Treas. reg. sec. 1.163(j)-1(a)(i).

[897] This rule currently is contained in Prop. Treas. reg. sec. 1.163(j)-2(c)(5).

[898] Sec. 108(e)(8).

[899] E.g., *Motor Mart Trust* v. *Commissioner*, 4 T.C. 931 (1945), aff'd, 156 F.2d 122 (1st Cir. 1946), acq. 1947-1 C.B. 3; *Capento Sec. Corp.* v. *Commissioner*, 47 B.T.A. 691 (1942), nonacq. 1943 C.B. 28, aff'd, 140 F.2d 382 (1st Cir. 1944); *Tower Bldg. Corp.* v. *Commissioner*, 6 T.C. 125 (1946), acq. 1947-1 C.B. 4; *Alcazar Hotel, Inc.* v. *Commissioner*, 1 T.C. 872 (1943), acq. 1943 C.B. 1.

[900] Sec. 108(a).

[901] See, e.g., *Fulton Gold Corp.* v. *Commissioner*, 31 B.T.A. 519 (1934); *American Seating Co.* v. *Commissioner*, 14 B.T.A. 328, aff'd in part and rev'd in part, 50 F.2d 681 (7th Cir. 1931); *Hiatt* v. *Commissioner*, 35 B.T.A. 292 (1937); *Hotel Astoria, Inc.* v. *Commissioner*, 42 B.T.A. 759 (1940); Rev. Rul. 91-31, 1991-1 C.B. 19.

No similar provision under present law prohibits the use of the installment method where the taxpayer sells property in exchange for readily tradable indebtedness issued by a partnership or an individual.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment denies installment sale treatment with respect to all sales in which the taxpayer receives indebtedness that is readily tradable under present-law rules, regardless of the nature of the issuer. For example, if the taxpayer receives readily tradable debt of a partnership in a sale, the partnership debt is treated as payment on the installment note, and the installment method is unavailable to the taxpayer.

Effective date.—The Senate amendment provision is effective for sales occurring on or after date of enactment.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment.

18. Modify treatment of transfers to creditors in divisive reorganizations (sec. 466 of the Senate amendment and secs. 357 and 361 of the Code)

PRESENT LAW

Section 355 of the Code permits a corporation ("distributing") to separate its businesses by distributing a controlled subsidiary ("controlled") tax-free, if certain conditions are met. In cases where the distributing corporation contributes property to the controlled corporation that is to be distributed, no gain or loss is recognized if the property is contributed solely in exchange for stock or securities of the controlled corporation (which are subsequently distributed to distributing's shareholders). The contribution of property to a controlled corporation that is followed by a distribution of its stock and securities may qualify as a reorganization described in section 368(a)(1)(D). That section also applies to certain transactions that do not involve a distribution under section 355 and that are considered "acquisitive" rather than "divisive" reorganizations.

The contribution in the course of a divisive section 368(a)(1)(D) reorganization is also subject to the rules of section 357(c). That section provides that the transferor corporation will recognize gain if the amount of liabilities assumed by controlled exceeds the basis of the property transferred to it.

Because the contribution transaction in connection with a section 355 distribution is a reorganization under section 368(a)(1)(D), it is also subject to certain rules applicable to both divisive and acquisitive reorganizations. One such rule, in section 361(b), states that a transferor corporation will not recognize gain if it receives money or other property and distributes that money or other property to its shareholders or creditors. The amount of property that may be distributed to creditors without gain recognition is unlimited under this provision.

HOUSE BILL

No provision.

SENATE AMENDMENT

The bill limits the amount of money plus the fair market value of other property that a distributing corporation can distribute to its creditors without gain recognition under section 361(b) to the amount of the basis of the assets contributed to a controlled corporation in a divisive reorganization. In addition, the bill provides that acquisitive reorganizations under section 368(a)(1)(D) are no longer subject to the liabilities assumption rules of section 357(c).

Effective date.—The bill is effective for transactions on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

19. Clarify definition of nonqualified preferred stock (sec. 467 of the Senate amendment and sec. 351(g) of the Code)

PRESENT LAW

The Taxpayer Relief Act of 1997 amended sections 351, 354, 355, 356, and 1036 to treat "nonqualified preferred stock" as boot in corporate transactions, subject to certain exceptions. For this purpose, preferred stock is defined as stock that is "limited and preferred as to dividends and does not participate in corporate growth to any significant extent." Nonqualified preferred stock is defined as any preferred stock if (1) the holder has the right to require the issuer or a related person to redeem or purchase the stock, (2) the issuer or a related person is required to redeem or purchase, (3) the issuer or a related person has the right to redeem or repurchase, and, as of the issue date, it is more likely than not that such right will be exercised, or (4) the dividend rate varies in whole or in part (directly or indirectly) with reference to interest rates, commodity prices, or similar indices, regardless of whether such varying rate is provided as an express term of the stock (as in the case of an adjustable rate stock) or as a practical result of other aspects of the stock (as in the case of auction stock). For this purpose, clauses (1), (2), and (3) apply if the right or obligation may be exercised within 20 years of the issue date and is not subject to a contingency which, as of the issue date, makes remote the likelihood of the redemption or purchase.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision clarifies the definition of nonqualified preferred stock to ensure that stock for which there is not a real and meaningful likelihood of actually participating in the earnings and profits of the corporation is not considered to be outside the definition of stock that is limited and preferred as to dividends and does not participate in corporate growth to any significant extent.

As one example, instruments that are preferred on liquidation and that are entitled to the same dividends as may be declared on common stock do not escape being nonqualified preferred stock by reason of that right if the corporation does not in fact pay dividends either to its common or preferred stockholders. As another example, stock that entitles the holder to a dividend that is the greater of seven percent or the dividends common shareholders receive does not avoid being preferred stock if the common shareholders are not expected to receive dividends greater than seven percent.

No inference is intended as to the characterization of stock under present law that has terms providing for unlimited dividends or participation rights but, based on all the facts and circumstances, is limited and preferred as to dividends and does not participate in corporate growth to any significant extent.

Effective date.—The provision is effective for transactions after May 14, 2003.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

20. Modify definition of controlled group of corporations (sec. 468 of the Senate amendment and sec. 1563 of the Code)

PRESENT LAW

Under present law, a tax is imposed on the taxable income of corporations. The rates are as follows:

MARGINAL FEDERAL CORPORATE INCOME TAX RATES

If taxable income is:	Then the income tax rate is:
$0–$50,000	15 percent of taxable income.
$50,001–$75,000	25 percent of taxable income.
$75,001–$10,000,000	34 percent of taxable income.
Over $10,000,000	35 percent of taxable income.

The first two graduated rates described above are phased out by a five-percent surcharge for corporations with taxable income between $100,000 and $335,000. Also, the application of the 34-percent rate is phased out by a three-percent surcharge for corporations with taxable income between $15 million and $18,333,333.

The component members of a controlled group of corporations are limited to one amount in each of the taxable income brackets shown above.[904] For this purpose, a controlled group of corporations means a parent-subsidiary controlled group and a brother-sister controlled group.

A brother-sister controlled group means two or more corporations if five or fewer persons who are individuals, estates or trusts own (or constructively own) stock possessing (1) at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total value of all stock, and (2) more than 50 percent of percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of all stock, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation.[905]

HOUSE BILL

No provision.

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[902] Sec. 453.

[903] Sec. 453(f)(3). Instead, the receipt of such indebtedness is treated as a receipt of payment.

[904] Component members are also limited to one alternative minimum tax exemption and one accumulated earnings credit.

[905] Sec. 1563(a)(2). The Supreme Court held in *United States* v. *Vogel Fertilizer*, 455 US 16 (1982), that Treas. Reg. Sec. 1.1563-1(a)(3), as it was then written, was invalid insofar as it would require an individual's stock to be taken into account, for purposes of the 80-percent brother-sister corporation ownership test, where that individual did not own stock in each of the corporations in the asserted controlled group. In that case, one corporation was owned 77.49 percent by one shareholder and 22.51 by an unrelated shareholder. The 77.49 percent shareholder of that first corporation also owned 87.5 percent of the voting stock and more than 90 percent of the value of the stock of a second corporation. The Supreme Court held the corporations were not a controlled group, even though they would have been one had the then applicable Treasury regulations been considered valid in their application to the case. The Treasury regulations were subsequently changed to conform to the Supreme Court decision. T.D. 8179, 53 F.R. 6603 (March 2, 1988).

SENATE AMENDMENT

Under the provision, a brother-sister controlled group means two or more corporations if five or fewer persons who are individuals, estates or trusts own (or constructively own) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote, or more than 50 percent of the total value of all stock, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation.

The provision applies only for purposes of section 1561, currently relating to corporate tax brackets, the accumulated earnings credit, and the minimum tax. The provision does not affect other Code sections or other provisions that utilize or refer to the section 1563 brother-sister corporation controlled group test for other purposes.[906]

Effective date.—The provision applies to taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

21. Establish specific class lives for utility grading costs (sec. 472 of the Senate amendment and sec. 168 of the Code)

PRESENT LAW

A taxpayer is allowed a depreciation deduction for the exhaustion, wear and tear, and obsolescence of property that is used in a trade or business or held for the production of income. For most tangible property placed in service after 1986, the amount of the depreciation deduction is determined under the modified accelerated cost recovery system ("MACRS") using a statutorily prescribed depreciation method, recovery period, and placed in service convention. For some assets, the recovery period for the asset is provided in section 168. In other cases, the recovery period of an asset is determined by reference to its class life. The class lives of assets placed in service after 1986 are generally set forth in Revenue Procedure 87-56.[907] If no class life is provided, the asset is allowed a 7-year recovery period under MACRS.

Assets that are used in the transmission and distribution of electricity for sale are included in asset class 49.14, with a class life of 30 years and a MACRS recovery period of 20 years. The cost of initially clearing and grading land improvements are specifically excluded from asset class 49.14. Prior to adoption of the accelerated cost recovery system, the IRS ruled that an average useful life of 84 years for the initial clearing and grading relating to electric transmission lines and 46 years for the initial clearing and grading relating to electric distribution lines, would be accepted. However, the result in this ruling was not incorporated in the asset classes included in Rev. Proc. 87-56 or its predecessors. Accordingly such costs are depreciated over a 7-year recovery period under MACRS as assets for which no class life is provided.

A similar situation exists with regard to gas utility pipelines and related storage facilities. Such assets are included in asset class 49.24, with a class life of 22 years and a MACRS recovery period of 15 years. Initial clearing and grade improvements are specifically excluded from the asset class, and no separate asset class is provided for such costs. Accordingly such costs are depreciated over a 7-year recovery period under MACRS as assets for which no class life is provided.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment assigns a class life to depreciable electric and gas utility clearing and grading costs incurred to locate transmission and distribution lines and pipelines. The provision includes these assets in the asset classes of the property to which the clearing and grading costs relate (generally, asset class 49.14 for electric utilities and asset class 49.24 for gas utilities, giving these assets a recovery period of 20 years and 15 years, respectively).

Effective date.—The Senate amendment is effective for property placed in service after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

22. Expansion of limitation on expensing of certain passenger automobiles (sec. 473 of the Senate amendment and sec. 179 of the Code)

PRESENT LAW

A taxpayer is allowed to recover, through annual depreciation deductions, the cost of certain property used in a trade or business or for the production of income. The amount of the depreciation deduction allowed with respect to tangible property for a taxable year is determined under the modified accelerated cost recovery system ("MACRS"). Under MACRS, passenger automobiles generally are recovered over five years. However, section 280F limits the annual depreciation deduction with respect to certain passenger automobiles.[908]

For purposes of the depreciation limitation, passenger automobiles are defined broadly to include any 4-wheeled vehicles that are manufactured primarily for use on public streets, roads, and highways and which are rated at 6,000 pounds unloaded gross vehicle weight or less.[909] In the case of a truck or a van, the depreciation limitation applies to vehicles that are rated at 6,000 pounds gross vehicle weight or less. Sports utility vehicles are treated as a truck for the purpose of applying the section 280F limitation.

In lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment may elect to expense such investment (sec. 179). The Jobs and Growth Tax Relief Reconciliation Act (JGTRRA) of 2003[910] increased the amount a taxpayer may deduct, for taxable years beginning in 2003 through 2005, to $100,000 of the cost of qualifying property placed in service for the taxable year.[911] In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. The $100,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $400,000. Prior to the enactment of JGTRRA (and for taxable years beginning in 2006 and thereafter) a taxpayer with a sufficiently small amount of annual investment may elect to deduct up to $25,000 of the cost of qualifying property placed in service for the taxable year. The $25,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $200,000. Passenger automobiles subject to section 280F are eligible for section 179 expensing only to the extent of the applicable limits contained in section 280F.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment limits the ability of taxpayers to claim deductions under section 179 for certain vehicles not subject to section 280F to $25,000. The provision applies to sport utility vehicles rated at 14,000 pounds gross vehicle weight or less (in place of the present law 6,000 pound rating). For this purpose, a sport utility vehicle is defined to exclude any vehicle that: (1) is designed for more than nine individuals in seating rearward of the driver's seat; (2) is equipped with an open cargo area, or a covered box not readily accessible from the passenger compartment, of at least six feet in interior length; or (3) has an integral enclosure, fully enclosing the driver compartment and load carrying device, does not have seating rearward of the driver's seat, and has no body section protruding more than 30 inches ahead of the leading edge of the windshield.

The following example illustrates the operation of the provision.

Example.—Assume that during 2005, a calendar year taxpayer acquires and places in service a sport utility vehicle subject to the provision that costs $70,000. In addition, assume that the property otherwise qualifies for the expensing election under section 179. Under the provision, the taxpayer is first allowed a $25,000 deduction under section 179. The taxpayer is also allowed an additional first-year depreciation deduction (sec. 168(k)) of $22,500 based on $45,000 ($70,000 original cost less the section 179 deduction of $25,000) of adjusted basis. Finally, the remaining adjusted basis of $22,500 ($45,000 adjusted basis less $22,500 additional first-year depreciation) is eligible for an additional depreciation deduction of $4,500 under the general depreciation rules (automobiles are five-year recovery property). The remaining $18,000 of cost ($70,000 original cost less $52,000 deductible currently) would be recovered in 2006 and subsequent years pursuant to the general depreciation rules.

Effective date.—The Senate amendment is effective for property placed in service after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

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[906] As one example, the provision does not change the present law standards relating to deferred compensation, contained in subchapter D of the Code, that refer to section 1563.

[907] 1987-2 C.B. 674 (as clarified and modified by Rev. Proc. 88-22, 1988-1 C.B. 785).

[908] The limitation is commonly referred to as the "luxury automobile depreciation limitation." For passenger automobiles (subject to the such limitation) placed in service in 2002, the maximum amount of allowable depreciation is $7,660 for the year in which the vehicle was placed in service, $4,900 for the second year, $2,950 for the third year, and $1,775 for the fourth and later years. This limitation applies to the combined depreciation deduction provided under present law for depreciation, including section 179 expensing and the temporary 30 percent additional first year depreciation allowance. For luxury automobiles eligible for the 50% additional first depreciation allowance, the first year limitation is increased by an additional $3,050.

[909] Sec. 280F(d)(5). Exceptions are provided for any ambulance, hearse, or any vehicle used by the taxpayer directly in the trade or business of transporting persons or property for compensation or hire.

[910] Pub. L. No. 108-27, sec. 202 (2003).

[911] Additional section 179 incentives are provided with respect to a qualified property used by a business in the New York Liberty Zone (sec. 1400L(f)), an empowerment zone (sec. 1397A), or a renewal community (sec. 1400J).

23. Provide consistent amortization period for intangibles (sec. 474 of the Senate amendment and secs. 195, 248, and 709 of the Code)

PRESENT LAW

At the election of the taxpayer, start-up expenditures[912] and organizational expenditures[913] may be amortized over a period of not less than 60 months, beginning with the month in which the trade or business begins. Start-up expenditures are amounts that would have been deductible as trade or business expenses, had they not been paid or incurred before business began. Organizational expenditures are expenditures that are incident to the creation of a corporation (sec. 248) or the organization of a partnership (sec. 709), are chargeable to capital, and that would be eligible for amortization had they been paid or incurred in connection with the organization of a corporation or partnership with a limited or ascertainable life.

Treasury regulations[914] require that a taxpayer file an election to amortize start-up expenditures no later than the due date for the taxable year in which the trade or business begins. The election must describe the trade or business, indicate the period of amortization (not less than 60 months), describe each start-up expenditure incurred, and indicate the month in which the trade or business began. Similar requirements apply to the election to amortize organizational expenditures. A revised statement may be filed to include start-up and organizational expenditures that were not included on the original statement, but a taxpayer may not include as a start-up expenditure any amount that was previously claimed as a deduction.

Section 197 requires most acquired intangible assets (such as goodwill, trademarks, franchises, and patents) that are held in connection with the conduct of a trade or business or an activity for the production of income to be amortized over 15 years beginning with the month in which the intangible was acquired.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment modifies the treatment of start-up and organizational expenditures. A taxpayer would be allowed to elect to deduct up to $5,000 of start-up and $5,000 of organizational expenditures in the taxable year in which the trade or business begins. However, each $5,000 amount is reduced (but not below zero) by the amount by which the cumulative cost of start-up or organizational expenditures exceeds $50,000, respectively. Start-up and organizational expenditures that are not deductible in the year in which the trade or business begins would be amortized over a 15-year period consistent with the amortization period for section 197 intangibles.

Effective date.—The Senate amendment is effective for start-up and organizational expenditures incurred after the date of enactment. Start-up and organizational expenditures that are incurred on or before the date of enactment would continue to be eligible to be amortized over a period not to exceed 60 months. However, all start-up and organizational expenditures related to a particular trade or business, whether incurred before or after the date of enactment, would be considered in determining whether the cumulative cost of start-up or organizational expenditures exceeds $50,000.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

24. Doubling of certain penalties, fines, and interest on underpayments related to certain offshore financial arrangements (sec. 483 of the Senate amendment)

PRESENT LAW

The Code contains numerous civil penalties, such as the delinquency, accuracy-related and fraud penalties. These civil penalties are in addition to any interest that may be due.

In January 2003, Treasury announced the Offshore Voluntary Compliance Initiative ("OVCI") running through April 15, 2003, to encourage the voluntary disclosure of previously unreported income placed by taxpayers in offshore accounts and accessed through credit card or other financial arrangements. The taxpayer will pay back taxes, interest and certain accuracy-related and delinquency penalties.

A taxpayer's timely, voluntary disclosure of a substantial unreported tax liability has long been an important factor in deciding whether the taxpayer's case should ultimately be referred for criminal prosecution. The voluntary disclosure must be truthful, timely, and complete. A voluntary disclosure does not guarantee immunity from prosecution.

HOUSE BILL

No provision.

SENATE AMENDMENT

Increases by a factor of two the total amount of civil penalties, interest and fines applicable for taxpayers who would have been eligible to participate in either the OVCI or the Treasury Department's voluntary disclosure initiative but did not participate in either program.

Effective date.—Taxpayers' open tax years on or after date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

25. Whistleblower reforms (sec. 488 of the Senate amendment)

PRESENT LAW

Under section 7623, the IRS is authorized to pay such sums as deemed necessary for: "(1) detecting underpayments of tax; and (2) detecting and bringing to trial and punishment persons guilty of violating the internal revenue laws or conniving at the same." Amounts are paid based on a percentage of tax, fines, and penalties (but not interest) actually collected based on the information provided. For specific information that caused the investigation and resulted in recovery, the IRS administratively has set the reward in an amount not to exceed 15 percent of the amounts recovered. For information, although not specific, that nonetheless caused the investigation and was of value in the determination of tax liabilities, the reward is not to exceed 10 percent of the amount recovered. For information that caused the investigation, but had no direct relationship to the determination of tax liabilities, the reward is not to exceed one percent of the amount recovered. The reward ceiling is $10 million (for payments made after November 7, 2002), and the reward floor is $100. No reward will be paid if the recovery was so small as to call for payment of less than $100 under the above formulas. Both the ceiling and percentages can be increased with a Special Agreement. The Code permits the IRS to disclose return information pursuant to a contract for tax administration services (sec. 6103(n)).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment creates a reward program for actions in which the tax, penalties, interest, additions to tax, and additional amounts in dispute exceed $20,000, and, if the taxpayer is an individual, the individual's gross income exceeds $200,000 for any taxable year.

Generally, the Senate amendment establishes a reward floor of 15 percent of the collected proceeds (including penalties, interest, additions to tax and additional amounts) if the IRS proceeds with an administrative or judicial action based on information brought to the IRS's attention by an individual. The Senate amendment permits awards of lesser amounts (but no less than 10 percent) if the action was based principally on allegations (other than information provided by the individual) resulting from a judicial or administrative hearing, government report, hearing, audit, investigation, or from the news media. The Senate amendment caps the available reward at 30 percent of the collected proceeds. Any determination regarding a reward may be appealed to the U.S. Tax Court.

The Senate amendment creates a Whistleblower Office within the IRS to administer this reward program. The Whistleblower Office is funded with amounts equal to rewards made. The Whistleblower Office may seek the assistance from the individual providing information or from his legal representative, and may reimburse the costs incurred by any legal representative out of the funds of the Whistleblower Office. To the extent the disclosure of returns or return information is required to render such assistance, the disclosure must be pursuant to an IRS tax administration contract.

Effective date.—Information provided on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

26. Increase in age of minor children whose unearned income is taxed as if parent's income (sec. 495 of the Senate amendment and sec. 1 of the Code)

PRESENT LAW

Filing requirements for children

A single unmarried individual eligible to be claimed as a dependent on another taxpayer's return generally must file an individual income tax return if he or she has: (1) earned income only over $4,850 (for 2004); (2) unearned income only over the minimum standard deduction amount for dependents ($800 in 2004); or (3) both earned income and unearned income totaling more than the smaller of (a) $4,850 (for 2004) or (b) the larger of (i) $800 (for 2004), or (ii) earned income plus $250.[915] Thus, if a dependent child has less than $800 in gross income, the child does not have to file an individual income tax return for 2004.[916]

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[912] Sec. 195

[913] Secs. 248 and 709.

[914] Treas. Reg. sec. 1.195-1.

[915] Sec. 6012(a)(1)(C). Other filing requirements apply to dependents who are married, elderly, or blind. See, Internal Revenue Service, Publication 929, Tax Rules for Children and Dependents, at 3, Table 1 (2003).

[916] A taxpayer generally need not file a return if he or she has gross income in an amount less than the standard dedcution (and, if allowable to the taxpyer, the personal exemption amount). An individual who

A child who cannot be claimed as a dependent on another person's tax return (e.g., because the support test is not satisfied by any other person) is subject to the generally applicable filing requirements. That is, such an individual generally must file a return if the individual's gross income exceeds the sum of the standard deduction and the personal exemption amounts applicable to the individual.

Taxation of unearned income under section 1(g)

Special rules (generally referred to as the "kiddie tax") apply to the unearned income of a child who is under age 14.[917] The kiddie tax applies if: (1) the child has not reached the age of 14 by the close of the taxable year; (2) the child's unearned income was more than $1,600 (for 2004); and (3) the child is required to file a return for the year. The kiddie tax applies regardless of whether the child may be claimed as a dependent on the parent's return.

For these purposes, unearned income is income other than wages, salaries, professional fees, or other amounts received as compensation for personal services actually rendered.[918] For children under age 14, net unearned income (for 2004, generally unearned income over $1,600) is taxed at the parent's rate if the parent's rate is higher than the child's rate. The remainder of a child's taxable income (i.e., earned income, plus unearned income up to $1,600 (for 2004), less the child's standard deduction) is taxed at the child's rates, regardless of whether the kiddie tax applies to the child. In general, a child is eligible to use the preferential tax rates for qualified dividends and capital gains.[919]

The kiddie tax is calculated by computing the "allocable parental tax." This involves adding the net unearned income of the child to the parent's income and then applying the parent's tax rate. A child's "net unearned income" is the child's unearned income less the sum of (1) the minimum standard deduction allowed to dependents ($800 for 2004), and (2) the greater of (a) such minimum standard deduction amount or (b) the amount of allowable itemized deductions that are directly connected with the production of the unearned income.[920] A child's net unearned income cannot exceed the child's taxable income.

The allocable parental tax equals the hypothetical increase in tax to the parent that results from adding the child's net unearned income to the parent's taxable income. If a parent has more than one child subject to the kiddie tax, the net unearned income of all children is combined, and a single kiddie tax is calculated. Each child is then allocated a proportionate share of the hypothetical increase, based upon the child's net unearned income relative to the aggregate net unearned income of all of the parent's children subject to the tax.

Special rules apply to determine which parent's tax return and rate is used to calculate the kiddie tax. If the parents file a joint return, the allocable parental tax is calculated using the income reported on the joint return. In the case of parents who are married but file separate returns, the allocable parental tax is calculated using the income of the parent with the greater amount of taxable income. In the case of unmarried parents, the child's custodial parent is the parent whose taxable income is taken into account in determining the child's liability. If the custodial parent has remarried, the stepparent is treated as the child's other parent. Thus, if the custodial parent and stepparent file a joint return, the kiddie tax is calculated using that joint return. If the custodial parent and stepparent file separate returns, the return of the one with the greater taxable income is used. If the parents are unmarried but lived together all year, the return of the parent with the greater taxable income is used.[921]

Unless the parent elects to include the child's income on the parent's return (as described below) the child files a separate return to report the child's income. In this case, items on the parent's return are not affected by the child's income. The total tax due from a child is the greater of:

(1) The sum of (a) the tax payable by the child on the child's earned income plus (b) the allocable parental tax on the child's unearned income, or

(2) The tax on the child's income without regard to the kiddie tax provisions.

Parental election to include child's dividends and interest on parent's return

Under certain circumstances, a parent may elect to report a child's dividends and interest on the parent's return. If the election is made, the child is treated as having no income for the year and the child does not have to file a return. The parent makes the election on Form 8814, Parents' Election To Report Child's Interest and Dividends. The requirements for the parent's election are that:

(1) The child has gross income only from interest and dividends (including capital gains distributions and Alaska Permanent Fund Dividends);[923]

(2) Such income is more than the minimum standard deduction amount for dependents ($800 in 2004) and less than 10 times that amount ($8000 in 2004);

(3) No estimated tax payments for the year were made in the child's name and taxpayer identification number;

(4) No backup withholding occurred; and

(5) The child is required to file a return if the parent does not make the election.

Only the parent whose return must be used when calculating the kiddie tax may make the election. The parent includes in income the child's gross income in excess of twice the minimum standard deduction amount for dependents (i.e., the child's gross income in excess of $1,600 for 2004). This amount is taxed at the parent's rate. The parent also must report an additional tax liability equal to the lesser of: (1) $80 (in 2004), or (2) 10 percent of the child's gross income exceeding the child's standard deduction ($800 in 2004).

Including the child's income on the parent's return can affect the parent's deductions and credits that are based on adjusted gross income, as well as income-based phaseouts, limitations, and floors.[924] In addition, certain deductions that the child would have been entitled to take on his or her own return are lost.[925] Further, if the child received tax-exempt interest from a private activity bond, that item is considered a tax preference of the parent for alternative minimum tax purposes.[926]

Taxation of compensation for services under section 1(g)

Compensation for a child's services is considered the gross income of the child, not the parent, even if the compensation is not received or retained by the child (e.g., is the parent's income under local law).[927] If the child's income tax is not paid, however, an assessment against the child will be considered as also made against the parent to the extent the assessment is attributable to amounts received for the child's services.[928]

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment increases the age of minors to which the kiddie tax provisions apply from under 14 to under 18.

Effective date.—The provision is effective for taxable years beginning after December 31, 2003.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

27. Modify holding period requirement for qualification for reduced tax rate on dividends on preferred stock (sec. 496 of the Senate amendment and sec. 1 of the Code)

PRESENT LAW

Section 1(h)(11) provides that if a taxpayer receives "qualified dividend income," the dividend income is taxed as net capital gain. The maximum rate of tax on qualified dividend income therefore generally is 15 percent.[929] Dividends are treated as qualified dividend income only if certain conditions, including holding period requirements, are satisfied. The holding period requirements under section 1(h)(11) are defined by reference, with modifications, to the holding period requirements under section 246(c) for qualification for the dividends received deduction. A dividend paid on a share of common stock is qualified dividend income only if, among other requirements, the recipient holds the share for more than 60 days during the 121-day period beginning on the date that is 60 days before the date on which the share becomes ex-dividend with respect to the dividend.[930] A dividend paid on a share of preferred stock is qualified dividend income only if the recipient holds the share for more than 90 days during the 181-day period beginning 90 days before the ex-dividend date.[931]

HOUSE BILL

No provision.

SENATE AMENDMENT[932]

The Senate amendment changes the holding period requirement for treatment as

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may be claimed as a dependent of another taxpyaer is not eligible to claim the dependency exemption relating to that individual. Sec. 151(d)(2). For taxable years beginning in 2004, the standard deduction amount for an individual who may be claimed as a dependent by another taxpyer may not exceed the greater of $800 or the sum of $250 and the individual's earned income.

[917] Sec. 1(g).

[918] Sec. 1(g)(4) and sec. 911(d)(2).

[919] Sec. 1(h)

[920] Sec. 1(g)(4).

[921] Sec. 1(g)(5); Internal Revenue Service, Publication 929, Tax Rules for Children and Dependents, at 6 (2003).

[923] Internal Revenue Service, Publication 929, Tax Rules

[924] Internal Revenue Service, Publication 929, Tax Rules for Children and Dependents, at 7 (2003).

[925] Internal Revenue Service, Publication 929, Tax Rules for Children and Dependents, at 7 (2003).

[926] Sec. 1(g)(7)(B).

[927] Sec. 73(a).

[928] Sec. 6201(c).

[929] Sec. 1(h)(1)(C).

[930] Secs. 1(h)(11)(B)(iii)(I), 246(c)(1)(A).

[931] Secs. 1(h)(11)(B)(iii)(I), 246(c)(2).

[932] The Senate amendment predated the enactment of H.R. 1308, Pub. L. No. 108-311 (the "Working Families Tax Relief Act of 2004"), which included a technical correction to the holding period requirements under sections 1(h)(11) and 246(c) (increasing from 120 to 121 days and from 180 to 181 days the periods

Continued

qualified dividend income for dividends paid on preferred stock. Under the Senate amendment, stock must be held for more than 120 days during the 240-day period beginning 120 days before the ex-dividend date.

Effective date.—The Senate amendment provision applies to taxable years beginning after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

28. Grant Treasury regulatory authority to address foreign tax credit transactions involving inappropriate separation of foreign taxes from related foreign income (sec. 661A of Senate amendment and sec. 901 of the Code)

PRESENT LAW

The United States provides a credit for foreign income taxes paid or accrued. For purposes of the foreign tax credit, the taxpayer "is the person on whom foreign law imposes legal liability for such tax." Treas. Reg. sec. 1.901-2(f)(1). Thus, if a U.S. corporation owns a foreign partnership, the U.S. corporation can claim foreign tax credits for the tax that is imposed on it as a partner in the foreign entity. This is true even if the U.S. corporation elects to treat the foreign entity as a corporation for U.S. tax purposes. If the foreign entity does not meet the definition of a controlled foreign corporation or does not generate income that is subject to current inclusion under the rules of an anti-deferral regime, the income generated by the foreign entity may never be reported on a U.S. return, despite the fact that the U.S. corporation can claim credits for taxes imposed on that income.

The Treasury Department and the IRS have expressed concern about transactions that involve inappropriate foreign tax credit results, including the second class of transactions described in Notice 98-5.[933] The tax benefits claimed in these transactions are inconsistent with the purposes of the foreign tax credit provisions.[934]

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision expands existing regulatory authority to provide Treasury and the IRS additional mechanisms to address the second class of transactions described in Notice 98-5 as well as other abusive foreign tax credit schemes that involve the inappropriate separation of foreign taxes from the related foreign income in cases where foreign taxes are imposed on any person with respect to income of an entity.

The regulations may provide for: (1) the disallowance of a credit for all or a portion of the foreign taxes; or (2) for the allocation of the foreign taxes among the participants in the transaction in a manner that is more consistent with the underlying economics of the transaction.

Effective date.—The provision is effective for transactions entered into after the date of enactment.

CONFERENCE AGREEMENT

No provision.

29. Freeze of provision regarding suspension of interest where Secretary fails to contact taxpayer (sec. 662B of the Senate amendment and sec. 6404(g) of the Code)

PRESENT LAW

In general, interest and penalties accrue during periods for which taxes were unpaid without regard to whether the taxpayer was aware that there was tax due. The Code suspends the accrual of certain penalties and interest after 1 year after the filing of the tax return[935] if the IRS has not sent the taxpayer a notice specifically stating the taxpayer's liability and the basis for the liability within the specified period.[936] With respect to taxable years beginning before January 1, 2004, the one-year period is increased to 18 months. Interest and penalties resume 21 days after the IRS sends the required notice to the taxpayer. The provision is applied separately with respect to each item or adjustment. The provision does not apply where a taxpayer has self-assessed the tax. The suspension only applies to taxpayers who file a timely tax return. The provision applies only to individuals and does not apply to the failure to pay penalty, in the case of fraud, or with respect to criminal penalties.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment makes the 18-month rule the permanent rule. The Senate amendment also adds gross misstatements[937] and listed and reportable transactions to the list of provisions to which the suspension of interest rules do not apply.

Effective date.—The Senate amendment is effective for taxable years beginning after December 31, 2003,[938] except that the addition of listed and reportable transactions applies to interest accruing after May 5, 2004.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment, except: (1) the provision relating to reportable transactions is made applicable only to reportable avoidance transactions;[939] and (2) that the addition of listed and reportable avoidance transactions applies to interest accruing after October 3, 2004.

30. Increase in withholding from supplemental wage payments in excess of $1 million (sec. 673 of the Senate amendment and sec. 13273 of the Revenue Reconciliation Act of 1993)

PRESENT LAW

An employer must withhold income taxes from wages paid to employees; there are several possible methods for determining the amount of income tax to be withheld. The IRS publishes tables (Publication 15, "Circular E") to be used in determining the amount of income tax to be withheld. The tables generally reflect the income tax rates under the Code so that withholding approximates the ultimate tax liability with respect to the wage payments. In some cases, "supplemental" wage payments (e.g., bonuses or commissions) may be subject to withholding at a flat rate,[940] based on the third lowest income tax rate under the Code (25 percent for 2005).[941]

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, once annual supplemental wage payments to an employee exceed $1 million, any additional supplemental wage payments to the employee in that year are subject to withholding at the highest income tax rate (35 percent for 2004 and 2005), regardless of any other withholding rules and regardless of the employee's Form W-4.

This rule applies only for purposes of wage withholding; other types of withholding (such as pension withholding and backup withholding) are not affected.

Effective date.—The provision is effective with respect to payments made after December 31, 2003.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment except that the conference agreement is effective for payments made after December 31, 2004.

31. Capital gain treatment on sale of stock acquired from exercise of statutory stock options to comply with conflict of interest requirements (sec. 674 of the Senate amendment and sec. 421 of the Code)

PRESENT LAW

Statutory stock options

Generally, when an employee exercises a compensatory option on employer stock, the difference between the option price and the fair market value of the stock (i.e., the "spread") is includible in income as compensation. Upon such exercise, an employer is allowed a corresponding compensation deduction. In the case of an incentive stock option or an option to purchase stock under an employee stock purchase plan (collectively referred to as "statutory stock options"), the spread is not included in income at the time of exercise.[942]

If an employee disposes of stock acquired upon the exercise of a statutory option, the employee generally is taxed at capital gains rates with respect to the excess of the fair market value of the stock on the date of disposition over the option price, and no compensation expense deduction is allowable to the employer, unless the employee fails to meet a holding period requirement. The employee fails to meet this holding period requirement if the disposition occurs within two years after the date the option is granted or one year after the date the option is exercised. The gain upon a disposition that occurs prior to the expiration of the applicable holding period(s) (a "disqualifying disposition") does not qualify for capital gains treatment. In the event of a disqualifying

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during which the stock holding requirements are tested).

[933] 1998-1 C.B. 334.

[934] Notice 2004-19, 2004-11 I.R.B. 606.

[935] If the return is filed before the due date, for this purpose it is considered to have been filed on the due date.

[936] Sec. 6404(g). This provision was added to the Code by sec. 3305 of the IRS Restructuring and Reform Act of 1998 (Pub. L. No. 105-206, July 22, 1998).

[937] This includes any substantial omission of items to which the six-year statute of limitations applies (sec. 6051(e)), gross valuation misstatements (sec. 6662(h)), and similar provisions.

[938] It is intended that this provision apply retroactively to the period beginning January 1, 2004 and ending on the date of enactment. The due date for returns for the taxable period beginning January 1, 2004 is generally April 15, 2005; April 15, 2005 is therefore the date from which the 12-month period that must pass under present-law prior to the commencement of suspension is calculated. Consequently, suspension of interest would generally not begin until April 15, 2006. Accordingly, the provision has no actual retroactive effect.

[939] A reportable avoidance transaction is a reportable transaction with a significant tax avoidance purpose.

[940] Sec. 13273 of the Revenue Reconciliation Act of 1993.

[941] Sec. 101(c)(11) of the Economic Growth and Tax Relief Reconciliation Act of 2001.

[942] Sec. 421.

disposition, the income attributable to the disposition is treated by the employee as income received in the taxable year in which the disposition occurs, and a corresponding deduction is allowable to the employer for the taxable year in which the disposition occurs.

Sale of property to comply with conflict of interest requirements

The Code provides special rules for recognizing gain on sales of property which are required in order to comply with certain conflict of interest requirements imposed by the Federal Government.[943] Certain executive branch Federal employees (and their spouses and minor or dependent children) who are required to divest property in order to comply with conflict of interest requirements may elect to postpone the recognition of resulting gains by investing in certain replacement property within a 60-day period. The basis of the replacement property is reduced by the amount of the gain not recognized. Permitted replacement property is limited to any obligation of the United States or any diversified investment fund approved by regulations issued by the Office of Government Ethics. The rule applies only to sales under certificates of divestiture issued by the President or the Director of the Office of Government Ethics.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, an eligible person who, in order to comply with Federal conflict of interest requirements, is required to sell shares of stock acquired pursuant to the exercise of a statutory stock option is treated as satisfying the statutory holding period requirements, regardless of how long the stock was actually held. An eligible person generally includes an officer or employee of the executive branch of the Federal Government (and any spouse or minor or dependent children whose ownership in property is attributable to the officer or employee). Because the sale is not treated as a disqualifying disposition, the individual is afforded capital gain treatment on any resulting gains. Such gains are eligible for deferral treatment under section 1043.

The employer granting the option is not allowed a deduction upon the sale of the stock by the individual.

Effective date.—The Senate amendment is effective for sales after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment.

32. Application of basis rules to nonresident aliens (sec. 675 of the Senate amendment and new sec. 72(w) and sec. 83 of the Code)

PRESENT LAW

Distributions from retirement plans

Distributions from retirement plans are includible in gross income under the rules relating to annuities[944] and, thus, are generally includible in income, except to the extent the amount received represents investment in the contract (i.e., the participant's basis). The participant's basis includes amounts contributed by the participant on an after-tax basis, together with certain amounts contributed by the employer, minus the aggregate amount (if any) previously distributed to the extent that such amount was excludable from gross income. Amounts contributed by the employer are included in the calculation of the participant's basis only to the extent that such amounts were includible in the gross income of the participant, or to the extent that such amounts would have been excludable from the participant's gross income if they had been paid directly to the participant at the time they were contributed.[945]

Employer contributions to retirement plans and other payments for labor or personal services performed outside the United States by a nonresident alien generally are not treated as U.S. source income. Such contributions, therefore, generally would not be includible in the nonresident alien's gross income if they had been paid directly to the nonresident alien at the time they were contributed. Consequently, the amounts of such contributions generally are includible in the employee's basis and are not taxed by the United States if a distribution is made when the employee is a U.S. citizen or resident.[946]

Earnings on contributions are not included in basis unless previously includible in income. In general, in the case of a nonexempt trust, earnings are includible in income when distributed or made available.[947] In the case of highly compensated employees, the amount of the vested accrued benefit under the trust (other than the employee's investment in the contract) is generally required to be included in income annually (to the extent not previously includible). That is, earnings, as well as contributions, that are part of the vested accrued benefit are currently includible in income.[948]

Property transferred in connection with the performance of services

The Code contains rules governing the amount and timing of income and deductions attributable to transfers of property in connection with the performance of services. If, in connection with the performance of services, property is transferred to any person other than the person for whom such services are performed, in general, an amount is includible in the gross income of the person performing the services (the "service provider") for the taxable year in which the property is first vested (i.e., transferable or not subject to a substantial risk of forfeiture).[949] The amount includible in the service provider's income is the excess of the fair market value of the property over the amount (if any) paid for the property. Basis in such property includes any amount that is included in income as a result of the transfer.[950]

U.S. income tax treaties

Under the 1996 U.S. Model Income Tax Treaty ("U.S. Model") and some U.S. income tax treaties in force, retirement plan distributions beneficially owned by a resident of a treaty country in consideration for past employment generally are taxable only by the individual recipient's country of residence. Under the U.S. Model treaty and some U.S. income tax treaties, this exclusive residence-based taxation rule is limited to the taxation of amounts that were not previously included in taxable income in the other country. For example, if a treaty country had imposed tax on a resident individual with respect to some portion of a retirement plan's earnings, subsequent distributions to that person while a resident of the United States would not be taxable in the United States to the extent the distributions were attributable to such previously taxed amounts.

Compensation of employees of foreign governments or international organizations

Under section 893, wages, fees, and salaries of any employee of a foreign government or international organization (including a consular or other officer or a nondiplomatic representative) received as compensation for official services to the foreign government or international organization generally are excluded from gross income when (1) the employee is not a citizen of the United States, or is a citizen of the Republic of the Philippines (whether or not a citizen of the United States); (2) in the case of an employee of a foreign government, the services are of a character similar to those performed by employees of the United States in foreign countries; and (3) in the case of an employee of a foreign government, the foreign government grants an equivalent exemption to employees of the United States performing similar services in such foreign country. The Secretary of State certifies the names of the foreign countries which grant an equivalent exclusion to employees of the United States performing services in those countries, and the character of those services.

The exclusion does not apply to employees of controlled commercial entities or employees of foreign governments whose services are primarily in connection with commercial activity (whether within or outside the United States) of the foreign government.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment modifies the present-law rules under which certain contributions and earnings that have not been previously taxed are treated as basis (under sec. 72). Under the Senate amendment, employee or employer contributions are not included in basis if: (1) the employee was a nonresident alien at the time the services were performed with respect to which the contribution was made; (2) the contribution is with respect to compensation for labor or personal services from sources without the United States; and (3) the contribution was not subject to income tax under the laws of the United States or any foreign country.

The Senate amendment authorizes the Secretary of the Treasury to issue regulations to carry out the purposes of the Senate amendment, including regulations treating contributions as not subject to income tax under the laws of any foreign country under appropriate circumstances.

Effective date.—The Senate amendment is effective for distributions occurring on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with modifications.

Under the conference agreement, employee or employer contributions are not included in basis (under sec. 72) if: (1) the employee was a nonresident alien at the time the services were performed with respect to which the contribution was made; (2) the contribution is with respect to compensation for labor or personal services from sources without the United States; and (3) the contribution was not subject to income tax (and would have been subject to income tax if paid as cash compensation when the services were rendered) under the laws of the United States or any foreign country.

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[943] Sec. 1043.

[944] Secs. 72 and 402.

[945] Sec. 72(f).

[946] Rev. Rul. 58-236, 1958-1 C.B. 37.

[947] Sec. 402(b)(2).

[948] Sec. 402(b)(4).

[949] Sec. 83(a).

[950] Treas. Reg. sec. 1.61-2(d)(1).

Additionally, earnings on employer or employee contributions are not included in basis if: (1) the earnings are paid or accrued with respect to any employer or employee contributions which were made with respect to compensation for labor or personal services; (2) the employee was a nonresident alien at the time the earnings were paid or accrued; and (3) the earnings were not subject to income tax under the laws of the United States or any foreign country.

The conference agreement does not change the rules applicable to calculation of basis with respect to contributions or earnings while an employee is a U.S. resident.

There is no inference that this conference agreement applies in any case to create tax jurisdiction with respect to wages, fees, and salaries otherwise exempt under section 893. Similarly, there is no inference that the conference agreement applies where contrary to an agreement of the United States that has been validly authorized by Congress (or in the case of a treaty, ratified by the Senate), and which provides an exemption for income.

Most U.S. tax treaties specifically address the taxation of pension distributions. The U.S. Model treaty provides for exclusive residence-based taxation of pension distributions to the extent such distributions were not previously included in taxable income in the other country. For purposes of the U.S. Model treaty, the United States treats any amount that has increased the recipient's basis (as defined in section 72) as having been previously included in taxable income. The following example illustrates how the conference agreement could affect the amount of a distribution that may be taxed by the United States pursuant to a tax treaty.

Assume the following facts. A, a nonresident alien individual, performs services outside the United States, in A's country of residence, country Z. A's employer makes contributions on behalf of A to a pension plan established in country Z. For U.S. tax purposes, no portion of the contributions or earnings are included in A's income (and would not be included in income if the amounts were paid as cash compensation when the services were performed) because such amounts relate to services performed without the United States.[951] Later in time, A retires and becomes a permanent resident of the United States.

Under the conference agreement, the employer contributions to the pension plan would not be taken into account in determining A's basis if A was not subject to income tax on the contributions by a foreign country and the contributions would have been subject to tax by a foreign country if the contributions had been paid to A as cash compensation when the services were performed. Thus, in those circumstances, A would be subject to U.S. tax on the distribution of all of the contributions, as such distributions are made. However, if the contributions would not have been subject to tax in the foreign country if they had been paid to A as cash compensation when the services were performed, under the conference agreement, the contributions would be included in A's basis. Earnings that accrued while A was a nonresident alien would not result in basis if not taxed under U.S. or foreign law. Earnings that accrued while A was a permanent resident of the United States would be subject to present-law rules. This result generally is consistent with the treatment of pension distributions under the U.S. Model treaty.

The conference agreement authorizes the Secretary of the Treasury to issue regulations to carry out the purposes of the conference agreement, including regulations treating contributions as not subject to income tax under the laws of any foreign country under appropriate circumstances. For example, Treasury could provide that foreign income tax that was merely nominal would not satisfy the "subject to income tax" requirement.

The conference agreement also changes the rules for determining basis in property received in connection for the performance of services in the case of an individual who was a nonresident alien at the time of the performance of services, if the property is treated as income from sources outside the United States. In that case, the individual's basis in the property does not include any amount that was not subject to income tax (and would have been subject to income tax if paid as cash compensation when the services were performed) under the laws of the United States or any foreign country.

Effective date.—The conference agreement is effective for distributions occurring on or after the date of enactment. No inference is intended that the earnings subject to the conference agreement are included in basis under present law.

33. Residence and source rules related to a United States possession (sec. 497 of the Senate amendment and new sec. 937 of the Code)

PRESENT LAW

In general

Generally, U.S. citizens are subject to U.S. income taxation on their worldwide income. Thus, all income earned by U.S. citizens is subject to U.S. income tax, regardless of its source.

The U.S. income taxation of alien individuals varies depending on whether they are resident or non-resident aliens. A resident alien is generally taxed in the same manner as a U.S. citizen.[952] In contrast, a nonresident alien is generally subject to U.S. tax only on certain gross U.S. source income at a flat 30 percent rate (unless such rate is eliminated or reduced by treaty) and on net income that has a sufficient nexus to the United States at the graduated rates applicable to U.S. citizens and residents under section 1.

An alien is considered a resident of the United States if the individual: (1) has entered the United States as a lawful permanent resident and is such a resident at any time during the calendar year, (2) is present in the United States for a substantial period of time (the so-called "substantial presence test"), or (3) makes an election to be treated as a resident of the United States (sec. 7701(b)). An alien who does not meet the definition of a "resident alien" is considered to be a non-resident alien for U.S. income tax purposes.

Under the substantial presence test, an alien individual is generally treated as a resident alien if he or she is present in the United States for 31 days during the taxable year and the sum of the number of days on which such individual was present in the United States (when multiplied by the applicable multiplier) during the current year and the preceding two calendar years equals or exceeds 183 days. The applicable multiplier for: the current year is one; the first preceding year is one-third; and the second preceding year is one-sixth.

An alien individual who meets the above test may nevertheless be a nonresident if he or she (1) is present in the United States for fewer than 183 days during the current year; (2) has a tax home in a foreign country during the year; and (3) has a closer connection to that country than to the United States.

For purposes of the substantial presence test, the United States includes the states and the District of Columbia, but does not include U.S. possessions. An individual is present in the United States for a particular day if he or she is physically present in the United States during any time during such day. However, in certain circumstances an individual's presence in the United States is ignored, including presence in the United States as a result of certain medical emergencies.

U.S. income taxation of residents of U.S. possessions

Generally, special U.S. income tax rules apply with respect to U.S. persons who are bona fide residents of certain U.S. possessions (i.e., Puerto Rico, Virgins Islands, Guam, Northern Mariana Islands and American Samoa) and who have possession source income or income effectively connected to the conduct of a trade or business within a possession.

Generally, a bona fide resident of a U.S. possession (regardless of whether the individual is a U.S. citizen or alien) is determined using the principles of a subjective, facts-and-circumstances test set forth in the regulations under section 871. Prior to the adoption of present-law section 7701(b), this subjective test was used to determine whether an alien individual was a resident of the United States. Under these rules, an individual is generally a resident of the United States if an individual (1) is actually present in the United States, and (2) is not a mere transient or sojourner.[953] Whether individuals are transients is determined by their intentions with regard to the length and nature of their stay. However, the regulations provide that section 7701(b) (discussed above) provides the basis for determining whether an alien individual is a resident of a U.S. possession with a mirror income tax code.[954]

Pursuant to regulations, the principles that generally apply for determining income from sources within and without the United States also generally apply in determining income from sources within and without a U.S. possession.[955] The Code and regulations do not indicate how to determine whether income is effectively connected with the conduct of a trade or business within a U.S. possession. However, section 864(c) provides rules for determining whether income is effectively connected to a trade or business conducted within the United States.

Information reporting

Section 7654(e) provides that Treasury may require information reporting with respect to individuals that may take advantage of certain special U.S. income tax rules with respect to U.S. possessions. Section 6688 provides that an individual may be subject to a $100 penalty if the individual fails to furnish the information required by regulations issued pursuant to section 7654(e).

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[951] Sec. 872.

[952] Section 7701(a)(30) defines a citizen or resident of the United States as "U.S. persons."

[953] Treas. Reg. sec. 1.871-2(b).

[954] A U.S. possession with a mirror income tax code is "a United States possession * * * that administers income tax laws that are identifical (except for the substitution of the name of the possession or territory for the term 'United States' where appropriate) to those in the United States." Treas. Reg. sec. 7701(b)-1(d)(1).

[955] Treas. Reg. sec. 1.863-6.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides the term "bona fide resident" means a person who satisfies a test, determined by the Secretary, similar to the substantial presence test of section 7701(b)(3) with respect to Guam, American Samoa, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands.

The provision also requires bona fide residents of the Virgin Islands to file an informational income tax return with the United States and imposes a penalty for the failure to file such a return.

Effective date.—The provision is effective for taxable years ending after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment with modifications.

The conferees understand that certain U.S. citizens and residents are claiming that they are exempt from U.S. income tax on their worldwide income based on a position that they are bona fide residents of the Virgin Islands or another possession. However, these individuals often do not spend a significant amount of time in the particular possession during a taxable year and, in some cases, continue to live and work in the United States. Under the Virgin Island's Economic Development Program, many of these same individuals secure a reduction of up to 90 percent of their Virgin Islands income tax liability on income they take the position is Virgin Islands source or effectively connected with the conduct of a Virgin Islands trade or business. The conferees are also aware that taxpayers are taking the position that income earned for services performed in the United States is Virgin Islands source or that their U.S. activities generate income effectively connected with the conduct of a Virgin Islands trade or business.

The conferees believe that the various exemptions from U.S. tax provided to residents of possessions should not be available to individuals who continue to live and work in the United States. The conferees also believe that the special U.S. income tax rules applicable to residents in a possession need to be rationalized. The conferees are further concerned that the general rules for determining whether income is effectively connected with the conduct of a trade or business in a possession present numerous opportunities for erosion of the U.S. tax base.

Generally, the provision provides that the term "bona fide resident" means a person who meets a two-part test with respect to Guam, American Samoa, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands, as the case may be, for the taxable year. First, an individual must be present in the possession for at least 183 days in the taxable year. Second, an individual must (i) not have a tax home outside such possession during the taxable year and (ii) not have a closer connection to the United States or a foreign country during such year.

The provision also grants authority to Treasury to create exceptions to these general rules as appropriate. The conferees intend for such exceptions to cover, in particular, persons whose presence outside a possession for extended periods of time lacks a tax avoidance purpose, such as military personnel, workers in the fisheries trade, and retirees who travel outside the possession for certain personal reasons.

An individual is present in a possession for a particular day if he is physically present in such possession during any time during such day. In certain circumstances an individual's presence outside a possession is ignored (e.g., certain medical emergencies) as provided under the principles of section 7701(b).

The provision provides that a taxpayer must file a notice in the first taxable year they claim bona fide residence in a possession. The provision imposes a penalty of $1000 for the failure to file such notice or to comply with any filing required by regulation under section 7654(e).

The provision generally codifies the existing rules for determining when income is considered to be from sources within a possession by providing that, as a general rule, for all purposes of the Code, the principles for determining whether income is U.S. source are applicable for purposes of determining whether income is possession source. In addition, the provision provides that the principles for determining whether income is effectively connected with the conduct of a U.S. trade or business are applicable for purposes of determining whether income is effectively connected to the conduct of a possession trade or business. However, the provision further provides that except as provided in regulations any income treated as U.S. source income or as effectively connected with the conduct of a U.S. trade or business is not treated as income from within any possession or as effectively connected with a trade or business within any such possession.

The provision also grants authority to the Secretary of the Treasury to create exceptions to these general rules regarding possession source income and income effectively connected with a possession trade or business as appropriate. The conferees anticipate that this authority will be used to continue the existing treatment of income from the sale of goods manufactured in a possession. The conferees also intend for this authority to be used to prevent abuse, for example, to prevent U.S. persons from avoiding U.S. tax on appreciated property by acquiring residence in a possession prior to its disposition.

No inference is intended as to the present-law rules for determining (1) bona fide residence in a possession, (2) whether income is possession source, and (3) whether income is effectively connected with the conduct of a trade or business within a possession.

Effective date.—Generally, the provision is effective for taxable years ending after the date of enactment. The first prong of the two-part residency test (i.e., the 183-day test) is effective for taxable years beginning after date of enactment. The general effective date applies with respect to the second prong of such test. The rule providing that income treated as U.S. source income or as effectively connected with the conduct of a U.S. trade or business is not treated as income from within any possession or as effectively connected with the conduct of a trade or business within any such possession is effective for income earned after date of enactment.

34. Include employer provided housing under foreign earned income exclusion cap (sec. 632 of the Senate amendment and sec. 911 of the Code)

PRESENT LAW

U.S. citizens generally are subject to U.S. income tax on all their income, whether derived in the United States or elsewhere. A U.S. citizen who earns income in a foreign country also may be taxed on such income by that foreign country. However, the United States generally cedes the primary right to tax income derived by a U.S. citizen from sources outside the United States to the foreign country where such income is derived. Accordingly, a credit against the U.S. income tax imposed on foreign source income is generally available for foreign taxes paid on that income, to the extent of the U.S. tax otherwise owed on such income. If the foreign income tax rate is lower than the U.S. income tax rate, then the United States generally provides a credit up to the amount of the foreign tax and imposes a residual tax to the extent of the difference.

U.S. citizens living abroad may be eligible to exclude from their income for U.S. tax purposes certain foreign earned income and foreign housing costs, in which case no residual U.S. tax is imposed to the extent of such exclusion, regardless of the foreign tax rate. In order to qualify for these exclusions, an individual must be either: (1) a U.S. citizen who is a bona fide resident of a foreign country for an uninterrupted period that includes an entire taxable year;[956] or (2) a U.S. citizen or resident present overseas for 330 days out of any 12-consecutive-month period. In addition, the taxpayer must have his or her tax home in a foreign country.

The foreign earned income exclusion generally applies to income earned from sources outside the United States as compensation for personal services rendered by the taxpayer. The maximum exclusion amount for foreign earned income is $80,000 per taxable year for 2002 and thereafter. For taxable years beginning after 2007, the maximum exclusion amount is indexed for inflation.

The exclusion for housing costs applies to reasonable expenses, other than deductible interest and taxes, paid or incurred by or on behalf of the taxpayer for housing in a foreign country but only to the extent the housing costs exceed a base housing amount. The base housing amount is equal to 16 percent of the annual salary earned by a GS-14, Step 1 U.S. government employee. In the case of housing costs that are not paid or reimbursed by the taxpayer's employer, the amount that would be excludible is treated instead as a deduction.

The combined foreign earned income exclusion and housing cost exclusion may not exceed the taxpayer's total foreign earned income for the taxable year. The taxpayer's foreign tax credit is reduced by the amount of such credit that is attributable to excluded income.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision applies the annual foreign earned income exclusion cap to the combined value of foreign earned income and employer-provided housing amounts.

The present-law provision providing indexation for inflation for tax years beginning after 2007 remains unchanged. The present law provision imposing an additional foreign earned income cap on exclusions and deductions also remains unchanged.

Effective date.—The provision is effective for taxable years beginning after December 31, 2003.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

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[956] Only U.S. citizens may qualify under the bona fide residence test. However, resident aliens of the United States who are citizens of foreign countries that have a treaty with the United States may qualify for section 911 exclusions under the bona fide residence test by application of a nondiscrimination provision.

35. Deduction for personal use of company aircraft and other entertainment expenses (sec. 103(b) of the Senate amendment and sec. 274(e) of the Code)

PRESENT LAW

Under present law, no deduction is allowed with respect to (1) an activity generally considered to be entertainment, amusement or recreation, unless the taxpayer establishes that the item was directly related to (or, in certain cases, associated with) the active conduct of the taxpayer's trade or business, or (2) a facility (e.g., an airplane) used in connection with such activity.[957] The Code includes a number of exceptions to the general rule disallowing deductions of entertainment expenses. Under one exception, the deduction disallowance rule does not apply to expenses for goods, services, and facilities to the extent that the expenses are reported by the taxpayer as compensation and wages to an employee.[958] The deduction disallowance rule also does not apply to expenses paid or incurred by the taxpayer for goods, services, and facilities to the extent that the expenses are includible in the gross income of a recipient who is not an employee (e.g., a nonemployee director) as compensation for services rendered or as a prize or award.[959] The exceptions apply only to the extent that amounts are properly reported by the company as compensation and wages or otherwise includible in income. In no event can the amount of the deduction exceed the amount of the actual cost, even if a greater amount is includible in income.

Except as otherwise provided, gross income includes compensation for services, including fees, commissions, fringe benefits, and similar items. In general, an employee or other service provider must include in gross income the amount by which the fair value of a fringe benefit exceeds the amount paid by the individual. Treasury regulations provide rules regarding the valuation of fringe benefits, including flights on an employer-provided aircraft.[960] In general, the value of a non-commercial flight is determined under the base aircraft valuation formula, also known as the Standard Industry Fare Level formula or "SIFL".[961] If the SIFL valuation rules do not apply, the value of a flight on a company-provided aircraft is generally equal to the amount that an individual would have to pay in an arm's-length transaction to charter the same or a comparable aircraft for that period for the same or a comparable flight.[962]

In the context of an employer providing an aircraft to employees for nonbusiness (e.g., vacation) flights, the exception for expenses treated as compensation has been interpreted as not limiting the company's deduction for operation of the aircraft to the amount of compensation reportable to its employees,[963] which can result in a deduction multiple times larger than the amount required to be included in income. In many cases, the individual including amounts attributable to personal travel in income directly benefits from the enhanced deduction, resulting in a net deduction for the personal use of the company aircraft.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the Senate amendment, in the case of covered employees, the exceptions to the general entertainment expense disallowance rule for expenses treated as compensation or includible in income apply only to the extent of the amount of expenses treated as compensation or includible in income. Covered employees are defined as under section 162(m)(3) and include the chief executive officer (or individual acting in such capacity) and the four highest-compensated officers of publicly-traded corporations. No deduction is allowed with respect to expenses for (1) a nonbusiness activity generally considered to be entertainment, amusement or recreation, or (2) a facility (e.g., an airplane) used in connection with such activity to the extent that such expenses exceed the amount treated as compensation or includible in income to the covered employee. For example, a company's deduction attributable to aircraft operating costs for a covered employee's vacation use of a company aircraft is limited to the amount reported as compensation to the employee. As under present law, the amount of the deduction cannot exceed the actual cost.

The provision is intended to overturn Sutherland Lumber-Southwest, Inc. v. Commissioner with respect to covered employees. As under present law, the exceptions apply only if amounts are properly reported by the company as compensation and wages or otherwise includible in income.

Effective date.—The Senate amendment is effective for expenses incurred after the date of enactment and before January 1, 2006.

CONFERENCE AGREEMENT

The conference agreement follows the Senate amendment except that the provision applies with respect to individuals who, with respect to an employer or other service recipient, are subject to the requirements of section 16(a) of the Securities and Exchange Act of 1934, or would be subject to such requirements if the employer or service recipient were an issuer of equity securities referred to in section 16(a). Such individuals generally include officers (as defined by section 16(a)),[964] directors, and 10-percent-or-greater owners of private and publicly-held companies.

Effective date.—The conference agreement is effective for amounts deferred after the date of enactment.

36. Treatment of contingent payment convertible debt instruments (sec. 733 of the Senate Amendment and sec. 1275 of the Code)

PRESENT LAW

Under present law, a taxpayer generally deducts the amount of interest paid or accrued within the taxable year on indebtedness issued by the taxpayer. In the case of original issue discount ("OID"), the issuer of a debt instrument generally accrues and deducts, as interest, the OID over the life of the obligation, even though the amount of the OID may not be paid until the maturity of the instrument.

The amount of OID with respect to a debt instrument is equal to the excess of the stated redemption price at maturity over the issue price of the debt instrument. The stated redemption price at maturity includes all amounts that are payable on the debt instrument by maturity. The amount of OID with respect to a debt instrument is allocated over the life of the instrument through a series of adjustments to the issue price for each accrual period. The adjustment to the issue price is determined by multiplying the adjusted issue price (i.e., the issue price increased or decreased by adjustments prior to the accrual period) by the instrument's yield to maturity, and then subtracting any payments on the debt instrument (other than non-OID stated interest) during the accrual period. Thus, in order to compute the amount of OID and the portion of OID allocable to a particular period, the stated redemption price at maturity and the time of maturity must be known. Issuers of debt instruments with OID accrue and deduct the amount of OID as interest expense in the same manner as the holders of such instruments accrue and include in gross income the amount of OID as interest income.

Treasury regulations provide special rules for determining the amount of OID allocated to a period with respect to certain debt instruments that provide for one or more contingent payments of principal or interest.[965] The regulations provide that a debt instrument does not provide for contingent payments merely because it provides for an option to convert the debt instrument into the stock of the issuer, into the stock or debt of a related party, or into cash or other property in an amount equal to the approximate value of such stock or debt.[966] The regulations also provide that a payment is not a contingent payment merely because of a contingency that, as of the issue date of the debt instrument, is either remote or incidental.[967]

In the case of contingent payment debt instruments that are issued for money or publicly traded property,[968] the regulations provide that interest on a debt instrument must be taken into account (as OID) whether or not the amount of any payment is fixed or determinable in the taxable year. The amount of OID that is taken into account for each accrual period is determined by constructing a comparable yield and a projected payment schedule for the debt instrument, and then accruing the OID on the basis of the comparable yield and projected payment schedule by applying rules similar to those for accruing OID on a noncontingent debt instrument (the "noncontingent bond method"). If the actual amount of a contingent payment is not equal to the projected amount, appropriate adjustments are made to reflect the difference. The comparable yield for a debt instrument is the yield at which the issuer would be able to issue a fixed-rate noncontingent debt instrument with terms and conditions similar to those of the contingent payment debt instrument (i.e., the comparable fixed-rate debt instrument), including the level of subordination, term, timing of payments, and general market conditions.[969]

With respect to certain debt instruments that are convertible into the common stock of the issuer and that also provide for contingent payments (other than the conversion feature)—often referred to as "contingent convertible" debt instruments—the IRS has stated that the noncontingent bond method applies in computing the accrual of OID on the debt instrument.[970] In applying the noncontingent bond method, the IRS has stated that the comparable yield for a contingent convertible debt instrument is determined by reference to a comparable fixed-rate nonconvertible debt instrument, and the projected payment schedule is determined by treating the issuer stock received upon a conversion of the debt instrument as a contingent payment.

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[957] Sec. 274(a).

[958] Sec. 274(e)(2).

[959] Sec. 274(e)(9).

[960] Treas. Reg. sec. 1.61-21.

[961] Treas. Reg. sec. 1.61-21(g).

[962] Treas. Reg. sec. 1.61-21(b)(6).

[963] Sutherland Lumber-Southwest, Inc. v. Comm., 114 T.C. 197 (2000), aff'd, 255 F.3d 495 (8th Cir. 2001), acq., AOD 2002-02 (Feb. 11, 2002).

[964] An officer is defined as the president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions.

[965] Treas. reg. sec. 1.1275-4.

[966] Treas. reg. sec. 1.1275-4(a)(4).

[967] Treas. reg. sec. 1.1275-4(a)(5).

[968] Treas. reg. sec. 1.1275-4(b).

[969] Treas. reg. sec. 1.1275-4(b)(4)(i)(A).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that, in the case of a contingent convertible debt instrument,[971] any Treasury regulations which require OID to be determined by reference to the comparable yield of a noncontingent fixed-rate debt instrument shall be applied as requiring that such comparable yield be determined by reference to a noncontingent fixed-rate debt instrument which is convertible into stock. For purposes of applying the Senate amendment, the comparable yield shall be determined without taking into account the yield resulting from the conversion of a debt instrument into stock. Thus, the noncontingent bond method in the Treasury regulations shall be applied in a manner such that the comparable yield for contingent convertible debt instruments shall be determined by reference to comparable noncontingent fixed-rate convertible (rather than nonconvertible) debt instruments.

Effective date.—The Senate amendment provision is effective for debt instruments issued on or after date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

TITLE XI—TRADE PROVISIONS

A. SUSPENSION OF DUTIES ON CEILING FANS

(Sec. 801 of the House bill and Chapter 99, II of the Harmonized Tariff Schedule of the United States)

PRESENT LAW

A 4.7-percent ad valorem customs duty is collected on imported ceiling fans from all sources.

HOUSE BILL

The House bill suspends the present customs duty applicable to ceiling fans through December 31, 2006.

Effective date.—The provision is effective on the fifteenth day after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes the House bill provision.

B. TEMPORARY SUSPENSION OF CERTAIN CUSTOMS DUTIES

1. Suspension of duties on nuclear steam generators (sec. 802(a) of the House bill and Chapter 99, II of the Harmonized Tariff Schedule of the United States)

PRESENT LAW

Nuclear steam generators, as classified under heading 9902.84.02 of the Harmonized Tariff Schedule of the United States, enter the United States duty free until December 31, 2006. After December 31, 2006, the duty on nuclear steam generators returns to the column 1 rate of 5.2 percent under subheading 8402.11.00 of the Harmonized Tariff Schedule of the United States.

HOUSE BILL

The House bill extends the present-law suspension of customs duty applicable to nuclear steam generators through December 31, 2008.

Effective date.—The provision is effective on the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes the House bill provision.

2. Suspension of Duties on Nuclear Reactor Vessel Heads (sec. 802(b) of the House bill and Chapter 99, II of the Harmonized Tariff Schedule of the United States)

PRESENT LAW

According to section 5202 of the Trade Act of 2002, nuclear reactor vessel heads are classified under subheading 8401.40.00 of the Harmonized Tariff Schedule of the United States and enter the United States with a column 1 duty rate of 3.3 percent.

HOUSE BILL

The House bill temporarily suspends the present customs duty applicable to nuclear reactor vessel heads for column 1 countries through December 31, 2008.

Effective date.—The provision is effective on the fifteenth day after the date of enactment.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement includes the House bill provision with a modification. The conference agreement also temporarily suspends the customs duty applicable to nuclear reactor pressurizers.

II. TAX COMPLEXITY ANALYSIS

The following tax complexity analysis is provided pursuant to section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998, which requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service ("IRS") and the Treasury Department) to provide a complexity analysis of tax legislation reported by the House Committee on Ways and Means, the Senate Committee on Finance, or a Conference Report containing tax provisions. The complexity analysis is required to report on the complexity and administrative issues raised by provisions that directly or indirectly amend the Internal Revenue Code and that have widespread applicability to individuals or small businesses. For each such provision identified by the staff of the Joint Committee on Taxation, a summary description of the provision is provided along with an estimate of the number and type of affected taxpayers, and a discussion regarding the relevant complexity and administrative issues.

Following the analysis of the staff of the Joint Committee on Taxation are the comments of the IRS and the Treasury Department regarding each of the provisions included in the complexity analysis, including a discussion of the likely effect on IRS forms and any expected impact on the IRS.

1. Deduction relating to income attributable to United States production activities (sec. 102 of the House bill, secs. 102 and 103 of the Senate amendment, and sec. 11 of the Code)

Summary description of provision

The conference agreement provides a deduction attributable to certain qualified production activities in the United States of a C corporation, S corporation, partnership, or sole proprietorship. Such activities generally include: (1) manufacturing, production, growth or extraction of certain tangible personal property, computer software, property described in section 168(f)(3) or (4) of the Code, and electricity, natural gas, or potable water produced by the taxpayer; (2) construction; and (3) engineering or architectural services.

The amount of the deduction in taxable years beginning in 2005, 2006, 2007, 2008, 2009, and 2010 and thereafter generally is three, three, six, six, six, and nine percent, respectively. The deduction is limited for a taxable year to 50 percent of the wages paid by the taxpayer during such taxable year. In addition, the deduction cannot exceed the lesser of the taxpayer's taxable income (computed without regard to the deduction) or the taxpayer's qualified production activities income.

The bill is effective for taxable years beginning after 2004.

Number of affected taxpayers

It is estimated that the provision will affect more than 10 percent of small businesses.

Discussion

It is anticipated that small businesses engaged in qualified production activities will need to keep additional records due to this provision, and that extensive additional regulatory guidance will be necessary to effectively implement the provision. It is anticipated that the provision will result in an increase in disputes between small businesses and the IRS. Reasons for such disputes include the complexity of the provision and the inherent incentive for small businesses and other taxpayers to characterize their activities as qualified production activities to claim the deduction under the provision.

The provision likely will increase the tax preparation costs for most small businesses that are, or may be, engaged in qualified production activities. Small businesses will have to perform additional analysis and make subjective determinations concerning whether their activities constitute qualified production activities and, thus, whether income attributable to such activities qualifies for the deduction allowed under the provision. In this regard, the provision does not provide detailed definitions of the activities that produce income eligible for the deduction, and it will be difficult for the Treasury Secretary to define qualified production activities administratively. It should be noted that a similar provision in the Canadian tax laws was found to be highly complex and difficult to administer, which led to numerous disputes and litigation between affected taxpayers and the Canadian tax authorities. Canada recently repealed the provision and provided a general reduction in corporate tax rates.

For income that is determined to be eligible for the deduction under the provision, small businesses will be required to perform additional and complex calculations to determine the amount of the deduction under the provision. Because the deduction is based upon modified taxable income rather than gross income, small businesses will be required to undertake complicated calculations to determine the amount of costs that are allocable to gross income from qualified production activities. In many cases, small businesses would not have been required otherwise to perform these calculations but for the provision.

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[970] Rev. Rul. 2002-31, 2002-1 C.B. 1023.

[971] Under the bill, a contingent convertible debt instrument is defined as a debt instrument that: (1) is convertible into stock of the issuing corporation, or a corporation in control of, or controlled by, the issuing corporation; and (2) provides for contingent payments.

The wage limitation on the deduction is likely to impact small businesses disproportionately. After undertaking the calculations and analyses to determine the amount of their potential deduction, many small business will find that such amount is significantly reduced, or eliminated together, by the wage limitation.

Under the provision, it may be necessary for small businesses to make certain allocations of income that are not required under present law, particularly with respect to businesses that have both income that is directly attributable to qualified production activities and income that is attributable to processes associated with qualified production activities (e.g., vertically integrated manufacturers that also engage in the selling, storage, and installation of manufactured goods). To the extent the reduction under the provision is not based upon income from processes associated with qualified production activities, taxpayers that engage in such processes will be required to allocate their aggregate income between qualified production activities and processes associated with qualified production activities. In general, it is expected that the multiple calculations and analyses required by this provision will lead to intentional or inadvertent noncompliance among small businesses, as well as other taxpayers.

Due to the detailed calculations required by the pvosion, it is anticipated that the Secretary of the Treasury will have to make appropriate revisions to several types of income tax forms, schedules, spreadsheets and instructions.

ESTIMATED BUDGET EFFECTS OF THE CONFERENCE AGREEMENT FOR H.R. 4520, THE "AMERICAN JOBS CREATION ACT OF 2004"

Fiscal Years 2005 - 2014

[Millions of Dollars]

Provision	Effective	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2005-09	2005-14
I. Provisions Relating to Repeal of Exclusion for Extraterritorial Income													
1. Repeal of exclusion for extraterritorial income [1]	ta 12/31/04	354	1,317	3,528	5,475	5,737	5,985	6,275	6,562	6,840	7,126	16,411	49,199
2. Deduction relating to income attributable to United States production activities	tyba 12/31/04	-2,054	-3,052	-4,396	-6,241	-6,722	-8,841	-10,741	-11,122	-11,525	-11,815	-22,465	-76,509
Total of Provisions Relating to Repeal of Exclusion for Extraterritorial Income		-1,700	-1,735	-868	-766	-985	-2,856	-4,466	-4,560	-4,685	-4,689	-6,054	-27,310
II. Business Tax Incentives													
A. Small Business Expensing - increase section 179 expensing from $25,000 to $100,000 and increase the phaseout threshold amount from $200,000 to $400,000; include software in section 179 property; and extend indexing of both the deduction limit and the phaseout threshold (sunset after 2007)	tyba 12/31/05	---	-3,814	-6,636	-488	3,786	2,416	1,665	1,116	609	249	-7,152	-1,095
B. Depreciation													
1. 15-year straight-line cost recovery for qualified leasehold improvements (sunset after 2005)	ppisa DOE	-65	-147	-185	-181	-174	-158	-151	-159	-156	-149	-751	-1,523
2. 15-year straight-line cost recovery for qualified restaurant improvements (sunset after 2005)	ppisa DOE	-141	-33	-40	-40	-40	-40	-40	-40	-40	-40	-294	-494
C. Community Revitalization													
1. Modification of targeted areas and low-income communities designated for new markets tax credit	DMA DOE	No Revenue Effect											
2. Expansion of designated renewal community area based on 2000 census data	[2]	-35	-10	-10	-9	-9	[3]	8	9	9	8	-71	-37
3. Modification of income requirement for census tracts within high migration rural counties	[4]	No Revenue Effect											
D. S Corporation Reform and Simplification													
1. Treat members of family as one shareholder (6 generations; multiple families per S corporation) (includes interaction with line 2. below)	generally tyba 12/31/04	-1	-4	-6	-8	-9	-9	-10	-10	-10	-10	-27	-76
2. Increase in number of eligible shareholders to 100	tyba 12/31/04	-18	-43	-56	-66	-74	-79	-82	-83	-84	-84	-257	-669
3. Expansion of bank S corporation eligible shareholders to include IRAs	DOE	-23	-34	-36	-37	-39	-41	-43	-45	-47	-49	-170	-394
4. Disregard unexercised powers of appointment in determining potential current beneficiaries of ESBT	tyba 12/31/04	Negligible Revenue Effect											
5. Transfer of suspended losses incident to divorce	tyba 12/31/04	-1	-2	-2	-2	-3	-3	-3	-3	-3	-3	-11	-25

gross income, small businesses will be required to undertake complicated calculations to determine the amount of costs that are allocable to gross income from qualified production activities. In many cases, small businesses would not have been required otherwise to perform these calculations but for the provision.

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C. Community Revitalization													
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3. Expansion of bank S corporation eligible shareholders to include IRAs	DOE	-23	-34	-36	-37	-39	-41	-43	-45	-47	-49	-170	-394
4. Disregard unexercised powers of appointment in determining potential current beneficiaries of ESBT	tyba 12/31/04	*Negligible Revenue Effect*											
5. Transfer of suspended losses incident to divorce	tyba 12/31/04	-1	-2	-2	-2	-3	-3	-3	-3	-3	-3	-11	-25

Provision	Effective	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2005-09	2005-14
6. Use of passive activity loss by subchapter S trust income beneficiaries	tma 12/31/04	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-4	-7
7. Exclusion of investment securities income from passive income test for bank S corporations	tyba 12/31/04	Negligible Revenue Effect											
8. Relief from inadvertently invalid qualified subchapter S subsidiary elections and terminations	ematma 12/31/2004	-2	-1	-1	-1	-1	-1	-1	-1	-1	-1	-7	-14
9. Information returns for qualified subchapter S subsidiaries	tyba 12/31/04	No Revenue Effect											
10. Repayment of loan for qualifying employer securities held by an ESOP	dma 12/31/97	-1	[5]	[5]	[5]	[5]	[5]	[5]	-1	-1	-1	-3	-5
E. Other Business Incentives													
1. Repeal of 4.3-cent General Fund excise taxes on railroad diesel fuel and inland waterway fuel (reduce excise taxes by 1 cent/gallon from 1/1/05 through 6/30/05, 2 cents/gallon from 7/1/05 through 12/31/06, and 4.3 cents/gallon thereafter)	1/1/05	-33	-74	-139	-170	-174	-179	-184	-189	-193	-198	-591	-1,532
2. Modification of application of the income forecast method of accounting	ppisa DOE	-182	-139	-81	-32	-24	-24	-28	-31	-35	-39	-458	-615
3. Improvements related to real estate investment trusts	tyba 12/31/00 & tyba DOE	Negligible Revenue Effect											
4. Special rules for certain film and television production (sunset taxable years beginning after 12/31/08)	pca DOE	-82	-99	-94	-60	-1	62	93	81	40	18	-336	-42
5. Provide a 50% tax credit for certain expenditures for maintaining railroad tracks	epoid tyba 12/31/04 & tybb 1/1/08	-63	-121	-109	-88	-59	-38	-21	-4	[5]	[5]	-439	-501
6. Suspension of the occupational taxes relating to distilled spirits, wine, and beer (sunset 6/30/08)	7/1/05	-66	-78	-78	-12	---	---	---	---	---	---	-234	-234
7. Modification of unrelated business income limitation on investment in certain debt-financed properties of SBICs	[6]	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-3	-9
8. Tonnage tax election for income from international shipping	tyba DOE	-2	-4	-5	-6	-6	-6	-6	-7	-7	-8	-23	-57
F. Exclusion of Incentive Stock Options and Employee Stock Purchase Plan Stock Options From Wages	saptoea DOE	No Revenue Effect											
Total of Business Tax Incentives		**-717**	**-4,605**	**-7,480**	**-1,203**	**3,171**	**1,898**	**1,196**	**631**	**79**	**-309**	**-10,830**	**-7,329**
III. Provisions Relating to Tax Relief for Agriculture and Small Manufacturers													
A. Volumetric Ethanol Excise Tax Credit													
1. Provide excise tax credit (in lieu of reduced tax rate on gasoline) to certain blenders of alcohol fuel mixtures (sunset 12/31/10)	fsoua 12/31/04	No Revenue Effect											
2. Provide that all alcohol fuels excise tax credits and payments are paid from the General Fund [7]:													
a. Revenue effects	fsoua 12/31/04	---	---	---	---	---	---	1,131	1,559	1,586	1,614	---	5,890
b. Outlay effects [8] [9]	fsoua 12/31/04	---	---	---	---	---	---	-19	-32	-54	-66	---	-171

Provision	Effective	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2005-09	2005-14
3. Repeal reduced-rate sales of gasoline for blending with alcohol and reduced-rate sales of alcohol fuel blends	fsoua 12/31/04	16	23	23	23	23	23	23	22	22	22	109	220
4. Provide outlay payments (in lieu of excise tax credits and refunds) to producers of alcohol fuel mixtures:													
a. Revenue effects	fsoua 12/31/04	77	114	116	117	119	121	38	---	---	---	543	702
b. Outlay effects [8] [10]	fsoua 12/31/04	-77	-114	-116	-117	-119	-121	-38	---	---	---	-543	-702
5. Transfer full amount of alcohol fuel excise taxes to the Highway Trust Fund (i.e., repeal 2.5/2.8 cents transfer to General Fund)	fsoua 9/30/04	No Revenue Effect											
6. Provide excise tax credits for biodiesel used to produce a qualified fuel mixture [11] ($1.00/gallon for agribiodiesel and $0.50/gallon for biodiesel) and provide that the excise tax credits are paid from the General Fund (sunset 12/31/06):													
a. Revenue effects	fsoua 12/31/04	-33	-57	-16	---	---	---	---	---	---	---	-107	-107
b. Outlay effects [8] [9]	fsoua 12/31/04	30	32	2	---	---	---	---	---	---	---	64	64
7. Provide outlay payments (in lieu of excise tax credits and refunds) to producers of biodiesel fuel mixtures:													
a. Revenue effects	fsoua 12/31/04	Negligible Revenue Effect											
b. Outlay effects [8] [10]	fsoua 12/31/04	Negligible Outlay Effect											
8. Extension of section 40 alcohol fuels income tax credit (sunset 12/31/10)	DOE	---	---	---	-2	-6	-8	-8	-6	-3	—	-8	-34
9. Biodiesel income tax credit - provide income tax credits for biodiesel fuel and biodiesel used to produce a qualified fuel mixture ($1.00/gallon for agribiodiesel and $0.50/gallon for biodiesel) (sunset 12/31/06)	fpasoua 12/31/04	Estimate Included in Item 6. Above											
10. Information reporting for persons claiming ethanol and biodiesel tax benefits	1/1/05	Negligible Revenue Effect											
B. Agricultural Incentives													
1. Special rules for livestock sold on account of weather-related conditions	trda 12/31/02	-18	-7	-4	-3	-3	-3	4	6	2	[3]	-35	-27
2. Payment of dividends on stock of cooperatives without reducing patronage dividends	di tyba DOE	[5]	[5]	-1	-1	-1	-1	-2	-2	-3	-4	-3	-15
3. Allow small ethanol producer cooperatives to pass the small producer credit through to cooperative members	tyea DOE	-8	-8	-9	-10	-11	-12	-10	-6	-3	---	-47	-77
4. Extend income averaging to fishermen and provide that income averaging for farmers and fishermen will not increase AMT liability	tyba 12/31/03	-3	-3	-4	-5	-6	-7	-7	-8	-9	-10	-20	-61
5. Capital gains treatment to apply to outright sales of timber by landowner	sota 12/31/04	Negligible Revenue Effect											
6. Modify cooperative marketing to include value-added processing involving animals	tyba DOE	-1	-2	-4	-5	-6	-7	-9	-10	-11	-12	-19	-68
7. Extend declaratory judgment relief to farm cooperatives	pfa DOE	Estimate Included in Line Above											

Provision	Effective	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2005-09	2005-14
8. Certain expenses of rural letter carriers	tyba 12/31/03	-2	-3	-3	-3	-3	-3	-4	-4	-4	-4	-15	-33
9. Treatment of certain income of electric cooperatives (sunset 12/31/06)	tyba DOE	-10	-19	-8	---	---	---	---	---	---	---	-38	-38
10. Exclude from gross income and employment taxes payments made to individuals under NHSC Loan Repayment Program and certain State loan repayment programs	tyba 12/31/03	-2	-2	-2	-4	-5	-6	-8	-11	-14	-18	-15	-72
11. Modified safe-harbor rules for timber REITs	tyba DOE	[5]	[5]	-1	-1	-2	-2	-3	-4	-5	-5	-4	-23
12. Deduction of the first $10,000 of qualified reforestation costs	epoia DOE	-55	-37	-25	-11	-1	2	8	13	20	22	-129	-64
C. Incentive for Small Manufacturers													
1. Net income from publicly traded partnerships treated as qualifying income for regulated investment company	tyba DOE	-1	-2	-3	-5	-5	-6	-6	-7	-7	-7	-16	-49
2. Simplification of excise tax imposed on bows and arrows:													
a. Revenue effects	asbmpoi 30da DOE	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-4	-9
b. Outlay effects [8]	asbmpoi 30da DOE	1	1	1	1	1	1	1	1	1	1	3	8
3. Reduce excise tax on fishing tackle boxes to 3 percent:													
a. Revenue effects	asbmpoia 12/31/04	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-5	-11
b. Outlay effects [8]	asbmpoia 12/31/04	[12]	1	1	1	1	1	1	1	1	1	4	10
4. Repeal excise tax on sonar devices suitable for finding fish:													
a. Revenue effects	asbmpoia 12/31/04	[5]	[5]	[5]	[5]	[5]	[5]	-1	-1	-1	-1	-2	-4
b. Outlay effects [8]	asbmpoia 12/31/04	[12]	[12]	[12]	[12]	[12]	[12]	[12]	[12]	[12]	1	1	3
5. Charitable contribution deduction for certain expenses in support of Native Alaska subsistence whaling	cma 12/31/04	[5]	[5]	[5]	[5]	[5]	[5]	[5]	[5]	[5]	[5]	-1	-4
6. Extended placed in service date for bonus depreciation for certain aircraft (excluding aircraft used in the transportation industry)	ppisa 9/10/01 [13]	-1,265	-175	576	346	271	194	54	---	---	---	-247	---
7. Special placed in service rule for bonus depreciation for certain property subject to syndication	sa 6/4/04	-27	8	6	4	4	4	2	1	---	---	-5	---
8. Expensing of capital costs incurred for production in complying with Environmental Protection Agency sulfur regulations for small refiners	epoia 12/31/02	-16	-8	-12	-28	-53	-21	3	4	5	6	-117	-119
9. Credit for small refiners for production for diesel fuel in compliance with Environmental Protection Agency sulfur regulations for small refiners	epoia 12/31/02	*Estimate Included in Line Above*											
10. Modification to small issue bonds - increase capital expenditure limit from $10 million to $20 million (maximum bond limit remains at $10 million)	bia 9/30/09	---	---	---	---	---	-6	-14	-22	-30	-38	---	-110
11. Oil and gas from marginal wells	pi tyba 12/31/04	*No Revenue Effect*											
Total of Provisions Relating to Tax Relief for Agriculture and Small Manufacturers		**-1,396**	**-260**	**515**	**295**	**196**	**141**	**1,134**	**1,492**	**1,491**	**1,500**	**-656**	**5,099**

Provision	Effective	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2005-09	2005-14
IV. Tax Reform and Simplification for United States Businesses													
1. Interest expense allocation rules	tyba 12/31/08	---	---	---	---	-908	-2,487	-2,586	-2,689	-2,797	-2,909	-908	-14,376
2. Recharacterize overall domestic loss	lf tyba 12/31/06	---	---	-57	-680	-713	-756	-793	-829	-862	-895	-1,450	-5,585
3. Apply look-through rules for dividends from noncontrolled section 902 corporations	tyba 12/31/02	-662	-51	-23	-6	-1	[14]	[14]	[14]	[14]	[14]	-743	-743
4. Base differences and reduction to 2 foreign tax credit baskets	[15]	-8	-13	-615	-900	-927	-1,002	-1,039	-1,078	-1,119	-1,161	-2,463	-7,862
5. Attribution of stock ownership through partnerships in determining section 902 and 960 credits	tyba DOE	-1	-3	-3	-3	-3	-3	-3	-3	-3	-3	-13	-28
6. Foreign tax credit treatment of deemed payments under section 367(d)	ataro/a 8/5/97	-26	-5	-5	-5	-5	-5	-5	-5	-5	-5	-46	-71
7. United States property not to include certain assets of controlled foreign corporations	[16]	-3	-20	-21	-22	-23	-24	-25	-27	-29	-31	-89	-225
8. Translation of foreign taxes	tyba 12/31/04	*Negligible Revenue Effect*											
9. Eliminate secondary withholding tax with respect to dividends paid by certain foreign corporations	pma 12/31/04	-2	-3	-3	-3	-3	-3	-3	-3	-3	-3	-14	-29
10. Provide equal treatment for interest paid by foreign partnerships and foreign corporations doing business in the U.S.	tyba 12/31/03	-3	-2	-2	-2	-2	-2	-2	-3	-3	-3	-11	-24
11. Treatment of certain dividends of regulated investment companies (sunset after 3 years)	[17]	-7	-59	-63	-57	---	---	---	---	---	---	-186	-186
12. Look-through treatment under subpart F for sales of partnership interests	[16]	-39	-91	-96	-101	-106	-111	-116	-122	-129	-137	-433	-1,048
13. Repeal of rules applicable to foreign personal holding companies and foreign investment companies, personal holding company rules as they apply to foreign corporations, and include in subpart F personal service contract income, as defined under the foreign personal holding company rules	[16]	-25	-65	-73	-81	-91	-102	-114	-128	-143	-162	-335	-984
14. Determination of foreign personal holding company income with respect to transactions in commodities	teia 12/31/04	-4	-10	-10	-10	-10	-11	-11	-11	-11	-12	-44	-100
15. Modify treatment of aircraft leasing and shipping income [18]	[16]	-33	-172	-98	-75	-76	-88	-98	-108	-118	-129	-454	-995
16. Modification of exceptions under subpart F for active financing income	[16]	*Negligible Revenue Effect*											
17. 10-year foreign tax credit carryforward; 1-year foreign tax credit carryback	[19]	-349	-271	-338	-500	-668	-779	-857	-942	-1,036	-1,191	-2,126	-6,931
18. Modify FIRPTA rules for REITs	tyba DOE	-2	-7	-10	-12	-14	-15	-17	-19	-21	-23	-45	-140
19. Exclusion of certain horse-racing and dog-racing gambling winnings from the income of nonresident alien individuals	wma DOE	-1	-3	-3	-3	-3	-3	-3	-3	-3	-3	-12	-27
20. Reduce withholding tax applicable to dividends paid to Puerto Rico companies to 10%	Dpa DOE	-5	-7	-8	-9	-10	-10	-11	-12	-13	-14	-39	-99
21. Repeal the 90% limitation on the use of foreign tax credits against the AMT	tyba 12/31/04	-265	-395	-376	-361	-348	-338	-329	-323	-319	-317	-1,745	-3,371
22. Incentives to reinvest foreign earnings in the United States	[20]	2,788	-2,119	-1,267	-838	-553	-379	-300	-264	-192	-137	-1,989	-3,261

Provision	Effective	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2005-09	2005-14
23. Delay in effective date of final regulations governing exclusion of income from international operation of ships or aircraft	[21]	-24	-4	[5]	[5]	[5]	[5]	[5]	[5]	[5]	[5]	-28	-28
24. Study of earnings stripping provisions		No Revenue Effect											
25. Interaction	---	3	192	248	253	410	429	450	473	497	523	1,106	3,478
Total of Tax Reform and Simplification for United States Businesses		**1,332**	**-3,108**	**-2,823**	**-3,415**	**-4,054**	**-5,689**	**-5,862**	**-6,096**	**-6,309**	**-6,612**	**-12,067**	**-42,635**
V. Deduction of State and Local General Sales Taxes (sunset 12/31/05)	tyba 12/31/03	**-3,080**	**-1,915**	—	—	—	—	—	—	—	—	**-4,995**	**-4,995**
VI. Fair and Equitable Tobacco Reform Provisions [22]													
A. Revenue effects	DOE	1,098	1,089	964	964	964	964	964	964	964	1,205	5,079	10,140
B. Outlay effects [8]	DOE	-1,464	-964	-964	-964	-964	-964	-964	-964	-964	-964	-5,320	-10,140
Total of Fair and Equitable Tobacco Reform Provisions		**-366**	**125**	—	—	—	—	—	—	—	**241**	**-241**	—
VII. Miscellaneous Provisions													
1. Qualified green building and sustainable design project bonds ($2 billion authority)	bia 12/31/04 & bib 10/1/09	-3	-9	-15	-22	-27	-31	-31	-31	-31	-31	-76	-231
2. Exclusion of gain or loss on sale or exchange of certain Brownfield sites from unrelated business taxable income	PAa 12/31/04 & PAb 1/1/10	1	1	1	-6	-18	-28	-38	-49	-34	-15	-21	-185
3. Civil rights tax relief	josoa DOE	-5	-21	-29	-31	-34	-36	-38	-42	-44	-47	-120	-327
4. 7-year recovery period for certain track facilities	ppisa DOE & before 2008	-13	-19	-26	-23	-14	-9	-6	-3	3	9	-95	-101
5. Permit life insurance companies tax-free distributions from policyholder surplus accounts	tyba 12/31/04 & tybb 1/1/07	-78	-54	-51	-48	-48	-48	-49	-51	-52	-54	-279	-533
6. Treat certain Alaska pipeline property as 7-year property	generally ppisa 12/31/13	---	---	---	---	---	---	---	---	---	-150	---	-150
7. Extension of enhanced oil recovery credit to Alaska gas processing facilities	cpoii tyba 12/31/04	---	---	---	-32	-91	-101	-61	-23	1	11	-123	-295
8. Method of accounting for naval shipbuilders	ceia DOE	-26	-52	-99	-62	-42	-57	-35	-32	-38	-52	-281	-495
9. Modify minimum cost requirement for transfer of excess defined benefit assets	tyea DOE	Negligible Revenue Effect											
10. Extension and expansion of credit for electricity produced from certain renewable resources - expand section 45 credit to include closed-loop biomass, open-loop biomass, geothermal solar, small irrigation, municipal solid waste, and refined coal to list of qualified energy resources	ppisa DOE	-218	-279	-322	-366	-375	-261	-177	-135	-94	-49	-1,560	-2,278
11. Allow the section 40 and section 45 credits to be taken against the AMT	tyea DOE	-10	-5	-4	-3	-2	-2	2	6	1	-3	-25	-21
12. Inclusion of primary and secondary medical strategies for children and adults with sickle cell disease as medical assistance under the Medicaid program:													
a. Revenue effects	DOE	No Revenue Effect											
b. Outlay effects [8] [23]	DOE	-2	-6	-8	-10	-11	-14	-16	-18	-20	-21	-37	-126

Provision	Effective	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2005-09	2005-14
13. Temporary suspension of customs duty on certain ceiling fans (sunset 12/31/06) [24]	15da DOE	-19	-20	-5	---	---	---	---	---	---	---	-44	-44
14. Temporary suspension of customs duty on certain steam generators (sunset 12/31/08) and certain reactor vessel heads and pressurizers used in nuclear facilities (sunset 12/31/08) [24]	15da DOE & DOE	-1	-1	-3	-3	-1	---	---	---	---	---	-9	-9
Total of Miscellaneous Provisions		**-374**	**-465**	**-561**	**-606**	**-663**	**-587**	**-449**	**-378**	**-308**	**-402**	**-2,670**	**-4,795**
VIII. Revenue Provisions													
A. Provisions to Reduce Tax Avoidance Through Individual and Corporate Expatriation													
1. Tax treatment of expatriated entities	tyea 3/4/03	96	50	59	63	67	77	90	100	109	119	335	830
2. Excise tax on stock compensation of insiders in expatriated corporations (rate tracks capital gains rate, applies to executives in affiliated groups)	generally 3/4/03	18	7	7	7	8	11	11	11	11	11	47	102
3. Reinsurance of United States risks in foreign jurisdictions	rra DOE	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	2	5
4. Revision of tax rules for individuals who expatriate	iwea 6/3/04	23	21	24	28	32	37	43	49	56	64	128	377
5. Reporting of taxable mergers and acquisitions	aa DOE	2	3	3	3	3	3	3	3	3	3	14	29
6. Studies	DOE						No Revenue Effect						
B. Provisions Relating to Tax Shelters													
1. Provisions relating to reportable transactions and tax shelters	[25]	50	119	120	124	131	139	150	164	179	195	544	1,371
2. Modifications to the substantial understatement penalty for nonreportable transactions	tyba DOE	---	7	15	23	26	30	34	38	38	38	71	249
3. Modification of actions to enjoin certain conduct related to tax shelters and reportable transactions	da DOE						Negligible Revenue Effect						
4. Impose a civil penalty (of up to $10,000) on failure to report interest in foreign financial accounts	voa DOE	---	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	1	3
5. Regulation of individuals practicing before the Department of Treasury	ata DOE						No Revenue Effect						
6. Treatment of stripped interest in bond and preferred stock funds	pada DOE	13	11	8	5	3	[3]	[3]	[3]	[3]	[3]	40	40
7. Minimum holding period for foreign tax credit on withholding tax on income other than dividends	apoamt 30da DOE	3	3	3	3	4	4	4	4	5	5	16	38
8. Disallowance of certain partnership loss transfers with partner level loss limits for transfer of interest in electing investment partnerships	ctada DOE	28	56	62	60	54	47	43	43	44	44	260	481
9. No reduction of basis under section 734 in stock held by partnership in corporate partner	Da DOE	6	12	19	23	27	28	30	33	34	36	87	249
10. Repeal of special rules for FASITs	after 12/31/04	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	[3]	2	5
11. Limitation on transfer or importation of built-in losses	ta DOE	51	99	147	164	180	198	218	240	264	290	641	1,851
12. Clarification of banking business for purposes of determining investment of earnings in United States property	DOE	40	34	34	36	38	40	42	44	46	50	182	404
13. Deny deduction for interest paid to the IRS on underpayments involving certain tax motivated transactions	tyba DOE	---	1	1	3	4	4	4	4	4	4	9	29

Provision	Effective	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2005-09	2005-14
14. Clarification of rules for payment of estimated tax for certain deemed asset sales	toa DOE	55	28	7	3	3	3	4	4	5	5	96	117
15. Exclusion of like-kind exchange property from nonrecognition treatment on the sale or exchange of a principal residence	soea DOE	11	13	15	17	19	21	23	25	27	29	75	200
16. Prevent mismatching of deductions and income inclusions in transactions with related foreign persons	pao/a DOE	40	82	80	33	35	37	39	41	43	45	270	475
17. Deposits made to suspend the running of interest on potential underpayments	Dma DOE	150	-6	-6	-6	-6	-6	-7	-7	-7	-7	127	93
18. Authorize IRS to enter into installment agreements that provide for partial payment	iaeio/a DOE	52	10	5	[12]	[12]	[12]	[12]	[12]	[12]	[12]	67	67
19. Affirmation of consolidated return regulation authority	[26]	Negligible Revenue Effect											
20. Expanded disallowance of deduction for interest on convertible debt	diia 10/4/04	94	90	94	96	98	101	103	106	109	113	472	1,004
21. Reform the tax treatment for leasing transactions with tax-indifferent parties with additional coverage of Indian and intangible assets and assets subject to a fixed purchase price option with an exception for aircraft and vessels	[27]	589	934	1,416	1,955	2,474	2,923	3,352	3,605	4,293	4,819	7,368	26,560
C. Reduction of Fuel Tax Evasion													
1. Exemption from certain excise taxes for mobile machinery vehicles	[28]	76	95	95	95	95	95	95	95	95	95	456	931
2. Modified definition of off-highway vehicle	[28]	Negligible Revenue Effect											
3. Aviation jet fuel - move point of taxation of aviation fuel to the rack; provide that certain refueler trucks are treated as terminals	[29]	297	429	433	436	439	439	437	435	434	432	2,034	4,211
4. Dye fuel mechanically, security standards, and related penalties	[30]	---	42	46	47	47	47	47	47	47	47	181	417
5. Elimination of administrative review for taxable use of dyed fuel	Paa DOE	Negligible Revenue Effect											
6. Extension of penalty on untaxed chemically altered fuel mixtures	DOE	Negligible Revenue Effect											
7. Termination of dyed diesel use by intercity buses	fsa 12/31/04	Negligible Revenue Effect											
8. Authority to inspect on-site records	DOE	Negligible Revenue Effect											
9. Assessable penalty for refusal of entry	1/1/05	Negligible Revenue Effect											
10. Registration of all pipeline or vessel operators required for exemption of bulk transfers; Secretary must publish list of registered persons [31]	3/1/05	56	125	127	128	129	129	130	129	129	129	564	1,211
11. Display of registration and penalty for failure to display	1/1/05 & pia 12/31/04	Revenue Effects Included in Line 10.											
12. Penalties for failure to register and failure to report	pia 12/31/04	1	2	2	2	2	2	2	2	2	2	10	20
13. Registration of persons within foreign trade zones	1/1/05	Revenue Effects Included in Line 10.											
14. Certain reports filed electronically	1/1/06	Revenue Effects Included in Line 10.											
15. Taxable fuel refunds for certain ultimate vendors	1/1/05	Negligible Revenue Effect											
16. Two-party exchanges	DOE	Negligible Revenue Effect											
17. Modifications to heavy vehicle use tax	tpba DOE	121	124	126	128	131	131	133	135	137	139	630	1,305

Provision	Effective	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2005-09	2005-14
18. Dedication of revenue from certain penalties to the Highway Trust Fund	Pao/a DOE	*No Revenue Effect*											
19. Simplify the heavy truck tire tax [32]	[33]	*Negligible Revenue Effect*											
20. Taxation of transmix and diesel fuel blendstocks	frsoua 12/31/04	74	107	108	108	108	108	108	108	107	106	505	1,043
21. Treasury study on fuel compliance	DOE	*No Revenue Effect*											
D. Other Revenue Provisions													
1. Permit private sector debt collection companies to collect tax debts:													
a. Revenue effects	DOE	---	78	200	182	161	147	147	147	147	147	621	1,356
b. Outlay effects [8]	DOE	---	-19	-50	-45	-40	-37	-37	-37	-37	-37	-154	-339
2. Modify charitable contribution rules for donations of patents and other intellectual property; provide for additional charitable deductions in future years based on income attributable to the contributed property	cma 6/3/04	307	318	330	342	356	369	384	399	414	434	1,653	3,653
3. Require increased reporting for noncash charitable contributions	cma 6/3/04	9	9	10	10	10	10	10	11	11	11	49	102
4. Provide that deduction for charitable contribution of vehicles generally equals the sales price	cma 12/31/04	30	251	253	256	258	261	263	266	269	272	1,048	2,379
5. Treatment of nonqualified deferred compensation plans	ada 12/31/04	158	135	44	21	20	18	144	189	172	151	377	1,051
6. Extension of amortization of intangibles to acquisitions of sports franchises	aoa DOE	52	88	71	37	22	21	19	22	24	26	270	382
7. Increase continuous levy for certain Federal payments	DOE	8	14	16	19	19	20	21	22	23	24	76	185
8. Modification of straddle rules	peo/a DOE	21	24	27	31	34	36	38	39	40	41	137	331
9. Addition of vaccines against Hepatitis A to the list of taxable vaccines:													
a. Revenue effects	[34]	7	9	9	9	9	9	9	9	9	9	43	88
b. Outlay effects [8]	[34]	-6	-7	-7	-7	-7	-7	-7	-7	-8	-8	-34	-72
10. Addition of vaccines against Influenza to the list of taxable vaccines:													
a. Revenue effects	[35]	55	62	65	67	68	69	69	70	71	72	317	669
b. Outlay effects [8]	[35]	-29	-33	-34	-35	-36	-37	-37	-37	-38	-39	-167	-355
11. Extension of IRS user fees through 9/30/14 [24]	ra DOE	25	33	35	38	39	41	43	45	47	50	170	396
12. Extension of Customs User Fees [24]:													
a. Extend passenger and conveyance processing fee through 9/30/14	DOE	105	331	348	365	383	402	423	444	466	489	1,532	3,756
b. Extend merchandise processing fee through through 9/30/14	DOE	679	1,234	1,308	1,386	1,470	1,558	1,651	1,750	1,855	1,967	6,077	14,858
13. Prohibition on nonrecognition of gain through complete liquidation of holding company	doo/a DOE	13	15	17	19	21	23	25	27	29	31	85	220
14. Effectively connected income to include economic equivalents of certain categories of foreign-source income	tyba DOE	5	7	8	9	10	10	10	10	11	11	39	91
15. Recapture of overall foreign losses on sale of controlled foreign corporation stock	DA DOE	3	7	8	9	9	9	10	10	10	10	36	85

Provision	Effective	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2005-09	2005-14
16. Recognize cancellation of indebtedness income realized on satisfaction of debt with partnership interest	coio/a DOE	4	4	4	4	5	5	5	5	6	6	21	48
17. Deny installment sale treatment for all readily tradable debt	soo/a DOE	51	57	8	11	12	13	15	17	18	19	139	221
18. Modify treatment of transfers to creditors in divisive reorganizations	to/a DOE	8	9	10	10	10	11	11	12	12	12	47	105
19. Clarify definition of nonqualified preferred stock	ta 5/14/03	5	8	8	8	8	8	8	7	7	7	37	74
20. Modification of definition of controlled group of corporations	tyba DOE	3	5	4	3	2	2	2	1	1	1	17	24
21. Establish specific class lives for utility grading costs	ppisa DOE	13	31	53	72	85	96	106	115	118	118	253	806
22. Provide consistent amortization periods for intangibles	[36]	-152	362	500	521	447	402	345	285	214	161	1,678	3,085
23. Freeze of provision regarding suspension of interest where Secretary fails to contact taxpayer; remove listed and reportable avoidance transactions from interest and penalty suspension	tyba 12/31/03 & iaa 10/3/04	---	23	176	187	188	190	192	195	196	198	574	1,545
24. Increase in withholding from supplemental wage payments in excess of $1 million	pma 12/31/04	111	43	5	[12]	[12]	[12]	4	7	8	8	159	186
25. Capital gain treatment on sale of stock acquired from exercise of statutory stock options to comply with conflict-of-interest requirements	sa DOE	1	1	1	1	1	1	1	1	1	1	4	10
26. Application of basis rules to nonresident aliens	doo/a DOE	14	16	18	21	23	25	27	30	32	35	92	241
27. Limit deduction for certain entertainment expenses (including company-provided aircraft) for covered employees [37]	eia DOE	172	201	209	217	225	234	244	255	264	272	1,023	2,292
28. Modify residence test in U.S. possessions	generally tyea DOE	3	8	12	16	25	35	41	49	58	63	64	310
29. Dispositions of transmission property to implement FERC restructuring policy (with reinvestment obligation (applies to sales or dispositions completed prior to 1/1/07))	ta DOE	-3,147	-1,823	172	939	955	964	970	845	507	15	-2,905	395
30. Expansion of limitation on depreciation of certain passenger automobiles	ppisa DOE	137	136	99	-50	-98	-74	-39	-23	-13	-2	223	71
Total of Revenue Provisions		611	4,135	6,987	8,257	8,845	9,482	10,255	10,838	11,158	11,388	28,835	81,966
NET TOTAL		-5,690	-7,828	-4,230	2,562	6,510	2,389	1,808	1,927	1,426	1,117	-8,678	1

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding. Date of enactment is assumed to be October 15, 2004.

[Legend and Footnotes for the Table appear on the following page]

Legend and Footnotes for the Table:

Legend for "Effective" column:

aa = acquisitions after
ada = amounts deferred after
aoa = acquisitions occurring after
apoamt = amounts paid or accrued more than
asbmpoia = articles sold by the manufacturer, producer, or importer after
ata = actions taken after
ataro/a = amounts treated as received on or after
bi =bonds issued
bia = bonds issued after
bib = bonds issued before
ceia = contracts entered into after
cma = contributions made after
coio/a = cancellations of indebtedness on or after
cpoii = costs paid or incurred in
ctada = contributions, transfers, and distributions after
da = day after
Da = distributions after
DA = dispositions after
di = distributions in
diia = debt instrument issued after
dma = distributions made after
Dma = deposits made after
DMA = designations made after
do/a = disclosures on or after
DOE = date of enactment
doo/a = distributions occurring on or after
Dpa = dividends paid after
eia = expenses incurred after
ematma = elections made and terminations made after
epoia = expenditures paid or incurred after
epoid = expenditures paid or incurred during
fpasoua = fuel produced, and sold or used, after
frsoua = fuel removed, sold or used after
fsa = fuel sold after
fsoua = fuel sold or used after
iaa = interest accrued after
iaeio/a = installment agreements entered into on or after
iwea = individuals who expatriate after
josoa = judgments or settlements occurring after
lf = losses for
pa = production after
Paa = penalties assessed after
PAa = property acquired after
PAb = property acquired before
pada = purchases and dispositions after
pao/a = payments accrued on or after
Pao/a = penalties assessed on or after
pca = productions commencing after
peo/a = positions established on or after
pfa = pleadings filed after
pi = production in
pia = penalties imposed after
pma = payments made after
ppisa = property placed in service after
ra = requests after
rra = risk reinsured after
sa = sales after
saptoea = stock acquired pursuant to options exercised after
soo/a = sales occurring on or after
soea = sales or exchanges after
sota = sales of timber after
ta = transactions after
teia = transactions entered into after
tma = transfers made after
toa = transactions occurring after
to/a = transactions on or after
tpba = taxable periods beginning after
trda = tax returns due after
tyba = taxable years beginning after
tybb = taxable years beginning before
tyea = taxable years ending after
voa = violations occurring after
wma = wagers made after
15da = 15 days after
30da = 30 days after

[1] Includes estimate for general transition and transition for binding contracts, if in effect on September 17, 2003, and for renewals of binding contracts if original contract was in effect on September 17, 2003.

[2] Effective as if included in the amendment made by section 101 of the "Community Renewal Tax Relief Act of 2000."

[3] Gain of less than $1 million.

[4] Effective as if included in the amendment made by section 121(a) of the "Community Renewal Tax Relief Act of 2000."

[5] Loss of less than $500,000.

[6] Effective for debt incurred after date of enactment by SBICs licensed after date of enactment.

[7] The bill provides that the excise tax credit expires after December 31, 2010. If this bill is enacted, the Congressional Budget Office's subsequent baseline would not assume extension of the excise tax credit beyond its expiration because the requirement to assume extension of excise taxes dedicated to trust funds does not apply to excise tax credits paid from the General Fund. For purposes of this revenue estimate, therefore, it is assumed that the excise tax credit would expire as scheduled. This treatment generates changes in revenues after December 31, 2010.

[8] Estimate provided by the Congressional Budget Office. Negative numbers indicate an increase in outlays. Positive numbers indicate a decrease in outlays.

[9] The outlay effects of this provision are the result of indirect effects on outlays for certain farm programs.

[10] The outlay payments for ethanol expire after December 31, 2010.

[11] Tax credits would be provided for on-road and off-road uses of biodiesel.

[12] Gain of less than $500,000.

[13] Provision is effective as if included in the amendments made by section 101 of the Job Creation and Worker Assistance Act of 2002.

[Footnotes for theTable are continued on the following page]

Footnotes for the Table continued:

[14] Loss of less than $1 million.

[15] Base difference change effective in taxable years beginning after 2004, for taxes paid or incurred after 2004. Basket change in taxable years beginning after 2006. Pre-effective date excess credits carried forward to new basket that would apply under new system.

[16] Effective for taxable years of foreign corporations beginning after December 31, 2004, and for taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.

[17] Effective for dividends with respect to taxable years of regulated investment companies beginning after December 31, 2004.

[18] Estimate accounts for interaction with reduction to 2 foreign tax credit baskets.

[19] Effective for excess foreign taxes that may be carried forward to any taxable year ending after the date of enactment. Carryback period effective for credits arising in taxable years beginning after the date of enactment.

[20] Effective for the first taxable year beginning on or after date of enactment, or for the last taxable year beginning before date of enactment, at the taxpayer's election.

[21] Effective for taxable years of a foreign corporation seeking qualified foreign corporation status beginning after September 24, 2004.

[22] Estimate is preliminary and subject to change pending final legislation.

[23] The bill includes additional spending (not shown in the table) that is subject to appropriation.

[24] Estimate provided by the Congressional Budget Office.

[25] Effective dates for provisions relating to reportable transactions and tax shelters: the penalty for failure to disclose reportable transactions is effective for returns and statements the due date of which is after the date of enactment; the modification to the accuracy-related penalty for listed or reportable transactions is effective for taxable years ending after the date of enactment; the tax shelter exception to confidentiality privileges is effective for communications made on or after the date of enactment; the statute of limitations for unreported listed transactions applies to all taxable years for which the statute of limitations under section 6501 has not run as of the date of enactment; the disclosure of reportable transactions by material advisors is effective for transactions with respect to which material aid, assistance or advice is provided after the date of enactment; the investor list penalty is effective for returns the due date for which is after the date of enactment; the modification of penalty for failure to maintain investor lists is effective for requests made after the date of enactment; and the penalty on promoters of tax shelters is effective for activities after the date of enactment.

[26] Effective for all taxable years, whether beginning before, on, or after the date of enactment.

[27] Effective for leases entered into on or after March 12, 2004 with exception for pending transportation leases with FTA.

[28] Generally effective after the date of enactment, except for fuel taxes, effective for taxable years beginning after the date of enactment.

[29] Effective for aviation-grade kerosene removed, entered into the United States, or sold after December 31, 2004.

[30] Effective 180 days after the date on which the Secretary issues the regulations, which are required no later than 180 days after the date of enactment.

[31] Bulk transfers to unregistered parties would be taxed at the time of the transfer. The Secretary would be required to publish a list of certain registered persons by January 1, 2005.

[32] The revenue neutral tax rate on each ten pounds of tire capacity above 3,500 pounds is 9.45 cents on tires in general and 4.725 cents for biasply tires.

[33] Effective for sales in calendar years beginning more than 30 days after the date of enactment.

[34] Effective for vaccines sold and used beginning on the first day of the first month beginning more than four weeks after the date of enactment.

[35] Effective for vaccines sold and used on or after the later of the first day of the first month beginning more than four weeks after the date of enactment, or the date on which the Secretary of Health and Human Services lists the vaccine in the Vaccine Injury Compensation Trust Fund.

[36] Generally effective for start-up and organizational expenditures incurred after the date of enactment.

[37] Applies to individuals subject to section 16 of the Securities and Exchange Act of 1934 for private and public companies.

From the Committee on Ways and Means, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

WILLIAM THOMAS,
PHIL CRANE,
JIM MCCRERY,

From the Committee on Agriculture, for consideration of Title VII of the House bill, and subtitle B of Title XI of the Senate amendment, and modifications committed to conference:

BOB GOODLATTE,
JOHN BOEHNER,
CHARLIE STENHOLM,

From the Committee on Education and the Workforce, for consideration of sections 489, 490, 616, 701, and 719 of the Senate amendment, and modifications committed to conference:

JOHN BOEHNER,
SAM JOHNSON,

From the Committee on Energy and Commerce, for consideration of sections 662 and subtitle A of Title XI of the Senate amendment, and modifications committed to conference:

JOE BARTON,
RICHARD BURR,

From the Committee on the Judiciary, for consideration of sections 422, 442, 1111, 1151, and 1161 of the Senate amendment, and modifications committed to conference:

LAMAR SMITH,

For consideration of the House bill and the Senate amendment, and modifications committed to conference:

TOM DELAY,
Managers on the Part of the House.

CHUCK GRASSLEY,
ORRIN HATCH,
DON NICKLES,
TRENT LOTT,
OLYMPIA SNOWE,
JON KYL,
CRAIG THOMAS,
RICK SANTORUM,
GORDON SMITH,
JIM BUNNING,
MITCH MCCONNELL,
MAX BAUCUS,
TOM DASCHLE,
JOHN BREAUX,
KENT CONRAD,
JEFF BINGAMAN,
BLANCHE L. LINCOLN,
Managers on the Part of the Senate.

PROVIDING FOR CONSIDERATION OF H.R. 10, 9/11 RECOMMENDATIONS IMPLEMENTATION ACT

Mr. LINDER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 827 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 827

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 10) to provide for reform of the intelligence community, terrorism prevention and prosecution, border security, and international cooperation and coordination, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed three hours and 40 minutes, with 40 minutes equally divided and controlled by the chairman and ranking minority member of the Permanent Select Committee on Intelligence; 30 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services; 30 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Financial Services; 30 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Government Reform; 30 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary; 20 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on International Relations; 20 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Transportation and Infrastructure; and 20 minutes equally divided and controlled by the chairman and ranking minority member of the Select Committee on Homeland Security. After general debate the bill shall be considered for amendment under the five-minute rule. In lieu of the amendments now printed in the bill, it shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule an amendment in the nature of a substitute consisting of the text of the Rules Committee Print dated October 4, 2004. That amendment in the nature of a substitute shall be considered as read. All points of order against that amendment in the nature of a substitute are waived. No amendment to that amendment in the nature of a substitute shall be in order except those printed in the report of the Committee on Rules accompanying this resolution. Each such amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points of order against such amendments are waived. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

SEC. 2. Upon passage of H.R. 10 and receipt of a message from the Senate transmitting S. 2845: (a) the House shall be considered to have: taken from the Speaker's table S. 2845; stricken all after the enacting clause of such bill and inserted in lieu thereof the provisions of H.R. 10, as passed by the House; passed the Senate bill as so amended; and insisted on its amendment and requested a conference with the Senate thereon; and (b) the Speaker may appoint conferees on S. 2845 and the House amendment thereto at any time.

SEC. 3. The motion to instruct conferees otherwise in order pending the appointment of conferees instead shall be in order only at a time designated by the Speaker in the legislative schedule within two additional legislative days after passage of H.R. 10.

The SPEAKER pro tempore. The gentleman from Georgia (Mr. LINDER) is recognized for 1 hour.

Mr. LINDER. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Texas (Mr. FROST), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, this is a fair and structured rule providing for consideration of H.R. 10, the 9/11 Recommendations Implementation Act. H. Res. 827 makes in order 23 amendments, including an amendment in the nature of a substitute offered by the gentleman from New Jersey (Mr. MENENDEZ).

The rule before the House today will provide for a thorough debate on this Nation's vision for the reform and improvement of our intelligence operations. Specifically, this rule provides for 3 hours and 40 minutes of general debate allocated between the chairman and ranking minority members of eight separate committees.

H. Res. 827 waives all points of order against consideration of the bill and provides that the amendment in the nature of a substitute consisting of the text of the Committee on Rules print dated October 4, 2004 be considered as an original bill for the purpose of amendment and shall be considered as read. The rule waives all points of order against the amendment in the nature of a substitute consisting of the text of the Committee on Rules print.

H. Res. 827 makes in order only those further amendments which are printed in the Committee on Rules report accompanying the resolution.

The rule provides that amendments made in order may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole.

H. Res. 827 waives all points of order against the amendments printed in the report and provides one motion to recommit with or without instructions.

In addition, this rule provides that upon passage of H.R. 10, the Senate transmittal of S. 2845, the House shall be considered to have taken from the Speaker's table S. 2845, stricken all after the enacting clause of such bill and inserted the provisions of H.R. 10 as passed by the House.

Finally, the rule provides that House shall be considered to have passed the

Senate bill as so amended, and insisted on its amendment and requested a conference with the Senate. The Speaker may appoint conferees on S. 2845 and the House amendment at any time. This provision provides for the expeditious movement of the bill upon passage to the next stage of the legislative process, which is a House-Senate conference.

The rule also provides that the motion to instruct conferees shall be in order only at a time designated by the Speaker and the legislative schedule within 2 additional legislative days after the passage of H.R. 10. This provision is intended to protect and ensure the minority's right to offer a motion to instruct conferees.

Mr. Speaker, 3 years have passed since that beautiful September day was shattered by terrorists who despise the thought of a Nation that allows its people the freedom to live and worship as they choose. I agree with President Bush that "the terrorists are offended not merely by our policies, they are offended by our existence as free nations."

Since that day, our Nation has fought this war on multiple fronts: diplomatic, financial, investigative, homeland security, humanitarian, and militarily. We have also committed to improving our intelligence operations. After the House and Senate passed the Intelligence Authorization bill last Congress, the President signed the bill into law, establishing the National Commission on Terrorist Attacks on the United States. Its goal was to prepare a complete account of the events surrounding the September 11 attacks. Recently, the Commission submitted recommendations to Congress citing the need for reforms of our intelligence and homeland security systems.

I am pleased that this bipartisan group was able to come through to a thorough conclusion on what went wrong prior to September 11 and what must be done to ensure that those heinous acts never occur again.

Proactive steps have already been taken during the month of August when Congress traditionally recesses to conduct work in our respective districts across the country. Members were called back to participate in no less than 20 committee hearings on the Commission's report. I joined my colleagues in a hearing of the House Select Committee on Homeland Security where we were able to listen to the testimony of Commission Chairman Tom Kean and Vice Chairman Lee Hamilton.

President Bush has outlined a strategy for sweeping reform of our security and intelligence operations in his continuing efforts to keep our Nation safe from those who wish to do harm to our citizens. Today, the House continues its efforts to move forward to make the substantive changes that will inevitably help better protect the citizens of this country. The House is committed to doing everything in its power to enact a plan that reflects the full scope of the Commission's intelligence and homeland security recommendations.

This wide-ranging bill reforms and integrates our intelligence capacity by establishing a National Intelligence Director to serve as the head of the intelligence community, a National Intelligence Council, and an Intelligence Community Information Technology Officer to assist in implementation of an integrated information technology network.

The bill focuses on effective information-sharing, because we know that prior to September 11, the sharing of intelligence in the Federal Government was inadequate. This bill ensures the sharing of and access to information within our intelligence community with a particular emphasis placed on detection, prevention, and the disruption of potential terrorist attacks.

Mr. Speaker, H.R. 10 focuses on terrorist prevention by authorizing Federal officials to target "lone wolf" terrorists, targeting money laundering and terrorist financing, and enhancing airline security through improved passenger pre-screening, and training all Federal law enforcement officers with in-flight counterterrorism procedures.

This bill effectively restructures the government by strengthening the Federal Bureau of Investigation through recruitment and retention, streamlining our Nation's current security clearance procedures by eliminating duplicative processes and, finally, improving efficiency by expediting the processes that direct resources to first responders where they are most needed.

In addition, in response to the Commission's detailed report on problems such as border security, information-sharing, and immigration enforcement, this comprehensive bill tackles these challenging issues and enhances the reforms that have been put in place since September 11.

Mr. Speaker, this is a fair and balanced rule for a bill that is critical to improving our current security and intelligence operations. I urge support for the rule and for the underlying measure.

Mr. Speaker, I reserve the balance of my time.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, at the end of the last Congress, after great pressure from the families of the victims of the terrorist attacks against the United States, this institution took a positive step in fighting the war on terror by creating the 9/11 Commission. The Commission was charged with the responsibility to investigate the reasons why that horrible day happened and to recommend ways to ensure that it could never happen again.

The Commission, ably chaired by Governor Kean of New Jersey and our former colleague, Lee Hamilton of Indiana, conducted a truly nonpartisan, exhaustive, and introspective investigation of the events leading up to September 11, 2001.

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Their report is chilling. It provides ample evidence of missed opportunities, failures of communication, and the inability of our intelligence agencies to fully examine and understand the threats against the United States.

As a result of these failures, the al Qaeda network and Osama bin Laden have been able to launch attacks against the United States in Saudi Arabia, Kenya, Tanzania, and Yemen in the years leading up to 2001 and, of course, against us on our own shores on September 11, 2001.

The commission on a totally bipartisan basis made 41 recommendations to the Congress. While not every Member of the House or the Senate agreed completely with every part of the commission's recommendations, many in this institution felt that the work of the commission deserved to be considered in a thoughtful and deliberate way.

Mr. Speaker, I believe that the leadership of the House has failed to give these recommendations the serious consideration they deserve. I must commend the chairman and ranking member who conducted hearings during the August district work period and into September. Many of these committees made substantive recommendations. But the text of the original H.R. 10 and the version of the bill before us today were not produced in a bipartisan manner; and that does a great disservice to this body, to the families of the 9/11 victims and to the meaningful work done by the 9/11 commission.

Unlike the bipartisan work on this issue by the other body, the process in the House was directed and controlled by the Republican leadership. Unfortunately, many of the thoughtful suggestions made by Democratic Members and adopted by their committees were jettisoned from the bill before us today.

While some of us may ultimately support H.R. 10 in an effort to move the process forward and in an effort to make the country and the world a much safer place, there is a deep concern that, on an issue of such great importance to every American, whether they be a Democrat, Republican or an Independent, that the House has missed a great opportunity.

The 108th Congress has been one of many missed opportunities, and it is a shame that we have to include this important legislation on that list.

The rule does make in order a substitute amendment to be made in order by the gentleman from New Jersey (Mr. MENENDEZ). The Menendez substitute merges the text of two Senate bills that have been endorsed by the 9/11 Commission, S. 2845, known as Collins-Lieberman, as reported from committee; and S. 2774, known as McCain-Lieberman, as introduced. The substitute more accurately reflects the work of the commission and should be considered by the House. It is unfortunate that we will consider H.R. 10 and the Menendez substitute under such a hurried schedule, but that is a hand that has been dealt to the House by the Republican leadership.

I am sure that many members of the Democratic Caucus will support the Menendez substitute. I hope that members of the Republican conference will do so as well.

Mr. Speaker, time and again we have seen the Republican leadership purposefully exclude Democrats from the deliberative process. At the hearing of the Committee on Rules on H.R. 10, I said that the Republican Party does not hold the lock on national security issues. National security is about all of us.

I hope that ultimately a bill will be sent to the President that will provide for the security of our Nation and its people.

Mr. Speaker, I reserve the balance of my time.

Mr. LINDER. Mr. Speaker, I yield 5 minutes to the gentleman from Illinois (Mr. LAHOOD).

Mr. LAHOOD. Mr. Speaker, the reason I asked for time under the rule is because I do not think there will be enough time during consideration under general debate and there are a number of points that I wanted to make.

I have been a member of the Permanent Select Committee on Intelligence for 6 years, and I am very proud and privileged to serve on that committee and have served on the committee when 9/11 occurred and obviously since that time. I want to just state for the record the things that we have done as a Congress and also what the administration has done long before a 9/11 Commission was ever created and long before a 9/11 Commission put out a report.

We created a homeland security agency that put together 22 agencies at a cost of $40 billion. These agencies are now working together, communicating and cooperating together. We created a TSA agency for every major airport in this country to screen passengers and screen bags at a cost of about $5.2 billion. We gave the airline industry $4.6 billion to secure cockpits and to make sure that the airline industry was able to survive after 9/11. We passed here on this floor in this Congress the PATRIOT Act which allows law enforcement people to communicate with each other, allows law enforcement people to arrest people in Buffalo, New York and Portland, Oregon trained by al Qaeda with no other purpose in mind but to hurt Americans.

The PATRIOT Act allows law enforcement people to surveil people and surveil people's cell phones and look into people's bank accounts, all provisions that did not exist before 9/11. We created that opportunity. We gave to New York between $20 billion and $40 billion to compensate the families and to compensate New York for the work that was done to clean up the Twin Towers area.

We authorized and now there are being recruited 1,000 new CIA agents, and we authorized and there are now being recruited 1,000 new FBI agents. We created TTIC, which is a terrorism task force within the CIA that works very closely and now is analyzing information, and there is a great deal of coordination and cooperation going on.

We created the JTTFs in every major city where all law enforcement and prosecutors are sitting together every day talking to one another and doing good work. The FBI has been reorganized under Director Mueller, and he deserves a great deal of credit for reorganizing the FBI with one goal in mind: to go after the terrorists and to really make an effort in every office in the FBI to communicate directly with local law enforcement people.

We invaded Afghanistan. We dismantled al Qaeda at a cost of about $18 billion, an enormous cost, but we have dismantled al Qaeda. We have invaded Iraq. We have brought down Saddam Hussein's regime. But the bottom line in all of this is we have not been attacked for 3 years, and we have not been attacked because we have done a lot of good in this Congress. And the lion's share of the credit goes to this administration, to President Bush and his team, and this Congress for the work we have done to secure America, to go after the terrorists, to dismantle al Qaeda. And it has cost us enormous amounts of money, but we have not been attacked for 3 years.

All of this was done prior to the 9/11 Commission and prior to any kind of report being put out.

Now to the bill. This bill was cobbled together by a small group of people with little or no real help from those of us on the Permanent Select Committee on Intelligence or any other committee. It creates a so-called intelligence czar, and it creates what people have been criticizing around here for a long time, another bureaucracy. It not only creates another national intelligence czar, but it also creates eight or nine additional people. It creates a whole new bureaucracy.

The criticism has been that there was too much bureaucracy. There were too many stovepipes. There were too many people who were not communicating or cooperating with one another.

My point is this: We do not need another bureaucracy. We do not need another person. There are plenty of people that are communicating and cooperating, and the proof of that is all of the things that we have put in place and that the Bush administration has done. They deserve the credit, and we deserve the credit. And we should be talking around here about the things that the Permanent Select Committee on Intelligence and other committees have done and that we as a Congress have done to secure America, to go after al Qaeda, to take the war on terror to the terrorists. We have done a lot of good work around here.

Now this idea that the report comes out and it is sacrosanct and it is the end all and be all, I think, is not accurate. And to put another layer of bureaucracy without consulting the communities, without consulting the CIA, without consulting those people that are involved in this on a day-to-day basis I think is wrong.

I will vote against the bill, and I hope Members will look carefully at it.

I appreciate very much the gentleman from Georgia (Mr. LINDER) for giving me the chance to have an opportunity to sound off on these things.

Mr. FROST. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Ms. HARMAN).

Ms. HARMAN. Mr. Speaker, this rule does accommodate the request of the minority leadership to make in order the Menendez amendment. It allows 60 minutes in order for debate on that amendment. However, the text of H.R. 10, which we will consider under the rule, undercuts bipartisan efforts to strengthen the intelligence portions of the bill which were adopted in the House Permanent Select Committee on Intelligence, and for that reason I urge a "no" vote on the rule.

My amendment offered in committee to establish an independent privacy and civil liberties board passed our committee by a vote of 16 to 3. A second amendment offered by a member of the majority, the gentleman from Nevada (Mr. GIBBONS), to give the National Intelligence director stronger authority to transfer and reprogram money passed in our committee by a vote of 12 to 7.

A third offered by the gentleman from Minnesota (Mr. PETERSON) to prevent the executive branch from reorganizing the intelligence community without Congress's input passed by voice vote.

Mr. Speaker, it is as if these amendments were written in disappearing ink. Not one of them made it into the bill that was considered and reported by the Committee on Rules. Not one.

Our new Permanent Select Committee on Intelligence chairman, the gentleman from Michigan (Mr. HOEKSTRA), is trying to restore our committee's long-standing bipartisan tradition which had come apart in recent months. He supported two of these amendments, but his leadership prevented them from becoming part of the base bill. Why?

Fortunately, our amendments are included in S. 2845, the Collins-Lieberman-McCain bill which is the substance of the Menendez amendment in the nature of a substitute. This is one of the reasons I strongly support the Menendez amendment which we will discuss later this afternoon.

Mr. Speaker, this rule should have accommodated bipartisan efforts by the committee of primary jurisdiction in this House. The actions by the Speaker and the Committee on Rules to strip bipartisan provisions of H.R. 10 are a sorry way to start this historic debate. I will vote "no" on the rule.

Mr. LINDER. Mr. Speaker, I yield 3 minutes to the gentleman from Wisconsin (Mr. GREEN).

Mr. GREEN of Wisconsin. Mr. Speaker, I thank the gentleman for yielding me time.

I rise in support of the rule and the bill that the rule brings to the floor later today.

Mr. Speaker, on a day like today a lot of Members will get up here and make political arguments and try to score political points. I trust that the public will see through all of that.

As the gentleman from Illinois (Mr. LAHOOD) has said, and I think so, well, since 9/11 we have taken a number of very important steps in this body on a bipartisan basis. There are a lot of things that we have done. Perhaps that is one reason why the 9/11 report itself says very clearly we are safer today than we were 3 years ago. But it continues on to say, but we are not safe.

It is that last part that brings us here today. I know that we are all grateful that the 9/11 Commission did not give in to the finger-pointing that we have heard so much of in the months leading up to its creation. But what the commission does make very clear, I think what the public understands instinctively is that for too many years a storm was growing in the terrorist world while too many of our leaders just turned and looked away.

The question that we will answer over the next 2 days is, Will we look away once again? Will our successors 10 years from now, 15 years from now or more, will they look back and say that this Congress failed to act when we could have, when we should have, even when the signs of danger were unmistakable? Just as unmistakable in my view is what we need to do, and that is what the underlying bill is about.

This legislation that we will take up today contains steps that will make us stronger, better, smarter, reforming our intelligence; destroying the lines of material support that make a terrorist operation possible; giving our officials from the Pentagon to our first responders the tools that they need to disrupt terrorists plans.

There will be some good debate today, and there will be some foolish debate today. Some apparently are more interested in who gets the credit instead of what gets done, but the bottom line is simple. This time under our watch we must not look away. We cannot look away.

I urge my colleagues to support this rule. It is a fair rule. I urge them to support this rule so that we can get to the debate on the underlying bill.

I urge passage of this underlying bill as quickly as we can. It will offer important tools. It will help this Nation be safe once again.

Mr. FROST. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. TURNER).

Mr. TURNER of Texas. Mr. Speaker, I rise to respond to the remarks of the gentleman from Illinois (Mr. LAHOOD) who I have the highest respect for, but I think it would be a great mistake to lead the American people to believe that we have done all we should be doing to secure the homeland.

If you look at our record, though you may claim America is safer, it is far from as safe as it might be in light of the threats we face.

One year after 9/11, bin Laden on his Web site said his goal is to kill 4 million Americans. The greatest threat we face today is a nuclear bomb brought into one of our major cities by terrorists.

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In the 2 years before 9/11, we did more to secure loose nukes than we did in the 2 years after 9/11. Three years after 9/11, we still do not have a unified, accessible terrorist watch list.

We just read in the paper the other day that 120,000 hours of untranslated wiretap intercepts are at the FBI. We know that 20,000 illegal immigrants from countries other than Mexico were caught and released last year into our country because we did not fund the detention space to hold them.

We know that our administration says we need anthrax vaccines to vaccinate 25 million Americans in the event of an anthrax attack, and today, in our stockpile, we have enough vaccine to vaccinate 500 people.

I submit to my colleagues that the increased spending on homeland security has not been near what it should be. The other night, during the presidential debate, when JOHN KERRY enumerated some of these shortcomings, President Bush had an interesting response. He said, well, that is going to cost a lot of money, and we have a big tax gap. It shows us where the priorities have been in the administration.

Last fiscal year, our appropriations for homeland security were $20 billion more than they were in the year before 9/11, $20 billion. The tax cuts last fiscal year benefiting the wealthiest 1 percent of Americans was four times that. I say we have made the wrong choices. We have had the wrong priorities, and we should be focusing on the real threat to the security of the American people, al Qaeda.

We increased homeland security appropriations this year in the bill we just approved a few minutes ago by $1 billion. It sounds like a lot of money. We spend $1 billion every week in Iraq. It is time to take the real threat of al Qaeda and bin Laden seriously to protect this country to be sure we are safe from terrorist attacks.

Mr. LINDER. Mr. Speaker, I reserve the balance of my time.

Mr. FROST. Mr. Speaker, we have another request for time; although the speaker is not here on the floor at this moment. I think he will be here shortly. I would ask, does the gentleman from Georgia (Mr. LINDER) have any other speakers?

Mr. LINDER. Mr. Speaker, I am prepared to close.

Mrs. MALONEY. Mr. Speaker, I rise in support of this rule.

9/11 Commission Chairman Thomas Kean is quoted today calling the bill the other body passed 96–2 a dream. If the other body's bill is a dream, I guess H.R. 10 is his nightmare.

There are many of us with grave concerns with the underlying bill, H.R. 10. Analysis of the bill shows it only implements 10 of the 41 recommendations, while tacking on an additional 50. In due time we will have a chance to debate this.

More importantly, the Rules Committee has also made in order a substitute amendment. While the name has changed, it is the same exact substance of the Shays/Maloney substitute. This will allow us the opportunity to have a fair debate. An opportunity to pass a clean bill with bipartisan support.

I will note that the Rules Committee did miss an opportunity to make this truly a bipartisan effort and I remind everyone that the American people do not want a partisan debate on their security. Both parties need to work together and pass this substitute.

This is what the 9/11 Commission and the 9/11 Family Steering Committee has been fighting for.

Over the last weeks they have been unwavering in their support for a fair debate and have fought for an up or down vote on clean legislation.

Today they have scored another improbable victory.

They were told by the House leadership—the same people that fought the creation and extension of the 9/11 commission—that the House would never have this opportunity. The families and commission refused to listen and once again fought for change.

They told us they want us to work in a bipartisan way.

I thank them for always keeping this House on task and I hope, with today's substitute, we can do just that.

By allowing a substitute, this House will have the opportunity to vote up or down legislation that takes provisions from both the Collins/Lieberman and the McCain/Lieberman bills.

This is the same legislation, H.R. 5223, Congressman SHAYS and I have introduced in the House and both have the support of our bipartisan 9/11 Commission Caucus.

This substitute takes Title One of the Collins/Lieberman Bill which creates a National Intelligence Director and a National Center for Counter Terrorism. For Titles two through nine, it uses the language of the McCain/Lieberman bill.

This combination would allow the House to debate a bill similar to the bill that passed the other body 96–2, a bill that enacts the provisions of the 9/11 Commission without any add-ons. This is a bill we could have on the President's desk before we leave town.

I ask Members to support this rule, but I urge them to support the substitute.

This is the option the 9/11 Families and the 9/11 Commission have fought for. It would be a shame if this House does not take this opportunity to work together and pass this substitute.

The American people want this Congress to work in a bipartisan way to enact the 9/11 Commission's recommendations. Today we will have that opportunity by supporting the substitute.

Mr. FROST. Mr. Speaker, then I yield back the balance of my time.

Mr. LINDER. Mr. Speaker, I yield back balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. BONILLA). Pursuant to clause 8 of rule XX, proceedings will resume on questions previously postponed. Votes will be taken in the following order:

H. Res. 828, by the yeas and nays;

S. 1134, by the yeas and nays; and

H.R. 5061, by the yeas and nays.

The first electronic vote will be conducted as a 15-minute vote. Remaining electronic votes will be conducted as 5-minute votes.

WAIVING REQUIREMENT OF CLAUSE 6(a) OF RULE XIII WITH RESPECT TO CONSIDERATION OF CERTAIN RESOLUTIONS REPORTED FROM THE COMMITTEE ON RULES

The SPEAKER pro tempore. The pending business is the question of agreeing to the resolution, House Resolution 828, on which the yeas and nays are ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is the resolution.

This vote will be followed by two 5-minute votes.

The vote was taken by electronic device, and there were—yeas 222, nays 195, not voting 15, as follows:

[Roll No. 506]

YEAS—222

Aderholt
Akin
Alexander
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carson (OK)
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Dunn
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
Manzullo
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Saxton
Schrock
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—195

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Becerra
Bell
Berkley
Berman
Berry
Bishop (NY)
Blumenauer
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Case
Chandler
Clay
Clyburn
Conyers
Cooper
Costello
Cramer
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Ford
Frank (MA)
Frost
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Hill
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Lucas (KY)
Lynch
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (VA)
Serrano
Sherman
Skelton
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—15

Boehlert
Filner
Gephardt
Hinchey
Jones (OH)
Kilpatrick
Majette
Millender-McDonald
Norwood
Paul
Quinn
Radanovich
Ryun (KS)
Slaughter
Tauzin

□ 1359

Messrs. BAIRD, ORTIZ, GRIJALVA, and RUSH changed their vote from "yea" to "nay."

Mr. CARSON of Oklahoma and Mr. TOM DAVIS of Virginia changed their vote from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated against:

Mr. FILNER. Mr. Speaker, on rollcall No. 506, I was in my Congressional District on official business. Had I been present, I would have voted "nay."

ECONOMIC DEVELOPMENT ADMINISTRATION REAUTHORIZATION ACT OF 2004

The SPEAKER pro tempore (Mr. BONILLA). The unfinished business is the question of suspending the rules and passing the Senate bill, S. 1134.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. LATOURETTE) that the House suspend the rules and pass the Senate bill, S. 1134, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 388, nays 31, not voting 13, as follows:

[Roll No. 507]

YEAS—388

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Ballenger
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chandler
Clay
Clyburn
Coble
Cole
Collins
Conyers
Cooper
Costello
Cramer
Crane
Crenshaw
Crowley
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Foley
Forbes
Ford
Fossella
Frank (MA)
Frelinghuysen
Frost
Gallegly
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Herger
Herseth
Hill
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kind
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Miller (MI)
Miller (NC)
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Ose
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Peterson (MN)
Peterson (PA)
Pickering
Pitts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Serrano
Sessions
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NAYS—31

Barrett (SC)
Chabot
Chocola
Cox
Cubin
Culberson
Flake
Franks (AZ)
Garrett (NJ)
Hefley
Hensarling
Hostettler
Johnson, Sam
Jones (NC)
King (IA)
Miller (FL)
Miller, Gary
Myrick
Otter
Pence
Petri
Platts
Rohrabacher
Royce
Sensenbrenner
Shadegg
Smith (MI)
Souder
Stearns
Taylor (MS)
Toomey

NOT VOTING—13

Boehlert
Filner
Gephardt
Hinchey
Kilpatrick
Majette
Millender-McDonald
Norwood
Paul
Quinn
Ryun (KS)
Slaughter
Tauzin

□ 1411

Mr. BARRETT of South Carolina and Mrs. CUBIN changed their vote from "yea" to "nay."

Mr. TAYLOR of North Carolina changed his vote from "nay" to "yea."

So (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. FILNER. Mr. Speaker, on rollcall No. 507, I was in my Congressional District on official business. Had I been present, I would have voted "yea."

PERSONAL EXPLANATION

Ms. KILPATRICK. Mr. Speaker, official business in my district prevents me from being present for legislative business scheduled for today, Thursday, October 7, 2004. Had I been present, I would have voted "aye" on the motion to instruct conferees to H.R. 42567, Homeland Security Appropriations for Fiscal Year 2005 (Rollcall No. 502); "aye" on H.R. 4661, Internet Spyware Prevention Act (Rollcall No. 503); "aye" on H.R. 5213 (Rollcall No. 503); "aye" on H.R. 5186, a bill to reduce certain special allowance payments and provide additional teach loan forgiveness on Federal student loans (Rollcall No. 504); "no" on the adoption of H. Res. 828, a resolution waiving the requirement of clause 6(a) of Rule 13 to provide for same day consideration of H.R. 4520 (Rollcall No. 505); "aye" on S. 1134, the Economic Development Administration Reauthorization Act of 2003 (Rollcall No. 506); and "aye" on H.R. 5061, the Comprehensive Peace in Sudan Act (Rollcall No. 507).

COMPREHENSIVE PEACE IN SUDAN ACT

The SPEAKER pro tempore (Mr. BONILLA). The unfinished business is the question of suspending the rules and passing the bill, H.R. 5061, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Colorado (Mr. TANCREDO) that the House suspend the rules and pass the bill, H.R. 5061, as amended, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 412, nays 3, not voting 17, as follows:

[Roll No. 508]

YEAS—412

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole
Collins
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell

Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hensarling
Herger
Herseth
Hill
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kind
King (IA)
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Toomey
Towns
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NAYS—3

Flake
Hefley
Miller, Gary

NOT VOTING—17

Boehlert
Buyer
Filner
Gephardt
Hinchey
Jones (OH)
Kilpatrick
Majette
Millender-McDonald
Norwood
Osborne
Paul
Quinn
Rush
Slaughter
Tauzin
Weller

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LAHOOD) (during the vote). Members are advised that 2 minutes remain in this vote.

☐ 1419

So (two thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. FILNER. Mr. Speaker, on rollcall No. 508, I was in my Congressional District on official business. Had I been present, I would have voted "yea."

GENERAL LEAVE

Mr. HOEKSTRA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 10.

The SPEAKER pro tempore (Mr. LAHOOD). Is there objection to the request of the gentleman from Michigan?

There was no objection.

9/11 RECOMMENDATIONS IMPLEMENTATION ACT

The SPEAKER pro tempore. Pursuant to House Resolution 827 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 10.

The Chair designates the gentleman from Idaho (Mr. SIMPSON) as chairman of the Committee of the Whole, and requests the gentleman from Texas (Mr. BONILLA) to assume the chair temporarily.

☐ 1419

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 10) to provide for reform of the intelligence community, terrorism prevention and prosecution, border security, and international cooperation and coordination, and for other purposes, with Mr. BONILLA (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. Pursuant to the rule, the bill is considered read the first time.

General debate shall not exceed 3 hours and 40 minutes, with 40 minutes equally divided and controlled by the chairman and ranking minority member of the Permanent Select Committee on Intelligence; 30 minutes equally divided and controlled by each chairman and ranking minority member of the Committee on Armed Services, Committee on Financial Services, Committee on Government Reform, and the Committee on the Judiciary; and 20 minutes equally divided and controlled by each chairman and ranking minority member of the Committee on International Relations, Committee on Transportation and Infrastructure, and the Select Committee on Homeland Security.

The gentleman from Michigan (Mr. HOEKSTRA) and the gentlewoman from California (Ms. HARMAN) each will control 20 minutes of debate from the Permanent Select Committee on Intelligence.

The Chair recognizes the gentleman from Michigan (Mr. HOEKSTRA).

Mr. HOEKSTRA. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise today in strong support of H.R. 10, the 9/11 Recommendations Implementation Act.

Mr. Chairman, H.R. 10 is a bill that reforms the intelligence community of the United States. To be sure, this bill has provisions to improve our Nation's ability to prevent and prosecute terrorism, to improve border security, and to improve international security cooperation and coordination. But it is the specific focus of the intelligence reform that I wish to address.

This bill, very specifically and very wisely, implements the intelligence reform recommendations of the 9/11 Commission and the House/Senate Joint Inquiry Report. H.R. 10, for example, creates a National Intelligence Director who has dramatically improved authorities and capabilities to manage and coordinate the disparate efforts of the various intelligence components and elements of the United States Government. It makes the National Intelligence Director truly the leader of the entire community, and it makes this person responsible for the coordinated efforts of the entire community.

Some will say that H.R. 10 does not follow all of the recommendations of the 9/11 Commission. In constructing this bill, we critically reviewed the ramifications of one of their recommendations, declassifying the budget. We believe that the unintended negative consequences of such a move outweighed any possible benefits. Why, at a time of war, share any information that our enemies might find useful? I want to be clear to the American people. Structural changes and enhanced authorities cannot and will not ensure perfect knowledge about our enemies' plans and intentions. It is important to say that those who would do America harm are clever. They are very secretive. The asymmetric threats that they can both imagine and effect require us to be many fold better at defense than they need to be in offense. That said, I firmly believe the improvements provided in this bill will make significant improvements in the outcomes of our intelligence analysis, collection, and dissemination.

Mr. Chairman, I, like my colleagues on the other side of the aisle, want to ensure the strongest, most empowered intelligence director possible. It is with that specific intent that we met with negotiators from the other affected committees of the House and crafted what I consider to be a very strong bill. H.R. 10 addresses five major improvements for the intelligence community.

First and foremost, the bill creates an empowered National Intelligence Director who is the head of the intelligence community and who is the principal adviser to the President on all intelligence matters.

Second, it provides this new director with enhanced management authorities to coordinate and manage all aspects of intelligence operations. These new authorities are, I believe, unprecedented and strike a careful balance between the equities of the National Intelligence Director and the heads of the departments that contain the elements of the intelligence community.

Third, the National Intelligence Director is vested with the responsibility and authority to dramatically improve information-sharing of intelligence across the government.

Fourth, the National Intelligence Director is made responsible for strengthening intelligence analysis across the community.

And, finally, this bill creates a National counterterrorism Center. This center will be responsible for analyzing and integrating all intelligence pertaining to terrorism and counterterrorism.

Finally, I want to mention that this legislation also addresses several provisions for dramatically improving intelligence community training and education, particularly in the areas of foreign language expertise and analyst proficiency.

Mr. Chairman, I would also be remiss if I did not turn to the gentlewoman from California (Ms. HARMAN), ranking member of the Permanent Select Committee on Intelligence, and thank her for the intelligence reform legislation that she offered earlier this year. I hold in very high regard the bipartisan manner in which the gentlewoman from California (Ms. HARMAN) and her staff have worked with us on the intelligence provisions of H.R. 10 and look forward to working with her staff as we continue moving through this process, move through the process of a conference committee and bring a bill to the desk of the President.

Mr. Chairman, H.R. 10 is real reform of the intelligence community. It is far better and more well thought out than any other legislation we will address today. I urge my colleagues to vote "yes" on H.R. 10.

Mr. Chairman, I reserve the balance of my time.

Ms. HARMAN. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, I thank the gentleman from Michigan (Mr. HOEKSTRA), the new chairman of the Permanent Select Committee on Intelligence, for the comments he just made, not just about me and the members of the minority but about our staff. We work hard, and we welcome the fact that the winds of bipartisanship are again blowing through our committee. It is a good thing for America.

Mr. Chairman, I hail from California, the land of earthquakes. Yesterday, Washington experienced two near simultaneous earthquakes. In California, we would call that "the big one."

The first was the Duelfer report, which conclusively established that we invaded Iraq based on wrong intelligence. Four ancient chemical warheads, one vial of Botox and a centrifuge hidden under a rose bush in 1991 did not and do not constitute an imminent threat.

The second earthquake was last evening's spectacular 96-to-2 victory of the Collins-Lieberman-McCain legislation, S. 2845, implementing the 9/11 Commission recommendations. Kudos to Senators COLLINS and LIEBERMAN, amazing legislators who presided over 2 days of markup and withstood votes on dozens of floor amendments over 6 days to produce an excellent bipartisan bill.

In contrast, Mr. Chairman, although this House was first to identify our intelligence gaps and could have played the leadership role in fixing them, we are playing catch-up. More than a year ago, former Permanent Select Committee on Intelligence Chairman Porter Goss and I sent a letter to George Tenet detailing our preliminary findings that "there were significant deficiencies" in our intelligence about Iraq's WMD capabilities and that the intelligence community's "judgments were based on too many uncertainties."

Last April, as we heard from our chairman, all nine Democrats on the House Permanent Select Committee on Intelligence introduced H.R. 4104 to provide "Goldwater/Nichols"-style jointness for the intelligence community. Our bill put a dozen intelligence agencies with different rules, cultures and databases under one unified commander for the entire community just the way we put our military services under unified command. We are told our bill formed the basis for many of the 9/11 Commission recommendations on intelligence reform, including the creation of the National Intelligence Director.

Mr. Chairman, the concepts we will debate today were developed from a House bill. It started here, and it stalled here when the Permanent Select Committee on Intelligence majority took no action to mark up our bill. It remains stalled, Mr. Chairman, because the Republican leadership insists on pursuing a highly partisan process. Fortunately, the Menendez substitute has been made in order, and I urge its adoption.

S. 2845, the Collins-Lieberman-McCain bill, which would replace H.R. 10 if the Menendez amendment is adopted, provides full budget execution authority to the National Intelligence Director. In contrast, H.R. 10 creates an "N-I-D" but it is a "Neutered Intelligence Director," passing funding through the NID without giving the NID adequate control.

S. 2845 provides for a National Counterterrorism Center with real power to integrate our counterterrorist operations. H.R. 10 reduces the NCTC's power. S. 2845 provides for an independent Privacy and Civil Liberties Board. H.R. 10 does not.

S. 2845 follows the excellent recommendations of the nonpartisan Markle Foundation and creates a trusted Information Sharing Network so that government agencies can connect the dots about the terrorists but not infringe on the civil liberties of law-abiding Americans. H.R. 10 has no such provision.

S. 2845 allows the public to see the overall amount we spend on intelligence by declassifying the top line, something we did in 1997 and 1998 without jeopardizing national security. H.R. 10 insists on unnecessary secrecy.

In sum, Mr. Chairman, we are debating the wrong bill. In case anyone missed it, the terrorists did not check our party labels before they attacked us, and they certainly will not care whether we are Democrats or Republicans when they try to attack us again. Mr. Chairman, the American people want us to defend our country, not our turf.

Mr. Chairman, I reserve the balance of my time.

Mr. HOEKSTRA. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Missouri (Mr. BLUNT), majority whip and a member of the Permanent Select Committee on Intelligence.

Mr. BLUNT. Mr. Chairman, the House is taking bold steps today to reform the way our intelligence community works for the first time in two generations. The legislation that we are debating here today responds to the 9/11 Commission's look at an unprecedented and horrendous day in American history. The Commission made recommendations for dramatically changing our intelligence operations, and seven House committees of jurisdiction held 20 hearings and five markups. Despite some claims to the contrary, our committees have worked in a bipartisan fashion to contribute with strong bipartisan votes, sweeping and much-needed components of change of the legislation that we are discussing today.

I would like to focus on the intelligence reform for a minute. I have had the privilege of joining the gentleman from Michigan's (Chairman HOEKSTRA'S) and the gentlewoman from California's (Ms. HARMAN'S) committee last week during the Permanent Select Committee on Intelligence's markup of the components of the 9/11 Commission bill. This legislation establishes a strong empowered National Intelligence Director who will coordinate the efforts of all the U.S. intelligence agencies. The National Intelligence Director will head up the U.S. intelligence community and serve as the President's principal adviser on intelligence matters. The new National Intelligence Director will also be responsible for establishing and running a new National Counterterrorism Center. This center will be the primary organization for analyzing and integrating all terrorism and counterterrorism intelligence.

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The center will help keep Americans safe by integrating all national efforts to detect, deter and disrupt terrorist activities.

This bill enhances the community wide intelligence budget, operations and personal management authorities for the new National Security Director. The Director will have, for example, increased authority to manage and oversee execution of the National Intelligence Program and its annual budget.

One of the strengths of this bill is that this bill still keeps that budget secret, from our enemies. Divulging the top line of the national intelligence budget to our enemies is not a good idea. If it is a good idea, why not divulge the next to the top line and the line after that and the line after that? This is just simply information that does not need to be disclosed. This is the only option that protects that information.

The 9/11 Commission Implementation Bill will also improve information sharing. The landmark legislation also sharpens intelligence tools, making the National Intelligence Director responsible for the accuracy of intelligence analysis and for ensuring the quality of human intelligence and other intelligence capabilities around globe. This legislation provides a better intelligence structure and improves our national security.

I urge my colleagues to support H.R. 10, to defeat any substitutes, and to move forward toward this important landmark piece of legislation.

Ms. HARMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. REYES), a excellent senior member of our committee.

Mr. REYES. Mr. Chairman, I thank the ranking member for yielding me time, and want to thank our new chairman for working on a bipartisan basis.

Mr. Chairman, unfortunately, we had passed three amendments that have been stripped out of H.R. 10. Having said that, I have been a member of the Subcommittee on Terrorism and Homeland Security of the Permanent Select Committee on Intelligence for nearly 4 years now. Through that subcommittee's work, I have focused on the issue of strengthening our intelligence response to terrorism. I have also served on the Joint Congressional Inquiry of 9/11, and for almost 8 years on the House Committee on Armed Services. So I understand the importance of intelligence to our troops in the field.

We must reform the intelligence community to avoid another 9/11, but the bill before us today is not the way to do it.

H.R. 10, from my perspective, Mr. Chairman, is just too weak. The National Intelligence Director created under the bill would not have the minimum necessary control over funding and appointment of officials or personnel assignments. For example, if the National Intelligence Director cannot hire and fire people, they do not really work for him or her.

In both the Permanent Select Committee on Intelligence and the Committee on Armed Services markups, I offered amendments to strengthen the hiring and firing authority of our National Intelligence Director, using the language of the Collins-Lieberman bill passed by the Senate and endorsed by our White House, The 9/11 Commission and 9/11 families.

The Senate's completely bipartisan bill would properly implement the Commission's recommendations. The House bill is not bipartisan, and my amendments in committee failed on basically party-line votes.

I believe that today we should be adopting a bill to be closer to the bipartisan Collins-Lieberman effort on the Senate side. The voters, and the 9/11 families, in whose honor we work, deserve the strongest efforts to make this happen.

Our ability to counter future attacks from al Qaeda and other terrorist groups demands a bipartisan effort. Sadly, Mr. Chairman, we fail that test today with H.R. 10. I urge my colleagues to vote against it.

Mr. HOEKSTRA. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. CUNNINGHAM) a distinguished member of the committee and our "top gun."

Mr. CUNNINGHAM. Mr. Chairman, I could expound to all of what is in H.R. 10, but I would like to go through a few of the differences and why.

I think for anybody to espouse complete acceptance of the 9/11 Commission recommendations is irresponsible, totally irresponsible, and I will be specific.

The bill that the gentlewoman from California (Ms. HARMAN) presented is thoughtful, caring and actually has many, many of the H.R. 10 legislation bullets in it. She has done a good job. But there are many things that I totally disagree with that I think would do more harm for this country than good. The gentlewoman from California (Ms. HARMAN) is a friend and we work side by side. It does not mean we have to agree on every issue.

First of all, putting the National Intelligence Director under the White House, everybody knows how it works around here. The closer you are to the White House, the more political things become. If you have everything that is scrubbed through the National Intelligence Director by the White House, regardless if it is a Republican or a Democrat, that White House is going to be concerned that anything that is done is going to reflect on their next election and it is going to cause gridlock at that level.

It is going to keep our intelligence agents from being flexible and mobile and have initiative. I think that is wrong, and it could harm this country's intelligence services. That is one.

Secondly, control of the NID totally over the defense budget, I think that is wrong. If you look at Senator JOHN KERRY, that is exactly what he tried to do, is gut defense, for 30 years. And if they are able to have a person as a NID control the Secretary of Defense and the entire defense budget, that is exactly what they want. It is politically motivated, and I think it is wrong.

If you take a look, look at the Army Times. Seventy-two percent of the Guard, Reserves and active duty, officer and enlisted, are going to vote for G.W. Bush, and they want to stymie that.

Ms. HARMAN. Mr. Chairman, I yield myself 15 seconds.

Mr. Chairman, I would point out to my friend the last speaker that both in Collins-Lieberman and H.R. 10, the NID is not part of the White House, the Executive Office of the President. It is separate. I agree with his comments on that.

As far as the budget of the NID is concerned, tactical intelligence is totally exempted.

Mr. Chairman, it is my privilege to yield 2 minutes and 10 seconds to the gentleman from Iowa (Mr. BOSWELL), the ranking member on the Subcommittee on Human Intelligence, Analysis and Counterintelligence of the Permanent Select Committee on Intelligence.

Mr. BOSWELL. Mr. Chairman, I, too, would like to say I appreciate the work of the gentleman from Michigan (Mr. HOEKSTRA) with our committee, the fresh leadership, and his working together with the gentlewoman from California (Ms. HARMAN), who is doing a great job for us as ranking member. It is good to see my neighbor and friend, the gentleman from Missouri (Mr. BLUNT) participating as he is standing in for Mr. BOEHLERT.

Mr. Chairman, the 9/11 Commission examined ways that terrorists are trying to attack us and pointed out problems with how our intelligence agencies tackle this threat. Our intelligence community was set up more than 50 years ago to deal with threats from the Soviet Union in the Cold War. I personally participated in rewriting FM 101 5 when I was instructor at Command General Staff. We knew we had to change, we had a new threat, the Cold War.

Today we face new threats and our intelligence agencies need to adapt. The 9/11 Commission showed us a way to do that.

I believe H.R. 10 is too weak. It does not do enough to address the threat from terrorism and weapons of mass destruction our country faces. I offered an amendment in committee last week to improve the bill's provisions on the budget authority of the National Intelligence Director. It was voted down on a party-line vote, even though the same provision is part of the bipartisan Senate bill that passed 96 to 2 yesterday.

I think the issue of budget authority is actually a simple one. The National Intelligence Director needs the authority to do the job we are asking him to do. That means power over the intelligence budget. And to be effective, to be allowed to do his or her job, they must have authority over the budget.

With weak authority, the National Intelligence Director will inevitably be weak, exactly as the Director of Central Intelligence has been weak for half a century.

There have been many, many studies of intelligence reform over the decades, and most of them have urged stronger budgetary authority for the Director of Central Intelligence. The 9/11 Commission strongly recommends that the National Intelligence Director be fully in control of the budget, from developing it to implementing it, to ensuring that the National Intelligence Director has the clout to make decisions.

Over in the Senate, the Collins-Lieberman bill keeps faith with those recommendations. H.R. 10 does not. I hope that we will be able to improve the bill, amending the budget provisions and other provisions that are far too weak.

Mr. HOEKSTRA. Mr. Chairman, I yield 2 minutes to the gentlewoman from Virginia (Ms. JO ANN DAVIS), a member of the committee.

Mrs. JO ANN DAVIS of Virginia. Mr. Chairman, I rise in support of H.R. 10, the 9/11 Recommendations Implementation Act, and I thank my friend and colleague from Michigan for yielding me this time.

The legislation before us today contains the most substantial reform of the United States intelligence community since its inception in 1947 and it contains five major improvements to the current intelligence community.

First and foremost, this legislation creates an empowered National Intelligence Director who is the head of the intelligence community and the principal adviser to the President for all intelligence matters. Because this new position will be separate from that of the director of the Central Intelligence Agency, we will finally have an individual whose sole purpose is to direct the overall functioning of the intelligence community.

Second, the legislation provides a new National Intelligence Director with enhanced management authorities to coordinate and manage all aspects of intelligence operations as well as improved authorities over and control of intelligence budgets.

Third, the legislation vests in the National Intelligence Director the responsibility and authority to dramatically improve information sharing across the government. We are all too familiar with the failure of agencies to communicate vital information with each other prior to 9/11.

Now the head of the intelligence community will have the ability to implement an integrated technology network and establish uniform security standards that can break down stovepipes and promote the fullest information sharing possible.

Fourth, this legislation makes the National Intelligence Director responsible for strengthening analysis across the community and for ensuring the sufficiency and quality of human intelligence and other intelligence capabilities.

Finally, the legislation creates a National Counterterrorism Center that will be responsible for analyzing and integrating all intelligence pertaining to terrorism and counterterrorism. No longer will the left-hand not know what the right hand is doing with respect to counterterrorism activities.

As the central knowledge bank of all terrorist and counterterrorist information and the central point for strategic operational planning, we can now take the fight to the terrorists in the most coordinated manner possible.

It is vital that the intelligence community reform better align U.S. resources and management authorities to effectively target both the terrorist threats of today, as well as new threats of tomorrow. I strongly urge support of the legislation.

Ms. HARMAN. Mr. Chairman, it is my privilege to yield 2 minutes to the gentleman from Minnesota (Mr. PETERSON), a member of our committee.

Mr. PETERSON of Minnesota. Mr. Chairman, H.R. 10 is not the best bill that this body could produce. H.R. 10, as introduced, included a curious provision in Title V, section 5021 of the bill would give the President the authority to draft a completely new intelligence reform bill and submit it to Congress for only an up or down vote with no ability to amend.

Now, the Permanent Select Committee on Intelligence, the committee with the expertise and jurisdiction on restructuring the intelligence community, voted on a bipartisan basis to strike this provision. But the Committee on Rules overruled the Permanent Select Committee on Intelligence and left section 5021 in the bill before us today.

This provision would create the same mess that we already have when we are dealing with Trade Promotion Authority, a situation where the Congress has almost no say in what the administration does in our trade agreements. Why would we want to set up another system like that? It would undermine Congress' ability for effective oversight of our intelligence operations, and that is clearly not the right thing to do.

In addition, I do not understand why the House Republican leadership is ignoring the President's endorsement of the Senate's bill and so much of what the 9/11 Commission recommended Their approach is not going to help us get to where we need to go on this bill and get done in a constructive and timely manner.

I believe the proposed National Intelligence Director should have strong authority in the areas of budget control, appointment of senior officials in the intelligence community and assignment and tasking authority of personnel, and we should have a strong National Counterterrorism Center with responsibilities for assigning roles and planning counterterrorist operations.

Mr. Chairman, I think that the bill passed by the other body is much preferable to H.R. 10 in all of those areas, and I think that is the direction that we should go.

Mr. HOEKSTRA. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Texas, (Mr. THORNBERRY), a member of the committee.

Mr. THORNBERRY. Mr. Chairman, understandably in this debate, we tend to emphasize our differences, but I think it is important to step back a little bit and remember that the basic premise upon which the 9/11 Commission report is based and upon which this legislation is based is that the arrangement of the intelligence organizations we had for the Cold War is not necessarily the best arrangement for today or for tomorrow.

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That should not be surprising. It has been true of the military, and we are making changes in the organization of the military. It has been true of our homeland security organizations, and we have made changes there; and it is also true of our intelligence organizations, and this bill begins to make those changes as well.

The issues related to whether we need an overall director of national intelligence have been around since the second Hoover Commission of 1955. CRS has documented about a dozen or more studies that have made this point over the years since then. This bill does it.

There has been unanimous agreement since September 11 that we need to have better fusion of intelligence from all sources, and this bill formalizes that with the National Counterterrorism Center.

There is concern about providing intelligence for the warfighters, and this bill tries to strike the balance to make sure that the warfighters on the ground get the information they need but, at the same time, it recognizes that if we are going to be successful in preventing terrorism, not just managing terrorism, but preventing terrorism, we have to do a better job of bringing that intelligence together and getting it to the policymakers.

This is an important step, but it is only a step, because as the 9/11 Commission recognized, moving boxes on an organizational chart is important, but there are other things that need to be done with the border, with economic development assistance, with public diplomacy, and a variety of otner issues that they brought out, and this Congress and the government need to follow that up as well.

Ms. HARMAN. Mr. Chairman, I appreciate the comments of the last speaker and welcome him to the committee.

It is now my privilege to yield 2 minutes to the gentlewoman from California (Ms. ESHOO), who is ranking member on one of our subcommittees, a new member of our committee, and my California sister.

Ms. ESHOO. Mr. Chairman, I thank the distinguished ranking member of the House Select Committee on Intelligence for yielding me this time.

Today I think it is an historic opportunity for the Congress to confront the critical threats to our national security. But the House Republican leadership unfortunately has refused to address this problem in a comprehensive and bipartisan manner.

Last April, 6 long months ago, all 9 Democrats of the House Select Committee on Intelligence introduced a reform bill. We incorporated the lessons from the congressional joint inquiry into 9/11 and the intelligence failures on the Iraqi weapons of mass destruction. The 9/11 Commission, inspired by the families of the victims, built on our bill and they developed a comprehensive set of recommendations to overhaul the intelligence community.

The Senate, the other body, embraced the 9/11 Commission recommendations in a bipartisan manner by a vote of 96 to 2 and passed a bill that the 9/11 families support and the Commission fully endorsed. No amendment was accepted that reduced the authority of the national intelligence director or the mission of the National Counterterrorism Center. This is the bill I believe we should be voting on today.

Mr. Chairman, H.R. 10 is not such a bill. It is not endorsed by the 9/11 Commission, and it does not fulfill the mandate of the victims' families, as well as I think the hopes and aspirations of the American people.

Last week, at the House Select Committee on Intelligence markup, I offered an amendment to strengthen the quality of analysis in National Intelligence Estimates. That is the ultimate document that is offered to the President and to the Congress to rank and to determine what the threat is. Have we not learned, I say to my colleagues, the failures that were incorporated in that national intelligence estimate that led us to war, and this country is at war today.

I think we can do better. I believe that we should be emulating what the Senate has done, do this on a bipartisan basis. I do not believe this fits the bill.

Mr. Chairman, I rise with serious concerns about H.R. 10. Today we have a historic opportunity to confront the critical threats to our national security, but the House Republican leadership has refused to address this problem in a comprehensive, bipartisan manner.

Last April, all 6 months ago, Democrats of the House Intelligence Committee introduced an intelligence reform bill.

We incorporated the lessons from the Congressional Joint Inquiry into 9/11 and the intelligence failures on Iraqi weapons of mass destruction. The 9/11 Commission—inspired by the families of victims—built on our bill and developed their comprehensive set of recommendations to overhaul our Intelligence Community and congressional oversight of intelligence.

The other body embraced the 9/11 Commission recommendations in a bipartisan manner, and by a vote of 96–2 passed the bill that the 9/11 families support and the 9/11 Commission fully endorsed. No amendment was accepted that reduced the authority of the National Intelligence Director, or the mission of the National Counter Terrorism Center. This is the bill we should be voting on today. H.R. 10 is not such a bill. It is not endorsed by the 9/11 Commission, and it doesn't fulfill the mandate of the victims' families and the American people.

Last week at the House Intelligence Committee, I offered an amendment to improve the quality of analysis in National Intelligence Estimates. The amendment required intelligence analysis to provide a better analysis of the quality of their sources and the uncertainties in their judgments. It was defeated on a party-line vote.

Ultimately, I supported Title I of H.R. 10 in Committee markup last week, because it contained 3 bipartisan amendments which made this bill a better reflection of the 9/11 Commission's recommendations.

The bill the Rules Committee brings to the floor today includes none of the bipartisan amendments passed, and rejects many of the core recommendation of the Commission.

This bill falls far short of the 9/11 Commission's recommendations—far short of what the other body passed overwhelmingly. The National Intelligence Director doesn't have the necessary authorities to direct the intelligence community or to move resources when priorities change. The National Counter Terrorism Center will have a director without clout, with a limited mission, and with little ability to coordinate counter terrorism operations across the Federal Government.

And to make matters worse, the Republican leadership has included so-called "poison pills " in the bill—such as anti-immigration policies dressed up as counterterrorism, and a provision that could undue our treaty obligations under the Convention Against Torture. This is nothing but a cynical ploy, an attempt to label those Democrats who will not support this weak legislation as somehow "weak" against terrorism.

Mr. Chairman, our responsibility today is to strengthen our national security as the 9/11 Commission recommended. We can honor the 9/11 families and pass the bill they've been fighting for for 3 years. H.R. 10 simply isn't that bill.

Mr. HOEKSTRA. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Illinois (Mr. LAHOOD).

Mr. LAHOOD. Mr. Chairman, I thank the chairman for yielding me this time.

I tried to focus earlier on, under consideration of the rule, my many long list of things that those of us on this committee have been doing since 9/11, and that the Bush administration has been doing. We have done a lot. We have really tried to do an awful lot to dismantle al Qaeda, to secure America, to secure our airports, and all of it long before there was ever a 9/11 Commission and long before there was a 9/11 Commission report.

This Congress, President Bush and his team, have done an extraordinary job, and the proof of it is that America has not been attacked for 3 years. We deserve this credit for that. We ought to take the credit for it. This was before there was any kind of a report printed. Now, all of a sudden, there is this report that comes out that says we need another level of bureaucracy. I do not think we need another level of bureaucracy. We do not need anybody else on top.

There has been a lot of coordination and a lot of communication that has taken place since 9/11. The FBI has been reorganized under Director Mueller and he is doing a good job, and we have a new CIA director and he is doing a good job. He has a new team in place. The CIA has embedded agents in the FBI and the FBI has agents embedded in the CIA who have created JTTFs all over the country. We have the TTIC that is operating very well. These acronyms maybe do not mean much to anybody, but there is a lot of activity that has taken place in this government under the leadership of President Bush and under the leadership of Congress, and to put another layer of bureaucracy, another layer of people, I think, makes no sense at all.

One of the criticisms prior to 9/11 is that this kind of bureaucracy, there was too much bureaucracy; we do not need any more bureaucracy, we do not need any other layers of government. This position would not have prevented 9/11. Had this position been in place prior to 9/11, it would not have prohibited 9/11.

I urge Members to look carefully at this bill. I plan to vote against it.

Ms. HARMAN. Mr. Chairman, it is my pleasure to yield 2 minutes to another committee member, the gentleman from New Jersey (Mr. HOLT).

Mr. HOLT. Mr. Chairman, I thank the gentlewoman for yielding me this time. I commend the chairman and the ranking member for their leadership.

I rise today in opposition to H.R. 10, a partisan and wholly inadequate bill, a pale shadow of the recommendations of the 9/11 Commission. It does not come close to addressing many of the key issues raised by the Commission. I should underscore that this is not an academic exercise, this is not about boxes on a bureaucratic organization chart, Mr. Chairman; these are life and death issues, as the families of more than 100 9/11 victims would attest.

Let us remember why we are here. There are well-publicized failures and shortcomings in our intelligence, failures of intelligence agencies to communicate in the days and months leading up to 9/11, absence of anyone coordinating activities, absence of self-criticality, accepting and perpetuating unfounded reports of weapons in Iraq. That is what we are trying to address.

But this legislation does not give the intelligence director the personnel and budgetary authority to coordinate activities or to direct communications. There is nothing in here to guarantee that the intelligence community does not, once again, fall victim to false assumptions and group think.

Furthermore, H.R. 10 includes other changes unjustified by the 9/11 Commission or by the committee's own findings.

I am grateful that the Committee on Rules has allowed the amendment of my colleague, the gentleman from New Jersey (Mr. MENENDEZ) to come to the floor. It is clearly a superior alternative to H.R. 10 for many reasons, not the least of which it rejects the noxious provisions of H.R. 10 that would mindlessly shred civil liberties while sanctioning the outsourcing of torture of unconvicted terrorist suspects by transferring them to other countries with deplorable human rights records.

I urge my colleagues to reject H.R. 10 and to vote for the Menendez substitute.

Our constituents have asked Congress to reform the intelligence community because of a self-evident lack of coordination among agencies, a confirmed failure to communicate critical threat information, and repeated instances of the use of questionable assumptions and faulty conclusions in key intelligence assessments. The bill before us addresses none of these deficiencies in a meaningful way, and in many cases does not address the key problems at all.

With regard to this legislation's proposed budget and personnel authorities for the National Intelligence Director, I share the view expressed by 9/11 Commission chairman Tom Kean (Washington Post, October 1): "This is not an area where one can compromise," he said. "If you're not going to create a strong national intelligence director, with powers both appointive and over the budget, don't do it."

SERIOUS FLAWS WITH H.R. 10

The bill before this House would also add other changes unjustified by the 9/11 Commission or by the committee's own findings. H.R. 10 fails to address the ongoing problems in the intelligence community with regard to information sharing. Congress must craft specific legislative language—not simply vague guidance to the executive branch—to create a mechanism for ensuring the sharing of information. I posed an amendment that would have done that by implementing the thoughtful, bipartisan solution incorporated in the Collins-Lieberman bill.

H.R. 10 also ignores the need for Congress to create an independent capability for judging the veracity of both finished assessments—be they NIE's or PDB's—and the sources that underpin those assessments. The executive branch's past failures in the area of "Red Teams" or "Team B's" have been well documented, including by the 9/11 Commission in its final report. Omitting this glaring necessity is simply irresponsible.

HOUSE INTELLIGENCE COMMITTEE MARKUP-UP OF H.R. 10. BIPARTISAN IN NAME ONLY

With very few exceptions, H.R. 10 was not drafted in a bipartisan manner. During September's House Intelligence Committee markup of H.R. 10, a number of amendments offered were in the spirit of strengthening H.R. 10 and strengthening our capabilities against terrorists.

To be accurate, the Committee approved 3 amendments in a bipartisan fashion.

The Gentlelady from California, Jane Harman's amendment to add an independent Privacy and Civil Liberties Oversight Board, similar to a provision of S. 2845, passed on a bipartisan vote of 16–3. An amendment by Representative Gibbons to increase budget-reprogramming authority, modeled on the Intelligence Transformation Act (H.R. 4104), passed 12–7. The Committee also accepted on a voice vote an amendment by U.S. Representatives Peterson and Boswell to strike a provision in Title V of H.R. 10 that would have allowed the President to ignore statutory direction and reorganize the Intelligence Community with only an up-or-down vote from Congress. Such a provision could conceivably be used to erase the reorganization of the intelligence community in Title I. It would also have undermined by HPSCI's oversight of intelligence community reorganization.

I note for the record that when the amended H.R. 10 went before the Rules Committee, these bipartisan provisions were stripped out, thus demolishing any claims that H.R. 10 was a bipartisan bill.

An independent bipartisan commission has determined that systemic problems across multiple agencies contributed to the 9/11 catastrophe, in particular, and that the essential problems that led to 9/11 remain unaddressed. The executive branch has not cleaned up its act. I certainly heard nothing in the multiple hearings in the HPSCI to convince me that the major problems have been solved.

Also, H.R. 10 makes no effort whatsoever to reform how the Congress handles our oversight functions in the national security arena. The Menendez substitute does begin to take some steps in this direction, but I hope my colleagues on both sides of the aisle understand that we have much more work to do in this area, as the Commission has made very clear in its final report.

Mistakenly, H.R. 10 provides new authority allowing the President to completely undo the intelligence reforms mandated by Congress. Under this provision a presidential plan to reorganize the intelligence community would be guaranteed an up or down vote, with no amendments, within 90 days of submission to Congress.

BACKSLIDING ON HUMAN RIGHTS

Clearly, supporters of this bill learned nothing from the Abu Chraib prison debacle that stained our efforts in Iraq, when disclosed less than 6 months ago. H.R. 10 makes an exception to America's legal obligations under the U.N. Convention Against Torture and Other Forms of Cruel and Inhuman or Degrading Treatment or Punishment for some aliens as well as terrorists and criminals. Indeed, I have introduced a bill (H.R. 4951) that would allow independent monitoring and mandate that interrogations of prisoners and detainees in the war on terrorism be video recorded, something that I understand that Pentagon has finally started doing, albeit on a limited basis. This proposal in H.R. 10 to potentially sanction further abuse in third world countries is simply unconscionable and it should be categorically rejected by both the House and the Senate.

MORE EROSION OF CIVIL LIBERTIES AND PERSONAL PRIVACY

H.R. 10 would allow the U.S. government to spy on individuals without proving they are connected to a foreign government or terrorist group. Since when did we decide to bring back the "good old days" of allowing our intelligence community to spy on Americans without impunity? We know what happened the last time we allowed our intelligence community to run amok here at home: spying on anti-war groups whose only agenda was to end our nightmare in Vietnam and make the government accountable to the people it was created to serve. This is a back-door effort to create a domestic spy agency without any genuine public debate or examination of the perils of such a proposal, and it too should be roundly rejected.

COLLINS-LIEBERMAN-MCCAIN AND SHAYS-MALONEY: REAL BIPARTISAN REFORM

Let me turn now to a more positive, bipartisan alternative to H.R. 10.

In my view, the Collins-Lieberman-McCain bill provides the best available vehicle for strengthening the intelligence community, and I support Mr. MEMENDEZ's substitute which is based on that. The 9/11 Commission and the 9/11 families have endorsed this approach and it was reported unanimously out of the Senate Government Affairs Committee, and our Senate colleagues are on the verge of passing that bill as we speak. The Administration also released a Statement of Administration Policy supporting that bill, albeit with some caveats.

The Menendez substitute to H.R. 10 establishes a National Intelligence Director with strong authorities over the Intelligence Community's budget and a decisive role in appointing the heads of all elements of the Intelligence Community. In this way, it is consistent with the recommendations of the 9/11 Commission. The creation of a strong National Intelligence Director with strong authorities over budgets and agency heads was also the number one recommendation of the bipartisan, bicameral Congressional Joint Inquiry into 9/11.

If the National Intelligence Director is going to have real power, he or she must have stronger budget and hiring authority than H.R. 10 proposes. The only way to get a dozen intelligence agencies to work together to help defeat the violent, extremist Islamic insurgency we are facing is to have a single director with real power.

The Menendez substitute also has the advantage of being a "clean" bill. It focuses exclusively on the 9/11 Commission's recommendations. In contrast, H.R. 10 is a 543-page bill loaded with provisions unrelated to the 9/11 Commission's recommendations. H.R. 10 makes changes to immigration laws that have nothing to do with the 9/11 Commission's recommendations, and are bad policy. Our legislative purpose must be to make American safer—not to undermine civil liberties; expand authorities for domestic spying, or erode the rights of immigrant communities.

Finally, the Collins-Lieberman-McCain bill is genuinely bipartisan, and thus the Menendez substitute is, by extension, bipartisan. Making America safer is not a Republican issue or a Democratic issue—it is an American issue. As my colleague, the Gentlelady from California, Ms. HARMAN, has observed on numerous occasions, terrorists are not going to check our party labels before they attack us.

I understand that the American Civil Liberties Union and other civil rights advocacy groups expressed concern about the Collins-Lieberman measure that was passed by the Senate. Specifically, the ACLU stated that "senators failed to address concerns about the creation of an "Information Sharing Network," a system that the ACLU said lacks privacy and civil liberties safeguards." I understand and share their concerns, but I believe the Menendez substitute—which does create a civil liberties board—addresses this issue. I will also encourage the House-Senate conferees on this legislation to strengthen these provisions as well.

I want to close by appealing to my colleagues to remember why we're here: to pass legislation that implements the recommendations of a bipartisan commission that was created out of both the pain and the hopes of the families of 9/11. Those families have endorsed the Collins-Lieberman Bill. They will freely admit it is not perfect, a sentiment I share. But they know, as I do, that it is a far superior proposal to the one we're debating today and it is for those reasons I urge my colleagues to support the Menendez substitute to H.R. 10.

Mr. HOEKSTRA. Mr. Chairman, I yield 1 minute to the gentleman from Kansas (Mr. TIAHRT).

Mr. TIAHRT. Mr. Chairman, in July, the 9/11 Commission released its report. This report detailed the terrorist mindset, the hatred, the religious fanaticism, the unimaginable degree of commitment to harm us and destroy our culture. Today we are considering legislation based on the 9/11 Commission's recommendations that is making the most sweeping changes since the CIA was created more than 50 years ago. I believe the most important part of the bill is the creation of a national intelligence director for intelligence community management, which will unite the intelligence community, leaving the day-to-day duties of running individual agencies to their directors.

This legislation mandates a network designed to share information across agencies and promote the distribution of information. The legislation will also reduce the barriers of our domestic law enforcement and forward intelligence activities by creating a National Counterterrorism Center.

This bill has the strong support of all of the committees of jurisdictions, so I ask my fellow Members to give it their full support. September 11 showed us the danger of Islamic terrorism. It also taught us the deficiencies of our own system. It is important, as Members of Congress, we do not let it happen again, and for that reason I urge that we pass this legislation.

Ms. HARMAN. Mr. Chairman, it is now my privilege to yield 2 minutes to the gentleman from Maryland (Mr. RUPPERSBERGER), a member of our committee.

Mr. RUPPERSBERGER. Mr. Chairman, I applaud Senators COLLINS and LIEBERMAN for their bill which was endorsed by the 9/11 Commission, the 9/11 families, and the President. This bipartisan bill passed the Senate yesterday 96 to 2 and shows us that Congress is capable of getting it right.

The Senate bill is not perfect, but it is tough, historic reform. Of course, there are other important national security issues, like border security, and we must and we will deal with them.

Now is the time to throw partisan politics out the window. Now is the time to come together on behalf of the American people. This is about life and death. This is about the national security of our families and our communities. The bipartisan 9/11 Commission did an outstanding job for 20 months, with 1,200 witnesses and millions of documents, and reached a unanimous conclusion. The country stands behind their work and their recommendations. We need to move forward and follow the Commission's incredible work.

The most important recommendation we can implement is that of a strong national intelligence director with real authority and budget control. When I was Baltimore County Executive, I managed over 15,000 people. A leader needs real budget authority to be able to give people the resources they need to get the job done and hold them accountable for performance.

We owe it to the 9/11 families, we owe it to the victims, we owe it to the 9/11 Commission, and we owe it to the American people to set our politics aside and get it right.

This should not be about turf battles. I urge all Members to vote their conscience and vote for the Menendez substitute amendment, which is the closest to the Senate bill.

Mr. HOEKSTRA. Mr. Chairman, I yield 1 minute to the gentleman from New York (Mr. SWEENEY), my colleague who has fought for the recovery of New York, and a member of the Select Committee on Homeland Security.

Mr. SWEENEY. Mr. Chairman, I thank the chairman for yielding me this time.

In the brief time that I have, I briefly want to say a couple of things. One, this bill is important for a lot of structural reasons, and if we think about the fact that we have, in Congress, not done such a great job, dating back to the 1970s, as the gentleman from Texas (Mr. THORNBERRY) pointed out earlier. This is a huge and significant step.

So for those out there who say we still need to do more, or we have some disagreements and we need to get it right, I would say this. I think this bill strikes a perfect balance at this particular time, and I have every bit of confidence that the new chairman of the Select Committee on Intelligence will be able to get us to exact point that we all can agree on and where we all want to be.

Some would argue let us centralize it more; some would argue let us give it more power. Others on the other side say it is another bit of bureaucracy and we do not need it at all. I will say this simply. Deciding to establish a national intelligence director and establishing a National Counterterrorism Center will end the buck-passing that has occurred all too often around here.

I think it is a bold and significant stroke. I think it is the right balance at this point, and I also would point out for first responders that in this bill, this Congress takes its first steps forward to making those fundings risk-based. I salute the chairman for that.

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Ms. HARMAN. Mr. Chairman, I yield 1½ minutes to the gentleman from California (Mr. SCHIFF).

Mr. SCHIFF. Mr. Chairman, I thank the gentlewoman for yielding me time.

It used to be an axiom of American politics that partisanship ended at the water's edge. We have no greater responsibility to our constituents than the security of this Nation.

On September 11, 2001, Republicans and Democrats died together in the World Trade Center and the Pentagon. Today tens of thousands of American troops, Democrats and Republicans alike, are battling insurgents and chasing al Qaeda and the Taliban in Afghanistan. Our police, firefighters and air marshals, Democrats and Republicans alike, are working every day to keep Americans safe.

In return, our troops, our first responders, and the American public expect us to organize the government so that we are better able to perform the mission of the defense of this country. In late July, the 9/11 Commission produced its report and laid out a series of recommendations that they believe would best ensure the security of the country. I said then and I say again today that the 9/11 Commission's recommendations should be the basis for any actions taken by this Congress in reorganizing and best configuring this government's response to the threat of terrorism.

The Menendez substitute closely adheres to the recommendations of the commission. It has no extraneous provisions that are not central to the mission of securing this Nation from terrorism. I also note that it has the support of the 9/11 families and their voices are ones we should not ignore. It grants more authority to the National Intelligence Director to enact real reforms in the intelligence community and creates a more powerful national counterterrorism center than the one proposed by the base bill. And, most important, it includes a mandate supported by the commission to strengthen Nunn-Luger's cooperative threat reduction and the Proliferation Security Initiative.

The threat of a nuclear weapon falling into the wrong hands is the most significant threat we face.

Mr. HOEKSTRA. Mr. Chairman, I yield 1 minute to the gentleman from Georgia (Mr. COLLINS).

Mr. COLLINS. Mr. Chairman, I rise in support of H.R. 10. I know we have made a lot of changes over the last 3 years in our intelligence community, with the most recent being a change in the DCI, from Mr. Tenet to Mr. GOSS. And I think that is probably the most important change that has been made.

The DCI is an important position. It will be replaced by the National Intelligence Director. What concerns me, though, Mr. Chairman, is how far Congress will go in trying to manage or micromanage the intelligence community. The intelligence community is one of the most important agencies of our government. They gather information. They analyze information. And they present that information to the Commander in Chief. Lives depend on that information and we should never do anything that will stand in the way or weaken the efforts of our war fighters.

I will support this bill. I like this bill much better than I do anything I see from the other body or any substitute that I have heard about. I urge my colleagues to support H.R. 10.

Ms. HARMAN. Mr. Chairman, I yield myself the balance of my time to close the debate.

Mr. Chairman, previous speakers have detailed the strength of the Collins-Lieberman-McCain bill and the weaknesses of H.R. 10, and they have done an excellent job. I would like to close by reminding everyone what is at stake.

We have had multiple intelligence failures over the last 3 years with catastrophic consequences. We failed to anticipate and stop the attacks of September 11. Then our intelligence agencies failed to provide an accurate assessment of Iraq's weapons programs as was conclusively established with the release of the Duelfer Report. And we failed to predict the post-war looting and the strength of the post-war insurgency in Iraq.

The President seems to be in denial. He has not even acknowledged the existence of the Duelfer Report. But we cannot afford to be in denial. The terrorists are preparing their attacks right now. We need to act not as Democrats and not as Republicans, but as Americans.

A spokesman for the Speaker stated last week that the purpose of this exercise is to "spank Democrats." I think the purpose of this exercise is to prevent, deter, and disrupt the next terrorist attack with the best intelligence we can field. I think the purpose of this exercise is to make America safer. I think the American people agree with me, and I urge us to adopt the bipartisan Menendez substitute.

Mr. Chairman, I yield back the balance of my time.

Mr. HOEKSTRA. Mr. Chairman, I yield 1 minute to the gentleman from Pennsylvania (Mr. WELDON).

Mr. WELDON of Pennsylvania. Mr. Chairman, I rise in support of this legislation, and I want to thank the distinguished chairman of the committee for his outstanding work on this issue.

I want to also say that this body has been at the forefront of dealing with issues prior to 9/11 that if the CIA and other agencies had paid attention to us would have allowed us to be better prepared than we were on September 11. In fact, it was the House Committee on Armed Services that put language in three successive defense bills starting in 1999 calling for the creation of an interoperability center, a data fusion center.

That initiative was not established and set until January of 2003, which today is called the TTIC. We had language in three successive bills to do that in the previous Congress, the previous administration. And the CIA on November 4 of 1999 in my office said, we do not need that capability. That was 2 years before 9/11.

It has been this body and the various committees that have done a good job in allowing us through efforts like the Gillmor Commission to make recommendations that could have helped us. That did not happen. But the bill we have today is a good bill.

The alternative, which I understand was crafted a matter of days ago or hours ago, is certainly not something I can support. I urge my colleagues to support the bill.

Mr. HOEKSTRA. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am disappointed by some of the partisan tone that at times permeates through this debate. The Permanent Select Committee on Intelligence has been racked by a series of failures over the last 13 years, not the last 3: the failure to anticipate the World Trade Center bombing in 1993; the failure to anticipate the attacks on our barracks in Saudi Arabia; the failure to anticipate the attack on the USS *Cole* or our embassies in Africa.

But there are many hard-working men and women in the CIA and in the intelligence community who have done a phenomenal job. This bill fixes the problems.

We would have had an opportunity in a bipartisan way to move this bill forward, but our colleagues on the other side of the aisle walked away from any bipartisan amendments and only wanted one.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore (Mr. LINDER). The time for general debate for the Permanent Select Committee on Intelligence has expired.

Under the rule, the Chair now recognizes from the Committee on Armed Services, the chairman, the gentleman from California (Mr. HUNTER), and the gentleman from Missouri (Mr. SKELTON) each for 15 minutes.

The Chair recognizes the gentleman from California (Mr. HUNTER).

Mr. HUNTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I understand that my partner on the Committee on Armed Services, the gentleman from Missouri (Mr. SKELTON), will have 15 minutes also.

Mr. Chairman, we do have an opening statement, and we do have a number of Members who wish to speak on the bill.

Mr. Chairman, this is a very important piece of legislation, and the Committee on Armed Services had a very important role here. I think we want to applaud all the other committees that participated in putting this bill together, but our role was to a large degree a protective role. It was a role of making sure that the men and women who are fighting right now in the war, fighting in theaters in Iraq and Afghanistan have that lifeline between themselves, whether it is a Special Forces team or a Marine platoon in Fallujah or an Army company in Tikrit, that they have that lifeline between the war fighters on the ground and our national platforms, including our aircrafts, our UAVs and our satellites; maintaining that lifeline of immediate information to the war fighters so they can prosecute this war against proper terror and protect their soldiers, sailors, airmen and Marines.

So when we look at this creation of the National Intelligence Director, which I think is a needed thing and is an important step for our country, a director who can set rules for the dissemination of intelligence and information across the broad scope of American agencies so that an agency that can use a piece of information is able to get it without having to go to great length. And so that our classification system, when you decide who is going to be allowed to listen to certain things or hear certain things, it has a set of rules so that they can see what they need to carry out their job in protecting our country.

The National Intelligence Director is going to do all of those things. He is also going to set this broad strategic plan and this blueprint for our intelligence apparatus, and he is going to develop the intelligence budget. And he is going to make sure that that budget is moved through the various wickets of the bureaucracy and ends up buying the right kind of things, developing the right kind of capabilities, and bringing to this important team the right kinds of people.

Now, the Department of Defense, but more specifically people on the ground who wear the uniform of the United States, have an enormous stake here. They need to have that lifeline of intelligence available at all times; and it needs to come from all different sources. So they need to sit at the table in partnership with the National Intelligence Director when we are talking about information that is going to make a difference on the battlefields. And in this bill, different from any other bill, we do that.

We maintain that partnership between people in uniform, and this direction comes from having lots of names, lots of discussions with people from war fighters in the field right up through the directors of our intelligence units. To do that, to make sure that that partnership is maintained, we have maintained the Department of Defense, not in developing the budget but in the execution chain of that budget so that you have informed buyers when you are buying things like satellites and other types of platforms, and also when you are choosing the head of these agencies like the NSA, the NRO, geospacial, so that while the Department of Defense could overrule the DCI in the old days, today it is going to be a true partnership. It is going to be true concurrence, where the National Intelligence Director and the Secretary of Defense need to concur on a decision or on a recommendation for the head of the NSA, very important intelligence apparatus.

So we have true concurrence, and that is another way to maintain this important partnership. Right now, Mr. Chairman, we have people sitting in rooms deciding where our intelligence assets are going to look next, whether they are going to look at some place over in Africa that is an important area or maybe some place up in the hills of Pakistan and they are making decisions as to what we look at next. And this partnership, this collaboration, is working and this bill today, Mr. Chairman, that we are producing as written does maintain that partnership. I would urge that everybody support it.

Mr. Chairman, I reserve the balance of my time.

Mr. SKELTON. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in reluctant support of H.R. 10. Mr. Chairman, this bill is a bill to reorganize our Nation's intelligence community. This bill proposes to reform the organization and structures of national intelligence capabilities in an effort to better protect us against catastrophic terrorist attacks similar to those of 9/11. Of course, that is a laudable goal.

The bill that is before us is far from perfect. Many of us on this side believe this bill does not go nearly far enough in revamping our national intelligence system. In addition, unnecessary provisions on immigration and the PATRIOT Act have been added.

This bill could and should be a better product. We can make it better if we adopt the Menendez substitute amendment which will bring the bill into line with the recommendations of the 9/11 Commission as well as the Collins-Lieberman-McCain bill in the Senate that was passed yesterday.

The bill before us creates a new National Intelligence Director with the authority to develop, manage, and reprogram the budget of the new intelligence.

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The Menendez bill creates real budgetary power. The National Intelligence Director is authorized to transfer personnel and appoint key leaders throughout the intelligence community. Moreover, under this bill the National Intelligence Director is expected to establish the guidelines and priorities of the entire intelligence community. Better coordination is the aim of the Menendez substitute.

Mr. Chairman, the foremost concern that I have about the bill relates to battlefield intelligence. The soldiers, sailors, airmen and Marines are the ones on the front lines of the war on terror. We all know that. The intelligence community both serves and relies on them. Forward deployed, they are the ones collecting much of the intelligence. In fact, more than 80 percent of our Nation's intelligence capability is derived from Department of Defense resources. I am hoping that whatever conference agreement is achieved on this bill will recognize this and respect the role and unique responsibilities of the Secretary of Defense.

I do, however, want to register my unhappiness over the process that brought us to this point. This bill was written behind closed doors.

I would also like to note that although the Committee on Armed Services marked up this bill, several titles of the bill have made it to the House floor, Mr. Chairman, without any committee consideration of any committee of the House of Representatives. Moreover, several amendments adopted in the committee markup are not included in the text of the bill before us. That is just simply wrong.

One omission is the proposed creation of a civil liberties oversight board to oversee the issuance of intelligence-related legal and regulatory guidance to ensure consistency with our Nation's Constitution and our civil rights law.

Another provision that should be included in this bill would establish an independent Inspector General with the responsibility to investigate alleged fraud, waste and abuse under the new system and within the office of the National Intelligence Director. This is important, but it is not there.

Other provisions that should be in this bill would improve our national ability to reduce the proliferation of weapons of mass destruction around the world. We all know that it is the most dangerous, Damocles' sword that hangs over the head of the free world. H.R. 10 does not go far enough in curbing the flow of nuclear, chemical or biological weapons to terrorists. Robust counterproliferation programs, in my opinion, are essential to winning the war against terror.

In the end, Mr. Chairman, I believe all of us support a better intelligence capability, and toward that end, I will support H.R. 10. However, as I said earlier, reluctantly, in my view, though, this would be a much better, better bill now if the process that led to its consideration had been a full and bipartisan one.

We have a chance to improve this bill today. We can do it simply by adopting the Menendez substitute, and I urge my colleagues to support that amendment when it comes before this body.

Mr. Chairman, I reserve the balance of my time.

Mr. HUNTER. Mr. Chairman, I yield 2 minutes to the gentleman from New Jersey (Mr. SAXTON) who is the chairman of the Subcommittee on Terrorism, Unconventional Threats and Capabilities.

Mr. SAXTON. Mr. Chairman, I thank the chairman for yielding me time.

Mr. Chairman, I rise in support of H.R. 10. This bill, as it has already been said, creates a National Intelligence Director which I think is extremely important, but I also think it is important that it maintains the director of Central Intelligence as a key player and a Secretary of Defense as the third key player.

This, from our point of view on the Committee on Armed Services, is an extremely important point. That being so, because the Secretary of Defense has traditionally been responsible for managing those defense intelligence agencies such as NGA and NRO and NSA and others which have done a very credible job in their areas of expertise.

This is extremely important today because of the support that is necessary for the intelligence community to give directly to the warfighter. Mr. Chairman, the methods of collection and necessity of collecting have changed dramatically over the last decade or so. Prior to the early 1990s, we had the necessity of collecting information on the Soviet Union with big armies, with an arsenal of weapons that we knew about, with fighting capabilities that we knew about.

Today, we collect on a completely different adversary. We collect on someone who we know little about, with whom and who has been very difficult to infiltrate their organizations because of the nature of the culture. So, intelligence has changed and so have the defense intelligence agencies that collect on the new threat.

Today's intelligence agencies are able to answer questions such as these: Where am I, and what does my environment look like? Where exactly is my adversary, and what does his environment look like? What capabilities does the adversary appear to possess? Are new situations or capabilities emerging from my adversary? What are my adversary's centers of gravity, limitations and vulnerabilities? And this list goes on. These are questions that were important historically, but they are more important today. Our defense intelligence agencies have evolved and changed to answer these questions.

Mr. SKELTON. Mr. Chairman, I yield 5 minutes to the gentleman from Tennessee (Mr. COOPER).

Mr. COOPER. Mr. Chairman, I thank the gentleman from Missouri for the time.

Mr. Chairman, this is an extremely important debate. All Americans have a stake in the outcome of this debate, and it is a fascinating set of issues because, on the one hand, basically supporting the provisions of the Menendez substitute, we have none other than the President of the United States, the 9/11 Commission, most all of the 9/11 families, 96 United States Senators, including all 51 Republican Senators. We have such a notable defense expert such as the chairman of the Senate Committee on Armed Services, Mr. WARNER. That is on one side of the debate.

On the other side of the debate, in favor of H.R. 10, a bill that came out of nowhere, a purely partisan bill, we have the gentleman from California (Mr. HUNTER), the chairman of the House Committee on Armed Services.

Now, which side would most House Members choose to support? The President, the 9/11 Commission, the 9/11 families, 96 Senators, 51 Republican Senators, including Senator WARNER, or our colleague, the gentleman from California (Mr. HUNTER)? I suggest that should be a pretty easy question for most Members of this House to decide.

What really matters is the substance, and our friend, the gentleman from California, has said many times, including in today's Wall Street Journal, that it is vitally important to preserve that link between the warfighter and intelligence asset. I could not agree with the gentleman from California more. I think all Members of the committee are in favor of preserving that link. I would submit to the gentleman that the White House and our President are in favor of preserving that link. That is why they have endorsed basically the Collins-Lieberman bill, which the closest thing we will be allowed to discuss is the Menendez substitute. They have not, to my knowledge, unless the gentleman has gotten a secret submission from the White House in the last few hours, supported the gentleman's approach.

So, for my friends on the other side of the aisle who are standing with our chairman, that puts the White House in a curious position. Are our colleagues on the other side of the aisle counting the White House as being incompetent and somehow supporting a bill that would do bad things to our troops? Or are they accusing the White House of being insincere and not really meaning their endorsement of Collins-Lieberman? Which is it? Because the two sides could not be more at odds.

The American people reading the newspapers today probably thought that the Congress of the United States is well on its way toward intelligence bipartisan reform. Well, if the wrecking crew that is being put forward on this side of the House has its way on this side of the Capitol building, there might not be a conference that can succeed at all. It is very important that the American people get reform so that we can be better protected.

I would urge the Members of this House to not just consider this a routine vote, not just to routinely go along with leadership. These are very complex issues. It is a lot to ask Members to read some 600-page bill that we got handed basically on Monday, a much longer bill than we were dealing with last week. Most of the committees that had jurisdiction were very poorly able to conduct their business.

As the gentleman knows, in the Committee on Armed Services, discussions of weapons of mass destruction was ruled to be nongermane. So, due to a technicality, the Committee on Armed Services was not allowed to discuss weapons of mass destruction issues. I would ask, what is more important than discussing such issues? What is a better forum than the House Committee on Armed Services? But we were not allowed to discuss it due to a technicality.

Other committees, the Permanent Select Committee on Intelligence, they adopted three amendments in the Permanent Select Committee on Intelligence on a bipartisan basis, but somehow all those amendments were struck before the bill got to the floor.

So the process has been an abomination. Not only did our chairman not consult the ranking member of this committee in formulating H.R. 10, the process has ignored weapons of mass destruction, has struck bipartisan amendments that were reached in other committees. That is not the right way to reform intelligence in this country.

The right way, I would suggest, is the way the other body did it, by working together in a calm and bipartisan fashion to achieve consensus such as a consensus they achieved yesterday with a 96–2 vote, complete unanimity among the Republicans, in agreement with the White House, but that, sadly, is not what we have on this side of the Capitol.

So I would urge my colleagues, in the strongest possible terms, support the Menendez amendment. Oppose H.R. 10, and do the right thing for our country.

Mr. HUNTER. Mr. Chairman, I thank the gentleman, and I thank him for being one of the 59 members of the Committee on Armed Services who voted unanimously for the bill that is before us right now.

Mr. Chairman, I yield 3 minutes to the gentleman from Pennsylvania (Mr. WELDON), the vice chairman of the committee.

Mr. WELDON of Pennsylvania. Mr. Chairman, I thank the distinguished chairman for the time, and I rise in support of the legislation, and I would just like to reemphasize what my colleague and leader said.

The gentleman who just spoke voted with us in support of this legislation in committee. The vote was 59 to zero, and I would further add that I hope the gentleman's not trying to imply that the White House or the President supports the Menendez amendment. Is he implying that?

Mr. COOPER. Mr. Chairman, will the gentleman yield?

Mr. WELDON of Pennsylvania. I yield to the gentleman from Tennessee.

Mr. COOPER. Mr. Chairman, the statement of administration policy said they supported H.R. 2840.

Mr. WELDON of Pennsylvania. The gentleman said they were supportive of the Menendez amendment.

Mr. COOPER. The Collins-Lieberman bill, and the closest thing we are allowed to vote on is the Menendez bill. As I said, the Menendez amendment is the closest thing we are allowed to vote on in the House.

Mr. WELDON of Pennsylvania. Mr. Chairman, the gentleman is not being truthful to the Members of the Congress. He said the same thing in committee when he told the Members in committee that the amendment he offered had passed another committee of the House, and one of our colleagues on the Republican side had to correct him, and they had to admonish the gentleman because he gave false information.

He said in the committee that one of the other full committees had passed in markup the bill that we were considering in the Committee on Armed Services, and it was wrong.

The President and the White House is not supporting the Menendez amendment in no way, shape or form, and it is wrong to give that impression to our colleagues.

What I want to do is spend, for a moment, a minute congratulating my distinguished chairman. He is doing what the Committee on Armed Services has done since I have been here for 18 years under Democratic leadership and Republican leadership. He is doing what is right for our soldiers.

It was the Committee on Armed Services in 1995 and 1996 that told the CIA and the Air Force to arm the Predator. Now, back then, the same argument could be made. The Air Force did not want to arm the Predator, neither the CIA, neither the White House. Guess what? We provided leadership, and the Committee on Armed Services required the Predator be armed, and the Predator became a key asset for us. But, now, the previous administration has been trying to take credit for it.

It was the Committee on Armed Services in 1999 that established the Gilmore Commission. The White House at that time did not want the Gilmore Commission. The White House said we do not need that commission. The Gilmore Commission was stood up, chaired by Governor Gilmore, bipartisan members. The Gilmore Commission issued three reports before 9/11. Unfortunately, the previous administration did not listen to the recommendations of the Gilmore Commission, many of which were repeated by the 9/11 Commission. If they had, we would have been better prepared for 9/11.

Third, it was the Committee on Armed Services, three times in three defense bills, that called for the creation of a national collaborative center to fuse intelligence data, three successive bills.

On November 4, 1999, in my office, I had the deputy director of the CIA, deputy director of the FBI, deputy director of Defense. We gave them a 9-page proposal to establish a data collaborative center, a national collaborative center, today called the TTIC. The CIA and the previous administration, 2 years before 9/11, said we do not need it.

So to somehow now say that this committee is not doing right because it is exercising its legitimate authority is absolutely wrong. I am glad our chairman had the guts to stand up for the intelligence needs of the military, and I am glad to stand here and support it, and I am glad the vote was 59 to zero.

Mr. SPRATT. Mr. Chairman, I yield 2 minutes to the gentlewoman from California (Ms. LORETTA SANCHEZ).

Ms. LORETTA SANCHEZ of California. Mr. Chairman, I rise today to voice my frustration over H.R. 10, the House Republican leadership's version of intelligence reform. Instead of following in the tradition of the 9/11 Commission, which issued a thorough, bipartisan recommendation, the House leadership shut Democrats out.

☐ 1530

We were not allowed to help in drafting this legislation. This legislation actually undercuts the Commission's recommendations, the 9/11 Commission recommendations.

For example, the 9/11 Commission was adamant that an effective National Intelligence Director, or NID, be given powerful personnel authority. This bill does not do that. The 9/11 Commission was adamant that the NID be given substantial authority over the personnel of our national intelligence agencies. This bill does not do that. The 9/11 Commission was adamant that Congress increase its oversight over the intelligence community, but H.R. 10 limits congressional oversight.

I offered an amendment to H.R. 10 in the Committee on Armed Services to partially correct that problem and it was defeated by a party-line vote, but my amendment would have required that the first NID be confirmed by the Senate, a measure that was strongly recommended by the 9/11 Commission. H.R. 10, in contrast, gives the President, whoever he or she may be, the authority to make the CIA director the first NID.

Now, the first NID, the first director, is very important in this process because he or she defines that office. They indicate how serious our government is about intelligence reform, and it sends a message to our enemies that we are determined to root them out at home and abroad. This bill shuts Congress out from finding the best person for that job.

In actuality, this bill does a great disservice to the American people who are counting on and who actually want real reform and meaningful oversight of our intelligence community. I believe that this is the wrong way to move forward on such an important issue.

Mr. HUNTER. Mr. Chairman, I yield myself such time as I may consume to thank the gentlewoman for voting for our bill.

Mr. Chairman, I yield 3 minutes to the gentleman from Georgia (Mr. GINGREY).

Mr. GINGREY. Mr. Chairman, I thank the gentleman from California for yielding me this time and giving me the opportunity to speak on this bill.

I rise in strong support of H.R. 10 and the provisions within the legislation that will protect the Department of Defense's vital control of military intelligence capabilities. All of us in Congress must tread carefully as we evaluate how we will reform the United States intelligence community. When I first became a physician and took the Hippocratic Oath, I swore to do no harm. Today I think this oath is very relevant to our current efforts.

I believe that most Members of Congress see the tremendous value of the 9/11 Commission recommendations and they want to enact sound and carefully crafted legislation that will embrace the concept of a National Intelligence Director. However, we must not blindly surrender all authority to this new NID without considering the direct and specific needs of our brave troops stationed around the world. I believe, as written, the House version of the bill embraces this careful balance between giving the new NID "proper" authority over our Nation's intelligence assets and protecting the specific needs of our troops.

In a recent op-ed that the chairman, the gentleman from California (Mr. HUNTER), wrote, he summed up this intricate balance very well when he said, "At stake is more than just a bureaucratic reshuffling exercise inside Washington. The reforms Capitol Hill ultimately endorses could impact how the Department of Defense provides critical up-to-the-minute intelligence to our troops, America's sons and daughters who are fighting insurgents and terrorists worldwide. Before leaping, Congress must be certain that any bill it passes does not endanger their lives and missions."

One specific way that H.R. 10 ensures that the military's intelligence lifeline remains intact is it limits the funds the NID can transfer from the defense agencies that directly support our troops to $100 million a year, while simultaneously retaining the NID's flexibility to manage the overall funds.

Mr. Chairman, H.R. 10 is a carefully crafted bill, and I believe will go a long way in protecting our troops abroad and our citizens at home, and I urge my colleagues to vote "yes" on the legislation.

Mr. SKELTON. Mr. Chairman, I yield 2 minutes to the gentleman from South Carolina (Mr. SPRATT).

Mr. SPRATT. Mr. Chairman, the first time I saw H.R. 10, the base bill, was 5 minutes before markup. As I leafed through all 609 pages of it to see what was in it, I quickly saw there were two glaring deficiencies. The first is the National Intelligence Director. Oh, there is an NID in the base bill, but it is an NID in name only. This bill does not have the superpowers the 9/11 Commission considered necessary to pull together the 16 component parts of the intelligence community to fuse foreign and domestic intelligence.

This NID is clearly lacking in those powers, and let me give two examples why I say that. One is the power of the purse, the power to make the budget. There is an old adage in the Defense Department called the golden rule, he who has the gold, makes the rules. Well, the NID in this bill does not have the gold, so he will not be making the rules that really matter. He does not have the power to set priorities or to make programmatic budget decisions. He is basically a facilitator; a coordinator.

The same diminished powers apply to personnel, the hiring, firing, and promoting; putting the team together that can get the job done. He is not a CEO. He is not even a coach or a quarterback. He simply does not have the power the Commission conceived necessary. The prime mover in the 9/11 Commission report in this bill has a name but he does not have substantive powers, which begs the question: Can the NID "effect" real change, radical change, without real power? I doubt it.

The other missing piece is nuclear nonproliferation. The other night the President and Senator KERRY agreed on one thing, that nuclear terrorism is the gravest threat facing this country. So what does this bill do about the gravest threat facing this country? Next to nothing. Oh, it calls for a study, but we have had countless studies. Howard Baker and Lloyd Cutler, you do not get more high powered than that in this town, did the last study and they called for us to triple the amount of money we spend on nuclear nonproliferation. It has not happened.

So the base bill slights the single most significant reform, the NID, and it ignores the gravest threat facing the country. That is why the White House, the Senate, and the 9/11 Commission support the substitute, and why I will support it and urge others to do the same.

Mr. SKELTON. May I make an inquiry, Mr. Chairman, as to the time remaining?

The CHAIRMAN. The gentleman from Missouri (Mr. SKELTON) has 1½ minutes remaining, and the gentleman from California (Mr. HUNTER) has 3 minutes remaining.

Mr. HUNTER. Mr. Chairman, I yield 2 minutes to the gentleman from South Carolina (Mr. WILSON), who has done a lot of work on this bill and who has been over to theater many times and has a personal stake in this war against terrorism.

Mr. WILSON of South Carolina. Mr. Chairman, I thank the gentleman from California for yielding me this time and, indeed, I am on the Committee on Armed Services, and very grateful to be serving on the Committee. At this time, I would like to take the opportunity to speak in strong support of H.R. 10, the 9/11 Recommendations Implementation Act.

Mr. Chairman, the House Committee on Armed Services, under the leadership of our chairman, the gentleman from California (Mr. HUNTER), was tasked with the consideration of title I of this measure. We had hearings during the break in August. We had a great deal of input from so many different people. This was an open process, and we achieved, I think, a great deal.

I particularly note we achieved the creation of a National Intelligence Director separate from the director of the CIA. This legislation creates a National Counterterrorism Center within the Office of the National Intelligence Director to integrate all Federal agencies that deal with intelligence services. There are 15 that need to be coordinated.

The Committee on Armed Services considered all the recommendations, and were careful to ensure we were strengthening our national intelligence infrastructure, particularly with respect to the men and women in uniform. The Department of Defense operates the majority of national intelligence capability and uses those assets to support troops engaged in combat in addition to supporting the director of the CIA. It is critical that the Department of Defense maintain the ability to provide the best intelligence directly to our troops on the ground as they wage the war on terrorism.

The Committee on Armed Services, as you heard, 59 to nothing, approved this unanimously in committee. As the father of three sons currently serving in the military, I want to thank again Chairman HUNTER for his leadership on behalf of our troops. He has a special insight, in that our chairman is a veteran himself, and his son has just returned from distinguished service with the U.S. Marines in Iraq.

Mr. SKELTON. Mr. Chairman, I yield 1 minute to the gentleman from Rhode Island (Mr. LANGEVIN).

Mr. LANGEVIN. Mr. Chairman, I rise today in support of this measure, not because I endorse all of its provisions, but because I believe that the Congress must act swiftly to reform our intelligence community and to protect our homeland.

As a member of the House Committee on Armed Services, I do want to point out that H.R. 10 does not go far enough to combat the threat of nuclear weapons proliferation, and it could have. I also have reservations about the potential impact of some of these provisions on civil liberties. However, I am pleased that H.R. 10 recognizes the need to improve our diplomatic, educational, and cultural exchange initiatives with other nations, and would also enhance our human intelligence capabilities, for it is in these areas that we will help in ensuring that we win the long-term war on terror.

I am deeply, though, disappointed that the House leadership has denied the minority a voice in drafting this bill and has ignored many of the recommendations of the 9/11 Commission while adding extraneous provisions. But I am confident that when the bill gets to conference that we will be able to improve this legislation in negotiations with the Senate and the White House.

Mr. SKELTON. Mr. Chairman, I yield 15 seconds to the gentleman from Tennessee.

Mr. COOPER. Two corrections, Mr. Chairman.

First, the statement of administrative policy is dated September 28 endorses S. 2845. The closest thing we can vote on in the House to that is the Menendez amendment.

Also, in the Committee on Armed Services, we reported out the bill 59 to zero, but the real vote in committee was 33 to 26, a more closely divided issue.

Mr. SKELTON. Mr. Chairman, I yield myself the balance of my time.

Let me make this prediction. Unless the Menendez substitute is adopted by this House, this bill, at the end of the day, will go nowhere and the United States of America will be without intelligence reform.

We saw what the Senate did, we know what the White House wants, we know what the families of 9/11 have endorsed. And I hate to say it, but this may lead to a graveyard for legislation.

Mr. HUNTER. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, if people are looking at the Menendez substitute, which is going to come up here and is going to, in my estimation, tear apart that partnership that the military has with the intelligence agencies in maintaining the lifeline between our troops and their assets; if the American people are reading that, one thing that may strike them as just remarkable and somewhat illogical is the idea that we will reveal to the world, under the Menendez substitute, under, I guess, what is called a transparent government, our intelligence numbers, or how much we spend on intelligence.

This is a figure we have been trying to keep out of the hands of the bad guys for a long time. Americans who are looking at this bill as a response to the attack on 9/11 on American soil are probably puzzled as they watch from around the Nation saying, let me see, how are we possibly going to prevent an attack on America by telling the bad guys what our intelligence number is and allowing them to peel that onion back and then discover what our priorities are, and what our strengths are, and, ultimately, what our weaknesses are? That makes no sense whatsoever.

The provision we have carefully crafted here maintains that delicate balance for America's security. Support the base bill. Do it for our troops.

The CHAIRMAN. The time for general debate for the Committee on Armed Services has expired.

□ 1545

Under the rule, the Chair recognizes the Committee on Financial Services, the gentleman from Ohio (Mr. OXLEY) and the gentleman from Massachusetts (Mr. FRANK), for 15 minutes each.

The Chair recognizes the gentleman from Ohio (Mr. OXLEY).

Mr. OXLEY. Mr. Chairman, I yield myself such time as I may consume. I rise to address those provisions of H.R. 10 favorably reported by the Committee on Financial Services that have been included in the legislation that we are considering today. The committee's additions to H.R. 10 continue the work it, and Congress, began in the tense hours and days after the tragic attacks of September 11, 2001. During that unsettled time, the committee pulled together to produce comprehensive, bipartisan legislation that aimed to disrupt the financing of terrorism and to strengthen the country's anti-money laundering laws. That bill, H.R. 3004, later became title III, the anti-terror finance title of the USA PATRIOT Act, signed into law less than 7 weeks after the attacks.

It is a testament to that legislation that the 9/11 Commission report issued a month ago cited it with approval and said that on anti-terror finance and anti-money laundering issues, the various elements of the government generally are doing a good job.

But we must not be complacent. The 9/11 Commission's final report states that "vigorous efforts to track terrorist financing must remain front and center in U.S. counterterrorism efforts." The commission urged Congress and both the law enforcement and intelligence communities to engage in an ongoing and rigorous examination of the financial system for "loopholes that al Qaeda can exploit, and to close them as they are uncovered."

In response to this challenge, the Committee on Financial Services assembled a bipartisan legislative package that centers on four broad themes: one, additional funding for the fight against terrorist financing; two, new tools for the government to combat terrorist financing schemes; three, improved international cooperation and coordination on anti-money laundering and counterterrorist financing initiatives; and, four, enhanced preparedness of the financial services sector in the event of another large-scale terrorist attack.

Among the key provisions in H.R. 10 that reflect contributions by the Committee on Financial Services are the following:

Technical amendments to the anti-terror finance title of the USA PATRIOT Act, which was largely drafted in the Committee on Financial Services;

Authorization of additional funding for Treasury's Financial Crimes Enforcement Network, which serves as the Federal Government's financial intelligence unit and plays a critical role in the collection and analysis of data on suspicious financial activity;

A reauthorization of the national anti-money laundering strategy, along with grants to State and local law enforcement agencies to investigate the financing of terror and other financial crimes;

Additional enforcement tools to prevent the counterfeiting of U.S. currency;

Enhanced authority for the SEC to respond to extraordinary market disruptions caused by terrorist attacks or other catastrophic events; and

Codification of strong interagency cooperation and communication on international financial standard-setting matters related to anti-terrorist financing where the Treasury Department is in the lead.

At the committee's markup last week, several thoughtful and largely noncontroversial amendments were adopted, including one offered by the gentlewoman from New York (Mrs. KELLY) that seeks to address the vulnerability identified by the 9/11 Commission of the international funds-transfer system to terrorist financing; related amendments by the gentlewoman from Illinois (Mrs. BIGGERT) and the gentleman from Illinois (Mr. EMANUEL) to promote greater public-private coordination on preparedness issues relating to the financial services sector; an amendment offered by the gentlewoman from Illinois (Mrs. BIGGERT) and the gentleman from New York (Mr. KING) to strengthen interagency cooperation and clarify negotiating authorities between the State Department and the Treasury Department with respect to international financial institutions and other multilateral financial policymaking bodies; and a bipartisan amendment offered by the gentleman from Illinois (Mr. GUTIERREZ) and the gentlewoman from New York (Mrs. KELLY) to prohibit Federal bank examiners who serve a lead role in the supervision of an insured depository institution from accepting employment with that institution for 1 year after leaving the government.

In sum, Mr. Chairman, the Financial Services Committee's contribution to H.R. 10 makes needed changes that respond directly to the 9/11 Commission's call for a continuous examination of the U.S. financial system to identify loopholes capable of being exploited by al Qaeda and other terrorist organizations, and to close those loopholes both at home and abroad.

As for the larger body of legislation, I support H.R. 10 and urge its swift passage, a speedy conference, and quick adoption of the conference report. That will require a lot of work over the next several weeks, but it is work that is absolutely vital to the security of our Nation.

Finally, I hope the conferees will be able to resist the suggestions of some that the final legislative package be limited strictly to reshuffling the intelligence community's architecture. There are very important pieces of anti-terror legislation in H.R. 10 from a number of committees of jurisdiction, and the fact that they do not deal precisely with who directs the course or funding of the intelligence community does not mean they are any less important, or that they can wait for another year.

Mr. Chairman, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the sections of this bill that are relevant to the jurisdiction of the Committee on Financial Services are useful ones and not controversial. Indeed, in our committee, as the chairman has mentioned, we adopted a couple of amendments which make some improvement. Some of them, while not directly related to terrorism, the amendment by the gentleman from Illinois (Mr. GUTIERREZ) and the gentlewoman from New York (Mrs. KELLY) regarding conflict of interest potential at the Comptroller of the Currency is a very good piece of legislation. It is not directly relevant to terrorism, although it does not detract.

But I am troubled by the choice the House is being forced to make on this in general. I believe that overall, the bill that will be offered by the gentleman from New Jersey, who will be speaking to it shortly, is a far better response to the terrible tragedy of 9/11 and subsequent than the bill that the majority has put forward. It reflects the deliberations of that 9/11 Commission far better on the central issues involving intelligence, involving the way in which the government is organized in the security areas. It has the potential to be genuinely bipartisan as we saw from the other body.

And, in fact, what we are being asked to do is something we have been asked to do all too often recently. What we ought to be doing is what was done in the Senate. We ought to have a bill before us that is amendable. That is what many of us asked to have before us. Instead, we get two packages, and in the end Members will have to choose all or nothing. I will choose the bill when we come to vote on the substitute that more nearly reflects the 9/11 Commission, indeed, very closely tracks the 9/11 Commission.

It has several advantages. It does follow the extensive deliberations of the 9/11 Commission in a thoroughly bipartisan manner. It also makes it likelier that we will get a law passed, because if the bill put forward by the majority passes, the differences between House and Senate versions will be quite substantial and the likelihood of a conference report being adopted before the election in time for that bill to go into effect this year will be slight.

I do not understand why we have not been able to follow in this bill and in many others the normal democratic process in which a bill comes forward and we are able to amend it and vote on amendments. That is the way it used to be. I can remember when we would do that. Today, what we are told by the rule is you will choose one package or another, and neither package will be perfect. Given that choice, I much prefer the 9/11 bill as opposed to what we are being given by the majority as their version.

But I regret very much the continued loss of democracy in the House. I regret very much the failure to follow what a parliamentary democracy ought to follow. Bring a bill to the floor, and let it be amended. As we try to bring democracy to parts of the world that have not had it before, I fear that we set them a very poor example; and I have to hope, Mr. Chairman, that they are paying less attention to us than I would like to be able to say.

Mr. Chairman, I reserve the balance of my time.

Mr. OXLEY. Mr. Chairman, I yield 3 minutes to the gentlewoman from Illinois (Mrs. BIGGERT).

Mrs. BIGGERT. I thank the gentleman for yielding me this time.

Mr. Chairman, I want to thank Chairman OXLEY, Ranking Member FRANK, and the staffs of the committee for their work in producing an outstanding package of financial services initiatives that were reported out of committee on a bipartisan basis and included in H.R. 10.

Mr. Chairman, the 9/11 Commission recognized our country's success in tracking and freezing terrorist finances in the post-9/11 period, and that was certainly welcome news. But the sad truth remains that we are only as strong and successful as our weakest link. Our weakest link may be a country, or several countries, with antiquated financial systems, a weak economy, or inadequate oversight and enforcement of the money that flows within their borders.

Through diplomatic and other means, we are aiding other nations and encouraging them to join in our fight against money laundering and terrorist financing. The 9/11 Commission testified before our committee that there must be experts at the forefront of our efforts to continue to counter terrorist financing. We must keep our Treasury experts, in collaboration with our State Department experts, on the front lines in our dealings with international financial bodies, especially when those bodies are making decisions with regard to anti-terrorist financing.

With that in mind, the committee adopted an amendment that I offered along with my colleague from New York (Mr. KING) that seeks to ensure that the Treasury Department's role as the lead Federal agency in international financial matters is clear. By confirming that the Secretary of the Treasury is the lead U.S. representative and negotiator to international financial institutions and multilateral financial policymaking bodies, we will ensure that the U.S. has consistent financial leadership, a consistent financial message, and endorses consistent financial policies.

Secondly, I want to point out that this bill now contains important language that will encourage best practices in building private-public partnerships to detect counterterrorist financing activities and enhance financial sector disaster preparedness and response. The Department of the Treasury and ChicagoFirst are one such partnership that can serve as a model for other agencies and industries.

I urge my colleagues to support H.R. 10.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 3½ minutes to the minority whip, the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. Mr. Chairman, today we must undertake the most important task entrusted to us, our responsibility to protect the American people and our country, to defend our borders, and to preserve our way of life against those who already have, and those who would again, do us harm. Specifically, we must address the shortcomings in our Nation's defenses that were exploited by murderers who killed 3,000 unsuspecting, innocent people on American soil on September 11, 2001. Too many of these shortcomings have simply gone unaddressed in the last 3 years.

After months of painstaking and bipartisan work, the 9/11 Commission produced a thoughtful road map to guide our efforts at shoring up our intelligence and homeland security capabilities. The Senate accepted this road map, began working immediately in a bipartisan manner on it, and has produced legislation supported by the families of the 9/11 victims, the commissioners, and 96 Members of the Senate. Regrettably, yet again, the House Republican leadership has chosen to legislate in an exclusionary, partisan process, resulting in a bill that not only falls short of many of the 9/11 Commission's recommendations but also contains divisive, extraneous provisions.

Many of my colleagues on both sides of the aisle have expressed their concerns about the unnecessary expansion of law enforcement authority, the undermining of immigrants' fundamental rights, and the erosion of basic civil liberties contained in H.R. 10. I share those concerns. I am also troubled that this House bill fails to adequately address the gravest threat to our national security, terrorists acquiring weapons of mass destruction. Interestingly enough, both Senator KERRY and President Bush in the last debate made it clear that they thought that was the highest priority. Yet this bill on the floor does not address it. Luckily, the substitute does.

H.R. 10 fails to strengthen the Nunn-Lugar cooperative threat reduction program which is designed to prevent these weapons from falling into the hands of terrorists, as the commission recommended and as the Senate bill does. The Menendez alternative addresses the issue of expanding our ability to acquire and get off the market for terrorists such nuclear weapons.

This legislation represents a missed opportunity to learn lessons from September 11 and to implement meaningful improvements to our ability to better detect, prevent, and respond to future terrorist attacks.

I urge my colleagues to support the Menendez substitute. It can clearly pass the Senate; 96 Senators have already supported it.

□ 1600

At a time when time is of the essence, we ought to act in as bipartisan and cooperative a fashion as we can. The Menendez substitute mirrors the bill passed in the Senate which incorporates the recommendations of the 9/11 Commission, and it will allow us to better fulfill our sacred duty of protecting the American people and doing so in a very efficient, effective, and quick fashion. We ought to adopt the Menendez substitute.

And I thank the gentleman from New Jersey for his leadership on this critically important effort. I know that he lost many constituents in that tragic event, and I thank him for following up so diligently since then to ensure that it does not happen again.

Mr. OXLEY. Mr. Chairman, I yield 4 minutes to the gentleman from Alabama (Mr. BACHUS), the chairman of the Financial Institutions and Consumer Credit Subcommittee.

Mr. BACHUS. Mr. Chairman, let me first start out by saying that the 9/11 Commission said that the work of the Committee on Financial Services and the legislation that we passed in the aftermath of 9/11 had worked very well, very well, to make it much harder today, and this is some very good news for all Americans as a result of the Patriot Act and also President Bush's Executive Order 13224, they said the combination of our efforts and the efforts of the Treasury Department, of FinCEN and OFAC, the Justice Department and the State Department and others, that today it is much harder, much harder for al Qaeda to raise money. It is much more difficult for them to conceal that money and it is much more difficult for them to move that money. They said that we had identified almost 400 terrorist financiers or people that facilitated the funding of terrorists. We have made it much harder, and we have chilled donations. We have decreased dorations to a great degree.

And let me deal with just two of those. One is the Executive Order that President Bush offered only 2 weeks after 9/11, 13224. As a result of that, we have actually identified millions of dollars, not only here but overseas, of al Qaeda money. We have seized that money. We have designated terrorist facilitators, and, finally, we have actually under that and under PATRIOT Act title III, section 311, we have identified banks that were actually involved in taking money for the terrorists and transferring that.

We only have seven countries today in the world that have not cooperated with us in one respect or another. We have come from 58 countries at the time of 9/11 that were actively involved in tracking and seizing terrorist financing to about 100 countries that are doing an exceptional job. And, in fact, 209 countries are actually making financing efforts to combat terrorist financing, 174 countries. We have built quite a coalition when it comes to disrupting terrorist financing, 174 countries. Contrast that to 58 countries at the start of our efforts. Today, 174 countries are seizing terrorist finances and have offered freezing orders. We have had great successes.

The 9/11 Commission did say that it was essential that we allow the Treasury Department, FinCEN to have some new ways of working with foreign governments, and the gentleman from Ohio (Chairman OXLEY) has included in this provision, and this is very important that we get this through, actually some implementation legislation that will allow us to better cooperate and coordinate with those foreign governments that want to ally with us and our efforts. As a result of the train bombings in Madrid, the bombings in Moscow, the bombings in Casablanca and Istanbul, these countries are ready to help us, but we do need to change these laws.

I would urge us to pass this legislation. It passed out of committee overwhelmingly in a bipartisan way. It is very important.

And I would close by saying that we have got a counterfeiting measure in this. The law says we have got to catch the counterfeiters. Just the fact that we have counterfeiting equipment is not enough. It is in this provision. We need to pass this bill.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 4 minutes to the gentleman from New Jersey (Mr. MENENDEZ), who has been a leader on this issue and who is the author of the very important substitute amendment which genuinely embodies the recommendations of the 9/11 Commission.

Mr. MENENDEZ. Mr. Chairman, I thank the gentleman for yielding me this time.

As my colleagues know, the minority party always asks for a substitute to be made in order. To have asked for anything less than the 9/11 Commission's recommendations would have been to do a disservice not only to the 9/11 families but to the memories of over 2,900 people that were murdered on that fateful day over 3 years ago.

And I think there is a real consequence to enacting the Republican bill, legislation whose title suggests enactment of the 9/11 Commission report but that leaves us far short of where the 9/11 Commission and the families have said we need to be. Instead, the People's House needs to serve this Nation and those families well by truly protecting our country from further terrorist attacks. On this issue, we need to put partisanship aside.

I want to be perfectly clear to all my colleagues in the House about what exactly my substitute amendment is and what it does. My substitute is identical to the bipartisan Shays-Maloney substitute amendment that was taken before the Committee on Rules, endorsed by the 9/11 commissioners and the 9/11 families. That is, in essence, the Collins-Lieberman-McCain legislation that passed so rigorously yesterday in the Senate. In fact, the gentleman from Connecticut (Mr. SHAYS) and other Members wrote asking that the Shays-Maloney substitute be made in order, and I would suggest that the Committee on Rules did exactly that by making the Menendez substitute in order. And after a 96 to 2 vote yesterday in the Senate on legislation that is the essence of this substitute, the principles and provisions of this amendment are also supported by Senate Republicans and Senate and House Democrats.

Unfortunately, the House Republican bill, H.R. 10, includes provisions that are unnecessary, unrelated to the bill's stated purpose, which is the reorganization of the intelligence community aimed at strengthening the Nation against terrorist attack. In doing so, there are over 50 extraneous provisions that were not recommended by the Commission included in that bill, many of which are highly controversial.

H.R. 10 also leaves out many of the bipartisan recommendations of the unanimous 9/11 Commission. In fact, out of the 41 recommendations, it appears that only 11 are implemented; 15 are not implemented at all, and 15 others are done incompletely. In fact, the base bill that we consider today is weaker than the 9/11 Commission's recommendation, weaker than what the Senate passed. It does not provide the National Intelligence Director with budget execution authority and only provides the NID the unilateral authority to nominate the CIA Director. That is in direct contravention of the statement of administration policy put out by President Bush where he says that they support the Collins-Lieberman bill and specifically oppose any amendment that weakens the establishment of the NID with full, effective, meaningful budget authority and other authorities to manage the intelligence community, including the statutory authority for the newly created National Counterterrorism Center. They are running against the President on this.

The Director of the National Counterterrorism Center is not appointed by the President, not confirmed by the Senate, does not have budget authority or hiring authority. Their legislation does not create an information-sharing network, a new trusted network with common standards to share information within the intelligence community.

Their legislation only requires the Transportation Safety Administration to give priority to explosive detection, but it does not, as the commission called for, require improved detection capabilities.

Their legislation does not create an independent civil liberties board. It does not declassify the intelligence budget topline.

So, today, we have an opportunity to see who really supports the 9/11 Commission's recommendations and who does not. Those who support the 9/11 Commission's recommendations will have the opportunity to do so when the Menendez substitute comes to the floor. That is the one that has passed in the Senate. That is the one supported by a unanimous bipartisan vote of the 9/11 Commission. That is the one that is supported by the overwhelming majority of the 9/11 families. That is the one that best protects the Nation and creates the changes necessary to ensure that this Nation is safe, secure, as that Commission, after thousands of hours and thousands of pages, decided.

Mr. OXLEY. Mr. Chairman, I yield 2½ minutes to the gentlewoman from Wyoming (Mrs. CUBIN).

Mrs. CUBIN. Mr. Chairman, my home State of Wyoming is the least populated State in this Nation but a proud provider of many of the resources on which America depends.

Wyoming and our neighboring States produce the bulk of our Nation's agricultural and energy resources. We have vast deposits of coal, uranium, and natural gas. Significant portions of our Nation's power plants, pipelines, highways, and railroads cross Wyoming and rural States. We manage and preserve national parks and landmarks, where countless numbers of visitors can be found at any given time.

But perhaps most importantly, however, rural America houses our military landbased nuclear weapons, which are absolutely necessary for our Nation's defense system.

I had submitted an amendment to the Committee on Rules to ensure our first responders in Wyoming, Montana, North Dakota, Nebraska, and Colorado, which house America's nuclear arsenal, had the resources they needed to prepare for a possible threat against these nuclear weapons. In rural America, first responders cannot even communicate sometimes between one department and another like policemen and firemen. We have not had the money to develop those communication systems yet. We have started, but with lower funding in this bill, we will not be able to finish that. Needless to say, I was gravely disappointed when my amendment was not allowed on the floor for a fair debate today. That decision was a vote against the safety of Wyoming citizens and the rest of rural America. In fact, I believe rural America became the whipping post for the large populated areas.

While the needs of first responders in high-population States such as California and New York are addressed in this bill, first responders in rural America are left with the scraps. Rural Americans are spread thin over a lot of land. We have 490,000 people in Wyoming spread over about 100,000 square miles. So one can imagine the difficulty of trying to protect resources and people spread over that area. Money to pay for first responders cannot be appropriated on a per capita basis, as has been suggested.

Rural first responders are the brave individuals who protect our communities after an attack, and those men and women deserve the same respect and resources in Wyoming and rural America as they do in New York.

I thank the chairman for yielding me this time.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield 3 minutes to the gentleman from Illinois (Mr. GUTIERREZ), one of the members of the Committee on Financial Services who has been most active on this issue in a very informed way.

Mr. GUTIERREZ. Mr. Chairman, H.R. 10 should be about restructuring our Nation's intelligence agency, strengthening our homeland, and better protecting our citizens by following the framework recommended by the 9/11 Commission. However, as currently written, H.R. 10 violates our Constitution and attacks immigrants by subjecting immigrants living here less than 5 years to expedited deportation at the hands of overworked immigration agents and without access to a judge.

□ 1615

Restricting States from issuing driver's licenses to immigrant drivers, placing public safety at risk.

Prohibiting Federal acceptance of consular cards and other identity documents issued by foreign governments other than passports, no matter how secure these documents are when trying to secure a Federal entrance even to a Federal building.

Deporting asylum seekers to their torturers and authorizing the deportation of immigrants to countries that lack a functioning government, all without judicial review.

Prohibiting habeas corpus review of a variety of immigration issues.

These anti-immigration issues do nothing to protect our homeland. In fact, leaders of the 9/11 Commission wisely called on House Republicans last week to remove these controversial provisions from the bill for fear it would slow its progress through Congress.

As if that is not enough, family members of 9/11 victims recently sent a letter to this body urging a "no" vote if these provisions that I have mentioned are not stripped from the bill. I applaud the commissioners and the 9/11 families for their courageously speaking out strongly against these dangerous provisions. It is unconscionable that certain Members this body would politicize national security in a misguided attempt to advance their malicious attacks on our Nation's immigrant community in the name of public safety.

Immigrants died and lost family members in the Twin Towers, they helped rebuild the Pentagon, and they serve on the front lines in Afghanistan, Iraq and the global war on terror. It is shameful that legislation that rose directly from the tragedy of 9/11, legislation that bears the name of the darkest day of our Nation's history, legislation designed to ensure that we are never again attacked on our soil, would be so malicious an attempt against a group of serving, sacrificing, and helping people and try to put on their shoulders the responsibility of the post-9/11 world.

Republicans in this House still have time to do what is right and reasonable, as the Senate has done in their legislative package, by capturing the recommendations without attacking our Nation's newcomers.

Republicans and Democrats alike should vote for the Menendez substitute, the components of which have been endorsed by the commission and even the White House. If Republican leaders insist on playing politics with this critical legislation, I will vote against H.R. 10, as it is anti-immigrant, un-American, and flies in the face of 9/11 families and the commission's hard work. I would urge my colleagues to do the same.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield to the gentlewoman from New York (Mrs. MALONEY), for the purpose of making a unanimous consent request.

Mrs. MALONEY. Mr. Chairman, I rise in support of the substitute.

Mr. FRANK of Massachusetts. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, you have heard from the gentleman from New Jersey and the gentleman from Maryland the criticisms of what are not in the majority's bill. Much of what the 9/11 Commission asked for is not in the bill. I want to talk to my objections about what is in their bill that was not in the 9/11 Commission report, and not just to the specifics, but the procedure.

The House has been put into a position time and time again of being given legislation, and it is kind of like being a dog given a pill. When people want to give medicine to a dog, they wrap it in something the dog wants to eat.

When the majority has controversial pieces of legislation that could not pass on their own, they wrap it in something which Members will be afraid to vote against. And that is what we have in this bill. Not in our section dealing with financial services, but in the majority's bill is an example of a tactic that has been used repeatedly. You take controversial things, things that ought to be fully debated, things that many Members would not support on their own, and you wrap them in something which has a great deal of political appeal to try and coerce Members into voting for it.

It is in repudiation of that tactic that I and many others, if the substitute fails, will vote against the basic bill, because I am tired of being given legislation that resembles nothing so much as a pill being fed to a dog.

Mr. OXLEY. Mr. Chairman, I yield myself the balance of my time.

This section of the bill we are debating from the Committee on Financial Services was a great bipartisan effort. We had testimony from Lee Hamilton, our former colleague, who was praiseworthy of what our committee was able to do in the PATRIOT Act and moving forward and trying to deal with terrorist financing.

I think this process has been pretty good. I think that, overall, I understand over 200 Members have been able to offer amendments in the committee process, with regular order in the committee process. Our committee was no exception. I think the product that we have come up with in H.R. 10 is positive.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. OXLEY. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, I would like to make it clear that my criticisms do not extend to our part of the bill. I lament that the House in general has not followed the example we have set.

Mr. OXLEY. Mr. Chairman, I yield back my time.

The CHAIRMAN. The time for general debate for the Committee on Financial Services has expired.

The Chair recognizes the Committee on Government Reform. The gentleman from Virginia (Mr. TOM DAVIS) and the gentleman from California (Mr. WAXMAN) each will control 15 minutes.

The Chair recognizes the gentleman from Virginia (Mr. TOM DAVIS).

Mr. TOM DAVIS of Virginia. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise today in strong support of H.R. 10, the 9/11 Recommendations Implementation Act. The purpose of this landmark legislation is to address the problems and weaknesses identified by the National Commission on Terrorist Attacks Upon the United States by improving the intelligence and security operations of the Federal Government.

I am proud of what we have achieved in this legislation on behalf of the American people, who understandably are clamoring for change. It accomplishes the goal of revamping our intelligence network and makes other changes necessary to protect our national security.

I would like to elaborate on a few of the provisions of the larger bill that fall within our jurisdiction at the Committee on Government Reform and why we believe they are critical to this effort.

One is executive reorganization authority for intelligence agencies. H.R. 10 would give the President the power to submit reorganization plans, limited to the intelligence community, to Congress for a guaranteed up-or-down vote.

We cannot afford to assume this legislation is a panacea that will somehow be the last word on intelligence reform. Reorganization authority is authority every President had government-wide from 1932 to 1984. It enables the executive branch to come forward with a plan that would come to Congress for an up-or-down vote without amendment. The President should have the ability to make further tweaks to the organization without having to worry about his proposal getting watered-down or just plain blocked in Congress over petty jurisdictional fights between committees. Congress, of course, retains the ultimate say.

We have enhanced information-sharing. This legislation would task the President with establishing a trusted and secure information-sharing environment to promote the sharing of intelligence information and to change the culture in the Federal Government from a "need to know" to a "need to share" basis. This initiative is the result of collaborative efforts of multiple committees of jurisdiction.

The rationale for this language is straightforward. As a Nation, we must be able to identify terrorist threats and defeat them. Our success depends on collecting, analyzing, and appropriately sharing information found in data bases, transactions, and other sources.

Streamlined financial disclosure for appointees in the intelligence community. Just about anyone who studies the Presidential appointments process realizes that it is broken. It takes too long to confirm individuals to key positions, and the process itself often drives away some of those best qualified to serve. Financial disclosure requirements are supposed to protect against conflicts of interest concerns; but they have become proxy statements for a nominee's net worth, with more detail than is necessary, extending the vetting process so that nominees cannot even move forward to Senate confirmation. This legislation would return to the original intent of financial disclosures.

An improved security clearance process. This legislation would assign security clearance management and oversight to the Office of the National Intelligence Director. The NID would set uniform standards and policies and require reciprocity among agencies. This would enable an individual with a top secret clearance at, say, Treasury to retain that clearance should he or she move to another agency.

Previous efforts to enforce reciprocity have failed, but this legislation finally addresses this important part of the process by putting an end to the time and money-wasting practice of redundant security clearance investigations and adjudications. This redundancy drives up the cost of doing business, and this cost is ultimately passed on to the taxpayers.

New Federal standards for identification cards and birth certificates. We need to have confidence that when someone shows a State driver's license to board a plane or a State birth certificate to get a passport, that the ID is valid. We need to know that people are who they say they are.

Is this a national ID card? No. We are simply saying the Federal Government must have documents that it can trust, and it is perfectly within its right to establish minimum standards for Federal acceptance.

This important provision would provide grant money to help States meet the new Federal guidelines and gives them 3 years to comply. Though States have made strides in improving the security of driver's licenses and identification since 9/11, the commission outlined the need to establish minimum standards as a framework for improvement.

This language was crafted with the assistance of the American Association of Motor Vehicle Administrators and the National Association For Public Health and Information Systems who administer these programs for the States. They have been hard at work developing studies, best practices and guidelines on this issue, especially since the terrorist attacks on our Nation; and this legislation closely follows those recommendations for action. Importantly, this provision is also strongly supported by the 9/11 victims' families.

A revitalized FBI workforce. H.R. 10 would provide for retention bonuses and critical pay authorities to help the FBI improve its intelligence directorate. It also would allow for delays in mandatory retirements and the creation of a Reserve Service so the agency can reactivate retired employees with very specialized skills.

The improvements to the operations of the Federal Government that are included in H.R. 10 are essential to making this country safer. I urge my colleagues to support this carefully crafted legislation.

Mr. Chairman, I reserve the balance of my time.

Mr. WAXMAN. Mr. Chairman, I yield myself $3\frac{1}{2}$ minutes.

Mr. Chairman, the House is taking up legislation of enormous importance: how to make our Nation safe from future terrorist attacks. Outside of this body the effort to protect our Nation has been a united, bipartisan effort. Against the odds, the 9/11 Commission produced unanimous recommendations about how to protect our Nation. The Senate has carried their work forward. By an overwhelming 96 to 2 vote, the Senate has approved legislation embodying the commission's recommendations. Unfortunately, this bipartisan process has been hijacked in the House.

There are just three numbers that you need to remember: 41 were the recommendations from the 9/11 Commission; 11 were the number of recommendations out of the 41 that they implemented; and 50 are the number of extraneous provisions inserted into the bill.

The missing components are no minor oversights. H.R. 10 does not give the National Intelligence Director the full authority recommended by the 9/11 Commission. It falls short on border security, on aviation security, and on emergency response.

During the first Presidential debate, both President Bush and Senator KERRY agreed that preventing nuclear proliferation was the single greatest threat facing our Nation, yet incredibly the Republican bill does not implement the recommendations for stopping nuclear proliferation.

For the next 30 minutes we are going to talk about the areas of the bill in the jurisdiction of the Committee on Government Reform. Here the same pattern emerges. Key recommendations from the 9/11 Commission are ignored, while damaging extraneous provisions are inserted.

One of the major recommendations of the 9/11 Commission was to improve information-sharing among intelligence agencies. In our committee we unanimously adopted an amendment to implement the information-sharing provisions recommended by the commission. These essential provisions, however, even though adopted unanimously by the committee, were dropped by the Republican leadership on the way to the House floor.

At the same time, H.R. 10 includes extraneous provisions that are both dangerous and controversial. In one provision, and most people may not even be aware of it, the legislation establishes a fast track legislative procedure that allows the executive branch to undo all of the bill enacted in the legislation. The President can then send legislation to Congress that reverses the reforms we have just enacted, and Congress would be prohibited from amending the President's proposal.

□ 1630

And here is another inexplicable extraneous provision. The bill actually repeals financial disclosure requirements for the intelligence agencies. Under this legislation, top intelligence officials no longer have to reveal if they own assets worth over $5 million, $25 million, or even $50 million.

The substitute amendment that will be offered by the gentleman from New Jersey (Mr. MENENDEZ) addresses all of the Commission's recommendations, it has the same structure and provisions as the Senate legislation that passed 96 to 2. It is that legislation that we should be enacting today.

Mr. Chairman, I reserve the balance of my time.

Mr. TOM DAVIS of Virginia. Mr. Chairman, I yield 2½ minutes to the gentleman from Indiana (Mr. SOUDER), an able member of our committee.

Mr. SOUDER. First, I want to thank the gentleman from Virginia (Chairman DAVIS) for his leadership on this bill and the leadership in working with us on a number of amendments. I want to go on record before I get into my particular area on two things.

The 9/11 Commission report is a great book, it is a great starter, but it is not the Bible, and it is not perfect, and we need to forward. On this question of defense intelligence, they completely missed. If we compromise and put the people that vote in my district at risk because we make a mistake in intelligence, they may die because of our error and we have to address that.

Secondly, these immigration reforms and security changes are absolutely essential, because everything we are spending on homeland security breaks down if we do not know that the person actually is the person they say they are. We are dependent then on them telling us the truth about their background. We need secure IDs and we are trying to address that.

As chairman of the Subcommittee on Criminal Justice, Drug Policy and Human Resources, I would like to highlight two provisions of the bill that address the dangers drug trafficking poses to homeland security. Many of us forget that many of the largest antinarcotics agencies and over 20,000 people in the United States die a year from the narco-terrorism on the streets. Furthermore, this money often funds these terrorist groups, and legacy Customs, legacy Border Patrol, legacy Coast Guard are all in the Department of Homeland Security.

We need two things to make sure it stays part of it. First, that it strengthens and clarifies the role of the counternarcotics officer who is in the Department of Homeland Security to coordinate these efforts; and the second requires that drug enforcement activities be one of the benchmarks for relevant employee performance appraisals at DHS. It was appalling that inside the Department of Homeland Security, narcotics enforcement had been neglected and not even mentioned in the whole system, yet these agencies absolutely are the first line of defense.

Now, specifically, what this does is change the personnel incentives and also takes this counternarcotics officer and makes him a director of counternarcotics enforcement subject to Senate confirmation reporting directly to the Secretary assigned specific responsibilities to the new director because, up until now, he has been detailed and had to battle for each employee and authorize permanent staff to be assigned to him as well as detailees from the relevant agencies.

Mr. Chairman, we cannot afford to take our eye off the daily battle on our streets as we try to deal with the new world challenges, particularly when our drug habit is financing many of these terrorists efforts around the world.

Mr. WAXMAN. Mr. Chairman, I am pleased at this time to yield 3½ minutes to the gentlewoman from New York (Mrs. MALONEY) who has taken such a strong leadership role in this legislation and is a cosponsor of the Shays-Maloney bill, which is part of the Menendez substitute.

Mrs. MALONEY. Mr. Chairman, I thank the gentleman for yielding me this time and for his outstanding leadership in so many areas, especially health. We really appreciate it.

Mr. Chairman, reform for our Nation's security and intelligence is now the sole responsibility of the House of Representatives. The other body, both sides of the aisle, unanimously, almost with complete and total support, passed the strongest intelligence reform in our Nation's history, with a vote of 96 to 2.

The Collins-Lieberman bill is before the House today in the form of a bipartisan substitute, the Menendez substitute. It will make our country safer by creating a strong national intelligence director with full personnel and budgetary authority and a National counterterrorism Center that will share intelligence.

Regrettably, the House leadership bill has no such authority. Last week, the 9/11 Commission chairman, Governor Kean said, "If the National Intelligence Director does not have budgetary authority, you might as well not do anything."

If we pass today the Collins-Lieberman-Menendez bill out of the House, we can get it to the President's desk for his signature before we adjourn. The bipartisan 9/11 Commission members support the substitute. The White House has lined up behind it. So has the 9/11 family members, the steering committee, as well as editorial boards across this Nation. The only lone wolf muddying the process with extraneous, unrelated, controversial provisions is the House Republican leadership.

The Commission made 41 recommendations. Of these, the House Republican leaders fully implemented only 11. This is the exact opposite of what the Commission recommended. They recommended a package. Instead of implementing the key Commission recommendations, the House Republican leaders added over 50 extraneous provisions that are not mentioned anywhere in the 9/11 Commission report. Even the President has asked the House leadership to strip these provisions out of the bill.

Mr. Chairman, I will place in the RECORD a letter from the White House in support of Collins-Lieberman, a Washington Times article, and an L.A. Times article that speaks to the administration's support for Collins-Lieberman and against the many add-ons that have been loaded on to the Republican bill. Some of the 50 extra provisions are innocuous, but many are controversial poison pills that will only sidetrack and delay the legislation.

The truth of the matter is that if the Republicans really cared about these extra provisions, they could have passed it 3 years ago or added it on later. Yesterday, Chairman Kean said that the Senate bill is a giant step forward and the right vehicle for our recommendations. He called the bill that passed out of the Senate that is before us today a dream, and if this is the dream, then I say that the House leadership bill is an absolute nightmare that will only delay and hurt the process and will make it harder for us to make this country safer and enact a law that implements the 41 recommendations of the 9/11 Commission.

THE WHITE HOUSE,
Washington, October 1, 2004.

TO THE EDITORS OF THE WASHINGTON POST: Yesterday's Washington Post inaccurately reported that the Bush Administration supports a provision in the House intelligence reform bill that would permit the deportation of certain foreign nationals to countries where they are likely to be tortured.

The President did not propose and does not support this provision. He has made clear that the United States stands against and will not tolerate torture, and that the United States remains committed to complying with its obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Consistent with that treaty, the United States does not expel, return or extradite individuals to other countries where the United States believes it is likely they will be tortured.

As the President has said, torture is wrong no matter where it occurs, and the United States will continue to lead the fight to eliminate it everywhere.

Sincerely,

ALBERTO R. GONZALES,
Counsel to the President.

[From the Washington Times, Oct. 4, 2004]

HOUSE TOLD TO ALTER INTELLIGENCE BILL

(By Stephen Dinan)

The White House has told House Republicans that it wants them to remove provisions in their intelligence-overhaul bill that would crack down on illegal aliens' obtaining drivers' licenses, allow easier deportation and limit the use of foreign consular ID cards.

The Senate's bill lacks those provisions, and as the two chambers race toward trying to pass a bill before the Nov. 2 election, the measures are a potential stumbling block.

The White House wants those provisions out, according to a congressional source familiar with the bill.

"They have expressed desire to kill some of the immigration provisions and gut some of others," the source said, speaking on the condition of anonymity.

Rosemary Jenks, a lobbyist for stricter immigration controls for the group NumbersUSA, who has been tracking the bill, said White House policy officials met with Republican staffers to urge them to remove the provisions, even though White House officials initially had signed off on those same provisions before the bill was introduced officially.

"The White House was involved in the negotiations before the bill was introduced, and now, for some reason, it has come back and decided to insist that the main provisions, the most effective provisions of the bill, be gutted," she said.

She said House Republican leaders appear to be standing firm in refusing the White House demands. A White House spokesman did not return a call for comment yesterday.

Peter Gadiel, spokesman for 9/11 Families for a Secure America, said his organization will drop its endorsement of the bill if the immigration provisions are removed.

"This goes to the very heart of the entire conspiracy of 9/11," he said. "These people entered the country, got driver's licenses, used those driver's licenses to obtain the services they needed, and then used those driver's licenses to get on the plane."

The House bill restricts federal employees' acceptance of consular identification cards issued by other nations, which the Government Accountability Office said last week helps illegal aliens evade immigration law.

The bill also would set standards for driver's licenses that would make it much more difficult for illegal aliens to obtain them and for temporary visitors to keep licenses past their visa expiration.

The legislation also would expedite deportation of immigrants who have entered the United States illegally in the past five years and curtail court reviews of deportation proceedings even when the person faces torture when returned home.

Angela Kelley, deputy director of the National Immigration Forum, said adding those amendments is an attempt to sink the entire bill.

"The piling on of unrelated legislative pet projects, especially by the Republican Party's anti-immigration wing, could throw the carefully reasoned, bipartisan recommendations of the 9/11 commission to the curb," she said.

Members of the National Commission for Terrorist attacks upon the United States held a press conference last week to complain about some of the House provisions and praise the Senate bill as it now stands. Commission Vice Chairman Lee H. Hamilton singled out some of the House immigration provisions as particularly problematic for commission members.

The White House also has issued a statement praising the Senate bill.

But Mr. Gadiel said removing the immigration provision would be breaking Congress' promise to pass all of the September 11 commission's recommendations.

He said senators should be warned: "If you really have the nerve to kill a final bill—ignore all the recommendations of the 9/11 commission and spit in the faces of the 9/11 families because the final bill [includes] all of the recommendations, not just the ones you find palatable, go ahead, kill the bill. See what the American people feel in November."

[From the Los Angeles Times Oct. 6, 2004]

HOUSE INTELLIGENCE MEASURE TARGETED

(By Mary Curtius)

WASHINGTON—Eager to get an intelligence reform bill through Congress before the Nov. 2 elections, the White House is pressing to get controversial immigration provisions stripped from the House measure, Republican lawmakers said Tuesday.

Both the House and Senate are moving toward final votes this week on differing versions of bills that seek to overhaul the nation's intelligence community by putting a single director in charge of all 15 agencies. Both major parties are eager to take credit for completing the most sweeping intelligence changes since the Cold War.

The more comprehensive House version includes provisions to tighten border controls and make it easier for law enforcement to track and quickly deport suspected terrorists.

Democrats have joined civil libertarians, members of the Sept. 11 commission and families of victims of those attacks in criticizing the measures. Democrats describe the provisions as "poison pills" that threaten the chances for reconciling the two chambers' bills.

House Republicans said Tuesday that they believed the White House was fearful of a backlash against the House bill by immigrant voters.

"I sincerely hope that the White House is not seriously thinking about walking away from this effort in the interest of political expediency in a few states," said Rep. Thomas G. Tancredo (R-Colo).

Tancredo, chairman of the House Immigration Reform Caucus, and Rep. Steve King (R-Iowa), a member of the House Judiciary Subcommittee on Immigration, Border Security and Claims, said in interviews that their staffs had been told by the House leadership that the White House wanted the immigration provisions removed from the bill. Both men said they urged the leadership to resist the pressure.

The White House, according the King and Tancredo, has specifically targeted provisions in the House bill that would make it easier to deport illegal immigrants, make it harder to use foreign consular identity cards as forms of identity in the United States and make it harder for illegal immigrants to obtain driver's licenses by imposing federal standards.

The American Civil Liberties Union has denounced those measures as "anti-immigrant policies" it says would "deny immigrants basic judicial review over unfair, arbitrary or otherwise abusive deportations" and allow suspected terrorist to be deported to countries "lacking a functioning government."

The House leadership says it stands behind its bill and all its provisions, and that it will bring it to a floor vote Thursday or Friday. But a White House spokesman said Tuesday that negotiations over the bill's provisions were continuing.

"What I can say is that the president supports strong, effective immigration reform," said Erin Healy, a White House spokesman.

"We will continue to work with members of the House on their proposal. We continue to meet with them—to work with them on the legislation. It is a work in progress."

House Majority Leader Tom DeLay (R-Texas) said no one had spoken to him about removing provisions of the bill.

"Whether it be redesigning our intelligence-gathering capabilities or protecting our borders or going after terrorists," DeLay said, all the measures "are designed to keep Americans safer."

But pressure has been mounting on the House Republican leadership to produce a bill that looks more like the Senate version.

Editorials across the country have criticized the House bill for endangering prospects for quickly completing real reform of the intelligence community.

The Senate, on the other hand, has been praised for producing a bipartisan bill, coauthored by Republican Susan Collins of Maine and Democrat Joe Lieberman of Connecticut.

With the political maneuvering around the bills intensifying, Republicans and Democrats in the House held competing news conferences Tuesday, each producing family members of Sept. 11 victims to bolster arguments for or against the legislation.

At one point, family members who support the House bill clashed publicly with family members who gathered with Democrats and Sept. 11 commission members to demand that the controversial provisions be dropped.

Both the Senate and House bills call for the creation of a national intelligence director to oversee the nation's 15 intelligence agencies. But the Senate version would give the director greater control over the intelligence community budgets and personnel than the House version would.

House Democrats have pushed the leadership unsuccessfully to allow a floor debate on a substitute bill that would more closely conform to the Senate version.

The Senate bill, which has survived seven days of floor debate largely intact, is expected to be voted on today. Differences between the final versions of the bill will be dealt with in a conference committee.

Mr. TOM DAVIS of Virginia. Mr. Chairman, I am happy to yield 2 minutes to the gentlewoman from Michigan (Mrs. MILLER), the former Secretary of State of the State of Michigan.

Mrs. MILLER of Michigan. Mr. Chairman, I thank the distinguished chairman for yielding me this time.

Mr. Chairman, I rise today in strong support of H.R. 10 and I urge my colleagues to support this bill in the spirit of bipartisanship exhibited by the 9/11 Commission in their report and their subsequent recommendations as well.

Clearly, our Nation needs to better prepare ourselves for the challenges facing us as we continue to successfully prosecute this war on terror.

And as we examine the intelligence failures in the aftermath of the absolutely horrific attacks on our Nation on 9/11, we see the need to improve our intelligence-gathering and move from the need-to-know to the need-to-share.

It is said that once in a generation is there truly an opportunity to structurally reform government, and this is our opportunity. We remember in the 1940s when we created the Joint Chiefs to better meld our military, and the naysayers had lots of reasons why it would not work but, in fact, it has served our Nation remarkably well. This legislation today will serve our intelligence community well, and so allow us to better protect our homeland.

I am particularly pleased to have helped draft the provisions in this bill which deal with national standards for issuing State driver's licenses and State identification cards. This is long overdue, as are the provisions regarding the breeder documents or identification documentation required before you can obtain a driver's license or a State ID card.

In today's world, the driver's license is the foundation of your identity. It is the photo ID that is most commonly used to get on an airplane, to enroll in a flight school, or to get a commercial driver's license with perhaps an endorsement for transporting hazardous material.

Mr. Chairman, prior to coming to Congress, I served 8 years as the Michigan Secretary of State with the principal responsibility for motor vehicle administration, and I totally agree with the 9/11 Commission statement, "Sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists."

Let us remember that 18 of the 19 9/11 terrorists had valid driver's licenses, many acquired through fraudulent documentation. This legislation will allow our States to stop the terrorists from using our freedoms against us.

Mr. WAXMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Maryland (Mr. VAN HOLLEN).

Mr. VAN HOLLEN. Mr. Chairman, the other day I heard the majority leader, the gentleman from Texas (Mr. DELAY) assert on the floor of this House that the 9/11 Commission recommendations legislation were being considered by the various committees in this House on a bipartisan basis.

Well, in the Committee on Government Reform, there were some areas of strong bipartisan agreement. As the gentleman from California (Mr. WAXMAN) said, one of those areas was the need to implement one of the central recommendations of the 9/11 Commission report to develop a system of information-sharing among different Federal Government agencies that collect and analyze information. When you are trying to pull together information about a threat, it makes no sense for one agency to keep hold of its information and not share it. You need all the pieces to put together the puzzle.

Now, this bill, H.R. 10 as it was introduced, had nothing with respect to information-sharing. So I, together with some of my colleagues, offered an amendment in the committee to do exactly that. And on a bipartisan basis in the committee, supported by the chairman of the committee, and echoing the recommendations of the 9/11 Commission, we unanimously supported that amendment and that recommendation.

Well, guess what? The bill left committee and on the way to the floor, that information-sharing amendment was stripped out of the bill by the House Republican leadership and replaced by what is just a hollow shell, virtual dribble, nothing of serious substance on that issue. Apparently, the real test being applied here by the House Republican leadership is not bipartisan cooperation, but where there is bipartisan cooperation on the committee, let us get rid of that provision of the bill, because it does not fit with the overall objective, which is to use this bill and use national security for pure political purposes.

Why would the House leadership remove a provision also contained in the Senate Collins-Lieberman bill to promote information-sharing? Why are they sticking up for creating separate turf and different fiefdoms among government agencies? That is a question they are going to have to answer to the victims and the families of the victims of 9/11.

Mr. TOM DAVIS of Virginia. Mr. Chairman, I would just say to my friend, unfortunately, other committees shared jurisdiction on this, so when the Committee on Rules wrote it, we did not get our committee language.

Mr. Chairman, I am happy to yield 1 minute to the gentleman from California (Mr. LEWIS), the distinguished chairman of the Subcommittee on Defense of the Committee on Appropriations.

Mr. LEWIS of California. Mr. Chairman, I appreciate very much my colleague yielding me this time. I will be rising later in the day to express my very serious concern about the Menendez substitute, but that is for a later time.

But I wanted to take a moment to express the House's deep appreciation for the work being done every day by the men and women who make up our security agencies. We all know that during the 1990s, much of their work was disrupted by undermining, especially of our HUMINT assets in the country, throughout the world, particularly in the Middle East. But between now and then, those men and women who work every day and put their lives on the line on our behalf, those who make up the agencies that are our security agencies, need to know that there is broadly-based bipartisan support for their work here in the Congress.

Mr. WAXMAN. Mr. Chairman, I yield for the purpose of making a unanimous consent request to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Chairman, I rise in support of the Menendez substitute.

Mr. Chairman, I rise in support of the Menendez substitute because I believe that its provisions, like those in the Shays-Maloney bill, better reflect the recommendations contained in the bipartisan 9/11 Commission Report: To improve our intelligence gathering and analytical capabilities and create "an enhanced system of checks and balances" to adequately protect civil liberties.

I regret, however, that the options before us today fail to fully embrace available technologies to modernize our driver's license and identification systems. Some States are taking action, for example, as some of my colleagues may have read in today's Washington Times and Washington Post; a plan to use embedded chip technology is currently under consideration in the Virginia legislature. Still, the pace of change remains slow and problems in our driver's license system persist.

The holes in our system continue to support a thriving black market for fake IDs, create security risks that are national in scope, and therefore warrant adequate Federal resources to repair.

The September 11th hijackings illuminated many holes in our domestic security, for example 13 of the 19 hijackers were able to obtain driver's licenses or ID cards, some from black market "brokers" who often charge $2,000 for a single fake license.

Utilizing chip technology and biometric identifiers will make a quantum leap in the efficiency of the system and make it significantly harder for criminals and terrorists to obtain fake licenses. Unfortunately, neither side of the aisle took full advantage of this opportunity to utilize on-card biometric technology to repair holes in the system.

In light of the currently available technologies, the bills being considered on the House floor today simply do not go far enough.

The on-card biometric technology we need to adopt in our driver's license system is not entirely new. Private companies and government agencies currently utilize embedded chips in their ID cards. The smart cards have been in use for years in the military with the Common Access Card, or CAC, and Congress sanctioned the use of on-card biometric technology in the US-VISIT visa program.

Both the 9/11 Commission Report and its predecessor, the Markle Foundation Task Force Report, hailed on-card biometrics as an excellent example of how technology can be used to improve the integrity of a number of identification documents.

Why not use it on our driver's licenses? The legislative solution I have proposed retains traditional State authority over non-commercial driver's licenses, but recognizes that disparate standards, outmoded technologies and inadequate security features create risks that are national in scope and therefore justify Federal resources and technical assistance.

Many states are open to adopting the technology, but they need Federal assistance to implement it.

Mr. Chairman, we must not delay any further. The time to act has come. A driver's license is a dangerous tool in the hands of a criminal, or worse, a terrorist. It allows them to easily travel on our roads, open bank accounts, rent vehicles, and take domestic flights. The driver's license has come to represent more than authorization to operate a motor vehicle; it imparts a stamp of legitimacy and is often taken as unquestionable proof of identity. Possession of a driver's license allows terrorists to easily travel and blend into the population.

Of course there are many out there who fear new uses of technology. Civil libertarians, conspiracy theorists and absolutists will attempt to characterize smart cards as a threat to individual privacy. In fact the opposite is true. By reducing identity theft (clearly a privacy concern), controlling access to personal data through encryption and proper regulations, and making it easier to create a digital paper trail on government employees who access your data, smart cards will actually reduce privacy violations.

Smart cards will not allow the government to track people's movements; the chips don't work that way. The best government could do in tracking your movements is maintain records of where and when you are asked to show your license, something it already does by writing down your driver's license number.

Of course it is difficult to completely allay the concerns of civil libertarians and privacy advocates, lest we do away with all forms of identification. But smart cards will not create invasion of privacy risks that do not already exist today. They will, however, significantly reduce the risk of identity theft, and correct current widespread abuses in the system. As an added benefit, the technology will make it easier for law enforcement officials to do their job by eliminating wasted time filling out paperwork, but it will not magically transform every law enforcement officer or civil servant into a voyeur or jackbooted thug bent on harassing you at every turn.

Mr. Chairman, I urge this Congress to take the next logical step and implement smart card and biometric technology in driver's licenses and ID cards. I look forward to working with relevant committees in advancing this important policy. In light of the serious problems that persist, we can't afford delay.

Mr. WAXMAN. Mr. Chairman, I am pleased to yield 2 minutes to the gentleman from Massachusetts (Mr. TIERNEY), a member of the Committee on Government Reform.

Mr. TIERNEY. Mr. Chairman, I thank the gentleman for yielding me this time. I want to just address one part of this bill.

I feel strongly that we ought to go with the substitute amendment that the gentleman from New Jersey (Mr. MENENDEZ) will be presenting, and that this House ought to try, in a bipartisan fashion, to work within the Collins-Lieberman-McCain legislation, and that the surest way to do that and to get a bill now is to make sure that this House acts in a bipartisan way, and not in the manner that seems to be before us today, a poison pill that will tie this issue up and not allow us to have the kind of legislation we need to protect this country.

The 9/11 Commission, in its work, was very adamant about the idea that congressional oversight should be reinforced and strengthened, particularly if there is going to be some strengthening of the legislative and executive branch. Any executive power that is going to be enhanced ought to be met with commensurate increases in congressional oversight.

Section 5021 of this bill authorizes the President to essentially reorganize all of the work that Congress would do in establishing the intelligence regime under this bill. It would have the President be able to submit a reorganization plan with expedited approval, up or down, with no amendments; in essence, abrogating all of our responsibilities as legislators to the White House.

Now, I am surprised that this would get any support and, unfortunately, in the Committee on Government Reform, it did get enough support in a 20 to 21 vote. My amendment that would obliterate this recommendation was defeated. But it did pass. It was successful in the markup of the Permanent Select Committee on Intelligence community markup, but in the Committee on Rules, as is its penchant for rewriting the law, it reappears with us here today.

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The fact of the matter is that allowing the process to just organize and bring us something to vote up or down is an absolute total abrogation of Congress's responsibilities. I am shocked that our colleagues would even consider that premise.

They should look at one another. They should determine whether or not they came here to just give our role to the White House or we came here to do what our constituents elected us to do, which is to deliberate, to debate, to decide, and to vote, and to vote on matters of this significance.

Yes, in one of the issues one of the Members brought up in the committee was that this would take time, we would go from committee to committee and House to House. The fact of the matter is, that is hard work as the President likes to say, but it is the hard work we are supposed to be doing. It is our responsibility to legislate. It is the executive branch's responsibility to give us a recommendation that we should consider. But in the end we need to do our job, and this bill should be done in such a way as to meet the Menendez substitute. We should all vote for that and not for the base bill.

Mr. TOM DAVIS of Virginia. Mr. Chairman, I yield myself 30 seconds.

What abrogates our responsibility is taking the substitute that is offered by the other side. Basically we are saying to the other body, we are going to take your version and adopt your version. We have a lot of good ideas that emanate from this side of the Capitol.

Those ideas will then go into a conference, and we can take the best of both.

The Congress does not abrogate their responsibility by allowing the President to submit for an up-or-down vote, the changes they wish to make in the intelligence community; we get to vote them up or down. But we do circumvent some of the jurisdictional battles that so often prolong these fights and make us very inefficient. I might add, this is authority that we had for Presidents for 50 years prior to 1984.

Mr. Chairman, I reserve the balance of my time.

Mr. WAXMAN. Mr. Chairman, how much time remains?

The CHAIRMAN. The gentleman from California (Mr. WAXMAN) has 4 minutes remaining. The gentleman from Virginia (Mr. TOM DAVIS) has 3½ minutes remaining.

Mr. WAXMAN. Mr. Chairman, I yield 1 minute to the gentlewoman from Minnesota (Ms. MCCOLLUM).

Ms. MCCOLLUM. Mr. Chairman, this House has a choice to make today. It has been more than 3 years since September 11. We can put the safety and security of America first, put the security of its people first and pass the Menendez substitute which has the Shays-Maloney language in it. This substitute bill will protect America, our families, our civil liberties; and it does not play politics with intelligence reform.

Yesterday, the other body passed a bipartisan intelligence reform bill, 96 to 2. The other body's vote put America first and will help to make America safer, and it abandons cheap partisan politics. The Republican leadership's bill, H.R. 10, is a bipartisan bill intended to derail intelligence reform while al Qaeda plots against us.

H.R. 10 ignores the 9/11 Commission recommendations, and it is a dangerous partisan distraction that should be defeated.

Mr. TOM DAVIS of Virginia. Mr. Chairman, I reserve the balance of my time.

Mr. WAXMAN. Mr. Chairman, I yield 1 minute to the gentlewoman from the District of Columbia (Ms. NORTON).

Ms. NORTON. Mr. Chairman, I sat in a committee that I must say tries and often is bipartisan. I kept looking for gravitas of the 9/11 recommendations. One that is not here actually stunned me and that is the recommendation to strengthen our counternuclear proliferation efforts.

During the first Presidential debate there was a moment of rare agreement between KERRY and BUSH. They both said that nuclear proliferation was the single most serious threat facing the United States. The commission agreed. It says that al Qaeda has tried to acquire or make nuclear weapons for the last 10 years and that the maximum effort should be made. H.R. 10 relegates this issue to a study. A study is a way not to do anything.

The Senate knew exactly what to do. You do not study it any more. You expand the proliferation security initiative and the proliferation programs literally on the books now. I represent this city. What a small nuclear device would do to the Nation's capital I do not want to contemplate.

The commission understands what nuclear weapons would do nation-wide. No serious effort can exclude nuclear nonproliferation.

Mr. TOM DAVIS of Virginia. Mr. Chairman, I reserve the balance of my time as I have the right to close.

The CHAIRMAN. The gentleman from Virginia (Mr. TOM DAVIS) has 3½ minutes remaining and the right to close.

Mr. WAXMAN. Mr. Chairman, I yield 1 minute to the gentleman from Massachusetts (Mr. LYNCH).

Mr. LYNCH. Mr. Chairman, the 9/11 Commission was born of the most brutal attack in this country's history on our soil, and we should remember that the commission was created to investigate our weaknesses and also to make recommendations on strengthening our national security. I think that the commission should be commended and the families that have been involved in making those recommendations at our hearings should be commended for their good work and for remaining above our partisanship.

But what I see here today in this bill is that after that long process of the commissioners and the involvement of these families, that much of their key recommendations have been set aside, and I think that is a shame. And we should, I think, instead, support the Menendez substitute that agrees with the recommendations made by the other branch which I think properly protects American security and brings accountability to our intelligence systems that were so flawed prior to the attacks.

Mr. TOM DAVIS of Virginia. Mr. Chairman, I reserve the balance of my time.

Mr. WAXMAN. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I just want to point out to my colleagues, we are talking about something of the most significant importance to this Nation. We should not allow politics to be played with this matter.

We have had a commission that was set up by a vote of the Congress. They came back with a unanimous recommendation. The other body adopted their recommendations unanimously, Democrats and Republicans. I strongly urge support for the Menendez substitute and a rejection of the Republican partisan bill.

Mr. Chairman, I urge rejection of H.R. 10 and support for the substitute amendment so we can be in sync with the bipartisan vote in the Senate and the bipartisan recommendations before us.

Mr. Chairman, I yield back the balance of my time.

Mr. TOM DAVIS of Virginia. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, first of all, let me thank my friends on the other side in the committee for working cordially with us to improve this legislation. I know we have some disagreements.

I want to take up just a minute to correct what I think is misinformation about this legislation, namely, that some of the sections of this are not within the scope of the 9/11 Commission's report. I want to walk through the provisions that were added at the request of our committee. All of these initiatives were things that the committee had been working on to make our country safer prior to the release of the report, but they can also be traced to report language.

Our language on identity security, for example, is identified as an urgent need on page 309 of the report, where it says, "The Federal Government should set standards for the issuance of birth certificates and sources of identification such as driver's licenses. Fraud in identity documents is no longer just a problem of theft. At many entry points to vulnerable facilities, including gates for boarding aircraft, sources of identification are the last opportunity to ensure that people are who they say they are and to check whether they are terrorists."

Our language on appointments reform is in direct response to a finding in the report on page 422: "Since a catastrophic event could occur with little or no notice, we should minimize as much as possible the disruption of national security policymaking during the change of administrations by accelerating the process for national security appointments."

Our security clearance language is based both on work that we have been doing in the committee and the commission's report which said on page 422 that the Federal Government needs uniform application investigation in adjudication procedures, a single database to store clearance information, and an expedited clearing process for Presidential transition team personnel.

Our language to revitalize the FBI workforce responds to a finding in the report on page 425, where it says "a specialized and integrated national security workforce should be established at the FBI consisting of agents, analysts, linguists, and surveillance specialists who are recruited, trained, rewarded, and retained to ensure a deep expertise in intelligence and national security."

And our language on information-sharing and security addresses the commission's finding on page 400 that we need to unify the many participants in the counterterrorism effort and their knowledge in a network-based information-sharing system that transcends traditional governmental boundaries.

As you can see, Mr. Chairman, all of these provisions that were marked up by our committees and included in the version on H.R. 10 today are direct responses to problems or weaknesses identified by the 9/11 Commission.

I take exception to Members who think the other body had thorough knowledge and exhausted all of the ideas on this.

We look to a good conference where we can iron out some of these, but more importantly I think we thoroughly address some of the concerns raised by the commission. At a time when the terrorists are moving dollars electronically and communicating in nanoseconds, we have to give the executive branch a rapid response for additional reorganization changes as well.

I urge my colleagues to support H.R. 10 and reject the Menendez substitute.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The time for general debate for the Committee on Government Reform has expired.

The Chair recognizes from the Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentlewoman from Texas (Ms. JACKSON-LEE) for 15 minutes each.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of H.R. 10. On September 11, 2001, foreign terrorists attacked the United States without provocation in a failed effort to crush our spirit and our resolve.

In the last 3 years Congress has taken bold bipartisan steps to strengthen the ability of the law enforcement intelligence community to protect the American people against future terrorist attacks. The Committee on the Judiciary has played a central role in addressing vulnerabilities that the terrorists exploited on 9/11.

Bipartisan passage of the PATRIOT Act, the Barbara Jordan Immigration Reform and Accountability Act, the Homeland Security Act, and other legislation have made America safer; but there is still much more work to be done.

In November of 2002 President Bush created the bipartisan 9/11 Commission. I supported the President's creation of this independent commission, and I am pleased that this bill implements and addresses its recommendations and findings. H.R. 10 provides specific legislative substance to those recommendations. First, the creation of the National Intelligence Director, then the establishment of a National counterterrorism Center in title I are reforms that will ensure that the wall of separation between intelligence and law enforcement is never again exploited by terrorists. In addition, section 1112 codifies the laudable efforts of the FBI to better assist and thwart terrorist attacks before they occur.

The Judiciary sections in title II enhance penalties for terrorism hoaxes; increase penalties for supporting, financing, or cooperating with terrorist organizations; expand the scope of laws that prohibit the shipments or use of weapons of mass destruction; provide additional funding to combat terrorist financing; and enhance the use of biometrics to reduce terrorist threats against air travel.

Several 9/11 hijackers either should not have been admitted to the United States or violated the terms of their visas. Title III of the legislation contains important provisions to enhance border security and reduce opportunities for terrorists who enter and stay in the United States. As the 9/11 staff report on terrorist travel declared, "The challenge for national security in an age of terrorism is to prevent the people who may pose overwhelming risk from entering the United States undetected."

The Judiciary sections of title III require Americans returning from most parts of the Western Hemisphere to possess passports; require Canadians seeking entry into the United States to present a passport or other secure identification; authorize additional immigration agents and investigators; reduce the risk of identity and document fraud; provide for the expedited removal of illegal aliens; limit asylum abuse by terrorists; and streamline the removal of terrorists and other criminal aliens. These provisions reflect both commission recommendations and legislation that was pending in the House.

Finally, I am pleased that this legislation safeguards the privacy and civil liberties of all Americans. These provisions establish a privacy officer in the office of the NID; require Federal agencies to prepare a privacy impact analysis during rulemaking process; and direct the head of each Federal agency with law enforcement or antiterrorism functions to appoint a chief privacy officer.

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The bill reflects careful, thoughtful and principled consideration of the 9/11 Commission's bipartisan recommendations and staff report. Unlike some other proposals, this legislation does not merely transcribe sometimes vague proposals. Rather, it does the hard work of implementing the 9/11 Commission's recommendations with the legislative clarity and depth they deserve.

H.R. 10 also received the full committee deliberation that the House committee process provides. The committee process greatly enhanced the quality of this legislation.

America has so far been spared another large-scale attack within our border since 9/11. Yet the terror in Beslan, Russia, just weeks ago chillingly reminds us that the global threat of terrorism has not receded nor has the need for vigilance and foresight.

While much has already been done, much remains to be done. Passage of H.R. 10 will make America safer still, and I urge my colleagues to support this legislation.

I am also happy to put in the RECORD, a letter dated October 7, 2004, from the 9/11 Families for a Secure America that states, "we strongly support H.R. 10 and oppose all the alternatives that have been proposed. The reason is simple: H.R. 10 is the only bill that addresses the recommendations on pages 385-390 of the 9/11 Commission's report." I would include this letter in the RECORD at this point.

9/11 FAMILIES FOR A SECURE AMERICA,
New York, New York, October 7, 2001.

DEAR MEMBERS OF THE HOUSE OF REPRESENTATIVES: Over the past few weeks, several articles in the press and statements from individuals have implied falsely that the families of victims of the September 11, 2001, attacks support alternatives to H.R. 10. Our organization, 9/11 Families for a Secure America, represents hundreds of families of those murdered on 9/11, and we strongly support H.R. 10 and oppose all the alternatives that have been proposed. The reason is simple. H.R. 10 is the only bill that addresses the recommendations on pages 385-90 of the 9/11 Commission's report.

Family members of 9/11 victims worked long and hard to have an independent commission appointed to investigate the attacks. Now that the Commission has completed its task and presented Congress with its recommendations, we believe that Congress must address all of the 41 recommendations, including those relating to immigration policy. We will be satisfied with nothing less.

All of the 9/11 family members with whom we have been in contact agree that immigration reform is a key component of the implementation of the Commission's recommendations. Sadly, some of our elected officials have misled 9/11 families by convincing them that no legislation will pass this year if we insist that immigration reform be part of it, because immigration is simply "too controversial." We are appalled that any public official would suggest that national security is "too controversial" to be addressed.

We applaud the House Leadership for making security their top priority and we strongly urge all Members of the House to support H.R. 10. We have read the immigration provisions in H.R. 10, and we have compared them to the Commission's recommendations. The provisions some have labeled "extraneous and unrelated" are, in fact, clearly and directly related to the Commission's findings and to preventing terrorist attacks in this country. The simple fact is that if the 9/11 terrorists have not been able to enter the United States and operate freely in our country—to obtain driver's licenses (over 60 licenses for 19 hijackers), open bank accounts, rent homes and cars, and board airplanes—they would not have been able to murder our loved ones. To pretend otherwise is hypocritical; but more importantly, it is an invitation to future terrorist attacks.

Members of Congress have promised us repeatedly over the last three years that they would honor our loved ones who were murdered by implementing the reforms needed to ensure that Americans will never again face the same horror we live with every day. We ask you to stand by your promise and pass H.R. 10, rather than dishonoring us and our loved ones to protect a status quo that aided the murderers who tore apart our families on September 11, 2001.

9/11 FSA BOARD OF DIRECTORS

Peter & Jan Gadiel, Kent, CT, Parents of James, age 23.

Will Sekzer, Detective Sgt (ret'd) NYPD, Sunnyside, NY, Father of Jason, age 31.

Diana Stewart, New Jersey, only wife of Michael Stewart.

Bill Doyle, Staten Island, NY, Father of Joseph.

Joan Molinaro, Staten Island, NY, Mother of Firefighter Carl Molinaro.

Bruce DeCell, Staten Island, NY, Father in law of Mark Petrocelli, age 28.

Sally Regenhard, Al Regenhard (Det. Sgt. NYPD, Ret'd), Parents of Firefighter Christian Regenhard.

Grace Godshalk, Yardley, PA, Mother of William R. Godshalk, age 35.

April D. Gallop, Virginia, Pentagon Survivor.

Lynn Faulkner, Ohio, Husband of Wendy Faulkner.

Colette Lafuente, Poughkeepsie, NY, Wife of Juan LaFuente, WTC visitor.

Mr. Chairman, I reserve the balance of my time.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself 3 minutes on behalf of the Committee on the Judiciary.

Mr. Chairman, I thank the distinguished chairman and the gentleman from Michigan (Mr. CONYERS), the distinguished ranking member, who I am looking to join us soon, of the full Committee on the Judiciary. We did work together. In fact, as our colleagues in America are seeing, we worked together with any number of committees that will be on the floor today and the very fact that we worked together with so many committees, it looks as if we would have been able to reach maybe a very easy consensus, but it appears that we did not.

Allow me just to offer, as I begin, the words of two of the 9/11 family members, Donald W. Goodrich and Sally Goodrich, in a conversation this morning, words that were offered to me as written by James Joyce seem to be particularly relevant to this debate, and it is particularly relevant based on all of the work and all of the pain and all of the adversity that the 9/11 families have gone through. James Joyce said, it is the now, the here through which all future plunges to the past.

I guess what I would say to my colleagues though we have the responsibility of securing the homeland, we also have the responsibility of a concise, consensus method and format in which to take that journey. I believe the Shays-Maloney legislation, conforming to the Collins-McCain-Lieberman proposal, meets that standard and that test.

In our work of H.R. 10, we have a duty to take into account the families that will be affected. We have in this august body the duty to take into account all American families, and as I have said over and over again, we have a responsibility to take into account that the government failed the American people.

So I wish that we would have come to the floor with this single bill, but yet we have 50 extraneous provisions. Let me just list a few as I close: giving the President fast track authority to reorganize the intelligence agencies; undermining the reforms recommended by the 9/11 Commission; no budgetary authority to the new intelligence director, giving the President authority to bypass Senate confirmation of the director of CIA and other key intelligence and defense officials, weakening congressional oversight; giving Federal law enforcement officials new authority to deport foreign nationals, revoke visas and deny asylum without judicial review, uncalled for by the 9/11 Commission, maybe valid issues to consider later but certainly holding up this legislation; creation of new national databases of driver's licenses, birth certificates and criminal histories, raising civil liberties and privacy concerns; and, of course, expanding a grand jury without oversight.

I thank the distinguished chairman, and I hope that we will pass the substitute of the gentleman from New Jersey (Mr. MENENDEZ), that incorporates the 9/11 Commission report and fixes our broken national intelligence system.

Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from Wisconsin (Mr. GREEN), my colleague.

Mr. GREEN of Wisconsin. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, much of the attention on this bill has been focused on intelligence reforms, rightly so because they are absolutely necessary, but I would argue that the provisions under the jurisdiction of the Committee on the Judiciary are every bit as important and every bit as urgent.

A few folks have tried to argue here that somehow these are extraneous. They are wrong. These provisions strike at the support network that makes a terrorist operation possible. They give us the tools to prevent the movement of those who would hide and move in the shadows, who offer support to terrorism, who provide training, logistical information, transportation and so on. Those who provide material support to terrorists are, in many ways, as dangerous as the evil figure who pulls the trigger.

If we attack and remove those who provide such support, we yank at the links in the chain. We break those links, we break the chain of destruction. These are essential provisions to make this Nation safer. They are an essential part of the war on terrorism.

I urge my colleagues to support the work of the Committee on the Judiciary.

Mr. CONYERS. Mr. Chairman, I ask unanimous consent that I control the time on the minority side for the purpose of yielding time.

The CHAIRMAN pro tempore (Mr. LINDER). Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. CONYERS. Mr. Chairman, I yield myself as much time as I may consume.

I begin by thanking the gentlewoman from Texas (Ms. JACKSON-LEE) for her brilliant opening statement.

This measure before us today could be called, A Tale of Two Bills. One is our substitute, that reflects both the spirit and the substance of the 9/11 Commission's work, and like the Commission itself, it is bipartisan, a theme that we continue to underscore even in the closing days of the 108th Congress. We are supported by the gentleman from Connecticut (Mr. SHAYS), the gentlewoman from New York (Mrs. MALONEY) and Senators MCCAIN, COLLINS and LIEBERMAN. Yesterday, in the other body, this measure that we will bring forward here this evening passed the other body by a vote of 96 to 2. In substance, it reflects exactly what the 9/11 Commission recommendations contained, and it was endorsed by the commission and by the September 11 families.

On the other hand, we have before us a bill that was cobbled together haphazardly, with only the input of one party. It fails to implement many of the Commission's recommendations, and therein lies our grievance, and contains provisions that the Commission, after months of study, did not ask for at all.

But the main omission is that the 9/11 Commission recommended, at a time of increased and consolidated government authority, there should be a board within the executive branch to oversee adherence to the guidelines we recommend and the commitment the government makes to defend our civil liberties. Why is there no civil liberties board in the majority bill?

Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio (Mr. CHABOT), chairman of the Subcommittee on the Constitution.

Mr. CHABOT. Mr. Chairman, I thank the gentleman from Wisconsin (Chairman SENSENBRENNER) for yielding me time.

September 11, 2001, changed our world. It changed the way in which we must deal with terrorism and the way in which we, as a country, must protect ourselves.

Since then, Congress and the administration have taken steps to help better protect our Nation at home and abroad. We have provided law enforcement with enhanced investigative tools and improved our ability to coordinate activities designed to protect against the future threat of terrorism.

Yet these actions are not enough to guarantee our Nation's security or freedom. The 9/11 Commission report and recommendations showed us that security and freedom can only be accomplished through continued vigilance and a willingness to challenge conventional wisdom.

But these broad antiterrorism efforts do not have to come at the price of our rights here at home. The joint hearing held by the Subcommittee on Commercial and Administrative Law and the Subcommittee on the Constitution reaffirmed that ignoring important civil liberties will not only erode our freedoms but would undermine legitimate efforts to increase our security here at home.

The directives set out in H.R. 10, requiring Federal agencies to consider, for example, the impact that proposed and final rules have on an individual's privacy and establishing chief privacy officers within agencies that conduct law enforcement and antiterrorism activities, and establishing a civil liberties protection officer within the Office of the National Intelligence Director and a Civil Liberties Protection Board, ensures that effective antiterrorism measures do not come at the price of our constitutional principles.

I am confident that both Houses will come together on this issue to ensure that we continue to improve our intelligence capabilities, strengthen our defenses, and stay one step ahead of the terrorists.

I want to again thank and commend the gentleman from Wisconsin (Congressman SENSENBRENNER), the Committee on the Judiciary's chair, for his leadership on these issues.

Mr. CONYERS. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Chairman, this bill is not the 9/11 Commission recommendations. This bill is John Ashcroft's wish list.

Ground Zero is in my district, and I understand the grave danger and harsh reality of terrorism. It is absolutely imperative that we implement the recommendations of the 9/11 Commission, and strengthen our security and win the war on terrorism. Unfortunately, House Republicans would rather play partisan political games on the eve of the election.

The 9/11 Commission recommended that homeland security grants be distributed based on risk, but this bill contains a political pork barrel funding formula that directs funds away from key targets like New York and Washington, D.C.

The 9/11 Commission recommended that we strengthen counterproliferation efforts to prevent al Qaeda from getting nuclear weapons. This bill ignores that recommendation and does little to prevent the terrorists from exploding atomic bombs in our cities.

This bill even fails to establish a strong, independent National Intelligence, by not providing that office with sufficient authority over the budget and personnel of other intelligence agencies.

House Republicans are once again wrapping themselves in the flag and in 9/11 to hide the fact that they are loading up this bill with questionable provisions that will not make us safer but will undermine our civil liberties. For example, this bill would permit people to be deported to countries that engage in torture. This will not stop terrorists from entering the United States. It would not have stopped the 9/11 terrorists. If we do have suspected terrorists among us, we should not deport them. We should charge them, interrogate them and convict them.

This bill includes egregious provisions that would expand the secret surveillance powers of the Federal Government and relax grand jury secrecy requirements while depriving people of their constitutionally protected right to due process and to the writ of habeas corpus. It would give the Federal Government new authority to revoke visas and deny asylum without judicial review.

This legislation is a betrayal of the families and the hard and thorough work of the 9/11 Commission. Commission Chairman Thomas Kean and Vice Chairman Lee Hamilton have asked the House Republicans to remove extraneous provisions and pass a clean bill. The New York Times, The Washington Post, and Miami Herald, to name a few, call this bill a "political sideshow" and "election-year posturing." They see this bill for what it is, a step in the wrong direction that in many cases does the opposite of what the 9/11 Commission recommended.

The House Republicans should stop playing politics with the war on terrorism and start protecting the American people. As those of us from New York know all too well, we must do everything we can to prevent another September 11. I urge my colleagues to defeat this legislation and pass a bill that will actually make us safer.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 1 minute to the gentlewoman from California (Ms. WATERS).

□ 1715

Ms. WATERS. Mr. Chairman, I wish to thank the gentleman from Michigan (Mr. CONYERS) for yielding me this time to talk on this most important piece of legislation.

Mr. Chairman, this bill should have been voted on and passed a long time ago, but the President and the Republican leadership have simply dragged their feet. We must not forget that Republicans opposed the creation of the 9/11 Commission. Now, House Republicans are pushing a bill that does not make all the necessary reforms that will help ensure the safety of this Nation.

The 9/11 Commission has done outstanding work. It spent months interviewing members of the intelligence community, hearing testimony and reviewing documents. After all that, the Commission unanimously approved its report and the recommendations included in it. Most importantly, the families of those who lost loved ones on September 11 have endorsed the Commission's report. Unfortunately, the House Republicans continue to delay and to refuse to embrace the Commission's work.

I find it appalling that the Republican leadership thinks it has a monopoly on the wisdom needed to make our country safe. I urge my colleagues to support a bill that incorporates the recommendations of the 9/11 Commission.

Mr. CONYERS. Mr. Chairman, I am pleased now to yield 2 minutes to the gentleman from New York (Mr. WEINER).

Mr. WEINER. Mr. Chairman, I thank the gentleman for yielding me this time.

Much has been mentioned on this floor about what has been left out of this report and things put in that were extraneous. Well, I do not know how those of us on the Committee on the Judiciary can support this bill when so much of the work we included in the bill was stripped out of it.

My colleagues on the other side of the aisle, when they visited New York, were amazed and awestruck about the level of preparedness we in New York had, and I think even the Speaker said that we need to do more for New York. In the September 11 report, they said we need to do more. In our committee we included a provision to fund the anti-terrorism cops. Stripped out in this bill on the floor. We included a provision to allow all localities to make retroactive application for funds. Stripped out in this bill. We certainly did not include any language to have a minimum guaranty for cities like New York, to make sure if the list grows too long, they still have the basic amount they need.

What we did manage to do is do the opposite of what the September 11 Commission recommended, which was to have a minimum guaranty for all States irrespective of their needs. I just hope my colleagues remember that when the agriculture bill comes on the floor and those of us from Brooklyn and Queens and Manhattan come and we say we want a minimum guaranty of wheat subsidies or corn subsidies.

But I will tell my colleagues something that certainly did get included in the bill, is a provision on page 395 of the bill, saying "it is the sense of Congress we should have a more robust dialogue between the government of the United States and the government of Saudi Arabia in order to provide a reevaluation and improvements to the relationship by both sides." What is it with the love affair that you have with the Saudi Arabians?

The problems with our relationship on both sides? Have we jacked up their gas prices? Did we not be thankful to them when they defended our country? Did we send 15 of 19 bombers to their country?

Why do you keep doing this, every time we stand up in this House and say, enough with the Saudis, you stick language like this back in. What is with the love affair of President Bush and your party with the Saudi Arabian government? They are not our allies. They have not behaved like our allies. Yet, in the September 11 report, in the ultimate sign of contempt for the victims, you are laying down and prostrate at the feet of the Saudi Arabians. It is a shame.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. SMITH).

Mr. SMITH of Texas. Mr. Chairman, I thank the chairman of the Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER), for yielding me this time.

Mr. Chairman, I strongly support H.R. 10. This legislation includes important immigration provisions that are vital to improving homeland security. The expansion of expedited removal is particularly important to me because it is a provision I originally authored in the Illegal Immigration Reform and Immigrant Responsibilities Act of 1996.

Back in the mid 1990s, thousands of aliens arrived at our airports without valid documents and then made fraudulent asylum claims. They knew they would be released into the community pending their asylum hearing, and few were ever heard from again. We created expedited removal to allow us to immediately return an alien to their country of origin if they showed up in the U.S. without proper documentation. The result is that we no longer have a serious problem of aliens arriving with false documents at airports.

The situation is much different on our land borders. Every day thousands of aliens enter the country illegally, and because we do not have adequate detention space, they are released pending a hearing. A high percentage of these aliens, and this should not surprise anybody, are not from Mexico, they are from every other country you can imagine.

The Department of Homeland Security recently reported that aliens have been apprehended on our borders from such countries as Iran, Saudi Arabia, and Syria. The 1996 Act created authority for the administration to use expedited removal for any alien in the country illegally, but until recently, they have not made use of that authority. The 9/11 Commissioners expressly pointed out how dangerous it is not to have expedited removal at our land borders. Potential terrorists will attempt to cross our land borders, and we should help the administration stop these terrorists from entering the United States. Mr. Chairman, I am pleased that section 3006 of this legislation would expand expedited removal to our land borders.

Mr. CONYERS. Mr. Chairman, I am pleased to yield 1 minute to the gentleman from California (Mr. SCHIFF), a former U.S. attorney and a distinguished member of the California bar.

Mr. SCHIFF. Mr. Chairman, I thank the gentleman for yielding me this time, and I rise in support of the Menendez substitute, a substitute that closely adheres to the recommendations of the 9/11 Commission, and most importantly, from my point of view, incorporates the 9/11 Commission's recommendation that we strengthen our efforts to prevent the proliferation of nuclear material, technology, and expertise around the world.

In the Committee on the Judiciary, I offered a series of amendments, some which adopt the language now found in the Menendez substitute, which was in McCain-Lieberman, to strengthen our nonproliferation efforts; others that identify and prioritize the sites of highly-enriched uranium around the world, those amendments were adopted. I want to thank the chairman and the ranking member for their support in committee. They were also supported by the Chair of the Committee on International Relations.

But for some reason, Mr. Chairman, they were stripped out of this bill prior to its arrival on the floor, leaving this base bill far weaker than the substitute when it comes to the number one danger facing this country, as the President and Senator KERRY outlined in the debates, the threat of nuclear terrorism. The Menendez substitute addresses this problem, and I support it.

Mr. CONYERS. Mr. Chairman, I am now pleased to yield 30 seconds to the gentlewoman from California (Ms. LOFGREN), a distinguished member of the Committee on the Judiciary.

Ms. LOFGREN. Mr. Chairman, if you just read the title of this bill, you might think the House is finally acting on the 9/11 Commission. But if you read the bill's content, you find, sadly, no.

Out of the 41 recommendations by the Commission, only 11 are in the bill, 15 are incomplete, 15 were totally ignored, and there are 50 extraneous poison pill provisions.

The Menendez substitute is the 9/11 Commission recommendations. This bill is not. And I hope that we will support the 9/11 families and the Commission by adopting the Menendez substitute instead of this flawed measure.

The independent, bipartisan 9/11 Commission, issued its report on July 22nd. A full 78 days have passed since this important document was published. Today we are voting on a bill entitled, "9/11 Recommendations Implementation Act." If you just read the title of the bill, you might think the House is finally acting on the recommendations of the 9/11 Commission.

Yet, upon closer examination of the bill, you realize the title has little to do with the bill's content.

There are several provisions in this bill that have absolutely nothing to do with the recommendations by the bipartisan, independent 9/11 Commission. There are others that simply miss the point made by recommendations of the 9/11 Commission. Worse yet, there are several Commission recommendations that are totally ignored.

Out of 41 recommendations made by the 9/11 Commission, only 11 are addressed in the bill, 15 are incomplete, and 15 were totally ignored. Over 50 extraneous "poison pill" provisions that were not recommended by the Commission are included.

In H.R. 10, the Republican leadership simply ignored some of the most important recommendations made by the 9/11 Commission. H.R. 10:

Fails to give the National Intelligence Director sufficient authority over the budget and personnel of the intelligence agencies; fails to strengthen U.S. efforts to prevent the proliferation of nuclear weapons; fails to secure U.S. borders by integrating disparate screening systems; fails to mandate and fund the use of explosive detection devices for airline safety; fails to provide radio spectrum for first responders to communicate during emergencies; fails to provide additional security assistance to Afghanistan or economic development assistance to Arab and Muslim countries.

H.R. 10 contains several provisions that undermine Commission recommendations by weakening Congressional oversight and giving the President too much power in reorganizing the intelligence agencies. The bill includes controversial immigration and tort provisions that had nothing to do with 9/11 Commission recommendations. They will delay or ultimately frustrate enactment of 9/11 Commission recommendations.

The bipartisan, independent 9/11 Commission should not be exploited today to enact the majority party's agenda that has very little to do with the Commission's recommendations.

It is time for the Republican leadership in this House to take the 9/11 Commission seriously. We should pass a bill that truly implements the 9/11 Commission recommendations, such as the bill that was passed by the

Senate yesterday, or the Menendez amendment in the House today. Unlike H.R. 10, the Senate bill was worked out in a bipartisan fashion with a vote of 96–2, and has been endorsed by the 9/11 Commission.

More importantly, the Menendez substitute has the strong support of the 9/11 families, who know too well the tremendous suffering that comes with a terrorist attack.

The republican leadership in this House is ignoring the families of the 9/11 victims, the 9/11 Commission, and a strong agreement reached in the Senate in a bipartisan fashion. It is time for the Republicans to stop playing politics with our Nation's security. Let's vote against H.R. 10 and instead for a bill that represents a consensus across the political spectrum.

Mr. CONYERS. Mr. Chairman, I yield the balance of my time to the distinguished gentleman from North Carolina (Mr. WATTS), the ranking member on the Subcommittee on Commercial and Administrative Law of the Committee on the Judiciary, to close for our side.

Mr. WATT. Mr. Chairman, since 9/11, numerous groups have found that, along with the imperative to enhance the flow of information necessary to detect, combat, and prevent future acts of terrorism, comes a parallel and increased imperative to protect the privacy and civil liberties of individuals. These groups believe that balancing security and liberty is not only possible but fundamental to the fight against terror. In other words, they believe that individuals should have personal rights and privacy even after 9/11.

The report of the 9/11 Commission was equally clear on this point, stating that, "The shift of power and authority to the government calls for an enhanced system of checks and balances to protect the precious liberties that are vital to our way of life."

Chief among the Commission's recommendations was the recommendation that an entity within the executive branch be established "to look across the government at the actions we are taking to protect ourselves to ensure that liberty concerns are appropriately considered." That was a clear unequivocal recommendation of the 9/11 Commission.

I find it astonishing that this bill that we are considering today completely ignores this recommendation and fails to create a board to protect the civil liberties of the American people. Refusing to establish a civil liberties watchdog is an insult to the unanimous bipartisan 9/11 Commission report and an affront to the values we cherish.

Further, by refusing to establish a civil liberties watchdog in this bill, the bill is also inconsistent with the bill reported favorably from the Committee on the Judiciary and it is inconsistent with the Senate Bill.

Last month, at a joint hearing of the Subcommittee on Commercial and Administrative Law and the Subcommittee on the Constitution, two members of the Commission testified that the board should have quite robust powers, and that the board should be independent and should be powerful enough so that it gets listened to.

Consistent with these views of the distinguished members of the 9/11 Commission, during the markup of H.R. 10 in the Committee on the Judiciary, I offered an amendment to create a strong bipartisan board to supervise civil liberties compliance. After substantial debate about one aspect of the amendment, whether the board should have subpoena power, the Committee on the Judiciary passed a bill that included a version of my amendment. But it did include a civil liberties board.

It is, therefore, unbelievable that this bill, while giving the government even broader powers that may affect the freedoms of our citizens, flatly rejects the obligations to protect those freedoms from abuse. The American people should not be asked to sacrifice the very liberties they are defending against terrorist attack without the benefit of a board with genuine oversight authority. I request my colleagues to reject this bill and support the substitute.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself the balance of my time to close.

Mr. Chairman, I have been listening to this debate since it began several hours ago. And those who are promoting the Menendez substitute, time and time again, criticize the base bill, H.R. 10, for extraneous and unrelated issues. Mr. Chairman, let me be blunt. Many of these extraneous and unrelated issues are designed to prevent terrorists from coming to our borders; or, if they get inside the United States, making sure that they do not game the system to be able to stay here and have the time to plot to do ill to America and its people and its values.

I would like to talk about a couple of these issues. First of all, aliens who apply for American drivers' licenses will have to present a passport. We know that the driver's license is the type of ID that is used at airports and other transportation facilities, as well as to prove a person's age when they are buying alcohol or tobacco. If the driver's license that is issued by a State Department of Motor Vehicles is based on phony and unsecure identification, then that person can use the result of the use of the phony and unsecure identification to be able to do a lot of things, including hijack airplanes and get on them and fly those airplanes into buildings.

We have heard a lot about some of the changes in the immigration law that are contained in the base bill but not in the Menendez substitute. Let me say that those changes in the immigration law are designed to get at people who are criminals, and not United States citizens, and deal with them, like the deportation of criminal aliens and those that wish to use the asylum laws to game our system, like Sheikh Rahman did when he was plotting the bombing of the World Trade Center in 1993.

□ 1730

There is a difference between illegal aliens who wish to game the system and those that overstay their visas and those people from other countries who wish to come here to live legally and peacefully. And unless we tighten up the system, it is this latter group that are going to end up being tarred with the sins of the former group. The provisions in the base H.R. 10 bill that deal with expedited removal, et cetera, are designed to protect legal immigrants to the United States so that they do not have to pay for the sins of those who wish to commit crimes and acts of terrorism. That is why those provisions ought to stay in this bill and not be stricken out during the amendatory process.

The base bill is a good bill. It makes America safer than the Menendez substitute and the Senate-passed bill and ought to be approved.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore (Mr. LINDER). All time having expired for the Committee on the Judiciary, it is now in order to recognize the Committee on International Relations, the gentleman from Illinois (Mr. HYDE) and the gentleman from California (Mr. LANTOS), for 10 minutes each.

The Chair recognizes the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

The final report of the 9/11 Commission made recommendations on how best to confront the threat of terrorism in the 21st century. Of these 44 recommendations, one-third of them fell within the jurisdiction of the House Committee on International Relations.

H.R. 10 will prepare us to better respond to this threat using all available tools as recommended by the commission, including diplomacy, public diplomacy, international cooperation, foreign aid, sanctions, covert action, security enhancement, and military force when necessary. H.R. 10 goes beyond the mere urging of the issuance of a report or a "sense of Congress" as many of the other legislative initiatives propose.

It offers practical, focused, and concrete initiatives that take effect immediately. Although some foreign policy issues are addressed in the Menendez substitute, it mainly addresses only intelligence reform efforts while H.R. 10 delves more deeply into foreign policy and diplomacy efforts which, I might add, were developed in a bipartisan fashion with my good friend from California, the ranking member of the House Committee on International Relations.

For example, I refer Members to the response to the commission's recommendation to define and defend our ideals abroad. H.R. 10 places the emphasis on training, language proficiency, and a creative recruitment process to fulfill our various public diplomacy needs. The Menendez substitute has no comparable provisions.

The commission remarked on the need to develop a comprehensive coalition strategy against Islamist terrorism. The Menendez substitute offers no comparable response, while H.R. 10 has a series of provisions to strengthen the capabilities of the State Department to engage in multilateral diplomacy and to build working relationships with like-minded democratic nations.

Another difference between H.R. 10 and the Menendez substitute is how we propose to deal with countries that provide sanctuary for terrorists. H.R. 10 requires the President to develop a strategy to eliminate terrorist sanctuaries and, most importantly, requires that U.S. exports be regulated to countries that act as sanctuaries. The Menendez substitute includes no such provision.

Another example of how H.R. 10 translates the broad recommendations of the 9/11 Commission into concrete action is the creation of a terrorism interdiction initiative modeled after the successful proliferation security initiative, and the establishment of regional counterterrorism centers and terrorism prevention teams. The Menendez substitute contains no such provisions.

The commission could not have been clearer that targeting travel is at least as powerful a weapon against terrorists as targeting money. H.R. 10 includes specific language which expands two important programs that screen passengers and inspect passports and visas of U.S.-bound visitors prior to their departure at foreign airports. The Menendez substitute has no comparable provisions.

H.R. 10 also increases staffing and improves training of our consular officers who are the first line of defense in screening out potential terrorists. In addition, it increases penalties for convictions involving fraudulent government-issued visas and passports. Again, the Menendez substitute is silent.

In line with the 9/11 Commission's recommendations, H.R. 10 explicitly requires the State Department to make denial of terrorist mobility a top priority of the Department's chief counterterrorist official. No similar provision exists in the other legislative option.

With regard to Afghanistan, which is just 2 days away from its first national elections, the provisions included in H.R. 10 are far superior to those in the Menendez substitute. The commission concluded that the allocation of reconstruction funds in Afghanistan was too compartmentalized. We have solved that problem with the appointment of a coordinator tasked with broad authority. H.R. 10 also restates our commitment to the rule of law and vital education programs in Afghanistan.

Mr. Chairman, although the Menendez substitute represents a serious effort to address a few of the problems posed by terrorists to the security of this country, its unspoken premise is that difficult problems can be easily solved by the simple act of throwing money at them. In the final analysis, we cannot substitute money for careful thought, nor can we buy our way out of the difficult task of crafting wise and effective policies. H.R. 10 does not just throw money at the problem, it defines priorities by which to eliminate fragmented management and operations structures, redirecting resources to where they are most necessary in order to build intelligence capabilities to counter terrorist threats through the best possible means, exactly as the commission recommended. It is time to enact these concrete solutions to confront the threat head-on.

The National Commission on Terrorist Attacks upon the United States criticized the United States Government on is fragmented management and operations structures and questioned its ability to direct resources where necessary to best build intelligence capabilities to counter terrorist threats or to address broader issues of national security challenges. The final report issued 44 recommendations on how to best confront this threat. Of these 44 recommendations, one-third of them, or fifteen, fall within the jurisdiction of the House International Relations Committee.

In sum, these recommendations suggest that the United States use all tools available to respond to this threat, including: diplomacy, public diplomacy, international cooperation and coordination, foreign aid, sanctions, covert action, security enhancement and military force when necessary. With each of these instruments, the United States should focus its efforts on attacking terrorists and their organizations, preventing the continued growth of terrorism, and protecting against and preparing for future attacks.

H.R. 10 goes beyond the mere urging of the issuance of a report or a "Sense of Congress," as many of the other legislative initiatives propose. It offers practical, focused and concrete initiatives that take effect immediately, rather than waiting for another study to determine whether the full recommendation of the Commission should be implemented. To put it simply, the authors of H.R. 10 did not stop reading the Commission's report halfway through, but instead, crafted thoughtful solutions to the tough recommendations. We took the abstract and made it concrete.

Although some foreign policy issues are addressed in the Menendez Amendment, it mainly addresses the first "track" on the intelligence reform efforts, while H.R. 10 delves more deeply into foreign policy and diplomacy efforts. In fact, many of the provisions of H.R. 10 were developed in a bipartisan fashion, gaining the expertise and guidance of my dear friend from California, the Ranking Member of the House International Relations Committee, TOM LANTOS.

For example, I refer you to the response to the Commission's recommendation to "define and defend our ideals abroad," or conduct better public diplomacy. H.R. 10 places the emphasis on training and the creative recruitment process to find the skill-set needed, such as language proficiency, for the various public diplomacy needs. The Menendez Substitute does not offer anything more than reporting requirement or non-binding "Sense of Congress" language. H.R. 10 directs the State Department, in coordination with other government agencies involved with communications or public outreach, to collaborate on a strategic plan and conduct annual assessments to measure progress.

Expanded broadcasting to the Muslim world is too new to fairly evaluate. Sufficient time is necessary to determine the appropriate course corrections, if any. However, I recognize that professional, contemporary communications are "a must" as we compete against satellite networks feeding misleading news to the region.

The Commission remarked on the need to engage other nations in developing a comprehensive coalition strategy against Islamist terrorism. The Menendez Substitute offers virtually no response to this suggestion, while H.R. 10 has a series of provisions designated to specifically strengthen the capabilities of the State Department in the multilateral arena. It addresses the systemic weaknesses of the Department on the multilateral front by increasing training and education. H.R. 10 also addresses the importance of building working relationships with like-minded democratic nations through the work of such organizations as the Community of Democracies and through the establishment of a democracy caucus at the United Nations.

Another difference between H.R. 10 and the Menendez Substitute is how we propose to deal with countries that provide sanctuary to terrorists. H.R. 10 provides a clear policy statement on terrorist sanctuaries, requires the President to develop a strategy to address and eliminate terrorist sanctuaries and, most importantly, requires that U.S. exports be regulated to countries that are found to be terrorist sanctuaries. This provision puts meat on the bones. It directly implements the 9–11 Commission charge to "use all elements of national power" by saying that if a foreign country provides sanctuary for terrorists, then we will condition the trade of our goods and services with that country. There is no such provision in the Menendez Substitute. It contains only identical findings, non-binding policy language and a one-time report.

Another example of how H.R. 10 translates the broad recommendations of the 9–11 Commission into concrete actions is the creation of a Terrorism Interdiction Initiative, modeled after the successful Proliferation Security Initiative. The 9–11 Commission calls for expanded collaboration with other governments on terrorism. Other legislative initiatives only have "Sense of Congress" provisions suggesting the establishment of a contact group. By contrast, H.R. 10 mandates the negotiation, on a bilateral basis, of international agreements to secure global support, cooperation and coordination, and to maximize and integrate resources for attacking terrorists and terrorist organizations. It establishes specific requirements for these agreements under the Terrorism Interdiction Initiative which include "Interdiction Principles;" establishment of Regional Counter-terrorism Centers; and establishment of Terrorism Prevention Teams to address current and emerging terrorist threats.

On the important question of curtailing terrorist travel, the Menendez Substitute falls short of the provisions contained in H.R. 10. The Commission could not have been clearer that "targeting travel is at least as powerful a weapon against terrorists as targeting money." H.R. 10 includes specific language which expands two important programs that screen passengers and inspect passports and visas of U.S.-bound visitors prior to their departure from foreign airports. This keeps terrorists away from our shores, and perhaps most importantly, it prevents those who want to do us harm from even boarding flights headed for the United States. The Menendez Substitute has no comparable provisions.

H.R. 10 also increases staffing and improves training of our consular officers who are the first line of defense in screening out potential terrorists. In addition, the legislation increases penalties for convictions involving fraudulent, government-issued visas and passports, Again, the Menendez Substitute does not address these problems.

In line with the 9–11 Commission's recommendation, H.R. 10 explicitly requires the State Department to make denial of terrorist mobility a top priority of the Department's chief counterterrorist official. No similar provision exists in other legislative options.

With regard to Afghanistan, which I might add is just two days away from its first national elections, the provisions included in H.R. 10 are far superior to the Mendendez Substitute. The Commission concluded that the allocation of reconstruction funds in Afghanistan was too compartmentalized. We have solved that problem with the appointment of a coordinator tasked with broad authority. H.R. 10 also restates our commitment to the rule of law and vital educational programs in Afghanistan.

Mr. Chairman, although the Mendendez Substitute represents a serious effort to address a few of the problems posed by terrorists to the security of the United States, its unspoken premise is that difficult problems can be easily solved by the simple act of throwing money at them. We have no shortage of examples of government programs were this approach has not only failed, but actually rendered our problems worse. Here, the greatest danger stems from the complacency that will result from our merely having increased spending while congratulating ourselves for having taken swift action.

In the final analysis, we cannot substitute money for careful thought, nor can we buy our way out of the difficult task of crafting wise and effective policies. H.R. 10 doesn't just throw money at the problem. Instead, it defines priorities by which to eliminate fragmented management and operations structures, redirecting resources to where they are most necessary in order to build intelligence capabilities to counter terrorist threats through the best possible means—exactly as the Commission recommended. It is time to enact these concrete solutions to confront the threat head-on.

Mr. Chairman, I reserve the balance of my time.

Mr. LANTOS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the country is at war, and the first requirement of a country at war is unity. Yesterday, the other body voted 96 to 2 to approve legislation that the 9/11 Commission's chairman, former Republican Governor of New Jersey Tom Kean, hailed as "a dream come true." Afterward, one of the Republican authors of that legislation, a universally respected and admired war hero, said, "This is one of my prouder moments because of the way this entire body has acted in the national interest."

Mr. Chairman, what will we in what is known as the people's House be able to say of our debate today when it is done? That we pulled together in the same spirit that all Americans showed when we came together after September 11? Or that we deepened divisions by subjecting this process to rancorous and divisive partisanship?

Later in this debate, we will have the perfect framework to bring unity to our Nation that experienced such unspeakable loss of life on September 11, a Nation that in the heat of an election season is becoming divided even over things that once brought us together. The Menendez substitute reflects the recommendations of the bipartisan 9/11 Commission which in turn have been strongly endorsed by those who lost the most on that tragic autumn day, the families of the victims of September 11.

The Menendez substitute, Mr. Chairman, minutely follows the unanimous recommendations of the bipartisan 9/11 Commission and of the legislation approved yesterday by the other body, let me repeat, by a vote of 96 to 2. The most conservative Republicans and the most liberal Democrats saw fit to vote for that legislation which is the Menendez substitute. The two dissenters raised no substantive concerns whatsoever. They simply believed that the bill was moving too fast through the legislative process.

Mr. Chairman, if there are no major substantive problems with the legislation approved by the other body, why do we need to reinvent the wheel? Or perhaps more aptly, spin our wheels on legislation with divisive additional measures and legislation that does not reflect the 9/11 Commission's report?

The American people do not wish to see further divisions in Washington. Troops are bleeding in Afghanistan and Iraq, tens of thousands of military families have been affected dramatically, but the bill before the House only exacerbates divisions that are fueled by the fervor of a national election. We may disagree on the virtues and shortcomings of the two major proposals, but we can all agree that divisiveness and partisanship are contrary to our national interest in the autumn of 2004. Soon we will hear some severe criticism of the Menendez substitute, but I ask my friends across the aisle, how can the Menendez legislation be so terrible since every single Republican Senator voted for it?

While I strongly support the Menendez substitute, I would be remiss if I did not acknowledge the bipartisan spirit in which the distinguished chairman of the Committee on International Relations, my dear friend from Illinois (Mr. HYDE), approached the provisions of this legislation which are within the jurisdiction of the Committee on International Relations. Chairman HYDE took into account Democratic views in crafting title IV of this bill; and I support many of its provisions, although some measures the Democrats had proposed were left out.

Mr. Chairman, we are at the hinge of history. The 9/11 Commission has spoken and the Nation is waiting. Now Congress must move assertively to further protect our Nation's security by enacting legislation in line with the commission's findings and what the American people want: well-laid plans for our security that do not sacrifice our solidarity.

Mr. Chairman, in a short while we will have the opportunity to vote for a bill strongly endorsed by the bipartisan 9/11 Commission, the families of the victims, and 96 Members of the other body, and to speed this critically important bill to the President's desk. The other choice is a partisan bill that does not embody all of the 9/11 Commission's intentions. I urge all of my colleagues to support the Menendez substitute.

Mr. Chairman, I reserve the balance of my time.

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore. The Chair reminds all Members that it is not in order to cast reflections on the actions of the Senate or its Members, individually or collectively.

☐ 1745

Mr. HYDE. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from New Jersey (Mr. SMITH).

Mr. SMITH of New Jersey. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, at the appropriate time, I intend to offer amendments to strike two provisions of H.R. 10, section 3006 and 3007, which, if enacted, would radically alter U.S. immigration law and put true refugees, bona fide refugees, at risk of injury or harm.

My amendments are supported by approximately 40 religious, refugee and human rights organizations, including the Catholic Bishops Conference, Hebrew Immigrant Aid Society, Human Rights First, Boat People SOS, Refugees International, and many others.

I want to point out to my colleagues that the Bush administration in its statement of administration policy, SAP, which I just received a few minutes ago, makes clear that the administration strongly opposes the overbroad expansion of expedited removal authority which is contained in the underlying bill. These sweeping changes that I would strike, Mr. Chairman, were not recommended by the 9/11 Commission nor have these provisions been sufficiently vetted and analyzed to fully understand their effect.

What we do know is that section 3006 drastically alters and expands existing authority known as "expedited removal" and it could put hundreds of thousands of refugees at risk of immediate deportation.

What we do know is that section 3007, among other things, replaces a clear, longstanding defined "burden of proof" standard for proving an asylum claim with a brand new unfair test that will almost certainly result in deportation regardless of merit.

One might ask, what is wrong with expanding expedited removal? A lot. Expedited removal takes away the rights of legitimate asylum seekers to a fair hearing before the proper authorities.

Tomorrow, we will take this up or perhaps later on tonight. I hope Members will support the amendments.

Mr. LANTOS. Mr. Chairman, I yield 1½ minute to the gentlewoman from California (Ms. LEE).

Ms. LEE. Mr. Chairman, I thank the ranking member of the Committee on International Relations for yielding me this time and also for continuing to forge bipartisan consensus on Committee on International Relations issues.

Let me just say today that I rise in strong opposition to H.R. 10, which is the fundamentally flawed bill before us today, and in support of the Menendez substitute.

What a shame that the Republicans decided really to take, as I say, the partisan low road in crafting this bill and opted to play politics with the single most important issue facing this Nation today, our homeland security. What a shame, Mr. Chairman, that the Republicans inserted anti-immigrant and other controversial and really extraneous provisions into this bill. What a shame that the Republicans ignored at least 16, 16 provisions of the bipartisan 9/11 Commission's recommendations. And, yes, what a shame that this Republican bill is so weak, especially when it did not have to be.

But I guess, really, we should not be shocked by these actions. After all, the White House resisted the 9/11 Commission in the first place and really have taken every opportunity to politicize the most important of issues before this House.

Fortunately, we do have a stronger bipartisan alternative to H.R. 10. Fortunately, we have an alternative which respects civil liberties by creating a Civil Liberties Oversight Board. Fortunately, we have a bill which recognizes the true threat of nuclear proliferation by taking steps to strengthen efforts to secure nuclear materials. It is a bill that reflects the input of both sides of the aisle, days of consideration and debate and fully implements the 9/11 Commission recommendations.

Mr. LANTOS. Mr. Chairman, I yield the balance of my time to the gentleman from New Jersey (Mr. MENENDEZ), the distinguished chairman of the Democratic Caucus, the author of the Democratic substitute.

Mr. MENENDEZ. Mr. Chairman, as a senior member of the Committee on International Relations, I am shocked that the Republican bill falls well short of the Commission's recommendations. On four key international relations proposals designed to reduce the threat of terrorism, our Democratic amendment provides new money while the House Republican bill does virtually nothing. On prioritizing efforts in Afghanistan, reforming education in the Middle East, promoting American ideals abroad, encouraging economic development in the Middle East, our bill provides real support, and their bill does virtually nothing.

Like the 9/11 Commission's recommendations, the Menendez substitute protects the United States by taking real action to secure the peace in Afghanistan, the home of the Taliban and breeding ground for bin Laden and al Qaeda. Our bill puts new money on the table to fight terror and promote democracy in Afghanistan. Their bill asks for new reports. When will we learn that Osama bin Laden attacked the United States, not Saddam Hussein?

Like the 9/11 Commission's recommendations, the Menendez substitute recognizes that the gravest threat our Nation faces today is the potential for a nuclear weapon to land in the hands of terrorists. That is why we must stop the spread of nuclear weapons and secure the world's existing stockpiles. Our amendment requires a plan to do exactly that. It also pushes the administration to secure loose nuclear material in the former Soviet Union and allows for increased funding to deal with proliferation threats elsewhere.

At a time when this country has secured less weapons material in the 2 years after September 11 than in the 2 years before it, the House Republican bill only calls for a study.

Vote for the Menendez substitute, which embodies the 9/11 Commission's recommendations on international relations and nuclear nonproliferation. That is, in essence, the way in which we strengthen America.

And I thank the distinguished ranking Democrat for his very strong statement and his expertise, and I only wish that we can get our substitute passed because it embodies his views.

Mr. HYDE. Mr. Chairman, I yield the balance of my time to the gentleman from California (Mr. ROYCE).

Mr. ROYCE. Mr. Chairman, I thank the gentleman from Illinois (Chairman HYDE) for yielding me this time.

And I want to commend the gentleman from Illinois (Chairman HYDE) for putting together a comprehensive package of reforms to reinvigorate U.S. diplomacy in our war against Islamist terror.

I think that this comprehensive legislation includes many provisions to improve our safety, including cracking down on illegal U.S. visas and passports, and it gets the ball rolling towards the use of biometric, tamper-resistant machine-readable passports. Clearly, border security is national security.

I also wanted to speak in opposition to the amendment suggested by the gentleman from New Jersey (Mr. SMITH) for expedited removal. And I do that because an illegal alien who has been in the United States for less than 5 years under this proposal is subject to expedited removal unless he applies for asylum and shows a credible fear of persecution. Then he is exempted. So this bill addresses that issue.

But what the amendment proposed by the gentleman from New Jersey (Mr. SMITH) would do is eliminate the expedited removal provision. The reason we have the provision is that, currently, many of the illegal aliens picked up on the border have to be released, and they have to be released because of lack of detention space. So they are asked to show up to a special hearing, and, of course, 87 percent, as we know, do not show up for that deportation hearing. This bill was crafted to solve the problem. The gentleman from New Jersey's (Chairman SMITH's) amendment would prevent that.

Secondly, the Ninth Circuit in California has given asylum to illegal aliens whose home governments believe they are terrorists on the theory that they are being persecuted because of the political beliefs of the terrorist organization. So the provision of the bill provides that if the alien applying for asylum is believed to be a terrorist, the alien has to show that a central reason is persecution for race, gender, political beliefs or religion.

The CHAIRMAN pro tempore (Mr. LINDER). All time for debate has expired for the Committee on International Relations.

It is now in order to recognize the Committee on Transportation and Infrastructure. The gentleman from Alaska (Mr. YOUNG) and the gentleman from Minnesota (Mr. OBERSTAR) each will control 10 minutes.

The Chair recognizes the gentleman from Alaska (Mr. YOUNG).

Mr. YOUNG of Alaska. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise to speak regarding H.R. 10, the 9/11 Recommendations Implementation Act.

I realize the importance of this legislation and understand the need for improving our intelligence gathering and coordination. The failure of our intelligence and law enforcement agencies to communicate has been demonstrated on numerous occasions. However, while there is no doubt that we must protect our country and our people from the threat of terrorism, we must also protect the viability of our economy. I want to stress that, the viability of our economy, and if we do not do so, especially in our Nation's transportation, the bad guys have won.

The Committee on Transportation and Infrastructure has worked very hard on a bipartisan basis for the last 3 years to develop the best transportation security possible. It was our committee that proposed and passed the first legislation to create the Transportation Security Administration, TSA. We have improved that legislation and moved other bills that improved security as well. We have exercised our oversight jurisdiction both thoroughly and prudently and with due respect to the concerns of the Department of Homeland Security and other federal agencies.

H.R. 10 contains new recommendations from our committee regarding improvements in aviation security and additional improvements in the area of maritime security. The Committee on Transportation and Infrastructure also reported recommendations regarding the funding of first responders.

Recently, I personally experienced how it felt to be on TSA's no-fly list when I was confused with another person with the same name. This was not a pleasant experience, but I was able to clear up the confusion fairly quickly and continued on my trip. H.R. 10 includes recommendations from the Committee on Transportation and Infrastructure that will provide travelers who are misidentified by the TSA an opportunity to appeal.

I have serious concerns regarding section 5027, encouraging the Committee on Rules to act on the recommendation regarding committee jurisdiction prior to the next Congress. This House should have an opportunity for full and fair debate on any changes to the structure of the standing committees or any changes to their jurisdiction. There should be regular order and a fair process for consideration of changes that could have seriously impacts on all the stakeholders and industries who will be affected by the way we exercise our jurisdiction and carry out our oversight.

The decision regarding the rules of the House should be made at the beginning of the next Congress. This is not a fight about turf as some might claim. It is about doing the best job for legislating that we can for the American people and that requires both expertise and balance. The committee with a single focus only on security, not balanced by concern for the economic and other consequences, could result in posing unreasonable burdens on the taxpayers and our economic base.

The current recommendations of the Select Committee on Homeland Security eliminate the ability of the Committee on Transportation and Infrastructure to exercise legislation or oversight jurisdiction over transportation security. The Select Committee on Homeland Security's recommendation has extremely serious consequences and deserves full consideration over the coming months.

Should this bill go to conference, I strongly encourage the conferees and the Committee on Rules to refrain from taking action that would prevent a full and fair debate on the changes to the rules. As we legislate to protect the homeland security in all areas of our national life, we must look at the whole picture and find the right balance between security and economic stability.

And may I respectfully suggest to the leadership of the House on both sides of the aisle and those that might be in the conference, and I will be one of them, if we, in fact, change the rules without going through the due process, I will vote and work against this legislation. Because if we disrupt our economic base, if we cannot continue the mission of moving our goods and people, then the bad guys have won. So we have to be very careful what we do. As we rush to judgment to pass a piece of legislation recommended by the 9/11 Commission, I will assure the Members that I want to study it very closely to make sure that we provide the security that is necessary but keep in mind the economic well-being of our people in this Nation.

Mr. Chairman, I reserve the balance of my time.

□ 1800

Mr. OBERSTAR. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, I join at the outset with our chairman, the gentleman from Alaska, in expressing support for reserving to the next Congress the issue of jurisdiction of homeland security and how the matter of legislative authority over these issues should be handled. The gentleman is absolutely correct, and we are in full agreement.

Unfortunately, the bill we are considering, H.R. 10, implements only 11 of the 41 recommendations of the bipartisan 9/11 Commission. Our committee actually reported stronger language and better provisions than are in the vehicle before us today, and, had the process provided for it, our committee proposals in aviation and in transit would have been superior to what is in the pending legislation.

Actually the Menendez amendment in the nature of a substitute is superior. It implements all of the Commission recommendations and borrows from the other body's approach, which passed the other body 96 to 2. We are not likely to have that kind of outcome on the House floor today.

In a process where 50 items not recommended in the September 11 Commission report are added to this bill, our side is not allowed to offer amendments to the Menendez substitute in which we could have made major improvements, including not only those recommendations of our Committee on Transportation and Infrastructure, but many that we considered but have not yet acted upon.

Gaps exist, and, unfortunately, the September 11 Commission did not deal with highway, bridge, transit, rail and port facilities. We passed a port facility bill. We got it enacted, but it has not been funded.

The administration has not seen fit to put money into the port security requests that have come in the nature of some $2.9 billion requested by ports, both saltwater, fresh water and river ports in the United States. They are woefully inadequately funded, and yet all of us recall the tragedy of the USS Cole and the merchant vessel Limburg just 2 years ago. I can envision a scenario when the same type of attack is made upon cruise ships or LNG tankers or chemical tankers.

There are also threats from the 6 million containers that enter U.S. ports every year. We have no comprehensive means of screening containers. We need to do that. We need to invest maybe not the $7 billion the Coast Guard proposed, but something in that nature, and this H.R. 10 document does not move us in that direction.

Mr. YOUNG of Alaska. Mr. Chairman, I yield the balance of my time to the gentleman from Florida (Mr. MICA), and ask unanimous consent that he be allowed to control it.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Alaska?

There was no objection.

Mr. MICA. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in strong support of H.R. 10. In fact, I think one of the most important parts of this legislation deals with aviation security. We have worked very hard over the past 2 years to try to come up with bipartisan solutions, things that really would make a difference. Many of those recommendations are contained in the 9/11 report.

Now, the 9/11 report is not perfect. It is put together by 10 people, and it does have some flaws in it. I want to talk about, unfortunately, the adoption and anatomy of adopting one of those flaws in the Menendez substitute which weakens the provisions of H.R. 10.

First of all, the Menendez substitute would strip vital provisions from H.R. 10. We have $60 million in mandatory funding for checkpoint explosive detection devices. Nothing is more important or no greater risk.

Actually, there are two risks. One is someone walking through a 1950s metal detector technology, metal detectors we have at our airports, with explosives strapped to themselves, and those metal detectors will not detect that. We need to deploy them now. The Menendez amendment strips that.

Second is biometric identification. We cannot tell today Mohammad Atta from Sam Hill. We need a biometric identification provision. We have a bipartisan provision, which the Menendez substitute drops from this bill.

Another potential threat is shoulder-launched missile nonproliferation programs. We have worked hard in a bipartisan fashion to eliminate that threat, and we have a four-part, well-thought-out, well-reasoned approach to dealing with that threat. Again, the Menendez substitute weakens and destroys things that we have been working on.

We have improvements in arming our pilots, one of the most effective protective measures, and secondary cockpit barriers. We paid attention to looking at those weaknesses. And also the Menendez substitute weakens international air marshal deployment.

So, again, I rise in strong support of the provisions of H.R. 10.

One of the things that I wanted to address tonight, and, unfortunately, it has even reached the presidential debates, to those uninformed candidates and some of my colleagues on this floor who continue to try to scare the traveling public to suggest that our air cargo carried in on a passenger aircraft is not screened and that we must take extreme measures and build a bureaucracy and march forward in different directions. As a result, they have put forward proposals that are not only unworkable, but would bring this Nation's economy to a grinding halt.

In fact, the facts are that we have a risk-based system in place now. Is it flawless? No. The facts are that building a larger TSA bureaucracy is not going to solve the problem. In fact, it will make the problem worse. The facts are that scaring people and running around the country and saying "the sky is falling" is just wrong and irresponsible.

Let us talk about the Menendez amendment and how it deals with hardened containers. Let me give you the anatomy of the development. Turn to page 393 of the report and see what the Commission recommended. Our committee has worked on these issues day and night, weekends, tirelessly, and our staff, since September 11, and even before that, on aviation security issues.

The Commission recommends, "The TSA should require that every passenger aircraft carrying cargo must deploy at least one hardened container to carry any suspect cargo."

That is not our recommendation. We met with these folks. Who in their right mind would allow suspect cargo on an aircraft? We have provisions already that do not allow "suspect cargo" on an aircraft. They also put "one hardened container." What a goofy idea. "One hardened container."

First of all, the current law that we have a definition of and we have used again to define what we want is "blast resistant container." So they just copied a recommendation without actually having it make sense.

Now, most of our aircraft that you fly on, a 737 that I fly on usually, an Airbus, regional jets that are our biggest proliferation of new aircraft, do not have aircraft containers. So what are we going to have to do, build one to put on there? They do not have containers. 737s have a container.

Think of how goofy this is. A 737, I am told, has 30 containers, so which container are we going to make blast resistant and allow suspicious cargo in violation of our current rules that do not even allow that? We are going to do "eenie, meenie, minie, moe, in which one would the explosive cargo go?"

And I am pleased that the gentle-lady from California, Ms. MILLENDER-MCDONALD, whose district includes the manufacturer of these containers, supported the testing proposal when it was unanimously approved by the Transportation Committee.

TSA is currently drafting new, comprehensive standards for air cargo security, which should be finalized in the next several weeks. TSA has in place risk based, layered air cargo security system.

These directives include key components on the Known Shipper Program, the Indirect Air Carrier Program, the Freight Assessment Program and other increased oversight initiatives.

In addition, the airline industry has taken steps to upgrade their extensive "known shipper" program, which is currently the basis for air cargo screening procedures.

Right now we have a risk-based security system that targets high-risk shipments for additional screening, and combines layers of security along the supply chain.

Contrary to rhetoric, the Department of Homeland Security pre-screens 100 percent of all cargo that comes into the United States and conducts 100 percent inspections of high-risk shipments.

Rushing ahead without carefully considering all the risks and all the implications of security mandates would be destructive to ongoing efforts and have far-reaching and damaging implications.

The Department of Homeland Security's (DHS) has warned that some mandates could "damage their efforts to provide security in the aviation environment and ensure the smooth flow of legitimate goods and people."

DHS has also warned that due to "significant technology limitations," ". . . there is no practical way to achieve 100 percent manual screening and inspection of all air cargo."

Only with technology can we effectively screen air cargo. Why do we not have that technology—I ask Senator PATTY MURRAY who in 2002 diverted R&D funds.

Therefore, given the lack of technology for screening air cargo, any mandate to screen 100 percent of cargo on passenger aircraft would require actual physical inspection of each piece of cargo placed aboard a passenger aircraft.

Now I know that my colleagues from the other side of the aisle would like this approach, because then we could hire thousands more screeners to do this work. According to the IG manual screening for weapons and explosives is the least effective means of detection.

This type of requirement would grind the transportation of air cargo to a virtual halt, or it would also result in a situation where passenger carriers would be denied the ability to transport cargo and guarantees the final nail in the bankruptcy coffin of our ailing major airlines.

Just as important, communities who rely on air cargo to receive much needed supplies, medicines, food, mail, and other necessities of life will be left high and dry.

We've spent $10 billion dollars since 9/11—just for passenger screening. And $6 billion of that on labor-costs alone—48,000 Federal screeners. All for a screening system that the DHS Inspector General reports fails to detect the most dangerous items most of the time.

We let the Fear-mongers push an unworkable deadline for baggage screening. Consequently, in our haste, we've wasted billions on ineffective, labor-intensive stand-alone and ineffective manual trace systems. If we had done it right in the first place, we would already have highly effective and highly efficient systems for passengers, baggage and cargo.

You would think that we would have learned from our mistakes—and not react in a knee jerk fashion. We need to be smarter about where we place our scarce and limited resources.

We must find the proper balance between enhancing air cargo security while ensuring that the flow of air commerce is not disrupted.

The Department of Homeland Security is doing all it can to find additional ways to enhance air cargo screening while technology catches up.

TSA budgeted about $55 million for fiscal year 2004 for research and development projects to enhance air cargo security.

Projects being funded include a pre-screening system to identify high-risk cargo, and technology and equipment to screen containerized air cargo and mail.

TSA also budgeted an additional $45 million in fiscal year 2004 for key initiatives in air cargo security oversight, including known shipper enhancements, canine explosives detection and 100 additional cargo inspectors.

And, both the House and the other body have allocated $75 million in research and development funds for air cargo security in fiscal year 2005.

Clearly air cargo security is being given much attention by both the Congress and the Administration.

Bottom line, the Department of Homeland Security is the proper entity to lead this effort and Congress should refrain from micro-managing this process.

The CHAIRMAN pro tempore. The time of the gentleman from Florida (Mr. MICA) has expired.

Mr. OBERSTAR. Mr. Chairman, I yield 1½ minutes to the gentleman from New Jersey (Mr. PASCRELL).

Mr. PASCRELL. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, yesterday the Senate overwhelmingly passed a bipartisan bill that would make needed changes to our Nation's intelligence community. Ninety-six Senators voted for it and the 9/11 Commission supported it. Whether you read the executive commission report, the executive summary or the full report, it is quite specific what they recommend.

Everyone recommends it, except the leadership of the House of Representatives. Once again, the important work of this body has morphed into a political exercise, and it is an additional tragedy that this comes as no surprise to any of us.

The leadership had their chance to proceed on this critical endeavor in a judicious, fair and thoughtful manner. H.R. 10 fails to give the National Intelligence Director sufficient authority over the budget and personnel of the intelligence agencies. H.R. 10 fails to fully address transportation modes, such as inner-city rail and public transit. H.R. 10 fails to provide additional security assistance to Afghanistan or economic development assistance to Arab and Muslim countries. Yet somehow 50 extraneous provisions, none of which were recommended by the 9/11 Commission, have been added.

So today I will support the Menendez substitute. This substitute is based on the bipartisan Senate bill to fully implement the 9/11 Commission recommendations. It is the most effective approach to ensure that this process does not get sidetracked or enmeshed in a superfluous quagmire.

The safety and security of our Nation deserves more than the political ploys of the House leadership. I implore my colleagues to vote for the Menendez substitute.

Mr. OBERSTAR. Mr. Chairman, I yield 2 minutes to the gentleman from Oregon (Mr. DEFAZIO).

Mr. DEFAZIO. Mr. Chairman, I thank the ranking member for yielding me time and for his work on this issue, and I thank the gentleman from Florida (Chairman Mica) too.

I believe the chairman and I share an opinion, and that is that the greatest threat to today's civil aviation is explosive devices. There are several ways in which the explosive devices can get on the plane. One is cargo. We have already talked about the inadequacies there. This bill does nothing to deal with that. Another is baggage. I had hoped this bill would deal with that.

In fact, our committee dealt with it. We doubled the annual investment in in-line automated baggage screening, but, strangely enough, that money disappeared before this bill came before us today. That is unfortunate.

When you link that to the fact that the majority party has arbitrarily limited the number of screeners we can have so they are not even utilizing the inadequate trace equipment and other things they have, and we have reports on how sometimes they cannot even operate the machines they have because they do not have enough people, we are not investing in the people and we are leaving gaps.

The bill does improve and begins to deal with the threat of suicide bombers and carry-on explosives, $30 million a year. We should do more. The Transportation Security Administration's own expert on this says it is a mature technology, we are using it to guard nuclear plants, military bases, we do not need to be testing it, we need to deploy it.

The $30 million a year in this bill is a lot better than what the administration is doing today. It is still not enough. We should have a goal of immediately purchasing and deploying explosives detection for all passenger checkpoints and carry-on bags, doubling at least the budget for in-line explosive screening, and doing a bottom-up survey to find out how many people we really need to do this job. It has never been done.

We had an arbitrary cut in the number of screeners. 11,000 were cut by the chairman of the Committee on Appropriations of jurisdiction. For what reason? Well, he said because we are going to buy new equipment. Then, of course, he did not fund the new equipment.

So we are leaving extraordinary gaps in our Nation's security. This is of tremendous concern and it should be, to the traveling public. This is a foolish place to save money. We can borrow money to give tax cuts to millionaires and billionaires. We can borrow to build infrastructure and provide security in Iraq. But we cannot afford the investment we need in the United States of America to do the things we need to do to make flying safe and prevent a tragedy like happened in Russia, which we have been predicting for more than 2 years is likely to happen here.

□ 1815

I wish that we could get the vote on a bill that would do all of those things. They will not let us do it.

Mr. OBERSTAR. Mr. Chairman, I yield 2½ minutes to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Chairman, I appreciate the gentleman's courtesy for yielding me this time, and his leadership.

Indeed, following on the heels of my friend, the gentleman from Oregon (Mr. DEFAZIO), our distinguished ranking member on the Subcommittee on Aviation, with the gentleman from Florida (Chairman MICA) and with the gentleman from Florida (Chairman YOUNG), we know in our committee how to work together to solve problems. We should be celebrating today what should be the ultimate expression of bipartisan support to make America safer.

Sadly, as has been chronicled by my friend, the gentleman from Oregon and others, that is not what we are doing today. We bypassed these opportunities and, instead, we have inserted in this bill provisions that would allow the deportation of suspects to countries where they can be tortured, enshrining a bizarre and despicable practice, even after the debacle at Abu Ghraib. It is not just immoral and in violation of treaties we have signed; it is a terrible risk to American lives.

If we were working together the way we know we can in our Committee on Transportation and Infrastructure, we would not have provisions like this. We would have been able to work through the Commission recommendations, not leaving out 14 that are incomplete and 16 not included at all, but the way the other body has done, supported by the administration.

We would not have failed to take action to strengthen nuclear counter proliferation efforts. We would find a way to provide additional security assistance in Afghanistan, and we would not be in a situation where we failed to bring together, to give the National Intelligence Director sufficient authority over the budget and personnel of all of the intelligence agencies. We still have not remedied a fundamental flaw in our system that was made so evident in the report from the 9-11 Commission, what every Member of this House who has looked at it has discovered, that the FBI and the CIA could not communicate with each other, let alone with people within their chain of command.

Mr. Chairman, we can do better. The America public deserves better. We need to reject this proposal, adopt the Menendez amendment, and use that as a point of departure to give the American public the security they need, want, and deserve.

Mr. OBERSTAR. Mr. Chairman, I yield myself the balance of the time.

Mr. Chairman, all in all, unfortunately, we had a great opportunity to do something really good with this H.R. 10 from the recommendations of our committee. Had we gone further to deal with Amtrak and other rail protections, include our transit security provisions, and expand that to port security, we could have had a really good bill if our committee had been permitted to participate in the full, open process, instead of spending an enormous amount of time, like we have done over the last couple of days, naming post offices and other minuscule resolutions.

We have not achieved the goal that we should have of a really substantive bill.

The CHAIRMAN. All time has expired for the Committee on Transportation and Infrastructure.

It is now in order to recognize the Select Committee on Homeland Security. The gentleman from California (Mr. COX) and the gentleman from Texas (Mr. TURNER) each will control 10 minutes.

The Chair recognizes the gentleman from California (Mr. COX).

Mr. COX. Mr. Chairman, I yield myself 3 minutes and 45 seconds.

I rise in strong support of H.R. 10, the 9/11 Recommendations Implementation Act.

Mr. Chairman, as chairman of the Select Committee on Homeland Security, I want to begin by thanking my ranking member, the gentleman from Texas (Mr. TURNER). The significant portions of H.R. 10 that were produced by the Select Committee on Homeland Security will represent the lasting contribution of our retiring colleague, and he is to be congratulated for his hard work in this effort.

I am sponsoring this legislation, H.R. 10, because I believe it represents a significant step in our ongoing battle to protect our Nation from terrorism. It is a truly comprehensive response to the 9-11 Commission recommendations.

Although the Commission's report and its recommendations are only 2 months old, the Select Committee on Homeland Security has been working on these very issues for 2 entire years; issues such as reforming our first responder funding system, enhancing interoperable communications, integrating intelligence and operational information to better track terrorists and frustrate their planned attacks, and improving information-sharing and cyber security. All have been the work of this committee.

Building on this work in over 50 hearings over 2 years, the Select Committee on Homeland Security has held hearings this August with the 9/11 Commission. We took testimony from Chairman Kean and Vice Chairman Hamilton, and from the Secretary of the Department of Homeland Security, Tom Ridge, among others, about the substance of these recommendations and the substance of this legislation. Based on this work, the Select Committee on Homeland Security has included in this legislation several proposals that comprise the bulk of H.R. 10.

First, reform of first responder grant funding. Title V, subtitle (a) of H.R. 10, fully incorporates H.R. 3266, the Faster and Smarter Funding For First Responders Act. This legislation satisfies each and every one of the 9/11 Commission's recommendations concerning the delivery of Federal homeland security assistance to State and local governments. Of all the proposals to reform Federal terrorism preparedness funding, H.R. 10 best exemplifies the spirit and intent of the Commission's recommendations in this area.

Specifically, H.R. 10 will require the Department of Homeland Security to prioritize homeland security assistance grants based upon risk to persons and to critical infrastructure. That is a key Commission recommendation. H.R. 10 requires the Department of Homeland Security to establish specific and measurable essential capabilities for State and local government terrorism preparedness, based on the recommendations of a 25-member advisory body comprised of first responders themselves, another key Commission recommendation that will help to control and prioritize spending in this area.

H.R. 10 requires States to allocate their Department of Homeland Security grant funding according to these prioritized criteria, as the 9/11 Commission recommends. And, H.R. 10 guarantees that each State will receive a sufficient minimum amount each year.

Mr. Chairman, beyond the Commission's recommendations, the Select Committee on Homeland Security also found that billions of dollars authorized and appropriated by this Congress and granted by the Department of Homeland Security, intended for first responders, are stuck in the pipeline. That money is not being spent. Only 29 percent of the billions of dollars of assistance from 2003 that this Congress has authorized only 29 percent of that assistance from fiscal 2003 has yet been spent. This legislation will unclog that pipeline and make sure the money gets to the front lines, the men and women who need it most.

Mr. Chairman, I reserve the balance of my time.

Mr. TURNER of Texas. Mr. Chairman, I yield myself 6 minutes.

Mr. Chairman, I want to commend my chairman, the gentleman from California (Mr. COX) for the bipartisan effort that he has put in with me on the Faster and Smarter Funding For First Responders Act, which is included in H.R. 10. I might say it has been an honor and a pleasure to serve with him over the last 2 years in what is I think the most important challenge of our time: making America safe.

We took 2 bills and we made them into one. It was a truly bipartisan effort. We are going to, for the first time, use the billions of dollars in first responder grants to build the essential capabilities that we need in this country to make America safer. We do not know today what we are getting for our investment; we certainly do not know what progress we are making. That will change with this bill. Instead of basing funding on arbitrary formulas, we will, for the first time, base funding on the risk and vulnerabilities that our communities, our regions, and our States are facing.

The bill before us improves our grant system in 2 ways. It builds a system of planning and accountability that does not exist today, and it allocates a much higher percentage of first responder funds to the areas that face the greatest threats and vulnerabilities. I appreciate the good work the chairman and I have been able to do together on this bill, as well as the work of the other members of our committee.

Unfortunately, Mr. Chairman, there are many other issues of critical importance that have not been addressed in H.R. 10. The Menendez substitute is a much more comprehensive effort to implement all 41 recommendations of the bipartisan 9/11 Commission. H.R. 10 is, in fact, a missed opportunity to take concrete steps to win the war against our terrorist enemies.

As the bipartisan 9/11 Commission stated, and virtually everyone has agreed, to defeat radical Islamic terrorism over the long term requires pursuing three strategies simultaneously. First, we must aggressively attack the terrorist cells wherever they exist. Secondly, we must protect the homeland. And third, we must create conditions to prevent the rise of future terrorists. Any legislation that purports to implement the findings of the 9/11 Commission must contain meaningful provisions on all three strategies.

The 9/11 Commissioners have strongly urged that all 41 of their recommendations be enacted. Unfortunately, our Republican colleagues who drafted H.R. 10 did not heed the advice of the 9/11 Commission. We looked at the recommendations of H.R. 10 and found that it implements only 10 of the 41 fully, it implements 15 of the recommendations only partially and, of the final 15, they are either completely ignored or dealt with in no meaningful way.

In contrast, the bipartisan bills coming out of the Senate and the Menendez substitute implement all of the recommendations of the 9/11 Commission. H.R. 10 falls short in moving us forward faster and stronger in the war on terror.

Three years after 9/11, Mr. Chairman, bin Laden, the enemy who attacked us, is still on the loose, and al Qaeda is expanding its reach. Just last week, General Abizaid warned us about the growing threat in the Middle East and Central Asia region. We must double our special forces to go after the terrorists in over 60 countries around the world.

Three years after 9/11, we still do not have a fully integrated terrorist watch list. Three years after 9/11, the government still checks the watch list on airline flights that come from overseas after the plane is in the air, rather than before the passengers board. And we still do not check all of the air cargo for explosives that fly on the airplanes with us every day.

The greatest threat, Mr. Chairman, we face is a nuclear weapon in the hands of a terrorist. Yet, 3 years after 9/11, we still have not installed sufficient numbers of radiation detectors to check all of the cargo containers that come into our country by sea, land, and air. Three years after 9/11, our first responders still cannot communicate with one another in the event of an emergency, even though technology exists that allows them to do so. Three years after 9/11, our intelligence agencies can still not communicate one with another and share an integrated database so that a border inspector or a law enforcement officer can identify whether the person standing before them is a suspected terrorist or not.

Three years after 9/11, we still have 120,000 hours of untranslated terrorist-related wiretaps at the FBI that may contain information about the next terrorist attack. Three years after 9/11, our borders are still porous. A recent investigation by our committee revealed that over 25,000 illegal immigrants from countries other than Mexico came into this country, were released on their own personal bond, and 90 percent of them never showed up again.

Mr. Chairman, it has been 2 years since we were attacked with anthrax here on Capitol Hill and the administration said we need anthrax vaccines to vaccinate up to 25 million Americans. Today, in our national stockpile, we have enough vaccine for anthrax to vaccinate 500 people.

It is all about choices. The fiscal year 2004 appropriation is $20 billion more than we spent in the year of 9/11. Last year alone, the top 1 percent of Americans by income received 4 times as much in tax cuts as we spent in increased funding for homeland security over that 4-year period. Just today on this floor, we moved to instruct the FY 2005 homeland security appropriations bill and in it, the President had requested a half a billion dollars more. Fortunately, we gave him $1 billion more, and yet we spend $1 billion every week in Iraq.

☐ 1830

It is all a matter of priorities. And, Mr. Chairman, we must get our priorities straight and make America safe again.

Mr. Chairman, I reserve the balance of my time.

Mr. COX. Mr. Chairman, I yield 1½ minutes to the gentlewoman from Washington (Ms. DUNN), the vice chairman of the Select Committee on Homeland Security.

Ms. DUNN. Mr. Chairman, I rise today in support of H.R. 10, the 9/11 Commission Implementation Act of 2004.

As the vice chairman of the Select Committee on Homeland Security, I am especially pleased that the Faster Smarter Funding for First Responders bill is part of this legislation.

Our committee traveled throughout the country to learn firsthand from first responders about the tools they need to protect our homeland. The message we consistently received was, our current system for funding is broken and needs to be fixed.

Despite unprecedented appropriations immediately following 9/11, our Nation's first responders were not receiving the funds on the ground fast enough, and some were not receiving any money at all.

They know and we know that, as terrorists are not arbitrary in selecting their targets, the Federal Government cannot afford arbitrary formulas for distributing the money. Dollars must be handed out on risk-based reasons, not population, not politics. The first responder section of H.R. 10 will fix the flaws in the current system.

The 9/11 Commission agreed and supported the committee's recommendation that "homeland security assistance should be based strictly on an assessment of risks and vulnerabilities."

Mr. Chairman, we owe it to our first responders, those law enforcement and emergency personnel who put their lives at risk every single day to protect American citizens. Our committee crafted the legislation that will fix current funding problems by, one, creating a streamlined funding system; two, supporting partnership and mutual aid agreements; and, three, by assisting local officials in setting preparedness goals.

These innovative solutions are endorsed by 26 first responders organizations across the country, and I applaud the House leadership for making them part of this bill.

Mr. Chairman, the bill before us today, H.R. 10, deserves the support of every Member of our body and I urge its passage.

Mr. TURNER of Texas. Mr. Chairman, I yield 2 minutes to the gentleman from New Jersey (Mr. ANDREWS).

Mr. ANDREWS. Mr. Chairman, I thank the gentleman from Texas (Mr. TURNER) for yielding me time. I would like to congratulate and thank the gentleman from California (Mr. COX) and the gentleman from Texas (Mr. TURNER) for their outstanding leadership. The gentleman from Texas (Mr. TURNER) will be missed. I know he will contribute to this country in many ways in the future.

The underlying bill represents a squandered opportunity to advance a consensus of the 9/11 Commission's report. The Menendez substitute represents that consensus, and it ought to be adopted.

The 9/11 Commission said that one of the flaws that led up to the 9/11 attack was that our intelligence agencies did not have incentives to share information with each other. The Menendez substitute provides those incentives. The underlying bill does not.

The 9/11 Commission acknowledged the fact that terrorists will strike a variety of targets. It acknowledged the fact that 90 percent of the critical infrastructure of this country is in private lands, nuclear power plants, chemical plants and other such facilities. The Menendez substitute picks up the 9/11 Commission's report and requires an analytical toughening of our defenses of that critical infrastructure. The underlying bill ignores that problem.

The 9/11 Commission report pointed out the travesty that on 9/11 police officers and fire fighters in New York City literally could not talk to each other because of the problem of the interoperability lacking among first responders. The Menendez substitute directs that that problem be fixed and funds it as per the 9/11 Commission. The underlying bill does not.

This bill will be back before us as a conference report. I hope that a strong vote for the Menendez substitute will add impetus for that conference to add here to the recommendations of the 9/11 Commission report and fix these problems.

Let us not squander an opportunity to advance a national consensus as set forward by Governor Kean and Congressman Hamilton. Let us advance that consensus tonight by voting "yes" on the Menendez substitute.

Mr. COX. Mr. Chairman, I yield 1½ minutes to the gentleman from Texas (Mr. THORNBERRY), the chairman of the Subcommittee on Cyber Security, Science and Research and Development.

Mr. THORNBERRY. Mr. Chairman, as I mentioned earlier in the debate, I think understandably the debate here on the floor emphasizes differences we have with the underlying bill; but when you look at it, there is a lot of agreement in the general thrust of this bill and in the specific provisions.

One of those specific provisions is one that the ranking member, the gentlewoman from California (Ms. LOFGREN), and I have worked on to elevate the position of the Director of the National Cyber Division to an Assistant Secretary position in the Department of Homeland Security.

The reason we think that is a good idea is so that cybersecurity as an issue does not get lost in the bureaucracy; secondly, so that you can attract the kind of person one needs to attract that has the trust of industry and academia to do the kind of work that needs to be done in that position. But also, thirdly, so you can be at a level to deal with other elements of the government at an appropriate level and have other folks and other Departments treat you and treat the issues you bring before them appropriately.

Now, that is one provision. It has widespread support among the industry groups. We have worked with the Committee on Government Reform, the Committee on Science, the Committee on the Judiciary to formulate this provision; and it has, as far as I know, complete support on both sides of the aisle. There is a lot in this bill that helps make America safer, and I believe it deserves the support of all Members.

Mr. TURNER of Texas. Mr. Chairman, I yield 1 minute to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, there are many items in this legislation that could make us safe, but we would be much safer if we had focus and kept our eye on the target in support of the 9/11 Commission legislation under Shays-Maloney and, of course, under Collins-Lieberman-McCain.

These are the extraneous provisions: expedited removal of aliens without judicial review; extraneous provision, revocation of visas; extraneous provision, making it more difficult to obtain asylum; extraneous provision, limiting judicial review of orders of removal.

All of these have been condemned by the White House. All of these are extraneous and do not keep our eye on the target.

Extraneous provision, deportation of suspected terrorists to countries that engage in torture. We still have not corrected that. Extraneous provision, national driver's license and birth certificate requirements. We can do all of this better. We just need to do it in a more directed manner. Putting extraneous immigration matters into the bill does not make us safer. The 9/11 terrorists came in on legal documents. We can do a better job of comprehensive immigration reform in a bipartisan manner. This is just not the bill to do it.

Pass the Menendez substitute, the Shays-Maloney bill.

H.R. 10 lacks focus. It does not keep its eye on the target, which is the need to implement the recommendations of the 9/11 commission.

Extraneous Provision: Expedited Removal of Aliens

House Bill: Section 3006 directs immigration officers to order the expedited removal "from the United States without further hearing or review" of (a) arriving aliens and (b) aliens already in the United States who have false travel documents, who have not been admitted or paroled into the United States, and who have not been living continuously in the United States for the previous five years. This does not apply of the alien in question is applying for asylum. However, an alien applying for asylum cannot avoid expedited removal if he or she has been in the United States for more than a year.

Analysis: Under this provision, asylum-seekers with legally valid claims of persecution could be removed to their countries of origin to face that persecution. The provision also extends the use of expedited removal to aliens who have lived in the United States for several years. This is the first time expedited removal will be used against aliens already in the United States. Under current law, only arriving aliens are subject to expedited removal.

Extraneous Provision: Revocation of Visas

House Bill: Section 3008 eliminates all judicial review of a revoked visa, including habeas corpus review. The provision also makes an alien deportable if his or her visa has been revoked. In addition, this section eliminates the requirement that a petitioner receive notice of the revocation of his or her immigration petition. This provision also transfers the authority to review petitions of revocation from the Attorney General to the Secretary of Homeland Security.

Analysis: Aliens who used a fraudulent visa to enter the country can already be removed based on unlawful admission. The provision eliminates the basic protections of notice and judicial review for discretionary decisions made by the Justice or State Department.

Extraneous Provision: Making It More Difficult To Obtain Asylum

House Bill: Section 3007 amends the Immigration and Nationality Act to change evidentiary requirements for all asylum-seekers. Under the provision, the burden of proof is on the asylum-seeker to establish that he or she is a "refugee" under the statute. In order to sustain this burden, the applicant must (a) corroborate his or her testimony or (b) at the discretion of the trier of fact, provide an explanation as to why such corroborating evidence cannot be presented. Judicial review of a determination as to the availability of corroborating evidence is limited.

Analysis: Many of this provision's requirements are not tailored to suspected terrorists, but apply to all asylum-seekers. The new evidentiary standards will make it more difficult for legitimate asylum-seekers to obtain asylum and may do nothing to prevent terrorists from entering the country.

Extraneous Provision: Limiting Judicial Review of Orders of Removal

House Bill: Section 3009 amends the Immigration and Naturalization Act to eliminate habeas corpus review of certain orders of removal. Under the provision, circuit courts of appeal may only hear petitions based on constitutional claims or pure questions of law and are the sole and exclusive means of defense against an order of removal.

Analysis: This provision further restricts federal court review of discretionary immigration decisions and applies these restrictions to pending cases.

Extraneous Provision: Deportation of Suspected Terrorists to Countries that Engage in Torture

House Bill: Section 3031 amends the Immigration and Nationality Act to permit individuals whom the Secretary of Homeland Security determines to be "a danger to the security of the United States" to be removed to a country where they are likely to be persecuted or threatened. Section 3032 excludes suspected terrorists from protection under the Convention Against Torture.

Analysis: These sections conflict with the Convention Against Torture by allowing the Administration to turn suspected terrorists over to countries where they can be tortured.

Extraneous Provision: National Drivers License and Birth Certificate Requirements

House Bill: Sections 3051 through 3067 place a long list of requirements on the states relating to drivers licenses and birth certificates, including what information must appear on drivers licenses and birth certificates and what documents must be required to receive a state authenticated drivers license or birth certificate. The provisions require the verification of all identity documents before a drivers license or birth certificate is issued, as well as the creation of a national database of state drivers license records accessible by all states and the federal government. The provisions also require that states create a national network of electronic birth and death registration information.

Analysis: These provisions go well beyond the 9/11 Commission recommendation that the federal government "set standards for the issuance of birth certificates and sources of identification," which could be achieved without the elaborate and overly burdensome requirements set forth in the bill. They are opposed by the National Governors Association and the National Association of State Legislators, which predict that the new paperwork burdens will result in individuals waiting hours, if not days, to get a new drivers license or birth certificate. Civil liberties groups object to the potential loss of privacy created by the new national databases. Moreover, the linkage of all state databases, without any requirements for security or privacy protection, creates a severe risk of identity theft.

Mr. COX. Mr. Chairman, I yield 1½ minutes to the gentleman from Arizona (Mr. SHADEGG), the chairman of the Subcommittee on Emergency Preparedness and Response.

Mr. SHADEGG. Mr. Chairman, I rise in strong support of the underlying bill, H.R. 10; and I want to thank all of those who were involved in crafting its provisions. I think it is important to our Nation.

As a member of the Select Committee on Homeland Security and Chair of the Subcommittee on Emergency Preparedness and Response, I am extremely pleased that H.R. 10 includes critically important provisions regarding the funding for our first responders. My colleague, the gentlewoman from Washington (Ms. DUNN), the full committee vice chairman, talked about these issues.

I strongly believe, as does the chairman of the full committee and I think the 9/11 Commission, that it is important that we dispense homeland security funds not based on politics or peanut butter to every Member's district, but rather based on risk, to where we face a real threat. The provisions of that bill which are incorporated in this legislation moved through my subcommittee, and they ensure that States are awarded grant money to locals in a timely and efficient manner by establishing stringent timelines and incentives for grant disbursement, along with penalties for failure to disburse those funds.

They requires States to pass through at least 80 percent of their funds to local government so that first responders actually get the money and get it no later than 45 days after receiving the funds from the Federal Government.

They establish clear benchmarks for terrorism preparedness to help localities determine spending priorities with confidence. And they require parties to make spending decisions before the money is even allocated, thus facilitating quicker distribution of these funds to all recipients.

We move the planning process to the front end. The Senate bill does not fix this problem of back-ended distribution fights that slow distribution.

The 9/11 Commission supported this language. I think it is critically important, and I urge my colleagues to support the legislation.

Mr. TURNER of Texas. Mr. Chairman, I yield 1 minute to the gentlewoman from California (Ms. LORETTA SANCHEZ), the chairman of the Subcommittee on Border Security and Infrastructure of the Select Committee on Homeland Security.

Ms. LORETTA SANCHEZ of California. Mr. Chairman, I thank our ranking member, the gentleman from Texas (Mr. TURNER). He has been doing a great job, and we are going to miss him.

What do we need to do to be safer? I think there are three things we need to fix the intelligence system: we need to protect our infrastructure; we need to protect our assets in this country; and we need to prepare. We need to know how to react to an attack that is called the First Responders Issue, but I think this bill falls very, very short of really helping America. For example, protection of our ports still remains a glaring vulnerability in our Nation, and H.R. 10 largely ignores maritime security imposing a deadline or two, but really as far as things not really getting to what the problem is.

The Coast Guard estimates that required port security upgrades will cost $5.4 billion over the next 10 years; and despite this estimate, the administration has requested less than 1 percent of that amount for port security improvements. A terrorist attack involving a container at our ports could result in substantial loss of life and billions of dollars of economic losses.

This is not the first time this administration has ignored our vulnerabilities.

Mr. COX. Mr. Chairman, I yield myself 1 minute.

H.R. 10 includes several different provisions that the Select Committee on Homeland Security produced and assisted in drafting in this final product.

One is the provisions responsive to the 9/11 Commission's concerns about terrorist travel. H.R. 10 includes specific activities to be undertaken by several Federal agencies. It establishes a program within DHS to focus exclusively on terrorist travel. It ensures that this critical information will be shared with frontline personnel at our borders, our ports, and our consulates.

The Menendez bill, unfortunately, does not include these vital provisions and simply requires DHS to submit a strategy. H.R. 10 and the Select Committee on Homeland Security produced recommendations, legislative recommendations, to increase the number of border patrol agents, immigration and customs and enforcement investigators on our Nation's borders.

The ranking minority member on the Select Committee on Homeland Security produced a very thorough report highlighting the vulnerability of our Nation's borders. This is a very real concern to which H.R. 10 responds, but the Menendez bill strips out all of these provisions.

Mr. Chairman, I yield such time as he may consume to the distinguished gentleman from Texas (Mr. DELAY), the majority leader.

Mr. DELAY. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, we have learned a lot about politics today, but this debate should be and ultimately is not about politics but about policy. Unfortunately, politics seems to come in every now and then. The 9/11 Commission's report is a substantive document describing and examining the circumstances that 3 years ago allowed 19 men to conceive, plan, and execute the murder of 3,000 Americans right under our noses. It is a highly detailed, exhaustive, thorough report, 567 pages; and Congress has the responsibility to respond with equal gravity and vigor, and now we have.

The bill before us now is the product of seven committees and more than 20 subcommittees. It is a substantive document that solves the substantive problems laid out by the 9/11 Commission report. Every provision, every word, Mr. Chairman, of this bill will make Americans safer and help to prevent terrorism from ever striking our soil again as it did on 9/11. It makes tough choices, it sets tough policy, and it will reaffirm the one fact that too often is ignored by too many: we are at war.

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The first priority in this war is the protection of the American people, the first priority.

I know some have portrayed the House bill as controversial, but the more information about its contents that is revealed, the more support it garners.

The policies set forth in this bill before us are so obvious, so self-evidently necessary that most Americans would probably be surprised to learn that they are not already on the books. Forget the spin for a moment and look at the policies.

The House bill creates the National Intelligence Director and the National counterterrorism Center. It authorizes law enforcement authorities to track lone wolf terrorists. It cuts off material support for terrorists. It strengthens laws against weapons of mass destruction and enhances airline security.

It doubles the number of border patrol officers and triples the number of immigration enforcement agents.

It targets terrorist travel and ensures terrorists and violent criminals from other countries are deported, instead of released back on our streets.

It streamlines our homeland security and intelligence agency, and it improves Federal funding for first responders.

These provisions are not outside the scope of the 9/11 Commission report. They are the 9/11 Commission report. Those eight provisions alone that I just mentioned answer 18 separate commission recommendations, and I just chose them at random.

By contrast, consider one of the principal policy initiatives of the proposal preferred by the Democrats, the disclosure and publicizing of the United States intelligence budget. Just think about what that means for a second. Not only would an al Qaeda be able to track every last dollar we are spending to capture and kill them, but Iraqi insurgents, the governments of Iran, North Korea, Communist China, they will know exactly when and where and how our Nation defends itself.

The words of President Bush on this issue are worth repeating: "Disclosing to the Nation's enemies, especially during wartime, the amounts requested by the President, and provided by the Congress, for the conduct of the Nation's intelligence activities would be a mistake."

In other words, we do not tell the bad guys how exactly we plan to capture and kill them.

Those who have crafted the alternative proposal have done so in good faith, I guess, but their final product, Mr. Chairman, is woefully insufficient. It does not secure our borders. It does not provide law enforcement authorities with enough tools to catch and prosecute terrorists, and it does not engage the international community in the diplomatic front on our war on terror.

I might say, the substitute that is going to be offered by the Democrats and claim to be bipartisan is a fraud. If it were bipartisan, then why did the Democrats take the Shays-Maloney bipartisan bill, copy it and introduce it as the Menendez Democrat bill? That is not bipartisan. It is a cynical attempt to play politics with the safety of our families.

No, Mr. Chairman, this is the bill. This is the bill that will make every citizen in this country safer and make every terrorist hunting our citizens less safe. This is the bill that calls a war a war and a terrorist a terrorist. This is the bill that will help America stay one step ahead of the men who, if they could, would kill every last one of us, regardless of party, race, creed or color. This is the bill that will help us defeat an enemy, win a war and secure a future of freedom for our children.

I urge all my colleagues to do the right thing, make the difficult choices they were elected to make and vote for this bill and vote against the substitute.

Mr. COOPER. Mr. Chairman, during floor debate on H.R. 10, Mr. WELDON referred to me as being "untruthful" regarding two matters: (a) White House support for, as I described it during the debate, "basically the Collins-Lieberman bill; the closest thing to which we will be able to discuss is the Menendez substitute", and (b) my description during the Armed Services Committee markup of H.R. 10 of a voice vote on an amendment I offered in another committee, the Government Reform Committee.

As I stated during the floor debate, but I was unsure the official reporter heard, since Mr. WELDON refused to yield time to me, I felt strongly Mr. WELDON was mistaken in his characterization.

(a) What is the White House's position? According to the White House's Statement of Administration Policy of Sept. 28, 2004, "the Administration supports Senate passage of S. 2845 (the Collins-Lieberman bill)." Since the Rules Committee did not allow the Collins-Lieberman bill to be voted on by the House, the Menendez substitute was the closest approximation of the Collins-Lieberman legislation. In fact, as described by the Rules Committee, the Menendez substitute "merges two bills endorsed by the 9/11 Commission: Collins-Lieberman (S. 2845) . . . and McCain/Lieberman (S. 2774). . . ."

(b) What happened in the Government Reform Committee? The draft transcript of the Government Reform markup of Sept. 29, 2004 includes the following statement from Chairman TOM DAVIS on my amendment, "In the opinion of the Chair, the ayes have it. I will ask for a rollcall on that."

Later in the Government Reform markup, when I asked Chairman DAVIS for his recollection of the voice vote, he said, as reported in the draft transcript, "Let the record show the ayes had it at the time, but I had the right to request a rollcall . . ."

In summary, it is clear from the record that the White House supports S. 2845, and that a voice vote in my favor occurred in the Government Reform Committee.

Mr. TIAHRT. Mr. Chairman, I rise in strong support of H.R. 10—the 9/11 Recommendations Implementation Act.

On September 11, 2001, life in America was irreversibly changed. That day we were quickly drawn into a war to confront a threat we did not fully understand.

In July, after months of hearings and research, the 9–11 Commission released its report on the events leading up to, including, and following that infamous day. The report laid it all out in a straightforward manner that the public easily understand. I don't think any government publication has ever landed on the bestseller list, which speaks not only to the Commission's work but also the level of commitment of Americans to understanding and stemming terrorist activity. I'd like to thank the Commission for their work and also the families of the victims for their unwavering commitment to improving national security.

The 9–11 Commission report detailed the terrorist mindset; the hatred, the religious fanaticism, the unimaginable degree of commitment to do us harm and destroy our culture. Osama bin Ladin's Letter to America of November 24, 2002 states that the Islamic nation "desires death more than you [America] desire life."

The 9–11 report tells us that: "Plans to attack the United States were developed with unwavering single-mindedness throughout the 1990s. Bin Ladin saw himself as called to . . . serve as the rallying point and organizer of a new kind of war to destroy America and bring the world to Islam."

We are fighting a war like this country has never seen. A war against an enemy that doesn't value life, that does not in their own words "differentiate between those dressed in military uniforms and civilians; they are all targets in this fatwa." This makes our job to literally protect our way of life much harder.

Today we are considering legislation that addresses the recommendations made by the 9/11 Commission. It proposes the most sweeping changes to our national security apparatus since the CIA was created more than 50 years ago. Most importantly, we are creating a position, the National Intelligence Director, that will have broad authority over the entire intelligence community. Divisions and tensions between the different intelligence agencies have hampered our ability to effectively target al Qaeda. This legislation will provide the authority necessary to unite the intelligence community and address problems before they materialize.

The new National Intelligence Director will have enhanced budgetary and personnel authority over the elements of the intelligence community—and will dedicate his full attention to the job of intelligence community management. This will leave the day to day duties of running intelligence agencies to their directors.

The 9–11 Commission identified deficiencies in the ability to share information that is essential to preventing future terrorist activities—and we are fixing that.

This legislation mandates the National Intelligence Director to create a network designed to share information across agencies and break down the barriers. There will be uniform security policies that will promote sharing information rather than hoarding it for one agency's use.

This legislation will also reduce the barriers between our domestic law enforcement activities and our foreign intelligence activities by creating a National Counter Terrorism Center.

There are many additional provisions in this act that will strengthen our capability to protect Americans at home and abroad.

This bill has the strong support of all the committees of jurisdiction.

So, I ask my fellow Members to give it their full support.

If Osama bin Ladin was here today, he would surely oppose it. For a divided intelligence community, and a divided America would allow him to operate more freely in carrying out his war against our culture and our people.

September 11, 2001 showed us in the danger of Islamic terrorism. It also taught us that deficiencies in our own system made it possible for terrorists to operate right under our noses.

Our most important duty as Members of Congress is to protect our Nation from ever experiencing that lesson again. For that reason, we must pass this legislation and improve our intelligence capabilities.

Mr. EVERETT. Mr. Chairman, the terrorist attacks on our homeland that occurred on September 11th, 2001 changed the world forever for all Americans. The collective national loss we felt on that day is no less painful today, and ranks as one of the darkest moments in our national history. In that solemn hour, our President was rightly resolved to take the fight to the terrorists and not to stop until justice prevailed and the threat was mitigated.

Today, 3 years later, we are still very much engaged in the war on terror. Since the release of the 9/11 Commission report in July, the national media and many politicians have called for the immediate adoption of all the report's 41 recommendations, which is the path being taken by the other body. Mr. Chairman, I fear that we are moving too fast to implement a solution that does not match the problem. Moreover, election year politics are driving us to address the shortfalls between foreign and domestic intelligence by unwisely tinkering with the military. This could prove to have grave and unintended consequences to our troops currently in battle and our future military operations.

Long before the 9/11 Commission report hit bookstores and the commissioners launched their book tours, this Republican-led Congress and the Bush Administration took many measures designed to enhance our Nation's homeland security. I feel it is important to highlight these accomplishments that clearly illustrate Congress's dedication to keep our Nation safe. At an August hearing held by the House Permanent Select Committee on Intelligence, Vice-Chairman of the Commission, Lee Hamilton admitted that a lot of progress has been made in many areas, including hurting al Qaeda and inhibiting their ability to respond, while also beefing up security here at home. In fact, it has been disclosed that our security efforts have since prevented several post 9/11 terrorist incidents.

Furthermore, we have already taken action through Operations Enduring Freedom and Iraq Freedom to eliminate safe havens for terrorists in foreign lands—including Al Qaeda's top sanctuary, Afghanistan. Additionally, we have made progress in blocking sources of weapons of mass destruction from terrorists, including the elimination of the A.Q. Khan nuclear proliferation network and Libya's WMD and long-range missile programs.

On a more positive note, this legislation does encompass many of the recommendations adopted by the Committees on Armed Services and Intelligence to improve intelligence operations. This measure reforms the intelligence community consistent with the framework established by the 9/11 Commission by creating a National Intelligence Director (NID) with substantial budget and personnel authority as well as a National Counterterrorism Center (NCTC).

Specifically, the NID will have expanded statutory, budgetary, and personnel powers over the National Intelligence Program (NIP). The NIP is composed of CIA, parts of the National Security Agency (NSA), the National Reconnaissance Office (NRO), the National Geospatial Agency (NGA), FBI, State, and Homeland Security. This excludes the Pentagon's joint military and tactical intelligence programs, which allows the Secretary of Defense to continue to directly support the joint and tactical requirements of military intelligence. The budget authorities given to the NID were carefully crafted to preserve the ability of the Secretary of Defense to rely on these agencies to provide the best military intelligence directly to combatant commanders, which in my view makes this superior to the other proposal adopted by the other body.

Mr. Chairman, it is important to note that the 9/11 Commission did not suggest that DoD management of intelligence agencies contributed to 9/11. In fact, when testifying before the House Armed Services Committee, Mr. Hamilton suggested that the military intelligence system is not broken. As such, it is imperative that we preserve the intelligence lifeline to our troops by ensuring that more bureaucracy, distance and unnecessary obstacles do not come between our troops and strategic and tactical intelligence; an increasingly critical tool in today's battlefield. Specifically, Mr. Hamilton said, "I think the committee has helped us in understanding the importance of tactical military intelligence. And I think some of our recommendations can be refined." He also added, "I think the questions that are being asked here are helpful to us and causes me to think that we need to refine some of our thinking in this very important area, and we will try to do that."

Mr. Chairman, there are 158,000 troops currently in theater and their combatant commanders need to know they can count on the military chain of command to quickly access critical intelligence resources. As has been said before, first do no harm. The balance maintained in this bill can be literally a matter of life and death for these brave men and women serving overseas. My support of this legislation is predicated upon my strong reservations about the measure adopted by the other body, and with the hope that the provisions of H.R. 10 that I outlined will prevail in conference.

Mr. PEARCE. Mr. Chairman, I rise in support of H.R. 10, the 9/11 Recommendations Implementation Act.

I appreciate the Judiciary Subcommittee on Immigration, Border Security and Claims' efforts to include additional full-time border patrol agents in this legislation. I also appreciate the fine work of your staff to create awareness about the significant need for additional resources to the Mexico-New Mexico border.

As Customs and Border Protection augments its efforts through additional money, agents and technology to the more high-profiled southern Border States such as California, Arizona and Texas, New Mexico's border law enforcement agencies are left understaffed and unprepared for the increased drug trafficking and human smuggling resulting from the crackdown in neighboring states.

Today, after $19 billion spent for border security and technology in the last 2 years, DHS has increased its emphasis on Arizona border security through its Arizona Border Control Initiative.

This Initiative invests $10 million in the Tucson Customs and Border Protection region to hire more border agents, improve technology and provide unmanned aerial vehicles (UAVs). As a result, more than 2,000 border patrol agents will be assigned to the region. This makes an average of six agents for each mile of border in Arizona.

However, with only 425 border patrol agents in New Mexico, there are fewer than 2 agents per mile of border. Yet, increasing pressure against illegal activity on the Arizona border has resulted in increasing drug and human trafficking spilling over into New Mexico.

For example, in FY 2004, agents in Lordsburg, New Mexico made 141 percent more apprehensions than all of last year.

I strongly encourage my colleagues to consider providing New Mexico with additional resources to make our border more secure. I look forward to working with the Committee to ensure the necessary resources are provided to protect our border.

Mr. Chairman, I urge passage of H.R. 10.

Mr. UDALL of New Mexico. Mr. Chairman, I rise today greatly disappointed, but unfortunately not surprised, that the majority has once again decided to trump substantive policy with petty politics. As we are well aware, in late August the bipartisan 9/11 Commission issued the report they diligently prepared regarding the circumstances surrounding the horrific and tragic terrorist attacks that took place on September 11, 2001. I immediately called upon the Majority to bring Congress back in session to respond to the 9/11 Commission Report. Sadly, the Majority has ignored a great number of the recommendations of the bipartisan report.

As part of their report, the 10 members of the commission made 41 recommendations to prevent future terrorist attacks. In fact, H.R. 10 contains only 11 of these recommendations. Equally alarming to the number of recommendations made by the 9/11 Commission that are not included in this bill, is the number of recommendations not made by the 9/11 Commission that are included in this bill. Amazingly, the Majority has inserted over 50 extraneous provisions not found anywhere in the 9/11 Commission Report. Several of these are so controversial that even the 9/11 Commission itself and families of victims of the tragic events of 9/11 have voiced their opposition to H.R. 10.

Mr. Chairman, thankfully for those of us who recognize this legislation for what it is, a partisan attempt at political gain, we can take solace in the fact that the Senate just yesterday passed the bipartisan Collins-Lieberman-McCain legislation. This legislation reflects the unanimous, bipartisan recommendations of the 9/11 Commission and is also similar to Mr. Menendez's substitute that I will support today. It is my hope that the legislative product that emerges from conference with the Senate will much more accurately reflect the 9/11 Commission recommendations that H.R. 10 does today. The future security of our Nation depends on it.

Mr. DINGELL. Mr. Chairman, I rise in strong opposition to H.R. 10. This is a bad bill. This is a partisan bill. This is an arrogant bill. Unlike the other body, the majority excluded Democrats from the process. They met behind closed doors and came up with their bill. They did this with the Medicare Bill. They did this with the Energy Bill. Now they are doing this with important Intelligence Reform bill.

The Commission made 41 recommendations. These were unanimous. There were 5 Republican and 5 Democratic Commissioners. There was no dissent. This bill implements only 11 recommendations. It ignores 15 recommendations of those recommendations. Worst of all, this bill includes over 50 extraneous provisions that were not in the final 9/11 Commission report. This bill does not meet the important requirements of the 9/11 Commission report.

Mr. Speaker, the Congress handed the bipartisan 9/11 Commission the task to thoroughly investigate Osama bin Laden's al Qaeda network and how it financed, trained, and aided the terrorist hijackers.

We asked them to create a report of there findings. They did. We asked the commission to come back with recommendations. They did. We must not pick and choose recommendations based upon the election season. As the 9/11 Commissioners repeatedly emphasized before our congressional committees, it is important to enact the recommendations as a complete package.

This bill fails to create the government wide civil liberties board recommended by the commission and contained in the Senate bill. This bill fails to give the National Intelligence Director sufficient authority over the budget and personnel of the intelligence agencies. This bill fails to secure U.S. borders by integrating disparate screening systems. Worst of all, it includes over 50 provisions that were not part of the report.

Of those additional provisions, three are particularly appalling. It gives the President "fast track" authority to reorganize the intelligence agencies, undermining the reforms recommended by the 9/11 Commission. It gives the President authority to bypass Senate confirmation of the Director of the CIA and other key intelligence and defense officials, weakening congressional oversight. Finally, it gives Federal law enforcement officials new authority to deport foreign nationals, revoke visas, and deny asylum without judicial review.

If we brought up the bipartisan bill offered by Congresswoman MALONEY and Congressman SHAYS we could avoid the wrangling of a conference committee. We could avoid the delays and avoid weeks of uncertainty. Most of all, we could provide the American people some peace of mind.

Mr. Chairman, we must not play politics with the national security of our country. We must work on a bipartisan basis to reform the system to make us more secure. This bill does not meet the important requirements of the 9/11 Commission report. This bill will not make us safe. I urge my colleagues to vote against this arrogant, partisan bill.

Mr. SHAW. Mr. Chairman, I rise today in support of H.R. 10, the 9/11 Recommendations Implementation Act and the provisions included in the legislation that ensure the privacy and integrity of Social Security numbers.

According to the 9–11 Commission report, "secure identification should begin in the United States." A critical step toward that goal must include safeguarding the Social Security number from theft and misuse.

When the Social Security number—commonly known as the "SSN"—was created 68 years ago, its only purpose was to tract a worker's earnings so that Social Security Taxes could be collected and benefits could be calculated. But today, use of the SSN is rampant.

Although SSNs are used for many legitimate purposes, their widespread use has made them very valuable to criminals. Someone who steals your Social Security number can literally steal your identity.

Victims can have their credit ruined, be harassed by bill collectors, be denied loans or even be mistakenly arrested because of the identity thief's crimes. And the number of victims is growing. In 2002 almost five percent of Americans were identity theft victims.

Worse yet, we have head repeated testimony on how terrorists use identity theft or fraudulently obtained SSNs to gain employment, engage in financial transactions and assimilate into our society. Preventing identity thieves from obtaining SSNs will help to protect Americans and our Nation from this threat.

For these reasons I introduced bipartisan legislation, H.R. 2971, the "Social Security Number Privacy and Identity Theft Prevention Act of 2004." This legislation would restrict the sale and public display of SSNs, tighten procedures for issuing new SSNs, and establish penalties for violations.

This bill was unanimously approved by the Commission on Ways and Means on July 21, 2004. In addition, because of its far reaching impact, the bill was also referred to the Committees on Financial Services, Energy and Commerce, and Judiciary, whose thorough deliberations are necessary and important. Based on consultation with these committees, several provisions to ensure the privacy and integrity of SSNs have been included in the "9/11 Recommendations Implementation Act."

One provision would prohibit States from placing a person's full or partial SSN on a driver's license or ID card. While many States have done this voluntarily, it is only an option in other States. Enacting this provision will help prevent identity theft if a wallet is stolen or lost and help prevent rogue employees from accessing the SSN when a driver's license is presented for ID.

Two provisions would tighten the standards for issuing an SSN by preventing fraud in the process of assigning SSNs to newborns and requiring the Social Security Administration to verify birth certificates' authenticity. The Government Accountability Office's investigators showed how easy it would be for identity thieves or terrorists to get an official SSN by submitting a fraudulent birth certificate for a baby, and the Social Security Administration's Inspector General reported on lack of checks and balances and other weaknesses in the process parents use to sign up their newborns for an SSN while still in the hospital.

Another provision would limit the number of SSN replacement cards a person may receive to 3 per year and 10 per lifetime. Both the GAO and the SSA Inspector General recommended limiting SSN replacement cards to prevent their misuse by individuals working illegally in the United States or seeking to hide their identities.

Finally, two provisions would mandate studies on requiring photo ID when applying for Social Security benefits or an SSN card and on modifying the SSN to help employers identify individuals who are potentially not authorized to work in the United States.

Some of my colleagues may believe these provisions don't go far enough, and they're right. Providing for uses of SSNs that benefit the public while protecting these numbers from being used by criminals, or even terrorists, is a complex balancing act. There are powerful consumer and commerce benefits from business use of SSNs as a common identifier. It takes time to achieve legislation that is responsible, and balances privacy concerns with concerns over efficiency, but we are making progress.

Others would like see the Social Security card become an identification card, adding a photo or other biometric information encoded electronically in the card. Such proposals represent a new purpose for the Social Security card and a new role for the Social Security Administration. We must carefully consider the ramifications of such change, which the Ways and Means Subcommittee on Social Security will explore in hearings early next year.

The Social Security number measures in H.R. 10 are important steps in our fight to prevent terrorism. I urge my colleagues to support this bill.

Mrs. MALONEY. Mr. Chairman, as I have said, I oppose H.R. 10. But I have to give the Financial Services Committee this: They didn't add anything affirmatively harmful to this bill. Indeed, several of these provisions are things that this body has passed before and I support, such as providing the SEC with increased emergency authority, or authorizing Treasury to produce secure currency for other countries.

Indeed, one provision of the bill builds on recent legislation I cosponsored. I worked with Rep. KELLY to pass an appropriation of $25 million in funding for FinCEN to make key technological improvements in FinCEN systems. This bill authorizes no-year funding for that purpose, and that is commendable.

Other provisions are unobjectionable, such as making technical corrections to money laundering statutes, or requiring Treasury to prepare an annual Money Laundering Strategy. These are things we should have done some time ago.

My bigger concern in this Committee is with what we have not done as we come to the end of this session. There is financial services legislation we should be passing—but the majority has failed to give this body a chance to vote on it.

The Financial Services Committee voted out legislation extending the Terrorism Risk Insurance Act—but the leadership has failed to bring this to the floor. This is critical to the district I represent. We were attacked on 9/11 and we cannot rebuild and remake our commercial district without terrorism insurance. Together with many of my colleagues I have signed a letter asking that TRIA be brought to the floor and I hope that can still happen.

Similarly, the Financial Services Committee voted out legislation revising the bankruptcy laws to provide an orderly unwinding of financial contracts. This legislation is strongly supported by the Treasury Department. But again, it's missing in action.

We must set better priorities. We should pass TRIA and netting in this Congress.

Mr. HASTINGS of Florida. Mr. Chairman, I rise today to express my deep concerns about H.R. 10, the Republican Leadership's intelligence reorganization bill. There are many problems with this bill.

As the Ranking Democrat on the Intelligence Subcommittee on Terrorism and Homeland Security, I have been engaged in the debate on intelligence reorganization ever since 9/11. I was privileged to join 8 of my colleagues in April to introduce H.R. 4104, the Intelligence Transformation Act, which helped to inform the 9/11 Commission and was a precursor to the great debate we have had on intelligence reform over the last two months.

The bill the House is now being asked to consider does not come close to reflecting the legislation that I and others introduced this April, and its flaws are many.

The provisions contained in Title I are intended to strengthen intelligence, but they are far too weak. Where is the strong budget authority for the National Intelligence Director? Where is the strong hiring and firing authority for the National Intelligence Director? Where are the detailed provisions necessary for improving counterterrorism information sharing? Where is the National Counterterrorism Center's real power to coordinate counterterrorism operations? They are not in the Republican Leadership bill.

Senators COLLINS and LIEBERMAN have led a remarkable, bipartisan effort in the other body. They consulted with the 9/11 Commission and the 9/11 families. Their bill is a battle-tested product.

If the House of Representatives is going to undertake a serious effort to improve our response to terrorism, we must do so seriously. We must improve this seriously-flawed bill.

Mr. EVERETT. Mr. Chairman, the terrorist attacks on our homeland that occurred on September 11th, 2001 changed the world forever for all Americans. The collective national loss we felt on that day is no less painful today, and ranks as one of the darkest moments in our national history. In that solemn hour, our President was rightly resolved to take the fight to the terrorists and not to stop until justice prevailed and the threat was mitigated.

Today, three years later, we are still very much engaged in the war on terror. Since the release of the 9/11 Commission report in July, the national media and many politicians have called for the immediate adoption of all the report's 41 recommendations, which is the tact being taken by the other body. Mr. Chairman I fear that we are moving too fast to implement a solution that does not match the problem. Moreover, election year politics are driving us to address the shortfalls between foreign and domestic intelligence by unwisely tinkering with the military. This could prove to have grave and unintended consequences to our troops currently in battle and our future military operations.

Long before the 9/11 Commission report hit bookstores and the commissioners launched their book tours, this Republican-led Congress and the Bush Administration took many measures designed to enhance our nation's homeland security. I feel it is important to highlight these accomplishments that clearly illustrates Congress' dedication to keep our nation safe. At an August hearing held by the House Permanent Select Committee on Intelligence, Vice-Chairman of the Commission, Lee Hamilton admitted that a lot of progress has been made in many areas, including hurting Al Qaeda and inhibiting their ability to respond, while also beefing up security here at home. In fact, it has been disclosed that our security efforts have since prevented several post 9/11 terrorist incidents.

Furthermore, we have already taken action through Operations Enduring Freedom and Iraqi Freedom to eliminate safe havens for terrorists in foreign lands—including Al Qaeda's top sanctuary, Afghanistan. Additionally, we have made progress in blocking sources of weapons of mass destruction from terrorists, including the elimination of the A.Q. Khan nuclear proliferation network and Libya's WMD and long-range missile programs.

On a more positive note, this legislation does encompass many of the recommendations adopted by the Committees on Armed Services and Intelligence to improve intelligence operations. This measure reforms the intelligence community consistent with the framework established by the 9/11 Commission by creating a National Intelligence Director (NID) with substantial budget and personnel authority as well as a National Counterterrorism Center (NCTC).

Specifically, the NID will have expanded statutory, budgetary, and personnel powers over the National Intelligence Program (NIP). The NIP is composed of CIA, parts of the National Security Agency (NSA), the National Reconnaissance Office (NRO), the National Geospatial Agency (NGA), FBI, State and Homeland Security. This excludes the Pentagon's joint military and tactical intelligence programs, which allows the Secretary of Defense to continue to directly support the joint and tactical requirements of military intelligence. The budget authorities given to the NID were carefully crafted to preserve the ability of the Secretary of Defense to rely on these agencies to the best military intelligence directly to combatant commanders, which in my view makes it superior to the other proposal adopted by the other body.

Mr. Chairman, it is important to note that the 9/11 Commission did not suggest that DoD management of intelligence agencies contributed to 9/11. In fact, when testifying before the House Armed Services Committee, Mr. Hamilton suggested that the military intelligence support is not broken. As such, it is imperative that we preserve the intelligence lifeline to our troops by ensuring that more bureaucracy, distance and unnecessary obstacles do not come between our troops and strategic and tactical intelligence; an increasingly critical tool in today's battlefield. Specifically, Mr. Hamilton said, "I think the committee has helped us in understanding the importance of tactical military intelligence. And I think some of our recommendations can be refined." He also added, "I think the questions that are being asked here are helpful to us and causes me to think that we need to refine some of our thinking in this very important area, and we will try to do that.

Mr. Chairman, there are 158,000 troops currently in theater and their combatant commanders need to know they can count on the military chain of command to quickly access critical intelligence resources. As has been said before, first do no harm. The balance maintained in this bill can be literally a matter of life and death for these brave men and women serving overseas. My support of this legislation is predicated upon my strong reservations about the measure adopted by the other body and with the hope that the provisions of H.R. 10 that I outlined will prevail in conference.

Mr. BURR. Mr. Chairman, I rise today in strong support of H.R. 10. This bill represents the hard work and coordination of many Committees' of jurisdiction. The level of cooperation and collaboration that went into creating this bill demonstrates our commitment to bringing about real Intelligence Reform. This bill responds in a very serious way to the 9/11 Commission report.

As a member of the Intelligence Committee I have seen "first-hand" the needs facing the Intelligence Community. The intelligence reforms proposed by H.R. 10 go to the heart of these issues—and provide the remedies to correct many of the organizational problems that contributed to the tragedy of September 11th.

H.R. 10 addresses the major findings of the 9/11 Commission, in particular: It creates a strong and empowered National Intelligence Director; it enhances budget and management authorities of the national director; it improves information sharing by giving the director the mandate and authority to establish community-wide standards; it sharpens intelligence tools, particularly analytic capabilities; and it improves our ability to detect and deter terrorist threats.

Taken together—the new organization, these capabilities, and enhanced authorities—provide the foundation necessary to empower the National Intelligence Director to effect real transformation throughout the Intelligence Community.

While providing these new authorities, H.R. 10 carefully balances the authorities required to empower the National Intelligence Director to conduct the nation's intelligence analysis and collection operations, with the authorities of the Department heads who have to administer the intelligence elements that conduct and execute those operations.

Those checks and balances ensure that the equities of the various departments are not unintentionally harmed—and I will point out that, unlike other legislation that we will consider here today, H.R. 10 carefully and rightfully ensures unfettered intelligence support to our armed forces deployed around the world.

H.R. 10 also eliminates the creation of unnecessary new bureaucracies, unlike two substitute amendments that we will debate. The other major proposals being considered add layers of management between the Intelligence Community agencies and the National Intelligence Director. These layers create duplicative auditing agencies and burden intelligence operations with unnecessary review boards and councils. These layers will hamper the process of change not enhance it, and may even serve to prevent the dramatic changes that are needed.

Finally, H.R. 10 creates an Information Sharing Environment which will handle the sharing of all intelligence data, not just that which deals with terrorism.

The other proposals being considered limit the scope of technological change to simply one set of intelligence data. I can tell you first-hand—my experience on the Intelligence Committee has demonstrated to me that technological reform will come from the fusion and sharing of all intelligence data. Only H.R. 10 proposes to do this.

It is a very good bill, and I strongly urge my colleagues on both sides of the aisle to support H.R. 10.

Mr. MEEHAN. Mr. Chairman, I rise today in strong support of the substitute amendment to bring the House bill in line with the bipartisan recommendations of the September 11th Commission.

All Members of Congress should reflect on the events that have brought us here. We lost over 3,000 Americans on 9/11. 30 families from my district lost loved ones on that day.

Our government failed us on 9/11. It failed John Ogonowski, the Captain of American Airlines Flight 11, a constituent of mine who lived in Dracut, Massachusetts. Captain Ogonowski was an Air Force pilot and a Vietnam Veteran. But because of the massive failure of intelligence, and our failure to stop the terrorists and secure the cockpit door, Captain Ogonowski became a "sitting duck" in the words of his wife Peg.

There are thousands of families we failed on 9/11. And many of them have turned their grief into resolve—they are demanding action so that no family suffers a similar tragedy because the failures of this government.

Some of those families are here in Washington today. On 9/11, Sally and Don Goodrich lost their son Peter, who lived with his wife Rachel in Sudbury, MA. Both Sally and Don are in Washington today urging that Congress move forward on the Commission's recommendations on a bipartisan basis as soon as possible.

Last week I met with Carrie Lemack of Framingham, MA, who along with Don Goodrich helped to found "Families of September 11." Carrie and her sister, Danielle, lost their mom, Judy. Carrie came to Washington to attend the committee markups. She is urging Congress to put aside partisanship for once and do what we have to do to make America safer.

Loretta Filipov of Concord, MA, lost her husband Al on 9/11. Three years later, she believes the world is no safer. But as she says, "I refuse to live in fear." She's been writing and calling members of Congress urging us to work together to make the belated changes that will make us safer.

After 9/11, all of us recognized the need to improve our intelligence—but it was the families who lost loved ones on 9/11 who demanded action. The 9/11 families are the reason we had a bipartisan 9/11 Commission in the first place.

In July, the September 1th Commission gave Congress a blueprint for action Its report included 43 very specific recommendations to fix the problems in our intelligence community and improve our homeland defense. All of the recommendations were bipartisan and unanimous.

The Senate is working on a bipartisan basis to follow the recommendations. Unfortunately, the House is taking a different approach. The Republican leadership in the House has decided to play politics with our homeland security. H.R. 10 was introduced without consulting the minority and rushed through committees days later, giving members little opportunity to look over the bill. Yesterday, the Rules Committee met in an emergency session to hear testimony on amendments without informing the rest of us.

But even more important than the process is what's in the bill, and what's not in the bill. Simply stated, H.R. 10 fails to follow the recommendations of the 9/11 Commission. It ignores many of the important things we need to do to keep our homeland safe. And at the same time, this partisan Republican bill also goes far beyond what the Commissioners recommended in curbing the civil liberties of American citizens in ways that won't make us any safer.

For example, one of the central recommendations of the 9/11 Commissioners was to establish a National Intelligence Director with full budgetary authority over our national intelligence agencies. The Senate bill upholds this recommendation. The House bill fails to give the NID the authority to establish national priorities and force bureaucracies to work together.

The September 11th Commissioners also recommended that we establish a Cabinet-level National Counterterrorism Center. The Senate bill does that. But again, the House bill doesn't give the new Center the authority to coordinate the war on terror.

The September 11th Commission recommend strengthening the programs that help us secure loose nuclear materials in Russia and around the world. The Senate bill does this—the House bill just calls for a study of the issue. Last week, I joined with Congresswoman Tauscher and Congressman Spratt in introducing a bill that would meet the 9/11 Commission's recommendations for developing a long-term nonproliferation strategy. Unfortunately, when the legislation was offered as an amendment in the Armed Services Committee last week, we were told that it wasn't germane.

The September 11th Commission called for doing more to exchange information on terrorists with trusted allies. The House bill is silent on this matter.

The September 11th Commission also urged Congress to improve aviation security—specifically, that we screen people for explosives and also put cargo in hardened containers. Again, the Senate accomplishes this while the House fails.

Finally, the September 11th Commission calls for a Civil Liberties Oversight Board. This provision is in the Senate bill but not the House bill. In fact, the House bill goes overboard in undermining civil liberties. Instead of reexamining the Patriot Act to see what is working and what goes too far, the Republican leadership has included new powers for law enforcement without even holding a hearing on them.

The Republicans knew that these provisions would prevent Congress from finding consensus, moving forward, and passing a bill before the elections. I would have hoped that, for once, the Republican leadership wouldn't have let politics get in the way of needed steps to improve our national security. Regrettably, it has. But the 9/11 families have waited three years for action, and it's not too late to follow the example and the recommendations of the 9/11 Commission and move forward in a bipartisan way.

This Congress created the September 11th Commission for a reason—to conduct an independent investigation into the terrorist attacks and recommend policy changes to ensure that they never occur again. The Senate bill takes these recommendations seriously. The House bill does not. I therefore urge my colleagues to support the Menendez substitute amendment and adopt the language in the Senate version of the bill.

Mr. MARKEY. Mr. Chairman, I rise in opposition to H.R. 10. This bill is nothing more than a cynical sham masquerading as reform. It purports to implement the recommendations of the 9/11 Commission, but it actually implements only 11 of the Commission's 41 recommendations. What was left off the table? The bill on the House Floor today: Fails to strengthen our efforts to prevent proliferation of nuclear weapons; fails to give the National Intelligence Director sufficient authority over the budget and personnel of the intelligence agencies; and fails to secure U.S. borders by integrating disparate screening systems.

H.R. 10 has numerous additional flaws: There is no requirement to screen all cargo being placed on airplanes to ensure they do not contain explosives. There are NO whistleblower protections for TSA baggage screeners or employees of the FBI and the CIA who are retaliated against for disclosing security problems to their supervisors. Any reorganization of the intelligence community is rendered meaningless by the failure to protect modern day Paul Reveres like Coleen Rowley and Sibel Edmonds when they blow the whistle. An amendment offered by Mr. NADLER to increase the security of nuclear facilities and shipments of extremely hazardous materials that was actually ACCEPTED during the Judiciary Committee markup was inexplicably removed by the Rules Committee.

What was added to the bill? Dozens of pages of extraneous material that have nothing to do with anything that the 9/11 Commission recommended. The underlying bill actually contains a provision that would authorize the outsourcing of torture and limit any judicial review of this process! That's right—in this bill—H.R. 10—the House Republican leadership would actually make it easier for certain foreign persons to be sent to countries where they would be tortured in interrogations. I call this the Abu Ghraib-by-Proxy provision.

It's outrageous that these provisions have been snuck into the 9/11 bill behind closed doors when the 9/11 Commission specifically called for the United States to "offer an example of moral leadership in the world, committed to treat people humanely, abide by the law. . ." Nothing could be farther from the 9/11 Commission's intent when it issued this recommendation.

Where does the Bush Administration stand on this Abu Ghraib? The White House's Legal Counsel sent a letter to the Washington Post saying that the Administration does not support these provisions in this bill.

Earlier this year I introduced H.R. 4674, a bill that would explicitly bar the U.S. from deporting, extraditing, or otherwise rendering persons to foreign nations known to engage in the practice of torture. If we really want to implement the 9/11 commission recommendations, we would be including this type of proposal in the bill before us today. I asked the Rules Committee to approve an open Rule that would allow me to do this, but they refused.

What the Rules Committee did approve was a Rule that makes in order an amendment by the Gentleman from Indiana (Mr. HOSTETTLER). What does the Hostettler amendment do? It would rely on "diplomatic assurances" that detainees would not be tortured. We should not be trusting "diplomatic assurances" from torturers that they won't engage in torture.

Both H.R. 10 and the proposed Hostettler amendment would legitimize the practice of sending suspected terrorists to other countries to be tortured. That is wrong.

I urge a "no" vote on H.R. 10, and a NO vote on the Hostettler amendment.

The CHAIRMAN pro tempore (Mr. LINDER). All time for general debate has expired.

Mr. COX. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. LATOURETTE) having assumed the chair, Mr. LINDER, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 10) to provide for reform of the intelligence community, terrorism prevention and prosecution, border security, and international cooperation and coordination, and for other purposes, had come to no resolution thereon.

REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST THE CONFERENCE REPORT ON H.R. 4520, AMERICAN JOBS CREATION ACT OF 2004

Mr. REYNOLDS, from the Committee on Rules, submitted a privileged report (Rept. No. 108-762) on the resolution (H. Res. 830) waiving points of order against the conference report to accompany the bill (H.R. 4520) to amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service, and high-technology businesses and workers more competitive and productive both at home and abroad, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION WAIVING REQUIREMENT OF CLAUSE 6(a) OF RULE XIII WITH RESPECT TO CONSIDERATION OF CERTAIN RESOLUTIONS

Mr. REYNOLDS, from the Committee on Rules, submitted a privileged report (Rept. No. 108-763) on the resolution (H. Res. 831) waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules, which was referred to the House Calendar and ordered to be printed.

CONFERENCE REPORT ON H.R. 4520, AMERICAN JOBS CREATION ACT OF 2004

Mr. REYNOLDS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 830 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 830

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 4520) to amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service, and high-technology businesses and workers more competitive and productive both at home and abroad. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read.

The SPEAKER pro tempore. The gentleman from New York (Mr. REYNOLDS) is recognized for 1 hour.

Mr. REYNOLDS. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts (Mr. MCGOVERN), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 830 is a standard rule that provides for consideration of the conference report to accompany H.R. 4520, the American Jobs Creation Act of 2004.

The rule waives all points of order against the conference report and against its consideration. The rule also provides that the conference report will be considered as read.

Mr. Speaker, over the past several years, America's economy has experienced more than its fair share of setbacks. We have had a triple shock of terrorist attacks, corporate scandals and a recession, but each and every time, this administration and this Congress has responded with sound policies to move forward, to create jobs, to stimulate economic growth.

After inheriting a slowing economy, President Bush and this Congress reacted quickly and enacted a series of tax cuts that resulted in the shortest and shallowest recession in this Nation's history. We have been resolute in our work towards recovery, and today, real GDP has grown at its fastest rate in 20 years.

More than 1.7 million jobs have been created, and more Americans are working today than in any other time in our history. The unemployment rate is below the average levels in each of the past three decades. In the past 4 years, we have seen the fastest rate of growth in productivity in more than a half a century. Homeownership continues at an all-time high.

In the particularly hard-hit manufacturing sector, we have seen 17 straight months of growth in activity, and the manufacturing employment index has been growing for 11 consecutive months. When President Bush took office, manufacturing employment had been on the decline for 3 years. In fact, more than 200,000 manufacturing jobs were lost in the last 6 months of the Clinton administration. So far this year, manufacturing employment is up by more than 107,000 jobs. We have seen the addition of 22,000 manufacturing jobs last month alone, and manufacturing output is at an all-time high.

But our work is not done until every American who wants a job can find one, and that is why, Mr. Speaker, I am proud to be here today on behalf of the American Jobs Creation Act by supporting this rule and the underlying conference report.

Now is the time to seize on the momentum that we have created and continue to enact policies that spur economic growth, generate jobs, bolster domestic manufacturing and protect small businesses and farmers.

As my colleagues know, European Union sanctions on American exports are costing our manufacturers and farmers billions of dollars. Tariffs currently stand at 12 percent and will continue to increase 1 percent per month until the FSC/ETI is repealed. That, Mr. Speaker, threatens the ability of our domestic companies to create jobs right here at home.

EU sanctions are increasing the price of 1,600 categories of U.S. goods sold outside of the United States. They are hindering the exporting capability of multiple industries.

Today, we have the power to stop them. Without our action, many small businesses and other employers face financial ruin, while their employees face their own job losses.

By repealing the FSC/ETI through the underlying conference report, this Congress will finally put an end to these staggering sanctions and help, once again, to put Americans to work.

This conference report permanently reduces the corporate tax rate to 32 percent for domestic, and only domestic, manufacturers, producers, farmers and small corporations. This is yet another stimulant for job growth, encouraging production and manufacturing here at home, giving employers incentives to reinvest, expand and, more importantly, create new jobs in the United States.

Mr. Speaker, the underlying report also addresses the primary obstacle in realizing even bigger job growth, the double taxation for U.S.-based manufacturers. Our global competitors enjoy a considerable advantage over the United States simply due to the burdensome U.S. tax code. In reducing this double taxation faced by U.S.-based companies, we greatly enhance their competitiveness in the global market and their ability to sell American-made goods, all the while making it easier for them to create more jobs here in the United States.

Mr. Speaker, another important part of H.R. 4520 is its relief for millions of small businesses and farmers from the alternative minimum tax. Over the years, that tax has unintentionally ensnared more and more middle-income Americans. With the passage of the underlying report today, this House will deliver much-needed relief for millions of American farmers and small businessmen.

We will end the double and triple taxation of farmer cooperatives, and we will provide capital gains tax relief when livestock is sold and replaced on account of drought and other weather-related disasters.

The conference report also makes it cheaper for existing businesses to increase their investment and for entrepreneurs to expense new ventures.

Provisions to promote investment in new equipment are extended for an additional 2 years. This increased investment opportunity provides significant stimulus to the economy, and further aids in boosting job growth.

Partnerships and S corporations also receive a reduction for domestic production activities under the conference report. A whole host of reforms are included which provide S corporations with $1.2 billion in tax relief.

In total, the conference report gives manufacturing companies, farms and small businesses $76.5 billion in stimulative tax relief through a reduction for income attributable to production activities here in the United States. This relief will help keep individuals from sending exorbitant amounts of their hard-earned money to Uncle Sam and use it instead to create new jobs and new opportunities.

Mr. Speaker, our colleagues have worked tirelessly on behalf of the American people throughout this process. I would like to especially commend the Chairman and the conference committee members for their steadfast support of sound tax policy and job creation.

We have the opportunity and the responsibility to not only continue but also accelerate the last year of economic growth and job creation. We can do that today by passing the American Jobs Creation Act of 2004.

I urge my colleagues to support the rule and the underlying conference report.

Mr. Speaker, I reserve the balance of my time.

Mr. McGOVERN. Mr. Speaker, I yield myself such time as I may consume, and I want to thank the gentleman from New York (Mr. REYNOLDS) for yielding me the customary 30 minutes.

Mr. Speaker, I guess it is refreshing that the Republican leadership is allowing this House to debate and vote on a bill that now has actually been filed, and I am glad that the majority has finally provided paper copies of this massive bill to Members of this House.

□ 1900

Unfortunately, we are still considering a flawed bill under a very flawed process.

Let me remind my colleagues this rule waives the normal 3-day layover of the conference report. Those are the rules of the House. Members of Congress and the American people deserve to have at least 3 full days to read and examine and analyze this massive tax cut, but this rule waives that layover and allows this body to consider this bill today when most Members have not read the bill in its entirety.

Like I said this morning during debate on the martial law rule, this is not the first time the Republican leadership has broken and flaunted the rules to get their way. And while I continue to be disappointed by the way the Republican leadership continues to misuse the House rules, I want to talk for a few minutes about the substance of this conference report.

Mr. Speaker, to describe this bill as flawed does not do it justice. This conference report is a legislative grab bag filled with goodies for special interests. Every Member of this body knew about the export subsidy that was ruled illegal by the World Trade Organization. Thousands of U.S. exporters are needlessly paying tariffs to European countries simply because the Republican-controlled Congress has failed to pass legislation to avoid these penalties. Thanks to the Republican leadership of this Congress, jewelry, textile and small manufacturers in my Congressional District have been especially hard hit by these sanctions.

Now, our colleagues, the gentleman from Illinois (Mr. CRANE) and the gentleman from New York (Mr. RANGEL) joined together and sponsored a bipartisan bill to fix this problem a long time ago, and 177 Members are cosponsors of that bill. The Crane-Rangel bill was clean, it was simple, and it would bring the United States into compliance with the WTO without the extra add-ons that the Republican leadership felt compelled to include in this conference report as sweeteners or incentives for passage of this bill.

Crane-Rangel would have been approved by this House if the Republican leadership would have allowed the bill to come to the floor for an up-or-down vote. It would have been sent to the President and signed into law by now, if the Republican leadership did not drag its heels while pretending to address this problem. And its small cost could have been completely paid for.

Instead of bringing a clean bill fixing this problem to the floor, the Republican leadership has delivered this monstrosity. Once again, the Republican leadership has turned a noncontroversial issue in a noncontroversial bill into bad policy.

Does this conference report fix this problem we have with the WTO? Well, according to the Republican leadership it does. But according to press accounts, the European Union is hinting this legislation may not accomplish its goal; and, if true, the sanctions on American exports will not be lifted.

Mr. Speaker, there was a better way to do this, and I am disappointed that the Republican leadership took the hard way out of what should have been an easy problem to fix. But while this conference report should be about eliminating the WTO sanctions against American corporations, it is really about the tax breaks and other goodies provided to special interests.

This conference report gives tax breaks to various corporate interests. There are 276 separate tax breaks that benefit everyone from restaurant owners to foreign gamblers. Provisions like the one that will help native Alaskan whalers were inserted to help vulnerable Members in the other body win reelection. Home Depot and General Electric, two companies who have donated large sums of campaign funds to the Republican Party, get significant tax breaks in this bill.

Mr. Speaker, this conference report should not be used to reward corporate contributors. This is no way to do tax policy. We can and we should do better.

Now, if that were not bad enough, Mr. Speaker, several provisions that actually do help average Americans, which were included in the other body's version of this bill, were stripped out by Republican leaders. When the Republican leadership had a chance to actually do something good for a change, they turned away and ignored the needs and concerns of everyday Americans.

Included in this conference report is a bailout for tobacco farmers. This provision will provide $10 million to financially vulnerable tobacco farmers in tobacco communities. These funds would come from an assessment on tobacco companies, not from taxpayers.

While this bailout provision is important to a small segment of the American population, the heart of the amendment adopted by the other body was FDA regulation of tobacco. The Senate amendment would give the Food and Drug Administration the broad authority to regulate the sale, distribution, and advertising of cigarettes and smokeless tobacco.

We know that each day, 5,000 children try their first cigarette; that 2,000 children will become daily smokers, and nearly 1,000 will die prematurely from tobacco-induced diseases. The other body included this language as a bipartisan amendment adopted by a vote of 78 to 15. But instead of supporting this bipartisan amendment, the Republican leadership stripped FDA regulation from this conference report, leaving only the tobacco bailout.

By stripping out FDA regulation, we continue to leave our children vulnerable to the dangers of tobacco. This is unconscionable, and I am disappointed by the Republican leadership's action.

During debate on the other body's version of this legislation, two amendments were adopted to block President Bush's overtime regulations that recently went into effect. These regulations are yet another nasty attack by this administration on American workers.

Mr. Speaker, we all know that these overtime regulations will deny six million workers overtime protection. The House has voted against these regulations twice, and the other body has voted against it three times. These overtime cuts are pay cuts. When workers lose their overtime pay protection, employers force them to work longer hours for no extra pay. That is wrong.

Protecting the 40-hour workweek is vital to protecting the work-family balance for millions of Americans in communities in all parts of this Nation, and I am disappointed that the Republican leadership did not stand up to the corporate interests and support these two amendments. Instead, they caved to pressure from their corporate friends and allowed these misguided regulations to continue to stay in effect.

Finally, Mr. Speaker, I must express my extreme displeasure with the Republican leadership for stripping out the provision that would provide tax relief to every company in business that voluntarily makes up the difference in income to an employee activated in the National Guard or Reserves. This provision would also have provided support to those same companies to train temporary companies to fill the jobs left vacant by active duty employees.

The gentleman from California (Mr. LANTOS) and I attempted to offer this amendment during the debate on this bill when it was considered in June, but the Republican leadership denied us the opportunity to offer that amendment to the bill. However, a similar amendment offered by Senator LANDRIEU was adopted.

During this time of national emergency, when members of the Reserves and Guard are serving extended deployments in Iraq and Afghanistan, it is vital that the Congress provide help to the hundreds of small businesses suffering from long-term vacancies or the families whose loved ones have been activated for service in Iraq and Afghanistan. But instead of showing a little compassion, instead of doing the right thing, instead of standing with the troops, their families, and their hometown communities, the Republican leadership in both Chambers stripped this provision from the final bill.

Mr. Speaker, it is truly a sad day when this body turns its back on those who are fighting for this country.

Mr. Speaker, I urge my colleagues to join me in opposing this conference report. We need to draw a line in the sand when it comes to corporate giveaways and legislative sweeteners like the ones written into this conference report. It is time we say enough is enough.

Mr. Speaker, I reserve the balance of my time.

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I was listening to the gentleman from Massachusetts. He said draw a line in the sand. I am willing to bet, by the time we complete our vote on the bill, the underlying legislation, it is going to be quicksand, because I think it will have bipartisan support not only in this body but the other body.

I guess it is okay to come on the floor and see just a half or a quarter of what the legislation does, but you cannot write history over again. The fact is, earlier the gentleman from Massachusetts and I had the opportunity to bring back to the floor from the Committee on Rules a same-day resolution. It was passed by this honorable body and we are now having the underlying legislation brought down, the conference report, to be considered here.

So the will of the House was done today by a vote which allowed the bringing of this bill to the floor. It seems that this is a similar situation to a discussion we had earlier on the rule on this same-day legislation, and that was in reference to the Crane-Rangel legislation. I just must remind us again for the record in the rules debate we are now having that while my colleagues continue to talk about Crane-Rangel, many of the provisions that were in the legislation offered by the gentleman from Illinois (Mr. CRANE) are incorporated in the parts of this bill in the conference report. I also note that the gentleman from Illinois (Mr. CRANE) has signed this conference report as a conferee.

Mr. Speaker, I also want to remind my colleagues that it has bipartisan support, as the conferees deliberated on only those things that were in the House bill or in the other body's bill as a final product of the conference report. The minority leader of the other body has signed this as a conferee.

And there is good reason why it has bipartisan support. But before we discuss that, we might look back at the reality of what the chairman of the Committee on Ways and Means said earlier today in the previous rule which helped to bring this one to the floor. He said in order to have bipartisanship, it goes two ways. Sometimes we lose track of that, as it was extended by the chairman of the Senate Committee on Finance version, of having amendments offered from the conferees and then considered, as is done in the Senate Committee on Finance.

Before we conclude on what is in the bill through the eyes of my colleague from Massachusetts, let us be reminded that this legislation addresses help for exporters, where the European Union has imposed a penalty tariff of 12 percent on more than 1,600 categories of U.S. exports. And unless the U.S. Congress acts, the European Union will continue to increase that penalty tariff by 1 percent every single month until it reaches 17 percent.

Mr. Speaker, that affects Wisconsin's cheese, Florida's oranges, California's lemons and limes and other farm products which are subject to that penalty tariff; and U.S. manufacturers of jewelry and steel and tools, glass, toys, and clothing, and other products subject to the penalty tariff.

I keep hearing, Mr. Speaker, we have a plan for the middle class. Well, when I look at small business, that is middle class, on Main Street USA. This bill extends and enhances section 179 expensing for 2 additional years, so small businesses can write off the costs of their investments up to $100,000 annually. Partnerships and S corporations receive a deduction for domestic production activities. It offers S corporations ten reforms providing $1.2 billion in tax relief, and it provides for faster depreciation of leasehold and restaurant improvements on those mom-and-pop shops all through USA Main Street.

When we look at our farmers, Mr. Speaker, the impact of what has been done in this bill on the deduction for domestic production activities extended to farmers as well as to agriculture and horticulture cooperatives, it deals with AMT relief for farmers and fisherman who income average. It extends an ethanol subsidy for those under current law through 2010, thus improving farmers' incomes. It ends double and triple taxation of farmer cooperatives. It provides capital gains tax relief when livestock is sold and replaced on account of drought or other weather-related disasters. It extends capital gains treatment on outright sales of timber.

Mr. Speaker, on domestic manufacturers, the bill provides companies, farms, and small business with $76.5 billion, that is with a "B," $76.5 billion in stimulative tax relief through a deduction for income tax attributed to production activities in the United States. More tax relief is provided for businesses with proportionately more U.S. production operations. The deduction is available for domestic production activities only, and the deduction is limited to 50 percent of the wages paid to workers in America. The bill does not move jobs overseas.

And for those who do not have income tax, something that I live with in New York, Mr. Speaker, H.R. 4520 allows taxpayers, especially those in Nevada, Wyoming, the State of Washington, South Dakota, Texas, Alaska and Florida, to deduct their sales taxes because they do not pay income tax.

And ending the tobacco quotas. I have seen tobacco States where it is clear that the message of opportunity of offering tobacco farmers, including those in Florida, Georgia, South Carolina, North Carolina, Tennessee, and Kentucky, a fair buy-out to end the quota system.

□ 1915

Mr. Speaker, this is a tremendous opportunity for middle America to get a tax break and to continue stimulating our economy.

Mr. Speaker, I yield 2 minutes to the gentlewoman from Tennessee (Mrs. BLACKBURN).

Mrs. BLACKBURN. Mr. Speaker, I rise to support the rule, and I also want to commend the chairman of the Committee on Ways and Means, the gentleman from California (Mr. THOMAS), for his excellent work, the work of the Committee on Rules and also to commend the conference committee for their good work on this issue.

This is a fair rule. It is a good conference report. And it is time for us to take action on this. The issue that we have before us is about tax fairness, it is about equity, and it is about jobs growth. Mr. Speaker, as I was listening to my colleague from across the aisle talk about tax cuts, you would think that they think that the tax cuts are bad, that reducing the tax burden on the American citizens is a bad thing to do. I am here to tell you from my constituents in Tennessee, reducing that burden is a very good thing to do. It is something that the jobs growth bill does. And so I do rise to enthusiastically support it.

There is a provision in this bill that is of great importance not only to my constituents in Tennessee but to 55 million Americans. As we were hearing from the chairman, he mentioned this was help for farmers, help for Main Street, and help for Main Street is what I want to talk about, because restoring the deductibility of sales tax to the Federal income tax filing for those of us that are in States that do not have a State income tax, that choose to fund our State governments by sales tax, that is an issue of tax fairness.

It is also a way to help out Main Street and provide an economic boost that is truly needed in our communities. This is a provision also that is very important to thousands of female-owned small businesses: increasing expensing, leasehold provisions, deductibility of sales tax that provides more traffic on Main Street for our thousands of female-owned businesses. This is a very positive move.

Mr. McGOVERN. Mr. Speaker, I yield myself such time as I may consume.

I just wanted to comment on some of the words of my colleague from New York (Mr. REYNOLDS) who read very well from the Republican talking points on this bill. I would say that if we followed the rules of this House and he actually had the 3-day layover to actually read what was in this bill or what was not in this bill, he would have noticed that this bill actually undercuts the will of the House and the other body with regard to President Bush's nasty overtime regulations which was removed from this bill.

He would realize that the Republican leadership stripped out a provision that would provide tax relief to every company and business that voluntarily makes up the difference in income to an employee activated in the National Guard or Reserves. I think he would see that of the 276 separate little provisions that benefit special interests, makers of bows and arrows, tackle boxes and sonar finders and even importers of Chinese ceiling fans, let me say to my colleague from New York that I think those who are serving in our National Guard and Reserves and those businesses that are struggling as those brave men and women are fighting overseas in Afghanistan and Iraq, I think they are more important, quite frankly, than Chinese ceiling fans. I think they deserve a bigger break than makers of bows and arrows and tackle boxes and sonar fish finders.

That is the complaint here, that this bill is filled with special goodies for people who do not need it when in fact some of the people who need it most do not get anything. What is even more frustrating is the fact that people are going to vote on this bill today, this conference report, when it was just brought before us today, breaking the rules of this House, waiving the rules of this House where we are supposed to have 3 days to know what is in it.

Mr. Speaker, I yield 5 minutes to the distinguished gentleman from New York (Mr. RANGEL), the coauthor of the Crane-Rangel bill.

Mr. RANGEL. Mr. Speaker, I want to thank my friend and colleague from New York (Mr. REYNOLDS) for sharing with us what is in this bill because the Members probably are still at their Web sites trying to figure it out.

The reason we are here right now is not to go into the substance of the bill but for me and others to try to encourage the leadership to kill this bill and do this the right way. There are 650 pages to this tax bill and 650 pages explaining the tax bill. This adds another 1,200 pages to the 6,000-page IRS Code that we have here.

We know that Members are supposed to have 3 days in order to find out what is in these 1,200 pages. That is difficult enough. The problem is the Members do not have the bill. They have no bills in their offices. But our friend from New York (Mr. REYNOLDS) has said not to worry, the government has bought them Web sites to find out what is in the bill.

I want to say to those that may be interested in what is in the bill, since when you go home people may ask you, tune into wayside and share with Members of this august body what is in this bill we are going to vote on. We would like to have had 3 days to have looked into this. But the Republicans do not have 3 days to give us. We would have liked to have used the rules of the House, but they say we have to have martial law. I guess it has something to do with combat, but they have put martial law to the House of Representatives, denying us the opportunity to do anything but to look at the Web site.

Why are there so few Republicans and Democrats on the floor? Lack of dedication? Not wanting to understand this complex piece of legislation? No. They are at their Web sites. So, Americans, stop what you are doing now, go to waysandmeans.house.com so when we come home and share with you the good things we have brought to you, the fact that you do not have to totally rely on the Internal Revenue Service, we will have the private sector collectors helping us out. It is on the Web site. And, of course, if you are in tobacco, bully, $10 billion you get it, smoking goes up; but if you manufacture you are in a good business.

What about these charities that they ask you to give cause to? No, not in this tax bill. I do not know how to tell you to get that on waysandmeans.house.com, but it is there. But if you are into pro sports teams, if you are into race track cars being depreciated, if you are foreign, of course, and you are into horse racing and dog racing and gambling, then go to waysandmeans.house.com.

If you really want to find out what we are trying to correct, and that is the tariff and sanctions that have been put on us by the World Trade Organization, we are not certain yet whether we covered that, but when Santa Claus sees the sleigh coming, he wants to pile up on it. So the little part that this bill was supposed to take care of, we hope that they did that. But for the rest, the lobbyists that really believe that before this election they have to show their appreciation to those people who put the bill together, well, they do make out from what I understand.

I will not be able to speak too much about this. I was in the conference, and then they put the Senate piece together with the House piece. Therefore, I did not sign it because I did not know how it was all going to come together. But I said, I will wait and see what they have done. But guess what? It was not until 12:15 that they brought the 1,000 pages to my desk. So I immediately went out and I said, but it is not just for conferees, there are other Members here, there are Democrats and Republicans.

And what do they tell me? Tell them to go to waysandmeans.house.com.

Mr. REYNOLDS. Mr. Speaker, I yield 2 minutes to the gentlewoman from Florida (Ms. HARRIS).

Ms. HARRIS. Mr. Speaker, I rise to enthusiastically encourage my colleagues to vote for the rule this evening for the conference report on H.R. 4520. Once again the U.S. House of Representatives has risen to the occasion and placed job creation and tax fairness over simplistic rhetoric. For far too long the Federal Tax Code has permitted the residents of States with income tax to deduct their State burden while discriminating against Florida and other States who choose to rely upon sales tax. I commend Chairman THOMAS and the House majority leadership for their leadership in crafting compromise legislation that has attracted significant bipartisan support.

H.R. 4520, the American Jobs Creation Act of 2004, creates tax fairness for Floridians by allowing individuals, not just corporations, individuals who pay State and local taxes to have that deductibility. This will create jobs in Florida through its repeal of tax rules that have led to escalating European retaliation against U.S. exports and through its inclusion of offsetting tax relief for domestic manufacturers, producers, farmers, and small corporations. The sales tax deductibility will provide a direct economic boost to our consumers, especially middle-income families.

In closing, it is not only an issue of fundamental tax fairness; it is also an economic stimulus that will create jobs and improve the lives of 55 million Americans living in State income tax-free States.

On a personal note, Florida has been devastated by four hurricanes, three of which have crossed my district. This bill is going to be so important to those Floridians who will have a chance once again not only to rebuild their lives and their homes but a shot at that economic viability and restoration. I urge its passage.

The SPEAKER pro tempore (Mr. LATOURETTE). Without objection, the gentleman from Florida (Mr. HASTINGS) will control the time.

There was no objection.

Mr. HASTINGS of Florida. Mr. Speaker, I yield myself such time as I may consume.

The previous speaker, not the gentlewoman from Florida but the distinguished ranking member from New York, when speaking commented as to the site that could be viewed by one who was interested, and he said it was waysandmeans.house.com. I have been instructed that it was waysandmeans.house.gov. It is kind of catching up here, sort of like Vice President CHENEY. You know, we can make those mistakes sometimes.

Mr. Speaker, I am pleased to yield 3 minutes to my good friend, the distinguished gentleman from New Jersey (Mr. ANDREWS).

Mr. ANDREWS. I would like to thank my friend for yielding me this time.

Mr. Speaker, if you had a leaky faucet and your plumber told you it was going to cost $150 to fix the leak, you would not go out and put a $100,000 second mortgage on your house. That is what this bill does. We had a $4 billion problem, a very real and serious problem with respect to trade with our European allies and trading partners. What we now have to fix that $4 billion problem is a $140 billion raid on the Treasury.

I know we are going to be told that this bill is paid for. That is an incredible fiction, it is a delusion, because most of the way this bill is paid for is to assume that the tax breaks that are enacted in this bill will be repealed in a couple of years when they expire. You could make a fair amount of money if gambling were legal betting that that would not happen and it will not happen.

It is bad enough that we are going to reach into the Social Security trust fund again and we are going to reach out to foreign creditors again to borrow the money for these tax breaks; but when you look at what they are for and what they are not for, the bill becomes even more odious. What they are for in large part, $42 billion worth of tax breaks for American firms to support their overseas operations.

I want to repeat that. At a time when virtually everyone except apparently the Secretary of Labor thinks that the outsourcing of jobs is a major problem in this country, this bill is going to borrow $42 billion to reward American companies for creating jobs outside of the United States of America. That is pretty bad. What makes it even worse is the choice that this bill makes not to do as the gentleman from Massachusetts talked about a few minutes ago. There was an effort in this bill to provide tax relief for employers who voluntarily pay full salaries to members of the National Guard and the Reserve serving in Iraq and Afghanistan. So an employer who voluntarily says that he or she is going to keep paying a Guardsmember or a Reservist while he or she is overseas was going to get some help. That was taken out of the bill. What was left in was the tax breaks for the sonar detection of fish.

I have a suggestion, Mr. Speaker, that the sonar detector would very clearly detect a fish here. It is a rotten fish. It does not smell very good at all. This is a bill that borrows money for the wrong reason. The rule should be amended so we could fix these problems in the bill. I oppose the rule and would urge my colleagues on both sides to do so.

□ 1930

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

I listened here, and I have just got to remind people that it is very clear this resolution is revenue-neutral, so it is not going to impact the deficit. Second, I listened to my colleague from New Jersey as he talked about jobs overseas and everybody getting a benefit, and I have just got to remind, again for the record, although we put it on in the previous rule, that nothing in this bill moves jobs overseas. More tax relief is provided for businesses with proportionately more U.S. operations. The deduction is available for domestic production activities only. The deduction is limited to 50 percent of the wages paid to workers in America. Income attributable to outsourcing does not benefit. Overseas operations of multinationals does not benefit. New taxes are imposed on expatriated entities.

The international tax reforms in the bill would not lead to the movement of jobs overseas, as many Democrats claim. In fact, these provisions would reduce double taxation on companies, thus encouraging them to keep their headquarters in the United States.

This conference report has bipartisan support, including the minority leader of the other body.

Mr. Speaker, I yield 2 minutes to the gentleman from Michigan (Mr. CAMP), who is an expert on the Committee on Ways and Means.

Mr. CAMP. Mr. Speaker, I thank the gentleman for yielding me this time.

I rise in strong support of the rule and the underlying conference report, the American Jobs Creation Act of 2004.

This bill is urgently needed and long overdue. We must send this bill to the President as soon as possible. Each month that goes by means another tax increase on American manufacturers and another job being pushed overseas. Right now the World Trade Organization is slapping 12 percent tariffs on dozens of American products. These tariffs are directly impacting the bottom line of my industries in my home State of Michigan like glass, agriculture, and paper. When a company's bottom line is hit, a family's bottom line is hit.

The conference report underlying this rule will end the WTO sanctions and enact meaningful reform and simplification of a tax structure that has not seen change in decades. Not only will this legislation repeal the 12 percent tariffs, but it will give U.S.-based manufacturers a 3 percent rate cut that will allow them to better compete with their foreign counterparts and give them the flexibility to start hiring again.

I want to remind my colleagues that the United States has the second highest corporate tax rate in the industrialized world. While Ireland is at 12.5 percent, Korea at 29.7, Britain at 30 percent, the United States businesses are saddled with a 35 percent tax rate. We lead the world in terms of productivity and efficiency, but we need to begin to erase the serious disadvantages the tax code places on American companies. Our workers and entrepreneurs can compete with anyone, but it is time we stop asking them to do it with one hand tied behind their backs.

Mr. Speaker, these tariffs are punishing our small businesses and manufacturers. We need to end the sanctions immediately. This bill is about helping American farmers, manufacturers, small business owners, and relieving the United States from its dependence on foreign sources of oil.

I urge support for the rule and support for the underlying legislation.

Mr. HASTINGS of Florida. Mr. Speaker, I yield 4½ minutes to the distinguished gentleman from Texas (Mr. DOGGETT).

Mr. DOGGETT. Mr. Speaker, a new report indicates that 275 giant, multinational corporations have been paying taxes over the last 3 years at an effective rate which is actually less than the marginal rate, for a family making $35,000 a year. Over this same period, eighty-two companies paid zero or they got a refund in federal income taxes in at least 1 of these 3 years. These giant, multinational corporations are paying less than an insurance agency on East 7th in Austin, Texas; they are paying less than a used car dealer on South 23rd Street in McAllen, Texas or a cafe on Cage in Pham, Texas. They are paying less than hardworking families across this country trying to make a go of it, but having to bear much more than their fair share of the Federal tax load.

But as if that were not outrageous enough, tonight, this Congress is about to pour more largess on those same multinationals that are not paying their fair share.

Let me give some specific examples. Exxon Mobil down in Texas: Exxon Mobil received $4.3 billion in corporate tax subsidies over the last 3 years, yet they stand to share in something like ten times that much in this bill. About a third of the cost of this $140 billion corporate tax bonanza will reward companies like Exxon Mobil for moving more jobs overseas.

Of course, they are a key part of the lobbying coalition that produced this bill. And at the top of the list of that lobbying coalition is General Electric. General Electric has done pretty well under the federal tax system. They have had profits of nearly $12 billion over a 3-year period. In 2002, it paid zero federal income taxes. Instead, it got $33 million back in a refund check, a little bigger than that small business or that family with $35,000 a year is likely to get when their refund comes, if it does. But General Electric has added new meaning to their motto "We bring good things to life." In this bill those "good things" are billions in tax breaks for GE—the top recipient of tax benefits from this bill.

One after another these multinationals are being rewarded in a bad corporate grab bag bill that is being pushed through here at the last minute. What is happening here gives new meaning to Leona Helmsley's infamous comment that "only little people pay taxes." The "little people" of America are the ones being left to pay the taxes when bills like this are passed that allow those at the top to dodge their fair share of taxes.

In addition, these same corporations will use the benefits that they get out of this bill to just export more jobs overseas. There are 24 separate provisions in this bill that deal with offshore operations by multinationals.

We have, therefore, a bill that is tragic in both its gross size and in its encouraging even more jobs to be shipped abroad. It outrageously shifts yet more of the tax burden for our national security and our homeland security to the small businesses across America that are the focus for growth in our economy and to the working families of America that cannot hire a bevy of lobbyists and a fleet of limousines to come to Washington and do the things that are necessary to get the kind of special treatment that is being rewarded here tonight.

And there is another great example. The $10 billion "buyout", as they call it, of tobacco farmers. Yes, it is a buyout that does not buy them out of anything, since they can keep producing just as much poison as they were before they were bailed out, which is what this bill really represents. The true effect of the bill is to reward big tobacco with cheaper tobacco with which to entice and addict even more of our children.

With one horrible giveaway provision after another, this bill must be flavored before it can be swallowed. For the folks in Texas and several other States that flavoring is a short 2 years in which they can deduct their sales taxes. I am all for that; I have voted to make such deductibility permanent. But when somebody is putting a dollar in one's hand, you need to consider whether they are swiping the wallet out of your back pocket. And that is exactly what this bill does. It is a very very high price we are asked to pay for too modest of a benefit.

Indeed, this is the very kind of bill that causes Americans to become cynical about the legislative process and to feel their government is failing them because tonight it certainly is.

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

I do not know about everyone, but I know that a number of my colleagues on both sides of the aisle, the fact that H.R. 4520 allows taxpayers, especially those in Nevada, Wyoming, the State of Washington, South Dakota, Texas, Alaska, and Florida, to deduct their sales taxes is one that just brings about an opportunity for everyone no matter what their tax bracket is at. But let us not forget, while we kind of rant and rave about all the different aspects of domestic companies that will see taxes decrease, this thing is targeted right into middle America, whether it is on Main Street, USA, or in the fields of America or in those manufacturing plants of our communities, because this is about taking care of small business, our farmers, and small manufacturing.

Mr. Speaker, I yield 2 minutes to the gentleman from Tennessee (Mr. WAMP).

Mr. WAMP. Mr. Speaker, I thank the gentleman for yielding me this time.

We will hear a lot of demagoguery tonight and some just downright nonsense, but this is a beautiful thing if we look at the bipartisan coalitions that came together to bring this about. And as a representative from the great State of Tennessee, we are very pleased that farmers and growers of tobacco can finally move on after suffering for so long with the inequities that they have and that we are one of those seven States where sales tax is where most of our revenue comes, but there has not been any deductibility for 18 years of sales tax; and yet we do not have an income tax, and our sales tax is almost 10 cents on the dollar.

I thank the distinguished gentleman from California (Mr. THOMAS), chairman of the Committee on Ways and Means, who worked in a very fair manner with Members from both sides of the aisle. There was a lot of involvement here. And to the gentleman from upper east Tennessee (Mr. JENKINS) for really carrying this tobacco settlement through. The Senate spoke. The House spoke. We worked it out, and frankly, the tobacco companies now have to step up and put the money up to do this so that the growers and farmers are not penalized anymore in the tobacco business.

But this sales tax equity is a beautiful thing. Politics is the art of the possible, and I am encouraged tonight that, even though it is near the end, there is almost an election here, people from both sides have worked together.

I commend the gentleman from Washington (Mr. BAIRD) for carrying his sales tax issue and bringing a coalition today. The gentleman from Texas (Mr. BRADY) was the champion. And the gentleman from Texas (Mr. DELAY), our majority leader, really helped us bring this about. And it is right for all of the people of this country because it really affects all 50 States, not just the seven States that have sales tax, because every State has the option of taking the income tax deduction or the sales tax deduction. This is good for America; $635 million of economic impact on the tobacco settlement alone for my State. That is important.

We need to support the rule and pass the bill.

Mr. McGOVERN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from Tennessee (Mr. WAMP) mentioned it is almost an election year. Judging from all the special goodies that are in this bill, it is an election year.

Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. SHERMAN).

Mr. SHERMAN. Mr. Speaker, I tell my colleagues, please do not listen to this speech unless they are from California.

As Californians, we, of course, care that this bill will hurt America because it encourages the export of jobs and increases the federal deficit. But we care perhaps even more that it is the most anti-California tax bill in history. If one is from Texas and they pay sales tax, they can deduct that under this bill. But if they are from California, they pay a higher rate of sales tax, and under this bill, they get no deduction.

The bill contains some loophole plugs for corporations doing funny things overseas, but then it provides exemptions for four specific corporations, four Houston-based corporations.

Our kids are dying from tobacco. This bill contains $10 billion for tobacco farmers, and of course, not one penny of that is going to a Californian. But what we were supposed to get out of it is FDA regulation of tobacco to save some of our kids. Well, they stripped that out of the bill so the FDA will have no power to regulate tobacco, just $10 billion goes to the tobacco farmers.

This is an export promotion bill, or so it claims. California is the number one export State. The entertainment industry, based in our State, is the number one export industry. Surely, there must be something in it for California. And indeed, there is: $1 billion and more of tax increases on America's number one export industry, the entertainment industry. Why is that? Are the authors anti-California? Perhaps more, they are anti-Democrat. The Motion Picture Association hired a Democrat, Dan Glickman. In doing so, they failed to abide by the pay-to-play corrupt rules of tax lobbying. So this is a corrupt anti-California tax bill.

I invite my fellow Californians, 20 of them from the Republican side of the aisle, to come on down and vote for this bill and then go to the Republican club and root for the Cardinals against the Dodgers.

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

I need to help the gentleman from California understand, particularly for his State, as I understand this legislation, it is designed for States like California and New York that have income tax, that they can deduct either the sales tax or the income tax, depending on how the taxpayer may choose which one they want to make for the deduction.

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The States that I previously read that do not have an income tax, it allows them to use a sales tax deduction as an opportunity to participate. So let us not lose sight that the taxpayer has an individual option. So I believe that, helping the gentleman who was the previous speaker from California understand that, it is a more correct provision of what we outlined.

I also want to remind my colleagues that I believe, as he talked about giveaways and some of the other things, the motion picture industry, which hales greatly from his State and much less from our's, to the dissatisfaction of my colleague the gentleman from New York (Mr. RANGEL) and me, is the fact there are three tax provisions inside this bill that assist the motion picture industry. If he considers those assistance, I do not find how he can take some of the other parts for corporations and call them giveaways. Each would look at what those provisions might mean in their respective categories.

Let us not lose sight that this goes right after taking care of middle-class America, with helping our small businesses, helping our farmers, helping our small manufacturers, and making sure it all is accountable to domestic production and opportunity.

Mr. Speaker, I reserve the balance of my time.

Mr. McGOVERN. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Massachusetts (Mr. LYNCH).

Mr. LYNCH. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I rise today in opposition to the conference report for H.R. 4520, the so-called American Jobs Creation Act.

There has been a lot said here tonight, but if I could simply point out three numbers: One, this was intended to fix a $4 billion problem, a real problem of tariffs that were going to be asserted against us by the EU because of violations or noncompliance with international trade agreements. But instead of fixing a $4 billion problem, we now have a bill before this body that costs $140 billion, $42 billion of which go to special interests.

Mr. Speaker, this country really does need a true jobs bill, but this is a snow job bill. This is what we would call in my neighborhood a snow job bill. I cannot believe some of the people getting up on this floor tonight with a straight face and saying that this is good for America. That is truly unbelievable.

Politics is the art of the possible, but tonight it is politics is the art of the unbelievable. It is simply unbelievable, what I am hearing tonight.

Some politicians in Washington claim things are getting better here, but we have got to really ask ourselves, are they really? Just this past August, we had 8 million people unemployed in this country, 40 million people without health insurance, and we have a bunch of companies in this country being convinced to ship their jobs overseas.

While the conference report before us calls itself a "jobs act," in reality it does little to address the unemployment numbers in this country. Instead, we have 276 separate tax breaks for corporations who are being actively encouraged and being encouraged by our Tax Code to ship American jobs overseas. That is the truth. And even worse than that, the conference report strips out language that would have provided incentives to companies for keeping jobs here in the United States. That is the truth. And beyond that, the conference report strips the Harkin amendment, which would have restored overtime pay rights for 6 million Americans. That should have happened in this bill. It has been stripped out.

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I read this in the RECORD so many times I can almost do it from memory, but I cannot allow the beating up of this legislation with misnomers or false or inaccurate viewpoints in the debate.

This bill does nothing to move jobs overseas. Nothing in this bill moves jobs overseas. I want to remind my colleagues that more tax relief is provided for businesses with proportionately more U.S. operations. The deduction is available for domestic production activities only. The deduction is limited to 50 percent of the wages paid to workers in America. The income attributable to outsourcing does not benefit. Overseas operations of multinationals does not benefit. New taxes are imposed on expatriated entities.

The international tax reforms in the bill would not lead to movement of jobs overseas, as many Democrats claim. In fact, these provisions would reduce double taxation on companies, thus encouraging them to keep their headquarters in the United States.

Mr. Speaker, I reserve the balance of my time.

Mr. McGOVERN. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Maryland (Mr. VAN HOLLEN).

Mr. VAN HOLLEN. Mr. Speaker, I thank my colleague for yielding me time.

Mr. Speaker, I want to talk about a provision tucked into this bill that has not gotten a lot of attention, but it should grab the attention of anyone who cares about fair treatment of the American taxpayer.

I just take you back to 1998 when, in response to concerns about overly aggressive IRS collection tactics against individual taxpayers, this Congress, the House and the Senate, passed the IRS Restructuring and Reform Act. That act specifically prevented IRS agents and their supervisors from being evaluated or rewarded based on the amount of tax revenues they collect.

The reason for that was pretty simple and straightforward. We wanted to make sure that those agents treat taxpayers fairly and objectively. We wanted to make sure they did not have a personal stake, financial stake, in how much they collected and the outcome of disputes with taxpayers. We did not want to turn them into bounty hunters.

Well, take a look at this bill. This bill has a provision that will authorize private contractors and private debt collectors to go out and collect the tax revenues of taxpayers and get a commission on it. They get to pocket that tax money, and they get a commission based on how much they collect from the taxpayer, and that is money that goes into their pockets, not into the public Treasury to spend on the public good.

I do not think anybody in this body focused on this issue on either side of the aisle. I think it is going to be tough to go back home and explain how you unleashed these private debts collectors on the American taxpayer.

I will say, when the Treasury appropriations bill was on this floor just a few weeks ago, by a voice vote, this body said, we cannot spend money for the purpose of private debt collection. The body was right then, we were right back in 1998 when we passed the IRS Restructuring Act, and it is a mistake to reverse that policy and unleash private debt collectors on taxpayers and let them pocket the money, rather than have those funds go into the public Treasury for the public good.

The SPEAKER pro tempore (Mr. LATOURETTE). All time for the gentleman from Massachusetts (Mr. MCGOVERN) has expired.

The Chair recognizes the gentleman from New York (Mr. REYNOLDS).

Mr. REYNOLDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as we close, if you vote against H.R. 4520, you are voting against exporters, small businesses, farmers, domestic manufacturers, States without an income tax and for ending tobacco quotas.

Mr. Speaker, we are here today to create jobs. Our domestic companies currently face countless disincentives to job creation, including onerous taxes, over-regulation, high energy costs, frivolous litigation and spiraling health care costs. For manufacturers and small businesses and farmers that are the entrepreneurial backbone of this country, these obstacles diminish their ability to compete in the international arena.

We need to level the playing field. The underlying bill brings us closer than ever before to the equitable and competitive global marketplace that can propel our domestic industries into the 21st century.

Free markets and free enterprise are direct outgrowth of the freedoms that we hold dear. I urge my colleagues to embrace this spirit by supporting the rule and the underlying conference report.

Mr. Speaker, I yield back the balance of my time, I and move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. THOMAS. Mr. Speaker, pursuant to House Resolution 830, I call up the conference report on the bill (H.R. 4520) to amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service and high-technology businesses and workers more competitive and productive both at home and abroad, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 830, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of earlier today.)

The SPEAKER pro tempore. The gentleman from California (Mr. THOMAS) and the gentleman from New York (Mr. RANGEL) each will control 30 minutes.

The Chair recognizes the gentleman from California (Mr. THOMAS).

Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the U.S. economy has experienced robust growth in the past 12 months, and it can be largely attributed to the tax relief this Congress provided the American people in 2001, 2020 and 2003.

Today, we are considering H.R. 4520, the American Jobs Creation Act of 2004. We believe it will encourage further economic expansion and job creation by relieving sanctions and providing tax relief to America's job creators.

Mr. Speaker, the U.S. economy has experienced robust growth in the past 12 months—which can be largely attributed to the tax relief this Congress provided to the American people in 2001, 2002 and 2003. Today we are considering H.R. 4520, the American Jobs Creation Act of 2004, that will encourage further economic expansion and job creation by relieving sanctions providing tax relief to America's job creators.

Right now 12 percent sanctions are being levied on thousands of American products—like agriculture, steel and timber—because the World Trade Organization ruled that the FSC/ETI export subsidy is noncompliant. These sanctions are making U.S. products more expensive in overseas markets, which hurts America's competitiveness in the worldwide economy. H.R. 4520 will repeal the offending provision, bringing our tax code into compliance, thereby ending sanctions.

Repealing that provision without providing equivalent relief will amount to a tax increase on American businesses. To encourage further growth in the U.S. economy, the American Jobs Creation Act will provide tax relief to American manufacturers—including corporations, S corporations, partnerships and sole proprietorships. These American businesses will save nearly 10 percent on their income tax bills for manufacturing activities here at home.

Meanwhile, the international portions of our Tax Code are antiquated—they have not been updated in four decades. To help provide U.S.-based businesses with a more level playing field when competiting against their worldwide counterparts, this legislation reduces double taxation and simplifies our complex international tax law.

The WTO ruling forced us to update our tax laws but also provided the opportunity to improve the tax code to encourage business growth; to close abusive loopholes; to update our antiquated international tax law for the first time in 40 years; and to make all of these structural improvements without increasing the deficit.

This conference report rightly enjoyed strong bipartisan support from conferees and I urge Members of the House to vote for H.R. 4520, the American Jobs Creation Act of 2004.

Mr. Speaker, I reserve the balance of my time.

Mr. RANGEL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, well, we have been denied the opportunity, at least the Members, to actually see what is in these 600 pages of statute and another 600 pages to explain what they mean. But, once again, I would ask Americans to go to waysandmeans.house.gov, because if the Members do not know everything that is in this bill, then maybe their lawyers would be able to tell them, because if this is what simplification is all about, we are going to have a pretty rough time filling out our taxes

Mr. Speaker, I yield 3 minutes to the gentleman from Maryland (Mr. HOYER), the outstanding minority whip, to share his views on this complex piece of legislation. I have been advised he has been at this website all evening studying the bill.

Mr. HOYER. Mr. Speaker, I thank the gentleman for yielding me time. I am not sure who he is getting advice from, but I rise in opposition to this bill.

Mr. Speaker, like most of my colleagues, I agree that we must address the underlying problems with our international tax rules. We should have done that over a year ago. As a result of not doing so, as a result of simply delaying until we could get enough special interest provisions in this bill to get a majority for it, we have cost American manufacturers and exporters millions and millions of dollars.

But I must voice my opposition to the conference report, a product that has not improved with age. In fact, as it has been drawn out over time, it gets further and further away from the problem it was supposed to address.

There are more narrowly-crafted tax breaks in the conference report than when it left the House in June. There are fewer incentives to keep jobs in this country and just as many incentives that will continue to move jobs overseas, no matter how often they say that is not the case. Read the bill.

On the whole, the balance of this measure has absolutely nothing to do with fixing international tax rules, and were it not for some extraneous provisions that are vital in several States, I doubt that we would be debating this conference report now, because it would have never passed the House in the first place. Period.

So, once again, after a decade of rhetoric on tax reform and increased calls by leaders of the other side of the aisle for action on tax simplification, a product has been brought before this House that only serves to complicate and carve up the Tax Code even more. As a matter of fact, as the gentleman from New York (Mr. RANGEL) knows, in 40 months, we have expanded the Tax Code and regulations by over 30 percent. My, my, my.

That is why, of course, Joe Scarborough said when informed that he campaigned on the basis of tax simplification, he shrugged his shoulders and said, "We lied." That is what Joe Scarborough said.

U.S. Treasury Secretary Snow, U.S. Treasury Secretary Snow agrees, indicating earlier this week that its content "went far beyond the bill's core objective," which was to resolve a $4 billion trade dispute with the European Union.

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At a time of record job loss, especially in the manufacturing sector, Republican leaders rejected a bipartisan solution that could have passed well over a year ago, at far less cost to the country and without the delaying tactics that allowed 1 percent tariffs on our exports.

The SPEAKER pro tempore (Mr. LATOURETTE). The time of the gentleman from Maryland (Mr. HOYER) has expired.

Mr. RANGEL. Mr. Speaker, I yield 1 additional minute to the gentleman from Maryland, but I want to advise the gentleman that when he suggests that we read the bill, that the bill has not been distributed to the Members.

Mr. HOYER. Then that advice cannot be followed.

To date, Mr. Speaker, business across this country have been harmed to the tune of nearly $187 million, because the majority did not pass this bill last year, as they should have. After having ignored fiscal discipline for the last 43 months, the majority has miraculously rediscovered the principle of revenue neutrality, but are using gimmicks, phase-outs, and controversial revenue-raisers that punish working families, small business taxpayers, and charitable organizations to do so.

True, hidden among the largesse are a few deserving provisions. I would like to support those. But I cannot support this bill, which continues the path of extraordinary fiscal irresponsibility, which took us from a $5.6 trillion surplus told that we had by George Bush back in March of 2001, to the time now when we have a $3 trillion deficit confronting the children and grandchildren of this country. How sad the performance. How ill-timed and ill-conceived this legislation.

Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased that the gentleman from Maryland has, in essence, kicked off the debate, because he indicated that since we did not operate on his timetable, that there is a 12 percent assessment imposed as sanctions, and basically shamed us for not moving sooner. If my colleagues did not pay attention to what he said during the remainder of his speech, what he said was, if it was up to him, the sanctions would stay in place, because he is going to vote no on this conference report, which means the sanctions would go up to 17 percent, which means all of the burdens that he described would be even greater. He wants it both ways. He wants to criticize for not moving, but he does not want to help to solve the problem.

I am pleased that in the conference, there were a lot of people who wanted to help, especially on the Senate side. There were 23 Senators; 17 of them voted to support the conference report. Six of them were Democrats. Three-quarters of the Senate conferees support this measure, a majority of the gentleman's own party in the Senate.

On the House side, of the 17 conferees, two-thirds of them supported the conference report. So an overwhelming majority of the conferees urge a yes. The gentleman from Maryland lambasts Republicans for not getting it done, but will not help solve the problem. That, I think, is a theme we are going to hear repeated over and over again on the other side: you folks did not do it right, but we are certainly not going to help. What a message.

Mr. Speaker, I yield 3 minutes to the gentleman from Illinois (Mr. CRANE), the chairman of the Subcommittee on Trade, and let me say that without his yeoman work, we would not be here today.

Mr. CRANE. Mr. Speaker, I thank the distinguished chairman for yielding me the time, and I rise in strong support of the American Jobs Creation Act. This important legislation will end EU sanctions against our exporters, which is harming U.S. workers while delivering much-needed tax relief to America's job creators.

In April 2003, with U.S. exporters facing EU sanctions, I introduced bipartisan legislation that repealed WTO illegal provisions in our Tax Code, while simultaneously lowering the corporate tax rate for domestic manufacturing from 35 percent to 32 percent. My goal was simple: to make sure that U.S. manufacturers can compete on a level playing field with our foreign competitors.

H.R. 4520 includes my legislation, which means that every U.S. manufacturer will see their taxes reduced by 3 points. That means more jobs here at home, and at great Illinois companies like Boeing, Caterpillar, Abbott Labs, Motorola, Baxter, and Brunswick.

In addition, this legislation contains a number of provisions I have long worked on passing that are very important to my home State of Illinois. For instance, hundreds of small businesses in my district will be able to take advantage of provisions I have authored to allow them to deduct up to $100 for the cost of new equipment every year. The life insurance industry, including Allstate, which employs some 3,500 of my constituents, will benefit from the repeal of policyholder surplus accounts; and Lake County Partners, which helps businesses transform opportunities into success, will benefit from a provision I have championed allowing States to expand their small issue bond programs.

I would like to thank the gentleman from California (Chairman THOMAS) for working with me to include these very important provisions in the legislation that he has presented before us today.

Mr. Speaker, we certainly have traveled a long road in bringing this legislation to the floor, and I am glad to be here today in support of a great bill. I urge my colleagues to vote for the American Jobs Creation Act.

Mr. RANGEL. Mr. Speaker, I yield 3½ minutes to the gentleman from Michigan (Mr. LEVIN), an outstanding member, a senior member of the committee.

Mr. LEVIN. Mr. Speaker, we needed to replace FSC, and the chairman knows that the gentleman from Illinois (Mr. CRANE) and the gentleman from Illinois (Mr. MANZULLO) and the gentleman from New York (Mr. RANGEL) and I introduced a bill over a year ago. It was before it was loaded up by this House with bills that have nothing to do with this issue. And I read from the letter of Secretary Snow of October 4: "Both the House and Senate-passed bills include a myriad of special interest tax provisions that benefit few taxpayers and increase the complexity of the Tax Code." That is his letter: special interest tax provisions.

We have heard laudatory comments about major provisions, the small business expensing, the ethanol excise tax credit, that is agriculture; the State and local sales tax. I want to ask any Republican who signed the conference report, because these three provisions are sunsetted, will you come to the well and tell the people of this country that you will let the sunset occur. You will not do that.

What is really happening here is that these provisions are sunsetted in order to bring down the cost of this bill. In a real sense, it is not revenue-neutral. Do not say it. Those three provisions alone, $35 billion, $5.9 billion, $25 billion, that is $66 billion more are sure to continue. You laud them; you should have included the cost.

Let me say a word about another way that you brought down the cost, and that is you deferred the effectiveness of several of these provisions, including the interest allocation and the basket provisions. The effect of deferring them is that companies will keep their profits overseas longer, not bring them back home in order to gain the benefit of those tax provisions. In that respect as well as others, you are creating incentives for companies to invest overseas instead of the United States of America. This is a form of outsourcing.

The gentleman from New York (Mr. REYNOLDS) said that there are proportionately more monies here for U.S. producers. That is not true. The provision of proportionality was stricken from the Senate bill.

Also, when you put together the benefit under the so-called manufacturing provision, $27 billion versus $42 billion for overseas activities, even if that is what you mean by proportionality, there is an incentive here for operations overseas. In a real sense, not only special interest wins, so does outsourcing of U.S. jobs.

Mr. Speaker, we need to go back and do this right.

Mr. THOMAS. Mr. Speaker, it is my pleasure to yield 2 minutes and 15 seconds to a distinguished member of the Committee on Ways and Means, the gentleman from Pennsylvania (Mr. ENGLISH).

Mr. ENGLISH. Mr. Speaker, I wonder if the gentleman from California (Mr. THOMAS) might respond to a colloquy. I specifically have a question about how to interpret one of the rules contained in section 422 of the conference agreement.

Would the chairman please clarify what the rule that disallows deductions for expenses "properly allocated and apportioned to the deductible portion" of the dividend is intended to cover?

Mr. THOMAS. Mr. Speaker, will the gentleman yield?

Mr. ENGLISH. I yield to the gentleman from California.

Mr. THOMAS. Mr. Speaker, I thank the gentleman from Pennsylvania for his question.

The rule and the Statement of Managers upon closer examination, we believe, contain some ambiguity as to which deductions are disallowed. The intent of the rule is to disallow only deductions for expenses that relate directly to generating the dividend income in question.

Mr. ENGLISH. Mr. Speaker, I thank the gentleman from California.

Mr. Speaker, we have before us a conference report today that repeals the FSC/ETI regime and, while doing so, boldly strengthens our manufacturing sector. Passing this conference report will fulfill our duty to end the punitive job-killing tariffs that are being levied against American products.

Manufacturers in my home State of Pennsylvania are being hard-hit by the tariffs, and that is why ending the tariffs has been a top priority for many of us. The repeal of the export regime also provides us with an opportunity to enact pro-growth, pro-manufacturing policies, resulting in new and higher-paying jobs across the United States. This bill acts on that opportunity and significantly reduces the tax burden on manufacturers in the United States and begins to address the uncompetitive tax system U.S. employers are faced with.

Mr. Speaker, I particularly want to draw attention to one particular job-creating provision in this bill, which mirrors legislation I introduced and will lead to in-sourcing. This provision, known as the Homeland Investment Act, is one of the strongest stimulus proposals brought before Congress in recent years, and I think it is going to have a huge impact. It temporarily reduces the tax rate on foreign earnings of U.S. companies, when that money is brought back to the United States for investment here at home.

The billions of dollars that will be brought back will be used by American employers to hire new workers, invest in top-of-the-line equipment, and build new plants right here at home, instead of in the countries where their earnings are currently stranded. This is critical legislation to rebuild our manufacturing base.

Mr. RANGEL. Mr. Speaker, it is my great honor to yield 1 minute to the gentlewoman from California (Ms. PELOSI), our distinguished leader who has been a credit to our country and to this Congress.

Ms. PELOSI. Mr. Speaker, I thank the gentleman for yielding me this time, and I thank him for his great leadership on issues of importance to middle income Americans. The gentleman tried very hard to correct this problem in a way that would not decrease the deficit and would increase jobs in America but, unfortunately, that approach was rejected. I wish that we had a chance to vote on it today.

Mr. Speaker, in commending the gentleman from New York (Mr. RANGEL) for his excellent work on so many issues emerging from this committee, I deeply regret that we would not have the opportunity to take the approach he took, which the gentleman from New York (Mr. RANGEL) shared with the gentleman from Illinois (Mr. CRANE) for a long time.

The gentleman from California (Mr. THOMAS), the chairman of the committee, gave the gentleman from Illinois (Mr. CRANE) a dubious distinction by saying he did yeoman duties in bringing this bill to the floor, but this is a terrible bill for working families in America.

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Please do not paint him with that brush. He really did try; but, unfortunately, he succumbed to the bad bill.

Mr. Speaker, I rise in opposition to this deeply flawed bill, and I thank the ranking member again for his steadfast leadership on behalf of our manufacturing sector.

This conference report is yet another example of the stark differences between Republican and Democratic priorities. We are faced with a simple problem caused by your trade sanctions, but Republicans are using a $4 billion trade issue to pry open the door wide for special interests. This is a blatant example of corporate welfare, full of pork for the special interest. This is not, just as the expression goes, this little piggie goes to market. This is the whole hog lot goes to the public trough. The oinking is so loud the Republicans cannot even think straight.

If you listen closely you can hear those hogs oinking. Can you hear them?

That may be why at every step of this process Republicans have consistently made decisions that are against the interests of middle-income Americans.

The difference between the parties is clear. In our New Partnership for America's Future, Democrats pledge to create new jobs here in America. But Republicans under this bill are exporting jobs overseas. For more on the subject, I will follow the lead of the gentleman from New York (Mr. RANGEL) and say please visit HouseDemocrats.gov for more on the New Partnership for America's Future.

Can you believe this? In the past 3 years nearly half a million jobs have been shipped overseas. But instead of working to stop this hemorrhaging, this Republican bill tonight has in it tax incentives to export American jobs. Think about it. You are a U.S. taxpayer in a job. They are using your tax dollars to export your job overseas. In fact, as businesses around the country are hit with 12 percent tariffs on more than 1,600 products, Republicans have been holding this bill hostage so they could include 24 extraneous provisions that will create jobs overseas rather than here at home.

No, Mr. Speaker, our distinguished whip and I in criticizing this bill are not saying that the problem should not be corrected. We said it should be done right, not at the expense of middle-income Americans, not at the expense of increasing our deficit.

This bill includes a whopping $42 billion in tax cuts for the foreign operations of U.S. multinationals. We all recognize the importance of multinationals to our economy, but we must face the facts. Many of those very same corporations pay no income tax whatsoever. Many of the multinational corporations getting tax breaks in this bill, pay no income tax whatsoever. And from 2001 to 2003, Federal corporate tax collections fell to their lowest sustained level in 6 decades, in 6 decades.

Democrats led by the gentleman from New York (Mr. RANGEL) pursued a bipartisan bill that was tailored to create good-paying jobs in the U.S. without sacrificing our long-term fiscal health.

The difference is clear. In our Partnership for America's Future, Democrats have made a commitment to fiscal responsibility and the gentleman from California's (Mr. GEORGE MILLER) pay-as-you-go. Republicans chose in this bill to spend as they please and then hide the true costs of their bill with expensive gimmicks. A convoluted combination of phase-in, sunset dates, changes in scoring rules mask the true cost of the bill and how it will constrict our choices in the future.

This conference report is being touted as revenue neutral. But, in fact, it will cost nearly $80 billion over the next decade. The difference is clear. In our New Partnership for America's Future, Democrats put forth an agenda to support manufacturers and small businesses. In this bill, Republicans choose to give handouts to special interests. Please again visit us on HouseDemocrats.gov.

Our manufacturing sector is struggling to stay competitive in global markets. The erosion of our manufacturing base is cause for serious concern in our country, but not in the Republican Party. Under the Bush administration, we have lost nearly 2.7 million manufacturing jobs. Despite this depressing fact, this conference report stripped language that would have given bigger tax cuts to companies that manufacture more of their goods in the U.S.

That was one of the gentleman from California's (Mr. RANGEL) provisions. They stripped from the bill a provision that would have given tax incentives to companies that manufacture more of their goods in the United States. The conference report also has broadly expanded the definition of manufacturing to include activities wholly unrelated to the manufacturing of goods and products.

Now, listen to this: the bill is riddled with special interest giveaways including suspension of customs duties on ceiling fans and steam generators, tax deductions on bows and arrows, fishing tackle boxes and sonar devices, as well as tax incentives for other specialized industries. Even the Bush administration's Treasury Secretary has criticized the Republican FSC/ETI bill as including a myriad of special interest tax provisions that benefit few taxpayers and increase the complexity of the Tax Code.

How is that for an indictment? The choices that Republicans are making are clear, and it is clear that they are the wrong choices. The same Republicans who today will find enough money for their special interest giveaways have not found the funding to secure loose nuclear materials to protect the American people. They have shortchanged veterans health care by $1.3 billion. They have underfunded No Child Left Behind by about $9 billion every year, 9.4 billion this year; and they have broken their promises on Pell grants.

They have defeated a $1,500 bonus for our brave men and women in uniform returning from Afghanistan and Iraq, 213 to 213. Every Republican who voted against that bonus is responsible for its defeat because it failed by one vote.

I urge my colleagues to make the right choice and defeat this job-exporting, budget-busting, special interest handout.

Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentlewoman said "they" stripped from the bill. Well, who is they? How about six of the 10 Democrat Senators who were on the conference. The Democrats who were on the conference were the minority leader, the ranking member of the Senate Finance Committee, the ranking member of the Committee on the Budget, the Senator from Arkansas.

A majority of those Democrats support, signed a conference, and agreed with what we did. It seems to me that when the minority leader on this side describes "they," the world should know who "they" is.

Mr. Speaker, I yield 2 minutes to the gentleman from Arizona (Mr. HAYWORTH), a distinguished member of the Committee on Ways and Means.

Mr. HAYWORTH. Mr. Speaker, I thank the distinguished chairman of the committee for yielding me time.

I too listened with great interest to the remarks of the minority leader who preceded me here in the well. Mr. Speaker, I think she offers ample evidence as to why she will remain the minority leader in this body unless she is involuntarily returned to the private sector where perhaps she can take up a career in writing more fiction. Although I would offer some friendly advice: it is probably not good to try to rewrite the Orwellian tale of "Animal Farm," but the valid theme rings true here as borne out by my friend, the gentlewoman from California (Ms. PELOSI) the minority leader.

I guess in her mind some animals are more equal than others. Rather than an imaginary sound of a porcine species, perhaps if we listen closely, we hear the braying of the typical tired, shopworn refrain. The notion that somehow the highest and best use of the people's money is to be captured in the coffers of the government to offer this type of job growth. Job growth for bureaucrats, money always in the coffers being overspent. Not really accountable to the people but that for some of our friends is the highest and best use of the money for the American people.

And if there are businesses, be they small businesses, S corporations, partnerships, sole proprietorships, whatever category, why certainly they are part and parcel of some evil cabal of special interests. Certainly they exist only for greed and to rob the noble public treasury.

That is one vision of the future that was endorsed in this well by the minority leader. But a bipartisan coalition and majorities in both Houses rises to say no to that thinking with this, the American Jobs Creation Act of 2004 eponymously named, Mr. Speaker, because by reducing taxes, yes, even on corporations, we create more jobs. That is the key. Support the legislation.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LATOURETTE). The Chair would advise all Members that, although it is not out of order to recite the content of the signature sheets by which the conference report was approved, parsing the votes of individual Senators, for example, by party affiliation or other characterization, goes beyond the factual descriptions permitted by the rule.

Mr. RANGEL. Mr. Speaker, I yield myself such time as I may consume.

That was exactly what I was about to say, Mr. Speaker. They are telling us what is going on in this conference with those other people over there. What you should be telling us if this bill is so exciting for working people in America, why did you not give it to the Members to look at?

The distinguished gentleman from Oklahoma, he may not have a bill. No one else got a bill except we conferees, and I am not up to the 1,100th page yet. So all of the exciting things that you are hearing about what they finally put in the bill, I hope people go to waysandmeans.house.gov because none of the Members except the conferees have the bill. I do not know why they do not have the bill. But I suspect there are things in here that we are going to speculate that is in here and they will refer us to the problem page, wherever they are holding that bill.

Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts (Mr. NEAL), a great friend and a great legislator and a senior member of the Committee on Ways and Means.

Mr. NEAL of Massachusetts. Mr. Speaker, let me just, if I can, respond to the remarks that the gentleman from Arizona (Mr. HAYWORTH) offered a moment ago.

You would have thought he was Robin Hood here at the well. He talked about the tax relief that they are giving to the little guy. The tax relief that this Congress has given now in terms of four tax cuts has overwhelmingly gone to the people at the very top of the income scale in America. But we have an obligation to object not only to the actions but to the rhetoric that was offered a few moments ago.

We are now fighting two wars with four tax cuts. The Republican Party says with a straight face that Social Security has got a problem, after they took $2.2 trillion out of the budget during the next 10 years. Have a $4.5 billion problem here with European Union and our other trading partners? Let us have a $140 billion solution.

Do you know what that is the equivalent of? Using a machine gun to clean the wax out of our ears. That is how far-reaching this is.

Now, just here 3 years ago the gentlewoman from Connecticut (Mrs. JOHNSON) and a number of us were involved in what I thought was an entirely legitimate campaign to keep Stanley Works in America instead of reincorporating to Bermuda. Well, Stanley Works decided to stay in America. I was reminded of it the other night as I came through the airport in Windsor Locks, Connecticut. Stanley Works, New Britton, an American address.

What does this legislation do to one of its competitors? You grant them a permanent grandfather clause so that they can stay in a foreign tax haven and not be assessed the same obligation that that company that we fought valiantly to keep in America, to keep an American address, is assessed.

□ 2030

My Dad used to have a great line when I was a child when he saw something that was outrageous. He used to simply say, At least Jesse James had enough honor to wear a mask.

What we are seeing here tonight is another giveaway. They are pushing jobs offshore, and what do they wrap themselves in? Patriotism. This is all we hear from them is the line about patriotism, and then we witness the arguments and its aftermath and we know what it is going to be in terms of this argument some sense of justice?

Well, the news media is going to go through this legislation over the course of the next couple of weeks because we all know tonight we would not have a chance to go through the legislation. Heaven forbid that the minority might have an opportunity to look it over, and then the media is going to pick it apart and they are going to look back and say, who was watching in the House?

This is a bad piece of legislation. I close on the remarks I opened with, we are fighting two wars with four tax cuts.

Mr. THOMAS. Mr. Speaker, might I inquire the time remaining on each side?

The SPEAKER pro tempore (Mr. LATOURETTE). The gentleman from California (Mr. THOMAS) has 21½ minutes remaining, and the gentleman from New York (Mr. RANGEL) has 17 minutes remaining.

Mr. THOMAS. Mr. Speaker, it is my pleasure to yield such time as he may consume to the gentleman from Virginia (Mr. GOODLATTE), the chairman of the Committee on Agriculture, a member of the conference committee, for the purpose of engaging in a colloquy with the ranking member of the House Committee on Agriculture, a member of the conference.

Mr. GOODLATTE. Mr. Speaker, I thank the chairman for the time, and I yield to the gentleman from Texas (Mr. STENHOLM).

Mr. STENHOLM. Mr. Speaker, I thank my chairman for yielding.

Mr. Speaker, the bill provides financial assistance for producers in return for the termination of tobacco marketing quotas and related price support. For kinds of tobacco other than flue-cured and burley tobacco, the payments to producers will reflect "the basic tobacco farm acreage allotment for the 2002 marketing year established by the Secretary for quota tobacco produced on the farm."

My understanding is that for this calculation, the Secretary will take into account nondisaster transfer of allotments that were made for the 2002 marketing year. Is that correct?

Mr. GOODLATTE. Mr. Speaker, reclaiming my time, yes, that is correct. For producer payments, such transfers for these crops will be taken into account as they are for the other tobaccos. The payments will be based on the actual amount available on the farm after those transfers.

Mr. STENHOLM. I thank the chairman for that clarification.

Mr. GOODLATTE. Mr. Speaker, I thank the gentleman, and I also would like to thank the Chair and the members of the Committee on Ways and Means who worked with the Committee on Agriculture so diligently to finally accomplish something that has been badly needed for a long time, and that is, to buy out a bad program that has been working against America's tobacco farmers for a long period of time. I thank the gentleman.

Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume.

First of all, I want to thank both of the gentlemen, members of the conference committee, Republican and Democrat. Both of them voted for the conference report, and the Chair appreciates that.

The Chair would like to engage in a colloquy with the gentleman from Florida and will consume as much time as is required.

Mr. MICA. Mr. Speaker, will the gentleman yield?

Mr. THOMAS. I yield to the gentleman from Florida.

Mr. MICA. Mr. Speaker, I rise to engage in a colloquy with the Chairman of the Committee on Ways and Means about the short line railroad incentives.

The tax credits in H.R. 4520 will apply to expenditures for maintaining railroad tracks. Does this definition of qualified expenditures include signalization and grade crossing devices and protections?

Mr. THOMAS. Mr. Speaker, reclaiming my time, I tell the gentleman it does and he is correct.

Mr. MICA. I thank the gentleman.

Mr. THOMAS. Mr. Speaker, I reserve the balance of my time.

Mr. RANGEL. Mr. Speaker, I yield 2 minutes to the gentleman from Maryland (Mr. CARDIN), a senior member of the Committee on Ways and Means.

Mr. CARDIN. Mr. Speaker, this is a serious issue, the fact that we have a retaliatory tariff that has been imposed against us because of our sales corporation fix. We need to take care of that.

The Foreign Sales Corporation Act has caused us a retaliatory tariff. The problem is, Mr. Speaker, we have an easy way to do it. There was a bill introduced by the gentleman from New York (Mr. RANGEL) and the gentleman from Illinois (Mr. CRANE), bipartisan, that would have fixed it. It would have done it in a true revenue-neutral way.

Instead, we have a bill that is going to cost tens of billions of dollars in unrelated provisions. Let me just mention one of those provisions.

It would authorize private tax collection on a contingency fee to harass our taxpayers, giving these private collectors government immunity. We tried that before and it did not work. That is wrong. It should not be in this bill, and yet it is.

When we take away the sunsets and all the other provisions, we really have $80 billion that is not funded in this legislation, adding to the deficit of this country.

But, Mr. Speaker, there is another provision that was left out of this bill. There was a tobacco buyout that was put in, even though we had no hearings in our committee on it or any hearings at all, but the other body at least had the good sense to subject the tobacco to the FDA, using taxpayer money. That seems to make sense, and yet the final report leaves that out.

There are more people who die every year from tobacco than from alcohol, AIDS, car crashes, illegal drugs, murders collectively. We had a chance to do something about that in this legislation. Instead, we are spending taxpayer money and not taking care of the problem.

Mr. Speaker, there are numerous provisions unrelated that should be in this bill, and for those reasons I regret that I will not be able to support this legislation.

Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume.

This conference report is in front of us tonight due to a number of Members doing yeoman's service. There is a provision in this bill that was alluded to by the chairman of the Committee on Agriculture that is long overdue to be changed.

This gentleman from California started his congressional career on the Committee on Agriculture, and I tried to do something about it at that time. This was an opportunity to do something to correct the record that is long overdue for correcting.

The gentleman I am going to recognize to speak was one of the first to come to me to suggest that this might be an opportunity that we could take advantage of.

I have to tell my colleagues that as far as a State-wide race in North Carolina, I have received only one phone call from those individuals. I have worked beside only one of those individuals for far more than a decade, and the provision of removing the tobacco buyout was placed in the House bill long before it was placed in the Senate bill.

I can assure anyone that had we not been able to put it in the House bill, it would not have been in the Senate bill, and so for all of those people who are now going to receive a payment, the argument about how much they are going to get, whether or not it is greater than someone other's offer, is all moot.

The fact of the matter is, tonight, we are finally going to end a depression-era government created program that is long overdue for repeal, and the primary gentleman that worked with me to make sure that it would be in there is my friend, the gentleman from North Carolina (Mr. BURR), a senior member of the Committee on Energy and Commerce.

Mr. Speaker, I yield 3½ minutes to the gentleman from North Carolina (Mr. BURR).

Mr. BURR. Mr. Speaker, I thank the distinguished gentleman from California, the Chairman of the Committee on Ways and Means, for the time.

This is indeed a special night for many people across this country, farmers who have struggled over the last 5 years, who have made a livelihood on the farm, because of a commitment to the land, and throughout North Carolina and many other States, we see the benefits of their success in the schools and the churches because it is their generosity that built the communities that, in fact, they live in.

Because of that program that we put them into decades ago, which has now served as a noose around their neck over the past 5 years, the Federal Government has cut their livelihood by 50 percent. I ask anyone in this body who were in business before they came here if they artificially got 50 percent of their revenue eliminated, would they be able to survive? The answer is likely they would not, and the fact is that our farmers are not.

This piece of legislation that this body will pass tonight will probably enable 10,000 individuals in North Carolina alone not to file bankruptcy this year. It is inevitable that communities will exist tomorrow because we are willing to step up and to provide the necessary help that they need.

Mr. Speaker, former Senator Helms once said that getting a tobacco buyout through the United States Congress would be one of the hardest legislative efforts ever undertaken. He was certainly right about that. Mr. Speaker, not only was it a long road, it was an uphill road. The obstacles were many, but they have been overcome tonight, and I believe tomorrow both bodies will have passed this legislation.

I would like to take the time remaining to thank those individuals who helped so much: My colleagues, the gentleman from Tennessee (Mr. JENKINS), the gentleman from North Carolina (Mr. MCINTYRE), the gentleman from Kentucky (Mr. ROGERS), the gentleman from Kentucky (Mr. LEWIS), the gentleman from Virginia (Mr. GOODE), and the gentleman from Georgia (Mr. KINGSTON), individuals that for over 10 months met to try to strategize on how we move a piece of legislation, not that that was the richest, but one that could be signed into law, the single most important objective. We are not the first to stand in this well and promise people back home that we can deliver, but we are the first to be able to deliver.

I would also like to thank the staff members who put their long hours in and probably spent too much time with each other: Brenda Otterson, Jeff Hogg, Michael Higdon, Megan Spindel, Jerr Rosenbaum, Emily Howard and Chris Joyner.

I would also like to thank the gentleman from California (Mr. THOMAS). He was truly a partner in this every step of the way. It is not often that we take an agricultural piece and we ask to put it on a tax bill, but let us face it. We needed a vehicle that could become law. I thank the Chairman for his willingness to work with us. I thank him for the informative response that we always had with the Committee on Ways and Means, and I praise him tonight for a great piece of legislation.

I urge my colleagues to support this bill.

Mr. Speaker, I rise today in strong support of this legislation. This legislation contains a number of critical provisions. It ends sanctions on our exports, and provides tax benefits for our Nation's manufacturing sector. It provides tax incentives for businesses, including much needed S-corp reform. It extends important electricity production and alternative fuel tax credits.

But it also includes a long-overdue and desperately-needed provision that is near and dear to my heart—and the hearts of countless farmers in my State and across the southeast: A tobacco quota buyout and repeal of the Federal tobacco program.

It is hard to find an agriculture issue in my State that has taken on more passion—more emotion—than the tobacco buyout. My State's tobacco farmers—like their colleagues in other tobacco States—are trapped in the depression-era tobacco program. It is a program that promises little more than bankruptcy and foreclosure. It is a program that promises economic collapse for their communities. Today, at long last, we are taking action to restore some hope to our tobacco farmers and their communities.

With the inclusion of the tobacco buyout and reform package, this Congress is extending a lifeline to rural communities that were built on tobacco, but have faced difficulties as tobacco use has declined. It is offering tobacco farmers a way out, and the assistance they need to transition to new crops. It is providing tobacco families with some certainty, and the promise of a better day ahead. It is restoring hope to those who thought that this city had forgotten them.

The inclusion of the buyout in this legislation is the culmination of years worth of work. It has been a long road since Charlie Rose began his work on the issue in the early 1990s. It is a road that saw few travelers in the early years—but it is a well-traveled road now.

So difficult has it been at times to see the end of the road that most people said it would be impossible to reach it—that we would never get to our destination. It was always just out of reach—just over the next hill. Over the years, the "buyout" took on an almost mythical status. It was talked about in feed stores and coffee shops in almost reverential tones, but people began to believe they would never see it in their lifetime.

Former Senator Jesse Helms once said that getting a tobacco buyout through the United States Congress would be one of the hardest legislative efforts ever undertaken. He was certainly right about that, Mr. Speaker. Not only was the road long, it was uphill.

The obstacles were many, but they have been overcome. I would like to take what time I have left to thank some of my fellow travelers on this long journey. We would not be here today if it were not for my colleagues BILL JENKINS, MIKE MCINTYRE, HAL ROGERS, RON LEWIS, VIRGIL GOODE, and JACK KINGSTON. I would also like to thank their staff members, who put in long hours—and probably spent too much time with each other—over the last year: Brenda Otterson, Jeff Hogg, Michael Higdon, Megan Spindel, Jerr Rosenbaum, and Emily Howard.

I would also like to thank Chairman BILL THOMAS and his staff for their hard work—and for recognizing the critical need for this buyout.

Finally, Mr. Speaker, we have reached our destination. I urge my colleagues to support this important legislation.

Mr. RANGEL. Mr. Speaker, I yield myself such time as I may consume.

I want to join in thanking the chairman for expanding the jurisdiction of the Committee on Ways and Means so all of us could have a better understanding of these agricultural problems. Quite frankly, coming from New York, I never did understand the plight of farmers and tobacco farmers, and I do not know how far we are going to go in expanding this, but I am glad that we have a gentleman from outside of the committee to recognize and to praise the chairman, as I do.

Mr. Speaker, I would like to praise and yield 2 minutes to the gentleman from North Carolina (Mr. ETHERIDGE) so we can further edify the Committee on Ways and Means about problems other committees of jurisdiction have.

Mr. ETHERIDGE. Mr. Speaker, I thank the gentleman from New York for being kind enough, our distinguished ranking member, for yielding me the time.

Mr. Speaker, on behalf of North Carolina farm families and really a lot of farm families who grow tobacco across the southeast, I rise this evening to offer my support for this conference report on H.R. 4520.

The $9.6 billion buyout this bill provides to tobacco growers and quota holders will stave off the economic disaster that my tobacco farm families currently face in my district.

Since 1997, North Carolina farm families and really other tobacco families throughout the southeast have seen their income cut roughly in half. This December they faced the prospect of another 30 percent cut in quota, and that will mean a resulting income loss.

But this evening, a new day dawns for the American tobacco farmer. Eliminating the current quota system will make American tobacco leaf, the finest in the world, more competitive on the world market.

In addition, the buyout will give many debt-ridden tobacco growers a chance to either retire with some dignity, invest in production of a different crop or restructure their current tobacco production.

Almost $4 billion will flow into rural North Carolina during the next 10 years. Three-quarters of that billion will flow into my congressional district. This will have a tremendous transformative impact upon my mostly rural people.

While North Carolina's tobacco growers and quota holders are grateful to get this level of assistance, we wish the conference committee would have accepted either of the two amendments offered that would have increased the funding for the buyout.

I want to thank the Ways and Means chairman for honoring his pledge to keep the tobacco buyout in the bill. Four months ago, I told him, "Come back with your shield, or on it." He did bring his shield back. It is pretty beaten and battered, has a few holes, and has lost some of its original shine since it was given to him, but he brought it back, and North Carolina farmers are better off this evening.

I will support the adoption of the conference report.

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Mr. THOMAS. Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. BRADY), an important member of the Committee on Ways and Means, who, I daresay, virtually singlehandedly made sure that there was an additional item in this particular conference report for those States that do not have income tax.

Mr. BRADY of Texas. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, Republicans do not ship jobs overseas and neither do Democrats. Our own Tax Code does, though, and it is the responsibility of both parties. It is time to stop pointing fingers and start working together to save American jobs.

That is what this bill does. It removes the job killers in our Tax Code. It is a common sense principle: Stop punishing those who build in America and lower the tax burden on those who manufacture and produce here, and have a higher rate if you build it overseas.

This bill also restores sales tax fairness to the Tax Code, easing the burden on American families and giving a direct economic boost to Main Street. To States like mine, it means delivering $1 billion of tax relief to Texas families each year. Best of all, every taxpayer in America will have the option of choosing to deduct either their State and local income taxes or their sales taxes, whichever is highest.

Thanks to the leadership of the chairman of our committee, the gentleman from California (Mr. THOMAS), and with the key support of the majority leader, the gentleman from Texas (Mr. DELAY), and the gentleman from Texas (Mr. SAM JOHNSON), we have reopened the door to sales tax fairness that has been locked shut for 18 years. Every legislator from a sales tax State should support this legislation.

Mr. RANGEL. Mr. Speaker, I yield myself such time as I may consume to just note that I now get it. If you do not have enough votes to get a tax bill passed, reach out and get some farmers.

Mr. Speaker, I yield 2 minutes to the gentleman from North Carolina (Mr. MCINTYRE), to further explore the problems that have been resolved for our farmers.

Mr. McINTYRE. Mr. Speaker, I rise in strong support of the conference report for the American Jobs Creation Act. This carefully crafted and skillfully negotiated piece of legislation would end the unfair tariffs that have been targeted at textile, agriculture, high-tech and manufacturing industries.

For thousands of families not only in my home State of North Carolina, but also from tobacco producing States from across the south, this legislation is monumental because it ends the Federal tobacco price support system and gets our farmers out from under a government mandate. The current Federal tobacco price support system is the last depression-era farm program in America. Indeed, it is time to get out of the 1930s.

This is not a bailout. It is a buyout. It is a buyout of a Federal property interest that dictates what a farmer can and cannot do with his own land. Indeed, with this, our farmers, everywhere, will be relieved from the possibility of facing yet another 30 percent cut in their income this coming winter for the new growing season next year, farmers who have already suffered a 50 percent cut in income in the last 5 years.

I want to thank Members of both parties who have courageously stepped forward to pass this bill, and especially the gentleman from California (Mr. THOMAS) for his commitment. Let us give our farmers a choice. Get the government off their backs and out of their pockets. Let us do what is right and stop the uncertainty that has existed for everyone: the farmers, our government, and the American taxpayer.

Mr. Speaker, I rise in strong support of the Conference Report for H.R. 4520, the American Jobs Creation Act. This carefully crafted and skillfully negotiated piece of legislation would end the punitive tariffs that have been targeted at our Nation's textile, agriculture, high-tech, and manufacturing industries, and would replace those portions of our tax code found to be non-compliant in international law with provisions that will INSOURCE jobs to our Nation's economy. This must be done, and it must be done now!

For thousands of families—not only in my home state of North Carolina, but also from tobacco-producing states across the South—this legislation is monumental because it ends the federal tobacco price support system, allows our farmers to compete in a free market system, and gets them out from under a government mandate.

By including the Fair and Equitable Tobacco Reform Act with the American Jobs Creation Act, with which I had the privilege to coauthor with my friend from Tennessee, Rep. BILL JENKINS, we create trade opportunities for American farmers and prevent our farm jobs from going overseas.

The current federal tobacco price support system is the last Depression-era farm program in America! It's time to get out of the 1930s! Tobacco production has dramatically changed. Our federal tobacco policy, unfortunately, has remained the same: farmers producing tobacco in an overly-bureaucratic, government-controlled system which is unable to respond to market pressures and opportunities.

This is not a bailout, it's a buyout—a buyout of a federal property interest that dictates what a farmer can and cannot do with his own land.

Without this bill, tobacco farmers everywhere face the real possibility of a quota cut of over 30 percent next year under this antiquated price support system.

When I introduced the first comprehensive tobacco buyout proposal two and one-half years ago, I said then what I say now, "It's time for the uncertainty to end!"

Although this bill before us is not perfect, it puts an end to the uncertainty that has plagued our farm communities for so many years. This bill is the right bill for our families, our farm communities, and our future.

While the underlying Jobs bill will Create, Cultivate, and Conserve American jobs, the long-awaited tobacco reform will Replace lost jobs, Revitalize rural communities, and Restore the American farmer to a competitive role in the world marketplace.

Instead of turning our backs on the families and rural communities across our Nation, we are on the cutting edge of ending discrimination against our farmers, and we are providing them with the tools to compete on the world market.

So many people have worked so hard to get us to this momentous time. I thank the Members of both parties who courageously stepped forward to pass this buyout. I also thank Chairman THOMAS for his commitment to helping our tobacco producing communities by including tobacco reform legislation in the FSC/ETA Conference Report.

Let's give our farmers a choice! Get the government off their backs and out of their pockets. Do what's right, and stop the uncertainty for everyone—the farmer and his children, the government, and the American taxpayer. Support passage of this Conference Report!

Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume.

When there is a problem that is overdue for fixing, and has been for more than half a century, someone who argues process is the reason why we should not fix it, does not get it. Given the kind of problem that we have seen, it needs to be fixed. Tonight we are fixing it.

Mr. Speaker, it is my pleasure to yield 1½ minutes to the gentleman from Kentucky (Mr. LEWIS), a member of the Committee on Ways and Means who helped us fix this more than half-a-century-old problem.

Mr. LEWIS of Kentucky. Mr. Speaker, I rise tonight to also applaud the gentleman from California (Mr. THOMAS); and, Chairman THOMAS, I think you not only came back with your shield, but for the Kentucky tobacco farmers and their families, I think you came back as a knight in shining armor.

This is a fair and comprehensive final product that came out of the conference. And as a member of the Committee on Ways and Means, I recognize the importance of stimulating continued economic growth by enabling a fair and free market for U.S. companies with their competitors overseas. H.R. 4520 provides a comprehensive solution to ensure fair play, invigorating our economy by reducing taxes and creating new jobs.

In addition to the important international provisions, the bill also includes a much-needed buyout for our tobacco farmers. Those of us who represent tobacco growing States have been working on a bipartisan basis for many years to end the depression-era price support system.

Since the late 1990s, burley tobacco quotas have been cut in half, causing significant financial loss for family farmers who currently earn less than half the amount they could have earned only 5 years ago. A tobacco buyout is essential to protect their futures and to ensure the prosperity of many States and local economies, and Kentucky thanks you, Mr. Chairman.

Mr. RANGEL. Mr. Speaker, I yield myself such time as I may consume to note that I am not saying this problem should not have been fixed, I just wondered whether it should have been in a tax bill. I am certain that those that want to see other problems that were fixed can go to WaysandMeans.House.gov and they will understand why we had to fix bows and arrows, and fishing tackle boxes, and foreign made seal fans, how we had to help native whaling tribes, how we had to help foreign horse racing and dog racing gambling, how we had to help pro sports team owners, how we had to shorten the depreciation period for car race tracks.

This is really not admonishing, or, in any way, degradating the chairman, it is just we do not have the bill and we do not know what else is in there. So it is good to hear from Members that do know, because they know they promised to vote for the bill in order to get relief.

Mr. Speaker, I yield such time as she may consume to the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN), whose taxpayers will be hurt seriously.

Mrs. CHRISTENSEN. Mr. Speaker, I rise in opposition to H.R. 4520 for the damage that it does to our EDC program and the loss of jobs in my territory.

Mr. RANGEL. Mr. Speaker, I yield 1 minute to the gentleman from North Carolina (Mr. BUTTERFIELD), a new but a very hardworking Member who is going to get us away from taxes and the complexity of the legislation and get back to tobacco.

Mr. BUTTERFIELD. Mr. Speaker, I rise in strong support of a much-needed and much-overdue tobacco quota buyout. I want to thank the chairman and ranking member for their tireless work on this important issue. The conference has worked very hard, and now we are coming to the end of a process that will recognize the commitment of tobacco farmers for so long.

Mr. Speaker, there are 1,040 tobacco producers in my congressional district producing a crop of 35,147 acres of land. Every single one of these producers is in dire straits. They are cashing in their retirement to continue farming. They are mortgaging their houses to stay in business. They are going deeper and deeper into debt. A buyout is not a luxury payment, it is a desperately needed infusion into an economy that depends on a depression-era program that no longer works.

Even farmers that would ordinarily be wealthy are instead being told by their bankers that their loan will have to be reevaluated in future years. Mr. Speaker, American farmers need a buyout.

Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume to join with the gentleman in thanking the ranking member for his tireless work on the tobacco buyout as well.

Mr. Speaker, it is now my pleasure to yield 2 minutes to the gentlewoman from Connecticut (Mrs. JOHNSON), a senior member of the Committee on Ways and Means.

Mrs. JOHNSON of Connecticut. Mr. Speaker, I thank the chairman for yielding me this time and for this bill, and I rise in strong support of it.

Let us remember why we are here. We are here because punitive tariffs are making U.S.-made products high priced. We are here because that reduces sales and endangers American jobs.

Some say this bill will result in exporting jobs. Inaction will result in exporting jobs. This bill provides $77 billion in tax relief to every domestic manufacturer for work they do here at home. From the smallest S corporation or partnership to the largest C corporation, companies will be encouraged to produce more goods in the United States of America.

Furthermore, it provides a new source of funding for cleaning up brownfields in our cities and encourages the growth of manufacturing in the small, medium-sized cities of America, so important to their economic revitalization.

My colleagues, this is the best bill that has come on the floor of this House for American manufacturing in the 22 years I have been here, under Republicans or Democrats. Manufacturing is the foundation of our economy, and I consider this landmark legislation in laying the foundation for a competitive 21st century American economy.

Mr. Speaker, I thank the chairman for his remarkable leadership in making passage of this legislation possible here tonight.

Mr. Speaker, I rise in strong support of the American Jobs Act. Critics fail to remember why we are here. We are here because punitive tariffs on U.S. made products are increasing their price, reducing sales, and endangering U.S. jobs.

Every day we fail to comply with the WTO ruling American companies are losing market share in Europe. Tariff rates on some American goods stand at 12 percent and will rise to 17 percent. Our trade relationship with Europe includes $1 trillion worth of goods and services and we cannot compromise that many goods without forcing many Americans into unemployment. We have an obligation to protect the jobs of our constituents and strengthen our economy to meet the challenges of the 21st century global economy.

Our bill creates greater incentives for domestic manufacturing, helps small businesses by increasing the amount of money they can just write off for investing in equipment to improve their productivity or the quality of their product. It strengthens our competitiveness abroad by eliminating complex rules that hamper commerce.

Some critics complain that this bill will result in exporting jobs. They are wrong. The truth is we need to support American multinationals or we will fail to have a U.S. economy that produces good paying jobs here at home.

Literally millions of small firms depend on the successful performance of large companies abroad. The more business they win overseas, the more business they generate in the United States. It is that simple.

Important international reforms are matched by a firm commitment to domestic manufacturers. As we all know, the manufacturing sector has suffered disproportionately since 9/11. Our bill provides nearly $77 billion in tax relief to every domestic manufacturer for work they do here at home. From the smallest S corporation or partnership to the largest C corporation, companies will be encouraged to produce more in the United States.

It should also be noted that we accomplished all of this without adding a single penny to the federal deficit. We were able to craft a revenue neutral package that clamps down on abusive tax shelters and corporate inversions.

The dispute that brought us here has lingered for too long. We owe it to American businesses and consumers to complete our work and rid ourselves of punishing tariffs.

I want to commend the chairman for remaining steadfast in his desire to get a bill passed and to the president's desk before we adjourn. I congratulate the Chairman on a bill that will help American manufacturers more than any bill ever passed by this body under Republicans or Democrats. Since manufacturing is the foundation of our economy, I consider this landmark legislation as laying the foundation for 21st century prosperity.

Mr. RANGEL. Mr. Speaker, I yield myself such time as I may consume. I do not have anyone left who wants to talk about tobacco, but I wish I had known the chairman would be this flexible. I had some draft legislation that I could have possibly gotten into the conference report, but I just did not know.

Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. LAMPSON), who would like to speak on a tax issue.

Mr. LAMPSON. Mr. Speaker, I thank the gentleman from New York (Mr. RANGEL) for yielding me this time. I do rise to support this bill, because I strongly support the sales tax deductibility provision of FSC ETI that is supported by Texans and in the interest of all Texans.

This Congress must stop the Tax Code from penalizing those who live in States without local or State income tax. The sales tax deductibility provision gives taxpayers in these States an option to deduct either their sales tax or income tax from their Federal income tax returns. This is a fair and straightforward way to restore equity to the Tax Code as it applies to some 55 million taxpayers across this country.

Sales tax deductibility could keep $1 billion in Texans' pockets and save families roughly $300 a year. That is money that Texans need to provide for their seniors, to plan for our retirements, and to prepare for any unexpected emergencies.

This provision has been supported by a bipartisan, bicameral group in Texas, its congressional delegation, and our State legislature, and I urge my colleagues to let this 108th Congress be the session to restore fairness to America's Tax Code by passing this bill and by passing this provision.

Mr. THOMAS. Mr. Speaker, it is my pleasure to yield 1 minute to the gentleman from Texas (Mr. SAM JOHNSON), an invaluable member of the Committee on Ways and Means, a gentleman who also happens to be a member of the Texas delegation.

Mr. SAM JOHNSON of Texas. Mr. Speaker, thanks to the gentleman from California (Mr. THOMAS) we have worked for 3 years on this legislation, and I want to thank and congratulate Chairman THOMAS for making it a reality.

This bill strikes the right tone in repeal and replacement of the FSC ETI benefit. And while I have disagreed with the premise of changing how we tax Americans just to comply with the whims of some Frenchmen or Europeans, this bill will make American companies more competitive in the global market. Our businesses will be able to export more from the United States and will be more competitive in foreign lands.

I am glad this bill will reinstate the sales tax deduction for Texans that the gentleman from Texas (Mr. BRADY) was ensured to get in here. Residents of other States have been able to deduct their State's income taxes, but now residents of Texas and six other States can deduct sales tax, an important fairness issue for all constituents.

I want to also thank Chairman THOMAS and his staff for working with me on a number of other provisions to get these items perfected. Now that this bill is behind us, I look forward to working on fundamental tax reform next year, and I encourage my colleagues to vote for this bill.

Mr. RANGEL. Mr. Speaker, I yield myself such time as I may consume.

We have taken care of sales taxes and tobacco. I do not know whether we are taking care of the Treasury, though, because they had sent a terrible letter to us indicating that they thought that this bill had too much in the way of special interest tax provisions, which benefited few taxpayers and increased the complexity of the Tax Code.

The President indicated he wanted to simplify the Code. We know the only major Republican bill we have in the House is the national retail sales tax. So maybe, once again, I can say that since the Members of the House have not had the opportunity to review this five-pound bill, that people can go to WaysandMeans.House.gov and find out whatever else Santa Claus has brought in bringing us this gift package on the eve of an election.

Mr. Speaker, I reserve the balance of my time.

□ 2100

Mr. THOMAS. Mr. Speaker, I tell the gentleman that I would be pleased to invite him to the bill signing ceremony so that he can see the President of the United States sign this bill into law.

Mr. Speaker, it is my pleasure to yield 2½ minutes to the gentleman from Louisiana (Mr. MCCRERY) who is the chairman of the Subcommittee on Select Revenue Measures and was the foundation for building the overwhelming majority portion of this conference report, the tax provisions.

Mr. MCCRERY. Mr. Speaker, I thank the chairman for recognizing me to speak on this bill and also thank the chairman for his work in putting together this conference report and in putting together the coalition that will pass this bill on the floor of the House tonight and, I believe, in the other body tomorrow.

Mr. Speaker, we have heard a lot of comments on this floor tonight about how this bill encourages companies to ship jobs overseas, to export jobs. First of all, who in his right mind would want to do that? Do you really think that any of us in this body wants to ship jobs overseas? Just think about it. Of course not. If you want to create jobs here in this country, if you want to preserve the jobs that are here in this country, if you want to make American companies more competitive, if you want to give them a better chance to compete in the international marketplace, then you should be voting for this bill tonight. That is what this bill is all about.

That is what we spent so much time investigating, bringing in witnesses, listening to testimony and then crafting provisions that will help our American companies to create jobs here in the United States.

Do some of the provisions help American companies with their overseas operations? Absolutely. That is what we want to do. We want our American companies to beat the French and the Germans and the Japanese in Europe and in Japan and in Asia. We want American investment there. We want American workers there. We want American profits there so they can bring those profits back here and invest them in research and development and invest them in infrastructure here and in retooling, modernizing their plant and equipment. That is what this bill is all about.

Forget all the political rhetoric. Think about the work that has gone into this product. Think about what we are all here to do, Democrats and Republicans, to make this country a better place to live, give people a place to work, a good job. That is what this bill is about. We ought to pass it today, and I believe we will, thanks to the work of a lot of good people in this body on both sides of the aisle.

Mr. RANGEL. Mr. Speaker, I yield myself such time as I may consume.

You just cannot have it both ways. You cannot say that you want our

American firms to be competitive in France and all over Europe and in Central and South America. If you give them incentives to be able to do this to compete, the jobs that they would have here, these firms in order to be successful have to have some workers. And we are not going to say that we are going to give passports to every American to find a job overseas. It is the multinationals that have to be governed by where the profits are, not where the patriotism is.

So if you want to be competitive overseas, if you want them to be able to do the best vaccine in the world for flu, then you encourage them to do it overseas. But one day you will look around and you will see that all of this competition, we have taken our skilled labor jobs, things we used to be proud of, televisions, computers, cars, shoes, things that used to say "Made in the USA." Now, if it is not made in the USA, I hope you are not going to give a passport or citizenship to those foreigners who are making it. I have nothing against the CEOs except I want it to be, not an equal playing field, I want to give every American manufacturer a fair advantage to have jobs here in the good old USA. I am sorry that there are other people that believe that these tax incentives are good for the United States when our jobs go overseas.

Mr. Speaker, I reserve the balance of my time.

Mr. THOMAS. Mr. Speaker, it gives me great pleasure to yield 2½ minutes to the gentleman from Ohio (Mr. PORTMAN), a valuable member of the Committee on Ways and Means, to perhaps offer another view on the position that the gentleman from New York just indicated.

Mr. PORTMAN. Mr. Speaker, I thank Chairman THOMAS for yielding me this time, and I thank my colleague on the other side of the aisle, the gentleman from New York (Mr. RANGEL), for engaging in this debate because I think he put his finger on what this is all about tonight.

What we are talking about is basically responding to the European Union's decision that we cannot continue to provide a subsidy to our exporters. That was the lemons. And then making lemonade out of it by saying, how are we going to help U.S. firms become more competitive, but not by using the FSC/ETI benefit that was found illegal.

How are we doing that? In two ways. One the gentleman from New York just talked about: we are helping manufacturers. This is an area of our economy that is under great challenge for two reasons: one, higher productivity. We are using fewer workers to produce just as much and more so we are losing jobs in manufacturing. Second, international competition. In the last 3 years of the Clinton administration, we lost over 300,000 manufacturing jobs. They are starting to come back. This year alone, we have gained over 100,000 manufacturing jobs as the economy is starting to pick up. But that is not good enough. We want to do more. We want to make sure that we have a strong manufacturing base in this country. That is why there is an effective 3 percent reduction in the corporate rate for manufacturers, big, medium, small, all manufacturers, very similar to the gentleman's legislation he introduced about a year ago.

But, second, we do try to help those global companies. Why? Because, as the gentleman from Louisiana said, the global companies are out there competing in a marketplace where 95 percent of the consumers are outside of the United States. Ninety-five percent of them. Yet we have one-third of the world's economy here. If we are not out there competing with those French and German and Japanese and other companies, we are going to lose jobs right here.

A great example is in my own district. Procter & Gamble has about 14,000 jobs in greater Cincinnati. Forty percent of those jobs support international sales. That is where their expansion is right now. Those are the 95 percent of the consumers they have to access to keep jobs in my district. That is what this bill is about. And that is why I think it is so important that we pass it tonight on a bipartisan basis.

I thank the chairman for taking the lemons which were handed to us by the World Trade Organization and by the Europeans who brought that case; and by mixing them together to create lemonade, it will truly help create jobs in this country and help us in terms of our international competitiveness. There is no more important issue, I believe, over the next few decades for us in terms of job creation than being sure we have a strong manufacturing base. That is in the legislation, partly because the gentleman from New York raised that issue over a year ago. And then, secondly, to be sure that our global companies that are out there competing day in and day out to keep U.S. jobs right here in America have the ability to access those consumers overseas. Without it, the standard of living of our kids and our grandkids will not be what we have had. That is why this legislation is good. I congratulate the chairman for his good work in getting it done.

Mr. RANGEL. Mr. Speaker, I yield myself such time as I may consume.

Let me thank the gentleman from Ohio, my friend and someone that has now brought us back to why we are here. From time to time people are talking about tobacco and sales tax and things like that; but as he pointed out, we are here to correct a $4 billion World Trade Organization problem that we had. If we had just taken away the subsidy, guess what? We would have reduced the deficit by $70 billion. But we took a big different course, and so we are taking care of tobacco, and we are also taking care of a problem that some people have in their States where they do not have income taxes so they want to get equity. I have to learn how to do all of these things in case the original purpose of the bill does not have enough supporters and we want to make it bipartisan. We have to find Democrats who have real problems back home in other areas.

Mr. Speaker, for that reason, I yield 2 minutes to the gentleman from Washington (Mr. BAIRD) who really first brought this problem to my attention, and I wanted to make certain that it got in this bill before the Committee on Agriculture took care of it.

Mr. BAIRD. Mr. Speaker, I thank my good friend from New York for yielding me this time, and I want to express my profound gratitude on behalf of our citizens because it was the gentleman from New York who first put sales tax deductibility in the Democratic package, and for that our citizens will be eternally grateful. I personally am honored and appreciate his support.

I want to acknowledge the gentleman from Texas (Mr. BRADY) for his leadership and the gentleman from Tennessee (Mr. WAMP) and also the gentlewoman from Wyoming (Mrs. CUBIN). This has truly been a bipartisan effort. On our side of the aisle, Bob Clement, a former Member of Congress, also the gentleman from Tennessee (Mr. COOPER), have been leaders on this. And in the other body, Senators PATTY MURRAY and MARIA CANTWELL who coauthored the bill along with KAY BAILEY HUTCHISON.

In essence, the issue here is about tax fairness. If people in States with income taxes can deduct their State taxes from their Federal return, why not allow people in States with sales taxes? I thank the chairman for including this, and I thank the gentleman from Texas (Mr. DELAY). This will save Washington State taxpayers $500 million a year; for an average family that itemizes, $300 to $500 every single year.

It is all about fairness. It will bring valuable dollars to help pay for education, food, health care and other basics. And most importantly of all, I think it will go to the people who most need it. I want to thank again all those who participated in this and look forward to working in the future to make this a permanent extension and permanent restoration of sales tax deductibility.

Mr. THOMAS. Mr. Speaker, I want to compliment the gentleman from New York for maintaining his competitive edge, notwithstanding the fact that by my count now more than a majority of the people who have taken the well on his side of the aisle are supporting the conference report.

Mr. Speaker, it is now my pleasure to yield 2 minutes to the gentlewoman from Washington (Ms. DUNN), the real Member from Washington who actually made sure that the sales tax provision was in the bill.

Ms. DUNN. Mr. Speaker, we are finally bringing to a close a dispute that has lasted not years, but decades. By repealing FSC/ETI, we will bring U.S. law into conformity with the rulings of the WTO and remove sanctions that are now hurting United States workers and companies. We have got to remove these sanctions, and we must do so without delay.

We are doing a lot more in this legislation. The conference report provides a credit for domestic production activities, including software, which is enormously important to the high-tech industry in our State of Washington. It is a critical component that I worked hard on in the Committee on Ways and Means as our committee developed this proposal.

In this bill, we also help millions of our constituents in Washington, Texas, Tennessee, and other States by restoring the deductibility of State sales taxes. But we would not be here without the tireless efforts of the gentleman from Texas (Mr. BRADY) and the gentleman from Washington (Mr. NETHERCUTT). I commend their leadership on this issue.

The legislation also includes relief for reforestation costs to help keep U.S. workers competitive with global and foreign industry. This is a critical reform for the thousands of people that I represent who work in the timber industry.

There is a long list of important reforms in this conference report, Mr. Speaker. It provides transition relief for current users of FSC. It clarifies the safe harbor provision for timber REITs. It will make U.S.-based mutual funds more competitive by suspending the withholding tax for foreign-based investors. And it goes a long way toward updating U.S. tax law and how we treat United States-based companies that operate overseas.

If we hope to continue to attract capital and keep our companies and workers competitive, we must adopt these reforms. The product before us today is the result of years of negotiations between members of the Committee on Ways and Means, among members of both parties, between the House and the Senate, between the White House and the Congress.

Nothing this complex and far-reaching is going to please everybody, but it is far too important a bill with too many critical reforms for this Chamber to reject.

Mr. Speaker, I urge all my colleagues to vote for this excellent bill.

Mr. RANGEL. Mr. Speaker, I yield myself such time as I may consume.

I would like to say that she is indeed a real Member from Washington. We will miss her. I want to thank her for her support for the real FSC bill that she supported Crane-Rangel. We will miss her. We thank her for the great contribution she made to our committee and to this Congress.

Mr. Speaker, I yield to the gentlewoman from Texas (Ms. JACKSON-LEE) for the purpose of making a unanimous consent request.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the distinguished gentleman for his leadership. I stand for the citizens of Texas who will get sales tax relief finally with the ability to file sales tax deductions on their Federal income tax. I support this provision.

I rise tonight in support of the Conference Report for this important legislation. While this is a difficult decision I will support the legislation because we must stand with those who own small businesses and working families who must squeeze as much as they can out of their income to have a decent standard of living. Coming from the great state of Texas I know that our American workers are in need of assistance and while flawed I believe this legislation gives that assistance to them.

I am heartened by the small business provisions in this legislation that will help growth in this vital sector of our society. The bill reduces the top corporate tax rate from 35% to 32% for domestic manufacturers and small corporations. These provisions will help small businesses with important reforms and investment incentives that can hopefully kick start a lagging economy.

The extension of section 179 expensing and the simplification of numerous small business rules will provide more growth opportunities for America's small business owners. I am also content that this Conference Report also includes an extension of the research and development credit, which in my mind is vital to stimulating advancements in technology and economic growth.

The provisions of this large legislation that I am most supportive are those that deal with Sales Tax Deductibility. This Conference Report finally restores sales tax deductibility to the federal income tax code that has cost people in the state of Texas billions of lost dollars over the years. I am proud to have been a cosponsor of the Sales Tax Equity Act which would restore sales tax deductibility to the federal income tax code and would ensure greater financial equality for all American taxpayers. Today, that legislation will become a centerpiece of this Conference Report. The language in this bill restores the deductibility of state and local sales tax from federal taxes that were eliminated in 1986. Taxpayers are currently permitted to deduct their state and local personal income taxes, leaving seven states, including Texas, Florida, Tennessee, Wyoming, Washington, South Dakota, Alaska, and Nevada, which rely on sales tax, out in the cold. Preliminary estimates from the Texas State Comptrollers office have indicated that restoring the deductibility of state and local sales tax could keep $1 billion in Texas pockets and create nearly 16,000 jobs annually. Additionally, the Comptroller projects $590 million in new investments and $874 million increase in gross state product. Those kind of growth estimates are too important to Texas workers for me to ignore. Again, while I have many reservations about this Conference Report as a whole, the sales tax deductibility language in this legislation will restore fairness for Texas taxpayers, as well as taxpayers in several states that have been penalized because of this tax code inequity.

While I will support this legislation I do want to voice my displeasure with many of the provisions in this Conference Report. Specifically, I am disappointed that the Republicans in this body did not accept the Rangel motion to instruct that would have protected many American jobs. The provisions in the Rangel motion to instruct would have helped deal with the issue of businesses that are incorporating overseas and taking American jobs with them. There are provisions in this Conference Report that help reward those companies who keep production and jobs in the United States as opposed to rewarding companies that move overseas despite the fact that they receive all their benefits in the United States. It is truly unfortunate that this necessary motion to instruct was struck down, its defeat can only hurt the American workers that this legislation is meant to protect.

My concern with this legislation also extends to the fact that its implementation will greatly raise our national debt. While the Republican leadership has assured Members of this body that this Conference Report is revenue neutral, I am not likely to buy that claim. The leadership of this Congress has consistently passed fiscally irresponsible legislation that has bloated our ever-growing national debt, for FY 2004 alone we have a record deficit of $422 billion. These crushing debts will only hurt the average American worker and subsequently their families who they work so hard to support. The debts we create today will be a heavy burden for American workers of today and of tomorrow.

While I will vote to support this Conference Report, I am disheartened that important Democratic provisions that could have further helped the American worker were left out. I will support this legislation because I now how hard the residents of Texas work and they need all the support they can get. These Texas workers and the thousands of small businesses who dot my district make up the core of our society and I will not turn a blind eye to their needs. I only wish that this Conference Report were truly bipartisan, clearly too many Conference Reports this session have been one sided and therefore have been missing key provisions that could have strengthened the legislation. Our mission as a body is to come to a consensus on legislation that will benefit the American people; sadly we have fallen short of this noble goal.

Mr. RANGEL. Mr. Speaker, I yield 1 minute to the gentleman from Illinois (Mr. EMANUEL), an outstanding Member of our party and of the House.

Mr. EMANUEL. Mr. Speaker, I rise in opposition to this conference report. In the 1986 tax reform, President Reagan with the Congress flattened rates, simplified rules, and cut out loopholes. In the last 4 years, you have had 326 changes and added 10,000 more pages. It is a very funny way to pay tribute to Ronald Reagan.

Two weeks ago, we passed a $13 billion corporate giveaway on the very day that the New York Times and the Wall Street Journal reported that 82 of the most profitable companies paid no Federal income taxes in at least one of the last 3 years. Today we are passing an additional $42 billion in giveaways on the heels of Saturday's New York Times which reported a rise of 45 percent of those who earn more than $200,000 but paid no income taxes.

But I think this is a fitting way to end this Congress, because as I remember when the Speaker's gavel goes down, it is supposed to open the people's House, not close the auction house. That is what has happened on a Congress that has had, in fact, a prescription drug bill that has been a giveaway to the special interests, an energy bill that has been a giveaway to the special interests, and now a tax bill that has been given away to the special interests.

□ 2115

They had a $5 billion problem that they have resolved with $150 billion. No wonder the American people are cynical about what goes on here.

Mr. THOMAS. Mr. Speaker, I yield 1 minute to the gentleman from Wisconsin (Mr. RYAN), a member of the Committee on Ways and Means.

Mr. RYAN of Wisconsin. Mr. Speaker, I thank the gentleman for yielding me this time.

And I want to thank the chairman for his masterful work in bringing this bill to the floor and getting it done. This bill is designed to make our companies more competitive overseas and keep jobs here at home. There are many examples throughout this where we fix a lot of problems in our international tax laws.

One example that has been unfairly ridiculed here tonight is bows and arrows. Here is what we do here: current law, we tax domestic manufacturers from making arrows and we do not tax foreign manufacturers. So what happens? We lay people off in America. The companies go overseas, and they bring their products in tax-free. Is that good for America? Is that good for jobs?

That is a problem that is being fixed in this bill, as are so many other problems.

The point of this legislation is we are finally getting rid of these tariffs that are hitting a lot of our domestic manufacturers, a lot of our domestic industries, and costing jobs; and we are making American jobs more competitive in the international marketplace. That is a good thing, especially in this tough time of global competition.

I thank the chairman for doing this. And what we are doing is fixing up these ugly laws and making our businesses more competitive in the international marketplace and saving American jobs.

Mr. RANGEL. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, I thank the chairman of the Ways and Means Committee and chairman of the whole conference for having a major tax bill come to the floor, not in the middle of the night, but at least nine or ten o'clock, which is a courtesy. I only wish that he had given the Members of the House an opportunity to at least see the bill, but that is asking for too much. But, again, I want to thank him that he did get it on the Web site, and it is going to encourage a lot of Members on both sides to get more computer wise. We may not ever know what is in these tax bills; but we are learning, in the few minutes that we do have, what they do have in this tax bill.

So remember, for people who do not know what they are getting and who is getting the benefits or whether it is tax related or not, if someone wants to say "thank you" or they are sorry that they missed me, go to waysandmeans.house.gov.

I hope the other committees learn how to do this because I have spent 34 years here, and this seems to be a waste for us to ask what is in bills anymore since we have to go to the Web site. Or maybe we can find out how Members of the House really do not have to come down here. Just go to the Web site, ask what have they done, and if they are not a conferee, they can go to waysandmeans.house.gov.

Mr. Speaker, I yield back the balance of my time.

Mr. THOMAS. Mr. Speaker, I yield myself the balance of my time.

I want to thank all of the Members on both sides of the aisle. I want to thank the staffs on both sides of the aisle. This has been a very arduous and long journey. I think it is one of the more remarkable debates when half of the Members on the other side of the aisle taking the well say they are going to support the conference report. Apparently it was not that difficult for them to find out what was in this conference report.

It is kind of interesting that after all of the difficulties we have been through, the last comment was about process. Not about content, not about righting the wrongs that for so long should have been righted. I want to tell my friends on the other side of the aisle, I enjoyed working with them; I look forward to working with them again. Jurisdiction is not as important as righting wrongs, and we will do that.

And I want to tell the gentleman from New York that in the largest State in the Union, it is only 6:15.

I ask Members to support this conference report. Let us get this work behind us.

Mr. BLUMENAUER. Mr. Speaker, H.R. 4520 illustrates what is wrong with how we're operating in the House. In seeking a legislative solution to a relatively minor requirement to correct a problem that made our Tax Code for manufacturers conflict with our international trade obligations, the Republican leadership pushed aside a no-cost, bipartisan solution for a special-interest loaded bill that is much more expensive and complex.

The argument that H.R. 4520 is revenue-neutral is fiction. The actual cost that taxpayers will pay are hidden by delaying the starting date of some provisions and scheduling others to unrealistically end. It is certainly the intention of the sponsors of this bill to fully extend these tax cuts, which will add billions more dollars to years of projected deficits.

To compensate for its deficiencies, this bill was laden with targeted tax provisions that will secure the votes of those who represent various interests ranging from tobacco farmers to race track owners to manufacturers of bows and arrows. This has resulted in a bill with 700 pages of additional Tax-Code complexity, making it more difficult to enforce and creating a compliance nightmare for taxpayers.

This is not the way to craft tax policy. It erodes the confidence of the public, adding to their distrust of the political system and their belief that they are not being fairly treated.

Mr. MICA. Mr. Speaker, I would like to commend Chairman THOMAS and the House Ways and Means Committee for bringing the American Jobs Creation Act to the floor. I thank him for his leadership in the U.S. House of Representatives, and for his service to our Nation.

There are many excellent provisions in the bill that will assist expanding businesses, creating jobs and providing tax relief and incentives. One section of this bill provides tax credits as important incentives for investing in our class 2 and 3 railroad infrastructure. Today, short line and regional railroads—such as the Florida East Coast Railroad and the Florida Central Railroad—move freight loads that otherwise would help to clog our region's highways. More than 10,000 American businesses—employing over 1 million Americans—depend on class 2 and 3 rail services. Across the country our roadbeds, bridges and related track structures must be upgraded to ensure that we can continue to move both people and freight, safely and cost-effectively.

However, it is also important that we increase grade crossing protections and improve signalization as part of this effort to invest in our Nation's railroad infrastructure. The tax credits in H.R. 4520 will provide an important tool for increasing capacity on our railways and will help to increase jobs, lower transportation costs, consume less fuel, produce less pollution, and reduce highway congestion and accidents.

Mr. Speaker, H.R. 4520 defines qualified expenditures for maintaining railroad track to include roadbed, bridges and related track structures. It is my understanding that this definition includes signalization and grade crossing devices and protections. These tax incentives will help short line railroads improve our nation's rail infrastructure not only in my congressional district in Florida, but to all parts of our nation.

I urge my colleagues to vote "yes" on the conference report.

Mr. ROGERS of Alabama. Mr. Speaker, I rise today to discuss a provision included in the conference report that will clarify an ambiguity in the tax law.

While Congress enacts the tax law, the Internal Revenue Service is called upon to provide technical details, filling in gaps and ambiguities so that taxpayers have clear guidelines for compliance. One such case where taxpayers have had to rely on the Service to "fill in the gaps," involves the depreciation treatment of motorsports facilities. Track owners have relied for years, in good faith, on revenue procedures promulgated by the Service to determine that these facilities have a 7-year depreciable life. The Service did not question the track owners' interpretation for two decades, in countless audits and reviews of tax returns. However, within the last two years, the Service has questioned the 7-year classification.

To address this issue, the conferees have included a provision in H.R. 4520 that clarifies that motorsports facilities should be considered 7-year property for depreciation purposes. While the provision is prospective, it also includes language stating that "nothing in the amendments to this section shall be construed to affect the treatment of property placed in service on or before the date of enactment of this act." In light of this "no inference" provision, and the policy direction regarding the 7-year classification going forward, I hope that the Service will take an opportunity to pause to reexamine whether it should penalize years of good faith reliance on its own regulations. Taxpayers deserve clarity and certainty in complying with the tax code and its regulations. Good faith reliance that is implicitly approved by the Service should not be punished.

While the provision provides certainty for new investments, it expires on January 1, 2008. I am familiar with the decisions that went into drafting this provision, and Congress agrees such a change should be permanent, but because of revenue constraints we were unable to make the provision permanent in this bill. I urge Congress to revisit this issue as soon as possible to extend the provision, or, ideally, make it permanent. Doing so would provide additional needed clarity for taxpayers.

Mr. WAXMAN. Mr. Speaker, I urge my colleagues to oppose the conference report. This legislation is stuffed with special interest giveaways. It contains billions in undeserved corporate tax breaks. Even foreign gamblers who make money at dog tracks get a special tax break.

I would like to talk about one of the most egregious provisions in this bill—a $10 billion handout to tobacco growers.

This giveaway enriches hundreds of tobacco quota holders who are already millionaires. Less than 10 percent of those who benefit will take home 67 percent of the money. More than $3 billion will go to people who do not even grow tobacco. Not a dime goes to help rural communities transition away from a tobacco-based economy.

The biggest winner is the tobacco industry itself. When tobacco quotas are eliminated, U.S. production of tobacco leaf will skyrocket, and the prices will plummet. A USDA economist has estimated has estimated that lower leaf prices will generate more than a billion dollars in profits for the tobacco industry each year. This windfall will far outstrip what the companies will pay to quota holders and growers.

What will tobacco companies do with the extra cash? Some will lower prices, attracting more children. Others will expand their advertising and marketing to youth. And without legislation granting authority to the FDA to oversee the tobacco industry, there will be virtually nothing to stop them.

Congress had a historic opportunity to add legislation giving FDA jurisdiction over tobacco to this bill. The FDA provision would have outlawed candy-flavored cigarettes, cigarettes that look like crayons, and other products explicitly designed to appeal to children. It would have provided for strong government oversight of our most deadly consumer product.

But this historic opportunity was squandered. The House leadership chose profits for the tobacco industry over protecting our children from addiction, suffering, and death.

This choice is shameful, and it symbolizes the misplaced priorities of this House.

I urge my colleagues to deny a victory for tobacco companies and stand up for children and families across the country. I urge you to reject this bill and fight for strong government oversight over tobacco products.

Mr. HOLT. Mr. Speaker, I rise in opposition to this tax bill, which is full of giveaways and loopholes for the special interest. I wanted to support this bill, I support an across-the-board corporate rate reduction for income from U.S. manufacturing activities so that more manufacturing jobs are created here in the United States.

Unfortunately, this bill is not about job creation or long-term investment in research. This bill is a laundry list of expensive tax breaks.

Many of my constituents enjoy NASCAR but I do not believe that they want a $101 million tax break for NASCAR, when they are trying to figure out ow to pay for college.

While, some of my constituents have some Chinese ceiling fans, I am sure they would not want a $44 Million tax break for importers of Chinese ceiling fans, when they are trying to pay the mortgage on there homes.

Many of my constituents enjoy target shooting with bow and arrows but do the makers of bow and arrows really need the tax break that this bill provides? And even if they do should they get their tax break before we pass a tax credit for families who are trying to pay for health insurance?

This bill is a textbook example of legislative give away. What started as a modest effort in Congress to replace a $5 billion-a-year export subsidy that the WTO ruled was illegal has turned into a $145 billion, 633-page corporate tax giveaway.

As if all this were not bad enough the conference report uses a large number of gimmicks, such as long phase-ins, sunsets, and changes in scoring rules, fudge its true cost.

We know that this bill will drive us even deeper into debt. And a larger deficit is something we cannot afford. Massive deficits create high interest payments that will crowd out spending on public investments for future generations. Moreover, the resulting high interest rates make it harder for Americans to purchase homes, make college tuition payments or start business ventures.

Voting for this bill would not only be a mistake, it would be grossly negligent. Using scare resources to pay for corporate special interests, tax breaks when we have an enormous budget deficit and unmet needs like homeland security is an abdication of a responsibility to our constituents.

Ms. KILPATRICK. Mr. Speaker, I rise in opposition to H.R. 4520, the American Jobs Creation Act of 2004. The title of the conference bill is a misnomer. If enacted it will add to the loss of nearly 2.7 million manufacturing jobs. This conference bill will also increase tax incentives for large corporations to move manufacturing jobs overseas. It will increase the Federal deficit, endanger Social Security and Medicare which are directly impacted by burgeoning deficits, and limit the ability of states to fund public education in a high deficit environment.

This conference report contains enhanced benefits for offshore operations of U.S. multinational corporations that were not in the Senate or House bills. This conference report is significantly flawed because some of the taxes paid by companies operating in high tax countries will be paid by our government in the form of tax credits. The Republican majority is rigging the tax system to advantage corporate interests overseas and further eroding the federal government's ability to invest in America's families. Corporate farms will directly benefit from the manufacturing provisions in this bill, not the family farmers who desperately need help.

Finally, my opposition to this bill is based on the fact that the conference report offers a complex solution to a simple problem. Instead of pulling the tax code up by its roots, the conference bill adds hundreds of complex rules and loopholes. This conference bill contains $140 billion in gross tax breaks for companies. It is a flawed bill that will cause additional outsourcing of U.S. jobs.

Mr. Speaker, this bill has dropped the provision that was in the Rangel substitute and the Senate-passed bill that rewards companies for keeping jobs in America. This conference report makes a bad situation worse, and I urge my colleagues to join me in voting no on this measure.

Mr. BACA. Mr. Speaker, I rise in opposition to H.R. 4520, the Job Creation Act. This bill is guaranteed to do one thing—send American jobs overseas.

It is unconscionable that Congress would give a tax cut to companies that send American jobs overseas.

Corporations have outscourced three million jobs overseas, and have been rewarded with a tax break for doing so.

We should be passing legislation that creates high-quality jobs here in America.

Why continue to expand tax policies that threaten the American worker?

Under President Bush, America has lost 1.7 million private sector jobs. This calculates into a "jobs deficit" of nearly 8 million jobs in the last 42 months.

Manufacturing has been especially hard hit, with 2.8 million jobs lost, amounting to one out of six manufacturing jobs.

President Bush says things are getting better, but most of those jobs created in recent months are temporary jobs, seasonal jobs, and even part-time jobs, most of which do not normally have health and retirement benefits.

These statistics are fact, not rhetoric.

The response from the White House to these statistics is equally upsetting. Gregory Mankiw, President Bush' top economic adviser, wants to reclassify fast-food workers as manufacturing employees.

Trade is important, but we need trade and tax policies that promote a balance of both economic development and employment. A quarter of the economy of California is based on trade, but a quarter of Californians are now eligible for food stamps.

It's about balancing economic and human needs in our country.

The GAO, Boston Consulting Group, Economic Policy Institute and many other groups have come to the same conclusion—promoting the outsourcing of jobs is bad for America.

While the White House celebrates recently quarterly GDP growth, the fact is that most of it has been fueled by consumer debt and liquidation of home equity. That is hardly a solid foundation for growth.

The time for sophomoric economic policies has passed. Outsourcing may produce lower consumer costs, but what good is that if Americans don't even have jobs.

I urge my colleagues to oppose this bill simply on the outsourcing component.

Mr. KIND. Mr. Speaker, the retaliatory tariffs that the European Union has issued over our delay in complying with World Trade Organizations are hurting manufacturers all over this country, and it is past time to address this issue. Legislators on both sides of the aisle and in both the House and Senate agree on this basic premise, and it is a shame that a bill to solve this problem has been burdened with unnecessary tax incentives to corporations. I, along with many other members of Congress from both sides of the aisle have been pushing for congressional action to fix the international trade dispute over the extraterritorial income (ETI) and Foreign Sales Corporation (FSC) programs. We have a bipartisan, fully paid-for remedy that would reform these tax provisions, put the United States tax code in compliance with the World Trade Organization (WTO), and reduce the tax burden on American manufacturers and farmers. Unfortunately, the Majority leadership ignored this bipartisan approach in favor of a budget-busting, controversial bill that does little for small manufacturers in Wisconsin and includes multiple provisions completely unrelated to the trade problem we need to fix immediately.

Because of the House majority's previous inaction on reforming the FSC–ETI trade dispute, the European Union (EU) continues to ratchet up tariffs on nearly 100 categories of U.S.-produced exports. This costs American businesses and workers by making our products less competitive in the major European market. Unless we reform the FSC–ETI tax provisions, EU tariffs on American products will continue to climb, potentially costing American exporters over $4 billion.

With over two million American manufacturing jobs lost since 2001, it is critical that we act to reverse this trend by eliminating incentives for American jobs to be sent overseas and working to end trade barriers that hurt American exports. Anticipating the EU tariffs, Congressmen CRANE, RANGEL, MANZULLO and LEVIN introduced bipartisan legislation last year to address the FSC–ETI trade dispute. H.R. 1769, the Jobs Protection Act, would have eliminated the American tax breaks found in violation of WTO rules, and reinvested the savings back into American manufacturers by reducing their tax rates. I, along with 175 other members of Congress, cosponsored this legislation and have pushed for the House to consider this legislation.

Despite this bipartisan compromise, the conference agreement brought to the Floor today a fiscally irresponsible bill that is filled with special interest breaks and will increase already record budget deficits. H.R. 4520 provides over $42 billion in tax incentives for large multinational corporations while providing little to no tax relief to small and medium-sized manufacturers, farmers, and unincorporated businesses. The Republican chairman of the House Small Business Committee has expressed his opposition to this legislation because it fails to include smaller non-Chapter S corporations in its manufacturing benefit.

Furthermore, the House shamefully misses an opportunity to meaningfully reform the regulation of tobacco in this country. While I support the buyout for tobacco farmers, which will help hardworking farmers in Wisconsin, I am disappointed that the bill does not include a Senate provision giving the Food and Drug Administration authority to regulate tobacco. This hard-won provision was supported by major tobacco manufacturers as well as health advocacy groups, and the conference committee, by eliminating it, has allowed an historic opportunity to improve the health of this country pass by.

Mr. Speaker, with 2.7 million American manufacturing jobs lost over the past years, including over 80,000 in my home state of Wisconsin, we should not be playing partisan games on the House floor. We should be considering legislation that will end European tariffs on American exports, helps domestic farmers and manufacturers be more competitive, closes abused corporate tax loopholes, and does not burden our children with huge amounts of debt that they will have to pay off in the future. I urge my colleagues to oppose H.R. 4520 in its current form so that Congress can move forward on responsible ETI–FSC legislation.

Mr. UDALL of Colorado. Mr. Speaker, there is much to dislike about the process that has brought this conference report before the House, and there certainly are things to dislike in the conference report itself.

This is not the best way to do business, and this conference report certainly is not an ideal legislative produce. On the contrary, it is filled with flaws and with provisions that are unnecessary at best.

However, with all its flaws, I will vote for the conference report.

I will vote for it because we need to make the changes in tax laws needed to end the escalating retaliatory tariffs that are being imposed because our current laws are not in compliance with our international agreements. This is a matter of great urgency and this conference report responds to it.

I will vote for it because it includes provisions to encourage American corporations doing business abroad to repatriate their overseas earnings for investment here at home. This has great potential to stimulate investment in new plant and equipment as well as in the research and development that support innovation, job creation, and prosperity.

I will vote for it because I think the provisions related to foreign tax credits will increase the competitiveness of America's information-technology companies in global markets.

I will vote for it because it includes provisions to ensure that employee stock-purchase plans and incentive stock options are not subject to payroll taxes—provisions that are very important to thousands of Coloradans and the companies that employ them.

And I will vote for it because it includes provisions that will help us lessen our dependence on fossil fuels—something that is very important because clean power production provides greater reliability for our electricity system, promotes cleaner air and water, and benefits our economy and our national security.

The conference report will extend and expand the renewable energy production tax credit (PTC) to apply to other renewable energy technologies, including solar energy, geothermal energy, open-loop biomass, and small irrigation power. An extended PTC will provide more market certainty, and expanding the PTC to include solar, open-loop biomass, geothermal, and small irrigation power will ensure that all renewable energy sources can benefit.

Solar, wind, hydropower, biomass and geothermal energy are each potentially enormous energy resources. Every state has renewable energy potential. However, renewable resources are not spread uniformly across the country. Current tax law creates regional and technological inequities by failing to provide uniform benefits for all renewable energy resources. For example, the production tax credit enacted in 1992 has spurred significant new investment, but it only applies to power plants using wind power and closed-loop biomass. Allowing equal access to all the renewable energy sources will not only spur renewable energy investment, but it will also ensure that all renewable energy sources are allowed to compete fairly.

Also, importantly, I will vote for this conference report because as it stands it will not increase the deficit—meaning that as it stands it will not increase the national debt that will have to be repaid, with interest, in the future.

In making that statement, I refer to the conference report "as it stands" because I fully recognize that the present budgetary effect of the conference report reflects the fact that some of its provisions will come into effect in stages, or are temporary, or both.

I recognize—as we all recognize, Mr. Speaker—that in the future there will be proposals to extend some or all of the temporary provisions or to speed up the implementation of those that are scheduled to take effect in stages. And I recognize—as we all must—that adoption of those proposals will have budgetary consequences that should not be ignored.

So, Mr. Speaker, I want to give notice here and now that while I am voting for this conference report as it stands, I am making no commitment to supporting any of those proposals. If I still have the honor of serving in this House when any such proposal is considered, I will consider it carefully but I will not support it unless I am convinced that it merits approval.

And, further, I want to give notice here and now that my vote for this conference report should not be read as meaning that I fully support each and every one of its provisions. That is certainly not the case, and in fact I hope that I will have the opportunity to support efforts to remove or repair many of those provisions in the future.

I could cite many examples, but let me mention just one—the fact that the conference report does not included all the provisions of the Senate bill related to tobacco and tobacco products. Omission of key parts of those provisions means we are missing an opportunity to take an important step toward better health for many Americans, especially children. This is a very bitter disappointment.

Mr. Speaker, I am sure that in the days ahead there will be a great deal of public discussion of this conference report in Colorado and across the country. There will be many who will hail it as marking the dawning of a great new day. Many others will bewail parts that they think are examples of bad legislation.

I think the second group will have much ammunition. But I also am sure that the rhetoric on both sides will be excessive. My evaluation is that the bill is too flawed to be a model, but that its merits do outweigh its flaws, although not by very much.

Mr. MORAN of Kansas. Mr. Speaker, I am pleased that my colleagues on the conference committee for H.R. 4520, the American Jobs Creation Act, have, by passing this legislation, taken an important step to preserve jobs in rural Kansas and across the country. In specific, I applaud Chairman THOMAS for his inclusion of the Railroad Track Maintenance Credit.

This provision will help to preserve freight railroad infrastructure operated by short line and regional railroads. Over 12,000 manufacturing, mining, chemical and agricultural employers, who employ over one million workers in 49 states depend on short line railroads for their success. In many rural areas, such as the First District of Kansas, short lines are crucial in transporting agriculture goods and products to market. Across our country, there are over 500 short line railroads, operating nearly 50,000 miles of track, or nearly one third of the national freight rail network in the U.S.

The repercussions of certain federal regulations combined with the increasing gross weight of railroad cars have created a serious threat to the continued viability of this rail infrastructure. The Railroad Track Maintenance Credit will encourage investment to protect this important transportation link for American businesses and agriculture.

This provision originated with the introduction of H.R. 876. My colleagues also recognized the importance of short lines to their local economies, and as a result, 267 Members of the House co-sponsored this legislation.

I appreciate the conferees including a version of H.R. 876 with the railroad infrastructure provisions in H.R. 4520. These provisions will go a long way in preserving short line railroad track and keeping our local communities attached to the national rail network.

As drafted in H.R. 4520, the 50 percent tax credit available to each short line is subject to a maximum limitation. This limit is the product of $3,500 and the number of miles operated by the railroad. Credits up to this limit may be earned regardless of the length of track that is improved by the expenditures. For example, if a 100-mile railroad invests $800,000 in improving a 1,000 foot bridge span, the amount of qualified expenditures would be $800,000. The credit earned on such investment would be $400,000, or fifty percent of $800,000. The last $50,000 would be excluded as exceeding the limitation of $350,000, determined by multiplying 100 miles by $3,500. Therefore, the railroad would earn a credit of $350,000.

I believe that such a limitation will allow short line railroads to upgrade segments of track, roadbed and bridges that are in the most dire need of upgrades. At the same time, this credit will cap the potential exposure of tax revenues at a known amount: the length of a short line in miles times $3,500.

The conference committee version also includes an important provision that is a variation on the original subsection (g) proposed in H.R. 876. This provision will encourage those who depend most on short line railroads to invest directly in maintaining this critical infrastructure. Railroad customers or suppliers of railroad-related property or services may earn credits under this provision for railroad track maintenance expenditures they make in short line railroads.

I believe this provision is also critical for those two-dozen municipal or state owned railroads that are tax exempt. While those railroads cannot benefit directly from the tax credit because they are tax exempt, their customers and suppliers can still help preserve this infrastructure by investing directly.

In conclusion I want to again thank all of my colleagues who have supported our short line railroads over the past two years. I also want to thank Chairman THOMAS and the conferees for including this provision to help rural America stay connected to the national transportation network.

Mr. THOMAS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. LATOURETTE). Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. RANGEL. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 230, nays 141, not voting 12, as follows:

[Roll No. 509]

YEAS—280

Aderholt
Akin
Alexander
Bachus
Baird
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Beauprez
Bell
Berkley
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Brady (TX)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carson (OK)
Carter
Chabot
Chandler
Chocola
Clyburn
Coble
Cole
Collins
Cooper
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cunningham
Davis (AL)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Deutsch
Dicks
Dooley (CA)
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
English
Etheridge
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Ford
Fossella
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastert
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hill
Hinojosa
Hobson
Hoekstra
Hooley (OR)
Hostettler
Houghton
Hulshof
Hunter
Hyde
Inslee
Isakson
Issa
Istook
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Kaptur
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kline
Knollenberg
Kolbe
Lampson
Larsen (WA)
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Marshall
Matheson
McCotter
McCrery
McHugh
McInnis
McIntyre
McKeon
Meeks (NY)
Mica
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Moore
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Osborne
Otter
Oxley
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Ross
Royce
Ruppersberger
Ryan (WI)
Ryun (KS)
Sandlin
Saxton
Schrock
Scott (GA)
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Spratt
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Tanner
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Turner (TX)
Udall (CO)
Vitter
Walden (OR)
Walsh
Wamp
Watt
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (SC)
Wu
Wynn
Young (AK)

NAYS—141

Abercrombie
Ackerman
Allen
Andrews
Baca
Baldwin
Bass
Becerra
Berman
Bishop (NY)
Blumenauer
Bradley (NH)
Brady (PA)
Brown (OH)
Capps
Capuano
Cardin
Cardoza

Carson (IN)
Case
Castle
Clay
Conyers
Costello
Cummings
Davis (CA)
DeFazio
DeGette
Delahunt
DeLauro
Diaz-Balart, L.
Diaz-Balart, M.
Dingell
Doggett
Doyle
Emanuel
Engel
Eshoo
Evans
Farr
Fattah
Frank (MA)
Grijalva
Gutierrez
Harman
Hinchey
Hoeffel
Holden
Holt
Honda
Hoyer
Israel
Jackson (IL)
Jones (OH)
Kanjorski
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kirk
Kleczka
Kucinich
LaHood
Langevin
Lantos
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Lynch
Maloney
Markey
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McNulty
Meehan
Meek (FL)
Menendez
Michaud
Miller, George
Mollohan
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ose
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Platts
Rahall
Rangel
Rohrabacher
Ros-Lehtinen
Rothman
Roybal-Allard
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Scott (VA)
Sensenbrenner
Serrano
Sherman
Solis
Stark
Strickland
Stupak
Tauscher
Tierney
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Waters
Watson
Waxman
Weiner
Wexler
Wilson (NM)
Wolf
Woolsey
Young (FL)

NOT VOTING—12

Boehlert
Filner
Gephardt
Lipinski
Majette
Millender-McDonald
Norwood
Ortiz
Paul
Slaughter
Tauzin
Towns

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LATOURETTE) (during the vote). Members are advised 2 minutes remain in this vote.

☐ 2145

Ms. LORETTA SANCHEZ of California, Ms. CARSON of Indiana, Ms. MCCARTHY of Missouri and Mr. ROHRABACHER changed their vote from "yea" to "nay."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated against:

Mr. FILNER. Mr. Speaker, on rollcall No. 509, I was in my Congressional District on official business. Had I been present, I would have voted "nay."

GENERAL LEAVE

Mr. THOMAS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the conference report accompanying H.R. 4520.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

9/11 RECOMMENDATIONS IMPLEMENTATION ACT

The SPEAKER pro tempore. Pursuant to House Resolution 827 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 10.

☐ 2145

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 10) to provide for reform of the intelligence community, terrorism prevention and prosecution, border security, and international cooperation and coordination, and for other purposes, with Mr. NETHERCUTT (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. When the Committee of the Whole rose earlier today, all time for general debate had expired.

In lieu of the amendments printed in the bill, it shall be in order to consider as an original bill for the purpose of amendment under the 5-minute rule an amendment in the nature of a substitute consisting of the text of the Rules Committee print dated October 4, 2004. That amendment shall be considered read.

The text of the amendment in the nature of a substitute is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "9/11 Recommendations Implementation Act".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I—REFORM OF THE INTELLIGENCE COMMUNITY

Sec. 1001. Short title.

Subtitle A—Establishment of National Intelligence Director

Sec. 1011. Reorganization and improvement of management of intelligence community.
Sec. 1012. Revised definition of national intelligence.
Sec. 1013. Joint procedures for operational coordination between Department of Defense and Central Intelligence Agency.
Sec. 1014. Role of National Intelligence Director in appointment of certain officials responsible for intelligence-related activities.
Sec. 1015. Initial appointment of the National Intelligence Director.
Sec. 1016. Executive schedule matters.
Sec. 1017. Information sharing.

Subtitle B—National Counterterrorism Center and Civil Liberties Protections

Sec. 1021. National Counterterrorism Center.
Sec. 1022. Civil Liberties Protection Officer.

Subtitle C—Joint Intelligence Community Council

Sec. 1031. Joint Intelligence Community Council.

Subtitle D—Improvement of Human Intelligence (HUMINT)

Sec. 1041. Human intelligence as an increasingly critical component of the intelligence community.
Sec. 1042. Improvement of human intelligence capacity.

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This title may be cited as the "National Security Intelligence Improvement Act of 2004".

Subtitle A—Establishment of National Intelligence Director

SEC. 1011. REORGANIZATION AND IMPROVEMENT OF MANAGEMENT OF INTELLIGENCE COMMUNITY.

(a) IN GENERAL.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by striking sections 102 through 104 and inserting the following new sections:

"NATIONAL INTELLIGENCE DIRECTOR

"SEC. 102. (a) NATIONAL INTELLIGENCE DIRECTOR.—(1) There is a National Intelligence Director who shall be appointed by the President, by and with the advice and consent of the Senate.

"(2) The National Intelligence Director shall not be located within the Executive Office of the President.

"(b) PRINCIPAL RESPONSIBILITY.—Subject to the authority, direction, and control of the President, the National Intelligence Director shall—

"(1) serve as head of the intelligence community;

"(2) act as the principal adviser to the President, to the National Security Council, and the Homeland Security Council for intelligence matters related to the national security; and

"(3) through the heads of the departments containing elements of the intelligence community, and the Central Intelligence Agency, manage and oversee the execution of the National Intelligence Program and direct the National Intelligence Program.

"(c) PROHIBITION ON DUAL SERVICE.—The individual serving in the position of National Intelligence Director shall not, while so serving, also serve as the Director of the Central Intelligence Agency or as the head of any other element of the intelligence community.

"RESPONSIBILITIES AND AUTHORITIES OF THE NATIONAL INTELLIGENCE DIRECTOR

"SEC. 102A. (a) PROVISION OF INTELLIGENCE.—(1) Under the direction of the President, the National Intelligence Director shall be responsible for ensuring that national intelligence is provided—

"(A) to the President;

"(B) to the heads of departments and agencies of the executive branch;

"(C) to the Chairman of the Joint Chiefs of Staff and senior military commanders;

"(D) where appropriate, to the Senate and House of Representatives and the committees thereof; and

"(E) to such other persons as the National Intelligence Director determines to be appropriate.

"(2) Such national intelligence should be timely, objective, independent of political considerations, and based upon all sources available to the intelligence community and other appropriate entities.

"(b) ACCESS TO INTELLIGENCE.—To the extent approved by the President, the National Intelligence Director shall have access to all national intelligence and intelligence related to the national security which is collected by any Federal department, agency, or other entity, except as otherwise provided by law or, as appropriate, under guidelines agreed upon by the Attorney General and the National Intelligence Director.

"(c) BUDGET AUTHORITIES.—(1)(A) The National Intelligence Director shall develop and present to the President on an annual basis a budget for intelligence and intelligence-related activities of the United States.

"(B) In carrying out subparagraph (A) for any fiscal year for the components of the budget that comprise the National Intelligence Program, the National Intelligence Director shall provide guidance to the heads of departments containing elements of the intelligence community, and to the heads of the elements of the intelligence community, for development of budget inputs to the National Intelligence Director.

"(2)(A) The National Intelligence Director shall participate in the development by the Secretary of Defense of the annual budgets for the Joint Military Intelligence Program and for Tactical Intelligence and Related Activities.

"(B) The National Intelligence Director shall provide guidance for the development of the annual budget for each element of the intelligence community that is not within the National Intelligence Program.

"(3) In carrying out paragraphs (1) and (2), the National Intelligence Director may, as appropriate, obtain the advice of the Joint Intelligence Community Council.

"(4) The National Intelligence Director shall ensure the effective execution of the annual budget for intelligence and intelligence-related activities.

"(5)(A) The National Intelligence Director shall facilitate the management and execution of funds appropriated for the National Intelligence Program.

"(B) Notwithstanding any other provision of law, in receiving funds pursuant to relevant appropriations Acts for the National Intelligence Program, the Office of Management and Budget shall apportion funds appropriated for the National Intelligence Program to the National Intelligence Director for allocation to the elements of the intelligence community through the host executive departments that manage programs and activities that are part of the National Intelligence Program.

"(C) The National Intelligence Director shall monitor the implementation and execution of the National Intelligence Program by the heads of the elements of the intelligence community that manage programs and activities that are part of the National Intelligence Program, which may include audits and evaluations, as necessary and feasible.

"(6) Apportionment and allotment of funds under this subsection shall be subject to chapter 13 and section 1517 of title 31, United States Code, and the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 621 et seq.).

"(7)(A) The National Intelligence Director shall provide a quarterly report, beginning April 1, 2005, and ending April 1, 2007, to the President and the Congress regarding implementation of this section.

"(B) The National Intelligence Director shall report to the President and the Congress not later than 5 days after learning of any instance in which a departmental comptroller acts in a manner inconsistent with the law (including permanent statutes, authorization Acts, and appropriations Acts), or the direction of the National Intelligence Director, in carrying out the National Intelligence Program.

"(d) ROLE OF NATIONAL INTELLIGENCE DIRECTOR IN REPROGRAMMING.—(1) No funds made available under the National Intelligence Program may be transferred or reprogrammed without the prior approval of the National Intelligence Director, except in accordance with procedures prescribed by the National Intelligence Director.

"(2) The Secretary of Defense shall consult with the National Intelligence Director before transferring or reprogramming funds made available under the Joint Military Intelligence Program.

"(e) TRANSFER OF FUNDS OR PERSONNEL WITHIN NATIONAL INTELLIGENCE PROGRAM.—(1) In addition to any other authorities available under law for such purposes, the National Intelligence Director, with the approval of the Director of the Office of Management and Budget—

"(A) may transfer funds appropriated for a program within the National Intelligence Program to another such program; and

"(B) in accordance with procedures to be developed by the National Intelligence Director and the heads of the departments and agencies concerned, may transfer personnel authorized for an element of the intelligence community to another such element for periods up to one year.

"(2) The amounts available for transfer in the National Intelligence Program in any given fiscal year, and the terms and conditions governing such transfers, are subject to the provisions of annual appropriations Acts and this subsection.

"(3)(A) A transfer of funds or personnel may be made under this subsection only if—

"(i) the funds or personnel are being transferred to an activity that is a higher priority intelligence activity;

"(ii) the need for funds or personnel for such activity is based on unforeseen requirements;

"(iii) the transfer does not involve a transfer of funds to the Reserve for Contingencies of the Central Intelligence Agency;

"(iv) in the case of a transfer of funds, the transfer results in a cumulative transfer of funds out of any department or agency, as appropriate, funded in the National Intelligence Program in a single fiscal year—

"(I) that is less than $100,000,000, and

"(II) that is less than 5 percent of amounts available to a department or agency under the National Intelligence Program; and

"(v) the transfer does not terminate a program.

"(B) A transfer may be made without regard to a limitation set forth in clause (iv) or (v) of subparagraph (A) if the transfer has the concurrence of the head of the department or agency involved. The authority to provide such concurrence may only be delegated by the head of the department or agency involved to the deputy of such officer.

"(4) Funds transferred under this subsection shall remain available for the same period as the appropriations account to which transferred.

"(5) Any transfer of funds under this subsection shall be carried out in accordance with existing procedures applicable to reprogramming notifications for the appropriate congressional committees. Any proposed transfer for which notice is given to the appropriate congressional committees shall be accompanied by a report explaining the nature of the proposed transfer and how it satisfies the requirements of this subsection. In addition, the congressional intelligence committees shall be promptly notified of any transfer of funds made pursuant to this subsection in any case in which the transfer would not have otherwise required reprogramming notification under procedures in effect as of the date of the enactment of this subsection.

"(6)(A) The National Intelligence Director shall promptly submit to—

"(i) the congressional intelligence committees,

"(ii) in the case of the transfer of personnel to or from the Department of Defense, the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, and

"(iii) in the case of the transfer of personnel to or from the Department of Justice, to the Committees on the Judiciary of the Senate and the House of Representatives,

a report on any transfer of personnel made pursuant to this subsection.

"(B) The Director shall include in any such report an explanation of the nature of the transfer and how it satisfies the requirements of this subsection.

"(f) Tasking and Other Authorities.—(1)(A) The National Intelligence Director shall—

"(i) develop collection objectives, priorities, and guidance for the intelligence community to ensure timely and effective collection, processing, analysis, and dissemination (including access by users to collected data consistent with applicable law and, as appropriate, the guidelines referred to in subsection (b) and analytic products generated by or within the intelligence community) of national intelligence;

"(ii) determine and establish requirements and priorities for, and manage and direct the tasking of, collection, analysis, production, and dissemination of national intelligence by elements of the intelligence community, including—

"(I) approving requirements for collection and analysis, and

"(II) resolving conflicts in collection requirements and in the tasking of national collection assets of the elements of the intelligence community; and

"(iii) provide advisory tasking to intelligence elements of those agencies and departments not within the National Intelligence Program.

"(B) The authority of the National Intelligence Director under subparagraph (A) shall not apply—

"(i) insofar as the President so directs;

"(ii) with respect to clause (ii) of subparagraph (A), insofar as the Secretary of Defense exercises tasking authority under plans or arrangements agreed upon by the Secretary of Defense and the National Intelligence Director; or

"(iii) to the direct dissemination of information to State government and local government officials and private sector entities pursuant to sections 201 and 892 of the Homeland Security Act of 2002 (6 U.S.C. 121, 482).

"(2) The National Intelligence Director shall oversee the National Counterterrorism Center and may establish such other national intelligence centers as the Director determines necessary.

"(3)(A) The National Intelligence Director shall prescribe community-wide personnel policies that—

"(i) facilitate assignments across community elements and to the intelligence centers;

"(ii) establish overarching standards for intelligence education and training; and

"(iii) promote the most effective analysis and collection of intelligence by ensuring a diverse workforce, including the recruitment and training of women, minorities, and individuals with diverse, ethnic, and linguistic backgrounds.

"(B) In developing the policies prescribed under subparagraph (A), the National Intelligence Director shall consult with the heads of the departments containing the elements of the intelligence community.

"(C) Policies prescribed under subparagraph (A) shall not be inconsistent with the personnel policies otherwise applicable to members of the uniformed services.

"(4) The National Intelligence Director shall ensure compliance with the Constitution and laws of the United States by the Central Intelligence Agency and shall ensure such compliance by other elements of the intelligence community through the host executive departments that manage the programs and activities that are part of the National Intelligence Program.

"(5) The National Intelligence Director shall ensure the elimination of waste and unnecessary duplication within the intelligence community.

"(6) The National Intelligence Director shall perform such other functions as the President may direct.

"(7) Nothing in this title shall be construed as affecting the role of the Department of Justice or the Attorney General with respect to applications under the Foreign Intelligence Surveillance Act of 1978.

"(g) Intelligence Information Sharing.—(1) The National Intelligence Director shall have principal authority to ensure maximum availability of and access to intelligence information within the intelligence community consistent with national security requirements. The National Intelligence Director shall—

"(A) establish uniform security standards and procedures;

"(B) establish common information technology standards, protocols, and interfaces;

"(C) ensure development of information technology systems that include multi-level security and intelligence integration capabilities; and

"(D) establish policies and procedures to resolve conflicts between the need to share intelligence information and the need to protect intelligence sources and methods.

"(2) The President shall ensure that the National Intelligence Director has all necessary support and authorities to fully and effectively implement paragraph (1).

"(3) Except as otherwise directed by the President or with the specific written agreement of the head of the department or agency in question, a Federal agency or official shall not be considered to have met any obligation to provide any information, report, assessment, or other material (including unevaluated intelligence information) to that department or agency solely by virtue of having provided that information, report, assessment, or other material to the National Intelligence Director or the National Counterterrorism Center.

"(4) Not later than February 1 of each year, the National Intelligence Director shall submit to the President and to the Congress an annual report that identifies any statute, regulation, policy, or practice that the Director believes impedes the ability of the Director to fully and effectively implement paragraph (1).

"(h) Analysis.—(1) The National Intelligence Director shall ensure that all elements of the intelligence community strive for the most accurate analysis of intelligence derived from all sources to support national security needs.

"(2) The National Intelligence Director shall ensure that intelligence analysis generally receives the highest priority when distributing resources within the intelligence community and shall carry out duties under this subsection in a manner that—

"(A) develops all-source analysis techniques;

"(B) ensures competitive analysis;

"(C) ensures that differences in judgment are fully considered and brought to the attention of policymakers; and

"(D) builds relationships between intelligence collectors and analysts to facilitate greater understanding of the needs of analysts.

"(i) Protection of Intelligence Sources and Methods.—(1) In order to protect intelligence sources and methods from unauthorized disclosure and, consistent with that protection, to maximize the dissemination of intelligence, the National Intelligence Director shall establish and implement guidelines for the intelligence community for the following purposes:

"(A) Classification of information.

"(B) Access to and dissemination of intelligence, both in final form and in the form when initially gathered.

"(C) Preparation of intelligence products in such a way that source information is removed to allow for dissemination at the lowest level of classification possible or in unclassified form to the extent practicable.

"(2) The Director may only delegate a duty or authority given the Director under this subsection to the Deputy National Intelligence Director.

"(j) Uniform Procedures for Sensitive Compartmented Information.—The President, acting through the National Intelligence Director, shall—

"(1) establish uniform standards and procedures for the grant of access to sensitive compartmented information to any officer or employee of any agency or department of the United States and to employees of contractors of those agencies or departments;

"(2) ensure the consistent implementation of those standards and procedures throughout such agencies and departments;

"(3) ensure that security clearances granted by individual elements of the intelligence community are recognized by all elements of the intelligence community, and under contracts entered into by those agencies; and

"(4) ensure that the process for investigation and adjudication of an application for access to sensitive compartmented information is performed in the most expeditious manner possible consistent with applicable standards for national security.

"(k) COORDINATION WITH FOREIGN GOVERNMENTS.—Under the direction of the President and in a manner consistent with section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927), the National Intelligence Director shall oversee the coordination of the relationships between elements of the intelligence community and the intelligence or security services of foreign governments on all matters involving intelligence related to the national security or involving intelligence acquired through clandestine means.

"(l) ENHANCED PERSONNEL MANAGEMENT.—(1)(A) The National Intelligence Director shall, under regulations prescribed by the Director, provide incentives for personnel of elements of the intelligence community to serve—

"(i) on the staff of the National Intelligence Director;

"(ii) on the staff of the national intelligence centers;

"(iii) on the staff of the National Counterterrorism Center; and

"(iv) in other positions in support of the intelligence community management functions of the Director.

"(B) Incentives under subparagraph (A) may include financial incentives, bonuses, and such other awards and incentives as the Director considers appropriate.

"(2)(A) Notwithstanding any other provision of law, the personnel of an element of the intelligence community who are assigned or detailed under paragraph (1)(A) to service under the National Intelligence Director shall be promoted at rates equivalent to or better than personnel of such element who are not so assigned or detailed.

"(B) The Director may prescribe regulations to carry out this section.

"(3)(A) The National Intelligence Director shall prescribe mechanisms to facilitate the rotation of personnel of the intelligence community through various elements of the intelligence community in the course of their careers in order to facilitate the widest possible understanding by such personnel of the variety of intelligence requirements, methods, users, and capabilities.

"(B) The mechanisms prescribed under subparagraph (A) may include the following:

"(i) The establishment of special occupational categories involving service, over the course of a career, in more than one element of the intelligence community.

"(ii) The provision of rewards for service in positions undertaking analysis and planning of operations involving two or more elements of the intelligence community.

"(iii) The establishment of requirements for education, training, service, and evaluation that involve service in more than one element of the intelligence community.

"(C) It is the sense of Congress that the mechanisms prescribed under this subsection should, to the extent practical, seek to duplicate for civilian personnel within the intelligence community the joint officer management policies established by chapter 38 of title 10, United States Code, and the other amendments made by title IV of the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99-433).

"(4)(A) This subsection shall not apply with respect to personnel of the elements of the intelligence community who are members of the uniformed services or law enforcement officers (as that term is defined in section 5541(3) of title 5, United States Code).

"(B) Assignment to the Office of the National Intelligence Director of commissioned officers of the Armed Forces shall be considered a joint-duty assignment for purposes of the joint officer management policies prescribed by chapter 38 of title 10, United States Code, and other provisions of that title.

"(m) ADDITIONAL AUTHORITY WITH RESPECT TO PERSONNEL.—(1) In addition to the authorities under subsection (f)(3), the National Intelligence Director may exercise with respect to the personnel of the Office of the National Intelligence Director any authority of the Director of the Central Intelligence Agency with respect to the personnel of the Central Intelligence Agency under the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.), and other applicable provisions of law, as of the date of the enactment of this subsection to the same extent, and subject to the same conditions and limitations, that the Director of the Central Intelligence Agency may exercise such authority with respect to personnel of the Central Intelligence Agency.

"(2) Employees and applicants for employment of the Office of the National Intelligence Director shall have the same rights and protections under the Office of the National Intelligence Director as employees of the Central Intelligence Agency have under the Central Intelligence Agency Act of 1949, and other applicable provisions of law, as of the date of the enactment of this subsection.

"(n) ACQUISITION AUTHORITIES.—(1) In carrying out the responsibilities and authorities under this section, the National Intelligence Director may exercise the acquisition authorities referred to in the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.).

"(2) For the purpose of the exercise of any authority referred to in paragraph (1), a reference to the head of an agency shall be deemed to be a reference to the National Intelligence Director or the Deputy National Intelligence Director.

"(3)(A) Any determination or decision to be made under an authority referred to in paragraph (1) by the head of an agency may be made with respect to individual purchases and contracts or with respect to classes of purchases or contracts, and shall be final.

"(B) Except as provided in subparagraph (C), the National Intelligence Director or the Deputy National Intelligence Director may, in such official's discretion, delegate to any officer or other official of the Office of the National Intelligence Director any authority to make a determination or decision as the head of the agency under an authority referred to in paragraph (1).

"(C) The limitations and conditions set forth in section 3(d) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403c(d)) shall apply to the exercise by the National Intelligence Director of an authority referred to in paragraph (1).

"(D) Each determination or decision required by an authority referred to in the second sentence of section 3(d) of the Central Intelligence Agency Act of 1949 shall be based upon written findings made by the official making such determination or decision, which findings shall be final and shall be available within the Office of the National Intelligence Director for a period of at least six years following the date of such determination or decision.

"(o) CONSIDERATION OF VIEWS OF ELEMENTS OF THE INTELLIGENCE COMMUNITY.—In carrying out the duties and responsibilities under this section, the National Intelligence Director shall take into account the views of a head of a department containing an element of the intelligence community and of the Director of the Central Intelligence Agency.

"OFFICE OF THE NATIONAL INTELLIGENCE DIRECTOR

"SEC. 103. (a) ESTABLISHMENT OF OFFICE; FUNCTION.—(1) There is an Office of the National Intelligence Director. The Office of the National Intelligence Director shall not be located within the Executive Office of the President.

"(2) The function of the Office is to assist the National Intelligence Director in carrying out the duties and responsibilities of the Director under this Act and to carry out such other duties as may be prescribed by the President or by law.

"(3) Any authority, power, or function vested by law in any officer, employee, or part of the Office of the National Intelligence Director is vested in, or may be exercised by, the National Intelligence Director.

"(4) Exemptions, exceptions, and exclusions for the Central Intelligence Agency or for personnel, resources, or activities of such Agency from otherwise applicable laws, other than the exception contained in section 104A(c)(1) shall apply in the same manner to the Office of the National Intelligence Director and the personnel, resources, or activities of such Office.

"(b) OFFICE OF NATIONAL INTELLIGENCE DIRECTOR.—(1) The Office of the National Intelligence Director is composed of the following:

"(A) The National Intelligence Director.

"(B) The Deputy National Intelligence Director.

"(C) The Deputy National Intelligence Director for Operations.

"(D) The Deputy National Intelligence Director for Community Management and Resources.

"(E) The Associate National Intelligence Director for Military Support.

"(F) The Associate National Intelligence Director for Domestic Security.

"(G) The Associate National Intelligence Director for Diplomatic Affairs.

"(H) The Associate National Intelligence Director for Science and Technology.

"(I) The National Intelligence Council.

"(J) The General Counsel to the National Intelligence Director.

"(K) Such other offices and officials as may be established by law or the National Intelligence Director may establish or designate in the Office.

"(2) To assist the National Intelligence Director in fulfilling the duties and responsibilities of the Director, the Director shall employ and utilize in the Office of the National Intelligence Director a staff having expertise in matters relating to such duties and responsibilities and may establish permanent positions and appropriate rates of pay with respect to such staff.

"(c) DEPUTY NATIONAL INTELLIGENCE DIRECTOR.—(1) There is a Deputy National Intelligence Director who shall be appointed by the President, by and with the advice and consent of the Senate.

"(2) The Deputy National Intelligence Director shall assist the National Intelligence Director in carrying out the responsibilities of the National Intelligence Director under this Act.

"(3) The Deputy National Intelligence Director shall act for, and exercise the powers of, the National Intelligence Director during the absence or disability of the National Intelligence Director or during a vacancy in the position of the National Intelligence Director.

"(4) The Deputy National Intelligence Director takes precedence in the Office of the National Intelligence Director immediately after the National Intelligence Director.

"(d) Deputy National Intelligence Director for Operations.—(1) There is a Deputy National Intelligence Director for Operations.

"(2) The Deputy National Intelligence Director for Operations shall—

"(A) assist the National Intelligence Director in all aspects of intelligence operations, including intelligence tasking, requirements, collection, and analysis;

"(B) assist the National Intelligence Director in overseeing the national intelligence centers; and

"(C) perform such other duties and exercise such powers as National Intelligence Director may prescribe.

"(e) Deputy National Intelligence Director for Community Management and Resources.—(1) There is a Deputy National Intelligence Director for Community Management and Resources.

"(2) The Deputy National Intelligence Director for Community Management and Resources shall—

"(A) assist the National Intelligence Director in all aspects of management and resources, including administration, budgeting, information security, personnel, training, and programmatic functions; and

"(B) perform such other duties and exercise such powers as the National Intelligence Director may prescribe.

"(f) Associate National Intelligence Director for Military Support.—(1) There is an Associate National Intelligence Director for Military Support who shall be appointed by the National Intelligence Director, in consultation with the Secretary of Defense.

"(2) The Associate National Intelligence Director for Military Support shall—

"(A) ensure that the intelligence needs of the Department of Defense are met; and

"(B) perform such other duties and exercise such powers as the National Intelligence Director may prescribe.

"(g) Associate National Intelligence Director for Domestic Security.—(1) There is an Associate National Intelligence Director for Domestic Security who shall be appointed by the National Intelligence Director in consultation with the Attorney General and the Secretary of Homeland Security.

"(2) The Associate National Intelligence Director for Domestic Security shall—

"(A) ensure that the intelligence needs of the Department of Justice, the Department of Homeland Security, and other relevant executive departments and agencies are met; and

"(B) perform such other duties and exercise such powers as the National Intelligence Director may prescribe, except that the National Intelligence Director may not make such officer responsible for disseminating any domestic or homeland security information to State government or local government officials or any private sector entity.

"(h) Associate National Intelligence Director for Diplomatic Affairs.—(1) There is an Associate National Intelligence Director for Diplomatic Affairs who shall be appointed by the National Intelligence Director in consultation with the Secretary of State.

"(2) The Associate National Intelligence Director for Diplomatic Affairs shall—

"(A) ensure that the intelligence needs of the Department of State are met; and

"(B) perform such other duties and exercise such powers as the National Intelligence Director may prescribe.

"(i) Associate National Intelligence Director for Science and Technology.—(1) There is an Associate National Intelligence Director for Science and Technology who shall be appointed by the National Intelligence Director.

"(2) The Associate National Intelligence Director for Science and Technology shall—

"(A) advise the National Intelligence Director regarding research and development efforts and priorities in support of the intelligence mission, to ensure that the science and technology needs of the National Intelligence Program will be met;

"(B) develop in consultation with appropriate agencies and the Associate National Intelligence Directors for Military Support, Domestic Security, and Diplomatic Affairs a strategic plan to support United States leadership in science and technology to facilitate intelligence missions; and

"(C) perform such other duties and exercise such powers as the National Intelligence Director may prescribe.

"(j) Military Status of Director and Deputy Directors.—(1) Not more than one of the individuals serving in the positions specified in paragraph (2) may be a commissioned officer of the Armed Forces in active status.

"(2) The positions referred to in this paragraph are the following:

"(A) The National Intelligence Director.

"(B) The Deputy National Intelligence Director.

"(3) It is the sense of Congress that, under ordinary circumstances, it is desirable that one of the individuals serving in the positions specified in paragraph (2)—

"(A) be a commissioned officer of the Armed Forces, in active status; or

"(B) have, by training or experience, an appreciation of military intelligence activities and requirements.

"(4) A commissioned officer of the Armed Forces, while serving in a position specified in paragraph (2)—

"(A) shall not be subject to supervision or control by the Secretary of Defense or by any officer or employee of the Department of Defense;

"(B) shall not exercise, by reason of the officer's status as a commissioned officer, any supervision or control with respect to any of the military or civilian personnel of the Department of Defense except as otherwise authorized by law; and

"(C) shall not be counted against the numbers and percentages of commissioned officers of the rank and grade of such officer authorized for the military department of that officer.

"(5) Except as provided in subparagraph (A) or (B) of paragraph (4), the appointment of an officer of the Armed Forces to a position specified in paragraph (2) shall not affect the status, position, rank, or grade of such officer in the Armed Forces, or any emolument, perquisite, right, privilege, or benefit incident to or arising out of such status, position, rank, or grade.

"(6) A commissioned officer of the Armed Forces on active duty who is appointed to a position specified in paragraph (2), while serving in such position and while remaining on active duty, shall continue to receive military pay and allowances and shall not receive the pay prescribed for such position. Funds from which such pay and allowances are paid shall be reimbursed from funds available to the National Intelligence Director.

"(k) National Intelligence Council.—(1) There is a National Intelligence Council.

"(2)(A) The National Intelligence Council shall be composed of senior analysts within the intelligence community and substantive experts from the public and private sector, who shall be appointed by, report to, and serve at the pleasure of, the National Intelligence Director.

"(B) The Director shall prescribe appropriate security requirements for personnel appointed from the private sector as a condition of service on the Council, or as contractors of the Council or employees of such contractors, to ensure the protection of intelligence sources and methods while avoiding, wherever possible, unduly intrusive requirements which the Director considers to be unnecessary for this purpose.

"(3) The National Intelligence Council shall—

"(A) produce national intelligence estimates for the United States Government, including alternative views held by elements of the intelligence community;

"(B) evaluate community-wide collection and production of intelligence by the intelligence community and the requirements and resources of such collection and production; and

"(C) otherwise assist the National Intelligence Director in carrying out the responsibilities of the Director.

"(4) Within their respective areas of expertise and under the direction of the National Intelligence Director, the members of the National Intelligence Council shall constitute the senior intelligence advisers of the intelligence community for purposes of representing the views of the intelligence community within the United States Government.

"(5) Subject to the direction and control of the National Intelligence Director, the National Intelligence Council may carry out its responsibilities under this subsection by contract, including contracts for substantive experts necessary to assist the Council with particular assessments under this subsection.

"(6) The National Intelligence Director shall make available to the National Intelligence Council such personnel as may be necessary to permit the Council to carry out its responsibilities under this subsection.

"(7)(A) The National Intelligence Director shall take appropriate measures to ensure that the National Intelligence Council and its staff satisfy the needs of policymaking officials and other consumers of intelligence.

"(B) The Council shall be readily accessible to policymaking officials and other appropriate individuals not otherwise associated with the intelligence community.

"(8) The heads of the elements of the intelligence community shall, as appropriate, furnish such support to the National Intelligence Council, including the preparation of intelligence analyses, as may be required by the National Intelligence Director.

"(l) General Counsel to the National Intelligence Director.—(1) There is a General Counsel to the National Intelligence Director.

"(2) The individual serving in the position of General Counsel to the National Intelligence Director may not, while so serving, also serve as the General Counsel of any other agency or department of the United States.

"(3) The General Counsel to the National Intelligence Director is the chief legal officer for the National Intelligence Director.

"(4) The General Counsel to the National Intelligence Director shall perform such functions as the National Intelligence Director may prescribe.

"(m) Intelligence Community Information Technology Officer.—(1) There is an

Intelligence Community Information Technology Officer who shall be appointed by the National Intelligence Director.

“(2) The mission of the Intelligence Community Information Technology Officer is to assist the National Intelligence Director in ensuring the sharing of information in the fullest and most prompt manner between and among elements of the intelligence community consistent with section 102A(g).

“(3) The Intelligence Community Information Technology Officer shall—

“(A) consult with the National Intelligence Director who shall provide guidance to the heads of the department containing elements of the intelligence community and heads of the elements of the intelligence community as appropriate;

“(B) assist the Deputy National Intelligence Director for Community Management and Resources in developing and implementing the Information Sharing Environment (ISE) established under section 1017 of the 9/11 Recommendations Implementation Act;

“(C) develop an enterprise architecture for the intelligence community and assist the National Intelligence Director through the Deputy National Intelligence Director for Community Management and Resources in ensuring that elements of the intelligence community comply with such architecture;

“(D) have procurement approval authority over all enterprise architecture-related information technology items funded in the National Intelligence Program;

“(E) ensure that all such elements have the most direct and continuous electronic access to all information (including unevaluated intelligence consistent with existing laws and the guidelines referred to in section 102A(b)) necessary for appropriately cleared analysts to conduct comprehensive all-source analysis and for appropriately cleared policymakers to perform their duties—

“(i) directly, in the case of the elements of the intelligence community within the National Intelligence Program, and

“(ii) in conjunction with the Secretary of Defense and other applicable heads of departments with intelligence elements outside the National Intelligence Program;

“(F) review and provide recommendations to the Deputy National Intelligence Director for Community Management and Resources on National Intelligence Program budget requests for information technology and national security systems;

“(G) assist the Deputy National Intelligence Director for Community Management and Resources in promulgating and enforcing standards on information technology and national security systems that apply throughout the elements of the intelligence community;

“(H) ensure that within and between the elements of the National Intelligence Program, duplicative and unnecessary information technology and national security systems are eliminated; and

“(I) pursuant to the direction of the National Intelligence Director, consult with the Director of the Office of Management and Budget to ensure that the Office of the National Intelligence Director coordinates and complies with national security requirements consistent with applicable law, Executive orders, and guidance; and

“(J) perform such other duties with respect to the information systems and information technology of the Office of the National Intelligence Director as may be prescribed by the Deputy National Intelligence Director for Community Management and Resources or specified by law.

“(n) COUNTERINTELLIGENCE OFFICER TO THE NATIONAL INTELLIGENCE DIRECTOR.—(1) There is a Counterintelligence Officer to the National Intelligence Director who shall be appointed by the National Intelligence Director.

“(2) The mission of the Counterintelligence Officer to the National Intelligence Director is to assist the National Intelligence Director in reducing the threats of disclosure or loss of classified or sensitive information or penetration of national intelligence functions that may be potentiated by increased information sharing, enterprise architectures, or other activities under this Act.

“(3) The Counterintelligence Officer to the National Intelligence Director shall—

“(A) assist the Deputy National Intelligence Director for Community Management and Resources in developing and implementing counterintelligence policies for the functions of the Office of the National Intelligence Director, in consultation with the Associate National Intelligence Directors;

“(B) ensure that policies under subparagraph (A) and the implementation of those policies are coordinated with counterintelligence activities of appropriate agencies and elements of the National Intelligence Program, and with the activities of the Intelligence Community Information Officer;

“(C) review resource requirements to support the mission of the Counterintelligence Officer under this subsection and make recommendations to the Deputy National Intelligence Director for Community Management and Resources with respect to those requirements; and

“(D) perform such other duties as the National Intelligence Director shall prescribe.

“CENTRAL INTELLIGENCE AGENCY

“SEC. 104. (a) CENTRAL INTELLIGENCE AGENCY.—There is a Central Intelligence Agency.

“(b) FUNCTION.—The function of the Central Intelligence Agency is to assist the Director of the Central Intelligence Agency in carrying out the responsibilities specified in section 104A(c).

“DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY

“SEC. 104A. (a) DIRECTOR OF CENTRAL INTELLIGENCE AGENCY.—There is a Director of the Central Intelligence Agency who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be under the authority, direction, and control of the National Intelligence Director, except as otherwise determined by the President.

“(b) DUTIES.—In the capacity as Director of the Central Intelligence Agency, the Director of the Central Intelligence Agency shall—

“(1) carry out the responsibilities specified in subsection (c); and

“(2) serve as the head of the Central Intelligence Agency.

“(c) RESPONSIBILITIES.—The Director of the Central Intelligence Agency shall—

“(1) collect intelligence through human sources and by other appropriate means, except that the Director of the Central Intelligence Agency shall have no police, subpoena, or law enforcement powers or internal security functions;

“(2) provide overall direction for the collection of national intelligence overseas or outside the United States through human sources by elements of the intelligence community authorized to undertake such collection and, in coordination with other agencies of the Government which are authorized to undertake such collection, ensure that the most effective use is made of resources and that the risks to the United States and those involved in such collection are minimized;

“(3) correlate and evaluate intelligence related to the national security and provide appropriate dissemination of such intelligence;

“(4) perform such additional services as are of common concern to the elements of the intelligence community, which services the National Intelligence Director determines can be more efficiently accomplished centrally; and

“(5) perform such other functions and duties related to intelligence affecting the national security as the President or the National Intelligence Director may direct.

“(d) DEPUTY DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY.—There is a Deputy Director of the Central Intelligence Agency who shall be appointed by the President. The Deputy Director shall perform such functions as the Director may prescribe and shall perform the duties of the Director during the Director's absence or disability or during a vacancy in the position of the Director of the Central Intelligence Agency.

“(e) TERMINATION OF EMPLOYMENT OF CIA EMPLOYEES.—(1) Notwithstanding the provisions of any other law, the Director of the Central Intelligence Agency may, in the discretion of the Director, terminate the employment of any officer or employee of the Central Intelligence Agency whenever the Director considers the termination of employment of such officer or employee necessary or advisable in the interests of the United States.

“(2) Any termination of employment of an officer or employee under paragraph (1) shall not affect the right of the officer or employee to seek or accept employment in any other department, agency, or element of the United States Government if declared eligible for such employment by the Office of Personnel Management.”.

(b) FIRST DIRECTOR.—(1) When the Senate receives the nomination of a person for the initial appointment by the President for the position of National Intelligence Director, it shall consider and dispose of such nomination within a period of 30 legislative days.

(2) If the Senate does not dispose of such nomination referred to in paragraph (1) within such period—

(A) Senate confirmation is not required; and

(B) the appointment of such nominee as National Intelligence Director takes effect upon administration of the oath of office.

(3) For the purposes of this subsection, the term “legislative day” means a day on which the Senate is in session.

SEC. 1012. REVISED DEFINITION OF NATIONAL INTELLIGENCE.

Paragraph (5) of section 3 of the National Security Act of 1947 (50 U.S.C. 401a) is amended to read as follows:

“(5) The terms ‘national intelligence’ and ‘intelligence related to national security’ refer to all intelligence, regardless of the source from which derived and including information gathered within or outside the United States, that—

“(A) pertains, as determined consistent with any guidance issued by the President, to more than one United States Government agency; and

“(B) that involves—

“(i) threats to the United States, its people, property, or interests;

“(ii) the development, proliferation, or use of weapons of mass destruction; or "(iii) any other matter bearing on United States national or homeland security.".

SEC. 1013. JOINT PROCEDURES FOR OPERATIONAL COORDINATION BETWEEN DEPARTMENT OF DEFENSE AND CENTRAL INTELLIGENCE AGENCY.

(a) DEVELOPMENT OF PROCEDURES.—The National Intelligence Director, in consultation with the Secretary of Defense and the Director of the Central Intelligence Agency, shall develop joint procedures to be used by the Department of Defense and the Central Intelligence Agency to improve the coordination and deconfliction of operations that involve elements of both the Armed Forces and the Central Intelligence Agency consistent with national security and the protection of human intelligence sources and methods. Those procedures shall, at a minimum, provide the following:

(1) Methods by which the Director of the Central Intelligence Agency and the Secretary of Defense can improve communication and coordination in the planning, execution, and sustainment of operations, including, as a minimum—

(A) information exchange between senior officials of the Central Intelligence Agency and senior officers and officials of the Department of Defense when planning for such an operation commences by either organization; and

(B) exchange of information between the Secretary and the Director of the Central Intelligence Agency to ensure that senior operational officials in both the Department of Defense and the Central Intelligence Agency have knowledge of the existence of the ongoing operations of the other.

(2) When appropriate, in cases where the Department of Defense and the Central Intelligence Agency are conducting separate missions in the same geographical area, mutual agreement on the tactical and strategic objectives for the region and a clear delineation of operational responsibilities to prevent conflict and duplication of effort.

(b) IMPLEMENTATION REPORT.—Not later than 180 days after the date of the enactment of the Act, the National Intelligence Director shall submit to the congressional defense committees (as defined in section 101 of title 10, United States Code) and the congressional intelligence committees (as defined in section 3(7) of the National Security Act of 1947 (50 U.S.C. 401a(7))) a report describing the procedures established pursuant to subsection (a) and the status of the implementation of those procedures.

SEC. 1014. ROLE OF NATIONAL INTELLIGENCE DIRECTOR IN APPOINTMENT OF CERTAIN OFFICIALS RESPONSIBLE FOR INTELLIGENCE-RELATED ACTIVITIES.

Section 106 of the National Security Act of 1947 (50 U.S.C. 403-6) is amended by striking all after the heading and inserting the following:

"(a) RECOMMENDATION OF NID IN CERTAIN APPOINTMENTS.—(1) In the event of a vacancy in a position referred to in paragraph (2), the National Intelligence Director shall recommend to the President an individual for nomination to fill the vacancy.

"(2) Paragraph (1) applies to the following positions:

"(A) The Deputy National Intelligence Director.

"(B) The Director of the Central Intelligence Agency.

"(b) CONCURRENCE OF NID IN APPOINTMENTS TO POSITIONS IN THE INTELLIGENCE COMMUNITY.—(1) In the event of a vacancy in a position referred to in paragraph (2), the head of the department or agency having jurisdiction over the position shall obtain the concurrence of the National Intelligence Director before appointing an individual to fill the vacancy or recommending to the President an individual to be nominated to fill the vacancy. If the Director does not concur in the recommendation, the head of the department or agency concerned may not fill the vacancy or make the recommendation to the President (as the case may be). In the case in which the National Intelligence Director does not concur in such a recommendation, the Director and the head of the department or agency concerned may advise the President directly of the intention to withhold concurrence or to make a recommendation, as the case may be.

"(2) Paragraph (1) applies to the following positions:

"(A) The Director of the National Security Agency.

"(B) The Director of the National Reconnaissance Office.

"(C) The Director of the National Geospatial-Intelligence Agency.

"(c) CONSULTATION WITH NATIONAL INTELLIGENCE DIRECTOR IN CERTAIN POSITIONS.—(1) In the event of a vacancy in a position referred to in paragraph (2), the head of the department or agency having jurisdiction over the position shall consult with the National Intelligerce Director before appointing an individual to fill the vacancy or recommending to the President an individual to be nominated to fill the vacancy.

"(2) Paragraph (1) applies to the following positions:

"(A) The Director of the Defense Intelligence Agency.

"(B) The Assistant Secretary of State for Intelligence and Research.

"(C) The Director of the Office of Intelligence of the Department of Energy.

"(D) The Director of the Office of Counterintelligence of the Department of Energy.

"(E) The Assistant Secretary for Intelligence and Analysis of the Department of the Treasury.

"(F) The Executive Assistant Director for Intelligence of the Federal Bureau of Investigation or successor.

"(G) The Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection.

"(H) The Deputy Assistant Commandant of the Coast Guard for Intelligence.

SEC. 1015. INITIAL APPOINTMENT OF THE NATIONAL INTELLIGENCE DIRECTOR.

(a) INITIAL APPOINTMENT OF THE NATIONAL INTELLIGENCE DIRECTOR.—Notwithstanding section 102(a)(1) of the National Security Act of 1947, as added by section 1011(a), the individual serving as the Director of Central Intelligence on the date immediately preceding the date of the enactment of this Act may, at the discretion of the President, become the initial National Intelligence Director.

(b) GENERAL REFERENCES.—(1) Any reference to the Director of Central Intelligence in the Director's capacity as the head of the intelligence community in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the National Intelligence Director.

(2) Any reference to the Director of Central Intelligence in the Director's capacity as the head of the Central Intelligence Agency in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the Director of the Central Intelligence Agency.

(3) Any reference to the Deputy Director of Central Intelligence in the Deputy Director's capacity as deputy to the head of the intelligence community in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the Deputy National Intelligence Director.

(4) Any reference to the Deputy Director of Central Intelligence for Community Management in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the Deputy National Intelligence Director for Community Management and Resources.

SEC. 1016. EXECUTIVE SCHEDULE MATTERS.

(a) EXECUTIVE SCHEDULE LEVEL I.—Section 5312 of title 5, United States Code, is amended by adding the end the following new item:

"National Intelligence Director.".

(b) EXECUTIVE SCHEDULE LEVEL II.—Section 5313 of title 5, United States Code, is amended by adding at the end the following new items:

"Deputy National Intelligence Director.

"Director of the National Counterterrorism Center.".

(c) EXECUTIVE SCHEDULE LEVEL IV.—Section 5315 of title 5, United States Code, is amended by striking the item relating to the Assistant Directors of Central Intelligence.

SEC. 1017. INFORMATION SHARING.

(a) FINDINGS.—Congress makes the following findings:

(1) The effective use of information, from all available sources, is essential to the fight against terror and the protection of our homeland.

(2) The United States Government has access to a vast amount of information, including not only traditional intelligence but also other government databases, such as those containing customs or immigration information.

(3) In the period preceding September 11, 2001, there were instances of potentially helpful information that was available but that no person knew to ask for; information that was distributed only in compartmented channels, and information that was requested but could not be shared.

(4) The current system, in which each intelligence agency has its own security practices, requires a demonstrated "need to know" before sharing.

(5) The National Intelligence Director should pursue setting an executable government-wide security mode policy of "right-to-share," one based on a proven blend of both integrity and access control models and supported by applicable law. No single agency can create a meaningful government-wide information sharing system on its own.

(b) ESTABLISHMENT OF INFORMATION SHARING ENVIRONMENT.—The President shall establish a secure information sharing environment (ISE) for the sharing of intelligence and related information in a manner consistent with national security and the protection of privacy and civil liberties. The information sharing environment (ISE) shall be based on clearly defined and consistently applied policies and procedures, and valid investigative, analytical, and operational requirements.

Subtitle B—National Counterterrorism Center and Civil Liberties Protections

SEC. 1021. NATIONAL COUNTERTERRORISM CENTER.

(a) IN GENERAL.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by adding at the end the following new section:

"NATIONAL COUNTERTERRORISM CENTER

"SEC. 119. (a) ESTABLISHMENT OF CENTER.—There is within the Office of the National Intelligence Director a National Counterterrorism Center.

"(b) DIRECTOR OF NATIONAL COUNTERTERRORISM CENTER.—There is a Director of the National Counterterrorism Center, who shall be the head of the National Counterterrorism Center, who shall be appointed by National Intelligence Director.

"(c) SUPERVISION.—The Director of the National Counterterrorism Center shall report to the National Intelligence Director on—

"(1) the budget and programs of the National Counterterrorism Center;

"(2) the activities of the Directorate of Intelligence of the National Counterterrorism Center under subsection (h);

"(3) the conduct of intelligence operations implemented by other elements of the intelligence community; and

"(4) the planning and progress of joint counterterrorism operations (other than intelligence operations).

The National Intelligence Director shall carry out this section through the Deputy National Intelligence Director for Operations.

"(d) PRIMARY MISSIONS.—The primary missions of the National Counterterrorism Center shall be as follows:

"(1) To serve as the primary organization in the United States Government for analyzing and integrating all intelligence possessed or acquired by the United States Government pertaining to terrorism and counterterrorism, excepting intelligence pertaining exclusively to domestic terrorists and domestic counterterrorism.

"(2) To conduct strategic operational planning for counterterrorism activities, integrating all instruments of national power, including diplomatic, financial, military, intelligence, homeland security, and law enforcement activities within and among agencies.

"(3) To assign roles and missions responsibilities as part of the its strategic operational planning duties to lead Departments or agencies, as appropriate, for counterterrorism activities that are consistent with applicable law and that support counterterrorism strategic plans, but shall not direct the execution of any resulting operations.

"(4) To ensure that agencies, as appropriate, have access to and receive all-source intelligence support needed to execute their counterterrorism plans or perform independent, alternative analysis.

"(5) To ensure that such agencies have access to and receive intelligence needed to accomplish their assigned activities.

"(6) To serve as the central and shared knowledge bank on known and suspected terrorists and international terror groups, as well as their goals, strategies, capabilities, and networks of contacts and support.

"(e) DOMESTIC COUNTERTERRORISM INTELLIGENCE.—(1) The Center may, consistent with applicable law, the direction of the President, and the guidelines referred to in section 102A(b), receive intelligence pertaining exclusively to domestic counterterrorism from any Federal, State, or local government or other source necessary to fulfill its responsibilities and retain and disseminate such intelligence.

"(2) Any agency authorized to conduct counterterrorism activities may request information from the Center to assist it in its responsibilities, consistent with applicable law and the guidelines referred to in section 102A(b).

"(f) DUTIES AND RESPONSIBILITIES OF DIRECTOR.—The Director of the National Counterterrorism Center shall—

"(1) serve as the principal adviser to the National Intelligence Director on intelligence operations relating to counterterrorism;

"(2) provide strategic guidance and plans for the civilian and military counterterrorism efforts of the United States Government and for the effective integration of counterterrorism intelligence and operations across agency boundaries, both inside and outside the United States;

"(3) advise the National Intelligence Director on the extent to which the counterterrorism program recommendations and budget proposals of the departments, agencies, and elements of the United States Government conform to the priorities established by the President;

"(4) disseminate terrorism information, including current terrorism threat analysis, to the President, the Vice President, the Secretaries of State, Defense, and Homeland Security, the Attorney General, the Director of the Central Intelligence Agency, and other officials of the executive branch as appropriate, and to the appropriate committees of Congress;

"(5) support the Department of Justice and the Department of Homeland Security, and other appropriate agencies, in fulfillment of their responsibilities to disseminate terrorism information, consistent with applicable law, guidelines referred to in section 102A(b), Executive Orders and other Presidential guidance, to State and local government officials, and other entities, and coordinate dissemination of terrorism information to foreign governments as approved by the National Intelligence Director;

"(6) consistent with priorities approved by the President, assist the National Intelligence Director in establishing requirements for the intelligence community for the collection of terrorism information; and

"(7) perform such other duties as the National Intelligence Director may prescribe or are prescribed by law.

"(g) LIMITATION.—The Director of the National Counterterrorism Center may not direct the execution of counterterrorism operations.

"(h) RESOLUTION OF DISPUTES.—The National Intelligence Director shall resolve disagreements between the National Counterterrorism Center and the head of a department, agency, or element of the United States Government on designations, assignments, plans, or responsibilities. The head of such a department, agency, or element may appeal the resolution of the disagreement by the National Intelligence Director to the President.

"(i) DIRECTORATE OF INTELLIGENCE.—The Director of the National Counterterrorism Center shall establish and maintain within the National Counterterrorism Center a Directorate of Intelligence which shall have primary responsibility within the United States Government for analysis of terrorism and terrorist organizations (except for purely domestic terrorism and domestic terrorist organizations) from all sources of intelligence, whether collected inside or outside the United States.

"(j) DIRECTORATE OF STRATEGIC PLANNING.—The Director of the National Counterterrorism Center shall establish and maintain within the National Counterterrorism Center a Directorate of Strategic Planning which shall provide strategic guidance and plans for counterterrorism operations conducted by the United States Government.".

(b) CLERICAL AMENDMENT.—The table of sections for the National Security Act of 1947 is amended by inserting after the item relating to section 118 the following new item:

"Sec. 119. National Counterterrorism Center.".

SEC. 1022. CIVIL LIBERTIES PROTECTION OFFICER.

(a) CIVIL LIBERTIES PROTECTION OFFICER.—(1) Within the Office of the National Intelligence Director, there is a Civil Liberties Protection Officer who shall be appointed by the National Intelligence Director.

(2) The Civil Liberties Protection Officer shall report directly to the National Intelligence Director.

(b) DUTIES.—The Civil Liberties Protection Officer shall—

(1) ensure that the protection of civil liberties and privacy is appropriately incorporated in the policies and procedures developed for and implemented by the Office of the National Intelligence Director and the elements of the intelligence community within the National Intelligence Program;

(2) oversee compliance by the Office and the National Intelligence Director with requirements under the Constitution and all laws, regulations, Executive orders, and implementing guidelines relating to civil liberties and privacy;

(3) review and assess complaints and other information indicating possible abuses of civil liberties and privacy in the administration of the programs and operations of the Office and the National Intelligence Director and, as appropriate, investigate any such complaint or information;

(4) ensure that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;

(5) ensure that personal information contained in a system of records subject to section 552a of title 5, United States Code (popularly referred to as the 'Privacy Act'), is handled in full compliance with fair information practices as set out in that section;

(6) conduct privacy impact assessments when appropriate or as required by law; and

(7) perform such other duties as may be prescribed by the National Intelligence Director or specified by law.

(c) USE OF AGENCY INSPECTORS GENERAL.—When appropriate, the Civil Liberties Protection Officer may refer complaints to the Office of Inspector General having responsibility for the affected element of the department or agency of the intelligence community to conduct an investigation under paragraph (3) of subsection (b).

Subtitle C—Joint Intelligence Community Council

SEC. 1031. JOINT INTELLIGENCE COMMUNITY COUNCIL.

(a) ESTABLISHMENT.—(1) There is hereby established a Joint Intelligence Community Council.

(b) FUNCTIONS.—(1) The Joint Intelligence Community Council shall provide advice to the National Intelligence Director as appropriate.

(2) The National Intelligence Director shall consult with the Joint Intelligence Community Council in developing guidance for the development of the annual National Intelligence Program budget.

(c) MEMBERSHIP.—The Joint Intelligence Community Council shall consist of the following:

(1) The National Intelligence Director, who shall chair the Council.

(2) The Secretary of State.

(3) The Secretary of the Treasury.

(4) The Secretary of Defense.

(5) The Attorney General.

(6) The Secretary of Energy.

(7) The Secretary of Homeland Security.

(8) Such other officials of the executive branch as the President may designate.

Subtitle D—Improvement of Human Intelligence (HUMINT)

SEC. 1041. HUMAN INTELLIGENCE AS AN INCREASINGLY CRITICAL COMPONENT OF THE INTELLIGENCE COMMUNITY.

It is a sense of Congress that—

(1) the human intelligence officers of the intelligence community have performed admirably and honorably in the face of great personal dangers;

(2) during an extended period of unprecedented investment and improvements in technical collection means, the human intelligence capabilities of the United States have not received the necessary and commensurate priorities;

(3) human intelligence is becoming an increasingly important capability to provide information on the asymmetric threats to the national security of the United States;

(4) the continued development and improvement of a robust and empowered and flexible human intelligence work force is critical to identifying, understanding, and countering the plans and intentions of the adversaries of the United States; and

(5) an increased emphasis on, and resources applied to, enhancing the depth and breadth of human intelligence capabilities of the United States intelligence community must be among the top priorities of the National Intelligence Director.

SEC. 1042. IMPROVEMENT OF HUMAN INTELLIGENCE CAPACITY.

Not later than 6 months after the date of the enactment of this Act, the National Intelligence Director shall submit to Congress a report on existing human intelligence (HUMINT) capacity which shall include a plan to implement changes, as necessary, to accelerate improvements to, and increase the capacity of, HUMINT across the intelligence community.

Subtitle E—Improvement of Education for the Intelligence Community

SEC. 1051. MODIFICATION OF OBLIGATED SERVICE REQUIREMENTS UNDER NATIONAL SECURITY EDUCATION PROGRAM.

(a) IN GENERAL.—(1) Subsection (b)(2) of section 802 of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902) is amended to read as follows:

"(2) will meet the requirements for obligated service described in subsection (j); and".

(2) Such section is further amended by adding at the end the following new subsection:

"(j) REQUIREMENTS FOR OBLIGATED SERVICE IN THE GOVERNMENT.—(1) Each recipient of a scholarship or a fellowship under the program shall work in a specified national security position. In this subsection, the term 'specified national security position' means a position of a department or agency of the United States that the Secretary certifies is appropriate to use the unique language and region expertise acquired by the recipient pursuant to the study for which scholarship or fellowship assistance (as the case may be) was provided under the program.

"(2) Each such recipient shall commence work in a specified national security position as soon as practicable but in no case later than two years after the completion by the recipient of the study for which scholarship or fellowship assistance (as the case may be) was provided under the program.

"(3) Each such recipient shall work in a specified national security position for a period specified by the Secretary, which period shall include—

"(A) in the case of a recipient of a scholarship, one year of service for each year, or portion thereof, for which such scholarship assistance was provided, and

"(B) in the case of a recipient of a fellowship, not less than one nor more than three years for each year, or portion thereof, for which such fellowship assistance was provided.

"(4) Recipients shall seek specified national security positions as follows:

"(A) In the Department of Defense or in any element of the intelligence community.

"(B) In the Department of State or in the Department of Homeland Security, if the recipient demonstrates to the Secretary that no position is available in the Department of Defense or in any element of the intelligence community.

"(C) In any other Federal department or agency not referred to in subparagraphs (A) and (B), if the recipient demonstrates to the Secretary that no position is available in a Federal department or agency specified in such paragraphs.";

(b) REGULATIONS.—The Secretary of Defense shall prescribe regulations to carry out subsection (j) of section 802 of the David L. Boren National Security Education Act of 1991, as added by subsection (a). In prescribing such regulations, the Secretary shall establish standards that recipients of scholarship and fellowship assistance under the program under section 802 of the David L. Boren National Security Education Act of 1991 are required to demonstrate in order to satisfy the requirement of a good faith effort to gain employment as required under such subsection.

(c) APPLICABILITY.—(1) The amendments made by subsection (a) shall apply with respect to service agreements entered into under the David L. Boren National Security Education Act of 1991 on or after the date of the enactment of this Act.

(2) The amendments made by subsection (a) shall not affect the force, validity, or terms of any service agreement entered into under the David L. Boren National Security Education Act of 1991 before the date of the enactment of this Act that is in force as of that date.

SEC. 1052. IMPROVEMENTS TO THE NATIONAL FLAGSHIP LANGUAGE INITIATIVE.

(a) INCREASE IN ANNUAL AUTHORIZATION OF APPROPRIATIONS.—(1) Title VIII of the Intelligence Authorization Act for Fiscal Year 1992 (Public Law 102–183; 105 Stat. 1271), as amended by section 311(c) of the Intelligence Authorization Act for Fiscal Year 1994 (Public Law 103–178; 107 Stat. 2037) and by section 333(b) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2397), is amended in subsection (a) of section 811 by striking "there is authorized to be appropriated to the Secretary for each fiscal year, beginning with fiscal year 2003, $10,000,000," and inserting "there is authorized to be appropriated to the Secretary for each of fiscal years 2003 and 2004, $10,000,000, and for fiscal year 2005 and each subsequent fiscal year, $12,000,000,".

(2) Subsection (b) of such section is amended by inserting "for fiscal years 2003 and 2004 only" after "authorization of appropriations under subsection (a)".

(b) REQUIREMENT FOR EMPLOYMENT AGREEMENTS.—(1) Section 802(i) of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902(i)) is amended by adding at the end the following new paragraph:

"(5)(A) In the case of an undergraduate or graduate student that participates in training in programs under paragraph (1), the student shall enter into an agreement described in subsection (b), other than such a student who has entered into such an agreement pursuant to subparagraph (A)(ii) or (B)(ii) of section 802(a)(1).

"(B) In the case of an employee of an agency or department of the Federal Government that participates in training in programs under paragraph (1), the employee shall agree in writing—

"(i) to continue in the service of the agency or department of the Federal Government employing the employee for the period of such training;

"(ii) to continue in the service of such agency or department employing the employee following completion of such training for a period of two years for each year, or part of the year, of such training;

"(iii) to reimburse the United States for the total cost of such training (excluding the employee's pay and allowances) provided to the employee if, before the completion by the employee of the training, the employment of the employee by the agency or department is terminated due to misconduct by the employee or by the employee voluntarily; and

"(iv) to reimburse the United States if, after completing such training, the employment of the employee by the agency or department is terminated either by the agency or department due to misconduct by the employee or by the employee voluntarily, before the completion by the employee of the period of service required in clause (ii), in an amount that bears the same ratio to the total cost of the training (excluding the employee's pay and allowances) provided to the employee as the unserved portion of such period of service bears to the total period of service under clause (ii).

"(C) Subject to subparagraph (D), the obligation to reimburse the United States under an agreement under subparagraph (A) is for all purposes a debt owing the United States.

"(D) The head of an element of the intelligence community may release an employee, in whole or in part, from the obligation to reimburse the United States under an agreement under subparagraph (A) when, in the discretion of the head of the element, the head of the element determines that equity or the interests of the United States so require.".

(2) The amendment made by paragraph (1) shall apply to training that begins on or after the date that is 90 days after the date of the enactment of this Act.

(c) INCREASE IN THE NUMBER OF PARTICIPATING EDUCATIONAL INSTITUTIONS.—The Secretary of Defense shall take such steps as the Secretary determines will increase the number of qualified educational institutions that receive grants under the National Flagship Language Initiative to establish, operate, or improve activities designed to train students in programs in a range of disciplines to achieve advanced levels of proficiency in those foreign languages that the Secretary identifies as being the most critical in the interests of the national security of the United States.

(d) CLARIFICATION OF AUTHORITY TO SUPPORT STUDIES ABROAD.—Educational institutions that receive grants under the National Flagship Language Initiative may support students who pursue total immersion foreign language studies overseas of foreign languages that are critical to the national security of the United States.

SEC. 1053. ESTABLISHMENT OF SCHOLARSHIP PROGRAM FOR ENGLISH LANGUAGE STUDIES FOR HERITAGE COMMUNITY CITIZENS OF THE UNITED STATES WITHIN THE NATIONAL SECURITY EDUCATION PROGRAM.

(a) SCHOLARSHIP PROGRAM FOR ENGLISH LANGUAGE STUDIES FOR HERITAGE COMMUNITY CITIZENS OF THE UNITED STATES.—(1) Subsection (a)(1) of section 802 of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902) is amended—

(A) by striking "and" at the end of subparagraph (C);

(B) by striking the period at the end of subparagraph (D) and inserting "; and"; and

(C) by adding at the end the following new subparagraph:

"(E) awarding scholarships to students who—

"(i) are United States citizens who—

"(I) are native speakers (commonly referred to as heritage community residents) of a foreign language that is identified as critical to the national security interests of the United States who should be actively recruited for employment by Federal security agencies with a need for linguists; and

"(II) are not proficient at a professional level in the English language with respect to reading, writing, and interpersonal skills required to carry out the national security interests of the United States, as determined by the Secretary,

to enable such students to pursue English language studies at an institution of higher education of the United States to attain proficiency in those skills; and

"(ii) enter into an agreement to work in a national security position or work in the field of education in the area of study for which the scholarship was awarded in a similar manner (as determined by the Secretary) as agreements entered into pursuant to subsection (b)(2)(A).".

(2) The matter following subsection (a)(2) of such section is amended—

(A) in the first sentence, by inserting "or for the scholarship program under paragraph (1)(E)" after "under paragraph (1)(D) for the National Flagship Language Initiative described in subsection (i)"; and

(B) by adding at the end the following: "For the authorization of appropriations for the scholarship program under paragraph (1)(E), see section 812.".

(3) Section 803(d)(4)(E) of such Act (50 U.S.C. 1903(d)(4)(E)) is amended by inserting before the period the following: "and section 802(a)(1)(E) (relating to scholarship programs for advanced English language studies by heritage community residents)".

(b) FUNDING.—The David L. Boren National Security Education Act of 1991 (50 U.S.C. 1901 et seq.) is amended by adding at the end the following new section:

"SEC. 812. FUNDING FOR SCHOLARSHIP PROGRAM FOR CERTAIN HERITAGE COMMUNITY RESIDENTS.

"There is authorized to be appropriated to the Secretary for each fiscal year, beginning with fiscal year 2005, $4,000,000, to carry out the scholarship programs for English language studies by certain heritage community residents under section 802(a)(1)(E).

SEC. 1054. SENSE OF CONGRESS WITH RESPECT TO LANGUAGE AND EDUCATION FOR THE INTELLIGENCE COMMUNITY; REPORTS.

(a) SENSE OF CONGRESS.—It is the sense of Congress that there should be within the Office of the National Intelligence Director a senior official responsible to assist the National Intelligence Director in carrying out the Director's responsibilities for establishing policies and procedure for foreign language education and training of the intelligence community. The duties of such official should include the following:

(1) Overseeing and coordinating requirements for foreign language education and training of the intelligence community.

(2) Establishing policy, standards, and priorities relating to such requirements.

(3) Identifying languages that are critical to the capability of the intelligence community to carry out national security activities of the United States.

(4) Monitoring the allocation of resources for foreign language education and training in order to ensure the requirements of the intelligence community with respect to foreign language proficiency are met.

(b) REPORTS.—Not later than one year after the date of the enactment of this Act, the National Intelligence Director shall submit to Congress the following reports:

(1) A report that identifies—

(A) skills and processes involved in learning a foreign language; and

(B) characteristics and teaching techniques that are most effective in teaching foreign languages.

(2)(A) A report that identifies foreign language heritage communities, particularly such communities that include speakers of languages that are critical to the national security of the United States.

(B) For purposes of subparagraph (A), the term "foreign language heritage community" means a community of residents or citizens of the United States—

(i) who are native speakers of, or who have fluency in, a foreign language; and

(ii) who should be actively recruited for employment by Federal security agencies with a need for linguists.

(3) A report on—

(A) the estimated cost of establishing a program under which the heads of elements of the intelligence community agree to repay employees of the intelligence community for any student loan taken out by that employee for the study of foreign languages critical for the national security of the United States; and

(B) the effectiveness of such a program in recruiting and retaining highly qualified personnel in the intelligence community.

SEC. 1055. ADVANCEMENT OF FOREIGN LANGUAGES CRITICAL TO THE INTELLIGENCE COMMUNITY.

(a) IN GENERAL.—Title X of the National Security Act of 1947 (50 U.S.C.) is amended—

(1) by inserting before section 1001 (50 U.S.C. 441g) the following:

"Subtitle A—Science and Technology";

and

(2) by adding at the end the following new subtitles:

"Subtitle B—Foreign Languages Program

"PROGRAM ON ADVANCEMENT OF FOREIGN LANGUAGES CRITICAL TO THE INTELLIGENCE COMMUNITY

"SEC. 1011. (a) ESTABLISHMENT OF PROGRAM.—The Secretary of Defense and the National Intelligence Director may jointly establish a program to advance foreign languages skills in languages that are critical to the capability of the intelligence community to carry out national security activities of the United States (hereinafter in this subtitle referred to as the 'Foreign Languages Program').

"(b) IDENTIFICATION OF REQUISITE ACTIONS.—In order to carry out the Foreign Languages Program, the Secretary of Defense and the National Intelligence Director shall jointly determine actions required to improve the education of personnel in the intelligence community in foreign languages that are critical to the capability of the intelligence community to carry out national security activities of the United States to meet the long-term intelligence needs of the United States.

"EDUCATION PARTNERSHIPS

"SEC. 1012. (a) IN GENERAL.—In carrying out the Foreign Languages Program, the head of a department or agency containing an element of an intelligence community entity may enter into one or more education partnership agreements with educational institutions in the United States in order to encourage and enhance the study of foreign languages that are critical to the capability of the intelligence community to carry out national security activities of the United States in educational institutions.

"(b) ASSISTANCE PROVIDED UNDER EDUCATIONAL PARTNERSHIP AGREEMENTS.—Under an educational partnership agreement entered into with an educational institution pursuant to this section, the head of an element of an intelligence community entity may provide the following assistance to the educational institution:

"(1) The loan of equipment and instructional materials of the element of the intelligence community entity to the educational institution for any purpose and duration that the head determines to be appropriate.

"(2) Notwithstanding any other provision of law relating to transfers of surplus property, the transfer to the educational institution of any computer equipment, or other equipment, that is—

"(A) commonly used by educational institutions;

"(B) surplus to the needs of the entity; and

"(C) determined by the head of the element to be appropriate for support of such agreement.

"(3) The provision of dedicated personnel to the educational institution—

"(A) to teach courses in foreign languages that are critical to the capability of the intelligence community to carry out national security activities of the United States; or

"(B) to assist in the development of such courses and materials for the institution.

"(4) The involvement of faculty and students of the educational institution in research projects of the element of the intelligence community entity.

"(5) Cooperation with the educational institution in developing a program under which students receive academic credit at the educational institution for work on research projects of the element of the intelligence community entity.

"(6) The provision of academic and career advice and assistance to students of the educational institution.

"(7) The provision of cash awards and other items that the head of the element of the intelligence community entity determines to be appropriate.

"VOLUNTARY SERVICES

"SEC. 1013. (a) AUTHORITY TO ACCEPT SERVICES.—Notwithstanding section 1342 of title 31, United States Code, and subject to subsection (b), the Foreign Languages Program under section 1011 shall include authority for the head of an element of an intelligence community entity to accept from any individual who is dedicated personnel (as defined in section 1016(3)) voluntary services in support of the activities authorized by this subtitle.

"(b) REQUIREMENTS AND LIMITATIONS.—(1) In accepting voluntary services from an individual under subsection (a), the head of the element shall—

"(A) supervise the individual to the same extent as the head of the element would supervise a compensated employee of that element providing similar services; and

"(B) ensure that the individual is licensed, privileged, has appropriate educational or experiential credentials, or is otherwise qualified under applicable law or regulations to provide such services.

"(2) In accepting voluntary services from an individual under subsection (a), the head of an element of the intelligence community entity may not—

"(A) place the individual in a policy-making position, or other position performing inherently government functions; or

"(B) compensate the individual for the provision of such services.

"(c) AUTHORITY TO RECRUIT AND TRAIN INDIVIDUALS PROVIDING SERVICES.—The head of an element of an intelligence community entity may recruit and train individuals to provide voluntary services accepted under subsection (a).

"(d) STATUS OF INDIVIDUALS PROVIDING SERVICES.—(1) Subject to paragraph (2), while providing voluntary services accepted under subsection (a) or receiving training under subsection (c), an individual shall be considered to be an employee of the Federal Government only for purposes of the following provisions of law:

"(A) Section 552a of title 5, United States Code (relating to maintenance of records on individuals).

"(B) Chapter 11 of title 18, United States Code (relating to conflicts of interest).

"(2)(A) With respect to voluntary services accepted under paragraph (1) provided by an individual that are within the scope of the services so accepted, the individual is deemed to be a volunteer of a governmental entity or nonprofit institution for purposes of the Volunteer Protection Act of 1997 (42 U.S.C. 14501 et seq.).

"(B) In the case of any claim against such an individual with respect to the provision of such services, section 4(d) of such Act (42 U.S.C. 14503(d)) shall not apply.

"(3) Acceptance of voluntary services under this section shall have no bearing on the issuance or renewal of a security clearance.

"(e) REIMBURSEMENT OF INCIDENTAL EXPENSES.—(1) The head of an element of the intelligence community entity may reimburse an individual for incidental expenses incurred by the individual in providing voluntary services accepted under subsection (a). The head of an element of the intelligence community entity shall determine which expenses are eligible for reimbursement under this subsection.

"(2) Reimbursement under paragraph (1) may be made from appropriated or nonappropriated funds.

"(f) AUTHORITY TO INSTALL EQUIPMENT.—(1) The head of an element of the intelligence community may install telephone lines and any necessary telecommunication equipment in the private residences of individuals who provide voluntary services accepted under subsection (a).

"(2) The head of an element of the intelligence community may pay the charges incurred for the use of equipment installed under paragraph (1) for authorized purposes.

"(3) Notwithstanding section 1348 of title 31, United States Code, the head of an element of the intelligence community entity may use appropriated funds or nonappropriated funds of the element in carrying out this subsection.

"REGULATIONS

"SEC. 1014. (a) IN GENERAL.—The Secretary of Defense and the National Intelligence Director jointly shall promulgate regulations necessary to carry out the Foreign Languages Program authorized under this subtitle.

"(b) ELEMENTS OF THE INTELLIGENCE COMMUNITY.—Each head of an element of an intelligence community entity shall prescribe regulations to carry out sections 1012 and 1013 with respect to that element including the following:

"(1) Procedures to be utilized for the acceptance of voluntary services under section 1013.

"(2) Procedures and requirements relating to the installation of equipment under section 1013(g).

"DEFINITIONS

"SEC. 1015. In this subtitle:

"(1) The term 'intelligence community entity' means an agency, office, bureau, or element referred to in subparagraphs (B) through (K) of section 3(4).

"(2) The term 'educational institution' means—

"(A) a local educational agency (as that term is defined in section 9101(26) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(26))),

"(B) an institution of higher education (as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002) other than institutions referred to in subsection (a)(1)(C) of such section), or

"(C) any other nonprofit institution that provides instruction of foreign languages in languages that are critical to the capability of the intelligence community to carry out national security activities of the United States.

"(3) The term 'dedicated personnel' means employees of the intelligence community and private citizens (including former civilian employees of the Federal Government who have been voluntarily separated, and members of the United States Armed Forces who have been honorably discharged or generally discharged under honorable circumstances, and rehired on a voluntary basis specifically to perform the activities authorized under this subtitle).

"Subtitle C—Additional Education Provisions

"ASSIGNMENT OF INTELLIGENCE COMMUNITY PERSONNEL AS LANGUAGE STUDENTS

"SEC. 1021. (a) IN GENERAL.—(1) The National Intelligence Director, acting through the heads of the elements of the intelligence community, may provide for the assignment of military and civilian personnel described in paragraph (2) as students at accredited professional, technical, or other institutions of higher education for training at the graduate or undergraduate level in foreign languages required for the conduct of duties and responsibilities of such positions.

"(2) Personnel referred to in paragraph (1) are personnel of the elements of the intelligence community who serve in analysts positions in such elements and who require foreign language expertise required for the conduct of duties and responsibilities of such positions.

"(b) AUTHORITY FOR REIMBURSEMENT OF COSTS OF TUITION AND TRAINING.—(1) The Director may reimburse an employee assigned under subsection (a) for the total cost of the training described in subsection (a), including costs of educational and supplementary reading materials.

"(2) The authority under paragraph (1) shall apply to employees who are assigned on a full-time or part-time basis.

"(3) Reimbursement under paragraph (1) may be made from appropriated or nonappropriated funds.

"(c) RELATIONSHIP TO COMPENSATION AS AN ANALYST.—Reimbursement under this section to an employee who is an analyst is in addition to any benefits, allowances, travels, or other compensation the employee is entitled to by reason of serving in such an analyst position.".

(b) CLERICAL AMENDMENT.—The table of contents for the National Security Act of 1947 is amended by striking the item relating to section 1001 and inserting the following new items:

"Subtitle A—Science and Technology

"Sec. 1001. Scholarships and work-study for pursuit of graduate degrees in science and technology.

"Subtitle B—Foreign Languages Program

"Sec. 1011. Program on advancement of foreign languages critical to the intelligence community.
"Sec. 1012. Education partnerships.
"Sec. 1013. Voluntary services.
"Sec. 1014. Regulations.
"Sec. 1015. Definitions.

"Subtitle C—Additional Education Provisions

"Sec. 1021. Assignment of intelligence community personnel as language students.".

SEC. 1056. PILOT PROJECT FOR CIVILIAN LINGUIST RESERVE CORPS.

(a) PILOT PROJECT.—The National Intelligence Director shall conduct a pilot project to establish a Civilian Linguist Reserve Corps comprised of United States citizens with advanced levels of proficiency in foreign languages who would be available upon a call of the President to perform such service or duties with respect to such foreign languages in the Federal Government as the President may specify.

(b) CONDUCT OF PROJECT.—Taking into account the findings and recommendations contained in the report required under section 325 of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 116 Stat. 2393), in conducting the pilot project under subsection (a) the National Intelligence Director shall—

(1) identify several foreign languages that are critical for the national security of the United States;

(2) identify United States citizens with advanced levels of proficiency in those foreign languages who would be available to perform the services and duties referred to in subsection (a); and

(3) implement a call for the performance of such services and duties.

(c) DURATION OF PROJECT.—The pilot project under subsection (a) shall be conducted for a three-year period.

(d) AUTHORITY TO ENTER INTO CONTRACTS.—The National Intelligence Director may enter into contracts with appropriate agencies or entities to carry out the pilot project under subsection (a).

(e) REPORTS.—(1) The National Intelligence Director shall submit to Congress an initial and a final report on the pilot project conducted under subsection (a).

(2) Each report required under paragraph (1) shall contain information on the operation of the pilot project, the success of the pilot project in carrying out the objectives of the establishment of a Civilian Linguist Reserve Corps, and recommendations for the

continuation or expansion of the pilot project.

(3) The final report shall be submitted not later than 6 months after the completion of the project.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the National Intelligence Director such sums as are necessary for each of fiscal years 2005, 2006, and 2007 in order to carry out the pilot project under subsection (a).

SEC. 1057. CODIFICATION OF ESTABLISHMENT OF THE NATIONAL VIRTUAL TRANSLATION CENTER.

(a) IN GENERAL.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.), as amended by section 1021(a), is further amended by adding at the end the following new section:

"NATIONAL VIRTUAL TRANSLATION CENTER

"SEC. 120. (a) IN GENERAL.—There is an element of the intelligence community known as the National Virtual Translation Center under the direction of the National Intelligence Director.

"(b) FUNCTION.—The National Virtual Translation Center shall provide for timely and accurate translations of foreign intelligence for all other elements of the intelligence community.

"(c) FACILITATING ACCESS TO TRANSLATIONS.—In order to minimize the need for a central facility for the National Virtual Translation Center, the Center shall—

"(1) use state-of-the-art communications technology;

"(2) integrate existing translation capabilities in the intelligence community; and

"(3) use remote-connection capacities.

"(d) USE OF SECURE FACILITIES.—Personnel of the National Virtual Translation Center may carry out duties of the Center at any location that—

"(1) has been certified as a secure facility by an agency or department of the United States; and

"(2) the National Intelligence Director determines to be appropriate for such purpose.".

(b) CLERICAL AMENDMENT.—The table of sections for that Act, as amended by section 1021(b), is further amended by inserting after the item relating to section 119 the following new item:

"Sec. 120. National Virtual Translation Center.".

SEC. 1058. REPORT ON RECRUITMENT AND RETENTION OF QUALIFIED INSTRUCTORS OF THE DEFENSE LANGUAGE INSTITUTE.

(a) STUDY.—The Secretary of Defense shall conduct a study on methods to improve the recruitment and retention of qualified foreign language instructors at the Foreign Language Center of the Defense Language Institute. In conducting the study, the Secretary shall consider, in the case of a foreign language instructor who is an alien, to expeditiously adjust the status of the alien from a temporary status to that of an alien lawfully admitted for permanent residence.

(b) REPORT.—(1) Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the appropriate congressional committees a report on the study conducted under subsection (a), and shall include in that report recommendations for such changes in legislation and regulation as the Secretary determines to be appropriate.

(2) DEFINITION.—In this subsection, the term "appropriate congressional committees" means the following:

(A) The Select Committee on Intelligence and the Committee on Armed Services of the Senate.

(B) The Permanent Select Committee on Intelligence and the Committee on Armed Services of the House of Representatives.

Subtitle F—Additional Improvements of Intelligence Activities

SEC. 1061. PERMANENT EXTENSION OF CENTRAL INTELLIGENCE AGENCY VOLUNTARY SEPARATION INCENTIVE PROGRAM.

(a) EXTENSION OF PROGRAM.—Section 2 of the Central Intelligence Agency Voluntary Separation Pay Act (50 U.S.C. 403-4 note) is amended—

(1) by striking subsection (f); and

(2) by redesignating subsections (g) and (h) as subsections (f) and (g), respectively.

(b) TERMINATION OF FUNDS REMITTANCE REQUIREMENT.—(1) Section 2 of such Act (50 U.S.C. 403-4 note) is further amended by striking subsection (i).

(2) Section 4(a)(2)(B)(ii) of the Federal Workforce Restructuring Act of 1994 (5 U.S.C. 8331 note) is amended by striking ", or section 2 of the Central Intelligence Agency Voluntary Separation Pay Act (Public Law 103-36; 107 Stat. 104)".

SEC. 1062. NATIONAL SECURITY AGENCY EMERGING TECHNOLOGIES PANEL.

The National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended by adding at the end the following new section:

"SEC. 19. (a) There is established the National Security Agency Emerging Technologies Panel. The panel is a standing panel of the National Security Agency. The panel shall be appointed by, and shall report directly to, the Director.

"(b) The National Security Agency Emerging Technologies Panel shall study and assess, and periodically advise the Director on, the research, development, and application of existing and emerging science and technology advances, advances on encryption, and other topics.

"(c) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply with respect to the National Security Agency Emerging Technologies Panel.".

SEC. 1063. SERVICE AND NATIONAL LABORATORIES AND THE INTELLIGENCE COMMUNITY.

The National Intelligence Director, in cooperation with the Secretary of Defense and the Secretary of Energy, should seek to ensure that each service laboratory of the Department of Defense and each national laboratory of the Department of Energy may, acting through the relevant Secretary and in a manner consistent with the missions and commitments of the laboratory—

(1) assist the National Intelligence Director in all aspects of technical intelligence, including research, applied sciences, analysis, technology evaluation and assessment, and any other aspect that the relevant Secretary considers appropriate; and

(2) make available to the intelligence community, on a community-wide basis—

(A) the analysis and production services of the service and national laboratories, in a manner that maximizes the capacity and services of such laboratories; and

(B) the facilities and human resources of the service and national laboratories, in a manner that improves the technological capabilities of the intelligence community.

SEC. 1064. IMPROVEMENT IN TRANSLATION AND DELIVERY OF SUSPECTED TERRORIST COMMUNICATIONS.

(a) REQUIREMENT FOR PROMPT TRANSLATION AND TRANSMISSION.—The National Intelligence Director shall develop and transmit to the appropriate agencies guidelines to ensure that all suspected terrorist communications, including transmissions, are translated and delivered in a manner consistent with timelines contained in regulations of the Federal Bureau of Investigations to the extent practicable.

(b) PREVENTION OF DELETION OF TERRORIST COMMUNICATIONS.—The National Intelligence Director shall take such steps as are necessary to ensure that terrorist communications are not deleted or discarded before those communications are translated.

Subtitle G—Conforming and Other Amendments

SEC. 1071. CONFORMING AMENDMENTS RELATING TO ROLES OF NATIONAL INTELLIGENCE DIRECTOR AND DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY.

(a) NATIONAL SECURITY ACT OF 1947.—(1) The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by striking "Director of Central Intelligence" each place it appears in the following provisions and inserting "National Intelligence Director":

(A) Section 3(5)(B) (50 U.S.C. 401a(5)(B)).

(B) Section 101(h)(2)(A) (50 U.S.C. 402(h)(2)(A)).

(C) Section 101(h)(5) (50 U.S.C. 402(h)(5)).

(D) Section 101(i)(2)(A) (50 U.S.C. 402(i)(2)(A)).

(E) Section 101(j) (50 U.S.C. 402(j)).

(F) Section 105(a) (50 U.S.C. 403-5(a)).

(G) Section 105(b)(6)(A) (50 U.S.C. 403-5(b)(6)(A)).

(H) Section 105B(a)(1) (50 U.S.C. 403-5b(a)(1)).

(I) Section 105B(b) (50 U.S.C. 403-5b(b)), the first place it appears.

(J) Section 110(b) (50 U.S.C. 404e(b)).

(K) Section 110(c) (50 U.S.C. 404e(c)).

(L) Section 112(a)(1) (50 U.S.C. 404g(a)(1)).

(M) Section 112(d)(1) (50 U.S.C. 404g(d)(1)).

(N) Section 113(b)(2)(A) (50 U.S.C. 404h(b)(2)(A)).

(O) Section 114(a)(1) (50 U.S.C. 404i(a)(1)).

(P) Section 114(b)(1) (50 U.S.C. 404i(b)(1)).

(R) Section 115(a)(1) (50 U.S.C. 404j(a)(1)).

(S) Section 115(b) (50 U.S.C. 404j(b)).

(T) Section 115(c)(1)(B) (50 U.S.C. 404j(c)(1)(B)).

(U) Section 116(a) (50 U.S.C. 404k(a)).

(V) Section 117(a)(1) (50 U.S.C. 404l(a)(1)).

(W) Section 303(a) (50 U.S.C. 405(a)), both places it appears.

(X) Section 501(d) (50 U.S.C. 413(d)).

(Y) Section 502(a) (50 U.S.C. 413a(a)).

(Z) Section 502(c) (50 U.S.C. 413a(c)).

(AA) Section 503(b) (50 U.S.C. 413b(b)).

(BB) Section 504(a)(3)(C) (50 U.S.C. 414(a)(3)(C)).

(CC) Section 504(d)(2) (50 U.S.C. 414(d)(2)).

(DD) Section 506A(a)(1) (50 U.S.C. 415a-1(a)(1)).

(EE) Section 603(a) (50 U.S.C. 423(a)).

(FF) Section 702(a)(1) (50 U.S.C. 432(a)(1)).

(GG) Section 702(a)(6)(B)(viii) (50 U.S.C. 432(a)(6)(B)(viii)).

(HH) Section 702(b)(1) (50 U.S.C. 432(b)(1)), both places it appears.

(II) Section 703(a)(1) (50 U.S.C. 432a(a)(1)).

(JJ) Section 703(a)(6)(B)(viii) (50 U.S.C. 432a(a)(6)(B)(viii)).

(KK) Section 703(b)(1) (50 U.S.C. 432a(b)(1)), both places it appears.

(LL) Section 704(a)(1) (50 U.S.C. 432b(a)(1)).

(MM) Section 704(f)(2)(H) (50 U.S.C. 432b(f)(2)(H)).

(NN) Section 704(g)(1)) (50 U.S.C. 432b(g)(1)), both places it appears.

(OO) Section 1001(a) (50 U.S.C. 441g(a)).

(PP) Section 1102(a)(1) (50 U.S.C. 442a(a)(1)).

(QQ) Section 1102(b)(1) (50 U.S.C. 442a(b)(1)).

(RR) Section 1102(c)(1) (50 U.S.C. 442a(c)(1)).

(SS) Section 1102(d) (50 U.S.C. 442a(d)).

(2) That Act is further amended by striking "of Central Intelligence" each place it appears in the following provisions:

(A) Section 105(a)(2) (50 U.S.C. 403-5(a)(2)).

(B) Section 105B(a)(2) (50 U.S.C. 403-5b(a)(2)).

(C) Section 105B(b) (50 U.S.C. 403-5b(b)), the second place it appears.

(3) That Act is further amended by striking "Director" each place it appears in the following provisions and inserting "National Intelligence Director":

(A) Section 114(c) (50 U.S.C. 404i(c)).

(B) Section 116(b) (50 U.S.C. 404k(b)).

(C) Section 1001(b) (50 U.S.C. 441g(b)).

(C) Section 1001(c) (50 U.S.C. 441g(c)), the first place it appears.

(D) Section 1001(d)(1)(B) (50 U.S.C. 441g(d)(1)(B)).

(E) Section 1001(e) (50 U.S.C. 441g(e)), the first place it appears.

(4) Section 114A of that Act (50 U.S.C. 404i-1) is amended by striking "Director of Central Intelligence" and inserting "National Intelligence Director, the Director of the Central Intelligence Agency"

(5) Section 504(a)(2) of that Act (50 U.S.C. 414(a)(2)) is amended by striking "Director of Central Intelligence" and inserting "Director of the Central Intelligence Agency".

(6) Section 701 of that Act (50 U.S.C. 431) is amended—

(A) in subsection (a), by striking "Operational files of the Central Intelligence Agency may be exempted by the Director of Central Intelligence" and inserting "The Director of the Central Intelligence Agency, with the coordination of the National Intelligence Director, may exempt operational files of the Central Intelligence Agency"; and

(B) in subsection (g)(1), by striking "Director of Central Intelligence" and inserting "Director of the Central Intelligence Agency and the National Intelligence Director".

(7) The heading for section 114 of that Act (50 U.S.C. 404i) is amended to read as follows:

"ADDITIONAL ANNUAL REPORTS FROM THE NATIONAL INTELLIGENCE DIRECTOR".

(b) CENTRAL INTELLIGENCE AGENCY ACT OF 1949.—(1) The Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) is amended by striking "Director of Central Intelligence" each place it appears in the following provisions and inserting "National Intelligence Director":

(A) Section 6 (50 U.S.C. 403g).

(B) Section 17(f) (50 U.S.C. 403q(f)), both places it appears.

(2) That Act is further amended by striking "of Central Intelligence" in each of the following provisions:

(A) Section 2 (50 U.S.C. 403b).

(A) Section 16(c)(1)(B) (50 U.S.C. 403p(c)(1)(B)).

(B) Section 17(d)(1) (50 U.S.C. 403q(d)(1)).

(C) Section 20(c) (50 U.S.C. 403t(c)).

(3) That Act is further amended by striking "Director of Central Intelligence" each place it appears in the following provisions and inserting "Director of the Central Intelligence Agency":

(A) Section 14(b) (50 U.S.C. 403n(b)).

(B) Section 16(b)(2) (50 U.S.C. 403p(b)(2)).

(C) Section 16(b)(3) (50 U.S.C. 403p(b)(3)), both places it appears.

(D) Section 21(g)(1) (50 U.S.C. 403u(g)(1)).

(E) Section 21(g)(2) (50 U.S.C. 403u(g)(2)).

(c) CENTRAL INTELLIGENCE AGENCY RETIREMENT ACT.—Section 101 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2001) is amended by striking paragraph (2) and inserting the following new paragraph (2):

"(2) DIRECTOR.—The term 'Director' means the Director of the Central Intelligence Agency.".

(d) CIA VOLUNTARY SEPARATION PAY ACT.—Subsection (a)(1) of section 2 of the Central Intelligence Agency Voluntary Separation Pay Act (50 U.S.C. 2001 note) is amended to read as follows:

"(1) the term 'Director' means the Director of the Central Intelligence Agency;".

(e) FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—(1) The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by striking "Director of Central Intelligence" each place it appears and inserting "National Intelligence Director".

(f) CLASSIFIED INFORMATION PROCEDURES ACT.—Section 9(a) of the Classified Information Procedures Act (5 U.S.C. App.) is amended by striking "Director of Central Intelligence" and inserting "National Intelligence Director".

(g) INTELLIGENCE AUTHORIZATION ACTS.—

(1) PUBLIC LAW 103-359.—Section 811(c)(6)(C) of the Counterintelligence and Security Enhancements Act of 1994 (title VIII of Public Law 103-359) is amended by striking "Director of Central Intelligence" and inserting "National Intelligence Director".

(2) PUBLIC LAW 107-306.—(A) The Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107-306) is amended by striking "Director of Central Intelligence, acting as the head of the intelligence community," each place it appears in the following provisions and inserting "National Intelligence Director":

(i) Section 313(a) (50 U.S.C. 404n(a)).

(ii) Section 343(a)(1) (50 U.S.C. 404n-2(a)(1))

(B) That Act is further amended by striking "Director of Central Intelligence" each place it appears in the following provisions and inserting "National Intelligence Director":

(i) Section 902(a)(2) (50 U.S.C. 402b(a)(2)).

(ii) Section 904(e)(4) (50 U.S.C. 402c(e)(4)).

(iii) Section 904(e)(5) (50 U.S.C. 402c(e)(5)).

(iv) Section 904(h) (50 U.S.C. 402c(h)), each place it appears.

(v) Section 904(m) (50 U.S.C. 402c(m)).

(C) Section 341 of that Act (50 U.S.C. 404n-1) is amended by striking "Director of Central Intelligence, acting as the head of the intelligence community, shall establish in the Central Intelligence Agency" and inserting "National Intelligence Director shall establish within the Central Intelligence Agency".

(D) Section 352(b) of that Act (50 U.S.C. 404-3 note) is amended by striking "Director" and inserting "National Intelligence Director".

(3) PUBLIC LAW 108-177.—(A) The Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108-177) is amended by striking "Director of Central Intelligence" each place it appears in the following provisions and inserting "National Intelligence Director":

(i) Section 317(a) (50 U.S.C. 403-3 note).

(ii) Section 317(h)(1).

(iii) Section 318(a) (50 U.S.C. 441g note).

(iv) Section 319(b) (50 U.S.C. 403 note).

(v) Section 341(b) (28 U.S.C. 519 note).

(vi) Section 357(a) (50 U.S.C. 403 note).

(vii) Section 504(a) (117 Stat. 2634), both places it appears.

(B) Section 319(f)(2) of that Act (50 U.S.C. 403 note) is amended by striking "Director" the first place it appears and inserting "National Intelligence Director".

(C) Section 404 of that Act (18 U.S.C. 4124 note) is amended by striking "Director of Central Intelligence" and inserting "Director of the Central Intelligence Agency".

SEC. 1072. OTHER CONFORMING AMENDMENTS

(a) NATIONAL SECURITY ACT OF 1947.—(1) Section 101(j) of the National Security Act of 1947 (50 U.S.C. 402(j)) is amended by striking "Deputy Director of Central Intelligence" and inserting "Deputy National Intelligence Director".

(2) Section 112(d)(1) of that Act (50 U.S.C. 404g(d)(1)) is amended by striking "section 103(c)(6) of this Act" and inserting "section 102A(g) of this Act".

(3) Section 116(b) of that Act (50 U.S.C. 404k(b)) is amended by striking "to the Deputy Director of Central Intelligence, or with respect to employees of the Central Intelligence Agency, the Director may delegate such authority to the Deputy Director for Operations" and inserting "to the Deputy National Intelligence Director, or with respect to employees of the Central Intelligence Agency, to the Director of the Central Intelligence Agency".

(4) Section 506A(b)(1) of that Act (50 U.S.C. 415a-1(b)(1)) is amended by striking "Office of the Deputy Director of Central Intelligence" and inserting "Office of the National Intelligence Director".

(5) Section 701(c)(3) of that Act (50 U.S.C. 431(c)(3)) is amended by striking "Office of the Director of Central Intelligence" and inserting "Office of the National Intelligence Director".

(6) Section 1001(b) of that Act (50 U.S.C. 441g(b)) is amended by striking "Assistant Director of Central Intelligence for Administration" and inserting "Office of the National Intelligence Director".

(b) CENTRAL INTELLIGENCE ACT OF 1949.—Section 6 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403g) is amended by striking "section 103(c)(7) of the National Security Act of 1947 (50 U.S.C. 403-3(c)(7))" and inserting "section 102A(g) of the National Security Act of 1947".

(c) CENTRAL INTELLIGENCE AGENCY RETIREMENT ACT.—Section 201(c) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2011(c)) is amended by striking "paragraph (6) of section 103(c) of the National Security Act of 1947 (50 U.S.C. 403-3(c)) that the Director of Central Intelligence" and inserting "section 102A(g) of the National Security Act of 1947 (50 U.S.C. 403-3(c)(1)) that the National Intelligence Director".

(d) INTELLIGENCE AUTHORIZATION ACTS.—

(1) PUBLIC LAW 107-306.—(A) Section 343(c) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107-306; 50 U.S.C. 404n-2(c)) is amended by striking "section 103(c)(6) of the National Security Act of 1947 (50 U.S.C. 403-3((c)(6))" and inserting "section 102A(g) of the National Security Act of 1947 (50 U.S.C. 403-3(c)(1))".

(B) Section 904 of that Act (50 U.S.C. 402c) is amended—

(i) in subsection (c), by striking "Office of the Director of Central Intelligence" and inserting "Office of the National Intelligence Director"; and

(ii) in subsection (l), by striking "Office of the Director of Central Intelligence" and inserting "Office of the National Intelligence Director".

(2) PUBLIC LAW 108-177.—Section 317 of the Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108-177; 50 U.S.C. 403-3 note) is amended—

(A) in subsection (g), by striking "Assistant Director of Central Intelligence for Analysis and Production" and inserting "Deputy National Intelligence Director"; and

(B) in subsection (h)(2)(C), by striking "Assistant Director" and inserting "Deputy National Intelligence Director".

SEC. 1073. ELEMENTS OF INTELLIGENCE COMMUNITY UNDER NATIONAL SECURITY ACT OF 1947.

Paragraph (4) of section 3 of the National Security Act of 1947 (50 U.S.C. 401a) is amended to read as follows:

"(4) The term 'intelligence community' includes the following:

"(A) The Office of the National Intelligence Director.

"(B) The Central Intelligence Agency.

"(C) The National Security Agency.

"(D) The Defense Intelligence Agency.

"(E) The National Geospatial-Intelligence Agency.

"(F) The National Reconnaissance Office.

"(G) Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs.

"(H) The intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, and the Department of Energy.

"(I) The Bureau of Intelligence and Research of the Department of State.

"(J) The Office of Intelligence and Analysis of the Department of the Treasury.

"(K) The elements of the Department of Homeland Security concerned with the analysis of intelligence information, including the Office of Intelligence of the Coast Guard.

"(L) Such other elements of any other department or agency as may be designated by the President, or designated jointly by the National Intelligence Director and the head of the department or agency concerned, as an element of the intelligence community.".

SEC. 1074. REDESIGNATION OF NATIONAL FOREIGN INTELLIGENCE PROGRAM AS NATIONAL INTELLIGENCE PROGRAM.

(a) REDESIGNATION.—Paragraph (6) of section 3 of the National Security Act of 1947 (50 U.S.C. 401a) is amended by striking "Foreign".

(b) CONFORMING AMENDMENTS.—(1) Section 506(a) of the National Security Act of 1947 (50 U.S.C. 415a(a)) is amended by striking "National Foreign Intelligence Program" and inserting "National Intelligence Program".

(2) Section 17(f) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(f)) is amended by striking "National Foreign Intelligence Program" and inserting "National Intelligence Program".

(c) HEADING AMENDMENT.—The heading of section 506 of that Act is amended by striking "FOREIGN".

SEC. 1075. REPEAL OF SUPERSEDED AUTHORITIES.

(a) APPOINTMENT OF CERTAIN INTELLIGENCE OFFICIALS.—Section 106 of the National Security Act of 1947 (50 U.S.C. 403-6) is repealed.

(b) COLLECTION TASKING AUTHORITY.—Section 111 of the National Security Act of 1947 (50 U.S.C. 404f) is repealed.

SEC. 1076. CLERICAL AMENDMENTS TO NATIONAL SECURITY ACT OF 1947.

The table of contents for the National Security Act of 1947 is amended—

(1) by striking the items relating to sections 102 through 104 and inserting the following new items:

"Sec. 102. National Intelligence Director.
"Sec. 102A. Responsibilities and authorities of National Intelligence Director.
"Sec. 103. Office of the National Intelligence Director.
"Sec. 104. Central Intelligence Agency.
"Sec. 104A. Director of the Central Intelligence Agency."; and

(2) by striking the item relating to section 114 and inserting the following new item:

"Sec. 114. Additional annual reports from the National Intelligence Director.";

and

(3) by striking the item relating to section 506 and inserting the following new item:

"Sec. 506. Specificity of National Intelligence Program budget amounts for counterterrorism, counterproliferation, counternarcotics, and counterintelligence".

SEC. 1077. CONFORMING AMENDMENTS RELATING TO PROHIBITING DUAL SERVICE OF THE DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY.

Section 1 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a) is amended—

(1) by redesignating paragraphs (a), (b), and (c) as paragraphs (1), (2), and (3), respectively; and

(2) by striking paragraph (2), as so redesignated, and inserting the following new paragraph (2):

"(2) 'Director' means the Director of the Central Intelligence Agency; and".

SEC. 1078. ACCESS TO INSPECTOR GENERAL PROTECTIONS.

Section 17(a)(1) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(a)(1)) is amended by inserting before the semicolon at the end the following: "and to programs and operations of the Office of the National Intelligence Director".

SEC. 1079. GENERAL REFERENCES.

(a) DIRECTOR OF CENTRAL INTELLIGENCE AS HEAD OF INTELLIGENCE COMMUNITY.—Any reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the National Intelligence Director.

(b) DIRECTOR OF CENTRAL INTELLIGENCE AS HEAD OF CIA.—Any reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the Director of the Central Intelligence Agency.

(c) COMMUNITY MANAGEMENT STAFF.—Any reference to the Community Management Staff in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the staff of the Office of the National Intelligence Director.

SEC. 1080. APPLICATION OF OTHER LAWS.

(a) POLITICAL SERVICE OF PERSONNEL.—Section 7323(b)(2)(B)(i) of title 5, United States Code, is amended—

(1) in subclause (XII), by striking "or" at the end; and

(2) by inserting after subclause (XIII) the following new subclause:

"(XIV) the Office of the National Intelligence Director; or".

(b) DELETION OF INFORMATION ABOUT FOREIGN GIFTS.—Section 7342(f)(4) of title 5, United States Code, is amended—

(1) by inserting "(A)" after "(4)";

(2) in subparagraph (A), as so designated, by striking "the Director of Central Intelligence" and inserting "the Director of the Central Intelligence Agency"; and

(3) by adding at the end the following new subparagraph:

"(B) In transmitting such listings for the Office of the National Intelligence Director, the National Intelligence Director may delete the information described in subparagraphs (A) and (C) of paragraphs (2) and (3) if the Director certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources.".

(c) EXEMPTION FROM FINANCIAL DISCLOSURES.—Section 105(a)(1) of the Ethics in Government Act (5 U.S.C. App.) is amended by inserting "the Office of the National Intelligence Director," before "the Central Intelligence Agency".

Subtitle H—Transfer, Termination, Transition and Other Provisions

SEC. 1091. TRANSFER OF COMMUNITY MANAGEMENT STAFF.

(a) TRANSFER.—There shall be transferred to the Office of the National Intelligence Director the staff of the Community Management Staff as of the date of the enactment of this Act, including all functions and activities discharged by the Community Management Staff as of that date.

(b) ADMINISTRATION.—The National Intelligence Director shall administer the Community Management Staff after the date of the enactment of this Act as a component of the Office of the National Intelligence Director under section 103(b) of the National Security Act of 1947, as amended by section 1011(a).

SEC. 1092. TRANSFER OF TERRORIST THREAT INTEGRATION CENTER.

(a) TRANSFER.—There shall be transferred to the National Counterterrorism Center the Terrorist Threat Integration Center (TTIC), including all functions and activities discharged by the Terrorist Threat Integration Center as of the date of the enactment of this Act.

(b) ADMINISTRATION.—The Director of the National Counterterrorism Center shall administer the Terrorist Threat Integration Center after the date of the enactment of this Act as a component of the Directorate of Intelligence of the National Counterterrorism Center under section 119(i) of the National Security Act of 1947, as added by section 1021(a).

SEC. 1093. TERMINATION OF POSITIONS OF ASSISTANT DIRECTORS OF CENTRAL INTELLIGENCE.

(a) TERMINATION.—The positions within the Central Intelligence Agency referred to in subsection (b) are hereby abolished.

(b) COVERED POSITIONS.—The positions within the Central Intelligence Agency referred to in this subsection are as follows:

(1) The Assistant Director of Central Intelligence for Collection.

(2) The Assistant Director of Central Intelligence for Analysis and Production.

(3) The Assistant Director of Central Intelligence for Administration.

SEC. 1094. IMPLEMENTATION PLAN.

(a) SUBMISSION OF PLAN.—The President shall transmit to Congress a plan for the implementation of this title and the amendments made by this title. The plan shall address, at a minimum, the following:

(1) The transfer of personnel, assets, and obligations to the National Intelligence Director pursuant to this title.

(2) Any consolidation, reorganization, or streamlining of activities transferred to the National Intelligence Director pursuant to this title.

(3) The establishment of offices within the Office of the National Intelligence Director to implement the duties and responsibilities of the National Intelligence Director as described in this title.

(4) Specification of any proposed disposition of property, facilities, contracts,

records, and other assets and obligations to be transferred to the National Intelligence Director.

(5) Recommendations for additional legislative or administrative action as the Director considers appropriate.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the permanent location for the headquarters for the Office of the National Intelligence Director, should be at a location other than the George Bush Center for Intelligence in Langley, Virginia.

SEC. 1095. TRANSITIONAL AUTHORITIES.

Upon the request of the National Intelligence Director, the head of any executive agency may, on a reimbursable basis, provide services or detail personnel to the National Intelligence Director.

SEC. 1096. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise expressly provided in this Act, this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) SPECIFIC EFFECTIVE DATES.—(1)(A) Not later than 60 days after the date of the enactment of this Act, the National Intelligence Director shall first appoint individuals to positions within the Office of the National Intelligence Director.

(B) Subparagraph (A) shall not apply with respect to the Deputy National Intelligence Director.

(2) Not later than 180 days after the date of the enactment of this Act, the President shall transmit to Congress the implementation plan required under section 1904.

(3) Not later than one year after the date of the enactment of this Act, the National Intelligence Director shall prescribe regulations, policies, procedures, standards, and guidelines required under section 102A of the National Security Act of 1947, as amended by section 1011(a).

Subtitle I—Other Matters

SEC. 1101. STUDY OF PROMOTION AND PROFESSIONAL MILITARY EDUCATION SCHOOL SELECTION RATES FOR MILITARY INTELLIGENCE OFFICERS.

(a) STUDY.—The Secretary of Defense shall conduct a study of the promotion selection rates, and the selection rates for attendance at professional military education schools, of intelligence officers of the Armed Forces, particularly in comparison to the rates for other officers of the same Armed Force who are in the same grade and competitive category.

(b) REPORT.—The Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report providing the Secretary's findings resulting from the study under subsection (a) and the Secretary's recommendations (if any) for such changes in law as the Secretary considers needed to ensure that intelligence officers, as a group, are selected for promotion, and for attendance at professional military education schools, at rates not less than the rates for all line (or the equivalent) officers of the same Armed Force (both in the zone and below the zone) in the same grade. The report shall be submitted not later than April 1, 2005.

TITLE II—TERRORISM PREVENTION AND PROSECUTION

Subtitle A—Individual Terrorists as Agents of Foreign Powers

SEC. 2001. INDIVIDUAL TERRORISTS AS AGENTS OF FOREIGN POWERS.

(a) IN GENERAL.—Section 101(b)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(b)(1)) is amended by adding at the end the following new subparagraph:

"(C) engages in international terrorism or activities in preparation therefor; or".

(b) SUNSET.—The amendment made by subsection (a) shall be subject to the sunset provision in section 224 of Public Law 107-56 (115 Stat. 295), including the exception provided in subsection (b) of such section 224.

Subtitle B—Stop Terrorist and Military Hoaxes Act of 2004

SEC. 2021. SHORT TITLE.

This subtitle may be cited as the "Stop Terrorist and Military Hoaxes Act of 2004".

SEC. 2022. HOAXES AND RECOVERY COSTS.

(a) PROHIBITION ON HOAXES.—Chapter 47 of title 18, United States Code, is amended by inserting after section 1037 the following:

"§ 1038. False information and hoaxes

"(a) CRIMINAL VIOLATION.—

"(1) IN GENERAL.—Whoever engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of chapter 2, 10, 11B, 39, 40, 44, 111, or 113B of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502, the second sentence of section 46504, section 46505 (b)(3) or (c), section 46506 if homicide or attempted homicide is involved, or section 60123(b) of title 49 shall—

"(A) be fined under this title or imprisoned not more than 5 years, or both;

"(B) if serious bodily injury results, be fined under this title or imprisoned not more than 25 years, or both; and

"(C) if death results, be fined under this title or imprisoned for any number of years up to life, or both.

"(2) ARMED FORCES.—Whoever, without lawful authority, makes a false statement, with intent to convey false or misleading information, about the death, injury, capture, or disappearance of a member of the Armed Forces of the United States during a war or armed conflict in which the United States is engaged, shall—

"(A) be fined under this title or imprisoned not more than 5 years, or both;

"(B) if serious bodily injury results, be fined under this title or imprisoned not more than 25 years, or both; and

"(C) if death results, be fined under this title or imprisoned for any number of years up to life, or both.

"(b) CIVIL ACTION.—Whoever knowingly engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of chapter 2, 10, 11B, 39, 40, 44, 111, or 113B of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), or section 46502, the second sentence of section 46504, section 46505 (b)(3) or (c), section 46506 if homicide or attempted homicide is involved, or section 60123(b) of title 49 is liable in a civil action to any party incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.

"(c) REIMBURSEMENT.—

"(1) IN GENERAL.—The court, in imposing a sentence on a defendant who has been convicted of an offense under subsection (a), shall order the defendant to reimburse any state or local government, or private not-for-profit organization that provides fire or rescue service incurring expenses incident to any emergency or investigative response to that conduct, for those expenses.

"(2) LIABILITY.—A person ordered to make reimbursement under this subsection shall be jointly and severally liable for such expenses with each other person, if any, who is ordered to make reimbursement under this subsection for the same expenses.

"(3) CIVIL JUDGMENT.—An order of reimbursement under this subsection shall, for the purposes of enforcement, be treated as a civil judgment.

"(d) ACTIVITIES OF LAW ENFORCEMENT.—This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or political subdivision of a State, or of an intelligence agency of the United States.".

(b) CLERICAL AMENDMENT.—The table of sections as the beginning of chapter 47 of title 18, United States Code, is amended by adding after the item for section 1037 the following:

"1038. False information and hoaxes.".

SEC. 2023. OBSTRUCTION OF JUSTICE AND FALSE STATEMENTS IN TERRORISM CASES.

(a) ENHANCED PENALTY.—Section 1001(a) and the third undesignated paragraph of section 1505 of title 18, United States Code, are amended by striking "be fined under this title or imprisoned not more than 5 years, or both" and inserting "be fined under this title, imprisoned not more than 5 years or, if the matter relates to international or domestic terrorism (as defined in section 2331), imprisoned not more than 10 years, or both".

(b) SENTENCING GUIDELINES.—Not later than 30 days of the enactment of this section, the United States Sentencing Commission shall amend the Sentencing Guidelines to provide for an increased offense level for an offense under sections 1001(a) and 1505 of title 18, United States Code, if the offense involves a matter relating to international or domestic terrorism, as defined in section 2331 of such title.

SEC. 2024. CLARIFICATION OF DEFINITION.

Section 1958 of title 18, United States Code, is amended—

(1) in subsection (a), by striking "facility in" and inserting "facility of"; and

(2) in subsection (b)(2), by inserting "or foreign" after "interstate".

Subtitle C—Material Support to Terrorism Prohibition Enhancement Act of 2004

SEC. 2041. SHORT TITLE.

This subtitle may be cited as the "Material Support to Terrorism Prohibition Enhancement Act of 2004".

SEC. 2042. RECEIVING MILITARY-TYPE TRAINING FROM A FOREIGN TERRORIST ORGANIZATION.

Chapter 113B of title 18, United States Code, is amended by adding after section 2339C the following new section:

"§ 2339D. Receiving military-type training from a foreign terrorist organization

"(a) OFFENSE.—Whoever knowingly receives military-type training from or on behalf of any organization designated at the time of the training by the Secretary of State under section 219(a)(1) of the Immigration and Nationality Act as a foreign terrorist organization shall be fined under this title or imprisoned for ten years, or both. To violate this subsection, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (c)(4)), that the organization has engaged or engages in terrorist activity (as defined in section 212 of the Immigration and Nationality Act), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).

“(b) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over an offense under this section. There is jurisdiction over an offense under subsection (a) if—

“(1) an offender is a national of the United States (as defined in 101(a)(22) of the Immigration and Nationality Act) or an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of the Immigration and Nationality Act);

“(2) an offender is a stateless person whose habitual residence is in the United States;

“(3) after the conduct required for the offense occurs an offender is brought into or found in the United States, even if the conduct required for the offense occurs outside the United States;

“(4) the offense occurs in whole or in part within the United States;

“(5) the offense occurs in or affects interstate or foreign commerce;

“(6) an offender aids or abets any person over whom jurisdiction exists under this paragraph in committing an offense under subsection (a) or conspires with any person over whom jurisdiction exists under this paragraph to commit an offense under subsection (a).

“(c) DEFINITIONS.—As used in this section—

“(1) the term ‘military-type training’ includes training in means or methods that can cause death or serious bodily injury, destroy or damage property, or disrupt services to critical infrastructure, or training on the use, storage, production, or assembly of any explosive, firearm or other weapon, including any weapon of mass destruction (as defined in section 2232a(c)(2));

“(2) the term ‘serious bodily injury’ has the meaning given that term in section 1365(h)(3);

“(3) the term ‘critical infrastructure’ means systems and assets vital to national defense, national security, economic security, public health or safety including both regional and national infrastructure. Critical infrastructure may be publicly or privately owned; examples of critical infrastructure include gas and oil production, storage, or delivery systems, water supply systems, telecommunications networks, electrical power generation or delivery systems, financing and banking systems, emergency services (including medical, police, fire, and rescue services), and transportation systems and services (including highways, mass transit, airlines, and airports); and

“(4) the term ‘foreign terrorist organization’ means an organization designated as a terrorist organization under section 219(a)(1) of the Immigration and Nationality Act.”.

SEC. 2043. PROVIDING MATERIAL SUPPORT TO TERRORISM.

(a) ADDITIONS TO OFFENSE OF PROVIDING MATERIAL SUPPORT TO TERRORISTS.—Section 2339A(a) of title 18, United States Code, is amended—

(1) by designating the first sentence as paragraph (1);

(2) by designating the second sentence as paragraph (3);

(3) by inserting after paragraph (1) as so designated by this subsection the following:

“(2) (A) Whoever in a circumstance described in subparagraph (B) provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, an act of international or domestic terrorism (as defined in section 2331), or in preparation for, or in carrying out, the concealment or escape from the commission of any such act, or attempts or conspires to do so, shall be punished as provided under paragraph (1) for an offense under that paragraph.

“(B) The circumstances referred to in subparagraph (A) are any of the following:

“(i) The offense occurs in or affects interstate or foreign commerce.

“(ii) The act of terrorism is an act of international or domestic terrorism that violates the criminal law of the United States.

“(iii) The act of terrorism is an act of domestic terrorism that appears to be intended to influence the policy, or affect the conduct, of the Government of the United States or a foreign government.

“(iv) An offender, acting within the United States or outside the territorial jurisdiction of the United States, is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act, an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of the Immigration and Nationality Act , or a stateless person whose habitual residence is in the United States, and the act of terrorism is an act of international terrorism that appears to be intended to influence the policy, or affect the conduct, of the Government of the United States or a foreign government.

“(v) An offender, acting within the United States, is an alien, and the act of terrorism is an act of international terrorism that appears to be intended to influence the policy, or affect the conduct, of the Government of the United States or a foreign government.

“(vi) An offender, acting outside the territorial jurisdiction of the United States, is an alien and the act of terrorism is an act of international terrorism that appears to be intended to influence the policy of, or affect the conduct of, the Government of the United States.

“(vii) An offender aids or abets any person over whom jurisdiction exists under this paragraph in committing an offense under this paragraph or conspires with any person over whom jurisdiction exists under this paragraph to commit an offense under this paragraph.”; and

(4) by inserting “act or” after “underlying”.

(b) DEFINITIONS.—Section 2339A(b) of title 18, United States Code, is amended—

(1) by striking “In this” and inserting “(1) In this”;

(2) by inserting “any property, tangible or intangible, or service, including” after “means”;

(3) by inserting “(one or more individuals who may be or include oneself)” after “personnel”;

(4) by inserting “and” before “transportation”;

(5) by striking “and other physical assets”; and

(6) by adding at the end the following:

“(2) As used in this subsection, the term ‘training’ means instruction or teaching designed to impart a specific skill, as opposed to general knowledge, and the term ‘expert advice or assistance’ means advice or assistance derived from scientific, technical or other specialized knowledge.”.

(c) ADDITION TO OFFENSE OF PROVIDING MATERIAL SUPPORT TO TERRORIST ORGANIZATIONS.—Section 2339B(a)(1) of title 18, United States Code, is amended—

(1) by striking “, within the United States or subject to the jurisdiction of the United States,” and inserting “in a circumstance described in paragraph (2)” ; and

(2) by adding at the end the following: “To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (g)(6)), that the organization has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act, or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989.”.

(d) FEDERAL AUTHORITY.—Section 2339B(d) of title 18 is amended—

(1) by inserting “(1)” before “There”; and

(2) by adding at the end the following:

“(2) The circumstances referred to in paragraph (1) are any of the following:

“(A) An offender is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)) or an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of the Immigration and Nationality Act.

“(B) An offender is a stateless person whose habitual residence is in the United States.

“(C) After the conduct required for the offense occurs an offender is brought into or found in the United States, even if the conduct required for the offense occurs outside the United States.

“(D) The offense occurs in whole or in part within the United States.

“(E) The offense occurs in or affects interstate or foreign commerce.

“(F) An offender aids or abets any person over whom jurisdiction exists under this paragraph in committing an offense under subsection (a) or conspires with any person over whom jurisdiction exists under this paragraph to commit an offense under subsection (a).”.

(e) DEFINITION.—Paragraph (4) of section 2339B(g) of title 18, United States Code, is amended to read as follows:

“(4) the term ‘material support or resources’ has the same meaning given that term in section 2339A;”.

(f) ADDITIONAL PROVISIONS.—Section 2339B of title 18, United States Code, is amended by adding at the end the following:

“(h) PROVISION OF PERSONNEL.—No person may be prosecuted under this section in connection with the term ‘personnel’ unless that person has knowingly provided, attempted to provide, or conspired to provide a foreign terrorist organization with one or more individuals (who may be or include himself) to work under that terrorist organization’s direction or control or to organize, manage, supervise, or otherwise direct the operation of that organization. Individuals who act entirely independently of the foreign terrorist organization to advance its goals or objectives shall not be considered to be working under the foreign terrorist organization’s direction and control.

“(i) RULE OF CONSTRUCTION.—Nothing in this section shall be construed or applied so as to abridge the exercise of rights guaranteed under the First Amendment to the Constitution of the United States.”.

SEC. 2044. FINANCING OF TERRORISM.

(a) FINANCING TERRORISM.—Section 2339c(c)(2) of title 18, United States Code, is amended—

(1) by striking “, resources, or funds” and inserting “or resources, or any funds or proceeds of such funds”;

(2) in subparagraph (A), by striking “were provided” and inserting “are to be provided, or knowing that the support or resources were provided,”; and

(3) in subparagraph (B)—

(A) by striking “or any proceeds of such funds”; and

(B) by striking “were provided or collected” and inserting “are to be provided or collected, or knowing that the funds were provided or collected,”.

(b) DEFINITIONS.—Section 2339c(e) of title 18, United States Code, is amended—

(1) by striking “and” at the end of paragraph (12);

(2) by redesignating paragraph (13) as paragraph (14); and

(3) by inserting after paragraph (12) the following:

“(13) the term ‘material support or resources’ has the same meaning given that term in section 2339B(g)(4) of this title; and”.

Subtitle D—Weapons of Mass Destruction Prohibition Improvement Act of 2004

SEC. 2051. SHORT TITLE.

This subtitle may be cited as the “Weapons of Mass Destruction Prohibition Improvement Act of 2004”.

SEC. 2052. WEAPONS OF MASS DESTRUCTION.

(a) EXPANSION OF JURISDICTIONAL BASES AND SCOPE.—Section 2332a of title 18, United States Code, is amended—

(1) so that paragraph (2) of subsection (a) reads as follows:

“(2) against any person or property within the United States, and

“(A) the mail or any facility of interstate or foreign commerce is used in furtherance of the offense;

“(B) such property is used in interstate or foreign commerce or in an activity that affects interstate or foreign commerce;

“(C) any perpetrator travels in or causes another to travel in interstate or foreign commerce in furtherance of the offense; or

“(D) the offense, or the results of the offense, affect interstate or foreign commerce, or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce;”;

(2) in paragraph (3) of subsection (a), by striking the comma at the end and inserting “; or”;

(3) in subsection (a), by adding the following at the end:

“(4) against any property within the United States that is owned, leased, or used by a foreign government,”;

(4) at the end of subsection (c)(1), by striking“and”;

(5) in subsection (c)(2), by striking the period at the end and inserting “; and”; and

(6) in subsection (c), by adding at the end the following:

“(3) the term ‘property’ includes all real and personal property.”.

(b) RESTORATION OF THE COVERAGE OF CHEMICAL WEAPONS.—Section 2332a of title 18, United States Code, as amended by subsection (a), is further amended—

(1) in the section heading, by striking “certain”;

(2) in subsection (a), by striking “(other than a chemical weapon as that term is defined in section 229F)”; and

(3) in subsection (b), by striking “(other than a chemical weapon (as that term is defined in section 229F))”.

(c) EXPANSION OF CATEGORIES OF RESTRICTED PERSONS SUBJECT TO PROHIBITIONS RELATING TO SELECT AGENTS.—Section 175b(d)(2) of title 18, United States Code, is amended—

(1) in subparagraph (G) by—

(A) inserting “(i)” after “(G)”;

(B) inserting “, or (ii) acts for or on behalf of, or operates subject to the direction or control of, a government or official of a country described in this subparagraph” after “terrorism”; and

(C) striking “or” after the semicolon.

(2) in subparagraph (H) by striking the period and inserting “; or”; and

(3) by adding at the end the following new subparagraph:

“(I) is a member of, acts for or on behalf of, or operates subject to the direction or control of, a terrorist organization as defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)).”.

(d) CONFORMING AMENDMENT TO REGULATIONS.—

(1) Section 175b(a)(1) of title 18, United States Code, is amended by striking “as a select agent in Appendix A” and all that follows and inserting the following: “as a non-overlap or overlap select biological agent or toxin in sections 73.4 and 73.5 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act, and is not excluded under sections 73.4 and 73.5 or exempted under section 73.6 of title 42, Code of Federal Regulations.”.

(2) The amendment made by paragraph (1) shall take effect at the same time that sections 73.4, 73.5, and 73.6 of title 42, Code of Federal Regulations, become effective.

(e) ENHANCING PROSECUTION OF WEAPONS OF MASS DESTRUCTION OFFENSES.—Section 1961(1)(B of title 18, United States Code, is amended by adding at the end the following: “sections 175–178 (relating to biological weapons), sections 229–229F (relating to chemical weapons), section 831 (relating to nuclear materials),”.

SEC. 2053. PARTICIPATION IN NUCLEAR AND WEAPONS OF MASS DESTRUCTION THREATS TO THE UNITED STATES.

(a) Section 57(b) of the Atomic Energy Act of 1954 (42 U.S.C. 2077(b)) is amended by striking “in the production of any special nuclear material” and inserting “or participate in the development or production of any special nuclear material or atomic weapon”.

(b) Title 18, United States Code, is amended—

(1) in the table of sections at the beginning of chapter 39, by inserting after the item relating to section 831 the following:

“832. Participation in nuclear and weapons of mass destruction threats to the United States.”;

(2) by inserting after section 831 the following:

“§ 832. Participation in nuclear and weapons of mass destruction threats to the United States

“(a) Whoever, within the United States or subject to the jurisdiction of the United States, willfully participates in or provides material support or resources (as defined in section 2339A) to a nuclear weapons program or other weapons of mass destruction program of a foreign terrorist power, or attempts or conspires to do so, shall be imprisoned for not more than 20 years.

“(b) There is extraterritorial Federal jurisdiction over an offense under this section.

“(c) Whoever without lawful authority develops, possesses, or attempts or conspires to develop or possess a radiological weapon, or threatens to use or uses a radiological weapon against any person within the United States, or a national of the United States while such national is outside the United States or against any property that is owned, leased, funded or used by the United States, whether that property is within or outside the United States, shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life.

“(d) As used in this section—

“(1) ‘nuclear weapons program’ means a program or plan for the development, acquisition, or production of any nuclear weapon or weapons;

“(2) ‘weapons of mass destruction program’ means a program or plan for the development, acquisition, or production of any weapon or weapons of mass destruction (as defined in section 2332a(c));

“(3) ‘foreign terrorist power’ means a terrorist organization designated under section 219 of the Immigration and Nationality Act, or a state sponsor of terrorism designated under section 6(j) of the Export Administration Act of 1979 or section 620A of the Foreign Assistance Act of 1961; and

“(4) ‘nuclear weapon’ means any weapon that contains or uses nuclear material as defined in section 831(f)(1).”; and

(3) in section 2332b(g)(5)(B)(i), by inserting after “nuclear materials),” the following: “832 (relating to participation in nuclear and weapons of mass destruction threats to the United States)”.

Subtitle E—Money Laundering and Terrorist Financing

CHAPTER 1—FUNDING TO COMBAT FINANCIAL CRIMES INCLUDING TERRORIST FINANCING

SEC. 2101. ADDITIONAL AUTHORIZATION FOR FINCEN.

Subsection (d) of section 310 of title 31, United States Code, is amended—

(1) by striking “APPROPRIATIONS.—There are authorized” and inserting “APPROPRIATIONS.—

“(1) IN GENERAL.—There are authorized”; and

(2) by adding at the end the following new paragraph:

“(2) AUTHORIZATION FOR FUNDING KEY TECHNOLOGICAL IMPROVEMENTS IN MISSION-CRITICAL FINCEN SYSTEMS.—There are authorized to be appropriated for fiscal year 2005 the following amounts, which are authorized to remain available until expended:

“(A) BSA DIRECT.—For technological improvements to provide authorized law enforcement and financial regulatory agencies with Web-based access to FinCEN data, to fully develop and implement the highly secure network required under section 362 of Public Law 107–56 to expedite the filing of, and reduce the filing costs for, financial institution reports, including suspicious activity reports, collected by FinCEN under chapter 53 and related provisions of law, and enable FinCEN to immediately alert financial institutions about suspicious activities that warrant immediate and enhanced scrutiny, and to provide and upgrade advanced information-sharing technologies to materially improve the Government's ability to exploit the information in the FinCEN databanks, $16,500,000.

“(B) ADVANCED ANALYTICAL TECHNOLOGIES.—To provide advanced analytical tools needed to ensure that the data collected by FinCEN under chapter 53 and related provisions of law are utilized fully and appropriately in safeguarding financial institutions and supporting the war on terrorism, $5,000,000.

“(C) DATA NETWORKING MODERNIZATION.—To improve the telecommunications infrastructure to support the improved capabilities of the FinCEN systems, $3,000,000.

“(D) ENHANCED COMPLIANCE CAPABILITY.—To improve the effectiveness of the Office of Compliance in FinCEN, $3,000,000.

“(E) DETECTION AND PREVENTION OF FINANCIAL CRIMES AND TERRORISM.—To provide development of, and training in the use of, technology to detect and prevent financial crimes and terrorism within and without the United States, $8,000,000.”.

SEC. 2102. MONEY LAUNDERING AND FINANCIAL CRIMES STRATEGY REAUTHORIZATION.

(a) PROGRAM.—Section 5341(a)(2) of title 31, United States Code, is amended by striking “and 2003,” and inserting “2003, and 2005,”.

(b) REAUTHORIZATION OF APPROPRIATIONS.—Section 5355 of title 31, United States Code, is amended by adding at the end the following:

“2004	$15,000,000.
“2005	$15,000,000.”.

CHAPTER 2—ENFORCEMENT TOOLS TO COMBAT FINANCIAL CRIMES INCLUDING TERRORIST FINANCING

Subchapter A—Money laundering abatement and financial antiterrorism technical corrections

SEC. 2111. SHORT TITLE.

This subchapter may be cited as the “Money Laundering Abatement and Financial Antiterrorism Technical Corrections Act of 2004”.

SEC. 2112. TECHNICAL CORRECTIONS TO PUBLIC LAW 107–56.

(a) The heading of title III of Public Law 107–56 is amended to read as follows:

“TITLE III—INTERNATIONAL MONEY LAUNDERING ABATEMENT AND FINANCIAL ANTITERRORISM ACT OF 2001”.

(b) The table of contents of Public Law 107–56 is amended by striking the item relating to title III and inserting the following new item:

“TITLE III—INTERNATIONAL MONEY LAUNDERING ABATEMENT AND FINANCIAL ANTITERRORISM ACT OF 2001”.

(c) Section 302 of Public Law 107–56 is amended—

(1) in subsection (a)(4), by striking the comma after “movement of criminal funds”;

(2) in subsection (b)(7), by inserting “or types of accounts” after “classes of international transactions”; and

(3) in subsection (b)(10), by striking “subchapters II and III” and inserting “subchapter II”.

(d) Section 303(a) of Public Law 107–56 is amended by striking “Anti-Terrorist Financing Act” and inserting “Financial Antiterrorism Act”.

(e) The heading for section 311 of Public Law 107–56 is amended by striking “or international transactions” and inserting “international transactions, or types of accounts”.

(f) Section 314 of Public Law 107–56 is amended—

(1) in paragraph (1)—

(A) by inserting a comma after “organizations engaged in”; and

(B) by inserting a comma after “credible evidence of engaging in”;

(2) in paragraph (2)(A)—

(A) by striking “and” after “nongovernmental organizations,”; and

(B) by inserting a comma after “unwittingly involved in such finances”;

(3) in paragraph (3)(A)—

(A) by striking “to monitor accounts of” and inserting “monitor accounts of,”; and

(B) by striking the comma after “organizations identified”; and

(4) in paragraph (3)(B), by inserting “financial” after “size, and nature of the”.

(g) Section 321 of Public Law 107–56 is amended by striking “5312(2)” and inserting “5312(a)(2)”.

(h) Section 325 of Public Law 107–56 is amended by striking “as amended by section 202 of this title,” and inserting “as amended by section 352,”.

(i) Subsections (a)(2) and (b)(2) of section 327 of Public Law 107–56 are each amended by inserting a period after “December 31, 2001” and striking all that follows through the period at the end of each such subsection.

(j) Section 356(c)(4) of Public Law 107–56 is amended by striking “or business or other grantor trust” and inserting “, business trust, or other grantor trust”.

(k) Section 358(e) of Public Law 107–56 is amended—

(1) by striking “Section 123(a)” and inserting “That portion of section 123(a)”;

(2) by striking “is amended to read” and inserting “that precedes paragraph (1) of such section is amended to read”; and

(3) by striking “.’.” at the end of such section and inserting “—’”.

(l) Section 360 of Public Law 107–56 is amended—

(1) in subsection (a), by inserting “the” after “utilization of the funds of”; and

(2) in subsection (b), by striking “at such institutions” and inserting “at such institution”.

(m) Section 362(a)(1) of Public Law 107–56 is amended by striking “subchapter II or III” and inserting “subchapter II”.

(n) Section 365 of Public Law 107—56 is amended—

(1) by redesignating the 2nd of the 2 subsections designated as subsection (c) (relating to a clerical amendment) as subsection (d); and

(2) by redesignating subsection (f) as subsection (e).

(o) Section 365(d) of Public Law 107–56 (as so redesignated by subsection (n) of this section) is amended by striking “section 5332 (as added by section 112 of this title)” and inserting “section 5330”.

SEC. 2113. TECHNICAL CORRECTIONS TO OTHER PROVISIONS OF LAW.

(a) Section 310(c) of title 31, United States Code, is amended by striking “the Network” each place such term appears and inserting “FinCEN”.

(b) Section 5312(a)(3)(C) of title 31, United States Code, is amended by striking “sections 5333 and 5316” and inserting “sections 5316 and 5331”.

(c) Section 5318(i) of title 31, United States Code, is amended—

(1) in paragraph (3)(B), by inserting a comma after “foreign political figure” the 2nd place such term appears; and

(2) in the heading of paragraph (4), by striking “DEFINITION” and inserting “DEFINITIONS”.

(d) Section 5318(k)(1)(B) of title 31, United States Code, is amended by striking “section 5318A(f)(1)(B)” and inserting “section 5318A(e)(1)(B)”.

(e) The heading for section 5318A of title 31, United States Code, is amended to read as follows:

“§ 5318A. Special measures for jurisdictions, financial institutions, international transactions, or types of accounts of primary money laundering concern”.

(f) Section 5318A of title 31, United States Code, is amended—

(1) in subsection (a)(4)(A), by striking “, as defined in section 3 of the Federal Deposit Insurance Act,” and inserting “ (as defined in section 3 of the Federal Deposit Insurance Act)”;

(2) in subsection (a)(4)(B)(iii), by striking “or class of transactions” and inserting “class of transactions, or type of account”;

(3) in subsection (b)(1)(A), by striking “or class of transactions to be” and inserting “class of transactions, or type of account to be”; and

(4) in subsection (e)(3), by inserting “or subsection (i) or (j) of section 5318” after “identification of individuals under this section”.

(g) Section 5324(b) of title 31, United States Code, is amended by striking “5333” each place such term appears and inserting “5331”.

(h) Section 5332 of title 31, United States Code, is amended—

(1) in subsection (b)(2), by striking “, subject to subsection (d) of this section”; and

(2) in subsection (c)(1), by striking “, subject to subsection (d) of this section,”.

(i) The table of sections for subchapter II of chapter 53 of title 31, United States Code, is amended by striking the item relating to section 5318A and inserting the following new item:

“5318A. Special measures for jurisdictions, financial institutions, international transactions, or types of accounts of primary money laundering concern.”.

(j) Section 18(w)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1828(w)(3)) is amended by inserting a comma after “agent of such institution”.

(k) Section 21(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1829b(a)(2)) is amended by striking “recognizes that” and inserting “recognizing that”.

(l) Section 626(e) of the Fair Credit Reporting Act (15 U.S.C. 1681v(e)) is amended by striking “governmental agency” and inserting “government agency”.

SEC. 2114. REPEAL OF REVIEW.

Title III of Public Law 107–56 is amended by striking section 303 (31 U.S.C. 5311 note).

SEC. 2115. EFFECTIVE DATE.

The amendments made by this subchapter to Public Law 107–56, the United States Code, the Federal Deposit Insurance Act, and any other provision of law shall take effect as if such amendments had been included in Public Law 107–56, as of the date of the enactment of such Public Law, and no amendment made by such Public Law that is inconsistent with an amendment made by this subchapter shall be deemed to have taken effect.

Subchapter B—Additional enforcement tools

SEC. 2121. BUREAU OF ENGRAVING AND PRINTING SECURITY PRINTING.

(a) PRODUCTION OF DOCUMENTS.—Section 5114(a) of title 31, United States Code (relating to engraving and printing currency and security documents), is amended—

(1) by striking “(a) The Secretary of the Treasury” and inserting:

“(a) AUTHORITY TO ENGRAVE AND PRINT.—

“(1) IN GENERAL.—The Secretary of the Treasury”; and

(2) by adding at the end the following new paragraphs:

“(2) ENGRAVING AND PRINTING FOR OTHER GOVERNMENTS.—The Secretary of the Treasury may produce currency, postage stamps, and other security documents for foreign governments if—

“(A) the Secretary of the Treasury determines that such production will not interfere with engraving and printing needs of the United States; and

“(B) the Secretary of State determines that such production would be consistent with the foreign policy of the United States.

“(3) PROCUREMENT GUIDELINES.—Articles, material, and supplies procured for use in the production of currency, postage stamps, and other security documents for foreign governments pursuant to paragraph (2) shall be treated in the same manner as articles, material, and supplies procured for public use within the United States for purposes of title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.; commonly referred to as the Buy American Act).".

(b) REIMBURSEMENT.—Section 5143 of title 31, United States Code (relating to payment for services of the Bureau of Engraving and Printing), is amended—

(1) in the first sentence, by inserting "or to a foreign government under section 5114" after "agency";

(2) in the second sentence, by inserting "and other" after "including administrative"; and

(3) in the last sentence, by inserting ", and the Secretary shall take such action, in coordination with the Secretary of State, as may be appropriate to ensure prompt payment by a foreign government of any invoice or statement of account submitted by the Secretary with respect to services rendered under section 5114" before the period at the end.

SEC. 2122. CONDUCT IN AID OF COUNTERFEITING.

(a) IN GENERAL.—Section 474(a) of title 18, United States Code, is amended by inserting after the paragraph beginning "Whoever has in his control, custody, or possession any plate" the following:

" Whoever, with intent to defraud, has in his custody, control, or possession any material that can be used to make, alter, forge or counterfeit any obligations and other securities of the United States or any part of such securities and obligations, except under the authority of the Secretary of the Treasury; or".

(b) FOREIGN OBLIGATIONS AND SECURITIES.—Section 481 of title 18, United States Code, is amended by inserting after the paragraph beginning "Whoever, with intent to defraud" the following:

" Whoever, with intent to defraud, has in his custody, control, or possession any material that can be used to make, alter, forge or counterfeit any obligation or other security of any foreign government, bank or corporation; or".

(c) COUNTERFEIT ACTS.—Section 470 of title 18, United States Code, is amended by striking "or 474" and inserting "474, or 474A".

(d) MATERIALS USED IN COUNTERFEITING.—Section 474A(b) of title 18, United States Code, is amended by striking "any essentially identical" and inserting "any thing or material made after or in the similitude of any".

SEC. 2123. REPORTING OF CROSS-BORDER TRANSMITTAL OF FUNDS.

Section 5318 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(n) REPORTING OF CROSS-BORDER TRANSMITTAL OF FUNDS.—

"(1) IN GENERAL.—Subject to paragraph (3), the Secretary shall prescribe regulations requiring such financial institutions as the Secretary determines to be appropriate to report to the Financial Crimes Enforcement Network certain cross-border electronic transmittals of funds relevant to efforts of the Secretary against money laundering and terrorist financing.

"(2) FORM AND MANNER OF REPORTS.—In prescribing the regulations required under paragraph (1), the Secretary shall determine the appropriate form, manner, content and frequency of filing of the required reports.

"(3) FEASIBILITY REPORT.—Before prescribing the regulations required under paragraph (1), and as soon as is practicable after the date of enactment of the 9/11 Recommendations Implementation Act, the Secretary shall delegate to the Bank Secrecy Act Advisory Group established by the Secretary the task of producing a report for the Secretary and the Congress that—

"(A) identifies the information in cross-border electronic transmittals of funds that is relevant to efforts against money laundering and terrorist financing;

"(B) makes recommendations regarding the appropriate form, manner, content and frequency of filing of the required reports; and

"(C) identifies the technology necessary for the Financial Crimes Enforcement Network to receive, keep, exploit and disseminate information from reports of cross-border electronic transmittals of funds to law enforcement and other entities engaged in efforts against money laundering and terrorist financing.

The report shall be submitted to the Secretary and the Congress no later than the end of the 1-year period beginning on the date of enactment of such Act.

"(4) REGULATIONS.—

"(A) IN GENERAL.—Subject to subparagraph (B), the regulations required by paragraph (1) shall be prescribed in final form by the Secretary, in consultation with the Board of Governors of the Federal Reserve System, before the end of the 3-year period beginning on the date of the enactment of the 9/11 Recommendations Implementation Act.

"(B) TECHNOLOGICAL FEASIBILITY.—No regulations shall be prescribed under this subsection before the Secretary certifies to the Congress that the Financial Crimes Enforcement Network has the technological systems in place to effectively and efficiently receive, keep, exploit, and disseminate information from reports of cross-border electronic transmittals of funds to law enforcement and other entities engaged in efforts against money laundering and terrorist financing.

"(5) RECORDKEEPING.—No financial institution required to submit reports on certain cross-border electronic transmittals of funds to the Financial Crimes Enforcement Network under this subsection shall be subject to the recordkeeping requirement under section 21(b)(3) of the Federal Deposit Insurance Act with respect to such transmittals of funds.".

SEC. 2124. ENHANCED EFFECTIVENESS OF EXAMINATIONS, INCLUDING ANTI-MONEY LAUNDERING PROGRAMS.

(a) DEPOSITORY INSTITUTIONS AND DEPOSITORY INSTITUTION HOLDING COMPANIES.—Section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820) is amended by adding at the end the following new subsection:

"(k) POST-EMPLOYMENT LIMITATIONS ON LEADING BANK EXAMINERS.—

"(1) IN GENERAL.—In the case of any person who—

"(A) was an officer or employee (including any special Government employee) of a Federal banking agency or a Federal reserve bank; and

"(B) served 2 or more months during the final 18 months of such person's employment with such agency or entity as the examiner-in-charge (or a functionally equivalent position) of a depository institution or depository institution holding company with dedicated, overall, continuous, and ongoing responsibility for the examination (or inspection) and supervision of that depository institution or depository institution holding company,

such person may not hold any office, position, or employment at any such depository institution or depository institution holding company, become a controlling shareholder in, a consultant for, a joint-venture partner with, or an independent contractor for (including as attorney, appraiser, or accountant) any such depository institution or holding company, or any other company that controls such depository institution, or otherwise participate in the conduct of the affairs of any such depository institution or holding company, during the 1-year period beginning on the date such person ceases to be an officer or employee (including any special Government employee) of the Federal banking agency or Federal reserve bank.

"(2) VIOLATORS SUBJECT TO INDUSTRY-WIDE PROHIBITION ORDERS.—

"(A) IN GENERAL.—In addition to any other penalty which may apply, whenever a Federal banking agency determines that a person subject to paragraph (1) has violated the prohibition in such paragraph by becoming associated with any insured depository institution, depository institution holding company, or other company for which such agency serves as the appropriate Federal banking agency, the agency shall serve a written notice or order, in accordance with and subject to the provisions of section 8(e)(4) for written notices or orders under paragraphs (1) or (2) of section 8(e), upon such person of the agency's intention to—

"(i) remove such person from office in any capacity described in paragraph (1) for a period of 5 years; and

"(ii) prohibit any further participation by such person, in any manner, in the conduct of the affairs of any insured depository institution, depository institution holding company, or other company that controls an insured depository institution for a period of 5 years.

"(B) SCOPE OF PROHIBITION ORDER.—Any person subject to an order issued under this subsection shall be subject to paragraphs (6) and (7) of section 8(e) in the same manner and to the same extent as a person subject to an order issued under such section and subsections (i) and (j) of section 8 and any other provision of this Act applicable to orders issued under subsection (e) shall apply with respect to such order.

"(3) REGULATIONS.—

"(A) IN GENERAL.—The Federal banking agencies shall prescribe regulations to implement this subsection, to determine which persons are referred to in paragraph (1)(B) taking into account—

"(i) the manner in which examiners and other persons who participate in the regulation, examination, or monitoring of depository institutions or depository institution holding companies are distributed among such institutions or companies by such agency, including the number of examiners and other persons assigned to each institution or holding company, the depth and structure of any group so assigned within such distribution, and the factors giving rise to that distribution;

"(ii) the number of institutions or companies each such examiner or other person is so involved with in any given period of assignment;

"(iii) the period of time for which each such examiner or other person is assigned to an institution or company, or a group of institutions or companies, before reassignment;

"(iv) the size of the institutions or holding companies for which each such person is responsible and the amount of time devoted to each such institution or holding company during each examination period; and

“(v) such other factors as the agency determines to be appropriate.

“(B) DETERMINATION OF APPLICABILITY.—The regulations prescribed or orders issued under this subparagraph by an appropriate Federal banking agency shall include a process, initiated by application or otherwise, for determining whether any person who ceases to be, or intends to cease to be, an examiner of insured depository institutions or depository institution holding companies for or on behalf of such agency is subject to the limitations of this subsection with respect to any particular insured depository institution or depository institution holding company.

“(C) CONSULTATION.—The Federal banking agencies shall consult with each other for the purpose of assuring that the rules and regulations issued by the agencies under subparagraph (A) are, to the extent possible, consistent, comparable, and practicable, taking into account any differences in the supervisory programs utilized by the agencies for the supervision of depository institutions and depository institution holding companies.

“(4) WAIVER.—A Federal banking agency may waive, on a case-by-case basis, the restrictions imposed by this subsection if—

“(A) the head of the agency certifies in writing that the grant of such waiver would not be inconsistent with the public interest; and

“(B) the waiver is provided in advance before the person becomes affiliated in any way with the depository institution, depository institution holding company, or other company.

“(5) DEFINITIONS AND RULES OF CONSTRUCTION.—For purposes of this subsection, the following definitions and rules shall apply:

“(A) DEPOSITORY INSTITUTION.—The term ‘depository institution’ includes an uninsured branch or agency of a foreign bank if such branch or agency is located in any State.

“(B) DEPOSITORY INSTITUTION HOLDING COMPANY.—The term ‘depository institution holding company’ includes any foreign bank or company described in section 8(a) of the International Banking Act of 1978.

“(C) HEAD OF THE AGENCY.—The term ‘the head of the agency’ means—

“(i) the Comptroller of the Currency, in the case of the Office of the Comptroller of the Currency;

“(ii) the Chairman of the Board of Governors of the Federal Reserve System, in the case of the Board of Governors of the Federal Reserve System;

“(iii) the Chairperson of the Board of Directors, in the case of the Federal Deposit Insurance Corporation; and

“(iv) the Director, in the case of the Office of Thrift Supervision.

“(D) RULE OF CONSTRUCTION FOR CONSULTANTS AND INDEPENDENT CONTRACTORS.—A person shall be deemed to act as a consultant or independent contractor (including as an attorney, appraiser, or accountant) for a depository institution, depository holding company, or other company only if such person directly works on matters for, or on behalf of, such depository institution, depository holding company, or other company.

“(E) APPROPRIATE AGENCY FOR CERTAIN OTHER COMPANIES.—The term ‘appropriate Federal banking agency’ means, with respect to a company that is not a depository institution or depository institution holding company, the Federal banking agency on whose behalf the person described in paragraph (1) performed the functions described in paragraph (1)(B), as implemented by regulations prescribed under paragraph (3).”.

(b) CREDIT UNIONS.—Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by adding at the end the following new subsection:

“(w) POST-EMPLOYMENT LIMITATIONS ON EXAMINERS.—

“(1) REGULATIONS REQUIRED.—The Board shall consult with the Federal banking agencies and prescribe regulations imposing the same limitations on persons employed by or on behalf of the Board as leading examiners of, or functionally equivalent positions with respect to, credit unions as are applicable under section 10(k) of the Federal Deposit Insurance Act, taking into account all the requirements and factors described in paragraphs (3) and (4) of such section.

“(2) ENFORCEMENT.—The Board shall issue orders under subsection (g) with respect to any person who violates any regulation prescribed pursuant to paragraph (1) to—

“(A) remove such person from office in any capacity with respect to a credit union; and

“(B) prohibit any further participation by such person, in any manner, in the conduct of the affairs of any credit union for a period of 5 years.

“(3) SCOPE OF PROHIBITION ORDER.—Any person subject to an order issued under this subsection shall be subject to paragraphs (5) and (7) of subsection (g) in the same manner and to the same extent as a person subject to an order issued under such subsection and subsection (l) and any other provision of this Act applicable to orders issued under subsection (g) shall apply with respect to such order.”.

(c) STUDY OF EXAMINER HIRING AND RETENTION.—

(1) STUDY REQUIRED.—The Board of Directors of the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, and the National Credit Union Administration Board, acting through the Financial Institutions Examination Council, shall conduct a study of efforts and proposals for—

(A) retaining the services of experienced and highly qualified examiners and supervisors already employed by such agencies; and

(B) continuing to attract such examiners and supervisors on an-ongoing basis to the extent necessary to fulfill the agencies' obligations to maintain the safety and soundness of the Nation's depository institutions.

(2) REPORT.—Before the end of the 1-year period beginning on the date of the enactment of this Act, the agencies conducting the study under paragraph (1) shall submit a report containing the findings and conclusions of such agencies with respect to such study, together with such recommendations for administrative or legislative changes as the agencies determine to be appropriate.

Subtitle F—Criminal History Background Checks

SEC. 2141. SHORT TITLE.

This subtitle may be cited as the “Criminal History Access Means Protection of Infrastructures and Our Nation Act”.

SEC. 2142. CRIMINAL HISTORY BACKGROUND CHECKS.

(a) IN GENERAL.—Section 534 of title 28, United States Code, is amended by adding at the end the following:

“(f)(1) Under rules prescribed by the Attorney General, the Attorney General shall, within 60 days after the date of enactment, initiate a 180-day pilot program to establish and maintain a system for providing to an employer criminal history information that—

“(A) is in the possession of the Attorney General; and

“(B) is requested by an employer as part of an employee criminal history investigation that has been authorized by the State where the employee works or where the employer has their principal place of business;

in order to ensure that a prospective employee is suitable for certain employment positions.

“(2) The Attorney General shall require that an employer seeking criminal history information of an employee request such information and submit fingerprints or other biometric identifiers as approved by the Attorney General to provide a positive and reliable identification of such prospective employee.

“(3) The Director of the Federal Bureau of Investigation may require an employer to pay a reasonable fee for such information.

“(4) Upon receipt of fingerprints or other biometric identifiers, the Attorney General shall conduct an Integrated Fingerprint Identification System of the Federal Bureau of Investigation (IAFIS) check and provide the results of such check to the requester.

“(5) As used in this subsection,

“(A) the term ‘criminal history information’ and ‘criminal history records’ includes—

“(i) an identifying description of the individual to whom it pertains;

“(ii) notations of arrests, detentions, indictments, or other formal criminal charges pertaining to such individual; and

“(iii) any disposition to a notation revealed in subparagraph (B), including acquittal, sentencing, correctional supervision, or release.

“(B) the term ‘Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation (IAFIS)’ means the national depository for fingerprint, biometric, and criminal history information, through which fingerprints are processed electronically.

“(6) Nothing in this subsection shall preclude the Attorney General from authorizing or requiring criminal history record checks on individuals employed or seeking employment in positions vital to the Nation's critical infrastructure or key resources as those terms are defined in section 1016(e) of Public Law 107-56 (42 U.S.C. 5195c(e)) and section 2(9) of the Homeland Security Act of 2002 (6 U.S.C. 101(9)), if pursuant to a law or executive order.”.

(b) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than 60 days after the conclusion of the pilot program, the Attorney General shall report to the appropriate committees of Congress regarding all statutory requirements for criminal history record checks that are required to be conducted by the Department of Justice or any of its components.

(2) IDENTIFICATION OF INFORMATION.—The Attorney General shall identify the number of records requested, including the type of information requested, usage of different terms and definitions regarding criminal history information, and the variation in fees charged for such information and who pays such fees.

(3) RECOMMENDATIONS.—The Attorney General shall make recommendations for consolidating the existing procedures into a unified procedure consistent with that provided in section 534(f) of title 28, United States

Code, as amended by this subtitle. In making the recommendations to Congress, the Attorney General shall consider—

(A) the effectiveness of utilizing commercially available databases as a supplement to IAFIS criminal history information checks;

(B) the effectiveness of utilizing State databases as a supplement to IAFIS criminal history information checks;

(C) any feasibility studies by the Department of Justice of the FBI's resources and structure to establish a system to provide criminal history information; and

(D) privacy rights and other employee protections to include employee consent, access to the records used if employment was denied, an appeal mechanism, and penalties for misuse of the information.

SEC. 2143. PROTECT ACT.

Public law 108-21 is amended—

(1) in section 108(a)(2)(A) by striking "an 18 month" and inserting "a 30-month"; and

(2) in section 108(a)(3)(A) by striking "an 18-month" and inserting "a 30-month".

SEC. 2144. REVIEWS OF CRIMINAL RECORDS OF APPLICANTS FOR PRIVATE SECURITY OFFICER EMPLOYMENT.

(a) SHORT TITLE.—This section may be cited as the "Private Security Officer Employment Authorization Act of 2004".

(b) FINDINGS.—Congress finds that—

(1) employment of private security officers in the United States is growing rapidly;

(2) private security officers function as an adjunct to, but not a replacement for, public law enforcement by helping to reduce and prevent crime;

(3) such private security officers protect individuals, property, and proprietary information, and provide protection to such diverse operations as banks, hospitals, research and development centers, manufacturing facilities, defense and aerospace contractors, high technology businesses, nuclear power plants, chemical companies, oil and gas refineries, airports, communication facilities and operations, office complexes, schools, residential properties, apartment complexes, gated communities, and others;

(4) sworn law enforcement officers provide significant services to the citizens of the United States in its public areas, and are supplemented by private security officers;

(5) the threat of additional terrorist attacks requires cooperation between public and private sectors and demands professional, reliable, and responsible security officers for the protection of people, facilities, and institutions;

(6) the trend in the Nation toward growth in such security services has accelerated rapidly;

(7)·such growth makes available more public sector law enforcement officers to combat serious and violent crimes, including terrorism;

(8) the American public deserves the employment of qualified, well-trained private security personnel as an adjunct to sworn law enforcement officers; and

(9) private security officers and applicants for private security officer positions should be thoroughly screen and trained.

(c) DEFINITIONS.—In this Act:

(1) EMPLOYEE.—The term "employee" includes both a current employee and an applicant for employment as a private security officer.

(2) AUTHORIZED EMPLOYER.—The term "authorized employer" means any person that—

(A) employs private security officers; and

(B) is authorized by regulations promulgated by the Attorney General to request a criminal history record information search of an employee through a State identification bureau pursuant to this section.

(3) PRIVATE SECURITY OFFICER.—The term "private security officer"—

(A) means an individual other than an employee of a Federal, State, or local government, whose primary duty is to perform security services, full- or part-time, for consideration, whether armed or unarmed and in uniform or plain clothes (except for services excluded from coverage under this Act if the Attorney General determines by regulation that such exclusion would serve the public interest); but

(B) does not include—

(i) employees whose duties are primarily internal audit or credit functions;

(ii) employees of electronic security system companies acting as technicians or monitors; or

(iii) employees whose duties primarily involve the secure movement of prisoners.

(4) SECURITY SERVICES.—The term "security services" means acts to protect people or property as defined by regulations promulgated by the Attorney General.

(5) STATE IDENTIFICATION BUREAU.—The term "State identification bureau" means the State entity designated by the Attorney General for the submission and receipt of criminal history record information.

(d) CRIMINAL HISTORY RECORD INFORMATION SEARCH.—

(1) IN GENERAL.—

(A) SUBMISSION OF FINGERPRINTS.—An authorized employer may submit to the State identification bureau of a participating State, fingerprints or other means of positive identification, as determined by the Attorney General, of an employee of such employer for purposes of a criminal history record information search pursuant to this Act.

(B) EMPLOYEE RIGHTS.—

(i) PERMISSION.—An authorized employer shall obtain written consent from an employee to submit to the State identification bureau of a participating State the request to search the criminal history record information of the employee under this Act.

(ii) ACCESS.—An authorized employer shall provide to the employee confidential access to any information relating to the employee received by the authorized employer pursuant to this Act.

(C) PROVIDING INFORMATION TO THE STATE IDENTIFICATION BUREAU.—Upon receipt of a request for a criminal history record information search from an authorized employer pursuant to this Act, submitted through the State identification bureau of a participating State, the Attorney General shall—

(i) search the appropriate records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation; and

(ii) promptly provide any resulting identification and criminal history record information to the submitting State identification bureau requesting the information.

(D) USE OF INFORMATION.—

(i) IN GENERAL.—Upon receipt of the criminal history record information from the Attorney General by the State identification bureau, the information shall be used only as provided in clause (ii).

(ii) TERMS.—In the case of—

(I) a participating State that has no State standards for qualification to be a private security officer, the State shall notify an authorized employer as to the fact of whether an employee has been—

(aa) convicted of a felony, an offense involving dishonesty or a false statement if the conviction occurred during the previous 10 years, or an offense involving the use or attempted use of physical force against the person of another if the conviction occurred during the previous 10 years; or

(bb) charged with a criminal felony for which there has been no resolution during the preceding 365 days; or

(II) a participating State that has State standards for qualification to be a private security officer, the State shall use the information received pursuant to this Act in applying the State standards and shall only notify the employer of the results of the application of the State standards.

(E) FREQUENCY OF REQUESTS.—An authorized employer may request a criminal history record information search for an employee only once every 12 months of continuous employment by that employee unless the authorized employer has good cause to submit additional requests.

(2) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall issue such final or interim final regulations as may be necessary to carry out this Act, including—

(A) measures relating to the security, confidentiality, accuracy, use, submission, dissemination, destruction of information and audits, and record keeping;

(B) standards for qualification as an authorized employer; and

(C) the imposition of reasonable fees necessary for conducting the background checks.

(3) CRIMINAL PENALTIES FOR USE OF INFORMATION.—Whoever knowingly and intentionally uses any information obtained pursuant to this Act other than for the purpose of determining the suitability of an individual for employment as a private security officer shall be fined under title 18, United States Code, or imprisoned for not more than 2 years, or both.

(4) USER FEES.—

(A) IN GENERAL.—The Director of the Federal Bureau of Investigation may—

(i) collect fees to process background checks provided for by this Act; and

(ii) establish such fees at a level to include an additional amount to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs.

(B) LIMITATIONS.—Any fee collected under this subsection—

(i) shall, consistent with Public Law 101-515 and Public Law 104-99, be credited to the appropriation to be used for salaries and other expenses incurred through providing the services described in such Public Laws and in subparagraph (A);

(ii) shall be available for expenditure only to pay the costs of such activities and services; and

(iii) shall remain available until expended.

(C) STATE COSTS.—Nothing in this Act shall be construed as restricting the right of a State to assess a reasonable fee on an authorized employer for the costs to the State of administering this Act.

(5) STATE OPT OUT.—A State may decline to participate in the background check system authorized by this Act by enacting a law or issuing an order by the Governor (if consistent with State law) providing that the State is declining to participate pursuant to this subsection.

SEC. 2145. TASK FORCE ON CLEARINGHOUSE FOR IAFIS CRIMINAL HISTORY RECORDS.

Not later than 60 days after the date of enactment of this Act, the Attorney General shall establish a task force to examine the establishment of a national clearinghouse to process IAFIS criminal history record requests received directly from employers providing private security guard services with respect to critical infrastructure (as defined in section 1016(e) of Public Law 107–56 (42 U.S.C. 5195c(e))) and other private security guard services. Members of this task force shall include representatives of the Department of Justice and the Federal Bureau of Investigation, in consultation with representatives of the security guard industry. Not later than 90 days after the establishment of the task force, the Attorney General shall submit to Congress a report outlining how the national clearinghouse shall be established, and specifying a date certain (within one year of the enactment of this Act) by which the national clearinghouse will begin operations.

SEC. 2146. CLARIFICATION OF PURPOSE.

The clearinghouse described in section 2145 shall only process criminal history record requests pertaining to employees or prospective employees of the private security guard service making the request pursuant to that section.

Subtitle G—Protection of United States Aviation System From Terrorist Attacks

SEC. 2171. PROVISION FOR THE USE OF BIOMETRIC OR OTHER TECHNOLOGY.

(a) USE OF BIOMETRIC TECHNOLOGY.—Section 44903(h) of title 49, United States Code, is amended—

(1) in paragraph (4)(E) by striking “may provide for” and inserting “shall issue, not later than 120 days after the date of enactment of paragraph (5), guidance for”; and

(2) by adding at the end the following:

“(5) USE OF BIOMETRIC TECHNOLOGY IN AIRPORT ACCESS CONTROL SYSTEMS.—In issuing guidance under paragraph (4)(E), the Assistant Secretary of Homeland Security (Transportation Security Administration), in consultation with the Attorney General, representatives of the aviation industry, the biometrics industry, and the National Institute of Standards and Technology, shall establish, at a minimum—

“(A) comprehensive technical and operational system requirements and performance standards for the use of biometrics in airport access control systems (including airport perimeter access control systems) to ensure that the biometric systems are effective, reliable, and secure;

“(B) a list of products and vendors that meet such requirements and standards;

“(C) procedures for implementing biometric systems—

“(i) to ensure that individuals do not use an assumed identity to enroll in a biometric system; and

“(ii) to resolve failures to enroll, false matches, and false non-matches; and

“(D) best practices for incorporating biometric technology into airport access control systems in the most effective manner, including a process to best utilize existing airport access control systems, facilities, and equipment and existing data networks connecting airports.

“(6) USE OF BIOMETRIC TECHNOLOGY FOR LAW ENFORCEMENT OFFICER TRAVEL.—

“(A) IN GENERAL.—Not later than 120 days after the date of enactment of this paragraph, the Assistant Secretary in consultation with the Attorney General shall—

“(i) establish a law enforcement officer travel credential that incorporates biometrics and is uniform across all Federal, State, and local government law enforcement agencies;

“(ii) establish a process by which the travel credential will be used to verify the identity of a Federal, State, or local government law enforcement officer seeking to carry a weapon on board an aircraft, without unnecessarily disclosing to the public that the individual is a law enforcement officer;

“(iii) establish procedures—

“(I) to ensure that only Federal, State, and local government law enforcement officers are issued the travel credential;

“(II) to resolve failures to enroll, false matches, and false non-matches relating to use of the travel credential; and

“(III) to invalidate any travel credential that is lost, stolen, or no longer authorized for use;

“(iv) begin issuance of the travel credential to each Federal, State, and local government law enforcement officer authorized by the Assistant Secretary to carry a weapon on board an aircraft; and

“(v) take such other actions with respect to the travel credential as the Secretary considers appropriate.

“(B) FUNDING.—There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

“(7) DEFINITIONS.—In this subsection, the following definitions apply:

“(A) BIOMETRIC INFORMATION.—The term ‘biometric information’ means the distinct physical or behavioral characteristics that are used for identification, or verification of the identity, of an individual.

“(B) BIOMETRICS.—The term ‘biometrics’ means a technology that enables the automated identification, or verification of the identity, of an individual based on biometric information.

“(C) FAILURE TO ENROLL.—The term ‘failure to enroll’ means the inability of an individual to enroll in a biometric system due to an insufficiently distinctive biometric sample, the lack of a body part necessary to provide the biometric sample, a system design that makes it difficult to provide consistent biometric information, or other factors.

“(D) FALSE MATCH.—The term ‘false match’ means the incorrect matching of one individual's biometric information to another individual's biometric information by a biometric system.

“(E) FALSE NON-MATCH.—The term ‘false non-match’ means the rejection of a valid identity by a biometric system.

“(F) SECURE AREA OF AN AIRPORT.—The term ‘secure area of an airport’ means the sterile area and the Secure Identification Display Area of an airport (as such terms are defined in section 1540.5 of title 49, Code of Federal Regulations, or any successor regulation to such section).”.

(b) FUNDING FOR USE OF BIOMETRIC TECHNOLOGY IN AIRPORT ACCESS CONTROL SYSTEMS.—

(1) GRANT AUTHORITY.—Section 44923(a) of title 49, United States Code, is amended—

(A) by striking “and” at the end of paragraph (3);

(B) by redesignating paragraph (4) as paragraph (5); and

(C) by inserting after paragraph (3) the following:

“(4) for projects to implement biometric technologies in accordance with guidance issued under section 44903(h)(4)(E); and”.

(2) AUTHORIZATION OF APPROPRIATIONS.—Section 44923(i)(1) of such title is amended by striking “$250,000,000 for each of fiscal years 2004 through 2007” and inserting “$250,000,000 for fiscal year 2004, $345,000,000 for fiscal year 2005, and $250,000,000 for each of fiscal years 2006 and 2007”.

SEC. 2172. TRANSPORTATION SECURITY STRATEGIC PLANNING.

Section 44904 of title 49, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (e); and

(2) by inserting after subsection (b) the following:

“(c) TRANSPORTATION SECURITY STRATEGIC PLANNING.—

“(1) IN GENERAL.—The Secretary of Homeland Security shall prepare and update, as needed, a transportation sector specific plan and transportation modal security plans in accordance with this section.

“(2) CONTENTS.—At a minimum, the modal security plan for aviation prepared under paragraph (1) shall—

“(A) set risk-based priorities for defending aviation assets;

“(B) select the most practical and cost-effective methods for defending aviation assets;

“(C) assign roles and missions to Federal, State, regional, and local authorities and to stakeholders;

“(D) establish a damage mitigation and recovery plan for the aviation system in the event of a terrorist attack; and

“(E) include a threat matrix document that outlines each threat to the United States civil aviation system and the corresponding layers of security in place to address such threat.

“(3) REPORTS.—Not later than 180 days after the date of enactment of the subsection and annually thereafter, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing the plans prepared under paragraph (1), including any updates to the plans. The report may be submitted in a classified format.

“(d) OPERATIONAL CRITERIA.—Not later than 90 days after the date of submission of the report under subsection (c)(3), the Assistant Secretary of Homeland Security (Transportation Security Administration) shall issue operational criteria to protect airport infrastructure and operations against the threats identified in the plans prepared under subsection (c)(1) and shall approve best practices guidelines for airport assets.”.

SEC. 2173. NEXT GENERATION AIRLINE PASSENGER PRESCREENING.

(a) IN GENERAL.—Section 44903(j)(2) of title 49, United States Code, is amended by adding at the end the following:

“(C) NEXT GENERATION AIRLINE PASSENGER PRESCREENING.—

“(i) COMMENCEMENT OF TESTING.—Not later than November 1, 2004, the Assistant Secretary of Homeland Security (Transportation Security Administration), or the designee of the Assistant Secretary, shall commence testing of a next generation passenger prescreening system that will allow the Department of Homeland Security to assume the performance of comparing passenger name records to the automatic selectee and no fly lists, utilizing all appropriate records in the consolidated and integrated terrorist watchlist maintained by the Federal Government.

“(ii) ASSUMPTION OF FUNCTION.—Not later than 180 days after completion of testing under clause (i), the Assistant Secretary, or the designee of the Assistant Secretary, shall assume the performance of the passenger prescreening function of comparing passenger name records to the automatic selectee and no fly lists and utilize all appropriate records in the consolidated and integrated terrorist watchlist maintained by the Federal Government in performing that function.

"(iii) REQUIREMENTS.—In assuming performance of the function under clause (i), the Assistant Secretary shall—

"(I) establish a procedure to enable airline passengers, who are delayed or prohibited from boarding a flight because the next generation passenger prescreening system determined that they might pose a security threat, to appeal such determination and correct information contained in the system;

"(II) ensure that Federal Government databases that will be used to establish the identity of a passenger under the system will not produce a large number of false positives;

"(III) establish an internal oversight board to oversee and monitor the manner in which the system is being implemented;

"(IV) establish sufficient operational safeguards to reduce the opportunities for abuse;

"(V) implement substantial security measures to protect the system from unauthorized access;

"(VI) adopt policies establishing effective oversight of the use and operation of the system; and

"(VII) ensure that there are no specific privacy concerns with the technological architecture of the system.

"(iv) PASSENGER NAME RECORDS.—Not later than 60 days after the completion of the testing of the next generation passenger prescreening system, the Assistant Secretary shall require air carriers to supply to the Assistant Secretary the passenger name records needed to begin implementing the next generation passenger prescreening system.

"(D) SCREENING OF EMPLOYEES AGAINST WATCHLIST.—The Assistant Secretary of Homeland Security (Transportation Security Administration), in coordination with the Secretary of Transportation and the Administrator of the Federal Aviation Administration, shall ensure that individuals are screened against all appropriate records in the consolidated and integrated terrorist watchlist maintained by the Federal Government before—

"(i) being certificated by the Federal Aviation Administration;

"(ii) being issued a credential for access to the secure area of an airport; or

"(iii) being issued a credential for access to the air operations area (as defined in section 1540.5 of title 49, Code of Federal Regulations, or any successor regulation to such section) of an airport.

"(E) APPEAL PROCEDURES.—The Assistant Secretary shall establish a timely and fair process for individuals identified as a threat under subparagraph (D) to appeal the determination and correct any erroneous information.

"(F) DEFINITION.—In this paragraph, the term 'secure area of an airport' means the sterile area and the Secure Identification Display Area of an airport (as such terms are defined in section 1540.5 of title 49, Code of Federal Regulations, or any successor regulation to such section).".

(b) GAO REPORT.—

(1) IN GENERAL.—Not later than 90 days after the date on which the Assistant Secretary of Homeland Security (Transportation Security Administration) assumes performance of the passenger prescreening function under section 44903(j)(2)(C)(ii) of title 49, United States Code, the Comptroller General shall submit to the appropriate congressional committees a report on the assumption of such function. The report may be submitted in a classified format.

(2) CONTENTS.—The report under paragraph (1) shall address—

(A) whether a system exists in the next generation passenger prescreening system whereby aviation passengers, determined to pose a threat and either delayed or prohibited from boarding their scheduled flights by the Transportation Security Administration, may appeal such a decision and correct erroneous information;

(B) the sufficiency of identifying information contained in passenger name records and any government databases for ensuring that a large number of false positives will not result under the next generation passenger prescreening system in a significant number of passengers being treated as a threat mistakenly or in security resources being diverted;

(C) whether the Transportation Security Administration stress tested the next generation passenger prescreening system;

(D) whether an internal oversight board has been established in the Department of Homeland Security to monitor the next generation passenger prescreening system;

(E) whether sufficient operational safeguards have been established to prevent the opportunities for abuse of the system;.

(F) whether substantial security measures are in place to protect the passenger prescreening database from unauthorized access;

(G) whether policies have been adopted for the effective oversight of the use and operation of the system;

(H) whether specific privacy concerns still exist with the system; and

(I) whether appropriate life cycle cost estimates have been developed, and a benefit and cost analysis has been performed, for the system.

SEC. 2174. DEPLOYMENT AND USE OF EXPLOSIVE DETECTION EQUIPMENT AT AIRPORT SCREENING CHECKPOINTS.

(a) NONMETALLIC WEAPONS AND EXPLOSIVES.—In order to improve security, the Assistant Secretary of Homeland Security (Transportation Security Administration) shall give priority to developing, testing, improving, and deploying technology at screening checkpoints at airports that will detect nonmetallic weapons and explosives on the person of individuals, in their clothing, or in their carry-on baggage or personal property and shall ensure that the equipment alone, or as part of an integrated system, can detect under realistic operating conditions the types of nonmetallic weapons and explosives that terrorists would likely try to smuggle aboard an air carrier aircraft.

(b) STRATEGIC PLAN FOR DEPLOYMENT AND USE OF EXPLOSIVE DETECTION EQUIPMENT AT AIRPORT SCREENING CHECKPOINTS.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Assistant Secretary shall transmit to the appropriate congressional committees a strategic plan to promote the optimal utilization and deployment of explosive detection systems at airports to screen individuals and their carry-on baggage or personal property, including walk-through explosive detection portals, document scanners, shoe scanners, and any other explosive detection equipment for use at a screening checkpoint. The plan may be transmitted in a classified format.

(2) CONTENTS.—The strategic plan shall include descriptions of the operational applications of explosive detection equipment at airport screening checkpoints, a deployment schedule and quantities of equipment needed to implement the plan, and funding needs for implementation of the plan, including a financing plan that provides for leveraging non-Federal funding.

SEC. 2175. PILOT PROGRAM TO EVALUATE USE OF BLAST-RESISTANT CARGO AND BAGGAGE CONTAINERS.

(a) IN GENERAL.—Beginning not later than 180 days after the date of enactment of this Act, the Assistant Secretary of Homeland Security (Transportation Security Administration) shall carry out a pilot program to evaluate the use of blast-resistant containers for cargo and baggage on passenger aircraft to minimize the potential effects of detonation of an explosive device.

(b) INCENTIVES FOR PARTICIPATION IN PILOT PROGRAM.—

(1) IN GENERAL.—As part of the pilot program, the Assistant Secretary shall provide incentives to air carriers to volunteer to test the use of blast-resistant containers for cargo and baggage on passenger aircraft.

(2) APPLICATIONS.—To volunteer to participate in the incentive program, an air carrier shall submit to the Assistant Secretary an application that is in such form and contains such information as the Assistant Secretary requires.

(3) TYPES OF ASSISTANCE.—Assistance provided by the Assistant Secretary to air carriers that volunteer to participate in the pilot program shall include the use of blast-resistant containers and financial assistance to cover increased costs to the carriers associated with the use and maintenance of the containers, including increased fuel costs.

(c) REPORT.—Not later than one year after the date of enactment of this Act, the Assistant Secretary shall submit to appropriate congressional committees a report on the results of the pilot program.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $2,000,000. Such sums shall remain available until expended.

SEC. 2176. AIR CARGO SCREENING TECHNOLOGY.

The Transportation Security Administration shall develop technology to better identify, track, and screen air cargo.

SEC. 2177. AIRPORT CHECKPOINT SCREENING EXPLOSIVE DETECTION.

Section 44940 of title 49, United States Code, is amended by adding at the end the following:

"(i) CHECKPOINT SCREENING SECURITY FUND.—

"(1) ESTABLISHMENT.—There is established in the Department of Homeland Security a fund to be known as the 'Checkpoint Screening Security Fund'.

"(2) DEPOSITS.—In each of fiscal years 2005 and 2006, after amounts are made available under section 44923(h), the next $30,000,000 derived from fees received under subsection (a)(1) shall be available to be deposited in the Fund.

"(3) FEES.—The Secretary of Homeland Security shall impose the fee authorized by subsection (a)(1) so as to collect at least $30,000,000 in each of fiscal years 2005 and 2006 for deposit into the Fund.

"(4) AVAILABILITY OF AMOUNTS.—Amounts in the Fund shall be available for the purchase, deployment, and installation of equipment to improve the ability of security screening personnel at screening checkpoints to detect explosives.".

SEC. 2178. NEXT GENERATION SECURITY CHECKPOINT.

(a) PILOT PROGRAM.—The Transportation Security Administration shall develop, not later than 120 days after the date of enactment of this Act, and conduct a pilot program to test, integrate, and deploy next generation security checkpoint screening technology at not less than 5 airports in the United States.

(b) HUMAN FACTOR STUDIES.—The Administration shall conduct human factors studies to improve screener performance as part of the pilot program under subsection (a).

SEC. 2179. PENALTY FOR FAILURE TO SECURE COCKPIT DOOR.

(a) CIVIL PENALTY.—Section 46301(a) of title 49, United States Code, is amended by adding at the end the following:

"(6) PENALTY FOR FAILURE TO SECURE FLIGHT DECK DOOR.—Any person holding a part 119 certificate under part of title 14, Code of Federal Regulations, is liable to the Government for a civil penalty of not more than $25,000 for each violation, by the pilot in command of an aircraft owned or operated by such person, of any Federal regulation that requires that the flight deck door be closed and locked when the aircraft is being operated.".

(b) TECHNICAL CORRECTIONS.—

(1) COMPROMISE AND SETOFF FOR FALSE INFORMATION.—Section 46302(b)(1) of such title is amended by striking "Secretary of Transportation" and inserting "Secretary of Homeland Security and, for a violation relating to section 46504, the Secretary of Transportation,".

(2) CARRYING A WEAPON.—Section 46303 of such title is amended—

(A) in subsection (b)(1) by striking "Secretary of Transportation" and inserting "Secretary of Homeland Security"; and

(B) in subsection (c)(2) by striking "Under Secretary of Transportation for Security" and inserting "Secretary of Homeland Security".

(3) ADMINISTRATIVE IMPOSITION OF PENALTIES.—Section 46301(d) of such title is amended—

(A) in the first sentence of paragraph (2) by striking "46302, 46303," and inserting "46302 (for a violation relating to section 46504),";

(B) in the second sentence of paragraph (2)—

(i) by striking "Under Secretary of Transportation for Security" and inserting "Secretary of Homeland Security"; and

(ii) by striking "44909)" and inserting "44909), 46302 (except for a violation relating to section 46504), 46303,";

(C) in each of paragraphs (2), (3), and (4) by striking "Under Secretary or" and inserting "Secretary of Homeland Security or"; and

(D) in paragraph (4)(A) by moving clauses (i), (ii), and (iii) 2 ems to the left.

SEC. 2180. FEDERAL AIR MARSHAL ANONYMITY.

The Director of the Federal Air Marshal Service of the Department of Homeland Security shall continue to develop operational initiatives to protect the anonymity of Federal air marshals.

SEC. 2181. FEDERAL LAW ENFORCEMENT COUNTERTERRORISM TRAINING.

(a) The Assistant Secretary for Immigration and Customs Enforcement and the Director of Federal Air Marshal Service of the Department of Homeland Security, in coordination with the Assistant Secretary of Homeland Security (Transportation Security Administration), shall make available appropriate in-flight counterterrorism and weapons handling procedures and tactics training to Federal law enforcement officers who fly while on duty.

(b) The Assistant Secretary for Immigration and Customs Enforcement and the Director of Federal Air Marshal Service of the Department of Homeland Security, in coordination with the Assistant Secretary of Homeland Security (Transportation Security Administration), shall ensure that Transportation Security Administration screeners and Federal Air Marshals receive training in identifying fraudulent identification documents, including fraudulent or expired Visas and Passports. Such training shall also be made available to other Federal law enforcement agencies and local law enforcement agencies located in border states.

SEC. 2182. FEDERAL FLIGHT DECK OFFICER WEAPON CARRIAGE PILOT PROGRAM.

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Assistant Secretary of Homeland Security (Transportation Security Administration) shall implement a pilot program to allow pilots participating in the Federal flight deck officer program to transport their firearms on their persons. The Assistant Secretary may prescribe any training, equipment, or procedures including procedures for reporting of missing, lost or stolen firearms, that the Assistant Secretary determines necessary to ensure safety and maximize weapon retention.

(b) REVIEW.—Not later than 1 year after the date of initiation of the pilot program, the Assistant Secretary shall conduct a review of the safety record of the pilot program and transmit a report on the results of the review to the appropriate congressional committees.

(c) OPTION.—If the Assistant Secretary as part of the review under subsection (b) determines that the safety level obtained under the pilot program is comparable to the safety level determined under existing methods of pilots carrying firearms on aircraft, the Assistant Secretary shall allow all pilots participating in the Federal flight deck officer program the option of carrying their firearm on their person subject to such requirements as the Assistant Secretary determines appropriate.

SEC. 2183. REGISTERED TRAVELER PROGRAM.

The Transportation Security Administration shall expedite implementation of the registered traveler program.

SEC. 2184. WIRELESS COMMUNICATION.

(a) STUDY.—The Transportation Security Administration, in consultation with the Federal Aviation Administration, shall conduct a study to determine the viability of providing devices or methods, including wireless methods, to enable a flight crew to discreetly notify the pilot in the case of a security breach or safety issue occurring in the cabin.

(b) MATTERS TO BE CONSIDERED.—In conducting the study, the Transportation Security Administration and the Federal Aviation Administration shall consider technology that is readily available and can be quickly integrated and customized for use aboard aircraft for flight crew communication.

(c) REPORT.—Not later than 180 days after the date of enactment of this Act, the Transportation Security Administration shall submit to the appropriate congressional committees a report on the results of the study.

SEC. 2185. SECONDARY FLIGHT DECK BARRIERS.

Not later than 6 months after the date of enactment of this Act, the Assistant Secretary of Homeland Security (Transportation Security Administration) shall transmit to the appropriate congressional committees a report on the costs and benefits associated with the use of secondary flight deck barriers and whether the use of such barriers should be mandated for all air carriers. The Assistant Secretary may transmit the report in a classified format.

SEC. 2186. EXTENSION.

Section 48301(a) of title 49, United States Code, is amended by striking "and 2005" and inserting "2005, and 2006".

SEC. 2187. PERIMETER SECURITY.

(a) REPORT.—Not later than 180 days after the date of enactment of this Act, the Assistant Secretary of Homeland Security (Transportation Security Administration), in consultation with airport operators and law enforcement authorities, shall develop and submit to the appropriate congressional committee a report on airport perimeter security. The report may be submitted in a classified format.

(b) CONTENTS.—The report shall include—

(1) an examination of the feasibility of access control technologies and procedures, including the use of biometrics and other methods of positively identifying individuals prior to entry into secure areas of airports, and provide best practices for enhanced perimeter access control techniques; and

(2) an assessment of the feasibility of physically screening all individuals prior to entry into secure areas of an airport and additional methods for strengthening the background vetting process for all individuals credentialed to gain access to secure areas of airports.

SEC. 2188. DEFINITIONS.

In this title, the following definitions apply:

(1) APPROPRIATE CONGRESSIONAL COMMITTEE.—The term "appropriate congressional committees" means the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(2) AIR CARRIER.—The term "air carrier" has the meaning such term has under section 40102 of title 49, United States Code.

(3) SECURE AREA OF AN AIRPORT.—The term "secure area of an airport" means the sterile area and the Secure Identification Display Area of an airport (as such terms are defined in section 1540.5 of title 49, Code of Federal Regulations, or any successor regulation to such section).

Subtitle H—Other Matters

SEC. 2191. GRAND JURY INFORMATION SHARING.

(a) RULE AMENDMENTS.—Rule 6(e) of the Federal Rules of Criminal Procedure is amended—

(1) in paragraph (3)—

(A) in subparagraph (A)(ii), by striking "or state subdivision or of an Indian tribe" and inserting ", state subdivision, Indian tribe, or foreign government";

(B) in subparagraph (D)—

(i) by inserting after the first sentence the following: "An attorney for the government may also disclose any grand-jury matter involving a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, to any appropriate Federal, State, state subdivision, Indian tribal, or foreign government official for the purpose of preventing or responding to such a threat."; and

(ii) in clause (i)—

(I) by striking "federal"; and

(II) by adding at the end the following: "Any State, state subdivision, Indian tribal, or foreign government official who receives information under Rule 6(e)(3)(D) may use the information only consistent with such guidelines as the Attorney General and the National Intelligence Director shall jointly issue."; and

(C) in subparagraph (E)—

(i) by redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively;

(ii) by inserting after clause (ii) the following:

"(iii) at the request of the government, when sought by a foreign court or prosecutor for use in an official criminal investigation;"; and

(iii) in clause (iv), as redesignated—

(I) by striking "state or Indian tribal" and inserting "State, Indian tribal, or foreign"; and

(II) by striking "or Indian tribal official" and inserting "Indian tribal, or foreign government official"; and

(2) in paragraph (7), by inserting ", or of guidelines jointly issued by the Attorney General and Director of Central Intelligence pursuant to Rule 6," after "Rule 6".

(b) CONFORMING AMENDMENT.—Section 203(c) of Public Law 107-56 (18 U.S.C. 2517 note) is amended by striking "Rule 6(e)(3)(C)(i)(V) and (VI)" and inserting "Rule 6(e)(3)(D)".

SEC. 2192. INTEROPERABLE LAW ENFORCEMENT AND INTELLIGENCE DATA SYSTEM.

(a) FINDINGS.—The Congress finds as follows:

(1) The interoperable electronic data system know as the "Chimera system", and required to be developed and implemented by section 202(a)(2) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1722(a)(2)), has not in any way been implemented.

(2) Little progress has been made since the enactment of such Act with regard to establishing a process to connect existing trusted systems operated independently by the respective intelligence agencies.

(3) It is advisable, therefore, to assign such responsibility to the National Intelligence Director.

(4) The National Intelligence Director should, pursuant to the amendments made by subsection (c), begin systems planning immediately upon assuming office to deliver an interim system not later than 1 year after the date of the enactment of this Act, and to deliver the fully functional Chimera system not later than September 11, 2007.

(5) Both the interim system, and the fully functional Chimera system, should be designed so that intelligence officers, Federal law enforcement agencies (as defined in section 2 of such Act (8 U.S.C. 1701)), operational counter-terror support center personnel, consular officers, and Department of Homeland Security enforcement officers have access to them.

(b) PURPOSES.—The purposes of this section are as follows:

(1) To provide the National Intelligence Director with the necessary authority and resources to establish both an interim data system and, subsequently, a fully functional Chimera system, to collect and share intelligence and operational information with the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(2) To require the National Intelligence Director to establish a state-of-the-art Chimera system with both biometric identification and linguistic capabilities satisfying the best technology standards.

(3) To ensure that the National Intelligence Center will have a fully functional capability, not later than September 11, 2007, for interoperable data and intelligence exchange with the agencies of the intelligence community (as so defined).

(c) AMENDMENTS.—

(1) IN GENERAL.—Title II of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1721 et seq.) is amended—

(A) in section 202(a)—

(i) by amending paragraphs (1) and (2) to read as follows:

"(1) INTERIM INTEROPERABLE INTELLIGENCE DATA EXCHANGE SYSTEM.—Not later than 1 year after assuming office, the National Intelligence Director shall establish an interim interoperable intelligence data exchange system that will connect the data systems operated independently by the entities in the intelligence community and by the National Counterterrorism Center, so as to permit automated data exchange among all of these entities. Immediately upon assuming office, the National Intelligence Director shall begin the plans necessary to establish such interim system.

"(2) CHIMERA SYSTEM.—Not later than September 11, 2007, the National Intelligence Director shall establish a fully functional interoperable law enforcement and intelligence electronic data system within the National Counterterrorism Center to provide immediate access to information in databases of Federal law enforcement agencies and the intelligence community that is necessary to identify terrorists, and organizations and individuals that support terrorism. The system established under this paragraph shall referred to as the 'Chimera system'. ";

(ii) in paragraph (3)—

(I) by striking "President" and inserting "National Intelligence Director"; and

(II) by striking "the data system" and inserting "the interim system described in paragraph (1) and the Chimera system described in paragraph (2)";

(iii) in paragraph (4)(A), by striking "The data system" and all that follows through "(2)," and inserting "The interim system described in paragraph (1) and the Chimera system described in paragraph (2)";

(iv) in paragraph (5)—

(I) in the matter preceding subparagraph (A), by striking "data system under this subsection" and inserting "Chimera system described in paragraph (2)";

(II) in subparagraph (B), by striking "and" at the end;

(III) in subparagraph (C), by striking the period at the end and inserting "; and"; and

(IV) by adding at the end the following:

"(D) to any Federal law enforcement or intelligence officer authorized to assist in the investigation, identification, or prosecution of terrorists, alleged terrorists, individuals supporting terrorist activities, and individuals alleged to support terrorist activities. "; and

(v) in paragraph (6)—

(I) by striking "President" and inserting "National Intelligence Director";

(II) by striking "the data system" and all that follows through "(2)," and inserting "the interim system described in paragraph (1) and the Chimera system described in paragraph (2)";

(B) in section 202(b)—

(i) in paragraph (1), by striking "The interoperable" and all that follows through "subsection (a)" and inserting "the Chimera system described in subsection (a)(2)";

(ii) in paragraph (2), by striking "interoperable electronic database" and inserting "Chimera system described in subsection (a)(2)"; and

(iii) by amending paragraph (4) to read as follows:

"(4) INTERIM REPORTS.—Not later than 6 months after assuming office, the National Intelligence Director shall submit a report to the appropriate committees of Congress on the progress in implementing each requirement of this section.";

(C) in section 204—

(i) by striking "Attorney General" each place such term appears and inserting "National Intelligence Director";

(ii) in subsection (d)(1), by striking "Attorney General's" and inserting "National Intelligence Director's"; and

(D) by striking section 203 and redesignating section 204 as section 203.

(2) CLERICAL AMENDMENT.—The table of contents for the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1701 et seq.) is amended—

(A) by striking the item relating to section 203; and

(B) by redesignating the item relating to section 204 as relating to section 203.

SEC. 2193. IMPROVEMENT OF INTELLIGENCE CAPABILITIES OF THE FEDERAL BUREAU OF INVESTIGATION.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States and to meet the intelligence needs of the United States, Congress makes the following findings:

(1) The Federal Bureau of Investigation has made significant progress in improving its intelligence capabilities.

(2) The Federal Bureau of Investigation must further enhance and fully institutionalize its ability to prevent, preempt, and disrupt terrorist threats to our homeland, our people, our allies, and our interests.

(3) The Federal Bureau of Investigation must collect, process, share, and disseminate, to the greatest extent permitted by applicable law, to the President, the Vice President, and other officials in the Executive Branch, all terrorism information and other information necessary to safeguard our people and advance our national and homeland security interests.

(4) The Federal Bureau of Investigation must move towards full and seamless coordination and cooperation with all other elements of the Intelligence Community, including full participation in, and support to, the National Counterterrorism Center.

(5) The Federal Bureau of Investigation must strengthen its pivotal role in coordination and cooperation with Federal, State, tribal, and local law enforcement agencies to ensure the necessary sharing of information for counterterrorism and criminal law enforcement purposes.

(6) The Federal Bureau of Investigation must perform its vital intelligence functions in a manner consistent with both with national intelligence priorities and respect for privacy and other civil liberties under the Constitution and laws of the United States.

(b) IMPROVEMENT OF INTELLIGENCE CAPABILITIES.—The Director of the Federal Bureau of Investigation shall establish a comprehensive intelligence program for—

(1) intelligence analysis, including recruitment and hiring of analysts, analyst training, priorities and status for analysis, and analysis performance measures;

(2) intelligence production, including product standards, production priorities, information sharing and dissemination, and customer satisfaction measures;

(3) production of intelligence that is responsive to national intelligence requirements and priorities, including measures of

the degree to which each FBI headquarters and field component is collecting and providing such intelligence;

(4) intelligence sources, including source validation, new source development, and performance measures;

(5) field intelligence operations, including staffing and infrastructure, management processes, priorities, and performance measures;

(6) full and seamless coordination and cooperation with the other components of the Intelligence Community, consistent with their responsibilities; and

(7) sharing of FBI intelligence and information across Federal, state, and local governments, with the private sector, and with foreign partners as provided by law or by guidelines of the Attorney General.

(c) INTELLIGENCE DIRECTORATE.—The Director of the Federal Bureau of Investigation shall establish an Intelligence Directorate within the FBI. The Intelligence Directorate shall have the authority to manage and direct the intelligence operations of all FBI headquarters and field components. The Intelligence Directorate shall have responsibility for all components and functions of the FBI necessary for—

(1) oversight of FBI field intelligence operations;

(2) FBI human source development and management;

(3) FBI collection against nationally-determined intelligence requirements;

(4) language services;

(5) strategic analysis;

(6) intelligence program and budget management; and

(7) the intelligence workforce.

(d) NATIONAL SECURITY WORKFORCE.—The Director of the Federal Bureau of Investigation shall establish a specialized, integrated intelligence cadre composed of Special Agents, analysts, linguists, and surveillance specialists in a manner which creates and sustains within the FBI a workforce with substantial expertise in, and commitment to, the intelligence mission of the FBI. The Director shall—

(1) ensure that these FBI employees may make their career, including promotion to the most senior positions in the FBI, within this career track;

(2) establish intelligence cadre requirements for—

(A) training;

(B) career development and certification;

(C) recruitment, hiring, and selection;

(D) integrating field intelligence teams; and

(E) senior level field management;

(3) establish intelligence officer certification requirements, including requirements for training courses and assignments to other intelligence, national security, or homeland security components of the Executive branch, in order to advance to senior operational management positions in the FBI;

(4) ensure that the FBI's recruitment and training program enhances its ability to attract individuals with educational and professional backgrounds in intelligence, international relations, language, technology, and other skills relevant to the intelligence mission of the FBI;

(5) ensure that all Special Agents and analysts employed by the FBI after the date of the enactment of this Act shall receive basic training in both criminal justice matters and intelligence matters;

(6) ensure that all Special Agents employed by the FBI after the date of the enactment of this Act, to the maximum extent practicable, be given an opportunity to undergo, during their early service with the FBI, meaningful assignments in criminal justice matters and in intelligence matters;

(7) ensure that, to the maximum extent practical, Special Agents who specialize in intelligence are afforded the opportunity to work on intelligence matters over the remainder of their career with the FBI; and

(8) ensure that, to the maximum extent practical, analysts are afforded FBI training and career opportunities commensurate with the training and career opportunities afforded analysts in other elements of the intelligence community.

(e) FIELD OFFICE MATTERS.—The Director of the Federal Bureau of Investigation shall take appropriate actions to ensure the integration of analysis, Special Agents, linguists, and surveillance personnel in FBI field intelligence components and to provide effective leadership and infrastructure to support FBI field intelligence components. The Director shall—

(1) ensure that each FBI field office has an official at the level of Assistant Special Agent in Charge or higher with responsibility for the FBI field intelligence component; and

(2) to the extent practicable, provide for such expansion of special compartmented information facilities in FBI field offices as is necessary to ensure the discharge by the field intelligence components of the national security and criminal intelligence mission of the FBI.

(g) BUDGET MATTERS.—The Director of the Federal Bureau of Investigation shall, in consultation with the Director of the Office of Management and Budget, modify the budget structure of the FBI in order to organize the budget according to its four main programs as follows:

(1) Intelligence.

(2) Counterterrorism and counterintelligence.

(3) Criminal enterprise/Federal crimes.

(4) Criminal justice services.

(h) REPORTS.—

(1)(A) Not later than 180 days after the date of the enactment of this Act, and every twelve months thereafter, the Director of the Federal Bureau of Investigation shall submit to Congress a report on the progress made as of the date of such report in carrying out the requirements of this section.

(B) The Director shall include in the first report required by subparagraph (A) an estimate of the resources required to complete the expansion of special compartmented information facilities to carry out the intelligence mission of FBI field intelligence components.

(2) In each annual report required by paragraph (1)(A) the director shall include—

(A) a report on the progress made by each FBI field office during the period covered by such review in addressing FBI and national intelligence priorities;

(B) a report assessing the qualifications, status, and roles of analysts at FBI headquarters and in FBI field offices; and

(C) a report on the progress of the FBI in implementing information-sharing principles.

(3) A report required by this subsection shall be submitted—

(A) to each committee of Congress that has jurisdiction over the subject matter of such report; and

(B) in unclassified form, but may include a classified annex.

SEC. 2194. AUTHORIZATION AND CHANGE OF COPS PROGRAM TO SINGLE GRANT PROGRAM.

(a) IN GENERAL.—Section 1701 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd) is amended—

(1) by amending subsection (a) to read as follows:

"(a) GRANT AUTHORIZATION.—The Attorney General shall carry out a single grant program under which the Attorney General makes grants to States, units of local government, Indian tribal governments, other public and private entities, and multi-jurisdictional or regional consortia for the purposes described in subsection (b).";

(2) by striking subsections (b) and (c);

(3) by redesignating subsection (d) as subsection (b), and in that subsection—

(A) by striking "ADDITIONAL GRANT PROJECTS.—Grants made under subsection (a) may include programs, projects, and other activities to—" and inserting "USES OF GRANT AMOUNTS.—The purposes for which grants made under subsection (a) may be made are—";

(B) by redesignating paragraphs (1) through (12) as paragraphs (6) through (17), respectively;

(C) by inserting before paragraph (5) (as so redesignated) the following new paragraphs:

"(1) rehire law enforcement officers who have been laid off as a result of State and local budget reductions for deployment in community-oriented policing;

"(2) hire and train new, additional career law enforcement officers for deployment in community-oriented policing across the Nation;

"(3) procure equipment, technology, or support systems, or pay overtime, to increase the number of officers deployed in community-oriented policing;

"(4) improve security at schools and on school grounds in the jurisdiction of the grantee through—

"(A) placement and use of metal detectors, locks, lighting, and other deterrent measures;

"(B) security assessments;

"(C) security training of personnel and students;

"(D) coordination with local law enforcement; and

"(E) any other measure that, in the determination of the Attorney General, may provide a significant improvement in security;

"(5) pay for officers hired to perform intelligence, anti-terror, or homeland security duties exclusively;"; and

(D) by amending paragraph (9, (as so redesignated) to read as follows:

"(8) develop new technologies, including interoperable communications technologies, modernized criminal record technology, and forensic technology, to assist State and local law enforcement agencies in reorienting the emphasis of their activities from reacting to crime to preventing crime and to train law enforcement officers to use such technologies;";

(4) by redesignating subsections (e) through (k) as subsections (c) through (i), respectively;

(5) in subsection (c) (as so redesignated) by striking "subsection (i)" and inserting "subsection (g)"; and

(6) by adding at the end the following new subsection:

"(j) MATCHING FUNDS FOR SCHOOL SECURITY GRANTS.—Notwithstanding subsection (i), in the case of a grant under subsection (a) for the purposes described in subsection (b)(4)—

"(1) the portion of the costs of a program provided by that grant may not exceed 50 percent;

"(2) any funds appropriated by Congress for the activities of any agency of an Indian tribal government or the Bureau of Indian Affairs performing law enforcement functions on any Indian lands may be used to provide the non-Federal share of a matching requirement funded under this subsection; and

"(3) the Attorney General may provide, in the guidelines implementing this section, for the requirement of paragraph (1) to be waived or altered in the case of a recipient with a financial need for such a waiver or alteration.".

(b) CONFORMING AMENDMENT.—Section 1702 of title I of such Act (42 U.S.C. 3796dd–1) is amended in subsection (d)(2) by striking "section 1701(d)" and inserting "section 1701(b)".

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a)(11) of title I of such Act (42 U.S.C. 3793(a)(11)) is amended—

(1) in subparagraph (A) by striking clause (i) and all that follows through the period at the end and inserting the following:

"(i) $1,007,624,000 for fiscal year 2005;

"(ii) $1,027,176,000 for fiscal year 2006; and

"(iii) $1,047,119,000 for fiscal year 2007."; and

(2) in subparagraph (B)—

(A) by striking "section 1701(f)" and inserting "section 1701(d)"; and

(B) by striking the third sentence.

Subtitle I—Police Badges

SEC. 2201. SHORT TITLE.

This subtitle may be cited as the "Badge Security Enhancement Act of 2004".

SEC. 2202. POLICE BADGES.

Section 716 of title 18, United States Code, is amended in subsection (b)—

(1) by striking paragraphs (2) and (4); and

(2) by redesignating paragraph (3) as paragraph (2).

TITLE III—BORDER SECURITY AND TERRORIST TRAVEL

Subtitle A—Immigration Reform in the National Interest

CHAPTER 1—GENERAL PROVISIONS

SEC. 3001. ELIMINATING THE "WESTERN HEMISPHERE" EXCEPTION FOR CITIZENS.

(a) IN GENERAL.—

(1) IN GENERAL.—Section 215(b) of the Immigration and Nationality Act (8 U.S.C. 1185(b)) is amended to read as follows:

"(b)(1) Except as otherwise provided in this subsection, it shall be unlawful for any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States unless the citizen bears a valid United States passport.

"(2) Subject to such limitations and exceptions as the President may authorize and prescribe, the President may waive the application of paragraph (1) in the case of a citizen departing the United States to, or entering the United States from, foreign contiguous territory.

"(3) The President, if waiving the application of paragraph (1) pursuant to paragraph (2), shall require citizens departing the United States to, or entering the United States from, foreign contiguous territory to bear a document (or combination of documents) designated by the Secretary of Homeland Security under paragraph (4).

"(4) The Secretary of Homeland Security—

"(A) shall designate documents that are sufficient to denote identity and citizenship in the United States such that they may be used, either individually or in conjunction with another document, to establish that the bearer is a citizen or national of the United States for purposes of lawfully departing from or entering the United States; and

"(B) shall publish a list of those documents in the Federal Register.

"(5) A document or documents may not be designated under paragraph (4) unless the Secretary of Homeland Security determines that the document or documents adequately identifies or identify the bearer as a citizen of the United States. If a single document is designated, it must be a document that may not be issued to an alien. In no event may a combination of documents be accepted for this purpose unless the Secretary of Homeland Security determines that at least one of those documents could not be issued to an alien.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on October 1, 2006.

(b) INTERIM RULE.—

(1) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Secretary of Homeland Security—

(A) shall designate documents that are sufficient to denote identity and citizenship in the United States such that they may be used, either individually or in conjunction with another document, to establish that the bearer is a citizen or national of the United States for purposes of lawfully departing from or entering the United States; and

(B) shall publish a list of those documents in the Federal Register.

(2) LIMITATION ON PRESIDENTIAL AUTHORITY.—Beginning on the date that is 90 days after the publication described in paragraph (1)(B), the President, notwithstanding section 215(b) of the Immigration and Nationality Act (8 U.S.C. 1185(b)), may not exercise the President's authority under such section so as to permit any citizen of the United States to depart from or enter, or attempt to depart from or enter, the United States from any country other than foreign contiguous territory, unless the citizen bears a document (or combination of documents) designated under paragraph (1)(A).

(3) CRITERIA FOR DESIGNATION.—A document or documents may not be designated under paragraph (1)(A) unless the Secretary of Homeland Security determines that the document or documents adequately identifies or identify the bearer as a citizen of the United States. If a single document is designated, it must be a document that may not be issued to an alien (as defined in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))). In no event may a combination of documents be accepted for this purpose unless the Secretary of Homeland Security determines that at least one of those documents could not be issued to an alien (as so defined).

(4) EFFECTIVE DATE.—This subsection shall take effect on the date of the enactment of this Act and shall cease to be effective on September 30, 2006.

SEC. 3002. MODIFICATION OF WAIVER AUTHORITY WITH RESPECT TO DOCUMENTATION REQUIREMENTS FOR NATIONALS OF FOREIGN CONTIGUOUS TERRITORIES AND ADJACENT ISLANDS.

(a) IN GENERAL.—Section 212(d)(4) of the Immigration and Nationality Act (8 U.S.C.1182(d)(4)) is amended—

(1) by striking "Attorney General" and inserting "Secretary of Homeland Security";

(2) by striking "on the basis of reciprocity" and all that follows through "or (C)"; and

(3) by adding at the end the following: "Either or both of the requirements of such paragraph may also be waived by the Secretary of Homeland Security and the Secretary of State, acting jointly and on the basis of reciprocity, with respect to nationals of foreign contiguous territory or of adjacent islands, but only if such nationals are required, in order to be admitted into the United States, to be in possession of identification deemed by the Secretary of Homeland Security to be secure.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on December 31, 2006.

SEC. 3003. INCREASE IN FULL-TIME BORDER PATROL AGENTS.

The Secretary of Homeland Security, in each of fiscal years 2006 through 2010, shall increase by not less than 2,000 the number of positions for full-time active-duty border patrol agents within the Department of Homeland Security above the number of such positions for which funds were allotted for the preceding fiscal year.

SEC. 3004. INCREASE IN FULL-TIME IMMIGRATION AND CUSTOMS ENFORCEMENT INVESTIGATORS.

The Secretary of Homeland Security, in each of fiscal years 2006 through 2010, shall increase by not less than 800 the number of positions for full-time active-duty investigators within the Department of Homeland Security investigating violations of immigration laws (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)) above the number of such positions for which funds were allotted for the preceding fiscal year. At least half of these additional investigators shall be designated to investigate potential violations of section 274A of the Immigration and Nationality Act (8 U.S.C 1324a). Each State shall be allotted at least 3 of these additional investigators.

SEC. 3005. ALIEN IDENTIFICATION STANDARDS.

Section 211 of the Immigration and Nationality Act (8 U.S.C. 1181) is amended by adding at the end the following:

"(d) For purposes of establishing identity to any Federal employee, an alien present in the United States may present any document issued by the Attorney General or the Secretary of Homeland Security under the authority of one of the immigration laws (as defined in section 101(a)(17)), a domestically issued document that the Secretary of Homeland Security designates as reliable for this purpose and that cannot be issued to an alien unlawfully present in the United States, or an unexpired, lawfully issued foreign passport as determined by the Secretary of State. Subject to the limitations and exceptions in the immigration laws (as so defined), no other document may be presented for such purposes.".

SEC. 3006. EXPEDITED REMOVAL.

Section 235(b)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(A)) is amended by striking clauses (i) through (iii) and inserting the following:

"(i) IN GENERAL.—If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States, or who has not been admitted or paroled into the United States and has not been physically present in the United States continuously for the 5-year period immediately prior to the date of the determination of inadmissibility under this paragraph, is inadmissible under section 212(a)(6)(C) or 212(a)(7), the officer shall order the alien removed from the United States without further hearing or review, unless the alien indicates an intention to apply for asylum under section 208 or a fear of persecution and the officer determines that the alien has been physically present in the United States for less than 1 year.

"(ii) CLAIMS FOR ASYLUM.—If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States, or who has not been admitted or paroled into the United States and has not been physically present in the United States continuously for the 5-year period immediately prior to the date of the determination of inadmissibility under this paragraph, is inadmissible under section 212(a)(6)(C) or 212(a)(7), and the alien indicates either an intention to apply for asylum under section 208 or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B) if the officer determines that the alien has been physically present in the United States for less than 1 year.".

SEC. 3007. PREVENTING TERRORISTS FROM OBTAINING ASYLUM.

(a) CONDITIONS FOR GRANTING ASYLUM.—Section 208(b) of the Immigration and Nationality Act (8 U.S.C. 1158(b)) is amended—

(1) in paragraph (1), by striking "The Attorney General" and inserting the following:

"(A) ELIGIBILITY.—The Secretary of Homeland Security or the Attorney General"; and

(2) by adding at the end the following:

"(B) BURDEN OF PROOF.—

"(i) IN GENERAL.—The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section 101(a)(42)(A).

"(ii) SPECIAL RULE.—The applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be the central motive for persecuting the applicant if the applicant claims that the applicant has been or would be subjected to persecution because the applicant—

"(I) has been accused of being or is believed to be a member of, or has been accused of supporting, a guerrilla, militant, or terrorist organization; or

"(II) has been accused of engaging in or supporting guerrilla, militant, or terrorist activities, or is believed to have engaged in or supported such activities.

"(iii) SUSTAINING BURDEN.—The testimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if it is credible, is persuasive, and refers to specific facts that demonstrate that the applicant is a refugee. Where the trier of fact finds that it is reasonable to expect corroborating evidence for certain alleged facts pertaining to the specifics of the applicant's claim, such evidence must be provided unless a reasonable explanation is given as to why such information is not provided. It is reasonable to expect the applicant to provide corroborating evidence if the applicant has, or has access to, the evidence or could reasonably obtain the evidence without departing from the United States.

"(iv) CREDIBILITY DETERMINATION.—The credibility determination of the trier of fact may be based, in addition to other factors, on the demeanor, candor, or responsiveness of the applicant or witness, the consistency between the applicant's or witness's written and oral statements, whether or not under oath, made at any time to any officer, agent, or employee of the United States, the internal consistency of each such statement, the consistency of such statements with the country conditions in the country from which the applicant claims asylum (as presented by the Department of State) and any inaccuracies or falsehoods in such statements. These factors may be considered individually or cumulatively.".

(b) STANDARD OF REVIEW FOR ORDERS OF REMOVAL.—Section 242(b)(4) of the Immigration and Nationality Act (8 U.S.C. 1252(b)(4)) is amended by adding after subparagraph (D) the following flush language: "No court shall reverse a determination made by an adjudicator with respect to the availability of corroborating evidence as described in section 208(b)(1)(B), unless the court finds that a reasonable adjudicator is compelled to conclude that such corroborating evidence is unavailable.".

(c) EFFECTIVE DATE.—The amendment made by subsection (b) shall take effect upon the date of the enactment of this Act and shall apply to cases in which the final administrative removal order was issued before, on, or after the date of the enactment of this Act.

SEC. 3008. REVOCATION OF VISAS AND OTHER TRAVEL DOCUMENTATION.

(a) LIMITATION ON REVIEW.—Section 221(i) of the Immigration and Nationality Act (8 U.S.C. 1201(i)) is amended by adding at the end the following: "There shall be no means of judicial review (including review pursuant to section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title) of a revocation under this subsection, and no court shall have jurisdiction to consider any claim challenging the validity of such a revocation.".

(b) CLASSES OF DEPORTABLE ALIENS.—Section 237(a)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(1)(B)) is amended by striking "United States is" and inserting the following: "United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 221(i), is".

(c) REVOCATION OF PETITIONS.—Section 205 of the Immigration and Nationality Act (8 U.S.C. 1155) is amended—

(1) by striking "Attorney General" and inserting "Secretary of Homeland Security"; and

(2) by striking the final two sentences.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to revocations under sections 205 and 221(i) of the Immigration and Nationality Act made before, on, or after such date.

SEC. 3009. JUDICIAL REVIEW OF ORDERS OF REMOVAL.

(a) IN GENERAL.—Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252) is amended—

(1) in subsection (a)—

(A) in paragraph (2)—

(i) in subparagraphs (A), (B), and (C), by inserting "(statutory and nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title" after "Notwithstanding any other provision of law"; and

(ii) by adding at the end the following:

"(D) JUDICIAL REVIEW OF CERTAIN LEGAL CLAIMS.—Nothing in this paragraph shall be construed as precluding consideration by the circuit courts of appeals of constitutional claims or pure questions of law raised upon petitions for review filed in accordance with this section. Notwithstanding any other provision of law (statutory and nonstatutory), including section 2241 of title 28, United States Code, or, except as provided in subsection (e), any other habeas corpus provision, and sections 1361 and 1651 of such title, such petitions for review shall be the sole and exclusive means of raising any and all claims with respect to orders of removal entered or issued under any provision of this Act."; and

(B) by adding at the end the following:

"(4) CLAIMS UNDER THE UNITED NATIONS CONVENTION.—Notwithstanding any other provision of law (statutory and nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review by the circuit courts of appeals filed in accordance with this section is the sole and exclusive means of judicial review of claims arising under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment.

"(5) EXCLUSIVE MEANS OF REVIEW.—The judicial review specified in this subsection shall be the sole and exclusive means for review by any court of an order of removal entered or issued under any provision of this Act. For purposes of this title, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms 'judicial review' and 'jurisdiction to review' include habeas corpus review pursuant to section 2241 of title 28, United States Code, or any other habeas corpus provision, sections 1361 and 1651 of such title, and review pursuant to any other provision of law.";

(2) in subsection (b)—

(A) in paragraph (3)(B), by inserting "pursuant to subsection (f)" after "unless"; and

(B) in paragraph (9), by adding at the end the following: "Except as otherwise provided in this subsection, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28, United States Code, or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to hear any cause or claim subject to these consolidation provisions.";

(3) in subsection (f)(2), by inserting "or stay, by temporary or permanent order, including stays pending judicial review," after "no court shall enjoin"; and

(4) in subsection (g), by inserting "(statutory and nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title" after "notwithstanding any other provision of law".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect upon the date of the enactment of this Act and shall apply to cases in which the final administrative removal order was issued before, on, or after the date of the enactment of this Act.

(c) TRANSFER OF CASES.—If an alien's case, brought under section 2241 of title 28, United States Code, and challenging a final administrative removal order, is pending in a district court on the date of the enactment of this Act, then the district court shall transfer the case (or part of the case that challenges the removal order) to the court of appeals for the circuit in which a petition for review could have been properly filed under section 242 of the Immigration and Nationality Act (8 U.S.C. 1252), as amended by this Act. The court of appeals shall treat the transferred case as if it had been brought pursuant to a petition for review under such section 242.

CHAPTER 2—DEPORTATION OF TERRORISTS AND SUPPORTERS OF TERRORISM

SEC. 3031. EXPANDED INAPPLICABILITY OF RESTRICTION ON REMOVAL.

(a) IN GENERAL.—Section 241(b)(3)(B) (8 U.S.C. 1231(b)(3)(B)) is amended—

(1) in clause (iii), by striking "or";

(2) in clause (iv), by striking the period at the end and inserting "; or";

(3) by inserting after clause (iv) the following:

"(v) the alien is described in subclause (I), (II), (III), (IV), or (VI) of section 212(a)(3)(B)(i) or section 237(a)(4)(B), unless, in the case only of an alien described in section 212(a)(3)(B)(i)(IV), the Secretary of Homeland Security determines, in the Secretary's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States."; and

(4) by striking the last sentence.

(b) EXCEPTIONS.—Section 208(b)(2)(A)(v) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(2)(A)(v)) is amended—

(1) by striking "inadmissible under" each place such term appears and inserting "described in"; and

(2) by striking "removable under".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to—

(1) removal proceedings instituted before, on, or after the date of the enactment of this Act; and

(2) acts and conditions constituting a ground for inadmissibility or removal occurring or existing before, on, or after such date.

SEC. 3032. EXCEPTION TO RESTRICTION ON REMOVAL FOR TERRORISTS AND CRIMINALS.

(a) REGULATIONS.—

(1) REVISION DEADLINE.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security shall revise the regulations prescribed by the Secretary to implement the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, done at New York on December 10, 1984.

(2) EXCLUSION OF CERTAIN ALIENS.—The revision—

(A) shall exclude from the protection of such regulations aliens described in section 241(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3)(B)) (as amended by this title), including rendering such aliens ineligible for withholding or deferral of removal under the Convention; and

(B) shall ensure that the revised regulations operate so as to—

(i) allow for the reopening of determinations made under the regulations before the effective date of the revision; and

(ii) apply to acts and conditions constituting a ground for ineligibility for the protection of such regulations, as revised, regardless of when such acts or conditions occurred.

(3) BURDEN OF PROOF.—The revision shall also ensure that the burden of proof is on the applicant for withholding or deferral of removal under the Convention to establish by clear and convincing evidence that he or she would be tortured if removed to the proposed country of removal.

(b) JUDICIAL REVIEW.—Notwithstanding any other provision of law, no court shall have jurisdiction to review the regulations adopted to implement this section, and nothing in this section shall be construed as providing any court jurisdiction to consider or review claims raised under the Convention or this section, except as part of the review of a final order of removal pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

SEC. 3033. ADDITIONAL REMOVAL AUTHORITIES.

(a) IN GENERAL.—Section 241(b) of the Immigration and Nationality Act (8 U.S.C. 1231(b)) is amended—

(1) in paragraph (1)—

(A) in each of subparagraphs (A) and (B), by striking the period at the end and inserting "unless, in the opinion of the Secretary of Homeland Security, removing the alien to such country would be prejudicial to the United States."; and

(B) by amending subparagraph (C) to read as follows:

"(C) ALTERNATIVE COUNTRIES.—If the alien is not removed to a country designated in subparagraph (A) or (B), the Secretary of Homeland Security shall remove the alien to—

"(i) the country of which the alien is a citizen, subject, or national, where the alien was born, or where the alien has a residence, unless the country physically prevents the alien from entering the country upon the alien's removal there; or

"(ii) any country whose government will accept the alien into that country."; and

(2) in paragraph (2)—

(A) by striking "Attorney General" each place such term appears and inserting "Secretary of Homeland Security";

(B) by amending subparagraph (D) to read as follows:

"(D) ALTERNATIVE COUNTRIES.—If the alien is not removed to a country designated under subparagraph (A)(i), the Secretary of Homeland Security shall remove the alien to a country of which the alien is a subject, national, or citizen, or where the alien has a residence, unless—

"(i) such country physically prevents the alien from entering the country upon the alien's removal there; or

"(ii) in the opinion of the Secretary of Homeland Security, removing the alien to the country would be prejudicial to the United States."; and

(C) by amending subparagraph (E)(vii) to read as follows:

"(vii) Any country whose government will accept the alien into that country.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to any deportation, exclusion, or removal on or after such date pursuant to any deportation, exclusion, or removal order, regardless of whether such order is administratively final before, on, or after such date.

CHAPTER 3—PREVENTING COMMERCIAL ALIEN SMUGGLING

SEC. 3041. BRINGING IN AND HARBORING CERTAIN ALIENS.

(a) CRIMINAL PENALTIES.—Section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)) is amended by adding at the end the following:

"(4) In the case of a person who has brought aliens into the United States in violation of this subsection, the sentence otherwise provided for may be increased by up to 10 years if—

"(A) the offense was part of an ongoing commercial organization or enterprise;

"(B) aliens were transported in groups of 10 or more;

"(C) aliens were transported in a manner that endangered their lives; or

"(D) the aliens presented a life-threatening health risk to people in the United States.".

(b) OUTREACH PROGRAM.—Section 274 of the Immigration and Nationality Act (8 U.S.C. 1324), as amended by subsection (a), is further amended by adding at the end the following:

"(f) OUTREACH PROGRAM.—The Secretary of Homeland Security, in consultation as appropriate with the Attorney General and the Secretary of State, shall develop and implement an outreach program to educate the public in the United States and abroad about the penalties for bringing in and harboring aliens in violation of this section.

Subtitle B—Identity Management Security

CHAPTER 1—IMPROVED SECURITY FOR DRIVERS' LICENSES AND PERSONAL IDENTIFICATION CARDS

SEC. 3051. DEFINITIONS.

In this chapter, the following definitions apply:

(1) DRIVER'S LICENSE.—The term "driver's license" means a motor vehicle operator's license, as defined in section 30301 of title 49, United States Code.

(2) IDENTIFICATION CARD.—The term "identification card" means a personal identification card, as defined in section 1028(d) of title 18, United States Code, issued by a State.

(3) SECRETARY.—The term "Secretary" means the Secretary of Homeland Security.

(4) STATE.—The term "State" means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

SEC. 3052. MINIMUM DOCUMENT REQUIREMENTS AND ISSUANCE STANDARDS FOR FEDERAL RECOGNITION.

(a) MINIMUM STANDARDS FOR FEDERAL USE.—

(1) IN GENERAL.—Beginning 3 years after the date of the enactment of this Act, a Federal agency may not accept, for any official purpose, a driver's license or identification card issued by a State to any person unless the State is meeting the requirements of this section.

(2) STATE CERTIFICATIONS.—The Secretary shall determine whether a State is meeting the requirements of this section based on certifications made by the State to the Secretary. Such certifications shall be made at such times and in such manner as the Secretary, in consultation with the Secretary of Transportation, may prescribe by regulation.

(b) MINIMUM DOCUMENT REQUIREMENTS.—To meet the requirements of this section, a State shall include, at a minimum, the following information and features on each driver's license and identification card issued to a person by the State:

(1) The person's full legal name.

(2) The person's date of birth.

(3) The person's gender.

(4) The person's driver license or identification card number.

(5) A digital photograph of the person.

(6) The person's address of principal residence.

(7) The person's signature.

(8) Physical security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes.

(9) A common machine-readable technology, with defined minimum data elements.

(c) MINIMUM ISSUANCE STANDARDS.—

(1) IN GENERAL.—To meet the requirements of this section, a State shall require, at a minimum, presentation and verification of the following information before issuing a driver's license or identification card to a person:

(A) A photo identity document, except that a non-photo identity document is acceptable if it includes both the person's full legal name and date of birth.

(B) Documentation showing the person's date of birth.

(C) Proof of the person's social security account number or verification that the person is not eligible for a social security account number.

(D) Documentation showing the person's name and address of principal residence.

(2) Special requirements.—

(A) In general.—To meet the requirements of this section, a State shall comply with the minimum standards of this paragraph.

(B) Evidence of legal status.—A State shall require, before issuing a driver's license or identification card to a person, valid documentary evidence that the person—

(i) is a citizen of the United States;

(ii) is an alien lawfully admitted for permanent or temporary residence in the United States;

(iii) has conditional permanent resident status in the United States;

(iv) has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States;

(v) has a pending or approved application for asylum in the United States;

(vi) has entered into the United States in refugee status;

(vii) has a pending or approved application for temporary protected status in the United States;

(viii) has approved deferred action status; or

(ix) has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States.

(C) Temporary drivers' licenses and identification cards.—

(i) In general.—If a person presents evidence under any of clauses (iv) through (ix) of subparagraph (B), the State may only issue a temporary driver's license or temporary identification card to the person.

(ii) Expiration date.—A temporary driver's license or temporary identification card issued pursuant to this subparagraph shall be valid only during the period of time of the applicant's authorized stay in the United States or if there is no definite end to the period of authorized stay a period of one year.

(iii) Display of expiration date.—A temporary driver's license or temporary identification card issued pursuant to this subparagraph shall clearly indicate that it is temporary and shall state the date on which it expires.

(iv) Renewal.—A temporary driver's license or temporary identification card issued pursuant to this subparagraph may be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the temporary driver's license or temporary identification card has been extended by the Secretary of Homeland Security.

(3) Applications for renewal, duplication, or reissuance.—

(A) Presumption.—For purposes of paragraphs (1) and (2), a State shall presume that any driver's license or identification card for which an application has been made for renewal, duplication, or reissuance has been issued in accordance with the provisions of such paragraphs if, at the time the application is made, the driver's license or identification card has not expired or been canceled, suspended, or revoked.

(B) Limitation.—Subparagraph (A) shall not apply to a renewal, duplication, or reissuance if the State is notified by a local, State, or Federal government agency that the person seeking such renewal, duplication, or reissuance is neither a citizen of the United States nor legally in the United States.

(4) Verification of documents.—To meet the requirements of this section, a State shall implement the following procedures:

(A) Before issuing a driver's license or identification card to a person, the State shall verify, with the issuing agency, the issuance, validity, and completeness of each document required to be presented by the person under paragraph (1) or (2).

(B) The State shall not accept any foreign document, other than an official passport, to satisfy a requirement of paragraph (1) or (2).

(C) Not later than September 11, 2005, the State shall enter into a memorandum of understanding with the Secretary of Homeland Security to routinely utilize the automated system known as Systematic Alien Verification for Entitlements, as provided for by section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (110 Stat. 3009-664), to verify the legal presence status of a person, other than a United States citizen, applying for a driver's license or identification card.

(d) Other Requirements.—To meet the requirements of this section, a State shall adopt the following practices in the issuance of drivers' licenses and identification cards:

(1) Employ technology to capture digital images of identity source documents so that the images can be retained in electronic storage in a transferable format.

(2) Retain paper copies of source documents for a minimum of 7 years or images of source documents presented for a minimum of 10 years.

(3) Subject each person applying for a driver's license or identification card to mandatory facial image capture.

(4) Establish an effective procedure to confirm or verify a renewing applicant's information.

(5) Confirm with the Social Security Administration a social security account number presented by a person using the full social security account number. In the event that a social security account number is already registered to or associated with another person to which any State has issued a driver's license or identification card, the State shall resolve the discrepancy and take appropriate action.

(6) Refuse to issue a driver's license or identification card to a person holding a driver's license issued by another State without confirmation that the person is terminating or has terminated the driver's license.

(7) Ensure the physical security of locations where drivers' licenses and identification cards are produced and the security of document materials and papers from which drivers' licenses and identification cards are produced.

(8) Subject all persons authorized to manufacture or produce drivers' licenses and identification cards to appropriate security clearance requirements.

(9) Establish fraudulent document recognition training programs for appropriate employees engaged in the issuance of drivers' licenses and identification cards.

SEC. 3053. LINKING OF DATABASES.

(a) In General.—To be eligible to receive any grant or other type of financial assistance made available under this subtitle, a State shall participate in the interstate compact regarding sharing of driver license data, known as the "Driver License Agreement", in order to provide electronic access by a State to information contained in the motor vehicle databases of all other States.

(b) Requirements for Information.—A State motor vehicle database shall contain, at a minimum, the following information:

(1) All data fields printed on drivers' licenses and identification cards issued by the State.

(2) Motor vehicle drivers' histories, including motor vehicle violations, suspensions, and points on licenses.

SEC. 3054. TRAFFICKING IN AUTHENTICATION FEATURES FOR USE IN FALSE IDENTIFICATION DOCUMENTS.

Section 1028(a)(8) of title 18, United States Code, is amended by striking "false authentication features" and inserting "false or actual authentication features".

SEC. 3055. GRANTS TO STATES.

(a) In General.—The Secretary may make grants to a State to assist the State in conforming to the minimum standards set forth in this chapter.

(b) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out this chapter.

SEC. 3056. AUTHORITY.

(a) Participation of Secretary of Transportation and States.—All authority to issue regulations, certify standards, and issue grants under this chapter shall be carried out by the Secretary, in consultation with the Secretary of Transportation and the States.

(b) Extensions of Deadlines.—The Secretary may grant to a State an extension of time to meet the requirements of section 3052(a)(1) if the State provides adequate justification for noncompliance.

CHAPTER 2—IMPROVED SECURITY FOR BIRTH CERTIFICATES

SEC. 3061. DEFINITIONS.

(a) Applicability of Definitions.—Except as otherwise specifically provided, the definitions contained in section 3051 apply to this chapter.

(b) Other Definitions.—In this chapter, the following definitions apply:

(1) Birth certificate.—The term "birth certificate" means a certificate of birth—

(A) for an individual (regardless of where born)—

(i) who is a citizen or national of the United States at birth; and

(ii) whose birth is registered in the United States; and

(B) that—

(i) is issued by a Federal, State, or local government agency or authorized custodian of record and produced from birth records maintained by such agency or custodian of record; or

(ii) is an authenticated copy, issued by a Federal, State, or local government agency or authorized custodian of record, of an original certificate of birth issued by such agency or custodian of record.

(2) Registrant.—The term "registrant" means, with respect to a birth certificate, the person whose birth is registered on the certificate.

(3) State.—The term "State" shall have the meaning given such term in section 3051; except that New York City shall be treated as a State separate from New York.

SEC. 3062. APPLICABILITY OF MINIMUM STANDARDS TO LOCAL GOVERNMENTS.

The minimum standards in this chapter applicable to birth certificates issued by a State shall also apply to birth certificates issued by a local government in the State. It shall be the responsibility of the State to ensure that local governments in the State comply with the minimum standards.

SEC. 3063. MINIMUM STANDARDS FOR FEDERAL RECOGNITION.

(a) Minimum Standards for Federal Use.—

(1) In general.—Beginning 3 years after the date of the enactment of this Act, a Federal agency may not accept, for any official purpose, a birth certificate issued by a State to any person unless the State is meeting the requirements of this section.

(2) State certifications.—The Secretary shall determine whether a State is meeting the requirements of this section based on certifications made by the State to the Secretary. Such certifications shall be made at such times and in such manner as the Secretary, in consultation with the Secretary of Health and Human Services, may prescribe by regulation.

(b) Minimum Document Standards.—To meet the requirements of this section, a State shall include, on each birth certificate issued to a person by the State, the use of safety paper, the seal of the issuing custodian of record, and such other features as the Secretary may determine necessary to prevent tampering, counterfeiting, and otherwise duplicating the birth certificate for fraudulent purposes. The Secretary may not require a single design to which birth certificates issued by all States must conform.

(c) Minimum Issuance Standards.—

(1) In general.—To meet the requirements of this section, a State shall require and verify the following information from the requestor before issuing an authenticated copy of a birth certificate:

(A) The name on the birth certificate.

(B) The date and location of the birth.

(C) The mother's maiden name.

(D) Substantial proof of the requestor's identity.

(2) Issuance to persons not named on birth certificate.—To meet the requirements of this section, in the case of a request by a person who is not named on the birth certificate, a State must require the presentation of legal authorization to request the birth certificate before issuance.

(3) Issuance to family members.—Not later than one year after the date of the enactment of this Act, the Secretary, in consultation with the Secretary of Health and Human Services and the States, shall establish minimum standards for issuance of a birth certificate to specific family members, their authorized representatives, and others who demonstrate that the certificate is needed for the protection of the requestor's personal or property rights.

(4) Waivers.—A State may waive the requirements set forth in subparagraphs (A) through (C) of subsection (c)(1) in exceptional circumstances, such as the incapacitation of the registrant.

(5) Applications by electronic means.—To meet the requirements of this section, for applications by electronic means, through the mail or by phone or fax, a State shall employ third party verification, or equivalent verification, of the identity of the requestor.

(6) Verification of documents.—To meet the requirements of this section, a State shall verify the documents used to provide proof of identity of the requestor.

(d) Other Requirements.—To meet the requirements of this section, a State shall adopt, at a minimum, the following practices in the issuance and administration of birth certificates:

(1) Establish and implement minimum building security standards for State and local vital record offices.

(2) Restrict public access to birth certificates and information gathered in the issuance process to ensure that access is restricted to entities with which the State has a binding privacy protection agreement.

(3) Subject all persons with access to vital records to appropriate security clearance requirements.

(4) Establish fraudulent document recognition training programs for appropriate employees engaged in the issuance process.

(5) Establish and implement internal operating system standards for paper and for electronic systems.

(6) Establish a central database that can provide interoperative data exchange with other States and with Federal agencies, subject to privacy restrictions and confirmation of the authority and identity of the requestor.

(7) Ensure that birth and death records are matched in a comprehensive and timely manner, and that all electronic birth records and paper birth certificates of decedents are marked "deceased".

(8) Cooperate with the Secretary in the implementation of electronic verification of vital events under section 3065.

SEC. 3064. ESTABLISHMENT OF ELECTRONIC BIRTH AND DEATH REGISTRATION SYSTEMS.

In consultation with the Secretary of Health and Human Services and the Commissioner of Social Security, the Secretary shall take the following actions:

(1) Work with the States to establish a common data set and common data exchange protocol for electronic birth registration systems and death registration systems.

(2) Coordinate requirements for such systems to align with a national model.

(3) Ensure that fraud prevention is built into the design of electronic vital registration systems in the collection of vital event data, the issuance of birth certificates, and the exchange of data among government agencies.

(4) Ensure that electronic systems for issuing birth certificates, in the form of printed abstracts of birth records or digitized images, employ a common format of the certified copy, so that those requiring such documents can quickly confirm their validity.

(5) Establish uniform field requirements for State birth registries.

(6) Not later than 1 year after the date of the enactment of this Act, establish a process with the Department of Defense that will result in the sharing of data, with the States and the Social Security Administration, regarding deaths of United States military personnel and the birth and death of their dependents.

(7) Not later than 1 year after the date of the enactment of this Act, establish a process with the Department of State to improve registration, notification, and the sharing of data with the States and the Social Security Administration, regarding births and deaths of United States citizens abroad.

(8) Not later than 3 years after the date of establishment of databases provided for under this section, require States to record and retain electronic records of pertinent identification information collected from requestors who are not the registrants.

(9) Not later than 6 months after the date of the enactment of this Act, submit to Congress, a report on whether there is a need for Federal laws to address penalties for fraud and misuse of vital records and whether violations are sufficiently enforced.

SEC. 3065. ELECTRONIC VERIFICATION OF VITAL EVENTS.

(a) Lead Agency.—The Secretary shall lead the implementation of electronic verification of a person's birth and death.

(b) Regulations.—In carrying out subsection (a), the Secretary shall issue regulations to establish a means by which authorized Federal and State agency users with a single interface will be able to generate an electronic query to any participating vital records jurisdiction throughout the Nation to verify the contents of a paper birth certificate. Pursuant to the regulations, an electronic response from the participating vital records jurisdiction as to whether there is a birth record in their database that matches the paper birth certificate will be returned to the user, along with an indication if the matching birth record has been flagged "deceased". The regulations shall take effect not later than 5 years after the date of the enactment of this Act.

SEC. 3066. GRANTS TO STATES.

(a) In General.—The Secretary may make grants to a State to assist the State in conforming to the minimum standards set forth in this chapter.

(b) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out this chapter.

SEC. 3067. AUTHORITY.

(a) Participation With Federal Agencies and States.—All authority to issue regulations, certify standards, and issue grants under this chapter shall be carried out by the Secretary, with the concurrence of the Secretary of Health and Human Services and in consultation with State vital statistics offices and appropriate Federal agencies.

(b) Extensions of Deadlines.—The Secretary may grant to a State an extension of time to meet the requirements of section 3063(a)(1) if the State provides adequate justification for noncompliance.

Chapter 3—Measures To Enhance Privacy and Integrity of Social Security Account Numbers

SEC. 3071. PROHIBITION OF THE DISPLAY OF SOCIAL SECURITY ACCOUNT NUMBERS ON DRIVER'S LICENSES OR MOTOR VEHICLE REGISTRATIONS.

(a) In General.—Section 205(c)(2)(C)(vi) of the Social Security Act (42 U.S.C. 405(c)(2)(C)(vi)) is amended—

(1) by inserting "(I)" after "(vi)"; and

(2) by adding at the end the following new subclause:

"(II) Any State or political subdivision thereof (and any person acting as an agent of such an agency or instrumentality), in the administration of any driver's license or motor vehicle registration law within its jurisdiction, may not display a social security account number issued by the Commissioner of Social Security (or any derivative of such number) on any driver's license or motor vehicle registration or any other document issued by such State or political subdivision to an individual for purposes of identification of such individual or include on any such license, registration, or other document a magnetic strip, bar code, or other means of communication which conveys such number (or derivative thereof).".

(b) Effective Date.—The amendments made by this section shall apply with respect to licenses, registrations, and other documents issued or reissued after 1 year after the date of the enactment of this Act.

SEC. 3072. INDEPENDENT VERIFICATION OF BIRTH RECORDS PROVIDED IN SUPPORT OF APPLICATIONS FOR SOCIAL SECURITY ACCOUNT NUMBERS.

(a) APPLICATIONS FOR SOCIAL SECURITY ACCOUNT NUMBERS.—Section 205(c)(2)(B)(ii) of the Social Security Act (42 U.S.C. 405(c)(2)(B)(ii)) is amended—

(1) by inserting "(I)" after "(ii)"; and

(2) by adding at the end the following new subclause:

"(II) With respect to an application for a social security account number for an individual, other than for purposes of enumeration at birth, the Commissioner shall require independent verification of any birth record provided by the applicant in support of the application. The Commissioner may provide by regulation for reasonable exceptions from the requirement for independent verification under this subclause in any case in which the Commissioner determines there is minimal opportunity for fraud.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to applications filed after 270 days after the date of the enactment of this Act.

(c) STUDY REGARDING APPLICATIONS FOR REPLACEMENT SOCIAL SECURITY CARDS.—

(1) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Commissioner of Social Security shall undertake a study to test the feasibility and cost effectiveness of verifying all identification documents submitted by an applicant for a replacement social security card. As part of such study, the Commissioner shall determine the feasibility of, and the costs associated with, the development of appropriate electronic processes for third party verification of any such identification documents which are issued by agencies and instrumentalities of the Federal Government and of the States (and political subdivisions thereof).

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Commissioner shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding the results of the study undertaken under paragraph (1). Such report shall contain such recommendations for legislative changes as the Commissioner considers necessary to implement needed improvements in the process for verifying identification documents submitted by applicants for replacement social security cards.

SEC. 3073. ENUMERATION AT BIRTH.

(a) IMPROVEMENT OF APPLICATION PROCESS.—

(1) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Commissioner of Social Security shall undertake to make improvements to the enumeration at birth program for the issuance of social security account numbers to newborns. Such improvements shall be designed to prevent—

(A) the assignment of social security account numbers to unnamed children;

(B) the issuance of more than 1 social security account number to the same child; and

(C) other opportunities for fraudulently obtaining a social security account number.

(2) REPORT TO THE CONGRESS.—Not later than 1 year after the date of the enactment of this Act, the Commissioner shall transmit to each House of the Congress a report specifying in detail the extent to which the improvements required under paragraph (1) have been made.

(b) STUDY REGARDING PROCESS FOR ENUMERATION AT BIRTH.—

(1) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Commissioner of Social Security shall undertake a study to determine the most efficient options for ensuring the integrity of the process for enumeration at birth. Such study shall include an examination of available methods for reconciling hospital birth records with birth registrations submitted to agencies of States and political subdivisions thereof and with information provided to the Commissioner as part of the process for enumeration at birth.

(2) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Commissioner shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding the results of the study undertaken under paragraph (1). Such report shall contain such recommendations for legislative changes as the Commissioner considers necessary to implement needed improvements in the process for enumeration at birth.

SEC. 3074. STUDY RELATING TO USE OF PHOTOGRAPHIC IDENTIFICATION IN CONNECTION WITH APPLICATIONS FOR BENEFITS, SOCIAL SECURITY ACCOUNT NUMBERS, AND SOCIAL SECURITY CARDS.

(a) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Commissioner of Social Security shall undertake a study to—

(1) determine the best method of requiring and obtaining photographic identification of applicants for old-age, survivors, and disability insurance benefits under title II of the Social Security Act, for a social security account number, or for a replacement social security card, and of providing for reasonable exceptions to any requirement for photographic identification of such applicants that may be necessary to promote efficient and effective administration of such title, and

(2) evaluate the benefits and costs of instituting such a requirement for photographic identification, including the degree to which the security and integrity of the old-age, survivors, and disability insurance program would be enhanced.

(b) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Commissioner shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding the results of the study undertaken under subsection (a). Such report shall contain such recommendations for legislative changes as the Commissioner considers necessary relating to requirements for photographic identification of applicants described in subsection (a).

SEC. 3075. RESTRICTIONS ON ISSUANCE OF MULTIPLE REPLACEMENT SOCIAL SECURITY CARDS.

(a) IN GENERAL.—Section 205(c)(2)(G) of the Social Security Act (42 U.S.C. 405(c)(2)(G)) is amended by adding at the end the following new sentence: "The Commissioner shall restrict the issuance of multiple replacement social security cards to any individual to 3 per year and to 10 for the life of the individual, except in any case in which the Commissioner determines there is minimal opportunity for fraud.".

(b) REGULATIONS AND EFFECTIVE DATE.—The Commissioner of Social Security shall issue regulations under the amendment made by subsection (a) not later than 1 year after the date of the enactment of this Act. Systems controls developed by the Commissioner pursuant to such amendment shall take effect upon the earlier of the issuance of such regulations or the end of such 1-year period.

SEC. 3076. STUDY RELATING TO MODIFICATION OF THE SOCIAL SECURITY ACCOUNT NUMBERING SYSTEM TO SHOW WORK AUTHORIZATION STATUS.

(a) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Commissioner of Social Security, in consultation with the Secretary of Homeland Security, shall undertake a study to examine the best method of modifying the social security account number assigned to individuals who—

(1) are not citizens of the United States,

(2) have not been admitted for permanent residence, and

(3) are not authorized by the Secretary of Homeland Security to work in the United States, or are so authorized subject to one or more restrictions,

so as to include an indication of such lack of authorization to work or such restrictions on such an authorization.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Commissioner shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding the results of the study undertaken under this section. Such report shall include the Commissioner's recommendations of feasible options for modifying the social security account number in the manner described in subsection (a).

Subtitle C—Targeting Terrorist Travel

SEC. 3081. STUDIES ON MACHINE-READABLE PASSPORTS AND TRAVEL HISTORY DATABASE.

(a) IN GENERAL.—Not later than May 31, 2005, the Comptroller General of the United States, the Secretary of State, and the Secretary of Homeland Security each shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate, the Committee on International Relations of the House of Representatives, and the Committee on Foreign Relations of the Senate the results of a separate study on the subjects described in subsection (c).

(b) STUDY.—The study submitted by the Secretary of State under subsection (a) shall be completed by the Office of Visa and Passport Control of the Department of State, in coordination with the appropriate officials of the Department of Homeland Security.

(c) CONTENTS.—The studies described in subsection (a) shall examine the feasibility, cost, potential benefits, and relative importance to the objectives of tracking suspected terrorists' travel, and apprehending suspected terrorists, of each of the following:

(1) Requiring nationals of all countries to present machine-readable, tamper-resistant passports that incorporate biometric and document authentication identifiers.

(2) Creation of a database containing information on the lifetime travel history of each foreign national or United States citizen who might seek to enter the United States or another country at any time, in order that border and visa issuance officials may ascertain the travel history of a prospective entrant by means other than a passport.

(d) INCENTIVES.—The studies described in subsection (a) shall also make recommendations on incentives that might be offered to encourage foreign nations to participate in the initiatives described in paragraphs (1) and (2) of subsection (c).

SEC. 3082. EXPANDED PREINSPECTION AT FOREIGN AIRPORTS.

(a) IN GENERAL.—Section 235A(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225(a)(4)) is amended—

(1) by striking "October 31, 2000," and inserting "January 1, 2008,";

(2) by striking "5 additional" and inserting "at least 15 and up to 25 additional";

(3) by striking "number of aliens" and inserting "number of inadmissible aliens, especially aliens who are potential terrorists,";

(4) by striking "who are inadmissible to the United States." and inserting a period; and

(5) by striking "Attorney General" each place such term appears and inserting "Secretary of Homeland Security".

(b) REPORT.—Not later than June 30, 2006, the Secretary of Homeland Security and the Secretary of State shall report to the Committees on the Judiciary of the House of Representatives and of the Senate, the Committee on International Relations of the House of Representatives, and the Committee on Foreign Relations of the Senate on the progress being made in implementing the amendments made by subsection (a).

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security to carry out the amendments made by subsection (a)—

(1) $24,000,000 for fiscal year 2005;

(2) $48,000,000 for fiscal year 2006; and

(3) $97,000,000 for fiscal year 2007.

SEC. 3083. IMMIGRATION SECURITY INITIATIVE.

(a) IN GENERAL.—Section 235A(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)) is amended—

(1) in the subsection heading, by inserting "AND IMMIGRATION SECURITY INITIATIVE" after "PROGRAM"; and

(2) by adding at the end the following:

"Beginning not later than December 31, 2006, the number of airports selected for an assignment under this subsection shall be at least 50.".

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security to carry out the amendments made by subsection (a)—

(1) $25,000,000 for fiscal year 2005;

(2) $40,000,000 for fiscal year 2006; and

(3) $40,000,000 for fiscal year 2007.

SEC. 3084. RESPONSIBILITIES AND FUNCTIONS OF CONSULAR OFFICERS.

(a) INCREASED NUMBER OF CONSULAR OFFICERS.—The Secretary of State, in each of fiscal years 2006 through 2009, may increase by 150 the number of positions for consular officers above the number of such positions for which funds were allotted for the preceding fiscal year.

(b) LIMITATION ON USE OF FOREIGN NATIONALS FOR NONIMMIGRANT VISA SCREENING.—Section 222(d) of the Immigration and Nationality Act (8 U.S.C. 1202(d)) is amended by adding at the end the following:

"All nonimmigrant visa applications shall be reviewed and adjudicated by a consular officer.".

(c) TRAINING FOR CONSULAR OFFICERS IN DETECTION OF FRAUDULENT DOCUMENTS.—Section 305(a) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1734(a)) is amended by adding at the end the following: "As part of the consular training provided to such officers by the Secretary of State, such officers shall also receive training in detecting fraudulent documents and general document forensics and shall be required as part of such training to work with immigration officers conducting inspections of applicants for admission into the United States at ports of entry.".

(d) ASSIGNMENT OF ANTI-FRAUD SPECIALISTS.—

(1) SURVEY REGARDING DOCUMENT FRAUD.—The Secretary of State, in coordination with the Secretary of Homeland Security, shall conduct a survey of each diplomatic and consular post at which visas are issued to assess the extent to which fraudulent documents are presented by visa applicants to consular officers at such posts.

(2) PLACEMENT OF SPECIALIST.—Not later than July 31, 2005, the Secretary shall, in coordination with the Secretary of Homeland Security, identify 100 of such posts that experience the greatest frequency of presentation of fraudulent documents by visa applicants. The Secretary shall place in each such post at least one full-time anti-fraud specialist employed by the Department of State to assist the consular officers at each such post in the detection of such fraud.

SEC. 3085. INCREASE IN PENALTIES FOR FRAUD AND RELATED ACTIVITY.

Section 1028 of title 18, United States Code, relating to penalties for fraud and related activity in connection with identification documents and information, is amended—

(1) in subsection (b)(1)(A)(i), by striking "issued by or under the authority of the United States" and inserting the following: "as described in subsection (d)";

(2) in subsection (b)(2), by striking "three years" and inserting "six years";

(3) in subsection (b)(3), by striking "20 years" and inserting "25 years";

(4) in subsection (b)(4), by striking "25 years" and inserting "30 years"; and

(5) in subsection (c)(1), by inserting after "United States" the following: "Government, a State, political subdivision of a State, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization,".

SEC. 3086. CRIMINAL PENALTY FOR FALSE CLAIM TO CITIZENSHIP.

Section 1015 of title 18, United States Code, is amended—

(1) by striking the dash at the end of subsection (f) and inserting "; or"; and

(2) by inserting after subsection (f) the following:

"(g) Whoever knowingly makes any false statement or claim that he is a citizen of the United States in order to enter into, or remain in, the United States—".

SEC. 3087. ANTITERRORISM ASSISTANCE TRAINING OF THE DEPARTMENT OF STATE.

(a) LIMITATION.—Notwithstanding any other provision of law, the Secretary of State shall ensure, subject to subsection (b), that the Antiterrorism Assistance Training (ATA) program of the Department of State (or any successor or related program) under chapter 8 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2349aa et seq.) (or other relevant provisions of law) is carried out primarily to provide training to host nation security services for the specific purpose of ensuring the physical security and safety of United States Government facilities and personnel abroad (as well as foreign dignitaries and training related to the protection of such dignitaries), including security detail training and offenses related to passport or visa fraud.

(b) EXCEPTION.—The limitation contained in subsection (a) shall not apply, and the Secretary of State may expand the ATA program to include other types of antiterrorism assistance training, if the Secretary first obtains the approval of the Attorney General and provides written notification of such proposed expansion to the appropriate congressional committees.

(c) DEFINITION.—In this section, the term "appropriate congressional committees" means—

(1) the Committee on International Relations and the Committee on the Judiciary of the House of Representatives; and

(2) the Committee on Foreign Relations and the Committee on the Judiciary of the Senate.

SEC. 3088. INTERNATIONAL AGREEMENTS TO TRACK AND CURTAIL TERRORIST TRAVEL THROUGH THE USE OF FRAUDULENTLY OBTAINED DOCUMENTS.

(a) FINDINGS.—Congress finds the following:

(1) International terrorists travel across international borders to raise funds, recruit members, train for operations, escape capture, communicate, and plan and carry out attacks.

(2) The international terrorists who planned and carried out the attack on the World Trade Center on February 26, 1993, the attack on the embassies of the United States in Kenya and Tanzania on August 7, 1998, the attack on the USS Cole on October 12, 2000, and the attack on the World Trade Center and the Pentagon on September 11, 2001, traveled across international borders to plan and carry out these attacks.

(3) The international terrorists who planned other attacks on the United States, including the plot to bomb New York City landmarks in 1993, the plot to bomb the New York City subway in 1997, and the millennium plot to bomb Los Angeles International Airport on December 31, 1999, traveled across international borders to plan and carry out these attacks.

(4) Many of the international terrorists who planned and carried out large-scale attacks against foreign targets, including the attack in Bali, Indonesia, on October 11, 2002, and the attack in Madrid, Spain, on March 11, 2004, traveled across international borders to plan and carry out these attacks.

(5) Throughout the 1990s, international terrorists, including those involved in the attack on the World Trade Center on February 26, 1993, the plot to bomb New York City landmarks in 1993, and the millennium plot to bomb Los Angeles International Airport on December 31, 1999, traveled on fraudulent passports and often had more than one passport.

(6) Two of the September 11, 2001, hijackers were carrying passports that had been manipulated in a fraudulent manner and several other hijackers whose passports did not survive the attacks on the World Trade Center and Pentagon were likely to have carried passports that were similarly manipulated.

(7) The National Commission on Terrorist Attacks upon the United States, (commonly referred to as the 9/11 Commission), stated that "Targeting travel is at least as powerful a weapon against terrorists as targeting their money.".

(b) INTERNATIONAL AGREEMENTS TO TRACK AND CURTAIL TERRORIST TRAVEL.—

(1) INTERNATIONAL AGREEMENT ON LOST, STOLEN, OR FALSIFIED DOCUMENTS.—The President shall lead efforts to track and curtail the travel of terrorists by supporting the drafting, adoption, and implementation of international agreements, and by supporting the expansion of existing international agreements, to track and stop international travel by terrorists and other criminals through the use of lost, stolen, or falsified documents to augment existing United Nations and other international anti-terrorism efforts.

(2) CONTENTS OF INTERNATIONAL AGREEMENT.—The President shall seek, in the appropriate fora, the drafting, adoption, and

implementation of an effective international agreement requiring—

(A) the establishment of a system to share information on lost, stolen, and fraudulent passports and other travel documents for the purposes of preventing the undetected travel of persons using such passports and other travel documents that were obtained improperly;

(B) the establishment and implementation of a real-time verification system of passports and other travel documents with issuing authorities;

(C) the assumption of an obligation by countries that are parties to the agreement to share with officials at ports of entry in any such country information relating to lost, stolen, and fraudulent passports and other travel documents;

(D) the assumption of an obligation by countries that are parties to the agreement—

(i) to criminalize—

(I) the falsification or counterfeiting of travel documents or breeder documents for any purpose;

(II) the use or attempted use of false documents to obtain a visa or cross a border for any purpose;

(III) the possession of tools or implements used to falsify or counterfeit such documents;

(IV) the trafficking in false or stolen travel documents and breeder documents for any purpose;

(V) the facilitation of travel by a terrorist; and

(VI) attempts to commit, including conspiracies to commit, the crimes specified above;

(ii) to impose significant penalties so as to appropriately punish violations and effectively deter these crimes; and

(iii) to limit the issuance of citizenship papers, passports, identification documents, and the like to persons whose identity is proven to the issuing authority, who have a bona fide entitlement to or need for such documents, and who are not issued such documents principally on account of a disproportional payment made by them or on their behalf to the issuing authority;

(E) the provision of technical assistance to State Parties to help them meet their obligations under the convention;

(F) the establishment and implementation of a system of self-assessments and peer reviews to examine the degree of compliance with the convention; and

(G) an agreement that would permit immigration and border officials to confiscate a lost, stolen, or falsified passport at ports of entry and permit the traveler to return to the sending country without being in possession of the lost, stolen, or falsified passport, and for the detention and investigation of such traveler upon the return of the traveler to the sending country.

(3) INTERNATIONAL CIVIL AVIATION ORGANIZATION.—The United States shall lead efforts to track and curtail the travel of terrorists by supporting efforts at the International Civil Aviation Organization to continue to strengthen the security features of passports and other travel documents.

(c) REPORT.—

(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act, and at least annually thereafter, the President shall submit to the appropriate congressional committees a report on progress toward achieving the goals described in subsection (b).

(2) TERMINATION.—Paragraph (1) shall cease to be effective when the President certifies to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate that the goals described in subsection (b) have been fully achieved.

SEC. 3089. INTERNATIONAL STANDARDS FOR TRANSLATION OF NAMES INTO THE ROMAN ALPHABET FOR INTERNATIONAL TRAVEL DOCUMENTS AND NAME-BASED WATCHLIST SYSTEMS.

(a) FINDINGS.—Congress finds that—

(1) the current lack of a single convention for translating Arabic names enabled some of the 19 hijackers of aircraft used in the terrorist attacks against the United States that occurred on September 11, 2001, to vary the spelling of their names to defeat name-based terrorist watchlist systems and to make more difficult any potential efforts to locate them; and

(2) although the development and utilization of terrorist watchlist systems using biometric identifiers will be helpful, the full development and utilization of such systems will take several years, and name-based terrorist watchlist systems will always be useful.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the President should seek to enter into an international agreement to modernize and improve standards for the translation of names into the Roman alphabet in order to ensure one common spelling for such names for international travel documents and name-based watchlist systems.

SEC. 3090. BIOMETRIC ENTRY AND EXIT DATA SYSTEM.

(a) FINDING.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, the Congress finds that completing a biometric entry and exit data system as expeditiously as possible is an essential investment in efforts to protect the United States by preventing the entry of terrorists.

(b) PLAN AND REPORT.—

(1) DEVELOPMENT OF PLAN.—The Secretary of Homeland Security shall develop a plan to accelerate the full implementation of an automated biometric entry and exit data system required by applicable sections of—

(A) the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208);

(B) the Immigration and Naturalization Service Data Management Improvement Act of 2000 (Public Law 106–205);

(C) the Visa Waiver Permanent Program Act (Public Law 106–396);

(D) the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107–173); and

(E) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107–56).

(2) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit a report to Congress on the plan developed under paragraph (1), which shall contain—

(A) a description of the current functionality of the entry and exit data system, including—

(i) a listing of ports of entry with biometric entry data systems in use and whether such screening systems are located at primary or secondary inspection areas;

(ii) a listing of ports of entry with biometric exit data systems in use;

(iii) a listing of databases and data systems with which the automated entry and exit data system are interoperable;

(iv) a description of—

(I) identified deficiencies concerning the accuracy or integrity of the information contained in the entry and exit data system;

(II) identified deficiencies concerning technology associated with processing individuals through the system; and

(III) programs or policies planned or implemented to correct problems identified in subclause (I) or (II); and

(v) an assessment of the effectiveness of the entry and exit data system in fulfilling its intended purposes, including preventing terrorists from entering the United States;

(B) a description of factors relevant to the accelerated implementation of the biometric entry and exit system, including—

(i) the earliest date on which the Secretary estimates that full implementation of the biometric entry and exit data system can be completed;

(ii) the actions the Secretary will take to accelerate the full implementation of the biometric entry and exit data system at all ports of entry through which all aliens must pass that are legally required to do so; and

(iii) the resources and authorities required to enable the Secretary to meet the implementation date described in clause (i);

(C) a description of any improvements needed in the information technology employed for the entry and exit data system; and

(D) a description of plans for improved or added interoperability with any other databases or data systems.

(c) INTEGRATION REQUIREMENT.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Homeland Security shall integrate the biometric entry and exit data system with all databases and data systems maintained by U.S. Citizenship and Immigration Services that process or contain information on aliens.

(d) MAINTAINING ACCURACY AND INTEGRITY OF ENTRY AND EXIT DATA SYSTEM.—

(1) IN GENERAL.—The Secretary of Homeland Security, in consultation with other appropriate agencies, shall establish rules, guidelines, policies, and operating and auditing procedures for collecting, removing, and updating data maintained in, and adding information to, the entry and exit data system, and databases and data systems linked to the entry and exit data system, that ensure the accuracy and integrity of the data.

(2) REQUIREMENTS.—The rules, guidelines, policies, and procedures established under paragraph (1) shall—

(A) incorporate a simple and timely method for—

(i) correcting errors; and

(ii) clarifying information known to cause false hits or misidentification errors; and

(B) include procedures for individuals to seek corrections of data contained in the data systems.

(e) EXPEDITING REGISTERED TRAVELERS ACROSS INTERNATIONAL BORDERS.—

(1) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, the Congress finds that—

(A) expediting the travel of previously screened and known travelers across the borders of the United States should be a high priority; and

(B) the process of expediting known travelers across the border can permit inspectors to better focus on identifying terrorists attempting to enter the United States.

(2) DEFINITION.—For purposes of this section, the term "registered traveler program" means any program designed to expedite the

travel of previously screened and known travelers across the borders of the United States.

(3) REGISTERED TRAVEL PLAN.—

(A) IN GENERAL.—As soon as is practicable, the Secretary of Homeland Security shall develop and implement a plan to expedite the processing of registered travelers who enter and exit the United States through a single registered traveler program.

(B) INTEGRATION.—The registered traveler program developed under this paragraph shall be integrated into the automated biometric entry and exit data system described in this section.

(C) REVIEW AND EVALUATION.—In developing the program under this paragraph, the Secretary of Homeland Security shall—

(i) review existing programs or pilot projects designed to expedite the travel of registered travelers across the borders of the United States;

(ii) evaluate the effectiveness of the programs described in clause (i), the costs associated with such programs, and the costs to travelers to join such programs; and

(iii) increase research and development efforts to accelerate the development and implementation of a single registered traveler program.

(4) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the Congress a report describing the Department of Homeland Security's progress on the development and implementation of the plan required by this subsection.

(f) INTEGRATED BIOMETRIC ENTRY-EXIT SCREENING SYSTEM.—With respect to the biometric entry and exit data system referred to in subsections (a) and (b), such system shall accomplish the following:

(1) Ensure that the system's tracking capabilities encompass data related to all immigration benefits processing, including visa applications with the Department of State, immigration related filings with the Department of Labor, cases pending before the Executive Office for Immigration review, and matters pending or under investigation before the Department of Homeland Security.

(2) Utilize a biometric based identity number tied to an applicant's biometric algorithm established under the entry and exit data system to track all immigration related matters concerning the applicant.

(3) Provide that all information about an applicant's immigration related history, including entry and exit history, can be queried through electronic means. Database access and usage guidelines shall include stringent safeguards to prevent misuse of data.

(4) Provide real-time updates to the information described in paragraph (3), including pertinent data from all agencies referenced in paragraph (1).

(5) Limit access to the information described in paragraph (4) (and any other database used for tracking immigration related processing or entry and exit) to personnel explicitly authorized to do so, and ensure that any such access may be ascertained by authorized persons by review of the person's access authorization code or number.

(6) Provide continuing education in counterterrorism techniques, tools, and methods for all Federal personnel employed in the evaluation of immigration documents and immigration-related policy.

(g) ENTRY-EXIT SYSTEM GOALS.—The Department of Homeland Security shall continue to implement the system described in subsections (a) and (b) in such a manner that it fulfills the following goals:

(1) Serves as a vital counterterrorism tool.

(2) Screens travelers efficiently and in a welcoming manner.

(3) Provides inspectors and related personnel with adequate real-time information.

(4) Ensures flexibility of training and security protocols to most effectively comply with security mandates.

(5) Integrates relevant databases and plans for database modifications to address volume increase and database usage.

(6) Improves database search capacities by utilizing language algorithms to detect alternate names.

(h) DEDICATED SPECIALISTS AND FRONT LINE PERSONNEL TRAINING.—In implementing the provisions of subsections (f) and (g), the Department of Homeland Security and the Department of State shall—

(1) develop cross-training programs that focus on the scope and procedures of the entry and exit data system;

(2) provide extensive community outreach and education on the entry and exit data system's procedures;

(3) provide clear and consistent eligibility guidelines for applicants in low-risk traveler programs; and

(4) establish ongoing training modules on immigration law to improve adjudications at our ports of entry, consulates, and embassies.

(i) INFORMATION ACCURACY STANDARDS.—

(1) AUTHORIZED OFFICERS.—Any information placed in the entry and exit data system shall be entered by authorized officers in compliance with established procedures that guarantee the identification of the person placing the information.

(2) DATA COLLECTED FROM FOREIGN NATIONALS.—The Secretary of Homeland Security, the Secretary of State, and the Attorney General, after consultation with directors of the relevant intelligence agencies, shall standardize the information and data collected from foreign nationals as well as the procedures utilized to collect such data to ensure that the information is consistent and of value to officials accessing that data across multiple agencies.

(j) ACCESSIBILITY.—The Secretary of Homeland Security, the Secretary of State, the Attorney General, and the head of any other department or agency that possesses authority to enter data related to the immigration status of foreign nationals, including lawful permanent resident aliens, or where such information could serve to impede lawful admission of United States citizens to the United States, shall each establish guidelines related to data entry procedures. Such guidelines shall—

(1) strictly limit the agency personnel authorized to enter data into the system;

(2) identify classes of information to be designated as temporary or permanent entries, with corresponding expiration dates for temporary entries; and

(3) identify classes of prejudicial information requiring additional authority of supervisory personnel prior to entry.

(k) SYSTEM ADAPTABILITY.—

(1) IN GENERAL.— Each agency authorized to enter data related to the immigration status of any persons identified in subsection (f) shall develop and implement system protocols to—

(A) correct erroneous data entries in a timely and effective manner;

(B) clarify information known to cause false hits or misidentification errors; and

(C) update all relevant information that is dispositive to the adjudicatory or admission process.

(2) CENTRALIZING AND STREAMLINING CORRECTION PROCESS.—The President or agency director so designated by the President shall establish a clearinghouse bureau as part of the Department of Homeland Security to centralize and streamline the process through which members of the public can seek corrections to erroneous or inaccurate information related to immigration status, or which otherwise impedes lawful admission to the United States, contained in agency databases. Such process shall include specific time schedules for reviewing data correction requests, rendering decisions on such requests, and implementing appropriate corrective action in a timely manner.

(l) TRAINING.—Agency personnel authorized to enter data pursuant to subsection (i)(1) shall undergo extensive training in immigration law and procedure.

(m) IMPLEMENTATION AUDIT.—The Secretary of the Department of Homeland Security shall submit a report to the Congress not later than 6 months after the date of the enactment of this Act. The report shall detail activities undertaken to date to develop the biometric entry and exit data system, areas in which the system currently does not achieve the mandates set forth in this section, and the funding, infrastructure, technology and other factors needed to complete the system, as well as a detailed time frame in which the completion of the system will be achieved.

(n) REPORTS.—

(1) JOINT BIANNUAL REPORTS.—The Secretaries of the Departments of State and Homeland Security jointly shall report biannually to the Congress on the following:

(A) Current infrastructure and staffing at each port of entry and each consular post.

(B) The numbers of immigrant and nonimmigrant visas issued.

(C) the numbers of individuals subject to expedited removal at the ports of entry, as well as within 100 miles of the United States border.

(D) The plan for enhanced database review at entry.

(E) The number of suspected terrorists and criminals intercepted utilizing the biometric entry and exit data system.

(F) The funds spent in the preceding fiscal year to achieve the mandates of this section.

(G) Areas in which they failed to achieve these mandates, and the steps they are taking to address these deficiencies.

(2) PORTS OF ENTRY.—For ports of entry, similar information shall be provided including the number of I-94s issued, immigrant visa admissions made, and nonimmigrant admissions.

(3) STATUS REPORT ON COMPLIANCE WITH ENHANCED BORDER SECURITY AND VISA ENTRY REFORM ACT.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security and the Secretary of State, after consultation with the Director of the National Institute of Standards and Technology and the Commission on Interoperable Data Sharing, shall issue a report addressing the following:

(A) The status of agency compliance with the mandates set forth in section 202 of the Enhanced Border Security and Visa Entry Reform Act (8 U.S.C. 1722).

(B) The status of agency compliance with section 201(c)(3) of such Act (8 U.S.C. 1721(c)(3)).

(4) STATUS REPORT ON COMPLIANCE WITH SECTION.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Homeland Security, the Secretary of State, the Attorney General, and the head

of any other department or agency bound by the mandates in this section, shall issue both individual status reports and a joint status report detailing compliance with each mandate contained in this section.

(o) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security, for each of the fiscal years 2005 through 2009, such sums as may be necessary to carry out the provisions of this section.

SEC. 3091. ENHANCED RESPONSIBILITIES OF THE COORDINATOR FOR COUNTERTERRORISM.

(a) DECLARATION OF UNITED STATES POLICY.—Congress declares that it shall be the policy of the United States to—

(1) make combating terrorist travel and those who assist them a priority for the United States counterterrorism policy; and

(2) ensure that the information relating to individuals who help facilitate terrorist travel by creating false passports, visas, documents used to obtain such travel documents, and other documents are fully shared within the United States Government and, to the extent possible, with and from foreign governments, in order to initiate United States and foreign prosecutions of such individuals.

(b) AMENDMENT.—Section 1(e)(2) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2651a(e)(2)) is amended by adding at the end the following:

"(C) ADDITIONAL DUTIES RELATING TO TERRORIST TRAVEL.—In addition to the principal duties of the Coordinator described in subparagraph (B), the Coordinator shall analyze methods used by terrorists to travel internationally, develop policies with respect to curtailing terrorist travel, and coordinate such policies with the appropriate bureaus and other entities of the Department of State, other United States Government agencies, the Human Trafficking and Smuggling Center, and foreign governments.".

SEC. 3092. ESTABLISHMENT OF OFFICE OF VISA AND PASSPORT SECURITY IN THE DEPARTMENT OF STATE.

(a) ESTABLISHMENT.—There is established within the Bureau of Diplomatic Security of the Department of State an Office of Visa and Passport Security (in this section referred to as the "Office").

(b) HEAD OF OFFICE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the head of the Office shall be an individual who shall have the rank and status of Deputy Assistant Secretary of State for Diplomatic Security (in this section referred to as the "Deputy Assistant Secretary").

(2) RECRUITMENT.—The Under Secretary of State for Management shall chose the Deputy Assistant Secretary from among individuals who are Diplomatic Security Agents.

(3) QUALIFICATIONS.—The Diplomatic Security Agent chosen to serve as the Deputy Assistant Secretary shall have expertise and experience in investigating and prosecuting visa and passport fraud.

(c) DUTIES.—

(1) PREPARATION OF STRATEGIC PLAN.—

(A) IN GENERAL.—The Deputy Assistant Secretary, in coordination with the appropriate officials of the Department of Homeland Security, shall ensure the preparation of a strategic plan to target and disrupt individuals and organizations at home and in foreign countries that are involved in the fraudulent production, distribution, use, or other similar activity—

(i) of a United States visa or United States passport;

(ii) of documents intended to help fraudulently procure a United States visa or United States passport, or other documents intended to gain unlawful entry into the United States; or

(iii) of passports and visas issued by foreign countries intended to gain unlawful entry into the United States.

(B) EMPHASIS.—Such plan shall—

(i) focus particular emphasis on individuals and organizations that may have links to domestic terrorist organizations or foreign terrorist organizations (as such term is defined in Section 219 of the Immigration and Nationality Act (8 U.S.C. 1189));

(ii) require the development of a strategic training course under the Antiterrorism Assistance Training (ATA) program of the Department of State (or any successor or related program) under chapter 8 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2349aa et seq.) (or other relevant provisions of law) to train participants in the identification of fraudulent documents and the forensic detection of such documents which may be used to obtain unlawful entry into the United States; and

(iii) determine the benefits and costs of providing technical assistance to foreign governments to ensure the security of passports, visas, and related documents and to investigate, arrest, and prosecute individuals who facilitate travel by the creation of false passports and visas, documents to obtain such passports and visas, and other types of travel documents.

(2) DUTIES OF OFFICE.—The Office shall have the following duties:

(A) ANALYSIS OF METHODS.—Analyze methods used by terrorists to travel internationally, particularly the use of false or altered travel documents to illegally enter foreign countries and the United States, and advise the Bureau of Consular Affairs and the Secretary of Homeland Security on recommended changes to the visa issuance process that could combat such methods, including the introduction of new technologies into such process.

(B) IDENTIFICATION OF INDIVIDUALS AND DOCUMENTS.—Identify, in cooperation with the Human Trafficking and Smuggling Center, individuals who facilitate travel by the creation of false passports and visas, documents used to obtain such passports and visas, and other types of travel documents, and ensure that the appropriate agency is notified for further investigation and prosecution or, in the case of such individuals abroad for which no further investigation or prosecution is initiated, ensure that all appropriate information is shared with foreign governments in order to facilitate investigation, arrest, and prosecution of such individuals.

(C) IDENTIFICATION OF FOREIGN COUNTRIES NEEDING ASSISTANCE.—Identify foreign countries that need technical assistance, such as law reform, administrative reform, prosecutorial training, or assistance to police and other investigative services, to ensure passport, visa, and related document security and to investigate, arrest, and prosecute individuals who facilitate travel by the creation of false passports and visas, documents used to obtain such passports and visas, and other types of travel documents.

(D) INSPECTION OF APPLICATIONS.—Randomly inspect visa and passport applications for accuracy, efficiency, and fraud, especially at high terrorist threat posts, in order to prevent a recurrence of the issuance of visas to those who submit incomplete, fraudulent, or otherwise irregular or incomplete applications.

(3) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Deputy Assistant Secretary shall submit to Congress a report containing—

(A) a description of the strategic plan prepared under paragraph (1); and

(B) an evaluation of the feasibility of establishing civil service positions in field offices of the Bureau of Diplomatic Security to investigate visa and passport fraud, including an evaluation of whether to allow diplomatic security agents to convert to civil service officers to fill such positions.

Subtitle D—Terrorist Travel

SEC. 3101. INFORMATION SHARING AND COORDINATION.

The Secretary of Homeland Security shall establish a mechanism to—

(1) ensure the coordination and dissemination of terrorist travel intelligence and operational information among the appropriate agencies within the Department of Homeland Security, including the Bureau of Customs and Border Protection, the Bureau of Immigration and Customs Enforcement, the Bureau of Citizenship and Immigration Services, the Transportation Security Administration, the Coast Guard, and other agencies as directed by the Secretary; and

(2) ensure the sharing of terrorist travel intelligence and operational information with the Department of State, the National Counterterrorism Center, and other appropriate Federal agencies.

SEC. 3102. TERRORIST TRAVEL PROGRAM.

The Secretary of Homeland Security, in consultation with the Director of the National Counterterrorism Center, shall establish a program to—

(1) analyze and utilize information and intelligence regarding terrorist travel tactics, patterns, trends, and practices; and

(2) disseminate that information to all front-line Department of Homeland Security personnel who are at ports of entry or between ports of entry, to immigration benefits offices, and, in coordination with the Secretary of State, to appropriate individuals at United States embassies and consulates.

SEC. 3103. TRAINING PROGRAM.

(a) REVIEW, EVALUATION, AND REVISION OF EXISTING TRAINING PROGRAMS.—The Secretary of Homeland Security shall—

(1) review and evaluate the training currently provided to Department of Homeland Security personnel and, in consultation with the Secretary of State, relevant Department of State personnel with respect to travel and identity documents, and techniques, patterns, and trends associated with terrorist travel; and

(2) develop and implement a revised training program for border, immigration, and consular officials in order to teach such officials how to effectively detect, intercept, and disrupt terrorist travel.

(b) REQUIRED TOPICS OF REVISED PROGRAMS.—The training program developed under subsection (a)(2) shall include training in the following areas:

(1) Methods for identifying fraudulent and genuine travel documents.

(2) Methods for detecting terrorist indicators on travel documents and other relevant identity documents.

(3) Recognizing travel patterns, tactics, and behaviors exhibited by terrorists.

(4) Effectively utilizing information contained in databases and data systems available to the Department of Homeland Security.

(5) Other topics determined to be appropriate by the Secretary of Homeland Security in consultation with the Secretary of State or the National Intelligence Director.

SEC. 3104. TECHNOLOGY ACQUISITION AND DISSEMINATION PLAN.

(a) PLAN REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security, in consultation with the Secretary of State, shall submit to the Congress a plan to ensure that the Department of Homeland Security and the Department of State acquire and deploy, to all consulates, ports of entry, and immigration benefits offices, technologies that facilitate document authentication and the detection of potential terrorist indicators on travel documents.

(b) INTEROPERABILITY REQUIREMENT.—To the extent possible, technologies to be acquired and deployed under the plan shall be compatible with current systems used by the Department of Homeland Security to detect and identify fraudulent documents and genuine documents.

(c) PASSPORT SCREENING.—The plan shall address the feasibility of using such technologies to screen passports submitted for identification purposes to a United States consular, border, or immigration official.

Subtitle E—Maritime Security Requirements

SEC. 3111. DEADLINES FOR IMPLEMENTATION OF MARITIME SECURITY REQUIREMENTS.

(a) NATIONAL MARITIME TRANSPORTATION SECURITY PLAN.—Section 70103(a) of the 46, United States Code, is amended by striking "The Secretary" and inserting "Not later than December 31, 2004, the Secretary".

(b) FACILITY AND VESSEL VULNERABILITY ASSESSMENTS.—Section 70102(b)(1) of the 46, United States Code, is amended by striking ", the Secretary" and inserting "and by not later than December 31, 2004, the Secretary".

(c) TRANSPORTATION SECURITY CARD REGULATIONS.—Section 70105(a) of the 46, United States Code, is amended by striking "The Secretary" and inserting "Not later than December 31, 2004, the Secretary".

TITLE IV—INTERNATIONAL COOPERATION AND COORDINATION

Subtitle A—Attack Terrorists and Their Organizations

CHAPTER 1—PROVISIONS RELATING TO TERRORIST SANCTUARIES

SEC. 4001. UNITED STATES POLICY ON TERRORIST SANCTUARIES.

It is the sense of Congress that it should be the policy of the United States—

(1) to identify and prioritize foreign countries that are or that could be used as terrorist sanctuaries;

(2) to assess current United States resources being provided to such foreign countries;

(3) to develop and implement a coordinated strategy to prevent terrorists from using such foreign countries as sanctuaries; and

(4) to work in bilateral and multilateral fora to prevent foreign countries from being used as terrorist sanctuaries.

SEC. 4002. REPORTS ON TERRORIST SANCTUARIES.

(a) INITIAL REPORT.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the President shall transmit to Congress a report that describes a strategy for addressing and, where possible, eliminating terrorist sanctuaries.

(2) CONTENT.—The report required under this subsection shall include the following:

(A) A list that prioritizes each actual and potential terrorist sanctuary and a description of activities in the actual and potential sanctuaries.

(B) An outline of strategies for preventing the use of, disrupting, or ending the use of such sanctuaries.

(C) A detailed description of efforts, including an assessment of successes and setbacks, by the United States to work with other countries in bilateral and multilateral fora to address or eliminate each actual or potential terrorist sanctuary and disrupt or eliminate the security provided to terrorists by each such sanctuary.

(D) A description of long-term goals and actions designed to reduce the conditions that allow the formation of terrorist sanctuaries.

(b) SUBSEQUENT REPORTS.—

(1) REQUIREMENT OF REPORTS.—Section 140(a)(1) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f(a)(1)) is amended—

(A) by striking "(1)" and inserting "(1)(A)";

(B) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively;

(C) in subparagraph (A)(iii) (as redesignated), by adding "and" at the end; and

(D) by adding at the end the following:

"(B) detailed assessments with respect to each foreign country whose territory is being used or could potentially be used as a sanctuary for terrorists or terrorist organizations;".

(2) PROVISIONS TO BE INCLUDED IN REPORT.—Section 140(b) of such Act (22 U.S.C. 2656f(b)) is amended—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking "subsection (a)(1)" and inserting "subsection (a)(1)(A)"; and

(ii) by striking "and" at the end;

(B) by redesignating paragraph (2) as paragraph (3);

(C) by inserting after paragraph (1) the following:

"(2) with respect to subsection (a)(1)(B)—

"(A) the extent of knowledge by the government of the country with respect to terrorist activities in the territory of the country; and

"(B) the actions by the country—

"(i) to eliminate each terrorist sanctuary in the territory of the country;

"(ii) to cooperate with United States antiterrorism efforts; and

"(iii) to prevent the proliferation of and trafficking in weapons of mass destruction in and through the territory of the country;";

(D) by striking the period at the end of paragraph (3) (as redesignated) and inserting a semicolon; and

(E) by inserting after paragraph (3) (as redesignated) the following:

"(4) a strategy for addressing and, where possible, eliminating terrorist sanctuaries that shall include—

"(A) a description of actual and potential terrorist sanctuaries, together with an assessment of the priorities of addressing and eliminating such sanctuaries;

"(B) an outline of strategies for disrupting or eliminating the security provided to terrorists by such sanctuaries;

"(C) a description of efforts by the United States to work with other countries in bilateral and multilateral fora to address or eliminate actual or potential terrorist sanctuaries and disrupt or eliminate the security provided to terrorists by such sanctuaries; and

"(D) a description of long-term goals and actions designed to reduce the conditions that allow the formation of terrorist sanctuaries;

"(5) an update of the information contained in the report required to be transmitted to Congress pursuant to section 4002(a)(2) of the 9/11 Recommendations Implementation Act;

"(6) to the extent practicable, complete statistical information on the number of individuals, including United States citizens and dual nationals, killed, injured, or kidnapped by each terrorist group during the preceding calendar year; and

"(7) an analysis, as appropriate, relating to trends in international terrorism, including changes in technology used, methods and targets of attacks, demographic information on terrorists, and other appropriate information.".

(3) DEFINITIONS.—Section 140(d) of such Act (22 U.S.C. 2656f(d)) is amended—

(A) in paragraph (2), by striking "and" at the end;

(B) in paragraph (3), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

"(4) the term 'territory' and 'territory of the country' means the land, waters, and airspace of the country; and

"(5) the term 'terrorist sanctuary' or 'sanctuary' means an area in the territory of a country that is used by a terrorist group with the express or implied consent of the government of the country—

"(A) to carry out terrorist activities, including training, fundraising, financing, recruitment, and education activities; or

"(B) to provide transit through the country.".

(4) EFFECTIVE DATE.—The amendments made by paragraphs (1), (2), and (3) apply with respect to the report required to be transmitted under section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, by April 30, 2006, and by April 30 of each subsequent year.

SEC. 4003. AMENDMENTS TO EXISTING LAW TO INCLUDE TERRORIST SANCTUARIES.

(a) AMENDMENTS.—Section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) is amended—

(1) in paragraph (1)—

(A) by redesignating subparagraph (B) as subparagraph (C); and

(B) by inserting after subparagraph (A) the following:

"(B) Any part of the territory of the country is being used as a sanctuary for terrorists or terrorist organizations.";

(2) in paragraph (3), by striking "paragraph (1)(A)" and inserting "subparagraph (A) or (B) of paragraph (1)";

(3) by redesignating paragraph (5) as paragraph (6);

(4) by inserting after paragraph (4) the following:

"(5) A determination made by the Secretary of State under paragraph (1)(B) may not be rescinded unless the President submits to the Speaker of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs and the chairman of the Committee on Foreign Relations of the Senate before the proposed rescission would take effect a report certifying that the government of the country concerned—

"(A) is taking concrete, verifiable steps to eliminate each terrorist sanctuary in the territory of the country;

"(B) is cooperating with United States antiterrorism efforts; and

"(C) is taking all appropriate actions to prevent the proliferation of and trafficking in weapons of mass destruction in and through the territory of the country.''; and

(5) by inserting after paragraph (6) (as redesignated) the following:

''(7) In this subsection—

''(A) the term 'territory of the country' means the land, waters, and airspace of the country; and

''(B) the term 'terrorist sanctuary' or 'sanctuary' means an area in the territory of a country that is used by a terrorist group with the express or implied consent of the government of the country—

''(i) to carry out terrorist activities, including training, fundraising, financing, recruitment, and education activities; or

''(ii) to provide transit through the country.''.

(b) IMPLEMENTATION.—The President shall implement the amendments made by subsection (a) by exercising the authorities the President has under the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

CHAPTER 2—OTHER PROVISIONS

SEC. 4011. APPOINTMENTS TO FILL VACANCIES IN ARMS CONTROL AND NONPROLIFERATION ADVISORY BOARD.

(a) REQUIREMENT.—Not later than December 31, 2004, the Secretary of State shall appoint individuals to the Arms Control and Nonproliferation Advisory Board to fill all vacancies in the membership of the Board that exist on the date of the enactment of this Act.

(b) CONSULTATION.—Appointments to the Board under subsection (a) shall be made in consultation with the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate.

SEC. 4012. REVIEW OF UNITED STATES POLICY ON PROLIFERATION OF WEAPONS OF MASS DESTRUCTION AND CONTROL OF STRATEGIC WEAPONS.

(a) REVIEW.—

(1) IN GENERAL.—The Undersecretary of State for Arms Control and International Security shall instruct the Arms Control and Nonproliferation Advisory Board (in this section referred to as the ''Advisory Board'') to carry out a review of existing policies of the United States relating to the proliferation of weapons of mass destruction and the control of strategic weapons.

(2) COMPONENTS.—The review required under this subsection shall contain at a minimum the following:

(A) An identification of all major deficiencies in existing United States policies relating to the proliferation of weapons of mass destruction and the control of strategic weapons.

(B) Proposals that contain a range of options that if implemented would adequately address any significant threat deriving from the deficiencies in existing United States policies described in subparagraph (A).

(b) REPORTS.—

(1) INTERIM REPORT.—Not later than June 15, 2005, the Advisory Board shall prepare and submit to the Undersecretary of State for Arms Control and International Security an interim report that contains the initial results of the review carried out pursuant to subsection (a).

(2) FINAL REPORT.—Not later than December 1, 2005, the Advisory Board shall prepare and submit to the Undersecretary of State for Arms Control and International Security, and to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate, a final report that contains the comprehensive results of the review carried out pursuant to subsection (a).

(c) EXPERTS AND CONSULTANTS.— In carrying out this section, the Advisory Board may procure temporary and intermittent services of experts and consultants, including experts and consultants from nongovernmental organizations, under section 3109(b) of title 5, United States Code.

(d) FUNDING AND OTHER RESOURCES.—The Secretary of State shall provide to the Advisory Board an appropriate amount of funding and other resources to enable the Advisory Board to carry out this section.

SEC. 4013. INTERNATIONAL AGREEMENTS TO INTERDICT ACTS OF INTERNATIONAL TERRORISM.

Section 1(e)(2) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2651a(e)(2)), as amended by section 3091(b), is further amended by adding at the end the following:

''(D) ADDITIONAL DUTIES RELATING TO INTERNATIONAL AGREEMENTS TO INTERDICT ACTS OF INTERNATIONAL TERRORISM.—

''(i) IN GENERAL.—In addition to the principal duties of the Coordinator described in subparagraph (B), the Coordinator, in consultation with relevant United States Government agencies, shall seek to negotiate on a bilateral basis international agreements under which parties to an agreement work in partnership to address and interdict acts of international terrorism.

''(ii) TERMS OF INTERNATIONAL AGREEMENT.—It is the sense of Congress that—

''(I) each party to an international agreement referred to in clause (i)—

''(aa) should be in full compliance with United Nations Security Council Resolution 1373 (September 28, 2001), other appropriate international agreements relating to antiterrorism measures, and such other appropriate criteria relating to antiterrorism measures;

''(bb) should sign and adhere to a 'Counterterrorism Pledge' and a list of 'Interdiction Principles', to be determined by the parties to the agreement;

''(cc) should identify assets and agree to multilateral efforts that maximizes the country's strengths and resources to address and interdict acts of international terrorism or the financing of such acts;

''(dd) should agree to joint training exercises among the other parties to the agreement; and

''(ee) should agree to the negotiation and implementation of other relevant international agreements and consensus-based international standards; and

''(II) an international agreement referred to in clause (i) should contain provisions that require the parties to the agreement—

''(aa) to identify regions throughout the world that are emerging terrorist threats;

''(bb) to establish terrorism interdiction centers in such regions and other regions, as appropriate;

''(cc) to deploy terrorism prevention teams to such regions, including United States-led teams; and

''(dd) to integrate intelligence, military, and law enforcement personnel from countries that are parties to the agreement in order to work directly with the regional centers described in item (bb) and regional teams described in item (cc).''.

SEC. 4014. EFFECTIVE COALITION APPROACH TOWARD DETENTION AND HUMANE TREATMENT OF CAPTURED TERRORISTS.

It is the sense of Congress that the President should pursue by all appropriate diplomatic means with countries that are participating in the Coalition to fight terrorism the development of an effective approach toward the detention and humane treatment of captured terrorists. The effective approach referred to in this section may, as appropriate, draw on Article 3 of the Convention Relative to the Treatment of Prisoners of War, done at Geneva on August 12, 1949 (6 UST 3316).

Subtitle B—Prevent the Continued Growth of Terrorism

CHAPTER 1—UNITED STATES PUBLIC DIPLOMACY

SEC. 4021. ANNUAL REVIEW AND ASSESSMENT OF PUBLIC DIPLOMACY STRATEGY.

(a) IN GENERAL.—The Secretary of State, in coordination with all appropriate Federal agencies, shall submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate an annual assessment of the impact of public diplomacy efforts on target audiences. Each assessment shall review the United States public diplomacy strategy worldwide and by region, including an examination of the allocation of resources and an evaluation and assessment of the progress in, and barriers to, achieving the goals set forth under previous plans submitted under this section. Not later than March 15 of every year, the Secretary shall submit the assessment required by this subsection.

(b) FURTHER ACTION.— On the basis of such review, the Secretary, in coordination with all appropriate Federal agencies, shall submit, as part of the annual budget submission, a public diplomacy strategy plan which specifies goals, agency responsibilities, and necessary resources and mechanisms for achieving such goals during the next fiscal year. The plan may be submitted in classified form.

SEC. 4022. PUBLIC DIPLOMACY TRAINING.

(a) STATEMENT OF POLICY.—It should be the policy of the United States:

(1) The Foreign Service should recruit individuals with expertise and professional experience in public diplomacy.

(2) United States chiefs of mission should have a prominent role in the formulation of public diplomacy strategies for the countries and regions to which they are assigned and should be accountable for the operation and success of public diplomacy efforts at their posts.

(3) Initial and subsequent training of Foreign Service officers should be enhanced to include information and training on public diplomacy and the tools and technology of mass communication.

(b) PERSONNEL.—

(1) QUALIFICATIONS.—In the recruitment, training, and assignment of members of the Foreign Service, the Secretary of State shall emphasize the importance of public diplomacy and applicable skills and techniques. The Secretary shall consider the priority recruitment into the Foreign Service, at middle-level entry, of individuals with expertise and professional experience in public diplomacy, mass communications, or journalism. The Secretary shall give special consideration to individuals with language facility and experience in particular countries and regions.

(2) LANGUAGES OF SPECIAL INTEREST.—The Secretary of State shall seek to increase the number of Foreign Service officers proficient in languages spoken in predominantly Muslim countries. Such increase shall be accomplished through the recruitment of new officers and incentives for officers in service.

SEC. 4023. PROMOTING DIRECT EXCHANGES WITH MUSLIM COUNTRIES.

(a) DECLARATION OF POLICY.—Congress declares that the United States should commit to a long-term and sustainable investment in promoting engagement with people of all levels of society in countries with predominantly Muslim populations, particularly with youth and those who influence youth. Such an investment should make use of the talents and resources in the private sector and should include programs to increase the number of people who can be exposed to the United States and its fundamental ideas and values in order to dispel misconceptions. Such programs should include youth exchange programs, young ambassadors programs, international visitor programs, academic and cultural exchange programs, American Corner programs, library programs, journalist exchange programs, sister city programs, and other programs related to people-to-people diplomacy.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the United States should significantly increase its investment in the people-to-people programs described in subsection (a).

SEC. 4024. PUBLIC DIPLOMACY REQUIRED FOR PROMOTION IN FOREIGN SERVICE.

(a) IN GENERAL.—Section 603(b) of the Foreign Service Act of 1980 (22 U.S.C. 4003(b)) is amended by adding at the end the following new sentences: "The precepts for such selection boards shall also consider whether the member of the Service or the member of the Senior Foreign Service, as the case may be, has served in at least one position in which the primary responsibility of such member was related to public diplomacy. A member may not be promoted into or within the Senior Foreign Service if such member has not served in at least one such position.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on January 1, 2009.

CHAPTER 2—UNITED STATES MULTILATERAL DIPLOMACY

SEC. 4031. PURPOSE.

It is the purpose of this chapter to strengthen United States leadership and effectiveness at international organizations and multilateral institutions.

SEC. 4032. SUPPORT AND EXPANSION OF DEMOCRACY CAUCUS.

(a) IN GENERAL.—The President, acting through the Secretary of State and the relevant United States chiefs of mission, shall—

(1) continue to strongly support and seek to expand the work of the democracy caucus at the United Nations General Assembly and the United Nations Human Rights Commission; and

(2) seek to establish a democracy caucus at the United Nations Conference on Disarmament and at other broad-based international organizations.

(b) PURPOSES OF THE CAUCUS.—A democracy caucus at an international organization should—

(1) forge common positions, including, as appropriate, at the ministerial level, on matters of concern before the organization and work within and across regional lines to promote agreed positions;

(2) work to revise an increasingly outmoded system of membership selection, regional voting, and decision making; and

(3) establish a rotational leadership agreement to provide member countries an opportunity, for a set period of time, to serve as the designated president of the caucus, responsible for serving as its voice in each organization.

SEC. 4033. LEADERSHIP AND MEMBERSHIP OF INTERNATIONAL ORGANIZATIONS.

(a) UNITED STATES POLICY.—The President, acting through the Secretary of State, the relevant United States chiefs of mission, and, where appropriate, the Secretary of the Treasury, shall use the voice, vote, and influence cf the United States to—

(1) where appropriate, reform the criteria for leadership and, in appropriate cases, for membership, at all United Nations bodies and at other international organizations and multilateral institutions to which the United States is a member so as to exclude countries that violate the principles of the specific organization;

(2) make it a policy of the United Nations and other international organizations and multilateral institutions of which the United States is a member that a member country may not stand in nomination for membership or in nomination or in rotation for a leadership position in such bodies if the member country is subject to sanctions imposed by the United Nations Security Council; and

(3) work to ensure that no member country stand in nomination for membership, or in nomination or in rotation for a leadership position in such organizations, or for membership on the United Nations Security Council, if the member country is subject to a determination under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)), section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)).

(b) REPORT TO CONGRESS.—Not later than 15 days after a country subject to a determination under one or more of the provisions of law specified in subsection (a)(3) is selected for membership or a leadership post in an international organization of which the United States is a member or for membership on the United Nations Security Council, the Secretary of State shall submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report on any steps taken pursuant to subsection (a)(3).

SEC. 4034. INCREASED TRAINING IN MULTILATERAL DIPLOMACY.

(a) TRAINING PROGRAMS.—Section 708 of the Foreign Service Act of 1980 (22 U.S.C. 4028) is amended by adding at the end the following new subsection:

"(c) TRAINING IN MULTILATERAL DIPLOMACY.—

"(1) IN GENERAL.—The Secretary shall establish a series of training courses for officers of the Service, including appropriate chiefs of mission, on the conduct of diplomacy at international organizations and other multilateral institutions and at broad-based multilateral negotiations of international instruments.

"(2) PARTICULAR PROGRAMS.—The Secretary shall ensure that the training described in paragraph (1) is provided at various stages of the career of members of the service. In particular, the Secretary shall ensure that after January 1, 2006—

"(A) officers of the Service receive training on the conduct of diplomacy at international organizations and other multilateral institutions and at broad-based multilateral negotiations of international instruments as part of their training upon entry into the Service; and

"(B) officers of the Service, including chiefs of mission, who are assigned to United States missions representing the United States to international organizations and other multilateral institutions or who are assigned in Washington, D.C., to positions that have as their primary responsibility formulation of policy towards such organizations and institutions or towards participation in broad-based multilateral negotiations of international instruments, receive specialized training in the areas described in paragraph (1) prior to beginning of service for such assignment or, if receiving such training at that time is not practical, within the first year of beginning such assignment.".

(b) TRAINING FOR CIVIL SERVICE EMPLOYEES.—The Secretary shall ensure that employees of the Department of State who are members of the civil service and who are assigned to positions described in section 708(c) of the Foreign Service Act of 1980 (as amended by subsection (a)) receive training described in such section.

(c) CONFORMING AMENDMENTS.—Section 708 of such Act is further amended—

(1) in subsection (a), by striking "(a) The" and inserting "(a) TRAINING ON HUMAN RIGHTS.—The"; and

(2) in subsection (b), by striking "(b) The" and inserting "(b) TRAINING ON REFUGEE LAW AND RELIGIOUS PERSECUTION.—The".

SEC. 4035. IMPLEMENTATION AND ESTABLISHMENT OF OFFICE ON MULTILATERAL NEGOTIATIONS.

(a) ESTABLISHMENT OF OFFICE.—The Secretary of State is authorized to establish, within the Bureau of International Organization Affairs, an Office on Multilateral Negotiations to be headed by a Special Representative for Multilateral Negotiations (in this section referred to as the "Special Representative").

(b) APPOINTMENT.—The Special Representative shall be appointed by the President and shall have the rank of Ambassador-at-Large. At the discretion of the President another official at the Department may serve as the Special Representative.

(c) STAFFING.—The Special Representative shall have a staff of Foreign Service and civil service officers skilled in multilateral diplomacy.

(d) DUTIES.—The Special Representative shall have the following responsibilities:

(1) IN GENERAL.—The primary responsibility of the Special Representative shall be to assist in the organization of, and preparation for, United States participation in multilateral negotiations, including advocacy efforts undertaken by the Department of State and other United States Government agencies.

(2) CONSULTATIONS.—The Special Representative shall consult with Congress, international organizations, nongovernmental organizations, and the private sector on matters affecting multilateral negotiations.

(3) ADVISORY ROLE.—The Special Representative shall advise the Assistant Secretary for International Organization Affairs and, as appropriate, the Secretary of State, regarding advocacy at international organizations, multilateral institutions, and negotiations, and shall make recommendations regarding—

(A) effective strategies (and tactics) to achieve United States policy objectives at multilateral negotiations;

(B) the need for and timing of high level intervention by the President, the Secretary of State, the Deputy Secretary of State, and other United States officials to secure support from key foreign government officials for United States positions at such organizations, institutions, and negotiations; and

(C) the composition of United States delegations to multilateral negotiations.

(4) ANNUAL DIPLOMATIC MISSIONS OF MULTILATERAL ISSUES.—The Special Representative, in coordination with the Assistant Secretary for International Organization Affairs, shall organize annual diplomatic missions to appropriate foreign countries to conduct consultations between principal officers responsible for advising the Secretary of State on international organizations and high-level representatives of the governments of such foreign countries to promote the United States agenda at the United Nations General Assembly and other key international fora (such as the United Nations Human Rights Commission).

(5) LEADERSHIP AND MEMBERSHIP OF INTERNATIONAL ORGANIZATIONS.—The Special Representative, in coordination with the Assistant Secretary of International Organization Affairs, shall direct the efforts of the United States to reform the criteria for leadership of and membership in international organizations as described in section 4033.

(6) PARTICIPATION IN MULTILATERAL NEGOTIATIONS.—The Secretary of State may direct the Special Representative to serve as a member of a United States delegation to any multilateral negotiation.

(7) COORDINATION WITH THE DEPARTMENT OF THE TREASURY.—

(A) COORDINATION AND CONSULTATION.—The Special Representative shall coordinate and consult with the relevant staff at the Department of the Treasury in order to prepare recommendations for the Secretary of State regarding multilateral negotiations involving international financial institutions and other multilateral financial policymaking bodies.

(B) NEGOTIATING AUTHORITY CLARIFIED.—Notwithstanding any other provision of law, the Secretary of the Treasury shall remain the lead representative and lead negotiator for the United States within the international financial institutions and other multilateral financial policymaking bodies.

(C) DEFINITIONS.—In this paragraph:

(i) INTERNATIONAL FINANCIAL INSTITUTIONS.—The term "international financial institutions" has the meaning given in section 1701(c)(2) of the International Financial Institutions Act.

(ii) OTHER MULTILATERAL FINANCIAL POLICYMAKING BODIES.—The term "other multilateral financial policymaking bodies" means—

(I) the Financial Action Task Force at the Organization for Economic Cooperation and Development;

(II) the international network of financial intelligence units known as the "Egmont Group";

(III) the United States, Canada, the United Kingdom, France, Germany, Italy, Japan, and Russia, when meeting as the Group of Eight; and

(IV) any other multilateral financial policymaking group in which the Secretary of the Treasury represents the United States.

(iii) FINANCIAL ACTION TASK FORCE.—The term "Financial Action Task Force" means the international policy-making and standard-setting body dedicated to combating money laundering and terrorist financing that was created by the Group of Seven (G-7) in 1989.

CHAPTER 3—OTHER PUBLIC DIPLOMACY PROVISIONS

SEC. 4041. PILOT PROGRAM TO PROVIDE GRANTS TO AMERICAN-SPONSORED SCHOOLS IN PREDOMINANTLY MUSLIM COUNTRIES TO PROVIDE SCHOLARSHIPS.

(a) FINDINGS.—Congress finds the following:

(1) During the 2003–2004 school year, the Office of Overseas Schools of the Department of State is financially assisting 189 elementary and secondary schools in foreign countries.

(2) American-sponsored elementary and secondary schools are located in more than 20 countries with significant Muslim populations in the Near East, Africa, South Asia, Central Asia, and East Asia.

(3) American-sponsored elementary and secondary schools provide an American-style education in English, with curricula that typically include an emphasis on the development of critical thinking and analytical skills.

(b) PURPOSE.—The United States has an interest in increasing the level of financial support provided to American-sponsored elementary and secondary schools in predominantly Muslim countries, in order to—

(1) increase the number of students in such countries who attend such schools;

(2) increase the number of young people who may thereby gain at any early age an appreciation for the culture, society, and history of the United States; and

(3) increase the number of young people who may thereby improve their proficiency in the English language.

(c) PILOT PROGRAM AUTHORIZED.—The Secretary of State, acting through the Director of the Office of Overseas Schools of the Department of State, may conduct a pilot program to make grants to American-sponsored elementary and secondary schools in predominantly Muslim countries for the purpose of providing full or partial merit-based scholarships to students from lower- and middle-income families of such countries to attend such schools.

(d) DETERMINATION OF ELIGIBLE STUDENTS.—For purposes of expending grant funds, an American-sponsored elementary and secondary school that receives a grant under subsection (c) is authorized to establish criteria to be implemented by such school to determine what constitutes lower- and middle-income families in the country (or region of the country, if regional variations in income levels in the country are significant) in which such school is located.

(e) RESTRICTION ON USE OF FUNDS.—Amounts appropriated to the Secretary of State pursuant to the authorization of appropriations in subsection (h) shall be used for the sole purpose of making grants under this section, and may not be used for the administration of the Office of Overseas Schools of the Department of State or for any other activity of the Office.

(f) VOLUNTARY PARTICIPATION.—Nothing in this section shall be construed to require participation in the pilot program by an American-sponsored elementary or secondary school in a predominantly Muslim country.

(g) REPORT.—Not later than April 15, 2006, the Secretary shall submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report on the pilot program. The report shall assess the success of the program, examine any obstacles encountered in its implementation, and address whether it should be continued, and if so, provide recommendations to increase its effectiveness.

(h) FUNDING.—There are authorized to be appropriated to the Secretary of State such sums as may be necessary for each of fiscal years 2005, 2006, and 2007 to carry out this section.

SEC. 4042. ENHANCING FREE AND INDEPENDENT MEDIA.

(a) FINDINGS.—Congress makes the following findings:

(1) Freedom of speech and freedom of the press are fundamental human rights.

(2) The United States has a national interest in promoting these freedoms by supporting free media abroad, which is essential to the development of free and democratic societies consistent with our own.

(3) Free media is undermined, endangered, or nonexistent in many repressive and transitional societies around the world, including in Eurasia, Africa, and the Middle East.

(4) Individuals lacking access to a plurality of free media are vulnerable to misinformation and propaganda and are potentially more likely to adopt anti-American views.

(5) Foreign governments have a responsibility to actively and publicly discourage and rebut unprofessional and unethical media while respecting journalistic integrity and editorial independence.

(b) STATEMENTS OF POLICY.—It shall be the policy of the United States, acting through the Secretary of State, to—

(1) ensure that the promotion of press freedoms and free media worldwide is a priority of United States foreign policy and an integral component of United States public diplomacy;

(2) respect the journalistic integrity and editorial independence of free media worldwide; and

(3) ensure that widely accepted standards for professional and ethical journalistic and editorial practices are employed when assessing international media.

(c) GRANTS TO PRIVATE SECTOR GROUP TO ESTABLISH MEDIA NETWORK.—

(1) IN GENERAL.—Grants made available to the National Endowment for Democracy (NED) pursuant to paragraph (3) shall be used by NED to provide funding to a private sector group to establish and manage a free and independent media network in accordance with paragraph (2).

(2) PURPOSE.—The purpose of the network shall be to provide an effective forum to convene a broad range of individuals, organizations, and governmental participants involved in journalistic activities and the development of free and independent media to—

(A) fund a clearinghouse to collect and share information concerning international media development and training;

(B) improve research in the field of media assistance and program evaluation to better inform decisions regarding funding and program design for government and private donors;

(C) explore the most appropriate use of existing means to more effectively encourage the involvement of the private sector in the field of media assistance; and

(D) identify effective methods for the development of a free and independent media in societies in transition.

(3) FUNDING.—For grants made by the Department of State to NED as authorized by the National Endowment for Democracy Act (Pub. L. 98–164, 97 Stat. 1039), there are authorized to be appropriated to the Secretary of State such sums as may be necessary for each of fiscal years 2005, 2006, and 2007 to carry out this section.

SEC. 4043. COMBATING BIASED OR FALSE FOREIGN MEDIA COVERAGE OF THE UNITED STATES.

(a) FINDINGS.—Congress finds the following:

(1) Biased or false media coverage of the United States and its allies is a significant factor encouraging terrorist acts against the people of the United States.

(2) Public diplomacy efforts designed to encourage an accurate understanding of the people of the United States and the policies of the United States are unlikely to succeed if foreign publics are subjected to unrelenting biased or false local media coverage of the United States.

(3) Where freedom of the press exists in foreign countries the United States can combat biased or false media coverage by responding in the foreign media or by communicating directly to foreign publics in such countries.

(4) Foreign governments which encourage biased or false media coverage of the United States bear a significant degree of responsibility for creating a climate within which terrorism can flourish. Such governments are responsible for encouraging biased or false media coverage if they—

(A) issue direct or indirect instructions to the media to publish biased or false information regarding the United States;

(B) make deliberately biased or false charges expecting that such charges will be disseminated; or

(C) so severely constrain the ability of the media to express criticism of any such government that one of the few means of political expression available is criticism of the United States.

(b) STATEMENTS OF POLICY.—

(1) FOREIGN GOVERNMENTS.—It shall be the policy of the United States to regard foreign governments as knowingly engaged in unfriendly acts toward the United States if such governments—

(A) instruct their state-owned or influenced media to include content that is anti-American or prejudicial to the foreign and security policies of the United States; or

(B) make deliberately false charges regarding the United States or permit false or biased charges against the United States to be made while constraining normal political discourse.

(2) SEEKING MEDIA ACCESS; RESPONDING TO FALSE CHARGES.—It shall be the policy of the United States to—

(A) seek access to the media in foreign countries on terms no less favorable than those afforded any other foreign entity or on terms available to the foreign country in the United States; and

(B) combat biased or false media coverage in'foreign countries of the United States and its allies by responding in the foreign media or by communicating directly to foreign publics.

(c) RESPONSIBILITIES REGARDING BIASED OR FALSE MEDIA COVERAGE.—

(1) SECRETARY OF STATE.—The Secretary of State shall instruct chiefs of mission to report on and combat biased or false media coverage originating in or received in foreign countries to which such chiefs are posted. Based on such reports and other information available to the Secretary, the Secretary shall prioritize efforts to combat such media coverage, giving special attention to audiences where fostering popular opposition to terrorism is most important and such media coverage is most prevalent.

(2) CHIEFS OF MISSION.—Chiefs of mission shall have the following responsibilities:

(A) Chiefs of mission shall give strong priority to combatting biased or false media reports in foreign countries to which such chiefs are posted regarding the United States.

(B) Chiefs of mission posted to foreign countries in which freedom of the press exists shall inform the governments of such countries of the policies of the United States regarding biased or false media coverage of the United States, and shall make strong efforts to persuade such governments to change policies that encourage such media coverage.

(d) REPORTS.—Not later than 120 days after the date of the enactment of this Act and at least annually thereafter until January 1, 2015, the Secretary shall submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report regarding the major themes of biased or false media coverage of the United States in foreign countries, the actions taken to persuade foreign governments to change policies that encourage such media coverage (and the results of such actions), and any other actions taken to combat such media coverage in foreign countries.

SEC. 4044. REPORT ON BROADCAST OUTREACH STRATEGY.

(a) REPORT.—Not later than 180 days after the date of the enactment of this Act, the President shall transmit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report on the strategy of the United States to expand its outreach to foreign Muslim audiences through broadcast media.

(b) CONTENT.—The report required under subsection (a) shall contain the following:

(1) An assessment of the Broadcasting Board of Governors and the public diplomacy activities of the Department of State with respect to outreach to foreign Muslim audiences through broadcast media.

(2) An outline of recommended actions that the United States should take to more regularly and comprehensively present a United States point of view through indigenous broadcast media in countries with sizeable Muslim populations, including increasing appearances by United States Government officials, experts, and citizens.

(3) An assessment of potential incentives for, and costs associated with, encouraging United States broadcasters to dub or subtitle into Arabic and other relevant languages their news and public affairs programs broadcast in Muslim countries in order to present those programs to a much broader Muslim audience than is currently reached.

(4) An assessment of providing a training program in media and press affairs for members of the Foreign Service.

SEC. 4045. OFFICE RELOCATION.

As soon as practicable after the date of the enactment of this Act, the Secretary of State shall take such actions as are necessary to consolidate within the Harry S. Truman Building all offices of the Department of State that are responsible for the conduct of public diplomacy, including the Bureau of Educational and Cultural Affairs.

SEC. 4046. STRENGTHENING THE COMMUNITY OF DEMOCRACIES FOR MUSLIM COUNTRIES.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the United States—

(1) should work with the Community of Democracies to discuss, develop, and refine policies and assistance programs to support and promote political, economic, judicial, educational, and social reforms in Muslim countries;

(2) should, as part of that effort, secure support to require countries seeking membership in the Community of Democracies to be in full compliance with the Community's criteria for participation, as established by the Community's Convening Group, should work to ensure that the criteria are part of a legally binding document, and should urge other donor countries to use compliance with the criteria as a basis for determining diplomatic and economic relations (including assistance programs) with such participating countries; and

(3) should seek support for international contributions to the Community of Democracies and should seek authority for the Community's Convening Group to oversee adherence and compliance of participating countries with the criteria.

(b) MIDDLE EAST PARTNERSHIP INITIATIVE AND BROADER MIDDLE EAST AND NORTH AFRICA INITIATIVE.—Amounts made available to carry out the Middle East Partnership Initiative and the Broader Middle East and North Africa Initiative may be made available to the Community of Democracies in order to strengthen and expand its work with Muslim countries.

(c) REPORT.—The Secretary of State shall include in the annual report entitled "Supporting Human Rights and Democracy: The U.S. Record" a description of efforts by the Community of Democracies to support and promote political, economic, judicial, educational, and social reforms in Muslim countries and the extent to which such countries meet the criteria for participation in the Community of Democracies.

Subtitle C—Reform of Designation of Foreign Terrorist Organizations

SEC. 4051. DESIGNATION OF FOREIGN TERRORIST ORGANIZATIONS.

(a) PERIOD OF DESIGNATION.—Section 219(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1189(a)(4)) is amended—

(1) in subparagraph (A)—

(A) by striking "Subject to paragraphs (5) and (6), a" and inserting "A"; and

(B) by striking "for a period of 2 years beginning on the effective date of the designation under paragraph (2)(B)" and inserting "until revoked under paragraph (5) or (6) or set aside pursuant to subsection (c)";

(2) by striking subparagraph (B) and inserting the following:

"(B) REVIEW OF DESIGNATION UPON PETITION.—

"(i) IN GENERAL.—The Secretary shall review the designation of a foreign terrorist organization under the procedures set forth in clauses (iii) and (iv) if the designated organization files a petition for revocation within the petition period described in clause (ii).

"(ii) PETITION PERIOD.—For purposes of clause (i)—

"(I) if the designated organization has not previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date on which the designation was made; or

"(II) if the designated organization has previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date of the determination made under clause (iv) on that petition.

"(iii) PROCEDURES.—Any foreign terrorist organization that submits a petition for revocation under this subparagraph must provide evidence in that petition that the relevant circumstances described in paragraph

(I) are sufficiently different from the circumstances that were the basis for the designation such that a revocation with respect to the organization is warranted.

"(iv) DETERMINATION.—

"(I) IN GENERAL.—Not later than 180 days after receiving a petition for revocation submitted under this subparagraph, the Secretary shall make a determination as to such revocation.

"(II) CLASSIFIED INFORMATION.—The Secretary may consider classified information in making a determination in response to a petition for revocation. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c).

"(III) PUBLICATION OF DETERMINATION.—A determination made by the Secretary under this clause shall be published in the Federal Register.

"(IV) PROCEDURES.—Any revocation by the Secretary shall be made in accordance with paragraph (6)."; and

(3) by adding at the end the following:

"(C) OTHER REVIEW OF DESIGNATION.—

"(i) IN GENERAL.—If in a 6-year period no review has taken place under subparagraph (B), the Secretary shall review the designation of the foreign terrorist organization in order to determine whether such designation should be revoked pursuant to paragraph (6).

"(ii) PROCEDURES.—If a review does not take place pursuant to subparagraph (B) in response to a petition for revocation that is filed in accordance with that subparagraph, then the review shall be conducted pursuant to procedures established by the Secretary. The results of such review and the applicable procedures shall not be reviewable in any court.

"(iii) PUBLICATION OF RESULTS OF REVIEW.—The Secretary shall publish any determination made pursuant to this subparagraph in the Federal Register.".

(b) ALIASES.—Section 219 of the Immigration and Nationality Act (8 U.S.C. 1189) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following new subsection (b):

"(b) AMENDMENTS TO A DESIGNATION.—

"(1) IN GENERAL.—The Secretary may amend a designation under this subsection if the Secretary finds that the organization has changed its name, adopted a new alias, dissolved and then reconstituted itself under a different name or names, or merged with another organization.

"(2) PROCEDURE.—Amendments made to a designation in accordance with paragraph (1) shall be effective upon publication in the Federal Register. Subparagraphs (B) and (C) of subsection (a)(2) shall apply to an amended designation upon such publication. Paragraphs (2)(A)(i), (4), (5), (6), (7), and (8) of subsection (a) shall also apply to an amended designation.

"(3) ADMINISTRATIVE RECORD.—The administrative record shall be corrected to include the amendments as well as any additional relevant information that supports those amendments.

"(4) CLASSIFIED INFORMATION.—The Secretary may consider classified information in amending a designation in accordance with this subsection. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c).".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—Section 219 of the Immigration and Nationality Act (8 U.S.C. 1189) is amended—

(1) in subsection (a)—

(A) in paragraph (3)(B), by striking "subsection (b)" and inserting "subsection (c)";

(B) in paragraph (6)(A)—

(i) in the matter preceding clause (i), by striking "or a redesignation made under paragraph (4)(B)" and inserting "at any time, and shall revoke a designation upon completion of a review conducted pursuant to subparagraphs (B) and (C) of paragraph (4)"; and

(ii) in clause (i), by striking "or redesignation";

(C) in paragraph (7), by striking ", or the revocation of a redesignation under paragraph (6),"; and

(D) in paragraph (8)—

(i) by striking ", or if a redesignation under this subsection has become effective under paragraph (4)(B),"; and

(ii) by striking "or redesignation"; and

(2) in subsection (c), as so redesignated—

(A) in paragraph (1), by striking "of the designation in the Federal Register," and all that follows through "review of the designation" and inserting "in the Federal Register of a designation, an amended designation, or a determination in response to a petition for revocation, the designated organization may seek judicial review";

(B) in paragraph (2), by inserting ", amended designation, or determination in response to a petition for revocation" after "designation";

(C) in paragraph (3), by inserting ", amended designation, or determination in response to a petition for revocation" after "designation"; and

(D) in paragraph (4), by inserting ", amended designation, or determination in response to a petition for revocation" after "designation" each place that term appears.

(d) SAVINGS PROVISION.—For purposes of applying section 219 of the Immigration and Nationality Act on or after the date of enactment of this Act, the term "designation", as used in that section, includes all redesignations made pursuant to section 219(a)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1189(a)(4)(B)) prior to the date of enactment of this Act, and such redesignations shall continue to be effective until revoked as provided in paragraph (5) or (6) of section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).

SEC. 4052. INCLUSION IN ANNUAL DEPARTMENT OF STATE COUNTRY REPORTS ON TERRORISM OF INFORMATION ON TERRORIST GROUPS THAT SEEK WEAPONS OF MASS DESTRUCTION AND GROUPS THAT HAVE BEEN DESIGNATED AS FOREIGN TERRORIST ORGANIZATIONS.

(a) INCLUSION IN REPORTS.—Section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f) is amended—

(1) in subsection (a)(2)—

(A) by inserting "any terrorist group known to have obtained or developed, or to have attempted to obtain or develop, weapons of mass destruction," after "during the preceding five years,"; and

(B) by inserting "any group designated by the Secretary as a foreign terrorist organization under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189)," after "Export Administration Act of 1979,";

(2) in subsection (b)(1)(C)(iii), by striking "and" at the end;

(3) in subsection (b)(1)(C)—

(A) by redesignating clause (iv) as clause (v); and

(B) by inserting after clause (iii) the following new clause:

"(iv) providing weapons of mass destruction, or assistance in obtaining or developing such weapons, to terrorists or terrorist groups; and"; and

(4) in subsection (b)(3) (as redesignated by section 4002(b)(2)(B) of this Act)—

(A) by redesignating subparagraphs (C), (D), and (E) as (D), (E), and (F), respectively; and

(B) by inserting after subparagraph (B) the following new subparagraph:

"(C) efforts by those groups to obtain or develop weapons of mass destruction;".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply beginning with the first report under section 140 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 (22 U.S.C. 2656f), submitted more than one year after the date of the enactment of this Act.

Subtitle D—Afghanistan Freedom Support Act Amendments of 2004

SEC. 4061. SHORT TITLE.

This subtitle may be cited as the "Afghanistan Freedom Support Act Amendments of 2004".

SEC. 4062. COORDINATION OF ASSISTANCE FOR AFGHANISTAN.

(a) FINDINGS.—Congress finds that—

(1) the Final Report of the National Commission on Terrorist Attacks Upon the United States criticized the provision of United States assistance to Afghanistan for being too inflexible; and

(2) the Afghanistan Freedom Support Act of 2002 (Public Law 107-327; 22 U.S.C. 7501 et seq.) contains provisions that provide for flexibility in the provision of assistance for Afghanistan and are not subject to the requirements of typical foreign assistance programs and provide for the designation of a coordinator to oversee United States assistance for Afghanistan.

(b) DESIGNATION OF COORDINATOR.—Section 104(a) of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7514(a)) is amended in the matter preceding paragraph (1) by striking "is strongly urged to" and inserting "shall".

(c) OTHER MATTERS.—Section 104 of such Act (22 U.S.C. 7514) is amended by adding at the end the following:

"(c) PROGRAM PLAN.—The coordinator designated under subsection (a) shall annually submit to the Committees on International Relations and Appropriations of the House of Representatives and the Committees on Foreign Relations and Appropriations of the Senate the Administration's plan for assistance to Afghanistan together with a description of such assistance in prior years.

"(d) COORDINATION WITH INTERNATIONAL COMMUNITY.—The coordinator designated under subsection (a) shall work with the international community and the Government of Afghanistan to ensure that assistance to Afghanistan is implemented in a coherent, consistent, and efficient manner to prevent duplication and waste. The coordinator designated under subsection (a) shall work through the Secretary of the Treasury and the United States Executive Directors at the international financial institutions in order to effectuate these responsibilities within the international financial institutions. The term 'international financial institution' has the meaning given in section 1701(c)(2) of the International Financial Institutions Act.".

SEC. 4063. GENERAL PROVISIONS RELATING TO THE AFGHANISTAN FREEDOM SUPPORT ACT OF 2002.

(a) ASSISTANCE TO PROMOTE ECONOMIC, POLITICAL AND SOCIAL DEVELOPMENT.—

(1) DECLARATION OF POLICY.—Congress reaffirms the authorities contained in title I of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7501 et seq.; relating to economic and democratic development assistance for Afghanistan).

(2) PROVISION OF ASSISTANCE.—Section 103(a) of such Act (22 U.S.C. 7513(a)) is amended in the matter preceding paragraph (1) by striking "section 512 of Public Law 107 115 or any other similar" and inserting "any other".

(b) DECLARATIONS OF POLICY.—Congress makes the following declarations:

(1) The United States reaffirms the support that it and other countries expressed for the report entitled "Securing Afghanistan's Future" in their Berlin Declaration of April 2004. The United States should help enable the growth needed to create an economically sustainable Afghanistan capable of the poverty reduction and social development foreseen in the report.

(2) The United States supports the parliamentary elections to be held in Afghanistan by April 2005 and will help ensure that such elections are not undermined by warlords or narcotics traffickers.

(3)(A) The United States continues to urge North Atlantic Treaty Organization members and other friendly countries to make much greater military contributions toward securing the peace in Afghanistan.

(B) The United States should continue to lead in the security domain by, among other things, providing logistical support to facilitate those contributions.

(C) In coordination with the Government of Afghanistan, the United States should urge others, and act itself, to increase efforts to promote disarmament, demobilization, and reintegration efforts, to enhance counternarcotics activities, to expand deployments of Provincial Reconstruction Teams, and to increase training of Afghanistan's National Army and its police and border security forces.

(c) LONG-TERM STRATEGY.—

(1) STRATEGY.—Title III of such Act (22 U.S.C. 7551 et seq.) is amended by adding at the end the following:

"SEC. 304 FORMULATION OF LONG-TERM STRATEGY FOR AFGHANISTAN.

"(a) STRATEGY.—

"(1) IN GENERAL.—Not later than 180 days after the date of the enactment of the Afghanistan Freedom Support Act Amendments of 2004, the President shall formulate and transmit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a 5-year strategy for Afghanistan that includes specific and measurable goals, timeframes for accomplishing such goals, and specific resource levels necessary for accomplishing such goals for addressing the long-term development and security needs of Afghanistan, including sectors such as agriculture and irrigation, parliamentary and democratic development, the judicial system and rule of law, human rights, education, health, telecommunications, electricity, women's rights, counternarcotics, police, border security, anti-corruption, and other law-enforcement activities.

"(2) ADDITIONAL REQUIREMENT.—The strategy shall also delineate responsibilities for achieving such goals and identify and address possible external factors that could significantly affect the achievement of such goals.

"(b) IMPLEMENTATION.—Not later than 30 days after the date of the transmission of the strategy required by subsection (a), the Secretary of State, the Administrator of the United States Agency for International Development, and the Secretary of Defense shall submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a written 5-year action plan to implement the strategy developed pursuant to subsection (a). Such action plan shall include a description and schedule of the program evaluations that will monitor progress toward achieving the goals described in subsection (a).

"(c) REVIEW.—The Secretary of State, the Administrator of the United States Agency for International Development, and the Secretary of Defense shall carry out an annual review of the strategy required by subsection (a) and the action plan required by subsection (b).

"(d) MONITORING.—The report required by section 206(c)(2) of this Act shall include—

"(1) a description of progress toward implementation of both the strategy required by subsection (a) and the action plan required by subsection (b); and

"(2) a description of any changes to the strategy or action plan since the date of the submission of the last report required by such section.".

(2) CLERICAL AMENDMENT.—The table of contents for such Act (22 U.S.C. 7501 note) is amended by adding after the item relating to section 303 the following:

"Sec. 304. Formulation of long-term strategy for Afghanistan.".

SEC. 4064. RULE OF LAW AND RELATED ISSUES.

Section 103(a)(5)(A) of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7513(a)(5)(A)) is amended—

(1) in clause (v), to read as follows:

"(v) support for the activities of the Government of Afghanistan to develop modern legal codes and court rules, to provide for the creation of legal assistance programs, and other initiatives to promote the rule of law in Afghanistan;";

(2) in clause (xii), to read as follows:

"(xii) support for the effective administration of justice at the national, regional, and local levels, including programs to improve penal institutions and the rehabilitation of prisoners, to establish a responsible and community-based police force, and to rehabilitate or construct courthouses and detention facilities;"; and

(3) in clause (xiii), by striking "and" at the end;

(4) in clause (xiv), by striking the period at the end and inserting "; and"; and

(5) by adding at the end the following:

"(xv) assistance for the protection of Afghanistan's culture, history, and national identity, including with the rehabilitation of Afghanistan's museums and sites of cultural significance.".

SEC. 4065. MONITORING OF ASSISTANCE.

Section 108 of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7518) is amended by adding at the end the following:

"(c) MONITORING OF ASSISTANCE FOR AFGHANISTAN.—

"(1) REPORT.—The Secretary of State, in consultation with the Administrator for the United States Agency for International Development, shall submit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report on the obligations and expenditures of United States assistance for Afghanistan from all United States Government agencies. The first report under this paragraph shall be submitted not later than January 15, 2005, and subsequent reports shall be submitted every six months thereafter and may be included in the report required by section 206(c)(2) of this Act.

"(2) SUBMISSION OF INFORMATION FOR REPORT.—The head of each United States Government agency referred to in paragraph (1) shall provide on a timely basis to the Secretary of State such information as the Secretary may reasonably require to allow the Secretary to prepare and submit the report required by such paragraph.".

SEC. 4066. UNITED STATES POLICY TO SUPPORT DISARMAMENT OF PRIVATE MILITIAS AND TO SUPPORT EXPANSION OF INTERNATIONAL PEACEKEEPING AND SECURITY OPERATIONS IN AFGHANISTAN.

(a) DISARMAMENT OF PRIVATE MILITIAS.—Section 103 of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7513) is amended by adding at the end the following:

"(d) UNITED STATES POLICY RELATING TO DISARMAMENT OF PRIVATE MILITIAS.—

"(1) IN GENERAL.—It shall be the policy of the United States to take immediate steps to provide active support for the disarmament, demobilization, and reintegration of armed soldiers, particularly child soldiers, in Afghanistan, in close consultation with the President of Afghanistan.

"(2) REPORT.—The report required by section 206(c)(2) of this Act shall include a description of the progress to implement paragraph (1).".

(b) INTERNATIONAL PEACEKEEPING AND SECURITY OPERATIONS.—Section 103 of such Act (22 U.S.C. 7513(d)), as amended by subsection (a), is further amended by adding at the end the following:

"(e) UNITED STATES POLICY RELATING TO INTERNATIONAL PEACEKEEPING AND SECURITY OPERATIONS.—It shall be the policy of the United States to make every effort to support the expansion of international peacekeeping and security operations in Afghanistan in order to—

"(1) increase the area in which security is provided and undertake vital tasks related to promoting security, such as disarming warlords, militias, and irregulars, and disrupting opium production; and

"(2) safeguard highways in order to allow the free flow of commerce and to allow material assistance to the people of Afghanistan, and aid personnel in Afghanistan, to move more freely.".

SEC. 4067. EFFORTS TO EXPAND INTERNATIONAL PEACEKEEPING AND SECURITY OPERATIONS IN AFGHANISTAN.

Section 206(d)(1) of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7536(d)(1)) is amended to read as follows:

"(1) EFFORTS TO EXPAND INTERNATIONAL PEACEKEEPING AND SECURITY OPERATIONS IN AFGHANISTAN.—

"(A) EFFORTS.—The President shall encourage, and, as authorized by law, enable other countries to actively participate in expanded international peacekeeping and security operations in Afghanistan, especially through the provision of military personnel for extended periods of time.

"(B) REPORTS.—The President shall prepare and transmit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a report on efforts carried out pursuant to subparagraph (A). The first report under this subparagraph shall be transmitted not later than 60 days after the date of the enactment of the Afghanistan Freedom Support Act Amendments of 2004 and subsequent reports shall be transmitted every six months thereafter and may be included in the report required by subsection (c)(2).''.

SEC. 4068. PROVISIONS RELATING TO COUNTERNARCOTICS EFFORTS IN AFGHANISTAN.

(a) COUNTERNARCOTICS EFFORTS.—The Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7501 et seq.) is amended—

(1) by redesignating—

(A) title III as title IV; and

(B) sections 301 through 305 as sections 401 through 405, respectively; and

(2) by inserting after title II the following:

"TITLE III—PROVISIONS RELATING TO COUNTERNARCOTICS EFFORTS IN AFGHANISTAN

"SEC. 301. ASSISTANCE FOR COUNTERNARCOTICS EFFORTS.

"In addition to programs established pursuant to section 103(a)(3) of this Act or other similar programs, the President is authorized and encouraged to implement specific initiatives to assist in the eradication of poppy cultivation and the disruption of heroin production in Afghanistan, such as—

"(1) promoting alternatives to poppy cultivation, including the introduction of high value crops that are suitable for export and the provision of appropriate technical assistance and credit mechanisms for farmers;

"(2) enhancing the ability of farmers to bring legitimate agricultural goods to market;

"(3) notwithstanding section 660 of the Foreign Assistance Act of 1961 (22 U.S.C. 2420), assistance, including nonlethal equipment, training (including training in internationally recognized standards of human rights, the rule of law, anti-corruption, and the promotion of civilian police roles that support democracy), and payments, during fiscal years 2006 through 2008, for salaries for special counternarcotics police and supporting units;

"(4) training the Afghan National Army in counternarcotics activities; and

"(5) creating special counternarcotics courts, prosecutors, and places of incarceration.

"SEC. 302. SENSE OF CONGRESS AND REPORT REGARDING COUNTER-DRUG EFFORTS IN AFGHANISTAN.

"(a) SENSE OF CONGRESS.—It is the sense of Congress that—

"(1) the President should make the substantial reduction of illegal drug production and trafficking in Afghanistan a priority in the Global War on Terrorism;

"(2) the Secretary of Defense, in coordination with the Secretary of State and the heads of other appropriate Federal agencies, should expand cooperation with the Government of Afghanistan and international organizations involved in counter-drug activities to assist in providing a secure environment for counter-drug personnel in Afghanistan; and

"(3) the United States, in conjunction with the Government of Afghanistan and coalition partners, should undertake additional efforts to reduce illegal drug trafficking and related activities that provide financial support for terrorist organizations in Afghanistan and neighboring countries.

"(b) REPORT REQUIRED.—(1) The Secretary of Defense and the Secretary of State shall jointly prepare a report that describes—

"(A) the progress made towards substantially reducing poppy cultivation and heroin production capabilities in Afghanistan; and

"(B) the extent to which profits from illegal drug activity in Afghanistan are used to financially support terrorist organizations and groups seeking to undermine the Government of Afghanistan.

"(2) The report required by this subsection shall be submitted to Congress not later than 120 days after the date of the enactment of the 9/11 Recommendations Implementation Act.''.

(b) CLERICAL AMENDMENTS.—The table of contents for such Act (22 U.S.C. 7501 note) is amended—

(1) by redesignating—

(A) the item relating to title III as the item relating to title IV; and

(B) the items relating to sections 301 through 305 as the items relating to sections 401 through 405; and

(2) by inserting after the items relating to title II the following:

"TITLE III—PROVISIONS RELATING TO COUNTERNARCOTICS EFFORTS IN AFGHANISTAN

"Sec. 301. Assistance for counternarcotics efforts.

"Sec. 302. Sense of Congress and report regarding counter-drug efforts in Afghanistan.''.

SEC. 4069. ADDITIONAL AMENDMENTS TO THE AFGHANISTAN FREEDOM SUPPORT ACT OF 2002.

(a) TECHNICAL AMENDMENT.—Section 103(a)(7)(A)(xii) of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7513(a)(7)(A)(xii)) is amended by striking "National'' and inserting "Afghan Independent''.

(b) REPORTING REQUIREMENT.—Section 206(c)(2) of such Act (22 U.S.C. 7536(c)(2)) is amended in the matter preceding subparagraph (A) by striking "2007'' and inserting "2012''.

SEC. 4070. REPEAL.

Section 620D of the Foreign Assistance Act of 1961 (22 U.S.C. 2374; relating to prohibition on assistance to Afghanistan) is hereby repealed.

Subtitle E—Provisions Relating to Saudi Arabia and Pakistan

SEC. 4081. NEW UNITED STATES STRATEGY FOR RELATIONSHIP WITH SAUDI ARABIA.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the relationship between the United States and Saudi Arabia should include a more robust dialogue between the people and Government of the United States and the people and Government of Saudi Arabia in order to provide for a reevaluation of, and improvements to, the relationship by both sides.

(b) REPORT.—

(1) IN GENERAL.— Not later than one year after the date of the enactment of this Act, the President shall transmit to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate a strategy for collaboration with the people and Government of Saudi Arabia on subjects of mutual interest and importance to the United States.

(2) CONTENTS.—The strategy required under paragraph (1) shall include the following provisions:

(A) A framework for security cooperation in the fight against terrorism, with special reference to combating terrorist financing and an examination of the origins of modern terrorism.

(B) A framework for political and economic reform in Saudi Arabia and throughout the Middle East.

(C) An examination of steps that should be taken to reverse the trend toward extremism in Saudi Arabia and other Muslim countries and throughout the Middle East.

(D) A framework for promoting greater tolerance and respect for cultural and religious diversity in Saudi Arabia and throughout the Middle East.

(3) FORM.—The strategy required by this subsection may contain a classified annex.

SEC. 4082. UNITED STATES COMMITMENT TO THE FUTURE OF PAKISTAN.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the United States should, over a long-term period, help to ensure a promising, stable, and secure future for Pakistan, and should in particular provide assistance to encourage and enable Pakistan—

(1) to continue and improve upon its commitment to combating extremists;

(2) to seek to resolve any outstanding difficulties with its neighbors and other countries in its region;

(3) to continue to make efforts to fully control its territory and borders;

(4) to progress towards becoming a more effective and participatory democracy;

(5) to participate more vigorously in the global marketplace and to continue to modernize its economy;

(6) to take all necessary steps to halt the spread of weapons of mass destruction;

(7) to continue to reform its education system; and

(8) to, in other ways, implement a general strategy of moderation.

(b) STRATEGY.—Not later than 180 days after the date of the enactment of this Act, the President shall transmit to Congress a detailed proposed strategy for the future, long-term, engagement of the United States with Pakistan. The strategy required by this subsection may contain a classified annex.

SEC. 4083. EXTENSION OF PAKISTAN WAIVERS.

The Act entitled "An Act to authorize the President to exercise waivers of foreign assistance restrictions with respect to Pakistan through September 30, 2003, and for other purposes'', approved October 27, 2001 (Public Law 107–57; 115 Stat. 403), as amended by section 2213 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108–106; 117 Stat. 1232), is further amended—

(1) in section 1(b)—

(A) in the heading, by striking "FISCAL YEAR 2004'' and inserting "FISCAL YEARS 2005 AND 2006''; and

(B) in paragraph (1), by striking "2004'' and inserting "2005 or 2006'';

(2) in section 3(2), by striking "and 2004,'' and inserting "2004, 2005, and 2006''; and

(3) in section 6, by striking "2004'' and inserting "2006''.

Subtitle F—Oversight Provisions

SEC. 4091. CASE-ZABLOCKI ACT REQUIREMENTS.

(a) AVAILABILITY OF TREATIES AND INTERNATIONAL AGREEMENTS.—Section 112a of title 1, United States Code, is amended by adding at the end the following:

"(d) The Secretary of State shall cause to be published in slip form or otherwise made publicly available through the Internet website of the Department of State each treaty or international agreement proposed to be published in the compilation entitled 'United States Treaties and Other International Agreements' not later than 180 days after the date on which the treaty or agreement enters into force.''.

(b) TRANSMISSION TO CONGRESS.—Section 112b(a) of title 1, United States Code (commonly referred to as the "Case-Zablocki Act''), is amended—

(1) in the first sentence, by striking "has entered into force" and inserting "has been signed or entered into force"; and

(2) in the second sentence, by striking "Committee on Foreign Affairs" and inserting "Committee on International Relations".

(c) REPORT.—Section 112b of title 1, United States Code, is amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (c) the following:

"(d)(1) The Secretary of State shall submit to Congress on an annual basis a report that contains an index of all international agreements (including oral agreements), listed by country, date, title, and summary of each such agreement (including a description of the duration of activities under the agreement and the agreement itself), that the United States—

"(A) has signed, proclaimed, or with reference to which any other final formality has been executed, or that has been extended or otherwise modified, during the preceding calendar year; and

"(B) has not been published, or is not proposed to be published, in the compilation entitled 'United States Treaties and Other International Agreements'.

"(2) The report described in paragraph (1) may be submitted in classified form.".

(d) DETERMINATION OF INTERNATIONAL AGREEMENT.—Subsection (e) of section 112b of title 1, United States Code, (as redesignated) is amended—

(1) by striking "(e) The Secretary of State" and inserting "(e)(1) Subject to paragraph (2), the Secretary of State"; and

(2) by adding at the end the following:

"(2)(A) An arrangement shall constitute an international agreement within the meaning of this section (other than subsection (c) of this section) irrespective of the duration of activities under the arrangement or the arrangement itself.

"(B) Arrangements that constitute an international agreement within the meaning of this section (other than subsection (c) of this section) include, but are not limited to, the following:

"(i) A bilateral or multilateral counterterrorism agreement.

"(ii) A bilateral agreement with a country that is subject to a determination under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)), section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)).".

(e) ENFORCEMENT OF REQUIREMENTS.—Section 139(b) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989 is amended to read as follows:

"(b) EFFECTIVE DATE.—Subsection (a) shall take effect 60 days after the date of the enactment of the 9/11 Recommendations Implementation Act and shall apply during fiscal years 2005, 2006, and 2007.".

Subtitle G—Additional Protections of United States Aviation System from Terrorist Attacks

SEC. 4101. INTERNATIONAL AGREEMENTS TO ALLOW MAXIMUM DEPLOYMENT OF FEDERAL FLIGHT DECK OFFICERS.

The President is encouraged to pursue aggressively international agreements with foreign governments to allow the maximum deployment of Federal air marshals and Federal flight deck officers on international flights.

SEC. 4102. FEDERAL AIR MARSHAL TRAINING.

Section 44917 of title 49, United States Code, is amended by adding at the end the following:

"(d) TRAINING FOR FOREIGN LAW ENFORCEMENT PERSONNEL.—

"(1) IN GENERAL.—The Assistant Secretary for Immigration and Customs Enforcement of the Department of Homeland Security, after consultation with the Secretary of State, may direct the Federal Air Marshal Service to provide appropriate air marshal training to law enforcement personnel of foreign countries.

"(2) WATCHLIST SCREENING.—The Federal Air Marshal Service may only provide appropriate air marshal training to law enforcement personnel of foreign countries after comparing the identifying information and records of law enforcement personnel of foreign countries against appropriate records in the consolidated and integrated terrorist watchlists of the Federal Government.

"(3) FEES.—The Assistant Secretary shall establish reasonable fees and charges to pay expenses incurred in carrying out this subsection. Funds collected under this subsection shall be credited to the account in the Treasury from which the expenses were incurred and shall be available to the Assistant Secretary for purposes for which amounts in such account are available.".

SEC. 4103. MAN-PORTABLE AIR DEFENSE SYSTEMS (MANPADS).

(a) UNITED STATES POLICY ON NONPROLIFERATION AND EXPORT CONTROL.—

(1) TO LIMIT AVAILABILITY AND TRANSFER OF MANPADS.—The President shall pursue, on an urgent basis, further strong international diplomatic and cooperative efforts, including bilateral and multilateral treaties, in the appropriate forum to limit the availability, transfer, and proliferation of MANPADSs worldwide.

(2) TO LIMIT THE PROLIFERATION OF MANPADS.—The President is encouraged to seek to enter into agreements with the governments of foreign countries that, at a minimum, would—

(A) prohibit the entry into force of a MANPADS manufacturing license agreement and MANPADS co-production agreement, other than the entry into force of a manufacturing license or co-production agreement with a country that is party to such an agreement;

(B) prohibit, except pursuant to transfers between governments, the export of a MANPADS, including any component, part, accessory, or attachment thereof, without an individual validated license; and

(C) prohibit the reexport or retransfer of a MANPADS, including any component, part, accessory, or attachment thereof, to a third person, organization, or government unless the written consent of the government that approved the original export or transfer is first obtained.

(3) TO ACHIEVE DESTRUCTION OF MANPADS.—The President should continue to pursue further strong international diplomatic and cooperative efforts, including bilateral and multilateral treaties, in the appropriate forum to assure the destruction of excess, obsolete, and illicit stocks of MANPADSs worldwide.

(4) REPORTING AND BRIEFING REQUIREMENT.—

(A) PRESIDENT'S REPORT.—Not later than 180 days after the date of enactment of this Act, the President shall transmit to the appropriate congressional committees a report that contains a detailed description of the status of diplomatic efforts under paragraphs (1), (2), and (3) and of efforts by the appropriate United States agencies to comply with the recommendations of the General Accounting Office set forth in its report GAO-04-519, entitled "Nonproliferation: Further Improvements Needed in U.S. Efforts to Counter Threats from Man-Portable Air Defense Systems".

(B) ANNUAL BRIEFINGS.—Annually after the date of submission of the report under subparagraph (A) and until completion of the diplomatic and compliance efforts referred to in subparagraph (A), the Secretary of State shall brief the appropriate congressional committees on the status of such efforts.

(b) FAA AIRWORTHINESS CERTIFICATION OF MISSILE DEFENSE SYSTEMS FOR COMMERCIAL AIRCRAFT.—

(1) IN GENERAL.—As soon as practicable, but not later than the date of completion of Phase II of the Department of Homeland Security's counter-man-portable air defense system (MANPADS) development and demonstration program, the Administrator of the Federal Aviation Administration shall establish a process for conducting airworthiness and safety certification of missile defense systems for commercial aircraft certified as effective and functional by the Department of Homeland Security. The process shall require a certification by the Administrator that such systems can be safely integrated into aircraft systems and ensure airworthiness and aircraft system integrity.

(2) CERTIFICATION ACCEPTANCE.—Under the process, the Administrator shall accept the certification of the Department of Homeland Security that a missile defense system is effective and functional to defend commercial aircraft against MANPADSs.

(3) EXPEDITIOUS CERTIFICATION.—Under the process, the Administrator shall expedite the airworthiness and safety certification of missile defense systems for commercial aircraft certified by the Department of Homeland Security.

(4) REPORTS.—Not later than 90 days after the first airworthiness and safety certification for a missile defense system for commercial aircraft is issued by the Administrator, and annually thereafter until December 31, 2008, the Federal Aviation Administration shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that contains a detailed description of each airworthiness and safety certification issued for a missile defense system for commercial aircraft.

(c) PROGRAMS TO REDUCE MANPADS.—

(1) IN GENERAL.—The President is encouraged to pursue strong programs to reduce the number of MANPADSs worldwide so that fewer MANPADSs will be available for trade, proliferation, and sale.

(2) REPORTING AND BRIEFING REQUIREMENTS.—Not later than 180 days after the date of enactment of this Act, the President shall transmit to the appropriate congressional committees a report that contains a detailed description of the status of the programs being pursued under subsection (a). Annually thereafter until the programs are no longer needed, the Secretary of State shall brief the appropriate congressional committees on the status of programs.

(3) FUNDING.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

(d) MANPADS VULNERABILITY ASSESSMENTS REPORT.—

(1) IN GENERAL.—Not later than one year after the date of enactment of this Act, the

Secretary of Homeland Security shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report describing the Department of Homeland Security's plans to secure airports and the aircraft arriving and departing from airports against MANPADSs attacks.

(2) MATTERS TO BE ADDRESSED.—The Secretary's report shall address, at a minimum, the following:

(A) The status of the Department's efforts to conduct MANPADSs vulnerability assessments at United States airports at which the Department is conducting assessments.

(B) How intelligence is shared between the United States intelligence agencies and Federal, State, and local law enforcement to address the MANPADS threat and potential ways to improve such intelligence sharing.

(C) Contingency plans that the Department has developed in the event that it receives intelligence indicating a high threat of a MANPADS attack on aircraft at or near United States airports.

(D) The feasibility and effectiveness of implementing public education and neighborhood watch programs in areas surrounding United States airports in cases in which intelligence reports indicate there is a high risk of MANPADS attacks on aircraft.

(E) Any other issues that the Secretary deems relevant.

(3) FORMAT.—The report required by this subsection may be submitted in a classified format.

(e) DEFINITIONS.—In this section, the following definitions apply:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means—

(A) the Committee on Armed Services, the Committee on International Relations, and the Committee on Transportation and Infrastructure of the House of Representatives; and

(B) the Committee on Armed Services, the Committee on Foreign Relations, and the Committee on Commerce, Science, and Transportation of the Senate.

(2) MANPADS.—The term "MANPADS" means—

(A) a surface-to-air missile system designed to be man-portable and carried and fired by a single individual; and

(B) any other surface-to-air missile system designed to be operated and fired by more than one individual acting as a crew and portable by several individuals.

Subtitle H—Improving International Standards and Cooperation to Fight Terrorist Financing

SEC. 4111. SENSE OF THE CONGRESS REGARDING SUCCESS IN MULTILATERAL ORGANIZATIONS.

(a) FINDINGS.—The Congress finds as follows:

(1) The global war on terrorism and cutting off terrorist financing is a policy priority for the United States and its partners, working bilaterally and multilaterally through the United Nations (UN), the UN Security Council and its Committees, such as the 1267 and 1373 Committees, the Financial Action Task Force (FATF) and various international financial institutions, such as the International Monetary Fund (IMF), the International Bank for Reconstruction and Development (IBRD), and the regional multilateral development banks, and other multilateral fora.

(2) The Secretary of the Treasury has engaged the international financial community in the global fight against terrorist financing. Specifically, the Department of the Treasury helped redirect the focus of the Financial Action Task Force on the new threat posed by terrorist financing to the international financial system, resulting in the establishment of the FATF's Eight Special Recommendations on Terrorist Financing as the international standard on combating terrorist financing. The Secretary of the Treasury has engaged the Group of Seven and the Group of Twenty Finance Ministers to develop action plans to curb the financing of terror. In addition, other economic and regional fora, such as the Asia-Pacific Economic Cooperation (APEC) Forum, the Western Hemisphere Financial Ministers, have been used to marshal political will and actions in support of countering the financing of terrorism (CFT) standards.

(3) FATF's Forty Recommendations on Money Laundering and the Eight Special Recommendations on Terrorist Financing are the recognized global standards for fighting money laundering and terrorist financing. The FATF has engaged in an assessment process for jurisdictions based on their compliance with these standards.

(4) In March 2004, the IMF and IBRD Boards agreed to make permanent a pilot program of collaboration with the FATF to assess global compliance with the FATF Forty Recommendations on Money Laundering and the Eight Special Recommendations on Terrorist Financing. As a result, anti-money laundering (AML) and combating the financing of terrorism (CFT) assessments are now a regular part of their Financial Sector Assessment Progam (FSAP) and Offshore Financial Center assessments, which provide for a comprehensive analysis of the strength of a jurisdiction's financial system. These reviews assess potential systemic vulnerabilities, consider sectoral development needs and priorities, and review the state of implementation of and compliance with key financial codes and regulatory standards, among them the AML and CFT standards.

(5) To date, 70 FSAPs have been conducted, with over 24 of those incorporating AML and CFT assessments. The international financial institutions (IFIs), the FATF, and the FATF-style regional bodies together are expected to assess AML and CFT regimes in up to 40 countries or jurisdictions per year. This will help countries and jurisdictions identify deficiencies in their AML and CFT regimes and help focus technical assistance (TA) efforts.

(6) TA programs from the United States and other nations, coordinated with the Department of State and other departments and agencies, are playing an important role in helping countries and jurisdictions address shortcomings in their AML and CFT regimes and bringing their regimes into conformity with international standards. Training is coordinated within the United States Government, which leverages multilateral organizations and bodies and international financial institutions to internationalize the conveyance of technical assistance.

(7) In fulfilling its duties in advancing incorporation of AML and CFT standards into the IFIs as part of the IFIs' work on protecting the integrity of the international monetary system, the Department of the Treasury, under the guidance of the Secretary of the Treasury, has effectively brought together all of the key United States Government agencies. In particular, United States Government agencies continue to work together to foster broad support for this important undertaking in various multilateral fora, and United States Government agencies recognize the need for close coordination and communication within our own government.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that the Secretary of the Treasury should continue to promote the dissemination of international AML and CFT standards, and to press for full implementation of the FATF 40 + 8 Recommendations by all countries in order to curb financial risks and hinder terrorist financing around the globe.

SEC. 4112. EXPANDED REPORTING AND TESTIMONY REQUIREMENTS FOR THE SECRETARY OF THE TREASURY.

(a) REPORTING REQUIREMENTS.—Section 1503(a) of the International Financial Institutions Act (22 U.S.C. 262o-2(a)) is amended by adding at the end the following new paragraph:

"(15) Work with the International Monetary Fund to—

"(A) foster strong global anti-money laundering (AML) and combat the financing of terrorism (CFT) regimes;

"(B) ensure that country performance under the Financial Action Task Force anti-money laundering and counter-terrorist financing standards is effectively and comprehensively monitored;

"(C) ensure note is taken of AML and CFT issues in Article IV reports, International Monetary Fund programs, and other regular reviews of country progress;

"(D) ensure that effective AML and CFT regimes are considered to be indispensable elements of sound financial systems; and

"(E) emphasize the importance of sound AML and CFT regimes to global growth and development.".

(b) TESTIMONY.—Section 1705(b) of such Act (22 U.S.C. 262r-4(b)) is amended—

(1) by striking "and" at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting "; and" and

(3) by adding at the end the following:

"(4) the status of implementation of international anti-money laundering and counter-terrorist financing standards by the International Monetary Fund, the multilateral development banks, and other multilateral financial policymaking bodies.".

SEC. 4113. COORDINATION OF UNITED STATES GOVERNMENT EFFORTS.

The Secretary of the Treasury, or the designee of the Secretary as the lead United States Government official to the Financial Action Task Force (FATF), shall continue to convene the interagency United States Government FATF working group. This group, which includes representatives from all relevant federal agencies, shall meet at least once a year to advise the Secretary on policies to be pursued by the United States regarding the development of common international AML and CFT standards, to assess the adequacy and implementation of such standards, and to recommend to the Secretary improved or new standards as necessary.

SEC. 4114. DEFINITIONS.

In this subtitle:

(1) INTERNATIONAL FINANCIAL INSTITUTIONS.—The term "international financial institutions" has the meaning given in section 1701(c)(2) of the International Financial Institutions Act.

(2) FINANCIAL ACTION TASK FORCE.—The term "Financial Action Task Force" means the international policy-making and standard-setting body dedicated to combating

money laundering and terrorist financing that was created by the Group of Seven in 1989.

TITLE V—GOVERNMENT RESTRUCTURING

Subtitle A—Faster and Smarter Funding for First Responders

SEC. 5001. SHORT TITLE.

This subtitle may be cited as the "Faster and Smarter Funding for First Responders Act of 2004".

SEC. 5002. FINDINGS.

The Congress finds the following:

(1) In order to achieve its objective of minimizing the damage, and assisting in the recovery, from terrorist attacks, the Department of Homeland Security must play a leading role in assisting communities to reach the level of preparedness they need to respond to a terrorist attack.

(2) First responder funding is not reaching the men and women of our Nation's first response teams quickly enough, and sometimes not at all.

(3) To reform the current bureaucratic process so that homeland security dollars reach the first responders who need it most, it is necessary to clarify and consolidate the authority and procedures of the Department of Homeland Security that support first responders.

(4) Ensuring adequate resources for the new national mission of homeland security, without degrading the ability to address effectively other types of major disasters and emergencies, requires a discrete and separate grant making process for homeland security funds for first response to terrorist acts, on the one hand, and for first responder programs designed to meet pre-September 11 priorities, on the other.

(5) While a discrete homeland security grant making process is necessary to ensure proper focus on the unique aspects of terrorism prevention, preparedness, and response, it is essential that State and local strategies for utilizing such grants be integrated, to the greatest extent practicable, with existing State and local emergency management plans.

(6) Homeland security grants to first responders must be based on the best intelligence concerning the capabilities and intentions of our terrorist enemies, and that intelligence must be used to target resources to the Nation's greatest threats, vulnerabilities, and consequences.

(7) The Nation's first response capabilities will be improved by sharing resources, training, planning, personnel, and equipment among neighboring jurisdictions through mutual aid agreements and regional cooperation. Such regional cooperation should be supported, where appropriate, through direct grants from the Department of Homeland Security.

(8) An essential prerequisite to achieving the Nation's homeland security objectives for first responders is the establishment of well-defined national goals for terrorism preparedness. These goals should delineate the essential capabilities that every jurisdiction in the United States should possess or to which it should have access.

(9) A national determination of essential capabilities is needed to identify levels of State and local government terrorism preparedness, to determine the nature and extent of State and local first responder needs, to identify the human and financial resources required to fulfill them, and to direct funding to meet those needs and to measure preparedness levels on a national scale.

(10) To facilitate progress in achieving, maintaining, and enhancing essential capabilities for State and local first responders, the Department of Homeland Security should seek to allocate homeland security funding for first responders to meet nationwide needs.

(11) Private sector resources and citizen volunteers can perform critical functions in assisting in preventing and responding to terrorist attacks, and should be integrated into State and local planning efforts to ensure that their capabilities and roles are understood, so as to provide enhanced State and local operational capability and surge capacity.

(12) Public-private partnerships, such as the partnerships between the Business Executives for National Security and the States of New Jersey and Georgia, can be useful to identify and coordinate private sector support for State and local first responders. Such models should be expanded to cover all States and territories.

(13) An important aspect of essential capabilities is measurability, so that it is possible to determine how prepared a State or local government is now, and what additional steps it needs to take, in order to respond to acts of terrorism.

(14) The Department of Homeland Security should establish, publish, and regularly update national voluntary consensus standards for both equipment and training, in cooperation with both public and private sector standard setting organizations, to assist State and local governments in obtaining the equipment and training to attain the essential capabilities for first response to acts of terrorism, and to ensure that first responder funds are spent wisely.

SEC. 5003. FASTER AND SMARTER FUNDING FOR FIRST RESPONDERS.

(a) IN GENERAL.—The Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 361 et seq.) is amended—

(1) in section 1(b) in the table of contents by adding at the end the following:

"TITLE XVIII—FUNDING FOR FIRST RESPONDERS

"Sec. 1801. Definitions.
"Sec. 1802. Faster and smarter funding for first responders.
"Sec. 1803. Essential capabilities for first responders.
"Sec. 1804. Task Force on Essential Capabilities for First Responders.
"Sec. 1805. Covered grant eligibility and criteria.
"Sec. 1806. Use of funds and accountability requirements.
"Sec. 1807. National standards for first responder equipment and training."; and

(2) by adding at the end the following:

"TITLE XVIII—FUNDING FOR FIRST RESPONDERS

"SEC. 1801. DEFINITIONS.

"In this title:

"(1) BOARD.—The term 'Board' means the First Responder Grants Board established under section 1805(f).

"(2) COVERED GRANT.—The term 'covered grant' means any grant to which this title applies under section 1802.

"(3) DIRECTLY ELIGIBLE TRIBE.—The term 'directly eligible tribe' means any Indian tribe or consortium of Indian tribes that—

"(A) meets the criteria for inclusion in the qualified applicant pool for Self-Governance that are set forth in section 402(c) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458bb(c));

"(B) employs at least 10 full-time personnel in a law enforcement or emergency response agency with the capacity to respond to calls for law enforcement or emergency services; and

"(C)(i) is located on, or within 5 miles of, an international border or waterway;

"(ii) is located within 5 miles of a facility within a critical infrastructure sector identified in section 1803(c)(2);

"(iii) is located within or contiguous to one of the 50 largest metropolitan statistical areas in the United States; or

"(iv) has more than 1,000 square miles of Indian country, as that term is defined in section 1151 of title 18, United States Code.

"(4) ELEVATIONS IN THE THREAT ALERT LEVEL.—The term 'elevations in the threat alert level' means any designation (including those that are less than national in scope) that raises the homeland security threat level to either the highest or second highest threat level under the Homeland Security Advisory System referred to in section 201(d)(7).

"(5) EMERGENCY PREPAREDNESS.—The term 'emergency preparedness' shall have the same meaning that term has under section 602 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195a).

"(6) ESSENTIAL CAPABILITIES.—The term 'essential capabilities' means the levels, availability, and competence of emergency personnel, planning, training, and equipment across a variety of disciplines needed to effectively and efficiently prevent, prepare for, and respond to acts of terrorism consistent with established practices.

"(7) FIRST RESPONDER.—The term 'first responder' shall have the same meaning as the term 'emergency response provider'.

"(8) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"(9) REGION.—The term 'region' means—

"(A) any geographic area consisting of all or parts of 2 or more contiguous States, counties, municipalities, or other local governments that have a combined population of at least 1,650,000 or have an area of not less than 20,000 square miles, and that, for purposes of an application for a covered grant, is represented by 1 or more governments or governmental agencies within such geographic area, and that is established by law or by agreement of 2 or more such governments or governmental agencies in a mutual aid agreement; or

"(B) any other combination of contiguous local government units (including such a combination established by law or agreement of two or more governments or governmental agencies in a mutual aid agreement) that is formally certified by the Secretary as a region for purposes of this Act with the consent of—

"(i) the State or States in which they are located, including a multi-State entity established by a compact between two or more States; and

"(ii) the incorporated municipalities, counties, and parishes that they encompass.

"(10) TASK FORCE.—The term 'Task Force' means the Task Force on Essential Capabilities for First Responders established under section 1804.

"SEC. 1802. FASTER AND SMARTER FUNDING FOR FIRST RESPONDERS.

"(a) COVERED GRANTS.—This title applies to grants provided by the Department to States, regions, or directly eligible tribes for the primary purpose of improving the ability of first responders to prevent, prepare for, respond to, or mitigate threatened or actual terrorist attacks, especially those involving weapons of mass destruction, administered under the following:

"(1) STATE HOMELAND SECURITY GRANT PROGRAM.—The State Homeland Security Grant Program of the Department, or any successor to such grant program.

"(2) URBAN AREA SECURITY INITIATIVE.—The Urban Area Security Initiative of the Department, or any successor to such grant program.

"(3) LAW ENFORCEMENT TERRORISM PREVENTION PROGRAM.—The Law Enforcement Terrorism Prevention Program of the Department, or any successor to such grant program.

"(4) CITIZEN CORPS PROGRAM.—The Citizen Corps Program of the Department, or any successor to such grant program.

"(b) EXCLUDED PROGRAMS.—This title does not apply to or otherwise affect the following Federal grant programs or any grant under such a program:

"(1) NONDEPARTMENT PROGRAMS.—Any Federal grant program that is not administered by the Department.

"(2) FIRE GRANT PROGRAMS.—The fire grant programs authorized by sections 33 and 34 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229, 2229a).

"(3) EMERGENCY MANAGEMENT PLANNING AND ASSISTANCE ACCOUNT GRANTS.—The Emergency Management Performance Grant program and the Urban Search and Rescue Grants program authorized by title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 et seq.); the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 (113 Stat. 1047 et seq.); and the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.).

"SEC. 1803. ESSENTIAL CAPABILITIES FOR FIRST RESPONDERS.

"(a) ESTABLISHMENT OF ESSENTIAL CAPABILITIES.—

"(1) IN GENERAL.—For purposes of covered grants, the Secretary shall establish clearly defined essential capabilities for State and local government preparedness for terrorism, in consultation with—

"(A) the Task Force on Essential Capabilities for First Responders established under section 1804;

"(B) the Under Secretaries for Emergency Preparedness and Response, Border and Transportation Security, Information Analysis and Infrastructure Protection, and Science and Technology, and the Director of the Office for Domestic Preparedness;

"(C) the Secretary of Health and Human Services;

"(D) other appropriate Federal agencies;

"(E) State and local first responder agencies and officials; and

"(F) consensus-based standard making organizations responsible for setting standards relevant to the first responder community.

"(2) DEADLINES.—The Secretary shall—

"(A) establish essential capabilities under paragraph (1) within 30 days after receipt of the report under section 1804(b); and

"(B) regularly update such essential capabilities as necessary, but not less than every 3 years.

"(3) PROVISION OF ESSENTIAL CAPABILITIES.—The Secretary shall ensure that a detailed description of the essential capabilities established under paragraph (1) is provided promptly to the States and to the Congress. The States shall make the essential capabilities available as necessary and appropriate to local governments within their jurisdictions.

"(b) OBJECTIVES.—The Secretary shall ensure that essential capabilities established under subsection (a)(1) meet the following objectives:

"(1) SPECIFICITY.—The determination of essential capabilities specifically shall describe the training, planning, personnel, and equipment that different types of communities in the Nation should possess, or to which they should have access, in order to meet the Department's goals for terrorism preparedness based upon—

"(A) the most current risk assessment available by the Directorate for Information Analysis and Infrastructure Protection of the threats of terrorism against the United States;

"(B) the types of threats, vulnerabilities, geography, size, and other factors that the Secretary has determined to be applicable to each different type of community; and

"(C) the principles of regional coordination and mutual aid among State and local governments.

"(2) FLEXIBILITY.—The establishment of essential capabilities shall be sufficiently flexible to allow State and local government officials to set priorities based on particular needs, while reaching nationally determined terrorism preparedness levels within a specified time period.

"(3) MEASURABILITY.—The establishment of essential capabilities shall be designed to enable measurement of progress towards specific terrorism preparedness goals.

"(4) COMPREHENSIVENESS.—The determination of essential capabilities for terrorism preparedness shall be made within the context of a comprehensive State emergency management system.

"(c) FACTORS TO BE CONSIDERED.—

"(1) IN GENERAL.—In establishing essential capabilities under subsection (a)(1), the Secretary specifically shall consider the variables of threat, vulnerability, and consequences with respect to the Nation's population (including transient commuting and tourist populations) and critical infrastructure. Such consideration shall be based upon the most current risk assessment available by the Directorate for Information Analysis and Infrastructure Protection of the threats of terrorism against the United States.

"(2) CRITICAL INFRASTRUCTURE SECTORS.—The Secretary specifically shall consider threats of terrorism against the following critical infrastructure sectors in all areas of the Nation, urban and rural:

"(A) Agriculture.

"(B) Banking and finance.

"(C) Chemical industries.

"(D) The defense industrial base.

"(E) Emergency services.

"(F) Energy.

"(G) Food.

"(H) Government.

"(I) Postal and shipping.

"(J) Public health.

"(K) Information and telecommunications networks.

"(L) Transportation.

"(M) Water.

The order in which the critical infrastructure sectors are listed in this paragraph shall not be construed as an order of priority for consideration of the importance of such sectors.

"(3) TYPES OF THREAT.—The Secretary specifically shall consider the following types of threat to the critical infrastructure sectors described in paragraph (2), and to populations in all areas of the Nation, urban and rural:

"(A) Biological threats.

"(B) Nuclear threats.

"(C) Radiological threats.

"(D) Incendiary threats.

"(E) Chemical threats.

"(F) Explosives.

"(G) Suicide bombers.

"(H) Cyber threats.

"(I) Any other threats based on proximity to specific past acts of terrorism or the known activity of any terrorist group.

The order in which the types of threat are listed in this paragraph shall not be construed as an order of priority for consideration of the importance of such threats.

"(4) CONSIDERATION OF ADDITIONAL FACTORS.—In establishing essential capabilities under subsection (a)(1), the Secretary shall take into account any other specific threat to a population (including a transient commuting or tourist population) or critical infrastructure sector that the Secretary has determined to exist.

"SEC. 1804. TASK FORCE ON ESSENTIAL CAPABILITIES FOR FIRST RESPONDERS.

"(a) ESTABLISHMENT.—To assist the Secretary in establishing essential capabilities under section 1803(a)(1), the Secretary shall establish an advisory body pursuant to section 871(a) not later than 60 days after the date of the enactment of this section, which shall be known as the Task Force on Essential Capabilities for First Responders.

"(b) REPORT.—

"(1) IN GENERAL.—The Task Force shall submit to the Secretary, not later than 9 months after its establishment by the Secretary under subsection (a) and every 3 years thereafter, a report on its recommendations for essential capabilities for preparedness for terrorism.

"(2) CONTENTS.—The report shall—

"(A) include a priority ranking of essential capabilities in order to provide guidance to the Secretary and to the Congress on determining the appropriate allocation of, and funding levels for, first responder needs;

"(B) set forth a methodology by which any State or local government will be able to determine the extent to which it possesses or has access to the essential capabilities that States and local governments having similar risks should obtain;

"(C) describe the availability of national voluntary consensus standards, and whether there is a need for new national voluntary consensus standards, with respect to first responder training and equipment;

"(D) include such additional matters as the Secretary may specify in order to further the terrorism preparedness capabilities of first responders; and

"(E) include such revisions to the contents of past reports as are necessary to take into account changes in the most current risk assessment available by the Directorate for Information Analysis and Infrastructure Protection or other relevant information as determined by the Secretary.

"(3) CONSISTENCY WITH FEDERAL WORKING GROUP.—The Task Force shall ensure that its recommendations for essential capabilities are, to the extent feasible, consistent with any preparedness goals or recommendations of the Federal working group established under section 319F(a) of the Public Health Service Act (42 U.S.C. 247d–6(a)).

"(4) COMPREHENSIVENESS.—The Task Force shall ensure that its recommendations regarding essential capabilities for terrorism preparedness are made within the context of a comprehensive State emergency management system.

"(5) PRIOR MEASURES.—The Task Force shall ensure that its recommendations regarding essential capabilities for terrorism preparedness take into account any capabilities that State or local officials have determined to be essential and have undertaken since September 11, 2001, to prevent or prepare for terrorist attacks.

"(c) MEMBERSHIP.—

"(1) IN GENERAL.—The Task Force shall consist of 25 members appointed by the Secretary, and shall, to the extent practicable, represent a geographic and substantive cross section of governmental and nongovernmental first responder disciplines from the State and local levels, including as appropriate—

"(A) members selected from the emergency response field, including fire service and law enforcement, hazardous materials response, emergency medical services, and emergency management personnel (including public works personnel routinely engaged in emergency response);

"(B) health scientists, emergency and inpatient medical providers, and public health professionals, including experts in emergency health care response to chemical, biological, radiological, and nuclear terrorism, and experts in providing mental health care during emergency response operations;

"(C) experts from Federal, State, and local governments, and the private sector, representing standards-setting organizations, including representation from the voluntary consensus codes and standards development community, particularly those with expertise in first responder disciplines; and

"(D) State and local officials with expertise in terrorism preparedness, subject to the condition that if any such official is an elected official representing one of the two major political parties, an equal number of elected officials shall be selected from each such party.

"(2) COORDINATION WITH THE DEPARTMENT OF HEALTH AND HEALTH SERVICES.—In the selection of members of the Task Force who are health professionals, including emergency medical professionals, the Secretary shall coordinate the selection with the Secretary of Health and Human Services.

"(3) EX OFFICIO MEMBERS.—The Secretary and the Secretary of Health and Human Services shall each designate one or more officers of their respective Departments to serve as ex officio members of the Task Force. One of the ex officio members from the Department of Homeland Security shall be the designated officer of the Federal Government for purposes of subsection (e) of section 10 of the Federal Advisory Committee Act (5 App. U.S.C.).

"(d) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—Notwithstanding section 871(a), the Federal Advisory Committee Act (5 U.S.C. App.), including subsections (a), (b), and (d) of section 10 of such Act, and section 552b(c) of title 5, United States Code, shall apply to the Task Force.

"SEC. 1805. COVERED GRANT ELIGIBILITY AND CRITERIA.

"(a) GRANT ELIGIBILITY.—Any State, region, or directly eligible tribe shall be eligible to apply for a covered grant.

"(b) GRANT CRITERIA.—In awarding covered grants, the Secretary shall assist States and local governments in achieving, maintaining, and enhancing the essential capabilities for first responders established by the Secretary under section 1803.

"(c) STATE HOMELAND SECURITY PLANS.—

"(1) SUBMISSION OF PLANS.—The Secretary shall require that any State applying to the Secretary for a covered grant must submit to the Secretary a 3-year State homeland security plan that—

"(A) demonstrates the extent to which the State has achieved the essential capabilities that apply to the State;

"(B) demonstrates the needs of the State necessary to achieve, maintain, or enhance the essential capabilities that apply to the State;

"(C) includes a prioritization of such needs based on threat, vulnerability, and consequence assessment factors applicable to the State;

"(D) describes how the State intends—

"(i) to address such needs at the city, county, regional, tribal, State, and interstate level, including a precise description of any regional structure the State has established for the purpose of organizing homeland security preparedness activities funded by covered grants;

"(ii) to use all Federal, State, and local resources available for the purpose of addressing such needs; and

"(iii) to give particular emphasis to regional planning and cooperation, including the activities of multijurisdictional planning agencies governed by local officials, both within its jurisdictional borders and with neighboring States;

"(E) is developed in consultation with and subject to appropriate comment by local governments within the State; and

"(F) with respect to the emergency preparedness of first responders, addresses the unique aspects of terrorism as part of a comprehensive State emergency management plan.

"(2) APPROVAL BY SECRETARY.—The Secretary may not award any covered grant to a State unless the Secretary has approved the applicable State homeland security plan.

"(d) CONSISTENCY WITH STATE PLANS.—The Secretary shall ensure that each covered grant is used to supplement and support, in a consistent and coordinated manner, the applicable State homeland security plan or plans.

"(e) APPLICATION FOR GRANT.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, any State, region, or directly eligible tribe may apply for a covered grant by submitting to the Secretary an application at such time, in such manner, and containing such information as is required under this subsection, or as the Secretary may reasonably require.

"(2) DEADLINES FOR APPLICATIONS AND AWARDS.—All applications for covered grants must be submitted at such time as the Secretary may reasonably require for the fiscal year for which they are submitted. The Secretary shall award covered grants pursuant to all approved applications for such fiscal year as soon as practicable, but not later than March 1 of such year.

"(3) AVAILABILITY OF FUNDS.—All funds awarded by the Secretary under covered grants in a fiscal year shall be available for obligation through the end of the subsequent fiscal year.

"(4) MINIMUM CONTENTS OF APPLICATION.—The Secretary shall require that each applicant include in its application, at a minimum—

"(A) the purpose for which the applicant seeks covered grant funds and the reasons why the applicant needs the covered grant to meet the essential capabilities for terrorism preparedness within the State, region, or directly eligible tribe to which the application pertains;

"(B) a description of how, by reference to the applicable State homeland security plan or plans under subsection (c), the allocation of grant funding proposed in the application, including, where applicable, the amount not passed through under section 1806(g)(1), would assist in fulfilling the essential capabilities specified in such plan or plans;

"(C) a statement of whether a mutual aid agreement applies to the use of all or any portion of the covered grant funds;

"(D) if the applicant is a State, a description of how the State plans to allocate the covered grant funds to regions, local governments, and Indian tribes;

"(E) if the applicant is a region—

"(i) a precise geographical description of the region and a specification of all participating and nonparticipating local governments within the geographical area comprising that region;

"(ii) a specification of what governmental entity within the region will administer the expenditure of funds under the covered grant; and

"(iii) a designation of a specific individual to serve as regional liaison;

"(F) a capital budget showing how the applicant intends to allocate and expend the covered grant funds;

"(G) if the applicant is a directly eligible tribe, a designation of a specific individual to serve as the tribal liaison; and

"(H) a statement of how the applicant intends to meet the matching requirement, if any, that applies under section 1806(g)(2).

"(5) REGIONAL APPLICATIONS.—

"(A) RELATIONSHIP TO STATE APPLICATIONS.—A regional application—

"(i) shall be coordinated with an application submitted by the State or States of which such region is a part;

"(ii) shall supplement and avoid duplication with such State application; and

"(iii) shall address the unique regional aspects of such region's terrorism preparedness needs beyond those provided for in the application of such State or States.

"(B) STATE REVIEW AND SUBMISSION.—To ensure the consistency required under subsection (d) and the coordination required under subparagraph (A) of this paragraph, an applicant that is a region must submit its application to each State of which any part is included in the region for review and concurrence prior to the submission of such application to the Secretary. The regional application shall be transmitted to the Secretary through each such State within 30 days of its receipt, unless the Governor of such a State notifies the Secretary, in writing, that such regional application is inconsistent with the State's homeland security plan and provides an explanation of the reasons therefor.

"(C) DISTRIBUTION OF REGIONAL AWARDS.—If the Secretary approves a regional application, then the Secretary shall distribute a regional award to the State or States submitting the applicable regional application under subparagraph (B), and each such State shall, not later than the end of the 45-day period beginning on the date after receiving a regional award, pass through to the region all covered grant funds or resources purchased with such funds, except those funds necessary for the State to carry out its responsibilities with respect to such regional application: *Provided* That, in no such case shall the State or States pass through to the region less than 80 percent of the regional award.

"(D) CERTIFICATIONS REGARDING DISTRIBUTION OF GRANT FUNDS TO REGIONS.—Any State that receives a regional award under subparagraph (C) shall certify to the Secretary, by not later than 30 days after the expiration of the period described in subparagraph (C) with respect to the grant, that the State has made available to the region the required funds and resources in accordance with subparagraph (C).

"(E) DIRECT PAYMENTS TO REGIONS.—If any State fails to pass through a regional award to a region as required by subparagraph (C) within 45 days after receiving such award and does not request or receive an extension of such period under section 1806(h)(2), the region may petition the Secretary to receive directly the portion of the regional award that is required to be passed through to such region under subparagraph (C).

"(F) REGIONAL LIAISONS.—A regional liaison designated under paragraph (4)(E)(iii) shall—

"(i) coordinate with Federal, State, local, regional, and private officials within the region concerning terrorism preparedness;

"(ii) develop a process for receiving input from Federal, State, local, regional, and private sector officials within the region to assist in the development of the regional application and to improve the region's access to covered grants; and

"(iii) administer, in consultation with State, local, regional, and private officials within the region, covered grants awarded to the region.

"(6) TRIBAL APPLICATIONS.—

"(A) SUBMISSION TO THE STATE OR STATES.—To ensure the consistency required under subsection (d), an applicant that is a directly eligible tribe must submit its application to each State within the boundaries of which any part of such tribe is located for direct submission to the Department along with the application of such State or States.

"(B) OPPORTUNITY FOR STATE COMMENT.—Before awarding any covered grant to a directly eligible tribe, the Secretary shall provide an opportunity to each State within the boundaries of which any part of such tribe is located to comment to the Secretary on the consistency of the tribe's application with the State's homeland security plan. Any such comments shall be submitted to the Secretary concurrently with the submission of the State and tribal applications.

"(C) FINAL AUTHORITY.—The Secretary shall have final authority to determine the consistency of any application of a directly eligible tribe with the applicable State homeland security plan or plans, and to approve any application of such tribe. The Secretary shall notify each State within the boundaries of which any part of such tribe is located of the approval of an application by such tribe.

"(D) TRIBAL LIAISON.—A tribal liaison designated under paragraph (4)(G) shall—

"(i) coordinate with Federal, State, local, regional, and private officials concerning terrorism preparedness;

"(ii) develop a process for receiving input from Federal, State, local, regional, and private sector officials to assist in the development of the application of such tribe and to improve the tribe's access to covered grants; and

"(iii) administer, in consultation with State, local, regional, and private officials, covered grants awarded to such tribe.

"(E) LIMITATION ON THE NUMBER OF DIRECT GRANTS.—The Secretary may make covered grants directly to not more than 20 directly eligible tribes per fiscal year.

"(F) TRIBES NOT RECEIVING DIRECT GRANTS.—An Indian tribe that does not receive a grant directly under this section is eligible to receive funds under a covered grant from the State or States within the boundaries of which any part of such tribe is located, consistent with the homeland security plan of the State as described in subsection (c). If a State fails to comply with section 1806(g)(1), the tribe may request payment under section 1806(h)(3) in the same manner as a local government.

"(7) EQUIPMENT STANDARDS.—If an applicant for a covered grant proposes to upgrade or purchase, with assistance provided under the grant, new equipment or systems that do not meet or exceed any applicable national voluntary consensus standards established by the Secretary under section 1807(a), the applicant shall include in the application an explanation of why such equipment or systems will serve the needs of the applicant better than equipment or systems that meet or exceed such standards.

"(f) FIRST RESPONDER GRANTS BOARD.—

"(1) ESTABLISHMENT OF BOARD.—The Secretary shall establish a First Responder Grants Board, consisting of—

"(A) the Secretary;

"(B) the Under Secretary for Emergency Preparedness and Response;

"(C) the Under Secretary for Border and Transportation Security;

"(D) the Under Secretary for Information Analysis and Infrastructure Protection;

"(E) the Under Secretary for Science and Technology; and

"(F) the Director of the Office for Domestic Preparedness.

"(2) CHAIRMAN.—

"(A) IN GENERAL.—The Secretary shall be the Chairman of the Board.

"(B) EXERCISE OF AUTHORITIES BY DEPUTY SECRETARY.—The Deputy Secretary of Homeland Security may exercise the authorities of the Chairman, if the Secretary so directs.

"(3) RANKING OF GRANT APPLICATIONS.—

"(A) PRIORITIZATION OF GRANTS.—The Board—

"(i) shall evaluate and annually prioritize all pending applications for covered grants based upon the degree to which they would, by achieving, maintaining, or enhancing the essential capabilities of the applicants on a nationwide basis, lessen the threat to, vulnerability of, and consequences for persons and critical infrastructure; and

"(ii) in evaluating the threat to persons and critical infrastructure for purposes of prioritizing covered grants, shall give greater weight to threats of terrorism based on their specificity and credibility, including any pattern of repetition.

"(B) MINIMUM AMOUNTS.—After evaluating and prioritizing grant applications under subparagraph (A), the Board shall ensure that, for each fiscal year—

"(i) each of the States, other than the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands, that has an approved State homeland security plan receives no less than 0.25 percent of the funds available for covered grants for that fiscal year for purposes of implementing its homeland security plan in accordance with the prioritization of needs under subsection (c)(1)(C);

"(ii) each of the States, other than the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands, that has an approved State homeland security plan and that meets one or both of the additional high-risk qualifying criteria under subparagraph (C) receives no less than 0.45 percent of the funds available for covered grants for that fiscal year for purposes of implementing its homeland security plan in accordance with the prioritization of needs under subsection (c)(1)(C);

"(iii) the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands each receives no less than 0.08 percent of the funds available for covered grants for that fiscal year for purposes of implementing its approved State homeland security plan in accordance with the prioritization of needs under subsection (c)(1)(C); and

"(iv) directly eligible tribes collectively receive no less than 0.08 percent of the funds available for covered grants for such fiscal year for purposes of addressing the needs identified in the applications of such tribes, consistent with the homeland security plan of each State within the boundaries of which any part of any such tribe is located, except that this clause shall not apply with respect to funds available for a fiscal year if the Secretary receives less than 5 applications for such fiscal year from such tribes under subsection (e)(6)(A) or does not approve at least one such application.

"(C) ADDITIONAL HIGH-RISK QUALIFYING CRITERIA.—For purposes of subparagraph (B)(ii), additional high-risk qualifying criteria consist of—

"(i) having a significant international land border; or

"(ii) adjoining a body of water within North America through which an international boundary line extends.

"(4) EFFECT OF REGIONAL AWARDS ON STATE MINIMUM.—Any regional award, or portion thereof, provided to a State under subsection (e)(5)(C) shall not be considered in calculating the minimum State award under paragraph (3)(B) of this subsection.

"(5) FUNCTIONS OF UNDER SECRETARIES.—The Under Secretaries referred to in paragraph (1) shall seek to ensure that the relevant expertise and input of the staff of their directorates are available to and considered by the Board.

"SEC. 1806. USE OF FUNDS AND ACCOUNTABILITY REQUIREMENTS.

"(a) IN GENERAL.—A covered grant may be used for—

"(1) purchasing or upgrading equipment, including computer software, to enhance terrorism preparedness and response;

"(2) exercises to strengthen terrorism preparedness and response;

"(3) training for prevention (including detection) of, preparedness for, or response to attacks involving weapons of mass destruction, including training in the use of equipment and computer software;

"(4) developing or updating response plans;

"(5) establishing or enhancing mechanisms for sharing terrorism threat information;

"(6) systems architecture and engineering, program planning and management, strategy formulation and strategic planning, life-cycle systems design, product and technology evaluation, and prototype development for terrorism preparedness and response purposes;

"(7) additional personnel costs resulting from—

"(A) elevations in the threat alert level of the Homeland Security Advisory System by the Secretary, or a similar elevation in threat alert level issued by a State, region, or local government with the approval of the Secretary;

"(B) travel to and participation in exercises and training in the use of equipment and on prevention activities;

"(C) the temporary replacement of personnel during any period of travel to and participation in exercises and training in the use of equipment and on prevention activities; and

"(D) participation in information, investigative, and intelligence sharing activities specifically related to terrorism prevention;

"(8) the costs of equipment (including software) required to receive, transmit, handle, and store classified information;

"(9) protecting critical infrastructure against potential attack by the addition of barriers, fences, gates, and other such devices, except that the cost of such measures may not exceed the greater of—

"(A) $1,000,000 per project; or

"(B) such greater amount as may be approved by the Secretary, which may not exceed 10 percent of the total amount of the covered grant;

"(10) the costs of commercially available interoperable communications equipment (which, where applicable, is based on national, voluntary consensus standards) that the Secretary, in consultation with the Chairman of the Federal Communications Commission, deems best suited to facilitate interoperability, coordination, and integration between and among emergency communications systems, and that complies with prevailing grant guidance of the Department for interoperable communications;

"(11) educational curricula development for first responders to ensure that they are prepared for terrorist attacks;

"(12) training and exercises to assist public elementary and secondary schools in developing and implementing programs to instruct students regarding age-appropriate skills to prepare for and respond to an act of terrorism;

"(13) paying of administrative expenses directly related to administration of the grant, except that such expenses may not exceed 3 percent of the amount of the grant; and

"(14) other appropriate activities as determined by the Secretary.

"(b) PROHIBITED USES.—Funds provided as a covered grant may not be used—

"(1) to supplant State or local funds;

"(2) to construct buildings or other physical facilities;

"(3) to acquire land; or

"(4) for any State or local government cost sharing contribution.

"(c) MULTIPLE-PURPOSE FUNDS.—Nothing in this section shall be construed to preclude State and local governments from using covered grant funds in a manner that also enhances first responder preparedness for emergencies and disasters unrelated to acts of terrorism, if such use assists such governments in achieving essential capabilities for terrorism preparedness established by the Secretary under section 1803.

"(d) REIMBURSEMENT OF COSTS.—In addition to the activities described in subsection (a), a covered grant may be used to provide a reasonable stipend to paid-on-call or volunteer first responders who are not otherwise compensated for travel to or participation in training covered by this section. Any such reimbursement shall not be considered compensation for purposes of rendering such a first responder an employee under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.).

"(e) ASSISTANCE REQUIREMENT.—The Secretary may not request that equipment paid for, wholly or in part, with funds provided as a covered grant be made available for responding to emergencies in surrounding States, regions, and localities, unless the Secretary undertakes to pay the costs directly attributable to transporting and operating such equipment during such response.

"(f) FLEXIBILITY IN UNSPENT HOMELAND SECURITY GRANT FUNDS.—Upon request by the recipient of a covered grant, the Secretary may authorize the grantee to transfer all or part of funds provided as the covered grant from uses specified in the grant agreement to other uses authorized under this section, if the Secretary determines that such transfer is in the interests of homeland security.

"(g) STATE, REGIONAL, AND TRIBAL RESPONSIBILITIES.—

"(1) PASS-THROUGH.—The Secretary shall require a recipient of a covered grant that is a State to obligate or otherwise make available to local governments, first responders, and other local groups, to the extent required under the State homeland security plan or plans specified in the application for the grant, not less than 80 percent of the grant funds, resources purchased with the grant funds having a value equal to at least 80 percent of the amount of the grant, or a combination thereof, by not later than the end of the 45-day period beginning on the date the grant recipient receives the grant funds.

"(2) COST SHARING.—

"(A) IN GENERAL.—The Federal share of the costs of an activity carried out with a covered grant to a State, region, or directly eligible tribe awarded after the 2-year period beginning on the date of the enactment of this section shall not exceed 75 percent.

"(B) INTERIM RULE.—The Federal share of the costs of an activity carried out with a covered grant awarded before the end of the 2-year period beginning on the date of the enactment of this section shall be 100 percent.

"(C) IN-KIND MATCHING.—Each recipient of a covered grant may meet the matching requirement under subparagraph (A) by making in-kind contributions of goods or services that are directly linked with the purpose for which the grant is made, including, but not limited to, any necessary personnel overtime, contractor services, administrative costs, equipment fuel and maintenance, and rental space.

"(3) CERTIFICATIONS REGARDING DISTRIBUTION OF GRANT FUNDS TO LOCAL GOVERNMENTS.—Any State that receives a covered grant shall certify to the Secretary, by not later than 30 days after the expiration of the period described in paragraph (1) with respect to the grant, that the State has made available for expenditure by local governments, first responders, and other local groups the required amount of grant funds pursuant to paragraph (1).

"(4) QUARTERLY REPORT ON HOMELAND SECURITY SPENDING.—The Federal share described in paragraph (2)(A) may be increased by up to 2 percent for any State, region, or directly eligible tribe that, not later than 30 days after the end of each fiscal quarter, submits to the Secretary a report on that fiscal quarter. Each such report must include, for each recipient of a covered grant or a pass-through under paragraph (1)—

"(A) the amount obligated to that recipient in that quarter;

"(B) the amount expended by that recipient in that quarter; and

"(C) a summary description of the items purchased by such recipient with such amount.

"(5) ANNUAL REPORT ON HOMELAND SECURITY SPENDING.—Each recipient of a covered grant shall submit an annual report to the Secretary not later than 60 days after the end of each fiscal year. Each recipient of a covered grant that is a region must simultaneously submit its report to each State of which any part is included in the region. Each recipient of a covered grant that is a directly eligible tribe must simultaneously submit its report to each State within the boundaries of which any part of such tribe is located. Each report must include the following:

"(A) The amount, ultimate recipients, and dates of receipt of all funds received under the grant during the previous fiscal year.

"(B) The amount and the dates of disbursements of all such funds expended in compliance with paragraph (1) or pursuant to mutual aid agreements or other sharing arrangements that apply within the State, region, or directly eligible tribe, as applicable, during the previous fiscal year.

"(C) How the funds were utilized by each ultimate recipient or beneficiary during the preceding fiscal year.

"(D) The extent to which essential capabilities identified in the applicable State homeland security plan or plans were achieved, maintained, or enhanced as the result of the expenditure of grant funds during the preceding fiscal year.

"(E) The extent to which essential capabilities identified in the applicable State homeland security plan or plans remain unmet.

"(6) INCLUSION OF RESTRICTED ANNEXES.—A recipient of a covered grant may submit to the Secretary an annex to the annual report under paragraph (5) that is subject to appropriate handling restrictions, if the recipient believes that discussion in the report of unmet needs would reveal sensitive but unclassified information.

"(7) PROVISION OF REPORTS.—The Secretary shall ensure that each annual report under paragraph (5) is provided to the Under Secretary for Emergency Preparedness and Response and the Director of the Office for Domestic Preparedness.

"(h) INCENTIVES TO EFFICIENT ADMINISTRATION OF HOMELAND SECURITY GRANTS.—

"(1) PENALTIES FOR DELAY IN PASSING THROUGH LOCAL SHARE.—If a recipient of a covered grant that is a State fails to pass through to local governments, first responders, and other local groups funds or resources required by subsection (g)(1) within 45 days after receiving funds under the grant, the Secretary may—

"(A) reduce grant payments to the grant recipient from the portion of grant funds that is not required to be passed through under subsection (g)(1);

"(B) terminate payment of funds under the grant to the recipient, and transfer the appropriate portion of those funds directly to local first responders that were intended to receive funding under that grant; or

"(C) impose additional restrictions or burdens on the recipient's use of funds under the grant, which may include—

"(i) prohibiting use of such funds to pay the grant recipient's grant-related overtime or other expenses;

"(ii) requiring the grant recipient to distribute to local government beneficiaries all or a portion of grant funds that are not required to be passed through under subsection (g)(1); or

"(iii) for each day that the grant recipient fails to pass through funds or resources in accordance with subsection (g)(1), reducing grant payments to the grant recipient from the portion of grant funds that is not required to be passed through under subsection (g)(1), except that the total amount of such reduction may not exceed 20 percent of the total amount of the grant.

"(2) EXTENSION OF PERIOD.—The Governor of a State may request in writing that the Secretary extend the 45-day period under section 1805(e)(5)(E) or paragraph (1) for an additional 15-day period. The Secretary may approve such a request, and may extend such period for additional 15-day periods, if the Secretary determines that the resulting delay in providing grant funding to the local government entities that will receive funding under the grant will not have a significant detrimental impact on such entities' terrorism preparedness efforts.

"(3) PROVISION OF NON-LOCAL SHARE TO LOCAL GOVERNMENT.—

"(A) IN GENERAL.—The Secretary may upon request by a local government pay to the local government a portion of the amount of a covered grant awarded to a State in which the local government is located, if—

"(i) the local government will use the amount paid to expedite planned enhancements to its terrorism preparedness as described in any applicable State homeland security plan or plans;

"(ii) the State has failed to pass through funds or resources in accordance with subsection (g)(1); and

"(iii) the local government complies with subparagraphs (B) and (C).

"(B) SHOWING REQUIRED.—To receive a payment under this paragraph, a local government must demonstrate that—

"(i) it is identified explicitly as an ultimate recipient or intended beneficiary in the approved grant application;

"(ii) it was intended by the grantee to receive a severable portion of the overall grant for a specific purpose that is identified in the grant application;

"(iii) it petitioned the grantee for the funds or resources after expiration of the period within which the funds or resources were required to be passed through under subsection (g)(1); and

"(iv) it did not receive the portion of the overall grant that was earmarked or designated for its use or benefit.

"(C) EFFECT OF PAYMENT.—Payment of grant funds to a local government under this paragraph—

"(i) shall not affect any payment to another local government under this paragraph; and

"(ii) shall not prejudice consideration of a request for payment under this paragraph that is submitted by another local government.

"(D) DEADLINE FOR ACTION BY SECRETARY.—The Secretary shall approve or disapprove each request for payment under this paragraph by not later than 15 days after the date the request is received by the Department.

"(i) REPORTS TO CONGRESS.—The Secretary shall submit an annual report to the Congress by December 31 of each year—

"(1) describing in detail the amount of Federal funds provided as covered grants that were directed to each State, region, and directly eligible tribe in the preceding fiscal year;

"(2) containing information on the use of such grant funds by grantees; and

"(3) describing—

"(A) the Nation's progress in achieving, maintaining, and enhancing the essential capabilities established under section 1803(a) as a result of the expenditure of covered grant funds during the preceding fiscal year; and

"(B) an estimate of the amount of expenditures required to attain across the United States the essential capabilities established under section 1803(a).

"SEC. 1807. NATIONAL STANDARDS FOR FIRST RESPONDER EQUIPMENT AND TRAINING.

"(a) EQUIPMENT STANDARDS.—

"(1) IN GENERAL.—The Secretary, in consultation with the Under Secretaries for Emergency Preparedness and Response and Science and Technology and the Director of the Office for Domestic Preparedness, shall, not later than 6 months after the date of enactment of this section, support the development of, promulgate, and update as necessary national voluntary consensus standards for the performance, use, and validation of first responder equipment for purposes of section 1805(e)(7). Such standards—

"(A) shall be, to the maximum extent practicable, consistent with any existing voluntary consensus standards;

"(B) shall take into account, as appropriate, new types of terrorism threats that may not have been contemplated when such existing standards were developed;

"(C) shall be focused on maximizing interoperability, interchangeability, durability, flexibility, efficiency, efficacy, portability, sustainability, and safety; and

"(D) shall cover all appropriate uses of the equipment.

"(2) REQUIRED CATEGORIES.—In carrying out paragraph (1), the Secretary shall specifically consider the following categories of first responder equipment:

"(A) Thermal imaging equipment.

"(B) Radiation detection and analysis equipment.

"(C) Biological detection and analysis equipment.

"(D) Chemical detection and analysis equipment.

"(E) Decontamination and sterilization equipment.

"(F) Personal protective equipment, including garments, boots, gloves, and hoods and other protective clothing.

"(G) Respiratory protection equipment.

"(H) Interoperable communications, including wireless and wireline voice, video, and data networks.

"(I) Explosive mitigation devices and explosive detection and analysis equipment.

"(J) Containment vessels.

"(K) Contaminant-resistant vehicles.

"(L) Such other equipment for which the Secretary determines that national voluntary consensus standards would be appropriate.

"(b) TRAINING STANDARDS.—

"(1) IN GENERAL.—The Secretary, in consultation with the Under Secretaries for Emergency Preparedness and Response and Science and Technology and the Director of the Office for Domestic Preparedness, shall support the development of, promulgate, and regularly update as necessary national voluntary consensus standards for first responder training carried out with amounts provided under covered grant programs, that will enable State and local government first responders to achieve optimal levels of terrorism preparedness as quickly as practicable. Such standards shall give priority to providing training to—

"(A) enable first responders to prevent, prepare for, respond to, and mitigate terrorist threats, including threats from chemical, biological, nuclear, and radiological weapons and explosive devices capable of inflicting significant human casualties; and

"(B) familiarize first responders with the proper use of equipment, including software, developed pursuant to the standards established under subsection (a).

"(2) REQUIRED CATEGORIES.—In carrying out paragraph (1), the Secretary specifically shall include the following categories of first responder activities:

"(A) Regional planning.

"(B) Joint exercises.

"(C) Intelligence collection, analysis, and sharing.

"(D) Emergency notification of affected populations.

"(E) Detection of biological, nuclear, radiological, and chemical weapons of mass destruction.

"(F) Such other activities for which the Secretary determines that national voluntary consensus training standards would be appropriate.

"(3) CONSISTENCY.—In carrying out this subsection, the Secretary shall ensure that such training standards are consistent with the principles of emergency preparedness for all hazards.

"(c) CONSULTATION WITH STANDARDS ORGANIZATIONS.—In establishing national voluntary consensus standards for first responder equipment and training under this section, the Secretary shall consult with relevant public and private sector groups, including—

"(1) the National Institute of Standards and Technology;

"(2) the National Fire Protection Association;

"(3) the National Association of County and City Health Officials;

"(4) the Association of State and Territorial Health Officials;

"(5) the American National Standards Institute;

"(6) the National Institute of Justice;

"(7) the Inter-Agency Board for Equipment Standardization and Interoperability;

"(8) the National Public Health Performance Standards Program;

"(9) the National Institute for Occupational Safety and Health;

"(10) ASTM International;

"(11) the International Safety Equipment Association;

"(12) the Emergency Management Accreditation Program; and

"(13) to the extent the Secretary considers appropriate, other national voluntary consensus standards development organizations, other interested Federal, State, and local agencies, and other interested persons.

"(d) COORDINATION WITH SECRETARY OF HHS.—In establishing any national voluntary consensus standards under this section for first responder equipment or training that involve or relate to health professionals, including emergency medical professionals, the Secretary shall coordinate activities under this section with the Secretary of Health and Human Services.".

(b) DEFINITION OF EMERGENCY RESPONSE PROVIDERS.—Paragraph (6) of section 2 of the Homeland Security Act of 2002 (Public Law 107–296; 6 U.S.C. 101(6)) is amended by striking "includes" and all that follows and inserting "includes Federal, State, and local governmental and nongovernmental emergency public safety, law enforcement, fire, emergency response, emergency medical (including hospital emergency facilities), and related personnel, organizations, agencies, and authorities.".

(c) TEMPORARY LIMITATIONS ON APPLICATION.—

(1) 1-YEAR DELAY IN APPLICATION.—The following provisions of title XVIII of the Homeland Security Act of 2002, as amended by subsection (a), shall not apply during the 1-year period beginning on the date of the enactment of this Act:

(A) Subsections (b), (c), and (e)(4)(A) and (B) of section 1805.

(B) In section 1805(f)(3)(A), the phrase ", by enhancing the essential capabilities of the applicants,".

(2) 2-YEAR DELAY IN APPLICATION. The following provisions of title XVIII of the Homeland Security Act of 2002, as amended by subsection (a), shall not apply during the 2-year period beginning on the date of the enactment of this Act:

(A) Subparagraphs (D) and (E) of section 1806(g)(5).

(B) Section 1806(i)(3).

SEC. 5004. COORDINATION OF INDUSTRY EFFORTS.

Section 102(f) of the Homeland Security Act of 2002 (Public Law 107-296; 6 U.S.C. 112(f)) is amended by striking "and" after the semicolon at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting "; and", and by adding at the end the following:

"(8) coordinating industry efforts, with respect to functions of the Department of Homeland Security, to identify private sector resources and capabilities that could be effective in supplementing Federal, State, and local government agency efforts to prevent or respond to a terrorist attack.".

SEC. 5005. SUPERSEDED PROVISION.

This subtitle supersedes section 1014 of Public Law 107-56.

SEC. 5006. SENSE OF CONGRESS REGARDING INTEROPERABLE COMMUNICATIONS.

(a) FINDING. The Congress finds that—

(1) many emergency response providers (as defined under section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101), as amended by this Act) working in the same jurisdiction or in different jurisdictions cannot effectively and efficiently communicate with one another; and

(2) their inability to do so threatens the public's safety and may result in unnecessary loss of lives and property.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that interoperable emergency communications systems and radios should continue to be deployed as soon as practicable for use by the emergency response provider community, and that upgraded and new digital communications systems and new digital radios must meet prevailing national, voluntary consensus standards for interoperability.

SEC. 5007. SENSE OF CONGRESS REGARDING CITIZEN CORPS COUNCILS.

(a) FINDING.—The Congress finds that Citizen Corps councils help to enhance local citizen participation in terrorism preparedness by coordinating multiple Citizen Corps programs, developing community action plans, assessing possible threats, and identifying local resources.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that individual Citizen Corps councils should seek to enhance the preparedness and response capabilities of all organizations participating in the councils, including by providing funding to as many of their participating organizations as practicable to promote local terrorism preparedness programs.

SEC. 5008. STUDY REGARDING NATIONWIDE EMERGENCY NOTIFICATION SYSTEM.

(a) STUDY.—The Secretary of Homeland Security, in consultation with the heads of other appropriate Federal agencies and representatives of providers and participants in the telecommunications industry, shall conduct a study to determine whether it is cost-effective, efficient, and feasible to establish and implement an emergency telephonic alert notification system that will—

(1) alert persons in the United States of imminent or current hazardous events caused by acts of terrorism; and

(2) provide information to individuals regarding appropriate measures that may be undertaken to alleviate or minimize threats to their safety and welfare posed by such events.

(b) TECHNOLOGIES TO CONSIDER.—In conducting the study, the Secretary shall consider the use of the telephone, wireless communications, and other existing communications networks to provide such notification.

(c) REPORT.—Not later than 9 months after the date of the enactment of this Act, the Secretary shall submit to the Congress a report regarding the conclusions of the study.

SEC. 5009. REQUIRED COORDINATION.

The Secretary of Homeland Security shall ensure that there is effective and ongoing coordination of Federal efforts to prevent, prepare for, and respond to acts of terrorism and other major disasters and emergencies among the divisions of the Department of Homeland Security, including the Directorate of Emergency Preparedness and Response and the Office for State and Local Government Coordination and Preparedness.

Subtitle B—Government Reorganization Authority

SEC. 5021. AUTHORIZATION OF INTELLIGENCE COMMUNITY REORGANIZATION PLANS.

(a) REORGANIZATION PLANS.—Section 903(a)(2) of title 5, United States Code, is amended to read as follows:

"(2) the abolition of all or a part of the functions of an agency;".

(b) REPEAL OF LIMITATIONS.—Section 905 of title 5, United States Code, is amended to read as follows:

"§ 905. Limitation on authority.

"The authority to submit reorganization plans under this chapter is limited to the following organizational units:

"(1) The Office of the National Intelligence Director.

"(2) The Central Intelligence Agency.

"(3) The National Security Agency.

"(4) The Defense Intelligence Agency.

"(5) The National Geospatial-Intelligence Agency.

"(6) The National Reconnaissance Office.

"(7) Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs.

"(8) The intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, and the Department of Energy.

"(9) The Bureau of Intelligence and Research of the Department of State.

"(10) The Office of Intelligence Analysis of the Department of Treasury.

"(11) The elements of the Department of Homeland Security concerned with the analysis of intelligence information, including the Office of Intelligence of the Coast Guard.

"(12) Such other elements of any other department or agency as may be designated by the President, or designated jointly by the National Intelligence Director and the head of the department or agency concerned, as an element of the intelligence community.".

(c) REORGANIZATION PLANS.—903(a) of title 5, United States Code, is amended—

(1) in paragraph (5), by striking "or" after the semicolon;

(2) in paragraph (6), by striking the period and inserting "; or"; and

(3) by inserting after paragraph (6) the following:

"(7) the creation of an agency.".

(d) APPLICATION OF CHAPTER.—Chapter 9 of title 5, United States Code, is amended by adding at the end the following:

"§ 913. Application of chapter

"This chapter shall apply to any reorganization plan transmitted to Congress in accordance with section 903(b) on or after the date of enactment of this section.".

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TABLE OF SECTIONS.—The table of sections for chapter 9 of title 5, United States Code, is amended by adding after the item relating to section 912 the following:

"913. Application of chapter.".

(2) REFERENCES.—Chapter 9 of title 5, United States Code, is amended—

(A) in section 908(1), by striking "on or before December 31, 1984"; and (B) in section 910, by striking "Government Operations" each place it appears and inserting "Government Reform".

(3) DATE MODIFICATION.—Section 909 of title 5, United States Code, is amended in the first sentence by striking "19" and inserting "20".

Subtitle C—Restructuring Relating to the Department of Homeland Security and Congressional Oversight

SEC. 5025. RESPONSIBILITIES OF COUNTERNARCOTICS OFFICE.

(a) AMENDMENT.—Section 878 of the Homeland Security Act of 2002 (6 U.S.C. 458) is amended to read as follows:

"SEC. 878. OFFICE OF COUNTERNARCOTICS ENFORCEMENT.

"(a) OFFICE.—There shall be in the Department an Office of Counternarcotics Enforcement, which shall be headed by a Director appointed by the President, by and with the advice and consent of the Senate.

"(b) ASSIGNMENT OF PERSONNEL.—(1) The Secretary shall assign to the Office permanent staff and other appropriate personnel detailed from other subdivisions of the Department to carry out responsibilities under this section.

"(2) The Secretary shall designate senior employees from each appropriate subdivision of the Department that has significant counternarcotics responsibilities to act as a liaison between that subdivision and the Office of Counternarcotics Enforcement.

"(c) LIMITATION ON CONCURRENT EMPLOYMENT.—Except as provided in subsection (d), the Director of the Office of Counternarcotics Enforcement shall not be employed by, assigned to, or serve as the head of, any other branch of the Federal Government, any State or local government, or any subdivision of the Department other than the Office of Counternarcotics Enforcement.

"(d) ELIGIBILITY TO SERVE AS THE UNITED STATES INTERDICTION COORDINATOR.—The Director of the Office of Counternarcotics Enforcement may be appointed as the United States Interdiction Coordinator by the Director of the Office of National Drug Control Policy, and shall be the only person at the Department eligible to be so appointed.

"(e) RESPONSIBILITIES.—The Secretary shall direct the Director of the Office of Counternarcotics Enforcement—

"(1) to coordinate policy and operations within the Department, between the Department and other Federal departments and agencies, and between the Department and State and local agencies with respect to stopping the entry of illegal drugs into the United States;

"(2) to ensure the adequacy of resources within the Department for stopping the entry of illegal drugs into the United States;

"(3) to recommend the appropriate financial and personnel resources necessary to help the Department better fulfill its responsibility to stop the entry of illegal drugs into the United States;

"(4) within the Joint Terrorism Task Force construct to track and sever connections between illegal drug trafficking and terrorism; and

"(5) to be a representative of the Department on all task forces, committees, or other entities whose purpose is to coordinate the counternarcotics enforcement activities of the Department and other Federal, state or local agencies.

"(f) REPORTS TO CONGRESS.—

"(1) ANNUAL BUDGET REVIEW.—The Director of the Office of Counternarcotics Enforcement shall, not later than 30 days after the submission by the President to Congress of any request for expenditures for the Department, submit to the Committees on Appropriations and the authorizing committees of jurisdiction of the House of Representatives and the Senate a review and evaluation of such request. The review and evaluation shall—

"(A) identify any request or subpart of any request that affects or may affect the counternarcotics activities of the Department or any of its subdivisions, or that affects the ability of the Department or any subdivision of the Department to meet its responsibility to stop the entry of illegal drugs into the United States;

"(B) describe with particularity how such requested funds would be or could be expended in furtherance of counternarcotics activities; and

"(C) compare such requests with requests for expenditures and amounts appropriated by Congress in the previous fiscal year.

"(2) EVALUATION OF COUNTERNARCOTICS ACTIVITIES.—The Director of the Office of Counternarcotics Enforcement shall, not later than February 1 of each year, submit to the Committees on Appropriations and the authorizing committees of jurisdiction of the House of Representatives and the Senate a review and evaluation of the counternarcotics activities of the Department for the previous fiscal year. The review and evaluation shall—

"(A) describe the counternarcotics activities of the Department and each subdivision of the Department (whether individually or in cooperation with other subdivisions of the Department, or in cooperation with other branches of the Federal Government or with State or local agencies), including the methods, procedures, and systems (including computer systems) for collecting, analyzing, sharing, and disseminating information concerning narcotics activity within the Department and between the Department and other Federal, State, and local agencies;

"(B) describe the results of those activities, using quantifiable data whenever possible;

"(C) state whether those activities were sufficient to meet the responsibility of the Department to stop the entry of illegal drugs into the United States, including a description of the performance measures of effectiveness that were used in making that determination; and

"(D) recommend, where appropriate, changes to those activities to improve the performance of the Department in meeting its responsibility to stop the entry of illegal drugs into the United States.

"(3) CLASSIFIED OR LAW ENFORCEMENT SENSITIVE INFORMATION.—Any content of a review and evaluation described in the reports required in this subsection that involves information classified under criteria established by an Executive order, or whose public disclosure, as determined by the Secretary, would be detrimental to the law enforcement or national security activities of the Department or any other Federal, State, or local agency, shall be presented to Congress separately from the rest of the review and evaluation.".

(b) CONFORMING AMENDMENT.—Section 103(a) of the Homeland Security Act of 2002 (6 U.S.C. 113(a)) is amended—

(1) by redesignating paragraphs (8) and (9) as paragraphs (9) and (10), respectively; and

(2) by inserting after paragraph (7) the following new paragraph (8):

"(8) A Director of the Office of Counternarcotics Enforcement.".

(c) AUTHORIZATION OF APPROPRIATIONS.—Of the amounts appropriated for the Department of Homeland Security for Departmental management and operations for fiscal year 2005, there is authorized up to $6,000,000 to carry out section 878 of the Department of Homeland Security Act of 2002 (as amended by this section).

SEC. 5026. USE OF COUNTERNARCOTICS ENFORCEMENT ACTIVITIES IN CERTAIN EMPLOYEE PERFORMANCE APPRAISALS.

(a) IN GENERAL.—Subtitle E of title VIII of the Homeland Security Act of 2002 (6 U.S.C. 411 and following) is amended by adding at the end the following:

"SEC. 843. USE OF COUNTERNARCOTICS ENFORCEMENT ACTIVITIES IN CERTAIN EMPLOYEE PERFORMANCE APPRAISALS.

"(a) IN GENERAL.—Each subdivision of the Department that is a National Drug Control Program Agency shall include as one of the criteria in its performance appraisal system, for each employee directly or indirectly involved in the enforcement of Federal, State, or local narcotics laws, the performance of that employee with respect to the enforcement of Federal, State, or local narcotics laws, relying to the greatest extent practicable on objective performance measures, including—

"(1) the contribution of that employee to seizures of narcotics and arrests of violators of Federal, State, or local narcotics laws; and

"(2) the degree to which that employee cooperated with or contributed to the efforts of other employees, either within the Department or other Federal, State, or local agencies, in counternarcotics enforcement.

"(b) DEFINITIONS.—For purposes of this section—

"(1) the term 'National Drug Control Program Agency' means—

"(A) a National Drug Control Program Agency, as defined in section 702(7) of the Office of National Drug Control Policy Reauthorization Act of 1998 (as last in effect); and

"(B) any subdivision of the Department that has a significant counternarcotics responsibility, as determined by—

"(i) the counternarcotics officer, appointed under section 878; or

"(ii) if applicable, the counternarcotics officer's successor in function (as determined by the Secretary); and

"(2) the term 'performance appraisal system' means a system under which periodic appraisals of job performance of employees are made, whether under chapter 43 of title 5, United States Code, or otherwise.".

(b) CLERICAL AMENDMENT.—The table of contents for the Homeland Security Act of 2002 is amended by inserting after the item relating to section 842 the following:

"Sec. 843. Use of counternarcotics enforcement activities in certain employee performance appraisals.".

SEC. 5027. SENSE OF THE HOUSE OF REPRESENTATIVES ON ADDRESSING HOMELAND SECURITY FOR THE AMERICAN PEOPLE.

(a) FINDINGS.—The House of Representatives finds that—

(1) the House of Representatives created a Select Committee on Homeland Security at the start of the 108th Congress to provide for vigorous congressional oversight for the implementation and operation of the Department of Homeland Security;

(2) the House of Representatives also charged the Select Committee on Homeland Security with undertaking a thorough and complete study of the operation and implementation of the rules of the House, including the rule governing committee jurisdiction, with respect to the issue of homeland security and to make its recommendations to the Committee on Rules;

(3) on February 11, 2003, the Committee on Appropriations of the House of Representatives created a new Subcommittee on Homeland Security with jurisdiction over the Transportation Security Administration, the Coast Guard, and other entities within the Department of Homeland Security to help address the integration of the Department of Homeland Security's 22 legacy agencies; and

(4) during the 108th Congress, the House of Representatives has taken several steps to help ensure its continuity in the event of a terrorist attack, including—

(A) adopting H.R. 2844, the Continuity of Representation Act, a bill to require States to hold expedited special elections to fill vacancies in the House of Representatives not later than 45 days after the vacancy is announced by the Speaker in extraordinary circumstances;

(B) granting authority for joint-leadership recalls from a period of adjournment to an alternate place;

(C) allowing for anticipatory consent with the Senate to assemble in an alternate place;

(D) establishing the requirement that the Speaker submit to the Clerk a list of Members in the order in which each shall act as Speaker pro tempore in the case of a vacancy in the Office of Speaker (including physical inability of the Speaker to discharge his duties) until the election of a Speaker or a Speaker pro tempore, exercising such authorities of the Speaker as may be necessary and appropriate to that end;

(E) granting authority for the Speaker to declare an emergency recess of the House subject to the call of the Chair when notified of an imminent threat to the safety of the House;

(F) granting authority for the Speaker, during any recess or adjournment of not more than three days, in consultation with the Minority Leader, to postpone the time for reconvening or to reconvene before the time previously appointed solely to declare the House in recess, in each case within the constitutional three-day limit;

(G) establishing the authority for the Speaker to convene the House in an alternate place within the seat of Government; and

(H) codifying the long-standing practice that the death, resignation, expulsion, disqualification, or removal of a Member results in an adjustment of the quorum of the House, which the Speaker shall announce to the House and which shall not be subject to appeal.

(b) SENSE OF THE HOUSE.—It is the sense of the House of Representatives that the Committee on Rules should act upon the recommendations provided by the Select Committee on Homeland Security, and other committees of existing jurisdiction, regarding the jurisdiction over proposed legislation, messages, petitions, memorials and other matters relating to homeland security prior to or at the start of the 109th Congress.

SEC. 5028. ASSISTANT SECRETARY FOR CYBERSECURITY.

(a) IN GENERAL.—Subtitle A of title II of the Homeland Security Act of 2002 (6 USC 121 et. seq.) is amended by adding at the end the following:

“SEC. 203. ASSISTANT SECRETARY FOR CYBERSERCURITY.

“(a) IN GENERAL.—There shall be in the Department an Assistant Secretary for Cybersecurity, who shall be appointed by the President.

“(b) RESPONSIBILITIES.—The Assistant Secretary for Cybersecurity shall assist the Under Secretary for Information Analysis and Infrastructure Protection in discharging the responsibilities of the Under Secretary under this subtitle.

“(c) AUTHORITY OVER THE NATIONAL COMMUNICATIONS SYSTEM.—The Assistant Secretary shall have primary authority within the Department over the National Communications System.”.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended by inserting after the item relating to section 202 the following:

“203. Assistant Secretary for Cybersecurity.”.

Subtitle D—Improvements to Information Security

SEC. 5031. AMENDMENTS TO CLINGER-COHEN PROVISIONS TO ENHANCE AGENCY PLANNING FOR INFORMATION SECURITY NEEDS.

Chapter 113 of title 40, United States Code, is amended

(1) in section 11302(b), by inserting “security,” after “use,”;

(2) in section 11302(c), by inserting “, including information security risks,” after “risks” both places it appears;

(3) in section 11312(b)(1), by striking “information technology investments” and inserting “investments in information technology (including information security needs)”; and

(4) in section 11315(b)(2), by inserting “, secure,” after “sound”.

Subtitle E—Personnel Management Improvements

CHAPTER 1—APPOINTMENTS PROCESS REFORM

SEC. 5041. APPOINTMENTS TO NATIONAL SECURITY POSITIONS.

(a) DEFINITION OF NATIONAL SECURITY POSITION.—For purposes of this section, the term “national security position” shall include—

(1) those positions that involve activities of the United States Government that are concerned with the protection of the Nation from foreign aggression, terrorism, or espionage, including development of defense plans or policies, intelligence or counterintelligence activities, and related activities concerned with the preservation of military strength of the United States and protection of the homeland; and

(2) positions that require regular use of, or access to, classified information.

(b) PUBLICATION IN THE FEDERAL REGISTER.—Not later than 60 days after the effective date of this section, the Director of the Office of Personnel Management shall publish in the Federal Register a list of offices that constitute national security positions under section (a) for which Senate confirmation is required by law, and the Director shall revise such list from time to time as appropriate.

(c) PRESIDENTIAL APPOINTMENTS.—(1) With respect to appointment of individuals to offices identified under section (b) and listed in sections 5315 or 5316 of title 5, United States Code, which shall arise after the publication of the list required by section (b), and notwithstanding any other provision of law, the advice and consent of the Senate shall not be required, but rather such appointment shall be made by the President alone.

(2) With respect to appointment of individuals to offices identified under section (b) and listed in sections 5313 or 5314 of title 5, United States Code, which shall arise after the publication of the list required by section (b), and notwithstanding any other provision of law, the advice and consent of the Senate shall be required, except that if 30 legislative days shall have expired from the date on which a nomination is submitted to the Senate without a confirmation vote occurring in the Senate, such appointment shall be made by the President alone.

(3) For the purposes of this subsection, the term “legislative day” means a day on which the Senate is in session.

SEC. 5042. PRESIDENTIAL INAUGURAL TRANSITIONS.

Subsections (a) and (b) of section 3349a of title 5, United States Code, are amended to read as follows:

“(a) As used in this section—

“(1) the term ‘inauguration day’ means the date on which any person swears or affirms the oath of office as President; and

“(2) the term ‘specified national security position’ shall mean not more than 20 positions requiring Senate confirmation, not to include more than 3 heads of Executive Departments, which are designated by the President on or after an inauguration day as positions for which the duties involve substantial responsibility for national security.

“(b) With respect to any vacancy that exists during the 60-day period beginning on an inauguration day, except where the person swearing or affirming the oath of office was the President on the date preceding the date of swearing or affirming such oath of office, the 210-day period under section 3346 or 3348 shall be deemed to begin on the later of the date occurring—

“(1) 90 days after such transitional inauguration day; or

“(2) 90 days after the date on which the vacancy occurs.

“(c) With respect to any vacancy in any specified national security position that exists during the 60-day period beginning on an inauguration day, the requirements of subparagraphs (A) and (B) of section 3345(a)(3) shall not apply.”.

SEC. 5043. PUBLIC FINANCIAL DISCLOSURE FOR THE INTELLIGENCE COMMUNITY.

(a) IN GENERAL.—The Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by inserting before title IV the following:

“TITLE III—INTELLIGENCE PERSONNEL FINANCIAL DISCLOSURE REQUIREMENTS

“SEC. 301. PERSONS REQUIRED TO FILE.

“(a) Within 30 days of assuming the position of an officer or employee described in subsection (e), an individual shall file a report containing the information described in section 302(b) unless the individual has left another position described in subsection (e) within 30 days prior to assuming such new position or has already filed a report under this title with respect to nomination for the new position or as a candidate for the position.

“(b)(1) Within 5 days of the transmittal by the President to the Senate of the nomination of an individual to a position in the executive branch, appointment to which requires the advice and consent of the Senate, such individual shall file a report containing the information described in section 302(b). Such individual shall, not later than the date of the first hearing to consider the nomination of such individual, make current the report filed pursuant to this paragraph by filing the information required by section 302(a)(1)(A) with respect to income and honoraria received as of the date which occurs 5 days before the date of such hearing. Nothing in this Act shall prevent any congressional committee from requesting, as a condition of confirmation, any additional financial information from any Presidential nominee whose nomination has been referred to that committee.

“(2) An individual whom the President or the President-elect has publicly announced he intends to nominate to a position may file the report required by paragraph (1) at any time after that public announcement, but not later than is required under the first sentence of such paragraph.

“(c) Any individual who is an officer or employee described in subsection (e) during any calendar year and performs the duties of his position or office for a period in excess of 60 days in that calendar year shall file on or before May 15 of the succeeding year a report containing the information described in section 302(a).

“(d) Any individual who occupies a position described in subsection (e) shall, on or before the 30th day after termination of employment in such position, file a report containing the information described in section 302(a) covering the preceding calendar year if the report required by subsection (c) has not been filed and covering the portion of the calendar year in which such termination occurs up to the date the individual left such office or position, unless such individual has accepted employment in or takes the oath of office for another position described in subsection (e) or section 101(f).

“(e) The officers and employees referred to in subsections (a), (c), and (d) are those officers and employees who—

“(1) are employed in or under—

“(A) the Office of the National Intelligence Director; or

“(B) an element of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)); and

“(2) would (but for this subsection) otherwise be subject to title I by virtue of paragraph (3) of section 101(f), including—

“(A) any special Government employee and any member of a uniformed service who is described in such paragraph; and

“(B) any officer or employee in any position with respect to which the Director of the Office of Government Ethics makes a determination described in such paragraph.

“(f)(1) Reasonable extensions of time for filing any report may be granted under procedures prescribed by the Office of Government Ethics, but the total of such extensions shall not exceed 90 days.

“(2)(A) In the case of an individual who is serving in the Armed Forces, or serving in support of the Armed Forces, in an area while that area is designated by the President by Executive order as a combat zone for purposes of section 112 of the Internal Revenue Code of 1986, the date for the filing of any report shall be extended so that the date is 180 days after the later of—

"(i) the last day of the individual's service in such area during such designated period; or

"(ii) the last day of the individual's hospitalization as a result of injury received or disease contracted while serving in such area.

"(B) The Office of Government Ethics, in consultation with the Secretary of Defense, may prescribe procedures under this paragraph.

"(g) The Director of the Office of Government Ethics may grant a publicly available request for a waiver of any reporting requirement under this title with respect to an individual if the Director determines that—

"(1) such individual is not a full-time employee of the Government;

"(2) such individual is able to provide special services needed by the Government;

"(3) it is unlikely that such individual's outside employment or financial interests will create a conflict of interest;

"(4) such individual is not reasonably expected to perform the duties of his office or position for more than 60 days in a calendar year; and

"(5) public financial disclosure by such individual is not necessary in the circumstances.

"SEC. 302. CONTENTS OF REPORTS.

"(a) Each report filed pursuant to section 301 (c) and (d) shall include a full and complete statement with respect to the following:

"(1)(A) The source, description, and category of amount or value of income (other than income referred to in subparagraph (B)) from any source (other than from current employment by the United States Government), received during the preceding calendar year, aggregating more than $500 in amount or value, except that honoraria received during Government service by an officer or employee shall include, in addition to the source, the exact amount and the date it was received.

"(B) The source, description, and category of amount or value of investment income which may include but is not limited to dividends, rents, interest, and capital gains, received during the preceding calendar year which exceeds $500 in amount or value.

"(C) The categories for reporting the amount or value of income covered in subparagraphs (A) and (B) are—

"(i) greater than $500 but not more than $20,000;

"(ii) greater than $20,000 but not more than $100,000;

"(iii) greater than $100,000 but not more than $1,000,000;

"(iv) greater than $1,000,000 but not more than $2,500,000; and

"(v) greater than $2,500,000.

"(2)(A) The identity of the source, a brief description, and the value of all gifts aggregating more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or $250, whichever is greater, received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of an individual need not be reported, and any gift with a fair market value of $100 or less, as adjusted at the same time and by the same percentage as the minimal value is adjusted, need not be aggregated for purposes of this subparagraph.

"(B) The identity of the source and a brief description (including dates of travel and nature of expenses provided) of reimbursements received from any source aggregating more than the minimal value as established by section 7342(a)(5) of title 5, United States Code, or $250, whichever is greater and received during the preceding calendar year.

"(C) In an unusual case, a gift need not be aggregated under subparagraph (A) if a publicly available request for a waiver is granted.

"(3) The identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value which exceeds $5,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a spouse, or by a parent, brother, sister, or child of the reporting individual or of the reporting individual's spouse, or any deposit accounts aggregating $100,000 or less in a financial institution, or any Federal Government securities aggregating $100,000 or less.

"(4) The identity and category of value of the total liabilities owed to any creditor other than a spouse, or a parent, brother, sister, or child of the reporting individual or of the reporting individual's spouse which exceed $20,000 at any time during the preceding calendar year, excluding—

"(A) any mortgage secured by real property which is a personal residence of the reporting individual or his spouse; and

"(B) any loan secured by a personal motor vehicle, household furniture, or appliances, which loan does not exceed the purchase price of the item which secures it.

With respect to revolving charge accounts, only those with an outstanding liability which exceeds $20,000 as of the close of the preceding calendar year need be reported under this paragraph.

"(5) Except as provided in this paragraph, a brief description of any real property, other than property used solely as a personal residence of the reporting individual or his spouse, and stocks, bonds, commodities futures, and other forms of securities, if—

"(A) purchased, sold, or exchanged during the preceding calendar year;

"(B) the value of the transaction exceeded $5,000; and

"(C) the property or security is not already required to be reported as a source of income pursuant to paragraph (1)(B) or as an asset pursuant to paragraph (3).

Reporting is not required under this paragraph of any transaction solely by and between the reporting individual, his spouse, or dependent children.

"(6)(A) The identity of all positions held on or before the date of filing during the current calendar year (and, for the first report filed by an individual, during the 1-year period preceding such calendar year) as an officer, director, trustee, partner, proprietor, representative, employee, or consultant of any corporation, company, firm, partnership, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution other than the United States Government. This subparagraph shall not require the reporting of positions held in any religious, social, fraternal, or political entity and positions solely of an honorary nature.

"(B) If any person, other than a person reported as a source of income under paragraph (1)(A) or the United States Government, paid a nonelected reporting individual compensation in excess of $25,000 in the calendar year in which, or the calendar year prior to the calendar year in which, the individual files his first report under this title, the individual shall include in the report—

"(i) the identity of each source of such compensation; and

"(ii) a brief description of the nature of the duties performed or services rendered by the reporting individual for each such source.

"(C) Subparagraph (B) shall not require any individual to include in such report any information—

"(i) with respect to a person for whom services were provided by any firm or association of which such individual was a member, partner, or employee, unless the individual was directly involved in the provision of such services;

"(ii) that is protected by a court order or is under seal; or

"(iii) that is considered confidential as a result of—

"(I) a privileged relationship established by a confidentiality agreement entered into at the time the person retained the services of the individual;

"(II) a grand jury proceeding or a nonpublic investigation, if there are no public filings, statements, appearances, or reports that identify the person for whom such individual is providing services; or

"(III) an applicable rule of professional conduct that prohibits disclosure of the information and that can be enforced by a professional licensing body.

"(7) A description of parties to and terms of any agreement or arrangement with respect to (A) future employment; (B) a leave of absence during the period of the reporting individual's Government service; (C) continuation of payments by a former employer other than the United States Government; and (D) continuing participation in an employee welfare or benefit plan maintained by a former employer. The description of any formal agreement for future employment shall include the date of that agreement.

"(8) The category of the total cash value of any interest of the reporting individual in a qualified blind trust.

"(b)(1) Each report filed pursuant to subsections (a) and (b) of section 301 shall include a full and complete statement with respect to the information required by—

"(A) paragraphs (1) and (6) of subsection (a) for the year of filing and the preceding calendar year,

"(B) paragraphs (3) and (4) of subsection (a) as of the date specified in the report but which is less than 31 days before the filing date, and

"(C) paragraph (7) of subsection (a) as of the filing date but for periods described in such paragraph.

"(2)(A) In lieu of filling out 1 or more schedules of a financial disclosure form, an individual may supply the required information in an alternative format, pursuant to either rules adopted by the Office of Government Ethics or pursuant to a specific written determination by the Director of the Office of Government Ethics for a reporting individual.

"(B) In lieu of indicating the category of amount or value of any item contained in any report filed under this title, a reporting individual may indicate the exact dollar amount of such item.

"(c) In the case of any individual described in section 301(e), any reference to the preceding calendar year shall be considered also to include that part of the calendar year of filing up to the date of the termination of employment.

“(d)(1) The categories for reporting the amount or value of the items covered in subsection (a)(3) are—

“(A) greater than $5,000 but not more than $15,000;

“(B) greater than $15,000 but not more than $25,000;

“(C) greater than $25,000 but not more than $100,000;

“(D) greater than $100,000 but not more than $1,000,000;

“(E) greater than $1,000,000 but not more than $2,500,000; and

“(F) greater than $2,500,000.

“(2) For the purposes of subsection (a)(3) if the current value of an interest in real property (or an interest in a real estate partnership) is not ascertainable without an appraisal, an individual may list (A) the date of purchase and the purchase price of the interest in the real property, or (B) the assessed value of the real property for tax purposes, adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of such market value, but such individual shall include in his report a full and complete description of the method used to determine such assessed value, instead of specifying a category of value pursuant to paragraph (1). If the current value of any other item required to be reported under subsection (a)(3) is not ascertainable without an appraisal, such individual may list the book value of a corporation whose stock is not publicly traded, the net worth of a business partnership, the equity value of an individually owned business, or with respect to other holdings, any recognized indication of value, but such individual shall include in his report a full and complete description of the method used in determining such value. In lieu of any value referred to in the preceding sentence, an individual may list the assessed value of the item for tax purposes, adjusted to reflect the market value of the item used for the assessment if the assessed value is computed at less than 100 percent of such market value, but a full and complete description of the method used in determining such assessed value shall be included in the report.

“(3) The categories for reporting the amount or value of the items covered in paragraphs (4) and (8) of subsection (a) are—

“(A) greater than $20,000 but not more than $100,000;

“(B) greater than $100,000 but not more than $500,000;

“(C) greater than $500,000 but not more than $1,000,000; and

“(D) greater than $1,000,000.

“(e)(1) Except as provided in subparagraph (F), each report required by section 301 shall also contain information listed in paragraphs (1) through (5) of subsection (a) respecting the spouse or dependent child of the reporting individual as follows:

“(A) The sources of earned income earned by a spouse, including honoraria, which exceed $500, except that, with respect to earned income, if the spouse is self-employed in business or a profession, only the nature of such business or profession need be reported.

“(B) All information required to be reported in subsection (a)(1)(B) with respect to investment income derived by a spouse or dependent child.

“(C) In the case of any gifts received by a spouse or dependent child which are not received totally independent of the relationship of the spouse or dependent child to the reporting individual, the identity of the source and a brief description of gifts of transportation, lodging, food, or entertainment and a brief description and the value of other gifts.

“(D) In the case of any reimbursements received by a spouse or dependent child which are not received totally independent of the relationship of the spouse or dependent child to the reporting individual, the identity of the source and a brief description of each such reimbursement.

“(E) In the case of items described in paragraphs (3) through (5) of subsection (a), all information required to be reported under these paragraphs other than items which the reporting individual certifies (i) represent the spouse's or dependent child's sole financial interest or responsibility and which the reporting individual has no knowledge of, (ii) are not in any way, past or present, derived from the income, assets, or activities of the reporting individual, and (iii) are ones from which he neither derives, nor expects to derive, any financial or economic benefit.

“(F) Reports required by subsections (a), (b), and (c) of section 301 shall, with respect to the spouse and dependent child of the reporting individual, only contain information listed in paragraphs (1), (3), and (4) of subsection (a).

“(2) No report shall be required with respect to a spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation, or with respect to any income or obligations of an individual arising from the dissolution of his marriage or the permanent separation from his spouse.

“(f)(1) Except as provided in paragraph (2), each reporting individual shall report the information required to be reported pursuant to subsections (a), (b), and (c) with respect to the holdings of and the income from a trust or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, such individual, his spouse, or any dependent child.

“(2) A reporting individual need not report the holdings of or the source of income from any of the holdings of—

“(A) any qualified blind trust (as defined in paragraph (3));

“(B) a trust—

“(i) which was not created directly by such individual, his spouse, or any dependent child, and

“(ii) the holdings or sources of income of which such individual, his spouse, and any dependent child have no knowledge; or

“(C) an entity described under the provisions of paragraph (8), but such individual shall report the category of the amount of income received by him, his spouse, or any dependent child from the trust or other entity under subsection (a)(1)(B).

“(3) For purposes of this subsection, the term ‘qualified blind trust’ includes any trust in which a reporting individual, his spouse, or any minor or dependent child has a beneficial interest in the principal or income, and which meets the following requirements:

“(A)(i) The trustee of the trust and any other entity designated in the trust instrument to perform fiduciary duties is a financial institution, an attorney, a certified public accountant, a broker, or an investment advisor who—

“(I) is independent of and not affiliated with any interested party so that the trustee or other person cannot be controlled or influenced in the administration of the trust by any interested party;

“(II) is not and has not been an employee of or affiliated with any interested party and is not a partner of, or involved in any joint venture or other investment with, any interested party; and

“(III) is not a relative of any interested party.

“(ii) Any officer or employee of a trustee or other entity who is involved in the management or control of the trust—

“(I) is independent of and not affiliated with any interested party so that such officer or employee cannot be controlled or influenced in the administration of the trust by any interested party;

“(II) is not a partner of, or involved in any joint venture or other investment with, any interested party; and

“(III) is not a relative of any interested party.

“(B) Any asset transferred to the trust by an interested party is free of any restriction with respect to its transfer or sale unless such restriction is expressly approved by the Office of Government Ethics.

“(C) The trust instrument which establishes the trust provides that—

“(i) except to the extent provided in subparagraph (B), the trustee in the exercise of his authority and discretion to manage and control the assets of the trust shall not consult or notify any interested party;

“(ii) the trust shall not contain any asset the holding of which by an interested party is prohibited by any law or regulation;

“(iii) the trustee shall promptly notify the reporting individual and the Office of Government Ethics when the holdings of any particular asset transferred to the trust by any interested party are disposed of or when the value of such holding is less than $1,000;

“(iv) the trust tax return shall be prepared by the trustee or his designee, and such return and any information relating thereto (other than the trust income summarized in appropriate categories necessary to complete an interested party's tax return), shall not be disclosed to any interested party;

“(v) an interested party shall not receive any report on the holdings and sources of income of the trust, except a report at the end of each calendar quarter with respect to the total cash value of the interest of the interested party in the trust or the net income or loss of the trust or any reports necessary to enable the interested party to complete an individual tax return required by law or to provide the information required by subsection (a)(1) of this section, but such report shall not identify any asset or holding;

“(vi) except for communications which solely consist of requests for distributions of cash or other unspecified assets of the trust, there shall be no direct or indirect communication between the trustee and an interested party with respect to the trust unless such communication is in writing and unless it relates only (I) to the general financial interest and needs of the interested party (including, but not limited to, an interest in maximizing income or long-term capital gain), (II) to the notification of the trustee of a law or regulation subsequently applicable to the reporting individual which prohibits the interested party from holding an asset, which notification directs that the asset not be held by the trust, or (III) to directions to the trustee to sell all of an asset initially placed in the trust by an interested party which in the determination of the reporting individual creates a conflict of interest or the appearance thereof due to the subsequent assumption of duties by the reporting individual (but nothing herein shall require any such direction); and "(vii) the interested parties shall make no effort to obtain information with respect to the holdings of the trust, including obtaining a copy of any trust tax return filed or any information relating thereto except as otherwise provided in this subsection.

"(D) The proposed trust instrument and the proposed trustee is approved by the Office of Government Ethics.

"(E) For purposes of this subsection, 'interested party' means a reporting individual, his spouse, and any minor or dependent child; 'broker' has the meaning set forth in section 3(a)(4) of the Securities and Exchange Act of 1934 (15 U.S.C. 78c(a)(4)); and 'investment adviser' includes any investment adviser who, as determined under regulations prescribed by the supervising ethics office, is generally involved in his role as such an adviser in the management or control of trusts.

"(4)(A) An asset placed in a trust by an interested party shall be considered a financial interest of the reporting individual, for the purposes of any applicable conflict of interest statutes, regulations, or rules of the Federal Government (including section 208 of title 18, United States Code), until such time as the reporting individual is notified by the trustee that such asset has been disposed of, or has a value of less than $1,000.

"(B)(i) The provisions of subparagraph (A) shall not apply with respect to a trust created for the benefit of a reporting individual, or the spouse, dependent child, or minor child of such a person, if the Office of Government Ethics finds that—

"(I) the assets placed in the trust consist of a widely-diversified portfolio of readily marketable securities;

"(II) none of the assets consist of securities of entities having substantial activities in the area of the reporting individual's primary area of responsibility;

"(III) the trust instrument prohibits the trustee, notwithstanding the provisions of paragraph (3)(C) (iii) and (iv), from making public or informing any interested party of the sale of any securities;

"(IV) the trustee is given power of attorney, notwithstanding the provisions of paragraph (3)(C)(v), to prepare on behalf of any interested party the personal income tax returns and similar returns which may contain information relating to the trust; and

"(V) except as otherwise provided in this paragraph, the trust instrument provides (or in the case of a trust which by its terms does not permit amendment, the trustee, the reporting individual, and any other interested party agree in writing) that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A).

"(ii) In any instance covered by subparagraph (B) in which the reporting individual is an individual whose nomination is being considered by a congressional committee, the reporting individual shall inform the congressional committee considering his nomination before or during the period of such individual's confirmation hearing of his intention to comply with this paragraph.

"(5)(A) The reporting individual shall, within 30 days after a qualified blind trust is approved by the Office of Government Ethics, file with such office a copy of—

"(i) the executed trust instrument of such trust (other than those provisions which relate to the testamentary disposition of the trust assets), and

"(ii) a list of the assets which were transferred to such trust, including the category of value of each asset as determined under subsection (d).

This subparagraph shall not apply with respect to a trust meeting the requirements for being considered a qualified blind trust under paragraph (7).

"(B) The reporting individual shall, within 30 days of transferring an asset (other than cash) to a previously established qualified blind trust, notify the Office of Government Ethics of the identity of each such asset and the category of value of each asset as determined under subsection (d).

"(C) Within 30 days of the dissolution of a qualified blind trust, a reporting individual shall (i) notify the Office of Government Ethics of such dissolution, and (ii) file with such Office and his designated agency ethics official a copy of a list of the assets of the trust at the time of such dissolution and the category of value under subsection (c) of each such asset.

"(D) Documents filed under subparagraphs (A), (B), and (C) and the lists provided by the trustee of assets placed in the trust by an interested party which have been sold shall be made available to the public in the same manner as a report is made available under section 305 and the provisions of that section shall apply with respect to such documents and lists.

"(E) A copy of each written communication with respect to the trust under paragraph (3)(C)(vi) shall be filed by the person initiating the communication with the Office of Government Ethics within 5 days of the date of the communication.

"(6)(A) A trustee of a qualified blind trust shall not knowingly and willfully, or negligently, (i) disclose any information to an interested party with respect to such trust that may not be disclosed under paragraph (3); (ii) acquire any holding the ownership of which is prohibited by the trust instrument; (iii) solicit advice from any interested party with respect to such trust, which solicitation is prohibited by paragraph (3) or the trust agreement; or (iv) fail to file any document required by this subsection.

"(B) A reporting individual shall not knowingly and willfully, or negligently, (i) solicit or receive any information with respect to a qualified blind trust of which he is an interested party that may not be disclosed under paragraph (3)(C) or (ii) fail to file any document required by this subsection.

"(C)(i) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully violates the provisions of subparagraph (A) or (B). The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $11,000.

"(ii) The Attorney General may bring a civil action in any appropriate United States district court against any individual who negligently violates the provisions of subparagraph (A) or (B). The court in which such action is brought may assess against such individual a civil penalty in any amount not to exceed $5,500.

"(7) Any trust may be considered to be a qualified blind trust if—

"(A) the trust instrument is amended to comply with the requirements of paragraph (3) or, in the case of a trust instrument which does not by its terms permit amendment, the trustee, the reporting individual, and any other interested party agree in writing that the trust shall be administered in accordance with the requirements of this subsection and the trustee of such trust meets the requirements of paragraph (3)(A); except that in the case of any interested party who is a dependent child, a parent or guardian of such child may execute the agreement referred to in this subparagraph;paragraph;

"(B) a copy of the trust instrument (except testamentary provisions) and a copy of the agreement referred to in subparagraph (A), and a list of the assets held by the trust at the time of approval by the Office of Government Ethics, including the category of value of each asset as determined under subsection (d), are filed with such office and made available to the public as provided under paragraph (5)(D); and

"(C) the Director of the Office of Government Ethics determines that approval of the trust arrangement as a qualified blind trust is in the particular case appropriate to assure compliance with applicable laws and regulations.

"(8) A reporting individual shall not be required to report the financial interests held by a widely held investment fund (whether such fund is a mutual fund, regulated investment company, pension or deferred compensation plan, or other investment fund), if—

"(A)(i) the fund is publicly traded; or

"(ii) the assets of the fund are widely diversified; and

"(B) the reporting individual neither exercises control over nor has the ability to exercise control over the financial interests held by the fund.

"(9)(A) A reporting individual described in subsection (a), (b), or (c) of section 301 shall not be required to report the assets or sources of income of any publicly available investment fund if—

"(i) the identity of such assets and sources of income is not provided to investors;

"(ii) the reporting individual neither exercises control over nor has the ability to exercise control over the fund; and

"(iii) the reporting individual—

"(I) does not otherwise have knowledge of the individual assets of the fund and provides written certification by the fund manager that individual assets of the fund are not disclosed to investors; or

"(II) has executed a written ethics agreement that contains a commitment to divest the interest in the investment fund no later than 90 days after the date of the agreement. The reporting individual shall file the written certification by the fund manager as an attachment to the report filed pursuant to section 301.

"(B) The provisions of subparagraph (A) shall apply to an individual described in subsection (d) or (e) of section 301 if—

"(i) the interest in the trust or investment fund is acquired, during the period to be covered by the report, involuntarily (such as through inheritance) or as a legal incident of marriage; and

"(ii) for an individual described in subsection (d), the individual executes a written ethics agreement containing a commitment to divest the interest no later than 90 days after the date the report is due.

Failure to divest within the time specified or within an extension period granted by the supervising ethics office for good cause shown shall result in an immediate requirement to report as specified in paragraph (1).

"(g) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed pursuant to this title.

"(h) A report filed pursuant to subsection (a), (c), or (d) of section 301 need not contain the information described in subparagraphs

(A), (B), and (C) of subsection (a)(2) with respect to gifts and reimbursements received in a period when the reporting individual was not an officer or employee of the Federal Government.

“(i) A reporting individual shall not be required under this title to report—

“(1) financial interests in or income derived from—

“(A) any retirement system under title 5, United States Code (including the Thrift Savings Plan under subchapter III of chapter 84 of such title); or

“(B) any other retirement system maintained by the United States for officers or employees of the United States, including the President, or for members of the uniformed services; or

“(2) benefits received under the Social Security Act (42 U.S.C. 301 et seq.).

“SEC. 303. FILING OF REPORTS.

“(a) Except as otherwise provided in this section, the reports required under this title shall be filed by the reporting individual with the designated agency ethics official at the agency by which he is employed (or in the case of an individual described in section 301(d), was employed) or in which he will serve. The date any report is received (and the date of receipt of any supplemental report) shall be noted on such report by such official.

“(b) Reports required of members of the uniformed services shall be filed with the Secretary concerned.

“(c) The Office of Government Ethics shall develop and make available forms for reporting the information required by this title.

“SEC. 304. FAILURE TO FILE OR FILING FALSE REPORTS.

“(a) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information that such individual is required to report pursuant to section 302. The court in which such action is brought may assess against such individual a civil penalty in any amount, not to exceed $11,000, order the individual to file or report any information required by section 302, or both.

“(b) The head of each agency, each Secretary concerned, or the Director of the Office of Government Ethics, as the case may be, shall refer to the Attorney General the name of any individual which such official has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file information required to be reported.

“(c) The President, the Vice President, the Secretary concerned, or the head of each agency may take any appropriate personnel or other action in accordance with applicable law or regulation against any individual failing to file a report or falsifying or failing to report information required to be reported.

“(d)(1) Any individual who files a report required to be filed under this title more than 30 days after the later of—

“(A) the date such report is required to be filed pursuant to the provisions of this title and the rules and regulations promulgated thereunder; or

“(B) if a filing extension is granted to such individual under section 301(g), the last day of the filing extension period, shall, at the direction of and pursuant to regulations issued by the Office of Government Ethics, pay a filing fee of $500. All such fees shall be deposited in the miscellaneous receipts of the Treasury. The authority under this paragraph to direct the payment of a filing fee may be delegated by the Office of Government Ethics to other agencies in the executive branch.

“(2) The Office of Government Ethics may waive the filing fee under this subsection for good cause shown.

“SEC. 305. CUSTODY OF AND PUBLIC ACCESS TO REPORTS.

“Any report filed with or transmitted to an agency or the Office of Government Ethics pursuant to this title shall be made available to the public (in the same manner as described in section 105) and retained by such agency or Office, as the case may be, for a period of 6 years after receipt of the report. After such 6-year period the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to section 301(b) and was not subsequently confirmed by the Senate, such reports shall be destroyed 1 year after the individual is no longer under consideration by the Senate, unless needed in an ongoing investigation.

“SEC. 306. REVIEW OF REPORTS.

“(a) Each designated agency ethics official or Secretary concerned shall make provisions to ensure that each report filed with him under this title is reviewed within 60 days after the date of such filing, except that the Director of the Office of Government Ethics shall review only those reports required to be transmitted to him under this title within 60 days after the date of transmittal.

“(b)(1) If after reviewing any report under subsection (a), the Director of the Office of Government Ethics, the Secretary concerned, or the designated agency ethics official, as the case may be, is of the opinion that on the basis of information contained in such report the individual submitting such report is in compliance with applicable laws and regulations, he shall state such opinion on the report, and shall sign such report.

“(2) If the Director of the Office of Government Ethics, the Secretary concerned, or the designated agency ethics official after reviewing any report under subsection (a)—

“(A) believes additional information is required to be submitted to complete the report or to perform a conflict of interest analysis, he shall notify the individual submitting such report what additional information is required and the time by which it must be submitted, or

“(B) is of the opinion, on the basis of information submitted, that the individual is not in compliance with applicable laws and regulations, he shall notify the individual, afford a reasonable opportunity for a written or oral response, and after consideration of such response, reach an opinion as to whether or not, on the basis of information submitted, the individual is in compliance with such laws and regulations.

“(3) If the Director of the Office of Government Ethics, the Secretary concerned, or the designated agency ethics official reaches an opinion under paragraph (2)(B) that an individual is not in compliance with applicable laws and regulations, the official shall notify the individual of that opinion and, after an opportunity for personal consultation (if practicable), determine and notify the individual of which steps, if any, would in the opinion of such official be appropriate for assuring compliance with such laws and regulations and the date by which such steps should be taken. Such steps may include, as appropriate—

“(A) divestiture,

“(B) restitution,

“(C) the establishment of a blind trust,

“(D) request for an exemption under section 208(b) of title 18, United States Code, or

“(E) voluntary request for transfer, reassignment, limitation of duties, or resignation.

The use of any such steps shall be in accordance with such rules or regulations as the Office of Government Ethics may prescribe.

“(4) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by an individual in a position in the executive branch, appointment to which requires the advice and consent of the Senate, the matter shall be referred to the President for appropriate action.

“(5) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by a member of the Foreign Service or the uniformed services, the Secretary concerned shall take appropriate action.

“(6) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (3) by any other officer or employee, the matter shall be referred to the head of the appropriate agency for appropriate action.

“(7) The Office of Government Ethics may render advisory opinions interpreting this title. Notwithstanding any other provision of law, the individual to whom a public advisory opinion is rendered in accordance with this paragraph, and any other individual covered by this title who is involved in a fact situation which is indistinguishable in all material aspects, and who acts in good faith in accordance with the provisions and findings of such advisory opinion shall not, as a result of such act, be subject to any penalty or sanction provided by this title.

“SEC. 307. CONFIDENTIAL REPORTS AND OTHER ADDITIONAL REQUIREMENTS.

“(a)(1) The Office of Government Ethics may require officers and employees of the executive branch (including special Government employees as defined in section 202 of title 18, United States Code) to file confidential financial disclosure reports, in such form as it may prescribe. The information required to be reported under this subsection by the officers and employees of any department or agency listed in section 301(e) shall be set forth in rules or regulations prescribed by the Office of Government Ethics, and may be less extensive than otherwise required by this title, or more extensive when determined by the Office of Government Ethics to be necessary and appropriate in light of sections 202 through 209 of title 18, United States Code, regulations promulgated thereunder, or the authorized activities of such officers or employees. Any individual required to file a report pursuant to section 301 shall not be required to file a confidential report pursuant to this subsection, except with respect to information which is more extensive than information otherwise required by this title. Section 305 shall not apply with respect to any such report.

“(2) Any information required to be provided by an individual under this subsection shall be confidential and shall not be disclosed to the public.

“(3) Nothing in this subsection exempts any individual otherwise covered by the requirement to file a public financial disclosure report under this title from such requirement.

“(b) The provisions of this title requiring the reporting of information shall supersede any general requirement under any other provision of law or regulation with respect to the reporting of information required for purposes of preventing conflicts of interest or apparent conflicts of interest. Such provisions of this title shall not supersede the requirements of section 7342 of title 5, United States Code.

"(c) Nothing in this Act requiring reporting of information shall be deemed to authorize the receipt of income, gifts, or reimbursements; the holding of assets, liabilities, or positions; or the participation in transactions that are prohibited by law, Executive order, rule, or regulation.

"SEC. 308. AUTHORITY OF COMPTROLLER GENERAL.

"The Comptroller General shall have access to financial disclosure reports filed under this title for the purposes of carrying out his statutory responsibilities.

"SEC. 309. DEFINITIONS.

"For the purposes of this title—

"(1) the term 'dependent child' means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who—

"(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

"(B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1986 (26 U.S.C. 152);

"(2) the term 'designated agency ethics official' means an officer or employee who is designated to administer the provisions of this title within an agency;

"(3) the term 'executive branch' includes—

"(A) each Executive agency (as defined in section 105 of title 5, United States Code), other than the General Accounting Office; and

"(B) any other entity or administrative unit in the executive branch;

"(4) the term 'gift' means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor, but does not include—

"(A) bequests and other forms of inheritance;

"(B) suitable mementos of a function honoring the reporting individual;

"(C) food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

"(D) food and beverages which are not consumed in connection with a gift of overnight lodging;

"(E) communications to the offices of a reporting individual, including subscriptions to newspapers and periodicals; or

"(F) items that are accepted pursuant to or are required to be reported by the reporting individual under section 7342 of title 5, United States Code.

"(5) the term 'honorarium' means a payment of money or anything of value for an appearance, speech, or article;

"(6) the term 'income' means all income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items; gross income derived from business (and net income if the individual elects to include it); gains derived from dealings in property; interest; rents; royalties; prizes and awards; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust;

"(7) the term 'personal hospitality of any individual' means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family;

"(8) the term 'reimbursement' means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

"(A) provided by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

"(B) required to be reported by the reporting individual under section 7342 of title 5, United States Code; or

"(C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

"(9) the term 'relative' means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiancé or fiancée of the reporting individual;

"(10) the term 'Secretary concerned' has the meaning set forth in section 101(a)(9) of title 10, United States Code; and

"(11) the term 'value' means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual.

"SEC. 310. NOTICE OF ACTIONS TAKEN TO COMPLY WITH ETHICS AGREEMENTS.

"(a) In any case in which an individual agrees with that individual's designated agency ethics official, the Office of Government Ethics, or a Senate confirmation committee, to take any action to comply with this Act or any other law or regulation governing conflicts of interest of, or establishing standards of conduct applicable with respect to, officers or employees of the Government, that individual shall notify in writing the designated agency ethics official, the Office of Government Ethics, or the appropriate committee of the Senate, as the case may be, of any action taken by the individual pursuant to that agreement. Such notification shall be made not later than the date specified in the agreement by which action by the individual must be taken, or not later than 3 months after the date of the agreement, if no date for action is so specified. If all actions agreed to have not been completed by the date of this notification, such notification shall continue on a monthly basis thereafter until the individual has met the terms of the agreement.

"(b) If an agreement described in subsection (a) requires that the individual recuse himself or herself from particular categories of agency or other official action, the individual shall reduce to writing those subjects regarding which the recusal agreement will apply and the process by which it will be determined whether the individual must recuse himself or herself in a specific instance. An individual shall be considered to have complied with the requirements of subsection (a) with respect to such recusal agreement if such individual files a copy of the document setting forth the information described in the preceding sentence with such individual's designated agency ethics official or the Office of Government Ethics not later than the date specified in the agreement by which action by the individual must be taken, or not later than 3 months after the date of the agreement, if no date for action is so specified.

"SEC. 311. ADMINISTRATION OF PROVISIONS.

"The Office of Government Ethics shall issue regulations, develop forms, and provide such guidance as is necessary to implement and interpret this title.".

(b) EXEMPTION FROM PUBLIC ACCESS TO FINANCIAL DISCLOSURES.—Section 105(a)(1) of such Act is amended by inserting "the Office of the National Intelligence Director," before "the Central Intelligence Agency".

(c) CONFORMING AMENDMENT.—Section 101(f) of such Act is amended—

(1) in paragraph (12), by striking the period at the end and inserting a semicolon; and

(2) by adding at the end the following: "but do not include any officer or employee of any department or agency listed in section 301(e).".

SEC. 5044. REDUCTION OF POSITIONS REQUIRING APPOINTMENT WITH SENATE CONFIRMATION.

(a) DEFINITION.—In this section, the term "agency" means an Executive agency, as defined under section 105 of title 5, United States Code.

(b) REDUCTION PLAN.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the head of each agency shall submit a Presidential appointment reduction plan to—

(A) the President;

(B) the Committee on Governmental Affairs of the Senate; and

(C) the Committee on Government Reform of the House of Representatives.

(2) CONTENT.—The plan under this subsection shall provide for the reduction of—

(A) the number of positions within that agency that require an appointment by the President, by and with the advice and consent of the Senate; and

(B) the number of levels of such positions within that agency.

SEC. 5045. EFFECTIVE DATES.

(a) SECTION 5043.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by section 5043 shall take effect on January 1 of the year following the year in which occurs the date of enactment of this Act.

(2) LATER DATE.—If this Act is enacted on or after July 1 of a year, the amendments made by section 301 shall take effect on July 1 of the following year.

(b) SECTION 5044.—Section 5044 shall take effect on the date of enactment of this Act.

CHAPTER 2—FEDERAL BUREAU OF INVESTIGATION REVITALIZATION

SEC. 5051. MANDATORY SEPARATION AGE.

(a) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8335(b) of title 5, United States Code, is amended—

(1) by striking "(b)" and inserting "(b)(1)"; and

(2) by adding at the end the following:

"(2) In the case of employees of the Federal Bureau of Investigation, the second sentence of paragraph (1) shall be applied by substituting '65 years of age' for '60 years of age'. The authority to grant exemptions in accordance with the preceding sentence shall cease to be available after December 31, 2009.".

(b) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Section 8425(b) of title 5, United States Code, is amended—

(1) by striking "(b)" and inserting "(b)(1)"; and

(2) by adding at the end the following:

"(2) In the case of employees of the Federal Bureau of Investigation, the second sentence of paragraph (1) shall be applied by substituting '65 years of age' for '60 years of age'. The authority to grant exemptions in accordance with the preceding sentence shall cease to be available after December 31, 2009.".

SEC. 5052. RETENTION AND RELOCATION BONUSES.

(a) IN GENERAL.—Subchapter IV of chapter 57 of title 5, United States Code, is amended by adding at the end the following:

"§ 5759. Retention and relocation bonuses for the Federal Bureau of Investigation

"(a) AUTHORITY.—The Director of the Federal Bureau of Investigation, after consultation with the Director of the Office of Personnel Management, may pay, on a case-by-case basis, a bonus under this section to an employee of the Bureau if—

"(1)(A) the unusually high or unique qualifications of the employee or a special need of the Bureau for the employee's services makes it essential to retain the employee; and

"(B) the Director of the Federal Bureau of Investigation determines that, in the absence of such a bonus, the employee would be likely to leave—

"(i) the Federal service; or

"(ii) for a different position in the Federal service; or

"(2) the individual is transferred to a different geographic area with a higher cost of living (as determined by the Director of the Federal Bureau of Investigation).

"(b) SERVICE AGREEMENT.—Payment of a bonus under this section is contingent upon the employee entering into a written service agreement with the Bureau to complete a period of service, not to exceed 4 years, with the Bureau. Such agreement shall include—

"(1) the period of service the individual shall be required to complete in return for the bonus; and

"(2) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

"(c) LIMITATIONS ON AUTHORITY.—A bonus paid under this section—

"(1) shall not exceed 50 percent of the annual rate of basic pay of the employee as of the beginning of the period of service (established under subsection (b)) multiplied by the number of years (including a fractional part of a year) in the required period of service of the employee involved, but shall in no event exceed 100 percent of the annual rate of basic pay of the employee as of the beginning of the service period; and

"(2) may not be paid to an individual who is appointed to or who holds a position—

"(A) to which an individual is appointed by the President, by and with the advice and consent of the Senate; or

"(B) in the Senior Executive Service as a noncareer appointee (as defined in section 3132(a)).

"(d) IMPACT ON BASIC PAY.—A retention bonus is not part of the basic pay of an employee for any purpose.

"(e) TERMINATION OF AUTHORITY.—The authority to grant bonuses under this section shall cease to be available after December 31, 2009.".

(b) CLERICAL AMENDMENT.—The analysis for chapter 57 of title 5, United States Code, is amended by adding at the end the following:

"5759. Retention and relocation bonuses for the Federal Bureau of Investigation.".

SEC. 5053. FEDERAL BUREAU OF INVESTIGATION RESERVE SERVICE.

(a) IN GENERAL.—Chapter 35 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER VII—RETENTION OF RETIRED SPECIALIZED EMPLOYEES AT THE FEDERAL BUREAU OF INVESTIGATION

"§ 3598. Federal Bureau of Investigation Reserve Service

"(a) ESTABLISHMENT.—The Director of the Federal Bureau of Investigation may provide for the establishment and training of a Federal Bureau of Investigation Reserve Service (hereinafter in this section referred to as the 'FBI Reserve Service') for temporary reemployment of employees in the Bureau during periods of emergency, as determined by the Director.

"(b) MEMBERSHIP.—Membership in the FBI Reserve Service shall be limited to individuals who previously served as full-time employees of the Bureau.

"(c) ANNUITANTS.—If an individual receiving an annuity from the Civil Service Retirement and Disability Fund on the basis of such individual's service becomes temporarily reemployed pursuant to this section, such annuity shall not be discontinued thereby. An individual so reemployed shall not be considered an employee for the purposes of chapter 83 or 84.

"(d) NO IMPACT ON BUREAU PERSONNEL CEILING.—FBI Reserve Service members reemployed on a temporary basis pursuant to this section shall not count against any personnel ceiling applicable to the Bureau.

"(e) EXPENSES.—The Director may provide members of the FBI Reserve Service transportation and per diem in lieu of subsistence, in accordance with applicable provisions of this title, for the purpose of participating in any training that relates to service as a member of the FBI Reserve Service.

"(f) LIMITATION ON MEMBERSHIP.—Membership of the FBI Reserve Service is not to exceed 500 members at any given time.

"(g) LIMITATION ON DURATION OF SERVICE.—An individual may not be reemployed under this section for more than 180 days in connection with any particular emergency unless, in the judgment of the Director, the public interest so requires.".

(b) CLERICAL AMENDMENT.—The analysis for chapter 35 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER VII—RETENTION OF RETIRED SPECIALIZED EMPLOYEES AT THE FEDERAL BUREAU OF INVESTIGATION

"3598. Federal Bureau of Investigation Reserve Service.".

SEC. 5054. CRITICAL POSITIONS IN THE FEDERAL BUREAU OF INVESTIGATION INTELLIGENCE DIRECTORATE.

Section 5377(a)(2) of title 5, United States Code, is amended—

(1) by striking "and" at the end of subparagraph (E);

(2) by striking the period at the end of subparagraph (F) and inserting "; and"; and

(3) by inserting after subparagraph (F) the following:

"(G) a position at the Federal Bureau of Investigation, the primary duties and responsibilities of which relate to intelligence functions (as determined by the Director of the Federal Bureau of Investigation).".

CHAPTER 3—REPORTING REQUIREMENT

SEC. 5061. REPORTING REQUIREMENT.

The President shall, within 6 months after the date of enactment of this Act, submit to Congress a report that—

(1) evaluates the hiring policies of the Federal Government with respect to its foreign language needs and the war on terrorism, including an analysis of the personnel requirements at the Federal Bureau of Investigation, the Central Intelligence Agency, the Department of Homeland Security, the Department of State, the Department of Defense, and all other Federal agencies the President identifies as having responsibilities in the war on terrorism;

(2) describes with respect to each agency identified under paragraph (1) the Federal Government's current workforce capabilities with respect to its foreign language needs and the war on terrorism;

(3) summarizes for each agency identified under paragraph (1) any shortfall in the Federal Government's workforce capabilities relative to its foreign language needs with respect to the war on terrorism; and

(4) provides a specific plan to eliminate any shortfalls identified under paragraph (3) and a cost estimate, by agency, for eliminating those shortfalls.

Subtitle F—Security Clearance Modernization

SEC. 5071. DEFINITIONS.

In this subtitle:

(1) The term "Director" means the National Intelligence Director.

(2) The term "agency" means—

(A) an executive agency, as defined in section 105 of title 5, United States Code;

(B) a military department, as defined in section 102 of title 5, United States Code; and

(C) elements of the intelligence community, as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(3) The term "authorized investigative agency" means an agency authorized by law, regulation or direction of the Director to conduct a counterintelligence investigation or investigation of persons who are proposed for access to classified information to ascertain whether such persons satisfy the criteria for obtaining and retaining access to such information.

(4) The term "authorized adjudicative agency" means an agency authorized by law, regulation or direction of the Director to determine eligibility for access to classified information in accordance with Executive Order 12968.

(5) The term "highly sensitive program" means—

(A) a government program designated as a Special Access Program (as defined by section 4.1(h) of Executive Order 12958); and

(B) a government program that applies restrictions required for—

(i) Restricted Data (as defined by section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)); or

(ii) other information commonly referred to as "Sensitive Compartmented Information".

(6) The term "current investigation file" means, with respect to a security clearance, a file on an investigation or adjudication that has been conducted during—

(A) the 5-year period beginning on the date the security clearance was granted, in the case of a Top Secret Clearance, or the date access was granted to a highly sensitive program;

(B) the 10-year period beginning on the date the security clearance was granted in the case of a Secret Clearance; and

(C) the 15-year period beginning on the date the security clearance was granted in the case of a Confidential Clearance.

(7) The term "personnel security investigation" means any investigation required for the purpose of determining the eligibility of any military, civilian, or government contractor personnel to access classified information.

(8) The term "periodic reinvestigations" means—

(A) investigations conducted for the purpose of updating a previously completed background investigation—

(i) every five years in the case of a Top Secret Clearance or access to a highly sensitive program;

(ii) every 10 years in the case of a Secret Clearance; and

(iii) every 15 years in the case of a Confidential Clearance;

(B) on-going investigations to identify personnel security risks as they develop, pursuant to section 5075(c).

(9) The term "appropriate committees of Congress" means—

(A) the Permanent Select Committee on Intelligence and the Committees on Armed Services, Judiciary, and Government Reform of the House of Representatives; and

(B) the Select Committee on Intelligence and the Committees on Armed Services, Judiciary, and Governmental Affairs of the Senate.

SEC. 5072. SECURITY CLEARANCE AND INVESTIGATIVE PROGRAMS OVERSIGHT AND ADMINISTRATION.

The Deputy National Intelligence Director for Community Management and Resources shall have responsibility for the following:

(1) Directing day-to-day oversight of investigations and adjudications for personnel security clearances and highly sensitive programs throughout the Federal Government.

(2) Developing and implementing uniform and consistent policies and procedures to ensure the effective, efficient, and timely completion of security clearances and determinations for access to highly sensitive programs, including the standardization of security questionnaires, financial disclosure requirements for security clearance applicants, and polygraph policies and procedures.

(3) Serving as the final authority to designate an authorized investigative agency or authorized adjudicative agency pursuant to section 5074(d).

(4) Ensuring reciprocal recognition of access to classified information among agencies, including acting as the final authority to arbitrate and resolve disputes involving the reciprocity of security clearances and access to highly sensitive programs.

(5) Ensuring, to the maximum extent practicable, that sufficient resources are available in each agency to achieve clearance and investigative program goals.

(6) Reviewing and coordinating the development of tools and techniques for enhancing the conduct of investigations and granting of clearances.

SEC. 5073. RECIPROCITY OF SECURITY CLEARANCE AND ACCESS DETERMINATIONS.

(a) Requirement for Reciprocity.—(1) All security clearance background investigations and determinations completed by an authorized investigative agency or authorized adjudicative agency shall be accepted by all agencies.

(2) All security clearance background investigations initiated by an authorized investigative agency shall be transferable to any other authorized investigative agency.

(b) Prohibition on Establishing Additional.—(1) An authorized investigative agency or authorized adjudicative agency may not establish additional investigative or adjudicative requirements (other than requirements for the conduct of a polygraph examination) that exceed requirements specified in Executive Orders establishing security requirements for access to classified information.

(2) Notwithstanding the paragraph (1), the Director may establish additional requirements as needed for national security purposes.

(c) Prohibition on Duplicative Investigations.—An authorized investigative agency or authorized adjudicative agency may not conduct an investigation for purposes of determining whether to grant a security clearance to an individual where a current investigation or clearance of equal level already exists or has been granted by another authorized adjudicative agency.

SEC. 5074. ESTABLISHMENT OF NATIONAL DATABASE.

(a) Establishment.—Not later than 12 months after the date of the enactment of this Act, the Director of the Office of Personnel Management, in cooperation with the Director, shall establish, and begin operating and maintaining, an integrated, secure, national database into which appropriate data relevant to the granting, denial, or revocation of a security clearance or access pertaining to military, civilian, or government contractor personnel shall be entered from all authorized investigative and adjudicative agencies.

(b) Integration.—The national database established under subsection (a) shall function to integrate information from existing Federal clearance tracking systems from other authorized investigative and adjudicative agencies into a single consolidated database.

(c) Requirement to Check Database.—Each authorized investigative or adjudicative agency shall check the national database established under subsection (a) to determine whether an individual the agency has identified as requiring a security clearance has already been granted or denied a security clearance, or has had a security clearance revoked, by any other authorized investigative or adjudicative agency.

(d) Certification of Authorized Investigative Agencies or Authorized Adjudicative Agencies.—The Director shall evaluate the extent to which an agency is submitting information to, and requesting information from, the national database established under subsection (a) as part of a determination of whether to certify the agency as an authorized investigative agency or authorized adjudicative agency.

(e) Exclusion of Certain Intelligence Operatives.—The Director may authorize an agency to withhold information about certain individuals from the database established under subsection (a) if the Director determines it is necessary for national security purposes.

(f) Compliance.—The Director shall establish a review procedure by which agencies can seek review of actions required under section 5073.

(g) Authorization of Appropriations.—There is authorized to be appropriated such sums as may be necessary for fiscal year 2005 and each subsequent fiscal year for the implementation, maintenance and operation of the database established in subsection (a).

SEC. 5075. USE OF AVAILABLE TECHNOLOGY IN CLEARANCE INVESTIGATIONS.

(a) Investigations.—Not later than 12 months after the date of the enactment of this Act, each authorized investigative agency that conducts personnel security clearance investigations shall use, to the maximum extent practicable, available information technology and databases to expedite investigative processes and to verify standard information submitted as part of an application for a security clearance.

(b) Interim Clearance.—If the application of an applicant for an interim clearance has been processed using the technology under subsection (a), the interim clearances for the applicant at the secret, top secret, and special access program levels may be granted before the completion of the appropriate investigation. Any request to process an interim clearance shall be given priority, and the authority granting the interim clearance shall ensure that final adjudication on the application is made within 90 days after the initial clearance is granted.

(c) On-Going Monitoring of Individuals With Security Clearances.—(1) Authorized investigative agencies and authorized adjudicative agencies shall establish procedures for the regular, ongoing verification of personnel with security clearances in effect for continued access to classified information. Such procedures shall include the use of available technology to detect, on a regularly recurring basis, any issues of concern that may arise involving such personnel and such access.

(2) Such regularly recurring verification may be used as a basis for terminating a security clearance or access and shall be used in periodic reinvestigations to address emerging threats and adverse events associated with individuals with security clearances in effect to the maximum extent practicable.

(3) If the Director certifies that the national security of the United States is not harmed by the discontinuation of periodic reinvestigations, the regularly recurring verification under this section may replace periodic reinvestigations.

SEC. 5076. REDUCTION IN LENGTH OF PERSONNEL SECURITY CLEARANCE PROCESS.

(a) 60-Day Period for Determination on Clearances.—Each authorized adjudicative agency shall make a determination on an application for a personnel security clearance within 60 days after the date of receipt of the completed application for a security clearance by an authorized investigative agency. The 60-day period shall include—

(1) a period of not longer than 40 days to complete the investigative phase of the clearance review; and

(2) a period of not longer than 20 days to complete the adjudicative phase of the clearance review.

(b) Effective Date and Phase-In.—

(1) Effective Date.—Subsection (a) shall take effect 5 years after the date of the enactment of this Act.

(2) Phase-In.—During the period beginning on a date not later than 2 years after the date of the enactment of this Act and ending on the date on which subsection (a) takes effect as specified in paragraph (1), each authorized adjudicative agency shall make a determination on an application for a personnel security clearance pursuant to this title within 120 days after the date of receipt of the application for a security clearance by an authorized investigative agency. The 120-day period shall include—

(A) a period of not longer than 90 days to complete the investigative phase of the clearance review; and

(B) a period of not longer than 30 days to complete the adjudicative phase of the clearance review.

SEC. 5077. SECURITY CLEARANCES FOR PRESIDENTIAL TRANSITION.

(a) CANDIDATES FOR NATIONAL SECURITY POSITIONS.—(1) The President-elect shall submit to the Director the names of candidates for high-level national security positions, for positions at the level of under secretary of executive departments and above, as soon as possible after the date of the general elections held to determine the electors of President and Vice President under section 1 or 2 of title 3, United States Code.

(2) The Director shall be responsible for the expeditious completion of the background investigations necessary to provide appropriate security clearances to the individuals who are candidates described under paragraph (1) before the date of the inauguration of the President-elect as President and the inauguration of the Vice-President-elect as Vice President.

(b) SECURITY CLEARANCES FOR TRANSITION TEAM MEMBERS.—(1) In this section, the term "major party" has the meaning provided under section 9002(6) of the Internal Revenue Code of 1986.

(2) Each major party candidate for President, except a candidate who is the incumbent President, shall submit, before the date of the general presidential election, requests for security clearances for prospective transition team members who will have a need for access to classified information to carry out their responsibilities as members of the President-elect's transition team.

(3) Necessary background investigations and eligibility determinations to permit appropriate prospective transition team members to have access to classified information shall be completed, to the fullest extent practicable, by the day after the date of the general presidential election.

SEC. 5078. REPORTS.

Not later than February 15, 2006, and annually thereafter through 2016, the Director shall submit to the appropriate committees of Congress a report on the progress made during the preceding year toward meeting the requirements specified in this Act. The report shall include—

(1) the periods of time required by the authorized investigative agencies and authorized adjudicative agencies during the year covered by the report for conducting investigations, adjudicating cases, and granting clearances, from date of submission to ultimate disposition and notification to the subject and the subject's employer;

(2) a discussion of any impediments to the smooth and timely functioning of the implementation of this title; and

(3) such other information or recommendations as the Deputy Director deems appropriate.

Subtitle G—Emergency Financial Preparedness

CHAPTER 1—EMERGENCY PREPAREDNESS FOR FISCAL AUTHORITIES

SEC. 5081. DELEGATION AUTHORITY OF THE SECRETARY OF THE TREASURY.

Subsection (d) of section 306 of title 31, United States Code, is amended by inserting "or employee" after "another officer".

SEC. 5082. TREASURY SUPPORT FOR FINANCIAL SERVICES INDUSTRY PREPAREDNESS AND RESPONSE.

(a) CONGRESSIONAL FINDING.—The Congress finds that the Secretary of the Treasury—

(1) has successfully communicated and coordinated with the private-sector financial services industry about counter-terrorist financing activities and preparedness;

(2) has successfully reached out to State and local governments and regional public-private partnerships, such as ChicagoFIRST, that protect employees and critical infrastructure by enhancing communication and coordinating plans for disaster preparedness and business continuity; and

(3) has set an example for the Department of Homeland Security and other Federal agency partners, whose active participation is vital to the overall success of the activities described in paragraphs (1) and (2).

(b) FURTHER EDUCATION AND PREPARATION EFFORTS.—It is the sense of Congress that the Secretary of the Treasury, in consultation with the Secretary of Homeland Security and other Federal agency partners, should—

(1) furnish sufficient personnel and technological and financial resources to foster the formation of public-private sector coalitions, similar to ChicagoFIRST, that, in collaboration with the Department of Treasury, the Department of Homeland Security, and other Federal agency partners, would educate consumers and employees of the financial services industry about domestic counter-terrorist financing activities, including—

(A) how the public and private sector organizations involved in counter-terrorist financing activities can help to combat terrorism and simultaneously protect and preserve the lives and civil liberties of consumers and employees of the financial services industry; and

(B) how consumers and employees of the financial services industry can assist the public and private sector organizations involved in counter-terrorist financing activities; and

(2) submit annual reports to the Congress on Federal efforts, in conjunction with public-private sector coalitions, to educate consumers and employees of the financial services industry about domestic counter-terrorist financing activities.

CHAPTER 2—MARKET PREPAREDNESS

SEC. 5084. SHORT TITLE.

This chapter may be cited as the "Emergency Securities Response Act of 2004".

SEC. 5085. EXTENSION OF EMERGENCY ORDER AUTHORITY OF THE SECURITIES AND EXCHANGE COMMISSION.

(a) EXTENSION OF AUTHORITY.—Paragraph (2) of section 12(k) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*(k)(2)) is amended to read as follows:

"(2) EMERGENCY.—(A) The Commission, in an emergency, may by order summarily take such action to alter, supplement, suspend, or impose requirements or restrictions with respect to any matter or action subject to regulation by the Commission or a self-regulatory organization under the securities laws, as the Commission determines is necessary in the public interest and for the protection of investors—

"(i) to maintain or restore fair and orderly securities markets (other than markets in exempted securities);

"(ii) to ensure prompt, accurate, and safe clearance and settlement of transactions in securities (other than exempted securities); or

"(iii) to reduce, eliminate, or prevent the substantial disruption by the emergency of (I) securities markets (other than markets in exempted securities), investment companies, or any other significant portion or segment of such markets, or (II) the transmission or processing of securities transactions (other than transactions in exempted securities).

"(B) An order of the Commission under this paragraph (2) shall continue in effect for the period specified by the Commission, and may be extended. Except as provided in subparagraph (C), the Commission's action may not continue in effect for more than 30 business days, including extensions.

"(C) An order of the Commission under this paragraph (2) may be extended to continue in effect for more than 30 business days if, at the time of the extension, the Commission finds that the emergency still exists and determines that the continuation of the order beyond 30 business days is necessary in the public interest and for the protection of investors to attain an objective described in clause (i), (ii), or (iii) of subparagraph (A). In no event shall an order of the Commission under this paragraph (2) continue in effect for more than 90 calendar days.

"(D) If the actions described in subparagraph (A) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission. In exercising its authority under this paragraph, the Commission shall not be required to comply with the provisions of section 553 of title 5, United States Code, or with the provisions of section 19(c) of this title.

"(E) Notwithstanding the exclusion of exempted securities (and markets therein) from the Commission's authority under subparagraph (A), the Commission may use such authority to take action to alter, supplement, suspend, or impose requirements or restrictions with respect to clearing agencies for transactions in such exempted securities. In taking any action under this subparagraph, the Commission shall consult with and consider the views of the Secretary of the Treasury.".

(b) CONSULTATION; DEFINITION OF EMERGENCY.—Section 12(k) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*(k)) is further amended by striking paragraph (6) and inserting the following:

"(6) CONSULTATION.—Prior to taking any action described in paragraph (1)(B), the Commission shall consult with and consider the views of the Secretary of the Treasury, Board of Governors of the Federal Reserve System, and the Commodity Futures Trading Commission, unless such consultation is impracticable in light of the emergency.

"(7) DEFINITIONS.—

"(A) EMERGENCY.—For purposes of this subsection, the term 'emergency' means—

"(i) a major market disturbance characterized by or constituting—

"(I) sudden and excessive fluctuations of securities prices generally, or a substantial threat thereof, that threaten fair and orderly markets; or

"(II) a substantial disruption of the safe or efficient operation of the national system for clearance and settlement of transactions in securities, or a substantial threat thereof; or

"(ii) a major disturbance that substantially disrupts, or threatens to substantially disrupt—

"(I) the functioning of securities markets, investment companies, or any other significant portion or segment of the securities markets; or

"(II) the transmission or processing of securities transactions.

"(B) SECURITIES LAWS.—Notwithstanding section 3(a)(47), for purposes of this subsection, the term 'securities laws' does not include the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a et seq.).".

SEC. 5086. PARALLEL AUTHORITY OF THE SECRETARY OF THE TREASURY WITH RESPECT TO GOVERNMENT SECURITIES.

Section 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*–5) is amended by adding at the end the following new subsection:

"(h) EMERGENCY AUTHORITY.—The Secretary may by order take any action with respect to a matter or action subject to regulation by the Secretary under this section, or the rules of the Secretary thereunder, involving a government security or a market therein (or significant portion or segment of that market), that the Commission may take under section 12(k)(2) of this title with respect to transactions in securities (other than exempted securities) or a market therein (or significant portion or segment of that market).".

SEC. 5087. JOINT REPORT ON IMPLEMENTATION OF FINANCIAL SYSTEM RESILIENCE RECOMMENDATIONS.

(a) REPORT REQUIRED.—Not later than April 30, 2006, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Securities and Exchange Commission shall prepare and submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a joint report on the efforts of the private sector to implement the Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System.

(b) CONTENTS OF REPORT.—The report required by subsection (a) shall—

(1) examine the efforts to date of covered private sector financial services firms to implement enhanced business continuity plans;

(2) examine the extent to which the implementation of business continuity plans has been done in a geographically dispersed manner, including an analysis of the extent to which such firms have located their main and backup facilities in separate electrical networks, in different watersheds, in independent transportation systems, and using separate telecommunications centers;

(3) examine the need to cover more financial services entities than those covered by the Interagency Paper; and

(4) recommend legislative and regulatory changes that will—

(A) expedite the effective implementation of the Interagency Paper by all covered financial services entities; and

(B) maximize the effective implementation of business continuity planning by all participants in the financial services industry.

(c) CONFIDENTIALITY.—Any information provided to the Federal Reserve Board, the Comptroller of the Currency, or the Securities and Exchange Commission for the purposes of the preparation and submission of the report required by subsection (a) shall be treated as privileged and confidential. For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(d) DEFINITION.—The Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System is the interagency paper prepared by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Securities and Exchange Commission that was announced in the Federal Register on April 8, 2003.

SEC. 5088. PRIVATE SECTOR PREPAREDNESS.

It is the sense of the Congress that the insurance industry and credit-rating agencies, where relevant, should carefully consider a company's compliance with standards for private sector disaster and emergency preparedness in assessing insurability and creditworthiness, to ensure that private sector investment in disaster and emergency preparedness is appropriately encouraged.

SEC. 5089. REPORT ON PUBLIC/PRIVATE PARTNERSHIPS.

Before the end of the 6-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing—

(1) information on the efforts the Department of the Treasury has made to encourage the formation of public/private partnerships to protect critical financial infrastructure and the type of support that the Department has provided to these partnerships; and

(2) recommendations for administrative or legislative action regarding these partnerships as the Secretary may determine to be appropriate.

Subtitle H—Other Matters

Chapter 1—Privacy Matters

SEC. 5091. REQUIREMENT THAT AGENCY RULEMAKING TAKE INTO CONSIDERATION IMPACTS ON INDIVIDUAL PRIVACY.

(a) SHORT TITLE.—This section may be cited as the "Federal Agency Protection of Privacy Act of 2004".

(b) IN GENERAL.—Title 5, United States Code, is amended by adding after section 553 the following new section:

"§ 553a. Privacy impact assessment in rulemaking

"(a) INITIAL PRIVACY IMPACT ASSESSMENT.—

"(1) IN GENERAL.—Whenever an agency is required by section 553 of this title, or any other law, to publish a general notice of proposed rulemaking for a proposed rule, or publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States, and such rule or proposed rulemaking pertains to the collection, maintenance, use, or disclosure of personally identifiable information from 10 or more individuals, other than agencies, instrumentalities, or employees of the Federal government, the agency shall prepare and make available for public comment an initial privacy impact assessment that describes the impact of the proposed rule on the privacy of individuals. Such assessment or a summary thereof shall be signed by the senior agency official with primary responsibility for privacy policy and be published in the Federal Register at the time of the publication of a general notice of proposed rulemaking for the rule.

"(2) CONTENTS.—Each initial privacy impact assessment required under this subsection shall contain the following:

"(A) A description and analysis of the extent to which the proposed rule will impact the privacy interests of individuals, including the extent to which the proposed rule—

"(i) provides notice of the collection of personally identifiable information, and specifies what personally identifiable information is to be collected and how it is to be collected, maintained, used, and disclosed;

"(ii) allows access to such information by the person to whom the personally identifiable information pertains and provides an opportunity to correct inaccuracies;

"(iii) prevents such information, which is collected for one purpose, from being used for another purpose; and

"(iv) provides security for such information.

"(B) A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant privacy impact of the proposed rule on individuals.

"(b) FINAL PRIVACY IMPACT ASSESSMENT.—

"(1) IN GENERAL.—Whenever an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, or promulgates a final interpretative rule involving the internal revenue laws of the United States, and such rule or proposed rulemaking pertains to the collection, maintenance, use, or disclosure of personally identifiable information from 10 or more individuals, other than agencies, instrumentalities, or employees of the Federal government, the agency shall prepare a final privacy impact assessment, signed by the senior agency official with primary responsibility for privacy policy.

"(2) CONTENTS.—Each final privacy impact assessment required under this subsection shall contain the following:

"(A) A description and analysis of the extent to which the final rule will impact the privacy interests of individuals, including the extent to which such rule—

"(i) provides notice of the collection of personally identifiable information, and specifies what personally identifiable information is to be collected and how it is to be collected, maintained, used, and disclosed;

"(ii) allows access to such information by the person to whom the personally identifiable information pertains and provides an opportunity to correct inaccuracies;

"(iii) prevents such information, which is collected for one purpose, from being used for another purpose; and

"(iv) provides security for such information.

"(B) A summary of any significant issues raised by the public comments in response to the initial privacy impact assessment, a summary of the analysis of the agency of such issues, and a statement of any changes made in such rule as a result of such issues.

"(C) A description of the steps the agency has taken to minimize the significant privacy impact on individuals consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the privacy interests of individuals was rejected.

"(3) AVAILABILITY TO PUBLIC.—The agency shall make copies of the final privacy impact assessment available to members of the public and shall publish in the Federal Register such assessment or a summary thereof.

"(c) WAIVERS.—

"(1) EMERGENCIES.—An agency head may waive or delay the completion of some or all of the requirements of subsections (a) and (b) to the same extent as the agency head may, under section 608, waive or delay the completion of some or all of the requirements of sections 603 and 604, respectively.

"(2) NATIONAL SECURITY.—An agency head may, for national security reasons, or to protect from disclosure classified information, confidential commercial information, or information the disclosure of which may adversely affect a law enforcement effort, waive or delay the completion of some or all of the following requirements:

"(A) The requirement of subsection (a)(1) to make an assessment available for public comment.

"(B) The requirement of subsection (a)(1) to have an assessment or summary thereof published in the Federal Register.

"(C) The requirements of subsection (b)(3).

"(d) Procedures for Gathering Comments.—When any rule is promulgated which may have a significant privacy impact on individuals, or a privacy impact on a substantial number of individuals, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that individuals have been given an opportunity to participate in the rulemaking for the rule through techniques such as—

"(1) the inclusion in an advance notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant privacy impact on individuals, or a privacy impact on a substantial number of individuals;

"(2) the publication of a general notice of proposed rulemaking in publications of national circulation likely to be obtained by individuals;

"(3) the direct notification of interested individuals;

"(4) the conduct of open conferences or public hearings concerning the rule for individuals, including soliciting and receiving comments over computer networks; and

"(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by individuals.

"(e) Periodic Review of Rules.—

"(1) In general.—Each agency shall carry out a periodic review of the rules promulgated by the agency that have a significant privacy impact on individuals, or a privacy impact on a substantial number of individuals. Under such periodic review, the agency shall determine, for each such rule, whether the rule can be amended or rescinded in a manner that minimizes any such impact while remaining in accordance with applicable statutes. For each such determination, the agency shall consider the following factors:

"(A) The continued need for the rule.

"(B) The nature of complaints or comments received from the public concerning the rule.

"(C) The complexity of the rule.

"(D) The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules.

"(E) The length of time since the rule was last reviewed under this subsection.

"(F) The degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since the rule was last reviewed under this subsection.

"(2) Plan required.—Each agency shall carry out the periodic review required by paragraph (1) in accordance with a plan published by such agency in the Federal Register. Each such plan shall provide for the review under this subsection of each rule promulgated by the agency not later than 10 years after the date on which such rule was published as the final rule and, thereafter, not later than 10 years after the date on which such rule was last reviewed under this subsection. The agency may amend such plan at any time by publishing the revision in the Federal Register.

"(3) Annual publication.—Each year, each agency shall publish in the Federal Register a list of the rules to be reviewed by such agency under this subsection during the following year. The list shall include a brief description of each such rule and the need for and legal basis of such rule and shall invite public comment upon the determination to be made under this subsection with respect to such rule.

"(f) Judicial Review.—

"(1) In general.—For any rule subject to this section, an individual who is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of subsections (b) and (c) in accordance with chapter 7. Agency compliance with subsection (d) shall be judicially reviewable in connection with judicial review of subsection (b).

"(2) Jurisdiction.—Each court having jurisdiction to review such rule for compliance with section 553, or under any other provision of law, shall have jurisdiction to review any claims of noncompliance with 'subsections (b) and (c) in accordance with chapter 7. Agency compliance with subsection (d) shall be judicially reviewable in connection with judicial review of subsection (b).

"(3) Limitations.—

"(A) An individual may seek such review during the period beginning on the date of final agency action and ending 1 year later, except that where a provision of law requires that an action challenging a final agency action be commenced before the expiration of 1 year, such lesser period shall apply to an action for judicial review under this subsection.

"(B) In the case where an agency delays the issuance of a final privacy impact assessment pursuant to subsection (c), an action for judicial review under this section shall be filed not later than—

"(i) 1 year after the date the assessment is made available to the public; or

"(ii) where a provision of law requires that an action challenging a final agency regulation be commenced before the expiration of the 1-year period, the number of days specified in such provision of law that is after the date the assessment is made available to the public.

"(4) Relief.—In granting any relief in an action under this subsection, the court shall order the agency to take corrective action consistent with this section and chapter 7, including, but not limited to—

"(A) remanding the rule to the agency; and

"(B) deferring the enforcement of the rule against individuals, unless the court finds that continued enforcement of the rule is in the public interest.

"(5) Rule of construction.—Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law or to grant any other relief in addition to the requirements of this subsection.

"(6) Record of agency action.—In an action for the judicial review of a rule, the privacy impact assessment for such rule, including an assessment prepared or corrected pursuant to paragraph (4), shall constitute part of the entire record of agency action in connection with such review.

"(7) Exclusivity.—Compliance or noncompliance by an agency with the provisions of this section shall be subject to judicial review only in accordance with this subsection.

"(8) Savings clause.—Nothing in this subsection bars judicial review of any other impact statement or similar assessment required by any other law if judicial review of such statement or assessment is otherwise permitted by law.

"(g) Definition.—For purposes of this section, the term 'personally identifiable information' means information that can be used to identify an individual, including such individual's name, address, telephone number, photograph, social security number or other identifying information. It includes information about such individual's medical or financial condition.".

(c) Periodic Review Transition Provisions.—

(1) Initial plan.—For each agency, the plan required by subsection (e) of section 553a of title 5, United States Code (as added by subsection (a)), shall be published not later than 180 days after the date of the enactment of this Act.

(2) In the case of a rule promulgated by an agency before the date of the enactment of this Act, such plan shall provide for the periodic review of such rule before the expiration of the 10-year period beginning on the date of the enactment of this Act. For any such rule, the head of the agency may provide for a 1-year extension of such period if the head of the agency, before the expiration of the period, certifies in a statement published in the Federal Register that reviewing such rule before the expiration of the period is not feasible. The head of the agency may provide for additional 1-year extensions of the period pursuant to the preceding sentence, but in no event may the period exceed 15 years.

(d) Congressional Review.—Section 801(a)(1)(B) of title 5, United States Code, is amended—

(1) by redesignating clauses (iii) and (iv) as clauses (iv) and (v), respectively; and

(2) by inserting after clause (ii) the following new clause:

"(iii) the agency's actions relevant to section 553a;".

(e) Clerical Amendment.—The table of sections at the beginning of chapter 5 of title 5, United States Code, is amended by adding after the item relating to section 553 the following new item:

553a. Privacy impact assessment in rulemaking.".

SEC. 5092. CHIEF PRIVACY OFFICERS FOR AGENCIES WITH LAW ENFORCEMENT OR ANTI-TERRORISM FUNCTIONS.

(a) In General.—There shall be within each Federal agency with law enforcement or anti-terrorism functions a chief privacy officer, who shall have primary responsibility within that agency for privacy policy. The agency chief privacy officer shall be designated by the head of the agency.

(b) Responsibilities.—The responsibilities of each agency chief privacy officer shall include—

(1) ensuring that the use of technologies sustains, and does not erode, privacy protections relating to the use, collection, and disclosure of personally identifiable information;

(2) ensuring that personally identifiable information contained in systems of records is handled in full compliance with fair information practices as set out in section 552a of title 5, United States Code;

(3) evaluating legislative and regulatory proposals involving collection, use, and disclosure of personally identifiable information by the Federal Government;

(4) conducting a privacy impact assessment of proposed rules of the agency on the privacy of personally identifiable information, including the type of personally identifiable information collected and the number of people affected;

(5) preparing and submitting a report to Congress on an annual basis on activities of the agency that affect privacy, including complaints of privacy violations, implementation of section 552a of title 5, United States Code, internal controls, and other relevant matters;

(6) ensuring that the agency protects personally identifiable information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

(A) integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;

(B) confidentially, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information;

(C) availability, which means ensuring timely and reliable access to and use of that information; and

(D) authentication, which means utilizing digital credentials to assure the identity of users and validate their access; and

(7) advising the head of the agency and the Director of the Office of Management and Budget on information security and privacy issues pertaining to Federal Government information systems.

CHAPTER 2—MUTUAL AID AND LITIGATION MANAGEMENT

SEC. 5101. SHORT TITLE.

This chapter may be cited as the "Mutual Aid and Litigation Management Authorization Act of 2004".

SEC. 5102. MUTUAL AID AUTHORIZED.

(a) AUTHORIZATION TO ENTER INTO AGREEMENTS.—

(1) IN GENERAL.—The authorized representative of a State, locality, or the Federal Government may enter into an interstate mutual aid agreement or a mutual aid agreement with the Federal Government on behalf of the State, locality, or Federal Government under which, at the request of any party to the agreement, the other party to the agreement may—

(A) provide law enforcement, fire, rescue, emergency health and medical services, transportation, communications, public works and engineering, mass care, and resource support in an emergency or public service event occurring in the jurisdiction of the requesting party;

(B) provide other services to prepare for, mitigate, manage, respond to, or recover from an emergency or public service event occurring in the jurisdiction of the requesting party; and

(C) participate in training events occurring in the jurisdiction of the requesting party.

(b) LIABILITY AND ACTIONS AT LAW.—

(1) LIABILITY.—A responding party or its officers or employees shall be liable on account of any act or omission occurring while providing assistance or participating in a training event in the jurisdiction of a requesting party under a mutual aid agreement (including any act or omission arising from the maintenance or use of any equipment, facilities, or supplies in connection therewith), but only to the extent permitted under and in accordance with the laws and procedures of the State of the responding party and subject to any litigation management agreement entered into pursuant to section 5103.

(2) JURISDICTION OF COURTS.—

(A) IN GENERAL.—Subject to subparagraph (B) and any litigation management agreement entered into pursuant to section 5103, any action brought against a responding party or its officers or employees on account of an act or omission described in subsection (b)(1) may be brought only under the laws and procedures of the State of the responding party and only in the State courts or United States District Courts located therein.

(B) UNITED STATES AS PARTY.—If the United States is the party against whom an action described in paragraph (1) is brought, the action may be brought only in a United States District Court.

(c) WORKERS' COMPENSATION AND DEATH BENEFITS.—

(1) PAYMENT OF BENEFITS.—A responding party shall provide for the payment of workers' compensation and death benefits with respect to officers or employees of the party who sustain injuries or are killed while providing assistance or participating in a training event under a mutual aid agreement in the same manner and on the same terms as if the injury or death were sustained within the jurisdiction of the responding party.

(2) LIABILITY FOR BENEFITS.—No party shall be liable under the law of any State other than its own (or, in the case of the Federal Government, under any law other than Federal law) for the payment of workers' compensation and death benefits with respect to injured officers or employees of the party who sustain injuries or are killed while providing assistance or participating in a training event under a mutual aid agreement.

(d) LICENSES AND PERMITS.—Whenever any person holds a license, certificate, or other permit issued by any responding party evidencing the meeting of qualifications for professional, mechanical, or other skills, such person will be deemed licensed, certified, or permitted by the requesting party to provide assistance involving such skill under a mutual aid agreement.

(e) SCOPE.—Except to the extent provided in this section, the rights and responsibilities of the parties to a mutual aid agreement shall be as described in the mutual aid agreement.

(f) EFFECT ON OTHER AGREEMENTS.—Nothing in this section precludes any party from entering into supplementary mutual aid agreements with fewer than all the parties, or with another, or affects any other agreements already in force among any parties to such an agreement, including the Emergency Management Assistance Compact (EMAC) under Public Law 104–321.

(g) FEDERAL GOVERNMENT.—Nothing in this section may be construed to limit any other expressed or implied authority of any entity of the Federal Government to enter into mutual aid agreements.

(h) CONSISTENCY WITH STATE LAW.—A party may enter into a mutual aid agreement under this chapter only insofar as the agreement is in accord with State law.

SEC. 5103. LITIGATION MANAGEMENT AGREEMENTS.

(a) AUTHORIZATION TO ENTER INTO LITIGATION MANAGEMENT AGREEMENTS.—The authorized representative of a State or locality may enter into a litigation management agreement on behalf of the State or locality. Such litigation management agreements may provide that all claims against such Emergency Response Providers arising out of, relating to, or resulting from an act of terrorism when Emergency Response Providers from more than 1 State have acted in defense against, in response to, or recovery from such act shall be governed by the following provisions.

(b) FEDERAL CAUSE OF ACTION.—

(1) IN GENERAL.—There shall exist a Federal cause of action for claims against Emergency Response Providers arising out of, relating to, or resulting from an act of terrorism when Emergency Response Providers from more than 1 State have acted in defense against, in response to, or recovery from such act. As determined by the parties to a litigation management agreement, the substantive law for decision in any such action shall be—

(A) derived from the law, including choice of law principles, of the State in which such acts of terrorism occurred, unless such law is inconsistent with or preempted by Federal law; or

(B) derived from the choice of law principles agreed to by the parties to a litigation management agreement as described in the litigation management agreement, unless such principles are inconsistent with or preempted by Federal law.

(2) JURISDICTION.—Such appropriate district court of the United States shall have original and exclusive jurisdiction over all actions for any claim against Emergency Response Providers for loss of property, personal injury, or death arising out of, relating to, or resulting from an act of terrorism when Emergency Response Providers from more than 1 State have acted in defense against, in response to, or recovery from an act of terrorism.

(3) SPECIAL RULES.—In an action brought for damages that is governed by a litigation management agreement, the following provisions apply:

(A) PUNITIVE DAMAGES.—No punitive damages intended to punish or deter, exemplary damages, or other damages not intended to compensate a plaintiff for actual losses may be awarded, nor shall any party be liable for interest prior to the judgment.

(B) COLLATERAL SOURCES.—Any recovery by a plaintiff in an action governed by a litigation management agreement shall be reduced by the amount of collateral source compensation, if any, that the plaintiff has received or is entitled to receive as a result of such acts of terrorism.

(4) EXCLUSIONS.—Nothing in this section shall in any way limit the ability of any person to seek any form of recovery from any person, government, or other entity that—

(A) attempts to commit, knowingly participates in, aids and abets, or commits any act of terrorism, or any criminal act related to or resulting from such act of terrorism; or

(B) participates in a conspiracy to commit any such act of terrorism or any such criminal act.

SEC. 5104. ADDITIONAL PROVISIONS.

(a) NO ABROGATION OF OTHER IMMUNITIES.—Nothing in this chapter shall abrogate any constitutional, statutory, or common law immunities that any party may have.

(b) EXCEPTION FOR CERTAIN FEDERAL LAW ENFORCEMENT ACTIVITIES.—A mutual aid agreement or a litigation management agreement may not apply to law enforcement security operations at special events of national significance under section 3056(e) of title 18, United States Code, or to other law enforcement functions of the United States Secret Service.

(c) SECRET SERVICE.—Section 3056 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(g) The Secret Service shall be maintained as a distinct entity within the Department of Homeland Security and shall not be merged with any other department function. All personnel and operational elements of the United States Secret Service shall report to the Director of the Secret Service, who shall report directly to the Secretary of Homeland Security without being required to report through any other official of the Department.".

SEC. 5105. DEFINITIONS.

For purposes of this chapter, the following definitions apply:

(1) AUTHORIZED REPRESENTATIVE.—The term "authorized representative" means—

(A) in the case of the Federal Government, any individual designated by the President with respect to the executive branch, the Chief Justice of the United States with respect to the judicial branch, or the President pro Tempore of the Senate and Speaker of the House of Representatives with respect to the Congress, or their designees, to enter into a mutual aid agreement;

(B) in the case of a locality, the official designated by law to declare an emergency in and for the locality, or the official's designee;

(C) in the case of a State, the Governor or the Governor's designee.

(2) EMERGENCY.—The term "emergency" means a major disaster or emergency declared by the President, or a State of Emergency declared by an authorized representative of a State or locality, in response to which assistance may be provided under a mutual aid agreement.

(3) EMERGENCY RESPONSE PROVIDER.—The term "Emergency Response Provider" means any party to a litigation management agreement that meets the definition of "emergency response providers" under section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101), as amended by this Act, except that the term does not include any Federal personnel, agency, or authority.

(4) EMPLOYEE.—The term "employee" means, with respect to a party to a mutual aid agreement, the employees of the party, including its agents or authorized volunteers, who are committed to provide assistance under the agreement.

(5) LITIGATION MANAGEMENT AGREEMENT.—The term "litigation management agreement" means an agreement entered into pursuant to the authority granted under section 5103.

(6) LOCALITY.—The term "locality" means a county, city, or town.

(7) MUTUAL AID AGREEMENT.—The term "mutual aid agreement" means an agreement entered into pursuant to the authority granted under section 5102.

(8) PUBLIC SERVICE EVENT.—The term "public service event" means any undeclared emergency, incident, or situation in preparation for or response to which assistance may be provided under a mutual aid agreement.

(9) REQUESTING PARTY.—The term "requesting party" means, with respect to a mutual aid agreement, the party in whose jurisdiction assistance is provided, or a training event is held, under the agreement.

(10) RESPONDING PARTY.—The term "responding party" means, with respect to a mutual aid agreement, the party providing assistance, or participating in a training event, under the agreement, but does not include the requesting party.

(11) STATE.—The term "State" includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, and any political subdivision of any such place.

(12) TERRORISM.—The term "terrorism" means any activity that meets the definition of "terrorism" under section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101), as amended by this Act.

(13) TRAINING EVENT.—The term "training event" means an emergency and public service event-related exercise, test, or other activity using equipment and personnel to prepare for or simulate performance of any aspect of the giving or receiving of assistance during emergencies or public service events, but does not include an actual emergency or public service event.

Chapter 3—Miscellaneous Matters

SEC. 5131. ENHANCEMENT OF PUBLIC SAFETY COMMUNICATIONS INTEROPERABILITY.

(a) COORDINATION OF PUBLIC SAFETY INTEROPERABLE COMMUNICATIONS PROGRAMS.—

(1) PROGRAM.—The Secretary of Homeland Security, in consultation with the Secretary of Commerce and the Chairman of the Federal Communications Commission, shall establish a program to enhance public safety interoperable communications at all levels of government. Such program shall—

(A) establish a comprehensive national approach to achieving public safety interoperable communications;

(B) coordinate with other Federal agencies in carrying out subparagraph (A);

(C) develop, in consultation with other appropriate Federal agencies and State and local authorities, appropriate minimum capabilities for communications interoperability for Federal, State, and local public safety agencies;

(D) accelerate, in consultation with other Federal agencies, including the National Institute of Standards and Technology, the private sector, and nationally recognized standards organizations as appropriate, the development of national voluntary consensus standards for public safety interoperable communications;

(E) encourage the development and implementation of flexible and open architectures incorporating, where possible, technologies that currently are commercially available, with appropriate levels of security, for short-term and long-term solutions to public safety communications interoperability;

(F) assist other Federal agencies in identifying priorities for research, development, and testing and evaluation with regard to public safety interoperable communications;

(G) identify priorities within the Department of Homeland Security for research, development, and testing and evaluation with regard to public safety interoperable communications;

(H) establish coordinated guidance for Federal grant programs for public safety interoperable communications;

(I) provide technical assistance to State and local public safety agencies regarding planning, acquisition strategies, interoperability architectures, training, and other functions necessary to achieve public safety communications interoperability;

(J) develop and disseminate best practices to improve public safety communications interoperability; and

(K) develop appropriate performance measures and milestones to systematically measure the Nation's progress towards achieving public safety communications interoperability, including the development of national voluntary consensus standards.

(2) OFFICE FOR INTEROPERABILITY AND COMPATIBILITY.—

(A) ESTABLISHMENT OF OFFICE.—The Secretary may establish an Office for Interoperability and Compatibility to carry out this subsection.

(B) FUNCTIONS.—If the Secretary establishes such office, the Secretary shall, through such office—

(i) carry out Department of Homeland Security responsibilities and authorities relating to the SAFECOM Program; and

(ii) carry out subsection (c) (relating to rapid interoperable communications capabilities for high risk jurisdictions).

(3) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to advisory groups established and maintained by the Secretary for purposes of carrying out this subsection.

(b) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Secretary shall report to the Congress on Department of Homeland Security plans for accelerating the development of national voluntary consensus standards for public safety interoperable communications, a schedule of milestones for such development, and achievements of such development.

(c) RAPID INTEROPERABLE COMMUNICATIONS CAPABILITIES FOR HIGH RISK JURISDICTIONS.—The Secretary, in consultation with other relevant Federal, State, and local government agencies, shall provide technical, training, and other assistance as appropriate to support the rapid establishment of consistent, secure, and effective interoperable communications capabilities for emergency response providers in jurisdictions determined by the Secretary to be at consistently high levels of risk of terrorist attack.

(d) DEFINITIONS.—In this section:

(1) INTEROPERABLE COMMUNICATIONS.—The term "interoperable communications" means the ability of emergency response providers and relevant Federal, State, and local government agencies to communicate with each other as necessary, through a dedicated public safety network utilizing information technology systems and radio communications systems, and to exchange voice, data, or video with one another on demand, in real time, as necessary.

(2) EMERGENCY RESPONSE PROVIDERS.—The term "emergency response providers" has the meaning that term has under section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101), as amended by this Act.

(e) CLARIFICATION OF RESPONSIBILITY FOR INTEROPERABLE COMMUNICATIONS.—

(1) UNDER SECRETARY FOR EMERGENCY PREPAREDNESS AND RESPONSE.—Section 502(7) of the Homeland Security Act of 2002 (6 U.S.C. 312(7)) is amended—

(A) by striking "developing comprehensive programs for developing interoperative communications technology, and"; and

(B) by striking "such" and inserting "interoperable communications".

(2) OFFICE FOR DOMESTIC PREPAREDNESS.—Section 430(c) of such Act (6 U.S.C. 238(c)) is amended—

(A) in paragraph (7) by striking "and" after the semicolon;

(B) in paragraph (8) by striking the period and inserting "; and"; and

(C) by adding at the end the following:

"(9) helping to ensure the acquisition of interoperable communication technology by State and local governments and emergency response providers.".

SEC. 5132. SENSE OF CONGRESS REGARDING THE INCIDENT COMMAND SYSTEM.

(a) FINDINGS.—The Congress finds that—

(1) in Homeland Security Presidential Directive-5, the President directed the Secretary of Homeland Security to develop an incident command system to be known as the National Incident Management System (NIMS), and directed all Federal agencies to make the adoption of NIMS a condition for the receipt of Federal emergency preparedness assistance by States, territories, tribes, and local governments beginning in fiscal year 2005;

(2) in March 2004, the Secretary of Homeland Security established NIMS, which provides a unified structural framework for Federal, State, territorial, tribal, and local governments to ensure coordination of command, operations, planning, logistics, finance, and administration during emergencies involving multiple jurisdictions or agencies; and

(3) the National Commission on Terrorist Attacks Upon the United States strongly supports the adoption of NIMS by emergency response agencies nationwide, and the decision by the President to condition Federal emergency preparedness assistance upon the adoption of NIMS.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that all levels of government should adopt NIMS, and that the regular use of and training in NIMS by States, territories, tribes, and local governments should be a condition for receiving Federal preparedness assistance.

SEC. 5133. SENSE OF CONGRESS REGARDING UNITED STATES NORTHERN COMMAND PLANS AND STRATEGIES.

It is the sense of Congress that the Secretary of Defense should regularly assess the adequacy of United States Northern Command's plans and strategies with a view to ensuring that the United States Northern Command is prepared to respond effectively to all military and paramilitary threats within the United States.

The CHAIRMAN pro tempore. No amendment to the amendment in the nature of a substitute is in order except those printed in House Report 108-751. Each amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

The CHAIRMAN pro tempore (Mr. NETHERCUTT). It is now in order to consider Amendment No. 1 printed in House report 108-751.

AMENDMENT NO. 1 IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. MENENDEZ

Mr. MENENDEZ. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN pro tempore. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment No. 1 in the nature of a substitute offered by Mr. MENENDEZ:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "National Intelligence Reform Act of 2004".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

TITLE I—NATIONAL INTELLIGENCE AUTHORITY

Subtitle A—National Intelligence Authority

Sec. 101. National Intelligence Authority.

Sec. 102. National Intelligence Director.

Subtitle B—Responsibilities and Authorities of National Intelligence Director

Sec. 111. Provision of national intelligence.

Sec. 112. Responsibilities of National Intelligence Director.

Sec. 113. Authorities of National Intelligence Director.

Sec. 114. Enhanced personnel management.

Sec. 115. Security clearances.

Sec. 116. National Intelligence Reserve Corps.

Sec. 117. Appointment and termination of certain officials responsible for intelligence-related activities.

Sec. 118. Reserve for Contingencies of the National Intelligence Director.

Subtitle C—Office of the National Intelligence Director

Sec. 121. Office of the National Intelligence Director.

Sec. 122. Deputy national intelligence directors.

Sec. 123. National Intelligence Council.

Sec. 124. General Counsel of the National Intelligence Authority.

Sec. 125. Intelligence Comptroller.

Sec. 126. Officer for Civil Rights and Civil Liberties of the National Intelligence Authority.

Sec. 127. Privacy Officer of the National Intelligence Authority.

Sec. 128. Chief Information Officer of the National Intelligence Authority.

Sec. 129. Chief Human Capital Officer of the National Intelligence Authority.

Sec. 130. Chief Financial Officer of the National Intelligence Authority.

Sec. 131. National Counterintelligence Executive.

Subtitle D—Additional Elements of National Intelligence Authority

Sec. 141. Inspector General of the National Intelligence Authority.

Sec. 142. Ombudsman of the National Intelligence Authority.

Sec. 143. National Counterterrorism Center.

Sec. 144. National intelligence centers.

Subtitle E—Education and Training of Intelligence Community Personnel

Sec. 151. Framework for cross-disciplinary education and training.

Sec. 152. Intelligence Community Scholarship Program.

Subtitle F—Additional Authorities of National Intelligence Authority

Sec. 161. Use of appropriated funds.

Sec. 162. Acquisition and fiscal authorities.

Sec. 163. Personnel matters.

Sec. 164. Ethics matters.

TITLE II—OTHER IMPROVEMENTS OF INTELLIGENCE ACTIVITIES

Subtitle A—Improvements of Intelligence Activities

Sec. 201. Availability to public of certain intelligence funding information.

Sec. 202. Merger of Homeland Security Council into National Security Council.

Sec. 203. Joint Intelligence Community Council.

Sec. 204. Improvement of intelligence capabilities of the Federal Bureau of Investigation.

Sec. 205. Federal Bureau of Investigation Intelligence Career Service.

Sec. 206. Information sharing.

Subtitle B—Privacy and Civil Liberties

Sec. 211. Privacy and Civil Liberties Oversight Board.

Sec. 212. Privacy and civil liberties officers.

Subtitle C—Independence of Intelligence Agencies

Sec. 221. Independence of National Intelligence Director.

Sec. 222. Independence of intelligence.

Sec. 223. Independence of National Counterterrorism Center.

Sec. 224. Access of congressional committees to national intelligence.

Sec. 225. Communications with Congress.

TITLE III—MODIFICATIONS OF LAWS RELATING TO INTELLIGENCE COMMUNITY MANAGEMENT

Subtitle A—Conforming and Other Amendments

Sec. 301. Restatement and modification of basic authority on the Central Intelligence Agency.

Sec. 302. Conforming amendments relating to roles of National Intelligence Director and Director of the Central Intelligence Agency.

Sec. 303. Other conforming amendments

Sec. 304. Modifications of foreign intelligence and counterintelligence under National Security Act of 1947.

Sec. 305. Elements of intelligence community under National Security Act of 1947.

Sec. 306. Redesignation of National Foreign Intelligence Program as National Intelligence Program.

Sec. 307. Conforming amendment on coordination of budgets of elements of the intelligence community within the Department of Defense.

Sec. 308. Repeal of superseded authorities.

Sec. 309. Clerical amendments to National Security Act of 1947.

Sec. 310. Modification of authorities relating to National Counterintelligence Executive.

Sec. 311. Conforming amendment to Inspector General Act of 1978.

Sec. 312. Conforming amendment relating to Chief Financial Officer of the National Intelligence Authority.

Subtitle B—Transfers and Terminations

Sec. 321. Transfer of Office of Deputy Director of Central Intelligence for Community Management.

Sec. 322. Transfer of National Counterterrorism Executive.

Sec. 323. Transfer of Terrorist Threat Integration Center.

Sec. 324. Termination of certain positions within the Central Intelligence Agency.

Subtitle C—Other Transition Matters

Sec. 331. Executive Schedule matters.

Sec. 332. Preservation of intelligence capabilities.

Sec. 333. Reorganization.

Sec. 334. National Intelligence Director report on implementation of intelligence community reform.

Sec. 335. Comptroller General reports on implementation of intelligence community reform.

Sec. 336. General references.

Subtitle D—Effective Date

Sec. 341. Effective date.

Subtitle E—Other Matters

Sec. 351. Severability.

Sec. 352. Authorization of appropriations.

TITLE IV—INFORMATION SHARING

Sec. 401. Information sharing.

TITLE V—CONGRESSIONAL REFORM

Sec. 501. Findings.

Sec. 502. Reorganization of congressional jurisdiction.

TITLE VI—PRESIDENTIAL TRANSITION

Sec. 601. Presidential transition.

TITLE VII—THE ROLE OF DIPLOMACY, FOREIGN AID, AND THE MILITARY IN THE WAR ON TERRORISM

Sec. 701. Report on terrorist sanctuaries.
Sec. 702. Role of Pakistan in countering terrorism.
Sec. 703. Aid to Afghanistan.
Sec. 704. The United States-Saudi Arabia relationship.
Sec. 705. Efforts to combat Islamic terrorism by engaging in the struggle of ideas in the Islamic world.
Sec. 706. United States policy toward dictatorships.
Sec. 707. Promotion of United States values through broadcast media.
Sec. 708. Use of United States scholarship and exchange programs in the Islamic world.
Sec. 709. International Youth Opportunity Fund.
Sec. 710. Report on the use of economic policies to combat terrorism.
Sec. 711. Middle East Partnership Initiative.
Sec. 712. Comprehensive coalition strategy for fighting terrorism.
Sec. 713. Detention and humane treatment of captured terrorists.
Sec. 714. Proliferation of weapons of mass destruction.
Sec. 715. Financing of terrorism.

TITLE VIII—TERRORIST TRAVEL AND EFFECTIVE SCREENING

Sec. 801. Counterterrorist travel intelligence.
Sec. 802. Integrated screening system.
Sec. 803. Biometric entry and exit data system.
Sec. 804. Travel documents.
Sec. 805. Exchange of terrorist information.
Sec. 806. Minimum standards for identification-related documents.

TITLE IX—TRANSPORTATION SECURITY

Sec. 901. Definitions.
Sec. 902. National Strategy for Transportation Security.
Sec. 903. Use of watchlists for passenger air transportation screening.
Sec. 904. Enhanced passenger and cargo screening.

TITLE X—NATIONAL PREPAREDNESS

Sec. 1001. Homeland security assistance.
Sec. 1002. The incident command system.
Sec. 1003. National Capital Region Mutual Aid.
Sec. 1004. Assignment of spectrum for public safety.
Sec. 1005. Urban area communications capabilities.
Sec. 1006. Private sector preparedness.
Sec. 1007. Critical infrastructure and readiness assessments.
Sec. 1008. Report on Northern Command and defense of the United States homeland.

TITLE XI—PROTECTION OF CIVIL LIBERTIES

Sec. 1101. Privacy and Civil Liberties Oversight Board.
Sec. 1102. Privacy and Civil Liberties Officers.

SEC. 2. DEFINITIONS.

In this Act:

(1) The term "intelligence" includes foreign intelligence and counterintelligence.

(2) The term "foreign intelligence" means information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists.

(3) The term "counterintelligence" means information gathered, and activities conducted, to protect against espionage, other intelligence activities, sabotage, or assassinations conducted by or on behalf of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists.

(4) The term "intelligence community" includes the following:

(A) The National Intelligence Authority.

(B) The Central Intelligence Agency.

(C) The National Security Agency.

(D) The Defense Intelligence Agency.

(E) The National Geospatial-Intelligence Agency.

(F) The National Reconnaissance Office.

(G) Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs.

(H) The intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, and the Department of Energy.

(I) The Bureau of Intelligence and Research of the Department of State.

(J) The Office of Intelligence and Analysis of the Department of the Treasury.

(K) The elements of the Department of Homeland Security concerned with the analysis of intelligence information, including the Office of Intelligence of the Coast Guard.

(L) Such other elements of any department or agency as may be designated by the President, or designated jointly by the National Intelligence Director and the head of the department or agency concerned, as an element of the intelligence community.

(5) The terms "national intelligence" and "intelligence related to the national security"—

(A) each refer to intelligence which pertains to the interests of more than one department or agency of the Government; and

(B) do not refer to counterintelligence or law enforcement activities conducted by the Federal Bureau of Investigation except to the extent provided for in procedures agreed to by the National Intelligence Director and the Attorney General, or otherwise as expressly provided for in this title.

(6) The term "National Intelligence Program"—

(A)(i) refers to all national intelligence programs, projects, and activities of the elements of the intelligence community;

(ii) includes all programs, projects, and activities (whether or not pertaining to national intelligence) of the National Intelligence Authority, the Central Intelligence Agency, the National Security Agency, the National Geospatial-Intelligence Agency, the National Reconnaissance Office, the Office of Intelligence of the Federal Bureau of Investigation, and the Office of Information Analysis of the Department of Homeland Security; and

(iii) includes any other program, project, or activity of a department, agency, or element of the United States Government relating to national intelligence unless the National Intelligence Director and the head of the department, agency, or element concerned determine otherwise; but

(B) except as provided in subparagraph (A)(ii), does not refer to any program, project, or activity of the military departments, including any program, project, or activity of the Defense Intelligence Agency that is not part of the National Foreign Intelligence Program as of the date of the enactment of this Act, to acquire intelligence principally for the planning and conduct of joint or tactical military operations by the United States Armed Forces.

(7) The term "congressional intelligence committees" means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

TITLE I—NATIONAL INTELLIGENCE AUTHORITY

Subtitle A—National Intelligence Authority

SEC. 101. NATIONAL INTELLIGENCE AUTHORITY.

(a) INDEPENDENT ESTABLISHMENT.—There is hereby established as an independent establishment in the executive branch of government the National Intelligence Authority.

(b) COMPOSITION.—The National Intelligence Authority is composed of the following:

(1) The Office of the National Intelligence Director.

(2) The elements specified in subtitle D.

(3) Such other elements, offices, agencies, and activities as may be established by law or by the President or the National Intelligence Director.

(c) PRIMARY MISSIONS.—The primary missions of the National Intelligence Authority are as follows:

(1) To unify and strengthen the efforts of the intelligence community of the United States Government.

(2) To ensure the organization of the efforts of the intelligence community of the United States Government in a joint manner relating to intelligence missions rather than through intelligence collection disciplines.

(3) To provide for the operation of the National Counterterrorism Center and national intelligence centers under subtitle D.

(4) To eliminate barriers that impede coordination of the counterterrorism activities of the United States Government between foreign intelligence activities located abroad and foreign intelligence activities located domestically while ensuring the protection of civil liberties.

(5) To establish clear responsibility and accountability for counterterrorism and other intelligence matters relating to the national security of the United States.

(d) SEAL.—The National Intelligence Director shall have a seal for the National Intelligence Authority. The design of the seal is subject to the approval of the President. Judicial notice shall be taken of the seal.

SEC. 102. NATIONAL INTELLIGENCE DIRECTOR.

(a) NATIONAL INTELLIGENCE DIRECTOR.—There is a National Intelligence Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) INDIVIDUALS ELIGIBLE FOR NOMINATION.—Any individual nominated for appointment as National Intelligence Director shall have extensive national security expertise.

(c) PROHIBITION ON SIMULTANEOUS SERVICE IN OTHER CAPACITY IN INTELLIGENCE COMMUNITY.—The individual serving as National Intelligence Director may not, while so serving, serve in any capacity in any other element of the intelligence community, except to the extent that the individual serving as National Intelligence Director does so in an acting capacity.

(d) PRINCIPAL DUTIES AND RESPONSIBILITIES.—The National Intelligence Director shall—

(1) serve as head of the intelligence community in accordance with the provisions of this Act, the National Security Act of 1947 (50 U.S.C. 401 et seq.), and other applicable provisions of law;

(2) act as a principal adviser to the President for intelligence related to the national security;

(3) serve as the head of the National Intelligence Authority; and

(4) direct and oversee the National Intelligence Program.

(e) GENERAL RESPONSIBILITIES AND AUTHORITIES.—In carrying out the duties and responsibilities set forth in subsection (c), the National Intelligence Director shall have the responsibilities set forth in section 112 and the authorities set forth in section 113 and other applicable provisions of law.

Subtitle B—Responsibilities and Authorities of National Intelligence Director

SEC. 111. PROVISION OF NATIONAL INTELLIGENCE.

(a) IN GENERAL.—The National Intelligence Director shall be responsible for providing national intelligence—

(1) to the President;

(2) to the heads of other departments and agencies of the executive branch;

(3) to the Chairman of the Joint Chiefs of Staff and senior military commanders;

(4) to the Senate and House of Representatives and the committees thereof; and

(5) to such other persons or entities as the President shall direct.

(b) NATIONAL INTELLIGENCE.—Such national intelligence shall be timely, objective, independent of political considerations, and based upon all sources available to the intelligence community.

SEC. 112. RESPONSIBILITIES OF NATIONAL INTELLIGENCE DIRECTOR.

(a) IN GENERAL.—The National Intelligence Director shall—

(1) determine the annual budget for the intelligence and intelligence-related activities of the United States by—

(A) providing to the heads of the departments containing agencies or elements within the intelligence community and that have one or more programs, projects, or activities within the National Intelligence program, and to the heads of such agencies and elements, guidance for development the National Intelligence Program budget pertaining to such agencies or elements;

(B) developing and presenting to the President an annual budget for the National Intelligence Program after consultation with the heads of agencies or elements, and the heads of their respective departments, under subparagraph (A);

(C) providing budget guidance to each element of the intelligence community that does not have one or more program, project, or activity within the National Intelligence Program regarding the intelligence and intelligence-related activities of such element; and

(D) participating in the development by the Secretary of Defense of the annual budgets for the military intelligence programs, projects, and activities not included in the National Intelligence Program;

(2) manage and oversee the National Intelligence Program, including—

(A) the execution of funds within the National Intelligence Program;

(B) the reprogramming of funds appropriated or otherwise made available to the National Intelligence Program; and

(C) the transfer of funds and personnel under the National Intelligence Program;

(3) establish the requirements and priorities to govern the collection, analysis, and dissemination of national intelligence by elements of the intelligence community;

(4) establish collection and analysis requirements for the intelligence community, determine collection and analysis priorities, issue and manage collection and analysis tasking, and resolve conflicts in the tasking of elements of the intelligence community within the National Intelligence Program, except as otherwise agreed with the Secretary of Defense pursuant to the direction of the President;

(5) provide advisory tasking on the collection of intelligence to elements of the United States Government having information collection capabilities that are not elements of the intelligence community;

(6) manage and oversee the National Counterterrorism Center under section 143, and establish, manage, and oversee national intelligence centers under section 144;

(7) establish requirements and priorities for foreign intelligence information to be collected under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), and provide assistance to the Attorney General to ensure that information derived from electronic surveillance or physical searches under that Act is disseminated so it may be used efficiently and effectively for foreign intelligence purposes, except that the Director shall have no authority to direct, manage, or undertake electronic surveillance or physical search operations pursuant to that Act unless otherwise authorized by statute or Executive order;

(8) develop and implement, in consultation with the heads of other agencies or elements of the intelligence community, and the heads of their respective departments, personnel policies and programs applicable to the intelligence community that—

(A) encourage and facilitate assignments and details of personnel to the National Counterterrorism Center under section 143, to national intelligence centers under section 144, and between elements of the intelligence community;

(B) set standards for education, training, and career development of personnel of the intelligence community;

(C) encourage and facilitate the recruitment and retention by the intelligence community of highly qualified individuals for the effective conduct of intelligence activities;

(D) ensure that the personnel of the intelligence community is sufficiently diverse for purposes of the collection and analysis of intelligence through the recruitment and training of women, minorities, and individuals with diverse ethnic, cultural, and linguistic backgrounds;

(E) make service in more than one element of the intelligence community a condition of promotion to such positions within the intelligence community as the Director shall specify;

(F) ensure the effective management of intelligence community personnel who are responsible for intelligence community-wide matters;

(G) provide for the effective management of human capital within the intelligence community, including—

(i) the alignment of human resource policies and programs of the elements of the intelligence community with the missions, goals, and organizational objectives of such elements and of the intelligence community overall;

(ii) the assessment of workforce characteristics and future needs and the establishment of workforce development strategies to meet those needs based on relevant organizational missions and strategic plans;

(iii) the sustainment of a culture that encourages and allows for the development of a high performing workforce; and

(iv) the alignment of expectations for personnel performance with relevant organizational missions and strategic plans;

(H) are consistent with the public employment principles of merit and fitness set forth under section 2301 of title 5, United States Code; and

(I) include the enhancements required under section 114;

(9) promote and evaluate the utility of national intelligence to consumers within the United States Government;

(10) ensure that appropriate officials of the United States Government and other appropriate individuals have access to a variety of intelligence assessments and analytical views;

(11) protect intelligence sources and methods from unauthorized disclosure;

(12) establish requirements and procedures for the classification of intelligence information and for access to classified intelligence information;

(13) establish requirements and procedures for the dissemination of classified information by elements of the intelligence community;

(14) establish intelligence reporting guidelines that maximize the dissemination of information while protecting intelligence sources and methods;

(15) develop, in consultation with the heads of appropriate departments and agencies of the United States Government, an integrated communications network that provides interoperable communications capabilities among all elements of the intelligence community and such other entities and persons as the Director considers appropriate;

(16) establish standards for information technology and communications for the intelligence community;

(17) ensure that the intelligence community makes efficient and effective use of open-source information and analysis;

(18) ensure compliance by elements of the intelligence community with the Constitution and all laws, regulations, Executive orders, and implementing guidelines of the United States applicable to the intelligence and intelligence-related activities of the United States Government, including the provisions of the Constitution and all laws, regulations, Executive orders, and implementing guidelines of the United States applicable to the protection of the privacy and civil liberties of United States persons;

(19) eliminate waste and unnecessary duplication within the intelligence community; and

(20) perform such other functions as the President may direct.

(b) UNIFORM PROCEDURES FOR SENSITIVE COMPARTMENTED INFORMATION.—The President, acting through the National Intelligence Director, shall establish uniform standards and procedures for the grant to sensitive compartmented information in accordance with section 115.

(c) PERFORMANCE OF COMMON SERVICES.—(1) The National Intelligence Director shall, in consultation with the heads of departments and agencies of the United States Government containing elements within the intelligence community and with the Director of the Central Intelligence Agency, direct and coordinate the performance by the elements of the intelligence community within the

National Intelligence Program of such services as are of common concern to the intelligence community, which services the National Intelligence Director determines can be more efficiently accomplished in a consolidated manner.

(2) The services performed under paragraph (1) shall include research and development on technology for use in national intelligence missions.

(d) REGULATIONS.—The National Intelligence Director may prescribe regulations relating to the discharge and enforcement of the responsibilities of the Director under this section.

SEC. 113. AUTHORITIES OF NATIONAL INTELLIGENCE DIRECTOR.

(a) ACCESS TO INTELLIGENCE.—Unless otherwise directed by the President, the National Intelligence Director shall have access to all intelligence related to the national security which is collected by any department, agency, or other element of the United States Government.

(b) DETERMINATION OF BUDGETS FOR NIP AND OTHER INTELLIGENCE ACTIVITIES.—The National Intelligence Director shall determine the annual budget for the intelligence and intelligence-related activities of the United States Government under section 112(a)(1) by—

(1) providing to the heads of the departments containing agencies or elements within the intelligence community and that have one or more programs, projects, or activities within the National Intelligence program, and to the heads of such agencies and elements, guidance for development the National Intelligence Program budget pertaining to such agencies or elements;

(2) developing and presenting to the President an annual budget for the National Intelligence Program after consultation with the heads of agencies or elements, and the heads of their respective departments, under paragraph (1), including, in furtherance of such budget, the review, modification, and approval of budgets of the agencies or elements of the intelligence community with one or more programs, projects, or activities within the National Intelligence Program utilizing the budget authorities in subsection (c)(1);

(3) providing guidance on the development of annual budgets for each element of the intelligence community that does not have any program, project, or activity within the National Intelligence Program utilizing the budget authorities in subsection (c)(2);

(4) participating in the development by the Secretary of Defense of the annual budget for military intelligence programs and activities outside the National Intelligence Program;

(4) receiving the appropriations for the National Intelligence Program as specified in subsection (d) and allotting and allocating funds to agencies and elements of the intelligence community; and

(5) managing and overseeing the execution by the agencies or elements of the intelligence community, and, if necessary, the modification of the annual budget for the National Intelligence Program, including directing the reprogramming and transfer of funds, and the transfer of personnel, among and between elements of the intelligence community within the National Intelligence Program utilizing the authorities in subsections (f) and (g).

(c) BUDGET AUTHORITIES.—(1)(A) In developing and presenting an annual budget for the elements of the intelligence community within the National Intelligence Program under subsection (b)(1), the National Intelligence Director shall coordinate, prepare, and present to the President the annual budgets of those elements, in consultation with the heads of those elements.

(B) If any portion of the budget for an element of the intelligence community within the National Intelligence Program is prepared outside the Office of the National Intelligence Director, the Director—

(i) shall approve such budget before submission to the President; and

(ii) may require modifications of such budget to meet the requirements and priorities of the Director before approving such budget under clause (i).

(C) The budget of an agency or element of the intelligence community with one or more programs, projects, or activities within the National Intelligence Program may not be provided to the President unless the Director has first approved such budget.

(2)(A) The Director shall provide guidance for the development of the annual budgets for each agency or element of the intelligence community that does not have any program, project, or activity within the National Intelligence Program.

(B) The heads of the agencies or elements of the intelligence community, and the heads of their respective departments, referred to in subparagraph (A) shall coordinate closely with the Director in the development of the budgets of such agencies or elements, before the submission of their recommendations on such budgets to the President.

(d) JURISDICTION OF FUNDS UNDER NIP.—(1) Notwithstanding any other provision of law and consistent with section 504 of the National Security Act of 1947 (50 U.S.C. 414), any amounts appropriated or otherwise made available for the National Intelligence Program shall be appropriated to the National Intelligence Authority and, pursuant to subsection (e), under the direct jurisdiction of the National Intelligence Director.

(2) The Director shall manage and oversee the execution by each element of the intelligence community of any amounts appropriated or otherwise made available to such element under the National Intelligence Program.

(e) ACCOUNTS FOR ADMINISTRATION OF NIP FUNDS.—(1) The Secretary of the Treasury shall, in consultation with the National Intelligence Director, establish accounts for the funds under the jurisdiction of the Director under subsection (d) for purposes of carrying out the responsibilities and authorities of the Director under this Act with respect to the National Intelligence Program.

(2) The National Intelligence Director shall—

(A) control and manage the accounts established under paragraph (1); and

(B) with the concurrence of the Director of the Office of Management and Budget, establish procedures governing the use (including transfers and reprogrammings) of funds in such accounts.

(3)(A) To the extent authorized by law, a certifying official shall follow the procedures established under paragraph (2)(B) with regard to each account established under paragraph (1). Disbursements from any such account shall only be made against a valid obligation of such account.

(B) In this paragraph, the term "certifying official', with respect to an element of the intelligence community, means an employee of the element who has responsibilities specified in section 3528(a) of title 31, United States Code.

(4) The National Intelligence Director shall allot funds deposited in an account established under paragraph (1) directly to the head of the elements of the intelligence community concerned in accordance with the procedures established under paragraph (2)(B).

(5) Each account established under paragraph (1) shall be subject to chapters 13 and 15 of title 31, United States Code, other than sections 1503 and 1556 of that title.

(6) Nothing in this subsection shall be construed to impair or otherwise affect the authority granted by subsection (g)(3) or by section 5 or 8 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f, 403j).

(f) ROLE IN REPROGRAMMING OR TRANSFER OF NIP FUNDS BY ELEMENTS OF INTELLIGENCE COMMUNITY.—(1) No funds made available under the National Intelligence Program may be reprogrammed or transferred by any agency or element of the intelligence community without the prior approval of the National Intelligence Director except in accordance with procedures issued by the Director.

(2) The head of the department concerned shall consult with the Director before reprogramming or transferring funds appropriated or otherwise made available to an agency or element of the intelligence community that does not have any program, project, or activity within the National Intelligence Program.

(3) The Director shall, before reprogramming funds appropriated or otherwise made available for an element of the intelligence community within the National Intelligence Program, consult with the head of the department or agency having jurisdiction over such element regarding such reprogramming.

(4)(A) The Director shall consult with the appropriate committees of Congress regarding modifications of existing procedures to expedite the reprogramming of funds within the National Intelligence Program.

(B) Any modification of procedures under subparagraph (A) shall include procedures for the notification of the appropriate committees of Congress of any objection raised by the head of a department or agency to a reprogramming proposed by the Director as a result of consultations under paragraph (3).

(g) TRANSFER OR REPROGRAMMING OF FUNDS AND TRANSFER OF PERSONNEL WITHIN NIP.—(1) In addition to any other authorities available under law for such purposes, the National Intelligence Director, with the approval of the Director of the Office of Management and Budget and after consultation with the heads of the departments containing agencies or elements within the intelligence community to the extent their subordinate agencies or elements are affected, with the heads of such subordinate agencies or elements, and with the Director of the Central Intelligence Agency to the extent the Central Intelligence Agency is affected, may—

(A) transfer or reprogram funds appropriated for a program within the National Intelligence Program to another such program;

(B) review, and approve or disapprove, any proposal to transfer or reprogram funds from appropriations that are not for the National Intelligence Program to appropriations for the National Intelligence Program;

(C) in accordance with procedures to be developed by the National Intelligence Director, transfer personnel of the intelligence community funded through the National Intelligence Program from one element of the intelligence community to another element of the intelligence community; and

(D) in accordance with procedures to be developed by the National Intelligence Director and the heads of the departments and agencies concerned, transfer personnel of the intelligence community not funded through the National Intelligence Program from one element of the intelligence community to another element of the intelligence community.

(2) A transfer of funds or personnel may be made under this subsection only if—

(A) the funds or personnel are being transferred to an activity that is a higher priority intelligence activity;

(B) the transfer does not involve a transfer of funds to the Reserve for Contingencies of the National Intelligence Director; or

(C) the transfer does not exceed applicable ceilings established in law for such transfers.

(3) Funds transferred under this subsection shall remain available for the same period as the appropriations account to which transferred.

(4) Any transfer of funds under this subsection shall be carried out in accordance with existing procedures applicable to reprogramming notifications for the appropriate congressional committees. Any proposed transfer for which notice is given to the appropriate congressional committees shall be accompanied by a report explaining the nature of the proposed transfer and how it satisfies the requirements of this subsection. In addition, the congressional intelligence committees shall be promptly notified of any transfer of funds made pursuant to this subsection in any case in which the transfer would not have otherwise required reprogramming notification under procedures in effect as of October 24, 1992.

(5)(A) The National Intelligence Director shall promptly submit to the appropriate committees of Congress a report on any transfer of personnel made pursuant to this subsection. The Director shall include in any such report an explanation of the nature of the transfer and how it satisfies the requirements of this subsection.

(B) In this paragraph, the term "appropriate committees of Congress" means—

(i)(I) the Committee on Appropriations and the Select Committee on Intelligence of the Senate; and

(II) the Committee on Appropriations and the Permanent Select Committee on Intelligence of the House of Representatives;

(ii) in the case of a transfer of personnel to or from the Department of Defense—

(I) the committees and select committees referred to in clause (i);

(II) the Committee on Armed Services of the Senate; and

(III) the Committee on Armed Services of the House of Representatives;

(iii) in the case of a transfer of personnel to or from the Federal Bureau of Investigation—

(I) the committees and select committees referred to in clause (i);

(II) the Committee on the Judiciary of the Senate; and

(III) the Committee on the Judiciary of the House of Representatives; and

(iv) in the case of a transfer of personnel to or from the Department of Homeland Security—

(I) the committees and select committees referred to in clause (i);

(II) the Committee on Governmental Affairs of the Senate; and

(III) the Select Committee on Homeland Security of the House of Representatives.

(h) INFORMATION TECHNOLOGY AND COMMUNICATIONS.—(1) In conforming with section 205, in carrying out section 112(a)(16), the National Intelligence Director shall—

(A) establish standards for information technology and communications across the intelligence community;

(B) develop an integrated information technology network and enterprise architecture for the intelligence community, including interface standards for interoperability to enable automated information-sharing among elements of the intelligence community;

(C) maintain an inventory of critical information technology and communications systems, and eliminate unnecessary or duplicative systems;

(D) establish contingency plans for the intelligence community regarding information technology and communications; and

(E) establish policies, doctrine, training, and other measures necessary to ensure that the intelligence community develops an integrated information technology and communications network that ensures information-sharing.

(2) Consistent with section 205, the Director shall take any action necessary, including the setting of standards for information technology and communications across the intelligence community, to develop an integrated information technology and communications network that ensures information-sharing across the intelligence community.

(i) COORDINATION WITH FOREIGN GOVERNMENTS.—In a manner consistent with section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927), the National Intelligence Director shall oversee and direct the Director of the Central Intelligence Agency in coordinating, under section 103(f) of the National Security Act of 1947, the relationships between elements of the intelligence community and the intelligence or security services of foreign governments on all matters involving intelligence related to the national security or involving intelligence acquired through clandestine means.

(j) OPEN SOURCE INFORMATION COLLECTION.—The National Intelligence Director shall establish and maintain within the intelligence community an effective and efficient open-source information collection capability.

(k) ACCESS TO INFORMATION.—Except as otherwise directed by the President, the head of each element of the intelligence community shall promptly provide the National Intelligence Director such information in the possession or under the control of such element as the Director may request in order to facilitate the exercise of the authorities and responsibilities of the Director under this Act.

SEC. 114. ENHANCED PERSONNEL MANAGEMENT.

(a) REWARDS FOR SERVICE IN CERTAIN POSITIONS.—(1) The National Intelligence Director shall prescribe regulations to provide incentives for service on the staff of the national intelligence centers, on the staff of the National Counterterrorism Center, and in other positions in support of the intelligence community management functions of the Director.

(2) Incentives under paragraph (1) may include financial incentives, bonuses, and such other awards and incentives as the Director considers appropriate.

(b) ENHANCED PROMOTION FOR SERVICE UNDER NID.—Notwithstanding any other provision of law, the National Intelligence Director shall ensure that personnel of an element of the intelligence community who are assigned or detailed to service under the National Intelligence Director shall be promoted at rates equivalent to or better than personnel of such element who are not so assigned or detailed.

(c) JOINT CAREER MATTERS.—(1) In carrying out section 112(a)(8), the National Intelligence Director shall prescribe mechanisms to facilitate the rotation of personnel of the intelligence community through various elements of the intelligence community in the course of their careers in order to facilitate the widest possible understanding by such personnel of the variety of intelligence requirements, methods, and disciplines.

(2) The mechanisms prescribed under paragraph (1) may include the following:

(A) The establishment of special occupational categories involving service, over the course of a career, in more than one element of the intelligence community.

(B) The provision of rewards for service in positions undertaking analysis and planning of operations involving two or more elements of the intelligence community.

(C) The establishment of requirements for education, training, service, and evaluation that involve service in more than one element of the intelligence community.

(3) It is the sense of Congress that the mechanisms prescribed under this subsection should, to the extent practical, seek to duplicate within the intelligence community the joint officer management policies established by the Goldwater Nichols Department of Defense Reorganization Act of 1986 (Public Law 99-433) and the amendments on joint officer management made by that Act.

SEC. 115. SECURITY CLEARANCES.

(a) IN GENERAL.—The President, in consultation with the National Intelligence Director, the department, agency, or element selected under (b), and other appropriate officials shall—

(1) establish uniform standards and procedures for the grant of access to classified information for employees and contractor personnel of the United States Government who require access to such information;

(2) ensure the consistent implementation of the standards and procedures established under paragraph (1) throughout the departments, agencies, and elements of the United States Government and under contracts entered into by such departments, agencies, and elements;

(3) ensure that an individual who is granted or continued eligibility for access to classified information is treated by each department, agency, or element of the executive branch as eligible for access to classified information at that level for all purposes of each such department, agency, or element, regardless of which department, agency, or element of the executive branch granted or continued the eligibility of such individual for access to classified information;

(4) establish uniform requirements and standards, including for security questionnaires, financial disclosure requirements, and standards for administering polygraph examinations, to be utilized for the performance of security clearance investigations, including by the contractors conducting such investigations; and

(5) ensure that the database established under subsection (b)(2)(B) meets the needs of the intelligence community.

(b) PERFORMANCE OF SECURITY CLEARANCE INVESTIGATIONS.—(1) Not later than 45 days after the date of the enactment of this Act, the President shall select a single department, agency, or element of the executive branch to conduct all security clearance investigations of employees and contractor personnel of the United States Government who require access to classified information and to provide and maintain all security clearances of such employees and contractor personnel.

(2) The department, agency, or element selected under paragraph (1) shall—

(A) take all necessary actions to carry out the requirements of this section, including entering into a memorandum of understanding with any agency carrying out responsibilities relating to security clearances or security clearance investigations before the date of the enactment of this Act;

(B) as soon as practicable, establish and maintain a single database for tracking security clearance applications, security clearance investigations, and determinations of eligibility for security clearances, which database shall incorporate applicable elements of similar databases in existence on the date of the enactment of this Act; and

(C) ensure that security clearance investigations are conducted in accordance with uniform standards and requirements established under subsection (a)(4), including uniform security questionnaires and financial disclosure requirements.

(c) ADJUDICATION AND GRANT OF SECURITY CLEARANCES.—(1) Each agency that adjudicates and grants security clearances as of the date of the enactment of this Act may continue to adjudicate and grant security clearances after that date.

(2) Each agency that adjudicates and grants security clearances shall specify to the department, agency, or element selected under subsection (b) the level of security clearance investigation required for an individual under its jurisdiction.

(3) Upon granting or continuing eligibility for access to classified information to an individual under its jurisdiction, an agency that adjudicates and grants security clearances shall submit to the department, agency, or element selected under subsection (b) notice of that action, including the level of access to classified information granted.

(d) UTILIZATION OF PERSONNEL.—There shall be transferred to the department, agency, or element selected under subsection (b) any personnel of any executive agency whose sole function as of the date of the enactment of this Act is the performance of security clearance investigations.

(e) TRANSITION.—The President shall take appropriate actions to ensure that the performance of security clearance investigations under this section commences not later than one year after the date of the enactment of this Act.

SEC. 116. NATIONAL INTELLIGENCE RESERVE CORPS.

(a) ESTABLISHMENT.—The National Intelligence Director may provide for the establishment and training of a National Intelligence Reserve Corps (in this section referred to as "National Intelligence Reserve Corps") for the temporary reemployment on a voluntary basis of former employees of elements of the intelligence community during periods of emergency, as determined by the Director.

(b) ELIGIBLE INDIVIDUALS.—An individual may participate in the National Intelligence Reserve Corps only if the individual previously served as a full time employee of an element of the intelligence community.

(c) LIMITATION ON MEMBERSHIP.—The total number of individuals who are members of the National Intelligence Reserve Corps at any given time may not exceed 200 individuals.

(d) TERMS OF PARTICIPATION.—The National Intelligence Director shall prescribe the terms and conditions under which eligible individuals may participate in the National Intelligence Reserve Corps.

(e) EXPENSES.—The National Intelligence Director may provide members of the National Intelligence Reserve Corps transportation and per diem in lieu of subsistence for purposes of participating in any training that relates to service as a member of the Reserve Corps.

(f) TREATMENT OF ANNUITANTS.—(1) If an annuitant receiving an annuity from the Civil Service Retirement and Disability Fund becomes temporarily reemployed pursuant to this section, such annuity shall not be discontinued thereby.

(2) An annuitant so reemployed shall not be considered an employee for the purposes of chapter 83 or 84 of title 5, United States Code.

(g) TREATMENT UNDER NATIONAL INTELLIGENCE AUTHORITY PERSONNEL CEILING.—A member of the National Intelligence Reserve Corps who is reemployed on a temporary basis pursuant to this section shall not count against any personnel ceiling applicable to the National Intelligence Authority.

SEC. 117. APPOINTMENT AND TERMINATION OF CERTAIN OFFICIALS RESPONSIBLE FOR INTELLIGENCE-RELATED ACTIVITIES.

(a) RECOMMENDATION OF NID IN CERTAIN APPOINTMENT.—In the event of a vacancy in the position of Director of the Central Intelligence Agency, the National Intelligence Director shall recommend to the President an individual for nomination to fill the vacancy.

(b) CONCURRENCE OF SECRETARY OF DEFENSE IN CERTAIN APPOINTMENTS RECOMMENDED BY NID.—(1) In the event of a vacancy in a position referred to in paragraph (2), the National Intelligence Director shall obtain the concurrence of the Secretary of Defense before recommending to the President an individual for nomination to fill such vacancy. If the Secretary does not concur in the recommendation, the Director may make the recommendation to the President without the concurrence of the Secretary, but shall include in the recommendation a statement that the Secretary does not concur in the recommendation.

(2) Paragraph (1) applies to the following positions:

(A) The Director of the National Security Agency.

(B) The Director of the National Reconnaissance Office.

(C) The Director of the National Geospatial-Intelligence Agency.

(c) CONCURRENCE OF NID IN CERTAIN APPOINTMENTS.—(1) In the event of a vacancy in a position referred to in paragraph (2), the head of the department or agency having jurisdiction over the position shall obtain the concurrence of the National Intelligence Director before appointing an individual to fill the vacancy or recommending to the President an individual to be nominated to fill the vacancy. If the Director does not concur in the recommendation, the head of the department or agency concerned may fill the vacancy or make the recommendation to the President (as the case may be) without the concurrence of the Director, but shall notify the President that the Director does not concur in appointment or recommendation (as the case may be).

(2) Paragraph (1) applies to the following positions:

(A) The Under Secretary of Defense for Intelligence.

(B) The Assistant Secretary of Homeland Security for Information Analysis.

(C) The Director of the Defense Intelligence Agency.

(D) The Executive Assistant Director for Intelligence of the Federal Bureau of Investigation.

(d) RECOMMENDATION OF NID ON TERMINATION OF SERVICE.—(1) The National Intelligence Director may recommend to the President or the head of the department or agency concerned the termination of service of any individual serving in any position covered by this section.

(2) In the event the Director intends to recommend to the President the termination of service of an individual under paragraph (1), the Director shall seek the concurrence of the head of the department or agency concerned. If the head of the department or agency concerned does not concur in the recommendation, the Director may make the recommendation to the President without the concurrence of the head of the department or agency concerned, but shall notify the President that the head of the department or agency concerned does not concur in the recommendation.

SEC. 118. RESERVE FOR CONTINGENCIES OF THE NATIONAL INTELLIGENCE DIRECTOR.

(a) ESTABLISHMENT.—There is hereby established on the books of the Treasury an account to be known as the Reserve for Contingencies of the National Intelligence Director.

(b) ELEMENTS.—The Reserve shall consist of the following elements:

(1) Amounts authorized to be appropriated to the Reserve.

(2) Any amounts authorized to be transferred to or deposited in the Reserve by law.

(c) AVAILABILITY.—Amounts in the Reserve shall be available for such purposes as are provided by law.

(d) TRANSFER OF FUNDS OF RESERVE FOR CONTINGENCIES OF CIA.—There shall be transferred to the Reserve for Contingencies of the National Intelligence Director all unobligated balances of the Reserve for Contingencies of the Central Intelligence Agency as of the date of the enactment of this Act.

Subtitle C—Office of the National Intelligence Director

SEC. 121. OFFICE OF THE NATIONAL INTELLIGENCE DIRECTOR.

(a) OFFICE OF NATIONAL INTELLIGENCE DIRECTOR.—There is within the National Intelligence Authority an Office of the National Intelligence Director.

(b) FUNCTION.—The function of the Office of the National Intelligence Director is to assist the National Intelligence Director in carrying out the duties and responsibilities of the Director under this Act, the National Security Act of 1947 (50 U.S.C. 401 et seq.), and other applicable provisions of law, and to carry out such other duties as may be prescribed by the President or by law.

(c) COMPOSITION.—The Office of the National Intelligence Director is composed of the following:

(1) The Principal Deputy National Intelligence Director.

(2) Any Deputy National Intelligence Director appointed under section 122(b).

(3) The National Intelligence Council.

(4) The General Counsel of the National Intelligence Authority.

(5) The Intelligence Comptroller.

(6) The Officer for Civil Rights and Civil Liberties of the National Intelligence Authority.

(7) The Privacy Officer of the National Intelligence Authority.

(8) The Chief Information Officer of the National Intelligence Authority.

(9) The Chief Human Capital Officer of the National Intelligence Authority.

(10) The Chief Financial Officer of the National Intelligence Authority.

(11) The National Counterintelligence Executive (including the Office of the National Counterintelligence Executive).

(12) Such other offices and officials as may be established by law or the Director may establish or designate in the Office.

(d) STAFF.—(1) To assist the National Intelligence Director in fulfilling the duties and responsibilities of the Director, the Director shall employ and utilize in the Office of the National Intelligence Director a professional staff having an expertise in matters relating to such duties and responsibilities, and may establish permanent positions and appropriate rates of pay with respect to that staff.

(2) The staff of the Office of the National Intelligence Director under paragraph (1) shall include the staff of the Office of the Deputy Director of Central Intelligence for Community Management that is transferred to the Office of the National Intelligence Director under section 321.

(e) PROHIBITION ON CO-LOCATION WITH OTHER ELEMENTS OF INTELLIGENCE COMMUNITY.—Commencing as of October 1, 2006, the Office of the National Intelligence Director may not be co-located with any other element of the intelligence community.

SEC. 122. DEPUTY NATIONAL INTELLIGENCE DIRECTORS.

(a) PRINCIPAL DEPUTY NATIONAL INTELLIGENCE DIRECTOR.—(1) There is a Principal Deputy National Intelligence Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) In the event of a vacancy in the position of Principal Deputy National Intelligence Director, the National Intelligence Director shall recommend to the President an individual for appointment as Principal Deputy National Intelligence Director.

(3) Any individual nominated for appointment as Principal Deputy National Intelligence Director shall have extensive national security experience and management expertise.

(4) The individual serving as Principal Deputy National Intelligence Director may not, while so serving, serve in any capacity in any other element of the intelligence community, except to the extent that the individual serving as Principal Deputy National Intelligence Director is doing so in an acting capacity.

(5) The Principal Deputy National Intelligence Director shall assist the National Intelligence Director in carrying out the duties and responsibilities of the Director.

(6) The Principal Deputy National Intelligence Director shall act for, and exercise the powers of, the National Intelligence Director during the absence or disability of the National Intelligence Director or during a vacancy in the position of National Director of Intelligence.

(b) DEPUTY NATIONAL INTELLIGENCE DIRECTORS.—(1) There may be not more than four Deputy National Intelligence Directors who shall be appointed by the President.

(2) In the event of a vacancy in any position of Deputy National Intelligence Director established under this subsection, the National Intelligence Director shall recommend to the President an individual for appointment to such position.

(3) Each Deputy National Intelligence Director appointed under this subsection shall have such duties, responsibilities, and authorities as the National Intelligence Director may assign or are specified by law.

SEC. 123. NATIONAL INTELLIGENCE COUNCIL.

(a) NATIONAL INTELLIGENCE COUNCIL.—There is a National Intelligence Council.

(b) COMPOSITION.—(1) The National Intelligence Council shall be composed of senior analysts within the intelligence community and substantive experts from the public and private sector, who shall be appointed by, report to, and serve at the pleasure of, the National Intelligence Director.

(2) The Director shall prescribe appropriate security requirements for personnel appointed from the private sector as a condition of service on the Council, or as contractors of the Council or employees of such contractors, to ensure the protection of intelligence sources and methods while avoiding, wherever possible, unduly intrusive requirements which the Director considers to be unnecessary for this purpose.

(c) DUTIES AND RESPONSIBILITIES.—(1) The National Intelligence Council shall—

(A) produce national intelligence estimates for the United States Government, including alternative views held by elements of the intelligence community and other information as specified in paragraph (2);

(B) evaluate community-wide collection and production of intelligence by the intelligence community and the requirements and resources of such collection and production; and

(C) otherwise assist the National Intelligence Director in carrying out the responsibilities of the Director under section 111.

(2) The National Intelligence Director shall ensure that the Council satisfies the needs of policymakers and other consumers of intelligence by ensuring that each national intelligence estimate under paragraph (1)—

(A) states separately, and distinguishes between, the intelligence underlying such estimate and the assumptions and judgments of analysts with respect to such intelligence and such estimate;

(B) describes the quality and reliability of the intelligence underlying such estimate;

(C) presents and explains alternative conclusions, if any, with respect to the intelligence underlying such estimate and such estimate; and

(D) characterizes the uncertainties, if any, and confidence in such estimate.

(d) SERVICE AS SENIOR INTELLIGENCE ADVISERS.—Within their respective areas of expertise and under the direction of the National Intelligence Director, the members of the National Intelligence Council shall constitute the senior intelligence advisers of the intelligence community for purposes of representing the views of the intelligence community within the United States Government.

(e) AUTHORITY TO CONTRACT.—Subject to the direction and control of the National Intelligence Director, the National Intelligence Council may carry out its responsibilities under this section by contract, including contracts for substantive experts necessary to assist the Council with particular assessments under this section.

(f) STAFF.—The National Intelligence Director shall make available to the National Intelligence Council such staff as may be necessary to permit the Council to carry out its responsibilities under this section.

(g) AVAILABILITY OF COUNCIL AND STAFF.—(1) The National Intelligence Director shall take appropriate measures to ensure that the National Intelligence Council and its staff satisfy the needs of policymaking officials and other consumers of intelligence.

(2) The Council shall be readily accessible to policymaking officials and other appropriate individuals not otherwise associated with the intelligence community.

(h) SUPPORT.—The heads of the elements of the intelligence community shall, as appropriate, furnish such support to the National Intelligence Council, including the preparation of intelligence analyses, as may be required by the National Intelligence Director.

SEC. 124. GENERAL COUNSEL OF THE NATIONAL INTELLIGENCE AUTHORITY.

(a) GENERAL COUNSEL OF NATIONAL INTELLIGENCE AUTHORITY.—There is a General Counsel of the National Intelligence Authority who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) PROHIBITION ON DUAL SERVICE AS GENERAL COUNSEL OF ANOTHER AGENCY.—The individual serving in the position of General Counsel of the National Intelligence Authority may not, while so serving, also serve as the General Counsel of any other department, agency, or element of the United States Government.

(c) SCOPE OF POSITION.—The General Counsel of the National Intelligence Authority is the chief legal officer of the National Intelligence Authority.

(d) FUNCTIONS.—The General Counsel of the National Intelligence Authority shall perform such functions as the National Intelligence Director may prescribe.

SEC. 125. INTELLIGENCE COMPTROLLER.

(a) INTELLIGENCE COMPTROLLER.—There is an Intelligence Comptroller who shall be appointed from civilian life by the National Intelligence Director.

(b) SUPERVISION.—The Intelligence Comptroller shall report directly to the National Intelligence Director.

(c) DUTIES.—The Intelligence Comptroller shall—

(1) assist the National Intelligence Director in the preparation and execution of the budget of the elements of the intelligence community within the National Intelligence Program;

(2) assist the Director in participating in the development by the Secretary of Defense of the annual budget for military intelligence programs and activities outside the National Intelligence Program;

(3) provide unfettered access to the Director to financial information under the National Intelligence Program;

(4) perform such other duties as may be prescribed by the Director or specified by law.

SEC. 126. OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES OF THE NATIONAL INTELLIGENCE AUTHORITY.

(a) OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES OF NATIONAL INTELLIGENCE AUTHORITY.—There is an Officer for Civil Rights and Civil Liberties of the National Intelligence Authority who shall be appointed by the President.

(b) SUPERVISION.—The Officer for Civil Rights and Civil Liberties of the National Intelligence Authority shall report directly to the National Intelligence Director.

(c) DUTIES.—The Officer for Civil Rights and Civil Liberties of the National Intelligence Authority shall—

(1) assist the National Intelligence Director in ensuring that the protection of civil rights and civil liberties, as provided in the Constitution, laws, regulations, and Executive orders of the United States, is appropriately incorporated in—

(A) the policies and procedures developed for and implemented by the National Intelligence Authority;

(B) the policies and procedures regarding the relationships among the elements of the intelligence community within the National Intelligence Program; and

(C) the policies and procedures regarding the relationships between the elements of the intelligence community within the National Intelligence Program and the other elements of the intelligence community;

(2) oversee compliance by the Authority, and in the relationships described in paragraph (1), with requirements under the Constitution and all laws, regulations, Executive orders, and implementing guidelines relating to civil rights and civil liberties;

(3) review, investigate, and assess complaints and other information indicating possible abuses of civil rights or civil liberties, as provided in the Constitution, laws, regulations, and Executive orders of the United States, in the administration of the programs and operations of the Authority, and in the relationships described in paragraph (1), unless, in the determination of the Inspector General of the National Intelligence Authority, the review, investigation, or assessment of a particular complaint or information can better be conducted by the Inspector General;

(4) coordinate with the Privacy Officer of the National Intelligence Authority to ensure that programs, policies, and procedures involving civil rights, civil liberties, and privacy considerations are addressed in an integrated and comprehensive manner; and

(5) perform such other duties as may be prescribed by the Director or specified by law.

SEC. 127. PRIVACY OFFICER OF THE NATIONAL INTELLIGENCE AUTHORITY.

(a) PRIVACY OFFICER OF NATIONAL INTELLIGENCE AUTHORITY.—There is a Privacy Officer of the National Intelligence Authority who shall be appointed by the National Intelligence Director.

(b) DUTIES.—(1) The Privacy Officer of the National Intelligence Authority shall have primary responsibility for the privacy policy of the National Intelligence Authority (including in the relationships among the elements of the intelligence community within the National Intelligence Program and the relationships between the elements of the intelligence community within the National Intelligence Program and the other elements of the intelligence community).

(2) In discharging the responsibility under paragraph (1), the Privacy Officer shall—

(A) assure that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;

(B) assure that personal information contained in Privacy Act systems of records is handled in full compliance with fair information practices as set out in the Privacy Act of 1974;

(C) conduct privacy impact assessments when appropriate or as required by law; and

(D) coordinate with the Officer for Civil Rights and Civil Liberties of the National Intelligence Authority to ensure that programs, policies, and procedures involving civil rights, civil liberties, and privacy considerations are addressed in an integrated and comprehensive manner.

SEC. 128. CHIEF INFORMATION OFFICER OF THE NATIONAL INTELLIGENCE AUTHORITY.

(a) CHIEF INFORMATION OFFICER OF NATIONAL INTELLIGENCE AUTHORITY.—There is a Chief Information Officer of the National Intelligence Authority who shall be appointed by the National Intelligence Director.

(b) DUTIES.—The Chief Information Officer of the National Intelligence Authority shall—

(1) assist the National Intelligence Director in implementing the responsibilities and executing the authorities related to information technology under paragraphs (15) and (16) of section 112(a) and section 113(h); and

(2) perform such other duties as may be prescribed by the Director or specified by law.

SEC. 129. CHIEF HUMAN CAPITAL OFFICER OF THE NATIONAL INTELLIGENCE AUTHORITY.

(a) CHIEF HUMAN CAPITAL OFFICER OF NATIONAL INTELLIGENCE AUTHORITY.—There is a Chief Human Capital Officer of the National Intelligence Authority who shall be appointed by the National Intelligence Director.

(b) DUTIES.—The Chief Human Capital Officer of the National Intelligence Authority shall—

(1) have the functions and authorities provided for Chief Human Capital Officers under sections 1401 and 1402 of title 5, United States Code, with respect to the National Intelligence Authority; and

(2) advise and assist the National Intelligence Director in exercising the authorities and responsibilities of the Director with respect to the workforce of the intelligence community as a whole.

SEC. 130. CHIEF FINANCIAL OFFICER OF THE NATIONAL INTELLIGENCE AUTHORITY.

(a) CHIEF FINANCIAL OFFICER OF NATIONAL INTELLIGENCE AUTHORITY.—There is a Chief Financial Officer of the National Intelligence Authority who shall be designated by the President, in consultation with the National Intelligence Director.

(b) DESIGNATION REQUIREMENTS.—The designation of an individual as Chief Financial Officer of the National Intelligence Authority shall be subject to applicable provisions of section 901(a) of title 31, United States Code.

(c) AUTHORITIES AND FUNCTIONS.—The Chief Financial Officer of the National Intelligence Authority shall have such authorities, and carry out such functions, with respect to the National Intelligence Authority as are provided for an agency Chief Financial Officer by section 902 of title 31, United States Code, and other applicable provisions of law.

(d) COORDINATION WITH NIA COMPTROLLER.—(1) The Chief Financial Officer of the National Intelligence Authority shall coordinate with the Comptroller of the National Intelligence Authority in exercising the authorities and performing the functions provided for the Chief Financial Officer under this section.

(2) The National Intelligence Director shall take such actions as are necessary to prevent duplication of effort by the Chief Financial Officer of the National Intelligence Authority and the Comptroller of the National Intelligence Authority.

(e) INTEGRATION OF FINANCIAL SYSTEMS.—Subject to the supervision, direction, and control of the National Intelligence Director, the Chief Financial Officer of the National Intelligence Authority shall take appropriate actions to ensure the timely and effective integration of the financial systems of the National Intelligence Authority (including any elements or components transferred to the Authority by this Act), and of the financial systems of the Authority with applicable portions of the financial systems of the other elements of the intelligence community, as soon as possible after the date of the enactment of this Act.

(f) PROTECTION OF ANNUAL FINANCIAL STATEMENT FROM DISCLOSURE.—The annual financial statement of the National Intelligence Authority required under section 3515 of title 31, United States Code—

(1) shall be submitted in classified form; and

(2) notwithstanding any other provision of law, shall be withheld from public disclosure.

SEC. 131. NATIONAL COUNTERINTELLIGENCE EXECUTIVE.

(a) NATIONAL COUNTERINTELLIGENCE EXECUTIVE.—The National Counterintelligence Executive under section 902 of the Counterintelligence Enhancement Act of 2002 (title IX of Public Law 107-306; 50 U.S.C. 402b et seq.), as amended by section 309 of this Act, is a component of the Office of the National Intelligence Director.

(b) DUTIES.—The National Counterintelligence Executive shall perform the duties provided in the Counterintelligence Enhancement Act of 2002, as so amended, and such other duties as may be prescribed by the National Intelligence Director or specified by law.

Subtitle D—Additional Elements of National Intelligence Authority

SEC. 141. INSPECTOR GENERAL OF THE NATIONAL INTELLIGENCE AUTHORITY.

(a) OFFICE OF INSPECTOR GENERAL OF NATIONAL INTELLIGENCE AUTHORITY.—There is within the National Intelligence Authority an Office of the Inspector General of the National Intelligence Authority.

(b) PURPOSE.—The purpose of the Office of the Inspector General of the National Intelligence Authority is to—

(1) create an objective and effective office, appropriately accountable to Congress, to initiate and conduct independently investigations, inspections, and audits relating to—

(A) the programs and operations of the National Intelligence Authority;

(B) the relationships among the elements of the intelligence community within the National Intelligence Program; and

(C) the relationships between the elements of the intelligence community within the National Intelligence Program and the other elements of the intelligence community;

(2) recommend policies designed—

(A) to promote economy, efficiency, and effectiveness in the administration of such programs and operations, and in such relationships; and

(B) to prevent and detect fraud and abuse in such programs, operations, and relationships;

(3) provide a means for keeping the National Intelligence Director fully and currently informed about—

(A) problems and deficiencies relating to the administration of such programs and operations, and to such relationships; and

(B) the necessity for, and the progress of, corrective actions; and

(4) in the manner prescribed by this section, ensure that the congressional intelligence committees are kept similarly informed of—

(A) significant problems and deficiencies relating to the administration of such programs and operations, and to such relationships; and

(B) the necessity for, and the progress of, corrective actions.

(c) INSPECTOR GENERAL OF NATIONAL INTELLIGENCE AUTHORITY.—(1) There is an Inspector General of the National Intelligence Authority, who shall be the head of the Office of the Inspector General of the National Intelligence Authority, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The nomination of an individual for appointment as Inspector General shall be made—

(A) without regard to political affiliation;

(B) solely on the basis of integrity, compliance with the security standards of the National Intelligence Authority, and prior experience in the field of intelligence or national security; and

(C) on the basis of demonstrated ability in accounting, financial analysis, law, management analysis, public administration, or auditing.

(3) The Inspector General shall report directly to and be under the general supervision of the National Intelligence Director.

(4) The Inspector General may be removed from office only by the President. The President shall immediately communicate in writing to the congressional intelligence committees the reasons for the removal of any individual from the position of Inspector General.

(d) DUTIES AND RESPONSIBILITIES.—It shall be the duty and responsibility of the Inspector General of the National Intelligence Authority—

(1) to provide policy direction for, and to plan, conduct, supervise, and coordinate independently, the investigations, inspections, and audits relating to the programs and operations of the National Intelligence Authority, the relationships among the elements of the intelligence community within the National Intelligence Program, and the relationships between the elements of the intelligence community within the National Intelligence Program and the other elements of the intelligence community to ensure they are conducted efficiently and in accordance with applicable law and regulations;

(2) to keep the National Intelligence Director fully and currently informed concerning violations of law and regulations, violations of civil liberties and privacy, and fraud and other serious problems, abuses, and deficiencies that may occur in such programs and operations, and in such relationships, and to report the progress made in implementing corrective action;

(3) to take due regard for the protection of intelligence sources and methods in the preparation of all reports issued by the Inspector General, and, to the extent consistent with the purpose and objective of such reports, take such measures as may be appropriate to minimize the disclosure of intelligence sources and methods described in such reports; and

(4) in the execution of the duties and responsibilities under this section, to comply with generally accepted government auditing standards.

(e) LIMITATIONS ON ACTIVITIES.—(1) The National Intelligence Director may prohibit the Inspector General of the National Intelligence Authority from initiating, carrying out, or completing any investigation, inspection, or audit if the Director determines that such prohibition is necessary to protect vital national security interests of the United States.

(2) If the Director exercises the authority under paragraph (1), the Director shall submit an appropriately classified statement of the reasons for the exercise of such authority within seven days to the congressional intelligence committees.

(3) The Director shall advise the Inspector General at the time a report under paragraph (1) is submitted, and, to the extent consistent with the protection of intelligence sources and methods, provide the Inspector General with a copy of such report.

(4) The Inspector General may submit to the congressional intelligence committees any comments on a report of which the Inspector General has notice under paragraph (3) that the Inspector General considers appropriate.

(f) AUTHORITIES.—(1) The Inspector General of the National Intelligence Authority shall have direct and prompt access to the National Intelligence Director when necessary for any purpose pertaining to the performance of the duties of the Inspector General.

(2)(A) The Inspector General shall have access to any employee, or any employee of a contractor, of the National Intelligence Authority, and of any other element of the intelligence community within the National Intelligence Program, whose testimony is needed for the performance of the duties of the Inspector General.

(B) The Inspector General shall have direct access to all records, reports, audits, reviews, documents, papers, recommendations, or other material which relate to the programs and operations with respect to which the Inspector General has responsibilities under this section.

(C) The level of classification or compartmentation of information shall not, in and of itself, provide a sufficient rationale for denying the Inspector General access to any materials under subparagraph (B).

(D) Failure on the part of any employee or contractor of the National Intelligence Authority to cooperate with the Inspector General shall be grounds for appropriate administrative actions by the Director, including loss of employment or the termination of an existing contractual relationship.

(3) The Inspector General is authorized to receive and investigate complaints or information from any person concerning the existence of an activity constituting a violation of laws, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety. Once such complaint or information has been received from an employee of the Federal government—

(A) the Inspector General shall not disclose the identity of the employee without the consent of the employee, unless the Inspector General determines that such disclosure is unavoidable during the course of the investigation or the disclosure is made to an official of the Department of Justice responsible for determining whether a prosecution should be undertaken; and

(B) no action constituting a reprisal, or threat of reprisal, for making such complaint may be taken by any employee in a position to take such actions, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

(4) The Inspector General shall have authority to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the duties of the Inspector General, which oath, affirmation, or affidavit when administered or taken by or before an employee of the Office of the Inspector General of the National Intelligence Authority designated by the Inspector General shall have the same force and effect as if administered or taken by or before an officer having a seal.

(5)(A) Except as provided in subparagraph (B), the Inspector General is authorized to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the duties and responsibilities of the Inspector General.

(B) In the case of departments, agencies, and other elements of the United States Government, the Inspector General shall obtain information, documents, reports, answers, records, accounts, papers, and other data and evidence for the purpose specified in subparagraph (A) using procedures other than by subpoenas.

(C) The Inspector General may not issue a subpoena for or on behalf of any other element or component of the Authority.

(D) In the case of contumacy or refusal to obey a subpoena issued under this paragraph, the subpoena shall be enforceable by order of any appropriate district court of the United States.

(g) STAFF AND OTHER SUPPORT.—(1) The Inspector General of the National Intelligence Authority shall be provided with appropriate and adequate office space at central and field office locations, together with such equipment, office supplies, maintenance services, and communications facilities and services as may be necessary for the operation of such offices.

(2)(A) Subject to applicable law and the policies of the National Intelligence Director, the Inspector General shall select, appoint and employ such officers and employees as may be necessary to carry out the functions of the Inspector General.

(B) In making selections under subparagraph (A), the Inspector General shall ensure that such officers and employees have the requisite training and experience to enable the Inspector General to carry out the duties of the Inspector General effectively.

(C) In meeting the requirements of this paragraph, the Inspector General shall create within the Office of the Inspector General of the National Intelligence Authority a career cadre of sufficient size to provide appropriate continuity and objectivity needed for the effective performance of the duties of the Inspector General.

(3)(A) Subject to the concurrence of the Director, the Inspector General may request such information or assistance as may be necessary for carrying out the duties and responsibilities of the Inspector General from any department, agency, or other element of the United States Government.

(B) Upon request of the Inspector General for information or assistance under subparagraph (A), the head of the department, agency, or element concerned shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the department, agency, or element, furnish to the Inspector General, or to an authorized designee, such information or assistance.

(h) REPORTS.—(1)(A) The Inspector General of the National Intelligence Authority shall, not later than January 31 and July 31 of each year, prepare and submit to the National Intelligence Director a classified semiannual report summarizing the activities of the Office of the Inspector General of the National Intelligence Authority during the immediately preceding six-month periods ending December 31 (of the preceding year) and June 30, respectively.

(B) Each report under this paragraph shall include, at a minimum, the following:

(i) A list of the title or subject of each investigation, inspection, or audit conducted during the period covered by such report.

(ii) A description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of the National Intelligence Authority identified by the Inspector General during the period covered by such report.

(iii) A description of the recommendations for corrective action made by the Inspector General during the period covered by such report with respect to significant problems, abuses, or deficiencies identified in clause (ii).

(iv) A statement whether or not corrective action has been completed on each significant recommendation described in previous semiannual reports, and, in a case where corrective action has been completed, a description of such corrective action.

(v) An assessment of the effectiveness of all measures in place in the Authority for the protection of civil liberties and privacy of United States persons.

(vi) A certification whether or not the Inspector General has had full and direct access to all information relevant to the performance of the functions of the Inspector General.

(vii) A description of the exercise of the subpoena authority under subsection (f)(5) by the Inspector General during the period covered by such report.

(viii) Such recommendations as the Inspector General considers appropriate for legislation to promote economy and efficiency in the administration of programs and operations undertaken by the Authority, and to detect and eliminate fraud and abuse in such programs and operations.

(C) Not later than the 30 days after the date of receipt of a report under subparagraph (A), the Director shall transmit the report to the congressional intelligence committees together with any comments the Director considers appropriate.

(2)(A) The Inspector General shall report immediately to the Director whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs or operations of the Authority, a relationship between the elements of the intelligence community within the National Intelligence Program, or a relationship between an element of the intelligence community within the National Intelligence Program and another element of the intelligence community.

(B) The Director shall transmit to the congressional intelligence committees each report under subparagraph (A) within seven calendar days of receipt of such report, together with such comments as the Director considers appropriate.

(3) In the event that—

(A) the Inspector General is unable to resolve any differences with the Director affecting the execution of the duties or responsibilities of the Inspector General;

(B) an investigation, inspection, or audit carried out by the Inspector General should focus on any current or former Authority official who holds or held a position in the Authority that is subject to appointment by the President, by and with the advice and consent of the Senate, including such a position held on an acting basis;

(C) a matter requires a report by the Inspector General to the Department of Justice on possible criminal conduct by a current or former official described in subparagraph (B);

(D) the Inspector General receives notice from the Department of Justice declining or approving prosecution of possible criminal conduct of any current or former official described in subparagraph (B); or

(E) the Inspector General, after exhausting all possible alternatives, is unable to obtain significant documentary information in the course of an investigation, inspection, or audit,

the Inspector General shall immediately notify and submit a report on such matter to the congressional intelligence committees.

(4) Pursuant to title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), the Director shall submit to the congressional intelligence committees any report or findings and recommendations of an investigation, inspection, or audit conducted by the office which has been requested by the Chairman or Ranking Minority Member of either committee.

(5)(A) An employee of the Authority, an employee of an entity other than the Authority who is assigned or detailed to the Authority, or an employee of a contractor to the Authority who intends to report to Congress a complaint or information with respect to an urgent concern may report such complaint or information to the Inspector General.

(B) Not later than the end of the 14-calendar day period beginning on the date of receipt from an employee of a complaint or information under subparagraph (A), the Inspector General shall determine whether the complaint or information appears credible. Upon making such a determination, the Inspector General shall transmit to the Director a notice of that determination, together with the complaint or information.

(C) Upon receipt of a transmittal from the Inspector General under subparagraph (B), the Director shall, within seven calendar days of such receipt, forward such transmittal to the congressional intelligence committees, together with any comments the Director considers appropriate.

(D)(i) If the Inspector General does not find credible under subparagraph (B) a complaint or information submitted under subparagraph (A), or does not transmit the complaint or information to the Director in accurate form under subparagraph (B), the employee (subject to clause (ii)) may submit the complaint or information to Congress by contacting either or both of the congressional intelligence committees directly.

(ii) An employee may contact the intelligence committees directly as described in clause (i) only if the employee—

(I) before making such a contact, furnishes to the Director, through the Inspector General, a statement of the employee's complaint or information and notice of the employee's intent to contact the congressional intelligence committees directly; and

(II) obtains and follows from the Director, through the Inspector General, direction on how to contact the intelligence committees in accordance with appropriate security practices.

(iii) A member or employee of one of the congressional intelligence committees who receives a complaint or information under clause (i) does so in that member or employee's official capacity as a member or employee of such committee.

(E) The Inspector General shall notify an employee who reports a complaint or information to the Inspector General under this paragraph of each action taken under this paragraph with respect to the complaint or information. Such notice shall be provided not later than three days after any such action is taken.

(F) An action taken by the Director or the Inspector General under this paragraph shall not be subject to judicial review.

(G) In this paragraph, the term "urgent concern" means any of the following:

(i) A serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operations of an intelligence activity involving classified information, but does not include differences of opinions concerning public policy matters.

(ii) A false statement to Congress, or a willful withholding from Congress, on an issue of material fact relating to the funding, administration, or operation of an intelligence activity.

(iii) An action, including a personnel action described in section 2302(a)(2)(A) of title 5, United States Code, constituting reprisal or threat of reprisal prohibited under subsection (f)(3)(B) of this section in response to an employee's reporting an urgent concern in accordance with this paragraph.

(H) In support of this paragraph, Congress makes the findings set forth in paragraphs (1) through (6) of section 701(b) of the Intelligence Community Whistleblower Protection Act of 1998 (title VII of Public Law 105-272; 5 U.S.C. App. 8H note).

(6) In accordance with section 535 of title 28, United States Code, the Inspector General shall report to the Attorney General any information, allegation, or complaint received by the Inspector General relating to violations of Federal criminal law that involve a program or operation of the Authority, consistent with such guidelines as may be issued by the Attorney General pursuant to subsection (b)(2) of such section. A copy of each such report shall be furnished to the Director.

(i) SEPARATE BUDGET ACCOUNT.—The National Intelligence Director shall, in accordance with procedures to be issued by the Director in consultation with the congressional intelligence committees, include in the National Intelligence Program budget a separate account for the Office of Inspector General of the National Intelligence Authority.

SEC. 142. OMBUDSMAN OF THE NATIONAL INTELLIGENCE AUTHORITY.

(a) OMBUDSMAN OF NATIONAL INTELLIGENCE AUTHORITY.—There is within the National Intelligence Authority an Ombudsman of the National Intelligence Authority who shall be appointed by the National Intelligence Director.

(b) DUTIES.—The Ombudsman of the National Intelligence Authority shall—

(1) counsel, arbitrate, or offer recommendations on, and have the authority to initiate inquiries into, real or perceived problems of politicization, biased reporting, or lack of objective analysis within the National Intelligence Authority, or any element of the intelligence community within the National Intelligence Program, or regarding any analysis of national intelligence by any element of the intelligence community;

(2) monitor the effectiveness of measures taken to deal with real or perceived politicization, biased reporting, or lack of objective analysis within the Authority, or any element of the intelligence community within the National Intelligence Program, or regarding any analysis of national intelligence by any element of the intelligence community; and

(3) conduct reviews of the analytic product or products of the Authority, or any element of the intelligence community within the National Intelligence Program, or of any analysis of national intelligence by any element of the intelligence community, with such reviews to be conducted so as to ensure that analysis is timely, objective, independent of political considerations, and based upon all sources available to the intelligence community.

(c) ANALYTIC REVIEW UNIT.—(1) There is within the Office of the Ombudsman of the

National Intelligence Authority an Analytic Review Unit.

(2) The Analytic Review Unit shall assist the Ombudsman of the National Intelligence Authority in performing the duties and responsibilities of the Ombudsman set forth in subsection (b)(3).

(3) The Ombudsman shall provide the Analytic Review Unit a staff who possess expertise in intelligence analysis that is appropriate for the function of the Unit.

(4) In assisting the Ombudsman, the Analytic Review Unit shall, subject to the direction and control of the Ombudsman, conduct detailed evaluations of intelligence analysis by the following:

(A) The National Intelligence Council.

(B) The elements of the intelligence community within the National Intelligence Program.

(C) To the extent involving the analysis of national intelligence, other elements of the intelligence community.

(D) The divisions, offices, programs, officers, and employees of the elements specified in subparagraphs (B) and (C).

(5) The results of the evaluations under paragraph (4) shall be provided to the congressional intelligence committees and, upon request, to appropriate heads of other departments, agencies, and elements of the executive branch.

(d) ACCESS TO INFORMATION.—In order to carry out the duties specified in subsection (c), the Ombudsman of the National Intelligence Authority shall, unless otherwise directed by the President, have access to all analytic products, field reports, and raw intelligence of any element of the intelligence community, and to any reports or other material of an Inspector General, that might be pertinent to a matter under consideration by the Ombudsman.

(e) ANNUAL REPORTS.—The Ombudsman of the National Intelligence Authority shall submit to the National Intelligence Director and the congressional intelligence committees on an annual basis a report that includes—

(1) the assessment of the Ombudsman of the current level of politicization, biased reporting, or lack of objective analysis within the National Intelligence Authority, or any element of the intelligence community within the National Intelligence Program, or regarding any analysis of national intelligence by any element of the intelligence community;

(2) such recommendations for remedial measures as the Ombudsman considers appropriate; and

(3) an assessment of the effectiveness of remedial measures previously taken within the intelligence community on matters addressed by the Ombudsman.

(f) REFERRAL OF CERTAIN MATTERS FOR INVESTIGATION.—In addition to carrying out activities under this section, the Ombudsman of the National Intelligence Authority may refer serious cases of misconduct related to politicization of intelligence information, biased reporting, or lack of objective analysis within the intelligence community to the Inspector General of the National Intelligence Authority for investigation.

SEC. 143. NATIONAL COUNTERTERRORISM CENTER.

(a) NATIONAL COUNTERTERRORISM CENTER.—There is within the National Intelligence Authority a National Counterterrorism Center.

(b) DIRECTOR OF NATIONAL COUNTERTERRORISM CENTER.—(1) There is a Director of the National Counterterrorism Center, who shall be the head of the National Counterterrorism Center, and who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Any individual nominated for appointment as the Director of the National Counterterrorism Center shall have significant expertise in matters relating to the national security of the United States and matters relating to terrorism that threatens the national security of the United States.

(3) The individual serving as the Director of the National Counterterrorism Center may not, while so serving, serve in any capacity in any other element of the intelligence community, except to the extent that the individual serving as Director of the National Counterterrorism Center is doing so in an acting capacity.

(c) SUPERVISION.—(1) The Director of the National Counterterrorism Center shall report to the National Intelligence Director on—

(A) the budget and programs of the National Counterterrorism Center; and

(B) the activities of the Directorate of Intelligence of the National Counterterrorism Center under subsection (g).

(2) The Director of the National Counterterrorism Center shall report to the President and the National Intelligence Director on the planning and progress of joint counterterrorism operations.

(d) PRIMARY MISSIONS.—The primary missions of the National Counterterrorism Center shall be as follows:

(1) To develop and unify strategy for the civilian and military counterterrorism efforts of the United States Government.

(2) To integrate counterterrorism intelligence activities of the United States Government, both inside and outside the United States.

(3) To develop interagency counterterrorism plans, which plans shall—

(A) involve more than one department, agency, or element of the executive branch (unless otherwise directed by the President); and

(B) include the mission, objectives to be achieved, courses of action, parameters for such courses of action, coordination of agency operational activities, recommendations for operational plans, and assignment of departmental or agency responsibilities.

(4) To ensure that the collection of counterterrorism intelligence, and the conduct of counterterrorism operations, by the United States Government are informed by the analysis of all-source intelligence.

(e) DUTIES AND RESPONSIBILITIES OF DIRECTOR OF NATIONAL COUNTERTERRORISM CENTER.—Notwithstanding any other provision of law, at the direction of the President, the National Security Council, and the National Intelligence Director, the Director of the National Counterterrorism Center shall—

(1) serve as the principal adviser to the President and the National Intelligence Director on joint operations relating to counterterrorism;

(2) provide unified strategic direction for the civilian and military counterterrorism efforts of the United States Government and for the effective integration and deconfliction of counterterrorism intelligence and operations across agency boundaries, both inside and outside the United States;

(3) advise the President and the National Intelligence Director on the extent to which the counterterrorism program recommendations and budget proposals of the departments, agencies, and elements of the United States Government conform to the priorities established by the President and the National Security Council;

(4) in accordance with subsection (f), concur in, or advise the President on, the selections of personnel to head the operating entities of the United States Government with principal missions relating to counterterrorism; and

(5) perform such other duties as the National Intelligence Director may prescribe or are prescribed by law.

(f) ROLE OF DIRECTOR OF NATIONAL COUNTERTERRORISM CENTER IN CERTAIN APPOINTMENTS.—(1) In the event of a vacancy in a position referred to in paragraph (2), the head of the department or agency having jurisdiction over the position shall obtain the concurrence of the Director of the National Counterterrorism Center before appointing an individual to fill the vacancy or recommending to the President an individual for nomination to fill the vacancy. If the Director does not concur in the recommendation, the head of the department or agency concerned may fill the vacancy or make the recommendation to the President (as the case may be) without the concurrence of the Director, but shall notify the President that the Director does not concur in the appointment or recommendation (as the case may be).

(2) Paragraph (1) applies to the following positions:

(A) The Director of the Central Intelligence Agency's Counterterrorist Center.

(B) The Assistant Director of the Federal Bureau of Investigation in charge of the Counterterrorism Division.

(C) The Coordinator for Counterterrorism of the Department of State.

(D) The head of such other operating entities of the United States Government having principal missions relating to counterterrorism as the President may designate for purposes of this subsection.

(3) The President shall notify Congress of the designation of an operating entity of the United States Government under paragraph (2)(D) not later than 30 days after the date of such designation.

(g) DIRECTORATE OF INTELLIGENCE.—(1) The Director of the National Counterterrorism Center shall establish and maintain within the National Counterterrorism Center a Directorate of Intelligence.

(2) The Directorate shall utilize the capabilities of the Terrorist Threat Integration Center (TTIC) transferred to the Directorate by section 323 and such other capabilities as the Director of the National Counterterrorism Center considers appropriate.

(3) The Directorate shall have primary responsibility within the United States Government for analysis of terrorism and terrorist organizations from all sources of intelligence, whether collected inside or outside the United States.

(4) The Directorate shall—

(A) be the principal repository within the United States Government for all-source information on suspected terrorists, their organizations, and their capabilities;

(B) propose intelligence collection requirements for action by elements of the intelligence community inside and outside the United States;

(C) have primary responsibility within the United States Government for net assessments and warnings about terrorist threats, which assessments and warnings shall be based on a comparison of terrorist intentions and capabilities with assessed national vulnerabilities and countermeasures; and

(D) perform such other duties and functions as the Director of the National Counterterrorism Center may prescribe.

(h) DIRECTORATE OF PLANNING.—(1) The Director of the National Counterterrorism Center shall establish and maintain within the National Counterterrorism Center a Directorate of Planning.

(2) The Directorate shall have primary responsibility for developing interagency counterterrorism plans, as described in subsection (d)(3).

(3) The Directorate shall—

(A) provide guidance, and develop strategy and interagency plans, to counter terrorist activities based on policy objectives and priorities established by the National Security Council;

(B) develop interagency plans under subparagraph (A) utilizing input from personnel in other departments, agencies, and elements of the United States Government who have expertise in the priorities, functions, assets, programs, capabilities, and operations of such departments, agencies, and elements with respect to counterterrorism;

(C) assign responsibilities for counterterrorism operations to the departments and agencies of the United States Government (including the Department of Defense, the Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Homeland Security, and other departments and agencies of the United States Government), consistent with the authorities of such departments and agencies;

(D) monitor the implementation of operations assigned under subparagraph (C) and update interagency plans for such operations as necessary;

(E) report to the President and the National Intelligence Director on the compliance of the departments, agencies, and elements of the United States with the plans developed under subparagraph (A); and

(F) perform such other duties and functions as the Director of the National Counterterrorism Center may prescribe.

(4) The Directorate may not direct the execution of operations assigned under paragraph (3).

(i) STAFF.—(1) The National Intelligence Director may appoint deputy directors of the National Counterterrorism Center to oversee such portions of the operations of the Center as the National Intelligence Director considers appropriate.

(2) To assist the Director of the National Counterterrorism Center in fulfilling the duties and responsibilities of the Director of the National Counterterrorism Center under this section, the National Intelligence Director shall employ in the National Counterterrorism Center a professional staff having an expertise in matters relating to such duties and responsibilities.

(3) In providing for a professional staff for the National Counterterrorism Center under paragraph (2), the National Intelligence Director may establish as positions in the excepted service such positions in the Center as the National Intelligence Director considers appropriate.

(4) The National Intelligence Director shall ensure that the analytical staff of the National Counterterrorism Center is comprised primarily of experts from elements in the intelligence community and from such other personnel in the United States Government as the National Intelligence Director considers appropriate.

(5)(A) In order to meet the requirements in paragraph (4), the National Intelligence Director shall, from time to time—

(i) specify the transfers, assignments, and details of personnel funded within the National Intelligence Program to the National Counterterrorism Center from any other element of the intelligence community that the National Intelligence Director considers appropriate; and

(ii) in the case of personnel from a department, agency, or element of the United States Government and not funded within the National Intelligence Program, request the transfer, assignment, or detail of such personnel from the department, agency, or other element concerned.

(B)(i) The head of an element of the intelligence community shall promptly effect any transfer, assignment, or detail of personnel specified by the National Intelligence Director under subparagraph (A)(i).

(ii) The head of a department, agency, or element of the United States Government receiving a request for transfer, assignment, or detail of personnel under subparagraph (A)(ii) shall, to the extent practicable, approve the request.

(6) Personnel employed in or assigned or detailed to the National Counterterrorism Center under this subsection shall be under the authority, direction, and control of the Director of the National Counterterrorism Center on all matters for which the Center has been assigned responsibility and for all matters related to the accomplishment of the missions of the Center.

(7) Performance evaluations of personnel assigned or detailed to the National Counterterrorism Center under this subsection shall be undertaken by the supervisors of such personnel at the Center.

(8) The supervisors of the staff of the National Counterterrorism Center may, with the approval of the National Intelligence Director, reward the staff of the Center for meritorious performance by the provision of such performance awards as the National Intelligence Director shall prescribe.

(9) The National Intelligence Director may delegate to the Director of the National Counterterrorism Center any responsibility, power, or authority of the National Intelligence Director under paragraphs (1) through (8).

(10) The National Intelligence Director shall ensure that the staff of the National Counterterrorism Center has access to all databases maintained by the elements of the intelligence community that are relevant to the duties of the Center.

(j) SUPPORT AND COOPERATION OF OTHER AGENCIES.—(1) The elements of the intelligence community and the other departments, agencies, and elements of the United States Government shall support, assist, and cooperate with the National Counterterrorism Center in carrying out its missions under this section.

(2) The support, assistance, and cooperation of a department, agency, or element of the United States Government under this subsection shall include, but not be limited to—

(A) the implementation of interagency plans for operations, whether foreign or domestic, that are developed by the National Counterterrorism Center in a manner consistent with the laws and regulations of the United States and consistent with the limitation in subsection (h)(4);

(B) cooperative work with the Director of the National Counterterrorism Center to ensure that ongoing operations of such department, agency, or element do not conflict with joint operations planned by the Center;

(C) reports, upon request, to the Director of the National Counterterrorism Center on the progress of such department, agency, or element in implementing responsibilities assigned to such department, agency, or element through joint operations plans; and

(D) the provision to the analysts of the National Counterterrorism Center electronic access in real time to information and intelligence collected by such department, agency, or element that is relevant to the missions of the Center.

(3) In the event of a disagreement between the National Intelligence Director and the head of a department, agency, or element of the United States Government on a plan developed or responsibility assigned by the National Counterterrorism Center under this subsection, the National Intelligence Director may either accede to the head of the department, agency, or element concerned or notify the President of the necessity of resolving the disagreement.

SEC. 144. NATIONAL INTELLIGENCE CENTERS.

(a) NATIONAL INTELLIGENCE CENTERS.—(1) The National Intelligence Director may establish within the National Intelligence Authority one or more centers (to be known as "national intelligence centers") to address intelligence priorities established by the National Security Council.

(2) Each national intelligence center established under this section shall be assigned an area of intelligence responsibility.

(3) National intelligence centers shall be established at the direction of the President, as prescribed by law, or upon the initiative of the National Intelligence Director.

(b) ESTABLISHMENT OF CENTERS.—(1) In establishing a national intelligence center, the National Intelligence Director shall assign lead responsibility for administrative support for such center to an element of the intelligence community selected by the Director for that purpose.

(2) The Director shall determine the structure and size of each national intelligence center.

(3) The Director shall notify Congress of the establishment of each national intelligence center before the date of the establishment of such center.

(c) DIRECTORS OF CENTERS.—(1) Each national intelligence center shall have as its head a Director who shall be appointed by the National Intelligence Director for that purpose.

(2) The Director of a national intelligence center shall serve as the principal adviser to the National Intelligence Director on intelligence matters with respect to the area of intelligence responsibility assigned to the center.

(3) In carrying out duties under paragraph (2), the Director of a national intelligence center shall—

(A) manage the operations of the center;

(B) coordinate the provision of administration and support by the element of the intelligence community with lead responsibility for the center under subsection (b)(1);

(C) submit budget and personnel requests for the center to the National Intelligence Director;

(D) seek such assistance from other departments, agencies, and elements of the United States Government as is needed to fulfill the mission of the center; and

(E) advise the National Intelligence Director of the information technology, personnel, and other requirements of the center for the performance of its mission.

(4) The National Intelligence Director shall ensure that the Director of a national intelligence center has sufficient authority, direction, and control to effectively accomplish the mission of the center.

(d) MISSION OF CENTERS.—Pursuant to the direction of the National Intelligence Director, each national intelligence center shall, in the area of intelligence responsibility assigned to the center by the Director pursuant to intelligence priorities established by the National Security Council—

(1) have primary responsibility for providing all-source analysis of intelligence based upon foreign intelligence gathered both abroad and domestically;

(2) have primary responsibility for identifying and proposing to the National Intelligence Director intelligence collection and analysis requirements;

(3) have primary responsibility for net assessments and warnings;

(4) ensure that appropriate officials of the United States Government and other appropriate officials have access to a variety of intelligence assessments and analytical views; and

(5) perform such other duties as the National Intelligence Director shall specify.

(e) INFORMATION SHARING.—(1) The National Intelligence Director shall ensure that the Directors of the national intelligence centers and the other elements of the intelligence community undertake appropriate sharing of intelligence analysis and plans for operations in order to facilitate the activities of the centers.

(2) In order to facilitate information sharing under paragraph (1), the Directors of the national intelligence centers shall—

(A) report directly to the National Intelligence Director regarding their activities under this section; and

(B) coordinate with the Principal Deputy National Intelligence Director regarding such activities.

(f) STAFF.—(1) In providing for a professional staff for a national intelligence center, the National Intelligence Director may establish as positions in the excepted service such positions in the center as the National Intelligence Director considers appropriate.

(2)(A) The National Intelligence Director shall, from time to time—

(i) specify the transfers, assignments, and details of personnel funded within the National Intelligence Program to a national intelligence center from any other element of the intelligence community that the National Intelligence Director considers appropriate; and

(ii) in the case of personnel from a department, agency, or element of the United States Government not funded within the National Intelligence Program, request the transfer, assignment, or detail of such personnel from the department, agency, or other element concerned.

(B)(i) The head of an element of the intelligence community shall promptly effect any transfer, assignment, or detail of personnel specified by the National Intelligence Director under subparagraph (A)(i).

(ii) The head of a department, agency, or element of the United States Government receiving a request for transfer, assignment, or detail of personnel under subparagraph (A)(ii) shall, to the extent practicable, approve the request.

(3) Personnel employed in or assigned or detailed to a national intelligence center under this subsection shall be under the authority, direction, and control of the Director of the center on all matters for which the center has been assigned responsibility and for all matters related to the accomplishment of the mission of the center.

(4) Performance evaluations of personnel assigned or detailed to a national intelligence center under this subsection shall be undertaken by the supervisors of such personnel at the center.

(5) The supervisors of the staff of a national center may, with the approval of the National Intelligence Director, reward the staff of the center for meritorious performance by the provision of such performance awards as the National Intelligence Director shall prescribe.

(6) The National Intelligence Director may delegate to the Director of a national intelligence center any responsibility, power, or authority of the National Intelligence Director under paragraphs (1) through (6).

(7) The Director of a national intelligence center may recommend to the National Intelligence Director the reassignment to the home element concerned of any personnel previously assigned or detailed to the center from another element of the intelligence community.

(g) TERMINATION.—(1) The National Intelligence Director may terminate a national intelligence center if the National Intelligence Director determines that the center is no longer required to meet an intelligence priority established by the National Security Council.

(2) The National Intelligence Director shall notify Congress of any determination made under paragraph (1) before carrying out such determination.

Subtitle E—Education and Training of Intelligence Community Personnel

SEC. 151. FRAMEWORK FOR CROSS-DISCIPLINARY EDUCATION AND TRAINING.

The National Intelligence Director shall establish an integrated framework that brings together the educational components of the intelligence community in order to promote a more effective and productive intelligence community through cross-disciplinary education and joint training.

SEC. 152. INTELLIGENCE COMMUNITY SCHOLARSHIP PROGRAM.

(a) DEFINITIONS.—In this section:

(1) AGENCY.—The term "agency" means each element of the intelligence community as determined by the National Intelligence Director.

(2) INSTITUTION OF HIGHER EDUCATION.—The term "institution of higher education" has the meaning given that term under section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(3) PROGRAM.—The term "Program" means the Intelligence Community Scholarship Program established under subsection (b).

(b) ESTABLISHMENT.—

(1) IN GENERAL.—The National Intelligence Director, in consultation with the head of each agency, shall establish a scholarship program (to be known as the "Intelligence Community Scholarship Program") to award scholarships to individuals that is designed to recruit and prepare students for civilian careers in the intelligence community to meet the critical needs of the intelligence community agencies.

(2) SELECTION OF RECIPIENTS.—

(A) MERIT AND AGENCY NEEDS.—Individuals shall be selected to receive scholarships under this section through a competitive process primarily on the basis of academic merit and the needs of the agency.

(B) DEMONSTRATED COMMITMENT.—Individuals selected under this section shall have a demonstrated commitment to the field of study for which the scholarship is awarded.

(3) CONTRACTUAL AGREEMENTS.—To carry out the Program the head of each agency shall enter into contractual agreements with individuals selected under paragraph (2) under which the individuals agree to serve as full-time employees of the agency, for the period described in subsection (h)(1), in positions needed by the agency and for which the individuals are qualified, in exchange for receiving a scholarship.

(c) ELIGIBILITY.—In order to be eligible to participate in the Program, an individual shall—

(1) be enrolled or accepted for enrollment as a full-time student at an institution of higher education and be pursuing or intend to pursue undergraduate or graduate education in an academic field or discipline described in the list made available under subsection (e);

(2) be a United States citizen; and

(3) at the time of the initial scholarship award, not be an employee (as defined under section 2105 of title 5, United States Code).

(d) APPLICATION.—An individual seeking a scholarship under this section shall submit an application to the National Intelligence Director at such time, in such manner, and containing such information, agreements, or assurances as the Director may require.

(e) PROGRAMS AND FIELDS OF STUDY.—The National Intelligence Director shall—

(1) make publicly available a list of academic programs and fields of study for which scholarships under the Program may be used; and

(2) update the list as necessary.

(f) SCHOLARSHIPS.—

(1) IN GENERAL.—The National Intelligence Director may provide a scholarship under the Program for an academic year if the individual applying for the scholarship has submitted to the Director, as part of the application required under subsection (d), a proposed academic program leading to a degree in a program or field of study on the list made available under subsection (e).

(2) LIMITATION ON YEARS.—An individual may not receive a scholarship under this section for more than 4 academic years, unless the National Intelligence Director grants a waiver.

(3) STUDENT RESPONSIBILITIES.—Scholarship recipients shall maintain satisfactory academic progress.

(4) AMOUNT.—The dollar amount of a scholarship under this section for an academic year shall be determined under regulations issued by the National Intelligence Director, but shall in no case exceed the cost of tuition, fees, and other authorized expenses as established by the Director.

(5) USE OF SCHOLARSHIPS.—A scholarship provided under this section may be expended for tuition, fees, and other authorized expenses as established by the National Intelligence Director by regulation.

(6) PAYMENT TO INSTITUTION OF HIGHER EDUCATION.—The National Intelligence Director may enter into a contractual agreement with an institution of higher education under which the amounts provided for a scholarship under this section for tuition, fees, and other authorized expenses are paid directly to the institution with respect to which the scholarship is provided.

(g) SPECIAL CONSIDERATION FOR CURRENT EMPLOYEES.—

(1) SET ASIDE OF SCHOLARSHIPS.—Notwithstanding paragraphs (1) and (3) of subsection (c), 10 percent of the scholarships awarded under this section shall be set aside for individuals who are employees of agencies on the date of enactment of this section to enhance the education of such employees in areas of critical needs of agencies.

(2) FULL- OR PART-TIME EDUCATION.—Employees who are awarded scholarships under paragraph (1) shall be permitted to pursue undergraduate or graduate education under the scholarship on a full-time or part-time basis.

(h) Employee Service.—

(1) Period of Service.—Except as provided in subsection (j)(2), the period of service for which an individual shall be obligated to serve as an employee of the agency is 24 months for each academic year for which a scholarship under this section is provided. Under no circumstances shall the total period of obligated service be more than 8 years.

(2) Beginning of Service.—

(A) In General.—Except as provided in subparagraph (B), obligated service under paragraph (1) shall begin not later than 60 days after the individual obtains the educational degree for which the scholarship was provided.

(B) Deferral.—In accordance with regulations established by the National Intelligence Director, the Director or designee may defer the obligation of an individual to provide a period of service under paragraph (1) if the Director or designee determines that such a deferral is appropriate.

(i) Repayment.—

(1) In General.—Scholarship recipients who fail to maintain a high level of academic standing, as defined by the National Intelligence Director, who are dismissed from their educational institutions for disciplinary reasons, or who voluntarily terminate academic training before graduation from the educational program for which the scholarship was awarded, shall be in breach of their contractual agreement and, in lieu of any service obligation arising under such agreement, shall be liable to the United States for repayment within 1 year after the date of default of all scholarship funds paid to them and to the institution of higher education on their behalf under the agreement, except as provided in subsection (j)(2). The repayment period may be extended by the Director when determined to be necessary, as established by regulation.

(2) Liability.—Scholarship recipients who, for any reason, fail to begin or complete their service obligation after completion of academic training, or fail to comply with the terms and conditions of deferment established by the National Intelligence Director under subsection (h)(2)(B), shall be in breach of their contractual agreement. When recipients breach their agreements for the reasons stated in the preceding sentence, the recipient shall be liable to the United States for an amount equal to—

(A) the total amount of scholarships received by such individual under this section; and

(B) the interest on the amounts of such awards which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States, multiplied by 3.

(j) Cancellation, Waiver, or Suspension of Obligation.—

(1) Cancellation.—Any obligation of an individual incurred under the Program (or a contractual agreement thereunder) for service or payment shall be canceled upon the death of the individual.

(2) Waiver or Suspension.—The National Intelligence Director shall prescribe regulations to provide for the partial or total waiver or suspension of any obligation of service or payment incurred by an individual under the Program (or a contractual agreement thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be contrary to the best interests of the Government.

(k) Regulations.—The National Intelligence Director shall prescribe regulations necessary to carry out this section.

Subtitle F—Additional Authorities of National Intelligence Authority

SEC. 161. USE OF APPROPRIATED FUNDS.

(a) Disposal of Property.—(1) If specifically authorized to dispose of real property of the National Intelligence Authority under any law enacted after the date of the enactment of this Act, the National Intelligence Director shall, subject to paragraph (2), exercise such authority in strict compliance with subchapter IV of chapter 5 of title 40, United States Code.

(2) The Director shall deposit the proceeds of any disposal of property of the National Intelligence Authority into the miscellaneous receipts of the Treasury in accordance with section 3302(b) of title 31, United States Code.

(b) Gifts.—Gifts or donations of services or property of or for the National Intelligence Authority may not be accepted, used, or disposed of unless specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

SEC. 162. ACQUISITION AND FISCAL AUTHORITIES.

(a) Acquisitions of Major Systems.—(1) For each intelligence program for the acquisition of a major system, the National Intelligence Director shall—

(A) require the development and implementation of a program management plan that includes cost, schedule, and performance goals and program milestone criteria;

(B) subject to paragraph (4), serve as the exclusive milestone decision authority; and

(C) periodically—

(i) review and assess the progress made toward the achievement of the goals and milestones established in such plan; and

(ii) submit to Congress a report on the results of such review and assessment.

(2) The National Intelligence Director shall prescribe guidance for the development and implementation of program management plans under this subsection. In prescribing such guidance, the Director shall review Department of Defense guidance on program management plans for Department of Defense programs for the acquisition of major systems and, to the extent feasible, incorporate the principles of the Department of Defense guidance into the Director's guidance under this subsection.

(3) Nothing in this subsection may be construed to limit the authority of the National Intelligence Director to delegate to any other official any authority to perform the responsibilities of the Director under this subsection.

(4)(A) The authority conferred by paragraph (1)(B) shall not apply to Department of Defense programs until the National Intelligence Director, in consultation with the Secretary of Defense, determines that the National Intelligence Authority has the personnel and capability to fully and effectively carry out such authority.

(B) The National Intelligence Director may assign any authority under this subsection to the Secretary of Defense. The assignment of such authority shall be made pursuant to a memorandum of understanding between the Director and the Secretary.

(5) In this subsection:

(A) The term "intelligence program", with respect to the acquisition of a major system, means a program that—

(i) is carried out to acquire such major system for an element of the intelligence community; and

(ii) is funded in whole out of amounts available for the National Intelligence Program.

(B) The term "major system" has the meaning given such term in section 4(9) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 403(9)).

(b) Availability of Funds.—Notwithstanding any other provision of law (other than the provisions of this Act), sums appropriated or otherwise made available to the National Intelligence Authority may be expended for purposes necessary to carry out its functions, including any function performed by the National Intelligence Authority that is described in section 8(a) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j(a)).

(c) Relationship of Director's Authority to Other Laws on Acquisition and Management of Property and Services.—Section 113(e) of title 40, United States Code, is amended—

(A) by striking "or" at the end of paragraph (18);

(B) by striking the period at the end of paragraph (19) and inserting "; or"; and

(C) by adding at the end the following new paragraph:

"(20) the National Intelligence Director.".

(d) National Intelligence Director Report on Enhancement of NSA and NGIA Acquisition Authorities.—Not later than one year after the date of the enactment of this Act, the National Intelligence Director shall—

(1) review—

(A) the acquisition authority of the Director of the National Security Agency; and

(B) the acquisition authority of the Director of the National Geospatial-Intelligence Agency; and

(2) submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives a report setting forth any recommended enhancements of the acquisition authorities of the Director of the National Security Agency and the Director of the National Geospatial-Intelligence Agency that the National Intelligence Director considers necessary.

(e) Comptroller General Report on Acquisition Policies and Procedures.—Not later than two years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the extent to which the policies and procedures adopted for managing the acquisition of major systems for national intelligence purposes, as identified by the National Intelligence Director, are likely to result in successful cost, schedule, and performance outcomes.

SEC. 163. PERSONNEL MATTERS.

(a) In General.—In addition to the authorities provided in section 114, the National Intelligence Director may exercise with respect to the personnel of the National Intelligence Authority any authority of the Director of the Central Intelligence Agency with respect to the personnel of the Central Intelligence Agency under the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.), and other applicable provisions of law, as of the date of the enactment of this Act to the same extent, and subject to the same conditions and limitations, that the Director of the Central Intelligence Agency may exercise such authority with respect to personnel of the Central Intelligence Agency.

(b) Rights and Protections of Employees and Applicants.—Employees and applicants for employment of the National Intelligence

Authority shall have the same rights and protections under the Authority as employees of the Central Intelligence Agency have under the Central Intelligence Agency Act of 1949, and other applicable provisions of law, as of the date of the enactment of this Act.

SEC. 164. ETHICS MATTERS.

(a) POLITICAL SERVICE OF PERSONNEL.—Section 7323(b)(2)(B)(i) of title 5, United States Code, is amended—

(1) in subclause (XII), by striking "or" at the end; and

(2) by inserting after subclause (XIII) the following new subclause:

"(XIV) the National Intelligence Authority; or".

(b) DELETION OF INFORMATION ABOUT FOREIGN GIFTS.—Section 7342(f)(4) of title 5, United States Code, is amended—

(1) by inserting "(A)" after "(4)";

(2) in subparagraph (A), as so designated, by striking "the Director of Central Intelligence" and inserting "the Director of the Central Intelligence Agency"; and

(3) by adding at the end the following new subparagraph:

"(B) In transmitting such listings for the National Intelligence Authority, the National Intelligence Director may delete the information described in subparagraphs (A) and (C) of paragraphs (2) and (3) if the Director certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources.".

(c) EXEMPTION FROM FINANCIAL DISCLOSURES.—Section 105(a)(1) of the Ethics in Government Act (5 U.S.C. App.) is amended by inserting "the National Intelligence Authority," before "the Central Intelligence Agency".

TITLE II—OTHER IMPROVEMENTS OF INTELLIGENCE ACTIVITIES

Subtitle A—Improvements of Intelligence Activities

SEC. 201. AVAILABILITY TO PUBLIC OF CERTAIN INTELLIGENCE FUNDING INFORMATION.

(a) AMOUNTS REQUESTED EACH FISCAL YEAR.—The President shall disclose to the public for each fiscal year after fiscal year 2005 the aggregate amount of appropriations requested in the budget of the President for such fiscal year for the National Intelligence Program.

(b) AMOUNTS AUTHORIZED AND APPROPRIATED EACH FISCAL YEAR.—Congress shall disclose to the public for each fiscal year after fiscal year 2005 the aggregate amount of funds authorized to be appropriated, and the aggregate amount of funds appropriated, by Congress for such fiscal year for the National Intelligence Program.

(c) STUDY OF DISCLOSURE OF ADDITIONAL INFORMATION.—(1) The National Intelligence Director shall conduct a study to assess the advisability of disclosing to the public amounts as follows:

(A) The aggregate amount of appropriations requested in the budget of the President for each fiscal year for each element of the intelligence community.

(B) The aggregate amount of funds authorized to be appropriated, and the aggregate amount of funds appropriated, by Congress for each fiscal year for each element of the intelligence community.

(2) The study under paragraph (1) shall—

(A) address whether or not the disclosure to the public of the information referred to in that paragraph would harm the national security of the United States; and

(B) take into specific account concerns relating to the disclosure of such information for each element of the intelligence community.

(3) Not later than 180 days after the effective date of this section, the Director shall submit to Congress a report on the study under paragraph (1).

SEC. 202. MERGER OF HOMELAND SECURITY COUNCIL INTO NATIONAL SECURITY COUNCIL.

(a) MERGER OF HOMELAND SECURITY COUNCIL INTO NATIONAL SECURITY COUNCIL.—Section 101 of the National Security Act of 1947 (50 U.S.C. 402) is amended—

(1) in the fourth undesignated paragraph of subsection (a), by striking clauses (5) and (6) and inserting the following new clauses:

"(5) the Attorney General;

"(6) the Secretary of Homeland Security;"; and

(2) in subsection (b)—

(A) in paragraph (1), by striking "and" at the end;

(B) in paragraph (2), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following new paragraphs:

"(3) assess the objectives, commitments, and risks of the United States in the interests of homeland security and make recommendations to the President based on such assessments;

"(4) oversee and review the homeland security policies of the Federal Government and make recommendations to the President based on such oversight and review; and

"(5) perform such other functions as the President may direct.".

(c) REPEAL OF SUPERSEDED AUTHORITY.—(1) Title IX of the Homeland Security Act of 2002 (6 U.S.C. 491 et seq.) is repealed.

(2) The table of contents for that Act is amended by striking the items relating to title IX.

SEC. 203. JOINT INTELLIGENCE COMMUNITY COUNCIL.

Title I of the National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by inserting after section 101 the following new section:

"JOINT INTELLIGENCE COMMUNITY COUNCIL

"SEC. 101A. (a) JOINT INTELLIGENCE COMMUNITY COUNCIL.—There is a Joint Intelligence Community Council.

"(b) MEMBERSHIP.—The Joint Intelligence Community Council shall consist of the following:

"(1) The National Intelligence Director, who shall chair the Council.

"(2) The Secretary of State.

"(3) The Secretary of the Treasury.

"(4) The Secretary of Defense.

"(5) The Attorney General.

"(6) The Secretary of Energy.

"(7) The Secretary of Homeland Security.

"(8) Such other officers of the United States Government as the President may designate from time to time.

"(c) FUNCTIONS.—The Joint Intelligence Community Council shall assist the National Intelligence Director to in developing and implementing a joint, unified national intelligence effort to protect national security by—

"(1) advising the Director on establishing requirements, developing budgets, financial management, and monitoring and evaluating the performance of the intelligence community, and on such other matters as the Director may request; and

"(2) ensuring the timely execution of programs, policies, and directives established or developed by the Director.

"(d) MEETINGS.—The Joint Intelligence Community Council shall meet upon the request of the National Intelligence Director.".

SEC. 204. IMPROVEMENT OF INTELLIGENCE CAPABILITIES OF THE FEDERAL BUREAU OF INVESTIGATION.

(a) FINDINGS.—Congress makes the following findings:

(1) The National Commission on Terrorist Attacks Upon the United States in its final report stated that, under Director Robert Mueller, the Federal Bureau of Investigation has made significant progress in improving its intelligence capabilities.

(2) In the report, the members of the Commission also urged that the Federal Bureau of Investigation fully institutionalize the shift of the Bureau to a preventive counterterrorism posture.

(b) IMPROVEMENT OF INTELLIGENCE CAPABILITIES.—The Director of the Federal Bureau of Investigation shall continue efforts to improve the intelligence capabilities of the Federal Bureau of Investigation and to develop and maintain within the Bureau a national intelligence workforce.

(c) NATIONAL INTELLIGENCE WORKFORCE.—(1) In developing and maintaining a national intelligence workforce under subsection (b), the Director of the Federal Bureau of Investigation shall, subject to the direction and control of the President, develop and maintain a specialized and integrated national intelligence workforce consisting of agents, analysts, linguists, and surveillance specialists who are recruited, trained, and rewarded in a manner which ensures the existence within the Federal Bureau of Investigation an institutional culture with substantial expertise in, and commitment to, the intelligence mission of the Bureau.

(2) Each agent employed by the Bureau after the date of the enactment of this Act shall receive basic training in both criminal justice matters and national intelligence matters.

(3) Each agent employed by the Bureau after the date of the enactment of this Act shall, to the maximum extent practicable, be given the opportunity to undergo, during such agent's early service with the Bureau, meaningful assignments in criminal justice matters and in national intelligence matters.

(4) The Director shall—

(A) establish career positions in national intelligence matters for agents and analysts of the Bureau; and

(B) in furtherance of the requirement under subparagraph (A) and to the maximum extent practicable, afford agents and analysts of the Bureau the opportunity to work in the career specialty selected by such agents and analysts over their entire career with the Bureau.

(5) The Director shall carry out a program to enhance the capacity of the Bureau to recruit and retain individuals with backgrounds in intelligence, international relations, language, technology, and other skills relevant to the intelligence mission of the Bureau.

(6) The Director shall, to the maximum extent practicable, afford the analysts of the Bureau training and career opportunities commensurate with the training and career opportunities afforded analysts in other elements of the intelligence community.

(7) Commencing as soon as practicable after the date of the enactment of this Act, each direct supervisor of a Field Intelligence Group, and each Bureau Operational Manager at the Section Chief and Assistant Special Agent in Charge (ASAC) level and above, shall be a certified intelligence officer.

(8) The Director shall, to the maximum extent practicable, ensure that the successful discharge of advanced training courses, and

of one or more assignments to another element of the intelligence community, is a precondition to advancement to higher level intelligence assignments within the Bureau.

(d) Field Office Matters.—(1) In improving the intelligence capabilities of the Federal Bureau of Investigation under subsection (b), the Director of the Federal Bureau of Investigation shall ensure that each Field Intelligence Group reports directly to a field office senior manager responsible for intelligence matters.

(2) The Director shall provide for such expansion of the secure facilities in the field offices of the Bureau as is necessary to ensure the discharge by the field offices of the intelligence mission of the Bureau.

(3) The Director shall require that each Field Intelligence Group manager ensures the integration of analysts, agents, linguists, and surveillance personnel in the field.

(e) Budget Matters.—The Director of the Federal Bureau of Investigation shall, in consultation with the Director of the Office of Management and Budget, modify the budget structure of the Federal Bureau of Investigation in order to organize the budget according to the four principal missions of the Bureau as follows:

(1) Intelligence.

(2) Counterterrorism and counterintelligence.

(3) Criminal Enterprises/Federal Crimes.

(4) Criminal justice services.

(f) Reports.—(1) Not later than 180 days after the date of the enactment of this Act, the Director of the Federal Bureau of Investigation shall submit to Congress a report on the progress made as of the date of such report in carrying out the requirements of this section.

(2) The Director shall include in each annual program review of the Federal Bureau of Investigation that is submitted to Congress a report on the progress made by each field office of the Bureau during the period covered by such review in addressing Bureau and national program priorities.

(3) Not later than 180 days after the date of the enactment of this Act, and every 12 months thereafter, the Director shall submit to Congress a report assessing the qualifications, status, and roles of analysts at Bureau headquarters and in the field offices of the Bureau.

(4) Not later than 180 days after the date of the enactment of this Act, and every 12 months thereafter, the Director shall submit to Congress a report on the progress of the Bureau in implementing information-sharing principles.

SEC. 205. FEDERAL BUREAU OF INVESTIGATION INTELLIGENCE CAREER SERVICE.

(a) Short Title.—This section may be cited as the "Federal Bureau of Investigation Intelligence Career Service Authorization Act of 2005".

(b) Establishment of Federal Bureau of Investigation Intelligence Career Service.—

(1) In general.—The Director of the Federal Bureau of Investigation, in consultation with the Director of the Office of Personnel Management—

(A) may establish positions for intelligence analysts, without regard to chapter 51 of title 5, United States Code;

(B) shall prescribe standards and procedures for establishing and classifying such positions; and

(C) may fix the rate of basic pay for such positions, without regard to subchapter III of chapter 53 of title 5, United States Code, if the rate of pay is not greater than the rate of basic pay payable for level IV of the Executive Schedule.

(2) Levels of performance.—Any performance management system established for intelligence analysts shall have at least 1 level of performance above a retention standard.

(c) Reporting Requirement.—Not less than 60 days before the date of the implementation of authorities authorized under this section, the Director of the Federal Bureau of Investigation shall submit an operating plan describing the Director's intended use of the authorities under this section to—

(1) the Committees on Appropriations of the Senate and the House of Representatives;

(2) the Committee on Governmental Affairs of the Senate;

(3) the Committee on Government Reform of the House of Representatives;

(4) the congressional intelligence committees; and

(5) the Committees on the Judiciary of the Senate and the House of Representatives.

(d) Annual Report.—Not later than December 31, 2005, and annually thereafter for 4 years, the Director of the Federal Bureau of Investigation shall submit an annual report of the use of the permanent authorities provided under this section during the preceding fiscal year to—

(1) the Committees on Appropriations of the Senate and the House of Representatives;

(2) the Committee on Governmental Affairs of the Senate;

(3) the Committee on Government Reform of the House of Representatives;

(4) the congressional intelligence committees; and

(5) the Committees on the Judiciary of the Senate and the House of Representatives.

SEC. 206. INFORMATION SHARING.

(a) Definitions.—In this section:

(1) Advisory board.—The term "Advisory Board" means the Advisory Board on Information Sharing established under subsection (i).

(2) Executive council.—The term "Executive Council" means the Executive Council on Information Sharing established under subsection (h).

(3) Homeland security information.—The term "homeland security information" means all information, whether collected, produced, or distributed by intelligence, law enforcement, military, homeland security, or other activities relating to—

(A) the existence, organization, capabilities, plans, intentions, vulnerabilities, means of finance or material support, or activities of foreign or international terrorist groups or individuals, or of domestic groups or individuals involved in transnational terrorism;

(B) threats posed by such groups or individuals to the United States, United States persons, or United States interests, or to those of other nations;

(C) communications of or by such groups or individuals; or

(D) groups or individuals reasonably believed to be assisting or associated with such groups or individuals.

(4) Network.—The term "Network" means the Information Sharing Network described under subsection (c).

(b) Findings.—Consistent with the report of the National Commission on Terrorist Attacks upon the United States, Congress makes the following findings:

(1) The effective use of information, from all available sources, is essential to the fight against terror and the protection of our homeland. The biggest impediment to all-source analysis, and to a greater likelihood of "connecting the dots", is resistance to sharing information.

(2) The United States Government has access to a vast amount of information, including not only traditional intelligence but also other government databases, such as those containing customs or immigration information. However, the United States Government has a weak system for processing and using the information it has.

(3) In the period preceding September 11, 2001, there were instances of potentially helpful information that was available but that no person knew to ask for; information that was distributed only in compartmented channels, and information that was requested but could not be shared.

(4) Current security requirements nurture over-classification and excessive compartmentalization of information among agencies. Each agency's incentive structure opposes sharing, with risks, including criminal, civil, and administrative sanctions, but few rewards for sharing information.

(5) The current system, in which each intelligence agency has its own security practices, requires a demonstrated "need to know" before sharing. This approach assumes that it is possible to know, in advance, who will need to use the information. An outgrowth of the cold war, such a system implicitly assumes that the risk of inadvertent disclosure outweighs the benefits of wider sharing. Such assumptions are no longer appropriate. Although counterintelligence concerns are still real, the costs of not sharing information are also substantial. The current "need-to-know" culture of information protection needs to be replaced with a "need-to-share" culture of integration.

(6) A new approach to the sharing of intelligence and homeland security information is urgently needed. An important conceptual model for a new "trusted information network" is the Systemwide Homeland Analysis and Resource Exchange (SHARE) Network proposed by a task force of leading professionals assembled by the Markle Foundation and described in reports issued in October 2002 and December 2003.

(7) No single agency can create a meaningful information sharing system on its own. Alone, each agency can only modernize stovepipes, not replace them. Presidential leadership is required to bring about governmentwide change.

(c) Information Sharing Network.—

(1) Establishment.—The President shall establish a trusted information network and secure information sharing environment to promote sharing of intelligence and homeland security information in a manner consistent with national security and the protection of privacy and civil liberties, and based on clearly defined and consistently applied policies and procedures, and valid investigative, analytical or operational requirements.

(2) Attributes.—The Network shall promote coordination, communication and collaboration of people and information among all relevant Federal departments and agencies, State, tribal, and local authorities, and relevant private sector entities, including owners and operators of critical infrastructure, by using policy guidelines and technologies that support—

(A) a decentralized, distributed, and coordinated environment that connects existing systems where appropriate and allows users to share information among agencies, between levels of government, and, as appropriate, with the private sector;

(B) the sharing of information in a form and manner that facilitates its use in analysis, investigations and operations;

(C) building upon existing systems capabilities currently in use across the Government;

(D) utilizing industry best practices, including minimizing the centralization of data and seeking to use common tools and capabilities whenever possible;

(E) employing an information access management approach that controls access to data rather than to just networks;

(F) facilitating the sharing of information at and across all levels of security by using policy guidelines and technologies that support writing information that can be broadly shared;

(G) providing directory services for locating people and information;

(H) incorporating protections for individuals' privacy and civil liberties;

(I) incorporating strong mechanisms for information security and privacy and civil liberties guideline enforcement in order to enhance accountability and facilitate oversight, including—

(i) multifactor authentication and access control;

(ii) strong encryption and data protection;

(iii) immutable audit capabilities;

(iv) automated policy enforcement;

(v) perpetual, automated screening for abuses of network and intrusions; and

(vi) uniform classification and handling procedures;

(J) compliance with requirements of applicable law and guidance with regard to the planning, design, acquisition, operation, and management of information systems; and

(K) permitting continuous system upgrades to benefit from advances in technology while preserving the integrity of stored data.

(d) IMMEDIATE ACTIONS.—Not later than 90 days after the date of the enactment of this Act, the Director of the Office of Management and Budget, in consultation with the Executive Council, shall—

(1) submit to the President and to Congress a description of the technological, legal, and policy issues presented by the creation of the Network described in subsection (c), and the way in which these issues will be addressed;

(2) establish electronic directory services to assist in locating in the Federal Government intelligence and homeland security information and people with relevant knowledge about intelligence and homeland security information; and

(3) conduct a review of relevant current Federal agency capabilities, including—

(A) a baseline inventory of current Federal systems that contain intelligence or homeland security information;

(B) the money currently spent to maintain those systems; and

(C) identification of other information that should be included in the Network.

(e) GUIDELINES AND REQUIREMENTS.—As soon as possible, but in no event later than 180 days after the date of the enactment of this Act, the President shall—

(1) in consultation with the Executive Council—

(A) issue guidelines for acquiring, accessing, sharing, and using information, including guidelines to ensure that information is provided in its most shareable form, such as by separating out data from the sources and methods by which that data are obtained; and

(B) on classification policy and handling procedures across Federal agencies, including commonly accepted processing and access controls;

(2) in consultation with the Privacy and Civil Liberties Oversight Board established under section 211, issue guidelines that—

(A) protect privacy and civil liberties in the development and use of the Network; and

(B) shall be made public, unless, and only to the extent that, nondisclosure is clearly necessary to protect national security; and

(3) require the heads of Federal departments and agencies to promote a culture of information sharing by—

(A) reducing disincentives to information sharing, including overclassification of information and unnecessary requirements for originator approval; and

(B) providing affirmative incentives for information sharing, such as the incorporation of information sharing performance measures into agency and managerial evaluations, and employee awards for promoting innovative information sharing practices.

(f) ENTERPRISE ARCHITECTURE AND IMPLEMENTATION PLAN.—Not later than 270 days after the date of the enactment of this Act, the Director of Management and Budget shall submit to the President and to Congress an enterprise architecture and implementation plan for the Network. The enterprise architecture and implementation plan shall be prepared by the Director of Management and Budget, in consultation with the Executive Council, and shall include—

(1) a description of the parameters of the proposed Network, including functions, capabilities, and resources;

(2) a delineation of the roles of the Federal departments and agencies that will participate in the development of the Network, including identification of any agency that will build the infrastructure needed to operate and manage the Network (as distinct from the individual agency components that are to be part of the Network), with the delineation of roles to be consistent with—

(A) the authority of the National Intelligence Director under this Act to set standards for information sharing and information technology throughout the intelligence community; and

(B) the authority of the Secretary of Homeland Security and the role of the Department of Homeland Security in coordinating with State, tribal, and local officials and the private sector;

(3) a description of the technological requirements to appropriately link and enhance existing networks and a description of the system design that will meet these requirements;

(4) an enterprise architecture that—

(A) is consistent with applicable laws and guidance with regard to planning, design, acquisition, operation, and management of information systems;

(B) will be used to guide and define the development and implementation of the Network; and

(C) addresses the existing and planned enterprise architectures of the departments and agencies participating in the Network;

(5) a description of how privacy and civil liberties will be protected throughout the design and implementation of the Network;

(6) objective, systemwide performance measures to enable the assessment of progress toward achieving full implementation of the Network;

(7) a plan, including a time line, for the development and phased implementation of the Network;

(8) total budget requirements to develop and implement the Network, including the estimated annual cost for each of the 5 years following the date of the enactment of this Act; and

(9) proposals for any legislation that the Director of Management and Budget determines necessary to implement the Network.

(g) DIRECTOR OF MANAGEMENT AND BUDGET RESPONSIBLE FOR INFORMATION SHARING ACROSS THE FEDERAL GOVERNMENT.—

(1) ADDITIONAL DUTIES AND RESPONSIBILITIES.—

(A) IN GENERAL.—The Director of Management and Budget, in consultation with the Executive Council, shall—

(i) implement and manage the Network;

(ii) develop and implement policies, procedures, guidelines, rules, and standards as appropriate to foster the development and proper operation of the Network; and

(iii) assist, monitor, and assess the implementation of the Network by Federal departments and agencies to ensure adequate progress, technological consistency and policy compliance; and regularly report the findings to the President and to Congress.

(B) CONTENT OF POLICIES, PROCEDURES, GUIDELINES, RULES, AND STANDARDS.—The policies, procedures, guidelines, rules, and standards under subparagraph (A)(ii) shall—

(i) take into account the varying missions and security requirements of agencies participating in the Network;

(ii) address development, implementation, and oversight of technical standards and requirements;

(iii) address and facilitate information sharing between and among departments and agencies of the intelligence community, the Department of Defense, the Homeland Security community and the law enforcement community;

(iv) address and facilitate information sharing between Federal departments and agencies and State, tribal and local governments;

(v) address and facilitate, as appropriate, information sharing between Federal departments and agencies and the private sector;

(vi) address and facilitate, as appropriate, information sharing between Federal departments and agencies with foreign partners and allies; and

(vii) ensure the protection of privacy and civil liberties.

(2) APPOINTMENT OF PRINCIPAL OFFICER.—Not later than 30 days after the date of the enactment of this Act, the Director of Management and Budget shall appoint, with approval of the President, a principal officer in the Office of Management and Budget whose primary responsibility shall be to carry out the day-to-day duties of the Director specified in this section. The officer shall report directly to the Director of Management and Budget, have the rank of a Deputy Director and shall be paid at the rate of pay payable for a position at level III of the Executive Schedule under section 5314 of title 5, United States Code.

(h) EXECUTIVE COUNCIL ON INFORMATION SHARING.—

(1) ESTABLISHMENT.—There is established an Executive Council on Information Sharing that shall assist the Director of Management and Budget in the execution of the Director's duties under this Act concerning information sharing.

(2) MEMBERSHIP.—The members of the Executive Council shall be—

(A) the Director of Management and Budget, who shall serve as Chairman of the Executive Council;

(B) the Secretary of Homeland Security or his designee;

(C) the Secretary of Defense or his designee;

(D) the Attorney General or his designee;

(E) the Secretary of State or his designee;

(F) the Director of the Federal Bureau of Investigation or his designee;

(G) the National Intelligence Director or his designee;

(H) such other Federal officials as the President shall designate;

(I) representatives of State, tribal, and local governments, to be appointed by the President; and

(J) individuals who are employed in private businesses or nonprofit organizations that own or operate critical infrastructure, to be appointed by the President.

(3) RESPONSIBILITIES.—The Executive Council shall assist the Director of Management and Budget in—

(A) implementing and managing the Network;

(B) developing policies, procedures, guidelines, rules, and standards necessary to establish and implement the Network;

(C) ensuring there is coordination among departments and agencies participating in the Network in the development and implementation of the Network;

(D) reviewing, on an ongoing basis, policies, procedures, guidelines, rules, and standards related to the implementation of the Network;

(E) establishing a dispute resolution process to resolve disagreements among departments and agencies about whether particular information should be shared and in what manner; and

(F) considering such reports as are submitted by the Advisory Board on Information Sharing under subsection (i)(2).

(4) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Council shall not be subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App.).

(5) REPORTS.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Director of Management and Budget, in the capacity of Chair of the Executive Council, shall submit a report to the President and to Congress that shall include—

(A) a description of the activities and accomplishments of the Council in the preceding year; and

(B) the number and dates of the meetings held by the Council and a list of attendees at each meeting.

(6) INFORMING THE PUBLIC.—The Executive Council shall—

(A) make its reports to Congress available to the public to the greatest extent that is consistent with the protection of classified information and applicable law; and

(B) otherwise inform the public of its activities, as appropriate and in a manner consistent with the protection of classified information and applicable law.

(i) ADVISORY BOARD ON INFORMATION SHARING.—

(1) ESTABLISHMENT.—There is established an Advisory Board on Information Sharing to advise the President and the Executive Council on policy, technical, and management issues related to the design and operation of the Network.

(2) RESPONSIBILITIES.—The Advisory Board shall advise the Executive Council on policy, technical, and management issues related to the design and operation of the Network. At the request of the Executive Council, or the Director of Management and Budget in the capacity as Chair of the Executive Council, or on its own initiative, the Advisory Board shall submit reports to the Executive Council concerning the findings and recommendations of the Advisory Board regarding the design and operation of the Network.

(3) MEMBERSHIP AND QUALIFICATIONS.—The Advisory Board shall be composed of no more than 15 members, to be appointed by the President from outside the Federal Government. The members of the Advisory Board shall have significant experience or expertise in policy, technical and operational matters, including issues of security, privacy, or civil liberties, and shall be selected solely on the basis of their professional qualifications, achievements, public stature and relevant experience.

(4) CHAIR.—The President shall designate one of the members of the Advisory Board to act as chair of the Advisory Board.

(5) ADMINISTRATIVE SUPPORT.—The Office of Management and Budget shall provide administrative support for the Advisory Board.

(j) REPORTS.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, and semiannually thereafter, the President through the Director of Management and Budget shall submit a report to Congress on the state of the Network and of information sharing across the Federal Government.

(2) CONTENT.—Each report under this subsection shall include—

(A) a progress report on the extent to which the Network has been implemented, including how the Network has fared on the government-wide and agency-specific performance measures and whether the performance goals set in the preceding year have been met;

(B) objective systemwide performance goals for the following year;

(C) an accounting of how much was spent on the Network in the preceding year;

(D) actions taken to ensure that agencies procure new technology that is consistent with the Network and information on whether new systems and technology are consistent with the Network;

(E) the extent to which, in appropriate circumstances, all terrorism watch lists are available for combined searching in real time through the Network and whether there are consistent standards for placing individuals on, and removing individuals from, the watch lists, including the availability of processes for correcting errors;

(F) the extent to which unnecessary roadblocks, impediments, or disincentives to information sharing, including the inappropriate use of paper-only intelligence products and requirements for originator approval, have been eliminated;

(G) the extent to which positive incentives for information sharing have been implemented;

(H) the extent to which classified information is also made available through the Network, in whole or in part, in unclassified form;

(I) the extent to which State, tribal, and local officials—

(i) are participating in the Network;

(ii) have systems which have become integrated into the Network;

(iii) are providing as well as receiving information; and

(iv) are using the Network to communicate with each other;

(J) the extent to which—

(i) private sector data, including information from owners and operators of critical infrastructure, is incorporated in the Network; and

(ii) the private sector is both providing and receiving information;

(K) where private sector data has been used by the Government or has been incorporated into the Network—

(i) the measures taken to protect sensitive business information; and

(ii) where the data involves information about individuals, the measures taken to ensure the accuracy of such data;

(L) the measures taken by the Federal Government to ensure the accuracy of other information on the Network and, in particular, the accuracy of information about individuals;

(M) an assessment of the Network's privacy and civil liberties protections, including actions taken in the preceding year to implement or enforce privacy and civil liberties protections and a report of complaints received about interference with an individual's privacy or civil liberties; and

(N) an assessment of the security protections of the Network.

(k) AGENCY RESPONSIBILITIES.—The head of each department or agency possessing or using intelligence or homeland security information or otherwise participating in the Network shall—

(1) ensure full department or agency compliance with information sharing policies, procedures, guidelines, rules, and standards established for the Network under subsections (c) and (g);

(2) ensure the provision of adequate resources for systems and activities supporting operation of and participation in the Network; and

(3) ensure full agency or department cooperation in the development of the Network and associated enterprise architecture to implement governmentwide information sharing, and in the management and acquisition of information technology consistent with applicable law.

(l) AGENCY PLANS AND REPORTS.—Each Federal department or agency that possesses or uses intelligence and homeland security information, operates a system in the Network or otherwise participates, or expects to participate, in the Network, shall submit to the Director of Management and Budget—

(1) not later than 1 year after the date of the enactment of this Act, a report including—

(A) a strategic plan for implementation of the Network's requirements within the department or agency;

(B) objective performance measures to assess the progress and adequacy of the department or agency's information sharing efforts; and

(C) budgetary requirements to integrate the agency into the Network, including projected annual expenditures for each of the following 5 years following the submission of the report; and

(2) annually thereafter, reports including—

(A) an assessment of the progress of the department or agency in complying with the Network's requirements, including how well the agency has performed on the objective measures developed under paragraph (1)(B);

(B) the agency's expenditures to implement and comply with the Network's requirements in the preceding year; and

(C) the agency's or department's plans for further implementation of the Network in the year following the submission of the report.

(m) PERIODIC ASSESSMENTS.—

(1) COMPTROLLER GENERAL.—

(A) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, and periodically thereafter, the Comptroller General shall evaluate the implementation of the Network, both generally and, at the discretion of the Comptroller General, within specific departments and agencies, to determine the extent of compliance with the

Network's requirements and to assess the effectiveness of the Network in improving information sharing and collaboration and in protecting privacy and civil liberties, and shall report to Congress on the findings of the Comptroller General.

(B) INFORMATION AVAILABLE TO THE COMPTROLLER GENERAL.—Upon request by the Comptroller General, information relevant to an evaluation under subsection (a) shall be made available to the Comptroller General under section 716 of title 31, United States Code.

(C) CONSULTATION WITH CONGRESSIONAL COMMITTEES.—If a record is not made available to the Comptroller General within a reasonable time, before the Comptroller General files a report under section 716(b)(1) of title 31, United States Code, the Comptroller General shall consult with the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Committee on Government Reform of the House of Representatives concerning the Comptroller's intent to file a report.

(2) INSPECTORS GENERAL.—The Inspector General in any Federal department or agency that possesses or uses intelligence or homeland security information or that otherwise participates in the Network shall, at the discretion of the Inspector General—

(A) conduct audits or investigations to—

(i) determine the compliance of that department or agency with the Network's requirements; and

(ii) assess the effectiveness of that department or agency in improving information sharing and collaboration and in protecting privacy and civil liberties; and

(B) issue reports on such audits and investigations.

(n) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

(1) $50,000,000 to the Director of Management and Budget to carry out this section for fiscal year 2005; and

(2) such sums as are necessary to carry out this section in each fiscal year thereafter, to be disbursed and allocated in accordance with the Network implementation plan required by subsection (f).

Subtitle B—Privacy and Civil Liberties

SEC. 211. PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD.

(a) IN GENERAL.—There is established within the Executive Office of the President a Privacy and Civil Liberties Oversight Board (referred to in this subtitle as the "Board").

(b) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) In conducting the war on terrorism, the Government may need additional powers and may need to enhance the use of its existing powers.

(2) This shift of power and authority to the Government calls for an enhanced system of checks and balances to protect the precious liberties that are vital to our way of life and to ensure that the Government uses its powers for the purposes for which the powers were given.

(c) PURPOSE.—The Board shall—

(1) analyze and review actions the executive branch takes to protect the Nation from terrorism; and

(2) ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the Nation against terrorism.

(d) FUNCTIONS.—

(1) ADVICE AND COUNSEL ON POLICY DEVELOPMENT AND IMPLEMENTATION.—The Board shall—

(A) review proposed legislation, regulations, and policies related to efforts to protect the Nation from terrorism, including the development and adoption of information sharing guidelines under section 205(g);

(B) review the implementation of new and existing legislation, regulations, and policies related to efforts to protect the Nation from terrorism, including the implementation of information sharing guidelines under section 205(g);

(C) advise the President and the departments, agencies, and elements of the executive branch to ensure that privacy and civil liberties are appropriately considered in the development and implementation of such legislation, regulations, policies, and guidelines; and

(D) in providing advice on proposals to retain or enhance a particular governmental power, consider whether the department, agency, or element of the executive branch has explained—

(i) that the power actually materially enhances security;

(ii) that there is adequate supervision of the use by the executive branch of the power to ensure protection of privacy and civil liberties; and

(iii) that there are adequate guidelines and oversight to properly confine its use.

(2) OVERSIGHT.—The Board shall continually review—

(A) the regulations, policies, and procedures, and the implementation of the regulations, policies, and procedures, of the departments, agencies, and elements of the executive branch to ensure that privacy and civil liberties are protected;

(B) the information sharing practices of the departments, agencies, and elements of the executive branch to determine whether they appropriately protect privacy and civil liberties and adhere to the information sharing guidelines prescribed under section 205(g) and to other governing laws, regulations, and policies regarding privacy and civil liberties; and

(C) other actions by the executive branch related to efforts to protect the Nation from terrorism to determine whether such actions—

(i) appropriately protect privacy and civil liberties; and

(ii) are consistent with governing laws, regulations, and policies regarding privacy and civil liberties.

(3) RELATIONSHIP WITH PRIVACY AND CIVIL LIBERTIES OFFICERS.—The Board shall—

(A) review and assess reports and other information from privacy officers and civil liberties officers described in section 212;

(B) when appropriate, make recommendations to such privacy officers and civil liberties officers regarding their activities; and

(C) when appropriate, coordinate the activities of such privacy officers and civil liberties officers on relevant interagency matters.

(4) TESTIMONY.—The Members of the Board shall appear and testify before Congress upon request.

(e) REPORTS.—

(1) IN GENERAL.—The Board shall—

(A) receive and review reports from privacy officers and civil liberties officers described in section 212; and

(B) periodically submit, not less than semiannually, reports—

(i)(I) to the appropriate committees of Congress, including the Committees on the Judiciary of the Senate and the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives; and

(II) to the President; and

(ii) which shall be in unclassified form to the greatest extent possible, with a classified annex where necessary.

(2) CONTENTS.—Not less than 2 reports submitted each year under paragraph (1)(B) shall include—

(A) a description of the major activities of the Board during the preceding period; and

(B) information on the findings, conclusions, and recommendations of the Board resulting from its advice and oversight functions under subsection (d).

(f) INFORMING THE PUBLIC.—The Board shall—

(1) make its reports, including its reports to Congress, available to the public to the greatest extent that is consistent with the protection of classified information and applicable law; and

(2) hold public hearings and otherwise inform the public of its activities, as appropriate and in a manner consistent with the protection of classified information and applicable law.

(g) ACCESS TO INFORMATION.—

(1) AUTHORIZATION.—If determined by the Board to be necessary to carry out its responsibilities under this section, the Board is authorized to—

(A) have access from any department, agency, or element of the executive branch, or any Federal officer or employee, to all relevant records, reports, audits, reviews, documents, papers, recommendations, or other relevant material, including classified information consistent with applicable law;

(B) interview, take statements from, or take public testimony from personnel of any department, agency, or element of the executive branch, or any Federal officer or employee;

(C) request information or assistance from any State, tribal, or local government; and

(D) require, by subpoena issued at the direction of a majority of the members of the Board, persons (other than departments, agencies, and elements of the executive branch) to produce any relevant information, documents, reports, answers, records, accounts, papers, and other documentary or testimonial evidence.

(2) ENFORCEMENT OF SUBPOENA.—In the case of contumacy or failure to obey a subpoena issued under paragraph (1)(D), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found may issue an order requiring such person to produce the evidence required by such subpoena.

(3) AGENCY COOPERATION.—Whenever information or assistance requested under subparagraph (A) or (B) of paragraph (1) is, in the judgment of the Board, unreasonably refused or not provided, the Board shall report the circumstances to the head of the department, agency, or element concerned without delay. The head of the department, agency, or element concerned shall ensure that the Board is given access to the information, assistance, material, or personnel the Board determines to be necessary to carry out its functions.

(h) MEMBERSHIP.—

(1) MEMBERS.—The Board shall be composed of a full-time chairman and 4 additional members, who shall be appointed by

the President, by and with the advice and consent of the Senate.

(2) QUALIFICATIONS.—Members of the Board shall be selected solely on the basis of their professional qualifications, achievements, public stature, expertise in civil liberties and privacy, and relevant experience, and without regard to political affiliation, but in no event shall more than 3 members of the Board be members of the same political party.

(3) INCOMPATIBLE OFFICE.—An individual appointed to the Board may not, while serving on the Board, be an elected official, officer, or employee of the Federal Government, other than in the capacity as a member of the Board.

(4) TERM.—Each member of the Board shall serve a term of six years, except that—

(A) a member appointed to a term of office after the commencement of such term may serve under such appointment only for the remainder of such term;

(B) upon the expiration of the term of office of a member, the member shall continue to serve until the member's successor has been appointed and qualified, except that no member may serve under this subparagraph—

(i) for more than 60 days when Congress is in session unless a nomination to fill the vacancy shall have been submitted to the Senate; or

(ii) after the adjournment sine die of the session of the Senate in which such nomination is submitted; and

(C) the members initially appointed under this subsection shall serve terms of two, three, four, five, and six years, respectively, from the effective date of this Act, with the term of each such member to be designated by the President.

(5) QUORUM AND MEETINGS.—After its initial meeting, the Board shall meet upon the call of the chairman or a majority of its members. Three members of the Board shall constitute a quorum.

(i) COMPENSATION AND TRAVEL EXPENSES.—

(1) COMPENSATION.—

(A) CHAIRMAN.—The chairman shall be compensated at the rate of pay payable for a position at level III of the Executive Schedule under section 5314 of title 5, United States Code.

(B) MEMBERS.—Each member of the Board shall be compensated at a rate of pay payable for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Board.

(2) TRAVEL EXPENSES.—Members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for persons employed intermittently by the Government under section 5703(b) of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

(j) STAFF.—

(1) APPOINTMENT AND COMPENSATION.—The Chairman, in accordance with rules agreed upon by the Board, shall appoint and fix the compensation of a full-time executive director and such other personnel as may be necessary to enable the Board to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) DETAILEES.—Any Federal employee may be detailed to the Board without reimbursement from the Board, and such detailee shall retain the rights, status, and privileges of the detailee's regular employment without interruption.

(3) CONSULTANT SERVICES.—The Board may procure the temporary or intermittent services of experts and consultants in accordance with section 3109 of title 5, United States Code, at rates that do not exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of such title.

(k) SECURITY CLEARANCES.—The appropriate departments, agencies, and elements of the executive branch shall cooperate with the Board to expeditiously provide the Board members and staff with appropriate security clearances to the extent possible under existing procedures and requirements.

(l) TREATMENT AS AGENCY, NOT AS ADVISORY COMMITTEE.—The Board—

(1) is an agency (as defined in section 551(1) of title 5, United States Code); and

(2) is not an advisory committee (as defined in section 3(2) of the Federal Advisory Committee Act (5 U.S.C. App.)).

SEC. 212. PRIVACY AND CIVIL LIBERTIES OFFICERS.

(a) DESIGNATION AND FUNCTIONS.—The Attorney General, the Secretary of Defense, the Secretary of State, the Secretary of the Treasury, the Secretary of Health and Human Services, the Secretary of Homeland Security, the National Intelligence Director, the Director of the Central Intelligence Agency, and the head of any other department, agency, or element of the executive branch designated by the Privacy and Civil Liberties Oversight Board to be appropriate for coverage under this section shall designate not less than 1 senior officer to—

(1) assist the head of such department, agency, or element and other officials of such department, agency, or element in appropriately considering privacy and civil liberties concerns when such officials are proposing, developing, or implementing laws, regulations, policies, procedures, or guidelines related to efforts to protect the Nation against terrorism;

(2) periodically investigate and review department, agency, or element actions, policies, procedures, guidelines, and related laws and their implementation to ensure that such department, agency, or element is adequately considering privacy and civil liberties in its actions;

(3) ensure that such department, agency, or element has adequate procedures to receive, investigate, respond to, and redress complaints from individuals who allege such department, agency, or element has violated their privacy or civil liberties; and

(4) in providing advice on proposals to retain or enhance a particular governmental power the officer shall consider whether such department, agency, or element has explained—

(i) that the power actually materially enhances security;

(ii) that there is adequate supervision of the use by such department, agency, or element of the power to ensure protection of privacy and civil liberties; and

(iii) that there are adequate guidelines and oversight to properly confine its use.

(b) EXCEPTION TO DESIGNATION AUTHORITY.—

(1) PRIVACY OFFICERS.—In any department, agency, or element referred to in subsection (a) or designated by the Board, which has a statutorily created privacy officer, such officer shall perform the functions specified in subsection (a) with respect to privacy.

(2) CIVIL LIBERTIES OFFICERS.—In any department, agency, or element referred to in subsection (a) or designated by the Board, which has a statutorily created civil liberties officer, such officer shall perform the functions specified in subsection (a) with respect to civil liberties.

(c) SUPERVISION AND COORDINATION.—Each privacy officer or civil liberties officer described in subsection (a) or (b) shall—

(1) report directly to the head of the department, agency, or element concerned; and

(2) coordinate their activities with the Inspector General of such department, agency, or element to avoid duplication of effort.

(d) AGENCY COOPERATION.—The head of each department, agency, or element shall ensure that each privacy officer and civil liberties officer—

(1) has the information, material, and resources necessary to fulfill the functions of such officer;

(2) is advised of proposed policy changes;

(3) is consulted by decision makers; and

(4) is given access to material and personnel the officer determines to be necessary to carry out the functions of such officer.

(e) REPRISAL FOR MAKING COMPLAINT.—No action constituting a reprisal, or threat of reprisal, for making a complaint or for disclosing information to a privacy officer or civil liberties officer described in subsection (a) or (b), or to the Privacy and Civil Liberties Oversight Board, that indicates a possible violation of privacy protections or civil liberties in the administration of the programs and operations of the Federal Government relating to efforts to protect the Nation from terrorism shall be taken by any Federal employee in a position to take such action, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

(f) PERIODIC REPORTS.—

(1) IN GENERAL.—The privacy officers and civil liberties officers of each department, agency, or element referred to or described in subsection (a) or (b) shall periodically, but not less than quarterly, submit a report on the activities of such officers—

(A)(i) to the appropriate committees of Congress, including the Committees on the Judiciary of the Senate and the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives;

(ii) to the head of such department, agency, or element; and

(iii) to the Privacy and Civil Liberties Oversight Board; and

(B) which shall be in unclassified form to the greatest extent possible, with a classified annex where necessary.

(2) CONTENTS.—Each report submitted under paragraph (1) shall include information on the discharge of each of the functions of the officer concerned, including—

(A) information on the number and types of reviews undertaken;

(B) the type of advice provided and the response given to such advice;

(C) the number and nature of the complaints received by the department, agency, or element concerned for alleged violations; and

(D) a summary of the disposition of such complaints, the reviews and inquiries conducted, and the impact of the activities of such officer.

(g) INFORMING THE PUBLIC.—Each privacy officer and civil liberties officer shall—

(1) make the reports of such officer, including reports to Congress, available to the public to the greatest extent that is consistent with the protection of classified information and applicable law; and

(2) otherwise inform the public of the activities of such officer, as appropriate and in a manner consistent with the protection of classified information and applicable law.

(h) SAVINGS CLAUSE.—Nothing in this section shall be construed to limit or otherwise supplant any other authorities or responsibilities provided by law to privacy officers or civil liberties officers.

Subtitle C—Independence of Intelligence Agencies

SEC. 221. INDEPENDENCE OF NATIONAL INTELLIGENCE DIRECTOR.

(a) LOCATION OUTSIDE EXECUTIVE OFFICE OF THE PRESIDENT.—The National Intelligence Director shall not be located within the Executive Office of the President.

(b) PROVISION OF NATIONAL INTELLIGENCE.—The National Intelligence Director shall provide to the President and Congress national intelligence that is timely, objective, and independent of political considerations, and has not been shaped to serve policy goals.

SEC. 222. INDEPENDENCE OF INTELLIGENCE.

(a) DIRECTOR OF NATIONAL COUNTERTERRORISM CENTER.—The Director of the National Counterterrorism Center shall provide to the President, Congress, and the National Intelligence Director national intelligence related to counterterrorism that is timely, objective, and independent of political considerations, and has not been shaped to serve policy goals.

(b) DIRECTORS OF NATIONAL INTELLIGENCE CENTERS.—Each Director of a national intelligence center established under section 144 shall provide to the President, Congress, and the National Intelligence Director intelligence information that is timely, objective, and independent of political considerations, and has not been shaped to serve policy goals.

(c) DIRECTOR OF CENTRAL INTELLIGENCE AGENCY.—The Director of the Central Intelligence Agency shall ensure that intelligence produced by the Central Intelligence Agency is objective and independent of political considerations, and has not been shaped to serve policy goals.

(d) NATIONAL INTELLIGENCE COUNCIL.—The National Intelligence Council shall produce national intelligence estimates for the United States Government that are timely, objective, and independent of political considerations, and have not been shaped to serve policy goals.

SEC. 223. INDEPENDENCE OF NATIONAL COUNTERTERRORISM CENTER.

No officer, department, agency, or element of the executive branch shall have any authority to require the Director of the National Counterterrorism Center—

(1) to receive permission to testify before Congress; or

(2) to submit testimony, legislative recommendations, or comments to any officer or agency of the United States for approval, comments, or review prior to the submission of such recommendations, testimony, or comments to Congress if such recommendations, testimony, or comments include a statement indicating that the views expressed therein are those of the agency submitting them and do not necessarily represent the views of the Administration.

SEC. 224. ACCESS OF CONGRESSIONAL COMMITTEES TO NATIONAL INTELLIGENCE.

(a) DOCUMENTS REQUIRED TO BE PROVIDED TO CONGRESSIONAL COMMITTEES.—The National Intelligence Director, the Director of the National Counterterrorism Center, and the Director of a national intelligence center shall provide to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and any other committee of Congress with jurisdiction over the subject matter to which the information relates, all intelligence assessments, intelligence estimates, sense of intelligence community memoranda, and daily senior executive intelligence briefs, other than the Presidential Daily Brief and those reports prepared exclusively for the President.

(b) RESPONSE TO REQUESTS FROM CONGRESS REQUIRED.—

(1) IN GENERAL.—Except as provided in paragraph (2), in addition to providing material under subsection (a), the National Intelligence Director, the Director of the National Counterterrorism Center, or the Director of a national intelligence center shall, not later than 15 days after receiving a request for any intelligence assessment, report, or estimate or other intelligence information from the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, or any other committee of Congress with jurisdiction over the subject matter to which the information relates, make available to such committee such intelligence assessment, report, or estimate or other intelligence information.

(2) CERTAIN MEMBERS.—In addition to requests described in paragraph (1), the National Intelligence Director shall respond to requests from the Chairman and Vice Chairman of the Select Committee on Intelligence of the Senate and the Chairman and Ranking Member of the Permanent Select Committee on Intelligence of the House of Representatives. Upon making a request covered by this paragraph, the Chairman, Vice Chairman, or Ranking Member, as the case may be, of such committee shall notify the other of the Chairman, Vice Chairman, or Ranking Member, as the case may be, of such committee of such request.

(3) ASSERTIONS OF PRIVILEGE.—In response to requests described under paragraph (1) or (2), the National Intelligence Director, the Director of the National Counterterrorism Center, or the Director of a national intelligence center shall provide information, unless the President certifies that such information is not being provided because the President is asserting a privilege pursuant to the United States Constitution.

SEC. 225. COMMUNICATIONS WITH CONGRESS.

(a) DISCLOSURE OF CERTAIN INFORMATION AUTHORIZED.—

(1) IN GENERAL.—Employees of covered agencies and employees of contractors carrying out activities under classified contracts with covered agencies may disclose information described in paragraph (2) to the individuals referred to in paragraph (3) without first reporting such information to the appropriate Inspector General.

(2) COVERED INFORMATION.—Paragraph (1) applies to information, including classified information, that an employee reasonably believes provides direct and specific evidence of a false or inaccurate statement to Congress contained in, or withheld from Congress, any intelligence information material to, any intelligence assessment, report, or estimate, but does not apply to information the disclosure of which is prohibited by rule 6(e) of the Federal Rules of Criminal Procedure.

(3) COVERED INDIVIDUALS.—

(A) IN GENERAL.—The individuals to whom information in paragraph (2) may be disclosed are—

(i) a Member of a committee of Congress having primary responsibility for oversight of a department, agency, or element of the United States Government to which the disclosed information relates and who is authorized to receive information of the type disclosed;

(ii) any other Member of Congress who is authorized to receive information of the type disclosed; and

(iii) an employee of Congress who has the appropriate security clearance and is authorized to receive information of the type disclosed.

(B) PRESUMPTION OF NEED FOR INFORMATION.—An individual described in subparagraph (A) to whom information is disclosed under paragraph (2) shall be presumed to have a need to know such information.

(b) CONSTRUCTION WITH OTHER REPORTING REQUIREMENTS.—Nothing in this section may be construed to modify, alter, or otherwise affect—

(1) any reporting requirement relating to intelligence activities that arises under this Act, the National Security Act of 1947 (50 U.S.C. 401 et seq.), or any other provision of law; or

(2) the right of any employee of the United States Government to disclose to Congress in accordance with applicable law information not described in this section.

(c) COVERED AGENCIES DEFINED.—In this section, the term "covered agencies" means the following:

(1) The National Intelligence Authority, including the National Counterterrorism Center.

(2) The Central Intelligence Agency.

(3) The Defense Intelligence Agency.

(4) The National Geospatial-Intelligence Agency.

(5) The National Security Agency.

(6) The Federal Bureau of Investigation.

(7) Any other Executive agency, or element or unit thereof, determined by the President under section 2302(a)(2)(C)(ii) of title 5, United States Code, to have as its principal function the conduct of foreign intelligence or counterintelligence activities.

TITLE III—MODIFICATIONS OF LAWS RELATING TO INTELLIGENCE COMMUNITY MANAGEMENT

Subtitle A—Conforming and Other Amendments

SEC. 301. RESTATEMENT AND MODIFICATION OF BASIC AUTHORITY ON THE CENTRAL INTELLIGENCE AGENCY.

(a) IN GENERAL.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by striking sections 102 through 104 and inserting the following new sections:

"CENTRAL INTELLIGENCE AGENCY

"SEC. 102. (a) CENTRAL INTELLIGENCE AGENCY.—There is a Central Intelligence Agency.

"(b) FUNCTION.—The function of the Central Intelligence Agency is to assist the Director of the Central Intelligence Agency in carrying out the responsibilities specified in section 103(d).

"DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY

"SEC. 103. (a) DIRECTOR OF CENTRAL INTELLIGENCE AGENCY.—There is a Director of the Central Intelligence Agency who shall be appointed by the President, by and with the advice and consent of the Senate.

"(b) SUPERVISION.—The Director of the Central Intelligence Agency shall report to the National Intelligence Director regarding the activities of the Director of the Central Intelligence Agency.

"(c) DUTIES.—The Director of the Central Intelligence Agency shall—

"(1) serve as the head of the Central Intelligence Agency; and

"(2) carry out the responsibilities specified in subsection (d).

"(d) RESPONSIBILITIES.—The Director of the Central Intelligence Agency shall—

"(1) collect intelligence through human sources and by other appropriate means, except that the Director of the Central Intelligence Agency shall have no police, subpoena, or law enforcement powers or internal security functions;

"(2) correlate and evaluate intelligence related to the national security and provide appropriate dissemination of such intelligence;

"(3) provide overall direction for and coordination of the collection of national intelligence outside the United States through human sources by elements of the intelligence community authorized to undertake such collection and, in coordination with other departments, agencies, or elements of the United States Government which are authorized to undertake such collection, ensure that the most effective use is made of resources and that appropriate account is taken of the risks to the United States and those involved in such collection; and

"(4) perform such other functions and duties pertaining to intelligence relating to the national security as the President or the National Intelligence Director may direct.

"(e) TERMINATION OF EMPLOYMENT OF CIA EMPLOYEES.—(1) Notwithstanding the provisions of any other law, the Director of the Central Intelligence Agency may, in the discretion of the Director, terminate the employment of any officer or employee of the Central Intelligence Agency whenever the Director considers the termination of employment of such officer or employee necessary or advisable in the interests of the United States.

"(2) Any termination of employment of an officer or employee under paragraph (1) shall not affect the right of the officer or employee to seek or accept employment in any other department, agency, or element of the United States Government if declared eligible for such employment by the Office of Personnel Management.

"(f) COORDINATION WITH FOREIGN GOVERNMENTS.—Under the direction of the National Intelligence Director and in a manner consistent with section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927), the Director of the Central Intelligence Agency shall coordinate the relationships between elements of the intelligence community and the intelligence or security services of foreign governments on all matters involving intelligence related to the national security or involving intelligence acquired through clandestine means.".

(b) TRANSFORMATION OF CENTRAL INTELLIGENCE AGENCY.—The Director of the Central Intelligence Agency shall, in accordance with standards developed by the Director in consultation with the National Intelligence Director—

(1) enhance the analytic, human intelligence, and other capabilities of the Central Intelligence Agency;

(2) develop and maintain an effective language program within the Agency;

(3) emphasize the hiring of personnel of diverse backgrounds for purposes of improving the capabilities of the Agency;

(4) establish and maintain effective relationships between human intelligence and signals intelligence within the Agency at the operational level; and

(5) achieve a more effective balance within the Agency with respect to unilateral operations and liaison operations.

(c) REPORTS.—(1) Not later than 180 days after the effective date of this section, and annually thereafter, the Director of the Central Intelligence Agency shall submit to the National Intelligence Director and the congressional intelligence committees a report setting forth the following:

(A) A strategy for improving the conduct of analysis (including strategic analysis) by the Central Intelligence Agency, and the progress of the Agency in implementing the strategy.

(B) A strategy for improving the human intelligence and other capabilities of the Agency, and the progress of the Agency in implementing the strategy, including—

(i) the recruitment, training, equipping, and deployment of personnel required to address the current and projected threats to the national security of the United States during each of the 2-year, 5-year, and 10-year periods beginning on the date of such report, including personnel with the backgrounds, education, and experience necessary for ensuring a human intelligence capability adequate for such projected threats;

(ii) the achievement of a proper balance between unilateral operations and liaison operations;

(iii) the development of language capabilities (including the achievement of high standards in such capabilities by the use of financial incentives and other mechanisms);

(iv) the sound financial management of the Directorate of Operations; and

(v) the identification of other capabilities required to address the current and projected threats to the national security of the United States during each of the 2-year, 5-year, and 10-year periods beginning on the date of such report.

(C) In conjunction with the Director of the National Security Agency, a strategy for achieving integration between signals and human intelligence capabilities, and the progress in implementing the strategy.

(D) Metrics and milestones for measuring progress in the implementation of each such strategy.

(2)(A) The information in each report under paragraph (1) on the element of the strategy referred to in paragraph (1)(B)(i) shall identify the number and types of personnel required to implement the strategy during each period addressed in such report, include a plan for the recruitment, training, equipping, and deployment of such personal, and set forth an estimate of the costs of such activities.

(B) If as of the date of a report under paragraph (1), a proper balance does not exist between unilateral operations and liaison operations, such report shall set forth the steps to be taken to achieve such balance.

(C) The information in each report under paragraph (1) on the element of the strategy referred to in paragraph (1)(B)(v) shall identify the other capabilities required to implement the strategy during each period addressed in such report, include a plan for developing such capabilities, and set forth an estimate of the costs of such activities.

SEC. 302. CONFORMING AMENDMENTS RELATING TO ROLES OF NATIONAL INTELLIGENCE DIRECTOR AND DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY.

(a) NATIONAL SECURITY ACT OF 1947.—(1) The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by striking "Director of Central Intelligence" each place it appears in the following provisions and inserting "National Intelligence Director":

(A) Section 3(5)(B) (50 U.S.C. 401a(5)(B)).

(B) Section 101(h)(2)(A) (50 U.S.C. 402(h)(2)(A)).

(C) Section 101(h)(5) (50 U.S.C. 402(h)(5)).

(D) Section 101(i)(2)(A) (50 U.S.C. 402(i)(2)(A)).

(E) Section 101(j) (50 U.S.C. 402(j)).

(F) Section 105(a) (50 U.S.C. 403-5(a)).

(G) Section 105(b)(6)(A) (50 U.S.C. 403-5(b)(6)(A)).

(H) Section 105B(a)(1) (50 U.S.C. 403-5b(a)(1)).

(I) Section 105B(b) (50 U.S.C. 403-5b(b)).

(J) Section 110(b) (50 U.S.C. 404e(b)).

(K) Section 110(c) (50 U.S.C. 404e(c)).

(L) Section 112(a)(1) (50 U.S.C. 404g(a)(1)).

(M) Section 112(d)(1) (50 U.S.C. 404g(d)(1)).

(N) Section 113(b)(2)(A) (50 U.S.C. 404h(b)(2)(A)).

(O) Section 114(a)(1) (50 U.S.C. 404i(a)(1)).

(P) Section 114(b)(1) (50 U.S.C. 404i(b)(1)).

(R) Section 115(a)(1) (50 U.S.C. 404j(a)(1)).

(S) Section 115(b) (50 U.S.C. 404j(b)).

(T) Section 115(c)(1)(B) (50 U.S.C. 404j(c)(1)(B)).

(U) Section 116(a) (50 U.S.C. 404k(a)).

(V) Section 117(a)(1) (50 U.S.C. 404l(a)(1)).

(W) Section 303(a) (50 U.S.C. 405(a)), both places it appears.

(X) Section 501(d) (50 U.S.C. 413(d)).

(Y) Section 502(a) (50 U.S.C. 413a(a)).

(Z) Section 502(c) (50 U.S.C. 413a(c)).

(AA) Section 503(b) (50 U.S.C. 413b(b)).

(BB) Section 504(a)(2) (50 U.S.C. 414(a)(2)).

(CC) Section 504(a)(3)(C) (50 U.S.C. 414(a)(3)(C)).

(DD) Section 504(d)(2) (50 U.S.C. 414(d)(2)).

(EE) Section 506A(a)(1) (50 U.S.C. 415a-1(a)(1)).

(FF) Section 603(a) (50 U.S.C. 423(a)).

(GG) Section 702(a)(1) (50 U.S.C. 432(a)(1)).

(HH) Section 702(a)(6)(B)(viii) (50 U.S.C. 432(a)(6)(B)(viii)).

(II) Section 702(b)(1) (50 U.S.C. 432(b)(1)), both places it appears.

(JJ) Section 703(a)(1) (50 U.S.C. 432a(a)(1)).

(KK) Section 703(a)(6)(B)(viii) (50 U.S.C. 432a(a)(6)(B)(viii)).

(LL) Section 703(b)(1) (50 U.S.C. 432a(b)(1)), both places it appears.

(MM) Section 704(a)(1) (50 U.S.C. 432b(a)(1)).

(NN) Section 704(f)(2)(H) (50 U.S.C. 432b(f)(2)(H)).

(OO) Section 704(g)(1)) (50 U.S.C. 432b(g)(1)), both places it appears.

(PP) Section 1001(a) (50 U.S.C. 441g(a)).

(QQ) Section 1102(a)(1) (50 U.S.C. 442a(a)(1)).

(RR) Section 1102(b)(1) (50 U.S.C. 442a(b)(1)).

(SS) Section 1102(c)(1) (50 U.S.C. 442a(c)(1)).

(TT) Section 1102(d) (50 U.S.C. 442a(d)).

(2) That Act is further amended by striking "of Central Intelligence" each place it appears in the following provisions:

(A) Section 105(a)(2) (50 U.S.C. 403-5(a)(2)).

(B) Section 105B(a)(2) (50 U.S.C. 403-5b(a)(2)).

(C) Section 105B(b) (50 U.S.C. 403-5b(b)), the second place it appears.

(3) That Act is further amended by striking "Director" each place it appears in the following provisions and inserting "National Intelligence Director":

(A) Section 114(c) (50 U.S.C. 404i(c)).

(B) Section 116(b) (50 U.S.C. 404k(b)).

(C) Section 1001(b) (50 U.S.C. 441g(b)).

(C) Section 1001(c) (50 U.S.C. 441g(c)), the first place it appears.

(D) Section 1001(d)(1)(B) (50 U.S.C. 441g(d)(1)(B)).

(E) Section 1001(e) (50 U.S.C. 441g(e)), the first place it appears.

(4) Section 114A of that Act (50 U.S.C. 404i-1) is amended by striking "Director of Central Intelligence" and inserting "National Intelligence Director, the Director of the Central Intelligence Agency"

(5) Section 701 of that Act (50 U.S.C. 431) is amended—

(A) in subsection (a), by striking "Operational files of the Central Intelligence Agency may be exempted by the Director of Central Intelligence" and inserting "The Director of the Central Intelligence Agency, with the coordination of the National Intelligence Director, may exempt operational files of the Central Intelligence Agency"; and

(B) in subsection (g)(1), by striking "Director of Central Intelligence" and inserting "Director of the Central Intelligence Agency and the National Intelligence Director".

(6) The heading for section 114 of that Act (50 U.S.C. 404i) is amended to read as follows:

"ADDITIONAL ANNUAL REPORTS FROM THE NATIONAL INTELLIGENCE DIRECTOR".

(b) CENTRAL INTELLIGENCE AGENCY ACT OF 1949.—(1) Section 1 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a) is amended—

(A) by redesignating paragraphs (a), (b), and (c) as paragraphs (1), (2), and (3), respectively; and

(B) by striking paragraph (2), as so redesignated, and inserting the following new paragraph (2):

"(2) 'Director' means the Director of the Central Intelligence Agency; and".

(2) That Act (50 U.S.C. 403a et seq.) is further amended by striking "Director of Central Intelligence" each place it appears in the following provisions and inserting "National Intelligence Director":

(A) Section 6 (50 U.S.C. 403g).

(B) Section 17(f) (50 U.S.C. 403q(f)), both places it appears.

(3) That Act is further amended by striking "of Central Intelligence" in each of the following provisions:

(A) Section 2 (50 U.S.C. 403b).

(B) Section 16(c)(1)(B) (50 U.S.C. 403p(c)(1)(B)).

(C) Section 17(d)(1) (50 U.S.C. 403q(d)(1)).

(D) Section 20(c) (50 U.S.C. 403t(c)).

(4) That Act is further amended by striking "Director of Central Intelligence" each place it appears in the following provisions and inserting "Director of the Central Intelligence Agency":

(A) Section 14(b) (50 U.S.C. 403n(b)).

(B) Section 16(b)(2) (50 U.S.C. 403p(b)(2)).

(C) Section 16(b)(3) (50 U.S.C. 403p(b)(3)), both places it appears.

(D) Section 21(g)(1) (50 U.S.C. 403u(g)(1)).

(E) Section 21(g)(2) (50 U.S.C. 403u(g)(2)).

(c) CENTRAL INTELLIGENCE AGENCY RETIREMENT ACT.—Section 101 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2001) is amended by striking paragraph (2) and inserting the following new paragraph (2):

"(2) DIRECTOR.—The term 'Director' means the Director of the Central Intelligence Agency.".

(d) CIA VOLUNTARY SEPARATION PAY ACT.—Subsection (a)(1) of section 2 of the Central Intelligence Agency Voluntary Separation Pay Act (50 U.S.C. 2001 note) is amended to read as follows:

"(1) the term 'Director' means the Director of the Central Intelligence Agency;".

(e) FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—(1) The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by striking "Director of Central Intelligence" each place it appears and inserting "National Intelligence Director".

(f) CLASSIFIED INFORMATION PROCEDURES ACT.—Section 9(a) of the Classified Information Procedures Act (5 U.S.C. App.) is amended by striking "Director of Central Intelligence" and inserting "National Intelligence Director".

(g) INTELLIGENCE AUTHORIZATION ACTS.—

(1) PUBLIC LAW 103–359.—Section 811(c)(6)(C) of the Counterintelligence and Security Enhancements Act of 1994 (title VIII of Public Law 103–359) is amended by striking "Director of Central Intelligence" and inserting "National Intelligence Director".

(2) PUBLIC LAW 107–306.—(A) The Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306) is amended by striking "Director of Central Intelligence, acting as the head of the intelligence community," each place it appears in the following provisions and inserting "National Intelligence Director":

(i) Section 313(a) (50 U.S.C. 404n(a)).

(ii) Section 343(a)(1) (50 U.S.C. 404n–2(a)(1))

(B) Section 341 of that Act (50 U.S.C. 404n–1) is amended by striking "Director of Central Intelligence, acting as the head of the intelligence community, shall establish in the Central Intelligence Agency" and inserting "National Intelligence Director shall establish within the Central Intelligence Agency".

(C) Section 352(b) of that Act (50 U.S.C. 404–3 note) is amended by striking "Director" and inserting "National Intelligence Director".

(3) PUBLIC LAW 108–177.—(A) The Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108–177) is amended by striking "Director of Central Intelligence" each place it appears in the following provisions and inserting "National Intelligence Director":

(i) Section 317(a) (50 U.S.C. 403–3 note).

(ii) Section 317(h)(1).

(iii) Section 318(a) (50 U.S.C. 441g note).

(iv) Section 319(b) (50 U.S.C. 403 note).

(v) Section 341(b) (28 U.S.C. 519 note).

(vi) Section 357(a) (50 U.S.C. 403 note).

(vii) Section 504(a) (117 Stat. 2634), both places it appears.

(B) Section 319(f)(2) of that Act (50 U.S.C. 403 note) is amended by striking "Director" the first place it appears and inserting "National Intelligence Director".

(C) Section 404 of that Act (18 U.S.C. 4124 note) is amended by striking "Director of Central Intelligence" and inserting "Director of the Central Intelligence Agency".

SEC. 303. OTHER CONFORMING AMENDMENTS

(a) NATIONAL SECURITY ACT OF 1947.—(1) Section 101(j) of the National Security Act of 1947 (50 U.S.C. 402(j)) is amended by striking "Deputy Director of Central Intelligence" and inserting "Principal Deputy National Intelligence Director".

(2) Section 112(d)(1) of that Act (50 U.S.C. 404g(d)(1)) is amended by striking "section 103(c)(6) of this Act" and inserting "section 112(a)(11) of the National Intelligence Reform Act of 2004".

(3) Section 116(b) of that Act (50 U.S.C. 404k(b)) is amended by striking "to the Deputy Director of Central Intelligence, or with respect to employees of the Central Intelligence Agency, the Director may delegate such authority to the Deputy Director for Operations" and inserting "to the Principal Deputy National Intelligence Director, or, with respect to employees of the Central Intelligence Agency, to the Director of the Central Intelligence Agency".

(4) Section 504(a)(2) of that Act (50 U.S.C. 414(a)(2)) is amended by striking "Reserve for Contingencies of the Central Intelligence Agency" and inserting "Reserve for Contingencies of the National Intelligence Director".

(5) Section 506A(b)(1) of that Act (50 U.S.C. 415a–1(b)(1)) is amended by striking "Office of the Deputy Director of Central Intelligence" and inserting "Office of the National Intelligence Director".

(6) Section 701(c)(3) of that Act (50 U.S.C. 431(c)(3)) is amended by striking "or the Office of the Director of Central Intelligence" and inserting "the Office of the Director of the Central Intelligence Agency, or the Office of the National Intelligence Director".

(7) Section 1001(b) of that Act (50 U.S.C. 441g(b)) is amended by striking "Assistant Director of Central Intelligence for Administration" and inserting "Office of the National Intelligence Director".

(b) CENTRAL INTELLIGENCE AGENCY ACT OF 1949.—Section 6 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403g) is amended by striking "section 103(c)(7) of the National Security Act of 1947 (50 U.S.C. 403–3(c)(7))" and inserting "section 112(a)(11) of the National Intelligence Reform Act of 2004".

(c) CENTRAL INTELLIGENCE AGENCY RETIREMENT ACT.—Section 201(c) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2011(c)) is amended by striking "paragraph (6) of section 103(c) of the National Security Act of 1947 (50 U.S.C. 403–3(c)) that the Director of Central Intelligence" and inserting "section 112(a)(11) of the National Intelligence Reform Act of 2004 that the National Intelligence Director".

(d) INTELLIGENCE AUTHORIZATION ACTS.—

(1) PUBLIC LAW 107–306.—Section 343(c) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107–306; 50 U.S.C. 404n–2(c)) is amended by striking "section 103(c)(6) of the National Security Act of 1947 (50 U.S.C. 403–3((c)(6))" and inserting "section 112(a)(11) of the National Intelligence Reform Act of 2004".

(2) PUBLIC LAW 108–177.—Section 317 of the Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108–177; 50 U.S.C. 403–3 note) is amended—

(A) in subsection (g), by striking "Assistant Director of Central Intelligence for Analysis and Production" and inserting "Principal Deputy National Intelligence Director"; and

(B) in subsection (h)(2)(C), by striking "Assistant Director" and inserting "Principal Deputy National Intelligence Director".

SEC. 304. MODIFICATIONS OF FOREIGN INTELLIGENCE AND COUNTERINTELLIGENCE UNDER NATIONAL SECURITY ACT OF 1947.

Section 3 of the National Security Act of 1947 (50 U.S.C. 401a) is amended—

(1) in paragraph (2), by striking "or foreign persons, or international terrorist activities" and inserting "foreign persons, or international terrorists"; and

(2) in paragraph (3), by striking "or foreign persons, or international terrorist activities" and inserting "foreign persons, or international terrorists".

SEC. 305. ELEMENTS OF INTELLIGENCE COMMUNITY UNDER NATIONAL SECURITY ACT OF 1947.

Paragraph (4) of section 3 of the National Security Act of 1947 (50 U.S.C. 401a) is amended to read as follows:

"(4) The term 'intelligence community' includes the following:

"(A) The National Intelligence Authority.

"(B) The Central Intelligence Agency.

"(C) The National Security Agency.

"(D) The Defense Intelligence Agency.

"(E) The National Geospatial-Intelligence Agency.

"(F) The National Reconnaissance Office.

"(G) Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs.

"(H) The intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, and the Department of Energy.

"(I) The Bureau of Intelligence and Research of the Department of State.

"(J) The Office of Intelligence and Analysis of the Department of the Treasury.

"(K) The elements of the Department of Homeland Security concerned with the analysis of intelligence information, including the Office of Intelligence of the Coast Guard.

"(L) Such other elements of any department or agency as may be designated by the President, or designated jointly by the National Intelligence Director and the head of the department or agency concerned, as an element of the intelligence community.".

SEC. 306. REDESIGNATION OF NATIONAL FOREIGN INTELLIGENCE PROGRAM AS NATIONAL INTELLIGENCE PROGRAM.

(a) REDESIGNATION.—Section 3 of the National Security Act of 1947 (50 U.S.C. 401a), as amended by this Act, is further amended—

(1) by striking paragraph (6); and

(2) by redesignating paragraph (7) as paragraph (6).

(b) CONFORMING AMENDMENTS.—(1) The National Security Act of 1947, as amended by this Act, is further amended by striking "National Foreign Intelligence Program" each place it appears in the following provisions and inserting "National Intelligence Program":

(A) Section 105(a)(2) (50 U.S.C. 403-5(a)(2)).

(B) Section 105(a)(3) (50 U.S.C. 403-5(a)(3)).

(C) Section 506(a) (50 U.S.C. 415a(a)).

(2) Section 17(f) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(f)) is amended by striking "National Foreign Intelligence Program" and inserting "National Intelligence Program".

(c) HEADING AMENDMENTS.—(1) The heading of section 105 of that Act is amended to read as follows:

"RESPONSIBILITIES OF THE SECRETARY OF DEFENSE PERTAINING TO THE NATIONAL INTELLIGENCE PROGRAM".

(2) The heading of section 506 of that Act is amended to read as follows:

"SPECIFICITY OF NATIONAL INTELLIGENCE PROGRAM BUDGET AMOUNTS FOR COUNTERTERRORISM, COUNTERPROLIFERATION, COUNTERNARCOTICS, AND COUNTERINTELLIGENCE".

SEC. 307. CONFORMING AMENDMENT ON COORDINATION OF BUDGETS OF ELEMENTS OF THE INTELLIGENCE COMMUNITY WITHIN THE DEPARTMENT OF DEFENSE.

Section 105(a)(1) of the National Security Act of 1947 (50 U.S.C. 403-5(a)(1)) is amended by striking "ensure" and inserting "assist the Director in ensuring".

SEC. 308. REPEAL OF SUPERSEDED AUTHORITIES.

(a) APPOINTMENT OF CERTAIN INTELLIGENCE OFFICIALS.—Section 106 of the National Security Act of 1947 (50 U.S.C. 403-6) is repealed.

(b) COLLECTION TASKING AUTHORITY.—Section 111 of the National Security Act of 1947 (50 U.S.C. 404f) is repealed.

SEC. 309. CLERICAL AMENDMENTS TO NATIONAL SECURITY ACT OF 1947.

The table of contents for the National Security Act of 1947 is amended—

(1) by inserting after the item relating to section 101 the following new item:

"Sec. 101A. Joint Intelligence Community Council.";

(2) by striking the items relating to sections 102 through 104 and inserting the following new items:

"Sec. 102. Central Intelligence Agency.
"Sec. 103. Director of the Central Intelligence Agency.";

(3) by striking the item relating to section 105 and inserting the following new item:

"Sec 105. Responsibilities of the Secretary of Defense pertaining to the National Intelligence Program.";

(4) by striking the item relating to section 114 and inserting the following new item:

"Sec. 114. Additional annual reports from the National Intelligence Director.";

and

(5) by striking the item relating to section 506 and inserting the following new item:

"Sec. 506. Specificity of National Intelligence Program budget amounts for counterterrorism, counterproliferation, counternarcotics, and counterintelligence".

SEC. 310. MODIFICATION OF AUTHORITIES RELATING TO NATIONAL COUNTERINTELLIGENCE EXECUTIVE.

(a) APPOINTMENT OF NATIONAL COUNTERINTELLIGENCE EXECUTIVE.—Subsection (a)(2) of section 902 of the Counterintelligence Enhancement Act of 2002 (title IX of Public Law 107-306; 116 Stat. 2432; 50 U.S.C. 402b) is amended by striking "Director of Central Intelligence" and inserting "National Intelligence Director, and Director of the Central Intelligence Agency".

(b) COMPONENT OF OFFICE OF NATIONAL INTELLIGENCE DIRECTOR.—Such section is further amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following new subsection (b):

"(b) COMPONENT OF OFFICE OF NATIONAL INTELLIGENCE DIRECTOR.—The National Counterintelligence Executive is a component of the Office of the National Intelligence Director under subtitle C of the National Intelligence Reform Act of 2004.".

(c) DUTIES.—Subsection (d) of such section, as redesignated by subsection (a)(1) of this section, is amended by adding at the end the following new paragraph:

"(5) To perform such other duties as may be provided under section 131(b) of the National Intelligence Reform Act of 2004.".

(d) OFFICE OF NATIONAL COUNTERINTELLIGENCE EXECUTIVE.—Section 904 of the Counterintelligence Enhancement Act of 2002 (116 Stat. 2434; 50 U.S.C. 402c) is amended—

(1) by striking "Office of the Director of Central Intelligence" each place it appears in subsections (c) and (l)(1) and inserting "Office of the National Intelligence Director";

(2) by striking "Director of Central Intelligence" each place it appears in subsections (e)(4), (e)(5), (h)(1), and (h)(2) and inserting "National Intelligence Director"; and

(3) in subsection (m), by striking "Director of Central Intelligence" and inserting "National Intelligence Director, the Director of the Central Intelligence Agency".

SEC. 311. CONFORMING AMENDMENT TO INSPECTOR GENERAL ACT OF 1978.

Section 8H(a)(1) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following new subparagraph:

"(D) An employee of the National Intelligence Authority, an employee of an entity other than the Authority who is assigned or detailed to the Authority, or of a contractor of the Authority, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the Inspector General of the National Intelligence Authority in accordance with section 141(h)(5) of the National Intelligence Reform Act of 2004.".

SEC. 312. CONFORMING AMENDMENT RELATING TO CHIEF FINANCIAL OFFICER OF THE NATIONAL INTELLIGENCE AUTHORITY.

Section 901(b)(1) of title 31, United States Code, is amended by adding at the end the following new subparagraph:

"(Q) The National Intelligence Authority.".

Subtitle B—Transfers and Terminations

SEC. 321. TRANSFER OF OFFICE OF DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE FOR COMMUNITY MANAGEMENT.

(a) TRANSFER.—There shall be transferred to the Office of the National Intelligence Director the staff of the Office of the Deputy Director of Central Intelligence for Community Management as of the date of the enactment of this Act, including all functions and activities discharged by the Office of the Deputy Director of Central Intelligence for Community Management as of that date.

(b) ADMINISTRATION.—The National Intelligence Director shall administer the staff of the Office of the Deputy Director of Central Intelligence for Community Management after the date of the enactment of this Act as a component of the Office of the National Intelligence Director under section 121(d).

SEC. 322. TRANSFER OF NATIONAL COUNTERTERRORISM EXECUTIVE.

(a) TRANSFER.—There shall be transferred to the Office of the National Intelligence Director the National Counterintelligence Executive and the Office of the National Counterintelligence Executive under the Counterintelligence Enhancement Act of 2002 (title IX of Public Law 107-306; 50 U.S.C. 402b et seq.), as amended by section 309 of this Act, including all functions and activities discharged by the National Counterintelligence Executive and the Office of the National Counterintelligence Executive as of the date of the enactment of this Act.

(b) ADMINISTRATION.—The National Intelligence Director shall treat the National Counterintelligence Executive, and administer the Office of the National Counterintelligence Executive, after the date of the enactment of this Act as components of the Office of the National Intelligence Director under section 121(c).

SEC. 323. TRANSFER OF TERRORIST THREAT INTEGRATION CENTER.

(a) TRANSFER.—There shall be transferred to the National Counterterrorism Center the Terrorist Threat Integration Center (TTIC), including all functions and activities discharged by the Terrorist Threat Integration Center as of the date of the enactment of this Act.

(b) ADMINISTRATION.—The Director of the National Counterterrorism Center shall administer the Terrorist Threat Integration Center after the date of the enactment of this Act as a component of the Directorate of Intelligence of the National Counterterrorism Center under section 143(g)(2).

SEC. 324. TERMINATION OF CERTAIN POSITIONS WITHIN THE CENTRAL INTELLIGENCE AGENCY.

(a) TERMINATION.—The positions within the Central Intelligence Agency referred to in subsection (b) are hereby abolished.

(b) COVERED POSITIONS.—The positions within the Central Intelligence Agency referred to in this subsection are as follows:

(1) The Deputy Director of Central Intelligence for Community Management.

(2) The Assistant Director of Central Intelligence for Collection.

(3) The Assistant Director of Central Intelligence for Analysis and Production.

(4) The Assistant Director of Central Intelligence for Administration.

Subtitle C—Other Transition Matters

SEC. 331. EXECUTIVE SCHEDULE MATTERS.

(a) EXECUTIVE SCHEDULE LEVEL I.—Section 5312 of title 5, United States Code, is amended by adding the end the following new item:

"National Intelligence Director.".

(b) EXECUTIVE SCHEDULE LEVEL II.—Section 5313 of title 5, United States Code, is amended—

(1) by striking the item relating to the Director of Central Intelligence; and

(2) by adding at the end the following new items:

"Deputy National Intelligence Directors (5).

"Director of the National Counterterrorism Center.".

(c) EXECUTIVE SCHEDULE LEVEL III.—Section 5314 of title 5, United States Code, is amended by striking the item relating to the Deputy Directors of Central Intelligence and inserting the following new item:

"Director of the Central Intelligence Agency.".

(d) EXECUTIVE SCHEDULE LEVEL IV.—Section 5315 of title 5, United States Code, is amended by striking the item relating to the Assistant Directors of Central Intelligence.

SEC. 332. PRESERVATION OF INTELLIGENCE CAPABILITIES.

The National Intelligence Director, the Director of the Central Intelligence Agency, and the Secretary of Defense shall jointly take such actions as are appropriate to preserve the intelligence capabilities of the United States during the establishment of the National Intelligence Authority under this Act.

SEC. 333. REORGANIZATION.

(a) REORGANIZATION.—The National Intelligence Director may, with the approval of the President and after consultation with the department, agency, or element concerned, allocate or reallocate functions among the officers of the National Intelligence Program, and may establish, consolidate, alter, or discontinue organizational units within the Program, but only after providing notice of such action to Congress, which shall include an explanation of the rationale for the action.

(b) LIMITATION.—The authority under subsection (a) does not extend to any action inconsistent with law.

(c) CONGRESSIONAL REVIEW.—An action may be taken under the authority under subsection (a) only with the approval of the following:

(1) Each of the congressional intelligence committees.

(2) Each of the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

SEC. 334. NATIONAL INTELLIGENCE DIRECTOR REPORT ON IMPLEMENTATION OF INTELLIGENCE COMMUNITY REFORM.

Not later than one year after the date of the enactment of this Act, the National Intelligence Director shall submit to Congress a report on the progress made in the implementation of this Act, including the amendments made by this Act. The report shall include a comprehensive description of the progress made, and may include such recommendations for additional legislative or administrative action as the Director considers appropriate.

SEC. 335. COMPTROLLER GENERAL REPORTS ON IMPLEMENTATION OF INTELLIGENCE COMMUNITY REFORM.

(a) REPORTS.—(1) Not later than two years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a comprehensive report on the implementation of this Act and the amendments made by this Act.

(2) The Comptroller General may submit to Congress at any time during the two-year period beginning on the date of the enactment of this Act, such reports on the progress made in the implementation of this Act and the amendments made by this Act as the Comptroller General considers appropriate.

(b) REPORT ELEMENTS.—Each report under subsection (a) shall include the following:

(1) The assessment of the Comptroller General of the progress made in the implementation of this Act (and the amendments made by this Act) as of the date of such report.

(2) A description of any delays or other shortfalls in the implementation of this Act that have been identified by the Comptroller General.

(3) Any recommendations for additional legislative or administrative action that the Comptroller General considers appropriate.

(c) AGENCY COOPERATION.—Each department, agency, and element of the United States Government shall cooperate with the Comptroller General in the assessment of the implementation of this Act, and shall provide the Comptroller General timely and complete access to relevant documents in accordance with section 716 of title 31, United States Code.

SEC. 336. GENERAL REFERENCES.

(a) DIRECTOR OF CENTRAL INTELLIGENCE AS HEAD OF INTELLIGENCE COMMUNITY.—Any reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the National Intelligence Director.

(b) DIRECTOR OF CENTRAL INTELLIGENCE AS HEAD OF CIA.—Any reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the Director of the Central Intelligence Agency.

(c) OFFICE OF THE DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE FOR COMMUNITY MANAGEMENT.—Any reference to the Office of the Deputy Director of Central Intelligence for Community Management in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the staff of such office within the Office of the National Intelligence Director under section 121.

Subtitle D—Effective Date

SEC. 341. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this Act, and the amendments made by this Act, shall take effect 180 days after the date of the enactment of this Act.

(b) EARLIER EFFECTIVE DATE.—In order to ensure the rapid implementation of this Act while simultaneously ensuring a smooth transition that will safeguard the national security of the United States, the President may provide that this Act (including the amendments made by this Act), or one or more particular provisions of this Act (including the amendments made by such provision or provisions), shall take effect on such date that is earlier than the date otherwise provided under subsection (a) as the President shall specify.

(c) NOTIFICATION OF EFFECTIVE DATES.—If the President exercises the authority in subsection (b), the President shall—

(1) notify Congress of the exercise of such authority; and

(2) publish in the Federal Register notice of the earlier effective date or dates involved, including each provision (and amendment) covered by such earlier effective date.

Subtitle E—Other Matters

SEC. 351. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstance is held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those to which such provision is held invalid, shall not be affected thereby.

SEC. 352. AUTHORIZATION OF APPROPRIATIONS.

There are specifically authorized to be appropriated for fiscal year 2005 such sums as may be necessary to carry out this Act and the amendments made by this Act.

TITLE IV—INFORMATION SHARING

SEC. 401. INFORMATION SHARING.

(a) DEFINITIONS.—In this section:

(1) NETWORK.—The term "Network" means the Information Sharing Network described in subsection (c).

(2) TERRORISM INFORMATION.—The term "terrorism information" means all information, whether collected, produced, or distributed by intelligence, law enforcement, military, homeland security, or other activities, relating to—

(A) the existence, organization, capabilities, plans, intentions, vulnerabilities, means of finance or material support, or activities of foreign or international terrorist groups or individuals, or of domestic groups or individuals involved in transnational terrorism;

(B) threats posed by such groups or individuals to the United States, United States persons, or United States interests, or to those of other nations;

(C) communications of or by such groups or individuals; or

(D) information relating to groups or individuals reasonably believed to be assisting or associated with such groups or individuals.

(b) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) The effective use of information, from all available sources, is essential to the fight

against terror and the protection of our homeland. The biggest impediment to all-source analysis, and to a greater likelihood of "connecting the dots", is resistance to sharing information.

(2) The United States Government has access to a vast amount of information, including not only traditional intelligence but also other government databases, such as those containing customs or immigration information. But the United States Government has a weak system for processing and using the information it has.

(3) In the period leading up to September 11, 2001, there were instances of potentially helpful information that was available but that no person knew to ask for; information that was distributed only in compartmented channels; and information that was requested but could not be shared.

(4) Current security requirements nurture overclassification and excessive compartmentalization of information among agencies. Each agency's incentive structure opposes sharing, with risks, including criminal, civil, and administrative sanctions, but few rewards for sharing information.

(5) The current system, in which each intelligence agency has its own security practices, requires a demonstrated "need to know" before sharing. This approach assumes that it is possible to know, in advance, who will need to use the information. An outgrowth of the cold war, such a system implicitly assumes that the risk of inadvertent disclosure outweighs the benefits of wider sharing. Such assumptions are no longer appropriate. Although counterintelligence concerns are still real, the costs of not sharing information are also substantial. The current "need-to-know" culture of information protection needs to be replaced with a "need-to-share" culture of integration.

(6) A new approach to the sharing of terrorism information is urgently needed. An important conceptual model for a new "trusted information network" is the Systemwide Homeland Analysis and Resource Exchange (SHARE) Network proposed by a task force of leading professionals assembled by the Markle Foundation and described in reports issued in October 2002 and December 2003.

(7) No single agency can create a meaningful information sharing system on its own. Alone, each agency can only modernize stovepipes, not replace them. Presidential leadership is required to bring about governmentwide change.

(c) INFORMATION SHARING NETWORK.—

(1) ESTABLISHMENT.—The President shall establish an information sharing network to promote the sharing of terrorism information, in a manner consistent with national security and the protection of privacy and civil liberties.

(2) ATTRIBUTES.—The Network shall promote coordination, communication and collaboration of people and information among all relevant Federal departments and agencies, State, tribal, and local authorities, and relevant private sector entities, including owners and operators of critical infrastructure, by using policy guidelines and technologies that support—

(A) a decentralized, distributed, and coordinated environment that connects existing systems where appropriate and allows users to share information horizontally across agencies, vertically between levels of government, and, as appropriate, with the private sector;

(B) building on existing systems capabilities at relevant agencies;

(C) utilizing industry best practices, including minimizing the centralization of data and seeking to use common tools and capabilities whenever possible;

(D) employing an information rights management approach that controls access to data rather than to whole networks;

(E) facilitating the sharing of information at and across all levels of security by using policy guidelines and technologies that support writing information that can be broadly shared;

(F) providing directory services for locating people and information;

(G) incorporating protections for individuals' privacy and civil liberties;

(H) incorporating mechanisms for information security; and

(I) access controls, authentication and authorization, audits, and other strong mechanisms for information security and privacy guideline enforcement across all levels of security, in order to enhance accountability and facilitate oversight.

(d) IMMEDIATE STEPS.—Not later than 90 days after the date of enactment of this Act, the President, through the Director of Management and Budget and in consultation with the National Intelligence Director, the Attorney General, the Secretary of Homeland Security, the Secretary of Defense, the Secretary of State, the Director of the Federal Bureau of Investigation, the Director of the Central Intelligence Agency, and such other Federal officials as the President shall designate, shall—

(1) establish electronic directory services to assist in locating in the Federal Government terrorism information and people with relevant knowledge about terrorism information; and

(2) conduct a review of relevant current Federal agency capabilities, including a baseline inventory of current Federal systems that contain terrorism information, the money currently spent to maintain those systems, and identification of other information that should be included in the Network.

(e) GUIDELINES.—As soon as possible, but in no event later than 180 days after the date of enactment of this Act, the President shall—

(1) in consultation with the National Intelligence Director and the Advisory Council on Information Sharing established in subsection (g), issue guidelines for acquiring, accessing, sharing, and using terrorism information, including guidelines to ensure such information is provided in its most shareable form, such as by separating out data from the sources and methods by which they are obtained;

(2) in consultation with the Privacy and Civil Liberties Oversight Board established under section 901, issue guidelines that—

(A) protect privacy and civil liberties in the development and use of the Network; and

(B) shall be made public, unless, and only to the extent that, nondisclosure is clearly necessary to protect national security;

(3) establish objective, systemwide performance measures to enable the assessment of progress toward achieving full implementation of the Network; and

(4) require Federal departments and agencies to promote a culture of information sharing by—

(A) reducing disincentives to information sharing, including overclassification of information and unnecessary requirements for originator approval; and

(B) providing affirmative incentives for information sharing, such as the incorporation of information sharing performance measures into agency and managerial evaluations, and employee awards for promoting innovative information sharing practices.

(f) SYSTEM DESIGN AND IMPLEMENTATION PLAN.—Not later than 270 days after the date of enactment of this Act, the President shall submit to Congress a system design and implementation plan for the Network. The plan shall be prepared by the President through the Director of Management and Budget and in consultation with the National Intelligence Director, the Attorney General, the Secretary of Homeland Security, the Secretary of Defense, the Secretary of State, the Director of the Federal Bureau of Investigation, the Director of the Central Intelligence Agency, and such other Federal officials as the President shall designate, and shall include—

(1) a description of the parameters of the proposed Network, including functions, capabilities, and resources;

(2) a description of the technological, legal, and policy issues presented by the creation of the Network described in subsection (c), and the ways in which these issues will be addressed;

(3)(A) a delineation of the roles of the Federal departments and agencies that will participate in the development of the Network, including—

(i) identification of any agency that will build the infrastructure needed to operate and manage the Network (as distinct from the individual agency components that are to be part of the Network); and

(ii) identification of any agency that will operate and manage the Network (as distinct from the individual agency components that are to be part of the Network);

(B) a provision that the delineation of roles under subparagraph (A) shall—

(i) be consistent with the authority of the National Intelligence Director, under this Act, to set standards for information sharing and information technology throughout the intelligence community; and

(ii) recognize the role of the Department of Homeland Security in coordinating with State, tribal, and local officials and the private sector;

(4) a description of the technological requirements to appropriately link and enhance existing networks and a description of the system design that will meet these requirements;

(5) a plan, including a time line, for the development and phased implementation of the Network;

(6) total budget requirements to develop and implement the Network, including the estimated annual cost for each of the 5 years following the date of enactment of this Act; and

(7) proposals for any legislation that the President believes necessary to implement the Network.

(g) ADVISORY COUNCIL ON INFORMATION SHARING.—

(1) ESTABLISHMENT.—There is established an Advisory Council on Information Sharing (in this subsection referred to as the "Council").

(2) MEMBERSHIP.—No more than 25 individuals may serve as members of the Council, which shall include—

(A) the National Intelligence Director, who shall serve as Chairman of the Council;

(B) the Secretary of Homeland Security;

(C) the Secretary of Defense;

(D) the Attorney General;

(E) the Secretary of State;

(F) the Director of the Central Intelligence Agency;

(G) the Director of the Federal Bureau of Investigation;

(H) the Director of Management and Budget;

(I) such other Federal officials as the President shall designate;

(J) representatives of State, tribal, and local governments, to be appointed by the President;

(K) individuals from outside government with expertise in relevant technology, security and privacy concepts, to be appointed by the President; and

(L) individuals who are employed in private businesses or nonprofit organizations that own or operate critical infrastructure, to be appointed by the President.

(3) RESPONSIBILITIES.—The Council shall—

(A) advise the President and the heads of relevant Federal departments and agencies on the implementation of the Network;

(B) ensure that there is coordination among participants in the Network in the development and implementation of the Network;

(C) review, on an ongoing basis, policy, legal and technology issues related to the implementation of the Network; and

(D) establish a dispute resolution process to resolve disagreements among departments and agencies about whether particular terrorism information should be shared and in what manner.

(4) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Council shall not be subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App.).

(5) INFORMING THE PUBLIC.—The Council shall hold public hearings and otherwise inform the public of its activities, as appropriate and in a manner consistent with the protection of classified information and applicable law.

(6) COUNCIL REPORTS.—Not later than 1 year after the date of enactment of this Act and annually thereafter, the National Intelligence Director, in the capacity of Chairman of the Council, shall submit a report to Congress that shall include—

(A) a description of the activities and accomplishments of the Council in the preceding year; and

(B) the number and dates of the meetings held by the Council and a list of attendees at each meeting.

(h) PRESIDENTIAL REPORTS.—Not later than 1 year after the date of enactment of this Act, and semiannually thereafter, the President shall submit a report to Congress on the state of the Network. The report shall include—

(1) a progress report on the extent to which the Network has been implemented, including how the Network has fared on the governmentwide and agency-specific performance measures and whether the performance goals set in the preceding year have been met;

(2) objective systemwide performance goals for the following year;

(3) an accounting of how much was spent on the Network in the preceding year;

(4) actions taken to ensure that agencies procure new technology that is consistent with the Network and information on whether new systems and technology are consistent with the Network;

(5) the extent to which, in appropriate circumstances, all terrorism watch lists are available for combined searching in real time through the Network and whether there are consistent standards for placing individuals on, and removing individuals from, the watch lists, including the availability of processes for correcting errors;

(6) the extent to which unnecessary roadblocks or disincentives to information sharing, including the inappropriate use of paper-only intelligence products and requirements for originator approval, have been eliminated;

(7) the extent to which positive incentives for information sharing have been implemented;

(8) the extent to which classified information is also made available through the Network, in whole or in part, in unclassified form;

(9) the extent to which State, tribal, and local officials—

(A) are participating in the Network;

(B) have systems which have become integrated into the Network;

(C) are providing as well as receiving information; and

(D) are using the Network to communicate with each other;

(10) the extent to which—

(A) private sector data, including information from owners and operators of critical infrastructure, is incorporated in the Network; and

(B) the private sector is both providing and receiving information;

(11) where private sector data has been used by the Government or has been incorporated into the Network—

(A) the measures taken to protect sensitive business information; and

(B) where the data involves information about individuals, the measures taken to ensure the accuracy of such data;

(12) the measures taken by the Federal Government to ensure the accuracy of other information on the Network and, in particular, the accuracy of information about individuals;

(13) an assessment of the Network's privacy protections, including actions taken in the preceding year to implement or enforce privacy protections and a report of complaints received about interference with an individual's privacy or civil liberties; and

(14) an assessment of the security protections of the Network.

(i) AGENCY PLANS AND REPORTS.—Each Federal department or agency that possesses or uses terrorism information or that otherwise participates, or expects to participate, in the Network, shall submit to the Director of Management and Budget and to Congress—

(1) not later than 1 year after the enactment of this Act, a report including—

(A) a strategic plan for implementation of the Network's requirements within the department or agency;

(B) objective performance measures to assess the progress and adequacy of the department's or agency's information sharing efforts; and

(C) budgetary requirements to integrate the department or agency into the Network, including projected annual expenditures for each of the following 5 years following the submission of the reports; and

(2) annually thereafter, reports including—

(A) an assessment of the department's or agency's progress in complying with the Network's requirements, including how well the department or agency has performed on the objective measures developed under paragraph (1);

(B) the department's or agency's expenditures to implement and comply with the Network's requirements in the preceding year;

(C) the department's or agency's plans for further implementation of the Network in the year following the submission of the report.

(j) PERIODIC ASSESSMENTS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and periodically thereafter, the Government Accountability Office shall review and evaluate the implementation of the Network, both generally and, at its discretion, within specific departments and agencies, to determine the extent of compliance with the Network's requirements and to assess the effectiveness of the Network in improving information sharing and collaboration and in protecting privacy and civil liberties, and shall report to Congress on its findings.

(2) INSPECTORS GENERAL.—The Inspector General in any Federal department or agency that possesses or uses terrorism information or that otherwise participates in the Network shall, at the discretion of the Inspector General—

(A) conduct audits or investigations to—

(i) determine the compliance of that department or agency with the Network's requirements; and

(ii) assess the effectiveness of that department or agency in improving information sharing and collaboration and in protecting privacy and civil liberties; and

(B) issue reports on such audits and investigations.

(k) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated—

(1) $50,000,000 to the Director of Management and Budget to carry out this section for fiscal year 2005; and

(2) such sums as are necessary to carry out this section in each fiscal year thereafter, to be disbursed and allocated in accordance with the Network system design and implementation plan required by subsection (f).

TITLE V—CONGRESSIONAL REFORM

SEC. 501. FINDINGS.

Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) The American people are not served well by current congressional rules and resolutions governing intelligence and homeland security oversight.

(2) A unified Executive Branch effort on fighting terrorism will not be effective unless it is matched by a unified effort in Congress, specifically a strong, stable, and capable congressional committee structure to give the intelligence agencies and Department of Homeland Security sound oversight, support, and leadership.

(3) The intelligence committees of the Senate and the House of Representatives are not organized to provide strong leadership and oversight for intelligence and counterterrorism.

(4) Jurisdiction over the Department of Homeland Security, which is scattered among many committees in each chamber, does not allow for the clear authority and responsibility needed for effective congressional oversight.

(5) Congress should either create a new, joint Senate-House intelligence authorizing committee modeled on the former Joint Committee on Atomic Energy, or establish new intelligence committees in each chamber with combined authorization and appropriations authority.

(6) Congress should establish a single, principal point of oversight and review in each chamber for the Department of Homeland Security and the report of the National Commission on Terrorist Attacks Upon the United States stated that “Congressional

leaders are best able to judge what committee should have jurisdiction over this department and its duties.".

(7) In August 2004, the joint Senate leadership created a bipartisan working group to examine how best to implement the Commission's recommendations with respect to reform of the Senate's oversight of intelligence and homeland security, and directed the working group to begin its work immediately and to present its findings and recommendations to Senate leadership as expeditiously as possible.

SEC. 502. REORGANIZATION OF CONGRESSIONAL JURISDICTION.

The 108th Congress shall not adjourn until each House of Congress has adopted the necessary changes to its rules such that, effective the start of the 109th Congress—

(1) jurisdiction over proposed legislation, messages, petitions, memorials, and other matters relating to the Department of Homeland Security shall be consolidated in a single committee in each House and such committee shall have a nonpartisan staff; and

(2) jurisdiction over proposed legislation, messages, petitions, memorials, and other matters related to intelligence shall reside in—

(A) either a joint Senate-House authorizing committee modeled on the former Joint Committee on Atomic Energy, or a committee in each chamber with combined authorization and appropriations authority; and

(B) regardless of which committee structure is selected, the intelligence committee or committees shall have—

(i) not more than 9 members in each House, who shall serve without term limits and of which at least 1 each shall also serve on a committee on Armed Services, Judiciary, and Foreign Affairs and at least 1 on a Defense Appropriations subcommittee;

(ii) authority to issue subpoenas;

(iii) majority party representation that does not exceed minority party representation by more than 1 member in each House, and a nonpartisan staff; and

(iv) a subcommittee devoted solely to oversight.

TITLE VI—PRESIDENTIAL TRANSITION

SEC. 601. PRESIDENTIAL TRANSITION.

(a) SERVICES PROVIDED PRESIDENT-ELECT.—Section 3 of the Presidential Transition Act of 1963 (3 U.S.C. 102 note) is amended—

(1) by adding after subsection (a)(8)(A)(iv) the following:

"(v) Activities under this paragraph shall include the preparation of a detailed classified, compartmented summary by the relevant outgoing executive branch officials of specific operational threats to national security; major military or covert operations; and pending decisions on possible uses of military force. This summary shall be provided to the President-elect as soon as possible after the date of the general elections held to determine the electors of President and Vice President under section 1 or 2 of title 3, United States Code.";

(2) by redesignating subsection (f) as subsection (g); and

(3) by adding after subsection (e) the following:

"(f)(1) The President-elect should submit to the agency designated by the President under section 601(d) of the 9/11 Commission Report Implementation Act of 2004 the names of candidates for high level national security positions through the level of undersecretary of cabinet departments as soon as possible after the date of the general elections held to determine the electors of President and Vice President under section 1 or 2 of title 3, United States Code.

"(2) The Federal Bureau of Investigation, and any other appropriate agency, shall undertake and complete as expeditiously as possible the background investigations necessary to provide appropriate security clearances to the individuals who are candidates described under paragraph (1) before the date of the inauguration of the President-elect as President and the inauguration of the Vice-President-elect as Vice President.".

(b) SENSE OF CONGRESS REGARDING EXPEDITED CONSIDERATION OF NATIONAL SECURITY NOMINEES.—It is the sense of Congress that—

(1) the President-elect should submit the nominations of candidates for high-level national security positions, through the level of undersecretary of cabinet departments, to the Senate by the date of the inauguration of the President-elect as President; and

(2) for all national security nominees received by the date of inauguration, the Senate committees to which these nominations are referred should, to the fullest extent possible, complete their consideration of these nominations, and, if such nominations are reported by the committees, the full Senate should vote to confirm or reject these nominations, within 30 days of their submission.

(c) SECURITY CLEARANCES FOR TRANSITION TEAM MEMBERS.—

(1) DEFINITION.—In this section, the term "major party" shall have the meaning given under section 9002(6) of the Internal Revenue Code of 1986.

(2) IN GENERAL.—Each major party candidate for President, except a candidate who is the incumbent President, may submit, before the date of the general election, requests for security clearances for prospective transition team members who will have a need for access to classified information to carry out their responsibilities as members of the President-elect's transition team.

(3) COMPLETION DATE.—Necessary background investigations and eligibility determinations to permit appropriate prospective transition team members to have access to classified information shall be completed, to the fullest extent practicable, by the day after the date of the general election.

(d) CONSOLIDATION OF RESPONSIBILITY FOR PERSONNEL SECURITY INVESTIGATIONS.—

(1) CONSOLIDATION.—

(A) IN GENERAL.—Not later than 45 days after the date of enactment of this Act, the President shall select a single Federal agency to provide and maintain all security clearances for Federal employees and Federal contractor personnel who require access to classified information, including conducting all investigation functions.

(B) CONSIDERATIONS.—In selecting an agency under this paragraph, the President shall fully consider requiring the transfer of investigation functions to the Office of Personnel Management as described under section 906 of the National Defense Authorization Act for Fiscal Year 2004 (5 U.S.C. 1101 note).

(C) COORDINATION AND CONSOLIDATION OF RESPONSIBILITIES.—The Federal agency selected under this paragraph shall—

(i) take all necessary actions to carry out the responsibilities under this subsection, including entering into a memorandum of understanding with any agency carrying out such responsibilities before the date of enactment of this Act; and

(ii) identify any legislative actions necessary to further implement this subsection.

(D) DATABASE.—The agency selected shall, as soon as practicable, establish and maintain a single database for tracking security clearance applications, investigations and eligibility determinations and ensure that security clearance investigations are conducted according to uniform standards, including uniform security questionnaires and financial disclosure requirements.

(E) POLYGRAPHS.—The President shall direct the agency selected under this paragraph to administer any polygraph examinations on behalf of agencies that require them.

(2) ACCESS.—The President, acting through the National Intelligence Director, shall—

(A) establish uniform standards and procedures for the grant of access to classified information to any officer or employee of any agency or department of the United States and to employees of contractors of those agencies and departments;

(B) ensure the consistent implementation of those standards and procedures throughout such agencies and departments; and

(C) ensure that security clearances granted by individual elements of the intelligence community are recognized by all elements of the intelligence community, and under contracts entered into by such elements.

TITLE VII—THE ROLE OF DIPLOMACY, FOREIGN AID, AND THE MILITARY IN THE WAR ON TERRORISM

SEC. 701. REPORT ON TERRORIST SANCTUARIES.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Complex terrorist operations require locations that provide such operations sanctuary from interference by government or law enforcement personnel.

(2) A terrorist sanctuary existed in Afghanistan before September 11, 2001.

(3) The terrorist sanctuary in Afghanistan provided direct and indirect value to members of al Qaeda who participated in the terrorist attacks on the United States on September 11, 2001 and in other terrorist operations.

(4) Terrorist organizations have fled to some of the least governed and most lawless places in the world to find sanctuary.

(5) During the twenty-first century, terrorists are focusing on remote regions and failing states as locations to seek sanctuary.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the United States Government should identify and prioritize locations that are or that could be used as terrorist sanctuaries;

(2) the United States Government should have a realistic strategy that includes the use of all elements of national power to keep possible terrorists from using a location as a sanctuary; and

(3) the United States Government should reach out, listen to, and work with countries in bilateral and multilateral fora to prevent locations from becoming sanctuaries and to prevent terrorists from using locations as sanctuaries.

(c) STRATEGY ON TERRORIST SANCTUARIES.—

(1) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to Congress a report that describes a strategy for addressing and, where possible, eliminating terrorist sanctuaries.

(2) CONTENT.—The report required under this section shall include the following:

(A) A description of actual and potential terrorist sanctuaries, together with an assessment of the priorities of addressing and eliminating such sanctuaries.

(B) An outline of strategies for disrupting or eliminating the security provided to terrorists by such sanctuaries.

(C) A description of efforts by the United States Government to work with other countries in bilateral and multilateral fora to address or eliminate actual or potential terrorist sanctuaries and disrupt or eliminate the security provided to terrorists by such sanctuaries.

(D) A description of long-term goals and actions designed to reduce the conditions that allow the formation of terrorist sanctuaries, such as supporting and strengthening host governments, reducing poverty, increasing economic development, strengthening civil society, securing borders, strengthening internal security forces, and disrupting logistics and communications networks of terrorist groups.

SEC. 702. ROLE OF PAKISTAN IN COUNTERING TERRORISM.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) The Government of Pakistan has a critical role to perform in the struggle against Islamist terrorism.

(2) The endemic poverty, widespread corruption, and frequent ineffectiveness of government in Pakistan create opportunities for Islamist recruitment.

(3) The poor quality of education in Pakistan is particularly worrying, as millions of families send their children to madrassahs, some of which have been used as incubators for violent extremism.

(4) The vast unpoliced regions in Pakistan make the country attractive to extremists seeking refuge and recruits and also provide a base for operations against coalition forces in Afghanistan.

(5) A stable Pakistan, with a government advocating "enlightened moderation" in the Muslim world, is critical to stability in the region.

(6) There is a widespread belief among the people of Pakistan that the United States has long treated them as allies of convenience.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the United States should make a long-term commitment to assisting in ensuring a promising, stable, and secure future in Pakistan, as long as its leaders remain committed to combatting extremists and implementing a strategy of "enlightened moderation";

(2) the United States aid to Pakistan should be fulsome and, at a minimum, sustained at the fiscal year 2004 levels;

(3) the United States should support the Government of Pakistan with a comprehensive effort that extends from military aid to support for better education; and

(4) the United States Government should devote particular attention and resources to assisting in the improvement of the quality of education in Pakistan.

(c) REPORT ON SUPPORT FOR PAKISTAN.—

(1) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to Congress a report on the efforts of the United States Government to support Pakistan and encourage moderation in that country.

(2) CONTENT.—The report required under this section shall include the following:

(A) An examination of the desirability of establishing a Pakistan Education Fund to direct resources toward improving the quality of secondary schools in Pakistan.

(B) Recommendations on the funding necessary to provide various levels of educational support.

(C) An examination of the current composition and levels of United States military aid to Pakistan, together with any recommendations for changes in such levels and composition that the President considers appropriate.

(D) An examination of other major types of United States financial support to Pakistan, together with any recommendations for changes in the levels and composition of such support that the President considers appropriate.

SEC. 703. AID TO AFGHANISTAN.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) The United States and its allies in the international community have made progress in promoting economic and political reform within Afghanistan, including the establishment of a central government with a democratic constitution, a new currency, and a new army, the increase of personal freedom, and the elevation of the standard of living of many Afghans.

(2) A number of significant obstacles must be overcome if Afghanistan is to become a secure and prosperous democracy, and such a transition depends in particular upon—

(A) improving security throughout the country;

(B) disarming and demobilizing militias;

(C) curtailing the rule of the warlords;

(D) promoting equitable economic development;

(E) protecting the human rights of the people of Afghanistan;

(F) holding elections for public office; and

(G) ending the cultivation and trafficking of narcotics.

(3) The United States and the international community must make a long-term commitment to addressing the deteriorating security situation in Afghanistan and the burgeoning narcotics trade, endemic poverty, and other serious problems in Afghanistan in order to prevent that country from relapsing into a sanctuary for international terrorism.

(b) POLICY.—It shall be the policy of the United States to take the following actions with respect to Afghanistan:

(1) Working with other nations to obtain long-term security, political, and financial commitments and fulfillment of pledges to the Government of Afghanistan to accomplish the objectives of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7501 et seq.), especially to ensure a secure, democratic, and prosperous Afghanistan that respects the rights of its citizens and is free of international terrorist organizations.

(2) Using the voice and vote of the United States in relevant international organizations, including the North Atlantic Treaty Organization and the United Nations Security Council, to strengthen international commitments to assist the Government of Afghanistan in enhancing security, building national police and military forces, increasing counter-narcotics efforts, and expanding infrastructure and public services throughout the country.

(3) Taking appropriate steps to increase the assistance provided under programs of the Department of State and the United States Agency for International Development throughout Afghanistan and to increase the number of personnel of those agencies in Afghanistan as necessary to support the increased assistance.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) FISCAL YEAR 2005.—There are authorized to be appropriated to the President for fiscal year 2005 for assistance for Afghanistan, in addition to any amounts otherwise available for the following purposes, the following amounts:

(A) For Development Assistance to carry out the provisions of sections 103, 105, and 106 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151a, 2151c, and 2151d), $400,000,000.

(B) For the Child Survival and Health Program Fund to carry out the provisions of section 104 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b), $100,000,000.

(C) For the Economic Support Fund to carry out the provisions of chapter 4 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2346 et seq.), $550,000,000.

(D) For International Narcotics and Law Enforcement to carry out the provisions of section 481 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291), $360,000,000.

(E) For Nonproliferation, Anti-Terrorism, Demining, and Related Programs, $50,000,000.

(F) For International Military Education and Training to carry out the provisions of section 541 of the Foreign Assistance Act of 1961 (22 U.S.C. 2347), $2,000,000.

(G) For Foreign Military Financing Program grants to carry of the provision of section 23 of the Arms Export Control Act (22 U.S.C. 2763), $880,000,000.

(H) For Peacekeeping Operations to carry out the provisions of section 551 of the Foreign Assistance Act of 1961 (22 U.S.C. 2348), $60,000,000.

(2) FISCAL YEARS 2006 THROUGH 2009.—There are authorized to be appropriated to the President for each of fiscal years 2006 through 2009 such sums as may be necessary for financial and other assistance to Afghanistan.

(3) CONDITIONS FOR ASSISTANCE.—Assistance provided by the President under this subsection—

(A) shall be consistent with the Afghanistan Freedom Support Act of 2002; and

(B) shall be provided with reference to the "Securing Afghanistan's Future" document published by the Government of Afghanistan.

(d) SENSE OF CONGRESS.—It is the sense of Congress that Congress should, in consultation with the President, update and revise, as appropriate, the Afghanistan Freedom Support Act of 2002.

(e) STRATEGY AND SUPPORT REGARDING UNITED STATES AID TO AFGHANISTAN.—

(1) REQUIREMENT FOR STRATEGY.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to Congress a 5-year strategy for providing aid to Afghanistan.

(2) CONTENT.—The strategy required under paragraph (1) shall describe the resources that will be needed during the next 5 years to achieve specific objectives in Afghanistan, including in the following areas:

(A) Fostering economic development.

(B) Curtailing the cultivation of opium.

(C) Achieving internal security and stability.

(D) Eliminating terrorist sanctuaries.

(E) Increasing governmental capabilities.

(F) Improving essential infrastructure and public services.

(G) Improving public health services.

(H) Establishing a broad-based educational system.

(I) Promoting democracy and the rule of law.

(J) Building national police and military forces.

(3) UPDATES.—Beginning not later than 1 year after the strategy is submitted to Congress under paragraph (1), the President shall submit to Congress an annual report—

(A) updating the progress made toward achieving the goals outlined in the strategy under this subsection; and

(B) identifying shortfalls in meeting those goals and the resources needed to fully achieve them.

SEC. 704. THE UNITED STATES-SAUDI ARABIA RELATIONSHIP.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Despite a long history of friendly relations with the United States, Saudi Arabia has been a problematic ally in combating Islamic extremism.

(2) Cooperation between the Governments of the United States and Saudi Arabia has traditionally been carried out in private.

(3) The Government of Saudi Arabia has not always responded promptly and fully to United States requests for assistance in the global war on Islamist terrorism.

(4) Counterterrorism cooperation between the Governments of the United States and Saudi Arabia has improved significantly since the terrorist bombing attacks in Riyadh, Saudi Arabia, on May 12, 2003.

(5) The Government of Saudi Arabia is now aggressively pursuing al Qaeda and appears to be acting to build a domestic consensus for some internal reforms.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the problems in the relationship between the United States and Saudi Arabia must be confronted openly, and the opportunities for cooperation between the countries must be pursued openly by those governments;

(2) both governments must build a relationship that they can publicly defend and that is based on other national interests in addition to their national interests in oil;

(3) this relationship should include a shared commitment to political and economic reform in Saudi Arabia; and

(4) this relationship should also include a shared interest in greater tolerance and respect for other cultures in Saudi Arabia and a commitment to fight the violent extremists who foment hatred in the Middle East.

(c) REPORT.—

(1) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to Congress a strategy for expanding collaboration with the Government of Saudi Arabia on subjects of mutual interest and of importance to the United States.

(2) SCOPE.—As part of this strategy, the President shall consider the utility of undertaking a periodic, formal, and visible high-level dialogue between senior United States Government officials of cabinet level or higher rank and their counterparts in the Government of Saudi Arabia to address challenges in the relationship between the 2 governments and to identify areas and mechanisms for cooperation.

(3) CONTENT.—The strategy under this subsection shall encompass—

(A) intelligence and security cooperation in the fight against Islamist terrorism;

(B) ways to advance the Middle East peace process;

(C) political and economic reform in Saudi Arabia and throughout the Middle East; and

(D) the promotion of greater tolerance and respect for cultural and religious diversity in Saudi Arabia and throughout the Middle East.

SEC. 705. EFFORTS TO COMBAT ISLAMIC TERRORISM BY ENGAGING IN THE STRUGGLE OF IDEAS IN THE ISLAMIC WORLD.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) While support for the United States has plummeted in the Islamic world, many negative views are uninformed, at best, and, at worst, are informed by coarse stereotypes and caricatures.

(2) Local newspapers in Islamic countries and influential broadcasters who reach Islamic audiences through satellite television often reinforce the idea that the people and Government of the United States are anti-Muslim.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Government of the United States should offer an example of moral leadership in the world that includes a commitment to treat all people humanely, abide by the rule of law, and be generous and caring to the people and governments of other countries;

(2) the United States should cooperate with governments of Islamic countries to foster agreement on respect for human dignity and opportunity, and to offer a vision of a better future that includes stressing life over death, individual educational and economic opportunity, widespread political participation, contempt for indiscriminate violence, respect for the rule of law, openness in discussing differences, and tolerance for opposing points of view;

(3) the United States should encourage reform, freedom, democracy, and opportunity for Arabs and Muslims and promote moderation in the Islamic world; and

(4) the United States should work to defeat extremist ideology in the Islamic world by providing assistance to moderate Arabs and Muslims to combat extremist ideas.

(c) REPORT ON THE STRUGGLE OF IDEAS IN THE ISLAMIC WORLD.—

(1) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to Congress a report that contains a cohesive long-term strategy for the United States Government to help win the struggle of ideas in the Islamic world.

(2) CONTENT.—The report required under this section shall include the following:

(A) A description of specific goals related to winning this struggle of ideas.

(B) A description of the range of tools available to the United States Government to accomplish these goals and the manner in which such tools will be employed.

(C) A list of benchmarks for measuring success and a plan for linking resources to the accomplishment of these goals.

(D) A description of any additional resources that may be necessary to help win this struggle of ideas.

(E) Any recommendations for the creation of, and United States participation in, international institutions for the promotion of democracy and economic diversification in the Islamic world, and intra-regional trade in the Middle East.

(F) An estimate of the level of United States financial assistance that would be sufficient to convince United States allies and people in the Islamic world that engaging in the struggle of ideas in the Islamic world is a top priority of the United States and that the United States intends to make a substantial and sustained commitment toward winning this struggle.

SEC. 706. UNITED STATES POLICY TOWARD DICTATORSHIPS.

(a) FINDING.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress finds that short-term gains enjoyed by the United States through cooperation with the world's most repressive and brutal governments are too often outweighed by long-term setbacks for the stature and interests of the United States.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) United States foreign policy should promote the value of life and the importance of individual educational and economic opportunity, encourage widespread political participation, condemn indiscriminate violence, and promote respect for the rule of law, openness in discussing differences among people, and tolerance for opposing points of view; and

(2) the United States Government must prevail upon the governments of all predominantly Muslim countries, including those that are friends and allies of the United States, to condemn indiscriminate violence, promote the value of life, respect and promote the principles of individual education and economic opportunity, encourage widespread political participation, and promote the rule of law, openness in discussing differences among people, and tolerance for opposing points of view.

SEC. 707. PROMOTION OF UNITED STATES VALUES THROUGH BROADCAST MEDIA.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Although the United States has demonstrated and promoted its values in defending Muslims against tyrants and criminals in Somalia, Bosnia, Kosovo, Afghanistan, and Iraq, this message is not always clearly presented in the Islamic world.

(2) If the United States does not act to vigorously define its message in the Islamic world, the image of the United States will be defined by Islamic extremists who seek to demonize the United States.

(3) Recognizing that many Arab and Muslim audiences rely on satellite television and radio, the United States Government has launched promising initiatives in television and radio broadcasting to the Arab world, Iran, and Afghanistan.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the United States must do more to defend and promote its values and ideals to the broadest possible audience in the Islamic world;

(2) United States efforts to defend and promote these values and ideals are beginning to ensure that accurate expressions of these values reach large audiences in the Islamic world and should be robustly supported;

(3) the United States Government could and should do more to engage the Muslim world in the struggle of ideas; and

(4) the United States Government should more intensively employ existing broadcast media in the Islamic world as part of this engagement.

(c) REPORT ON OUTREACH STRATEGY.—

(1) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to Congress a report on the strategy of the United States Government for expanding its outreach to foreign Muslim audiences through broadcast media.

(2) CONTENT.—The report shall include the following:

(A) The initiatives of the Broadcasting Board of Governors and the public diplomacy activities of the Department of State with respect to outreach to foreign Muslim audiences.

(B) An outline of recommended actions that the United States Government should take to more regularly and comprehensively present a United States point of view through indigenous broadcast media in countries with sizable Muslim populations, including increasing appearances by United States Government officials, experts, and citizens.

(C) An assessment of potential incentives for, and costs associated with, encouraging United States broadcasters to dub or subtitle into Arabic and other relevant languages their news and public affairs programs broadcast in the Muslim world in order to present those programs to a much broader Muslim audience than is currently reached.

(D) Any recommendations the President may have for additional funding and legislation necessary to achieve the objectives of the strategy.

(d) AUTHORIZATIONS OF APPROPRIATIONS.—There are authorized to be appropriated to the President to carry out United States Government broadcasting activities under the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1431 et seq.), the United States International Broadcasting Act of 1994 (22 U.S.C. 6201 et seq.), and the Foreign Affairs Reform and Restructuring Act of 1998 (22 U.S.C. 6501 et seq.), and to carry out other activities under this section consistent with the purposes of such Acts, the following amounts:

(1) INTERNATIONAL BROADCASTING OPERATIONS.—For International Broadcasting Operations—

(A) $717,160,000 for fiscal year 2005; and

(B) such sums as may be necessary for each of the fiscal years 2006 through 2009.

(2) BROADCASTING CAPITAL IMPROVEMENTS.—For Broadcasting Capital Improvements—

(A) $11,040,000 for fiscal year 2005; and

(B) such sums as may be necessary for each of the fiscal years 2006 through 2009.

SEC. 708. USE OF UNITED STATES SCHOLARSHIP AND EXCHANGE PROGRAMS IN THE ISLAMIC WORLD.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Exchange, scholarship, and library programs are effective ways for the United States Government to promote internationally the values and ideals of the United States.

(2) Exchange, scholarship, and library programs can expose young people from other countries to United States values and offer them knowledge and hope.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the United States should expand its exchange, scholarship, and library programs, especially those that benefit people in the Arab and Muslim worlds.

(c) DEFINITIONS.—In this section:

(1) ELIGIBLE COUNTRY.—The term "eligible country" means a country or entity in Africa, the Middle East, Central Asia, South Asia, or Southeast Asia that—

(A) has a sizable Muslim population; and

(B) is designated by the Secretary of State as eligible to participate in programs under this section.

(2) SECRETARY.—Except as otherwise specifically provided, the term "Secretary" means the Secretary of State.

(3) UNITED STATES ENTITY.—The term "United States entity" means an entity that is organized under the laws of the United States, any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, or any other territory or possession of the United States.

(4) UNITED STATES SPONSORING ORGANIZATION.—The term "United States sponsoring organization" means a nongovernmental organization that is—

(A) based in the United States; and

(B) controlled by a citizen of the United States or a United States entity that is designated by the Secretary, pursuant to regulations, to carry out a program authorized by subsection (e).

(d) EXPANSION OF EDUCATIONAL AND CULTURAL EXCHANGES.—

(1) PURPOSE.—The purpose of this subsection is to provide for the expansion of international educational and cultural exchange programs between the United States and eligible countries.

(2) SPECIFIC PROGRAMS.—In carrying out this subsection, the Secretary is authorized to conduct or initiate programs in eligible countries as follows:

(A) FULBRIGHT EXCHANGE PROGRAM.—

(i) INCREASED NUMBER OF AWARDS.—The Secretary is authorized to substantially increase the number of awards under the J. William Fulbright Educational Exchange Program.

(ii) INTERNATIONAL SUPPORT FOR FULBRIGHT PROGRAM.—The Secretary shall work to increase support for the J. William Fulbright Educational Exchange Program in eligible countries in order to enhance academic and scholarly exchanges with those countries.

(B) HUBERT H. HUMPHREY FELLOWSHIPS.—The Secretary is authorized to substantially increase the number of Hubert H. Humphrey Fellowships awarded to candidates from eligible countries.

(C) SISTER INSTITUTIONS PROGRAMS.—The Secretary is authorized to facilitate the establishment of sister institution programs between cities and municipalities and other institutions in the United States and in eligible countries in order to enhance mutual understanding at the community level.

(D) LIBRARY TRAINING EXCHANGES.—The Secretary is authorized to develop a demonstration program, including training in the library sciences, to assist governments in eligible countries to establish or upgrade the public library systems of such countries for the purpose of improving literacy.

(E) INTERNATIONAL VISITORS PROGRAM.—The Secretary is authorized to expand the number of participants from eligible countries in the International Visitors Program.

(F) YOUTH AMBASSADORS.—

(i) IN GENERAL.—The Secretary is authorized to establish a youth ambassadors program for visits by middle and secondary school students from eligible countries to the United States to participate in activities, including cultural and educational activities, that are designed to familiarize participating students with United States society and values.

(ii) VISITS.—The visits of students who are participating in the youth ambassador program under clause (i) shall be scheduled during the school holidays in the home countries of the students and may not exceed 4 weeks.

(iii) CRITERIA.—Students selected to participate in the youth ambassador program shall reflect the economic and geographic diversity of eligible countries.

(G) EDUCATION REFORM.—The Secretary is authorized—

(i) to expand programs that seek to improve the quality of primary and secondary school systems in eligible countries; and

(ii) in order to foster understanding of the United States, to promote civic education through teacher exchanges, teacher training, textbook modernization, and other efforts.

(H) PROMOTION OF RELIGIOUS FREEDOM.—The Secretary is authorized to establish a program to promote dialogue and exchange among leaders and scholars of all faiths from the United States and eligible countries.

(I) BRIDGING THE DIGITAL DIVIDE.—The Secretary is authorized to establish a program to help foster access to information technology among underserved populations and by civil society groups in eligible countries.

(J) PEOPLE-TO-PEOPLE DIPLOMACY.—The Secretary is authorized to expand efforts to promote United States public diplomacy interests in eligible countries through cultural, arts, entertainment, sports and other exchanges.

(K) COLLEGE SCHOLARSHIPS.—

(i) IN GENERAL.—The Secretary is authorized to establish a program to offer scholarships to permit individuals to attend eligible colleges and universities.

(ii) ELIGIBILITY FOR PROGRAM.—To be eligible for the scholarship program, an individual shall be a citizen or resident of an eligible country who has graduated from a secondary school in an eligible country.

(iii) ELIGIBLE COLLEGE OR UNIVERSITY DEFINED.—In this subparagraph, the term "eligible college or university" means a college or university that is organized under the laws of the United States, a State, or the District of Columbia, accredited by an accrediting agency recognized by the Secretary of Education, and primarily located in, but not controlled by, an eligible country.

(L) LANGUAGE TRAINING PROGRAM.—The Secretary is authorized to provide travel and subsistence funding for students who are United States citizens to travel to eligible countries to participate in immersion training programs in languages used in such countries and to develop regulations governing the provision of such funding.

(e) SECONDARY SCHOOL EXCHANGE PROGRAM.—

(1) IN GENERAL.—The Secretary is authorized to establish an international exchange visitor program, modeled on the Future Leaders Exchange Program established under the FREEDOM Support Act (22 U.S.C. 5801 et seq.), for eligible students to—

(A) attend public secondary school in the United States;

(B) live with a host family in the United States; and

(C) participate in activities designed to promote a greater understanding of United States and Islamic values and culture.

(2) ELIGIBLE STUDENT DEFINED.—In this subsection, the term "eligible student" means an individual who—

(A) is a national of an eligible country;

(B) is at least 15 years of age but not more than 18 years and 6 months of age at the time of enrollment in the program;

(C) is enrolled in a secondary school in an eligible country;

(D) has completed not more than 11 years of primary and secondary education, exclusive of kindergarten;

(E) demonstrates maturity, good character, and scholastic aptitude, and has the proficiency in the English language necessary to participate in the program;

(F) has not previously participated in an exchange program in the United States sponsored by the Government of the United States; and

(G) is not prohibited from entering the United States under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) or any other provision of law related to immigration and nationality.

(3) COMPLIANCE WITH VISA REQUIREMENTS.—An eligible student may not participate in the exchange visitor program authorized by paragraph (1) unless the eligible student has the status of nonimmigrant under section 101(a)(15)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(J)).

(4) BROAD PARTICIPATION.—Whenever appropriate, the Secretary shall make special provisions to ensure the broadest possible participation in the exchange visitor program authorized by paragraph (1), particularly among females and less advantaged citizens of eligible countries.

(5) DESIGNATED EXCHANGE VISITOR PROGRAM.—The exchange visitor program authorized by paragraph (1) shall be a designated exchange visitor program for the purposes of section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372).

(6) REGULAR REPORTING TO THE SECRETARY.—If the Secretary utilizes a United States sponsoring organization to carry out the exchange visitor program authorized by paragraph (1), such United States sponsoring organization shall report regularly to the Secretary on the progress it has made to implement such program.

(f) REPORT ON EXPEDITING VISAS FOR PARTICIPANTS IN EXCHANGE, SCHOLARSHIP, AND VISITORS PROGRAMS.—

(1) REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary and the Secretary of Homeland Security shall submit to Congress a report on expediting the issuance of visas to individuals who are entering the United States for the purpose of participating in a scholarship, exchange, or visitor program authorized in subsection (d) or (e) without compromising the security of the United States.

(2) RECOMMENDATIONS.—The report required by paragraph (1) shall include—

(A) the recommendations of the Secretary and the Secretary of Homeland Security, if any, for methods to expedite the processing of requests for such visas; and

(B) a proposed schedule for implementing any recommendations described in subparagraph (A).

(g) AUTHORIZATION OF APPROPRIATIONS.—Of the amounts authorized to be appropriated for educational and cultural exchange programs for fiscal year 2005, there is authorized to be appropriated to the Department of State $60,000,000 to carry out programs under this section.

SEC. 709. INTERNATIONAL YOUTH OPPORTUNITY FUND.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Education that teaches tolerance, the dignity and value of each individual, and respect for different beliefs is a key element in any global strategy to eliminate Islamist terrorism.

(2) Education in the Middle East about the world outside that region is weak.

(3) The United Nations has rightly equated literacy with freedom.

(4) The international community is moving toward setting a concrete goal of reducing by half the illiteracy rate in the Middle East by 2010, through the implementation of education programs targeting women and girls and programs for adult literacy, and by other means.

(5) To be effective, the effort to improve education in the Middle East must also include—

(A) support for the provision of basic education tools, such as textbooks that translate more of the world's knowledge into local languages and local libraries to house such materials; and

(B) more vocational education in trades and business skills.

(6) The Middle East can benefit from some of the same programs to bridge the digital divide that already have been developed for other regions of the world.

(b) INTERNATIONAL YOUTH OPPORTUNITY FUND.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—The President shall establish an International Youth Opportunity Fund (hereafter in this section referred to as the "Fund").

(B) INTERNATIONAL PARTICIPATION.—The President shall seek the cooperation of the international community in establishing and generously supporting the Fund.

(2) PURPOSE.—The purpose of the Fund shall be to provide financial assistance for the improvement of public education in the Middle East, including assistance for the construction and operation of primary and secondary schools in countries that have a sizable Muslim population and that commit to sensibly investing their own financial resources in public education.

(3) ELIGIBILITY FOR ASSISTANCE.—

(A) DETERMINATION.—The Secretary of State, in coordination with the Administrator of the United States Agency for International Development, shall determine which countries are eligible for assistance through the Fund.

(B) CRITERIA.—In determining whether a country is eligible for assistance, the Secretary shall consider whether the government of that country is sensibly investing financial resources in public education and is committed to promoting a system of education that teaches tolerance, the dignity and value of each individual, and respect for different beliefs.

(4) USE OF FUNDS.—Financial assistance provided through the Fund shall be used for expanding literacy programs, providing textbooks, reducing the digital divide, expanding vocational and business education, constructing and operating public schools, establishing local libraries, training teachers in modern education techniques, and promoting public education that teaches tolerance, the dignity and value of each individual, and respect for different beliefs.

(c) REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the Secretary of State and the Administrator of the United States Agency for International Development shall jointly prepare and submit to Congress a report on the improvement of education in the Middle East.

(2) CONTENT.—Reports submitted under this subsection shall include the following:

(A) A general strategy for working with eligible host governments in the Middle East toward establishing the International Youth Opportunity Fund and related programs.

(B) A listing of countries that are eligible for assistance under such programs.

(C) A description of the specific programs initiated in each eligible country and the amount expended in support of such programs.

(D) A description of activities undertaken to close the digital divide and expand vocational and business skills in eligible countries.

(E) A listing of activities that could be undertaken if additional funding were provided and the amount of funding that would be necessary to carry out such activities.

(F) A strategy for garnering programmatic and financial support from international organizations and other countries in support of the Fund and activities related to the improvement of public education in eligible countries.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the President for the establishment of the International Youth Opportunity Fund, in addition to any amounts otherwise available for such purpose, $40,000,000 for fiscal year 2005 and such sums as may be necessary for fiscal years 2006 through 2009.

SEC. 710. REPORT ON THE USE OF ECONOMIC POLICIES TO COMBAT TERRORISM.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) While terrorism is not caused by poverty, breeding grounds for terrorism are created by backward economic policies and repressive political regimes.

(2) Policies that support economic development and reform also have political implications, as economic and political liberties are often linked.

(3) The United States is working toward creating a Middle East Free Trade Area by 2013 and implementing a free trade agreement with Bahrain, and free trade agreements exist between the United States and Israel and the United States and Jordan.

(4) Existing and proposed free trade agreements between the United States and Islamic countries are drawing interest from other countries in the Middle East region, and Islamic countries can become full participants in the rules-based global trading system, as the United States considers lowering its barriers to trade with the poorest Arab countries.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) a comprehensive United States strategy to counter terrorism should include economic policies that encourage development, open societies, and opportunities for people to improve the lives of their families and to enhance prospects for their children's future;

(2) 1 element of such a strategy should encompass the lowering of trade barriers with the poorest countries that have a significant population of Arab or Muslim individuals;

(3) another element of such a strategy should encompass United States efforts to promote economic reform in countries that have a significant population of Arab or Muslim individuals, including efforts to integrate such countries into the global trading system; and

(4) given the importance of the rule of law in promoting economic development and attracting investment, the United States should devote an increased proportion of its assistance to countries in the Middle East to the promotion of the rule of law.

(c) REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to Congress a report on the efforts of the United States Government to encourage development and promote economic reform in countries that

have a significant population of Arab or Muslim individuals.

(2) CONTENT.—The report required under this subsection shall describe—

(A) efforts to integrate countries with significant populations of Arab or Muslim individuals into the global trading system; and

(B) actions that the United States Government, acting alone and in partnership with other governments in the Middle East, can take to promote intra-regional trade and the rule of law in the region.

SEC. 711. MIDDLE EAST PARTNERSHIP INITIATIVE.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for fiscal year 2005 $200,000,000 for the Middle East Partnership Initiative.

(b) SENSE OF CONGRESS.—It is the sense of Congress that, given the importance of the rule of law and economic reform to development in the Middle East, a significant portion of the funds authorized to be appropriated under subsection (a) should be made available to promote the rule of law in the Middle East.

SEC. 712. COMPREHENSIVE COALITION STRATEGY FOR FIGHTING TERRORISM.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Almost every aspect of the counterterrorism strategy of the United States relies on international cooperation.

(2) Since September 11, 2001, the number and scope of United States Government contacts with foreign governments concerning counterterrorism have expanded significantly, but such contacts have often been ad hoc and not integrated as a comprehensive and unified approach.

(b) INTERNATIONAL CONTACT GROUP ON COUNTERTERRORISM.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that the President—

(A) should seek to engage the leaders of the governments of other countries in a process of advancing beyond separate and uncoordinated national counterterrorism strategies to develop with those other governments a comprehensive coalition strategy to fight Islamist terrorism; and

(B) to that end, should seek to establish an international counterterrorism policy contact group with the leaders of governments providing leadership in global counterterrorism efforts and governments of countries with sizable Muslim populations, to be used as a ready and flexible international means for discussing and coordinating the development of important counterterrorism policies by the participating governments.

(2) AUTHORITY.—The President is authorized to establish an international counterterrorism policy contact group with the leaders of governments referred to in paragraph (1) for purposes as follows:

(A) To develop in common with such other countries important policies and a strategy that address the various components of international prosecution of the war on terrorism, including policies and a strategy that address military issues, law enforcement, the collection, analysis, and dissemination of intelligence, issues relating to interdiction of travel by terrorists, counterterrorism-related customs issues, financial issues, and issues relating to terrorist sanctuaries.

(B) To address, to the extent (if any) that the President and leaders of other participating governments determine appropriate, such long-term issues as economic and political reforms that can contribute to strengthening stability and security in the Middle East.

SEC. 713. DETENTION AND HUMANE TREATMENT OF CAPTURED TERRORISTS.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Carrying out the global war on terrorism requires the development of policies with respect to the detention and treatment of captured international terrorists that is adhered to by all coalition forces.

(2) Article 3 of the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316) was specifically designed for cases in which the usual rules of war do not apply, and the minimum standards of treatment pursuant to such Article are generally accepted throughout the world as customary international law.

(b) DEFINITIONS.—In this section:

(1) CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT.—The term "cruel, inhuman, or degrading treatment or punishment" means the cruel, unusual, and inhumane treatment or punishment prohibited by the 5th amendment, 8th amendment, or 14th amendment to the Constitution.

(2) GENEVA CONVENTIONS.—The term "Geneva Conventions" means—

(A) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3114);

(B) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(C) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(D) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

(3) PRISONER.—The term "prisoner" means a foreign individual captured, detained, interned, or otherwise held in the custody of the United States.

(4) SECRETARY.—The term "Secretary" means the Secretary of Defense.

(5) TORTURE.—The term "torture" has the meaning given that term in section 2340 of title 18, United States Code.

(c) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the United States should engage countries that are participating in the coalition to fight terrorism to develop a common approach toward the detention and humane treatment of captured international terrorists; and

(2) an approach toward the detention and humane treatment of captured international terrorists developed by the countries participating in the coalition to fight terrorism could draw upon Article 3 of the Convention Relative to the Treatment of Prisoners of War, the principles of which are commonly accepted as minimum basic standards for humane treatment of captured individuals.

(d) POLICY.—It is the policy of the United States—

(1) to treat any prisoner humanely and in accordance with standards that the Government of the United States would determine to be consistent with international law if such standards were applied to personnel of the United States captured by an enemy in the war on terrorism;

(2) if there is any doubt as to whether a prisoner is entitled to the protections afforded by the Geneva Conventions, to provide the prisoner such protections until the status of the prisoner is determined under the procedures authorized by paragraph 1-6 of Army Regulation 190-8 (1997); and

(3) to expeditiously prosecute cases of terrorism or other criminal acts alleged to have been committed by prisoners in the custody of the United States Armed Forces at Guantanamo Bay, Cuba, in order to avoid the indefinite detention of such prisoners.

(e) PROHIBITION ON TORTURE OR CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT.—

(1) IN GENERAL.—No prisoner shall be subject to torture or cruel, inhuman, or degrading treatment or punishment that is prohibited by the Constitution, laws, or treaties of the United States.

(2) RELATIONSHIP TO GENEVA CONVENTIONS.—Nothing in this section shall affect the status of any person under the Geneva Conventions or whether any person is entitled to the protections of the Geneva Conventions.

(f) RULES, REGULATIONS, AND GUIDELINES.—

(1) REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall prescribe the rules, regulations, or guidelines necessary to ensure compliance with the prohibition in subsection (e)(1) by the members of the Armed Forces of the United States and by any person providing services to the Department of Defense on a contract basis.

(2) REPORT TO CONGRESS.—The Secretary shall submit to Congress the rules, regulations, or guidelines prescribed under paragraph (1), and any modifications to such rules, regulations, or guidelines—

(A) not later than 30 days after the effective date of such rules, regulations, guidelines, or modifications; and

(B) in a manner and form that will protect the national security interests of the United States.

(g) REPORT ON POSSIBLE VIOLATIONS.—

(1) REQUIREMENT.—The Secretary shall submit, on a timely basis and not less than twice each year, a report to Congress on the circumstances surrounding any investigation of a possible violation of the prohibition in subsection (e)(1) by a member of the Armed Forces of the United States or by a person providing services to the Department of Defense on a contract basis.

(2) FORM OF REPORT.—A report required under paragraph (1) shall be submitted in a manner and form that—

(A) will protect the national security interests of the United States; and

(B) will not prejudice any prosecution of an individual involved in, or responsible for, a violation of the prohibition in subsection (e)(1).

(h) REPORT ON A COALITION APPROACH TOWARD THE DETENTION AND HUMANE TREATMENT OF CAPTURED TERRORISTS.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to Congress a report describing the efforts of the United States Government to develop an approach toward the detention and humane treatment of captured international terrorists that will be adhered to by all countries that are members of the coalition against terrorism.

SEC. 714. PROLIFERATION OF WEAPONS OF MASS DESTRUCTION.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Al Qaeda has tried to acquire or make weapons of mass destruction since 1994 or earlier.

(2) The United States doubtless would be a prime target for use of any such weapon by al Qaeda.

(3) Although the United States Government has redoubled its international commitments to supporting the programs for Cooperative Threat Reduction and other nonproliferation assistance programs, nonproliferation experts continue to express deep concern about the United States Government's commitment and approach to securing the weapons of mass destruction and related highly dangerous materials that are still scattered among Russia and other countries of the former Soviet Union.

(4) The cost of increased investment in the prevention of proliferation of weapons of mass destruction and related dangerous materials is greatly outweighed by the potentially catastrophic cost to the United States of use of weapons of mass destruction or related dangerous materials by the terrorists who are so eager to acquire them.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) maximum effort to prevent the proliferation of weapons of mass destruction, wherever such proliferation may occur, is warranted; and

(2) the programs of the United States Government to prevent or counter the proliferation of weapons of mass destruction, including the Proliferation Security Initiative, the programs for Cooperative Threat Reduction, and other nonproliferation assistance programs, should be expanded, improved, and better funded to address the global dimensions of the proliferation threat.

(c) REQUIREMENT FOR STRATEGY.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to Congress—

(1) a strategy for expanding and strengthening the Proliferation Security Initiative, the programs for Cooperative Threat Reduction, and other nonproliferation assistance programs; and

(2) an estimate of the funding necessary to execute that strategy.

(d) REPORT ON REFORMING THE COOPERATIVE THREAT REDUCTION PROGRAM AND OTHER NON-PROLIFERATION ASSISTANCE PROGRAMS.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to Congress a report evaluating whether the United States could more effectively address the global threat of nuclear proliferation by—

(1) establishing a central coordinator for the programs for Cooperative Threat Reduction;

(2) eliminating the requirement that the President spend no more than $50,000,000 annually on programs for Cooperative Threat Reduction and other non-proliferation assistance programs carried out outside the former Soviet Union; or

(3) repealing the provisions of the Soviet Nuclear Threat Reduction Act of 1991 (22 U.S.C. 2551 note) that place conditions on assistance to the former Soviet Union unrelated to bilateral cooperation on weapons dismantlement.

SEC. 715. FINANCING OF TERRORISM.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) While efforts to designate and freeze the assets of terrorist financiers have been relatively unsuccessful, efforts to target the relatively small number of al Qaeda financial facilitators have been valuable and successful.

(2) The death or capture of several important financial facilitators has decreased the amount of money available to al Qaeda, and has made it more difficult for al Qaeda to raise and move money.

(3) The capture of al Qaeda financial facilitators has provided a windfall of intelligence that can be used to continue the cycle of disruption.

(4) The United States Government has rightly recognized that information about terrorist money helps in understanding terror networks, searching them out, and disrupting their operations.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the primary weapon in the effort to stop terrorist financing should be the targeting of terrorist financial facilitators by intelligence and law enforcement agencies; and

(2) efforts to track terrorist financing must be paramount in United States counter-terrorism efforts.

(c) REPORT ON TERRORIST FINANCING.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to Congress a report evaluating the effectiveness of United States efforts to curtail the international financing of terrorism.

(2) CONTENTS.—The report required by paragraph (1) shall evaluate and make recommendations on—

(A) the effectiveness of efforts and methods to track terrorist financing;

(B) ways to improve international governmental cooperation in this effort;

(C) ways to improve performance of financial institutions in this effort;

(D) the adequacy of agency coordination in this effort and ways to improve that coordination; and

(E) recommendations for changes in law and additional resources required to improve this effort.

TITLE VIII—TERRORIST TRAVEL AND EFFECTIVE SCREENING

SEC. 801. COUNTERTERRORIST TRAVEL INTELLIGENCE.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Travel documents are as important to terrorists as weapons since terrorists must travel clandestinely to meet, train, plan, case targets, and gain access to attack sites.

(2) International travel is dangerous for terrorists because they must surface to pass through regulated channels, present themselves to border security officials, or attempt to circumvent inspection points.

(3) Terrorists use evasive, but detectable, methods to travel, such as altered and counterfeit passports and visas, specific travel methods and routes, liaisons with corrupt government officials, human smuggling networks, supportive travel agencies, and immigration and identity fraud.

(4) Before September 11, 2001, no Federal agency systematically analyzed terrorist travel strategies. If an agency had done so, the agency could have discovered the ways in which the terrorist predecessors to al Qaeda had been systematically, but detectably, exploiting weaknesses in our border security since the early 1990s.

(5) Many of the hijackers were potentially vulnerable to interception by border authorities. Analyzing their characteristic travel documents and travel patterns could have allowed authorities to intercept some of the hijackers and a more effective use of information available in Government databases could have identified some of the hijackers.

(6) The routine operations of our immigration laws and the aspects of those laws not specifically aimed at protecting against terrorism inevitably shaped al Qaeda's planning and opportunities.

(7) New insights into terrorist travel gained since September 11, 2001, have not been adequately integrated into the front lines of border security.

(8) The small classified terrorist travel intelligence collection and analysis program currently in place has produced useful results and should be expanded.

(b) STRATEGY.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Homeland Security shall submit to Congress unclassified and classified versions of a strategy for combining terrorist travel intelligence, operations, and law enforcement into a cohesive effort to intercept terrorists, find terrorist travel facilitators, and constrain terrorist mobility domestically and internationally. The report to Congress should include a description of the actions taken to implement the strategy.

(2) ACCOUNTABILITY.—The strategy submitted under paragraph (1) shall—

(A) describe a program for collecting, analyzing, disseminating, and utilizing information and intelligence regarding terrorist travel tactics and methods; and

(B) outline which Federal intelligence, diplomatic, and law enforcement agencies will be held accountable for implementing each element of the strategy.

(3) COORDINATION.—The strategy shall be developed in coordination with all relevant Federal agencies, including—

(A) the National Counterterrorism Center;

(B) the Department of Transportation;

(C) the Department of State;

(D) the Department of the Treasury;

(E) the Department of Justice;

(F) the Department of Defense;

(G) the Federal Bureau of Investigation;

(H) the Drug Enforcement Agency; and

(I) the agencies that comprise the intelligence community.

(4) CONTENTS.—The strategy shall address—

(A) the intelligence and law enforcement collection, analysis, operations, and reporting required to identify and disrupt terrorist travel practices and trends, and the terrorist travel facilitators, document forgers, human smugglers, travel agencies, and corrupt border and transportation officials who assist terrorists;

(B) the initial and ongoing training and training materials required by consular, border, and immigration officials to effectively detect and disrupt terrorist travel described under subsection (c)(3);

(C) the new procedures required and actions to be taken to integrate existing counterterrorist travel and mobility intelligence into border security processes, including consular, port of entry, border patrol, maritime, immigration benefits, and related law enforcement activities;

(D) the actions required to integrate current terrorist mobility intelligence into military force protection measures;

(E) the additional assistance to be given to the interagency Human Smuggling and Trafficking Center for purposes of combatting terrorist travel, including further developing and expanding enforcement and operational capabilities that address terrorist travel;

(F) the additional resources to be given to the Directorate of Information and Analysis and Infrastructure Protection to aid in the sharing of information between the frontline border agencies of the Department of Homeland Security and classified and unclassified sources of counterterrorist travel intelligence and information elsewhere in the Federal Government, including the Human Smuggling and Trafficking Center;

(G) the development and implementation of procedures to enable the Human Smuggling and Trafficking Center to timely receive terrorist travel intelligence and documentation obtained at consulates and ports of entry, and by law enforcement officers and military personnel;

(H) the use of foreign and technical assistance to advance border security measures and law enforcement operations against terrorist travel facilitators;

(I) the development of a program to provide each consular, port of entry, and immigration benefits office with a counterterrorist travel expert trained and authorized to use the relevant authentication technologies and cleared to access all appropriate immigration, law enforcement, and intelligence databases;

(J) the feasibility of digitally transmitting passport information to a central cadre of specialists until such time as experts described under subparagraph (I) are available at consular, port of entry, and immigration benefits offices; and

(K) granting consular officers the security clearances necessary to access law enforcement sensitive databases.

(c) FRONTLINE COUNTERTERRORIST TRAVEL TECHNOLOGY AND TRAINING.—

(1) TECHNOLOGY ACQUISITION AND DISSEMINATION PLAN.—Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security, in conjunction with the Secretary of State, shall submit to Congress a plan describing how the Department of Homeland Security and the Department of State can acquire and deploy, to all consulates, ports of entry, and immigration benefits offices, technologies that facilitate document authentication and the detection of potential terrorist indicators on travel documents.

(2) CONTENTS OF PLAN.—The plan submitted under paragraph (1) shall—

(A) outline the timetable needed to acquire and deploy the authentication technologies;

(B) identify the resources required to—

(i) fully disseminate these technologies; and

(ii) train personnel on use of these technologies; and

(C) address the feasibility of using these technologies to screen every passport submitted for identification purposes to a United States consular, border, or immigration official.

(3) TRAINING PROGRAM.—

(A) IN GENERAL.—The Secretary of Homeland Security and the Secretary of State shall develop and implement an initial and annual training program for consular, border, and immigration officials to teach such officials how to effectively detect and disrupt terrorist travel. The Secretary may assist State, local, and tribal governments, and private industry, in establishing training programs related to terrorist travel intelligence.

(B) TRAINING TOPICS.—The training developed under this paragraph shall include training in—

(i) methods for identifying fraudulent documents;

(ii) detecting terrorist indicators on travel documents;

(iii) recognizing travel patterns, tactics, and behaviors exhibited by terrorists;

(iv) the use of information contained in available databases and data systems and procedures to maintain the accuracy and integrity of such systems; and

(v) other topics determined necessary by the Secretary of Homeland Security and the Secretary of State.

(C) CERTIFICATION.—Not later than 1 year after the date of enactment of this Act—

(i) the Secretary of Homeland Security shall certify to Congress that all border and immigration officials have received training under this paragraph; and

(ii) the Secretary of State shall certify to Congress that all consular officers have received training under this paragraph.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out the provisions of this subsection.

(d) ENHANCING CLASSIFIED COUNTERTERRORIST TRAVEL EFFORTS.—

(1) IN GENERAL.—The National Intelligence Director shall significantly increase resources and personnel to the small classified program that collects and analyzes intelligence on terrorist travel.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out this subsection.

SEC. 802. INTEGRATED SCREENING SYSTEM.

(a) IN GENERAL.—The Secretary of Homeland Security shall develop a plan for a comprehensive integrated screening system.

(b) DESIGN.—The system planned under subsection (a) shall be designed to—

(1) encompass an integrated network of screening points that includes the Nation's border security system, transportation system, and critical infrastructure or facilities that the Secretary determines need to be protected against terrorist attack;

(2) build upon existing border enforcement and security activities, and to the extent practicable, private sector security initiatives, in a manner that will enable the utilization of a range of security check points in a continuous and consistent manner throughout the Nation's screening system;

(3) allow access to government databases to detect terrorists; and

(4) utilize biometric identifiers that the Secretary determines to be appropriate and feasible.

(c) STANDARDS FOR SCREENING PROCEDURES.—

(1) AUTHORIZATION.—The Secretary may promulgate standards for screening procedures for—

(A) entering and leaving the United States;

(B) accessing Federal facilities that the Secretary determines need to be protected against terrorist attack;

(C) accessing critical infrastructure that the Secretary determines need to be protected against terrorist attack; and

(D) accessing modes of transportation that the Secretary determines need to be protected against terrorist attack.

(2) SCOPE.—Standards prescribed under this subsection may address a range of factors, including technologies required to be used in screening and requirements for secure identification.

(3) REQUIREMENTS.—In promulgating standards for screening procedures, the Secretary shall—

(A) consider and incorporate appropriate civil liberties and privacy protections;

(B) comply with the Administrative Procedure Act; and

(C) consult with other Federal, State, local, and tribal governments, and other interested parties, as appropriate.

(4) LIMITATION.—This section does not confer to the Secretary new statutory authority, or alter existing authorities, over systems, critical infrastructure, and facilities.

(5) NOTIFICATION.—If the Secretary determines that additional regulatory authority is needed to fully implement the plan for an integrated screening system, the Secretary shall immediately notify Congress.

(d) COMPLIANCE.—The Secretary may issue regulations to ensure compliance with the standards promulgated under this section.

(e) CONSULTATION.—For those systems, critical infrastructure, and facilities that the Secretary determines need to be protected against terrorist attack, the Secretary shall consult with other Federal agencies, State, local, and tribal governments, and the private sector to ensure the development of consistent standards and consistent implementation of the integrated screening system.

(f) BIOMETRIC IDENTIFIERS.—In carrying out this section, the Secretary shall continue to review biometric technologies and existing Federal and State programs using biometric identifiers. Such review shall consider the accuracy rate of available technologies.

(g) IMPLEMENTATION.—

(1) PHASE I.—The Secretary shall—

(A) issue standards for driver's licenses, personal identification cards, and birth certificates, as required under section 806;

(B) develop plans for, and begin implementation of, a single program for registered travelers to expedite travel across the border, as required under section 803(e);

(C) continue the implementation of a biometric exit and entry data system that links to relevant databases and data systems, as required by subsections (b) and (c) of section 803 and other existing authorities;

(D) centralize the "no-fly" and "automatic-selectee" lists, making use of improved terrorists watch lists, as required by section 903;

(E) develop plans, in consultation with other relevant agencies, for the sharing of terrorist information with trusted governments, as required by section 805;

(F) initiate any other action determined appropriate by the Secretary to facilitate the implementation of this paragraph; and

(G) report to Congress on the implementation of phase I, including—

(i) the effectiveness of actions taken, the efficacy of resources expended, compliance with statutory provisions, and safeguards for privacy and civil liberties; and

(ii) plans for the development and implementation of phases II and III.

(2) PHASE II.—The Secretary shall—

(A) complete the implementation of a single program for registered travelers to expedite travel across the border, as required by section 803(e);

(B) complete the implementation of a biometric entry and exit data system that links to relevant databases and data systems, as required by subsections (b) and (c) of section 803, and other existing authorities;

(C) in cooperation with other relevant agencies, engage in dialogue with foreign governments to develop plans for the use of common screening standards;

(D) initiate any other action determined appropriate by the Secretary to facilitate the implementation of this paragraph; and

(E) report to Congress on the implementation of phase II, including—

(i) the effectiveness of actions taken, the efficacy of resources expended, compliance with statutory provisions, and safeguards for privacy and civil liberties; and

(ii) the plans for the development and implementation of phase III.

(3) PHASE III.—The Secretary shall—

(A) finalize and deploy the integrated screening system required by subsection (a);

(B) in cooperation with other relevant agencies, promote the implementation of common screening standards by foreign governments; and

(C) report to Congress on the implementation of Phase III, including—

(i) the effectiveness of actions taken, the efficacy of resources expended, compliance with statutory provisions, and safeguards for privacy and civil liberties; and

(ii) the plans for the ongoing operation of the integrated screening system.

(h) REPORT.—After phase III has been implemented, the Secretary shall submit a report to Congress every 3 years that describes the ongoing operation of the integrated screening system, including its effectiveness, efficient use of resources, compliance with statutory provisions, and safeguards for privacy and civil liberties.

(i) AUTHORIZATIONS.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2005 through 2009, such sums as may be necessary to carry out the provisions of this section.

SEC. 803. BIOMETRIC ENTRY AND EXIT DATA SYSTEM.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress finds that completing a biometric entry and exit data system as expeditiously as possible is an essential investment in efforts to protect the United States by preventing the entry of terrorists.

(b) PLAN AND REPORT.—

(1) DEVELOPMENT OF PLAN.—The Secretary of Homeland Security shall develop a plan to accelerate the full implementation of an automated biometric entry and exit data system required by applicable sections of—

(A) the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208);

(B) the Immigration and Naturalization Service Data Management Improvement Act of 2000 (Public Law 106-205);

(C) the Visa Waiver Permanent Program Act (Public Law 106-396);

(D) the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107-173); and

(E) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107-56).

(2) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit a report to Congress on the plan developed under paragraph (1), which shall contain—

(A) a description of the current functionality of the entry and exit data system, including—

(i) a listing of ports of entry with biometric entry data systems in use and whether such screening systems are located at primary or secondary inspection areas;

(ii) a listing of ports of entry with biometric exit data systems in use;

(iii) a listing of databases and data systems with which the automated entry and exit data system are interoperable;

(iv) a description of—

(I) identified deficiencies concerning the accuracy or integrity of the information contained in the entry and exit data system;

(II) identified deficiencies concerning technology associated with processing individuals through the system; and

(III) programs or policies planned or implemented to correct problems identified in subclause (I) or (II); and

(v) an assessment of the effectiveness of the entry and exit data system in fulfilling its intended purposes, including preventing terrorists from entering the United States;

(B) a description of factors relevant to the accelerated implementation of the biometric entry and exit system, including—

(i) the earliest date on which the Secretary estimates that full implementation of the biometric entry and exit data system can be completed;

(ii) the actions the Secretary will take to accelerate the full implementation of the biometric entry and exit data system at all ports of entry through which all aliens must pass that are legally required to do so; and

(iii) the resources and authorities required to enable the Secretary to meet the implementation date described in clause (i);

(C) a description of any improvements needed in the information technology employed for the entry and exit data system; and

(D) a description of plans for improved or added interoperability with any other databases or data systems.

(c) INTEGRATION REQUIREMENT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall integrate the biometric entry and exit data system with all databases and data systems maintained by the United States Citizenship and Immigration Services that process or contain information on aliens.

(d) MAINTAINING ACCURACY AND INTEGRITY OF ENTRY AND EXIT DATA SYSTEM.—

(1) IN GENERAL.—The Secretary, in consultation with other appropriate agencies, shall establish rules, guidelines, policies, and operating and auditing procedures for collecting, removing, and updating data maintained in, and adding information to, the entry and exit data system, and databases and data systems linked to the entry and exit data system, that ensure the accuracy and integrity of the data.

(2) REQUIREMENTS.—The rules, guidelines, policies, and procedures established under paragraph (1) shall—

(A) incorporate a simple and timely method for—

(i) correcting errors; and

(ii) clarifying information known to cause false hits or misidentification errors; and

(B) include procedures for individuals to seek corrections of data contained in the data systems.

(e) EXPEDITING REGISTERED TRAVELERS ACROSS INTERNATIONAL BORDERS.—

(1) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress finds that—

(A) expediting the travel of previously screened and known travelers across the borders of the United States should be a high priority; and

(B) the process of expediting known travelers across the border can permit inspectors to better focus on identifying terrorists attempting to enter the United States.

(2) DEFINITION.—The term "registered traveler program" means any program designed to expedite the travel of previously screened and known travelers across the borders of the United States.

(3) REGISTERED TRAVEL PLAN.—

(A) IN GENERAL.—As soon as is practicable, the Secretary shall develop and implement a plan to expedite the processing of registered travelers who enter and exit the United States through a single registered traveler program.

(B) INTEGRATION.—The registered traveler program developed under this paragraph shall be integrated into the automated biometric entry and exit data system described in this section.

(C) REVIEW AND EVALUATION.—In developing the program under this paragraph, the Secretary shall—

(i) review existing programs or pilot projects designed to expedite the travel of registered travelers across the borders of the United States;

(ii) evaluate the effectiveness of the programs described in clause (i), the costs associated with such programs, and the costs to travelers to join such programs; and

(iii) increase research and development efforts to accelerate the development and implementation of a single registered traveler program.

(4) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report describing the Department's progress on the development and implementation of the plan required by this subsection.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary, for each of the fiscal years 2005 through 2009, such sums as may be necessary to carry out the provisions of this section.

SEC. 804. TRAVEL DOCUMENTS.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress finds that—

(1) existing procedures allow many individuals to enter the United States by showing minimal identification or without showing any identification;

(2) the planning for the terrorist attacks of September 11, 2001, demonstrates that terrorists study and exploit United States vulnerabilities; and

(3) additional safeguards are needed to ensure that terrorists cannot enter the United States.

(b) BIOMETRIC PASSPORTS.—

(1) DEVELOPMENT OF PLAN.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall develop and implement a plan as expeditiously as possible to require biometric passports or other identification deemed by the Secretary to be at least as secure as a biometric passport, for all travel into the United States by United States citizens and by categories of individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(4)(B)).

(2) REQUIREMENT TO PRODUCE DOCUMENTATION.—The plan developed under paragraph (1) shall require all United States citizens, and categories of individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of such Act, to carry and produce the documentation described in paragraph (1) when traveling from foreign countries into the United States.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—After the complete implementation of the plan described in subsection (b)—

(1) the Secretary of State and the Attorney General may no longer exercise discretion under section 212(d)(4)(B) of such Act to waive documentary requirements for travel into the United States; and

(2) the President may no longer exercise discretion under section 215(b) of such Act to waive documentary requirements for United States citizens departing from or entering, or attempting to depart from or enter, the United States, unless the Secretary of State determines that the alternative documentation that is the basis for the waiver of the documentary requirement is at least as secure as a biometric passport.

(d) TRANSIT WITHOUT VISA PROGRAM.—The Secretary of State shall not use any authorities granted under section 212(d)(4)(C) of such Act until the Secretary, in conjunction with the Secretary of Homeland Security, completely implements a security plan to fully ensure secure transit passage areas to prevent aliens proceeding in immediate and continuous transit through the United States from illegally entering the United States.

SEC. 805. EXCHANGE OF TERRORIST INFORMATION.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress finds that—

(1) the exchange of terrorist information with other countries, consistent with privacy requirements, along with listings of lost and stolen passports, will have immediate security benefits; and

(2) the further away from the borders of the United States that screening occurs, the more security benefits the United States will gain.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the United States Government should exchange terrorist information with trusted allies;

(2) the United States Government should move toward real-time verification of passports with issuing authorities;

(3) where practicable the United States Government should conduct screening before a passenger departs on a flight destined for the United States;

(4) the United States Government should work with other countries to ensure effective inspection regimes at all airports;

(5) the United States Government should work with other countries to improve passport standards and provide foreign assistance to countries that need help making the transition to the global standard for identification; and

(6) the Department of Homeland Security, in coordination with the Department of State and other agencies, should implement the initiatives called for in this subsection.

(c) REPORT REGARDING THE EXCHANGE OF TERRORIST INFORMATION.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of State and the Secretary of Homeland Security, working with other agencies, shall submit to the appropriate committees of Congress a report on Federal efforts to collaborate with allies of the United States in the exchange of terrorist information.

(2) CONTENTS.—The report shall outline—

(A) strategies for increasing such collaboration and cooperation;

(B) progress made in screening passengers before their departure to the United States; and

(C) efforts to work with other countries to accomplish the goals described under this section.

SEC. 806. MINIMUM STANDARDS FOR IDENTIFICATION-RELATED DOCUMENTS.

(a) IN GENERAL.—Subtitle H of title VIII of the Homeland Security Act of 2002 (6 U.S.C. 451 et seq.) is amended by adding at the end the following:

"SEC. 890A. MINIMUM STANDARDS FOR BIRTH CERTIFICATES.

"(a) DEFINITION.—In this section, the term 'birth certificate' means a certificate of birth—

"(1) for an individual (regardless of where born)—

"(A) who is a citizen or national of the United States at birth; and

"(B) whose birth is registered in the United States; and

"(2) that—

"(A) is issued by a Federal, State, or local government agency or authorized custodian of record and produced from birth records maintained by such agency or custodian of record; or

"(B) is an authenticated copy, issued by a Federal, State, or local government agency or authorized custodian of record, of an original certificate of birth issued by such agency or custodian of record.

"(b) STANDARDS FOR ACCEPTANCE BY FEDERAL AGENCIES.—

"(1) IN GENERAL.—Beginning 2 years after the promulgation of minimum standards under paragraph (2), no Federal agency may accept a birth certificate for any official purpose unless the certificate conforms to such standards.

"(2) MINIMUM STANDARDS.—Within 1 year after the date of enactment of this section, the Secretary shall by regulation establish minimum standards for birth certificates for use by Federal agencies for official purposes that—

"(A) at a minimum, shall require certification of the birth certificate by the State or local government custodian of record that issued the certificate, and shall require the use of safety paper, the seal of the issuing custodian of record, and other features designed to prevent tampering, counterfeiting, or otherwise duplicating the birth certificate for fraudulent purposes;

"(B) shall establish requirements for proof and verification of identity as a condition of issuance of a birth certificate, with additional security measures for the issuance of a birth certificate for a person who is not the applicant;

"(C) may not require a single design to which birth certificates issued by all States must conform; and

"(D) shall accommodate the differences between the States in the manner and form in which birth records are stored and birth certificates are produced from such records.

"(3) CONSULTATION WITH GOVERNMENT AGENCIES.—In promulgating the standards required by paragraph (2), the Secretary shall consult with State vital statistics offices and appropriate Federal agencies.

"(4) EXTENSION OF EFFECTIVE DATE.—The Secretary may extend the 2-year date under paragraph (1) by up to 2 additional years for birth certificates issued before that 2-year date if the Secretary determines that the States are unable to comply with such date after making reasonable efforts to do so.

"(c) GRANTS TO STATES.—

"(1) ASSISTANCE IN MEETING FEDERAL STANDARDS.—

"(A) IN GENERAL.—Beginning on the date a final regulation is promulgated under subsection (b)(2), the Secretary shall make grants to States to assist them in conforming to the minimum standards for birth certificates set forth in the regulation.

"(B) ALLOCATION OF GRANTS.—The Secretary shall make grants to States under this paragraph based on the proportion that the estimated average annual number of birth certificates issued by a State applying for a grant bears to the estimated average annual number of birth certificates issued by all States.

"(2) ASSISTANCE IN MATCHING BIRTH AND DEATH RECORDS.—

"(A) IN GENERAL.—The Secretary, in coordination with other appropriate Federal agencies, shall make grants to States to assist them in—

"(i) computerizing their birth and death records;

"(ii) developing the capability to match birth and death records within each State and among the States; and

"(iii) noting the fact of death on the birth certificates of deceased persons.

"(B) ALLOCATION OF GRANTS.—The Secretary shall make grants to States under this paragraph based on the proportion that the estimated annual average number of birth and death records created by a State applying for a grant bears to the estimated annual average number of birth and death records originated by all States.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out this section.

"SEC. 890B. DRIVER'S LICENSES AND PERSONAL IDENTIFICATION CARDS.

"(a) DEFINITIONS.—In this section:

"(1) DRIVER'S LICENSE.—The term 'driver's license' means a motor vehicle operator's license as defined in section 30301(5) of title 49, United States Code.

"(2) PERSONAL IDENTIFICATION CARD.—The term 'personal identification card' means an identification document (as defined in section 1028(d)(3) of title 18, United States Code) issued by a State.

"(b) STANDARDS FOR ACCEPTANCE BY FEDERAL AGENCIES.—

"(1) IN GENERAL.—

"(A) LIMITATION ON ACCEPTANCE.—No Federal agency may accept, for any official purpose, a driver's license or personal identification card issued by a State more than 2 years after the promulgation of the minimum standards under paragraph (2) unless the driver's license or personal identification card conforms to such minimum standards.

"(B) DATE FOR CONFORMANCE.—The Secretary shall establish a date after which no driver's license or personal identification card shall be accepted by a Federal agency for any official purpose unless such driver's license or personal identification card conforms to the minimum standards established under paragraph (2). The date shall be as early as the Secretary determines it is practicable for the States to comply with such date with reasonable efforts.

"(2) MINIMUM STANDARDS.—Within 1 year after the date of enactment of this section, the Secretary shall by regulation establish minimum standards for driver's licenses or personal identification cards issued by a State for use by Federal agencies for identification purposes that shall include—

"(A) standards for documentation required as proof of identity of an applicant for a driver's license or identification card;

"(B) standards for third-party verification of the authenticity of documents used to obtain a driver's license or identification card;

"(C) standards for the processing of applications for driver's licenses and identification cards to prevent fraud;

"(D) security standards to ensure that driver's licenses and identification cards are—

"(i) resistant to tampering, alteration, or counterfeiting; and

"(ii) capable of accommodating a digital photograph or other unique identifier; and

"(E) a requirement that a State confiscate a driver's license or identification card if any component or security feature of the license or identification card is compromised.

"(3) CONTENT OF REGULATIONS.—The regulations required by paragraph (2)—

"(A) shall facilitate communication between the chief driver licensing official of a State and an appropriate official of a Federal agency to verify the authenticity of documents issued by such Federal agency and presented to prove the identity of an individual;

"(B) may not directly or indirectly infringe on a State's power to set eligibility criteria for obtaining a driver's license or identification card from that State; and

"(C) may not require a State to comply with any such regulation that conflicts with or otherwise interferes with the full enforcement of such eligibility criteria by the State.

"(4) CONSULTATION WITH GOVERNMENT AGENCIES.—In promulgating the standards required by paragraph (2), the Secretary shall consult with the Department of Transportation, the chief driver licensing official of each State, any other State organization that issues personal identification cards, and any organization, determined appropriate by the Secretary, that represents the interests of the States.

"(c) GRANTS TO STATES.—

"(1) ASSISTANCE IN MEETING FEDERAL STANDARDS.—Beginning on the date a final regulation is promulgated under subsection (b)(2), the Secretary shall make grants to States to assist them in conforming to the minimum standards for driver's licenses and personal identification cards set forth in the regulation.

"(2) ALLOCATION OF GRANTS.—The Secretary shall make grants to States under this subsection based on the proportion that the estimated average annual number of driver's licenses and personal identification cards issued by a State applying for a grant bears to the average annual number of such documents issued by all States.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2005 through 2009, such sums as may be necessary to carry out this section.

"SEC. 890C. SOCIAL SECURITY CARDS.

"(a) SECURITY ENHANCEMENTS.—The Commissioner of Social Security shall—

"(1) within 180 days after the date of enactment of this section, issue regulations to restrict the issuance of multiple replacement social security cards to any individual to minimize fraud;

"(2) within 1 year after the date of enactment of this section, require independent verification of all records provided by an applicant for an original social security card, other than for purposes of enumeration at birth; and

"(3) within 18 months after the date of enactment of this section, add death, fraud, and work authorization indicators to the social security number verification system.

"(b) INTERAGENCY SECURITY TASK FORCE.—The Secretary and the Commissioner of Social Security shall form an interagency task force for the purpose of further improving the security of social security cards and numbers. Within 1 year after the date of enactment of this section, the task force shall establish security requirements, including—

"(1) standards for safeguarding social security cards from counterfeiting, tampering, alteration, and theft;

"(2) requirements for verifying documents submitted for the issuance of replacement cards; and

"(3) actions to increase enforcement against the fraudulent use or issuance of social security numbers and cards.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commissioner of Social Security for each of the fiscal years 2005 through 2009, such sums as may be necessary to carry out this section.".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 656 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (5 U.S.C. 301 note) is repealed.

(2) Section 1(b) of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2135) is amended by inserting after the item relating to section 890 the following:

"Sec. 890A. Minimum standards for birth certificates.
"Sec. 890B. Driver's licenses and personal identification cards.
"Sec. 890C. Social security cards.".

TITLE IX—TRANSPORTATION SECURITY

SEC. 901. DEFINITIONS.

In this title, the terms "air carrier", "air transportation", "aircraft", "airport", "cargo", "foreign air carrier", and "intrastate air transportation" have the meanings given such terms in section 40102 of title 49, United States Code.

SEC. 902. NATIONAL STRATEGY FOR TRANSPORTATION SECURITY.

(a) REQUIREMENT FOR STRATEGY.—

(1) RESPONSIBILITIES OF SECRETARY OF HOMELAND SECURITY.—The Secretary of Homeland Security shall—

(A) develop and implement a National Strategy for Transportation Security; and

(B) revise such strategy whenever necessary to improve or to maintain the currency of the strategy or whenever the Secretary otherwise considers it appropriate to do so.

(2) CONSULTATION WITH SECRETARY OF TRANSPORTATION.—The Secretary of Homeland Security shall consult with the Secretary of Transportation in developing and revising the National Strategy for Transportation Security under this section.

(b) CONTENT.—The National Strategy for Transportation Security shall include the following matters:

(1) An identification and evaluation of the transportation assets within the United States that, in the interests of national security, must be protected from attack or disruption by terrorist or other hostile forces, including aviation, bridge and tunnel, commuter rail and ferry, highway, maritime, pipeline, rail, urban mass transit, and other public transportation infrastructure assets that could be at risk of such an attack or disruption.

(2) The development of the risk-based priorities, and realistic deadlines, for addressing security needs associated with those assets.

(3) The most practical and cost-effective means of defending those assets against threats to their security.

(4) A forward-looking strategic plan that assigns transportation security roles and missions to departments and agencies of the Federal Government (including the Armed Forces), State governments (including the Army National Guard and Air National Guard), local governments, and public utilities, and establishes mechanisms for encouraging private sector cooperation and participation in the implementation of such plan.

(5) A comprehensive delineation of response and recovery responsibilities and issues regarding threatened and executed acts of terrorism within the United States.

(6) A prioritization of research and development objectives that support transportation security needs, giving a higher priority to research and development directed toward protecting vital assets.

(7) A budget and recommendations for appropriate levels and sources of funding to meet the objectives set forth in the strategy.

(c) SUBMISSIONS TO CONGRESS.—

(1) THE NATIONAL STRATEGY.—

(A) INITIAL STRATEGY.—The Secretary of Homeland Security shall submit the National Strategy for Transportation Security developed under this section to Congress not later than April 1, 2005.

(B) SUBSEQUENT VERSIONS.—After 2005, the Secretary of Homeland Security shall submit the National Strategy for Transportation Security, including any revisions, to Congress not less frequently than April 1 of each even-numbered year.

(2) PERIODIC PROGRESS REPORT.—

(A) REQUIREMENT FOR REPORT.—Each year, in conjunction with the submission of the budget to Congress under section 1105(a) of title 31, United States Code, the Secretary of Homeland Security shall submit to Congress an assessment of the progress made on implementing the National Strategy for Transportation Security.

(B) CONTENT.—Each progress report under this paragraph shall include, at a minimum, the following matters:

(i) An assessment of the adequacy of the resources committed to meeting the objectives of the National Strategy for Transportation Security.

(ii) Any recommendations for improving and implementing that strategy that the Secretary, in consultation with the Secretary of Transportation, considers appropriate.

(3) CLASSIFIED MATERIAL.—Any part of the National Strategy for Transportation Security that involves information that is properly classified under criteria established by Executive order shall be submitted to Congress separately in classified form.

(d) PRIORITY STATUS.—

(1) IN GENERAL.—The National Strategy for Transportation Security shall be the governing document for Federal transportation security efforts.

(2) OTHER PLANS AND REPORTS.—The National Strategy for Transportation Security shall include, as an integral part or as an appendix—

(A) the current National Maritime Transportation Security Plan under section 70103 of title 46, United States Code;

(B) the report of the Secretary of Transportation under section 44938 of title 49, United States Code; and

(C) any other transportation security plan or report that the Secretary of Homeland Security determines appropriate for inclusion.

SEC. 903. USE OF WATCHLISTS FOR PASSENGER AIR TRANSPORTATION SCREENING.

(a) IN GENERAL.—The Secretary of Homeland Security, acting through the Transportation Security Administration, as soon as practicable after the date of the enactment of this Act but in no event later than 90 days after that date, shall—

(1) implement a procedure under which the Transportation Security Administration compares information about passengers who are to be carried aboard a passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation for flights and flight segments originating in the United States with a comprehensive, consolidated database containing information about known or suspected terrorists and their associates; and

(2) use the information obtained by comparing the passenger information with the information in the database to prevent known or suspected terrorists and their associates from boarding such flights or flight segments or to subject them to specific additional security scrutiny, through the use of "no fly" and "automatic selectee" lists or other means.

(b) AIR CARRIER COOPERATION.—The Secretary of Homeland Security, in coordination with the Secretary of Transportation, shall by order require air carriers to provide the passenger information necessary to implement the procedure required by subsection (a).

(c) MAINTAINING THE ACCURACY AND INTEGRITY OF THE "NO FLY" AND "AUTOMATIC SELECTEE" LISTS.—

(1) WATCHLIST DATABASE.—The Secretary of Homeland Security, in consultation with the Director of the Federal Bureau of Investigation, shall design guidelines, policies, and operating procedures for the collection, removal, and updating of data maintained, or to be maintained, in the watchlist database described in subsection (a)(1) that are designed to ensure the accuracy and integrity of the database.

(2) ACCURACY OF ENTRIES.—In developing the "no fly" and "automatic selectee" lists under subsection (a)(2), the Secretary of Homeland Security shall establish a simple and timely method for correcting erroneous entries, for clarifying information known to cause false hits or misidentification errors, and for updating relevant information that is dispositive in the passenger screening process. The Secretary shall also establish a process to provide individuals whose names are confused with, or similar to, names in the database with a means of demonstrating that they are not a person named in the database.

SEC. 904. ENHANCED PASSENGER AND CARGO SCREENING.

(a) AIRCRAFT PASSENGER SCREENING AT CHECKPOINTS.—

(1) DETECTION OF EXPLOSIVES.—

(A) IMPROVEMENT OF CAPABILITIES.—As soon as practicable after the date of the enactment of this Act, the Secretary of Homeland Security shall take such action as is necessary to improve the capabilities at passenger screening checkpoints, especially at commercial airports, to detect explosives carried aboard aircraft by passengers or placed aboard aircraft by passengers.

(B) INTERIM ACTION.—Until measures are implemented that enable the screening of all passengers for explosives, the Secretary shall take immediate measures to require Transportation Security Administration or other screeners to screen for explosives any individual identified for additional screening before that individual may board an aircraft.

(2) IMPLEMENTATION REPORT.—

(A) REQUIREMENT FOR REPORT.—Within 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall transmit to the Senate and the House of Representatives a report on how the Secretary intends to achieve the objectives of the actions required under paragraph (1). The report shall include an implementation schedule.

(B) CLASSIFIED INFORMATION.—The Secretary may submit separately in classified form any information in the report under subparagraph (A) that involves information that is properly classified under criteria established by Executive order.

(b) ACCELERATION OF RESEARCH AND DEVELOPMENT ON, AND DEPLOYMENT OF, DETECTION OF EXPLOSIVES.—

(1) REQUIRED ACTION.—The Secretary of Homeland Security, in consultation with the Secretary of Transportation, shall take such action as may be necessary to accelerate research and development and deployment of technology for screening aircraft passengers for explosives during or before the aircraft boarding process.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as are necessary to carry out this subsection for each of fiscal years 2005 through 2009.

(c) IMPROVEMENT OF SCREENER JOB PERFORMANCE.—

(1) REQUIRED ACTION.—The Secretary of Homeland Security shall take such action as may be necessary to improve the job performance of airport screening personnel.

(2) HUMAN FACTORS STUDY.—In carrying out this subsection, the Secretary shall, not later than 180 days after the date of the enactment of this Act, conduct a human factors study in order better to understand problems in screener performance and to set attainable objectives for individual screeners and screening checkpoints.

(d) CHECKED BAGGAGE AND CARGO.—

(1) IN-LINE BAGGAGE SCREENING.—The Secretary of Homeland Security shall take such action as may be necessary to expedite the installation and use of advanced in-line baggage-screening equipment at commercial airports.

(2) CARGO SECURITY.—The Secretary shall take such action as may be necessary to ensure that the Transportation Security Administration increases and improves its efforts to screen potentially dangerous cargo.

(3) HARDENED CONTAINERS.—The Secretary, in consultation with the Secretary of Transportation, shall require air carriers to deploy at least 1 hardened container for containing baggage or cargo items in each passenger aircraft that also carries cargo.

(e) COST-SHARING.—Not later than 45 days after the date of the enactment of this Act, the Secretary of Homeland Security, in consultation with representatives of air carriers, airport operators, and other interested parties, shall submit to the Senate and the House of Representatives—

(1) a proposed formula for cost-sharing, for the advanced in-line baggage screening equipment required by this title, between and among the Federal Government, State and local governments, and the private sector that reflects proportionate national security benefits and private sector benefits for such enhancement; and

(2) recommendations, including recommended legislation, for an equitable, feasible, and expeditious system for defraying the costs of the advanced in-line baggage screening equipment required by this title, which may be based on the formula proposed under paragraph (1).

TITLE X—NATIONAL PREPAREDNESS

SEC. 1001. HOMELAND SECURITY ASSISTANCE.

(a) DEFINITIONS.—In this section:

(1) COMMUNITY.—The term "community" means a State, local government, or region.

(2) HOMELAND SECURITY ASSISTANCE.—The term "homeland security assistance" means grants or other financial assistance provided by the Department of Homeland Security under the State Homeland Security Grants Program, the Urban Areas Security Initiative, or the Law Enforcement Terrorism Prevention Program.

(3) LOCAL GOVERNMENT.—The term "local government" has the meaning given that term in section 2(10) of the Homeland Security Act of 2002 (6 U.S.C. 101(10)).

(4) REGION.—The term "region" means any intrastate or interstate consortium of local governments.

(5) SECRETARY.—The term "Secretary" means the Secretary of Homeland Security.

(6) STATE.—The term "State" has the meaning given that term in section 2(14) of the Homeland Security Act of 2002 (6 U.S.C. 101(14)).

(7) UNDER SECRETARY.—The term "Under Secretary" means the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection.

(b) IN GENERAL.—The Secretary shall allocate homeland security assistance to communities based on—

(1) the level of threat faced by a community, as determined by the Secretary through the Under Secretary, in consultation with the National Intelligence Director;

(2) the critical infrastructure in the community, and the risks to and vulnerability of that infrastructure, as identified and assessed by the Secretary through the Under Secretary;

(3) the community's population and population density;

(4) such other indicia of a community's risk and vulnerability as the Secretary determines is appropriate;

(5) the benchmarks developed under subsection (d)(4)(A); and

(6) the goal of achieving and enhancing essential emergency preparedness and response capabilities throughout the Nation.

(c) REALLOCATION OF ASSISTANCE.—A State receiving homeland security assistance may reallocate such assistance, in whole or in part, among local governments or other entities, only if such reallocation is made on the basis of an assessment of threats, risks, and vulnerabilities of the local governments or other entities that is consistent with the criteria set forth in subsection (b).

(d) ADVISORY PANEL.—

(1) ESTABLISHMENT.—Not later than 60 days after the date of enactment of this Act, the Secretary shall establish an advisory panel to assist the Secretary in determining how to allocate homeland security assistance funds most effectively among communities, consistent with the criteria set out in subsection (b).

(2) SELECTION OF MEMBERS.—The Secretary shall appoint no fewer than 10 individuals to serve on the advisory panel. The individuals shall—

(A) be chosen on the basis of their knowledge, achievements, and experience;

(B) be from diverse geographic and professional backgrounds; and

(C) have demonstrated expertise in homeland security or emergency preparedness and response.

(3) TERM.—Each member of the advisory panel appointed by the Secretary shall serve a term the length of which is to be determined by the Secretary, but which shall not exceed 5 years.

(4) RESPONSIBILITIES.—The advisory panel shall—

(A) develop benchmarks by which the needs and capabilities of diverse communities throughout the Nation with respect to potential terrorist attacks may be assessed, and review and revise those benchmarks as appropriate; and

(B) advise the Secretary on means of establishing appropriate priorities for the allocation of funding among applicants for homeland security assistance.

(5) REPORTS.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the advisory panel shall provide the Secretary and Congress with a report on the benchmarks it has developed under paragraph (4)(A), including any revisions or modifications to such benchmarks.

(6) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the advisory panel.

(7) ADMINISTRATIVE SUPPORT SERVICES.—The Secretary shall provide administrative support services to the advisory panel.

(e) TECHNICAL AND CONFORMING AMENDMENT.—Section 1014(c) of the USA PATRIOT ACT of 2001 (42 U.S.C. 3714(c)) is amended by striking paragraph (3).

SEC. 1002. THE INCIDENT COMMAND SYSTEM.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) The attacks on September 11, 2001, demonstrated that even the most robust emergency response capabilities can be overwhelmed if an attack is large enough.

(2) Teamwork, collaboration, and cooperation at an incident site are critical to a successful response to a terrorist attack.

(3) Key decision makers who are represented at the incident command level help to ensure an effective response, the efficient use of resources, and responder safety.

(4) Regular joint training at all levels is essential to ensuring close coordination during an actual incident.

(5) Beginning with fiscal year 2005, the Department of Homeland Security is requiring that entities adopt the Incident Command System and other concepts of the National Incident Management System in order to qualify for funds distributed by the Office of State and Local Government Coordination and Preparedness.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) emergency response agencies nationwide should adopt the Incident Command System;

(2) when multiple agencies or multiple jurisdictions are involved, they should follow a unified command system; and

(3) the Secretary of Homeland Security should require, as a further condition of receiving homeland security preparedness funds from the Office of State and Local Government Coordination and Preparedness, that grant applicants document measures taken to fully and aggressively implement the Incident Command System and unified command procedures.

SEC. 1003. NATIONAL CAPITAL REGION MUTUAL AID.

(a) DEFINITIONS.—In this section:

(1) AUTHORIZED REPRESENTATIVE OF THE FEDERAL GOVERNMENT.—The term "authorized representative of the Federal Government" means any individual or individuals designated by the President with respect to the executive branch, the Chief Justice with respect to the Federal judiciary, or the President of the Senate and Speaker of the House of Representatives with respect to Congress, or their designees, to request assistance under a Mutual Aid Agreement for an emergency or public service event.

(2) CHIEF OPERATING OFFICER.—The term "chief operating officer" means the official designated by law to declare an emergency in and for the locality of that chief operating officer.

(3) EMERGENCY.—The term "emergency" means a major disaster or emergency declared by the President, or a state of emergency declared by the Mayor of the District of Columbia, the Governor of the State of Maryland or the Commonwealth of Virginia, or the declaration of a local emergency by the chief operating officer of a locality, or their designees, that triggers mutual aid under the terms of a Mutual Aid Agreement.

(4) EMPLOYEE.—The term "employee" means the employees of the party, including its agents or authorized volunteers, who are committed in a Mutual Aid Agreement to prepare for or who respond to an emergency or public service event.

(5) LOCALITY.—The term "locality" means a county, city, or town within the State of Maryland or the Commonwealth of Virginia and within the National Capital Region.

(6) MUTUAL AID AGREEMENT.—The term "Mutual Aid Agreement" means an agreement, authorized under subsection (b) for the provision of police, fire, rescue and other public safety and health or medical services to any party to the agreement during a public service event, an emergency, or preplanned training event.

(7) NATIONAL CAPITAL REGION OR REGION.—The term "National Capital Region" or "Region" means the area defined under section 2674(f)(2) of title 10, United States Code, and those counties with a border abutting that area and any municipalities therein.

(8) PARTY.—The term "party" means the State of Maryland, the Commonwealth of Virginia, the District of Columbia, and any of the localities duly executing a Mutual Aid Agreement under this section.

(9) PUBLIC SERVICE EVENT.—The term "public service event"—

(A) means any undeclared emergency, incident or situation in preparation for or response to which the Mayor of the District of Columbia, an authorized representative of the Federal Government, the Governor of the State of Maryland, the Governor of the Commonwealth of Virginia, or the chief operating officer of a locality in the National Capital Region, or their designees, requests or provides assistance under a Mutual Aid Agreement within the National Capital Region; and

(B) includes Presidential inaugurations, public gatherings, demonstrations and protests, and law enforcement, fire, rescue, emergency health and medical services, transportation, communications, public works and engineering, mass care, and other support that require human resources, equipment, facilities or services supplemental to or greater than the requesting jurisdiction can provide.

(10) STATE.—The term "State" means the State of Maryland, the Commonwealth of Virginia, and the District of Columbia.

(11) TRAINING.—The term "training" means emergency and public service event-related exercises, testing, or other activities using equipment and personnel to simulate performance of any aspect of the giving or receiving of aid by National Capital Region jurisdictions during emergencies or public service events, such actions occurring outside actual emergency or public service event periods.

(b) MUTUAL AID AUTHORIZED.—

(1) IN GENERAL.—The Mayor of the District of Columbia, any authorized representative of the Federal Government, the Governor of the State of Maryland, the Governor of the Commonwealth of Virginia, or the chief operating officer of a locality, or their designees, acting within his or her jurisdictional purview, may, subject to State law, enter into, request or provide assistance under Mutual Aid Agreements with localities, the Washington Metropolitan Area Transit Authority, the Metropolitan Washington Airports Authority, and any other governmental agency or authority for—

(A) law enforcement, fire, rescue, emergency health and medical services, transportation, communications, public works and engineering, mass care, and resource support in an emergency or public service event;

(B) preparing for, mitigating, managing, responding to or recovering from any emergency or public service event; and

(C) training for any of the activities described under subparagraphs (A) and (B).

(2) FACILITATING LOCALITIES.—The State of Maryland and the Commonwealth of Virginia are encouraged to facilitate the ability of localities to enter into interstate Mutual Aid Agreements in the National Capital Region under this section.

(3) APPLICATION AND EFFECT.—This section—

(A) does not apply to law enforcement security operations at special events of national significance under section 3056(e) of title 18, United States Code, or other law enforcement functions of the United States Secret Service;

(B) does not diminish any authorities, express or implied, of Federal agencies to enter into Mutual Aid Agreements in furtherance of their Federal missions; and

(C) does not—

(i) preclude any party from entering into supplementary Mutual Aid Agreements with fewer than all the parties, or with another party; or

(ii) affect any other agreement in effect before the date of enactment of this Act among the States and localities, including the Emergency Management Assistance Compact.

(4) RIGHTS DESCRIBED.—Other than as described in this section, the rights and responsibilities of the parties to a Mutual Aid Agreement entered into under this section shall be as described in the Mutual Aid Agreement.

(c) DISTRICT OF COLUMBIA.—

(1) IN GENERAL.—The District of Columbia may purchase liability and indemnification insurance or become self insured against claims arising under a Mutual Aid Agreement authorized under this section.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out paragraph (1).

(d) LIABILITY AND ACTIONS AT LAW.—

(1) IN GENERAL.—Any responding party or its officers or employees rendering aid or failing to render aid to the District of Columbia, the Federal Government, the State of Maryland, the Commonwealth of Virginia, or a locality, under a Mutual Aid Agreement authorized under this section, and any party or its officers or employees engaged in training activities with another party under such a Mutual Aid Agreement, shall be liable on account of any act or omission of its officers or employees while so engaged or on account of the maintenance or use of any related equipment, facilities, or supplies, but only to

the extent permitted under the laws and procedures of the State of the party rendering aid.

(2) ACTIONS.—Any action brought against a party or its officers or employees on account of an act or omission in the rendering of aid to the District of Columbia, the Federal Government, the State of Maryland, the Commonwealth of Virginia, or a locality, or failure to render such aid or on account of the maintenance or use of any related equipment, facilities, or supplies may be brought only under the laws and procedures of the State of the party rendering aid and only in the Federal or State courts located therein. Actions against the United States under this section may be brought only in Federal courts.

(3) GOOD FAITH EXCEPTION.—

(A) DEFINITION.—In this paragraph, the term "good faith" shall not include willful misconduct, gross negligence, or recklessness.

(B) EXCEPTION.—No State or locality, or its officers or employees, rendering aid to another party, or engaging in training, under a Mutual Aid Agreement shall be liable under Federal law on account of any act or omission performed in good faith while so engaged, or on account of the maintenance or use of any related equipment, facilities, or supplies performed in good faith.

(4) IMMUNITIES.—This section shall not abrogate any other immunities from liability that any party has under any other Federal or State law.

(d) WORKERS COMPENSATION.—

(1) COMPENSATION.—Each party shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that party and representatives of deceased members of such forces if such members sustain injuries or are killed while rendering aid to the District of Columbia, the Federal Government, the State of Maryland, the Commonwealth of Virginia, or a locality, under a Mutual Aid Agreement, or engaged in training activities under a Mutual Aid Agreement, in the same manner and on the same terms as if the injury or death were sustained within their own jurisdiction.

(2) OTHER STATE LAW.—No party shall be liable under the law of any State other than its own for providing for the payment of compensation and death benefits to injured members of the emergency forces of that party and representatives of deceased members of such forces if such members sustain injuries or are killed while rendering aid to the District of Columbia, the Federal Government, the State of Maryland, the Commonwealth of Virginia, or a locality, under a Mutual Aid Agreement or engaged in training activities under a Mutual Aid Agreement.

(e) LICENSES AND PERMITS.—If any person holds a license, certificate, or other permit issued by any responding party evidencing the meeting of qualifications for professional, mechanical, or other skills and assistance is requested by a receiving jurisdiction, such person will be deemed licensed, certified, or permitted by the receiving jurisdiction to render aid involving such skill to meet a public service event, emergency or training for any such events.

SEC. 1004. ASSIGNMENT OF SPECTRUM FOR PUBLIC SAFETY.

Section 309(j)(14) of the Communications Act of 1934 (47 U.S.C. 309(j)(14)) is amended by adding at the end the following:

"(E) EXTENSIONS NOT PERMITTED FOR CHANNELS (63, 64, 68 AND 69) REASSIGNED FOR PUBLIC SAFETY SERVICES.—Notwithstanding subparagraph (B), the Commission shall not grant any extension under such subparagraph from the limitation of subparagraph (A) with respect to the frequencies assigned, under section 337(a)(1), for public safety services. The Commission shall take all actions necessary to complete assignment of the electromagnetic spectrum between 764 and 776 megahertz, inclusive, and between 794 and 806 megahertz, inclusive, for public safety services and to permit operations by public safety services on those frequencies commencing not later than January 1, 2007.".

SEC. 1005. URBAN AREA COMMUNICATIONS CAPABILITIES.

(a) IN GENERAL.—Title V of the Homeland Security Act of 2002 (6 U.S.C. 311 et seq.) is amended by adding at the end the following:

"SEC. 510. HIGH RISK URBAN AREA COMMUNICATIONS CAPABILITIES.

"The Secretary, in consultation with the Federal Communications Commission and the Secretary of Defense, and with appropriate governors, mayors, and other State and local government officials, shall encourage and support the establishment of consistent and effective communications capabilities in the event of an emergency in urban areas determined by the Secretary to be at consistently high levels of risk from terrorist attack. Such communications capabilities shall ensure the ability of all levels of government agencies, including military authorities, and of first responders, hospitals, and other organizations with emergency response capabilities to communicate with each other in the event of an emergency. Additionally, the Secretary, in conjunction with the Secretary of Defense, shall develop plans to provide back-up and additional communications support in the event of an emergency.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 1(b) of that Act is amended by inserting after the item relating to section 509 the following:

"Sec. 510. High risk urban area communications capabilities.".

SEC. 1006. PRIVATE SECTOR PREPAREDNESS.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Private sector organizations own 85 percent of the Nation's critical infrastructure and employ the vast majority of the Nation's workers.

(2) Unless a terrorist attack targets a military or other secure government facility, the first people called upon to respond will likely be civilians.

(3) Despite the exemplary efforts of some private entities, the private sector remains largely unprepared for a terrorist attack, due in part to the lack of a widely accepted standard for private sector preparedness.

(4) Preparedness in the private sector and public sector for rescue, restart and recovery of operations should include—

(A) a plan for evacuation;

(B) adequate communications capabilities; and

(C) a plan for continuity of operations.

(5) The American National Standards Institute recommends a voluntary national preparedness standard for the private sector based on the existing American National Standard on Disaster/Emergency Management and Business Continuity Programs (NFPA 1600), with appropriate modifications. This standard would establish a common set of criteria and terminology for preparedness, disaster management, emergency management, and business continuity programs.

(6) The mandate of the Department of Homeland Security extends to working with the private sector, as well as government entities.

(b) PRIVATE SECTOR PREPAREDNESS PROGRAM.—

(1) IN GENERAL.—Title V of the Homeland Security Act of 2002 (6 U.S.C. 311 et seq.), as amended by section 1005, is amended by adding at the end the following:

"SEC. 511. PRIVATE SECTOR PREPAREDNESS PROGRAM.

"The Secretary shall establish a program to promote private sector preparedness for terrorism and other emergencies, including promoting the adoption of a voluntary national preparedness standard such as the private sector preparedness standard developed by the American National Standards Institute and based on the National Fire Protection Association 1600 Standard on Disaster/Emergency Management and Business Continuity Programs.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 1(b) of that Act, as amended by section 1005, is amended by inserting after the item relating to section 510 the following:

"Sec. 511. Private sector preparedness program.".

(c) SENSE OF CONGRESS.—It is the sense of Congress that insurance and credit-rating industries should consider compliance with the voluntary national preparedness standard, the adoption of which is promoted by the Secretary of Homeland Security under section 511 of the Homeland Security Act of 2002, as added by subsection (b), in assessing insurability and credit worthiness.

SEC. 1007. CRITICAL INFRASTRUCTURE AND READINESS ASSESSMENTS.

(a) FINDINGS.—Congress finds the following:

(1) Under section 201 of the Homeland Security Act of 2002 (6 U.S.C 121), the Department of Homeland Security, through the Under Secretary for Information Analysis and Infrastructure Protection, has the responsibility—

(A) to carry out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States, including the performance of risk assessments to determine the risks posed by particular types of terrorist attacks within the United States;

(B) to identify priorities for protective and supportive measures; and

(C) to develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States.

(2) Under Homeland Security Presidential Directive 7, issued on December 17, 2003, the Secretary of Homeland Security was given 1 year to develop a comprehensive plan to identify, prioritize, and coordinate the protection of critical infrastructure and key resources.

(3) Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, the Secretary of Homeland Security should—

(A) identify those elements of the United States' transportation, energy, communications, financial, and other institutions that need to be protected;

(B) develop plans to protect that infrastructure; and

(C) exercise mechanisms to enhance preparedness.

(b) REPORTS ON RISK ASSESSMENT AND READINESS.—Not later than 180 days after the date of enactment of this Act and annually thereafter, the Secretary of Homeland

Security shall submit a report to Congress on—

(1) the Department of Homeland Security's progress in completing vulnerability and risk assessments of the Nation's critical infrastructure;

(2) the adequacy of the Government's plans to protect such infrastructure; and

(3) the readiness of the Government to respond to threats against the United States.

SEC. 1008. REPORT ON NORTHERN COMMAND AND DEFENSE OF THE UNITED STATES HOMELAND.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) The primary responsibility for national defense is with the Department of Defense and the secondary responsibility for national defense is with the Department of Homeland Security, and the 2 departments must have clear delineations of responsibility.

(2) Before September 11, 2001, the North American Aerospace Defense Command (hereafter in this section referred to as "NORAD"), which had responsibility for defending United States airspace on September 11, 2001—

(A) focused on threats coming from outside the borders of the United States; and

(B) had not increased its focus on terrorism within the United States, even though the intelligence community had gathered intelligence on the possibility that terrorists might turn to hijacking and even the use of airplanes as missiles within the United States.

(3) The United States Northern Command has been established to assume responsibility for defense within the United States.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Secretary of Defense should regularly assess the adequacy of United States Northern Command's plans and strategies with a view to ensuring that the United States Northern Command is prepared to respond effectively to all military and paramilitary threats within the United States; and

(2) the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives should periodically review and assess the adequacy of such plans and strategies.

(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, and every 180 days thereafter, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report describing the United States Northern Command's plans and strategies to defend the United States against military and paramilitary threats within the United States.

TITLE XI—PROTECTION OF CIVIL LIBERTIES

SEC. 1011. PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD.

(a) IN GENERAL.—There is established within the Executive Office of the President a Privacy and Civil Liberties Oversight Board (referred to in this title as the "Board").

(b) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) In conducting the war on terrorism, the Government may need additional powers and may need to enhance the use of its existing powers.

(2) This shift of power and authority to the Government calls for an enhanced system of checks and balances to protect the precious liberties that are vital to our way of life and to ensure that the Government uses its powers for the purposes for which the powers were given.

(c) PURPOSE.—The Board shall—

(1) analyze and review actions the Executive Branch takes to protect the Nation from terrorism; and

(2) ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the Nation against terrorism.

(d) FUNCTIONS.—

(1) ADVICE AND COUNSEL ON POLICY DEVELOPMENT AND IMPLEMENTATION.—The Board shall—

(A) review proposed legislation, regulations, and policies related to efforts to protect the Nation from terrorism, including the development and adoption of information sharing guidelines under section 401(e);

(B) review the implementation of new and existing legislation, regulations, and policies related to efforts to protect the Nation from terrorism, including the implementation of information sharing guidelines under section 401(e);

(C) advise the President and Federal executive departments and agencies to ensure that privacy and civil liberties are appropriately considered in the development and implementation of such legislation, regulations, policies, and guidelines; and

(D) in providing advice on proposals to retain or enhance a particular governmental power, consider whether the executive department or agency has explained—

(i) that the power actually materially enhances security; and

(ii) that there is adequate supervision of the executive's use of the power to ensure protection of civil liberties.

(2) OVERSIGHT.—The Board shall continually review—

(A) the regulations, policies, and procedures and the implementation of the regulations, policies, procedures, and related laws of Federal executive departments and agencies to ensure that privacy and civil liberties are protected;

(B) the information sharing practices of Federal executive departments and agencies to determine whether they appropriately protect privacy and civil liberties and adhere to the information sharing guidelines promulgated under section 401(e) and to other governing laws, regulations, and policies regarding privacy and civil liberties; and

(C) other actions by the Executive Branch related to efforts to protect the Nation from terrorism to determine whether such actions—

(i) appropriately protect privacy and civil liberties; and

(ii) are consistent with governing laws, regulations, and policies regarding privacy and civil liberties.

(3) RELATIONSHIP WITH PRIVACY AND CIVIL LIBERTIES OFFICERS.—The Board shall review and assess the activities of privacy and civil liberties officers described in section 1012 and, where appropriate, shall coordinate their activities.

(e) REPORTS.—

(1) IN GENERAL.—The Board shall—

(A) receive and review reports from privacy and civil liberties officers described in section 1012; and

(B) periodically submit, not less than semiannually, reports to Congress and the President.

(2) CONTENTS.—Not less than 2 reports submitted each year under paragraph (1)(B) shall include—

(A) a description of the major activities of the Board during the relevant period; and

(B) information on the findings, conclusions, and recommendations of the Board resulting from its advice and oversight functions under subsection (d).

(f) INFORMING THE PUBLIC.—The Board shall hold public hearings, release public reports, and otherwise inform the public of its activities, as appropriate and in a manner consistent with the protection of classified information and applicable law.

(g) ACCESS TO INFORMATION.—

(1) AUTHORIZATION.—If determined by the Board to be necessary to carry out its responsibilities under this section, the Board may—

(A) secure directly from any Federal executive department or agency, or any Federal officer or employee, all relevant records, reports, audits, reviews, documents, papers, or recommendations, including classified information consistent with applicable law;

(B) interview, take statements from, or take public testimony from personnel of any Federal executive department or agency or any Federal officer or employee;

(C) request information or assistance from any State, tribal, or local government; and

(D) require, by subpoena, persons other than Federal executive departments and agencies to produce any relevant information, documents, reports, answers, records, accounts, papers, and other documentary or testimonial evidence.

(2) ENFORCEMENT OF SUBPOENA.—In the case of contumacy or failure to obey a subpoena issued under paragraph (1)(D), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found may issue an order requiring such person to produce the evidence required by such subpoena.

(h) MEMBERSHIP.—

(1) MEMBERS.—The Board shall be composed of a chairman and 4 additional members, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) QUALIFICATIONS.—Members of the Board shall be selected solely on the basis of their professional qualifications, achievements, public stature, and relevant experience, and without regard to political affiliation.

(3) INCOMPATIBLE OFFICE.—An individual appointed to the Board may not, while serving on the Board, be an elected official, an officer, or an employee of the Federal Government, other than in the capacity as a member of the Board.

(i) COMPENSATION AND TRAVEL EXPENSES.—

(1) COMPENSATION.—

(A) CHAIRMAN.—The chairman shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay in effect for a position at level III of the Executive Schedule under section 5314 of title 5, United States Code, for each day during which the chairman is engaged in the actual performance of the duties of the Board.

(B) MEMBERS.—Each member of the Board shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Board.

(2) TRAVEL EXPENSES.—Members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at

rates authorized for persons employed intermittently by the Government under section 5703(b) of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

(j) STAFF.—

(1) APPOINTMENT AND COMPENSATION.—The Chairman, in accordance with rules agreed upon by the Board, shall appoint and fix the compensation of an executive director and such other personnel as may be necessary to enable the Board to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) DETAILEES.—Any Federal employee may be detailed to the Board without reimbursement from the Board, and such detailee shall retain the rights, status, and privileges of the detailee's regular employment without interruption.

(3) CONSULTANT SERVICES.—The Board may procure the temporary or intermittent services of experts and consultants in accordance with section 3109 of title 5, United States Code, at rates that do not exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of such title.

(k) SECURITY CLEARANCES.—The appropriate Federal executive departments and agencies shall cooperate with the Board to expeditiously provide the Board members and staff with appropriate security clearances to the extent possible under existing procedures and requirements, except that no person shall be provided with access to classified information under this section without the appropriate security clearances.

(l) TREATMENT AS AGENCY, NOT AS ADVISORY COMMITTEE.—The Board—

(1) is an agency (as defined in section 551(1) of title 5, United States Code); and

(2) is not an advisory committee (as defined in section 3(2) of the Federal Advisory Committee Act (5 U.S.C. App.)).

(m) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 1012. PRIVACY AND CIVIL LIBERTIES OFFICERS.

(a) DESIGNATION AND FUNCTIONS.—The Attorney General, Secretary of Defense, Secretary of Homeland Security, Secretary of State, Secretary of the Treasury, Secretary of Health and Human Services, National Intelligence Director, Director of the Central Intelligence Agency, and the head of any other executive department or agency designated by the Privacy and Civil Liberties Oversight Board to be appropriate for coverage under this section shall designate not less than 1 senior officer to—

(1) assist the department or agency head and other department or agency officials in appropriately considering privacy and civil liberties concerns when such officials are proposing, developing, or implementing laws, regulations, policies, procedures, or guidelines related to efforts to protect the Nation against terrorism;

(2) periodically investigate and review department or agency actions, policies, procedures, guidelines, and related laws and their implementation to ensure that the department or agency is adequately considering privacy and civil liberties in its actions;

(3) ensure that the department or agency has adequate procedures to receive, investigate, and respond to complaints from individuals who allege the department or agency has violated their privacy or civil liberties; and

(4) in providing advice on proposals to retain or enhance a particular governmental power the officer shall consider whether the department or agency has explained—

(i) that the power actually materially enhances security; and

(ii) that there is adequate supervision of the department's or agency's use of the power to ensure protection of civil liberties.

(b) EXCEPTION TO DESIGNATION AUTHORITY.—

(1) PRIVACY OFFICERS.—In any department or agency referenced in subsection (a) or designated by the Board, which has a statutorily created privacy officer, such officer shall perform the functions specified in subsection (a) with respect to privacy.

(2) CIVIL LIBERTIES OFFICERS.—In any department or agency referenced in subsection (a) or designated by the Board, which has a statutorily created civil liberties officer, such officer shall perform the functions specified in subsection (a) with respect to civil liberties.

(c) SUPERVISION AND COORDINATION.—Each privacy or civil liberties officer described in subsection (a) or (b) shall—

(1) report directly to the department or agency head; and

(2) coordinate their activities with the Inspector General of the agency to avoid duplication of effort.

(d) AGENCY COOPERATION.—Each department or agency head shall ensure that each privacy and civil liberties officer—

(1) has the information and material necessary to fulfill the officer's functions;

(2) is advised of proposed policy changes;

(3) is consulted by decision makers; and

(4) is given access to material and personnel the officer determines to be necessary to carry out the officer's functions.

(e) PERIODIC REPORTS.—

(1) IN GENERAL.—The privacy and civil liberties officers of each department or agency referenced or designated under subsection (a) shall periodically, but not less than quarterly, submit a report on the officers' activities to Congress, the department or agency head, and the Privacy and Civil Liberties Oversight Board.

(2) CONTENTS.—Each report submitted under paragraph (1) shall include information on the discharge of each of the officer's functions, including—

(A) information on the number and types of reviews undertaken;

(B) the type of advice provided and the response given to such advice;

(C) the number and nature of the complaints received by the agency for alleged violations; and

(D) a summary of the disposition of such complaints, the reviews and inquiries conducted, and the impact of the officer's activities.

The CHAIRMAN pro tempore. Pursuant to House Resolution 827, the gentleman from New Jersey (Mr. MENENDEZ) and a Member opposed each will control 30 minutes.

The Chair recognizes the gentleman from New Jersey (Mr. MENENDEZ).

Mr. MENENDEZ. Mr. Chairman, I yield myself 5½ minutes.

Mr. Chairman, in my district on September 11, 122 of our friends and neighbors never returned home from work, never returned to their families. The smoking ruins of the Twin Towers were visible for all of my community to see and, to this day, their absence is still felt every time we look across the Hudson River and see the void where the Towers once stood. So the events of that day are very personal to us. We are reminded of them always.

This debate is the most important debate that will be held during the entire 108th Congress: how do we respond to the unanimous, bipartisan recommendations of the 9/11 Commission in protecting this Nation and helping prevent future terrorist attacks from occurring?

Over 3 years after that fateful September 11 day, my amendment is based upon the work of the 9/11 Commission and an inquiry that spanned 20 months, 19 days of hearings, 160 witnesses, the review of 2.5 million documents, and interviews of more than 1,200 individuals in 10 countries. The new structure proposed in this amendment is based upon a rock-solid foundation of inquiry and information.

Under Governor Kean and Congressman Hamilton, the bipartisan Commission unanimously made 41 recommendations to strengthen our country against terrorists. Those recommendations were for sweeping changes to our government, our intelligence community, and to how oversight is provided by Congress. The two they have called the most urgent; that is, the most time-sensitive to act on: a strong National Intelligence Director, and a National Counterterrorism Center, form the centerpiece of the Menendez substitute we consider here today. That is why the 9/11 Commissioners and organizations that represent the 9/11 families such as the family steering committee for the 9/11 Commission all support the McCain-Lieberman-Collins combination legislation that this substitute embodies.

The gentleman from Connecticut (Mr. SHAYS) and other Republicans wrote asking that the Shays-Maloney amendment be made in order. The Committee on Rules, I would argue, did so by making the Menendez substitute in order. And, after a 96-to-2 vote yesterday in the Senate on legislation very substantively as this substitute, the principles and provisions of this amendment are also supported by both Senate Republicans and Senate and House Democrats.

Unfortunately, the House Republican bill, H.R. 10, leaves out many of the bipartisan recommendations of the 9/11 Commission. In fact, out of the 41 recommendations, it appears that only 11 are implemented, 15 are not implemented at all, and 15 others are done so incompletely.

H.R. 10 also includes provisions that are unrelated to the bill's stated purpose: reorganizing the intelligence community and strengthening the Nation against terrorist attacks. In doing so, over 50 extraneous provisions were included that go well beyond the Commission's recommendations.

Like the 9/11 Commission's recommendations, the Menendez substitute creates a strong national intelligence director with real budgetary and personnel authority. Unfortunately, the House Republican bill creates a weak NID with no budget authority and limited personnel authority.

Like the 9/11 Commission's recommendations, the Menendez substitute creates a strong National Counterterrorism Center headed by a strong director appointed by the President, confirmed by the Senate. Unfortunately, the House Republican bill creates a weak NCTC without a presidentially-appointed director.

Like the 9/11 Commission's recommendations, the Menendez substitute strengthens the nonproliferation programs that keep nuclear material out of the hands of terrorists. Unfortunately, the Republican bill only calls for a study into the matter.

Like the 9/11 Commission's recommendations, the Menendez substitute requires vulnerability assessments and security plans for our critical infrastructure, including our ports, chemical plants, and public transportation systems. Unfortunately, the House Republican bill makes no effort to address these issues.

Like the 9/11 Commission recommendations, the Menendez substitute authorizes new money to protect the United States by taking real action to secure the peace in Afghanistan, the home of the Taliban, al Qaeda, and Osama bin Laden. Unfortunately, the House Republican bill only asks for new reports.

My constituents and all Americans expect us to do everything we can to defeat terrorism, not to do a third of what is necessary or half of what is necessary or even three-quarters of what is necessary. We need to use, we have a responsibility to use every tool we have.

The facts are clear. Our proposal implements the Commission's recommendations. The Republican bill implements only 11 of the recommendations in full, partially implementing another 15. That is just not good enough. America needs a complete and total strategy to fight this enemy, not a partial one like the Republican bill gives us. America requires and deserves better than that, and that is why I ask my colleagues to support the Menendez substitute and the 9/11 Commission's report.

Mr. Chairman, I reserve the balance of my time.

Mr. HOEKSTRA. Mr. Chairman, I rise in strong opposition to the Menendez substitute.

The CHAIRMAN pro tempore. The gentleman from Michigan (Mr. HOEKSTRA) is recognized to control 30 minutes.

Mr. HOEKSTRA. Mr. Chairman, I yield 2½ minutes to the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. Mr. Chairman, while there may be some provisions in the Menendez substitute that are worthy of discussion during conference, I still rise in opposition to his amendment.

Our review of the Commission's report was performed with a seriousness and a deliberation that is worthy of the subject and the task. The preparatory effort included full committee hearings, scores of briefings by the administration and others on the range of issues, the input of many experts, and days and weeks of effort devoted to gathering the requisite information. From this, we developed what we believe are measures necessary to give form and meaning to the often diaphanous wording of each of the Commission's recommendations that fell within our committee's jurisdiction.

The Menendez substitute offers little more than a mere restatement of the Commission's recommendations, and the unspoken premise that difficult problems can be easily solved by the simple expedient of throwing money at them. We have no shortage of examples of government programs where this approach not only failed, but actually rendered our problems worse. Here, the greatest danger stems from the complacency that will result from our merely having increased spending while congratulating ourselves for having taken swift action.

Instead, as authors of H.R. 10, we crafted practical solutions to fulfill the recommendations. We took abstract report recommendations such as, "offer an example of moral leadership, commit to treat people humanely, abide by the rule of law," and we made them concrete.

Taken in its totality, H.R. 10 is a far superior product because it reflects the concerted and consolidated efforts of several committees and lays out direct, specific policy guidance on how to confront these evils.

The Senate may have voted to pass a similar measure to the Menendez substitute, but this is our chance to vote for something better, more concrete.

I urge a no vote on the Menendez substitute amendment.

Mr. MENENDEZ. Mr. Chairman, I yield 1 minute to the gentlewoman from California (Ms. PELOSI), the distinguished Democratic leader of the House of Representatives.

Ms. PELOSI. Mr. Chairman, I thank the gentleman from New Jersey for yielding me this time, and for his extraordinary leadership in bringing this substitute to the floor.

Mr. Chairman, the credentials of the gentleman from New Jersey (Mr. MENENDEZ) are unsurpassed in this body. In the previous Congress, following the 9/11 attack, and even before that, he served as the Chair of the Homeland Security Task Force for the House Democrats. He serves on the Committee on Transportation and Infrastructure, and he serves on the Committee on International Relations, in senior positions on both committees. So when we speak about protecting our homeland, our waterways, our ports, our rivers, our whatever, he knows of what he speaks. And when he talks about taking the fight against terrorism into Afghanistan and other diplomatic initiatives, sitting on the Committee on International Relations, he knows of what he speaks.

But perhaps the saddest, let us say the saddest learning experience he has had in this regard was the loss of over 100 of his constituents on September 11, 2001. So it is with great pride, I say to the gentleman, that I rise to support the gentleman's substitute. It is an informed substitute, it is based on bipartisanship, the bipartisanship of the Commission and the bipartisanship of the Senate, as it is a reflection of two of the bills that were put together in the Senate.

Following 9/11, Mr. Chairman, the Congress called for a joint inquiry of what happened then.

□ 2200

As a ranking member on the Permanent Select Committee on Intelligence, at the time I served as a co-chair of that, and before we started our proceedings, our inquiry, which was conducted in a bipartisan manner, for most of the time, but before we began, we said that we must have a moment of silence before we began. It was both a deeply felt approach to it because we all wanted to pray for the families who had been harmed, who had lost their loved ones in 9/11; but also it represented the inadequacy of any words that we could ever have to express sympathy or condolence to those families. No words could possibly be adequate.

We resolved as we proceeded that we were on hallowed grounds. Anything to do with 9/11 was hallowed grounds. There was no place there for partisan politics. There was only room there for the U.S. to honor the memory of those who lost their lives; to pledge to the families that we would find the terrorists and bring them to justice who were responsible for this heinous crime; to make sure that we protected the American people so that acts of terrorism would not occur in this country; and to give comfort to those families that we were doing everything possible to achieve those goals.

The work that we did on that committee was largely ignored, and many of us thought that there should be an independent commission to bring fresh eyes to the challenges that we faced with a broader mandate; hence, the 9/11 commission was born. And the members of that commission understood that there was no place for partisanship on that hallowed ground that they now occupied, and they knew the responsibility that they undertook. The commission was reviewing the failures associated with 9/11 and suggesting ways to correct them.

Under the leadership of Chairman Kean and Vice Chairman Hamilton, the commission acted in a very bipartisan and thoughtful way to accomplish its assignment. By persistence, dedication, and an unshakable belief in the importance of its task, the commission overcame every obstacle, and on July 22 provided us with a unanimous bipartisan blue print for action. Our entire Nation is in their debt.

The 9/11 families and the commission then looked to Congress to enact their recommendations into law. The 9/11 families had reason to be proud that their advocacy was effective, when last night the Senate adopted by 96 to 2 a bipartisan bill that meets the challenge for reform laid down by the commission and needed by our country.

We have an opportunity to do the same thing by adopting the substitute advanced by the gentleman from New Jersey (Mr. MENENDEZ) whose district like so many others across our country bore such pain and sorrow on September 11. The Menendez substitute is a merger of the legislation introduced on September 7 by Senator MCCAIN and Senator LIEBERMAN and the bill authored by Senator COLLINS and Senator LIEBERMAN that was reported by the Senate Government Affairs Committee.

These bills were endorsed by the 9/11 Commission and by the 9/11 families groups as being faithful to the commission's recommendation, and they were bipartisan from day one.

The Republican leadership bill, H.R. 10, on the other hand, implements fully only 25 percent of the commission's recommendations as opposed to the Menendez bill which is a reflection of the commission's recommendations. Having waited for more than 3 years to take action, why would the House want to adopt a bill which falls so short of the reforms identified as urgently necessary and adopted unanimously by the bipartisan commission and by the Senate?

Our country has tremendous unmet needs in the area of homeland security. Securing nuclear materials overseas before they fall into the hands of the terrorists and could do us harm; improving security on our airports, our ports, and our rail lines; ensuring that our first responders can communicate effectively in real time; and protecting our critical infrastructure have not been given the priorities they deserve in H.R. 10. We are not as safe as we could be.

Our first responsibility as elected officials is to protect the American people. Making the right choices on legislation to implement the 9/11 Commission recommendations is one of the ways that we can meet that responsibility. The right choice today is the Menendez substitute that will bring us closest to the bill adopted 96 to 2 in the Senate, facilitate a rapid conference, and enable legislation to be signed by the President quickly.

Mr. Chairman, on September 11, 2001, the United States was the victim, as we all know, of some of the most horrific attacks in our history. Today is 1,121 days later. This House is finally being given the opportunity to consider a comprehensive legislative response to those attacks. It took over 3 years.

When the 9/11 Commission issued its report on July 22, it did so with a sense of urgency. Having delayed so long in taking action, it is critical that we get it right and that we get it right now. A vote for the Menendez substitute will honor the work of the commission, will respect the wishes of the families, and will make the American people safer.

I urge my colleagues to support the Menendez substitute.

Mr. HOEKSTRA. Mr. Chairman, I yield 3 minutes to the gentleman from Missouri (Mr. BLUNT), the distinguished majority whip.

Mr. BLUNT. Mr. Chairman, I thank the chairman for his hard work.

Having participated as our committees worked hard through August and September to produce the bipartisan composites and component of H.R. 10, I rise today in strong opposition to the Menendez amendment. We have considered the ideas contained in the gentleman's amendment, the gentleman's substitute, and rejected them. The amendment goes too far in some areas and not far enough in others.

The Menendez amendment seeks to declassify the U.S. intelligence budget. This action will have a very specific impact on our national security. It will guarantee that Americans will be more vulnerable. It simply is not logical to think that providing the terrorists with information about our intelligence priorities will make anyone safer. In fact, the impact would be just the opposite.

Today our adversaries spend a great deal of resources and time and devote vast amounts of their efforts trying to estimate just how much Americans spend on intelligence activities. Why should we want to hand our Nation's classifieds information, its most important security blue print, to the very people that we fight to keep it from?

This substitute ignores the 9/11 Commission's call to secure our borders. Does anyone believe America will be safer if the government does not require secure documents for people crossing our borders? Are we safer with a bill that does not provide any additional resources for our overtaxed border patrol? Are we safer with a bill that allows foreign terrorists, murderers, rapists, and kidnappers to abuse the antiquated laws and be released into our community?

Under this bill, if people come to this country we know they have committed crimes in other countries but they have not committed them here. We do not want to send them back to those other countries because we are prohibited from doing that; we have to simply let them wander around in the United States. That cannot be the best results for a secure America.

Those provisions, the security of our borders, protects all who live within our borders, those who are born here, those who sought America out searching for a better life for themselves and their families. If we want real security and real reform, we need to oppose this substitute and move this bill forward to get this job done.

Mr. MENENDEZ. Mr. Chairman, I yield myself 30 seconds.

Our substitute does exactly what the 9/11 commission said was necessary to secure the borders of the United States, and all of this fear-mongering to suggest that the substitute would permit foreign terrorists to be allowed to stay does a disservice both to the commission and to those who have worked so hard to bring this type of legislation to the floor. Secondly, the question about throwing money around is not an issue. When you have no money for nonproliferation, when you have no money for homeland security, when you do not deal with any of the commission's report language as it relates to money, you are failing the American people.

Mr. Chairman, I yield 2 minutes to the gentlewoman from California (Ms. HARMAN), the distinguished ranking Democrat on the Permanent Select Committee on Intelligence who has done so much work even prior to the commission's report.

Ms. HARMAN. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, a number of speakers have commented on the courage and sacrifice of intelligence community personnel who work in the shadows in austere lands. As we debate this bill, their lives are at risk and we owe them and their families our heartfelt thanks and total support.

We also owe them better tools, including an organization that equips them to meet 21st-century threats. We are using a 1947 business model designed to defeat an enemy that no longer exists.

It is time, Mr. Chairman, way past time for change. And this debate needs to focus on what change will truly help our intelligence community transition to the capabilities necessary to meet 21st-century threats.

When you think about that, and you compare H.R. 10 to the Menendez substitute, a substitute which is battle-tested, which passed the other body 96 to 2 just last night with every single Republican voting for it, there is absolutely no contest. The Menendez substitute is much stronger, much better, and much more bipartisan than H.R. 10.

The accusations made against the Menendez substitute can all be rebutted, and we will do that tonight. It does a better job of controlling our borders. It does a better job of protecting the civil liberties of Americans. It does a better job of targeting terrorists while protecting the rights of innocent immigrants.

I urge strong support for the Menendez substitute and would hope that H.R. 10 will be viewed as the partisan offering that it sadly is.

Mr. HOEKSTRA. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. HUNTER), a strong partner in developing H.R. 10, an individual who fully understands that this bill needs to protect our war fighters and be able to provide the strategic information to our policymakers.

Mr. HUNTER. Mr. Chairman, if you have friends or relatives or just people you care about who wear the uniform of the United States who are in war fighting in Iraq and Afghanistan, and they are going out on a mission tonight or tomorrow and there are communications that affect that mission, directions from headquarters, plans, operations, those will probably go through your communications.

Now, these assurances of those secure communications reside in a little shop that is in what is known as the National Signals Agency. That is one of the agencies that Mr. MENENDEZ's amendment would pull away from the Department of Defense. Now, that agency right now is responsible to the Secretary of Defense, to the uniformed personnel who run those military operations, whose people have their lives on the line and depend on those communications.

Can you imagine a military operation where the people that are running the operation, that is the U.S. military, do not have the resourcing and the control over their own communications line?

I remember one of the arguments that is going on right now is who shot down Yamamoto, and we still have an argument over which American pilot shot him down after we had broken their code and sent out a squad of aircraft to shoot down the leader of the Japanese Navy. That is because we broke their communications.

The security of communications is important as having a weapon that works. And inadvertently, Mr. MENENDEZ's amendment pulls away and they probably do not even know this, so you cannot blame the gentleman from New Jersey (Mr. MENENDEZ) because he copied probably what somebody else in the other body put down, and they did not realize what they were doing. They have pulled away by definition from the Department of Defense and the uniformed people who serve this country the control over their own communication and the resourcing of their own communications. They pull that away in their bill.

Now, interestingly, the 9/11 reports says do not do that. It only has one small paragraph on that. I am turning to page 412. It says, "The Department of Defense military intelligence programs, the joint military intelligence programs and the tactical intelligence programs will remain parts of the Department of Defense's responsibilities."

□ 2215

That is one tiny paragraph, and yet because they missed that and they pulled this particular function away from the people that wear the uniform, they have committed a deadly mistake.

This amendment is full of deadly mistakes, deadly mistakes that the author does not even know about because he simply copied what somebody else put down.

Let me finally say, Mr. Chairman, that what we have serves this great partnership of the people that wear the uniform and the CIA. Let us maintain that partnership. Let us pass this bill without the amendment.

Mr. MENENDEZ. Mr. Chairman, I yield myself 15 seconds.

A deadly mistake is the number of recommendations the 9/11 Commission put forth that are not included in H.R. 10, and as it relates to declassifying the top line budget, that vote was 55 to 37 in the Senate, with people like JOHN MCCAIN, CHUCK HAGEL and TRENT LOTT voting for it. I do not think they want to risk the danger of American troops. So I think that makes imminent sense that people like that support that amendment.

Mr. Chairman, I am pleased to yield 2 minutes to the gentleman from California (Mr. WAXMAN), the distinguished ranking Democrat on the Committee on Government Reform.

Mr. WAXMAN. Mr. Chairman, I rise in strong support of the substitute amendment offered by the gentleman from New Jersey (Mr. MENENDEZ).

The Republican bill is fundamentally flawed. There are 41 recommendations made by the 9/11 Commission, but the Republican bill implements only 11. Instead of implementing the 9/11 Commission recommendations, the Republican bill includes 50 extraneous provisions, many of them poison pills.

There is a better way and it is this substitute. The substitute is bipartisan. It implements all of the recommendations made by the 9/11 Commission, not just 11 of the 41 recommendations, and it includes no poison pills.

I want to point out to my colleagues, the substitute has the support of the 9/11 Commission and the family steering committee of the victims from 9/11. It has the support of Senate Republicans, Senate Democrats, House Democrats and President Bush.

As we consider this legislation, let us remember the loss of the families of the 9/11 victims. These family members have found strength through their terrible losses. We have a moral obligation to pass legislation that honors the sacrifices that they have made. That is why we need to pass the substitute.

But Members who are watching and the public who are paying attention to this issue may want to take note of the fact that when Congress voted to set up the September 11 Commission, so far all of the Republicans that have talked against the Menendez substitute, not a single one of them voted for the Commission in the first place. A number of them, the gentleman from Michigan (Mr. HOEKSTRA), the gentleman from California (Mr. HUNTER), the gentleman from Illinois (Mr. HYDE) voted against setting up the Commission.

Well, Congress voted to set up that Commission. They worked hard, and they unanimously recommended we adopt what is the Menendez substitute.

Mr. HOEKSTRA. Mr. Chairman, I yield 30 seconds to the gentleman from California (Mr. HUNTER).

Mr. HUNTER. Mr. Chairman, I just wanted to go through a few more of the deadly mistakes that the Menendez substitute does in contravention of what the Commission said.

They take away from the military, military communications. They take away intelligence information on an adversary's communication. They take away defense cryptology. They take away warnings of impending military action against U.S. interests. They take away joint operational planning and execution. All because they ignored those particular teams that are hosted by the National Signals Agency. That was crayon legislation.

Mr. HOEKSTRA. Mr. Chairman, I yield 4 minutes to the gentleman Florida (Mr. YOUNG).

Mr. YOUNG of Florida. Mr. Chairman, it is a great opportunity to engage in this very important discussion. Because I intended to be part of this debate this evening, I looked through the Constitution again this afternoon, as I do from time to time, and I learned once again that the Constitution says that the Congress shall raise the armies and the navies and provide for the Nation's security.

The Members of this Congress that have put together H.R. 10 have spent their careers in Congress working on issues of importance to our Nation's security and in the creation of the most effective military and security operation in the entire world. We have the best military in the entire world, and the very people who are responsible for making that happen also are the creators of H.R. 10. I am proud to have been a part of that work, and they worked hard, many days and many nights.

While I am speaking of the Constitution, the Menendez amendment, in my opinion, yields the constitutional requirement of the Congress, yields it, to the 9/11 Commission. The 9/11 Commission, they worked hard, but I checked the Constitution. I did not find anything in the Constitution about the 9/11 Commission.

One of the issues that concerns me seriously in the Menendez amendment is the decision to have the authorizers also be the appropriators. The chairman of the House Permanent Select Committee on Intelligence said he does not want that, and there is a good reason for that. This has been tried before where authorizers would actually be the appropriators.

The reason we have the two different organizations is simply this. The authorizers set the policy. They determine what will be the policy of the United States of America and whatever the issue is. The appropriators deal with the budgetary aspects of that work. We know that the budgetary, the appropriations business must be completed or the agencies shut down. The policy workers can go on and on for months, even years beyond their allotted time and still not have an adverse affect on the operation of this great Nation.

What concerns me is that if we give the authorizing committees also appropriating responsibilities they will, of necessity, spend most of their time dealing with the appropriations, the budgetary aspects, and leaving the policy-making to wan.

This is not a good idea to pass this Menendez amendment, and I realize he worked hard and I realize that he is promoting basically what the 9/11 Commission has recommended. But we were elected to function under the Constitution, to provide for the security of this Nation. I would say to my colleagues, as much respect as I have for the members of the 9/11 Commission and as hard as they worked to come up with some ideas that were actually pretty good, they are not the depository of all wisdom when it comes to providing for the security of our Nation.

As I said, those who were involved in the creation of H.R. 10 have spent a career in this Congress creating and providing for the most effective, the best military operation in the entire world, the best that the world has ever seen.

So I ask for a "no" vote on the Menendez amendment and a strong "yes" vote for H.R. 10.

Mr. MENENDEZ. Mr. Chairman, I would like to ask the Chair how much time remains on both sides.

The CHAIRMAN pro tempore (Mr. NETHERCUTT). The gentleman from New Jersey (Mr. MENENDEZ) has 19 minutes remaining. The gentleman from Michigan (Mr. HOEKSTRA) has 17 minutes remaining.

Mr. MENENDEZ. Mr. Chairman, I yield 25 seconds to the gentlewoman from California (Ms. HARMAN).

Ms. HARMAN. Mr. Chairman, in response to two of the claims just made, number one, the defense communications budget and the defense information security budget are not part of the National Foreign Intelligence program. Only the NFIB will be managed by the NID, as it is today by the DCI. So those budgets will not be covered.

Secondly, the Menendez substitute does not address the reorganization of Congress. It does not collapse the appropriations authority into the authorizing committee. That does not happen under this substitute.

Mr. MENENDEZ. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. TURNER), the distinguished ranking Democrat on the Select Committee on Homeland Security.

Mr. TURNER of Texas. Mr. Chairman, I thank the gentleman for yielding me time.

The 9/11 Commission said very clearly that to win the war on terror, we had to pursue three strategies simultaneously. We had to go after the terrorists more aggressively; we have to protect the homeland; and thirdly, we have to prevent the rise of future terrorists. Any legislation that purports to deal with the 9/11 Commission recommendations must have meaningful provisions in all three of these areas.

The 9/11 Commission had 41 recommendations. If we look at H.R. 10, 15 of the recommendations of the Commission are not implemented at all. Fifteen of the recommendations of the Commission in H.R. 10 are dealt with only partially. Eleven of the recommendations are implemented in H.R. 10.

The truth of the matter is some of the most critical elements for our security are not dealt with in H.R. 10. We did more to dismantle and to put into control loose nuke material in the 2 years prior to 9/11 than we have in the 2 years since 9/11. Our bill, the Menendez substitute, deals meaningfully with trying to control loose nuclear material.

H.R. 10 simply says we are going to study it. We have studied it to death. If the greatest threat to our security is a nuclear weapon in the hands of terrorists, one would think that H.R. 10 would deal meaningfully with that threat.

H.R. 10 does not deal with the critical issue of information sharing. We need to be able to know that a border patrol inspector or a law enforcement officer, when they have a suspected terrorist in front of them, they have access in real-time to all the government databases that share intelligence and have intelligence relating to terrorists.

We know we need to involve the private sector. Eighty-five percent of all infrastructure is in private hands, and yet H.R. 10 does not deal with a private sector preparedness program. That is dealt with in the Menendez substitute.

The truth of the matter, Mr. Chairman, is that we have got to do better. We have got to be stronger than we are in H.R. 10, and I urge the adoption of the Menendez substitute.

Mr. HOEKSTRA. Mr. Chairman, I yield myself such time as I may consume.

When a bill is cobbled together at the last minute, sometimes even the authors do not know what is in it. I advise my colleagues to take a look at section 502 that talks of reorganization of congressional jurisdiction. It is part of the bill, page 145.

Mr. Chairman, I yield 2 minutes to the gentleman from Virginia (Mr. TOM DAVIS), an expert on government reorganization, the chairman of the Committee on Government Reform.

Mr. TOM DAVIS of Virginia. Mr. Chairman, I want to join my colleagues in strong opposition to the Menendez amendment. Quite simply, the substitute provides fewer safeguards against another 9/11. Rather than participating in the legislative process by offering constructive amendments during the House debate, the minority has unfortunately chosen to simply cobble together various provisions from H.R. 10 and various incarnations of Senate legislation and repackage them as the Democratic position on homeland security. The resulting package is a scattered jumble of proposals that do not fit into cohesive strategy for protecting the homeland.

On the issue of driver's license security, for example. Two conflicting deadlines for compliance by the States are established: the first deadline being 2 years from the promulgation of minimum standards; the second deadline is to be established by the Secretary of Homeland Security.

In contrast, the language of H.R. 10 is strong and clear, exactly what this landmark legislation needs.

Additionally, the Menendez amendment is replete with the kind of layered bureaucracy we took great pains to avoid in H.R. 10. Our aim was a nimble, flexible, flat structure that could improve intelligence gathering and analysis. The substitute amendment, by contrast, is loaded with a chief information officer, a chief human capital officer, a chief financial officer, an out-of-control Inspector General, a comptroller, an ombudsman, multiple privacy officers, and a civil liberties board with unlimited subpoena power.

Our bill is about better government. The substitute is about bigger government.

Equally troubling to our committee in particular is the fact that such basic necessities as personnel and acquisition authorities have been scattered throughout the amendment with different and conflicting authorities being haphazardly assigned to different officials within the NID. Our committee specializes in agency organizational matters. That is what we do day in and day out. The substitute's organizational structure is no way to set up a new entity, and I urge opposition to the Menendez amendment.

□ 2230

Mr. MENENDEZ. Mr. Chairman, I yield myself 10 seconds.

Fewer safeguards to protect America than the unanimous bipartisan recommendations of the 9/11 Commission? That is outrageous. Are we saying the bipartisan 9/11 Commission, with a unanimous vote of 51 Republican Senators and 96 Senators actually voted to reduce the safeguards to America? I do not think so.

Mr. Chairman, I yield 2 minutes to the gentleman from Missouri (Mr. SKELTON), someone who fought for his country, someone who has enormous experience in the national security and defense of the United States, and who is the ranking Democrat on the Committee on Armed Services.

Mr. SKELTON. Mr. Chairman, I thank the gentleman for yielding me this time. Let us put some common sense into this piece of legislation, if we may.

You are about to see an attempt to mix oil and water legislatively. We see that the Senate passed 96 to 2 the recommendations of the Commission, the 9/11 Commission. The White House recommended and urged such a passage. The family victims organization of 9/11 has recommended that. And we see in this H.R. 10 a diversion from the only hearing that we had, which was by the chairman and vice chairman of the 9/11 Commission, and I thought they explained their situation well.

I would like to read from a statement of administration policy from the Executive Office of the President. Three pages of concerns regarding the base bill that we have, H.R. 10. And in those three pages of concern it says "The administration is concerned that H.R. 10 does not provide the National Intelligence Director sufficient authorities to manage the intelligence community effectively."

I thought we had a sense of urgency about this. As a result of the 9/11 Commission and recommendations, a sense of urgency had come over our Congress, I thought; over our country, I thought. And yet we see this bill, should it pass, H.R. 10, should it pass, you will see it mixed in conference with the Senate like oil and water. And I predict this will very well end up in the legislative graveyard, sadly.

Mr. HOEKSTRA. Mr. Chairman, I yield myself such time as I may consume.

It was stated earlier that the President supports the Menendez amendment. That is inaccurate. The administration supports House passage of H.R. 10.

Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. LEWIS), another individual who gets his facts right.

Mr. LEWIS of California. Mr. Chairman, regretfully, I rise in very strong opposition to the Menendez amendment, for this substitute does not reflect the real word that we must deal with when we are trying to make certain that our intelligence activities positively affect our men and women who have their lives threatened overseas.

The Menendez amendment is similar to H.R. 10, but includes a number of provisions that are unacceptable or at least should be to this House. Probably one of the most troubling aspects of the amendment before us is the provision that would call for the disclosure of the aggregate level of funding provided to the intelligence community.

Mr. Chairman, I would ask my colleague, the gentleman from New Jersey (Mr. MENENDEZ), to please tell us what the logic is behind disclosing to our enemies the top line of our intelligence budget? I am not worried about what the Senate may say or suggest, I am not sure they thought through what this might mean. But what is the logic behind our disclosing to our enemies the top line of our intelligence work? Who can it serve in terms of America's interests to disclose those top lines?

The September 28, 20004, statement of administrative policy states clearly that "legislation should not compel disclosure, including the Nation's enemies in war, of the amounts requested by the President and provided by the Congress for the conduct of the Nation's intelligence activities."

H.R. 10 retains a classified intelligence budget. It is absolutely in the American interest, our public interest, our military interest to make certain that those top lines are not disclosed. If the gentleman would not depend upon the Senate, I would like to hear the gentleman's logic behind disclosure of those top lines. Indeed, it is fundamental to the future security of our troops to make certain our intelligence programs are kept within the interest of those troops who are defending us overseas.

If the gentleman would like to respond specifically to that, perhaps I could understand better why he would take these steps.

Mr. MENENDEZ. Mr. Chairman, will the gentleman yield?

Mr. LEWIS of California. I yield to the gentleman from New Jersey.

Mr. MENENDEZ. First, in 1997 and 1998, we disclosed the top line and we did not risk the national security of the United States.

Mr. LEWIS of California. Who did?

Mr. MENENDEZ. The American people have the right to know how much that collective amount is. It does not tell us where we divide that money, covert, overt, and for what other purposes.

And I would say that the other body overwhelmingly voted for the disclosure.

Mr. LEWIS of California. Mr. Chairman, reclaiming my time, I asked the gentleman who disclosed the amount?

Mr. MENENDEZ. In 1997 and 1998.

Mr. LEWIS of California. But who disclosed the amount?

Mr. MENENDEZ. The other body just voted that.

Mr. LEWIS of California. Reclaiming my time once again, Mr. Chairman, I am not certain the gentleman has been in the intelligence rooms. If he has disclosed that, then he is in violation of the rules.

Mr. MENENDEZ. Mr. Chairman, I yield myself 1 minute.

As a trial attorney, I know what to do when you do not have the facts and the law on your side. You bang on the table and try to create confusion. That is what the other side is trying to do here because they have left us less secure in H.R. 10.

We heard a lot about flip-flopping lately. Well, the administration put out a statement of policy saying the administration supports the Collins-Lieberman bill, and went on specifically to say that they would oppose weakening the NID, exactly what H.R. 10 does.

My colleagues are going against what the President wants. Now the President comes out, after he supports the Senate version, and says, well, I support H.R. 10, but then he has three pages of exceptions to H.R. 10 that he does not like in your bill and thinks that you make America less secure by virtue of what is in the bill.

So you cannot have it every which way. Either the President is for the 9/11 Commission or he is not. Either he is for McCain-Collins-Lieberman or he is not.

Mr. Chairman, I yield 3 minutes to the distinguished gentlewoman from New York (Mrs. MALONEY), who has worked tirelessly on the task force on Homeland Security for House Democrats and worked with the gentleman from Connecticut (Mr. SHAYS) on what, in essence, is the Menendez proposal.

Mrs. MALONEY. Mr. Chairman, I rise in strong support of the bipartisan substitute. This substitute is identical to the substitute that the gentleman from Connecticut (Mr. SHAYS) and I offered but was not made in order. This substitute is almost identical to the bill that passed the Senate yesterday with a strong vote of 96 to 2. All 51 Republicans voted yes to bringing overdue reform to our intelligence network.

Right after 9/11, this body came together and we worked together as Americans, not as partisans. We need to come together again tonight and pass the bipartisan 9/11 Commission substitute, a bill we could have on the President's desk tomorrow.

Unlike the underlying bill, this substitute adopts all of the recommendations and nothing else, and that is why the bipartisan substitute has the support of the 9/11 Commission, the 9/11 Family Steering Committee members, and editorial boards across this Nation. They have written in favor of the Collins-Lieberman bill, upon which the substitute is based, and against the House leadership's controversial bill, which is strikingly different from the 9/11 Commission report on many key points.

Mr. Chairman, the President of the United States agrees. Just tonight the White House released a statement on this bill, and they said, and I quote, "the National Intelligence Director should have full budget authority." The substitute does give full budget authority. H.R. 10 does not.

The administration also strongly opposes the, and I quote "overbroad expansion of expedited removal authorities." The administration has concerns with the overbroad alien identification standards proposed by the bill, and I quote, "that are unrelated to security concerns." The administration strongly opposes section 3032, the so-called outsourcing of torture provision. And it goes on and on. They are opposed to Title V, inconsistent with President's constitutional authority.

In fact, H.R. 10 is so problematic that the White House ran out of room talking about provisions they did not like. They ended their letter by saying, and I quote, "Finally, the administration has concerns with a number of other provisions in this bill."

So, my colleagues, the choice is clear. Pass a bill that even makes the White House queasy, or pass the substitute that enacts the recommendations of the 9/11 Commission.

Mr. Chairman, the 9/11 families wrote, "We believe the 9/11 substitute is the best choice for certain and quick legislation to make our country safe. We respectfully ask you to put politics aside and act in the best interest of America. Vote for the 9/11 substitute."

And on a personal note, my city was attacked, and I urge my colleagues to support the bipartisan substitute. It will make our country safer.

Mr. Chairman, I would like to end with the full letter of the 9/11 victims' families, which I will submit for the RECORD, along with editorials in support of the bipartisan bill.

Newspapers across the country have editorialized in favor of the Senate's bipartisan legislation—and against the House Republican leadership's divisive approach, including the New York Times, the Washington Post, the Baltimore Sun, the Miami Herald, the Albuquerque Journal, Milwaukee Journal Sentinel, Orlando Sentinel, and the Rocky Mountain News.

Here are some selected quotes:

"House Republicans are already trying to turnt this week's debate into a pre-election brawl aimed more at scoring phony patriotic points than at passing meaningful laws. . . . Congress cannot escape its duty to finally repair the institutional failures that left the country so vulnerable before 9/11 and so wrong before the invasion of Iraq."—NY Times, Sep. 27

"The House of Representatives' version of intelligence reform might be dismissed as an election-year stunt were it not so dangerous. . . .

"Playing politics with intelligence reform should not be worth the potential damage."—Washington Post, Oct. 5

"House Speaker Dennis Hastert and Majority Leader Tom DeLay have been in no rush, yielding, it appears, to the status quo forces in Washington that stand to lose power and influence if sweeping changes are adopted."—Baltimore Sun, Oct. 5

"Instead of focusing on the nuts and bolts of intelligence reform, legislators are debating wholly extraneous issues that will contribute little or nothing to making our country safer."—Miami Herald, Oct. 4

"House Republicans should avoid hanging apple-related riders on legislation addressing oranges when it comes to implementing 9/11 Commission recommendations."—Albuquerque Journal, Oct. 2

"Legislative sabotage such as this is hardly unusual in political Washington, and most of the time the damage is not intolerable. This time, however, it is."—Milwaukee Journal Sentinel, Sep. 30

"The House proposal is a weak, partisan plan that perpetuates too much of the discredited status quo in intelligence—Orlando Sentinel

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VOTE FOR THE 9/11 SUBSTITUTE

DEAR MEMBER OF CONGRESS, As 9/11 family members we ask our Congress to vote in a bipartisan way on the 9/11 substitute, which most closely follows the core recommendations of the 9/11 Commission. This substitute is based on the bipartisan legislation offered in the Senate by Senators COLLINS, LIEBERMAN and MCCAIN. It is endorsed by the 9/11 Commission and the President.

You have a choice today. You can vote for H.R. 10 or the 9/11 Substitute. We believe the 9/11 substitute is the superior vehicle for effective change without delay. A vote for the substitute will quickly send a bill to the President's desk for signature. The path of H.R. 10 is far less certain.

The 9/11 Families demand a clean, bipartisan bill that is true to the core recommendations of the 9/11 Commission. We believe the 9/11 substitute is the best choice for certain and quick legislation to make our country safe. We respectively ask you to put politics aside and act in the best interest of America. Vote for the 9/11 substitute!

THE 9/11 FAMILIES.

Mr. HOEKSTRA. Mr. Chairman, I yield myself such time as I may consume to note that CRS has identified provisions of H.R. 10 that are relevant or respond to 39 of the 41 recommendations of the 9/11 Commission.

Mr. Chairman, I yield 2 minutes to the gentleman from Illinois (Mr. LAHOOD), the distinguished member of the Permanent Select Committee on Intelligence who spent an enormous amount of time working on these kind of issues, understanding the issues that face both our troops and our policymakers in this area.

Mr. LAHOOD. Mr. Chairman, I rise in strong opposition to the Menendez amendment.

Mr. Chairman, I have been on the floor almost all day speaking on the rule, and speaking during consideration of the bill during general debate. This amendment seeks to create an information technology network of immense proportions but without significant resources and no logical or direct correlation to what actually would be needed to share information properly.

The amendment overregulates the design of the network, it creates excessive reporting requirements and truly unrealistic implementation deadlines. The amendment would also create several layers of new bureaucracy, which is something that I have been speaking out about all day.

No more bureaucracy. No more red tape. No more stovepipes. And that is what this creates. It would create a new bureaucratic advisory and executive board, which will prevent the rapid creation of a true information-sharing environment.

The information-sharing provisions of the Menendez amendment will not achieve the intent of the 9/11 Commission. In fact, they will serve to confuse and prevent the needed changes. We do not need any more bureaucracy. We do not need any more stovepipes.

In fairness to the people who work 24–7, in dark places in the world, this amendment had no consultation with the community, with those that are charged with the responsibility of collecting and analyzing information. This amendment is terribly flawed and would create the kind of stovepipe and bureaucracy the 9/11 Commission railed against. It would do no good in terms of our ability to really create the kind of opportunity that is needed to win the war on terror.

□ 2245

Mr. MENENDEZ. Mr. Chairman, I yield myself 15 seconds to simply say if the gentleman is concerned about bureaucracy, then he needs to read the statement of administration policy that says, "The administration remains concerned about a series of provisions in H.R. 10 that create new bureaucratic structures and layers in the office of the NID and elsewhere that would hinder, not help, the effort to strengthen U.S. intelligence capabilities."

Mr. Chairman, I yield 20 seconds to the gentlewoman from California (Ms. HARMAN) to deal with some of the questions that have been raised here.

Ms. HARMAN. I thank the gentleman for yielding me this time.

Mr. Chairman, the gentleman from California (Mr. LEWIS) has raised concerns about providing information to the enemy by declassifying the top line of the budget. In the 9/11 Commission report it says, "When even aggregate categorical numbers remain hidden, it is hard to judge priorities and foster accountability. The top line figure by itself provides little insight into U.S. intelligence sources and methods." It was passed in the other body 55 to 37, overwhelmingly supported by Republican Senators.

Mr. MENENDEZ. Mr. Chairman, I yield 1 minute to the distinguished gentleman from New York (Mr. ENGEL), a senior member of the Committee on International Relations.

Mr. ENGEL. I thank the gentleman for yielding me this time.

Mr. Chairman, on 9/11, 2001, my city was attacked. And then a remarkable thing happened. The 9/11 Commission was formed with five Democrats and five Republicans, and they unanimously made a series of recommendations. That showed true bipartisanship. The other body also showed true bipartisanship when it came up with a bill that was passed again almost unanimously.

But here, unfortunately, we have not seen bipartisanship. Democrats have essentially been shut out of the process once again, something that we have seen too frequently; and this bill before us does not implement most of the 9/11 Commission recommendations. The Menendez substitute before us does implement most of the recommendations of the 9/11 Commission. Intelligence should not be a Democratic issue or a Republican issue, but an American issue.

In the underlying bill, there are some good things in the bill. There are some troubling things in the bill. But on the whole, the Menendez substitute is by far the better bill. It is bipartisan, implementing the 9/11 Commission.

Vote for the Menendez substitute.

Mr. HOEKSTRA. Mr. Chairman, I yield myself such time as I may consume.

In the rules process, our colleagues on the other side of the aisle were not shut out. They did not show up. They only offered one amendment. No other amendments. All their amendments were accepted and made in order.

Mr. Chairman, I yield 2 minutes to the gentleman from New Jersey (Mr. SAXTON).

Mr. SAXTON. Mr. Chairman, let me just respond to a couple of things that have been said. One of the previous speakers mentioned that we have a 1947 business model when it comes to our intelligence community. That may be true for the CIA, it may be true for certain civilian intelligence-gathering agencies, but it is not true for the military, the defense intelligence agencies. We had a certain type of information-gathering system prior to 1990. The Soviet Union went away and our military intelligence changed because it had to change. The collection system changed to keep up with the changing threat. The changing threat today is terrorism and other kinds of threats. Back then it was a conventional threat carried out by the Soviet Union. Our military intelligence has changed. It is a modern-day intelligence collecting system that we are trying our best tonight here to protect.

Secondly, the notion that the top line was disclosed in the past is completely false. It was never disclosed in the past. We have always kept secret the amount of money, the resources that we spend on intelligence collecting. The Menendez amendment discloses this information which we believe is a tremendous mistake. Further, this is not the 9/11 Commission report that they are putting forth. The 9/11 Commission report was amended 81 times by the Senate. Eighty-one times. They criticize us for offering our views after they amended it 81 times.

Mr. Chairman, this is a good bill. It should stand the way it is.

Mr. MENENDEZ. Mr. Chairman, I yield 4 minutes to the distinguished gentleman from Connecticut (Mr. SHAYS) who has offered and is embodied in our substitute, in essence the 9/11 Commission's report.

Mr. SHAYS. I thank the gentleman for yielding me this time.

Mr. Chairman, I have been in public life 30 years, and I was sitting in my office thinking, I am not sure I want to participate in this debate because I am seeing people on both sides of the aisle for whom I have such tremendous respect wrestling with this issue; but it is not a good feeling on the House floor, and I cannot describe why.

I was hoping that when we were going to debate the recommendations of the 9/11 Commission that we would have an effort from day one to include both sides of the aisle. I felt from that process we would have a bill that we would be proud of. It did not seem to work out that way. For me, I have chaired the National Security subcommittee now for 6 years. When I took it over in 1998, we began in 1999, we rewrote the rules so that we would look at terrorism at home and abroad. What we did is we had 19 hearings before September 11, and we had three commissions that came before us and all three commissions, the Bremer Commission, the Hart-Rudman Commission, the Gilmore Commission, they all said the same thing: we have a serious terrorist threat; we need to have an assessment of that threat; we need to have a strategy to deal with it and we need to reorganize our government so that we can implement the strategy. And we did not really pay attention to it. We had committees of cognizance that should have been.

Then we had this horrible tragedy and we responded. I think we responded in the right way. We did not establish the 9/11 Commission right away. What we did is we just said, Republicans and Democrats, what do we do about it? While there has been criticism of the PATRIOT Act, I think it was vital. We reorganized our government and we did it, I think, ultimately in a bipartisan way. I think we have made our country safer.

And then, and it made so much sense, what we did is we said, let's find out what the heck happened. It was very clear. We let down the American people. I have many constituents who lost loved ones, and I think every day how sorry I am for our failure in this Chamber. I have constituents who spoke with their loved ones for an hour trying to help them get out of a building. We all know those tragedies. But in the end we had this commission, and this commission was partisan at first and then when they started to write what happened and they looked and they described what happened on that day, five Republicans and five Democrats became one. That is what I was hoping would happen on the floor tonight, and it is not happening. But I think it will.

I am going to vote for the Menendez amendment because I think it is truer to the commission's objectives. If it fails, I am going to be voting to pass out H.R. 10 because I believe that eventually Republicans and Democrats in this Chamber are going to find common ground like the Senate found, and I believe the President is going to have a bill to sign, and I think we are ultimately going to be proud of the product.

But I support the gentleman's amendment. I appreciate that he has brought it out. I appreciate that it was made in order because it is truly more reflective of what the commission suggested. If there are problems with one aspect of it, like releasing the top line, those are things that we clearly can deal with in conference. But the way we set this debate, a major substitute, just an hour, yes, it is going to be hard to come to a conclusion that any of us are satisfied with.

The commission did their work so well. I am so proud of them. I think their work was sacred, and I think that we deserve and they deserve to have this legislation moved forward.

Mr. HOEKSTRA. Mr. Chairman, I yield 1 minute to the gentleman from Colorado (Mr. TANCREDO).

Mr. TANCREDO. Mr. Chairman, the Menendez amendment claims to be comprehensive in its approach toward border security. Let me read directly from the commission report:

"It is perhaps obvious to state that terrorists cannot plan and carry out attacks in the United States if they are unable to enter the country. Yet prior to September 11, while there were efforts to enhance border security, no agency of the U.S. Government thought of border security as a tool in the counterterrorism arsenal. Indeed, even after 19 hijackers demonstrated the relative ease of obtaining a U.S. visa and gaining admission into the United States, border security is still not considered a cornerstone of national security policy. We believe that it must be made one."

Yet the Menendez amendment is eerily silent on this issue. How can we possibly suggest that there is any way that we can think of their amendment as comprehensive in terms of border security and security of this Nation when it does not address this fundamental idea that was placed in the 9/11 Commission report?

The only way you can think about this is that it is pandering for votes in light of the fact that we should actually be thinking about national security, not thinking about votes.

Mr. HOEKSTRA. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. COX).

Mr. COX. Mr. Chairman, I thank the gentleman for his excellent work on this legislation. I would like to speak as the chairman of the Select Committee on Homeland Security about portions of this legislation, H.R. 10, with which our committee has been very, very closely concerned and portions of this substitute which lack those same elements.

First, the 9/11 Commission in their report recommended that Congress "should pass legislation to remedy the longstanding indemnification and liability impediments to the provision of public safety and mutual aid in the national capital region and, where applicable, throughout the Nation." H.R. 10, the 9/11 Recommendations Implementation Act, includes these very provisions just as the 9/11 Commission recommended.

We ease the liability problems for first responders crossing jurisdictional boundaries so they do not need to worry they will be subject to some other liability regime when they help out in time of need. The Menendez bill ironically limits this liability relief to the capital here, but it does not do anything for the rest of the Nation as the 9/11 Commission recommended. It does not even do anything for the author's home State of New Jersey. If New Jersey first responders were to go into New York City and help out, they would not have the liability relief that the 9/11 Commission recommended that they have. First responders from across the country have endorsed the first responder provisions in H.R. 10.

The commission, the 9/11 Commission, recommended that moneys be allocated to State and local governments on the basis of threat and on the basis of risk. That is exactly what H.R. 10 does. But the Menendez substitute does not require the Secretary of Homeland Security to prioritize applications on the basis of risk. It does not require States to prioritize the allocation of their grant awards to localities on the basis of risk.

The Menendez substitute does not guarantee first responders a voice in establishing terrorism preparedness benchmarks that will guide spending. H.R. 10, on the other hand, has a task force comprised of first responders themselves.

The Menendez substitute does not identify either permitted or prohibited use for first responder grant awards, and it does not provide any penalties for failing to get money to first responders on time. H.R. 10 has strict penalties for failing to get funds to their intended destination, the men and women on the front lines, within 45 days. For that reason, all of the major first responder groups, including the International Association of Firefighters, the International Association of Fire Chiefs, the National Volunteer Fire Council, the Fraternal Order of Police, the Major Cities Chiefs Association, and the National Sheriffs Association have endorsed the Faster and Smarter Funding For First Responders Act included in this legislation. The Menendez bill is not supported by any first responder group.

Let us reject the Menendez substitute and enact H.R. 10.

□ 2300

Mr. MENENDEZ. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, the gentleman from California (Chairman COX) just made a statement, but his committee reported out a bill that contained a historic $3.4 billion commitment to first responders. Was that provision included in H.R. 10? The answer is no. Let us look at some of what the 9/11 commissioners have said: "The Senate bill is a giant step forward" and "the right vehicle for our recommendations." That incredible vote on a bipartisan basis in the Senate is the basis of the Menendez substitute. Lee Hamilton said, "The House bill contains a number of proposals that go beyond the commission's recommendations" and could very well, in essence, affect the nature of getting a bill done in the 108th Congress.

The statement of the Family Steering Committee, in support of Shays-Maloney, as we have heard, which is, in essence, the Menendez substitute, said, "If House Members present H.R. 10 for vote rather than a choice that includes H.R. 5150 legislation, enacting the 9/11 Commission reforms may be doomed."

Let me try to take away all the obfuscation, and, by the way, about not submitting amendments, it was our statement that we sought on the greatest issue to face this country, the national security of the United States and how one responds to the September 11 Commission report, we asked for an open rule. An open rule would have let any Member of the House work its way and have the House's will work its way in front of the American people about what were the best ideas with the 9/11 Commission's report as a foundation to best secure America. But that open rule was not presented. So we would have had all the amendments that may have perfected.

There has been a lot of obfuscation here about what the Menendez substitute does and does not do. Let us make it clear once again. It is the 9/11 Commission report. It is the Collins-Lieberman-McCain legislation. It is what passed in the Senate 96 to 2 with over 51 Republican Senators and such a bipartisan support. It is, in essence, the real reform.

There are a lot of reasons why people do not want to seek reform. There are a lot of turf issues. People do not want to give up their abilities. But the only turf we should be fighting for is our collective turf as a country, and that is what this institution should be doing.

Let me just go through some of the critical issues. Like the 9/11 Commission recommendations, the Menendez substitute creates a strong National Intelligence Director. They do not.

Like the 9/11 Commission recommendations, our substitute creates a strong National counterterrorism Center. They do not.

Like the 9/11 Commission recommendations, the Menendez substitute mandates strengthening the Nunn-Lugar programs against nuclear nonproliferation. They do not.

Like the 9/11 Commission recommendations, our substitute mandates the creation of long-term strategies to win the struggle for ideas in the Muslim world. Theirs do not.

Like the 9/11 Commission recommendations, the Menendez substitute provides for much more extensive U.S. efforts in Afghanistan, including authorizing an additional $2.8 billion to win the war in what is the central part of terror. Theirs does not.

Like the 9/11 Commission recommendations, our substitute requires the Transportation Security Administration to improve explosive detection capabilities. Theirs does not.

Like the 9/11 Commission recommendations, our substitute replaces the current patchwork of border screening systems with an integrated screening system with one set of standards far beyond what they do. Like the 9/11 Commission recommendations, our substitute creates a government-wide Civil Liberties Oversight Board to review the use of intelligence powers and act as a watchdog. Theirs does not.

I urge the 25 colleagues on the other side of the aisle who voted for the 9/11

Commission to now have the same vision and courage and vote for this substitute and let us move forward to real reform and a greater, secure America. Vote for the Menendez substitute.

Mr. HOEKSTRA. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, Lee Hamilton, the distinguished vice chairman, a former Member of this body, the vice chairman of the 9/11 Commission, stated what should be obvious to all of us: that as the Senate and the House conduct the normal legislative process, he fully expected each body would refine and put their imprint on the commission's recommendations. He said at a September 28 press conference and on other occasions that the commission's recommendations are not set in stone. In that sense I applaud the Senate for putting its imprint on the commission's recommendations while crafting its bill.

I am proud of H.R. 10 and the work that our committees have done on this bill. H.R. 10 is the House's imprint, its product in responding to the commission's recommendations.

Let us be clear about what the substitute is and is not. It is the hastily drafted combination of the text of at least two bills introduced in the other body. It is a version that has never been reviewed by any committee in the other body or been voted on in the other body. The Menendez amendment asks the House to simply accept titles II through XI of the McCain-Lieberman bill as introduced. These provisions of McCain-Lieberman have not been reviewed by any committee in the other body. We are also being asked to ignore the modifications made to these provisions during floor consideration in the other body.

Similarly, the Menendez amendment asks the House to simply ignore the deliberations on the floor of the other body. Over 6 days with regards to the Collins-Lieberman bill, title I of the Menendez substitute, the Collins-Lieberman bill is frequently described as being "battle-tested," but now we are being requested to ignore the results of the biggest test, the amendment process of the other body.

If this is the biggest debate in the House, that is a poor excuse for a legislative proposal to cobble together pieces from the other body that have never been deliberated, that have never been voted on, and that did not pass the other body.

The House can do better, and we have done better than what the other body has done and what has been proposed in this amendment.

H.R. 10 is a comprehensive bill. H.R. 10 effectively implements the framework of recommendations contained in the report of the 9/11 Commission, especially its core recommendations regarding the restructuring of the intelligence community.

Mr. Chairman, for these reasons I urge my colleagues to join me in opposing the Menendez amendment in the nature of a substitute and later on vote overwhelmingly to support H.R. 10.

Mr. SIMMONS. Mr. Chairman, I rise today to support my colleague from New Jersey, Mr. MENENDEZ's amendment to H.R. 10, the 9/11 Recommendations Implementation Act.

Every American remembers where they were on September 11, 2001. On that morning the American people began a journey together. No one can predict how long we will be on this journey. Luckily, we were given the beginnings of a guidebook for this journey, provided by the bipartisan men and women of the 9/11 Commission.

The American people watched over the last many months as the 9/11 Commission met to examine facts and question witnesses. Together they pieced together the failures and shortcomings that led to the terrible attacks of September 11. The Commission then produced a series of recommendations for the American people that came out in July and literally flew off bookstore shelves around the country.

Like my fellow citizens I took the time to read the 9/11 Commission's final report and contemplate the more-than 40 recommendations. I like many of the recommendations made by the Commission. There are others that I do not like. But I respect the fact that this is an important start, and a blueprint that many of the American people have read, and understand.

On July 28, 2004, I joined my colleague from Connecticut, CHRISTOPHER SHAYS, to announce my participation in a bipartisan 9/11 Commission Caucus whose purpose was to promote their recommendations in a bicameral and bipartisan fashion. Subsequently, we introduced a bill in the House that mirrored the 9/11 Commission recommendations.

Senator SUSAN COLLINS of Maine and my Senator, JOE LIEBERMAN of Connecticut, also had the wisdom to introduce legislation in the other body that mirrors the recommendations of the 9/11 Commission. The administration has endorsed the Collins-Lieberman legislation; the 9/11 Commission Families have endorsed this legislation and last night the Senate overwhelmingly passed the legislation.

Today we have the opportunity to do the same by voting in favor of the Menendez amendment. I will be supporting this amendment to show my constituents and the American people that indeed we are on this journey together, that we will not taint the 9/11 Commission's recommendations, that we will start reforming our intelligence community and that we invite Americans to join us as we build from these recommendations.

Mr. MEEKS of New York. Mr. Chairman, I rise today in strong support of the Menendez substitute to H.R. 10, the only version supported by the House's 9/11 Commission Caucus, the 9/11 families and the legislation most similar to the bill adopted by the Senate yesterday by a 96–2 vote.

This bipartisan substitute fully implements the forty-one 9/11 Commission recommendations and adds no extraneous provisions. It implements critical recommendations not fully addressed by H.R. 10, including the creation of a strong National Intelligence Director and giving that director full budgetary and personal authority, as the 9/11 Commission recommends.

The 9/11 Commission came together because America and the victims' families demanded answers and solutions. The bipartisan group of Commissioners—five Democrats and five Republicans—worked tirelessly to fulfill their commitment to make America safe. We should honor their efforts and fulfill our commitment to America by producing a bill that responds directly to the Commissions' recommendations—with no added controversial or unrelated provisions. The Menendez substitute helps us do just that by ensuring that we have a clean bill on the President's desk before we adjourn.

Let's not play politics with a bill as important to the American people as this one. Pass the Menendez substitute.

Mr. KIND. Mr. Chairman, I rise today in support of the Menendez substitute to H.R. 10, legislation to reform our country's intelligence agencies. I support this substitute so that as a country we can move forward quickly to a short conference and then give the President a completed bill to sign. The security of the people of western Wisconsin is of an utmost priority, and I am supporting measures that will make changes necessary to protect our homeland.

On September 11, 2001, our Nation was brutally attacked and several thousand of our citizens were killed. Our country was shocked and dismayed, but we were far from defeated. The resolve of our Nation is strong, and we stood up to the challenge and struck back.

After the attacks on that fateful day in September, many questions about our homeland security were raised. I supported and worked for a comprehensive Homeland Security bill that created the Homeland Security Department and cabinet level secretary. The creation of the Homeland Security Department was an important first step for our country to ensure the security of its citizens. But there remained many unanswered questions about our Nation's intelligence failures before September 11, which is why I supported the creation of the independent bipartisan 9/11 Commission.

On July 22, 2004, the 9/11 Commission provided a full and complete report to Congress and the American public. I praise the Commission for its excellent work, leadership, patriotism, and service to our country. We owe it to the families of the victims of 9/11 and to the citizens of our country to use this report to make certain this type of attack never happens again; I fully support the unanimous and bipartisan recommendations of the 9/11 Commission.

That is why I am a cosponsor of H.R. 5150, the Shays/Maloney bill to implement the Commission's recommendations. This legislation is the bipartisan companion bill to the Collins/Lieberman bill which just passed in the Senate on October 6, 2004, by a vote of 96–2. I am disappointed that House leadership has refused us the opportunity to debate this bill. Rather, today on the House floor we are debating a different 9/11 bill, which was drafted solely by the Republican leadership, which is not bipartisan, not supported by the 9/11 Commission members, or most of the families of the victims of September 11.

Regrettably, it is rare these days for Republicans and Democrats to come together and work toward the greater good of the country. But that is exactly what happened this summer when five Democrats and five Republicans on the 9/11 Commission voted unanimously on 41 key recommendations to make our country more secure. And, this October, it happened again when the Senate worked together to pass the Collins/Lieberman bill endorsed by the 9/11 Commission.

Unfortunately, in the House, intelligence reform has taken a turn in the opposite direction and we are being forced to debate and vote on a bill that is not endorsed by the 9/11 Commission.

H.R. 10 would strip power from the National Intelligence Director and the National Counterterrorism Center; it does not create an office to oversee civil liberties; and, H.R. 10 does not increase congressional oversight of our intelligence agencies. Further, this bill includes several provisions not recommended by the 9/11 Commission, including increased removal of immigrants without a hearing or review, and easing rules of the U.N. Convention Against Torture. Essentially, H.R. 10 strips away the 9/11 Commission's recommendations and adds language not endorsed by the Commission.

When the security of our country is at hand, politics should not play a part. But, again, here we are debating a bill without support from both sides of the aisle, and the will of the few is being forced upon the many. This is not the right way to make important changes for a nation's security. The partisanship of H.R. 10 will only delay making our country safer. We need to pass H.R. 5150, so it can be brought to the President's desk immediately, instead of further delaying the process by passing H.R. 10.

But if the substitute fails, I have decided that for the purpose of moving this process forward to conference quickly I am going to support H.R. 10. When the safety of our country is at hand we need to be able to cross the aisle and work with our colleagues to protect our country. After passage of H.R. 10, I plan to work closely with the members of the conference committee on the 9/11 Commission Recommendation Implementation Act to more closely align the conference report with the 9/11 Commission's 41 recommendations and the recently passed Senate bill.

Mr. Chairman, the 9/11 Commissioners' recommendations are thorough and complete, and I stand behind them. Let us make our country safer now, not later. I urge my colleagues to support the substitute and the underlying bill.

Mr. HYDE. Mr. Chairman, while there may be some provisions in the Menendez substitute worthy of discussion during conference on this measure, I rise in opposition to the amendment.

Our review of the Commission's report was performed with a seriousness and deliberation worthy of the subject and the task. The preparatory effort included full committee hearings, scores of briefings by the administration and others on the range of issues, the input of many experts, and days and weeks of effort devoted to gathering the requisite information. From this, we developed what we believe are measures necessary to give form and meaning to the often diaphanous wording of each of the Commission's recommendations that fall within my committee's jurisdiction.

The Menendez substitute offers little more than a mere restatement of the Commission's recommendations and the unspoken premise that difficult problems can be easily solved by the simple act of throwing money at them. We have no shortage of examples of government programs where this approach has not only failed, but actually rendered our problems worse. Here, the greatest danger stems from the complacency that will result from our merely having increased spending while congratulating ourselves for having taken swift action.

Instead, as the authors of H.R. 10, we crafted practical solutions to fulfill the recommendations. We took abstract report recommendations such as "offer an example of moral leadership, commit to treat people humanely, abide by the rule of law" and made them concrete.

Taken in its totality, H.R. 10 is a far superior product because it reflects the concerted and consolidated efforts of several committees and lays out direct, specific policy guidance on how to confront these evils. The Senate may have voted to pass a similar measure to the Menendez substitute, but this is our chance to vote for something better, more concrete. I urge a "no" vote on the Menendez substitute amendment.

Mr. MENENDEZ. Mr. Chairman, I yield back the balance of my time.

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (Mr. NETHERCUTT). Members are reminded to refrain from improper references to the Senate.

The question is on the amendment in the nature of a substitute offered by the gentleman from New Jersey (Mr. MENENDEZ).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

Mr. MENENDEZ. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment in the nature of a substitute offered by the gentleman from New Jersey (Mr. MENENDEZ) will be postponed.

It is now in order to consider amendment No. 2 printed in House report 108-751.

AMENDMENT NO. 2 OFFERED BY MR. SIMMONS

Mr. SIMMONS. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. SIMMONS:

Page 101, after line 3 add the following new section:

SEC. 1065. SENSE OF CONGRESS AND REPORT REGARDING OPEN SOURCE INTELLIGENCE.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the National Intelligence Director should establish an intelligence center for the purpose of coordinating the collection, analysis, production, and dissemination of open source intelligence to elements of the intelligence community;

(2) open source intelligence is a valuable source that must be integrated into the intelligence cycle to ensure that United States policymakers are fully and completely informed; and

(3) the intelligence center should ensure that each element of the intelligence community uses open source intelligence consistent with the mission of such element.

(b) REPORT.—Not later than June 30, 2005, the National Intelligence Director shall submit to the congressional intelligence committees a report containing the decision of the National Intelligence Director as to whether an open source intelligence center will be established. If the National Intelligence Director decides not to establish an open source intelligence center, such report shall also contain a description of how the intelligence community will use open source intelligence and effectively integrate open source intelligence into the national intelligence cycle.

The CHAIRMAN pro tempore. Pursuant to House Resolution 827, the gentleman from Connecticut (Mr. SIMMONS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Connecticut (Mr. SIMMONS).

Mr. SIMMONS. Mr. Chairman, I yield myself such time as I may consume.

I rise today to urge my colleagues to support my Open Source Intelligence amendment to H.R. 10, the 9/11 Recommendations Implementation Act. And I thank the Committee on Rules, the chairman of the Permanent Select Committee on Intelligence, the chairman of the Committee on the Judiciary, and, of course, the chairman of the Committee on Armed Services for their efforts to help me perfect this amendment, and I also thank them for their support of the amendment.

Essentially what this amendment does is it expresses a sense of Congress that the new National Intelligence Director should establish an intelligence center for the production of open source intelligence, and it instructs the National Intelligence Director to consider establishing this new center and to report to Congress by June 30, 2005.

Many people ask me what is open source intelligence. And it is really very simple. Open source intelligence, or OSINT, is an intelligence discipline based on information collected from open sources, which could be newspapers, the Internet, books, phonebooks, scientific journals, radio, and television. And once this information is collected from these open sources, it is processed, analyzed, used to produce intelligence, which is then disseminated to intelligence consumers.

Open source is not new. The Foreign Broadcast Information Service has been around for many years, and their daily reports contained translated broadcasts, news agency transmissions, newspapers, and other statements from nations around the world. The daily reports represent a unique resource for the study of foreign affairs. But we can do better than just these daily reports.

The 9/11 Commission report supported the creation of a new Open Source Agency and staff statement No. 11 from that report said, Open sources have always been the bedrock source of information for intelligence.

One of the great advantages of open source intelligence is it is relatively inexpensive, and we can share it with others including our allies, soldiers from foreign governments; and best of all, we can share open source intelligence with the American people.

For example, for those interested in Iran's nuclear proliferation activities, I have an aerial photograph in front of me dated 2002 showing the construction of buildings for uranium enrichment, and then 2 years later it shows that those facilities have been buried underground. If the Iranians claim there is nothing sensitive taking place on that site, we look at a larger photograph and here we see the construction, but here when these facilities have been buried underground, we see a new guard fence with guard posts around.

The best part of these aerial photographs is they are unclassified, and we can describe what is going on in Iran and share it not only with Members of this Chamber but with our allies and with the American people.

Even though the 9/11 Commission report supports creation of an Open Source Agency, my amendment simply asks the National Intelligence Director to report to Congress next June with his or her recommendation.

Mr. Chairman, at a time when the performance of the U.S. intelligence community is being questioned and when every scrap of information is needed to put together the puzzle presented by terrorist operations, there could be no better time to incorporate the value of open source intelligence to the overall product than right now.

Mr. Chairman, I urge my colleagues to support my open source intelligence amendment to H.R. 10, the 9/11 Recommendations Implementation Act.

I thank the Rules Committee for allowing for consideration of this amendment and I thank Intelligence Chairman PETE HOEKSTRA, Judiciary Committee Chairman JIM SENSENBRENNER, and Armed Services, Chairman DUNCAN HUNTER for working with me to perfect this amendment. I also thank them for their endorsements of the amendment.

This amendment expresses a sense of Congress that the new National Intelligence Director should establish an intelligence center for the production of open source intelligence. It instructs the National Intelligence Director to consider establishing this new center and to report to Congress by June 30, 2005 with a decision on whether or not to create such an OSINT Center.

Many people ask me to explain what exactly is open source intelligence or OSINT. It is really very simple.

OSINT is an intelligence discipline based on information collected from open sources. These sources include newspapers, the Internet, books, phone books, scientific journals, radio and television broadcasts. Once this information is collected from publicly available sources, it is processed and analyzed to produce intelligence, which is subsequently disseminated to intelligence consumers.

The discipline of OSINT is nothing new and our intelligence community has been using it for a long time. For example, the Foreign Broadcast Information Service works with open sources. Their Daily Reports consist of translated broadcasts, news agency transmissions, newspapers, periodicals and government statements from nations around the globe. These media sources are monitored in their original language, translated into English, and issued daily to U.S. Government officials. The Daily Reports represent a unique resource for the study of foreign affairs, business, law, sociology, political science and more, covering all regions of the world.

It is important to know that the 9/11 Commission Report recommends creation of a new Open Source Agency. Staff Statement No. 11 of the 9/11 Commission Report states the following:

> Finally, open sources—the systematic collection of foreign media—have always been a bedrock source of information for intelligence. Open sources remain important, including among terrorist groups that use the media and the Internet to communicate leadership guidance. The Foreign Broadcast Information Service performed this mission. During the early 1990s that service had been "shredded," as one official put it to us, by budget cuts.

In the mid-1990s, it was my honor to command the 434th Military Intelligence Detachment (MID), a U.S. Army Reserve unit affiliated with Yale University and located in New Haven, Connecticut. With the active participation of CWO–4 Alan D. Tompkins and SGT Eliot A. Jardines, our unit wrote the first handbook for Open Source Intelligence (OSINT) for the U.S. Army. The Military Intelligence Corps accepted it as doctrine.

One of the great advantages of Open Source Intelligence is that it is relatively inexpensive. Another advantage is that we can share it with others without fear of compromising sensitive sources and methods. We can share it with our soldiers, share it with our international allies, and most importantly—we can share it with the American people.

I have with me overhead photos that illustrate the utility of Open Source Intelligence. They describe Iran's activities to construct and then bury a uranium enrichment facility. You can clearly see that over two years the facility was completed, buried and secured with a fence and guard towers. The best part is that these aerial photos are not classified and can be shared with our allies and the American people when discussing Iran's nuclear proliferation activities.

Why is OSINT important today? The "information explosion" has dramatically increased both the quality and quantity of the information available in the public domain. Because this information is unclassified, it can be shared quickly and freely, and acted upon.

Unfortunately, our country's intelligence service has not adequately coordinated our OSINT efforts. The time has come to revisit the importance of Open Source Intelligence and to consider the creation of an OSINT center.

Although the 9/11 Commission Report supports creation of an Open Source Agency, my amendment simply asks the new National Intelligence Director to report to Congress his or her recommendation on this matter.

Earlier this year when the House considered the Intelligence Authorization Act my colleagues accepted a similar amendment that directed the Director of Central Intelligence (DCI) to focus on the importance of OSINT and report to Congress in six months on the progress being made in utilizing OSINT.

At a time in our history where the performance of the U.S. Intelligence Community is being questioned, and where every scrap of information is needed to piece together the puzzle presented by terrorist operations, there could be no better time to incorporate the value of OSINT to the overall intelligence product available to our policy makers and military forces.

I urge you to join me in support of my amendment on Open Source Intelligence.

Mr. Chairman, I reserve the balance of my time.

Ms. HARMAN. Mr. Chairman, I rise to control the time on the amendment.

The CHAIRMAN pro tempore. Is the gentlewoman opposed to the amendment?

Ms. HARMAN. I am not, Mr. Chairman.

The CHAIRMAN pro tempore. Without objection, the gentlewoman is recognized to control 5 minutes.

There was no objection.

Ms. HARMAN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the amendment's sponsor knows a lot about intelligence, having served as staff director for the Intelligence Committee in the other body under the late great Senator Goldwater, author of Goldwater-Nichols, the law that prescribes jointness in the military just like the approach some of us want to take to the intelligence community.

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The gentleman is rightly a supporter of greater use of open sources, and I would agree with him that our entire intelligence community could benefit by greater use of open sources. I would just point out that some of the photos he showed us were very interesting, and to my mind, reveal a lot more information than the top line of the intelligence budget. But be that as it may, his amendment, I think, is a sensible idea, if only to draw more attention to the importance that open sources can provide.

This is a sense of the Congress, so for those who think that centers should only be mission oriented, it is only a sense of the Congress that we should pay more attention to open sources.

Mr. Chairman, I am pleased to support the gentleman's amendment.

Mr. Chairman, I would comment further only this, that I regret the tone of the debate on the last amendment. It troubles me a lot. I think everyone sitting here really cares that we get it right about intelligence reorganization.

Many of us have studied it for years. I wish the House had taken the lead on the subject months and months ago, because we had very good information on the problems and very good legislation drafted. But we stalled out, and the other body filled the vacuum and we are where we are.

Mr. Chairman, I yield 1 minute to the gentleman from New Jersey (Mr. HOLT), a member of our committee.

Mr. HOLT. Mr. Chairman, I thank the ranking member for yielding me time.

Mr. Chairman, we have discussed this matter quite a bit in the Permanent Select Committee on Intelligence and we agree that there should be more use of open sources. In fact, it should be routine, an integral part of every analyst's and every agency's work. It may not be necessary to have a center, as the gentleman suggests in his amendment, but I think as a sense of Congress this amendment is useful to emphasize the importance that open sources of information bring.

Excessive reliance on information obtained from secret sources is not necessarily a good thing, and time and again, in example after example, we have discovered that openly published and openly discussed information is indeed superior, more correct than some of the secret information that analysts have been relying on excessively. So we think this is heading in the right direction.

Mr. SIMMONS. Mr. Chairman, I yield 30 seconds to the gentleman from Michigan (Mr. HOEKSTRA), the distinguished chairman of the Permanent Select Committee on Intelligence.

Mr. HOEKSTRA. Mr. Chairman, I thank the gentleman for yielding me time.

By creating an Open Source Intelligence Center under the National Intelligence Director to collect, analyze, produce and disseminate open source materials to the intelligence communities, the information becomes a building block for further collection, rather than a forgotten tool.

I rise in support of the Simmons amendment. It creates a valuable tool under the authority of the National Intelligence Director to make open source intelligence more acceptable and available to the agencies of the intelligence community.

Ms. HARMAN. Mr. Chairman, I yield to the gentleman from North Carolina (Mr. WATT) for the purpose of making unanimous consent request.

Mr. WATT of North Carolina. Mr. Chairman, I rise in support of the Menendez substitute amendment.

Mr. Chairman, I rise in support of the Menendez Substitute, and in particular, its creation of a Privacy and Civil Liberties Board within the Executive branch as unanimously recommended by the 9/11 Commission. After months and months of study, and months and months of hearing testimony and reviewing volumes of documents, the 9/11 Commission unanimously recommended that there be a board "within the government whose job it is to look across the government at the actions we are taking to protect ourselves to ensure that liberty concerns are appropriately considered."

Because I take the protection of our constitutional rights and liberties very seriously, I offered an amendment during the Judiciary Committee markup of this bill to establish an independent, bipartisan board to oversee compliance with civil liberties and the Judiciary Committee bill included a version of the oversight board. The Menendez substitute establishes such a board. Now there are those who might suggest that an advisory board created by the President by executive order satisfies the mandate of the 9/11 Commission. It does not. That board consists of Administration insiders with advisory functions.

In the words of the Vice Chairman of the 9/11 Commission, we must establish a board that is "robust," one that has the authority to secure our freedoms against abuse. We all agree that our Nation must adjust to confront the terrorist threat, but in doing so we cannot undermine the principles for which Americans stand.

One need not look far to imagine the types of abuses that a Privacy and Civil Liberties Board could expose and prevent. Should innocent Americans be held merely on suspicion, without the opportunity to consult with counsel and without the ability to speak with their family? After two years of detention without access to family or counsel, a U.S. citizen was recently released from Guantanamo because he was no longer of "intelligence value." Should Americans be willing to miss graduations, baptisms, weddings, and funerals, because their names are erroneously on a no-fly list? If Senator KENNEDY, Congressman JOHN LEWIS and Congressman YOUNG find themselves detained as suspected terrorists, who will be next? Just last week, a federal district court ruled that the FBI's use of "national security letters" to compel the production of customer records from internet service providers was unconstitutional.

In short, just as we need to make adjustments as we fight terrorism, we also need this independent board to make sure that fighting terrorism is done in a manner that does not change the fundamental nature of our society. In closing, let me quote directly from the 9/11 Commission's findings in connection with its recommendation that there be a board to protect civil liberties:

> We must find ways of reconciling security with liberty, since the success of one helps protect the other. The choice between security and liberty is a false choice, as nothing is more likely to endanger America's liberties than the success of a terrorist attack at home. Our history has shown us that insecurity threatens liberty. Yet, if our liberties are curtailed, we lose the values that we are struggling to defend.

The substitute implements the recommendation of the 9/11 Commission and should be supported. I urge my colleagues to vote "yes."

Mr. SIMMONS. Mr. Chairman, I yield 30 seconds to the gentleman from California (Mr. HUNTER), the distinguished chairman of the Committee on Armed Services.

Mr. HUNTER. Mr. Chairman, I will not take that much time, but just to say like the gentleman that offered this amendment, this amendment is practical, it is a smart thing to do, and we support it very strongly.

Ms. HARMAN. Mr. Chairman, I yield to the gentlewoman from Texas (Ms. JACKSON-LEE) for the purpose of making a unanimous consent request.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I rise to support the Menendez substitute in recognition of fixing the human intelligence problem we have in the intelligence system and recognizing the 9/11 Commission's work.

Mr. Chairman, it pleases me that the Committee on Rules had the prudence to make the amendment offered by the Gentleman from New Jersey, Mr. MENENDEZ, in order. This important amendment has been endorsed by the 9/11 Commission and embodies the provisions found in the Collins/Lieberman proposal, S. 2845 and the McCain/Lieberman proposal, S. 2774.

In our work on H.R. 10, we have a duty to take in to account the families that will be affected. We in this august body have a duty to take into account that these families—in fact, all American families, will be waiting and watching to see if this body will act responsibly, appropriately, and adequately.

The base bill includes over 50 extraneous provisions that were not recommended by the 9/11 Commission. Within these extraneous provisions are legislative "poison pills" that will ultimately frustrate our overall purpose—to make America safe. These poison pills include:

Giving the President "fast track" authority to reorganize the intelligence agencies, undermining the reforms recommended by the 9/11 Commission;

Giving the President authority to bypass Senate confirmation of the Director of the CIA and other key intelligence and defense officials, weakening congressional oversight;

Giving federal law enforcement officials new authority to deport foreign nationals, revoke visas, and deny asylum without judicial review;

Creation of new national databases of drivers licenses, birth certificates, and criminal histories, raising civil liberties and privacy concerns; and

Expansion of the authority of the Justice Department by relaxing grand jury secrecy requirements and increasing its ability to conduct secret surveillance.

I serve on the House Select Committee on Homeland Security, and it troubles me that while that body received a referral for markup, the leadership has chose not to schedule such a hearing. The very committee that would presumably hold the most jurisdiction over this matter deferred its opportunity to make this legislation better. That does not sit well with my colleagues on this side of the aisle and it does not sit well with the families of the victims of 9/11—it does not sit well with the American people.

Furthermore, while the September 11 Commission has set forth its bi-partisan suggestion for rebuilding and improvement, we cannot even move legislation that authorizes homeland security spending through a markup by the main committee of jurisdiction. These issues are indicative of a body that has its priorities misplaced.

H.R. 10 will have to serve as the blueprint for this nation's ability to fight terrorism. Therefore, it is our duty to comprehensively and earnestly debate the merits of this legislation without partisan politics and pre-election motives. Since this proposal was crafted without giving Democrats an adequate opportunity to provide input, it is clear that, while the September 11 Commission's (9/11 Commission) report recommendations are a bi-partisan product, H.R. 10 is not. Hence, this bill is the symbol of leadership that is guided by partisanship when it should be guided by the needs of the American people. This bill is the symbol of misplaced priorities.

BORDER SECURITY

The state of security at our nation's land border is extremely troubling. we are only safe if we have secured our borders. Most of the people who come into our country come across our land borders.

Yet the Republican House of Representatives doesn't want to make necessary investments at our nation's ports of entry and between the ports of entry to keep terrorists out. Apparently, in light of what they have proposed in the 9/11 bill, Republicans are focused exclusively on finding new ways to kick the bad guys out.

I've got news for you all—something the American people know—Once terrorists are in the US, it's too late. The goal should be to keep them out in the first place, but in a manner that respects their civil liberties.

What we must do is make it harder for terrorists to get into this country.

To do this we need to invest in law enforcement resources at the border—at and between our Nation's ports of entry.

Security means investment in personnel, technology and infrastructure that will keep Americans safe.

Security means having a comprehensive unified border security strategy.

The Administration has failed to invest in the expansion and improvement of infrastructure and staffing at our nation's ports of entry.

We only have 1000 more border patrol agents than we did on 9/11—that is a three percent increase per year.

The Administration has failed to invest in technology to monitor the land borders. Much of the technology at the southern border is more than a quarter century old.

Today, millions of people who cross our borders are not checked against any database and the intelligence databases available to front line officers are antiquated and not fully integrated or interoperable.

The Administration has failed to secure federal parks, wildlife sanctuaries, forests and Indian reservations—some of these areas have experienced the largest increases in narcotics and human smuggling.

The Administration has failed to budget for adequate detention space. Tens of thousands of illegal immigrants have been released into U.S. communities. Of those released 80–90 percent fail to appear for deportation proceedings.

Perhaps most glaring is the failure of the Administration to develop a comprehensive long term interagency border strategy.

Unless the Administration acts in these areas, American will not be safe.

CONVENTION AGAINST TORTURE

Originally, I planned to offer an amendment that would remove section 3032 from the 9/11 Recommendations Implementation Act. Section 3032 would retroactively authorize the deportation of aliens to countries where they are likely to be tortured. Sending people to countries where they would face torture is morally wrong, and it would violate the United Nations Convention Against Torture (CAT). Section 3032 also would make it harder to establish eligibility for CAT relief, and it would prohibit federal court challenges to a decision removing CAT protection under the new law except as part of the review of a final order of removal.

Article 3 of the Convention forbids a State Party from forcibly returning a person to a country when there are substantial grounds for believing that he would be in danger of being subjected to torture. In ratifying the treaty, the U.S. Senate did not express any reservation, understanding, or proviso that might exclude a person from Article 3 prohibition.

I support this absolute prohibition on moral as well as legal grounds. Torture is so horrendous and so contrary to our ethical, spiritual, and democratic beliefs that it must absolutely be condemned and prohibited.

I want to emphasize that the prohibition in the Convention is country specific. It just prohibits deportation to a country where the alien will face torture. Also, the grant of CAT protection is temporary. It can be removed when a change in conditions eliminates the risk of torture.

I also object to the change in the burden of proof that would require the applicant to prove his case by "clear and convincing evidence" instead of the present "more likely than not" standard. Raising the standard to this level of certainty would result in sending people to countries where they will be tortured.

Finally, I object to making such changes retroactively and to prohibiting federal court review of CAT decisions unless it is part of the review of a final order of removal. Petitions for review of a removal order must be filed within 30 days. Consequently, section 3032 would prevent many aliens from having federal court review of adverse decisions. This cannot be justified where the consequence of a mistake could be subjecting a person to torture.

In closing, I will quote some sections from a letter that White House counsel Alberto R. Gonzalez sent to the editors of the Washington Post on October 1, 2004, about the torture provision in the House intelligence reform bill:

> The President did not propose and does not support this provision. He has made clear that the United States stands against and will not tolerate torture, and that the United States remains committed to complying with its obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Consistent with that treaty, the United States does not expel, return, or extradite individuals to other countries where the United States believes it is likely they will be tortured.
>
> As the President has said, torture is wrong no matter where it occurs, and the United States will continue to lead the fight to eliminate it everywhere.

STATE ISSUANCE OF DRIVER'S LICENSES

An amendment that would remove subsection 3052(c)(2) from the 9/11 Recommendations Implementation Act. Subsection 3052(c)(2) would prohibit the states from issuing driver's licenses to aliens who do not have lawful status.

Recent estimates indicate that we have between 8 and 14 million undocumented aliens in the United States. Subsection 3052(c)(2) would prevent many of them from getting driver's licenses. While I understand the argument that undocumented aliens are here unlawfully and should not be accorded the privilege of having driver's license, the analysis of the problem should not stop with that observation. The reality is that the undocumented aliens will drive even if they cannot get driver's licenses. For most people, it is virtually impossible to survive in our society without a car, and it is unrealistic to expect the undocumented aliens to give up and leave the country when they find out they cannot get driver's licenses.

A driver's license is not just a privilege for the driver's benefit. It also serves state purposes. By licensing drivers, the state can ensure that the drivers who receive licenses have acceptable driving skills, know traffic laws, and have liability insurance. In addition, registering and photographing all drivers helps the state to monitor driving records.

Traffic accidents are the leading cause of death for persons aged six to 33, with more than 40 thousand traffic fatalities each year. According to a study conducted by the AAA Foundation for Traffic Safety, unlicensed drivers are five times more likely to be in fatal crashes than drivers with valid licenses.

TSA AND PASSENGER PRE-SCREENING

This proposal would make the "Next Generation Airline Passenger Prescreening" provision (Section 2173) more effective while taking active measures to protect individual rights and liberties.

The existing language in Subsection (i) of Section 2173(a)(C) assigns the task of testing the next generation passenger prescreening system against automatic selectee and no-fly lists and records in the consolidated and integrated terrorist watchlist maintained by the Federal Government to the "Assistant Secretary or designee." This a very loose assignment of a very important task. Moreover, the duties of the Assistant Secretary would hardly allow for the time and effort that is necessary to perform the functions of this provision to address the needs of the American public.

The Jackson-Lee Amendment would assign this task rather to the "Civil Liberties Protection Officer" of designee thereof—in consultation with the Assistant Secretary. Therefore, this amendment adds teeth to the existing provision in the area of personnel assignment.

The Civil Liberties Protection Officer is the most appropriate personnel to perform this function. Its duties are enumerated in Section 1022(b) of this legislation:

> (b) DUTIES.—The Civil Liberties Protection Officer shall—
>
> (1) ensure that the protection of civil liberties and privacy is appropriately incorporated in the policies and procedures developed for and implemented by the Office of the National Intelligence Director and the elements of the intelligence community within the National Intelligence Program;
>
> (2) oversee compliance by the Office and the National Intelligence Director with requirements under the Constitution and all laws, regulations, Executive orders, and implementing guidelines relating to civil liberties and privacy;
>
> (3) review and assess complaints and other information indicating possible abuses of civil liberties and privacy in the administration of the programs and operations of the Office and the National Intelligence Director and, as appropriate, investigate any such complaint or information;
>
> (4) ensure that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;
>
> (5) ensure that personal information contained in a system of records subject to section 552a of title 5, United States Code (popularly referred to as the 'Privacy Act'), is handled in full compliance with fair information practices as set out in that section;
>
> (6) conduct privacy impact assessments when appropriate or as required by law; and
>
> (7) perform such other duties as may be prescribed by the National Intelligence Director or specified by law.

Under the Jackson-Lee Amendment, the Civil Liberties Officer (CLO) would "assume performance of the passenger prescreening function of comparing passenger name records to the automatic selectee and no-fly lists and utilize all appropriate records in the consolidated and integrated terrorist watchlist maintained by the Federal Government." Given the functions of the CLO as described in Section 1022, the Next Generation Airline Passenger Prescreening program would be developed in a way that protects individual liberties and privacy while eliminating mistakes that have been made, perhaps, due to a lack of proper skills or experience.

The Jackson-Lee Amendment would also require the CLO to develop guidelines, policies, and operating procedures for the (1) "collection, removal, and updating" of the data maintained by the prescreening system, (2) criteria for the addition of names to the database, (3) security measures to protect the system from unauthorized access, (4) a system for correcting erroneous entries, and (5) a process that allows individuals who are victims of error to demonstrate that an error has been made as well as to allow for a challenge as to the inclusion of his/her name in the database. Again, with the expertise in the area of civil liberties and privacy rights, this function would be performed most efficiently with the inclusion of my proposal.

Moreover, the Jackson-Lee Amendment would enable individuals or entities to file civil actions against an agency with respect to the challenge.

According to the Associated Press, Senator EDWARD KENNEDY could not fly out to Boston because his name had been listed in the "no fly" database erroneously. After having made several phone calls, he was able to fly to Boston; however, the same thing occurred on his way back to Washington. It required three phone calls to the Secretary of Homeland Security to correct this error.

The normal American citizen, however, cannot simply pick up the phone and call the Secretary of DHS to address the problem of erroneous inclusion in the "no fly" database. Therefore, the Jackson-Lee Amendment would provide the protection of the Civil Liberties Officer and the tort reform provision to address his/her grievances.

CRIMINAL BACKGROUND CHECKS—SECTION 2142

Lastly, at the Committee level, I offered an amendment that speaks to protecting the privacy of employees. This amendment would have stricken Section 2142(a) of the base bill before this body, H.R. 10. Section 2142 of the 9/11 Recommendations Implementation Act (H.R. 10) mandates that the Department of Justice establish and maintain a system to provide employers with criminal history information of its employees. In order for the employer to receive this information, it must submit fingerprints or other biometric identifiers of the employee to the Department. Once fingerprints or biometric data are submitted, the FBI would be required to use the Integrated Fingerprint Identification System. (IAFIS) to identify any records of arrest, detention, indictment or other formal charge pertaining to the employee and any disposition of such charge.

This body should oppose this unnecessary and intrusive provision which would provide a false sense of security, impede the ability of employers to hire new workers and impose an undue burden on important federal law enforcement resources.

The measure is unnecessary because employers already have many options to conduct criminal history background checks on applicants and employees through the public and private sector. The National Crime Prevention and Privacy Compact (Title II of Pub. L. 105–251) already provides a framework—including privacy safeguards—through which nationwide criminal background checks can be conducted by employers on applicants and employees through state criminal history repositories when a state determines that such a check is appropriate. In addition, employers may seek background information from private databases as provided under the Fair Credit Reporting Act.

The FBI database is not sufficiently thorough to provide a truly adequate review of an individual's criminal background and would therefore provide a false sense of security. According to the Department of Justice, "state systems tend to be more comprehensive and up-to-date than the federal system, because state courts report to the state system, not the federal system. This is particularly true in the case of non-felony arrests and convictions. While federal criminal records for felony arrests are improving daily, there are many important criminal history details that a prospective . . . employer would find important that are not found in federal data bases. These include: misdemeanor crimes of domestic violence; misdemeanor sex offenses; misdemeanor drug possession offenses; and impaired driving offenses." (H. Rept. 105–61).

ChoicePoint's National Criminal File, for example, contains over 170 million criminal history records from jurisdictions nationwide. In contrast, the FBI's NCIC houses an estimated 50 million records. Well over 90 percent of ChoicePoint's records are conviction records (not arrests or bookings), whereas only 20 percent of the NCIC records contain disposition information.

Universal employee screening would overwhelm insufficient infrastructure and would impede an employer's ability to hire new workers. While electronic submissions can be processed relatively quickly, paper based submissions currently take five to ten business days to complete according to congressional testimony by the Department of Justice. With expanded submissions, employers can expect the delay to increase thus impairing their ability to make hiring decisions.

Universal federal screening of employees would place an undue burden on the law enforcement, diverting resources away from better uses. While the IAFIS system is already established, the FBI still would need to develop means and capacity for accepting, processing, and responding to requests for background checks from employers. The employers from which the FBI will receive requests likely will vary widely in terms of their knowledge of the background check process and in their technical capabilities to collect and transmit requests (including fingerprints) to the FBI, requiring additional expenditures of resources by the FBI. The Department of Justice has opposed more narrow proposals that did not require that checks first be run through state criminal records systems. Whereas state criminal records systems are more robust than federal records, running background checks through state agencies would conserve federal time and expenses. (H. Rept. 105–61).

The Department also has noted that many state and local law enforcement agencies that typically serve as the starting point are often "under-staffed and under-equipped," which would limit their ability to conduct thorough and timely civil checks and "could eventually result in the need to institute some type of prioritization of such checks as the existing infrastructure becomes overloaded." (Michael Kirkpatrick, FBI, testimony to House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, 3/30/04).

The federal government's collection of fingerprints or other biometric data from all prospective employees lacks adequate privacy safeguards. The bill does not provide any privacy protections for the applicant/employee that is the subject of the background investigation. Employers conducting background checks directly through the Attorney General would not be subject to the extensive protections afforded by the Fair Credit Reporting Act (15 U.S.C. § 1681 et. seq.) because those protections only attach to information an employer obtains from a consumer reporting agency—not information the employer obtains directly from the government. Thus, under the provision, an employee would lose many privacy safeguards otherwise provided under existing law. The bill would not require employees to be given notice of the background investigation nor would the employee have access to the results of the investigation or a means of appealing incorrect information as is provided.

The measure intrudes on the rights of states to regulate the dissemination of this sensitive information. Existing law provides the states with extensive authority to determine which criminal history record information is disseminated within its borders for employment and other non-criminal justice purposes. The proposed measure effectively would reverse this policy and pre-empt the ability of states to regulate this area. Moreover, the proposal would subject employees to the laws of states other than where he/she works. Under the proposal, an employer may seek a background investigation if authorized by the state where the employee works or by the state where the employer has its principal place of business. Arkansas, for example, could authorize criminal background checks nationwide for employees of Wal-Mart and other Arkansas-based businesses. Similarly, an employee of General Motors working in North Carolina would be subject to Michigan law. Unfortunately, the proposal does not clarify and would exacerbate patchwork of state laws pertaining to pre-employment background investigations. Individual rights can be protected while vigorously protecting the Homeland. It is our duty as legislators to find that balance.

Mr. Chairman, in recognition and tribute to the families of the 9/11 victims, there should never be a price limitation placed on effectively securing the Homeland. Nor should solid legislation be ignored or thwarted in carrying out the will of the American people. For this reason, I fully supported the goals set forth in the Shays-Maloney proposal that was not made in order by this Committee.

Given that the Menendez Amendment has been made in order, I offer my full support to the Gentleman. This Democratic substitute has been endorsed by the 9/11 Commission and embodies the provisions found in the Collins/Lieberman proposal, S. 2845 and the McCain/Lieberman proposal, S. 2774.

The real crime on 9/11 was the failure of the American Government in having a real intelligence integrated system that might have thwarted the horrific tragedy of 9/11. The focus today pursuant to the 9/11 Commission to be to vote on legislation that overhauls our broken intelligence system, give budgetary authority to the new intelligence director and fix the system that did not function on 9/11.

Our 9/11 families deserve a signed bill, as James Joyce said as told to me by Donald and Sally Goodrich, "It is the now, the here through which all future plunges to the past." Let's move forward.

Ms. HARMAN. Mr. Chairman, I yield to the gentleman from Wisconsin (Mr. OBEY) for the purpose of making a unanimous consent request.

Mr. OBEY. Mr. Chairman, I think both the Menendez bill and the core bill are headed in the wrong direction on final passage. I would vote against both of them.

Ms. HARMAN. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, as I said and our other speaker said, this is a good amendment. This is a bipartisan issue. I think everybody here cares about better intelligence, and it is interesting to note how little attention open sources have gotten over the years and how much we have lost because we have not paid attention to them. So in that sense I think this amendment is extremely inspired to make a point that we must focus on this.

I would, however, like to make sure that the record of some of the conversation under the Menendez amendment is accurate, and in that connection, I am holding a press release issued by the Central Intelligence Agency dated 15 October, 1997, which says at the bottom the aggregate amount appropriated for intelligence and intelligence-related activities for fiscal year 1997 is $26.6 billion. A press release was also issued for 1998.

I would also like to say I do stand corrected. I have looked at the language of the Collins bill and what it provides is an alternative. That is what the 9/11 Commission also said in terms of organization of Congress. "One alternative is a joint Senate-House authorizing committee. The other alternative is a committee in each Chamber with combined authorization and appropriations authority." The legislation does not make a decision between the two.

Mr. Chairman, I support the amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. SIMMONS. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, at a time of international terrorism, there is no such thing as too much intelligence. Open source intelligence could save lives and inform our policymakers. Support the amendment.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore (Mr. NETHERCUTT). All time has expired.

The question is on the amendment offered by the gentleman from Connecticut (Mr. SIMMONS).

The amendment was agreed to.

The CHAIRMAN pro tempore. It is now in order to consider Amendment No. 3 printed in House Report 108–751.

AMENDMENT NO. 3 OFFERED BY MR. SOUDER

Mr. SOUDER. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mr. SOUDER:

At the end of subtitle C of title V (page 493, after the item after line 21) add the following:

SEC. ___. INTEGRATING SECURITY SCREENING SYSTEMS AND ENHANCING INFORMATION SHARING BY DEPARTMENT OF HOMELAND SECURITY.

(a) IMMEDIATE ACTIONS.—The Secretary of Homeland Security shall ensure—

(1)(A) that appropriate personnel of the Department of Homeland Security who are engaged in the security-related screening of individuals and entities interacting with the United States border and transportation systems, have the appropriate security clearances, and need access to the information in the context of their job responsibilities, can promptly access or receive law enforcement and intelligence information contained in all databases utilized by the Department, except as otherwise provided by law or, as appropriate, under guidelines agreed upon by the Attorney General and the Secretary;

(B) any Federal official who receives information pursuant to subparagraph (A) may use that information only as necessary in the conduct of that person's official duties and subject to any limitations on the unauthorized disclosure of such information;

(2) the coordination and, where appropriate, consolidation or elimination of duplicative targeting and screening centers or systems used by the Department for security screening purposes;

(3) the timely sharing of law enforcement and intelligence information between entities of the Directorate of Border and Transportation Security and the Directorate for Information Analysis and Infrastructure Protection, and any other entities of the Federal Government prescribed by the Secretary in consultation with the Director of the Office of Management and Budget; and

(4) that all actions taken under this section are consistent with the Secretary's Department-wide efforts to ensure the compatibility of information systems and databases pursuant to section 102(b)(3) of the Homeland Security Act of 2002 (6 U.S.C. 112(b)(3)).

(b) REPORT.—

(1) REQUIREMENT.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit a report to the Congress that includes the following:

(A) A description of each center, office, task force, or other coordinating organization that the Department of Homeland Security administers, maintains, or participates in, and that is involved in collecting, analyzing, or sharing information or intelligence related to—

(i) individuals or organizations involved in terrorism, drug trafficking, illegal immigration, or any other criminal activity; or

(ii) the screening, investigation, inspection, or examination of persons or goods entering the United States.

(B) A description of each database or other electronic system that the Department of Homeland Security administers or utilizes for the purpose of tracking or sharing of information or intelligence related to—

(i) individuals or organizations involved in terrorism, drug trafficking, illegal immigration, or any other criminal activity; or

(ii) the screening, investigation, inspection, or examination of persons or goods entering the United States.

(C) For each description provided under subparagraph (A) or (B)—

(i) information on the purpose and scope of operations of the center, office, task force, or other coordinating organization, or database or other electronic system, respectively; and

(ii) an identification of each subdivision of the Department, and each governmental agency (whether Federal, State, or local) that participates in or utilizes such organization or system on a routine basis.

(D) A description of the nature and extent of any overlap between, or duplication of effort by, the centers, offices, task forces, and other coordinating organizations, or databases and electronic systems, described under subparagraph (A) or (B).

(2) CLASSIFIED OR LAW ENFORCEMENT SENSITIVE INFORMATION.—Any content of the report that involves information classified

under criteria established by an Executive order, or the public disclosure of which, as determined by the Secretary, would be detrimental to the law enforcement or national security activities of the Department or any other Federal, State, or local agency, shall be presented to the Congress separately from the rest of the report.

(c) REQUIREMENT TO SUBMIT PLAN.—Within 270 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the Congress a plan describing the actions taken, and those that will be taken, to implement subsection (a). Such plan shall include an analysis of the feasibility of integrating all security screening centers or systems utilized by the Department of Homeland Security into a single, comprehensive system, and actions that can be taken to further coordinate such system with other Federal and private screening efforts at critical infrastructure and facilities.

The CHAIRMAN pro tempore. Pursuant to House Resolution 827, the gentleman from Indiana (Mr. SOUDER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Indiana (Mr. SOUDER).

Mr. SOUDER. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, this amendment is pretty simple. It attempts to address this. When the Commission talks about stovepiping, these are the stoves. This is not even what is called the intelligence community. It does not include most of the CIA, the NSA. These are mostly the narcotics and border intelligence agencies.

As we look at this, for example, in El Paso alone, we have a Custom and Border Protection Field Intelligence Center, we have a DEA El Paso Intelligence Center, an OCDETF Center with a Southwest border initiative there also. This is just El Paso.

We have an Office of National Drug Control HIDTA, and we have a JTF 6, and the DHS is proposing a new Border Interdiction Support Center.

So this means in El Paso we have a BORFIC, an EPIC, an OCDETF, a SWBI, a HIDTA, a JTF and BISC that we need to have if we are going to do a better job of coordinating the intelligence on our southwest border and other places.

If we are going to have DHS actually coordinate these things, we need this amendment. This amendment says the Secretary should make sure everyone has access to relevant law enforcement. They need to consolidate databases, they need to improve information sharing. It requires the report to Congress containing an overview of all of the agencies' databases and other capabilities. It directs the Secretary to submit a plan to Congress, to improve information and intelligence sharing within the Department, and it directs the Secretary to ensure that information and intelligence sharing is subject to appropriate limitations and legal safeguards.

Mr. Chairman, I reserve the balance of my time.

Mr. TURNER. Mr. Chairman, I rise to speak on the amendment.

The CHAIRMAN pro tempore. Is the gentleman opposed to the amendment?

Mr. TURNER. I am.

The CHAIRMAN pro tempore. The gentleman from Texas (Mr. TURNER) is recognized for 5 minutes.

Mr. TURNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I appreciate the gentleman from Indiana offering the amendment, which I do intend to support. But the amendment, interestingly enough, requires the Secretary of Homeland Security to do a whole lot of things that we have already required the Secretary to do 2 years ago in the Homeland Security Act. I think the amendment, more than anything else, shows us how far we have to go in getting this Department of Homeland Security to do what we wanted it to do when we created the Department in the first place.

The Homeland Security Act already requires the Department to do everything that is in this amendment. Under sections 201 and 892 of the Homeland Security Act, we called upon the Secretary to improve information sharing, to ensure that all DHS personnel share appropriate information. Two years later, this has not been done, thus, requiring us to say it again, I guess, as the gentleman has in his amendment.

Our frontline forces in the Department of Homeland Security clearly do not have access to the full range of databases that they should have access to to do their job. If a border inspector or law enforcement officer has a suspected terrorist in front of them, they need to have access to the information about that person. They do not have it today.

Likewise, the Department of Homeland Security legislation we passed 2 years ago required the Secretary to ensure appropriate exchanges of information with the private sector, which is also called for in the gentleman's amendment. Unfortunately, the Department still does not provide owners of critical infrastructure with the intelligence they need. I appreciate the gentleman pointing this out by offering this amendment.

According to the Department's Inspector General, the Department has the lead responsibility to coordinate the terrorist watch list information, but thus far they have failed to provide the leadership to do it.

Here we are, 2 years after the creation of the Department of Homeland Security, we still do not have a unified terrorist watch list available to any agency of our government, as required by the Homeland Security Act, evidenced by the Department of Homeland Security's own Inspector General report.

Mr. Chairman, it is interesting to read in the amendment that the gentleman requires a report to list all of the offices in the Department that have the responsibility for collecting, analyzing and sharing information. Again, 2 years ago, the Homeland Security Act made the Department's Information Analysis Directorate responsible for this mission. Unfortunately, the gentleman is right in suspecting that the Information Analysis Infrastructure Protection Directorate has failed in the responsibilities that we gave them 2 years ago.

My colleague's amendment raises a number of very serious oversight questions for the Department. In fact, the amendment is nothing short of an admission of failure of the Department to carry out the mandates of this Congress which we put into law 2 years ago.

So I thank the gentleman for his amendment. I will join him in supporting it.

Mr. Chairman, I reserve the balance of my time.

Mr. SOUDER. Mr. Chairman, I thank the gentleman for his support.

Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. COX), the distinguished chairman of the Select Committee on Homeland Security.

Mr. COX. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, I rise in support of the amendment offered by the gentleman from Indiana (Mr. SOUDER), which is an important amendment. It will ensure that the people responsible for screening border crossings, airline passengers and other transportation systems have access to all the law enforcement and intelligence information they need and it will ensure that they have access to all the law enforcement and intelligence information available to the Secretary of the Department of Homeland Security.

It is well-known that several Federal agencies have long maintained separate watch lists and that work is well underway to completely consolidate these. But the purpose of watch lists is to identify terrorists who are attempting to gain entry into the United States.

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If they are not integrated, in the meanwhile, we do not have seamless electronic access to that information in multiple databases, and they cannot do their job.

The Department of Homeland Security combined no less than 22 separate Federal agencies, and those agencies brought their legacy databases with them and their separate screening processes, which were developed to aid in their own separate missions before the merging.

The 9/11 Commission report recommends that "all points in the border system, from consular offices to immigration services, will need appropriate electronic access to an individual's file." And they note that "scattered units at Homeland Security and the State Department perform screening and data mining; instead," they say, "a government-wide team of border and transportation officials should be working together."

The 9/11 Commission report stresses the need to have border screening systems "integrated into a larger network of screening points that includes our transportation system."

This amendment offered by the gentleman from Indiana (Mr. SOUDER) addresses these concerns by ensuring that the Department of Homeland Security pursues the best way to link these systems together.

As chairman of the Select Committee on Homeland Security, I would like to thank the gentleman from Indiana (Mr. SOUDER) for offering this important amendment.

Mr. TURNER of Texas. Mr. Chairman, I yield 1 minute to the gentlewoman from Texas (Ms. JACKSON-LEE), a distinguished member of the Select Committee on Homeland Security.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the gentleman for the insight he gave us on the duties and responsibilities of the Department of Homeland Security, but I want to also thank the gentleman from Indiana (Mr. SOUDER) for this addition. I want to correct any suggestions that there were not many amendments; we all brought amendments and testified before the Committee on Rules, but I do want to say that this is an addition that is important.

Having just returned from the border, one of the key elements of providing good security is good intelligence; and particularly on the border and with our Border Patrol agents and our border security resources on the border, information-sharing has been extremely difficult. It is clear that the 9/11 Commission again talked about breaking down stovepipes. This is a good direction for breaking down those stovepipes and suggesting that ensuring safety at the borders keeps the homeland safe.

I am hoping, however, that we can also reflect upon the importance of a National Intelligence Director that has budgetary authority.

Mr. Chairman, I support this amendment for the information-sharing that it creates.

Mr. SOUDER. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, first I want to thank the gentleman from California (Chairman COX), the distinguished ranking member, the gentleman from Texas (Mr. TURNER), and the gentlewoman from Texas (Ms. JACKSON-LEE) who has been helpful, and a number of other members. Also, the Committee on Transportation and Infrastructure, as well as the Committee on the Judiciary and the Committee on Government Reform, those four committees came together to make this amendment possible.

We see cooperation in the narcotics area of the subcommittee I chair. We have had increasing drug busts, we have had some progress, but it is not fast enough. If we are not careful here, instead of collecting intelligence, all we are going to be doing is having people going to meetings and talking to each other. We have to have a better ability of our computers to talk, a more organized structure, because we cannot afford to make errors.

We understand, and this House is recognizing, the fact that these agencies that have been put together under Homeland Security have multiple missions. There are narcotics missions, there are search and rescue under the Coast Guard, there are fisheries missions, there are immigration missions within these Departments, and there are going to be some stovepipes; but they all have valuable information, and we need to get this better coordinated so we can be more effective and safer as a Nation.

I hope everyone will support this amendment. I do not see any reason why anybody would not. I appreciate the support on the minority side as well as the majority side.

Mr. Chairman, I yield back the balance of my time.

Mr. TURNER of Texas. Mr. Chairman, I yield myself the remaining time.

Again, I thank the gentleman from Indiana for bringing the amendment forward. As I said, it is something that should have been done under the law we passed 2 years ago when we passed the Homeland Security Act.

To show my colleagues how bad it is, the minority members of our Select Committee on Homeland Security did a 6-month investigation on the southern border and issued this report just last month: "Transforming The Southern Border." One of the many facts that was laid out and discovered as we did this report is that today, a border inspector watching people come across our border has to search eight different databases to find out whether they have a suspected terrorist before them.

So I support the Souder amendment.

The CHAIRMAN pro tempore (Mr. NETHERCUTT). All time has expired.

The question is on the amendment offered by the gentleman from Indiana (Mr. SOUDER).

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

Mr. HOEKSTRA. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Indiana (Mr. SOUDER) will be postponed.

The point of no quorum is considered withdrawn.

SEQUENTIAL VOTES POSTPONED IN THE COMMITTEE OF THE WHOLE

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments on which further proceedings were postponed in the following order: amendment in the nature of a substitute offered by Mr. MENENDEZ of New Jersey; amendment offered by Mr. SOUDER of Indiana.

The Chair will reduce to 5 minutes the time for the second vote.

AMENDMENT NO. 1 IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. MENENDEZ

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment in the nature of a substitute offered by the gentleman from New Jersey (Mr. MENENDEZ) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment in the nature of a substitute.

The Clerk redesignated the amendment in the nature of a substitute.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 203, noes 213, not voting 17, as follows:

[Roll No. 510]

AYES—203

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Case
Castle
Chandler
Clay
Clyburn
Conyers
Cooper
Costello
Cramer
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Ferguson
Ford
Fossella
Frank (MA)
Frost
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Hill
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (IL)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Leach
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Lucas (KY)
Lynch
Maloney
Markey
Matheson
Matsui
McCarthy (MO)

McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Michaud
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Quinn
Rahall
Rangel
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Shays
Sherman
Simmons
Skelton
Smith (WA)
Snyder
Solis
Spratt
Stenholm
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—213

Aderholt
Akin
Alexander
Bachus
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Chabot
Chocola
Coble
Cole
Collins
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Dunn
Ehlers
Emerson
English
Everett
Feeney
Flake
Foley
Forbes
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
Manzullo
Marshall
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shuster
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—17

Baker
Boehlert
Filner
Gephardt
Houghton
Lipinski
Majette
Millender-McDonald
Murtha
Norwood
Ortiz
Paul
Ros-Lehtinen
Slaughter
Stark
Tauzin
Towns

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Messrs. BURTON of Indiana, DREIER and THOMAS changed their vote from "aye" to "no."

Mr. KANJORSKI changed his vote from "no" to "aye."

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 3 OFFERED BY MR. SOUDER

The CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Indiana (Mr. SOUDER) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 410, noes 0, not voting 22, as follows:

[Roll No. 511]

AYES—410

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
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Barrett (SC)
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Barton (TX)
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Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehner
Bonilla
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Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
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Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
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Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
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Chandler
Chocola
Clay
Clyburn
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Conyers
Cooper
Costello
Cox
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Crane
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Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (TX)
Green (WI)
Greenwood
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Hastings (FL)
Hastings (WA)
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Hensarling
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Hill
Hinchey
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
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Honda
Hooley (OR)
Hostettler
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Maloney
Manzullo
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Oberstar
Obey
Olver
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
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Spratt
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Strickland
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Sullivan
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Turner (OH)
Turner (TX)
Udall (CO)
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Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh

Wamp
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Watson
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Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING 22

Baker
Ballenger
Boehlert
Collins
Filner
Gephardt
Houghton
Kleczka
Lipinski
Majette
Millender-McDonald
Murtha
Norwood
Ortiz
Paul
Ros-Lehtinen
Schrock
Slaughter
Smith (MI)
Stark
Tauzin
Towns

☐ 0010

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Mr. SESSIONS. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. GERLACH) having assumed the chair, Mr. NETHERCUTT, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 10) to provide for reform of the intelligence community, terrorism prevention and prosecution, border security, and international cooperation and coordination, and for other purposes, had come to no resolution thereon.

REPORT ON RESOLUTION WAIVING REQUIREMENT OF CLAUSE 6(a) OF RULE XIII WITH RESPECT TO CONSIDERATION OF CERTAIN RESOLUTIONS

Mr. SESSIONS, from the Committee on Rules, submitted a privileged report (Rept. No. 108–764) on the resolution (H. Res. 832) waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF MOTIONS TO SUSPEND THE RULES

Mr. SESSIONS, from the Committee on Rules, submitted a privileged report (Rept. No. 108–765) on the resolution (H. Res. 833) providing for consideration of motions to suspend the rules, which was referred to the Union Calendar and ordered to be printed.

REPORT ON RESOLUTION WAIVING REQUIREMENT OF CLAUSE 6(a) OF RULE XIII WITH RESPECT TO CONSIDERATION OF CERTAIN RESOLUTIONS

Mr. SESSIONS, from the Committee on Rules, submitted a privileged report (Rept. No. 108–766) on the resolution (H. Res. 834) waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules, which was referred to the House Calendar and ordered to be printed.

RESIGNATION AS MEMBER OF COMMITTEE ON GOVERNMENT REFORM

The SPEAKER pro tempore laid before the House the following resignation as a member of the Committee on Government Reform:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, October 6, 2004.

Speaker DENNIS HASTERT,
U.S. House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: With this letter, please accept my resignation from the House Committee on Government Reform, effective immediately.

Should you have any questions, please feel free to contact me.

With kind regards, I am

Sincerely,

ERIC CANTOR,
Member of Congress.

The SPEAKER pro tempore. Without objection, the resignation is accepted.

There was no objection.

ELECTION OF MEMBER TO COMMITTEE ON GOVERNMENT REFORM

Mr. SESSIONS. Mr. Speaker, I offer a resolution (H. Res. 835) and I ask unanimous consent for its immediate consideration in the House.

The SPEAKER pro tempore. The Clerk will report the resolution.

The Clerk read as follows:

Resolved, That the following Member be and is hereby elected to the following standing committee of the House of Representatives:

Committee on Government Reform: Mr. Putnam, to rank after Mr. Cannon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The resolution was agreed to

A motion to reconsider was laid on the table.

APPOINTMENT OF CONFEREES ON H.R. 4837, MILITARY CONSTRUCTION APPROPRIATIONS ACT, 2005

Mr. KNOLLENBERG. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4837) making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2005, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan? The Chair hears none and, without objection, appoints the following conferees: Messrs. KNOLLENBERG, WALSH, ADERHOLT, Ms. GRANGER, and Messrs. GOODE, VITTER, KINGSTON, CRENSHAW, YOUNG of Florida, EDWARDS, FARR, BOYD, BISHOP of Georgia, DICKS and OBEY.

There was no objection.

APPOINTMENT AS MEMBER TO COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM

The SPEAKER pro tempore. Pursuant to section 201(b) of the International Religious Freedom Act of 1998 (22 U.S.C. 6431 Note), amended by section 681(b) of the Foreign Relations Authorization Act, fiscal year 2003 (22 U.S.C. 2651 Note), the order of the House of December 8, 2003, and upon the recommendation of the Minority Leader, the Chair announces the Speaker's appointment of the following member on the part of the House to the Commission on International Religious Freedom for a 2-year term ending May 14, 2006, to fill the existing vacancy thereon:

Ms. Elizabeth Prodromou, Boston, Massachusetts, to succeed Ms. Patricia W. Chang, San Francisco, California.

HONORING THE FALLEN OF THE USS "COLE"

(Mr. BURGESS asked and was given permission to address the House for 1 minute and to revise and extend his remarks and include extraneous material.)

Mr. BURGESS. Mr. Speaker, it is hard to believe that it has almost been 4 years, but October 12 will mark the fourth anniversary of the bombing of the USS *Cole*. During that attack, 17 of our sailors died and 39 were hurt when the guided missile destroyed the USS *Cole*, which was attacked while refueling offshore. A small craft with two terrorists and probably 400 to 700 pounds of explosives blew a 40-foot hole in the hull of that ship.

Today, Mr. Speaker, I think it is appropriate since we will not be here next week, I think it is appropriate today that we honor those who were lost and acknowledge those who were injured and also acknowledge the suffering of those families who continue to mourn their loss.

Mr. Speaker, the following are the names of the fallen of the USS *Cole*.

USS "COLE" VICTIMS

Electronics technician 1st Class Richard Costelow; Morrisville, Pennsylvania.

Signalman Seaman Recruit Cherone Louis Gunn; Rex, Georgia.

Seaman James Rodrick McDaniels; Norfolk, Virginia.

Seaman Recruit Lakiba Nicole Palmer; San Diego, California.

Operations Specialist 2nd Class Timothy Lamont Saunders; Ringold, Virginia.

Ensign Andrew Triplett; Macon, Mississippi.

Seaman Apprentice Craig Bryan Wibberley; Williamsport, Maryland.

Hull Maintenance Technician 3rd Class Kenneth Eugene Clodfelter; Mechanicsville, Virginia.

Mess Management Specialist Seaman Lakeina Monique Francis; Woodleaf, North Carolina.

Information Systems Technician Seaman Timothy Lee Gauna; Rice, Texas.

Engineman 2nd Class Marc Ian Nieto; Fond du Lac, Wisconsin.

Electronics Warfare Technician 3rd Class Ronald Scott Owens; Vero Beach, Florida.

Engineman Fireman Joshua Langdon Parlett; Churchville, Maryland.

Fireman Apprentice Patrick Howard Roy; Cornwall on Hudson, New York.

Electronics Warfare Technician 2nd Class Kevin Shawn Rux; Portland, North Dakota.

Mess Management Specialist 3rd Class Ronchester Mananga Santiago; Kingsville, Texas.

Fireman Gary Graham Swenchonis Jr.; Rockport, Texas.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Ms. MILLENDER-MCDONALD (at the request of Ms. PELOSI) for today on account of important business in the district.

Mr. ORTIZ (at the request of Ms. PELOSI) for today and the balance of the week on account of personal reasons.

Mr. NORWOOD (at the request of Mr. DELAY) from October 5 through the balance of the 108th Congress on account of medical reasons.

ADJOURNMENT

Mr. PEARCE. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 12 o'clock and 13 minutes a.m.), the House adjourned until today, Friday, October 8, 2004, at 9 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

10164. A letter from the Director, Regulations Policy and Management Staff, FDA, Department of Health and Human Services, transmitting the Department's final rule—Over-the-Counter Human Drugs; Labelling Requirements; Delay of Implementation Date [Docket Nos. 1998N-0337, 1996N-0420, 1995N-0259, and 1990P-0201] (RIN: 0910-AA79) received September 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10165. A letter from the Director, Regulations Policy and Management Staff, FDA, Department of Health and Human Services, transmitting the Department's final rule—Use of Materials Derived From Cattle in Human Food and Cosmetics [Docket No. 2004N-0081] (RIN: 0910-AF47) received July 27, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10166. A letter from the Director, Regulations Policy and Management Staff, FDA, Department of Health and Human Services, transmitting the Department's final rule—Listing of Color Additives Subject to Certification; D&C Black No. 2 [Docket No. 1987C-0023] received August 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10167. A letter from the Director, Regulations Policy and Management Staff, FDA, Department of Health and Human Services, transmitting the Department's final rule—Skin Protectant Drug Products for Over-the-Counter Human Use; Final Monograph; Technical Amendment [Docket Nos. 1978N-0021 and 1978N-021P] (RIN: 0910-AF42) received September 20, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10168. A letter from the Regulations Coordinator, OIG, Department of Health and Human Services, transmitting the Department's final rule—Health Care Fraud and Abuse Data Collection Program: Technical Revisions to Healthcare Integrity and Protection Data Bank Data Collection Activities (RIN: 0991-AB31) received September 21, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10169. A letter from the Regulations Coordinator, OS, Department of Health and Human Services, transmitting the Department's final rule—Civil Money Penalties: Procedures for Investigations, Imposition of Penalties, and Hearings-Extension of Expiration Date [CMS-0010-IFC] (RIN: 0938-AM63) received September 15, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10170. A letter from the Attorney-Advisor, NHTSA, Department of Transportation, transmitting the Department's final rule—Federal Motor Vehicle Safety Standards; Fuel System Integrity and Electric Powered Vehicles: Electrolyte Spillage and Electrical Shock Protection [Docket No. NHTSA-2004-18900] (RIN: 2127-AJ45) received August 16, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10171. A letter from the Attorney-Advisor, NHTSA, Department of Transportation, transmitting the Department's final rule—Federal Motor Vehicle Safety Standards; Occupant Crash Protection [Docket No. NHTSA-2004-18905] (RIN: 2127-AJ42) received August 16, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10172. A letter from the Attorney-Advisor, NHTSA, Department of Transportation, transmitting the Department's final rule—Federal Motor Vehicle Safety Standards; Power-Operated Window, Partition, and Roof Panel Systems [Docket No. NHTSA-2004-19032] (RIN: 2127-AG36) received September 22, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10173. A letter from the Attorney-Advisor, NHTSA, Department of Transportation, transmitting the Department's final rule—Federal Motor Vehicle Safety Standards; Power-Operated Window, Partition, and Roof Panel Systems [Docket No. NHTSA-2004-19076] (RIN: 2127-AF83) received September 22, 204, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10174. A letter from the Attorney-Advisor, NHTSA, Department of Transportation, transmitting the Department's final rule—Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment [Docket No. NHTSA-2004-18794] (RIN: 2127-AF75) received August 16, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10175. A letter from the Attorney-Advisor, NHTSA, Department of Transportation, transmitting the Department's final rule—Federal Motor Vehicle Safety Standards; Child Restraint Anchorage Systems [Docket No. NHTSA-2004-18793] (RIN: 2127-AJ39; RIN: 2127-AH85) received August 16, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10176. A letter from the Attorney, NHTSA, Department of Transportation, transmitting the Department's final rule—Motor Vehicle Safety; Disposition of Recalled Tires [Docket No. NHTSA-2001-10856; Notice 3] (RIN: 2127-AI29) received August 16, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10177. A letter from the Attorney, NHTSA, Department of Transportation, transmitting the Department's final rule—Certification; Importation of Vehicles and Equipment Suject to Federal Safety, Bumper and Theft Prevention Standards; Registered Importers of Vehicles Not Originally Manufactured to Conform with the Federal Motor Vehicle Safety Standards; Schedule of Fees Authorized by 49 U.S.C. 30141 [Docket No. NHTSA-2000-8159; Notice 2] (RIN: 2127-AH67) received September 10, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10178. A letter from the Special Assistant to the Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule—Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Apalachicola, Florida) [MB Docket No. 04-32; RM-10851] received August 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10179. A letter from the Special Assistant to the Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule—Amendment of Section 73.622(b), Table of Allotments, Television Broadcast Stations; and Section 73.622(b), Table of Allotments Digital Broadcast Television Stations (El Dorado, Arkansas)—received August 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10180. A letter from the Special Assistant to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule—Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Canton, IL) [MB Dkt No. 04-97; RM-10897; RM-10898]; (Cedarville, IL) [MB Dkt No. 04-98; RM-10899]; (Clifton, IL) [MB Dkt No. 04-99; RM-10900]; (Freeport, IL) [MB Dkt No. 04-100; RM-10901]; (Pickneyville, IL) [MB Dkt No. 04-101; RM-10902; RM-10903]; (Farmersburg, IN) [MB Dkt No. 04-102; RM-10904; RM-10905; RM-10906]; (Fowler, IN) [MB Dkt No. 04-103; RM-10907]; (Madison, IN) [MB Dkt No. 04-104; RM-10908]; (Terre Haute, IN) [MB Dkt No. 04-105; RM-10909; RM-10910; RM-10911]; (Council Grove, KS) [MB Dkt No. 04-106; RM-10912]; et. al. Received August 9, 2004, to the Committee on Energy and Commerce.

10181. A letter from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule—Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (West Tisbury, MA) [MB Dkt No. 04-113; RM-10923]; (Hubbardston, MI) [MB Dkt No. 04-114; RM-10924; RM-10925];

(Laurie, MO) [MB Dkt No. 04-116; RM-10927]; (Dillsboro, NC) [MB Dkt No. 04-118; RM-10929]; (Berthold, ND) [MB Dkt. No. 04-119; RM-10930]; (Amherst, NY) [MB Dkt No. 04-120; RM-10931]; (Cordell, OK) [MB Dkt No. 04-121; RM-10932]; (Weatherford, OK) [MB Dkt No. 04-122; RM-10933; RM-10934]; (Wynnewood, OK) [MB Dkt No. 04-123; RM-10935]; (Madras, OR) [MB Dkt No. 04-125; RM-10940] Received September 7, 2004, pursuant to 5 U.S.C. to the Committee on Energy and Commerce.

10182. A letter from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule—Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations (Crisfield, Maryland; Belle Haven, Cape Charles, Exmore, Nassawadox, and Poquoson, Virginia) [MB Docket No. 02-76; RM-10405; RM-10499] received September 7, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10183. A letter from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule—Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Liberty, PA) [MB Dkt No. 04-127; RM-10941]; (Susquehanna, PA) [MB Dkt No. 04-128; RM-10942]; (Barnwell, SC) [MB Dkt No. 04-129; RM-10943]; (Burnet, TX) [MB Dkt No. 04-130; RM-10944]; (Denver City, TX) [MB Dkt No. 04-131; RM-10945]; (Van Alstyne, TX) [MB Dkt No. 04-132; RM-10946]; (Fountain Green, UT) [MB Dkt No. 04-133; RM-10947]; (Shenandoah, VA) [MB Dkt No. 04-135; RM-10949; RM-10950]; (Augusta, WI) [MB Dkt No. 04-136; RM-10951]; (Hayward, WI) [MB Dkt No. 04-137; RM-10952]; (St. Marys, WV) [MB Dkt No. 04-138; RM-10953; RM-10954] Received September to the Committee on Energy and Commerce.

10184. A letter from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule—Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Goldsboro, Smithfield, Louisburg, and Rolesville, North Carolina) [MM Docket No. 02-40; RM-10377; RM-10508] received September 7, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10185. A letter from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule—Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Anniston, AL) [MB Dkt No. 04-79; RM-10873; RM-10874]; (Somerton, AZ) [MB Dkt No. 04-83; RM-10878]; (Sutter Creek, CA) [MB Dkt No. 04-85; RM-10880; RM-10881]; (Westley, CA) [MB Dkt No. 04-86; RM-10882; RM-10883; RM-10884; RM-10885]; (Olathe, CO) [MB Dkt No. 04-87; RM-10886]; (Olathe, CO) [MB Dkt No. 04-88; RM-10887]; (Horseshoe Beach, FL) [MB Dkt No. 04-89; RM-10888]; (Live Oak, FL) [MB Dkt No. 04-90; RM-10889]; (Asbury, IA) [MB Dkt No. 04-91; RM-10890; RM-1891]; (Keosauqua, IA) [MB Dkt No. 04-92; RM-10892; RM-10893]; (Moville, IA) [MB Dkt No. to the Committee on Energy and Commerce.

10186. A letter from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule—Amendment of Section 73.202(b) FM Table of Allotments, FM Broadcast Stations (Seymour and Sellersburg, Indiana) [MB Docket No. 03-98; RM-10688] received September 7, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10187. A letter from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule—Amendment of Section 73.202(b) FM Table of Allotments, FM Broadcast Stations (Hilton Head Island, Hollywood and Port Royal, South Carolina) [MB Docket No. 02-198; RM-10513] received September 10, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10188. A letter from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule—Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations (Jasper, Florida) [MB Docket No. 02-274; RM-10560]; (Tigerton, Wisconsin) [MB Docket No. 02-275; RM-10561] received September 10, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10189. A letter from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule—Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations; and Section 73.622(b) Table of Allotments, Digital Broadcast Television Stations (Moscow, Idaho) [MB Docket No. 02-315; RM-10566] received August 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10190. A letter from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule—Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Yuba City and Lincoln, California) [MB Docket No. 04-24; RM-10846] received August 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10191. A letter from the Legal Advisor to the Bureau Chief, WTB, Federal Communications Commission, transmitting the Commission's final rule—Facilitating the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz bands [WT Docket No. 03-66; WT Docket No. 03-67; MM Docket No. 97-217; WT Docket No. 02-68; WT Docket No. 00-230; RM-10586; FCC 04-135] received September 7, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10192. A letter from the Attorney Advisor, Federal Communications Commission, transmitting the Commission's final rule—Improving Public Safety Communications in the 800 MHz Band [WT Docket 02-55]; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels [ET Docket No. 00-258]; Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems [RM-9498]; Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service [RM-10024]; et. al. Received September 10, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10193. A letter from the Senior Legal Counsel, WCB, Federal Communications Commission, transmitting the Commission's final rule—Request to Update Default Compensation Rate for Dial-Around Calls from Payphones [WC Docket No. 03-225] received September 7, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10194. A letter from the Attorney, WCB, Federal Communications Commission, transmitting the Commission's final rule—Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers [CC Docket No. 01-338]; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 [CC Docket No. 96-98]; Deployment of Wireline Services Offering Advanced Telecommunications Capability [CC Docket No. 98-147] received September 7, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10195. A letter from the Attorney, WCB, Federal Communications Commission, transmitting the Commission's final rule—Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers [CC Docket No. 01-338] received July 22, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10196. A letter from the Chief, Policy and Rules Division, OET, Federal Communications Commission, transmitting the Commission's final rule—Modification of Parts 2 and 15 of the Commission's Rules for unlicensed devices and equipment approval [ET Docket No. 03-201] received August 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10197. A letter from the Senior Legal Advisor, International Bureau, Federal Communications Commission, transmitting the Commission's final rule—Amendment of the Commission's Space Station Licensing Rules and Policies [IB Docket No. 02-34] received September 7, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10198. A letter from the Assistant Bureau Chief, International Bureau, Federal Communications Commission, transmitting the Commission's final rule—Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands [IB Docket No. 02-364]; Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems [ET Docket No. 00-258] received July 22, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10199. A letter from the Chief, Disability Rights Office, CGB, Federal Communications Commission, transmitting the Commission's final rule—Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities [CC Docket No. 90-571; CC Docket No. 98-67; CG Docket No. 03-123] received July 22, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10200. A letter from the General Counsel, Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, transmitting the Commission's final rule—Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992 [Docket No. RM93-11-002] received September 14, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10201. A letter from the Secretary, Federal Trade Commission, transmitting the Commission's final rule—Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (RIN: 3084-AA74) received September 7, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10202. A letter from the Secretary, Federal Trade Commission, transmitting the Commission's final rule—Contact Lens Rule (RIN: 3084-AA95) received September 7, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10203. A letter from the Secretary, Federal Trade Commission, transmitting the Commission's final rule—Telemarketing Sales Rule Fees (RIN: 3084-0098) received September 7, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10204. A letter from the Secretary, Federal Trade Commission, transmitting the Commission's final rule—Tire Advertising and Labeling Guides received September 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10205. A letter from the Director, Office of Congressional Affairs, Nuclear Regulatory Commission, transmitting the Commission's final rule—List of Approved Spent Fuel Storage Casks: NAC-MPC Revision (RIN: 3150-AH50) received August 16, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10206. A letter from the Director, Office of Congressional Affairs, Nuclear Regulatory Commission, transmitting the Commission's final rule—Generic Letter 2004-02: Potential impact of debris blockage on emergency recirculation during design basis accidents at pressurized-water reactors—received September 21, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10207. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 15-530, "Gallery Place Project Graphics Temporary Amendment Act of 2004," pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

10208. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 15-528, "Fleeing Law Enforcement Prohibition Amendment Act of 2004," pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

10209. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 15-529, "Alcoholic Beverage Penalty Act of 2004," pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

10210. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 15-531, "Unemployment Compensation Pension Offset Reduction Temporary Amendment Act of 2004," pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

10211. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 15-532, "Juvenile Justice Temporary Act of 2004," pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

10212. A letter from the Director, Office of Surface Mining, Department of the Interior, transmitting the Department's final rule—Indiana Regulatory Program [Docket No. IN-154-FOR] received September 27, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10213. A letter from the Acting Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting the Department's "Major" final rule—Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations (RIN: 1018-AT53) received August 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10214. A letter from the Fish and Wildlife Service, Department of the Interior, transmitting the Department's final rule—Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for the Mexican Spotted Owl (RIN: 1018-AG29) received September 24, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10215. A letter from the Acting Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting the Department's final rule—Endangered and Threatened Wildlife and Plants; Establishment of an Additional Manatee Protection Area in Lee County, Florida (RIN: 1018-AT65) received August 17, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10216. A letter from the Acting Assistant Secretary for Fish, Wildlife and Parks, Department of the Interior, transmitting the Department's final rule—Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for the Topeka Shiner (RIN: 1018-AI20) received August 17, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10217. A letter from the Assistant Secretary for Fish, Wildlife and Parks, Department of the Interior, transmitting the Department's final rule—Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Astragalus magdalenae var. peirsnii (Peirson's milk-vetch) (RIN: 1018-AI77) received August 17, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10218. A letter from the Director, Office of Surface Mining, Department of the Interior, transmitting the Department's final rule—Kentucky Regulatory Program [KY-216-FOR] received August 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10219. A letter from the Assistant Secretary, Bureau of Indian Affairs, Department of the Interior, transmitting the Department's final rule—Law and Order on Indian Reservations (RIN: 1076-AE53) received August 17, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10220. A letter from the Deputy Assistant Administrator for Regulatory Programs, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Northeastern United States; Summer Flounder Recreational Fishery; Fishing Year 2004; New York Measures [Docket No.040326103-4239-03; I.D.031504A] (RIN: 0648-AQ82) received September 15, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10221. A letter from the Deputy Assistant Administrator for Regulatory Programs, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; Final 2004 Harvest Specifications for Skates [Docket No.040223064-4136-02; I.D.020404F] received October 4, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10222. A letter from the Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; Rougheye Rockfish in the Bering Sea and Aleutian Islands [Docket No.031124287-4060-02; I.D.092004D] received October 4, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10223. A letter from the Deputy Assistant Administrator for Regulatory Programs, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota (IFQ) Program; Community Purchase [Docket No.030922237-4183-03; I.D.082503D] (RIN: 0648-AQ98) received August 17, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10224. A letter from the Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries [I.D.071504A] received August 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10225. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Western Regulatory Area of the Gulf of Alaska [Docket No. 031125292-4061-02; I.D.072204F] received August 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10226. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; Arrowtooth Flounder in the Bering Sea and Aleutian Islands [Docket No.031124287-4060-02; I.D.072604C] received August 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10227. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska [Docket No.031125292-4061-02; I.D.090904C] received September 24, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10228. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska [Docket No.031125292-4061-02; I.D.090904] received September 24, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10229. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Reallocation of Pacific Sardine [Docket No.031125290-4058-02; I.D090304A] (RIN: 0648-AQ97) received September 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10230. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; Non-Community Development Quota Trawl Gear in the Chum Salmon Savings Area of the Bering Sea and Aleutian Islands Management Area [Docket No.031124287-4060-02; I.D.091304C] received September 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10231. A letter from the Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Atlantic Highly Migratory Species; Atlantic

Bluefin Tuna Fisheries [I.D.072104B] received August 31, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10232. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #10—Adjustments of the Recreational Fishery from the U.S.-Canada Border to Cape Falcon, Oregon [Docket No.040429134-4135-01; I.D.083004B] received September 15, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10233. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #9—Adjustment of the Commercial Salmon Fishery from Humbug Mountain, Oregon to the Oregon-California Border [Docket No. 040429134-4135-01; I.D. 082604A] received September 15, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10234. A letter from the Assistant Administrator, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Atlantic Highly Migratory Species (HMS) Fisheries; Vessel Monitoring System (VMS) Requirement; Effective Date for Atlantic Shark Fisheries [Docket No.04050421-4142-01; I.D.042204B] (RIN: 0648-AS07) received August 31, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10235. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; Atka mackeral in the Gulf of Alaska [Docket No. 031125292-4061-01; I.D.072804D] received August 16, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10236. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; Flathead sole in the Bering Sea and Aleutian Islands [Docket No.031124287-4060-02; I.D.072904B] received August 16, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10237. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the West Yakutat District of the Gulf of Alaska [Docket No.031125292-4061-02; I.D.072804C] received August 16, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10238. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; Flathead Sole in the Bering Sea and Aleutian Islands [Docket No.031124287-4060-02; I.D.090204B] received, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10239. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Economic Zone Off Alaska; Trawl Gear in the Gulf of Alaska [Docket No.031125292-4061-02; I.D.092004G] received September 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10240. A letter from the Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Aleutian District of the Bering Sea and Aleutian Islands [Docket No.031124287-4060-02; I.D.070904A] received July 22, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10241. A letter from the Deputy Assistant Administrator for Regulatory Programs, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Taking of Marine Mammals Incidental to Commercial Fishing Operations; Tuna Purse Seine Vessels in the Eastern Tropical Pacific Ocean (ETP) [Docket No.040806232-4232-01; I.D.041404C] received September 24, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10242. A letter from the Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries [I.D.091604A] received October 1, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10243. A letter from the Deputy Assistant Administrator for Regulatory Programs, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries Off West Coast States and in the Western Pacific; Western Pacific Bottomfish and Seamont Groundfish Fishery; Fishing Moratorium [Docket No.04061787-4234-01; I.D.060704H] (RIN: 0648-AR85) received August 31, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10244. A letter from the Acting Director, Office of Sustainable Fishery, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska [Docket No.031125292-4061-02; I.D.072604A] received August 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10245. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Actions #5—Adjustments of the Commercial Fishery from the U.S.-Canada Border to Cape Falcon, Oregon [Docket No.040429134-4135-01; I.D.071304A] received July 27, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10246. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Actions #5—Adjustments of the Commercial Fishery from the U.S.-Canada Border to Cape Falcon, Oregon [Docket No.040429134-4135-01; I.D.071304A] received June 14, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10247. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cad by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska [Docket No.031125292-4061-02; I.D.090804A] received September 20, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10248. A letter from the Assistant Administrator for Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Northeastern United States; Atlantic Bluefish Fishery [Docket No.040507144-4213-02; I.D.043004A] (RIN: 0648-AQ85) received August 17, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10249. A letter from the Deputy Assistant Administrator for Regulatory Programs, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Authorization for Commercial Fisheries under the Marine Mammal Protection Act of 1972; Zero Mortality Rate Goal [Docket No.030630163-4205-03; I.D.052303F] (RIN: 0648-AR15) received July 27, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10250. A letter from the Deputy Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska [Docket No.031125292-4061-02; I.D.082704D] received September 14, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10251. A letter from the Deputy Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Regulatory Area of the Gulf of Alaska [Docket No.031125292-4061-02; I.D.070904E] received July 27, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10252. A letter from the Deputy Assistant Administrator for Regulatory Programs, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; Chiniak Gully Research Area for Vessels Using Trawl Gear [Docket No.040910259-4259-01; I.D.091004A] (RIN: 0648-AS60) received September 24, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10253. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska [Docket No.031125292-4061-02; I.D.090904A] received September 24, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10254. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; "Other Rockfish" in the Central Regulatory Area of the Gulf of Alaska [Docket No.031152592-4061-02; I.D.072704B] received August 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10255. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; Shortraker and Rougheye Rockfish in the Western Regulatory Area of the Gulf of Alaska [Docket No.031125292-4061-02; I.D.072704C] received August 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10256. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska, "Other Species" in the Bering Sea and Aleutian Islands Management Area [Docket No.031124287-4060-02; I.D.072804E] received August 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10257. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackeral in the Bering Sea and Aleutian Islands [Docket No.031124287-4060-02; I.D.081804A] received August 31, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10258. A letter from the Deputy Assistant Administrator for Regulatory Programs, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule—Fisheries of the Exclusive Economic Zone Off Alaska; Removal of a Harvest Restriction for the Harvest Limit Area Atka Mackeral Fishery in the Aleutian Islands Subarea [Docket No.040521156-4228-02; I.D.051704E] (RIN: 0648-AS10) received August 31, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10259. A letter from the Director, Regulations Management, Office of Regualtion Policy and Management, Department of Veterans Affairs, transmitting the Department's final rule—Board of Veterans' Appeals: Obtaining Evidence and Curing Procedural Defects (RIN: 2900-AL77) received August 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Veterans' Affairs.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. THOMAS: Committee on Ways and Means. House Resolution 776. Resolution of inquiry requesting the President and directing the Secretary of Health and Human Services provide certain documents to the House of Representatives relating to estimates and analyses of the cost of the Medicare prescription drug legislation; adversely (Rept. 108–754 Pt. 1). Ordered to be printed.

Mr. THOMAS: Committee of Conference. Conference report on H.R. 4520. A bill to amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service, and high-technology businesses and workers more competitive and productive both at home and abroad (Rept. 108–755). Ordered to be printed.

Mr. SENSENBRENNER: Committee on the Judiciary. H.R. 4264. A bill to amend title 18, United States Code, to strengthen prohibitions against animal fighting, and for other purposes; with an amendment (Rept. 108–756). Referred to the Committee of the Whole House on the State of the Union.

Mr. POMBO: Committee on Resources. H.R. 4893. A bill to authorize additional appropriations for the Reclamation Safety of Dams Act of 1978 (Rept. 108–757). Referred to the Committee of the Whole House on the State of the Union.

Mr. POMBO: Committee on Resources. H.R. 4588. A bill to amend the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 to authorize additional projects and activities under that Act, and for other purposes; with an amendment (Rept. 108–758). Referred to the Committee of the Whole House on the State of the Union.

Mr. POMBO: Committee on Resources. H.R. 4650. A bill to amend the Act entitled "An Act to provide for the construction of the Cheney division, Witchita Federal reclamation project, Kansas, and for other purposes" to authorize the Equus Beds Division of the Wichita Project (Rept. 108–759). Referred to the Committee of the Whole House on the State of the Union.

Mr. POMBO: Committee on Resources. H.R. 4775. A bill to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the El Paso, Texas, water reclamation, reuse, and desalinization project, and for other purposes (Rept. 108–760). Referred to the Committee of the Whole House on the State of the Union.

Mr. POMBO: Committee on Resources. H.R. 5135. A bill to provide for a nonvoting delegate to the House of Representatives to represent the Commonwealth of the Northern Mariana Islands, and for other purposes (Rept. 108–761). Referred to the Committee of the Whole House on the State of the Union.

Mr. REYNOLDS: Committee on Rules. House Resolution 830. Resolution waiving points of order against the conference report to accompany the bill (H.R. 4520) to amend the Internal Revenue Code of 1986 to remove impediments in such Code and make our manufacturing, service, and high-technology businesses and workers more competitive and productive both at home and abroad (Rept. 108–762). Referred to the House Calendar.

Mrs. MYRICK: Committee on Rules. House Resolution 831. Resolution waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules (Rept. 108–763). Referred to the House Calendar.

[Filed on October 8 (legislative day of October 7), 2004]

Mrs. MYRICK: Committee on Rules. House Resolution 832. Resolution waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules (Rept. 108–764). Referred to the House Calendar.

Mr. SESSIONS: Committee on Rules. House Resolution 833. Resolution providing for consideration of motions to suspend the rules (Rept. 108–765). Referred to the House Calendar.

Mr. LINCOLN DIAZ-BALART of Florida: Committee on Rules. House Resolution 834. Resolution waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules (Rept. 108–766). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. FARR (for himself, Mr. Shays, Mr. Leach, Ms. Baldwin, Mr. Van Hollen, Mr. Blumenauer, Mr. George Miller of California, Ms. Lee, Mr. Wexler, Mr. Greenwood, Ms. Solis, Ms. Eshoo, Mr. Sherman, Mr. Moran of Virginia, Mr. Berman, Mr. Honda, Mr. Grijalva, Mr. Nadler, Mrs. Maloney, Mr. Evans, Mr. Ackerman, and Mr. Inslee):

H.R. 5242. A bill to amend title 18, United States Code, to prohibit certain interstate conduct relating to captive mammals; to the Committee on the Judiciary.

By Mr. DeFAZIO (for himself, Ms. Woolsey, Mr. George Miller of California, Mr. Boswell, Mr. Costello, Mr. Abercrombie, Mr. Sanders, Mr. Scott of Virginia, Mr. Crowley, Mr. Baird, Mr. Hinchey, Mr. Holden, Mr. Gutierrez, Mrs. Christensen, Mrs. Maloney, Ms. Norton, Mr. Etheridge, Ms. McCollum, Ms. DeLauro, Ms. McCarthy of Missouri, Mr. Conyers, Mr. Moore, Mr. Pallone, Mr. Wexler, Mr. Filner, and Mr. Ford):

H.R. 5243. A bill to amend the Public Health Service Act to provide for emergency distributions of influenza vaccine; to the Committee on Energy and Commerce.

By Mr. EVANS (for himself, Mr. Filner, Mr. Gutierrez, Ms. Corrine Brown of Florida, Mr. Rodriguez, Mr. Michaud, Ms. Hooley of Oregon, Mr. Strickland, Mr. Udall of New Mexico, Mrs. Davis of California, Ms. Herseth, Mr. Baird, Mr. Kennedy of Rhode Island, Mr. Emanuel, Mr. Stenholm, Ms. Bordallo, Mr. Langevin, Mr. Faleomavaega, Mr. Abercrombie, and Mr. Larson of Connecticut):

H.R. 5244. A bill to improve programs for the identification and treatment of Post-Traumatic Stress Disorder in veterans and members of the Armed Forces, and for other purposes; to the Committee on Veterans' Affairs, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. BOEHLERT:

H.R. 5245. A bill to extend the liability indemnification regime for the commercial space transportation industry; to the Committee on Science.

By Mr. CUMMINGS (for himself, Mrs. Christensen, Mr. Towns, Ms. Corrine Brown of Florida, Mr. Meeks of New York, Ms. Lee, Mr. Bishop of Georgia, Mr. Davis of Illinois, and Mr. Fattah):

H.R. 5246. A bill to amend title 18, United States Code, with respect to voter intimidation, and for other purposes; to the Committee on the Judiciary.

By Mr. ROHRABACHER (for himself, Mr. Berman, Ms. Kaptur, Mr. Shadegg, Mr. Shimkus, and Mr. Smith of New Jersey):

H.R. 5247. A bill to encourage the promotion of democracy, free, fair, and transparent elections, and respect for human rights and the rule of law in Ukraine; to the Committee on International Relations, and in addition to the Committees on the Judiciary, and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. TAYLOR of Mississippi (for himself, Mr. Pickering, Mr. Wicker, and Mr. Thompson of Mississippi):

H.R. 5248. A bill to designate the parcel of land containing the facility of the Agricultural Research Service of the Department of Agriculture located at State Highway 26 West in Poplarville, Mississippi, as the "Thad Cochran Southern Horticultural Laboratory Site"; to the Committee on Agriculture.

By Mr. HOUGHTON:

H.R. 5249. A bill to amend the Internal Revenue Code of 1986 to provide for a nonrefundable tax credit against income tax for individuals who purchase a residential gun safe for the safe storage of firearms; to the Committee on Ways and Means.

By Mr. DEFAZIO (for himself and Mr. MICA):

H.R. 5250. A bill to amend title 49, United States Code, to make modifications to the Federal flight deck officer program; to the Committee on Transportation and Infrastructure.

By Mr. FRANK of Massachusetts (for himself, Mr. GUTIERREZ, Mr. SHERMAN, Ms. WATERS, Mr. SANDERS, Ms. WATSON, Mr. CLAY, Mrs. MCCARTHY of New York, Ms. CARSON of Indiana, Mr. HINCHEY, Mr. PAUL, Mr. RANGEL, Mr. ACEVEDO-VILÁ, Mr. BRADY of Pennsylvania, Mr. SERRANO, Mr. DELAHUNT, Mr. DINGELL, Ms. LEE, Mr. WEINER, Mr. ACKERMAN, Ms. SLAUGHTER, Ms. SCHAKOWSKY, Mr. WAXMAN, and Mrs. MALONEY):

H.R. 5251. A bill to clarify the applicability of State law to national banks, and for other purposes; to the Committee on Financial Services.

By Mr. MARKEY (for himself and Mr. WAXMAN):

H.R. 5252. A bill to amend the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act with respect to the availability to the public of information on clinical trials to determine the safety and effectiveness of drugs, biological products, and devices, and for other purposes; to the Committee on Energy and Commerce.

By Mr. ISSA (for himself and Mr. TOM DAVIS of Virginia):

H.R. 5253. A bill to make technical corrections in patent law; to the Committee on the Judiciary.

By Mr. DAVIS of Florida (for himself, Mr. KIND, Mr. SMITH of Washington, Mr. BLUMENAUER, Mr. CHANDLER, Mr. DAVIS of Alabama, Mrs. DAVIS of California, Mr. DOOLEY of California, Mr. ETHERIDGE, Mr. FORD, Ms. HOOLEY of Oregon, Mr. LARSEN of Washington, Mr. MORAN of Virginia, Mrs. NAPOLITANO, Mr. PRICE of North Carolina, and Mr. SNYDER):

H.R. 5254. A bill to amend the Internal Revenue Code of 1986 to allow employers a credit against income tax for the costs of providing technical training for employees; to the Committee on Ways and Means.

By Mr. KIND (for himself, Mr. DAVIS of Florida, Mr. SMITH of Washington, Mr. HOLT, Mr. BLUMENAUER, Mr. CHANDLER, Mr. DAVIS of Alabama, Mrs. DAVIS of California, Mr. DOOLEY of California, Mr. ETHERIDGE, Mr. FORD, Ms. HOOLEY of Oregon, Mr. LARSEN of Washington, Mr. MORAN of Virginia, Mrs. NAPOLITANO, Mr. PRICE of North Carolina, and Mr. SNYDER):

H.R. 5255. A bill to direct the National Science Foundation to establish a competitive grant program for institutions of higher education to enhance education and job training opportunities in mathematics, science, engineering, and technology; to the Committee on Science, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. ADERHOLT:

H.R. 5256. A bill to suspend temporarily the duty on Polyethylene HE2591; to the Committee on Ways and Means.

By Mr. BARTLETT of Maryland:

H.R. 5257. A bill to provide that members of the Armed Forces and Selected Reserve may transfer certain educational assistance benefits to dependents, and for other purposes; to the Committee on Veterans' Affairs, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. CUMMINGS:

H.R. 5258. A bill to provide that the Secretary of Education may give preference, in the distribution of certain grants under the Individuals with Disabilities Education Act, to local educational agencies and public or private nonprofit organizations that provide training to regular education personnel to meet the needs of children with disabilities; to the Committee on Education and the Workforce.

By Ms. DELAURO (for herself, Ms. SLAUGHTER, Ms. LEE, and Ms. ROYBAL-ALLARD):

H.R. 5259. A bill to establish the Food Safety Administration to protect the public health by preventing food-borne illness, ensuring the safety of food intended for human consumption, improving research on contaminants leading to food-borne illness, and improving security of food from intentional contamination; to the Committee on Energy and Commerce, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. DELAURO (for herself and Mr. TURNER of Ohio):

H.R. 5260. A bill to extend the life of the Advisory Committee on Veterans Business Affairs until September 30, 2006; to the Committee on Small Business, and in addition to the Committee on Veterans' Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. FOSSELLA:

H.R. 5261. A bill to amend title 39, United States Code, to provide for free mailing privileges for personal correspondence and parcels sent by family members from within the United States to members of the Armed Forces serving on active duty in Iraq or Afghanistan; to the Committee on Government Reform.

By Mr. FOSSELLA:

H.R. 5262. A bill to amend the Internal Revenue Code of 1986 to allow a deduction from gross income for uncompensated education costs incurred by veterans' survivors and dependents who are in receipt of educational assistance under chapter 35 of title 38, United States Code; to the Committee on Ways and Means.

By Mr. KING of New York:

H.R. 5263. A bill to amend the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to require that, in order to determine that a democratically elected government in Cuba exists, the government extradite to the United States convicted felon William Morales and all other individuals who are living in Cuba in order to escape prosecution or confinement for criminal offenses committed in the United States; to the Committee on International Relations.

By Mr. LANGEVIN:

H.R. 5264. A bill to authorize the use of Strategic Petroleum Reserve capacity above 700,000,000 barrels to address sustained petroleum product price increases; to the Committee on Energy and Commerce.

By Mrs. MALONEY:

H.R. 5265. A bill to amend the National Housing Act to authorize the Secretary of Housing and Urban Development to insure mortgages for the acquisition, construction, or substantial rehabilitation of child care and development facilities and to establish the Children's Development Commission (Kiddie Mac) to certify such facilities for such insurance, and for other purposes; to the Committee on Financial Services.

By Mr. McINNIS:

H.R. 5266. A bill to amend the Internal Revenue Code of 1986 to encourage investment in facilities which use woody biomass to produce electricity; to the Committee on Ways and Means.

By Mr. ORTIZ:

H.R. 5267. A bill to improve the security clearance process and increase the number of detention beds along the United States-Mexico border; to the Committee on the Judiciary.

By Mr. PETERSON of Minnesota:

H.R. 5268. A bill to amend title 49, United States Code, to require the National Transportation Safety Board to investigate all fatal railroad grade crossing accidents; to the Committee on Transportation and Infrastructure.

By Ms. PRYCE of Ohio (for herself and Mrs. MALONEY):

H.R. 5269. A bill to combat unlawful commercial sex activities by targeting demand, to protect children from being exploited by such activities, to prohibit the operation of sex tours, to assist State and local governments to enforce laws dealing with commercial sex activities, and for other purposes; to the Committee on the Judiciary.

By Mr. RENZI:

H.R. 5270. A bill to make careers in public service more feasible for students who graduate with high educational loan debt; to the Committee on Education and the Workforce.

By Mr. SHIMKUS (for himself and Mr. LAMPSON):

H.R. 5271. A bill to direct the Secretary of Defense to establish and award a decoration, to be known as the "Coalition of the Willing Medal", to members of the military services of nations participating with the United States in Operation Enduring Freedom and Operation Iraqi Freedom; to the Committee on Armed Services.

By Mr. STEARNS (for himself, Mr. OSBORNE, and Mr. KING of New York):

H.R. 5272. A bill to establish the United States Boxing Commission to protect the general welfare of boxers and to ensure fairness in the sport of professional boxing; to the Committee on Energy and Commerce, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. THOMAS (for himself, Mr. BLUNT, Mr. POMBO, Mr. HERGER, Mr. MATSUI, Mr. DOOLITTLE, Mr. TERRY, Mr. CASE, Mr. OSE, Mr. OSBORNE, Mr. NUNES, Mr. RYUN of Kansas, Mr. RADANOVICH, Mr. CARDOZA, and Mr. MOORE):

H.R. 5273. A bill to convert certain temporary judgeships to permanent judgeships, to create an additional judgeship for the district of Nebraska and for the eastern district of California, and for other purposes; to the Committee on the Judiciary.

By Mr. THOMAS (for himself, Mr. POMBO, Mr. HERGER, Mr. MATSUI, Mr. DOOLITTLE, Mr. OSE, Mr. NUNES, Mr. RADANOVICH, and Mr. CARDOZA):

H.R. 5274. A bill to create an additional judgeship for the eastern district of California, and for other purposes; to the Committee on the Judiciary.

By Mr. UDALL of New Mexico (for himself, Mr. GEORGE MILLER of California, Mr. RAHALL, and Mr. KILDEE):

H.R. 5275. A bill to provide for the remittance to certain Indian veterans of amounts withheld from military basic pay for State income tax purposes for periods of time those veterans were in active service and were domiciled in Indian country; to the Committee on Armed Services.

By Mr. VAN HOLLEN (for himself, Mr. ALLEN, Mr. BACA, Ms. CARSON of Indiana, Mr. CONYERS, Mr. CUMMINGS, Mrs. DAVIS of California, Mr. DELAHUNT, Mr. DOGGETT, Mr. EVANS, Mr. FARR, Mr. FOLEY, Mr. FRANK of Massachusetts, Mr. FROST, Mr. GORDON, Mr. GREEN of Texas, Ms. ROS-LEHTINEN, Mr. GRIJALVA, Mr. HASTINGS of Florida, Mr. HOLT, Mr. HONDA, Mrs. JONES of Ohio, Mr. KIND, Ms. LEE, Ms. MCCARTHY of Missouri, Ms. MCCOLLUM, Mr. MCDERMOTT, Mr. MCGOVERN, Mr. GEORGE MILLER of California, Mr. MORAN of Virginia, Mr. NADLER, Mrs. NAPOLITANO, Mr. OLVER, Mr. OWENS, Mr. PASTOR, Mr. PAYNE, Mr. PRICE of North Carolina, Mr. RANGEL, Mr. RUPPERSBERGER, Mr. SCHIFF, Mr. SCOTT of Virginia, Mr. SERRANO, Mr. TIERNEY, Ms. WATSON, Mr. WU, and Mr. WYNN):

H.R. 5276. A bill to require that a conversion to contractor performance of an activity or function of the Federal Government may not result in the loss of employment of any Federal worker with a severe disability employed in that activity or function; to the Committee on Government Reform.

By Mr. WEINER (for himself, Mr. KELLER, Mr. STUPAK, Mr. QUINN, Mr. ANDREWS, Mr. PLATTS, Mr. HOLDEN, Mr. ABERCROMBIE, Mr. ACEVEDO-VILÁ, Mr. ACKERMAN, Mr. ALLEN, Mr. BACA, Mr. BAIRD, Ms. BALDWIN, Mr. BECERRA, Mr. BELL, Ms. BERKLEY, Mr. BERMAN, Mr. BERRY, Mr. BISHOP of Georgia, Mr. BISHOP of New York, Mr. BLUMENAUER, Mr. BOSWELL, Mr. BOUCHER, Mr. BOYD, Mr. BRADY of Pennsylvania, Ms. CORRINE BROWN of Florida, Mr. BROWN of Ohio, Mrs. CAPPS, Mr. CAPUANO, Mr. CARDIN, Mr. CARDOZA, Mr. CARSON of Oklahoma, Ms. CARSON of Indiana, Mr. CASE, Mr. CHANDLER, Mrs. CHRISTENSEN, Mr. CLAY, Mr. CLYBURN, Mr. CONYERS, Mr. COOPER, Mr. COSTELLO, Mr. CRAMER, Mr. CROWLEY, Mr. CUMMINGS, Mr. DAVIS of Alabama, Mr. DAVIS of Illinois, Mr. DAVIS of Florida, Mr. DAVIS of Tennessee, Mrs. DAVIS of California, Mr. DEFAZIO, Ms. DEGETTE, Mr. DELAHUNT, Ms. DELAURO, Mr. DEUTSCH, Mr. DICKS, Mr. DINGELL, Mr. DOGGETT, Mr. DOOLEY of California, Mr. DOYLE, Mr. EDWARDS, Mr. EMANUEL, Mr. ENGEL, Ms. ESHOO, Mr. ETHERIDGE, Mr. EVANS, Mr. FALEOMAVAEGA, Mr. FARR, Mr. FATTAH, Mr. FILNER, Mr. FORD, Mr. FRANK of Massachusetts, Mr. FROST, Mr. GEPHARDT, Mr. GONZALEZ, Mr. GORDON, Mr. GREEN of Texas, Mr. GRIJALVA, Mr. GUTIERREZ, Ms. HARMAN, Mr. HASTINGS of Florida, Ms. HERSETH, Mr. HILL, Mr. HINCHEY, Mr. HINOJOSA, Mr. HOEFFEL, Mr. HOLT, Mr. HONDA, Ms. HOOLEY of Oregon, Mr. HOYER, Mr. INSLEE, Mr. ISRAEL, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Mr. JEFFERSON, Mr. JOHN, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. JONES of Ohio, Mr. KANJORSKI, Ms. KAPTUR, Mr. KENNEDY of Rhode Island, Mr. KILDEE, Ms. KILPATRICK, Mr. KIND, Mr. KLECZKA, Mr. KUCINICH, Mr. LAMPSON, Mr. LANGEVIN, Mr. LANTOS, Mr. LARSEN of Washington, Mr. LARSON of Connecticut, Ms. LEE, Mr. LEVIN, Mr. LEWIS of Georgia, Mr. LIPINSKI, Mr. LOBIONDO, Ms. LOFGREN, Mrs. LOWEY, Mr. LUCAS of Kentucky, Mr. LYNCH, Ms. MAJETTE, Mrs. MALONEY, Mr. MARKEY, Mr. MARSHALL, Mr. MATHESON, Mr. MATSUI, Mrs. MCCARTHY of New York, Ms. MCCARTHY of Missouri, Ms. MCCOLLUM, Mr. MCDERMOTT, Mr. MCGOVERN, Mr. MCINTYRE, Mr. MCNULTY, Mr. MEEHAN, Mr. MEEK of Florida, Mr. MEEKS of New York, Mr. MENENDEZ, Mr. MICHAUD, Ms. MILLENDER-MCDONALD, Mr. MILLER of North Carolina, Mr. GEORGE MILLER of California, Mr. MOLLOHAN, Mr. MOORE, Mr. MORAN of Virginia, Mr. NADLER, Mrs. NAPOLITANO, Mr. NEAL of Massachusetts, Ms. NORTON, Mr. OBERSTAR, Mr. OBEY, Mr. OLVER, Mr. ORTIZ, Mr. OWENS, Mr. PALLONE, Mr. PASCRELL, Mr. PASTOR, Mr. PAYNE, Ms. PELOSI, Mr. PETERSON of Minnesota, Mr. POMEROY, Mr. PRICE of North Carolina, Mr. RAHALL, Mr. RANGEL, Mr. REYES, Mr. RODRIGUEZ, Mr. ROSS, Mr. ROTHMAN, Ms. ROYBAL-ALLARD, Mr. RUPPERSBERGER, Mr. RUSH, Mr. RYAN of Ohio, Mr. SABO, Ms. LINDA T. SANCHEZ of California, Ms. LORETTA SANCHEZ of California, Mr. SANDERS, Mr. SANDLIN, Mr. SAXTON, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SCOTT of Georgia, Mr. SCOTT of Virginia, Mr. SERRANO, Mr. SHAYS, Mr. SHERMAN, Mr. SHIMKUS, Mr. SKELTON, Ms. SLAUGHTER, Mr. SMITH of Washington, Mr. SNYDER, Ms. SOLIS, Mr. SPRATT, Mr. STARK, Mr. STENHOLM, Mr. STRICKLAND, Mr. TANNER, Mrs. TAUSCHER, Mr. TAYLOR of Mississippi, Mr. TERRY, Mr. THOMPSON of Mississippi, Mr. THOMPSON of California, Mr. TIERNEY, Mr. TOWNS, Mr. TURNER of Texas, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mr. VAN HOLLEN, Ms. VELÁZQUEZ, Mr. VISCLOSKY, Ms. WATERS, Ms. WATSON, Mr. WATT, Mr. WAXMAN, Mr. WEXLER, Ms. WOOLSEY, Mr. WU, Mr. WYNN, Mr. MURTHA, and Ms. BORDALLO):

H.R. 5277. A bill to provide reliable officers, technology, education, community prosecutors, and training in our neighborhoods; to the Committee on the Judiciary.

By Mr. WEINER (for himself and Mr. MORAN of Kansas):

H.R. 5278. A bill to ensure and foster continued patient safety and quality of care by making the antitrust laws apply to negotiations between groups of independent pharmacies and health plans and health insurance issuers in the same manner as such laws apply to collective bargaining by labor organizations under the National Labor Relations Act, to ensure integrity in the operation of pharmacy benefit managers, and to preserve access standards to community pharmacies under the Medicare outpatient prescription drug program; to the Committee on Energy and Commerce, and in addition to the Committees on the Judiciary, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. WILSON of South Carolina:

H.R. 5279. A bill to suspend temporarily the duty on Nylosan red F-GS SGR; to the Committee on Ways and Means.

By Mr. WILSON of South Carolina:

H.R. 5280. A bill to suspend temporarily the duty on Basic yellow 94; to the Committee on Ways and Means.

By Mr. WILSON of South Carolina:

H.R. 5281. A bill to suspend temporarily the duty on Acid brown 298; to the Committee on Ways and Means.

By Mr. WILSON of South Carolina:

H.R. 5282. A bill to suspend temporarily the duty on Basic blue 154; to the Committee on Ways and Means.

By Mr. WILSON of South Carolina:

H.R. 5283. A bill to suspend temporarily the duty on Disperse blue 281; to the Committee on Ways and Means.

By Mr. WILSON of South Carolina:

H.R. 5284. A bill to suspend temporarily the duty on Acid red 336; to the Committee on Ways and Means.

By Mr. WILSON of South Carolina:

H.R. 5285. A bill to suspend temporarily the duty on Direct blue 90; to the Committee on Ways and Means.

By Mr. WILSON of South Carolina:

H.R. 5286. A bill to suspend temporarily the duty on 1,4-Benzenedicarboxylic acid polymer with N,N'-bis(2-aminoethyl;- 1,2-ethanediamine, cyclized, methyl sulfates; to the Committee on Ways and Means.

By Mr. WILSON of South Carolina:

H.R. 5287. A bill to suspend temporarily the duty on Acid yellow 235; to the Committee on Ways and Means.

By Mr. WILSON of South Carolina:

H.R. 5288. A bill to suspend temporarily the duty on Acid blue 324; to the Committee on Ways and Means.

By Mr. WU (for himself, Mr. BLUMENAUER, Ms. HOOLEY of Oregon, and Mr. DEFAZIO):

H.R. 5289. A bill to establish the Mark O. Hatfield-Elizabeth Furse Scholarship and Excellence in Tribal Governance Foundation, and for other purposes; to the Committee on Resources.

By Mr. CARSON of Oklahoma (for himself, Mr. COLE, and Mr. SULLIVAN):

H. Con. Res. 511. Concurrent resolution expressing the sense of the Congress with respect to Inez Sitter; to the Committee on Resources.

By Mr. CHABOT (for himself and Mr. BROWN of Ohio):

H. Con. Res. 512. Concurrent resolution expressing the sense of Congress regarding the European Union's plans to lift the embargo on arms sales to the People's Republic of China; to the Committee on International Relations, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. CROWLEY:

H. Con. Res. 513. Concurrent resolution commending the first United States kindergarten, established in College Point, New York, and for other purposes; to the Committee on Education and the Workforce.

By Mr. SESSIONS:

H. Res. 835. A resolution electing a Member to a certain standing committee of the House of Representatives; considered and agreed to.

By Mr. ENGLISH:

H. Res. 836. A resolution urging the Senate to give its advice and consent to ratification of Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organize as adopted by the International Labor Conference; to the Committee on International Relations.

By Mrs. MALONEY (for herself, Mr. Shays, Mr. Case, Mr. Sandlin, Mr. Dingell, and Mr. Cardoza):

H. Res. 837. A resolution amending the Rules of the House of Representatives to establish a standing Committee on Homeland Security and a standing Committee on Intelligence (with jurisdiction over appropriations for intelligence activities), and for other purposes; to the Committee on Rules.

By Mr. NADLER (for himself and Mr. Lantos):

H. Res. 838. A resolution expressing the sense of the House of Representatives regarding the creation of refugee populations in the Middle East, North Africa, and the Persian Gulf region as a result of human rights violations; to the Committee on International Relations.

By Mr. PITTS:

H. Res. 839. A resolution urging a peaceful resolution of the conflict over Kashmir, and for other purposes; to the Committee on International Relations.

By Mr. PITTS (for himself, Mr. Sam Johnson of Texas, Mr. Gilchrest, Mr. Bishop of Georgia, Mr. Alexander, Mr. Issa, Mr. Goode, Mr. Wilson of South Carolina, Mr. Butterfield, Mr. Jones of North Carolina, Mr. Wolf, Mr. Osborne, Mr. Kolbe, Mr. Deal of Georgia, Mr. Gary G. Miller of California, Mr. Bachus, Mr. Cunningham, Mr. Frost, Mr. Lipinski, Mr. Marshall, and Mr. Pearce):

H. Res. 840. A resolution honoring the members of the United States Armed Forces who served in the Vietnam War, and expressing the appreciation of the House of Representatives for the service and sacrifice of all veterans of the Vietnam era; to the Committee on Veterans' Affairs.

By Mr. SOUDER (for himself and Mr. Cummings):

H. Res. 841. A resolution supporting the goals of Red Ribbon Week; to the Committee on Energy and Commerce.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 295: Mr. Israel.

H.R. 434: Mr. Taylor of North Carolina and Mr. Carson of Oklahoma.

H.R. 545: Mr. McCotter.

H.R. 623: Mr. Kildee.

H.R. 677: Mr. Berry and Mr. Marshall.

H.R. 717: Mr. Rothman.

H.R. 727: Mr. Serrano.

H.R. 785: Mr. Meehan.

H.R. 792: Mr. Kucinich.

H.R. 1043: Mr. DeMint and Mr. Murphy.

H.R. 1294: Mr. Walsh.

H.R. 1322: Mr. Moran of Virginia.

H.R. 1359: Mr. Walsh.

H.R. 1477: Mr. Issa.

H.R. 1563: Mr. Holt.

H.R. 1639: Mr. Gonzalez.

H.R. 1726: Ms. Kilpatrick.

H.R. 1811: Mr. Cummings, Mr. Sabo, and Mr. Meehan.

H.R. 1812: Mr. Smith of Washington.

H.R. 1886: Mr. John and Mr. Jackson of Illinois.

H.R. 2037: Mr. Markey.

H.R. 2042: Mr. Meehan.

H.R. 2045: Mr. Taylor of North Carolina.

H.R. 2225: Ms. Schakowsky, Mr. Green of Texas, Ms. Kaptur, Mr. McDermott, Mr. Filner, Mr. Wexler, and Mr. Nadler.

H.R. 2440: Mr. Smith of Washington and Mr. Moore.

H.R. 2570: Mr. Meehan.

H.R. 2592: Mr. Cummings.

H.R. 2735: Mr. Honda and Mr. Lampson.

H.R. 2741: Mr. Filner.

H.R. 2801: Mr. Cummings.

H.R. 2823: Mrs. Christensen, Mr. Lipinski, Mr. Ballenger, and Mr. Baker.

H.R. 2950: Mr. Shimkus.

H.R. 2952: Mr. Kind.

H.R. 3438: Mr. Ryan of Ohio, Ms. Linda T. Sanchez of California, Mr. Davis of Tennessee, Mrs. Davis of California, and Ms. Solis.

H.R. 3459: Mr. Farr, Ms. Lofgren, Mr. Jefferson, Ms. DeGette, and Mr. Capuano.

H.R. 3579: Mr. Udall of Colorado.

H.R. 3634: Mr. Nadler.

H.R. 3643: Mr. Meehan.

H.R. 3656: Mr. Grijalva.

H.R. 3729: Ms. Watson and Mr. Ortiz.

H.R. 3758: Ms. DeLauro, Mr. Kennedy of Rhode Island, Mr. Berry, and Ms. McCollum.

H.R. 3780: Mr. Cummings.

H.R. 3799: Mr. Cannon.

H.R. 3810: Mr. Cummings.

H.R. 3820: Mr. Olver.

H.R. 3859: Mr. Brown of Ohio, Ms. McCarthy of Missouri, Mr. Matsui, and Mr. Rush.

H.R. 3965: Mr. Bradley of New Hampshire.

H.R. 4026: Mr. Stupak.

H.R. 4110: Mrs. Capps and Mr. Schiff.

H.R. 4150: Mr. Marshall.

H.R. 4334: Mr. Kildee.

H.R. 4343: Mr. Hefley.

H.R. 4354: Mr. Clay.

H.R. 4367: Ms. Bordallo, Mr. Cummings, Ms. Kilpatrick, Ms. Lee, Mr. Doggett, Mr. Kildee, Mr. Gonzalez, Mr. Holden, Mr. Davis of Tennessee, Mr. McIntyre, Mr. Cooper, Mr. Boyd, Mr. Bishop of Georgia, Mr. Scott of Georgia, Mr. Pastor, and Mr. Israel.

H.R. 4370: Ms. Linda T. Sanchez of California, and Mr. Tierney.

H.R. 4433: Mr. Farr, Mr. Lantos, Ms. Kilpatrick, and Mr. Andrews.

H.R. 4434: Mr. Simmons, Ms. McCollum, Mr. Wexler, Mrs. Christensen, Mr. McGovern, Mr. Oberstar, Mr. Sanders, Mr. Pomeroy, Mr. Frost, Mr. Larson of Connecticut, and Mr. Murtha.

H.R. 4463: Mr. McGovern and Mr. Cummings.

H.R. 4473: Mr. Doyle.

H.R. 4488: Mr. Lewis of Kentucky.

H.R. 4575: Mr. Lewis of Georgia and Mr. Kennedy of Rhode Island.

H.R. 4610: Mrs. McCarthy of New York.

H.R. 4669: Mr. Miller of Florida.

H.R. 4676: Mr. Berman, Ms. Woolsey, Mr. Coble, Mr. Owens, and Mr. King of New York.

H.R. 4685: Ms. Bordallo and Mr. Upton.

H.R. 4694: Mr. Hinchey.

H.R. 4706: Mr. Hoeffel, Mr. Wu, Mr. Emanuel, Mr. Blumenauer, Mrs. Tauscher, and Mr. Udall of New Mexico.

H.R. 4779: Mr. Goode.

H.R. 4849: Mr. Gordon.

H.R. 4851: Mr. Pence.

H.R. 4875: Mr. Burr.

H.R. 4902: Ms. Herseth.

H.R. 4910: Mr. Fattah, Mr. Gephardt, Mr. Meek of Florida, Mr. Engel, and Mr. Lynch.

H.R. 4927: Mr. Dicks and Mr. Moore.

H.R. 4936: Mr. Kildee.

H.R. 4940: Ms. Pryce of Ohio.

H.R. 4948: Mr. Rangel.

H.R. 4965: Mr. Wexler.

H.R. 4973: Mr. Brown of Ohio, Mr. Bell, Mr. Hinojosa, Ms. Jackson-Lee of Texas, Ms. Millender-McDonald, Mr. Duncan, and Mr. Owens.

H.R. 4986: Mr. Gordon and Mr. McCotter.

H.R. 4994: Mr. Kennedy of Rhode Island and Ms. Harman.

H.R. 5055: Mr. Dicks, Mr. Sessions, Mr. Berman, and Mr. Cox.

H.R. 5121: Mr. Davis of Florida.

H.R. 5128: Mr. Cannon and Mr. Michaud.

H.R. 5144: Mr. Gingrey and Mr. Rush.

H.R. 5150: Mr. Michaud, Mr. Baird, and Mr. Cardoza.

H.R. 5155: Mr. Hinchey.

H.R. 5166: Mr. Ballenger and Mr. McDermott.

H.R. 5167: Mr. Skelton and Mr. Alexander.

H.R. 5177: Mr. Pomeroy.

H.R. 5190: Mr. Rahall and Mr. McIntyre.

H.R. 5191: Ms. Eddie Bernice Johnson of Texas and Mr. Udall of Colorado.

H.R. 5193: Mrs. Jo Ann Davis of Virginia, Mr. Porter, Mr. Burton of Indiana, Mrs. Myrick, Mr. Sherman, Mr. McCotter, and Ms. Harris.

H.R. 5197: Ms. Herseth.

H.R. 5199: Mr. Peterson of Minnesota.

H.R. 5203: Mr. Allen.

H.R. 5211: Mr. Pitts, Mr. Farr, and Mr. Tauzin.

H.R. 5226: Mr. Otter and Mr. Jenkins.

H. Con. Res. 213: Mr. Meehan.

H. Con. Res. 441: Mr. Boozman.

H. Con. Res. 495: Mr. Snyder.

EXTENSIONS OF REMARKS

HONORING DOROTHY HUGHES

HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Ms. WOOLSEY. Mr. Speaker, I rise today to honor Dorothy Hughes, who died on July 26 at the age of 80. An activist in Marin County, California, for 35 years, Dorothy was a leader who cared deeply about her community and the people who live in it.

Born in Woodland, California, in 1923 on her parents' sheep ranch, she married Dr. Robert Leake with whom she had eight children. She attended Hamlin School in San Francisco, Stanford University, and, after her divorce, California State University in Sacramento, where she earned a master's degree. She moved to Marin in 1969.

Best known for her work on behalf of mental health programs, Dorothy was director of the Marin Association for Mental Health for two decades and was instrumental in the development of a mental health community care system. She also had a passion for children and youth, peace, human rights, and a goal of creating a caring world. She was a founder of, or active in, Community Action Marin, Fairfax-San Anselmo Children's Center, Marin Suicide Prevention Center, Buckelew Houses, Marin Family Action, Isoji, the Marin Peace and Justice Coalition, and the Campaign for a Healthier Community for Children.

Dorothy advocated both behind the scenes through lobbying and through community organizing. She was tireless in promoting the causes that will make our world a better place for all people, inspiring others with her conviction and forcefulness as well as her warmth. Her goal was nothing less than "a world that works for all of us."

When inducted into the Marin Women's Hall of Fame in 1991, Dorothy stated that it was her dream that one day there would be a progressive national policy on children and families. That is the same dream that inspires me to introduce legislation addressing the well-being of our nation's family and children . . . knowing that our future depends on them.

Dorothy is survived by her eight children, 17 grandchildren, and eight great-grandchildren, as well as her sister and her niece. She was very devoted to her family and had moved to Sacramento last November to be near them.

Mr. Speaker, Dorothy Hughes liked to call herself "an old radical," and I can think of no higher tribute. She was a radical in the best sense, one who fought for all those in society who can't fight for themselves and who believed that creating a better world through our children was both necessary and possible. I join the many people who will miss Dorothy Hughes' friendship and bright spirit.

PERSONAL EXPLANATION

HON. ROB PORTMAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. PORTMAN. Mr. Speaker, yesterday, I was absent attending to a previously scheduled commitment and missed the votes on Roll Call Number 490, on Ordering the Previous Question on H. Res. 814, the Rule for S. 878, the Bankruptcy Judgeship Act; Roll Call Number 491, on H. Res. 814, the Rule for S. 878, the Bankruptcy Judgeship Act; Roll Call Number 492, on the Simpson Amendment to S. 878; Roll Call Number 493, on a Motion to Recommit S. 878 with Instructions; Roll Call Number 494, on Passage of H.R. 163, the Universal National Service Act; Roll Call Number 495, on Passage of H.R. 2929, the Safeguard Against Privacy Invasions Act; and Roll Call Number 496 on H.R. 5011, on Passage of the Military Personnel Financial Services Protection Act.

Had I been present, I would have voted "Yea" on Roll Call Number 490, "Yea" on Roll Call Number 491; "Yea" on Roll Call Number 492, "Nay" on Roll Call Number 493; "Nay" on Roll Call Number 494; "Yea" on Roll Call Number 495; and "Yea" on Roll Call Number 496.

INTRODUCTION OF THE BETTER FUTURE FOR AMERICAN FAMILIES ACT

HON. JOHN B. LARSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. LARSON of Connecticut. Mr. Speaker, I rise today to introduce the Better Future for American Families Act. This legislation will help increase access for low- and moderate-income American families to private retirement investments. Families are struggling to make ends meet and this tax credit will give them an extra incentive to invest in their future.

Since Social Security was created in 1934, the model for retirement savings has been a three-legged stool. The three legs of that stool are: Social Security benefits, private pensions, and personal savings and investment. Without one of those legs, the stool wobbles. As Reinhard A. Hohaus, an early private-sector authority on Social Security, explained, "Each (leg) has its own function to perform and need not, and should not, be competitive with the others. When soundly conceived, each class of insurance can perform its role better because of the other two classes." Unfortunately, some are advocating for a significant weakening of Social Security by taking funds away from this leg of the stool by allowing workers to invest some of their Social Security taxes in personal accounts. Instead of weakening Social Security, I propose that we strengthen incentives for all Americans to invest in their retirement.

For years, Americans worked their entire careers with one company and could rely on a generous pension coupled with Social Security benefits to provide for a comfortable retirement. This is no longer the case. Workers change jobs more often, pensions have become less reliable in this world of Enron accounting, and the Social Security trust fund will be strained by the retirement of the baby boomers. In this environment, workers should be investing in individual retirement accounts, but due to rising costs in housing, health care, and other necessities, many families are no longer able to save for the future. While Congress has passed laws to create IRAs and 401(k) plans to encourage investment, more than 90 percent of the tax benefits the federal government offers to help families save go to households earning more than $50,000. We need to broaden these incentives to include all Americans, especially those whose struggle to cope with the costs of living here and now are causing them to ignore their future financial security.

One of the most sensible tax credits enacted by the Economic Growth and Tax Relief Reconciliation Act of 2001 was the Saver's Credit, which offered low- and moderate-income workers up to a dollar-for-dollar credit for contributions to an individual retirement account or a qualified employer-sponsored plan. The credit phases out rapidly as income rises, so this is truly a tax break for middle class Americans. Unfortunately, this tax credit is scheduled to expire in 2006. Even worse, as the Republican majority tries to extend every other tax cut from 2001, to the benefit of the wealthiest, this expiring tax credit for middle class Americans is being ignored.

My legislation would make the Saver's Credit permanent and would significantly expand the program to give help to millions by increasing benefits for families earning less than $50,000. Additionally, although 57 million taxpayers are eligible for the maximum credit on paper, 80 percent of them cannot actually benefit because they do not have income tax liability. These families need as much help as anyone and my legislation would make them eligible for the Saver's Credit by making it a refundable tax credit.

Mr. Speaker, I believe that this tax credit is the most fiscally responsible avenue for Congress to encourage personal savings and ensure that American families have financial security during their retirement years. Stripping money from Social Security only shifts the wobbling leg of the stool. This legislation would strengthen all legs and provide a solid foundation for retirement for all Americans. I encourage all of my colleagues to join me in supporting this legislation.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

RECOGNIZING THE SONOMA INDEX-TRIBUNE NEWSPAPER

HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. THOMPSON of California. Mr. Speaker, I rise today to recognize and honor the Sonoma Index-Tribune Newspaper, which has been selected as the Business of the Year by the Sonoma Valley Chamber of Commerce.

Over its 125 year history, this family-owned newspaper has won hundreds of national, state and local awards: including First Place for Best Local News Coverage by the National Newspaper Association in 2004, the Environmental Business Award from the Sonoma Ecology Center in 2003–2004, the Howard Grothe Award for Progressive Contributions to Newspaper Advertising from the California Newspaper Advertising Executives Association in 2002, the James Madison Freedom of Information Award for Investigative Journalism from the California Newspaper Advertising Executives Association in 2001, the Lincoln Steffens Investigative Reporting award from Sonoma State University and the Sonoma County Press Club in 2001, the Justice F. Craemer Newspaper Executive of the Year Award to Bill Lynch from the California Press Association in 2001, the Sonoma Valley Hospital Foundation Award in 2001 and the Community Partnership Award from the Sonoma Valley Education Foundation in 1999.

The Index-Tribune was selected to receive this award not only because of its journalistic excellence but also because the paper and the Lynch Family contribute to the community in many other ways.

The newspaper has been an exemplary employer and has been a training ground for many fine journalists throughout its history.

Over the years the paper has contributed hundreds of thousands of dollars of free advertising space to non-profit organizations serving the Sonoma Valley. CEO and President Bill Lynch and his brother, CFO and Publisher Jim Lynch have personally contributed countless hours to a variety of community organizations, including the Hanna Boys Center, the Valley of the Moon Boys and Girls Club, Sonoma Valley Hospital, Field of Dreams, Maxwell Park and the Chamber of Commerce.

Mr. Speaker, through its industry excellence, its community involvement and its employment practices, the Sonoma Index-Tribune has earned a position of prestige in the Sonoma Valley. It is appropriate for us today to honor Bill and Jim Lynch, the paper and its many employees both past and present.

HONORING MAJOR GENERAL RICHARD D. MURRAY USAF (RET) ON THE OCCASION OF HIS RETIREMENT AS PRESIDENT OF THE NATIONAL ASSOCIATION OF UNIFORMED SERVICES

HON. STEVE BUYER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. BUYER. Mr. Speaker, today I rise to honor a great American patriot and tireless worker on behalf of our military, veterans and dependents.

Major General Richard D. Murray, USAF (Ret), is retiring as the President of the National Association for Uniformed Services (NAUS), an association that he has led for the last six years. In and out of uniform, General Murray has displayed longstanding dedication to our great country in a career that spans over 50 years. For over a half century, General Murray has championed countless causes on behalf of the people who comprise the military community.

I first met General Murray just after his arrival at NAUS in 1998 where he immediately reiterated NAUS' emphasis on improving the military health system. He aggressively sought changes in law that would ensure that active duty and military retirees receive the high-quality healthcare that they earned. Despite stiff opposition from the Department of Defense, General Murray pressed hard for the government to honor the lifetime medical care promise and for the Department of Defense to implement a realistic pharmacy benefit for its Medicare-eligible beneficiaries, initiatives that I strongly supported and led as a member of the House Armed Services Committee and Veterans Affairs Committee. General Murray also initiated NAUS' unique programs such as the "NAUS Misfortune 500" program to assist lower income retirees with the high cost of their prescription drugs.

I have especially enjoyed his leadership and support for legislation I authored called "TRICARE For Life" and the Senior Pharmacy Program. His support was important to our effort and our veterans owe him a debt of gratitude.

General Murray was born in Shreveport, Louisiana, and graduated from Baylor University, Waco, Texas in 1954. He received his commission through the University's Air Force Reserve Officers' Training Corps in March 1954.

General Murray served 31 years in the United States Air Force. During his distinguished career in the Air Force, he served in various assignments in the United States and overseas in positions of increasing responsibility. His last assignment was as Commander, Army and Air Force Exchange Service from 1981 to 1985. After retiring he continued to serve as the President of the American Logistics Association.

His military decorations and awards include the Distinguished Service Medal, Legion of Merit, Bronze Star Medal, Meritorious Service Medal, Joint Service Commendation

Medal, Air Force Commendation Medal with one oak leaf cluster, Republic of Vietnam Armed Forces Honor Medal First Class and Republic of Vietnam Air Service Medal Honor Class.

I wish General Murray and his wife my very best as they devote time to their children and grandchildren.

In closing, General Murray is a man worthy of Congressional distinction in his private life and in the uniform that he has worn so honorably. I salute him. Job well done, my friend.

HONORING EDWARD UEBER

HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Ms. WOOLSEY. Mr. Speaker, I rise today to honor Edward Ueber, a dedicated public servant and a passionate defender of our nation's marine resources. He is a man with a wide range of marine experiences, an inquiring mind, and a can-do attitude—all attributes that he has brought to bear in a 28-year career working first for the National Marine Fisheries Service and then the National Marine Sanctuary Program, where until recently he has served as the longtime manager of the Gulf of the Farallones and Cordell Bank National Marine Sanctuaries.

Ed Ueber has sea salt in his veins. As a teenager in the fifties he was a fisherman and seafood merchant. In the next twenty-five years he navigated and piloted Navy submarines and Merchant Marine ships, worked at a shipyard, earned an advanced degree in fisheries resource economics and management, consulted for the government of Brazil on fisheries management and was a University of Connecticut researcher.

With all of this nautical background, the National Marine Fisheries Service was lucky to have him come aboard as a fisheries economist in 1976. During that period, Ed published a number of peer review papers on a wide range of fisheries and resource issues.

By the late '80s Ed Ueber had amassed a wealth of experiences that for most people would have been a career in itself. But in 1990, when Ed was appointed the Manager of the Gulf of the Farallones National Marine Sanctuary and a year later Manager of the brand new Cordell Bank National Marine Sanctuary, he began to take on legendary status. Ed Ueber, the resources economist, rolled up his sleeves and once again became a sailor, making the rounds of the sometimes-rough waters of the two Sanctuaries, and navigating the political shoals onshore.

Ed successfully fought a plan to indirectly dump wastewater into the Gulf of the Farallones; dealt with several oil spills, and a forgotten radioactive dumpsite at sea. At the same time, he brought the Sanctuary program to the public by creating the first Marine Sanctuary Beach Watch program, the SEALS harbor seal protection and education program, the Farallones Marine Sanctuary Association and opening three visitor centers.

Ed also upheld the Sanctuary program's scientific mission with an intertidal monitoring program, a new ecosystem oceanographic evaluating system, and deep-sea studies.

He was and is immensely knowledgeable, with a disarming and impish sense of humor. And with those who would threaten the Sanctuary's resource he is a skillfull negotiator and tough when he has to be. He is a communicator who can speak the language of researchers, fishermen, environmentalists, beach lovers—and even bureaucrats if he really tries.

Ed Ueber's love of the ocean and its creatures manifests itself in fierce protectiveness. He personifies the ideals of the National Marine Sanctuary Program.

This week as we honor the 15th Anniversary of the Cordell Bank National Marine Sanctuary, one of the most biologically productive underwater areas on the planet, I also honor Ed Ueber, its first manager, a man to match the bounteous and awe-inspiring resource he has protected for so many years.

IN OPPOSITION TO H.R. 163, THE UNIVERSAL NATIONAL SERVICE ACT

HON. ROB PORTMAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. PORTMAN. Mr. Speaker, I regret that a previous commitment prevented me from being present to vote on H.R. 163, Mr. Rangel's Universal National Service Act.

This proposal would require that all young persons in the United States, including women, perform a period of military service or a period of civilian service for the national defense and homeland security. Had I been present, I would have voted "no."

Both the President and the Secretary of Defense have stated on more than one occasion that there is no need for a draft for the War on Terrorism or any likely contingency, such as Iraq. I believe the All-Volunteer Military Force has operated effectively for over thirty years. I fully agree with the Administration that there is no need for a military draft, and I do not support the Rangel bill.

TRIBUTE TO MICHAEL W. NYE

HON. JOHN B. LARSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. LARSON. Mr. Speaker, I rise today to recognize and offer my congratulations to Mr. Michael (Mike) W. Nye, Director of Investigations, Office of Inspector General of the House of Representatives, for his outstanding career and service to the House of Representatives for the past six years, and to the Federal Government for thirty-two years. Mike will be retiring from the House this month after previously serving as a judge advocate in the U.S. Air Force, from which he retired in the rank of Colonel. Prior to joining the House Office of Inspector General, he also served as Counsel to the Inspector General of the Marine Corps. During his career, he gained widespread legal experience and has provided invaluable counsel to the House Inspector General and his colleagues at the House on a wide range of legal issues.

Mike put his skills to good use at the House and his advice and counsel has been widely sought as we strive to continuously improve controls and security over the financial and administrative operations of the House. His energy and "can do" attitude were an example to all of us and his keen insights into legal matters helped assure that the Office of Inspector General's reports consistently met our needs by providing candid and reliable advice on all aspects of House operations.

Always the consummate professional, Mike will be sorely missed by all of his colleagues, but he can take pride and satisfaction in his service to our great nation. Truly, Mike was one of those rare individuals who made a real difference by improving every organization in which he served. Once again Mr. Speaker, I would like to congratulate Mike on his career and outstanding service to the House, and to wish him, and his lovely wife Judy, much happiness as they pursue new challenges in retirement.

IN RECOGNITION OF THE 75TH ANNIVERSARY OF THE CALIFORNIA HIGHWAY PATROL AND THE CHP OF LAKE COUNTY

HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. THOMPSON of California. Mr. Speaker, we rise today to pay tribute to the California Highway Patrol (CHP) in Lake County, California.

For the past 75 years, the CHP has had the motto "Safety, Security and Service." This reflects the mission and the intent of the CHP in Lake County.

The Lake County CHP consists of 32 uniformed members and five civilians. They are commanded by Lieutenant D.R. Hayward. In addition, a Vehicle Theft Investigator, Mobile Commercial Vehicle Inspector and a Motor Carrier Specialist are permanently deployed in the Lake County region. They are responsible for traffic and general law enforcement on roadways that cover 1825 square miles.

The Lake County CHP's commitment to the citizens of Lake County includes a very successful community outreach program. This program combines a dedicated community outreach officer along with Senior Volunteers and Explorers who act as a conduit for not only the general community but the Native American communities to interact with the Department and voice their concerns.

The Lake County CHP won the 2003 California Chief's Challenge as well as recognition for the 2003 Pedestrian Safety Corridor grant which was successful in reducing fatal collisions to zero during the duration of the grant.

The commander has implemented a collective program with Caltrans to continuously identify and mitigate any safety related highway designs. This program has had a quantifiable effect on reducing collisions and increasing traffic safety within the community.

Therefore, Mr. Speaker and colleagues, it is most appropriate that we acknowledge and honor the CHP in Lake County for their service to the community. The CHP of Lake County has established a standard of dependability, bravery and hard work that should be followed in all communities.

HONORING MS. ELSA BIRCHWOOD ON THE OCCASION OF HER RETIREMENT AS DIRECTOR OF THE CHIEF OF THE ARMY RESERVE'S STAFF GROUP

HON. STEVE BUYER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. BUYER. Mr. Speaker, I rise today to note the departure of a great lady and a good friend, Ms. Elsa Birchwood, the Director of the Chief of the Army Reserve's Staff Group. For the past ten years, Ms. Birchwood served as a superb leader, counselor, mentor, and confidant not only within her own office, but also earned the respect from other components of the Department of Defense. She served with great distinction in a full military career that began with her enlistment in the Active Army, duty as a drill sergeant, and ultimately as a commissioned officer in the Active Guard and Reserve Program. Throughout this period, she proved herself to be an outstanding leader and thoroughly professional staff officer of great experience and compassion.

Ms. Birchwood's loyalty and reputation led to her return to Federal service in January 1994 as a civilian military personnel management specialist in the Office of the Chief, Army Reserve. She applied her skills to her congressional liaison activities, the White House and Executive Branch agencies. She was an invaluable point of contact for legislative matters and always made herself available to Members of Congress and their staffs. She responded rapidly to inquiries regarding Army Reserve programs and policies and individual personnel management problems. Her cooperative spirit, determination and perseverance gained her and the Department of Defense many friends and much good will.

Ms. Birchwood's reputation for candor and integrity spread throughout the Reserve community and senior leadership in the Washington area. By the time she was appointed the Director of the Chief, Army Reserve's Staff Group, she had become something of a legend and a cultural hero as an advisor to the Chiefs of the Army Reserve, other general officers, and their staffs. She was an enlightened manager, anticipating emerging issues before they impeded the agency's involvement in the Global War on Terror.

Despite myriad demands on her time, Ms. Birchwood always responded with detailed advice and refreshing candor. She mentored her subordinates and assisted in their professional development. She took personal and professional responsibility to prepare those she supervised to perform up to their potential and she never shirked that responsibility. She was at once enthusiastic and practical, offering long-range advice and suggesting specific immediate courses of action for achieving professional goals and objectives.

At the end of the day, Elsa Birchwood stands as a splendid role model for all who aspire to meaningful public service. She served her country well as a private soldier and officer, and as a distinguished civil servant. She rose to the grade of GS–15 and served with great distinction as a supervisor, mentor, counselor, and friend. Elsa never forgot that she was first a soldier. Elsa Birchwood deserves our thanks, and I salute her lifetime of service to America. We are proud of you and your legacy is now the standard. Job well done, my friend.

RECOGNIZING SPIRIT OF JACOB MOCK DOUB AND EXPRESSING SENSE OF CONGRESS THAT "NATIONAL TAKE A KID MOUNTAIN BIKING DAY" SHOULD BE ESTABLISHED IN JACOB MOCK DOUB'S HONOR

SPEECH OF

HON. RICHARD BURR

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 5, 2004

Mr. BURR. Mr. Speaker, I rise today in support of the resolution, and do so on behalf of the 400 members of the International Mountain Bicycling Association in North Carolina, as well as the 1,500 members of affiliated cycling clubs.

It is appropriate that the House is considering this resolution today. On Saturday, I.M.B.A. brought together kids and adults across the country to hold the first "National Take A Kid Mountain Biking Day."

According to the Surgeon General, the percentage of youth that are overweight has nearly tripled in the last twenty years. Forecasts predict that the current generation of our children could actually have a shorter life expectancy than their parents. Childhood obesity is reaching epidemic proportions. Overweight adolescents have a 70% chance of becoming overweight or obese adults. NIH research indicates that the large increase in childhood obesity rates can be traced to overeating and a lack of exercise.

This resolution, Mr. Speaker, was drafted in memory of Jack Doub, an avid teenage mountain biker who had a passion for introducing others to the sport. Jack saw the need for kids to get off the couch, get outside, and get some exercise. After being introduced to mountain biking at age 11 near Grandfather Mountain, North Carolina, he won almost every cross-country race he entered for two years. Between the ages of 14 and 17, he became a top national-level downhill and slalom competitor. He actively encouraged others—particularly kids—to ride bicycles. He was a leader in every sense of the word.

I urge my colleagues to support this resolution.

UNIVERSAL NATIONAL SERVICE ACT OF 2003

HON. NEIL ABERCROMBIE

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. ABERCROMBIE. Mr. Speaker, I rise in opposition to H.R. 163, a bill to re-instate the draft. I oppose the draft and do not want to see it brought back.

I added my name to this bill in order to promote an open, honest public discussion of the personnel crisis facing our military today, and in that sense I welcome today's vote. It is unfortunate, however, that H.R. 163 is being brought to the floor with only a few hours notice, depriving the American public of the extended exploration this problem deserves.

It is not a coincidence that today's vote is taking place as public uneasiness is rising with regard to the draft. It is obvious to everyone that the demands of military operations in Iraq and Afghanistan are narrowing the Administration's options. Our regular divisions and brigades are stretched to the limit. The Reserve and National Guard are being drawn upon to the point where they now comprise nearly half of all U.S. troops in Iraq. Stop loss is the order of the day, holding servicemen and women in uniform past their discharge dates. We're even dipping into the Individual Ready Reserve, calling up people who have completed not only their active duty obligations, but their active reserve obligations as well. Under these circumstances, the growing suspicions of the Administration's intentions in regard to a draft are well-founded.

In fact, I have found confirmation of those suspicions. KITV television news of Honolulu reported last night on a February 11, 2003, Selective Service System document which was provided to me recently and which I have shared with several of my colleagues. Judging from its contents, it appears to be a memo prepared for a meeting between the Acting Director of the Selective Service, the Principal Deputy Undersecretary of Defense for Personnel and Readiness, and other senior Defense and Selective Service officials. The document takes note of critical shortages of military personnel with certain skills and raises the idea of drafting them to alleviate the shortages.

Features of this "bring back the draft" memo include:

—Draft registration for women as well as men;

—Registration of all citizens and resident aliens between the ages of 18 and 34;

—Require registrants to submit periodic updates of their skills and education up to the age of 35;

—Draftees would be sent not only into the military, but also to the Department of Homeland Security, state, and municipal government agencies; and

—Suggests the House and Senate Armed Services Committees be asked to pass legislation to bring back this expanded draft.

The public deserves the chance to fully consider and discuss these radical ideas and participate meaningfully in any decision to adopt such drastic steps to address the very real personnel needs of our military forces stemming from the demands of multiple deployments to Iraq, Afghanistan, and beyond. Bringing H.R. 163 to the floor for a vote without hearings, without warning, deprives the Nation and the Congress of an opportunity for that full consideration and discussion.

Right now we have a back door draft, euphemistically called stop loss orders, that keeps troops in uniform even after their enlistments are over. At the same time, we are putting our National Guard and Reserve under intolerable strain, keeping them on active duty far longer than they or their families could have anticipated.

One of the most frustrating aspects of these problems is that they were foreseeable. General Eric Shinseki, then Army Chief of Staff, accurately predicted we would need far more troops than the Administration was willing to commit to occupy Iraq. He was publicly condemned by the Administration for telling the truth. I voted against the Iraq war because, among other reasons, it was clear the Administration was unwilling to send enough troops to pacify that country after the initial military attack. Paul Bremer, the former chief of the Coalition Provisional Authority, just confirmed that fact in a speech yesterday.

If we are to meet this troop strength crisis, a serious and open discussion needs to take place involving the public, elected leaders, and senior national security officials. The Administration wants to operate in secret in order to hide that discussion from the public. Bringing H.R. 163 to the floor for a vote is a partial victory for public discussion, a reflection of the public's insistent concern over the issue. On the other hand, the furtive way in which it was brought to the floor is a partial victory for those who want to keep the issue in the shadows.

We have been dealing with this matter for years in the Armed Services Committee. During the 14 years that I have served on the Committee, the questions have never been as urgent as they are now:

—What happens if a quick victory in Iraq is elusive, and we remain there for years to come?

—What troop strength levels and mix of active, National Guard, and Reserves will be needed in the coming years?

—Can the all-volunteer military keep its ranks filled?

—If not, what options does the nation have?

—How can we get better pay, benefits, and quality of life improvements to attract and retain enough troops and their families?

As a member of the Armed Services Committee, I work on a daily basis with my colleagues and military leaders in the search for answers. It is a long and often difficult process. Its worth is measured in improvements in the lives of our fighting men and women, their families, and our veterans.

I was proud to vote for badly needed equipment like Humvee armor protection and stronger body armor for troops in Iraq and Afghanistan. I have championed better military family housing for troops based in my home state of Hawaii and around the globe. I was one of the authors of the Tricare for Life bill, which provides military retirees with the health coverage they were promised when they enlisted.

What solutions are offered by those who want to pretend we don't face a military personnel crisis? Do they support the Administration's covert moves—despite public denials—to restart the draft? What do they have to say about the stop loss orders that deny thousands of troops and their families the post-service opportunities they were led to expect? How do they propose to deal with our over-reliance on the National Guard and Reserves, which are already strained to the limit? Most importantly, will they discuss these issues fully and openly, or do they want them decided in secret?

TRIBUTE TO THE LATE FRANK FOX

HON. DONNA M. CHRISTENSEN

OF THE VIRGIN ISLANDS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mrs. CHRISTENSEN. Mr. Speaker, today in the U.S. Virgin Islands, on my island of St. Croix, residents from all walks of life will gather to remember and pay tribute to Frank J. Fox.

Frank Fox was the president of the St. Croix Chamber of Commerce from 2002 to 2003. But his service to St. Croix and the entire Territory did not begin or end there. He lent his time and talents to a variety of task forces, commissions and committees such as the Governor's Economic Development Committee, The Cruise Ship Task Force, the U.S. Coast Guard Auxiliary, the Navy League, the Landmark Society, Our Town Frederiksted, and St. Croix Friends of Denmark to name but a few. He was also a member of Rotary Mid Island.

But even beyond these Frank and his beloved wife, Beverly were everywhere. They truly adopted St. Croix as home, and did everything they could to make it a better, and more vibrant place for everyone.

Mr. Speaker, Regrettably, due to pressing matters up here, I will not be there at the memorial service. And I know that this is where Frank would insist that I be.

Frank lent his expertise to me, during a very difficult political time—when I had introduced and was shepherding the bill to create a Chief Financial Officer for the Virgin Islands. Often as he offered his opinion or advice, he would preface it with "For whatever it is worth." I can tell you, and others who benefited from his counsel would attest, whatever he said was worth a lot!

I had the pleasure of serving with Frank on the VI EpsCor (Virgin Islands Experimental Program to Stimulate Competitive Research), where he was the first Chairman. He gave generously of his time, and expertise, and led us through a very successful launching in which the University received the first ever grant to a territory.

He will be fondly remembered for all of the above, but never more than every August when we as a community gather to greet new teachers. It was during his tenure as Chamber president that this activity, which is now tradition, began. It demonstrates the depth of his insight into what is important to the future of the Virgin Islands, and more importantly his commitment to that future. He knew and showed us through his life and service, the importance of the "village," and its responsibility to our children.

Mr. Speaker, we were all shocked to hear that this man, so full of life, had left us. We will always be grateful for his friendship, and for his service to our community.

We send our heartfelt condolences to his wife Beverly and his family. And we thank her for sharing this wonderful man with us so generously.

TRIBUTE TO MRS. MARY TOWLES SASSEEN WILSON

HON. ED WHITFIELD

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. WHITFIELD. Mr. Speaker, I rise today to honor the legacy of Mrs. Mary Towles Sasseen Wilson, a distinguished native of Henderson, Kentucky, which I have the pleasure of representing in the House. In recognizing Mrs. Wilson, we also pay tribute to all mothers in this great Nation, as she is responsible in large part for the origination of the Mother's Day holiday.

In 1860, Mrs. Wilson was born Mary Towles Sasseen in western Kentucky. She spent most of her life in Henderson as a school teacher. Had she never become involved in the development and spread of Mother's Day, she still would have been recalled fondly by many western Kentuckians as a tireless, caring, and effective educator.

However, Wilson's story was not to end there. Spurred by the love and devotion she felt for her own mother, in 1887 Mary Sasseen held her first public Mother's Day celebration at the Center Street School in Henderson. In 1893 she published and dedicated to her mother a pamphlet entitled Mother's Day Celebration, which defined the holiday and suggested readings and activities suitable for its celebration.

In subsequent years she worked diligently toward the introduction of Mother's Day observations at schools and towns in Kentucky and elsewhere. When Sasseen attempted in 1899 to become one of the region's earliest female elected officials by running for Superintendent of Public Instruction, commentary regarding the campaign cited her as "the author and originator of Mother's Day."

Although Sasseen's attempts to win elective office failed, she continued to work for the furtherance of Mother's Day in America. In 1904 she married Judge William Marshall Wilson and moved to Freeport, Florida, which was to be the site of her untimely death in 1906. Less than a decade later, in response to the efforts of other notable Mother's Day advocates in the tradition of Mrs. Wilson, President Woodrow Wilson signed a joint resolution designating the second Sunday in May as Mother's Day.

Mrs. Wilson's efforts were recognized by the Kentucky General Assembly in 1926, when it passed a resolution acclaiming Mary Towles Sasseen as "the originator of the idea of the celebration of Mother's Day" and giving her credit for "her splendid work in attempting to bring to the minds of children everywhere the full admiration, respect, and love due our mothers."

I believe, Mr. Speaker, that these are efforts no less worthy of commendation today than when they were first carried out and honored over a century ago. It is my distinct pleasure to bring to the attention of this House the noteworthy legacy of Mrs. Wilson and all of the mothers she worked so hard to honor.

PERSONAL EXPLANATION

HON. RICK RENZI

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. RENZI. Mr. Speaker, on Tuesday, October 5, 2004, I was unavoidably detained and missed the last vote of the day. Had I been present I would have voted "yea" on H.R. 5011, the Military Personnel Financial Services Protection Act.

PERSONAL EXPLANATION

HON. DEBORAH PRYCE

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Ms. PRYCE of Ohio. Mr. Speaker, on the legislative day of Tuesday, October 5, 2004, the House had a vote on rollcall 494, on H.R. 163, a bill to provide for the common defense by requiring that all young persons in the United States, including women, perform a period of military service or a period of civilian service in furtherance of the national defense and homeland security, and for other purposes. Had I been present, I would have voted "no."

The House also had a vote on rollcall 495, on H.R. 2929, a bill to protect users of the Internet from unknowing transmission of their personally identifiable information through spyware programs, and for other purposes and rollcall 496, on H.R. 5011, a bill to prevent the sale of abusive insurance and investment products to military personnel. Had I been present, I would have voted "aye" on both.

HONORING CITY OF MONTEVIDEO

HON. COLLIN C. PETERSON

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. PETERSON of Minnesota. Mr. Speaker, I rise today to honor the City of Montevideo who received the National Civic League 2004 All-America City Award.

The City of Montevideo is located in the southern part of the 7th Congressional District of Minnesota, where the prairie meets the Minnesota River Valley. Montevideo is a small rural community that has made a large impact in the surrounding area and through the Nation.

Although I have only represented Montevideo for a short period, they have been a shining example of a progressive community that has been able to keep their identity in a changing world. Most people round these parts have a mutual respect for preserving the outdoors while balancing economic growth and development. People who live in Montevideo maintain a quality of life filled with family and civic responsibilities. They take pride in public service and volunteering.

If the All-America City Award is described as ". . . a Nobel Prize for constructive citizenship," then the City of Montevideo is an excellent example. The All-America City Award encourages and recognizes civic excellence, honoring the communities in which citizens, government, business, and non-profit organizations demonstrate successful resolution of critical community issues.

Whether you are picnicking along the Chippewa River or biking aside the Minnesota River, the City of Montevideo is a wonderful example of what a community is supposed to be. I am proud to represent the City of Montevideo and congratulate them on their outstanding performance among a Nation of communities.

TRIBUTE TO COY DEAN FORTSON

HON. FRED UPTON

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. UPTON. Mr. Speaker, I rise today to pay tribute to Coy Dean Fortson who regretfully passed away recently. A life-long resident of Berrien County, Michigan, Coy was a dedicated family man whose extensive charity and dedication to local individuals and the community as a whole made southwest Michigan an even greater place to live and grow.

Coy valiantly served his country in the U.S. Air Force during the Korean War, and was a member of the Air Force Reserves for more than 30 years. Over his inspiring career at the Whirlpool Corporation, Coy helped to improve the lives of countless individuals who had the fortune of crossing his path. There is no question that Coy's passion for the betterment of our corner of Michigan will be greatly missed. He undoubtedly touched many lives as a member of Berrien County's FEMA Emergency Planning and Response Team. Coy also served on the Board of Directors for the local public library, where he spent many hours volunteering in order to expand the availability of educational resources for our extended community.

On behalf of the Sixth District of Michigan, our prayers and sincere regards go out to Coy's family and friends—he will certainly be deeply missed.

CONGRATULATIONS TO GREATER TULSA AREA HISPANIC AFFAIRS COMMISSION

HON. JOHN SULLIVAN

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. SULLIVAN. Mr. Speaker, I want to extend my congratulations to the Greater Tulsa Area Hispanic Affairs Commission in Tulsa, Oklahoma, for 25 years of service to the Hispanic community.

Then Mayor, James M. Inhofe, and Jack and Aurora Ramirez Helton formed the Greater Tulsa Area Hispanic Affairs Commission in 1979. A city ordinance and county resolution were enacted so that the Commission would continue in the future. In 1979 only a few cities in the United States had such a commission. The Commission's current work includes annual youth exchanges and adult exchanges, which are an established part of their partnership with Tulsa's Eisenhower International School. Eisenhower has the United States' only elementary school international exchange program in its relationship with San Luis Potosi's Instituto Cervantes.

May the commission have many more years of such valuable community service and prosperity.

HONORING TAIWAN PRESIDENT CHEN SHUI-BIAN

HON. JOHN BOOZMAN

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. BOOZMAN. Mr. Speaker, I join my colleagues in honoring Taiwan President, Chen Shui-bian, and his people on the occasion of their October 10 National Day.

In the past two decades, Taiwan has truly emerged as a model Asian country. Secretary Powell said it well when he remarked, "Taiwan has become a resilient economy, a vibrant democracy and a generous contributor to the international community." In fact, Taiwan's economy is the 16th largest in the world. One third the size of Virginia, Taiwan produces a Gross National Product that is four-fifths the size of Australia's.

In addition, Taiwan's democracy gives its people a full range of political and civil rights, including freedom of speech and assembly. Taiwan also contributes to international causes. For example, in the last 10 years, Taiwan has given $100 million dollars to 78 countries and Taiwan is now providing a significant amount of humanitarian assistance to refugees in Afghanistan and Iraq.

Mr. Speaker, Taiwan has become a close friend of the United States. Our relationship with Taiwan is multifaceted and wide-ranging. While we do not have formal diplomatic relations with Taiwan, our mutual relationship has been able to flourish over many years. The United States and Taiwan have many common interests and shared values. Taiwan has been supportive of the United States, including our efforts in the war against global terror. In turn, the United States should help Taiwan return to the World Health Organization and the United Nations and commit ourselves to the Taiwan Relations Act, thus assuring Taiwan's security.

It is clear to us that the 23 million people of Taiwan prefer the status quo in the Taiwan Strait. They prefer peace, stability and continued prosperity instead of dramatic changes that might undermine or endanger what they have achieved. To reflect the will of the people, in his May 20 inaugural address to the Taiwanese people, Taiwan President Chen Shui-bian was very conciliatory toward China and offered to open talks with China without pre-conditions. In fact, he did not rule out any form of relationship with China as long as it would be acceptable to the people of Taiwan. During this difficult time, the United States should support Taiwan's security, dignity and sovereignty. We should listen to the 23 million people of Taiwan and heed their desire for continued peace and democracy.

Mr. Speaker, in closing I wish to congratulate Taiwan ambassador, Dr. David Lee, and the people of Taiwan on their National Day and wish them every success in their year-end legislative elections.

RECOGNIZING GARY, INDIANA MEMBERS OF NAACP

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. VISCLOSKY. Mr. Speaker, it is my distinct pleasure to recognize and commend the members of the Gary, Indiana branch of the National Association for the Advancement of Colored People (NAACP). On Friday, October 15, 2004, the Gary NAACP will hold its 44th Annual Mary White Ovington Awards Banquet at St. Timothy Community Church's Fellowship Hall in Gary, Indiana.

This annual event is a major fundraiser for the Gary branch of the NAACP. The funds generated through this activity, and others like it, go directly to the organization's needed programs and advocacy efforts. In addition, the dinner serves to update and keep the community aware of the activities, accomplishments, and accolades of the local and national chapters of the NAACP on an annual basis.

The featured speaker at this gala event will be Dr. Mary Steele. Dr. Steele is the Superintendent of the Gary Community School Corporation. This is a celebration of the 50th Anniversary of the Brown vs. Board of Education, the 75th Birthday of Dr. Martin Luther King, Jr. and the 39th Anniversary of the Voting Rights Act. This year's theme is "The Race Is On. The Time Is Now." The NAACP Gary Branch will honor members of the community that have contributed to the cause of civil rights, labor and industry, the community, and its organization.

On February 12, 1909, the National Association for the Advancement of Colored People was founded by a multiracial group of activists, and their goal among many was to secure the political, economic, and social rights of all African Americans. For more than 95 years, the NAACP built and grew on the collective courage of thousands of people. As the Nation's oldest and largest civil rights organization, the NAACP has worked successfully with allies of all races who believe in and stand for the principles on which the organization was founded. Throughout its history, some of America's greatest minds have worked to effect change.

The Gary NAACP was organized by a group of residents that felt there was a need for an organization that would monitor and defend the rights of African Americans in Northwest Indiana. The national organization, of which the Gary branch is a member, focuses on providing better and more positive ways of addressing the important issues facing minorities in social and job-related settings. Like the national organization, the Gary branch of the NAACP serves its community by combating injustice, discrimination, and unfair treatment in our society.

Mr. Speaker, I ask you and my other distinguished colleagues to join me in paying tribute to the members of the Gary NAACP for the efforts, activities, and leadership that these outstanding men and women have championed to improve the quality of life for all residents of Indiana's First Congressional District.

TRIBUTE TO DALLAS CHAFFINS

HON. HAROLD ROGERS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. ROGERS of Kentucky. Mr. Speaker, I rise today to pay tribute to Dallas Chaffins, an upstanding resident of the Fifth Congressional District of Kentucky. Chaffins, a 73-year-old coal miner in Eastern Kentucky, has been working underground for 56 years without ever having a lost-time injury. This remarkable accomplishment has earned him numerous awards and commendations, and I believe he deserves our recognition as well.

Born in Big Rock, Virginia, Dallas Chaffins started working in the coal mines on April 5, 1948, at the Buchanan Coal Company. Although he was only 17-years-old then, he had already been working for 6 years with his father in the timber industry. It's obvious that Dallas had a strong work ethic instilled in him from the time he was a little boy.

Throughout the next 6 decades, Dallas worked determinedly in the mines. During his career, he only took 2 years off, from October 1951 to October 1953, so he could serve his country in the United States Marine Corps.

And he's not quite ready to throw in his helmet yet.

He still rises each morning long before the sun does and heads to the mines to greet his coworkers with a handshake and a smile. You see, Dallas is known as much for his friendly disposition as he is his impeccable safety record. He attributes this characteristic to his devout faith in God. "I believe if a person keeps his own conscience clean that he will shine on the outside," he recently told a reporter for a Kentucky newspaper. "I think the Lord has blessed me with this. Yes, I give him all the credit."

In addition to being a friend and mentor, and source of joy to countless miners throughout the years, Chaffins has reared 12 children and now enjoys spending time with 26 grandchildren.

Mr. Speaker, on behalf of my colleagues and myself, I want to congratulate Dallas Chaffins on 56 years of tireless, careful service in the mines. His hard work and integrity is an inspiration to others, both young and old, and Eastern Kentucky is a better place because of him.

HONORING DR. ROGER W. LITWILLER

HON. BOB GOODLATTE

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. GOODLATTE. Mr. Speaker, I rise today to pay tribute to a leader in the field of medicine and an outstanding citizen of the Commonwealth of Virginia, Roger W. Litwiller, M.D.

Dr. Litwiller soon will complete his term as national president of the American Society of Anesthesiologists (ASA). It is my pleasure to recognize one of the Roanoke Valley's own as the 2003–2004 president of this prestigious national organization that is recognized worldwide for its outstanding work in improving patient safety.

Founded in 1905, ASA is the predominant professional organization representing more than 39,000 anesthesiologists. Since its founding, ASA has been the leader in the development of patient safety standards and guidelines for the delivery of safe patient care before, during and after surgery. Efforts on the part of the organization and its members are recognized throughout the scientific and medical communities. The Institute of Medicine, in its 1999 report on medical errors, recognized the successes of organized anesthesiology in improving patient outcomes.

Anesthesiologists either directly administer or supervise 90 percent of all anesthetics performed throughout this country, in hospitals and outpatient surgical centers, and in urban and rural areas. Besides the operating room, anesthesiologists are often found treating patients' pain and delivering critical medical care to patients in hospital intensive care units, emergency rooms and diagnostic facilities.

Dr. Litwiller received his medical degree from the University of Florida College of Medicine in Gainesville, Florida, and completed his anesthesiology residency at Case Western Reserve University in Cleveland, Ohio, and the University of Virginia in Charlottesville, Virginia.

He is currently a staff anesthesiologist for Carilion Roanoke Memorial Hospital, Roanoke, Virginia; Montgomery Regional Hospital, Blacksburg, Virginia; and Carilion Brambleton Ambulatory Surgery Center. He has worked in the private practice of anesthesiology in Roanoke, Virginia for more than 30 years.

Dr. Litwiller has served the Virginia Society of Anesthesiologists as president, newsletter editor and member of the Board of Directors.

For ASA, Dr. Litwiller has served as president-elect, first vice president, delegate, director, and chair of the committees on Finance, Governmental Affairs and Physician Resources. During his tenure as ASA president, Dr. Litwiller has made unparalleled strides in bringing together the various practitioners in medicine—from the operating room to the critical care suite and beyond—who share patient safety as their common goal. He has worked tirelessly with other organizations representing those who care for patients, and has involved ASA in numerous campaigns to improve surgical care.

Through the ASA Expert Witness Review process, he has also worked to ensure the accuracy of testimony given in malpractice suits, thereby helping to address the medical liability crisis.

He has spoken to countless groups all over the country to promote ASA's work, to ensure the future of academic programs in anesthesiology, and to tackle any threat to the continued development of science and research held so dear by this specialty.

Over the last year he united the professional associations providing the vast majority of anesthesia care in this country by identifying common goals. This cooperation between anesthesiologists and certified registered nurse anesthetists resulted in efforts such as joint statements on clinical issues, visits to regulatory officials in Washington, D.C., and work with the Joint Commission on Accreditation of Healthcare Organizations on patient safety matters.

He has been guided by a vision of compassion, science, and political involvement as the cornerstones of the practice of anesthesiology, and in so doing has set an enduring example and created a legacy for his colleagues.

Mr. Speaker, I ask my colleagues to join me today in recognizing Roger W. Litwiller, M.D., for his notable career achievements, his exemplary leadership, his dedication to patient safety, and his legacy which will benefit the patients of today as well as tomorrow.

POLITICAL RELATIONS BETWEEN PUERTO RICO AND THE UNITED STATES

HON. ANÍBAL ACEVEDO-VILÁ

OF PUERTO RICO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. ACEVEDO-VILÁ. Mr. Speaker, the political status of Puerto Rico, and its relationship with the United States, is of great importance to the people of Puerto Rico. Puerto Rico has enjoyed Commonwealth status since 1952. One of the virtues of Commonwealth is precisely the fact that it possesses the flexibility to change the political status of Puerto Rico vis-a-vis the U.S., either within the framework of Commonwealth, or if the people choose other status options such as Statehood or Independence. Of course, Puerto Rico would work with the U.S. Congress towards implementing whichever option the people choose.

Since its creation, Commonwealth has been the preferred status option among the people of Puerto Rico. However, the people of Puerto Rico have failed in its previous efforts to improve Commonwealth because the different initiatives in Puerto Rico, as well as in this Congress, to deal with the status issue have not translated into concrete actions to implement the will of the people of Puerto Rico. Experience has shown that in order to have a true exercise of self-determination, we must work hard at achieving consensus among the people of Puerto Rico as to the process towards self-determination, in spite of our differences with regard to individual status preferences.

Hence, the Legislature of Puerto Rico approved Senate Concurrent Resolution 107 on July 22, 2004 which sets forth the public policy of said body that a Constitutional Assembly on Status is the preferred approach through which to exercise self-determination concerning the status of Puerto Rico and acknowledges these past failed attempts to deal with the status issue, recognizes the consensus among the people of Puerto Rico to effectively exercise their right to self-determination, and adopts the public policy that the Constitutional Assembly on Status is the best approach through which to exercise self-determination.

Accordingly, the Legislature of Puerto Rico has agreed to study and prepare legislation for the people to decide whether the Constitutional Assembly on Status is their preferred mechanism to deal with the status issue. Other mechanisms will be presented to the people. Thus the people will ultimately choose their preferred process. The legislation will also include the mechanisms through which delegates to the Assembly are elected, and will provide for its organization, if it is the option favored by voters.

At the same time, Senate Concurrent Resolution 107 orders the Puerto Rico Senate and House Judiciary Committees to prepare a study and report with bills for the celebration of a referendum regarding the Constitutional Assembly, authorization of funds, and related matters. Such bills would guarantee the effective participation of representatives of the political parties and civil society, that the proposals to be considered by the people must stem from the principle of sovereignty in the future relationship of Puerto Rico and must be defined as being outside of the Territorial Clause of the U.S. Constitution; that the Constitutional Assembly must have attributes of deliberation and negotiation vis-a-vis the U.S. Government; and that every determination by the Assembly must be subject to ratification by the people through a referendum. The Committees shall issue its report by December 31, 2004, and it will thus be submitted for the consideration of the next Legislative Session.

Mr. Speaker, the Popular Democratic Party of Puerto Rico and I personally support the creation of a Constitutional Assembly on Status in order to deal with the status issue because it embodies the principle that it is the people of Puerto Rico who must decide their preferred political status, and that the process should be initiated in Puerto Rico. Therefore, we have made a commitment to initiate this process during the first half of 2005. At the same time, we recognize that even though this process is to be initiated in Puerto Rico, it cannot and should not be isolated from Washington. That is why, early in the process, Senate Concurrent Resolution 107 mandates notifying the White House, the President's Task Force on Puerto Rico's Status and the U.S. Congress of said Resolution.

Mr. Speaker, I rise today to, as requested by the Puerto Rico Legislature and in compliance with Article 6 of Senate Concurrent Resolution 107, notify this Congress of said Resolution by placing the English-language translation of Senate Concurrent Resolution 107, along with its certification, into the RECORD at this time. I am also sending a copy of Senate Concurrent Resolution, and its certification, to the U.S. Senate, the President of the United States, the President's Task Force on Puerto Rico's Status, and the United Nations' Special Committee on Decolonization.

Mr. Speaker, I am confident that the people of Puerto Rico will soon be able to truly exercise their right to self-determination in a meaningful manner, one in which the outcome will be a product of the democratic tradition we so dearly cherish.

CONCURRENT RESOLUTION 107

(To consign the public policy of the Legislature of Puerto Rico in facing and attending to the urgent need to review the political relations between Puerto Rico and the United States through a Constitutional Assembly on Status elected by the people in the exercise of the natural right to self-determination and sovereignty, and to initiate its organizational process)

STATEMENT OF MOTIVES

The right of the People to freely choose their system of government and their political destiny in relation to the other countries is an inalienable natural right; neither can legislation contrary to this right be admitted nor can a regime or legislation contrary to the full exercise of this right be admitted. This is thus consigned in several resolutions of the General Assembly of the United Nations Organization applicable to Puerto Rico.

The regime of the political relations between Puerto Rico and the United States of America remained subject for future deliberation since the conclusion of the deliberations of the Constitutional Convention on the political status of the People of Puerto Rico in 1952, which drafted the Constitution of the Commonwealth of Puerto Rico. This by virtue of Public Law 600 of the 81st Congress of the United States of 1950, adopted in a referendum held in Puerto Rico, which limited the deliberative and governmental framework of the Constitutional Convention from 1951 to 1952.

The Constitutional Convention of 1952 expressed through Resolution No. 23 that: "The People of Puerto Rico reserve the right to propose and accept modifications in the terms of its relations with the United States of America, in order that these relations may at all times be the expression of an agreement freely entered into between the People of Puerto Rico and the United States of America." (Enacted February 4, 1952, and forwarded to the President of the United States).

This expression, based on a natural and constitutional right and of the highest democratic nature, was subsequently incorporated by the General Assembly of the United Nations Organization in its Resolution 748 (VIII) of November, 1953, regarding the documents submitted by the United States Government on the Constitution of the Commonwealth of Puerto Rico. It is thus stated in its ninth enabling paragraph where it is expressed, "its assurance that, in accordance with the spirit of the present Resolution... due regard will be paid to the will of both the Puerto Rican and American peoples ... in the eventuality that either of the parties to the mutually agreed association may desire any change in the terms of this association."

Since the effectiveness of the present status of political relationship between Puerto Rico and the United States, untiring efforts have been made to review the political status issue of Puerto Rico and the scope of the relationship with the United States of America. Specifically, in 1967, a consultation process of the people was held in which the majority of the participants reaffirmed their support to the Commonwealth option, and subsequently, in 1993, a second plebiscite was held, and once again the Commonwealth option was favored. Finally, in 1998, a new plebiscite was held in which the Legislature of Puerto Rico, and not the political parties or the representative groups of specific ideologies, defined the status options to be presented to the people. In said plebiscite, the "None of the Above" option was favored.

Likewise, in the past fifty-two years several efforts have been made to have the United States Congress enact legislation that would allow further the discussion of this issue. Specifically, we take notice of the efforts made through the Status Commission during the decades of the 60s and 70s; and from 1989 to 1991 by the U.S. Senate Resources Committee, and in the mid 90s, by the U.S. House of Representatives Resources Committee. None of these efforts was able to produce legislation that would effectively attend the discussion of status.

Having repeatedly approached through decades diverse methods, the Legislature of Puerto Rico, exercising its powers and faculties pursuant to the Constitution of the Commonwealth of Puerto Rico, proposes a consultation of the people so that they may determine the procedural mechanism they deem proper to deal with the issue of the political status of Puerto Rico, and the scope of the relationship with the United States of America. In this referendum a constitutional assembly will be presented as an alternative.

More than fifty years have elapsed since the establishment of the present status, and considering the manifest expressions of all representative sectors of the country on the need to make changes to the present relationship, it is proper for this Legislature to consult the people in order to initiate the process to elect an adequate mechanism to deal with the political status of Puerto Rico and its relationship with the United States of America: be it

Resolved by the Legislature of Puerto Rico:

GENERAL PROVISIONS

Section 1. Statement of Public Policy.

It is hereby declared that the People of Puerto Rico have the inalienable natural right to self-determination and political sovereignty. In accordance thereto, this Legislature declares that, upon the failure of several processes for the exercise of this right, it is imperative for the people to exercise the same through a Constitutional Assembly on the status of the relationship between Puerto Rico and the United States of America.

Section 2. The Legislature acknowledges the Report rendered on March 11, 2002, as directed by Senate Resolution 201 and House Resolution 3873, both recommending the mechanism of an Assembly of the People to consider the status issue.

Section 3. It is proper to study and draft the legislation for the people to decide on the desirability of calling a Constitutional Assembly on Status. The legislation shall include the mechanisms to implement the election of delegates and the organization of the Constitutional Assembly on Status, if it is favored at the polls.

Section 4.—The Committee on the Judiciary of both Bodies shall prepare a study and report which shall contain projects of law for holding a referendum on the calling of said Constitutional Assembly, appropriation of funds, and every other measure or process needed to implement this public policy. The following shall be assured:

(a) The effective participation of the representatives of the political parties and the civil society.

(b) That the proposals to be submitted to the consideration of the people arise from the principle of sovereignty in the future political relationships of Puerto Rico, and be as such defined outside of the territorial clause of the Constitution of the United States of America.

(c) That the Assembly shall enjoy deliberative and negotiation attributes with the United States Government.

(d) That every determination of the Assembly shall be subject to ratification by the people at a referendum.

Section 5.—The Committee shall render its report before December 31, 2004, and thereby be submitted for the consideration of the next Regular Legislature.

Section 6.—A copy of this Concurrent Resolution, together with the results of the vote for its approval, shall be certified by the Office of the Secretary and of the Clerk of both Chambers, and remitted to the Special Decolonization Committee of the United Nations General Assembly, to the White House Interagency Committee on the Status of Puerto Rico, and to the Congress of the United States of America.

Section 7.—This Concurrent Resolution shall take effect upon its approval and constitutes public policy until its repeal or implemented.

I, José Ariel Nazario-Álvarez, Secretary of the Senate of the Commonwealth of Puerto Rico, hereby certify that the enclosed document is a true and exact copy of S. Conc. R. 107 approved on July 22 of 2004.

HONORING BERNARD HOPKINS

HON. ROBERT A. BRADY

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. BRADY of Pennsylvania. Mr. Speaker, I rise to honor Philadelphia's own, Bernard "The Executioner" Hopkins. Mr. Speaker, my hometown is one of the greatest sports cities in the world. We have honored many champions over the years. But none of them is more revered than the undisputed Middleweight Champion of the world, Bernard Hopkins.

Bernard always dreamed of being a champion. He first showed his championship form at an early age, winning the Pennsylvania Junior Olympics at age nine. Mr. Speaker, Bernard Hopkins' name is frequently and properly mentioned in the same breath as the best middleweights in history. Men like Sugar Ray Robinson, Carlos Monzon and Marvelous Marvin Hagler. Even his latest opponent, Oscar De La Hoya once said that Hopkins is "one of the great talents we've had in this generation." De La Hoya, who lost and was ko'd by a Hopkins left hook to the body, called the champ one of the top 5 boxers in history. And, like his championship, that description is undisputed. After all, he has won 45 professional bouts, 32 by knockout.

Let's put his record into perspective. Carlos Monzon formerly held the seemingly unbreakable record for successful title defenses, beating back 14 attempts to take his crown. But, Hopkins shattered that record back in 2002. Altogether, he has successfully defended his title 19 times since January, 1996.

This record is historic and he should be proud of it. But, Mr. Speaker, Philadelphians don't simply love and respect Bernard Hopkins the fighter. They love and respect Bernard Hopkins the man. He rose from humble beginnings to reach greatness. And he never left behind the city of his birth.

Bernard is a true role model. He works tirelessly with offenders, especially youth, to help them get on and stay on the straight and narrow. He is a husband and a father and great American.

Mr. Speaker, I know that all my colleagues join me in honoring a great champion, and an even greater person, Bernard Hopkins.

LETTERS FROM A MARINE OFFICER

HON. LAMAR S. SMITH

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. SMITH of Texas. Mr. Speaker, I'd like to submit for the CONGRESSIONAL RECORD two letters that were forwarded to me by Bill and Bonnie Nofsinger. Their nephew, 1st Lt. Robert I. Nofsinger, is stationed in Iraq with the United States Marine Corps.

Lieutenant Nofsinger's letters contradict much of what has been reported in the national news media about the war on terror in Iraq. Reports have led some Americans to conclude that all of Iraq is in turmoil and despair, which is not supported by the facts. Much of the country is making the successful transition to stability.

Lt. Nofsinger writes:

"When you watch the news and see doomsday predictions and spiteful opinions about our efforts over here, you can refute them by knowing that we are doing a tremendous amount of good. So spread the word."

Mr. Speaker, I will follow Lt. Nofsinger's advice and spread the word by submitting his eloquent and heartfelt letters for my colleagues and others to read.

HELLO EVERYONE: I am taking time to ask you all for your help. First off, I'd like to say that this is not a political message. I'm not concerned about domestic politics right now. We have much bigger things to deal with, and we need your help.

It seems that despite the tremendous and heroic efforts of the men and women serving here in Iraq to bring much needed peace and stability to this region, we are losing the war of perception with the media and American people.

Our enemy has learned that the key to defeating the mighty American military is by swaying public opinion at home and abroad. We are a people that cherish the democratic system of government and therefore hold the will of the people in the highest regard. We love to criticize ourselves almost to an endless degree, because we care what others think. Our enemies see this as a weakness and are trying to exploit it.

When we ask ourselves questions like, "Why do they hate us?" or "What did we do wrong?" we are playing into our enemies' hands. Our natural tendency to question ourselves is being used against us to undermine our effort to do good in the world. How far would we have gotten if after the surprise attacks on December 7, 1941 at Pearl Harbor, we would have asked, "Why do the Japanese hate us so much?" or "How can we change ourselves so that they won't do that again?"

Here in Iraq the enemy is trying very hard to portray our efforts as failing and fruitless. They kill innocents and desecrate their bodies in hopes that the people back home will lose the will to fight for liberty. They are betting on our perceived weakness as a thoughtful, considerate people. Unfortunately our media only serves to further their cause. In an industry that feeds on ratings and bad news, a failure in Iraq would be a goldmine. When our so-called "trusted" American media takes a quote from an Iraqi doctor as the gospel truth over that of the men and women that are daily fighting to protect the right to freedom of the press, you know something is wrong. That doctor claimed that of the 600 Iraqis who were casualties of the fighting in Fallujah, the vast majority of them were women, children and the elderly. This is totally absurd. In the history of man, no one has spent more time and effort, often to the detriment of our own mission, to be more discriminate in our targeting of the enemy than the American military. The Marines and Soldiers serving in Iraq have gone through extensive training in order to avoid shedding innocent blood.

Yet, despite all of this, our media consistently sides with those who openly lie and directly challenge the honor of our brave heroes fighting for liberty and peace. What we have to remember is that peace is not defined as an absence of war. It is the presence of liberty, stability, and prosperity. In the face of the horrendous tyranny of the former Iraqi regime, the only way true peace was able to come to this region was through force. That is what the American Revolution was all about. Have we forgotten?

Freedom is not free and "peace" without principle is not peace. The peace that so-called "peace advocates" support can only be brought to Iraq through the military. And we are doing it, if only the world will let us!

If the American people believe we are failing, even if we are not, then we will ultimately fail. That is why I am asking for your support. Become a voice of truth in your community. Wherever you are, fight the enemy's lies. Don't buy into pessimism and apathy and say that it is hopeless, that they hate us too much, that this part of the world is just too messed up and it is our fault anyway, that we are to blame.

Whether you're in Middle School, working a 9-5 job, retired or a stay-at-home mom, you can make a huge difference! There is nothing more powerful than the truth. So, when you watch the news and see doomsday predictions and spiteful opinions about our efforts over here, you can refute them by knowing that we are doing a tremendous amount of good. Spread the word. No one is poised to make such an amazing contribution to the everyday lives of Iraqis and the rest of the Arab world than the American Armed Forces. By making this a place where liberty can finally grow, we are making the whole world safer.

Your efforts at home are directly tied to our success. You are the soldiers at home fighting the war of perception. So I'm asking you as fellow soldiers to do your duty; stop the attempts of the enemy wherever you are. You are a mighty force for good, because truth is on your side.

Together we will win this fight and ensure a better world for the future.

God Bless and Semper Fidelis,
1ST LT. ROBERT L. NOFSINGER USMC.

DEAR FRIENDS: Well, my unit has come to the end of its time here in Iraq and I wanted to send a final note. During the past seven months 3rd Battalion 11th Marines has accomplished much. Our artillery Battalion was given the mission of convoy security and provisional MP (Military Police) duties. From that mission gnaw other duties and we eventually ended up accomplishing a wide range of tasks.

We were assigned to assist the Iraqi Border Patrol along the Saudi Arabian border. Along with that came the responsibility to care for the nearby town of Nukhayb. It is a fairly small town that had been ravaged by two wars, 12 years of sanctions, and a tyrannical government that neglected its basic needs. Over the course of seven months, our small civil affairs section was able to spend roughly $1.3 million on the infrastructure, people of Nukhayb and outlying areas. The projects included the following:

Hospital renovation and medical supplies; school refurbishment; water supply improvement; sanitation equipment; regional fire department; agricultural cooperative; multiple power generators and transformers; equipment and gear for local Iraqi Security Forces; electrical rewiring; refurbishment of local government buildings; establishment of employment programs; and local mosque refurbishment.

Nukhayb is now a thriving active community with a renewed sense of direction. The local economy is rapidly increasing and is already far beyond where it was at any time during the past 30 years. 3/11's main mission was to provide convoy security for military and non-military convoys throughout Iraq. This was done with the utmost patience and professionalism. The Marines of 3/11 being trained as artillerymen, performed tremendously as provisional infantrymen without skipping a beat. As this war has only further proven, Artillerymen are the "go to" Marines of the Marine Corps. In the end 3/11 was responsible for escorting hundreds upon hundreds of vital convoys throughout the theater.

In addition to this responsibility 3/11 was asked to supervise and run a provincial Iraqi Security College where Iraqi Security Forces were trained to take control of their country. The college was so successful that it is now entirely run by Iraqis.

Continuing the Military Police role 3/11 also maintained and operated a provincial detention facility where detainees were treated with respect and humanity. Long before incidents at other prisons in Iraq were discovered, 3/11 set the highest of possible standards in the country for quality of care and facility conditions. The detention facility has been heralded as a hallmark in our area of operations and brings much praise to the battalion.

All along the way 3/11 was asked to step outside its area of expertise and provide the highest level of performance, and each time the expectations were met and exceeded. Few units if any can claim to have accomplished such a wide variety of missions in such a short period of time. The Marines of 3rd Battalion 11th Marines can return home to their loved ones knowing they provided absolutely vital contributions to the war in Iraq. The Iraqi people have never known liberty in their entire history and now they finally have a chance to live free. With Marines and soldiers out there like those from 3/11, the war on terror will be definitively won and the world will know a higher level of freedom and prosperity than it has ever known. I personally want to thank each of you who have supported me through this journey. I will never be able to put into words, my appreciation for all you have done for me. My definition of family has grown exponentially since being over here and I thank you. But more than just your personal support I am grateful for your support of the cause. Not everyone in America is educated enough to understand the full importance of what we are doing in this part of the world and I am so thankful that you all do. Freedom and liberty are fragile and America seems to be one of the only countries actively fighting to ensure that they do not perish from this earth. Your continued efforts at home are much needed in spreading the truth. Together we will win this fight and secure a better future for the whole world.

God Bless and Semper Fidelis,
1ST LT. ROBERT L. NOFSINGER USMC.

INTRODUCTION OF THE LET PARENTS RAISE THEIR KIDS ACT

HON. RON PAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. PAUL. Mr. Speaker, I rise to introduce the Let Parents Raise Their Kids Act. This bill forbids Federal funds from being used for any universal or mandatory mental-health screening of students without the express, written, voluntary, informed consent of their parents or legal guardians. This bill protects the fundamental right of parents to direct and control the upbringing and education of their children.

The New Freedom Commission on Mental Health has recommended that the Federal government adopt a comprehensive system of mental-health screening for all Americans. The commission recommends the government implement universal or mandatory mental-health screening in public schools as a prelude to expanding it to the general public. However, neither the commission's report nor any related mental-health screening proposal requires parental consent before a child is subjected to mental-health screening. Federally funded universal or mandatory mental-health screening in schools without parental consent could lead to labeling more children as "ADD" or "hyperactive" and thus force more children to take psychotropic drugs, such as Ritalin, against their parents' wishes.

Already, too many children are suffering from being prescribed psychotropic drugs for nothing more than children's typical rambunctious behavior. According to the Journal of the American Medical Association, there was a 300-percent increase in psychotropic drug use in two to four year old children from 1991 to 1995!

Many children have suffered harmful side effects from using psychotropic drugs. Some of the possible side effects include mania, violence, dependence, and weight gain. Yet, parents are already being threatened with child abuse charges if they resist efforts to drug their children. Imagine how much easier it will be to drug children against their parents' wishes if a Federal mental-health screener makes the recommendation.

Universal or mandatory mental-health screening could also provide a justification for stigmatizing children from families that support traditional values. Even the authors of mental-health diagnosis manuals admit that mental-health diagnoses are subjective and based on social constructions. Therefore, it is all too easy for a psychiatrist to label a person's disagreement with the psychiatrist's political beliefs a mental disorder. For example, a federally funded school violence prevention program lists "intolerance" as a mental problem that may lead to school violence. Because "intolerance" is often a code word for believing in traditional values, children who share their parents' values could be labeled as having mental problems and a risk of causing violence. If the mandatory mental-health screening program applies to adults, everyone who believes in traditional values could have his or her beliefs stigmatized as a sign of a mental disorder. Taxpayer dollars should not support programs that may label those who adhere to traditional values as having a "mental disorder."

Mr. Speaker, universal or mandatory mental-health screening threatens to undermine parents' right to raise their children as the parents see fit. Forced mental-health screening could also endanger the health of children by leading to more children being improperly placed on psychotropic drugs, such as Ritalin, or stigmatized as "mentally ill" or a risk of causing violence because they adhere to traditional values. Congress has a responsibility to the nation's parents and children to stop this from happening. I, therefore, urge my colleagues to cosponsor the Let Raise Their Kids Act.

TRIBUTE TO THE HONORABLE DONALD GLENN BROTZMAN

HON. JOEL HEFLEY

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. HEFLEY. Mr. Speaker. I rise today to recognize and remember the life of former Republican Congressman Donald Brotzman of Colorado, who recently passed away at the age of 82. Congressman Brotzman honorably represented Colorado's second Congressional District from 1962 through 1975, during some of this great nation's most tumultuous and trying times.

He was born June 28, 1922 on a farm in Logan County, on Colorado's eastern plains. Both a musician and three-sport athlete at Sterling High School, Don Brotzman won a football scholarship in 1939 to the University of Colorado in Boulder where he was an all-conference center and varsity letter-winner in shot put and discus.

As war continued to rage on the other side of the world, Don Brotzman delayed his education and served as an Army officer in Yokohama, Japan, and the Philippines through World War II. Following the end of the war, he returned to Boulder to complete degrees in business and law in 1949.

Mr. Brotzman began working as a lawyer in Boulder in 1950, and was elected to the Colorado House of Representatives in 1952 and later the State Senate. Local media named him the outstanding freshman member in both chambers.

By 1959, he was appointed United States Attorney for Colorado by President Eisenhower and served as such until he was elected to the U.S. House of Representatives in 1962, where he was voted president of his freshman class.

Congressman Brotzman served five terms and helped to shape laws such as the Clean Air Act and the Public Broadcasting Act. He reached across the aisle to champion causes such as the Indian Peaks Wilderness Area west of Boulder, a national program to help runaway youth and a tax credit for higher-education expenses. Despite serving on the minority side of the aisle, he successfully found the funds to complete the Chatfield Dam and Reservoir, and sponsored the bill authorizing the building of Bear Creek Dam and Reservoir in Colorado.

Furthermore, he persuaded the Johnson Administration to sponsor a study that eventually changed the Army's environmental practices at the Rocky Mountain Arsenal in Adam's County, Colorado, and he was one of the first members of Congress to call for an all-volunteer military.

Colorado lost a great friend and a tremendous leader when it lost Donald Brotzman. His strong western values and commitment to always do what was right, despite partisan interests and outside persuasion, has continued to serve as a great example.

RECOGNIZING SPIRIT OF JACOB MOCK DOUB AND EXPRESSING SENSE OF CONGRESS THAT "NATIONAL TAKE A KID MOUNTAIN BIKING DAY" SHOULD BE ESTABLISHED IN JACOB MOCK DOUB'S HONOR

SPEECH OF

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 5, 2004

Mr. UDALL of Colorado. Mr. Speaker, I rise today in support of House Concurrent Resolution 480, expressing the sense of Congress that "National Take a Kid Mountain Biking Day" should be established in honor of Jacob Mock Doub.

The youth of today's America are becoming less and less active. The U.S. Surgeon General reports the percentage of overweight children has nearly tripled in the past two decades. Forecasts also predict the current generation of children in the United States could actually have a shorter life span than their parents as the epidemic of childhood obesity expands.

Promoting physical activity and diet are critical in addressing the rise of childhood obesity and youth inactivity and Congress should be supportive in addressing this important issue. Certainly more needs to be done but this resolution is a step in the right direction to raise awareness and move the discussion forward.

The resolution also honors Jacob Mock Doub, a young man who had a great passion for life and for cycling. He encouraged many young people like himself to get involved with the activity.

I urge my colleagues to support this legislation.

For the information of our colleagues, I am attaching an item from the International Mountain Biking Association, IMBA, that provides additional information about Jacob Mock Doub.

JACOB MOCK "JACK" DOUB

Jul. 11, 1985–Oct. 21, 2002

One year ago this October we unexpectedly lost a great friend and brother when Jack Doub died from complications from an injury received during practice for the Snowshoe NORBA National downhill race last June. To honor Jack's spirit and love of biking we have in association with IMBA, helped to establish the Jack Doub Memorial Fund to promote and encourage other "kids" to learn and live to ride. To understand Jack and his love of biking is to understand our wishes to continue his memory. Jack was born to two energetic and loving parents who greatly enjoyed the outdoors and early on Jack enjoyed the same. Skiing at age 18 months, he became an unbelievable freestyle and backcountry skier . . . the best. In life Jack learned to climb, to kayak, to motocross race, and to fly fish. By age 11 Jack's fly-fishing skills and abilities to see and catch fish were legend. It was almost unbelievable that he literally could do anything he wanted and at levels of skill that others only dream about, all of this while quiet, reserved, and humble.

Ultimately Jack was introduced to biking at age 11 near Grandfather Mountain, N.C. He saw a friend riding, doing a few tricks and he wanted to learn to wheelie. He was hooked. Within a week he could wheelie like crazy and soon obtained a new Gary Fisher Super Caliber on which he won essentially every cross-country race he entered for two years. Although remaining the best fly fisherman around at age 13, biking had become Jack's obsession. It was at age 13 that Jack obtained a Santa Cruz Super 8 and began racing downhill as well; again nothing but success. One of Jack's greatest sparks was participating in mountain bike "dirt" camp during the summer of 1998 at Snowshoe, WV, and this is also where he raced his last race.

From age 14 to 17 Jack rode primarily downhill and dual slalom. He found it difficult to train and ride downhill and dual slalom and have the energy to race cross-country on the same day. Cross-country was great but Jack was an adrenalin junkie . . . fast and furious. The neat thing about Jack however was not his desire to race and to win but his absolute love of being on the bike. Whether he podiumed or came in 23rd, his response was always, "It was great." He never complained or had excuses and no matter how bad the mechanical failure or the crash, he always finished . . . never a DNF or withdrawal. For Jack, it was all about the bike . . . cross-country, downhill, dual slalom, trials, or as always just playing in the yard; there were very few days that he didn't touch the bike.

Jack rode many bikes and greatly loved his Spooky, his Intense M1, and his Santa Cruz Heckler but his real favorite was his Foes Zigzag on which he came in second at the NORBA Snowshoe National in junior expert dual slalom in his last race ever. His accident occurred the next day in downhill training where as usual he was trying to air a major jump and obstacle . . . he later rode but never raced again. His accomplishments were extensive and are too numerous to detail nor would that be his focus.

Jack's last ride occurred approximately one week before he died. He was excited to ride a new trail with a group of us. Out of shape but never out of energy, he wheelied the mile to the trail including down a 200 yard hill all the way on a wheelie manual to a nose manual. As usual we were all amazed. During the two hour ride we rode hard, played hard and had worlds of fun. Jack rode through the pain and upset stomach while laughing and smiling and could only talk of getting back in shape and coming back. God, do we miss that next ride with Jack.

Despite all of Jack's great accomplishments and skills, his greatest strength was involving and encouraging others to ride, especially children. Jack would skip chances to hang out with his peers just to go to Hobby Park and teach young kids to ride and jump dual slalom . . . he did this even while injured. On occasions he was known to stop in a race and help other individuals. During one 12 hour race he rode two extra laps just to give his friends a break and lessen their pain so as to have more fun. Most importantly he greatly enjoyed seeing his friends do well, especially "Tone Dog", "Magoo", Jonathan, and Will. Jack's smiles were as big or bigger for their successes than for his own. Jack at heart wanted others to encounter and love life and biking as much as he did.

Jay de Jesus wrote in a letter to Jack's dad, Jay after Jack's death; Jack was . . . "up all night doing manuals and wheelies all the way across the courtyard at Snowshoe Village, the same nice, intelligent, bike-crazy kid with the ever present smile . . . every night, just riding on and on." There are no real answers to Jack's passing away, just a huge void. May that void be filled with our smiles and those of other kids experiencing the awesome joy of biking and as Jack would want us to do . . . "riding on and on". The Jack Doub Memorial Fund hopes in some small way to continue his spirit and memory to that end. Jack Doub . . . orange helmet, red hair and blue jeans . . . rest in peace brother as you ride in our hearts and memories forever.

FRIENDS OF JACK DOUB.

HONORING FRANK WACHOWSKI

HON. WILLIAM O. LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. LIPINSKI. Mr. Speaker, I rise today to pay tribute to an outstanding gentleman, Frank Wachowski, more commonly known as "The Chicago Weather Man," who will be honored on October 16, 2004 with the prestigious Thomas Jefferson Award. It is with great honor that I recognize the contribution of a man who continues to serve the Chicagoland area and the state of Illinois.

The Thomas Jefferson Awards are presented to people who work to better their communities through volunteer and community services. They are ordinary people who do extraordinary things without expectations of recognition or reward.

For over 25 years, Frank Wachowski has volunteered his services as a cooperative observer for the National Weather Service and has closely worked with Tom Skilling, chief meteorologist at WGN–TV in Chicago. More than 11,000 volunteers nationwide take observations on farms, in urban and suburban areas, National Parks, seashores, and mountaintops. The Cooperative Network has been recognized as the most definitive source of information on our nation's climate trends as the data collections are truly representative of where people live, work and play.

Mr. Speaker, I ask that my colleagues join me today in honoring Frank Wachowski for all of his hard work and dedication, as I hope that others are inspired by him to become involved in community service projects.

RECOGNIZING THE 50TH WEDDING ANNIVERSARY OF LONNIE AND LUCIA ROARK

HON. HILDA L. SOLIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Ms. SOLIS. Mr. Speaker, today I rise in order to recognize Lonnie and Lucia Roark, who will celebrate their 50th wedding anniversary on October 23rd, 2004.

I have had the pleasure of knowing both of these wonderful people because they are valued friends of my parents. Lonnie, a native of Oklahoma, relocated to California and worked alongside my father, Raul Solis. Lucia and my mother are both originally from Nicaragua.

It has been said that once Lonnie met Lucia, everyone knew that she was his reason for living. What started out as friendship eventually blossomed into true devotion and a growing unconditional love. They became husband and wife on October 23, 1954, and remain so until this day.

This inspirational couple met in Los Angeles and raised their family in the nearby suburb of La Puente. Today, they continue to live in La Puente and are blessed with 3 children, 5 grandchildren and 2 great-grandchildren.

In addition, they are a treasured part of the Solis family as well. Lonnie and Lucia are the proud godparents of my sister Anna. I am proud to say that they will always be a part of our family.

I wish to congratulate them on their 50th anniversary. May they continue to share a life of love and happiness.

ARUBA

HON. SPENCER BACHUS

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. BACHUS. Mr. Speaker, year after year thousands upon thousands of Americans die of illicit drugs. Year after year billions upon billions of dollars end up in the hands of the cartel bosses who traffic these deadly goods. The flow of drugs will only stop if the flow of money can be contained. It can only be contained if our allies all over the world work together with us to rid the world of that terrible scourge. I rise today to pay tribute to one of those important allies, the Caribbean nation of Aruba. This small island state is leading the way in efforts to counter drug trafficking and drug-related money laundering.

In the past, money laundering organizations have attempted to use Aruba's offshore banking and incorporation systems, free-zone areas, and resort/casino complexes to transfer and to launder drug proceeds. However, the timely implementation and rigorous enforcement of anti money-laundering and asset-seizure laws have set an example for others to follow.

Prime Minister Nelson Oduber and the Government of Aruba should be commended for recently issuing several decrees on money laundering that include increased oversight of casinos and insurance companies. The Government of Aruba also is in the process of instituting reporting requirements for cross-border currency movements in excess of 20,000 Aruban florins, approximately US$11,200. Aruba has a Financial Intelligence Unit and is a member of the Egmont Group, an international group of financial intelligence units.

The Aruba Organized Crime Unit and the Criminal Intelligence Unit of the Coast Guard of the Netherlands Antilles and Aruba fight drug trafficking right alongside the United States Drug Enforcement Agency. Furthermore, Aruba serves as one of two forward operating locations in the Caribbean for U.S. counterdrug aircraft. The forward operating location, located at Queen Beatrix Airport near Oranjestad, provides a landing and servicing area for counterdrug detection and monitoring missions in the region.

For this cooperation, I would like to express the heartfelt thanks of the American people. With allies like Aruba on our side, we can win this war, too.

IN HONOR OF THE 350TH ANNIVERSARY OF THE CONGREGATION SHEARITH ISRAEL

HON. JERROLD NADLER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. NADLER. Mr. Speaker, on September 12, 2004 a service was held for the 350th anniversary of the Congregation Shearith Israel in New York City. The Congregation, founded by 23 impoverished Brazilian Jews seeking refuge in New Amsterdam, marked the beginning of Jewish life in America. What began as a small settlement, nearly 122 years before American independence, grew into a community that not only benefited from the equality and religious freedom found here, but had a profound influence on such ideals over the course of American history. The American Jewish community has played a role in the extension of freedom, justice and social equality to all our people. Mr. Speaker, I would like to enter into the RECORD the sermon given by Rabbi Marc D. Angel on the occasion of the 350th anniversary of the Congregation Shearith Israel.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty, and the pursuit of Happiness." These words from the American Declaration of Independence reflect the deepest ideals and aspirations of the American people. America is not merely a country, vast and powerful; America is an idea, a vision of life as it could be.

When these words were first proclaimed on July 4, 1776, Congregation Shearith Israel was almost 122 years old. It was a venerable community, with an impressive history a bastion of Jewish faith and tradition, and an integral part of the American experience. When the British invaded New York in 1776, a large group of congregants including our Hazan Rev. Gershom Mendes Seixas, left the city rather than live under British rule. Many joined the Revolutionary army and fought for American independence.

Some remained in New York, and conducted services in our synagogue building on Mill Street. Early in the war, two British soldiers broke into the synagogue and desecrated two Torah scrolls. This was not just an attack on scrolls, but was a symbolic assault on the spiritual foundations of Judaism, the self-same foundations upon which the American republic has been built. In our service today, we read from one of these Torah scrolls as a symbolic response to those soldiers, and to all those who would seek to undermine the eternal teachings of Torah and the principles of American democracy: we are not intimidated, we are not afraid. Generation by generation, we will continue to live by our ideals and by our faith. Generation by generation, we will lend our strength to the great American enterprise that promises hope and freedom, one nation under God, with liberty and justice for all.

Our story in America is not built on historical abstractions, but on generations of Jews who have played their roles in the unfolding of this nation. It is a very personal history, ingrained in our collective memory.

Attending this service today are descendants of Jews of the Colonial period, whose ancestors served in the American Revolution; descendants of families including de Lucena, Gomez, Nathan, Hendricks, Phillips, Franks, Cardozo, Seixas. We welcome descendants of Rev. Johannes Polhemus, minister of the Dutch Reformed Church, who was on the same ship as the first group of 23 Jews who arrived in New Amsterdam in September 1654.

We welcome representatives of our sister congregations that date back to the Colonial period: from the Touro Synagogue in Newport; from Mikveh Israel in Philadelphia; we have representatives or words of congratulations from the historic congregations in Savannah, Charleston and Richmond. We welcome members of our sister congregation, the Spanish and Portuguese community of London.

We welcome elected officials and representatives. We welcome officers of the 20th precinct, who serve our community with courage and dedication. We welcome leaders of the American Jewish community, and those who have worked so hard for Celebrate 350, the national umbrella group commemoration the 350th anniversary of American Jewry. Indeed we welcome all congregants and friends who have gathered here today on this historic occasion.

A number of those present today participated in the Tercentenary celebrations of 1954. We have a member here today whose mother—now 107 years old—was part of our community during the 250th anniversary celebrations in 1904/5.

Among us are descendants of Jews from all parts of the world, Jews who came to America at different times and under different circumstances; including those who are themselves first generation Americans and first generation Jews. For 350 years, our generations have been part of the American experience, and have striven to make this a better nation.

We have just read from the Revolutionary Period Torah scroll, from the section know as "Kedoshim", only a few columns from where the British soldier damaged the scroll. Kedoshim opens with a challenge to the people of Israel to be a holy nation, to live according to the commandments of God, to have the courage and inner strength to maintain Torah ideals in a world that is not always receptive to such lofty teachings. The portion goes on to specify how we are to manifest holiness: through charity; honesty; commitment to truth and justice; through the avoidance of gossip and hatred. It culminates with the words: ve-ahavta le-re-aha kamokha, and you shall love your neighbor as yourself. The very principles of enjoined by this passage are the spiritual foundations of the United States of America. These teachings are constant reminders of how to live a good life and build a righteous society; they also are prods to make us realize how far short we fall from these ideals, how much more work remains to be done.

On this 350th anniversary of the American Jewish community, we reflect on the courage and heroic efforts of our forbearers who have maintained Judaism as a vibrant and living force in our lives. We express gratitude to America for having given us—and all citizens—the freedom to practice our faith. This very freedom has energized and strengthened America.

Within Congregation Shearith Israel, we have been blessed with men and women who have helped articulate Jewish ideals and American ideals. Their voices have blended with the voices of fellow Americans of various religions and races, to help shape the dream and reality of America.

The American Declaration of Independence pronounced that all men are created equal. In his famous letter to the Jewish community of Newport, in August 1790, President George Washington hailed the United States for allowing its citizens freedom—not as a favor bestowed by one group on another—but in recognition of the inherent natural rights of all human beings. This country, wrote President Washington, "gives bigotry no sanction, to persecution no assistance".

And yet, if equality and human dignity are at the core of American ideals, the fulfillment of these ideals have required—and still require—sacrifice and devotion. Reality has not always kept up with the ideal. In 1855, Shearith Israel member Uriah Phillips Levy—who rose to the rank of Commodore in the U.S. Navy—was dropped from the Navy's active duty list. He was convinced that anti-Semitism was at the root of this demotion. He appealed the ruling and demanded justice. He asked: are people "now to learn to their sorrow and dismay that we too have sunk into the mire of religious intolerance and bigotry? . . . What is my case today, if you yield to this injustice, may tomorrow be that of the Roman Catholic or the Unitarian, the Presbyterian or the Methodist, the Episcopalian or the Baptist. There is but one safeguard: that is to be found in honest, whole-hearted, inflexible support of the wise, the just the impartial guarantee of the Constitution." Levy won his case. He helped the United States remain true to its principles.

Shearith Israel member Moses Judah (1735–1822) believed that all men were created equal—including black men. In 1799, he was elected to the New York Society for Promoting the Manumission of Slaves. During his tenure on the standing committee between 1806 and 1809, about 50 slaves were freed. Through his efforts, many other slaves achieved freedom. He exerted himself to fight injustice, to expand the American ideals of freed and equality regardless of race or religion.

Another of our members, Maud Nathan, believed that all men were created equal but so were all women created equal. She was a fiery, internationally renowned suffragette, who worked tirelessly to advance a vision of America that indeed recognized the equality of all its citizens—men and women. As president of the consumer league of New York from 1897–1917, Maud Nathan was a pioneer in social activism, working for the improvement of working conditions of employees in New York's department stores. Equality and human dignity were the rights of all Americans, rich and poor, men and women.

The Declaration of Independence proclaimed that human beings have unalienable rights; among them are life, liberty and the pursuit of happiness. These words express the hope and optimism of America. They are a repudiation of the tyranny and oppression that prevailed—and still prevail—in so many lands. America is a land of opportunity, where people can live in freedom. The pursuit of happiness really signifies the pursuit of self-fulfillment, of a meaningful way of life. America's challenge was—and still is—to create a harmonious society that allows us to fulfill our potentials.

President George Washington declared a day of national Thanksgiving for November 26, 1789. Shearith Israel held a service, at which Hazan Gershom Mendes Seizas called on this congregation "to unite, with cheerfulness and uprightness . . . to promote that which has a tendency to the public good." Hazzan Seixas believed that Jews, in being faithful to Jewish tradition, would be constructive and active participants in American society.

Life, liberty, and the pursuit of happiness were not reserved only for those born in America; they are the rights of all human beings everywhere. This notion underlies the idealism of the American dream, calling for a sense of responsibility for all suffering people, whether at home or abroad. American Jews have been particularly sensitive and responsive to this ideal.

On March 8th, 1847, Hazan Jacques Judah Lyons addressed a gathering at Shearith Israel for the purpose of raising funds for Irish famine relief. The potato crop in Ireland had failed in 1846, resulting in widespread famine. Hazan Lyons well realized that the Jewish community needed charitable dollars for its own internal needs; and yet he insisted that Jews reach out and help the people of Ireland. He said that there was one indestructible and all-powerful link between us and the Irish sufferers: "That link, my brethren, is HUMANITY! Its appeal to hear surmounts every obstacle. Clime, color, sect are barriers which impede not its progress thither." In assisting with Irish famine relief, the Jewish community reflected its commitment to the well-being of all suffering human beings. American Jewry grew into—and has continued to be—a great philanthropic community perhaps unmatched in history. Never have so few given so much to so many. In this, we have been true to our Jewish tradition, and true to the spirit of America.

Who articulated the hope and promise of America more eloquently than Emma Lazarus? "Give me your tired, your poor, your huddled masses yearning to breath free, the wretched refuse of your teeming shore. Send these, the homeless, tempest-tost to me. I lift my lamp beside the golden door." How appropriate is it that her poem is affixed to the great symbol of American freedom, the Statue of Liberty.

Alice Menken, (for many years president of our Sisterhood) did remarkable work to help immigrants, to assist young women who ran into trouble with the law, to promote reform of the American prison system. She wrote: "We must seek a balanced philosophy of life. We must live to make the world worth living in, with new ideals, less suffering, and more joy."

Americans see ourselves as one nation, indivisible, under God, with liberty and justice for all. Yet, liberty and justice are not automatically attained. They have required—and still require—wisdom, vigilance, and active participation. American legal tradition has been enriched by the insights and the work of many American Jews.

In one of his essays, Justice Benjamin Nathan Cardozo—a devoted member of Shearith Israel—referred to a Talmudic passage which has been incorporated into our prayer book. It asks that the Almighty let His mercy prevail over strict justice. Justice Cardozo reminded us that the American system relies not only on justice—but on mercy. Mercy entails not merely an understanding of laws, but an understanding of the human predicament, of human nature, of the circumstances prevailing in human society. Another of our members, Federal Judge William Herlands, echoed this sentiment when he stated the Justice without Mercy—is just ice!

Our late rabbis Henry Pereira Mendes, David de Sola Pool and Louis C. Gerstein, were singularly devoted to social welfare, to religious education, to the land of Israel. They distinguished themselves for their devotion to Zionism, and played their parts in the remarkable unfolding of the State of Israel. They, along with so many American Jews, have keenly understood how much unites Israel and the United States—two beacons of democracy and idealism in a very troubled world.

These individuals—along with so many other American Jews—were exponents of the American ideals and the American dream. During the past 350 years, the American Jewish community has accomplished much and contributed valiantly to all aspects of American life. We have been free to practice our faith and teach our Torah. We have worked with Americans of others faiths and traditions to mold a better, stronger, more idealistic nation.

America today is not just a powerful and vast country. It is also an idea, a compelling idea that has a message for all people in all lands. As American Jews, we are committed to the ideals of freedom and equality, human dignity and security, to life, liberty, and the pursuit of happiness, the pursuit of harmony among ourselves and throughout the world. We have come far as a nation, but very much remains to be done. May God give us the strength and the resolve to carry on, to work proudly as Jews to bring the American dream to many more generations of humanity.

I close with a prayer spoken by Mordecai Manuel Noah at the consecration of our second Mill Street Synagogue on April 17, 1818: "May we prove ever worthy of His blessing; may He look down from His heavenly abode, and send us peace and comfort; may He instill in our minds a love of country, of friends, and of all mankind. Be just, therefore, and fear not. That God who brought us out of the land of Egypt, who walked before us like 'a cloud by day and a pillar of fire by night,' will never desert his people Israel."

MILITARY PERSONNEL FINANCIAL SERVICES PROTECTION ACT

SPEECH OF

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 5, 2004

Mrs. MALONEY. Mr. Speaker, I rise in support of H.R. 5011, a bill to correct abusive practices in the sale of financial products to our military.

This bill was strongly supported by myself and all my colleagues on the Financial Services Committee because it provides a necessary correction to a real problem.

Over the past several years, we have seen the growth of unprincipled sales practices pushing marginal financial products, blatantly unsuitable for military personnel.

These contractual plans impose staggering fees and draconian early termination penalties.

They are so undesirable that they are not sold in the civilian market, where the force of normal competition has driven them out.

All the more shame that certain brokers used privileged on-base access to military personnel to force this product on servicemen facing combat.

Our nation's military personnel deserve the best possible financial advice about all the options available to them, with complete and accurate information, clearly presented.

At the very least, they shouldn't be subjected to unscrupulous sales practices or offered financial products that no civilian would choose and that are not suitable for any investor. We should have banned these products and practices years ago; it is high time to do so now.

CONGRATULATIONS TO PARTNERS OF THE AMERICAS ON THEIR 40 YEAR ANNIVERSARY

HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. FARR. Mr. Speaker, in 1963 President John F. Kennedy launched the Alliance for Progress, a program of government-to-government economic cooperation across the Western Hemisphere. At the same time, he called for the creation of a parallel people-to-people initiative and the Partners of the Alliance was established the following year. After its founding, the idea of engaging in citizen-to-citizen programs under the direct participation and leadership of the people of the Americas led to the Alliance's re-organization in the private sector. With this change in status also came a new name: Partners of the Americas.

Today Partners of the Americas celebrates 40 years of bringing together citizen volunteers, their institutions and communities from throughout the Americas to address shared concerns of economic, social and cultural development. Partners' commitment to building on these enduring relationships among people of Latin America, the Caribbean and the U.S. is what makes Partners truly unique. These relationships fostered by Partners help spark creative ideas, cultivate friendship and ultimately, produce positive change.

Mr. Speaker, I wish to congratulate Partners of the Americas on its work over the past 40 years. Partners embraces the wonderful diversity of the Western Hemisphere and plays a crucial role in building cross-cultural understanding, inspiring hope and creating opportunity. I know others join me in wishing Partners of the Americas continued success in their service to citizens of the Western Hemisphere.

TRIBUTE TO JOHN FEE

HON. JIM SAXTON

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. SAXTON. Mr. Speaker, I rise today to commend John Fee, a constituent from Delran, New Jersey, who is currently participating in the Bristol-Myers Squibb Tour of Hope. John was chosen from nearly 1,200 cyclists nationwide to be one of 20 cyclists participating in this awareness-raising tour for cancer research.

The Tour of Hope is a grueling eight-day bike journey across America that is designed to help raise awareness about the need for increased participation in cancer clinical trials. This cross-country tour was designed by Bristol-Myers Squibb and Lance Armstrong, six-time Tour de France winner and cancer survivor, who credits his survival to the many people before him who participated in the clinical trials that ultimately led to the development of the treatment that saved his life.

By participating in the Tour of Hope, which began on October 1st in Los Angeles and will conclude on October 8th here in Washington, DC, John has dedicated himself to being a part of the effort to cure cancer. During his eight-day journey across America, John and his team will be selflessly delivering the Tour's message—the need to support cancer research—to communities across our Nation.

John's commitment to this worthy cause stems from personal, family experiences with cancer, and his bravery and generosity in confronting this issue head-on is commendable. With advocates like John, I am confident that we can ultimately conquer cancer once and for all.

CONGRATULATIONS TO MISSOURI SHERIFF OF THE YEAR, SHERIFF KERRICK ALUMBAUGH

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. SKELTON. Mr. Speaker, let me take this opportunity to congratulate Sheriff Kerrick Alumbaugh for being named the Missouri Deputy Sheriffs' Association's 2004 "Sheriff of the Year."

Sheriff Alumbaugh was born on March 19, 1964, in St. Charles, Missouri. He graduated from Lafayette County C1 High School in Higginsville, Missouri. Later, he graduated from the FBI National Law Enforcement Academy.

In September 1985, Sheriff Alumbaugh began his law enforcement career as a patrolman for the Higginsville, Missouri, Police Department. Then, in 1993, he became the Chief of Police of Higginsville, Missouri. He became the Sheriff of Lafayette County on January 1, 2001.

During his time as Sheriff, he has had many accomplishments. Sheriff Alumbaugh formed a county-wide crime scene team comprised of local police agencies and trained by the Kansas City Crime Scene Unit, fought to give deputies a living wage, and was instrumental in the passage of the county-wide law enforcement tax and a new jail and court system. Also, he developed an investigation unit within the department, comprised of two detectives, that investigates and solves rural crimes. These two detectives alone filed more Felony cases in 2003 than the whole department did in 2000.

Most importantly, he has instilled pride and professionalism for the deputies that work for the citizens of Lafayette County.

Mr. Speaker, once again, I wish to extend my congratulations to Sheriff Kerrick Alumbaugh. It is with great pride that I honor him for being named the Missouri Deputy Sheriffs' Association's 2004 "Sheriff of the Year."

PAYING TRIBUTE TO BRUCE HILL

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. McINNIS. Mr. Speaker, it is with great pride that I rise today to pay tribute to Bruce Hill, a dedicated public servant and community leader from Grand Junction, Colorado. Bruce is a dedicated leader and a champion of the city, and I would like to join my colleagues here today in recognizing his tremendous achievements before this body of Congress and this Nation.

Bruce is a Grand Junction native who has naturally assumed many leadership roles. At Tope Elementary School, he was appointed Safety Leader. Later, while attending West Middle School, Bruce's classmates elected him their student council representative, where he was known to lead by example, setting the standards for his peers to follow. After studying accounting at Mesa Junior College, he began working at Superior Alarm. When Bruce was hired, the owner told him that he would have a chance to own the company one day. Two years later, at the age of 22, he purchased Superior Alarm.

Twenty-three years later Bruce is now the Mayor of Grand Junction. Utilizing his past experience as a customer service representative and the owner of Superior Alarm, he has been a true people's representative. Bruce makes himself available to the people of Grand Junction as much as possible. Holding informal gatherings, he takes a keen interest in listening to each individual's issue, and then uses his knowledge and influence to achieve a resolution. Using this style, Bruce has made a significant impact, despite his short four months in office.

Mr. Speaker, it is a privilege to honor Bruce Hill for his ongoing contributions to the people and city of Grand Junction, and the State of Colorado. His leadership as Mayor is an example to all public servants, and it is with great pleasure that I recognize him today before this body of Congress and this Nation. Thanks, Bruce, for everything, and I hope you can serve this community for many years to come.

HONORING THE LATE REVEREND VICTORIANO F. SANDOVAL

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. PALLONE. Mr. Speaker, I would like to call the attention of my colleagues to the late Reverend Victoriano F. Sandoval. It is with great respect that I pay tribute to Padre Sandoval, who is being honored, In Memoriam, by the Latino American Association of Monmouth County, Inc., as they celebrate their Eleventh Annual Awards Banquet.

Padre Victoriano Fernandez Sandoval was born on December 24, 1933 in the town of Fuentes de los Oteros, in the Castilla Province, Spain. He studied in the Seminary of "los Padres Agustinos" in the Castilla Province. He was ordained as a priest on July 12, 1958.

He worked as a priest for 16 years in Brazil as the Director of the College and Seminary of Braganca Paulista, Sao Paulo. Shortly thereafter, he was the Director of the Educational Faculty at Catholic University and the College of San Agustin in Goiania.

In the United States he worked for 21 years at the Church of the Holy Redemption, Mount Holly, NJ and at Saint John the Baptist Church in Long Branch for 4 years. He served as the Chaplain for Hispanics at the federal prison in Fort Dix and Mid-State Correctional facility. There he ensured that all Hispanic inmates' rights were observed. He made it possible for them to celebrate Christmas with a dinner every year. His rectory door was always open for anyone in need.

Additionally, Padre Sandoval served as the Spiritual Director for marriage retreats in the northeast U.S.A. He also worked with Hispanics at marital retreats in Canada, Puerto Rico, Brazil, and Mexico.

Lamentably, Padre Sandoval died suddenly on June 20, 2002.

Mr. Speaker, it is my sincere hope that my colleagues will join me in paying tribute to Padre Victoriano Fernandez Sandoval, as the Latino American Association of Monmouth County honors him, In Memoriam, for his unfaltering dedication and commitment to the advancement of Latinos.

CONGRATULATIONS TO MARY GRILLO

HON. BOB FILNER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. FILNER. Mr. Speaker and colleagues, I want to take this opportunity to recognize and congratulate Mary Grillo, the Secretary-Treasurer of Service Employees International Union (SEIU) Local 2028 who is being honored by the Interfaith Committee for Worker Justice for her many years of dedicated service in advocating for worker justice and dignity for employees in work places throughout San Diego County.

Mary started out as a Wellesley College student interning for SEIU in Boston and at an early age saw firsthand the injustice that many workers face. After several years of work with the International Union, Mary came to work as an organizer in San Diego in 1987. At the time, SEIU Local 102 was a 1,600-member union on decline, but after teaming up with Eliseo Medina, Mary helped to transform Local 102 into the second largest union and one of the most powerfully political unions in San Diego County: SEIU, Local 2028.

Since 1996, Mary has served as executive Director of SEIU Local 2028, representing over 14,000 workers in many different jobs—ranging from janitor to librarian, racetrack program seller to registered nurse, housekeeper to code enforcement officer. In addition, she has acted as spokesperson for not only the workers she represents, but also for all working people in San Diego County.

Mary has led the effort to increase wages and benefits for immigrant and low-wage workers, has worked to expand health care coverage to the County's 650,000 uninsured workers, and has helped to create good jobs in the region.

In local 2028, Mary has worked tirelessly to bring together this large and diverse organization based on the principle of justice for all. And as an important mark of all leaders, Mary has found and developed many leaders who lead their co-workers in organizing and building economic strength in their industries.

Congratulations to Mary Grillo for her work in fighting for justice for the workers of San Diego County.

PERSONAL EXPLANATION

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. HYDE. Mr. Speaker, on the afternoon of October 6, 2004, I was unable to make two votes. I regret missing them and had I been present, I would have voted: vote No. 497, on passage—H.R. 5107, "yea"; vote No. 498, on agreeing to the Conference Report—H.R. 4850, "yea."

HONORING THE LIFE OF JOSEPH HENRY (JOEY) ZORN

HON. JOE WILSON

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. WILSON of South Carolina. Mr. Speaker, last Saturday the life of the late Sheriff Joey Zorn of Barnwell County, South Carolina, was celebrated at a funeral service attended by hundreds of appreciative friends conducted by Dr. Steve Burnette, Dr. Ken Catoe, Rev. Scott Brown, Rev. John Nixon, Rev. Billy Mew, Rev. Eddie Jenkins, Rev. Wilbur Creech, and Rev. Farrell Ray.

In his last month he received the state's highest honor of the Order of the Palmetto inspired by the thoughtfulness of Mrs. Mary Cothran of Williston, South Carolina, along with South Carolina State Senator Jake Knotts. In addition to being a champion of law enforcement, he was the first Republican Sheriff ever elected in Barnwell County. The following obituary is from The State newspaper, published October 1, 2004.

JOSEPH HENRY (JOEY) ZORN III

BARNWELL.—Joseph H. (Joey) Zorn III, 49, Sheriff of Barnwell County, died Wednesday, September 29, 2004, after a courageous battle with cancer.

Born in Barnwell, S.C., he was the son of Joseph H. Zorn Jr. and Cleo Renew Zorn. He graduated from Barnwell High School and the University of South Carolina with a degree in Criminal Justice, and was a graduate of 70 advanced law enforcement courses. He served as a Special U.S. Deputy Marshal, on the Board of Directors of the Barnwell Co. Helpline, on the Board of Directors of the S.C. Sheriff's Association, president of the Ellenton Agriculture Club.

He was a member and deacon of Friendship Baptist Church, Gideon International, Harmony Masonic Lodge #17, Barnwell Rotary Club, Ellenton Agriculture Club, S.C. Sheriff's Association and Barnwell County TAG Enforcement Association. He had over 30 years of law enforcement experience, was active in the youth baseball program and was voted Barnwell County Chamber of Commerce Man of the Year 2002. He was selected S.C. American Legion Law Enforcement Officer of the Year 2004, and Rotarian of the Year 2004. On September 8, 2004, he was presented the Order of the Palmetto by Gov. Mark Sanford.

In 1988 Joey was elected Sheriff of Barnwell County, and this year ran unopposed for his fifth term. Some of his accomplishments are: expanded sheriff's office staff, started the 24 hour patrol, obtained grants that saved taxpayers over 2.8 million dollars, instituted the anti-drug DARE program which graduated over 4,000 5th grade students, was the first sheriff in S.C. to complete DARE school and teach DARE in the schools, placed Resource Officers in all Barnwell County schools, installed an advanced communications system, established an on-going training program for department personnel, established the Reserve Deputy program, the Chaplaincy program, Sheriff's emergency Response Team and a bloodhound tracking team.

Funeral services were held at 11 a.m. Saturday, October 2, 2004, in the Barnwell First Baptist Church. Burial followed in the Friendship Baptist Church Cemetery. In lieu of flowers, memorials may be made to the American Cancer Society, 200 Jefferson St., Barnwell, SC 29812, Gideon International, P.O. Box 86, Williston, SC 29853 or the Connie Maxwell Children's Home, P.O. Box 1178, Greenwood, SC 29640.

Survivors include: His wife, Pamela Delk Zorn of Barnwell, SC; his parents, Joe and Cleo Zorn of Barnwell, SC; daughter, Jessica Zorn of Barnwell, SC; sons, Josh, Rodney and Russell Zorn of Barnwell, SC; sister and brother-in-law, Linda and Tommy Tyner of Abbeville, SC; mother and father-in-law, Jimmy and Faye Delk of Beech Island, SC; sister-in-law, Theresa Delk of Wrens, GA; four nieces.

PAYING TRIBUTE TO JOHN ATTARDO

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. McINNIS. Mr. Speaker, I rise today to mourn the passing of John Attardo, a dedicated firefighter from my home State of Colorado who lost his life serving his fellow citizens. As the National Fallen Firefighters Foundation honors these brave men, it is important for us to remember those dedicated firefighters who have made the ultimate sacrifice for their fellow Americans.

I know that those who seek the true meaning of duty, honor, and sacrifice will find it in dedicated servants like John Attardo. He was a loving husband and with a huge heart and I know that his wife Tina, his family and his friends take pride in the uniform he wore and the ideals for which he worked. Our Nation will long endure due to the strength and character of the men and women like John who serve our country.

Mr. Speaker, I cannot fully express my deep sense of gratitude for the sacrifice of these young firefighters and their families. Throughout our history, men and women in uniform have performed their duties with distinction and courage. These brave firefighters have made all Americans proud and I know they have the respect and admiration of all of my colleagues here today.

RECOGNITION OF DETECTIVE JUAN H. VASQUEZ

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. PALLONE. Mr. Speaker, I would like to call the attention of my colleagues to Detective Juan H. Vasquez, a distinguished gentleman from my district, who is being honored by the Latino American Association of Monmouth County, Inc., as they celebrate their Eleventh Annual Awards Banquet.

A life long resident of Long Branch, Juan was born at Monmouth Medical Center on November of 1969. In June of 1988, he graduated from Long Branch High School and in September of that same year, began undergraduate studies at Kean College (now Kean University). In January of 1993, Juan graduated from Kean College with a Bachelor's degree in Criminal Justice. In April of 1993, he started employment at the Monmouth County Division of Social Services, where he was employed as an Income Maintenance Worker until September of 1997. In October of 1997, he began his law enforcement career when he was hired by the City of Long Branch as a Police Officer. He attended the New Jersey State Police Academy in Sea Girt, NJ, and graduated from the 196th Municipal Class in January of 1998.

After graduating from the Police Academy, he started working in the Patrol Division as a Patrolman. In February of 2000 he was transferred to the Criminal Division of the Detective Bureau where he holds the current title of Detective.

Juan continues to live in Long Branch with his wife of 10 years, Tara, and his two children, Emelie who is 6 years old and Zachary age four.

Mr. Speaker, it is my sincere hope that my colleagues will join me in honoring and recognizing, Detective Juan H. Vasquez, as the Latino American Association of Monmouth County honors him for his unwavering commitment to the Latino community as well as the Long Branch Police Department.

CONGRATULATIONS TO LINDA ARREOLA

HON. BOB FILNER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. FILNER. Mr. Speaker and colleagues, I want to take this opportunity to recognize and congratulate Linda Arreola for being honored by the Interfaith Committee for Worker Justice for lending her strong voice to worker justice and worker rights. Linda is the Assistant Director of the Office for Social Ministry in the Catholic Diocese of San Diego. In this office, she assists the direction and coordination of ministries involving issues such as the sanctity of life, immigration, worker justice, human trafficking, political responsibility and advocacy.

Ms. Arreola is a member of the United States Catholic Conference Bishops' Working Group on Human Trafficking. She has also worked in other ministries in the Diocese including the Diocesan Institute for Adult Education and Ministry Formation, Hispanic Affairs and the Office for Hispanic Evangelization. She has been a member of St. Anthony of Padua in National City since 1983, where she served as director of religious education, catechist and youth minister.

Ms. Arreola is a native of San Diego and has lived in National City for 33 years, having graduated from Sweetwater Union High School. She also attended San Diego State University, where she received a Bachelor of Arts and Masters of Arts in French. Linda is also an instructor in the San Diego Diocesan Institute and volunteers as a Puente Project mentor at Southwestern College.

Congratulations to Ms. Linda Arreola for her commitment in working to make our community a better place.

TRIBUTE TO MR. THADDEUS ROBERT STEBBINS

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. HYDE. Mr. Speaker, I would like to commend to the House for its edification a recent event of note, that on the 3rd of September of this year, in Exeter, New Hampshire, Thaddeus Robert Stebbins celebrated his 17th birthday.

Although still in the formative period of his life's journey, Mr. Stebbins has already demonstrated remarkable abilities across a broad range of endeavor, from academics and music to sports and debate. These preternatural accomplishments must command our attention and admiration. But even more noteworthy are the maturity of thought and manner already manifest and the generosity of spirit evidenced by the unhesitating respect granted others.

The birthday was celebrated quietly at the Phillips Exeter Academy where Mr. Stebbins is currently enrolled in his Upper year and where he is manfully displaying talents and capacities notable even at that prestigious institution. Although they were not physically in attendance on that day, Mr. Stebbins was very much in the thoughts of his proud parents and sisters, of his godfather, and of his many admiring friends.

I cannot speak to Mr. Stebbins' religious beliefs, but I have no doubt that the Almighty has prepared great things for him and ever watches over him. And that he has entertained angels, unaware.

Mr. Speaker, Wordsworth wrote that "the Child is the father of the Man". We will be fortunate indeed to know the Man he will become.

HONORING HARVEY L. GOLDEN'S 50 YEARS OF PRACTICING LAW

HON. JOE WILSON

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. WILSON of South Carolina. Mr. Speaker, I rise today to praise the works of one of South Carolina's outstanding legal minds, Harvey L. Golden, who celebrates 50 years of practicing family law this month. I am proud to call Harvey a good friend, a fellow member of the Bar of South Carolina, and I ask all of my colleagues to join me in honoring his lifetime of hard work and service in the law profession.

I ask that the following information on Harvey's life and achievements be added into the official record.

Harvey Laurance Golden was born in Brooklyn, New York, October 15, 1929, the only child of Gertrude Dribbon Golden who had, come to this Country from Manchester, England, and Irvin (Jack) Golden who was born in New York. When Harvey was four years old, his mother, father and he moved from Brooklyn to Hartford, Connecticut, where his father spent World War II working at the Colt Firearms factory and, subsequently, became a supervisor in Pratt and Whitney Aircraft factory. In Hartford, his mother became a buyer for Brown and Thompson Department Store. In Hartford, Harvey attended the Vine Street School and subsequently Jones Jr. High School. Whereupon the family moved to Columbia, South Carolina, after a brief summer in Augusta, Georgia. In Columbia, he attended Columbia High School and became Business Manager of the school newspaper, "High Life" and became active in the high school debate team. Harvey was also active in the drama club and chorus.

While in Columbia, Harvey and some of his best friends joined the S.C. Air National Guard in 1948 and when the Korean war began, he turned down a college deferment when his S.C. Guard unit was federalized. The South Carolina Guard was the first guard unit in the country to be nationalized and he was the first guardsman in Korea and one month later was promoted to Sergeant. He spent two years as a Weapons Specialist in charge of the 157th Fighter Bomber Squadron Armament, including napalm, bombs, rockets, machine guns and small arms. This work was accomplished on F-51 aircraft that had already been sent to the war zone and had SCANG scrubbed from the side of the planes. These were the same aircraft on which Sgt. Golden had been working back at Congaree Air Base in Columbia. Upon returning to Columbia he was hospitalized in the Columbia VA Hospital for three months and released.

Whereupon, he approached Dean Sam Prince of the USC Law School requesting special dispensation to be allowed to attend law school without vacation and thus be able to graduate in two years rather then three or two and a half. The Dean grudgingly allowed him to become the first student to petition the law school to enter and while in law school he was awarded membership in Wig and Robe Honor Society, having begun in September 1952 and finished in September, 1954 with only one grade below a B. He was also elected by the faculty and editorial board as Editor-in-Chief of the South Carolina Law Review. He had already been elected president of his fraternity. After graduation, he had become very active in the University Theatre and had played many roles there as well as in Town Theatre and later he founded the Workshop Theatre and Columbia City Ballet as he began the practice of law. After law school, he practiced with Edens and Woodward and then Isadore Lourie, the late legendary State Senator, joined him as Golden and Lourie for the next four years.

On July 15, 1962, he married Heide Engelhart and they are the proud parents of three children and two grand children.

HARVEY L. GOLDEN

Trial Attorney in South Carolina for 50 continuous years with primary statewide practice in Family Law. Currently:

Recipient, American Bar Association, Lifetime Achievement Award—August, 2001;

Recipient, South Carolina Bar Association first Family Law Public Service Award—June, 1994;

Member, ABA House of Delegates (1990–2000) and its Nominating Committee (1996–, 1998);

Officer, Council Member, ABA Family Law Section (1984–2000);

Certified Fellow of the American Academy of Matrimonial Lawyers and member of its National Board of Governors;

Founding Fellow, (U.S. Chapter) International Academy of Matrimonial Lawyers;

Diplomate, American College of Family Trial Lawyers (1989–);

Advocate, American Board of Trial Advocates;

Listed in "Best Lawyers in America" all five editions 1983–99;

Listed as one of the best forty-three Family Court Lawyers in the United States by National Law Journal, November 16, 1987;

Contributor to "Fair Share", "Matrimonial Strategist", "Trial" and "Family Advocate" National legal publications;

Author, S.C. Pre-Nuptial Agreement Statute;

Co-Author, S.C. Equitable Apportionment Act;

Co-Author: "Divorce", 13 S.C. Jurisprudence 63, 1992, and "Adultery and Fornication", 3 S.C. Jurisprudence 1, 1991;

Chairman, AAML Inter-Disciplinary Mental Health Committee;

Former Treasurer, International Academy of Matrimonial Lawyers (1990–1991);

Former National Chairman of American Bar Association Family Law Section 1987–1988) and Secretary, Vice Chair and Chair Elect (1984–1987);

Former President, South Carolina Chapter, American Academy of Matrimonial Lawyers (4 Years);

Past Member, Nominating Committee, American Bar Association Conference of Section Chairmen;

Past Member, American Bar Association Law School Accreditation Team (1988). Formerly Contributing Editor on Family Law for the South Carolina Educational Television Network;

Member, South Carolina Bar Judicial Modernization Committee. Formerly one of five original appointees by the S.C. Supreme Court on Family Law Specialization Advisory Board;

Former Chairman of the Family Law Section of the S.C. Bar;

Former Chairman of the S.C. Trial Lawyers Family Law Section. Program Participant, "Negotiations" American Academy of Matrimonial Lawyers, 1983;

Producer-Moderator of the First Family law CLE program in South Carolina (1975) at the request of the SC Supreme Court;

Former member, Long Range Planning Committee and Scope and Correlation Committee, ABA Family Law Section;

Former Public Information Representative, ABA Family Law Section;

Frequent Family Law Faculty at: ABA National Institutes, Annual and mid-winter conventions and S.C. Mandatory Judicial C.L.E. programs. Frequent Lecturer on Family Law at USC College of Law, USC College of General Studies, Lutheran Southern Theological Seminary, CLE program speaker in: Atlanta, Connecticut, D.C., Colorado, Florida, Illinois, Maryland, New Jersey, North Carolina, Texas, Virginia, West Virginia, and Wisconsin Bar Association programs. Past Chairman of the Paternity Committee of the ABA, Family Law Section (1978–1981);

Recipient of the 1978 "Certificate of Outstanding Contribution" of ABA Family Law Section;

Participant, with Lawrence Stotter, Esq., in the "Great Custody Debate of 1980" presented by the American Academy of Matrimonial Lawyers, Chicago, Illinois;

Former Special Judge appointee in Richland County, S.C. Juvenile-Domestic Relations Courts, County Civil Jury Courts, County Criminal Jury Courts (1965–1975);

Elected to the Debate Hall of Fame, University of South Carolina (1977);

Former Editor in Chief, S.C. Law Quarterly (1954);

Elected to Order of Wig and Robe, Legal Scholarship Society (1954);

Former Drama Critic, the State Newspaper, Columbia, South Carolina (1983–1987);

Past President, Congregation Beth Shalom, Columbia, S.C. (Two terms);

Co-Founder and Director, Workshop Theatre of South Carolina (1965–1981);

Co-Founder of Columbia City Ballet Company, Columbia, South Carolina (1962), Board of Directors (1962–1988);

U.S. Air Force Korean Combat Zone (1950–1952).

PAYING TRIBUTE TO MARGRET MERGELMAN

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. McINNIS. Mr. Speaker, I rise today to pay tribute to Margret Mergelman, a dedicated leader and 4–H activist from Gunnison, Colorado. For over sixty-four years, Margret has volunteered to better her community, and I am honored to stand before this body of Congress and this Nation today to recognize her service.

Margret earned her elementary education degree in 1943 from Western State College and that same year married Warren Mergelman, whose family has ranched the Gunnison area for generations. Margret accompanied her husband on the long cattle drives for local area ranchers. After the couple started a family she focused her attention on homemaking skills, especially cooking. When the kids became active in 4–H, she started a cooking club, in addition to sewing, gardening, and square-dancing clubs. She herself was a 4–H leader for ten years. Margret's cooking is legendary and her open-house lunch after the Cattlemen's Days parade has drawn more than one hundred people in the past. Today Margret is still active in the rural community, donating cash gifts to the local 4–H and annually sponsoring the Mergelman Family Award to competitors of the Round Robin Showmanship. She has also been a member of the Eastern Star for sixty-two years.

Mr. Speaker, Margret Mergelman, is a dedicated individual who devotes her free time to aiding members of her Gunnison community and works to preserve Colorado's western style and heritage. Her level of enthusiasm and commitment is commendable and I am honored to stand here before this body and recognize the efforts of such a selfless and benevolent woman. Thanks for all your service, Margret, and I wish you all the best in your future endeavors.

RECOGNITION OF DEPUTY MAYOR REBECCA AARONSON

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. PALLONE. Mr. Speaker, I would like to call the attention of my colleagues to a constituent in the 6th District of New Jersey. It is with great pleasure that I introduce my friend, the Honorable Rebecca Aaronson, Deputy Mayor of Manalapan, N.J., who is being honored by the Latino American Association of Monmouth County as they celebrate their Eleventh Annual Awards Banquet.

Rebecca Aaronson was born in Laredo, Texas to Mexican parents. Her father was born in Monterrey, Mexico and her mother was born in Mexico City, D.F. She grew up in El Paso, Texas and attended the University of Texas at El Paso for one year. Rebecca met and married Richard Aaronson in 1972. She is the proud mother of two sons, Scott, 27 years old, who recently married Julie, and Glenn, 22 years old, a senior at Quinnipiac University in Connecticut.

Rebecca returned to school and graduated from Brookdale Community College in 1997 with an Associates Degree in Humanities. She volunteered at the Women's Center of Monmouth County (now 180) in the shelter program for victims of domestic violence. She became involved with the community because she always felt that no one has the right to complain if they are not willing to do something about it. She was concerned with the over-development of her town, Manalapan, and felt that the builders, not the Planning Board, were making all of the decisions.

In 2002, she was elected Mayor of Manalapan Township. Presently, she is in her second term and serves as Deputy Mayor. In 2001 she was the Democratic candidate for Monmouth County Freeholder. Presently she serves as the Vice Chair of Monmouth County Democrats.

She believes that she and her colleagues have made a difference in Manalapan. Her philosophy has always been that we are all obligated to leave our mark somehow and politics has given her the opportunity to do so. She carries that philosophy to her personal life and is always seeking a way of making a difference in people's lives.

Mr. Speaker, it is my sincere hope that my colleagues will join me in honoring and recognizing Deputy Mayor Rebecca Aaronson, as the Latino American Association of Monmouth County honors her for her unfaltering dedication to the Latino community.

CONGRATULATIONS TO RABBI LEVIN

HON. BOB FILNER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. FILNER. Mr. Speaker and colleagues, I want to take the time to recognize Rabbi Moshe Levin, the spiritual leader of Congregation Ner Tamid in the Sunset, San Francisco. Rabbi Levin is being honored by the Interfaith Committee for Worker Justice for his contributions to worker justice and worker rights.

Rabbi Levin came from San Francisco to San Diego, where he served as the Senior Rabbi of Congregation Beth El in La Jolla for 15 years. Two years ago, he was named Rabbi Emeritus of that prestigious congregation, and began commuting to San Francisco to serve the people of Ner Tamid.

Rabbi Levin was ordained at the Jewish Theological Seminary of America, the central pillar of Conservative Judaism in the United States. He served as an Air Force chaplain for the first 2 years of his rabbinical career, and was stationed in Southeast Asia during the Vietnam War. His pulpit experience spanned 30 years, including 2 years on the Island of Curacao in the Dutch West Indies.

Rabbi Levin was born in Brooklyn, NY, graduated from Brooklyn College and spent 2 years at Jerusalem's Hebrew University, majoring in economics and philosophy, and studying the Bible with the famed Nehama Leibowitz and archeology with Yigal Yadin. At the Jewish Theological Seminary, Rabbi Levin was privileged to study with such giants of the last century as Abraham Joshua Heschel and Chancellor Louis Finkelstein.

Over the course of his career, Rabbi Moshe Levin has been active in Zionist causes, social action projects, interfaith activities, as well as furthering the creative continuity of American Jewish life. He is a founding member of the Palestinian-Jewish Dialogue of San Diego, which has been featured in the Christian Science Monitor, and has served on numerous boards, most recently the American Jewish Committee and the Interfaith Committee for Worker Justice. In 1992, he was named Civil Libertarian of the Year by the San Diego and Imperial Chapters of the ACLU.

Rabbi Levin's writings include: the Ethical Orgins of Kashrut, Near- Eastern Birthrights and the Eassau Jacob Narrative, Sexuality in Jewish Law and Tradition, and the Rabbinate for the 21st Century. It is a privilege to honor Rabbi Moshe Levin.

PAYING TRIBUTE TO ANDREW GULLIFORD

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. McINNIS. Mr. Speaker, I rise today to pay tribute to Andrew Gulliford, the Director of the Center for Southwest Studies at Fort Lewis College in Grand Junction. Andrew has dedicated his life to preserving Western heritage and culture and I am honored to stand here today with my colleagues before this body of Congress and this Nation and recognize his accomplishments.

Andrew grew up in Southwest, Colorado attending high school in the town of Lamar. He earned his bachelor's degree in American history and master's degree in teaching at Colorado College. Andrew applied his new knowledge as a fourth grade teacher in Silt, Colorado where he also taught American History at the Rifle branch of Colorado Mountain College before going on to complete his doctorate in American Culture and history at Bowling Green University in Ohio. After teaching, Andrew served as the Director of the Western New Mexico University Museum where he arranged for several donations of Navajo weavings, Mimbres pottery, Southwest art, and Hispano Folk Art.

Andrew did not abandon teaching completely and returned to be a professor and director of the Public History and Historic Preservation Program at Middle Tennessee State University for 10 years where he directed one of the oldest and largest public history and historic preservation graduate programs in the Nation. In 2001, Andrew was selected by Fort Lewis College to become their Director of the Center for Southwest Studies where his national reputation as a scholar, a public historian and developer and manager of several academic centers have contributed to the shinning success of the center in Fort Lewis. Andrew is also an accomplished author and photographer and he is supported by his wife Stephanie Moran, and their two children Tristan and Duncan.

Mr. Speaker, Andrew Gulliford is a dedicated scholar, and it is through his many hours of devotion that we are able to have such a vivid picture of Western history and culture in Colorado and I am honored to recognize his efforts before this body of Congress. Andrew, thanks for all your hard work and I wish you all the best in your future endeavors.

RECOGNITION OF MARIA ANN CRESPO-RODRIGUEZ

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. PALLONE. Mr. Speaker, I would like to call the attention of my colleagues to Mrs. Maria Ann Crespo-Rodriguez, who is being honored by the Latino American Association of Monmouth County, Inc., as they celebrate their Eleventh Annual Awards Banquet.

Maria was born at Monmouth Medical Center in Long Branch and raised in Red Bank, NJ, where she attended the Red Bank Public School System, and graduated from Red Bank High School in 1974. She earned a Bachelor's Degree in Secondary Education/Spanish from Monmouth College, and received a Masters degree in ESL from Kean College.

Maria has been teaching in the Long Branch Middle School for the last 26 years. During that time, her energy and enthusiasm have manifested themselves both in and out of the classroom, where she became involved in a number of volunteer agencies and services. She has been a board member of Hispanic Affairs and Resource Center of Monmouth County, spent 5 years as a tutor in Stay Smart University helping children in a pediatric ward, many of whom were terminally ill. She was a member of the Pearl Chaney Memorial Scholarship Fund for 10 years, as well as a member of the Long Branch School District's Puerto Rican Disaster Relief Fund, President of the S.T.P.O. of Elberon School (1997–1998), and a speaker at the National School Board Association in 1997, 2003, and 2004. As the cofounder of the B.B.I.P., which started as the Bilingual/Bicultural Intervention Program, later changed to Basic Belief in All People, she has helped hundreds of students with academic as well as behavioral problems to succeed.

Maria has been awarded Teacher of the Month in the Long Branch Middle School two times, once in 1992 and again in 2003. She was District Teacher of the Month in 2003, and was nominated for the Long Branch Middle School Teacher of the Year.

For her service as co-founder of BBIP and its co-moderator over the last 12 years, she served in the roles of teacher, mentor, friend, counselor and surrogate mother, she earned many justly deserved awards. She received recognition from HARC's youth organization, "Almas Latinos". She is the recipient of the NJ State Department of Education P.R.I.D.E. Model Program Award (BBIP), the PRIDE pin for Programs of Inclusion, and is an Equity Hall of Fame Member, NJ State Department's "Best Practices" award. In 1996, she was recognized as a Hall of Fame Member of the "A+ for Kids" Teachers Network, and presented the award on a television show on WWOR, Channel 9 by Jerry Orbach (Law and Order). She has been recognized for the program by Governor Christine Todd Whitman as well as movie actor, Edward James Olmos, and most recently was featured in an Asbury Park Press "School Scene" article (February 27, 2003) entitled "School program offers students a little nudge."

Maria resides in Tinton Falls with her husband, Carlos, and two children, Roberto and Gabriella.

Mr. Speaker, it is my sincere hope that my colleagues will join me in honoring and recognizing, Mrs. Crespo-Rodriguez, as the Latino American Association of Monmouth County honors her for her dedication to the educational advancement of Latinos and her commitment to the Long Branch Public School System.

CONGRATULATIONS TO PASTOR WILLIE E. MANLEY

HON. BOB FILNER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. FILNER. Mr. Speaker and colleagues, I want to take this opportunity to recognize and congratulate Pastor Willie E. Manley of the Greater Life Baptist Church of San Diego, California as he is honored by the Interfaith Committee for Worker Justice for his advocacy for worker rights and worker justice.

He was born in Stephens, Arkansas, and has presided over the Greater Life Baptist Church for over 30 years.

Pastor Manley has contributed to the community by spending several years in the offices of both the City Council and Congressional offices in San Diego. He has ably led the National Association for the Advancement of Colored People (NAACP) for several terms. Pastor Manley has served in numerous leadership roles with the Baptist Ministers Union and the Interdenominational Ministerial Alliance. He is a very strong advocate for voter registration and education in his community. On many civic and safety matters, many residents in the San Diego community without fail call on Pastor Manley for answers and solutions.

Pastor Manley was recently honored with the very prestigious Ambassador of Peace Award that is given to an individual that has promoted goodwill among all peoples without respect to one's race, creed, color, religion, or national origin. He has traveled extensively across the United States and around the world promoting spiritual and religious harmony. As part of his worldwide missionary travels, Pastor Manley ministered before large embracing crowds in West and South Africa. Pastor Manley also points to his trip to the Holy Land as the fulfillment of a life-long dream.

A dynamic leader and a willing servant to his community, I am proud to honor Pastor Willie E. Manley and congratulate him for his outstanding work in support of his church, his community, and his country.

PAYING TRIBUTE TO TERRI GIRD

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. McINNIS. Mr. Speaker, I rise today to pay tribute to Terri Gird, a dedicated public servant who has devoted countless hours of her spare time assisting citizens in the Grand Junction community. Recently, Terri was awarded the 2004 Volunteer of the Year Award by the Grand Junction Safehouse for her work with the Grand Junction Police Department Victim's Advocate program and I am honored to stand here today with my colleagues before this body of Congress and this nation and recognize her accomplishments.

Terri has worked with the Grand Junction Police Department Victim's Advocate program since 2001. During her tenure she has volunteered over 2,000 hours to the program and assisted on over two hundred cases. The vast majority of the cases were domestic violence victims, in fact Terri was nominated for the award after her extensive work easing the trauma for the family of a high profile domestic violence case where the victim was murdered. She is also a model advocate for both her co-volunteers and the newer members of the program, mentoring them as they begin their training. Additionally Terri also serves on the Community Corrections Board and teaches victim empathy classes at the Mesa County Department of Youth Corrections and the Partner's Program.

Mr. Speaker, Terri Gird is a dedicated volunteer who devotes her spare time to aiding people of her Grand Junction Community in need. She is strong and talented member of the Grand Junction Police Department Victim's Advocate Program and I am honored to recognize her efforts before this body of Congress. Congratulations on your award, Terri, and I wish you all the best in your future endeavors.

HONORING MIGUEL RODRIGUEZ

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. MENENDEZ. Mr. Speaker, I rise today to honor Miguel Rodriguez, Chief Community Relations Specialist for the Newark Housing Authority. On Thursday, October 7, 2004, friends, co-workers and family members will gather at Nanina's in the Park in Belleville, New Jersey to celebrate his retirement after 39 years of dedicated public service.

Mr. Rodriguez, or Don Mike as he is referred to by friends and colleagues, began his career in public service in the early 1970s when he was appointed Deputy Mayor of the City of Newark, New Jersey by former Mayor Kenneth Gibson, a position he held for sixteen years. In his current position with the Newark Housing Authority, Mr. Rodriguez is responsible for providing information to the community regarding low-income housing options.

An active member of the greater Newark community, Mr. Rodriguez has founded various organizations, including the Hispanic American Chamber of Commerce of Essex County and the Newark Borinquen Lions Club. Additionally, Mr. Rodriguez has served on the Boards of the Newark Symphony Hall, the Essex County Board of Economic Development, and The Hispanic American Political Forum.

A strong believer in the power of education, Mr. Rodriguez established the Communications Information Marketing Scholarship Award (CIMA), a private, nonprofit organization that supports students from Hispanic and African American families who are pursuing a career in communications, and has provided over $22,000 in scholarships for minority journalists.

A native of Puerto Rico and a resident of Newark for 44 years, Mr. Rodriguez earned a Bachelor's Degree from Shaw University in North Carolina. He is the proud father to Myra, Michael, Ricardo and Carlos, and the doting grandfather to six wonderful grandchildren.

Today, I ask my colleagues to join me in honoring Miguel Rodriguez as we celebrate his 39 years of public service to the City of Newark and wish him well as he begins a new chapter full of good work and many more contributions to our community.

IN RECOGNITION OF JOHN DAVANZO, 2004 VOLUNTEER FIREFIGHTER OF THE YEAR

HON. CAROLYN McCARTHY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mrs. MCCARTHY of New York. Mr. Speaker, I rise today on behalf of the people of the 4th Congressional District to recognize John DaVanzo of Mineola, New York.

I am extremely honored to congratulate Mr. DaVanzo as he was recently named the 2004 National Volunteer Fire Council's Volunteer Firefighter of the Year. Receipt of such an honor is testament to his impressive record of nearly sixty years of dedicated service to the Mineola Fire Department.

John DaVanzo is a man who has spent most of his life to serving the people of Long Island. He began his career with the Mineola Fire Department in 1947, eventually becoming captain. John later became a member of the department's Fire Council and was a delegate to the Southern New York and Nassau County Firemen's Associations.

In addition to his work with the fire department, John served as Deputy Mayor of the Village of Mineola and as a North Hempstead Councilman. For seventeen years, he was North Hempstead's Town Clerk and was honored as the New York State Clerk of the Year for 1986–87. He has also volunteered with worthy organizations like the American Cancer Society, Catholic Charities, and the Boy Scouts of America. In all of the undertakings that he has pursued, John has always been a leader, exhibiting consummate diligence and tireless effort.

Since 1978, the National Volunteer Fire Council has awarded those individuals who have made outstanding achievements in fire service and maintain an exemplary record of community service. This prestigious title is one of only two awards that the Council distributes each year and it is no surprise that John is one of the recipients.

Mr. Davanzo's tireless commitment to service has made a difference in the lives of many. Once again, I would like to offer my congratulations to him on this well-deserved national recognition and wish him the best of luck in his future endeavors.

SENATE—*Friday, October 8, 2004*

The Senate met at 9 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Almighty God, from the rising of the Sun to the coming of evening, we lift Your name in praise. During these long days and short nights, we have felt Your presence. Thank You for sustaining our lawmakers in their challenging work. Strengthen them to do what is right so that our Nation will be blessed by Your love. Empower them to treat one another with respect and honor. Teach us to hate what is evil and to cling to what is good. Remind us of how fleeting the days of our lives are, and give us the wisdom to prepare for eternity.

We anticipate all You are going to do in the coming months. Lord, You are our God. We will exalt You and praise Your name, for in perfect faithfulness You have done marvelous works.

Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, in a moment we will proceed to the conference report to accompany the FSC/ETI, or JOBS bill. It is my understanding that we would be unable to reach a time agreement on the conference report, and therefore I will file a cloture motion on it this morning.

Immediately after filing of that cloture, we will begin the vote on invoking cloture on the McConnell-Reid substitute amendment to the intelligence reform and homeland security resolution. The managers made substantial progress over the course of yesterday and last night. At this juncture, we are down to only a handful of amendments.

Senators who do have amendments remaining should stay close to the Chamber this morning as we hope to move quickly on the underlying resolution. If Members are not timely in coming to offer their amendments, we will be moving to adoption of the resolution.

At this juncture, we really should have no delay. Every hour that we delay over the course of today means an hour later before we adjourn, whether that is later tonight or tomorrow or the next day. We need to move on to complete the remaining legislative items before our adjournment. As we all know, the clock is working against us.

We will finish the pending intelligence reform resolution. We will finish the FSC/ETI conference report. We will finish the Homeland Security appropriations conference report. Finally, we also expect to finish the Department of Defense authorization conference report.

Obviously, from those four items you can see we have a lot to do, a full plate of business before our adjournment. Yet all of these can be handled expeditiously, but it is going to take the cooperation of each and every one of our Members. Individual Members are going to be able to determine whether we have to continue to work through the weekend, including Saturday and Sunday, to complete our business.

I don't believe, if you look at it and you look at where each of these four items is, that it is necessary for it to take that long. We can very efficiently work through these items, but every Senator is going to have to cooperate. If not, it will be necessary to continue late tonight, Saturday, and possibly Sunday with these four items we must complete before adjourning.

We will be voting throughout today and, if necessary, tomorrow and into Sunday. I believe we could finish all of this even late today if Senators focus on it and work together. Again, we need to finish all four items before we adjourn.

I will be happy to yield for a moment to the Democratic leader before proceeding to the FSC conference report.

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER (Mr. BOND). The Senator from South Dakota is recognized.

INTELLIGENCE REFORM

Mr. DASCHLE. Mr. President, last night, we reached agreement on a finite list of amendments to the intelligence reorganization resolution. As I understand it, there are six amendments that will be addressed today following cloture, so we have made good progress. It is a resolution I strongly support. Like the 9/11 Commission legislation, it is imperative that we finish it. It is imperative that we have an opportunity to work through these amendments. I hope everybody could cooperate with regard to time on the amendments.

I again commend the two managers. This has not been an easy task. Dealing with legislative jurisdiction is one of the trickiest of all the challenges and efforts we as legislators face. They have done a masterful job. I commend them again this morning and look forward to completing our work today.

I yield the floor.

AMERICAN JOBS CREATION ACT OF 2004—CONFERENCE REPORT

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. I now move to proceed to the conference report to accompany H.R. 4520.

The PRESIDING OFFICER. The question is on agreeing to the motion to proceed to the conference report.

Without objection, the motion is agreed to.

CLOTURE MOTION

Mr. FRIST. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the cloture motion.

The legislative clerk read as follows:

> CLOTURE MOTION
>
> We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the conference report to accompany H.R. 4520, a bill to amend the Internal Revenue Code of 1986 to remove impediments in such code and make our manufacturing service technology businesses and workers more competitive and productive both at home and abroad.
>
> Bill Frist, Chuck Grassley, Ted Stevens, Kay Bailey Hutchison, Conrad Burns, Thad Cochran, Norm Coleman, George Allen, Larry Craig, Trent Lott, Mitch McConnell, Jon Kyl, Craig Thomas, John Cornyn, Ben Nighthorse Campbell, Elizabeth Dole, and James Talent.

Mr. FRIST. I believe we are now ready to proceed to the cloture vote on the McConnell-Reid amendment to the intelligence resolution.

INTELLIGENCE COMMITTEE REORGANIZATION

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. Res. 445, which the clerk will report.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

The legislative clerk read as follows:

A resolution (S. Res. 445) to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence.

Pending:

McConnell/Reid/Frist/Daschle Amendment No. 3981, in the nature of a substitute.

Bingaman (for Domenici) Amendment No. 4040 (to Amendment No. 3981), to transfer jurisdiction over organization and management of United States nuclear export policy to the Committee on Energy and Natural Resources.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators in accordance with the provisions of rule XXII of the standing rules of the Senate do hereby move to bring to a close debate to the pending amendment on S. Res. 445, a resolution to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence.

> Bill Frist, Mitch McConnell, Harry Reid, John Cornyn, Craig Thomas, James Inhofe, Mike Crapo, Conrad Burns, Norm Coleman, Tom Daschle, Lamar Alexander, James Talent, Wayne Allard, Gordon Smith, Larry Craig, Robert Bennett, Pete Domenici, Susan Collins.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate debate on Amendment No. 3981, offered by the Senator from Kentucky, Mr. McCONNELL, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL), the Senator from Georgia (Mr. CHAMBLISS), and the Senator from New Hampshire (Mr. SUNUNU) are necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KERRY), the Senator from Vermont (Mr. LEAHY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

The PRESIDING OFFICER (Mr. BOND). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 88, nays 3, as follows:

[Rollcall Vote No. 204 Leg.]

YEAS—88

Akaka
Alexander
Allard
Allen
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Boxer
Breaux
Brownback
Bunning
Burns
Byrd
Cantwell
Carper
Chafee
Clinton
Cochran
Coleman
Conrad
Cornyn
Corzine
Craig
Crapo
Daschle
Dayton
DeWine
Dodd
Dole
Domenici
Dorgan
Durbin
Ensign
Enzi
Feingold
Feinstein
Fitzgerald
Frist
Graham (SC)
Grassley
Gregg
Hagel
Harkin
Hatch
Hutchison
Inhofe
Inouye
Jeffords
Johnson
Kennedy
Kohl
Kyl
Landrieu
Lautenberg
Levin
Lincoln
Lott
Lugar
McConnell
Mikulski
Miller
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Nickles
Pryor
Reed
Reid
Roberts
Rockefeller
Santorum
Sarbanes
Schumer
Sessions
Shelby
Smith
Snowe
Specter
Stabenow
Stevens
Talent
Thomas
Warner
Wyden

NAYS—3

Collins
McCain
Voinovich

NOT VOTING—9

Campbell
Chambliss
Edwards
Graham (FL)
Hollings
Kerry
Leahy
Lieberman
Sununu

The PRESIDING OFFICER. On this vote, the yeas are 88, the nays are 3. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The assistant Republican leader.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the pending amendment be temporarily set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 4035, AS MODIFIED

Mr. McCONNELL. Mr. President, I call up amendment No. 4035 for the majority leader, Senator FRIST. I understand a modification to the amendment is at the desk. I ask unanimous consent that the modification be accepted.

The PRESIDING OFFICER (Mr. ALLARD). Is there objection?

The Senator from Nevada.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. HARKIN. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The legislative clerk continued with the call of the roll.

Mr. McCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. HARKIN. I object.

The PRESIDING OFFICER. Objection is heard.

The legislative clerk continued with the call of the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. HARKIN. I object.

Mr. HATCH. I cannot make a unanimous consent request.

Mr. HARKIN. I object.

Mr. HATCH. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, I ask unanimous consent that I be permitted to speak for up to 1 hour and after that the quorum be reinstituted.

Mr. REID. Reserving the right to object, his hour will be counted against the time for the cloture; is that right?

Mr. HATCH. No, because I am not speaking on the bill.

Mr. REID. I object, then.

Mr. HATCH. That is fine.

Mr. REID. I objected.

Mr. HATCH. Fine. Your request is fine.

Mr. REID. The hour will be counted?

Mr. HATCH. Fine.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Utah is recognized for 1 hour.

Mr. HATCH. I thank the distinguished minority whip and, of course, my friend from Iowa for their courtesy. I have been wanting to give these Senate remarks as in morning business ever since yesterday.

MEDICARE MODERNIZATION ACT

Mr. President, over the past few weeks several of our colleagues on the other side of the aisle have given rousing statements on health care.

There is no question that health care is of paramount importance on American families. On that we can all agree.

I am sure it will come as no surprise that I disagree with a number of points my colleagues have raised. In fact, some of their allegations are just plain wrong, particularly with respect to the Medicare prescription drug law which I helped to negotiate.

I was a member of the tripartisan group that came up with a bill that I think would have been supported by the 20 Democrats at the time. I have been working on this ever since and was on the conference committee, sat in for days, weeks, and months on that conference committee to negotiate this bill.

It is mind-boggling some Senators seem willing to sacrifice the health and well-being of beneficiaries by spreading mistruths about the law. These mistruths could cause a beneficiary to forego learning more about provisions in the law that could really help, such as the Medicare-approved discount card program which study after study shows is delivering real savings, or the voluntary Part D benefits that begin in 2006.

This continued misinformation and set of damaging attacks are a tremendous disservice to Medicare beneficiaries. So I wanted to take this opportunity to set the record straight.

Opponents have characterized the Medicare law as a failure for beneficiaries. What poppycock. To me, we would have failed had we not passed the Medicare Modernization Act, had we not given beneficiaries what they need, meaningful prescription drug coverage and a stronger Medicare Program.

Let me highlight a few areas in which we need to set the record straight. The first is the cost estimates of the MMA. I will refer to this bill, the Medicare Modernization Act, from here on in as the MMA. That means the Medicare Modernization Act.

Let me talk about cost estimates. The central theme echoed by those who seek to discredit the new Medicare law is the allegation that the administration hid the true cost of the Medicare law from the Congress before the final vote.

This is simply political election year hyperbole.

The opponents of the drug benefit have made this claim because the complete and final cost estimate from the CMS Office of the Actuary was not finished before the vote took place.

Let's be clear, the administration's cost estimate was not withheld from Congress because there was not a final cost estimate from CMS to withhold. The CMS cost estimate was not even completed until December 23, 2003—long after the House and Senate vote, long after the bill was signed into law. So let's get rid of that argument right off the bat because it is a false, fallacious argument.

Rick Foster, the chief actuary for the Centers for Medicare and Medicaid Services confirmed these facts to us earlier this year in a Finance Committee briefing and we all know that. Even after that briefing, however, some chose to continue this erroneous attack, perhaps because they did not take the time to attend the briefing. To me, this is but another indication of election year hyperbole.

Let me also be clear that we did have the official cost estimate on the Medicare bill before the vote. That estimate, as my colleagues are well aware, is the one from the Congressional Budget Office, not CMS. That is what binds us. That cost estimate, our official cost estimate, by the entity we rely on in Congress, was available to every Member of Congress before the measure was presented to either the House or the Senate.

No one should doubt that we had the true cost estimate for the prescription drug bill last year, and everyone in this body and the other body had access to it before the vote.

There also have been claims that the administration changes its cost estimate. Again, that is not the case. The President's mid-session review did update the estimates of Medicare outlays, but it did not change the estimate of the Medicare Modernization Act, the MMA.

In fact, Rick Foster, the CMS actuary, has said you simply cannot add the change in estimated outlays to the MMA estimate and declare you have a new estimate.

Apparently, Mr. Foster's words, the words of a trained actuary, don't matter to some of these so-called critics. If opponents of the Medicare bill value his opinion of cost estimates so highly, why do they ignore him now? That is amazing to me. They will quote part of what he said—but ignore the other part of what he said. Mr. Foster has said that the MMA estimate has not changed; but despite that, opponents of the MMA have wrongly claimed that it did.

Again, it is just political hyperbole. We had—and have—the true cost estimates from CBO. Case closed. That is what we have to rely on in the Senate Finance Committee.

Now let me address the accusations that the bill prohibits Medicare from negotiations with drug companies. This is another one of the fallacious things that enemies of the bill have been spewing forth.

Those who make this charge imply, wrongly, that the price charged to beneficiaries is not subject to negotiation. That could not be further from the truth. The truth is, Medicare prescription drug plans will be negotiating with drug makers. These negotiations are the very heart of the new Medicare drug benefit.

The absurd claim that the Government will not be negotiating with drug makers comes from a non-interference clause in the Medicare law.

This noninterference clause does not prohibit Medicare from negotiating with drug makers. It prohibits CMS from interfering in those negotiations. That is a far cry from some of the fallacious statements that have been made on this floor.

Let me be clear, the non-interference clause is at the heart of the bill's structure for delivering prescription drug benefits. This clause ensures those savings will result from market competition, rather than through price fixing by the CMS bureaucracy. That is what was behind this. Let's not distort these provisions.

What is ironic about the minority charges on this provision—some in the minority; not all in the minority would agree with some of these fallacious charges—but what is ironic about these minority charges by some on this provision is that the same non-interference clause was in the Daschle-Kennedy-Rockefeller bill and the Gephardt-Dingell-Stark bills in the year 2000.

I hate to say this, but if my memory serves me correctly, these are leading Democrats in the Senate and in the House. They are not Republicans. It is the same provision that is being condemned by some in this body through hyperbole, political hyperbole. In fact, I want to read this to you:

> In administering the prescription drug benefit program established under this part, the Secretary may not—(1) require a particular formulary or institute a price structure for benefits; (2) interfere in any way with negotiations between private entities and drug manufacturers, or wholesalers; or (3) otherwise interfere with the competitive nature of providing a prescription drug benefit through private entities.

Now, what is the source of that language? It is from S. 2541, the Medicare Expansion for Needed Drugs, or MEND, Act, introduced in 2000 by Senator DASCHLE and cosponsored by 33 Democrats, including Senator KERRY. Think about it, some of the very people who are criticizing the MMA, that passed overwhelmingly in both Houses of Congress.

I find it curious that this approach, which is mislabeled as "preventing Medicare from negotiating," was fine in the year 2000 when the Democrats were putting forth a bill, but not fine when enacted into law by a Republican President and a Republican Congress in 2003.

I must remind my colleagues that Senator DASCHLE, the distinguished Senator from South Dakota, once said:

> Our plan gives seniors the bargaining power that comes with numbers. . . . Our plan mirrors the best practices used in the private sector. For beneficiaries in traditional Medicare, prescription drug coverage would be delivered by private entities that negotiate prices with drug manufacturers. This is the same mechanism used by private insurers.

Think about that. I think those who advance these arguments that you cannot have competitive work with regard to drug pricing ought to be ashamed of themselves and ought to quit playing politics with a bill that is so important for senior citizens all over this country.

A related charge I heard one minority Senator make was that this so-called non-interference language contributed to next year's Part B premium increase. Again, this is plain wrong.

The Part B premium reflects the costs of Part B benefits. These include physician services and other outpatient services.

I would like to remind my colleagues that when Medicare was first created, the Government paid 50 percent of the premiums and beneficiaries paid 50 percent of the premiums. That was when Medicare was instituted. Today, the Government pays 75 percent of the premiums and beneficiaries pay only 25 percent of the premiums because we in the Congress were trying to help limit beneficiaries' out-of-pocket costs.

Those who suggest this non-interference language will drive up the cost of implementing the law simply do not have the facts or the legislation on their side.

This is what the CBO said about eliminating the non-interference clause in a letter earlier this year:

> [T]he Secretary would not be able to negotiate prices that further reduce federal spending to a significant degree.

The CBO in that letter went on to say:

> CBO estimates that substantial savings will be obtained by the private plans.

Now, let us be clear: Direct Government negotiation is not the answer. The Government does not negotiate drug prices. That would be price control, and it would, I think, inevitably cause prices to rise as companies would not be able to do business in this country as they have in the past.

The bill's entire approach is to get Medicare beneficiaries the best deal through vigorous market competition, not price controls.

Again, it might be illustrative to quote from the distinguished minority leader, Senator DASCHLE, when he outlined the principles for the MEND Act. Now remember, the MEND Act was a Democrat-sponsored act. This is what Senator DASCHLE said:

> [W]e should take a lesson from the best private insurance companies: Cost-savings should be achieved through competition, not regulation or price controls.

Now, keep in mind, they had the same provision in their bill that they are criticizing now in the MMA.

This year, even the Washington Post, in a February 17 editorial, stated that:

> Governments are notoriously bad at setting prices, and the U.S. government is notoriously bad at setting prices in the medical realm.

There is proof of that.

In an August 2000 report, the Government Accountability Office, the GAO, found that drug manufacturers could respond to a mandate that they extend Federal prices to a larger share of purchasers by adjusting their prices to others. The larger the group that would be newly entitled to receive a Federal price, the greater the incentive for drug manufacturers to raise that price.

The GAO stated that with the Medicaid rebate experience, specifically, that following enactment of the rebate program, discounts for outpatient drugs decreased significantly because manufacturers raised the prices they charged large private purchasers. Now, this shows how Federal and non-Federal drug price discounts could change if Medicare beneficiaries had access to the same price discounts available to Federal purchasers.

It is common sense that expanding access to the Medicaid rebate means weaker discounts for everyone. If almost everyone can get the Medicaid "best price," then no one gets a discount.

Another charge we hear frequently is that Congress should give Medicare beneficiaries access to the Veterans' Administration approach. Well, what these critics do not tell beneficiaries about the VA model is that it is a very restrictive formulary and that the drugs are available only through a limited number of VA pharmacies.

The VA has lower prices in part because it has a very restrictive formulary. Now, this puzzles me because many proponents of the VA system also have expressed the concern of ensuring beneficiaries' access to drugs.

In calling for the VA system, Families USA spotlighted 15 drugs commonly taken by Medicare beneficiaries. In fact, of the 15 drugs mentioned by Families USA, only nine are even on the VA formulary. The rest are not even covered.

Sixty-one percent of the drugs on the VA formulary are generic drugs. If a Medicare beneficiary needed a brand-name drug—and the vast majority either do or will—the beneficiary would have to meet a narrow set of exceptions to get that brand-name drug under the VA system.

The drugs are only dispensed at VA facilities. Such a closed system would limit Medicare beneficiaries' access to their neighborhood pharmacy. I am not for limiting beneficiaries' access to their neighborhood pharmacies. And I don't think any of my colleagues are either, in spite of some of the comments that have been made on the floor of the Senate.

So while proposing the VA system might make for a good sound bite or advantageous sound bite, they might think, there are some important facts they are not sharing that could do more harm than good. And those facts were taken into consideration when we wrote this bill.

We did not rely on CMS price fixing, but instead created a new drug benefit that relies on strong market competition and an approach in keeping with the principles of the MEND Act, the Democratic act, as introduced by Senator DASCHLE and cosponsored by 33 Democrats, including their candidate for President, Senator JOHN KERRY. But that was then. I guess this is now. All of a sudden, this provision they adopted, that they were articulating, that they were pushing, is now suddenly a bad provision for senior citizens.

Moving along, I want to talk about the Part B premium increase. There has been a good deal of criticism on the increase of the Part B premium, and that was understandable as many of us were shocked at so high a jump. Many of us were concerned about the impact this could have on beneficiaries, especially those living on fixed incomes.

But it might be helpful to look at why this increase occurred rather than demagogue about it.

The vast majority of the premium increase resulted from physician payment changes made in a previous year and by those in the Medicare Modernization Act that were needed to ensure beneficiaries' access to care. I can't relate how many letters I have received over the past few years from beneficiaries and providers alike who were concerned about the negative impact of reductions in physician reimbursement. Preventing those cuts was not a partisan issue. Indeed, Republicans and Democrats worked to prevent payment cuts to physicians so access to their services would be protected.

In fact, some of today's most vocal critics of the administration joined with 71 Democrat and Republican Senators to sign a letter to the administration calling for immediate action to prevent payment cuts to physicians. We all knew that had to be done if we were going to be fair to those on Medicare. Virtually all of us hailed the ensuing action to prevent the physician pay cuts.

Yet today many of my colleagues on the other side of the aisle criticize the Part B premium increase, four-fifths of which is directly attributable to the actions they requested to prevent the decrease in physician payments. Is that right? I don't think so.

Let's look at another reason the Part B premium increased so much this year.

Congress increased payments made on behalf of beneficiaries who choose a Medicare Advantage plan. The higher payments, like the physician payments, were necessary to preserve access to Medicare Advantage plans and were supported by both Democrats and Republicans.

In a letter to Medicare conferees, several prominent Democratic Senators expressed support for including these higher payments in the final Medicare bill. Senator KERRY, by the way, was a lead cosponsor of an amendment to increase Medicare Advantage funding.

In his floor statement last June, he said:

> The Schumer-Santorum-Kerry amendment focuses on protecting this important option for seniors who have nowhere else to turn for the quality health care coverage they need.

Senator KERRY went on to state:

> I urge my colleagues to support the additional funding that is urgently needed to strengthen the Medicare+Choice program for seniors. This should be among our highest priorities in this year's Medicare debate.

"Among the highest priorities"—that is their nominee for President of the United States. These are the reasons the Medicare premiums went up. It wasn't because of the new Medicare bill. I find it so disingenuous for some of my colleagues to question the premium increase when they, in fact, supported the changes that led to the premium increase. Better medical care and more widespread medical care is being given as a result of the bipartisan work that we did.

There were also six amendments to the Medicare bill introduced by Democratic Senators that, if approved, would have increased the Part B premium even more—six amendments by Democrats that would have increased the Part B premium even more. Yet we hear the persistent minority drumbeat trying to say that this increase was caused by the new Medicare reform bill.

That is pure bunk. The amazing thing is, I guess they don't fully realize it. So I am making this speech to make sure they do realize it and that they understand it. When we hear charges that the new Medicare bill drove up the Part B premium—which as I have noted are largely false—we must also keep in mind the fact that the premium increase will not affect low-income beneficiaries, whose premiums are paid for by the Government.

We must also bear in mind the important fact that the premium also reflects new Medicare coverage for important preventive benefits.

Practically every other American with private health coverage has a wider array of preventive benefits. But Medicare beneficiaries, who could possibly benefit the most from the value of prevention, did not have the benefit of coverage for many of these basic preventive services prior to enactment of the Medicare reform bill.

That didn't make sense. Now Medicare will cover important screenings for cholesterol and diabetes, as well as the initial physical.

Finally, the MMA can save beneficiaries money. Reforms and overpayments for drugs, combined with the new preventive benefits, will lower beneficiaries' out-of-pocket costs by $270 million in 2005.

Beneficiaries deserve to know the facts, not to be fed lines that amount to nothing more than political year potshots. They deserve to know how the new benefit will work, not to be given misleading information that may cause them to forgo learning more about the prescription drug benefit. Quite frankly, I am surprised and dismayed that some who claim to care about seniors and the disabled have unfairly distorted the new law and have spread falsehoods about what it does. To me, their actions are irresponsible and wrong and should be condemned as election year politicking at its very worst.

Beneficiaries deserve much better. I hope my colleagues will think twice about frightening beneficiaries with untruths and distortions. The new Medicare law is a solid attempt to improve some glaring deficits in the Medicare program and should be heralded as what it is: a bipartisan effort to help seniors and the disabled, and not hurt them as some so irresponsibly have charged.

How anybody can say that this new Medicare bill will not help seniors when we are going to spend an additional $400 billion plus over the next number of years that would never have been there without this bill is beyond me. I don't see how anybody can stand up with a straight face and make some of the comments and charges that have been made. In all honesty, it is hard to believe some of these charges. And in the process, we have taken care of more of the poor than was even contemplated by the prior attempts to reform Medicare. The poor are very much helped by that bill. Frankly, virtually everybody is very much helped by that bill. I personally think it is despicable to come on the floor or to speak in public and try to scare our seniors so they don't know what to do. Seniors can have confidence in CMS and have some confidence in the Medicare bill which will be for their benefit.

JUDICIAL NOMINATIONS

Mr. HATCH. Mr. President, I rise to speak about four fine judicial nominees that deserve votes before we adjourn this Congress. Three of these four nominees received the ABA's highest rating, unanimously "well-qualified." The Judiciary Committee has thoroughly reviewed their background and qualifications and determined that they would all make fine Federal judges. All four were reported favorably by the committee, three of the four by unanimous vote. They have put forward their good names for the Senate's evaluation, and they deserve our attention before we adjourn. We owe them no less.

Susan Neilson has been waiting a long time for a vote. She was nominated to the Sixth Circuit Court of Appeals, for a seat that has been classified as a judicial emergency, on November 8, 2001. That is nearly 3 years that she has been waiting for this body to consider her nomination. Mr. President, it is time.

Judge Neilson is an outstanding candidate for this post. She received a unanimous "well qualified" rating from the American Bar Association. She graduated with high distinction from the University of Michigan Honors College in 1977 and was elected to Phi Beta Kappa. Judge Neilson received her law degree, cum laude, from Wayne State University School of Law in 1980 and was a member of its law review. Following her graduation, Judge Neilson began her legal career as an associate at the Detroit law firm of Dickinson Wright, one of the oldest and most prestigious law firms in Michigan. She became a partner in the firm in 1986 and continued to practice there until 1991. While in private practice, Judge Neilson appeared in court on a regular basis and handled hundreds of cases at both the trial and appellate levels.

In 1991, Governor John M. Engler appointed her to the 3rd Judicial Circuit Court of Michigan, the largest trial court in the State. She was reelected to that post in 1992, 1996, and 2002. She currently is assigned to the criminal division of the court.

Despite her busy schedule, Judge Neilson makes it a priority to give back to the community. She is active in many service organizations including the Catholic Lawyers Society and the Worship Commission of her church. She served as President of her local chapter of Soroptimist International, a worldwide organization working to promote human rights and the status of women.

Judge Neilson is also a prolific writer. She has written numerous articles and was co-editor and author of Michigan Civil Procedure, a two-volume treatise on all areas of Michigan civil practice. This treatise was selected by the Michigan Judicial Institute for purchase on behalf of every trial court judge in the State of Michigan and received the "Plain English Award" from the State Bar of Michigan. I also understand that she is currently working on a new book.

Judge Neilson is imminently qualified for the Sixth Circuit. I commend her to my colleagues and urge them to vote for her confirmation.

Micaela Alvarez, nominated to be United States District Judge for the Southern District of Texas, is an experienced attorney and trial judge. She began her legal career in 1989 as an Associate Litigation Attorney at the law firm of Atlas & Hall, in McAllen, TX. Her practice focused primarily on insurance defense, employment defense, and wrongful discharge defense. Judge Alvarez later joined the Law Offices of Ronald G. Hole where she expanded her practice to include medical malpractice defense and products liability. In 1995, she was appointed to the 139th Judicial District Court in Hidalgo County, TX, where she served as presiding judge.

Judge Alvarez brings a wealth of experience to the Federal bench, and she will make an excellent addition to the Southern District of Texas.

Keith Starrett, nominated to the U.S. District Court for the Southern District of Mississippi, is an exceptional nominee with a long and distinguished record both as an attorney and judge. He is a graduate of Mississippi State University and the University of Mississippi School of Law. He is an experienced litigator who has represented plaintiffs, defendants, debtors, creditors, and criminal defendants in both State and Federal courts. While in private practice he litigated over 400 cases. In 1992 he was appointed to the Fourteenth Circuit Court of Mississippi where he presently serves. The American Bar Association unanimously gave him its highest rating of "well qualified." The Mississippi Bar Association awarded him with the Judicial Excellence Award in 2003. Undoubtedly, he will be a wonderful addition to the Federal bench.

Christopher Boyko has been nominated to the United States District Court for the Northern District of Ohio. Judge Boyko brings 25 years of legal experience and sterling credentials to the Federal bench. He has served as a judge for the Court of Common Pleas in Cuyahoga County for 8 years. He also served on the Parma Municipal Court before joining the Court of Common Pleas.

Prior to his appointment to the bench, Judge Boyko built a successful law practice, which he coupled with his duties as assistant prosecutor, prosecutor, and director of law, for the city of Parma. He also served as the legal adviser to the local police department's S.W.A.T. team, as a statutory legal counsel for the Parma School District, and as chief legal counsel for the Southwest Enforcement Bureau.

The ABA has recognized this seasoned nominee with a unanimously "Well Qualified" rating. In addition, he has received Martindale-Hubbell's highest rating of "AV." He has the distinction of having been elected to "Who's Who in American Law," and the Judicial Candidates Rating Coalition, in Cleveland, unanimously gave him an "excellent" rating for 2004.

Mr. President, I think that you will agree that these four fine nominees possess the credentials, reputation, and experience to be Federal judges. I am convinced that each of them would serve with distinction.

Now, let me take a minute to dispense with the old canard that judges aren't confirmed late in an election year. When Senator Thurmond chaired this committee, during a Presidential election year, the Senate confirmed six Circuit Judges after August 1—one in August and five in October. In addition, 12 district judges were confirmed in September and October of that year. So I will follow that Thurmond rule and continue to bring the President's nominees to the committee for action and to the Senate for consideration.

I am only too well aware of the unprecedented and constitutionally suspect tactics my colleagues across the aisle have used to filibuster circuit court judges. So I am under no illusion that Judge Neilson will be given the up-or-down vote that the Constitution requires. Certainly this is unlikely to occur in the closing days of this session. Be that as it may, I hope that the devious tactic of filibustering circuit judges will in no way prevent the Senate from confirming three superbly qualified district judges. I hope they will be included in the final Executive Calendar package along with four commissioners for the Sentencing Commission and four U.S. Attorneys.

I understand time is precious. We are in the waning hours of this Congress, and still much is left to be done. We should not, however, in our haste to adjourn, neglect consideration of all these outstanding nominees. They deserve our attention. They deserve our time. I call on the leadership on both sides of the aisle to move these nominations and urge my colleagues to vote for the confirmation of all these distinguished nominees.

Mr. President, in accordance with the unanimous consent request agreed to earlier, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. TALENT). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I ask unanimous consent to speak as in morning business for 1 hour and when my time is yielded that the quorum be questioned.

Mr. HATCH. Mr. President, I object for the moment, but I will come back to it.

The PRESIDING OFFICER. Objection is heard.

Mr. HATCH. Mr. President, I withdraw my objection.

The PRESIDING OFFICER. Without objection, the Senator is recognized.

JUDICIAL NOMINATIONS

Mr. DURBIN. Mr. President, I will address some of the issues just debated on the floor of the Senate. The Senator from Utah is my friend. We have worked together, and he chairs the Judiciary Committee. We are miles and worlds apart on many issues but have found common ground many times and I am sure we will in the future. He has done an excellent job for his President as chairman of the committee.

It is my understanding that, as of today, President Bush has successfully nominated over 200 Federal judges to fill vacancies, thanks to the work of Senator HATCH and many others in the Senate. Those nominees have been approved. At this point, it is my understanding that we have one of the lowest vacancy rates in the Federal judiciary in recent memory and that we have responded particularly in the areas of our country where there have been shortages of judges and an abundance of cases to be considered. It is my understanding that the scoreboard on President Bush's nominees who have been proposed and accepted and approved by the Senate is 201; somewhere in the range of 6 or 8 have not been approved. That is quite a good average by any standard for any President. It is certainly dramatically better than the approval given to judges under the previous President, President Clinton.

There have been a lot of complaints and concern expressed about the six or eight judges who have not been approved, and while all of that argument has gone on, 201 of President Bush's nominees have been approved.

Now we have a suggestion that in the closing days of this session, we should approve even more judges. It is a troubling suggestion only in this regard: Not reflecting on any single judicial nominee or that person's qualifications, it has been a practice and tradition in the Senate that in a Presidential election year, we suspend the approval of Federal judges after the first nominating convention of a major party. It is known as the Thurmond rule because Senator Strom Thurmond of South Carolina, chairing this same committee, established it and said once we get that close to a Presidential election, with the outcome uncertain, that we will not be approving judges. We will wait and see what the verdict of the American people will be as to whether the President, in this case, is reelected or a new President takes office and fills those same vacancies.

The Senator from Utah has asked us to look beyond this time-honored Thurmond rule. In my State of Illinois and many other States, we have withheld pursuing nominees because we understood the process was closed down, that there would not be any further judicial nominees considered. I am sure this will be discussed at length. So the record will reflect that has been the tradition. It is the situation that has applied to President after President, and most of us believe, in fairness, it should apply in this situation.

I listened carefully as the Senator from Utah talked about a number of issues, all of which are relevant, many of which will be discussed tonight in the second Presidential debate at Washington University in St. Louis between President Bush and Senator KERRY.

One of the issues which he spoke to with some force was the issue of whether we are doing enough to help seniors and other American families pay for their health care. He noted that we passed a Medicare prescription drug bill. It is true that a bill passed with that name. For a person like myself who has supported throughout his congressional career the idea of assistance to senior citizens to pay for prescription drugs, it was painful to vote against a bill called the Medicare prescription drug bill. But I did vote against it, and the reason I voted against it is the same reason that most seniors across America are not only skeptical of this proposal by the Bush administration and the Republican leaders in Congress but have flatly rejected it, because if you take a close look at the proposal which the Bush White House put before us and was approved by this Republican Congress, you will see it is only a Medicare prescription drug bill in name. In fact, it is not, and the reason is obvious. There is no authority in the bill for Medicare as an agency to bargain with the pharmaceutical companies to get the best price for seniors and families across America. The pharmaceutical industry is the most powerful industry on Capitol Hill. Bill after bill, vote after vote, amendment after amendment, the pharmaceutical industry rarely loses. Why? Because they are a powerful force in our economy, the most profitable economic sector in America, and a powerful political force. They are involved in the campaigns, primarily with Republicans but some Democrats, too. They make contributions to those who believe in their approach, and they are rewarded many times with votes that come out their way. This is what happened with the Medicare prescription drug bill.

This bill expressly prohibits the Medicare agency from bargaining with pharmaceutical companies to lower the cost of prescription drugs, and what it means is that seniors, even with this bill, will continue to see the cost of medication going up 10, 15, and 20 percent a year. There is no end in sight. It will continue to grow at a pace that will outstrip the money we put in this bill, at a pace that will outstrip the resources of most seniors and, frankly, will do it in a hurry.

Mrs. BOXER. Mr. President, will my friend yield for a question?

Mr. DURBIN. I will be happy to yield for a question from the Senator from California.

Mrs. BOXER. Mr. President, first, I thank my friend from Illinois. We had the Senator from Utah talking about how wonderful everything is with that prescription drug plan the Senator from Illinois and I voted against and Senator KERRY does not support either. The reason we voted against it is it does not do much for our seniors. It is very costly for them when they need it. It is not there because after a certain amount of expenditure, the benefit stops. We call it benefit shutdown, donut hole—different names. Lots of us are trying to fix it.

One of the main problems is what my friend described—a prohibition on the Medicare agency from negotiating with these giant drug companies for lower prices. This is where I want to ask my friend a question.

If someone from the Government came up to one of our constituents who was looking for a new bike for their son and said, You cannot shop around, you have to take whatever that store on the corner says you have to pay, I do not think that would be very popular for the Government to do. I am sure my friend would agree.

Essentially, that is what we are doing here. We are essentially taking the leverage away from Medicare to help our seniors get lower prices by telling them, even though there are 40 million Americans—that is my understanding—on Medicare, they cannot use that power and that leverage to sit across from Pfizer or any of the big companies and say: If you want to get on our formulary, you have to lower this price.

It seems stunning to me that Senator HATCH would come to the floor and say it is not true. He said: We do not stop Medicare, we just stop the agency that runs Medicare. Talk about flimflam. Talk about misleading the seniors. Is that what the Senator from Illinois heard the Senator say?

Mr. DURBIN. Mr. President, in response to the Senator from California, I did not hear that exact quote, but it is clear for anyone who reads the bill that Medicare, as an agency, does not have the authority to bargain for lower drug prices or to create its own drug benefit program.

The Republican leadership in the White House and Congress insisted that this be done through private sector insurance companies. In fact, they expressly prohibited seniors from buying Medicare gap policies to cover this overwhelming cost of prescription drugs.

The most telling fact that I think should be part of this debate is the Bush administration insisted that this so-called Medicare prescription drug benefit plan would not go into effect until after this election. They know, the Senator from California knows, I know, that when seniors see the situation close up and all the details, they are going to feel even worse about what Congress has done. Congress has left them vulnerable on prescription drug costs, and they are not the only ones.

We are finding companies across America and families across America wrestling with the high cost of health care. What has the Bush administration done to help small businesses provide health insurance, to help families afford health insurance, to come to the rescue of 100,000 American retirees who have lost their health care benefits because of a bankruptcy court? What have they done to help these people in such dire straits? Nothing. Why? Because the companies that are profiting from these high costs of insurance and pharmaceuticals are companies that are the political favorites of the Bush administration and the Republican leadership in Congress.

So when any Senator comes to the floor and talks with some pride about what has happened over the last 4 years on health care, go ask the families of America what is happening. The honest answer is no relief, no help, and they find themselves with increasing costs for health care and the cost of health insurance.

Businesses identify this as the No. 1 problem facing American business today, that health care premiums are going up 25 percent and more each year. They say to us: How can we provide coverage for our employees, how can we be competitive in the world if we face that overhead cost?

Labor unions say exactly the same thing. They say: We try to get more money per hour for our workers so they can have a better life, but every penny of it goes for health insurance, and this year's coverage is less than last year's coverage. They are frustrated. Business, labor, families, individuals, and retirees are being left out in the cold.

What has the Bush administration and the Republican Congress done for these groups? Nothing. Absolutely nothing.

Mrs. BOXER. Will my friend continue to yield to me?

Mr. DURBIN. I would be happy to yield for a question.

Mrs. BOXER. Again, I want to thank my friend for moving to the bigger issue of all of our citizens, leading off with the issues that are facing our seniors. But I want to get back to our seniors.

My friend said it is interesting that the date of the prescription drug benefit is after the election because it is such a bad benefit and they do not want people to see there is really not very much there. They thought they could run on this as an issue, but I say to my colleague seniors are smart.

We say this is the greatest generation. This is the generation that has kept us free, and they are smart. I am sure my friend has seen what I have seen. As I go around my State, seniors are saying, please fix this thing, allow Medicare to negotiate for lower prices. Do not have the benefit that shuts down just when we need it the most. It is too expensive. Allow importation of pharmaceutical products through Canada. I am sure my friend is having that same experience.

The thing they did not count on, President Bush and our friends on the other side, is that the seniors see this on the horizon. They get it. They are used to reading the small print, and I believe they are letting us know that they are quite unhappy.

I want to ask my friend this: One would think, after looking at what the Veterans' Administration does for its people, when they sit down, knowing they have millions of veterans behind them, and negotiate with a drug company and get those prices down, perhaps a third less, maybe even a half lower than what they sell for normally on the market, one would think that would have been the perfect model for this group that wrote this bill to emulate what the Veterans' Administration does for its veterans.

Oh, no, no. Was not my friend surprised when it turned out that instead of taking the model that has been developed for veterans on pharmaceutical prices, where the Veterans' Administration sits across the table from the big drug companies, essentially, and bargains for lower companies, that instead of taking that model they are reversing that model and prohibiting Medicare to negotiate?

Mr. DURBIN. The Senator from California, I am sure, has met with veterans, as I have in Illinois. Veterans are fortunate when they reach an age that they can go to a Veterans Hospital and get their prescriptions filled for a modest amount each month. That is because the Veterans' Administration bargains for the prices of drugs, brings them down to a lower cost than a senior on Medicare is going to pay.

There has been a lot of talk about reimportation of drugs from Canada. I just want to say for the record, many of us believe that a promise had been made on the Senate floor that we would vote on this issue of reimportation of drugs from Canada before we went home this year. In fact, there is ample evidence in the CONGRESSIONAL RECORD, a colloquy between Senator DORGAN of North Dakota and the majority leader of the Senate, which led us all to believe that we would finally get a chance to reimport drugs that have been made in the United States safely and can be bought at a fraction of the cost in Canada and other places.

The decision was made, no, we do not have time. We cannot do it. Well, that decision was made as the decision was made to stop Medicare from asking for lower prices for drugs, at the request of the pharmaceutical companies. These companies are making the greatest profit of any sector of the American economy, and they have asked for Congress to protect their profits. This is a decision driven by greed. It is a decision where the pharmaceutical companies have said, despite the hardship on seniors, despite the hardship on families and businesses, we will not reduce the prices of our drugs.

A phony argument has been raised, and that is that we cannot reimport drugs from Canada without compromising the safety of the drugs that are brought in. Let me remind everyone that the overwhelming majority of the drugs we are talking about are the product of research in the United States. They are the product of American pharmaceutical companies. They are in packages and under names in Canada exactly as they are in the United States. We are only asking that these drugs be brought back in so that seniors can get some relief from high drug prices, relief that is not forthcoming in the Medicare prescription drug bill.

Let me say something about the safety issue. Do not trust me. I am just an elected official. Trust instead Dr. Peter Rost, who is vice president of marketing at Pfizer. Let us see what he had to say about the safety issue:

> During my time responsible for a region in northern Europe, I never once—not once—heard the drug industry, regulatory agencies, the government, or anyone else saying that this practice was unsafe. And personally, I think it is outright derogatory to claim that Americans would not be able to handle reimportation of drugs, when the rest of the educated world can do this.

It is a phony issue. Safety of drugs is a phony issue. We can put safeguards in place. We have proposals before the Senate to do it. In my home State of Illinois, Governor Blagojevich has been a leader on the reimportation issue. He has established what I consider to be rational and very thoroughly thought out standards for the reimportation of drugs. Resistance comes from the Food and Drug Administration, and that resistance is inspired by the pharmaceutical companies that do not want to see cheaper drugs coming into the United States to help seniors and families meet the overwhelming cost of prescription drugs.

Tonight, during the course of this debate between President Bush and Senator KERRY, I am sure that health care will be an issue. I am guessing that someone, in 90 minutes, in the Washington University audience is going to say to both candidates: What are you going to do to reduce the cost of health care for families across America?

What the President will say is, We have done it with the Medicare prescription drug bill. And the obvious answer to that is, Well, then why did you postpone it until after the election? Why is it so hard to understand? Why the gaps in coverage? Why can't Medicare bargain for a lower price?

The answer on the other side from Senator KERRY is obviously, this administration, in the thrall and under the control of the pharmaceutical industry, is not prepared to confront them on behalf of American families and businesses which are struggling to pay for prescription drugs.

I think that is a clear choice, as there will be a clear choice on so many issues.

Take a look at this issue as well. On the issue of health care, what has happened under the Bush administration? Under President Bush's 4 years, fewer jobs in America provide health insurance. We know from the reports, the President, during his administration, has lost more jobs in America than any President in the last 70 years of either political party. Even today's report about a few new jobs in America still leaves the President somewhere between 500,000 and 800,000 net jobs lost during his Presidency. Even his father, facing a recession and a war, was able to see much more employment created than this President.

As a result of the lost jobs, and as a result of businesses struggling with the Bush economic policies, fewer companies offer health insurance.

In the year 2000, when President Bush took office, 63.6 percent of companies offered employer-provided health insurance. Today, it is 60.4 percent. That means 3.8 million Americans have lost health insurance coverage at their job.

Now, what does one do when they have lost their health insurance at their job? Well, for many of these Americans, it means no protection whatsoever. It means that they pray each morning that someone does not develop a serious illness or get involved in an accident.

So how is this making America a better place? How is it strengthening families? How is it removing fears and worries from families who are just trying to get by each day and maybe make life a little better for their children? I cannot imagine in my family, if we did not have health insurance, what it would be like, fearful that at any given moment the savings that we have could evaporate paying for health costs.

Under President Bush, 3.8 million Americans have lost health insurance. That is a fact. That will come up tonight during the course of this debate.

Look at the jobs that have been lost under President Bush as well. The Clinton administration saw an increase of 20.7 million jobs in the 8 years of his Presidency; under President Bush, a loss of 1.6 million jobs. The President says his economic policies are working. The unemployed people of America are a living testimony to the fact that they have failed because the President's economic policy is very simply stated. If we give tax breaks to the wealthiest people in America, surely everybody else will be better off.

It has not worked. It is not going to work. The helping hand should be given to businesses to create jobs. A helping hand should be given to working families to try to keep up with increased costs for health care and college tuition and gasoline. These are the basics of life. This administration has ignored it. By ignoring it they have created an economic climate that has destroyed jobs instead of creating them.

Mrs. BOXER. Will the Senator yield?

Mr. DURBIN. I am happy to yield to my friend.

Mrs. BOXER. Would you keep the chart up. This is a shocking chart. This is not about politics or rhetoric. This is a fact. The fact is, we came off of the Clinton administration where 20.7 million new jobs were created, and we are at the end of the Bush administration and a loss of 1.6 million jobs. They will make every excuse in the book for it. The fact is, we have that kind of record, even though we are in raging deficit spending.

I am an economics major. Granted, it was a long time ago that I went to college and I got my degree in economics, but one of the things they taught us in economics 101 was that when you wanted to rejuvenate the economy—deficit spending. So here we have a President who is deficit spending, who has stolen every penny from the Social Security trust fund to pay for his tax cuts, throwing hundreds of billions—let's be exact, between $120 billion and $200 billion at Iraq with no end in sight to bear the burden of that war, let alone the human loss of life, and with all of this deficit spending we see a loss of 1.6 million jobs. It is shocking to see this type of record.

The President goes around with the music blaring, saying how great his economic program is, as my colleague pointed out, and all of these great new jobs that are being created. I want to ask my friend, for the jobs that are being created—and there are some, although it is very anemic—isn't it true that the average pay of those jobs is approximately $9,000 less a year than the pay of the jobs that have been lost? If my friend, in answering that question, could talk about what that means to families who have to pay the higher costs of health care, college tuition, gas prices, and all the things we need to pay for, it would be helpful.

Mr. DURBIN. I would be happy to respond to that question. I would say if you listen carefully, the President's regular response when asked about whether there is enough employment in America is: This administration will not rest until every American has a job.

The President better plan on staying up late at night, all through the night, for the next 3 weeks-plus of this campaign, because Americans are having difficulty finding jobs.

The point the Senator made is an important one. I have met with some of these unemployed people, many of whom worked for years, even decades, in good-paying jobs. They live in nice houses, their kids go to good schools, they had savings accounts, a car in the driveway—maybe two or three, vacations were planned. Then all of a sudden the bottom fell out. They lost the job. I met with them and listened to them about their desperate efforts to find another job. They are in a situation where they will take a lot less money for a job just to go back to work. The potential employer says: "Wait a minute, you are overqualified. Because you are overqualified we are not going to hire you because we know you'll take something better that comes along," so they can't get employed. But if they luck out and get one of the lower paying jobs, what will they have to sacrifice? Will it be their savings? Will it be the college education of their child? Will it be the home they live in? You can't tell what it means.

But if this President says he won't rest until every American has a job, he better stay up at night for a long, long time because we have lost more jobs under his Presidency than any President's since Herbert Hoover. For those who are not students of history, he was the President during the Great Depression, a depression which our parents lived through and will remember as the toughest time in their lives.

This President has created a climate in this country where the number of jobs is not growing. It did not have to be that way. Take a look at what happened under the Clinton administration. The Clinton administration was creating 2.6 million jobs a year. The Bush administration has been losing about 200,000 jobs a year.

You say to yourself, What was the difference? The difference was the Clinton administration put together a sound fiscal policy for America. It was not easy. In fact, it passed the House and the Senate—I served in the House at the time—by one vote in each Chamber. Vice President Gore cast the deciding vote. President Clinton did say that in his administration we are going to take deficits seriously. I know the other party, the Republicans, say they are fiscal conservatives but we believe that getting the deficit under control is critically important if we are going to rejuvenate this economy and bring down interest rates and have more capital investment.

We did it. It was painful. Many Members of the House and Senate lost their seats because they voted for this plan. But it worked. As a consequence, under the Clinton administration jobs were created.

Now take a look at what this President has done. Claiming to be a fiscal conservative, this President now has us in a position where we have the largest deficit in the history of the United States. How can this be? The President will say, Don't blame me for 9/11. Don't blame me for the recession that was inevitable. Don't blame me for the war in Iraq. But the honest answer is he has to accept the blame for an economic policy that called for tax cuts during this same period, tax cuts primarily focused on the wealthiest people in America. That is what has been driving deficit numbers to a great extent. That is something for which you can blame the Bush administration.

Many of us believe a tax policy that would have helped smaller businesses, family farmers, and individuals struggling to pay the bills for their families could have put real juice in this economy, as the Senator from California suggested, rejuvenating it at the right level at a lower cost.

To give to a person making over $200,000 a year another $5,000 or $10,000 or $20,000 is gilding the lily. Their life is pretty comfortable. To give them $20,000 more means more stocks purchased, more money invested. But it is not the same kind of expenditure as when you give $5,000 to a working family which turns around and says now we can consider the downpayment on a car, we can get the washer and dryer, a little remodel job on the kitchen, we can put the money away for our son and daughter for a college education, we can make sure we are planning for a brighter future for our family. It is the difference between night and day.

There was a moment in a movie, which was controversial, called "Fahrenheit 9/11." President Bush was speaking to a group. I don't know where it was located. He was on film. He was in his tuxedo and the people all around him were in tuxedos, and he said something along these lines: Some people say you are the upper last class. They call you the wealthy. They call you the upper level. But I call you my base.

It was supposed to be a humorous line, but there was more truth than humor. The President has served his base well with his economic policies. He has said to those people who are well off: You are my first priority. His economic policies have been directed to help them, time and again, at the expense of working families, at the expense of the worst deficit in our history.

So we have a choice. We have a choice to make on November 2. More of the same? Continuation of this policy, risking more jobs lost, putting more burdens on working families?

Take a look at the long-term unemployment in this country. The long-term unemployment in 2000 was 649,000 people. Now it is almost three times that amount, 1.7 million people. Long-term unemployed, meaning they have tried and tried and cannot get back to work.

Take a look at who is better off because of the policies of the Bush administration. These charts tell you what happens here. The household income in America is down, under the Bush administration. If you think you are pedalling faster and not going any farther, this chart tells you why. You may be making a few more dollars, but the cost of living for working families has gone up.

How have the CEOs at the major corporations done under the Bush tax policy, the people making dramatically more money than the people working in the office and factory? The CEO compensation went up 20 percent. Take a look at the HMOs, the insurance companies that have been protected by this administration. Their profits have been up 84 percent.

Do you think you are paying more for gasoline today than you were 4 years ago? This is the chart: $1.47 was the average price of gas in 2001. The average price of a gallon of gas in 2004 is $1.92. And when we hear the price of a barrel of oil is over $50, it may be a good thing for the oil companies, but it is bad news for American families and a lot of businesses.

Why are these airlines going into bankruptcy one after the other? I was on a plane the other day—United. At the end of the flight, as we landed, the flight attendant came on and said: Thank you for flying United. I know you had a choice of many companies that are in bankruptcy or near bankruptcy. That is what he announced to the passengers. Everybody kind of laughed, but it is a sad reality.

The cost of fuel, the cost of oil, and our dependence on foreign oil instead of an energy bill that moves us toward independence have left us vulnerable as an economy and left American families vulnerable paying for the bills.

Where is the leadership? Do we really need 4 more years of wrong decisions like these, decisions that would not challenge the Saudis and their oil supplies and instead say America is going to move forward to energy independence so we can't be held captive by OPEC and the Saudi Arabian oil cartel? That is the difference. That is the case.

We are suggesting there ought to be a better vision for America, and move us away from dependence on Mideast oil, move us toward an economic policy to give working families a fighting chance. You haven't seen it for 4 years.

Tonight, this administration through the President is going to try to justify some of the harsh realities.

Mrs. BOXER. Mr. President, will the Senator yield for a question?

Mr. DURBIN. Yes.

Mrs. BOXER. Mr. President, I ask unanimous consent that Senator REID be granted the hour which will come to me postcloture.

The PRESIDING OFFICER. Is there objection?

Mr. CORNYN. We object.

Mrs. BOXER. I ask unanimous consent that it be yielded to Senator DASCHLE.

The PRESIDING OFFICER. Is there objection?

The Senator has the right to give it to Senator DASCHLE under the rule.

Mrs. BOXER. I make that point.

As I listened to my friend in his usual way of kind of tying together the pieces and as we get ready to watch our Presidential candidate tonight, I am wondering if my friend is beginning to see a pattern by this administration which is kind of just coming in.

Mr. REID. Mr. President, will the Senator yield for a parliamentary inquiry?

As manager of the bill, am I not entitled to be given by the Senator from California 1 hour of time? As manager of the bill, as I understand it, I have the right to be yielded 1 hour of time by any Member.

The PRESIDING OFFICER. The Senator is correct and the Chair was in error, not realizing that Senator REID was the manager of the bill on this side of the aisle. The Chair apologizes to the Senator from California. She has a matter of right to give the hour either to Senator REID or Senator DASCHLE.

Mrs. BOXER. Mr. President, I might say that I am going to give my hour to Senator REID.

Mr. REID. Thank you, Mr. President.

Mrs. BOXER. I am sorry for the interruption.

As I hear the Senator from Illinois talk—and I think back to the first debate where I believe all of America now knows there was no plan for Iraq following the stunning military victory. There was no plan for after that military victory, and we are paying a heavy price. I have come to this floor and eulogized those being lost.

There is no plan for Iraq.

By the way, that was pointed out not only by Democrats such as Senator KERRY, Senator BIDEN, and Senator DODD, who sit on the Foreign Relations Committee, but also by Senators LUGAR, CHAFEE, and HAGEL, who also sit on that committee. There was no plan.

I am asking my friend, as we look at the disastrous factual statistics on this economy, whether he believes there really was a plan as to how we were going to continue the Clinton administration record on job creation, stem the loss of manufacturing jobs, and stem the loss of outsourcing jobs, which, shockingly, people in this administration say is good for our economy. Was there a plan? Was there a plan to make sure that health care premiums would be affordable for our people? Was there a plan to lower prescription drug prices for our people through importation? Was there a plan for gas prices? My God. My friend put up a chart—$1.81 average. People in California would be thrilled at $1.92 a gallon. We are looking at $2.30, $2.40, $2.20, $2.50 a gallon. When the Senate voted in a bipartisan way to beg this administration to stop filling the Strategic Petroleum Reserve so we could put downward pressure on the prices, nothing has really happened.

To conclude my question, I am beginning to see a pattern of kind of a "flying by the seat of your pants" administration where there is no plan to make life better for people, whether it is our men and women in uniform in Iraq, whether it is our consumers, our middle-class families, working families, and all of our families in regard to health care and gas prices.

Could my friend comment on that bigger picture?

Mr. DURBIN. I would be happy to respond to the question.

First, Mr. President, may I inquire how much time I have remaining?

The PRESIDING OFFICER. The Senator has 21½ minutes remaining.

Mr. DURBIN. Mr. President, let me say to the Senator from California that she has really come to the heart of the problem. The President said in his first debate that being President was hard work. He said that over and over again. This is hard work. This is hard stuff. These are hard things to do. I don't doubt it. Being President of the United States may be the toughest job in the world. But sadly, the President, despite the hard work he has experienced, doesn't understand the hard work families have to go through just to make ends meet. If he were a little more in touch with these families and their own struggles, he would understand why we need a man or a person in the White House standing up for them and understanding the challenges families face every single day. And it hasn't happened.

The Senator from California mentions outsourcing. It is true. The head of the Council of Economic Advisers in the Bush administration sent a report to Congress saying that the outsourcing of jobs was a positive, a good result; sending jobs overseas was good. He explained that that would mean more competition and lower costs, completely overlooking the obvious. When a good-paying job leaves America, it is not likely the person who lost it is going to get another good-paying job, or get it soon. It is likely that that follow job is not going to have the same level of benefits for the person who just saw their job outsourced.

This administration plays by a strange economic textbook. That economic textbook calls for total free market forces despite the consequences. Even under this administration, the President has seen what the free market unbridled can lead to.

I put as exhibit A Enron. If you do not have a government through its President and regulatory agencies keeping an eye on some corporate activity as we keep an eye on individual activity, terrible things can occur—and they did occur in Enron, a business that defrauded a lot of innocent people out of their life savings, not to mention misrepresentations made in terms of the status of that business and the impact it had on so many other businesses. But this President steps back every time someone suggests that he needs to stand up to free market forces that are not serving America. He will not stand up to pharmaceutical companies that are overcharging Americans. He wouldn't let the Medicare agency bargain for lower prices. No. Let the free market work its will. The free market is working its will at the expense of a lot of senior citizens and families who can't afford their prescription drugs.

Did the President get on the phone as he promised as a candidate and call the OPEC cartel when they were holding oil off the market and driving up prices in America? No. Let the free market work its will. You know what happened. Gasoline prices have gone through the roof, airline fuel prices have gone through the roof, and America's economy has suffered. More jobs are being lost, more airline employees are being laid off, and we see businesses dependent on fuel struggling across America.

When it came to a tax break, did this President take into consideration that the cost of a college education is going up more than 20 percent a year in many institutions and that families with bright students who want the best chance in life just can't imagine their son or daughter graduating with $100,000 in debt and a diploma? Did the President think about that when he decided to look at the Tax Code to help families? No. No, there was no provision in there for the deductibility of college education expenses. The President said to let the market work its will at the expense of many of these families.

Langston Hughes once referred to the group of people that I am talking about. He called them "people for whom life ain't been no crystal stair." He was a person who understood that people get up every morning and struggle—struggle to keep their family together, struggle to make ends meet, struggle to try to believe that their kids will be better off than they are. These families would like to believe there is somebody someplace in Washington who cares, someone who understands we are headed in the wrong direction in this country in so many instances.

We are losing jobs. We are seeing important jobs outsourced. We are seeing our deficit at record levels. These are the harsh realities.

The Senator from California says it does not appear that this administration has a plan. In many instances, it does not appear this administration has a clue. It is as if the President, with those auditoriums filled with thousands of fans, does not take the time to step outside the auditorium and talk to an average family about what they are going through as their cost of health insurance goes up and the cost of living goes up as well.

IRAQ

I will use my remaining time of morning business to speak to the other issue brought up by the Senator from California. That, of course, is the situation in Iraq.

We had a report through the Senate Intelligence Committee and Senate Armed Services Committee this week from Mr. Duelfer who went back to Iraq and for the second time spent months and millions of dollars to look for weapons of mass destruction. He came back and told us they are not there. We cannot find them.

Think about that. Think of how often President Bush, Vice President CHENEY, Secretary Rumsfeld, Secretary Powell, and others told us we were in imminent danger from an attack from Saddam Hussein because of arsenals of chemical and biological weapons and the rebuilding of the nuclear weapons in Iraq. That was the justification. That is why we had to invade. That is why we could not wait. And it was all wrong. Totally wrong.

Now comes the administration saying, no, it was not really about weapons of mass destruction, despite the fact they said that then over and over again. It was the fact that Saddam Hussein could not be trusted and was an evil man. It was about the fact he may have had the desire—the new word, "desire"—to build weapons of mass destruction and it really was about the Oil for Food Program in Iraq.

Really? Go back and check the tape on statements made by the President as to why we had to send our Armed Forces into harm's way. The statements made by the President do not quibble: weapons of mass destruction, yellow cake uranium coming into Iraq, linkage between al-Qaida and those who were responsible for September 11, al-Qaida and Saddam Hussein.

Now, today, that evidence, that case, has evaporated. It is gone after millions of dollars have been spent desperately trying to find evidence of one weapon of mass destruction.

Trust me, those who are following this debate, had this administration found a tiny shred of evidence of weapons of mass destruction, it would have been front page news around the world. They could not find a thing.

The intelligence was bad. The reasons for going to war, given to us by the President, was just plain wrong.

Where are we today? Mr. President, 140,000 of our best and brightest, our soldiers, marines, our airmen, those in the U.S. Navy, our guardsmen and reservists, got up this morning in Iraq and went to do their duty and risk their lives for America. Over a year and a half after our invasion of Iraq, there is no end in sight. They say we hope someday soon to have elections. We are not quite sure how much of Iraq will be safe to vote. We hope to have an election and we hope to have the Iraqis take over. Those are two good goals. I hope we can reach them.

But we have to acknowledge the obvious. This administration was not prepared for the war in Iraq. They were prepared for the invasion. Our troops did a masterful job in a very short period of time. But this administration was not ready for what followed. Isn't that the most basic thing to ask of a Commander in Chief? Don't send my son or your son into battle unless you are prepared to give that soldier everything they need to be safe, to win, and to come home. This administration was not prepared.

I know that because for the last few months I have spent time on behalf of Illinois soldiers, demanding they have body armor to protect themselves in Iraq, one of the most basic things one would think we would provide, demanding we have armor plating on Humvee vehicles so as they travel across Iraq they do not fall prey to the homemade bombs and rocket-propelled grenades, demanding we put the necessary defensive equipment on helicopters so we will not have Guard and Reserve and Regular Army helicopters shot out of the sky because they were not properly equipped.

Why would I be doing this, a year and a half after the invasion, after giving the Bush administration every single penny they asked for to execute this war? I am doing it, and many others in the Senate and Congress are doing it, we are doing it because this administration was not prepared for the war in Iraq.

The losers are over 1,000 American soldiers who have lost their lives, and the 7,000 bravely wounded. I have met many going to a veterans hospital, Jefferson Barracks, right outside of St. Louis, meeting a young soldier, quadriplegic as a result of injuries sustained in Iraq; going to Walter Reed Hospital to meet these brave young men and women who have lost an arm, a leg, both hands, suffered head injuries. They are there with their families trying to put their lives back together, still proud of their service to this country, as they should be.

But as you walk away from the hospitals, you think we could do more. We should have been ready. We were not ready. But we could not wait. We could not wait for the U.N. inspectors to finish. We could not wait for a real coalition to come together—taking nothing away from the coalition we have, let's be honest. When you pick up the morning paper, the casualties, the soldiers who have lost their lives are overwhelmingly American soldiers. I am glad the Brits are with us. I am glad another 30 nations have given us some assistance in this regard, but when it comes to putting lives on the line in Iraq every single day, trust me, it is America front and center. And it has been for a long, long time.

When it comes to paying for this war, it is the American taxpayers front and center. We have spent over $1 billion a week on the war in Iraq and there is no end in sight. We appropriated almost $20 billion to start rebuilding Iraq and we are not spending it. Why? It is a vicious circle. Let me tell you what it is.

You cannot stabilize Iraq until you move the economy forward. You cannot move the economy forward until you build basic infrastructure such as electricity, and you cannot build basic infrastructure if you have insurgents and terrorists and guerillas blowing up everything you build. This vicious circle suggests there is no end in sight.

So the President has driven our national bus into a cul-de-sac and now challenges Senator KERRY to explain how to get out of this mess. A lot of us think that even giving the President the authority to go forward, he should have been prepared. He should have known what we were getting into.

Ambassador Bremer said, within the week, we did not send enough troops there. Had the right number of troops been sent at the right time, it could have been a more peaceful environment, but instead it is dangerous and American soldiers are still living in fear of what is going to happen from day to day.

At the same time, we turned our back on the obvious target, Osama bin Laden. I went to Afghanistan in the first codel with Senator DASCHLE, the first daylight codel that was allowed into Afghanistan, to Bagram Air Force Base, to a closed briefing by our intelligence agents about Osama bin Laden. They put up this huge aerial photo of the Tora Bora Mountains and they drew a tiny circle on the map. They pointed to all Members of Congress and the Senate and said: This is where Osama bin Laden is and we are going to nail him. This tiny circle.

I left there thinking, great, that will break the back and the morale of this terrorism network of al-Qaida. But it didn't happen. The Bush administration did not execute it well. They did not bring in the troops. They did not capture Osama bin Laden. He is not only still on the loose but al-Qaida is spreading like a cancer across the globe.

Where is our coalition to fight al-Qaida? It is the coalition that was stiff-armed by this administration when it came to the invasion of Iraq, when the President said, We will do it alone. We do not need you. Bring it on.

Remember when the President said, "Bring it on"? Well, they brought it on and, sadly, we have a lot of soldiers who have sacrificed so much for their country because of it.

We need to turn this corner. We need to have a new vision. We need to have a leader who will reach out to the world and reestablish America as a leader willing to work with others, not that any country should ever have veto power over our national defense. That is our call. That is our decision.

But we know, as President Bush's father knew, that it is a coalition of nations that makes us stronger. When we decided in the Persian Gulf war to bring Arab nations and their soldiers into that war as part of our coalition, it did not just add more soldiers in the field, it added an element that is missing in this war in Iraq.

Why are we being criticized so roundly in Arab States? Because we went into Iraq without waiting for those who could and would have helped us. This President could not wait, and now our soldiers are paying the price. I hope the American people make a decision to move forward with a new vision for this country, not to repeat the same mistakes again and again.

We have made mistakes when it comes to our economic policy, and we have paid a dear price for it. We have made mistakes when it comes to our agenda in Congress. We do not take up the serious bills that America's working families expect us to take up. We have generated the biggest deficit in the history of the United States to leave our children. We have the costs of war that are over $1 billion a week, and no end in sight. And, sadly, we are still losing our soldiers.

I was on the phone yesterday, as I have tried to so many times, to call the families of Illinois soldiers who have died overseas. I have not been able to get through to all of them, and I can understand some of them just don't want to take phone calls. That is understandable. And each and every one of them is a profile in courage. They are so proud of their son or daughter who has lost his life or her life in Iraq, and they are proud they served their country. I am, too. But I also want to take some pride that we have policies that are going to reduce the likelihood that more soldiers will end up losing their lives.

This administration has been in total denial about the reality of the threat in Iraq, total denial about the reality of what continues as a war in Iraq, total denial when it comes to understanding that we have lost a worldwide coalition that stood by our side after 9/11 and now wonders why the United States wants to go it alone.

I want to make certain, as I end these remarks, that we understand that in this great Nation we live in, we do have a chance to make a choice. And that chance will come on November 2.

Mr. President, it is my understanding that as part of my unanimous consent agreement, that when I finish and yield the floor, a quorum will be questioned.

The PRESIDING OFFICER. The Senator has to actually suggest the absence of a quorum.

Mr. DURBIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CORNYN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

Mr. DURBIN. I object.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. I object.

The PRESIDING OFFICER. Objection is heard.

The legislative clerk continued with the call of the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BURNS). Without objection, it is so ordered.

Mr. REID. Mr. President, the Senator from Texas wishes to speak for 20 minutes as in morning business. The time will count toward the 30 hours. Following that, Senator DURBIN, who has already used his hour, or his designee, would be recognized for 20 minutes to speak as in morning business. That time would also count against the 30 hours. That is the request for which I ask unanimous consent.

The PRESIDING OFFICER. Is there objection?

The Senator from Texas.

Mr. CORNYN. Mr. President, can I ask the distinguished Democratic whip if from the 20 minutes allotted to our side I could consume 10 minutes, and then Senator TALENT be recognized to speak for 10 minutes, and then Senator DURBIN be recognized for his time?

Mr. REID. Absolutely. And that following Senator DURBIN, or his designee, we will return to a quorum call.

The PRESIDING OFFICER. Is there an objection?

Hearing none, it is so ordered.

The Senator from Texas.

AMERICANS ARE STRONGER, SAFER, AND BETTER OFF

Mr. CORNYN. Mr. President, I was sitting in my office watching on television the proceedings in the Chamber, and I was inspired to come to the Chamber to respond to some of the comments I heard on the Senate floor. I expected to be watching debate about reform of the oversight that this body provides for the intelligence community and homeland security but instead watched what appeared to be part of the Presidential campaign playing out here on the Senate floor.

I just want to respond to some of the things that I heard, and not at great length. But I think in fairness to the American people they should not be fed just one side, which I think is fraught with inaccuracies. So I think a few facts are pertinent.

First of all, I would say that after listening to the distinguished Senator from Illinois, you would wonder why in the world anyone would want to live in the United States of America today because things are so bad we might as well give up and depart for somewhere else. And you may have noticed, Mr. President, people are not knocking down the door to leave the United States of America because somehow we are no longer the land of opportunity and freedom and hope.

Indeed, just the contrary is true. People are literally dying to get into the United States by any method they can because they recognize that America still is the last best hope of freedom-loving people anywhere in the world.

For example, we heard some very dire statements made about job figures. Well, it just so happens that since August 2003, we learned today, 1.9 million new jobs have been created in the United States of America—1.9 million new jobs. That is not because the Government created the jobs, but it is because Government created the conditions that allowed the risk takers and the hard-working people all across this country to create jobs, by investing and building opportunities for those who wanted to find work.

Now, the truth is, as we all know, we came out of a very difficult time at the beginning of President Bush's first term in office when he started his Presidency because during the end of President Clinton's term we were going through a recession. The recession had just started then. Then we know that the terrible events of 9/11 followed on shortly thereafter, with tremendous negative impact on our economy in addition to the terrible loss of human life.

Then there were the corporate scandals at the highest level of corporate America which caused the public to lose confidence in the marketplace.

Thanks to the efforts of this President and this administration, this Congress, thanks to the fact that we lowered taxes for hard-working men and women, it allowed them to save more, invest more, and for small businesses to create more jobs. Indeed, we are coming back with 1.9 million jobs being created since August 2003.

If we had agreed with our colleagues on the other side of the aisle about what course to take, the recovery would have been killed in its infancy because their solution was to raise taxes, not to lower taxes and let people keep more of what they earn. Yet what they want to do is play the card of class warfare and accuse this President and this administration of favoring part of the population, the wealthiest, over the rest of America.

The fact is, the tax cuts that were passed by this Congress affected every taxpayer, lowered the tax rates for even those of the most modest means, and are responsible for creating 1.9 million jobs.

We continually hear criticism about this President's policy in Iraq and in the global war on terror. Our colleagues on the other side of the aisle have a short-term memory because the only reason we took Saddam Hussein out of Iraq, as the bloodthirsty dictator that he was, and put him in a prison cell, is because of the authorization of this Congress. An overwhelming majority of the Members of this Congress, of this Senate, voted to authorize the use of force in October of 2002, to enforce U.N. resolutions which Saddam Hussein had defied since 1991.

I was at the same Senate Armed Services Committee where Mr. Duelfer testified a couple of days ago. While he confirmed that the intelligence the President relied on and this Congress relied on with regard to weapons of mass destruction proved not to be correct—and we are working in this bill to correct those deficiencies in our intelligence gathering and analysis capability—he did confirm Saddam Hussein had corrupted the Oil for Food Program, was evading sanctions, chased the inspectors out of his country because he didn't want them to know he was in the process of rebuilding his capacity to rearm himself with weapons of mass destruction as soon as those sanctions failed.

Indeed, former Ambassador Paul Bremer, who served as the head of the coalition efforts to rebuild Iraq, said:

> The president was right when he concluded that Saddam Hussein was a menace who needed to be removed from power. [The president] understands that our enemies are not confined to al Qaeda, and certainly not just Osama bin Laden, who is probably trapped in his hide-out in Afghanistan. As the bipartisan 9/11 commission reported, there were contacts between al Qaeda and Saddam Hussein's regime going back a decade. We will win the war against global terror only by staying on the offensive and confronting terrorists and the state sponsors of terror—wherever they are. Right now, Abu Musab al-Zarqawi, a Qaeda ally, is a dangerous threat. He is in Iraq.

I hope those who listen to the debate and the politics of this season and the attempt to score political points by criticizing this Nation's policy with regard to the global war on terror understand exactly what is going on. We are in the silly season, where sometimes the statements being made in pursuit of scoring political points stray way too far from the facts.

The fact is, America is stronger and safer and better off as a result of President Bush's leadership and as a result of the leadership of this Congress. We have created opportunity for more Americans. America is more secure than we were on 9/11. We are constantly working, including here today, to make it safer. We have created 1.9 million jobs since August 2003 as a result of the policies of this Congress and this President. If we had accepted the rationale of our colleagues across the aisle and raised taxes and let spending run amok, then we would still be in very dire straits, indeed, and not on the road to recovery.

I yield the remainder of the 20 minutes allotted to our side to the Senator from Missouri.

Mr. TALENT. I thank the Senator for yielding.

Mr. President, how much of the 20 minutes remains?

The PRESIDING OFFICER. The Senator from Missouri has 11½ minutes.

Mr. TALENT. Mr. President, if the Senator from New Jersey would agree, I ask unanimous consent for an additional 5 minutes, and I would, of course, agree that he could have an additional 5 minutes, if we could modify that previous unanimous consent request.

Mr. LAUTENBERG. Speaking for our side, is the Senator asking for 5 minutes from our remaining time?

Mr. TALENT. No, 5 minutes in addition to my 11 minutes, and then my request would be that you would have an additional 5 minutes, for a total of 25.

Mr. REID. Parliamentary inquiry, Mr. President.

Mr. TALENT. Under the same parameters as the unanimous consent request of the Senator from Illinois, I ask to extend the 20 minutes to 25 minutes on each side. I think I can do what I need to do if I have about 15 minutes.

Mr. REID. As I understand, the Senator from Missouri would be recognized for 15 minutes, and Senator DURBIN or his designee would be recognized for 25 minutes.

The PRESIDING OFFICER. That is correct.

Mr. REID. I ask unanimous consent that Senator LAUTENBERG be the designated substitute for Senator DURBIN.

Mr. TALENT. If the Senator from Nevada will yield, it is only a minute, but a minute is a minute. I think I had 11, so an additional 5 would be 16 minutes.

Mr. REID. And further, the consent agreement said that following the statement of Senator DURBIN or his designee, we would return to a quorum call.

The PRESIDING OFFICER. That is correct.

Without objection, it is so ordered.

The Senator from Missouri.

Mr. TALENT. I thank the Senator from Nevada. I don't mean to quibble over a minute. On the other hand, the Rams would probably have won the Super Bowl a couple of years ago if they had had another minute, so one never knows.

Mr. REID. Mr. President, if my friend would yield, those of us who served in the House know how important a minute is.

Mr. TALENT. And the Senator knows, I also served in the House and came from there more recently than he did. I do guard my minutes jealously.

Mr. REID. In the House, how we got to speak was, we were entitled to 1 minute a day. We were always guaranteed 1 minute a day. But most of the time that was all we got all week long, that 1 minute a day.

Mr. TALENT. The Senator has had a similar experience as I have. Having prepared a nice set of remarks on issues about which he feels passionately and gone to the floor manager in the House and asked how much time he could have and being told: Well, a couple of other people have expressed a desire for time; how about 90 seconds.

The PRESIDING OFFICER. Speaking from the Chair and the observation of the Chair, I never served in the House, and we might observe the same rules here some days.

Mr. TALENT. I thank the Senator from New Jersey and the Senator from Nevada for their flexibility. I will proceed with my 16 minutes as best I can.

Mr. President, I share the observation of the Senator from Texas that our friend from Illinois is certainly very angry and seems to be rather negative about the prospects for America.

He would probably say he is negative about the administration, but he seems to describe an economic and foreign policy picture that is very bleak. I don't think it reflects reality or what most Americans believe is reality. I am certain it does not reflect the views or the policies of the administration.

I do think it is important to get some of these charges correct. I don't have time to go through everything. I want to talk about a couple of things that have interested me. I don't generally get up here to participate in these debates that are clearly part of the Presidential campaign. I am here to try and do things. I have an agenda I am trying to accomplish, and others share it.

I was distressed when the Senator from California referred to some of the remarks of the Senator from Utah and said: Talk about flimflam, talk about misleading the seniors.

That was with reference to the Senator's comments regarding the Medicare prescription drug bill, which I happened to rather like and I supported. It is already helping thousands of Missouri seniors, and I don't think that is flimflam. I will get to that in a minute.

The Senator from Texas correctly pointed out that when the whole issue of jobs lost over the last few years comes up, it is important to keep in mind, before blaming President Bush, that President Bush was not in office when the recession began. Americans all across the country understand there is something called a business cycle, an economic cycle in the country. I don't tend to blame Presidents for recessions. I blame them if they have long-term policies that depress the economy over the long term.

I agree with the Senator from Texas, if you want economic growth—and we should all want that because we cannot do anything we want to without growth; we cannot fund education, we cannot have good health care, or a strong defense, and we cannot have retirement security without growth.

How do you get growth? Our Democrat friends believe you get it by raising taxes on people. What the Senator from Illinois said—they didn't used to think that. There was a time not so long ago when there was a bipartisan agreement that, if you wanted growth, one of the things you did was cut taxes. That is not some kind of modern conservative philosophy. That is what John Maynard Keynes thought; that is what FDR thought; that is what LBJ and JFK thought. But they don't believe that today. They are entitled to their beliefs, but they are not entitled to blame President Bush for a recession that was in effect and had started before he assumed office and was magnified by events over which he had no control—the attack on 9/11 and corporate fraud.

I don't blame any President for that either, but it didn't happen on President Bush's watch. He took steps to get the economy moving. He proposed a tax cut, which we passed despite the opposition of many—although not all—Members of the other side of the aisle. He proposed tort reform, restrictions on abusive lawsuits, which I think is the most important thing we can do to get the economy going. That was filibustered by the other side. You can filibuster if you want to, but you cannot filibuster and then blame somebody else for not getting things done.

You heard from the Senator from Illinois that energy prices are too high. I am on the Energy Committee. It is one of my priorities to get energy prices down. We put together a really good Energy bill. We got it all the way through the process, with one vote left. We could not take that vote. Do you know why? It was filibustered. Is it President Bush's fault that the Energy bill was filibustered—a pro-production, pro-jobs, pro-growth Energy bill?

Many Members on the other side joined us in trying to defeat the filibuster, but there were not enough. We lost three-quarters of the other party. Senator KERRY voted for the filibuster.

Iraq. We hear over and over again that there was no reason, no plan, no coalition. There was a reason and it goes back to 1991. I remember during the 1990s, when people criticized the first President Bush because he didn't get rid of Hussein. He was trying to appeal to the U.N., and he left Saddam Hussein in power.

I was in the House all through the 1990s on the Armed Services Committee. This man and his regime was an organic threat to the interests and security of the United States of America. Everybody saw it. He had attacked his neighbors twice, lobbed missiles all over the country. He used weapons of mass destruction on his own people. We cannot permit an anti-American tyrant to take control of that part of the world.

I believe very strongly that President Clinton was moving toward a resolution of that when he left office. Look at the statements he made then and the statements he has made since then. Even if there had not been a 9/11, we would have had to do something about Saddam Hussein and, no, we could not wait longer. How long are you supposed to wait? At what point do arguments in favor of waiting really become just a disguise for doing nothing and not wanting to admit it?

No plan. The plan was to remove Saddam Hussein and replace him, with the help of the Iraqi people, with a liberal democracy that would be an ally against terrorism. Saddam Hussein is gone. We have had the provisional convention. We have a provisional government in place. We are going to have elections in January. Prime Minister Allawi stood on the dais in the House and said that. He also said: We are going to stand with you. He said—I remarked on this—"as you have stood with us, we will stand with you in the battle against terrorism."

No coalition. Look, this kind of a military effort, no matter where it occurs, and whether the U.N. supports it or not, is going to be 95-percent led and executed by forces of the United States of America. In the air war in Bosnia, which everybody supported, even though there was no U.N. resolution in support of it, 95 to 97 percent of the airpower was American.

There is one very important coalition partner—the Iraqis. It is incorrect to say that 90 percent of the casualties have been American. We have taken casualties, but they are taking them too, and they will take more and more as they assume responsibility for this war.

The Medicare prescription drug bill. The Senator from Illinois says it is a terrible political conspiracy on the part of the President to delay the full implementation of the bill until after November 2004. Nobody's proposal would have been implemented before November 2004. I didn't like that. I complained about that. I thought, well, in 1965 they did the whole Medicare bill in 8 months. Why does it take so long to set up one new feature? Everybody believed that. There were not any of their proposals that would have taken effect before November of 2004. I don't like that, but that is not a political conspiracy. I don't know if the Senator from Texas heard that. I had not. You cannot bargain.

Look, this is the reason for the Medicare prescription drug bill—and I have 200,000 senior citizens in Missouri who have no insurance for their prescription drugs. They are paying not only out of pocket, which is the first thing that is wrong, but they are paying the highest price because when they walk into the pharmacy, it is them against the big insurance companies. The whole idea is to get them into a pool because if you are part of a big pool, you have economies of scale and prices will be lower. That is what this bill does. I don't have time to go into length on this issue.

The bargaining with the prescription drug companies is going to be done by the organizations that put the pool together—like we have discount cards, one, for example, that AARP puts out, and AARP bargains with the prescription drug companies and you buy the AARP discount card and you get the discount. People are getting that discount today.

If I go to the car dealer and buy an automobile, I may bargain with the dealer about the price of the car. I am not going to bargain about the price of the tires on the automobile. That doesn't mean there was no bargaining over the price of the tires; it means the automobile manufacturer did it. The difference between us and them on this—and it is a legitimate difference—is they want a one-size-fits-all, Government-dominated program where the Government would directly do the bargaining with the drug company.

There are worse things than that. We thought ours was better. We wanted a number of different options for seniors, where the people who organized the options would bargain with the prescription drug companies. It is a difference of philosophy because they are more trusting of the Government than we are. It is not some kind of conspiracy with the drug companies.

How much time do I have left?

The PRESIDING OFFICER. The Senator has 6 minutes 32 seconds.

Mr. TALENT. I think I can do it in 6 minutes.

This is the reason I got up. President Bush actually has a plan to lower health insurance premiums. It is a pretty good plan. It is my plan. He kind of got it from me and Senator SNOWE and Senator BOND and a couple of us over here, those of us who have worked on this since 1997 when I was in the House. I don't like people saying my plan is not a plan.

President Bush wants two things. He wants medical liability reform—reform of frivolous lawsuits in medicine. In Missouri, they know about this because we are losing doctors because malpractice insurance premiums are going up due to a problem with frivolous lawsuits.

The Senator from Texas told me they just passed a bill to reform that and their health insurance premiums are going down substantially, and I know this is happening all over the country. If you cut that risk of the frivolous lawsuits, where people are recovering many more times the value of actual injuries, insurance premiums will go down. President Bush wants that. We didn't get that here because it was filibustered. His opponent in the election supported the filibuster.

How can you say he doesn't have a plan? You can say you disagree with the plan if you want—you filibustered it. The plan I have that the President supports is called the association health plan.

Most of the people who do not have health insurance in the country are working people. They work for small businesses or are farmers. They cannot get health insurance because it is more expensive to buy health insurance as part of a small group than it is as a big national pool.

There is a reason everybody else who has health insurance, except people who work for small businesses, get in as part of a national pool. Think about that for a minute. You work for a big company, you are part of a big labor union plan, Medicare, a national pool, Medicaid, a national pool. You are a Federal employee, retired Federal employee, retired military, you get it as part of a national pool because there are economies of scale to insuring a large group. Administrative costs are less, and the bargaining power is more. You get more for less. You get better quality health insurance at less cost and no sacrifice of access or quality.

What I would like to do and the President would like to do is allow small businesses to do the same, to get health insurance through their trade association, so that my brother—and I have mentioned him on the floor before—who has a little restaurant in St. Louis—and I encourage anybody within the sound of my voice to patronize it; great hamburgers, Mr. President—he would like to get health insurance for his people as part of a big group. He would get it then. He is an employee of his corporation, his little business. He has to buy it on the small group market. But what if he could join the National Restaurant Association and become part of a 10-, 20-, 30-person pool and get health insurance on the same terms as if he worked for Anheuser-Busch headquartered in St. Louis or Hallmark headquartered in Kansas City. The health insurance premiums would go down 30 percent, at no cost to the taxpayers because it is not a Government program. It empowers small businesses to do what big businesses can do.

We hear over there how they do not like big business. They are not supporting this. It has passed in the House year after year with bipartisan support. The President supports it; his opponent does not.

Mr. President, look, there are differences between President Bush and Senator KERRY. The nature of our elections, unfortunately, is our candidates—and I can assure voters of this—are never as bad as they make each other out to be. They are both better people than you would believe from the commercials, but there are big differences of opinion. And I am proud of the fact that with the support of many people on the other side of the aisle, my party in leading this Congress and my party's leader at the White House has proposed a series of measures that empower small businesses and farmers that create jobs, that lower health insurance costs in innovative ways that will not cost the taxpayers a lot of money, that has built up our defenses, has taken the fight to the terrorists and has stood with respect but clearly for the commonsense cultural values of this country.

I would say in each of those areas, there is a big difference between my party's nominee for President and the other party's nominee, as much as I respect him and as often as I have worked with him on various issues in the past. With the greatest respect to the Senator from California and the Senator from Illinois, that "ain't" flimflam. That is not misleading anybody. That is the way it is. If we are going to debate out here on the floor regarding the Presidential election, we ought to at least get it right.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from New Jersey.

IRAQ

Mr. LAUTENBERG. Mr. President, I will use our time to discuss a couple of subjects, one of which relates to the present debate or dialog, and that is the position of our respective parties on behalf of the interests of the American people. After that, I will talk about the terrible attack that took place in Egypt against a group of Israelis and what the world is saying about events such as that.

First, what we heard in the debate a little while ago was the fact that the reason, as I heard it—and I am willing to be corrected if wrong—that one of the reasons we went to war in Iraq was a resolution that was passed in this body, in the Senate—talking about the resolution that was passed in October 2002—giving the President authority to send our troops to Iraq. That hardly was the reason we did that.

We did not mandate in this body that we go to war. What we said was: OK, Mr. President, if you know about those weapons of mass destruction, and if you know that al-Qaida has a presence there, and if all of these threats are directed at world peace and a threat to the security of the United States, we give you permission, we give you support to send them.

We never relinquished our support for the troops in Iraq, nobody here, not even the most tranquil of the personalities. Everybody said: Take care of our troops. Senator JOHN KERRY stood up and said: Take care of our troops.

I was not in the Senate at that particular moment, but I have been back here again since the beginning of 2003. There was never a moment when it was suggested that we would not support our troops and their needs, the basic things.

So when we were told that all these threats were there, that we have to do it to protect ourselves, that 9/11 was fresh in our memory, that we felt we had to get out there before we had another 9/11 thrust down our throats that would kill more Americans, we said: OK, let's do it. Let's go ahead and make sure that we wipe out these things that menace America's population, that menace American citizens.

That was the reason we did it. Then we found out that we were duped. That is what happened. We were fooled. We were misled, and now everybody knows it. Yes, Senator JOHN KERRY had the same information President Bush had. The fact is, Senator JOHN KERRY did not manipulate the information, did not make sure that people were identifying tubes and pipes as part of the threat that Iraq raised to us and to world peace.

Much of that was, if not fabricated, tainted, biased. Some of our most distinguished Government servants, our distinguished Secretary of State Colin Powell, made such a convincing argument in front of the U.N. and in front of the world at large about where these weapons were stored, how they were transported, and so forth. And all of us—I speak for myself—have faith in Secretary Powell, a distinguished soldier, great statesman, brilliant man, honest—honest. He later on said in a public release that he, too, was deceived by the information that he received.

Now when we try to suggest that we were parties to the origination of this war, it is an outrage. I felt, too—and I was not in the Senate, but I said it publicly, people were still hearing me occasionally—that I supported the thrust to go to war in Iraq because of the ominous reports we had.

It was not that we wanted to throw American lives in there. We are now about to deploy some 1,500 Guard people from New Jersey. I hope that tomorrow I will be able to be there to wish them well when they depart New Jersey. It reminds me of a long time ago when I also was transported out of New Jersey to a ship up in Massachusetts so I could go to Europe during the war. I want to be there tomorrow. They are all concerned. They are frightened. The families are frightened. Their spouses are frightened. Their kids are frightened. We are in a mess, we are in a quagmire, and the world is looking at us and listening to the messages that say we are doing well, we are prepared for the Iraqi takeover fully for the next election.

We hear, well, maybe the next election cannot be held as we thought it might be in the whole country, maybe only part of it, maybe just the part that we think is friendly.

The assertion when Prime Minister Allawi was here, the interim Prime Minister who made his speech at the joint session, that we should be assured—I heard President Bush say we should be assured that things are on the right track. In other words, do not believe what one sees in front of them. No, no. Listen to what we tell people coming from the administration. Listen to the fabrications. Listen to the stories about Senator JOHN KERRY's lack of courage, unwillingness to support the troops. There is an unwillingness that stands largely in our sight about an unwillingness to serve when the country was sending its people to Vietnam, where 58,000 of them perished on the battlefield. For Vice President CHENEY, he said, and I quote him, I think—if I do not quote him, I am sure about the general content of what he said, and that is: I had other priorities. He received almost a half dozen deferments.

President Bush's service, yes, I know, it was 30 years ago, and what does it matter? It matters because it shows character. That is what it does. It shows character. President Bush did not want to be over there where the fighting was tough, where one's life might be at risk. No, no. He managed to have a sweetheart duty and never went to war when he could very well have, with the bravado that is now exhibited. He could have gone to war and stood alongside people like JOHN KERRY and Max Cleland, those who paid a price for their loyalty to country.

I saw a commercial running on TV this morning. I found it shocking. Widows, apparently, whose husbands perished in the Korean War were saying they did not trust JOHN KERRY's judgment because, why? It is because the Bush administration and the political operation there has succeeded in poisoning the minds of Americans.

Do not believe the fact that Senator KERRY got three Purple Hearts, deservedly, oh, no. They want to make the judgment from the White House. Those judgments were made by the medical department of the U.S. military, and they were confirmed by the highest authorities in the military.

The medals for valor, the Bronze Star and Silver Star—I served in Europe during the war and I know what it took to get those medals. It took heroism. I did not get one of those medals. I did my job the best I could. But JOHN KERRY earned his medals, and they are being questioned to try to show he is unpatriotic.

The fact that he rebelled against the purpose of the war in Vietnam after he served, boy, what kind of backbone that takes. The man knows the policy is wrong, and it turned out to be wrong, and it turned out to be a terrible loss of life, but he fought the battle. He exposed himself to danger, to death. He did it. What kind of courage that is. That is not the kind of courage we saw from a young George W. Bush, not at all, or from Vice President CHENEY. I think Attorney General Ashcroft also had a few deferments. There is a list of them.

I think the race against former Senator Max Cleland, who lost two legs and most of an arm and struggles to get out of bed every day and do what he has to—he is a courageous man and he lost because he was portrayed as soft on defense. He was portrayed as soft on defense by those who also had Vietnam deferments.

The country was in a rage, with demonstrations all over the place, but JOHN KERRY took up the challenge and went to war.

So now when I hear these spurious assertions that one cannot trust JOHN KERRY, well, I will say, if I was lost in the woods and had a choice between JOHN KERRY or George W. Bush getting me out, I know JOHN KERRY can make a decision. I know he can find his way. I know he can survive when the going is tough. I know he had the guts to reach into the water to pull out one of his companions who was likely to drown and saved his life. The man says so all over the place.

I think the country would be far better off if we followed JOHN KERRY's courageous character and tried to find a way out of the mess. We are almost a year and a half after President Bush declared the mission was accomplished. It is almost 18 months ago but more importantly it was more than 800 lives ago. We have now lost over 1,000 people and more than 800 of them since May of a year ago, and they are still trying to portray what the President said as gospel: mission accomplished.

He said, bring them on. Boy, that one got to me because I know what it is like to be worried about the enemy. They shoot at you. Bring them on? I never wanted to see a German uniform, I can say that. I never wanted to see more of the enemy. I wanted to make sure I did my duty. I wanted to make sure that I got through. I wanted to make sure I got back to my widowed mother and my kid sister. That is what I wanted to do. So we never said, bring them on. I have never heard of another Commander in Chief say, bring them on.

I do not want to elongate this discussion, but I must say when I see these character assassination ads that run on television regularly, I do not hear them talking seriously about the job recovery, no, no. Some jobs are newly created but not as many as we lost.

They talk on the other side about how JOHN KERRY is going to raise taxes. Outrageous, the thought that he had voted to increase taxes. No, they would rather vote to increase the deficit and to increase our indebtedness. That is what they want to vote for. Let America owe so much money that we may one day tip the world's economy into a recession mode. That was said by former Treasury Secretary Bob Rubin, a very reliable voice. Both Republicans and Democrats had faith in Bob Rubin. He said if this indebtedness continues to grow, we could upset the world's economy, not just ours. And I believe it. Anybody who has ever been in business, anybody who has ever paid bills, anybody who has ever lived in a serious adult life knows that indebtedness is a killer. But the administration managed to turn things around. It wasn't my doing, I can tell you. I tried to help. When I left here, we were having surpluses, a couple of hundred billion dollars in surplus with forecasts of a $5 trillion surplus at the end of 10 years. That has turned around. Instead, we expect about a $7 trillion deficit after 10 years.

We have managed to take this economy and turn it on its ear, borrow from Social Security, threaten Medicare with insolvency in 15 years. By 2019, the expectation is that Medicare will go belly-up at that time. Social Security? We are borrowing everything available there. Why don't we tell the people the truth? Why don't we talk about those issues in depth?

In the debates coming up tonight and another one next week, I hope the focus will be on what kind of plans each of the candidates has. What kind of plans has President George W. Bush for getting us out of Iraq? What kind of plans does he have for getting this economy back into surplus performances year after year? What kind of plans does he have to fulfill the obligation he took on with the Leave No Child Behind Act? It is one thing to enact legislation, to create law; it is another to pay for it. When it comes to paying for it, that didn't happen.

When you think about these tax cuts, we were accused before by one of our distinguished colleagues on the other side of trying to create class warfare. That is the cheesiest thing I have ever heard. Class warfare? I happen to be in a class of income earners who did very well in America, I and two other kids who came from the same poor neighborhood that I did. Their father worked in the same mill my father worked in, and my father died at 43 from an occupationally hazardous environment. We built a huge business, a huge business. We went from nothing, three of us together, kids in their 20s, and we built a business that today employs 40,000 people. That is the old-fashioned American way. I made some money with this, as did many others who succeeded in business. We did it the old-fashioned way.

Class warfare? I come from working-class stock, and I am proud of it. But because I have been successful, because this country was the enabler that permitted me to be successful, as everybody else who has been successful here, I say I don't need a tax cut. It will not do me any more good. I can't buy more, I can't eat more, I can't do more, and I want it distributed among the ordinary people who work every day, struggling the way I remember my mother and my father did just to keep things on an even keel, to provide clothing, to provide food, to provide decent shelter. I lived in the back of the store for a lot of years, I can tell you, four of us in one room. Nobody wants to hear those stories anymore. The Great Depression is a thing of the past. But we do understand when people want to rise above their circumstances and educate their children and make sure they have a chance at a job, a career, and a family where they can afford the ordinary things of life—not the luxuries.

So we can't talk about class warfare. If there is class warfare, boy, it is over there. They say take the upper class, give them a lot of money back, and don't worry about those poor people or those who now have two jobs, who now find their purchasing power is substantially reduced, who now are worried about what it is going to cost for health care and who are worried about pensions.

I was at a hearing the other day on the financial condition of the airlines. What they want to do is to get rid of their pension obligation. If you work 26 years for an airline, a factory, or a company, work 27 years, count on your pension, and wake up one day and find out it is not there, what do you do? You are 55, 60, 65 years of age. These are terrible blights. I hope we are going to see something of the truth.

TERRORIST BOMBING IN EGYPT

Mr. President, I want to discuss another subject. I want to discuss the news we heard today of a raid in Egypt aimed at a bunch of Israelis who were there on vacation—brutalizing, suicide bombers, the whole thing. An Israeli official says maybe it was al-Qaida. Obviously it was some mad group.

What I see lately is disturbing trends regarding the various criticisms of Israel. We have seen two prominent church bodies decide to take away their investments from Israel because of Israel's—maybe it is because Israel wants to defend itself, to keep its people alive. Maybe it is because Israel wants to live as any other country—in peace, without torture, without suicide bombers ripping up the society.

The Israelis have lost over 1,000 lives since 2000. Think of it in terms of America and the numerical equivalents because their population is so much smaller. One thousand citizens of Israel would be the same as 48,000 Americans lost to terror. Heaven forbid it, but that is the truth of the matter.

Israel has taken appropriate measures to defend itself against the terrorist threat it faces every day. Israel has made tough choices to defend her people. But now we are seeing these respected, mainstream church organizations contemplating divestment campaigns against the State of Israel. I wish they would talk about ending the violence that has been the pattern there for so long. There is so much violence and strife in the region, not dissimilar to that which we are facing in Iraq.

There is a trend. You can see it in the talk of a divestment campaign—blame Israel first. The innocents killed by terrorists are ignored, but there is a disproportionate focus on civilian victims of Israeli military operations against terrorists. To blame Israel for the turmoil and violence in the Middle East is outrageous. Review some of the recent history in the Middle East, events that had nothing to do with Israel. Yet when I was in Syria with other Senators, we heard the President of Syria, President Assad, say all the problems that exist in the area are because of Israel.

Millions died in the Iran-Iraq war. It had nothing to do with Israel. In Sudan, Arab Muslims are murdering thousands of Black Christians—nothing to do with Israel. Iraq invading Kuwait in 1991 and threatening Saudi Arabia had nothing to do with Israel. The Taliban took control of Afghanistan and severely oppressed women and gave safe haven to terrorists—nothing to do with Israel. None of these events had anything to do with Israel, yet somehow or other the region's problems are Israel's fault.

How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 4 seconds remaining.

Mr. LAUTENBERG. Mr. President, with that, I will close my comments and hope the world takes a look at what is causing the problems within Israel and her right to defend herself.

I yield the floor.

QUORUM CALL

Mr. LAUTENBERG. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 1, Leg.]

Frist

The PRESIDING OFFICER (Mr. CRAIG). A quorum is not present. The clerk will call the names of absent Senators.

Mr. FRIST. Mr. President, I now move to instruct the Sergeant at Arms to request the presence of absent Senators, and I ask for the yeas and nays on the motion.

Mr. HARKIN. Parliamentary inquiry: Are we not in a quorum call?

The PRESIDING OFFICER. We have had a quorum call, and a quorum is not present.

Is there a sufficient second on the motion?

There is a sufficient second.

Mr. HARKIN. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. McCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL), the Senator from Georgia (Mr. CHAMBLISS), the Senator from South Carolina (Mr. GRAHAM), and the Senator from New Hampshire (Mr. SUNUNU) are necessarily absent.

Mr. REID. I announce that the Senator from California (Mrs. BOXER), the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KERRY), the Senator from Vermont (Mr. LEAHY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

The PRESIDING OFFICER (Mr. ALEXANDER). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 85, nays 4, as follows:

[Rollcall Vote No. 205 Leg.]

YEAS—85

Akaka
Alexander
Allard
Baucus
Bayh
Biden
Bingaman
Bond
Brownback
Bunning
Burns
Byrd
Cantwell
Carper
Chafee
Clinton
Cochran
Coleman
Collins
Conrad
Cornyn
Corzine
Craig
Crapo
Daschle
Dayton
DeWine
Dodd
Dole
Domenici
Dorgan
Durbin
Ensign
Enzi
Feingold
Feinstein
Fitzgerald
Frist
Grassley
Gregg
Hagel
Harkin
Hatch
Hutchison
Inhofe
Jeffords
Johnson
Kennedy
Kohl
Kyl
Landrieu
Lautenberg
Levin
Lincoln
Lott
Lugar
McCain
McConnell
Mikulski
Miller
Murkowski
Murray
Nelson (FL)
Nelson (NE)
Nickles
Pryor
Reed
Reid
Roberts
Rockefeller
Santorum
Sarbanes
Schumer
Sessions
Shelby
Smith
Snowe
Specter
Stabenow
Stevens
Talent
Thomas
Voinovich
Warner
Wyden

NAYS—4

Allen
Bennett
Breaux
Inouye

NOT VOTING—11

Boxer
Campbell
Chambliss
Edwards
Graham (FL)
Graham (SC)
Hollings
Kerry
Leahy
Lieberman
Sununu

The motion was agreed to.

The PRESIDING OFFICER. A quorum is present.

The majority leader.

Mr. FRIST. What is the pending business?

The PRESIDING OFFICER. The Bingaman amendment has been set aside.

Mr. FRIST. Mr. President, the two distinguished whips have done a lot of work on the resolution before us through yesterday, last night, and over the course of the morning. As people have been saying, we have come to a stall period, and we really do need to refocus on the resolution itself. We are down to a very few remaining amendments that were agreed to. The list was agreed to last night. I urge our colleagues to allow us to progress on the underlying resolution and on those amendments so we can progress with a lot of business that we have to do. But we cannot do the other business until we address these amendments.

I understand everyone's rights, but I remind everybody that we are in a cloture period, and we invoked cloture. I believe the vote this morning was 88 to 3. Therefore, I urge us to stay on the business we are now on and to address the amendments. Once we complete the amendments, we will proceed to the cloture vote on the underlying resolution itself.

We have just used a procedural vote. We have not had to use procedural votes very often over the last couple of years. I am disappointed to have to force Members to come back to the floor, but we do need to focus on the business at hand. We have other issues to address, such as the FSC/ETI bill and the Homeland Security appropriations that we are doing. We cannot get to those until we address the business at hand.

Some people are saying we ought to go home or we should not do the Nation's business. We are talking about intelligence reform, the safety and security of the American people, and we need to address those issues now.

We do have the FSC/ETI bill, the Defense authorization bill, and the Homeland Security appropriations, when they are available, and we will take those up. But we have to complete this bill first.

On the business at hand, I have an amendment at the desk, which has been cleared on both sides. I do ask consent to call up a modified version of my amendment, which is at the desk.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. Mr. President, I object.

The PRESIDING OFFICER. The objection is heard.

Mr. FRIST. Mr. President, again, this amendment was an amendment that, last night, we said we would be addressing today. We have Members who are trying to work on that business. Again, I plead with Members on both sides of the aisle to allow us to address the intelligence oversight of the Senate. The American people expect it. I know individual Senators have certain rights to put a block and to obstruct, but we are talking about the Nation's business.

We are about ready to adjourn over the next hours, but it looks as though, because of the obstruction, it is going to be days now, but we are going to stay here. The American people deserve it. The 9/11 Commission Report said act and we have acted, and now we are in that final few feet of this sprint, and we are there, but we are having this obstruction.

The amendment I just asked to turn to is part of the underlying business. Again, we just heard another objection. So I am frustrated, but nevertheless we are going to stay here and we are going to complete the Nation's business.

I am prepared at this juncture to yield the floor to allow business. I understand Senators have rights and can speak under rule XXII, but I do want to at least advise Members that we cannot just sit in a quorum call like we have for the last little bit throughout the afternoon. The American people deserve more. We are here to work. We are here to produce. We are here to address the safety and security of the American people. If Members want to debate this resolution, please come forward and do it. It is the resolution that is the business on the floor. We will have votes as necessary through the afternoon and through the evening, hopefully on substantive amendments. We will have procedural votes, if necessary, to bring people back to conduct the Nation's business.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DOMENICI. Will the Senator yield?.

Mr. McCAIN. I have the floor. I would be glad to yield to the Senator from New Mexico for purposes of a discussion.

Mr. DOMENICI. Yes, discussion of this bill. First, I want to say I have a little amendment pending, but believe me, I do not intend to delay things. I will offer it with Senator BINGAMAN, so I am not running to my office, and the Senator does not have to call me back with anything.

I want to tell the Senator why things are taking so long. We have Senator HARKIN. He has a legitimate point. I mean, the whole law of the land on big subjects that the conferees know nothing about in appropriations should not be changed. The Senator from Iowa can speak for himself, but I have a situation where the conferees on that subcommittee have not had a hearing on the huge program called the milk subsidy for America. They changed it. They extended part of it. They added a new subsidy and a new forward contract.

Now, how do they know how that affects Oklahoma, California, or Texas? They do not, but there are enough people on the conference to do that, and Senators know about that.

Now, I am a player, and there is nobody who has more respect for what the Senator is trying to do than I, but there comes a point where one cannot stand it anymore. People want this big bill to protect our country, Homeland Security, but they do not have to protect some cows along with it, do they? We are not here for a cow protection program; we are here to protect America.

So if they do that—I do the rules, although not very often, but that bill has three perfect points of order in it. I say to the leader, they will be made, and they are all debatable. Unless they can get to the floor to make a motion to table, we will be here and then we can talk a little bit.

So the great desire of the Senator to get out of here Sunday, I can tell the Senator that if he brings that bill out here with that on it, we are here until Wednesday.

That is a cinch.

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. McCAIN. I thank the distinguished Chair, and I thank the Senator from New Mexico and respect always his opinion and his passion.

Since the Senator from Iowa is in the Chamber, I would like to perhaps do something that may be pleasant for him, and that is I will yield to him for 5 minutes without losing my right to the floor, if he would like to describe his plans to the body. No?

Mr. HARKIN. I thank the Senator from Arizona. I did not hear what he said.

Mr. McCAIN. I said I would be glad to propound a unanimous consent to yield to the Senator for 5 minutes without losing my right to the floor, if the Senator would like to describe what he intends to do.

Mr. HARKIN. I thank the Senator from Arizona. I did not hear what he said.

Mr. McCAIN. I said I would be happy to propound a unanimous consent to yield to you without losing my right to the floor, if you would like to describe what you intend to do.

Mr. HARKIN. I thank the Senator for that kindness.

Mr. McCAIN. I ask unanimous consent to yield to the Senator from Iowa for 5 minutes and then regain my right to the floor.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. The Senator asked what my plans are. My plans are to protect my farmers.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. My plans are to fight for what we in the Agriculture Committee——

Mr. McCAIN. Mr. President, the Senate is not in order.

The PRESIDING OFFICER. The Senate will be in order. The Senator from Iowa.

Mr. HARKIN. I say to my friend from Arizona, my plan is to fight for an agreement that was hammered out in the Agriculture bill a couple or 3 years ago that everybody signed up on, everyone agreed, the President signed it.

It is not right. I tell my friends, it is not right to treat farmers in one area of this country different than the other. For the last 50 years, this Congress has responded to disasters, whether they are earthquakes or tornadoes or floods or hail or fire or hurricanes. For 50 years, we have responded, and not once, not once have we offset it. It has always been in emergency spending.

Mr. NICKLES. Will the Senator yield?

Mr. HARKIN. Not once until 2 years ago they did it once, and that was corrected. Now they want to do it again. Once was once too many. Now they want to change the underlying structure of the farm bill. I am telling you, it is not right to do so.

I thank the Senator from Arizona for giving me the time to explain why I am doing what I am doing. I thank the Senator.

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. McCAIN. I would like to do the same thing with the Senator from Arkansas in just a minute. I would like to make a point to my friend from Iowa and others. I don't think there is anyone else in this body who has been viewed in as many ways as one who is—maybe the word is obstructionist and disagreeable from time to time on issues with which I do not agree, but let me say I have never filibustered, nor have I ever tried to prevent the passage of legislation as long as I have been able to have my amendment, make my point, and get a vote and move forward.

I say to my friend from Iowa, I think for the good of the body here, on Friday afternoon, I would be glad to vote on any amendment he would propose. I would be glad to debate and vote, because I just do not think it is good for the institution for us to stay here until Tuesday, basically doing nothing. I am not sure we satisfy our constituents by doing so.

Now, if it is agreeable—I ask unanimous consent to yield 2 minutes to the Senator from Arkansas, without losing my right to the floor—excuse me, Louisiana. My deep apologies. I do know the difference between Louisiana and Arkansas.

Ms. LANDRIEU. I thank the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I thank my distinguished colleague for yielding.

I am objecting also because of an issue that is of great concern to me and to the people of Louisiana. It is in this $137 billion tax bill that we have worked on very hard for 2 years. Our leaders in the Senate have done an excellent job under very difficult circumstances. It was a House committee, without the cameras rolling and without a real record of it.

The only people taking bullets for us, who are the men and women on the front line in Afghanistan and Iraq—in this case the Guard and National Reserve—the only people taking the bullets were left out of the bill completely. They were not the top of the list, they were not in the middle of the list, and they were not in the bottom of the list.

So I am slowing the Senate down until I can get this message out, and talking to as many reporters and others who will talk so I can tell them the truth and what happened. I can talk to my colleagues if we are going to stay here a day or 2 days or 3 days. They have been in Iraq for over a year and a half, 2 years, and another weekend is not going to hurt me. We need to talk about a plan to work through it. But I am not leaving them on the cutting-room floor.

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. McCAIN. I would like to say again to my colleagues, as one who has a reputation for disagreeing from time to time, I think we should let the body move forward and decide on these amendments. I believe we could work out agreements that would allow for amendments to be voted up or down on these very compelling issues.

I share the concern and view of the Senator from Louisiana. I think that issue needs to be discussed and debated. I am not sure just holding up the body is the answer.

Finally, I ask unanimous consent for my colleague from Oklahoma to speak for 3 minutes, without losing my right to the floor, and then the Senator from Massachusetts.

I ask unanimous consent for 5 minutes to the Senator from Oklahoma without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Oklahoma.

AMENDMENT NO. 4027 TO AMENDMENT NO. 3981

Mr. NICKLES. Mr. President, I call up amendment No. 4027.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Oklahoma [Mr. NICKLES] proposes an amendment numbered 4027 to amendment No. 3981.

The amendment is as follows:

(Purpose: To vest sole jurisdiction over the Federal budget process in the Committee on the Budget)

At the end of Section 101, insert the following:

"(e) JURISDICTION OF BUDGET COMMITTEE.—Notwithstanding paragraph (b)(3) of this section, the Committee on the Budget shall have exclusive jurisdiction over measures affecting the congressional budget process, including:

(1) the functions, duties, and powers of the Congressional Budget Office;

(2) the functions, duties, and powers of the Congressional Budget Office;

(3) the process by which Congress annually establishes the appropriate levels of budget authority, outlays, revenues, deficits or surpluses, and public debt—including subdivisions thereof—and including the establishment of mandatory ceilings on spending and appropriations, a floor on revenues, timetables for congressional action on concurrent resolutions, on the reporting of authorization bills, and on the enactment of appropriation bills, and enforcement mechanisms for budgetary limits and timetables;

(4) the limiting of backdoor spending devices;

(5) the timetables for Presidential submission of appropriations and authorization requests;

(6) the definitions of what constitutes impoundment—such as "rescissions" and "deferrals";

(7) the process and determination by which impoundments must be reported to and considered by Congress;

(8) the mechanisms to insure Executive compliance with the provisions of the Impoundment Control Act, title X—such as GAO review and lawsuits; and

(9) the provisions which affect the content or determination of amounts included in or excluded from the congressional budget or the calculation of such amounts, including the definition of terms provided by the Budget Act."

AMENDMENT NO. 4041 TO AMENDMENT NO. 4027

Mr. NICKLES. Mr. President, I call up amendment No. 4041 to amendment No. 4027.

Mr. KENNEDY. Point of order. Mr. President. Parliamentary inquiry: As I understood it, the Senator from Arizona yielded for points of discussion. I ask the Chair if he would not rule. I ask if he asked consent if he would be able to yield, for the point of discussion, to other Members here? As I understand it now, the Senator is offering an amendment. That is not discussion. I make a point of order.

The PRESIDING OFFICER. The Senator yielded for a specified period of time.

Mr. KENNEDY. And not for discussion only?

The PRESIDING OFFICER. Simply for a specified period of time.

Mr. KENNEDY. What is the request now that is before the Chair?

Several Senators addressed the Chair.

Mr. McCAIN. What is the pending business?

The PRESIDING OFFICER. The Senator from Oklahoma has the right to call up an amendment.

Mr. KENNEDY. Mr. President, what is the request?

Mr. McCAIN. What is the pending business before the Senate?

The PRESIDING OFFICER. The Senator has called up an amendment and has sent it to the desk, and a second-degree amendment as well, which is his right.

The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I believe I was recognized.

For the information of my colleagues, to help clarify, I believe I understood the underlying Domenici amendment was set aside.

Mr. McCAIN. Mr. President, I do not believe the pending amendment was set aside. It required unanimous consent.

Mr. NICKLES. My understanding—I will ask the Chair, but it is my understanding the Domenici-Craig amendment was set aside. Under the unanimous consent agreement that was entered into yesterday, there were several amendments to be pending, that are in order. One of those amendments is an amendment I had, dealing with the budget office. I am just trying to get in, too.

I have modified it at the request of the chairman of the Government Operations Committee. This is not a significant amendment, but it is an important one and I am trying to advance the movement of this bill, to have a pending amendment. I have now modified it. I have a second-degree amendment pending to it, that Senator KENT CONRAD and myself are cosponsoring.

It now means that would be the pending amendment to the underlying bill when we go to the regular order on the bill. I would like for us to finish this bill.

I know some people wish to speak at length because they happen to be upset about the Homeland Security bill. I may support them in their efforts. That remains to be seen. But I do think it is important we finish the bill that is pending, and there are four or five amendments that are out there. Maybe two or three of those amendments will be agreed to and we can finish the Homeland Security bill in a very short period of time.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. McCAIN. Before I yield to the Senator from Kentucky—I mean Massachusetts——

The PRESIDING OFFICER. The clerk will report the second-degree amendment.

The assistant legislative clerk read as follows:

The Senator from Oklahoma [Mr. NICKLES] proposes an amendment numbered 4041 to amendment No. 4027.

Mr. NICKLES. I ask unanimous consent that the reading of the amendment be dispensed with.

Mr. HARKIN. I object.

The assistant legislative clerk continued with the reading, as follows:

Strike all after the first word, and insert the following:

"JURISDICTION OF BUDGET COMMITTEE.—Notwithstanding paragraph (b)(3) of this section, and except as otherwise provided in the Congressional Budget Act of 1974, the Committee on the Budget shall have exclusive jurisdiction over measures affecting the congressional budget process, which are:

(1) the functions, duties, and powers of the Budget Committee;

(2) the functions, duties, and powers of the Congressional Budget Office;

(3) the process by which Congress annually establishes the appropriate levels of budget authority, outlays, revenues, deficits or surpluses, and public debt—including subdivisions thereof—and including the establishment of mandatory ceilings on spending and appropriations, a floor on revenues, timetables for congressional action on concurrent resolutions, on the reporting of authorization bills, and on the enactment of appropriation bills, and enforcement mechanisms for budgetary limits and timetables;

Mr. REID. Mr. President, it does not take consent to stop reading. I seek recognition. I ask unanimous consent to speak for 1 minute.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Mr. President, I want the attention——

Mr. McCAIN. I have the floor, Mr. President.

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. McCAIN. Has the time of the Senator from Oklahoma expired?

The PRESIDING OFFICER. The time of the Senator from Oklahoma has expired.

The Senator from Arizona has the floor.

Mr. REID. Mr. President, I ask unanimous consent to speak for 1 minute.

The PRESIDING OFFICER. Is there objection?

Mr. McCAIN. The Senator from Massachusetts was waiting to say a few words. I ask unanimous consent to yield to the Senator from Massachusetts for 5 minutes for the purpose of discussion, followed by the Senator from Nevada for 2 minutes, with my right to regain the floor.

The PRESIDING OFFICER. Is there objection?

Mr. REID. I ask unanimous consent to speak before Senator KENNEDY for 1 or 2 minutes.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Mr. President, I direct this to my friend from Oklahoma. I have the greatest respect for the Senator from Oklahoma. But it is not appropriate when neither manager is on the floor to send an amendment to the desk. It is not the way we do things around here. I ask unanimous consent that the action taken by my friend be vitiated. That is not fair. I say that with all due respect. We have been here for the last 3 or 4 days.

Mr. NICKLES. Mr. President, will the Senator yield?

Mr. McCAIN. Once, shame on you; twice, shame on me. The Senator from Massachusetts was recognized.

Mr. REID. My time is not up.

The PRESIDING OFFICER. The Senator from Nevada has the floor.

Mr. REID. Mr. President, I ask unanimous consent that the action taken by the Senator from Oklahoma be vitiated, and that we go back to where we started before he offered his amendment.

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, my friends and colleagues from Iowa, Florida, and Louisiana have outlined very briefly some of their concerns about how they felt the minority had been treated in an arbitrary way in the conference committee.

I want to remind the Senate that we had a 78-to-15 vote in the Senate to tie the tobacco buyout with the FDA regulations, and that particular proposal came back. We had not asked that the tobacco buyout be in the tax bill. But, nonetheless, the House decided to put it in the bill. Then when it came back here, the decision of that conference was made to take care of the tobacco companies and give short shrift to the children of this country.

I think it is going to be appropriate that many of us talk about that and make sure the American people understand that.

Finally, we have also had the issue on overtime. Three times we saw the decision made in the Senate to repeal the administration's overtime—twice in the House of Representatives. This was given 6 minutes in the conference committee.

I think the working families of this country have a right to understand and know what is in that FSC bill. I for one intend to use my time to make sure that they do.

I thank the Senator from Arizona for yielding.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, I would like to say again I am not sure that the situation on Monday, or Tuesday, or midnight tonight, or Wednesday, or whatever, is going to be any different than it is now. I have been assured by the leader that we could have any amendment within reason considered, debated, and voted on in a reasonable length of time. I hope my colleagues will consider doing that.

Mr. DURBIN. Mr. President, will the Senator yield for a question?

Mr. McCAIN. I would be glad to.

Mr. DURBIN. If I am not mistaken, it is possible to amend the conference committee report which was sent to us for consideration on the floor of the Senate. The Senator suggested amendments several times. I ask if he would please clarify that.

Mr. McCAIN. I think the Senator knows that conference reports are not amendable. But I would also respond by saying as frustrated as many of us are with conference reports, especially appropriations conference reports coming out with little things in them that we never anticipated, if you want to delay it 1 day, or 2 days, or a week, the result is basically going to be the same. I think we all know that.

Mr. GREGG. Mr. President, will the Senator yield for a question?

Mr. McCAIN. I would be glad to yield for a question by the Senator from New Hampshire.

I am learning.

Mr. GREGG. The Senator has spent some time there, and we appreciate it.

Mr. President, I ask the Senator from Arizona if he would be willing to allow me to go forward with a unanimous consent request which the Senator from Massachusetts, Senator KENNEDY, and I have agreed to which would extend the higher education bill and which would in addition allow us to save the taxpayers $100 million from money that is now being paid out to banks that are getting unconscionably high rates of return on student loans, and take that money and apply it so that teachers who go into underserved districts or in matters such as special education could receive a much higher forgiveness of their loans, raising their forgiveness from $5,000 to $17,000.

I was wondering if the Senator would allow me to offer a unanimous consent request. I believe it has been signed off on by both sides.

Mr. McCAIN. I would be glad to.

I wonder why the Senator missed this one. What happened? Are we asleep at the switch? Everything else is in here.

Mr. GREGG. That is a good point.

Mr. McCAIN. There is all kinds of fun in that. I don't know why you missed that one. Of course, we have homeland appropriations coming down. That is loaded with pork. The Senator from New Mexico just mentioned they changed the formula on milk to the tune of about $2.4 billion.

Mr. DOMENICI. They haven't yet.

Mr. GREGG. This is within the jurisdiction of my committee, and the Senator from Massachusetts and I have worked on this. We think it is important for existing students who are paying this ridiculous interest rate—the Government is paying this ridiculous interest rate—and use the money to help teachers who are going into underserved areas. Will the Senator allow me to do that?

Mr. McCAIN. I would be glad to.

Mr. KENNEDY. I am in strong support.

Mr. McCAIN. I am happy to yield for a question by the Senator from Massachusetts.

Mr. KENNEDY. Will the Senator agree with me that even though I might strongly support what the Senator from New Hampshire has stated, I would like to defer action because my friend and colleague Senator HARKIN is not here at the moment. He may or may not object. He objected to it earlier. I hope the Senator will address this later on in the afternoon or evening.

Mr. GREGG. Will the Senator from Massachusetts yield the floor at this time? At some time I would like to put the body on notice that we need to handle it today.

Mr. McCAIN. Mr. President, I appreciate the work of the Senator from New Hampshire and the Senator from Massachusetts on this issue. I have been reading a lot about it. I think it is disgraceful and outrageous, and I think every Member of this body agrees with it. I hope we can get this done today because it is as egregious as the Senator from New Hampshire described.

I have little doubt about the outcome of this vote, but I will continue to remind my colleagues that the so-called reorganization resolution is a farce. The hypocrisy was bad enough when the resolution was laid down Wednesday evening. Since that time, Members' parochial interests have whittled away the little new oversight authority that would be transferred to the renamed homeland security and governmental affairs committee. The result is nothing more than a name change for the committee.

I associate myself with the remarks of Senator VOINOVICH, who made some comments last night when he further exposed this sham for what it is. We should adopt this proposal to not rename the committee but keep it the Governmental Affairs Committee since we really are not making any substantive changes.

In today's Washington Post, there is an excellent column by David Ignatius. David Ignatius says in the article:

> "It's outrageous. The American people should be angry," says former Senator Bob Kerrey, who was a Member of the Sept. 11 commission and for eight years served as a member of the Senate intelligence committee. He argues that it would have been better to drop the executive-branch changes if Congress was not going to reform itself. "These are secret agencies," he explains. "Unless you put in place strong oversight, it isn't going to work."

In fact, Senator Kerrey and others argue with the consolidation of power we are making it more dangerous because there is no oversight. We may have not only remained in neutral here as far as increasing congressional oversight, but since we are consolidating power, what this proposal does is even more dangerous to America than the status quo.

The 9/11 Commission in its report described congressional oversight of intelligence as "dysfunctional." They did not say it needed improvement; they did not say the system could use a tweak here or there; they said it was dysfunctional and that it needed comprehensive change. So we in the Senate supposedly committed to doing just that. We formed a working group, held discussions—they were interesting discussions, by the way—committed to bringing a bill to the Senate, and now we are here.

What have we done? Have we embraced comprehensive change? No, we haven't. We haven't even embraced a modicum of change. We have said that the status quo is fine with us, and as far as the Senate is concerned, September 11 never happened It never happened, if you look at what is being done in the name of responding to September 11 and the recommendations of the 9/11 Commission.

Now, we are tinkering with the oversight responsibilities of the Intelligence Committee but certainly nothing substantive. When I go home to Arizona and I say: My friends, we have really reformed intelligence; we have changed the Intelligence Committee from a B committee to an A committee. How do you like that? They are going to be overwhelmed when they hear that we have changed the Intelligence Committee from a B committee to an A committee. I can see the Scottsdale Rotary Club rising to their feet in applause for this incredible change we have made in the way we carry out our intelligence oversight responsibility.

I apologize for engaging in a little bit too much hyperbole.

We took away from the new committee jurisdiction over immigration, then the Secret Service. I have to relate to my colleagues a funny story in case they missed it. I was on the Senate floor with the two sponsors of the amendment that would keep the Secret Service under the Judiciary Committee when they said: You know, the Secret Service really wants to be under the Judiciary Committee. I have encountered hundreds of Secret Service agents, and I have never had a single one come up to me and say: Senator, please put me under the oversight of the Judiciary Committee. Never. I guess I have not spoken to the right agents.

Anyway, all that is remains of the committee on homeland security is the name. I wouldn't be surprised if someone objected to that on jurisdictional grounds.

The new committee, as the Senator from Maine and the Senator from Connecticut will attest, the new committee will have responsibility over 34 percent of the budget and 3.9 percent of the employees. About all that it will be responsible for is FEMA and the Office of the Secretary. That is right, over 96 percent of the employees of the Department of Homeland Security will fall under the jurisdiction of other committees, not the committee on homeland security. So much for real reform.

One of the recurrent themes has been the overload of the Department of Homeland Security because of the number of committees they have to testify before during the course of a year. The number, as I remember, is 88 different committees and subcommittees, et cetera. I hope the Senator from Maine will assert exactly how many committees and subcommittees under this revolutionary new reorganization the Department of Homeland Security will have to testify to.

Now, a word about the Department of Homeland Security, the White House, and the administration. While we were trying in our amendment to move the TSA—a radical idea—to move the Transportation Security Administration under the new Department of Homeland Security, which I think garnered 22 of my colleagues' votes, along with myself, while we did that, we got these calls: Way to go, we are with you, we are with you. This is a great thing to do. You have to move the TSA into the Department of Homeland Security.

I said: Fine, will you issue a statement saying that? No, no, no, we cannot do that. We cannot issue a statement saying we support such an amendment. We might make somebody mad.

We saw the result of that outrageous attempt to move the organization called the Transportation Security Administration under the jurisdiction of the committee on homeland security. I will admit in retrospect I cannot imagine why anyone would assume that the Transportation Security Administration should fall under the committee on homeland security.

Anyway, we aren't changing things here. We have decided the status quo is good enough, and we are sticking with it.

I again quote from David Ignatius' article in the Washington Post this morning:

> Senators were patting themselves on the back yesterday for passing some of the intelligence reforms recommended by the 9/11 Commission.

I was one of those. I was praising the work that was done as far as executive reorganization. It was landmark legislation, the first major reorganization of Government since 1947. It was an incredible job.

But behind the scenes, the legislative process has been an egregious example of congressional politics as usual.

> Legislators have embraced the commission's call for a national intelligence director and a national counterterrorism center that would, in theory, coordinate intelligence efforts in the executive branch. But they have ignored or gutted the commission's proposal for similar reforms in the way Congress oversees intelligence.
>
> "Of all our recommendations, strengthening congressional oversight may be among the most difficult and important," the commissioners stressed in their final report. They urged that Congress give its intelligence committees control over both authorizations and appropriations—so that the committees would finally have the muscle to provide real oversight.
>
> Why did the Senate bill scuttle these internal reforms of what the commission called "a dysfunctional" system? Because they would threaten the turf of powerful legislators. To be blunt, the Senators put their own perks and prerogatives ahead of the Nation's security.

That is a pretty tough statement.

> "It is outrageous. The American people should be angry," says former Senator Bob Kerrey.

By the way, Senator Bob Kerrey left part of his leg on the battlefield at Vietnam and received the Congressional Medal of Honor and was also a member of the 9/11 Commission and for 8 years served as a member of the Senate Intelligence Committee.

> He argues that it would have been better to drop the executive-branch changes if Congress was not going to reform itself. "These are secret agencies," he explains. "Unless you put in place strong oversight, it isn't going to work."

Because the real power lies with the appropriations, the intelligence agencies know they can safely ignore pressure from the Intelligence Committee. Indeed, major contractors that do business with the intelligence community, such as Lockheed Martin, Boeing, and TRW, are said to spend little time lobbying the intelligence panels because they know the appropriators have the power of the purse. CIA Directors recognize the same reality. They can ignore the intelligence committees as long as they keep stroking the appropriators.

We will have a status quo Intelligence Committee without combined authorization and appropriations power, a committee that handles only a tiny fraction of homeland security issues, and we will be right back where we started. So let's be honest with ourselves and with the American people. We aren't changing things here. We have decided that the status quo is good enough, and we are sticking with it.

I yield the floor.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. REID. Mr. President, no matter how many times you say something that is not true, it does not make it true. I am not going to belabor the point other than to say we have spent a lot of time doing what the 9/11 Commission recommended. Did we do everything they asked? No, we did not. Did we do 90 percent of what they asked? The answer is yes, as I explained on the floor on more than one occasion with the charts where we checked off what they asked for and we did. Again, I repeat, it does not matter how many times you say something that is not true, it does not make it true.

Now, people can minimize all they want. The committee on homeland security will be created as soon as we complete this cloture fiasco we are now involved in. As I read on the floor here yesterday evening for half an hour, only getting into two directorates, the homeland security committee that will be formed could hold hearings every day next year and still not complete all the policy decisions that are made regarding terrorism in this country. Yes, they may not have all the employees, but they have the policy that is important to make our country safer.

We start out with the basic Government Operations Committee, and we do not change that one iota, and we add to that four directorates. For three they have total 100 percent responsibility, and for the fourth one they have partial responsibility.

I repeat for the third time today, no matter how many times you say something that is untrue, it does not make it true. You cannot have it both ways. We have people telling us that we may establish nothing out of this committee, but yet we have people here grousing from 10 different committees saying we gave them too much. You cannot have it both ways.

Now, I know there is some disappointment on the part of the Senator from Maine, and I have heard very little from the Senator from Connecticut. I know he has been away for religious observances, but I have kept in close contact with him. I think he realizes the glass is not half empty, it is half full.

This committee is a good committee. It is going to be one of the most significant committees in this Congress. It is going to increase the brawn and muscle of the Government Operations Committee tenfold. We took jurisdiction from 10 standing committees and gave things to the new committee.

Now, as an example, let's just take my committee. I have been chairman on two separate occasions of the Environment and Public Works Committee. We have wide-ranging responsibilities in that committee. But one thing we have that is most important is the Federal Emergency Management Agency. I have spent a lot of time on that committee.

When I served in the House of Representatives, Congressman Al Gore was chairman of a committee called Investigations and Oversight, and we spent weeks doing investigations regarding FEMA. I know a little bit about it. It is a very powerful institution. The new government operations/expanded homeland security has complete jurisdiction over that, except for flood control. Flood control has always been with the Banking Committee. It took all day yesterday to work something out so that the new Government Operations Committee could still have that.

So, Mr. President, when we complete our work on this—and we are going to complete it pretty soon—people will be striving to get on the committee that will be chaired, at least for the next couple of months, by Chairman COLLINS; after that maybe Senator LIEBERMAN.

But the point I want to make is I know people have been putting in the mind of the distinguished Senator from Maine that she got nothing. Isn't it terrible what they did to you? The fact of the matter is, I read only partially here on the Senate floor last night the responsibilities of this new committee. The responsibilities are terribly significant.

We still have work to do on this resolution. I am disappointed that it has not been completed. I want the record to be spread with the fact that Senator MCCONNELL and I did not do a perfect job, but we did the best job we could do, and we have worked for weeks trying to do something that was very hard to do; that is, change what this body does.

Everyone hates change, as when I started my remarks, whether it is a change in your family relationship, as I explained when my daughter left to go to college, or whether it is a committee you feel strongly about.

I talked to a Member of the Senate today, and he said: Today was a big change in my life. I said: What? And he said—I am not going to embarrass him and use his name; this happened at lunchtime—he said: I have been using the House gymnasium for 22 years. He said: I switched; today I started using the Senate gym. He said: You have no idea how hard that was for me to do because even though I am a Senator now, I have used that gym for 22 years.

People hate change. They fight change. And I have to say, I have never changed; I still use the House gym.

So I am sorry, because I have talked to her personally, and I am sorry the Senator from Maine is disappointed in the jurisdiction she has. I am sorry we could not give her more jurisdiction. But, believe me, she will do a good job, because there is so much to do. I have worked here with a lot of different Senators in the years I have been in the Senate, and I have found very few people as competent and as resourceful and who work as hard as the Senator from Maine. I know when she gets this committee, even though she feels slighted that she did not get more, she will have her hands full doing what she will be doing very competently.

So the main point I want to make here, for the fourth time—and I am not going to apologize to anyone for the work I did on this. Not to anyone. I worked hard. It was hard to get where we are. And I repeat, if people think we did nothing, why have I been berated the last few days about: How could you do this? How could you take this from me? And I used, every time, the example of FEMA. FEMA is no insignificant matter. We took significant matters from 10 standing committees and have given them to the new government operations, expanded homeland security committee.

I am going to continue to support the legislation. I have kept the 9/11 Commission advised. This is not an end run we have done on the 9/11 Commission. Oh, isn't it surprising? Why didn't REID keep us informed? REID kept them informed.

Now, I wrote a book, published a history book, and people criticized my book. They can if they want. I defend what is in my book, and they defend what is in their report. The 9/11 Commission—I have said on this floor, not on one occasion, not on two occasions, I cannot count how many occasions I have complimented my friend, Congressman Lee Hamilton, and Governor Kean. I know Lee Hamilton very well. I have known him for 22 years. I do not know Governor Kean very well, but I surely like him. I know how competent he is. I know Roemer, who served there; Slade Gorton, an outstanding Senator whom I served with; Bob Kerrey, one of my good friends, whom I think the world of. They did a wonderful job.

We have given the 9/11 Commission and the people of America, as I said, most everything the 9/11 Commission recommended. The 9/11 Commission, by the way, did not tell us how to reorganize the Senate. What we are doing here does not take the President to sign off on. We do this on our own. This is what we are doing. This is one of the most significant changes in the history of this Congress.

Now, people say: Well, big deal; it is not a very big change. I think it is a significant change. Remember, we got rid of a subcommittee on Appropriations. We created a new subcommittee. We gave a lot of muscle to the new Intelligence Committee.

I checked off here yesterday all the things we gave to the new Intelligence Committee. We got rid of term limits, which they complained about for so long, increased staffing and made it bipartisan, so now it is not divided 3 to the minority and 23—I don't know the exact number, but about that—33 to the majority. It is now divided 60/40. That is the way it should be.

> Congress should create a single, principal point of oversight and review for homeland security. Congressional leaders are best able to judge what committee should have jurisdiction over this department and its duties.

This is not something I dreamed up. This comes directly from the 9/11 Commission. Page 421 of the 9/11 Commission, what did they say? They said:

> Congressional leaders are best able to judge what committee should have jurisdiction over this department and its duties.

We did that. Now, is it in keeping with what my friend for 22 years, Senator MCCAIN, thinks we should do? No. He thinks we should do things differently. But we made decisions he does not agree with. That does not mean we are all right, but that does not mean he is all right either. I mean, he is all right—not right on this issue. So we did as the 9/11 Commission said we should do.

Again, it is not as if we were doing something that was significantly more important anyway. But I read yesterday all the many responsibilities that this committee has. I want to find this again. I am turning to my loyal staff here. This is directorate No. 1. The responsibilities are very significant. And for someone to say this is not important, I defy reason to say this is not important.

This committee has jurisdiction over this: To access, receive, and analyze law enforcement information, intelligence information, and other information from agencies of the Federal Government—and it always says "State and local"—to integrate such information in order to, A, identify and assess the nature and scope of terrorist threats to the homeland; B, detect and identify threats of terrorism against the United States; and, C, understand such threats in light of actual and potential vulnerabilities of the homeland.

No. 2, to carry out comprehensive assessments of the vulnerabilities of key resources and critical infrastructure of the United States, including the performance of risk assessments to determine the risks posed by particular types of terrorist attacks within the United States, including assessment of the probability of success of such attacks and the feasibility and potential efficacy of various countermeasures to such attacks.

I say through the Chair to my friend from Maine, if you spent 6 months of the next congressional session having congressional hearings on this, you would have your plate completely full just on this. But we didn't stop there. I have gone through two of the obligations, responsibilities they have. But there are 17 more, such as: To integrate relevant information—I am skipping a little bit—analyses, and vulnerability assessments in order to identify priorities for protective and support measures by the Department, other agencies of the Federal Government, State and local government agencies; to ensure the timely and efficient access by the Department to all information necessary to discharge the responsibilities.

No. 5, to develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States, including power production, generation, and distribution systems, information technology, telecommunications systems, including satellites, electronic, financial, property record storage, transmission systems, emergency preparedness communications systems, and the physical and technological aspects that support such systems.

I say, these responsibilities may not be very glamorous. You may not be calling people in that are part of the 41,000 Transportation Security Administration, but it sure is important to my family and the people of the State of Nevada that we do some good work to find out about a national plan for securing our electricity, our satellites, our electronic and financial records storage and transmission systems. That requires some congressional hearings.

If somebody is chairman of that committee and ranking member or a member of the committee, I think that is something they should focus on, at least for a little while.

No. 6, to recommend measures necessary to protect key resources and critical infrastructure of the United States, in coordination with other agencies of the Federal Government.

No. 7, to administer the homeland security advisory system, including exercising primary responsibility for public advisories related to threats to homeland security; to review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence information, intelligence-related information, other information related to homeland security.

No. 9, to disseminate information analyzed by the Department to Homeland Security, agencies of State and local governments, and private sector entities with such responsibilities to assist in the deterrence, prevention, preemption of, or response to terrorist acts against the United States.

I think that is a pretty heavy responsibility. To say this is nothing, you haven't given us anything.

No. 10, to consult with the Director of the Central Intelligence Agency—right now we still have a CIA Director—and other appropriate intelligence, law enforcement, or other elements of the Federal Government to establish collection priorities and strategies for information relating to threats of terrorism against the United States; to consult with State and local governments and private sector entities to ensure appropriate exchanges of information, including law-enforcement-related information; to ensure that any material received pursuant to this act is protected from unauthorized disclosure; to ensure that any intelligence information is shared, retained, and disseminated consistent with the authority of the Director of the CIA.

So for someone to say: What is this? You wasted all of our time here. We should not have done anything. It is an insult. I told people this is, if not the hardest thing I have ever done, one of the hardest in all the time I have been in Congress. For someone to stand and say, You didn't do anything, what I would suggest to the Senator from Maine, if she doesn't like this committee, turn it over to somebody else. I will bet a lot of people would like it. The ranking member right under her, I bet they would love to have this committee.

To request additional information from other agencies of the Federal Government, State and local government agencies, and the private sector relating to threats of terrorism against the United States; to establish and utilize, in conjunction with the chief information officer of the Department, a secure communication and information technology infrastructure, including data mining, and other advanced analytical tools, in order to access, receive, and analyze data and information.

Again, there are not a lot of employees involved in this, but if we depended on that—I don't know the number of employees we have in the Federal Government; it is over 2 million, millions anyway—how many employees were involved, you would just ignore the FBI. There are only 11,000, only 11,000 out of approximately 2 million. I don't know that exact number, a very tiny percentage of what the FBI makes up of the overall workforce, but it is still real important.

What I am talking about is, that is going to be the responsibility of this committee, and it is also important.

I am still only through No. 13. We have six more to go in the first directorate. I have three more directorates to go through to show what this new committee that a small minority here think doesn't amount to much, I am saying it amounts to plenty. If this committee does its job—and I say without any hesitation that I know that Senator LIEBERMAN and the distinguished Senator from Maine will do a good job—they will have a lot to do. They make sure to listen in one ear about all they don't have to do, but let's also listen with the other ear about all they have to do. Some people like to denigrate anything we try to do about this institution. Some like to tear it down.

No. 15, to ensure, in conjunction with the chief information officer of the Department, that any information databases and analytical tools developed or utilized by the Department are compatible with one another and with relevant information databases of other agencies of the Federal Government; B, treat the information in such databases in a manner that complies with applicable Federal laws on privacy.

That is one of the biggest issues. I did a poll in Nevada a few years ago, and my staff, when they came to me, was stunned. In Nevada, the most important issue was not health care, it was not education, not the environment, not jobs—it was privacy. People in America are extremely concerned about privacy. We have all these electronic tools to do all kinds of things. And we want to make sure people's privacy is protected. One of the obligations of this committee is to see what can be done, with all the electronic apparatus we have for collecting intelligence and protecting the homeland, that it doesn't interfere with my family's privacy. That is a responsibility this committee will have when we complete it.

No. 16, to coordinate training and other support to the elements and personnel of the Department.

No. 17, to coordinate elements in the intelligence community with Federal, State, and local law enforcement agencies and the private sector, as appropriate; to provide intelligence and information analysis, and support to other elements of the Department.

And who does this cover? Who does this committee look to, to gather information? One of their defined legislative responsibilities—it is in this RECORD right now, we are making legislative history with the jurisdiction of this committee, but this is also in the underlying amendment that is now before this body, covered agencies: The Department of State, the Central Intelligence Agency, the Federal Bureau of Investigation, the National Security

Agency, the National Imagery and Mapping Agency, the Defense Intelligence Agency, and any other agency of the Federal Government that the President considers appropriate.

This is the legislative history that we are making to establish what this committee has to do. For someone to say their dealing with the CIA, FBI, NSA, and the DIA is not important, well, that is too bad because it is important.

We also have another directorate, and I will only cover a couple because there are four. The fourth one doesn't have total coverage over that. That is the one where immigration—they only have part of that—relating to security.

The Judiciary Committee has jurisdiction over immigration as it relates to policy matters, as I understand it. They have security matters. I may not have defined it as policy, but they don't have 100 percent of the other directorate.

One of the directorates they have is emergency preparedness and response. I already talked about FEMA being part of their responsibility—and a big responsibility FEMA is, Mr. President. It is one of the most important agencies we have in the Federal Government today. As we speak, they are doing gallant work in Florida, Alabama, and Georgia as a result of the hurricanes. We lend that agency to foreign countries because they are the best in the world when there is an emergency. I have learned over the years that the most important thing they work on is water-related emergencies across the country, with flooding and those kinds of things. Floods are caused by lots of different things. So what does the FEMA have to do? They do this:

All functions and authorities prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistant Act, which is carrying out its mission to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a comprehensive, risk-based emergency management program—A, of mitigation, by taking sustained actions to reduce or eliminate long-term risk to people and property from hazards and their effects; B, of planning for building the emergency management profession to prepare effectively for, mitigate against, respond to, and recover from any hazard; of response, by conducting emergency operations to save lives and property through positioning emergency equipment and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services; of recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards.

Mr. President, I first became aware of the work that FEMA does when we had a disastrous flood in northern Nevada. We don't get much rain in Nevada, but we had a lot of snow in the Sierra Nevada Mountains. We had early rain. That water came down without warning. And as I traveled to Gardnerville and Minden in Douglas County, one of my friends there, a farmer who had lived there for a long time, said: Look out here. A little river that a child could walk across most of the time was like a raging river. Cottonwood trees that were 100 years old were being thrown down the river path like toothpicks. By the time I got to northern Nevada, coming in a different airport because the regular airport was closed, FEMA had already set up operations and started life-sustaining operations, feeding people. They had already set up locations for businesses that had been devastated to come and make their claims.

If we did nothing else other than transfer FEMA from the Environment and Public Works to the new homeland security committee, that is a tremendous new responsibility for that committee—in addition to the page after page of other stuff I read that is their responsibility.

For the fifth time, people can come on this floor and keep saying what we have done is inconsequential and doesn't mean anything, but saying that doesn't mean it is true. I want everybody within the sound of my voice to understand some of the things we have transferred to this committee. Remember, this was already an A committee. It had lots of work to do. That is why some people around here are saying, What are people complaining about? It is already an A committee. They are getting a lot of stuff to do, other responsibilities from 10 different committees. What more do they want?

Well, I guess they want more. I say the glass should be half full, not half empty. It may not be perfect, but it is certainly pretty good.

We have to complete this legislation. There are six amendments, a couple maybe we can work out. Some of them probably we will not be able to work out, and a couple will be withdrawn. We are close to being able to finish. As I understand the parliamentary aspect, first of all, sometime tomorrow, if all time is used, we will vote on the amendment now before the body. After having completed these amendments, then we will vote on the underlying resolution—invoke cloture on that and, of course, there are 30 hours to run on that. When that is completed, this will be done.

The Senate, without having to go to the House of Representatives or the President, will have made one of the largest changes in the history of this body by reorganizing the legislative branch of Government. So, again, we transferred matters from Agriculture, Armed Services, Commerce, Energy and Natural Resources, Environment and Public Works, Finance, Foreign Relations, and Judiciary, so I think we have done a good job.

I am disappointed that my friend from Maine is apparently disappointed in thinking she is not going to have enough to do. I want her to know that the distinguished Senator from Kentucky and I did the best we could. Remember, this is not a dictatorship we have here, it is a legislative body. We cannot just suddenly decide what we want and it happens. It is a process that I talked about last night.

Legislation is the art of compromise. That is why you don't see much reorganization in the legislative branch of Government, because it is hard to do. As the President said in the last debate: This is hard work. It is hard work what we have done.

Again, I am disappointed that she is disappointed because I have the highest respect for her. I want her to know that I have only touched, this afternoon, on a very few things that she has to do. There are so many other things that this committee has. As I said, in years to come, what we have done this afternoon and what we will do on this legislation will be laid out before the Senate, so it will be easy for referrals and other things this committee will do.

This is one of the directorates, emergency preparedness and response:

The Secretary, acting through the Under Secretary for Emergency Preparedness and Response shall include: Helping to ensure the effectiveness of emergency response providers to terrorist attacks, major disasters, and other emergencies; coordinating other Federal response resources in the event of a terrorist attack or major disaster; aiding the recovery from terrorist attacks and major disasters; building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters; consolidating existing Federal Government emergency response plans into a single, coordinated national response plan; and finally, developing comprehensive programs for developing interoperative communications technology and helping to ensure that emergency response providers acquire such technology. So please do not tell me this committee does not have a lot to do. This committee will be one of the most important committees there is.

I say, in closing, to my friend from Maine, when I first came to the Senate, I received a phone call from Howard Metzenbaum. Howard Metzenbaum said: We finished—I think it is called the Steering Committee—and you are going to the Appropriations Committee. I was so excited about that. He said: You have a choice of two other committees you can go on—either Environment and Public Works or Government Operations.

I said: Senator Metzenbaum, I am so thrilled about being able to be on Appropriations. You decide which one I should go on.

He said: It does not matter. They are both great committees.

He chose for me Environment and Public Works. One reason he chose that is because in those days—I don't know if it is still the same way—a member of the Government Operations Committee, even though you were a new member, you were entitled to a staff person, someone assigned to you. They figured they would give that plum to someone else.

My point being, the Government Operations Committee has always been a good committee, but it is going to be a really good committee now. I think it will be on the par of Armed Services. I think it will be on the par with any committee we have. I will sleep well knowing that my friend, the distinguished Senator from Connecticut, Mr. LIEBERMAN, and my friend, the distinguished Senator from Maine, Ms. COLLINS, will be the two leading that committee. I know they have the ability to do a good job in meeting all the responsibilities this new committee has, including all the responsibilities they had to start with.

The PRESIDING OFFICER (Mr. FITZGERALD). The Senator from Maine.

Ms. COLLINS. Mr. President, as I was listening to the Senator from Nevada, it brought back memories of the night when he started reading from a book he wrote. I think it was about, if I remember correctly, Searchlight, NV. I was listening that evening to him, and much to my surprise, I actually got caught up in the story of Searchlight, NV. It was delightfully told, and although the Senator was clearly killing time that evening, I learned a lot about his upbringing and his talent in telling a story.

This afternoon, I feel we have once again seen his talent in telling a story. I think it is unfortunate that the Senator from Nevada is personalizing this debate. This debate has nothing to do with the Senator from Maine. The authority over homeland security could have been given to a brand new committee or some other committee.

What is important to me is that we try to address the recommendation made by the 9/11 Commission. I want to read that recommendation because it is very clear, it is very straightforward. It says:

> Congress should create a single, principal point of oversight and review for homeland security.

It goes on to say:

> Congress does have the obligation to choose one in the House and one in the Senate. . . .

It certainly says the congressional leaders are best able to judge which committee should have jurisdiction over this Department and its duties, but it makes very clear that it should be a single committee, and we have not come close to doing this.

I admire the Senator from Nevada. He was extremely helpful to me when I was managing the intelligence reform bill over 10 days' time. I looked to him often for advice. I admire his experience and his knowledge, but the recommendation is very clear. It says "a single, principal point of oversight." It says "choose one." It does not say which one. It did not have to be Governmental Affairs. It could have been a new committee. It could have been some other committee. But it says "choose one," and we did not choose one. This plan does not even come close to choosing one.

We know that between the House and the Senate, the Department has to report to some 88 committees and subcommittees. Here in the Senate, I think it is around 26 committees and subcommittees. We reduced those by maybe one or two. We still have the Judiciary Committee with significant jurisdiction. We still have the Commerce Committee with jurisdiction over the two largest agencies within the Department of Homeland Security—the Transportation Security Agency and the Coast Guard. You can make a case that the Coast Guard has a lot of nonhomeland security functions, but certainly the homeland security functions of the Coast Guard should have been transferred to the new committee. And certainly the TSA, the largest agency within the Department of Homeland Security with 51,000 employees, should have been transferred.

Under the proposal of the Senator from Nevada and the Senator from Kentucky, certain responsibilities were transferred from the Judiciary Committee, but those have been reversed in the course of this debate. In fact, the first amendment on the floor had to do with a Customs responsibility that had been transferred, and before either the Senator from Maine or the Senator from Connecticut were even given the courtesy of a phone call about that amendment, it was adopted by the managers of the bill. They immediately transferred away from the new committee some jurisdiction. Then they went on to suggest the adoption of other amendments as well.

My point is this: This jurisdiction does not have to come to Governmental Affairs, but what it should go to is a single committee. We should not pretend we are fulfilling the recommendation of the 9/11 Commission—the very specific recommendation of the 9/11 Commission—that Congress should vest this responsibility in a single committee because we have not come close to that.

That is the issue. The issue is not whether Governmental Affairs is the right committee. The issue is not whether Governmental Affairs has other jurisdiction. The issue is, are we going to try to follow the recommendation—the very strong recommendation—of the 9/11 Commission to consolidate oversight of the Department within one congressional committee. Are we going to follow the advice—no, the plea—of Secretary Tom Ridge that we consolidate jurisdiction so he and his top officials do not have to be constantly racing up to the Hill to testify rather than concentrating on the security of our country, because that is what this is about.

This is not about turf battles—this should not be about turf battles. This should not be about power plays. This should not be about power grabs. It is about how we can best improve congressional oversight over a department that is critical to the security of this country, and that is the Department of Homeland Security.

The Senator from Nevada referred to the Senator from Connecticut. Perhaps he missed some of the debate yesterday. He is extremely attentive to the floor, but at times did step out. The Senator from Connecticut could not have made clearer yesterday his disappointment with this resolution, and he argued against the amendments that even the modest transfers provided in the Reid-McConnell resolution.

The staff of the Senator from Connecticut has told me they are certain the Senator from Connecticut would want me, since he is not able to be here today, to make very clear to his colleagues in the Senate that he shares, indeed he mirrors, my concerns.

The Senator from Connecticut has worked very hard to make sure the major recommendations of the 9/11 Commission are implemented, and that is not what we are doing here.

At best, we are taking a very modest step forward, but let's not pretend that we are in any way implementing the recommendations for a single congressional committee in the Senate to have jurisdiction over the Department of Homeland Security.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. I ask unanimous consent to speak as if in morning business for a period of 5 minutes.

Mr. REID. No objection, as long as the time continues to be counted against the 30 hours.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

UNANIMOUS CONSENT REQUEST—S. 2823

Mr. CRAIG. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 711, S. 2823.

The PRESIDING OFFICER. Is there objection?

(Several Senators addressed the Chair.)

Mr. REID. Mr. President, I object.

The PRESIDING OFFICER. The objection is heard.

The Senator from Idaho.

Mr. CRAIG. Mr. President, you can see by my unanimous consent request the alarm I brought to the Senate floor just now. The reason that happened is because I was attempting to bring to the floor a very critical issue that this Congress and this Senate have refused to address this year. It is a bill called AgJOBS. It is a bill that has more than 60 Members of this body as cosponsors, and yet it is a bill that nobody wants to talk about right now and nobody wants to deal with in the final hours of this 108th Congress.

The reason I brought it up now, and I worked it through the Rule XIV process over the last several weeks, is because when we talk about homeland security, we are talking about border security, we are talking immigration reform, we are talking about identifying 8 to 12 million undocumented foreign nationals in this country.

We have seen this Congress, this Senate, toil mightily over the last 2 weeks to try to address the 9/11 Commission's study and to reshape our intelligence community, to enhance our national security and homeland security. But this Congress has left one part of that effort unfinished.

This year, we have refused to address one of the greatest problems in our country, and that is an immigration policy that has resulted in 8 to 12 million undocumented workers.

For the last 5 years, I and others have tried to deal with one small aspect of this issue, those foreign nationals who come to our country in agriculture. There are about 1.6 million individuals in our agricultural work force, and most of them are undocumented. Yet they come here to work and harvest our fields and to process our foods, to allow this great agriculture of ours to be the most abundant in the world, and yet we will not give them a reasonable and legal status so they can continue to work, continue to return home across our borders with a degree of fluidity, without fear to go to their families. The current system has effectively locked them inside this country, in the shadows.

We have created for ourselves a monstrous problem, and the American public knows it. It is all about homeland security, and it is all about border security, and yet, oh, my goodness, we just could not get to it this year.

I have worked for several years to produce the AgJOBS legislation. It is bipartisan. Senator TED KENNEDY is my primary cosponsor, and we have worked very hard to keep it bipartisan. The numbers on the same bill have grown rapidly in the House, because this is an issue whose time has come and yet somehow we just do not have time to get to it.

So I thought it was important one more time, in the waning hours of the 108th Congress, to try to bring it to the floor and at least talk a little bit about it. When I risked bringing it to the floor, my goodness, papers flew and chairs tipped over as people rushed to the microphones to object. Is it a matter of timing? Is it a matter of opposition to reform? Oh, no, it is a matter of, gee, we just do not want to talk about this issue this year.

Let me serve notice to the Senate right now—I do not oftentimes do this—but when there are more than 60 Members of this body who are ready to debate an issue and vote on it, we will get a vote. With a bipartisan coalition nationwide of more than 400 groups that have come together, from the American Farm Bureau to the United Farm Workers, saying, for goodness' sake, Government, get your act together, solve this problem, create a program that moves us forward, that gives a legal status for people to work in this country who do the kind of work that many Americans would choose not to do, we will get a vote. That is what the AgJOBS is about. It means the reduction of illegal immigration by a reasonable program that allows that kind of safe, productive, economically beneficial movement in our country.

Of the nearly 12 million undocumented population, the vast majority do not create or even pose any threat. They are here, they are hard working, they work 12 and 14 hours a day, and they save their money, because they want to feed their families, they want a better life for their children, they want the same opportunity that has always beckoned hard working people to America. Some of them would like to be U.S. citizens; many would not. Many want to go home to their families across the border or overseas at the end of the work season. They are here to better themselves and to better their families, something all Americans can understand.

By their presence, they better us. They make our lives better, and in this issue with American agriculture, there is no question, they help to produce the abundance on the supermarket shelves and the family tables of America.

When I said "serve notice," here is what I am serving: I will not give up on getting a vote on this bill and passing it. The bill is ready to move now. Its time has come. I have been trying to move it this year. If we don't move it this year, when we get back this next Congress, this bill will move. We will vote on this issue. If not the old Congress, then the new Congress will face this issue. They will face it in a variety of ways.

Some will say, let us do a large, all-inclusive immigration bill. Fine, while the committees are spending the 10 or 12 months or 2 years to try to figure that one out, we are going to vote on this one because it is a small piece of a very large puzzle, but it is the right piece. It will show we can cooperatively do what we ought to do in a fair and responsible way to create an earned status so these folks can work here in a legal way and can move freely back and forth across the borders, dominantly between the United States and Mexico, but clearly with other countries of the world, too. We want to eliminate these human hazards of the kind that have been created along the Mexican-American border, where last year more than 300 people died, many of them in the deserts, in the hot sun, or being smuggled in the back of trucks, trying to get here to work, because we have a program that does not function.

That is why I came to the floor, and I am sorry if I caused undue alarm on the part of some of my colleagues. I was quite confident that at some point someone would object because some would argue this issue's time has not yet come. It will come. It may be January, February, or March of 2005, but it will be on this floor for a full, constructive, and positive debate and a vote up or down, possibly with the opportunity for some amendments, because this is legislation that now demands our consideration.

Americans want our borders controlled. They want undocumented foreign nationals identified in our country. This is a small step in the right direction of that effort to accomplish that goal.

Amnesty is not the solution. It has been tried before and it has failed.

The current system has not worked either, and opposition to amnesty should not be an excuse for tolerating a dysfunctional status quo.

AgJOBS avoids the problems and limitations of past initiatives and other proposals. AgJOBS is the only proposal that addresses the problem for both the short term and the long term.

In the long term, when willing American workers can not be found to work in our fields, that shortage would be addressed through a reformed H-2A program. The current program is so burdensome and costly that it now supplies only about 2 percent of our farm workers. It will take time to implement reforms that allow H-2A to meet our needs with legal guest workers.

In the short run, while H-2A reforms are being implemented, the earned adjustment program in AgJOBS would stabilize our current agricultural work force. Trusted, proven workers who have already been working here in 2003 and 2002 and before would be allowed to stay and continue to work.

A reformed H-2A program, made workable with the red tape cut out, would meet future work force needs and mean the earned adjustment program would not have to be repeated.

A realistic, workable guest worker program actually would reduce illegal immigration.

The last time the United States had a substantial agricultural guest worker program, apprehensions of undocumented workers actually plummeted, from almost 900,000 in 1953 to a low of 45,336 in 1959.

Whatever other aspects of this so-called "bracero" program were subject to criticism, history proved that its 500,000 farm workers entered our country legally, worked in jobs citizens did not want, obeyed our laws, returned home at the end of the work season, and dramatically reduced the demand for, and supply of, undocumented labor.

Increased enforcement of our laws is part of the solution, and we've made progress.

In the last decade, we have tripled the number of agents enforcing border and immigration laws.

Worker identification checks have intensified.

Apprehensions have skyrocketed above 900,000 a year and formal removals have increased sixfold.

High-tech initiatives are coming on-line.

We are poised to take up the FY 2005 Homeland Security Appropriations bill, which again increases resources in this area.

However, more enforcement is only part of the answer.

This is demonstrated by the fact that, despite more enforcement, over the last decade, the undocumented population has more than doubled.

The self-described "experts" who say, "Just round them up and deport them," are only proposing an excuse, not a solution, while the situation just gets worse. That is the cruelest amnesty of all.

Instead, we must manage our borders and our immigration system better.

AgJOBS is a critical part of doing just that—managing our borders better and improving our homeland security by bringing hundreds of thousands of individuals up out of the shadows and into a legal system.

We can never neglect the humanitarian side of this, as well, that we should treat with dignity and humaneness those who labor to put the food on our families' tables.

Mr. President, I yield the floor.

Mr. KENNEDY. It is a privilege to join Senator CRAIG today in urging the Senate to pass this important jobs bill for immigrants in agriculture. We have been struggling for decades to find a solution to the heart-wrenching problems facing so many farm workers for so long.

The Agricultural Jobs, Opportunity, Benefits, and Security Act—AgJOBS—is an opportunity to correct these long-festering problems. In a landmark agreement, both the United Farm Workers and the agricultural industry support this solution. It gives farm workers and their families the dignity and opportunity they deserve, and it gives farm owners a legal workforce.

The bill is a compromise, and it has 63 Senate sponsors, with almost equal numbers of Democrats and Republicans. More than 400 organizations across the country support it. They include advocates for farm workers, such as the United Farm Workers, the Farm Labor Organizing Community, and the Farm Worker Justice Fund. They include business groups such as the U.S. Chamber of Commerce, the National Council of Agricultural Employers, the American Nursery and Landscape Association, and the American Farm Bureau Federation. They include civil rights groups such as the Leadership Conference on Civil Rights, Latino organizations such as the National Council of LaRaza, the Mexican American Legal Defense and Educational Fund, and the League of United Latin American Citizens.

It is a bill whose time has come. In fact, we should have passed it long before now, because the need is so great, and the current situation is so untenable. For economic, security, and humanitarian reasons, Congress ought to complete action on this legislation before we adjourn for the year.

The AgJOBS bill is good for both business and labor. The Nation can no longer ignore the fact that more than half of our agricultural workers are undocumented immigrants. Growers need a reliable and legal workforce. Workers need legal status to improve their wages and working conditions. Everyone is harmed when crops rot in the field because of the lack of an adequate labor force.

The AgJOBS bill provides a fair and reasonable process for these agricultural workers to earn legal status. It reforms the current visa program, so that employers unable to obtain American workers can hire the foreign workers they need.

Undocumented farm workers are easily and unfairly exploited by unscrupulous contractors and growers. Their illegal status deprives them of bargaining power and depresses the wages of all farm workers. Our bill provides fair solutions for undocumented workers who have been toiling in our fields, harvesting our fruits and vegetables.

The bill is not an amnesty. To earn the right to remain in this country, workers have to demonstrate past work contributions to the U.S. economy, and also make a substantial future work commitment. These men and women will finally be able to come out of the shadows, identify themselves, and provide evidence that they have worked in agriculture, so that they can continue to work hard and play by the rules.

Hard-working migrant farm workers are essential to American agriculture. We need an honest agriculture policy that recognizes the contributions of these workers and respects and rewards their work.

The legislation will also modify the current temporary foreign agricultural worker program, and it does so in a way that preserves and enhances key labor protections. It strikes a fair balance. It also benefits employers, by streamlining the visa application process and reducing paperwork for employers.

This legislation will also unify families. When temporary residence is granted, a farm worker's spouse and minor children will be allowed to remain legally in the United States, but they will not be authorized to work. When the worker becomes a permanent resident, the spouse and minor children will also be granted that status.

In the wake of the terrorist attacks of September 11, we can no longer accept policies that fail to protect our borders. Congress has periodically invested millions of dollars to increase the number of immigration border patrol agents, improve surveillance technology, and install other controls to strengthen border enforcement, especially along our southwest border. Yet, almost everyone agrees that these steps have failed to stop illegal immigration. The proof is in the numbers—several hundred thousand people a year continue to enter the United States illegally, and a significant part of the workforce in many sectors of the economy, especially agriculture, is undocumented.

One major unintended effect of our border enforcement strategy has been to shift illegal border crossings to the harsh desert and mountain terrains along the border, causing significant increases in deaths. According to the U.S. Border Patrol, since 1998 nearly 2000 people have died attempting to make the difficult journey across that border. Desperate migrants are being drawn into criminal smuggling syndicates, which increase the danger of violence to border patrol officers, border communities, and the workers themselves. As Stephen Flynn, an expert on terrorism, noted at a recent Congressional hearing, these "draconian measures" have produced chaos at our borders, which "makes it ideal for exploitation by criminals and terrorists."

The AgJOBS bill will make legality the norm and reduce illegal immigration. It provides reasonable rules that are realistic and enforceable. It replaces the chaotic, deadly, and illegal flows at our borders with orderly, safe, and legal avenues for these farm workers and their families. A workable and legal program for foreign workers crossing our borders will strengthen our security, substantially reduce crime and enable immigration enforcement authorities to focus their resources on terrorists and criminals trying to enter the country illegally. We need laws that recognize reality, so that legality is the rule, not the exception.

In this post-9/11 world, we cannot afford to ignore the fact any longer that so much of today's agricultural workforce is undocumented. The AgJOBS bill enhances our national security and makes out communities safer. It brings undocumented farm workers and their families out of the shadows and makes it possible for them to pass thorough security checks. It shrinks the pool of law enforcement targets and enables law enforcement officers to give priority to terrorists and criminals. It will make our communities safer, because once immigrants become legal, they will no longer fear deportation if they report crimes to law enforcement officers.

Reducing the size of the undocumented population also reduces the ability of suspected terrorists to hide. The half million or more undocumented farm workers eligible for this program will undergo rigorous security checks when they apply for legal status. Future temporary workers will be carefully screened to meet security concerns. Law enforcement resources will be more effectively focused on the highest risks.

Opponents of this legislation offer no workable solutions to the serious problems of current law. Yet they have blocked our efforts for a genuine debate on the issue. We cannot be complacent any longer. I urge my colleagues to support this needed legislation. It is long past time to end these dangerous conditions, and to do it in a way that not only improves the lives and working conditions of all farm workers, but also enhances the security of our Nation. I urge my colleagues to approve this legislation, and I look forward to its enactment into law as soon as possible.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Will the Senator yield for a unanimous consent request?

Mr. ENSIGN. Yes.

The PRESIDING OFFICER. The senior Senator from Nevada.

Mr. REID. Mr. President, the Senator from Nevada wishes to speak; also the Senator from Louisiana. Even though there has not been a lot of order here today, I wonder if we could attempt, at least for a short time—how much time does the Senator wish to speak?

Mr. ENSIGN. I would like to speak for 10 minutes in morning business.

Mr. REID. The Senator from Nevada, 15 minutes in morning business. The Senator from Louisiana, 15 minutes. So 15 minutes to the Senator from Nevada, Senator ENSIGN, followed by the Senator from Louisiana, 15 minutes, and then we would return to a quorum. Is that appropriate? I ask consent.

Mr. HARKIN. Reserving the right to object.

Mr. REID. It is 15, 15, go back to a quorum.

Mr. HARKIN. OK.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Nevada.

Mr. ENSIGN. Mr. President, I thank the senior Senator from Nevada for allowing us to cooperate to get some time to talk about a couple of issues that are related to what we are talking about today.

I want to talk about the Duelfer report that has been reported widely in the papers are in our national news in the last several days.

The Duelfer report proves one thing—Senator KERRY was right about the coalition of the bribed and coerced. They were the countries that opposed the war in Iraq. They were the corrupt members of the U.N. Security Council who were bought off by Saddam Hussein.

Back in June, when I introduced the Oil-For-Food Accountability Act, I stated that I believed Saddam Hussein, corrupt U.N. officials, and corrupt well-connected countries were the real benefactors of the Oil-for-Food program. I noted there was evidence that they profited from illegal oil shipments, financial transactions, kickbacks, and surcharges that allowed Saddam Hussein to build up his armed forces and live in the lap of luxury.

The just-released 1,200-page CIA report confirms those allegations and details even more. The report states that some $10.9 billion, that's billion with a "B", was secretly skimmed from the U.N. oil-for-food program for Saddam to use as he pleased.

The report outlines how Saddam Hussein used lavish gifts of oil vouchers and contracts to secure the support of countries to lift U.N. sanctions on Iraq and oppose American initiatives in the Security Council. And this might be the most important point I make today—an Iraqi Intelligence report indicated that one nation—France—was bribe to use its veto in the U.N. Security Council againts any effort to use armed forces in Iraq, and France later threatened to do just that.

France was not the only culprit in corruption. France was joined by Russia and China—also permanent members of the U.N. Security Council—as the top three countries in which influential individuals, companies or entities received oil vouchers. According to the report, Russia received 30 percent of the vouchers, France 15 percent and China 10 percent.

The real "coalition of the bribed and coerced" is the three members of the U.N. Security Council that were bought and sold by Saddam Hussein.

The three members of the Security Council that profited immensely as long as Saddam Hussen remained in power.

The oil voucher system used by Saddam through the U.N. Oil-For-Food program was clever in that the vouchers were negotiable and could be resold to oil companies or other buyers at profits of 10 to 35 cents per barrel.

A voucher for 10 million barrels could generate between $1 million and $3.5 million to the holder of those vouchers.

The report notes that Benon Sevan, the former top U.N. Official in charge of the oil-for-food program was himself a recipent of Saddam's scheme. The report says that Mr. Sevan was allocated 13 million barrels of oil, of which 7.3 million were cashed in. There is also information about how Saddam's illicit oil profits were used to rearm Iraq. The report details how Saddam's deals with Chinese companies helped Iraq improve its missile capabilities. Russian companies provided barrels for antiaircraft guns, missile components, and missile-guidance electronics. French military contractors offered to supply Saddam Hussein with helicopters, spare parts for fighter aircraft and air defense systems. On the WMD front, Duelfer reports that using the Oil-for-Food program, Saddam Hussein was making a point of procuring the resources and establishing the networks to start a massive effort to produce chemical-weapons production just months after sanctions were lifted.

With Saddam's coalition of the bribed and coerced in place as three of the five permanent members of the UN Security Council, no amount of coalition-building by an American president was going to preserve the sanctions on Saddam Hussein. No amount of diplomacy was going to get those courtries to enforce Security Council resolutions by force. They were permanent members on Saddam's payroll. The CIA report notes that Saddam had succeeded: to the point where sitting members of the Security Council were actively violating resolutions passed by the Security Council.

So when I hear talk about some kind of a global test, or the need for UN Security Council approval for the use of force this Senator turns away in disgust because, with the release of the Duelfer report, we have names, dates, and amounts of bribes to prove that our critics, including the UN, do not have the moral authority to judge our actions. They are not motivated by security interests, humanitarian needs or any other noble cause. They are motivated by greed. America's freedom to use force wisely and justly is truly the world's best hope for peace and security. God bless President George W. Bush for having the courage to stand by his convictions.

He is doing his job. It is time, now, for the U.S. Senate to follow the 9/11 Commission's recommendations.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I think under the unanimous consent agreement that I am entitled to speak for the next 15 minutes.

The PRESIDING OFFICER. The Senator is correct.

TAX RELIEF

Ms. LANDRIEU. Mr. President, the Senator from Nevada makes some interesting points. I will have more to say about that specific issue later, as will other Senators from this side. But I am glad that he brought up the point of greed because it is actually something that I am going to speak about myself but as it relates to a different aspect, a different bill, and a different issue, but basically the same "sin," if you will.

Unfortunately, it is not our allies who are committing this sin, it is us right here. We are debating now, over the course of the next several days, and have actually been debating for 2 years, a tax relief bill prompted by the World Trade Organization's decision that some of the things in our U.S. Tax Code were contrary to the free trade principles that most of us—not all of us but most of us—espouse. So that decision set in motion a very necessary effort to address that decision by changing some things in our Tax Code.

Of course, anytime you open up the Tax Code there are many people interested in changing the words, the letters, the titles, the paragraphs, and the provisions. Sometimes a change in one word could mean a $1 billion windfall for a particular company, or millions of dollars of windfall for particular entities. There is a lot of interest every time this body opens up a tax bill.

Two years ago when it came to the attention of some of us that a tax bill would be opened, and ther as the 9/11 tragedy happened and as we saw men and women from our States going to the front lines to fight in Afghanistan and Iraq, and as we watched some of our health units, particularly in New Jersey, New York, Pennsylvania, right here in Washington, DC, and Virginia respond to some very tough casualties that this country experienced, some of us began to think: What could we do in this tax bill to honor the men and women who are on the front lines?

Not being on the Finance Committee, I wasn't aware of all the specific aspects, but I knew there would be maybe hundreds or thousands of entities, corporations, big and small, groups that thought they were entitled to some sort of tax break.

For the life of me, I didn't think we would have any trouble at all when a group of us got together—Senator BOXER being one, Senator MIKULSKI, Senator MURRAY, Senator DASCHLE, Senator REID, Senator BOND, the Senator from South Carolina, LINDSEY GRAHAM, and many others—and thought, having been to a lot of parades and flag-waving ceremonies for our troops, maybe there would be a way we could help them in this tax bill.

I know it is not the focus, but we figured—or I thought—there would be lots of other people who were trying to get in. So why don't we try to get our troops in? The good part of this story is we did in the Senate, with the help of Senator GRASSLEY, Senator BAUCUS, and many members on the Senate Finance Committee who worked long hours, many weeks, many months negotiating a bill that would correct the original problem that the World Trade Organization had, and provide some tax relief, according to their views and other people who wanted tax relief; we put in a tax benefit of $2 billion for the men and women who are actually on the front lines, the guardsmen and reservists who have become a larger and larger component of our fighting force, who leave their regular jobs, leave their families, and leave their regular civilian life, put on their uniforms and go to the front lines.

We know from reports which we have read and from our own experience representing our Guard and Reserve in our own States that 40 percent of these men and women take a cut in pay to go to the front lines. Not only do they take the bullet, not only do their Humvees get blown up on patrols, but they also take a cut in pay to go.

Some of us had the notion that maybe in this bill, whether it was going to be $350 billion or $75 billion or $100 billion, now it is $137 billion—I would like to show you what that looks like. This is only part of it. This is what a bill looks like that has tax relief provisions of $137 billion. This is just part of it. I am going to get the rest of it because it is a lot of pages.

Some of us had the foolish notion that maybe the Congress could find one page, one paragraph, one letter to include tax relief for American businesses that are doing the right thing, the patriotic thing, by filling the pay gap that these men and women are experiencing. When they leave their civilian life and they put the uniform on, and they pick up their paychecks from the Army, Air Force, or the Navy, they get a substantial cut in pay. Some of the employers are making them whole and doing the right thing, the patriotic thing. We thought surely in this tax bill we could give a tax credit to those small businesses because times are not good everywhere in some States and communities. Really, the whole economy is weaker than we had expected and these small businesses are struggling.

But I don't know why Chairman THOMAS from California who wrote the bill, and the House leadership of Congressman DELAY and Speaker HASTERT, couldn't find one page or paragraph to include them. So they were left out. They weren't in the top of the list, they weren't in the middle of the list, and they were not at the bottom of the list. They are not on the list.

We stand here and talk all weekend about our intelligence reorganization to secure ourselves. We talk about spending and the investment in our defense to secure ourselves. Let me just ask anyone who would want to come to this floor, or Chairman THOMAS, if he is listening to me, what could we be thinking if we are not even keeping the paychecks of the men and women on the front lines whole? No bonus, no extra, just keep their paycheck whole, just to keep their house payments up, just to keep the car notes for their spouse who is at home so they can continue to work and transport the children, just keep the children's trust funds moving along so they don't have to make that up when they come home—what could they be thinking? They weren't thinking very well on the House side. They took it out.

If we could afford $2.5 trillion in tax cuts in 2001, I think we could at least allocate one-tenth of 1 percent to our troops on the front lines who are protecting us today.

I want to say another thing to the businesses that are in this bill. I have a lot of companies in Louisiana that are going to benefit from this bill. I have not a word to say about that. I am happy they are in. I am sure they have good reasons. I am sure it is going to help create jobs.

But I have a word to say to the businesses in the United States of America. No business would be here, no business could operate, no business would have international trade, no business would have stockholders, no business would have a profit sheet, no businesspeople would be paying taxes on profits they made if it were not for the men and women in uniform who go to the front lines every time we have a conflict, a peacekeeping mission or a war to undertake to protect their commercial interests.

I am confident that the businesspeople who are represented in this bill know that. I know they are not going to blame me for taking a few days to talk about it. I know they will say, Senator, you are right. We are grateful to the men and women in uniform. We are actually a little embarrassed because we are in the bill and they are not. It is not their fault. It is nobody's fault. But the House leadership who wrote the bill left them out.

We have in this bill help for investors who want to invest in a subway system in Paris. I like NASCAR. Lots of people in my State go to NASCAR races. We have tax relief for NASCAR. We have tax relief for ceiling fan importers with Home Depot. I shop at Home Depot. I like Home Depot. But we left out the Guard and Reserve.

I don't know. I am just starting to think that unless the cameras are on nobody remembers the truth. It is only the photo opportunities or the rallies or the parades that everybody goes to. We wear the pins and the flags, but when it comes to the budget and to the tax bill, we leave them out.

I don't think our troops need a lobbyist. I thought we were their advocates. Mr. President, $137 billion and we could not allocate $2 billion, not $1 billion, not half a billion?

I will speak about this as often as possible for the next couple of days. I tell my leadership, I don't want to make people's lives miserable. I am happy to talk with our leadership and the Republican leadership about any time agreements that make people's weekends convenient, but I could not in good conscience not spend some hours—whether it is 2, 5, 10, or 30—talking about the 5,000 men and women who have been deployed out of Louisiana, who are on the front lines, whose employers, whom I know personally, are making their paychecks whole.

We had the chance to help out small business, to help our National Guard and Reserve. Somebody, somewhere, on the other side of this Capitol made a decision that is immoral, unconscionable, and most certainly not justifiable.

I will present for the record some names of families. I will present some hardship cases so the record is clear about the kind of families we have turned our backs on and the kind of employers who are doing the very best they can. While they are hiring a replacement, because they obviously need the job done, and sending the paycheck overseas, the Government of the United States, which is supposed to be on their side, decides we do not want to help them because we have higher priorities.

What higher priorities could we possibly have in the Tax Code at this time? If any one of my colleagues wants to explain to me and anyone else what could be a higher priority, I would appreciate it. If there is something else in here for the Guard and Reserve, for the military, to support our troops directly, please tell me. Maybe I didn't get to read the whole report.

I was on the Armed Services Committee for several years. Eventually, I hope to be on Defense Appropriations where I can do more work along this line. I know one thing, last year the Guard and Reserve, despite the fact these are the most dedicated and patriotic men and women—they will go the distance. They do not complain. They do not even like to say what is wrong because they feel sacrifice is what they do. I understand that. They came 5,000 people short of their retention goals. Could it possibly be because, although the soldiers do not mind making the sacrifice, they are getting belly sick of their spouses and their wives and children making sacrifices more than the rest of us are making? Why can't we sacrifice and help them? Why do they have to continue to make the sacrifice? When we have the opportunity, we say no.

Drastic pay cuts, bankruptcies, foreclosures—these aren't exactly the kinds of challenges members of the American military reserve signed up for when they volunteered to put their life on the line for us and for a country as great as this. For all of our pompous talk about how patriotic we are in this Congress, the least we can do is keep their paycheck whole.

Let me talk about three families I actually know. I will be in the Chamber talking about more.

Janet Wright is from Hammond, LA. Her husband Russell is in the Marine Corps. I have the Marine Corps pin on today in honor of our men and women. He makes $60,000 a year in the civilian world. He was activated and made only $30,000. He took a 50-percent pay cut. Mrs. Wright said that after a couple of months she started to put water in her children's cereal while her husband was gone because she had to count every penny. That is what happens when we give out $137 billion: We cannot help the Wrights. We don't have enough money to help the Wrights, so they have to put water in the children's cereal bowls.

Scott is a Navy reservist from California. He lost his home when he was activated and he lost nearly $1,000 a month in pay because the Navy job was different than the civilian. People say, Senator, that is impossible. There is a law that protects people from losing their home. I know that. You cannot foreclose on someone's home when they are on the front line. But the problem is, the bills add up and when they have to come home, if they have not paid those monthly notes and they cannot pay it within a certain amount of time, the foreclosure happens.

I don't understand how we don't have any money to fix it. How can I go home and tell my Guard and Reserve, I'm sorry, we didn't have any money, but here is $137 billion we gave out to everybody else? I am not going to do it. I can't go home. So I would as soon stay here because I don't have a thing I can tell them, not a thing I can say.

I will tell more stories about real people. They are calling my office right now and sending letters. We are getting a lot of e-mails. I will come down here until I hear from Chairman THOMAS. We are sending a letter to the President at 6 o'clock today.

Let me say on the record I don't think the President of the United States knows they were left out. He has a lot on his mind. I understand that. And I know this is only one of a thousand things he has to consider, literally, weekly. But I am sending him a letter to let him know. I cannot amend this bill; it is beyond my power to amend it. It is against the rules. But the bill could be vetoed and this could be included. Or the President could send a message to his House leadership that says, you must have made a mistake; we should have included this. We obviously could afford it and he could promise to fix it.

I hope that is a response we will get over the next couple of days. I don't know. I know he is very busy on many other things right now. There will be a big debate tonight, but this is something I had to bring to our attention.

Over 410,000 members of the National Guard and Reserve have been activated since September 11. Secretary Rumsfeld has predicted that number may go up to 640,000. That is a lot of families dependent on us to make good decisions for them. This was not a good decision made by the House leadership. I will do everything in my power to get them to change their mind, to change the bill, or to promise they will put in this $2 billion or $3 billion—whatever it will cost to close this pay gap—so the men and women who leave your State of Illinois or my State of Louisiana or the Senator's State of Ohio or the Senator's State of Massachusetts, when the soldiers leave to go overseas, they have confidence that when we have a chance to help them keep their pay whole, keep their benefits intact, give them some support in the spousal support program we have established, we are there for them.

I understand the Senator from Massachusetts will speak and I understand the Senator from Iowa will yield the time to make that possible. But if my colleagues are wondering why the process has slowed down, why we are having a hard time getting a schedule for the next couple of days, this is one of the reasons. This is the reason I am voting against the bill and will be speaking about it as the days go forward.

I yield the floor.

Mr. REID. It is my understanding that the majority has people who want to speak. I know the Senator from North Carolina is here and wishes to speak for 10 minutes and the Senator from Massachusetts wishes to speak for up to 30 minutes. This would be as if in morning business. Senator KENNEDY will speak for up to 30 minutes. Of course, the time counts against the 30 hours we are working under now. And we would ask that the majority be recognized for up to 30 minutes, to match that of the time for Senator KENNEDY, with the first 10 minutes being for the Senator from North Carolina, and that time also be counted against the 30 hours. I ask unanimous consent that be the order.

The PRESIDING OFFICER (Ms. MURKOWSKI). Is there objection?

Without objection, it is so ordered.

The Senator from Massachusetts.

Mr. KENNEDY. Madam President, while my good friend the Senator from Louisiana is in the Chamber, I commend her for the enormously persuasive case she has made and say I agree with her 100 percent and will certainly do everything I can to support her.

The point is, we passed this underlying bill in June, and the conferees were appointed in July by the Senate of the United States. The House of Representatives did not even appoint their conferees until the end of last week, and did not have their first meeting until Monday of this week, and we are trying to jam this legislation through the Senate late in the afternoon on a Friday, and the cloture motion was filed the first thing this morning before there was 1 minute of debate on it.

Ms. LANDRIEU. Yes.

Mr. KENNEDY. I say that both in terms of the substance, which is so powerful, and the process and the procedure in standing for the Guard and Reserve, I commend the leader. There is an arrogance among the chairman of the House Ways and Means Committee and the Republican leadership that ends up and results in this kind of a situation where they say: Well, there won't be people over there who will stand for the Guard and Reserve. We will send it over there late either last night, which they would have done if they had been able to get these printed up, or we will have it over there on Friday morning, and they will all want to take off on Friday, so they will go ahead and pass it. That is the view.

I commend the Senator from Louisiana for the substance and commend her for the process as well. And I will take the time not just at this moment but also to comment about the same legislation, how Chairman THOMAS and the Republican leadership are prepared to take care of the tobacco companies but not take care of America's children. That was the choice. You could have done both. I would have supported looking out after tobacco farmers who are having difficulties on that. I would have supported having the tobacco companies pay for that particular bailout. But it should have included the protection of America's children, and the Republican leadership refused to do that.

It refused to look out after American workers. We have passed—three times in the Senate, twice in the House of Representatives—a prohibition against this administration's repeal of the overtime provisions that affect 6 million of our fellow workers, primarily the first responders. Police and firefighters and nurses: They are three of the largest groups that were going to be affected. We passed that three times. The House of Representatives passed it twice.

We had 5 minutes of discussion on it from the proponents of it in the same conference. I was there. So that is certainly one of the reasons that we speak and we are so concerned about those provisions. We will have a chance to address those matters. But I do want to speak to the Senate on two other matters briefly this afternoon.

AFGHAN ELECTIONS

Madam President, one is the greatest intelligence failures in our history occurred on 9/11, and the seeds of that disaster were planted long ago in Afghanistan, whose people will participate tomorrow in the historic election to select their next President. I know my colleagues share my deep respect for the Afghan people and the many others who worked so hard in recent months to make these elections possible.

The elections already have been postponed three times, and the parliamentary elections that were to be held this weekend have now been delayed until next year. President Karzai has shown tremendous courage and determination in the face of multiple assassination attempts. He and the vast majority of the Afghan people have demonstrated an impressive commitment to a free and democratic Afghanistan.

Yet Afghanistan still faces fundamental threats to the casting of ballots on Saturday, let alone its long-term stability and prosperity. Elections are vitally important to the process of rebuilding a free country, but they are not a panacea for the myriad of problems that face the people in Afghanistan. Those problems will still be there the day after the elections, and the Bush administration, Congress, and the American people cannot afford to be distracted from the ongoing efforts that will be required to bring peace and stability to Afghanistan.

We made that mistake once before in Afghanistan, in the aftermath of the Soviet withdrawal in 1989, and the result was a failed nation that became the breeding ground for the terrorists who attacked us on September 11, 2001. We cannot afford to allow Afghanistan to fall into chaos once again. Unfortunately, because of its misguided war in Iraq, the Bush administration may bring us perilously close to doing just that.

In the aftermath of the terrorist attacks on September 11, President Bush rightly spoke about the need to put Afghanistan on the right course. He welcomed then-Chairman of the Afghan Interim Authority Hamid Karzai to the White House in January 2002, and said:

> The United States is committed to building a lasting partnership with Afghanistan. We will help the new Afghan government provide the security that is the foundation for peace.

Instead of finishing the job, however, President Bush foolishly and recklessly diverted America's attention from the real war on terrorism in Afghanistan by rushing to war in Iraq, a country that had no operational links to al-Qaida terrorists.

We now know that President Bush began planning the invasion of Iraq from the earliest days of his administration. Finding a rationale to get rid of Saddam Hussein was on the agenda from day one of this administration. Barely 3 months after the most vicious terrorist attack on America, the President already began concentrating on Iraq, not Afghanistan. On November 26, 2001, he said:

> Afghanistan is still just the beginning.

And 3 days later, even before Hamid Karzai had been approved as interim Afghan President, Vice President CHENEY publicly began to send signals about attacking Iraq. On November 29, he said:

> I don't think it takes a genius to figure out this guy [Saddam Hussein] is clearly . . . a significant potential problem for the region, for the United States, for everybody with interests in the area.

The shift was all but sealed by the time of President Bush's State of the Union Address on January 29, 2002. Karl Rove had told the Republican National Committee that terrorism could be used politically. Remember that speech, that terrorism could be used politically? That is Karl Rove in 2002: Republicans could "go to the country on this issue."

In the State of the Union Address, President Bush unveiled his "Axis of Evil"—Iraq, Iran, and North Korea. Those three words forged the lockstep linkage between the Bush administration's top political advisers and the Big Three: Cheney, Rumsfeld, and Wolfowitz.

What did President Bush say about bin Laden in the State of the Union Address that day? Nothing.

What did he say about al-Qaida? One fleeting mention.

What did he say about the Taliban? Nothing.

Nothing about bin Laden, a fleeting mention of al-Qaida, nothing about the Taliban in that State of the Union Address.

With those words, we lost our clear focus on the most imminent threat to our national security—Osama bin Laden and al-Qaida. The President had checked the box on Afghanistan and was poised to use the 9/11 attacks to advance his Iraq war agenda of a war on Iraq.

The consequences of that decision have been severe for the security of Afghanistan and for the security of the American people. Without a doubt, the war with Iraq has distracted us from the hunt for Osama bin Laden.

The administration botched the battle at Tora Bora in December 2001. By outsourcing the job to warlords in Afghanistan, he let Osama bin Laden escape. Instead of sticking with the job of capturing bin Laden, the administration launched a war with Iraq. Reports indicate that the Bush administration shifted special operations soldiers and

Arab language specialists from Afghanistan to prepare for the war in Iraq. And it recently pulled the State Department's extraordinarily talented assistance coordinator for Afghanistan, William Taylor, out of Afghanistan and sent him to Iraq. Saddam Hussein is behind bars, but he did not attack America.

Meanwhile, Osama bin Laden is probably hiding somewhere in the ungovernable tribal region between Afghanistan and Pakistan planning another attack on America.

Security outside of Kabul is tenuous because we and our allies are overstretched in Iraq and cannot commit sufficient troops in Afghanistan. We have 140,000 troops in Iraq and our allies, another 20,000. It was al-Qaida operatives who trained in Afghanistan who attacked America. Yet America has seven times more troops in Iraq than in Afghanistan.

We obviously do not have enough soldiers to secure Afghanistan. It was the lowest troop-to-population ratio of any postconflict country during the past 60 years. President Karzai asked for 20,000 new troops for election security at the NATO summit last June. The U.N. reportedly estimated this summer that it would take somewhere between 5,000 and 15,000 additional troops to secure this Saturday's election. Sadly, what NATO and the United States eventually provided fell far short of that requirement—3,000 troops total. Spain agreed to send a battalion to Afghanistan for election security only after the Government pulled its troops out of Iraq. Our allies can't meet NATO requests for a minimal increase in troops for Afghanistan because they too are bogged down in Iraq.

This administration's lack of credibility with the international community has made it almost impossible to obtain the necessary troop commitments to win peace in Afghanistan. Because the international community is unable to provide adequate security in Afghanistan, the forces of the Taliban and al-Qaida continue to strike regularly. Most experts believe that elements of the Pakistani security services continue to support the Taliban and that Taliban forces are able to move freely between Afghanistan and Pakistan and can launch attacks on American and Afghan forces before retreating to their sanctuaries in Pakistan.

The Bush administration's Ambassador to Afghanistan admits what has become the obvious truth on the ground: The Taliban ranks are growing in Afghanistan.

Our Ambassador Zalmay Khalizad told reporters in September:

> With regard to Taliban, I have to say that there may have been some growth in the numbers of their people that are active. There has been some effort, obviously, at recruitment, increased effort at recruitment in the refugee camps and in the madrasas.

Ambassador Khalizad also tells us that he still sees a "strong link" between al-Qaida and the Taliban in Afghanistan. Three years after our invasion of Afghanistan to deny al-Qaida its sanctuary under Taliban protection, the Taliban and al-Qaida still retain a strong relationship in Afghanistan. How did the Bush administration ignore the fact that America cannot be safe until Afghanistan is stable and al-Qaida no longer has a haven there?

As a result of the poor security, President Karzai still does not have full control over his country and is forced to negotiate with warlords who control private militias with forces numbering in the tens of thousands. A recent report by Human Rights Watch summarized the issue well:

> Political repression by the local strongmen is the principal problem. Through the country, militarized political factions . . . continue to cement their hold on political power at the local level, using force, threats, and corruption to stifle more legitimate political activity and dominate the election process.

Our inability to secure Afghanistan means that opium production is at record levels. Funds from the drug trade are being used to finance attacks against our troops and against the Afghan people. They are being used to operate the private armies of the warlords and rebuild the ranks of the Taliban. They are pouring fuel on the fire of instability and terrorism. Yet the administration failed to give a priority to shutting off the drug trade in Afghanistan, and the result has been predictably destructive.

Two weeks ago, Robert Charles, our Assistant Secretary of State for International Narcotics and Law Enforcement, painted an ominous picture in his testimony in the House International Relations Committee. He said:

> On the narcotics front, tied like a ball and chain to security, justice and economic development, we stand in the darkness of a long shadow . . . President Karzai and other Afghan officials have said that drug trafficking and the corruption it breeds may be the biggest threat right now to Afghan's long-term security and democratic future.

The CIA and the United Nations estimate that the crop of poppies for 2004 will be 20 to 40 percent greater than last year. That means 500 tons of heroin. No wonder Afghanistan now accounts for 75 percent of the worldwide production of opium.

The long shadow that Robert Charles described is the shadow of our misguided war in Iraq. The forces and resources we are pouring into Iraq could have been used and should have been used to end the drug trade in Afghanistan, regain control of the country from the warlords, and dismantle their militias.

Last month, LTG Walter Sharp of the Joint Chiefs of Staff told the House International Relations Committee that less than half of the approximately 40,000 people targeted in Afghanistan for disarmament had actually been disarmed. The operations manager of the U.N. disarmament program on the ground in Afghanistan told the Financial Times that fewer than 10,000 of the targeted individuals had been disarmed. Clearly, the effort to dismantle the private militias has fallen drastically short with dangerous consequences for Afghan stability.

In June, local militias killed five aid workers from Doctors Without Borders in a brutal attack. In July, that distinguished nongovernmental organization pulled out of Afghanistan after 24 years of helping the Afghan people. Their loss is a sad commentary on the continuing violence and the Bush administration's misguided handling of Afghanistan. The failure to crack down on the narcotics trade, the continuing domination of much of the countryside by warlords, and the inability of this administration to provide sufficient troops to stabilize the country are major setbacks to the war on terrorism. Clearly some progress has been made. I hope the elections tomorrow will proceed without incident. But if we had not rushed to war with Iraq, much greater progress could have been made and certainly would have been made in Afghanistan, and America would be safer today. Yet President Bush continues to deny this obvious reality. Incredibly, he told a campaign rally in Ohio last week that as a result of the U.S. military, the Taliban no longer is in existence.

Representative RON PAUL, a Republican Congressman from Texas, does not agree. As he said on September 23:

> A picture of Afghanistan has been painted, I think, overly optimistic. You read the newspapers, what you're talking about doesn't even exist from the reports that I have read about what's really going on. And when you hear about the Doctors Without Borders leaving, after having been there through the Russian occupation. The U.N. wants to leave. Protection of the president is very precarious. We don't know what will come of that.
>
> The airport's getting bombed. There's estimates that 90 percent of the country, at least a very large percent of the country, is under the occupation of the Taliban and the warlords. We have a serious disconnect here and we have to be—as Americans and as members of Congress, we have to be realistic and not hide from the realities of what is happening.

That is from a Republican Congressman from Texas. I couldn't agree more.

In the aftermath of 9/11, it was clear that America had to deal effectively with Afghanistan as the highest priority for our national security. It was clear that America could not be safe if Afghanistan remained unstable. Instead of finishing the job, we rushed off to fight a different war, the war in Iraq. We squandered the tremendous worldwide good will that flowed to America after 9/11. We alienated longtime friends and leaders in other nations on whom we heavily depend for intelligence for support in the ongoing war against terrorism. Distrust of America has soared throughout the world. We are especially hated in the Muslim world. The past 2 years have seen the steepest and deepest fall from grace our country has ever suffered in the eyes of the world community in all our history.

All this is the heavy price our country has paid because of the war in Iraq that America never should have fought. We cannot afford to continue down this dangerous path of incompetence in foreign policy. We know that America has to do better.

As I have said before, the only thing we have to fear is 4 more years of George Bush.

Madam President, how much time do I have?

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

UNEMPLOYMENT

Mr. KENNEDY. Madam President, earlier today, the Department of Labor issued its report on the state of unemployment in the country. I want to just comment on this. It is official now that President Bush will be the first President since the days of Herbert Hoover and the Great Depression—over 70 years ago—to preside over a net loss of jobs during his Presidency.

Today's job numbers show that only 96,000 were created last month, which is even lower than economists had predicted in order to keep up with population growth. Even worse, a third of the jobs created were in temporary positions. Another third were government jobs, which means the private sector job creation is far from recovering.

The official unemployment rate is 5.4 percent, but the real rate of unemployment and underemployment is 9.4 percent. More than 400,000 workers have stopped looking for work because they are so discouraged. They are no longer counted in the official rate. Another 4.5 million are working part time because they cannot find full-time jobs.

Part-time workers and temporary workers earn less money than full-time permanent employees and often do not even receive benefits. America's workers have been out of work for months. They have finally found a job, but it is part time or temporary, so they take a huge cut and have no health insurance. Temporary workers earn about 40 percent less a week than the rest of the workforce.

Of the 8 million unemployed workers, nearly 22 percent are long-term unemployed; they have been out of a job for more than 6 months. This long-term unemployment rate has been over the 20-percent mark each month since October 2002, 2 consecutive years, which is the longest streak since this data has ever been collected.

Despite these record highs in long-term unemployment, President Bush allowed the unemployment insurance program to expire last December. These workers have worked hard, played by the rules, and paid into the unemployment trust fund, which now has $20 billion in it. But the President had said no to extending unemployment benefits for these workers.

Do we understand that, Madam President? You don't get unemployment compensation; you are not eligible unless you have worked and contributed to the fund. The reason the fund was set up was for just this kind of condition, where workers have been working, want to work, and need to work, but the economy slows down, so they receive unemployment compensation for a period of time, generally 26 weeks. It has been extended 13 weeks in particularly high unemployment areas. It is just enough to cover the mortgage and put some food on the table and put gas in the automobile. It is interesting that Bush No. 1 extended the unemployment compensation three times, when we never had the economic and adverse economic conditions we have at this time. But this President will not extend it to help these workers.

The job situation is even worse for people of color. The unemployment rate for African Americans is more than 10 percent—almost double the national average—and for Hispanics, it is 7 percent. And women are not faring well in this economy. The income of low-income single mothers has gone down by 3 percent every year in the Bush economy—3 percent constantly down.

But President Bush and the Republican Congress refused to raise the minimum wage, which would benefit primarily women—7 million of our fellow citizens, men and women of dignity, who work hard, clean out the great buildings where American industry is housed, help as assistant teachers, work in nursing homes—primarily women; and many of them have children, so it is a women and children's issue, a family issue. It is also a civil rights issue because so many of those who earn minimum wage are men and women of color. It is a civil rights, family, women and children, and a fairness issue.

Americans believe if you work hard 52 weeks in the year, you should not have to live in poverty. Why is it that the Republican leadership has refused to let us have a vote on increasing the minimum wage? I offered to increase the minimum wage on the TANF bill. What did the leadership do? They pulled the bill. I offered it on the State Department reauthorization bill. They pulled the bill so the Senate could not vote. Here you see the results of that: no long-term unemployment compensation, no increase in the minimum wage.

Now we hear, as I heard on the Joint Economic Committee, about how the hurricanes have really impacted things. We heard other testimony that because of the hurricanes more people are working to try to deal with the problems. All of this is against a background where those workers are facing the perfect storm: the lack of an increase in the minimum wage, lack of unemployment compensation, and the fact that this administration has put in the regulations to deny overtime for up to 6 million American workers. So they are going to work longer and harder—because that is the record if you don't have that protection—and they will make less.

You have those three coming at you and, at the same time, you have college tuition going up 38 percent. Health care premiums are up 59 percent. Gas, 40 percent.

If you can believe it, milk, in Cape Cod, MA, last week was $4.05 a gallon. It is a little less in other parts of Massachusetts, maybe a little over $3. But it is $4.05 a gallon there, and we cannot get an increase in the minimum wage.

So American families are working and working long and hard.

What happens after all this? We have a proposal on the floor of the Senate called the JOBS bill—how much time remains?

The PRESIDING OFFICER. There is 3 ½ minutes remaining.

Mr. KENNEDY. The JOBS bill was meant to initially deal with the $4.5 billion problem at the World Trade Organization. What has happened is the Republican leadership in the House of Representatives sent over a $143 billion program that benefited the tobacco companies at the expense of the children, and also increased financial incentives to drive more American jobs out of the country, rather than bring them home—outsourcing.

My friend, the Senator from Florida, BOB GRAHAM, will address this issue during the course of this debate. We see how this legislation disserves American workers even more.

This is a fierce record and everybody on Main Street knows it. This economy is working fine for Wall Street. It works well for the elites, the elite corporations and the elite individuals. In this economy, we have had four tax breaks—at a time when we are fighting two wars—for the elite corporations and elite individuals. But for the working families on Main Street, they are suffering. Hopefully, they will have an opportunity to express themselves on election day.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. DORGAN. Madam President, I wonder if the Senator will yield for a question.

Mrs. DOLE. Yes.

Mr. DORGAN. Madam President, I understand the Senator from North Carolina is speaking as in morning business under a block of time allocated to the other side by prior agreement.

I ask unanimous consent that following the Senator from North Carolina—if nobody is on the floor—that I be recognized for 15 minutes as in morning business, preserving the remainder of the 30 minutes allocated to the other side. If other speakers on that side are here to follow the Senator from North Carolina, I suggest that I follow them at the end of the 30-minute period.

Mr. REID. Madam President, I ask unanimous consent that the Senator modify his request that for whatever time he uses, the majority have equal time, subsequent time, and that the time the Senator from North Dakota uses and the time of the majority following him be charged against the 30 hours.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from North Carolina.

CONNECTION BETWEEN IRAQ AND AL-QAIDA

Mrs. DOLE. Madam President, in our post-9/11 world, most Americans would agree that to defend our Nation and the freedoms we hold dear we must continue to succeed in the war on terror. As many of my colleagues and I have said, Iraq is the central battleground in the war on terror. The terrorists certainly know what is at stake, which is why they are pulling out all the stops to derail our efforts there. They know that a free and democratic Iraq is a serious blow to their interests.

Collaboration of Iraq's former regime with terrorist groups and its funding of them have not been in question. Democratic cochairman of the 9/11 Commission, former Congressman Lee Hamilton, told reporters that there were connections between al-Qaida, and Saddam Hussein's government. Still, few naysayers have passed up the chance to contest links between Iraq and al-Qaida, links that have existed for more than a decade.

Charges have been made that Iraq was not a haven for terrorists before the war, this statement being made just days after terrorist followers of Zarqawi, arguably the most dangerous terrorist in the world today, kidnapped and beheaded American civilians in Iraq. Reports strongly suggest that Zarqawi himself committed the atrocities.

He and his men trained and fought with al-Qaida for years. Not only was Zarqawi in Baghdad prior to Saddam's ousting, but nearly two dozen members of al-Qaida were there as well. One al-Qaida associate even described the situation in Iraq as "good" and stated that Baghdad could be transited quickly.

Then there is Abdul Rahman Yasin, another terrorist who was in Iraq long before the war. Yasin was a member of the al-Qaida cell that detonated the 1993 World Trade Center bomb. Documents discovered recently by U.S. forces in Saddam's hometown of Tikrit show that Iraq gave Yasin both a home and a salary until the eve of the war in Iraq. When a Newsweek reporter interviewed Yasin's Baghdad neighbors, they told the reporter that Yasin was "working for the government." Is this not a clear example of Iraq not only having a relationship with al-Qaida but also harboring and rewarding a terrorist, a person who was directly involved in a terrorist attack on our soil?

What about a link between Osama bin Laden, the al-Qaida leader himself, and Iraq? The 9/11 Commission Report states that Iraqi intelligence officials and al-Qaida members met in the spring and summer of 1998, and that an Iraqi official offered bin Laden a safe haven in Iraq. In its 1998 indictment of bin Laden, the Clinton administration asserted that al-Qaida and the Iraqi Government had an understanding that they would not work against each other, and on projects such as weapons development, they would work cooperatively. Is this not evidence of bin Laden and al-Qaida having a collaborative relationship with the Iraqi Government?

In a recent interview with a French newspaper published August 29, 2004, Hudayfa Azzam, the son of bin Laden's mentor, Abdullah Azzam, said the Iraqi regime and al-Qaida had worked together closely before the war. He said:

> Saddam Hussein's regime welcomed them with open arms and young al-Qaida members entered Iraq in large numbers, setting up an organization to confront the occupation.

Azzam said that al-Qaida members came into Iraq from Afghanistan, across mountains in Iran, with the help of Kurdish militants. And once in Iraq, Saddam strictly and directly controlled their activities, according to Azzam. Here is yet another example of al-Qaida members infiltrating Iraq and being given safe haven prior to the entrance of coalition forces.

Let me be clear, despite recent political criticisms and media reports that have clouded or even misrepresented the facts, there is ample evidence of terrorists operating out of Iraq prior to the war, and there is compelling evidence of a longstanding link between al-Qaida and Iraq. The bipartisan Senate Intelligence Committee report informs us of this, as does the bipartisan 9/11 Commission Report.

Again, let me emphasize, Iraq is the central battleground in the war on terror. Recently, before a joint meeting of Congress, Prime Minister Allawi spoke of the challenges and continued progress in his country. He offered eloquent words of gratitude for America liberating the Iraqi people. I close today with a simple, but significant, statement that he made without much notice or fanfare. In talking about Iraq he said:

> We are fighting for freedom and democracy—ours and yours.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from North Dakota has 15 minutes.

Mr. DORGAN. Madam President, I believe I asked for 15 minutes.

The PRESIDING OFFICER. That is correct.

JOBS BILL

Mr. DORGAN. Madam President, I came to the floor because we are going to have a great deal of business in the final days of this legislative session. Some of the legislation will be very significant. This is one piece of tax legislation that originally came out of the Senate Finance Committee and the House Ways and Means Committee. It rests on all of our desks. It is a large unwieldy piece of legislation dealing with, in some cases, arcane portions of our Tax Code.

There is much in this conference report on what is called the FSC/ETI bill, which is the shorthand way we talk around here. Others call it the JOBS bill. There is much I commend, much that I support, and much that I think represents good work. But I want to talk a moment about some missed opportunities as well.

I am mindful of what Mark Twain once said. It is always easy to be negative. Mark Twain once said, when asked if he would debate: Of course, if I can take the negative side.

They said: We haven't told you the subject.

He said: It doesn't matter, the negative side doesn't require preparation.

I am mindful of that when I am trying to pick apart some pieces of this bill, but I think it is important to talk about missed opportunities at this late date.

I am going to vote for this bill, but I will tell you what is not in it and should be.

We are drowning in debt in this country. We have the largest budget deficit in the history of America, and add to that the largest trade deficit in the history of this country. We are neck deep in debt. We are spending money we do not have, in some cases on things we do not need. We send our men and women to war and say, by the way, we will not pay for that, we will have them pay for it when they come back. We are drowning in debt.

One part of dealing with that debt in fiscal policy is to try to get the revenue into the coffers of the Federal Government that is owed by those who are required to pay taxes.

Let me describe a couple headlines from recent days:

> House Negotiators Reject Tougher Tax Shelter Penalties.

Those House negotiators said: No, we do not want to get tough to shut down tax shelters and tax dodgers. I am talking now about very large corporations that make billions of dollars and decide they want to do everything they can do as an American citizen, except they do not want to pay taxes. They do not want the obligation of paying taxes.

Madam President, $40 billion would have been raised as a result of the provision that was objected to by the House negotiators. That's $40 billion saved in taxes that will not be paid by companies that should have been full taxpayers.

October 7:

How Big Tax Shelters with Cities Short-changes the Federal Treasury.

This is about people buying a sewer system. Can you imagine someone wanting to own a sewer system? But cities are now selling their subways, city hall, and the sewer system. Why? Because if they sell it to a corporation, a corporation can depreciate it, and then they can each share in the tax writeoff because a city does not have a tax write off because it is not taxable. So we see these things being sold to private investors so that everybody wins, except the taxpayer loses, and our debt goes up and up because entities that should be paying taxes are not.

Let me talk just for a moment about the issue of missed opportunities with respect to runaway plants and moving American jobs overseas.

This morning there was an announcement about the number of jobs created in the last month. We need to create about 175,000 jobs a month just to keep pace with the increased population moving into the workforce. This month it was only 96,000 new jobs, far short of what is necessary just to keep pace with the new people coming into the workforce.

Even as we struggled to create these new jobs, we have in place a provision in this country's Tax Code that says to a company: Guess what. If you will just decide to move your jobs overseas, we will give you a tax cut for doing it.

We will give you a big fat tax cut if you move your jobs overseas. Now, I cannot think of a more pernicious, obscene thing to do than to say to American companies, move your jobs and we will give you a tax cut.

If some tax concessions are going to be given, give them to the businesses that create jobs and stay here, not to the businesses that fire their workers and move their jobs to China, Bangladesh, Sri Lanka, and Indonesia.

We voted on this provision and the Senate actually turned it down. Senator MIKULSKI and I offered an amendment that said let us shut down this pernicious tax cut that says to people, move your job overseas and we will give you a benefit. That, it seems to me, should have been a revenue raiser in this bill.

Or how about the proposition of American companies that decide they want to have all the benefits that accrue to being an American citizen as a corporation—because in law we say a corporation is a citizen, artificial citizenship. It can sue and be sued; contract and be contracted with. It wants in some cases all of the opportunities of citizenship in this country except for paying taxes. That is why we see corporations that decide what they want to do is do their business through a post office box in the Cayman Islands. Why? Is that where they run their company, from a post office box? No. What they want to do is shelter their income from this country so they can have all the benefits our country has to offer them but avoid paying U.S. taxes that are required.

Who then pays the taxes? Oh, it is just the working men and women who get up in the morning and dress and go to work all day. They do everything right, and at the end of the day they try to provide for their families and try to pay shelter and transportation, all the things that are necessary to send their kids to school, pay for health care, and then pay taxes as well.

It seems to me this is a terrible missed opportunity to shut down aggressive tax shelters, to shut down the tax opportunities that have come from tax haven subsidiaries of U.S. corporations.

I could go through a list of corporations. One corporation, for example, set up 441 entities in the Cayman Islands alone. Yes, an American corporation, an energy company, for example, set up 441 subsidiaries in the Cayman Islands. Why? Because they do not want to pay taxes.

The Halliburton Company has 17 tax haven subsidiaries, including in Liechtenstein—Panama, Cayman Islands, Liechtenstein. I would like to see these shut down. If you are setting up circumstances where you are doing business through a post office box in the Bahamas or the Cayman Islands or, yes, Liechtenstein, in order to avoid paying taxes, the next time you get in trouble maybe you should call out the Liechtenstein Navy to protect you, or the Bahamian Navy. Someone told me the Bahamian Navy has 20 people.

These companies want all the benefits that can come to an American citizen, but they do not want to pay their fair share of taxes. Again, we have people who get up every morning in this country, they are good citizens, pay their bills, and they pay their taxes, because they want to send their kids to the best schools, and they want to be able to have affordable health care. They want to live in safe neighborhoods. They want grandma and grandpa to have access to health care. They want a good job that pays well. Instead, we have a tax system that says, oh, by the way, we will give you a tax cut to ship your job overseas and oh, by the way, it is fine for you to access, even if you stay here, tax shelters so that if you make money, you do not have to pay, but your workers do. Your workers should pay taxes, but you make $2 billion, you do not have to pay. Do your business through a mailbox somewhere.

These are enormous missed opportunities, and they are missed opportunities because, as this says—and this is why House negotiators reject tougher tax shelter penalties. What that means is a bunch of people come to this conference and say, no, we want to protect these special deals, we do not want to close these loopholes. The fact is, the American people deserve better. This country is drowning in debt.

People ask, how do you get a handle on the fiscal policy? The first thing you do is you stop this sort of nonsense. You stop subsidizing jobs being exported overseas by American companies that are told by this Government, shut down your plant and we will give you a tax cut if you move your job overseas.

Yes, we voted on that in the Senate and it was voted down. Closing that loophole was voted down in the Senate. My hope would have been with the deficit growing worse and worse, that perhaps in conference, working on this bill, we would have seen a conference that would have closed these loopholes, closed these shelters, closed off the opportunities that result in such a massive amount of lost revenue to the Federal Treasury at a time when we are deep in debt.

At a time as well when our country is reliant on about 60 percent of our oil from others around the world, it seems to me that we also missed some opportunities to move aggressively in areas to make us more independent with respect to our oil supply. It seems to me that when we have a circumstance where we need additional energy and we reach for 60 percent of that oil from troubled parts of the world, it puts our economy in great jeopardy. When we are talking about incentives for energy production in this country, we could have done and should have done much better. If we do not understand that the 60 percent reliance on Saudi Arabia and Kuwait and, yes, Iraq, Venezuela, and Nigeria is very troublesome to this country, then we do not understand very much.

I happen to think we are going to always continue to use fossil fuels—coal, oil, and natural gas. I also believe we ought to move toward a hydrogen fuel cell future in which we stop putting gasoline through our carburetors; find an inexhaustible supply of energy such as hydrogen, which is ubiquitous and everywhere, and when you use a fuel cell hydrogen vehicle you put water vapor on the tailpipe, you have twice the power to the wheel. What a remarkable future.

We will not get there because the energy companies, particularly many of them that have a vested interest in what we are doing now, do not want to get there. There are some who are very excited about a new Apollo project in which this country describes a completely new energy future. I would hope some of those incentives would have been in this bill, and they are not.

This legislation which is presented to us now over the weekend is legislation that has a number of things that I believe moves us in a good direction, a number of constructive things.

I will make one other point on tax shelters. My colleague Senator GRASSLEY, for example, announced some long while ago that he was going to put a stop these phony lease transactions between cities and companies. Yet, the way this conference report comes out they actually went easier on some of these transactions. The same is true with respect to inversions.

Corporations that decide, we do not want to be American citizens anymore, we renounce our American citizenship, we want to become citizens of the Bahamas. Why? I do not know. Sun, sand, good food. I do not know. They want to become citizens of the Bahamas in order to avoid paying U.S. taxes so they do something called inversion, which is renounce your citizenship.

There was a date set by my colleague Senator GRASSLEY and his counterpart and they said, beyond this date, understand you are in jeopardy when you do this. Well, guess what. In this conference, they went a year forward from that date. I do not have the foggiest idea why they did that.

By the way, this is not a criticism of Senator GRASSLEY because he has been a leader in shutting down these abusive transactions. My assumption is that the House of Representatives came over once again and said, no, we cannot buy that.

It is unbelievable that corporations that want to renounce their citizenship are given even an inch of ground by anybody in this Chamber, let alone anybody in that conference. We ought to say, you want to renounce your American citizenship in order to save on taxes? Shame on you. You are not going to get tax benefits or tax savings from this Tax Code, not from this Congress. You want to do what is called an inversion and renounce your American citizenship? Then this Congress is not going to give you one cent of benefits in the Tax Code.

Yet regrettably, what has happened here is they have actually given another year's flexibility to the companies that did that, a year beyond the date in which my colleague—and good for him, Senator GRASSLEY—said, here is the date.

Ms. LANDRIEU. Will the Senator yield for a question?

Mr. DORGAN. I am happy to yield.

Ms. LANDRIEU. Does it strike the Senator as odd and actually unjust that the same bill that would push the date back for companies to go register in the Bahamas—to give up their U.S. citizenship presumably because they think it is too hard for them to pay their taxes—in that same bill, the men and women who are protecting the right of those businesses to make a profit and to benefit from the great riches of this country were deprived of a tax credit? Does that strike the Senator as an odd way to either begin or end a session of the Congress?

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. DORGAN. I ask unanimous consent for 1 additional minute to answer my colleague.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Let me answer my colleague from Louisiana by saying of course it is absurd. Let me say it seems to me the first obligation in this Congress is to make sure we are doing what we should do for those men and women who, when called, left their homes, left their families, left their jobs, and went to serve this country. It is unbelievable to me, some of the priorities that have been established around here.

I heard the Senator from Louisiana make the case earlier today. She is absolutely right about that. The soldiers she is talking about should not be put at the end of the line. They ought to be at the front of the line when you talk about trying to do what is right in this bill. I appreciate the leadership of the Senator from Louisiana on that point.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Madam President, I am a little surprised to hear my friend from North Dakota. This bill has been worked on for a long time here. It passed this Senate with a great amount of support. There are some things here that are very important that we are doing, and all I hear is talk about how bad it is. That is interesting.

I think it has a little to do with politics. There are some things on here we ought to be talking about. Please remember why this bill was offered in the first place. We had a benefit that went to manufacturers, a 3-percent reduction if they shipped overseas. What happened is WTO, the World Trade Organization, said, That is not in keeping with our rules, and they started to levy a penalty, each month, that goes up to 17 percent. Something had to be done about that.

The Senator didn't bother to mention that. He didn't bother to mention all the good things that are on here. I don't know whether that is politics or whether they are trying to talk a little bit about the facts. That would be a surprise.

Ms. LANDRIEU. Will the Senator yield for me to have an opportunity to try to answer that just briefly?

Mr. THOMAS. Really, if you have a question, I will take that. Otherwise I think it is my turn to have the floor.

Ms. LANDRIEU. OK. I would just ask the Senator, did he know that at least my remarks were not at all directed politically to this bill? The Senator is correct. Did he know that when the provision I spoke about earlier left the Senate floor, 100 percent of the Senators, including the leadership of Senator GRASSLEY and Senator BAUCUS, sent our bill over to the House saying, please put our troops at the top of the list if we are going to give out $137 billion? Did the Senator know they didn't even come back in any part of the list? They are not on the list. I just wanted to ask the Senator if he remembered that that was something we sent over.

Mr. THOMAS. Absolutely. There is no question. But this is the size of the bill. There are thousands of things in there.

I am sorry. I agree with you. I was on the conference committee. We went through this process. But it is the House and the Senate both. When you go through a conference committee you come out with some things added and some things subtracted. I agree with the Senator and supported what she is talking about. But that is not the whole issue in this bill. This is a huge bill.

The other thing that seldom is mentioned is that this is revenue neutral over 10 years. There are offsets to these expenditures which I feel very strongly about because I probably feel more strongly about the deficit than the Senator from North Dakota. But this is revenue neutral. They took enough things out, and that is one of the reasons some of the things are not in there that people would like in there, because they had to limit it to the amount of offsets they could find to make it work this way.

But what happened then is they took off this 3-percent addition that went to manufacturers because the WTO opposed it and turned it around and gave that to all manufacturers, including people, for instance, who produce oil and who produce coal. It broadened the definition of manufacturers to where nearly every business in this country, then, receives it.

We are talking about jobs numbers, which have grown pretty significantly. We are talking here about strengthening business to create jobs. Somehow we seem to forget that is where jobs come from, is by encouraging and giving incentives to businesses so they will invest and provide an opportunity to create jobs. That is what it is for. I don't quite understand where the Senator thinks jobs come from unless it has to do with businesses that invest and create those jobs.

There are a great many things in there. Everyone could find something they don't like. I thought it was perhaps a little overdone, frankly, in terms of some of the things that were there. I tried very hard to get the tax element of the Energy bill into the bill. We were not able to put that all in there. We did get some energy incentives here, however, which will help some. We all had some things.

There are some things that are particularly useful, just little things that are kind of typical of the many issues that are in there.

Mr. DORGAN. Will the Senator yield for a question?

Mr. THOMAS. When you have medical providers who go to underserved areas, they are given financial incentives to go, and in the past those incentives which caused them to go there were taxable. We were able to take that taxable business out, so we will have more people willing and able to go to underserved areas—nurses, physicians, clinicians, and so forth.

I will certainly yield.

Mr. DORGAN. I think the Senator was not in the Chamber when I began my presentation. I did say I intend to vote for this. I said there is much in it that I commend and much that I support, including some of the energy provisions that I believe you just mentioned. I was speaking specifically only about the series of tax shelters representing, in my judgment, a missed opportunity.

But I think the Senator from Wyoming missed the opening comments of this Senator. He probably missed that I did say there is much here to commend, and I was speaking about what I think is a gross abuse, which we call tax shelters, which we have to close, and I think most Members think at some point we will have to close them.

Mr. THOMAS. I did not hear that. I continue to hear a lot of complaint and criticism when talking about spending when indeed it is revenue neutral, and the Senator didn't brother to mention that. Obviously in a bill this size there are a great many things you can talk about. Obviously no one is going to agree with all of the hundreds of issues that are there.

There are some really good things, some things I thought were particularly good. For instance, ranchers who, because of the drought, had to sell their herd and cattle, they don't have to pay on capital gains now for 4 years. It gives them a chance to get back without having to pay for that.

One of the fairness issues that is there is the idea that States that do not have State income tax, which is deductible from the Federal taxes, but indeed finance through sales taxes, can now deduct the sales taxes, which makes it fair. States can choose to either have income tax, they can have sales tax, they can have both, and then they can have one of the two of them deductible. In the past, sometimes, my State did not have a State income tax, but we had a sales tax and it was not deductible. It will be now. That is a real incentive for people to be able to save some of the money they have.

We also had a provision in there that was put in that had to do with enlarging the loans that are available to small businesses from the Government. The limit was put in there in the 1970s. Of course, that has changed a great deal. Here again, the purpose is to encourage businesses to build up so they can, in fact, hire people, and we do something for jobs.

There are a number of things here that are very good.

As I said, we need incentives for the small production oil wells. If you have an oil well that does not produce a lot of oil, the fact is there is an incentive in here for marginal wells—to have a production tax credit for electricity produced by renewable sources—geothermal, solar energy, those kinds of things which we have been looking forward to in the energy package.

Obviously, I think anyone in effect can find some things in here that wouldn't be their choice. On the other hand, this is a jobs bill. It is designed to encourage the economy and create jobs. That is what it is all about.

I get a little concerned when we seem to direct more attention toward the election which is coming up. I will be happy when that is over so we can talk a little bit more about the merits of the issues. That is what we are here for. It would be a good idea if in fact that is what we do.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Madam President, is there a specific order under the unanimous consent agreement?

The PRESIDING OFFICER. The majority has up to 30 minutes of debate.

Ms. LANDRIEU. I ask unanimous consent to speak for the next 10 minutes, if I am not interrupting anyone's time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. LANDRIEU. Madam President, before the Senator from Wyoming leaves, I want to make a couple of comments regarding some of the things he said. While some Members of this Senate intend to vote for this bill, I am one who will not be voting for the bill. I would like to restate why.

There is only one reason, one specific reason, and I think one compelling reason, that injustice was done in this bill after it left the Senate, and that injustice was that the one provision which would give direct tax relief to the men and women on the front lines, the Guard and Reserve fighting in Afghanistan, in Iraq, or whether it is North Korea, or South Korea, was left out of the bill.

We have a lot of bills, and not all of them are this fat, this full, and this expensive. This is $137 billion.

In 2 years, we negotiated between the House and the Senate. I know the Senator from Wyoming is aware of this because he helped to put it in. But there was only one provision in this entire bill that would have actually directed some modest tax relief to the men and women in the Guard and Reserve. But for some reason—I am not sure if it was politics, I am not sure if it was an election, I am not sure because I have not gotten an answer yet from anyone about why it was left out. Obviously, we had $137 billion to spend, and we spent it. We allocated it, but not for the Guard and Reserve.

We send the Guard and Reserve to the front lines. According to Secretary Rumsfeld, we sent 640,000 men and women, 5,000-plus from my State of Louisiana, to the front lines. We can't even send them with a full paycheck.

Some of us thought, gee, if we have this tax bill going through, we have to fix this problem with the World Trade Organization, and surely in the middle of this war at this time we could spend $2 billion to give tax credit. If we didn't have the $2 billion, I certainly would not have suggested that we spend it. But we have $137 billion in this bill.

I am confused. My constituents are confused. The men and women in the armed services are confused and their families are wondering and are very puzzled: How could we possibly be giving away $137 billion to businesses here and abroad and leave them out?

I am going to stand here for a couple of days and talk about it. I don't have an explanation for it. I don't want to go home because I don't know what I would tell them.

When the Senator from Wyoming says it is politics involved in the opposition of this bill, I think that is a good question. I am not sure of the answer. But I would like to say it this way. Is politics in any way involved in the passage of this bill? This bill, $137 billion for every corporation, or many corporations that you could think of, big ones, little ones, ones that make ceiling fans, ones that operate horse racing—just go through it. I am not going to even comment about the benefits of that. I don't want the reporters and the people following this debate to say Senator LANDRIEU objects to anything in this bill except that the Guard and Reserve were left out. That is what I object to. I am not going to even talk about ceiling fans and horse racing, or shipbuilding, which happens in my State. There are lots of wonderful things in this bill. My only question is, How could we possibly have the nerve to pass a bill and leave the Guard and Reserve out?

According to the GAO, the men and women in the Guard and Reserve on the front lines are taking a 41-percent pay cut.

You may say to me, Senator, they knew it when they signed up. Let me answer that. They knew there would be sacrifice. These men and women don't want a lot of pity or attention. They are happy to go. They want to go. They are proud to serve. I know many of them personally. I am proud of them. But I tell you what they did not know: They didn't know that we—when I say "we", I mean this President, the former President, and the leadership of the Armed Services Committee—would make a policy decision that would say that our Armed Forces, instead of relying mostly on Active and a little bit on our Reserve, decided because it is less expensive we are going to rely more on our Reserve and a little less on our Active.

We didn't tell them that because they signed up 10 years ago and we have been making these decisions in the last couple of years. They sign up. They weigh the pros and cons. They want to serve their country. They are patriotic. They say, I will make the sacrifice. But then we changed the rules on them. It is not their job to fix that. It is our job to fix it.

We had a bill coming along. It started 2 years ago. I thought: this is a perfect time to fix this situation. Here is the money. It is small businesses that are writing these checks to keep their pay whole, and surely this country would find money in this bill to do this, and then whatever else they want to do is fine with me. But, oh, no.

Let me make another point about what the Senator from Wyoming said. He said something along the lines that jobs are created by tax cuts. We have to have tax cuts for businesses to grow. I think that is partially correct. I don't think just any tax cut at any time makes business grow, but I will give him that. But I will tell you what makes businesses in America grow. I will tell you what no business could operate without. I will tell you in large measure what this war is about. It is about economic freedom. It is about global trade. It is about peace in the world so people can make a profit. No business in this bill could possibly function without the men and women in the Active or Reserve units. They wouldn't exist. Yet we have this bill to help companies and businesses, and we can't help the men and women taking the bullets.

I am not voting for a bill like that. I urge my colleagues, if they have decided how to vote, they might want to change their minds. I hope maybe people listening in their States, and maybe some of the families who have actually lost soldiers on the front lines might call their Senators, and say, Senator, if you do not mind, what Senator LANDRIEU is saying makes sense. Please don't leave me out of the bill. You put me in the war. Don't leave me out of the bill. You put me in the photograph, don't leave me out of the budget.

I will say one more thing before my 10 minutes is up.

I know something else about military families, and it is what I love about them the most. They never even want attention. I have had a little bit of a difficult time getting some of the families to call me. Do you know why? Because these men and women understand what sacrifice is all about. They didn't sign up to get rich. They didn't sign up to get an award. They don't really advertise their bravery every day, not like some people around here who cannot wait to show their awards off, et cetera. The men and women in uniform don't do that. So it is hard for them to ask.

I want them to know it is my job as their Senator to ask for them and to fight for them. I don't blame them for not wanting to have their names used. They want to feel self-reliant. But I will be darned if I will sit here and watch this $137 billion get out of this Chamber and leave them behind.

My colleagues, we are going to be here for a long weekend because I have a lot of things to say about this. My time now is up, but I am not going far. I don't live far from here. I am back and forth from Louisiana, and the house I live in when I am here is four blocks away, so I am not far away. I would stay here for many days to talk about it.

Members in this Chamber feel very strongly about their Guard and Reserve. They know the sacrifices they are making and a mistake was made. Mistakes can be corrected.

At 6 o'clock today I am delivering a letter to the White House. I will read it before 6 o'clock in the Senate. It is being delivered to the President. It is assumed in the letter that he didn't know about this personally, that it was just something that did not come to his attention. But he has the power as the President to fix it, and I hope that he will take that action.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ALLARD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Reserving the right to object, I hope the Senator's time—I make it clear that under the consent that the Senator's time, however much time he uses, be counted as running with the bill.

The PRESIDING OFFICER. That is correct, it is.

Mr. ALLARD. I thank the Senator from Iowa for clarifying that.

THE ECONOMY

We are here today at the end of the session. We have some important legislation yet to act on: this legislation that deals with the economic health of this country; it is legislation that deals with the security of this country. We have been working all session on these two issues primarily, with a plethora of other issues, but we do have some very important bills. The FSC/ETI bill is important, obviously, to sustaining and continuing the economic growth. We have the intelligence bill, the conference report. That is important for the security of this country. We have the Department of Defense authorization bill, which we are still waiting to get passed out of the Senate, the conference report to that. That is also very important.

I will talk a little bit about our economy because today an economic report came out. When we look at this economic report with all that has been happening through 2004, I don't see how anyone can deny this has not been a good year for America's economy.

I think back a little bit when President Bush was elected President and what kind of economy he inherited from the Clinton administration. The economy was going down. It was not doing well. As a result of that, the President decided to address the economic growth of this country and put in place tax cuts that did make a difference. There were 3 years of tax cuts put in place that took the burden of government off of the people of this country, and they produced.

The sector of this economy that produces more jobs than any other is the small business sector. I know because I came from that sector. As a veterinarian, I had my own veterinarian practice, my small business, and I know how taxes can impact the bottom line of the business and how it can affect whether you have any capital remaining to buy new equipment. A lot of new ideas, or creation, comes out of small business, and too much regulation has an impact.

In some ways, with the security challenges this country has faced, we have had to put in rules and regulations for business to be able to sustain their growth and create jobs.

The real choice we have is to do something about the tax burden. It has been working. I will share some of those figures that came out today.

America's economy is doing much better than just good. It has been doing really good. Since August of 2003, more than 1.5 million jobs have been created; 1.3 million jobs in 2004 alone. The unemployment rate of 5.4 percent today is well above the average employment rate of the 1970s, the 1980s, and the 1990s. For the last 12 months, the American economy has grown faster than the economy of any major industrial nation.

Today's Department of Labor and Bureau of Labor Statistics report, which, by the way, measures payroll—that is an important distinction that I will talk about later—according to that report, the economy added 96,000 new payroll jobs in September, continuing an upward trend in job creation. Employment gains over the last 4 months totaled more than 405,000, and this year the economy has added an average of 170,000 jobs per month. Manufacturers have increased hiring in 6 of the last 9 months and are responsible for more than 70,000 jobs so far this year. And we still have October, November, and December to go.

Unemployment remains steady at 5.4 percent, exactly where it was when President Clinton was reelected in 1996. Unemployment peaked more than a year ago in June of 2003 at 6.3 percent, and the labor force has increased by almost 950,000. The overall number of unemployed has fallen dramatically by 1.2 million since June of 2003. The economic policy of this President, what we have been doing in Congress, has been working.

I will take a little time and talk about the other survey that we have out there, the household survey. There are some remarkable things happening in the household survey. It has increased more than 2.2 million since April of 2003. Those are fantastic figures. They reflect the self-employed. They reflect people who work on a part-time basis. They reflect people who work out of their homes for various reasons—maybe they have a high-tech business and work through eBay to market some products that they have available, or perhaps they are real estate salesmen who have been working out of their home. This gets measured in the household survey.

The household survey measures much more of our economy than just the labor payroll report. That is exciting. During those times when we had some layoffs in the high-tech industry and went through the high-tech slump, people who lost those jobs said, we are getting some bonuses because when they were asked to leave the company they frequently gave them a bonus and they took some of the money to start their own business.

The most logical place to start a small business is out of your home if you can make it work. That is where most of them started their business. You keep your overhead down. You have a phone, you can hook it to the phone line. You can work out of there. What little money you earn you can put it back in the business or put it aside and hopefully buy more equipment and maybe move into a larger building at some point in time when that business takes off and begins to operate.

So I think it is important to point out that the payroll numbers, as strong as they are, do not reflect the growth of self-employment. According to the household survey, employment has increased by more than 2.2 million, as I said earlier, since April 2003. Again, these are fabulous figures. It reflects the ingenuity of a small businessperson who decides he wants to go out there and apply the American dream. He wants to start his own business. He wants to be self-employed. He wants to be independent. And he wants to be his own boss.

I think America is on the right track.

Now, the National Bureau of Economic Research determined that the latest recession ended in November of 2001, well after this President was sworn into office. Today's numbers are further evidence that the doom and gloom of those challenging the policies of this President is simply unfounded.

We have created and we are witnessing the impact of policies that encourage growth. What did we do? We lowered tax rates on personal income for all taxpayers. The top marginal rate was reduced from 39.6 percent to 35 percent, and a 10-percent bracket was introduced. Where did the real impact of this fall? It fell on small businesses in this country. It helped them grow and prosper. It helped them create a lot of the figures you are seeing out of the household survey—favorable figures, fabulous figures, I might add.

We lowered taxes on business investment, including a much lower tax rate, 15 percent, on dividends and on long-term capital gains. Of great importance is the tax cuts allowed businesses to more quickly deduct the expenses of their investments in machinery, computers, and software. American companies have responded by employing more people and investing more money in equipment and facilities. And in what part of the business sector will you see most of that happening? You will see it happening in the small business sector.

Now, small businesses, they can be organized in a number of different ways. They can be organized as individual entrepreneurs. They can be organized as partnerships, various legal organizations. Family businesses will even incorporate. Professionals like myself, we have professional corporations that we organize in. So when we talk about separating business out into various sectors, no matter how you do it, somehow you are going to affect the small business community, where we see most of our economic growth.

So we have to be careful about attacking corporations and attacking businesses in general because they do create the jobs in this economy. They create employment. They are what America is all about; that is, the principle of free enterprise and people holding their own property and being able to move themselves up in society.

Another thing that happened to help keep our economy moving was the increased child tax credit from $500 to $1,000 per child. We also ended the marriage penalty. Married couples no longer pay higher taxes than equivalent singles, which eliminates a perverse incentive against marriage.

We also repealed the estate tax. Probably the most unfair tax we have in this country is the estate tax because the estate tax has been taxed once already, and sometimes taxed twice, and then when you die it becomes a death tax and you have to pay again.

When a family, a small business family in many cases, is struggling to try to get that small business to sustain itself during an untimely death in the family, then along comes the estate tax and whacks that family hard. Many times these are farmers and ranchers who have been struggling to try to save their farm or ranch. In States such as Colorado, where we are getting a lot of rapid growth, there is a demand for real estate, and many times these farmers and ranchers are forced to sell to developers or somebody else who is going to use that land for something else other than the production of crops and livestock. The end result is, we lose an opportunity to have an open space available in States like Colorado where there is a desire to have a considerable amount of open space.

Home ownership is at an alltime high. I am pleased to be able to join with the President in putting forth the American Dream Downpayment Act, where we provide some well-deserved dollars to people, first-time home buyers, in this country. This is for people who have been paying rent who could be owning the same type of dwelling except that the only problem keeping them out of their own house, their own personal dwelling, is the fact that they cannot make the downpayment. So this piece of legislation was desired to help those individuals. By the way, many of them are minorities. As a result of that act, we are beginning to see a lot of growth in home ownership, and particularly among minorities it is getting much better.

There are a lot of positive effects that happen with home ownership. The children tend to be better educated. They become better citizens in their communities. They tend to be more stable. They are not moving around as much. They care; they take an active role in what is happening in their community.

Home ownership is another good story that is coming out of this administration. Sometimes I just do not think we talk enough about it, but it is important. It is important to communities, and it is important to families.

So I summarize and say the good news today is something we need to work hard to sustain. It is important we draw this session to a close. We have some important pending legislation. We need to get that passed because it will help contribute to the continued growth of this country as far as the economy is concerned. It will help to continue to make America more secure, and it will help because we need to have a strong defense for this country.

Today's numbers, again, are good news, part of a healthy, steady trend of growth and prosperity.

I yield back my time, Mr. President.

Ms. LANDRIEU. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BURNS). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Ms. LANDRIEU. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Louisiana.

TAX RELIEF

Ms. LANDRIEU. Mr. President, I thought I would take the next 15 minutes or so to review a couple points about the tax relief bill we are considering adopting. There are three or four major pieces of legislation that the Senate is trying to finish in the next couple of days. One of them is the reorganization of homeland security and the Intelligence Committee. One of them is the tax relief bill that we have been working on for 2 years. There are other issues that this Congress is struggling to get finished in the next few days, but the most important issue to me and the one I would like to spend a bit of time talking about now is the tax relief bill that was put together by many of us, or tried to be put together by many of us, over the last 2 years.

That started out for a very good purpose and a very good reason because there was a trade decision made by the WTO that called into question the legitimacy of some part of our Tax Code relative to certain businesses.

We had to take some action or our businesses would have been fined through the WTO because the European Union had prevailed in their argument. So our tax writers got busy and tried to fix that. We need to fix it. But what has happened is, we have done more than fix. We have really messed up some things. Unfortunately, inexplicably, and as a grave injustice, we didn't take care of our men and women in uniform. For the men and women who are taking care of us on the front lines and suffering pay reductions, we are letting pass the opportunity to make their paychecks whole. I am going to spend a few hours over the next couple of days talking about that. Before I do, let me share a fact that maybe some might not realize. We have always had men and women in our Guard and Reserve units supplementing our Active Forces. But never in the history of this country have we relied on the Guard and Reserve to the extent we are today.

Let me share that in the Berlin crisis of 1961, we called up 148,000 reservists; in the Cuban missile crisis, we called up 14,000; in the Vietnam war, we called up 37,000—for a total of almost 200,000 from 1953 to 1989.

You can see from this chart that just in the last 12 years, in the Persian Gulf War, the invasion in Haiti, the Bosnia peacekeeping, Operation Southern Watch, which is ongoing, the Kosovo conflict, and Iraq and Afghanistan—and this list is not completely up to date—we have called out 364,000 guardsmen and reservists to supplement our Active Forces, to protect this country, to defend this country. These troops have been willing to go at great sacrifice, but the least we could do is keep their paychecks whole. The least we could do, if we are giving out tax credits and tax cuts to other people, is include them in the bill. This conference report that this Senate is considering over the next couple of days, $137 billion, left them completely out.

We talk about helping small business. This is a picture of one of our soldiers. We left them out but we put in ceiling fans. I know people are not going to believe this, because it is hard to believe. But the guardsmen and reservists and their employers who keep their paychecks whole while they are on the front lines so they can pay their mortgages, pay their car notes, continue to contribute to their children's college trust fund, or just keep their household together, the employers of this country, small employers and large employers, are doing the right thing, the patriotic thing, not mandated by the Government but out of their own good heart, digging deep, keeping those men and women on the front line with a full paycheck.

We had the opportunity to give them a modest tax credit so they could keep that paycheck whole and hire a temporary worker to take the spot of that guardsman or that reservist who went overseas to protect us. And we couldn't find one line, one paragraph, not one word in a $137 billion tax relief bill for every conceivable commercial, industrial, or manufacturing interest in the country, for our guardsmen and reservists.

I want to show you the state of our Active Reserve. Sometimes pictures help us to understand. I know this subject can be complicated, but it is actually very simple. We just didn't put our Guard and Reserve in the $137 billion tax bill. We put everybody else in, but we left them out. I am going to stand here until I get an answer why.

In 1940, at the height of the Second World War in the 1940s, this was the Army troop strength. This is where we had to go in the Second World War to defend. This is in the thousands, so it was 600,000 to defend our Nation. Because we, of course, won that war, won the Cold War, defeated communism, we have dropped the active strength force of our troops down to probably the lowest level since 1942. What fills this gap is our Guard and Reserve that are called up when we need them.

When September 11 hit, we needed them and we called them. And they went. And 41 percent of them are going with a pay cut. Some of us got together, Republicans and Democrats on the Senate side, Chairman GRASSLEY and our ranking member, Senator BAUCUS from Montana, and fixed that. Since we have a big, fat tax bill going through, couldn't we possibly give a little bit of money to the businesses that are keeping those paychecks whole, filling the gap, giving us extra strength, Active and Reserve, to protect us?

But for some reason, once the bill left here and got over to the House Republican leadership, it got taken out.

I know Senator BYRD is here to speak so I will wrap up my comments in just 5 minutes. I know he wants to speak, perhaps a little about this and other subjects. But I want to say a few things that the newspapers are saying about this bill.

Let me be clear. I don't oppose this bill for any other reason other than the fact that the $2.4 billion tax benefit to employers for the Guard and Reserve to help keep their paychecks whole while they are on the front line was left out. There are other provisions of this bill that are questionable. There are other important issues that have been raised by the Senator from Iowa, Mr. McCAIN from Arizona, and the Senator from Massachusetts. Those are legitimate arguments as well.

But leaving the Reserve and the Guard out and their patriotic employers is more than I can bear to be silent about.

This is some of what some of our newspapers are saying about the general bill.

The Washington Post, October 8:

> The bill is aimed at ending a transatlantic trade war by scrapping certain illegal tax subsidies for U.S. exporters that have brought on retaliatory action by Europe. But in the version approved last night by the House, that modest goal is largely overwhelmed in a preelection package of benefits for dozens of constituencies, including NASCAR track owners and mall builders.

That is the opinion of the newspaper. Again, I don't know if the NASCAR track people are deserving or not. Many people enjoy NASCAR in my State. Maybe they are. But I can promise you that nobody in my State thinks NASCAR owners or investors or ceiling fan importers deserve a tax break more than the employers who are keeping whole the paychecks of our men and women on the front line. I can promise you that—not a one. I don't know of a business or a mall or a retail establishment that thinks they should get in line before the Guard and the Reserve.

It was a long line. This is what I call a long line. This is not a thin bill. This is not a one-page bill. This is a lot of lines and a long line. They didn't even get in the middle of the line. They didn't get in the end of the line. They didn't get in at all. It is a grave injustice.

The New York Times, the Boston Globe, the Minneapolis Star Tribune, and the Las Vegas Journal have all editorialized against this bill for different reasons. I am hoping that many of these newspapers and others that are listening will begin to focus on this issue as to a reason why we should vote against this bill, send it back to conference, redo it.

We all make mistakes. This was a big mistake the House Republican leadership made. I say basically this is a paycheck that we send to our soldiers. Their average pay is $30,000. According to our own report, these soldiers are getting a 41-percent pay cut. We could have done something to help them, but we chose not to. So I am going to vote against this bill. I know other Senators are joining me in letters being sent to the conferees, which evidently did not make an impression on them—at least not to the point where they kept our provision in. That was passed by 100 votes here, Republicans and Democrats, and it would be paid for with an offset. We didn't ask for this provision to be included without paying for it. It is even paid for. But they decided—the leadership, Chairman THOMAS and, I guess, Congressman DELAY and Speaker HASTERT—we could not afford it.

Let me again say for the record that there is $137 billion in this bill. The bill started out as being a $50 billion fix over 10 years. That was the cost of fixing the problem we originally started to correct. It grew and grew and grew. Everyone, it seems, was added in, except the men and women who are taking the bullets morning, noon, and night.

It is hard for me to go back to Louisiana and explain this. I am not sure I could explain it adequately to the 5,000 families who are currently serving on the front lines. Why should they pour a little water into the cereal bowl, as one woman wrote to me, trying to make ends meet? Why did some of them lose their houses because their notes pile up and they cannot pay the bill when they get home? What could we be thinking as to the justice of losing an automobile, losing their retirement, losing their college benefit, or having to make them stretch and sacrifice when we could help them? If we could not afford it, if we didn't have the money, that would be one thing. This is $137 billion. Why could we not have given them $1 billion, or $2 billion, or half a billion? Or even if you could not give them the money, write something in the bill, for Heaven's sake, and tell them you understand they have a 41-percent pay cut and you are sorry you cannot fix it today, but when we get another bill, we will try later. Not even a comment.

When they go off to war, they don't make a lot of comments to us either, other than I am going to my post, I am going to do my job; I will see you when I get back. Take care of my family. That is all they say to us. We could not even get a paragraph of gratitude in this bill.

Senator BYRD is going to speak. I will speak a few more times this weekend about this. I am doing as many interviews as I can, explaining this to people and handing out material. I am still waiting for Chairman THOMAS to either write me, send me a note, write a letter, make a comment in the newspaper, or meet me for a debate about why he took them out of the bill in the middle of the night, when the cameras were not on, and there is virtually no record of the discussion. I don't know. The people in my State would like to know.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has up to an hour under the cloture rules.

ANOTHER WHITE HOUSE EXCUSE FOR WAR

Mr. BYRD. Mr. President, I thank the distinguished Senator who is presiding over the Senate with a degree of dignity, poise, collection, and composure, as it is so rare today. I thank Senator BURNS.

Mr. President, I thank the Senator who has been speaking, the Senator from Louisiana. She tells a story that many of my Guardsmen and Reservists and their families can also relate to. I compliment her on standing on the floor. She has courage and determination. When she says she is going to stay here until she gets some satisfaction from other Senators, she means that. I know that. I thank her for her kind reference to me.

I will not speak longer than 15 minutes, after which the Senator may resume if she so desires.

On Wednesday, October 6, the Senate Armed Services Committee received testimony from the top CIA weapons inspector in Iraq. The report of Charles Duelfer explains in precise detail the facts that the American people have long ago realized: that Saddam Hussein had no weapons of mass destruction, and that Iraq never posed an imminent threat to the United States. I said that at the beginning, before we voted on that nefarious resolution on October 11, 2002, to shift the power to declare war, which is set forth in the Constitution very clearly, as being reposed here in the Congress of the United States; instead, to shift that power to the hands of a President. How shameful. How shameful that we turned our backs—the Senate and House collectively—on the Constitution of the United States.

The fact that weapons of mass destruction have not been found in Iraq is nothing new. Our military has been on the hunt for banned Iraqi weapons since March 19, 2003, when President Bush ordered the invasion of Iraq under his nefarious doctrine of preemption—preemptive war—a doctrine that squarely contradicts the constitutional powers given in the Constitution as having been reposed in this body and in the other body across the way. The CIA conducted its own extensive search for more than a year. Did anything turn up? No. No stockpiles of dangerous germs, no warehouses of poison gases, no nuclear weapons.

They say, well, Saddam Hussein has used these on his own people. Of course, he had some years before. I can understand how many Senators were misled by the statements of the administration and, in particular, the statements of the President and the Vice President and others on the President's team.

In fact, the CIA report finds that the truth on the ground in Iraq was almost the exact opposite of what the White House had claimed in the runup to the war. Contrary to the President's statement, the CIA report says that Saddam had no active WMD programs, and he didn't have even so much as a plan to restart them. Despite the Vice President's insinuations, the CIA found no secret plans for Iraq to attack the United States. Despite the National Security Adviser's warnings of mushroom clouds, the CIA found that Iraq's nuclear weapons program was dormant and decaying.

Now, the White House is desperately trying to have their spin machine generate a new reason for the war. We have seen a litany of reasons as time has ensued following March 19, 2003—a litany of reasons. When one reason was shot down, when one reason proved to be wrong, the White House always came up with another reason, another reason, another reason we sent our men and women to war, the first war fought under the pernicious doctrine of preemption, the Bush doctrine of preemption. And regardless of how many times the President may seek to salve the conscience of his administration, the fact remains that Saddam Hussein was not an immediate, imminent threat to the security of the United States. I said so at that time. It was the wrong war at the wrong time in the wrong place, and I will say that again and again.

The President, on his way to a campaign stop in Wisconsin, has tried to gloss over the collapse of his central reasons for a preemptive war. According to the Associated Press, the President said:

> The Duelfer report showed that Saddam was systematically gaming the system, using the U.N. Oil for Food Program to try to influence countries and companies in an effort to undermine sanctions.

So does the President mean to say he launched this war to stop waste, fraud, and abuse in a U.N.-run humanitarian program? Does the President mean to say that Saddam Hussein's greed was the reason that 225,000 American troops were sent overseas, away from their families, their loved ones, and their communities, to attack Iraq? Are we to believe that the President now seeks, once again, to justify his war against Iraq because Saddam was cheating the Oil for Food Program? Is that the reason we sent our men and women to war? Mr. President, unbelievable, unbelievable, incredible. Too bad that the White House does not hold Halliburton to the same standard.

The truth is that the President changes his reasons for the war more often than he changes his socks. On March 19, 2003, the day he sent American troops into battle—many of them never again to return to their homes, their families, their native soil—the President said:

> The people of the United States and our friends and allies will not live at the mercy of an outlaw regime that threatens the peace with weapons of mass murder. We will meet that threat now with our Army, Air Force, Navy, Coast Guard, and Marines so that we do not have to meet it later with armies of firefighters and police and doctors on the streets of our cities.

I have heard that so many times. The President did not say a peep—not a peep—about the Oil for Food Program on the day he ordered our brave men and women to march on Baghdad. Talk about flip-flops. Yet despite all that has gone wrong in Iraq—the failure to find weapons of mass destruction, the failure to stabilize postwar Iraq, the failure to share the burdens of occupation with our allies, the failure to equip our soldiers with the body armor they need, and the deaths of 1,061 American troops as of my last reading of the press the President maintains that he would do everything the same if he had to do it over again.

Well, I hope not, and I hope the Senate of the United States would not do the same thing it did before if it had to do it over again. I spoke out against that nefarious, terrible action, sending our men and women to their deaths in Iraq, in a foreign land, spilling their blood in the hot sands of the Middle East. For what? For what?

The President maintains he would do everything the same if he had to do it over again. Maybe he would. Surely he should learn from what has already happened. The American people might not stand again for that.

Mr. President, the fog of war is beginning to lift and for the first time, the American people are beginning to see the war in Iraq on clear terms. As cruel as Saddam Hussein was to the Iraqi people, he was no imminent threat to the American people. That is why we went to war. That is why this administration led this country into a war against a nation that had not provoked us, had not attacked our country. That was the Bush doctrine, and it is the Bush war.

Saddam Hussein had no links to the 9/11 attacks, and yet a majority of the American people I noticed in some polls not too long ago, believed at the time the polls were taken that many or, indeed, most of the attackers, most of the hijackers on 9/11 were from Iraq. That is not the case. Not one, not a single one of those 19 hijackers was from Iraq, and yet this administration would like to have the American people believe that it was otherwise.

I guess they lie awake at night concocting new ways in case this fails, in case it is shown to be wrong: Where is the next fallback? What do we fall back on next? Iraq was not the central front of the war on terrorism until President Bush invaded and unleashed a firestorm of anti-American sentiment.

The President's postwar strategy has been a failure. The President's handpicked envoy to run postwar Iraq, Ambassador Bremer, said there were never enough troops to stabilize Iraq. The President himself, in a rare acknowledgment of fallibility, admitted on August 27, 2004, that he had miscalculated the danger of postwar Iraq. Yet the President still has no exit strategy for Iraq. How long will the American people have to wait to hear from this President and this administration an exit strategy? How long will we have to wait for a plan from this administration to bring our men and women home with honor?

The White House still refuses to acknowledge that Iraq has been turned into an international basket case due to an unprovoked and unjustified war. Instead, the White House has paralyzed our military, has paralyzed our diplomacy and our allies by maintaining we must continue to stay the course. Stay what course? Keep on with the same? Mr. President, 1,061 dead and counting, and we are supposed to stay the course? What our Iraq policy needs is change, not more of the same.

The original rationale for preemptive war against Iraq has collapsed. The CIA's new report on the absence of weapons of mass destruction is the final nail in the coffin of the administration's prewar claims. How long will the American people be content with a President who refuses to acknowledge the disaster caused by his doctrine of preemptive war? How many more American men and women will have to shed their blood in the hot sands of the Middle East? How long will our troops struggle against a tide, the increasing tide of violent anti-Americanism that this terrible misbegotten war has spawned? How long will the United States of America be tied down in a Middle Eastern country while other threats at home—here at home—go unaddressed? How long, Mr. President? How long?

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

BUSINESS IS DOING ITS PART

Ms. LANDRIEU. I ask unanimous consent to speak for 10 minutes. I see other colleagues on the Senate floor. I will take the 10 or 12 minutes I have remaining, if I might.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. LANDRIEU. Mr. President, I thank the Senator from West Virginia for the kind words he spoke before he made the very important points he has made this evening and throughout the course of actually the last few days. The challenge we face in Iraq is the most important issue before our country. I thank him for his kind words, and I want to thank him for his continued leadership.

As we get toward these evening hours, I remind my colleagues—

Mr. BYRD. If the distinguished Senator would yield, let me thank her for her most charitable comments concerning this Senator. She graces the Senate from the great State of Louisiana. She does her work. She is deeply dedicated. She is on the Appropriations Committee, on which I have had the good fortune to serve for many years. I thank her for what she is doing for her people. I thank her for what she is saying on the Senate floor. I thank her very much. I appreciate it. I appreciate the fact that she is my colleague and shares the concerns of my people in what she is saying today.

Ms. LANDRIEU. I thank the Senator. My colleague is so right that the men and women of West Virginia have served so bravely and so willingly, as so many people from our States have served in the Active Forces and in the Reserve and the Guard and, as I said earlier in my remarks, do so without the expectation of fanfare. They do not want awards. They do not even want that special attention in their communities because they are so proud to serve and they are so willing to serve. That is what makes me want to stay on this Senate floor even more for them, knowing that about these families.

I will read a few things into the RECORD during the 10 minutes that I have to build this argument and get out these facts about this important issue. One of the three or four important pieces of legislation we are trying to make decisions about in the last 2, 3, 4 days of this Congress is whether this bill, which is called the FSC bill—it is a tax cut bill which modifies many sections of the Tax Code—should pass or if it should not. I am going to vote against it because the Guard and Reserve were left out. The people on the front lines taking the bullets, taking the cut in pay to serve us, and risking their lives were in the bill when it left the Senate, but because of the House leadership they were left out.

This bill is $137 billion, and if we could not afford $2 billion of this $137 billion for them, then I do not know what we can afford because none of us would be here without them and none of the businesses benefiting from this bill would be able to actually operate, function, have a license, or have the freedom to function or enjoy the free enterprise system that has been created over 220 years without the men and women in the armed services.

Some of us were silly enough to believe that in a bill that was $137 billion, they could get in at the top of the list, but we were mistaken because they did not even make the cut.

I ask unanimous consent that this article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Officer, Dec. 2003]

EMPLOYER SUPPORT GROWS

"I know of no other time in our nation's history when so many employers have voluntarily offered this level of support and benefits," Secretary of Defense Donald H. Rumsfeld wrote in September to employers of Reservists and National Guard members called to active duty in the global war on terrorism.

In his open letter of thanks and praise, Mr. Rumsfeld expressed "the deepest appreciation of this department and the United States government for your unswerving support of our nation's military." His letters were sent 29 September 2003 to directors of major employer associations and government agencies who are asked to then distribute them to their members.

Many employers "did more than was required by law by voluntarily offering continued benefits, pay differentials, and additional, creative forms of family support, which made the period of separation so much easier to bear," Mr. Rumsfeld noted. He said that without the continued support, "we could not maintain a strong military or sustain the current effort to overcome the international terrorist threat directed at our country, our citizens, and all who love freedom."

In concluding, the Secretary of Defense wrote: "You have my deepest thanks. Your direct contributions and support are another illustration of America's greatness as a nation."

Since 11 September 2001, that employer support has been extended to more than 350,000 Reservists and Guard members who have been mobilized and demobilized. This commitment is documented in the charts on the pages that follow, summarizing corporate policy for 185 of the Fortune 500 companies when Reservist/Guard employees are called to emergency active duty. Replies represent 112 new responses (compared with 91 last year) adn 73 repeats from previous years. On the charts, as well as in this article, asterisks indicate responses from last year or two years ago. For many companies, policies represent upgrades since 9/11 and are usually for implementation during the period of the terrorist threat.

Of the 185 companies listed, 19 provide full salary; 17 provide salary plus differential; 137 provide differential; nine provide no salary or differential; and three reply either vaguely or "do not participate in surveys."

COMPANIES THAT LEAD

From among the 19 where full salary is provided, companies that lead the way are #26 J.P. Morgan Chase & Co., full salary from 9-11-01 through 3-31-04; $69 American Express, #179 MBNA, #187 *Schering-Plough, and #397 MGM Mirage, for the duration; and #242 *First Data and #355 W.W. Grainger, for one year.

Among the 17 with a combination of salary plus differential, companies with the most generous packages include #235 General Mills, salary for one month and differential for the duration, plus a $300 monthly Military Leave Allowance; #51 *Dow Chemical, salary for two months and differential for the duration, not to exceed five years; #199 United Services Automobile Assn., salary for one month and differential for up to two years; #215 National City Corp., salary for six months and half-salary for six months; #419 **Pacific LifeCorp., salary for six months and differential for six months; #92 Coca-Cola, salary for three months and differential for 275 days; #183 *AFLAC, salary for three months, then one month of differential for each year employed to equal annual salary; #5 General Electric, salary for one month and differential for 11 months; #74 Georgia-Pacific, salary until last day of month when employee reaches 30 days of service and differential until 12th month is reached.

In past surveys, where "the duration" or "one year" was considered the ultimate in differential payment, that standard has changed since 11 September 2001. The following first five groups have continued to raise the bar for the 137 in this category, as they join with the duration and one-year providers:

Maximum of Five Years: #15 Boeing and #77 BellSouth.

Three Years: #10 Verizon Communications, #56 Lockheed Martin, and #141 Lucent Technologies.

Two and One-half Years: #22 AT&T, #30 Sears, Roebuck, #54 Sprint (continues to be extended since 9/11), and #105 Raytheon.

Two Years: #128 Wyeth, #315 *Eastman Chemical (two years at 80 percent of difference), and #335 Avaya.

18 Months: #11 Altria Group (through 10 September 2004), #50 ConAgra Foods, #80 *Electronic Data Systems, #116 **Xerox, #177 **Southern, #814 *Dominion Resources, #200 Pepsi Bottling, #224 Entergy, #301 Rohm & Haas, and #408 Hormel Foods.

Duration: #3 **Exxon Mobil, #6 Citigroup, #8 **International Business Machines, #37 **Pfizer, #49 United Technologies, #52 Marathon Oil, #72 Tyson Foods (retroactive to 9-11-01), #79 *Bank One Corp. (salary offset by 5/7 of military pay), #85 Caterpillar, #127 Household International, #140 PG&E Corp., #156 **Union Pacific, #170 Pacificare Health Systems, #211 Public Service Enterprise Group, #246 Calpine, #270 *DTE Energy, #304 NCR, #381 **CDW Computer Centers, and #486 New York Times.

One Year: #7 Chevron Texaco, #12 ConocoPhillips, #32 *Freddie Mac, #35 Albertson's, #42 J.C. Penney, #43 United Parcel Service, #45 Walgreen, #57 *Prudential Financial, #71 **Archer Daniels Midland, #84 Massachusetts Mutual Life Ins., #99 Northrop Grumman, #100 Abbott Laboratories, #101 *Sara Lee, #110 3M, #111 *Nationwide, #119 AT&T, #139 *Goodyear Tire & Rubber, #163 *Edison International, #172 **Eli Lilly, #196 Williams, #231 CSX Corp., #249 MeadWestvaco, #285 KeyCorp., #302 Thrivent Financial for Lutherans, #303 Unisys, #350 Mellon Financial Corp., #392 *Harley-Davidson, #393 Providian Financial, #399 *Energy East, #415 *Ball, #418 Ameren, #422 Adolph Coors, the two companies in #426 position, *Kerr-McGee and Wisconsin Energy, and #462 H&R Block.

Ms. LANDRIEU. This is from "Citizen-Soldiers and the Fortune 500. Employer Support Grows." The article reads:

> "I know of no other time in our nation's history when so many employers have voluntarily offered this level of support and benefits," Secretary of Defense Donald H. Rumsfeld wrote in September to employers of Reservists and National Guard members called to active duty in the global war on terror.

In his open letter of thanks and praise, Mr. Rumsfeld expressed the deepest appreciation of his Department and the U.S. Government for "your unswerving support of our nation's military." His letters were sent on 29 September to directors of major employer associations and Government agencies that were asked to distribute them to their members so their members would know of the good works and good words of Secretary Rumsfeld.

His letter went on to say:

> Many employers did more than was required by law by voluntarily offering continued benefits, pay differentials, and additional, creative forms of family support, which made the period of separation so much easier to bear, Mr. Rumsfeld noted. He said that without the continued support, we could not maintain a strong military or sustain the current effort to overcome the international terrorist threat directed at our country, our citizens, and all who love freedom.

Those are beautiful words. My colleagues would acknowledge these are beautiful words. The problem is, they are only words, because when the administration that Secretary Rumsfeld works for and the House Republican leadership that follows his lead and his direction put together a $137 billion tax package, they did not think they could find the room, the time, the energy, or the concern to really thank the employers by giving them part of this tax cut. They decided to send them the brochures and the newsletters and the go-for-it congratulations kind of letters, but the real people who they wanted to help or the people they thought deserved the most help were actually in the bill.

I think this is pretty clear evidence that the words that are sometimes written by leaders do not really convey what actually happens, that really what happens is what is in the budget. When one is in the budget, they know they matter, and if they are not, they do not. It is about as simple as that.

I am going to submit a list of the employers—the National Committee for Employers supports the Guard and Reserve, outstanding employers. I have them all through my State. I am so proud of these small businesses, I do not know what to do.

I had one of my mayors whose chief operating officer was called out of the city not once but twice, one of the most talented, remarkable public servants. The whole city sort of suffers when one of these skilled folks goes off, and I have heard his story out of Lake Charles, LA. But they kept his paycheck going voluntarily. Many employers keep the paychecks going.

I thought, silly me, we have a tax bill. Could we not acknowledge the patriotism of these thousands of employers in our country, big companies, small companies, local governments, fire departments and police departments that are digging deep? There are no line items in their corporate budgets to pay people who are not at work, but they do it anyway. We do not even mandate they do it; they are doing it voluntarily. They do not put a line item in their corporate budget: Pay people that are not on the job that are on the front line. But you know what. They do it. They do it for a good reason—because 41 percent of the Guard and Reserve are taking a pay cut to serve on the front line.

I want to submit for the record some the patriotic employers.

I ask unanimous consent to have some of their names printed at the conclusion of my remarks.

(See exhibit 1.)

Ms. LANDRIEU. Unlike some of the leaders who just write these employers letters and tell them what a good job they do, I want these employers—Conoco and Chevron and Alcoa and All About Music and Allianz Life Insurance Company and American Electric Power. American Express, the American Stock Exchange, and I could go on and on, 250 Central, 3M—there are pages of them—I want to tell them all that there are a few Senators, some Republicans and some Democrats, who are going to do more than send you a letter. We would like to send you a tax credit and we think you deserve it.

You didn't really ask for it. We understand that because you are digging deep. But we are going to give tax credits out to everybody in the world, it looks like, because we have ceiling fan importers and NASCAR race investors; we have shipbuilders—many of which are in my State and they know I support them—but we can't find a tax credit to help these companies that are sending paychecks for the front line to keep our soldiers prepared to fight and defend our country when really it is the Federal Government's responsibility.

If they said we didn't have the money, I would just sit down and say we just don't have it. We are running a deficit. We can't afford it. But for me to sit here and watch $137 billion fly through this Chamber and land in the hands of whomever, but not these companies, not our troops, not the people who are having a hard time paying their house note and keeping their household together, it makes me literally want to just get on my knees. I can hardly stand here. I really feel like just falling out.

I want to read a couple more things into the RECORD. I only have a few minutes. This is from Kristin who called in today from Portland. Her husband is in the Army Reserve and has been in Iraq for about a month. She is anticipating a 50-percent cut in pay. Her husband was a private consultant project manager.

> We knew when he was activated that he was going to have to be away, but to think that some in Congress aren't even willing to do something to help employers continue to pay him is hard to believe.

Gwen from Minnesota, her husband spent a year deployed in Iraq as a reservist. He is a schoolteacher. He took a significant pay cut during deployment.

Because I talked to Gwen, let me add a few things to this. Her husband has a doctorate degree. He is teaching school, in either high school or elementary school. He is a real double patriotic American because, even though he has a doctorate degree and could teach at a college or get some high-paying job, he feels compelled to give his life to help children.

In his spare time he goes to the front line. So what does our Government do for Gwen and her husband? Send them letters in the newsletter to tell them how proud we are. Then, when they are not looking, in the dead of night, we pass a $137 billion tax cut and leave them out? I don't think so.

Sue, from New Orleans, her husband has been activated for a year and a half but has not been deployed. Even so, her family is experiencing a 60-percent pay cut during his deployment.

Trish from Pennsylvania, her family is experiencing a one-third pay cut. He is on his second deployment. They may have to declare bankruptcy. Her husband is in the Air Force Reserve. He was deployed to Afghanistan last year and is headed to Iraq in the fall.

We in Congress think we do a great job for these families by providing them financial counseling. Let me say one thing. Most of the people I know in the Army and Reserve do a very good job managing their money. They are happy for the help we could give them and they are happy for the counseling that they could sign up for, but I can tell you what they really want. They just want a paycheck and they want a solid paycheck. They don't want something to make them rich, not something to allow them to live in a mansion or drive around in a Lexus, but they would like a real paycheck. We could have helped them but we decided this Congress had other priorities.

The last thing I want to submit for the RECORD is a letter to the President of the United States that I am sending right now. I am going to read it and then I am going to yield the floor to the Senator from Kansas.

May I have order, please?

The PRESIDING OFFICER. The Senate will come to order.

Ms. LANDRIEU. The letter says:

> DEAR MR. PRESIDENT: I am writing to bring a grave injustice to your personal attention. During Senate consideration of the FSC-ETI legislation, the members of the Senate added a modest provision to assist our troops. GAO studies have concluded that 41% of our Guardsmen and Reservists called to serve their country on the front line must take a pay cut to do so. Fortunately, some companies around the country have stepped up to the plate, and taken the patriotic step to make up the pay gap of these brave men and women.
>
> The provision that we added in the Senate would have provided a tax credit of 50% of these costs to companies who make up that difference. In so doing, we hoped both to acknowledge the patriotism of existing companies, and at the same time encourage more employers to take this step.
>
> Mr. President, no doubt that as you have traveled the country, you have confronted the same stories I have from spouses and military families struggling to make ends meet. We have had to ask an awful lot of our Guard and Reserves, and they ask very little from us. So trying to take this worry off the minds of our men and women on the front lines seemed to be the least we can do.
>
> So it is with deep embarrassment for our government that I must report that this very modest relief for our troops was stripped from the conference report by Congressman Thomas and the leadership of the United States House. While I am certain that representatives of your administration participated in this conference, I presume that you did not have personal knowledge of the decision to cut support for our military families.
>
> Regrettably, this decision has placed all of us in a difficult position. While I endorse many aspects of the FSC-ETI bill, but I simply cannot support a measure that places so many lesser priorities ahead of our military families.
>
> Mr. President, I respectfully request that your exert your great influence to correct this injustice. Your willingness to veto this bill, or your insistence that a free standing bill be adopted, could redress this failure. Mr. President our troops need your leadership on this matter. Let us not disappoint them.

I might add, our troops need our leadership. I am sending this letter. I am sending a similar letter to Congressman THOMAS. I hope in the next 3 days that we are debating we may get an answer that tells us either why they were left out or what we could do to help them, because $137 billion is a lot of money and they deserve to be in the bill.

I have ended my speech. I see the Senator from Kansas on the floor and I yield the floor.

EXHIBIT 1

NATIONAL COMMITTEE FOR EMPLOYER SUPPORT OF THE GUARD AND RESERVE

OUTSTANDING EMPLOYERS

250 Central, 3M, 99th RRC, AMSA 113 (G), A.G. Edwards & Sons, Inc., A.K. Steel/A.E.I.F., Abbott Laboratories, AC Nielsen, Accenture, Accolades Awards and Trophy, Adelphia Cable, ADT Security Services, Aerojet Ordnance Tennessee, Aetna, Affiliated Computer Services, Inc/Riverside, AFLAC, Ahold Information Services, Air Products and Chemicals, Alabama Rural Water Association, Alchua County Sheriff Qffice.

Alameda County Sheriffs Office, Alamo Area Council of Government, Albany, N.Y., Albertsons, Inc., ALCOA, Alion Science & Technology, Alkermes Inc., All About Music, Allianz Life Insurance Company, Allstate Insurance Company, Alpha Industries, Altair Engineering, Inc., Alticor, Inc., Amazon.com, Amber Mechanical Contractors, Inc., AMERESCO, American Electric Power Company, American Express, American Express Financial Advisors, American General Financial Group.

American Heart Association, American Ink Jet Corp., American International Group, American Medical Response, American Postal Workers Union, American Recycling Systems, Inc., American Standard, American Stock Exchange, AmeriGas, Anderson County, Blue Mountain Energy, Blue Cross Blue Shield of South Carolina, Bluefield Police Department, Bluefire Partners, Blum, Shapiro & Company, P.C., BMC Software, BMW Manufacturing Corp., Boeing Aerospace, Boeing Electron Dynamic Devices, Inc., Boeing Satellite Systems.

Boise Cascade, Boise Police Department, Booz-Allen & Hamilton, Bose Corporation, Bradley-Morris, Inc., BRAVO! Development Inc., Brighton School District 27J, Bristol-Myers Squibb, Britton Engineering & Land Surveying, Inc., Brooks Automation Inc., Broward County Sheriffs Office, Broward County, Florida, School Board, Brown & Williamson Tobacco Company, Bureau of Alcohol, Tobacco and Firearms, Burlington Northern Santa Fe Railroad, Burnet County Sheriff's Office, CACI, Inc.—Federal, Caddo Parish Schools, La., Calamos Asset Management, Inc., Canadian National Railroad.

Canon Business Solution, Cantey & Hanger, Cape May County Municipal Utilities Authority, Capitol One Financial, Capsugel/Pfizer, CAREFLITE, CASAS International, Caterpiller, Inc., Catholic Finance Corporation, CDW Computer Centers, Cendant owns [Avis & Budget rent a car agencies], Cendant Mobility, Cendant Mortgage, Cendent Corporation, Center of Applied Technology North, Centex Rooney Construction, Central Arkansas Veterans Healthcare System, Central Connecticut State College, Cerner Corporation, Cerritos College.

Charles Schwab, Charter Consulting, Inc., Chautauqua and Erie Telephone, Cheaptickets, Chesapeake Biological Laboratories, Chesterfield County, Computer Sciences Corporation, Comsewogue School District Board of Education, Con-Way Central Express, Con-Way Western Express, ConAgra, Concurrent Technologies Corporation (CTC), Conectiv Power Delivery, Congentrix Energy, Congress Title, Connecticut Light & Power Company, Conoco, Cónoco-Phillips, Consolidated Edison of New York, Cook County, Ill.

Cooley Manion Jones LLP, Coors Brewing Company, Copperfield LLC., Cornerstone Retirment Community, Corriher—Lipe Middle School, Country Insurance & Financial Services, County of Santa Clara, Environmental Resource Agency, Parks & Recreation, Covance, Inc., Coweta County Sheriffs Department, Cox Communications, Cranston Print Works Company, Crowley Middle School, CSX Corp., Cummins, Inc., Curtiss-Wright Corp., CVM, Inc., D. H. Griffin Company, D. Miller & Associates, PA, Daimler Chrysler, Daphne, AL P.D. (and City of Daphne).

Dassault Falcon Jet—Wilmington Corp., Data Base Accounting Solutions, Inc., Data Search Systems Incorporated, Davidson County, Tenn., Davie Police Department, DeKalb County School System, Delaware, Dell Computers, Delphi, Delta Faucet Company, Department of Environmental Protection, Department of Labor/Wage & Hour Division, Department of Military of Affairs, Designer Checks, Deutsche Bank, DeVry Inc., Digital Partners Inc., DirectEmployers Association Inc., Discover Card Services, Discover Financial Services, Discover Financial Services, District of Columbia (Washington, DC).

FISI Madison Financial, Fleet Bank of Hartford, FleetBoston Financial, Fleming Companies, Inc., Flik International, Florida Blood Services, Florida Power & Light Company, Florida State Gov., FMC Technologies, Food Lion, Ford Motor Company, Forensic Technology Inc., Forest Grove School District, Forrest Exterminating Service Inc., Fort Wayne Metals, FOX Broadcasting Company/News Corp., Fox Valley Tool & Die, Frankfort Fire Department, Franklin County Sheriff's Office, Columbus, Ohio, Freddie Mac.

Freightliner Trucks, Frito Lay Corporation, Frontier Telephone of Rochester Inc., Fujitsu Network Communications, Full Association Business Service, Inc., Galileo International, Gardonville Cooperative Telephone Association, GEICO Direct, Gen-Probe Incorporated, General Dynamics, General Dynamics Land Systems, General Electric, General Motors, George's Restaurant, Georgia Power Co., Georgia Power Company, Georgia-Pacific Corporation, Giant Food Inc., Gilbane Building Company, Giles County Sheriffs Department.

Glastonbury, Conn., Glaus, Pyle, Schomer, Burns & DeHaven, Inc., Glendale, Calif., Globe Motors, Inc., Goldman Sachs, Goodrich Corporation, Goodrich Corporation-Landing Gear Division, Goodwill Industries—South Eastern Wisconsin, Goodyear Tire & Rubber, Graco Minnesota Inc., Grainger, Grand Traverse County, Grapevine, Texas, GrayRobinson, Great Salt Lake Council Boy Scouts of America, Greater Baltimore Medical Center.

Jackson Township, Jacksonville Sheriffs Office, James City County, Jamestown Public Schools, JCPenney Home Office, JE Dunn Construction Company, Jedi Computing, Jefferson Parish Sheriffs Office, JM Thomas Forest Products, John Peter Smith Hospital, Johnson & Johnson, Jones & Carter, Inc., Jones Day, JP Morgan Chase, JP Morgan Chase Custody Services, Inc., JSA Inc., Kaman Aerospace Inc., Kaufman & Canoles, P.C., Kell Container Corporation, Keller Police Department.

Kennesaw State University, Kenton County Airport Board, Kerr-McGee, Kessler sign company, Kettering City Schools, Kettering, Ohio, Key Corporation, KeyCorp, KIC Chemicals, Inc., Kocourek Chevrolet, KORYAK Consulting, KPMG LLP, KRA Corporation, Kraft Foods-Maxwell House, Kronos, Inc., Kwik Trip Inc., L G & E Energy (KY), L-3 Communications, Labor Ready, Inc., Lake County Captains Professional Baseball.

Lake County Metropolitan Enforcement Group, Landstar System, Inc., Lang Wyatt Construction, Las Vegas City, NV., Lauerman's #2 Saloon, Lawfirm of Sacks & Sacks, LD Clark Excavating, Lebanon Township Committee, Leviton Manufacturing Co. Inc. (NY), Liberty Mutual, Liberty Technology-Magnet High School, Liorente Investigations, Lisle-Woodridge Fire District, Live Oak Police Department, Lockheed Martin, Lockheed Martin Aeronautics Company.

Miami—Dade County, Fla., Michelin North America, Micro Vane (MI), Microsoft Corporation, Mid-States Ford Inc, Mideast Aluminum Division of Indalex, Midlands Orthopaedics, P.A., Military Resale Group, Inc., Miller Brewing Company (WI), Mind & Media, Inc., Mintz, Levin, Cohn, Ferris, Glovsky and Popeo PC, Mirant, Mission Critical Linux, Mississippi Board of Nursing, MK Diamond Products, Inc., Modesto City Schools, Monster Worldwide/Monster Government Solutions, Montefiore CMO, Montello School Department, Monterey Bay Aquarium.

Morgan Stanley, Morgantown (WV) Utility Board, Morrison & Foerster LLP (CA), Morton Plant Mease Primary Care, Inc., Motorola, Inc., Munhall Area Prehospital Services, Munters Corporation, Mutual of Omaha, NASDAQ, Nashville, Tenn., Nassau County Police Department, Nassau County, NY, National Association of Securities Dealers, National City Bank, National City Corp, Cleveland, OH, National Information Consortium USA, National Park Service, NationsRent, Nationwide, Natural Resources Conservation Service.

Navy Engineering Logistics Office, Navy Federal Credit Union, Navy Public Works Center, Nebraska Public Power, Neill Corporation, Nestle Frozen Food Division, NetJets, Inc., Nevada Highway Patrol, New Britain, Conn., New York City Housing Authority, New York City Police Department, New York Life Insurance, New York Stock Exchange, Nicor Gas, NiSource Corporation, Nissan North America, Inc.

Phillip Morris, Phoenix Metals Company, Phoenix Police Department, Piedmont Natural Gas, Pilkington North America, Pinellas County Government, Pittston, Plateau Valley School District #50, PNC Bank, Police and Fire Financial Services, Portion Pac, Post, Buckley, Schuh & Jernigan, Inc., Post-Newsweek Stations, Inc. / The Washington Post Company, PPG (Pittsburgh Plate Glass), Pratt & Whitney, Praxair, Inc., Precision Castings of Tennessee, Inc., Premier Yachts, PricewaterhouseCoopers, LLP, Prince Frederick Motors.

Prince George's Fire and EMS Department, Prince William County, Va., Principal Financial Group, PrivatAir Group, Produer's Cooperative Association, Progress Rail Services, Progressive Escrow and Closing, Provident Bank, Providian Financial, Prudential Financial, PS Doors, Public Service Company of New Hampshire, Public Services Group, Publishers Printing Co., Quaker Oats, Qualex, Inc., Quiet Light Securities, Quincy District Court, Qwest Communications, Rainey, Ross, Rice & Binns.

Raytheon, Raytheon Systems Engineering Project AUTEC, RCI (resource communication), Regal Ware, Inc., REMEC Broadband Wireless, Rentacom, Republic Airways, Reynolds & Reynolds, Reynoldsburg Police Department, RHDonnelley, Rhodia, Inc., Rich Township, Richard B. Russell Lake and Dam, US Army Corps of Engineers, Richard Childress Racing, Richmonf Financial Group, Riverside County Sheriffs Department.

Skowhegan Savings Bank, Slidell Memorial Hospital, Smurfit Stone Container Corporation, Sodexho, Solar Turbines Inc., South Brunswick Township Police Department, Southampton Sheriffs Dept., Southeast Missouri State University, Southern California Edison, Southern Connecticut State College, Southern Fabricators, Inc., Southern New England Telecommunication Corp., SouthTrust Bank, Southwest Airlines, Southwestern Bell Telephone, Space Gateway Support, Spartanburg Forest Products, Speedway Motorsports, Sprint, St. Charles County Ambulance District.

St. Joseph's Medical Center, St. Onge Company, St. Vincent Healthcare, Stabilus, Stanley County Sheriff's Office, Staples, Inc., Starcom Worldwide, State Attorney, 8th Judicial Circuit, Florida, State Farm Insurance, State of California, State of Maryland (Patuxent Institution), State of New Jersey, State of New Jersey OIT, Stockton Banking Center, Student Health Services, UNCG, Subaru of Indiana, Subaru of Indiana Automotive, Inc., Supervalu, Supreme Court of Guam, Survival Incorporated.

Sweetwater Police Department, Sybase, Inc., SYColeman, Synovus, Systems Research and Development, t.w.phillips Gas and Oil, Tampa Preparatory School, TAP Pharmaceuticals, Inc., Target, Target Distribution Center, Tarver Abstract Company, TASC, Inc., Technology Concepts & Design, Teledyne Brown Engineering, Tellabs Operations Inc., Tennessee Valley Authority.

UBS Wealth Management, Ulbrich Stainless Steel and Special Metals, Inc., Unilever Bestfoods, Union County, North Carolina, Union Hospital of Cecil County, Union Pacific, Union Pacific Railroad, Unique Security—Silver Star Security—Champion Security, Unisys Blue Bell, United Cerebral Palsy, United Parcel Service (UPS), United Space Alliance, LLC, United States Department of Agriculture, United States Mint, United States Postal Inspection Service, United States Postal Service, United States Probation Office, Universal Forest Products, University Hospitals of Cleveland, University of Pittsburgh Medical Center.

University of South Florida Foundation, UniversityCare, University of Maryland Medicine, UPS Revenue Recovery Englewood Hub, US Conec LTD, USAA, USDA Forest Service, Curlew Job Corps, USI Inc, USPS Columbus Ohio, VA Medical Center San Francisco, VAHR-EO, Vanasse Hangen Brustlin, Inc., Vanderbilt Medical Center, Ventera Corporation, Veridian, VERITAS, Verizon, Verizon Washington D.C., Inc., Veronica Connor Middle School, Victoria's Secret, Village of Wellington.

VISA, Visteon Corporation, Volvo Penta of the Americas, W. W. Grainger, Wachovia Bank, Wal-Mart Stores Inc., Wal-Mart Stores, Inc—Private Fleet, Walgreen, Wallkill, NY, Washington, Washington Mutual Bank, Washington State Prison, Waste By Rail, Inc., Waste Management Inc., Wausau Imports, Inc., We Energies.

Webster Cantrell Hall, Weis Markets, Wellmark Blue Cross Blue Shield of Iowa, Wells Fargo, Wesley United Methodist Church, West Virginia, WestAM, Westar Energy Inc., Westchester County, NY, Western Financial, Western Massachusetts Electric Company, Western Oklahoma State College, Westinghouse Electric Company, Westinghouse Savannah River Company.

Westport Fire Dept., Westvaco, Weyerhaeuser, Wilkes-Barre City Police Department, Wisconsin State AFL-CIO LETC, Wizcom, World Financial Group, Wright Express, WWBT NBC 12, Wyeth, Xenobiotic Detection Systems, Inc., Xerox, Yankee Gas Services Company, Yearout Mechanical and Engineering, Inc., Yosemite Waters.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I ask unanimous consent to speak as in morning business and the time I use to be considered against the pending cloture motion.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. Will the Senator just amend his unanimous consent request to state that at the end his statement, whenever that might be, the Senate would be put back into a quorum call?

The PRESIDING OFFICER. Is there objection?

Mr. BROWNBACK. No objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Kansas.

FSC/ETI

Mr. BROWNBACK. Mr. President, I wish to address a couple of topics that have come up this afternoon, and then address a couple that are pending in front of us.

No. 1, on the FSC/ETI bill, there are a lot of things in the bill that I think are very positive. There are some things I disagree with in the bill. One thing I am going to draw to the attention of some of my colleagues in this bill that is very helpful in my State is a particular provision extending the bonus depreciation allowance for civil aviation aircraft. That is something about which I know the Presiding Officer is interested. These are small manufacturers of airplanes. These are not the big airliners but general aviation manufacturers that have extended bonus depreciation.

You may ask, what am I interested in that for? That bonus depreciation has brought back an industry that was on its knees, that was crushed after 9/11. They were selling no aircraft. By having the bonus depreciation in there, they started selling aircraft. In fact, they quadrupled their sales of aircraft, particularly Cessna, Bombardier, Learjet. This hits Raytheon, the whole industry, much of which is concentrated in my State but has fingers around much of the country. It is a fabulous industry, great productivity of workers. There are really good people associated with it. It was on its knees after 9/11. The bonus depreciation was put in the first tax cut bill that really revived it and brought it back. They started hiring people again instead of laying off workers, but then they were hitting up against the time deadline of that bonus depreciation, so their sales orders starting going back down again.

With it in this bill and by passing this bill, we are going to be able to bring sales back to that industry. You can say that is a pretty narrow provision, that it doesn't cost anything, that it actually scored at zero, but the point being the reason this FSC/ETI bill is called a jobs bill is because it creates jobs. Here is a bill that creates a number of jobs. By doing this, there are going to be people working in Wichita, throughout my State, throughout the region, building general aviation aircraft products. The chairman has done a good job in working on this particular provision.

Most of this bill contains provisions that create jobs so people can work. They can continue their work. They are not laid off from their work. There are provisions in it which I don't agree with. There are things which I wish we could have had more of in it.

The Senator from Louisiana made a speech saying there was something that should have been in it. It would have been nice to be in it, but it didn't make it in. The bill has provisions in it that will create jobs and continue jobs, such as this bonus depreciation extension on general aviation manufactured products. This is a good thing that needs to happen. It is the right thing to do. It is the sort of thing we need for this country, particularly in these areas of manufacturing jobs which have so much difficulty and so much competition overseas for these jobs. Here is an area where we can do it. We need a little bit of benefit. It is in the bill.

I applaud the Chairman, Senator GRASSLEY, particularly for putting that provision in the bill.

There is a second thing which hasn't had the notice and which happened this week. It is not in the bill, but it is another job creator. This week, the U.S. Trade Representative in the Office of the President announced that they will be withdrawing from the 1992 civil aviation agreement with the European Union. The issue here is that Airbus has stolen by Government subsidies a huge market share from Boeing and other manufacturers, primarily from Boeing and large-scale aircraft.

Since 1992 when the agreement was entered into, Airbus has gotten somewhere between 8 to 15 percent of the market share. With Government subsidies, Airbus now has a majority of the market share in the large airline manufacturing business. It has gotten that through Government subsidies in Europe.

What type of Government subsidies? It is a subsidy where the European Governments say to Airbus, you want to make this new airliner, you want to be able to sell it to United Airlines, you want to sell it to Lufthansa and other airlines around the world; we will provide you with the money. We will loan the money to create this new aircraft to sell to these major airlines. And if you sell the product and if it works, you will have to repay the loan. But if it doesn't work, if people do not buy the aircraft, you don't have to pay back the loan.

There are a number of countries in the world that would love this deal. As such, you never have to bet the company on a new product. You can go out and say we think there is a market for a 600-seat airliner. If it makes it, great; you have to repay the loan. If it doesn't, the Government is going to pick up the tab.

That is what is taking place, billions of dollars of direct subsidies on putting these aircraft into the manufacturing system that have subsidized the takeover of Airbus over Boeing and the majority of aircraft manufacturing in the world today. If it were a fair competition between Airbus and Boeing, that would be another matter. But these sorts of subsidies are wrong. It is wrong for us to allow Europe to continue to do that.

I am delighted that the Office of the U.S. Trade Representative is withdrawing from this 1992 protocol, saying to the Europeans we are going to start consultation and take this to the World Trade Organization to have you stop the subsidization of aircraft manufacturing and stealing jobs from America.

What does that have to do with this bill? Again, it is about jobs and fighting for jobs. Boeing itself has lost nearly 60,000 jobs since 9/11. We have been losing market share. We have had difficulty in the economy. Here is something to say we have to start fighting back aggressively, pull out of this agreement, start the consultation, bring the World Trade Organization into it, and if we have to subsidize to be able to get back into market share to compete on a dollar-for-dollar basis for Europe, I think we have to look at that as well.

Here is the administration through the USTR fighting for manufacturing jobs that have been lost because of a bad agreement in 1992 on airliners being subsidized and made by Airbus. I am delighted the administration is doing this. I wholeheartedly support it. I have a resolution which I put in here asking my colleagues to support, saying this is the right way for us to reclaim manufacturing jobs that are being stolen by Europe providing these subsidies to Airbus.

Another issue which is coming up in some of the debate on the floor is the discussion about the war in Iraq. For all of us, this is a very sensitive issue. We have lost American lives. We have lost a number of American lives. We have lost a number of Kansans in this war in Iraq. They are fighting for freedom. They are fighting to spread democracy in a part of the world that has not known it. They are fighting against terrorists. They are fighting against a government that has harbored terrorists. They are fighting against a government that was identified by us for a number of years as being a state sponsor of terrorism—one of only seven countries in the world. Abu Nidal operated out of Iraq. There has been and continues to be, and was continued under Saddam Hussein, a connection between terrorism and his regime.

It becomes quite fashionable, it seems to me, to criticize this war in Iraq. Certainly there are things there to criticize. But I want to caution my colleagues. When I visit with soldiers coming back from Fort Riley, or leaving from Fort Riley to go over, officers who have been over and back, and Fort Leavenworth, or I see them here, they want to know that America continues to support them. It gets to be a real dissidence for a lot of people. OK, I support the troops but I don't support this effort in conflict.

I think a number of people look at this, saying what you mean is you don't support this conflict and does that mean we are going to be pulling out and are we not going to complete the job? Are we not going to make the turn to democracy in Iraq? This is a very difficult attempt we are making. Once it is done, it will spread throughout the region. But getting there is going to be very difficult.

I want to caution my colleagues, when you are being critical of this war—and everybody has their right to put their opinion forward—how that is heard by our troops. I say that from the practical experience in talking with a number of troops who have come back to my State. They want to know and want to make sure that the country still supports them. People will have different opinions on the war, but they want to know they are supported. Once we are in, they want people to stand behind them and with them.

I hope we let our troops know that, yes, we have not found weapons of mass destruction. It doesn't mean their efforts have been in vain, or what they have done has been wrong.

We have spread a message of democracy and hope. We have pushed Libya to the point now where they have given up WMDs, and are opening up their society. We have pushed them to the point they opened up the Dr. Kahn nuclear network. That has made the world safer on nuclear weapons. We are not completely safe, but it has made us safer in the process. Their effort has not been in vain. They are opening their society, bringing schools and opportunity to people who have not known it.

We have gotten rid of a mass murderer in Saddam Hussein. There are thousands of people buried in mass graves. That is not a vain effort. Yes, they are having difficulty. We are losing blood on a regular basis, but we have to continue and we need to speak strongly that we support the war and we support the troops.

In our efforts to have vigorous political debate here, I don't want to take the wind out of the sails of our troops who fight so hard and who put their lives and their families on the line for our safety.

Finally, I want to address an issue that we thought we were going to be able to get with the Department of Defense authorization bill; that is, raising of the fines for indecent material in public over-the-air broadcasts over the radio and television. We have had broad bipartisan support for this effort. There is the Janet Jackson bill, for lack of better terminology, at the Super Bowl last year in the event with her and Justin Timberlake. It spawned a lot of complaints going to the FCC about indecent material on public over-the-air broadcasts. I remind those watching, the issue is that the airwaves used by radio and television broadcast are public airwaves. They are licensed from the public to radio stations and must be used for the common good.

There is a level of material that has been deemed as indecent if you have this license. It is not so much about the first amendment, although the first amendment is protected. It is about abiding by your license agreement to use public property. It is like going to a national park. A national park is owned by the public. Visitors have to abide by the rules in the national park when they go in. They cannot start a fire just anywhere in that national park. Everyone has to abide by the rules.

If you are going to go into this, the property is owned by the public, and there are rules to follow. If you are going to use a license, the property is owned by the public, the airwaves, and you have to abide by the requirements. One of those requirements is you cannot put on indecent material. That has been defined.

We have had several broadcast violations. As a matter of fact, the company that broadcast the Super Bowl was fined heavily for that Janet Jackson and Justin Timberlake episode. But their fine amounted to one-fourth of the value of a 30-second ad on the Super Bowl. So the total fine CBS received was the equivalent of a quarter of the price paid for a 30-second ad at the Super Bowl. It was not even commensurate. It is the cost-of-doing-business type of fine.

Within the bill that passed, the amendment that passed 99 to 1, was to increase these fines. We increased fines substantially so there would be a penalty to the companies broadcasting the indecent material. The FCC would be given the authority to fine up to $500,000 per violation with a $3 million cap per 24-hour period per station group. However, the FCC has to consider a number of factors in deciding whether to put that level of fine forward. Broadcasters do not make $2 million per 30-second ad on every show, and many broadcasters in small markets, particularly in my State or in other States, do not make near that kind of money. So we give the FCC a top figure they can use in big instances, but we give them a series of factors to consider such as ability of the company to pay in assessing the fine.

We also have included fines for performers. If it is the performers who choose to do this and the companies broadcasting did not have clearance ahead of time, then the performers themselves need to be held responsible. That was included.

We also required an annual report that the FCC would have to give to the Congress on what they are doing on indecency complaints and violations. This had broad bipartisan support. It was pulled out of the Department of Defense authorization bill because there were other issues associated with it, such as media ownership and a provision for family-hour viewing of violent television programming that had some controversy so it did not make it through.

We brought this issue back and we have put it today in a House bill that is at the desk numbered 3717, the Broadcast Decency Enforcement Act of 2004, which we are attempting to move through the Senate in the final hours of this session so we can get what has been agreed to, what has been passed by this Senate 99 to 1, what has passed through the House by an overwhelming majority as well, and have it as a stand-alone bill. It is being held by some Members on the other side of the aisle.

I am pleased my colleague, Senator DORGAN, in particular, is a cosponsor on this individual bill. We are trying to have it cleared. It has cleared the Republican side and has not cleared the Democratic side. It has bipartisan support. I am hopeful we can get any holds lifted from this particular bill. It is an important provision.

The public is fed up with the amount of the indecent material on television, particularly during prime time when families are watching. They want the FCC to have tools that are real, that can be used against the broadcast companies willing to put forward this sort of material that families do not want in their living room.

I applaud the FCC for fining CBS for the Super Bowl incident. But, my goodness, that fine wasn't much because that was the maximum amount they can be fined under the old fine structure. We need to get this new fine structure in place.

We have this House-passed bill. It is at the desk. It is amended with a House-Senate agreement that was part of the Department of Defense authorization bill. We are hopeful to get through that, and we are working to get this through the Senate. The House stands ready to pass that if we can get it cleared through the Senate.

The broadcast decency bill, the bill that is at our desk, sends the message that indecent and obscene material will not be tolerated on the public airwaves during the hours in which children might be in the audience. Along with licensed use of the public airwaves for a period of time comes a set of responsibilities that need to be taken seriously.

I am hopeful, as we are here for a couple of days on these votes, that we can get this matter cleared to send it to the House, we can get it passed to the President and take care of something that has broad bipartisan support. I urge my colleagues if they are holding this bill to consider this is something that they have probably already supported. It would be important as a step forward in trying to present airwaves to the public the way the public wants them to be presented, as the public does own these airwaves.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Parliamentary inquiry, Mr. President. Under the procedure we are under now, the Senator from Iowa has how much time to speak?

The PRESIDING OFFICER. The Senator from Iowa is advised he has up to 58 minutes.

Mr. HARKIN. Under the bill?

The PRESIDING OFFICER. That is correct.

Mr. HARKIN. Then, I ask, as others have before me, unanimous consent to speak as in morning business but that the time keep running on the bill.

The PRESIDING OFFICER. The time would continue to run on the clock?

Mr. HARKIN. Yes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. I thank the Presiding Officer.

The PRESIDING OFFICER (Mr. COCHRAN). The Senator from Iowa.

OVERTIME PAY

Mr. HARKIN. Mr. President, tonight, in just a couple hours, there will be another Presidential debate between our colleague, Senator JOHN KERRY, and President George Bush. The debate tonight will be with questions from audience members. I assume these are rank-and-file citizens of Missouri or maybe Illinois and Iowa. I do not know where they are coming from. It will be interesting to see. The moderator is going to pick and choose the questions that are asked of both President Bush and Senator KERRY. I understand they will cover a broad range of topics, but the basic topic tonight will be on domestic issues.

Well, I hope there will be a number of questions asked of President Bush for him to explain why it is that he is so intent on taking away the overtime pay rights of over 6 million American workers.

A year and a half ago, his Department of Labor issued proposed regulations to drastically—drastically—change who is eligible for overtime pay in America. After analysis by independent groups, I decided we had to do everything we could to stop these rules from going into effect and hurting the workers of America.

So we have had debate on this issue over the last year and a half. The Congress has voted six times—four times in the Senate, twice in the House—each time voting to overturn and to stop these onerous new regulations from going into effect. Six times, the President has not listened to the elected representatives of the American people. Six times he basically said: I don't care what you want; this is what we are going to do.

Now, keep in mind, when these proposed regulations came out in February of 2003, they were sort of put out in the middle of the night, so to speak a stealth attack. Not one public hearing was held on these proposed rules—not one. Congress was not involved in shaping or fashioning them. This simply came out of the heads—I wouldn't say the hearts because these are heartless kinds of regulations—but it came out of the heads of some people in the Department of Labor, I guess, and maybe in the White House.

We have said time and time again they should not go into effect, but on August 23 of this year those rules went into effect. The new rules took effect on that date because House Republicans have been able to strip my amendment and its House companions in conferences. It goes to conference, they strip it out.

Now, I want to be clear. And I want to clear up one misstatement that comes out of the administration's press releases all the time; and that is that somehow I am denying workers the right to get overtime pay because the base pay on which people are exempt from overtime—I should say not exempt from any overtime regulations—starts at about $8,000 and goes up to $23,000 under these new rules. Every time I have offered my amendment, we keep that in there. The base ought to go up. But we say that no person who was eligible for overtime prior to August 23 ought to lose overtime afterwards. They ought to still be eligible for it. That is what the White House has said time and time again. They say: Well, if people got overtime before, they are going to get it afterwards. I say: OK, why not pass my bill? That is all I say. Anybody who got it before ought to get it afterwards. But the White House has resisted that.

As a result, employers will no longer have to pay more money for overtime work for millions of American workers. And most of these workers will be women, make no mistake about it. This is going hit women hardest. Why do I say that? Because women are in that class of employees out there who many times are salaried. They work at what might be termed white-collar-type jobs. They work with perhaps information systems. They are inputting data in computers, many times working for small businesses.

A lot of times they are working in jobs that are maybe their second job, for example, or they have entered the workforce later in life after their children have grown, and they are working at a job that does not pay a lot, but they are salaried.

Well, right now, they might be eligible if they worked over 40 hours a week to get time and a half. But under these new rules, they will be reclassified. They will then be asked to work over 40 hours a week and will not get one dime of overtime pay.

As one woman wrote me, who lives in Seattle, WA, she said: When I get home from work, my second job starts. I have to take care of my kids. I get dinner ready. I make sure they get to their afterschool events. Then we have homework. I put them to bed. And I have my laundry to do. But she said: That time with my family and that time at home is my premium time. If I am asked to give up my premium time to work longer, I ought to get at least premium pay for it.

I have never heard it said better. Yet that woman will be asked to give up her time with her family, her time with her children, working longer hours, and not get one dime of overtime pay.

If overtime pay is free to the employer, it is going to be overused. If employers no longer have to pay more money for overtime work, they will have no incentive to demand longer hours, no incentive to hire more workers. Workers will have less time to spend with their families.

A study done by the Center for Women and Work at Rutgers University showed that only 20 percent of the workers eligible for overtime worked more than 40 hours a week. In other words, of 20 percent of workers eligible for overtime, only 20 percent worked more than 40 hours a week, but 44 percent of workers who are exempt from overtime pay work overtime, so twice as many. In other words, if the employer doesn't have to pay you overtime, you are twice as likely to work over 40 hours a week than if they have to pay overtime. That is common sense. It stands to reason.

When Congress enacted the overtime provisions in the Fair Labor Standards Act in 1938, Congress did so with the intent that a hard-working America would not leave behind the concept of valuable family time. We believe that workers should be paid extra for the extra hours they work. Time-and-a-half pay accounts for some 25 percent of total income of those who work overtime, and the economic health of too many families is at stake. Congress has voted on this six times on a bipartisan basis to protect these American workers' overtime. Now they want to strip it out again, out of conference. In these tough economic times, why are we taking away families' rights to be fairly compensated in their overtime?

During the first 3 years of the Bush administration, the typical household saw their real income fall by more than $1,500. Real wages have fallen while gas prices have gone up. Milk prices have gone up. Health care costs have gone up. More than 4 million people have been thrown into poverty since the beginning of the Bush administration. More than 5 million have joined the ranks of the uninsured. In this kind, of economy, why would the President of the United States want to take money out of families' pockets?

I hope this will be something that will be talked about tonight in the Presidential debate. I am sure the President will say they are expanding overtime pay because they are raising the base. They are raising the base with one hand, taking it away with the other. It is the old shell game. Yes, a worker who is making $15,000 or $18,000 a year will now be automatically covered by overtime. But guess what the administration did in the rules. They have suggestions to employers on how to get around it, how to get around paying the lowest income workers in America overtime.

We have had examples of that. We had an example in The Detroit News: "Workers Agonize About Overtime Loss." Two managers out of 150 at metro Detroit Burger King franchises became eligible for overtime. Rather than make them hourly workers, the company gave them $20 a week raises to maintain their salaried status. They gave them a $20 a week raise so they would just be over that threshold, and they are not eligible for overtime. That means they have a $20 raise, and they to have work 3 or 4 hours' overtime. They are getting minimum wage or below even for working overtime. Two managers out of 150 eligible for overtime. So that is what is happening.

The President might say tonight: Well, they raised the base. But they are already telling employers how to beat it. I hope the President will tonight respond and answer to the American people why he is so intent on taking away the right to overtime pay, to time and a half over 40 hours of work.

Please, Mr. President, tell the women of America why you are sticking it to them, the working mothers of America, why you are taking away their premium time from their families but not allowing them to make premium time by working overtime.

Another issue I hope comes up tonight is the issue of job growth. The job report came out today. The economy created 96,000 jobs last month, less than two-thirds of the amount needed just to keep up with population growth. Only 59,000 were in the private sector, so just slightly over half in the private sector, and the rest were in the public sector. We have lost 1.6 million private sector jobs since President Bush took office.

They may say: That is not quite right. There was an 813,000 job increase. Well, that is because of Government employment. The gap between total jobs and private sector jobs accounted for 813,000 jobs in Government employment. That is called socialism. I wonder what this is called now. President Bush is for socialism? We can't get jobs in the private sector. We will put them on the Government payroll. Shades of the Soviet Union. But the private sector jobs are not there.

Total manufacturing jobs fell by 18,000 in September, the largest drop since last December. A total of 2.7 million manufacturing jobs have been lost since President Bush took office—the first President since Herbert Hoover to not have created one net new job in 4 years in office. What a record. I hope the President talks about how great that is for our country, that the only increase we are getting is in Government jobs.

The unemployment rate is unchanged, 5.4 percent. It was 4.2 percent when the President took office in January of 2001. Eight million Americans were unemployed in September; 2 million more Americans unemployed today than when President Bush took office in January of 2001—a 33-percent increase. That is a terrible way to say it, a 33-percent increase in the number of unemployed in this country since President Bush took office.

Let's talk about long-term unemployment. That is longer than 26 weeks. That means you are out of work longer than 6½ months. Long-term unemployment rose by 83,000 last month. It is now at 1.7 million people. It has increased by 1 million under President Bush. That is long-term unemployment. The long-term unemployed are now 21.8 percent of the unemployed. That share has nearly doubled. This is the economic record. Long-term unemployment more than doubled.

In January of 2001, there were 680,000 long-term unemployed. September 2004, there are 1.75 million, a 160-percent increase in long-term unemployed.

That is it. I hope that the President will please talk about that tonight and how good this is for America and why things are getting better for America and for American families.

As I said, he is the worst President since Herbert Hoover to face the voters, having lost jobs during his tenure. He will finish his term with the worst record since the Great Depression and finish his term having lost private sector jobs. While the economy has created jobs over the last year, the recovery has been modest, with a total of 1.7 million jobs created, which is about 143,000 a month. This is below what is needed to keep up with population growth. A healthy labor market would be creating jobs at a more rapid pace.

During the last economic expansion, the economy created 200,000 jobs per month, for a full decade, every year, and 236,000 jobs per month during President Clinton's two terms. I will repeat that. During President Clinton's two terms, the economy created 236,000 jobs per month. During President Bush's tenure, we have had 143,000 jobs created per month. In January 2001, we had 111,560,000 private sector jobs. In September 2004, we had 109,930,000, with 1.6 million lost during that period of time.

So when the President says they are creating jobs, yes, they are creating jobs—mostly in the public sector, Government employment, but far fewer than is even needed to keep up with the population growth.

The administration has billed its tax cuts as a solution. But its predictions of the impact of the tax cuts have been consistently wrong. In 2001, Congress passed the President's economic plan. Three years later, we still have fewer jobs than existed when the plan became law. In 2003, the administration predicted that passage of that year's tax cut would create 5.5 million jobs by the end of this year, 306,000 jobs per month. That target has only been reached in 2 months, and the total 15-month shortfall is 2.9 million jobs behind the pace predicted by the administration. Job growth is roughly 7 million behind the administration's 2002 prediction of the impact of their economic plan.

I know these are big numbers when you talk about 306,000 and 5.5 million. Well, the fact is that has resulted in hitting our families hard. Here is what happened to families. Median household income: In 2000, the median household income was $44,853. Today, it is $43,318. So it is down $1,500.

I hope the President tonight talks about how this is good for America, how things are getting better, when family income is coming down. I hope the President will address himself to the huge increase in the cost of natural gas in the Midwest, and what that is going to mean to our farmers, our families, to the elderly who have to heat homes with natural gas, to our manufacturing concerns who use natural gas, and power companies that use natural gas to produce electricity.

Yet, household family income is down. The price of natural gas is up, gasoline is up, and oil hit a new high yesterday at $53 a barrel. Great for Halliburton and the oil companies; not too good for our families who have to drive a car to work—maybe drive two cars to work if they have two people working at different times. That is the median household income right there.

I hope tonight's debate will be about domestic issues. I hope they talk about the lack of job growth, the cut in median family income, the number of long-term unemployed; and, yes, I hope they talk about overtime pay and what is happening to people who work hard and are now going to see their rights to overtime pay taken away. Those are mostly women. So that is the economy.

I want to talk about all of those who are going to be hurt by the rules on overtime. Employees earning between $23,660 and $100,000 a year are going to find themselves with their right to overtime restricted or taken away, including veterans, police, nurses, team leaders, journalists, cooks, financial services, computer workers, and many others—a lot of people. So someone earning as low as $23,661 a year will find that their rights to overtime will be taken away. They will be reclassified.

As I pointed out, in Detroit, 2 out of 150 managers at a certain place of business were eligible for overtime—2 out of 150. What happened is the employer realized how to fix it. By raising their salary so it was $23,661, or $23,662—just over the $23,660—guess what. They don't have to pay them overtime anymore. I hope they will talk about that tonight. I hope we will also recognize that there are no excuses for this overtime being taken away.

Three career employees of the Department of Labor who worked in this area under Presidents Reagan, the first Bush, Clinton, and this Bush—so they have worked for various Presidents—all three of them basically said that in every instance where the Department of Labor has made substantive changes to the existing rules, it has weakened the criteria for overtime exemptions, thereby expanding the reach and scope of the exemptions. That means that in every instance where they have made substantive changes to these rules, it has made it easier for employers to deny you the right to overtime pay.

So I hope the President again tonight will respond and tell us why he is intent on taking away the right to overtime pay. I also hope they will talk about health care and what happened to health care coverage in this country. We are now up to about 4.5 million more people who have lost health insurance under this President. Somewhere around 45 million to 50 million people in America have no health insurance coverage—none. No health insurance coverage.

As we have said, the rate of poverty has gone up in this country. We know that especially the elderly are cutting pills in half and going without medicine to pay their heating bills or their lighting bills or their rent. Well, I happened to listen to the Senator from Utah, my friend Senator HATCH, this morning go on and on. As I said, I like him, but he happens to be wrong on this issue, that's all. I don't know how anyone can stand here with a straight face and say that Medicare doesn't have the right to bargain down prices of drugs. In the Medicare prescription drug bill that we passed, which the President signed into law, there is an express prohibition against Medicare bargaining with the pharmaceutical companies to get a cheaper price. They are prohibited from doing this.

The Veterans' Administration is allowed to bargain, and they get great prices. In fact, our veterans get the cheapest drugs anywhere in America through the Veterans' Administration. That is great for our veterans. Why shouldn't Medicare be able to do the same thing?

JOHN KERRY has a plan. He has a plan for better health care in America, and the first part of his health care plan is to take away that restriction on Medicare and to allow Medicare—not even to allow Medicare, to insist that Medicare bargain with the pharmaceutical companies to get a cheaper price for drugs for the elderly in this country. Now that would be meaningful prescription drug reform.

The second part of the Kerry plan for having better health care for our people is to allow us to have free trade with Canada. One might say we have a free-trade agreement with Canada. Of course, we do. We have NAFTA. It allows free trade with Canada. We can have free trade in cars, clothes, shoes, glasses, paper, and I suppose anything you want to mention, except one item. We do not have free trade with Canada on prescription drugs.

Go along the northern border of the United States and people are driving across the border every day to buy cheaper drugs. Sometimes they take a bus from Iowa, go up through Minnesota, buy prescription drugs, and come back.

Why don't we have a free-trade agreement with Canada on drugs? Why not allow us to reimport drugs from Canada for our people in this country to get a cheaper price? It is time to do so. The Bush administration will not allow that to happen.

For a lot of people in this country who do not have health insurance, they look at us. I have a really good plan. I have a health care plan that allows me to choose doctors and hospitals and covers me wherever I go. Every year I can change my plan. When our kids were little, we had one plan. Now that our kids are grown up and married, we have a different plan. I get to choose from about—I don't know, I didn't check last year—15, 20 different plans. It is a good plan. I have that plan. President Bush is under that plan. Vice President CHENEY is under that plan.

If it is so good, why don't we let the American people buy into this? Why don't we let them buy into the Federal Employees Health Benefits Plan? Senator KERRY says we ought to do that. President Bush says no. It is OK for us, but it is too good for the American people. I think it ought to be good enough for the American people. JOHN KERRY says, yes, he wants to open up the Federal Employees Health Benefits Plan to allow the American people to buy in. That would be very meaningful, especially for small businesses and people who work for small business.

The fourth part of JOHN KERRY's comprehensive plan to have better health care for America is to allow better tax breaks for small businesses to cover their employees with health care. It is very meaningful to those of us who live in rural States. Most of our people who live in small towns and communities work for small businesses. Small businesses simply cannot afford any longer to cover their employees.

JOHN KERRY says we should provide up to a 50-percent tax credit to small businesses and to family farmers to allow them to purchase health care coverage for their employees. President Bush says no. But this is where we need to focus—on our small businesses. That is where most of the people work, and that is where most jobs are created. Yet small businesses simply cannot afford it any longer. JOHN KERRY says, let's provide tax cuts to small businesses to get health care coverage for their employees.

The fourth part of JOHN KERRY's comprehensive health care program is to extend and make more comprehensive the SCHIP program; that is the Children's Health Insurance Program. One might say, the President says he is for that. At his convention in New York, President Bush announced a new $1 billion initiative to enroll millions of poor children in two popular Government health programs, but next week the Bush administration plans to return $1.1 billion in children's unspent health funds to the Treasury. A projected shortfall in Federal SCHIP funds reduced health care to more than 200,000 children.

There you have it. A President Kerry would expand the SCHIP program and get every kid covered. Let poor families get into the SCHIP program and provide them the wherewithal to do so. Under this administration, fewer and fewer children are being covered under the SCHIP program.

Lastly, in his comprehensive plan for health care reform, Senator KERRY has said that we need a real prescription drug benefit for the elderly, not a phony card. And that is what it is, a phony card. That is what the elderly get today, a card. I cannot tell you how many senior citizens have come up to me in Iowa and told me how worthless that card is. They say: I have two or three cards in my billfold or in my purse and some of those are better than the Government card. The card I got with this drug company, or an AARP card—whatever card they have; there are a bunch out there—are better than the Government card. So why should they buy yet another card?

Senators were on the floor the other day saying we should not be denigrating; we should not be talking badly about this card for the elderly. We ought to be promoting it. Promoting it? Don't talk to me; talk to the senior citizens. Find out why they are not buying it. They are not buying it just because I got up here and said it is worthless. They know it is worthless. They are telling me it is worthless. But we are supposed to, I guess, be a cheerleader and get them to buy something that is not in their best interest, that is worthless. Senator KERRY says we need a real prescription drug plan for the elderly and not just a phony card.

Lastly, I want to talk about education. I hope education also is a part of the debate tonight. The President can probably tout the fact that he got a bipartisan bill through called No Child Left Behind. I supported that bill. I am on the Education Committee. We had a lot of negotiations. I was sitting there, since I am a senior member of that committee, in the final negotiations, and the big holdup was how much money would we put into it. We agreed on a number, and President Bush agreed that in exchange for the States doing these things and the mandates we put on No Child Left Behind, in exchange for that, we would provide the funding necessary to meet these requirements, and we specified how much money that would be.

What happened? The first budget year comes up, they get shortchanged. The second budget year comes up, shortchanged again, and once again this year.

I believe we are now in the neighborhood of about $27 billion short in education from what we had guaranteed. If I am wrong, I will come back and correct that, but it is something like that. I know it is over 20. The figure 27 sticks in my head. Even if it was $10 billion or $5 billion, the fact is, we put a mandate on our schools. We said we were going to pay for it, and we have reneged.

Now, do not take my word for it. I tell people, talk to your teachers. If you do not like that, talk to your principal or your superintendent. Talk to your school board members and see what they say about No Child Left Behind. Most of them will say, look, it is test after test. We can handle that, but we are not getting the supporting mechanisms we need because we do not have the funds to do it.

I cannot tell my colleagues how many times it has happened to me in my State of Iowa that I have seen schools where, guess what, they have cut out art classes, they have cut out music classes, they have cut out PE. Why? Because they are pinched. They are strapped. They have to put the money in for No Child Left Behind. Why? Because we did not fund it, one of the largest unfunded mandates ever.

President Bush has not asked for the money in his budget. He did not put it in there to fund No Child Left Behind. I think the President should be held accountable for that on education.

The second largest unfunded mandate our schools have is special education. We promised 25 years ago that we would pay up to 40 percent of the additional costs of funding special education in America. I think we are now at about 18 percent of funding additional costs for special education. We promised 40 percent, and yet time and again we do not get the funds and we do not get the budget allocation to fund special education.

So I hope these will be some of the issues that the President will talk about tonight, that I hope will be involved in the debate because these are the issues that affect families in their daily lives.

Lastly, I will take a little bit of time to talk about why I have been involved in slowing down the process in the Senate today. There are a lot of press people who talked to me about that so I thought I might at least take this time to explain why I am doing it.

The Senator from Arizona yielded me a couple of minutes to explain why I was doing it, and I have only one simple declarative sentence: I am doing it to protect our farmers. I am doing it to protect the jurisdiction of the Agriculture Committee. The occupant of the Chair is our distinguished chairman.

When we pass bills that are multiyear bills, sometimes it takes a lot of debate and discussion and working things out. In the 2002 farm bill, that was true. It took many weeks. I can remember sitting in these conversations on Saturday, Saturday night, and Sunday working it out. These are tough negotiations. Agriculture is very diverse, but I have always believed the Agriculture Committee ought to represent all of agriculture; that we are all in this together.

So we hammered out a farm bill and we passed it. There was give-and-take. Now, I did not get everything I wanted. The Senator from Indiana, who was ranking at the time, did not get what he wanted. The House Democrats did not get all they wanted. The House Republicans did not get all they wanted. That is the art of compromise. But I thought we had a pretty good bill. We had one which was a true compromise, and everyone signed off on it. We passed it with big majorities in the Senate and the House, and the President signed it. I was there for the signing.

I remember the President talking about how this bill was so strong on conservation. That was one of the reasons he was signing it. Yes, I am proud of the fact that the bill had an 80-percent increase in conservation, everything from the WHIP program, the Wildlife Habitat Incentives Program, to the Waters Resources Program, Wetlands Reserve Program, CRP, Conservation Reserve Program, and a whole host of others, and a new program that we started called the Conservation Security Program, Farmland Protection Program, a lot of conservation programs.

So we had a provision dealing with the Conservation Security Program, which was designed to be an uncapped program that entitled every farmer who met certain requirements to be eligible to get payments for protecting soil, water, and air, and being a good farmer. I have long believed that it was not right that we just pay farmers to take land out of production. What about all of those farmers who do produce our food supply and work hard every day, who are good stewards of the land? Should they not have some incentive to take care of the soil, to protect our water, to protect our wildlife? So that is what we hammered out in the Conservation Security Program, an incentive program for farmers, yes, to take better care of the land. It does not require one iota of land taken out of production.

It is voluntary. It is not a mandatory program. No farmer has to participate, but if they will do certain things—there is a minimum level, a moderate level, and a higher level, and if they do these things they will get a payment. But they have to agree to do it for between 5 and 10 years by contract, and then they have to meet certain requirements from the Natural Resources Conservation Service. They sign an agreement that they will do certain things to indeed keep soil from running off, make their soil better, better tilled, protect the water, a whole host of things, all kinds of things, because what is considered good conservation practices in my State of Iowa may not be good conservation practices in the States of Mississippi, Colorado, Washington, or Pennsylvania. Different soil, different land, different crops, different ways. So we wanted to make it so it was adaptable to every part of the country; it was not some cookie-cutter approach.

Well, everyone touted this as a new approach. It was signed off on by the Agriculture Committee, passed and signed by President Bush. Then what happened was the Department of Agriculture began to drag their feet. In the bill, we gave them 18 months to come up with rules and regulations to get this program implemented. We passed the law and it was signed by the President in May of 2002. So that is almost 2½ years ago, and the final rules still have not been promulgated by the Department of Agriculture.

They put out the proposed rules finally after 2 years. So they have been dragging their feet. I guess they just did that for some reason.

We finally got it going and then a couple of years ago for the first time in the history of this Congress we responded to a disaster, a drought, by providing for disaster assistance to hard-hit farmers, but for the first time ever we took it out of agriculture. We made agriculture pay for it. In the 50 years that we have been providing disaster assistance to farmers—or others—it has always been paid for as an emergency spending. Two years ago, for the first time, they took it out of agriculture.

I warned at the time that they were reopening the farm bill, changing a program that was agreed upon and passed by an authorizing committee; that they were fundamentally changing the appropriations process—and I am on the Appropriations Committee, as is the occupant of the Chair. I said that they are fundamentally changing it; this is not right to do this.

Well, it was an on an Omnibus appropriations bill. The House passed it, went home, the funding of the Government was in it, so we had to pass it. I entered into a colloquy with the chairman of the Appropriations Committee, the chairman of the Agriculture Committee, the Presiding Officer, the Senate majority leader, and Senate minority leader. In that colloquy we stated that we agreed, the chairman of the Appropriations Committee agreed that at the first possible time—I will get the exact language—we would put the program back so that we could assure that it would run as intended by the farm bill for the life of the farm bill, which would take us to 2007. Fine. That is OK. So it was put back.

Because there was a lapse of time there, a gap in time, the Department of Agriculture issued some rules on how to implement this program, but they issued rules based upon the fact that it was a capped program and not eligible to every farmer. But the farm bill said it is eligible for every farmer in every State of this country if they meet certain requirements. They said they had to do that because it was capped.

I said, Now it is not capped. We changed it back.

The Department said, OK, we will have to change the rules to make it go back, and they said that. They said they were going to change it.

I know this is a long story, but now it takes us up to today. Once again, we had a disaster. We had two hurricanes, three hurricanes that hit Florida and Georgia and the Carolinas so they are going to provide disaster assistance. I think we should. We always have. How are they going to pay for it? They are going to pay for it as emergency spending.

But there is another disaster that has taken place in other States of the country. We have had tornadoes, mud slides, high winds, hail in other agricultural parts of the country. We want those disasters taken care of, too. The administration said: Yes, we will take care of those disasters, but agriculture has to pay for it, and guess what, it is going to come out of conservation.

Strange. If you are a citrus farmer in Florida and you have an orange grove and there were tornadoes in this hurricane, if a tornado came through and ripped out your trees—and it did, by the way, in a lot of places—you will now get disaster assistance, crop-loss disaster assistance paid for under the hurricane bill, not taken out of agriculture. But if you are a farmer in Mississippi or Iowa and you had a tornado come through and take out your cotton crop or take out my corn crop, you might get compensated, but, guess what, they are taking it out of your other pocket. They are taking it out of agriculture.

Why should our farmers be treated differently than the farmers in Florida, I ask. That is why I have slowed this up today. That is why I wanted to get the attention of the Senate. I have always believed farmers had to be treated the same no matter where they are. That is why this is so bad, what is happening. They are opening up the farm bill again. They are taking it out of conservation again. They say they are going to do it. It may be conservation today. Next year, it might be commodity payments, maybe payment limitations. I have fought on this floor to protect those things. Maybe that is what it is going to be next year.

Look out. Once we in agriculture divide ourselves up and we say, No, that's all right, we will take it out of there; we will treat farmers someplace different than in another place. Now we opened the farm bill. Our baseline is going to be down. It is going to take it right out of the baseline of agriculture. I know that is sort of the inside game around here. That means agriculture is taking a hit.

What makes this so terrible is that in the last 3 years we, agriculture—I should not say "we"—the farmers of America saved the taxpayers of this country $15 billion that was allotted for them under the farm bill that they did not have to take. That was $15 billion that went back to the Treasury. You would think we would say: OK, if we saved $15 billion, that is where the disaster assistance ought to come from. We are talking about $3 billion or $2.8 billion. We have already saved $15 billion.

But no, they are not going to count that. They are not going to count that. I am sorry to have to say this. We in the Senate passed an amendment to provide for disaster assistance that would be emergency. We did it here, but the House didn't. And the White House, OMB, is insisting, insisting that this $2.8 billion of disaster assistance for our farmers be taken out of agriculture but not the disaster assistance for farmers in Alabama or Georgia or the Carolinas or Florida. Please, someone tell me, what is the difference?

Maybe we are just not lucky enough to have the President's brother as our Governor, or your Governor.

That is why I am so upset about this. It is just not right. It is not right what they are doing. They are fundamentally changing a program we agreed upon. They are taking it out of agriculture, even after we saved all this money. It is not right. I am going to stand here and I am going to fight.

I told them I probably can't win. They have the votes and they have the White House. But I am going to fight for my farmers. I am going to stand here or sit here to the bitter end. If I do not win this time, I will be back.

I told the majority leader. Majority leader, I said, I like you, I respect you. He is a fine guy and he has a tough job. But, I said, I have to fight for my farmers. I have to fight for my rural people. I have to fight to make sure they are not discriminated against. I said, Leader, if I get rolled here, I will be back. If we come back in October, I will be back then. I will be back in November, too. I will be back. I will be back.

Mr. President, I yield the floor.

JURISDICTION

Mr. GRASSLEY. I would like to engage in a colloquy with the ranking member on the Finance Committee, Senator BAUCUS, regarding provisions in Senate Resolution 445 pertaining to the jurisdiction of the Committee on Homeland Security and Governmental Affairs. In particular, I wish to address the provisions that exclude from the jurisdiction of that committee oversight of matters relating to the customs revenue functions, and the commercial functions and commercial operations, of the Bureau of Customs and Border Protection—CBP—and the Bureau of Immigration and Customs Enforcement—ICE.

Mr. BAUCUS. This is a very important topic. As the Chairman of the Finance Committee will recall, the issue of customs authority was a major one in the debate leading up to passage of the Homeland Security Act of 2002. The Finance Committee held a hearing in July 2002, followed by a letter to the Chairman and Ranking Member of the Governmental Affairs Committee. We stressed the importance of preserving the revenue collection and trade facilitation functions of the U.S. Customs Service, even as that agency moved into the Department of Homeland Security with an added national security focus. I would be pleased to engage in a colloquy on this topic with my good friend from Iowa.

Mr. GRASSLEY. I appreciate the Senator's recollection of our efforts on this issue. I would add that following the hearing and our letter, we worked closely with the Committee on Governmental Affairs and with the Administration to develop text that would keep intact the commercial functions of the Customs Service. Under the final legislation, authorities vested in the Secretary of the Treasury relating to customs revenue functions remained with the Secretary of the Treasury unless delegated to the Secretary of Homeland Security. By order of the Secretary dated May 15, 2003 Treasury Order 100-16), the Secretary of the Treasury delegated to the Secretary of Homeland Security general authority over Customs revenue functions, subject to certain exceptions that preserved Treasury's oversight of the Customs Service with respect to policy matters and the authority to issue regulations and determinations.

Mr. BAUCUS. Yes, and I believe we can both agree that our efforts were successful in preserving the revenue functions, commercial functions, and commercial operations of the Customs Service, including oversight of those functions and operations within the Committee on Finance.

Mr. GRASSLEY. I concur entirely. And the Senator's last point-the importance of preserving oversight of the revenue functions, commercial functions, and commercial operations that are now delegated to CBP and ICE—leads directly to the main point of this colloquy; namely, the necessity of preserving the role of the Finance Committee as primary overseer of the customs revenue functions, the commercial functions, and the commercial operations associated with the customs duties now being performed by employees of the Department of Homeland Security. I want to thank my colleagues, Senator MCCONNELL and Senator REID, for working so constructively with me and Senator BAUCUS to address this priority. Together, we have clarified the scope of jurisdiction for the Committee on Homeland Security and Governmental Affairs as it relates to the commercial aspects of customs operations.

Mr. BAUCUS. I concur in thanking our colleagues for their cooperation in addressing this important issue. For the benefit of the record, would the Chairman of the Finance Committee outline the clarifications that have been added to the resolution?

Mr. GRASSLEY. I would be pleased to do so. To begin, I think it's important to appreciate the context in which the clarifications have been made. Commercial customs functions are one element of the comprehensive international trade agenda of the United States. The various elements of international trade and trade policy are woven together so thoroughly that effective oversight of the whole necessitates oversight of the individual elements of trade. Now, of utmost importance to our broader purpose here today, we agree that preservation of Finance Committee jurisdiction in this manner will not in any way diminish the effective oversight of Department of Homeland Security functions by the Committee on Homeland Security and Governmental affairs. Consequently, the clarifications we've added serve only to enhance effective oversight by the United States Senate of both the homeland security interests and the international trade interests of the United States.

Now, the provisions we've added specify that the Committee on Homeland Security and Governmental Affairs will have jurisdiction over matters relating to the Department of Homeland Security, except matters relating to the following: first, any customs revenue function, including but not limited to the customs revenue functions enumerated in section 415 of the Homeland Security Act of 2002. For example, that would cover the assessment and collection of customs duties, antidumping and countervailing duties, duties imposed under the various safeguard provisions in our trade laws, excise taxes, fees and penalties due on imported merchandise. But these are only some of the many revenue functions associated with customs operations. I encourage my colleagues to refer to section 415 of the Act, and again I note that section 415 is illustrative and does not provide an exhaustive list of the customs revenue functions that will remain within Finance Committee jurisdiction.

Second, matters relating to any commercial function or commercial operation of the Bureau of Customs and Border Patrol and the Bureau of Immigration and Customs Enforcement would be excluded from the jurisdiction of the Committee on Homeland Security and Governmental Affairs. That would cover, for example, matters relating to trade facilitation and trade regulation. But let's take a closer look at what that would mean. Last year I introduced the Clean Diamond Trade Act. That important legislation prohibits trade in conflict diamonds. Once introduced, it was referred to the Committee on Finance where we held a hearing and reported it to the full Senate with the benefit of committee's expertise. In the future, similar legislation to regulate imports or exports would also be referred to the Finance Committee.

Mr. BAUCUS. That specific example is very helpful. Does the Chairman of the Finance Committee have any other examples in mind?

Mr. GRASSLEY. Well, another example would be the Convention on Cultural Property Implementation Act, over which the Finance Committee would retain jurisdiction. That legislation authorizes the United States to enter into bilateral agreements to protect the cultural antiquities of a trading partner. Another example would include matters relating to the Automated Commercial Environment—or ACE—computerized entry system for imports. Again, the driving factor here is whether a matter is commercial or trade regulatory in nature; if so, the

Finance Committee would retain jurisdiction over the matter notwithstanding that the matter may fall among the duties assigned to an employee of the Department of Homeland Security.

Mr. BAUCUS. I thank the Chairman. Are there any other matters that fall within the exception to transfer of jurisdiction to the Committee on Homeland Security and Governmental Affairs?

Mr. GRASSLEY. Yes, in fact there is a third clarification that's been added. The Committee on Homeland Security and Governmental Affairs will have jurisdiction over matters relating to the Department of Homeland Security, except with respect to any other function related to the customs revenue functions or to the commercial functions or commercial operations that were exercised by the United States Customs Service on the day before the effective date of the Homeland Security Act of 2002. Now, the Homeland Security Act directed the Secretary of the Treasury to identify, within 60 days after the date of enactment of the Act, those authorities vested in the Secretary of the Treasury that were exercised by the Commissioner of Customs on or before the effective date of the act. By letter dated January 24, 2003, the General Counsel at the Department of the Treasury transmitted that report to the Finance Committee. I ask unanimous consent that the General Counsel's letter and attached report be printed in the RECORD, in order to provide further guidance as to what is covered by this third clarifying provision. As comprehensive as this report is, I note that it serves to provide illustrative guidance and is not an exhaustive list of the functions or operations encompassed by the third clarification we've added.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF THE TREASURY,
Washington, DC, January 24, 2003.

Hon. CHARLES GRASSLEY,
Chairman, Committee on Finance, Dirksen Senate Office Building, Washington, DC

Hon. MAX BAUCUS,
Committee on Finance, Dirksen Senate Office Building, Washington, DC.

GENTLEMEN: Under Section 418(b) of the Homeland Security Act of 2002 (the "Act"), Title IV, Subtitle B, Public L. No. 107-296, 116 Stat. 2135 (November 24, 2002), the Secretary of the Treasury is directed to report to your Committees any proposed conforming amendments to determine the appropriate allocation of legal authorities described under section 412(a)(2) of the Act. The Secretary of the Treasury is also directed to identify those authorities vested in the Secretary of the Treasury that are exercised by the Commissioner of Customs on or before the effective date of this section. This report is due not later than 60 days after the date of enactment of the Act and is provided by this letter.

Treasury has identified no conforming amendments needed to determine the appropriate allocation of legal authorities described under section 412(a)(2) of the Act. Under section 412(a)(1), authority related to Customs revenue functions that was vested in the Secretary of the Treasury by law before the effective date of this Act under those provisions of law set forth in section 412(a)(2), shall not be transferred to the Secretary of Homeland Security by reason of this Act. Rather, on and after the effective date of this Act, the law provides that the Secretary of the Treasury may, at his discretion, delegate any such authority to the Secretary of Homeland Security and that the Secretary of the Treasury shall consult with the Secretary of Homeland Security regarding the exercise of any authority not so delegated. Based on our review, we have identified no barriers to the appropriate allocation of legal authorities described under section 412(a)(2). As we work with the Department of Homeland Security and others to implement the act, we will notify you promptly if we determine that currently unforeseen legal barriers pose a problem that require a legislative solution.

To complete this report, a chart is attached identifying those authorities vested in the Secretary of the Treasury that are exercised by the Commissioner of Customs on or before the effective date of this Act. We are pleased to be of assistance in this matter.

Sincerely,

DAVID D. AUFHAUSER,
General Counsel.

Mr. GRASSLEY. Mr. President, the chart attached to the January 24, 2003, letter of the General Counsel to the Chairman and Ranking Member of the Senate Finance Committee regarding the authorities vested in the Secretary of the Treasury that were exercised by the Commissioner of Customs prior to the effective date of the Homeland Security Act of 2002 may be accessed at the Finance Committee Web site under "Legislation—January 2003".

Mr. BAUCUS. I thank the Finance Committee Chairman. There is one last point, I think, we should address. First, I would like to add that it's my understanding that the Finance Committee has had jurisdiction over customs for 188 years, and so I am glad to see today that the Committee's expertise will continue to be brought to bear on the customs revenue functions and the commercial functions and operations of our customs officials. As part of that longstanding oversight, I note that referral of nominees for the position of Commissioner of Customs has been to the Finance Committee. I ask the Chairman, does he anticipate that such referral will continue in the future?

Mr. GRASSLEY. I thank the Senator. Under section 411 of the Homeland Security Act of 2002, there is established a Commissioner of Customs, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioner of Customs reports to the Under Secretary for Border and Transportation Security. The Commissioner of Customs shall oversee certain functions, including functions performed by the following personnel and associated support staff of the United States Customs Service on the day before the effective date of the Homeland Security Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialists, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, and Financial Systems Specialists. Clearly, the responsibilities of the Commissioner of Customs encompass customs revenue functions, and commercial functions and operations, that are now assigned to employees of the Department of Homeland Security. So, in response to the Senator, I say yes, it is clear that referral of future nominees for the position of Commissioner of Customs, or any position or positions charged with responsibilities similar to those of the Commissioner of Customs, will continue to be made to the Finance Committee.

Mr. BAUCUS. I thank the Chairman of the Finance Committee for his elaboration of the provisions that have been added to clarify the parameters of the jurisdiction of the Committee on Homeland Security and Governmental Affairs, and for his description of illustrative and non-exhaustive examples of the types of jurisdiction that will remain within the Committee on Finance.

• Mr. CHAMBLISS. Mr. President, I rise today to speak on H.R. 4520, the American Jobs Creation Act of 2004.

This important legislation attempts to comply with the World Trade Organization, WTO, rulings on the Foreign Sales Corporation, FSC, Extraterritorial Income, ETI, benefit in order to prompt the European Union to rescind trade tariffs currently placed on United States exporters. It would repeal an export provision in the United States tax code that has been ruled an unfair subsidy and therefore does not comply with the WTO. In addition this bill seeks to preserve jobs and production activities in the United States via the simplification of international tax laws and a mix of investment incentives. A $10 million tobacco buyout, minus the Food and Drug Administration's regulation, is also incorporated within this bill.

This bill would replace the current export subsidy that has been ruled unfair by the WTO with a new $77 billion tax break on manufacturing income. Companies will also be able to exclude 9 percent of their manufacturing profits from taxation and multinational companies will receive $43 billion in a variety of tax cuts on their overseas income. These tax breaks and incentives are instrumental in our attempt to comply with the WTO while ensuring American jobs stay at home.

Also included in this package is a landmark change. This bill contains provisions to terminate the Federal tobacco quota program. This tobacco quota program was created during the 1930s and has provided controls on the production of tobacco for decades. And it has worked well. However, since 1998 tobacco quotas have been cut by over 50 percent leaving tobacco farmers with no where to turn. This package provides compensation for those farmers and quota holders who have lost over half of their assets through no fault of their own.

Compensation of $7 to quota owners and $3 to producers based on the 2002 effective quota level is provided in this package while at the same time it keeps producers free of potential burdensome regulations advocated by some in the industry. I am pleased that the funding for this buyout comes at no cost to the taxpayer without granting authority to the FDA to regulate tobacco and tobacco products.

In terms of the economy, this legislation will have a significant impact on rural Georgia. Mr. President, $607 million will be provided over a ten year period. Additionally growers can continue to produce tobacco without government constraints and be competitive in the world tobacco market.

I support the passage of this significant legislation because it will benefit the manufacturing industry in Georgia while ensuring American jobs are not lost overseas due to burdensome and unfair tax regulations. I also support the passage of this bill because of the unregulated FDA tobacco buyout provisions that compensate tobacco farmers for assets that have been plundered by the Federal Government.

It is because of my son's wedding this weekend in Georgia that I regret that I will not be able to actually vote on this legislation. However, if I was in attendance and able to cast my vote on H.R. 4520, it would be in support of this bill.●

Mr. BINGAMAN. Mr. President, I come to the floor to thank the chairman and ranking member of the Finance Committee for their assistance in getting my amendment on the Civil Rights Tax Review in the conference report to accompany H.R. 4520, the American Jobs Creation Act of 2004.

The law with respect to the tax treatment of attorneys' fees paid by those that receive settlements or judgments in connection with a claim of unlawful discrimination, a Qui Tam proceeding or actions containing damages for non-physical injuries was unclear and that its application was questionable as interpreted by the IRS. It was never the intent of Congress that the attorneys' fees portions of such recoveries should be included in taxable income whether for regular income or alternative minimum tax purposes. The language contained in section 703 of H.R. 4520, the American Jobs Creation Act of 2004 is intended to clarify the proper interpretation of the prior law, and any settlements prior to the date of enactment should be treated in a manner consistent with such intent.

The conferees are acting to make it clear that attorneys' fees and costs in these cases are not taxable income, especially where the plaintiff, or in the case of a Qui Tam proceeding, the relator, never actually receives the portion of the award paid to the attorneys. Despite differing opinions by certain jurisdictions and the IRS, this is the correct interpretation of the law prior to enactment of section 703 as it will be going forward. In adopting this provision, the Congress in no way intends to prejudice the tax treatment of settlements or awards made prior to that time and the courts and IRS should not treat attorneys' fees and other costs as taxable income.

UNANIMOUS CONSENT AGREEMENT

Mr. FRIST. Mr. President, I ask unanimous consent that at 11:15 a.m. on Saturday, October 9, the Senate proceed to votes in relation to any pending amendments to the McConnell-Reid amendment to S. Res. 445; provided further that it be in order prior to the votes for Senators to offer a qualified amendment from the unanimous consent list of last night; provided further that following the disposition of those amendments the Senate proceed to a vote on the adoption of the pending McConnell-Reid substitute, to be followed by the immediate vote on cloture on the underlying resolution; further, that if cloture is invoked, the Senate immediately proceed to a vote on adoption of the resolution, as amended, with no intervening action or debate.

I now ask unanimous consent it then be in order during Saturday's session for the Senate to consider a resolution submitted by Senator HARKIN regarding the sense of the Senate on agricultural emergencies which is currently at the desk; further, that when the Senate finishes S. Res. 445, the Senate immediately proceed to a vote on the adoption of the Harkin resolution, with no intervening action or debate and the preamble then be agreed to.

I further ask unanimous consent that the vote with respect to cloture on the conference report to accompany H.R. 4520 occur at 1 p.m. Sunday, October 10.

Finally, I ask unanimous consent that during Sunday's session it be in order for the Senate to consider a bill regarding overtime compensation and a bill regarding FDA and tobacco products which are currently at the desk; I ask unanimous consent that on Sunday those bills be read a third time and passed, en bloc, with the motions to reconsider laid upon the table with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. Mr. President, reserving the right to object, and I shall not, this does not preclude other matters that might be worked out either by consent or otherwise during that time; is that correct?

Mr. FRIST. That is correct.

Mr. LEAHY. I will not object.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Vermont.

THE DNA ACT

Mr. LEAHY. Mr. President, I have been in a lot of discussions today by phone, with my staff, and elsewhere, on H.R. 5107, something referred to as the innocent protection act and by others as the DNA act.

I think we are close. In some ways, it is like the perils of Pauline, you are up the hill, down the hill, if we can excuse, at 10 minutes of 8 in the evening, mixed metaphors.

But this is a bill that passed with overwhelming bipartisan support in the other body, from the most conservative to the most liberal Members of the other body. Then there is just a little difference, or at the last moment the Department of Justice comes up with some little thing they just thought of.

After a while, one wonders if even with the proven, overwhelming support—polls show overwhelming support for it; the other body has passed it overwhelmingly. I would guess if we actually had a vote in this body, 80 to 90 Members would vote for it. There are always a couple of Members who have some reason for holding it up. I hope we get rid of that. I hope we are coming closer.

I only wanted to say this for my colleagues both in the House and in the Senate who have been working with me and my staff today and working with people everywhere, from church groups to prosecutors' groups throughout yesterday and late last night and throughout today. I am hoping we can settle. That is why I asked the question of the distinguished Senator from Tennessee, to make sure we reach such an agreement at some point and we can move forward.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period of morning business, with Senators speaking for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

HONORING OUR ARMED FORCES

Mrs. BOXER. Mr. President, today I rise to pay tribute to 29 young Americans who have been killed in Iraq since September 3. All of them were from California or were based in California.

PETTY OFFICER 3RD CLASS ERIC L. KNOTT, AGE 21

Petty Officer Knott was killed September 4 when the area in which he was working was struck by enemy fire. He died of shrapnel wounds and had been supporting Operation Iraqi Freedom.

He was assigned to Naval Mobile Construction Battalion 4, Port Hueneme, CA.

LANCE CORPORAL LAMONT N. WILSON, AGE 20

Lance Corporal Wilson died September 6 due to enemy action in Al Anbar Province.

He was assigned to second Battalion, first Marine Regiment, first Marine Division, Camp Pendleton, CA.

CORPORAL MICK R. NYGARDBEKOWSKY, AGE 21

Corporal Nygardbekowsky was killed in action September 6 from an explosion while conducting combat operations in the Al Anbar Province.

He was assigned to second Battalion, first Marine Regiment, first Marine Division, Camp Pendleton, CA. He was from Concord, CA.

LANCE CORPORAL JOSEPH C. MCCARTHY, AGE 21

Lance Corporal McCarthy was killed in action September 6 from an explosion while conducting combat operations in the Al Anbar Province.

He was assigned to second Battalion, first Marine Regiment, first Marine Division, Camp Pendleton, CA.

He was from Concho, CA.

LANCE CORPORAL QUINN A. KEITH, AGE 21

Lance Corporal Keith died September 6 due to enemy action in Al Anbar Province.

He was assigned to second Battalion, first Marine Regiment, first Marine Division, Camp Pendleton, CA.

LANCE CORPORAL DEREK L. GARDNER, AGE 20

Lance Corporal Gardner was killed in action September 6 from an explosion while conducting combat operations in the Al Anbar Province.

He was assigned to Headquarters Battalion, first Marine Division, Camp Pendleton, CA.

He was from San Juan Capistrano, CA.

PRIVATE FIRST CLASS DAVID BURRIDGE AGE 19

Private First Class Burridge died September 6 due to enemy action in Al Anbar Province.

He was assigned to second Battalion, first Marine Regiment, first Marine Division, Camp Pendleton, CA.

LANCE CORPORAL MICHAEL J. ALLRED, AGE 22

Lance Corporal Allred died September 6 due to enemy action in Al Anbar Province.

He was assigned to second Battalion, first Marine Regiment, first Marine Division, Camp Pendleton, CA.

FIRST LIEUTENANT ALEXANDER E. WETHERBEE, AGE 27

First Lieutenant Wetherbee died September 12 from injuries received from enemy action in Al Anbar Province.

He was assigned to 3rd Assault Amphibian Battalion, first Marine Division, Camp Pendleton, CA.

PRIVATE FIRST CLASS JASON T. POINDEXTER, AGE 20

Private First Class Poindexter died September 12 due to enemy action in Al Anbar Province.

He was assigned to second Battalion, 5th Marine Regiment, first Marine Division, Camp Pendleton, CA.

SPECIALIST EDGAR P. DACLAN, AGE 24

Specialist Daclan died September 10 in Balad, Iraq when his patrol was responding to indirect fire and an improvised explosive device exploded.

He was assigned to the first Battalion, 18th Infantry, first Infantry Division from Schweinfurt, Germany.

He was from Cypress, CA.

LANCE CORPORAL DOMINIC C. BROWN, AGE 19

Lance Corporal Brown died September 13 due to a non-combat related incident in Al Anbar Province.

He was assigned to Headquarters Battalion, first Marine Division, Camp Pendleton, CA.

STAFF SERGEANT GUY S. HAGY, JR., AGE 31

Staff Sergeant Hagy died September 13 in Baghdad when an improvised explosive device detonated near his observation post.

He was assigned to the first Battalion, 12th Cavalry Regiment, first Cavalry Division, Fort Hood, TX.

He was from Lodi, CA.

MAJ. KEVIN M. SHEA, AGE 38

Maj. Shea died September 14 due to enemy action in Al Anbar Province.

He was assigned to first Marine Regiment, first Marine Division, Camp Pendleton, CA.

LANCE CORPORAL MATTHEW D. PUCKETT, AGE 19

Lance Corporal Puckett died September 13 due to enemy action in Al Anbar Province.

He was assigned to 3rd Assault Amphibian Battalion, first Marine Division, Camp Pendleton, CA.

CORPORAL ADRIAN V. SOLTAU, AGE 21

Corporal Soltau died September 13 due to enemy action in Al Anbar Province.

He was assigned to 3rd Assault Amphibian Battalion, first Marine Division, Camp Pendleton, CA.

LANCE CORPORAL DREW M. UHLES, AGE 20

Lance Corporal Uhles died September 15 from injuries received due to enemy action in Al Anbar Province.

He was assigned to first Battalion, 7th Marine Regiment, first Marine Division, Marine Corps Air Ground Combat Center, Twentynine Palms, CA.

CORPORAL JAYGEE MELAUT, AGE 24

Corporal Melaut died September 13 due to enemy action in Al Anbar Province.

He was assigned to 3rd Assault Amphibian Battalion, first Marine Division, Camp Pendleton, CA.

FIRST LIEUTENANT ANDREW K. STERN, AGE 24

First Lieutenant Stern died September 16 from injuries received due to enemy action in Al Anbar Province.

He was assigned to first Tank Battalion, first Marine Division, Marine Corps Air Ground Combat Center, Twentynine Palms, CA.

CORPORAL STEVEN A. RINTAMAKI, AGE 21

Corporal Rintamaki died September 16 due to enemy action in Al Anbar Province.

He was assigned to 3rd Battalion, first Marine Regiment, first Marine Division, Camp Pendleton, CA.

CORPORAL CHRISTOPHER S. EBERT, AGE 21

Corporal Ebert died September 17 due to enemy action in Al Anbar Province.

He was assigned to second Battalion, first Marine Regiment, first Marine Division, Camp Pendleton, CA.

LANCE CORPORAL GREGORY C. HOWMAN, AGE 28

Lance Corporal Howman died September 15 due to enemy action in Al Anbar Province.

He was assigned to second Battalion, 5th Marine Regiment, first Marine Division, Camp Pendleton, CA.

LANCE CORPORAL STEVEN C.T. CATES, AGE 22

Lance Corporal Cates died September 20 due to enemy action in Al Anbar Province.

He was assigned to first Battalion, 7th Marine Regiment, first Marine Division, Marine Corps Air Ground Combat Center, Twentynine Palms, CA.

SERGEANT BENJAMIN K. SMITH, AGE 24

Sergeant Smith died September 22 due to enemy action in Al Anbar Province.

He was assigned to first Tank Battalion, first Marine Division, Marine Corps Air Ground Combat Center, Twentynine Palms, CA.

LANCE CORPORAL RAMON MATEO, AGE 20

Lance Corporal Mateo died September 24 as result of enemy action in Al Anbar Province.

He was assigned to Headquarters and Service Company, 7th Marine Regiment, first Marine Division, Marine Corps Air Ground Combat Center, Twentynine Palms, CA.

SERGEANT TIMOTHY FOLMAR, AGE 21

Sergeant Folmar died September 24 as result of enemy action in Al Anbar Province.

He was assigned to second Battalion, 5th Marine Regiment, first Marine Division, Camp Pendleton, CA.

LANCE CORPORAL AARON BOYLES, AGE 24

Lance Corporal Boyles was killed in action September 24 from small arms fire while conducting combat operations in the Al Anbar Province.

He was assigned to Headquarters and Service Company, 7th Marine Regiment, first Marine Division, Marine Corps Air Ground Combat Center, Twentynine Palms, CA.

He was from Alameda, CA.

SERGEANT FIRST CLASS JOSELITO O. VILLANUEVA, AGE 36

Sergeant First Class Villanueva died September 27 in Balad, Iraq when he was at an observation post and was shot by a sniper.

He was assigned to the 9th Engineer Battalion, first Infantry Division, Schweinfurt, Germany.

He was from Los Angeles, CA.

PRIVATE FIRST CLASS KENNETH L. SICKELS, AGE 20

Private First Class Sickels died September 27 in Al Anbar Province.

He was assigned to first Battalion, 7th Marine Regiment, first Marine Division, Marine Corps Air Ground Combat Center, Twentynine Palms, CA. He was from Apple Valley, CA.

Two hundred and eighty three soldiers who were either from California or based in California have been killed while serving our country in Iraq. I pray for these young Americans and their families.

LIEUTENANT DAVID KINGSLEY MEMORIAL SERVICE

Mr. WYDEN. Mr. President, in just a couple of weeks, on October 23, a memorial will be erected by villagers and family member at Suhozem, Bulgaria to honor one of our Nation's brave soldiers and one of Oregon's native sons, Lt. Kingsley. Today, I wish to take a few minutes to remember Lt. Kingsley and share his story of great courage and sacrifice.

The story of Lt. David Kingsley is emblematic of the strength and pioneering spirit of the earliest Oregonians. Lt. Kingsley was born and raised in Portland, OR and graduated from Benson High School. Prior to enlisting in the Air Force, he worked in the disaster unit of the Portland Fire Bureau—always committed to the service of his community and country. During the Second World War, he went to pilot training, and then served as a bombardier in a B–17F. He was assigned to the 341st Bomb Squadron, 97th Bombardment Group, 15th Air Force.

On June 23, 1944, he was on Mission No. 295, flying out of Amendola airfield in Foggia, Italy against the Dacia Oil Refinery in Ploesti, Romania. While on the bombing run, the right wing of his aircraft was hit by enemy fire. His aircraft took 15 strikes, crippling it as it flew over Bulgaria. The attack injured several members of the aircrew, including the tail-gunner. Lt. Kingsley had to remove the tail-gunner's damaged parachute to provide first-aid.

An order to bailout was given; the Lieutenant gave his parachute to the injured tail-gunner and reminded him to pull the ripcord. The last airman exiting the crippled aircraft remembers seeing Lt. Kingsley standing in the bomb bay of the plane, making sure all of his fellow crew were out of the plane first. Because of Lt. Kingsley's previous flying experience, he jumped into the pilot's seat and tried to regain control of the aircraft, which descended and circled the field in an attempt to land. Witnesses reported seeing the aircraft dive steeply and crash in a field just north of Plovdiv, Bulgaria. Lt. Kingsley never got out alive. For his extreme bravery he was posthumously awarded the Medal of Honor.

Today, one of the Oregon Air Guard's F–15 units is based in southern Oregon at Kingsley Field, named in Lt. Kingsley's honor. This year marked the 60th anniversary of that fateful day and of Kingsley's heroism.

At a time when so many young men and women from Oregon and all across the Nation are fighting overseas, we honor their service. And we must also remember to honor the service of these veterans—some of whom, like Lt. Kingsley, have made the ultimate sacrifice—so that we can live in freedom and continue to pursue our dreams. We do not forget and will not forget them, and we are forever grateful for their honorable service to and sacrifices for our Nation.

SERGEANT JOSHUA J. SKVOR

Mr. GRASSLEY. Mr. President, I rise today in honor of a fellow Iowan and a dedicated serviceman, Sergeant Joshua J. Skvor, of Cedar Rapids, IA. It is my sad duty to inform the Senate that Sgt. Skvor, a member of the Iowa National Guard, lost his life when the truck he was driving was involved in a collision with another vehicle north of Amana, IA. My deepest sympathy goes out to his family and friends. Sgt. Skvor was assigned to the Iowa Army National Guard's Headquarters and Headquarters Company, 234th Signal Battalion, stationed in Cedar Rapids. He is survived by his mother and father, Rachel and Joseph Skvor. They can be very proud of their son.

Though not currently serving on Federal active duty, Sgt. Skvor had recently returned from a 14-month deployment in Iraq in support of Operation Iraqi Freedom. As we mourn his tragic loss, it is fitting that we pay tribute to his service to his country. He will be missed by his fellow soldiers as well as all those who knew him.

CORRAL DRIVE ELEMENTARY SCHOOL

Mr. DASCHLE. Mr. President, I would like to take a moment to congratulate the Corral Drive Elementary School in Rapid City for being recognized by the U.S. Department of Education as a "Blue Ribbon School."

The Federal Blue Ribbon Schools program recognizes schools that make significant progress in closing the achievement gap or whose students achieve at very high levels. Corral Drive Elementary School clearly meets those high standards. Last year, 90 percent of its students were proficient or advanced in reading, and 84 percent were proficient or advanced in math.

South Dakota also has one other Blue Ribbon School this year: The Challenge Center School in Sioux Falls.

If you visit Corral Drive Elementary School—as I had the pleasure of doing last spring—it's clear why the school is so successful. It is a lively place where each child's spark of curiosity is nurtured and valued. The walls are covered with students' work and teachers and parents are eager to talk about the children's progress. Overseeing it all is a thoughtful and energetic principal, Mrs. Nancy Whitcher.

Like communities across America, Rapid City has had to cut a number of programs for students, in order to meet budget constraints as well as the new mandates in the No Child Left Behind Act. The fact that Corral Drive Elementary School has achieved such success in the face of such significant challenges makes the Blue Ribbon School designation all the more impressive. Parents, teachers, administrators and everyone in the Corral Drive community can be very proud of Blue Ribbon School designation and, more importantly, of everything they are doing to make sure that their children have the opportunity to develop their God-given skills and abilities.

Education is something South Dakotans take very seriously, and we are proud of how well our schools are doing. About three-quarters of our children demonstrated proficient on the latest No Child Left Behind exams, and our state ranks among the top 10 in the country on the National Assessment of Educational Progress.

Good, strong public schools like Corral Drive are pillars of hope. They are also the cornerstone of American democracy. They are what has helped America create the most innovative, powerful economy the world has ever known. It's important to let our educators and parents know that we value their efforts and celebrate their successes. So today, I am pleased to send my congratulations to the educators and families of the Corral Drive school. Keep up the great work!

CONGRATULATIONS ON 30 YEARS

Mr. DASCHLE. Mr. President, this month we celebrate an important milestone in South Dakota: The opening of the first Super 8 Motel.

In 1974, the first Super 8 Motel opened in my hometown of Aberdeen, SD. This motel is a pioneer of the economy motel industry, and a perfect example of entrepreneurial success. In its first year of operation, Super 8 showed that its founders, Dennis Brown and Ron Rivett, were surpassing their goals by leaps and bounds—one year after its first motel opened, an additional three motels sprang up in the cities of Pierre, Mitchell, and Yankton. This unprecedented growth continued, and today, in Super 8's thirtieth year of operation, this small business venture has resulted in over 2,000 motels opening throughout the United States and Canada.

Super 8's success is predicated on the core operating values that Dennis and Ron instilled in their employees and motel owners: cleanliness, efficiency, and friendly service. From its inception, the founders and board members continually strived to better serve their customers. Some examples of their strong commitment to customer service are the implementation of one of the first toll-free reservation lines in the early 1970s and the VIP club, which currently has over 7.5 million members.

I will never forget when I returned home to Aberdeen and saw the first Super 8 Motel: a two story stucco building on Sixth Avenue, Southeast. At that time, very few people could conceive that this start-up business would reshape the hospitality industry. Thankfully, Dennis and Ron had the plan and the motivation to realize their goals and make believers out of ordinary folks in need of a place to stay on the road.

After my stays at Super 8 Motels, it was clear that this company was destined for greatness. Super 8 is a true American success story, which could not have been achieved without the hard work and determination of Dennis, Ron, and all of their hard-working staff. I am confident that Super 8 will continue to grow for many years to come, and I wish to extend my congratulations to everyone that has been involved in this monumental effort over the past 30 years.

JAPAN AND BURMA

Mr. McCONNELL. Mr. President, it has come to my attention that since October of last year, the Government of Japan has funded at least 28 new projects in Burma totaling more than $18 million. Some of these funds appear to have been provided directly to the illegitimate and repressive State Peace and Development Council, SPDC.

A question many of my colleagues may be asking is: Why is Japan providing assistance to Burma and the thugs in Rangoon when Burmese democracy leader Daw Aung San Suu Kyi and other members and supporters of the National League for Democracy, NLD, remain imprisoned?

I wish I knew the answer.

Providing assistance to Burma and the SPDC sends exactly the wrong message at the wrong time. Assistance to the junta prolongs the suffering of the Burmese people and props up an illegitimate regime, headed by Than Swe, which has tortured, murdered and raped with impunity.

It is time Japan gets with the program and pressures the SPDC to begin meaningful reconciliation with the NLD—the only legitimately elected leadership of that country.

Freedom needs Japan's help in Burma.

TRIBUTE TO MR. CLATIS WALKER

Mr. McCONNELL. Mr. President, I rise today to pay tribute to a valued educator in my State who is retiring in November after more than 30 years of service to the youth of Kentucky, Mr. Clatis Walker.

The education profession is one that people seem to take for granted from time to time in our society, but its importance cannot be overlooked. The impact educators have on future generations is paramount. This responsibility is made all the greater when the focus is on children with special needs. Mr. Walker has taken this responsibility and welcomed it throughout his career.

In 1972, Mr. Walker began his career as a special education teacher in Montgomery County, KY. Six years later, he became a field service consultant for the Bureau of Education for Exceptional Children for the Kentucky Department of Education.

Mr. Walker jumped back into the classroom in 1980 when he accepted the position as Special Education Work Study Program coordinator and Athletics Director at Bourbon County High School. In 1982, he returned to Montgomery County, where he began his teaching career. He spent the next 9 years serving in several capacities including, special education coordinator, early childhood coordinator, chairman of the Northeastern Bluegrass Education Cooperative Project, and Assistant Principal at J.B. McNabb Middle School.

A change in profession occurred in 1991 when he left the education field to become an assistant vice president at Montgomery Traders Bank, where he was a loan specialist. His absence in the Montgomery County school system was noticed and in 1993, Mr. Walker returned as the Director of Special Education and the Director of Public Relations.

In 1999, he was named the Executive Director of the Central Kentucky Special Education Cooperative. This cooperative aims to enhance the educational opportunities for its students by allowing the Kentucky Department of Education, school districts, and state universities to work together. The important work of this cooperative has taken place because of the leadership of Mr. Walker.

Mr. President, today I ask my colleagues to join me in honoring and recognizing the career of this outstanding Kentuckian, Mr. Clatis Walker.

HONORING LUCES

Mr. REID. Mr. President, I rise today to recognize Lo Nuestro de Latinos Unidos Celebrando Salud, LUCES, or the Latino HIV/AIDS Task Force of Clark County, NV for its efforts to promote National Latino AIDS Awareness Day.

The 2nd Annual National Latino AIDS Awareness Day will mark the last day of Hispanic Heritage Month, an annual celebration in which we recognize the tremendous contributions of our Nation's Latino community. This day will focus attention on an important health challenge facing the Latino community, and on how we can help the community overcome this challenge.

Latinos account for 14 percent of all HIV infection cases and 15 percent of AIDS cases in Clark County. It is critical that we stop the spread of this terrible disease. The dedication of LUCES to educating and advocating on this important issue in Clark County is commendable.

I would like to take a moment to recognize several individuals for their hard work and strong commitment on this issue: Cheryl Ballard, Marcia English, Cherie Filler-Maietta, Robbie Keeley, Ernesto Martinez, Julie McCain, Keanu Medina, Molly Puno, Elias Zamorano, and Louise Zuniga.

Please join me in congratulating the members of LUCES for their work to promote public health, and in wishing them great success in their future endeavors.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

On October 4, 2000, in LaCrosse, WI, Jason Welch and Jason Elisius, both 21, were charged with a hate crime for allegedly violently targeting two gay men because of their sexual orientation.

I believe that the Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

A NOTE OF GRATITUDE

Mr. PRYOR. Mr. President, I rise today to acknowledge the assistance and support one soldier's family has shown him during his 26 years of service in the United States Army. Lieutenant Colonel Andy Lucas, currently serving with J37, Joint Task Force

Global Network Operations, is the oldest of Andrew and Shirley Lucas' five children. The entire family attend the University of Arkansas, making me particularly proud because that is my alma mater, and Mr. Lucas and three of his children have bravely served our country in the military.

Lieutenant Colonel Lucas wrote to me on the occasion of his retirement and asked that I write to each of his family members in an effort to show them how grateful he is for their love and support over the last 26 year. He writes.

My family is fantastic, personal bias aside. Throughout my entire time in the military, they have always been there to support me and provide that emotional stability during deployments in both peace and crisis. Everything that I have accomplished in the military and in life can be attributed to the upbringing, love, and support by my parents coupled with the love and support from my brothers and sister. I am truly blessed to have such a wonderful family . . .

Our country is blessed to have you, too, Andrew and Shirley Lucas; Ernest and Carole Lucas; Lieutenant Colonel John and Coleen, John Jr., Kevin, Bryan, and Andrea Lucas; Jim and Cathy, Linden and Weston Spalding; Thomas and Sara, Darcy and Will Lucas; and April Kulda-Lucas and Christopher Drew, LTC Lucas' wife and son. It is extremely hard on our men and women in uniform to deal with the ups and downs of military life, but it is family members like you that help them through it, which is why I am happy to honor LTC Lucas' request and say thank you for your service to our country.

PASSAGE OF H.R. 5149

Mr. HATCH. Mr. President, last week the Senate passed yet another short-term extension of the 1996 welfare law. This marks the eighth temporary extension—and the third year we have been unable to improve this program that serves millions of needy families. I rise today to express my disappointment that improving this legislation has not been realized because of efforts by some of my colleagues to undermine the principles and goals of reform.

I think we can all agree that welfare reform has been one of the most successful social policy reforms in U.S. history. The 1996 welfare reform legislation made remarkable headway in helping welfare dependents move toward self-sufficiency. It dramatically reduced State welfare caseloads, reduced child poverty, and increased employment. But there is still room for improvement.

It is a misfortune that we had to pass yet another short-term extension that doesn't give States the certainty they need to best plan for the future. We passed this welfare extension because we had to—it bought us another 6 months in the hopes that we can finally act on a broader welfare reform bill in the 109th Congress.

We want more welfare recipients to prepare for work, which is the true path off welfare. We want to help more parents marry or stay married, which helps them and helps their children. We want to help more parents get ready for full-time work, which is what it takes to lift families out of poverty. We want to provide more child care, so more parents can go to work knowing their children are cared for and safe.

In 2003, I worked tirelessly with my colleagues on the other side of the aisle to produce a comprehensive welfare reform bill that enjoyed substantial Democratic support. Many of the provisions in the bill we should have passed in March reflected the provisions in the 2003 bill. This further underscores my frustration with the Senate Democrats' failure to support a comprehensive reauthorization bill, and in effect, force both bodies to fund welfare programs through a series of short-term extensions, without any further improvements.

Welfare reform has saved taxpayers money, but it has not been free. It will not be free in the future. The welfare reform bill we tried to pass 6 months ago included meaningful reforms and resources needed to help more low-income parents go to work. We understand that parents need to know they have access to quality child care, and the bill included an additional $6 billion—for a total of $7 billion—in child care funding to support the efforts of working families who need help with this essential assistance.

I have seen in my home State of Utah, that many of these parents, hardworking people, young and old, end up finding great self-satisfaction in giving their gift of skill at work, at giving themselves to a task at hand so thoroughly, that they have a meaningful relationship with their work. I think we will all agree that sometimes it isn't easy to dive into your work with enthusiasm. But sometimes this is necessary and appropriate. That is why I would like to talk a little bit about its importance, that work requirements are increased.

The increased work requirements in H.R. 4 would have changed the core work requirement from 20 hours per week to 24 hours per week. Total hours required for a state to receive full credit it would have increased from 30 hours per week to 34 hours per week for single-parent families. Now these are sensible, reasonable requirements. Two-parent families would have been required to work 39 hours per week, or 55 hours per week if they received subsidized child care. States would have received partial credit if individuals worked 20 hours per week, and extra credit if they worked more than 34 hours per week. Current law provides full credit only at 30 hours.

Again, I think these modifications could have made real progress. The more a person sets goals and takes responsibility for the career they want, they will better be able to decide if a particular job fits into the scheme of their life. The harder you work, that is the more hours you work, the more you understand why you're working at a particular job and how your hard work is going to benefit you.

Another important provision in H.R. 4 was the establishment of a meaningful State participation rate. For years now, States have had no real Federal requirements to actively recruit adults into industrious work and work related activities. Under H.R. 4, States would have been required to have 70 percent of their caseload involved in approved work activities by 2008. It is important to know that most States currently have less than 50 percent of their caseloads in approved, full-time, work-related activities. Several states are below 25 percent. Requirements would oblige States to significantly ramp up their efforts to engage a much greater number of families in activities that count toward the work participation rate.

Right now, the majority of adults receiving assistance are reporting zero hours of activity. I think it is time we recognize that an effective participation rate, and by the elimination of the caseload reduction credit in the 1996 welfare law, we will encourage people to commit, to careers, to goals, to real recovery. Just half-heartedly trying will not enable a person to succeed, but committing yourself will.

For the sake of the millions of families that remain in the welfare system, we should have been able to come to a final agreement that would have helped Americans achieve independence and a brighter future.

Again, I am very frustrated that we have caved to the passage of another short-term placeholder extension. Unfortunately, the remarkable improvements included in H.R. 4 will remain on hold while we continue to kick the ball down the field.

As time passes, budget pressures will only squeeze tighter and tighter. The additional help we could have offered will become only harder to come by.

WORLD FOOD DAY

Mr. DURBIN. Mr. President, I rise today to join people from more than 150 nations in celebrating October 16 as World Food Day.

World Food Day brings much-needed attention to hunger and malnutrition around the world. Inadequate nutrition is an unremitting global health threat. Over 840 million people in the world are hungry, including more than 300 million children.

The United Nations Food and Agriculture Organization has worked for 59 years to help both developed and developing nations create their own sustainable food supply.

Because of the organization's achievements, many people who did not know where their next meal would come from can now live healthy and productive lives. Workers from the Food and Agriculture Organization have assisted farmers in Swaziland with growing new crops to combat problems of hypertension and sugar diabetes. They have offered alternatives to more than 2000 poor coca farmers in Bolivia, helping to curb the production of cocaine. Recently, the organization approved $400,000 in emergency relief funding for Caribbean countries devastated by this year's hurricanes.

The Food and Agriculture Organization is not alone in its effort to fight hunger. Last month, the Senate Hunger Caucus, which I cochair with Senators DOLE, LINCOLN, and SMITH, met with Ambassador George McGovern and the Executive Director of the United Nations World Food Program, Jim Morris, to discuss international hunger. We know it is possible to feed the hungry and improve the lives of millions of impoverished people around the globe. An additional $13 billion each year, for instance, could meet the most basic health and nutritional needs of the world's poorest people. It is a modest amount compared to the 25,000 lives lost to hunger each day.

Several years ago, Ambassador McGovern and the former Senator Bob Dole called for an international school feeding program. They recognized that we can fight hunger among children in the world's poorest countries while also sending them to school. This idea, which became the McGovern-Dole International Food for Education Program, is one of the single best policy ideas I have ever heard. We know that poor children and families often do not have enough food to eat. We also know that poor children are less likely to go to school. But, by providing food as an incentive to attend school, we are able to provide fuel for the bodies and minds of these children.

I am pleased that the Senate Appropriations Committee accepted my request to increase funding for the McGovern-Dole program to $100 million in the fiscal year 2005 Agriculture Appropriations bill. It is a simple step toward ending an epidemic that leaves children with bloated stomachs, emaciated faces, and underdeveloped minds—an image that I will never forget after seeing the devastation first hand in some of these developing nations.

As we celebrate World Food Day and the progress of the Food and Agriculture Organization and other groups on the front lines in the battle against hunger, let us remember the substantial work that remains. I hope this day will spur us on to achieve the vision of a time when abundant food is available to every human being. I look forward to working with other members of the Senate Hunger Caucus toward that goal.

DOMESTIC VIOLENCE AWARENESS MONTH

Ms. MURKOWSKI. Mr. President, October is Domestic Violence Awareness Month and as an Alaskan, I welcome this opportunity to discuss a problem my State has been combating for decades.

In 2002, more women per capita were killed by men they knew in Alaska than in any other State. During the last 5 years, over 18,000 domestic violence charges have been filed in Alaska, and this statistic does not include incidences where a women decided not to press charges. Since 1976, Alaska has ranked in the top five States for the highest rate of rape per 100,000 total inhabitants.

The epidemic domestic violence and sexual assault rates in Alaska constitute a serious public crisis and our State is dedicated to finding solutions for this problem. In the spirit of that commitment, I helped organize a summit with the Department of Justice to discuss the unique challenges that Alaska faces. The summit provided a forum for law enforcement, nonprofit organizations, governmental entities, health personnel and advocates to come together to openly discuss the multiple issues associated with this crisis. The summit covered a wide range of topics, including the role of responders to domestic violence, the best practices to implement in communities and the identification of training needs.

The summit gave different entities the opportunity to convene, collaborate, and openly discuss solutions that will help us prevent domestic violence and sexual assault. The summit was a solid first step in an ongoing effort in our State.

There are no simple solutions to the problem of domestic violence, but we do know that education and programs that take a proactive approach can help turn the tide on this issue. This year I secured several earmarks in the CJS appropriations bill in response to the domestic violence problem that Alaska is facing. Funds will be provided to the State of Alaska for a sexual assault/domestic violence prosecution unit. Funds will also be available for a new domestic violence prevention project to allow for a comprehensive evaluation and assessment of domestic violence cases. Money was also attained to offer services to victims whose lives have been impacted by violent crime.

Addressing the public crisis posed by domestic violence and sexual assault is a two-front effort. On one front, we are working to meet the immediate needs of the victims of these crimes, ensuring they have the resources they need to recover. On the other, we are working on the long term goals of raising awareness and educating the public. Domestic Violence Awareness Month is a vital part of that effort.

In many cases, victims of domestic violence wrongly believe they are responsible for what has happened to them. We must work to alter the social stigma associated with being a victim of domestic violence. That stigma belongs to those who commit crimes, not their victims. By taking care of victims, prosecuting offenders, and educating the public about this issue, I believe we can begin to end a serious problem that has plagued our communities and our citizens for far too long. Many of my colleagues have pledged their support in this effort, and I look forward to working with them on additional solutions to address this problem.

Mr. JOHNSON. Mr. President I rise today to mark the beginning of National Domestic Violence Awareness Month, NDVAM and to acknowledge the tenth anniversary of the Violence Against Women Act, VAWA. NDVAM began in 1987 as a way to draw attention to the problem domestic violence. Seventeen years later, domestic violence is still a blight in our communities. As such, we must do what we can to combat domestic violence. A timely reauthorization of VAWA is a critical step in this effort.

Ratified in 1994 as title IV of the Violent Crime Control and Law Enforcement Act, VAWA established protocol and discretionary grant programs that are managed by the Department of Justice, and the Department of Health and Human Services. As indicated by Congressional Research Service reports, grants administered by DOJ aid law enforcement, establish and operate training programs for victim advocates and counselors, and train probation and parole officers who work with released sex offenders. Grants provided by the HHS fund shelters for battered women, rape prevention programs, and community programs on domestic violence. Grants also provide funding for efforts to reduce sexual abuse of runaway and homeless street youth.

VAWA also finances and annually publishes a series of reports on the methods of assessing and preventing gender-related crimes. The findings of these studies are used to develop existing programs and create new ones in areas that require more attention. As a result, VAWA's efforts have initiated critical changes in Federal laws regarding interstate stalking, intrastate domestic abuse, the rules of evidence concerning the use of a victim's past sexual behavior, and HIV testing in rape cases.

Additionally, VAWA instituted a pilot program for safe custody exchange for families of domestic violence, as well as a domestic violence task force. These initiatives greatly enhance the enforcement of protective orders across state lines. Without VAWA's assistance, battered women who relocate to other states would be extremely vulnerable, as would these States' resources.

Despite the enormous strides the VAWA has made for victims of domestic violence, sexual assault, and stalking, Native American women still experience the highest rate of violence of any group in the United States. This is of particular concern to the Lakota, Nakota, and Dakota tribes located in my home State of South Dakota. A Department of Justice report titled, "American Indians and Crime," found that Native American women suffer from violent crime at a rate three and a half times greater than the national average. Researchers also estimate that this number is actually much higher, as according to the Department of Justice, over 70 percent of sexual assaults are never reported. Many Native American women remain silent due to cultural barriers, a high level of mistrust for white dominated agencies, and a history of inactivity by state and tribal agencies to prosecute crimes committed against Native Americans.

Furthermore, it is important to address the fact that police and courts tend to ignore cases of violence involving Native American women, due to alleged confusion between Federal and tribal jurisdictions. Cases involving a non-Native American perpetrator and a Native American victim fall under Federal jurisdiction. Tribes do not have criminal jurisdiction over nontribal members even for crimes committed against Native women on the reservation, and regrettably, States are not effective enough in enforcing tribal protection orders. Fortunately, VAWA provides victims with access to critical resources by establishing key grant programs that improve the criminal and civil justice systems' response to victims, as mentioned above. However, even with the best efforts of antiviolence advocates, law enforcement officials and judicial personnel have yet to reach everyone in need of assistance. Despite the successes of VAWA, Native American women are still at greater risk of becoming victims of violence, and the jurisdictional issues they face only further complicate the problem.

On the tenth anniversary of the VAWA, I call on my colleagues to continue supporting this important piece of legislation. Its contributions to society, while unfinished, are essential to combating abuse against women.

NOTICE OF CHANGE IN REGULATIONS REGARDING SENATORIAL SUITE SELECTION

Mr. LOTT. Mr. President, I rise to announce that in accordance with Title V of the Rules of Procedure of the Senate Committee on Rules and Administration, the committee has updated the Senate regulations on Senatorial suite selection effective October 7, 2004.

Based on the committee's review of the 1992 regulations which allow members up to 24 hours to select a Senatorial office suite, the Committee on Rules and Administration has concluded that its regulations should be updated to facilitate the speedy and smooth transition of assigning Senatorial office space. This update includes changing the allowable time for suite selection from 24 hours to eight hours. The Committee on Rules and Administration has also streamlined the process for the submission of office layout plans to the Architect of the Capitol. The timeframe for submitting such layouts to the Architect of the Capitol has been amended from two weeks to one week.

The amended regulations, as adopted appear below:

COMMITTEE ON RULES AND ADMINISTRATION, UNITED STATES SENATE

REGULATIONS ON SENATORIAL SUITE SELECTION

Adopted by the Committee on Rules and Administration, September 20, 1988, Amended June 17, 1992, Amended October 7, 2004

The following policy will be in effect for suite selection by Senators following the general elections in November:

1. As in the past, seniority will determine the order of selection of suites.

2. Suite selection will begin promptly after the election.

3. The only opportunity for suite selection by each Senator will occur when he or she is contacted by the Rules Committee.

4. Selection will consist of only those suites available at the time of contact by the Rules Committee.

5. Senators shall inform the Rules Committee of the decision on suite selection within 8 business hours (9 a.m.–6 p.m. Monday through Friday) after contact by the Rules Committee. Failure to respond within 8 business hours will be deemed a decision not to move, unless an extension beyond the 8 business hours is approved by the Chairman of the Rules Committee.

6. Senators shall submit an approved office layout to the Office of the Architect of the Capitol within one week after a suite is assigned. (This action is critical because reconfiguration of partitions, telephones, and computer terminals are dependent upon the office layout.)

7. Senators shall be expected to begin moving into the newly-assigned suite not later than two days after notification that the suite is ready for occupancy.

8. In considering whether to move, Senators should take into consideration the following requirements:

a. Modular furniture will not be moved. If a Senator with an office containing modular furniture selects a suite without modular furniture, traditional furniture will be assigned. In cases where modular furniture is in place, changes in suite configurations should be kept to a minimum.

b. A Senator's computer equipment will move to the new suite. The central processing unit will be initially installed in the location where the previous occupant's CPU was located.

c. If a Senator from a "large" state elects to move, the extra space due that state may not be contiguous. Committees will not be forced to relocate in order to provide contiguous space. The Rules Committee will seek to locate the extra space in a contiguous area, but it may not be possible with most suite choices. It should also be understood that the Rules Committee will not know where the extra space due a "large" state will be located until after all 100 Senators have selected a suite. Then and only then will it be possible for the extra space to be assigned.

9. Senators from California will be assigned the two largest suites in the Hart Building as they become available. The choice between the two suites is to be made by the California Senators. These offices will then be permanently removed from the pool of available suites for assignment.

10. Every effort will be made to expedite moves, including the employment of temporary staff. However, the reconfiguration of partitions, furniture, telephones, and computer terminals requires seven to ten days. It is also desirable to repaint while the suite is vacant.

11. Each Senator (returning and newly-elected) will be informed of this policy immediately after the general election in November.

INTELLECTUAL PROPERTY PROTECTION

Mr. LEAHY. Mr. President, back in June the Senate took a strong step to support intellectual property on the Internet by updating the Government's most important tool in the fight against piracy: its enforcement authority. Unfortunately, the Bush administration, which likes to talk a good game, is apparently not interested in having the tools it needs to do the job. This administration has done nothing, as far as I know, to help enact important intellectual property legislation. As a consequence, congressional Republicans are holding up and resisting important legislation.

The Protecting Intellectual Rights Against Theft and Expropriation Act, S. 2237, allows United States Attorneys' Offices to bring a civil action against a large-scale copyright infringer. For some unimaginable reason, the Justice Department, which cannot issue enough press releases about its newly-minted Intellectual Property Task Force, has taken no interest in or action on this legislation. Apparently, the Ashcroft Justice Department rejects having the law enforcement authority to stop large-scale infringers and protect America's intellectual property from piracy. A Justice Department that has reinterpreted treaties and contorted the law to claim vast and unfettered authorities for this executive has little interest in assembling legislatively enacted tools for copyright protection and to stop piracy.

For a number of reasons having to do with law enforcement priorities, resources and other considerations, prosecutors rarely decide to bring criminal charges even against flagrant infringers. I have encouraged the Department to be more aggressive both internationally and here at home and have praised them when they have acted against infringers. I have worked hard to provide additional resources to our international efforts.

The PIRATE Act is another important effort in this fight. It provides alternative civil enforcement authority. When a U.S. Attorney's Office sees a need for enforcement, but determines that a criminal case is not justified, the PIRATE Act would afford the Government a civil law route and civil law remedies. There are times when civil proceedings and remedies are more appropriate. Until we enact the PIRATE Act, they are unavailable. Presently, very few criminal cases are brought and no civil cases can be brought by the Government for these violations of Federal law. When you consider that the copyright industry employs over 11 million people in the United States, hamstringing the Federal Government by limiting it to criminal enforcement is unthinkable.

The Justice Department has appropriately refocused many resources of the FBI and the Criminal Division on preventing and investigating terrorism cases, leaving even fewer resources for protecting the intellectual property that is such a critical economic engine in this country. The PIRATE Act will enable other resources, outside the Criminal Division of the Justice Department and U.S. Attorney's Offices, to help protect intellectual property. This bill removes legal obstacles to the Justice Department's effective use of the resources it has at its disposal to fight piracy. The Attorney General should be fighting for this initiative. Unfortunately, the Bush administration and its Attorney General are missing in action.

The logic of the PIRATE Act and the reasoned approach it takes to Government enforcement of intellectual property rights is compelling. Consider that during this divisive session of Congress in which partisanship was pervasive, the Senate Judiciary Committee and the Senate passed the PIRATE Act without a single dissenting voice.

I urge the Bush administration to get with the program. If you want to talk the talk and pretend to support the protection of intellectual property rights, then walk the walk and work to clear the Republican opposition so that Congress can enact the PIRATE Act. Then use that authority as appropriate to help end the theft of intellectual property that is an enormous drag on our economy and so unfair to the artists who created the works by which others illegally profit.

The Ashcroft Justice Department issued a veto threat to the SAFE Act before a single hearing and before any markup of that legislative proposal. The PIRATE Act has passed the Senate and we still await the first word from the Justice Department providing its views on this legislation. The lack of support for enactment of civil enforcement tools by the Department of Justice is most revealing.

NOMINATION OF DR. FRANCIS JOSEPH HARVEY TO BE SECRETARY OF THE ARMY

Mr. SPECTER. Mr. President, I have sought recognition to recommend that Francis Joseph Harvey, of California, confirmed to be Secretary of the Army. I met with Secretary Harvey on October 5, 2004 in my office. I found Secretary Harvey to be not only very well qualified, but also to have a great deal of enthusiasm for the task ahead. I was particularly impressed with Secretary Harvey's background. He was born and educated in Pennsylvania. His mother still resides in Latrobe, PA.

Mr. Harvey is currently serving as Assistant Secretary of Defense for Networks and Information Integration. Prior to his nomination by the Army, he served as vice chairman of Duratek, Inc. in Columbia, MD, and has served as the chief operating officer of the Industries and Technology Group for Westinghouse Electric Corporation where he earlier served as president of the Electronic Systems Group and as president of the Government and Environmental Service Company. Dr. Harvey earned his bachelor's degree from the University of Notre Dam and his Ph.D. from the University of Pennsylvania.

Pennsylvania has a rich Army tradition. Pennsylavnia is home to several bases, and the Army War College and Military History Institute at Carlisle Barracks.

If confirmed, Secretary Harvey will no doubt apply his expertise, energy, and enthusiasm to serve the soldiers of the United States Army and our country with distinction.

SATELLITE HOME VIEWER ACT

Mr. LEAHY. Mr. President, I am very upset that the Congress has been unable to pass legislation to prevent the termination of satellite television service to hundreds of thousands households in the United States. In September, I raised these concerns on the Senate floor in the hope of preventing these potential terminations of satellite service. The Senate Judiciary Committee got its job done in June. We reported out a great satellite television bill which would have expanded viewing options for satellite dish owners. The other body has also developed a very good satellite bill which I shall discuss in a moment.

However, history may repeat itself because Congress has not completed action on this legislation. I explained my concerns on the Senate floor when I reminded everyone that in "1998 and 1999 over 2 million families were faced with the prospect of losing the ability to receive one or more of their satellite televisions network stations."

These terminations of satellite service will begin just after midnight on December 31, 2004. The problem is that the Congress will be out of session during most of the time between now and that termination date. If we are in session for a small portion of that time, it will most likely be during a lame duck session of Congress after the November elections. There will be very little time to enact this satellite bill with the huge press of business yet to be completed.

Many Midwestern and Rocky Mountain states have vast areas where satellite dish owners receive network stations, such as ABC, NBC, CBS or Fox, from out-of-state stations because signals from their local stations are blocked by mountains or diminished by distance from TV broadcast towers. Thousands of these families do not have any other way to receive television signals except by satellite. They do not have access to TV stations over-the-air because mountain terrain blocks those signals, and distance from the broadcast towers weakens the signals. Many residents in those states do not have access to cable TV service because of the rough terrain or the low population density which makes it economically difficult for cable companies to invest in the needed cables. Without access to network stations via satellite because the satellite legislation did not pass, and because they do not receive service over-the-air, or via cable, thousands of families in those areas will lose national network service.

Since information about subscribers is proprietary it is difficult for me to tell you exactly how many families will be affected by this, but I assure you it is not a small number.

The Hatch-Leahy Satellite Home Viewer Extension Act of 2004 was approved by the Senate Judiciary Committee in June. All the Members of the Judiciary Committee supported that bill. Similar legislation in the other body entitled the Satellite Home Viewer Extension and Reauthorization Act of 2004, if enacted, would also be a boon to public television, the satellite industry, the movie, music and television industries, and to satellite dish owners throughout America. Unfortunately, the time is rapidly approaching when it will be too late to act.

I am especially pleased that both the Senate and the House, H.R. 4518, bills contain a provision which I worked on with my colleagues from New Hampshire, Senator SUNUNU and Senator GREGG. We, along with Senator JEFFORDS, introduced legislation to ensure that satellite dish owners in every county in each of our States would be able to receive signals, via satellite, from our respective in-State television stations. While our two States represent a small television market as compared to some of the major population centers, this provision is nonetheless very important to residents in six of our collective counties two in Vermont and four counties in New Hampshire. The Senate bill, S. 2013, as reported in June by the Judiciary Committee also contains this provision, which was just included in H.R. 4518, the House bill.

In Vermont this will mean if one of these bills passes—that satellite dish owners in Bennington and Windham Counties will be able to receive all Vermont network stations in addition to the out-of-State network stations they now receive.

The Senate bill was introduced on January 21, 2004, by Chairman HATCH and was cosponsored by myself and Senators DEWINE and KOHL. When the bill was reported out of committee on June 17, 2004, I noted that the bill does far more than just protect satellite dish owners from losing signals. I pointed out that the new satellite bill "protects subscribers in every state, expands viewing choices for most dish owners, promotes access to local programming, and increases direct, head-to-head, competition between cable and satellite providers."

I continued by saying that, "easily, this bill will benefit 21 million satellite television dish owners throughout the Nation, and I am happy to note that over 85,000 of those subscribers are in Vermont."

The Senate Judiciary Committee-reported bill, and the recently passed bill H.R. 4518, go far beyond protecting what current subscribers receive. As I mentioned in a September statement on the Senate floor, the bills allow additional programming via satellite through adoption of the so-call "significantly viewed" test now used for cable, but not satellite subscribers. That test means that, in general, if a person in a cable service area that historically received over-the-air TV reception from "nearby" stations outside that area, those cable operators could offer those station signals in that person's cable service area. In other words, if you were in an area in which most families in the past had received TV signals using a regular rooftop antenna, then you could be offered that same signal TV via cable. By having similar rules, satellite carriers will be able to directly compete with cable providers who already operate under the significantly viewed test. This gives home dish owners more choices of programming.

In the past, Congress got the job done. Congress worked together in 1998 and 1999 when we developed a major satellite law that transformed the industry by allowing local television stations to be carried by satellite and beamed back down to the local communities served by those stations. This marked the first time that thousands of TV owners were able to get the full complement of local network stations. In 1997 we found a way to avoid cutoffs of satellite TV service to millions of homes and to protect the local affiliate broadcast system. The following year we forged an alliance behind a strong satellite bill to permit local stations to be offered by satellite, thus increasing competition between cable and satellite providers.

Because of those efforts, in Vermont and most other States, dish owners are able to watch their local stations instead of getting signals from distant stations. Such a service allows television watchers to be more easily connected to their communities as well as providing access to necessary emergency signals, news and broadcasts.

Mr. President, I hope we are able to work together to finish this important satellite television bill in the few remaining days of this Congress.

AUTHORIZATION FOR LIHEAP

Mr. FEINGOLD. Mr. President, as the Nation faces crude oil prices of over $53 per barrel, the Federal Government must commit to helping families fight high home heating oil costs. This week, the Milwaukee Journal Sentinel projected that home heating oil costs will increase by 18 percent this winter. Despite the higher energy costs consumers will face this winter, States are reducing benefit levels in order to try to serve an increased number of households. Congress must act now to help low-income families and the elderly pay for high home heating costs.

To combat these high prices, I urge my colleagues to support a bill introduced today by the Senator from Vermont, Mr. JEFFORDS, to extend and increase the authorization of the Low Income Home Energy Assistance Program, LIHEAP. LIHEAP provides a vital safety net for our Nation's low-income households, who spend approximately 17 percent of their annual income on residential energy costs. Last winter, my home State of Wisconsin received more than $40 million in Low Income Energy Assistance and the program served over 112,656 Wisconsin households. I strongly support extending the LIHEAP program and efforts to increase the authorization to $3.4 billion each year to ensure that low-income families and the elderly have this crucial support to heat their homes. I urge my colleagues to support and pass this important legislation as soon as possible.

SUPPORT OF ENERGY SAVINGS PERFORMANCE CONTRACTS

Mr. DORGAN. Mr. President, I rise to thank members of the Defense Authorization Committee for addressing the Energy Savings Performance Contract, ESPC, program. Not only did the conference adopt the Senate position on the importance of this program, they went a step further and extended the program through 2006. Getting this reauthorization has been a long process and unfortunately one that will need to be revisited during the next Congress. We could have avoided this situation by simply providing a permanent authorization for the program, but since we didn't, I believe we should focus on this issue at the beginning of the next Congress instead of waiting until the contracting authority runs out in 2006.

I want to take a moment of the Senate's time to explain to my colleagues the importance of energy savings performance contracts. Energy Savings Performance Contracts allow Federal agencies to enter into unique contracts through which private companies provide energy-efficiency improvements in Federal buildings. What makes these contracts unique is that the private companies are reimbursed for these improvements only through the resulting stream of savings on that Federal agency's energy bill. Simply put, if there are no savings, then there are no payments. The Federal Government owns the energy efficiency improvements, but pays for these improvements through actual energy savings achieved. The Government retains the monetary value equivalent of any savings that exceed the payments to the private company during the duration of the contract and then retains all energy savings once the contract is complete. Importantly, the Federal agency pays no upfront capital costs for the upgrade.

The authority to enter into these contracts expired last year. To ensure continuation of the program, several of us in the Senate worked to include renewal authority in the comprehensive energy bill. Unfortunately, that extension authority was removed from the modified version of the energy legislation introduced by the majority leader. One of the main reasons for this deletion was because the CBO has assigned a significant revenue impact to continuation of the program. This scoring occurred even though the private sector energy efficiency providers are required by law to guarantee the energy savings and thus provide no net cost to the Treasury. Let me say this again, unless there are savings, the Government owes nothing. CBO's interpretation of how to score these contracts may be in line with the literal meaning of the Budget Act, but it certainly is not in line with the spirit of the act. By allowing these private sector companies to work with the Federal Government on installing energy efficiency measures, an enormous service is being provided. We are saving energy; the Government is not required to pay up front costs; and at the end of the day, the Government and the American taxpayer gets the benefit of lower energy bills.

With passage of this short-term extension, the Senate must now turn its attention to passing a permanent extension. The start-stop program we have now is not conducive to getting these efficiency measures installed. During debate on the fiscal year 2005 budget resolution over 40 companies and associations signed a letter in support of the ESPC program. The signatures ranged from USPIRG to the Chamber of Commerce. There are not many instances when you have those two associations agreeing on a measure, so I believe the benefits of the program speak for itself.

In closing, I want to again thank members of the conference committee for their work and support for this program.

COLONEL ROBERT MORGAN

Mrs. DOLE. Mr. President, I would like to reflect for a moment and explain why we should take a moment to honor Colonel Robert Morgan, a man of distinguished valor. Not only was he part of our Greatest Generation, he was a true hero, aptly defined as one who inspires through manners and actions, who leads through personal example and accomplishments requiring bravery, skill, and determination. As commander of the famed Memphis Belle during World War II, and at a time when German anti-aircraft fire brought down 8 in 10 bombers, Colonel Morgan repeatedly risked everything for his country. In this extremely dangerous environment he piloted the first heavy bomber to complete 25 combat missions in the European Theater, an unprecedented achievement and the magic number to be sent home. Colonel Morgan's exceptional courage did not end in the European Theater. He continued his valiant service to his country in the Pacific Theater and again made history when his B 29 named "Dauntless Dotty" was chosen to lead the first B 29 raid on Tokyo. A native of Asheville, North Carolina, Colonel Morgan represented the American Spirit—courage in the face of seemingly insurmountable odds.

BUSH IRAQ POLICY

Mr. LEAHY. Mr. President, I have seen the television reports and the newspaper articles, and I have spoken with people who recently returned from Iraq. I have seen the escalating violence and the chaos that has engulfed parts of that country.

And like all Americans I have watched the death toll of our young men and women in uniform pass 1000. It is now more than 1050, with many thousands more who have been grievously wounded.

Yet to hear the President and Vice President talk, one would think that everything is going well. The President uses words like "freedom is winning" and "we're making steady progress."

There is no question that all of us here wish that were true, but unfortunately the rosy picture that the President paints on the campaign trail is misleading and wildly off base.

Even worse, the President's statements are contradicted by knowledgeable officials in his Administration, by leading Republicans in the Senate, and by a growing number of national security experts within his own administration.

Here are a few examples: Secretary of State Powell said that the situation in Iraq is "getting worse." General Abizaid, the top U.S. military commander in Iraq, said "[w]e're going to have to fight our way all the way through elections," he said, "and there'll be a lot of violence between now and then." Senator Hagel said "The fact is, we're in trouble. We're in deep trouble in Iraq." And, according to a recent article in the Washington Post, a lengthening list of career military, intelligence and State Department officials believe that Iraq is a mess and things are getting even worse, raising the specter of civil war.

Faced with mounting evidence that things are going from bad to worse in Iraq, what does the President do?

First, he attacks the messenger of the bad news by calling the National Intelligence Estimate "just guessing." Next, he ignores the problem by repeating the same old platitudes and wildly-optimistic rhetoric. Then he and his political allies accuse those who dare to disagree of giving aid and comfort to the terrorists. When all else fails, the President engages in a time-honored tradition here in Washington: He changes the subject and deflects attention.

This President and Vice-President are masters at changing the subject. They have attacked John Kerry's distinguished military record, even though neither of them saw combat and many others in the administration used family connections or deferments to avoid military service altogether. In fact, when asked about serving in Vietnam Vice President CHENEY said that he "had other priorities in the military service."

Imagine what the President's campaign would be saying if JOHN KERRY had said that.

Why do the President and Vice-President constantly change the subject when asked to explain why things are going so badly in Iraq? The answer is simple. They have been consistently wrong about Iraq, and the results speak for themselves.

The President was wrong about weapons of mass destruction, which cut short the U.N. weapons inspections and got us into Iraq in the first place. The Duelfer report found that Iraq got rid of its weapons of mass destruction more than a decade ago, that Saddam Hussein did not have the means to develop a nuclear weapon, and that the U.N. inspections were working. Yet the White House insists that this devastating report by its own expert somehow supports the President's decision to go to war.

The Vice President was wrong about our being greeted as liberators. Think about that statement, and compare it to the daily—actually, hourly—attacks against our troops in Iraq today.

The President was wrong about "mission accomplished." More than 900 Americans have died since that famous photo op on the aircraft carrier.

The President was not only wrong, but it is hard to imagine what he was thinking, when he told the insurgents in Iraq to "bring it on."

The President was wrong about Iraqi oil revenues paying for the reconstruction. It is American taxpayers who are paying most of the costs.

And the President acts as if everything is on track for Iraqi elections in January even as the insurgency grows steadily worse and Secretary Rumsfeld is talking about holding elections in only parts of the country.

Despite being consistently wrong, the President's strategy stays the same—put the best face on it, insist that everything is going according to plan even though there is no plan, and attack the patriotism of anyone who dares to question or to criticize.

They have tried to keep the media from publishing photographs of the planeloads of flag-draped coffins of Americans who have died in Iraq.

They rarely even mention the casualties—American or Iraqi—since that, of course, would mean having to acknowledge the terrible price that is being paid day after day.

They treated the Abu Ghraib prison scandal as an aberration—the work of a few rogue recruits.

They have done their best to hide the policies to subvert the law that were approved at the highest levels of government, and the fact that Abu Ghraib was only one of several locations where foreign prisoners were humiliated, tortured, denied the most basic human rights, and even murdered.

They shut down distribution of a key security report, issued daily by a U.S. contractor—which U.S. personnel in Iraq have relied on for their own safety—because the news of escalating violence in these reports did not square with the spin being put out by the Pentagon and the White House.

Just as the President ignored those who predicted the widening anti-American insurgency, he has sugar-coated the rebuilding of Iraq.

A year ago, he asked the Congress to appropriate $19 billion immediately, in fact so immediately that he resisted every amendment designed to ensure the aid dollars would be well spent.

The President opposed my amendment to put Secretary Powell in charge of the reconstruction in Iraq, causing the Department of Defense to run the biggest nation-building venture since the Marshall Plan. And they bungled it miserably.

The President opposed an amendment that would have at least required that the aid be paid for out of the President's tax cuts for the wealthiest Americans—not left for our children and grandchildren.

The President opposed an amendment that would have created tough criminal penalties for war profiteering in Iraq.

The President refused to consider any alternative approaches. His attitude was "my way or the highway." And look at what a mess it has gotten us into. It has been nearly a year since the Iraq supplemental was signed into law, and only $1 billion of the $19 billion has been spent.

Of those funds, it is estimated that only 27 cents of every dollar has gone to benefit the Iraqi people. The rest has ended up in the pockets of high-priced contractors and consultants, and to pay for insurance and security and other overhead costs.

There are serious consequences resulting from this administration's handling of the chaos in Iraq. One, which all Senators are increasingly hearing about from our constituents, is the possibility of a return to the draft. If Iraq continues on its downward spiral, there is growing concern that it may be necessary at some point to reinstate military conscription. I oppose returning to a military draft, I do not believe it is necessary, and I believe it would lessen our military effectiveness.

Yet the President needs to acknowledge to the American people that our entire military forces, including the active Army, the Reserves, and the National Guard, are stretched very thin right now because of the choices the President has made. The military is finding it difficult to get new recruits and has resorted to a backdoor draft, forcing personnel to remain in the service through so-called stop-loss orders.

The Pentagon at some point might decide that the only way to find new recruits—unless we pursue more sensible policies—would be through a draft. I sincerely hope not. This is only one of the many examples of the life-and-death choices that the Nation faces in prudently allocating our resources to combat terrorism.

A lot has been said about President Bush's consistency. His campaign advertisements boast that he is a strong leader because he 'says what he means and he does what he says.'

What good is consistency when it means sending 140,000 Americans into a guerrilla war in a foreign land fueled by religious and ethnic hatred, without justification?

What good is consistency when it means spending upwards of $200 billion on a policy that has not made us any safer, and that has turned Iraq into a haven for terrorists eager to kill Americans who they see as foreign invaders out to destroy Islam itself?

What good is consistency when it squanders the good will that we need to effectively fight terrorism, to build a real coalition so the United States is not paying 90 percent of the cost and suffering 90 percent of the casualties?

What good is consistency, when all it really amounts to is hollow rhetoric that bears no relationship to the facts?

The President and Vice-President have been consistent alright—consistently wrong. There is no value in that.

The President and Vice President constantly assert that we need to 'stay the course.' My answer to that is that if you are captain of the ship and you are heading for an iceberg, you change course. You want to get to the same destination, but you do not want to plow into the iceberg to get there.

It is this President's rigid adherence to a misguided ideology that has gotten us into deep, deep trouble in Iraq.

The American people deserve better. They deserve competence and they deserve honesty. They deserve leaders who know the difference between a political decision, and the right decision.

AEROSPACE MANUFACTURING

Mr. SMITH. Mr. President, I rise today to speak about a troubling dispute between two great partners in trade. Boeing Commercial Airplances, a pioneer and mainstay in American aerospace manufacturing since 1917, is being injured by subsidies that European governments are providing to its main competitor, Airbus.

More than 30 years ago, Airbus was created by the governments of Germany, France, the United Kingdom, and Spain with the goal of building a competitive airplane manufacturer for the European Continent. To help encourage growth by their new company, these governments began giving Airbus large amounts of money with very liberal terms. These subsidies included infrastructure loans, loss coverage, debt forgiveness, money for research and development, equity infusion, and launch aid.

These subsidies have allowed Airbus to develop and market a full range of aircraft without incurring full commercial risk. The launch aid assistance alone, which is essentially no-fault borrowing, has amounted to over $15 billion and allowed Airbus to undercut the marketplace with lower prices. In fact, if Airbus had borrowed this money at standard commercial rates, it is estimated that they would have to incur an additional $35 billion on their books today.

While subsidies of this sort might be acceptable for a company in its infancy, Airbus has long since grown into a robust and mature competitor. Airbus today competes in every single airplane market over 100 seats and is now jointly owned by the European Aeronautic Defense and Space—EADS—Company and BAE Systems, the world's second- and fourth-largest aerospace companies respectively. Combined, these two defense companies are actually larger than Boeing. In fact, last year, for the first time, Airbus surpassed Boeing in annual aircraft deliveries. Yet, they continue to receive large government subsidies.

As much as these subsidies have helped Airbus, they have harmed Boeing. Boeing's global market share, based on deliveries, fell from nearly 67 percent in 1999 to 48 percent in 2003. In the past 5 years, Boeing Commercial Airplanes has reduced employment from 115,880 to 54,880—that is 61,000 workers who have lost some of the highest quality and highest paying manufacturing jobs in the Nation. The aerospace industry is one of the most competitive sectors of our economy, and it is the single largest positive contributor to the U.S. manufacturing trade balance.

The facts are simple. Airbus is a mature company with a full family of airplanees that can no longer justify these subsidies, and the obvious damage to Boeing must be addressed and resolved.

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

Mr. DURBIN. Mr. President, the 9/11 Commission recognized that one of the biggest challenges we face in fighting the war on terrorism is protecting civil liberties. The Commission said, "While protecting our homeland, Americans should be mindful of threats to vital personal and civil liberties. This balancing is no easy task, but we must constantly strive to keep it right."

To help keep this balance right, the Commission wisely recommended the creation of a board to ensure that the Government does not violate privacy or civil liberties. Following this recommendation, the National Intelligence Reform Act of 2004 establishes the Privacy and Civil Liberties Oversight Board. I want to commend Senator COLLINS and Senator LIEBERMAN for recognizing the importance of this issue.

The 9/11 Commission has endorsed the Collins-Lieberman Board. Commissioners Slade Gorton and Richard Ben-Veniste told the House Government Reform Committee: "A Board of the kind we recommend can be found in the Collins-Lieberman bill in the Senate."

Some have claimed that establishing this board will tilt the balance between security and liberty too far in favor of liberty. I disagree. As the 9/11 Commission said, "The choice between security and liberty is a false choice." We can be both safe and free.

Throughout American history, in times of war, we have sacrificed liberty in the name of security. Now, we are being tested again. The creation of the Privacy and Civil Liberties Oversight Board sends a clear message: This time will be different. We will protect the lives of the American people, but we will also protect their liberty.

The board created by the Collins-Lieberman resolution is a vast improvement over the President's Board on Safeguarding Americans' Civil Liberties, which the President recently created by Executive order.

The President's board is chaired by the Deputy Attorney General and its members will all be high-ranking Government officials, the vast majority of them political appointees.

This board will not be independent because its members are precisely those officials who need independent civil liberties advice. This is like letting a baseball player call his own balls and strikes.

I asked Commission Chair Tom Kean about this. He said that, in the Commission's view, the civil liberties board should have independent members from outside the Government who can provide a "disinterested perspective."

The Collins-Lieberman Board will provide that "disinterested perspective." The board will be appointed by the President from outside the Government and by the Senate.

The board will have the authority to obtain the information they need to determine whether the Government is violating civil liberties. If someone outside the Government refuses to provide this information, the board would have the power to issue a subpoena to obtain it.

This is common sense. An investigative body must have the power to get the information it needs to conduct an investigation.

It is also common. Countless Federal commissions and boards have subpoena authority. I will name just a few: The National Labor Relations Board, the Equal Employment Opportunity Commission, the Federal Trade Commission, and the Federal Energy Regulatory Commission. The Privacy and Civil Liberties Oversight Board, which has such an important role, should have the same power that so many other Government boards and commissions have.

The Privacy and Civil Liberties Oversight Board will be required to share information about its work with the public. This is a good thing. There should be transparency in Government. The American people have a right to know what their Government is doing.

As Commissioners Gorton and Ben-Veniste told the House Government Reform Committee, "Such a Board should be transparent, making regular reports to Congress and the American public."

Of course, at the same time, we have to protect national security. This bill does that. It requires that information will only be shared with the public, and I quote, "in a manner consistent with the protection of classified information and applicable law."

I want to thank Senator COLLINS and Senator LIEBERMAN for working with me on the structure of the Privacy and Civil Liberties Oversight Board. I offered several amendments to strengthen the Board. Senator COLLINS and Senator LIEBERMAN accepted these amendments, and I thank them for that.

As a result of these amendments: the chairman of the board and the board's executive director will now be full-time. It would very difficult for a part-time Board to function effectively.

Terms for board members will be fixed at 6 years so the President will not be able to fire board members who provide advice the White House doesn't like.

Board members will be required to have expertise in civil liberties and privacy issues.

No more than three of the five board members will be from the same political party, which will ensure the board is bipartisan and independent.

The board will be able to meet upon the call the majority of the board and a majority of the board will constitute a quorum. This will protect the board from being dominated by a chair who is too close to the President.

Board members will be required to testify before Congress if called to do so. This will prevent any administration from trying to shield the disclosure of information by claiming executive privilege for the board.

The board will be required to file semiannual unclassified reports with the appropriate Congressional committees. Therefore, Congress will be fully informed on the board's important work.

In reviewing a government power, the board will be required to consider whether the need for such power is balanced with the need to protect privacy and civil liberties; whether there is adequate supervision of the use by the executive branch of the power to ensure protection of privacy and civil liberties; and whether there are adequate guidelines and oversight to properly confine its use.

This standard of review will provide the board to follow guidelines recommended by the 9/11 Commission as it reviews government power. As the 9/11 Commission said, the board should "ensure that liberty concerns are appropriately considered," and "the burden of proof for retaining a particular governmental power should be on the executive."

These changes will make a strong board even stronger. The Privacy and Civil Liberties Oversight Board will ensure that, as we fight the war on terrorism, we will respect the precious liberties that are the foundation of our society.

COMMENDING DR. JIM MARKS

Mr. BROWNBACK. Mr. President, I would like to make a few remarks commending Dr. Jim Marks, who will be leaving the Department of Health and Human Services in December.

Dr. Marks has directed the National Center for Chronic Disease Prevention and Health Promotion within the Centers for Disease Control and Prevention since 1995. During Dr. Marks' tenure, the CDC has had a significant impact on the lives of all Americans through programs to prevent and promote cancer's earliest detection. Under Dr. Marks' direction and with the support of Congress, the Division of Cancer Prevention and Control has grown from approximately $123 million to over $313 million. This growth has afforded CDC the ability to provide national leadership in the cancer prevention and control. Dr. Marks was instrumental in leading efforts to partner with States, territories, tribal organizations as well as national, State and local partners to monitor cancer trends; conduct research and evaluate cancer prevention and control activities; apply scientific advances and develop strong cancer control programs; and to educate public health professionals and the public about cancer prevention and control.

Some specific accomplishments during Dr. Marks' tenure include: the total number of woman ever served by the National Breast and Cervical Cancer Early Detection Program NBCCEDP, reached 1.9 million in 2003. Under Dr. Marks' guidance, the NBCCEDP has helped uninsured and underinsured women gain access to lifesaving screening and diagnostic testing programs for the early detection of breast and cervical cancer. To date, the program has: provided over 4.6 million screening examinations; diagnosed 17,009 breast cancers; 61,474 precancerous cervical lesions; and 1,157 cervical cancers.

Expansion of the National Program of Cancer Registries (NPCR) to cover 96 percent of the Nation's population. The cancer information gathered by the NPCR serve a key role in determining cancer patterns among various populations; monitoring cancer trends over time; guiding State planning and evaluation of cancer control programs; assisting States in setting priorities for the allocation of resources; and, advancing clinical, epidemiologic, and health services research. The data gathered through the NPCR coupled with information from the National Cancer Institute and the North American Association of Central Cancer Registries was combined to produce official Federal statistics on cancer incidence in the report entitled, U.S. Cancer Statistics: 2000 Incidence.

Development and expansion of the National Comprehensive Cancer Control Program to 61 programs in States, territories and tribes. CDC support permits the respective health agencies to establish broad-based Comprehensive Cancer Control, CCC, coalitions, assess the burden of cancer, determine priorities for cancer prevention and control, and develop and implement CCC plans.

Development of A National Action Plan or Cancer Survivorship: Advancing Public Health Strategies, 2003 in collaboration with the Lance Armstrong Foundation and national experts in cancer survivorship and public health. The action plan charts a course for how the public health community can more effectively and comprehensively address cancer survivorship and focus on improving the quality of life for survivors.

Dr. Marks' leadership and direction in CDC's cancer control and prevention efforts helped Americans lead more productive and healthier lives.

TAIWAN'S NATIONAL DAY

Mr. SMITH. Mr. President, I rise today to pay tribute to the President and the people of Taiwan on the occasion of Taiwan's National Day on October 10.

Despite the lack of formal diplomatic relations between the United States and Taiwan over the last 25 years, the relationship between the two countries has continued to flourish in terms of economics, politics, security, culture and education, science and technology, and human rights. Most important, we share with Taiwan the core values of democracy and freedom. In the past two decades, Taiwan has truly emerged as a model democracy. Taiwan's economy currently ranks as the 16th largest in the world. As Secretary of State Colin Powell stated, "Taiwan has become a resilient economy, a vibrant democracy and a generous contributor to the international community." I hope that we will continue to help Taiwan proceed on the path toward further democratization and peaceful relations with its neighbors.

The President of Taiwan, Chen Shui-bian, is a dedicated and strong leader for the people of Taiwan. In his May 20 inaugural address to his people, he reiterated his commitment to maintaining peace and stability in the Taiwan Strait, which is vital to the political development and economic prosperity in the Asia-Pacific region as a whole.

In closing, I wish to congratulate President Chen, the Taiwan Ambassador, Dr. David Lee, and the people of Taiwan on their National Day and wish them every success in the years to come.

DETENTION AND HUMANE TREATMENT OF CAPTURED TERRORISTS

Mr. DURBIN. Mr. President, I rise to speak about, section 514 of the National Intelligence Reform Act of 2004 which deals with the detention and humane treatment of captured terrorists.

Section 514 was added to the bill as a result of an amendment offered by Senator McCAIN and Senator LIEBERMAN. I commend them for their leadership on this issue, which is so important to our country, and to our ability to fight an effective war on terrorism.

The 9/11 Commission correctly concluded that the Iraqi prisoner abuse scandal has negatively affected our ability to combat the terrorist threat. The Commission wrote, "Allegations that the United States abused prisoners in its custody make it harder to build the diplomatic, political, and military alliances the government will need [to fight the war on terrorism]."

As a result, the Commission recommended, "The United States should engage its friends to develop a common coalition approach toward the detention and humane treatment of captured terrorists." In order to develop a coalition policy on the humane treatment of captured terrorists, the U.S. government must have its own policy that ensures the humane treatment of captured terrorists. That is what section 514 would require.

It will reaffirm a very important, long-standing position of our Nation: that the United States will not engage in torture or cruel, inhuman or degrading treatment. This is a standard that is embodied in the U.S. Constitution and in numerous international agreements which the United States has ratified.

Section 514 will require the Defense Secretary and the National Intelligence Director, NID, issue policies to ensure compliance with this standard and to provide these policies to Congress.

The Defense Secretary and the NID will also be required to report to Congress on any suspected violations of the prohibition on torture or cruel, inhuman or degrading treatment.

Section 514 specifically provides that this information should be provided to Congress only in a manner and form that would protect national security.

Section 514 is very similar to an amendment that I offered to this year's Defense Authorization bill. My amendment, which was cosponsored by Senators McCAIN, LEVIN, SPECTER, FEINSTEIN, LEAHY, and KENNEDY, was adopted by the Senate by a unanimous voice vote.

When I offered this amendment, it was supported by a broad coalition of organizations and individuals, including human rights organizations like Human Rights Watch, religious institutions like the Catholic Church and the Episcopal Church, and military officers.

Retired RADM John Hutson was the Judge Advocate General, the top lawyer in the Navy. In a letter in support of the amendment, he wrote:

> It is absolutely necessary that the United States maintain the high ground in this area and that Congress take a firm stand on the issue. . . . It is critical that we remain steadfast in our absolute opposition to torture and [cruel, inhuman or degrading treatment].

Former Republican Congressman Pete Peterson, who was a POW in Vietnam for 6½ years, wrote in support of the amendment:

> From my 6½ years of captivity in Vietnam, I know what life in a foreign prison is like. To a large degree, I credit the Geneva Conventions for my survival . . . This is one reason the United States has led the world in upholding treaties governing the status and care of enemy prisoners: because these standards also protect us . . . We need absolute clarity that America will continue to set the gold standard in the treatment of prisoners in wartime.

As we fight the war on terrorism, we must adhere to the ideals that made our country great. Torture is inconsistent with the principles of liberty and the rule of law that underpin our Constitution.

Any erosion in these standards would endanger American servicemen and women who might be captured by our adversaries. It would also create anti-American sentiment at a time when we need the support and assistance of other countries in the war on terrorism.

The U.S. Army fully recognizes these practical downsides. The Army Field Manual on Intelligence Interrogation states:

> Revelation of use of torture by U.S. personnel will bring discredit upon the U.S. and its armed forces while undermining domestic and international support for the war effort. It may also place U.S. and allied personnel in enemy hands at a greater risk of abuse by their captors.

As the great American patriot Thomas Paine said: "He that would make his own liberty secure must guard even his enemy from oppression."

CALIFORNIA DESERT PROTECTION ACT

Mrs. FEINSTEIN. Mr. President, ten years ago this fall, President Bill Clinton signed the California Desert Protection Act into law, preserving 7.7 million acres of stunning landscape for generations to come.

With the passage of this legislation, the largest parks and wilderness bill to impact the lower 48 States was enacted, thereby establishing Joshua Tree National Park, Death Valley National Park and the Mojave National Preserve.

Protecting these beautiful lands stands as one of my proudest legislative accomplishments to this day.

The California Desert is home to remarkable archaeology, beauty and wildlife—some of the last remaining dinosaur tracks, Native American petroglyphs, abundant spring wildflowers, and threatened species including the bighorn sheep and the desert tortoise, an animal known to live for as many as 100 years.

And each of the parks created by the act has its own unique beauty. Joshua Tree, encompassing parts of both the Mojave Desert and the Colorado Desert, contains magnificent rock formations and forests which blanket the high country throughout the park. The abundant yellow creosote bushes of the eastern side of the park are mirrored by the rugged Joshua Trees to the west.

The Death Valley landscape, marked by a diverse range of salt playas, alpine forests, and jagged rocks, is a land of extremes—one of the hottest, driest, and lowest places on Earth. At Dante's View, a visitor may look down into Badwater, the lowest place in the western hemisphere and, on a clear day, look west to Mt. Whitney, the highest point in the lower 48 States.

Mojave National Preserve, with its granite, limestone, and metamorphic rocks, has a remarkable geological diversity, as well as the largest Joshua Tree forest in the world. Many of the preserve's peaks are a vivid pink at the top, the result of a volcanic explosion more than 18 million years ago in Arizona that sent deposits flying through the air and flowing across the land to the Mojave Desert.

The California Desert Protection Act ensured that these lands would be preserved for years to come. In total, the act raised the protection level for 9 million acres of parks and wilderness.

Since 2000 the wilderness area has been expanded even further with the purchase of nearly 600,000 acres of land primarily in and around the Mojave National Preserve. The transaction, the largest conservation acquisition of private lands in U.S. history, combined Federal Land and Water Conservation Fund appropriations with funding from the Wildlands Conservancy to buy discounted land owned by the Catellus Development Corporation.

This expansion protected 200,000 acres of critical habitat for the endangered desert tortoise, 150,000 acres for bighorn sheep, the largest cactus gardens in the world at Bigelow Cholla Gardens and rights-of-way for 165 trails and access roads leading to 3.7 million additional acres of land used for hunting, hiking and camping.

Visitors have taken advantage of these abundant recreation and research opportunities in the California Desert. Last year, 2.8 million people traveled to Joshua Tree and Death Valley national parks and the Mojave National Preserve. In turn, these visitors provided an economic boost of approximately $100 million at nearby hotels, restaurants, and other local businesses.

Now, as we celebrate the 10-year anniversary of the California Desert Protection Act, the preservation of our national park system has never been more important. Population growth, especially in the western United States, is placing increased pressure on our public lands. That is why it was so critical that we acted 10 years ago and why it is urgent that we continue to preserve our Nation's natural treasures today.

Unfortunately, there is much evidence that our national parks are not receiving the funding or attention they deserve. A recent survey of 12 national parks by the Coalition of Concerned National Park Service Retirees found that six parks had either reduced or planned to reduce visitor center hours or days of operation. The survey also found that all twelve parks had recently cut full-time or seasonal staff positions.

One of the parks surveyed, Death Valley, reduced its law enforcement positions from 23 several years ago to 15 at the time of the study. More than 600 miles of backcountry roads are inadequately secured leaving natural resources, wildlife and visitors less safe.

Meanwhile, the backlog of maintenance projects in our parks has grown to a range of $4 billion to $6.8 billion, according to the Government Accountability Office. Throughout our national park system, roads, bridges, and historic structures are falling into disrepair, trails and campgrounds are poorly maintained, and visitor centers are becoming outdated.

Additionally, a recent report by the Environmental Protection Agency designated eight national parks, including Joshua Tree, as containing excessively high levels of ozone. It is alarming to know that the air at some of our national parks is harmful, especially since the problem of poor air quality in these regions was identified for action under the Clean Air Act in 1977.

Our national parks are America's natural treasures. They make the beauty of our Nation accessible to all Americans and, indeed, visitors from around the world. We have a responsibility to preserve these places for the enjoyment of generations to come.

Enacting the California Desert Protection Act was an important step toward that end. Now, we must continue to work to ensure that the parks we have already established, and those we may yet protect, have the resources they need.

RED RIBBON WEEK

Mr. GRASSLEY. Mr. President, I am pleased to join my colleague Senator MURKOWSKI in sponsoring a resolution commemorating the annual "Red Ribbon Week." Celebrated October 23-31, Red Ribbon Week encourages individuals, families, and communities to take a stand against alcohol, tobacco, and illegal drug use. I hope the rest of the Senate will join in supporting this resolution and support this very important campaign.

The tradition of Red Ribbon Week and wearing and displaying red ribbons started back in 1985 following the assassination of U.S. Drug Enforcement Agency Special Agent Enrique Camarena. In an effort to honor his memory and unite in the battle against illegal drugs, friends, neighbors and students from his home town began wearing red ribbons. In 1988 the National Family Partnership took the celebration nationwide. Since then, the Red Ribbon campaign has reached millions of children, families and communities across the country, spreading the message about the destructive effects of drugs.

In my State of Iowa, this year's theme for Red Ribbon Week is "Take a Stand—Help Iowa Be Drug Free." Schools and community groups across the State are organizing a variety of activities including pledges, contests, workshops, rallies, theatrical and musical performances, and other family and educational events all designed to educate our children on the negative effects of drugs and promote a drug-free environment.

Research tells us that if you can keep a child drug-free until they turn 20, chances are very slim that they will ever try or become addicted. This is why it is so important to maintain a coherent anti-drug message that begins early in adolescence and continues throughout the growing years. Such an effort must engage parents, communities, and young people. Red Ribbon week provides each of us the opportunity to take a stand by helping our children make the right decisions when it comes to drugs.

More than 80 million people across the country are expected to participate in Red Ribbon Week. I urge my colleagues to join us in passing this resolution to demonstrate our commitment to raising awareness about drugs and encourage everyone to make healthy choices.

U.S.-JAPAN RELATIONS

Mr. CRAIG. Mr. President, I rise today to discuss the contribution that one of America's closest and most important allies is making to our Nation's efforts to help the Iraqi people build a safe and stable democracy.

In the very public discussions that we hear every day about Iraq we often do not hear about the extraordinary efforts of the United States' closest security ally in the Asia-Pacific Region. That ally is, of course, Japan. We are all aware of the limitations that Japan has imposed on its own military since World War II. What many of us are not aware of is the actions Japan has taken to work with the United States and other nations to bring peace and stability to Iraq.

One document published by the Japanese Embassy outlines the deployment of Japanese Self-Defense Forces to provide humanitarian assistance in Iraq. Many Americans would be interested to learn that there are about 1,000 Japanese troops in Iraq, including almost 600 ground troops. In addition, Japan has undertaken a very substantial humanitarian relief effort. Through the end of September, Japan's Air Self-Defense Force C 130 aircraft flew 66 missions between Kuwait and Iraq and delivered over 175 tons of relief supplies.

Mr. President, I ask unanimous consent to print that paper and two others—one on Japan's very substantial financial assistance for Iraq and the other describing Japan's cultural assistance for Iraq—in the CONGRESSIONAL RECORD. Taken together, these papers demonstrate that one of America's most reliable security allies is truly dedicated to bringing stability and freedom to Iraq.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JAPAN'S ASSISTANCE FOR IRAQ—FACT SHEET

(Note: All figures are approximate.)

1. Overview

At the International Donors' Conference on Reconstruction of Iraq held in Madrid on 24 October 2003, Japan announced its financial assistance package totaling up to $5 billion.

The package comprises (a) $1.5 billion grants for the immediate needs through 2004, and (b) up to $3.5 billion, mainly in ODA loans, in order to meet the medium-term needs for a period approximately through 2007.

It's Japan's policy to make its financial assistance by ODA and the humanitarian and reconstruction activities by the Self-Defense Forces work in tandem for the reconstruction of Iraq.

2. $1.5 billion grant

In the grant assistance, Japan gives priority to areas such as power generation, education, water and sanitation, health and employment, as well as others including improvement of the security, culture, sports and capacity buildings.

Out of $1.5 billion, more than $1150 million have already been disbursed or decided as following:

$180 million have already been disbursed. (Attachment A);

$490 million have been committed to the International Reconstruction Fund Facility for Iraq of the UNDG ($360 million) and the World Bank ($130 million). (Attachment B) $10 million have been disbursed into IFC small business finance facility; and

$470 million worth of bilateral projects have been identified and decided including a new package of projects totaling $290 million announced on 29 June (Attachment C).

3. Up to $3.5 billion mainly through ODA loans

Japan will provide up to $3.5 billion mainly through concessionary loans (ODA loans) to meet the mid-term reconstruction needs between 2005 2007, taking account of the advancement of the political process, developments toward the solution of outstanding debt issues and the improvement of the security situation.

With regard to areas of this assistance, in addition to areas mentioned above, Japan will also focus on infrastructure development, including telecommunications and transportation.

A. Japan's assistance disbursed so far ($180 million)

(1) Humanitarian Assistance for Iraq (WFP, UNICEF, ICRC, UNHCR).

(2) Assistance through the international organizations for the following projects:

Umm Qasr Port Project (UNDP);

Iraq Reconstruction and Employment Program m Baghdad (UNDP);

Rehabilitation of the National Dispatch Centre (UNDP);

Emergency Rehabilitation of Al-Kadhimiya Hospital (UNDP);

Emergency Rehabilitation of the Hartha Power Station (UNDP);

IREP2 in North and South of Iraq (UNDP);

Reactivation of Primary Education in Iraq (UNICEF);

School rehabilitation Project (UN HABITAT);

Community rehabilitation Project (UN HABITAT);

Contribution to the IFC Fund (assistance to Micro- and small-scale enterpises).

(3) Direct assistance to Iraq and Grassroots assistance for the following projects:

Provisions of 1,150 Police vehicles;

Provision of 70 fire-trucks to Baghdad, Al Basra and Al-Mutharma;

Humanitarian operation in the Umm Qasr Community;

Equipment supply for Rashid District in Baghdad;

Improving Hibatoallah Institute for Down Syndrome; and

Provisions of ambulances in Nineveh Governorate.

(4) Assistance in won with NGOs:

Medical projects and emergency rehabilitation of public facilities (Japanese NGO);

Medical project in Baghdad run by Hashemite Charity Organization (Jordanian NGO); and

Project distributing medical equipment run by CARE International (International NGO).

(5) Assistance in Samawah and Governorate of Al-Muthanna, where Japanese Self-Defense Forces are dispatched, for the following projects:

Provisions of Water Tanks;

Provisions of Emergency Medical Supplies to the Samawa General Hospital;

Emergency Aid of medical equipment to the Samawa Maternity and Children Hospital;

Improvement of Access to Safe Drinking Water;

School rehabilitation Project (UN HABITAT);

Iraq Reconstruction and Employment Program (UNDP);

Provision of water treatment facilities; and

Provision of medical equipment to the Al-Rumaytha and Al-Khidhur Hospitals.

(6) Capacity building programs of JICA (Japan International Cooperation Agency) as following:

Vice-minister and other officials of the Ministry of Health;

Training of Iraqi doctors and nurses in Cairo as the Japan-Egypt Joint Medical Cooperation for Iraq;

Training of Iraqi experts (ex. electricity) in Jordan;

Director General of Governorate of Al-Muthannah Health Department and Directors of Four Hospitals in Samawa and Neighboring Areas.

(7) Others:

Humananitarian and Reconstruction Assistance by the Japanese Self-Defense Force (SDF) in Samawah and Governorate of Al-Muthanna;

Consolidating broad based solidarity among the international community;

Cooperation with Arab and neighboring countries;

Cooperation with Germany and France;

Conservation of cultural heritage and promotion of sports in Iraq; and

Assistance for supplying Japanese TV program.

B. Japan's assistance through International Reconstruction Fund Facility for Iraq ($490 million)

$450 million has been paid into the respective IRFFI (International Reconstruction Fund Facility for Iraq) holding accounts of the UNDG Trust Fund ($360 million) and the World Bank Trust Fund ($90 million). Additionally, $40 million will be paid into WB TF in the near future.

Japan has already authorized UNDG to use $260 million out of $360 million for UNDG TF by signing the document, and will authorize WB to use $40 million for WB TF in the near future (totally $300 million).

The relevant international organizations will start some projects in the fields of electricity, transportation, education, water resources, environment and so on by using part of Japanese contribution.

C. Japan's assistance through bilateral channel ($470 million)

(1)) Following projects totaling $490 million was decided on 26 March and 29 June:

(i) Electricity: Provision of 27 mobile substations throughout Iraq and rehabilitation of Taji Gas Turbine Power Station, Mosul Gas Turbine Power Station and Mosul Hydroelectric Power Station.

(ii) Health: Rehabilitation and provision of equipment to 4 general hospitals in South (Nasiriyah, Najaf, Diwaniyah, and Samawah) constructed by Japanese companies and rehabilitation and provision of equipment to 4 general hospitals in North (Kirkuk, Arbil, Mosul, Dabuk) constructed by Japanese companies.

(iii) Water/sanitation: Provision of 30 compact units to the city of Baghdad, and provision of special vehicles for garbage disposal and sewage cleaning throughout Iraq.

(iv) Others: Provision of Armored vehicles in Baghdad and Al-Muthanna.

[From the Embassy of Japan, Oct. 4, 2004]

DEPLOYMENT OF JAPAN SELF-DEFENSE FORCE TO PROVIDE HUMANITARIAN ASSISTANCE IN IRAQ

The total number of Japan Self-Defense Force (JSDF) personnel participating in the effort for the reconstruction of Iraq is approximately 1,000, including up to 600 Japanese Ground Self-Defense Force (GSDF) troops, several Japan Maritime Self-Defense Force (MSDF) vessels and Japan Air Self-Defense Force (ASDF) aircraft.

The third contingent of GSDF was dispatched to Iraq on August 8. These new forces represent Japan's firm commitment to the hands-on reconstruction of Iraq.

Japan's ASDF, with its C–130 aircraft, started to transport humanitarian relief supplies between Kuwait and Iraq on March 3, 2004. During the period between March 3 and September 30, over the course of 66 missions, the supplies carried amounted to 175.6 tons.

JAPAN'S CULTURAL ASSISTANCE FOR IRAQ

The Government of Japan (GOJ) is determined to offer the most possible support to the continued tenacious efforts by the Iraqi people, who still face very difficult circumstances.

It is important that the Iraqi people maintain hope and improve their prospects for the future while tackling their difficulties. Japan's assistance in the fields of culture and sports is expected to provide moral support for the Iraqi efforts to reconstruct their country. The rich history represented by the cultural heritage in Iraq is a credit to the country, and sports contribute to their solidarity.

Cultural assistance may also serve to elicit more understanding of Japan by diffusing soft images of Japan (e.g. politeness, kindness) throughout Iraq.

As can be seen from Japan's experience of reconstruction after World War II, it is extremely important and pressing for the future development of Iraq, to improve the quality of education in order to nurture human resources.

PROVISION OF TV PROGRAMS

(1) Provision of "Oshin":

"Oshin" is a TV drama depicting the life of a Japanese woman who overcame poverty and difficulties before, during, and after WWII. "Oshin" has been broadcast in 59 countries and has been very popular in many countries, in particular in Middle Eastern countries.

In October 2003, the GOJ (the Japan Foundation), in cooperation with Egyptian R & T.V Union, provided 96 episodes (mainly about the woman's childhood) of "Oshin" with subtitles in Arabic to the Iraqi Media Network (IMN) free of charge.

(2) Provision of other TV programs:

In April, the Japan Foundation provided the TV program "Project X" to the Lebanon-based Future Satellite TV. (It is a satellite TV station with viewers primarily from Arabic speaking countries including Iraq.)

SPORTS ASSISTANCE

(1) Donation of football equipment by the Japan Football Association (JFA):

In November 2003, the JFA donated football equipment (1214 balls, 4853 uniforms, and 394 pairs of spiked shoes) to the Iraq Football Association (IFA). The equipment was collected from all over Japan on the initiative of the JFA.

The GOJ provided transportation for the football equipment to Baghdad (under the framework of Grant Assistance for Cultural Grassroots Projects).

(2) Provision of football equipment to the southern Iraq including Samawah:

The GOJ has decided to provide football equipment (1000 balls, 3000 game jackets,.and 20 inflators) to the Department of Youth and Sports in the Governorate of Al-Muthanna (under the framework of Grant Assistance for Cultural Grassroots Projects). Part of equipment provided by the Government was transported from Kuwait to Samawah by C–130H of the Self-Defense Forces (SDF). The handover ceremony took place on May 23 at the SDF camp in Samawah. An exchange soccer match was convened between three soccer clubs in Samawah and the SDF team on June 10, using soccer balls provided.

(3) Cooperation Relating to the International Friendly Football Match between Japanese and Iraqi National Football Teams on February 12, 2004:

The GOJ provided travel expenses for the Iraqi National Team members through the Japan Foundation.

The GOJ provided assistance for the Iraqi Media Network (IMN) to conduct a live broadcast of the friendly football match so that as many people in Iraq as possible could watch the game. The GOJ also provided coverage assistance to the Lebanon-based Future Satellite TV, which was visiting Japan at the invitation of the MOFA.

On February 12, Senior Vice-Minister for Foreign Affairs Aisawa held a ceremony to present footballs (the design of the balls is same as that of the balls provided to southern Iraq) to the Vice President of the Iraqi Football Association, Mr. Ahmed Radhi, as a token of appreciation for his visit.

(4) Assistance involving Judo:

The GOJ, in cooperation with the Kodokan Judo Institute, invited the President of the Iraq Judo Federation (IJF) Sameir S. al-Mousoy to visit Japan from February 22 to March 6 as a part of a sports exchange assistance program.

Taking advantage of this opportunity, the GOJ decided to provide the IJF with 50 blue judo uniforms for international matches and transportation assistance for judo equipment (100 white judo uniforms and 2 sets of tatami mats for official matches (approximately 200 mats)) donated by the All Japan Judo Federation (AJJF) under the framework of Grant Assistance for Cultural Grassroots Projects.

On March 3, Senior Vice-Minister for Foreign Affairs Abe held a ceremony to present the list of judo equipment donated by the GOJ and AJJF to the President of IJF, Sameir S. al-Mousoy.

(5) Assistance for athletes aiming to participate in international competitions:

The Government invited Chairman Ahmed al-Samarrai of the National Olympic Committee of Iraq to Japan (April 13–17). Chairman al-Samarrai paid courtesy calls on Prime Minister Junichiro Koizumi and Minister for Foreign Affairs Yoriko Kawaguchi, and exchanged opinions with the officials from the Ministry of Foreign Affairs and the members of the Japanese Olympic Committee on Japan's assistance for the Iraqi athletes aiming to participate in international games such as the Athens Olympics 2004. He then observed the training and other facilities which will accept the Iraqi athletes.

Trying to provide hope and solidarity towards reconstruction among Iraqi nationals, Japan is considering the provision of assistance for Iraqi athletes aiming to participate in international games such as the Athens Olympic Games in August 2004, the Pan-Arab Sports Games in September 2004, and the Asia Sports Games in 2006.

ASSISTANCE RELATED TO CULTURE AND EDUCATION

(1) Assistance to the Iraq National Museum:

The assistance for the recovery of the restoration laboratory of the Iraqi National Museum of Iraq (provision of equipment, human resources development, and management of facility) is being implemented based on an additional contribution from the GOJ to the UNESCO/Japan Trust Fund. The Japan Foundation invited Director General of the Iraqi National Museum Donny George to Japan from March 30 to April 6. Mr. Donny George held several meetings with government officials.

(2) Provision of vehicles for protection of cultural heritage, etc.:

The GOJ has earmarked part of the contributions which it provided to the UN Trust Fund to assist the reconstruction of Iraq to be used in cultural projects of UNESCO and a project to provide vehicles for protection of cultural heritage is scheduled to be implemented.

EDUCATIONAL ASSISTANCE

The GOJ decided to contribute approximately $1 million through the Japanese Fund-in-Trust for the capacity-building of Human Resources in UNESCO to conduct research on the local needs and to start emergency assistance (training of staff members and launching of Web sites) for the Ministry of Education of Iraq.

The GOJ has appropriated part of the contributions it provided to the UN Trust Fund to assist the reconstruction of Iraq for educational projects of UNESCO, and projects such as assistance for literacy education and capacity building of educational personnel are scheduled to be implemented.

JAPAN-FRENCH COOPERATION ON SPORTS AND CULTURAL ASSISTANCE FOR IRAQ

In early February 2004, Special Advisor to Prime Minister Junichiro Koizumi, Yukio Okamura visited France and agreed with the French Government to pursue Franco-Japanese cooperation on sports and cultural assistance for Iraq.

After discussions at working levels, Japanese Foreign Minister Kawaguchi and French Foreign Minister de Villepin agreed to move forward on the following cooperative projects:

Provision of support, inter alia, for the exhibition of Iraq National Museum and rehabilitation of Iraq National Library and Iraq National Archives.

Provision of support for Iraqi athletes aiming to participate in international competitions.

Mrs. FEINSTEIN. I would like to join the Senator from Idaho in calling attention to the very significant contribution that Japan is making in Iraq.

As a Senator from California, I am privileged to represent thousands of Japanese-Americans who I know will be proud and pleased to learn about Japan's critical role in Iraq.

Beyond the impressive figures on force deployment, which the Senator from Idaho has so clearly outlined, it should be noted that Japan's financial commitment to Iraq, and to working closely with the United States in Iraq, is equally significant. At last year's Madrid International Donors Conference on Reconstruction of Iraq, Japan announced a financial assistance package totaling up to $5 billion. The package includes both $1.5 billion in grants and $3.5 billion in loans. In addition, Japan will host the Third Meeting of the Donors' Committee of the International Reconstruction Fund for Iraq this month.

Japan has also made a very significant effort to provide cultural assistance for Iraq. One of the documents submitted by Senator CRAIG provides the details on this undertaking. I was especially struck by Japan's reference to its own experience of reconstruction after World War II and the need to ensure that the unifying forces, like those of a shared culture and athletic tradition, are nurtured to help the Iraqi people reestablish their own identity.

It is also important to remember that Japan's commitment to Iraq was severely tested during a hostage crisis this year. Fortunately, that crisis was resolved favorably. Here's what Prime Minister Koizumi said on April 22 on that subject:

> This hostage taking has not undermined Japan's firm resolve to engage in humanitarian and reconstruction assistance in Iraq. It is precisely because the situation in Iraq makes the activities of ordinary individuals impossible that the Self-Defense Forces have been dispatched to engage in humanitarian and reconstruction assistance in Iraq.

Mr. President, these facts underscore the very important point made by the Senator from Idaho. The United States is fortunate to have Japan as a close ally. I yield to the Senator from Hawaii.

Mr. INOUYE. Mr. President, I want to commend the Senators from Idaho and California for their comments, and to associate myself with their discussion.

The depth of my concern with the subject of Japan's cooperation with the U.S. on security matters goes very deep. I was privileged to have served my country during World War II, and I was as proud as any American with the victory we achieved over Japan. However, I am much more proud of the events that have occurred since that war—events that have changed two former enemies into the closest of allies.

Mr. President, the post-war actions of these two former adversaries is one of history's most shining moments. America demanded and received Japan's unconditional surrender. America also insisted on compensation, and that was accomplished by the 1951 San Francisco Peace Treaty. Our country, however, also recognized that Japan is a great nation, and we dedicated ourselves to helping restore its place in the world. Thus, instead of the kind of "armistice" or "cold peace" settlement that only preserves hostility and resentment, both nations worked hard to transcend their recent past and build a true alliance.

As Americans, we have seen this before. Our Nation's first enemy, Britain, is now one of our very closest allies. It is inspiring that Japan and the U.S. have accomplished a similar achievement and created a truly strong and lasting alliance. The facts that Senators FEINSTEIN and CRAIG put before us only confirm how strong that alliance is.

HONORING FAVORITE TEACHERS

Mr. DAYTON. Mr. President, nearly 4,000 Minnesotans honored their favorite teacher at my Minnesota State Fair booth this summer. I would like to honor these teachers further by submitting their names to the Record, as follows:

New Richmond Middle School—Shane Dupuis, Mr. Franzwa, Mr. Henk, Mr. Nadeu; New Rochelle High School—Daniel Owich; New Ulm Junior High—Ms. Liedman; New Ulm Senior High—Colleen Tasto; New York Mills Elementary—Connie Griffith; Newport Elementary—Mrs. Bernie; Nicollet High School—Brad Koenig, Kenneth Wick; Nicollet Junior High—Ann Bakken, Danielle Christy, Mr. Holt; Nisswa Elementary—Brenda Marohn, Sue Headlee; Noble Elementary—Mrs. Johnson, Rachel Schwandt; Nokomis Elementary—Sharon Benson; Nokomis Montessori—Mr. Huelster, Judy Jacobsen, Georgia Maguire, Gwen Odney; Norman County Secondary School—Mildred Halvorson, Gwendolyn Meyer, Robert Ramstad; Normandale Community College—Chuck Gross, Cynthia Shiebe, Marilyn Wood; Normandale Elementary—French Immersion—Gary Boisclaire, Joanne Click, Joey Click, Jaime Locke, Jennifer Johnson, Barbara Pinaire;

Normandale Hills Elementary—Mr. Zarbo, Karen Anthony, Mrs. Kosey, Emily Nuss, Mrs. Oldfather, Jan Saari, Carol Shelly, Doris Stenberg; North Branch Elementary—Dianna Linehan, Julia Roman, Dave Balzer; North Branch High School—Marilyn Fagerness; North Branch Middle School—Joan Carlson, Al Jones, Robert Monk, Lisa Mueller; North Elementary (Princeton)—Mr. Johnson; North Hennepin Community College—Marion Day; North High School (Minneapolis)—Jeff Bustza, Richard Chakolis, Aletha Halcomb, Julie Jacobsen, Natalie Rasmussen, Patricia Rydeen; North High School (North St. Paul)—Ms. Brown, Karen Klein, Kate Liden, Melissa Morgan, Sarah Paul; North Lakes Academy—Caroline Little; North Park Elementary—Faith Twedell; North Rose Wolcott High School—Sherman Parker; North Senior High—Lisa Johnson; North View Junior High—Sue Howard, Dan Murphy, Nancy Ziemer, Tom Brandt, Dianna Deschene, Mike Mullin; Northdale Middle School—Sarah Engstrom, Julie Fleischhacker, Veann Beutler, Tim Martin, Lionel Washington; Northern Elementary—Mary Kostohryz; Northern Illinois University—Paul Stey; Northfield High School—Stephen Cade, Donald Dick, Deb Reynolds, Sam Wold; Northfield Middle School—John Bade, Mark Langerin; Northrup Elementary—Mary Hartman, Jim Nannemann; Northside Christian School—Beth Dvorak, Bryan Remen, Anne Remen; Northside Elementary (Benson)—Mary Ann Larson; Northside Elementary (St. James)—Roxanne Romsdahl; Northview Elementary School DHOH Team—Kristine Cinealis, Northwest YMCA—Gloria Smith; Northwestern College—Bruce Melander, Jackie Pickar; O.H. Anderson Elementary—Dave Clymer, Christine Anderson; Oak Grove Middle School—Renee Sbrocco; Oak Hill Community Elementary—Linda Baker, Mr. Kaczor; Oak Hill Montessori—Renee Laurent; Oak Hills Elementary—Mrs. Bloomquist, Ms. Rome; Oak Park Elementary—Nina Leiser, Daryl Vossler; Oak Point Elementary—Chris Hajney, Diane Kelly, Mrs. Radel, Jodi Radel, Matt Rusch, Mrs. Wolfe; Oak Point Intermediate Elementary—Heidi Wavinak; Oak Point Intermediate School—Vicki Effertz; Oak View Elementary—Mr. Esselman, Jill Simon, Kelli Varley; Oak View Middle School—Olivia Bastian, Mary Mann, Gordy Nilsen; Oakdale Elementary—Shirley Blasjo, Lynn Brown, Jane Cavanaugh, Kari Eilief, Lisa Frampton, Patty Krauschaar; Oakland Junior High—Brian Luke, Julie Guerber, Robin Vought; Oakridge Elementary—Mrs. Yetzer; Oakview Middle School—Mr. Walden; Oakwood Elementary—Rose Klobuchar, Jan Wiley; Occidental College—Daniel Fineman; Odyssey Charter School—Jeni Holm; Ogilvie High School—Joan Erickson; Olathe Unified School District—Antonia Miller, Mr. Reeves; Olivia, MN—Letha Brenner, Pat Kadlecek; Olson Elementary—Jessica Newman, Jane Willey; Olson Middle School—Terry Fraver, Tammy Kellen, Jean Liss, Karolyn Thompson, Ron Wagner, Jeremy Willey; Oltman Junior High—Peter Bergman, Susan Peichel;

Onamia Elementary—Ms. Maxwell, Kelly Mertens; Onamia Secondary School—Joani Ellingson; Orchard Lake Elementary—Mrs. Batta, Patti Schluter, Janine Steffer; Ordean Middle School—Jennifer Timm; Orono High School—Sarah Cole, Adrienne Gilby; Orono Intermediate—Katy Crofutt; Osceola Middle School—Rachel Marrier; Osseo Elementary—Nancy Hammer, Kathy Johnson, Kathy Petruzzi, Carolyn Steinke; Osseo High School—Brian Chance, Jill Kellar, Ms. Lausche, Gary Leafblad, Mr. Rosch, Ms. Sasse, Leslie Schmelsser, Mr. Schultz, Gerry Zelenak, Eric Kalenze, Daryll Lindquist, Kelli Wallk; Osseo Junior High Greg Bigalke, Joe Domeier, Mr. Lemke, Clayton Ochs, Mrs. Peterson; Osseo Secondary Transition Center—Kristin Cappola; Osseo Senior High—Helen Larson, Mr. Leabo; Otsego Elementary—Nancy Boyer, Rick Greenwaldt, Mary Beth Stensgard, Wayne Stensgard, Julie Olson; Ottawa Hills School District—Susan Everheart; Otter Lake Elementary—Ann Feider, Lee McGrath, Mrs. Poppa, Lisa Thompson; Our Lady of Grace School—Bonnie Stone; Our Lady of Peace—Julie Mueller; Owatonna High School—Katie Berglund; Owatonna Junior High—Margaret Swanson; Oxbow Creek Elementary—Rolf Carlson, Ms. Cox, Neil Eerdmans, Judy Johnson, Heidi Johnson, Kari Kaehn, Rebecca Lundberg, Terry McEowen; Palmer Lake Elementary—Marlys Carols-Stieskal; Park High School—Valerie Bradt; Park Brook Elementary—Mary Beth Walls;

Park Center High School—Paul Lorentzen, Bradley Olson; Park Elementary—Susan Haughland; Park High School—Denise Atkinson, Stephanie Blair, Jarom Debtviller, Mr. Kyes, Mr. Mackie, Roberta Rudolph, Christopher Russel, Maria Tol; Park Rapids Elementary—Candy Malm; Park Senior High—Joe Hentges; Park Spanish Immersion Park Spanish Immersion Teachers—Milissa Hoffman, Corey Maslowski; Park Spanish Immersion Elementary—Kathleen Walser; Park Valley Catholic School—Mrs. Steffensmeier; Park View Early Childhood Center—Lee Bahr; Park View Montessori School—Teri Blair, Todd Vandeberg; Parkside Elementary—Lauri Hayes; Parkvalley Catholic School—Leona Cornish, Mrs. Halstrom, Nancy Hanson, Mrs. Heimer; Parkview Center Elementary—Christine Hitchcock, Gloria Honda, Deb Obey; Parkview Center School—Barb Grengs, Gail Hagen, Jill Koshiol, Stacy Nelson; Parkview Early Childhood Center—Mrs. Blake; Parkview Elementary (Rosemount)—Petra Hagen, Mrs. Lunn; Parkview Elementary (Virginia)—Marcia Bergquist; Parkview Elementary (White Bear Lake)—Mr. Allen, Ms. Sharp; Parkway Elementary—Rebecca Swanson; Parkway Elementary (St. Paul)—Nancy Class, Mrs. Heubach; Patrick Henry High School—Perry Juenemann, Eva Lockhart, Susan Losacker; Paul and Sheila Wellstone Elementary—Kelly Madder, Mrs. Potts, Judy Schultz; Paynesville Elementary—Cheryl Colbert; Paynesville High School—Patricia Nelson; Paynesville Middle School—Todd Spanier; Pearson Elementary—James Otto; Penn Township School District—Leola Schmidt; Pequot Lakes High School—Lynn Smith; Perpich Center for Arts Education—Joao Bichino, John Colburn, Craig Farmer, Bob Frey, Chris Granius, Nancy Norwood, Wesley Wallace;

Peter Enich Kindergarten Center—Mr. Gall; Peter Hobart Elementary—Barb Bottlene, Ali Dvorak, Elizabeth Lovas, Carole Humphrey; Phalen Lake Elementary—John Farthing, Ms. Wolters; Phillips Community School—Clyde Eagle; Piedmont Elementary—Jan Holt, Gerry Mizuko; Pierz High School—David Dormanen; Pike Lake Elementary—Jean Modjeki; Pilgrim Lane Elementary—Mrs. Stensrud; Pillsbury Elementary—Krista Anderson, Mrs. Jernberg, Sandra O'Donnell, Kristen Parker, Lori Tierney, Mark Trumper; Pilot Knob Elementary—Steven Anderson, Char Kascht, Dave Skoglund, Carol Olson; Pine Bend Elementary—Patty Goettsch, Mary Landis, Ben Peine; Pine City High School—Eric Wicktor; Pine Hill Elementary—Mrs. Burns, Sue Elchert, Mrs. Germshied, Andrew Hovden, Ms. Karnowski, Mrs. Mitchell; Pine Island Elementary—Mary Bakeberg; Pine Island High School—Dale Phillipson; Pine Lake Elementary—Mr. Klippenes; Pinecrest Elementary (Hastings)—Lyn Much, Glenda Peak; Pinewood Elementary (Monticello)—Jessica Herbst; Pinewood Elementary (Eagan)—Mrs. Anderson, Betsy Beach, Erik Davis, Joel Ruthenbeck. Pinewood Elementary (Mounds View)—Barbara Brusman, Melissa Dugan, Gary Judd, Holly Kettelsen, Betty Simonsen; Pioneer Ridge Freshman Center—Ross Erickson; Pipestone Alternative Program—Toni Cunningham; Pipestone Area Schools—Leorna Studt; Pipestone Public Schools—Joan Ratzloff; Pleasantview Elementary—Jill Krueger, Mrs. Martin, Gina Rudolph; Plymouth Middle School—Katie Buss, Bradley Burns, Tony Vazquez; Pope John Paul II Catholic School—Mrs. Aska, Lissa Forletti-Aska; Poplar Bridge Elementary—Mrs. Kapsch, Nancy Layman, Susan Peterson, Emily Rolek, Michelle Shorma, Mrs. Steffes; Powderhorn Elementary—Joan Hutchinson, Nancy Kruse; Prairie Elementary—Maririn Jensen, Judy Schmidt, Yvonne Sieve; Prairie Lutheran Early Childhood—Avis Turner; Prairie View Elementary—Linda Fullerton, Mike Skarp, Mark Swiggum; Prairie Woods Elementary—Jon Ninneman, Gwendolyn Roeder;

Pratt Elementary—Matt Berg, Anita Kangas, Laura Madsen; Presentation of Mary Elementary School—Hannah Stolen, Patsy Bishop; Prince of Peace Lutheran School—Wayne Coburn; Princeton High School—Duane Anderson, Stephen Larson; Princeton North Elementary—Carol Jones; Princeton South Elementary—Heidi Gebhard; Prior Lake—Ms. Colbert, Lyle Grimmer; Proctor Senior High School—Dick Kieren, Jim McIntire, Kathy Sylvester; Prosperity Heights Elementary—Mary Bakken, Angela Jalonack; Providence Academy—Teresa Wilson; Pullman Elementary—Nicole Wildman; Putnam Elementary—Cathy Clemons, Mrs. Johnson, Kristie Rossow; Putnam Heights Elementary (Eau Claire, WI)—Alan Hudacek; R.T.R. High School—Mr. Thomas; Rahn Elementary School—Brad Taylor; Rainbow Connection Preschool—Kristy Adams, Deb Milow; Ralph R. Reeder Community Education Center—Cathy Larson; Ramsey Elementary—Sandra Anderson, Lona Kampf, Sue Olseon, Penny Rodman, Patricia Schlick, Sue Stearans, Deb Waller; Ramsey Fine Arts Elementary—Blatti Ann, Kathy Glick, Susan Gonzalez, Jennifer Hennen, Pat Kelly, Tim Leach, Lisa Munson; Randolph Heights Elementary—Lisa Dochniak, Monica Fitzgerald;

Red Lake Elementary—Shelly Fredriksen, Jean Whitefeather; Red Oak Elementary—Mary Louise Olberding; Red Pine Elementary—Nicole Crumb, Sue Gerten, Laurie Herman; Red Rock Elementary—Mrs. Denault, Stephanie Dorn, Mrs. Lee, Laura Loppnow, Kathy Mides, Mrs. Opatz, Red Rock Elementary Teachers; Red Wing High School—Jeff Chalmers, Lowell Gran, Jim Morrisson, Dave Woods, Kevin Larson; Redwood Valley High School—Mrs. Sales; Redwood Valley Middle School—Susan Anderson, Elizabeth Sales; Reede Gray Elementary—Euleen Christensen; Renville County West Elementary—Cam Weis; Rice Creek Elementary—Beth Gelino; Rice Elementary—Mrs. McDermid; Rice Lake Elementary—Amy Gerst, Ryan Hahn, Jeanne Holland, Ann Miller, Karen Schwartz, Gail Tellander, Candy Boser, Mr. Stamman; Richard Green Elementary—Karen Larson; Richard Green School—Ms. Guiltary; Richardson Elementary—Ms. Jansen; Richfield High School—Richard Prindle, Barry Bain, Mr. Bente, Laurie Brown, Colleen Fischer, Mabel Frankenstein, Christopher Kaus, Derek Nelson, Mr. Oiseth, Cliff Peterson, Jennifer Swenson, Aaron Tepp, Elizabeth Vella Zehnphennig, Bruce Wiebe; Richfield Intermediate School—Kathryn Post, Jim Hayeck, Jodi Schleyer, Sandy Stone; Richfield Middle School—Val Caroll, James Habeck, Julie Lentz, Laura McQuiston, Kim Smith; Richfield School District—F. Taber-Akin; Richmond Elementary—Susan Utecht;

Ridgeview Elementary—Ms. Anderson, Paul Meyer; Rippleside Elementary—Sharon Lake, Daryl Smith, Loren Vonaske, Missy Walters; River Falls School District—Lanny Saumer; River Heights Elementary—Lisa Mayer; Riverside Elementary—Ms. Porter; Riverview Elementary School—Larry Golyer, Krista Carroll; Robbinsdale Armstrong High School—Pam Stanoch, Paul Anderson, Linda Holstein, James Irwin, Dean Larsen, John Norton, Kathleen Norton; Robbinsdale Cooper High School—Mrs. Bye, Lisa Emison, Vernon Hollister, Melissa Kyle, Kurt Pauly, Carol Zaudtke; Robbinsdale School District—Mr. Mossberg; Robbinsdale Spanish Immersion—Sr. Marique, Laura Pezan; Rochester—Sarah Nelson; Rochester Central Lutheran School—Pat Bryngelson; Rockford Elementary School—Terry Stansfield; Rockford High School—Caroline Young; Rogers Elementary—Mrs. Deroma, Vicky Roberts; Rogers High School—Laura Honeck, Sara Klingelhofer, Susan Romane; Rogers Middle School—Julie Athman, Lance Boole, Lori Tukey; Rondo Learning Center Cathy Smith; Roosevelt Elementary (Detroit Lakes)—Jane Ballard; Roosevelt Elementary (Faribault)—Mary Canney; Roosevelt Elementary (Mankato)—Brian Eggersdorfer, Kayla Koble, Mrs. Kuhlmann; Roosevelt Elementary (St. Cloud)—Larry Hanson; Roosevelt Elementary (Virginia)—Wayne Slater; Roosevelt High School (Minneapolis)—Jeahanne Beaton, Margaret Berg, Sharon Haldeman, Diane Martini-Johnson, Mr. Newton, John Vukmomich; Roosevelt Magnet Elementary (St. Paul)—Sheryl Cain, Jeanne Ertz, Dayna Thomas; Roosevelt Middle School (Blaine)—Laura Kaiser, Wayne Larkin; Roseau Elementary—Kelly Christianson; Rosemount High School—Rodney Smith, Liz Erikson, Sara Haitlei, Faith Jonas, Mr. Olsen, Caroll Rasch, Thomas Scott, Mr. Sieve, Mr. Theisen, Dr. Scott, Roy Warter; Rosemount Middle School—James Strey; Rosemount, MN—Justin Austgen; Roseville Area High School—Kay Sorgatz, Jane Aguilar, Merlen Clercx, Donna Erickson, Edward Fredine, Wally Jacobson, Robert Pass, Mary Peterson, Chris Ploetz, Charity Przepiora, Chelsea Schultz, Bo Smith, Kent Smith, Mr. Wagner, Jim Warren; Rooseville Area Middle School—Tony Andrea, Jeff Bibeau, Barbara Grengs, Scot Lavinger, Margo Olsen, Jodi Walker; Roseville Lutheran Nursery School—Anna; Rossman Elementary—Patricia Lee Benson, Ron Sprafka, Joann Strand; Royal Oaks Elementary—Mrs. Appert, Kelly Baeth, Laurie Beebe, Mr. Birkolyz, Denise Downhour, Louise Hinz, Linda Rull, Matt Judd; RTR High School—Mr. Thomas; Rum River Elementary—Mrs. Blue, Beverly Semanko, Jane Wood, Debra Day, Sandy Hannah; Rush City High School—Michael Vaugh; Rush Creek Elementary—Margot Andress, Ann Mock, Phyllis Rither, Patti Tannuzzo, Julie Williams; Rushford-Peterson High School—Craig Colbenson; Rutherford Elementary—Gretchen Haukom, Mrs. Spencer, Julie Kramer; Sacred Heart Elementary— Katie Goole, Mrs. Harty; Saint Ambrose of Woodbury—Mrs. Kress, Laurel Madden, Felicia Ochs, Kristn Woolsey; Saint Angela Merici School (Bronx, NY)—Diane Flanagan-Hogan; Saint Anthony Middle School—Robert Prust; Saint Anthony Park Elementary—Jessica Cherrier, Ruth Krider, Cathy Lime, Courtney O'Lean, Tim Olmstead, Susan Polfliet; Saint Anthony Village High School—Linda Guidera; Saint Batholomew's School Sr. Marcene; Saint Bernard's High School—Amy Okan, Mrs. Harrington, J.P. Kolbinger; Saint Boniface School—Liz Ficker; Saint Casmirs—Margo Lutzek; Saint Charles—Donna Spletz; Saint Charles Borromeo Catholic School—Judy Kusz, Mr. Willmar; Saint Charles Elementary School—Jeffrey Cole, Mike Smith; Saint Charles High School—Sarah Dixen, Scott Mecready; Saint Clair Elementary—Deb Hart; Saint Clair High School—Jim Williams; Saint Cloud—Marie Corriean, Ray Maresh, Sharon Truex; Saint Cloud Children's Home—Craig

Slocum; Saint Cloud Christian School—Patty Kelm; Saint Cloud School District—Larry Hanson; Saint Cloud State University—Albert Grottel, Chuck Rose, Frances Kayona, Janine Dahms-Walker;

Saint Cloud Technical High School—Gerald Gerads, LeRoy Pauley; Saint Croix Falls Senior High School—Erik Paulson; Saint David's Child Development Center—Debbie and Tina; Saint Elizabeth Ann Seton Catholic Middle School—Jeane Sharpe; Saint Francis de Sales School—Mrs. O'Keefe; Saint Francis Elementary—Patti Jo Oslin, Susan Robinette; Saint Francis High School—Mr. Bender, Michael Buck, Bobbi Hume, Mr. Keillor, Charles King, Mr. Klicka; Saint Francis Junior High School—Mr. Rose, Sue Starr, Bo Stevens; Saint Helena School—Sue Poepl; Saint John Fisher College—Michael Walczak; Saint John the Baptist School—Debra Cheney, Danielle Darwin, Mrs. Koskie, Ms. Schnette, Mrs. Spoden, Mrs. Sue, Mrs. Thompson; Saint John the Evangelist School—Andrew Sachaliason; Saint John Vianney School—Marge Milner, M. Pepperwolf, Nancy Schneider; Saint John's Catholic School (Hopkins)—Amy Hoheneker; Saint John's Lutheran School (Chaska)—Mrs. Herman; Saint John's Lutheran School (Maple Grove)—Justin Bermister; Saint Joseph's Catholic School—Sister John Christine, Regina Raush; Saint Joseph's School of Music—Rose Immacula; Saint Jude of the Lake—Tammy Green, Tracy Lewis; Saint Louis Park High School—Dorothy Ranslan, Arthur Cahill, Joe Getty, Joe Conrad, Jan Lane, David Linne, Mary Norris, Kevin O'Brian, Lee Smith, LeeAnn Stephens;

Saint Louis Park Junior High—Mrs. Maslowski, Randy Moore; Saint Mark's (St. Paul)—Karen Marolt, Ms. Rosga, Nicole; Saint Mary of the Lake Catholic School—Jeanne Bennek, Patty Clauson, Beth Croseby, Ms. Easton; Saint Mary's (Saint Paul)—Susan Reinardy; Saint Mary's (West Saint Paul)—Susan Walker; Saint Michael-Albertville High School—Derek Dewey, Michael Frickstad, Jens Rhoades, Pat Neumann; Saint Michael's School (Prior Lake)—Mr. Nickelson; Saint Michael's School (West St. Paul)—Sister Connie; Saint Odilia Parish School—Katy Maier, Kevin Scroggins, Mrs. Wendland; Saint Olaf College—Judy and Jim Cederberg, James Dickson, George Holt, Dan Forstner; Saint Pascal's School—Mrs. Campbell, Mrs. Reihle; Saint Paul—Blanche Burroughs, Ms. Hollman, Mrs. Martha, Dorothy Sarafolean, Tina Westawker, Billie McQuillan, Ralph Helm; Saint Paul Academy & Summit School—Laura Duke, David Fuerst, Laurie Goldfarb, Alisa Grewe, Judy Johnson, Margaret Kelberer, Tom Lundhom, Ms. Miller; Saint Paul Central High School—Ed Roth, Juanita Spire, Mr. Yernburg; Saint Paul College—Kathy Ross; Saint Paul French Immersion School—Audrey Gagnaire, Tammy Trochu; Saint Paul Mechanical Arts High School—Barbara Brice, Ray Schneider; Saint Paul Open School—Leo Bickelhaupt, Paula Brust, Jule Doble, Sheri Gongioroski, Kelly Jensen, Vaughn Koenig, Tim Leone-Getten; Saint Paul's Lutheran Elementary—Amy Bohme; Saint Peter High School—Mr. Harvey, Korrien Kreft, Jeff Miller; Saint Peter South Elementary—Ms. Farrington;

Saint Peter's Catholic School—Suzanne Yager; Saint Peter's School—Jeff Murawski; Saint Pius X Holy Family School—Deb Christensen, Racheal Hansen; Saint Rose of Lima Elementary School—Mrs. Kniffin, Rita W., Diane Wald; Saint Therese of Deephaven—Stephanie Brondani, Mrs. Connors, Carol Groetsch, Susan Ryan, Tim Wartman; Saint Thomas Academy—Wendy Fox, Donna Isaac, Tom Weber, Mark Westlake; Saint Thomas School—Michelle Misner; Saint Vincent De Paul Elementary—Mrs. Schlickup; Salem Hills Elementary—Ms. Gustafson; San Diego, CA—Diane Moss; Sand Creek Elementary—Roger Johnson, Scott Schaefer; Sandburg Middle School—Mark Balske, Mrs. Franz, Lauren Hildebrand, Dan McMullen, Molly Schmidt, Glen Semanko, Carrie Stack-Schaefer; Sandstone Saint Croix School—Barb Kunelius; Sanford Middle School—Lisa Dreyer, Nilo Guanzon, Lisa Stuehringer; Sartell Middle School—Donna Kellor, Amy Trombley; Sartell Senior High School—Jeff Kellerman; Sauk Centre Elementary—Mary Lou Kluver, Sandra Malevich; Sauk Rapids-Rice Senior High School—Kevin Hemmesch, Laura Mackenthun; Savage—Cindy Busse; Scandia Elementary—Mrs. McArdle, Jackie McMahon; Scenic Heights Elementary—Dylan Briest; Schaeffer Academy—Nola Aderton, Lisa Martinson; School District of Haverford Township—Mrs. Blanchard; School of Environmental Studies—Kim Lindell, Brad Nord;

Schoolcraft Learning Community—Judy Bing, Linda Blessing, Karen Bradley, Sara Breeze, Jim Conway, Marilyn Delaney, Ken Grantier, Gerry .Hoyum, Heidi Lindseth, Greg Moen, Melanie Nelson, Carla Patch, Hilary Phukan, Lisa Robinson; Schumann Elementary—Stephanie Johnson, Jane Kipling, Rochelle Ratzloff, Susan Vest; 'Scott Highlands Middle School—Jeremy Abbot, Lorie Dahlstrom, Phyllis Deer, Ron Finger, Stephanie Helgerson; Seward Montessori Elementary School—Kathie Glick, Kristen Hanson, Paul Hegre, Leni Heinen, Paul Heshe, Elizabeth Hockbeing, Agnes Kilpatrick, John Roper-Batker, Karen Utter; Shakopee Area Catholic School—Renae Sames; Shakopee High School—Eric Christianson, Edie Cook, Bev Fahey, Jason Hunt, Mr. MILLER; Shakopee Junior High—Ms. Fiora; Shannon Park Elementary—Chris Ice, Sue McMurchie, Mary Snyder, Carol Anderson, Jill Kopperud; SHAPE Program (Bloomington)—Marion Thorne; Sheridan Elementary (Lincoln, NE)—Karen Hoiberg; Sheridan Elementary (St. Paul)—Sheila Kluxdal; Sheridan Global Arts and Communications Elementary—Renee Beer, Charles Bethke, Colin Brown, Susan Ferrell, Nadine Hennings, Cathy Jaksha, Becca Kristofitz, Joni Kueng, Chasu Lo, Ms. Melquist, Carolyn Olcott, Robin Parker, Roberta Puzon, Jody Quenell, Linda Radick, Karen Ruhs, Brenda Schultz, Leah Williams, Shirely Foerster; Sheridan Hills Elementary—Jean Malherek, Mrs. Geafer; Shingle Creek Urban Environmental School—Paul Brau, Craig Smith;

Shirley Hills Primary School—Mrs. Tollefson, Dan O'Brien, Jessica Rashleger; Sibley Elementary—Susan Chabot, Dan Foley; Silver Lake Catholic School—Karen Eckstein; Simley High School—Anne Batisti, Tom Claussen, Thomas Findlay, Matthew Lorey, Rufino Ochoada, Mike Murr; Sioux Trail Elementary—Karen Brown, Elaine Vezina; Sky Oaks Elementary—Nancy Brandt, Kate Landgen, Mary Lincoln; Skyview Community Elementary—Seann Dikkers, Peter Evans, Kari Ratz, Peter Evans; Snail Lake Elementary—Leslie Lundmark, Craig Sundberg, Nathan Flansburg; Solomon Schecter Day School—Aliza Zeff; Somerset Elementary—Kathy Cardinal, Sue Wyckoff; Sonnesyn Elementary—Jennifer Cavanaugh, Janet Maki, Kay Miller, Jan Moen, Pam Oesterreich, Molly Zensen, Katni Homan; Sorteberg Elementary—Judy Saboe; South Avondale Elementary School—Sally Coomes; South Elementary—Lexi Cumings; South Grove Elementary—Mrs. Chun; South High School—Neil Anderson, Douglas Berglund, Scott Carter, Duane Dentz, Brian Fitzgerald, Mrs. Gunderson-Johnson, Mrs. Hayes, Tanya Hodge, Warren Kaari, Denny Sponsler, Mark Wald, Susan Wolfe, Melinda Bennett; Snail Lake Elementary—Eric Collins;

South Point Elementary—Kathy Voelker; South Saint Paul High School—Conrad Anderson, Judy Carney, Jennifer Caruso, Marlene Greger, Rachel Hansen, Sean McGlaughlin, Marilyn West, Jim Woodburn, Jane Stull; South View Middle School—Patrick Anderson, Ms. Barnett, Ms. Cicmil, Dean Dahl, Ms. Koenig, Marge Melvin, Mr. Sigmund, Mr. WOLFbauer, Dan Wymore; South Washington—Sarah Jepsen; South Washington County School District—Daryl Vossler; Southern Illinois University (Edwardsville, IL)—Thomas O'Keefe; Southland Senior High—Larry Luke; Southside Family School—Peter Oppenheim; Southview Elementary—Carol Peach, Lee Filipek; Southview Middle School—Ms. Arnold, Ms. Padden;

Southwest Christian High School—Andrew Gross; Southwest Junior High School—Crystal Ivanish; Southwest Senior High School—Mr. Behrendt, Mr. Denysenko, Robert Ferguson, Art Froehle, Larry Levine, Megan Marsnik, Beth Otto, Thomas Perry; Anne Marie Plante, Robin Polson, Sarah Sexton, Bill Towne, Jonathan Townsend, Ms. Westby; Southwest Star Concept Secondary School—Robert Graef; Special Education Resource Program (Minneapolis)—Meghan Scallon; Spooner High School—Mrs. Eichhorst; Spring Lake Park Senior High School—Michael Bobbe, Jennifer Bobbe, Brian Fredine, Wendy Hatchner, Carl Luepker, Jeremy Sellman, Beth Wackman;

Stevenson Elementary—Darri Becchetti, Mrs. Hermann, Michael Kozarek, Debbie Rein, Ms. Simineol; Stillwater High School—Greg Johnson, Marcia Aubineau, Bill Carlson, Tanya DeWing, Ms. Gunvolson, Mrs. Lee, Mr. Luke, Pam Norton, Darby Whitehill, Sunny Hollow Elementary—Ms. Branch, Doug Hubred, Andrew Hunter, Ms. Sigurdson, Julie Pitkin, Mr. Strand; Sunnyside Elementary—Mrs. Follet, Kevin Holm, Joseph Law, Sandy Lehman, Greg Ulrich; Sunset Hill Elementary—Cathi Critzer, Jane Reynolds, David Wiegert, Cheryl Burdick; Talahi Elementary—Angela Mitchell, Mary Pierce-Slocum; St. John's Lutheran School (Maple Grove)—Richard Wilkie; St. Joseph's School (West St. Paul)—Jane Schneeweis; St. Raphael Catholic School (Crytal)—Ms. Wockenfuss; St. Stephen's Catholic School (Anoka)—Mrs. Lakaner; Stanford University—Stanford, CA—Camille Picconatto; Staples High School (Westport, CT)—Joe Ball; Staples-Motley High School—Mrs. Schwichtenberg; Step by Step Montessori (Wayzata)—Olga Tregor; Stephen Senior High School—Gary Kotts; Stillwater Junior High—John Warnert, Mrs. Michaels;

Stonebridge Elementary—Mrs. Ivey, Mr. Kondrasuk, Ms. McKay, Ms. Studtman; Stowe Elementary—Robert Berg, Denise Nord; Studio Academy (Rochester)—Mr. Aakre; Sullivan Community Center—Susan Bell, Kaylen Gores, Mary Swenson; Sun Path Elementary—Mary Kornder; Sunday School—Amy Baker; Sunny Hill Preschool—Ruthann & Vicki; Sunny Hollow Montessori (St. Paul)—Anne Paul; Sunrise Park Middle School—Travis Littlefield, Huy Nguyen; Susan Lindgren Elementary—Sabrina Olson; Sweeney Elementary School—Jennifer Johnson; Talmud Torah of Saint Paul—Faye Bearman, Benji Latz, Robbi Nelson; Tartan

High School—Jan Churchill, Gerard Coury, Tony Didier, Matt Duffee, Roy Erickson, Vicki Fellows, Kristin Gessert, Glen Hanson, Mrs. Hyers, Karen Hyers, Phylis Kirsch, Dan Krengel, Carolyn Merva, Jeff Patry, Jackie Reiter, Mr. Roleff, Dave Rutledge, Craig Spreiter, Grant Steves, Mandy Wineberg, Janice Yamamoto, Vicki Reiter, Mark Junod, Louise Weldon; Taylors Falls Elementary—Mike Ackertz, Mrs. Noyd, Sheila Sandell, Technology and Language School—Mr. Lee, Ken Habel; Temple Israel School—Fran, Heidi Trashish; Tesseract School—Robert Tuma; The Blake School—David Burton, Judy Ann Ehrlich, Will Fisher, Laura Larson, Mr. Olsen, Heinz Otto, Lisa Vaughnn, Larry Hester, Ms. Johnson, Kathryn Kaatz, Patti Loftus, Chris Passi; Thomas Lake Elementary—Brenda Fluke, Mrs. Hokkanen, Mrs. Tan;

Torah Academy—Aarah Aizman, Jill Singer; Totino-Grace High School—Tim Glynn, Tom Jeffries, Mary Newman, Dick Paul, Jason Schwalen, Ms. Sweet; Tracy High School—Jerome Rood; Transfiguration Catholic School—Bryan Collins; Trinity Catholic School—Mr. Heller, Sister Mary Lorentz, Marla O'Keefe; Trinity Lutheran School—Ron Anenson, Greg McCourt, Laura Yust; Trinity School at River Ridge—Ken Folkestad; Turtle Lake Elementary—Nancy Friendt, Joan McMahon, Dennis Nelson, Cheryl Wallin; Tuttle Elementary—Teresa Wisniewski; Twin Bluff Middle School—Amy Carlson, Amy Strusz; Twin Cities Academy—Erin Amundson, Shannon Gould, Mr. Koch, Gina Stine, Susan Webster; United South Central Elementary—Mrs. Dalton; Unity Elementary—Yvonne Sorenson; University Day Community School—Jan Schaffer; University Elementary—Nicole Nelson; University of Central Florida—Robert Wood; University of Minnesota—JoAnne Buggey, Ed Nater, Peter Ralston, Larry McDonough, Drew Sweetzer, Michael Root, Raymond Duvall, Maribeth Overland, Jeff Ratliff-Grain, Steve Andreasen, Lee Galda, Shirely Garner, Karen Jorgensen, Jerry Luckhardt; University of Saint Thomas—Karen Boros, Robert Brown, Robert Delhunty, Beth Middleton; University of Wisconsin—W.L. Bretnzel, David Furniss; Upsala Secondary School—Roxanne Lewis; Urban League Saint Academy—Liam Baucom-Orlofsky;

Vadnais Heights Elementary—Deb Girard, Ellie van Guilder; Valentine Hills Elementary—Cindy Mortenson, Leland Porath; Valley Crossing Community School—Shannon Casey, Elizabeth Dobbins, Jenelle Krech, Deb Laub, Ms. Thompson; Valley Middle School—Ross Alwin, Elaine Coglitore, Shaun Lindquist, Mary Spychalla; Valley View Middle School—Christine Ingram, Besty Navarro, Jon Moore, Florence Debard, Ms. Ebert, Greg Erbish, Jeffrey Grabow, Phil Holm, Lindsey Jacobson, Jon Baudek, Kristen Morcomb, Ms. Nasset, Cathy Weller; Vandenberge Junior High School—Kassea Boche, Mrs. Kurmis, William Pollard; Ventura High School—Arlys Arnold; Vista View Elementary—Mehan Murray; Wabasha-Kellogg High School—Beth Jewson; Wadena-Deer Creek Elementary—John Keanen, Jean Rortvedt; Wagner Elementary—Bryce Wendlandt; Waite Park Elementary—Ms. Ficocello, William Land, Ms. Maier, Ms. Penn, Sue Schweitzer, Ms. Thompson; Walker-Hackensack-Akeley Secondary School—Kelly Nelson; Waseca Central Intermediate School—Brenda Saemrow, Jody Schlichte; Waseca High School—Herb Streitz;

Waseca Junior High School—Sheryl Wilder; Washburn Elementary—Aimee Johnson, Ms. Schill; Washburn High School—Barb E., Nancy Gustafson, Christine Lamm, Perry Rudey, Gary Wald, Jennifer Welbaum, Mrs. Wells, Katy Winker, Allan Wurst; Washington Elementary (Alexandria)—Dave Gran, Deb Odland; Washington Elementary (Cloquet)—Mr. Goard, Karen McKenna; Washington Elementary (Crookston)—Nancy Neis; Washington Elementary (Mankato)—Gerald Hansen, Connie Long, Cindy Stone; Washington Elementary (Owatonna)—Jenni Bricko, Monica Konold; Washington Elementary (Willmar)—Earl Habben; Washington Middle School (Brainerd)—Letitia Laske; Washington Middle School (St. Paul)—Anne Johnson; Watershed High School—John Miller; Watertown-Mayer Elementary—Tyler Finkelson, Joan Fritzke, Mr. Rockhold, Colleen Kelzer; Waterville-Elysian-Morristown Junior High—Mrs. Wanless; Watkins Elementary—Don Ksar; Wayzata High School—Jeff Dahl, Grace Gamradt, Brenda Gonuea, Michelle Howe, Kevin Johnson, Ertwin Jones-Hermerding, Stacy Larson, Chuck Leonard, Gail Rains, Jan Reineck, Peter Schmit, Tom Tietze, Adam Tillotson, Bill Vieth, Chip Williams, Ken Zwach;

Webster Magnet Elementary—Robin Abel, Pam Anderson, Bob Blat, Chris Diaz de Leon, Ralph Helm, Diane Kastner, Ms. Lund, Ron Moeller, Mrs. Reinhardt, Niceta Smith, Laura Stirn; Westwood Elementary—Debbie Kaiser, Mrs. McCuster, Carl Nevils, Helen Swedien, Kari Sunberg, Westwood Elementary Staff—Pam Dugas; White Bear Lake High School—Dan Rossiter, Kari Sunbeg, Mr. Nakasone, Roger Storkamp, Tiffany Dittrich, Peggy Ludtke, Mrs. Bortot, Mrs. Braegar, Mrs. Christenson, Gary Cook, Karla Lauerman, Marci Markuson, Keif Svendsen, John Mwachlarowicz, Mrs. Wagner, Marcia Wellstone, Joe Rukavina; Watzata East Middle School—Karen Peters; Wayzata—Karen Boole, Ginny Hersey; Wayzata Central Middle School—Stacy Calvert, Anne Todd; Wayzata East Middle School—Rachel Schaeffer; Wayzata West Junior High School—Ron Billings; Wayzata West Middle School—Mary Anderson; Weaver Elementary—Michael McHatchensen, Amy Arntson, Beth Chapelaine; Weaver Lake Elementary—Bonnie Caper-Eckstein, Mrs. Foster, Mrs. Maetzold, Diane Nielson;

Webb Middle School—Christopher Paulson; Webster Elementary—Amy McGuire; Webster Open Elementary—Kathy Beaman, Beth Nilson, Martha Spriggs; Welcome Elementary—Mary Ann DeBus; Willow Lane Elementary School—Tracy Gripentrog, Marilyn House, Helen Lind, Susan Schnorr, Lisa Slack, Bev Sonnenburg; Willow Creek Middle School (Rochester)—Robyn Floyd, Frances Reisner; Willow Creek Intermediate Elementary (Owatonna)—Stacy Ginseky; Willmar High School—Linda Aune, Mark Miley, George Peper; William Byrne Elementary—Debbie Bigelow, Nicole Happe; Wildwood Elementary—Nan Rohde, Paula Tansom, Mathew Hoffman; Westwood Middle School—Robert Gibson, Mr. Kretchmar, Marianne Paulos, Trent Snyder; Westside Elementary—Jamie Follstad, Camille Donaldson, Paulette Schwen; Wenonah Elementary—Gail Ketter, Ms. Langseth; White Bear Lake Central Middle School—Genni Steele; White Bear Lake Preschool—Lori Castro; Whitewater High School—James Minette; Whittier Park Elementary—Sue Ohman; White Bear Lake—Judy Lund; West Elementary—Janice Buening; Carrie Ekert; Mrs. Loita.

ADDITIONAL STATEMENTS

COMMENDING THE LADIES AUXILIARY TO THE VETERANS OF FOREIGN WARS

• Mr. CHAMBLISS. Mr. President, I would like to take this opportunity to commend the Ladies Auxiliary to the Veterans of Foreign Wars for their great work on behalf of our military members and veterans, and specifically those veterans and military personnel in the State of Georgia.

For many years, the Ladies Auxiliary to the Veterans of Foreign Wars has been involved in supporting our brave men and women in uniform and their families. Throughout the country many Ladies Auxiliary to the Veterans of Foreign Wars are providing support and well wishes at our Nation's airports as soldiers, sailors, airmen, and marines leave and return from Afghanistan, Kuwait, and Iraq. Members of the Ladies Auxiliary to the Veterans of Foreign Wars also help the families of deployed troops meet such challenges as trying to fill the roles of absent parents, learning to stretch a reduced paycheck, and dealing with loneliness.

In the last year, the Ladies Auxiliary to the Veterans of Foreign Wars has provided many families and troops with Operation Uplink cards, which allow our troops to make long-distance phone calls to loved ones during challenging times. Additionally, members of the Ladies Auxiliary to the Veterans of Foreign Wars have personally helped deployed service members' families by babysitting, providing transportation, helping with weekly tasks like mowing the lawn and grocery shopping, but most of all by being good listeners.

The Ladies Auxiliary to the Veterans of Foreign Wars also provides scholarship funds for civically minded youth. Through various scholarship funds, the Ladies Auxiliary to the Veterans of Foreign Wars awards $37,500 annually. Young people benefiting from these awards have outstanding achievement in academics, volunteerism, and the creative arts, and these awards allow them to extend these achievements even further.

The Ladies Auxiliary to the Veterans of Foreign Wars also offers a unique program to its members. All members are eligible to receive a cancer grant, which is a lump sum gift given to a member who has been diagnosed with cancer. Two Cancer Research Fellowships are also offered by the Ladies Auxiliary to the Veterans of Foreign Wars. These grants are 1-year, $50,000 postdoctoral fellowships, which are awarded each year to eligible scientists. The auxiliary provides these fellowships so that researchers can devote one year full-time to the challenge of cancer research.

I hope my colleagues will join with me today in commending the ladies auxiliary for their service and contribution on behalf of our military personnel and veterans. The Nation should be proud and appreciative to have such an organization active and operating. I am especially proud to have them active in the State of Georgia and congratulate them for their accomplishments and their service to our country.•

RECOGNIZING THE CHESTERFIELD COUNTY EMS, POLICE AND FIRE DEPARTMENTS

• Mr. ALLEN. Mr. President, I am honored today to recognize the Emergency Medical Services, EMS, Police and Fire Departments of Chesterfield County. It is through their brave and steadfast actions during the floods of Tropical Storm Gaston that the lives of many Virginians were saved.

Throughout the evening and overnight hours on Monday, August 30, 2004, the remnants of Tropical Storm Gaston entered the Central Virginia area. Although the weather forecasts called for 1 3 inches of rain, Chesterfield County residents found themselves under as much as 10 inches of rain in some areas that night. As a result, numerous roads began to flood and several swift-water rescues had to be made in the complete darkness. These rescues tested the knowledge, skills and abilities of the members of Chesterfield Fire, Police and EMS; their heroic actions under the extreme pressures they faced that night saved many members of their community from life-threatening conditions.

Today, I commend: David A. Stone, James B. Anderson, Richard A. Holmes, Daniel Juan Robertson, Jim Fitch, Stuart Smith, Curtis Sink, Steve Stump, Mike Larkin, William Smith, Steve Traylor, Chris Harrell, Bill Jeffords, Mark Berry, Frank Blankenship, Brian Riffe, Jack Speed, Roger Warden, Bryce Ford, Brook Keenum, Rick Bucher, Jim Stanley and the many other rescuers from Chesterfield County who saved so many lives at their own peril on that fateful night.

I am pleased to recognize the selfless actions of these tremendous men and women, which demonstrate the incredible dedication, determination and courage they have in serving their community. Virginia should be proud of the brave work undertaken by the rescue workers in Chesterfield County. Their community is a better and safer place because of the job they did that night and each and every day.•

A TRIBUTE TO REV. DR. JOHN HERBERT SPENCER, SR.

• Mr. SHELBY. Mr. President, today I honor Rev. Dr. John Herbert Spencer, Sr. who passed away on October 1, 2004 at the age of 83. Dr. Spencer was a compassionate man whose selflessness and devotion to his faith, family and community will be remembered for generations.

Dr. Spencer, a native of Greene County, AL, was born on December 7, 1920, to Manuel and Annie Eatman Spencer. A graduate of the public schools in Greene County and Tuscaloosa, Dr. Spencer also attended Stillman College and Union Seminary. He became the pastor of Morning Star Baptist Church in Holt, AL in 1946 and remained at the church for 58 years. His leadership and devotion to the church spurred tremendous growth, including a new sanctuary and increased congregation.

He also preached at the following churches: Antioch Baptist Church in Hulls, AL, Hopewell Baptist Church in Lowndes County, Pleasant Green Baptist Church in Whitehall, New Mount Moriah Baptist Church in Tyler, and the Old Kingston Baptist Church in Prattville. Dr. Spencer also dedicated much of his time and energy to the National Baptist Convention, USA, Inc. and the Alabama Baptist State Convention, particularly as Missionary for the Northwest District since 1976 and locally as Record Secretary of the New Antioch Bethlehem District, NABD, Association and instructor in both the local and State Congress of Christian Education. He was the oldest and longest serving pastor in the NABD Association.

Dr. Spencer's influence played a vital role in the completion of the NABD Association's Religious Center and the Science Building and Dinkins Hall at Selma University. He served as both Vice Chairman and Chairman of the Board of Trustees for Selma University and was instrumental in efforts to secure the school's accreditation. Honorary Doctorate Degrees from Selma University, Birmingham Baptist Bible College and Easonian Theological Seminary are among his numerous awards and citations for his contributions to Baptist work.

Dr. Spencer married Lillian Brown Johnson in 1946, and they were the parents of eight children. He later married Kay Frances Turner in 1980, who survives him. He is also survived by his children: Rev. John H. Spencer, Jr. and his wife Debra; Rev. Simeon D. Spencer and wife Glynis; Dr. Marjorie Spencer Campbell and husband Willie, Lillian M. Spencer; Jannis M. Glover and husband Donald and Dr. Faye Spencer Maor and husband Terver. He is also survived by two step-sons: Dr. Otis S. Johnson and Paul L. Johnson and wife Angeline; twelve grandchildren, and one great granddaughter.

Indeed, Dr. Spencer's willingness to share his faith had a positive impact on everyone with whom he came in contact. He will be missed by his family, friends, and the many lives he touched through his ministry.•

THE 40TH ANNIVERSARY OF THE OAKLAND LIVINGSTON HUMAN SERVICES AGENCY

• Mr. LEVIN. Mr. President, I would like to take a moment to celebrate the 40th anniversary of the Oakland Livingston Human Services Agency. The mission of this agency is to help low-income, elderly and disabled individuals become self-sufficient, and OLHSA has been extremely successful in this pursuit. With over 70 programs, OLHSA has assisted over 30,000 low-income, elderly and disabled individuals living in Oakland and Livingston counties become more self-reliant, thereby improving their quality of life. Over the last forty years, the efforts of OLHSA have improved the lives and livelihoods of Michigan citizens across the two counties.

Elderly citizens in Southeastern Michigan can turn to OLHSA for a variety of resources and services. Senior centers, located in Pontiac and Novi, provide facilities for older adults to eat nutritious meals, attend exercise classes and socialize. The Senior AIDES program provides employment and training opportunities for older adults, opening the door to career options that would otherwise be unavailable because of their age and/or inexperience. Volunteers are dispatched to homes around the community to assist elderly individuals with household chores and yard work that they can no longer perform themselves.

The Oakland Livingston Human Services Agency also provides support and advocacy to low-income families and other struggling individuals. If a family or an individual is in an emergency situation, they can turn to OLHSA for immediate help. OLHSA provides the necessary assistance to those in need through food banks, emergency utility assistance and emergency housing. In addition, the Oakland Livingston Human Services Agency provides long-term aid to the surrounding community. OLHSA's Financial Education Program offers informational classes on money management, tax law, insurance options and a variety of other topics. It also provides counseling on childcare, nutrition and other problems that face the community. Those who take advantage of these classes and counseling sessions acquire the knowledge and skills they need to make it on their own and overcome their problems. OLHSA has worked consistently to reduce the causes and consequences of poverty in Oakland and Livingston counties, and I know I can speak for my constituents when I say the people of Michigan sincerely appreciate the good work they have done.

I know my Senate colleagues will join me in offering congratulations to the Oakland Livingston Human Services Agency on its 40th anniversary. We recognize and thank the dedicated staff and volunteers who have made the organization successful over the years, and I wish them many more years of service to the community.●

THANK YOU, SENATE POSTMASTER HARRY GREEN

● Mr. LOTT. Mr. President, since September 11, 2001, outstanding members of our Senate family have stepped forward to deal with the many challenges this institution has faced. One such leader is Harry Green, who I appointed to be the Senate Postmaster in January 1997.

I have known Harry Green all my life.

I rise today to wish Harry the very best as he plans to retire yet again at the end of October and return to our native State of Mississippi.

Harry began his career in 1961 with the United States Postal Service in Pascagoula, MS. After only 10 years, he was promoted into a supervisory role which led to his becoming the postmaster in Pascagoula. In 1985 he was transferred to Lafayette, LA, where he served as postmaster there until his retirement in 1992.

After I became majority leader, I coaxed Harry out of retirement in 1997 to become the postmaster of the United States Senate.

During his tenure with the Senate Post Office, he has been faced with two significant biological/chemical challenges, anthrax in October 2001 and ricin in February 2004. Because of Harry's experience and demeanor, both attacks on the Senate were met with calm leadership and competent direction and stability.

After the 2001 anthrax incident, Harry led the Senate Post Office team in a collaborative effort with U.S. Postal Service representatives to ensure the delivery of mail in a safe and timely manner. He and his team have received accolades for their performance and responsiveness in combating these threats to the Senate mail service.

Harry also has proven himself an outstanding steward of appropriated funds. By utilizing existing resources and without compromising customer service, he has improved the quality of the Senate Post Office's service, in normal times as well as during crises, while still managing to spend about 58 percent less than other similar government agencies.

I wish Harry well as he plans his retirement as postmaster of the Senate and leaves the Washington, DC area to be closer to his family. Harry has a lovely bride, Ilone, of 42 years, four children and five grandchildren. His post-retirement plans are to return to Pascagoula and its picturesque view of the Gulf of Mexico where he can enjoy full-time his hobbies of boating and watching SEC football and NASCAR racing.

We will all miss Harry's excellent leadership, gentle nature and good humor here in the U.S. Senate. Harry, I will see you, riding our bicycles on the beach.●

AN AMERICAN PATRIOT

● Mr. CRAPO. Mr. President, I rise today to honor an American patriot who, although not American by birth, demonstrated the best ideals of our country. Steen Christian Fischer was born in 1920 in Copenhagen, Denmark; he died in August in Boise, ID, and I had the opportunity to get to know him during the last ten years of his life. Steen had a wonderful outlook on life and believed strongly in freedom and opportunity. Prior to the German occupation of Denmark during World War II he served in the Danish Navy. After the occupation, when the Navy was disbanded by the Germans, he joined the Danish Resistance and was a part of the remarkably successful evacuation of Danish Jews to neutral Sweden. He was ultimately captured by the Gestapo in Copenhagen, sentenced to be hanged, and transported to Neuengamme Concentration Camp near Hamburg. His sentence was not carried out as the paperwork never arrived. Of 106,000 inmates at Neuengamme only 55,000 survived. After 9 months in the camp, with the Allied army approaching, the surviving inmates were loaded onto a train to be transported to another camp, but he and some friends jumped off the train and escaped to freedom into the surrounding countryside. He spent the rest of the war hidden in various locations in Denmark. As soon as he could do so after the war ended, Steen emigrated to the United States and continued his quest for freedom and opportunity.

In New York State, he met a lovely young woman, Mary Anne Bruun, who also had Danish ancestry, and married her. Together they became the parents of seven children—Peter, Anne, Douglas, Barbara, Paul, Karin, and Mary. He called his children "the best thing in his life" and he passed his zest for life onto them. Steen was fearless and wanted to experience all that he could in the world. He told his children he wanted them to develop "wide horizons;" he was willing to go anywhere, do anything for the experience. Steen was the kind of guy who would take the dotted line on the map over the freeway every time. He was successful in passing down that philosophy to those seven children who have lived all over the world and are passing onto the next generation of Fischers that attitude of "wide horizons."

During Steen's last decade of life, he spent his time in Idaho where his commitment to freedom and his efforts during World War II were recognized by Idaho Governor Dirk Kempthorne. The Danish government considered him a hero and awarded him a war pension. His experiences were recorded for the U.S. Holocaust Museum and stand as a testament to the efforts of so many like him throughout the world who are committed to freedom.

Steen passed away in August of 2004 at the age of 83, having lived a remarkable, courageous life. He will be remembered by so many who loved him as well as many who had found freedom through his efforts during World War II. There is no higher compliment I can pay him that to call him a patriot who found freedom during some of the darkest times in our world's history. He will be missed, but never forgotten.●

AMERICAN PHARMACISTS MONTH

● Mr. JOHNSON. Mr. President, I would like to take this opportunity to acknowledge American pharmacists during American Pharmacists Month. Pharmacists play an important role in our health care system. Their contributions to the care of our country's citizens, especially our seniors, are key to the health of Americans.

Pharmacists are medication experts within our Nation's health care workforce. Each day, their efforts assist in improving the use and effectiveness of medications. Pharmacists are improving health care in community pharmacies, hospitals and health systems, nursing homes, hospice, and in patient's own homes through home-infusion therapies, as well as the uniformed services, the government, and in research and academic settings.

Pharmacists work towards making sure that consumers safely administer their medications, and to provide them with crucial information pertaining to possible side effects or complications of taking multiple medications. Pharmacists assist in providing the most effective combinations of prescription drugs to those who take more than one prescription at a time. Pharmacists are a critical part of our health care system and should be recognized and commended this month for their important role.

During the course of the debate on the Medicare prescription drug bill, I introduced a medication therapy management, MTM assessment amendment, which I was pleased to see accepted in the Senate passed version of the Medicare bill. While the amendment was not included in the version sent to the President for his signature, I was pleased to see an MTM program component incorporated. Establishment of such a program would allow pharmacists, in conjunction with physicians, to assist beneficiaries who have various chronic conditions manage their medications. Pharmacists will be able to help ensure that patients use medications appropriately, enhance the patient understanding of such medications and help reduce the risk of adverse reactions to drugs. Such a program highlights the important role that pharmacists play in helping Medicare beneficiaries to reduce the costs of prescription drugs.

As prescription drug prices continue to climb, it is all too important that we continue to support efforts that will help to alleviate this burden. As noted, pharmacists are a critical component of our health care workforce and therefore need to be provided with the tools that help them to best serve the public, as well as to continue to combat the rising prices of prescription drugs. During American Pharmacists Month, I call on my fellow Senate colleagues to join in a bipartisan effort to support our pharmacists by acknowledging and commending their hard work and dedication towards improving the effectiveness and overall cost of health care.●

TRIBUTE TO VALENTIN J. RIVA

● Mrs. MURRAY. Mr. President, today I pay tribute to the life of Valentin J. Riva—a friend and transportation industry leader that was taken from us at far too young an age. Earlier this month, I was shocked and saddened to learn that Val Riva had passed away suddenly as a result of complications from heart surgery. Val was only 50 years old. I and many of my colleagues who work closely on transportation policy will remember Val as a truly visionary leader and trusted colleague. Moreover, Val was an extraordinarily dedicated father and husband.

Over the last two decades, Val has held leadership positions in several transportation organizations. Throughout, Val has been an articulate advocate for investment in our Nation's transportation infrastructure. Val served as vice president of government affairs for the National Stone, Sand and Gravel Association from 1988 until 1991 and as vice president and general counsel of the American Road and Transportation Builders Association from 1991 until 1997.

From August of 1997 until the time of his unfortunate death, Val Riva served as president and chief executive officer of the American Concrete Pavement Association. And in his most recent position, Val not only continued to be a powerful voice in the fight for infrastructure investment, but he also was a strong proponent of making sure that adequate resources were being dedicated to advancing pavement technology and transportation research. We have often heard Members speak on this floor about the deteriorating condition of our Nation's roads and bridges. Val Riva recognized that we not only need to replace and rehabilitate those crumbling roads and bridges but we also need to conduct the necessary research to create new technologies that will help prolong the lifespan of our infrastructure.

Val Riva was also respected by his peers in the transportation industry. Best of all, Val had the rare gift of being both thoughtful and funny. He was considered a trusted colleague and, more importantly, a loyal friend to those individuals that had the good fortune to work with him. I consider myself extraordinarily lucky to be one of those individuals.

And while Val was very dedicated to his work in the transportation industry, there was no job more important or rewarding to him than being a father to Clare, Michael and David. No one ever had a meeting with Val without hearing about his children and hearing a historical reference. I express my heartfelt condolences to his three children and to his wife, Marti. Val's passing is much more than just their loss. It is a loss to the entire national transportation enterprise and the great many of us that recognized his leadership in it. While we will miss Val's personable nature, his humor and his strength, I and many of my Senate colleagues know that his contributions will live on for a very long time to come.●

PRAISING THE WORK OF CAROLE EDWARDS AND THE ONCOLOGY NURSING SOCIETY

● Ms. MURKOWSKI. Mr. President, today I pay tribute to Carole Edwards, RN, BSN, of Juneau, AK. Carole is the first recipient of the Oncology Nursing Society, ONS, Excellence in Oncology Nursing Health Policy and Advocacy Award. ONS established the award this year to acknowledge the efforts of the many oncology nurses who participate as state health policy liaisons and other members who are active in advocacy efforts.

Cancer is a complex, multifaceted and chronic disease, and people with cancer are best served by a multidisciplinary health care team specialized in oncology care, including nurses who are certified in that specialty. This year alone, 1.3 million Americans will hear the words, "You have cancer." In addition, 556,000 will lose their battle with this terrible disease. Every day, oncology nurses see the pain and suffering caused by cancer and understand the physical, emotional, and financial challenges that people with cancer face throughout their diagnosis and treatment. Oncology nurses play a central role in the provision of quality cancer care as they are principally involved in the administration and monitoring of chemotherapy and the associated side-effects patients may experience.

The Oncology Nursing Society is the largest organization of oncology health professionals in the world, with more than 31,000 registered nurses and other health care professionals nationwide. Since 1975, the ONS has been dedicated to excellence in patient care, teaching, research, administration and education in the field of oncology. To that end, ONS honors and maintains an historical and essential commitment to advocacy for the public good by providing nurses and healthcare professionals with access to the highest quality educational programs, cancer-care resources, research opportunities and networks for peer support.

On behalf of the people with cancer and their families in my home State of Alaska, I would like to acknowledge Carole Edwards and thank her and ONS for their ongoing commitment to improving and assuring access to quality cancer care for all cancer patients and their families. Through Carole's and ONS's leadership, our Nation is charting a course that will help us win the war on cancer. I urge my colleagues to support them in their important endeavors.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 12:51 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House disagrees to the Senate amendment to the act (H.R. 4837) making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2005, and for other purposes, and agree to the conference asked by the Senate on the disagreeing votes of the two Houses thereon and appoints the following members as the managers of the conference on the part of the House: Mr. KNOLLENBERG, Mr. WALSH, Mr. ADERHOLT, Mr. GRANGER, Mr. GOODE, Mr. VITTER, Mr. KINGSTON, Mr. CRENSHAW, Mr. YOUNG of Florida, Mr. EDWARDS, Mr. FARR of California, Mr. BOYD, Mr. BISHOP, Mr. DICKS and Mr. OBEY.

The message also announced that the House passed the bill (S. 211) to establish the Northern Rio Grande National Heritage Area in the State of New Mexico, and for other purposes, with an amendment.

The message further announced that the House has passed the bill (S. 1134) to reauthorize and improve the programs authorized by the Public Works and Economic Development Act of 1965, without amendment.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 4470. An act to amend the Federal Water Pollution Control Act to extend the authorization of appropriations for the Lake Pontchartrain Basin Restoration Program from fiscal year 2005 to 2010.

H.R. 4661. An act to amend title 18, United States Code, to discourage spyware, and for other purposes.

H.R. 5061. An act to provide assistance for the current crisis in the Darfur region of Sudan and to facilitate a comprehensive peace in Sudan.

H.R. 5213. An act to expand research information regarding multidisciplinary research projects and epidemiological studies.

The message further announced that, the House agreed to the resolution (H. Res. 842) requesting that the Senate return to the House of Representatives the bill of the Senate (S. 1301) to amend title 18, United States Code, to prohibit video voyeurism in the special maritime and territorial jurisdiction of the United States, and for other purposes.

The message also announced that, pursuant to section 201(b) of the International Religious Freedom Act of 1998 (22 U.S.C. 6431 note), amended by section 681(b) of the Foreign Relations Authorization Act, Fiscal Year 2003 (22 U.S.C. 2651 note), the order of the House of December 8, 2003, and upon the recommendation of the Minority Leader, the Speaker appoints the following member on the part of the House of Representatives to the Commission on International Religious Freedom for a 2-year term ending May 14, 2006, to fill the existing vacancy thereon: Ms. Elizabeth Prodomou of Boston, Massachusetts, to succeed Ms. Patricia W. Chang of San Francisco, California.

ENROLLED BILLS SIGNED

At 6:48 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 33. An act to authorize the Secretary of Agriculture to sell or exchange all or part of certain administrative sites and other land in the Ozark-St. Francis and Ouachita National Forests and to use funds derived from the sale or exchange to acquire, construct, or improve administrative sites.

S. 2415. An act to designate the facility of the United States Postal Service located at 4141 Postmark Drive, Anchorage, Alaska, as the 'Robert J. Opinsky Post Office Building'.

S. 2742. An act to extend certain authority of the Supreme Court Police, modify the venue of prosecutions relating to the Supreme Court building and grounds, and authorize the acceptance of gifts to the United States Supreme Court.

H.R. 854. An act to provide for the promotion of democracy, human rights, and rule of law in the Republic of Belarus and for the consolidation and strengthening of Belarus sovereignty and independence.

H.R. 2828. An act to authorize the Secretary of the Interior to implement water supply technology and infrastructure programs aimed at increasing and diversifying domestic water resources.

H.R. 5122. An act to amend the Congressional Accountability Act of 1995 to permit members of the Board of Directors of the Office of Compliance to serve for 2 terms.

The enrolled bills were signed subsequently by the President pro tempore (Mr. STEVENS).

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar.

S. 2938. A bill to grant a Federal charter to the National American Indian Veterans Incorporated.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

S. 2949. A bill to amend the Low-Income Home Energy Assistance Act of 1981 to reauthorize the Act, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC-9613. A communication from the Administrator, Poultry Programs, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Regulations Governing Inspection of Eggs" (RIN0581-AB74) received on October 7, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC-9614. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Winter Pears in Oregon and Washington; Decrease of a Continuing Supplemental Assessment Rate for the Beurre d'Anjou Variety of Pears Grown in Oregon and Washington" (FV04-927-2) received on October 7, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC-9615. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Dried Prunes Produced in California; Increased Assessment Rate" (FV04-993-2) received on October 7, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC-9616. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Mandatory Country of Origin Labeling of Fish; Interim Final Rule" (RIN0581-AC26) received on October 7, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC-9617. A communication from the Administrator, Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Mango Promotion, Research, and Information Order" (RIN0581-AC05) received on October 7, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC-9618. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, transmitting, pursuant to law, the report of a rule entitled "Gypsy Moth Generally Infested Areas" (Doc. No. 04-025-2) received on October 5, 2004; to the Committee on Agriculture, Nutrition, and Forestry.

EC-9619. A communication from the Secretary of Agriculture, transmitting, a draft of proposed legislation to amend the Livestock Mandatory Reporting Act of 1999; to the Committee on Agriculture, Nutrition, and Forestry.

EC-9620. A communication from the Principal Deputy, Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense, transmitting, pursuant to law, a report of the authorization to wear the insignia of lieutenant general; to the Committee on Armed Services.

EC-9621. A communication from the Principal Deputy, Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense, transmitting, pursuant to law, a report of the authorization to wear the insignia of lieutenant general; to the Committee on Armed Services.

EC-9622. A communication from the Principal Deputy, Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense, transmitting, pursuant to law, a report of the authorization to wear the insignia of lieutenant general; to the Committee on Armed Services.

EC-9623. A communication from the Principal Deputy, Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense, transmitting, pursuant to law, a report of the authorization to wear the insignia of lieutenant general; to the Committee on Armed Services.

EC-9624. A communication from the Principal Deputy, Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense, transmitting, pursuant to law, a report of the authorization to wear the insignia of lieutenant general; to the Committee on Armed Services.

EC-9625. A communication from the Principal Deputy, Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense, transmitting, pursuant to law, a report of the authorization to wear the insignia of lieutenant general; to the Committee on Armed Services.

EC-9626. A communication from the Principal Deputy, Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense, transmitting, pursuant to law, a report of the authorization to wear the insignia of lieutenant general; to the Committee on Armed Services.

EC-9627. A communication from the Principal Deputy, Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense, transmitting, pursuant to law, a report of the authorization to wear the insignia of lieutenant general; to the Committee on Armed Services.

EC-9628. A communication from the Principal Deputy, Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense, transmitting, pursuant to law, a report of the authorization to wear the insignia of lieutenant general; to the Committee on Armed Services.

EC-9629. A communication from the Principal Deputy, Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense, transmitting, pursuant to law, a report of the authorization to wear the insignia of rear admiral (lower half); to the Committee on Armed Services.

EC-9630. A communication from the Principal Deputy, Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense, transmitting, pursuant to law, a report of the authorization to wear the insignia of general; to the Committee on Armed Services.

EC-9631. A communication from the Principal Deputy, Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense, transmitting, pursuant to law, a report of the authorization to wear the insignia of admiral; to the Committee on Armed Services.

EC-9632. A communication from the Principal Deputy, Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense, transmitting, pursuant to law, a report of the authorization to wear the insignia of general; to the Committee on Armed Services.

EC-9633. A communication from the Principal Deputy, Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense, transmitting, pursuant to law, a report of the authorization to wear the insignia of rear admiral; to the Committee on Armed Services.

EC-9634. A communication from the Principal Deputy, Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense, transmitting, pursuant to law, a report of officers authorized to wear the insignia of the next higher grade ; to the Committee on Armed Services.

EC-9635. A communication from the Principal Deputy, Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense, transmitting, pursuant to law, a report of a retirement; to the Committee on Armed Services.

EC-9636. A communication from the Principal Deputy, Office of the Under Secretary of Defense for Personnel and Readiness, transmitting, pursuant to law, a report of the authorization to wear the insignia of vice admiral; to the Committee on Armed Services.

EC-9637. A communication from the Principal Deputy, Office of the Under Secretary of Defense for Personnel and Readiness, transmitting, pursuant to law, a report of the authorization to wear the insignia of vice admiral; to the Committee on Armed Services.

EC-9638. A communication from the Deputy Secretary, Division of Market Regulation, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled "Amendments to Rule 19b-4, Filing With Respect to Proposed Rule Changes by Self-Regulatory Organizations, Form 19b-4, and Rule 11Aa3-2, Filing and Amendment of National Market System Plans, Under the Securities Exchange Act of 1934, and Regulation S-T, Mandated Electronic Submissions and Exceptions, under the Securities Act of 1933" (RIN3235-AJ20) received on October 5, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC-9639. A communication from the Chairman and President, Export-Import Bank of the United States, transmitting, pursuant to law, the report of a transaction involving U.S. exports to Singapore; to the Committee on Banking, Housing, and Urban Affairs.

EC-9640. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled "Safety Zone (Including 4 Regulations, COTP Jacksonville 04-112, COTP San Francisco Bay 04-025, COTP Jacksonville 04-093, CGD05-04-191" (RIN1625-AA00) received on October 6, 2004; to the Committee on Commerce, Science, and Transportation.

EC-9641. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled "Drawbridge Regulations (Including 5 Regulations), CGD05-04-166, CGD01-04-121, CGD01-04-116, CGD01-04-123" (RIN1625-AA09) received on October 6, 2004; to the Committee on Commerce, Science, and Transportation.

EC-9642. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled "Mandatory Ballast Water Management Program for U.S. Waters USCG-2002-14273" (RIN1625-AA52) received on October 6, 2004; to the Committee on Commerce, Science, and Transportation.

EC-9643. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled "Security Zone: Atlantic Ocean, Chesapeake and Delaware Canal, Delaware Bay, Delaware River and its tributaries (CGD05-04-047)" (RIN1625-AA87) received on October 6, 2004; to the Committee on Commerce, Science, and Transportation.

EC-9644. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled "Special Local Regulations (Including 5 Regulations), CGD05-04-160, CGD13-04-039, CGD05-04-182, CGD05-04-184, CGD05-04-190" (RIN1625-AA08) received on October 6, 2004; to the Committee on Commerce, Science, and Transportation.

EC-9645. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled "Shipping and Transportation; Technical, Organizational and Conforming Amendments (USCG-2004-18884)" (RIN1625-ZA03) received on October 6, 2004; to the Committee on Commerce, Science, and Transportation.

EC-9646. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled "Safety Zone; Upper Chesapeake Bay, Patapsco and Severn Rivers, MD (CGD05-04-135)" (RIN1625-AA00) received on October 6, 2004; to the Committee on Commerce, Science, and Transportation.

EC-9647. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled "Security Zone; Suisun Bay, Concord California (COTP San Francisco Bay 04-022)" (RIN1625-AA87) received on October 6, 2004; to the Committee on Commerce, Science, and Transportation.

EC-9648. A communication from the Secretary of Transportation , transmitting, pursuant to law, a report entitled "National Plan of Integrated Airport Systems (NPIAS) 2005-2009"; to the Committee on Commerce, Science, and Transportation.

EC-9649. A communication from the Secretary of the Interior, transmitting, pursuant to law, the report of a rule entitled "Subsistence Management Regulations for Public Lands in Alaska" (RIN1018-AT58) received on October 7, 2004; to the Committee on Energy and Natural Resources.

EC-9650. A communication from the Chairman, Nuclear Regulatory Commission, transmitting, pursuant to law, a report relative to the Commission's licensing and regulatory duties; to the Committee on Environment and Public Works.

EC-9651. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Delaware: Final Authorization of State Hazardous Waste Management Program Revisions" (FRL#7825-5) received on October 7, 2004; to the Committee on Environment and Public Works.

EC-9652. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Florida: Final Authorization of State Hazardous Waste Management Program Revision" (FRL#7825-8) received on October 7, 2004; to the Committee on Environment and Public Works.

EC-9653. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks" (FRL#7826-2) received on October 7 , 2004; to the Committee on Environment and Public Works.

EC-9654. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Revised Allotment Formula for Interstate Monies Appropriated Under Section 106 of the Clean Water Act" (FRL#7825-2) received on October 7, 2004; to the Committee on Environment and Public Works.

EC-9655. A communication from the Director of Finance and Administration, Delta Regional Authority, transmitting, pursuant to law, the Authority's Audited Financial Statements for Fiscal Year 2003; to the Committee on Environment and Public Works.

EC-9656. A communication from the Deputy Assistant Secretary, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Klamath River and Columbia River Populations of Bull Trout" (RIN1018-AI52) received on October 7, 2004; to the Committee on Environment and Public Works.

EC-9657. A communication from the Chief, Regulations Branch, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Merchandise Fees Eligible to be Claimed as Certain Types of Drawback Based on Substitutions of Finished Petroleum Derivatives" (RIB1505-AB44) received on October 5, 2004; to the Committee on Finance.

EC-9658. A communication from the Trade Representative, Executive Office of the President, transmitting, pursuant to law, a report relative to a free trade agreement with five countries of Central America and the Dominican Republic; to the Committee on Finance.

EC-9659. A communication from the Regulations Coordinator, Centers for Medicaid and Medicare Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicare Program; Interest Calculations" (RIN0938-AL14) received on October 5, 2004; to the Committee on Finance.

EC-9660. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled "United States Internal Revenue Service v. Donald Snyder 343 F3d 1171" (AOD2004-41) received on October 7, 2004; to the Committee on Finance.

EC-9661. A communication from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting, pursuant to law, the report of a rule entitled "Weighted Average Interest Rate Update Notice—Pension Funding Equity Act of 2004" (Notice 200) received on October 7, 2004; to the Committee on Finance.

EC-9662. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, transmitting, pursuant to law, the report of the certification of a proposed manufacturing license for the export of defense articles or defense services in the amount of $100,000,000 or more to Germany; to the Committee on Foreign Relations.

EC-9663. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, transmitting, pursuant to law, the report of the certification of a proposed manufacturing license for the export of defense articles or defense services in the amount of $100,000,000 or more to a Sea Launch Platform in International Waters, or French Guiana, or Kazhakstan; to the Committee on Foreign Relations.

EC-9664. A communication from the Chairperson, District of Columbia Commission on Judicial Disabilities and Tenure, transmitting, pursuant to law, the Commission's annual report; to the Committee on Governmental Affairs.

EC-9665. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, the report of D.C. Act 15-529, "Alcoholic Beverage Penalty Act of 2004"; to the Committee on Governmental Affairs.

EC-9666. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, the report of D.C. Act 15-530, "Gallery Place Project Graphics Temporary Amendment Act of 2004"; to the Committee on Governmental Affairs.

EC-9667. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, the report of D.C. Act 15-532, "Juvenile Justice Temporary Act of 2004"; to the Committee on Governmental Affairs.

EC-9668. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, the report of D.C. Act 15-531, "Unemployment Compensation Pension Offset Reduction Temporary Amendment Act of 2004"; to the Committee on Governmental Affairs.

EC-9669. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, the report of D.C. Act 15-528, "Fleeing Law Enforcement Prohibition Amendment Act of 2004"; to the Committee on Governmental Affairs.

EC-9670. A communication from the Coordinator, Forms Committee, Federal Election Commission, transmitting, pursuant to law, a report relative to FEC Form 13, Report of Donations Accepted for Inaugural Committee; to the Committee on Rules and Administration.

EC-9671. A communication from the National President, Women's Army Corps Veterans' Association, transmitting, pursuant to law, the Association's annual audit; to the Committee on Veterans' Affairs.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-529. A concurrent resolution adopted by the House of Representatives of the Legislature of the State of Louisiana relative to the Central America Free Trade Agreement; to the Committee on Finance.

HOUSE CONCURRENT RESOLUTION NO. 113

Whereas, American sugar producers are among the most efficient in the world, with two-thirds of the world's sugar-producing countries producing at a higher cost than the United States; and

Whereas, Louisiana is one of the nation's top sugar-producing states, with sugar cane harvested on approximately four hundred fifty thousand acres spread across twenty-four parishes; and

Whereas, the sugar industry has an estimated two billion dollar economic impact on Louisiana with approximately seven hundred fifty million dollars in annual sales; and

Whereas, thirty-two thousand Louisianians directly depend on sugar for their livelihood; and

Whereas, American sugar producers currently work under a World Trade Organization tariff rate quota system that prohibits other countries from flooding the United States market with unfairly traded raw sugar; and

Whereas, flooding the market with unfairly traded sugar will depress the United States price, cause sugar loan forfeitures, significantly increase government costs, put sugar producers, mills, and refineries out of business, and hurt communities that depend on these sugar industries; and

Whereas, the sugar provisions in the Central America Free Trade Agreement allow Central American countries to increase the current quota of sugar they can ship into the United States by seventy-five percent next year with an additional two percent increase per year for the next fifteen years; and

Whereas, large increases in sugar imports will likely drive the domestic raw sugar price down below break-even levels for a large percentage of Louisiana sugar cane producers; and

Whereas, opening up the domestic market to high levels of imports could destroy the domestic industry in Louisiana, which is a vital economic engine for jobs and families; and

Whereas, the world sugar market is grossly distorted by government intervention, resulting in the dumping of surpluses onto the severely depressed world market; and

Whereas, bilateral and regional free trade agreements hurt the nations that unilaterally disarm themselves by opening their markets: Therefore, be it

Resolved, That the Legislature of Louisiana does hereby memorialize congress to oppose the Central America Free Trade Agreement and the inclusion of sugar in all United States free trade agreements; Be it further

Resolved, That the Legislature of Louisiana urges the president to restrict all negotiations concerning sugar to the World Trade Organization; Be it further

Resolved, That a copy of this Resolution be transmitted to the presiding officers of the Senate and the House of Representatives of the Congress of the United States of America and to each member of the Louisiana congressional delegation.

POM-530. A resolution adopted by the House of Representatives of the General Assembly of the Commonwealth of Pennsylvania relative to the Federal Temporary Extended Unemployment Compensation (TEUC) program; to the Committee on Finance.

HOUSE RESOLUTION NO. 659

Whereas, over the past few years the national economy has struggled unsuccessfully to rebound from the recession, and a strong and sustainable recovery remains elusive; and

Whereas, twenty-two percent of the nation's unemployed have been out of work for more than six months; and

Whereas, in November 2003, long-term joblessness reached a 20-year high; and

Whereas, the average duration for unemployment in January increased to 19.8 weeks, and for 16 consecutive months the long-term unemployment rate has exceeded 20 weeks; and

Whereas, in January 2004, the nation's unemployment rate remained at 5.6% and the Pennsylvania unemployment rate was 5.3%; and

Whereas, the President and Congress originally approved TEUC compensation to provide assistance to unemployed workers who were unable to find jobs before exhausting their regular benefits and to stimulate the economy by injecting dollars directly into local communities; and

Whereas, according to the United States Department of Labor's Bureau of Labor Statistics, between January of 2001 and December of 2003, the loss of private sector jobs stood at 2.9 million nationally and totaled 220,000 in the Commonwealth of Pennsylvania; and

Whereas, across the nation more than 1 million unemployed workers are expected to exhaust their regular benefits in the first quarter of 2004; and

Whereas, in January, 17,050 Pennsylvanians reached the end of their eligibility for unemployment benefits but still could not find jobs; and

Whereas, job growth in the Commonwealth of Pennsylvania has trailed working-age population growth by three percentage points since the recession began and the prospects for employment of long-term unemployed individuals remain bleak; and

Whereas, employers in the Commonwealth of Pennsylvania will benefit from increased consumer demand pumped into the Commonwealth economy by unemployed workers if TEUC benefits are extended: Therefore, be it

Resolved, That the House of Representatives of the Commonwealth of Pennsylvania memorialize the President and Congress of the United States to extend and make retroactive the Federal TEUC program; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, George W. Bush, and to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania.

POM-531. A resolution adopted by the General Assembly of the State of New Jersey relative to Social Security disability and workers' compensation benefits; to the Committee on Finance.

ASSEMBLY RESOLUTION NO. 73

Whereas, the Social Security Act currently limits the total sum that a permanently, totally disabled worker may receive in federal Social Security disability benefits and state workers' compensation benefits combined to 80% of the worker's pre-injury income; and

Whereas, that act, because of amendments made in 1981 to 42 U.S.C. 424a (a), limits the sum of Social Security disability and workers' compensation benefits by requiring that if the sum of Social Security disability benefits and workers' compensation exceeds that

80% cap, the Social Security benefits must be reduced by the excess amount; and

Whereas, the stated purpose of those 1981 amendments was to prevent disabled workers form collecting the full amount of both Social Security disability benefits and workers' compensation, which in some cases had resulted in the workers receiving benefits of substantially greater value than the value of their previous wages; and

Whereas, rather than just preventing the combined total of Social Security and workers' compensation benefits for the disabled from exceeding the value of previous wages, the amendments, because they do not adjust the 80% cap for inflation, have instead had the effect, over time, of steadily reducing the real value of the combined Social Security and workers' compensation benefits to those injured workers; and

Whereas, with sustained, substantial inflation causing the Consumer Price Index to increase more than 30% during the last 10 years and more than 100% in the last 20 years, the failure to adjust the 80% cap often has a devastating impact on the real value of the benefits on which many disabled workers depend; and

Whereas, the fact that the Social Security Act provides for the annual adjustment of Social Security benefits, including disability benefits, for changes in the Consumer Price Index, suggests that an historic goal of the act is to prevent inflation from eroding the value of benefits, a goal that is undermined, in the case of disabled workers who receive both Social Security disability and workers' compensation benefits, by the failure of the 1981 amendments to provide for the adjustment of the 80% cap for changes in the Consumer Price Index: Now, therefore, be it

Resolved by the General Assembly of the State of New Jersey:

1. This House urges Congress to amend the Social Security Act to provide that the calculation of the 80% limit on total combined Social Security and workers' compensation benefits for permanently and totally disabled workers under the act be based, not on the pre-injury earnings of the workers, but on those earnings adjusted for inflation which occurs after the injuries occur.

2. Duly authenticated copies of this resolution, signed by the Speaker of the General Assembly and attested by the Clerk thereof, shall be transmitted to the President and the Vice President of the United States, the Speaker of the United States House of Representatives, the Majority and Minority Leaders of the United States Senate and the United States House of Representatives, and each member of Congress elected from this State.

POM 532. A resolution adopted by the House of Representatives of the General Assembly of the State of Delaware relative to Falun Gong practitioners in China; to the Committee on Foreign Relations.

HOUSE RESOLUTION NO. 86

Whereas, Falun Gong, also know as Falun Dafa, is a peaceful and nonviolent form of personal belief and practice with millions of adherents in the People's Republic of China and elsewhere; and

Whereas, the spiritual and meditative practice of Falun Gong is based on truthfulness, compassion and tolerance, which was taught in private for thousands of years before Mr. Li Hongzhi introduced the practice to the general public in China in 1992; and

Whereas, Falun Gong is practiced freely in more than 50 countries by tens of millions of people; and

Whereas, since July 1999, the government of the People's Republic of China has forbidden Falun Gong practitioners to practice their beliefs, and has systematically attempted to eradicate the practice and those who follow it; and

Whereas, this policy violates the Constitution of the People's Republic of China as well as the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights; and

Whereas, According to the Falun Dafa Information Center, hundreds of thousands of people have been arrested, detained, imprisoned, sent to labor camps, treated with cruelty, tortured, persecuted and in many cases killed by authorities in China in connection with their practice of Falun Gong; and

Whereas, also according to the Falun Dafa Information Center, women in particular have been the target of numerous forms of sexual violence, including rape, sexual assault, and forced abortion; and

Whereas, the brutal oppression of peaceful practitioners of Falun Gong is a blatant violation of human rights; and

Whereas, according to a December 1, 2002 article in the Philadelphia Inquirer Magazine, Jingfang Yang, who is the sister of Thomas Jefferson University Hospital psychiatrist Michael J. Yang, has been imprisoned since October 30, 2002; and

Whereas, several permanent United States residents and citizens have been affected by this oppression and have been subjected to arbitrary detention, imprisoned, and tortured in the People's Republic of China; and

Whereas, Dr. Charles Li, a United States citizen, is among the detained practitioners who have been isolated from their families and loved ones; and

Whereas, on July 24, 2002 the United States House of Representatives passed House Concurrent Resolution 188 "Expressing the sense of Congress that the Government of the People's Republic of China should cease its persecution of Falun Gong practitioners"; and

Whereas, on March 3, 2004 the United States House of Representatives passed House Resolution 530, as amended, which was a general resolution "Urguing the appropriate representative of the United States to the 60th Session of the United Nations Commission on Human Rights to introduce a resolution calling upon the Government of the People's Republic of China to end its human rights violations in China" and specifically sought redress for the persecuted Falun Gong practitioners in China: Now, therefore, be it

Resolved by the House of Representatives of the State of Delaware, That it does hereby recognize the plight of practitioners of Falun Gong in China; and be it further

Resolved, that the United States Congress is urged to take all appropriate actions and to use all appropriate public and private forums to urge the Government of the People's Republic of China to release Falun Gong practitioners, to put an end to the practices of torture and other cruel, inhumane, and degrading treatment against them, and to abide by the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights by allowing Falun Gong practitioners to pursue their personal beliefs; and be it further

Resolved, that copies of this resolution be transmitted to the presiding officers of each house of the United States Congress, to each member of Delaware's Congressional Delegation, and to The Honorable Colin L. Powell, United States Secretary of State.

POM 533. A resolution adopted by the General Assembly of the State of New Jersey relative to the Mary Ann Collura Post Office Building; to the Committee on Governmental Affairs.

ASSEMBLY RESOLUTION NO. 167

Whereas, Mary Ann Collura became Fair Lawn's first female police officer in 1985; and

Whereas, eighteen years later, on the night of April 17, 2003, Collura became the Fair Lawn Police Department's first officer killed in the line of duty; and

Whereas, Collura was shot twice on the lawn of a Fair Lawn church, where she had raced to assist a Clifton, New Jersey police officer who was trying to arrest three men following a car chase; and

Whereas, a multi-state manhunt ensued for the main suspect, who fled to Florida, where he was later found and killed in a shootout with police; and

Whereas, Collura was a popular street cop known for her sense of humor, her many commendations, her love of motorcycles and her devotion to the protection and care of her neighbors; and

Whereas, in 1999, Collura instituted a program to distribute glow sticks to children on Halloween so the children would be clearly visible to motorists; and

Whereas, as a trailblazer for female law enforcement officers in Bergen County, Collura was always available to hear the concerns and issues facing other female officers and she routinely obtained the names and numbers of new female officers from the county, welcomed them to their department, and offered advice and an open ear to them; and

Whereas, Collura was courageous, kind, concerned about the world and people around her, very highly regarded by her fellow officers and beloved by the people of Fair Lawn; and

Whereas, bills, cosponsored by all of the Members of the New Jersey Congressional delegation, have been introduced in the United States House and Senate to honor the life of Mary Ann Collura by re-designating the United States Postal Service located at 14-24 Abbott Road in Fair Lawn, New Jersey, and known as the Fair Lawn Main Post Office, as the Mary Ann Collura Post Office Building: Now, therefore, be it

Resolved by the General Assembly of the State of New Jersey:

1. The General Assembly of the State of New Jersey memorializes the Congress of the United States to enact legislation redesignating the facility of the United States Postal Service located at 14-24 Abbott Road in Fair Lawn, New Jersey, as the Mary Ann Collura Post Office Building.

2. Duly authenticated copies of this resolution, signed by the Speaker of the General Assembly and attested to by the Clerk thereof, shall be presented to the President of the United States Senate, the Speaker of the United States House of Representatives and every Member of the Congress elected from this State.

POM 534. A joint resolution adopted by the General Assembly of the State of Colorado relative to financial assistance for children of migrant workers; to the Committee on Health, Education, Labor, and Pensions.

HOUSE JOINT RESOLUTION 04-1064

Whereas, changes in the United States economy in recent years have added new and different types of jobs to those traditionally performed by migrant workers in the agricultural sector of the economy; and

Whereas, many of these new fields have developed in the service industries associated with growing economic activities such as tourism, gaming, and the needs of high technology; and

Whereas, In addition to the migrant workers that are so important to agriculture, migrant workers in these other emerging areas of our economy will be a vital part of the growth and expansion of these industries; and

Whereas, the educational needs of the children of all migrant workers should continue to be a major concern of the federal and state governments; and

Whereas, children of all types of migrant workers can suffer from performance problems in our public schools due to many factors, including the effects of attending multiple schools necessitated by the cyclical relocation needs of their parents; and

Whereas, these performance problems can be detrimental to the educational environment of our public schools if not addressed; and

Whereas, the educational needs of children of migrant workers affects many communities in Colorado; and

Whereas, the children of migrant workers should be eligible for migrant student educational assistance regardless of the industry in which the migrant parents work: Now, therefore, be it

Resolved by the House of Representatives of the Sixty-fourth General Assembly of the State of Colorado, the Senate concurring herein: That we, the members of the Sixty-fourth General Assembly, encourage the President of the United States and the United States Congress to take action to ensure that federal programs providing financial assistance for the educational needs of children of migrant workers include children of migrant workers in all sectors of our economy; be it further

Resolved, That copies of this Joint Resolution be transmitted to the President and Vice President of the United States, the Speaker of the United States House of Representatives, the Minority Leader of the United States House of Representatives, the Majority Leader of the United States Senate, the Minority Leader of the United States Senate, and to each member of Colorado's Congressional delegation.

POM–535. A resolution adopted by the House of Representatives of the General Assembly of the Commonwealth of Pennsylvania relative to the Men's Health Act; to the Committee on Health, Education, Labor, and Pensions.

House Resolution No. 744

Whereas, male morbidity and mortality from preventable causes is substantial, with significant and alarming disparities among subpopulations of men based on race, ethnicity and socioeconomic status; and

Whereas, a silent health crisis is affecting the health and well-being of American men; and

Whereas, this health crisis is of particular concern to men but is also a concern for women, especially those who have fathers, husbands, sons and brothers; and

Whereas, the National Center for Health Statistics has shown that men have higher age-adjusted death rates than women for each of the top ten leading causes of death in the United States; and

Whereas, men are almost twice as likely as women to die from heart disease, and the incidence of stroke is more than 10% higher in men than in women; and

Whereas, men are 50% more likely to die from cancer than women; and

Whereas, the life expectancy gap between men and women has steadily increased from 1 year in 1920 to 5.5 years in 2000; and

Whereas, since women live longer and tend to marry older men, seven out of ten baby boom women will outlive their husbands, and many of these women can expect to be widows for more than 15 years; and

Whereas, older women are three times more likely than older men to be living alone, nearly twice as likely to reside in a nursing home and more than twice as likely to live in poverty; and

Whereas, more than half of the elderly widows now living in poverty were not poor before their husbands died; and

Whereas, studies show that health-related disparities between men and women are due in part to lack of awareness, poor health education and the low number of male-specific health programs; and

Whereas, men are half as likely as women to visit a doctor for regular checkups or to obtain preventative screening tests for serious diseases; and

Whereas, men's health is a concern for employers who lose productive employees and who pay the cost of medical care; and

Whereas, men's health is a concern for Federal and State Government and society, which absorb the enormous costs of premature death and disability, including the cost of caring for dependents; and

Whereas, every state has formed a commission to address women's issues or has established a women's health program, but only seven states have a commission to address men's issues or a men's health program; and

Whereas, educating men, their families and health care providers about the importance of early detection of male health problems can result in reducing mortality rates and improving the health of America's men and the economy: Therefore be it

Resolved, That the House of Representatives of the Commonwealth of Pennsylvania, recognizing that Government health networks can be utilized to promote men's health and well-being, encourage the Congress to support passage of the Men's Health Act to secure access and remove barriers to health care for men and their family members and urge passage of state legislation addressing men's health issues.

POM–536. A resolution adopted by the House of Representatives of the General Assembly of the Commonwealth of Pennsylvania relative to the Omnibus Crime Control and Safe Streets Act of 1968; to the Committee on the Judiciary.

House Resolution No. 822

Whereas, on May 4, 2002, 14-year-old Christopher Kangas was struck and killed by a car while riding his bicycle in response to a fire in Brookhaven Borough, Delaware County, Pennsylvania, one block from the firehouse; and

Whereas, in the Commonwealth of Pennsylvania an individual may be a recognized firefighter in a local fire department with certain limitations on the kind of work that individual can perform at the scene of a fire and may be eligible for public safety officer benefits; and

Whereas, Christopher Kangas was a trained, regular firefighter who knew what he could and what he could not do at the scene; and

Whereas, Christopher Kangas was recognized by the Borough of Brookhaven and the Commonwealth of Pennsylvania as a firefighter; and

Whereas, after Christopher Kangas died, the Borough of Brookhaven and the Commonwealth of Pennsylvania gave him full honors and recognition as a fallen firefighter and the Commonwealth of Pennsylvania also provided full benefits to his family under the act of June 24, 1976 (P.L. 424, No. 101), referred to as the Emergency and Law Enforcement Personnel Death Benefits Act, as a fallen firefighter; and

Whereas, the representative of the President of the United States to the Fire Service, United States Fire Administrator Dave Paulison, sent a letter of condolence to the family recognizing Christopher Kangas as a firefighter; and

Whereas, the Department of Justice which administers section 1201 of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90–351, 42 U.S.C. §3796) has ruled for a second time that Christopher Kangas was not a public safety officer, despite the fact that the Commonwealth of Pennsylvania and the Brookhaven Fire Department legally maintained him on their rolls; and

Whereas, this ruling by the Department of Justice has denied his family the $267,000 line-of-duty benefit and has denied Christopher Kangas his rightful place at the National Fallen Firefighters Memorial in Emmitsburg, Maryland, along side his fellow fallen heroes; and

Whereas, the Department of Justice ruling not only ignored the facts but also the letter and spirit of section 1201 of the Omnibus Crime Control and Safe Streets Act of 1968, which Congress enacted to provide benefits to any firefighter serving as an officially recognized member of a legally organized fire department, regardless of age or type of activities: Therefore be it

Resolved, That the House of Representatives of the Commonwealth of Pennsylvania urge the President and Congress of the United States to enact H.R. 4472 which amends the Omnibus Crime Control and Safe Streets Act of 1968 to expand the definition of firefighter to include apprentices and trainees, regardless of age or duty limitations, applicable to death or injuries which occurred on or after May 4, 2002; and be it further

Resolved, That a copy of this resolution be presented to the family of Christopher Kangas in recognition of his dedication to the Borough of Brookhaven and the Commonwealth of Pennsylvania as a firefighter; and be it further

Resolved, That a copy of this resolution be sent to the President of the United States, to the presiding officers of each House of Congress and to each member of Congress from Pennsylvania.

POM–537. A concurrent resolution adopted by the House of Representatives of the Legislature of the State of Louisiana relative to the Pledge of Allegiance; to the Committee on the Judiciary.

House Concurrent Resolution No. 96

Whereas, one of the founding principles of the United States of America was the free exercise of religion and religious beliefs; and

Whereas, the First Amendment to the Constitution of the United States declares that congress shall make no law establishing a religion or prohibiting the free exercise of religion; and

Whereas, the Louisiana Constitution of 1974, Article I, Section 8, similarly prohibits the enactment of law respecting an establishment of religion or prohibiting the free exercise of religion; and

Whereas, in celebrating the four hundredth anniversary of Christopher Columbus' discovery of America on October 11, 1892, the Pledge of Allegiance was written to honor the United States and to salute the flag; and

Whereas, the first words of the Pledge of Allegiance were published in September of 1892, in the Boston-based youth magazine, The Youth's Companion, and in less than one month, more than twelve million school children were reciting the words of the Pledge of Allegiance across the nation; and

Whereas, in June of 1942, the Pledge of Allegiance was officially sanctioned by the United States Congress when it was included in the United States Flag Code (Title 36), after almost fifty years of daily recitals in schools; and

Whereas, there have been four changes to the original Pledge of Allegiance, and the final change occurred on June 14, 1954 (Flag Day), when the words "under God" were added with the approval of President Dwight D. Eisenhower, who stated, "In his way we are reaffirming the transcendence of religious faith in America's heritage and future; in this way we shall constantly strengthen those spiritual weapons which forever will be our country's most powerful resource in peace and war"; and

Whereas, this display of symbolic patriotism contained in the words of the Pledge of Allegiance is more critical today than ever before in our nation's history and should be maintained; and

Whereas, the Pledge of Allegiance, including the phrase "one nation under God", reflects the historical fact that a belief in God permeated the founding and development of the United States of America: Therefore, be it

Resolved, That the Legislature of Louisiana does hereby memorialize the United States Supreme Court and the United States Congress to take all necessary measures to preserve the phrase "one nation under God" in the Pledge of Allegiance; be it further

Resolved, That suitable copies of this Resolution be transmitted to the chief justice of the United States Supreme Court, the speaker of the United States House of Representatives, the president of the United States Senate, and each member of Louisiana's congressional delegation.

POM-538. A resolution adopted by the House of Representatives of the Legislature of the State of Mississippi relative to judicial taxation; to the Committee on the Judiciary.

HOUSE RESOLUTION NO. 51

Whereas, separation of powers is fundamental to the United States Constitution and the power of the federal government is strictly limited; and

Whereas, under the United States Constitution, the states are to determine public policy; and

Whereas, it is the duty of the judiciary to interpret the law, not to create law; and

Whereas, our present federal government has deviated from the intent of our Founding Fathers and the United States Constitution through inappropriate federal mandates; and

Whereas, these mandates by the way of statute, rule or judicial decision have forced state governments to serve as the mere administrative arm of the federal government; and

Whereas, federal district courts, with the acquiescence of the United States Supreme Court, continue to order states to levy or increase taxes to comply with federal mandates; and

Whereas, these court actions violate the United States Constitution and the legislative process; and

Whereas, the time has come for the people of this great nation and their duly elected representatives in state government, to reaffirm in no uncertain terms that the authority to tax under the Constitution of the United States is retained by the people who, by their consent alone, do delegate such power to tax explicitly to those duly elected representatives in the legislative branch of government who they choose, such representatives being directly responsible and accountable to those who have elected them; and

Whereas, the lawmakers of Alabama, Alaska, Arizona, Colorado, Delaware, Illinois, Kansas, Louisiana, Massachusetts, Michigan, Missouri, Nevada, New Hampshire, New York, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, Wyoming, Mariana Islands and Guam have petitioned the United States Congress to propose an amendment to the Constitution of the United States of America; and

Whereas, the amendment was previously introduced in Congress; and

Whereas, the amendment seeks to prevent federal courts from levying or increasing taxes without representation of the people against the peoples' wishes: Now, therefore, be it

Resolved by the House of Representatives of the State of Mississippi:

(1) That the Congress of the United States prepare and submit to the several states an amendment to the Constitution of the United States to add a new article providing as follows: "Neither the Supreme Court nor any inferior court of the United States shall have the power to instruct or to order a state or political subdivision thereof, or an official of such a state or political subdivision, to levy or increase taxes."

(2) That this application constitutes a continuing application in accordance with Article V of the Constitution of the United States.

(3) That the House of Representatives of the State of Mississippi also proposes that the Legislatures of each of the several states comprising the United States that have not yet made a similar request, apply to the United States Congress requesting enactment of an appropriate amendment to the United States Constitution, and apply to the United States Congress to propose such an amendment to the United States Constitution; be it further

Resolved, That the Secretary of State of the State of Mississippi transmit copies of this resolution to the President and Vice President of the United States, the presiding officer in each house of the Legislature in each of the states in the Union, the Speaker of the United States House of Representatives and to each member of the State of Mississippi Congressional Delegation.

POM-539. A resolution adopted by the General Assembly of the State of New Jersey relative to small business loans; to the Committee on Small Business and Entrepreneurship.

ASSEMBLY RESOLUTION NO. 175

Whereas, the nation's economy is built on and draws its strength from the creativity and entrepreneurship of its people, and

Whereas, the nation's 25 million small businesses employ more than half of all private sector employees, pay 44.5 percent of the total United States private payroll, and generate 60 to 80 percent of all net new jobs annually; and

Whereas, the men and women who own and operate the nation's small businesses make a vital contribution to the nation's prosperity through their ongoing work to create new technologies, products, and services; and

Whereas, the Small Business Administration was officially established in 1953 and for over 50 years has played a vital role in ensuring that the door to the American dream is truly open to all entrepreneurs; and

Whereas, the mission and high calling of the Small Business Administration is to champion the interests of the nation's entrepreneurs for the benefit of all Americans; and

Whereas, President Bush's proposed budget for fiscal year 2005 would cut federal funding to the Small Business Administration by $79 million and eliminate federal support for critical loan programs; and

Whereas, the proposed cuts would include the "7(a) loan program," which provides affordable capital to small business start-ups through public/private partnership and has directly provided over 2,000 small businesses in New Jersey with approximately $451 million in loans; and

Whereas, the proposed cuts would also include the Microloan program, which allows entrepreneurs to secure loans of up to $35,000, and provided 134 small businesses in New Jersey with $2.6 million in loans: Now, therefore be it

Resolved by the General Assembly of the State of New Jersey:

1. This House urges the United States Congress to restore funding for the Small Business Administration loan programs eliminated under President Bush's proposed budget for fiscal year 2005.

2. A duly authenticated copy of this resolution, signed by the Speaker of the General Assembly and attested by the Clerk thereof, shall be transmitted to the Speaker of the United States House of Representatives, the President of the United States Senate and to all members of the New Jersey congressional delegation.

POM-540. A resolution adopted by the Board of Commissioners of Pitt County of the State of North Carolina relative to a tobacco buyout; to the Committee on Agriculture, Nutrition, and Forestry.

POM-541. A resolution adopted by the City Commission of the City of Lauderdale Lakes of the State of Florida relative to the effects of antifreeze chemistry; to the Committee on Environment and Public Works.

POM-542. A resolution adopted by the Board of Commissioners of the City of Millville of the State of New Jersey relative to pollution; to the Committee on Energy and Natural Resources.

POM-543. A joint resolution adopted by the Legislature of the State of California relative to pharmaceutical advertising; to the Committee on Environment and Public Works.

SENATE JOINT RESOLUTION NO. 24

Whereas, the United States is one of just a few countries that allow pharmaceutical companies to advertise their prescription drugs; and

Whereas, in 1997, the federal Food and Drug Administration relaxed restrictions on the content of direct-to-consumer prescription drug advertising, withdrawing the prior requirement for a summary of side-effect and adverse reaction information and replacing it with a requirement for a statement about "major risks" but not "all risks"; and

Whereas, the shorter "major risk" statement made television and radio advertisements about prescription drugs more practicable; and

Whereas, Pharmaceutical companies spent $1.6 billion on direct-to-consumer television advertising in 2000, up from $761 million in 1996; and

Whereas, while health care spending generally is expected to increase by an average of 7.9 percent per year between 1998 and 2010, exceeding the 5.2 percent annual growth of 1993 to 1998, total prescription drug expenditures will increase by 15 percent per year as early as 2004; and

Whereas, numerous studies have linked the increased direct-to-consumer advertising to the exponential growth in prescription drug expenditures; and

Whereas, surveys suggest that 50 percent of the public believes that direct-to-consumer advertisements of prescription drugs must be submitted to the government for prior approval, 43 percent believe that only "completely safe" drugs may be advertised directly to consumers, 22 percent believe that advertising of drugs with serious side effect has been banned, and 21 percent believe that only "extremely effective" drugs may be advertised directly to consumers, and yet, all of these beliefs are untrue; and

Whereas, consumers are placing pressure on their prescribers to prescribe these drugs, some cases, inappropriately; and

Whereas, in 1997, a study of family physicians revealed that 80 percent of them believed that direct-to-consumer advertising "was not a good idea"; and

Whereas, the federal Food and Drug Administration has begun review of the policy that unleashed an explosive growth of prescription drug advertising: Now, therefore, be it

Resolved, That the President and Congress of the United States and the United States Department of Health and Human Services are memorialized to recognize the problems caused by direct-to-consumer advertising of prescription drugs by pharmaceutical companies; and be it further

Resolved, That the United States Food and Drug Administration is requested to aggressively monitor and regulate direct-to-consumer advertising of prescription drugs by pharmaceutical companies, pending action by the President and the Congress of the United States to limit, ban, or place increased restrictions on that advertising; and be it further

Resolved, That the President and the Congress of the United States are memorialized to limit or ban direct-to-consumer advertising of prescription drugs by pharmaceutical companies, or, alternatively, to require that those advertisements do the following:

(1) Remind consumers that prescribers and pharmacists are the best sources of information about appropriate medical treatment and drug therapy.

(2) Explicitly state the success and failure rates of drugs and compare them with other common products or no treatment.

(3) Mention alternate treatments by name and class.

(4) Recommend that consumers ask their prescribers and pharmacists if a generic equivalent is available for their condition.

(5) Refer consumers to independent sources of drug information; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President of the United States, the Speaker of the House of Representatives, the President pro Tempore of the Senate, to each Senator and Representative from California in the Congress of the United States, to the Secretary of the United States Department of Health and Human Services, and the Director of the United States Food and Drug Administration.

POM-544. A resolution adopted by the Legislature of the State of California relative to federal environmental permit and review process streamlining; to the Committee on Environment and Public Works.

SENATE JOINT RESOLUTION NO. 30

Whereas, the State Office of Historic Preservation has the responsibility for processing approvals for federally funded transportation projects pursuant to Section 106 of the National Historic Preservation Act (16 U.S.C. Sec. 470 et seq.) and Section 4(f) of the federal Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240); and

Whereas, the State Office of Historic Preservation has the smallest support staff of any office with a similar function in any other state in the nation, but California has the largest transportation program; and

Whereas, the federal Transportation Equity Act for the 21st Century (Public Law 105-178), also known as TEA-21, provided funding for additional staff for the State Office of Historic Preservation; and

Whereas, review delays at the State Office of Historic Preservation continue to be identified as a bottleneck in moving transportation projects through the environmental review phase; and

Whereas, lack of involvement of federal resource agencies in the transportation planning process has been identified as a cause for project delivery delays; Now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That California urges the President and Congress of the United States, the federal Secretary of Transportation, and the federal Department of Transportation to streamline the federal government review and permitting process by doing all of the following:

(a) Ensuring adequate funding for the State Office of Historic Preservation in California.

(b) Accelerating project delivery by developing a multiagency infrastructure team to be involved in the development of transportation projects from the early planning phase and continuing through the environmental permitting and construction phases. The multiagency team should include one or more representatives from each federal resource agency with decisionmaking and permit authority. Team members should commit to involvement in the early planning, environmental document preparation, permit review and issuance, and construction phases of a project. Resource agency representatives should be retained with transportation funds, and team members should be jointly selected by transportation and resource agencies. Transportation projects developed using the multiagency team approach would be expected to be completed within review deadlines outlined in the federal Endangered Species Act of 1973 and other relevant state and federal regulatory authorities; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the federal Secretary of Transportation.

POM-545. A resolution adopted by the House of Representatives of General Assembly of the Commonwealth of Pennsylvania relative to Centers for Medicaid and Medicare Services; to the Committee on Finance.

HOUSE RESOLUTION NO. 753

Whereas, House Bill No. 297, Printer's No. 2623 (2003), which authorized the Department of Public Welfare of the Commonwealth of Pennsylvania to impose an assessment on nursing homes in exchange for an increase in Medicaid payment rates; was signed into law, Act 2003-25, on September 30, 2003; and

Whereas, the Centers for Medicare and Medicaid Services (CMS) has indicated that it will not approve Pennsylvania's September 2003 provider tax submission; and

Whereas, current Federal regulations clearly allow approval for the assessment as submitted; and

Whereas, the fiscal year 2003-2004 Pennsylvania State budget relies upon $320 million in revenue generated through the provider assessment to help fund the Commonwealth's Medicaid budget; and

Whereas, Pennsylvania's nursing facilities are being paid rates that have not increased since April 2003 because of the impasse between the Ccommonwealth and CMS regarding approval of the nursing home assessment submission; and

Whereas, the delay is causing severe financial difficulties for providers struggling to make available necessary services for Pennsylvania's most vulnerable senior citizens; and

Whereas, there are few acceptable alternatives available if CMS does not approve Pennsylvania's September 2003 provider tax submission; and

Whereas, irreparable harm to some of Pennsylvania's most frail and vulnerable senior citizens could occur if this impasse remains unbroken; and

Whereas, it is the responsibility of the Federal and State Governments to develop long-term solutions to the problems of controlling escalating Medicaid budgets without calling on nursing homes and nursing home residents to fund Medicaid: Therefore, be it

Resolved, That the House Representatives of the Commonwealth of Pennsylvania urge CMS to approve the Commonwealth of Pennsylvania's application of September 2003, which would allow the Commonwealth to implement its assessment on Medicaid-participating nursing homes and provide the funding necessary to ensure quality care for Pennsylvania's vulnerable seniors; and be it further

Resolved, That the Governor urge Pennsylvania's congressional delegation to work with the Bush Administration and CMS to ensure approval of Pennsylvania's application of September 2003; and be it further

Resolved, That a copy of this resolution be transmitted to the Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244-1850, and to each member of Congress from Pennsylvania.

POM-546. A concurrent resolution adopted by the House of Representatives of the Legislature of the State of Louisiana relative to the Australian Free Trade Agreement; to the Committee on Finance.

HOUSE CONCURRENT RESOLUTION NO. 195

Whereas, the Louisiana dairy industry yields nearly five hundred ten million pounds in total milk production with an economic impact of one hundred eighty-three million dollars; and

Whereas, thousands of Louisianians depend directly on the dairy industry for their livelihood; and

Whereas, there has been a fifty percent decline in the number of dairy farms, dairy cows, and total statewide milk production during the past ten years; and

Whereas, dairy industries in other states have also suffered declines in production due to the cost of milk production and lower federal minimum support prices; and

Whereas, recently the Bush administration and Australian trade representatives entered into the Australian Free Trade Agreement (AUSFTA); and

Whereas, although AUSFTA retains current over-quota tariffs, it still opens the door to milk protein concentrates and casein imports from Australia; and

Whereas, the surge in milk protein concentrates and casein imports has created a negative ripple effect economically for Louisiana dairy producers who have suffered because of reduced milk sales, lower prices, and a weakening of the dairy price support program; and

Whereas, milk protein concentrate and casein imports have ranged between eight hundred million and one billion pounds in the past six years, and the imported quantity of both continues to grow; and

Whereas, milk protein concentrates and casein imports are currently entering the country with no duty and no quota; and

Whereas, free trade agreements hurt the nations that unilaterally disarm themselves by opening their markets: Therefore, be it

Resolved, That the Louisiana Legislature does hereby memorialize congress to oppose the Australian Free Trade Agreement (AUFSTA) and other free trade agreements which are harmful to American dairy producers; be it further

Resolved, That a copy of this Resolution be transmitted to the presiding officers of the Senate and the House of Representatives of the Congress of the United States of America and to each member of the Louisiana congressional delegation.

POM-547. A resolution adopted by the General Court of the Commonwealth of Massachusetts relative to the Postal Service; to the Committee on Governmental Affairs.

POM-548. A resolution adopted by the Legislature of the State of California relative to vocational and technical education; to the Committee on Health, Education, Labor, and Pensions.

SENATE JOINT RESOLUTION NO. 31

Whereas, the Carl D. Perkins Vocational and Technical Education Act of 1998 (Section 2301 of Title 20 of the United States Code) has been a significant source of funding for career and technical education programs in California's high schools, regional occupational centers and programs, adult education, and community colleges; and

Whereas, California's career and technical education programs educate approximately three million high school and adult students annually in state-of-the-art technology and advanced careers, preparing them to become productive, contributing citizens in a rapidly changing economy; and

Whereas, career and technical education is composed of rigorous, demanding coursework that enhances student academic achievement by applying core academic skills; and

Whereas, eighty-five percent of students who complete career and technical education programs go on to receive high school diplomas; and

Whereas, participation in these programs reduces dropout rates by approximately 35 percent; and

Whereas, the Carl D. Perkins Vocational and Technical Education Act of 1998 has supported professional development for career and technical educators; including, the integration of State Board of Education adopted academic standards into career and technical education courses, training in new and emerging technologies, and effective, research-based instructional strategies; and

Whereas, the Carl D. Perkins Vocational and Technical Education Act of 1998 has provided career development, support services, and job training to hundreds of thousands of students who have faced significant barriers to successfully transitioning from high school to careers or higher education; and

Whereas, the Carl D. Perkins Vocational and Technical Education Act of 1998 has greatly contributed to the development of California's workforce in high skill, high demand, and emerging career fields: Now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the California State Legislature urges the United States Congress to continue and fully fund the Carl D. Perkins Vocational and Technical Education Act of 1998, and, without partisanship, endorses the Carl D. Perkins Vocational and Technical Education Act of 1998; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, and to each Senator and Representative from California in the Congress of the United States.

POM-549. A resolution adopted by the Society of Mayflower Descendants of the State of Rhode Island relative to its Resolution dated January 10, 2001; to the Committee on Indian Affairs.

POM-550. A resolution adopted by the State of Illinois relative to National Gymnastics Day in Illinois; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Ms. COLLINS, from the Committee on Governmental Affairs, without amendment:

S. 2628. A bill to amend chapter 23 of title 5, United States Code, to clarify the disclosures of information protected from prohibited personnel practices, require a statement in nondisclosure policies, forms, and agreements that such policies, forms, and agreements conform with certain disclosure protections, provide certain authority for the Special Counsel, and for other purposes (Rept. No. 108-392).

S. 2657. A bill to amend part III of title 5, United States Code, to provide for the establishment of programs under which supplemental dental and vision benefits are made available to Federal employees, retirees, and their dependents, to expand the contracting authority of the Office of Personnel Management, and for other purposes (Rept. No. 108-393).

By Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, without amendment:

S. 2815. A bill to give a preference regarding States that require schools to allow students to self-administer medication to treat that student's asthma or anaphylaxis, and for other purposes (Rept. No. 108-394).

By Mr. GREGG, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute and an amendment to the title:

S. 1217. A bill to direct the Secretary of Health and Human Services to expand and intensify programs with respect to research and related activities concerning elder falls (Rept. No. 108-395).

By Mr. McCAIN, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 2645. A bill to amend the Communications Act of 1934 to authorize appropriations for the Corporation for Public Broadcasting, and for other purposes (Rept. No. 108-396).

By Mr. CAMPBELL, from the Committee on Indian Affairs, with an amendment in the nature of a substitute and an amendment to the title:

S. 1438. A bill to provide for equitable compensation of the Spokane Tribe of Indians of the Spokane Reservation in settlement of claims of the Tribe concerning the contribution of the Tribe to the production of hydropower by the Grand Coulee Dam, and for other purposes (Rept. No. 108-397).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mrs. FEINSTEIN (for herself, Mr. HAGEL, Mrs. BOXER, Mr. NELSON of Nebraska, Mr. INOUYE, and Mr. AKAKA):

S. 2943. A bill to convert certain temporary judgeships to permanent judgeships, to create an additional judgeship for the district of Nebraska, and for other purposes; to the Committee on the Judiciary.

By Mr. WYDEN:

S. 2944. A bill to provide that no funds may be expended by the United States Trade Representative to negotiate data exclusivity provisions for certain pharmaceutical products; to the Committee on Finance.

By Mr. CORZINE (for himself and Mr. LAUTENBERG):

S. 2945. A bill to permanently eliminate a procedure under which the Bureau of Alcohol, Tobacco, Firearms, and Explosives can waive prohibitions on the possession of firearms by convicted felons, drug offenders, and other disqualified individuals; to the Committee on the Judiciary.

By Mr. BAYH:

S. 2946. A bill to promote small business growth, and for other purposes; to the Committee on Finance.

By Mr. AKAKA (for himself, Mr. BINGAMAN, and Mr. DURBIN):

S. 2947. A bill to provide additional protections for recipients of the earned income tax credit; to the Committee on Finance.

By Mr. LEAHY (for himself and Mr. JEFFORDS):

S. 2948. A bill to authorize the Secretary of Agriculture to sell or exchange certain National Forest System land in the State of Vermont; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. JEFFORDS (for himself, Ms. COLLINS, Mr. LEAHY, Mr. DODD, Mr. REED, Mr. BIDEN, Mr. KENNEDY, Mr. BINGAMAN, Mr. LAUTENBERG, Mr. SARBANES, Ms. SNOWE, Mr. SCHUMER, Mr. KOHL, Mr. CHAFEE, Mr. AKAKA, Mr. DORGAN, Ms. CANTWELL, and Mr. DASCHLE):

S. 2949. A bill to amend the Low-Income Home Energy Assistance Act of 1981 to reauthorize the Act, and for other purposes; read the first time.

By Mr. CORZINE (for himself and Mr. LAUTENBERG):

S. 2950. A bill to amend title XIX of the Social Security Act to prohibit payments to States under the medicaid program for redispensing prescription drugs; to the Committee on Finance.

By Mr. HATCH:

S. 2951. A bill to direct the Secretary of the Interior to convey certain land held in trust for the Paiute Indian Tribe of Utah to the City of Richfield, Utah, and for other purposes; to the Committee on Indian Affairs.

By Mr. MCCAIN (for himself and Mr. HOLLINGS):

S. 2952. A bill to amend title 49, United States Code, to provide the Department of Transportation a more focused research organization, to improve pipeline and hazardous materials transportation safety, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mrs. CLINTON (for herself, Mr. CHAFEE, and Mr. REID):

S. 2953. A bill to amend the Public Health Service Act to establish a Coordinated Environmental Health Network, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BENNETT (for himself and Mr. HATCH):

S. 2954. A bill to authorize the exchange of certain land in Grand and Uintah Counties, Utah, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SMITH (for himself and Mr. CONRAD):

S. 2955. A bill to amend the Internal Revenue Code of 1986 to exclude from gross income of individual taxpayers discharges of indebtedness attributable to certain forgiven residential mortgage obligations; to the Committee on Finance.

By Mr. BOND:

S. 2956. A bill to amend title 10, United States Code, to direct the Secretary of Defense to carry out a program to provide a support system for members of the Armed Forces who incur severe disabilities; to the Committee on Armed Services.

By Mr. KYL (for himself, Mr. SMITH, and Mr. DOMENICI):

S. 2957. A bill to encourage the promotion of democracy, free, fair, and transparent elections, and respect for human rights and the rule of law in Ukraine, and for other purposes; to the Committee on Foreign Relations.

By Mr. SMITH (for himself and Mr. WYDEN):

S. 2958. A bill to authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to conduct a water resource feasibility study for the Little Bear/Bear Creek Sub-basins in Oregon; to the Committee on Energy and Natural Resources.

By Mr. DAYTON:

S. 2959. A bill to amend the Public Health Service Act to ensure an adequate supply and distribution of influenza vaccine; to the Committee on Health, Education, Labor, and Pensions.

By Mr. GRAHAM of Florida:

S. 2960. A bill to amend title 23, United States Code, to establish a traffic incident management program; to the Committee on Environment and Public Works.

By Mr. BROWNBACK (for himself and Mrs. DOLE):

S. 2961. A bill to amend the Internal Revenue Code of 1986 to clarify that qualified personal service corporations may continue to use the cash method of accounting, and for other purposes; to the Committee on Finance.

By Mr. DAYTON:

S. 2962. A bill to require the Secretary of Commerce to implement a system for the collection and reporting of comprehensive information on the foreign operations of United States corporations and the foreign investments of United States investors, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LEAHY (for himself, Mr. JEFFORDS, and Mr. DODD):

S. 2963. A bill to amend the Communications Act of 1934 to clarify and reaffirm State and local authority to regulate the placement, construction, and modification of broadcast transmission facilities, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. LEAHY (for himself, Mr. JEFFORDS, and Mr. DODD):

S. 2964. A bill to amend the Communications Act of 1934 to clarify and reaffirm State and local authority to regulate the placement, construction, and modification of personal wireless services facilities, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. COCHRAN (for himself and Mr. HARKIN):

S. 2965. A bill to amend the Livestock Mandatory Price Reporting Act of 1999 to modify the termination date for mandatory price reporting; considered and passed.

By Mr. CRAIG (for himself, Mr. DASCHLE, and Mr. SCHUMER):

S. 2966. A bill to amend the Internal Revenue Code of 1986 to provide for a nonrefundable tax credit against income tax for individuals who purchase a residential safe storage device for the safe storage of firearms; to the Committee on Finance.

By Ms. SNOWE (for herself and Mr. ROCKEFELLER):

S. 2967. A bill to provide for the implementation of a Green Chemistry Research and Development Program, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. REED (for himself, Mr. KENNEDY, Mr. WARNER, Mr. DASCHLE, Ms. SNOWE, Mr. DODD, Mrs. CLINTON, Mr. DORGAN, Mr. BAYH, Mr. SCHUMER, Mr. JOHNSON, and Mr. DAYTON):

S. 2968. A bill to amend the Public Health Service Act to address the shortage of influenza vaccine, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. HAGEL (for himself, Mr. LUGAR, Mr. BIDEN, Mr. LEAHY, Mr. MCCAIN, Mr. SUNUNU, and Mr. DODD):

S. Con. Res. 142. A concurrent resolution recognizing the significant achievements of the people and Government of Afghanistan since the Emergency Loya Jirga was held in June 2002 in establishing the foundation and means to hold presidential elections on October 9, 2004; to the Committee on Foreign Relations.

By Mr. DEWINE (for himself, Mrs. MURRAY, Mr. FRIST, and Ms. COLLINS):

S. Con. Res. 143. A concurrent resolution recognizing community organization of public access defibrillation programs; to the Committee on Health, Education, Labor, and Pensions.

ADDITIONAL COSPONSORS

S. 847

At the request of Mrs. CLINTON, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 847, a bill to amend title XIX of the Social Security Act to permit States the option to provide medicaid coverage for low income individuals infected with HIV.

S. 874

At the request of Mr. TALENT, the name of the Senator from Indiana (Mr. LUGAR) was added as a cosponsor of S. 874, a bill to amend title XIX of the Social Security Act to include primary and secondary preventative medical strategies for children and adults with Sickle Cell Disease as medical assistance under the medicaid program, and for other purposes.

S. 983

At the request of Mr. CHAFEE, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 983, a bill to amend the Public Health Service Act to authorize the Director of the National Institute of Environmental Health Sciences to make grants for the development and operation of research centers regarding environmental factors that may be related to the etiology of breast cancer.

S. 1304

At the request of Ms. SNOWE, the names of the Senator from New Jersey (Mr. CORZINE), the Senator from Maryland (Mr. SARBANES) and the Senator from Iowa (Mr. HARKIN) were added as cosponsors of S. 1304, a bill to improve the health of women through the establishment of Offices of Women's Health within the Department of Health and Human Services.

S. 1890

At the request of Mr. ENZI, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 1890, a bill to require the mandatory expensing of stock options granted to executive officers, and for other purposes.

S. 2146

At the request of Ms. LANDRIEU, the name of the Senator from New Hampshire (Mr. SUNUNU) was added as a cosponsor of S. 2146, a bill to require the Secretary of the Treasury to mint coins in commemoration of the contributions of Dr. Martin Luther King, Jr., to the United States.

S. 2302

At the request of Mr. CONRAD, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 2302, a bill to improve access to physicians in medically underserved areas.

S. 2447

At the request of Mr. LIEBERMAN, the name of the Senator from Nevada (Mr. ENSIGN) was added as a cosponsor of S. 2447 , a bill to amend the Public Health Service Act to authorize funding for the establishment of a program on children and the media within the National Institute of Child Health and Human Development to study the role and impact of electronic media in the development of children.

S. 2468

At the request of Ms. COLLINS, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 2468, a bill to reform the postal laws of the United States.

S. 2568

At the request of Mr. BIDEN, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 2568, a bill to require the Secretary of the Treasury to mint coins in commemoration of the tercentenary of the birth of Benjamin Franklin, and for other purposes.

S. 2602

At the request of Mr. DODD, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2602, a bill to provide for a circulating quarter dollar coin program to honor the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, and for other purposes.

S. 2734

At the request of Mr. DASCHLE, his name was added as a cosponsor of S. 2734, a bill to implement the recommendations of the Inspector General of the Department of the Interior regarding Indian Tribal detention facilities.

S. 2789

At the request of Mr. BROWNBACK, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 2789, a bill to reauthorize the grant program of the Department of Justice for reentry of offenders into the community, to establish a task force on Federal programs and activities relating to the reentry of offenders into the community, and for other purposes.

S. 2807

At the request of Mr. CRAPO, the name of the Senator from Colorado (Mr. CAMPBELL) was added as a cosponsor of S. 2807, a bill to amend the Internal Revenue Code of 1986 to exempt containers used primarily in potato farming from the excise tax on heavy trucks and trailers.

S. 2860

At the request of Mr. SANTORUM, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 2860, a bill to amend the Internal Revenue Code of 1986 to classify automatic fire sprinkler systems as 5-year property for purposes of depreciation.

S. 2869

At the request of Mr. TALENT, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 2869, a bill to respond to the illegal production, distribution, and use of methamphetamines in the United States, and for other purposes.

S. 2889

At the request of Mr. ALEXANDER, the names of the Senator from West Virginia (Mr. BYRD), the Senator from Tennessee (Mr. FRIST), the Senator from New Mexico (Mr. DOMENICI), the Senator from Arizona (Mr. MCCAIN), the Senator from Georgia (Mr. MILLER), the Senator from South Carolina (Mr. GRAHAM), the Senator from New York (Mr. SCHUMER), the Senator from Colorado (Mr. CAMPBELL), the Senator from Florida (Mr. NELSON), the Senator from Mississippi (Mr. LOTT), the Senator from Nevada (Mr. ENSIGN) and the Senator from Vermont (Mr. JEFFORDS) were added as cosponsors of S. 2889, a bill to require the Secretary of the Treasury to mint coins celebrating the recovery and restoration of the American bald eagle, the national symbol of the United States, to America's lands, waterways, and skies and the great importance of the designation of the American bald eagle as an endangered species under the Endangered Species Act of 1973, and for other purposes.

S. 2900

At the request of Ms. MURKOWSKI, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 2900, a bill to authorize the President to posthumously award a gold medal on behalf of Congress to Elizabeth Wanamaker Peratrovich and Roy Peratrovich in recognition of their outstanding and enduring contributions to civil rights and dignity of the Native peoples of Alaska and the Nation.

S. 2905

At the request of Ms. MIKULSKI, her name was added as a cosponsor of S. 2905, a bill to protect members of the Armed Forces from unscrupulous practices regarding sales of insurance, financial, and investment products.

S. 2909

At the request of Mr. SPECTER, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S. 2909, a bill to authorize the Secretary of the Interior to allow the Columbia Gas Transmission Corporation to increase the diameter of a natural gas pipeline located in the Delaware Water Gap National Recreation Area.

S. 2923

At the request of Mr. BIDEN, the names of the Senator from Kansas (Mr. BROWNBACK) and the Senator from Ohio (Mr. DEWINE) were added as cosponsors of S. 2923, a bill to reauthorize the grant program of the Department of Justice for reentry of offenders into the community, to establish a task force on Federal programs and activities relating to the reentry of offenders into the community, and for other purposes.

S. 2939

At the request of Mr. LUGAR, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 2939, a bill to amend the Foreign Assistance Act of 1961 to provide assistance for orphans and other vulnerable children in developing countries, and for other purposes.

S. 2942

At the request of Mr. PRYOR, the names of the Senator from South Carolina (Mr. HOLLINGS), the Senator from Oregon (Mr. WYDEN) and the Senator from Rhode Island (Mr. REED) were added as cosponsors of S. 2942, a bill to amend the Internal Revenue Code of 1986 to provide that combat pay be treated as earned income for purposes of the earned income credit.

S. CON. RES. 8

At the request of Ms. COLLINS, the names of the Senator from Ohio (Mr. VOINOVICH) and the Senator from Ohio (Mr. DEWINE) were added as cosponsors of S. Con. Res. 8, a concurrent resolution designating the second week in may each year as "National Visiting Nurse Association Week".

S. CON. RES. 33

At the request of Mr. CRAIG, the names of the Senator from Illinois (Mr. DURBIN), the Senator from Utah (Mr. BENNETT) and the Senator from Arkansas (Mr. PRYOR) were added as cosponsors of S. Con. Res. 33, a concurrent resolution expressing the sense of the Congress regarding scleroderma.

S. CON. RES. 136

At the request of Mr. CONRAD, the names of the Senator from Wisconsin (Mr. FEINGOLD), the Senator from Indiana (Mr. LUGAR) and the Senator from Kansas (Mr. BROWNBACK) were added as cosponsors of S. Con. Res. 136, a concurrent resolution honoring and memorializing the passengers and crew of United Airlines Flight 93.

S. RES. 408

At the request of Mr. SMITH, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. Res. 408, a resolution supporting the construction by Israel of a security fence to prevent Palestinian terrorist attacks, condemning the decision of the International Court of Justice on the legality of the security fence, and urging no further action by the United Nations to delay or prevent the construction of the security fence.

S. RES. 453

At the request of Mr. JEFFORDS, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. Res. 453, a resolution expressing the sense of the Senate that the United

States should prepare a comprehensive strategy for advancing and entering into international negotiations on a binding agreement that would swiftly reduce global mercury use and pollution to levels sufficient to protect public health and the environment.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WYDEN:

S. 2944. A bill to provide that no funds may be expended by the United States Trade Representative to negotiate data exclusivity provisions for certain pharmaceutical products; to the Committee on Finance.

Mr. WYDEN. Mr. President, today I am introducing legislation regarding the way the trade policies of the United States affect the ability of developing countries to access to generic drugs.

The bill addresses concerns that this Administration, through the United States Trade Representative, is pursuing policies that will make it even more difficult for developing countries to gain access to the drugs they need, particularly generics, to treat their public health problems like TB, HIV/AIDS and malaria. This is just wrong.

The policies the Administration seeks to put in place are data exclusivity provisions. Such provisions tend to benefit drug manufacturers. As reported in The Wall Street Journal and elsewhere, when these provisions are included trade agreements they essentially bar countries from being able to get more affordable generic drugs for a period of time, usually five years.

Trade agreements should be about promoting trade. People in developing nations who are suffering from such epidemic diseases should not be denied access to affordable medicines because of trade agreements.

The purpose of what is known as the Doha Declaration was to clarify that trade rules on intellectual property would not interfere with the ability of developing countries to take measures to protect public health. The legislation I am introducing today would prohibit USTR from spending any funds in order to impose data exclusivity for drugs used to treat HIV/AIDS, tuberculosis, or other epidemics, or needed in circumstances of extreme urgency, or national emergency.

I am not one to trample on the need to protect trade secrets, but I cannot condone policies that inhibit developing countries from being able to address their own public health needs. In today's world, it is shortsighted to think that infectious diseases cannot cross borders. By allowing developing countries access to generic drugs, we not only help improve health in those nations, we also help ourselves control these debilitating and often deadly diseases.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2944

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LIMITATION.

(a) IN GENERAL.—Notwithstanding any other provision of law, funds appropriated or otherwise obligated to the United States Trade Representative may not be expended to negotiate data exclusivity provisions with any country with respect to public health pharmaceutical products or to require actions of another country which interfere with a country's access to public health pharmaceutical products.

(b) DEFINITIONS.—In this section:

(1) DATA EXCLUSIVITY PROVISION.—The term "data exclusivity provision" means a provision that restricts for a set period of time a country from approving for sale generic public health pharmaceutical products based on original clinical data of public health pharmaceutical products previously approved for sale.

(2) PUBLIC HEALTH PHARMACEUTICAL PRODUCTS.—The term "public health pharmaceutical products" means any patented pharmaceutical product, or pharmaceutical product manufactured through a patented process, needed to treat HIV/AIDS, tuberculosis, malaria, or other epidemics, or needed in circumstances of extreme urgency or national emergency in accordance with the Decision of the General Council of 30 August 2003 on the Implementation of Paragraph Six of the DOHA Declaration on the TRIPS Agreement and Public Health and the WTO General Council Chairman's statement accompanying the Decision (JOB(03)/177, WT/GC/M/82) (collectively known as the "TRIPS/health solution").

By Mr. CORZINE (for himself and Mr. LAUTENBERG):

S. 2945. A bill to permanently eliminate a procedure under which the Bureau of Alcohol, Tobacco, Firearms, and Explosives can waive prohibitions on the possession of firearms by convicted felons, drug offenders, and other disqualified individuals; to the Committee on the Judiciary.

Mr. CORZINE. Mr. President, I rise today, along with Senator LAUTENBERG, to introduce legislation to help ensure that convicted felons are not permitted to legally possess dangerous weapons. The bill would eliminate a discredited program under which convicted felons can apply to the Bureau of Alcohol, Tobacco and Firearms, ATF, to seek a waiver that allows them to possess firearms or explosives.

Under Federal law, those convicted of felonies generally are prohibited from possessing firearms. However, ATF is authorized to grant a waiver from this prohibition if it believes that an individual is not likely to act in a manner that threatens public safety.

Interestingly, this waiver authority was enacted not to permit common criminals to obtain guns, but to assist a company called Winchester, which manufactures firearms. Winchester's parent company, Olin Mathieson Chemical Corporation, had been convicted of a felony involving a kickback scheme. As a result, Winchester was legally prohibited from shipping firearms in interstate commerce. The provision was approved to allow Winchester to stay in business.

Because the provision was drafted broadly, however, the waiver provision applied to common criminals. Originally, waivers could not be granted to those convicted of firearms offenses. But in 1986, Congress expanded the law to allow even persons convicted of firearms offenses, and those involuntarily committed to a mental institution, to apply for a waiver.

Between 1981 and 1991, ATF processed more than 13,000 applications. These applications required some of ATF's best agents to abandon their law enforcement responsibilities and instead conduct extensive investigations on behalf of convicted felons. In the late 1980's, the cost of handling these petitions worked out to about $10,000 for each waiver granted—costs borne by ordinary taxpayers.

The Violence Policy Center investigated 100 cases in which a convicted felon had been allowed to legally possess firearms. In 41 percent of those cases, the felon had been convicted of a crime of violence, or a drug or firearms offense. The crimes of violence included several homicides, sexual assaults and armed robberies.

Between 1981 and 1991, 5600 waivers were granted. In many cases, those who regained their gun privileges later used their guns to commit serious crimes, such as attempted murder, rape, kidnapping, and child molestation.

This program makes no sense. It is not fair to taxpayers, who must foot the bill for ATF investigations. It is not fair to ATF agents, who have much more important things to do. And, most importantly, it is not fair to the public, whose safety is put at risk when convicted felons are allowed to carry guns.

Fortunately, there has long been bipartisan support for blocking the program. Since 1992, Congress has prohibited the use of appropriated funds to implement it, and President Bush's budget proposes that the prohibition be retained. Yet funding bans in appropriations bills are stopgap measures that are effective for only a single fiscal year. It is time to eliminate the waiver program permanently.

I urge my colleagues to support the legislation and ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2945

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "No Guns for Felons Act".

SEC. 2. ADMINISTRATIVE RELIEF FROM CERTAIN FIREARMS PROHIBITIONS.

(a) IN GENERAL.—Section 925(c) of title 18, United States Code, is amended—

(1) in the first sentence by inserting "(other than a natural person)" before "who is prohibited";

(2) in the fourth sentence—

(A) by inserting "person (other than a natural person) who is a" before "licensed importer"; and

(B) by striking "his" and inserting "the person's"; and

(3) in the fifth sentence, by inserting "(1) the name of the person, (2) the disability with respect to which the relief is granted, (3) if the disability was imposed by reason of a criminal conviction of the person, the crime for which and the court in which the person was convicted, and (4)" before "the reasons therefor".

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply to—

(1) applications for administrative relief and actions for judicial review that are pending on the date of enactment of this Act; and

(2) applications for administrative relief filed, and actions for judicial review brought, after the date of enactment of this Act.

By Mr. AKAKA (for himself, Mr. BINGAMAN, and Mr. DURBIN):

S. 2947. A bill to provide additional protections for recipients of the earned income tax credit; to the Committee on Finance.

Mr. AKAKA. Mr. President, I rise to introduce the Taxpayer Abuse Prevention Act. Earned income tax credit (EITC) benefits intended for working families are increasingly being reduced by the growing use of refund anticipation loans, which typically carry triple digit interest rates. According to the Brookings Institution, an estimated $1.9 billion intended to assist low-income families was received by commercial tax preparers and affiliated national banks to pay for tax assistance, electronic filing of returns, and high-cost refund loans in 2002. The interest rates and fees charged on refund anticipation loans (RALs) are not justified for the short length of time that these loans cover and the minimal risk they present. These loans carry little risk because of the Debt Indicator program. The Debt Indicator (DI) is a service provided by the Internal Revenue Service that informs the lender whether or not an applicant owes Federal or State taxes, child support, student loans, or other government obligations, which assists the tax preparer in ascertaining the applicant's ability to obtain their full refund so that the RAL is repaid. The Department of the Treasury should not be facilitating these predatory loans that allow tax preparers to reap outrageous profits by exploiting working families.

Unfortunately too many working families are susceptible to predatory lending because they are left out of the financial mainstream. Between 25 and 56 million adults are unbanked, or not using mainstream, insured financial institutions. The unbanked rely on alternative financial service providers to obtain cash from checks, pay bills, send remittances, utilize payday loans, and obtain credit. Many of the unbanked are low- and moderate-income families that can ill afford to have their earnings unnecessarily diminished by their reliance on these high-cost and often predatory financial services. In addition, the unbanked are unable to save securely to prepare for the loss of a job, a family illness, a down payment on a first home, or education expenses.

My bill will protect consumers against predatory loans, reduce the involvement of the Department of the Treasury in facilitating the exploitation of taxpayers, and expand access to opportunities for saving and lending at mainstream financial services.

My bill prohibits refund anticipation loans that utilize EITC benefits. Other Federal benefits, such as Social Security, have similar restrictions to ensure that the beneficiaries receive the intended benefit.

My bill also limits several of the objectionable practices of RAL providers. My legislation will prohibit lenders from using tax refunds to collect outstanding obligations for previous RALs. In addition, mandatory arbitration clauses for RALs that utilize federal tax refunds would be prohibited to ensure that consumers have the ability to take future legal action if necessary in the future.

I am deeply troubled that the Department of the Treasury plays such a prominent role in the facilitation and subsequent promotion of refund anticipation loans. In 1995, the use of the DI was suspended because of massive fraud in e-filed returns with RALs. After the program was discontinued, RAL participation declined. The use of the DI was reinstated in 1999, according to H&R Block, to "assist with screening for electronic filing fraud and is also expected to substantially reduce refund anticipation loan pricing." Although RAL prices were expected go down as a result of the reinstatement of the DI, this has not occurred. The Debt Indicator should once again be stopped. The DI is helping tax preparers make excessive profits of low- and moderate-income taxpayers who utilize the service. If the Debt Indicator is removed, then the loans become riskier and the tax preparers may not aggressively market them among EITC filers. The IRS should not be aiding efforts that take the earned benefit away from low-income families and allow unscrupulous preparers to take advantage of low-income taxpayers. My bill terminates the DI program. In addition, my bill removes the incentive to meet Congressionally mandated electronic filing goals by facilitating the exploitation of taxpayers. My bill would prevent any electronically filed tax returns that resulted in tax refunds that were distributed by refund anticipation loans from being counted towards the goal established by the IRS Restructuring and Reform Act of 1998 that the IRS have at least 80 percent of all returns filed electronically by 2007.

My bill also expands access to mainstream financial services. Electronic Transfer Accounts (ETA) are low-cost accounts at banks and credit unions that are intended for recipients of certain Federal benefit payments. Currently, ETAs are provided for recipients of other federal benefits such as Social Security payments. My bill expands the eligibility for ETAs to include EITC benefits. These accounts will allow taxpayers to receive direct deposit refunds into an account without the need for a RAL.

Furthermore, my bill would mandate that low- and moderate-income taxpayers be provided opportunities to open low-cost accounts at federally insured banks or credit unions via appropriate tax forms. Providing taxpayers with the option of opening a bank or credit union account through the use of tax forms provides an alternative to RALs and provides immediate access to the opportunities found at banks and credit unions.

I want to thank my colleagues, Senator BINGAMAN and Senator DURBIN for cosponsoring the legislation. I also thank Representative JAN SCHAKOWSKY for introducing the companion legislation in the other body. I ask unanimous consent that the text of the Taxpayer Abuse Prevention Act be printed following my remarks. I also ask unanimous consent that the text of a support letter from the Association of Community Organizations for Reform Now, the Children's Defense Fund, the Consumer Federation of America, Consumers Union, and the National Consumer Law Center, be printed in the RECORD.

Mr. President, I ask unanimous consent that the text of the bill and a letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2947

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Taxpayer Abuse Prevention Act".

SEC. 2. PREVENTION OF DIVERSION OF EARNED INCOME TAX CREDIT BENEFITS.

(a) IN GENERAL.—Section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit) is amended by adding at the end the following new subsection:

"(n) PREVENTION OF DIVERSION OF CREDIT BENEFITS.—The right of any individual to any future payment of the credit under this section shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or right shall be subject to any execution, levy, attachment, garnishment, offset, or other legal process except for any outstanding Federal obligation. Any waiver of the protections of this subsection shall be deemed null, void, and of no effect.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act.

SEC. 3. PROHIBITION ON DEBT COLLECTION OFFSET.

(a) IN GENERAL.—No person shall, directly or indirectly, individually or in conjunction or in cooperation with another person, engage in the collection of an outstanding or delinquent debt for any creditor or assignee by means of soliciting the execution of, processing, receiving, or accepting an application or agreement for a refund anticipation loan or refund anticipation check that contains a provision permitting the creditor to repay, by offset or other means, an outstanding or delinquent debt for that creditor from the proceeds of the debtor's Federal tax refund.

(b) REFUND ANTICIPATION LOAN.—For purposes of subsection (a), the term "refund anticipation loan" means a loan of money or of any other thing of value to a taxpayer because of the taxpayer's anticipated receipt of a Federal tax refund.

(c) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act.

SEC. 4. PROHIBITION OF MANDATORY ARBITRATION.

(a) IN GENERAL.—Any person that provides a loan to a taxpayer that is linked to or in anticipation of a Federal tax refund for the taxpayer may not include mandatory arbitration of disputes as a condition for providing such a loan.

(b) EFFECTIVE DATE.—This section shall apply to loans made after the date of the enactment of this Act.

SEC. 5. TERMINATION OF DEBT INDICATOR PROGRAM.

The Secretary of the Treasury shall terminate the Debt Indicator program announced in Internal Revenue Service Notice 99-58.

SEC. 6. DETERMINATION OF ELECTRONIC FILING GOALS.

(a) IN GENERAL.—Any electronically filed Federal tax returns, that result in Federal tax refunds that are distributed by refund anticipation loans, shall not be taken into account in determining if the goals required under section 2001(a)(2) of the Restructuring and Reform Act of 1998 that the Internal Revenue Service have at least 80 percent of all such returns filed electronically by 2007 are achieved.

(b) REFUND ANTICIPATION LOAN.—For purposes of subsection (a), the term "refund anticipation loan" means a loan of money or of any other thing of value to a taxpayer because of the taxpayer's anticipated receipt of a Federal tax refund.

SEC. 7. EXPANSION OF ELIGIBILITY FOR ELECTRONIC TRANSFER ACCOUNTS.

(a) IN GENERAL.—The last sentence of section 3332(j) of title 31, United States Code, is amended by inserting "other than any payment under section 32 of such Code" after "1986".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments made after the date of the enactment of this Act.

SEC. 8. PROGRAM TO ENCOURAGE THE USE OF THE ADVANCE EARNED INCOME TAX CREDIT.

(a) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Secretary of the Treasury shall, after consultation with such private, nonprofit, and governmental entities as the Secretary determines appropriate, develop and implement a program to encourage the greater utilization of the advance earned income tax credit.

(b) REPORTS.—Not later than the date of the implementation of the program described in subsection (a), and annually thereafter, the Secretary of the Treasury shall report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives on the elements of such program and progress achieved under such program.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as are necessary to carry out the program described in this section. Any sums so appropriated shall remain available until expended.

SEC. 9. PROGRAM TO LINK TAXPAYERS WITH DIRECT DEPOSIT ACCOUNTS AT FEDERALLY INSURED DEPOSITORY INSTITUTIONS.

(a) ESTABLISHMENT OF PROGRAM.—Not later than 1 year after the date of the enactment of this Act, the Secretary of the Treasury shall enter into cooperative agreements with federally insured depository institutions to provide low- and moderate-income taxpayers with the option of establishing low-cost direct deposit accounts through the use of appropriate tax forms.

(b) FEDERALLY INSURED DEPOSITORY INSTITUTION.—For purposes of this section, the term "federally insured depository institution" means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) and any insured credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)).

(c) OPERATION OF PROGRAM.—In providing for the operation of the program described in subsection (a), the Secretary of the Treasury is authorized—

(1) to consult with such private and nonprofit organizations and Federal, State, and local agencies as determined appropriate by the Secretary, and

(2) to promulgate such regulations as necessary to administer such program.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as are necessary to carry out the program described in this section. Any sums so appropriated shall remain available until expended.

NATIONAL CONSUMER LAW CENTER INC,
Washington, DC, July 12, 2004.

Hon. DANIEL K. AKAKA,
U.S. Senate,
Washington, DC.

DEAR SENATOR AKAKA: The Association of Community Organizations for Reform Now (ACORN), Children's Defense Fund, Consumer Federation of America, Consumers Union, and National Consumer Law Center (on behalf of its low-income clients), write to support your bill, the "Taxpayer Abuse Prevention Act." By prohibiting lenders from making loans against the Earned Income Tax Credit, this bill would greatly reduce the scope of abuses caused by refund anticipation loans (RALs), which carry effective annualized interest rates of about 70% to over 700%.

As you know, over 55% of consumers who receive RALs are beneficiaries of the Earned Income Tax Credit. In 2002, EITC recipients paid about $749 million in loan and "administrative" fees for RALs. These fees divert hundreds of millions of EITC dollars, paid out of the U.S. Treasury, into the coffers of multimillion dollar commercial preparation chains and big banks. It's time to stop lenders from making high cost, abusive loans using the precious dollars intended to support working poor families.

Furthermore, we support the "Taxpayer Abuse Prevention Act" for its provisions that halt several of the most egregious practices of RAL lenders, such as seizing taxpayers' tax refunds as a form of debt collection and slipping in mandatory arbitration clauses, which leave RAL consumers without their day in court. Moreover, we appreciate the termination of the IRS Debt Indicator program, which would stop the IRS's practice of sharing taxpayer's personal financial information in order to make RALs more profitable for lenders. Finally, we applaud the provisions of the bill that support linking unbanked taxpayers with bank accounts, such as the provision to permit them to open Electronic Transaction Accounts to receive federal tax refunds.

Thank you again for all your efforts to combat taxpayer abuse by the RAL industry.

Sincerely,

MAUDE HURD,
National President, Association of Community Organizations for Reform Now.
JEAN ANN FOX,
Director of Consumer Protection, Consumer Federation of America.
CHI CHI WU,
Staff Attorney, National Consumer Law Center.
DEBORAH CUTLER-ORTIZ,
Director of Family Income, Children's Defense Fund.
SHELLEY CURRAN,
Policy Analyst, Consumers Union.

By Mr. CORZINE (for himself and Mr. LAUTENBERG):

S. 2950. A bill to amend title XIX of the Social Security Act to prohibit payments to States under the medicaid program for redispensing prescription drugs; to the Committee on Finance.

Mr. CORZINE. Mr. President, I rise today to introduce legislation to close a gaping loophole in the Medicaid law that allows pharmacies to double bill the Medicaid program for prescription drugs.

As you may know, many States are now encouraging or requiring health care facilities to return unused prescription drugs for Medicaid patients to pharmacies for re-dispensing as a way to save money. These drugs go unused because a nursing home patient has died, the prescription was incorrect, or the patient no longer needs the drugs.

Certainly, we should encourage states and pharmacies to re-dispense rather than simply discard these prescription drugs. However, while some States, including Connecticut, Missouri, and Texas, have laws that require pharmacies that re-stock drugs for re-dispensing to credit the State Medicaid program, many, including New Jersey, do not. This has resulted in pharmacy companies double charging Medicaid—for the sale and resale—of the restocked drugs.

We have an obligation to close this loophole. At a time in which all 50 States are proposing cuts to their Medicaid programs because of skyrocketing costs and the burden of these costs on the Federal Government continues to grow, we must eliminate such wasteful spending.

The absence of any Federal or State law or regulation prohibiting this practice has left our courts with no option but to allow this practice to continue. For example, a recent Third Circuit Court of Appeals decision found that a New Jersey pharmacy company, Omnicare, had indeed double charged the State's Medicaid program when it charged Medicaid twice for the sale and resale of restocked drugs. Because there was no State or Federal law prohibiting such double charges, however, the court could not assess penalties against the company. Writing for the court, Judge Jane Roth said, "We are constrained by a lack of a regulation. We believe that Congress and/or the New Jersey legislature might serve Medicaid well if this lack of regulation were corrected."

My legislation will close this loophole by prohibiting federal reimbursement for any prescription drugs that have been re-stocked. Recognizing that pharmacies that restock prescription drugs incur costs in verifying the integrity of the drugs and placing them back into the pharmacy's inventory, my legislation allows states to provide reasonable reimbursements to pharmacies for these costs.

In closing, I want to state that I am open to working with the Administration to close this loophole. I think that the Centers for Medicare and Medicaid have the authority to close this loophole and I hope that they will take immediate action to address this problem. This practice of double billing is nothing short of fraud. Congress and the Administration have a duty to safeguard the Medicaid program from such fraud, waste, and abuse. I urge my colleagues to join me in the effort to do just that.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2950

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROHIBITION ON PAYMENT FOR REDISPENSING PRESCRIPTION DRUGS.

(a) IN GENERAL.—Section 1903(i) of the Social Security Act (42 U.S.C. 1396b(i)) is amended—

(1) in paragraph (20), by striking the period at the end and inserting "; or"; and

(2) by adding at the end the following:

"(21) with respect to any amount expended for redispensing a prescribed drug, other than in accordance with guidance of the Secretary that—

"(A) specifies the circumstances under which redispensing of a prescribed drug shall be permissible; and

"(B) allows for a reasonable restocking fee that takes into account the costs of inspection and inventory processes for redispensing.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on the first day of the first fiscal year quarter that begins after the date of enactment of this Act.

By Mr. HATCH:

S. 2951. A bill to direct the Secretary of the Interior to convey certain land held in trust for the Paiute Indian Tribe of Utah to the City of Richfield, Utah, and for other purposes; to the Committee on Indian Affairs.

Mr. HATCH. Mr. President, I rise today to introduce the Paiute Land Adjustments Act. This bill would authorize the Secretary of the Interior to convey or transfer four small Paiute trust land parcels totaling about five acres. My introduction of this bill at the closing of the 108th Congress is to show my support to the Paiute Tribe, the city of Richfield, UT and to Congressman CHRIS CANNON's companion measure, H.R. 3982, which has passed the House and has been held at the desk in the Senate.

There are, however, some minor aspects of H.R. 3982 which I believe merit some clarification and may even require future technical amendments. The bill I am introducing today reflects some of the minor changes that have been requested by the Senate Indian Affairs Committee, and my introduction of the bill is also an effort to get those clarifications on record.

I do strongly support the passage of H.R. 3982, and I am working with Chairman BEN NIGHTHORSE CAMPBELL of the Senate Indian Affairs Committee and Senate leadership to secure its final passage before the close of this Congress.

The Paiute Land Adjustments Act would allow the Paiute Indian Tribe of Utah to convey at fair market value three acres of trust land to the city of Richfield, UT. This land transfer would allow expansion of the Richfield Municipal Airport and provide the Tribe with proceeds to purchase land that has economic development potential.

The city of Richfield approached the tribe about acquiring this parcel of land adjacent to the airport runway. The tribe agreed and the Paiute Tribal Council passed Resolution 01-36, unanimously agreeing to the conveyance of this parcel of land to the city. In 1974, the private nonprofit Utah Paiute Tribal Corporation acquired the three-acre parcel of land in fee for the purpose of economic development. With the passage of the Paiute Indian Tribe Restoration Act in 1980, the land was placed into trust. The land has not been used by the tribe for more than 20 years. It is not contiguous to the Paiute's Reservation and for nearly 30 years now has had no economic development potential. The tribal resolution expresses the Paiute's desire to accept the city's offer to purchase the land at fair market value and serves as the request to the Secretary of the Interior to convey the trust land. However, only an act of Congress may authorize this land conveyance.

The Paiute Land Adjustments Act would also transfer three trust land parcels, each an acre or less in size, from the tribe to its Kanosh and Shivwits Bands. All parcels would remain in trust status. The first parcel of one acre would be transferred from land held in trust by the United States for the Paiute Tribe to land held in trust for the Kanosh Band. This parcel is surrounded by 279 acres of land that is either owned by the Konosh Band or held in trust for the Konosh Band. For more than 20 years, the sole use of this land has been for the Kanosh Band Community Center. The second parcel, two-thirds of an acre in size, would also be transferred from the tribe to the Kanosh Band. The land has been used exclusively by the Kanosh Band. It was originally intended that the land be taken in trust for the Kanosh Band in 1981 under the Paiute Indian Tribe of Utah Restoration Act. However, through an administrative error, the land was mistakenly placed in trust for the tribe. By way of several Band resolutions, the Kanosh Band has formally requested correction of this error.

The third parcel of land, less than an acre in size, would be transferred from the tribe to be held in trust for the Shivwits Band. The land already is surrounded by several thousand acres of land held in trust for the Shivwits Band, and its sole use has been for the Shivwits Band Community Center.

Finally, the bill would eliminate the word "city" from the current official name of the "Cedar City Band of Paiute Indians," a name which has never been used by the Band or residents of southwestern Utah. Thus, the bill makes clear that any reference in a law, map, regulation, document, paper, or other record of the United States to the "Cedar City Band of Paiute Indians" shall be deemed to be a reference to the "Cedar Band of Paiute Indians."

I would like to make part of the record some clarifications with regard to this bill. This bill has language that would allow the city of Richfield to purchase land from the tribe and direct the payment directly to the tribe without the funds being funneled through the Department of the Interior. I support that provision. The bill also has a provision that would make land acquired by the tribe after February 17, 1984, be made part of the reservation.

This is an effort to clarify that lands already in possession of the tribe should be part of the reservation. It is not an effort to ensure that every parcel of land purchased by the tribe in the future be made part of the reservation without regard to the parcel's location or proximity to the existing reservation. I would also like to clarify that nothing in this legislation authorizes the Secretary of the Interior to make land conveyances for any tribe or band without their official consent to such a conveyance.

This bill will cost U.S. taxpayers nothing, but it will solve the dilemma that the City of Richfield faces as it works to make its airport meet the needs of the citizens of southwestern Utah. Equally important is the fact that this bill will allow the Paiute Tribe to use the proceeds from the land sale to acquire land with economic development potential to facilitate the self-determination of the tribe. The bill also takes care of non-controversial land adjustments and technical corrections. The bill is supported by the Paiute Tribe, its Bands, and the people of southwestern Utah residing nearby. That is why I am introducing this legislation that would convey or transfer these four small Paiute trust land parcels.

Finally, I offer my congratulations and best wishes to the Paiute Indian Tribe of Utah. At the tribe's Annual Restoration Gathering over the weekend of June 12, the Paiutes celebrated the 24th anniversary of their restoration as a tribe. The Federal trust relationship with the tribe was restored in 1980 upon enaction of the Paiute Indian Tribe Restoration Act, which I sponsored.

I thank the Senate for the opportunity to address this issue today, and I urge my colleagues to support the passage of H.R. 3982 during the 108th Congress.

By Mrs. CLINTON (for herself, Mr. CHAFEE, and Mr. REID):

S. 2953. A bill to amend the Public Health Service Act to establish a Coordinated Environmental Health Network, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mrs. CLINTON. Mr. President, I rise to introduce today a bill to authorize the development of the Coordinated Environmental Health Network. I am pleased to have Senators CHAFEE and REID as cosponsors.

Environmental public health tracking of chronic diseases began in FY 2002 when the CDC awarded $17 million to 17 states and 3 local health departments to develop the Program and establish 3 Centers of Excellence. These funds were for capacity building and demonstration projects over 3 years. Efforts included correlation of asthma in young adults to air pollution from traffic exhaust or indoor air quality in schools, correlation of adverse pregnancy outcomes and air pollution measurements, PCBs in water supplies, etc and biomonitoring for blood lead and hair mercury with exposure databases. In FY 2003, CDC awarded $18.5 million to continue this program and expand to three additional states as in Florida to link statewide surveillance systems for asthma, autism, mental retardation, cancers, and birth defects with EPA's Toxic Release Inventory, statewide air monitoring data, and data from the statewide well water surveillance program. 24 states now have efforts to track asthma. FY 2004 funding reached $27 million, and an additional $28 million pending in the Fiscal Year 2005 Labor-Health and Human Services-Education Appropriations bill.

Our bill would build on these efforts, and would eventually cover all priority chronic conditions including birth defects, developmental disabilities (such as cerebral palsy, autism, and mental retardation), asthma and chronic respiratory diseases, neurological diseases, such as Parkinson's disease, multiple sclerosis, and Alzheimer's disease, and autoimmune diseases such as Lupus. It would also eventually reach as many of the States as possible; already the EPA and DHHS (CDC) have signed a Memorandum of Understanding to coordinate exposure databases with the CDC's nationwide chronic disease tracking network and the State grantees.

Our current public health surveillance systems were developed when the major threats to health were infectious agents. Currently, 50 infectious diseases are tracked on a national basis. However, chronic diseases, such as cancer and cardiovascular disease are now the nation's number one killers, and there is evidence that rates of some chronic diseases and conditions are rising. More than 1.3 million new cancer cases were diagnosed in 2003. One in 33 U.S. babies born has a birth defect, and about 17 percent of children under 18 years of age have a developmental disability. In 2001, an estimated 31.3 million Americans reported having been diagnosed with asthma during their lifetime, and 14 million adults reported physician-diagnosed chronic obstructive pulmonary disease. Chronic diseases cost Americans $750,000,000,000 in health care expenses and lost productivity and affect 100 million Americans. Yet our systems for tracking chronic diseases are woefully underdeveloped.

All across our nation are communities where disease clusters such as birth defects, cancers and asthma raise questions about the role of environmental factors in chronic diseases. In order to improve the health of our nation and lower health care costs, we need to develop the infrastructure to study the relationship between environment and chronic disease.

The Coordinated Environmental Health Network Act would create the infrastructure necessary to collect, analyze, and report data on the rate of disease and the presence of relevant environmental factors and exposures. The Network would also coordinate national, State, and local efforts to bolster our public health system's capacity to investigate and respond aggressively to environmental exposures that threaten health. In addition, the Coordinated Environmental Health Network will alert health officials when there is a sudden increase in any disease or condition, including those associated with a biological or chemical attack.

Once fully operational, the network will coordinate national, state, and local efforts to inform communities, public health officials, researchers, and policymakers of potential environmental health risks, and to integrate this information with other parts of the public health system.

The Coordinated Environmental Health Network Act is supported by the Trust for America's Health, American Public Health Association, Citizens for a Cleaner Environment, March of Dimes, American Lung Association, U.S. Public Interest Research Group, The Breast Cancer Fund, Physicians for Social Responsibility, and many others.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2953

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Coordinated Environmental Health Network Act of 2004".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) approximately 7 out of every 10 deaths in the United States are attributable to chronic diseases;

(2) with 100,000,000 people suffering from chronic diseases each year, and $750,000,000,000 lost in health care costs as a result, the national cost of chronic disease is extremely high and must be appropriately addressed;

(3) the rates of many chronic diseases, including asthma, some birth defects, cancers, and autism, appear to be increasing;

(4) there is a growing amount of evidence that environmental factors are strongly linked with specific chronic disease;

(5) a major gap in critical knowledge exists regarding the prevalence and incidence of chronic diseases;

(6) States, local communities, territories, and Indian tribes need assistance with public health efforts that would lead to prevention of chronic disease, including the establishment and maintenance of necessary infrastructure for disease and environmental hazard exposure surveillance; and

(7) a Coordinated Environmental Health Network will help target resources to areas of chronic disease prevention most in need.

(b) PURPOSES.—It is the purpose of this Act to—

(1) develop, operate, and maintain a Coordinated Environmental Health Network, State Environmental Health Networks, and rapid response capabilities so that the Federal Government, States, local governments, territories, and Indian tribes can more effectively monitor, investigate, respond to, research, and prevent increases in the incidence and prevalence of certain chronic diseases and relevant environmental and other risk factors;

(2) provide information collected through the Coordinated and State Environmental Health Networks to government agencies, public health practitioners and researchers, policy makers, and the public;

(3) expand and coordinate among existing surveillance and data collection systems and other infrastructure for chronic diseases and relevant environmental, and other risk factors, including those relevant to bioterrorism;

(4) improve coordination between the areas of public health, environmental protection, and chemical, radiological and biological terrorism; and

(5) provide necessary support to ensure the availability of a sufficient number of well-trained environmental health and public health personnel to participate and provide leadership in the development and maintenance of the Coordinated and State Environmental Health Networks.

SEC. 3. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT.

The Public Health Service Act (42 U.S.C. 201 et seq.) is amended by adding at the end the following:

"TITLE XXIX—COORDINATED ENVIRONMENTAL HEALTH NETWORK

"SEC. 2900. DEFINITIONS.

"In this title:

"(1) ADMINISTRATORS.—The term 'Administrators' means the Director of the Centers for Disease Control and Prevention Coordinating Center for Environmental Health, Injury Prevention, and Occupational Health, and the Administrator of the Environmental Protection Agency.

"(2) COMMITTEE.—The term 'Committee' means the Advisory Committee established under section 2901(d).

"(3) DIRECTOR.—The term 'Director' means the Director of the Centers for Disease Control and Prevention.

"(4) MEDICAL PRIVACY REGULATIONS.—The term 'medical privacy regulations' means the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996.

"(5) COORDINATED NETWORK.—The term 'Coordinated Network' means the Coordinated Environmental Health Network established under section 2901(a).

"(6) PRIORITY CHRONIC CONDITION.—The term 'priority chronic condition' means a condition to be tracked in the Coordinated Network and the State Networks, including birth defects, developmental disabilities (such as cerebral palsy, autism, and mental retardation), asthma and chronic respiratory diseases, neurological diseases (such as Parkinson's disease, multiple sclerosis, Alzheimer's disease, and amyotrophic lateral sclerosis), autoimmune diseases (such as lupus), cancer, juvenile diabetes, and such other priority chronic conditions as the Secretary may specify.

"(7) STATE NETWORK.—The term 'State Network' means a State Environmental Health Network established under section 2901(b).

"(8) STATE.—The term 'State' means a State, territory, or Indian tribe that is eligible to receive a health tracking grant under section 2901(b).

"SEC. 2901. ESTABLISHMENT OF COORDINATED AND STATE ENVIRONMENTAL HEALTH NETWORKS.

"(a) COORDINATED ENVIRONMENTAL HEALTH NETWORK.—

"(1) ESTABLISHMENT.—Not later than 36 months after the date of the enactment of this title, the Secretary, acting through the Director and in consultation with the Administrators, State and local health departments, and the Committee, shall establish and operate a Coordinated Environmental Health Network. In establishing and operating the Coordinated Network, the Secretary shall—

"(A) identify, build upon, expand, and coordinate among existing data and surveillance systems, surveys, registries, and other Federal public health and environmental infrastructure wherever possible, including—

"(i) the National Electronic Disease Surveillance System;

"(ii) State birth defects surveillance systems as supported under section 317C;

"(iii) State cancer registries as supported under part M of title III;

"(iv) State asthma surveillance systems as supported under section 317I;

"(v) the National Health and Nutrition Examination Survey;

"(vi) the Behavioral Risk Factor Surveillance System;

"(vii) the Hazardous Substance Release Health Effects Database;

"(viii) the Hazardous Substances Emergency Events Surveillance System;

"(ix) the National Exposure Registry;

"(x) the Health Alert Network; and

"(xi) the State vital statistics systems as supported under section 306;

"(B) provide for public access to an electronic national database that accepts data from the State Networks on the incidence and prevalence of priority chronic conditions and relevant environmental and other factors, in a manner which protects personal privacy consistent with the medical privacy regulations;

"(C) not later than 36 months after the date of the enactment of this title, and annually thereafter, prepare and publish, in accordance with paragraph (2), a Coordinated Environmental Health Network Report to provide the public with the findings of the Coordinated Network;

"(D) operate and maintain a National Environmental Health Rapid Response Service within the Epidemic Intelligence Service to carry out the activities described in paragraph (3);

"(E) provide for the establishment of State Networks, and coordinate the State Networks as provided for under subsection (b);

"(F) provide technical assistance to support the State Networks, including providing—

"(i) training for environmental health investigators appointed or hired under subsection (b)(3)(D);

"(ii) technical assistance as needed to States to build necessary capacity and infrastructure for the establishment of a State Network, including a computerized data collection, reporting, and processing system, and additional assistance identified by the States under subsection (b)(5)(C) as necessary for infrastructure development; and

"(iii) such other technical assistance as the Secretary, in consultation with the Administrators, determines to be necessary;

"(G) not later than 12 months after the date of the enactment of this title, acting through the Director and consulting with the Administrators, the Surgeon General, the Director of the National Institutes of Health, and States, develop minimum standards and procedures in accordance with paragraph (4) for data collection and reporting for the State Networks, to be updated not less than annually thereafter; and

"(H) in developing the minimum standards and procedures under subparagraph (G), include mechanisms for allowing the States to set priorities, and allocate resources accordingly, among the factors described in subparagraphs (A), (B), and (C) of paragraph (4).

"(2) COORDINATED ENVIRONMENTAL HEALTH NETWORK REPORT.—Each Coordinated Environmental Health Network Report prepared under paragraph (1)(C) shall include—

"(A) a statement of the activities carried out under this title;

"(B) an analysis of the incidence, prevalence, and trends of priority chronic conditions and potentially relevant environmental and other factors by State and census tract (or other political or administrative subdivision determined appropriate by the Secretary in consultation with the Administrator of the Environmental Protection Agency) for the calendar year preceding the year for which the report is prepared;

"(C) the identification of gaps in the data of the Coordinated Network, including diseases of concern and environmental exposures not tracked; and

"(D) recommendations regarding high risk populations, public health concerns, response and prevention strategies, and additional tracking needs;

"(3) NATIONAL ENVIRONMENTAL HEALTH RAPID RESPONSE SERVICE.—The National Environmental Health Rapid Response Service operated under paragraph (1)(D) shall—

"(A) work with environmental health investigators appointed or hired under subsection (b)(3)(D) to develop and implement strategies, protocols, and guidelines for the coordinated, rapid responses to actual and perceived higher than expected incidence and prevalence rates of priority chronic conditions and to acute and potential environmental hazards and exposures;

"(B) conduct investigations into higher than expected incidence and prevalence rates of priority chronic conditions or environmental exposures after an individual requests, through a process established by the Secretary, the intervention of the Service;

"(C) coordinate activities carried out under this title with activities carried out under sections 319 through 319G; and

"(D) coordinate activities carried out under this title with the Administrators, the Surgeon General, and the Director of the National Institutes of Health.

"(4) DATA COLLECTION AND REPORTING BY STATE NETWORKS.—The minimum standards and procedures referred to in paragraph (1)(G) shall include—

"(A) a list and definitions of the priority chronic conditions to be tracked through the State Networks;

"(B) a list and definitions of relevant environmental exposures of concern to be tracked, to the extent practicable, through the State Networks, including—

"(i) hazardous air pollutants (as defined in section 302(g) of the Clean Air Act);

"(ii) air pollutants for which national primary ambient air quality standards have been promulgated under section 109 of the Clean Air Act;

"(iii) pollutants or contaminants (as defined in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980);

"(iv) toxic chemicals (as described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986);

"(v) substances reported under the Toxic Substances Control Act Inventory Update Rule as provided for in part 710 of title 40, Code of Federal Regulations, or successor regulations;

"(vi) pesticides (as defined in section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act); and

"(vii) such other potentially relevant environmental factors as the Secretary may specify;

"(C) a list and definitions of potentially relevant behavioral, socioeconomic, demographic, and other risk factors, including race, ethnic status, gender, age, occupation, and primary language, to be tracked through the State Networks;

"(D) procedures for the complete and timely collection and reporting of data to the Coordinated Network by census tract, or other political subdivision determined appropriate by the Secretary, in consultation with the Administrator of the Environmental Protection Agency, regarding the factors described in subparagraphs (A), (B), and (C);

"(E) procedures for making data available to the public and researchers, and for reporting to the Coordinated Network, while protecting the confidentiality of all personal data reported, in accordance with medical privacy regulations;

"(F) standards and procedures for the establishment and maintenance of at least 7 regional biomonitoring laboratories, including providing for an equitable geographic distribution, by entering into cooperative agreements with States, groups of States, and academic institutions or consortia of academic institutions, in order to expand the scope and amount of biomonitoring data collected by the Centers for Disease Control and Prevention;

"(G) criteria for the environmental health investigators as required under subsection (b)(3)(D); and

"(H) procedures for record and data maintenance and verification.

"(b) STATE ENVIRONMENTAL HEALTH NETWORKS.—

"(1) GRANTS.—Not later than 24 months after the date of the enactment of this title, the Secretary, acting through the Director, in consultation with the Administrators, and taking into consideration the findings of the Committee, shall award grants to States, local governments, territories, and Indian tribes for the establishment, maintenance, and operation of State Environmental Health Networks in accordance with the minimum standards and procedures established by the Secretary under subsection (a)(4).

"(2) SPECIALIZED ASSISTANCE.—The Coordinated Network shall provide specialized assistance to grantees in the establishment, maintenance, and operation of State Networks.

"(3) REQUIREMENTS.—A State, local government, territory, or Indian tribe receiving a grant under this subsection shall use the grant—

"(A) to establish an environmental health network that will provide—

"(i) for the complete tracking of the incidence, prevalence, and trends of priority chronic conditions and potentially relevant environmental and other factors as set forth in subsection (a), as well as any additional priority chronic conditions and potentially related environmental exposures of concern to that State, local government, territory, or Indian tribe;

"(ii) for identification of priority chronic conditions and potentially relevant environmental and other factors that disproportionately impact low income and minority communities;

"(iii) for the protection of the confidentiality of all personal data reported, in accordance with the medical privacy regulations;

"(iv) a means by which confidential data may, in accordance with Federal and State law, be disclosed to researchers for the purposes of public health research;

"(v) the fullest possible public access to data collected by the State Network or through the Coordinated Network, while ensuring that individual privacy is protected in accordance with subsection (a)(1)(B); and

"(vi) for the collection of exposure data through biomonitoring and other methods, including the entering into of cooperative agreements with the Coordinated Network in the establishment of the regional biomonitoring laboratories;

"(B) to develop a publicly available plan for establishing the State Network in order to meet minimum standards and procedures as developed by the Coordinated Network under subsection (a)(4), including the State's priorities within the minimum standards, a timeline by which all the standards will be met, and a plan for coordinating and expanding existing data and surveillance systems within the State including any pilot projects established through the Centers for Disease Control and Prevention prior to the date of the enactment of this title;

"(C) to appoint a lead environmental health department or agency that will be responsible for the development, operation, and maintenance of the State Network, and ensure the appropriate coordination among State and local agencies regarding the development, operation, and maintenance of the State Network;

"(D) to appoint or hire an environmental health investigator who meets criteria established by the Secretary under subsection (a)(4)(G) and who will coordinate the development and maintenance of the rapid response protocol established under subparagraph (E);

"(E) to establish a rapid response protocol, coordinated by the grantee's environmental health investigator, in order to respond in a timely manner to actual and perceived incidence and prevalence rates of priority chronic diseases that are higher than expected, acute and potential environmental hazards and exposures, and other environmental health concerns, including warning the public when emergent public health concerns are detected through the State Network, and concerns regarding vulnerable subpopulations and disproportionately impacted subpopulations;

"(F) to establish an advisory committee to ensure local community input to the State Network; and

"(G) to recruit and train public health officials to continue to expand the State Network.

"(4) LIMITATION.—A State, local government, territory, or Indian tribe that receives a grant under this section may not use more than 10 percent of the funds made available through the grant for administrative costs.

"(5) APPLICATION.—To seek a grant under this section, a State, local government, territory, or Indian tribe shall submit to the Secretary an application at such time, in such form and manner, and accompanied by such information as the Secretary may specify. The Secretary may not approve an application for a grant under this subsection unless the application—

"(A) contains assurances that the State, local government, territory, or tribe will—

"(i) use the grant only in compliance with the requirements of this title; and

"(ii) establish such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursement and accounting of Federal funds paid to the State, local government, territory, or tribe under the grant;

"(B) contains the assurance that the State, local government, territory, or tribe will establish a State Network as required by this subsection; and

"(C) contains assurances that if the State, local government, territory, or tribe is unable to meet all of the requirements described in this subsection within the prescribed time period, the State, local government, territory, or tribe will use grant funds to increase the public health infrastructure of the State, local government, territory, or tribe, acting in cooperation with the Coordinated Network, in order to implement and maintain a State Network within 24 months of the receipt of such grant.

"(c) PILOT PROJECTS.—

"(1) IN GENERAL.—Beginning in fiscal year 2005, a State, local government, territory, or Indian tribe may apply for a grant under this subsection to implement a pilot project that is approved by the Secretary, acting through the Director and in consultation with the Administrators and the Committee.

"(2) ACTIVITIES.—A State, local government, territory, or Indian tribe shall use amounts received under a grant under this subsection to carry out a pilot project designed to develop State Network enhancements and to develop programs to address specific local and regional concerns, including—

"(A) the expansion of the State Network to include additional chronic diseases or environmental exposures;

"(B) the conduct of investigations of local concerns of increased incidence or prevalence of priority chronic conditions and environmental exposures; and

"(C) the carrying out of other activities as determined to be a priority by the State or consortium of regional States, local government, territory, or tribe and the Secretary.

"(3) RESULTS.—The Secretary may consider the results of the pilot projects under this subsection for inclusion into the Coordinated Network.

"(d) ADVISORY COMMITTEE.—

"(1) ESTABLISHMENT.—Not later than 3 months after the date of the enactment of this title, the Secretary acting jointly with the Administrators, shall establish an Advisory Committee in accordance with the Federal Advisory Committee Act.

"(2) COMPOSITION.—The Advisory Committee shall be composed of 16 members to be appointed by the Secretary. Each member of the Advisory Committee shall serve a 3-year term, except that the Secretary may appoint the initial members of the Advisory Committee for lesser terms in order to comply with the following sentence. In appointing the members of the Advisory Committee, the Secretary shall ensure that the terms of 5 or 6 members expire each year. The Advisory Committee shall include at least 9 members that have experience in the areas of—

"(A) public health;

"(B) the environment, especially toxic chemicals and human exposure;

"(C) epidemiology; and

"(D) biomonitoring and other relevant exposure technologies.

"(3) REPORTING.—The Advisory Committee shall not later than 12 months after the date of the enactment of this title, and at least once every 12 months thereafter, report to Congress on the progress of the Coordinated Network.

"(4) HEARINGS.—The Advisory Committee shall hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Committee considers appropriate to carry out the objectives of the Coordinated Network.

"(5) DUTIES.—The Advisory Committee shall—

"(A) review and provide input for the Coordinated Environmental Health Network Report prior to publication, and make recommendations as to the progress of the Coordinated Network, including identifying information gaps in the network;

"(B) assist in developing the minimum standards and procedures for the State Networks under subsection (a)(4); and

"(C) provide ongoing public input to the Coordinated Network.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $100,000,000 for fiscal year 2005 and such sums as may be necessary for each of fiscal years 2006 through 2009.

"SEC. 2902. INCREASING PUBLIC HEALTH PERSONNEL CAPACITY.

"(a) SCHOOLS OR PROGRAMS OF PUBLIC HEALTH CENTERS OF EXCELLENCE.

"(1) GRANTS.—Beginning in fiscal year 2005, the Secretary may award grants to at least 5 accredited schools or programs of public health for the establishment, maintenance, and operation of Centers of Excellence for research and demonstration with respect to chronic conditions and relevant environmental factors.

"(2) ACTIVITIES.—A Center of Excellence established or operated under paragraph (1) shall undertake research and development projects in at least 1 of the following areas:

"(A) Investigating causal connections between chronic conditions and environmental factors.

"(B) Increasing the understanding of the causes of higher than expected incidence and prevalence rates of priority chronic conditions and developing more effective intervention methods for when such elevated rates occur.

"(C) Identifying additional chronic conditions and environmental factors that could be tracked by the Coordinated Network.

"(D) Improving translation of Coordinated Network tracking results into effective prevention activities.

"(E) Improving the training of public health workforce in environmental epidemiology.

"(F) Establishing links to the Coordinated Network and the State Networks to identify associations that warrant further study.

"(3) REQUIREMENTS FOR CENTERS OF EXCELLENCE.—To be eligible to receive a grant under paragraph (1), a school or program of public health shall provide assurances that the school or program—

"(A) meets the minimum requirements as established by the Secretary in consultation with the Director;

"(B) maintains privacy for public health information if appropriate to the project; and

"(C) makes public information regarding the findings and results of the programs.

"(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $5,000,000 for each of fiscal years 2005 through 2009.

"(b) JOHN H. CHAFEE PUBLIC HEALTH SCHOLAR PROGRAM.—

"(1) IN GENERAL.—The Secretary shall award scholarships, to be known as John H. Chafee Public Health Scholarships, to eligible students who are enrolled in an accredited school of public health or medicine. The Secretary shall determine both the criteria and eligibility requirements for such scholarships, after consultation with the Committee.

"(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $2,500,000 for each of fiscal years 2005 through 2009.

"(c) APPLIED EPIDEMIOLOGY FELLOWSHIP PROGRAMS.—

"(1) IN GENERAL.—Beginning in fiscal year 2005, the Secretary, acting through the Director, shall enter into a cooperative agreement with the Council of State and Territorial Epidemiologists to train and place, in State and local health departments, applied epidemiology fellows to enhance State and local epidemiology capacity in the areas of environmental health, chronic disease, and birth defects and development disabilities.

"(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $2,500,000 for fiscal year 2005, and such sums as may be necessary in each of fiscal years 2006 through 2009.

"SEC. 2903. GENERAL PROVISIONS.

"(a) INTERNAL MONITORING AND COORDINATION REGARDING CDC.—The Secretary, acting through the Director, shall place primary responsibility for the coordination of the programs established under this title in the Office of the Director. The officers or employees of the Centers for Disease Control and Prevention who are assigned responsibility for monitoring and coordinating the activities carried out under this title by the Director shall include officers or employees within the Office of the Director.

"(b) FUNDING THROUGH APPROPRIATIONS ACCOUNT FOR PUBLIC HEALTH IMPROVEMENT.—All authorizations of appropriations established in this title are authorizations exclusively for appropriations to the account that, among appropriations accounts for the Centers for Disease Control and Prevention, is designated 'Public Health Improvement'.

"(c) DATE CERTAIN FOR OBLIGATION OF APPROPRIATIONS.—With respect to the process of receiving applications for and making awards of grants, cooperative agreements, and contracts under this title, the Secretary, acting through the Director, shall to the extent practicable design the process to ensure that amounts appropriated under this title for such awards for a fiscal year are obligated not later than the beginning of the fourth quarter of the fiscal year, subject to compliance with section 1512 of title 31, United States Code (relating to deficiency or supplemental appropriations), and other applicable law regarding appropriations accounting.

"(d) COORDINATION WITH AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY.—In carrying out this title, the Secretary, acting through the Director, shall coordinate activities and responses with the Agency for Toxic Substances and Disease Registry.

"(e) COORDINATION WITH EXISTING PILOT PROJECTS THROUGH CDC.—The Secretary shall integrate the enactment of this title with all environmental health tracking pilot projects funded prior to the date of enactment of this title.".

By Mr. BENNETT (for himself and Mr. HATCH):

S. 2954. A bill to authorize the exchange of certain land in Grand and Uintah Counties, Utah, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. BENNETT. Mr. President, I am proud to introduce the Utah Recreational Land Exchange Act of 2004, together with my colleague Senator Hatch. This legislation will ensure the protection of critical lands along the Colorado River corridor in southeastern Utah and will help provide important funding for Utah's school children. In Utah we treasure the education of our children. A key component of our education system is the 3.5 million acres of school trust lands scattered throughout the State. These lands are dedicated to the support of public education. Revenue from Utah school trust lands, whether from grazing, forestry, surface leasing or mineral development, is placed in the State School Fund. This fund is a permanent income producing endowment created by Congress upon statehood to fund public education. Unfortunately, the majority of these lands are trapped within federal ownership patterns that make it impossible for responsible development. It is critical to both the state of Utah and the Bureau of Land Management (BLM) that we consolidate their respective lands to ensure that both public agencies are permitted to fulfill their mandates.

The legislation we are introducing today is yet another chapter in our State's long history of consolidating these State lands for the financial well being of our education system. These efforts serve a dual purpose as they help the Federal land management agencies to consolidate federal lands in environmentally sensitive areas that can then be reasonably managed. We see this exchange as a win-win solution for the State of Utah and its school children, as well as the Department of the Interior as the caretaker of our public lands.

Beginning in 1998 Congress passed the first major Utah school trust land exchange which consolidated hundreds of thousands of acres. Again in 2000, Congress enacted an exchange consolidating another 100,000 acres. I was proud to be instrumental in those efforts, and the bill we are introducing today is yet another step in the long journey toward giving the school children the deal they were promised in 1896 when Utah was admitted to the Union.

The School Trust of Utah currently owns some of the most spectacular lands in America, located along the Colorado River in southeastern Utah. This legislation will ensure that places like Westwater Canyon of the Colorado River, the world famous Kokopelli and Slickrock biking trails, some of the largest natural rock arches in the United States, wilderness study areas, and viewsheds for Arches National Park will be traded into Federal ownership and for the benefit of future generations. At the same time, the school children of Utah will receive mineral and development lands that are not environmentally sensitive, in locations where responsible development makes sense. This will be an equal value exchange, with approximately 40,000 acres exchanged on either side, with both taxpayers and the school children of Utah receiving a fair deal. Moreover, the legislation establishes a valuation process that is transparent to the public, yet will ensure the exchange process occurs in a timely manner.

This legislation represents a truly collaborative process. We have convened all of the players to give us input into this legislation: local government, the State, the recreation community, the environmental community and other interested parties. At the same time we are working closely with the Department of Interior. We introduce this bill at this late date in this Congress to begin the legislative portion of our efforts. The state has been working with all of these groups over the past year at a grass-roots level to address concerns. As with all legislation this will be a perfecting process and introduction today marks the beginning of our efforts to work with the appropriate committees and the Department of Interior to craft a product over the next few months that will be ready to move at the beginning of the next Congress.

I urge all of my colleagues to support our efforts to fund the education of our children in Utah and to protect some of this Nation's truly great lands. I urge support of the Utah Recreational Land Exchange Act of 2004.

By Mr. BOND:

S. 2956. A bill to amend title 10, United States Code, to direct the Secretary of Defense to carry out a program to provide a support system for members of the Armed Forces who incur severe disabilities; to the Committee on Armed Services.

Mr. BOND. Mr. President, I rise today to introduce a bill of great importance to our most severely injured troops who are carrying the battle to the terrorists. This legislation will assist the Department of Defense by granting reprogramming authority to the Army to transfer funds to the Army's Disabled Soldier Support System (DS3) and by expanding the program to cover all the Armed Services.

The Disabled Soldier Support System this legislation will support was established just this year by the former Vice Chief of Staff of the Army, General George W. Casey, who realized after visiting severely wounded soldiers at Walter Reed Army Hospital that more support was needed to help these soldiers make the transition from military to civilian life.

The program the Army currently has in place is budgeted for $ one million and has a staff of less than 10 people. It is reported to have helped over 200 soldiers but we have a much larger group of seriously wounded troops that need our help. Of the nearly 7,000 troops who have been wounded approximately 57 percent were so severely injured that they will not be able to return to active duty.

The Administration is doing all it can but we know that the bureaucracy is sometimes slow to respond and react rapidly to changing conditions. The Army is not the only Service Component with a growing patient load. That is why this legislation will expand this worthy program to all branches of the Armed Services.

The patriots who are wounded while serving in support of our defense deserve the best care and assistance this Nation can deliver. That is why I am honored to submit this legislation today. It is my hope that my colleagues will put their full support behind this legislation and find a way to get it passed when we return later this year.

I thank my co-sponsors Senator's KENNEDY, BURNS and NELSON of Florida along with Congressman "DUTCH" RUPPERSBERGER who introduced this legislation in the House in early September and Steve Robinson, National Gulf War Resource Center, who referred Congressman RUPPERSBERGER to my office.

While the current debate continues regarding U.S. foreign policy there is no debate about doing all that is necessary to help our troops prevail on the battlefield—or to help those who are severely wounded on the field of battle to recover and make the transition from military to civilian life.

As the Chairman of VA-HUD I continue to work with my distinguished colleague Senator MIKULSKI to make the transition from the military support system to the VA support system as seamless as possible. This legislation will help improve the support system in the Department of Defense and make the work we are doing with the VA that much easier.

This legislation is vital for the welfare of our troops, their loved ones and families, and for the Department of Defense and the Department of Veterans Affairs. That is why I hope my colleagues will support this bill and work to get it passed before years end.

By Mr. KYL (for himself, Mr. SMITH, and Mr. DOMENICI):

S. 2957. A bill to encourage the promotion of democracy, free, fair, and transparent elections, and respect for human rights and the rule of law in Ukraine, and for other purposes; to the Committee on Foreign Relations.

Mr. KYL. Mr. President, I rise today to introduce legislation, the Ukraine Democracy and Fair Elections Act of 2004, designed to promote free, fair and transparent elections in Ukraine. Like the United States, Ukraine is currently in the midst of a presidential election campaign. There is, however, one glaring contrast—all indications are that the campaign in Ukraine is not fair, not free and not transparent.

The U.S. government has sent a number of high level officials to Ukraine to tell retiring President Kuchma and Ukraine's Prime Minister Viktor Yanukovych—who is Kuchma's endorsed presidential candidate—that free and fair elections are essential to Ukraine's standing with the United States. Similarly, European governments have called upon Ukraine to hold free and fair elections. But, unfortunately, it appears that abuses of Ukraine's campaign laws are rapidly escalating.

Ukrainian government officials have continued, without pause, an aggressive offensive against their opposition. Together with oligarch beneficiaries of the Kuchma-Yanukovych government they have denied the opposition access to national media, they have intimidated campaign workers and opposition supporters at work and at home, they have tried to prohibit opposition assemblies, and have stopped buses on the way to opposition rallies. They make a mockery of Ukrainian laws by using government resources to promote the Yanukovych candidacy, and they are aggressively manipulating Ukrainian election laws to ensure that they control the election commission at each of the 40,000 polling place in the country.

What is at stake here is the future of democracy and perhaps independence in Ukraine as well as significant United States national interests in a region that we helped liberate from Communist tyranny just 15 years ago.

The legislation that I am introducing would prevent senior government officials, who are personally involved in suppressing free and fair elections in Ukraine, from obtaining visas to the United States, and would seize the assets of these corrupt officials, unless the U.S. President certifies the elections as free and fair. The objective is to target directly those individuals responsible for the corruption, not the Ukrainian people as a whole. I would note that similar legislation has been introduced in the House of Representatives by Representative DANA ROHRABACHER of California.

I hope this will send a clear message that we stand with the free and democratic people of Ukraine, but not with those who would pervert democracy.

By Mr. GRAHAM of Florida:

S. 2960. A bill to amend title 23, United States Code, to establish a traffic incident management program; to the Committee on Environment and Public Works.

Mr. GRAHAM of Florida. Mr. President, I rise today to introduce legislation that calls for a small Federal commitment that would make a huge impact on the daily lives of all Americans. This legislation, the Rush Hour Congestion Relief Act, authorizes $1 billion per year over the next 6 years, which can make a major dent in the amount of time we sit in traffic everyday.

In February, the Senate approved a six-year highway reauthorization bill, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, SAFETEA, which authorized $318 billion through 2009 for the Federal highway and transit program. I voted against the bill for many reasons, but the main reason I could not support the legislation is that the bill did not meet the funding levels identified by the U.S. Department of Transportation's needs assessment. The USDOT identified a $375 billion Federal commitment as necessary to maintain the current condition and level of congestion on our highways. Just maintain, not improve.

Additionally, SAFETEA did not contain any specific programs to target congestion relief. SAFETEA targets funding to construction to add highway capacity. Although adding capacity to our highway and transit system is very important, we will never build our way out of congestion. We must also look at ways to operate and manage the current system and use resources more efficiently. We must focus on managing the demand on our road network, especially in larger urban areas, through innovative approaches and use of new technology. A combination of operational improvements, including freeway ramp metering, traffic signal coordination, traveler information and incident management can accomplish major improvements in daily travel with a small price tag.

Now it looks as though a 6-year highway bill reauthorization will not be completed this year and the 109th Congress will have to start the process from scratch. This is a golden opportunity for the Senate to review the SAFETEA bill and support positive changes to target more funds to congestion relief.

Mr. President, according to the Texas Transportation Institute, TTI, at Texas A&M University, which conducts an annual Urban Mobility Report to study the state of America's urban transportation networks, gridlock cost Americans $63 billion in 2002 in wasted fuel and lost time. This is a significant loss that burdens families, individuals, and businesses. More than 2 in 5 adults report that congestion is a problem in their community. This number is even higher in major cities.

Such concern is not surprising, considering that the average resident of many cities in my state experience some of the worst congestion. Every year a typical resident of Miami and Orlando will lose over 51 hours stuck in traffic. Lost time and wasted fuel will cost each of these Floridians over $900. In 1982, only 11 hours were lost. This is not only a Florida problem. Nor is it only a problem here in Washington DC, or in New York City or Chicago. Even in small urban areas, delay during peak traveling hours grew 200 percent in the past 20 years. Across the country, residents of smaller cities like Pensacola, Charleston, and Colorado Springs could save hundreds of dollars by making our current road system more efficient.

The Rush Hour Congestion Relief Act of 2004 would establish a Federal incident management program to provide funding to states for regional projects to mitigate the effects of traffic congestion on our roads.

Incident management programs would save taxpayers money by allowing our roadways to operate at a more optimal level. When a stalled vehicle or traffic accident blocks a lane of traffic, our roads are not operating efficiently. The Federal Highway Administration estimates that every blocked lane creates an average of four minutes of traffic delay. Furthermore, up to one-third of traffic accidents are secondary to earlier incidents. What this means is that incidents that are not cleared quickly run a higher risk of causing more accidents and increasing delay even further. Results find that 55 percent of congestion in urban areas and 100 percent of congestion in rural areas are caused by incidents such as traffic accidents and stalled vehicles.

Incident management programs vary across the country, but include the cooperative effort of multiple agencies, such as city and county governments, regional planning councils, local police and firefighters, HAZMAT teams and emergency medical services to detect and verify incidents, manage the scene, and clear the obstruction in a safe manner. In many cases the incident management patrols are the first to arrive on the scene of an accident, and they coordinate Emergency Medical Services, tow trucks, law enforcement and other service providers. Additionally, they are able to funnel information to a central traffic command, which can provide important real-time information to the traveling public.

Some incident management programs offer needed assistance to travelers by providing services such as a free gallon of gas, changing a flat tire, a cell phone call, water for an overheated radiator, and charging a dead battery. In Florida, one way that we have addressed incident management is through a program called Road Rangers. Road Ranger trucks continuously rove the expressways looking for stranded motorists, debris, traffic accidents or other incidents. In 2002, this program utilized 83 vehicles and performed 279,525 service assists.

This bill would authorize $1 billion per year through 2010, from the Highway Trust Fund to create and improve programs like Road Rangers. The funds would be distributed to the states based on their amount of urbanized areas with greater than 300,000 people. The state would then be required to allocate the funds to those targeted urban areas. There are roughly 100 urbanized areas with a population of 300,000 or higher in 42 states. Urban areas would be required to develop an incident management plan before receiving direct funding for their program. This way, all of the stakeholders in a region will have an opportunity to participate in the design and operation of the incident management program. The only way it can work is with regional cooperation. The Rush Hour Congestion Relief Act of 2004 would fund initiatives like the current pilot program in Orlando to provide radio and telecommunications equipment to enhance coordination between Florida Highway Patrol and Road Rangers. It will also provide needed funding for incident management training. In 2001, 59 percent of all police casualties occurred during a response to a traffic incident. Funding under this bill would give first responders the tools and training necessary to reduce that risk.

I am proud to introduce this bill today because incident management works. According to the TTI, incident management has already reduced delay on our roads by 170 million hours. Had we employed these programs to all of our congested highways, American would have spent 239 million less hours on the road. To put this into perspective, it would take the construction of over 200 miles of a six-lane highway to achieve the same level of time savings.

Not only are these programs effective, they save far more than they cost. In States like Minnesota, annual savings from incident management was estimated at $1.4 million, while program operations amounted to only $600,000. In Denver, their Courtesy Patrol program has been estimated to save 10.5 to 16.9 times more than it cost. Although adding capacity to our highway and transit network is important, it is very expensive and takes many years to complete. This approach provides a real solution, which will make a huge impact on congestion in a short amount of time.

Finally, the Rush Hour congestion Relief Act is supported by our nation's lands in America, located along the Colorado River in southeastern Utah. This legislation will ensure that places like Westwater Canyon of the Colorado River, the world famous Kokopelli and Slickrock biking trails, some of the largest natural rock arches in the United States, wilderness study areas, and viewsheds for Arches National Park will be traded into Federal ownership and for the benefit of future generations. At the same time, the school children of Utah will receive mineral and development lands that are not environmentally sensitive, in locations where responsible development makes sense. This will be an equal value exchange, with approximately 40,000 acres exchanged on either side, with both taxpayers and the school children of Utah receiving a fair deal. Moreover, the legislation establishes a valuation process that is transparent to the public, yet will ensure the exchange process occurs in a timely manner.

This legislation represents a truly collaborative process. We have convened all of the players to give us input into this legislation: local government, the State, the recreation community, the environmental community and other interested parties. At the same time we are working closely with the Department of Interior. We introduce this bill at this late date in this Congress to begin the legislative portion of our efforts. The state has been working with all of these groups over the past year at a grass-roots level to address concerns. As with all legislation this will be a perfecting process and introduction today marks the beginning of our efforts to work with the appropriate committees and the Department of Interior to craft a product over the next few months that will be ready to move at the beginning of the next Congress.

I urge all of my colleagues to support our efforts to fund the education of our children in Utah and to protect some of this Nation's truly great lands. I urge support of the Utah Recreational Land Exchange Act of 2004.

By Mr. BOND:

S. 2956. A bill to amend title 10, United States Code, to direct the Secretary of Defense to carry out a program to provide a support system for members of the Armed Forces who incur severe disabilities; to the Committee on Armed Services.

Mr. BOND. Mr. President, I rise today to introduce a bill of great importance to our most severely injured troops who are carrying the battle to the terrorists. This legislation will assist the Department of Defense by granting reprogramming authority to the Army to transfer funds to the Army's Disabled Soldier Support System (DS3) and by expanding the program to cover all the Armed Services.

The Disabled Soldier Support System this legislation will support was established just this year by the former Vice Chief of Staff of the Army, General George W. Casey, who realized after visiting severely wounded soldiers at Walter Reed Army Hospital that more support was needed to help these soldiers make the transition from military to civilian life.

The program the Army currently has in place is budgeted for $ one million and has a staff of less than 10 people. It is reported to have helped over 200 soldiers but we have a much larger group of seriously wounded troops that need our help. Of the nearly 7,000 troops who have been wounded approximately 57 percent were so severely injured that they will not be able to return to active duty.

The Administration is doing all it can but we know that the bureaucracy is sometimes slow to respond and react rapidly to changing conditions. The Army is not the only Service Component with a growing patient load. That is why this legislation will expand this worthy program to all branches of the Armed Services.

The patriots who are wounded while serving in support of our defense deserve the best care and assistance this Nation can deliver. That is why I am honored to submit this legislation today. It is my hope that my colleagues will put their full support behind this legislation and find a way to get it passed when we return later this year.

I thank my co-sponsors Senator's KENNEDY, BURNS and NELSON of Florida along with Congressman "DUTCH" RUPPERSBERGER who introduced this legislation in the House in early September and Steve Robinson, National Gulf War Resource Center, who referred Congressman RUPPERSBERGER to my office.

While the current debate continues regarding U.S. foreign policy there is no debate about doing all that is necessary to help our troops prevail on the battlefield—or to help those who are severely wounded on the field of battle to recover and make the transition from military to civilian life.

As the Chairman of VA–HUD I continue to work with my distinguished colleague Senator MIKULSKI to make the transition from the military support system to the VA support system as seamless as possible. This legislation will help improve the support system in the Department of Defense and make the work we are doing with the VA that much easier.

This legislation is vital for the welfare of our troops, their loved ones and families, and for the Department of Defense and the Department of Veterans Affairs. That is why I hope my colleagues will support this bill and work to get it passed before years end.

By Mr. KYL (for himself, Mr. SMITH, and Mr. DOMENICI):

S. 2957. A bill to encourage the promotion of democracy, free, fair, and transparent elections, and respect for human rights and the rule of law in Ukraine, and for other purposes; to the Committee on Foreign Relations.

Mr. KYL. Mr. President, I rise today to introduce legislation, the Ukraine Democracy and Fair Elections Act of 2004, designed to promote free, fair and transparent elections in Ukraine. Like the United States, Ukraine is currently in the midst of a presidential election campaign. There is, however, one glaring contrast—all indications are that the campaign in Ukraine is not fair, not free and not transparent.

The U.S. government has sent a number of high level officials to Ukraine to tell retiring President Kuchma and Ukraine's Prime Minister Viktor Yanukovych—who is Kuchma's endorsed presidential candidate—that free and fair elections are essential to Ukraine's standing with the United States. Similarly, European governments have called upon Ukraine to hold free and fair elections. But, unfortunately, it appears that abuses of Ukraine's campaign laws are rapidly escalating.

Ukrainian government officials have continued, without pause, an aggressive offensive against their opposition. Together with oligarch beneficiaries of the Kuchma-Yanukovych government they have denied the opposition access to national media, they have intimidated campaign workers and opposition supporters at work and at home, they have tried to prohibit opposition assemblies, and have stopped buses on the way to opposition rallies. They make a mockery of Ukrainian laws by using government resources to promote the Yanukovych candidacy, and they are aggressively manipulating Ukrainian election laws to ensure that they control the election commission at each of the 40,000 polling place in the country.

What is at stake here is the future of democracy and perhaps independence in Ukraine as well as significant United States national interests in a region that we helped liberate from Communist tyranny just 15 years ago.

The legislation that I am introducing would prevent senior government officials, who are personally involved in suppressing free and fair elections in Ukraine, from obtaining visas to the United States, and would seize the assets of these corrupt officials, unless the U.S. President certifies the elections as free and fair. The objective is to target directly those individuals responsible for the corruption, not the Ukrainian people as a whole. I would note that similar legislation has been introduced in the House of Representatives by Representative DANA ROHRABACHER of California.

I hope this will send a clear message that we stand with the free and democratic people of Ukraine, but not with those who would pervert democracy.

By Mr. GRAHAM of Florida:

S. 2960. A bill to amend title 23, United States Code, to establish a traffic incident management program; to the Committee on Environment and Public Works.

Mr. GRAHAM of Florida. Mr. President, I rise today to introduce legislation that calls for a small Federal commitment that would make a huge impact on the daily lives of all Americans. This legislation, the Rush Hour Congestion Relief Act, authorizes $1 billion per year over the next 6 years, which can make a major dent in the amount of time we sit in traffic everyday.

In February, the Senate approved a six-year highway reauthorization bill, the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2004, SAFETEA, which authorized $318 billion through 2009 for the Federal highway and transit program. I voted against the bill for many reasons, but the main reason I could not support the legislation is that the bill did not meet the funding levels identified by the U.S. Department of Transportation's needs assessment. The USDOT identified a $375 billion Federal commitment as necessary to maintain the current condition and level of congestion on our highways. Just maintain, not improve.

Additionally, SAFETEA did not contain any specific programs to target congestion relief. SAFETEA targets funding to construction to add highway capacity. Although adding capacity to our highway and transit system is very important, we will never build our way out of congestion. We must also look at ways to operate and manage the current system and use resources more efficiently. We must focus on managing the demand on our road network, especially in larger urban areas, through innovative approaches and use of new technology. A combination of operational improvements, including freeway ramp metering, traffic signal coordination, traveler information and incident management can accomplish major improvements in daily travel with a small price tag.

Now it looks as though a 6-year highway bill reauthorization will not be completed this year and the 109th Congress will have to start the process from scratch. This is a golden opportunity for the Senate to review the SAFETEA bill and support positive changes to target more funds to congestion relief.

Mr. President, according to the Texas Transportation Institute, TTI, at Texas A&M University, which conducts an annual Urban Mobility Report to study the state of America's urban transportation networks, gridlock cost Americans $63 billion in 2002 in wasted fuel and lost time. This is a significant loss that burdens families, individuals, and businesses. More than 2 in 5 adults report that congestion is a problem in their community. This number is even higher in major cities.

Such concern is not surprising, considering that the average resident of many cities in my state experience some of the worst congestion. Every year a typical resident of Miami and Orlando will lose over 51 hours stuck in traffic. Lost time and wasted fuel will cost each of these Floridians over $900. In 1982, only 11 hours were lost. This is not only a Florida problem. Nor is it only a problem here in Washington DC, or in New York City or Chicago. Even in small urban areas, delay during peak traveling hours grew 200 percent in the past 20 years. Across the country, residents of smaller cities like Pensacola, Charleston, and Colorado Springs could save hundreds of dollars by making our current road system more efficient.

The Rush Hour Congestion Relief Act of 2004 would establish a Federal incident management program to provide funding to states for regional projects to mitigate the effects of traffic congestion on our roads.

Incident management programs would save taxpayers money by allowing our roadways to operate at a more optimal level. When a stalled vehicle or traffic accident blocks a lane of traffic, our roads are not operating efficiently. The Federal Highway Administration estimates that every blocked lane creates an average of four minutes of traffic delay. Furthermore, up to one-third of traffic accidents are secondary to earlier incidents. What this means is that incidents that are not cleared quickly run a higher risk of causing more accidents and increasing delay even further. Results find that 55 percent of congestion in urban areas and 100 percent of congestion in rural areas are caused by incidents such as traffic accidents and stalled vehicles.

Incident management programs vary across the country, but include the cooperative effort of multiple agencies, such as city and county governments, regional planning councils, local police and firefighters, HAZMAT teams and emergency medical services to detect and verify incidents, manage the scene, and clear the obstruction in a safe manner. In many cases the incident management patrols are the first to arrive on the scene of an accident, and they coordinate Emergency Medical Services, tow trucks, law enforcement and other service providers. Additionally, they are able to funnel information to a central traffic command, which can provide important real-time information to the traveling public.

Some incident management programs offer needed assistance to travelers by providing services such as a free gallon of gas, changing a flat tire, a cell phone call, water for an overheated radiator, and charging a dead battery. In Florida, one way that we have addressed incident management is through a program called Road Rangers. Road Ranger trucks continuously rove the expressways looking for stranded motorists, debris, traffic accidents or other incidents. In 2002, this program utilized 83 vehicles and performed 279,525 service assists.

This bill would authorize $1 billion per year through 2010, from the Highway Trust Fund to create and improve programs like Road Rangers. The funds would be distributed to the states based on their amount of urbanized areas with greater than 300,000 people. The state would then be required to allocate the funds to those targeted urban areas. There are roughly 100 urbanized areas with a population of 300,000 or higher in 42 states. Urban areas would be required to develop an incident management plan before receiving direct funding for their program. This way, all of the stakeholders in a region will have an opportunity to participate in the design and operation of the incident management program. The only way it can work is with regional cooperation. The Rush Hour Congestion Relief Act of 2004 would fund initiatives like the current pilot program in Orlando to provide radio and telecommunications equipment to enhance coordination between Florida Highway Patrol and Road Rangers. It will also provide needed funding for incident management training. In 2001, 59 percent of all police casualties occurred during a response to a traffic incident. Funding under this bill would give first responders the tools and training necessary to reduce that risk.

I am proud to introduce this bill today because incident management works. According to the TTI, incident management has already reduced delay on our roads by 170 million hours. Had we employed these programs to all of our congested highways, American would have spent 239 million less hours on the road. To put this into perspective, it would take the construction of over 200 miles of a six-lane highway to achieve the same level of time savings.

Not only are these programs effective, they save far more than they cost. In States like Minnesota, annual savings from incident management was estimated at $1.4 million, while program operations amounted to only $600,000. In Denver, their Courtesy Patrol program has been estimated to save 10.5 to 16.9 times more than it cost. Although adding capacity to our highway and transit network is important, it is very expensive and takes many years to complete. This approach provides a real solution, which will make a huge impact on congestion in a short amount of time.

Finally, the Rush Hour congestion Relief Act is supported by our nation's local governments, Metropolitan Planning Organizations, and transit providers, who are on the front lines of the daily congestion battle. The act has been endorsed by the National Association of Counties, National League of Cities, National Association of Regional Councils, Association for Commuter Transportation, and the Surface Transportation Policy Project.

I urge my colleagues to join us in this effort to ensure safe and open roads.

I ask unanimous consent, that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2960

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Rush Hour Congestion Relief Act of 2004".

SEC. 2. TRAFFIC INCIDENT MANAGEMENT PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code, is amended by inserting after section 138 the following:

"§ 139. Traffic incident management program

"(a) IN GENERAL.—The Secretary shall establish and implement a traffic incident management program in accordance with this section to assist States and localities in—

"(1) regional traffic incident management program planning; and

"(2) carrying out projects to mitigate the effects of traffic delays resulting from accidents, breakdowns, and other non-recurring incidents on highways.

"(b) USE OF FUNDS.—Funds apportioned to a State under this section may be used for—

"(1) regional collaboration and coordination activities that lead to regional traffic incident management policies, programs, plans, procedures, and agreements;

"(2) purchase or lease of telecommunications equipment for first responders as part of the development of a regional traffic incident management program;

"(3) purchase or lease of equipment to support the clearance of traffic incidents;

"(4) payments to contractors for towing and recovery services as part of a regional traffic incident management program;

"(5) rental of vehicle storage or staging areas immediately adjacent to roadways as part of a regional traffic incident management program;

"(6) traffic service patrols as part of a regional traffic incident management program;

"(7) enhanced hazardous materials incident response;

"(8) traffic management systems in support of traffic incident management;

"(9) traffic incident management training;

"(10) crash investigation equipment;

"(11) other activities under a regional traffic incident management plan; and

"(12) statewide incident reporting systems.

"(c) REGIONAL TRAFFIC INCIDENT MANAGEMENT PLAN.—

"(1) PLAN.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), funds apportioned under this section may not be obligated for an urbanized area with a population greater than 300,000 until such time as a regional traffic incident management plan is developed for the urbanized area.

"(B) FUNDS FOR PLAN.—An urbanized area described in subparagraph (A) may use funds apportioned under this section to develop the regional traffic incident management plan in accordance with this subsection.

"(2) PLAN DEVELOPMENT.—

"(A) COLLABORATION.—Any urbanized area described in paragraph (1) that receives funds apportioned under this section shall engage in regional collaboration and coordination activities to develop the regional traffic incident management plan required for the urbanized area under that paragraph.

"(B) PLAN ELEMENTS.—The regional traffic incident management plan for an urbanized area under paragraph (1) shall include—

"(i) a strategy, adopted by transportation, public safety, and appropriate private sector participants, for funding, implementing, managing, operating, and evaluating the traffic incident management program initiatives and activities for the urbanized area in a manner that ensures regional coordination of those initiatives and activities;

"(ii) an estimate of the impact of the plan on traffic delays; and

"(iii) a description of the means by which traffic incident management information will be shared among operators, service providers, public safety officials, and the general public.

"(d) FUNDING.—

"(1) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $1,000,000,000 for each of fiscal years 2005 through 2010.

"(2) APPORTIONMENT AMONG STATES.—Funds made available under paragraph (1) shall be apportioned among the States in the proportion that—

"(A) the aggregate population of the State, or part of the State, in urbanized areas with a population greater than 300,000; bears to

"(B) the total population of all States, or parts of all States, in those urbanized areas.

"(3) DISTRIBUTION WITHIN STATES.—Funds apportioned to a State under paragraph (2) shall be made available to carry out projects and activities under regional traffic incident management plans in each urbanized area in the State with a population greater than 300,000 in the proportion that—

"(A) the population of the urbanized area, or part of the urbanized area, in the State; bears to

"(B) the total population of all urbanized areas in the State.

"(e) DETERMINATION OF POPULATIONS.—For the purpose of determining populations of areas under this section, the Secretary shall use information from the most current decennial census, as supplied by the Secretary of Commerce.".

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by inserting after the item relating to section 138 the following:

"139. Traffic incident management program.".

By Mr. LEAHY (for himself, Mr. JEFFORDS, and Mr. DODD):

S. 2963. A bill to amend the Communications Act of 1934 to clarify and reaffirm State and local authority to regulate the placement, construction, and modification of broadcast transmission facilities, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. LEAHY (for himself, Mr. JEFFORDS, and Mr. DODD):

2964. A bill to amend the Communications Act of 1934 to clarify and reaffirm State and local authority to regulate the placement, construction, and modification of personal wireless services facilities, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. LEAHY. Mr. President, as in years past, I am offering today two pieces of legislation that would close a loophole in the 1996 Telecommunications Act, and as in years past I am pleased that I am joined by Senators JEFFORDS and DODD.

The catalog of complaints about the 1996 act continues to grow, and as it becomes more apparent that this flawed statute is in need of repair, I grow ever more proud that I was one of five Senators to have voted against that law.

In the coming Congress, we will be revisiting the 1996 Act. While we should rightly examine the various provisions related to telephone competition, broadband, and subscriber television rates, there are other important issues that we need to address.

The 1996 Telecommunications Act contained a provision that allowed the Federal Communications Commission to preempt the decisions of local authorities as to the placement of cell phone towers. In 1997, the Federal Communications Commission seized on the legislative loophole, proposing an expansive new rule that prevented State and local zoning laws from regulating the placement of cellular and broadcast towers based on environmental considerations, aviation safety, or other locally determined matters. Local and State governments were no longer empowered to shape the appearance of their communities.

I fought this proposed rule and was joined by many Vermonters, including former-Governor Dean, the Vermont Environmental Board, mayors, zoning officials, and numerous others. We took our case to the Supreme Court and filed an amicus brief, arguing that the preemption of that local power to regulate land use was a clear violation of the U.S. Constitution. It is unfortunate that the Court would not hear that case. It is time to give that control back to the local governments by enacting my legislation.

The two bills that we are reintroducing today will not tip the scales, but they will even them out a bit. They will allow local officials to use State and local regulations to work with the Federal Government in order to develop the best solutions for the placement of cell phone and broadcast towers.

Communities across the country understand the growing demand for cellular services will result in new towers, and they welcome the improvement in service that this increased infrastructure will bring. However, they also want to make sure that their towns do not become little more than pincushions for new cellular towers. These goals are not mutually exclusive.

I thank again Senator JEFFORDS and Senator DODD, and I urge my colleagues to join us in supporting this legislation. I ask unanimous consent that the text of these two bills be printed in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 2963

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Local Control of Broadcast Towers Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress makes the following findings:

(1) The placement, construction, and modification of broadcast transmission facilities near residential communities and facilities such as schools can greatly reduce the value of residential properties, destroy the views from properties, produce radio frequency interference, raise concerns about potential long-term health effects of such facilities, and reduce substantially the desire to live in the areas of such facilities.

(2) States and local governments have traditionally regulated development and should be able to exercise control over the placement, construction, and modification of broadcast transmission facilities through the use of zoning and other land use regulations relating to the protection of the environment, public health and safety, and the general welfare of the community and the public.

(3) The Federal Communications Commission establishes policies to govern interstate and international communications by television, radio, wire, satellite, and cable. The Commission ensures compliance of such activities with applicable Federal laws, including the National Environmental Policy Act of 1969 and the National Historic Preservation Act, in its decision-making on such activities.

(4) The Commission defers to State and local authorities which regulate the placement, construction, and modification of broadcast transmission facilities through the use of zoning, construction and building, and environmental and safety regulations in order to protect the environment and the health, safety, and general welfare of communities and the public.

(5) On August 19, 1997, the Commission issued a proposed rule, MM Docket No. 97-182, which would preempt the application of most State and local zoning, environmental, construction and building, and other regulations affecting the placement, construction, and modification of broadcast transmission facilities.

(6) The telecommunications industry and its experts should be expected to have access to the best and most recent technical information and should therefore be held to the highest standards in terms of their representations, assertions, and promises to governmental authorities.

(b) PURPOSE.—The purpose of this Act is to confirm that State and local governments are the appropriate entities—

(1) to regulate the placement, construction, and modification of broadcast transmission facilities consistent with State and local zoning, construction and building, environmental, and land use regulations;

(2) to regulate the placement, construction, and modification of broadcast transmission facilities so that their placement, construction, or modification will not interfere with the safe and efficient use of public airspace or otherwise compromise or endanger the health, safety, and general welfare of the public; and

(3) to hold accountable applicants for permits for the placement, construction, or modification of broadcast transmission facilities, and providers of services using such facilities, for the truthfulness and accuracy of representations and statements placed in the record of hearings for such permits, licenses, or approvals.

SEC. 3. PROHIBITION ON ADOPTION OF RULE REGARDING PREEMPTION OF STATE AND LOCAL AUTHORITY OVER BROADCAST TRANSMISSION FACILITIES.

Notwithstanding any other provision of law, the Federal Communications Commission shall not adopt as a final rule or otherwise directly or indirectly implement any portion of the proposed rule set forth in "Preemption of State and Local Zoning and Land Use Restrictions on Siting, Placement and Construction of Broadcast Station Transmission Facilities", MM Docket No. 97-182, released August 19, 1997.

SEC. 4. AUTHORITY OVER PLACEMENT, CONSTRUCTION, AND MODIFICATION OF BROADCAST TRANSMISSION FACILITIES.

Part I of title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) is amended by adding at the end the following:

"SEC. 340. STATE AND LOCAL AUTHORITY OVER PLACEMENT, CONSTRUCTION, AND MODIFICATION OF BROADCAST TRANSMISSION FACILITIES.

"(a) AUTHORITY TO REQUIRE LEAST INTRUSIVE FACILITIES.—

"(1) IN GENERAL.—A State or local government may deny an application to place, construct, or modify broadcast transmission facilities on the basis that alternative technologies, delivery systems, or structures are capable of delivering broadcast signals comparable to that proposed to be delivered by such facilities in a manner that is less intrusive to the community concerned than such facilities.

"(2) CONSIDERATIONS.—In determining under paragraph (1) the intrusiveness of technologies, delivery systems, or structures for the transmission of broadcast signals, a State or local government may consider the aesthetics of such technologies, systems, or structures, the environmental impact of such technologies, systems, or structures, and the radio frequency interference or radiation emitted by such technologies, systems, or structures.

"(3) BURDEN OF PROOF.—In any hearing for purposes of the exercise of the authority in paragraph (1), the burden shall be on the applicant.

"(b) RADIO INTERFERENCE.—A State or local government may regulate the location, height, or modification of broadcast transmission facilities in order to address the effects of radio frequency interference caused by such facilities on local communities and the public.

"(c) AUTHORITY TO REQUIRE STUDIES AND DOCUMENTATION.—No provision of this Act may be interpreted to prohibit a State or local government from—

"(1) requiring a person seeking authority to place, construct, or modify broadcast transmission facilities to produce—

"(A) environmental, biological, and health studies, engineering reports, or other documentation of the compliance of such facilities with radio frequency exposure limits, radio frequency interference impacts, and compliance with applicable laws, rules, and regulations governing the effects of such facilities on the environment, public health and safety, and the general welfare of the community and the public; and

"(B) documentation of the compliance of such facilities with applicable Federal, State, and local aviation safety standards or aviation obstruction standards regarding objects effecting navigable airspace; or

"(2) refusing to grant authority to such person to place, construct, or modify such facilities within the jurisdiction of such government if such person fails to produce studies, reports, or documentation required under paragraph (1).

"(d) CONSTRUCTION.—Nothing in this section may be construed to prohibit or otherwise limit the authority of a State or local government to ensure compliance with or otherwise enforce any statements, assertions, or representations filed or submitted by or on behalf of an applicant with the State or local government for authority to place, construct, or modify broadcast transmission facilities within the jurisdiction of the State or local government.

"(e) BROADCAST TRANSMISSION FACILITY DEFINED.—In this section, the term 'broadcast transmission facility' means the equipment, or any portion thereof, with which a broadcaster transmits and receives the radiofrequency waves that carry the services of the broadcaster, regardless of whether the equipment is sited on one or more towers or other structures owned by a person or entity other than the broadcaster, and includes the location of such equipment.".

S. 2964

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Local Control of Cellular Towers Act".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) The placement, construction, and modification of personal wireless services facilities (also known as wireless facilities) near residential communities and facilities such as schools can greatly reduce the value of residential properties, destroy the views from properties, produce radio frequency interference, raise concerns about potential long-term health effects of such facilities, and reduce substantially the desire to live in the areas of such facilities.

(2) States and local governments have traditionally regulated development and should be able to exercise control over the placement, construction, and modification of wireless facilities through the use of zoning and other land use regulations relating to the protection of the environment, public health and safety, and the general welfare of the community and the public.

(3) The Federal Communications Commission establishes policies to govern interstate and international communications by television, radio, wire, satellite, and cable. The Commission ensures the compliance of such activities with a variety of Federal laws, including the National Environmental Policy

Act of 1969 and the National Historic Preservation Act, in its decision-making on such activities.

(4) Under section 332(c)(7)(A) of the Communications Act of 1934 (47 U.S.C. 332(c)(7)(A)), the Commission defers to State and local authorities that regulate the placement, construction, and modification of wireless facilities through the use of zoning and other land use regulations.

(5) Alternative technologies for the placement, construction, and modification of wireless facilities may meet the needs of a wireless services provider in a less intrusive manner than the technologies proposed by the wireless services provider, including the use of small towers that do not require blinking aircraft safety lights, break skylines, or protrude above tree canopies.

(6) It is in the interest of the Nation that the requirements of the Commission with respect to the application of State and local ordinances to the placement, construction and modification of wireless facilities (for example WT Docket No. 97-192, ET Docket No. 93-62, RM-8577, and FCC 97-303, 62 FR 47960) be modified so as—

(A) to permit State and local governments to exercise their zoning and other land use authorities to regulate the placement, construction, and modification of such facilities; and

(B) to place the burden of proof in civil actions, and in actions before the Commission and State and local authorities relating to the placement, construction, and modification of such facilities, on the person that seeks to place, construct, or modify such facilities.

(7) PCS-Over-Cable, PCS-Over-Fiber Optic, and satellite telecommunications systems, including Low-Earth Orbit satellites, offer a significant opportunity to provide so-called "911" emergency telephone service throughout much of the United States without unduly intruding into or effecting the environment, public health and safety, and the general welfare of the community and the public.

(8) The Federal Aviation Administration must rely upon State and local governments to regulate the placement, construction, and modification of telecommunications facilities near airports or high-volume air traffic areas such as corridors of airspace or commonly used flyways. The proposed rules of the Commission to preempt State and local zoning and other land-use regulaticns for the siting of such facilities will have a serious negative impact on aviation safety, airport capacity and investment, the efficient use of navigable airspace, public health and safety, and the general welfare of the community and the public.

(9) The telecommunications industry and its experts should be expected to have access to the best and most recent technical information and should therefore be held to the highest standards in terms of their representations, assertions, and promises to governmental authorities.

(b) PURPOSES.—The purposes of this Act are as follows:

(1) To repeal certain limitations on State and local authority regarding the placement, construction, and modification of personal wireless services facilities under section 332(c)(7) of the Communications Act of 1934 (47 U.S.C. 332(c)(7)).

(2) To permit State and local governments—

(A) to regulate the placement, construction, or modification of personal wireless services facilities with respect to their impacts on land use, including radio frequency interference and radio frequency radiation, in order to protect the environment, public health and safety, and the general welfare of the community and the public;

(B) to regulate the placement, construction, and modification of personal wireless services facilities so that they will not interfere with the safe and efficient use of public airspace or otherwise compromise or endanger the public health and safety and the general welfare of the community and the public; and

(C) to hold accountable applicants for permits for the placement, construction, or modification of personal wireless services facilities, and providers of services using such facilities, for the truthfulness and accuracy of representations and statements placed in the record of hearings for permits, licenses, or approvals for such facilities.

SEC. 3. STATE AND LOCAL AUTHORITY OVER PLACEMENT, CONSTRUCTION, AND MODIFICATION OF PERSONAL WIRELESS SERVICES FACILITIES.

(a) LIMITATIONS ON STATE AND LOCAL REGULATION OF FACILITIES.—Subparagraph (B) of section 332(c)(7) of the Communications Act of 1934 (47 U.S.C. 332(c)(7)) is amended—

(1) by striking clause (iv);

(2) by redesignating clause (v) as clause (iv); and

(3) in clause (iv), as so redesignated—

(A) in the first sentence, by striking "may, within 30 days" and all that follows through the end of the sentence and inserting "may commence an action in any court of competent jurisdiction. Such action shall be commenced within 30 days after such action or failure to act unless the State concerned has established a different period for the commencement of such action."; and

(B) by striking the third sentence and inserting the following: "In any such action in which a person seeking to place, construct, or modify a personal wireless services facility is a party, such person shall bear the burden of proof, regardless of who commences such action.".

(b) PROHIBITION ON ADOPTION OF RULE REGARDING RELIEF FROM STATE AND LOCAL REGULATION OF FACILITIES.—Notwithstanding any other provision of law, the Federal Communications Commission shall not adopt as a final rule or otherwise directly or indirectly implement any portion of the proposed rule set forth in "Procedures for Reviewing Requests for Relief From State and Local Regulation Pursuant to Section 332(c)(7)(B)(v) of the Communications Act of 1934", WT Docket No. 97-192, released August 25, 1997.

(c) AUTHORITY OVER PLACEMENT, CONSTRUCTION, AND MODIFICATION OF FACILITIES.—Such section 332(c)(7) is further amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following new subparagraph (C):

"(C) ADDITIONAL LIMITATIONS.—

"(i) AUTHORITY TO REQUIRE LEAST INTRUSIVE FACILITIES.—

"(I) IN GENERAL.—A State or local government may deny an application to place, construct, or modify personal wireless services facilities on the basis that alternative technologies, delivery systems, or structures are capable of delivering a personal wireless services signal comparable to that proposed to be delivered by such facilities in a manner that is less intrusive to the community concerned than such facilities.

"(II) CONSIDERATIONS.—In determining under subclause (I) the intrusiveness of technologies, delivery systems, or structures for personal wireless services facilities, a State or local government may consider the aesthetics of such technologies, systems, or structures, the environmental impact of such technologies, systems, or structures, and the radio frequency interference or radiation emitted by such technologies, systems, or structures.

"(III) BURDEN OF PROOF.—In any hearing for purposes of the exercise of the authority in subclause (I), the burden shall be on the applicant.

"(ii) RADIO INTERFERENCE.—A State or local government may regulate the location, height, or modification of personal wireless services facilities in order to address the effects of radio frequency interference caused by such facilities on local communities and the public.

"(iii) AUTHORITY TO REQUIRE STUDIES AND DOCUMENTATION.—No provision of this Act may be interpreted to prohibit a State or local government from—

"(I) requiring a person seeking authority to place, construct, or modify personal wireless services facilities to produce—

"(aa) environmental, biological, and health studies, engineering reports, or other documentation of the compliance of such facilities with radio frequency exposure limits, radio frequency interference impacts, and compliance with applicable laws, rules, and regulations governing the effects of such facilities on the environment, public health and safety, and the general welfare of the community and the public; and

"(bb) documentation of the compliance of such facilities with applicable Federal, State, and local aviation safety standards or aviation obstruction standards regarding objects effecting navigable airspace; or

"(II) refusing to grant authority to such person to place, construct, or modify such facilities within the jurisdiction of such government if such person fails to produce studies, reports, or documentation required under subclause (I).

"(iv) CONSTRUCTION.—Nothing in this subparagraph may be construed to prohibit or otherwise limit the authority of a State or local government to ensure compliance with or otherwise enforce any statements, assertions, or representations filed or submitted by or on behalf of an applicant with the State or local government for authority to place, construct, or modify personal wireless services facilities within the jurisdiction of the State or local government.".

By Mr. CRAIG (for himself, Mr. DASCHLE, and Mr. SCHUMER):

S. 2966. A bill to amend the Internal Revenue Code of 1986 to provide for a nonrefundable tax credit against income tax for individuals who purchase a residential safe storage device for the safe storage of firearms; to the Committee on Finance.

Mr. CRAIG. Mr. President, I rise to introduce the Child Safety and Home Protection Act of 2004, to provide a limited tax credit for individuals who purchase a gun safe to store firearms in their homes. Under this legislation, taxpayers would receive a 25 percent credit up to $250 for the cost of purchasing, shipping, and installing a gun safe.

We have seen passionate debates in the Senate on political issues involving guns, but there is no dispute about the importance of preventing firearms accidents and theft. We all want to make sure guns do not fall into the hands of people who would mishandle them and cause accidental harm, or who intend to abuse them for criminal purposes. Responsible gun owners share those concerns and take safety issues seriously.

The firearms industry has responded by offering a variety of devices designed to enhance secure storage and safe use of firearms. Gun safes have demonstrated their effectiveness in stopping unauthorized access to their contents, not only protecting valuable guns but also preventing their accidental or criminal misuse.

With more than 200 million privately-owned firearms in the United States, this Nation clearly has an interest in encouraging safe gun storage. The Child Safety and Home Protection Act of 2004 serves that goal by allowing individuals to keep a little bit of their own hard-earned dollars to make a key investment in gun safety through the purchase and installation of a gun safe.

I say to all my colleagues: If you believe, as I do, that the right to keep and bear arms carries with it a responsibility to use firearms safely and lawfully, I hope you will join me in supporting this important measure to promote secure gun storage.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2966

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Child Protection and Home Safety Act of 2004".

SEC. 2. CREDIT FOR RESIDENTIAL GUN SAFE PURCHASES.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by inserting after section 25B the following new section:

"SEC. 25C. PURCHASE OF RESIDENTIAL GUN SAFES.

"(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 25 percent of the amount paid or incurred by the taxpayer during such taxable year for the purchase of a qualified residential gun safe.

"(b) LIMITATIONS.—

"(1) MAXIMUM CREDIT.—The credit allowed under subsection (a) with respect to any qualified residential gun safe shall not exceed $250.

"(2) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and section 23), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year. No credit may be carried forward under this subsection to any taxable year following the third taxable year after the taxable year in which the purchase or purchases are made. For purposes of the preceding sentence, credits shall be treated as used on a first-in first-out basis.

"(c) QUALIFIED RESIDENTIAL GUN SAFE.—For purposes of this section, the term 'qualified residential gun safe' means any container not intended for the display of firearms which is specifically designed to store or safeguard firearms from unauthorized access and which meets a performance standard for an adequate security level. For purposes of the preceding sentence, compliance with such performance standard must be established by objective testing.

"(d) SPECIAL RULES.—

"(1) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under this chapter with respect to any expense which is taken into account in determining the credit under this section.

"(2) MARRIED COUPLES MUST FILE JOINT RETURN.—If the taxpayer is married at the close of the taxable year, the credit shall be allowed under subsection (a) only if the taxpayer and taxpayer's spouse file a joint return for the taxable year.

"(3) MARITAL STATUS.—Marital status shall be determined in accordance with section 7703.

"(e) ELECTION TO HAVE CREDIT NOT APPLY.—A taxpayer may elect to have this section not apply for any taxable year.

"(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to ensure that residential gun safes qualifying for the credit meet design and performance standards sufficient to ensure the provisions of this section are carried out.

"(g) STATUTORY CONSTRUCTION; EVIDENCE; USE OF INFORMATION.—

"(1) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed—

"(A) as creating a cause of action against any firearms dealer or any other person for any civil liability, or

"(B) as establishing any standard of care.

"(2) EVIDENCE.—Notwithstanding any other provision of law, evidence regarding the use or nonuse by a taxpayer of the tax credit under this section shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity for the purposes of establishing liability based on a civil action brought on any theory for harm caused by a product or by negligence, or for purposes of drawing an inference that the taxpayer owns a firearm.

"(3) USE OF INFORMATION.—No database identifying gun owners may be created using information from tax returns on which the credit under this section is claimed.".

(b) CONFORMING AMENDMENT.—Section 6501(m) of the Internal Revenue Code of 1986 is amended by inserting "25C(e)," before "30(d)(4),".

(c) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter I of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 25B the following new item:

"25C. Purchase of residential gun safes.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

By Ms. SNOWE (for herself and Mr. ROCKEFELLER):

S. 2967. A bill to provide for the implementation of a Green Chemistry Research and Development Program, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Ms. SNOWE. Mr. President, I rise today to introduce bipartisan legislation, "The Green Chemistry Research and Development Act," with Senator ROCKEFELLER. Green chemistry is a science-based approach to pollution prevention, seeking to reduce the chemical impact on the environment by developing non-toxic technology. The American chemical, pharmaceutical and biotechnology industries, as well as the American Chemical Society, support this legislation, which promises to speed the development of environmentally benign chemical technology. I would like to request that a letter in support of this legislation from Dr. Michael J. Eckardt, Vice President for Research at the University of Maine, be printed in the RECORD

Green chemistry research and development improves technology used in industrial procedures and promotes the design of safer chemicals, the use of sustainable resources, the use of biotechnology alternatives to chemistry-based solutions, and an understanding of the chemical aspects of renewable energy. Clearly, there is a need to promote this emerging field, still relatively unknown, which furnishes both economic and environmental rewards—proving that the two are not, in fact, mutually exclusive.

The legislation establishes a Green Chemistry Research and Development Program to promote and coordinate Federal green chemistry research, development, demonstration, education, and technology transfer activities, through an interagency working group consisting of the National Science Foundation, the National Institute of Standards and Technology, the Department of Energy, and the Environmental Protection Agency. The program would provide sustained support through merit-based competitive research grants, research and development partnerships between universities, industry and nonprofit organizations, and research and development conducted at federal laboratories.

Green chemistry R&D benefits all regions of our country, but let me share with you an example of how one company, Correct Deck, located in Biddeford, Maine, has successfully used green chemistry technology to grow its business. As you may know, the Environmental Protection Agency has issued a stricter arsenic regulation due to concerns about the public health effects posed by the chemical, which is commonly found in wood that has been treated to repel insects before being used for constructing outdoor decks and playground equipment. These EPA regulations will take effect in 2006.

Correct Deck, taking advantage of a technology brought about through green chemistry research and development, manufactures a wood composite—a blend of sawdust and plastic—that closely resembles the boarding used on wood decks. Yet this composite does not splinter, requires less maintenance than wood, is not susceptible to termites, and most importantly, contains no harmful chemicals. By staying ahead of the curve, Correct Deck has seen sales of its wood composite skyrocket, and has since been striving to meet the ballooning demand for non-arsenic treated products for decks. Thus an environmental benefit also proves profitable.

The breadth of green chemistry's positive impact on our lives extends far beyond decks. Also in the process of development are next-generation pesticides that target specific insects while avoiding harm to other species, and, through steadfast commitment to avoiding environmental harm, are designed to degrade into harmless materials after serving their purpose, rather than dangerously persisting in the environment. Green chemistry R&D is also discovering methods for using carbon dioxide as a feedstock for industrial processes, rather than as a harmful byproduct, thus reducing greenhouse gas emissions.

I could continue, but the windfalls are just too many to enumerate here. From removing public health threats, to enhancing worker safety, to contributing to the battle against human-induced global warming, the multiple benefits of green chemistry research and development are truly exciting, which is why this legislation has strong support from both environmentalists and the chemical industry. One of many chemical company executives singing the praises of green chemistry R&D, David Buzzelli of Dow Chemical Company aptly stated, "Green chemistry technology is testament that when we merge our environmental commitment with innovative chemistry, we can create results that benefit our customers and society."

My colleagues, by passing this bipartisan legislation and thereby coordinating and supporting ongoing green chemistry research and development, we speed these benefits along to all Americans by acting both as stalwart environmental stewards and innovative supporters of environmentally friendly industrial processes. I strongly urge you to support this legislation—and to consider the business opportunities and environmental benefits that the promising field of green chemistry could bring to your respective states.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

THE UNIVERSITY OF MAINE,
Orono, ME, September 13, 2004.
Hon. OLYMPIA SNOWE,
U.S. Senate,
Washington, DC.

DEAR SENATOR SNOWE: We request your support for legislation pending in the Senate to provide for the implementation of a green chemistry research and development program. The University of Maine is a member of the New England Green Chemistry Consortium and we are working with several businesses in Maine to introduce green chemistry manufacturing techniques and processes to improve manufacturing productivity and help the environment. Federal investments in green chemistry research and development would support the University's efforts to advance green chemistry practices in Maine and the New England states.

As you may know, on April 21, 2004 the House of Representatives passed HR 3970, the Great Chemistry Research and Development Act. The bill was referred to the Senate Commerce Committee on April 22. We request your support for this legislation in the Senate.

Federally funded research at the University of Maine on green chemistry technologies would enhance our work in the area of natural resource processing. Specifically, UM would expand work on interfacial aspects of polymeric based composite materials, including primarily paper, and wood composites. The paper industry would benefit from development of solvent free release coatings, coatings for solvent free inks, and water based gravure printing. UM would also expand its work to help Maine's emerging extruded wood/thermoplastic composites industry develop new water based coatings and adhesive systems to replace current solvent based methods and chemistries that involve formaldehyde.

Thank you for considering this request and for your continued support for research at the University of Maine.

Sincerely yours,
MICHAEL J. ECKARDT, Ph.D.,
Vice President for Research.

By Mr. REED (for himself, Mr. KENNEDY, Mr. WARNER, Mr. DASCHLE, Ms. SNOWE, Mr. DODD, Mrs. CLINTON, Mr. DORGAN, Mr. BAYH, Mr. SCHUMER, Mr. JOHNSON, and Mr. DAYTON):

S. 2968. A bill to amend the Public Health Service Act to address the shortage of influenza vaccine, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. REED. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2968

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Emergency Flu Response Act of 2004".

SEC. 2. EMERGENCY FLU RESPONSE.

Title XXI of the Public Health Service Act (42 U.S.C. 300aa–1 et seq.) is amended by adding at the end the following:

"Subtitle 3—Influenza Vaccine

"SEC. 2141. DEFINITION.

"In this subtitle, the term 'priority group' means a group described as a priority group for vaccination with influenza vaccine in recommendations entitled 'Interim Influenza Vaccination Recommendations - 2004-2005 Influenza Season', dated October 5, 2004, or any successor to such recommendations issued by the Secretary.

"SEC. 2142. EMERGENCY ACCESS TO INFLUENZA VACCINE.

"(a) DECLARATION OF EMERGENCY.—

"(1) IN GENERAL.—Under section 564(b)(1)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb-3(b)(1)(C)), the Secretary shall immediately declare the shortage of influenza vaccine in the United States for the 2004-2005 influenza season to be an emergency justifying an authorization for a product under section 564 of such Act (21 U.S.C. 360bbb).

"(2) DETERMINATION.—For the purpose of making determinations under section 564(b)(1)(C) of such Act to carry out paragraph (1), the Secretary—

"(A) shall deem the shortage to be a public health emergency described in such section; and

"(B) shall deem influenza virus to be a biological agent.

"(3) CONSTRUCTION.—Nothing in this subsection shall be considered to invoke the authorities described in section 319, or to limit the ability of the Secretary to invoke such authorities.

"(b) SEEKING INFLUENZA VACCINE.—The Secretary shall promptly consult with the health ministries of Canada, countries that are members of the European Union as of January 1, 2003, Japan, and Switzerland to assess the availability of influenza vaccine for the 2004-2005 influenza season that—

"(1) has been approved, licensed, or otherwise cleared for marketing by the relevant regulatory agency in such a country; and

"(2) is in excess of the needs in such country for the vaccination of persons at high risk for complications from influenza.

"(c) ISSUANCE OF AUTHORIZATION.—

"(1) IN GENERAL.—The Secretary shall promptly evaluate available influenza vaccine (as identified under subsection (b)) to determine whether the vaccine meets the criteria for issuance of an authorization under section 564(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb-3(c)).

"(2) CRITERIA.—For the purpose of making determinations under section 564(c) of such Act to carry out paragraph (1), the Secretary—

"(A) shall deem influenza virus to be an agent that can cause a serious or life-threatening disease or condition; and

"(B) shall deem the shortage described in subsection (a)(1) to be sufficient evidence that there is no alternative described in section 564(c)(3).

"(d) VACCINE PURCHASE.—Not later than 30 days after the date of enactment of the Emergency Flu Response Act of 2004, the Secretary shall purchase, at a reasonable price, available influenza vaccine identified under subsection (b) for which the Secretary has issued an authorization under section 564(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bbb-3(c)).

"(e) VACCINE DISTRIBUTION.—Notwithstanding any other provision of law, the Secretary shall promptly import and distribute any influenza vaccine purchased under subsection (d), giving first priority to persons in priority groups.

“(f) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2005.

“SEC. 2143. EFFECTIVE RESPONSES TO VACCINE SHORTAGES.

“(a) In General.—The Secretary shall award a grant to each State to allow such State to develop and implement a plan to respond to the shortage of influenza vaccine in the United States for the 2004-2005 influenza season.

“(b) Use of Funds.—A State that receives a grant under this section shall use the funds made available through a grant under subsection (a) to develop—

“(1) a voluntary plan to ensure that the influenza vaccine is, to the maximum extent possible, administered to priority groups;

“(2) a system to notify health care providers about revisions in guidelines for administering influenza vaccine;

“(3) an awareness campaign to inform the public about recommendations concerning groups that are priority groups for vaccination with influenza vaccine; and

“(4) procedures to allow for the voluntary donation of vaccine as described in section 2145.

“(c) Amount.—The amount of a grant under subsection (a) shall be proportional to the population of the State and the severity of the shortage of influenza vaccine in such State, as determined by the Secretary.

“(d) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2005.

“SEC. 2144. EFFECTIVE MONITORING OF THE NATION'S INFLUENZA VACCINE SUPPLY.

“(a) Manufacturers.—Not later than 15 days after the date of enactment of the Emergency Flu Response Act of 2004 and every 30 days thereafter, any person who manufactures influenza vaccine for introduction into interstate commerce shall prepare and submit to the Secretary a summary report that lists—

“(1) each client, both public and private, who purchased influenza vaccine from the manufacturer during the period covered by the report; and

“(2) the number of doses of influenza vaccine sold to each client during the period.

“(b) State Public Health Agencies.—To be eligible to receive a grant under section 2143(a), a State through its public health agency shall, not later than 15 days after the date of enactment of the Emergency Flu Response Act of 2004 and every 30 days thereafter, prepare and submit to the Secretary a summary report describing—

“(1) the number of doses of influenza vaccine available in the State during the period covered by the report;

“(2) the number of such doses that were given to each priority group during that period; and

“(3) to the extent that such information is readily obtainable by the State, the manner in which such doses were distributed to consumers during such period, such as by distribution through public health agencies or private health care providers.

“SEC. 2145. CLEARINGHOUSES FOR VOLUNTARY DONATION OF INFLUENZA VACCINE.

“The Centers for Disease Control and Prevention, and each State public health agency described in section 2144(b), shall establish a clearinghouse to—

“(1) enable persons to voluntarily donate influenza vaccine doses; and

“(2) distribute the doses for administration to individuals in priority groups.

“SEC. 2146. PURCHASES OF INFLUENZA VACCINE.

“(a) In General.—The Secretary shall establish a program through which the Secretary may—

“(1) purchase from private employers, vaccine wholesalers, and other appropriate individuals and entities, doses of influenza vaccine that are not needed for the vaccination of priority groups; and

“(2) distribute the doses purchased under paragraph (1) for administration to individuals in priority areas.

“(b) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2005.

“SEC. 2147. USE OF INFLUENZA VACCINE.

“(a) Executive Branch.—The head of each Executive agency (as defined in section 105 of title 5, United States Code) shall ensure that any influenza vaccine in the possession of the head of the agency shall—

“(1) be administered only to employees of the agency who are in priority groups; and

“(2) provide to the Secretary any doses of the vaccine that are not needed for the vaccination of individuals in priority groups, so that the Secretary can distribute the doses for administration to individuals in the priority groups.

“(b) Legislative Branch.—The Attending Physician of the Capitol shall ensure that any influenza vaccine in the possession of the Attending Physician shall—

“(1) be administered only to employees of the legislative branch of the Federal Government who are in priority groups; and

“(2) provide to the Secretary any doses of the vaccine that are not needed for the vaccination of individuals in priority groups, so that the Secretary can distribute the doses for administration to individuals in the priority groups.

“SEC. 2148. ENHANCING EXISTING COUNTERMEASURES AGAINST INFLUENZA.

“(a) Authorization to Purchase.—The Secretary may, subject to amounts appropriated under subsection (d), purchase at a reasonable negotiated price, such additional amounts of any drug approved by the Commissioner of Food and Drugs to treat influenza as are determined necessary by the Secretary.

“(b) Addition to Stockpile.—The Secretary shall include any drug purchased under subsection (a) in the stockpile established under section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.

“(c) Increasing the Effectiveness of Existing Vaccine Supplies.—The Secretary, acting through the Director of the National Institutes of Health, shall conduct a clinical trial or trials to determine whether influenza vaccine can be diluted and continue to retain its effectiveness in preventing influenza in individuals in priority groups.

“(d) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 2005.

“SEC. 2149. NATIONAL QUARANTINE COMPENSATION PROGRAM.

“(a) In General.—There is established the National Quarantine Compensation Program to be administered by the Secretary under which compensation shall be paid to individuals who are subjected to an order of quarantine issued by a Federal or State health agency.

“(b) Amount.—An individual's compensation under the National Quarantine Compensation Program shall be equal to wages lost as a result of such individual being subjected to the quarantine.

“(c) Appropriations.—There are authorized to be appropriated and there are hereby appropriated to carry out subsections (a) and (b) such sums as may be necessary.

“SEC. 2150. EMPLOYMENT RIGHTS AND PROTECTIONS RELATING TO FEDERALLY MANDATED HEALTH-RELATED QUARANTINE.

“(a) Definitions.—In this section:

“(1) Employer.—The term ‘employer’—

“(A) means any person engaged in commerce or in any industry or activity affecting commerce; and

“(B) includes—

“(i)(I) any person who acts, directly or indirectly, in the interest of a person described in subparagraph (A) to any of the employees of such person; or

“(II) any successor in interest of a person described in subparagraph (A);

“(ii) any public agency, as defined in section 3(x) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(x));

“(iii) the Government Accountability Office, the Government Printing Office, and the Library of Congress; and

“(iv) all other legislative branch entities identified as employing offices in the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.).

“(2) Employment Benefits.—The term ‘employment benefits’ means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether such benefits are provided by a practice or written policy of an employer or through an employee benefit plan, as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002).

“(3) Secretary.—

“(A) In general.—Except as otherwise provided in subparagraph (B), the term ‘Secretary’ means the Secretary of Labor.

“(B) Exceptions.—In the case of actions brought regarding employees—

“(i) of the Government Accountability Office, the term ‘Secretary’ means the Comptroller General of the United States;

“(ii) of the Government Printing Office, the term ‘Secretary’ means the Public Printer;

“(iii) of the Library of Congress, the term ‘Secretary’ means the Librarian of Congress; and

“(iv) of any other legislative branch employer, the term ‘Secretary’ means the Office of Compliance.

“(b) Employment Rights, Benefits, and Protection from Discrimination.—

“(1) Restoration to position.—Any individual subjected to an order of quarantine issued by a Federal or State health agency shall be entitled, on return from such quarantine—

“(A) to be restored by the employer of such individual to the position of employment held by the individual when the quarantine of such individual commenced; or

“(B) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

“(2) Benefits.—An individual restored to such individual's position, or equivalent position, pursuant to paragraph (1) shall be entitled to the seniority and other rights and benefits that the individual had on the date when the quarantine of such individual commenced, plus the additional seniority and rights and benefits that the individual would have attained had the individual not been subjected to a federally mandated health-related quarantine.

"(3) PROTECTION FROM DISCRIMINATION.—It shall be unlawful for an employer to discharge or in any other manner discriminate against any individual on the basis of such individual's being, or having been, subjected to a federally mandated health-related quarantine.

"(c) INVESTIGATIVE AUTHORITY; ENFORCEMENT.—

"(1) IN GENERAL.—The Secretary shall ensure compliance with the provisions of subsection (b) and enforce violations of subsection (b).

"(2) SAME AUTHORITIES.—In order to carry out paragraph (1), the Secretary shall have the same authorities as provided to the Secretary under sections 106 and 107 of the Family and Medical Leave Act of 1993 (29 U.S.C. 209 and 210) to ensure compliance with and enforce violations of the Family and Medical Leave Act of 1993.

"(d) STATE AND LOCAL LAWS.—Nothing in this section shall be construed to supersede any provision of any State or local law that provides greater rights than the rights established under this section.".

"SEC. 2151. ASSURING THAT INDIVIDUALS IN PRIORITY GROUPS RECEIVE VACCINES.

"(a) DETERMINATIONS.—Not later than 30 days after the date of enactment of the Emergency Flu Response Act of 2004, and every 30 days thereafter, the Secretary shall review the effectiveness of measures taken under sections 2142 through 2147 and determine whether the measures have ensured the distribution of influenza vaccine for administration to individuals in priority groups. If the Secretary determines that the measures have not ensured that distribution, the Secretary—

"(1) may take the actions described in subsection (b) if the Secretary determines that such actions are needed to protect the public health; and

"(2) shall notify the appropriate committees of Congress of such determination.

"(b) ASSURING THE INDIVIDUALS IN PRIORITY GROUPS RECEIVE VACCINES.—On making the determination described in subsection (a), the Secretary may require that a person, not including a person that is a manufacturer of influenza vaccine, who possesses influenza vaccine sell such person's supply of the influenza vaccine to the Federal Government, as an exercise of the Federal Government's power to take private property for public use, for just compensation.

"(c) PRIORITIZATION.—The Secretary shall distribute the doses of influenza vaccine obtained under subsection (b) in a manner determined appropriate by the Secretary to ensure that such vaccine is administered to individual in priority groups.".

Mr. KENNEDY. Mr. President, it is a privilege to join Senator JACK REED in introducing the "Emergency Flu Response Act of 2004." I commend him for his leadership on this important issue. I also commend our colleagues, Senator BAYH and Senator CRAIG, for their thoughtful proposal.

The Emergency Flu Response Act gives the nation's health agencies the tools they need to respond to the current shortage of flu vaccine, to protect the public health from the danger of influenza and to maximize the value of our reduced vaccine stocks.

During last year's flu season, we experienced unprecedented public demand for the flu vaccine. Fears that last year's flu strain was more virulent than those of previous years fueled the public's demand and resulted in the administration of all 87 million doses produced. Anticipating a similar demand for this upcoming flu season, the two companies that manufacture the flu vaccine planned to produce 100 million doses for the United States.

On Tuesday, one of those companies lost its license due to manufacturing concerns and is unable to ship approximately 48 million doses. In one day, America lost about half the country's supply of the flu vaccine—and fifteen States have lost their entire supply of influenza vaccine for adults.

Clearly, Congress should take action to strengthen the Nation's supply of flu vaccine. My colleagues, Senator BAYH and Senator CRAIG, have offered thoughtful proposals on strengthening the flu vaccine supply in future years, and these proposals merit careful consideration by Congress. Many members of our Health committee have also shown great leadership on vaccine issues.

Due to the long period of time necessary to produce more vaccine, however, measures to increase the supply of new vaccine will have little effect on the current shortage.

We must make every effort to see whether additional flu vaccine can be found. The bill requires the Secretary of Health and Human Services to seek to purchase additional vaccines available in Europe, Canada or Japan, and directs the FDA to review those vaccines using the flexible and expedited review process provided under the Project BioShield legislation. We should also provide NIH with the resources and the clear direction to determine whether existing flu vaccine stocks can be diluted and still retain their effectiveness. NIH provided a valuable service to the nation by conducting similar studies with smallpox vaccine.

These measures may increase the effective supply of vaccine available to the nation, but even these measures may not be sufficient to meet the nation's needs. With flu season imminent, Congress must take steps immediately to give our health agencies the resources and authority they need to make best use of the supply currently available.

Our health professionals should make sure that those most at risk for complications from flu get vaccinated first. We must learn from the lessons from last year's flu season and use that knowledge to ensure that at Americans at highest risk have priority access to the flu shot.

We must act quickly. We know that there are 54 million doses available and we need to ensure that every one of them reaches those at highest risk of complications from flu. The bill provides funding for states to develop plans to effectively distribute vaccines to high priority groups. It also requires the tracking of available vaccines, so that doses can be directed to those who need it most.

Many employers contract directly with vaccine manufacturers to provide a supply of vaccines for their workforce. Our bill establishes a vaccine clearinghouse to facilitate the voluntary donation of vaccine from individuals or companies with employees at low risk of infection to individuals at high risk. Further, this bill gives HHS the ability to purchase vaccine back from employers and wholesalers for redistribution.

The Federal government should set an example of good vaccination practices. Our bill requires Federal Departments and the Attending Physician of the Capitol to abide by CDC recommendations on who should receive vaccine. If Members of Congress and their staffs cannot reserve flu vaccine for those most in need, how can we ask the American public to do so?

We must also learn from Canada's experience with the SARS outbreak in Toronto last year. During that outbreak, many people were forced to remain home from work to prevent the spread of SARS. Some lost their wages during that time, and some even lost their jobs. Even more worrisome is that some people ignored the quarantine orders out of fear of repercussions at work. Our bill will assure that those who lose wages in complying with a Federal or State quarantine order will be fully compensated, and will be protected from losing their employment or related benefits.

Finally, we must recognize that voluntary measures may not be enough to avert a crisis. For this reason, the legislation gives HHS emergency authority to require that vaccine supplies be administered to those in highest need if it determines that voluntary measures have failed, and that to do otherwise would pose a significant danger to the public health.

Let's not let history repeat itself. We need to be prepared for flu vaccine shortages and influenza pandemics in the future, and we need to respond effectively to the current shortage. I urge my colleagues to support the "Emergency Flu Response Act of 2004." We face a crisis, and Congress should not delay in enacting this needed legislation.

SUBMITTED RESOLUTIONS

SENATE CONCURRENT RESOLUTION 142—RECOGNIZING THE SIGNIFICANT ACHIEVEMENTS OF THE PEOPLE AND GOVERNMENT OF AFGHANISTAN SINCE THE EMERGENCY LOYA JIRGA WAS HELD IN JUNE 2002 IN ESTABLISHING THE FOUNDATION AND MEANS TO HOLD PRESIDENTIAL ELECTIONS ON OCTOBER 9, 2004

Mr. HAGEL (for himself, Mr. LUGAR, Mr. BIDEN, Mr. LEAHY, Mr. MCCAIN, Mr. SUNUNU, and Mr. DODD) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 142

Whereas section 101(1) of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7511(1)) declares that the "United States and the international community should support efforts that advance the development of democratic civil authorities and institutions in Afghanistan and the establishment of a new broad-based, multi-ethnic, gender-sensitive, and fully representative government in Afghanistan";

Whereas on January 4, 2004, the Constitutional Loya Jirga of Afghanistan adopted a constitution that promises free elections with full participation by women and establishes a legislative foundation for democracy in Afghanistan;

Whereas on June 15, 2004, President Bush stated that "Afghanistan's journey to democracy and peace deserves the support and respect of every nation. . . .The world and the United States stand with [the people of Afghanistan] as partners in their quest for peace and prosperity and stability and democracy.";

Whereas the independent Joint Electoral Management Body in Afghanistan and thousands of its staff throughout Afghanistan have worked to register voters and organize a fair and transparent electior process despite violent and deadly attacks on them and on the purpose of their work;

Whereas more than 10,500,000 Afghans have been reported registered to vote, demonstrating great courage and a deep desire to have a voice in the future of Afghanistan, and more than 40 percent of those reported registered to vote are women;

Whereas the presidential election campaign in Afghanistan officially began on September 7, 2004 and 18 candidates, including one woman, are seeking the presidency;

Whereas on October 9, 2004, the people of Afghanistan will vote in the first direct presidential election, at the national level, in Afghanistan's history at 5,000 polling centers located throughout Afghanistan, as well as polling centers in Pakistan and Iran;

Whereas the United States, the European Union, the Organization for Security and Cooperation in Europe, and the Asian Network for Free Elections will send monitors and support teams to join the more than 4,000 domestic election observers in Afghanistan for the presidential election;

Whereas the United States and many international partners have provided technical assistance and financial support for elections in Afghanistan; and

Whereas the International Security Assistance Force (ISAF), led by the North Atlantic Treaty Organization (NATO), and coalition forces will join the Afghan National Army and police in Afghanistan to help provide security during the presidential election: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That—

(1) the United States applauds the steadfast commitment of the people of Afghanistan to achieve responsive and responsible government through democracy;

(2) the United States strongly supports self-government and the protection of human rights and freedom of conscience for all men and women in Afghanistan; and

(3) the United States remains committed to a long-term partnership with the people of Afghanistan and to a peaceful future for Afghanistan.

Mr. HAGEL. Mr. President, I rise today to submit a resolution recognizing the landmark Presidential elections that will take place in Afghanistan this Saturday, October 9, 2004.

My colleagues Senators LUGAR, R-IN, BIDEN, D-DE, LEAHY, D-VT, MCCAIN, R-AZ, SUNUNU, R-NH and DODD, D-CT, join me as original co-sponsors of this resolution.

The Government and people of Afghanistan deserve our praise and recognition for their achievements since the emergency Loya Jirga of June 2002. The process leading to this historic election has not always been easy. Warlords and Taliban members have sought to intimidate voters and disrupt the process. But the government of President Hamid Karzai and the people of Afghanistan have not been deterred. More than 10.5 million Afghan citizens have been reported registered to vote, reflecting the courage and commitment of Afghans to a democratic future. Over forty per cent of those registered are women.

The Afghanistan Freedom Support Act of 2002, PL 107 327, authorized the United States Government to provide $3.3 billion in political, economic and security assistance to Afghanistan. It also expressed the U.S. Congress's support for the development of democratic institutions and a fully representative government in Afghanistan that respects religious freedom and the rights of women. The presidential election this week is a critical benchmark for America's commitment to a long-term partnership with Afghanistan for responsible governance and a more peaceful future.

America's interests in Afghanistan are linked to our wider regional objectives in the war on terrorism, and in promoting security and more open political and economic systems throughout the Greater Middle East and Central Asia.

President Bush said on June 15, 2004, that "the world and the United States stand with [the people of Afghanistan] as partners in their quest for peace and prosperity and stability and democracy."

I ask the Senate to recognize the historic achievement of the Afghan people in holding presidential elections this week, and to join the co-sponsors of this resolution and me in expressing our continued support for the people of Afghanistan.

SENATE CONCURRENT RESOLUTION 143—RECOGNIZING COMMUNITY ORGANIZATION OF PUBLIC ACCESS DEFIBRILLATION PROGRAMS

Mr. DEWINE (for himself, Mrs. MURRAY, Mr. FRIST, and Ms. COLLINS) submitted the following concurrent resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. CON. RES. 143

Whereas coronary heart disease is the single leading cause of death in the United States;

Whereas every two minutes, an individual suffers from cardiac arrest in the United States, and 250,000 Americans die each year from cardiac arrest out of hospital;

Whereas the chance of survival for a victim of cardiac arrest diminishes by ten percent each minute following sudden cardiac arrest;

Whereas 80 percent of cardiac arrests are caused by ventricular fibrillation, for which defibrillation is the only effective treatment;

Whereas 60 percent of all cardiac arrests occur outside the hospital, and the average national survival rate for an out-of-hospital victim of cardiac arrest is only five percent;

Whereas automated external defibrillators (AEDs) make it possible for trained non-medical rescuers to deliver potentially lifesaving defibrillation to victims of cardiac arrest;

Whereas public access defibrillation (PAD) programs train non-medical individuals to use AEDs;

Whereas communities that have established and implemented PAD programs that make use of AEDs have achieved average survival rates as high as 50 percent for those individuals who have suffered an out-of-hospital cardiac arrest;

Whereas successful PAD programs ensure that cardiac arrest victims have access to early 911 notification, early cardiopulmonary resuscitation, early defibrillation, and advanced care;

Whereas schools, sports arenas, large hotels, concert halls, high-rise buildings, gated communities, buildings subject to high-security, and similar facilities can benefit greatly from the use of AEDs as part of a PAD program, since it often takes additional and therefore critical time for emergency medical personnel to respond to victims of cardiac arrest in these areas;

Whereas widespread use of defibrillators could save as many as 50,000 lives nationally each year;

Whereas the Aviation Medical Assistance Act of 1998 (Public Law 105 170; 49 U.S.C. 44701 note) authorized AEDs to be carried and used aboard commercial airliners;

Whereas the Cardiac Arrest Survival Act of 2000 (Public Law 106 505; 42 U.S.C. 238p 238q) provided for the placement of AEDs in Federal office buildings;

Whereas the Rural Access to Emergency Devices Act (Public Law 106 505, 42 U.S.C. 254c note) increased access to AEDs in rural communities;

Whereas the Community Access to Emergency Defibrillation Act of 2001 (Public Law 107 188; 42 U.S.C. 244 245) authorized the development and implementation of PAD projects; and

Whereas the Automatic Defibrillation in Adam's Memory Act authorizes the use of grant funds to establish an information clearinghouse to provide information to increase public access to defibrillation in schools: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring),That Congress—

(1) recognizes the growing number of community activists, organizations, and municipal governments leading the national effort to establish public access defibrillation (PAD) programs; and

(2) encourages the continued development and implementation of PAD programs in schools, sports arenas, NASCAR race tracks, large hotels, concert halls, public housing, high-rise buildings, gated communities, buildings subject to high-security, and similar facilities to increase the survival rate for victims of cardiac arrest.

Mr. DEWINE. Mr. President, I rise today to submit a Resolution that would recognize the value and importance of automated external defibrillators (AEDs) in our Nation's communities. It is an important Resolution that sends a message of support to our communities, neighborhoods, schools and businesses.

For my colleagues who do not know, AEDs or automated external defibrillators, are devices that, when used properly, administer an electric shock through the chest wall to the heart. These devices are used on people who are suffering from heart attacks or have gone into full cardiac arrest.

Many of my colleagues may have seen these devices in airports or in other public spaces such as stadiums or shopping malls. They have been made widely visible and available because, according to the American Heart Association, "AEDs strengthen the chain of survival. They can restore a normal heart rhythm in sudden cardiac arrest victims."

What makes AEDs so valuable to our communities is that they are extremely effective and they are easy to use. A microprocessor, which is embedded in the AEDs analyzes a person's heart rhythm and determines whether an electrical shock is necessary to restore normal heart function. The American Heart Association makes clear the value of having access to AEDs—"When a person suffers a sudden cardiac arrest, for each minute that passes without defibrillation, their chance of survival decreases by 7 to 10 percent." Fortunately, many communities have realized the benefit of AEDs and have begun creating Public Access Defibrillation programs (PADs). There are a number of Public Access Defibrillation programs throughout our country, and I'm happy to say a few of them are in Ohio.

These State, local and community PAD programs are a valuable asset because they ensure that automated external defibrillation accessible and available to cardiac arrest victims in the community and provide appropriate training in performing cardiopulmonary resuscitation and the use of automated external defibrillators.

This resolution simply recognizes the Public Access Defibrillator programs for all of their good work to make it possible for communities to access these life-saving devices. My resolution also encourages the continued creation of PADs so that more people, in more places, have access to AEDs.

Finally, my Senate colleagues and I have long supported automatic external defibrillators and their increased use in communities, particularly rural communities. In fact, just this year, the Senate Labor Health and Human Services Appropriations subcommittee provides $10,933,000 for rural and community access to emergency devices. This funding provides grants to expand placement of automatic external defibrillators and to provide for training.

I ask my colleagues to support this resolution, to pass this resolution, and to encourage the continued development of Public Access Defibrillator (PAD) programs.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4043. Mr. INOUYE (for himself and Mr. AKAKA) submitted an amendment intended to be proposed by him to the bill S. 437, to provide for adjustments to the Central Arizona Project in Arizona, to authorize the Gila River Indian Community water rights settlement, to reauthorize and amend the Southern Arizona Water Rights Settlement Act of 1982, and for other purposes; which was ordered to lie on the table.

SA 4044. Mr. FRIST (for Mr. SPECTER) proposed an amendment to the bill S. 2486, to amend title 38, United States Code, to improve and enhance education, housing, employment, medical, and other benefits for veterans and to improve and extend certain authorities relating to the administration or benefits for veterans, and for other purposes.

TEXT OF AMENDMENTS

SA 4043. Mr. INOUYE (for himself and Mr. AKAKA) submitted an amendment intended to be proposed by him to the bill S. 437, to provide for adjustments to the Central Arizona Project in Arizona, to authorize the Gila River Indian Community water rights settlement, to reauthorize and amend the Southern Arizona Water Rights Settlement of 1982, and for other purposes; which was ordered to lie on the table; as follows:

At the end, add the following:

TITLE ___—NATIVE HAWAIIAN GOVERNMENT REORGANIZATION

SEC. ___01. SHORT TITLE.

This title may be cited as the "Native Hawaiian Government Reorganization Act of 2004".

SEC. ___02. FINDINGS.

Congress finds that—

(1) the Constitution vests Congress with the authority to address the conditions of the indigenous, native people of the United States;

(2) Native Hawaiians, the native people of the Hawaiian archipelago that is now part of the United States, are indigenous, native people of the United States;

(3) the United States has a special political and legal responsibility to promote the welfare of the native people of the United States, including Native Hawaiians;

(4) under the treaty making power of the United States, Congress exercised its constitutional authority to confirm treaties between the United States and the Kingdom of Hawaii, and from 1826 until 1893, the United States—

(A) recognized the sovereignty of the Kingdom of Hawaii;

(B) accorded full diplomatic recognition to the Kingdom of Hawaii; and

(C) entered into treaties and conventions with the Kingdom of Hawaii to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887;

(5) pursuant to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42), the United States set aside approximately 203,500 acres of land to address the conditions of Native Hawaiians in the Federal territory that later became the State of Hawaii;

(6) by setting aside 203,500 acres of land for Native Hawaiian homesteads and farms, the Hawaiian Homes Commission Act assists the members of the Native Hawaiian community in maintaining distinct native settlements throughout the State of Hawaii;

(7) approximately 6,800 Native Hawaiian families reside on the Hawaiian Home Lands and approximately 18,000 Native Hawaiians who are eligible to reside on the Hawaiian Home Lands are on a waiting list to receive assignments of Hawaiian Home Lands;

(8)(A) in 1959, as part of the compact with the United States admitting Hawaii into the Union, Congress established a public trust (commonly known as the "ceded lands trust"), for 5 purposes, 1 of which is the betterment of the conditions of Native Hawaiians;

(B) the public trust consists of lands, including submerged lands, natural resources, and the revenues derived from the lands; and

(C) the assets of this public trust have never been completely inventoried or segregated;

(9) Native Hawaiians have continuously sought access to the ceded lands in order to establish and maintain native settlements and distinct native communities throughout the State;

(10) the Hawaiian Home Lands and other ceded lands provide an important foundation for the ability of the Native Hawaiian community to maintain the practice of Native Hawaiian culture, language, and traditions, and for the survival and economic self-sufficiency of the Native Hawaiian people;

(11) Native Hawaiians continue to maintain other distinctly native areas in Hawaii;

(12) on November 23, 1993, Public Law 103-150 (107 Stat. 1510) (commonly known as the "Apology Resolution") was enacted into law, extending an apology on behalf of the United States to the native people of Hawaii for the United States' role in the overthrow of the Kingdom of Hawaii;

(13) the Apology Resolution acknowledges that the overthrow of the Kingdom of Hawaii occurred with the active participation of agents and citizens of the United States and further acknowledges that the Native Hawaiian people never directly relinquished to the United States their claims to their inherent sovereignty as a people over their national lands, either through the Kingdom of Hawaii or through a plebiscite or referendum;

(14) the Apology Resolution expresses the commitment of Congress and the President—

(A) to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii;

(B) to support reconciliation efforts between the United States and Native Hawaiians; and

(C) to consult with Native Hawaiians on the reconciliation process as called for in the Apology Resolution;

(15) despite the overthrow of the government of the Kingdom of Hawaii, Native Hawaiians have continued to maintain their separate identity as a distinct native community through cultural, social, and political institutions, and to give expression to their rights as native people to self-determination, self-governance, and economic self-sufficiency;

(16) Native Hawaiians have also given expression to their rights as native people to self-determination, self-governance, and economic self-sufficiency—

(A) through the provision of governmental services to Native Hawaiians, including the provision of—

(i) health care services;

(ii) educational programs;

(iii) employment and training programs;

(iv) economic development assistance programs;

(v) children's services;

(vi) conservation programs;

(vii) fish and wildlife protection;

(viii) agricultural programs;

(ix) native language immersion programs;

(x) native language immersion schools from kindergarten through high school;

(xi) college and master's degree programs in native language immersion instruction;

(xii) traditional justice programs, and

(B) by continuing their efforts to enhance Native Hawaiian self-determination and local control;

(17) Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural use areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants and herbs, and food sources;

(18) the Native Hawaiian people wish to preserve, develop, and transmit to future generations of Native Hawaiians their lands and Native Hawaiian political and cultural identity in accordance with their traditions, beliefs, customs and practices, language, and social and political institutions, to control and manage their own lands, including ceded lands, and to achieve greater self-determination over their own affairs;

(19) this title provides a process within the framework of Federal law for the Native Hawaiian people to exercise their inherent rights as a distinct, indigenous, native community to reorganize a Native Hawaiian governing entity for the purpose of giving expression to their rights as native people to self-determination and self-governance;

(20) Congress—

(A) has declared that the United States has a special responsibility for the welfare of the native peoples of the United States, including Native Hawaiians;

(B) has identified Native Hawaiians as a distinct group of indigenous, native people of the United States within the scope of its authority under the Constitution, and has enacted scores of statutes on their behalf; and

(C) has delegated broad authority to the State of Hawaii to administer some of the United States' responsibilities as they relate to the Native Hawaiian people and their lands;

(21) the United States has recognized and reaffirmed the special political and legal relationship with the Native Hawaiian people through the enactment of the Act entitled, "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (Public Law 86-3; 73 Stat. 4), by—

(A) ceding to the State of Hawaii title to the public lands formerly held by the United States, and mandating that those lands be held as a public trust for 5 purposes, 1 of which is for the betterment of the conditions of Native Hawaiians; and

(B) transferring the United States' responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii, but retaining the authority to enforce the trust, including the exclusive right of the United States to consent to any actions affecting the lands that comprise the corpus of the trust and any amendments to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42) that are enacted by the legislature of the State of Hawaii affecting the beneficiaries under the Act;

(22) the United States has continually recognized and reaffirmed that—

(A) Native Hawaiians have a cultural, historic, and land-based link to the aboriginal, indigenous, native people who exercised sovereignty over the Hawaiian Islands;

(B) Native Hawaiians have never relinquished their claims to sovereignty or their sovereign lands;

(C) the United States extends services to Native Hawaiians because of their unique status as the indigenous, native people of a once-sovereign nation with whom the United States has a political and legal relationship; and

(D) the special trust relationship of American Indians, Alaska Natives, and Native Hawaiians to the United States arises out of their status as aboriginal, indigenous, native people of the United States; and

(23) the State of Hawaii supports the reaffirmation of the political and legal relationship between the Native Hawaiian governing entity and the United States as evidenced by 2 unanimous resolutions enacted by the Hawaii State Legislature in the 2000 and 2001 sessions of the Legislature and by the testimony of the Governor of the State of Hawaii before the Committee on Indian Affairs of the Senate on February 25, 2003.

SEC. 03. DEFINITIONS.

In this title:

(1) ABORIGINAL, INDIGENOUS, NATIVE PEOPLE.—The term "aboriginal, indigenous, native people" means people whom Congress has recognized as the original inhabitants of the lands that later became part of the United States and who exercised sovereignty in the areas that later became part of the United States.

(2) ADULT MEMBER.—The term "adult member" means a Native Hawaiian who has attained the age of 18 and who elects to participate in the reorganization of the Native Hawaiian governing entity.

(3) APOLOGY RESOLUTION.—The term "Apology Resolution" means Public Law 103-150, (107 Stat. 1510), a Joint Resolution extending an apology to Native Hawaiians on behalf of the United States for the participation of agents of the United States in the January 17, 1893 overthrow of the Kingdom of Hawaii.

(4) COMMISSION.—The term "commission" means the Commission established under section 207(b) to provide for the certification that those adult members of the Native Hawaiian community listed on the roll meet the definition of Native Hawaiian set forth in section 203(8).

(5) COUNCIL.—The term "council" means the Native Hawaiian Interim Governing Council established under section 207(c)(2).

(6) INDIGENOUS, NATIVE PEOPLE.—The term "indigenous, native people" means the lineal descendants of the aboriginal, indigenous, native people of the United States.

(7) INTERAGENCY COORDINATING GROUP.—The term "Interagency Coordinating Group" means the Native Hawaiian Interagency Coordinating Group established under section 206.

(8) NATIVE HAWAIIAN.—For the purpose of establishing the roll authorized under section 207(c)(1) and before the reaffirmation of the political and legal relationship between the United States and the Native Hawaiian governing entity, the term "Native Hawaiian" means—

(A) an individual who is one of the indigenous, native people of Hawaii and who is a direct lineal descendant of the aboriginal, indigenous, native people who—

(i) resided in the islands that now comprise the State of Hawaii on or before January 1, 1893; and

(ii) occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii; or

(B) an individual who is one of the indigenous, native people of Hawaii and who was eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108, chapter 42) or a direct lineal descendant of that individual.

(9) NATIVE HAWAIIAN GOVERNING ENTITY.—The term "Native Hawaiian Governing Entity" means the governing entity organized by the Native Hawaiian people pursuant to this title.

(10) OFFICE.—The term "Office" means the United States Office for Native Hawaiian Relations established under section 205(a).

(11) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 04. UNITED STATES POLICY AND PURPOSE.

(a) POLICY.—The United States reaffirms that—

(1) Native Hawaiians are a unique and distinct, indigenous, native people with whom the United States has a special political and legal relationship;

(2) the United States has a special political and legal relationship with the Native Hawaiian people which includes promoting the welfare of Native Hawaiians;

(3) Congress possesses the authority under the Constitution, including but not limited to Article I, section 8, clause 3, to enact legislation to address the conditions of Native Hawaiians and has exercised this authority through the enactment of—

(A) the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42);

(B) the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 18, 1959 (Public Law 86-3, 73 Stat. 4); and

(C) more than 150 other Federal laws addressing the conditions of Native Hawaiians;

(4) Native Hawaiians have—

(A) an inherent right to autonomy in their internal affairs;

(B) an inherent right of self-determination and self-governance;

(C) the right to reorganize a Native Hawaiian governing entity; and

(D) the right to become economically self-sufficient; and

(5) the United States shall continue to engage in a process of reconciliation and political relations with the Native Hawaiian people.

(b) PURPOSE.—The purpose of this title is to provide a process for the reorganization of the Native Hawaiian governing entity and the reaffirmation of the political and legal relationship between the United States and the Native Hawaiian governing entity for purposes of continuing a government-to-government relationship.

SEC. ___05. UNITED STATES OFFICE FOR NATIVE HAWAIIAN RELATIONS.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary the United States Office for Native Hawaiian Relations.

(b) DUTIES.—The Office shall—

(1) continue the process of reconciliation with the Native Hawaiian people in furtherance of the Apology Resolution;

(2) upon the reaffirmation of the political and legal relationship between the Native Hawaiian governing entity and the United States, effectuate and coordinate the special political and legal relationship between the Native Hawaiian governing entity and the United States through the Secretary, and with all other Federal agencies;

(3) fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian governing entity by providing timely notice to, and consulting with, the Native Hawaiian people and the Native Hawaiian governing entity before taking any actions that may have the potential to significantly affect Native Hawaiian resources, rights, or lands;

(4) consult with the Interagency Coordinating Group, other Federal agencies, the Governor of the State of Hawaii and relevant agencies of the State of Hawaii on policies, practices, and proposed actions affecting Native Hawaiian resources, rights, or lands; and

(5) prepare and submit to the Committee on Indian Affairs and the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives an annual report detailing the activities of the Interagency Coordinating Group that are undertaken with respect to the continuing process of reconciliation and to effect meaningful consultation with the Native Hawaiian governing entity and providing recommendations for any necessary changes to Federal law or regulations promulgated under the authority of Federal law.

SEC. ___06. NATIVE HAWAIIAN INTERAGENCY COORDINATING GROUP.

(a) ESTABLISHMENT.—In recognition that Federal programs authorized to address the conditions of Native Hawaiians are largely administered by Federal agencies other than the Department of the Interior, there is established an interagency coordinating group to be known as the "Native Hawaiian Interagency Coordinating Group".

(b) COMPOSITION.—The Interagency Coordinating Group shall be composed of officials, to be designated by the President, from—

(1) each Federal agency that administers Native Hawaiian programs, establishes or implements policies that affect Native Hawaiians, or whose actions may significantly or uniquely impact Native Hawaiian resources, rights, or lands; and

(2) the Office.

(c) LEAD AGENCY.—

(1) IN GENERAL.—The Department of the Interior shall serve as the lead agency of the Interagency Coordinating Group.

(2) MEETINGS.—The Secretary shall convene meetings of the Interagency Coordinating Group.

(d) DUTIES.—The Interagency Coordinating Group shall—

(1) coordinate Federal programs and policies that affect Native Hawaiians or actions by any agency or agencies of the Federal Government that may significantly or uniquely affect Native Hawaiian resources, rights, or lands;

(2) ensure that each Federal agency develops a policy on consultation with the Native Hawaiian people, and upon the reaffirmation of the political and legal relationship between the Native Hawaiian governing entity and the United States, consultation with the Native Hawaiian governing entity; and

(3) ensure the participation of each Federal agency in the development of the report to Congress authorized in section 205(b)(5).

SEC. ___07. PROCESS FOR THE REORGANIZATION OF THE NATIVE HAWAIIAN GOVERNING ENTITY AND THE REAFFIRMATION OF THE POLITICAL AND LEGAL RELATIONSHIP BETWEEN THE UNITED STATES AND THE NATIVE HAWAIIAN GOVERNING ENTITY.

(a) RECOGNITION OF THE NATIVE HAWAIIAN GOVERNING ENTITY.—The right of the Native Hawaiian people to reorganize the Native Hawaiian governing entity to provide for their common welfare and to adopt appropriate organic governing documents is recognized by the United States.

(b) COMMISSION.—

(1) IN GENERAL.—There is authorized to be established a Commission to be composed of nine members for the purposes of—

(A) preparing and maintaining a roll of the adult members of the Native Hawaiian community who elect to participate in the reorganization of the Native Hawaiian governing entity; and

(B) certifying that the adult members of the Native Hawaiian community proposed for inclusion on the roll meet the definition of Native Hawaiian in section 203(8).

(2) MEMBERSHIP.—

(A) APPOINTMENT.—Within 180 days of the date of enactment of this Act, the Secretary shall appoint the members of the Commission in accordance with subclause (B). Any vacancy on the Commission shall not affect its powers and shall be filled in the same manner as the original appointment.

(B) REQUIREMENTS.—The members of the Commission shall be Native Hawaiian, as defined in section 203(8), and shall have expertise in the determination of Native Hawaiian ancestry and lineal descendancy.

(3) EXPENSES.—Each member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(4) DUTIES.—The Commission shall—

(A) prepare and maintain a roll of the adult members of the Native Hawaiian community who elect to participate in the reorganization of the Native Hawaiian governing entity; and

(B) certify that each of the adult members of the Native Hawaiian community proposed for inclusion on the roll meets the definition of Native Hawaiian in section 203(8).

(5) STAFF.—

(A) IN GENERAL.—The Commission may, without regard to the civil service laws (including regulations), appoint and terminate an executive director and such other additional personnel as are necessary to enable the Commission to perform the duties of the Commission.

(B) COMPENSATION.—

(i) IN GENERAL.—Except as provided in clause (ii), the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(ii) MAXIMUM RATE OF PAY.—The rate of pay for the executive director and other personnel shall not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(6) DETAIL OF FEDERAL GOVERNMENT EMPLOYEES.—

(A) IN GENERAL.—An employee of the Federal Government may be detailed to the Commission without reimbursement.

(B) CIVIL SERVICE STATUS.—The detail of the employee shall be without interruption or loss of civil service status or privilege.

(7) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Commission may procure temporary and intermittent services in accordance with section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

(8) EXPIRATION.—The Secretary shall dissolve the Commission upon the reaffirmation of the political and legal relationship between the Native Hawaiian governing entity and the United States.

(c) PROCESS FOR THE REORGANIZATION OF THE NATIVE HAWAIIAN GOVERNING ENTITY.—

(1) ROLL.—

(A) CONTENTS.—The roll shall include the names of the adult members of the Native Hawaiian community who elect to participate in the reorganization of the Native Hawaiian governing entity and are certified to be Native Hawaiian as defined in section 203(8) by the Commission.

(B) FORMATION OF ROLL.—Each adult member of the Native Hawaiian community who elects to participate in the reorganization of the Native Hawaiian governing entity shall submit to the Commission documentation in the form established by the Commission that is sufficient to enable the Commission to determine whether the individual meets the definition of Native Hawaiian in section 203(8).

(C) DOCUMENTATION.—The Commission shall—

(i) identify the types of documentation that may be submitted to the Commission that would enable the Commission to determine whether an individual meets the definition of Native Hawaiian in section 203(8);

(ii) establish a standard format for the submission of documentation; and

(iii) publish information related to clauses (i) and (ii) in the Federal Register;

(D) CONSULTATION.—In making determinations that each of the adult members of the Native Hawaiian community proposed for inclusion on the roll meets the definition of Native Hawaiian in section 203(8), the Commission may consult with Native Hawaiian organizations, agencies of the State of Hawaii including but not limited to the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, and the State Department of Health, and other entities with expertise and experience in the determination of Native Hawaiian ancestry and lineal descendancy.

(E) CERTIFICATION AND SUBMITTAL OF ROLL TO SECRETARY.—The Commission shall—

(i) submit the roll containing the names of the adult members of the Native Hawaiian community who meet the definition of Native Hawaiian in section 203(8) to the Secretary within two years from the date on which the Commission is fully composed; and

(ii) certify to the Secretary that each of the adult members of the Native Hawaiian community proposed for inclusion on the roll meets the definition of Native Hawaiian in section 203(8).

(F) PUBLICATION.—Upon certification by the Commission to the Secretary that those listed on the roll meet the definition of Native Hawaiian in section 203(8), the Secretary shall publish the roll in the Federal Register.

(G) APPEAL.—The Secretary may establish a mechanism for an appeal for any person whose name is excluded from the roll who claims to meet the definition of Native Hawaiian in section 203(8) and to be 18 years of age or older.

(H) PUBLICATION; UPDATE.—The Secretary shall—

(i) publish the roll regardless of whether appeals are pending;

(ii) update the roll and the publication of the roll on the final disposition of any appeal;

(iii) update the roll to include any Native Hawaiian who has attained the age of 18 and who has been certified by the Commission as meeting the definition of Native Hawaiian in section 203(8) after the initial publication of the roll or after any subsequent publications of the roll.

(I) FAILURE TO ACT.—If the Secretary fails to publish the roll, not later than 90 days after the date on which the roll is submitted to the Secretary, the Commission shall publish the roll notwithstanding any order or directive issued by the Secretary or any other official of the Department of the Interior to the contrary.

(J) EFFECT OF PUBLICATION.—The publication of the initial and updated roll shall serve as the basis for the eligibility of adult members of the Native Hawaiian community whose names are listed on those rolls to participate in the reorganization of the Native Hawaiian governing entity.

(2) ORGANIZATION OF THE NATIVE HAWAIIAN INTERIM GOVERNING COUNCIL.—

(A) ORGANIZATION.—The adult members of the Native Hawaiian community listed on the roll published under this section may—

(i) develop criteria for candidates to be elected to serve on the Native Hawaiian Interim Governing Council;

(ii) determine the structure of the Council; and

(iii) elect members from individuals listed on the roll published under this subsection to the Council.

(B) POWERS.—

(i) IN GENERAL.—The Council—

(I) may represent those listed on the roll published under this section in the implementation of this title; and

(II) shall have no powers other than powers given to the Council under this title.

(ii) FUNDING.—The Council may enter into a contract with, or obtain a grant from, any Federal or State agency to carry out clause (iii).

(iii) ACTIVITIES.—

(I) IN GENERAL.—The Council may conduct a referendum among the adult members of the Native Hawaiian community listed on the roll published under this subsection for the purpose of determining the proposed elements of the organic governing documents of the Native Hawaiian governing entity, including but not limited to—

(aa) the proposed criteria for citizenship of the Native Hawaiian governing entity;

(bb) the proposed powers and authorities to be exercised by the Native Hawaiian governing entity, as well as the proposed privileges and immunities of the Native Hawaiian governing entity;

(cc) the proposed civil rights and protection of the rights of the citizens of the Native Hawaiian governing entity and all persons affected by the exercise of governmental powers and authorities of the Native Hawaiian governing entity; and

(dd) other issues determined appropriate by the Council.

(II) DEVELOPMENT OF ORGANIC GOVERNING DOCUMENTS.—Based on the referendum, the Council may develop proposed organic governing documents for the Native Hawaiian governing entity.

(III) DISTRIBUTION.—The Council may distribute to all adult members of the Native Hawaiian community listed on the roll published under this subsection—

(aa) a copy of the proposed organic governing documents, as drafted by the Council; and

(bb) a brief impartial description of the proposed organic governing documents;

(IV) ELECTIONS.—The Council may hold elections for the purpose of ratifying the proposed organic governing documents, and on certification of the organic governing documents by the Secretary in accordance with paragraph (4), hold elections of the officers of the Native Hawaiian governing entity pursuant to paragraph (5).

(3) SUBMITTAL OF ORGANIC GOVERNING DOCUMENTS.—Following the reorganization of the Native Hawaiian governing entity and the adoption of organic governing documents, the Council shall submit the organic governing documents of the Native Hawaiian governing entity to the Secretary.

(4) CERTIFICATIONS.—

(A) IN GENERAL.—Within the context of the future negotiations to be conducted under the authority of section 208(b)(1), and the subsequent actions by the Congress and the State of Hawaii to enact legislation to implement the agreements of the 3 governments, not later than 90 days after the date on which the Council submits the organic governing documents to the Secretary, the Secretary shall certify that the organic governing documents—

(i) establish the criteria for citizenship in the Native Hawaiian governing entity;

(ii) were adopted by a majority vote of the adult members of the Native Hawaiian community whose names are listed on the roll published by the Secretary;

(iii) provide authority for the Native Hawaiian governing entity to negotiate with Federal, State, and local governments, and other entities;

(iv) provide for the exercise of governmental authorities by the Native Hawaiian governing entity, including any authorities that may be delegated to the Native Hawaiian governing entity by the United States and the State of Hawaii following negotiations authorized in section 208(b)(1) and the enactment of legislation to implement the agreements of the 3 governments;

(v) prevent the sale, disposition, lease, or encumbrance of lands, interests in lands, or other assets of the Native Hawaiian governing entity without the consent of the Native Hawaiian governing entity;

(vi) provide for the protection of the civil rights of the citizens of the Native Hawaiian governing entity and all persons affected by the exercise of governmental powers and authorities by the Native Hawaiian governing entity; and

(vii) are consistent with applicable Federal law and the special political and legal relationship between the United States and the indigenous, native people of the United States; provided that the provisions of Public Law 103-454, 25 U.S.C. 479a, shall not apply.

(B) RESUBMISSION IN CASE OF NONCOMPLIANCE WITH THE REQUIREMENTS OF SUBPARAGRAPH (A).—

(i) RESUBMISSION BY THE SECRETARY.—If the Secretary determines that the organic governing documents, or any part of the documents, do not meet all of the requirements set forth in subparagraph (A), the Secretary shall resubmit the organic governing documents to the Council, along with a justification for each of the Secretary's findings as to why the provisions are not in full compliance.

(ii) AMENDMENT AND RESUBMISSION OF ORGANIC GOVERNING DOCUMENTS.—If the organic governing documents are resubmitted to the Council by the Secretary under clause (i), the Council shall—

(I) amend the organic governing documents to ensure that the documents meet all the requirements set forth in subparagraph (A); and

(II) resubmit the amended organic governing documents to the Secretary for certification in accordance with this paragraph.

(C) CERTIFICATIONS DEEMED MADE.—The certifications under paragraph (4) shall be deemed to have been made if the Secretary has not acted within 90 days after the date on which the Council has submitted the organic governing documents of the Native Hawaiian governing entity to the Secretary.

(5) ELECTIONS.—On completion of the certifications by the Secretary under paragraph (4), the Council may hold elections of the officers of the Native Hawaiian governing entity.

(6) REAFFIRMATION.—Notwithstanding any other provision of law, upon the certifications required under paragraph (4) and the election of the officers of the Native Hawaiian governing entity, the political and legal relationship between the United States and the Native Hawaiian governing entity is hereby reaffirmed and the United States extends Federal recognition to the Native Hawaiian governing entity as the representative governing body of the Native Hawaiian people.

SEC. ___08. REAFFIRMATION OF DELEGATION OF FEDERAL AUTHORITY; NEGOTIATIONS; CLAIMS.

(a) REAFFIRMATION.—The delegation by the United States of authority to the State of Hawaii to address the conditions of the indigenous, native people of Hawaii contained in the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union" approved March 18, 1959 (Public Law 86-3, 73 Stat. 5), is reaffirmed.

(b) NEGOTIATIONS.—

(1) IN GENERAL.—Upon the reaffirmation of the political and legal relationship between the United States and the Native Hawaiian governing entity, the United States and the State of Hawaii may enter into negotiations with the Native Hawaiian governing entity designed to lead to an agreement addressing such matters as—

(A) the transfer of lands, natural resources, and other assets, and the protection of existing rights related to such lands or resources;

(B) the exercise of governmental authority over any transferred lands, natural resources, and other assets, including land use;

(C) the exercise of civil and criminal jurisdiction;

(D) the delegation of governmental powers and authorities to the Native Hawaiian governing entity by the United States and the State of Hawaii; and

(E) any residual responsibilities of the United States and the State of Hawaii.

(2) AMENDMENTS TO EXISTING LAWS.—Upon agreement on any matter or matters negotiated with the United States, the State of Hawaii, and the Native Hawaiian governing entity, the parties are authorized to submit—

(A) to the Committee on Indian Affairs of the Senate, the Committee on Energy and Natural Resources of the Senate, and the Committee on Resources of the House of Representatives, recommendations for proposed amendments to Federal law that will enable the implementation of agreements reached between the 3 governments; and

(B) to the Governor and the legislature of the State of Hawaii, recommendations for proposed amendments to State law that will enable the implementation of agreements reached between the 3 governments.

(c) CLAIMS.—

(1) IN GENERAL.—Nothing in this title serves as a settlement of any claim against the United States.

(2) STATUTE OF LIMITATIONS.—Any claim against the United States arising under Federal law that—

(A) is in existence on the date of enactment of this Act;

(B) is asserted by the Native Hawaiian governing entity on behalf of the Native Hawaiian people; and

(C) relates to the legal and political relationship between the United States and the Native Hawaiian people;

shall be brought in the court of jurisdiction over such claims not later than 20 years after the date on which Federal recognition is extended to the Native Hawaiian governing entity under section 207(c)(6).

SEC. ___09. APPLICABILITY OF CERTAIN FEDERAL LAWS.

(a) INDIAN GAMING REGULATORY ACT.—Nothing in this title shall be construed to authorize the Native Hawaiian governing entity to conduct gaming activities under the authority of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

(b) BUREAU OF INDIAN AFFAIRS.—Nothing contained in this title provides an authorization for eligibility to participate in any programs and services provided by the Bureau of Indian Affairs for any persons not otherwise eligible for the programs or services.

SEC. ___10. SEVERABILITY.

If any section or provision of this title is held invalid, it is the intent of Congress that the remaining sections or provisions shall continue in full force and effect.

SEC. ___11. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title.

SA 4044. Mr. FRIST (for Mr. SPECTER) proposed an amendment to the bill S. 2486, to amend title 38, United States Code, to improve and enhance education, housing, employment, medical, and other benefits for veterans and to improve and extend certain authorities relating to the administration or benefits for veterans, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Veterans Benefits Improvement Act of 2004".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Reference to title 38, United States Code.

TITLE I—VETERANS EARN AND LEARN ACT

Sec. 101. Short title.
Sec. 102. Modification of benefit entitlement charges for certain on-job training programs.
Sec. 103. Increase in benefit for individuals pursuing apprenticeship or on-job training.
Sec. 104. Authority for competency-based apprenticeship programs.
Sec. 105. Ten-year extension of delimiting period for survivors' and dependents' educational assistance for spouses of members who die on active duty.
Sec. 106. Availability of education benefits for payment for national admissions exams and national exams for credit at institutions of higher education.
Sec. 107. Requirement for coordination of data among the Departments of Veterans Affairs, Defense, and Labor with respect to on-job training.
Sec. 108. Pilot program to provide on-job benefits to train Department of Veterans Affairs' claims adjudicators.
Sec. 109. Collection of payment for educational assistance under Montgomery GI Bill from members of the Selected Reserve called to active duty.
Sec. 110. Technical and conforming amendments.

TITLE II—EMPLOYMENT MATTERS

Subtitle A—Employment and Reemployment Rights

Sec. 201. Two-year period of continuation of employer-sponsored health care coverage.
Sec. 202. Reinstatement of reporting requirements.
Sec. 203. Requirement for employers to provide notice of rights and duties under USERRA.
Sec. 204. Demonstration project for referral of USERRA claims against Federal agencies to the Office of Special Counsel.

Subtitle B—Other Matters

Sec. 211. Report of employment placement, retention, and advancement of recently separated servicemembers.

TITLE III—BENEFITS MATTERS

Sec. 301. Additional dependency and indemnity compensation for surviving spouses with dependent children.
Sec. 302. Offset of veterans' disability compensation and dependency and indemnity compensation from awards under radiation exposure compensation program.
Sec. 303. Exclusion of life insurance proceeds from consideration as income for veterans' pension purposes.
Sec. 304. Certain service-connected disability benefits authorized for persons disabled by treatment or vocational rehabilitation provided by the Department of Veterans Affairs.
Sec. 305. Effective date of death pension.
Sec. 306. Codification of administrative actions relating to presumptions of service connection for veterans exposed to ionizing radiation.
Sec. 307. Codification of cost-of-living adjustment provided in Public Law 108–47.
Sec. 308. Cross-reference amendments relating to concurrent payment of retired pay and veterans' disability compensation.

TITLE IV—HOUSING MATTERS

Sec. 401. Authority to provide specially adapted housing to certain disabled veterans.
Sec. 402. Transitional housing amendments.
Sec. 403. Increase in maximum amount of home loan guaranty for construction and purchase of homes and annual indexing of amount.
Sec. 404. Extension of authority for guarantee of adjustable rate mortgages.
Sec. 405. Extension and improvement of authority for guarantee of hybrid adjustable rate mortgages.
Sec. 406. Termination of collection of loan fees from veterans rated eligible for compensation at pre-discharge rating examinations.
Sec. 407. Three-year extension of Native American veteran housing loan pilot program.

TITLE V—MATTERS RELATING TO FIDUCIARIES

Sec. 501. Definition of fiduciary.
Sec. 502. Inquiry, investigations, and qualification of fiduciaries.
Sec. 503. Misuse of benefits by fiduciaries.
Sec. 504. Additional protections for beneficiaries with fiduciaries.
Sec. 505. Annual report.
Sec. 506. Annual adjustment in benefits thresholds.
Sec. 507. Effective dates.

TITLE VI—MEMORIAL AFFAIRS MATTERS

Sec. 601. Designation of Prisoner of War/Missing in Action National Memorial, Riverside National Cemetery, Riverside, California.
Sec. 602. Lease of certain National Cemetery Administration property.
Sec. 603. Exchanges of real property for national cemeteries.

TITLE VII—IMPROVEMENTS TO SERVICEMEMBERS CIVIL RELIEF ACT

Sec. 701. Clarification of meaning of "judgment" as used in the Act.
Sec. 702. Requirements relating to waiver of rights under the Act.
Sec. 703. Right of servicemember plaintiffs to request stay of civil proceedings.
Sec. 704. Termination of leases.

TITLE VIII—OTHER MATTERS

Sec. 801. Principal office of United States Court of Appeals for Veterans Claims.
Sec. 802. Technical amendments relating to the United States Court of Appeals for Veterans Claims.

Sec. 803. Extension of biennial report of Advisory Committee on Former Prisoners of War.
Sec. 804. Availability of administrative and judicial redress for certain veterans denied opportunity to compete for Federal employment.
Sec. 805. Report on servicemembers' and veterans' awareness of benefits and services available under laws administered by Secretary of Veterans Affairs.

SEC. 2. REFERENCE TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—VETERANS EARN AND LEARN ACT

SEC. 101. SHORT TITLE.

This title may be cited as the "Veterans Earn and Learn Act of 2004".

SEC. 102. MODIFICATION OF BENEFIT ENTITLEMENT CHARGES FOR CERTAIN ON-JOB TRAINING PROGRAMS.

(a) IN GENERAL.—Section 3687 is amended by adding at the end the following new subsection:

"(e)(1) For each month that an individual (as defined in paragraph (3)) is paid a training assistance allowance under subsection (a), the entitlement of the individual shall be charged at a percentage rate (rounded to the nearest percent) that is equal to the ratio of—

"(A) the training assistance allowance for the month involved, to

"(B) the monthly educational assistance allowance otherwise payable for full-time enrollment in an educational institution.".

"(2) For any month in which an individual fails to complete 120 hours of training, the entitlement otherwise chargeable under paragraph (1) shall be reduced in the same proportion as the monthly training assistance allowance payable is reduced under subsection (b)(3).

"(3) In this section, the term 'individual' means—

"(A) an eligible veteran who is entitled to monthly educational assistance allowances payable under section 3015(e) of this title, or

"(B) an eligible person who is entitled to monthly educational assistance allowances payable under section 3532(a) of this title,

as the case may be.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to months beginning after September 30, 2005.

SEC. 103. INCREASE IN BENEFIT FOR INDIVIDUALS PURSUING APPRENTICESHIP OR ON-JOB TRAINING.

(a) MONTGOMERY GI BILL.—For months beginning on or after October 1, 2005, and before January 1, 2008, subsection (c)(1) of section 3032 of title 38, United States Code, shall be applied as if—

(1) the reference to "75 percent" in subparagraph (A) were a reference to "85 percent";

(2) the reference to "55 percent" in subparagraph (B) were a reference to "65 percent"; and

(3) the reference to "35 percent" in subparagraph (C) were a reference to "45 percent".

(b) POST-VIETNAM ERA VETERANS' EDUCATIONAL ASSISTANCE.—For months beginning on or after October 1, 2005, and before January 1, 2008, subsection (a) of section 3233 of title 38, United States Code, shall be applied as if—

(1) the reference to "75 percent" in paragraph (1) were a reference to "85 percent";

(2) the reference to "55 percent" in paragraph (2) were a reference to "65 percent"; and

(3) the reference to "35 percent" in paragraph (3) were a reference to "45 percent".

(c) SURVIVORS AND DEPENDENTS EDUCATIONAL ASSISTANCE.—(1) For months beginning on or after October 1, 2005, and before January 1, 2008, subsection (b)(2) of section 3687 of title 38, United States Code, shall be applied as if—

(A) the reference to "$574 for the first six months" were a reference to "$650 for the first six months";

(B) the reference to "$429 for the second six months" were a reference to "$507 for the second six months"; and

(C) the reference to "$285 for the third six months" were a reference to "$366 for the third six months".

(2) Subsection (d) of such section 3687 shall not apply with respect to the provisions of paragraph (1) for months occurring during fiscal year 2006.

(3) For months beginning on or after January 1, 2008, the Secretary shall carry out subsection (b)(2) of such section 3687 as if paragraphs (1) and (2) were not enacted into law.

(d) SELECTED RESERVE MONTGOMERY GI BILL.—For months beginning on or after October 1, 2005, and before January 1, 2008, Subsection (d)(1) of section 16131 of title 10, United States Code, shall be applied as if—

(1) the reference to "75 percent" in subparagraph (A) were a reference to "85 percent";

(2) the reference to "55 percent" in subparagraph (B) were a reference to "65 percent"; and

(3) the reference to "35 percent" in subparagraph (C) were a reference to "45 percent".

SEC. 104. AUTHORITY FOR COMPETENCY-BASED APPRENTICESHIP PROGRAMS.

(a) IN GENERAL.—Section 3672(c) is amended—

(1) by striking "(1)" and "(2)" and inserting "(A)" and "(B)", respectively;

(2) by inserting "(1)" after "(c)"; and

(3) by adding at the end the following new paragraphs:

"(2) The period of a program of apprenticeship may be determined based upon a specific period of time (commonly referred to as a 'time-based program'), based upon the demonstration of successful mastery of skills (commonly referred to as a 'competency-based program'), or based upon a combination thereof.

"(3)(A) In the case of a competency-based program of apprenticeship, State approving agencies shall determine the period for which payment may be made for such a program under chapters 30 and 35 of this title and chapter 1606 of title 10. In determining the period of such a program, State approving agencies shall take into consideration the approximate term of the program recommended in registered apprenticeship program standards recognized by the Secretary of Labor.

"(B) The sponsor of a competency-based program of apprenticeship shall provide notice to the State approving agency involved of any such standards that may apply to the program and the proposed approximate period of training under the program.

"(4) The sponsor of a competency-based program of apprenticeship shall notify the Secretary upon the successful completion of a program of apprenticeship by an individual under chapter 30 or 35 of this title, or chapter 1606 of title 10, as the case may be.".

(b) INCREASED USE OF APPRENTICESHIPS.—Section 3672(d)(1) is amended by adding at the end the following new sentence: "The Secretary of Labor shall provide assistance and services to the Secretary, and to State approving agencies, to increase the use of apprenticeships.".

(c) FUNDING FOR DEPARTMENT COMPUTER SYSTEM MODIFICATIONS.—From amounts appropriated to the Department of Veterans Affairs for fiscal year 2005 for readjustment benefits, the Secretary of Veterans Affairs shall use an amount not to exceed $3,000,000 to modify computer systems and to develop procedures required to carry out the amendments made by subsection (a) and sections 102 and 103.

SEC. 105. TEN-YEAR EXTENSION OF DELIMITING PERIOD FOR SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE FOR SPOUSES OF MEMBERS WHO DIE ON ACTIVE DUTY.

Section 3512(b)(1) is amended—

(1) in subparagraph (A), by striking "in subparagraph (B)" and inserting "in subparagraph (B) or (C)"; and

(2) by adding at the end the following new subparagraph:

"(C) Notwithstanding subparagraph (A), an eligible person referred to in that subparagraph who is made eligible under section 3501(a)(1)(B) of this title by reason of the death of a person on active duty may be afforded educational assistance under this chapter during the 20-year period beginning on the date (as determined by the Secretary) such person becomes an eligible person within the meaning of such section.".

SEC. 106. AVAILABILITY OF EDUCATION BENEFITS FOR PAYMENT FOR NATIONAL ADMISSIONS EXAMS AND NATIONAL EXAMS FOR CREDIT AT INSTITUTIONS OF HIGHER EDUCATION.

(a) COVERED EXAMS.—Sections 3452(b) and 3501(a)(5) are each amended by adding at the end the following new sentence: "Such term also includes national tests for admission to institutions of higher learning or graduate schools (such as the Scholastic Aptitude Test (SAT), Law School Admission Test (LSAT), Graduate Record Exam (GRE), and Graduate Management Admission Test (GMAT)) and national tests providing an opportunity for course credit at institutions of higher learning (such as the Advanced Placement (AP) exam and College-Level Examination Program (CLEP)).".

(b) AMOUNT OF PAYMENT.—

(1) CHAPTER 30.—Section 3032 is amended by adding at the end the following new subsection:

"(g)(1) Subject to paragraph (3), the amount of educational assistance payable under this chapter for a national test for admission or national test providing an opportunity for course credit at institutions of higher learning described in section 3452(b) of this title is the amount of the fee charged for the test.

"(2) The number of months of entitlement charged in the case of any individual for a test described in paragraph (1) is equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such test by the full-time monthly institutional rate of educational assistance, except for paragraph (1), such individual would otherwise be paid under subsection (a)(1), (b)(1), (d), or (e)(1) of section 3015 of this title, as the case may be.

“(3) In no event shall payment of educational assistance under this subsection for a test described in paragraph (1) exceed the amount of the individual's available entitlement under this chapter.”.

(2) CHAPTER 32.—Section 3232 is amended by adding at the end the following new subsection:

“(d)(1) Subject to paragraph (3), the amount of educational assistance payable under this chapter for a national test for admission or national test providing an opportunity for course credit at institutions of higher learning described in section 3452(b) of this title is the amount of the fee charged for the test.

“(2) The number of months of entitlement charged in the case of any individual for a test described in paragraph (1) is equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such test by the full-time monthly institutional rate of educational assistance, except for paragraph (1), such individual would otherwise be paid under this chapter.

“(3) In no event shall payment of educational assistance under this subsection for a test described in paragraph (1) exceed the amount of the individual's available entitlement under this chapter.”.

(3) CHAPTER 35.—Section 3532 is amended by adding at the end the following new subsection:

“(g)(1) Subject to paragraph (3), the amount of educational assistance payable under this chapter for a national test for admission or national test providing an opportunity for course credit at institutions of higher learning described in section 3501(a)(5) of this title is the amount of the fee charged for the test.

“(2) The number of months of entitlement charged in the case of any individual for a test described in paragraph (1) is equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such test by the full-time monthly institutional rate of educational assistance, except for paragraph (1), such individual would otherwise be paid under this chapter.

“(3) In no event shall payment of educational assistance under this subsection for a test described in paragraph (1) exceed the amount of the individual's available entitlement under this chapter.”.

SEC. 107. REQUIREMENT FOR COORDINATION OF DATA AMONG THE DEPARTMENTS OF VETERANS AFFAIRS, DEFENSE, AND LABOR WITH RESPECT TO ON-JOB TRAINING.

Section 3694 is amended—

(1) by striking “In carrying out” and inserting “(a) IN GENERAL.—In carrying out”; and

(2) by adding at the end the following new subsection:

“(b) COORDINATION OF INFORMATION AMONG THE DEPARTMENTS OF VETERANS AFFAIRS, DEFENSE, AND LABOR WITH RESPECT TO ON-JOB TRAINING.—At the time of a servicemember's discharge or release from active duty service, the Secretary of Defense shall furnish to the Secretary such pertinent information concerning each registered apprenticeship pursued by the servicemember during the period of active duty service of the servicemember. The Secretary, in conjunction with the Secretary of Labor, shall encourage and assist States and private organizations to give credit to servicemembers for the registered apprenticeship program so pursued in the case of any related apprenticeship program the servicemember may pursue as a civilian.”.

SEC. 108. PILOT PROGRAM TO PROVIDE ON-JOB BENEFITS TO TRAIN DEPARTMENT OF VETERANS AFFAIRS' CLAIMS ADJUDICATORS.

Section 3677 is amended by adding at the end the following new subsection:

“(d)(1) The Secretary may conduct a pilot program under which the Secretary operates a program of training on the job under this section for a period (notwithstanding subsection (c)(2)) of up to three years in duration to train employees of the Department to become qualified adjudicators of claims for compensation, dependency and indemnity compensation, and pension.

“(2)(A) Not later than three years after the implementation of the pilot project, the Secretary shall submit to Congress an initial report on the pilot project. The report shall include an assessment of the usefulness of the program in recruiting and retaining of personnel of the Department as well as an assessment of the value of the program as a training program.

“(B) Not later than 18 months after the date on which the initial report under subparagraph (A) is submitted, the Secretary shall submit to Congress a final report on the pilot project. The final report shall include recommendations of the Secretary with respect to continuation of the pilot project and with respect to expansion of the types of claims for which the extended period of on the job training is available to train such employees.”.

SEC. 109. COLLECTION OF PAYMENT FOR EDUCATIONAL ASSISTANCE UNDER MONTGOMERY GI BILL FROM MEMBERS OF THE SELECTED RESERVE CALLED TO ACTIVE DUTY.

(a) ACTIVE DUTY PROGRAM.—Section 3011(b) is amended—

(1) by striking “The basic pay” and inserting “(1) Except as provided in paragraph (2), the basic pay”;

(2) by designating the second sentence as paragraph (3) and in that paragraph by striking “this chapter” and inserting “this subsection”; and

(3) by inserting after paragraph (1), as so designated, the following new paragraph:

“(2) In the case of an individual covered by paragraph (1) who is a member of the Selected Reserve, the Secretary of Defense shall collect from the individual an amount equal to $1,200 not later than one year after completion by the individual of the two years of service on active duty providing the basis for such entitlement. The Secretary of Defense may collect such amount through reductions in basic pay in accordance with paragraph (1) or through such other method as the Secretary of Defense considers appropriate.”.

(b) SELECTED RESERVE PROGRAM.—Section 3012(c) is amended—

(1) by striking “The basic pay” and inserting “(1) Except as provided in paragraph (2), the basic pay”;

(2) by designating the second sentence as paragraph (3) and in that paragraph by striking “this chapter” and inserting “this subsection”; and

(3) by inserting after paragraph (1), as so designated, the following new paragraph:

“(2) In the case of an individual covered by paragraph (1) who is a member of the Selected Reserve, the Secretary of Defense shall collect from the individual an amount equal to $1,200 not later than one year after completion by the individual of the two years of service on active duty providing the basis for such entitlement. The Secretary of Defense may collect such amount through reductions in basic pay in accordance with paragraph (1) or through such other method as the Secretary of Defense considers appropriate.”.

SEC. 110. TECHNICAL AND CONFORMING AMENDMENTS.

(a) DEFINITION OF TRAINING ESTABLISHMENT.—Section 3452(e), as amended by section 301 of the Veterans Benefits Act of 2003 (Public Law 108–183; 117 Stat. 2658), is amended in paragraph (5) to read as follows:

“(5) The sponsor of a program of apprenticeship.”.

(b) CLARIFICATION OF APPLICABLE APPRENTICESHIP STANDARDS.—(1) Section 3672(c), as amended by section 105(a), is amended in subparagraph (A) by inserting “apprenticeship” before “standards”.

(2) Section 3672(d)(1) is amended by striking “of programs of training on the job (including programs of apprenticeship)” and inserting “of apprenticeship and on the job training programs”.

(c) RECORD-KEEPING REQUIREMENTS FOR QUALIFIED PROVIDERS OF ENTREPRENEURSHIP COURSES.—(1) Section 3675(c) is amended by adding at the end the following new paragraph:

“(4) Notwithstanding paragraph (3), a qualified provider of entrepreneurship courses shall maintain such records as the Secretary determines to be necessary to comply with reporting requirements that apply under section 3684(a)(1) of this title with respect to eligible persons and veterans enrolled in an entrepreneurship course offered by the provider.”.

(2) The amendment made by paragraph (1) shall take effect as if included in the enactment of section 305(a) of the Veterans Benefits Act of 2003 (Public Law 108–183; 117 Stat. 2660).

(d) AUTHORITY TO PAY REPORTING FEE.—Section 3684(c) is amended by striking “or to any joint apprenticeship training committee acting as a training establishment” and inserting “or to the sponsor of a program of apprenticeship”.

TITLE II—EMPLOYMENT MATTERS

Subtitle A—Employment and Reemployment Rights

SEC. 201. TWO-YEAR PERIOD OF CONTINUATION OF EMPLOYER-SPONSORED HEALTH CARE COVERAGE.

(a) IMPROVEMENT IN PERIOD OF COVERAGE.—Subsection (a)(1)(A) of section 4317 is amended by striking “18-month period” and inserting “24-month period”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to elections made under section 4317 of title 38, United States Code, on or after the date of the enactment of this Act.

SEC. 202. REINSTATEMENT OF REPORTING REQUIREMENTS.

Section 4332 is amended in the matter preceding paragraph (1) by striking “no later than February 1, 1996, and annually thereafter through 2000” and inserting “no later than February 1, 2005, and annually thereafter”.

SEC. 203. REQUIREMENT FOR EMPLOYERS TO PROVIDE NOTICE OF RIGHTS AND DUTIES UNDER USERRA.

(a) NOTICE.—Chapter 43 is amended by adding at the end the following new section:

“§ 4334. Notice of rights and duties

“(a) REQUIREMENT TO PROVIDE NOTICE.—Each employer shall provide to persons entitled to rights and benefits under this chapter a notice of the rights, benefits, and obligations of such persons and such employers under this chapter. The requirement for the provision of notice under this section may be met by the posting of the notice where employers customarily place notices for employees.

"(b) CONTENT OF NOTICE.—The Secretary shall provide to employers the text of the notice to be provided under this section.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"4334. Notice of rights and duties.".

(c) IMPLEMENTATION.—(1) Not later than the date that is 90 days after the date of the enactment of this Act, the Secretary of Labor shall make available to employers the notice required under section 4334 of title 38, United States Code, as added by subsection (a).

(2) The amendments made by this section shall apply to employers under chapter 43 of title 38, United States Code, on and after the first date referred to in paragraph (1).

SEC. 204. DEMONSTRATION PROJECT FOR REFERRAL OF USERRA CLAIMS AGAINST FEDERAL AGENCIES TO THE OFFICE OF SPECIAL COUNSEL.

(a) ESTABLISHMENT OF PROJECT.—The Secretary of Labor and the Office of Special Counsel shall carry out a demonstration project under which certain claims against Federal executive agencies under the Uniformed Services Employment and Reemployment Rights Act under chapter 43 of title 38, United States Code, are referred to, or otherwise received by, the Office of Special Counsel for assistance, including investigation and resolution of the claim as well as enforcement of rights with respect to the claim.

(b) REFERRAL OF ALL PROHIBITED PERSONNEL ACTION CLAIMS TO THE OFFICE OF SPECIAL COUNSEL.—(1) Under the demonstration project, the Office of Special Counsel shall receive and investigate all claims under the Uniformed Services Employment and Reemployment Rights Act with respect to Federal executive agencies in cases where the Office of Special Counsel has jurisdiction over related claims pursuant to section 1212 of title 5, United States Code.

(2) For purposes of paragraph (1), a related claim is a claim involving the same Federal executive agency and the same or similar factual allegations or legal issues as those being pursued under a claim under the Uniformed Services Employment and Reemployment Rights Act.

(c) REFERRAL OF OTHER CLAIMS AGAINST FEDERAL EXECUTIVE AGENCIES.—(1) Under the demonstration project, the Secretary—

(A) shall refer to the Office of Special Counsel all claims described in paragraph (2) made during the period of the demonstration project; and

(B) may refer any claim described in paragraph (2) filed before the demonstration project that is pending before the Secretary at the beginning of the demonstration project.

(2) A claim referred to in paragraph (1) is a claim under chapter 43 of title 38, United States Code, against a Federal executive agency by a claimant with a social security account number with an odd number as its terminal digit, or, in the case of a claim that does not contain a social security account number, a case number assigned to the claim with an odd number as its terminal digit.

(d) ADMINISTRATION OF DEMONSTRATION PROJECT.—(1) The Office of Special Counsel shall administer the demonstration project. The Secretary shall cooperate with the Office of Special Counsel in carrying out the demonstration project.

(2) In the case of any claim referred, or otherwise received by, to the Office of Special Counsel under the demonstration project, any reference to the "Secretary" in sections 4321, 4322, and 4326 of title 38, United States Code, is deemed a reference to the "Office of Special Counsel".

(3) In the case of any claim referred to, or otherwise received by, the Office of Special Counsel under the demonstration project, the Office of Special Counsel shall retain administrative jurisdiction over the claim.

(e) PERIOD OF PROJECT.—The demonstration project shall be carried out during the period beginning on the date that is 60 days after the date of the enactment of this Act, and ending on September 30, 2007.

(f) EVALUATIONS AND REPORT.—(1) The Comptroller General of the United States shall conduct periodic evaluations of the demonstration project under this section.

(2) Not later than April 1, 2007, the Comptroller General shall submit to Congress a report on the evaluations conducted under paragraph (1). The report shall include the following information and recommendations:

(A) A description of the operation and results of the demonstration program, including—

(i) the number of claims described in subsection (c) referred to, or otherwise received by, the Office of Special Counsel, and the number of such claims referred to the Secretary of Labor; and

(ii) for each Federal executive agency, the number of claims resolved, the type of corrective action obtained, the period of time for final resolution of the claim, and the results obtained.

(B) An assessment of whether referral to the office of special counsel of claims under the demonstration project—

(i) improved services to servicemembers and veterans; or

(ii) significantly reduced or eliminated duplication of effort and unintended delays in resolving meritorious claims of those servicemembers and veterans.

(C) An assessment of the feasibility and advisability of referring all claims under chapter 43 of title 38, United States Code, against Federal executive agencies to the Office of Special Counsel for investigation and resolution.

(D) Such other recommendations for administrative action or legislation as the Comptroller General determines appropriate.

(g) DEFINITIONS.—In this section:

(1) The term "Office of Special Counsel" means the Office of Special Counsel established by section 1211 of title 5, United States Code.

(2) The term "Secretary" means the Secretary of Labor.

(3) The term "Federal executive agency" has the meaning given that term in section 4303(5) of title 38, United States Code.

Subtitle B—Other Matters

SEC. 211. REPORT OF EMPLOYMENT PLACEMENT, RETENTION, AND ADVANCEMENT OF RECENTLY SEPARATED SERVICEMEMBERS.

(a) CONTRACT FOR REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall enter into a contract with a qualified entity to conduct a study of and prepare a report on the employment histories of recently separated servicemembers.

(b) CONTENT OF REPORT.—(1) The study conducted pursuant to subsection (a) shall consist of an analysis of employment-related data that have been collected with respect to recently separated servicemembers.

(2) In conducting the study, the qualified entity shall—

(A) determine whether the employment obtained by recently separated servicemembers is commensurate with training and education of those servicemembers;

(B) determine whether recently separated servicemembers received educational assistance or training and rehabilitation under programs administered by the Secretary of Veterans Affairs under chapter 30 or 31 of title 38, United States Code, or under chapter 1606 of title 10, United States Code;

(C) determine whether transition assistance services provided to recently separated servicemembers assisted those servicemembers in obtaining civilian employment;

(D) analyze trends in hiring of veterans by the private sector; and

(E) identify recently separated servicemembers who have reached senior level management positions.

(c) USE OF DATA.—In conducting the study under subsection (a), the qualified entity shall review data compiled and reported by the Bureau of Labor Statistics and shall collect additional data on the employment histories of recently separated servicemembers available from such other sources as the qualified entity determines to be appropriate.

(d) CONTRACT REQUIREMENTS.—(1) The contract entered into under subsection (a) shall contain such terms and conditions as the Secretary may require. The contract shall require that the report on the study be submitted to the Secretary not later than 2 years after the date on which the contract was entered into.

(2) The report required under subsection (a) shall contain the findings and conclusions of the qualified entity on the study and specific recommendations to improve employment opportunities for veterans recently separated from service in the Armed Forces, including, if appropriate, recommendations for—

(A) the establishment of networks of contacts for employment of such veterans in the private sector;

(B) outreach to private sector leaders on the merits and sound business practice of hiring such veterans; and

(C) additional methods to facilitate communication between private sector employers and such veterans who are seeking employment.

(e) FUNDING.—Payment by the Secretary for the contract entered into under subsection (a)—

(1) shall be made from the Department of Veterans Affairs appropriations account from which payments for readjustment benefits are made; and

(2) may not exceed $490,000.

(f) DEFINITIONS.—In this section:

(1) The term "qualified entity" means an entity or organization that meets the following requirements:

(A) Demonstrated experience in conducting employment surveys of recently separated servicemembers, including Internet-based surveys, that meet such quality assurance requirements as the Secretary determines appropriate.

(B) Demonstrated familiarity with veteran employment matters.

(C) Demonstrated ability in developing plans to market veterans as employment assets.

(D) Demonstrated ability to acquire services at no cost from other organizations, such as technology, staff services, and advertising services.

(E) Demonstrated ability to develop relationships, establish employment networks, and facilitate interaction between private and public sector leaders and veterans.

(2) The term "employment history" means, with respect to a recently separated servicemember, training, placement, retention, and advancement in employment of that servicemember.

(3) The term "recently separated servicemember" means any veteran (as defined in section 101(2) of title 38, United States Code) discharged or released from active duty in the Armed Forces of the United States during the 16-year period beginning on January 1, 1990.

TITLE III—BENEFITS MATTERS

SEC. 301. ADDITIONAL DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES WITH DEPENDENT CHILDREN.

(a) ADDITIONAL DEPENDENCY AND INDEMNITY COMPENSATION.—Section 1311 is amended by adding at the end the following new subsection:

"(e)(1) Subject to paragraphs (2) and (3), if there is a surviving spouse with one or more children below the age of 18, the dependency and indemnity compensation paid monthly to the surviving spouse shall be increased by $250, regardless of the number of such children.

"(2) Dependency and indemnity compensation shall be increased under this subsection only for months occurring during the two-year period beginning on the date on which entitlement to dependency and indemnity compensation commenced.

"(3) The increase in dependency and indemnity compensation of a surviving spouse under this subsection shall cease beginning with the first month commencing after the month in which all children of the surviving spouse have attained the age of 18.

"(4) Dependency and indemnity compensation under this subsection is in addition to any other dependency and indemnity compensation payable under this chapter.".

(b) EFFECTIVE DATE.—Subsection (e) of section 1311 of title 38, United States Code, as added by subsection (a), shall take effect with respect to payments for the first month beginning after the date of the enactment of this Act.

SEC. 302. OFFSET OF VETERANS' DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION FROM AWARDS UNDER RADIATION EXPOSURE COMPENSATION PROGRAM.

(a) OFFSET IN LIEU OF FORFEITURE FROM DISABILITY COMPENSATION.—Subsection (c) of section 1112 is amended by adding at the end the following new paragraph:

"(4) A radiation-exposed veteran who receives a payment under the provisions of the Radiation Exposure Compensation Act of 1990 (42 U.S.C. 2210 note) shall not be deprived, by reason of the receipt of that payment, of receipt of compensation to which that veteran is entitled by reason of paragraph (1), but there shall be deducted from payment of such compensation the amount of the payment under that Act.".

(b) OFFSET IN LIEU OF FORFEITURE FROM DEPENDENCY AND INDEMNITY COMPENSATION.—Section 1310 is amended by adding at the end the following new paragraph:

"(c) A person who receives a payment under the provisions of the Radiation Exposure Compensation Act of 1990 (42 U.S.C. 2210 note) shall not be deprived, by reason of the receipt of that payment, of receipt of dependency and indemnity compensation to which that person is otherwise entitled, but there shall be deducted from payment of such dependency and indemnity compensation the amount of the payment under that Act.".

(c) EFFECTIVE DATE.—Paragraph (4) of section 1112(c) of title 38, United States Code, as added by subsection (a), shall take effect with respect to compensation payments for months beginning after March 26, 2002. Subsection (c) of section 1310 of such title, as added by subsection (b), shall take effect with respect to dependency and indemnity compensation payments for months beginning after March 26, 2002.

SEC. 303. EXCLUSION OF LIFE INSURANCE PROCEEDS FROM CONSIDERATION AS INCOME FOR VETERANS' PENSION PURPOSES.

Section 1503(a) is amended—

(1) by striking "and" at the end of paragraph (9);

(2) by striking the period at the end of the paragraph (10) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(11) lump-sum proceeds of any life insurance policy on a veteran, for purposes of pension under subchapter III of this chapter.".

SEC. 304. CERTAIN SERVICE-CONNECTED DISABILITY BENEFITS AUTHORIZED FOR PERSONS DISABLED BY TREATMENT OR VOCATIONAL REHABILITATION PROVIDED BY THE DEPARTMENT OF VETERANS AFFAIRS.

(a) AUTHORIZED BENEFITS.—Section 1151 is amended by adding at the end the following new subsection:

"(c) A qualifying additional disability under this section shall be treated in the same manner as if it were a service-connected disability for purposes of the following provisions of this title:

"(1) Chapter 21, relating to specially adapted housing.

"(2) Chapter 39, relating to automobiles and adaptive equipment.".

(b) EFFECTIVE DATE.—Subsection (c) of section 1151 of title 38, United States Code, as added by subsection (a), shall apply with respect to eligibility for benefits and services provided by the Secretary of Veterans Affairs on or after the date of the enactment of this Act.

(c) ADMINISTRATION OF OFFSET PROVISION.—Subsection (b) of section 1151 is amended—

(1) by inserting "(1)" after "(b)";

(2) by inserting "(except as otherwise provided in paragraph (2))" after "service-connected, then"; and

(3) by adding at the end the following new paragraph:

"(2) In the case of a judgment, settlement, or compromise covered by paragraph (1) that becomes final on or after the date of the enactment of this paragraph and that includes an amount that is specifically designated for a purpose for which benefits are provided under chapter 21 or 39 of this title (hereinafter in this paragraph referred to as the 'offset amount'), if such judgment, settlement, or compromise becomes final before the date of the award of benefits under chapter 21 or 39 for the purpose for which the offset amount was specifically designated—

"(A) the amount of such award shall be reduced by the offset amount; and

"(B) if the offset amount is greater than the amount of such award, the excess amount received pursuant to the judgment, settlement or compromise, shall be offset against benefits otherwise payable under this chapter.".

SEC. 305. EFFECTIVE DATE OF DEATH PENSION.

Section 5110(d) is amended—

(1) by striking "(1)";

(2) by striking "death compensation or dependency and indemnity compensation" and inserting "death compensation, dependency and indemnity compensation, or death pension"; and

(3) by striking paragraph (2).

SEC. 306. CODIFICATION OF ADMINISTRATIVE ACTIONS RELATING TO PRESUMPTIONS OF SERVICE CONNECTION FOR VETERANS EXPOSED TO IONIZING RADIATION.

(a) COVERED DISEASES.—Subsection (c)(2) of section 1112 is amended by adding at the end the following new subparagraphs:

"(Q) Cancer of the bone.

"(R) Cancer of the brain.

"(S) Cancer of the colon.

"(T) Cancer of the lung.

"(U) Cancer of the ovary.".

(b) COVERED RADIATION-RISK ACTIVITIES.—Subsection (c)(3)(B) of such section is amended by adding at the end the following new clause:

"(iv) Service in a capacity which, if performed as an employee of the Department of Energy, would qualify the individual for inclusion as a member of the Special Exposure Cohort under section 3621(14) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384l(14)).".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as of March 26, 2002.

SEC. 307. CODIFICATION OF COST-OF-LIVING ADJUSTMENT PROVIDED IN PUBLIC LAW 108–47.

(a) VETERANS' DISABILITY COMPENSATION.—Section 1114 is amended—

(1) by striking "$104" in subsection (a) and inserting "$106";

(2) by striking "$201" in subsection (b) and inserting "$205";

(3) by striking "$310" in subsection (c) and inserting "$316";

(4) by striking "$445" in subsection (d) and inserting "$454";

(5) by striking "$633" in subsection (e) and inserting "$646";

(6) by striking "$801" in subsection (f) and inserting "$817";

(7) by striking "$1,008" in subsection (g) and inserting "$1,029";

(8) by striking "$1,171" in subsection (h) and inserting "$1,195";

(9) by striking "$1,317" in subsection (i) and inserting "$1,344";

(10) by striking "$2,193" in subsection (j) and inserting "$2,239";

(11) in subsection (k)—

(A) by striking "$81" both places it appears and inserting "$82"; and

(B) by striking "$2,728" and "$3,827" and inserting "$2,785" and "$3,907", respectively;

(12) by striking "$2,728" in subsection (l) and inserting "$2,785";

(13) by striking "$3,010" in subsection (m) and inserting "$3,073";

(14) by striking "$3,425" in subsection (n) and inserting "$3,496";

(15) by striking "$3,827" each place it appears in subsections (o) and (p) and inserting "$3,907";

(16) by striking "$1,643" and "$2,446" in subsection (r) and inserting "$1,677" and "$2,497", respectively; and

(17) by striking "$2,455" in subsection (s) and inserting "$2,506".

(b) ADDITIONAL COMPENSATION FOR DEPENDENTS.—Section 1115(1) is amended—

(1) by striking "$125" in subparagraph (A) and inserting "$127";

(2) by striking "$215" and "$64" in subparagraph (B) and inserting "$219" and "$65", respectively;

(3) by striking "$85" and "$64" in subparagraph (C) and inserting "$86" and "$65", respectively;

(4) by striking "$101" in subparagraph (D) and inserting "$103";

(5) by striking "$237" in subparagraph (E) and inserting "$241"; and

(6) by striking "$198" in subparagraph (F) and inserting "$202".

(c) CLOTHING ALLOWANCE FOR CERTAIN DISABLED VETERANS.—Section 1162 is amended by striking "$588" and inserting "$600".

(d) DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES.—(1) Section 1311(a) is amended—

(A) by striking "$948" in paragraph (1) and inserting "$967"; and

(B) by striking "$204" in paragraph (2) and inserting "$208".

(2) The table in section 1311(a)(3) is amended to read as follows:

Pay grade	Monthly rate	Pay grade	Monthly rate
E-1	$967	W-4	$1,157
E-2	$967	0-1	$1,022
E-3	$967	0-2	$1,056
E-4	$967	0-3	$1,130
E-5	$967	0-4	$1,195
E-6	$967	0-5	$1,316
E-7	$1,000	0-6	$1,483
E-8	$1,056	0-7	$1,602
E-9	[1]$1,102	0-8	$1,758
W-1	$1,022	0-9	$1,881
W-2	$1,063	0-10	$2,063[2]
W-3	$1,094		

[1] If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse's rate shall be $1,189.

[2] If the veteran served as Chairman or Vice-Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse's rate shall be $2,213.

(3) Section 1311(b) is amended by striking "$237" and inserting "$241".

(4) Section 1311(c) is amended by striking "$237" and inserting "$241".

(5) Section 1311(d) is amended by striking "$113" and inserting "$115".

(e) DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN.—(1) Section 1313(a) is amended—

(A) by striking "$402" in paragraph (1) and inserting "$410";

(B) by striking "$578" in paragraph (2) and inserting "$590";

(C) by striking "$752" in paragraph (3) and inserting "$767"; and

(D) by striking "$752" and "$145" in paragraph (4) and inserting "$767" and "$148", respectively.

(2) Section 1314 is amended—

(A) by striking "$237" in subsection (a) and inserting "$241";

(B) by striking "$402" in subsection (b) and inserting "$410"; and

(C) by striking "$201" in subsection (c) and inserting "$205".

SEC. 308. CROSS-REFERENCE AMENDMENTS RELATING TO CONCURRENT PAYMENT OF RETIRED PAY AND VETERANS' DISABILITY COMPENSATION.

(a) PROHIBITION AGAINST DUPLICATION OF BENEFITS.—Section 5304(a)(1) is amended by inserting "as provided in section 1414 of title 10 or" after "Except".

(b) WAIVER OF RETIRED PAY.—Section 5305 is amended by striking "Any" in the first sentence and inserting "Except as provided in section 1414 of title 10, any".

TITLE IV—HOUSING MATTERS

SEC. 401. AUTHORITY TO PROVIDE SPECIALLY ADAPTED HOUSING TO CERTAIN DISABLED VETERANS.

The text of section 2101 is amended to read as follows:

"(a) ACQUISITION OF HOUSING WITH SPECIAL FEATURES.—(1) Subject to paragraph (3), the Secretary may assist a disabled veteran described in paragraph (2) in acquiring a suitable housing unit with special fixtures or movable facilities made necessary by the nature of the veteran's disability, and necessary land therefor.

"(2) A veteran is described in this paragraph if the veteran is entitled to compensation under chapter 11 of this title for a permanent and total service-connected disability that meets any of the following criteria:

"(A) The disability is due to the loss, or loss of use, of both lower extremities such as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair.

"(B) The disability is due to—

"(i) blindness in both eyes, having only light perception, plus

"(ii) loss or loss of use of one lower extremity.

"(C) The disability is due to the loss or loss of use of one lower extremity together with—

"(i) residuals of organic disease or injury; or

"(ii) the loss or loss of use of one upper extremity,

which so affect the functions of balance or propulsion as to preclude locomotion without the aid of braces, crutches, canes, or a wheelchair.

"(D) The disability is due to the loss, or loss of use, of both upper extremities such as to preclude use of the arms at or above the elbows.

"(3) The regulations prescribed under subsection (c) shall require that assistance under paragraph (1) may be provided to a veteran only if the Secretary finds that—

"(A) it is medically feasible for the veteran to reside in the proposed housing unit and in the proposed locality;

"(B) the proposed housing unit bears a proper relation to the veteran's present and anticipated income and expenses; and

"(C) the nature and condition of the proposed housing unit are such as to be suitable to the veteran's needs for dwelling purposes.

"(b) ADAPTATIONS TO RESIDENCE OF VETERAN.—(1) Subject to paragraph (3), the Secretary shall assist any disabled veteran described in paragraph (2) (other than a veteran who is eligible for assistance under subsection (a))—

"(A) in acquiring such adaptations to such veteran's residence as are determined by the Secretary to be reasonably necessary because of such disability; or

"(B) in acquiring a residence already adapted with special features determined by the Secretary to be reasonably necessary for the veteran because of such disability.

"(2) A veteran is described in this paragraph if the veteran is entitled to compensation under chapter 11 of this title for a permanent and total service-connected disability that meets either of the following criteria:

"(A) The disability is due to blindness in both eyes with 5/200 visual acuity or less.

"(B) The disability includes the anatomical loss or loss of use of both hands.

"(3) Assistance under paragraph (1) may be provided only to a veteran who the Secretary determines—

"(A) is residing in and reasonably intends to continue residing in a residence owned by such veteran or by a member of such veteran's family; or

"(B) if the veteran's residence is to be constructed or purchased, will be residing in and reasonably intends to continue residing in a residence owned by such veteran or by a member of such veteran's family.

"(c) REGULATIONS.—Assistance under this section shall be provided in accordance with such regulations as the Secretary may prescribe.".

SEC. 402. TRANSITIONAL HOUSING AMENDMENTS.

(a) USE OF VETERAN VOLUNTEERS.—Section 2051 is amended by adding at the end the following new subsection:

"(g) Notwithstanding any other provision of law, a multifamily transitional housing project that is funded by a loan guaranteed under this subchapter may accept uncompensated voluntary services performed by any eligible entity (as that term is defined in section 2011(d) of this title) in connection with the construction, alteration, or repair of such project.".

(b) AUTHORIZATION FOR COMMERCIALLY-LEASED SPACE.—Section 2052(c)(1) is amended by striking "services" and inserting "services, other commercial activities,".

SEC. 403. INCREASE IN MAXIMUM AMOUNT OF HOME LOAN GUARANTY FOR CONSTRUCTION AND PURCHASE OF HOMES AND ANNUAL INDEXING OF AMOUNT.

(a) MAXIMUM LOAN GUARANTY BASED ON 100 PERCENT OF FREDDIE MAC CONFORMING LOAN RATE.—Section 3703(a)(1) is amended by striking "$60,000" each place it appears in subparagraphs (A)(i)(IV) and (B) and inserting "the maximum guaranty amount (as defined in subparagraph (C))".

(b) DEFINITION.—Such section is further amended by adding at the end the following new subparagraph:

"(C) In this paragraph, the term 'maximum guaranty amount' means the dollar amount that is equal to 25 percent of the Freddie Mac conforming loan limit limitation determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) for a single-family residence, as adjusted for the year involved.".

SEC. 404. EXTENSION OF AUTHORITY FOR GUARANTEE OF ADJUSTABLE RATE MORTGAGES.

Section 3707(a) is amended by striking "during fiscal years 1993, 1994, and 1995" and inserting "during fiscal years 1993 through 2008".

SEC. 405. EXTENSION AND IMPROVEMENT OF AUTHORITY FOR GUARANTEE OF HYBRID ADJUSTABLE RATE MORTGAGES.

(a) EXTENSION OF AUTHORITY.—Subsection (a) of section 3707A is amended by striking "during fiscal years 2004 and 2005" and inserting "during fiscal years 2004 through 2008".

(b) MODIFICATION OF INTEREST RATE ADJUSTMENT REQUIREMENTS.—Subsection (c) of such section is amended—

(1) by redesignating paragraph (4) as paragraph (5);

(2) by striking paragraph (3) and inserting the following new paragraphs:

"(3) in the case of the initial contract interest rate adjustment—

"(A) if the initial contract interest rate remained fixed for less than 5 years, be limited to a maximum increase or decrease of 1 percentage point; or

"(B) if the initial contract interest rate remained fixed for 5 years or more, be limited to a maximum increase or decrease of such percentage point or points as the Secretary may prescribe;

"(4) in the case of any single annual interest rate adjustment after the initial contract interest rate adjustment, be limited to a maximum increase or decrease of 1 percentage point; and"; and

(3) in paragraph (5), as so redesignated, by striking "5 percentage points" and all that follows and inserting "such number of percentage points as the Secretary shall prescribe for purposes of this section.".

(c) No Effect on Guarantee of Loans Under Hybrid Adjustable Rate Mortgage Guarantee Demonstration Project.—The amendments made by this section shall not be construed to affect the force or validity of any guarantee of a loan made by the Secretary of Veterans Affairs under the demonstration project for the guarantee of hybrid adjustable rate mortgages under section 3707A of title 38, United States Code, as in effect on the day before the date of the enactment of this Act.

SEC. 406. TERMINATION OF COLLECTION OF LOAN FEES FROM VETERANS RATED ELIGIBLE FOR COMPENSATION AT PRE-DISCHARGE RATING EXAMINATIONS.

Section 3729(c) is amended—

(1) by inserting "(1)" before "A fee"; and

(2) by adding at the end the following new paragraph:

"(2) A veteran who is rated eligible to receive compensation as a result of a pre-discharge disability examination and rating shall be treated as receiving compensation for purposes of this subsection as of the date on which the veteran is rated eligible to receive compensation as a result of the pre-discharge disability examination and rating without regard to whether an effective date of the award of compensation is established as of that date.".

SEC. 407. THREE-YEAR EXTENSION OF NATIVE AMERICAN VETERAN HOUSING LOAN PILOT PROGRAM.

Section 3761(c) is amended by striking "December 31, 2005" and inserting "December 31, 2008".

TITLE V—MATTERS RELATING TO FIDUCIARIES

SEC. 501. DEFINITION OF FIDUCIARY.

(a) In General.—(1) Chapter 55 is amended by adding at the end the following new section:

"§ 5506. Definition of 'fiduciary'

"For purposes of this chapter and chapter 61 of this title, the term 'fiduciary' means—

"(1) a person who is a guardian, curator, conservator, committee, or person legally vested with the responsibility or care of a claimant (or a claimant's estate) or of a beneficiary (or a beneficiary's estate); or

"(2) any other person having been appointed in a representative capacity to receive money paid under any of the laws administered by the Secretary for the use and benefit of a minor, incompetent, or other beneficiary.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"5506. Definition of 'fiduciary'.".

(b) Conforming Amendments to Section 5502.—Section 5502 is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking "other person" and inserting "other fiduciary"; and

(B) in the second sentence of paragraph (2), by inserting "for benefits under this title" after "in connection with rendering fiduciary services";

(2) in subsection (b), by striking "guardian, curator, conservator, or other person" each place it appears and inserting "fiduciary"; and

(3) in subsection (d), by striking "guardian, curator, or conservator" and inserting "fiduciary".

(c) Conforming Amendment to Section 6101.—Section 6101(a) is amended by striking "guardian, curator," and all that follows through "beneficiary," and inserting "fiduciary (as defined in section 5506 of this title) for the benefit of a minor, incompetent, or other beneficiary under laws administered by the Secretary,".

SEC. 502. INQUIRY, INVESTIGATIONS, AND QUALIFICATION OF FIDUCIARIES.

(a) In General.—Chapter 55, as amended by section 501(a)(1), is further amended by adding at the end the following new section:

"§ 5507. Inquiry, investigations, and qualification of fiduciaries

"(a) Any certification of a person for payment of benefits of a beneficiary to that person as such beneficiary's fiduciary under section 5502 of this title shall be made on the basis of—

"(1) an inquiry or investigation by the Secretary of the fitness of that person to serve as fiduciary for that beneficiary, such inquiry or investigation—

"(A) to be conducted in advance of such certification;

"(B) to the extent practicable, to include a face-to-face interview with such person; and

"(C) to the extent practicable, to include a copy of a credit report for such person issued within one year of the date of the proposed appointment;

"(2) adequate evidence that certification of that person as fiduciary for that beneficiary is in the interest of such beneficiary (as determined by the Secretary under regulations); and

"(3) the furnishing of any bond that may be required by the Secretary.

"(b) As part of any inquiry or investigation of any person under subsection (a), the Secretary shall request information concerning whether that person has been convicted of any offense under Federal or State law which resulted in imprisonment for more than one year. If that person has been convicted of such an offense, the Secretary may certify the person as a fiduciary only if the Secretary finds that the person is an appropriate person to act as fiduciary for the beneficiary concerned under the circumstances.

"(c)(1) In the case of a proposed fiduciary described in paragraph (2), the Secretary, in conducting an inquiry or investigation under subsection (a)(1), may carry out such inquiry or investigation on an expedited basis that may include waiver of any specific requirement relating to such inquiry or investigation, including the otherwise applicable provisions of subparagraphs (A), (B), and (C) of such subsection. Any such inquiry or investigation carried out on such an expedited basis shall be carried out under regulations prescribed for purposes of this section.

"(2) Paragraph (1) applies with respect to a proposed fiduciary who is—

"(A) the parent (natural, adopted, or stepparent) of a beneficiary who is a minor;

"(B) the spouse or parent of an incompetent beneficiary;

"(C) a person who has been appointed a fiduciary of the beneficiary by a court of competent jurisdiction; or

"(D) being appointed to manage an estate where the annual amount of veterans benefits to be managed by the proposed fiduciary does not exceed $3,600, as adjusted pursuant to section 5312 of this title.

"(d) Temporary Fiduciaries.—When in the opinion of the Secretary, a temporary fiduciary is needed in order to protect the assets of the beneficiary while a determination of incompetency is being made or appealed or a fiduciary is appealing a determination of misuse, the Secretary may appoint one or more temporary fiduciaries for a period not to exceed 120 days. If a final decision has not been made within 120 days, the Secretary may not continue the appointment of the fiduciary without obtaining a court order for appointment of a guardian, conservator, or other fiduciary under the authority provided in section 5502(b) of this title.".

(b) Clerical Amendment.—The table of sections at the beginning of such chapter is amended by adding after the item added by section 501(a)(2) the following new item:

"5507. Inquiry, investigations, and qualification of fiduciaries.".

SEC. 503. MISUSE OF BENEFITS BY FIDUCIARIES.

(a) Protection of Veterans Benefits When Administered by Fiduciaries.—(1) Chapter 61 is amended by adding at the end the following new sections:

"§ 6106. Misuse of benefits by fiduciaries

"(a) Fee Forfeiture in Case of Benefit Misuse by Fiduciaries.—A fiduciary may not collect a fee from a beneficiary for any month with respect to which the Secretary or a court of competent jurisdiction has determined that the fiduciary misused all or part of the individual's benefit, and any amount so collected by the fiduciary as a fee for such month shall be treated as a misused part of the individual's benefit.

"(b) Misuse of Benefits Defined.—For purposes of this chapter, misuse of benefits by a fiduciary occurs in any case in which the fiduciary receives payment, under any of laws administered by the Secretary, for the use and benefit of a beneficiary and uses such payment, or any part thereof, for a use other than for the use and benefit of such beneficiary or that beneficiary's dependents. Retention by a fiduciary of an amount of a benefit payment as a fiduciary fee or commission, or as attorney's fees (including expenses) and court costs, if authorized by the Secretary or a court of competent jurisdiction, shall be considered to be for the use or benefit of such beneficiary.

"(c) Regulations.—The Secretary may prescribe by regulation the meaning of the term 'use and benefit' for purposes of this section.

"§ 6107. Reissuance of benefits

"(a) Negligent Failure by Secretary.—(1) In any case in which the negligent failure of the Secretary to investigate or monitor a fiduciary results in misuse of benefits by the fiduciary, the Secretary shall pay to the beneficiary or the beneficiary's successor fiduciary an amount equal to the amount of benefits that were so misused.

"(2) There shall be considered to have been a negligent failure by the Secretary to investigate and monitor a fiduciary in the following cases:

"(A) A case in which the Secretary failed to review a fiduciary's accounting within 60 days of the date on which that accounting is scheduled for review.

"(B) A case in which the Secretary was notified of allegations of misuse, but failed to act within 60 days of the date of such notification to terminate the fiduciary.

"(C) In any other case in which actual negligence is shown.

"(b) Reissuance of Misused Benefits in Other Cases.—(1) In any case in which a fiduciary described in paragraph (2) misuses all or part of an individual's benefit paid to such fiduciary, the Secretary shall pay to the beneficiary or the beneficiary's successor fiduciary an amount equal to the amount of such benefit so misused.

"(2) Paragraph (1) applies to a fiduciary that—

"(A) is not an individual; or

"(B) is an individual who, for any month during a period when misuse occurs, serves 10 or more individuals who are beneficiaries under this title.

"(3) In any other case in which the Secretary obtains recoupment from a fiduciary who has misused benefits, the Secretary shall promptly remit payment of the recouped amounts to the beneficiary or the beneficiary's successor fiduciary as the case may be.

"(c) LIMITATION ON TOTAL AMOUNT PAID.—The total of the amounts paid to a beneficiary (or a beneficiary's successor fiduciary) under this section may not exceed the total benefit amount misused by the fiduciary with respect to that beneficiary.

"(d) RECOUPMENT OF AMOUNTS REISSUED.—In any case in which the Secretary reissues a benefit payment (in whole or in part) under subsection (a) or (b), the Secretary shall make a good faith effort to obtain recoupment from the fiduciary to whom the payment was originally made.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new items:

"6106. Misuse of benefits by fiduciaries.
"6107. Reissuance of benefits.".

SEC. 504. ADDITIONAL PROTECTIONS FOR BENEFICIARIES WITH FIDUCIARIES.

(a) ONSITE REVIEWS AND REQUIRED ACCOUNTINGS.—(1) Chapter 55, as amended by section 502(a), is further amended by adding at the end the following new sections:

"§ 5508. Periodic onsite reviews of institutional fiduciaries

"In addition to such other reviews of fiduciaries as the Secretary may otherwise conduct, the Secretary shall provide for the periodic onsite review of any person or agency located in the United States that receives the benefits payable under laws administered by the Secretary to another individual pursuant to the appointment of such person or agency as a fiduciary under section 5502(a)(1) of this title in any case in which the fiduciary is serving in that capacity with respect to more than 20 beneficiaries and the total annual amount of such benefits exceeds $50,000, as adjusted pursuant to section 5312 of this title.

"§ 5509. Authority to require fiduciary to receive payments at regional offices of the Department when failing to provide required accounting

"(a) REQUIRED REPORTS AND ACCOUNTINGS.—The Secretary may require a fiduciary to file a report or accounting pursuant to regulations prescribed by the Secretary.

"(b) ACTIONS UPON FAILURE TO FILE.—In any case in which a fiduciary fails to submit a report or accounting required by the Secretary under subsection (a), the Secretary may, after furnishing notice to such fiduciary and the beneficiary entitled to such payment of benefits, require that such fiduciary appear in person at a regional office of the Department serving the area in which the beneficiary resides in order to receive such payments.".

(2) The table of sections at the beginning of such chapter is amended by adding after the item added by section 502(b) the following new items:

"5508. Periodic onsite reviews of institutional fiduciaries.
"5509. Authority to require fiduciary to receive payments at regional offices of the Department when failing to provide required accounting.".

(b) JUDICIAL ORDERS OF RESTITUTION.—(1) Chapter 61, as amended by section 503(a), is further amended by adding at the end the following new section:

"§ 6108. Authority for judicial orders of restitution

"(a) Any Federal court, when sentencing a defendant convicted of an offense arising from the misuse of benefits under this title, may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Department.

"(b) Sections 3612, 3663, and 3664 of title 18 shall apply with respect to the issuance and enforcement of orders of restitution under subsection (a). In so applying those sections, the Department shall be considered the victim.

"(c) If the court does not order restitution, or orders only partial restitution, under subsection (a), the court shall state on the record the reasons therefor.

"(d) Amounts received in connection with misuse by a fiduciary of funds paid as benefits under laws administered by the Secretary shall be paid to the individual whose benefits were misused. If the Secretary has previously reissued the misused benefits, the amounts shall be treated in the same manner as overpayments recouped by the Secretary and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation.".

(2) The table of sections at the beginning of such chapter is amended by adding after the item added by section 503(b) the following new item:

"6108. Authority for judicial orders of restitution.".

SEC. 505. ANNUAL REPORT.

(a) IN GENERAL.—Chapter 55, as amended by section 504(a)(1), is further amended by adding at the end the following new section:

"§ 5510. Annual report

"The Secretary shall include in the Annual Benefits Report of the Veterans Benefits Administration or the Secretary's Annual Performance and Accountability Report information concerning fiduciaries who have been appointed to receive payments for beneficiaries of the Department. As part of such information, the Secretary shall separately set forth the following:—

"(1) The number of beneficiaries in each category (veteran, surviving spouse, child, adult disabled child, or parent).

"(2) The types of benefit being paid (compensation, pension, dependency and indemnity compensation, death pension or benefits payable to a disabled child under chapter 18 of this title).

"(3) The total annual amounts and average annual amounts of benefits paid to fiduciaries for each category and type of benefit.

"(4) The number of fiduciaries who are the spouse, parent, legal custodian, court-appointed fiduciary, institutional fiduciary, custodian in fact, and supervised direct payees.

"(5) The number of cases in which the fiduciary was changed by the Secretary because of a finding that benefits had been misused.

"(6) How such cases of misuse of benefits were addressed by the Secretary.

"(7) The final disposition of such cases of misuse of benefits, including the number and dollar amount of any benefits reissued to beneficiaries.

"(8) The number of fiduciary cases referred to the Office of the Inspector General and the nature of the actions taken by the Inspector General.

"(9) The total amount of money recovered by the government in cases arising from the misuse of benefits by a fiduciary.

"(10) Such other information as the Secretary considers appropriate.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding after the items added by the amendment made by section 504(a)(2) the following new item:

"5510. Annual report.".

SEC. 506. ANNUAL ADJUSTMENT IN BENEFITS THRESHOLDS.

Section 5312(b)(1) is amended by inserting "and the annual benefit amount limitations under sections 5507(c)(2)(D) and 5508 of this title," after "(d)(3) of such section,".

SEC. 507. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided, this title and the amendments made by this title shall take effect on the first day of the seventh month beginning after the date of the enactment of this Act.

(b) SPECIAL RULES.—(1) Section 5510 of title 38, United States Code, as added by section 505(a), shall take effect on the date of the enactment of this Act.

(2) Sections 6106 and 6107 of title 38, United States Code, as added by section 503(a), shall apply with respect to any determinations by the Secretary of Veterans Affairs made after the date of the enactment of this Act of misuse of funds by a fiduciary.

TITLE VI—MEMORIAL AFFAIRS MATTERS

SEC. 601. DESIGNATION OF PRISONER OF WAR/MISSING IN ACTION NATIONAL MEMORIAL, RIVERSIDE NATIONAL CEMETERY, RIVERSIDE, CALIFORNIA.

(a) DESIGNATION.—The memorial to former prisoners of war and members of the Armed Forces listed as missing in action that is under construction at Riverside National Cemetery in Riverside, California, is hereby designated: "Prisoner of War/Missing in Action National Memorial".

(b) EFFECT OF DESIGNATION.—Such national memorial designated by subsection (a) is not a unit of the National Park System, and the designation of the national memorial shall not be construed to require Federal funds to be expended for any purpose related to the national memorial.

SEC. 602. LEASE OF CERTAIN NATIONAL CEMETERY ADMINISTRATION PROPERTY.

(a) IN GENERAL.—Chapter 24 is amended by adding at the end the following new section:

"§ 2412. Lease of land and buildings

"(a) LEASE AUTHORIZED.—The Secretary may lease any undeveloped land and unused or underutilized buildings, or parts or parcels thereof, belonging to the United States and part of the National Cemetery Administration.

"(b) TERM.—The term of a lease under subsection (a) may not exceed 10 years.

"(c) LEASE TO PUBLIC OR NONPROFIT ORGANIZATIONS.—(1) A lease under subsection (a) to any public or nonprofit organization may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5).

"(2) Notwithstanding section 1302 of title 40 or any other provision of law, a lease under subsection (a) to any public or nonprofit organization may provide for the maintenance, protection, or restoration of the leased property by the lessee, as a part or all of the consideration for the lease.

"(d) Notice.—Before entering into a lease under subsection (a), the Secretary shall give appropriate public notice of the intention of the Secretary to enter into the lease in a newspaper of general circulation in the community in which the lands or buildings concerned are located.

"(e) National Cemetery Administration Facilities Operation Fund.—(1) There is established on the book of the Treasury an account to be known as the 'National Cemetery Administration Facilities Operation Fund' (in this section referred to as the 'Fund').

"(2) The Fund shall consist of the following:

"(A) Proceeds from the lease of land or buildings under this section.

"(B) Proceeds of agricultural licenses of lands of the National Cemetery Administration.

"(C) Any other amounts appropriated to or otherwise authorized for deposit in the Fund by law.

"(3) Amounts in the Fund shall be available to cover costs incurred by the National Cemetery Administration in the operation and maintenance of property of the Administration.

"(4) Amounts in the Fund shall remain available until expended.".

(b) Clerical Amendment.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2412. Lease of land and buildings.".

SEC. 603. EXCHANGES OF REAL PROPERTY FOR NATIONAL CEMETERIES.

Section 2406 is amended by inserting "exchange," after "agencies,".

TITLE VII—IMPROVEMENTS TO SERVICEMEMBERS CIVIL RELIEF ACT

SEC. 701. CLARIFICATION OF MEANING OF "JUDGMENT" AS USED IN THE ACT.

Section 101 of the Servicemembers Civil Relief Act (50 U.S.C. App. 511) is amended by adding at the end the following new paragraph:

"(9) Judgment.—The term 'judgment' means any judgment, decree, order, or ruling, final or temporary.".

SEC. 702. REQUIREMENTS RELATING TO WAIVER OF RIGHTS UNDER THE ACT.

Section 107 of the Servicemembers Civil Relief Act (50 U.S.C. App. 517) is amended—

(1) in subsection (a), by inserting after the first sentence the following new sentence: "Any such waiver that applies to an action listed in subsection (b) of this section is effective only if it is in writing and is executed as an instrument separate from the obligation or liability to which it applies.";

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (b) the following new subsection (c):

"(c) Prominent Display of Certain Contract Rights Waivers.—Any waiver in writing of a right or protection provided by this Act that applies to a contract, lease, or similar legal instrument must be in at least 12 point type.".

SEC. 703. RIGHT OF SERVICEMEMBER PLAINTIFFS TO REQUEST STAY OF CIVIL PROCEEDINGS.

Section 202(a) of the Servicemembers Civil Relief Act (50 U.S.C. App. 522(a)) is amended by inserting "plaintiff or" before "defendant".

SEC. 704. TERMINATION OF LEASES.

(a) Joint Leases.—Subsection (a) of section 305 of the Servicemembers Civil Relief Act (50 U.S.C. App. 535) is amended to read as follows:

"(a) Termination by Lessee.—

"(1) In general.—The lessee on a lease described in subsection (b) may, at the lessee's option, terminate the lease at any time after—

"(A) the lessee's entry into military service; or

"(B) the date of the lessee's military orders described in paragraph (1)(B) or (2)(B) of subsection (b), as the case may be.

"(2) Joint leases.—A lessee's termination of a lease pursuant to this subsection shall terminate any obligation a dependent of the lessee may have under the lease.".

(b) Motor Vehicles Leases.—

(1) Applicability to PCS orders from states outside CONUS.—Subparagraph (B) of subsection (b)(2) of such section is amended by striking "military orders for" and all that follows through "or to deploy" and inserting "military orders—

"(i) for a change of permanent station—

"(I) from a location in the continental United States to a location outside the continental United States; or

"(II) from a location in a State outside the continental United States to any location outside that State; or

"(ii) to deploy".

(2) Definitions.—Such section is further amended by adding at the end the following new subsection:

"(i) Definitions.—

"(1) Military orders.—The term 'military orders', with respect to a servicemember, means official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military duty status.

"(2) CONUS.—The term 'continental United States' means the 48 contiguous States and the District of Columbia.".

(c) Coverage of Individual Deployments.—Subsection (b) of such section is further amended in paragraph (1)(B) and paragraph (2)(B)(ii) (as designated by subsection (b) of this section) by inserting ", or as an individual in support of a military operation," after "deploy with a military unit".

TITLE VIII—OTHER MATTERS

SEC. 801. PRINCIPAL OFFICE OF UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS.

Section 7255 is amended by striking "District of Columbia" and inserting "Washington, D.C., metropolitan area".

SEC. 802. TECHNICAL AMENDMENTS RELATING TO THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS.

(a) Restoration of Prior Provision Relating to Chief Judge.—Section 7253(d)(1) is amended by inserting after "(1)" the following: "The chief judge of the Court is the head of the Court.".

(b) Capitalization Amendments.—Section 7253(d)(4)(A) is amended by striking "court" in clauses (i) and (ii) and inserting "Court".

(c) Date of Enactment Reference.—Section 7253(h)(4) is amended by striking "the date of the enactment of this subsection" and inserting "December 27, 2001.".

SEC. 803. EXTENSION OF BIENNIAL REPORT OF ADVISORY COMMITTEE ON FORMER PRISONERS OF WAR.

Section 541(c)(1) is amended by striking "2003" and inserting "2009".

SEC. 804. AVAILABILITY OF ADMINISTRATIVE AND JUDICIAL REDRESS FOR CERTAIN VETERANS DENIED OPPORTUNITY TO COMPETE FOR FEDERAL EMPLOYMENT.

(a) Administrative Redress.—Section 3330a(a)(1) of title 5, United States Code, is amended—

(1) by inserting "(A)" after "(1)"; and

(2) by adding at the end the following new subparagraph:

"(B) A veteran described in section 3304(f)(1) who alleges that an agency has violated such section with respect to such veteran may file a complaint with the Secretary of Labor.".

(b) Judicial Redress.—Section 3330b(a) is amended by inserting ", or a veteran described by section 3330a(a)(1)(B) with respect to a violation described by such section," after "a preference eligible".

SEC. 805. REPORT ON SERVICEMEMBERS' AND VETERANS' AWARENESS OF BENEFITS AND SERVICES AVAILABLE UNDER LAWS ADMINISTERED BY SECRETARY OF VETERANS AFFAIRS.

(a) Report.—Not later than one year after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to Congress a report setting forth a detailed description of (1) the outreach efforts of the Department of Veterans Affairs, as of the date of the enactment of this Act, to inform members of the uniformed services and veterans (and their family members and survivors) of the benefits and services to which they are entitled under laws administered by the Secretary, and (2) the current level of awareness of those members and veterans (and family members and survivors) of those benefits and services.

(b) Matters to Be Included.—The report under subsection (a) shall include the following:

(1) A description of the outreach activities conducted by the Secretary in each of the three Administrations of the Department of Veterans Affairs and outreach activities conducted by other entities within the Department.

(2) The results of a national survey, conducted as described in subsection (c), to ascertain servicemembers' and veterans' level of awareness of benefits and services referred to in subsection (a) and whether servicemembers and veterans know how to access those benefits and services.

(3) Recommendations by the Secretary on how outreach and awareness activities to veterans and servicemembers may be improved.

(c) Conduct of Survey.—The survey conducted for purposes of subsection (b)(2) shall be conducted in a manner to include a statistically valid sample of persons in each of the following groups:

(1) World War II veterans.

(2) Korean conflict era veterans.

(3) Vietnam era veterans.

(4) Persian Gulf era veterans.

(5) Active duty servicemembers.

(6) National Guard and Reserve members activated under title 10, United States Code.

(7) Family members and survivors.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON FINANCE

Mrs. DOLE. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Friday, October 8, 2004, at 10 a.m., in 215 Dirksen Senate Office Building, to consider the nomination of Anna Escobedo Cabral to be United States Treasurer, U.S. Department of the Treasury.

The PRESIDING OFFICER. Without objection, it is so ordered.

JOINT ECONOMIC COMMITTEE

Mrs. DOLE. Mr. President, I ask unanimous consent that the Joint Economic Committee be authorized to conduct a hearing in Room 628 of the Dirksen Senate Office Building, Friday, October 8, 2004, from 9:30 a.m. to 12:30 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOTICE: REGISTRATION OF MASS MAILINGS

The filing date for 2004 third quarter mass mailings is Monday, October 25, 2004. If your office did no mass mailings during this period, please submit a form that states "none."

Mass mailing registrations, or negative reports, should be submitted to the Senate Office of Public Records, 232 Hart Building, Washington, DC 20510–7116.

The Public Records office will be open from 9:00 a.m. to 5:30 p.m. on the filing date to accept these filings. For further information, please contact the public Records office at (202) 224–0322.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FRIST. I ask unanimous consent that the Senate proceed to executive session for the consideration of the following nominations on the Executive Calendar. For the information of Members, these are uniformed military promotions that were reported by the Armed Services Committee. The nominations are 917 through 923, and all nominations on the Secretary's desk in the Air Force, Army, and Navy. I further ask consent that the nominations be confirmed, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

AIR FORCE

The following Air National Guard of the United States officers for appointment in the Reserve of the Air Force to the grades indicated under title 10, U.S.C., section 12203:

To be major general

Brig. Gen. David A. Brubaker, 2008
Brig. Gen. Annette L. Sobel, 0183

To be brigadier general

Colonel Eugene J. Delgado, 3412
Colonel James J. D'Agostino, 0491
Colonel Charles M. Campbell, 6247
Colonel William S. Busby, III, 8374
Colonel Robert B. Buehler, 8135
Colonel Hugh T. Broomall, 8450
Colonel Michael G. Brandt, 5080

To be major general

Brig. Gen. John M. White, 5135
Brig. Gen. Frank D. Tutor, 8226

To be brigadier general

Colonel Stephen M. Sischo, 9908
Colonel Don E. Reynolds, 4641
Colonel Richard J. Prosek, 9887
Colonel Peter S. Pawling, 2613
Colonel Dennis W. Menefee, 5023
Colone James M. Lillis, 0396
Colonel Richard D. King, 6633
Colonel David E. Holman, 5666
Colonel Allison A. Hickey, 4946
Colonel Thomas J. Haynes, 7181
Colonel Donald D. Harvel, 0643
Colonel Steven E. Foster, 1516
Colonel John B. Ellington, Jr., 6887
Colonel Richard G. Elliott, 5998

To be major general

Brig. Gen. Frank Pontelandolfo, Jr., 9346
Brig. Gen. Alan L. Cowles, 3501
Brig. Gen. Harry W. Feucht, Jr., 7876
Brig. Gen. Charles A. Morgan, III, 9002
Brig. Gen. Mark R. Musick, 3561
Brig. Gen. Allen R. Dehnert, 7273

ARMY

The following named officer for appointment in the United states Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Raymond T. Odierno, 8425

The following named officers for appointment in the United States Army to the grade indicated under title 10, U.S.C., section 624:

To be brigadier general

Colonel Rodney O. Anderson, 3221
Colonel Robert M. Brown, 0115
Colonel James L. Huggins, Jr., 5147
Colonel Jeffrey C. Horne, 3818
Colonel David D. Halverson, 1089
Colonel Mark A. Graham, 0072
Colonel Michael Ferriter, 5367
Colonel Jeffrey J. Dorko, 8001
Colonel Walter L. Davis, 4135
Colonel Charles T. Cleveland, 7375
Colonel John F. Campbell, 0073
Colonel Christopher Tucker, 9233
Colonel Michael J. Terry, 4150
Colonel Rickey L. Rife, 9823
Colonel Ernest E. Porter, 8660
Colonel Belinda Pinckney, 5043
Colonel William N. Phillips, 2441
Colonel Peter J. Palmer, 0270
Colonel Theodore C. Nicholas, 4035
Colonel James M. Milano, 1118
Colonel James C. Yarbrough, 6424
Colonel Robert H. Woods, Jr., 3697
Colonel Michael J. Walsh, 0884
Colonel Andrew B. Twomey, 6117
Colonel Michael S. Tucker, 4884
Colonel Richard R. McPhee, 1921
Colonel Anne F. Macdonald, 8579
Colonel Kevin A. Leonard, 9827
Colonel Susan S. Lawrence, 4034
Colonel Harvey T. Landwermeyer, 2424
Colonel Brian A. Keller, 1957
Colonel Nickolas G. Justice, 3718
Colonel Rodney L. Johnson, 2637
Colonel Mark A. Bellini, 0763
Colonel Steven M. Anderson, 2792
Colonel John M. Bednarek, 5704
Colonel James J. D'Agostino, 0491
Colonel Charles M. Campbell, 6247
Colonel William S. Busby, III, 8374
Colonel Robert B. Buehler, 8135
Colonel Hugh T. Broomall, 8450
Colonel Michael G. Brandt, 5080

To be major general

Brig. Gen. John M. White, 5135
Brig. Gen. Frank D. Tutor, 8226

To be brigadier general

Colonel Stephen M. Sischo, 9908
Colonel Don E. Reynolds, 4641
Colonel Richard J. Prosek, 9887
Colonel Peter S. Pawling, 2613
Colonel Dennis W. Menefee, 5023
Colonel James M. Lillis, 0396
Colonel Richard D. King, 6633
Colonel David E. Holman, 5666
Colonel Allison A. Hickey, 4946
Colonel Thomas J. Haynes, 7181
Colonel Donald D. Harvel, 0643
Colonel Steven E. Foster, 1516
Colonel John B. Ellington, Jr., 6887
Colonel Richard G. Elliott, 5998

To be major general

Brig. Gen. Frank Pontelandolfo, Jr., 9346
Brig. Gen. Alan L. Cowles, 3501
Brig. Gen. Harry W. Feucht, Jr., 7876
Brig. Gen. Charles A. Morgan, III, 9002
Brig. Gen. Mark R. Musick, 3561
Brig. Gen. Allen R. Dehnert, 7273

ARMY

The following named officer for appointment in the United States Army to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Raymond T. Odierno, 8425

NAVY

The following named officer for appointment in the United States Naval Reserve to the grade indicated under title 10, U.S.C., section 12203:

To be rear admiral (lower half)

Capt. Edward T. Reidy, III, 7345

The following named officer for appointment in the United States Naval Reserve to the grade indicated under title 10, U.S.C., section 12203;

To be rear admiral (lower half)

Capt. Gregory A. Timberlake, 6473

The following named officer for appointment in the United States Navy to the grade indicated under title 10, U.S.C., section 624:

To be rear admiral (lower half)

Capt. Edward H. Deets, III, 2048

The following named officer for appointment in the United States Naval Reserve to the grade indicated under title 10, U.S.C., section 624;

To be rear admiral

Rear Adm. (lh) Andrew M. Singer, 1084

AIR FORCE

PN1439 AIR FORCE nominations (160) beginning LAUREN F. * AASE, and ending SUSAN E. * YOUNG, which nominations were received by the Senate and appeared in the Congressional Record of March 12, 2004.

ARMY

PN1127 ARMY nominations (18) beginning JULIA A. ADAMS, and ending JANET L. WILSON, which nominations were received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN2006 ARMY nomination of Graeme J. Boyett, which was received by the Senate and appeared in the Congressional Record of September 23, 2004.

NAVY

PN2007 NAVY nominations (422) beginning BLAINE E MOWREY, and ending VICTORIA A YODER, which nominations were received by the Senate and appeared in the Congressional Record of September 23, 2004

PN2008 NAVY nominations (12) beginning JERRIS L BENNETT, and ending JESSE J ZIMBAUER, which nominations were received by the Senate and appeared in the Congressional Record of September 23, 2004.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 106–398, as amended by Public Law 108–7, in accordance with the qualifications specified under section 1238(b)(3)(E) of Public Law 106–398, and upon the recommendation of the Majority Leader, in consultation with the chairmen of the Senate Committee on Armed Services and the Senate Committee on Finance, appoints the following individuals to the United States-China Economic Security Review Commission: the Honorable Fred D. Thompson, of Tennessee, for a term beginning January 1, 2005 and expiring December 31, 2006.

THE PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 106–398, as amended by Public Law 108–7, in accordance with the qualifications specified under section 1238(b)(3)(E) of Public Law 106–398, and upon the recommendation of the Democratic Leader, in consultation with the chairmen of the Senate Committee on Armed Services and the Senate Committee on Finance, appoints the following individual to the United States-China Economic Security Review Commission: Patrick A. Mulloy of Virginia, for a term beginning January 1, 2005 and expiring December 31, 2006.

MEASURE READ THE FIRST TIME—S. 2949

Mr. FRIST. I understand S. 2949 is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2949) to amend the Low-Income Home Energy Assistance Act of 1981 to reauthorize the Act, and for other purposes.

Mr. JEFFORDS. Mr. President, this legislation reauthorizes the Low Income Home Energy Assistance Program, or LIHEAP. I am pleased to be joined in this effort by 13 other Senators: the Junior Senator from Maine, Mrs. COLLINS, the Senior from Vermont, Mr. LEAHY, the Senator from Connecticut, Mr. DODD, the Senator from Rhode Island, Mr. REED, the Senator from Delaware, Mr. BIDEN, the Senator from Massachusetts, Mr. KENNEDY, the Senator from New Mexico, Mr. BINGAMAN, the Senator from New Jersey, Mr. LAUTENBERG, the Senator from Maryland, Mr. SARBANES, the Senior Senator from Maine, Ms. SNOWE, the Senator from New York, Mr. SCHUMER, the Senator from Wisconsin, Mr. KOHL, and the Senator from Rhode Island, Mr. CHAFEE.

Funding authorization for this critically important program technically expires at the end of fiscal year 2004. In a regular year, the fiscal year ends on September 30, a date that has already passed. Right now, our Government is operating under a temporary extension of the fiscal year 2004 budget that expires on November 20, 2004. Today, the Federal Government released money for the first quarter of 2005 at the old fiscal year 2004 funding levels. I know that the states are grateful to have this additional money in hand. We must do something now to ensure that this vital program is reauthorized at a higher funding level right away, so that we can provide America's low income families the extra help they need this winter to pay their home heating bills. Who knows now, when we will finish appropriations for fiscal year 2005? We may finish our appropriations legislation in December or January, and we seem headed down that path.

The bill my colleagues and I introduce today sends the right message to concerned constituents already worried about about how they will afford to heat their homes in the face of reported higher home heating costs in the next few months. With this bill we say even if Congress continues to extend last fiscal year's appropriations level or pass a new one, the Senate will increase the amount of money that can be put toward the LIHEAP program.

Fortunately, we know we have support in the Senate for the legislation my colleagues and I introduce today. On February 12, 2004, the Senate passed S. 1786 unanimously. S. 1786 is a bill to extend the Community Services Block Grant Act. Included in Title II, Section 202 of that bill is a provision that would provide an annual LIHEAP funding authorization of $3.4 billion in each of FY2004–FY2006 and at such sums as necessary through FY2010. This bill is identical to Section 202 of S. 1786. Given that it has moved unanimously in the past, it is my hope that the bill I introduce today can pass quickly and become law.

Why is this bill important, Mr. President? First, authorizing LIHEAP at a higher funding level would mean that a subsequent appropriations bill could add more funds to LIHEAP for this winter's heating season. All of the fiscal year 2004 appropriation for LIHEAP has been released, a total of $1.7 billion in regular funds and $99 million in contingency funds, and we've funded the first quarter of 2005 at that same funding level. Even if we wanted to add more money for LIHEAP this winter, Mr. President, Congress is running close to the total authorized limit for the program. Under current law, Congress can only give can only give LIHEAP up to $600 million in contingency funds, and $2 billion in annual regular funding. We are about to head into what is likely to be a cold winter with high fuel cost having nearly hit our credit limit in the amount we can spend on the LIHEAP program. That is wrong. It is poor financial planning and it does a grave injustice to the families that are counting on us, especially when we know fuel costs are going to be high this winter. We should make certain that we can give the LIHEAP program the money it needs, and do so now.

Second, this bill is important our constituents face an uncertain and frightening future with respect to energy costs. We should not continue to fund LIHEAP at last year's level when we know that costs are increasing. In Vermont, my state's fuel assistance programs are now receiving calls from constituents on fixed incomes that have fallen behind on their fuel payments and are concerned about making ends meet. Vermont's first deadline for applications for fuel assistance was August 31, 2004, and payments are not expected to reach eligible applicants until November. In response to this first deadline, my state received 1,800 more applications than last year. Vermont's increase in assistance applications reflects the increased heating costs throughout the Northeast and Midwest. Almost daily, newspapers are reporting on the effect of higher energy costs for consumers in these regions this winter. The Energy Information Administration released its winter forecast this week. They forecast that heating costs will increase, and heating a home with oil in particular will go up by more than 28% compared to a year ago and will cost an average of more than $1,300. Compared to average heating costs from 1998 to 2000, expenditures this winter are expected to be 45 percent higher for heating oil.

Vermont is not alone. The costs for all heating fuels will be greater than last year throughout New England and the Midwest. Natural gas will cost 11% more than it did last year, and propane will cost 17% more. This may be our last opportunity to act before the onset of cold weather in New England and the Midwest. Families and businesses who face a heating crisis this winter deserve our help. Again, I think my colleagues, and I urge swift passage of this bill.

Mr. FRIST. I ask for its second reading, and in order to place the bill on the calendar under rule XIV I object to further proceeding on this matter.

The PRESIDING OFFICER. The objection is heard.

The bill will be read the second time on the next legislative day.

AMENDING THE LIVESTOCK MANDATORY PRICE REPORTING ACT OF 1999

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 2965, which was introduced earlier today by Senator COCHRAN.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2965) to amend the Livestock Mandatory Price Reporting Act of 1999 to modify the termination date for mandatory price reporting.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements regarding this matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 2965) was read the third time and passed, as follows:

S. 2965

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION.

Section 942 of the Livestock Mandatory Price Reporting Act of 1999 (7 U.S.C. 1635 note; Public Law 106-78) is amended by striking "terminate" and all that follows and inserting "terminate on September 30, 2005.".

MEASURE PLACED ON THE CALENDAR—S. 2938

Mr. FRIST. Mr. President, I understand that there is a bill at the desk that is due for a second reading.

The PRESIDING OFFICER. The clerk will report the title of the bill for a second time.

The legislative clerk read as follows:

A bill (S. 2938) to grant a Federal charter to the National American Indian Veterans, Incorporated.

Mr. FRIST. Mr. President, I object to further proceedings on the measure at this time in order to place the bill on the calendar under the provisions of rule XIV.

The PRESIDING OFFICER. The bill will be placed on the calendar.

NATIONAL INTELLIGENCE REFORM ACT OF 2004

MODIFICATION TO AMENDMENT NO. 3977

Mr. FRIST. Mr. President, I ask unanimous consent that notwithstanding the passage of S. 2845, amendment No. 3977, previously agreed to, be modified with the changes that are at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

The modification was agreed to, as follows:

On page 4 after the words "and information gathering" insert the following: "and other".

On page 4, after the words "or international terrorist activities" insert ", but does not include personnel, physical document, or communications security programs"

On page 181, after the words, "to the national security" insert the following: "or involving intelligence acquired through clandestine means".

AMENDING THE PUBLIC HEALTH SERVICE ACT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration of H.R. 3858, which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3858) to amend the Public Health Service Act to increase the supply of pancreatic islet cells for research, and to provide for better coordination of Federal efforts and information on islet cell transplantation.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 3858) was read the third time and passed.

VETERANS' BENEFITS IMPROVEMENTS ACT OF 2004

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 706, S. 2486, the veterans' non-health care benefits bill.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2486) to amend title 38, United States Code, to improve and enhance education, housing, employment, medical, and other benefits for veterans and to improve and extend certain authorities relating to the administration of benefits for veterans, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Veterans' Affairs with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

(Strike the part shown in black brackets and insert the part shown in italic.)

S. 2486

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

[(a) SHORT TITLE.—This Act may be cited as the "Veterans' Benefits Improvements Act of 2004".

[(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

[Sec. 1. Short title; table of contents.
Sec. 2. References to title 38, United States Code.

[TITLE I—EDUCATION BENEFITS

[Sec. 101. Increase in maximum amount of contribution for increased amount of basic educational assistance under Montgomery GI Bill.
[Sec. 102. Pilot program on additional two-year period for use of entitlement by participants in Montgomery GI Bill for vocational or job readiness training.
[Sec. 103. Exclusion of veterans education benefits in determination of eligibility or amount of Federal educational grants and loans.
[Sec. 104. Collection of contributions for educational assistance under Montgomery GI Bill from Reserves called to active duty.

[TITLE II—HOUSING BENEFITS

[Sec. 201. Increase in maximum amount of housing loan guarantee.
[Sec. 202. Permanent authority for guarantee of adjustable rate mortgages.
[Sec. 203. Permanent authority for guarantee of hybrid adjustable rate mortgages and modification of guarantee authority.
[Sec. 204. Termination of collection of loan fees from veterans rated eligible for compensation at pre-discharge rating examinations.

[TITLE III—OTHER BENEFITS AND BENEFITS MATTERS

[Subtitle A—Employment Benefits

[Sec. 301. Availability of administrative and judicial redress for certain veterans denied opportunity to compete for Federal employment.

[Subtitle B—Medical Benefits

[Sec. 311. Prohibition on collection of copayments for hospice care.

[Subtitle C—Extension of Benefits and Related Authorities

[Sec. 321. Extension of various authorities relating to benefits for veterans.

[Subtitle D—Other Matters

[Sec. 331. Modification of definition of minority group member for purposes of Advisory Committee on Minority Veterans.

[SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

[Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

[TITLE I—EDUCATION BENEFITS

[SEC. 101. INCREASE IN MAXIMUM AMOUNT OF CONTRIBUTION FOR INCREASED AMOUNT OF BASIC EDUCATIONAL ASSISTANCE UNDER MONTGOMERY GI BILL.

[(a) ACTIVE DUTY BENEFIT.—Section 3011(e)(3) is amended by striking "$600" and inserting "$2,000".

[(b) SELECTED RESERVE BENEFIT.—Section 3012(f)(3) is amended by striking "$600" and inserting "$2,000".

[SEC. 102. PILOT PROGRAM ON ADDITIONAL TWO-YEAR PERIOD FOR USE OF ENTITLEMENT BY PARTICIPANTS IN MONTGOMERY GI BILL FOR VOCATIONAL OR JOB READINESS TRAINING.

[(a) IN GENERAL.—(1) Subchapter I of chapter 30 is amended by adding at the end the following new section:

[“§ 3020A. Additional two-year period for use of entitlement for vocational or job readiness instruction or training: pilot program

[“(a) Pilot Program Required.—(1) The Secretary shall carry out a pilot program to assess the feasibility and advisability of permitting individuals whose entitlement to basic educational assistance under this chapter expires under section 3031 of this title before their complete use of such entitlement to be entitled to an additional two-year period for their use of such entitlement.

[“(2) The pilot program shall commence six months after the date of the enactment of this section, and shall terminate four years after the date of the commencement of the pilot program.

[“(b) Additional Two-Year Period of Entitlement.—Notwithstanding any provision of section 3031 of this title, an individual described in subsection (c) shall, at the expiration of the 10-year period beginning on the educational assistance entitlement commencement date of such individual, be entitled to an additional two-year period for the use of entitlement to basic educational assistance under this chapter.

[“(c) Eligible Individuals.—(1) An individual described in this subsection is any individual who—

[“(A) as of the end of the 10-year period beginning on the educational assistance entitlement commencement date of such individual—

[“(i) would remain entitled to basic educational assistance under this chapter but for the expiration of the 10-year delimiting period applicable to such individual under section 3031 of this title; and

[“(ii) has not utilized all of the entitlement of such individual to basic educational assistance under this chapter; and

[“(B) at the time of the application for entitlement under this subsection (d), is accepted, enrolled, or otherwise participating (as determined by the Secretary) in instruction or training described in subsection (e).

[“(2) This subsection does not apply to an individual otherwise described by paragraph (1) whose remaining entitlement to basic educational assistance under this chapter as described in subparagraph (A)(ii) of that paragraph is based on the transfer of basic educational assistance under section 3020 of this title.

[“(d) Application.—(1) An individual seeking an additional two-year period for the use of entitlement under this section shall submit to the Secretary an application therefor containing such information as the Secretary may require for purposes of this section.

[“(2) The Secretary may not receive applications under this subsection after the termination date of the pilot program under subsection (a)(2).

[“(e) Commencement of Additional Period for Use.—The additional two-year period for the use of entitlement by an individual under this section shall commence on the date the application of the individual under subsection (d) is received by the Secretary if the Secretary determines pursuant to a review of the application that the individual is an individual described by subsection (c) for purposes of this section.

[“(f) Instruction or Training Covered by Additional Period for Use.—(1) The instruction or training for which entitlement to basic educational assistance under this chapter may be used during the additional two-year period for the use of entitlement under this section is as follows:

[“(A) Education leading to employment in a high technology industry for purposes of section 3014A of this title.

[“(B) A full-time program of apprenticeship or other on-job training approved as provided in clause (1) or (2), as appropriate, of section 3687 of this title.

[“(C) A cooperative program (as defined in section 3482(a)(2) of this title).

[“(D) A licensing or certification test approved under section 3689 of this title.

[“(E) Training or education leading toward a professional or vocational objective which has been approved in accordance with the provisions of subchapter I of chapter 36 of this title and is identified by the Secretary in regulations to be prescribed by the Secretary for purposes of this section.

[“(2) Entitlement to basic educational assistance under this chapter may not be used during the additional two-year period for the use of entitlement under this section for the instruction or training as follows:

[“(A) General education leading toward a standard college degree (as defined in section 3452(g) of this title), unless the program or training concerned will result in an associates degree that is approved by the Secretary in the manner specified in paragraph (1)(E) to be necessary to obtain a professional or vocational objective.

[“(B) Preparatory courses for a test that is required or used for admission to an institution of higher education or graduate school.

[“(g) Coordination With Certain Other Benefits.—(1) An individual entitled to basic educational assistance under subsection (c) is entitled to educational and vocational counseling under section 3697A of this title in connection with the use of entitlement under this section.

[“(2) An individual using entitlement to basic educational assistance under this chapter during the additional two-year period for the use of entitlement under this section is not entitled during the use of such entitlement to the following:

[“(A) Supplemental educational assistance under subchapter III of this chapter.

[“(B) A work-study allowance under section 3485 of this title.

[“(h) Educational Assistance Entitlement Commencement Date Defined.—In this section, the term ‘educational assistance entitlement commencement date’, in the case of an individual described in subsection (b)(1), means the date on which begins the period during which the individual may use the individual's entitlement to educational assistance under chapter as determined under section 3031 of this title.

[“(i) Effect of Termination of Pilot Program.—The termination of the pilot program under subsection (a)(2) shall not effect the continuing use of entitlement under this section of any individual whose additional two-year period for the use of entitlement under this section continues after the date of the termination of the pilot program under that subsection.”.

[(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 3020 the following new item:

[“3020A. Additional two-year period for use of entitlement for vocational or job readiness instruction or training: pilot program.”.

[(b) Cross-Reference Amendment.—Section 3031 is amended—

[(1) in subsection (a), by striking “subsections (b) through (g), and subject to subsection (h),” and inserting “subsections (b) through (h), and subject to subsection (i),”;

[(2) by redesignating subsection (h) as subsection (i); and

[(3) by inserting after subsection (g) the following new subsection (h):

[“(h) An individual whose period for the use of entitlement to basic educational assistance under this chapter would otherwise expire under this section may be eligible for an additional two-year period for the use of entitlement under section 3020A of this title.”.

[SEC. 103. EXCLUSION OF VETERANS EDUCATION BENEFITS IN DETERMINATION OF ELIGIBILITY OR AMOUNT OF FEDERAL EDUCATIONAL GRANTS AND LOANS.

[(a) In General.—(1) Subchapter II of chapter 36 is amended by inserting after section 3694 the following new section:

[“§ 3694A. Exclusion of veterans education benefits in determination of eligibility or amount of Federal education grants and loans

[“(a) Exclusion.—Notwithstanding any other provision of law and subject to subsection (b), education benefits shall not be considered as income, assets, or other monetary resource in determining eligibility for, or the amount of, grant or loan assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

[“(b) Exception.—In the case of campus-based student financial assistance, the amount of such assistance for which an individual would otherwise be eligible without taking into consideration education benefits as described in subsection (a) shall be reduced to the extent that the sum of such amount, the amount of the education benefits of the individual, and the amount of the Federal Pell Grant, if any, of the individual exceeds the cost of attendance of the individual.

[“(c) Definitions.—In this section:

[“(1) The term ‘campus-based student financial assistance’ means grant, work, or loan assistance provided under subpart 3 of part A, and parts C and E of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070b et seq; 42 U.S.C. 2751 et seq.; 20 U.S.C. 1087aa et seq.).

[“(2) The term ‘cost of attendance’ has the meaning given such term in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087*ll*).

[“(3) The term ‘education benefits’ means education benefits under chapters 30, 32, and 35 of this title and under chapter 1606 of title 10.

[“(4) The term ‘Federal Pell Grant’ means a grant provided under subpart 1 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a).”.

[(2) The table of sections at the beginning of chapter 36 is amended by inserting after the item referring to section 3694 the following new item:

[“3694A. Exclusion of veterans education benefits in determination of eligibility or amount of Federal education grants and loans.”.

[(b) Effective Date.—The amendments made by this section shall be effective with respect to award years, as that term is defined in section 481(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)(1)), beginning on or after July 1, 2004.

[SEC. 104. COLLECTION OF CONTRIBUTIONS FOR EDUCATIONAL ASSISTANCE UNDER MONTGOMERY GI BILL FROM RESERVES CALLED TO ACTIVE DUTY.

[(a) Active Duty Program.—Section 3011(b) is amended—

[(1) by striking “The basic pay” and inserting “(1) Except as provided in paragraph (2), the basic pay”;

[(2) by designating the second sentence as paragraph (3), indenting the left margin of such paragraph, as so designated, two ems, and, in that paragraph by striking "this chapter" and inserting "this subsection"; and

[(3) by inserting after paragraph (1), as so designated, the following new paragraph:

["(2) In the case of an individual covered by paragraph (1) who is a Reserve, the Secretary shall collect from the individual an amount equal to $1,200 before the commencement by the individual of the use of entitlement to basic educational assistance under this chapter. The Secretary may collect such amount through reductions in basic pay in accordance with paragraph (1) or through such other method as the Secretary determines appropriate.".

[(b) SELECTED RESERVE PROGRAM.—Section 3012(c) is amended—

[(1) by striking "The basic pay" and inserting "(1) Except as provided in paragraph (2), the basic pay";

[(2) by designating the second sentence as paragraph (3), indenting the left margin of such paragraph, as so designated, two ems, and, in that paragraph by striking "this chapter" and inserting "this subsection"; and

[(3) by inserting after paragraph (1), as so designated, the following new paragraph:

["(2) In the case of an individual covered by paragraph (1) who is a Reserve, the Secretary shall collect from the individual an amount equal to $1,200 before the commencement by the individual of the use of entitlement to basic educational assistance under this chapter. The Secretary may collect such amount through reductions in basic pay in accordance with paragraph (1) or through such other method as the Secretary determines appropriate.".

[TITLE II—HOUSING BENEFITS

[SEC. 201. INCREASE IN MAXIMUM AMOUNT OF HOUSING LOAN GUARANTEE.

[(a) IN GENERAL.—Subparagraph (A)(i)(IV) of section 3703(a)(1) is amended by striking "$60,000" and inserting "$83,425".

[(b) CONFORMING AMENDMENT.—Subparagraph (B) of such section is amended by striking "$60,000" and inserting "$83,425".

[SEC. 202. PERMANENT AUTHORITY FOR GUARANTEE OF ADJUSTABLE RATE MORTGAGES.

[Section 3707(a) is amended by striking "The Secretary shall" and all that follows through "guaranteeing loans" and inserting "The Secretary shall guarantee loans".

[SEC. 203. PERMANENT AUTHORITY FOR GUARANTEE OF HYBRID ADJUSTABLE RATE MORTGAGES AND MODIFICATION OF GUARANTEE AUTHORITY.

[(a) PERMANENT AUTHORITY.—Subsection (a) of section 3707A is amended by striking "The Secretary shall" and all that follows through "guaranteeing loans" and inserting "The Secretary shall guarantee loans".

[(b) MODIFICATION OF INTEREST RATE ADJUSTMENT REQUIREMENTS.—Subsection (c) of such section is amended—

[(1) by striking paragraph (3) and inserting the following new paragraph (3):

["(3) in the case of the initial interest rate adjustment under such provisions, be limited to a maximum increase or decrease of 1 percentage point if the interest rate remained fixed for 3 or fewer years; and"; and

[(2) in paragraph (4), by striking "5 percentage points" and all that follows and inserting "such number of percentage points as the Secretary shall prescribe for purposes of this section.".

[(c) NO EFFECT ON GUARANTEE OF LOANS UNDER HYBRID ADJUSTABLE RATE MORTGAGE GUARANTEE DEMONSTRATION PROJECT.—The amendments made by this section shall not be construed to affect the force or validity of any guarantee of a loan made by the Secretary of Veterans Affairs under the demonstration project for the guarantee of hybrid adjustable rate mortgages under section 3707A of title 38, United States Code, as in effect on the day before the date of the enactment of this Act.

[SEC. 204. TERMINATION OF COLLECTION OF LOAN FEES FROM VETERANS RATED ELIGIBLE FOR COMPENSATION AT PRE-DISCHARGE RATING EXAMINATIONS.

[Section 3729(c) is amended—

[(1) by inserting "(1)" before "A fee"; and

[(2) by adding at the end the following new paragraph:

["(2) A veteran who is rated eligible to receive compensation as a result of a pre-discharge disability examination and rating shall be treated as receiving compensation for purposes of this subsection as of the date on which the veteran is rated eligible to receive compensation as a result of the pre-discharge disability examination and rating without regard to whether an effective date of the award of compensation is established as of that date.".

[TITLE III—OTHER BENEFITS AND BENEFITS MATTERS

[Subtitle A—Employment Benefits

[SEC. 301. AVAILABILITY OF ADMINISTRATIVE AND JUDICIAL REDRESS FOR CERTAIN VETERANS DENIED OPPORTUNITY TO COMPETE FOR FEDERAL EMPLOYMENT.

[(a) ADMINISTRATIVE REDRESS.—Section 3330a(a)(1) of title 5, United States Code, is amended—

[(1) by inserting "(A)" after "(1)"; and

[(2) by adding at the end the following new subparagraph:

["(B) A veteran described in section 3304(f)(1) who alleges that an agency has violated such section with respect to such veteran may file a complaint with the Secretary of Labor.".

[(b) JUDICIAL REDRESS.—Section 3330b(a)(1) of such title is amended by inserting ", or a veteran described by section 3330a(a)(1)(B) with respect to a violation described by such section," after "a preference eligible".

[Subtitle B—Medical Benefits

[SEC. 311. PROHIBITION ON COLLECTION OF COPAYMENTS FOR HOSPICE CARE.

[Section 1710B(c)(2) is amended—

[(1) in subparagraph (A), by striking "or" at the end;

[(2) by redesignating subparagraph (B) as subparagraph (C); and

[(3) by inserting after subparagraph (A) the following new subparagraph (B):

["(B) to a veteran being furnished hospice care under this section; or".

[Subtitle C—Extension of Benefits and Related Authorities

[SEC. 321. EXTENSION OF VARIOUS AUTHORITIES RELATING TO BENEFITS FOR VETERANS.

[(a) SIX-YEAR EXTENSION OF BIENNIAL REPORT OF ADVISORY COMMITTEE ON FORMER PRISONERS OF WAR.—Section 541(c)(1) is amended by striking "2003" and inserting "2009".

[(b) PERMANENT AUTHORITY FOR COUNSELING AND TREATMENT FOR SEXUAL TRAUMA.—Section 1720D(a) is amended—

[(1) in paragraph (1), by striking "During the period through December 31, 2004, the Secretary" and inserting "The Secretary"; and

[(2) in paragraph (2), by striking ", during the period through December 31, 2004,".

[(c) FIVE-YEAR EXTENSION OF REPORTS BY SPECIAL MEDICAL ADVISORY GROUP.—Section 7312(d) is amended by striking "December 31, 2004" and inserting "December 31, 2009".

[Subtitle D—Other Matters

[SEC. 331. MODIFICATION OF DEFINITION OF MINORITY GROUP MEMBER FOR PURPOSES OF ADVISORY COMMITTEE ON MINORITY VETERANS.

[Subsection (d) of section 544 is amended to read as follows:

["(d) In this section, the term 'minority group member' means an individual who is—

["(1) American Indian or Alaska Native;

["(2) Asian;

["(3) Black or African American;

["(4) Native Hawaiian or other Pacific Islander; or

["(5) of Hispanic, Latino, or Spanish origin.".]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Veterans' Benefits Improvements Act of 2004".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References to title 38, United States Code.

TITLE I—HOUSING MATTERS

Sec. 101. Increase in maximum amount of home loan guaranty for construction and purchase of homes and annual indexing of amount.
Sec. 102. Extension of authority for guarantee of adjustable rate mortgages.
Sec. 103. Extension and improvement of authority for guarantee of hybrid adjustable rate mortgages.
Sec. 104. Termination of collection of loan fees from veterans rated eligible for compensation at pre-discharge rating examinations.

TITLE II—EDUCATION MATTERS

Sec. 201. Collection of contributions for educational assistance under Montgomery GI Bill from members of the Selected Reserve called to active duty.
Sec. 202. Educational assistance under Montgomery GI Bill for members of the Selected Reserve who aggregate 2 or more years of active duty service during any 5-year period.
Sec. 203. Ten-year extension of delimiting period for survivors' and dependents' educational assistance for spouses of members who die on active duty.
Sec. 204. Availability of education benefits for payment for national admissions exams and national exams for credit at institutions of higher education.

TITLE III—OTHER MATTERS

Sec. 301. Availability of administrative and judicial redress for certain veterans denied opportunity to compete for Federal employment.
Sec. 302. Extension of biennial report of Advisory Committee on Former Prisoners of War.
Sec. 303. Modification of definition of minority group member for purposes of Advisory Committee on Minority Veterans.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—HOUSING MATTERS

SEC. 101. INCREASE IN MAXIMUM AMOUNT OF HOME LOAN GUARANTY FOR CONSTRUCTION AND PURCHASE OF HOMES AND ANNUAL INDEXING OF AMOUNT.

(a) Maximum Loan Guaranty Based on 100 Percent of Freddie Mac Conforming Loan Rate.—Section 3703(a)(1) is amended by striking "$60,000" each place it appears in subparagraphs (A)(i)(IV) and (B) and inserting "the maximum guaranty amount (as defined in subparagraph (C))".

(b) Definition.—Such section is further amended by adding at the end the following new subparagraph:

"(C) In this paragraph, the term 'maximum guaranty amount' means the dollar amount that is equal to 25 percent of the Freddie Mac conforming loan limit limitation determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) for a single-family residence, as adjusted for the year involved.".

SEC. 102. EXTENSION OF AUTHORITY FOR GUARANTEE OF ADJUSTABLE RATE MORTGAGES.

Section 3707(a) is amended by striking "during fiscal years 1993, 1994, and 1995" and inserting "during fiscal years 1993 through 2011".

SEC. 103. EXTENSION AND IMPROVEMENT OF AUTHORITY FOR GUARANTEE OF HYBRID ADJUSTABLE RATE MORTGAGES.

(a) Extension of Authority.—Subsection (a) of section 3707A is amended by striking "during fiscal years 2004 and 2005" and inserting "during fiscal years 2004 through 2011".

(b) Modification of Interest Rate Adjustment Requirements.—Subsection (c) of such section is amended—

(1) by redesignating paragraph (4) as paragraph (5);

(2) by striking paragraph (3) and inserting the following new paragraphs:

"(3) in the case of the initial interest rate adjustment—

"(A) if the initial interest rate remained fixed for less than 5 years, be limited to a maximum increase or decrease of 1 percentage point; or

"(B) if the initial interest rate remained fixed for 5 years or more, be limited to a maximum increase or decrease of such percentage point or points as the Secretary may prescribe;

"(4) in the case of any single annual interest rate adjustment after the initial interest rate adjustment, be limited to a maximum increase or decrease of 1 percentage point; and"; and

(3) in paragraph (5), as so redesignated, by striking "5 percentage points" and all that follows and inserting "such number of percentage points as the Secretary shall prescribe for purposes of this section.".

(c) No Effect on Guarantee of Loans Under Hybrid Adjustable Rate Mortgage Guarantee Demonstration Project.—The amendments made by this section shall not be construed to affect the force or validity of any guarantee of a loan made by the Secretary of Veterans Affairs under the demonstration project for the guarantee of hybrid adjustable rate mortgages under section 3707A of title 38, United States Code, as in effect on the day before the date of the enactment of this Act.

SEC. 104. TERMINATION OF COLLECTION OF LOAN FEES FROM VETERANS RATED ELIGIBLE FOR COMPENSATION AT PRE-DISCHARGE RATING EXAMINATIONS.

Section 3729(c) is amended—

(1) by inserting "(1)" before "A fee"; and

(2) by adding at the end the following new paragraph:

"(2) A veteran who is rated eligible to receive compensation as a result of a pre-discharge disability examination and rating shall be treated as receiving compensation for purposes of this subsection as of the date on which the veteran is rated eligible to receive compensation as a result of the pre-discharge disability examination and rating without regard to whether an effective date of the award of compensation is established as of that date.".

TITLE II—EDUCATION MATTERS

SEC. 201. COLLECTION OF CONTRIBUTIONS FOR EDUCATIONAL ASSISTANCE UNDER MONTGOMERY GI BILL FROM MEMBERS OF THE SELECTED RESERVE CALLED TO ACTIVE DUTY.

(a) Active Duty Program.—Section 3011(b) is amended—

(1) by striking "The basic pay" and inserting "(1) Except as provided in paragraph (2), the basic pay";

(2) by designating the second sentence as paragraph (3), indenting the left margin of such paragraph, as so designated, two ems, and, in that paragraph by striking "this chapter" and inserting "this subsection"; and

(3) by inserting after paragraph (1), as so designated, the following new paragraph:

"(2) In the case of an individual covered by paragraph (1) who is a Reserve, the Secretary of Defense shall collect from the individual an amount equal to $1,200 before the commencement by the individual of the use of entitlement to basic educational assistance under this chapter. The Secretary of Defense may collect such amount through reductions in basic pay in accordance with paragraph (1) or through such other method as the Secretary of Defense considers appropriate.".

(b) Selected Reserve Program.—Section 3012(c) is amended—

(1) by striking "The basic pay" and inserting "(1) Except as provided in paragraph (2), the basic pay";

(2) by designating the second sentence as paragraph (3), indenting the left margin of such paragraph, as so designated, two ems, and, in that paragraph by striking "this chapter" and inserting "this subsection"; and

(3) by inserting after paragraph (1), as so designated, the following new paragraph:

"(2) In the case of an individual covered by paragraph (1) who is a Reserve, the Secretary of Defense shall collect from the individual an amount equal to $1,200 before the commencement by the individual of the use of entitlement to basic educational assistance under this chapter. The Secretary of Defense may collect such amount through reductions in basic pay in accordance with paragraph (1) or through such other method as the Secretary of Defense considers appropriate.".

SEC. 202. EDUCATIONAL ASSISTANCE UNDER MONTGOMERY GI BILL FOR MEMBERS OF THE SELECTED RESERVE WHO AGGREGATE 2 OR MORE YEARS OF ACTIVE DUTY SERVICE DURING ANY 5-YEAR PERIOD.

(a) Entitlement.—Section 3012(a)(1) is amended—

(1) in subparagraph (B), by striking "or" at the end;

(2) in subparagraph (C), by adding "or" at the end; and

(3) by inserting after subparagraph (C) the following new subparagraph (D):

"(D) during any five-year period beginning on or after September 11, 2001, and ending on or before June 30, 2008, while in the Selected Reserve, serves on active duty in the Armed Forces for one or more periods (whether continuous or otherwise) aggregating not less than two years of service on active duty during such period;".

(b) Collection of Contributions.—Section 3012(c), as amended by section 201(b) of this Act, is further amended by adding at the end the following new paragraph:

"(4)(A) In the case of an individual who becomes entitled to basic educational assistance under this chapter by reason of subsection (a)(1)(D), the Secretary of Defense shall collect from the individual an amount equal to $1,200 not later than one year after the completion by the individual of the two years of service on active duty providing the basis for such entitlement.

"(B) An individual described in subparagraph (A) shall not be entitled to basic educational assistance as described in that subparagraph unless an amount equal to $1,200 is first collected from the individual as required under that subparagraph.

"(C) The Secretary of Defense may collect amounts under subparagraph (A) through reductions in basic pay in accordance with paragraph (1) or through such other method as the Secretary of Defense considers appropriate.".

(c) Duration of Assistance.—Section 3013(b) is amended by striking "is entitled to" and all that follows and inserting the following: "is entitled to—

"(1) one month of educational assistance benefits under this chapter—

"(A) in the case of an individual described in section 3012(a)(1)(A) of this title, for each month of continuous active duty served by such individual after June 30, 1985, as part of the obligated period of active duty on which such entitlement is based;

"(B) in the case of an individual described in section 3012(a)(1)(B) of this title, for each month of continuous active duty served by such individual after June 30, 1985; or

"(C) in the case of an individual described in section 3012(a)(1)(D) of this title, for each month of active duty served by such individual after September 11, 2001, and before July 1, 2008, as part of the aggregate period of active duty on which such entitlement is based; and

"(2) one month of educational assistance benefits under this chapter for each four months served by such individual in the Selected Reserve after the applicable date specified in paragraph (1) of this subsection (other than any month in which the individual served on active duty).".

(d) Amount of Assistance.—Section 3015 is amended—

(1) in subsections (a)(1)(D) and (b)(1)(D), by striking "subsection (h)" and inserting "subsection (i)";

(2) by redesignating subsection (h) as subsection (i); and

(3) by inserting after subsection (g) the following new subsection (h):

"(h) In the case of an individual entitled to an educational assistance allowance under section 3012(a)(1)(D) of this title, the amount of the basic educational assistance allowance payable under this chapter is the amount determined under subsection (b) of this section.".

(e) Outreach.—(1) The Secretary concerned shall take actions to inform members of the Selected Reserve who are or may become entitled to basic educational assistance benefits under chapter 30 of title 38, United States Code, as a result of section 3012(a)(1)(D) of such title (as amended by subsection (a) of this section) of the minimum service requirements for entitlement to such benefits under that chapter and of the scope and nature of such benefits.

(2) In this subsection:

(A) The term "Secretary concerned" has the meaning given such term in section 101(25) of title 38, United States Code.

(B) The term "Selected Reserve" has the meaning given such term in section 3002(4) of title 38, United States Code.

SEC. 203. TEN-YEAR EXTENSION OF DELIMITING PERIOD FOR SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE FOR SPOUSES OF MEMBERS WHO DIE ON ACTIVE DUTY.

Section 3512(b)(1) is amended—

(1) in subparagraph (A), by striking "in subparagraph (B)" and inserting "in subparagraph (B) or (C)"; and

(2) by adding at the end the following new subparagraph:

"(C) Notwithstanding subparagraph (A), an eligible person referred to in that subparagraph who is made eligible under section 3501(a)(1)(B) of this title by reason of the death of a person on active duty may be afforded educational assistance under this chapter during the 20-year period beginning on the date (as determined by the Secretary) such person becomes an eligible person within the meaning of such section.".

SEC. 204. AVAILABILITY OF EDUCATION BENEFITS FOR PAYMENT FOR NATIONAL ADMISSIONS EXAMS AND NATIONAL EXAMS FOR CREDIT AT INSTITUTIONS OF HIGHER EDUCATION.

(a) COVERED EXAMS.—Sections 3452(b) and 3501(a)(5) are each amended by adding at the end the following new sentence: "Such term also includes national tests for admission to institutions of higher learning or graduate schools (such as the SAT, LSAT, GRE, and GMAT exams) and national tests providing an opportunity for course credit at institutions of higher learning (such as the AP exam).".

(b) AMOUNT OF PAYMENT.—

(1) CHAPTER 30.—Section 3032 is amended by adding at the end the following new subsection:

"(g)(1) Subject to paragraph (3), the amount of educational assistance payable under this chapter for a national test for admission or national test providing an opportunity for course credit at institutions of higher learning described in section 3452(b) of this title is the amount of the fee charged for the test.

"(2) The number of months of entitlement charged in the case of any individual for a test described in paragraph (1) is equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such test by the full-time monthly institutional rate of educational assistance, except for paragraph (1), such individual would otherwise be paid under subsection (a)(1), (b)(1), (d), or (e)(1) of section 3015 of this title, as the case may be.

"(3) In no event shall payment of educational assistance under this subsection for a test described in paragraph (1) exceed the amount of the individual's available entitlement under this chapter.".

(2) CHAPTER 32.—Section 3232 is amended by adding at the end the following new subsection:

"(d)(1) Subject to paragraph (3), the amount of educational assistance payable under this chapter for a national test for admission or national test providing an opportunity for course credit at institutions of higher learning described in section 3452(b) of this title is the amount of the fee charged for the test.

"(2) The number of months of entitlement charged in the case of any individual for a test described in paragraph (1) is equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such test by the full-time monthly institutional rate of educational assistance, except for paragraph (1), such individual would otherwise be paid under this chapter.

"(3) In no event shall payment of educational assistance under this subsection for a test described in paragraph (1) exceed the amount of the individual's available entitlement under this chapter.".

(3) CHAPTER 34.—Section 3482 is amended by adding at the end the following new subsection:

"(i)(1) Subject to paragraph (3), the amount of educational assistance payable under this chapter for a national test for admission or national test providing an opportunity for course credit at institutions of higher learning described in section 3452(b) of this title is the amount of the fee charged for the test.

"(2) The number of months of entitlement charged in the case of any individual for a test described in paragraph (1) is equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such test by the full-time monthly institutional rate of educational assistance, except for paragraph (1), such individual would otherwise be paid under this chapter.

"(3) In no event shall payment of educational assistance under this subsection for a test described in paragraph (1) exceed the amount of the individual's available entitlement under this chapter.".

(4) CHAPTER 35.—Section 3532 is amended by adding at the end the following new subsection:

"(g)(1) Subject to paragraph (3), the amount of educational assistance payable under this chapter for a national test for admission or national test providing an opportunity for course credit at institutions of higher learning described in section 3501(a)(5) of this title is the amount of the fee charged for the test.

"(2) The number of months of entitlement charged in the case of any individual for a test described in paragraph (1) is equal to the number (including any fraction) determined by dividing the total amount of educational assistance paid such individual for such test by the full-time monthly institutional rate of educational assistance, except for paragraph (1), such individual would otherwise be paid under this chapter.

"(3) In no event shall payment of educational assistance under this subsection for a test described in paragraph (1) exceed the amount of the individual's available entitlement under this chapter.".

TITLE III—OTHER MATTERS

SEC. 301. AVAILABILITY OF ADMINISTRATIVE AND JUDICIAL REDRESS FOR CERTAIN VETERANS DENIED OPPORTUNITY TO COMPETE FOR FEDERAL EMPLOYMENT.

(a) ADMINISTRATIVE REDRESS.—Section 3330a(a)(1) of title 5, United States Code, is amended—

(1) by inserting "(A)" after "(1)"; and

(2) by adding at the end the following new subparagraph:

"(B) A veteran described in section 3304(f)(1) who alleges that an agency has violated such section with respect to such veteran may file a complaint with the Secretary of Labor.".

(b) JUDICIAL REDRESS.—Section 3330b(a) of such title is amended by inserting ", or a veteran described by section 3330a(a)(1)(B) with respect to a violation described by such section," after "a preference eligible".

SEC. 302. EXTENSION OF BIENNIAL REPORT OF ADVISORY COMMITTEE ON FORMER PRISONERS OF WAR.

Section 541(c)(1) is amended by striking "2003" and inserting "2009".

SEC. 303. MODIFICATION OF DEFINITION OF MINORITY GROUP MEMBER FOR PURPOSES OF ADVISORY COMMITTEE ON MINORITY VETERANS.

Subsection (d) of section 544 is amended to read as follows:

"(d) In this section, the term 'minority group member' means an individual who is—

"(1) American Indian or Alaska Native;

"(2) Asian;

"(3) Black or African American;

"(4) Native Hawaiian or other Pacific Islander; or

"(5) of Hispanic, Latino, or Spanish origin.".

Mr. SPECTER. Mr. President, I have sought recognition to comment on a substitute amendment I propose to make to S. 2486, the Veterans' Benefits Improvements Act of 2004, as part of my request that the bill, as so amended, be approved by the Senate. The underlying bill, S. 2486, was reported by the Senate Committee on Veterans Affairs on July 20, 2004, and is explained in detail in Senate Report 108-352. My comments at this time are limited to explaining how the proposed substitute amendment, which reflects a bipartisan agreement between Senate and House Veterans' Affairs Committees on issues related to veterans' non-medical benefits and services, differ from the provisions of S. 2486, as reported.

Almost all of the provisions set forth in S. 2486, as reported, are included in the substitute agreement that I present to the Senate today. Changes made, for the most part, simply reflect provisions that the House has approved which are acceptable to the Senate. There is, however, one notable excision of material from the Committee-reported bill: a provision crafted by Committee Member ZELL MILLER that would have increased educational assistance benefits for Reserves who are activated for extended periods. That provision is not included in the substitute amendment. Similar legislation, however, is in the offing via another legislative vehicle.

After S. 2486 was reported by the Veterans' Committee, the President requested that the Armed Services Committees, in the course of their conferencing on the Fiscal Year 2005 Defense Authorization bill, approve enhancements to educational assistance benefits that are substantially the same as those which are included in S. 2486, as reported. I have been given every indication that the President's proposal will be included in the conference agreement on the Defense Authorization bill. Expecting this to be the case, Senator MILLER's provision—a provision that was a centerpiece of the Committee-reported bill—has been laid aside. In its place, the substitute amendment includes a provision that would increase benefits to the neediest survivors of service members who are killed in combat or who subsequently die from service-related injuries or illnesses.

Under current law, the surviving spouse of a service member who is killed in service is eligible for dependency and indemnity compensation (DIC) benefits. The new provision, which is drawn from a provision contained in a bill, S. 1132, that I introduced last year, would provide, for a two-year period, an additional $250 per month of DIC to a surviving spouse who has dependent children. VA estimates that approximately 27 percent of service members killed in Iraq and Afghanistan are survived by spouses who have at least one dependent child. These survivors need an additional measure of help; the substitute amendment would provide it.

The substitute amendment also makes substantial improvements, authored by the House, to VA educational assistance benefits provided to service members and veterans who pursue apprenticeship and on-the-job training programs. VA programs for supporting those who pursue such opportunities have not been updated for over 50 years. These amendments are overdue. I applaud Chairman CHRIS SMITH, the author of these provisions, for his efforts to expand employment and training opportunities afforded to veterans.

There are many other fine additions to the reported bill contained in the substitute amendment. They include provisions to strengthen the oversight of VA fiduciaries, to enhance the Servicemembers Civil Relief Act and the Uniformed Services Employment and Reemployment Rights Act, and to improve on a myriad of other veterans' benefits and services. I encourage my colleagues to read the accompanying Explanatory Statement, which I ask be printed in the RECORD, for a better accounting of these worthy items.

This legislation will affect positively the lives of many deserving service members, veterans, and survivors. It merits the support of my colleagues. I request that support.

I yield the floor and I request the unanimous consent of the Senate that the "Explanatory Statement" that accompanies this statement be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXPLANATORY STATEMENT ON SENATE AMENDMENT TO SENATE BILL S. 2486, AS AMENDED

S. 2486, as amended, the "Veterans Benefits Improvement Act of 2004," reflects a Compromise Agreement reached by the Senate and House Committees on Veterans' Affairs (the Committees) on the following bills reported during the 108th Congress: S. 2485, as amended; S. 2486, as amended; and S. 1132, as introduced (Senate Bills); H.R. 1716, as amended; H.R. 3936; H.R. 4175, as amended; H.R. 4345; and H.R. 4658, as amended (House Bills).

The Senate and House Committees on Veterans' Affairs have prepared the following explanation of S. 2486, as further amended (Compromise Agreement). Differences between the provisions contained in the Compromise Agreement and the related provisions of S. 2485, as amended; S. 2486, as amended; S. 1132, as introduced; H.R. 1716, as amended; H.R. 3936; H.R. 4175, as amended; H.R. 4345; and H.R. 4658, as amended; are noted in this document, except for clerical corrections, conforming changes made necessary by the Compromise Agreement, and minor drafting, technical, and clarifying changes.

TITLE I—VETERANS EARN AND LEARN ACT

MODIFICATION OF BENEFIT ENTITLEMENT CHARGES FOR CERTAIN ON-JOB TRAINING PROGRAMS

Current Law

Section 3687 of title 38, United States Code, charges the Montgomery GI Bill-Active Duty and Selected Reserve programs' entitlement usage based on the actual "dollars used" of monthly VA payment amounts. The entitlement charge under the Vietnam-era and survivors' and dependents' educational assistance programs is based on the time spent in certain training programs.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 102 of H.R. 1716, as amended, would modify the manner in which VA on-job training and apprenticeship benefit entitlement is charged under the MGIB, Vietnam-era and survivors' and dependents' programs. The modification would charge entitlement usage for all programs based on "dollars used" rather than time spent in training. This provision would take effect one year after date of enactment.

Compromise Agreement

Section 102 of the Compromise Agreement follows the House language with an effective date of months beginning after September 30, 2005.

INCREASE IN BENEFIT FOR INDIVIDUALS PURSUING APPRENTICESHIP OR ON-JOB TRAINING

Current Law

Sections 3032 and 3233 of title 38, United States Code, and Section 16131 of title 10, United States Code, state that beneficiaries pursuing full-time apprenticeship or on-job training programs will receive 75 percent of the monthly educational assistance benefit for the first six months of training, 55 percent for the second six months of training and 35 percent for the subsequent months.

Section 3687 of title 38, United States Code, states that beneficiaries receiving full-time VA monthly Survivors' and Dependents' Educational Assistance allowances payable to individuals pursuing full-time apprenticeship or on-job training programs will receive, as of October 1, 2004, $585 for the first six months of training, $438 for the second six months of training, $291 for the third six months, and $147 for the remainder of the program.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 104 of H.R. 1716, as amended, would increase by 10 percent the full-time VA monthly educational assistance allowance payable to individuals pursuing a full-time apprenticeship or on-job training program. For the first six months of training, the percentage of the monthly benefit would increase to 85 percent; for the second six months of training, to 65 percent; and for subsequent months to 45 percent. These percentage increases would apply to the Montgomery GI Bill Active Duty and Selected Reserve programs, and the Post-Vietnam Era Veterans' Educational Assistance program. The Survivors' and Dependents' Educational Assistance program would increase to $650 for the first six months of training, $507 for the second six months of training and $366 for the third six months. This provision would be in effect from October 1, 2005 through September 30, 2010.

Compromise Agreement

Section 103 of the Compromise Agreement generally follows the House language, but the 10 percent increase would take effect October 1, 2005 through December 31, 2007.

AUTHORITY FOR COMPETENCY-BASED APPRENTICESHIPS

Current Law

Section 3672 of title 38, United States Code, currently allows payment of VA educational assistance benefits for time-based apprenticeships.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 105 of H.R. 1716, as amended, would authorize VA to pay educational assistance benefits to veterans participating in approved programs of competency-based apprenticeships; this new authority is in addition to time-based apprenticeships. In the case of a competency-based apprenticeship registered with the Secretary of Labor, this provision requires VA to consider Department of Labor standards in determining the appropriate length and structure of the competency-based apprenticeship. This section would also direct the Secretary of Veterans Affairs to use up to $3 million to develop the computer systems and procedures needed to carry out section 105(a), 102, 103, and 104 of the bill.

Compromise Agreement

Section 104 of the Compromise Agreement follows the House language. The Committees note that this provision acknowledges competency-based apprenticeships but does not require employers to use them in lieu of time-based apprenticeships. In today's workplace, apprenticeship programs are time-based or competency-based, or a combination of the two. Lastly, the Committees note that apprenticeships offered in industries that elect not to register them with the Department of Labor, but are approved by a State approving agency or VA, would continue to serve as legitimate training opportunities for veterans.

TEN-YEAR EXTENSION OF DELIMITING PERIOD FOR SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE FOR SPOUSES OF MEMBERS WHO DIES ON ACTIVE DUTY

Current Law

Chapter 35 of title 38, United States Code, entitles the surviving spouse of a servicemember or veteran who died of a service-connected injury, or the spouse of a veteran who is rated by VA as totally and permanently disabled as the result of a service connected disability, to educational assistance provided by the Secretary. An eligible spouse is entitled to use such educational assistance during a ten-year period beginning on either: (1) the date the person became eligible by reason of the servicemember's or veteran's service-connected death, or (2) the date on which the veteran was rated by VA as totally and permanently disabled as the result of a service-connected injury. A spouse may be eligible for two ten-year eligibility periods as the result of two distinct qualifying events. A spouse who is entitled to two eligibility periods will not have a subsequent period of eligibility reduced by any earlier period.

Senate Bill

Section 203 of S. 2486, as amended, would extend chapter 35 educational assistance eligibility from 10 to 20 years for a surviving spouse of any person who died on active duty.

House Bill

The House Bills contain no comparable provision.

Compromise Agreement

Section 105 of the Compromise Agreement follows the Senate language.

AVAILABILITY OF EDUCATIONAL BENEFITS FOR PAYMENT FOR NATIONAL ADMISSIONS EXAMS AND NATIONAL EXAMS FOR CREDIT AT INSTITUTIONS OF HIGHER EDUCATION

Current Law

Sections 3452(b) and 3501(a)(5) of title 38, United States Code, define the term "program of education" to generally include a required course, or combination of courses, that lead to an identified educational, professional, or vocational objective. A "program of education" also includes licensing or certification tests that are generally required to enter into, maintain, or advance in a vocation or profession. Section 3002(3) of title 38, United States Code, expands the definition of "program of education" provided in 3452(b) to include preparatory courses for a test required or used for admission to an institution of higher education or graduate school.

Senate Bill

Section 204 of S. 2486, as amended, would authorize VA to provide educational assistance benefits to reimburse eligible beneficiaries for the cost of certain national tests required for admission to institutions of higher learning or graduate schools and for national tests that can qualify veterans for receipt of college credit.

House Bill

The House Bills contain no comparable provision.

Compromise Agreement

Section 106 of the Compromise Agreement follows the Senate language, but adds the College Level Examination Program (CLEP) as an example of a test for which educational assistance benefits may be used.

REQUIREMENT FOR COORDINATION OF DATA AMONG THE DEPARTMENTS OF VETERANS AFFAIRS, DEFENSE, AND LABOR WITH RESPECT TO ON-JOB TRAINING

Current Law

There is no applicable current law.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 107 of H.R. 1716, as amended, would require certain coordination of information among the Departments of Veterans Affairs, Defense, and Labor with respect to on-job training and apprenticeship programs. First, at the time of a servicemember's separation from active duty, the Secretary of Defense would be required to furnish the Secretary of Veterans Affairs with information concerning each registered apprenticeship pursued by the servicemember during his or her active duty service. Second, it would require the Secretary of Veterans Affairs, in coordination with the Secretary of Labor, to encourage and assist States and private organizations to accord credit to servicemembers for skills in any related apprenticeship the servicemember may pursue in civilian life.

Compromise Agreement

Section 107 of the Compromise Agreement follows the House language.

PILOT PROGRAM TO PROVIDE ON-JOB BENEFITS TO TRAIN DEPARTMENT OF VETERANS AFFAIRS CLAIMS ADJUDICATORS

Current Law

There is no applicable current law.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 106 of H.R. 1716, as amended, would require the Secretary of Veterans Affairs to establish a pilot program to furnish structured on-job training and on-job training benefits to claims adjudicators training in its disability compensation, dependency and indemnity compensation (DIC), and pension programs. The Secretary would be required to submit reports concerning continuation and expansion of the pilot program.

Compromise Agreement

Section 108 of the Compromise Agreement generally follows the House language, but authorizes the Secretary to establish a pilot program to furnish formal, structured on-job training/benefits to claims adjudicators at the Secretary's discretion, and not by statutory mandate. The Committees note that one of VA's four regional offices that adjudicate educational assistance claims already offer such formal, structured on job training.

COLLECTION OF PAYMENT FOR EDUCATIONAL ASSISTANCE UNDER MONTGOMERY GI BILL FROM MEMBERS OF THE SELECTED RESERVE CALLED TO ACTIVE DUTY

Current Law

Sections 3011(b) and 3012(c) require that for a servicemember to be eligible for Montgomery GI Bill (MGIB) educational assistance benefits, the servicemember's active duty pay must be reduced by $100 for each of the first 12 months that the individual is entitled to such pay. The Secretary of Defense (or, in cases involving the activation of U.S. Coast Guard personnel, the Secretary of Homeland Security) is responsible for the collection of the $1,200 payment.

Senate Bill

Section 201 of S. 2486, as amended, would permit the Secretary of Defense (or, in cases involving the activation of U.S. Coast Guard personnel, the Secretary of Homeland Security) to collect an activated Selected Reserve member's $1,200 payment before the servicemember commences use of MGIB educational assistance benefits.

House Bill

The House Bills contain no comparable provision.

Compromise Agreement

Section 109 of the Compromise Agreement follows the Senate language with the requirement that the servicemember furnish a $1,200 payment not later than 1 year after completion of the 2 years of active duty.

TITLE II—EMPLOYMENT MATTERS

Subtitle A—Employment and Reemployment Rights

TWO-YEAR PERIOD OF CONTINUATION OF EMPLOYER-SPONSORED HEALTH CARE COVERAGE

Current Law

Section 4317(a)(1)(A) of title 38, United States Code, allows servicemembers covered under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) to elect to continue employer-provided health coverage for up to 18 months while on active duty, provided the servicemember pays up to 102 percent of the premium.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 201 of H.R. 4658, as amended, would increase from 18 months to 24 months the maximum period of employer-provided health coverage that an employee covered by USERRA may elect to continue. The coverage would become effective on the first day of the servicemember's absence from employment following the date of enactment of this provision.

Compromise Agreement

Section 201 of the Compromise Agreement follows the House language.

REINSTATEMENT OF REPORTING REQUIREMENTS

Current Law

Section 4332 of title 38, United States Code, formerly required that the Secretary of Labor, in consultation with the Office of Special Counsel and the U.S. Attorney General, provide annual reports to Congress on the disposition of cases filed under USERRA. This requirement expired on February 1, 1996.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 202 of H.R. 4658, as amended, would reinstate a requirement that the Secretary of Labor, in consultation with the Office of Special Counsel and the U.S. Attorney General, provide annual reports to Congress on the disposition of cases filed under USERRA, effective February 1, 2005.

Compromise Agreement

Section 202 of the Compromise Agreement follows the House language.

REQUIREMENT FOR EMPLOYERS TO PROVIDE NOTICE OF RIGHTS AND DUTIES UNDER USERRA

Current Law

There is no applicable current law.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 211 of H.R. 4658, as amended, would require employers to provide notice to employees of the rights, benefits and obligations under USERRA. Section 211 would also require the Department of Labor to make available to employers, within 90 days after the date of enactment of this provision, the text of the notice.

Compromise Agreement

Section 203 of the Compromise Agreement follows the House language.

DEMONSTRATION PROJECT FOR REFERRAL OF USERRA CLAIMS AGAINST FEDERAL AGENCIES TO THE OFFICE OF SPECIAL COUNSEL

Current Law

Section 4322 of title 38, United States Code, provides that an individual who believes his or her USERRA rights have been violated by a Federal executive agency may file a complaint with the Secretary of Labor to investigate such complaint. If the Secretary of Labor is unable to resolve the complaint, then in accordance with section 4324 of title 38, United States Code, the individual may request that the Secretary of Labor refer the complaint to the Office of Special Counsel (OSC) for resolution before the Merit Systems Protection Board.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 212 of H.R. 4658, as amended, would require the Secretary of Labor and the Office of Special Counsel (OSC) to carry out a three-year demonstration project on enforcement of USERRA rights for Federal executive branch employees. The demonstration project would allow certain individuals who allege a Federal executive agency has violated their USERRA rights to file a complaint with OSC. For the OSC demonstration project, USERRA cases involving Federal agencies would be selected by the terminal digit of the claimant's social security number or, if there is no social security number, the claimant's case number. Cases with odd terminal digits would be sent directly to OSC. The Comptroller General of the United States would be required to conduct periodic evaluations of the demonstration project and submit to Congress a final report.

Compromise Agreement

Section 204 of the Compromise Agreement follows the House language. While this demonstration project would be limited to USERRA cases involving Federal executive agency employees, the Committees intend to examine further USERRA education and enforcement activities by the Departments of Labor, Justice and Defense to determine whether all claimants are being effectively and efficiently served under the current system.

Subtitle B—Other Matters

REPORT OF EMPLOYMENT PLACEMENT, RETENTION, AND ADVANCEMENT OF RECENTLY SEPARATED SERVICEMEMBERS

Current Law

There is no applicable current law.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 206 of H.R. 1716, as amended, would direct the Secretary of Veterans Affairs to contract for a report within 180 days of enactment on employment placement, retention, and advancement of recently-separated veterans.

Compromise Agreement

Section 211 of the Compromise Agreement follows the House language. The requirement that the contract be entered into within 180 days of enactment was deleted. Nonetheless, the Committees expect the Secretary of Veterans Affairs to enter into such a contract promptly.

TITLE III—BENEFITS MATTERS

ADDITIONAL DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES WITH DEPENDENT CHILDREN

Current Law

Section 1311(a) of title 38, United States Code, prescribes the payment of dependency and indemnity compensation (DIC) to the surviving spouse of a veteran or servicemember who dies as a result of a service-connected disability. Section 1311(b) provides for an additional amount of DIC to be paid for each of the surviving spouse's children who are under the age of 18.

Senate Bill

Section 4 of S. 1132, as introduced, would provide for a $250 monthly increase in DIC payments for a surviving spouse with children below the age of 18. Such payments would be authorized during the 5-year period following the service-connected death of the servicemember or veteran. Such payments would cease when all children of a surviving spouse reach age 18.

House Bill

The House Bills contain no comparable provision.

Compromise Agreement

Section 301 of the Compromise Agreement follows the Senate language, except that the $250 monthly increase in DIC would only be authorized during the 2-year period following the application for such benefit. The Committees intend that when the Secretary notifies a DIC recipient of the additional benefit provided by this section, such notice shall clearly indicate that this is a transitional benefit which is limited to two years.

OFFSET OF VETERANS' DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION FROM AWARDS UNDER RADIATION EXPOSURE COMPENSATION PROGRAM

Current Law

Under current law, a veteran who first applies for and receives an award under the compensation program administered by the Department of Justice pursuant to the Radiation Exposure Compensation Act (RECA), Public Law 101–426, is prohibited from receiving benefits from the Department of Veterans Affairs. However, a veteran who applies for VA benefits first may then apply for the RECA award, subject to an offset by the Department of Justice of the amounts received from VA.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 202 of H.R. 1716, as amended, would repeal the bar that prevents a veteran or survivor from applying for VA benefits if the individual had previously received compensation from the Department of Justice's RECA program. The bill would allow individuals to receive VA compensation or dependency and indemnity compensation (DIC) benefits to which they are entitled. However, VA would be required to withhold compensation or DIC payments until the amount of the RECA award has been deducted. This provision is effective for compensation or DIC benefits paid after March 26, 2002. This is the date regulations providing for a presumption of service-connection for certain radiation-related disabilities were established.

Compromise Agreement

Section 302 of the Compromise Agreement follows the House language.

EXCLUSION OF LIFE INSURANCE PROCEEDS FROM CONSIDERATION AS INCOME FOR VETERANS' PENSION PURPOSES

Current Law

Section 1503(a) of title 38, United States Code, requires VA in determining eligibility for death pension benefits to consider annual income, including all payments of any kind or from any source.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 203 of H.R. 1716, as amended, would exclude life insurance proceeds from consideration of income for death pension benefits.

Compromise Agreement

Section 303 of the Compromise Agreement follows the House language.

CERTAIN SERVICE-CONNECTED DISABILITY BENEFITS AUTHORIZED FOR PERSONS DISABLED BY TREATMENT OR VOCATIONAL REHABILITATION PROVIDED BY THE DEPARTMENT OF VETERANS AFFAIRS

Current Law

Section 1151(a) of title 38, United States Code, authorizes disability compensation or dependency and indemnity compensation for veterans and their dependents who are injured or die as a result of negligent VA medical treatment, or in VA-sponsored rehabilitation or training. Under the decision of the United States Court of Appeals for the Federal Circuit in *Kilpatrick* v. *Secretary of Veterans Affairs*, 327 F.3d 1375 (Fed. Cir. 2003), veterans disabled under section 1151 are eligible for specially adapted housing allowances under chapter 21 of title 3 8, United States Code. Section 1151 (b) prohibits the receipt of VA compensation benefits or DIC (for amounts attributable to loss of consortium or society) where an individual, on or after December 1, 1962, receives a judgment against, or settlement or compromise payment from, the United States, until an amount equal to any judgment against, or settlement or compromise payment from the United States is recouped.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 205(a) of H.R. 1716, as amended, would allow veterans and dependents who are injured as a result of negligent VA medical treatment or rehabilitation or training to qualify for vocational rehabilitation benefits, in addition to specially adapted automobile and adaptive equipment grants. Section 205(b) would provide that where a judgment, settlement or compromise of a claim is offset against benefits provided by the Secretary, such offset would be applied only to the comparable benefit.

Compromise Agreement

Section 304 of the Compromise Agreement generally follows the House language, but omits eligibility for vocational rehabilitation benefits. Section 205(c) is amended to provide that in the event that a judgment, settlement or compromise specifically designates a portion of such award for housing or automobile benefits such as those provided under Chapters 21 or 39, and the beneficiary later applies for benefits under Chapter 21 or 39, benefits under those chapters would be reduced by the amount of benefits specifically designated in the judgment, settlement or compromise. Any amounts in excess of those permitted under Chapter 21 or 39 would be offset against benefits paid under Chapter 11.

EFFECTIVE DATE OF DEATH PENSION

Current Law

Section 5110(d) of title 38, United States Code, provides that an award based on a death pension claim received more than 45 days after the veteran's death can be effective no earlier than the date of the claim. If the application is received within 45 days of the veteran's death, then the effective date of the death pension award is the first day of the month in which the death occurred.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 204 of H.R. 1716, as amended, would repeal the 45-day rule for the effective date of death pension. Therefore, a claim for death pension received within one year from the date of the veteran's death would be effective the first day of the month in which the death occurred.

Compromise Agreement

Section 305 of the Compromise Agreement follows the House language.

CODIFICATION OF ADMINISTRATIVE ACTIONS RELATING TO PRESUMPTIONS OF SERVICE CONNECTION FOR VETERANS EXPOSED TO IONIZING RADIATION

Current Law

Section 1112(c)(2) of title 38, United States Code, lists 16 diseases that VA presumes are related to exposure to ionizing radiation. In addition to the 16 listed in statute, VA regulations list an additional five diseases: bone cancer, brain cancer, colon cancer, lung cancer, and ovarian cancer. Servicemembers who participated in certain radiation-risk activities, as defined in section 1112(c)(3)(B), benefit from the presumption of service-connection to ionizing radiation.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 201 of H.R. 1716, as amended, would add bone cancer, brain cancer, colon cancer, lung cancer, and ovarian cancer to the statutory list of those diseases presumed to be related to ionizing radiation exposure during participation in certain radiation-risk activities. Section 201 would also codify additional locations where radiation-risk activities occurred for purposes of determining which veterans qualify for the presumption of service-connection of certain diseases related to ionizing radiation exposure.

Compromise Agreement

Section 306 of the Compromise Agreement follows the House language.

TITLE IV—HOUSING MATTERS

AUTHORITY TO PROVIDE SPECIALLY ADAPTED HOUSING TO CERTAIN DISABLED VETERANS

Current Law

Chapter 21 of title 38, United States Code, authorizes the Secretary to provide grants to adapt or acquire suitable housing for certain severely disabled veterans.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 302 of H.R. 1716, as amended, would extend eligibility for specially adapted housing grants to veterans with permanent and total service-connected disabilities due to the loss, or loss of use, of both arms at or above both elbows.

Compromise Agreement

Section 401 of the Compromise Agreement follows the House language.

TRANSITIONAL HOUSING AMENDMENTS

Current Law

Section 2051 of title 38, United States Code, establishes the general authority governing loan guarantees for multifamily transitional housing. Section 2052 establishes eligibility and other requirements for such loans.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 303 of H.R. 1716, as amended, would provide that a multifamily transitional housing project that is funded by a VA-guaranteed loan may accept uncompensated voluntary services as defined in section 2011(d) of title 38, United States Code, in connection with the construction, alteration, or repair of such project. This section would also add commercial activities, other than neighborhood retail services or job training programs, to the purposes for which multifamily transitional housing space may be used.

Compromise Agreement

Section 402 of the Compromise Agreement follows the House language. The Committees intend that veterans be hired at these new centers of commercial activity where practicable.

INCREASE IN, AND ANNUAL INDEXING OF, MAXIMUM AMOUNT OF HOME LOAN GUARANTY FOR CONSTRUCTION AND PURCHASE OF HOMES

Current Law

Section 3703 of title 38, United States Code, establishes that a loan of more than $144,000 made to an eligible veteran under section 3710 for purchase or construction of a home is automatically guaranteed by the United States in an amount not to exceed the lesser of $60,000 or 25 percent of the loan.

Senate Bill

Section 101 of S. 2486, as amended, would increase the maximum VA home loan guaranty to 25 percent of the Freddie Mac conforming loan amount for a single-family residence and annually index the maximum amount of VA's home loan guaranty for construction or purchase of a home to the Freddie Mac limit.

House Bill

Section 301 of H.R. 1716, as amended, and H.R. 4345 contain a similar provision.

Compromise Agreement

Section 403 of the Compromise Agreement follows the Senate language.

EXTENSION OF AUTHORITY FOR GUARANTEE OF ADJUSTABLE RATE MORTGAGES

Current Law

Section 3707 of title 38, United States Code, formerly authorized a three-year test of a VA-guaranteed adjustable rate mortgage program (ARM). The VA ARM program was in force from fiscal year 1993 through fiscal year 1995.

Senate Bill

Section 102 of S. 2486, as amended, would reinstate the VA ARM program and extend its authorization through fiscal year 2011.

House Bill

The House Bills contain no comparable provision.

Compromise Agreement

Section 404 of the Compromise Agreement follows the Senate language but would extend the VA ARM program authorization through fiscal year 2008.

EXTENSION AND IMPROVEMENT OF AUTHORITY FOR GUARANTEE OF HYBRID ADJUSTABLE RATE MORTGAGES

Current Law

Section 3707A of title 38, United States Code, authorizes VA, during fiscal years 2004 and 2005, to guarantee hybrid adjustable rate mortgage (hybrid ARM) loans. Annual interest rate adjustments on VA-guaranteed hybrid ARM loans are subject to a maximum increase or decrease of one percentage point and are limited over the term of the mortgage to a maximum increase of five percentage points above the initial fixed rate of interest.

Senate Bill

Section 103 of S. 2486, as amended, would extend the authority of VA to guarantee hybrid ARM loans through fiscal year 2011. For hybrid ARM loans with fixed periods of interest of less than 5 years, the initial and subsequent annual interest rate adjustments would be limited to one percentage point. For hybrid ARM loans with an initial rate of interest fixed for 5 years or more, section 103 would give VA the authority to set an appropriate interest rate cap for the initial interest rate adjustment. Annual adjustments thereafter would be subject to a one percentage point cap. Finally, section 103 would require VA to prescribe the maximum number of percentage points above the initial fixed rate of interest that would limit, over the term of a hybrid ARM mortgage, interest rate adjustments.

House Bill

The House Bills contain no comparable provision.

Compromise Agreement

Section 405 of the Compromise Agreement follows the Senate language but would extend the VA hybrid ARM program through fiscal year 2008.

TERMINATION OF COLLECTION OF LOAN FEES FROM VETERANS RATED ELIGIBLE FOR COMPENSATION AT PRE-DISCHARGE RATING EXAMINATIONS

Current Law

Section 3729(a) of title 38, United States Code, requires VA to collect a fee from each person obtaining a housing loan guaranteed by VA. Section 3729(c) prohibits the collection of loan fees from veterans who are receiving VA disability compensation. Disability compensation may only be paid upon an active duty servicemember's discharge from service.

Senate Bill

Section 104 of S. 2486, as amended, would allow a servicemember who is rated eligible to receive disability compensation as a result of a pre-discharge medical examination to qualify for a waiver of the VA home loan funding fee.

House Bill

The House Bills contain no comparable provision.

Compromise Agreement

Section 406 of the Compromise Agreement follows the Senate language.

THREE-YEAR EXTENSION OF NATIVE AMERICAN VETERAN HOUSING LOAN PILOT PROGRAM

Current Law

Section 3761 of title 38, United States Code, establishes the general authority governing a pilot program for housing loans to Native Americans residing on tribal lands. The pilot program is authorized through December 31, 2005.

House Bill

H.R. 5153 WOULD EXTEND THE NATIVE AMERICAN HOME LOAN PROGRAM THROUGH DECEMBER 31, 2010.

Senate Bill

The Senate Bills contain no comparable provision.

Compromise Agreement

Section 407 of the Compromise Agreement extends the pilot program until December 31, 2008.

TITLE V—MATTERS RELATING TO FIDUCIARIES

DEFINITION OF FIDUCIARY

Current Law

There is no applicable current law.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 301 of H.R. 4658, as amended, would define a fiduciary for the purposes of chapters 55 and 61 of title 38, United States Code, as (1) the guardian, curator, conservator, committee or person legally vested with the responsibility or care of a claimant (or the estate) or of a beneficiary (or beneficiary's estate); or (2) any other person appointed in a representative capacity to receive money paid from VA.

Compromise Agreement

Section 501 of the Compromise Agreement follows the House language.

INQUIRY, INVESTIGATIONS, AND QUALIFICATION OF FIDUCIARIES

Current Law

There is no applicable current law.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 302 of H.R. 4658, as amended, would require VA to certify, following an inquiry or investigation, the fitness of a fiduciary. Such inquiry or investigation would be conducted through, to the extent practicable, a face-to-face interview, review of a credit report issued within one year of the fiduciary's proposed appointment, and the furnishing of any bond that may be required by the Secretary. Additionally, the Secretary would be required to request information on whether that person has been convicted of any offense under Federal or State law resulting in imprisonment for more than one year. If the proposed fiduciary has been convicted of such an offense, the Secretary may certify the person as a fiduciary only if the Secretary makes a specific finding of rehabilitation and finds that the proposed fiduciary is an appropriate one to act as the fiduciary for the beneficiary.

In cases of a parent or step-parent of a minor beneficiary (natural or adopted), spouse or parent of an incompetent beneficiary, a person who has been appointed by a court of competent jurisdiction, or a person appointed to manage an estate where the annual amount of veterans benefits to be managed does not exceed $3,600 (adjusted for annual cost-of-living increases), the Secretary may certify the potential fiduciary on an expedited basis.

If needed to protect the assets of the beneficiary when a determination of incompetence is being made or appealed, or a fiduciary is appealing a determination of misuse of veteran's benefits, the Secretary would have the authority to appoint a temporary fiduciary, for a period not to exceed 120 days. If a final decision has not been made within 120 days of the appointment of the temporary fiduciary, the Secretary would not be able to continue the temporary appointment without a court order for the appointment of a guardian, conservator, or similar legal fiduciary.

Compromise Agreement

Section 502 of the Compromise Agreement follows the House language with modifications. Language requiring a specific finding of rehabilitation before a person with a prior felony conviction may be appointed to serve as a fiduciary is omitted. The Committees intend that the Secretary have discretion in determining when such a person would be an appropriate person to serve as a fiduciary. The Committees expect the Secretary to consider such factors as the length of time since the conviction, the nature of the offense, the relationship of the proposed fiduciary to the beneficiary, and other factors which would demonstrate the appropriateness of the appointment.

MISUSE OF BENEFITS BY FIDUCIARIES

Current Law

There is no applicable current law.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 303 of H.R. 4658, as amended, would, if the Secretary or a court of competent jurisdiction determines the fiduciary misused some or all of the veterans' benefits, prohibit a fiduciary from collecting a fee from a beneficiary for any month benefits were misused. Additionally, any fee collected would be considered to be misused.

Any fiduciary, except a Federal, State or local government agency, would be liable for the amount misused, and that amount would be treated as an erroneous payment to the 18 fiduciary for purposes of laws pertaining to the recovery of overpayments. The misappropriated amount would be recovered in the same manner as any other debt due the United States, and the Secretary would repay to the beneficiary or the beneficiary's successor fiduciary, an amount equal to the recovered amount.

In the event the misused benefits are due to the Secretary's negligent failure to investigate or monitor the fiduciary, the Secretary would be liable to reissue all the benefits. Examples of failure to monitor a fiduciary adequately would include the Secretary's failing to review, in a timely manner, a fiduciary's accounting; failing to act in a timely manner when notified of allegations of misuse; and any other case when actual negligence is shown. In any case, a fiduciary who is (1) not an individual (i.e., an agency) or (2) is an individual who, for any month during a period when misuse occurs, serves ten or more individuals who are beneficiaries under title 38, United States Code, the Secretary would also reissue benefits. When the Secretary reissues a benefit payment, the Secretary is directed to make a good-faith effort to recoup the funds from the fiduciary to which the original payment was made.

Compromise Agreement

Section 503 of the Compromise Agreement follows the House language with modifications. The Committees have omitted language authorizing the Secretary to make a finding of misuse and treat the portions of benefits misused as erroneous payments to the fiduciary. Also omitted is language authorizing the Secretary to impose liability upon the fiduciary and recover misused funds in the same manner as any other debt owed to the United States. In addition, the Committees have omitted the provision that would have made a determination by the Secretary that a fiduciary has misused benefits a decision of the Secretary for purposes of section 511(a) of title 38, United States Code. The Committees recognize that it is the duty of the Federal government to recover misused funds and expect that VA and other government agencies will make every effort to recover misused funds. However, at this time, the Committees need to assess further the appropriateness of requiring a fiduciary accused of misuse by the Secretary to appeal such a finding in the appeals venue established for adjudicating veterans' entitlement claims.

The Committees have also amended the provision requiring the Secretary to reissue benefits when the Secretary has negligently failed to monitor or investigate a fiduciary. In particular, the Committees have specified that a timely review of a scheduled accounting or investigation of misuse is one that occurs within 60 days of the scheduled accounting or notification of alleged misuse.

ADDITIONAL PROTECTIONS FOR BENEFICIARIES WITH FIDUCIARIES

Current Law

There is no applicable current law.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 304 of H.R. 4658, as amended, would require the Secretary to conduct periodic onsite reviews of any person or agency located in the United States that serves as a fiduciary to more than 20 beneficiaries and who administers a total annual amount of benefits administered of $50,000 or more (to be adjusted annually to reflect cost-of-living adjustments). Additionally, the Secretary would be authorized to require a fiduciary to file a report or accounting of disbursement of benefits in accordance with regulations prescribed by the Secretary. In the event a fiduciary fails to file the requested report, the Secretary would be authorized to require a fiduciary to appear in person at a VA regional office to receive payment.

In the event the Secretary determines a fiduciary converts a payment for some use other than for use on the beneficiary's behalf, the Secretary would be authorized to assess, in addition to any other penalty that may be prescribed by law, a civil monetary penalty of not more than $5,000 per conversion. Such person would also be subject to an assessment by the Secretary of not more than twice the amount of any payments converted.

Additionally, any Federal court, when sentencing a defendant convicted of an offense arising from the misuse of benefits, could have ordered, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the Department and the court would have been required to state on the record the reasons for not ordering restitution, or only ordering partial restitution. Any amounts received or recovered would be available to defray the expenses incurred by the VA's Office of Inspector General for the inquiry or investigation of fiduciaries.

Compromise Agreement

Section 504 of the Compromise Agreement follows the House language with modifications. The title of new section 5509, of title 38, United States Code, has been changed to reflect more accurately the requirements of that section. The provision for imposition of civil monetary penalties has been omitted. The Compromise Agreement omits provisions allowing amounts received in excess of benefit restitution to be made available to the Office of the Inspector General.

ANNUAL REPORT

Current Law

There is no applicable current law.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 305 of H.R. 4658, as amended, would require the Secretary to include in the "Annual Benefits Report of the Veterans Benefits Administration" or the "Secretary's Annual Performance and Accountability Report" information concerning fiduciaries who have been appointed to receive benefits. The required report would include: (1) the number of beneficiaries in each category (veteran, surviving spouse, child, adult disabled child or parent); (2) the types of benefit being paid (compensation, pension, dependency and indemnity compensation, death pension or benefits payable to a disabled child under chapter 18 of title 38, United States Code); (3) the total annual amounts and average annual amounts of benefits paid to fiduciaries for each category and type of benefit; (4) the number of fiduciaries who are the spouse, parent, step-parent, legal custodian, court-appointed fiduciary, institutional fiduciary, custodian-in-fact and supervised direct payee; (5) the number of cases in which the fiduciary was changed by the Secretary because of a finding that benefits had been misused; (6) how such cases of misuse of benefits were addressed by the Secretary; (7) the final disposition of such cases of misuse of benefits, including the number and dollar amount of any civil or criminal penalties imposed; and (8) such other information as the Secretary considers appropriate.

Compromise Agreement

Section 505 of the Compromise Agreement follows the House language with modifications. Additional reporting requirements concerning cases referred to the Office of the Inspector General and the amounts of money recovered by the government have been added. Language referring to civil or criminal penalties has been omitted.

TITLE VI—MEMORIAL AFFAIRS MATTERS

DESIGNATION OF PRISONER OF WAR MISSING IN ACTION NATIONAL MEMORIAL, RIVERSIDE NATIONAL CEMETERY, RIVERSIDE, CALIFORNIA

Current Law

There is no applicable current law.

Senate Bill

Section 122 of S. 2485 would designate the Prisoner of War/Missing in Action National Memorial at the Riverside National Cemetery in Riverside, California. Federal funds would be permitted, but not required, at the discretion of the Secretary for maintenance of the memorial, should private funding sources prove to be inadequate.

House Bill

Section 402 of H.R. 1716, as amended, contains a similar provision.

Compromise Agreement

Section 601 of the Compromise Agreement generally follows the House language. However, the memorial is designated: "Prisoner of War/Missing in Action National Memorial."

LEASE OF CERTAIN NATIONAL CEMETERY ADMINISTRATION PROPERTY

Current Law

There is no applicable provision in current law.

Senate Bill

Section 107 of S. 2485, as amended, would authorize the Secretary to lease any undeveloped land and unused or underutilized buildings belonging to the United States and administered by the National Cemetery Administration (NCA). The term of any such lease would not be permitted to exceed ten years. Proceeds from the lease of land or buildings and proceeds from licenses sold in return for the agricultural use of NCA lands would be deposited in a National Cemetery Administration Facilities Operation Fund along with any appropriation, or other authorized payment, designated for that fund. Fund proceeds would be available to cover costs incurred by NCA in the operation and maintenance of national cemeteries.

House Bill

The House Bills contain no comparable provision.

Compromise Agreement

Section 602 of the Compromise Agreement follows the Senate language.

EXCHANGES OF REAL PROPERTY FOR NATIONAL CEMETERIES

Current Law

Section 2406 of title 38, United States Code, authorizes the Secretary to acquire additional lands for national cemeteries by purchase, gift, condemnation, or transfer from other Federal agencies.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

The House Bills contain no comparable provision.

Compromise Agreement

Section 603 of the Compromise Agreement would authorize the Secretary to acquire additional lands for national cemeteries by exchanging existing national cemetery land.

TITLE VII—IMPROVEMENTS TO SERVICEMEMBERS CIVIL RELIEF ACT

CLARIFICATION OF MEANING OF "JUDGMENT" AS USED IN THE SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)

Current Law

Section 101 of the SCRA provides definitions for purposes of the Act. The section does not define the term "judgment."

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 101 of H.R. 4658, as amended, would clarify that "[t]he term 'judgment' means any judgment, decree, order, or ruling, final or temporary."

Compromise Agreement

Section 701 of the Compromise Agreement follows the House language.

REQUIREMENTS RELATING TO WAIVER OF RIGHTS UNDER THE SCRA

Current Law

Section 107 of the SCRA provides that servicemembers may waive any of the rights and protections under the Act if certain requirements are met, including a requirement in section 107(b) that waivers be in writing for specified actions.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 102 of H.R. 4658, as amended, would provide that those actions requiring waivers in writing pursuant to section 107(b) of the SCRA must also be executed in a separate instrument. Additionally, section 102 would provide a new requirement that any waiver, in writing, of a right or protection under section 107 of the Act that applies to a contract, lease or similar legal instrument must be in at least 12-point type.

Compromise Agreement

Section 702 of the Compromise Agreement follows the House language.

RIGHT OF SERVICEMEMBERS PLAINTIFFS TO REQUEST STAY OF CIVIL PROCEEDINGS

Current Law

Section 202 of the SCRA provides for a stay of any civil action or proceeding when a servicemember who is a defendant has notice of the action or proceeding.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 103 of H.R. 4658, as amended, would include plaintiffs as well as defendants under section 202 of the SCRA.

Compromise Agreement

Section 703 of the Compromise Agreement follows the House language.

TERMINATION OF LEASES

Current Law

Section 305 of the SCRA provides that servicemembers may, under certain circumstances, terminate residential or motor vehicle leases and specifies the manner of termination.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 104 of H.R. 4658, as amended, would clarify that if, under section 305 of the SCRA the servicemember terminates a lease entered into jointly with a dependent, the obligations of both the servicemember and the dependent are terminated. Section 104 would also modify section 305 of the SCRA to allow motor vehicle lease terminations for any permanent change of station move from a state outside of the continental United States to any other location outside that state, and the term "continental United States" would be defined as the "48 contiguous states and the District of Columbia." Further, section 104 would broaden the definition of the term "military orders" to mean "official military orders, or any notification, certification, or verification from the servicemember's commanding officer, with respect to the servicemember's current or future military duty status." Finally, section 104 would amend section 305 of the SCRA to include individual as well as unit deployments for a period of not less than 90 days among the circumstances under which a servicemember could terminate a lease.

Compromise Agreement

Section 704 of the Compromise Agreement follows the House language.

TITLE VIII—OTHER MATTERS

PRINCIPAL OFFICE OF THE UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Current Law

Section 7255 of title 38, United States Code, requires the principal office of the U.S. Court of Appeals for Veterans Claims be located in the District of Columbia.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 1 of H.R. 3936 would authorize the principal office of the U.S. Court of Appeals for Veterans Claims to be located at any location in the Washington, D.C., metropolitan area. Section 2 would make findings and express the sense of Congress regarding a new veterans' courthouse and justice center.

Compromise Agreement

Section 801 of the Compromise Agreement follows the House language, but omits section 2 of the bill.

EXTENSION OF BIENNIAL REPORT OF ADVISORY COMMITTEE ON FORMER PRISONERS OF WAR

Current Law

Section 541 of title 38, United States Code, establishes an Advisory Committee on

Former Prisoners of War. The Advisory Committee is required to submit to the Secretary, no later than July 1st of each odd numbered year through 2003, a report on the programs and activities of the Department as they pertain to veterans who are former prisoners of war.

Senate Bill

Section 302 of S. 2486, as amended, would extend the reporting requirement through 2009.

House Bill

The House Bills contain no comparable provision.

Compromise Agreement

Section 803 of the Compromise Agreement follows the Senate language.

AVAILABILITY OF ADMINISTRATIVE AND JUDICIAL REDRESS FOR CERTAIN VETERANS DENIED OPPORTUNITY TO COMPETE FOR FEDERAL EMPLOYMENT

Current Law

Section 3304(f)(1) of title 5, United States Code, grants "preference eligible" veterans (generally, veterans who served during a wartime period; veterans who served during a period for which a campaign badge or expeditionary medal was awarded; or veterans with service-connected disabilities) and veterans who separated from the armed forces under honorable conditions after three years or more of active service the opportunity to compete for vacant positions in the Federal government for which an agency is accepting applications from individuals outside its own workforce under merit promotion procedures.

Section 3330a of title 5, United States Code, allows preference eligible veterans who allege their veterans' preference rights have been violated to seek administrative redress by filing a complaint with the Secretary of Labor. Section 3330b of title 5, United States Code, provides preference eligible veterans with judicial redress for claims arising from allegations of violations of veterans' preference laws.

Senate Bill

Section 204 of S. 2486, as amended, would provide a veteran who has been separated from the armed forces under honorable conditions after three years or more of active service with administrative and judicial redress for alleged violations of his or her rights under section 3304(f)(1) of title 5, United States Code.

House Bill

The House Bills contain no comparable provision.

Compromise Agreement

Section 804 of the Compromise Agreement follows the Senate language.

REPORT ON SERVICEMEMBERS'AND VETERANS' AWARENESS OF BENEFITS AVAILABLE UNDER LAWS ADMINISTERED BY THE SECRETARY OF VETERANS AFFAIRS

Current Law

Section 7722 of title 38, United States Code, requires the Secretary of Veterans Affairs to distribute full information to eligible servicemembers, veterans and dependents regarding all benefits and services to which they may be entitled under laws administered by the Department.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

The House Bills contain no comparable provision.

Compromise Agreement

Section 805 of the Compromise Agreement would direct the Secretary of Veterans Affairs to submit a report to Congress detailing VA's efforts to make veterans and servicemembers aware of VA benefits and services to which they are entitled. The report would include: 1) a description of the outreach activities conducted by VA at each of its three Administrations and by other internal VA entities; 2) the results of a national survey to ascertain servicemembers' and veterans' level of awareness of VA benefits and services; and 3) recommendations the Secretary may have to improve VA's outreach activities. The report would be due 1 year after the enactment of the Compromise Agreement.

LEGISLATIVE PROVISIONS NOT ADOPTED

IMPROVED VETERANS' BENEFITS FOR FORMER PRISONERS OF WAR

Current Law

Section 1112(b) of title 38, United States Code, specifies 16 disabilities that VA presumes are related to the prisoner of war (POW) experience for the purposes of veterans' and survivors' benefits.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 4 of H.R. 4175 would add osteoporosis to the list of diseases presumed to be the result of the POW experience.

FINDINGS RELATED TO ON-JOB TRAINING AND APPRENTICESHIP PROGRAMS

Current Law

There is no applicable current law.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 101 of H.R. 1716, as amended, would make Congressional findings with respect to broad purposes for VA's OJT and apprenticeship programs in both the private and public sectors of our economy. These include: helping employers hire and retain skilled workers; establishing a link between the training afforded to servicemembers while serving in the Armed Forces and the training available in civilian settings for purposes of occupational licensing and credentialing; and developing a more highly educated and productive workforce.

INCENTIVE PAYMENT FOR EARLY COMPLETION OF APPRENTICESHIP TRAINING

Current Law

Sections 3032, 3233, and 3687 of title 38, United States Code, and Section 16131 of title 10, United States Code, do not currently contain any incentive to finish on job training or apprenticeships earlier than the established completion date.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 103 of H.R. 1716, as amended, would establish an incentive payment for program participants who finish their apprenticeship training early. As an incentive for trainees to complete their apprenticeship or attain journeyworker status early, this provision would require VA to pay the trainee a lump-sum amount for the months of VA entitlement remaining that would have been needed to complete the apprenticeship. This provision would be applicable for months beginning on or after October 1, 2005, and ending on October 1, 2010.

ELIGIBILITY OF CERTAIN PERSONS FOR BURIAL IN ARLINGTON NATIONAL CEMETERY

Current Law

Eligibility for burial at Arlington National Cemetery is governed by Federal regulations at section 553.15 of title 32, Code of Federal Regulations. The following categories of persons are eligible for in-ground burial: active duty members of the Armed Forces, except those members serving on active duty for training; retired members of the Armed Forces who have served on active duty, are on a retired list and are entitled to receive retirement pay; former members of the Armed Forces discharged for disability before October 1, 1949, who served on active duty and would have been eligible for retirement under 10 U.S.C. 1202 had the statute been in effect on the date of separation; honorably discharged members of the Armed Forces awarded the Medal of Honor, Distinguished Service Cross, Air Force Cross or Navy Cross, Distinguished Service Medal, Silver Star, or Purple Heart; former prisoners of war who served honorably and who died on or after November 30, 1993; provided they were honorably discharged from the Armed Forces, elected Federal officials (the President, Vice President, and Members of Congress), Federal cabinet secretaries and deputies, agency directors and certain other high Federal officials (level I and II executives), Supreme Court Justices, and chiefs of certain diplomatic missions; the spouse, widow or widower, minor child and, at the discretion of the Secretary of the Army, certain unmarried adult children, and certain surviving spouses of persons eligible for in-ground burial.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 401 of H.R. 1716, as amended, would make eligible for in-ground burial at Arlington National Cemetery (1) a member or former member of a reserve component of the Armed Forces who at the time of death was under 60 years of age and who, but for age, would have been eligible for military retired pay under title 10, United States Code; and (2) a member of a reserve component of the Armed Forces who dies in the line of duty while on active duty for training or inactive duty training. Eligibility in both instances would also extend to the servicemember's dependents.

TECHNICAL AMENDMENTS TO EDUCATION PROGRAM PROVISIONS

Current Law

Section 3452(e) of title 38, United States Code, as amended by section 301 of the Veterans Benefits Act of 2003 (Public Law 108-183; 117 Stat. 2658), authorizes educational assistance benefits for certain self-employment and on-job training programs (franchises) for less than six months under the Montgomery GI Bill (MGIB) when the beneficiary receives a training wage.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 403 of H.R. 4658, as amended, would make a technical correction to waive the training-wage requirement for programs of less than six months beginning October 1, 2005, and ending on September 30, 2010. The

Department of Veterans Affairs would be required to review and approve all such programs before any MGIB educational assistance benefits could be dispersed.

PREVENTION OF DOUBLE TAXATION OF CERTAIN SERVICEMEMBERS

Current Law

There is no applicable current law.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 105 of H.R. 4658, as amended, would prohibit a tax jurisdiction from imposing a use, excise or similar tax on the personal property of a servicemember who is not a resident, if the tax jurisdiction's laws do not provide a credit against such taxes previously paid on the same personal property in another tax jurisdiction.

FINDINGS AND SENSE OF CONGRESS REGARDING NEW VETERANS COURTHOUSE AND JUSTICE CENTER

Current Law

There is no applicable current law.

Senate Bill

The Senate Bills contain no comparable provision.

House Bill

Section 2 of H.R. 3936 would make findings and express the sense of Congress that all other Article I courts of the United States are located in a dedicated courthouse; that the U.S. Court of Appeals for Veterans Claims, since its creation in 1988, has been located in a commercial office building; and that a dedicated Veterans Courthouse and Justice Center should be provided for the Court and the veterans it serves, and should be located, if feasible, at a site owned by the United States that is part of or proximate to the Pentagon Reservation. Section 2 would also require that not later than 90 days after the date of enactment of this provision, the Secretary of Defense, the Secretary of Veterans Affairs, and the Administrator of General Services submit to the House and Senate Committees on Veterans' Affairs and Armed Services a joint report on the feasibility of locating a new Veterans Courthouse and Justice Center at an appropriate Pentagon Reservation site.

EDUCATIONAL ASSISTANCE UNDER THE MONTGOMERY GI BILL FOR MEMBERS OF THE SELECTED RESERVE WHO AGGREGATE TWO OR MORE YEARS OF ACTIVE DUTY SERVICE DURING ANY FIVE-YEAR PERIOD

Current Law

Section 3012 of title 38, United States Code, authorizes the Department of Veterans Affairs to provide Chapter 30 educational assistance benefits to an individual who, after June 30, 1985, first enters on active duty and has his or her pay reduced by $100 per month for the first 12 months of active duty and serves at least two continuous years on active duty.

Senate Bill

Section 202 of S. 2486, as amended, would grant entitlement to Chapter 30 educational assistance benefits to an individual in the Selected Reserve who, during any five-year period beginning on or after September 11, 2001, and ending on June 30, 2008, serves an aggregate of two years of active duty service. The activated Selected Reserve member would be required to make a $1,200 contribution within one year of completing two years of aggregate active duty service.

House Bill

The House Bills contain no comparable provision.

MODIFICATION OF DEFINITION OF MINORITY GROUP MEMBER FOR PURPOSES OF ADVISORY COMMITTEE ON MINORITY VETERANS

Current Law

Section 544 of title 38, United States Code, establishes an Advisory Committee on Minority Veterans. For purposes of that section of law the term "minority group members" includes veterans who are: Asian American; Black; Hispanic; Native American (including American Indian, Alaskan Native, and Native Hawaiian); or Pacific-Islander American.

Senate Bill

Section 303 of S. 2486, as amended, would amend the definition of "minority group member" to conform to the new Race and Ethnic Standards used in Federal statistical reporting and in the 2000 United States Census. Specifically, section 303 would redefine the categories of minority group members making the following changes: substituting "Asian" for "Asian American;" "Black or African American" for "Black;" "Hispanic, Latino, or Spanish Origin" for "Hispanic;" and "American Indian or Alaska Native" and "Native Hawaiian or other Pacific Islander" for "Native American (including American Indian, Alaskan Native, and Native Hawaiian)."

House Bill

The House Bills contain no comparable provision.

INCREASE IN RATES OF DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION

Current Law

Current law does not require an annual cost-of-living adjustment to veterans' and survivors' disability compensation.

Senate Bill

S. 2483 contains a similar provision.

House Bill

Section 2 of H.R. 4175 would provide, effective December 1, 2004, a cost-of-living adjustment to the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans. The percentage increase would be equal to the percentage increase for benefits provided under the Social Security Act.

Compromise Agreement

The Committees expect that a veterans' cost-of-living adjustment effective December 1, 2004, will be considered in another bill.

Mr. GRAHAM of Florida. Mr. President, as ranking member of the Committee on Veterans' Affairs, I urge my colleagues to continue to support our veterans and their families by passing the Veterans Benefits Improvement Act of 2004.

This bill, which I shall call the Compromise Agreement, is the final version of a veterans omnibus bill. The Compromise Agreement will improve and expand a host of veterans benefits, including: survivors benefits for spouses with dependent children; housing benefits; and educational benefits for Guard and Reserve members, veterans, and spouses of veterans killed on active duty.

It is very appropriate that at a time when our airmen, soldiers, sailors and marines are in harm's way, that we remember the sacrifices that those before them have made on behalf of this great Nation by improving and expanding veterans benefits for our Nation's bravest and their families.

I will briefly highlight some of the more important provisions, and then ask that my colleagues direct their attention to the Joint Explanatory Statement for further explanation of the proposed legislation.

Dependency and indemnity compensation is a monthly benefit paid to eligible survivors of servicemembers who died on active duty, and of certain veterans. A larger monthly benefit is paid to surviving spouses with children under the age of 18. Under this legislation, dependency and indemnity compensation for survivors, with dependent children, of spouses killed on active duty would be increased by $250 a month, for 2 years, beginning on the date when entitlement to benefits begins. A VA contracted study found that spouses with children had a higher level of unmet need than spouses without children. This provision is included to further aid the transition of surviving spouses with dependent children. We must make every effort to make certain that the families of servicemembers who paid the ultimate sacrifice have their needs met.

Owning a home of one's own is the American Dream. This legislation would make that dream a reality for more of our veterans by increasing the maximum amount of the VA home loan guaranty. The current VA loan limit of $240,000 restricts beneficiaries from using the guaranty because it is insufficient to cover median housing prices in many parts of the Nation. Section 403 of the Compromise Agreement would increase the maximum VA loan amount to $333,700. It would also index the loan limit to 25 percent of the conforming loan limit for a single-family residence as set by Freddie Mac. This would allow the loan limit to continue to rise with the cost of housing inflation automatically. This change, coupled with the reinstatement of the VA adjustable rate mortgage loan program and improvement of the hybrid adjustable rate mortgage loan program will allow many more veterans to be able to purchase a home.

The second half of the American Dream is a college education. Educational assistance is provided to the surviving spouse of a servicemember or veteran who died of a service-connected injury, or the spouse of a veteran who is rated by VA to be totally and permanently disabled. The spouse has 10 years to use the entitlement. However, many surviving spouses, during this difficult transitional period, are busy raising children and working making it impossible to use the education benefit. This legislation would give an additional 10 years to the surviving spouse of a servicemember who died of a service-connected disability to use the benefit.

Under current law, a member of the Selected Reserve or National Guard must contribute a non-refundable $1,200 in order to participate in the Montgomery GI Bill education program. However, a member of the Selected Reserve must spend 1 year on active duty before being eligible for the program. Section 109 of the committee bill would create flexibility and allow the Montgomery GI Bill participation fee to be collected not later than 1 year after the completion of 2 years of active duty, ensuring that the Reserve or Guard has become eligible by satisfying the service requirement.

With the costs of attending college rising, it is important that we do as much for our veterans as possible so that they may reach their academic objectives. This legislation would allow VA to reimburse eligible beneficiaries for the cost of certain national admission tests, such as the Law School Admission Test, Graduate Record Exam, Graduate Management Admission Test, and Scholastic Aptitude Test, and for course credit at institutions of higher learning, such as the Advanced Placement Exam and College-Level Examination Program.

In keeping with this committee's continuing effort to aid veterans in attaining appropriate education and employment opportunities, this legislation improves the full-time apprenticeship and on-job training programs under the MGIB. Section 103 of the Compromise Agreement, for more than a 2-year period, would increase the full-time VA monthly educational assistance allowance payable to individuals participating in these training programs. For the first 6 months of training, the monthly benefit would increase to 85 percent from 75 percent; for the second 6 months, 65 percent from 55 percent; and the remainder of months, 45 percent from 35 percent. Additionally, Section 104 of the Compromise Agreement authorizes VA to pay educational benefits to veterans participating in competency-based apprenticeships, in addition to time-based apprenticeships, bringing the VA program in line with the way most apprenticeship programs are structured today.

These provisions show our veterans America's continuing unwavering support of the service and sacrifice that they have made on behalf of this country. Particularly at a time when we are at war, we must ensure our servicemembers that we will fulfill the commitment promised by Abraham Lincoln, "to care for him that shall have borne the battle and for his widow and his orphan."

In conclusion, I would like to specifically thank Senator SPECTER and his benefits staff for their work on this comprehensive bill, specifically Bill Tuerk, Jon Towers and Chris McNamee, and my staff, Buddy Menn, Mary Schoelen, Dahlia Melendrez, Ted Pusey, Amanda Krohn, and Tandy Barrett, who recently left the committee, for all of their hard work in helping to put this legislation together. I urge my colleagues to support this legislation on behalf of America's veterans and their families.

I ask unanimous consent that the text of the bill be printed in the RECORD following this statement.

Mr. FRIST. Mr. President, I ask unanimous consent that the amendment at the desk be agreed to, the committee amendment, as amended, be agreed to, the bill, as amended, be read a third time and passed, the amendment to the title be agreed to, the motions to reconsider be laid upon the table en bloc, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4044) was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 2486), as amended, was read the third time and passed.

The title was amended so as to read:

"A bill to amend title 38, United States Code, to improve and extend housing, education, and other benefits under the laws administered by the Secretary of Veterans Affairs, and for other purposes.".

ORDERS FOR SATURDAY, OCTOBER 9, 2004

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m. on Saturday, October 9; I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate resume consideration of S. Res. 445, the Senate intelligence reform resolution; provided further that the time until 11:15 be equally divided between the two managers, with 30 minutes under the control of Senator HARKIN.

The PRESIDING OFFICER (Mr. ENZI). Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Mr. President, tomorrow the Senate will resume consideration of the Senate intelligence reform resolution. Under the previous order, each of the remaining amendments in order will be offered, and the time until 11:15 will be equally divided for debate on the amendments. At 11:15 a.m., the Senate will proceed to a stacked series of votes on the remaining amendments, to be followed by a vote on adoption of the resolution, and a vote on the Harkin resolution.

Following disposition of the Senate intelligence reform resolution, the Senate will resume consideration of the conference report to accompany H.R. 4520, the FSC/ETI JOBS bill. It remains my hope that we can expedite consideration of the conference report, but I would remind all Senators that a cloture motion is pending and that vote is now scheduled to occur at 1 p.m. on Sunday. If cloture is invoked, we would hope that Members will allow us to move forward with the vote on passage at the earliest possible time.

The Senate may also take up the Department of Defense authorization conference report tomorrow or any appropriations conference report when it becomes available. I thank my colleagues for their patience. Weekend sessions are rare, but we have a lot of work to accomplish prior to adjourning. That work we will accomplish.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:03 p.m., adjourned until Saturday, October 9, 2004, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate October 8, 2004:

UNITED STATES POSTAL SERVICE

CAROLYN L. GALLAGHER, OF TEXAS, TO BE A GOVERNOR OF THE UNITED STATES POSTAL SERVICE FOR THE REMAINDER OF THE TERM EXPIRING DECEMBER 8, 2005, VICE ERENSTA BALLARD, RESIGNED.

LOUIS J. GIULIANO, OF NEW YORK, TO BE A GOVERNOR OF THE UNITED STATES POSTAL SERVICE FOR A TERM EXPIRING DECEMBER 8, 2009, VICE ALBERT CASEY.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK (*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

To be lieutenant colonel

STEVEN G. ALLRED, 0860
JOEL O. ALMOSARA, 6561
MARK J. ARMSTRONG, 3073
THOMAS A. BACON, 0604
ANNE H. BARRETT, 5596
MARK J. BATES, 0975
JOHN L. BELL JR., 5477
WILLIAM T. BENNETT, 2423
GREGORY D. BOBEL, 0244
LINDA L. BONNEL, 3723
LINDA S. BROECKL, 4889
DOUGLAS A. BURKETT, 4783
BRIAN G. CASLETON, 2036
ALICE S. CHAPMAN, 7556
JOHN T. CRIST, 7172
DARRIN L. CURTIS, 7298
RICHARD B. DELEON, 5530
KAREN S. FRALEY, 6416
MARKUS P. GMEHLIN, 1998
MARTHA D. GOFF, 9747
DANIEL J. GOLEN, 9383
REBA E. HARRIS, 5288
JANE E. HEETDERKSCOX, 2214
DAVID A. KAUTH, 9068
NANCY L. KLEIN, 1561
MARK A. LANGE, 3680
ABBIE K. LUCK, 1963

BRIAN B. MEIER, 0853
LUCIA E. MORE, 7814
TIMOTHY J. * MUKODA, 2107
JOSEPH J. NARRIGAN, 5907
RANDALL C. NEDEGAARD, 6600
DAVID K. NELSON, 3965
DEBRA ANN NOTTURNOBAYLEY, 0333
CRAIG A. OLSON, 3675
MARK S. OORDT, 2790
LISA T. PEGUES, 9669
RUSSELL L. PINARD, 1686
RONALD E. PORTE, 1135
PHILIP J. PREEN, 9843
ANDERSON B. ROWAN, 0479
MICHAEL B. SLACK, 0713
DAVID A. SMITH, 6876
CRAIG A. SMYSER, 4935
DAVID M. SONNTAG, 1094
SHARON L. SPRADLING, 7251
STEPHEN J. STOECKER, 9978
RONALD R. STUMBO, 5332
ROYCE M. TERRY, 4592
JONATHAN W. THOMAS, 5680
STEPHEN B. TUELLER, 2338
BRIAN L. WARRICK, 9107
JAMES D. WHITWORTH, 7528
ANNETTE J. WILLIAMSON, 5595
CHRISTOPHER A. D. WILLISTON, 5388
BRAD S. WINTERTON, 3858
JOHN R. WROCKLOFF, 4115

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK (*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

To be lieutenant colonel

DAVID C. ABRUZZI, 9025
RICHARD J. ADAMS, 8198
WALLACE L. ADDISON, 7291
RUSSELL G. ADELGREN, 0709
MARK L. * ADKINS, 1349
CARL W. AGAR, 5585
PATRICK A. AHLGRIMM, 6016
GREGORY C. AHLQUIST, 9628
PATRICK N. AHMANN, 6486
THERESA H. AINSWORTH, 8137
WILLARD B. AKINS II, 6945
JACQUELINE A. F. ALBRIGHT, 2807
VINCENT J. * ALCAZAR, 3306
ALEJANDRO J. ALEMAN, 5056
JEFFREY S. ALEXANDER, 3231
EDWARD D. ALLARD, 7261
JAMIE D. ALLEN, 4503
JOHN J. ALLEN, 6201
LISA C. ALLEN, 2172
MARK S. ALLEN, 5707
NEIL T. ALLEN, 1894
YOLANDA B. ALLEN, 5022
THOMAS P. ALLISON, 3379
DAVID L. ALMAND, 1140
THOMAS L. ALTO, 6290
DONATELLA D. ALVARADO, 5269
RICHARD C. AMBURN, 8502
STEVEN J. AMENT, 8305
KATHLEEN F. AMPONIN, 2455
BYRON B. ANDERSON, 2158
CHRISTINA M. ANDERSON, 9545
TIMOTHY D. ANDERSON, 1132
WILLIAM D. ANDERSON JR., 9851
JOSEPH F. ANGEL, 8673
JOHN S. R. ANTTONEN, 2116
REBECCA J. APPERT, 8279
ANDREW P. ARMACOST, 8473
ERIC L. ARMSTRONG, 7901
RUSSELL K. ARMSTRONG, 3078
DAVID C. ARNOLD, 3135
BRUCE A. ARRINGTON, 5425
CHRISTOPHER B. ASHBY, 9691
JOHN R. ASKREN, 8699
ROBIN D. ATHEY, 9768
LAWRENCE F. AUDET JR., 2080
MARK C. AUSTELL, 4933
RICHARD J. AUTHIER JR., 9520
CHRISTOPHER P. AZZANO, 2372
DOYLE R. * BABE, 6678
SCOTT E. BABOS, 7683
LEEMON C. BAIRD III, 1038
STACEE N. BAKO, 3079
SANFORD H. * BALKAN, 5520
DOUGLAS A. BALLINGER, 8023
KEVIN E. BANNISTER, 7968
KEVIN D. BARKER, 4955
DAVID W. BARNES, 6331
BRUCE C. BARTHOLOMEW, 7080
CATHY J. BARTHOLOMEW, 5918
PETER D. BASTIEN, 5790
ANDREW H. BATTEN, 7855
TONY D. BAUERNFEIND, 7569
KRIS A. BAUMAN, 5101
PAUL E. BAUMAN, 8123
DAVID J. BAYLOR, 4186
CHARLES E. BEAM, 7902
JOHN D. BEAN, 2425
BARRY D. BEAVERS, 4104
MATTHEW J. BECKAGE, 7596
BRIAN R. BEERS, 8182
MICHAEL D. BEESON, 3284
PAUL R. BEINEKE, 1246
THOMAS A. * BELL, 7767
WAYNE E. BELL, 3656
EUGENE R. BELMAIN II, 5549
DAVID B. BELZ, 2362
ROBERT E. BENNING, 2839
JAMES M. BENSON, 6010
RALPH E. BENTLEY, 6212
SCOTT I. BENZA, 1535
JEFFREY C. BERGDOLT, 4758
KURT A. BERGO, 5565
CYR LINDA K. BETHKE, 4267
SHAWN B. BEVANS, 6043
BRUCE A. BEYERLY, 3228
SUSHIL R. BHATT, 4264
JAY R. BICKLEY, 9413
TIMOTHY J. BILTZ, 7193
GREGORY A. BINGHAM, 3251
CRAIG S. BIONDO, 8035
DAVID R. BIRCH, 6187
TIMOTHY G. BISHOP, 1759
MARK L. BLACK, 4786
ALEXANDER J. BLANTON, 8068
DAVID P. BLAZEK, 1154
STEVEN J. BLEYMAIER, 6554
GARRY M. BLOOD, 9234
MORRIS C. BLUMENTHAL, 0773
MATTHEW J. BOBB, 9957
GREGORY A. BOERWINKLE, 5493
JAMES M. BOGUSLAWSKI, 7682
JULIE C. BOIT, 0935
RICHARD E. BOLTON, 8462
MICHAEL H. BOND, 5969
ROBERT T. BOQUIST, 5923
DAVID J. BORBELY, 4386
MICHAEL F. BORGERT, 7297
MAUREEN E. BORGIA, 7151
JAMES R. BORTREE, 7267
JAMES BOURASSA, 6269
JESSE BOURQUE JR., 3535
RANDELL P. BOWLING, 3537
SCOTT E. BOYD, 7182
ROBERT C. BOYLES, 5866
ANDREW R. BRABSON, 0757
SCOTT W. BRADLEY, 4200
ERIC P. BRAGANCA, 2153
CARY L. BRAGG, 2934
JAMES A. BRANDENBURG II, 9438
JOHN A. BRANIN, 3030
JAMES I. BRANSON, 5073
HELEN L. BRASHER, 3557
JAMES E. BRECK JR., 4013
BRAD A. BREDENKAMP, 4230
PAUL L. BREDHOLT, 6428
PATRICK D. BRENNAN, 6048
RICHARD F. * BRERETON, 7203
MICHAEL F. BRIDGES, 0979
LORING G. BRIDGEWATER, 7689
WILLIAM L. BRIGMAN, 0620
GREGORY S. BRINSFIELD, 9490
DALLAS S. BROOKS, 5854
TODD M. BROST, 8171
JOHN F. BROWER, 4393
GREGORY K. BROWN, 2566
KEVIN W. BROWN, 5393
RAY S. BROWN, 8228
SHERRY A. BROWN, 8746
TIMOTHY P. BROWN, 7340
KENNETH J. BROWNELL, 0540
ROBERT J. BRUCKNER, 7443
JERRY P. BRUMFIELD, 4615
DAVID F. BRUMMITT, 7459
ERIC J. BRUMSKILL, 7198
DALE S. BRUNER, 7687
CHRISTOPHER J. BRUNNER, 9598
ROBERT P. BUBELLO, 4102
ROBERT B. BUCHANAN, 2335
CAMERON E. BUCHHOLTZ, 5897
ROBERT A. BUENTE, 7961
STEVEN C. * BUETOW, 3850
PAUL A. BUGENSKE, 6688
DAVID BUKOVEY, 7171
KURT W. BULLER, 4695
KIMBERLY F. BULLOCK, 3189
KIRK P. BUNCH, 0341
JOHN G. BUNNELL, 3672
JEFFREY B. BURCHFIELD, 4146
PATRICK C. BURKE, 6109
TODD M. BURKHARDT, 9653
TIMOTHY A. BURNS, 4762
SCOTT D. BURNSIDE, 0455
PAUL J. * BURRELL, 3036
STEVEN B. BURTON, 2180
CHARLES K. BUSCH, 7918
CHRISTOPHER S. BUTLER, 8898
DONALD E. BUTLER, 2054
RUDOLPH E. BUTLER III, 6294
ERIC J. BUTTERBAUGH, 0248
BRADLEY J. BUXTON, 2145
TODD C. BYNUM, 8989
PHILIP M. BYRD, 8894
ANGELA M. CADWELL, 1735
SEANN J. CAHILL, 2069
DANIEL B. CAIN, 2437
ROBERT E. J. CALEY, 4537
GREGORY B. CALHOUN, 7344
DANIEL J. CALLAHAN, 3056
ITALO A. CALVARESI, 5769
DAVID C. CAMPASSI, 0716
STEVEN M. CAMPBELL, 5419
MICHAEL O. CANNON, 1105
KENNETH E. CANTERBURY, 8043
ALEJANDRO R. CANTU, 1750
BARRON D. CANTY, 1504
EDWARD J. CARDENAS, 5350
CHRISTOPHER A. CARLSEN, 5402
DANN S. CARLSON, 6673
ERIC N. CARLSON, 9570
KARN L. CARLSON, 8148
ALEXANDER E. CAROTHERS, 1914
ROBERT A. CARPENTER, 5177
VINCENT M. CARR JR., 1238
KURT J. CARRAWAY, 7113
MATTHEW D. CARROLL, 7266
AURELIA C. CARROLVERSON, 7758
TIM R. CARTER, 1506
JAVIER R. CASANOVA, 9501
WILLIAM M. CASHMAN, 0542
ERIC D. CASLER, 5453
HECTOR CASTILLO, 3753
WILLIAM M. CATHEY, 6301
VINCENT K. CATICH, 0962
MARC E. CAUDILL, 8857
DAVID A. CEBRELLI, 3206
JEFFREY D. CETOLA, 2133
GLENN S. CHADWICK, 9278
KENNETH M. CHAISSON, 6463
JAMES E. CHALKLEY II, 6533
RICHARD M. CHAMBERS, 8750
RICHARD W. CHANCELLOR, 6459
MICHAEL J. CHAPA, 5640
NIKOLAS CHAPAPAS, 2494
MARTIN A. CHAPIN, 2657
DAVID E. CHELEN, 0688
MARC L. CHERRY, 8987
THOMAS E. CHESLEY, 3697
LISETTE D. CHILDERS, 6106
BOGDAN CHOMICKI, 4152
TIMOTHY CHONG, 8941
DIANE M. CHOY, 6013
MIKE G. CHRISTIAN, 7344
MARK K. CIERO, 5674
DANIEL J. CLAIRMONT, 2445
ANDRA B. CLAPSADDLE, 0368
DOUGLAS S. CLARK, 0584
JAMES A. CLARK, 0352
JOHN A. CLARK, 9556
ANDREW A. * CLARKE, 5883
JAMES A. CLAVENNA, 2555
ROGER L. CLAYPOOLE JR., 7819
SHERMAN M. CLAYTON, 4690
RONALD E. CLEAVES, 2538
ARDYCE M. CLEMENTS, 5262
RODNEY L. CLEMENTS, 3744
CHAD M. CLIFTON, 3176
TERENCE P. CLINE, 1281
DAVID L. CLOE, 6573
KEVIN J. CLOWARD, 5626
JEFFREY H. * COGGIN, 2812
THOMAS C. COGLITORE, 1468
JOHN COLLEY, 5679
WENDELL L. COLLINS, 8759
MIGUEL J. COLON, 3088
MARK E. COLUZZI, 5099
JUAN T. COMMON, 6736
RONALD L. COMOGLIO, 4358
BRIAN D. CONANT, 3410
MONICA K. CONCHOLAR, 4327
STEPHEN R. CONKLING, 3737
MICHAEL R. CONTRATTO, 2823
DAYNE G. COOK, 8637
KAREN L. COOK, 6824
SCOTT P. COOK, 3024
DAVID L. COOL, 0421
DAVID J. COPPLER, 6026
EDWARD R. CORCORAN, 1952
TOBY L. COREY, 0163
MATTHEW J. CORNELL, 3880
SEAN C. CORNFORTH, 1343
DAVID A. CORRELL, 0002
DEREK F. COSSEY, 1006
JAMES A. COSTEY, 3765
BRIAN S. COULTRIP, 1782
JEFFERY M. COX, 9303
JODY D. COX, 2237
MATTHEW D. COX, 6297
KEVIN M. COYNE, 2356
SUHRA E. COYNE, 1382
CHRISTOPHER E. CRAIGE, 5243
KENNETH S. CRANE, 8404
DAVID M. CREAN, 0717
BRIAN L. CREASY, 9502
JAMES A. CREWS, 9550
THOMAS D. CRIMMINS, 3633
GIA C. CROMER, 3235
JEFFREY L. CROW, 6661
WILLIAM P. CROWE, 4838
BRETT E. CROZIER, 9057
HAYWOOD L. CRUDUP, 4912
BRIAN P. CRUICKSHANK, 8828
JACQUELINE CRUM, 0466
BRYAN L. CRUTCHFIELD, 2869
KEVIN M. CRUZE, 7790
MICHAEL G. * CULJAK, 1190
CARNELL C. CUNNINGHAM, 5621
JOHN T. CUNNINGHAM, 9645
MILLER CUNNINGHAM JR., 2986
JARED P. CURTIS, 3571
MARC E. CWIKLIK, 8933
DANIEL D. CZUPKA, 8088
THOMAS D. DAACK, 1947
DENNIS P. DABNEY, 8149
RICHARD S. DABROWSKI, 9244
TODD S. DAGGETT, 5071
BRYAN T. DAHLEMELSAETHER, 1807
THOMAS K. DALE, 8470
KENNETH J. DALFONSO, 4762

MATTHEW R. DANA, 7092
CHRISTOPHER O. DARLING, 2849
KEVIN J. DAUL, 7296
JUSTIN C. DAVEY, 7556
TERENCE A. DAVEY, 3158
DEREK K. DAVIS, 3273
HARRY A. DAVIS JR., 7825
JEFFREY A. * DAVIS, 4928
JONATHAN P. DAVIS, 8179
STEPHEN M. DAVIS, 7566
THEODORE L. DAVIS JR., 6652
JERI L. DAY, 5789
DARRELL S. DEARMAN, 1133
ROD A. DEAS, 4426
JEFFREY A. DEBOER, 7226
MICHAEL E. DEBRECZENI, 2514
JEFFREY W. DECKER, 0274
KIMBERLY JO DECKER, 4246
CHARLES E. DECKETT, 7495
BRENTLY G. DEEN, 0129
DARIN A. DEFENDORF, 3154
GREGORY S. DEFORE, 6079
HARVEY T. DEGROOT, 7517
DENNIS L. DEITNER, 0298
PETER J. DEITSCHEL, 0053
GERARDO DELACRUZMARTINEZ, 2640
JOHN M. DELAPP JR., 5512
TONY J. DELIBERATO, 3969
MILES A. DEMAYO, 3822
FRANKLIN L. DEMENT, 2681
ANDRE R. DEMPSEY, 7016
JAMES E. DENBOW JR., 4200
JASON J. DENNEY, 1143
LEANN DERBY, 8414
CHRISTOPHER A. DESIMONE, 2971
TED A. DETWILER, 5501
CHRISTOPHER M. DEVAUGHN, 3168
ROBERT J. DIANTONIO, 8815
ROBERT L. DIAS, 5871
RODNEY L. DICKERSON, 3306
JOHN R. DIERCKS, 4138
BOBBY R. DILLON, 3675
ANTHONY V. DIMARCO, 0227
PERCY A. DINGLE, 8594
JON J. DIX, 6552
KEVIN D. DIXON, 8044
DAVID W. DODGE, 2075
TIMOTHY C. DODGE, 4101
RICHARD A. DOLLESIN, 1516
PAUL B. DONOVAN, 7823
DAVID R. DORNBURG, 3772
JAMES L. DOROUGH JR., 9505
TRACY K. DORSETT III, 7321
DENIS P. DOTY, 2186
MARK R. DOUGLAS, 7237
RICHARD J. DOUGLASS, 8740
THOMAS R. * DOWDLE, 9261
PATRICK K. DOWLING, 9037
JAMES D. DOWNARD II, 5693
MICHAEL P. DOYLE, 9555
RICHARD A. DOYLE, 9710
TY R. DRAKE, 8582
JAMES H. DRAPE, 4283
DONALD R. DRECHSLER, 6346
DAVID J. DRESSEL, 8498
GARY T. DROUBAY, 0132
BRIAN M. DUBROFF, 4555
JOHN C. * DUFFEK, 4722
DAVID T. DUHADWAY, 6364
CARL R. DUMKE, 3573
KEVIN C. DUNBAUGH, 4082
LOUIS F. DUPUIS JR., 0971
JAMES A. DURBIN, 9141
JOHN P. DURNFORD, 4790
STEVEN L. DUTSCHMANN, 8408
JAMES P. DUTTON, 2749
ANTHONY T. DYESS, 0889
ALTON D. DYKES, 4055
STEPHEN M. EARLE, 4739
BILLIE S. EARLY, 7295
DARWIN H. EASTER, 2176
DAVID P. EASTERLING JR., 1936
ERIK H. ECKBLAD, 4929
BRYAN E. * EDMONDS, 8900
DANIEL C. EDWARDS, 7222
JOSEPH E. EDWARDS III, 4543
PHILLIP T. * EDWARDS, 2286
RICHARD J. EDWARDS, 0139
CHRISTOPHER J. EICHORST, 3751
PETER K. EIDE, 4134
KENNETH P. EKMAN, 9373
NEVIN K. ELDEN, 0130
EDWARD C. ELDER III, 5268
ERIK J. ELIASEN, 8518
MICHAEL D. ELIASON, 7051
ALAN W. ELLEDGE, 2262
TODD C. ELLISON, 0193
DOUGLAS H. ENGBERSON, 2625
JOHN T. ENYEART, 4878
ANTON ERET JR., 8596
MARVIN L. ERICKSON, 6507
CHRISTINE M. ERLEWINE, 9385
MARK B. ESTERBROOK, 4794
KERRY W. EVANS, 3032
MARK W. EVANS, 2615
MICHAEL C. FALLERT, 5528
JAYNE M. FARIS, 2114
CHARLES K. FARMER, 9508
PETER W. FARNEY, 1274
COLIN P. FARRELL, 7082
DAVID S. FARROW, 7757
SAMUEL S. FEDAK, 1243
ANNE MARIE FENTON, 2836
DRILLER L. FIEGEL, 9836
DONALD J. FIELDEN, 3124
AMY H. FIER, 5434
SHAWN D. FILBY, 1652
KAREN A. FINN, 5049
MICHAEL FINN II, 4797
JOHN N. FISCH, 2075
JEFFREY H. FISCHER, 5207
BARRY W. FISHER, 4044
EDWARD B. * FISHER, 0913
MICHAEL R. FISHER, 0505
FREDRIC S. * FITZSIMMONS, 6938
PETER G. FITZSIMMONS, 0744
MICHAEL P. FLAHERTY, 3957
TODD J. FLESCH, 5124
BRIAN J. FLETCHER, 4608
PATRICK M. FLOOD, 9000
KELLY D. FLOREK, 1584
RUEHL F. FLORES, 1105
ROBERT L. FLOYD IV, 3715
VICTOR M. FLOYD, 7882
RICHARD L. FOLKS II, 7542
CHRISTOPHER C. * FOLTZ, 9395
DAVID E. FOOTE, 0068
TERESA L. FOREST, 6183
WILLIAM A. FORKNER, 2402
ANDREAS J. FORSTNER, 6620
JUSTIN C. FORTUNE, 7220
CHRISTOPHER T. FOSTER, 7073
GREG W. FOSTER, 5081
JAMES R. FOURNIER, 3728
MATTHEW J. * FRANDSEN, 8065
GREGORY C. FRANKLIN, 0118
CHAD P. FRANKS, 9359
WENDY K. FRASER, 3645
GINA T. FRATIANI, 9899
THOMAS E. FREDERICKS, 9894
MICHAEL L. FREDLEY, 0036
MICHAEL R. FREY, 8118
SCOTT G. FRICKENSTEIN, 3297
DON C. FULLER III, 3791
MICHAEL L. FUREY, 3153
TALMADGE A. GAITHER, 0430
PAUL A. GALLAHER, 9084
BARRY R. GAMBRELL, 8023
CHADWICK H. GARBER, 7649
JOAN H. GARBUTT, 0957
ALFRED D. GARCIA, 6062
MARIA L. GARCIA, 4733
ROBERT J. GARNER, 8408
RONALD P. GARRETT, 0434
JOHN A. GASNER, 6308
JAMES M. * GATHRIGHT, 0647
KURT H. GAUDETTE, 6692
GRANT G. GEISLER, 1465
ANTHONY W. GENATEMPO, 1865
LYNNANE E. GEORGE, 8934
ROBERT T. GERMANN, 6918
BRIAN E. * GERONIME, 9389
PATRICIA A. GETHING, 8808
MARK A. GIDDINGS, 4060
WILLIAM W. GIDEON, 6121
SCOTT L. GIERAT, 2928
WILLIAM GIESER, 8102
CAMERON L. GILBERT, 4141
RANDALL S. GILHART, 3456
JOHN D. GILLESPIE, 4484
PAUL G. GILLESPIE, 4112
SHAWN P. GILLESPIE, 9786
WILLIAM U. GILLESPIE IV, 9925
GARY S. GIMA, 5907
MARK A. GISI, 8298
JOHN T. GLASSELL, 6065
MARK I. GLYNN, 9405
MICHAEL K. * GNALL, 4433
MATTHEW E. GODA, 2905
REGINA T. GOFF, 3314
TODD J. GONDECK, 7877
PATRICK J. GOOLEY, 4759
GARY E. GORDON, 6159
GERARD GORDON, 1681
GREGORY A. GOSSAGE, 3890
STEVEN F. GOTTSCHALK, 3445
CLAYTON M. GOYA, 0336
JOHNATHAN V. GRAFELMAN, 4741
SCOTT D. GRAHAM, 6403
GARY L. GRAPE, 9088
KATHLEEN M. GRASSE, 4472
ANDREW J. GRAU, 1807
ANN Y. GRAVIER, 2721
CHRISTOPHER P. GRAZZINI, 2516
MICHAEL W. GREEN, 2961
KENNETH M. GREENSTREET, 0922
PAULA D. GREGORY, 4493
CHRISTOPHER E. GREIMAN, 2745
JOHN E. GRENIER, 9830
KYLE D. GRESHAM, 1970
JOHN M. GRIFFIN, 4794
JOY D. GRIFFITH, 6030
JOHN T. GRIVAKIS, 0540
JANET W. GRONDIN, 8063
PAUL M. GROTELUESCHEN, 3480
CLARK M. GROVES, 5096
WILLIAM C. * GRUND, 9415
MICHAEL A. GUETLEIN, 9637
DUANE D. GUNN, 5301
TORRES ALEX X. GUTIERREZ, 5772
GARY S. HAAG, 8506
SEAN M. HACKBARTH, 4697
DAVID G. HADDEN, 6647
BRYAN K. HADERLIE, 2067
GREGORY S. HAEFELE, 8389
CURTIS R. HAFER, 7783
CLAY W. HALL, 0385
MICHAEL J. HALLORAN, 0560
DAVID S. HAMBLETON, 7818
EILEEN R. HAMBY, 6260
ALISON D. HAMILTON, 8026
CHARLES T. HAMILTON, 5782
DANIEL E. HAMILTON, 8344
ROBERT D. HAMILTON JR., 7605
KELLY D. HAMMETT, 5160
JAMES D. HANKINS, 7053
JOHN T. HANNA, 1905
SCOTT M. HANNAN, 2734
RONALD L. HANSELMAN JR., 2874
DAVID E. HANSEN, 7385
LISA K. HANSEN, 9665
ALFRED R. HANSON, 7437
KRAIG M. HANSON, 6136
MICHAEL C. HARASIMOWICZ, 8406
DOUGLAS D. HARDMAN, 3381
JEANNE I. HARDRATH, 7633
REGINA HARGETT, 3564
MICHAEL R. HARGIS, 8731
MARK J. HARLOW, 7568
GETTYS N. HARRIS JR., 2151
KENNETH A. HART, 7291
RICHARD A. HARVEY, 7543
VALERIE L. HASBERRY, 3803
BRIAN E. HASTINGS, 6477
SUSAN E. HASTINGS, 2931
BRETT R. HAUENSTEIN, 2849
TIMOTHY D. HAUGH, 5791
STACEY T. HAWKINS, 4252
RODNEY C. HAYDEN, 4025
TRACEY L. HAYES, 6647
JERRY W. HAYNES II, 3415
JOSEPH H. HAYSLETT JR., 8206
KIMBERLY LOVING HEARTSONG, 3959
DOUGLAS M. HEATH, 1413
GREGORY L. HEBERT, 4674
JOHN P. HEDRICK, 6840
PATRICK E. * HEFLIN, 2690
CARLIN R. HEIMANN, 0478
STEPHEN W. HEINRICH, 7699
MARK L. HELLEKSEN, 9825
MICHAEL W. HELVEY, 5400
EDWARD J. HENNIGAN II, 3362
LEANNE J. HENRY, 7221
CHRISTOPHER C. HERRING, 9896
CHRISTOPHER J. HESLIN, 7446
MARC V. HEWETT, 4459
ANTHONY A. HIGDON, 0358
JEFFREY L. HIGGINS, 3963
ROBERT W. HIGHLEY, 5131
CHRISTOPHER D. HILL, 3782
ERIC T. HILL, 9840
ROBIN L. HILL, 7051
GREGORY D. HILLEBRAND, 7827
KARL V. HINES, 6935
MICHAEL W. HINZ, 7343
RONALD W. HIRTLE, 8443
MARK A. HIRYAK, 6906
DAVID J. HLUSKA, 9957
CALMA C. HOBSON, 4790
CARL E. HODGES, 7992
JAMES C. HODGES, 2322
JOSEPH A. HOELSCHER, 8113
MICHAEL T. HOEPFNER, 0404
HANS A. HOERAUF, 4067
DAVID J. HOFF, 2138
TIMOTHY J. HOGAN, 2507
MICHAEL W. HOH, 2358
JEFFERY A. * HOLBROOK, 5424
STEPHANIE A. HOLCOMBE, 7200
JAMES F. HOLLIE, 6837
MICHAEL R. HOLMES, 2218
STAN L. * HOLMES, 5542
JERILYN G. HOLSAPPLE, 0174
CAMERON G. HOLT, 6291
WILLIE O. HOLT JR., 6011
DAVID E. HOOK, 5666
JOHN L. HOOVER, 6302
DAVID J. HORNYAK, 7661
RICHARD B. HUBBARD III, 1092
BRYAN J. HUDGENS, 9172
JED L. HUDSON, 6772
KEVIN J. HUGHES, 9227
PATRICK HUGHES, 1768
RICHARD J. HUGHES, 9545
STEPHEN A. HUGHES, 7189
CHERYL L. HUGULEY, 4164
KIRK W. HUNSAKER, 9870
JAMES D. HUNSICKER, 9101
CLINT H. HUNT, 5504
JOHN T. HUNTER, 4074
BRYAN K. HUNTSMAN, 0271
JEFFREY H. HURLBERT, 0323
LINDA S. HURRY, 1435
STEVEN R. HUSS, 6334
JON E. INCERPI, 3440
ROBERT L. INGEGNERI, 1858
ROBERT E. INTRONE, 1656
CHRISTOPHER J. IRELAND, 0865
CHRISTOPHER D. IRWIN, 3580
EZEKIEL T. ISAIS, 8300
MATTHEW C. ISLER, 9231
DAVID R. IVERSON, 6723
BRICK IZZI, 3332
ROBERT S. JACKSON JR., 1901
STEPHEN R. JACKSON, 0309
JOHN A. JACOBSON, 2544

DARREN V. JAMES, 1837
GEORGE L. JAMES, 2161
PAUL D. JAMPOLE, 0597
KALEN K. JEFFERS, 6940
MARC E. JEFFERSON, 2518
HENRY C. JENKINS JR., 2432
JEFFREY J. JENKINS, 6240
MYRA D. JENKINS, 1990
CHARLES R. JENNINGS, 3482
JOSEPH S. JEZAIRIAN, 5419
DAVID A. JOHNSON, 2508
DAVID D. JOHNSON, 5504
DAVID S. JOHNSON, 7324
DONNA L. JOHNSON, 7454
JEFFREY M. JOHNSON, 7996
JOHN H. JOHNSON, 6464
KENNETH F. JOHNSON, 1803
MALCOLM T. JOHNSON, 4253
PAUL T. JOHNSON, 3744
ROGER F. JOHNSON, 2157
SCOTT R. JOHNSON, 9482
TIMOTHY R. JOHNSON, 2342
WILLIAM H. JOHNSON III, 6364
RONALD E. JOLLY, 6787
BARRY W. * JONES, 3406
BENJAMIN F. JONES, 7754
DATHAN B. JONES, 5322
JEFFREY D. * JONES, 2478
JOHN W. JONES, 8985
RICHARD J. JONES, 3464
CURTIS M. JORDAN, 5995
JOSEPH S. JULIAN JR., 1513
DONALD J. KADERBEK, 6725
RUSSELL T. KASKEL, 1958
RANDY L. KAUFMAN, 4713
ADAM B. KAVLICK, 9142
DAVID A. * KAWECK, 7137
CHRISTY A. KAYSERCOOK, 7744
DAWN D. KEASLEY, 4418
PATRICK D. KEE, 3242
CLIFFORD A. KEENAN, 8413
PATRICK M. KEENAN, 9869
ROBERT B. KEENEY JR., 1081
TIMOTHY L. KEEPORTS, 4264
D. EDWARD KELLER JR., 8587
STEVEN E. KELLER, 9032
JAMES H. KELLEY JR., 1380
KEVIN C. KELLEY JR., 2872
MICHAEL B. KELLY, 6903
THOMAS A. KELLY IV, 9433
WAYNE N. KELM, 0188
MALCOLM T. KEMENY, 6072
ANDRE L. KENNEDY, 7389
DOUGLAS B. KENNEDY, 0855
KEVIN B. KENNEDY, 2686
PATRICK S. KENNEDY, 2282
STEVEN T. KENNEL, 0254
COREY J. KEPPLER, 4243
VICKIE S. KERSEY, 2974
TIMOTHY G. KETTERER, 5477
EDWARD J. KHIM, 6182
BRIAN C. KIEFFER, 4956
THOMAS J. KILLEEN, 3382
KIRK A. KIMMETT, 2547
DAVID R. KING, 4005
DEAN D. KING, 5579
RICHARD L. KING JR., 5549
BRADLEY A. KINNEER, 2282
DAVID K. * KLAUS, 5380
KONRAD J. KLAUSNER, 1698
JEFFREY T. KLIGMAN, 9641
WILLIAM J. KLUG, 2002
EDMUND W. KNETIG, 3030
DAVID W. KNIGHT, 1097
HEATHER R. KNIGHT, 0877
CHARLES W. KNOFCZYNSKI, 4981
RICHARD W. KOELLING JR., 4168
SANDRA J. KOLB, 2715
MICHAEL L. KONING, 0944
BRIAN L. KONKEL, 2172
JAMES L. KOONTZ, 1008
TRACEY D. KOP, 1393
KENNETH L. KORPAK, 7374
IOANNIS KOSKINAS, 2826
STEVEN C. KOVERMAN, 3616
KARL W. KRAAN, 4323
GEORGE S. KRAJNAK, 8214
TODD D. KRATZKE, 5515
RICHARD E. KRAUS, 9031
ROBERT W. KRAUS, 5010
ROBERT C. KRAUSE, 2352
GREGORY J. KRAUT, 5133
JAMES E. KRICKER, 8364
JOHN P. * KRIEGER, 9612
SHANNON E. KRUSE, 3000
JAMES K. KUBINSKI, 2783
DAVID P. KUENZLI, 8033
SCOTT A. KUNKEL, 9510
KURT W. KUNTZELMAN, 8648
KRISTINE T. KUSEKVELLANI, 0119
DONALD P. LAGATOR JR., 0962
HANS C. LAGESCHULTE, 6939
GEOFFREY A. LAING, 2872
ANDREW A. LAMBERT, 5847
JAY A. LANDIS, 1934
KENNETH M. LANG, 9191
ROWENE J. LANT, 0782
ALFONSO A. LAPUMA, 9925
DOUGLAS N. LARSON, 9081
CAROLYN B. LASALA, 5494
ROBERT H. LASS, 3663
SEAN D. LASSITER, 9975
ARTHUR H. LAUBACH JR., 2560
OCTAVE P. LAURET III, 4467
JEROME P. LAVELY, 2301
LORI S. LAVEZZI, 7019
CHERYL L. * LAW, 0504
DAVID T. LAWYER, 6816
CRAIG S. LEAVITT, 9898
JEANNIE M. LEAVITT, 4945
MARK T. LEAVITT, 0236
HYON K. LEE, 8591
RUSSELL E. * LEE, 2060
SCOTT T. LEFORCE, 5017
STEVE A. LEFTWICH, 9761
AARON D. LEHMAN, 7948
NORMAN J. LEONARD, 5549
GARY N. LEONG, 6309
JOHN F. LEPORE JR., 3414
CYNTHIA A. LESINSKI, 0299
JAMES L. LESS, 5597
STEVEN J. LEWIS, 2011
ANITA L. LIGHTFOOT, 9695
JOSEPH M. LIMBER, 2938
TIMOTHY J. LINCOLN, 6978
CHRISTOPHER J. LINDELL, 0681
FRANK J. LINK, 2018
FREDERICK H. LINK, 5864
KENNETH A. LINSENMAYER, 7674
CHRISTOPHER P. LIPNITZ, 5978
WILLIAM JOHN LIQUORI JR., 1401
WILLIAM C. LIVESAY JR., 7796
THOMAS K. LIVINGSTON, 0538
MATTHEW J. LLOYD, 6621
STEPHEN E. LLOYD, 7282
STACY LOCKLEAR JR., 3789
DOUGLAS T. LOEHR, 3433
STEVEN M. LOKEN, 2577
FREDERICK A. LOMBARDI, 9928
JOHN H. LONG, 0643
SCOTT N. LONG, 8597
RANDALL F. LOOKE, 6955
LESTER R. LORENZ, 6563
WILLIAM J. LOREY, 6313
VINCENT J. LOSTETTER JR., 3523
JEFFREY C. LOVELACE, 5365
DENNIS J. LUCAS, 6808
MARISSA C. LUCERO, 2518
ROY S. LUDVIGSEN, 7522
ROBERT A. LURZ, 0776
JOHN M. LUSSI, 6266
MARK NMN LUTTSCHWAGER, 8555
DANIEL R. LYKINS, 2282
DAVID L. LYLE, 4129
DAVID F. LYNCH, 4237
GREGORY D. LYND, 9171
DONALD D. LYTLE, 4376
MATTHEW M. D. * MACE, 3945
DAVID P. MACK, 5117
JEFFREY D. MACLOUD, 6093
DAVID L. MAHANES II, 9997
JACK W. MAIXNER, 8509
DAVID J. MALONEY, 1524
LORALEE R. MANAS, 0972
MARK H. MANLEY, 6194
CHRISTOPHER R. MANN, 1314
CHRISTOPHER M. MARCELL, 7765
JOSEPH R. MARCINKEVICH, 1337
TODD M. MARKWALD, 3424
TONY R. MARLOWE, 0311
JEFFREY A. MARSDEN, 3402
WILLIAM D. MARSH II, 4861
COREY J. MARTIN, 9249
JOEL L. MARTIN, 1917
JOHN M. MARTIN, 0489
WILLIAM J. MARTIN, 1095
JAMES T. MARX, 2473
ROBERT L. MASON, 0397
MAX R. MASSEY JR., 6266
RUSSELL A. MATIJEVICH, 2774
JAMES B. MATTILA, 3633
DAVID M. MATTSON JR., 6909
PATRICIA C. MAULDIN, 9105
JOHN C. MAXWELL, 2367
CHARLES C. MAYER, 5667
GEORGE A. MAYLEBEN, 8666
CLAYTON W. MCANALLY, 0802
PAUL W. MCAREE, 9613
RICHARD T. MCCAFFERTY, 6172
TODD V. MCCAGHY, 4955
KYNA R. MCCALL, 6708
PAUL R. MCCARVER, 7135
MITCHELL T. MCCLAREN, 8130
ROBERT G. MCCORMACK, 7100
JAMES B. MCCORMICK JR., 0385
CHASE P. MCCOWN, 7744
FRANCIS M. MCDONOUGH, 7018
GEORGE M. MCDOWELL, 5540
JAMES J. MCELHENNEY, 0151
DARYL C. MCELWAIN, 4446
JENNIFER A. MCGARVA, 8690
MARK A. MCGEORGE, 6066
BRIAN P. MCGOLDRICK, 2704
ANDREW MCINTYRE, 8644
JAMES R. * MCIRVIN, 8998
PATRICK J. MCKEEVER, 3635
TIMOTHY J. MCLAIN, 7906
PAUL R. MCLAUGHLIN, 4313
PHILIP M. MCNAIRY, 7212
FRANK R. MCNAMARA, 3079
BRUCE R. MCNAUGHTON, 0731
SAMUEL L. MCNIEL, 6447
FRANK A. MCVAY, 3646
MARC C. MCWILLIAMS, 8340
CHARLES R. MEADOWS, 9028
DEBORAH E. MEADOWS, 8808
BRUNO A. MEDIATE, 0658
JAMES M. MEEK, 4930
BRUNO MELTON, 6382
MICHAEL A. MENDOZA, 8843
WILLIAM E. * MENGERS, 4975
WILLIAM J. MERCHANT, 1094
DANIEL F. MERRY, 7730
CONSTANCE M. MESKILL, 1736
CHARLES E. METROLIS JR., 4988
EDWARD A. MEYER, 8059
GREGORY S. MEYER, 5279
THOMAS E. MEYER, 8503
JOSEPH F. * MICHELL IV, 0380
SAMUEL P. MILAM, 8666
STEPHEN V. MILIANO, 6446
JOHN C. MILLARD, 3122
DAVID E. MILLER, 1437
PATRICK D. MILLER, 3230
SCOTT C. MILLER, 1864
SUSAN M. MILLER, 0891
TOM D. MILLER, 3296
JOSEPH A. MILNER, 0376
RICHARD K. MILNER, 8401
LOUIS E. MINGO JR., 7305
JIMMIE L. MITCHELL JR., 5509
JOHN H. MODINGER, 9064
MATTHEW C. MOLINEUX, 9299
MITCHELL A. MONROE, 8542
MICHAEL G. MONSON, 0125
KENNETH S. S. MONTGOMERY, 1615
KIRK A. * MONTGOMERY, 6813
II NATHAN C. MOONEY, 3171
CHARLES E. MOORE JR., 2545
WILLIAM L. MOORE, 6848
ERIN R. MORAN, 8224
DAVID J. MORGAN, 4855
DONALD MORGAN, 5820
BRIAN K. MORRIS, 8328
CAIL MORRIS JR., 2850
MICHAEL E. MORRIS, 6344
WILLIAM F. MORRISON II, 2074
ROBERT L. MOSES, 6475
DEBORA E. MOSLEY, 5967
GERARD A. MOSLEY, 6763
RAY A. MOTTLEY, 9150
DANIEL R. MOY, 1436
ROBERT J. MOZELESKI, 8962
KEVIN M. MUCKERHEIDE, 8335
CHRISTOPHER G. MUELLER, 7513
KYLE D. MULLEN, 3813
DOUGLAS E. MULLINS, 3394
ROBERT B. MUNDIE, 7000
KENNY K. MUNECHIKA, 4533
PORFIRIO H. MUNOZ JR., 7365
WILLIAM C. * MURPHEY, 7221
BRIAN C. MURPHY, 8564
JOHN E. * MURPHY, 1174
MARK C. MURPHY, 9060
MIMI MURPHY, 2369
IVAN D. MURRAY, 9055
LANCE T. MURRAY, 5244
MICHAEL J. MUSZYNSKI, 8463
DAVID S. MYERS, 1641
JEFFREY B. MYERS, 4630
LEMUEL R. MYERS JR., 0449
MARCUS S. MYERS, 5107
MICHAEL L. MYERS, 0501
MYLES M. NAKAMURA, 1416
JOHN S. NEHR, 3854
JAMES A. NEICE JR., 0455
JEFFREY D. NEISCHEL, 7100
BRETT J. NELSON, 4013
MICHAEL S. NELSON, 5725
MARK N. NEULANDER, 7175
BRIAN M. NEWBERRY, 4421
DAVID J. NEWTON, 5721
RANDAL G. * NEWTON, 4694
CLIFTON E. NICHOLS, 1038
ERIC B. NICKISH, 5242
KENT A. NICKLE, 7880
DANA S. NIELSEN, 9631
DOUGLAS J. NIKOLAI, 7116
TREVOR W. NITZ, 3618
JAMES R. NOETZEL JR., 2372
STEVEN P. NOLL, 4025
WILLIAM R. NOLTE, 9632
DEBRA A. NORTH, 5000
GEOFFREY N. NORTON, 1686
JAMES D. NORTON, 4229
NELSON J. * NOVO, 6088
MICHAEL T. OBERBROECKLING, 0530
BRIAN M. OCONNELL, 9673
MARY J. OCONNOR, 9447
TIMOTHY J. OCONNOR, 5633
GARY L. ODANIEL, 8740
KELVIN B. ODELL, 3020
JOSEPH M. ODER, 8426
MARK J. OECHSLE, 1182
JOHN W. OGDEN JR., 0385
DAVIS S. OISHI, 5034
CHRISTOPHER J. OLEKSA, 4433
RAFAEL E. OLIVA, 2391
KEVIN A. OLIVER, 4465
FORREST O. OLSON, 0216
PHILLIP G. ONEAL, 4814
DOUGLAS A. OPERSTENY, 3429
DANIEL J. ORCUTT, 8137
JUAN C. ORTIZ, 8561
TROY D. ORWAN, 4285
ERIC R. OSTENDORF, 2744

DEAN R. OSTOVICH, 7536
SHIRLENE D. OSTROV, 7824
LAWRENCE J. OTT, 0614
WILLIAM J. OTT, 7342
RONALD G. OWENS, 9430
DANIEL A. PACHECO, 9034
THOMAS C. * PADGETT JR., 3522
WILLIAM E. * PAGE III, 5080
THOMAS E. PAINTER JR., 7106
HANS F. PALAORO, 2157
RICK A. PALO, 0709
GLENN A. PANARO, 2726
RICH Y. PANG, 8480
MICHAEL J. * PAOLI, 6914
ALAN PAOLUCCI, 5972
JOHN A. PAPACHRISTON, 7421
ZANNIS M. PAPPAS, 2873
JOHN A. PARADIS, 1538
THOMAS E. PARENT, 2453
ROBERT S. PARKS, 2259
TODD J. PARKS, 9802
MICHAEL J. PASTIKA JR., 2630
DAVID M. PATTERSON, 1631
BRETT A. PAUER, 3909
TODD M. PAVICH, 9290
KENNETH A. PAXTON, 0772
JAMES M. PAYNE II, 1358
JOHN D. PEAK, 9024
STEVEN D. PEARSON, 6829
JAMES L. PEASE, 6096
STEPHEN D. PEDROTTY, 2192
KATHY G. PEEL, 6494
TIMOTHY W. PENLEY, 2938
RANDY B. PENSON, 1527
JOHN C. PEPIN, 6496
JEFFREY W. PERHAM, 7977
SEAN W. PERKINS, 6001
WAYNE D. * PERRY, 9889
KENNETH M. PESEK, 4086
BRIAN T. PETERSON, 8930
JOEL T. PETERSON, 0102
RICK T. PETITO, 5994
GILBERT E. PETRINA JR., 5934
KARL D. PFEIFFER, 4873
ERIC M. * PHARRIS, 7903
KEITH L. PHILLIPS, 1343
RODGER W. PHILLIPS, 3970
BRADLEY R. PICKENS, 6332
DAVID C. PIECH, 1808
MARK A. PIERCE, 2547
CORY M. PINK, 5515
MATTHEW T. PIRKO, 6748
JOHN D. PLATING, 1887
MICHAEL H. PLATT, 5558
FREDRICK G. PLAUMANN, 9429
TERENCE A. PLUMB, 2835
JULIE R. PLUMMER, 5586
DOUGLAS W. POHLMAN, 1003
KELLI B. POHLMAN, 9007
MATTHEW S. POISSOT, 0033
ANTHONY J. POLLIZZI JR., 5191
STEVEN A. POMEROY, 9290
DANIEL O. PONCEDELEON, 7906
CHRISTOPHER J. POSSEHL, 4152
DANA POWELL, 4056
STEPHEN R. PRATT, 9291
LAWRENCE E. PRAVECEK, 8162
KEITH M. PREISING, 0573
STERETT R. PREVOST IV, 9506
RICHARD D. PROCTOR, 0284
CYNTHIA A. PROVOST, 7128
CHARLES A. PRYOR III, 2261
HOWARD K. PSMITHE, 3746
GARY PUHEK, 8819
GLENN C. QUANBECK, 4726
YVETTE S. QUITNO, 8717
ALLEN C. RABAYDA, 8443
CARL W. RAHN, 0519
LIONEL L. RAMOS, 4500
STEVEN T. RAMSAY, 7172
MARK J. RAMSEY, 6254
JOSEPH R. RARICK, 4704
RICHARD J. RASMUSSEN, 1025
THOMAS R. RAULS, 4073
ERIC D. RAY, 7311
MICHAEL B. REDDING, 6104
EDWIN H. REDMAN, 2642
MARK A. REDMON, 7377
RANDALL REED, 8583
DAVID L. REESE, 0055
GREGORY J. REESE, 1288
DAVID J. REGA, 5786
ADAM S. REMALY, 2837
MARK E. RESSEL, 8260
DAMON R. REYNOLDS, 7784
RONDALL R. RICE, 1585
MICHAEL P. RICHMOND, 2797
JAMES E. RICKMAN, 9774
BRADLEY T. RIDDLE, 3728
DAVID T. RIDDLE, 8191
JOHN J. RIEHL, 5098
THOMAS J. RINEY, 3769
LUIS A. RIOS, 1960
RANDY L. RIVERA, 2546
SCOTT W. RIZER, 8068
GLENN E. ROBERTS, 6854
PETER C. ROBERTS, 8293
RICHARD C. ROBERTS, 6311
FRANKLIN T. ROBINSON, 2835
JOHN D. ROBINSON, 7733
KELLY G. * ROBINSON, 9211
MICHAEL T. ROCHE, 6554
JOHN M. RODEN, 1263
BARRY D. ROEPER, 4020
BRADLEY J. ROGERS, 6731
KENNETH J. ROLLER, 6236
MICHAEL A. ROMERO, 4376
RENE F. ROMERO, 6503
MARK D. ROOSMA, 2734
ELIZABETH A. ROPER, 1442
STEPHEN A. ROSE, 9023
NANCY M. ROWER, 5728
KEVIN M. ROZELSKY, 7248
ERIK K. RUNDQUIST, 4900
JOEL C. * RUSH, 0845
JOSEPH J. RUSHLAU, 5821
RONALD R. RUTLEDGE, 2122
JOHN K. RYAN, 0389
LAURA M. RYAN, 0578
JAMES SABELLA, 1760
IAN R. SABLAD, 4500
CINDY K. SABO, 4365
JOEL A. SAKURA, 9474
LESLEE J. SALECK, 3590
WILLIAM S. SALINGER, 1313
WILLIAM B. SALKIND, 5851
RUSSELL S. SALLEY, 2748
BRADLEY CHANCE SALTZMAN, 6377
MARISSA C. SALVADOR, 3700
DAVID M. SAMPSON, 2002
WILLIAM G. SANDERS, 4789
RALPH A. SANDFRY, 6118
JAIME SANTOS, 6284
MICHAEL E. SANTOS, 2742
SUSAN S. SANTOS, 4066
CHRISTOPHER M. SARTORIUS, 7963
GREGORY W. SAVA, 2062
GLEN A. SAVORY, 0253
BARBARA L. SAWYER, 6990
VINCENT J. SCANNELLI, 0025
ANTHONY SCELSI, 8041
GEORGE W. SCHANTZ JR., 4794
PAUL A. SCHANTZ, 9744
MICHAEL P. SCHAUB JR., 3069
SCOTT J. SCHEPPERS, 8733
RAYMOND D. SCHERR, 3625
KEVIN J. SCHIELDS, 0358
DANA R. SCHINDLER, 3683
MICHAEL N. SCHLACTER, 1366
MYRON L. SCHLUETER, 0062
KIRK T. SCHMIERER, 9715
GARY J. SCHNEIDER, 4252
NEAL W. * SCHNEIDER, 6113
JON S. H. SCHOENBERG, 4068
JOHN M. SCHOOT, 9830
KARY R. SCHRAMM, 9626
JEFFREY C. SCHROEDER, 6957
BARTON B. SCHUCK, 6742
RODGER G. * SCHULD, 1224
GREGORY W. SCHULTZ, 2265
JEFFREY K. SCHWEFLER, 7202
WALTER H. SCHWERIN JR., 3540
BRADLEY S. SEARS, 0819
DAREN A. * SEARS, 1793
JAMES R. SEARS JR., 4360
THOMAS J. SEBENS, 6600
ANTHONY B. SECRIST, 2701
JOHN T. SELDEN II, 3799
DWAYNE P. SELLERS, 2268
RONALD D. SENGER, 2710
MICHAEL B. SENSENEY, 3382
JORGE F. SERAFIN, 1210
GARY L. SERFOSS, 0702
MARK W. SERGEY, 8918
MAYAN SHAH, 6681
SAMUEL J. SHANEYFELT, 3914
TONY A. SHARKEY, 2588
CHRISTOPHER L. SHARP, 1849
BRUCE W. SHAW, 4812
CHARLES B. SHEA, 8086
WALTER A. SHEARER, 8137
SEAN W. SHEEHY, 8470
RICHARD A. SHEETZ, 6406
RICHARD A. SHELDON JR., 5843
GREGG A. SHELTON, 5883
NAM N. M. SHELTON, 1695
DAVID J. SHERMAN, 6360
DAVIN M. SHING, 2352
WILMA J. SHIVELY, 6089
MICHAEL K. SHOWER, 8277
ROBERTA L. SHREFFLER, 0045
RICHARD A. * SHUFF, 4008
SAMUEL M. SHULT, 8610
KEVIN D. SIEVERS, 6939
THEODORE R. SIEWERT, 3992
GLENN L. SIGLEY, 6395
SHAWN G. SILVERMAN, 5149
SCOTT C. SIMON, 6625
WILLIAM P. SINGLETARY, 9710
DALE P. SINNOTT, 9599
MATTHEW E. SKEEN, 9330
ANNE E. SKELLY, 2618
KEITH A. SKINNER, 4790
GARY C. SLACK, 5767
THOMAS G. SLOAN, 1798
ANDREW J. SMITH, 1144
BRIAN G. SMITH, 0840
BRUCE M. SMITH, 2053
COLLIN B. SMITH, 7958
COURTNEY V. SMITH, 1163
DARRYL M. * SMITH, 8704
DAVID W. SMITH, 0941
DEVIN E. SMITH, 5254
DOUGLAS S. SMITH, 0832
DUSTIN P. SMITH, 8550
JAMES B. SMITH, 9388
JAMES E. SMITH, 6026
JAMES R. SMITH JR., 6155
LINDA D. SMITH, 1853
MAUREEN J. SMITH, 3596
REGINALD R. SMITH, 1332
STELLA T. SMITH, 1687
MATTHEW C. SMITHAM, 1313
KERRY J. SMITHERS, 9178
FRANKLIN W. SMYTH, 0571
LAUREL A. SMYTH, 6447
JOHN H. SNELLING JR., 0463
KATHERINE O. SNYDER, 4888
WILLIAM H. SNYDER, 5538
PETER M. SOLIE, 6267
JEFFREY L. SORENSEN, 3488
RHONDA M. SOTO, 8063
ROBERT S. SPALDING, 3349
STEVEN N. SPANOVICH, 1530
THOMAS R. SPELLMAN, 1849
MERRICE SPENCER, 4778
MICHAEL M. SPENCER, 1323
TANGELA D. SPENCER, 1667
RON L. SPERLING, 4961
GARY M. SPILLMAN, 2517
DARREN D. SPRUNK, 2835
WILLIAM A. STAHL JR., 0253
JAMES P. STAVER, 9119
MARCUS S. * STEFANOU, 9042
KEVIN M. STEFFENSON, 0290
STEPHEN R. STEINER, 1331
MICHAEL J. STEPHENS, 0146
PETER B. STERNS, 2770
JOHN S. STEWART, 3733
SCOTT M. STEWART, 6426
ALESSANDRA STOKSTAD, 4934
BRYAN M. STOKSTAD, 0673
VICKI J. * STONE, 9143
JOHN J. STOREY, 5756
TODD J. STOVALL, 2878
MICHAEL R. STRACHAN, 3768
ROBERT M. STRESEMAN, 0532
ROBERT M. STRICKLAND JR., 9131
DOUGLAS E. STROPES, 8493
CARL A. STRUCK, 7091
TIMOTHY A. STRUSZ, 4701
JOHN W. STUBLAR, 4886
JOSEPH L. STUPIC, 4782
JAMES G. STURGEON, 6349
JAMES A. STURIM, 5663
ANTONIO R. SUKLA, 9622
RICHARD E. SURDEL, 2652
ROBERT C. SWARINGEN II, 4265
DAWN MARIE SWEET, 8306
MARK F. SWENTKOFSKE, 7452
MICHAEL A. SWIFT, 5682
MARK J. SYNOVITZ, 9124
TRACY R. SZCZEPANIAK, 3986
CHRISTIAN J. TAFNER, 3756
BRET C. TALBOTT, 1530
KEVIN C. TALIAFERRO, 5372
KERRY L. TARR, 0124
HAROLD A. TAYLOR JR., 8924
JOHN W. TAYLOR JR., 5023
JOSEPH A. TAYLOR JR., 6762
KAREN L. TAYLOR, 4586
MICHAEL T. TAYLOR, 1232
SYLVIA C. TAYLOR, 8821
SCOTT G. TENNENT, 8465
MICHAEL K. TEPLEY JR., 6395
GARY M. TESTUT, 8303
JOHN R. THAYER, 9404
DAMON M. THEMELY, 4833
THEO THEODOR JR., 8247
BOB F. THOENS, 4924
DAVID E. THOLE, 6493
DWAYNE E. THOMAS, 4778
EDWARD W. THOMAS JR., 5706
TROY S. THOMAS, 3658
WILLIAM B. THOMAS, 1093
GREGORY F. THOMPSON, 6543
RANDALL L. THOMSEN, 8569
JEFFREY S. THORBURN, 9754
ROSEMARY L. THORNE; 9309
JENNIFER J. THORPELEWIS, 1182
KEVIN J. THRASH, 8309
RICHARD G. THUERMER, 2481
THOMAS J. TIMMERMAN, 2085
DANIEL W. TIPPETT, 8032
PAUL D. TOBIN, 7090
SCOTT D. TOBIN, 5551
MICHAEL A. TODD, 1855
LESA K. TOLER, 0327
KAREN L. TORRACA, 5855
ANMY D. TORRES, 7489
RAYMOND G. TOTH, 5597
GREGORY J. TOUSSAINT, 5490
WILLIAM R. TRACY, 4801
JEROME T. TRAUGHBER, 1919
VALERIE W. TREFTS, 7104
PETER J. TREMBLAY, 0163
LARRY J. TRENT, 5450
JOHN M. TRUMPFHELLER, 2643
LISA M. TUCKER, 6300
ZENA A. TUCKER, 8290
DONALD J. TUMA, 4731
GREGORY H. TUREAUD, 4755
DANIEL J. TURNER, 2950
RUSSELL J. TUTTY, 8620
LANELL B. TWIGGS, 3550
THOMAS W. TYSON, 0395

WILLIAM M. UHLMEYER, 9045
JOHN F. UKLEYA JR., 7574
SCOTT G. ULRICH, 4960
WILLIAM K. UPTMOR, 3187
GREGORY N. URTSO, 5485
DAVID E. UVODICH, 7832
JOHN M. VAIL, 1068
GREG A. VALDEZ, 0487
PAUL J. VALENZUELA, 1379
GREGG D. VANDERLEY, 9412
SAMUEL B. VANDIVER, 1168
DALE J. VANDUSEN, 6770
JOHN C. VANHOVE, 2212
BRUCE J. VANREMORTEL, 1890
DAVID A. VANVELDHUIZEN, 0165
TRACY L. VANZUIDEN, 2443
MATTHEW L. VENZKE, 3164
RUBEN VILLA, 8560
KURT A. VOGEL, 3274
JEANETTE M. VOIGT, 7429
KYLE D. VOIGT, 3239
FRED N. * WACKYM III, 1330
MARK I. WADE, 9883
JAMES D. WAGNER, 8533
RAYMOND J. WAGNER, 8795
ALLAN P. WAITE JR., 8400
CURTIS D. WALKER, 3352
DAVID W. WALKER, 0822
WILLIAM N. WALKER, 9914
STEPHEN B. WALLER, 8291
PAUL B. WALSKI, 2789
ANTHONY W. WANN, 5935
DEAN A. WARD, 9813
JAMES R. * WARD, 0431
HERBERT N. WARDEN IV, 5606
JOHN A. WARDEN IV, 7676
CHRISTINE M. WASDIN, 9479
MICHAEL E. WASHINGTON, 2306
TRACEY L. WATKINS, 8465
PERNELL B. WATSON, 0101
KATHLEEN E. WEATHERSPOON, 5964
ROBERT F. WEAVER II, 2032
JONATHAN D. WEBB, 7637
GREGORY A. WEBER, 6263
ROBERT B. * WEHNER, 3905
TERI L. WEIDE, 1431
BRIAN D. WEIDMANN, 5336
LESTER A. WEILACHER, 1330
MONTE T. WEILAND, 6272
STUART N. WEINBERGER, 5193
PATRICK T. WELCH, 6396
PAUL A. WELCH, 8002
RORY D. WELCH, 6176
CHRISTOPHER M. WELLBORN, 9091
ROBERT G. WELLINGTON, 7206
DAVID L. WENIGER, 2219
JASON S. WERCHAN, 7013
DAWN D. WERNER, 7776
JOHN F. WERNER, 6781
STEVEN W. WESSBERG, 0556
CHARLES N. WEST, 3186
DANE P. WEST, 7225
RITCHIE L. WEST, 9208
FREDERICK H. WESTON, 9798
SEABORN J. WHATLEY III, 6490
PAUL A. WHEELESS, 1481
AUBREY D. WHITE, 2628
KENT B. WHITE, 7875
FRANK A. WHORTON, 1747
RICHARD T. WICKUM, 0535
KENNETH B. WIGGINS, 3714
STEVEN W. WIGGINS, 9226
HENRY T. WILKENS JR., 3379
BRIAN A. WILKEY, 5457
BRUCE W. WILLETT, 7492
ANTHONY B. WILLIAMS, 0632
FREDERICK D. WILLIAMS, 4139
JAMES B. WILLIAMS, 7246
LYNDON J. WILLIAMS, 8205
NEICKO C. WILLIAMS, 1763
ROBIN B. WILLIAMS, 8059
STEPHEN C. WILLIAMS, 3579
JOHNDAVID W. WILLIS, 5952
MATTHEW B. WILLIS, 1725
CHRISTOPHER S. WILSON, 7082
GLENN J. WINCHELL, 1140
MICHAEL F. WINTHROP, 4212
ERIC C. WINTON, 3721
BRIAN E. WITHROW, 1555
THOMAS J. WITTERHOLT, 3112
THOMAS E. WOLCOTT, 6798
JOSEPH L. WOLFER, 7392
JOHN C. WOMACK, 5798
DAVID M. WOOD, 1113
STEPHEN D. WOOD, 5055
TODD K. WOODRICK, 3460
THOMAS L. WOODS, 6716
JOHN G. WORLEY, 6284
TODD A. WORMS, 2064
CYNTHIA A. WRIGHT, 7837
KURTIS L. WRIGHT, 6467
PATRICK W. WRIGHT, 0428
JOHN D. WROTH, 4596
JAMES E. WURZER, 7226
FRANK D. YANNUZZI JR., 0950
BRIAN A. YATES, 4419
MONIQUE M. YATES, 3681
DAVID L. YOCKEY, 0672
JEFFREY S. YOCUM, 0273
PETER L. * YORK, 9987
JON E. YOST, 9299
ANTHONY C. YOUNG, 5599
GEORGETTE J. YOUNG, 8904
GREGORY J. YUEN, 8756
JAMES P. ZEMOTEL, 0304
STEPHEN T. ZIADIE, 1384
MICHAEL J. ZIGAN, 6380
MARK A. ZIMMERHANZEL, 2771
MICHAEL J. ZUBER, 5091

CONFIRMATIONS

Executive nominations confirmed by the Senate October 8, 2004:

IN THE AIR FORCE

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADES INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIG. GEN. DAVID A. BRUBAKER
BRIG. GEN. ALAN L. COWLES
BRIG. GEN. ALLEN R. DEHNERT
BRIG. GEN. HARRY W. FEUCHT, JR.
BRIG. GEN. CHARLES A. MORGAN III
BRIG. GEN. MARK R. MUSICK
BRIG. GEN. FRANK PONTELANDOLFO, JR.
BRIG. GEN. ANNETTE L. SOBEL
BRIG. GEN. FRANK D. TUTOR
BRIG. GEN. JOHN M. WHITE

To be brigadier general

COLONEL MICHAEL G. BRANDT
COLONEL HUGH T. BROOMALL
COLONEL ROBERT B. BUEHLER
COLONEL WILLIAM S. BUSBY III
COLONEL CHARLES M. CAMPBELL
COLONEL JAMES J. D'AGOSTINO
COLONEL EUGENE J. DELGADO
COLONEL RICHARD G. ELLIOTT
COLONEL JOHN B. ELLINGTON, JR.
COLONEL STEVEN E. FOSTER
COLONEL DONALD D. HARVEL
COLONEL THOMAS J. HAYNES
COLONEL ALLISON A. HICKEY
COLONEL DAVID E. HOLMAN
COLONEL RICHARD D. KING
COLONEL JAMES M. LILLIS
COLONEL DENNIS W. MENEFEE
COLONEL PETER S. PAWLING
COLONEL RICHARD J. PROSEK
COLONEL DON E. REYNOLDS
COLONEL STEPHEN M. SISCHO

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. RAYMOND T. ODIERNO

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be brigadier general

COLONEL RODNEY O. ANDERSON
COLONEL STEVEN M. ANDERSON
COLONEL JOHN M. BEDNAREK
COLONEL MARK A. BELLINI
COLONEL ROBERT M. BROWN
COLONEL JOHN F. CAMPBELL
COLONEL CHARLES T. CLEVELAND
COLONEL WALTER L. DAVIS
COLONEL JEFFREY J. DORKO
COLONEL MICHAEL FERRITER
COLONEL MARK A. GRAHAM
COLONEL DAVID D. HALVERSON
COLONEL JEFFREY C. HORNE
COLONEL JAMES L. HUGGINS, JR.
COLONEL RODNEY L. JOHNSON
COLONEL NICKOLAS G. JUSTICE
COLONEL BRIAN A. KELLER
COLONEL HARVEY T. LANDWERMEYER
COLONEL SUSAN S. LAWRENCE
COLONEL KEVIN A. LEONARD
COLONEL ANNE F. MACDONALD
COLONEL RICHARD R. MCPHEE
COLONEL JAMES M. MILANO
COLONEL THEODORE C. NICHOLAS
COLONEL PETER J. PALMER
COLONEL WILLIAM N. PHILLIPS
COLONEL BELINDA PINCKNEY
COLONEL ERNEST E. PORTER
COLONEL RICKEY L. RIFE
COLONEL MICHAEL J. TERRY
COLONEL CHRISTOPHER TUCKER
COLONEL MICHAEL S. TUCKER
COLONEL ANDREW B. TWOMEY
COLONEL MICHAEL J. WALSH
COLONEL ROBERT H. WOODS, JR.
COLONEL JAMES C. YARBROUGH

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVAL RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral (lower half)

CAPT. EDWARD T. REIDY III

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVAL RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral (lower half)

CAPT. GREGORY A. TIMBERLAKE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral (lower half)

CAPT. EDWARD H. DEETS III

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral

REAR ADM. (LH) ANDREW M. SINGER

AIR FORCE NOMINATIONS BEGINNING LAUREN F. * AASE AND ENDING SUSAN E. * YOUNG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 12, 2004.

ARMY NOMINATIONS BEGINNING JULIA A. ADAMS AND ENDING JANET L. WILSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 17, 2003.

ARMY NOMINATION OF GRAEME J. BOYETT.

NAVY NOMINATIONS BEGINNING BLAINE E. MOWREY AND ENDING VICTORIA A. YODER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 23, 2004.

NAVY NOMINATIONS BEGINNING JERRIS L. BENNETT AND ENDING JESSE J. ZIMBAUER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 23, 2004.

HOUSE OF REPRESENTATIVES—*Friday, October 8, 2004*

The House met at 9 a.m. and was called to order by the Speaker pro tempore (Mr. KIRK).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
October 8, 2004.

I hereby appoint the Honorable MARK STEVEN KIRK to act as Speaker pro tempore on this day

J. DENNIS HASTERT,
Speaker of the House of Representatives,

PRAYER

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

Lord God, You are our hope and our salvation. Your word guides our every step of the way. Your spirit of truth penetrates our very being and becomes the judgment of every word and deed of ours.

Your truth shall set us free, O Lord. Sift through every complexity before us. Wherever You lead us may we find solace and peace. Bring us at last to that place where our hearts will rest in You, forever and ever. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Georgia (Mr. GINGREY) come forward and lead the House in the Pledge of Allegiance.

Mr. GINGREY led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will entertain up to five one-minute speech requests per side.

AMERICA SALUTES MR. VANE SCOTT

(Mr. NEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. NEY. Mr. Speaker, I rise today to commemorate the service of a great American, Mr. Vane Scott. Mr. Scott started his service to our nation in December, 1942. During World War II, he served on the USS *Radford* in the Pacific as an electrician and gyrocompass technician.

After the war, Mr. Scott went the to Art Institute of Pittsburgh on the GI bill; and, in 1968, he started an American flag production company. He retired in January, 1990; and he currently serves as the national president of the Radford Association. In September, 2001, Mr. Scott opened the USS *Radford* National Naval Museum in Newcomerstown, Ohio.

He is married to Mrs. Barbara Scott, his wife of more than 50 years, and has three children, four grandchildren and five great-grandchildren. On November 3, 2004, Mr. Scott will be inducted into the Ohio Veterans Hall of Fame for his valor in World War II and for his efforts in telling the stories of America's war heroes.

I also want to commemorate Mr. Scott's relative, Mr. Freeman Davis. Mr. Davis received the Medal of Honor for his valor on November 25, 1863, during the Civil War's Battle of Missionary Ridge.

Mr. Speaker, these two men represent some of the best America has to offer. I want to thank them for their remarkable service, and I want to congratulate Mr. Vane Scott on his induction into the Ohio Veterans Hall of Fame. America salutes Mr. Vane Scott today.

UNETHICAL REPUBLICAN HOUSE

(Mr. PALLONE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PALLONE. Mr. Speaker, it is now clear that the Republican leadership in the House of Representatives condones the direct linkage of political donations to legislation. It is clear the Republican leadership will not hesitate to use political donations to influence Members of their own caucus who plan to vote against them on legislation.

This weekend, former Republican Congressman Tom Coburn admitted on national television that Republican leaders had essentially offered him a bribe. Coburn said, "I don't believe that is the kind of government we want. That is what we are seeing in Congress now with some of the ethical problems that are there."

Mr. Coburn, I could not agree with you more. Unfortunately, even the Speaker excused such actions yesterday when he said he was "profoundly disappointed" by those who do not think bribes, threats and payoffs are acceptable behavior. An ethical cloud is indeed hanging over this House, and it will not be removed until a Democratic House is installed this November.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Members are reminded to direct their remarks to the Chair.

OUR TERRORIST ENEMIES ARE AFOOT

(Mr. PENCE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PENCE. Mr. Speaker, as we were grimly reminded in Egypt yesterday, our terrorist enemies are afoot. As we conclude our work on the 9/11 Recommendations Implementation Act today, we do so under a veil of uncertainty abroad and here at home, which makes both the content and tone of our debate on intelligence reform so important.

The 9/11 Commission performed a great public service, and its recommendations were thoughtful. Let us make this point. The 9/11 Commission was not elected by the American people to see to their security, we were. By retaining the independence of our defense and intelligence, while increasing coordination among agencies and adding vital immigration reforms, this Congress is doing just that.

Our enemies wish to do us harm, and the days before elections seem to be especially attractive to them for their treachery. As we debate the 9/11 Recommendations Implementation Act today, let live up to that ancient charge. Let us be strong and courageous and do the work the American people sent us here to do.

FOG OF WAR HAS SET IN

(Mr. EMANUEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EMANUEL. Mr. Speaker, in the past 24 hours, AT&T announced it is cutting an additional 7,000 workers, Bank of America is laying off an additional 4,500 employees, and Unisys 1,400, and 18,000 manufacturing jobs last month alone were lost. Less than an hour ago, the Bureau of Labor Statistics announced the economy added a paltry 96,000 jobs. Oil prices are above $50 a barrel. Since 2000, 5 million more Americans have entered the rolls of poverty. Bankruptcies are up more than a third. College and health care costs have each gone up by a third in the last 3 years, yet President Bush says we are making steady progress on the economy.

In Iraq, the numbers of attacks are increasing daily. Nearly 1,100 Americans have been killed and Republican Senators McCAIN, LUGAR and HAGEL have said Iraq is a mess.

America is stuck in an endless occupation and a jobless economy, yet the word "progress" is how President Bush described the situation. Time after time this administration has tried to bend reality to its ideology. Usually, the fog of war sets in on the battlefield, but it appears the fog of war has set in at the White House.

JOHN KERRY'S HANDOUT TO THE RICH

(Mr. PITTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PITTS. Mr. Speaker, despite what he says, under JOHN KERRY's tax plan, a multi-billionaire could get away without paying 1 penny more in taxes. The problem is Mr. KERRY does not distinguish between wealth and taxable income. Many truly wealthy do not receive a lot of taxable income. They put their money in tax-sheltered investments. If Mr. KERRY were truly serious about taxing the wealth, he would propose eliminating these tax shelters and penalize wealth directly.

Instead, Mr. KERRY would raise taxes on small business owners, ranchers and family farmers. They all work hard, but many are asset rich in land and equipment and cash poor. They are not wealthy. Many borrow money to start or grow businesses and often have high expenses. But if Mr. KERRY gets his way, these hard-working families would see more of their dwindling resources go to Uncle Sam while the truly wealthy get richer. Mr. KERRY's plan might sound good, but it is just a back-door tax hike on working families while giving the truly wealthy a pass.

ETHICAL CLOUD OVER HOUSE GROWS DARKER

(Mr. BROWN of Ohio asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BROWN of Ohio. Mr. Speaker, the ethical cloud hanging over the House of Representatives is growing darker. The arrogance of power has brought dishonor on the House of Representatives.

Look at the Medicare bill. It was written by the drug and insurance companies in the White House and in the Oval office. The legislation passed here in the middle of the night. The leadership attempted to bribe one Republican Member from Michigan. There was the threat of firing a bureaucrat in the President's office who tried to be honest with Congress and tried to be honest with the American people.

The result of that corruption is a 17.4 percent premium increase, the largest premium increase in Medicare history. Republican leaders should be ashamed of themselves.

HONORING ANDREW PHILLIPS

(Mr. GINGREY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GINGREY. Mr. Speaker, today I rise to pay tribute to a man whose selfless service keeps the citizens of Georgia's 11th Congressional District safe each and every day.

I recently had the privilege of attending a Public Safety Appreciation Breakfast to honor Officer Andrew Phillips of the Marietta Police Department with the Award of Merit.

The Award recognizes a public safety employee for an act of bravery involving great personal risk and saved lives. Officer Phillips was nominated for an incident in March, 2004, where he placed his life in jeopardy to protect other officers who had been shot as they were executing a search warrant in Mableton, Georgia. Instead of retreating, he pressed forward and returned the perpetrator's gunfire until the man surrendered.

By putting other's safety above his own, Andrew Phillips exemplified the highest bravery and professionalism in police work.

Mr. Speaker, I ask that you join me in congratulating Officer Phillips of Georgia's 11th Congressional District.

ARKANSAS NATIONAL GUARD CELEBRATES 200TH ANNIVERSARY

(Mr. SNYDER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SNYDER. Mr. Speaker, it was my honor last week to attended the 200th anniversary of the Arkansas National Guard.

In 1804, Arkansas was part of the District of Louisiana which was attached to the Indiana territory for administrative purposes. On October 1, 1804, the governor and judges of the Indiana Territory met to pass the laws of the newly acquired District of Louisiana. One of those laws established the requirement for the establishment of a militia which stated "all the male inhabitants in the district shall be liable to and perform militia duties." The Arkansas guard has grown from that.

The first use of the Arkansas militia was during the territorial period when one company of the Miller County militia was called out in 1828 to settle a dispute between local settlers and Native Americans. The situation was resolved without the use of force.

Arkansas units have served in every American war from the war with Mexico in 1846 to the current war on terrorism. Currently, over 3,000 members of the Arkansas National Guard are serving in Iraq with the 39th Brigade, and a number of other units, and over 40 percent of the Army Guard in Arkansas is currently employed in Iraq or in the war on terror.

Mr. Speaker, our thoughts and prayers are with these troops today as we celebrate the 200 years of service of the Arkansas National Guard.

EXPERTS PROVE HUSSEIN WAS A THREAT

(Mr. WILSON of South Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WILSON of South Carolina. Mr. Speaker, Charles Duelfer, the chief of the Iraq Survey Group, said in testimony before Congress that Saddam Hussein had plans to reconstitute his weapons of mass destruction, waiting for the sanctions to erode. In June 4, Mr. Duelfer told me that threat analysis while I visited him in Baghdad. This comes after former weapons inspector David Kay said earlier this year that Saddam was more of a serious threat than we thought.

As President Bush said yesterday, Saddam Hussein retained the knowledge, the materials, the means and intent to produce weapons of mass destruction; and he could have passed that knowledge on to our terrorist enemies. After September 11, we learned we could no longer wait until threats became imminent. If we had waited to liberate Iraq, sanctions may have been lifted, and by that time he may have acquired the weapons that he so desperately wanted. Removing Saddam's brutal, terror-sponsoring regime was the right thing to do at the right time.

Mr. Speaker, we need a courageous President that will continue to protect American families by stopping the enemies at the source in the war on terrorism to reduce the threat of warfare in American neighborhoods.

In conclusion, may God bless our troops. We will never forget September 11.

CHANGE IS COMING

(Mr. McDERMOTT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. McDERMOTT. Mr. Speaker, I want to introduce Members to four young men: Justin Sane, Chris #2, Chris Head, and Pat-Thetic. They are a major punk band called Anti-Flag. Do not let this stage name fool you. These kids care about their country. For over a month, they have been touring America and singing to get kids involved in this election.

Yes, they have mohawks and rings, but in the 1960s, we were considered radical because of long hair and beads, and we changed this country. And these kids will, too.

They are straight-edge punk; no drugs, no alcohol, just kids from Pittsburgh with interesting-colored hairdos and a great message for young people, register and vote or be told what to do and where to go and fight by an administration that will not talk straight to the American people.

To their parents I say, be proud; they are smart kids. I ought to know. I am a child psychiatrist. Do not worry about the hair. It will change.

To the country, all I can say is kids are listening and change is coming because voting is going to be the in thing in 2004. Mr. Bush, your days are numbered.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Members should address their remarks to the Chair and not to the President.

9/11 RECOMMENDATIONS IMPLEMENTATION ACT

The SPEAKER pro tempore. Pursuant to House Resolution 827 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 10.

☐ 0915

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 10) to provide for reform of the intelligence community, terrorism prevention and prosecution, border security, and international cooperation and coordination, and for other purposes, with Mr. KOLBE (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. When the Committee of the Whole rose on the legislative day of Thursday, October 7, 2004, amendment No. 3 printed in House Report 108-571 by the gentleman from Indiana (Mr. SOUDER) had been disposed of.

It is now in order to consider amendment No. 4 printed in House Report 108-751.

AMENDMENT NO. 4 OFFERED BY MR. KIRK

Mr. KIRK. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Mr. KIRK:

Page 60, after line 9, insert the following new section:

SEC. 1018. REPORT ON INTEGRATION OF DRUG ENFORCEMENT AGENCY INTO THE INTELLIGENCE COMMUNITY.

(a) REPORT.—Not later than 120 days after the date of enactment of this Act, the President shall submit to the appropriate congressional committees a report on the practicality of integrating the Drug Enforcement Administration into the intelligence community.

(b) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term "appropriate congressional committees" means—

(1) the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate; and

(2) the Committees on the Judiciary of the House of Representatives and the Senate.

The CHAIRMAN pro tempore. Pursuant to House Resolution 827, the gentleman from Illinois (Mr. KIRK) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Illinois (Mr. KIRK).

Mr. KIRK. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment corrects a critical problem with our intelligence community and adds a needed bipartisan recommendation to the reforms we have in the underlying legislation. We have known for quite some time that the sale of elicit narcotics and terrorism go hand in hand. This link is now firm and is clear with regard to the terrorist activities and terrorist groups in Colombia. It is also clear in Peru, but this phenomenon has spread far beyond Latin America and is evident in Pakistan and Afghanistan.

Earlier this year, I traveled to Pakistan and Afghanistan, the key frontier border area of such concern to the United States, and there I learned a new fact, that Osama bin Laden's connection to his family fortune has been reduced. His connection to donations to the United States and Europe has been reduced, but he has a new source of income. Osama bin Laden is now becoming one of the world's largest dealers in heroin. Through just one of his supply organizations, bin Laden's lieutenants are earning at least $28 million from the sale of narcotics through Pakistan.

Let us remind ourselves of the conclusion of the 9/11 Commission, that the attacks against the World Trade Centers, Shanksville, and the Pentagon cost al Qaeda only $500,000. With an annual income of $28 million coming from the sale of illegal narcotics, we know that one of the key terrorist financing mechanisms is the sale of illegal narcotics.

In the 9/11 Commission report, they briefly mentioned this but did not focus on it. When you are on the front lines in Kandahar or Peshawar in Pakistan, you see that this link is clear.

Our Drug Enforcement Agency has some of the best financial maps of terrorist organizations in the world, and the Drug Enforcement Agency used to be a formal member of the intelligence community. In my judgment and the judgment of my bipartisan partner, the gentleman from Washington (Mr. LARSEN), on this amendment, we believe that the Drug Enforcement Agency should become part of the intelligence community again, that this link between terrorism and illegal narcotics is very clear.

Roughly half of the 28 terrorist organizations identified by the State Department in October, 2001, have links to drug activities. Organizations like the Kurdistan Worker's Party, the National Liberation Army, ELN, al Qaeda, the Revolutionary Armed Forces of Colombia, Shining Path, and the United Self-Defense Forces/Group of Colombia. All of these in a worldwide phenomenon, depending on violence and terror, funded by the sale of illegal narcotics.

This bipartisan amendment would help study the integration of the U.S. Drug Enforcement Agency into the intelligence community. It is supported by Karen Tandy, the administrator of the DEA. It is supported by a number of minority members. It is supported by the attorney general. I urge adoption of this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. REYES. Mr. Chairman, I ask unanimous consent to claim the time in opposition to the amendment, although I rise in support of the amendment.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. REYES. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise today in support of the Kirk amendment to H.R. 10. This amendment requires the President to submit to Congress a report detailing the best way to incorporate the Drug Enforcement Administration into the intelligence community.

The El Paso Intelligence Center, or EPIC, is an asset of the Drug Enforcement Agency. It is located in El Paso, Texas. It is the Nation's singular, multi-agency, tactical intelligence center for drug, alien, and weapons trafficking intelligence. Supporting Federal, State, and local law enforcement officers, EPIC also provides information regarding homeland security, homeland defense and counterterrorism to its member agencies. During my

26½ year tenure with the United States Border Patrol, I was able to utilize the services of EPIC, leading to a personal appreciation of the important role that the El Paso Intelligence Center plays in homeland security defense.

Currently, EPIC accomplishes its mission by processing requests for information received from Federal, State and local law enforcement personnel on persons, modes of transportation, organizations or addresses that are suspected of being engaged or associated with some type of criminal activity. Officers have 24 hours a day, 7 days a week access to the information in its database. It gives them the ability to query and provide simultaneous access to a number of other Federal databases. The El Paso Intelligence Center provides analysis of drug movement events, trends and patterns. They also do research on criminal investigations and communication intercept exploitation in support of its many different customers.

It is well known that there is a link in my opinion between illegal narcotics and the funding that it creates for terrorism. The El Paso Intelligence Center understands this link and is known around the world for its ability to connect the dots between actions and players.

The DEA plays an important role in this Nation's war on terrorism and war on drugs, and should be more fully integrated with our intelligence community. For those reasons, I urge my colleagues to support the Kirk amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. KIRK. Mr. Chairman, I yield 1 minute to the gentleman from Michigan (Mr. HOEKSTRA), the chairman of the Permanent Select Committee on Intelligence.

Mr. HOEKSTRA. Mr. Chairman, I thank the gentleman for yielding me this time and thank the gentleman for his amendment.

Mr. Chairman, I support this amendment and appreciate the efforts of the gentleman from Illinois on this issue. The intelligence community looks forward to an opportunity to review this issue further.

The DEA has substantial capabilities around the world that should be fully utilized in an appropriate fashion. The report that is provided for in this amendment will assist Congress in its consideration of the role of the Drug Enforcement Administration and the intelligence community along with the other important responsibilities that the DEA undertakes on a daily basis. I look forward to seeing the report and look forward to the passage of this amendment.

Mr. REYES. Mr. Chairman, I yield 2 minutes to the gentleman from Washington (Mr. LARSEN).

Mr. LARSEN of Washington. Mr. Chairman, I rise in support of this amendment along with my colleague, the gentleman from Illinois (Mr. KIRK).

We need to consider making the DEA part of our intelligence network. Before our own eyes, Afghanistan is reemerging as the international leader in the heroin trade. As this problem grows, the less control our Nation will have over the funding sources of international terrorism. A direct relationship exists between terrorism and the drug trade. Therefore, a direct relationship is needed between the DEA and our intelligence agencies. The DEA not only combats the drug trade around the world but can gather valuable information that can transcend drug trafficking and reach into the shadowy corners of international terrorism.

According to the State Department, 12 of the 28 terrorist organizations listed in the Department of State October, 2001, Report on Foreign Terrorist Organizations have links to foreign drug trafficking. One fitting example of this relationship happened in 2003 when a seizure of hashish from a trafficking group included suspected al Qaeda members and involved drugs worth nearly $30 million at wholesale.

The drug trade not only has a role in funding terrorists but also plays a significant destabilizing role in Afghanistan. Just yesterday, drug smugglers were implicated in a terrorist attack on Hamid Karzai's vice presidential candidate. Free elections in Afghanistan are a threat to the drug trade, just as free elections in Afghanistan are a threat to global terrorism.

According to our Office of National Drug Control Policy, the challenging security situation in Afghanistan has complicated the task of fighting the war against drugs and vice versa. As the terrorists lose ground, the opium poppy growers win, and much of the money from Afghanistan's opium sales goes right back to the terrorists.

Drug traffickers and terror networks work out of the same rule book. They both strive to undermine democratic institutions and engage in widespread violence and corruption. Both groups also depend on money laundering, forgery and arms deals to implement their deadly goals.

We cannot separate international terrorism from the drug trade. They are intertwined. This amendment will examine the ways DEA can maintain its current role while sharing information to help further protect our Nation. I believe this amendment is in the spirit of the 9/11 Commission recommendations and will help create and consolidate the whole intelligence picture that a president needs to defend our Nation. I urge its support.

Mr. REYES. Mr. Chairman, I yield back the balance of my time.

Mr. KIRK. Mr. Chairman, I yield myself the balance of my time.

In closing, I thank the gentleman from Texas (Mr. REYES) and the gentleman from Washington (Mr. LARSEN) for supporting this amendment. The gentleman from Texas is exactly right. El Paso Intelligence Center already does this. It is a critical asset but should be a formal part of the intelligence community, as are combatant commands that do a number of key tasks with regard to drug profits and terrorism.

We know that half of the Afghan economy is now related to the sale of illicit narcotics. We know that the Taliban and al Qaeda depend on terrorist profits. We started winning the battle against narcoterrorism in Colombia because we took a unified campaign on this approach against terrorism and the sale of illegal narcotics.

The DEA is the expert on these financial organizations. If the 9/11 Commission said anything, it said we should attack the financial support for terrorism and that financial support is increasingly reliant on the sale of illegal narcotics, especially for Osama bin Laden becoming one of the number one heroin dealers in Central Asia. For these reasons, I urge adoption of the amendment.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Illinois (Mr. KIRK).

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

Mr. KIRK. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Illinois (Mr. KIRK) will be postponed.

The CHAIRMAN pro tempore. It is now in order to consider amendment No. 5 printed in House Report 108–751.

AMENDMENT NO. 5 OFFERED BY MR. SESSIONS

Mr. SESSIONS. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 5 offered by Mr. SESSIONS:

At the end of title II of the bill (page 235, after line 21), insert the following new subtitle:

Subtitle J—Prevention of Terrorist Access to Destructive Weapons Act of 2004

SECTION 2211. SHORT TITLE.

This subtitle may be cited as the "Prevention of Terrorist Access to Destructive Weapons Act of 2004".

SEC. 2212. FINDINGS AND PURPOSE.

(a) FINDINGS. Congress finds the following:

(1) The criminal use of man-portable air defense systems (MANPADS) presents a serious threat to civil aviation worldwide, especially in the hands of terrorists or foreign states that harbor them.

(2) Atomic weapons or weapons designed to release radiation ("dirty bombs") could be used by terrorists to inflict enormous loss of life and damage to property and the environment.

(3) Variola virus is the causative agent of smallpox, an extremely serious, contagious, and sometimes fatal disease. Variola virus is classified as a Category A agent by the Centers for Disease Control and Prevention, meaning that it is believed to pose the greatest potential threat for adverse public health impact and has a moderate to high potential for large-scale dissemination. The last case of smallpox in the United States was in 1949. The last naturally occurring case in the world was in Somalia in 1977. Although smallpox has been officially eradicated after a successful worldwide vaccination program, there remain two official repositories of the variola virus for research purposes. Because it is so dangerous, the variola virus may appeal to terrorists.

(4) The use, or even the threatened use, of MANPADS, atomic or radiological weapons, or the variola virus, against the United States, its allies, or its people, poses a grave risk to the security, foreign policy, economy, and environment of the United States. Accordingly, the United States has a compelling national security interest in preventing unlawful activities that lead to the proliferation or spread of such items, including their unauthorized production, construction, acquisition, transfer, possession, import, or export. All of these activities markedly increase the chances that such items will be obtained by terrorist organizations or rogue states, which could use them to attack the United States, its allies, or United States nationals or corporations.

(5) There is no legitimate reason for a private individual or company, absent explicit government authorization, to produce, construct, otherwise acquire, transfer, receive, possess, import, export, or use MANPADS, atomic or radiological weapons, or the variola virus.

(b) PURPOSE.—The purpose of this subtitle is to combat the potential use of weapons that have the ability to cause widespread harm to United States persons and the United States economy (and that have no legitimate private use) and to threaten or harm the national security or foreign relations of the United States.

SEC. 2213. MISSILE SYSTEMS DESIGNED TO DESTROY AIRCRAFT.

Chapter 113B of title 18, United States Code, is amended by adding after section 2332f the following:

"§ 2332g. Missile systems designed to destroy aircraft

"(a) UNLAWFUL CONDUCT.—

"(1) IN GENERAL.—Except as provided in paragraph (3), it shall be unlawful for any person to knowingly produce, construct, otherwise acquire, transfer directly or indirectly, receive, possess, import, export, or use, or possess and threaten to use—

"(A) an explosive or incendiary rocket or missile that is guided by any system designed to enable the rocket or missile to—

"(i) seek or proceed toward energy radiated or reflected from an aircraft or toward an image locating an aircraft; or

"(ii) otherwise direct or guide the rocket or missile to an aircraft;

"(B) any device designed or intended to launch or guide a rocket or missile described in subparagraph (A); or

"(C) any part or combination of parts designed or redesigned for use in assembling or fabricating a rocket, missile, or device described in subparagraph (A) or (B).

"(2) NONWEAPON.—Paragraph (1)(A) does not apply to any device that is neither designed nor redesigned for use as a weapon.

"(3) EXCLUDED CONDUCT.—This subsection does not apply with respect to—

"(A) conduct by or under the authority of the United States or any department or agency thereof or of a State or any department or agency thereof; or

"(B) conduct pursuant to the terms of a contract with the United States or any department or agency thereof or with a State or any department or agency thereof.

"(b) JURISDICTION.—Conduct prohibited by subsection (a) is within the jurisdiction of the United States if—

"(1) the offense occurs in or affects interstate or foreign commerce;

"(2) the offense occurs outside of the United States and is committed by a national of the United States;

"(3) the offense is committed against a national of the United States while the national is outside the United States;

"(4) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

"(5) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.

"(c) CRIMINAL PENALTIES.—

"(1) IN GENERAL.—Any person who violates, or attempts or conspires to violate, subsection (a) shall be fined not more than $2,000,000 and shall be sentenced to a term of imprisonment not less than 30 years or to imprisonment for life.

"(2) LIFE IMPRISONMENT.—Any person who, in the course of a violation of subsection (a), uses, attempts or conspires to use, or possesses and threatens to use, any item or items described in subsection (a), shall be fined not more than $2,000,000 and imprisoned for life.

"(3) DEATH PENALTY.—If the death of another results from a person's violation of subsection (a), the person shall be fined not more than $2,000,000 and punished by death or imprisoned for life.

"(d) DEFINITION.—As used in this section, the term 'aircraft' has the definition set forth in section 40102(a)(6) of title 49, United States Code.".

SEC. 2214. ATOMIC WEAPONS.

(a) PROHIBITIONS.—Section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) is amended by—

(1) inserting at the beginning "a." before "It";

(2) inserting "knowingly" after "for any person to";

(3) striking "or" before "export";

(4) striking "transfer or receive in interstate or foreign commerce," before "manufacture";

(5) inserting "receive," after "acquire,";

(6) inserting ", or use, or possess and threaten to use," before "any atomic weapon";

(7) inserting at the end the following:

"b. Conduct prohibited by subsection a. is within the jurisdiction of the United States if—

"(1) the offense occurs in or affects interstate or foreign commerce; the offense occurs outside of the United States and is committed by a national of the United States;

"(2) the offense is committed against a national of the United States while the national is outside the United States;

"(3) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

"(4) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.".

(b) VIOLATIONS.—Section 222 of the Atomic Energy Act of 1954 (42 U.S.C. 2272) is amended by—

(1) inserting at the beginning "a." before "Whoever";

(2) striking ", 92,"; and

(3) inserting at the end the following:

"b. Any person who violates, or attempts or conspires to violate, section 92 shall be fined not more than $2,000,000 and sentenced to a term of imprisonment not less than 30 years or to imprisonment for life. Any person who, in the course of a violation of section 92, uses, attempts or conspires to use, or possesses and threatens to use, any atomic weapon shall be fined not more than $2,000,000 and imprisoned for life. If the death of another results from a person's violation of section 92, the person shall be fined not more than $2,000,000 and punished by death or imprisoned for life.".

SEC. 2215. RADIOLOGICAL DISPERSAL DEVICES.

Chapter 113B of title 18, United States Code, is amended by adding after section 2332g the following:

"§ 2332h. Radiological dispersal devices

"(a) UNLAWFUL CONDUCT.—

"(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for any person to knowingly produce, construct, otherwise acquire, transfer directly or indirectly, receive, possess, import, export, or use, or possess and threaten to use—

"(A) any weapon that is designed or intended to release radiation or radioactivity at a level dangerous to human life; or

"(B) or any device or other object that is capable of and designed or intended to endanger human life through the release of radiation or radioactivity.

"(2) EXCEPTION.—This subsection does not apply with respect to—

"(A) conduct by or under the authority of the United States or any department or agency thereof; or

"(B) conduct pursuant to the terms of a contract with the United States or any department or agency thereof.

"(b) JURISDICTION.—Conduct prohibited by subsection (a) is within the jurisdiction of the United States if—

"(1) the offense occurs in or affects interstate or foreign commerce;

"(2) the offense occurs outside of the United States and is committed by a national of the United States;

"(3) the offense is committed against a national of the United States while the national is outside the United States;

"(4) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

"(5) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.

"(c) CRIMINAL PENALTIES.—

"(1) IN GENERAL.—Any person who violates, or attempts or conspires to violate, subsection (a) shall be fined not more than $2,000,000 and shall sentenced to a term of imprisonment not less than 30 years or to imprisonment for life.

"(2) LIFE IMPRISONMENT.—Any person who, in the course of a violation of subsection (a), uses, attempts or conspires to use, or possesses and threatens to use, any item or items described in subsection (a), shall be fined not more than $2,000,000 and imprisoned for life.

"(3) DEATH PENALTY.—If the death of another results from a person's violation of subsection (a), the person shall be fined not more than $2,000,000 and punished by death or imprisoned for life.".

SEC. 2216. VARIOLA VIRUS.

Chapter 10 of title 18, United States Code, is amended by inserting after section 175b the following:

"§175c. Variola virus

"(a) UNLAWFUL CONDUCT.—

"(1) IN GENERAL.—Except as provided in paragraph (2), it shall be unlawful for any person to knowingly produce, engineer, synthesize, acquire, transfer directly or indirectly, receive, possess, import, export, or use, or possess and threaten to use, variola virus.

"(2) EXCEPTION.—This subsection does not apply to conduct by, or under the authority of, the Secretary of Health and Human Services.

"(b) JURISDICTION.—Conduct prohibited by subsection (a) is within the jurisdiction of the United States if—

"(1) the offense occurs in or affects interstate or foreign commerce;

"(2) the offense occurs outside of the United States and is committed by a national of the United States;

"(3) the offense is committed against a national of the United States while the national is outside the United States;

"(4) the offense is committed against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States; or

"(5) an offender aids or abets any person over whom jurisdiction exists under this subsection in committing an offense under this section or conspires with any person over whom jurisdiction exists under this subsection to commit an offense under this section.

"(c) CRIMINAL PENALTIES.—

"(1) IN GENERAL.—Any person who violates, or attempts or conspires to violate, subsection (a) shall be fined not more than $2,000,000 and shall be sentenced to a term of imprisonment not less than 30 years or to imprisonment for life.

"(2) LIFE IMPRISONMENT.—Any person who, in the course of a violation of subsection (a), uses, attempts or conspires to use, or possesses and threatens to use, any item or items described in subsection (a), shall be fined not more than $2,000,000 and imprisoned for life.

"(3) DEATH PENALTY.—If the death of another results from a person's violation of subsection (a), the person shall be fined not more than $2,000,000 and punished by death or imprisoned for life.

"(d) DEFINITION.—As used in this section, the term 'variola virus' means a virus that can cause human smallpox or any derivative of the variola major virus that contains more than 85 percent of the gene sequence of the variola major virus or the variola minor virus.".

SEC. 2217. INTERCEPTION OF COMMUNICATIONS.

Section 2516(1) of title 18, United States Code, is amended—

(1) in paragraph (a), by inserting "2122 and" after "sections";

(2) in paragraph (c), by inserting "section 175c (relating to variola virus)," after "section 175 (relating to biological weapons),"; and

(3) in paragraph (q), by inserting "2332g, 2332h," after "2332f,".

SEC. 2218. AMENDMENTS TO SECTION 2332b(g)(5)(B) OF TITLE 18, UNITED STATES CODE.

Section 2332b(g)(5)(B) of title 18, United States Code, is amended—

(1) in clause (i)—

(A) by inserting before "2339 (relating to harboring terrorists)" the following: "2332g (relating to missile systems designed to destroy aircraft), 2332h (relating to radiological dispersal devices),"; and

(B) by inserting "175c (relating to variola virus)," after "175 or 175b (relating to biological weapons),"; and

(2) in clause (ii)—

(A) by striking "section" and inserting "sections 92 (relating to prohibitions governing atomic weapons) or"; and

(B) by inserting "2122 or" before "2284".

SEC. 2219. AMENDMENTS TO SECTION 1956(c)(7)(D) OF TITLE 18, UNITED STATES CODE.

Section 1956(c)(7)(D), title 18, United States Code, is amended—

(1) by inserting after "section 152 (relating to concealment of assets; false oaths and claims; bribery)," the following: "section 175c (relating to the variola virus),";

(2) by inserting after "section 2332(b) (relating to international terrorist acts transcending national boundaries)," the following: "section 2332g (relating to missile systems designed to destroy aircraft), section 2332h (relating to radiological dispersal devices),"; and

(3) striking "or" after "any felony violation of the Foreign Agents Registration Act of 1938," and after "any felony violation of the Foreign Corrupt Practices Act", striking ";" and inserting ", or section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122) (relating to prohibitions governing atomic weapons)".

SEC. 2220. EXPORT LICENSING PROCESS.

Section 38(g)(1)(A) of the Arms Export Control Act (22 U.S.C. 2778) is amended—

(1) by striking "or" before "(xi)"; and

(2) by inserting after clause (xi) the following: "or (xii) section 3, 4, 5, and 6 of the Prevention of Terrorist Access to Destructive Weapons Act of 2004, relating to missile systems designed to destroy aircraft (18 U.S.C. 2332g), prohibitions governing atomic weapons (42 U.S.C. 2122), radiological dispersal devices (18 U.S.C. 2332h), and variola virus (18 U.S.C. 175b);".

SEC. 2221. CLERICAL AMENDMENTS.

(a) CHAPTER 113B.—The table of sections for chapter 113B of title 18, United States Code, is amended by inserting the following after the item for section 2332f:

"2332g. Missile systems designed to destroy aircraft.
"2332h. Radiological dispersal devices.".

(b) CHAPTER 10.—The table of sections for chapter 10 of title 18, United States Code, is amended by inserting the following item after the item for section 175b:

"175c. Variola virus.".

The CHAIRMAN pro tempore. Pursuant to House Resolution 827, the gentleman from Texas (Mr. SESSIONS) and the gentleman from Virginia (Mr. SCOTT) each will control 5 minutes.

The Chair recognizes the gentleman from Texas (Mr. SESSIONS).

Mr. SESSIONS. Mr. Chairman, I yield myself such time as I may consume.

Today, I rise to offer my legislation, Prevention of Terrorist Access to Destructive Weapons Act, an amendment to H.R. 10. This amendment will aid the hard-working Federal investigators and agents on the front line in the war on terror by establishing a zero tolerance policy towards the illegal importation, possession or transfer of shoulder-fired missiles, atomic weapons, dirty bombs, and the smallpox virus.

☐ 0930

Today, maximum penalties of only 10 years in prison apply to the unlawful possession of shoulder-fired missiles. The same weak penalty also currently applies to the unlawful possession of an atomic weapon. Today, there is no law criminalizing the possession of dirty bombs with criminal intent, and the unregistered possession of the smallpox virus carries a maximum penalties of only 5 years in prison.

Given the terrorist threats that we currently face in the United States, weak punishments for the possession or use of these weapons is simply unacceptable in light of the fact that we know that 26 terror groups already have shoulder-fired missiles in their possession.

My amendment imposes stringent, mandatory minimum criminal penalties for these heinous crimes similar to the laws that we already use to prosecute drug kingpins. Specifically, for each of the weapons covered by the bill, unlawful possession would result in mandatory imprisonment for up to 30 years to life. Using, attempting, or conspiring to use, or possessing and threatening to use these weapons would result in mandatory life in prison. And if one death were to result from the unlawful possession of one of these weapons, this amendment would allow the death penalty to be applied to anyone who targets America in a terrorist attack.

Although tougher penalties may not deter homicidal terrorists determined to attack the United States, they will help to deter those middlemen who are essential to the transfer of such weapons. Many of these middlemen aid terrorists purely for financial gain, and significantly tougher mandatory penalties would dramatically alter their cost-benefit calculations.

When the middleman is caught importing or hiding these weapons, the existence of tough penalties will also assist prosecutors and investigators in obtaining cooperation and moving swiftly to identify terrorists. Long mandatory sentences, including life without parole, provide a fast and powerful incentive to cooperate, as has already been proven in cracking the code of silence for organized crime. In the case of these dangerous weapons, the speed with which persons choose to cooperate could also save thousands of lives.

These increased penalties are completely justified in light of the catastrophic destruction that could be caused by the use of any of these weapons, and supporting my amendment will send a strong message of America's resolve to win the war on terrorism.

Mr. Chairman, I encourage my colleagues to join me in supporting and giving Federal investigators and prosecutors the tools they have asked for to aid them in their fight against terrorism by supporting this commonsense, effective amendment.

[From the Associated Press, Aug. 5, 2004]

TWO ARRESTED IN MISSILE STING OPERATION

WASHINGTON.—Two leaders of a mosque in Albany, New York, were arrested on charges stemming from an alleged plot to help a man they thought was a terrorist who wanted to purchase a shoulder-fired missile, federal authorities said Thursday.

The men have ties to a group called Ansar al-Islam, which has been linked to the al Qaeda terror network, according to two federal law enforcement authorities speaking on condition of anonymity.

The two arrests came as FBI, Immigration and Customs Enforcement and other agents executed search warrants at the Masjid As-Salam mosque and two Albany-area homes, officials said. The men were identified as Yassin Aref, 34, the imam of the mosque, and 49-year-old Mohammed Hoosain, one of the mosque's founders.

According to law enforcement officials, the two are being charged with providing material support to terrorism by participating in a conspiracy to help an individual they believed was a terrorist purchase a shoulder-fired missile.

The individual was an undercover government agent and no missile ever changed hands. Aref and Hoosain were allegedly involved in money-laundering aspects of the plot, the officials said.

The investigation has been going on for a year and is not related to the Bush administration's decision earlier this week to raise the terror alert level for certain financial sector buildings in New York and Washington, the officials said.

In Albany, some mosque members gathered early Thursday outside the institution for morning prayers.

More details about the case were expected to be released later Thursday by the Justice Department.

[From the Los Angeles Times, Mar. 4, 2004]

2 CONVICTED OF SEEKING MISSILES FOR AL QAEDA ALLY

(By Tony Perry)

SAN DIEGO.—A Pakistani national and a naturalized American pleaded guilty Wednesday to a conspiracy to help the Al Qaeda terrorist group by selling five tons of hashish and a half-ton of heroin in exchange for money and four Stinger missiles.

Muhamed Abid Afridi, 30, and a naturalized citizen from Inida, Ilyas Ali, 56, admitted in U.S. District Court here that they planned to sell the missiles to the Taliban, an ally of Al Qaeda.

Afridi, Ali and a second Pakinstani were arrested in Hong Kong in September 2002 after meeting with undercover FBI agents posing as arms dealers with Stingers to sell. They allegedly offered to sell the agents heroin and hashish in return for missiles and money.

"They both had the will and the means to carry out the transaction they were negotiating," said Assistant U.S. Atty. Michael Skerlos.

Stingers are shoulder-launched missiles distributed widely by the CIA to Afghan rebels fighting the Soviet army in the 1980s. Easy to use and deadly accurate at hitting low-flying aircraft, Stingers were credited with helping the Afghans demoralize and rout the much stronger Soviets.

"Because of the actions taken in this investigation, America is safer and our citizens are more secure," Atty. General John Ashcroft said in a statement.

Initial meetings between Ali and the FBI agents occurred in San Diego, according to court documents. Afridi and Ali are scheduled to be sentenced June 29 by Judge M. James Lorenz; a plea bargain recommends that each be sentenced to up to 10 years in prison.

The case against the second Pakistani, Syed Mustajab Shah, has a court date April 5.

Ali was a grocer in Minneapolis before his arrest.

[From Jane's Intelligence Review, Sept. 2001]

THE PROLIFERATION OF MANPADS

(By Thomas B. Hunter)

Man-portable surface-to-air missiles, also known as MANPADs, represent a significant potential threat to military and civilian aircraft.

Following the collapse of the Soviet Union, the proliferation of SA-series MANPADs has increased, and the diffusion of these weapons now exceeds the infamous spread of US-made Stinger missiles from Afghanistan during the 1990s. Today, MANPADs of various types are in the hands of as many as 27 guerrilla and terrorist groups around the world.

Tracking the proliferation of MANPADs is a difficult endeavour. Often, the only verification of use by non-state actors has been post-event in nature—recovery of a used launcher or fragments from expended missiles. The black market is the primary source for these weapons. Unlike state-to-state transfers, usually documented and visible, the illicit black market MANPAD trade defies accurate tracking.

The inability of governments to correctly identify seized weapons also contributes to inaccurate reports. In many cases, soldiers and government officials have identified rocket-propelled grenades (RPGs) and other handheld rocket launchers as MANPADs. Moreover, the word 'Stinger' has become an all-encompassing term for any MANPAD among many civilian, military, and non-state groups, further complicating efforts to verify proliferation activity.

In many cases of surface-to-air attacks on aircraft, misreporting is quite common. Airbursts occurring near low-flying aircraft have frequently been reported as attacks by MANPADs, when in fact they are usually RPGs. Attacks on aircraft at very low altitudes, those occurring under 1,000 feet, are almost exclusively RPGs. Guerrilla and terrorist forces have successfully adapted the RPG to the anti-aircraft role. This skill was demonstrated perhaps most clearly when two US MH 60 Black Hawk helicopters were shot down by Somali gunmen in October 1993.

One popular misconception is that these missiles become unusable after several years due to battery or other systems failures, and are therefore useless after a period of time. While it is true that all MANPAD batteries have a finite shelf life, these can be replaced with commercially purchased batteries available on the open market and technically proficient terrorist groups might also be able to construct hybrid batteries to replace used ones.

Other concerns include deterioration of missile propellants and seeker coolant, and general storage issues. While these concerns merit attention, the commonly held assumption that these weapons have short shelf lives is erroneous. Most missiles are hermetically sealed in launchers designed for rough handling by soldiers in the field. Temperature extremes are also factored into the design of these weapons, reducing the threat of environmental degradation.

Clearly, the shelf life of MANPADs is, in large part, dependent on the conditions in which the weapon is stored. However, under ideal (factory specified) conditions, some versions of these weapons can remain operational for 22 years or more. So while it can be assumed that some weapons have not been stored in ideal conditions, many weapons previously believed to be inoperative, such as the Afghan Stingers, may indeed be operational.

Furthermore, MANPADs remain a popular commodity on the global black arms market. With the exception of the Soviet-Afghan war, these weapons are more widespread today than at any time since their introduction in the late 1960s. Guerrilla and terrorist organisations can obtain them with relative ease, with the primary limitation being money. As some of these groups increase their profits through drug trafficking and other activities, the likelihood of further illicit purchases will also increase.

MANPADs have proliferated to non-state groups throughout sub-Saharan Africa. These weapons can be found in the hands of insurgent groups in Angola, the Democratic Republic of Congo, Ethiopia, Rwanda and Somalia.

Of these states, Angola has seen the greatest activity. The CIA covertly provided FIM-92A Stinger missiles to UNITA rebels in the late 1980s as part of its effort to assist in the overthrow of Angola's pro-communist government. As in Afghanistan, efforts to recover the missiles following the end of hostilities proved futile. Today UNITA retains an unknown number of advanced weapons, which may be augmented with SA 7 (NATO reporting name 'Grail,' Russian name Strela-2) and FIM 43 Redeye missiles captured from government forces.

UNITA has also shown willingness to use them, sometimes against civilian aircraft. UNITA fired missiles at three World Food Programme (WFP) aircraft in June 2001, for example. One plane was struck but managed to land safely at a nearby airport. This attack was of particular concern in that the missile struck the aircraft at an altitude of 15,000 feet—3,500 feet beyond the weapon's published maximum range. While this is not the first report of Stinger missiles reaching this height, it is clear that aircraft travelling at an altitude believed to be out of the range of these weapons should be aware of this proven capability.

During the Soviet-Afghan War, the CIA working in conjunction with the Pakistani

Army's Inter-Services Intelligence (ISI), delivered over 1,000 Stingers to Mujahideen rebels. While the rebels fired many of the missiles against Soviet aircraft, hundreds remained after the fighting ended in 1987. Poor bookkeeping at the CIA, combined with the dispersal of the weapons to numerous clans throughout the country, made accounting for and recovering them impossible. The result was a proliferation of advanced anti-aircraft weaponry throughout the region.

It is well-known that the rebels did not retain all of the Stingers left behind after the war. Many found their way onto the global grey and black arms markets and ended up in guerrilla arsenals from Sri Lanka to Chechnya. With a reported black market price of between US$80,000 and $250,000, Stingers represent a significant profit potential due in no small part to widespread demand.

Terrorist leader Osama bin Laden also reportedly possesses a number of MANPADs, including SA 7s and Stingers. As Bin Laden has both the financial resources and black market connections to make procurement possible, these reports are probably accurate. Persistent rumours also indicate that Bin Laden's personal bodyguards may be equipped with Stingers, ostensibly to counter an airborne attack.

Regardless of the veracity of the latter information, it is logical to assume that Bin Laden's Al-Qaeda ("The Base') network is in possession of additional MANPADs. If this is true, then Al-Qaeda represents the most significant threat to international civil aviation. Given Bin Laden's specific threats against U.S. citizens, this threat is especially relevant with regard to U.S.-owned airlines.

While the Russian military is certainly not confronted with the same threat level that it experienced in Afghanistan, the increased proliferation of MANPADs to Chechen rebels has dramatically increased the danger to close air support (CAS) aircraft operating in theatre. A number of aircraft have been shot down, including Su 25 'Frogfoot' and Su 24 'Fencer' fighter bombers. MANPADs have also shot down a number of military helicopters.

The sources of Chechen MANPADs are varied. However, a large number of systems have been seized by Russian authorities, indicating that the rebels have established an effective pipeline for delivery. For example, three SA 7 missiles were found in the territory of Ingushetia near the Russian-Georgian border in September 2000. Just one month later, an unspecified number of SA 7s were discovered in a building near Severy airport. The following month a Russian military operation resulted in the seizure of four SA 7 missiles with their launchers from a lorry in Dagestan. A rebel spokesman later announced that the weapons were part of a shipment of arms destined for use in Chechnya. The shipment reportedly cost the Chechens $40,000.

Another report indicated that Bin Laden might have delivered as many as 50 Stinger missiles to the Chechens. The weapons were to have been transported from either Georgia or Azerbaijan and delivered in December 1999. Eight Stinger missiles were reportedly airdropped in the mountains of Sharoyskiy District on the night of 12 13 June 2001. The source of these weapons was not reported.

The primary MANPAD threat in the Western Hemisphere is their possible future use by the two main Colombian insurgent groups, the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia FARC) and the National Liberation Army (Ejercito de Liberacion Nacional ELN). Complicating analysis of the Colombia MANPAD situation is a plethora of false of misleading reporting.

Colombian electronic and print press outlets have regularly reported that both the FARC and ELN possess these missile systems. Government officials have also fanned this fire by issuing corroborating statements. These reports, both military and civilian, cumulatively suggest that the FARC currently possesses SA 7, SA 14 "Gremlin", SA 16 "Gimlet" and Redeye missiles. The Redeye missiles were variously reported to have come from Nicaraguan (former Contra) or Syrian arsenals and the SA-series weapons from various sources. There is no definitive evidence, however, to confirm that any Colombian guerrilla group currently possesses MANPADs of any type.

This misreporting is usually a matter of an honest mistake due to lack of familiarity with MANPADs, the Colombian situation may mask an ulterior motive. While the threat to the Colombian government from insurgent and narcotics trafficking groups is quite real, it is well-known that officials from that government have frequently overstated the sophistication of rebel groups in an effort to garner greater financial and political support from the USA. Given this history, it is possible that MANPAD events have occasionally been intentionally overstated.

According to Colombia expert Steven Salisbury, FARC commanders have admitted to possessing MANPADs. "The FARC commanders who told me the FARC has shoulder-fired SAMs [surface-to-air missiles] were field commanders talking privately to me," he said. "They said, yes, they have SAMs." This information given to Salisbury was corroborated by two FARC block commanders as well as other guerrillas.

Four additional factors must be highlighted. The first of these is that FARC commanders have stated that they do indeed possess MANPADs. The second is that both the FARC and ELN are known to be aggressively seeking these weapons. The third factor is that the guerrillas have received training on these weapons. In one instance, a Colombian government source stated that 25 guerrillas travelled to Nicaragua to attend an anti-aircraft course taught by former Sandanista soldiers. This course reportedly included MANPAD training as well as gunnery techniques involving 0.50-calibre heavy machine guns and the use of RPG 7s in the anti-air role. FARC members may also have travelled to Syria and Libya to receive similar training. Finally, both the FARC and ELN have the financial resources to make such a purchase possible.

With these factors in mind, it appears likely that the FARC will procure at least one type of MANPAD if it has not done so already. Colombian guerrilla groups have had very little difficulty obtaining weapons for use in their war against the government. Well established arms transit routes are in place to facilitate these shipments. The arms pipelines through which the FARC and ELN may obtain MANPADs run through the following countries Albania, Belgium, Ecuador, Jordan, North Korea, Peru, Romania, and Russia. Of specific concern is the Russian relationship, as the FARC and Russian mafias have a well-established arms-for-drugs pipeline in place. The Russian mafias have demonstrated the ability to obtain virtually any type of weapons system. If the Colombian guerrillas are to obtain these weapons, and have not been successful already, they will most likely come from this black market channel.

It must be noted that when the FARC obtains these weapons, it will almost certainly use them only in critical situations, such as the defence of important base camps or headquarters facilities. They will most likely not be used against drug-spraying aircraft or other non-threatening targets due to the high value of MANPADs to the FARC leadership.

If the FARC does indeed maintain a small inventory of these weapons, this is the most likely explanation for why they have not yet been employed. If employed, targets would most likely include Colombian Air Force CAS aircraft or possibly high-value civilian flights such as aircraft transporting senior government officials.

Hizbullah probably took its first delivery of MANPADs in 1982 with the acquisition of a small number of SA 7s. Reporting since that time indicates that these stocks were supplemented with PIM 92A Stingers in the mid-1990s, provided by Islamic Mujahideen rebels in Afghanistan. Most recently, the group may have received a small number of Chinese-made Qianwei ('Advanced Guard') 1 (QW 1) systems. If true, the acquisition of this latter system represents a significant upgrade in the surface-to-air capabilities of Hizbullah.

The Palestinian Authority also maintains a stock of SA 7 missiles and launchers. Reports also indicates that the Palestinians may have a small number of Stinger systems as well. The source of the SA 7 weapons is unclear, but it is possible some were delivered from Egypt aboard fishing boats, a common local method of arms smuggling.

For example, on 8 May 2001, Israeli security services intercepted the Lebanese-flagged vessel *Santorini* off the coast between Haifa and Tel Aviv. A search of the ship revealed a large quantity of arms, including 60 mm mortars, landmines, grenades, and four SA 7 missiles with launchers. The shipment was reportedly sent by the Palestinian Front for the Liberation of Palestine-General Command and intended for use by Palestinian militants. The MANPADS were confiscated by the Israelis and probably added to their own arsenal.

Apart from the Afghan Mujahideen, the Liberation Tigers of Tamil Eelam (LTTE) have enjoyed the greatest success with MANPADs. LTTE guerrillas have fired an estimated 20 missiles at government aircraft since 1996, shooting down three helicopters and probably two fixed-wing transports. These attacks killed a total of 179 personnel.

It is estimated that the LTTE possesses SA 7, SA 1a, and other MANPADs. One Chinese-built Hongying 5 (HN 5A) system was also discovered during government operations; however, there is no indication that the LTTE possesses additional units. It is possible that this weapon was procured from sources within the Burmese military.

In December 2000 Sri Lankan news carried video of a Tamil rebel holding what appeared to be a Stinger missile during an October operation against the Trincomalee naval facility. However, later analysis indicated this weapon was most probably a double barrelled 107 mm Katyusha rocket, believed to be a variant of the Chinese Type 63 107mm launcher, and not a MANPAD.

The LTTE reportedly acquired these weapons from a variety of sources. Press reports indicated that the Kurdistan's Worker's Party (PPK), working with the Greek 17 November terrorist organisation, sold 11 Stinger missiles to the LTTE in 1994. These weapons were reportedly built in Greece, which is a member of European consortium manufacturing PIM-92A/C Stinger systems under license from the USA. Other Stingers may have been sold or donated to the Tamils by the Afghan Taliban during the 1990s. LTTE weapons buyers have also been reported in Cambodia and Thailand, reportedly seeking MANPADs Given the Tamils success with these weapons, it is likely that procurement efforts will continue.

Mr. Chairman, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, this did not go through the Committee on the Judiciary and it is somewhat complicated and it appears to be overlapping and recreates and reauthorizations present law. For example under title XVIII, chapter 10 already criminalizes the use of biological weapons; chapter 11(b) criminalizes chemical weapons; chapter 39 criminalizes nuclear weapons; chapter 4 criminalizes the use of explosives, and on and on.

In addition, many of those, all of those offenses are predicates to 18 U.S.C. (a) 2332(b) which provides for the death penalty if death results from any violation of those statutes.

The only change appears to be a mandatory 30 years for attempts and conspiracies. There is no differentiation for a role in a conspiracy, relative knowledge of the crime, or even if death were an accident that had not been intended. What we have is new mandatory minimums.

We have, in the Committee on the Judiciary, often cited many findings and recommendations from researchers, sentencing professionals, even the judicial branch, justices on the Supreme Court, including the chief justice, citing problems created by mandatory sentences. They have been found to be a waste of money compared to alternatives such as treatment or traditional sentencing. They disrupt the ability of the Sentencing Commission and the courts to apply an orderly, proportional, nondisparate sentencing system. They discriminate against minorities and they transfer an inordinate amount of discretion to prosecutors in an adversarial system.

Mandatory minimum sentences increase disparities in sentencing because they do not allow distinctions between major players and bit players in a crime. In a recent letter to the subcommittee, the U.S. Judicial Conference, headed by the chief justice of the Supreme Court, noted and I quote: In addition to resulting in unwarranted sentencing disparities, mandatory minimums often lead to treatment of dissimilar offenders in a similar manner by requiring courts to impose the same sentence on offenders, when sound policy and common sense call for reasonable differences in punishment to reflect differences in the seriousness of the conduct or danger to society.

In other words, mandatory minimums violate common sense. That is the chief justice and the U.S. Judicial Conference.

Mr. Chairman, this bill, the underlying bill, is a reorganization bill. We should not include controversial criminal penalties, especially when the Judicial Conference headed by the chief justice tells us that these things violate common sense. We also need to study the international implications of this, because when we add in the death penalty, we add in complications of international cooperation. Most countries around the world do not have the death penalty and we have had problems where they would not even extradite criminals to the United States because we have all of these death penalties.

We need to study this, and having a floor amendment is not the appropriate way to legislate. Mr. Chairman, I would hope that we would defeat this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. SESSIONS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the several very important articles in my added materials that I have submitted speak not only to the threat to the United States, but also the reality of the groups who were engaged in the transfer, the trafficking of shoulder-fired missiles, of weapons of mass destruction, in terms of viruses that could be placed in the United States of America.

Mr. Chairman, I respect the gentleman for not liking the minimum mandatory sentences. I would also say that it is up to this body, Mr. Chairman, to make sure that we provide the tools necessary to the Attorney General and other U.S. attorneys who may be prosecuting these cases, to give to the frontline agents and investigators those abilities to find and stop those people who are perpetrators of crime, mass murder against the United States of America.

Most of all, I would remind this body how important it is to make sure that we keep terrorism away from our doorsteps. I believe in effective law enforcement, effective use of the laws of this country, and making sure that we have looked at this from the perspective of the Attorney General of the United States and U.S. attorneys across this country who support this important legislation.

Mr. Chairman, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I would just point out that we already have in the Code serious penalties for all of these crimes. The appropriate way to legislate would be to go through the committee so that we could see exactly how these fit into the present sentencing scheme. I would hope that we defeat the amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. SESSIONS. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I believe that the Members of this body understand that there is a need to make sure that we protect this country and the laws of this country. We have consulted with the Attorney General of the United States and other U.S. attorneys who are asking for this. I support this amendment. I believe it will help the President of the United States to ensure the safety of our country.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore (Mr. KOLBE). The question is on the amendment offered by the gentleman from Texas (Mr. SESSIONS).

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

Mr. SESSIONS. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Texas (Mr. SESSIONS) will be postponed.

AMENDMENT NO. 6 OFFERED BY MR. BONILLA

Mr. BONILLA. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 6 offered by Mr. BONILLA:

At the appropriate place in the bill, insert the following (and redesignate provisions and amend the table of contents accordingly):

SECTION ____. INCREASE IN DETENTION BED SPACE.

Subject to the availability of appropriated funds, the Secretary of Homeland Security shall increase by not less than 2,500, in each of fiscal years 2006 and 2007, the number of beds available for immigration detention and removal operations of the Department of Homeland Security above the number for which funds were allotted for the preceding fiscal year.

The CHAIRMAN pro tempore. Pursuant to House Resolution 827, the gentleman from Texas (Mr. BONILLA) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Texas (Mr. BONILLA).

Mr. BONILLA. Mr. Chairman, I yield myself such time as I may consume.

First, let me compliment the committees who put this bill together. They have done a great job facing very complicated circumstances. Specifically, they did a very good job about increasing the Border Patrol staff, that we need to deal with the increased flow of illegal immigration along the southwest border, along with other Federal agents that are necessary to do the job.

Unfortunately, there was an oversight in the bill in providing bed space for the people that we catch. Let me point out as well that the overwhelming number of them now are categorized as they are by the Border Patrol as OTMs, "other than Mexicans," people trying to enter our country that have figured out a different way to come in versus the ports of entry on either coast or using other means.

Mr. Chairman, in many cases the OTMs, are now arrested, processed, interrogated and released into communities because the Department of Homeland Security does not have enough bed space. So, believe it or not, in Texas alone, since January, there have been over 15,000 OTMs released in communities throughout the State in the neighborhood. They might have been introduced into any neighborhood in Texas, no matter where one lives.

Mr. Chairman, this is an outrage. Homeland Security claims the problem is bed space, so in this amendment we deal with that problem, calling for 2,500 additional bed spaces in 2006 and another 2,500 in 2007.

This is an amendment that is supported by the gentleman from California (Mr. COX), Chairman of Homeland Security. It is also supported by the gentleman from Texas (Mr. ORTIZ), my good friend, who represents an area near the Mexican border and the Gulf Coast in Texas and who has been working very hard on this issue.

Mr. Chairman, this is a nonpartisan issue. We have strong support by other members of the committees working on this. The gentleman from Texas (Mr. SMITH), my good colleague and friend from San Antonio and central Texas area, has been working hard on this issue as well. This is also something that is supported by, again no matter what ethnic group or political party one belongs to, especially on the southwest border. There is strong support by the mayors, the county judges, the county commissioners that are working very hard to deal with this illegal immigration problem every day.

Finally, Mr. Chairman, I would like to just single out the wonderful Border Patrol agents that are patrolling day and night, sometimes working with fewer resources than they should have, and doing a great job of patrolling the border. Help is on the way for them in terms of manpower and hopefully this amendment, when adopted, will provide the bed space as well to house the illegal aliens that are coming across our border and taking advantage of what we now have along the Mexican border.

Mr. Chairman, I reserve the balance of my time.

Mr. TURNER of Texas. Mr. Chairman, I ask unanimous consent to claim the time in opposition to the amendment, although I support the amendment.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The gentleman from Texas (Mr. TURNER) is recognized for 5 minutes.

Mr. TURNER of Texas. Mr. Chairman, there is no example any better of the failure of the administration to make America safe than is illustrated by the amendment offered by my colleague from Texas today. What the amendment says is that we need 2,500 more bed spaces so that we can end this deplorable, unacceptable practice of catching illegal immigrants who come across our borders every day from countries other than Mexico and seeing them immediately released into our country, knowing that 80 to 90 percent of them will never show up again for a deportation hearing.

Mr. Chairman, it is a practice that must end, but our administration has allowed this to go on for year after year after year. And it is very unfortunate, even though I appreciate greatly the intent expressed by the gentleman from Texas (Mr. BONILLA), my colleague, it is very unfortunate that all the amendment does is direct the Department of Homeland Security to somewhere in their budget find the money for an additional 2,500 beds so we can end this practice that represents a serious threat to the security of our country.

The truth of the matter is the gentleman from Texas is on the Committee on Appropriations, and when we look at what the Committee on Appropriations did to try to help solve this problem, all they did was what the President asked for. He asked for 117 additional bed spaces, when the President knows that even today we have only appropriated money to hold 1,944 detainees who cross the border illegally every day and we are holding 22,500. We are stretched to the limit now.

As the gentleman from Texas (Mr. BONILLA) points out, we need at least 2,500 more and probably 5,000 more beds, which is provided for in his amendment but not funded.

Nowhere is the gap between the rhetoric of the administration on protecting America and the reality of the failure to protect America any clearer than it is right here.

The Democrats on the House Committee on Homeland Security did a 6-month investigation of the problems of our border. We produced a report entitled Transforming the Southern Border. It pointed out a lot of interesting facts, one of which is the one we are discussing. As our staff traveled along the Rio Grande south of El Paso, we took this picture. What it shows is a cargo van backed up to a school bus just across the border inside the United States, along with an 18-wheeler, another cargo van, and another school bus.

As the staff flew over, nobody was to be seen who would be a part of our Border Patrol. So they called into the Border Patrol to tell them about this suspicious-looking activity. When they flew back over, the bus and the van and all the vehicles were gone. We do not know if they were exchanging illegal immigrants, illegal goods, narcotics, or nuclear weapons.

As the 9/11 Commission said, our borders are porous and we must remedy this problem. But to do so it is going to take more than rhetoric.

Mr. Chairman, when we look at what we are spending on homeland security today, we are spending $20 billion more than we did in the year of 9/11. That is a lot of money, but maybe not in an $850 billion discretionary budget. But last year alone, while we had increased homeland security spending, $20 billion, the richest 1 percent of Americans, those making over a million dollars, got four times the tax relief, almost $90 billion.

The reality is that we have made the wrong choice. We have failed to make America safe. And when illegal immigrants can come across our borders in the numbers that they are coming, last year alone 25,000 illegal immigrants were actually caught coming across our border from places other than Mexico. Every year there is close to a million that get across that are caught. No telling how many are not caught. But of those 25,000, because we did not have the detention space, the jail space to hold them, 80 to 90 percent of them never showed up because the 25,000 were given a free pass into America, released on personal bond.

Mr. Chairman, it does not surprise anybody that 80 to 90 percent of those 25,000 never show up. They are in our country today. This failure to protect America is inexcusable. I think we have got to stop it.

Mr. Chairman, I think I will vote for the amendment offered by my colleague, but I want to point out that we failed to fund the very issue he raises.

Mr. Chairman, I reserve the balance of my time.

Mr. BONILLA. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I would yield to the gentleman from Texas (Mr. TURNER) for a quick question.

Mr. Chairman, did the gentleman acknowledge in the end that he would vote for the amendment? I wanted to understand that clearly.

Mr. TURNER of Texas. Mr. Chairman, if the gentleman would yield, yes, I will vote for the amendment because I believe it is based on a sincere intent to solve a serious problem. But I was simply pointing out that it provides no funding. The gentleman's Committee on Appropriations only provided funding for 117 beds in next year's budget and there is no money to do what is provided for in this amendment. To simply direct the department to take it out of their hide is simply unrealistic.

Mr. BONILLA. Mr. Chairman, reclaiming my time, I thank the gentleman from Texas for his answer.

I wanted to reiterate that in spite of the rhetoric that was just heard from the gentleman from Texas (Mr. TURNER), my colleague, he is supporting the amendment. I am delighted to hear that.

The gentleman makes a lot of good points about problems that the Department of Homeland Security has faced over the last couple of years. I agree with the gentleman. That is why I am here trying to do something about it.

But, again, in spite of the rant that we just heard about how bad the problem is, and I can assure the gentleman that I have probably delivered the same remarks in my district, and here in Washington as well, about the problems that the Department of Homeland Security is facing, but ultimately we are all here to try to do something about it.

So I would hope that the gentleman would not only vote for the amendment, as he has indicated he will, but also tell his friends that we need this help for our good agents that are patrolling the border and for all of us who are trying to do something about it.

Mr. COX. Mr. Chairman, I am proud to rise in support of this amendment. Congressman BONILLA's amendment seeks to increase alien detention bed space by 2,500 beds per year for fiscal years 2006 and 2007. It is a very simple provision, but it will have a material impact on improving the security of our homeland and discouraging illegal immigration.

In order to have a successful border security strategy, it must be balanced. That is why this amendment is so important. There are other provisions in H.R. 10 that will increase staffing levels for the Border Patrol and ICE investigators. These, too, are important initiatives and will result in many more illegal aliens and immigration violators being apprehended. But in order to make the best use of these new assets, we must have adequate facilities to detain those additional immigration violators who are caught, especially those considered high-risk or in mandatory detention categories.

The Department of Homeland Security's Detention and Removal Office, or DRO, is currently authorized to fund approximately 19,000 detention beds. However, they consistently hold over 22,000 illegal aliens each day in facilities around the Nation. In the first year, this amendment would increase available bed space to meet the minimum demand and then would go above that in FY 2007 to provide additional detention resources to meet the expected demand that these other new border control initiatives will create.

It is a well-known fact that the majority of aliens not detained and released, pending an immigration hearing, never return for their scheduled hearing but seek instead to melt into U.S. communities. There are approximately 300,000 non-citizens in the United States who have received deportation orders, but who have not left the country. There is no doubt that more of these individuals would have left the country if they had been detained in the beginning.

Approximately 50 percent of DRO detainees are Mexicans, but there is a growing number of individuals from different countries, called "other than Mexicans" or OTMs. Less is known about their motivation for coming to the U.S., and I have serious concerns about individuals illegally entering America who originally are from countries of interest with respect to terrorism. We must have the resources to detain these individuals to guarantee that we have an opportunity to verify their identity and motives, and that they are deported if necessary.

In order to monitor more of the individuals that are released, DRO utilizes alternative methods of detention. This includes release on recognizance, release on bond, electronic monitoring devices (EMD), and the Intensive Supervision Appearance Program (ISAP). While these alternative methods are appropriate and responsible initiatives, it is essential that we have sufficient detention bed space for high-risk individuals, those with criminal records, and repeat immigration violators.

As Chairman of the Select Committee on Homeland Security, I would like to thank Mr. BONILLA for offering this critical amendment and request the support of my colleagues in ensuring passage. Thank you, Mr. Speaker, and I yield back the remainder of my time.

Mr. SMITH of Texas. Mr. Chairman, thousands of illegal aliens pour over our southern border each day. A significant number of these aliens are not Mexican, and cannot simply be sent back over the border.

Border Patrol agents must process aliens from countries other than Mexico and are forced to release them into our communities pending a hearing. This is because there is not enough bed space in our detention facilities.

When illegal aliens are released pending a hearing, it is estimated that 85 percent will never be heard from again.

This process has become known as the "catch and release" program, and it threatens our national security.

The Department of Homeland Security recently reported that from October through June over 44,000 non-Mexican aliens were apprehended on the southern border from countries such as Afghanistan, Algeria, Egypt, Iran, Pakistan, Saudi Arabia, and Syria.

The hard work of our Border Patrol agents is wasted when we do not have enough detention space.

The Bonilla amendment would help correct this problem by authorizing an increase of 2,500 detention bed spaces for each of the next two years.

The lack of detention space has reached a crisis.

Every day we are releasing aliens from dozens of countries into our communities. We don't know if these individuals are criminals or terrorists.

The Bonilla amendment curtails the catch and release program on our southern border. It lets the U.S. detain illegal immigrants who enter our country rather than release them in our communities.

Mr. ORTIZ. Mr. Chairman, I rise in support of the amendment by my friend from Texas, and the co-chair of the House Border Caucus, Mr. BONILLA.

Let me begin by thanking the gentleman for his hard work to find a way to stop the current "catch and release" policy propounded by this government . . . by releasing many of the illegal immigrants we are catching into the U.S. population. This is frightening for all of us.

Now, the basis for this "catch and release" policy is a lack of beds for the Department of Homeland Security to hold these illegal immigrants from countries other than Mexico (OTMs). The gentleman's amendment today specifically addresses this shortcoming and I join him in advocating it to the House.

We are apprehending an alarming number of OTMs with not enough space to detain them—forcing us to release them into our community—we need additional beds. The gentleman's amendment is certainly a good beginning and I am grateful for his efforts to end this policy.

Mr. BONILLA. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Texas (Mr. BONILLA).

The amendment was agreed to.

AMENDMENT NO. 7 OFFERED BY MRS. CAPITO

Mrs. CAPITO. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 7 offered by Mrs. CAPITO:

At the end of title II add the following:

Subtitle J—Railroad Carriers and Mass Transportation Protection Act of 20004

SEC. 2111. SHORT TITLE.

This subtitle may be cited as the "Railroad Carriers and Mass Transportation Protection Act of 2004".

SEC. 2112. ATTACKS AGAINST RAILROAD CARRIERS AND MASS TRANSPORTATION SYSTEMS.

(a) IN GENERAL.—Chapter 97 of title 18, United States Code, is amended by striking sections 1992 through 1993 and inserting the following:

"§ 1992. Terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air

"(a) GENERAL PROHIBITIONS.—Whoever, in a circumstance described in subsection (c), knowingly—

"(1) wrecks, derails, sets fire to, or disables railroad on-track equipment or a mass transportation vehicle;

"(2) with intent to endanger the safety of any person, or with a reckless disregard for the safety of human life, and without the authorization of the railroad carrier or mass transportation provider—

"(A) places any biological agent or toxin, destructive substance, or destructive device in, upon, or near railroad on-track equipment or a mass transportation vehicle; or

"(B) releases a hazardous material or a biological agent or toxin on or near any property described in subparagraph (A) or (B) of paragraph (3);

"(3) sets fire to, undermines, makes unworkable, unusable, or hazardous to work on or use, or places any biological agent or toxin, destructive substance, or destructive device in, upon, or near any—

"(A) tunnel, bridge, viaduct, trestle, track, electromagnetic guideway, signal, station, depot, warehouse, terminal, or any other way, structure, property, or appurtenance used in the operation of, or in support of the operation of, a railroad carrier, without the authorization of the railroad carrier, and with intent to, or knowing or having reason to know such activity would likely, derail, disable, or wreck railroad on-track equipment;

“(B) garage, terminal, structure, track, electromagnetic guideway, supply, or facility used in the operation of, or in support of the operation of, a mass transportation vehicle, without the authorization of the mass transportation provider, and with intent to, or knowing or having reason to know such activity would likely, derail, disable, or wreck a mass transportation vehicle used, operated, or employed by a mass transportation provider; or

“(4) removes an appurtenance from, damages, or otherwise impairs the operation of a railroad signal system or mass transportation signal or dispatching system, including a train control system, centralized dispatching system, or highway-railroad grade crossing warning signal, without authorization from the railroad carrier or mass transportation provider;

“(5) with intent to endanger the safety of any person, or with a reckless disregard for the safety of human life, interferes with, disables, or incapacitates any dispatcher, driver, captain, locomotive engineer, railroad conductor, or other person while the person is employed in dispatching, operating, or maintaining railroad on-track equipment or a mass transportation vehicle;

“(6) commits an act, including the use of a dangerous weapon, with the intent to cause death or serious bodily injury to any person who is on property described in subparagraph (A) or (B) of paragraph (3), except that this subparagraph shall not apply to rail police officers in acting the course of their law enforcement duties under section 28101 of title 49, United States Code;

“(7) conveys false information, knowing the information to be false, concerning an attempt or alleged attempt that was made, is being made, or is to be made, to engage in a violation of this subsection; or

“(8) attempts, threatens, or conspires to engage in any violation of any of paragraphs (1) through (7);

shall be fined under this title or imprisoned not more than 20 years, or both.

“(b) AGGRAVATED OFFENSE.—Whoever commits an offense under subsection (a) of this section in a circumstance in which—

“(1) the railroad on-track equipment or mass transportation vehicle was carrying a passenger or employee at the time of the offense;

“(2) the railroad on-track equipment or mass transportation vehicle was carrying high-level radioactive waste or spent nuclear fuel at the time of the offense;

“(3) the railroad on-track equipment or mass transportation vehicle was carrying a hazardous material at the time of the offense that—

“(A) was required to be placarded under subpart F of part 172 of title 49, Code of Federal Regulations; and

“(B) is identified as class number 3, 4, 5, 6.1, or 8 and packing group I or packing group II, or class number 1, 2, or 7 under the hazardous materials table of section 172.101 of title 49, Code of Federal Regulations; or

“(4) the offense results in the death of any person;

shall be fined under this title or imprisoned for any term of years or life, or both. In the case of a violation described in paragraph (2) of this subsection, the term of imprisonment shall be not less than 30 years; and, in the case of a violation described in paragraph (4) of this subsection, the offender shall be fined under this title and imprisoned for life and be subject to the death penalty.

“(c) CIRCUMSTANCES REQUIRED FOR OFFENSE.—A circumstance referred to in subsection (a) is any of the following:

“(1) Any of the conduct required for the offense is, or, in the case of an attempt, threat, or conspiracy to engage in conduct, the conduct required for the completed offense would be, engaged in, on, against, or affecting a mass transportation provider or railroad carrier engaged in or affecting interstate or foreign commerce.

“(2) Any person travels or communicates across a State line in order to commit the offense, or transports materials across a State line in aid of the commission of the offense.

“(d) DEFINITIONS.—In this section—

“(1) the term ‘biological agent’ has the meaning given to that term in section 178(1);

“(2) the term ‘dangerous weapon’ means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, including a pocket knife with a blade of less than 2½ inches in length and a box cutter;

“(3) the term ‘destructive device’ has the meaning given to that term in section 921(a)(4);

“(4) the term ‘destructive substance’ means an explosive substance, flammable material, infernal machine, or other chemical, mechanical, or radioactive device or material, or matter of a combustible, contaminative, corrosive, or explosive nature, except that the term ‘radioactive device’ does not include any radioactive device or material used solely for medical, industrial, research, or other peaceful purposes;

“(5) the term ‘hazardous material’ has the meaning given to that term in chapter 51 of title 49;

“(6) the term ‘high-level radioactive waste’ has the meaning given to that term in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12));

“(7) the term ‘mass transportation’ has the meaning given to that term in section 5302(a)(7) of title 49, except that the term includes school bus, charter, and sightseeing transportation;

“(8) the term ‘on-track equipment’ means a carriage or other contrivance that runs on rails or electromagnetic guideways;

“(9) the term ‘railroad on-track equipment’ means a train, locomotive, tender, motor unit, freight or passenger car, or other on-track equipment used, operated, or employed by a railroad carrier;

“(10) the term ‘railroad’ has the meaning given to that term in chapter 201 of title 49;

“(11) the term ‘railroad carrier’ has the meaning given to that term in chapter 201 of title 49;

“(12) the term ‘serious bodily injury’ has the meaning given to that term in section 1365;

“(13) the term ‘spent nuclear fuel’ has the meaning given to that term in section 2(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23));

“(14) the term ‘State’ has the meaning given to that term in section 2266;

“(15) the term ‘toxin’ has the meaning given to that term in section 178(2); and

“(16) the term ‘vehicle’ means any carriage or other contrivance used, or capable of being used, as a means of transportation on land, on water, or through the air.”.

(b) CONFORMING AMENDMENTS.—

(1) The table of sections at the beginning of chapter 97 of title 18, United States Code, is amended—

(A) by striking “**RAILROADS**” in the chapter heading and inserting “**RAILROAD CARRIERS AND MASS TRANSPORTATION SYSTEMS ON LAND, ON WATER, OR THROUGH THE AIR**”;

(B) by striking the items relating to sections 1992 and 1993; and

(C) by inserting after the item relating to section 1991 the following:

“1992. Terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air.”.

(2) The table of chapters at the beginning of part I of title 18, United States Code, is amended by striking the item relating to chapter 97 and inserting the following:

“97. Railroad carriers and mass transportation systems on land, on water, or through the air .... 1991”.

(3) Title 18, United States Code, is amended—

(A) in section 2332b(g)(5)(B)(i), by striking “1992 (relating to wrecking trains), 1993 (relating to terrorist attacks and other acts of violence against mass transportation systems),” and inserting “1992 (relating to terrorist attacks and other acts of violence against railroad carriers and against mass transportation systems on land, on water, or through the air),”;

(B) in section 2339A, by striking “1993,”; and

(C) in section 2516(1)(c) by striking “1992 (relating to wrecking trains),” and inserting “1992 (relating to terrorist attacks and other acts of violence against railroad carriers and against mass transportation systems on land, on water, or through the air),”.

The CHAIRMAN pro tempore. Pursuant to House Resolution 827, the gentlewoman from West Virginia (Mrs. CAPITO) and the gentleman from Virginia (Mr. SCOTT) each will control 5 minutes.

The Chair recognizes the gentlewoman from West Virginia (Mrs. CAPITO).

Mrs. CAPITO. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to begin by thanking the gentleman from Wisconsin (Chairman SENSENBRENNER) the Committee on Rules, the Departments of Justice and Transportation, the Subcommittee on Railroads of the Committee on Transportation and Infrastructure, and the many others who are supporting me in this initiative.

Mr. Chairman, in the wake of the September 11th attacks, as well as the recent bombing of four commuter trains in Madrid, Spain, the need for stronger criminal laws to deal with terrorists and other violence has never been stronger. Intelligence reports last spring indicate that some terrorists might try to bomb U.S. rail lines or buses in major U.S. cities. We have also heard reports of so-called “dirty bombs” that can be easily transported over our extensive mass transportation system.

Mr. Chairman, I do not have to remind anyone in this body of the potential loss of life and disruption to our economy and way of life from this modern new threat.

In order to help meet this threat head on, I have introduced an amendment that revises, enhances, and consolidates two Federal criminal law statutes into one comprehensive statute in order to deter and more effectively punish terrorist acts against railroad carriers and other mass transportation providers.

Specifically, under current Federal criminal law, terrorist acts against railroad carriers are prosecuted under the so-called "Wrecking Trains" statute which was enacted in 1940. This statute is in many ways outdated, full of gaps and inconsistencies, and quite literally inadequately addresses modern threats like radioactive materials or biological agents.

Additionally, the September 11 attacks on our homeland gave rise to the creation of another Federal criminal statute which covers terrorist acts against mass transportation systems. By combining these two statutes to cover all forms of transportation and railway carriers, we can introduce more consistency, predictability, and effectiveness into Federal prosecutorial powers.

First, it would reduce our criminal law's vulnerability to bogus legal claims and also prevent prosecutors from having to prosecute for lesser offenses because of discrepancies or gaps in the current law. Richard Reid, known as the Shoe Bomber, was actually able to have a charge against him dismissed because the new mass transportation statute did not explicitly define an airplane as a vehicle for purposes of prosecuting under the statute. My amendment will prevent oversights like this from happening.

Secondly, my amendment will bring more consistent and uniform protections to all modes of railroad carriers and mass transportation providers.

Third, my amendment will expand the jurisdictional reach of criminal law to cover more offenses, such as the release of biological agents or radioactive material, and cover more property if the prohibited conduct affects interstate commerce or travel, or communicating, or transporting prohibited materials across State lines.

Fourth, my amendment will make capital punishment an option under aggravating circumstances that involve terrorist acts that result in the death of a person. If our jurisdictional system is unable to have this tool at their disposal in order to meet the new threats that terrorism has brought upon us, then we will lose a critical opportunity to deter and prevent more terrorism from happening.

And fifth, my amendment protects all law enforcement, railroad carriers, and mass transportation providers from criminal liability if they are performing their duties in the course of lawful and authorized activities. In other words, my amendment protects conduct that should be protected, but does not protect conduct that should not be protected such as terrorist or imposters posing as rail or mass transportation employees.

Mr. Chairman, overall, Congress has taken dramatic steps in the last 3 years to improve our security here and abroad, but there is more work to be accomplished. I strongly urge passage of this amendment to H.R. 10.

Mr. Chairman, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, this is a 10-page amendment with mandatory minimum sentences, mandatory sentences of life imprisonment, and a death penalty provision. It has not been considered by any subcommittee or the full Committee on the Judiciary, and I am not sure it has even been considered by the Committee on Transportation and Infrastructure. We have information that the Committee on Transportation and Infrastructure has not considered it and, in fact, may not support it.

It appears to make, but it is not clear whether conspiracies, attempts and threats are subject to the same penalties as the underlying offense. Not only have these provisions not been considered by the appropriate committees of jurisdiction, but because of the mandatory minimum sentences, neither sentencing experts nor judges on the U.S. Sentencing Commission who have the responsibility to assure a rational and proportional sentencing system, nor any Federal judge who would review all the facts and circumstances of the case, will get to assess whether or not these sentences make any sense.

Mr. Chairman, I remind my colleagues that the Judicial Conference has written a letter saying that these mandatory minimums violate common sense, and yet here we are asked to decide in a 5-minute debate whether or not they are appropriate in this case.

Mr. Chairman, the author of the amendment indicates that we are trying to conform one code section to another. I would ask that we do that when we consider the code sections. We are going to consider the PATRIOT Act. That is one of the code sections involved. And the time to consider the PATRIOT Act and amending the PATRIOT Act is when we have the PATRIOT Act before us; not when we are doing a reorganization bill without any serious committee of jurisdiction considering the underlying amendment.

I say again, Mr. Chairman, when we have death penalty, that makes life complicated from an international point of view. We may have terrorists who are caught in another country. We cannot get them extradited because of all of these death penalties and we need to consider that.

We have heard that the Shoe Bomber was complicated as to which code section he was under. We have an easy case for attempted murder, plain and simple. It gives life imprisonment. Certainly the death penalty, if he had completed the act, would not have made any sense. The death penalty for a suicide bomber is obviously not going to be much of a deterrent.

Mr. Chairman, I would hope that we would consider all the implications and not adopt this amendment at this time.

Mr. Chairman, I reserve the balance of my time.

Mrs. CAPITO. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I appreciate the comments of the gentleman from Virginia (Mr. SCOTT). I would like to say that in working through this amendment, we did work with the Committee on the Judiciary and the Committee on Transportation and Infrastructure. We are also trying to reform an act here, the 1940 Wrecking Trains statute, that is sorely outdated and full of gaps. When it was conceived, there was no conception of a terrorist bombing on mass transportation. I think we know, obviously from the events in Spain, that that is a very real possibility in terms of acts of terrorism.

Mr. Chairman, the purpose of my amendment is to not only pull that 1940s Wrecking Train statute into the modern era, but also to combine it with other mass transportation sections so that not only the deterrent but the prosecutorial powers are available to our prosecutors to be able to use the most stringent and severe punishments that could possibly be available to try to use as a deterrent to terrorism.

Mr. Chairman, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, in 2001, we considered this provision when we put it in the PATRIOT Act. It was inconsistent with an older version. We need to consider whether we want to conform the law to the newer version or to the older version. That is why we have committees, so we can assess what the appropriate punishment is.

Mr. Chairman, 5-minute debates on the floor without committee consideration does not give us that opportunity. I would hope that we would delay consideration of this by defeating the amendment and consider the issue when we do the PATRIOT Act.

Mr. Chairman, I would ask the gentlewoman from West Virginia whether or not conspiracies, attempts, and threats are subject to the same penalties as the underlying offense.

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Mrs. CAPITO. Mr. Chairman, will the gentleman yield?

Mr. SCOTT of Virginia. I yield to the gentlewoman from West Virginia.

Mrs. CAPITO. I think there is a lot of prosecutorial discretion in the bill, and I think that would probably be left up to the prosecutor.

Mr. SCOTT of Virginia. Reclaiming my time, I would say again, you have mandatory minimums in the bill which would not give anybody any flexibility, and if a conspiracy attempt and threat are subject to the same mandatory minimums as actually completing the crime, that would be something that we would want to consider. It is just not clear.

If the gentlewoman wants time to respond, I will give her time.

Mrs. CAPITO. In terms of the death penalty, I think that is definitely at the discretion of the prosecutor, and there are two sets of offenses there. One is a 20-year and one is a 30-year minimum, and I think that is also at the discretion of the prosecutors. That is my understanding.

Mr. SCOTT of Virginia. Reclaiming my time, I would hope we would defeat the amendment.

The CHAIRMAN pro tempore (Mr. KOLBE). All time has expired.

The question is on the amendment offered by the gentlewoman from West Virginia (Mrs. CAPITO).

The amendment was agreed to.

Mr. HOEKSTRA. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mrs. CAPITO) having assumed the chair, Mr. KOLBE, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 10) to provide for reform of the intelligence community, terrorism prevention and prosecution, border security, and international cooperation and coordination, and for other purposes, had come to no resolution thereon.

MAKING IN ORDER AMENDMENTS EN BLOC DURING FURTHER CONSIDERATION OF H.R. 10, 9/11 RECOMMENDATIONS IMPLEMENTATION ACT

Mr. HOEKSTRA. Madam Speaker, I ask unanimous consent that during further consideration in the Committee of the Whole of H.R. 10 pursuant to House Resolution 827 that it be in order at any time for the chairman of the Permanent Select Committee on Intelligence or a designee to offer amendments en bloc consisting of any of the amendments numbered 9, 16, 18, 20, and 22 printed in the House Report 108–751; that amendments en bloc pursuant to this order may be considered as read, be debatable for 10 minutes equally divided and controlled by the chairman and ranking minority member of the Permanent Select Committee on Intelligence or their designees, not be subject to amendment and not be subject to a demand for a division of the question in the House or in the Committee of the Whole; and that the original proponent of an amendment included in such amendments en bloc may insert a statement in the CONGRESSIONAL RECORD immediately before the disposition of the amendments en bloc.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

9/11 RECOMMENDATIONS IMPLEMENTATION ACT

The SPEAKER pro tempore. Pursuant to House Resolution 827 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 10.

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IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 10) to provide for reform of the intelligence community, terrorism prevention and prosecution, border security, and international cooperation and coordination, and for other purposes, with Mr. KOLBE (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. When the Committee of the Whole rose earlier today, amendment No. 7 printed in House Report 108–751 by the gentlewoman from West Virginia (Mrs. CAPITO) had been disposed of.

Pursuant to the order of the House of today, it shall be in order at any time for the chairman of the Permanent Select Committee on Intelligence or a designee to offer amendments en bloc consisting of any of the amendment numbers 9, 16, 18, 20, and 22 printed in House report 108–751.

The amendments en bloc shall be considered read, shall be debatable for 10 minutes, equally divided and controlled by the chairman and the ranking minority member of the Permanent Select Committee on Intelligence or their designees, shall not be subject to amendment, and shall not be subject to a demand for a division of the question.

The original proponent of the amendment included in the amendments en bloc may insert a statement in the Congressional RECORD immediately before disposition of the amendments en bloc.

It is now in order to consider amendment No. 8 printed in House Report 108–751.

AMENDMENT NO. 8 OFFERED BY MR. CARTER

Mr. CARTER. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 8 offered by Mr. CARTER:

At the end of title II insert the following:

Subtitle J—Terrorist Penalties Enhancement Act of 2004

SEC. 2221. SHORT TITLE.

This subtitle may be cited as the "Terrorist Penalties Enhancement Act of 2004".

SEC. 2222. PENALTIES FOR TERRORIST OFFENSES RESULTING IN DEATH; DENIAL OF FEDERAL BENEFITS TO TERRORISTS.

(a) IN GENERAL.—Chapter 113B of title 18, United States Code, is amended by adding at the end the following:

"§ 2339E. Terrorist offenses resulting in death

"(a) Whoever, in the course of committing a terrorist offense, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life.

"(b) As used in this section, the term 'terrorist offense' means—

"(1) a Federal felony offense that is—

"(A) a Federal crime of terrorism as defined in section 2332b(g) except to the extent such crime is an offense under section 1363; or

"(B) an offense under this chapter, section 175, 175b, 229, or 831, or section 236 of the Atomic Energy Act of 1954; or

"(2) a Federal offense that is an attempt or conspiracy to commit an offense described in paragraph (1).

"§ 2339F. Denial of Federal benefits to terrorists

"(a) An individual or corporation who is convicted of a terrorist offense (as defined in section 2339E) shall, as provided by the court on motion of the Government, be ineligible for any or all Federal benefits for any term of years or for life.

"(b) As used in this section, the term 'Federal benefit' has the meaning given that term in section 421(d) of the Controlled Substances Act, and also includes any assistance or benefit described in section 115(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, with the same limitations and to the same extent as provided in section 115 of that Act with respect to denials of benefits and assistance to which that section applies.".

(b) CONFORMING AMENDMENT TO TABLE OF SECTIONS.—The table of sections at the beginning of the chapter 113B of title 18, United States Code, is amended by adding at the end the following new items:

"2339E. Terrorist offenses resulting in death.
"2339F. Denial of federal benefits to terrorists.".

(c) AGGRAVATING FACTOR IN DEATH PENALTY CASES.—Section 3592(c)(1) of title 18, United States Code, is amended by inserting "section 2339E (terrorist offenses resulting in death)," after "destruction),".

SEC. 2223. DEATH PENALTY IN CERTAIN AIR PIRACY CASES OCCURRING BEFORE ENACTMENT OF THE FEDERAL DEATH PENALTY ACT OF 1994.

Section 60003 of the Violent Crime Control and Law Enforcement Act of 1994, (Public Law 103–322), is amended, as of the time of its enactment, by adding at the end the following:

"(c) DEATH PENALTY PROCEDURES FOR CERTAIN PREVIOUS AIRCRAFT PIRACY VIOLATIONS.—An individual convicted of violating section 46502 of title 49, United States Code, or its predecessor, may be sentenced to death in accordance with the procedures established in chapter 228 of title 18, United

States Code, if for any offense committed before the enactment of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322), but after the enactment of the Antihijacking Act of 1974 (Public Law 93-366), it is determined by the finder of fact, before consideration of the factors set forth in sections 3591(a)(2) and 3592(a) and (c) of title 18, United States Code, that one or more of the factors set forth in former section 46503(c)(2) of title 49, United States Code, or its predecessor, has been proven by the Government to exist, beyond a reasonable doubt, and that none of the factors set forth in former section 46503(c)(1) of title 49, United States Code, or its predecessor, has been proven by the defendant to exist, by a preponderance of the information. The meaning of the term 'especially heinous, cruel, or depraved', as used in the factor set forth in former section 46503(c)(2)(B)(iv) of title 49, United States Code, or its predecessor, shall be narrowed by adding the limiting language 'in that it involved torture or serious physical abuse to the victim', and shall be construed as when that term is used in section 3592(c)(6) of title 18, United States Code."

Conform the table of sections accordingly.

The CHAIRMAN pro tempore. Pursuant to House Resolution 827, the gentleman from Texas (Mr. CARTER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Texas (Mr. CARTER).

Mr. CARTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, today I offer an amendment, the Terrorist Penalties Enhancements Act, which will provide new and expanded penalties to those who commit fatal acts of terrorism.

Since September 11, Federal and State officials continue to work hard to prevent further terrorist attacks on U.S. soil. However, despite some changes to the law to increase penalties after deadly terrorist attacks, a jury is still denied the ability to consider a death sentence or life imprisonment for a terrorist in many cases, even when the attacks result in death and the court believes it is necessary to prevent further harm to our citizens.

For example, in the case in which a terrorist causes massive loss of life by sabotaging a nuclear power plant or a national defense installation, there would be no possibility of imposing the death penalty under the statutes defining these offenses because they contain no death penalty authorizations. In contrast, dozens of other Federal violent crime provisions authorize up to life imprisonment or the death penalty in cases where victims are killed. Because the potential tragedy here is so great, we must hope that changing this law to allow a sentence of death or life imprisonment will serve as a deterrent to would-be terrorists. It is one more tool in our arsenal.

Mr. Chairman, hearings have been held on this straightforward legislation, and it has been agreed to by the House Committee on the Judiciary. It will make terrorists who kill eligible for the Federal death penalty. This legislation will also deny these same terrorists any Federal benefits they otherwise may have been eligible to receive. These Federal benefits denied include Social Security, welfare, unemployment and food stamps.

As a former State District Judge for over 20 years, I have presided over five capital murders trials, three of which resulted in the death penalty. I understand the gravity of seeking and imposing the death penalty. However, from my experience, I believe the death penalty is a tool that can deter acts of terrorism and can serve as a tool for prosecutors when negotiating sentences.

I am pleased that President George Bush expressed his support for this legislation. In a speech to the FBI Academy, President Bush said, "For the sake of American people, Congress should change the law and give law enforcement officials the same tools they have to fight terror that they have to fight other crime."

In Hershey, Pennsylvania, President Bush reemphasized the inequity in current law. President Bush said, "We ought to be sending a strong signal: If you sabotage a defense installation or a nuclear facility in a way that takes an innocent life, you ought to get the death penalty, the Federal death penalty."

This legislation today puts all would-be terrorists on notice that they will receive ultimate justice should they decide to plan and execute a future attack.

Mr. Chairman, I urge my colleagues to support this legislation.

Mr. Chairman, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Chairman, I claim the time in opposition.

Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, this bill creates 23 new death penalties, making all Federal crimes of terrorism punishable by death. We would remind people that a 23-year study of over 4,500 death penalty cases found reversible error in 68 percent of the cases. We suspect that approximately 100 people in the last 10 years have been wrongfully executed. This burden falls disproportionately on minorities.

So when you talk about a strong signal, the signal, I guess, is you put people to death because, well, they might have been guilty. We know in the end the death penalty will not deter suicide bombers from completing their crimes. Furthermore, we have the problem of international law, the fact that most countries in the world, particularly our allies, do not have the death penalty and will not extradite criminals to the United States if they will be subject to the death penalty.

One of the problems with the Federal crimes of terrorism is that it is somewhat vague. It could include some kind of a political protest. The death could occur by accident. It was not even intended. Somebody got trampled in the protest, for example, and here you are talking about the death penalty. But because it includes not only completing the crime and killing somebody, it includes support for someone. You might want to rename this the "Put Mama to Death Bill." If a mother harbors her son, lets him stay at home, she would then become and everybody in the family becomes subject to the death penalty.

Mr. Chairman, this has nothing to do with reorganization of the intelligence community. I would hope that we would reserve judgment on this and consider this bill and others when we consider the Patriot Act.

Mr. Chairman, I reserve the balance of my time.

Mr. CARTER. Mr. Chairman, I yield 1 minute to the gentleman from Wisconsin (Mr. GREEN).

Mr. GREEN of Wisconsin. Mr. Chairman, it is simple. We must do everything we can to stop terrorists, and that starts with ensuring that all terrorist acts are punished swiftly and severely. This amendment sends a clear message that we take terrorism seriously; that we understand that terrorist acts are not really crimes, they are combat; that on 9/11 we were not merely assaulted, we were invaded; and when there is combat, when terrorists invade our soil in deadly fashion, we will punish those responsible with the heaviest possible penalties. To do less would be a disservice to those who have lost their lives and would send a signal of softness to those who still seek our destruction.

I was proud to work with the gentleman from Texas (Mr. CARTER) on this subject. I commend him for carrying it forward. It is important work. It is good work that he is doing. I urge my colleagues to support this amendment.

Mr. SCOTT of Virginia. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would point out that we will be considering the Patriot Act. I would hope that we would consider this legislation as part of that.

Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. CARTER. Mr. Chairman, I urge my colleagues to support this amendment.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Texas (Mr. CARTER).

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

Mr. CARTER. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Texas (Mr. CARTER) will be postponed.

AMENDMENT EN BLOC OFFERED BY MR. HOEKSTRA

Mr. HOEKSTRA. Mr. Chairman, pursuant to the unanimous consent agreement, I offer the amendments en bloc.

The CHAIRMAN pro tempore. The Clerk will designate the amendments en bloc.

The text of the amendments en bloc is as follows:

Amendments en bloc offered by Mr. HOEKSTRA consisting of amendments numbered 9, 16, 18, 20 and 22:

AMENDMENT NO. 9 OFFERED BY MR. CASTLE

At the end of the bill, insert the following new section:

SEC. 5__. REMOVAL OF CIVIL LIABILITY BARRIERS THAT DISCOURAGE THE DONATION OF FIRE EQUIPMENT TO VOLUNTEER FIRE COMPANIES.

(a) SHORT TITLE.—This section may be cited as the "Good Samaritan Volunteer Firefighter Assistance Act of 2004".

(b) LIABILITY PROTECTION.—A person who donates fire control or fire rescue equipment to a volunteer fire company shall not be liable for civil damages under any State or Federal law for personal injuries, property damage or loss, or death proximately caused by the equipment after the donation.

(c) EXCEPTIONS.—Subsection (b) does not apply to a person if—

(1) the person's act or omission proximately causing the injury, damage, loss, or death constitutes gross negligence or intentional misconduct; or

(2) the person is the manufacturer of the fire control or fire rescue equipment.

(d) PREEMPTION.—This section preempts the laws of any State to the extent that such laws are inconsistent with this section, except that notwithstanding subsection (c) this section shall not preempt any State law that provides additional protection from liability for a person who donates fire control or fire rescue equipment to a volunteer fire company.

(e) DEFINITIONS.—In this section:

(1) PERSON.—The term "person" includes any governmental or other entity.

(2) FIRE CONTROL OR RESCUE EQUIPMENT.—The term "fire control or fire rescue equipment" includes any fire vehicle, fire fighting tool, communications equipment, protective gear, fire hose, or breathing apparatus.

(3) STATE.—The term "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, any other territory or possession of the United States, and any political subdivision of any such State, territory, or possession.

(4) VOLUNTEER FIRE COMPANY.—The term "volunteer fire company" means an association of individuals who provide fire protection and other emergency services, where at least 30 percent of the individuals receive little or no compensation compared with an entry level full-time paid individual in that association or in the nearest such association with an entry level full-time paid individual.

(f) EFFECTIVE DATE.—This section applies only to liability for injury, damage, loss, or death caused by equipment that, for purposes of subsection (b), is donated on or after the date that is 30 days after the date of the enactment of this Act.

(g) ATTORNEY GENERAL REVIEW.—

(1) IN GENERAL.—The Attorney General of the United States shall conduct a State-by-State review of the donation of firefighter equipment to volunteer firefighter companies during the 5-year period ending on the date of the enactment of this Act.

(2) REPORT.—Not later than 6 months after the date of the enactment of this Act, the Attorney General of the United States shall publish and submit to the Congress a report on the results of the review conducted under paragraph (1). The report shall include, for each State, the most effective way to fund firefighter companies, whether first responder funding is sufficient to respond to the Nation's needs, and the best method to ensure that the equipment donated to volunteer firefighter companies is in usable condition.

AMENDMENT NO. 16 OFFERED BY MR. BARTON OF TEXAS

After section 5010 insert the following new section:

SEC. 5011. DIGITAL TELEVISION CONVERSION DEADLINE.

(a) FINDINGS.—The Congress finds the following:

(1) Congress granted television broadcasters additional 6 MHz blocks of spectrum to transmit digital broadcasts simultaneously with the analog broadcasts they transmit on their original 6 megahertz blocks of spectrum.

(2) Section 309(j)(14) of the Communications Act of 1934 requires each television broadcaster to cease analog transmissions and return 6 megahertz of spectrum by December 31, 2006, or once just over 85 percent of the television households in that broadcaster's market can view digital broadcast television channels using a digital television, a digital-to-analog-converter box, cable service, or satellite service, whichever is later.

(3) Twenty-four megahertz of spectrum currently occupied by the television broadcasters has been earmarked for use by first responders once the television broadcasters return the spectrum broadcasters currently use to provide analog transmissions.

(4) This spectrum would be ideal to provide first responders with interoperable communications channels.

(5) Large parts of the vacated spectrum could be auctioned for advanced commercial services, such as wireless broadband.

(6) The "85-percent penetration test" could delay the termination of analog television broadcasts and the return of spectrum well beyond 2007, hindering the use of that spectrum for these important public-safety and advanced commercial uses.

(7) Proposals to require broadcasters to return, on a date certain, just the spectrum earmarked for future public-safety use would not adequately resolve the identified need for improved public-safety communications interoperability. Broadcasters estimate that the public-safety only approach would dislocate as many as 75 stations, including some in major markets, airing major network programming, sometimes even in digital form. Unless broadcasters are required to return concurrently all the spectrum currently used for analog transmissions, it will be exceedingly difficult to relocate these 75 stations, which also serve a critical public safety function by broadcasting weather, traffic, disaster, and other safety alerts.

(8) Proposals to require broadcasters to return, on a date certain, just the spectrum earmarked for future public-safety use also would neither address the digital television transition in a comprehensive fashion nor free valuable spectrum for advanced commercial services.

(b) SENSE OF CONGRESS.—Now, therefore, it is the sense of Congress that section 309(j)(14) of the Communications Act of 1934 should be amended to eliminate the 85-percent penetration test and to require broadcasters to cease analog transmissions at the close of December 31, 2006, so that the spectrum can be returned and repurposed for important public-safety and advanced commercial uses.

AMENDMENT NO. 18 OFFERED BY MR. FOSSELLA

Page 606, after line 17, insert the following (and redesignate the subsequent subsections accordingly):

(d) MULTI-YEAR INTEROPERABILITY GRANTS.—

(1) MULTI-YEAR COMMITMENTS.—In awarding grants to any State, region, local government, or Indian tribe for the purposes of enhancing interoperable communications capabilities for emergency response providers, the Secretary may commit to obligate Federal assistance beyond the current fiscal year, subject to the limitations and restrictions in this subsection.

(2) RESTRICTIONS.—

(A) TIME LIMIT.—No multi-year interoperability commitment may exceed 3 years in duration.

(B) AMOUNT OF COMMITTED FUNDS.—The total amount of assistance the Secretary has committed to obligate for any future fiscal year under paragraph (1) may not exceed $150,000,000.

(3) LETTERS OF INTENT.—

(A) ISSUANCE.—Pursuant to paragraph (1), the Secretary may issue a letter of intent to an applicant committing to obligate from future budget authority an amount, not more than the Federal Government's share of the project's cost, for an interoperability communications project (including interest costs and costs of formulating the project).

(B) SCHEDULE.—A letter of intent under this paragraph shall establish a schedule under which the Secretary will reimburse the applicant for the Federal Government's share of the project's costs, as amounts become available, if the applicant, after the Secretary issues the letter, carries out the project before receiving amounts under a grant issued by the Secretary.

(C) NOTICE TO SECRETARY.—An applicant that is issued a letter of intent under this subsection shall notify the Secretary of the applicant's intent to carry out a project pursuant to the letter before the project begins.

(D) NOTICE TO CONGRESS.—The Secretary shall transmit a written notification to the Congress no later than 3 days before the issuance of a letter of intent under this section.

(E) LIMITATIONS.—A letter of intent issued under this section is not an obligation of the Government under section 1501 of title 31, United States Code, and is not deemed to be an administrative commitment for financing. An obligation or administrative commitment may be made only as amounts are provided in authorization and appropriations laws.

(F) STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed—

(i) to prohibit the obligation of amounts pursuant to a letter of intent under this subsection in the same fiscal year as the letter of intent is issued; or

(ii) to apply to, or replace, Federal assistance intended for interoperable communications that is not provided pursuant to a commitment under this subsection.

(e) INTEROPERABLE COMMUNICATIONS PLANS.—Any applicant requesting funding assistance from the Secretary for interoperable communications for emergency response providers shall submit an Interoperable Communications Plan to the Secretary for approval. Such a plan shall—

(1) describe the current state of communications interoperability in the applicable jurisdictions among Federal, State, and local emergency response providers and other relevant private resources;

(2) describe the available and planned use of public safety frequency spectrum and resources for interoperable communications within such jurisdictions;

(3) describe how the planned use of spectrum and resources for interoperable communications is compatible with surrounding capabilities and interoperable communications plans of Federal, State, and local governmental entities, military installations, foreign governments, critical infrastructure, and other relevant entities;

(4) include a 5-year plan for the dedication of Federal, State, and local government and private resources to achieve a consistent, secure, and effective interoperable communications system, including planning, system design and engineering, testing and technology development, procurement and installation, training, and operations and maintenance; and

(5) describe how such 5-year plan meets or exceeds any applicable standards and grant requirements established by the Secretary.

AMENDMENT NO. 20 OFFERED BY MR. MICA

Page 198, after line 22, insert the following (and redesignate subsequent subparagraphs of the quoted matter accordingly):

"(D) PRESCREENING INTERNATIONAL PASSENGERS.—Not later than 60 days after date of enactment of this subparagraph, the Secretary of Homeland Security, or the designee of the Secretary, shall issue a notice of proposed rulemaking that will allow the Department of Homeland Security to compare passenger name records for any international flight to or from the United States against the consolidated and integrated terrorist watchlist maintained by the Federal Government before departure of the flight.

Page 199, strike lines 17 through 22 and insert the following:

"(F) APPEAL PROCEDURES.—

"(i) IN GENERAL.—The Assistant Secretary shall establish a timely and fair process for individuals identified as a threat under one or more of subparagraphs (C), (D), and (E) to appeal to the Transportation Security Administration the determination and correct any erroneous information.

"(ii) RECORDS.—The process shall include the establishment of a method by which the Assistant Secretary will be able to maintain a record of air passengers who have been misidentified and have corrected erroneous information. To prevent repeated delays of misidentified passengers, the Transportation Security Administration record shall contain information determined by the Assistant Secretary to authenticate the identity of such a passenger.

Page 203, lines 5 and 6, strike "explosive detection systems" and insert "explosive detection devices".

Page 203, line 9, insert "backscatter x-ray scanners," after "shoe scanners,".

Page 213, after line 9, insert the following (and conform the table of contents of the bill accordingly):

SEC. 2188. IN-LINE CHECKED BAGGAGE SCREENING.

The Secretary of Homeland Security shall take such action as may be necessary to expedite the installation and use of advanced in-line baggage-screening equipment at commercial airports.

Page 213, line 10, redesignate section 2188 of the bill as section 2189 and conform the table of contents of the bill accordingly.

AMENDMENT NO. 22 OFFERED BY MR. SHADEGG

In title V, at the end of chapter 3 of subtitle H (page 609, after line 21) add the following:

SEC. ____. PILOT STUDY TO MOVE WARNING SYSTEMS INTO THE MODERN DIGITAL AGE.

(a) PILOT STUDY.—The Secretary of Homeland Security, from funds available for improving the national system to notify the general public in the event of a terrorist attack, and in consultation with the Attorney General and the heads of other appropriate Federal agencies, the National Association of State Chief Information Officers, and other stakeholders with respect to public warning systems, shall conduct a pilot study under which the Secretary may issue public warnings regarding threats to homeland security using a warning system that is similar to the AMBER Alert communications network.

(b) REPORT.—Not later than 9 months after the date of the enactment of this Act, the Secretary shall submit to the Congress a report regarding the findings, conclusions, and recommendations of the pilot study.

The CHAIRMAN pro tempore. Pursuant to the order of the House earlier today, the gentleman from Michigan (Mr. HOEKSTRA) and the gentlewoman from California (Ms. HARMAN) or her designee each will control 5 minutes.

The Chair recognizes the gentleman from Michigan (Mr. HOEKSTRA).

Mr. HOEKSTRA. Mr. Chairman, I yield myself 1 minute.

This en bloc amendment has been agreed to in a bipartisan fashion which supports the amendments that have been offered by the gentleman from Delaware (Mr. CASTLE), the gentleman from Texas (Mr. BARTON), the gentleman from New York (Mr. FOSSELLA), the gentleman from Florida (Mr. MICA) and the gentleman from Arizona (Mr. SHADEGG).

I encourage my colleagues to support this en bloc amendment and move the process forward.

Mr. Chairman, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Chairman, I ask unanimous consent to claim the time in opposition to the amendments.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

The CHAIRMAN pro tempore. The gentleman is recognized for 5 minutes.

Mr. SCOTT of Virginia. Mr. Chairman, I yield myself such time as I may consume.

There is one bill, the firefighters bill, that is in here, we considered that, and we had a debate on it. I just want to incorporate by reference the problems with that legislation. It is not necessary because firefighters can receive gifts, and if they want to immunize the donor, they can do that under present law.

Furthermore, the answer to giving firefighters more equipment is in funding first responders equipment, rather than tort reform. So I would hope that we would consider that as we consider the en bloc amendments.

Mr. Chairman, I reserve the balance of my time.

Mr. HOEKSTRA. Mr. Chairman, I yield 2 minutes to the gentleman from Delaware (Mr. CASTLE), a former member of the Permanent Select Committee on Intelligence.

Mr. CASTLE. Mr. Chairman, I thank the chairman of the House Permanent Select Committee on Intelligence for yielding me time.

This is sort of like a deja vu discussion, that the gentleman from Virginia (Mr. SCOTT) and I have had this discussion before. I feel this legislation is necessary. There are some States that have waived the liability provisions to allow corporations to make donations of equipment to fire companies without liability, which is very, very important. A lot of these companies have very good and new equipment, hardly used because their fire needs are not as great as regular fire companies. They are willing to make this donation, but they are reluctant to do so because of the liability issues.

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A few States have waived those provisions but others have not. We simply would allow this throughout this country. I cannot imagine anything that is more dutiful or more beneficial to fighting fires in this country than this.

So he opposed this before, and I said at the time, I hope he is the only one who is opposing this, and, he almost was. There were three people who opposed it. It carried by 397 to 3. Obviously, it has to do with what we are dealing with in this country in terms of terrorism, in terms of the problems of dealing with security in the United States of America, intelligence and all those other areas. Quite frankly, it is something that a lot of people want to get done, but we have got to find the vehicle for it, and this is a proper vehicle.

It was unopposed and that is the reason it was put in the en bloc amendment, agreed to by Members on both sides of the aisle. My sense is this is something that each and every one of us should be supporting so that both our rural and our urban fire departments can take advantage of this particular type of law and have emergency vehicles and other equipment donated to them without that concern of liability.

I would hope that his concerns about that, which he has expressed, would not lead to opposition to the en bloc amendment and, hopefully, ultimately, the passage of this, and we will all be protected.

Mr. SCOTT of Virginia. Mr. Chairman, will the gentleman yield?

Mr. CASTLE. I yield to the gentleman from Virginia.

Mr. SCOTT of Virginia. Mr. Chairman, as the gentleman from Delaware has indicated, we have had this debate before, and I would just point out that my concerns with parts of the amendment are outweighed by the support of the other provisions in the other bills in the bloc. So I will not be opposing the bloc.

Mr. CASTLE. Mr. Chairman, I thank the gentleman.

Mr. Chairman, I rise today in support of my amendment to H.R. 10 which is identical to legislation I introduced, H.R. 1787, the "Good Samaritan Volunteer Firefighter Assistance Act." On September 14 this legislation overwhelming passed the U.S. House of Representatives 397 to 3.

My amendment removes a barrier which currently prevents some organizations from donating surplus fire fighting equipment to fire departments in need. Under current law, the threat of civil liability has caused some organizations to destroy fire equipment, rather than donating it to volunteer, rural and other financially-strapped departments.

We know that every day, across the United States, firefighters respond to calls for help. We are grateful that these brave men and women work to save our lives and protect our homes and businesses. We may presume that our firefighters work in departments with the latest and best firefighting and protective equipment. When in reality there are an estimated 30,000 firefighters who risk their lives daily due to a lack of basic Personal Protective Equipment (PPE).

In both rural and urban fire departments, limited budgets make it difficult to purchase more than fuel and minimum maintenance. At the same time, certain industries are constantly improving and updating the fire protection equipment to take advantage of new, state-of-the-art innovation. Sometimes, the surplus equipment has never been used to put out a single fire. Sadly, the threat of civil liability causes many organizations to destroy, rather than donate, millions of dollars of quality fire equipment.

Not only do volunteer fire departments provide an indispensable service, some estimates indicate that the nearly 800,000 volunteer firefighters nationwide save state and local governments $36.8 billion a year. Of the 26,000 fire departments in the United States, more than 19,000 are all volunteers and another 3,800 are mostly volunteer.

Ten states: Alabama, Arizona, Arkansas, California, Florida, Indiana, Missouri, New York, South Carolina and Texas have passed similar legislation. In the seven years of the Texas program more than $12 million worth of firefighter equipment has been donated and given to needy departments—this includes nearly 70 emergency vehicles, more than 1,500 piece of communications equipment. In total more than 33,000 items have been donated.

Congress can respond to the needs of fire companies by removing civil liability barriers. Equipping our nation's first responders is essential as we fight the war on terror and I am hopeful the esteemed Chairman of the Judiciary Committee and my colleagues will again join me in supporting this measure.

Mr. BUYER. Mr. Chairman, I rise in strong support of this amendment sponsored by the Chairman of the House Energy and Commerce Committee. This Sense of Congress sets out the right approach for this nation to move toward the digital television transition and return much-needed spectrum for public-safety and advanced commercial purposes, such as wireless broadband. The Congress, the Federal Communications Commission, as well as the telecommunications industry have spent valuable time and money for the advancement of the transition. A hard date will bring certainty to all those involved in this transition.

The Senate, in its just passed National Intelligence Reform bill, included a 2008 hard deadline for broadcasters to vacate only portions of the 700 MHz spectrum reserved for public safety. I do not believe this is the correct approach, nor do I believe that it adequately solves the public safety issue.

I commend the Chairman for his amendment and I look forward to our continued work as we move from an analog to a digital world.

Mr. COX. Mr. Chairman, I rise in support of the Amendment offered by my colleague and good friend, Mr. SHADEGG of Arizona.

Mr. SHADEGG is a distinguished Member of the Select Committee on Homeland Security and ably serves as Chairman of its Subcommittee on Emergency Preparedness & Response.

Under Chairman SHADEGG's leadership, the EP&R Subcommittee recently held a very informative and eye-opening hearing on the state of our Nation's warning and alert system.

The Amendment that he is offering today is the product of that excellent hearing.

I commend Chairman SHADEGG for his foresight in recognizing the importance of emergency warnings and alerts, and for his leadership in offering this important Amendment.

It is simply imperative that our Nation maintain and operate an effective emergency communication system. It is our responsibility to ensure that our citizens receive sufficient and timely warnings to enable them to take action necessary for their safety—whether the cause is a terrorist attack or a force of nature.

This Amendment authorizes a pilot study examining whether a system like the AMBER Alert network should, and can, be used for emergency warnings and alerts. The AMBER Alert network, which provides actionable intelligence on a geographic basis to help identify and track missing children, is a proven success. This Amendment is certainly worthy of our support.

Let me again commend Chairman SHADEGG. And I urge my colleagues to vote "yes" on the Shadegg Amendment.

Mr. GARY G. MILLER of California. Mr. Chairman, I rise in support of the Mica amendment, which will go a long way in making certain our skies are safe and free of terrorism.

I would like to focus my comments on important provisions in this amendment that will help ensure the civil liberties of all of America's citizens are protected during this war on terrorism. I thank Aviation Subcommittee Chairman MICA for including this language in his amendment, which I had submitted to the Rules Committee as a separate amendment.

There is no question that we should be vigilant in our fight against terrorism or that increased security measures will serve to inconvenience some of our citizens. However, forcing certain law-abiding citizens to be repeatedly detained and questioned each time they travel should not be tolerated.

This amendment will establish a process for the Transportation Security Administration to ensure those passengers who are erroneously flagged under its new pre-screening system are not unnecessarily delayed on future flights.

To illustrate the importance of addressing this issue, I would like to highlight an example of a family in my district who has been repeatedly delayed when traveling.

The most recent case occurred this summer, when returning from an oversees trip. The family was met by officials as they deplaned and escorted to a holding room at JFK Airport. During their detainment, officials thoroughly inspected the family's luggage and would not even allow them to go to the restroom without escort. The family was extensively questioned about their background and employment.

It took over three hours for the officials to clear and release the family. Unfortunately, the long delay caused them to miss their connecting flight to California.

According to Immigration and Customs Enforcement, this family was delayed due to the nature of our law enforcement databases, which can give rise to "near matches" and "tentative hits," resulting in misidentification scenarios.

This was not the first time this family was delayed because of the similarity of their name to names that appear on watch lists. Unfortunately, according to the Department of Homeland Security, it will not be the last—the family should expect similar detainment in the future because of this shortcoming in our law enforcement databases.

Some of you might say that this is the price American citizens of Middle-Eastern descent must pay to ensure safety in our skies.

But we must ask ourselves—how do we protect those unfortunate Americans, who share names that are similar to dangerous people on terrorist watch lists, from being effectively denied the ability to fly?

There is no question that we must encourage our security officials to be vigilant. But, it is reasonable to expect that the Transportation Security Administration be able to maintain their watch lists to ensure that the system does not continue to erroneously flag the same law-abiding citizens every time they try to travel on a plane.

I believe this can be done in a way that maintains aviation security, improves the effectiveness of watch lists, and demonstrates to our fellow Americans of Middle-Eastern descent that America affords the same freedoms and opportunities to all of its law-abiding citizens, even during this war on terrorism.

Specifically, this amendment will: establish a timely and fair process for individuals identified as a threat to appeal the determination and correct any erroneous information; include a method by which TSA will be able to maintain a record of air passengers who have been misidentified; and prevent repeated delays of misidentified passengers by ensuring the record contain information determined by TSA to authenticate the identity of such a passenger.

As we work toward policies that secure our homeland, we must not forget that there are U.S. citizens who are of Middle Eastern descent. They have greatly contributed to American society and are deserving of equal treatment under the Constitution of the United States.

These various cultures and races became citizens of the United States just as our ancestors did, and they are our neighbors, co-workers, friends, and family members. Most of all, they are our fellow Americans.

It is unfortunate that these Americans have been forced to bear the brunt of our increased security.

In the past, when American law enforcement confronted challenges to our safety and security from espionage, drug trafficking and organized crime, we were able to meet those challenges in ways that preserved our fundamental freedoms and civil liberties.

We must meet the challenge of terrorism with this same careful regard for the Constitutional rights of Americans and respect for all human beings.

Last week, the House Transportation and Infrastructure Committee unanimously approved these provisions and I ask my colleagues to support this amendment today.

Mr. UPTON. Mr. Chairman, I rise in support of the Barton Amendment.

Part of the spectrum which the broadcasters are to return at the end of the DTV transition has been earmarked for public safety interoperable radio communications. The tragic events of 9/11 underscore the need for this, and that is why we must move with deliberate speed to complete the transition.

But moving with deliberate speed does not mean moving recklessly, and it does not mean grasping at well-intentioned half-measures that would either cause scores of television stations to literally go dark or would actually set us back in our efforts to get spectrum into the hands of public safety because they are riddled with ill-defined exceptions.

Moreover, we need to consider consumers' analog television sets which could go dark once broadcasters cease analog broadcasts—if we do not take care to do this right. Helping public safety and minimizing consumer disruptions need not be mutually goals.

I support the Barton amendment because it says that we should impose a hard-date for the end of the entire transition as part of a comprehensive digital television transition bill to be enacted next Congress. I look forward to working in the Energy and Commerce Committee next Congress on this and other proposals to minimize consumer disruptions, focusing on how to get low-cost digital-to-analog converter boxes into the hands of consumers, not to mention other policy matters that are relevant to the transition. The Barton Amendment signs us up to move—not with reckless abandon—but with deliberate speed to ensure that we really get spectrum into the hands of public safety in an expeditious fashion.

I urge all of my colleagues to support the Barton Amendment.

Mr. COX. Mr. Chairman, I rise in strong support of the Fossella-Stupak amendment. From the first World Trade Center bombing in 1993 to the attacks on September 11, 2001, the inability of our first responders to communicate adequately and effectively has posed a serious obstacle to our Nation's ability to respond to acts of terrorism and other emergencies.

Regrettably, there is no silver bullet or panacea that will enable us to attain interoperable communications overnight. And, contrary to the good intentions of some of my colleagues on the other side of the aisle, merely throwing more money at the problem or creating new grant programs is not the answer. We already have enough programs.

Indeed, since 2002, the Federal government has awarded more than $1.2 billion in grant assistance specifically for the purpose of enhancing interoperable communications. And, unfortunately, our progress has been disappointing. The primary reason for this—according to the Government Accountability Office—is that Federal interoperable communications grant programs "present challenges to short- and long-term planning."

That is why I rise in support of the Fossella-Stupak Amendment. It does not create a new interoperable communications grant program. Rather, it gives the Department of Homeland Security much needed flexibility to support State and local short- and long-term planning for interoperable communications.

Specifically, under the Fossella-Stupak Amendment, the Department may issue Letters of Intent to commit future funding for interoperable communications for up to three years. These commitments must be made pursuant to existing grant programs.

States and local governments have been reluctant to invest in expensive and complicated communication systems due to uncertainty over the availability of Federal funds from year to year. Providing cash-strapped States and local governments with reasonable assurance that multi-year Federal assistance will be available should spur comprehensive planning and meaningful investments in communications.

The Fossella-Stupak Amendment also requires applicants to develop multi-year interoperable communication plans. Such plans are essential for long-term planning, such as coordinating communications strategies with different agencies and neighboring jurisdictions, and for preventing funds from being wasted on hastily planned systems.

I understand that numerous fire service and law enforcement groups, State and local government organizations, and other entities representing the public safety community played a key role in drafting this Amendment. They and I support this Amendment, and so should you.

I commend Representatives FOSSELLA and STUPAK for their leadership and vision in offering this important Amendment.

As Chairman of the Select Committee on Homeland Security, I strongly encourage my colleagues to support this Amendment.

Mr. DINGELL. Mr. Chairman, I agree with Chairman BARTON that the digital television transition has taken too long and that we need to quickly get our police officers, firefighters, and other first responders an additional 24 megahertz of spectrum to help them safely do their jobs. This spectrum, currently occupied by television channels 63, 64, 68, and 69, is set to be turned over to first responders once the stations broadcasting on those channels transition to digital. Can the federal government speed this up?

Some have proposed getting first responders this spectrum more quickly by requiring certain broadcasters to return their spectrum by the end of 2006. This suggestion, though well intentioned, is a simplistic approach to a complex problem. It does not ensure that the public safety sector will be ready to use this new spectrum. Also, this suggestion, by supplanting certain broadcasters directly, and shutting down others to prevent interference, will prevent many consumers from receiving important programming such as local news and weather. Finally, it will also disproportionately harm the Hispanic community by shutting down a number of Spanish-language stations.

Likewise, the amendment before us today does not reflect the complexity of this issue. Although I agree with Chairman BARTON that we need to speed up the digital transition, the amendment declares that we should establish a hard deadline of December 31, 2006, when all analog television broadcasts on all channels would cease. Such an absolute declaration is premature. It would not allow enough time for affordable equipment to come to market or to properly educate consumers about the transition. Moreover, it could result in many consumers losing their television service. That must not happen.

Congress needs to address the digital transition issue soon in a comprehensive way, addressing, among others, three major issues. First, we need to expedite public safety's access to new spectrum and provide them with certainty so they know when they will be receiving new spectrum. Certainty will allow first responders time to plan how to use the spectrum. It will also allow them time to line up the funding necessary to make use of the spectrum once it becomes available.

Second, we need to implement a far-reaching plan to educate consumers on what will happen once the digital transition is complete. It is important that consumers know when the transition will take place, how it will take place, and what it means for them with regard to their television viewing.

Third, consumers should not bear unfair cost burdens, and we need to have a program in place to provide subsidies so that no one is left behind as the United States transitions to digital television.

I am pleased that Chairman BARTON recognizes the need to tackle these issues in a thoughtful and comprehensive way. Unfortunately, I cannot support the amendment before us today because it is premature and could lead to consumers losing their television service.

I am confident, however, that regardless of which party controls the House next Congress, the Committee on Energy and Commerce will work on a bipartisan basis to properly address these issues in a way that will speed up the digital transition, provide certainty to public safety regarding new spectrum, and protect consumers from losing their television service.

Mr. MICA. Mr. Chairman, the amendment I have offered makes several non-controversial, but important changes:

First, it prevents a repeat of the "Cat Stevens" incident.

On September 21st, Yusuf Islam, formerly known as Cat Stevens, was allowed to board United Flight 919 from London to Washington, DC.

The plane was hundreds of miles over the Atlantic before it was discovered that Mr. Islam was on the terrorist watchlist. Fortunately, the plane was diverted to Maine without incident. That plane should never have left the ground with Mr. Islam on board.

My amendment requires DHS to compare the names of international passengers to the terrorist watch-lists prior to the flight's departure, and it ensures that future flights will not take off with known terrorists on board.

Secondly, my amendment requires TSA to establish an appeal process for passengers wrongly placed on terror watchlists.

It also establishes a process for DHS to track passengers erroneously flagged under the Department's new pre-screening system.

The watchlists are incredibly important tools, but they are far from perfect.

Last week, I learned that several members of Congress, including the Chairman of the Transportation Committee, have been prevented from boarding airliners because they shared the first and last name of someone on the watchlist.

This provision will ensure that they and others are not unnecessarily delayed on future flights.

Lastly, this amendment directs the Department of Homeland Security to take all necessary actions to expedite the installation and use of advanced in-line baggage-screening equipment at commercial airports.

I am disappointed that language to provide innovative non-Federal financing for these systems was not included in H.R. 10 due to shortsighted CBO scorekeeping.

However, I do believe the Administration has the authority to pursue this approach, and hopefully, this section will encourage them to do so.

We worked closely with members on both sides of the aisle to develop this amendment. A similar amendment passed the Transportation Committee unanimously last week and I urge all of my colleagues to vote in favor of this amendment.

Mr. PICKERING. Mr. Chairman, I rise today to support the Amendment being offered by Mr. BARTON, Chairman of the House Energy and Commerce Committee. First, I would like to thank Chairman BARTON for his leadership on this issue. I agree with Chairman BARTON that H.R. 10 is not the vehicle by which to effectively transition this precious public spectrum to public safety and valuable commercial and non-licensed uses. In order to address all issues and concerns, we must take a comprehensive approach and develop a comprehensive solution so that our first responders receive all the tools they need and the American people receive the unimaginable benefits of digital technology. The Senate proposal is the wrong approach and I hope we will work to accomplish our goal in a more all-inclusive process focusing on all broadcast issues. We cannot effectively address the digital transition piece by piece. I look forward to working with Chairman BARTON on this very important issue in order to find a date that is appropriate and achievable in order to effectively transition to that new and exciting digital age of television that will promote public safety, encourage innovation, create jobs, and benefit all Americans.

Mr. BARTON of Texas. Mr. Chairman, my amendment expresses the sense of the Congress that the way to get valuable spectrum promptly into the hands of public safety officials without shutting off consumers' televisions is to enact comprehensive, hard-deadline digital television legislation.

The Senate-passed 9/11 bill, however, requires the return of only a portion of that spectrum, rather than all the spectrum that broadcasters are currently using for analog broadcasts. Broadcasters estimate that these provisions would shut off as many as 75 stations. Many of these broadcasters carry major networks in major markets. Because the Senate bill does not require the other broadcasters to vacate their analog spectrum, there will be nowhere to relocate these 75 stations.

By waiting until the 109th Congress set a date-certain for all broadcasters to clear the spectrum they use for analog broadcasts, we can turn spectrum over to public safety sooner, and all broadcasters will be able to move to their final digital channels. The remaining spectrum can be auctioned for advanced commercial services, such as wireless broadband. Some of the billions of dollars generated can then be used for digital-to-analog converter boxes so that households relying on over-the-air analog broadcasts can continue to use their analog televisions.

I urge my colleagues to join me in expressing the Sense of the Congress that the responsible policy should be to address this issue comprehensively through regular order, not in a piecemeal fashion on a bill to implement the 9/11 Commission recommendations. I look forward next year to working with Ranking Minority Member DINGELL, Subcommittee Chairman UPTON, and Subcommittee Ranking Minority Member MARKEY, along with all of the Members of the Energy and Commerce Committee, to pass hard-deadline legislation. I urge my colleagues to vote for this amendment so that public safety gets its needed spectrum without making televisions go dark.

Mr. SCOTT of Virginia. Mr. Chairman, I yield back the balance of my time.

Mr. HOEKSTRA. Mr. Chairman, we have no additional speakers, and I yield back the balance of my time.

The CHAIRMAN pro tempore (Mr. KOLBE). The question is on the amendments en bloc offered by the gentleman from Michigan (Mr. HOEKSTRA).

The amendments en bloc were agreed to.

The CHAIRMAN pro tempore. It is now in order to consider amendment No. 10 printed in House Report 108–751.

AMENDMENT NO. 10 OFFERED BY MR. FOLEY

Mr. FOLEY. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. Offered by Mr. FOLEY:

Page 328, after line 7, insert the following (and amend the table of contents accordingly)

Subtitle F—Treatment of Aliens Who Commit Acts of Torture, Extrajudicial Killings, or Other Atrocities Abroad

SEC. 3121. INADMISSIBILITY AND DEPORTABILITY OF ALIENS WHO HAVE COMMITTED ACTS OF TORTURE OR EXTRAJUDICIAL KILLINGS ABROAD.

(a) INADMISSIBILITY.—Section 212(a)(3)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(E)) is amended—

(1) in clause (ii), by striking "has engaged in conduct that is defined as genocide for purposes of the International Convention on the Prevention and Punishment of Genocide is inadmissible" and inserting "ordered, incited, assisted, or otherwise participated in conduct outside the United States that would, if committed in the United States or by a United States national, be genocide, as defined in section 1091(a) of title 18, United States Code, is inadmissible";

(2) by adding at the end the following:

"(iii) COMMISSION OF ACTS OF TORTURE OR EXTRAJUDICIAL KILLINGS.—Any alien who, outside the United States, has committed, ordered, incited, assisted, or otherwise participated in the commission of—

"(I) any act of torture, as defined in section 2340 of title 18, United States Code; or

"(II) under color of law of any foreign nation, any extrajudicial killing, as defined in section 3(a) of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note);

is inadmissible."; and

(3) in the subparagraph heading, by striking "PARTICIPANTS IN NAZI PERSECUTION OR GENOCIDE" and inserting "PARTICIPANTS IN NAZI PERSECUTION, GENOCIDE, OR THE COMMISSION OF ANY ACT OF TORTURE OR EXTRAJUDICIAL KILLING".

(b) DEPORTABILITY.—Section 237(a)(4)(D) of such Act (8 U.S.C. 1227(a)(4)(D)) is amended—

(1) by striking "clause (i) or (ii)" and inserting "clause (i), (ii), or (iii)"; and

(2) in the subparagraph heading, by striking "ASSISTED IN NAZI PERSECUTION OR ENGAGED IN GENOCIDE" and inserting "PARTICIPATED IN NAZI PERSECUTION, GENOCIDE, OR THE COMMISSION OF ANY ACT OF TORTURE OR EXTRAJUDICIAL KILLING".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to offenses committed before, on, or after the date of the enactment of this Act.

SEC. 3122. INADMISSIBILITY AND DEPORTABILITY OF FOREIGN GOVERNMENT OFFICIALS WHO HAVE COMMITTED PARTICULARLY SEVERE VIOLATIONS OF RELIGIOUS FREEDOM.

(a) GROUND OF INADMISSIBILITY.—Section 212(a)(2)(G) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(G)) is amended to read as follows:

"(G) FOREIGN GOVERNMENT OFFICIALS WHO HAVE COMMITTED PARTICULARLY SEVERE VIOLATIONS OF RELIGIOUS FREEDOM.—Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time, particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998 (22 U.S.C. 6402), is inadmissible.".

(b) GROUND OF DEPORTABILITY.—Section 237(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)) is amended by adding at the end the following:

"(E) PARTICIPATED IN THE COMMISSION OF SEVERE VIOLATIONS OF RELIGIOUS FREEDOM.—Any alien described in section 212(a)(2)(G) is deportable.".

SEC. 3123. WAIVER OF INADMISSIBILITY.

Section 212(d)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(3)) is amended—

(1) in subparagraph (A), by striking "and 3(E)" and inserting "and clauses (i) and (ii) of paragraph (3)(E)"; and

(2) in subparagraph (B), by striking "and 3(E)" and inserting "and clauses (i) and (ii) of paragraph (3)(E)".

SEC. 3124. BAR TO GOOD MORAL CHARACTER FOR ALIENS WHO HAVE COMMITTED ACTS OF TORTURE, EXTRAJUDICIAL KILLINGS, OR SEVERE VIOLATIONS OF RELIGIOUS FREEDOM.

Section 101(f) of the Immigration and Nationality Act (8 U.S.C. 1101(f)) is amended—

(1) by striking the period at the end of paragraph (8) and inserting "; and"; and

(2) by adding at the end the following:

"(9) one who at any time has engaged in conduct described in section 212(a)(3)(E) (relating to assistance in Nazi persecution, participation in genocide, or commission of acts of torture or extrajudicial killings) or 212(a)(2)(G) (relating to severe violations of religious freedom).".

SEC. 3125. ESTABLISHMENT OF THE OFFICE OF SPECIAL INVESTIGATIONS.

(a) AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT.—Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended by adding at the end the following:

"(h)(1) The Attorney General shall establish within the Criminal Division of the Department of Justice an Office of Special Investigations with the authority to detect and investigate, and, where appropriate, to take legal action to denaturalize any alien described in section 212(a)(3)(E).

"(2) The Attorney General shall consult with the Secretary of the Department of Homeland Security in making determinations concerning the criminal prosecution or extradition of aliens described in section 212(a)(3)(E).

"(3) In determining the appropriate legal action to take against an alien described in section 212(a)(3)(E), consideration shall be given to—

"(A) the availability of criminal prosecution under the laws of the United States for any conduct that may form the basis for removal and denaturalization; or

"(B) the availability of extradition of the alien to a foreign jurisdiction that is prepared to undertake a prosecution for such conduct.".

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Department of Justice such sums as may be necessary to carry out the additional duties established under section 103(h) of the Immigration and Nationality Act (as added by this subtitle) in order to ensure that the Office of Special Investigations fulfills its continuing obligations regarding Nazi war criminals.

(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

SEC. 3126. REPORT ON IMPLEMENTATION.

Not later than 180 days after the date of enactment of this Act, the Attorney General, in consultation with the Secretary of Homeland Security, shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report on implementation of this subtitle that includes a description of—

(1) the procedures used to refer matters to the Office of Special Investigations and other components within the Department of Justice and the Department of Homeland Security in a manner consistent with the amendments made by this subtitle;

(2) the revisions, if any, made to immigration forms to reflect changes in the Immigration and Nationality Act made by the amendments contained in this subtitle; and

(3) the procedures developed, with adequate due process protection, to obtain sufficient evidence to determine whether an alien may be inadmissible under the terms of the amendments made by this subtitle.

The CHAIRMAN pro tempore. Pursuant to House Resolution 827, the gentleman from Florida (Mr. FOLEY) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Florida (Mr. FOLEY).

Mr. FOLEY. Mr. Chairman, I yield myself such time as I may consume.

I rise today in support of our amendment, the Foley-Ackerman amendment to H.R. 10, the Anti-Atrocity Alien Deportation Act that will help strengthen our Nation's security.

Every year, according to Amnesty International, an estimated 800 to 1,000 war criminals and human rights abusers seek refuge in the United States. Due to loopholes in current law, these criminals could be living in our States, in our towns, and even in our neighborhoods. There is nothing in current U.S. law to bar such monsters from the United States or to legally justify their removal from our country.

This headline, the INS says it cannot deport them. The Justice Department will not prosecute them. Torturers, death squad leaders, and human rights criminals who seek refuge in the United States have nothing to fear except their victims.

Let me be perfectly clear: Torturers are terrorists. Many of us here today probably think of torturers as domestic terrorists, those just committing unspeakable crimes in their own Nations, but that cannot be further from the truth.

Let us look at the facts. North Korea, Iran, Syria, Libya, Cuba, Sudan, the former regimes in Afghanistan, the Taliban, and Iraq, they are all State sponsors of terrorism, and all have some of the worst human rights records in history. They detain people for indefinite periods of time, commit brutal acts of torture and kill with little regard for human life. We would be naive to believe that torturers and terrorists are in many ways not one in the same.

The Anti-Atrocity Alien Deportation amendment, which the gentleman from New York (Mr. ACKERMAN) and I have worked on for over 4½ years, we are offering it today, will give the Federal Government another weapon in our war on terror. This amendment will, among other things, make aliens who commit torture or other human rights violations inadmissible and removable.

This bipartisan and bicameral provision will strengthen H.R. 10 by adding additional layers to our immigration laws, barring these criminals with clear ties to terror from even entering our country.

For decades, those who have committed some of the most horrific acts against humanity have sought sanctuary here with impunity. This amendment would strip their protection once and for all. We cannot let these criminals continue to be around our families any longer. They have committed crimes against their own people. They have committed crimes against the United States. They have committed crimes against humanity.

Mr. Chairman, I reserve the balance of my time.

Mr. ACKERMAN. Mr. Chairman, I ask unanimous consent to control the time in opposition and will be in favor of the legislation.

The CHAIRMAN pro tempore. Without objection, the gentleman from New York (Mr. ACKERMAN) is recognized for 5 minutes.

There was no objection.

Mr. ACKERMAN. Mr. Chairman, I yield myself such time as I may consume.

First, I want to say it has been a privilege to work with the gentleman from Florida (Mr. FOLEY) on a completely nonpartisan basis for almost half a decade on this particular legislation.

The Foley-Ackerman amendment closes the loophole that currently allows war criminals who enter the United States to remain in the United States. This measure enjoys bipartisan support in both the House and the Senate. A bill sponsored by the chairman and ranking Democrat on the Senate Judiciary Committee, ORRIN HATCH and PATRICK LEAHY, has been reported out of the Judiciary Committee in that body.

At this very moment, with our Nation engaged in a conflict in Iraq, which previously had a regime that committed every kind of grotesque criminal behavior that our Nation deplores, the U.S. Code provides no, again, no, assurance that Saddam Hussein's henchmen, Iraqi war criminals, perpetrators of torture or atrocities from there or other places could not somehow come into the United States and enjoy the very benefits that they have so cruelly deprived of others.

It is hard to believe but it is true. Some of Saddam Hussein's most brutal thugs, if they were able to hide their past and slip past the INS, they could conceivably apply and receive either U.S. permanent resident status or even possibly citizenship.

How do we know this? Because war criminals from other conflicts have been surreptitiously coming to the United States since World War II. We cannot continue to leave the United States open to monsters who have committed horrible atrocities against innocent civilians, and we need to slam that door shut and to shut it tightly. We must also capture those war criminals who have already entered the United States and show them the door.

The Foley-Ackerman amendment provides the Justice Department's Office of Special Investigation, the OSI, with the statutory authority to hunt down these thugs and criminals and, through the courts, remove them from our country.

The OSI is currently tasked with finding and expelling Nazi war criminals seeking to evade the consequences of their unprecedented and horrific crimes. Since its creation in 1979, this elite team of prosecutors and investigators has been methodically removing Nazi war criminals who were able to sneak into the United States. Based on its terrific past performance, its current readiness, and most critically, its desire to perform the mission, OSI is the right agency to ensure that this land remain free from the most vile criminals and violators of human rights.

Mr. Chairman, the very notion that anyone who has perpetuated genocide or committed these horrible crimes, these acts of torture, would be able to get into the United States is shocking enough. The fact that there is currently no law on the books to find these criminals and to remove them from our country is even worse. War criminals should have no safe haven or refuge anywhere, least of all in this land of liberty, and that is why I am encouraging all of our colleagues, Mr. Chairman, to vote in support of the Foley-Ackerman amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. FOLEY. Mr. Chairman, I yield 1 minute to the gentleman from Indiana (Mr. HOSTETTLER), the chairman of the Subcommittee on Immigration, Border Security and Claims.

Mr. HOSTETTLER. Mr. Chairman, I rise in strong support of the Foley-Ackerman amendment to H.R. 10, the 9/11 Recommendations Implementation Act. This important amendment will close a longstanding gap that has allowed thousands of aliens who have tortured or otherwise abused the human rights of untold numbers in their home country to live in the United States.

They are living here in our country the lives that many of their victims will never enjoy. As we continue our war on terror, we must do everything in our power to make sure that our Federal agencies have the tools they need to ensure our safety.

The Foley-Ackerman amendment will take such a step. This amendment will keep our country safe by barring admission into the United States and authorizing the deportation of any foreigner who has committed acts of torture or other human rights abuses abroad.

These criminals have committed some of the most atrocious acts ever imagined by mankind. We can no longer be a safe haven for those who seek to do us harm and have proven this by doing grave harm to others in the countries they have fled.

Mr. Chairman, I urge my colleagues to vote for this very important amendment.

Mr. ACKERMAN. Mr. Chairman, I yield 1 minute to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the distinguished gentleman for the time.

I rise to support this amendment because it spells out that immigrants who have committed torture or extrajudicial killings abroad are not eligible to enter the United States, and it changes the provisions that makes immigrants inadmissible if they have committed acts of genocide. The amendment also expands an existing bar against government officials who have committed severe violations of religious freedom.

I want to thank and commend the two gentlemen, and that is why I believe it is very important that H.R. 10 is clearly stripped of any violations of the convention against torture and to make sure that as we are consistent in denying into the United States those who would commit genocide, torture and other heinous acts, that we accept the responsibility of having the high moral ground, making sure that no legislation that we pass would deport any alien to a place where they might be tortured and subjected to such horrific acts.

This is a very strong amendment. It puts us on the right side of the column, protecting those who would be subjected to the violence of those who would be interested in coming to this country, and I support the gentlemen in this amendment and would ask that we also consider the elimination of such language in our own H.R. 10. I support this amendment.

The CHAIRMAN pro tempore. The gentleman from New York (Mr. ACKERMAN) has one-half minute remaining.

Mr. ACKERMAN. Mr. Chairman, I have no further speakers, and I yield our time to the gentleman from Florida (Mr. FOLEY).

Mr. FOLEY. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I want to thank my colleague the gentleman from New York (Mr. ACKERMAN) and the gentleman from Indiana (Mr. HOSTETTLER), Richard Krieger from my district, who brought this important issue to our attention who has been diligently tracking and identifying these criminals.

Let me read a couple of names: Marko Boskic, Bosnia, member of a group that killed 1,200 Bosnian Muslims in one day; Major General Jean-Claude Duperval, Haiti, implicated in the massacre at Raboteau, Haiti, 1994; Nikola Vukovic, beat Bosnian Muslims with rifles and metal pipes; Mohamed Ali Samatar from Somalia, oversaw the killing of more than 50,000 northern Somali Issaks; Abdi Ali Nur from Somalia, assisted in sham trials and the execution of hundreds of civilians. That is just a few of them.

I will enter this into the RECORD at this point so people can see.

TABLE OF INDIVIDUALS ACCUSED OF ATROCITIES

[Arranged by Time of Atrocity Committed]

Name	Country	Crime	Time of atrocities
Thomas Ricardo Anderson Kohatsu	Peru	Implicated in the torture of Leonor La Rosa and Mariela Lucy Barreto. La Rosa was paralyzed, Barreto was killed	1997
Marko Boskic	Bosnia	Member of group that killed 1,200 Bosnian Muslims in one day	July 15, 1995
Major Gen. Jean-Claude Duperval	Haiti	Implicated in massacre at Raboteau, Haiti	1994
Jean-Marie Vianney Mudahinyuka	Rwanda	Part of an elite group that ordered the killings of 500,000 Tutsis	1994
Nikola Vukovic	Bosnia	Beat Bosnian Muslims with rifles and metal pipes. Carved a religious symbol into the forehead of one prisoner	1992–1994
Emanuel "Toto" Constant	Haiti	Created paramilitary organization that killed over 3,000 pro-democracy activists	1991–1994
Carl Dorelien	Haiti	Oversaw the deaths of 5,000 people	1991–1994
Zijad Muzic	Bosnia	Ethnic cleansing of Croats and Bosnian Muslims	1991–1993
Jackson Joanis	Haiti	Accused of torture and murder	Early 1990s
Thioun Prasith	Cambodia	Implicated in the deaths of thousands of people	Late 1970s–1993
Mohamed Ali Samatar	Somalia	Oversaw killing of more than 50,000 northern Somali Issaks	1971–1990
Juan Lopez Grijalba	Honduras	Military chief accused of murder and torture of civilians	1980s
Jaime Ramirez Raudales	Honduras	Charged with political murders	1980s
Abdi Ali Nur	Somalia	Assisted in sham trials and the executions of hundreds of civilians	Late 1980s
Luis Discua	Honduras	Killed dozens of leftists in Honduras	1980s
Alvaro Rafael Saravia Marino	Honduras	Murdered Salvadoran archbishop	1980
Kelbessa Negewo	Ethiopia	Tortured, beat and raped Ethiopians	1978
Armando Fernando Larios	Chile	Helped kill Chile's foreign minister	1976

TABLE OF INDIVIDUALS ACCUSED OF ATROCITIES—Continued

[Arranged by Time of Atrocity Committed]

Name	Country	Crime	Time of atrocities
Gen. Fernando Vecino Alegret, a.k.a. "Fidel"	Vietnam	Cuban interrogator that tortured American POWs during Vietnam War	1967
Helmut Oberlander	Ukraine	Belonged to Nazi death squad that killed thousands of Jews	1941–1943

GENERAL

Iran: Pro-democracy Iranian Students tortured in 1970s.

Iraq: Dissidents against Ba'ath party regime systematically tortured.

Afghanistan: Taliban.

Sources sorted by name of accused individuals:

1. Kohatsu: "U.S. Becoming haven for Torturers." San Diego Union Tribune, April 10, 2002.

2. Boskic: Rupert, James. "Accused killer in Bosnian war makes a life in U.S." New York Newsday, Sep. 13, 2004.

3. Duperval: Daniel, Trenton and Susannah A. Nesmith. "Abusers back in the streets; Some of Haiti's most notorious human rights abusers walk the streets openly now." The Miami Herald. March 15, 2004.

4. Mudahinyuka: Korecki, Natasha. "More charges for Rwanda suspect." Chicago Sun-Times. May 15, 2004.

5. Vukovic: Dart, Bob. "U.S. is a haven for foreign war criminals." Austin American Statesman. April 11, 2002.

6. Constant: "Torture suspects find haven in U.S." Miami Herald. Aug. 1, 2001.

7. Dorelien: Wilber, Del Quentin. "Rights abusers can find haven." Baltimore Sun. Aug. 28, 2000.

8. Muzic: Fainaru, Steve. "Suspect in 'cleansing' by Serbs living in Vt." The Boston Globe. May 3, 1999.

9. Joanis: Benjamin, Jody A. "Haitian enforcer makes bid to stay put." Ft. Lauderdale Sun-Sentinel. June. 22, 2001.

10. Prasith: Fifield, Adam. "Apologist in suburbia." The Village Voice. May 5, 1998.

11. Samatar: Ragavan, Chitra. "A safe haven, but for whom?" U.S. News and World Report. Nov. 15, 1999.

12. Grijalba: "Foley introduces bill to stop influx of criminals here." Sun-Herald.com. April 4, 2003. http://www.sun-herald.com.

13. Raudales: Valbrun, Marjorie. "U.S. to pursue torturers who flee here—Move seeks to address 'nexus' between human-rights abusers and national-security risks." The Wall Street Journal. May 8, 2003.

14. Abdi Ali Nur: Ragavan, Chitra. "A safe haven, but whom?" U.S. News and World Report. Nov. 15, 1999.

15. Discua: "Foley introduces bill to stop influx of criminals here." Sun-Herald.com. April 4, 2003. http://www.sun-herald.com

16. Marino: Charvy, Alfonso and Elizabeth Donovan. "Torture suspects find haven." The Miami Herald. July 22, 2001.

17. Negewo: Dart, Bob. "U.S. is a haven for torturers, report says; many settle here illegally." The Atlanta-Journal Constitution. April 11, 2002.

18. Larios: Valbrun, Marjorie. "U.S. to pursue torturers who flee here—Move seeks to address 'nexus' between human-rights abusers and national-security risks." The Wall Street Journal. May 8, 2003.

19. Alegret a.k.a. "FIDEL": Alfonso, Pablo and Sonji Jacobs. "Ex-POW identifies Cuban dignitary as his chief tormentor." The Miami Herald. Sep. 9, 1999.

20. Oberlander: Staletovitch, Jenny. "New law would send modern war criminals packing." The Palm Beach Post. Jan. 18, 2000.

These are articles from papers about criminals living in the United States.

I urge my colleagues to vote for this very important national security measure. I thank my legislative counsel and legal director, Bradley Schreiber, and my staff for working so diligently.

As I mentioned, the gentleman from New York (Mr. ACKERMAN) and I have been doing this now for 4½ plus years. It has finally come to fruition. We thank our colleagues. We urge adoption of the amendment.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Florida (Mr. FOLEY).

The amendment was agreed to.

The CHAIRMAN pro tempore. It is now in order to consider amendment No. 11 printed in House Report 108-751.

AMENDMENT NO. 11 OFFERED BY MR. GOODLATTE

Mr. GOODLATTE. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 11 offered by Mr. GOODLATTE:

Page 235, after line 21, insert the following:

Subtitle J—Pretrial Detention and Postrelease Supervision of Terrorists

SEC. 2221. SHORT TITLE.

This subtitle may be cited as the "Pretrial Detention and Lifetime Supervision of Terrorists Act of 2004".

SEC. 2222. PRESUMPTION FOR PRETRIAL DETENTION IN CASES INVOLVING TERRORISM.

Section 3142 of title 18, United States Code, is amended—

(1) in subsection (e)—

(A) by inserting "or" before "the Maritime"; and

(B) by inserting after "or 2332b of title 18 of the United States Code" the following: ", or an offense listed in section 2332b(g)(5)(B) of title 18 of the United States Code, if the Attorney General certifies that the offense appears by its nature or context to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion, or to affect the conduct of a government by mass destruction, assassination, or kidnaping, or an offense involved in or related to domestic or international terrorism as defined in section 2331 of title 18 of the United States Code"; and

(2) in subsections (f)(1)(A) and (g)(1), by inserting after "violence" the following: ", or an offense listed in section 2332b(g)(5)(B) of title 18 of the United States Code, if the Attorney General certifies that the offense appears by its nature or context to be intended to intimidate or coerce a civilian population, to influence the policy of a government by intimidation or coercion, or to affect the conduct of a government by mass destruction, assassination, or kidnaping, or an offense involved in or related to domestic or international terrorism as defined in section 2331 of title 18 of the United States Code".

SEC. 2223. POSTRELEASE SUPERVISION OF TERRORISTS.

Section 3583(j) of title 18, United States Code, is amended in subsection (j), by striking ", the commission" and all that follows through "person,".

The CHAIRMAN pro tempore. Pursuant to House Resolution 827, the gentleman from Virginia (Mr. GOODLATTE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Virginia (Mr. GOODLATTE).

□ 1030

Mr. GOODLATTE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment would simply create a rebuttable presumption that no amount of bail or other conditions would assure the appearance in court of a defendant when he is charged with a terrorist offense and there is probable cause that the defendant committed certain terrorist acts. This bill simply creates a rebuttable presumption which can be overcome by evidence that the defendant would appear in court.

This presumption that a defendant would not show up in court already applies to those who are charged with major drug crimes and certain violent crimes. If it is good enough for drug dealers and violent criminals, it should be good enough for terrorists. It is simply too risky to trust terrorists who have been charged with terrorist offenses to return to court to be tried. We should not allow these criminals to roam free in our streets while they await trial.

In addition, this bill would help prevent further terrorist attacks by giving judges the discretion to impose a term of supervised relief up to life for terrorists who have been convicted of terrorist offenses. Currently, the law provides that only those who committed terrorist offenses which either resulted in or created a foreseeable risk of death could be supervised for a term of years up to life after being released. This bill would make clear that post-trial supervision is available for all victim terrorists, not just those whose terrorist acts happen to result in death.

This amendment only authorizes a court to impose the supervised relief of a terrorist. It does not mandate any particular term of supervised relief for any particular criminal, nor does it mandate that any supervised release be imposed at all. It leaves that decision up to the courts based on the facts and circumstances of each individual case.

In addition, current law already gives courts the authority to modify or end the period of supervised release if the court determines that the criminal's conduct and circumstances so warrant. This safeguard is not changed by this amendment.

Mr. Chairman, this amendment makes simple changes to current Federal criminal law to ensure that those who have committed terrorist acts will not attempt to harm our citizens again. I urge my colleagues to support this important amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Chairman, I rise to claim the time in opposition for the minority, and I yield myself such time as I may consume.

Mr. Chairman, this amendment adds to the list of crimes for which the presumption of detention occurs. It is an extraneous PATRIOT Act II provision not sought by the 9/11 Commission. This puts the defendant in a position where he has to prove the unprovable.

The Department of Justice has a bad record of detaining people who should not be detained. Brendon Mayfield, a lawyer in Seattle, was detained as a material witness in the Madrid train bombing. The Department of Justice was subsequently forced to admit that they had the wrong person, in that Mr. Mayfield had nothing to do with the crime, notwithstanding the fact that he had been held on one of these presumptions of detention.

I would hope we would consider this when we consider PATRIOT Act II.

Mr. Chairman, I reserve the balance of my time.

Mr. GOODLATTE. Mr. Chairman, I yield myself 15 seconds to say to the gentleman from Virginia that this is freestanding legislation which I have introduced. It has nothing to do with the so-called PATRIOT Act II the gentleman refers to. It is a good measure.

Mr. Chairman, I yield 1½ minutes to the gentleman from Wisconsin (Mr. GREEN).

Mr. GREEN of Wisconsin. Mr. Chairman, I thank the gentleman for yielding me this time, and I rise in strong support of this amendment. This amendment would enhance public safety by denying pretrial release to individuals accused of committing a terrorism offense. It would also provide that any individual convicted of a terrorism offense could be sentenced to supervised release for any term of years up to life.

Defendants in Federal cases who are accused of certain crimes are presumptively denied pretrial release. For these crimes there is a rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of that person as required for the safety of the community.

The list of crimes currently includes drug offenses, carrying maximum prison sentences of 10 years or more, but does not include most terrorism offenses. Thus, persons accused of many drug offenses are presumptively to be detained before trial, but no comparable presumption exists for people accused of most terrorist crimes. This makes no sense.

The continuing danger posed to national security by those who materially support terrorism, who are the vital links in the chain of any terrorist act, may be no less than that posed by the direct perpetrators, the triggermen, of terrorist violence. And the court should be afforded the same degree of discretion in prescribing post-release supervision in all these cases as well.

The standard for every one of these amendments is whether or not this language enhances the safety and security of this country. Clearly, this amendment is a step in the right direction. It gives our courts some of the same tools they have in drug cases. I urge my colleagues to support this amendment.

Mr. SCOTT of Virginia. Mr. Chairman, I yield such time as she may consume to the gentlewoman from California (Ms. HARMAN), the ranking member of the Permanent Select Committee on Intelligence.

Ms. HARMAN. Mr. Chairman, I rise to discuss three subjects, the first of which is this amendment. Although I listened carefully to the gentleman from Virginia (Mr. GOODLATTE), I think many of the points he makes are valid, and I agree with him that we should not be coddling terrorists, but I think this amendment is ill timed and needs further consideration by this House.

The gentleman has said that he is not participating in an effort to expand the PATRIOT Act, but these ideas have been circulated in a package called PATRIOT Act II. My view of the PATRIOT Act, which I supported, is that next year is the right time to consider how to expand or contract it.

I am a cosponsor of the SAFE Act, which would delete some provisions of the PATRIOT Act that are egregious, but I have an open mind in looking at some features of the PATRIOT Act which might be fine-tuned to work more effectively. So for that reason, I oppose this amendment.

I also will oppose the Hostettler amendment, which will be offered in a few minutes. I think it replaces the worst features of H.R. 10 with some other bad features. Certainly, the outsourcing of terrorists, as some of us have called it, which some Members of the majority including the gentleman from Illinois (Mr. HYDE), agree would violate U.S. law and the International Convention on Torture, is a terrible idea.

But there are other features of the Hostettler amendment that make asylum much harder to get, and in ways that have nothing whatsoever to do with finding and prosecuting terrorists, punish innocent immigrants. That is not the purpose of the debate today.

Finally, I want to comment on the en bloc amendment which was just offered and agreed to. I think it is a very good amendment, and the features of it I want to talk about are the Barton amendment, and the Fossella amendment, both of which have to do with interoperable communications.

We have done almost nothing since 9/11 effectively to deal with the failure to have communications equipment and adequate bandwidth with which to communicate, which was a major problem in New York and a major problem at the Pentagon. This administration is not even funding initiatives in this fiscal year for interoperable communications, claiming there is enough money in the pipeline.

The right answer is to free up some dedicated bandwidth for emergency communications. There is a pending bill called the HERO Act, introduced by the gentleman from Pennsylvania (Mr. WELDON) and me, which has been sadly withering on the vine for a year and a half, opposed by the broadcasters. These two amendments will help with multiyear funding, which we need for ports as well as interoperable communications, and will help convey the sense of the Congress that makes it clear we have to free up this bandwidth so that our first responders have the tools that they need.

So as we proceed this morning, Mr. Chairman, I hope we are all paying close attention to amendments. Some are good, some are less good. I would like to say to the gentleman from Virginia (Mr. GOODLATTE), however, that I think he is an extremely careful legislator and a very good lawyer, and I hope that next year we can work together to craft PATRIOT Act amendments both to eliminate provisions that do not work and to enhance provisions that do work that will keep America safe, find the bad guys, and protect our civil liberties and our constitution.

Mr. GOODLATTE. Mr. Chairman, I yield myself the balance of my time, and I say to the gentlewoman that I appreciate her comments, but I would also point out that we are engaged in the midst of a war against terror right now and a lot is going to happen in the next year, including the apprehension of people who, under appropriate circumstances meet this standard, and we should have the opportunity for the court, and this is a decision by the judge, not something that is a mandatory decision, but the judge should have the discretion to allow that the individual be held pending trial without bond.

Secondly, there will be people who have been convicted of terrorist acts potentially released during that period of time, and if the court finds it appropriate to authorize lifetime supervision, we ought to get that supervision started now to keep track of people who have engaged in terrorist acts and give the court the authority to undertake that now, without waiting an additional year and expose our country to greater risks that will occur during that time.

So I urge my colleagues to support this amendment.

The CHAIRMAN pro tempore (Mr. KOLBE). The question is on the amendment offered by the gentleman from Virginia (Mr. GOODLATTE).

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

Mr. GOODLATTE. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro temore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Virginia (Mr. GOODLATTE) will be postponed.

It is now in order to consider amendment No. 12 printed in House Report 108–751.

AMENDMENT NO. 12 OFFERED BY MR. GREEN OF WISCONSIN

Mr. GREEN of Wisconsin. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 12 offered by Mr. GREEN of Wisconsin:

Page 252, line 18, strike "**DEPORTATION**" and insert "**REMOVAL**" (and amend the table of contents accordingly).

Page 258, after line 5, insert the following (and amend the table of contents accordingly):

SEC. 3034. INADMISSIBILITY DUE TO TERRORIST AND TERRORIST-RELATED ACTIVITIES.

(a) IN GENERAL.—Section 212(a)(3)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)) is amended to read as follows:

"(i) IN GENERAL.—Any alien who—

"(I) has engaged in a terrorist activity;

"(II) a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv));

"(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;

"(IV) is a representative (as defined in clause (v)) of—

"(aa) a terrorist organization; or

"(bb) a political, social, or other group that endorses or espouses terrorist activity;

"(V) is a member of a terrorist organization described in subclause (I) or (II) of clause (vi);

"(VI) is a member of a terrorist organization described in clause (vi)(III), unless the alien can demonstrate by clear and convincing evidence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;

"(VII) endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization;

"(VIII) has received military-type training (as defined in section 2339D(c)(1) of title 18, United States Code) from or on behalf of any organization that, at the time the training was received, was a terrorist organization under section 212(a)(3)(B)(vi); or

"(IX) is the spouse or child of an alien who is inadmissible under this subparagraph, if the activity causing the alien to be found inadmissible occurred within the last 5 years, is inadmissible. An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for purposes of this Act, to be engaged in a terrorist activity.".

(b) ENGAGE IN TERRORIST ACTIVITY DEFINED.—Section 212(a)(3)(B)(iv) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(iv)) is amended to read as follows:

"(iv) ENGAGE IN TERRORIST ACTIVITY DEFINED.—As used in this subparagraph, the term 'engage in terrorist activity' means, in an individual capacity or as a member of an organization—

"(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;

"(II) to prepare or plan a terrorist activity;

"(III) to gather information on potential targets for terrorist activity;

"(IV) to solicit funds or other things of value for—

"(aa) a terrorist activity;

"(bb) a terrorist organization described in clause (vi)(I) or (vi)(II); or

"(cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization;

"(V) to solicit any individual—

"(aa) to engage in conduct otherwise described in this clause;

"(bb) for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or

"(cc) for membership in a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization; or

"(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training—

"(aa) for the commission of a terrorist activity;

"(bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;

"(cc) to a terrorist organization described in subclause (I) or (II) of clause (vi); or

"(dd) to a terrorist organization described in clause (vi)(III), unless the actor can demonstrate by clear and convincing evidence that the actor did not know, and should not reasonably have known, that the organization was a terrorist organization.".

(c) TERRORIST ORGANIZATION DEFINED.—Section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)) is amended to read as follows:

"(vi) TERRORIST ORGANIZATION DEFINED.—As used in this section, the term 'terrorist organization' means an organization—

"(I) designated under section 219;

"(II) otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security, as a terrorist organization, after finding that the organization engages in the activities described in subclauses (I) through (VI) of clause (iv); or

"(III) that is a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv).".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to—

(1) removal proceedings instituted before, on, or after the date of the enactment of this Act; and

(2) acts and conditions constituting a ground for inadmissibility occurring or existing before, on, or after such date.

SEC. 3035. DEPORTABILITY OF TERRORISTS.

(a) IN GENERAL.—Section 237(a)(4)(B) (8 U.S.C. 1227(a)(4)(B)) is amended to read as follows:

"(B) TERRORIST ACTIVITIES.—Any alien who would be considered inadmissible pursuant to subparagraph (B) or (F) of section 212(a)(3) is deportable.".

(b) DEPORTATION OF ALIENS WHO HAVE RECEIVED MILITARY-TYPE TRAINING FROM TERRORIST ORGANIZATIONS.—Section 237(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)) is amended by adding at the end the following:

"(E) RECIPIENT OF MILITARY-TYPE TRAINING.—Any alien who has received military-type training (as defined in section 2339D(c)(1) of title 18, United States Code) from or on behalf of any organization that, at the time the training was received, was a terrorist organization, as defined in section 212(a)(3)(B)(vi), is deportable.".

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to acts and conditions constituting a ground for removal occurring or existing before, on, or after such date.

The CHAIRMAN pro tempore. Pursuant to House Resolution 827, the gentleman from Wisconsin (Mr. GREEN) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. GREEN).

Mr. GREEN of Wisconsin. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, my time is limited, so I will focus on just two aspects of this amendment that come largely from my own legislation, H.R. 4942.

First, this amendment recognizes that our enemy is not merely the terrorist who pulls the trigger or places the bomb or drives that rig truck, it is also those who through their material support make the violent act possible. They provide the training, they provide the shelter, the ID documents, the resources, the intelligence, the many dirty acts that help the chain of destruction. If we can break these links in the terrorist chain, then the chain will fall apart.

The second thing these provisions do is common sense. It makes material support of terrorism, especially those who participate in military-style training, grounds for being inadmissible into this country and grounds for deportation.

We are a welcoming country. I am the proud son of immigrants. But we cannot allow our welcoming arms to be a tool for terrorists who seek our downfall.

Mr. Chairman, I reserve the balance of my time.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I rise to seek the time in opposition, and I yield myself such time as I may consume.

Mr. Chairman, no one is opposed to identifying and denying admission to terrorists, and no one is opposed to deporting terrorists who are found in the United States. However, we should not exclude or deport someone as a terrorist who is an innocent person. This amendment would make that possibility more likely by expanding the already overly broad provisions for excluding and deporting individuals on terrorism grounds.

The terrorist removal provisions presently in the Immigration Nationality Act specify that terrorist organizations must be designated by the Secretary of the Department of State. This amendment would eliminate that requirement. This would greatly increase the possibility that people will be excluded or deported on the basis of involvement with an organization that has incorrectly been called a terrorist organization.

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Moreover, I would be surprised if someone removed on that basis would ever be allowed to return to the United States.

Under current law, involvement with a terrorist organization is not a ground for removal unless that person knew or should have known that it was a terrorist organization. We have seen this occur time and time again, particularly after passage of the PATRIOT Act and, as well, as it is related to many in the Muslim community. I believe that more consideration needs to be given to these very important issues.

I ask my colleagues to vote against this amendment.

Mr. Chairman, no one is opposed to denying admission to terrorists, and no one is opposed to deporting terrorists who are found in the United States. However, we should not exclude or deport someone as a terrorist who is an innocent person. This amendment would make that possibility more likely by expanding the already overbroad provisions for excluding and deporting individuals on terrorism grounds.

The terrorist removal provisions presently in the Immigration and Nationality Act specify that terrorist organizations must be designated by the Secretary of the Department of State. This amendment would eliminate that requirement. This would greatly increase the possibility that people will be excluded or deported on the basis of involvement with an organization that has incorrectly been called a "terrorist organization." Moreover, I would be surprised if someone removed on that basis would ever be allowed to return to the United States.

Under current law, involvement with a terrorist organization is not a ground for removal unless the person knew or should have known that it was a terrorist organization. The amendment would require the alien to demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known that it was a terrorist organization. This would create a higher standard that would be much more difficult to prove. In fact, I am not sure that it is possible to establish the negative proposition that you did not know something.

Finally, the changes that this amendment would make would apply retroactively, which would increase the likelihood of ensnaring innocent people. I urge you to vote against this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. GREEN of Wisconsin. Mr. Chairman, I yield 1 minute to the gentleman from Wisconsin (Mr. SENSENBRENNER), the distinguished chairman of the Committee on the Judiciary who has produced so many of the important provisions of this legislation.

Mr. SENSENBRENNER. I thank the gentleman for yielding me this time.

Mr. Chairman, I am puzzled why anybody would oppose this amendment. The amendment simply states that if you cannot be admitted to the United States because you are affiliated with a terrorist organization, then you can be deported if you get in through one way or another. We have a big problem with illegal aliens crossing both the northern and the southern border. If you do not go through the passport check and enter the United States illegally and you could not enter the United States legally because you were a part of a terrorist organization, then if this amendment goes down, you cannot kick them out. So it seems to me that if you cannot get in and it is illegal for you to get in and you do get in, anyhow, illegally, or by fooling an immigration inspector, then the government ought to have the power to be able to deport these people.

The amendment is as simple as that, meaning if they do get in when they should not, they should be able to be removed and sent out of the country and make America safer.

I urge support of the amendment.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

Let me just say that the important part of this is that the amendment would require the alien to demonstrate by clear and convincing evidence that he did not know and should not reasonably have known that it was a terrorist organization. This is a higher standard and would be much more difficult to prove. And might I say we are adding this to a bill that frankly the White House has indicated that it strongly opposes any overbroad expansion of expedited removal. This is clearly in that ballpark.

The administration has concerns with the overbroad alien identification standards proposed by the bill and unrelated to security concerns. All of these amendments that we will be talking about, we have a clear statement by the White House that they oppose. But also my understanding is that the chairman of the full Committee on the Judiciary has indicated that he would not stand for the expansion of section 411 of the PATRIOT Act. In fact, the chairman said that it will be done "over my dead body." This is what we are doing here right now. Even if we do so, we need to do so with far more detailed review and judicial committee hearings and the understanding of the imbalance between civil liberties and respect for the judicial system and the right of someone to go into the courts and prove otherwise than what we are doing here under H.R. 10 which is supposed to be, as the 9/11 Commission has said, the overhaul of the U.S. intelligence agencies.

Mr. Chairman, I reserve the balance of my time.

Mr. GREEN of Wisconsin. Mr. Chairman, I yield 1½ minutes to the gentleman from Indiana (Mr. HOSTETTLER), chairman of the Subcommittee on Immigration, Border Security, and Claims.

Mr. HOSTETTLER. Mr. Chairman, I rise in strong support of this amendment and commend my colleague from Wisconsin for his work on this issue. Currently, terrorists and their supporters can be kept out of the United States, but as soon as they set foot in the U.S. on tourist visas, for example, we cannot deport them for many of the very same offenses. This hinders our ability to protect Americans from those alien terrorists who have infiltrated the United States. This amendment makes aliens deportable for terrorist-related offenses to the same extent that they would not be admitted in the first place to the United States.

Another deficiency in current law is based on a flawed understanding of how terrorist organizations operate. The Immigration and Nationality Act now reads that if an alien provides funding or other material support to a terrorist organization, the alien can escape deportation if he can show that he did not know that the funds or support would further the organization's terrorist activity. That is, his donation did not immediately go to buying explosives. This notion is based on a fundamental misunderstanding of how terrorist organizations operate.

As Kenneth McKune, former associate coordinator for counterterrorism at the State Department explained, "Given the purposes, organizational structure and clandestine nature of foreign terrorist organizations, it is highly likely that any material support to these organizations will ultimately inure to the benefit of their criminal, terrorist functions, regardless of whether such support was ostensibly intended to support nonviolent, nonterrorist activities."

Money given to terrorist organizations is fungible. Senator DIANNE FEINSTEIN has rightly stated that, "I simply do not accept that so-called humanitarian works by terrorist groups can be kept separate from their other operations."

I urge my colleagues to support the amendment.

Mr. GREEN of Wisconsin. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I think what is interesting to listen to today are the arguments on the other side. Where they cannot win on the merits, they choose to throw up a smoke screen of process, no matter how far off point it may be. This amendment stands for a very simple proposition, those who materially support terrorists, who make the terrorist act possible by providing training, intelligence, logistics, transportation, those who materially support terrorism should not be here. They should not be allowed in this country; and if they are in this country, they should be deported. We must have this tool. If we are truly going to make this country safe, if we are truly going to disrupt terrorism before the trigger is pulled or the bomb is set, before lives are lost, we must have these tools.

Those who support terrorism intellectually through their training support and harboring terrorists, those who operate and move in the shadows of the terrorist operation, they do not belong here. They are every bit as dangerous as the one who would pull the trigger. I urge my colleagues to support this amendment. I think it is a vitally important tool in our overall effort in homeland security.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore (Mr. KOLBE). The gentlewoman from Texas (Ms. JACKSON-LEE) is recognized to close for 2 minutes.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I yield myself such time as I may consume.

We do not want terrorists in this country and we certainly want to be able to identify the terrorists as everyone might expect we would want to do. This amendment is particularly overbroad, has an ability to wrap up innocent individuals, and it goes against what the administration has said. The administration strongly opposes the overbroad expansion of expedited removal authority.

Might I remind my colleagues of the unfortunate circumstances, though they are someone different, of Cat Stevens, Yusuf Islam, who came here with all innocent purposes. In fact, his last years of work have been in charitable work. Look what we tried to do with him. So many of our constituents in the United States have Muslim names and are affiliated with organizations who have good intentions but may be misconceived and therefore they are wrapped up in this expedited removal.

This is something that needs to be done in a separate, bipartisan manner, which is to have hearings, to get testimony, to understand the depth of the need and how to craft something that works. Our own chairman has indicated that we cannot by extension extend the PATRIOT Act without considerable thought and I believe it is important when we are defending our Nation to have considerable thought.

I would ask my colleagues to deny this amendment, to reject it, and I ask us to focus on restoring the sense of integrity to our intelligence system as the 9/11 Commission report argues for and the Maloney-Shays bill argues for.

I ask for a "no" vote on this particular amendment.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Wisconsin (Mr. GREEN).

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

Mr. GREEN of Wisconsin. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Wisconsin (Mr. GREEN) will be postponed.

It is now in order to consider amendment No. 13 printed in House Report 108–751.

AMENDMENT NO. 13 OFFERED BY MR. HOSTETTLER

Mr. HOSTETTLER. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 13 offered by Mr. HOSTETTLER:

Page 243, beginning on line 12, strike "and the officer determines that the alien has been physically present in the United States for less than 1 year".

Page 244, beginning on line 7, strike "if the officer determines that the alien has been physically present in the United States for less than 1 year".

Page 245, line 5, strike "the central motive" and insert "a central reason".

Page 254, strike line 6 and all that follows through line 24 on page 255 and insert the following:

SEC. 3032. DETENTION OF ALIENS BARRED FROM RESTRICTION ON REMOVAL PENDING REMOVAL.

(a) IN GENERAL.—Section 241 of Immigration and Nationality Act (8 U.S.C. 1231) is amended by adding at the end the following:

"(j) DETENTION OF ALIENS BARRED FROM RESTRICTION ON REMOVAL PENDING REMOVAL.—

"(1) IN GENERAL.—In order to protect the United States from those aliens who would threaten the national security or endanger the lives and safety of the American people, the Secretary of Homeland Security may, in the Secretary's unreviewable discretion, determine that any alien who has been ordered removed from the United States and who is described in subsection (b)(3)(B) is a specially dangerous alien and should be detained until removed. This determination shall be reviewed every six months until the alien is removed. In making this determination, the Secretary shall consider the length of sentence and severity of the offense, the loss and injury to the victim, and the future risk the alien poses to the community.

"(2) ALIENS GRANTED PROTECTION RESTRICTING REMOVAL.—Any alien described in paragraph (1) who has been ordered removed, and who has been granted any other protection under the immigration law, as defined in section 101(a)(17), restricting the alien's removal, shall be detained. The Secretary of State shall seek diplomatic assurances that such alien shall be protected if removed from the United States.".

(b) SEVERABILITY.—If any amendment, or part of any amendment, made by subsection (a), or the application of any amendment or part of any amendment to any person or circumstance, is held to be unconstitutional—

(1) the Secretary of Homeland Security shall continue to seek the removal of any alien described in section 241(j)(1) of the Immigration and Nationality Act, as amended by this Act, consistent with any protection described in section 241(j)(2) of such Act; and

(2) the Secretary of State shall continue to seek diplomatic assurances that any alien described in section 241(j)(2) of the Immigration and Nationality Act, as amended by this Act, would be protected upon removal.

The CHAIRMAN pro tempore. Pursuant to House Resolution 827, the gentleman from Indiana (Mr. HOSTETTLER) and the gentleman from California (Mr. BERMAN) each will control 5 minutes.

Mr. HOSTETTLER. Mr. Chairman, I ask unanimous consent to extend the debate on this amendment to 20 minutes, equally divided.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

The CHAIRMAN pro tempore. The gentleman from Indiana (Mr. HOSTETTLER) and the gentleman from California (Mr. BERMAN) each will control 10 minutes.

The Chair recognizes the gentleman from Indiana (Mr. HOSTETTLER).

Mr. HOSTETTLER. Mr. Chairman, I yield myself such time as I may consume.

I urge my colleagues to support this amendment. It is supported by leadership, including Chairman HENRY HYDE, and will protect the American people from dangerous aliens while continuing our Nation's proud history of providing refuge to the innocent oppressed. This amendment will protect the American people in the same way as section 3032, which it replaces, would have. Section 3032 would have barred aliens who posed a threat to the American public from seeking our country's protection.

The courts have created a need to defend the American public against such aliens. You see, the decisions of a few judges have turned what was a clear congressional mandate authorizing the detention of dangerous aliens who are facing removal into a confused and unworkable mess. Congress has authorized the Attorney General to detain all aliens who pose a risk to the community, including aliens granted protection under the Convention Against Torture, until they can be removed from the United States. The Supreme Court has read this provision, however, to find that any alien who has been ordered deported but who cannot be removed must be released, no matter how grave a danger the alien poses, unless some "special circumstance" makes the alien especially dangerous.

Congress' clear standard has eroded to the point that the Ninth Circuit Court of Appeals ordered Department of Homeland Security authorities to release a dangerously insane alien who had accumulated convictions for assault, harassment and rape. Why? Because the Supreme Court had released a killer in the same circumstances, and the alien in the Ninth Circuit Court of Appeals' case had not actually killed anyone. Under such logic, DHS cannot protect the public against an alien who has been granted torture convention protection and who therefore cannot be removed from the United States unless the alien has done something more serious than killing another person.

This amendment will address the goals of section 3032 by giving the Secretary of Homeland Security the tools to keep dangerous aliens granted protection under the torture convention out of our communities, off of our streets, and away from our children. It will authorize the Secretary, in his unreviewable discretion, to detain aliens granted such protection who pose a risk to the American people. In addition, this amendment will continue our Nation's tradition of providing aliens the opportunity to request asylum and torture convention relief while at the same time ensuring that our country's generosity is not abused.

It would also amend section 3007 to reinforce the current burdens governing asylum, with one exception. Aliens who claim that they need asylum because they have been accused in connection with terrorist, militant or guerilla activity must show that race, religion, membership in a particular social group, nationality or political opinion is a central reason for any claimed persecution. This amendment will protect innocent aliens who come to our shores fleeing thugs and dictators, while undoing an inappropriate burden imposed on our government by, once again, the Ninth Circuit Court of Appeals.

Contrary to law and logic, the Ninth Circuit has required the government to prove that aliens claiming persecution because they have been tied to terrorism are not eligible for asylum, instead of requiring the aliens seeking protection to show that they are. My subcommittee has discovered that Hesham Hedayet, who killed two innocent bystanders at LAX on July 4, 2002, had tried to exploit this loophole.

I must underscore again, however, the most important effect of this amendment which is to give the Secretary of Homeland Security the discretion to detain aliens who would pose a risk to the American people if released.

I urge my colleagues to support this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. BERMAN. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, we are about to embark on the debate on three amendments dealing with three provisions of this bill that are very important and I think the House should try to understand the context, so I would like to use this initial time just to sort of set the table.

The majority in putting forth this bill on the floor used intelligence reform and the compelling and legitimate concern about terrorism to insert three obnoxious, overbroad and overreaching provisions that flagrantly violate our convention against torture, which the United States has signed and ratified, and threaten to send people who are likely to be tortured back to their countries that will torture them; to engage in a process that allows a massive deportation of people, having nothing to do with terrorism, who are in this country for less than 5 years, through expedited removal, in a fashion that will not allow them a hearing, this is section 3006, that will not allow them a hearing, that will not allow them to contact their families, that will require them to establish they are either here legally or have been here for more than 5 years by the documents on their person, and, if not, to be detained and immediately removed from this country, in total and in flagrant violation of existing processes, taking a legitimate idea of expedited removal at our points of entry and in establishing it to the country in its entirety throughout its interior and to anyone who is here less than 5 years.

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Then, finally, in section 307 to massively alter the procedures and tests for getting asylum in such a way as to fundamentally depart from this country's tradition as a haven for refugees and people fleeing because of a well-founded fear of persecution, based on their politics, their gender, their religion, their ethnicity. These are horrible provisions. They have nothing to do with terrorism.

Now we have an amendment offered by the gentleman from Indiana after the White House counsel wrote the toughest letter we have seen saying the notion that America is going to send somebody back to a country where they are likely to be tortured is unconscionable, we do not support it, we do not ask for this provision. He offers an amendment, which is a smokescreen, a total smokescreen, that tries to pretend that we are getting out of this problem by making amendments to three sections, notwithstanding the fact that if his amendment were to pass and the Smith amendments that follow his amendment to strike sections 306 and 307 were to lose, every one of these problems would still exist.

Mr. HOSTETTLER. Mr. Chairman, I yield 3 minutes to the gentleman from Missouri (Mr. BLUNT), majority whip.

Mr. BLUNT. Mr. Chairman, I thank the gentleman from Indiana for yielding me this time.

Because of the strange conflict in current law, terrorists and criminals who are not citizens of our country but for some reason get here are, in fact, being released into our society. There are three amendments, as the gentleman from California (Mr. BERMAN) pointed out. I think it is better to debate them one at a time. That is why we do that. We are going to vote on them one at a time.

This amendment is an important amendment because it deals with that specific problem. I cannot believe anyone in this House would want violent criminals from other countries who somehow get here to be able to be released in our country. This amendment allows that those criminals would be detained.

There is a great example of a Jordanian who was convicted in Jordan of conspiracy to bomb a Jordanian school for American children. He is convicted of a conspiracy where his goal, his target, was to kill American children. He somehow got to this country.

Under the current interpretation of the courts, we cannot send him back to Jordan because he might be tortured, but we also cannot detain him. So in that interpretation this person is likely to be set free in some community in the United States, a person who is conspiring to kill American children in Jordan. So we would put him in a community of the United States that is full of American children, nobody but American children, to kill in that community? That cannot be allowed.

What the gentleman from Indiana's (Mr. HOSTETTLER) amendment does is address the concern that we all would have about sending anybody into a place where they would be punished in a way that we would think was not appropriate.

I have got to tell my colleagues the appropriateness to this body and anywhere else and even as we would talk personally of a punishment for some whose target was to kill American children, it is hard to imagine how that punishment could be too difficult, but that is not what we are about in this society. So this amendment would allow that person to be detained.

If one catches a rattlesnake on one's farm, they do not look at it and say, this is definitely a rattlesnake, let us go up and release it in the front yard. What this amendment does is say, if they catch that rattlesnake and they say we are going to be able detain this rattlesnake, even though he did not commit his crime in the United States. We are not going to let this criminal who was, in this case, targeting American children, in other cases might be a murderer, in other cases might be a rapist, in other cases might be a pedophile, we are not going to let this person go and release him in our community simply because we have no place to send him back to and he did not commit the crimes that there was an agreement that he committed in the United States.

This is a good amendment. It improves this bill. But the underlying bill was designed to deal with the concern that we could not find an adequate way to deal with until the gentleman from Indiana (Mr. HOSTETTLER) worked hard to come up with this amendment.

I urge support for this amendment. We are debating these and voting on them one at a time. I urge that this amendment be adopted.

Mr. BERMAN. Mr. Chairman, I yield for the purpose of making a unanimous consent request to the gentleman from Michigan (Mr. CONYERS)

Mr. CONYERS. Mr. Chairman, I reluctantly rise to tell the gentleman from Indiana (Mr. HOSTETTLER) of the Committee on the Judiciary that this breaks our deadlock, but it simply does not go far enough; and I am hoping that he will carefully consider the arguments being made by his colleagues, particularly on the Committee on the Judiciary, to see why it is that we think that even the Hostettler amendment can be approved.

I rise in strong opposition to this amendment. the Hostettler Amendment allows for some of the broadest and most damaging immigration changes we will have passed in several decades, and will decimate legal protections in our laws of expedited removal, asylum, and extraordinary rendition and torture.

Expedited removal (Section 3006)—The Hostettler Amendment would amend the immigration laws to permit summary deportations for persons who cannot prove that have physically been in the U.S. for more than 5 years. While the amendment deletes the provision that would have applied this summary deportation provision to asylee applicants, it still suffers from several glaring loopholes that would result in deserving immigrants facing the legal nightmare of summary deportation. Groups who would lose legal protections under the Hostettler Amendment include:

Trafficking victims, and victims of rape, incest, kidnaping, and domestic violence. Currently, the Trafficking Victims Protection Act allows these victims to remain in the U.S. so they are not subject to further violence and abuse. Under the Hostettler amendment, trafficking victims and other victims of rape, incest and kidnaping would be subject to mandatory deportation.

Batterred women and children. The Violence Against Women Act provides that battered immigrant women and children are permitted to remain here, so they are not forced to face further battering and violence. Under the Hostettler amendment, these immigrants could be plucked off the street and subject to mandatory deportation.

Cubans who arrive in the U.S. by sea or by land. Currently, the Attorney General has only discretionary power to exempt Cubans who arrive in the U.S. via land or sea from expedited removal. Under the Hostettler amendment, this discretionary power would again be obviated by the mandatory requirement of expedited removal. This would mean that Cubans who arrive at our shores would face automatic summary deportation

Asylum (Section 3007)—Under the Hostettler amendment, the rights of all asylum candidates would be impaired, decimating our historic commitment to refugees and persecuted immigrants. Among other things, the Hostettler Amendment would:

Require an asylum applicant to prove that a central reason for his or her being persecuted was race, religion, nationality, membership in a particular social group, or political opinion; a far more difficult evidentiary burden than current law.

Permit adjudicators to deny asylum because the applicant is unable to provide specific corroborating specific, and deny judicial review of such denials.

Introduce brand new credibility grounds for denying asylum, such as "demeanor," any inconsistency in statements (even if attributable to fear of retribution), and other subjective grounds that introduce new cultural barriers to asylum, particularly for traumatized victims of torture and violence.

Exclude country conditions from human rights organizations, journalists, and other relevant, reliable and more recent information than may be obtained from State Department reports.

Extraordinary Rendition/Torture (Section 3032)—The Hostettler Amendment would also allow immigrants to be returned to countries where they could be tortured in violation of the Convention Against Torture. This is because the amended provision would allow our government to send an individual to a country with a history of human rights violations even if a U.S. immigration judge has determined he or she would face torture, as long as the Secretary of State had merely asked the country if they would agree not to torture the immigrant. In essence, we would be substituting the judgment of a foreign diplomat from Syria, China or the Sudan, for that of a judge in the U.S., with the immigrant facing excruciating torture if the judge was right.

Another problem with the Hostettler Amendment is that it would create unreviewable authority on the part of the DHS to detain noncitizens who are found to be at risk of torture or persecution in their home countries.

The Hostettler amendment is opposed by a wide range of human rights, civil liberties and immigration groups, including the ACLU, the American Immigration Lawyers Association, Amnesty International, the Center for Victims of Torture, the Hebrew Immigrant Aid Society, Human Rights Watch, the US Committee for Refugees, the National Council of La Raza and the U.S. Conference of Catholic Bishops.

I urge No vote.

Mr. BERMAN. Mr. Chairman, I yield myself 15 seconds.

In response to the last speaker, he demonstrated why it is a smokescreen. The issue of criminal aliens is a serious issue which we should have to deal with; so they insert that into the Hostettler amendment. But what they do is leave a gaping loophole whereby a country that utilizes torture gives assurances to the United States and therefore gets back the person whom they are going to torture.

Mr. Chairman, I yield 3½ minutes to the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY. Mr. Chairman, I thank the gentleman for yielding me this time.

I rise in strong opposition to the Hostettler amendment. The Hostettler amendment amends the ill-considered and counterproductive torture provisions in H.R. 10 in a way that still allows foreigners to be subjected to torture.

How does it do this? The Hostettler amendment gives the Secretary of Homeland Security the power to detain certain foreigners that, "in the Secretary's unreviewable discretion," the Secretary has determined to be a specially dangerous alien that should be detained until removed. Such persons would be held behind bars indefinitely with no recourse to a court or another independent fact finder empowered to review the basis for the Secretary's decision. Any foreign person that the Secretary of Homeland Security decides is "especially dangerous" can just be locked up forever with no trial or just deported.

And the Hostettler amendment stipulates that the "Secretary of State shall seek diplomatic assurances that such alien shall be protected if removed from the United States." That means that the State Department is supposed to seek diplomatic assurances from a country that it will not torture somebody after a U.S. judge already has found that this country likely would, in fact, torture that person. Are we really going to trust the assurances of the countries that our own State Department says torture detainees?

Mr. Chairman, we should really call this the "In Syria we trust" amendment or perhaps the "In Sudan we trust" amendment. The assurances that these countries have provided that they would not torture have proved completely unreliable in practice.

In 2002, Maher Arar, a Syrian-born citizen, was intercepted at New York's JFK Airport and deported to Syria, where he was detained and reportedly tortured. The Washington Post has reported that while Syria provided "diplomatic assurances" that Arar would not be mistreated, these assurances proved worthless. Maher Arar was tortured anyway.

America should not be outsourcing torture to countries like Syria and the Sudan. America should be relying not on diplomatic assurances from countries that we already know practice torture, particularly when a U.S. judge has already found that it is more likely than not that the deported person would be tortured if they were sent there.

We as America cannot preach temperance from a bar stool. If we want to protect our own Marines and soldiers from torture, we must have the same standard for protecting prisoners that we have under our control from torture. We cannot build a new generation of nuclear bunker busters and then tell the Muslim nations they should not want nuclear weapons, and we cannot tell the Muslim world not to torture American prisoners at the same time we are sending Muslim detainees to countries that we know are going to torture those prisoners.

We cannot exist in a world where the United States is not the moral leader. This amendment must be defeated.

Mr. HOSTETTLER. Mr. Chairman, I yield 2 minutes to the gentleman from Wisconsin (Mr. SENSENBRENNER), distinguished chairman of the Committee on the Judiciary.

Mr. SENSENBRENNER. Mr. Chairman, I rise in support of the Hostettler amendment, which I believe deals with the issue of compliance with the torture amendment in a humane manner that will safeguard the safety of the American people.

Let me say why this is necessary. Under current law, as interpreted by the courts, a criminal who has committed a crime or conspired to commit a crime in another country, or someone who is on a terrorist watch list can come to the United States. When they get here, they claim asylum. It takes a while to adjudicate asylum applications.

They also can say if he is immediately deported, then he would be tortured if he went back home. So the way it stands now under the current law, that person would be out in society free to commit crimes, free to commit terrorist acts until the time comes for the asylum hearing. And then if the person were found not to be eligible for asylum, they still could not be deported if they thought that they would be tortured when they come back home.

So if we cannot send them home under the torture convention, and that is the case in many Middle Eastern countries, and we cannot detain them, then they are out on the street posing a danger to society.

What the Hostettler amendment does in this circumstance is say that they can be detained. And there are procedural safeguards in the Hostettler amendment that set up standards for detention and require a review every 6 months. If my colleagues vote against this amendment, they are going to have these people out on the street.

They should not be out on the street. They should be detained or deported. If we cannot deport them, then let us give the Department of Homeland Security the authority to detain them. Pass the amendment.

Mr. BERMAN. Mr. Chairman, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE), ranking member of the Immigration, Border Security, and Claims Subcommittee.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the gentleman for yielding me this time and for his leadership. I thank the chairman of the subcommittee and the chairman of the full committee for their comments.

I agree with the chairman of the full committee. Keep them, detain them here. The problem with this amendment is that it is subjected to persons who are not terrorists. It is subjected to persons who can cause harm but are not terrorists. This is the problem.

The White House has already said that the President of the United States opposes provisions dealing with sending people to places where torture occurs. The President made it clear that the United States stands against and will not tolerate torture and that the United States remains committed to comply with its obligations under the convention against torture and other cruel, inhuman, or degrading treatment or punishment.

The amendment offered by the gentleman from Indiana amendment does not solve the problem. It requires, or asks, the Secretary of State to simply ask a country not to torture the individual. Do my colleagues believe that Sudan would comply with that? That is not the case. This amendment is subjected to mistake.

Let me just read Cat Stevens: "I am a victim." Although the circumstances are different, he was yanked off a Washington-bound plane and sent home. The singer, formerly known as Cat Stevens, says he became the victim of an "unjust and arbitrary system." This is what we are passing now.

"I was devastated," he wrote. "The unbelievable thing is that only 2 months earlier, I had been having meetings in Washington with top officials from the White House Office of Faith-Based and Community Initiatives to talk about my charity work."

The real key in this amendment is that we should deal with this question in another separate opportunity to really address this in a fair manner. This amendment will be a wide, wide, wide net, and what will happen with this net? Innocent persons will be forced to places where they will be tortured.

The President is standing up against it. We stand up against it. I will simply argue that this is not the appropriate vehicle to use. This goes against the convention against torture, and I ask my colleagues to consider a high moral ground in this and to vote against the amendment. We must also support the two Smith of New Jersey amendments to eliminate the very bad H.R. 10 provisions subjecting deported persons to possible torture against the convention against torture.

This amendment would make minor changes to the expedited removal provisions in section 3006, but we need more than minor changes. We need to eliminate expedited removal proceedings entirely. Expedited removal proceedings are conducted by immigration officers who are not even attorneys. There is no hearing before an immigration judge, no right to counsel, and no appeal. Nevertheless, despite this complete absence of due process, someone removed from the United States in expedited removal proceedings is barred for 5 years from returning.

The amendment also would modify section 3032 to specify that people who have received CAT relief or withholding of removal may be detained indefinitely if they are dangerous. The authority to detain dangerous aliens indefinitely already exists.

In *Zadvydas* v. *Davis*, 533 U.S. 678 (2001), the United States Supreme Court held that the detention provisions in the Immigration and Nationality Act, read in light of the Constitution's demands, limit an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States. The Supreme Court found further that once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute—except where special circumstances justify continued detention, such as when it is necessary to protect the public.

In response to that Supreme Court decision, the former Immigration and Naturalization Service promulgated regulations for determining the circumstances under which an alien may be held in custody beyond the statutory removal period. 8 C.F.R. §241.4. These regulations authorize the Government to continue to detain aliens who present foreign policy concerns or national security and terrorism concerns, as well as individuals who are especially dangerous due to a mental condition or personality disorder, even though their removal is not likely in the reasonably foreseeable future.

If we are going to establish a statutory criterion for deciding when indefinite detention is warranted, we need to have a hearing first. An unwise or inadequate criterion will result in people being detained indefinitely who should be released from custody. We need to proceed with caution on this matter.

I urge you to vote against this amendment.

□ 1115

The CHAIRMAN pro tempore (Mr. KOLBE). There is 1 minute remaining on each side. The gentleman from California (Mr. BERMAN), as a member of the Committee on the Judiciary and in opposition, has the right to close.

The Chair recognizes the gentleman from Indiana (Mr. HOSTETTLER).

Mr. HOSTETTLER. Mr. Chairman, I would like to at this time state that the administration, as a result of the amendment to section 3032, has said that they favor the change in my amendment.

Mr. Chairman, I yield the balance of the time to the gentleman from Florida (Mr. LINCOLN DIAZ-BALART).

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Chairman, I think it is important that we realize that this amendment, while not perfect, it is extremely important that it pass. I am very supportive of the Smith amendments that will be debated shortly. But what this amendment does is it keeps us, the United States of America, in compliance with the convention against torture, allowing us, obviously, not to, in order to be in compliance with the convention against torture, not to deport people to places where they will be tortured. But it also gives discretion to the Secretary of Homeland Security to detain, to keep under detention, terrorists, murderers, rapists, child molesters, and a limited list of other serious criminals.

To comply with the convention against torture, it is important that we pass this amendment.

I thank the gentleman from Indiana (Mr. HOSTETTLER) for his hard work.

Mr. BERMAN. Mr. Chairman, I yield myself the remaining time.

I am going to vote against the Hostettler amendment because, number one, it is a smokescreen by pretending to fix 3006 and 3007, the amendments that will follow this amendment when we come back to the Committee of the Whole; and, secondly, because it has a glaring loophole involving assurances from the torturing country that they will not torture. That means it is still in violation of the Convention Against Torture. Members will decide how they are going to vote on that particular amendment.

The point I want to make most of all is do not fall for the trap which is being set by this amendment that the Smith amendments to 3006 and 3037, that have nothing to do with terrorism and that allow for mass deportations with no due process and which fundamentally change our asylum laws, do not fall for the trap that by pasting the Hostettler amendment you have cured the defects in those provisions. Be sure to vote for the Smith amendments and against those provisions when they come up.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Indiana (Mr. HOSTETTLER).

The amendment was agreed to.

SEQUENTIAL VOTES POSTPONED IN THE COMMITTEE OF THE WHOLE

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments on which further proceedings were postponed in the following order: Amendment No. 4 offered by Mr. KIRK of Illinois, Amendment No. 5 offered by Mr. SESSIONS of Texas, Amendment No. 8 offered by Mr. CARTER of Texas, Amendment No. 11 offered by Mr. GOODLATTE of Virginia, Amendment No. 12 offered by Mr. GREEN of Wisconsin.

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

AMENDMENT NO. 4 OFFERED BY MR. KIRK

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on Amendment No. 4 offered by the gentleman from Illinois (Mr. KIRK) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 414, noes 0, not voting 18, as follows:

[Roll No. 512]

AYES—414

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clyburn
Coble
Cole
Collins
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hill
Hinchey
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Maloney
Manzullo
Markey
Marshall
Matheson
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Oberstar
Obey
Olver
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)

Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Toomey
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—18

Boehlert
Clay
Conyers
Culberson
Filner
Gephardt
Hinojosa
Lipinski
Majette
Matsui
McCarthy (MO)
Meek (FL)
Norwood
Ortiz
Paul
Slaughter
Tauzin
Towns

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (Mr. ADERHOLT) (during the vote). Members are advised that there are 2 minutes remaining in this vote.

☐ 1142

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Stated for:

Ms. McCARTHY of Missouri. Mr. Chairman, on rollcall No. 512, I was unavoidable detained at a doctor's appointment. Had I been present, I would have voted "aye."

Mr. FILNER. Mr. Chairman, on rollcall No. 512, I was in my Congressional District on official business. Had I been present, I would have voted "aye."

AMENDMENT NO. 5 OFFERED BY SESSIONS

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Texas (Mr. SESSIONS) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 385, noes 30, not voting 17, as follows:

[Roll No. 513]

AYES—385

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole
Collins
Conyers
Cooper
Costello
Cramer
Crane
Crenshaw
Crowley
Cubin
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Fattah
Feeney
Ferguson
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hill
Hinchey
Hobson
Hoeffel
Hoekstra
Holden
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Levin
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Maloney
Manzullo
Marshall
Matheson
McCarthy (NY)
McCotter
McCrery
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer,
Ney
Northup
Nunes
Nussle
Obey
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Royce
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Spratt
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Toomey
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Watson
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Wynn
Young (AK)
Young (FL)

NOES—30

Blumenauer
Carson (IN)
Farr
Grijalva
Hastings (FL)
Holt
Honda
Jackson (IL)
Kildee
Kucinich
Lee
Lewis (GA)
Markey
McCarthy (MO)
McCollum
McDermott
Mollohan
Oberstar
Olver
Payne
Rangel
Roybal-Allard
Sabo
Scott (VA)
Solis
Stark
Velázquez
Waters
Watt
Woolsey

NOT VOTING—17

Boehlert
Cox
Culberson
Filner
Gephardt
Hinojosa
Lipinski
Majette
Matsui
Meek (FL)
Norwood
Ortiz
Paul
Ruppersberger
Slaughter
Tauzin
Towns

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (during the vote). Members are advised there are 2 minutes remaining in this vote.

☐ 1152

Mr. KUCINICH and Mr. BLUMENAUER changed their vote from "aye" to "no."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Stated for:

Mr. FILNER. Mr. Chairman, on rollcall No. 513, I was in my Congressional District on official business. Had I been present, I would have voted "aye."

AMENDMENT NO. 8 OFFERED BY MR. CARTER

The CHAIRMAN pro tempore (Mr. ADERHOLT). The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Texas (Mr. CARTER) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 344, noes 72, not voting 16, as follows:

[Roll No. 514]

AYES—344

Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Ballenger
Barrett (SC)

Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bell
Berkley
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Cardin
Cardoza
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clyburn
Coble
Cole
Collins
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Ford
Fossella
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Gutknecht
Hall
Harman
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hill
Hobson
Hoeffel
Holden
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Maloney
Manzullo
Marshall
Matheson
McCarthy (NY)
McCotter
McCrery
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Menendez
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Pallone
Pascrell
Pastor
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Royce
Ruppersberger
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sanchez, Loretta
Sandlin
Saxton
Schiff
Schrock
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (TX)
Smith (WA)
Snyder
Souder
Spratt
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Wynn
Young (AK)
Young (FL)

NOES—72

Abercrombie
Baldwin
Becerra
Berman
Blumenauer
Capuano
Carson (IN)
Clay
Conyers
Davis (IL)
DeGette
Delahunt
Ehlers
Farr
Fattah
Frank (MA)
Grijalva
Gutierrez
Hastings (FL)
Hinchey
Hoekstra
Holt
Honda
Jackson (IL)
Jackson-Lee (TX)
Johnson, E. B.
Jones (OH)
Kildee
Kilpatrick
Kleczka
Kucinich
Lee
Levin
Lewis (GA)
Lofgren
Markey
McCarthy (MO)
McCollum
McDermott
McGovern
Meeks (NY)
Millender-McDonald
Miller, George
Mollohan
Nadler
Napolitano
Oberstar
Olver
Owens
Payne
Pelosi
Rangel
Roybal-Allard
Rush
Sabo
Sánchez, Linda T.
Sanders
Schakowsky
Scott (VA)
Serrano
Sherman
Smith (NJ)
Solis
Stark
Tierney
Van Hollen
Velázquez
Waters
Watson
Watt
Waxman
Woolsey

NOT VOTING—16

Boehlert
Culberson
Filner
Gephardt
Hinojosa
Lipinski
Majette
Matsui
Meek (FL)
Norwood
Obey
Ortiz
Paul
Slaughter
Tauzin
Towns

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (during the vote). Members are advised there are 2 minutes remaining in this vote.

☐ 1202

Mr. RUSH, Mr. SMITH of New Jersey, Ms. LINDA T. SÁNCHEZ of California, Mr. WAXMAN and Mr. SHERMAN changed their vote from "aye" to "no."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Stated for:

Mr. FILNER. Mr. Chairman, on rollcall No. 514, I was in my Congressional District on official business. Had I been present, I would have voted "aye".

AMENDMENT NO. 11 OFFERED BY MR. GOODLATTE

The CHAIRMAN pro tempore (Mr. ADERHOLT). The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Virginia (Mr. GOODLATTE) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 333, noes 84, not voting 15, as follows:

[Roll No. 515]

AYES—333

Aderholt
Akin
Alexander
Andrews
Baca
Bachus
Baird
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bell
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capuano
Cardin
Cardoza
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clyburn
Coble
Cole
Collins
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Ford
Fossella
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hill
Hobson
Hoeffel
Hoekstra
Holden
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Isakson
Israel
Issa
Istook
Jefferson
Jenkins
John
Johnson (CT)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kind
King (IA)
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
LaHood
Lampson
Langevin
Lantos
Latham
LaTourette
Leach
Levin
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Manzullo
Marshall
Matheson
McCarthy (NY)
McCollum
McCotter
McCrery
McHugh
McInnis
McIntyre
McKeon
McNulty
Menendez
Mica
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Napolitano
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Obey
Osborne
Ose
Oxley
Pascrell
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Regula
Rehberg

Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ruppersberger
Ryan (WI)
Ryun (KS)
Sabo
Sandlin
Saxton
Schiff
Schrock
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Snyder
Souder
Spratt
Stearns
Stenholm
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Turner (TX)
Udall (CO)
Upton
Van Hollen
Vitter
Walden (OR)
Walsh
Wamp
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Wynn
Young (AK)
Young (FL)

NOES—84

Abercrombie
Ackerman
Allen
Baldwin
Becerra
Blumenauer
Brown (OH)
Capps
Carson (IN)
Clay
Conyers
Davis (IL)
DeGette
Delahunt
Dicks
Dingell
Doggett
Farr
Fattah
Frank (MA)
Grijalva
Gutierrez
Harman
Hastings (FL)
Hinchey
Holt
Honda
Inslee
Jackson (IL)
Jackson-Lee (TX)
Johnson (IL)
Jones (OH)
Kilpatrick
Kucinich
Larsen (WA)
Larson (CT)
Lee
Lewis (GA)
Lofgren
Maloney
Markey
McCarthy (MO)
McDermott
McGovern
Meehan
Meeks (NY)
Michaud
Millender-McDonald
Miller, George
Mollohan
Nadler
Neal (MA)
Oberstar
Olver
Otter
Owens
Pallone
Pastor
Payne
Pelosi
Rangel
Rothman
Roybal-Allard
Rush
Ryan (OH)
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Scott (VA)
Serrano
Smith (WA)
Solis
Stark
Strickland
Tierney
Udall (NM)
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Woolsey

NOT VOTING—15

Boehlert
Culberson
Filner
Gephardt
Hinojosa
Lipinski
Majette
Matsui
Meek (FL)
Norwood
Ortiz
Paul
Slaughter
Tauzin
Towns

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (during the vote). There are 2 minutes remaining in this vote.

□ 1212

Mr. RUSH, Mrs. MALONEY, and Mr. DICKS changed their vote from "aye" to "no."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Stated for:

Mr. FILNER. Mr. Chairman, on rollcall No. 515, I was in my congressional district on official business. Had I been present, I would have voted "aye".

AMENDMENT 12 OFFERED BY MR. GREEN OF WISCONSIN

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Wisconsin (Mr. GREEN) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 283, noes 132, not voting 17, as follows:

[Roll No. 516]

AYES—283

Aderholt
Akin
Alexander
Bachus
Baker
Ballenger
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Cardoza
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clyburn
Coble
Cole
Collins
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Cubin
Cunningham
Davis (AL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dingell
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
English
Etheridge
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Ford
Fossella
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hill
Hobson
Hoekstra
Holden
Hooley (OR)
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Kaptur
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Lampson
Langevin
Larson (CT)
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Marshall
Matheson
McCotter
McCrery
McHugh
McInnis
McIntyre
McKeon
McNulty
Mica
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Moore
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Pascrell
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ruppersberger
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sandlin
Saxton
Schrock
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Snyder
Souder
Spratt
Stearns
Stenholm
Sweeney
Tancredo
Tanner
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Turner (TX)
Udall (NM)
Upton
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (SC)
Wolf
Wu
Young (AK)
Young (FL)

NOES—132

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Becerra
Bell
Berkley
Berman
Blumenauer
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Carson (IN)
Clay
Conyers
Crowley
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeGette
Delahunt
DeLauro
Dicks
Doggett
Dooley (CA)
Emanuel
Engel
Eshoo
Evans
Farr
Fattah
Frank (MA)
Gonzalez
Grijalva
Gutierrez
Harman
Hastings (FL)
Hinchey
Hoeffel
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jones (OH)
Kanjorski
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lantos
Larsen (WA)
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Lynch
Maloney
Markey
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
Meehan
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller, George
Mollohan
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Owens
Pallone
Pastor
Payne
Pelosi
Price (NC)
Rangel
Reyes
Rodriguez
Rothman
Roybal-Allard
Rush
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Scott (VA)
Serrano
Sherman
Smith (WA)
Solis
Stark
Strickland
Stupak
Tauscher
Thompson (CA)
Tierney
Udall (CO)
Van Hollen
Velázquez
Waters
Watson
Watt
Waxman
Weiner
Wexler
Wilson (NM)
Woolsey
Wynn

NOT VOTING—17

Boehlert
Culberson
Filner
Gephardt
Hinojosa
Johnson, E. B.
Lipinski
Majette
Matsui
Meek (FL)
Norwood
Ortiz
Paul
Slaughter
Sullivan
Tauzin
Towns

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (Mr. ADERHOLT) (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1220

Mr. WYNN changed his vote from "aye" to "no."

Mr. SHAYS changed his vote from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Stated against:

Mr. FILNER. Mr. Chairman, on rollcall No. 516, I was in my congressional district on official business. Had I been present, I would have voted "no".

Mr. HUNTER. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. TERRY) having assumed the chair, Mr. ADERHOLT, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 10) to provide for reform of the intelligence community, terrorism prevention and prosecution, border security, and international cooperation and coordination, and for other purposes, had come to no resolution thereon.

CONFERENCE REPORT ON H.R. 4200, RONALD W. REAGAN NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

Mr. HUNTER submitted the following conference report and statement on the bill (H.R. 4200) to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes:

CONFERENCE REPORT (H. REPT. 108-767)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4200) to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted the Senate amendment, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005".

SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) DIVISIONS.—This Act is organized into three divisions as follows:

(1) Division A—Department of Defense Authorizations.

(2) Division B—Military Construction Authorizations.

(3) Division C—Department of Energy National Security Authorizations and Other Authorizations.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Organization of Act into divisions; table of contents.
Sec. 3. Congressional defense committees defined.

DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS

TITLE I—PROCUREMENT

Subtitle A—Authorization of Appropriations

Sec. 101. Army.
Sec. 102. Navy and Marine Corps.
Sec. 103. Air Force.
Sec. 104. Defense-wide activities.

Subtitle B—Army Programs

Sec. 111. Multiyear procurement authority for the light weight 155-millimeter howitzer program.
Sec. 112. Light utility helicopter program.

Subtitle C—Navy Programs

Sec. 121. DDG-51 modernization program.
Sec. 122. Repeal of authority for pilot program for flexible funding of cruiser conversions and overhauls.
Sec. 123. LHA(R) amphibious assault ship program.

Subtitle D—Air Force Programs

Sec. 131. Prohibition of retirement of KC-135E aircraft.
Sec. 132. Prohibition of retirement of F-117 aircraft.
Sec. 133. Aerial refueling aircraft acquisition program.

Subtitle E—Other Matters

Sec. 141. Development of deployable systems to include consideration of force protection in asymmetric threat environments.
Sec. 142. Allocation of equipment authorized by this title to units deployed, or to be deployed, to Operation Iraqi Freedom or Operation Enduring Freedom.
Sec. 143. Report on options for acquisition of precision-guided munitions.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Subtitle A—Authorization of Appropriations

Sec. 201. Authorization of appropriations.
Sec. 202. Amount for defense science and technology.

Subtitle B—Program Requirements, Restrictions, and Limitations

Sec. 211. Future Combat Systems program strategy.
Sec. 212. Collaborative program for research and development of vacuum electronics technologies.
Sec. 213. Annual Comptroller General report on Joint Strike Fighter program.
Sec. 214. Amounts for United States Joint Forces Command to be derived only from Defense-wide amounts.
Sec. 215. Global Positioning System III satellite.
Sec. 216. Initiation of concept demonstration of Global Hawk high altitude endurance unmanned aerial vehicle.
Sec. 217. Joint Unmanned Combat Air Systems program.

Subtitle C—Missile Defense Programs

Sec. 231. Fielding of ballistic missile defense capabilities.
Sec. 232. Integration of Patriot Advanced Capability-3 and Medium Extended Air Defense System into ballistic missile defense system.
Sec. 233. Comptroller General assessments of ballistic missile defense programs.
Sec. 234. Baselines and operational test and evaluation for ballistic missile defense system.

Subtitle D—Other Matters

Sec. 241. Annual report on submarine technology insertion.
Sec. 242. Sense of Congress regarding funding of the Advanced Shipbuilding Enterprise under the National Shipbuilding Research Program of the Navy.

TITLE III—OPERATION AND MAINTENANCE

Subtitle A—Authorization of Appropriations

Sec. 301. Operation and maintenance funding.
Sec. 302. Working capital funds.
Sec. 303. Other Department of Defense programs.

Subtitle B—Environmental Provisions

Sec. 311. Satisfaction of Superfund audit requirements by Inspector General of the Department of Defense.
Sec. 312. Reimbursement of Environmental Protection Agency for certain costs in connection with Moses Lake Wellfield Superfund Site, Moses Lake, Washington.
Sec. 313. Increase in authorized amount of environmental remediation, Front Royal, Virginia.
Sec. 314. Small boat harbor, Unalaska, Alaska.
Sec. 315. Report regarding encroachment issues affecting Utah Test and Training Range, Utah.
Sec. 316. Comptroller General study and report on alternative technologies to decontaminate groundwater at Department of Defense installations.
Sec. 317. Comptroller General study and report on drinking water contamination and related health effects at Camp Lejeune, North Carolina.
Sec. 318. Sense of Congress regarding perchlorate contamination of ground and surface water from Department of Defense activities.

Subtitle C—Workplace and Depot Issues

Sec. 321. Simplification of annual reporting requirements concerning funds expended for depot maintenance and repair workloads.
Sec. 322. Repeal of annual reporting requirement concerning management of depot employees.
Sec. 323. Extension of special treatment for certain expenditures incurred in operation of Centers of Industrial and Technical Excellence.
Sec. 324. Temporary authority for contractor performance of security-guard functions.
Sec. 325. Pilot program for purchase of certain municipal services for Army installations.
Sec. 326. Bid protests by Federal employees in actions under Office of Management and Budget Circular A-76.
Sec. 327. Limitations on conversion of work performed by Department of Defense civilian employees to contractor performance.
Sec. 328. Competitive sourcing reporting requirement.

Subtitle D—Information Technology

Sec. 331. Preparation of Department of Defense plan for transition to Internet Protocol version 6.
Sec. 332. Defense business enterprise architecture, system accountability, and conditions for obligation of funds for defense business system modernization.
Sec. 333. Report on maturity and effectiveness of the Global Information Grid Bandwidth Expansion (GIG-BE).

Subtitle E—Extensions of Program Authorities

Sec. 341. Two-year extension of Department of Defense telecommunications benefit.

Sec. 342. Extension of Arsenal Support Program Initiative.

Sec. 343. Two-year extension of warranty claims recovery pilot program.

Subtitle F—Other Matters

Sec. 351. Reimbursement for certain protective, safety, or health equipment purchased by or for members of the Armed Forces deployed in contingency operations.

Sec. 352. Limitation on preparation or implementation of Mid-Range Financial Improvement Plan pending report.

Sec. 353. Pilot program to authorize Army working-capital funded facilities to engage in cooperative activities with non-Army entities.

Sec. 354. Transfer of excess Department of Defense personal property to assist firefighting agencies.

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

Sec. 401. End strengths for active forces.

Sec. 402. Revision in permanent active duty end strength minimum levels.

Sec. 403. Additional authority for increases of Army and Marine Corps active duty personnel end strengths for fiscal years 2005 through 2009.

Sec. 404. Exclusion of service academy permanent and career professors from a limitation on certain officer grade strengths.

Subtitle B—Reserve Forces

Sec. 411. End strengths for Selected Reserve.

Sec. 412. End strengths for Reserves on active duty in support of the reserves.

Sec. 413. End strengths for military technicians (dual status).

Sec. 414. Fiscal year 2005 limitation on number of non-dual status technicians.

Sec. 415. Maximum number of Reserve personnel authorized to be on active duty for operational support.

Sec. 416. Accounting and management of reserve component personnel performing active duty or full-time National Guard duty for operational support.

Subtitle C—Authorizations of Appropriations

Sec. 421. Military personnel.

Sec. 422. Armed Forces Retirement Home.

TITLE V—MILITARY PERSONNEL POLICY

Subtitle A—Officer Personnel Policy

Sec. 501. Transition of active-duty list officer force to a force of all regular officers.

Sec. 502. Repeal of requirement that Deputy Chiefs and Assistant Chiefs of Naval Operations be selected from officers in the line of the Navy.

Sec. 503. Limitation on number of officers frocked to major general and rear admiral.

Sec. 504. Distribution in grade of Marine Corps reserve officers in an active status in grades below brigadier general

Sec. 505. Authority for Federal recognition of National Guard commissioned officers appointed from former Coast Guard personnel.

Sec. 506. Study regarding promotion eligibility of retired officers recalled to active duty.

Sec. 507. Succession for office of Chief, National Guard Bureau.

Sec. 508. Redesignation of Vice Chief of the National Guard Bureau as Director of the Joint Staff of the National Guard Bureau.

Subtitle B—Reserve Component Policy Matters

Sec. 511. Modification of stated purpose of the reserve components.

Sec. 512. Homeland defense activities conducted by the National Guard under authority of title 32.

Sec. 513. Commission on the National Guard and Reserves.

Sec. 514. Repeal of exclusion of active duty for training from authority to order Reserves to active duty.

Sec. 515. Army program for assignment of active component advisers to units of the Selected Reserve.

Sec. 516. Authority to accept certain voluntary services.

Sec. 517. Authority to redesignate the Naval Reserve as the Navy Reserve.

Sec. 518. Comptroller General assessment of integration of active and reserve components of the Navy.

Sec. 519. Limitation on number of Starbase academies in a State.

Sec. 520. Recognition items for certain reserve component personnel.

Subtitle C—Reserve Component Personnel Matters

Sec. 521. Status under disability retirement system for reserve members released from active duty due to inability to perform within 30 days of call to active duty.

Sec. 522. Requirement for retention of Reserves on active duty to qualify for retired pay not applicable to nonregular service retirement system.

Sec. 523. Federal civil service military leave for Reserve and National Guard civilian technicians.

Sec. 524. Expanded educational assistance authority for officers commissioned through ROTC program at military junior colleges.

Sec. 525. Repeal of sunset provision for financial assistance program for students not eligible for advanced training.

Sec. 526. Effect of appointment or commission as officer on eligibility for Selected Reserve education loan repayment program for enlisted members.

Sec. 527. Educational assistance for certain reserve component members who perform active service.

Sec. 528. Sense of Congress on guidance concerning treatment of employer-provided compensation and other benefits voluntarily provided to employees who are activated Reservists.

Subtitle D—Joint Officer Management and Professional Military Education

Sec. 531. Strategic plan to link joint officer development to overall missions and goals of Department of Defense.

Sec. 532. Improvement to professional military education in the Department of Defense.

Sec. 533. Joint requirements for promotion to flag or general officer grade.

Sec. 534. Clarification of tours of duty qualifying as a joint duty assignment.

Sec. 535. Two-year extension of temporary standard for promotion policy objectives for joint officers.

Sec. 536. Two-year extension of authority to waive requirement that Reserve Chiefs and National Guard Directors have significant joint duty experience.

Subtitle E—Military Service Academies

Sec. 541. Revision to conditions on service of officers as service academy superintendents.

Sec. 542. Academic qualifications of the dean of the faculty of United States Air Force Academy.

Sec. 543. Board of Visitors of United States Air Force Academy.

Sec. 544. Appropriated funds for service academy athletic and recreational extracurricular programs to be treated in same manner as for military morale, welfare, and recreation progams.

Sec. 545. Codification of prohibition on imposition of certain charges and fees at the service academies.

Subtitle F—Other Education and Training Matters

Sec. 551. College First delayed enlistment program.

Sec. 552. Senior Reserve Officers' Training Corps and recruiter access at institutions of higher education.

Sec. 553. Tuition assistance for officers.

Sec. 554. Increased maximum period for leave of absence for pursuit of a program of education in a health care profession.

Sec. 555. Eligibility of cadets and midshipmen for medical and dental care and disability benefits.

Sec. 556. Transfer of authority to confer degrees upon graduates of the Community College of the Air Force.

Sec. 557. Change in titles of leadership positions at the Naval Postgraduate School.

Subtitle G—Assistance to Local Educational Agencies for Defense Dependents Education

Sec. 558. Continuation of impact aid assistance on behalf of dependents of certain members despite change in status of member.

Sec. 559. Assistance to local educational agencies that benefit dependents of members of the Armed Forces and Department of Defense civilian employees.

Sec. 560. Impact aid for children with severe disabilities.

Subtitle H—Medals and Decorations and Special Promotions and Appointments

Sec. 561. Award of medal of honor to individual interred in the Tomb of the Unknowns as representative of casualties of a war.

Sec. 562. Plan for revised criteria and eligibility requirements for award of Combat Infantryman Badge and Combat Medical Badge for service in Korea after July 28, 1953.

Sec. 563. Authority to appoint Brigadier General Charles E. Yeager, United States Air Force (retired), to the grade of major general on the retired list.

Sec. 564. Posthumous commission of William Mitchell in the grade of major general in the Army.

Subtitle I—Military Voting

Sec. 566. Federal write-in ballots for absentee military voters located in the United States.

Sec. 567. Repeal of requirement to conduct electronic voting demonstration project for the Federal election to be held in November 2004.

Sec. 568. Reports on operation of Federal voting assistance program and military postal system.

Subtitle J—Military Justice Matters

Sec. 571. Review on how sexual offenses are covered by Uniform Code of Military Justice.

Sec. 572. Waiver of recoupment of time lost for confinement in connection with a trial.

Sec. 573. Processing of forensic evidence collection kits and acquisition of sufficient stocks of such kits.

Sec. 574. Authorities of the Judge Advocates General.

Subtitle K—Sexual Assault in the Armed Forces

Sec. 576. Examination of sexual assault in the Armed Forces by the Defense Task Force established to examine sexual harassment and violence at the military service academies.

Sec. 577. Department of Defense policy and procedures on prevention and response to sexual assaults involving members of the Armed Forces.

Subtitle L—Management and Administrative Matters

Sec. 581. Three-year extension of limitation on reductions of personnel of agencies responsible for review and correction of military records.

Sec. 582. Staffing for Defense Prisoner of War/Missing Personnel Office (DPMO).

Sec. 583. Permanent ID cards for retiree dependents age 75 and older.

Sec. 584. Authority to provide civilian clothing to members traveling in connection with medical evacuation.

Sec. 585. Authority to accept donation of frequent traveler miles, credits, and tickets to facilitate rest and recuperation travel of deployed members of the Armed Forces and their families.

Sec. 586. Annual report identifying reasons for discharges from the Armed Forces during preceding fiscal year.

Sec. 587. Study of blended wing concept for the Air Force.

Sec. 588. Sense of Congress regarding return of members to active duty service upon rehabilitation from service-related injuries.

Subtitle M—Other Matters

Sec. 591. Protection of Armed Forces personnel from retaliatory actions for communications made through the chain of command.

Sec. 592. Implementation plan for accession of persons with specialized skills.

Sec. 593. Enhanced screening methods and process improvements for recruitment of home schooled and National Guard Challenge program GED recipients.

Sec. 594. Redesignation of National Guard Challenge Program as National Guard Youth Challenge Program.

Sec. 595. Reports on certain milestones relating to Department of Defense transformation.

Sec. 596. Report on issues relating to removal of remains of persons interred in United States military cemeteries overseas.

Sec. 597. Comptroller General reports on closure of Department of Defense dependent elementary and secondary schools and commissary stores.

Sec. 598. Comptroller General report on transition assistance programs for members separating from the Armed Forces.

Sec. 599. Study on coordination of job training standards with certification standards for military occupational specialties.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Subtitle A—Pay and Allowances

Sec. 601. Increase in basic pay for fiscal year 2005.

Sec. 602. Relationship between eligibility to receive supplemental subsistence allowance and eligibility to receive imminent danger pay, family separation allowance, and certain Federal assistance.

Sec. 603. Authority to provide family separation basic allowance for housing.

Sec. 604. Geographic basis for housing allowance during short-assignment permanent changes of station for education or training.

Sec. 605. Immediate lump-sum reimbursement for unusual nonrecurring expenses incurred for duty outside the continental United States.

Sec. 606. Authority for certain members deployed in combat zones to receive limited advances on future basic pay.

Sec. 607. Repeal of requirement that members entitled to basic allowance for subsistence pay subsistence charges while hospitalized.

Subtitle B—Bonuses and Special and Incentive Pays

Sec. 611. One-year extension of certain bonus and special pay authorities for reserve forces.

Sec. 612. One-year extension of certain bonus and special pay authorities for certain health care professionals.

Sec. 613. One-year extension of special pay and bonus authorities for nuclear officers.

Sec. 614. One-year extension of other bonus and special pay authorities.

Sec. 615. Authority to provide hazardous duty incentive pay to military firefighters.

Sec. 616. Reduced service obligation for nurses receiving nurse accession bonus.

Sec. 617. Assignment incentive pay.

Sec. 618. Modification of active and reserve component reenlistment and enlistment bonus authorities.

Sec. 619. Bonus for certain initial service of officers in the Selected Reserve.

Sec. 620. Revision of authority to provide foreign language proficiency pay.

Sec. 621. Eligibility of enlisted members to qualify for critical skills retention bonus while serving on indefinite reenlistment.

Sec. 622. Eligibility of reserve component members for incentive bonus for conversion to military occupational specialty to ease personnel shortage.

Sec. 623. Permanent increase in authorized amounts for imminent danger special pay and family separation allowance.

Subtitle C—Travel and Transportation Allowances

Sec. 631. Travel and transportation allowances for family members to attend burial ceremony or memorial service of member who dies on duty.

Sec. 632. Transportation of family members incident to serious illness or injury of members of the uniformed services.

Sec. 633. Reimbursement for certain lodging costs incurred in connection with dependent student travel.

Subtitle D—Retired Pay and Survivor Benefits

Sec. 641. Computation of high-36 month average for reserve component members retired for disability while on active duty or dying while on active duty.

Sec. 642. Repeal of phase-in of concurrent receipt of retired pay and veterans' disability compensation for military retirees with service-connected disabilities rated as 100 percent.

Sec. 643. Death benefits enhancement.

Sec. 644. Phased elimination of two-tier annuity computation for surviving spouses under Survivor Benefit Plan.

Sec. 645. One-year open enrollment period for Survivor Benefit Plan commencing October 1, 2005.

Subtitle E—Commissary and Nonappropriated Fund Instrumentality Benefits

Sec. 651. Consolidation and reorganization of legislative provisions regarding defense commissary system and exchanges and other morale, welfare, and recreation activities.

Sec. 652. Consistent State treatment of Department of Defense Nonappropriated Fund Health Benefits Program.

Subtitle F—Other Matters

Sec. 661. Eligibility of members for reimbursement of expenses incurred for adoption placements made by foreign governments.

Sec. 662. Clarification of education loans qualifying for education loan repayment program for reserve component health professions officers.

Sec. 663. Receipt of pay by reservists from civilian employers while on active duty in connection with a contingency operation.

Sec. 664. Relief for mobilized reservists from certain Federal agricultural loan obligations.

Sec. 665. Survey and analysis of effect of extended and frequent mobilization of reservists for active duty service on reservist income.

Sec. 666. Study of disability benefits for veterans of service in the Armed Forces with service-connected disabilities.

TITLE VII—HEALTH CARE PROVISIONS

Subtitle A—Enhanced Benefits for Reserves

Sec. 701. TRICARE coverage for members of reserve components who commit to continued service in the Selected Reserve after release from active duty.

Sec. 702. Comptroller General report on the cost and feasibility of providing private health insurance stipends for members of the Ready Reserves.

Sec. 703. Permanent earlier eligibility date for TRICARE benefits for members of reserve components and their dependents.

Sec. 704. Waiver of certain deductibles under TRICARE program for members on active duty for a period of more than 30 days.

Sec. 705. Authority for payment by United States of additional amounts billed by health care providers to activated Reserves.

Sec. 706. Permanent extension of transitional health care benefits and addition of requirement for preseparation physical examination.

Subtitle B—Other Benefits Improvements

Sec. 711. Opportunity for young child dependent of deceased member to become eligible for enrollment in a TRICARE dental plan.

Sec. 712. Comptroller General report on provision of health, education, and support services for Exceptional Family Member Program enrollees.

Sec. 713. Continuation of sub-acute care for transition period.

Sec. 714. Improvements to pharmacy benefits program.

Sec. 715. Professional accreditation of military dentists.

Sec. 716. Temporary authority for waiver of collection of payments due for CHAMPUS benefits received by disabled persons unaware of loss of CHAMPUS eligibility.

Sec. 717. Services of marriage and family therapists.

Sec. 718. Chiropractic health care benefits advisory committee.

Subtitle C—Planning, Programming, and Management

Sec. 721. Pilot program for health care delivery.

Sec. 722. Study of provision of travel reimbursement to hospitals for certain military disability retirees.

Sec. 723. Study of mental health services.

Sec. 724. Policy for timely notification of next of kin of members seriously ill or injured in combat zones.

Sec. 725. Revised funding methodology for military retiree health care benefits.

Sec. 726. Grounds for presidential waiver of requirement for informed consent or option to refuse regarding administration of drugs not approved for general use.

Sec. 727. TRICARE program regional directors.

Subtitle D—Medical Readiness Tracking and Health Surveillance

Sec. 731. Medical readiness plan and Joint Medical Readiness Oversight Committee.

Sec. 732. Medical readiness of Reserves.

Sec. 733. Baseline Health Data Collection Program.

Sec. 734. Medical care and tracking and health surveillance in the theater of operations.

Sec. 735. Declassification of information on exposures to environmental hazards.

Sec. 736. Report on training on environmental hazards.

Sec. 737. Uniform policy for meeting mobilization-related medical care needs at military installations.

Sec. 738. Full implementation of Medical Readiness Tracking and Health Surveillance Program and Force Health Protection and Readiness Program.

Sec. 739. Reports and Internet accessibility relating to health matters.

TITLE VIII—AQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

Subtitle A—Acquisition Policy and Management

Sec. 801. Software-related program costs under major defense acquisition programs.

Sec. 802. Internal controls for Department of Defense procurements through GSA Client Support Centers.

Sec. 803. Defense commercial communications satellite services procurement process.

Sec. 804. Contractor performance of acquisition functions closely associated with inherently governmental functions.

Sec. 805. Sustainment plans for existing systems while replacement systems are under development.

Sec. 806. Applicability of competition exceptions to eligibility of National Guard for financial assistance for performance of additional duties.

Sec. 807. Inflation adjustment of acquisition-related dollar thresholds.

Subtitle B—Amendments to General Contracting Authorities, Procedures, and Limitations

Sec. 811. Rapid acquisition authority to respond to combat emergencies.

Sec. 812. defense acquisition workforce improvements.

Sec. 813. Period for multiyear task and delivery order contracts.

Sec. 814. Funding for contract ceilings for certain multiyear procurement contracts.

Sec. 815. Increased threshold for senior procurement executive approval of use of procedures other than competitive procedures.

Sec. 816. Increased threshold for applicability of requirement for defense contractors to provide information on subcontracting authority of contractor personnel to cooperative agreement holders.

Sec. 817. Extension of authority for use of simplified acquisition procedures.

Sec. 818. Submission of cost or pricing data on noncommercial modifications of commercial items.

Sec. 819. Delegations of authority to make determinations relating to payment of defense contractors for business restructuring costs.

Sec. 820. Availability of Federal supply schedule supplies and services to United Service Organizations, Incorporated.

Sec. 821. Addition of landscaping and pest control services to list of designated industry groups participating in the Small Business Competitiveness Demonstration Program.

Sec. 822. Increased thresholds under special emergency procurement authority.

Subtitle C—United States Defense Industrial Base Provisions

Sec. 831. Defense trade reciprocity.

Sec. 832. Assessment and report on the acquisition of polyacrylonitrile (PAN) carbon fiber from foreign sources.

Subtitle D—Extensions of Temporary Program Authorities

Sec. 841. Extension of mentor-protege program.

Sec. 842. Amendment to mentor-protege program.

Sec. 843. Extension of test program for negotiation of comprehensive small business subcontracting plans.

Sec. 844. Extension of pilot program on sales of manufactured articles and services of certain Army industrial facilities.

Subtitle E—Other Acquisition Matters

Sec. 851. Review and demonstration project relating to contractor employees.

Sec. 852. Inapplicability of certain fiscal laws to settlements under special temporary contract closeout authority.

Sec. 853. Contracting with employers of persons with disabilities.

Sec. 854. Defense procurements made through contracts of other agencies.

Sec. 855. Requirements relating to source selection for integrated support of aerial refueling aircraft fleet for the Air Force.

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Subtitle A—Duties and Functions of Department of Defense

Sec. 901. Study of roles and authorities of the Director of Defense Research and Engineering.

Sec. 902. Change of membership of specified council.

Subtitle B—Space Activities

Sec. 911. Space posture review.

Sec. 912. Panel on the future of national security space launch.

Sec. 913. Operationally responsive national security satellites.

Sec. 914. Nondisclosure of certain products of commercial satellite operations.

Subtitle C—Intelligence-Related Matters

Sec. 921. Two-year extension of authority of the Secretary of Defense to engage in commercial activities as security for intelligence collection activities abroad.

Sec. 922. Pilot program on cryptologic service training.

Subtitle D—Other Matters

Sec. 931. Strategic plan for destruction of lethal chemical agents and munitions stockpile.

Sec. 932. Secretary of Defense criteria for and guidance on identification and internal transmission of critical information.

TITLE X—GENERAL PROVISIONS

Subtitle A—Financial Matters

Sec. 1001. Transfer authority.

Sec. 1002. United States contribution to NATO common-funded budgets in fiscal year 2005.

Sec. 1003. Budget justification documents for operation and maintenance.

Sec. 1004. Licensing of intellectual property.

Sec. 1005. Repeal of funding restrictions concerning development of medical countermeasures against biological warfare threats.

Sec. 1006. Report on budgeting for exchange rates for foreign currency fluctuations.

Sec. 1007. Fiscal year 2004 transfer authority.

Sec. 1008. Clarification of fiscal year 2004 funding level for a National Institute of Standards and Technology account.

Sec. 1009. Notification of fund transfers from working-capital funds.

Sec. 1010. Charges for Defense Logistics Information Services materials.

Subtitle B—Naval Vessels and Shipyards

Sec. 1011. Authority for award of contracts for ship dismantling on net-cost basis.

Sec. 1012. Use of proceeds from exchange and sale of obsolete navy service craft and boats.
Sec. 1013. Transfer of naval vessels to certain foreign recipients.
Sec. 1014. Independent study to assess cost effectiveness of the Navy ship construction program.
Sec. 1015. Limitation on disposal of obsolete naval vessel.

Subtitle C—Counterdrug Matters

Sec. 1021. Use of funds for unified counterdrug and counterterrorism campaign in Colombia.
Sec. 1022. Sense of Congress and report regarding counter-drug efforts in Afghanistan.

Subtitle D—Matters Relating to Museums and Commemorations

Sec. 1031. Recognition of the Liberty Memorial Museum, Kansas City, Missouri, as America's National World War I Museum.
Sec. 1032. Program to commemorate 60th anniversary of World War II.
Sec. 1033. Annual report on Department of Defense operation and financial support for military museums.

Subtitle E—Reports

Sec. 1041. Quarterly detailed accounting for operations conducted as part of the Global War on Terrorism.
Sec. 1042. Report on post-major combat operations phase of Operation Iraqi Freedom.
Sec. 1043. Report on training provided to members of the Armed Forces to prepare for post-conflict operations.
Sec. 1044. Report on establishing National Centers of Excellence for unmanned aerial and ground vehicles.
Sec. 1045. Study of continued requirement for two-crew manning for ballistic missile submarines.
Sec. 1046. Report on Department of Defense programs for prepositioning of materiel and equipment.
Sec. 1047. Report on al Quaeda and associated groups in Latin America and the Caribbean.

Subtitle F—Defense Against Terrorism and Other Domestic Security Matters

Sec. 1051. Acceptance of communications equipment provided by local public safety agencies.
Sec. 1052. Determination and report on full-time airlift support for homeland defense operations.
Sec. 1053. Survivability of critical systems exposed to chemical or biological contamination.

Subtitle G—Personnel Security Matters

Sec. 1061. Use of National Driver Register for personnel security investigations and determinations.
Sec. 1062. Standards for disqualification from eligibility for Department of Defense security clearance.

Subtitle H—Transportation-Related Matters

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Sec. 3162. Conforming amendments.
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Sec. 3165. Use of Energy Employees Occupational Illness Compensation Fund for certain payments to covered uranium employees.
Sec. 3166. Improvements to Subtitle B of Energy Employees Occupational Illness Compensation Program Act of 2000.
Sec. 3167. Emergency Special Exposure Cohort meeting and report.
Sec. 3168. Coverage of individuals employed at atomic weapons employer facilities during periods of residual contamination.
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TITLE XXXII—DEFENSE NUCLEAR FACILITIES SAFETY BOARD

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TITLE XXXIII—NATIONAL DEFENSE STOCKPILE

Sec. 3301. Authorized uses of National Defense Stockpile funds.
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Sec. 3303. Disposal of ferromanganese.
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TITLE XXXIV—NAVAL PETROLEUM RESERVES

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TITLE XXXV—MARITIME ADMINISTRATION

Sec. 3501. Authorization of appropriations for Maritime Administration.
Sec. 3502. Extension of authority to provide war risk insurance for merchant marine vessels.
Sec. 3503. Modification of priority afforded applications for national defense tank vessel construction assistance.

TITLE XXXVI—ASSISTANCE TO FIREFIGHTERS

Sec. 3601. Short title.
Sec. 3602. Amendments to Federal Fire Prevention and Control Act of 1974.
Sec. 3603. Report on assistance to firefighters.

SEC. 3. CONGRESSIONAL DEFENSE COMMITTEES.

For purposes of this Act, the term "congressional defense committees" has the meaning given that term in section 101(a)(16) of title 10, United States Code.

DIVISION A—DEPARTMENT OF DEFENSE AUTHORIZATIONS

TITLE I—PROCUREMENT

Subtitle A—Authorization of Appropriations

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Sec. 102. Navy and Marine Corps.
Sec. 103. Air Force.
Sec. 104. Defense-wide activities.

Subtitle B—Army Programs

Sec. 111. Multiyear procurement authority for the light weight 155 millimeter howitzer program.
Sec. 112. Light utility helicopter program.

Subtitle C—Navy Programs

Sec. 121. DDG 51 modernization program.
Sec. 122. Repeal of authority for pilot program for flexible funding of cruiser conversions and overhauls.
Sec. 123. LHA(R) amphibious assault ship program.

Subtitle D—Air Force Programs

Sec. 131. Prohibition of retirement of KC 135E aircraft.
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Subtitle E—Other Matters

Sec. 141. Development of deployable systems to include consideration of force protection in asymmetric threat environments.
Sec. 142. Allocation of equipment authorized by this title to units deployed, or to be deployed, to Operation Iraqi Freedom or Operation Enduring Freedom.
Sec. 143. Report on options for acquisition of precision-guided munitions.

Subtitle A—Authorization of Appropriations

SEC. 101. ARMY.

Funds are hereby authorized to be appropriated for fiscal year 2005 for procurement for the Army as follows:

(1) For aircraft, $2,611,540,000.

(2) For missiles, $1,307,000,000.

(3) For weapons and tracked combat vehicles, $1,702,695,000.

(4) For ammunition, $1,545,702,000.

(5) For other procurement, $1,345,246,000.

SEC. 102. NAVY AND MARINE CORPS.

(a) NAVY.—Funds are hereby authorized to be appropriated for fiscal year 2005 for procurement for the Navy as follows:

(1) For aircraft, $8,814,442,000.

(2) For weapons, including missiles and torpedoes, $2,067,520,000.

(3) For shipbuilding and conversion, $10,116,827,000.

(4) For other procurement, $4,633,886,000.

(b) MARINE CORPS.—Funds are hereby authorized to be appropriated for fiscal year 2005 for procurement for the Marine Corps in the amount of $1,268,153,000.

(c) NAVY AND MARINE CORPS AMMUNITION.—Funds are hereby authorized to be appropriated for fiscal year 2005 for procurement of ammunition for the Navy and the Marine Corps in the amount of $878,140,000.

SEC. 103. AIR FORCE.

Funds are hereby authorized to be appropriated for fiscal year 2005 for procurement for the Air Force as follows:

(1) For aircraft, $13,228,124,000.

(2) For ammunition, $1,318,959,000.

(3) For missiles, $4,548,513,000.

(4) For other procurement, $12,949,327,000.

SEC. 104. DEFENSE-WIDE ACTIVITIES.

Funds are hereby authorized to be appropriated for fiscal year 2005 for Defense-wide procurement in the amount of $2,846,583,000.

Subtitle B—Army Programs

SEC. 111. MULTIYEAR PROCUREMENT AUTHORITY FOR THE LIGHT WEIGHT 155-MILLIMETER HOWITZER PROGRAM.

The Secretary of the Army and the Secretary of the Navy may, in accordance with section 2306b of title 10, United States Code, jointly enter into a multiyear contract, beginning with the fiscal year 2005 program year, for procurement of the light weight 155-millimeter howitzer.

SEC. 112. LIGHT UTILITY HELICOPTER PROGRAM.

(a) LIMITATION.—None of the funds authorized to be appropriated under section 101(1) for the procurement of light utility helicopters may be obligated or expended until 30 days after the date on which the Secretary of the Army submits to the congressional defense committees a report that contains—

(1) the Secretary's certification that all required documentation for the acquisition of light utility helicopters has been completed and approved; and

(2) an Army aviation modernization plan described in subsection (b).

(b) ARMY AVIATION MODERNIZATION PLAN.—The Army aviation modernization plan referred to in subsection (a)(2) is an updated modernization plan for Army aviation that contains, at a minimum, the following:

(1) The analysis on which the plan is based.

(2) A discussion of the Secretary's decision to terminate the Comanche helicopter program and to restructure the aviation force of the Army.

(3) The actions taken or to be taken to accelerate the procurement and development of aircraft survivability equipment for Army aircraft, together with a detailed list of aircraft survivability equipment that specifies such equipment by platform and by the related programmatic funding for procurement.

(4) A discussion of the conversion of Apache helicopters to block III configuration, including (A) the rationale for converting only 501 Apache helicopters to that configuration, and (B) the costs associated with a conversion of all Apache helicopters to the block III configuration.

(5) A discussion of the procurement of light armed reconnaissance helicopters, including (A) the rationale for the requirement for light armed reconnaissance helicopters, and (B) a discussion of the costs associated with upgrading the light armed reconnaissance helicopter to meet Army requirements.

(6) The rationale for the Army's requirement for light utility helicopters, together with a summary and copy of the analysis of the alternative means for meeting such requirement that the Secretary considered in the determination to procure light utility helicopters, including, at a minimum, the analysis of the alternative of using light armed reconnaissance helicopters and UH-60 Black Hawk helicopters instead of light utility helicopters to meet such requirement.

(7) The rationale for the procurement of cargo fixed-wing aircraft.

(8) The rationale for the initiation of a joint multi-role helicopter program.

(9) A description of the operational employment of the Army's restructured aviation force.

Subtitle C—Navy Programs

SEC. 121. DDG 51 MODERNIZATION PROGRAM.

(a) ACCELERATION OF MODERNIZATION PROGRAM.—The Secretary of the Navy shall accelerate the program for in-service modernization of the DDG 51 class of destroyers (in this section referred to as the "modernization program").

(b) REPORT.—Not later than March 31, 2005, the Secretary of the Navy shall submit to the congressional defense committees a report on the steps taken as of that date to carry out subsection (a). The report shall—

(1) describe the elements of the modernization program; and

(2) specify those elements of the modernization program that are expected to contribute to the goal of reducing the crew size of the DDG 51 class of destroyers by one-third and explain the basis for those expectations.

SEC. 122. REPEAL OF AUTHORITY FOR PILOT PROGRAM FOR FLEXIBLE FUNDING OF CRUISER CONVERSIONS AND OVERHAULS.

Section 126 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136; 117 Stat. 1410; 10 U.S.C. 7291 note) is repealed.

SEC. 123. LHA(R) AMPHIBIOUS ASSAULT SHIP PROGRAM.

(a) AUTHORIZATION OF SHIP.—The Secretary of the Navy is authorized to procure the first amphibious assault ship of the LHA(R) class, subject to the availability of appropriations for that purpose.

(b) AUTHORIZED AMOUNT.—Of the amount authorized to be appropriated under section 102(a)(3) for fiscal year 2005, $150,000,000 shall be available for the advance procurement and advance construction of components for the first amphibious assault ship of the LHA(R) class. The Secretary of the Navy may enter into a contract or contracts with the shipbuilder and other entities for the advance procurement and advance construction of those components.

Subtitle D—Air Force Programs

SEC. 131. PROHIBITION OF RETIREMENT OF KC-135E AIRCRAFT.

The Secretary of the Air Force may not retire any KC-135E aircraft of the Air Force in fiscal year 2005.

SEC. 132. PROHIBITION OF RETIREMENT OF F-117 AIRCRAFT.

No F-117 aircraft in use by the Air Force during fiscal year 2004 may be retired during fiscal year 2005.

SEC. 133. AERIAL REFUELING AIRCRAFT ACQUISITION PROGRAM.

(a) TERMINATION OF LEASING AUTHORITY.—Subsection (a) of section 135 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136, 117 Stat. 1413; 10 U.S.C. 2401a note) is amended by striking "may lease no more than 20 tanker aircraft" and inserting "shall lease no tanker aircraft".

(b) MULTIYEAR PROCUREMENT AUTHORITY.—Subsection (b) of such section is amended—

(1) in paragraph (1)—

(A) by striking "Beginning with the fiscal year 2004 program year, the Secretary" and inserting "The Secretary"; and

(B) by striking "necessary to meet" and all that follows through "is insufficient",

(2) in paragraph (2), by striking "80" and inserting "100"; and

(3) by striking paragraph (4).

(c) STUDY.—Subsection (c)(1) of such section is amended by striking "leased under the multiyear aircraft lease pilot program or" in subparagraphs (A) and (B).

(d) RELATIONSHIP TO PREVIOUS LAW.—Such section is further amended by adding at the end the following new subsection:

"(f) RELATIONSHIP TO PREVIOUS LAW.—The multiyear procurement authority in subsection (b) may not be executed under section 8159 of the Department of Defense Appropriations Act, 2002 (division A of Public Law 107-117).".

Subtitle E—Other Matters

SEC. 141. DEVELOPMENT OF DEPLOYABLE SYSTEMS TO INCLUDE CONSIDERATION OF FORCE PROTECTION IN ASYMMETRIC THREAT ENVIRONMENTS.

(a) REQUIREMENT FOR SYSTEMS DEVELOPMENT.—The Secretary of Defense shall require that the Department of Defense regulations, directives, and guidance governing the acquisition of covered systems be revised to require that—

(1) an assessment of warfighter survivability and of system suitability against asymmetric threats shall be performed as part of the development of system requirements for any such system; and

(2) requirements for key performance parameters for force protection and survivability shall be included as part of the documentation of system requirements for any such system.

(b) COVERED SYSTEMS.—In this section, the term "covered system" means any of the following systems that is expected to be deployed in an asymmetric threat environment:

(1) Any manned system.

(2) Any equipment intended to enhance personnel survivability.

(c) INAPPLICABILITY OF DEVELOPMENT REQUIREMENT TO SYSTEMS ALREADY THROUGH DEVELOPMENT.—The revisions pursuant subsection (a) to Department of Defense regulations, directives, and guidance shall not apply to a system that entered low-rate initial production before the date of the enactment of this Act.

(d) DEADLINE FOR POLICY REVISIONS.—The revisions required by subsection (a) to Department of Defense regulations, directives, and guidance shall be made not later than 120 days after the date of the enactment of this Act.

SEC. 142. ALLOCATION OF EQUIPMENT AUTHORIZED BY THIS TITLE TO UNITS DEPLOYED, OR TO BE DEPLOYED, TO OPERATION IRAQI FREEDOM OR OPERATION ENDURING FREEDOM.

In allocating equipment acquired using funds authorized to be appropriated by this title to operational units deployed, or scheduled to be deployed, to Operation Iraqi Freedom or Operation Enduring Freedom, the Secretary of Defense shall ensure that the allocation is made without regard to the status of the units as active, Guard, or reserve component units.

SEC. 143. REPORT ON OPTIONS FOR ACQUISITION OF PRECISION-GUIDED MUNITIONS.

(a) REQUIREMENT FOR REPORT.—Not later than March 1, 2005, the Secretary of Defense shall submit to the congressional defense committees a report on options for the acquisition of precision-guided munitions.

(b) CONTENT OF REPORT.—The report shall include the following:

(1) A list of the precision-guided munitions in the inventory of the Department of Defense.

(2) For each such munition—

(A) the inventory level as of the most recent date that it is feasible to specify when the report is prepared;

(B) the inventory objective that is necessary to execute the current National Military Strategy prescribed by the Chairman of the Joint Chiefs of Staff;

(C) the year in which that inventory objective would be expected to be achieved—

(i) if the munition were procured at the minimum sustained production rate;

(ii) if the munition were procured at the most economic production rate; and

(iii) if the munition were procured at the maximum production rate; and

(D) the procurement cost for each munition (in constant fiscal year 2004 dollars) at each of the production rates specified in subparagraph (C) for each year in the future-years defense program.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Subtitle A—Authorization of Appropriations

Sec. 201. Authorization of appropriations.
Sec. 202. Amount for defense science and technology.

Subtitle B—Program Requirements, Restrictions, and Limitations

Sec. 211. Future Combat Systems program strategy.
Sec. 212. Collaborative program for research and development of vacuum electronics technologies.
Sec. 213. Annual Comptroller General report on Joint Strike Fighter program.
Sec. 214. Amounts for United States Joint Forces Command to be derived only from Defense-wide amounts.
Sec. 215. Global Positioning System III satellite.
Sec. 216. Initiation of concept demonstration of Global Hawk high altitude endurance unmanned aerial vehicle.
Sec. 217. Joint Unmanned Combat Air Systems program.

Subtitle C—Missile Defense Programs

Sec. 231. Fielding of ballistic missile defense capabilities.
Sec. 232. Integration of Patriot Advanced Capability-3 and Medium Extended Air Defense System into ballistic missile defense system.
Sec. 233. Comptroller General assessments of ballistic missile defense programs.
Sec. 234. Baselines and operational test and evaluation for ballistic missile defense system.

Subtitle D—Other Matters

Sec. 241. Annual report on submarine technology insertion.

Sec. 242. Sense of Congress regarding funding of the Advanced Shipbuilding Enterprise under the National Shipbuilding Research Program of the Navy.

Subtitle A—Authorization of Appropriations

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

Funds are hereby authorized to be appropriated for fiscal year 2005 for the use of the Department of Defense for research, development, test, and evaluation as follows:

(1) For the Army, $9,307,248,000.

(2) For the Navy, $16,200,591,000.

(3) For the Air Force, $20,432,933,000.

(4) For Defense-wide activities, $20,556,986,000, of which $301,135,000 is authorized for the Director of Operational Test and Evaluation.

SEC. 202. AMOUNT FOR DEFENSE SCIENCE AND TECHNOLOGY.

(a) FISCAL YEAR 2005.—Of the amounts authorized to be appropriated by section 201, $11,191,600,000 shall be available for the Defense Science and Technology Program, including basic research, applied research, and advanced technology development projects.

(b) BASIC RESEARCH, APPLIED RESEARCH, AND ADVANCED TECHNOLOGY DEVELOPMENT DEFINED.—For purposes of this section, the term "basic research, applied research, and advanced technology development" means work funded in program elements for defense research and development under Department of Defense category 6.1, 6.2, or 6.3.

Subtitle B—Program Requirements, Restrictions, and Limitations

SEC. 211. FUTURE COMBAT SYSTEMS PROGRAM STRATEGY.

(a) PROGRAM STRATEGY REQUIRED.—The Secretary of the Army shall establish and implement a program strategy for the Future Combat Systems acquisition program of the Army. The purpose of the program strategy shall be to provide an effective, affordable, producible, and supportable military capability with a realistic schedule and a robust cost estimate.

(b) ELEMENTS OF PROGRAM STRATEGY.—The program strategy shall—

(1) require the release, at the design readiness review, of not less than 90 percent of engineering drawings for the building of prototypes;

(2) require, before facilitating production or contracting for items with long lead times, that an acceptable demonstration be carried out of the performance of the information network, including the performance of the Joint Tactical Radio System and the Warfighter Information Network-Tactical; and

(3) require, before the initial production decision, that an acceptable demonstration be carried out of the collective capability of each system to meet system-of-systems requirements when integrated with the information network.

(c) REQUIRED SUBMISSIONS TO CONGRESS.—Before convening the Milestone B update for the Future Combat Systems acquisition program required by the Future Combat Systems acquisition decision memorandum, the Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to Congress each of the following documents:

(1) The cost estimate of the Army with respect to the Future Combat Systems program.

(2) A report, prepared by an independent panel, on the maturity levels of the critical technologies with respect to the program, including an assessment of those technologies that are likely to require a decision to use an alternative approach.

(3) A report, prepared by the chief information officer of the Army, describing—

(A) the status of the development and integration of the network and the command, control, computers, communications, intelligence, surveillance, and reconnaissance components; and

(B) the progress made toward meeting the requirements for network-centric capabilities as set forth by such officer.

(4) A report identifying the key performance parameters with respect to the program, with all objectives and thresholds quantified, together with the supporting analytical rationale.

(d) INDEPENDENT COST ESTIMATE.—The Under Secretary of Defense for Acquisition, Technology, and Logistics shall submit to Congress not later than March 1, 2005, an independent cost estimate, prepared by the cost analysis improvement group of the Office of the Secretary of Defense, with respect to the Future Combat Systems program.

(e) LIMITATION ON FUNDING.—(1) Except as provided in paragraph (2), the Secretary of the Army may not obligate, from amounts made available for fiscal year 2005, more than $2,200,000,000 for the Future Combat Systems acquisition program.

(2) The limitation in paragraph (1) shall not apply after the Secretary of the Army submits to Congress—

(A) the Secretary's certification that the Secretary has established and implemented the program strategy required by subsection (a); and

(B) each of the documents specified in subsection (c).

SEC. 212. COLLABORATIVE PROGRAM FOR RESEARCH AND DEVELOPMENT OF VACUUM ELECTRONICS TECHNOLOGIES.

(a) PROGRAM REQUIRED.—The Secretary of Defense shall establish a program for research and development in advanced vacuum electronics to meet the requirements of Department of Defense systems.

(b) DESCRIPTION OF PROGRAM.—The program under subsection (a) shall be carried out collaboratively by the Director of Defense Research and Engineering, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of the Army, and other appropriate elements of the Department of Defense. The program shall include the following activities:

(1) Activities needed for development and maturation of advanced vacuum electronics technologies needed to meet the requirements of the Department of Defense.

(2) Identification of legacy and developmental Department of Defense systems which may make use of advanced vacuum electronics under the program.

(c) REPORT.—Not later than January 31, 2005, the Director of Defense Research and Engineering shall submit to the congressional defense committees a report on the implementation of the program under subsection (a). The report shall include the following:

(1) Identification of the organization to have lead responsibility for carrying out the program.

(2) Assessment of the role of investing in vacuum electronics technologies as part of the overall strategy of the Department of Defense for investing in electronics technologies to meet the requirements of the Department.

(3) The management plan and schedule for the program and any agreements relating to that plan.

(4) Identification of the funding required for fiscal year 2006 and for the future-years defense program to carry out the program.

(5) A list of program capability goals and objectives.

(6) An outline of the role of basic and applied research in support of the development and maturation of advanced vacuum electronics technologies needed to meet the requirements of the Department of Defense.

(7) Assessment of global capabilities in vacuum electronics technologies and the effect of those capabilities on the national security and economic competitiveness of the United States.

SEC. 213. ANNUAL COMPTROLLER GENERAL REPORT ON JOINT STRIKE FIGHTER PROGRAM.

(a) ANNUAL GAO REVIEW.—The Comptroller General shall conduct an annual review of the Joint Strike Fighter aircraft program and shall, not later than March 15 of each year, submit to the congressional defense committees a report on the results of the most recent review. With each such report, the Comptroller General shall submit a certification as to whether the Comptroller General has had access to sufficient information to enable the Comptroller General to make informed judgments on the matters covered by the report.

(b) MATTERS TO BE INCLUDED.—Each report on the Joint Strike Fighter aircraft program under subsection (a) shall include the following with respect to system development and demonstration under the program:

(1) The extent to which such system development and demonstration is meeting established goals, including the goals established for performance, cost, and schedule.

(2) The plan for such system development and demonstration (leading to production) for the fiscal year that begins in the year in which the report is submitted.

(3) The Comptroller General's conclusion regarding whether such system development and demonstration (leading to production) is likely to be completed at a total cost not in excess of the amount specified (or to be specified) for such purpose in the Selected Acquisition report for the Joint Strike Fighter aircraft program under section 2432 of title 10, United States Code, for the first quarter of the fiscal year during which the report of the Comptroller General is submitted.

(c) REQUIREMENT TO SUPPORT ANNUAL GAO REVIEW.—The Secretary of Defense and the prime contractor for the Joint Strike Fighter aircraft program shall provide to the Comptroller General such information on that program as the Comptroller General considers necessary to carry out the responsibilities of the Comptroller General under this section, including such information as is necessary for the purposes of subsection (b)(3).

(d) TERMINATION.—No report is required under this section after the report that, under subsection (a), is required to be submitted not later than March 15, 2009.

SEC. 214. AMOUNTS FOR UNITED STATES JOINT FORCES COMMAND TO BE DERIVED ONLY FROM DEFENSE-WIDE AMOUNTS.

(a) IN GENERAL.—Chapter 9 of title 10, United States Code, is amended by adding at the end the following new section:

"§232. United States Joint Forces Command: amounts for research, development, test, and evaluation to be derived only from Defense-wide amounts

"(a) REQUIREMENT.—Amounts for research, development, test, and evaluation for the United States Joint Forces Command shall be derived only from amounts made available to the Department of Defense for Defense-wide research, development, test, and evaluation.

"(b) SEPARATE DISPLAY IN BUDGET.—Any amount in the budget submitted to Congress under section 1105 of title 31 for any fiscal year for research, development, test, and evaluation for the United States Joint Forces Command shall be set forth under the account of the Department of Defense for Defense-wide research, development, test, and evaluation.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"232. United States Joint Forces Command: amounts for research, development, test, and evaluation to be derived only from Defense-wide amounts.".

(c) APPLICABILITY.—Section 232 of title 10, United States Code (as added by subsection (a)) applies to fiscal years beginning with fiscal year 2007.

SEC. 215. GLOBAL POSITIONING SYSTEM III SATELLITE.

Not more than 80 percent of the amount authorized to be appropriated by section 201(4) and available for the purpose of research, development, test, and evaluation on the Global Positioning System III satellite may be obligated or expended for that purpose until the Secretary of Defense—

(1) completes an analysis of alternatives for the satellite and ground architectures, satellite technologies, and tactics, techniques, and procedures for the next generation global positioning system (GPS); and

(2) submits to the congressional defense committees a report on the results of the analysis, including an assessment of the results of the analysis.

SEC. 216. INITIATION OF CONCEPT DEMONSTRATION OF GLOBAL HAWK HIGH ALTITUDE ENDURANCE UNMANNED AERIAL VEHICLE.

Section 221(c) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106-398; 114 Stat. 1654A-40) is amended by striking "March 1, 2001" and inserting "March 1, 2005".

SEC. 217. JOINT UNMANNED COMBAT AIR SYSTEMS PROGRAM.

(a) EXECUTIVE COMMITTEE.—(1) The Secretary of Defense shall, subject to subsection (b), establish an executive committee and require that executive committee to provide guidance and recommendations for the management of the Joint Unmanned Combat Air Systems program to the Director of the Defense Advanced Research Projects Agency and the personnel who are managing the program for such agency.

(2) The executive committee established under paragraph (1) shall be composed of the following members:

(A) The Under Secretary of Defense for Acquisition, Technology, and Logistics, who shall chair the executive committee.

(B) The Assistant Secretary of the Navy for Research, Development, and Acquisition.

(C) The Assistant Secretary of the Air Force for Acquisition.

(D) The Deputy Chief of Naval Operations for Warfare Requirements and Programs.

(E) The Deputy Chief of Staff of the Air Force for Air and Space Operations.

(F) Any additional personnel of the Department of Defense whom the Secretary determines appropriate for membership on the executive committee.

(b) APPLICABILITY ONLY TO DARPA-MANAGED PROGRAM.—The requirements of subsection (a) apply with respect to the Joint Unmanned Combat Air Systems program only while the program is managed by the Defense Advanced Research Projects Agency.

Subtitle C—Missile Defense Programs

SEC. 231. FIELDING OF BALLISTIC MISSILE DEFENSE CAPABILITIES.

(a) AUTHORITY.—Funds described in subsection (b) may, upon approval by the Secretary of Defense, be used for the development and fielding of ballistic missile defense capabilities.

(b) COVERED FUNDS.—Subsection (a) applies to funds appropriated for fiscal year 2005 or fiscal year 2006 for research, development, test, and evaluation for the Missile Defense Agency.

SEC. 232. INTEGRATION OF PATRIOT ADVANCED CAPABILITY-3 AND MEDIUM EXTENDED AIR DEFENSE SYSTEM INTO BALLISTIC MISSILE DEFENSE SYSTEM.

(a) RELATIONSHIP TO BALLISTIC MISSILE DEFENSE SYSTEM.—The combined program of the Department of the Army known as the Patriot Advanced Capability-3/Medium Extended Air Defense System air and missile defense program (hereinafter in this section referred to as the "PAC-3/MEADS program") is an element of the Ballistic Missile Defense System.

(b) MANAGEMENT OF CONFIGURATION CHANGES.—The Director of the Missile Defense Agency, in consultation with the Secretary of the Army (acting through the Assistant Secretary of the Army for Acquisition, Logistics and Technology) shall ensure that any configuration change for the PAC-3/MEADS program is subject to the configuration control board processes of the Missile Defense Agency so as to ensure integration of the PAC-3/MEADS element with appropriate elements of the Ballistic Missile Defense System.

(c) REQUIRED PROCEDURES.—(1) Except as otherwise directed by the Secretary of Defense, the Secretary of the Army (acting through the Assistant Secretary of the Army for Acquisition, Logistics and Technology) may make a significant change to the baseline technical specifications or the baseline schedule for the PAC-3/MEADS program only with the concurrence of the Director of the Missile Defense Agency.

(2) With respect to a proposal by the Secretary of the Army to make a significant change to the procurement quantity (including any quantity in any future block procurement) that, as of the date of such proposal, is planned for the PAC-3/MEADS program, the Secretary of Defense shall establish—

(A) procedures for a determination of the effect of such change on Ballistic Missile Defense System capabilities and on the cost of the PAC-3/MEADS program; and

(B) procedures for review of the proposed change by all relevant commands and agencies of the Department of Defense, including determination of the concurrence or nonconcurrence of each such command and agency with respect to such proposed change.

(d) REPORT.—Not later than February 1, 2005, the Secretary of Defense shall submit to the congressional defense committees a report describing the procedures developed pursuant to subsection (c)(2).

(e) DEFINITIONS.—For purpose of this section:

(1) The term "significant change" means, with respect to the PAC-3/MEADS program, a change that would substantially alter the role or contribution of that program in the Ballistic Missile Defense System.

(2) The term "baseline technical specifications" means, with respect to the PAC-3/MEADS program, those technical specifications for that program that have been approved by the configuration control board of the Missile Defense Agency and are in effect as of the date of the review.

(3) The term "baseline schedule" means, with respect to the PAC-3/MEADS program, the development and production schedule for the PAC-3/MEADS program in effect at the time of a review of such program conducted pursuant to subsection (b) or (c)(2)(B).

SEC. 233. COMPTROLLER GENERAL ASSESSMENTS OF BALLISTIC MISSILE DEFENSE PROGRAMS.

Section 232(g) of the National Defense Authorization Act for Fiscal Year 2002 (10 U.S.C. 2431 note) is amended to read as follows:

"(g) COMPTROLLER GENERAL ASSESSMENT.—(1) At the conclusion of each of fiscal years 2002 through 2006, the Comptroller General of the United States shall carry out an assessment of the extent to which the Missile Defense Agency achieved the goals established under subsection (c) for that fiscal year for each ballistic missile defense program of the Department of Defense.

"(2) Not later than February 15 of each of 2003 through 2007, the Comptroller General shall submit to the congressional defense committees a report on the Comptroller General's assessment under paragraph (1) with respect to the preceding fiscal year.".

SEC. 234. BASELINES AND OPERATIONAL TEST AND EVALUATION FOR BALLISTIC MISSILE DEFENSE SYSTEM.

(a) TESTING CRITERIA.—Not later than February 1, 2005, the Secretary of Defense, in consultation with the Director of Operational Test and Evaluation, shall prescribe appropriate criteria for operationally realistic testing of fieldable prototypes developed under the ballistic missile defense spiral development program. The Secretary shall submit a copy of the prescribed criteria to the congressional defense committees.

(b) USE OF CRITERIA.—(1) The Secretary of Defense shall ensure that, not later than October 1, 2005, a test of the ballistic missile defense system is conducted consistent with the criteria prescribed under subsection (a).

(2) The Secretary of Defense shall ensure that each block configuration of the ballistic missile defense system is tested consistent with the criteria prescribed under subsection (a).

(c) RELATIONSHIP TO OTHER LAW.—Nothing in this section shall be construed to exempt any spiral development program of the Department of Defense, after completion of the spiral development, from the applicability of any provision of chapter 144 of title 10, United States Code, or section 139, 181, 2366, 2399, or 2400 of such title in accordance with the terms and conditions of such provision.

(d) EVALUATION.—(1) The Director of Operational Test and Evaluation shall evaluate the results of each test conducted under subsection (a) as soon as practicable after the completion of such test.

(2) The Director shall submit to the Secretary of Defense and the congressional defense committees a report on the evaluation of each test conducted under subsection (a) upon completion of the evaluation of such test under paragraph (1).

(e) COST, SCHEDULE, AND PERFORMANCE BASELINES.—(1) The Director of the Missile Defense Agency shall establish cost, schedule, and performance baselines for each block configuration of the Ballistic Missile Defense System being fielded. The cost baseline for a block configuration shall include full life cycle costs for the block configuration.

(2) The Director shall include the baselines established under paragraph (1) in the first Selected Acquisition Report for the Ballistic Missile Defense System that is submitted to Congress under section 2432 of title 10, United States Code, after the establishment of such baselines.

(3) The Director shall also include in the Selected Acquisition Report submitted to Congress under paragraph (2) the significant assumptions used in determining the performance baseline under paragraph (1), including any assumptions regarding threat missile countermeasures and decoys.

(f) VARIATIONS AGAINST BASELINES.—In the event the cost, schedule, or performance of any block configuration of the Ballistic Missile Defense System varies significantly (as determined by the Director of the Ballistic Missile Defense Agency) from the applicable baseline established under subsection (d), the Director shall include such variation, and the reasons for such variation, in the Selected Acquisition Report submitted to Congress under section 2432 of title 10, United States Code.

(g) MODIFICATIONS OF BASELINES.—In the event the Director of the Missile Defense Agency elects to undertake any modification of a baseline established under subsection (d), the Director shall submit to the congressional defense committees a report setting forth the reasons for such modification.

Subtitle D—Other Matters

SEC. 241. ANNUAL REPORT ON SUBMARINE TECHNOLOGY INSERTION.

(a) REPORT REQUIRED.—(1) For each of fiscal years 2006, 2007, 2008, and 2009, the Secretary of Defense shall submit to the congressional defense committees a report on the submarine technologies that are available or potentially available for insertion in submarines of the Navy to reduce the production and operating costs of the submarines while maintaining or improving the effectiveness of the submarines.

(2) The annual report for a fiscal year under paragraph (1) shall be submitted at the same time that the President submits to Congress the budget for that fiscal year under section 1105(a) of title 31, United States Code.

(b) CONTENT.—The report on submarine technologies under subsection (a) shall include, for each class of submarines of the Navy, the following matters:

(1) A list of the technologies that have been demonstrated, together with—

(A) a plan for the insertion of any such technologies that have been determined appropriate for such submarines; and

(B) the estimated cost of such technology insertions.

(2) A list of the technologies that have not been demonstrated, together with a plan for the demonstration of any such technologies that have the potential for being appropriate for such submarines.

SEC. 242. SENSE OF CONGRESS REGARDING FUNDING OF THE ADVANCED SHIPBUILDING ENTERPRISE UNDER THE NATIONAL SHIPBUILDING RESEARCH PROGRAM OF THE NAVY.

(a) FINDINGS.—Congress makes the following findings:

(1) The budget for fiscal year 2005, as submitted to Congress by the President, provides $10,300,000 for the Advanced Shipbuilding Enterprise under the National Shipbuilding Research Program of the Navy.

(2) The Advanced Shipbuilding Enterprise is an innovative program to encourage greater efficiency in the national technology and industrial base.

(3) The leaders of the United States shipbuilding industry have embraced the Advanced Shipbuilding Enterprise as a method for exploring and collaborating on innovation in shipbuilding and ship repair that collectively benefits all components of the industry.

(b) SENSE OF CONGRESS.—It is the sense of Congress—

(1) that Congress—

(A) strongly supports the innovative Advanced Shipbuilding Enterprise under the National Shipbuilding Research Program as an enterprise between the Navy and industry that has yielded new processes and techniques that reduce the cost of building and repairing ships in the United States; and

(B) is concerned that the future-years defense program of the Department of Defense that was submitted to Congress for fiscal year 2005 does not reflect any funding for the Advanced Shipbuilding Enterprise after fiscal year 2005; and

(2) that the Secretary of Defense should continue to provide in the future-years defense program for funding the Advanced Shipbuilding Enterprise at a sustaining level in order to support additional research to further reduce the cost of designing, building, and repairing ships.

TITLE III—OPERATION AND MAINTENANCE

Subtitle A—Authorization of Appropriations

Sec. 301. Operation and maintenance funding.
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Sec. 303. Other Department of Defense programs.

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Sec. 312. Reimbursement of Environmental Protection Agency for certain costs in connection with Moses Lake Wellfield Superfund Site, Moses Lake, Washington.
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Sec. 314. Small boat harbor, Unalaska, Alaska.
Sec. 315. Report regarding encroachment issues affecting Utah Test and Training Range, Utah.
Sec. 316. Comptroller General study and report on alternative technologies to decontaminate groundwater at Department of Defense installations.
Sec. 317. Comptroller General study and report on drinking water contamination and related health effects at Camp Lejeune, North Carolina.
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Subtitle C—Workplace and Depot Issues

Sec. 321. Simplification of annual reporting requirements concerning funds expended for depot maintenance and repair workloads.
Sec. 322. Repeal of annual reporting requirement concerning management of depot employees.
Sec. 323. Extension of special treatment for certain expenditures incurred in operation of Centers of Industrial and Technical Excellence.
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Sec. 326. Bid protests by Federal employees in actions under Office of Management and Budget Circular A-76.
Sec. 327. Limitations on conversion of work performed by Department of Defense civilian employees to contractor performance.
Sec. 328. Competitive sourcing reporting requirement.

Subtitle D—Information Technology

Sec. 331. Preparation of Department of Defense plan for transition to Internet Protocol version 6.
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Sec. 341. Two-year extension of Department of Defense telecommunications benefit.
Sec. 342. Extension of Arsenal Support Program Initiative.
Sec. 343. Two-year extension of warranty claims recovery pilot program.

Subtitle F—Other Matters

Sec. 351. Reimbursement for certain protective, safety, or health equipment purchased by or for members of the Armed Forces deployed in contingency operations.
Sec. 352. Limitation on preparation or implementation of Mid-Range Financial Improvement Plan pending report.
Sec. 353. Pilot program to authorize Army working-capital funded facilities to engage in cooperative activities with non-Army entities.
Sec. 354. Transfer of excess Department of Defense personal property to assist firefighting agencies.

Subtitle A—Authorization of Appropriations

SEC. 301. OPERATION AND MAINTENANCE FUNDING.

Funds are hereby authorized to be appropriated for fiscal year 2005 for the use of the Armed Forces and other activities and agencies of the Department of Defense for expenses, not otherwise provided for, for operation and maintenance, in amounts as follows:

(1) For the Army, $26,098,411,000.

(2) For the Navy, $29,682,590,000.

(3) For the Marine Corps, $3,648,115,000.

(4) For the Air Force, $28,298,660,000.

(5) For Defense-wide activities, $17,325,276,000.

(6) For the Army Reserve, $2,008,128,000.

(7) For the Naval Reserve, $1,240,038,000.

(8) For the Marine Corps Reserve, $188,696,000

(9) For the Air Force Reserve, $2,239,790,000

(10) For the Army National Guard, $4,452,786,000.

(11) For the Air National Guard, $4,503,338,000.

(12) For the United States Court of Appeals for the Armed Forces, $10,825,000.

(13) For Environmental Restoration, Army, $400,948,000.

(14) For Environmental Restoration, Navy, $266,820,000.

(15) For Environmental Restoration, Air Force, $397,368,000.

(16) For Environmental Restoration, Defense-wide, $23,684,000

(17) For Environmental Restoration, Formerly Used Defense Sites, $256,516,000.

(18) For Overseas Humanitarian, Disaster, and Civic Aid programs, $59,000,000.

(19) For Cooperative Threat Reduction programs, $409,200,000.

(20) For the Overseas Contingency Operations Transfer Fund, $10,000,000.

SEC. 302. WORKING CAPITAL FUNDS.

Funds are hereby authorized to be appropriated for fiscal year 2005 for the use of the Armed Forces and other activities and agencies of the Department of Defense for providing capital for working capital and revolving funds in amounts as follows:

(1) For the Defense Working Capital Funds, $451,886,000.

(2) For the National Defense Sealift Fund, $1,269,252,000.

(3) For the Defense Working Capital Fund, Defense Commissary, $1,175,000,000.

SEC. 303. OTHER DEPARTMENT OF DEFENSE PROGRAMS.

(a) DEFENSE HEALTH PROGRAM.—Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2005 for expenses, not otherwise provided for, for the Defense Health Program, in the amount of $17,657,386,000, of which—

(1) $17,219,844,000 is for Operation and Maintenance;

(2) $72,907,000 is for Research, Development, Test, and Evaluation; and

(3) $364,635,000 is for Procurement.

(b) Chemical Agents and Munitions Destruction, Defense.—(1) Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2005 for expenses, not otherwise provided for, for Chemical Agents and Munitions Destruction, Defense, in the amount of $1,371,990,000, of which—

(A) $1,088,801,000 is for Operation and Maintenance;

(B) $204,209,000 is for Research, Development, Test, and Evaluation; and

(C) $78,980,000 is for Procurement.

(2) Amounts authorized to be appropriated under paragraph (1) are authorized for—

(A) the destruction of lethal chemical agents and munitions in accordance with section 1412 of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521); and

(B) the destruction of chemical warfare materiel of the United States that is not covered by section 1412 of such Act.

(c) Drug Interdiction and Counter-Drug Activities, Defense-wide.—Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2005 for expenses, not otherwise provided for, for Drug Interdiction and Counter-Drug Activities, Defense-wide, in the amount of $852,947,000.

(d) Defense Inspector General.—Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2005 for expenses, not otherwise provided for, for the Office of the Inspector General of the Department of Defense, in the amount of $204,562,000, of which—

(1) $202,362,000 is for Operation and Maintenance;

(2) $2,100,000 is for Procurement; and

(3) $100,000 is for Research, Development, Test, and Evaluation.

Subtitle B—Environmental Provisions

SEC. 311. SATISFACTION OF SUPERFUND AUDIT REQUIREMENTS BY INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE.

(a) Satisfaction of Requirements.—The Inspector General of the Department of Defense shall be deemed to be in compliance with the requirements of section 111(k) of Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(k)) if the Inspector General conducts periodic audits of the payments, obligations, reimbursements, and other uses of the Hazardous Substance Superfund by the Department of Defense, even if such audits do not occur on an annual basis.

(b) Reports to Congress on Audits.—The Inspector General shall submit to Congress a report on each audit conducted by the Inspector General as described in subsection (a).

SEC. 312. REIMBURSEMENT OF ENVIRONMENTAL PROTECTION AGENCY FOR CERTAIN COSTS IN CONNECTION WITH MOSES LAKE WELLFIELD SUPERFUND SITE, MOSES LAKE, WASHINGTON.

(a) Authority To Reimburse.—(1) Using funds described in subsection (b), the Secretary of Defense may transfer not more than $521,926.54 to the Moses Lake Wellfield Superfund Site 10–6J Special Account.

(2) The payment under paragraph (1) is to reimburse the Environmental Protection Agency for its costs, including interest, incurred in overseeing a remedial investigation/feasibility study performed by the Department of the Army under the Defense Environmental Restoration Program at the former Larson Air Force Base, Moses Lake Superfund Site, Moses Lake, Washington.

(3) The reimbursement described in paragraph (2) is provided for in the interagency agreement entered into by the Department of the Army and the Environmental Protection Agency for the Moses Lake Wellfield Superfund Site in March 1999.

(b) Source of Funds.—Any payment under subsection (a) shall be made using funds authorized to be appropriated by section 301(17) for operation and maintenance for Environmental Restoration, Formerly Used Defense Sites.

(c) Use of Funds.—The Environmental Protection Agency shall use the amount transferred under subsection (a) to pay costs incurred by the Agency at the Moses Lake Wellfield Superfund Site.

SEC. 313. INCREASE IN AUTHORIZED AMOUNT OF ENVIRONMENTAL REMEDIATION, FRONT ROYAL, VIRGINIA.

Section 591(a)(2) of the Water Resources Development Act of 1999 (Public Law 106–53; 113 Stat. 378) is amended by striking "$12,000,000" and inserting "$22,000,000".

SEC. 314. SMALL BOAT HARBOR, UNALASKA, ALASKA.

The Secretary of the Army shall carry out the small boat harbor project in Unalaska, Alaska, at a total estimated cost of $23,200,000, with an estimated Federal cost of $11,500,000 and an estimated non-Federal cost of $11,700,000, substantially in accordance with the plans, and subject to the conditions, recommended in a final report of the Chief of Engineers if a favorable final report of the Chief for the project is completed not later than December 31, 2004.

SEC. 315. REPORT REGARDING ENCROACHMENT ISSUES AFFECTING UTAH TEST AND TRAINING RANGE, UTAH.

(a) Report Required.—The Secretary of the Air Force shall prepare a report that outlines current and anticipated encroachments on the use and utility of the special use airspace of the Utah Test and Training Range in the State of Utah, including encroachments brought about through actions of other Federal agencies. The Secretary shall include in the report such recommendations as the Secretary considers appropriate regarding any legislative initiatives necessary to address encroachment problems identified by the Secretary in the report.

(b) Submission of Report.—Not later than one year after the date of the enactment of this Act, the Secretary shall submit the report to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate. It is the sense of Congress that the recommendations contained in the report should be carefully considered for future legislative action.

(c) Prohibition on Ground Military Operations.—Nothing in this section shall be construed to permit a military operation to be conducted on the ground in a covered wilderness study area in the Utah Test and Training Range.

(d) Communications and Tracking Systems.—Nothing in this section shall be construed to prevent any required maintenance of existing communications, instrumentation, or electronic tracking systems (or the infrastructure supporting such systems) necessary for effective testing and training to meet military requirements in the Utah Test and Training Range.

SEC. 316. COMPTROLLER GENERAL STUDY AND REPORT ON ALTERNATIVE TECHNOLOGIES TO DECONTAMINATE GROUNDWATER AT DEPARTMENT OF DEFENSE INSTALLATIONS.

(a) Comptroller General Study.—The Comptroller General shall conduct a study to determine whether cost-effective technologies are available to the Department of Defense for the cleanup of groundwater contamination at Department installations in lieu of traditional methods, such as pump and treat, used to respond to groundwater contamination.

(b) Elements of Study.—In conducting the study under subsection (a), the Comptroller General shall—

(1) identify current technologies being used or field tested by the Department of Defense to treat groundwater at Department installations;

(2) identify cost-effective technologies for the cleanup of groundwater contamination that—

(A) are being researched, are under development by commercial vendors, or are available commercially and being used outside the Department; and

(B) have potential for use by the Department to address groundwater contamination;

(3) evaluate the potential benefits and limitations of using the technologies identified under paragraphs (1) and (2); and

(4) consider the barriers, such as cost, capability, or legal restrictions, to using the technologies identified under paragraph (2).

(c) Report Required.—Not later than April 1, 2005, the Comptroller General shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing the results of the study, including information regarding the matters specified in subsection (b) and any recommendations, including recommendations for administrative or legislative action, that the Comptroller General considers appropriate.

SEC. 317. COMPTROLLER GENERAL STUDY AND REPORT ON DRINKING WATER CONTAMINATION AND RELATED HEALTH EFFECTS AT CAMP LEJEUNE, NORTH CAROLINA.

(a) Study.—The Comptroller General shall conduct a study on drinking water contamination and related health effects at Camp Lejeune, North Carolina. The study shall consist of the following:

(1) A study of the history of drinking water contamination at Camp Lejeune to determine, to the extent practical—

(A) what contamination has been found in the drinking water;

(B) the source of such contamination and when it may have begun; and

(C) what actions have been taken to address such contamination.

(2) An assessment of the study on the possible health effects associated with the drinking of contaminated drinking water at Camp Lejeune as proposed by the Agency for Toxic Substances and Disease Registry of the Department of Health and Human Services, including whether the proposed study—

(A) will address the appropriate at-risk populations;

(B) will encompass an appropriate timeframe;

(C) will consider all relevant health effects; and

(D) can be completed on an expedited basis without compromising its quality.

(b) Authority To Use Experts.—The Comptroller General may use experts in conducting the study required by subsection (a). Any such experts shall be independent, highly qualified, and knowledgeable in the matters covered by the study.

(c) Participation by Other Interested Parties.—In conducting the study required by subsection (a), the Comptroller General shall ensure that interested parties, including individuals who lived or worked at Camp Lejeune during the period when the drinking water may have been contaminated, have the opportunity to submit information and views on the matters covered by the study.

(d) Construction With ATSDR Study.—The requirement under subsection (a)(2) that the Comptroller General conduct an assessment of the study proposed by the Agency for Toxic Substances and Disease Registry, as described in such subsection, may not be construed as a basis for the delay of that study. The assessment is intended to provide an independent review of the appropriateness and credibility of the study *proposed by the Agency and to identify possible improvements in the plan or implementation of the study proposed by the Agency.*

(e) REPORT.—(1) Not later than one year after the date of the enactment of this Act, the Comptroller General shall submit to the congressional defense committees a report on the study required by subsection (a), including such recommendations as the Comptroller General considers appropriate for further study or for legislative or other action.

(2) Recommendations under paragraph (1) may include recommendations for modifications or additions to the study proposed by the Agency for Toxic Substances and Disease Registry, as described in subsection (a)(2), in order to improve the study.

SEC. 318. SENSE OF CONGRESS REGARDING PERCHLORATE CONTAMINATION OF GROUND AND SURFACE WATER FROM DEPARTMENT OF DEFENSE ACTIVITIES.

It is the sense of Congress that the Secretary of Defense should—

(1) develop a plan for the remediation of perchlorate contamination resulting from the activities of the Department of Defense to ensure that the Department is prepared to respond quickly and appropriately once the United States establishes a drinking water standard for perchlorate;

(2) continue remediation activities for perchlorate contamination at those sites where perchlorate contamination poses an imminent and substantial endangerment to public health and welfare and where the Department is undertaking site-specific remedial action as of the date of the enactment of this Act;

(3) develop a plan for the remediation of perchlorate contamination resulting from the activities of the Department of Defense in cases in which, notwithstanding the lack of a drinking water standard for perchlorate, such contamination is present in ground or surface water at levels that the Secretary of Defense determines pose a hazard to human health; and

(4) continue the process of evaluating and prioritizing perchlorate contamination sites without waiting for the establishment of the Federal drinking water standard for perchlorate.

Subtitle C—Workplace and Depot Issues

SEC. 321. SIMPLIFICATION OF ANNUAL REPORTING REQUIREMENTS CONCERNING FUNDS EXPENDED FOR DEPOT MAINTENANCE AND REPAIR WORKLOADS.

Subsection (d) of section 2466 of title 10, United States Code, is amended to read as follows:

"(d) ANNUAL REPORT AND REVIEW.—(1) Not later than April 1 of each year, the Secretary of Defense shall submit to Congress a report identifying, for each of the armed forces (other than the Coast Guard) and each Defense Agency, the percentage of the funds referred to in subsection (a) that was expended during the preceding fiscal year, and are projected to be expended during the current fiscal year and the ensuing fiscal year, for performance of depot-level maintenance and repair workloads by the public and private sectors.

"(2) Not later than 90 days after the date on which the Secretary submits a report under paragraph (1), the Comptroller General shall submit to Congress the Comptroller General's views on whether—

"(A) the Department of Defense complied with the requirements of subsection (a) during the preceding fiscal year covered by the report; and

"(B) the expenditure projections for the current fiscal year and the ensuing fiscal year are reasonable.".

SEC. 322. REPEAL OF ANNUAL REPORTING REQUIREMENT CONCERNING MANAGEMENT OF DEPOT EMPLOYEES.

(a) REPEAL.—Section 2472 of title 10, United States Code, is amended—

(1) by striking "(a) PROHIBITION ON MANAGEMENT BY END STRENGTH.—"; and

(2) by striking subsection (b).

(b) CLERICAL AMENDMENTS.—(1) The heading of such section is amended to read as follows:

"§2472. Prohibition on management of depot employees by end strength".

(2) The table of sections at the beginning of chapter 146 of such title is amended by striking the item relating to section 2472 and inserting the following new item:

"2472. Prohibition on management of depot employees by end strength.".

SEC. 323. EXTENSION OF SPECIAL TREATMENT FOR CERTAIN EXPENDITURES INCURRED IN OPERATION OF CENTERS OF INDUSTRIAL AND TECHNICAL EXCELLENCE.

Section 2474(f)(1) of title 10, United States Code, is amended by striking "through 2006" and inserting "through 2009".

SEC. 324. TEMPORARY AUTHORITY FOR CONTRACTOR PERFORMANCE OF SECURITY-GUARD FUNCTIONS.

(a) CONDITIONAL EXTENSION OF AUTHORITY.—Subsection (c) of section 332 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 116 Stat. 2513) is amended—

(1) by inserting "(1)" after "AUTHORITY.—"; and

(2) by striking "at the end of the three-year period" and all that follows through the period at the end of the subsection and inserting the following: "at the end of September 30, 2006, except that such authority shall not be in effect after December 1, 2005, if the Secretary fails to submit to Congress the plan required by subsection (d)(4), until the date on which the Secretary submits the plan.

"(2) No security-guard functions may be performed under any contract entered into using the authority provided under this section during any period in which the authority for contractor performance of security-guard functions under this section is not in effect under paragraph (1). The term of any contract entered into using such authority may not extend beyond September 30, 2006.".

(b) REAFFIRMATION AND REVISION OF REPORTING REQUIREMENT.—Subsection (d) of such section is amended to read as follows:

"(d) REPORT AND PLAN REQUIRED.—Not later than December 1, 2005, the Secretary of Defense shall submit to the congressional defense committees a report that—

"(1) identifies each contract for the performance of security-guard functions entered into on or before September 30, 2004, pursuant to the authority provided by subsection (a), including information regarding—

"(A) each installation at which such security-guard functions are performed or are to be performed;

"(B) the period and amount of such contract;

"(C) the number of security guards employed or to be employed under such contract;

"(D) whether the contract was awarded pursuant to full and open competition; and

"(E) the actions taken or to be taken within the Department of Defense to ensure that the conditions applicable under paragraph (1) of subsection (a) or determined under paragraph (2) of such subsection are satisfied;

"(2) identifies, for each military installation at which such authority was used or is expected to be used, any requirements for the performance of security-guard functions described in subsection (a) that are expected to continue after the date on which such authority expires;

"(3) identifies any limitation or constraint on the end strength of the civilian workforce of the Department of Defense that makes it difficult to meet requirements identified under paragraph (2) by hiring personnel as civilian employees of the Department of Defense; and

"(4) includes a plan for meeting such requirements, in a manner consistent with applicable law, on a long-term basis.".

SEC. 325. PILOT PROGRAM FOR PURCHASE OF CERTAIN MUNICIPAL SERVICES FOR ARMY INSTALLATIONS.

(a) PILOT PROGRAM AUTHORIZED.—The Secretary of Army may carry out a pilot program to procure one or more of the municipal services specified in subsection (b) for an Army installation from a county or municipality in which the installation is located for the purpose of evaluating the efficacy of procuring such services rather than providing them directly.

(b) SERVICES AUTHORIZED FOR PROCUREMENT.—Only the following services may be procured for a military installation participating in the pilot program:

(1) Refuse collection.

(2) Refuse disposal.

(3) Library services.

(4) Recreation services.

(5) Facility maintenance and repair.

(6) Utilities.

(c) PARTICIPATING INSTALLATIONS.—Not more than two Army installations may be selected to participate in the pilot program, and only installations located in the United States are eligible for selection.

(d) CONGRESSIONAL NOTIFICATION.—The Secretary may not enter into a contract under the pilot program for the procurement of municipal services until the Secretary notifies the congressional defense committees of the proposed contract and a period of 14 days elapses from the date the notification is received by the committees.

(e) IMPLEMENTATION REPORT.—(1) Not later than February 1, 2007, the Secretary shall submit to the congressional defense committees and the Comptroller General a report describing the implementation of the pilot program, evaluating the efficacy of procuring municipal services for participating installations from local counties or municipalities, and containing any recommendations that the Secretary considers appropriate regarding expansion or alteration of the program.

(2) The Comptroller General shall submit to the congressional defense committees an assessment of the findings and recommendations contained in the report submitted under paragraph (1).

(f) TERMINATION OF PILOT PROGRAM.—The pilot program shall terminate on September 30, 2010. Any contract entered into under the pilot program shall terminate not later than that date.

SEC. 326. BID PROTESTS BY FEDERAL EMPLOYEES IN ACTIONS UNDER OFFICE OF MANAGEMENT AND BUDGET CIRCULAR A–76.

(a) TREATMENT OF AGENCY TENDER OFFICIAL AS INTERESTED PARTY.—Section 3551(2) of title 31, United States Code, is amended—

(1) by inserting "(A)" after "(2)"; and

(2) by adding at the end the following new subparagraph:

"(B) The term includes the official responsible for submitting the Federal agency tender in a public-private competition conducted under Office of Management and Budget Circular A–76 regarding an activity or function of a Federal agency performed by more than 65 full-time equivalent employees of the Federal agency.".

(b) FILING OF PROTEST ON BEHALF OF FEDERAL EMPLOYEES.—Section 3552 of such title is amended—

(1) by inserting "(a)" before "A protest"; and

(2) by adding at the end the following new subsection:

"(b)(1) In the case of an agency tender official who is an interested party under section 3551(2)(B) of this title, the official may file a protest in connection with the public-private competition for which the official is an interested party. At the request of a majority of the employees of the Federal agency who are engaged in the performance of the activity or function subject to such public-private competition, the official shall file a protest in connection with such public-private competition unless the official determines that there is no reasonable basis for the protest.

"(2) The determination of an agency tender official under paragraph (1) whether or not to file a protest is not subject to administrative or judicial review. An agency tender official shall provide written notification to Congress whenever the official makes a determination under paragraph (1) that there is no reasonable basis for a protest.".

(c) INTERVENTION IN PROTEST.—Section 3553 of such title is amended by adding at the end the following new subsection:

"(g) If an interested party files a protest in connection with a public-private competition described in section 3551(2)(B) of this title, a person representing a majority of the employees of the Federal agency who are engaged in the performance of the activity or function subject to the public-private competition may intervene in protest.".

(d) APPLICABILITY.—The amendments made by this section shall apply to protests filed under subchapter V of chapter 35 of title 31, United States Code, that relate to studies initiated under Office of Management and Budget Circular A-76 on or after the end of the 90-day period beginning on the date of the enactment of this Act.

(e) RULE OF CONSTRUCTION.—The amendments made by this section shall not be construed to authorize the use of a protest under subchapter V of chapter 35 of title 31, United States Code, with regard to a decision made by an agency tender official.

SEC. 327. LIMITATIONS ON CONVERSION OF WORK PERFORMED BY DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES TO CONTRACTOR PERFORMANCE.

(a) REQUIRED COST-SAVINGS THRESHOLD FOR CONVERSION.—If a public-private competition conducted under the Office of Management and Budget Circular A-76 dated May 29, 2003 (68 Fed. Reg. 32134), regarding an activity or function performed by civilian employees of the Department of Defense is required to include a formal comparison of the cost of civilian employee performance of the activity or function with the cost of contractor performance, the Secretary of Defense shall maintain the continued performance of the activity or function by civilian employees unless the competitive sourcing official determines that, over all performance periods stated in the solicitation of offers for performance of the activity or function, the cost of performance of the activity or function by a contractor would be less costly to the Department of Defense by an amount that equals or exceeds the lesser of the following:

(1) $10,000,000.

(2) 10 percent of the most efficient organization's personnel-related costs for performance of the activity or function by civilian employees.

(b) PROHIBITION ON MODIFICATION OF FUNCTIONS TO PERMIT STREAMLINED A-76 STUDY.—The Secretary of Defense shall ensure that no organization, function, or activity of the Department of Defense is consolidated, restructured, reengineered, or otherwise modified in any way for the purpose of exempting any public-private competition conducted under the Office of Management and Budget Circular A-76 dated May 29, 2003 (68 Fed. Reg. 32134), regarding a commercial or industrial type function of the Department of Defense from the requirement to formally compare, in accordance with such Circular, the cost of civilian employee performance of the function with the cost of contractor performance.

(c) EXCEPTION.—Subsection (a) does not apply in the case of a public-private competition conducted as part of the best-value source selection pilot program authorized by section 336 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136; 10 U.S.C. 2461 note).

SEC. 328. COMPETITIVE SOURCING REPORTING REQUIREMENT.

Not later than February 1, 2005, the Inspector General of the Department of Defense shall submit to Congress a report addressing whether the Department of Defense—

(1) employs a sufficient number of adequately trained civilian employees—

(A) to conduct satisfactorily, taking into account equity, efficiency and expeditiousness, all of the public-private competitions that are scheduled to be undertaken by the Department of Defense during the next fiscal year (including a sufficient number of employees to formulate satisfactorily the performance work statements and most efficient organization plans for the purposes of such competitions); and

(B) to administer any resulting contracts; and

(2) has implemented a comprehensive and reliable system to track and assess the cost and quality of the performance of functions of the Department of Defense by service contractors.

Subtitle D—Information Technology

SEC. 331. PREPARATION OF DEPARTMENT OF DEFENSE PLAN FOR TRANSITION TO INTERNET PROTOCOL VERSION 6.

(a) TRANSITION PLAN REQUIRED.—The Secretary of Defense shall prepare a plan detailing the Department of Defense strategy to provide for the transition of the Department's information technology systems to Internet Protocol version 6 from the present use of Internet Protocol version 4 and other network protocols. In preparing the transition plan, the Secretary shall compare private industry plans for the transition to Internet Protocol version 6.

(b) ELEMENTS OF PLAN.—The transition plan required by subsection (a) shall include the following:

(1) An outline of the networking and security system equipment that will need to be replaced in the transition, including the timing and costs of such replacement.

(2) An assessment of how the current and new networks and security systems will be managed.

(3) An assessment of the potential impact of the transition, including an overall cost estimate for the transition and an estimate of the costs to be incurred by each of the military departments and the Defense Agencies.

(4) Any measures proposed to alleviate any adverse effects of the transition.

(c) TESTING AND EVALUATION FOR INTERNET PROTOCOL.—To determine whether a change to the use of Internet Protocol version 6 will support Department of Defense requirements, the Secretary of Defense shall provide for rigorous, real-world, end-to-end testing of Internet Protocol version 6, as proposed for use by the Department, to evaluate the following:

(1) The ability of Internet Protocol version 6, with its "best effort" quality of service, to satisfactory support the Department's multiple applications and other information technology systems, including the use of Internet Protocol version 6 over bandwidth-constrained tactical circuits.

(2) The ability of the Department's networks using Internet Protocol version 6 to respond to, and perform under, heavy loading of the core networks.

(d) REPORTS ON PLAN AND TEST RESULTS.—(1) Not later than March 31, 2005, the Secretary of Defense shall submit to the congressional defense committees a report containing the transition plan prepared under subsection (a).

(2) Not later than September 30, 2005, the Director of Operational Test and Evaluation shall submit to the congressional defense committees a report containing an update on the continuing test program and any test results.

SEC. 332. DEFENSE BUSINESS ENTERPRISE ARCHITECTURE, SYSTEM ACCOUNTABILITY, AND CONDITIONS FOR OBLIGATION OF FUNDS FOR DEFENSE BUSINESS SYSTEM MODERNIZATION.

(a) IN GENERAL.—(1) Chapter 131 of title 10, United States Code, is amended by inserting before section 2223 the following new section:

"§2222. Defense business systems: architecture, accountability, and modernization

"(a) CONDITIONS FOR OBLIGATION OF FUNDS FOR DEFENSE BUSINESS SYSTEM MODERNIZATION.—Effective October 1, 2005, funds appropriated to the Department of Defense may not be obligated for a defense business system modernization that will have a total cost in excess of $1,000,000 unless—

"(1) the approval authority designated for the defense business system certifies to the Defense Business Systems Management Committee established by section 186 of this title that the defense business system modernization—

"(A) is in compliance with the enterprise architecture developed under subsection (c);

"(B) is necessary to achieve a critical national security capability or address a critical requirement in an area such as safety or security; or

"(C) is necessary to prevent a significant adverse effect on a project that is needed to achieve an essential capability, taking into consideration the alternative solutions for preventing such adverse effect; and

"(2) the certification by the approval authority is approved by the Defense Business Systems Management Committee.

"(b) OBLIGATION OF FUNDS IN VIOLATION OF REQUIREMENTS.—The obligation of Department of Defense funds for a business system modernization in excess of the amount specified in subsection (a) that has not been certified and approved in accordance with such subsection is a violation of section 1341(a)(1)(A) of title 31.

"(c) ENTERPRISE ARCHITECTURE FOR DEFENSE BUSINESS SYSTEMS.—Not later than September 30, 2005, the Secretary of Defense, acting through the Defense Business Systems Management Committee, shall develop—

"(1) an enterprise architecture to cover all defense business systems, and the functions and activities supported by defense business systems, which shall be sufficiently defined to effectively guide, constrain, and permit implementation of interoperable defense business system solutions and consistent with the policies and procedures established by the Director of the Office of Management and Budget, and

"(2) a transition plan for implementing the enterprise architecture for defense business systems.

"(d) COMPOSITION OF ENTERPRISE ARCHITECTURE.—The defense business enterprise architecture developed under subsection (c)(1) shall include the following:

"(1) An information infrastructure that, at a minimum, would enable the Department of Defense to—

"(A) comply with all Federal accounting, financial management, and reporting requirements;

"(B) routinely produce timely, accurate, and reliable financial information for management purposes;

"(C) integrate budget, accounting, and program information and systems; and

"(D) provide for the systematic measurement of performance, including the ability to produce timely, relevant, and reliable cost information.

"(2) Policies, procedures, data standards, and system interface requirements that are to apply uniformly throughout the Department of Defense.

"(e) COMPOSITION OF TRANSITION PLAN.—(1) The transition plan developed under subsection (c)(2) shall include the following:

"(A) The acquisition strategy for new systems that are expected to be needed to complete the defense business enterprise architecture.

"(B) A listing of the defense business systems as of December 2, 2002 (known as 'legacy systems'), that will not be part of the objective defense business enterprise architecture, together with the schedule for terminating those legacy systems that provides for reducing the use of those legacy systems in phases.

"(C) A listing of the legacy systems (referred to in subparagraph (B)) that will be a part of the objective defense business system, together with a strategy for making the modifications to those systems that will be needed to ensure that such systems comply with the defense business enterprise architecture.

"(2) Each of the strategies under paragraph (1) shall include specific time-phased milestones, performance metrics, and a statement of the financial and nonfinancial resource needs.

"(f) APPROVAL AUTHORITIES AND ACCOUNTABILITY FOR DEFENSE BUSINESS SYSTEMS.—The Secretary of Defense shall delegate responsibility for review, approval, and oversight of the planning, design, acquisition, deployment, operation, maintenance, and modernization of defense business systems as follows:

"(1) The Under Secretary of Defense for Acquisition, Technology and Logistics shall be responsible and accountable for any defense business system the primary purpose of which is to support acquisition activities, logistics activities, or installations and environment activities of the Department of Defense.

"(2) The Under Secretary of Defense (Comptroller) shall be responsible and accountable for any defense business system the primary purpose of which is to support financial management activities or strategic planning and budgeting activities of the Department of Defense.

"(3) The Under Secretary of Defense for Personnel and Readiness shall be responsible and accountable for any defense business system the primary purpose of which is to support human resource management activities of the Department of Defense.

"(4) The Assistant Secretary of Defense for Networks and Information Integration and the Chief Information Officer of the Department of Defense shall be responsible and accountable for any defense business system the primary purpose of which is to support information technology infrastructure or information assurance activities of the Department of Defense.

"(5) The Deputy Secretary of Defense or an Under Secretary of Defense, as designated by the Secretary of Defense, shall be responsible for any defense business system the primary purpose of which is to support any activity of the Department of Defense not covered by paragraphs (1) through (4).

"(g) DEFENSE BUSINESS SYSTEM INVESTMENT REVIEW.—(1) The Secretary of Defense shall require each approval authority designated under subsection (f) to establish, not later than March 15, 2005, an investment review process, consistent with section 11312 of title 40, to review the planning, design, acquisition, development, deployment, operation, maintenance, modernization, and project cost benefits and risks of all defense business systems for which the approval authority is responsible. The investment review process so established shall specifically address the responsibilities of approval authorities under subsection (a).

"(2) The review of defense business systems under the investment review process shall include the following:

"(A) Review and approval by an investment review board of each defense business system as an investment before the obligation of funds on the system.

"(B) Periodic review, but not less than annually, of every defense business system investment.

"(C) Representation on each investment review board by appropriate officials from among the armed forces, combatant commands, the Joint Chiefs of Staff, and Defense Agencies.

"(D) Use of threshold criteria to ensure an appropriate level of review within the Department of Defense of, and accountability for, defense business system investments depending on scope, complexity, and cost.

"(E) Use of procedures for making certifications in accordance with the requirements of subsection (a).

"(F) Use of procedures for ensuring consistency with the guidance issued by the Secretary of Defense and the Defense Business Systems Management Committee, as required by section 186(c) of this title, and incorporation of common decision criteria, including standards, requirements, and priorities that result in the integration of defense business systems.

"(h) BUDGET INFORMATION.—In the materials that the Secretary submits to Congress in support of the budget submitted to Congress under section 1105 of title 31 for fiscal year 2006 and fiscal years thereafter, the Secretary of Defense shall include the following information:

"(1) Identification of each defense business system for which funding is proposed in that budget.

"(2) Identification of all funds, by appropriation, proposed in that budget for each such system, including—

"(A) funds for current services (to operate and maintain the system); and

"(B) funds for business systems modernization, identified for each specific appropriation.

"(3) For each such system, identification of the official to whom authority for such system is delegated under subsection (f).

"(4) For each such system, a description of each certification made under subsection (d) with regard to such system.

"(i) CONGRESSIONAL REPORTS.—Not later than March 15 of each year from 2005 through 2009, the Secretary of Defense shall submit to the congressional defense committees a report on Department of Defense compliance with the requirements of this section. The first report shall define plans and commitments for meeting the requirements of subsection (a), including specific milestones and performance measures. Subsequent reports shall—

"(1) describe actions taken and planned for meeting the requirements of subsection (a), including—

"(A) specific milestones and actual performance against specified performance measures, and any revision of such milestones and performance measures; and

"(B) specific actions on the defense business system modernizations submitted for certification under such subsection;

"(2) identify the number of defense business system modernizations so certified;

"(3) identify any defense business system modernization with an obligation in excess of $1,000,000 during the preceding fiscal year that was not certified under subsection (a), and the reasons for the waiver; and

"(4) discuss specific improvements in business operations and cost savings resulting from successful defense business systems modernization efforts.

"(j) DEFINITIONS.—In this section:

"(1) The term 'approval authority', with respect to a defense business system, means the Department of Defense official responsible for the defense business system, as designated by subsection (f).

"(2) The term 'defense business system' means an information system, other than a national security system, operated by, for, or on behalf of the Department of Defense, including financial systems, mixed systems, financial data feeder systems, and information technology and information assurance infrastructure, used to support business activities, such as acquisition, financial management, logistics, strategic planning and budgeting, installations and environment, and human resource management.

"(3) The term 'defense business system modernization' means—

"(A) the acquisition or development of a new defense business system; or

"(B) any significant modification or enhancement of an existing defense business system (other than necessary to maintain current services).

"(4) The term 'enterprise architecture' has the meaning given that term in section 3601(4) of title 44.

"(5) The terms 'information system' and 'information technology' have the meanings given those terms in section 11101 of title 40.

"(6) The term 'national security system' has the meaning given that term in section 2315 of this title.".

(2) The table of sections at the beginning of such chapter is amended by inserting before the item relating to section 2223 the following new item:

"2222. Defense business systems: architecture, accountability, and modernization.".

(b) DEFENSE BUSINESS SYSTEM MANAGEMENT COMMITTEE.—(1) Chapter 7 of such title is amended by adding at the end the following new section:

"§ 186. Defense Business System Management Committee

"(a) ESTABLISHMENT.—The Secretary of Defense shall establish a Defense Business Systems Management Committee, to be composed of the following persons:

"(1) The Deputy Secretary of Defense.

"(2) The Under Secretary of Defense for Acquisition, Logistics, and Technology.

"(3) The Under Secretary of Defense for Personnel and Readiness.

"(4) The Under Secretary of Defense (Comptroller).

"(5) The Assistant Secretary of Defense for Networks and Information Integration.

"(6) The Secretaries of the military departments and the heads of the Defense Agencies.

"(7) Such additional personnel of the Department of Defense (including personnel assigned to the Joint Chiefs of Staff and combatant commands) as are designated by the Secretary of Defense.

"(b) CHAIRMAN AND VICE CHAIRMAN.—The Deputy Secretary of Defense shall serve as the chairman of the Committee. The Secretary of Defense shall designate one of the officials specified in paragraphs (2) through (5) of subsection (a) as the vice chairman of the Committee, who shall act as chairman in the absence of the Deputy Secretary of Defense.

"(c) DUTIES.—(1) In addition to any other matters assigned to the Committee by the Secretary of Defense, the Committee shall—

"(A) recommend to the Secretary of Defense policies and procedures necessary to effectively integrate the requirements of section 2222 of this title into all business activities and any transformation, reform, reorganization, or process improvement initiatives undertaken within the Department of Defense;

"(B) review and approve any major update of the defense business enterprise architecture developed under subsection (b) of section 2222 of this title, including evolving the architecture, and of defense business systems modernization plans; and

"(C) manage cross-domain integration consistent with such enterprise architecture.

"(2) The Committee shall be responsible for coordinating defense business system modernization initiatives to maximize benefits and minimize costs for the Department of Defense and periodically report to the Secretary on the status of defense business system modernization efforts.

"(3) The Committee shall ensure that funds are obligated for defense business system modernization in a manner consistent with section 2222 of this title.

"(c) DEFINITIONS.—In this section, the terms 'defense business system' and 'defense business system modernization' have the meanings given such terms in section 2222 of this title.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"186. Defense Business System Management Committee.".

(c) IMPLEMENTATION REQUIREMENTS.—Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense shall—

(1) complete the delegation of responsibility for the review, approval, and oversight of the planning, design, acquisition, deployment, operation, maintenance, and modernization of defense business systems required by subsection (f) of section 2222 of title 10, United States Code, as added by subsection (a)(1); and

(2) designate a vice chairman of the Defense Business System Management Committee, as required by subsection (b) of section 186 of such title, as added by subsection (b)(1).

(d) COMPTROLLER GENERAL ASSESSMENT.—Not later than 60 days after the date on which the Secretary of Defense approves the defense business enterprise architecture and transition plan developed under section 2222 of title 10, United States Code, as added by subsection (a)(1), and again each year not later than 60 days after the submission of the annual report required under subsection (i), the Comptroller General shall submit to the congressional defense committees an assessment of the extent to which the actions taken by the Department comply with the requirements of such section.

(e) RELATION TO ANNUAL REGISTRATION REQUIREMENTS.—Nothing in sections 186 and 2222 of title 10, United States Code, as added by this section, shall be construed to alter the requirements of section 8083 of the Department of Defense Appropriations Act, 2005 (Public Law 108–287; 118 Stat. 989), with regard to information technology systems (as defined in subsection (d) of such section).

(f) REPEAL OF OBSOLETE FINANCIAL MANAGEMENT ENTERPRISE ARCHITECTURE REQUIREMENTS.—Section 1004 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 10 U.S.C. 113 note) is repealed.

SEC. 333. REPORT ON MATURITY AND EFFECTIVENESS OF THE GLOBAL INFORMATION GRID BANDWIDTH EXPANSION (GIG–BE).

(a) REPORT REQUIRED.—Not later that 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report on a test program to demonstrate the maturity and effectiveness of the Global Information Grid-Bandwidth Expansion (hereinafter in this section referred to as "GIG–BE").

(b) CONTENT OF REPORT.—In the report under subsection (a), the Secretary of Defense shall include the following:

(1) The Secretary's determination as to whether the results of the test program described in subsection (a) demonstrate compliance of the GIG–BE architecture with the overall goals of the GIG–BE program.

(2) Identification of—

(A) the extent to which the GIG–BE architecture does not meet the overall goals of the GIG–BE program; and

(B) the components of that architecture that are not yet sufficiently developed to achieve the overall goals of that program.

(3) A plan for achieving compliance referred to in paragraph (1), together with cost estimates for carrying out that plan.

(4) Documentation of the equipment and network configuration used in the test program to demonstrate real-world scenarios for the operation of the GIG–BE within the continental United States.

Subtitle E—Extensions of Program Authorities

SEC. 341. TWO-YEAR EXTENSION OF DEPARTMENT OF DEFENSE TELECOMMUNICATIONS BENEFIT.

Section 344(c) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1448) is amended by striking "September 30, 2004" and inserting "September 30, 2006".

SEC. 342. EXTENSION OF ARSENAL SUPPORT PROGRAM INITIATIVE.

(a) DURATION OF PROGRAM.—Subsection (a) of section 343 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 10 U.S.C. 4551 note) is amended by striking "2004" and inserting "2008".

(b) ADDITIONAL REPORT REQUIRED.—Subsection (g) of such section is amended—

(1) in paragraph (1), by striking "2004" and inserting "2008"; and

(2) in paragraph (2), by striking "2003" and inserting "2007".

SEC. 343. TWO-YEAR EXTENSION OF WARRANTY CLAIMS RECOVERY PILOT PROGRAM.

Section 391 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 10 U.S.C. 2304 note) is amended—

(1) in subsection (f), by striking "September 30, 2004" and inserting "September 30, 2006"; and

(2) by adding at the end the following new subsection:

"(g) REPORTING REQUIREMENT.—Not later than February 1, 2006, the Secretary of Defense shall submit to Congress a report on the pilot program, including—

"(1) a description of the extent to which commercial firms have been used to provide the services specified in subsection (b) and the type of services procured;

"(2) a description of any problems that have limited the ability of the Secretary to utilize the pilot program to procure such services; and

"(3) the recommendation of the Secretary regarding whether the pilot program should be made permanent or extended beyond September 30, 2006.".

Subtitle F—Other Matters

SEC. 351. REIMBURSEMENT FOR CERTAIN PROTECTIVE, SAFETY, OR HEALTH EQUIPMENT PURCHASED BY OR FOR MEMBERS OF THE ARMED FORCES DEPLOYED IN CONTINGENCY OPERATIONS.

(a) REIMBURSEMENT REQUIRED.—The Secretary of Defense shall reimburse a member of the Armed Forces for the cost (including any shipping cost) of any protective, safety, or health equipment that was purchased by the member or by another person on behalf of the member for the personal use of the member in anticipation of, or during, the deployment of the member in connection with Operation Noble Eagle, Operation Enduring Freedom, or Operation Iraqi Freedom, but only if—

(1) the Secretary of Defense certifies that the protective, safety, or health equipment was critical to the protection, safety, or health of the member;

(2) the member was not issued the protective, safety, or health equipment before the member became engaged in operations in areas or situations described in section 310(a)(2) of title 37, United States Code; and

(3) the protective, safety, or health equipment was purchased by the member during the period beginning on September 11, 2001, and ending on July 31, 2004.

(b) AMOUNT OF REIMBURSEMENT.—The amount of reimbursement provided under subsection (a) per item of protective, safety, or health equipment purchased by a member of the Armed Forces may not exceed $1,100.

(c) SUBMISSION OF REIMBURSEMENT CLAIMS.—Claims for reimbursement for the cost of protective, safety, or health equipment purchased by a member of the Armed Forces shall be submitted to the Secretary of Defense under this section not later than one year after the date on which the implementing rules required by subsection (d) take effect.

(d) RULEMAKING.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall issue rules to expedite the provision of reimbursement under subsection (a). In conducting such rulemaking, the Secretary shall address the circumstances under which the United States will assume title or ownership of any protective, safety, or health equipment for which reimbursement is made.

SEC. 352. LIMITATION ON PREPARATION OR IMPLEMENTATION OF MID-RANGE FINANCIAL IMPROVEMENT PLAN PENDING REPORT.

Amounts authorized to be appropriated to the Department of Defense for fiscal year 2005 for operation and maintenance may not be obligated for the purpose of preparing or implementing the Mid-Range Financial Improvement Plan until the Secretary of Defense submits to the congressional defense committees a report containing the following:

(1) A determination that the enterprise architecture for defense business systems and the transition plan for implementing the enterprise architecture have been developed, as required by subsection (c) of section 2222 of title 10, United States Code, as added by section 332(a).

(2) An explanation of the manner in which the operation and maintenance funds will be used for each of the military departments and the Defense Agencies to prepare or implement the Mid-Range Financial Improvement Plan during that fiscal year.

(3) An estimate of the costs for future fiscal years for each of the military departments and the Defense Agencies to prepare and implement the Mid-Range Financial Improvement Plan.

SEC. 353. PILOT PROGRAM TO AUTHORIZE ARMY WORKING-CAPITAL FUNDED FACILITIES TO ENGAGE IN COOPERATIVE ACTIVITIES WITH NON-ARMY ENTITIES.

(a) COOPERATIVE ARRANGEMENTS AUTHORIZED.—Chapter 433 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 4544. Army industrial facilities: cooperative activities with non-Army entities

"(a) COOPERATIVE ARRANGEMENTS AUTHORIZED.—A working-capital funded Army industrial facility may enter into a contract or other cooperative arrangement with a non-Army entity to carry out with the non-Army entity a military or commercial project described in subsection (b), subject to the conditions prescribed in subsection (c).

"(b) AUTHORIZED ACTIVITIES.—A cooperative arrangement entered into by an Army industrial facility under subsection (a) may provide for any of the following activities:

"(1) The sale of articles manufactured by the facility or services performed by the facility to persons outside the Department of the Army.

"(2) The performance of work by a non-Army entity at the facility.

"(3) The performance of work by the facility for a non-Army entity.

"(4) The sharing of work by the facility and a non-Army entity.

"(5) The leasing, or use under a facilities use contract or otherwise, of the facility (including excess capacity) or equipment (including excess equipment) of the facility by a non-Army entity.

"(6) The preparation and submission of joint offers by the facility and a non-Army entity for competitive procurements entered into with Federal agency.

"(c) CONDITIONS.—An activity authorized by subsection (b) may be carried out at an Army industrial facility under a cooperative arrangement entered into under subsection (a) only under the following conditions:

"(1) In the case of an article to be manufactured or services to be performed by the facility, the articles can be substantially manufactured, or the services can be substantially performed, by the facility without subcontracting for more than incidental performance.

"(2) The activity does not interfere with performance of—

"(A) work by the facility for the Department of Defense; or

"(B) a military mission of the facility.

"(3) The activity meets one of the following objectives:

"(A) Maximized utilization of the capacity of the facility.

"(B) Reduction or elimination of the cost of ownership of the facility.

"(C) Reduction in the cost of manufacturing or maintaining Department of Defense products at the facility.

"(D) Preservation of skills or equipment related to a core competency of the facility.

"(4) The non-Army entity agrees to hold harmless and indemnify the United States from any liability or claim for damages or injury to any person or property arising out of the activity, including any damages or injury arising out of a decision by the Secretary of the Army or the Secretary of Defense to suspend or terminate an activity, or any portion thereof, during a war or national emergency or to require the facility to perform other work or provide other services on a priority basis, except—

"(A) in any case of willful misconduct or gross negligence; and

"(B) in the case of a claim by a purchaser of articles or services under this section that damages or injury arose from the failure of the United States to comply with quality, schedule, or cost performance requirements in the contract to carry out the activity.

"(d) ARANGEMENT METHODS AND AUTHORITIES.—To establish a cooperative arrangement under subsection (a) with a non-Army entity, the approval authority described in subsection (e) for an Army industrial facility may—

"(1) enter into a firm, fixed-price contract (or, if agreed to by the non-Army entity, a cost reimbursement contract) for a sale of articles or services or use of equipment or facilities;

"(2) enter into a multiyear contract for a period not to exceed five years, unless a longer period is specifically authorized by law;

"(3) charge the non-Army entity the amounts necessary to recover the full costs of the articles or services provided, including capital improvement costs, and equipment depreciation costs associated with providing the articles, services, equipment, or facilities;

"(4) authorize the non-Army entity to use incremental funding to pay for the articles, services, or use of equipment or facilities; and

"(5) accept payment-in-kind.

"(e) APPROVAL AUTHORITY.—The authority of an Army industrial facility to enter into a cooperative arrangement under subsection (a) shall be exercised at the level of the commander of the major subordinate command of the Army that has responsibility for the facility. The commander may approve such an arrangement on a case-by-case basis or a class basis.

"(f) COMMERCIAL SALES.—Except in the case of work performed for the Department of Defense, for a contract of the Department of Defense, for foreign military sales, or for authorized foreign direct commercial sales (defense articles or defense services sold to a foreign government or international organization under export controls), a sale of articles or services may be made under this section only if the approval authority described in subsection (e) determines that the articles or services are not available from a commercial source located in the United States in the required quantity or quality, or within the time required.

"(g) EXCLUSION FROM DEPOT-LEVEL MAINTENANCE AND REPAIR PERCENTAGE LIMITATION.—Amounts expended for the performance of a depot-level maintenance and repair workload by non-Federal Government personnel at an Army industrial facility shall not be counted for purposes of applying the percentage limitation in section 2466(a) of this title if the personnel are provided by a non-Army entity pursuant to a cooperative arrangement entered into under subsection (a).

"(h) RELATIONSHIP TO OTHER LAWS.—Nothing in this section shall be construed to affect the application of—

"(1) foreign military sales and the export controls provided for in sections 30 and 38 of the Arms Export Control Act (22 U.S.C. 2770 and 2778) to activities of a cooperative arrangement entered into under subsection (a); and

"(2) section 2667 of this title to leases of non-excess property in the administration of such an arrangement.

"(i) DEFINITIONS.—In this section:

"(1) The term 'Army industrial facility' includes an ammunition plant, an arsenal, a depot, and a manufacturing plant.

"(2) The term 'non-Army entity' includes the following:

"(A) A Federal agency (other than the Department of the Army).

"(B) An entity in industry or commercial sales.

"(C) A State or political subdivision of a State.

"(D) An institution of higher education or vocational training institution.

"(3) The term 'incremental funding' means a series of partial payments that—

"(A) are made as the work on manufacture or articles is being performed or services are being performed or equipment or facilities are used, as the case may be; and

"(B) result in full payment being completed as the required work is being completed.

"(4) The term 'full costs', with respect to articles or services provided under a cooperative arrangement entered into under subsection (a), means the variable costs and the fixed costs that are directly related to the production of the articles or the provision of the services.

"(5) The term 'variable costs' means the costs that are expected to fluctuate directly with the volume of sales or services provided or the use of equipment or facilities.

"(j) EXPIRATION OF AUTHORITY.—The authority to enter into a cooperative arrangement under subsection (a) expires September 30, 2009, and arrangements entered into under such subsection shall terminate not later than that date.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"4544. Army industrial facilities: cooperative activities with non-Army entities.".

SEC. 354. TRANSFER OF EXCESS DEPARTMENT OF DEFENSE PERSONAL PROPERTY TO ASSIST FIREFIGHTING AGENCIES.

Section 2576b of title 10, United States Code, is amended—

(1) in subsection (a), by striking "may" and inserting "shall"; and

(2) in subsection (b), by striking "may" and inserting "shall".

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

Subtitle A—Active Forces

Sec. 401. End strengths for active forces.
Sec. 402. Revision in permanent active duty end strength minimum levels.
Sec. 403. Additional authority for increases of Army and Marine Corps active duty personnel end strengths for fiscal years 2005 through 2009.
Sec. 404. Exclusion of service academy permanent and career professors from a limitation on certain officer grade strengths.

Subtitle B—Reserve Forces

Sec. 411. End strengths for Selected Reserve.
Sec. 412. End strengths for Reserves on active duty in support of the reserves.
Sec. 413. End strengths for military technicians (dual status).
Sec. 414. Fiscal year 2005 limitation on number of non-dual status technicians.
Sec. 415. Maximum number of Reserve personnel authorized to be on active duty for operational support.
Sec. 416. Accounting and management of reserve component personnel performing active duty or full-time National Guard duty for operational support.

Subtitle C—Authorizations of Appropriations

Sec. 421. Military personnel.
Sec. 422. Armed Forces Retirement Home.

Subtitle A—Active Forces

SEC. 401. END STRENGTHS FOR ACTIVE FORCES.

(a) IN GENERAL.—The Armed Forces are authorized strengths for active duty personnel as of September 30, 2005, as follows:

(1) The Army, 502,400.

(2) The Navy, 365,900.

(3) The Marine Corps, 178,000.

(4) The Air Force, 359,700.

(b) LIMITATION.—(1) The authorized strength for the Army provided in paragraph (1) of subsection (a) for active duty personnel for fiscal year 2005 is subject to the condition that costs of active duty personnel of the Army for that fiscal year in excess of 482,400 shall be paid out of funds authorized to be appropriated for that fiscal year for a contingent emergency reserve fund or as an emergency supplemental appropriation.

(2) The authorized strength for the Marine Corps provided in paragraph (3) of subsection (a) for active duty personnel for fiscal year 2005 is subject to the condition that costs of active duty personnel of the Marine Corps for that fiscal year in excess of 175,000 shall be paid out of funds authorized to be appropriated for that fiscal year for a contingent emergency reserve

fund or as an emergency supplemental appropriation.

SEC. 402. REVISION IN PERMANENT ACTIVE DUTY END STRENGTH MINIMUM LEVELS.

Section 691(b) of title 10, United States Code, is amended by striking paragraphs (1) through (4) and inserting the following:

"(1) For the Army, 502,400.

"(2) For the Navy, 365,900.

"(3) For the Marine Corps, 178,000.

"(4) For the Air Force, 359,700.".

SEC. 403. ADDITIONAL AUTHORITY FOR INCREASES OF ARMY ACTIVE DUTY PERSONNEL END STRENGTHS FOR FISCAL YEARS 2005 THROUGH 2009.

(a) AUTHORITY.—During fiscal years 2005 through 2009, the Secretary of Defense is authorized to increase by up to 30,000 the end strength authorized for the Army, and by up to 9,000 the end strength authorized for the Marine Corps, above the levels authorized for those services in the National Defense Authorization Act for Fiscal Year 2004, as necessary—

(1) to support the operational mission of the Army and Marine Corps in Iraq and Afghanistan; and

(2) with respect to end strengths for the Army, to achieve transformational reorganization objectives of the Army, including objectives for increased numbers of combat brigades, unit manning, force stabilization and shaping, and rebalancing of the active and reserve component forces of the Army.

(b) RELATIONSHIP TO PRESIDENTIAL WAIVER AUTHORITY.—Nothing in this section shall be construed to limit the President's authority under section 123a of title 10, United States Code, to waive any statutory end strength in a time of war or national emergency.

(c) RELATIONSHIP TO OTHER VARIANCE AUTHORITY.—The authority under subsection (a) is in addition to the authority to vary authorized end strengths that is provided in subsections (e) and (f) of section 115 of title 10, United States Code.

(d) BUDGET TREATMENT.—(1) If the Secretary of Defense plans to increase the Army or Marine Corps active duty end strength for a fiscal year under subsection (a) of this section or pursuant to a suspension of end-strength limitation under section 123a of title 10, United States Code, then the budget for the Department of Defense for such fiscal year as submitted to Congress shall specify the amounts necessary for funding the active duty end strength of the Army in excess of 482,400 and the Marine Corps in excess of 175,000 (the end strengths authorized for active duty personnel of the Army and Marine Corps, respectively, for fiscal year 2004 in paragraphs (1) and (3) of section 401 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1450)).

(2) If the amount proposed for the Department of Defense for fiscal year 2006 within budget function 050 (National Defense) includes amounts necessary for funding an active duty end strength of the Army in excess of 482,400, or an active duty end strength of the Marine Corps in excess of 175,000, for that fiscal year, the specification of amounts necessary for funding such end strength (as required under paragraph (1)) shall include the following additional information:

(A) A display of the following amounts:

(i) The amount that is to be funded out of the amounts proposed for the Department of Defense within budget function 050 (National Defense) other than out of amounts for the Army and Marine Corps.

(ii) The amount that is to be funded out of the amounts proposed for the Army and Marine Corps within budget function 050 (National Defense).

(iii) The estimated amounts that are to be funded out of emergency reserve funds and supplemental appropriations for fiscal year 2006.

(B) A detailed justification for reliance on each funding source described in subparagraph (A).

(C) A detailed discussion of which programs and plans of the Army and Marine Corps funded in the proposed budget for fiscal year 2006 must be modified if the funding sources relied on, as presented under subparagraph (A), must be changed.

(D) The projected Army and Marine Corps active duty end strengths for each of fiscal years 2006 through 2010, together with a detailed enumeration of the component costs of the projected end strengths for each such fiscal year.

SEC. 404. EXCLUSION OF SERVICE ACADEMY PERMANENT AND CAREER PROFESSORS FROM A LIMITATION ON CERTAIN OFFICER GRADE STRENGTHS.

Section 523(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(8) Permanent professors of the United States Military Academy and the United States Air Force Academy and professors of the United States Naval Academy who are career military professors (as defined in regulations prescribed by the Secretary of the Navy), but not to exceed 50 from any such academy.".

Subtitle B—Reserve Forces

SEC. 411. END STRENGTHS FOR SELECTED RESERVE.

(a) IN GENERAL.—The Armed Forces are authorized strengths for Selected Reserve personnel of the reserve components as of September 30, 2005, as follows:

(1) The Army National Guard of the United States, 350,000.

(2) The Army Reserve, 205,000.

(3) The Naval Reserve, 83,400.

(4) The Marine Corps Reserve, 39,600.

(5) The Air National Guard of the United States, 106,800.

(6) The Air Force Reserve, 76,100.

(7) The Coast Guard Reserve, 10,000.

(b) ADJUSTMENTS.—The end strengths prescribed by subsection (a) for the Selected Reserve of any reserve component shall be proportionately reduced by—

(1) the total authorized strength of units organized to serve as units of the Selected Reserve of such component which are on active duty (other than for training) at the end of the fiscal year; and

(2) the total number of individual members not in units organized to serve as units of the Selected Reserve of such component who are on active duty (other than for training or for unsatisfactory participation in training) without their consent at the end of the fiscal year.

Whenever such units or such individual members are released from active duty during any fiscal year, the end strength prescribed for such fiscal year for the Selected Reserve of such reserve component shall be increased proportionately by the total authorized strengths of such units and by the total number of such individual members.

SEC. 412. END STRENGTHS FOR RESERVES ON ACTIVE DUTY IN SUPPORT OF THE RESERVES.

Within the end strengths prescribed in section 411(a), the reserve components of the Armed Forces are authorized, as of September 30, 2005, the following number of Reserves to be serving on full-time active duty or full-time duty, in the case of members of the National Guard, for the purpose of organizing, administering, recruiting, instructing, or training the reserve components:

(1) The Army National Guard of the United States, 26,602.

(2) The Army Reserve, 14,970.

(3) The Naval Reserve, 14,152.

(4) The Marine Corps Reserve, 2,261.

(5) The Air National Guard of the United States, 12,253.

(6) The Air Force Reserve, 1,900.

SEC. 413. END STRENGTHS FOR MILITARY TECHNICIANS (DUAL STATUS).

The minimum number of military technicians (dual status) as of the last day of fiscal year 2005 for the reserve components of the Army and the Air Force (notwithstanding section 129 of title 10, United States Code) shall be the following:

(1) For the Army Reserve, 7,299.

(2) For the Army National Guard of the United States, 25,076.

(3) For the Air Force Reserve, 9,954.

(4) For the Air National Guard of the United States, 22,956.

SEC. 414. FISCAL YEAR 2005 LIMITATION ON NUMBER OF NON-DUAL STATUS TECHNICIANS.

(a) LIMITATIONS.—(1) Within the limitation provided in section 10217(c)(2) of title 10, United States Code, the number of non-dual status technicians employed by the National Guard as of September 30, 2005, may not exceed the following:

(A) For the Army National Guard of the United States, 1,600.

(B) For the Air National Guard of the United States, 350.

(2) The number of non-dual status technicians employed by the Army Reserve as of September 30, 2005, may not exceed 795.

(3) The number of non-dual status technicians employed by the Air Force Reserve as of September 30, 2005, may not exceed 90.

(b) NON-DUAL STATUS TECHNICIANS DEFINED.—In this section, the term "non-dual status technician" has the meaning given that term in section 10217(a) of title 10, United States Code.

SEC. 415. MAXIMUM NUMBER OF RESERVE PERSONNEL AUTHORIZED TO BE ON ACTIVE DUTY FOR OPERATIONAL SUPPORT.

During fiscal year 2005, the maximum number of members of the reserve components of the Armed Forces who may be serving at any time on full-time operational support duty under section 115(b) of title 10, United States Code, is the following:

(1) The Army National Guard of the United States, 10,300.

(2) The Army Reserve, 5,000.

(3) The Naval Reserve, 6,200.

(4) The Marine Corps Reserve, 2,500.

(5) The Air National Guard of the United States, 10,100.

(6) The Air Force Reserve, 3,600.

SEC. 416. ACCOUNTING AND MANAGEMENT OF RESERVE COMPONENT PERSONNEL PERFORMING ACTIVE DUTY OR FULL-TIME NATIONAL GUARD DUTY FOR OPERATIONAL SUPPORT.

(a) STRENGTH AUTHORIZATIONS.—Section 115 of title 10, United States Code, is amended—

(1) in subsection (a)(1)(A), by inserting "unless on active duty pursuant to subsection (b)" after "active-duty personnel";

(2) in subsection (a)(1)(B), by inserting "unless on active duty or full-time National Guard duty pursuant to subsection (b)" after "reserve personnel";

(3) by redesignating subsections (b), (c), (d), (e), (f), (g) and (h) as subsections (c), (d), (e), (f), (g), (h) and (i), respectively; and

(4) by inserting after subsection (a) the following new subsection (b):

"(b) CERTAIN RESERVES ON ACTIVE DUTY TO BE AUTHORIZED BY LAW.—(1) Congress shall annually authorize the maximum number of members of a reserve component permitted to be on active duty or full-time National Guard duty at any given time who are called or ordered to—

"(A) active duty under section 12301(d) of this title for the purpose of providing operational support, as prescribed in regulation issued by the Secretary of Defense;

"(B) full-time National Guard duty under section 502(f)(2) of title 32 for the purpose of providing operational support when authorized by the Secretary of Defense;

"(C) active duty under section 12301(d) of this title or full-time National Guard duty under section 502(f)(2) of title 32 for the purpose of preparing for and performing funeral honors functions for funerals of veterans under section 1491 of this title;

"(D) active duty or retained on active duty under sections 12301(g) of this title while in a captive status; or

"(E) active duty or retained on active duty under 12301(h) or 12322 of this title for the purpose of medical evaluation or treatment.

"(2) A member of a reserve component who exceeds either of the following limits shall be included in the strength authorized under subparagraph (A) or subparagraph (B), as appropriate, of subsection (a)(1):

"(A) A call or order to active duty or full-time National Guard duty that specifies a period greater than three years.

"(B) The cumulative periods of active duty and full-time National Guard duty performed by the member exceed 1095 days in the previous 1460 days.

"(3) In determining the period of active service under paragraph (2), the following periods of active service performed by a member shall not be included:

"(A) All periods of active duty performed by a member who has not previously served in the Selected Reserve of the Ready Reserve.

"(B) All periods of active duty or full-time National Guard duty for which the member is exempt from strength accounting under paragraphs (1) through (8) of subsection (i).".

(b) LIMITATION ON APPROPRIATIONS.—Subsection (c) of such section (as redesignated by subsection (a)(3)) is amended—

(1) by striking "or" at the end of paragraph (1);

(2) by striking the period at the end of paragraph (2) and inserting "; or"; and

(3) by inserting after paragraph (2) the following new paragraph:

"(3) the use of reserve component personnel to perform active duty or full-time National Guard duty under subsection (b) unless the strength for such personnel for that reserve component for that fiscal year has been authorized by law.".

(c) AUTHORITY FOR SECRETARY OF DEFENSE VARIANCES IN MAXIMUM STRENGTHS.—Subsection (f) of such section (as redesignated by subsection (a)(3)) is amended—

(1) by striking "END" in the heading;

(2) by striking "and" at the end of paragraph (2);

(3) by striking the period at the end of paragraph (3) and inserting "; and"; and

(4) by adding at the end the following new paragraph:

"(4) increase the maximum strength authorized pursuant to subsection (b)(1) for a fiscal year for certain reserves on active duty for any of the reserve components by a number equal to not more than 10 percent of that strength.".

(d) CONFORMING AMENDMENTS TO SECTION 115.—Such section is further amended as follows:

(1) Subsection (e) (as redesignated by subsection (a)(3)) is amended—

(A) in paragraph (1), by striking "subsection (a) or (c)" and inserting "subsection (a) or (d)", and

(B) in paragraph (2)—

(i) by striking "subsections (a) and (c)"; and inserting "subsections (a) and (d)";

(ii) by striking "pursuant to subsection (e)) and subsection (c)" and inserting "pursuant to subsection (f)) and subsection (d)" each place it appears.

(2) Subsection (g) (as redesignated by subsection (a)(3)) is amended by striking "subsection (e)(1)" in paragraph (2) and inserting "subsection (f)(1)".

(3) Subsection (i) (as redesignated by subsection (a)(3)) is amended to read as follows:

"(i) CERTAIN PERSONNEL EXCLUDED FROM COUNTING FOR ACTIVE-DUTY END STRENGTHS.—In counting personnel for the purpose of the end strengths authorized pursuant to subsection (a)(1), persons in the following categories shall be excluded:

"(1) Members of a reserve component ordered to active duty under section 12301(a) of this title.

"(2) Members of a reserve component in an active status ordered to active duty under section 12301(b) of this title.

"(3) Members of the Ready Reserve ordered to active duty under section 12302 of this title.

"(4) Members of the Selected Reserve of the Ready Reserve or members of the Individual Ready Reserve mobilization category described in section 10144(b) of this title ordered to active duty under section 12304 of this title.

"(5) Members of the National Guard called into Federal service under section 12406 of this title.

"(6) Members of the militia called into Federal service under chapter 15 of this title.

"(7) Members of the National Guard on full-time National Guard duty under section 502(f)(1) of title 32.

"(8) Members of reserve components on active duty for training or full-time National Guard duty for training.

"(9) Members of the Selected Reserve of the Ready Reserve on active duty to support programs described in section 1203(b) of the Cooperative Threat Reduction Act of 1993 (22 U.S.C. 5952(b)).

"(10) Members of the National Guard on active duty or full-time National Guard duty for the purpose of carrying out drug interdiction and counter-drug activities under section 112 of title 32.

"(11) Members of a reserve component on active duty under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. App. 460(b)(2)) for the administration of the Selective Service System.

"(12) Members of the National Guard on full-time National Guard duty for the purpose of providing command, administrative, training, or support services for the National Guard Challenge Program authorized by section 509 of title 32.".

(e) MILITARY TO MILITARY CONTACT STRENGTH ACCOUNTING.—Subsection (f) of section 168 of such title is amended to read as follows:

"(f) ACTIVE DUTY END STRENGTHS.—A member of a reserve component who is engaged in activities authorized under this section shall not be counted for purposes of the following personnel strength limitations:

"(1) The end strength for active-duty personnel authorized pursuant to section 115(a)(1) of this title for the fiscal year in which the member carries out the activities referred to under this section.

"(2) The authorized daily average for members in pay grades E-8 and E-9 under section 517 of this title for the calendar year in which the member carries out such activities.

"(3) The authorized strengths for commissioned officers under section 523 of this title for the fiscal year in which the member carries out such activities.".

(f) E-8 AND E-9 STRENGTH ACCOUNTING.—Subsection (a) of section 517 of such title is amended by striking "(other than for training) in connection with organizing, administering, recruiting, instructing, or training the reserve component of an armed force." and inserting "as authorized under section 115(a)(1)(B) or 115(b) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title.".

(g) FIELD GRADE OFFICER STRENGTH ACCOUNTING.—(1) Paragraph (1) of section 523(b) of such title is amended to read as follows:

(1) Reserve officers—

"(A) on active duty as authorized under section 115(a)(1)(B) or 115(b)(1) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title;

"(B) on active duty under section 10211, 10302 through 10305, or 12402 of this title or under section 708 of title 32; or

"(C) on full-time National Guard duty.".

(2) Paragraph (7) of such section is amended by striking "Reserve or retired officers" and inserting "Retired officers".

(h) ACTIVE GUARD AND RESERVE FIELD GRADE OFFICER STRENGTH ACCOUNTING.—Paragraph (2) of section 12011(e) of such title is amended to read as follows:

"(2) Full-time National Guard duty (other than for training) under section 502(f) of title 32, except for duty under section 115(b)(1)(B) and (C) of this title and section 115(i)(9) of this title.".

(i) WARRANT OFFICER ACTIVE-DUTY LIST EXCLUSION.—Paragraph (1) of section 582 of such title is amended to read as follows:

"(1) Reserve warrant officers—

"(A) on active duty as authorized under section 115(a)(1)(B) or 115(b)(1) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title; or

"(B) on full-time National Guard duty.".

(j) OFFICER ACTIVE-DUTY LIST, APPLICABILITY OF CHAPTER.—Paragraph (1) of section 641 of such title is amended to read as follows:

"(1) Reserve officers—

"(A) on active duty authorized under section 115(a)(1)(B) or 115(b)(1) of this title, or excluded from counting for active duty end strengths under section 115(i) of this title;

"(B) on active duty under section 3038, 5113, 5144, 8038, 10211, 10301 through 10305, 10502, 10505, 10506(a), 10506(b), 10507, or 12402 of this title or section 708 of title 32; or

"(C) on full-time National Guard duty.".

(k) STRENGTH ACCOUNTING FOR MEMBERS PERFORMING DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES.—Section 112 of title 32, United States Code, is amended—

(1) by striking subsection (e);

(2) by redesignating subsections (f), (g), (h) and (i) as subsections (e), (f), (g) and (h) respectively; and

(3) in paragraph (1) of subsection (e), as redesignated by paragraph (2), by striking "for a period of more than 180 days" each place it appears.

(l) REPORT.—Not later than June 1, 2005, the Secretary of Defense shall report to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the Secretary's recommendations regarding the exemptions provided in paragraphs (8) through (11) by section 115(i) of title 10, United States Code, as amended by this section. The recommendations shall address the manner in personnel covered by those exemptions shall be accounted for in authorizations provided by section 115 of such title. The objective of the analysis should be to terminate the need for such exemptions after September 30, 2006.

(m) REGULATIONS.—The Secretary of Defense shall prescribe by regulation the meaning of the term "operational support" for purposes of paragraph (1) of subsection (b) of section 115 of title 10, United States Code, as added by subsection (a).

Subtitle C—Authorizations of Appropriations

SEC. 421. MILITARY PERSONNEL.

There is hereby authorized to be appropriated to the Department of Defense for military personnel for fiscal year 2005 a total of $106,542,982,000. The authorization in the preceding sentence supersedes any other authorization of appropriations (definite or indefinite) for such purpose for fiscal year 2005.

SEC. 422. ARMED FORCES RETIREMENT HOME.

There is hereby authorized to be appropriated for fiscal year 2005 from the Armed Forces Retirement Home Trust Fund the sum of $61,195,000 for the operation of the Armed Forces Retirement Home.

TITLE V—MILITARY PERSONNEL POLICY

Subtitle A—Officer Personnel Policy

Sec. 501. Transition of active-duty list officer force to a force of all regular officers.

Sec. 502. Repeal of requirement that Deputy Chiefs and Assistant Chiefs of Naval Operations be selected from officers in the line of the Navy.

Sec. 503. Limitation on number of officers frocked to major general and rear admiral.

Sec. 504. Distribution in grade of Marine Corps reserve officers in an active status in grades below brigadier general

Sec. 505. Authority for Federal recognition of National Guard commissioned officers appointed from former Coast Guard personnel.

Sec. 506. Study regarding promotion eligibility of retired officers recalled to active duty.

Sec. 507. Succession for office of Chief, National Guard Bureau.

Sec. 508. Redesignation of Vice Chief of the National Guard Bureau as Director of the Joint Staff of the National Guard Bureau.

Subtitle B—Reserve Component Policy Matters

Sec. 511. Modification of stated purpose of the reserve components.

Sec. 512. Homeland defense activities conducted by the National Guard under authority of title 32.

Sec. 513. Commission on the National Guard and Reserves.

Sec. 514. Repeal of exclusion of active duty for training from authority to order Reserves to active duty.

Sec. 515. Army program for assignment of active component advisers to units of the Selected Reserve.

Sec. 516. Authority to accept certain voluntary services.

Sec. 517. Authority to redesignate the Naval Reserve as the Navy Reserve.

Sec. 518. Comptroller General assessment of integration of active and reserve components of the Navy.

Sec. 519. Limitation on number of Starbase academies in a State.

Sec. 520. Recognition items for certain reserve component personnel.

Subtitle C—Reserve Component Personnel Matters

Sec. 521. Status under disability retirement system for reserve members released from active duty due to inability to perform within 30 days of call to active duty.

Sec. 522. Requirement for retention of Reserves on active duty to qualify for retired pay not applicable to nonregular service retirement system.

Sec. 523. Federal civil service military leave for Reserve and National Guard civilian technicians.

Sec. 524. Expanded educational assistance authority for officers commissioned through ROTC program at military junior colleges.

Sec. 525. Repeal of sunset provision for financial assistance program for students not eligible for advanced training.

Sec. 526. Effect of appointment or commission as officer on eligibility for Selected Reserve education loan repayment program for enlisted members.

Sec. 527. Educational assistance for certain reserve component members who perform active service.

Sec. 528. Sense of Congress on guidance concerning treatment of employer-provided compensation and other benefits voluntarily provided to employees who are activated Reservists.

Subtitle D—Joint Officer Management and Professional Military Education

Sec. 531. Strategic plan to link joint officer development to overall missions and goals of Department of Defense.

Sec. 532. Improvement to professional military education in the Department of Defense.

Sec. 533. Joint requirements for promotion to flag or general officer grade.

Sec. 534. Clarification of tours of duty qualifying as a joint duty assignment.

Sec. 535. Two-year extension of temporary standard for promotion policy objectives for joint officers.

Sec. 536. Two-year extension of authority to waive requirement that Reserve Chiefs and National Guard Directors have significant joint duty experience.

Subtitle E—Military Service Academies

Sec. 541. Revision to conditions on service of officers as service academy superintendents.

Sec. 542. Academic qualifications of the dean of the faculty of United States Air Force Academy.

Sec. 543. Board of Visitors of United States Air Force Academy.

Sec. 544. Appropriated funds for service academy athletic and recreational extracurricular programs to be treated in same manner as for military morale, welfare, and recreation progams.

Sec. 545. Codification of prohibition on imposition of certain charges and fees at the service academies.

Subtitle F—Other Education and Training Matters

Sec. 551. College First delayed enlistment program.

Sec. 552. Senior Reserve Officers' Training Corps and recruiter access at institutions of higher education.

Sec. 553. Tuition assistance for officers.

Sec. 554. Increased maximum period for leave of absence for pursuit of a program of education in a health care profession.

Sec. 555. Eligibility of cadets and midshipmen for medical and dental care and disability benefits.

Sec. 556. Transfer of authority to confer degrees upon graduates of the Community College of the Air Force.

Sec. 557. Change in titles of leadership positions at the Naval Postgraduate School.

Subtitle G—Assistance to Local Educational Agencies for Defense Dependents Education

Sec. 558. Continuation of impact aid assistance on behalf of dependents of certain members despite change in status of member.

Sec. 559. Assistance to local educational agencies that benefit dependents of members of the Armed Forces and Department of Defense civilian employees.

Sec. 560. Impact aid for children with severe disabilities.

Subtitle H—Medals and Decorations and Special Promotions and Appointments

Sec. 561. Award of medal of honor to individual interred in the Tomb of the Unknowns as representative of casualties of a war.

Sec. 562. Plan for revised criteria and eligibility requirements for award of Combat Infantryman Badge and Combat Medical Badge for service in Korea after July 28, 1953.

Sec. 563. Authority to appoint Brigadier General Charles E. Yeager, United States Air Force (retired), to the grade of major general on the retired list.

Sec. 564. Posthumous commission of William Mitchell in the grade of major general in the Army.

Subtitle I—Military Voting

Sec. 566. Federal write-in ballots for absentee military voters located in the United States.

Sec. 567. Repeal of requirement to conduct electronic voting demonstration project for the Federal election to be held in November 2004.

Sec. 568. Reports on operation of Federal voting assistance program and military postal system.

Subtitle J—Military Justice Matters

Sec. 571. Review on how sexual offenses are covered by Uniform Code of Military Justice.

Sec. 572. Waiver of recoupment of time lost for confinement in connection with a trial.

Sec. 573. Processing of forensic evidence collection kits and acquisition of sufficient stocks of such kits.

Sec. 574. Authorities of the Judge Advocates General.

Subtitle K—Sexual Assault in the Armed Forces

Sec. 576. Examination of sexual assault in the Armed Forces by the Defense Task Force established to examine sexual harassment and violence at the military service academies.

Sec. 577. Department of Defense policy and procedures on prevention and response to sexual assaults involving members of the Armed Forces.

Subtitle L—Management and Administrative Matters

Sec. 581. Three-year extension of limitation on reductions of personnel of agencies responsible for review and correction of military records.

Sec. 582. Staffing for Defense Prisoner of War/Missing Personnel Office (DPMO).

Sec. 583. Permanent ID cards for retiree dependents age 75 and older.

Sec. 584. Authority to provide civilian clothing to members traveling in connection with medical evacuation.

Sec. 585. Authority to accept donation of frequent traveler miles, credits, and tickets to facilitate rest and recuperation travel of deployed members of the Armed Forces and their families.
Sec. 586. Annual report identifying reasons for discharges from the Armed Forces during preceding fiscal year.
Sec. 587. Study of blended wing concept for the Air Force.
Sec. 588. Sense of Congress regarding return of members to active duty service upon rehabilitation from service-related injuries.

Subtitle M—Other Matters

Sec. 591. Protection of Armed Forces personnel from retaliatory actions for communications made through the chain of command.
Sec. 592. Implementation plan for accession of persons with specialized skills.
Sec. 593. Enhanced screening methods and process improvements for recruitment of home schooled and National Guard Challenge program GED recipients.
Sec. 594. Redesignation of National Guard Challenge Program as National Guard Youth Challenge Program.
Sec. 595. Reports on certain milestones relating to Department of Defense transformation.
Sec. 596. Report on issues relating to removal of remains of persons interred in United States military cemeteries overseas.
Sec. 597. Comptroller General reports on closure of Department of Defense dependent elementary and secondary schools and commissary stores.
Sec. 598. Comptroller General report on transition assistance programs for members separating from the Armed Forces.
Sec. 599. Study on coordination of job training standards with certification standards for military occupational specialties.

Subtitle A—Officer Personnel Policy

SEC. 501. TRANSITION OF ACTIVE-DUTY LIST OFFICER FORCE TO A FORCE OF ALL REGULAR OFFICERS.

(a) ORIGINAL APPOINTMENTS AS COMMISSIONED OFFICERS.—(1) Section 532 of title 10, United States Code, is amended by striking subsection (e).

(2) Subsection (a)(2) of such section is amended by striking "fifty-fifth birthday" and inserting "sixty-second birthday".

(3)(A) Such section is further amended by adding at the end the following new subsection:

"(f) The Secretary of Defense may waive the requirement of paragraph (1) of subsection (a) with respect to a person who has been lawfully admitted to the United States for permanent residence when the Secretary determines that the national security so requires, but only for an original appointment in a grade below the grade of major or lieutenant commander.".

(B) Section 619(d) of such title is amended by adding at the end the following new paragraph:

"(5) An officer in the grade of captain or, in the case of the Navy, lieutenant who is not a citizen of the United States.".

(4) Section 531(a) of such title is amended to read as follows:

"(a)(1) Original appointments in the grades of second lieutenant, first lieutenant, and captain in the Regular Army, Regular Air Force, and Regular Marine Corps and in the grades of ensign, lieutenant (junior grade), and lieutenant in the Regular Navy shall be made by the President alone.

"(2) Original appointments in the grades of major, lieutenant colonel, and colonel in the Regular Army, Regular Air Force, and Regular Marine Corps and in the grades of lieutenant commander, commander, and captain in the Regular Navy shall be made by the President, by and with the advice and consent of the Senate.".

(b) REPEAL OF TOTAL STRENGTH LIMITATIONS FOR ACTIVE-DUTY REGULAR COMMISSIONED OFFICERS.—(1) Section 522 of such title is repealed.

(2) The table of sections at the beginning of chapter 32 of such title is amended by striking the item relating to section 522.

(c) FORCE SHAPING AUTHORITY.—(1)(A) Subchapter V of chapter 36 of such title is amended by adding at the end the following new section:

"§ 647. Force shaping authority

"(a) AUTHORITY.—The Secretary concerned may, solely for the purpose of restructuring an armed force under the jurisdiction of that Secretary—

"(1) discharge an officer described in subsection (b); or

"(2) transfer such an officer from the active-duty list of that armed force to the reserve active-status list of a reserve component of that armed force.

"(b) COVERED OFFICERS.—(1) The authority under this section may be exercised in the case of an officer who—

"(A) has completed not more than 5 years of service as a commissioned officer in the armed forces; or

"(B) has completed more than 5 years of service as a commissioned officer in the armed forces, but has not completed a minimum service obligation applicable to that member.

"(2) In this subsection, the term 'minimum service obligation' means the initial period of required active duty service together with any additional period of required active duty service incurred during the initial period of required active duty service.

"(c) APPOINTMENT OF TRANSFERRED OFFICERS.—An officer of the Regular Army, Regular Air Force, Regular Navy, or Regular Marine Corps who is transferred to a reserve active-status list under this section shall be discharged from the regular component concerned and appointed as a reserve commissioned officer under section 12203 of this title.

"(d) REGULATIONS.—The Secretary concerned shall prescribe regulations for the exercise of the Secretary's authority under this section.".

(B) The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

"647. Force shaping authority.".

(2) Section 1174(e)(2)(B) of such title is amended by inserting after "obligated service" the following: ", unless the member is an officer discharged or released under the authority of section 647 of this title".

(3) Section 12201(a) of such title is amended—

(A) by inserting "(1)" after "(a)";

(B) in the first sentence, by inserting ", except as provided in paragraph (2)," after "the armed force concerned and"; and

(C) by adding at the end the following new paragraph:

"(2) An officer transferred from the active-duty list of an armed force to a reserve active-status list of an armed force under section 647 of this title is not required to subscribe to the oath referred to in paragraph (1) in order to qualify for an appointment under that paragraph.".

(4) Section 12203 of such title is amended—

(A) by redesignating subsection (b) as subsection (c); and

(B) by inserting after subsection (a) the following new subsection (b):

"(b) Subject to the authority, direction, and control of the President, the Secretary concerned may appoint as a reserve commissioned officer any regular officer transferred from the active-duty list of an armed force to the reserve active-status list of a reserve component under section 647 of this title, notwithstanding the requirements of subsection (a).".

(5) Section 531 of such title is amended by adding at the end the following new subsection:

"(c) Subject to the authority, direction, and control of the President, an original appointment as a commissioned officer in the Regular Army, Regular Air Force, Regular Navy, or Regular Marine Corps may be made by the Secretary concerned in the case of a reserve commissioned officer upon the transfer of such officer from the reserve active-status list of a reserve component of the armed forces to the active-duty list of an armed force, notwithstanding the requirements of subsection (a).".

(d) ACTIVE-DUTY READY RESERVE OFFICERS NOT ON ACTIVE-DUTY LIST.—Section 641(1)(F) of such title is amended by striking "section 12304" and inserting "sections 12302 and 12304".

(e) ALL REGULAR OFFICER APPOINTMENTS FOR STUDENTS OF THE UNIVERSITY OF HEALTH SCIENCES.—Section 2114(b) of such title is amended by striking "Notwithstanding any other provision of law, they shall serve" in the second sentence and all that follows through "if qualified," in the third sentence and inserting "They shall be appointed as regular officers in the grade of second lieutenant or ensign and shall serve on active duty in that grade. Upon graduation they shall be required to serve on active duty".

(f) TERMINATION OF REQUIREMENT OF 6 YEARS SERVICE IN A RESERVE COMPONENT FOR NONREGULAR SERVICE RETIREMENT ELIGIBILITY.—Section 12731(a)(3) of such title is amended by inserting after "(3)" the following: "in the case of a person who completed the service requirements of paragraph (2) before the end of the 180-day period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 2005,".

(g) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on the first day of the first month beginning more than 180 days after the date of the enactment of this Act.

(2) The amendment made by subsection (a)(1) shall take effect on May 1, 2005.

SEC. 502. REPEAL OF REQUIREMENT THAT DEPUTY CHIEFS AND ASSISTANT CHIEFS OF NAVAL OPERATIONS BE SELECTED FROM OFFICERS IN THE LINE OF THE NAVY.

(a) DEPUTY CHIEFS OF NAVAL OPERATIONS.—Section 5036(a) of title 10, United States Code, is amended by striking "in the line".

(b) ASSISTANT CHIEFS OF NAVAL OPERATIONS.—Section 5037(a) of such title is amended by striking "in the line".

SEC. 503. LIMITATION ON NUMBER OF OFFICERS FROCKED TO MAJOR GENERAL AND REAR ADMIRAL.

Section 777(d) of title 10, United States Code, is amended—

(1) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively; and

(2) by striking "(d) LIMITATION ON NUMBER OF OFFICERS FROCKED TO SPECIFIED GRADES.—" and inserting the following:

"(d) LIMITATION ON NUMBER OF OFFICERS FROCKED TO SPECIFIED GRADES.—(1) The total number of brigadier generals and Navy rear admirals (lower half) on the active-duty list who are authorized as described in subsection (a) to wear the insignia for the grade of major general or rear admiral, as the case may be, may not exceed 30.".

SEC. 504. DISTRIBUTION IN GRADE OF MARINE CORPS RESERVE OFFICERS IN AN ACTIVE STATUS IN GRADES BELOW BRIGADIER GENERAL.

The table in section 12005(c)(1) of title 10, United States Code, is amended to read as follows:

"Colonel	2 percent
Lieutenant colonel	8 percent
Major	16 percent
Captain	39 percent
First lieutenant and second lieutenant (when combined with the number authorized for general officer grades under section 12004 of this title)	35 percent.".

SEC. 505. AUTHORITY FOR FEDERAL RECOGNITION OF NATIONAL GUARD COMMISSIONED OFFICERS APPOINTED FROM FORMER COAST GUARD PERSONNEL.

Section 305(a) of title 32, United States Code, is amended—

(1) by striking "Army, Navy, Air Force, or Marine Corps" in paragraphs (2), (3), and (4) and inserting "armed forces"; and

(2) by striking "or the United States Air Force Academy" in paragraph (5) and inserting "the United States Air Force Academy, or the United States Coast Guard Academy".

SEC. 506. STUDY REGARDING PROMOTION ELIGIBILITY OF RETIRED OFFICERS RECALLED TO ACTIVE DUTY.

(a) REQUIREMENT FOR STUDY.—The Secretary of Defense shall carry out a study to determine whether it would be equitable for retired officers on active duty, but not on the active-duty list by reason of section 582(2) or 641(4) of title 10, United States Code, to be eligible for consideration for promotion under chapter 33A of such title, in the case of warrant officers, or chapter 36 of such title, in the case of officers other than warrant officers.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the results of the study under subsection (a). The report shall include a discussion of the Secretary's determination regarding the issue covered by the study, the rationale for the Secretary's determination, and any recommended legislation that the Secretary considers appropriate regarding that issue.

SEC. 507. SUCCESSION FOR OFFICE OF CHIEF, NATIONAL GUARD BUREAU.

(a) DESIGNATION OF SENIOR OFFICER IN NATIONAL GUARD BUREAU.—Section 10502 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(e) SUCCESSION.—(1) Unless otherwise directed by the President or the Secretary of Defense, the senior of the two officers specified in paragraph (2) shall serve as the acting Chief of the National Guard Bureau during any period that—

"(A) there is a vacancy in the position of Chief of the National Guard Bureau; or

"(B) the Chief is unable to perform the duties of that office.

"(2) The officers specified in this paragraph are the following:

"(A) The senior officer of the Army National Guard of the United States on duty with the National Guard Bureau.

"(B) The senior officer of the Air National Guard of the United States on duty with the National Guard Bureau.".

(b) CLERICAL AMENDMENTS.—(1) The heading of such section is amended to read as follows:

"§ 10502. Chief of the National Guard Bureau: appointment; adviser on National Guard matters; grade; succession".

(2) The item relating to such section in the table of sections at the beginning of chapter 1011 of such title is amended to read as follows:

"10502. Chief of the National Guard Bureau: appointment; adviser on National Guard matters; grade; succession.".

(c) CONFORMING REPEAL.—Subsections (d) and (e) of section 10505 of such title are repealed.

SEC. 508. REDESIGNATION OF VICE CHIEF OF THE NATIONAL GUARD BUREAU AS DIRECTOR OF THE JOINT STAFF OF THE NATIONAL GUARD BUREAU.

(a) REDESIGNATION OF POSITION.—Subsection (a)(1) of section 10505 of title 10, United States Code, is amended by striking "Vice Chief of the National Guard Bureau" and inserting "Director of the Joint Staff of the National Guard Bureau".

(b) CONFORMING AMENDMENTS.—(1) Subsections (a)(3)(A), (a)(3)(B), (b), and (c) of section 10505 of title 10, United States Code, are amended by striking "Vice Chief of the National Guard Bureau" and inserting "Director of the Joint Staff of the National Guard Bureau".

(2) Subsection (a)(3)(B) of such section, as amended by paragraph (1), is further amended by striking "as the Vice Chief" and inserting "as the Director".

(3) Paragraphs (2) and (4) of subsection (a) of such section are amended by striking "Chief and Vice Chief of the National Guard Bureau" and inserting "Chief of the National Guard Bureau and the Director of the Joint Staff of the National Guard Bureau".

(4) Section 10506(a)(1) of such title is amended by striking "Chief and Vice Chief of the National Guard Bureau" and inserting "Chief of the National Guard Bureau and the Director of the Joint Staff of the National Guard Bureau".

(c) CLERICAL AMENDMENTS.—(1) The heading for section 10505 of such title is amended to read as follows:

"§ 10505. Director of the Joint Staff of the National Guard Bureau".

(2) The item relating to such section in the table of sections at the beginning of chapter 1011 of such title is amended to read as follows:

"10505. Director of the Joint Staff of the National Guard Bureau.".

(d) OTHER REFERENCES.—Any reference in any law, regulation, document, paper, or other record of the United States to the Vice Chief of the National Guard Bureau shall be deemed to be a reference to the Director of the Joint Staff of the National Guard Bureau.

Subtitle B—Reserve Component Policy Matters

SEC. 511. MODIFICATION OF STATED PURPOSE OF THE RESERVE COMPONENTS.

Section 10102 of title 10, United States Code, is amended by striking ", during" and all that follows through "planned mobilization,".

SEC. 512. HOMELAND DEFENSE ACTIVITIES CONDUCTED BY THE NATIONAL GUARD UNDER AUTHORITY OF TITLE 32.

(a) IN GENERAL.—(1) Title 32, United States Code, is amended by adding at the end the following new chapter:

"CHAPTER 9—HOMELAND DEFENSE ACTIVITIES

"Sec.
"901. Definitions.
"902. Homeland defense activities: funds.
"903. Regulations.
"904. Homeland defense duty.
"905. Funding assistance.
"906. Requests for funding assistance.
"907. Relationship to State duty.
"908. Annual report.

"§ 901. Definitions

"In this chapter:

"(1) The term 'homeland defense activity' means an activity undertaken for the military protection of the territory or domestic population of the United States, or of infrastructure or other assets of the United States determined by the Secretary of Defense as being critical to national security, from a threat or aggression against the United States.

"(2) The term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

"§ 902. Homeland defense activities: funds

"(a) The Secretary of Defense may provide funds to a Governor to employ National Guard units or members to conduct homeland defense activities that the Secretary, determines to be necessary and appropriate for participation by the National Guard units or members, as the case may be.

"§ 903. Regulations

"The Secretary of Defense shall prescribe regulations to implement this chapter.

"§ 904. Homeland defense duty

"(a) FULL-TIME NATIONAL GUARD DUTY.—All duty performed under this chapter shall be considered to be full-time National Guard duty under section 502(f) of this title. Members of the National Guard performing full-time National Guard duty in the Active Guard and Reserve Program may support or execute homeland defense activities performed by the National Guard under this chapter.

"(b) DURATION.—The period for which a member of the National Guard performs duty under this chapter shall be limited to 180 days. The Governor of the State may, with the concurrence of the Secretary of Defense, extend the period one time for an additional 90 days to meet extraordinary circumstances.

"(c) RELATIONSHIP TO REQUIRED TRAINING.—A member of the National Guard performing duty under this chapter shall, in addition to performing such duty, participate in the training required under section 502(a) of this title. The pay, allowances, and other benefits of the member while participating in the training shall be the same as those to which the member is entitled while performing the duty under this chapter. The member is not entitled to additional pay, allowances, or other benefits for participation in training required under section 502(a)(1) of this title.

"(d) READINESS.—To ensure that the use of units and personnel of the National Guard of a State for homeland defense activities does not degrade the training and readiness of such units and personnel, the following requirements shall apply in determining the homeland defense activities that units and personnel of the National Guard of a State may perform:

"(1) The performance of the activities is not to affect adversely the quality of that training or otherwise interfere with the ability of a member or unit of the National Guard to perform the military functions of the member or unit.

"(2) The performance of the activities is not to degrade the military skills of the members of the National Guard performing those activities.

"§ 905. Funding assistance

"In the case of any homeland defense activity for which the Secretary of Defense determines under section 902 of this title that participation of units or members of the National Guard of a State is necessary and appropriate, the Secretary may provide funds to that State in an amount that the Secretary determines is appropriate for the following costs of the participation in that activity from funds available to the Department for related purposes:

"(1) The pay, allowances, clothing, subsistence, gratuities, travel, and related expenses of personnel of the National Guard of that State.

"(2) The operation and maintenance of the equipment and facilities of the National Guard of that State.

"(3) The procurement of services and equipment, and the leasing of equipment, for the National Guard of that State.

"§ 906. Requests for funding assistance

"A Governor of a State may request funding assistance for the homeland defense activities of the National Guard of that State from the Secretary of Defense. Any such request shall include the following:

"(1) The specific intended homeland defense activities of the National Guard of that State.

"(2) An explanation of why participation of National Guard units or members, as the case may be, in the homeland defense activities is necessary and appropriate.

"(3) A certification that homeland defense activities are to be conducted at a time when the personnel involved are not in Federal service.

"§ 907. Relationship to State duty

"Nothing in this chapter shall be construed as a limitation on the authority of any unit of the National Guard of a State, when such unit is not in Federal service, to perform functions authorized to be performed by the National Guard by the laws of the State concerned.

"§ 908. Annual report

"(a) REQUIREMENT FOR REPORT.—After the end of each fiscal year, the Secretary of Defense shall submit to the congressional defense committees a report regarding any assistance provided and activities carried out under this chapter during that fiscal year. The report for a fiscal year shall be submitted not later than March 31 of the year following the year in which such fiscal year ended.

"(b) CONTENT.—The report for a fiscal year shall include the following matters:

"(1) The numbers of members of the National Guard excluded under subsection (i) of section 115 of title 10 from being counted for the purpose of end-strengths authorized pursuant to subsection (a)(1) of such section.

"(2) A description of the homeland defense activities conducted with funds provided under this chapter.

"(3) An accounting of the amount of the funds provided to each State.

"(4) A description of the effect on military training and readiness of using units and personnel of the National Guard to perform homeland defense activities under this chapter.".

(2) The table of chapters at the beginning of such title is amended by adding at the end the following new item:

"9. Homeland Defense Activities .... 901".

(b) CONFORMING AMENDMENT.—Section 115 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(i) CERTAIN FULL-TIME NATIONAL GUARD DUTY PERSONNEL EXCLUDED FROM COUNTING FOR FULL-TIME NATIONAL GUARD DUTY END STRENGTHS.—In counting full-time National Guard duty personnel for the purpose of end-strengths authorized pursuant to subsection (a)(1), persons involuntarily performing homeland defense activities under chapter 9 of title 32 shall be excluded.".

SEC. 513. COMMISSION ON THE NATIONAL GUARD AND RESERVES.

(a) ESTABLISHMENT.—There is established a commission to be known as the "Commission on the National Guard and Reserves".

(b) COMPOSITION.—(1) The Commission shall be composed of 13 members appointed as follows:

(A) Three members appointed by the chairman of the Committee on Armed Services of the Senate.

(B) Three members appointed by the chairman of the Committee on Armed Services of the House of Representatives.

(C) Two members appointed by the ranking minority member of the Committee on Armed Services of the Senate.

(D) Two members appointed by the ranking minority member of the Committee on Armed Service of the House of Representatives.

(E) Three members appointed by the Secretary of Defense.

(2) The members of the Commission shall be appointed from among persons who have knowledge and expertise in the following areas:

(A) National security.

(B) Roles and missions of any of the Armed Forces.

(C) The mission, operations, and organization of the National Guard of the United States.

(D) The mission, operations, and organization of the other reserve components of the Armed Forces.

(E) Military readiness of the Armed Forces.

(F) Personnel pay and other forms of compensation.

(G) Other personnel benefits, including health care.

(3) Members of the Commission shall be appointed for the life of the Commission. A vacancy in the membership of the Commission shall not affect the powers of the Commission, but shall be filled in the same manner as the original appointment.

(4) The Secretary of Defense shall designate a member of the Commission to be chairman of the Commission.

(c) DUTIES.—(1) The Commission shall carry out a study of the following matters:

(A) The roles and missions of the National Guard and the other reserve components of the Armed Forces.

(B) The compensation and other benefits, including health care benefits, that are provided for members of the reserve components under the laws of the United States.

(2) In carrying out the study under paragraph (1), the Commission shall do the following:

(A) Assess the current roles and missions of the reserve components and identify appropriate potential future roles and missions for the reserve components.

(B) Assess the capabilities of the reserve components and determine how the units and personnel of the reserve components may be best used to support the military operations of the Armed Forces and the achievement of national security objectives, including homeland defense, of the United States.

(C) Assess the Department of Defense plan for implementation of section 115(b) of title 10, United States Code, as added by section 404(a)(4).

(D) Assess—

(i) the current organization and structure of the National Guard and the other reserve components; and

(ii) the plans of the Department of Defense and the Armed Forces for future organization and structure of the National Guard and the other reserve components.

(E) Assess the manner in which the National Guard and the other reserve components are currently organized and funded for training and identify an organizational and funding structure for training that best supports the achievement of training objectives and operational readiness.

(F) Assess the effectiveness of the policies and programs of the National Guard and the other reserve components for achieving operational readiness and personnel readiness, including medical and personal readiness.

(G) Assess—

(i) the adequacy and appropriateness of the compensation and benefits currently provided for the members of the National Guard and the other reserve components, including the availability of health care benefits and health insurance; and

(ii) the effects of proposed changes in compensation and benefits on military careers in both the regular and the reserve components of the Armed Forces.

(H) Identify various feasible options for improving the compensation and other benefits available to the members of the National Guard and the members of the other reserve components and assess—

(i) the cost-effectiveness of such options; and

(ii) the foreseeable effects of such options on readiness, recruitment, and retention of personnel for careers in the regular and reserve components the Armed Forces.

(I) Assess the traditional military career paths for members of the National Guard and the other reserve components and identify alternative career paths that could enhance professional development.

(J) Assess the adequacy of the funding provided for the National Guard and the other reserve components for several previous fiscal years, including the funding provided for National Guard and reserve component equipment and the funding provided for National Guard and other reserve component personnel in active duty military personnel accounts and reserve military personnel accounts.

(d) FIRST MEETING.—The Commission shall hold its first meeting not later than 30 days after the date on which all members of the Commission have been appointed.

(e) ADMINISTRATIVE AND PROCEDURAL AUTHORITIES.—(1) Sections 955, 956, 957 (other than subsection (f)), 958, and 959 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103-160; 10 U.S.C 111 note) shall apply to the Commission, except that in applying section 957(a) of such Act to the Commission, "level IV of the Executive Schedule" shall be substituted for "level V of the Executive Schedule".

(2) The following provisions of law do not apply to the Commission:

(A) Section 3161 of title 5, United States Code.

(B) The Federal Advisory Committee Act (5 U.S.C. App.).

(f) REPORTS.—(1) Not later than three months after the first meeting of the Commission, the Commission shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth—

(A) a strategic plan for the work of the Commission;

(B) a discussion of the activities of the Commission; and

(C) any initial findings of the Commission.

(2) Not later than one year after the first meeting of the Commission, the Commission shall submit a final report to the committees of Congress referred to in paragraph (1) and to the Secretary of Defense. The final report shall include any recommendations that the Commission determines appropriate, including any recommended legislation, policies, regulations, directives, and practices.

(g) TERMINATION.—The Commission shall terminate 90 days after the date on which the final report is submitted under subsection (f)(2).

(h) ANNUAL REVIEW.—(1) The Secretary of Defense shall annually review the reserve components of the Armed Forces with regard to—

(A) the roles and missions of the reserve components; and

(B) the compensation and other benefits, including health care benefits, that are provided for members of the reserve components under the laws of the United States.

(2) The Secretary shall submit a report of the annual review, together with any comments and recommendations that the Secretary considers appropriate, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(3) The first review under paragraph (1) shall take place during fiscal year 2006.

SEC. 514. REPEAL OF EXCLUSION OF ACTIVE DUTY FOR TRAINING FROM AUTHORITY TO ORDER RESERVES TO ACTIVE DUTY.

(a) General Authority To Order Reserves to Active Duty.—Section 12301 of title 10, United States Code, is amended—

(1) in the first sentence of subsection (a), by striking "(other than for training)";

(2) in subsection (c)—

(A) in the first sentence, by striking "(other than for training)" and inserting "as provided in subsection (a)"; and

(B) in the second sentence, by striking "ordered to active duty (other than for training)" and inserting "so ordered to active duty"; and

(3) in subsection (e), by striking "(other than for training)" and inserting "as provided in subsection (a)".

(b) Ready Reserve 24-Month Callup Authority.—Section 12302 of such title is amended by striking "(other than for training)" in subsections (a) and (c).

(c) Selected Reserve and Individual Ready Reserve 270-Day Callup Authority.—Section 12304(a) of such title is amended by striking "(other than for training)".

(d) Standby Reserve Callup Authority.—Section 12306 of such title is amended—

(1) in subsection (a), by striking "active duty (other than for training) only as provided in section 12301 of this title" and inserting "active duty only as provided in section 12301 of this title, but subject to the limitations in subsection (b)"; and

(2) in subsection (b)—

(A) in paragraph (1), by striking "(other than for training)" and inserting "under section 12301(a) of this title"; and

(B) in paragraph (2), by striking "no other member" and all that follows through "without his consent" and inserting "notwithstanding section 12301(a) of this title, no other member in the Standby Reserve may be ordered to active duty as an individual under such section without his consent".

SEC. 515. ARMY PROGRAM FOR ASSIGNMENT OF ACTIVE COMPONENT ADVISERS TO UNITS OF THE SELECTED RESERVE.

(a) Change in Minimum Number Required to be Assigned.—Section 414(c)(1) of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (10 U.S.C. 12001 note) is amended by striking "5,000" and inserting "3,500".

(b) Limitation on Reductions.—Notwithstanding the amendment made by subsection (a), the Secretary of the Army may not reduce the number of active component Reserve support personnel below the number of such personnel as of the date of the enactment of this Act until the report required by subsection (c) has been submitted.

(c) Report.—Not later than March 31, 2005, the Secretary of the Army shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the support by active components of the Army for training and readiness of the Army National Guard and Army Reserve. The report shall include an evaluation and determination of each of the following:

(1) The effect on the ability of the Army to improve such training and readiness resulting from the reduction under the amendment made by subsection (a) in the minimum number of active component Reserve support personnel.

(2) The adequacy of having 3,500 members of the Army (the minimum number required under the law as so amended) assigned as active component Reserve support personnel in order to meet emerging training requirements in the Army reserve components in connection with unit and force structure conversions and preparations for wartime deployment.

(3) The nature and effectiveness of efforts by the Army to reallocate the 3,500 personnel assigned as active component Reserve support personnel to higher priority requirements and to expand the use of reservists on active duty to meet reserve component training needs.

(4) Whether the Army is planning further reductions in the number of active component Reserve support personnel and, if so, the scope and rationale for those reductions.

(5) Whether an increase in Army reserve component full-time support personnel will be required to replace the loss of active component Reserve support personnel.

(d) Definition.—In this section, the term "active component Reserve support personnel" means the active component Army personnel assigned as advisers to units of the Selected Reserve of the Ready Reserve of the Army pursuant to section 414 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (10 U.S.C. 12001 note).

SEC. 516. AUTHORITY TO ACCEPT CERTAIN VOLUNTARY SERVICES.

Section 1588 of title 10, United States Code, is amended—

(1) in subsection (a), by adding at the end the following new paragraph:

"(8) Voluntary services to support programs of a committee of the Employer Support of the Guard and Reserve as authorized by the Secretary of Defense."; and

(2) in subsection (f)(1), by striking "subsection (a)(3)" and inserting "paragraph (3) or (8) of subsection (a)".

SEC. 517. AUTHORITY TO REDESIGNATE THE NAVAL RESERVE AS THE NAVY RESERVE.

(a) Authority of Secretary of the Navy.—The Secretary of the Navy may, with the approval of the President, redesignate the reserve component known as the Naval Reserve as the "Navy Reserve". Any such redesignation shall be effective on a date specified by the Secretary, which date may not be earlier than the date that is 180 days after the date on which the Secretary submits recommended legislation under subsection (c).

(b) Publication of Redesignation.—If the Secretary of the Navy exercises the authority to redesignate the Naval Reserve under subsection (a), the Secretary shall promptly publish in the Federal Register and submit to the Congress notice of the redesignation, including the effective date of the redesignation.

(c) Conforming Legislation.—If the Secretary of the Navy exercises the authority to redesignate the Naval Reserve under subsection (a), the Secretary shall submit to the Congress recommended legislation that identifies each specific provision of law that refers to the Naval Reserve and sets forth an amendment to that specific provision of law to conform the reference to the new designation.

(d) References.—If the Secretary of the Navy exercises the authority to redesignate the Naval Reserve under subsection (a), then on and after the effective date of the redesignation, any reference in any law, map, regulation, document, paper, or other record of the United States to the Naval Reserve shall be deemed to be a reference to the Navy Reserve.

SEC. 518. COMPTROLLER GENERAL ASSESSMENT OF INTEGRATION OF ACTIVE AND RESERVE COMPONENTS OF THE NAVY.

(a) Assessment.—The Comptroller General shall review the plan of the Secretary of the Navy for, and implementation by the Secretary of, initiatives undertaken within the Navy to improve the integration of the active and reserve components of the Navy in peacetime and wartime operations resulting from—

(1) the Naval Reserve Redesign Study carried out by the Navy; and

(2) the zero-based review of reserve component force structure undertaken by the commander of the Fleet Forces Command of the Navy during fiscal year 2004.

(b) Report.—No later than March 31, 2005, the Comptroller General shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the results of the review under subsection (a). The Comptroller General shall include in the report recommendations for improved active and reserve component integration in the Navy.

(c) Matters to be Examined.—In conducting the review under subsection (a), the Comptroller General shall examine the following:

(1) The criteria the Navy used to determine the following with respect to integration of the active and reserve components of the Navy:

(A) The future mix of active and reserve component force structure.

(B) Organization of command and control elements.

(C) Manpower levels.

(D) Basing changes.

(2) The extent to which the plans of the Navy for improving the integration of the active and reserve components of the Navy considered each of the following:

(A) The new Fleet Response Plan of the Navy.

(B) The flexible deployment concept.

(C) Global operations.

(D) Emerging mission requirements.

(E) Other evolving initiatives.

(3) The manner in which the timing of the execution of planned active and reserve integration initiatives will correlate with the funding of those initiatives, including consideration of an evaluation of the adequacy of the funding allocated to those integration initiatives.

(4) For naval aviation forces, the extent to which the active and reserve component integration plans of the Navy will affect factors such as—

(A) common training and readiness standards for active and reserve forces;

(B) reserve component access to the same equipment as the active component;

(C) relationships between command and headquarters elements of active and reserve forces; and

(D) trends in the use by the Navy of units referred to as "associate" units or "blended" units.

(E) Basing criteria of future aviation forces.

(F) Employment of Naval Reserve aviation forces and personnel in peacetime and wartime operations.

SEC. 519. LIMITATION ON NUMBER OF STARBASE ACADEMIES IN A STATE.

Paragraph (3) of section 2193b(c) of title 10, United States Code, is amended to read as follows:

"(3)(A) Except as otherwise provided under subparagraph (B), the Secretary may not support the establishment in any State of more than two academies under the program.

"(B) The Secretary may support the establishment and operation of an academy in a State in excess of two academies in that State if the Secretary expressly waives, in writing, the limitation in subparagraph (A) with respect to that State. In the case of any such waiver, appropriated funds may be used for the establishment and operation of an academy in excess of two in that State only to the extent that appropriated funds are expressly available for that purpose. Any such waiver shall be made under criteria to be prescribed by the Secretary.".

SEC. 520. RECOGNITION ITEMS FOR CERTAIN RESERVE COMPONENT PERSONNEL.

(a) Army Reserve.—(1) Chapter 1805 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 18506. Recruitment and retention: availability of funds for recognition items for Army Reserve personnel

"(a) AVAILABILITY OF FUNDS.—(1) Under regulations prescribed by the Secretary of the Army, funds authorized to be appropriated to the Army Reserve and available for recruitment and retention of military personnel may be obligated and expended for recognition items that are distributed to members of the Army Reserve and to members of their families and other individuals recognized as providing support that substantially facilitates service in the Army Reserve.

"(2) The purpose of the distribution of such items shall be to enhance the recruitment and retention of members of the Army Reserve.

"(b) PROVISION OF MEALS AND REFRESHMENTS.—For purposes of section 520c of this title and any regulation prescribed to implement that section, functions conducted for the purpose of presenting recognition items described in subsection (a) shall be treated as recruiting functions and recipients of such items shall be treated as persons who are the objects of recruiting efforts.

"(c) LIMITATION ON VALUE.—The value of items referred to in subsection (a) that are distributed to any single member of the Army Reserve at any one time may not exceed $50.

"(d) TERMINATION OF AUTHORITY.—The authority under this section shall expire December 31, 2005.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"18506. Recruitment and retention: availability of funds for recognition items for Army Reserve personnel.".

(b) USE OF FUNDS TO PROMOTE RETENTION IN THE NATIONAL GUARD.—(1) Chapter 7 of title 32, United States Code, is amended by adding at the end the following new section:

"§ 717. Presentation of recognition items for retention purposes

"(a) EXPENDITURES FOR RECOGNITION ITEMS.—Under regulations prescribed by the Secretary of the Army and the Secretary of the Air Force, funds appropriated for the Army National Guard or Air National Guard for the purpose of recruitment and retention of military personnel may be expended to procure recognition items of nominal or modest value for retention purposes and to present such items to members of the National Guard and to members of their families and other individuals recognized as providing support that substantially facilitates service in the National Guard.

"(b) PROVISION OF MEALS AND REFRESHMENTS.—For purposes of section 520c of title 10 and any regulation prescribed to implement that section, functions conducted for the purpose of presenting recognition items described in subsection (a) shall be treated as recruiting functions and recipients of such items shall be treated as persons who are the objects of recruiting efforts.

"(c) RELATION TO OTHER LAW.—The authority provided in this section is in addition to other provision of law authorizing the use of appropriations for recruitment and retention purposes.

"(d) DEFINITION.—The term 'recognition items of nominal or modest value' means commemorative coins, medals, trophies, badges, flags, posters, paintings, or other similar items that are valued at less than $50 per item and are designed to recognize or commemorate service in the armed forces or National Guard.

"(e) TERMINATION OF AUTHORITY.—The authority under this section shall expire December 31, 2005.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"717. Presentation of recognition items for retention purposes.".

(c) EFFECTIVE DATE.—Section 18506 of title 10, United States Code, as added by subsection (a), and section 717 of title 32, United States Code, as added by subsection (b), shall take effect as of November 24, 2003, and as if included in the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136).

Subtitle C—Reserve Component Personnel Matters

SEC. 521. STATUS UNDER DISABILITY RETIREMENT SYSTEM FOR RESERVE MEMBERS RELEASED FROM ACTIVE DUTY DUE TO INABILITY TO PERFORM WITHIN 30 DAYS OF CALL TO ACTIVE DUTY.

(a) IN GENERAL.—Chapter 61 of title 10, United States Code, is amended by inserting after section 1206 the following new section:

"§ 1206a. Reserve component members unable to perform duties when ordered to active duty: disability system processing

"(a) MEMBERS RELEASED FROM ACTIVE DUTY WITHIN 30 DAYS.—A member of a reserve component who is ordered to active duty for a period of more than 30 days and is released from active duty within 30 days of commencing such period of active duty for a reason stated in subsection (b) shall be considered for all purposes under this chapter to have been serving under an order to active duty for a period of 30 days or less.

"(b) APPLICABLE REASONS FOR RELEASE.—Subsection (a) applies in the case of a member released from active duty because of a failure to meet—

"(1) physical standards for retention due to a preexisting condition not aggravated during the period of active duty; or

"(2) medical or dental standards for deployment due to a preexisting condition not aggravated during the period of active duty.

"(c) SAVINGS PROVISION FOR MEDICAL CARE PROVIDED WHILE ON ACTIVE DUTY.—Notwithstanding subsection (a), any benefit under chapter 55 of this title received by a member described in subsection (a) or a dependent of such member before or during the period of active duty shall not be subject to recoupment or otherwise affected.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1206 the following new item:

"1206a. Reserve component members unable to perform duties when ordered to active duty: disability system processing.".

SEC. 522. REQUIREMENT FOR RETENTION OF RESERVES ON ACTIVE DUTY TO QUALIFY FOR RETIRED PAY NOT APPLICABLE TO NONREGULAR SERVICE RETIREMENT SYSTEM.

Section 12686(a) of title 10, United States Code, is amended by inserting "(other than the retirement system under chapter 1223 of this title)" after "retirement system".

SEC. 523. FEDERAL CIVIL SERVICE MILITARY LEAVE FOR RESERVE AND NATIONAL GUARD CIVILIAN TECHNICIANS.

Section 6323(d)(1) of title 5, United States Code is amended by striking "(other than active duty during a war or national emergency declared by the President or Congress)".

SEC. 524. EXPANDED EDUCATIONAL ASSISTANCE AUTHORITY FOR OFFICERS COMMISSIONED THROUGH ROTC PROGRAM AT MILITARY JUNIOR COLLEGES.

(a) FINANCIAL ASSISTANCE PROGRAM FOR SERVICE ON ACTIVE DUTY.—Section 2107(c) of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(5)(A) The Secretary of the Army, under regulations and criteria established by the Secretary, may provide an individual who received a commission as a Reserve officer in the Army from a military junior college through a program under this chapter and who does not have a baccalaureate degree with financial assistance for pursuit of a baccalaureate degree.

"(B) Such assistance is in addition to any financial assistance provided under paragraph (1), (3), or (4).

"(C) The agreement and reimbursement requirements established in section 2005 of this title are applicable to financial assistance under this paragraph.

"(D) An officer receiving financial assistance under this paragraph shall be attached to a unit of the Army as determined by the Secretary and shall be considered to be a member of the Senior Reserve Officers' Training Corps on inactive duty for training, as defined in section 101(23) of title 38.

"(E) A qualified officer who did not previously receive financial assistance under this section is eligible to receive educational assistance under this paragraph.

"(F) A Reserve officer may not be called or ordered to active duty for a deployment while participating in the program under this paragraph.

"(G) Any service obligation incurred by an officer under an agreement entered into under this paragraph shall be in addition to any service obligation incurred by that officer under any other provision of law or agreement.".

(b) FINANCIAL ASSISTANCE PROGRAM FOR SERVICE IN TROOP PROGRAM UNITS.—Section 2107a(c) of such title is amended by adding at the end the following new paragraph:

"(4)(A) The Secretary of the Army may provide an individual who received a commission as a Reserve officer in the Army from a military junior college through a program under this chapter and who does not have a baccalaureate degree with financial assistance for pursuit of a baccalaureate degree.

"(B) Such assistance is in addition to any provided under paragraph (1) or (2).

"(C) The agreement and reimbursement requirements established in section 2005 of this title are applicable to financial assistance under this paragraph.

"(D) An officer receiving financial assistance under this paragraph shall be attached to a unit of the Army as determined by the Secretary and shall be considered to be a member of the Senior Reserve Officers' Training Corps on inactive duty for training, as defined in section 101(23) of title 38.

"(E) A qualified officer who did not previously receive financial assistance under this section is eligible to receive educational assistance under this paragraph.

"(F) A Reserve officer may not be called or ordered to active duty for a deployment while participating in the program under this paragraph.

"(G) Any service obligation incurred by an officer under an agreement entered into under this paragraph shall be in addition to any service obligation incurred by that officer under any other provision of law or agreement.".

(c) IMPLEMENTATION REPORT.—Not later than March 31, 2007, the Secretary of the Army shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report providing information on the experience of the Department of the Army under paragraph (5) of section 2107(c) of title 10, United States Code, as added by subsection (a), and under paragraph (4) of section 2107a(c) of title 10, United States Code, as added by subsection (b). The report shall include any recommendations the Secretary considers necessary for the improvement of the programs under those paragraphs.

SEC. 525. REPEAL OF SUNSET PROVISION FOR FINANCIAL ASSISTANCE PROGRAM FOR STUDENTS NOT ELIGIBLE FOR ADVANCED TRAINING.

Section 2103a of title 10, United States Code, is amended by striking subsection (d).

SEC. 526. EFFECT OF APPOINTMENT OR COMMISSION AS OFFICER ON ELIGIBILITY FOR SELECTED RESERVE EDUCATION LOAN REPAYMENT PROGRAM FOR ENLISTED MEMBERS.

Section 16301(a) of title 10, United States Code, is amended—

(1) in paragraph (2), by striking "The Secretary" in the first sentence and inserting "Except as provided in paragraph (3), the Secretary of Defense"; and

(2) by adding at the end the following new paragraph:

"(3) In the case of a commitment made by the Secretary of Defense after the date of the enactment of this paragraph to repay a loan under paragraph (1) conditioned upon the performance by the borrower of service as an enlisted member under paragraph (2), the Secretary may repay the loan for service performed by the borrower as an officer (rather than as an enlisted member) in the case of a borrower who, after such commitment is entered into and while performing service as an enlisted member, accepts an appointment or commission as a warrant officer or commissioned officer of the Selected Reserve.".

SEC. 527. EDUCATIONAL ASSISTANCE FOR CERTAIN RESERVE COMPONENT MEMBERS WHO PERFORM ACTIVE SERVICE.

(a) ESTABLISHMENT OF PROGRAM.—Part IV of subtitle E of title 10, United States Code, is amended by inserting after chapter 1606 the following new chapter:

"CHAPTER 1607—EDUCATIONAL ASSISTANCE FOR RESERVE COMPONENT MEMBERS SUPPORTING CONTINGENCY OPERATIONS AND CERTAIN OTHER OPERATIONS

"Sec.
"16161. Purpose.
"16162. Educational assistance program.
"16163. Eligibility for educational assistance.
"16164. Time limitation for use of entitlement.
"16165. Termination of assistance.
"16166. Administration of program.

"§ 16161. Purpose

"The purpose of this chapter is to provide educational assistance to members of the reserve components called or ordered to active service in response to a war or national emergency declared by the President or the Congress, in recognition of the sacrifices that those members make in answering the call to duty.

"§ 16162. Educational assistance program

"(a) PROGRAM ESTABLISHMENT.— The Secretary of each military department, under regulations prescribed by the Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall establish and maintain a program as prescribed in this chapter to provide educational assistance to members of the Ready Reserve of the armed forces under the jurisdiction of the Secretary concerned.

"(b) AUTHORIZED EDUCATION PROGRAMS.—Educational assistance may be provided under this chapter for pursuit of any program of education that is an approved program of education for purposes of chapter 30 of title 38.

"(c) BENEFIT AMOUNT.—(1) The educational assistance program established under subsection (a) shall provide for payment by the Secretary concerned, through the Secretary of Veterans Affairs, an educational assistance allowance to each member entitled to educational assistance under this chapter who is pursuing a program of education authorized under subsection (b).

"(2) The educational assistance allowance provided under this chapter shall be based on the applicable percent under paragraph (4) to the applicable rate provided under section 3015 of title 38 for a member whose entitlement is based on completion of an obligated period of active duty of three years.

"(3) The educational assistance allowance provided under this section for a person who is undertaking a program for which a reduced rate is specified in chapter 30 of title 38, that rate shall be further adjusted by the applicable percent specified in paragraph (4).

"(4) The adjusted educational assistance allowance under paragraph (2) or (3), as applicable, shall be—

"(A) 40 percent in the case of a member of a reserve component who performed active service for 90 consecutive days but less than one continuous year;

"(B) 60 percent in the case of a member of a reserve component who performed active service for one continuous year but less than two continuous years; or

"(C) 80 percent in the case of a member of a reserve component who performed active service for two continuous years or more.

"(d) MAXIMUM MONTHS OF ASSISTANCE.—(1) Subject to section 3695 of title 38, the maximum number of months of educational assistance that may be provided to any member under this chapter is 36 (or the equivalent thereof in part-time educational assistance).

"(2)(A) Notwithstanding any other provision of this chapter or chapter 36 of title 38, any payment of an educational assistance allowance described in subparagraph (B) shall not—

"(i) be charged against the entitlement of any individual under this chapter; or

"(ii) be counted toward the aggregate period for which section 3695 of title 38 limits an individual's receipt of assistance.

"(B) The payment of the educational assistance allowance referred to in subparagraph (A) is the payment of such an allowance to the individual for pursuit of a course or courses under this chapter if the Secretary of Veterans Affairs finds that the individual—

"(i) had to discontinue such course pursuit as a result of being ordered to serve on active duty under section 12301(a), 12301(d), 12301(g), 12302, or 12304 of this title; and

"(ii) failed to receive credit or training time toward completion of the individual's approved educational, professional, or vocational objective as a result of having to discontinue, as described in clause (i), the individual's course pursuit.

"(C) The period for which, by reason of this subsection, an educational assistance allowance is not charged against entitlement or counted toward the applicable aggregate period under section 3695 of title 38 shall not exceed the portion of the period of enrollment in the course or courses for which the individual failed to receive credit or with respect to which the individual lost training time, as determined under subparagraph (B)(ii).

"§ 16163. Eligibility for educational assistance

"(a) ELIGIBILITY.—On or after September 11, 2001, a member of a reserve component is entitled to educational assistance under this chapter if the member—

"(1) served on active duty in support of a contingency operation for 90 consecutive days or more; or

"(2) in the case of a member of the Army National Guard of the United States or Air National Guard of the United States, performed full time National Guard duty under section 502(f) of title 32 for 90 consecutive days or more when authorized by the President or Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

"(b) DISABLED MEMBERS.—Notwithstanding the eligibility requirements in subsection (a), a member who was ordered to active service as prescribed under subsection (a)(1) or (a)(2) but is released from duty before completing 90 consecutive days because of an injury, illness or disease incurred or aggravated in the line of duty shall be entitled to educational assistance under this chapter at the rate prescribed in section 16162(c)(4)(A) of this title.

"(c) WRITTEN NOTIFICATION.—(1) Each member who becomes entitled to educational assistance under subsection (a) shall be given a statement in writing prior to release from active service that summarizes the provisions of this chapter and stating clearly and prominently the substance of section 16165 of this title as such section may apply to the member.

"(2) At the request of the Secretary of Veterans Affairs, the Secretary concerned shall transmit a notice of entitlement for each such member to that Secretary.

"(d) BAR FROM DUAL ELIGIBILITY.—A member who qualifies for educational assistance under this chapter may not receive credit for such service under both the program established by chapter 30 of title 38 and the program established by this chapter but shall make an irrevocable election (in such form and manner as the Secretary of Veterans Affairs may prescribe) as to the program to which such service is to be credited.

"(e) BAR FROM DUPLICATION OF EDUCATIONAL ASSISTANCE ALLOWANCE.—(1) Except as provided in paragraph (2), an individual entitled to educational assistance under this chapter who is also eligible for educational assistance under chapter 1606 of this title, chapter 30, 31, 32, or 35 of title 38, or under the Hostage Relief Act of 1980 (Public Law 96–449; 5 U.S.C. 5561 note) may not receive assistance under more than one such programs and shall elect (in such form and manner as the Secretary concerned may prescribe) under which program the member elects to receive educational assistance.

"(2) The restriction on duplication of educational assistance under paragraph (1) does not apply to the entitlement of educational assistance under section 16131(i) of this title.

"§ 16164. Time limitation for use of entitlement

"(a) DURATION OF ENTITLEMENT.—Except as provided in subsection (b), a member remains entitled to educational assistance under this chapter while serving—

"(1) in the Selected Reserve of the Ready Reserve, in the case of a member called or ordered to active service while serving in the Selected Reserve; or

"(2) in the Ready Reserve, in the case of a member ordered to active duty while serving in the Ready Reserve (other than the Selected Reserve).

"(b) DURATION OF ENTITLEMENT FOR DISABLED MEMBERS.—(1) In the case of a person who is separated from the Ready Reserve because of a disability which was not the result of the individual's own willful misconduct incurred on or after the date on which such person became entitled to educational assistance under this chapter, such person's entitlement to educational assistance expires at the end of the 10-year period beginning on the date on which such person became entitled to such assistance.

"(2) The provisions of subsections (d) and (f) of section 3031 of title 38 shall apply to the period of entitlement prescribed by paragraph (1).

"§ 16165. Termination of assistance

"Educational assistance may not be provided under this chapter, or if being provided under this chapter, shall be terminated—

"(1) if the member is receiving financial assistance under section 2107 of this title as a member of the Senior Reserve Officers' Training Corps program; or

"(2) when the member separates from the Ready Reserve, as provided for under section 16164(a)(1) or section 16164(a)(2), as applicable, of this title.

"§ 16166. Administration of program

"(a) ADMINISTRATION.—Educational assistance under this chapter shall be provided through the Department of Veterans Affairs, under agreements to be entered into by the Secretary of Defense, and by the Secretary of Homeland Security, with the Secretary of Veterans Affairs. Such agreements shall include administrative procedures to ensure the prompt and timely transfer of funds from the Secretary concerned to the Department of Veterans Affairs for the making of payments under this chapter.

"(b) PROGRAM MANAGEMENT.—Except as otherwise provided in this chapter, the provisions of sections 503, 511, 3470, 3471, 3474, 3476, 3482(g), 3483, and 3485 of title 38 and the provisions of subchapters I and II of chapter 36 of such title (with the exception of sections 3686(a), 3687, and 3692) shall be applicable to the provision of educational assistance under this chapter. The term 'eligible veteran' and the term 'person', as used in those provisions, shall be deemed for the purpose of the application of those provisions to this chapter to refer to a person eligible for educational assistance under this chapter.

"(c) FLIGHT TRAINING.—The Secretary of Veterans Affairs may approve the pursuit of flight training (in addition to a course of flight training that may be approved under section 3680A(b) of title 38) by an individual entitled to educational assistance under this chapter if—

"(1) such training is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation;

"(2) the individual possesses a valid private pilot certificate and meets, on the day the member begins a course of flight training, the medical requirements necessary for a commercial pilot certificate; and

"(3) the flight school courses meet Federal Aviation Administration standards for such courses and are approved by the Federal Aviation Administration and the State approving agency.

"(d) TRUST FUND.—Amounts for payments for benefits under this chapter shall be derived from the Department of Defense Education Benefits Fund under section 2006 of this title.".

(b) CONFORMING AMENDMENTS.—(1) Section 2006(b) of such title is amended—

(A) in paragraph (1), by striking "chapter 1606" and inserting "chapters 1606 and 1607, including funds provided by the Secretary of Homeland Security for education liabilities for the Coast Guard when it is not operating as a service in the Department of the Navy"; and

(B) in paragraph (2)(C), by striking "for educational assistance under chapter 1606" and inserting "(including funds from the Department in which the Coast Guard is operating) for educational assistance under chapters 1606 and 1607".

(2) Section 3695(a)(5) of title 38, United States Code, is amended by inserting "1607," after "1606,".

(c) CLERICAL AMENDMENT.—The tables of chapters at the beginning of subtitle E of title 10, United States Code, and at the beginning of part IV of such subtitle, are amended by inserting after the item relating to chapter 1606 the following new item:

"1607. Educational Assistance for Reserve Component Members Supporting Contingency Operations and Certain Other Operations .... 16161".

SEC. 528. SENSE OF CONGRESS ON GUIDANCE CONCERNING TREATMENT OF EMPLOYER-PROVIDED COMPENSATION AND OTHER BENEFITS VOLUNTARILY PROVIDED TO EMPLOYEES WHO ARE ACTIVATED RESERVISTS.

(a) SENSE OF CONGRESS.—It is the sense of Congress—

(1) that the Secretary of the Treasury should provide guidance with respect to treatment under the internal revenue laws of payments made by employers to activated Reservist employees under voluntary Reserve-employee differential pay arrangements, benefits provided by employers to such employees, and contributions by employers to employer-provided retirement savings plans related thereto; and

(2) that the guidance provided under paragraph (1) should, to the extent possible within the Secretary's authority, be consistent with the goal of promoting and ensuring the validity of voluntary differential pay arrangements, benefits, and contributions referred to in that paragraph.

(b) DEFINITIONS.—For purposes of this section:

(1) VOLUNTARY RESERVE-EMPLOYEE DIFFERENTIAL PAY ARRANGEMENT.—The term "voluntary Reserve-employee differential pay arrangement" means an arrangement by which an employer of an activated Reservist employee voluntarily agrees to pay, and pays, to that employee, while on active duty, amounts equivalent to the difference (or some portion of the difference) between (A) the compensation of that employee paid by the employer at the time of the employee's activation for such active duty, and (B) that employee's military compensation.

(2) ACTIVATED RESERVIST EMPLOYEE.—The term "activated Reservist employee" means a member of a reserve component of the Armed Forces who is on active duty under a call or order to active duty (other than for training) and who at the time of such call or order is employed in a position subject to chapter 43 of title 38, United States Code (referred to as the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)).

Subtitle D—Joint Officer Management and Professional Military Education

SEC. 531. STRATEGIC PLAN TO LINK JOINT OFFICER DEVELOPMENT TO OVERALL MISSIONS AND GOALS OF DEPARTMENT OF DEFENSE.

(a) PLAN REQUIRED.—(1) The Secretary of Defense shall develop a strategic plan for joint officer management and joint professional military education that links joint officer development to the accomplishment of the overall missions and goals of the Department of Defense, as set forth in the most recent national military strategy under section 153(d) of title 10, United States Code. Such plan shall be developed for the purpose of ensuring that sufficient numbers of officers fully qualified in occupational specialties involving combat operations are available as necessary to meet the needs of the Department for qualified officers who are operationally effective in the joint environment.

(2) The Secretary shall develop the strategic plan with the advice of the Chairman of the Joint Chiefs of Staff.

(b) MATTERS TO BE INCLUDED.—As part of the strategic plan under subsection (a), the Secretary shall include the following:

(1) A statement of the levels of joint officer resources needed to be available to properly support the overall missions of the Department of Defense, with such resources to be specified by the number of officers with the joint specialty, the number of officers required for service in joint duty assignment positions, and the training and education resources required.

(2) An assessment of the available and projected joint officer development resources (including officers, educational and training resources, and availability of joint duty assignment positions and tours of duty) necessary to achieve the levels specified under paragraph (1).

(3) Identification of any problems or issues arising from linking resources for joint officer development to accomplishment of the objective of meeting the levels specified under paragraph (1) to resolve those problems and issues and plans.

(4) A description of the process for identification of the present and future requirements for joint specialty officers.

(5) A description of the career development and management of joint specialty officers and of any changes to be made to facilitate achievement of the levels of resources specified in paragraph (1), including additional education requirements, promotion opportunities, and assignments to fill joint assignments.

(6) An assessment of any problems or issues (and proposed solutions for any such problems and issues) arising from linking promotion eligibility to completion of joint professional military education.

(7) An assessment of any problems or issues (and proposed solutions for any such problems and issues) arising from linking prescribed lengths of joint duty assignments to qualification as joint specialty officers.

(8) An assessment of any problems or issues (and proposed solutions for any such problems and issues) arising from current law regarding expected rates of promotion for joint specialty officers and officers who are serving in, or have served in, joint duty assignments (other than those serving in, or who have served in, the Joint Staff and joint specialty officers).

(9) An assessment of any problems or issues (and proposed solutions for any such problems and issues) arising from current applicability of scientific and technical qualification waivers for designation as joint specialty officers.

(10) An assessment of the viability of the use of incentives (such as awarding ribbons) to any person who successfully completes a joint professional military education program of instruction.

(11) An assessment of the feasibility and utility of a comprehensive written examination as part of the evaluation criteria for selection of officers for full-time attendance at an intermediate or senior level service school.

(12) An assessment of the effects on the overall educational experience at the National Defense University of a small increase in the number of private-sector civilians eligible to enroll in instruction at the National Defense University .

(13) An assessment of the propriety and implications in providing joint specialty officer qualification to all qualifying reserve offices who have achieved the statutory prerequisites.

(c) INCLUSION OF RESERVE COMPONENT OFFICERS.—In developing the strategic plan required by subsection (a), the Secretary shall include joint officer development for officers on the reserve active-status list in the plan.

(d) REPORT.—The Secretary shall submit the plan developed under this section to the Committees on Armed Services of the Senate and House of Representatives not later than January 15, 2006.

(e) ADDITIONAL ASSESSMENT.—Not later than January 15, 2007, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives, as a follow-on to the report under subsection (d), a report providing an assessment of, and initiatives to improve, the performance in joint matters of the following:

(1) Senior civilian officers and employees in the Office of the Secretary of Defense, the Defense Agencies, and the military departments.

(2) Senior noncommissioned officers.

(3) Senior leadership in the reserve components.

SEC. 532. IMPROVEMENT TO PROFESSIONAL MILITARY EDUCATION IN THE DEPARTMENT OF DEFENSE.

(a) In General.—Part III of subtitle A of title 10, United States Code, is amended—

(1) by redesignating chapter 107 as chapter 106A; and

(2) by inserting before chapter 108 the following new chapter:

"CHAPTER 107—PROFESSIONAL MILITARY EDUCATION

"Sec.

"2151. Definitions.
"2152. Professional military education: general requirements.
"2153. Capstone course: newly selected general and flag officers.
"2154. Joint professional military education: three-phase approach.
"2155. Joint professional military education phase II program of instruction.
"2156. Joint Forces Staff College: duration of principal course of instruction.
"2157. Annual report to Congress.

"§2151. Definitions

"(a) Joint Professional Military Education.—Joint professional military education consists of the rigorous and thorough instruction and examination of officers of the armed forces in an environment designed to promote a theoretical and practical in-depth understanding of joint matters and, specifically, of the subject matter covered. The subject matter to be covered by joint professional military education shall include at least the following:

"(1) National Military Strategy.

"(2) Joint planning at all levels of war.

"(3) Joint doctrine.

"(4) Joint command and control.

"(5) Joint force and joint requirements development.

"(b) Other Definitions.—In this chapter:

"(1) The term 'senior level service school' means any of the following:

"(A) The Army War College.

"(B) The College of Naval Warfare.

"(C) The Air War College.

"(D) The Marine Corps War College.

"(2) The term 'intermediate level service school' means any of the following:

"(A) The United States Army Command and General Staff College.

"(B) The College of Naval Command and Staff.

"(C) The Air Command and Staff College.

"(D) The Marine Corps Command and Staff College.

"§2152. Joint professional military education: general requirements

"(a) In General.—The Secretary of Defense shall implement a comprehensive framework for the joint professional military education of officers, including officers nominated under section 661 of this title for the joint specialty.

"§2153. Capstone course: newly selected general and flag officers

"(a) Requirement.—Each officer selected for promotion to the grade of brigadier general or, in the case of the Navy, rear admiral (lower half) shall be required, after such selection, to attend a military education course designed specifically to prepare new general and flag officers to work with the other armed forces.

"(b) Waiver Authority.—(1) Subject to paragraph (2), the Secretary of Defense may waive subsection (a)—

"(A) in the case of an officer whose immediately previous assignment was in a joint duty assignment and who is thoroughly familiar with joint matters;

"(B) when necessary for the good of the service;

"(C) in the case of an officer whose proposed selection for promotion is based primarily upon scientific and technical qualifications for which joint requirements do not exist (as determined under regulations prescribed under section 619(e)(4) of this title); and

"(D) in the case of a medical officer, dental officer, veterinary officer, medical service officer, nurse, biomedical science officer, or chaplain.

"(2) The authority of the Secretary of Defense to grant a waiver under paragraph (1) may only be delegated to the Deputy Secretary of Defense, an Under Secretary of Defense, or an Assistant Secretary of Defense. Such a waiver may be granted only on a case-by-case basis in the case of an individual officer.

"§2154. Joint professional military education: three-phase approach

"(a) Three-Phase Approach.—The Secretary of Defense shall implement a three-phase approach to joint professional military education, as follows:

"(1) There shall be a course of instruction, designated and certified by the Secretary of Defense with the advice and assistance of the Chairman of the Joint Chiefs of Staff as Phase I instruction, consisting of all the elements of a joint professional military education (as specified in section 2151(a) of this title), in addition to the principal curriculum taught to all officers at an intermediate level service school.

"(2) There shall be a course of instruction, designated and certified by the Secretary of Defense with the advice and assistance of the Chairman of the Joint Chiefs of Staff as Phase II instruction, consisting of a joint professional military education curriculum taught in residence at—

"(A) the Joint Forces Staff College; or

"(B) a senior level service school that has been designated and certified by the Secretary of Defense as a joint professional military education institution.

"(3) There shall be a course of instruction, designated and certified by the Secretary of Defense with the advice and assistance of the Chairman of the Joint Chiefs of Staff as the Capstone course, for officers selected for promotion to the grade of brigadier general or, in the case of the Navy, rear admiral (lower half) and offered in accordance with section 2153 of this title.

"(b) Sequenced Approach.—The Secretary shall require the sequencing of joint professional military education so that the standard sequence of assignments for such education requires an officer to complete Phase I instruction before proceeding to Phase II instruction, as provided in section 2155(a) of this title.

"§2155. Joint professional military education phase II program of instruction

"(a) Prerequisite of Completion of Joint Professional Military Education I Program of Instruction.—(1) After September 30, 2009, an officer of the armed forces may not be accepted for, or assigned to, a program of instruction designated by the Secretary of Defense as joint professional military education Phase II unless the officer has successfully completed a program of instruction designated by the Secretary of Defense as joint professional military education Phase I.

"(2) The Chairman of the Joint Chiefs of Staff may grant exceptions to the requirement under paragraph (1). Such an exception may be granted only on a case-by-case basis under exceptional circumstances, as determined by the Chairman. An officer selected to receive such an exception shall have knowledge of joint matters and other aspects of the Phase I curriculum that, to the satisfaction of the Chairman, qualifies the officer to meet the minimum requirements established for entry into Phase II instruction without first completing Phase I instruction. The number of officers selected to attend an offering of the principal course of instruction at the Joint Forces Staff College or a senior level service school designated by the Secretary of Defense as a joint professional military education institution who have not completed Phase I instruction should comprise no more than 10 percent of the total number of officers selected.

"(b) Phase II Requirements.—The Secretary shall require that the curriculum for Phase II joint professional military education at any school—

"(1) focus on developing joint operational expertise and perspectives and honing joint warfighting skills; and

"(2) be structured —

"(A) so as to adequately prepare students to perform effectively in an assignment to a joint, multiservice organization; and

"(B) so that students progress from a basic knowledge of joint matters learned in Phase I instruction to the level of expertise necessary for successful performance in the joint arena.

"(c) Curriculum Content.—In addition to the subjects specified in section 2151(a) of this title, the curriculum for Phase II joint professional military education shall include the following:

"(1) National security strategy.

"(2) Theater strategy and campaigning.

"(3) Joint planning processes and systems.

"(4) Joint, interagency, and multinational capabilities and the integration of those capabilities.

"(d) Student Ratio; Faculty Ratio.—Not later than September 30, 2009, for courses of instruction in a Phase II program of instruction that is offered at senior level service school that has been designated by the Secretary of Defense as a joint professional military education institution—

"(1) the percentage of students enrolled in any such course who are officers of the armed force that administers the school may not exceed 60 percent, with the remaining services proportionally represented; and

"(2) of the faculty at the school who are active-duty officers who provide instruction in such courses, the percentage who are officers of the armed force that administers the school may not exceed 60 percent, with the remaining services proportionally represented.

"§2156. Joint Forces Staff College: duration of principal course of instruction

"(a) Duration.—The duration of the principal course of instruction offered at the Joint Forces Staff College may not be less than 10 weeks of resident instruction.

"(b) Definition.—In this section, the term 'principal course of instruction' means any course of instruction offered at the Joint Forces Staff College as Phase II joint professional military education.

"§2157. Annual report to Congress

"The Secretary of Defense shall include in the annual report of the Secretary to Congress under section 113(c) of this title, for the period covered by the report, the following information (which shall be shown for the Department of Defense as a whole and separately for the Army, Navy, Air Force, and Marine Corps and each reserve component):

"(1) The number of officers who successfully completed a joint professional military education phase II course and were not selected for promotion.

"(2) The number of officer students and faculty members assigned by each service to the professional military schools of the other services and to the joint schools.".

(b) Transfer of Other Provisions.—Subsections (b) and (c) of section 663 of title 10,

United States Code, are transferred to section 2152 of such title, as added by subsection (a), and added at the end thereof.

(c) CONFORMING AMENDMENTS.—(1) Section 663 of such title, as amended by subsection (b), is further amended—

(A) by striking subsections (a) and (e); and

(B) by striking "(d) POST-EDUCATION JOINT DUTY ASSIGNMENTS.—(1) The" and inserting "(a) JOINT SPECIALTY OFFICERS.—The";

(C) by striking "(2)(A) The Secretary" and inserting "(b) OTHER OFFICERS.—(1) The Secretary";

(D) by striking "in subparagraph (B)" and inserting "in paragraph (2)";

(E) by striking "(B) The Secretary" and inserting "(2) The Secretary"; and

(F) by striking "in subparagraph (A)" and inserting "in paragraph (1)".

(2)(A) The heading of such section is amended to read as follows:

"§663. Joint duty assignments after completion of joint professional military education".

(B) The item relating to that section in the table of sections at the beginning of chapter 38 of such title is amended to read as follows:

"663. Joint duty assignments after completion of joint professional military education.".

(d) CONFORMING REPEAL.—Section 1123(b) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 103 Stat. 1556) is repealed.

(e) CLERICAL AMENDMENT.—The tables of chapters at the beginning of subtitle A, and at the beginning of part III of subtitle A, of title 10, United States Code, are amended by striking the item relating to chapter 107 and inserting the following:

"106A. Educational Assistance for Persons Enlisting for Active Duty 2141
"107. Professional Military Education .... 2151".

SEC. 533. JOINT REQUIREMENTS FOR PROMOTION TO FLAG OR GENERAL OFFICER GRADE.

(a) EFFECTIVE DATE FOR JOINT SPECIALTY OFFICER REQUIREMENT.—Subsection (a)(2) of section 619a of title 10, United States Code, is amended by striking "September 30, 2007" and inserting "September 30, 2008".

(b) EXCEPTION TO JOINT DUTY REQUIREMENT FOR OFFICERS SERVING IN JOINT DUTY ASSIGNMENT WHEN CONSIDERED FOR PROMOTION.—Subsection (b)(1) of such section is amended by striking "if—" and all that follows through "(B) the officer's" and inserting "if the officer's".

SEC. 534. CLARIFICATION OF TOURS OF DUTY QUALIFYING AS A JOINT DUTY ASSIGNMENT.

(a) JOINT DUTY ASSIGNMENT LIST.—Subsection (b)(2) of section 668 of title 10, United States Code, is amended by striking "a list" in the matter preceding subparagraph (A) and inserting "a joint duty assignment list".

(b) CONSECUTIVE TOURS OF DUTY IN JOINT DUTY ASSIGNMENTS.—Subsection (c) of such section is amended by striking "within the same organization".

(c) EFFECTIVE DATE.—The amendment made by subsection (b) shall not apply in the case of a joint duty assignment completed by an officer before the date of the enactment of this Act, except in the case of an officer who has continued in joint duty assignments, without a break in service in such assignments, between the end of such assignment and the date of the enactment of this Act.

SEC. 535. TWO-YEAR EXTENSION OF TEMPORARY STANDARD FOR PROMOTION POLICY OBJECTIVES FOR JOINT OFFICERS.

Section 662(a)(2) of title 10, United States Code, is amended by striking "December 27, 2004" in subparagraphs (A) and (B) and inserting "December 27, 2006".

SEC. 536. TWO-YEAR EXTENSION OF AUTHORITY TO WAIVE REQUIREMENT THAT RESERVE CHIEFS AND NATIONAL GUARD DIRECTORS HAVE SIGNIFICANT JOINT DUTY EXPERIENCE.

(a) EXTENSION.—Sections 3038(b)(4), 5143(b)(4), 5144(b)(4), 8038(b)(4), and 10506(a)(3)(D) of title 10, United States Code, are amended by striking "December 31, 2004," and inserting "December 31, 2006,".

(b) FUTURE COMPLIANCE.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate a plan for ensuring that all officers selected after December 31, 2006, for recommendation for appointment as a Reserve chief or National Guard director have significant joint duty experience, as required by law, and may be so recommended without requirement for a waiver of such requirement. Such plan shall be developed in coordination with the Chairman of the Joint Chiefs of Staff.

Subtitle E—Military Service Academies

SEC. 541. REVISION TO CONDITIONS ON SERVICE OF OFFICERS AS SERVICE ACADEMY SUPERINTENDENTS.

(a) AUTHORITY TO WAIVE REQUIREMENT THAT OFFICERS RETIRE AFTER SERVICE AS SUPERINTENDENT.—Title 10, United States Code, is amended as follows:

(1) MILITARY ACADEMY.—Section 3921 is amended—

(A) by inserting "(a) MANDATORY RETIREMENT.—" before "Upon the"; and

(B) by adding at the end the following:

"(b) WAIVER AUTHORITY.—The Secretary of Defense may waive the requirement in subsection (a) for good cause. In each case in which such a waiver is granted for an officer, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a written notification of the waiver, with a statement of the reasons supporting the decision that the officer not retire, and a written notification of the intent of the President to nominate the officer for reassignment.".

(2) NAVAL ACADEMY.—Section 6371 is amended—

(A) by inserting "(a) MANDATORY RETIREMENT.—" before "Upon the"; and

(B) by adding at the end the following:

"(b) WAIVER AUTHORITY.—The Secretary of Defense may waive the requirement in subsection (a) for good cause. In each case in which such a waiver is granted for an officer, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a written notification of the waiver, with a statement of the reasons supporting the decision that the officer not retire, and a written notification of the intent of the President to nominate the officer for reassignment.".

(3) AIR FORCE ACADEMY.—Section 8921 is amended—

(A) by inserting "(a) MANDATORY RETIREMENT.—" before "Upon the"; and

(B) by adding at the end the following:

"(b) WAIVER AUTHORITY.—The Secretary of Defense may waive the requirement in subsection (a) for good cause. In each case in which such a waiver is granted for an officer, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives a written notification of the waiver, with a statement of the reasons supporting the decision that the officer not retire, and a written notification of the intent of the President to nominate the officer for reassignment.".

(b) MINIMUM THREE-YEAR TOUR OF DUTY AS SUPERINTENDENT.—Title 10, United States Code, is amended as follows:

(1) MILITARY ACADEMY.—Section 4333a is amended—

(A) by inserting "(a) RETIREMENT.—" before "As a";

(B) by inserting before the period at the end the following: "pursuant to section 3921(a) of this title, unless such retirement is waived under section 3921(b) of this title"; and

(C) by adding at the end the following:

"(b) MINIMUM TOUR OF DUTY.—An officer who is detailed to the position of Superintendent of the Academy shall be so detailed for a period of not less than three years. In any case in which an officer serving as Superintendent is reassigned or retires before having completed three years service as Superintendent, or otherwise leaves that position (other than due to death) without having completed three years service in that position, the Secretary of the Army shall submit to Congress notice that such officer left the position of Superintendent without having completed three years service in that position, together with a statement of the reasons why that officer did not complete three years service in that position.".

(2) NAVAL ACADEMY.—Section 6951a is amended—

(A) by inserting before the period at the end of subsection (b) the following: "pursuant to section 6371(a) of this title, unless such retirement is waived under section 6371(b) of this title"; and

(B) by adding at the end the following new subsection:

"(c) An officer who is detailed to the position of Superintendent shall be so detailed for a period of not less than three years. In any case in which an officer serving as Superintendent is reassigned or retires before having completed three years service as Superintendent, or otherwise leaves that position (other than due to death) without having completed three years service in that position, the Secretary of the Navy shall submit to Congress notice that such officer left the position of Superintendent without having completed three years service in that position, together with a statement of the reasons why that officer did not complete three years service in that position.".

(3) AIR FORCE ACADEMY.—Section 9333a is amended—

(A) by inserting "(a) RETIREMENT.—" before "As a";

(B) by inserting before the period at the end the following: "pursuant to section 8921(a) of this title, unless such retirement is waived under section 8921(b) of this title"; and

(C) by adding at the end the following:

"(b) MINIMUM TOUR OF DUTY.—An officer who is detailed to the position of Superintendent of the Academy shall be so detailed for a period of not less than three years. In any case in which an officer serving as Superintendent is reassigned or retires before having completed three years service as Superintendent, or otherwise leaves that position (other than due to death) without having completed three years service in that position, the Secretary of the Air Force shall submit to Congress notice that such officer left the position of Superintendent without having completed three years service in that position, together with a statement of the reasons why that officer did not complete three years service in that position.".

(c) CLERICAL AMENDMENTS.—Title 10, United States Code, is amended as follows:

(1)(A) The heading for section 3921 is amended to read as follows:

"§3921. Mandatory retirement: Superintendent of the United States Military Academy; waiver authority".

(B) The item relating to that section in the table of sections at the beginning of chapter 367 is amended to read as follows:

"3921. Mandatory retirement: Superintendent of the United States Military Academy; waiver authority.".

(2)(A) The heading for section 6371 is amended to read as follows:

"§6371. Mandatory retirement: Superintendent of the United States Naval Academy; waiver authority".

(B) The item relating to that section in the table of sections at the beginning of chapter 573 is amended to read as follows:

"6371. Mandatory retirement: Superintendent of the United States Naval Academy; waiver authority.".

(3)(A) The heading for section 8921 is amended to read as follows:

"§8921. Mandatory retirement: Superintendent of the United States Air Force Academy; waiver authority".

(B) The item relating to that section in the table of sections at the beginning of chapter 867 is amended to read as follows:

"8921. Mandatory retirement: Superintendent of the United States Air Force Academy; waiver authority.".

SEC. 542. ACADEMIC QUALIFICATIONS OF THE DEAN OF THE FACULTY OF UNITED STATES AIR FORCE ACADEMY.

Section 9335(a) of title 10, United States Code, is amended by inserting before the period at the end of the second sentence the following: ", except that a person may not be appointed or assigned as Dean unless that person holds the highest academic degree in that person's academic field".

SEC. 543. BOARD OF VISITORS OF UNITED STATES AIR FORCE ACADEMY.

Section 9355 of title 10, United States Code, is amended to read as follows:

"§9355. Board of Visitors

"(a) A Board of Visitors to the Academy is constituted annually. The Board consists of the following members:

"(1) Six persons designated by the President.

"(2) The chairman of the Committee on Armed Services of the House of Representatives, or his designee.

"(3) Four persons designated by the Speaker of the House of Representatives, three of whom shall be members of the House of Representatives and the fourth of whom may not be a member of the House of Representatives.

"(4) The chairman of the Committee on Armed Services of the Senate, or his designee.

"(5) Three other members of the Senate designated by the Vice President or the President pro tempore of the Senate, two of whom are members of the Committee on Appropriations of the Senate.

"(b)(1) The persons designated by the President serve for three years each except that any member whose term of office has expired shall continue to serve until his successor is designated. The President shall designate persons each year to succeed the members designated by the President whose terms expire that year.

"(2) At least two of the members designated by the President shall be graduates of the Academy.

"(c)(1) If a member of the Board dies or resigns or is terminated as a member of the board under paragraph (2), a successor shall be designated for the unexpired portion of the term by the official who designated the member.

"(2)(A) If a member of the Board fails to attend two successive Board meetings, except in a case in which an absence is approved in advance, for good cause, by the Board chairman, such failure shall be grounds for termination from membership on the Board. A person designated for membership on the Board shall be provided notice of the provisions of this paragraph at the time of such designation.

"(B) Termination of membership on the Board under subparagraph (A)—

"(i) in the case of a member of the Board who is not a member of Congress, may be made by the Board chairman; and

"(ii) in the case of a member of the Board who is a member of Congress, may be made only by the official who designated the member.

"(C) When a member of the Board is subject to termination from membership on the Board under subparagraph (A), the Board chairman shall notify the official who designated the member. Upon receipt of such a notification with respect to a member of the Board who is a member of Congress, the official who designated the member shall take such action as that official considers appropriate.

"(d) The Board should meet at least four times a year, with at least two of those meetings at the Academy. The Board or its members may make other visits to the Academy in connection with the duties of the Board. Board meetings should last at least one full day. Board members shall have access to the Academy grounds and the cadets, faculty, staff, and other personnel of the Academy for the purposes of the duties of the Board.

"(e)(1) The Board shall inquire into the morale, discipline, and social climate, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy that the Board decides to consider.

"(2) The Secretary of the Air Force and the Superintendent of the Academy shall provide the Board candid and complete disclosure, consistent with applicable laws concerning disclosure of information, with respect to institutional problems.

"(3) The Board shall recommend appropriate action.

"(f) The Board shall prepare a semiannual report containing its views and recommendations pertaining to the Academy, based on its meeting since the last such report and any other considerations it determines relevant. Each such report shall be submitted concurrently to the Secretary of Defense, through the Secretary of the Air Force, and to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

"(g) Upon approval by the Secretary, the Board may call in advisers for consultation.

"(h) While performing duties as a member of the Board, each member of the Board and each adviser shall be reimbursed under Government travel regulations for travel expenses.".

SEC. 544. APPROPRIATED FUNDS FOR SERVICE ACADEMY ATHLETIC AND RECREATIONAL EXTRACURRICULAR PROGRAMS TO BE TREATED IN SAME MANNER AS FOR MILITARY MORALE, WELFARE, AND RECREATION PROGAMS.

(a) UNITED STATES MILITARY ACADEMY.—(1) Chapter 403 of title 10, United States Code, is amended by adding at the end the following new section:

"§4359. Mixed-funded athletic and recreational extracurricular programs: authority to manage appropriated funds in same manner as nonappropriated funds

"(a) AUTHORITY.—In the case of an Academy mixed-funded athletic or recreational extracurricular program, the Secretary of the Army may designate funds appropriated to the Department of the Army and available for that program to be treated as nonappropriated funds and expended for that program in accordance with laws applicable to the expenditure of nonappropriated funds. Appropriated funds so designated shall be considered to be nonappropriated funds for all purposes and shall remain available until expended.

"(b) COVERED PROGRAMS.—In this section, the term 'Academy mixed-funded athletic or recreational extracurricular program' means an athletic or recreational extracurricular program of the Academy to which each of the following applies:

"(1) The program is not considered a morale, welfare, or recreation program.

"(2) The program is supported through appropriated funds.

"(3) The program is supported by a nonappropriated fund instrumentality.

"(4) The program is not a private organization and is not operated by a private organization.".

(2) The table of sections at the beginning of such title is amended by adding at the end the following new item:

"4359. Mixed-funded athletic and recreational extracurricular programs: authority to manage appropriated funds in same manner as nonappropriated funds.".

(b) UNITED STATES NAVAL ACADEMY.—(1) Chapter 603 of title 10, United States Code, is amended by adding at the end the following new section:

"§6978. Mixed-funded athletic and recreational extracurricular programs: authority to manage appropriated funds in same manner as nonappropriated funds

"(a) AUTHORITY.—In the case of a Naval Academy mixed-funded athletic or recreational extracurricular program, the Secretary of the Navy may designate funds appropriated to the Department of the Navy and available for that program to be treated as nonappropriated funds and expended for that program in accordance with laws applicable to the expenditure of nonappropriated funds. Appropriated funds so designated shall be considered to be nonappropriated funds for all purposes and shall remain available until expended.

"(b) COVERED PROGRAMS.—In this section, the term 'Naval Academy mixed-funded athletic or recreational extracurricular program' means an athletic or recreational extracurricular program of the Naval Academy to which each of the following applies:

"(1) The program is not considered a morale, welfare, or recreation program.

"(2) The program is supported through appropriated funds.

"(3) The program is supported by a nonappropriated fund instrumentality.

"(4) The program is not a private organization and is not operated by a private organization.".

(2) The table of sections at the beginning of such title is amended by adding at the end the following new item:

"6978. Mixed-funded athletic and recreational extracurricular programs: authority to manage appropriated funds in same manner as nonappropriated funds.".

(c) UNITED STATES AIR FORCE ACADEMY.—(1) Chapter 903 of title 10, United States Code, is amended by adding at the end the following new section:

"§9359. Mixed-funded athletic and recreational extracurricular programs: authority to manage appropriated funds in same manner as nonappropriated funds

"(a) AUTHORITY.—In the case of an Academy mixed-funded athletic or recreational extracurricular program, the Secretary of the Air Force may designate funds appropriated to the Department of the Air Force and available for that program to be treated as nonappropriated funds and expended for that program in accordance with laws applicable to the expenditure of nonappropriated funds. Appropriated funds so designated shall be considered to be nonappropriated funds for all purposes and shall remain available until expended.

"(b) Covered Programs.—In this section, the term 'Academy mixed-funded athletic or recreational extracurricular program' means an athletic or recreational extracurricular program of the Academy to which each of the following applies:

"(1) The program is not considered a morale, welfare, or recreation program.

"(2) The program is supported through appropriated funds.

"(3) The program is supported by a nonappropriated fund instrumentality.

"(4) The program is not a private organization and is not operated by a private organization.".

(2) The table of sections at the beginning of such title is amended by adding at the end the following new item:

"9359. Mixed-funded athletic and recreational extracurricular programs: authority to manage appropriated funds in same manner as nonappropriated funds.".

(d) Effective Date and Applicability.—Sections 4359, 6978, and 9359 of title 10, United States Code, shall apply only with respect to funds appropriated for fiscal years after fiscal year 2004.

SEC. 545. CODIFICATION OF PROHIBITION ON IMPOSITION OF CERTAIN CHARGES AND FEES AT THE SERVICE ACADEMIES.

(a) United States Military Academy.—(1) Chapter 403 of title 10, United States Code, as amended by 544(a)(1), is further amended by adding at the end the following new section:

"§ 4360. Cadets: charges and fees for attendance; limitation

"(a) Prohibition.—Except as provided in subsection (b), no charge or fee for tuition, room, or board for attendance at the Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.

"(b) Exception.—The prohibition specified in subsection (a) does not apply with respect to any item or service provided to cadets for which a charge or fee is imposed as of October 5, 1994. The Secretary of Defense shall notify Congress of any change made by the Academy in the amount of a charge or fee authorized under this subsection.".

(2) The table of sections at the beginning of such chapter is amended by adding after the item added by section 544(a)(2) the following new item:

"4360. Cadets: charges and fees for attendance; limitation.".

(b) United States Naval Academy.—(1) Chapter 603 of title 10, United States Code, as amended by 544(b)(1), is further amended by adding at the end the following new section:

"§ 6979. Midshipmen: charges and fees for attendance; limitation

"(a) Prohibition.—Except as provided in subsection (b), no charge or fee for tuition, room, or board for attendance at the Naval Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.

"(b) Exception.—The prohibition specified in subsection (a) does not apply with respect to any item or service provided to midshipmen for which a charge or fee is imposed as of October 5, 1994. The Secretary of Defense shall notify Congress of any change made by the Naval Academy in the amount of a charge or fee authorized under this subsection.".

(2) The table of sections at the beginning of such chapter is amended by adding after the item added by section 544(b)(2) the following new item:

"6979. Midshipmen: charges and fees for attendance; limitation.".

(c) United States Air Force Academy.—(1) Chapter 903 title 10, United States Code, as amended by 544(c)(1), is further amended by adding at the end the following new section:

"§ 9360. Cadets: charges and fees for attendance; limitation

"(a) Prohibition.—Except as provided in subsection (b), no charge or fee for tuition, room, or board for attendance at the Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.

"(b) Exception.—The prohibition specified in subsection (a) does not apply with respect to any item or service provided to cadets for which a charge or fee is imposed as of October 5, 1994. The Secretary of Defense shall notify Congress of any change made by the Academy in the amount of a charge or fee authorized under this subsection.".

(2) The table of sections at the beginning of such chapter is amended by adding after the item added by section 544(c)(2) the following new item:

"9360. Cadets: charges and fees for attendance; limitation.".

(d) United States Coast Guard Academy.—(1) Chapter 9 of title 14, United States Code, is amended by adding at the end the following new section:

"§ 197. Cadets: charges and fees for attendance; limitation

"(a) Prohibition.—Except as provided in subsection (b), no charge or fee for tuition, room, or board for attendance at the Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.

"(b) Exception.—The prohibition specified in subsection (a) does not apply with respect to any item or service provided to cadets for which a charge or fee is imposed as of October 5, 1994. The Secretary of Homeland Security shall notify Congress of any change made by the Academy in the amount of a charge or fee authorized under this subsection.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"197. Cadets: charges and fees for attendance; limitation.".

(e) United States Merchant Marine Academy.—Section 1303 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1295b), is amended by adding at the end the following new subsection:

"(j) Limitation on Charges and Fees for Attendance.—

"(1) Except as provided in paragraph (2), no charge or fee for tuition, room, or board for attendance at the Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.

"(2) The prohibition specified in paragraph (1) does not apply with respect to any item or service provided to cadets for which a charge or fee is imposed as of October 5, 1994. The Secretary of Transportation shall notify Congress of any change made by the Academy in the amount of a charge or fee authorized under this paragraph.".

(f) Repeal of Codified Provision.—Section 553 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 10 U.S.C. 4331 note) is repealed.

Subtitle F—Other Education and Training Matters

SEC. 551. COLLEGE FIRST DELAYED ENLISTMENT PROGRAM.

(a) Codification and Extension of Army Program.—(1) Chapter 31 of title 10, United States Code, is amended by inserting after section 510 the following new section:

"§ 511. College First Program

"(a) Program Authority.—The Secretary of each military department may establish a program to increase the number of, and the level of the qualifications of, persons entering the armed forces as enlisted members by encouraging recruits to pursue higher education or vocational or technical training before entry into active service.

"(b) Delayed Entry With Allowance for Higher Education.—The Secretary concerned may—

"(1) exercise the authority under section 513 of this title—

"(A) to accept the enlistment of a person as a Reserve for service in the Selected Reserve or Individual Ready Reserve of a reserve component, notwithstanding the scope of the authority under subsection (a) of that section, in the case of the Army National Guard of the United States or Air National Guard of the United States; and

"(B) to authorize, notwithstanding the period limitation in subsection (b) of that section, a delay of the enlistment of any such person in a regular component under that subsection for the period during which the person is enrolled in, and pursuing a program of education at, an institution of higher education, or a program of vocational or technical training, on a full-time basis that is to be completed within the maximum period of delay determined for that person under subsection (c); and

"(2) subject to paragraph (2) of subsection (d) and except as provided in paragraph (3) of that subsection, pay an allowance to a person accepted for enlistment under paragraph (1)(A) for each month of the period during which that person is enrolled in and pursuing a program described in paragraph (1)(B).

"(c) Maximum Period of Delay.—The period of delay authorized a person under paragraph (1)(B) of subsection (b) may not exceed the 30-month period beginning on the date of the person's enlistment accepted under paragraph (1)(A) of such subsection.

"(d) Allowance.—(1) The monthly allowance paid under subsection (b)(2) shall be equal to the amount of the subsistence allowance provided for certain members of the Senior Reserve Officers' Training Corps with the corresponding number of years of participation under section 209(a) of title 37. The Secretary concerned may supplement that stipend by an amount not to exceed $225 per month.

"(2) An allowance may not be paid to a person under this section for more than 24 months.

"(3) A member of the Selected Reserve of a reserve component may be paid an allowance under this section only for months during which the member performs satisfactorily as a member of a unit of the reserve component that trains as prescribed in section 10147(a)(1) of this title or section 502(a) of title 32. Satisfactory performance shall be determined under regulations prescribed by the Secretary concerned.

"(4) An allowance under this section is in addition to any other pay or allowance to which a member of a reserve component is entitled by reason of participation in the Ready Reserve of that component.

"(e) Recoupment of Allowance.—(1) A person who, after receiving an allowance under this section, fails to complete the total period of service required of that person in connection with delayed entry authorized for the person under section 513 shall repay the United States the amount which bears the same ratio to the total amount of that allowance paid to the person as the unserved part of the total required period of service bears to the total period.

"(2) An obligation to repay the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.

"(3) A discharge of a person in bankruptcy under title 11 that is entered less than five years after the date on which the person was, or was to be, enlisted in the regular Army pursuant to the delayed entry authority under section 513 does not discharge that person from a debt arising under paragraph (1).

"(4) The Secretary concerned may waive, in whole or in part, a debt arising under paragraph (1) in any case for which the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

"(f) SPECIAL PAY AND BONUSES.—Upon enlisting in the regular component of the member's armed force, a person who initially enlisted as a Reserve under this section may, at the discretion of the Secretary concerned, be eligible for all regular special pays, bonuses, education benefits, and loan repayment programs.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 510 the following new item:

"511. College First Program.".

(b) CONTINUATION FOR ARMY OF PRIOR ARMY COLLEGE FIRST PROGRAM.—The Secretary of the Army shall treat the program under section 511 of title 10, United States Code, as added by subsection (a), as a continuation of the program under section 573 of the National Defense Authorization Act for Fiscal Year 2000 (10 U.S.C. 513 note), and for such purpose the Secretary may treat such section 511 as having been enacted on October 1, 2004.

SEC. 552. SENIOR RESERVE OFFICERS' TRAINING CORPS AND RECRUITER ACCESS AT INSTITUTIONS OF HIGHER EDUCATION.

(a) EQUAL TREATMENT OF MILITARY RECRUITERS WITH OTHER RECRUITERS.—Subsection (b)(1) of section 983 of title 10, United States Code, is amended—

(1) by striking "entry to campuses" and inserting "access to campuses"; and

(2) by inserting before the semicolon at the end the following: "in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer".

(b) PROHIBITION OF FUNDING FOR POST-SECONDARY SCHOOLS THAT PREVENT ROTC ACCESS OR MILITARY RECRUITING.—(1) Subsection (d) of such section is amended—

(A) in paragraph (1)—

(i) by striking "limitation established in subsection (a) applies" and inserting "limitations established in subsections (a) and (b) apply";

(ii) in subparagraph (B), by inserting "for any department or agency for which regular appropriations are made" after "made available"; and

(iii) by adding at the end the following new subparagraphs:

"(C) Any funds made available for the Department of Homeland Security.

"(D) Any funds made available for the National Nuclear Security Administration of the Department of Energy.

"(E) Any funds made available for the Department of Transportation.

"(F) Any funds made available for the Central Intelligence Agency."; and

(B) by striking paragraph (2).

(2)(A) Subsection (b) of such section is amended by striking "subsection (d)(2)" and inserting "subsection (d)(1)".

(B) Subsection (e) of such section is amended by inserting ", to the head of each other department and agency the funds of which are subject to the determination," after "Secretary of Education".

(c) CODIFICATION AND EXTENSION OF EXCLUSION OF AMOUNTS TO COVER INDIVIDUAL PAYMENTS.—Subsection (d) of such section, as amended by subsection (b)(1), is further amended—

(1) by striking "The" after "(1)" and inserting "Except as provided in paragraph (2), the"; and

(2) by adding at the end the following new paragraph:

"(2) Any Federal funding specified in paragraph (1) that is provided to an institution of higher education, or to an individual, to be available solely for student financial assistance, related administrative costs, or costs associated with attendance, may be used for the purpose for which the funding is provided.".

(d) CONFORMING AMENDMENTS.—Subsections (a) and (b) of such section are amended by striking "(including a grant of funds to be available for student aid)".

(e) CONFORMING REPEAL OF CODIFIED PROVISION.—Section 8120 of the Department of Defense Appropriations Act, 2000 (Public Law 106-79; 10 U.S.C. 983 note), is repealed.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to funds appropriated for fiscal year 2005 and thereafter.

SEC. 553. TUITION ASSISTANCE FOR OFFICERS.

(a) AUTHORITY TO REDUCE OR WAIVE ACTIVE DUTY SERVICE OBLIGATION.—Subsection (b) of section 2007 of title 10, United States Code, is amended—

(1) by inserting "(1)" after "(b)";

(2) by inserting "or full-time National Guard duty" after "active duty" each place it appears; and

(2) by adding at the end the following new paragraph:

"(2) Notwithstanding paragraph (1), the Secretary of the military department may reduce or waive the active duty service obligation—

"(A) in the case of a commissioned officer who is subject to mandatory separation;

"(B) in the case of a commissioned officer who has completed the period of active duty service in support of a contingency operation; or

"(C) in other exigent circumstances as determined by the Secretary.".

(b) INCREASE IN TUITION ASSISTANCE AUTHORIZED FOR ARMY OFFICERS IN THE SELECTED RESERVE.—Paragraph (1) of section 2007(c) of title 10, United States Code, is amended to read as follows:

"(1) Subject to paragraphs (2) and (3), the Secretary of the Army may pay the charges of an educational institution for the tuition or expenses of an officer in the Selected Reserve of the Army National Guard or the Army Reserve for education or training of such officer.".

(c) EFFECTIVE DATE.—The amendment made by subsection (a) may, at the discretion of the Secretary concerned, be applied to a service obligation incurred by an officer serving on active duty as of the date of the enactment of this Act.

SEC. 554. INCREASED MAXIMUM PERIOD FOR LEAVE OF ABSENCE FOR PURSUIT OF A PROGRAM OF EDUCATION IN A HEALTH CARE PROFESSION.

Section 708(a) of title 10, United States Code, is amended—

(1) by striking "for a period not to exceed two years"; and

(2) by adding at the end the following: "The period of a leave of absence granted under this section may not exceed two years, except that the period may exceed two years but may not exceed three years in the case of an eligible member pursuing a program of education in a health care profession.".

SEC. 555. ELIGIBILITY OF CADETS AND MIDSHIPMEN FOR MEDICAL AND DENTAL CARE AND DISABILITY BENEFITS.

(a) MEDICAL AND DENTAL CARE.—(1) Chapter 55 of title 10, United States Code, is amended by inserting after section 1074a the following new section:

"§ 1074b. Medical and dental care: Academy cadets and midshipmen; members of, and designated applicants for membership in, Senior ROTC

"(a) ELIGIBILITY.—Under joint regulations prescribed by the administering Secretaries, the following persons are, except as provided in subsection (c), entitled to the benefits described in subsection (b):

"(1) A cadet at the United States Military Academy, the United States Air Force Academy, or the Coast Guard Academy, and a midshipman at the United States Naval Academy, who incurs or aggravates an injury, illness, or disease in the line of duty.

"(2) A member of, and a designated applicant for membership in, the Senior Reserve Officers' Training Corps who incurs or aggravates an injury, illness, or disease—

"(A) in the line of duty while performing duties under section 2109 of this title;

"(B) while traveling directly to or from the place at which that member or applicant is to perform or has performed duties pursuant to section 2109 of this title; or

"(C) in the line of duty while remaining overnight immediately before the commencement of duties performed pursuant to section 2109 of this title or, while remaining overnight, between successive periods of performing duties pursuant to section 2109 of this title, at or in the vicinity of the site of the duties performed pursuant to section 2109 of this title, if the site is outside reasonable commuting distance from the residence of the member or designated applicant.

"(b) BENEFITS.—A person eligible for benefits under subsection (a) for an injury, illness, or disease is entitled to—

"(1) the medical and dental care under this chapter that is appropriate for the treatment of the injury, illness, or disease until the injury, illness, disease, or any resulting disability cannot be materially improved by further hospitalization or treatment; and

"(2) meals during hospitalization.

"(c) EXCEPTION FOR GROSS NEGLIGENCE OR MISCONDUCT.—A person is not entitled to benefits under subsection (b) for an injury, illness, or disease, or the aggravation of an injury, illness, or disease that is a result of the gross negligence or the misconduct of that person.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1074a the following new item:

"1074b. Medical and dental care: Academy cadets and midshipmen; members of, and designated applicants for membership in, Senior ROTC.".

(b) ELIGIBILITY OF ACADEMY CADETS AND MIDSHIPMEN FOR DISABILITY RETIRED PAY.—(1) Section 1217 of title 10, United States Code, is amended to read as follows:

"§ 1217. Academy cadets and midshipmen: applicability of chapter

"(a) This chapter applies to cadets at the United States Military Academy, the United States Air Force Academy, and the United States Coast Guard Academy and midshipmen of the United States Naval Academy, but only with respect to physical disabilities incurred after the date of the enactment of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.

"(b) Monthly cadet pay and monthly midshipman pay under section 203(c) of title 37 shall be considered to be basic pay for purposes of this chapter and the computation of retired pay and severance and separation pay to which entitlement is established under this chapter.".

(2) The item related to section 1217 in the table of sections at the beginning of chapter 61 of such title is amended to read as follows:

"1217. Academy cadets and midshipmen: applicability of chapter.".

SEC. 556. TRANSFER OF AUTHORITY TO CONFER DEGREES UPON GRADUATES OF THE COMMUNITY COLLEGE OF THE AIR FORCE.

(a) TRANSFER TO COMMANDER OF AIR UNIVERSITY.—Subsection (a) of section 9317 of title 10, United States Code, is amended—

(1) by striking "may confer—" and inserting "may confer academic degrees as follows:";

(2) by striking "the" in paragraphs (1), (2), and (3) after the paragraph designation and inserting "The";

(3) by striking the semicolon at the end of paragraph (1) and inserting a period;

(4) by striking "; and" at the end of paragraph (2) and inserting a period; and

(5) by adding at the end the following new paragraph:

"(4) An academic degree at the level of associate upon graduates of the Community College of the Air Force who fulfill the requirements for that degree.".

(b) CONFORMING AMENDMENT.—Subsection (c) of section 9315 of such title is amended to read as follows:

"(c) ASSOCIATE DEGREES.—(1) Subject to paragraph (2), an academic degree at the level of associate may be conferred under section 9317 of this title upon any enlisted member who has completed a program prescribed by the Community College of the Air Force.

"(2) No degree may be conferred upon any enlisted member under this section unless the Secretary of Education determines that the standards for the award of academic degrees in agencies of the United States have been met.".

(c) CLERICAL AMENDMENTS.—(1) The heading of section 9317 of such title is amended to read as follows:

"§ 9317. Air University: conferral of degrees".

(2) The item relating to such section in the table of sections at the beginning of chapter 901 of such title is amended to read as follows:

"9317. Air University: conferral of degrees.".

SEC. 557. CHANGE IN TITLES OF LEADERSHIP POSITIONS AT THE NAVAL POSTGRADUATE SCHOOL.

(a) DESIGNATION OF PRESIDENT.—(1) The position of Superintendent of the Naval Postgraduate School is redesignated as President of the Naval Postgraduate School.

(2) Any reference to the Superintendent of the Naval Postgraduate School in any law, rule, regulation, document, record, or other paper of the United States shall be deemed to be a reference to the President of the Naval Postgraduate School.

(3)(A) Section 7042 of title 10, United States Code, is amended by striking "Superintendent" each place it appears in the text and inserting "President".

(B) The heading of such section is amended to read as follows:

"§ 7042. President; assistants".

(4)(A) Section 7044 of such title is amended by striking "Superintendent" and inserting "President of the school".

(B) Sections 7048(a) and 7049(e) of such title are amended by striking "Superintendent" and inserting "President".

(b) DESIGNATION OF PROVOST AND ACADEMIC DEAN.—(1) The position of Academic Dean of the Naval Postgraduate School is redesignated as Provost and Academic Dean of the Naval Postgraduate School.

(2) Any reference to the Academic Dean of the Naval Postgraduate School in any law, rule, regulation, document, record, or other paper of the United States shall be deemed to be a reference to the Provost and Academic Dean of the Naval Postgraduate School.

(3)(A) Subsection (a) of section 7043 of title 10, United States Code, is amended to read as follows:

"(a) There is at the Naval Postgraduate School the civilian position of Provost and Academic Dean. The Provost and Academic Dean shall be appointed, to serve for periods of not more than five years, by the Secretary of the Navy. Before making an appointment to the position of Provost and Academic Dean, the Secretary shall consult with the Board of Advisors for the Naval Postgraduate School and shall consider any recommendation of the leadership and faculty of the Naval Postgraduate School regarding an appointment to that position.".

(B) The heading of such section is amended to read as follows:

"§ 7043. Provost and Academic Dean".

(4) Sections 7043(b) and 7081(a) of title 10, United States Code, are amended by striking "Academic Dean" and inserting "Provost and Academic Dean".

(5)(A) Section 5102(c)(10) of title 5, United States Code, is amended by striking "Academic Dean of the Postgraduate School of the Naval Academy" and inserting "Provost and Academic Dean of the Naval Postgraduate School".

(B) Subsection (b) of such section is amended by striking "Academic Dean" and inserting "Provost and Academic Dean".

(c) CLERICAL AMENDMENTS.—The table of sections at the beginning of chapter 605 of such title 10, United States Code, is amended by striking the items related to sections 7042 and 7043 and inserting the following new items:

"7042. President; assistants.
"7043. Provost and Academic Dean.".

Subtitle G—Assistance to Local Educational Agencies for Defense Dependents Education

SEC. 558. CONTINUATION OF IMPACT AID ASSISTANCE ON BEHALF OF DEPENDENTS OF CERTAIN MEMBERS DESPITE CHANGE IN STATUS OF MEMBER.

(a) SPECIAL RULE.—For purposes of computing the amount of a payment for an eligible local educational agency under subsection (a) of section 8003 of the Elementary and Secondary Education Act (20 U.S.C. 7703) for school year 2004–2005, the Secretary of Education shall continue to count as a child enrolled in a school of such agency under such subsection any child who—

(1) would be counted under paragraph (1)(B) of such subsection to determine the number of children who were in average daily attendance in the school; but

(2) due to the deployment of both parents or legal guardians of the child, the deployment of a parent or legal guardian having sole custody of the child, or the death of a military parent or legal guardian while on active duty (so long as the child resides on Federal property (as defined in section 8013(5) of such Act (20 U.S.C. 7713(5))), is not eligible to be so counted.

(b) TERMINATION.—The special rule provided under subsection (a) applies only so long as the children covered by such subsection remain in average daily attendance at a school in the same local educational agency they attended before their change in eligibility status.

SEC. 559. ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES THAT BENEFIT DEPENDENTS OF MEMBERS OF THE ARMED FORCES AND DEPARTMENT OF DEFENSE CIVILIAN EMPLOYEES.

(a) CONTINUATION OF DEPARTMENT OF DEFENSE PROGRAM FOR FISCAL YEAR 2005.—Of the amount authorized to be appropriated pursuant to section 301(5) for operation and maintenance for Defense-wide activities, $30,000,000 shall be available only for the purpose of providing educational agencies assistance to local educational agencies.

(b) NOTIFICATION.—Not later than June 30, 2005, the Secretary of Defense shall notify each local educational agency that is eligible for educational agencies assistance for fiscal year 2005 of—

(1) that agency's eligibility for the assistance; and

(2) the amount of the assistance for which that agency is eligible.

(c) DISBURSEMENT OF FUNDS.—The Secretary of Defense shall disburse funds made available under subsection (a) not later than 30 days after the date on which notification to the eligible local educational agencies is provided pursuant to subsection (b).

(d) DEFINITIONS.—In this section:

(1) The term "educational agencies assistance" means assistance authorized under section 386(b) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102–484; 20 U.S.C. 7703 note).

(2) The term "local educational agency" has the meaning given that term in section 8013(9) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713(9)).

(3) The term "basic support payment" means a payment authorized under section 8003(b)(1) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(b)(1)).

SEC. 560. IMPACT AID FOR CHILDREN WITH SEVERE DISABILITIES.

Of the amount authorized to be appropriated pursuant to section 301(5) for operation and maintenance for Defense-wide activities, $5,000,000 shall be available for payments under section 363 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–77; 20 U.S.C. 7703a).

Subtitle H—Medals and Decorations and Special Promotions and Appointments

SEC. 561. AWARD OF MEDAL OF HONOR TO INDIVIDUAL INTERRED IN THE TOMB OF THE UNKNOWNS AS REPRESENTATIVE OF CASUALTIES OF A WAR.

(a) AWARD TO INDIVIDUAL AS REPRESENTATIVE.—Chapter 57 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 1134. Medal of honor: award to individual interred in Tomb of the Unknowns as representative of casualties of a war

"The medal of honor awarded posthumously to a deceased member of the armed forces who, as an unidentified casualty of a particular war or other armed conflict, is interred in the Tomb of the Unknowns at Arlington National Cemetery, Virginia, is awarded to the member as the representative of the members of the armed forces who died in such war or other armed conflict and whose remains have not been identified, and not to the individual personally.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"1134. Medal of honor: award to individual interred in Tomb of the Unknowns as representative of casualties of a war.".

SEC. 562. PLAN FOR REVISED CRITERIA AND ELIGIBILITY REQUIREMENTS FOR AWARD OF COMBAT INFANTRYMAN BADGE AND COMBAT MEDICAL BADGE FOR SERVICE IN KOREA AFTER JULY 28, 1953.

(a) REQUIREMENT FOR PLAN.—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Army shall submit to the Committees on Armed Services of the Senate and the House of Representatives a plan for revising the Army's criteria and eligibility requirements for award of the Combat Infantryman Badge and the Combat Medical Badge for service in the Republic of Korea after July 28, 1953, to fulfill the purpose stated in subsection (b).

(b) PURPOSE OF REVISED CRITERIA AND ELIGIBILITY REQUIREMENTS.—*The purpose for revising the criteria and eligibility requirements for award of the Combat Infantryman Badge and the Combat Medical Badge for service in the Republic of Korea after July 28, 1953, is to ensure fairness in the standards applied to Army personnel in the awarding of such badges for Army service in the Republic of Korea in comparison to the standards applied to Army personnel in the awarding of such badges for Army service in other areas of operations.*

SEC. 563. AUTHORITY TO APPOINT BRIGADIER GENERAL CHARLES E. YEAGER, UNITED STATES AIR FORCE (RETIRED), TO THE GRADE OF MAJOR GENERAL ON THE RETIRED LIST.

The President is authorized to appoint, by and with the advice and consent of the Senate, Brigadier General Charles E. Yeager, United States Air Force (retired), to the grade of major general on the retired list of the Air Force. Any such appointment shall not affect the retired pay or other benefits of Charles E. Yeager or any benefits to which any other person is or may become entitled based upon his service.

SEC. 564. POSTHUMOUS COMMISSION OF WILLIAM MITCHELL IN THE GRADE OF MAJOR GENERAL IN THE ARMY.

(a) AUTHORITY.—The President, by and with the advice and consent of the Senate, may issue posthumously a commission as major general, United States Army, in the name of the late William Mitchell, formerly a colonel, United States Army, who resigned his commission on February 1, 1926.

(b) DATE OF COMMISSION.—A commission issued under subsection (a) shall issue as of the date of the death of William Mitchell on February 19, 1936.

(c) PROHIBITION OF BENEFITS.—No person is entitled to receive any bonus, gratuity, pay, allowance, or other financial benefit by reason of the enactment of this section.

Subtitle I—Military Voting

SEC. 566. FEDERAL WRITE-IN BALLOTS FOR ABSENTEE MILITARY VOTERS LOCATED IN THE UNITED STATES.

(a) DUTIES OF PRESIDENTIAL DESIGNEE.—Section 101(b)(3) of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff(b)(3)) is amended by striking "overseas voters" and inserting "absent uniformed services voters and overseas voters".

(b) STATE RESPONSIBILITIES.—Section 102(a)(3) of such Act (42 U.S.C. 1973ff-1(a)(3)) is amended by striking "overseas voters" and inserting "absent uniformed services voters and overseas voters".

(c) FEDERAL WRITE-IN ABSENTEE BALLOT.—Section 103 of such Act (42 U.S.C. 1973ff-2) is amended—

(1) in subsection (a), by striking "overseas voters" and inserting "absent uniformed services voters and overseas voters";

(2) in subsection (b), by striking the second sentence and inserting the following new sentence: "A Federal write-in absentee ballot of an absent uniformed services voter or overseas voter shall not be counted—

"(1) in the case of a ballot submitted by an overseas voter who is not an absent uniformed services voter, if the ballot is submitted from any location in the United States;

"(2) if the application of the absent uniformed services voter or overseas voter for a State absentee ballot is received by the appropriate State election official after the later of—

"(A) the deadline of the State for receipt of such application; or

"(B) the date that is 30 days before the general election; or

"(3) if a State absentee ballot of the absent uniformed services voter or overseas voter is received by the appropriate State election official not later than the deadline for receipt of the State absentee ballot under State law.";

(3) in subsection (c)(1), by striking "overseas voter" and inserting "absent uniformed services voter or overseas voter";

(4) in subsection (d), by striking "overseas voter" both places it appears and inserting "absent uniformed services voter or overseas voter"; and

(5) in subsection (e)(2), by striking "overseas voters" and inserting "absent uniformed services voters and overseas voters".

(d) CONFORMING AMENDMENTS.—(1) The heading of section 103 of such Act is amended to read as follows:

"SEC. 103. FEDERAL WRITE-IN ABSENTEE BALLOT IN GENERAL ELECTIONS FOR FEDERAL OFFICE FOR ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS VOTERS.".

(2) The subsection caption for subsection (d) of such section is amended by striking "OVERSEAS VOTER" and inserting "ABSENT UNIFORMED SERVICES VOTER OR OVERSEAS VOTER".

SEC. 567. REPEAL OF REQUIREMENT TO CONDUCT ELECTRONIC VOTING DEMONSTRATION PROJECT FOR THE FEDERAL ELECTION TO BE HELD IN NOVEMBER 2004.

The first sentence of section 1604(a)(2) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107; 115 Stat. 1277; 42 U.S.C. 1977ff note) is amended by striking "until the regularly scheduled general election for Federal office for November 2004" and inserting the following: "until the first regularly scheduled general election for Federal office which occurs after the Election Assistance Commission notifies the Secretary that the Commission has established electronic absentee voting guidelines and certifies that it will assist the Secretary in carrying out the project".

SEC. 568. REPORTS ON OPERATION OF FEDERAL VOTING ASSISTANCE PROGRAM AND MILITARY POSTAL SYSTEM.

(a) REPORTS ON PROGRAM AND SYSTEM.—(1) Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report on the actions that the Secretary has taken to ensure that the Federal Voting Assistance Program carried out under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.) functions effectively to support absentee voting by members of the Armed Forces deployed outside the United States in support of Operation Iraqi Freedom, Operation Enduring Freedom, and all other contingency operations.

(2) Not later than 60 days after the date of the submission of the report required by paragraph (1), the Secretary of Defense shall submit to Congress a report on the actions that the Secretary has taken to ensure that the military postal system functions effectively to support the morale of members referred to in such paragraph and their ability to vote by absentee ballot.

(b) REPORT ON IMPLEMENTATION OF POSTAL SYSTEM IMPROVEMENTS.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report specifying—

(1) the actions taken to implement the recommendations of the Military Postal Service Agency Task Force, dated 28 August 2000; and

(2) in the case of each recommendation not implemented or not fully implemented as of the date of the submission of the report, the reasons for not implementing or not fully implementing the recommendation, as the case may be.

Subtitle J—Military Justice Matters

SEC. 571. REVIEW ON HOW SEXUAL OFFENSES ARE COVERED BY UNIFORM CODE OF MILITARY JUSTICE.

(a) REVIEW REQUIRED.—The Secretary of Defense shall review the Uniform Code of Military Justice and the Manual for Courts-Martial with the objective of determining what changes are required to improve the ability of the military justice system to address issues relating to sexual assault and to conform the Uniform Code of Military Justice and the Manual for Courts-Martial more closely to other Federal laws and regulations that address such issues.

(b) REPORT.—Not later than March 1, 2005, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the review carried out under subsection (a). The report shall include the recommendations of the Secretary for revisions to the Uniform Code of Military Justice and, for each such revision, the rationale behind that revision.

SEC. 572. WAIVER OF RECOUPMENT OF TIME LOST FOR CONFINEMENT IN CONNECTION WITH A TRIAL.

Section 972 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(c) WAIVER OF RECOUPMENT OF TIME LOST FOR CONFINEMENT.—The Secretary concerned shall waive liability for a period of confinement in connection with a trial under subsection (a)(3), or exclusion of a period of confinement in connection with a trial under subsection (b)(3), in a case upon the occurrence of any of the following events:

"(1) For each charge—

"(A) the charge is dismissed before or during trial in a final disposition of the charge; or

"(B) the trial results in an acquittal of the charge.

"(2) For each charge resulting in a conviction in such trial—

"(A) the conviction is set aside in a final disposition of such charge, other than in a grant of clemency; or

"(B) a judgment of acquittal or a dismissal is entered upon a reversal of the conviction on appeal.".

SEC. 573. PROCESSING OF FORENSIC EVIDENCE COLLECTION KITS AND ACQUISITION OF SUFFICIENT STOCKS OF SUCH KITS.

(a) ELIMINATION OF BACKLOG, ETC.—The Secretary of Defense shall take such steps as may be necessary to ensure that—

(1) the United States Army Criminal Investigation Laboratory has the personnel and resources to effectively process forensic evidence used by the Department of Defense within 60 days of receipt by the laboratory of such evidence;

(2) consistent policies are established among the Armed Forces to reduce the time period between the collection of forensic evidence and the receipt and processing of such evidence by United States Army Criminal Investigation Laboratory; and

(3) there is an adequate supply of forensic evidence collection kits—

(A) for all United States military installations, including the military service academies; and

(B) for units of the Armed Forces deployed in theaters of operation.

(b) TRAINING.—The Secretary shall take such measures as the Secretary considers appropriate to ensure that personnel are appropriately trained—

(1) in the use of forensic evidence collection kits; and

(2) in the prescribed procedures to ensure protection of the chain of custody of such kits once used.

SEC. 574. AUTHORITIES OF THE JUDGE ADVOCATES GENERAL.

(a) DEPARTMENT OF THE ARMY.—Section 3037 of title 10, United States Code, is amended—

(1) in subsection (a), by striking the second and third sentences and inserting "The term of office of the Judge Advocate General and the Assistant Judge Advocate General is four years."; and

(2) by adding at the end the following new subsection:

"(e) No officer or employee of the Department of Defense may interfere with—

"(1) the ability of the Judge Advocate General to give independent legal advice to the Secretary of the Army or the Chief of Staff of the Army; or

"(2) the ability of judge advocates of the Army assigned or attached to, or performing duty with, military units to give independent legal advice to commanders.".

(b) DEPARTMENT OF THE NAVY.—(1) Section 5148 of such title is amended by adding at the end the following new subsection:

"(e) No officer or employee of the Department of Defense may interfere with—

"(1) the ability of the Judge Advocate General to give independent legal advice to the Secretary of the Navy or the Chief of Naval Operations; or

"(2) the ability of judge advocates of the Navy assigned or attached to, or performing duty with, military units to give independent legal advice to commanders.".

(2) Section 5046 of such title is amended by adding at the end the following new subsection:

"(c) No officer or employee of the Department of Defense may interfere with—

"(1) the ability of the Staff Judge Advocate to the Commandant of the Marine Corps to give independent legal advice to the Commandant of the Marine Corps; or

"(2) the ability of judge advocates of the Marine Corps assigned or attached to, or performing duty with, military units to give independent legal advice to commanders.".

(c) DEPARTMENT OF THE AIR FORCE.—Section 8037 of title 10, United States Code, is amended—

(1) in subsection (a), by striking ", but may be" in the second sentence and all that follows in that sentence through "President";

(2) in subsection (c)—

(A) by striking "shall" in the matter preceding paragraph (1);

(B) by striking paragraph (2);

(C) by redesignating paragraph (1) as paragraph (3) and in that paragraph—

(i) inserting "shall" before "receive,"; and

(ii) by striking "; and" at the end and inserting a period; and

(D) by inserting before paragraph (3), as so redesignated, the following new paragraphs:

"(1) is the legal adviser of the Secretary of the Air Force and of all officers and agencies of the Department of the Air Force;

"(2) shall direct the officers of the Air Force designated as judge advocates in the performance of their duties; and";

(3) in subsection (d)(1), by striking ", but may be" in the second sentence and all that follows in that sentence through "President"; and

(4) by adding at the end the following new subsection:

"(f) No officer or employee of the Department of Defense may interfere with—

"(1) the ability of the Judge Advocate General to give independent legal advice to the Secretary of the Air Force or the Chief of Staff of the Air Force; or

"(2) the ability of officers of the Air Force who are designated as judge advocates who are assigned or attached to, or performing duty with, military units to give independent legal advice to commanders.".

(d) INDEPENDENT REVIEW.—(1) The Secretary of Defense shall establish an independent panel of outside experts to conduct a study and review of the relationships between the legal elements of each of the military departments and to prepare a report setting forth the panel's recommendations as to statutory, regulatory, and policy changes that the panel considers to be desirable to improve the effectiveness of those relationships and to enhance the legal support provided to the leadership of each military department and each of the Armed Forces.

(2) The panel shall be composed of seven members, appointed by the Secretary of Defense from among private United States citizens who have substantial expertise in military law and the organization and functioning of the military departments. No more than one member of the panel may have served as the Judge Advocate General of an Armed Force, and no more than one member of the panel may have served as the General Counsel of a military department.

(3) The Secretary of Defense shall designate the chairman of the panel from among the members of the panel other than a member who has served as a Judge Advocate General or as a military department General Counsel.

(4) Members shall be appointed for the life of the panel. Any vacancy in the panel shall be filled in the same manner as the original appointment.

(5) The panel shall meet at the call of the chairman.

(6) All original appointments to the panel shall be made by January 15, 2005. The chairman shall convene the first meeting of the panel not later than February 1, 2005.

(7) In carrying out the study and review required by paragraph (1), the panel shall—

(A) review the history of relationships between the uniformed and civilian legal elements of each of the Armed Forces;

(B) analyze the division of duties and responsibilities between those elements in each of the Armed Forces;

(C) review the situation with respect to civilian attorneys outside the offices of the service general counsels and their relationships to the Judge Advocates General and the General Counsels;

(D) consider whether the ability of judge advocates to give independent, professional legal advice to their service staffs and to commanders at all levels in the field is adequately provided for by policy and law; and

(E) consider whether the Judge Advocates General and General Counsels possess the necessary authority to exercise professional supervision over judge advocates, civilian attorneys, and other legal personnel practicing under their cognizance in the performance of their duties.

(8) Not later than April 15, 2005, the panel shall submit a report on the study and review required by paragraph (1) to the Secretary of Defense. The report shall include the findings and conclusions of the panel as a result of the study and review, together with any recommendations for legislative or administrative action that the panel considers appropriate. The Secretary of Defense shall transmit the report, together with any comments the Secretary wishes to provide, to the Committees on Armed Services of the Senate and House of Representatives not later than May 1, 2005.

(9) In this section, the term "Armed Forces" does not include the Coast Guard.

Subtitle K—Sexual Assault in the Armed Forces

SEC. 576. EXAMINATION OF SEXUAL ASSAULT IN THE ARMED FORCES BY THE DEFENSE TASK FORCE ESTABLISHED TO EXAMINE SEXUAL HARASSMENT AND VIOLENCE AT THE MILITARY SERVICE ACADEMIES.

(a) EXTENSION OF TASK FORCE.—(1) The task force in the Department of Defense established by the Secretary of Defense pursuant to section 526 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1466) to examine matters relating to sexual harassment and violence at the United States Military Academy and United States Naval Academy shall continue in existence for a period of at least 18 months after the date as of which the task force would otherwise be terminated pursuant to subsection (i) of that section.

(2) Upon the completion of the functions of the task force referred to in paragraph (1) pursuant to section 526 of the National Defense Authorization Act for Fiscal Year 2004, the name of the task force shall be changed to the Defense Task Force on Sexual Assault in the Military Services, and the task force shall then carry out the functions specified in this section. The task force shall not begin to carry out the functions specified in this section until it has completed its functions under such section 526.

(3) Before the task force extended under this subsection begins to carry out the functions specified in this section, the Secretary of Defense may, consistent with the qualifications required by section 526(f) of Public Law 108-136, change the composition of the task force as the Secretary considers appropriate for the effective performance of such functions, except that—

(1) any change initiated by the Secretary in the membership of the task force under this paragraph may not take effect before the task force has completed its functions under section 526 of Public Law 108-136; and

(2) the total number of members of the task force may not exceed 14.

(b) EXAMINATION OF MATTERS RELATING TO SEXUAL ASSAULT IN THE ARMED FORCES.—The task force shall conduct an examination of matters relating to sexual assault in cases in which members of the Armed Forces are either victims or commit acts of sexual assault.

(c) RECOMMENDATIONS.—The Task Force shall include in its report under subsection (e) recommendations of ways by which civilian officials within the Department of Defense and leadership within the Armed Forces may more effectively address matters relating to sexual assault. That report shall include an assessment of, and recommendations (including any recommendations for changes in law) for measures to improve, with respect to sexual assault, the following:

(1) Victim care and advocacy programs.

(2) Effective prevention.

(3) Collaboration among military investigative organizations with responsibility or jurisdiction.

(4) Coordination and resource sharing between military and civilian communities, including local support organizations.

(5) Reporting procedures, data collection, tracking of cases, and use of data on sexual assault by senior military and civilian leaders.

(6) Oversight of sexual assault programs, including development of measures of the effectiveness of those programs in responding to victim needs.

(7) Military justice issues.

(8) Progress in developing means to investigate and prosecute assailants who are foreign nationals.

(9) Adequacy of resources supporting sexual assault prevention and victim advocacy programs, particularly for deployed units and personnel.

(10) Training of military and civilian personnel responsible for implementation of sexual assault policies.

(11) Programs and policies, including those related to confidentiality, designed to encourage victims to seek services and report offenses.

(12) Other issues identified by the task force relating to sexual assault.

(d) METHODOLOGY.—In carrying out its examination under subsection (b) and in formulating *its recommendations under subsection (c), the task force shall consider the findings and recommendations of previous reviews and investigations of sexual assault conducted by the Department of Defense and the Armed Forces.*

(e) REPORT.—(1) Not later than one year after the initiation of its examination under subsection (b), the task force shall submit to the Secretary of Defense and the Secretaries of the Army, Navy, and Air Force a report on the activities of the task force and on the activities of the Department of Defense and the Armed Forces to respond to sexual assault.

(2) The report shall include the following:

(A) A description of any barrier to implementation of improvements as a result of previous efforts to address sexual assault.

(B) Other areas of concern not previously addressed in prior reports.

(C) The findings and conclusions of the task force.

(D) Any recommendations for changes to policy and law that the task force considers appropriate.

(3) Within 90 days after receipt of the report under paragraph (1), the Secretary of Defense shall submit the report, together with the Secretary's evaluation of the report, to the Committees on Armed Services of the Senate and House of Representatives.

(f) TERMINATION.—The task force shall terminate 90 days after the date on which the report of the task force is submitted to the Committees on Armed Services of the Senate and House of Representatives pursuant to subsection (e)(3).

SEC. 577. DEPARTMENT OF DEFENSE POLICY AND PROCEDURES ON PREVENTION AND RESPONSE TO SEXUAL ASSAULTS INVOLVING MEMBERS OF THE ARMED FORCES.

(a) COMPREHENSIVE POLICY ON PREVENTION AND RESPONSE TO SEXUAL ASSAULTS.—(1) Not later than January 1, 2005, the Secretary of Defense shall develop a comprehensive policy for the Department of Defense on the prevention of and response to sexual assaults involving members of the Armed Forces.

(2) The policy shall be based on the recommendations of the Department of Defense Task Force on Care for Victims of Sexual Assaults and on such other matters as the Secretary considers appropriate.

(3) Before developing the comprehensive policy required by paragraph (1), the Secretary of Defense shall develop a definition of sexual assault. The definition so developed shall be used in the comprehensive policy under paragraph (1) and otherwise within the Department of Defense and Coast Guard in matters involving members of the Armed Forces. The definition shall be uniform for all the Armed Forces and shall be developed in consultation with the Secretaries of the military departments and the Secretary of Homeland Security with respect to the Coast Guard.

(b) ELEMENTS OF COMPREHENSIVE POLICY.—The comprehensive policy developed under subsection (a) shall, at a minimum, address the following matters:

(1) Prevention measures.

(2) Education and training on prevention and response.

(3) Investigation of complaints by command and law enforcement personnel.

(4) Medical treatment of victims.

(5) Confidential reporting of incidents.

(6) Victim advocacy and intervention.

(7) Oversight by commanders of administrative and disciplinary actions in response to substantiated incidents of sexual assault.

(8) Disposition of victims of sexual assault, including review by appropriate authority of administrative separation actions involving victims of sexual assault.

(9) Disposition of members of the Armed Forces accused of sexual assault.

(10) Liaison and collaboration with civilian agencies on the provision of services to victims of sexual assault.

(11) Uniform collection of data on the incidence of sexual assaults and on disciplinary actions taken in substantiated cases of sexual assault.

(c) REPORT ON IMPROVEMENT OF CAPABILITY TO RESPOND TO SEXUAL ASSAULTS.—Not later than March 1, 2005, the Secretary of Defense shall submit to Congress a proposal for such legislation as the Secretary considers necessary to enhance the capability of the Department of Defense to address matters relating to sexual assaults involving members of the Armed Forces.

(d) APPLICATION OF COMPREHENSIVE POLICY TO MILITARY DEPARTMENTS.—The Secretary of Defense shall ensure that, to the maximum extent practicable, the policy developed under subsection (a) is implemented uniformly by the military departments.

(e) POLICIES AND PROCEDURES OF MILITARY DEPARTMENTS.—(1) Not later than March 1, 2005, the Secretaries of the military departments shall prescribe regulations, or modify current regulations, on the policies and procedures of the military departments on the prevention of and response to sexual assaults involving members of the Armed Forces in order—

(A) to conform such policies and procedures to the policy developed under subsection (a); and

(B) to ensure that such policies and procedures include the elements specified in paragraph (2).

(2) The elements specified in this paragraph are as follows:

(A) A program to promote awareness of the incidence of sexual assaults involving members of the Armed Forces.

(B) A program to provide victim advocacy and intervention for members of the Armed Force concerned who are victims of sexual assault, which program shall make available, at home stations and in deployed locations, trained advocates who are readily available to intervene on behalf of such victims.

(C) Procedures for members of the Armed Force concerned to follow in the case of an incident of sexual assault involving a member of such Armed Force, including—

(i) specification of the person or persons to whom the alleged offense should be reported;

(ii) specification of any other person whom the victim should contact;

(iii) procedures for the preservation of evidence; and

(iv) procedures for confidential reporting and for contacting victim advocates.

(D) Procedures for disciplinary action in cases of sexual assault by members of the Armed Force concerned.

(E) Other sanctions authorized to be imposed in substantiated cases of sexual assault, whether forcible or nonforcible, by members of the Armed Force concerned.

(F) Training on the policies and procedures for all members of the Armed Force concerned, including specific training for members of the Armed Force concerned who process allegations of sexual assault against members of such Armed Force.

(G) Any other matters that the Secretary of Defense considers appropriate.

(f) ANNUAL REPORT ON SEXUAL ASSAULTS.—(1) Not later than January 15 of each year, the Secretary of each military department shall submit to the Secretary of Defense a report on the sexual assaults involving members of the Armed Forces under the jurisdiction of that Secretary during the preceding year. In the case of the Secretary of the Navy, separate reports shall be prepared for the Navy and for the Marine Corps.

(2) Each report on an Armed Force under paragraph (1) shall contain the following:

(A) The number of sexual assaults against members of the Armed Force, and the number of sexual assaults by members of the Armed Force, that were reported to military officials during the year covered by such report, and the number of the cases so reported that were substantiated.

(B) A synopsis of, and the disciplinary action taken in, each substantiated case.

(C) The policies, procedures, and processes implemented by the Secretary concerned during the year covered by such report in response to incidents of sexual assault involving members of the Armed Force concerned.

(D) A plan for the actions that are to be taken in the year following the year covered by such report on the prevention of and response to sexual assault involving members of the Armed Forces concerned.

(3) Each report under paragraph (1) for any year after 2005 shall include an assessment by the Secretary of the military department submitting the report of the implementation during the preceding fiscal year of the policies and procedures of such department on the prevention of and response to sexual assaults involving members of the Armed Forces in order to determine the effectiveness of such policies and procedures during such fiscal year in providing an appropriate response to such sexual assaults.

(4) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives each report submitted to the Secretary under this subsection, together with the comments of the Secretary on the report. The Secretary shall submit each such report not later than March 15 of the year following the year covered by the report.

(5) For the report under this subsection covering 2004, the applicable date under paragraph (1) is April 1, 2005, and the applicable date under paragraph (4) is May 1, 2005.

Subtitle L—Management and Administrative Matters

SEC. 581. THREE-YEAR EXTENSION OF LIMITATION ON REDUCTIONS OF PERSONNEL OF AGENCIES RESPONSIBLE FOR REVIEW AND CORRECTION OF MILITARY RECORDS.

Section 1559(a) of title 10, United States Code, is amended by striking "During fiscal years 2003, 2004, and 2005," and inserting "Before October 1, 2008,".

SEC. 582. STAFFING FOR DEFENSE PRISONER OF WAR/MISSING PERSONNEL OFFICE (DPMO).

(a) REPORT WHEN STAFFING IS BELOW PRESCRIBED LEVEL.—Subparagraph (B) of section 1501(a)(5) of title 10, United States Code, is amended—

(1) by inserting "(i)" after "(B)";

(2) by inserting ", whether temporary or permanent," after "civilian personnel"; and

(3) by adding at the end the following:

"(ii) If for any reason the number of military and civilian personnel assigned or detailed to the office should fall below the required level under clause (i), the Secretary of Defense shall promptly notify the Committees on Armed Services of the Senate and House of Representatives of the number of personnel so assigned or detailed and of the Secretary's plan to restore the staffing level of the office to at least the required minimum number under clause (i). The Secretary shall publish such notice and plan in the Federal Register.".

(b) GAO STUDY.—Not later than 180 days after the date of the enactment of this Act, the Comptroller General shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report providing an assessment of staffing and funding levels for the Defense Prisoner of War/Missing Personnel Office. The report shall include—

(1) a description of changes, over the period from the inception of the office to the time of the submission of the report, in the missions and mission requirements of the office, together with a comparison of personnel and funding requirements of the office over that period with actual manning and funding levels over that period; and

(2) the Comptroller General's assessment of the adequacy of current manning and funding levels for that office in light of current mission requirements.

SEC. 583. PERMANENT ID CARDS FOR RETIREE DEPENDENTS AGE 75 AND OLDER.

(a) IN GENERAL.—(1) Chapter 53 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 1060b. Military ID cards: dependents and survivors of retirees; issuance of permanent ID card after attaining 75 years of age

"(a) PERMANENT ID CARD AFTER AGE 75.—In issuing military ID cards to retiree dependents, the Secretary concerned shall issue a permanent ID card (not subject to renewal) to any such retiree dependent who has attained 75 years of age. Such a permanent ID card shall be issued upon the expiration, after the retiree dependent attains 75 years of age, of any earlier, renewable military ID card or, if earlier, upon the request of such a retiree dependent after attaining age 75.

"(b) DEFINITIONS.—In this section:

"(1) The term 'military ID card' means a card or other form of identification used for purposes of demonstrating eligibility for any benefit from the Department of Defense.

"(2) The term 'retiree dependent' means a person who is a dependent of a retired member of the uniformed services, or a survivor of a deceased retired member of the uniformed services, who is eligible for any benefit from the Department of Defense.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"1060b. Military ID cards: dependents and survivors of retirees; issuance of permanent ID card after attaining 75 years of age.".

(b) EFFECTIVE DATE.—Section 1060b of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2004.

SEC. 584. AUTHORITY TO FURNISH CIVILIAN CLOTHING TO MEMBERS TRAVELING IN CONNECTION WITH MEDICAL EVACUATION.

(a) AUTHORITY.—Section 1047 of title 10, United States Code, is amended—

(1) by inserting "(b) CERTAIN ENLISTED MEMBERS.—" before "The Secretary"; and

(2) by inserting after the section heading the following:

"(a) MEMBERS TRAVELING IN CONNECTION WITH MEDICAL EVACUATION.—The Secretary of the military department concerned may furnish civilian clothing to a member at a cost not to exceed $250, or reimburse a member for the purchase of civilian clothing in an amount not to exceed $250, in the case of a member who—

"(1) is medically evacuated for treatment in a medical facility by reason of an illness or injury incurred or aggravated while on active duty; or

"(2) after being medically evacuated as described in paragraph (1), is in an authorized travel status from a medical facility to another location approved by the Secretary.".

(b) EFFECTIVE DATE.—Subsection (a) of section 1047 of title 10, United States Code, as added by subsection (a), shall take effect as of October 1, 2004, and (subject to subsection (c)) shall apply with respect to clothing furnished, and reimbursement for clothing purchased, on or after that date.

(c) RETROACTIVE APPLICATION.—With respect to the period beginning on October 1, 2004, and ending on the date of the enactment of this Act, the Secretary of Defense shall provide for subsection (a) of section 1047 of title 10, United States Code, as added by subsection (a), to be applied as a continuation of the authority provided in section 1319 of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108–11; 117 Stat. 571), as continued in effect during fiscal year 2004 by section 1103 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108–106; 117 Stat. 1214).

SEC. 585. AUTHORITY TO ACCEPT DONATION OF FREQUENT TRAVELER MILES, CREDITS, AND TICKETS TO FACILITATE REST AND RECUPERATION TRAVEL OF DEPLOYED MEMBERS OF THE ARMED FORCES AND THEIR FAMILIES.

(a) OPERATION HERO MILES.—(1) Chapter 155 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 2613. Acceptance of frequent traveler miles, credits, and tickets; use to facilitate rest and recuperation travel of deployed members and their families

"(a) AUTHORITY TO ACCEPT DONATION OF TRAVEL BENEFITS.—Subject to subsection (c), the Secretary of Defense may accept from any person or government agency the donation of travel benefits for the purposes of use under subsection (d).

"(b) TRAVEL BENEFIT DEFINED.—In the section, the term 'travel benefit' means frequent traveler miles, credits for tickets, or tickets for air or surface transportation issued by an air carrier or a surface carrier, respectively, that serves the public.

"(c) CONDITION ON AUTHORITY TO ACCEPT DONATION.—The Secretary may accept a donation of a travel benefit under this section only if the air or surface carrier that is the source of the benefit consents to such donation. Any such donation shall be under such terms and conditions as the surface carrier may specify, and the travel benefit so donated may be used only in accordance with the rules established by the carrier.

"(d) USE OF DONATED TRAVEL BENEFITS.—A travel benefit accepted under this section may be used only for the purpose of—

"(1) facilitating the travel of a member of the armed forces who—

"(A) is deployed on active duty outside the United States away from the permanent duty station of the member in support of a contingency operation; and

"(B) is granted, during such deployment, rest and recuperative leave, emergency leave, convalescent leave, or another form of leave authorized for the member; or

"(2) in the case of a member of the armed forces recuperating from an injury or illness incurred or aggravated in the line of duty during such a deployment, facilitating the travel of family members of the member in order to be reunited with the member.

"(e) ADMINISTRATION.—(1) The Secretary shall designate a single office in the Department of Defense to carry out this section. That office shall develop rules and procedures to facilitate the acceptance and distribution of travel benefits under this section.

"(2) For the use of travel benefits under subsection (d)(2) by family members of a member of the armed forces, the Secretary may, as the Secretary determines appropriate, limit—

"(A) eligibility to family members who, by reason of affinity, degree of consanguinity, or otherwise, are sufficiently close in relationship to the member of the armed forces to justify the travel assistance;

"(B) the number of family members who may travel; and

"(C) the number of trips that family members may take.

"(3) The Secretary of Defense may, in an exceptional case, authorize a person not described in subsection (d)(2) to use a travel benefit accepted under this subsection to visit a member of the armed forces described in subsection (d)(1) if that person has a notably close relationship with the member. The travel benefit may be used by such person only in accordance with such conditions and restrictions as the Secretary determines appropriate and the rules established by the air carrier or surface carrier that is the source of the travel benefit.

"(f) SERVICES OF NONPROFIT ORGANIZATION.—The Secretary of Defense may enter into an agreement with a nonprofit organization to use the services of the organization—

"(1) to promote the donation of travel benefits under this section, except that amounts appropriated to the Department of Defense may not be expended for this purpose; and

"(2) to assist in administering the collection, distribution, and use of travel benefits under this section.

"(g) FAMILY MEMBER DEFINED.—In this section, the term 'family member' has the meaning given that term in section 411h(b)(1) of title 37.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2613. Acceptance of frequent traveler miles, credits, and tickets; use to facilitate rest and recuperation travel of deployed members and their families.".

(b) TAX TREATMENT OF TRAVEL BENEFITS DONATED FOR OPERATION HERO MILES.—

(1) EXCLUSION FROM GROSS INCOME.—Subsection (b) of section 134 of the Internal Revenue Code of 1986 (defining qualified military benefit) is amended by adding at the end the following new paragraph:

"(5) TRAVEL BENEFITS UNDER OPERATION HERO MILES.—The term 'qualified military benefit' includes a travel benefit provided under section 2613 of title 10, United States Code (as in effect on the date of the enactment of this paragraph).".

(2) CONFORMING AMENDMENTS.—

(A) Section 134(b)(3)(A) of such Code is amended by striking "paragraph (4)" and inserting "paragraphs (4) and (5)".

(B) Section 3121(a)(18) of such Code is amended by striking "or 134(b)(4)" and inserting "134(b)(4), or 134(b)(5)".

(C) Section 3306(b)(13) of such Code is amended by striking "or 134(b)(4)" and inserting "134(b)(4), or 134(b)(5)".

(D) Section 3401(a)(18) of such Code is amended by striking "or 134(b)(4)" and inserting "134(b)(4), or 134(b)(5)".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to travel benefits provided after the date of the enactment of this Act.

SEC. 586. ANNUAL REPORT IDENTIFYING REASONS FOR DISCHARGES FROM THE ARMED FORCES DURING PRECEDING FISCAL YEAR.

(a) REPORT REQUIRED.—Not later than March 1 each year through 2011, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on discharges from the Army, Navy, Air Force, and Marine Corps during the preceding fiscal year.

(b) MATTERS TO BE INCLUDED.—Each such report shall show, in the aggregate and for each of those Armed Forces, the following:

(1) The total number of persons discharged during the preceding fiscal year.

(2) For each separation code, and for each reenlistment eligibility code, used by the Armed Forces, the number of those discharged persons assigned that code.

(3) For the persons assigned each such separation code, classification of discharges by age, by sex, by race, by military rank or grade, by time in service, by unit (shown at the small unit level), by military occupational specialty (or the equivalent), and by reenlistment eligibility code.

(c) USE OF GENERIC SEPARATION CODES.—In preparing the reports under this section, the Secretary shall use a generic interservice separation code that provides similar, and consistent, data across the services.

SEC. 587. STUDY OF BLENDED WING CONCEPT FOR THE AIR FORCE.

(a) STUDY REQUIRED.—Not later than March 1, 2005, the Secretary of the Air Force shall submit to Congress a report on the blended wing concept for the Air Force. The report shall include the Secretary's findings as to the characteristics and locations that are considered favorable for a blended wing, a description of the manner in which current blended wings are functioning, and a statement of the current and future plans of the Air Force to implement the blended wing concept.

(b) SELECTION CRITERIA.—The report shall include a description of the criteria and attributes that the Secretary requires when choosing units to become blended wings.

SEC. 588. SENSE OF CONGRESS REGARDING RETURN OF MEMBERS TO ACTIVE DUTY SERVICE UPON REHABILITATION FROM SERVICE-RELATED INJURIES.

(a) FINDINGS.—Congress makes the following findings:

(1) The generation of young people currently serving on active duty in the Armed Forces, which history will record as being among the greatest, has shown in remarkable numbers an individual resolve to recover from injuries incurred in such service and to return to active service in the Armed Forces.

(2) Since September 11, 2001, numerous brave soldiers, sailors, airmen, and Marines have incurred serious combat injuries, including (as of June 2004) approximately 100 members of the Armed Forces who have been fitted with artificial limbs as a result of devastating injuries sustained in combat overseas.

(3) In cases involving combat-related injuries and other service-related injuries, it is possible, as a result of advances in technology and extensive rehabilitative services, to restore to members of the Armed Forces sustaining such injuries the capability to resume the performance of active military service, including, in a few cases, the capability to participate directly in the performance of combat missions.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) a member of the Armed Forces who on the member's own initiative is highly motivated to return to active duty service following rehabilitation from injuries incurred in service in the Armed Forces should, after appropriate medical review and physical disability evaluation, be given the opportunity to present the member's case for continuing to serve on active duty in varied military capacities;

(2) other than appropriate medical review and physical disability evaluation, there should be no barrier in policy or law to such a member having the option to return to military service on active duty; and

(3) the Secretary of Defense should develop specific protocols that include options for such members to return to active duty service and to be retrained to perform military missions for which they are fully capable.

Subtitle M—Other Matters

SEC. 591. PROTECTION OF ARMED FORCES PERSONNEL FROM RETALIATORY ACTIONS FOR COMMUNICATIONS MADE THROUGH THE CHAIN OF COMMAND.

(a) PROTECTED COMMUNICATIONS.—Section 1034(b)(1)(B) of title 10, United States Code, is amended—

(1) by striking "or" at the end of clause (iii)"; and

(2) by striking clause (iv) and inserting the following:

"(iv) any person or organization in the chain of command; or

"(v) any other person or organization designated pursuant to regulations or other established administrative procedures for such communications.".

(b) EFFECTIVE DATE.—The amendments made by this section apply with respect to any unfavorable personnel action taken or threatened, and any withholding of or threat to withhold a favorable personnel action, on or after the date of the enactment of this Act.

SEC. 592. IMPLEMENTATION PLAN FOR ACCESSION OF PERSONS WITH SPECIALIZED SKILLS.

(a) PLAN FOR ACCESSION OF PERSONS WITH SPECIALIZED SKILLS.—(1) Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a plan for implementation of authority, if subsequently provided by law, to allow for accession into the Armed Forces, on a special or lateral-entry basis, of persons with specialized skills, for duty involving the use of such skills.

(2) The plan under paragraph (1) shall address matters such as projected numbers of enlistments and appointments, initial rank or grade, projected enlistment and re-enlistment bonuses and pays, projected length of service obligation (if any), minimum time of active duty requirements, the potential effect the use of such authority would have on other special or lateral-entry programs (such as those applicable to physicians), and such other matters as the Secretary considers appropriate.

(3) The Secretary shall include with the plan submitted under paragraph (1) a comparison of that plan with an alternative for meeting the specialized skills required by the Armed Forces through the use of civilain contractor personnel.

(b) CIVILIAN SKILLS CORPS FEASIBILITY STUDY.—(1) The Secretary of Defense shall conduct a feasibility study of how to implement a system that would make civilian volunteers, with skills determined by the Secretary to be critical, rapidly available for use in, or in support of, units of the Armed Force on a temporary basis to meet no-notice, or short-notice, operational requirements. In conducting the study, the Secretary shall examine a range of options, including—

(A) a system that would embed on short notice in military units civilian volunteers who were not part of the military, but who possessed highly required skills that were in short supply in the Armed Forces; and

(B) a system to provide for the accession into the active or reserve components of persons with critical skills required by the Armed Forces for whom the Secretary could prescribe varying lengths of service and training requirements.

(2) The Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the results of the study under paragraph (1) not later than March 31, 2005.

SEC. 593. ENHANCED SCREENING METHODS AND PROCESS IMPROVEMENTS FOR RECRUITMENT OF HOME SCHOOLED AND NATIONAL GUARD CHALLENGE PROGRAM GED RECIPIENTS.

(a) ENHANCED SCREEING METHODS AND PROCESS IMPROVEMENTS.—(1) The Secretary of the Army shall carry out an initiative—

(A) to develop screening methods and process improvements for recruiting specified GED recipients so as to achieve attrition patterns, among the GED recipients so recruited, that match attrition patterns for Army recruits who are high school diploma graduates; and

(B) subject to subsection (b), to implement such screening methods and process improvements on a test basis.

(2) For purposes of this section, the term "specified GED recipients" means persons who receive a General Educational Development (GED) certificate as a result of home schooling or the completion of a program under the National Guard Challenge program.

(b) SECRETARY OF DEFENSE REVIEW.—Before the screening methods and process improvements developed under subsection (a)(1) are put into effect under subsection (a)(2), the Secretary of Defense shall review the proposed screening methods and process improvements. Based on such review, the Secretary of Defense either shall approve the use of such screening methods and process improvements for testing (with such modifications as the Secretary may direct) or shall disapprove the use of such methods and process improvements on a test basis.

(c) SECRETARY OF DEFENSE DECISION.—If the Secretary of Defense determines under subsection (b) that the screening methods and process improvements developed under subsection (a)(1) should be implemented on a test basis, then upon completion of the test period, the Secretary of Defense shall, after reviewing the results of the test program, determine whether the new screening methods and process improvements developed by the Army should be extended throughout the Department for recruit candidates identified by the new procedures to be considered tier 1 recruits.

(d) REPORTS.—(1) If the Secretary of Defense determines under subsection (b) that the screening methods and process improvements developed under subsection (a)(1) should not be implemented on a test basis, the Secretary of Defense shall, not later than 90 days thereafter, notify the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives of such determination, together with the reasons of the Secretary for such determination.

(2) If the Secretary of Defense determines under subsection (b) that the screening methods and process improvements developed under subsection (a)(1) should be implemented on a test basis, the Secretary of the Army shall submit to the committees specified in paragraph (1) a report on the results of the testing. The report shall be submitted not later than March 31, 2009, except that if the Secretary of Defense directs an earlier termination of the testing initiative, the Secretary of the Army shall submit the report under this paragraph not later than 180 days after such termination. Such report shall include the determination of the Secretary of Defense under subsection (c). If that determination is that the methods and processes tested should not be extended to the other services, the report shall include the Secretary's rationale for not recommending such extension.

SEC. 594. REDESIGNATION OF NATIONAL GUARD CHALLENGE PROGRAM AS NATIONAL GUARD YOUTH CHALLENGE PROGRAM.

(a) REDESIGNATION.—Section 509 of title 32, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "National Guard Challenge Program" the first place it appears and inserting "National Guard Youth Challenge Program"; and

(B) by striking "National Guard Challenge Program" the second place it appears and inserting "Program";

(2) by striking "National Guard Challenge Program" each place it appears in subsections (b) through (k) and subsection (m) and inserting "Program";

(3) by striking "program" each place it appears in subsections (b), (g), (i)(2)(A), (j), (k), and (m) and inserting "Program"; and

(4) in subsection (l), by adding at the end the following new paragraph:

"(3) The term 'Program' means the National Guard Youth Challenge Program carried out pursuant to this section.".

(b) CLERICAL AMENDMENTS.—(1) The heading of such section is amended to read as follows:

"§509. National Guard Youth Challenge Program of opportunities for civilian youth".

(2) The table of sections at the beginning of chapter 5 of such title is amended by striking the item relating to section 509 and inserting the following new item:

"509. National Guard Youth Challenge Program of opportunities for civilian youth.".

SEC. 595. REPORTS ON CERTAIN MILESTONES RELATING TO DEPARTMENT OF DEFENSE TRANSFORMATION.

(a) MILITARY-TO-CIVILIAN CONVERSIONS.—Not later than January 31, 2005, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report providing information as to the number of positions in the Department of Defense that were converted during fiscal year 2004 from performance by military personnel to performance by civilian personnel of the Department of Defense or contractor personnel. The report shall include the following:

(1) A description of the skill sets of the military positions converted.

(2) Specification of the total cost of the conversions and how that cost is being met.

(3) The number of positions in the Department of Defense projected for such conversion during the period from March 1, 2005, through January 31, 2006.

(b) MILITARY-TO-MILITARY CONVERSIONS.—Not later than March 31 of each of 2005, 2006, and 2007, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on—

(1) the number of units, by type, converted from one primary military capability to another during the previous fiscal year and, for each such unit, what the new unit designation and new military capabilities are;

(2) the number of military personnel, by military skill, who have converted during the previous fiscal year from one primary military skill to another, with a listing of the military skills to which the individuals converted;

(3) a description of the military unit and military personnel conversions planned for the upcoming fiscal year; and

(4) a statement of whether the overall unit and military personnel conversions planned for the previous fiscal year were met, and for each such planned conversion, the reasons why the planned conversion was or was not met.

(c) ARMY TRANSFORMATION TO BRIGADE STRUCTURE.—The Secretary of the Army shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives an annual report on the status of the internal transformation of the Army from a division-orientated force to a brigade-orientated force. Such report shall be submitted not later than March 31 of each year, except that the requirement to submit such annual report shall terminate when the Secretary of the Army submits to those committees the Secretary's certification that the transformation of the Army to a brigade-orientated force has been completed. Upon the submission of such certification, the Secretary shall publish in the Federal Register notice of that certification and that the statutory requirement to submit an annual report under this subsection has terminated.

SEC. 596. REPORT ON ISSUES RELATING TO REMOVAL OF REMAINS OF PERSONS INTERRED IN UNITED STATES MILITARY CEMETERIES OVERSEAS.

(a) STUDY.—The Secretary of the Army shall examine the issues relating to requests for disinterment of remains of persons buried in United States overseas military cemeteries. The examination shall include the following:

(1) A review of the historical facts involved in establishing the United States overseas military cemeteries and in determining the criteria for interment in those cemeteries.

(2) An examination of the processes for ensuring that the initial disposition decision with respect to the remains of any decedent was carried out, together with a review and explanation of the existing policy and procedures regarding request for disinterment and any exceptions that have been made.

(3) An analysis of the potential reasons for justifying disinterment of remains from those cemeteries, including error, misunderstanding, and change of decision by the original responsible next of kin or other family member or group of family members.

(4) An analysis of the potential impact on the operation of United States overseas military cemeteries of permitting disinterment of remains from those cemeteries

(b) REPORT.—Not later than September 30, 2005, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the results of the examination under subsection (a). The report shall include the following:

(1) The matters specified in paragraphs (1), (2), (3), and (4) of subsection (a).

(2) A description of the changes to policy criteria and procedures that would be necessary to support a system for requesting and authorizing disinterment of such remains.

(3) The recommendations of the Secretary of the Army and the American Battle Monuments Commission for changing current policy and procedures with respect to such disinterments.

(c) CONSULTATION WITH ABMC.—The Secretary shall carry out the examination under subsection (a) and prepare the report under subsection (b) in consultation with the American Battle Monuments Commission.

(d) ABMC ASSISTANCE.—The American Battle Monuments Commission shall provide the Secretary of the Army such assistance as the Secretary may require in carrying out this section.

(e) DEFINITIONS.—For purposes of this section:

(1) The term "United States overseas military cemetery" means a cemetery located in a foreign country that is administered by the Secretary of a military department or the American Battle Monuments Commission.

(2) The term "initial disposition decision", with respect to the remains of a person who died outside the United States and was interred in a United States overseas military cemetery, means a decision by a family member (or other designated person) as to the disposition (in accordance with laws and regulations in effect at the time) of the remains of the deceased person, such decision being to have the remains interred in a United States overseas military cemetery (rather than to have those remains transported to the United States for interment or other disposition in the United States).

SEC. 597. COMPTROLLER GENERAL REPORTS ON CLOSURE OF DEPARTMENT OF DEFENSE DEPENDENT ELEMENTARY AND SECONDARY SCHOOLS AND COMMISSARY STORES.

(a) REPORT ON DEFENSE DEPENDENT SCHOOLS.—The Comptroller General shall prepare a report containing—

(1) an assessment by the Comptroller General of the policy of the Department of Defense, and the criteria utilized by the Department, regarding the closure of Department of Defense dependent elementary and secondary schools, including whether or not such policy and criteria are consistent with Department policies and procedures on the preservation of the quality of life of members of the Armed Forces and their dependents; and

(2) an assessment by the Comptroller General of any current or on-going studies or assessments of the Department with respect to any of the schools.

(b) REPORT ON COMMISSARY STORES.—The Comptroller General shall prepare a report containing—

(1) an assessment by the Comptroller General of the policy of the Department of Defense, and the criteria utilized by the Department, regarding the closure of commissary stores, including whether or not such policy and criteria are consistent with Department policies and procedures on the preservation of the quality of life of members of the Armed Forces and their dependents; and

(2) an assessment by the Comptroller General of any current or on-going studies or assessments of the Department with respect to any of the commissary stores.

(c) SUBMISSION OF REPORTS.—The Comptroller General shall submit the reports required by this section to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than 180 days after the date of the enactment of this Act.

SEC. 598. COMPTROLLER GENERAL REPORT ON TRANSITION ASSISTANCE PROGRAMS FOR MEMBERS SEPARATING FROM THE ARMED FORCES.

(a) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report evaluating the programs of the Department of Defense and other Federal agencies under which transition assistance is provided to members of the Armed Forces who are separating from active duty service.

(b) ELEMENTS OF REPORT.—(1) With regard to the transition assistance programs under section 1142 and 1144 of title 10, United States Code, the report required by subsection (a) shall include—

(A) an analysis of the extent to which such programs are meeting the current needs of members of the Armed Forces as they are discharged or released from active duty;

(B) a discussion of the original purposes of the programs;

(C) a discussion of how the programs are currently being administered in relationship to those purposes;

(D) an assessment of whether the programs are adequate to meet the current needs of members of the reserve components; and

(E) such recommendations as the Comptroller General considers appropriate for improving such programs, including any recommendation regarding whether participation by members of the Armed Forces in such programs should be required.

(2) The report shall include an analysis of any differences among the Armed Forces and among the commands of military installations of the

Armed Forces regarding how transition assistance is being provided under the transition assistance programs and such recommendations as the Comptroller General considers appropriate—

(A) to achieve uniformity in the provision of assistance under such programs; and

(B) to ensure that the transition assistance is provided under such programs to members of the Armed Forces who are being separated at medical facilities of the uniformed services or Department of Veterans Affairs medical centers and to Armed Forces personnel on a temporary disability retired list under section 1202 or 1205 of title 10, United States Code.

(3) The report shall include—

(A) an analysis of the relationship between the Department of Defense transition assistance programs and the transition assistance programs of the Department of Veterans Affairs and the Department of Labor, including the relationship between the benefits delivery at discharge program carried out jointly by the Department of Defense and the Department of Veterans Affairs and the other transition assistance programs; and

(B) an assessment of the quality and thoroughness of information being provided during preseparation briefings under such transition assistance programs regarding the full range of benefits available to qualified members of the Armed Forces under programs operated by the Department of Veterans Affairs and the requirements for qualifying for those benefits.

(4) The report shall specify the rates of participation of members of the Armed Forces in the transition assistance programs and include such recommendations as the Comptroller General considers appropriate to increase such participation rates, including any recommendations regarding revisions of such programs that could result in increased participation by members.

(5) The report shall include—

(A) an assessment of whether the transition assistance information provided to members of the Armed Forces omits any transition information that would be beneficial to members;

(B) an assessment of the extent to which information is provided under the transition assistance programs regarding participation in Federal procurement opportunities available at prime contract and subcontract levels to veterans with service-connected disabilities and other veterans; and

(C) such recommendations as the Comptroller General considers appropriate regarding additional information that should be provided and any other recommendations that the Comptroller General considers appropriate for enhancing the provision of counseling on such procurement opportunities.

(6) The report shall include—

(A) an assessment of the extent to which representatives of military service organizations and veterans' service organizations are afforded opportunities to participate, and do participate, in preseparation briefings under transition assistance programs;

(B) an assessment of the effectiveness and usefulness of the role that military service organizations and veterans' service organizations are playing in the preseparation briefing process; and

(C) such recommendations as the Comptroller General considers appropriate regarding whether such organizations should be given a more formal role in the preseparation briefing process and how representatives of such organizations could better be used to disseminate transition assistance information and provide preseparation counseling to members of the Armed Forces, including members who are being released from active duty for continuation of service in a reserve component.

(7) The report shall include an analysis of the use of post-deployment and predischarge health screenings and such recommendations as the Comptroller General considers appropriate regarding whether and how to integrate the health screening process and the transition assistance programs into a single, coordinated preseparation program for members of the Armed Forces being discharged or released from active duty.

(8) The report shall include an analysis of the processes of the Armed Forces for conducting physical examinations of members of the Armed Forces in connection with discharge and release from active duty, including—

(A) how post-deployment questionnaires are used;

(B) the extent to which members of the Armed Forces waive the physical examinations; and

(C) how, and the extent to which, members of the Armed Forces are referred for follow-up health care.

(9) The report shall include a discussion of the current process by which mental health screenings are conducted, follow-up mental health care is provided for, and services are provided in cases of post-traumatic stress disorder and related conditions for members of the Armed Forces in connection with discharge and release from active duty, together with—

(A) for each of the Armed Forces, the programs that are in place to identify and treat cases of post-traumatic stress disorder and related conditions; and

(B) for persons returning from deployments in connection with Operation Enduring Freedom and Operation Iraqi Freedom—

(i) the number of persons treated as a result of such screenings; and

(ii) the types of interventions.

(c) ACQUISITION OF SUPPORTING INFORMATION.—In preparing the report under subsection (a), the Comptroller General shall seek to obtain views from the following persons:

(1) The Secretary of Defense and the Secretaries of the military departments.

(2) The Secretary of Veterans Affairs.

(3) The Secretary of Labor.

(4) Members of the Armed Forces who have received transition assistance under the programs covered by the report and members of the Armed Forces who have declined to accept transition assistance offered under such programs.

(5) Representatives of military service organizations and representatives of veterans' service organizations.

(6) Persons having expertise in health care (including mental health care) provided under the Defense Health Program, including Department of Defense personnel, Department of Veterans Affairs personnel, and persons in the private sector.

SEC. 599. STUDY ON COORDINATION OF JOB TRAINING STANDARDS WITH CERTIFICATION STANDARDS FOR MILITARY OCCUPATIONAL SPECIALTIES.

(a) STUDY REQUIRED.—The Secretary of Defense and the Secretary of Labor shall jointly carry out a study to determine ways to coordinate the standards applied by the Armed Forces for the training and certification of members of the Armed Forces in military occupational specialties with the standards that are applied to corresponding civilian occupations by occupational licensing or certification agencies of governments and occupational certification agencies in the private sector.

(b) SUBMISSION OF REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Labor shall submit to Congress a report containing the results of the study under subsection (a).

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

Subtitle A—Pay and Allowances

Sec. 601. Increase in basic pay for fiscal year 2005.
Sec. 602. Relationship between eligibility to receive supplemental subsistence allowance and eligibility to receive imminent danger pay, family separation allowance, and certain Federal assistance.
Sec. 603. Authority to provide family separation basic allowance for housing.
Sec. 604. Geographic basis for housing allowance during short-assignment permanent changes of station for education or training.
Sec. 605. Immediate lump-sum reimbursement for unusual nonrecurring expenses incurred for duty outside the continental United States.
Sec. 606. Authority for certain members deployed in combat zones to receive limited advances on future basic pay.
Sec. 607. Repeal of requirement that members entitled to basic allowance for subsistence pay subsistence charges while hospitalized.

Subtitle B—Bonuses and Special and Incentive Pays

Sec. 611. One-year extension of certain bonus and special pay authorities for reserve forces.
Sec. 612. One-year extension of certain bonus and special pay authorities for certain health care professionals.
Sec. 613. One-year extension of special pay and bonus authorities for nuclear officers.
Sec. 614. One-year extension of other bonus and special pay authorities.
Sec. 615. Authority to provide hazardous duty incentive pay to military firefighters.
Sec. 616. Reduced service obligation for nurses receiving nurse accession bonus.
Sec. 617. Assignment incentive pay.
Sec. 618. Modification of active and reserve component reenlistment and enlistment bonus authorities.
Sec. 619. Bonus for certain initial service of officers in the Selected Reserve.
Sec. 620. Recision of authority to provide foreign language proficiency pay.
Sec. 621. Eligibility of enlisted members to qualify for critical skills retention bonus while serving on indefinite reenlistment.
Sec. 622. Eligibility of reserve component members for incentive bonus for conversion to military occupational specialty to ease personnel shortage.
Sec. 623. Permanent increase in authorized amounts for imminent danger special pay and family separation allowance.

Subtitle C—Travel and Transportation Allowances

Sec. 631. Travel and transportation allowances for family members to attend burial ceremony or memorial service of member who dies on duty.
Sec. 632. Transportation of family members incident to serious illness or injury of members of the uniformed services.
Sec. 633. Reimbursement for certain lodging costs incurred in connection with dependent student travel.

Subtitle D—Retired Pay and Survivor Benefits

Sec. 641. Computation of high-36 month average for reserve component members retired for disability while on active duty or dying while on active duty.

Sec. 642. Repeal of phase-in of concurrent receipt of retired pay and veterans' disability compensation for military retirees with service-connected disabilities rated as 100 percent.
Sec. 643. Death benefits enhancement.
Sec. 644. Phased elimination of two-tier annuity computation for surviving spouses under Survivor Benefit Plan.
Sec. 645. One-year open enrollment period for Survivor Benefit Plan commencing October 1, 2005.

Subtitle E—Commissary and Nonappropriated Fund Instrumentality Benefits

Sec. 651. Consolidation and reorganization of legislative provisions regarding defense commissary system and exchanges and other morale, welfare, and recreation activities.
Sec. 652. Consistent State treatment of Department of Defense Nonappropriated Fund Health Benefits Program.

Subtitle F—Other Matters

Sec. 661. Eligibility of members for reimbursement of expenses incurred for adoption placements made by foreign governments.
Sec. 662. Clarification of education loans qualifying for education loan repayment program for reserve component health professions officers.
Sec. 663. Receipt of pay by reservists from civilian employers while on active duty in connection with a contingency operation.
Sec. 664. Relief for mobilized reservists from certain Federal agricultural loan obligations.
Sec. 665. Survey and analysis of effect of extended and frequent mobilization of reservists for active duty service on reservist income.
Sec. 666. Study of disability benefits for veterans of service in the Armed Forces with service-connected disabilities.

Subtitle A—Pay and Allowances

SEC. 601. INCREASE IN BASIC PAY FOR FISCAL YEAR 2005.

(a) WAIVER OF SECTION 1009 ADJUSTMENT.—The adjustment to become effective during fiscal year 2005 required by section 1009 of title 37, United States Code, in the rates of monthly basic pay authorized members of the uniformed services shall not be made.

(b) INCREASE IN BASIC PAY.—Effective on January 1, 2005, the rates of monthly basic pay for members of the uniformed services are increased by 3.5 percent.

SEC. 602. RELATIONSHIP BETWEEN ELIGIBILITY TO RECEIVE SUPPLEMENTAL SUBSISTENCE ALLOWANCE AND ELIGIBILITY TO RECEIVE IMMINENT DANGER PAY, FAMILY SEPARATION ALLOWANCE, AND CERTAIN FEDERAL ASSISTANCE.

(a) ENTITLEMENT NOT AFFECTED BY RECEIPT OF IMMINENT DANGER PAY AND FAMILY SEPARATION ALLOWANCE.—Subsection (b) of section 402a of title 37, United States Code, is amended—

(1) in paragraph (2), by striking "the Secretary—" and all that follows through "shall take into consideration" and inserting "the Secretary concerned shall take into consideration"; and

(2) by adding at the end the following new paragraph:

"(3) In determining whether a member meets the eligibility criteria under paragraph (1), the Secretary concerned shall not take into consideration—

"(A) the amount of the supplemental subsistence allowance that is payable under this section;

"(B) the amount of any special pay that is payable to the member under section 310 of this section, relating to duty subject to hostile fire or imminent danger; or

"(C) the amount of any family separation allowance that is payable to the member under section 427 of this title.".

(b) RELATION TO OTHER FEDERAL ASSISTANCE.—Such section is further amended—

(1) by redesignating subsections (g) and (h) as subsections (h) and (i), respectively; and

(2) by inserting after subsection (f) the following new subsection (g):

"(g) ELIGIBILITY FOR OTHER FEDERAL ASSISTANCE.—(1) A child or spouse of a member of the armed forces receiving the supplemental subsistence allowance under this section who, except on account of the receipt of such allowance, would be eligible to receive a benefit described in paragraph (2) shall be considered to be eligible for that benefit notwithstanding the receipt of such allowance.

"(2) The benefits referred to in paragraph (1) are as follows:

"(A) Assistance provided under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.).

"(B) Assistance provided under the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.).

"(C) A service provided under the Head Start Act (42 U.S.C. 9831 et seq.).

"(D) Assistance under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.).

"(3) A household that includes a member of the armed forces receiving the supplemental subsistence allowance under this section and that, except on account of the receipt of such allowance, would be eligible to receive a benefit under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.) shall be considered to be eligible for that benefit notwithstanding the receipt of such allowance.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply in determining, on or after the date of the enactment of this Act, the eligibility of a person for a supplemental subsistence allowance under section 402a of title 37, United States Code, or for Federal assistance under a law specified in subsection (g) of such section, as so amended.

SEC. 603. AUTHORITY TO PROVIDE FAMILY SEPARATION BASIC ALLOWANCE FOR HOUSING.

Section 403(d) of title 37, United States Code, is amended—

(1) in paragraph (1), by striking "is entitled to" and inserting "may be paid"; and

(2) in paragraph (4), by striking the first sentence and inserting the following new sentence: "A family separation basic allowance for housing paid to a member under this subsection is in addition to any other allowance or per diem that the member receives under this title.".

SEC. 604. GEOGRAPHIC BASIS FOR HOUSING ALLOWANCE DURING SHORT-ASSIGNMENT PERMANENT CHANGES OF STATION FOR EDUCATION OR TRAINING.

Section 403(d) of title 37, United States Code, as amended by section 603, is further amended—

(1) in the subsection heading, by striking "ARE UNABLE TO" and inserting "DO NOT"; and

(2) in paragraph (3), by adding at the end the following new subparagraph:

"(C) If the member is reassigned for a permanent change of station or permanent change of assignment from a duty station in the United States to another duty station in the United States for a period of not more than one year for the purpose of participating in professional military education or training classes, the amount of the basic allowance for housing for the member may be based on whichever of the following areas the Secretary concerned determines will provide the more equitable basis for the allowance:

"(i) The area of the duty station to which the member is reassigned.

"(ii) The area in which the dependents reside, but only if the dependents reside in that area when the member departs for the duty station to which the member is reassigned and only for the period during which the dependents reside in that area.

"(iii) The area of the former duty station of the member, if different than the area in which the dependents reside.".

SEC. 605. IMMEDIATE LUMP-SUM REIMBURSEMENT FOR UNUSUAL NONRECURRING EXPENSES INCURRED FOR DUTY OUTSIDE THE CONTINENTAL UNITED STATES.

(a) ELIGIBILITY FOR REIMBURSEMENT.—Section 405 of title 37, United States Code, is amended by adding at the end the following new subsection:

"(d) NONRECURRING EXPENSES.—(1) The Secretary concerned may reimburse a member of the uniformed services on duty as described in subsection (a) for a nonrecurring expense incurred by the member incident to such duty that—

"(A) is directly related to the conditions or location of the duty;

"(B) is of a nature or a magnitude not normally incurred by members of the uniformed services on duty inside the continental United States; and

"(C) is not included in the per diem determined under subsection (b) as payable to the member under subsection (a).

"(2) Any reimbursement provided to a member under paragraph (1) is in addition to a per diem payable to that member under subsection (a).".

(b) USE OF DEFINED TERM CONTINENTAL UNITED STATES.—(1) Subsection (a) of such section is amended by striking "outside of the United States or in Hawaii or Alaska" and inserting "outside of the continental United States".

(2) The heading of such section is amended to read as follows:

"§ 405. Travel and transportation allowances: per diem while on duty outside the continental United States".

(3) The table of sections at the beginning of chapter 7 of such title is amended by striking the item relating to section 405 and inserting the following new item:

"405. Travel and transportation allowances: per diem while on duty outside the continental United States.".

SEC. 606. AUTHORITY FOR CERTAIN MEMBERS DEPLOYED IN COMBAT ZONES TO RECEIVE LIMITED ADVANCES ON FUTURE BASIC PAY.

(a) ADVANCEMENT OF BASIC PAY.—Chapter 3 of title 37, United States Code, is amended by adding at the end the following new section:

"§ 212. Advancement of basic pay: members deployed in combat zone for more than one year

"(a) ELIGIBILITY; AMOUNT ADVANCED.—If a member of the armed forces is assigned to duty in an area for which special pay under section 310 of this title is available and the assignment is pursuant to orders specifying an assignment of one year or more (or the assignment is extended beyond one year), the member may request, during the period of the assignment, the advanced payment of not more than three months of the basic pay of the member.

"(b) CONSIDERATION OF REQUEST.—A request by a member described in subsection (a) for the advanced payment of a single month of basic *pay shall be granted. The Secretary concerned may grant a member's request for a second or third month of advanced basic pay during the assignment upon a showing of financial hardship.*

"(c) Recoupment of Advanced Pay.—The Secretary concerned shall recoup an advance made on the basic pay of a member under this section in equal installments over a one-year period beginning as provided in subsection (d). If the member is serving on active duty for any month during the recoupment period, the amount of the installment for the month shall be deducted from the basic pay of the member for that month. The estate of a deceased member shall not be required to repay any portion of the advanced pay paid to the member and not repaid before the death of the member.

"(d) Commencement of Recoupment.—The recoupment period for an advancement of basic pay to a member under this section shall commence on the first day of the first month beginning on or after the date on which the member receives the advanced pay.".

(b) Clerical Amendment.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"212. Advancement of basic pay: members deployed in combat zone for more than one year.".

SEC. 607. REPEAL OF REQUIREMENT THAT MEMBERS ENTITLED TO BASIC ALLOWANCE FOR SUBSISTENCE PAY SUBSISTENCE CHARGES WHILE HOSPITALIZED.

(a) Repeal.—(1) Section 1075 of title 10, United States Code, is repealed.

(2) The table of sections at the beginning of chapter 55 of such title is amended by striking the item relating to section 1075.

(b) Conforming Amendment Regarding Military-Civilian Health Services Partnership Program.—Section 1096(c) of such title is amended—

(1) by inserting "who is a dependent" after "covered beneficiary"; and

(2) by striking "shall pay" and all that follows through the period at the end of paragraph (2) and inserting "shall pay the charges prescribed by section 1078 of this title.".

Subtitle B—Bonuses and Special and Incentive Pays

SEC. 611. ONE-YEAR EXTENSION OF CERTAIN BONUS AND SPECIAL PAY AUTHORITIES FOR RESERVE FORCES.

(a) Selected Reserve Reenlistment Bonus.—Section 308b(g) of title 37, United States Code, is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(b) Selected Reserve Enlistment Bonus.—Section 308c(e) of such title is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(c) Special Pay for Enlisted Members Assigned to Certain High Priority Units.—Section 308d(c) of such title is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(d) Selected Reserve Affiliation Bonus.—Section 308e(e) of such title is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(e) Ready Reserve Enlistment and Reenlistment Bonus.—Section 308h(g) of such title is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(f) Prior Service Enlistment Bonus.—Section 308i(f) of such title is amended by striking "December 31, 2004" and inserting "December 31, 2005".

SEC. 612. ONE-YEAR EXTENSION OF CERTAIN BONUS AND SPECIAL PAY AUTHORITIES FOR CERTAIN HEALTH CARE PROFESSIONALS.

(a) Nurse Officer Candidate Accession Program.—Section 2130a(a)(1) of title 10, United States Code, is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(b) Repayment of Education Loans for Certain Health Professionals Who Serve in the Selected Reserve.—Section 16302(d) of such title is amended by striking "January 1, 2005" and inserting "January 1, 2006".

(c) Accession Bonus for Registered Nurses.—Section 302d(a)(1) of title 37, United States Code, is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(d) Incentive Special Pay for Nurse Anesthetists.—Section 302e(a)(1) of such title is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(e) Special Pay for Selected Reserve Health Professionals in Critically Short Wartime Specialties.—Section 302g(f) of such title is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(f) Accession Bonus for Dental Officers.—Section 302h(a)(1) of such title is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(g) Accession Bonus for Pharmacy Officers.—Section 302j(a) of such title is amended by striking "the date of the enactment of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 and ending on September 30, 2004" and inserting "October 30, 2000, and ending on December 31, 2005".

SEC. 613. ONE-YEAR EXTENSION OF SPECIAL PAY AND BONUS AUTHORITIES FOR NUCLEAR OFFICERS.

(a) Special Pay for Nuclear-Qualified Officers Extending Period of Active Service.—Section 312(e) of title 37, United States Code, is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(b) Nuclear Career Accession Bonus.—Section 312b(c) of such title is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(c) Nuclear Career Annual Incentive Bonus.—Section 312c(d) of such title is amended by striking "December 31, 2004" and inserting "December 31, 2005".

SEC. 614. ONE-YEAR EXTENSION OF OTHER BONUS AND SPECIAL PAY AUTHORITIES.

(a) Aviation Officer Retention Bonus.—Section 301b(a) of title 37, United States Code, is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(b) Assignment Incentive Pay.—Section 307a(f) of such title is amended by striking "December 31, 2005" and inserting "December 31, 2006".

(c) Reenlistment Bonus for Active Members.—Section 308(g) of such title is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(d) Enlistment Bonus for Active Members.—Section 309(e) of such title is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(e) Retention Bonus for Members With Critical Military Skills.—Section 323(i) of such title is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(f) Accession Bonus for New Officers in Critical Skills.—Section 324(g) of such title is amended by striking "December 31, 2004" and inserting "December 31, 2005".

SEC. 615. AUTHORITY TO PROVIDE HAZARDOUS DUTY INCENTIVE PAY TO MILITARY FIREFIGHTERS.

Section 301 of title 37, United States Code, is amended—

(1) in subsection (d), by inserting "(1)" after "(d)";

(2) by redesignating subsection (e) as paragraph (2) of subsection (d); and

(3) by inserting after subsection (d) the following new subsection (e):

"(e) A member of a uniformed service who is entitled to basic pay may be paid incentive pay under this subsection, at a monthly rate not to exceed $150, for any month during which the member performs duty involving regular participation as a firefighting crew member, as determined by the Secretary concerned.".

SEC. 616. REDUCED SERVICE OBLIGATION FOR NURSES RECEIVING NURSE ACCESSION BONUS.

(a) Period of Obligated Service.—Section 302d(a)(1) of title 37, United States Code, is amended by striking "four years" and inserting "three years".

(b) Effective Date.—The amendment made by subsection (a) shall apply with respect to agreements entered into under section 302d of title 37, United States Code, on or after the date of the enactment of this Act.

SEC. 617. ASSIGNMENT INCENTIVE PAY.

(a) Discretionary Written Agreements.—Subsection (b) of section 307a of title 37, United States Code, is amended to read as follows:

"(b) Written Agreement.—The Secretary concerned may require a member performing service in an assignment designated under subsection (a) to enter into a written agreement with the Secretary in order to qualify for incentive pay under this section. The written agreement shall specify the period for which the incentive pay will be paid to the member and, subject to subsection (c), the monthly rate of the incentive pay.".

(b) Discontinuation Upon Commencement of Terminal Leave.—Subsection (e) of such section is amended by striking "by reason of" and all that follows through the period at the end and inserting "by reason of—

"(1) temporary duty performed by the member pursuant to orders; or

"(2) absence of the member for authorized leave, other than leave authorized for a period ending upon the discharge of the member or the release of the member from active duty.".

(c) Effective Date.—Paragraph (2) of section 307a(e) of title 37, United States Code, as added by subsection (b), shall apply with respect to authorized leave occurring on or after the date of the enactment of this Act.

SEC. 618. MODIFICATION OF ACTIVE AND RESERVE COMPONENT REENLISTMENT AND ENLISTMENT BONUS AUTHORITIES.

(a) Active-Duty Reenlistment Bonus.—(1) Paragraph (1) of subsection (a) of section 308 of title 37, United States Code, is amended—

(A) in the matter preceding subparagraph (A), by striking "A member" and inserting "The Secretary concerned may pay a bonus under paragraph (2) to a member";

(B) in subparagraph (A), by striking "fourteen years" and inserting "16 years";

(C) in subparagraph (D), by striking the semicolon at the end and inserting a period; and

(D) by striking "may be paid a bonus as provided in paragraph (2).".

(2) Paragraph (3) of such subsection is amended by striking "16 years" and inserting "18 years".

(b) Selected Reserve Reenlistment Bonus.—(1) Subsection (a) of section 308b of title 37, United States Code, is amended—

(A) in the matter preceding paragraph (1), by striking "An enlisted member" and inserting "The Secretary concerned may pay a bonus under subsection (b) to an enlisted member";

(B) in paragraph (1), by striking "less than 11 years" and inserting "not more than 16 years";

(C) in paragraph (2), by striking the semicolon at the end and inserting a period; and

(D) by striking "may be paid a bonus as provided in subsection (b).".

(2) Subsection (b)(1) of such section is amended—

(A) in subparagraph (A), by striking "$5,000" and inserting "$15,000";

(B) in subparagraph (B), by striking "$2,500" and inserting "$7,500"; and

(C) in subparagraph (C), by striking "$2,000" and inserting "$6,000".

(3) Paragraph (2) of subsection (b) of such section is amended to read as follows:

"(2) Bonus payments authorized under this section may be paid in either a lump sum or in installments. If the bonus is paid in installments, the initial payment shall be not less than 50 percent of the total bonus amount. The Secretary concerned shall prescribe the amount of each subsequent installment payment and the schedule for making the installment payments.".

(4) Subsection (c) of such section is amended—

(A) in the subsection heading, by striking "; LIMITATION ON NUMBER OF BONUSES"; and

(B) by striking paragraph (2) and redesignating paragraph (3) as paragraph (2).

(c) SELECTED RESERVE ENLISTMENT BONUS.—(1) Subsection (b) of section 308c of title 37, United States Code, is amended by striking "$8,000" and inserting "$10,000".

(2) Subsection (f) of such section is amended to read as follows:

"(f) A member entitled to a bonus under this section who is called or ordered to active duty shall be paid, during that period of active duty, any amount of the bonus that becomes payable to the member during that period of active duty.".

(d) READY RESERVE ENLISTMENT BONUS FOR PERSONS WITHOUT PRIOR SERVICE.—Section 308g(b) of title 37, United States Code, is amended—

(1) by striking "$1,000" and inserting "$3,000"; and

(2) by adding at the end the following new sentence: "A person entitled to a bonus under this section who is called or ordered to active duty shall be paid, during that period of active duty, any amount of the bonus that becomes payable to the member during that period of active duty.".

(e) PRIOR SERVICE READY RESERVE BONUS.—Section 308h(b) of title 37, United States Code, is amended—

(1) in paragraph (2)(A), by striking "$1,500" and inserting "$3,000";

(2) in paragraph (2)(B), by striking "$750" and inserting "$1,500"; and

(3) by adding at the end the following new paragraph:

"(4) A person entitled to a bonus under this section who is called or ordered to active duty shall be paid, during that period of active duty, any amount of the bonus that becomes payable to the member during that period of active duty.".

(f) PRIOR SERVICE ENLISTMENT BONUS FOR SELECTED RESERVE.—(1) Subsection (a)(2)(A) of section 308i of title 37, United States Code, is amended by striking "less than 14 years" and inserting "not more than 16 years".

(2) Paragraph (1) of subsection (b) of such section is amended—

(A) in subparagraph (A), by striking "$8,000" and inserting "$15,000";

(B) in subparagraph (B), by striking "$4,000" and inserting "$7,500"; and

(C) in subparagraph (C), by striking "$3,500" and inserting "$6,000".

(3) Such subsection is further amended by adding at the end the following new paragraph:

"(3) A person entitled to a bonus under this section who is called or ordered to active duty shall be paid, during that period of active duty, any amount of the bonus that becomes payable to the member during that period of active duty.".

(g) EFFECTIVE DATE.—The amendment made by subsection (a)(2) shall apply only with respect to the computation of a bonus under section 308(a)(2)(A) of title 37, United States Code, made on or after the date of the enactment of this Act.

SEC. 619. BONUS FOR CERTAIN INITIAL SERVICE OF OFFICERS IN THE SELECTED RESERVE.

(a) AUTHORITY.—Chapter 5 of title 37, United States Code, is amended by inserting after section 308i the following new section:

"§ 308j. Special pay: bonus for certain initial service of officers in the Selected Reserve

"(a) AFFILIATION BONUS.—(1) The Secretary concerned may pay an affiliation bonus under this section to an eligible officer in any of the armed forces who enters into an agreement with the Secretary to serve, for the period specified in the agreement, in the Selected Reserve of the Ready Reserve of an armed force under the Secretary's jurisdiction—

"(A) in a critical officer skill designated under paragraph (3); or

"(B) to meet a manpower shortage in—

"(i) a unit of that Selected Reserve; or

"(ii) a particular pay grade in that armed force.

"(2) An officer is eligible for an affiliation bonus under this section if the officer—

"(A) either—

"(i) is serving on active duty for a period of more than 30 days; or

"(ii) is a member of a reserve component not on active duty and, if the member formerly served on active duty, was released from active duty under honorable conditions;

"(B) has not previously served in the Selected Reserve of the Ready Reserve; and

"(C) is not entitled to receive retired or retainer pay.

"(3)(A) The Secretary concerned shall designate for an armed force under the Secretary's jurisdiction the critical officer skills to which the bonus authority under this subsection is to be applied.

"(B) A skill may be designated as a critical officer skill for an armed force under subparagraph (A) if, to meet requirements of that armed force, it is critical for that armed force to have a sufficient number of officers who are qualified in that skill.

"(4) An affiliation bonus payable pursuant to an agreement under this section to an eligible officer accrues on the date on which the person is assigned to a unit or position in the Selected Reserve pursuant to such agreement.

"(b) ACCESSION BONUS.—(1) The Secretary concerned may pay an accession bonus under this section to an eligible person who enters into an agreement with the Secretary—

"(A) to accept an appointment as an officer in the armed forces; and

"(B) to serve in the Selected Reserve of the Ready Reserve in a skill designated under paragraph (2) for a period specified in the agreement.

"(2)(A) The Secretary concerned shall designate for an armed force under the Secretary's jurisdiction the officer skills to which the authority under this subsection is to be applied.

"(B) A skill may be designated for an armed force under subparagraph (A) if, to mitigate a current or projected significant shortage of personnel in that armed force who are qualified in that skill, it is critical to increase the number of persons accessed into that armed force who are qualified in that skill or are to be trained in that skill.

"(3) An accession bonus payable to a person pursuant to an agreement under this section accrues on the date on which that agreement is accepted by the Secretary concerned.

"(c) PERIOD OF OBLIGATED SERVICE.—An agreement entered into with the Secretary concerned under this section shall require the person entering into that agreement to serve in the Selected Reserve for a specified period. The period specified in the agreement shall be any period not less than three years that the Secretary concerned determines appropriate to meet the needs of the reserve component in which the service is to be performed.

"(d) AMOUNT.—The amount of a bonus under this section may be any amount not in excess of $6,000 that the Secretary concerned determines appropriate.

"(e) PAYMENT.—(1) Upon acceptance of a written agreement by the Secretary concerned under this section, the total amount of the bonus payable under the agreement becomes fixed. The agreement shall specify whether the bonus is to be paid in one lump sum or in installments.

"(2) A person entitled to a bonus under this section who is called or ordered to active duty shall be paid, during that period of active duty, any amount of the bonus that becomes payable to the member during that period of active duty.

"(f) RELATION TO OTHER ACCESSION BONUS AUTHORITY.—A person may not receive an affiliation bonus or accession bonus under this section and financial assistance under chapter 1608, 1609, or 1611 of title 10, or under section 302g of this title, for the same period of service.

"(g) REPAYMENT FOR FAILURE TO COMMENCE OR COMPLETE OBLIGATED SERVICE.—(1) A person who, after receiving all or part of the bonus under an agreement entered into by that person under this section, does not accept a commission or an appointment as an officer or does not commence to participate or does not satisfactorily participate in the Selected Reserve for the total period of service specified in the agreement shall repay to the United States such compensation or benefit, except under conditions prescribed by the Secretary concerned.

"(2) The Secretary concerned shall include in each agreement entered into by the Secretary under this section the requirements that apply for any repayment under this subsection, including the method for computing the amount of the repayment and any exceptions.

"(3) An obligation to repay the United States imposed under paragraph (1) is for all purposes a debt owed to the United States. A discharge in bankruptcy under title 11 that is entered less than five years after the termination of an agreement entered into under this section does not discharge a person from a debt arising under an agreement entered into under this subsection or a debt arising under paragraph (1).".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 308i the following new item:

"308j. Special pay: bonus for certain initial service of officers in the Selected Reserve.".

SEC. 620. REVISION OF AUTHORITY TO PROVIDE FOREIGN LANGUAGE PROFICIENCY PAY.

(a) IN GENERAL.—(1) Section 316 of title 37, United States Code, is amended to read as follows:

"§ 316. Special pay and bonus for members with foreign language proficiency

"(a) AVAILABILITY OF SPECIAL PAY.—Subject to subsection (c), the Secretary concerned may pay monthly special pay under this section to a member of the uniformed services who is entitled to basic pay under section 204 of this title and who—

"(1) is qualified in a uniformed services specialty requiring proficiency in a foreign language identified by the Secretary concerned as a foreign language in which it is necessary to have personnel proficient because of national defense or public health considerations;

"(2) received training, under regulations prescribed by the Secretary concerned, designed to develop a proficiency in such a foreign language;

"(3) is assigned to duties requiring a proficiency in such a foreign language; or

"(4) is proficient in a foreign language for which the uniformed service may have a critical need, as determined by the Secretary concerned.

"(b) AVAILABILITY OF BONUS.—Subject to subsection (c), the Secretary concerned may pay an annual bonus under this section to a member of a reserve component who satisfies the eligibility requirements specified in paragraph (1), (2), (3), or (4) of subsection (a).

"(c) CERTIFICATION OF PROFICIENCY.—To be eligible to receive special pay or a bonus under this section, a member described in subsection (a) or (b) must be certified by the Secretary concerned as being proficient in the foreign language for which the special pay or bonus is offered. The certification of the member shall expire at the end of the one-year period beginning on the first day of the first month beginning on or after the certification date.

"(d) SPECIAL PAY AND BONUS AMOUNTS.—(1) The monthly rate for special pay paid under subsection (a) may not exceed $1,000.

"(2) The maximum amount of the bonus paid to a member under subsection (b) may not exceed $6,000 for the one-year period covered by the certification of the member. The Secretary concerned may pay the bonus in a single lump sum at the beginning of the certification period or in installments during the certification period.

"(e) RELATIONSHIP TO OTHER PAY OR ALLOWANCE.—(1) Except as provided in paragraph (2), special pay or a bonus paid under this section is in addition to any other pay or allowance payable to a member under any other provision of law.

"(2) If a member of a reserve component serving on active duty receives special pay under subsection (a) for any month occurring during a certification period in which the member received, or is receiving, a bonus under subsection (b), the amount of the special pay paid to the member for the month shall be reduced by an amount equal to 1/12 of the bonus amount.

"(f) CERTIFICATION INTERRUPTED BY CONTINGENCY OPERATION.—(1) Notwithstanding subsection (c), the Secretary concerned may waive the certification requirement under such subsection and pay monthly special pay or a bonus under this section to a member who—

"(A) is assigned to duty in connection with a contingency operation;

"(B) is unable to schedule or complete the certification required by subsection (c) because of that assignment; and

"(C) except for the lack of such certification, satisfies the eligibility requirements for receipt of special pay under subsection (a) or a bonus under subsection (b), whichever applies to the member.

"(2) For purposes of providing an annual bonus to a member under the authority of this subsection, the Secretary concerned may treat the date on which the member was assigned to duty in connection with the contingency operation as equivalent to a certification date. In the case of a member whose certification will expire during such a duty assignment, the Secretary shall commence the next one-year certification period on the date on which the prior certification period expires.

"(3) A member who is paid special pay or a bonus under the authority of this subsection shall complete the certification required by subsection (c) for the foreign language for which the special pay or bonus was paid not later than the end of the 180-day period beginning on the date on which the member is released from the assignment in connection with the contingency operation. The Secretary concerned may extend that period for a member in accordance with regulations prescribed under subsection (h).

"(4) If a member fails to obtain the required certification under subsection (c) before the end of the period provided under paragraph (3), the Secretary concerned may require the member to repay all or a portion of the bonus in the manner provided in subsection (g).

"(g) REPAYMENT OF BONUS.—(1) The Secretary concerned may require a member who receives a bonus under this section, but who does not satisfy an eligibility requirement specified in paragraph (1), (2), (3), or (4) of subsection (a) for the entire certification period, to repay to the United States an amount which bears the same ratio to the total amount of the bonus paid to the member as the unsatisfied portion of the certification period bears to the entire certification period.

"(2) An obligation to repay the United States imposed under paragraph (1) or subsection (f)(4) is for all purposes a debt owed to the United States. A discharge in bankruptcy under title 11 that is entered for the member less than five years after the expiration of the certification period does not discharge the member from a debt arising under this paragraph. This paragraph applies to any case commenced under title 11 after the date of the enactment of this section.

"(h) REGULATIONS.—This section shall be administered under regulations prescribed by the Secretary of Defense for the armed forces under the jurisdiction of the Secretary, by the Secretary of Homeland Security for the Coast Guard when the Coast Guard is not operating as a service in the Navy, by the Secretary of Health and Human Services for the Commissioned Corps of the Public Health Service, and by the Secretary of Commerce for the National Oceanic and Atmospheric Administration.".

(2) The table of sections at the beginning of chapter 5 of such title is amended by striking the item relating to section 316 and inserting the following new item:

"316. Special pay and bonus for members with foreign language proficiency.".

(b) CONFORMING AMENDMENTS.—(1) Section 316a of title 37, United States Code, is repealed.

(2) The table of sections at the beginning of chapter 5 of such title is amended by striking the item relating to section 316a.

SEC. 621. ELIGIBILITY OF ENLISTED MEMBERS TO QUALIFY FOR CRITICAL SKILLS RETENTION BONUS WHILE SERVING ON INDEFINITE REENLISTMENT.

Section 323(a) of title 37, United States Code, is amended—

(1) by striking "or" at the end of paragraph (1);

(2) in paragraph (2)—

(A) by inserting "other than an enlisted member referred to in paragraph (3)," after "enlisted member,"; and

(B) by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following new paragraph:

"(3) in the case of an enlisted member serving pursuant to an indefinite reenlistment, the member executes a written agreement to remain on active duty for a period of at least one year.".

SEC. 622. ELIGIBILITY OF RESERVE COMPONENT MEMBERS FOR INCENTIVE BONUS FOR CONVERSION TO MILITARY OCCUPATIONAL SPECIALTY TO EASE PERSONNEL SHORTAGE.

(a) ELIGIBILITY.—Section 326 of title 37, United States Code, is amended—

(1) in subsection (a), by inserting "of a regular or reserve component" after "an eligible member";

(2) in subsection (b)—

(A) by striking "if—" and all that follows through "at the time" and inserting "if, at the time"; and

(B) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and

(3) in subsection (c)(2), by inserting "regular or reserve component of the" after "chief personnel officer of the".

(b) AMOUNT OF BONUS.—Subsection (c)(1) of such section is amended by inserting before the period at the end the following: ", in the case of a member of a regular component of the armed forces, and $2,000, in the case of a member of a reserve component of the armed forces".

SEC. 623. PERMANENT INCREASE IN AUTHORIZED AMOUNTS FOR IMMINENT DANGER SPECIAL PAY AND FAMILY SEPARATION ALLOWANCE.

(a) IMMINENT DANGER PAY.—(1) Subsection (e) of section 310 of title 37, United States Code, is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(2) Effective January 1, 2006, such section is further amended—

(A) in subsection (a), by striking "$150" and inserting "$225"; and

(B) by striking subsection (e).

(b) FAMILY SEPARATION ALLOWANCE.—(1) Subsection (e) of section 427 of such title is amended by striking "December 31, 2004" and inserting "December 31, 2005".

(2) Effective January 1, 2006, such section is further amended—

(A) in subsection (a)(1), by striking "$100" and inserting "$250"; and

(B) by striking subsection (e).

Subtitle C—Travel and Transportation Allowances

SEC. 631. TRAVEL AND TRANSPORTATION ALLOWANCES FOR FAMILY MEMBERS TO ATTEND BURIAL CEREMONY OR MEMORIAL SERVICE OF MEMBER WHO DIES ON DUTY.

(a) AUTHORIZED TRAVEL DESTINATIONS.—Subsection (a)(1) of section 411f of title 37, United States Code, is amended by inserting before the period at the end the following: "at the location determined under subsection (a)(8) of section 1482 of title 10 or attend a memorial service for the deceased member, under circumstances covered by subsection (d) of such section".

(b) LIMITATION ON AMOUNT.—Subsection (b) of such section is amended to read as follows:

"(b) LIMITATION ON AMOUNT.—Allowances for travel under subsection (a) may not exceed the rates for two days and the time necessary for such travel.".

(c) UNCONDITIONAL ELIGIBILITY OF DECEASED'S PARENTS.—Subsection (c)(1)(C) of such section is amended by striking "If no person described in subparagraph (A) or (B) is provided travel and transportation allowances under subsection (a)(1), the" and inserting "The".

SEC. 632. TRANSPORTATION OF FAMILY MEMBERS INCIDENT TO SERIOUS ILLNESS OR INJURY OF MEMBERS OF THE UNIFORMED SERVICES.

(a) REMOVAL OF LIMITATION ON NUMBER OF FAMILY MEMBERS.—Subsection (a)(1) of section 411h of title 37, United States Code, is amended—

(1) by striking "two family members" and inserting "three family members"; and

(2) by adding at the end the following new sentence: "In circumstances determined to be appropriate by the Secretary concerned, the Secretary may waive the limitation on the number of family members provided travel and transportation under this section.".

(b) AVAILABILITY OF PER DIEM.—Such section is further amended—

(1) in subsection (a)(1), by inserting "travel and" before "transportation"; and

(2) in subsection (c)—

(A) by inserting "(1)" after "(c)" ; and

(B) by adding at the end the following new paragraph:

"(2) In addition to the transportation authorized by subsection (a), the Secretary concerned may provide a per diem allowance or reimbursement for the actual and necessary expenses of the travel, or a combination thereof, but not to exceed the rates established under section 404(d) of this title.".

(c) EFFECTIVE DATE.—Section 411h of title 37, United States Code, as amended by this section, shall apply to travel and transportation authorized under such section that is provided on or after October 1, 2004, to family members of a member of the Armed Forces who is ill or injured as described in such section.

SEC. 633. REIMBURSEMENT FOR CERTAIN LODGING COSTS INCURRED IN CONNECTION WITH DEPENDENT STUDENT TRAVEL.

Section 430(b) of title 37, United States Code, is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(2) by inserting after paragraph (1) the following new paragraph (2):

"(2) The allowance authorized under paragraph (1) for the travel of an eligible dependent may include reimbursement for costs incurred by or on behalf of the dependent for lodging of the dependent that is necessitated by an interruption in the travel caused by extraordinary circumstances prescribed in the regulations under subsection (a). The amount of the reimbursement shall be determined using the rate applicable to such circumstances.".

Subtitle D—Retired Pay and Survivor Benefits

SEC. 641. COMPUTATION OF HIGH-36 MONTH AVERAGE FOR RESERVE COMPONENT MEMBERS RETIRED FOR DISABILITY WHILE ON ACTIVE DUTY OR DYING WHILE ON ACTIVE DUTY.

(a) COMPUTATION OF HIGH-36 MONTH AVERAGE.—Subsection (c) of section 1407 of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(3) SPECIAL RULE FOR RESERVE COMPONENT MEMBERS.—In the case of a member of a reserve component who is entitled to retired pay under section 1201 or 1202 of this title, the member's high-three average (notwithstanding paragraphs (1) and (2)) is computed in the same manner as prescribed in paragraphs (2) and (3) of subsection (d) for a member entitled to retired pay under section 1204 or 1205 of this title.".

(b) EFFECTIVE DATE.—Paragraph (3) of section 1407(c) of title 10, United States Code, as added by subsection (a), shall take effect—

(1) for purposes of determining an annuity under subchapter II or III of chapter 73 of that title, with respect to deaths on active duty on or after September 10, 2001; and

(2) for purposes of determining the amount of retired pay of a member of a reserve component entitled to retired pay under section 1201 or 1202 of such title, with respect to such entitlement that becomes effective on or after the date of the enactment of this Act.

SEC. 642. REPEAL OF PHASE-IN OF CONCURRENT RECEIPT OF RETIRED PAY AND VETERANS' DISABILITY COMPENSATION FOR MILITARY RETIREES WITH SERVICE-CONNECTED DISABILITIES RATED AS 100 PERCENT.

(a) TERMINATION OF PHASE-IN AT END OF 2004.—Subsection (a)(1) of section 1414 of title 10, United States Code, is amended by inserting before the period at the end the following: ", except that in the case of a qualified retiree receiving veterans' disability compensation for a disability rated as 100 percent, payment of retired pay to such veteran is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on December 31, 2004".

(b) CONFORMING AMENDMENT.—Subsection (c) of such section is amended in the matter preceding paragraph (1) by inserting "that pursuant to the second sentence of subsection (a)(1) is subject to this subsection" after "a qualified retiree".

SEC. 643. DEATH BENEFITS ENHANCEMENT.

(a) ACTIONS ON FISCAL YEAR 2004 DEATH BENEFITS STUDY.—(1) The Secretary of Defense shall expedite the completion and submission of the report, which was due on March 1, 2004, of the results of the study of the Federal death benefits for survivors of deceased members of the Armed Forces required by section 647(b) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1520).

(2) The President should promptly transmit to Congress any recommendation for legislation, together with a request for appropriations, that the President determines necessary to implement any death benefits enhancements that are recommended in the report referred to in paragraph(1).

(b) INCREASES OF DEATH GRATUITY CONSISTENT WITH INCREASES OF RATES OF BASIC PAY.—Section 1478 of title 10, United States Code, is amended—

(1) in subsection (a), by inserting "(as adjusted under subsection (c))" before the period at the end of the first sentence; and

(2) by adding at the end the following new subsection:

"(c) Effective on the date on which rates of basic pay under section 204 of title 37 are increased under section 1009 of that title or any other provision of law, the amount of the death gratuity in effect under subsection (a) shall be increased by the same overall average percentage of the increase in the rates of basic pay taking effect on that date.".

(c) FISCAL YEAR 2005 ACTIONS.—At the same time that the President transmits to Congress the budget for fiscal year 2006 under section 1105(a) of title 31, United States Code, the President shall transmit to Congress assessments and recommendations regarding legislation on proposals that would provide enhanced death benefits for survivors of deceased members of the uniformed services. Those assessments and recommendations regarding legislation shall include provisions for the following:

(1) Revision of the Servicemembers' Group Life Insurance program under chapter 19 of title 38, United States Code, to provide for—

(A) an increase in the maximum benefit amount provided under that program from $250,000 to $350,000;

(B) an increase, each fiscal year, in that maximum benefit amount by the same overall average percentage increase that takes effect during such fiscal year in the rates of basic pay under section 204 of title 37, United States Code; and

(C) a minimum benefit amount of $100,000 at no cost to the insured members of the uniformed services who elect the maximum coverage, together with an increase in such minimum benefit each fiscal year by the same percentage increase as is described in subparagraph (B).

(2) An additional set of death benefits for each member of the uniformed services who dies in the line of duty while on active duty that includes, at a minimum, an additional death gratuity in the amount that—

(A) in the case of a member not described in subparagraph (B), is equal to the sum of—

(i) the total amount of the basic pay to which the deceased member would have been entitled under section 204 of title 37, United States Code, if the member had not died and had continued to serve on active duty for an additional year; and

(ii) the total amount of all allowances and special pays that the member would have been entitled to receive under title 37, United States Code, over the one-year period beginning on the member's date of death as if the member had not died and had continued to serve on active duty for an additional year with the unit to which the member was assigned or detailed on such date; and

(B) in the case of a member who dies as a result of an injury caused by or incurred while exposed to hostile action (including any hostile fire or explosion and any hostile action from a terrorist source), is equal to twice the amount calculated under subparagraph (A).

(3) Any other new death benefits or enhancement of existing death benefits that the President recommends.

(4) Retroactive applicability of the benefits referred to in paragraph (2) and, as appropriate, the benefits recommended under paragraph (3) so as to provide the benefits—

(A) for members of the uniformed services who die in line of duty on or after October 7, 2001, of a cause incurred or aggravated while deployed in support of Operation Enduring Freedom; and

(B) for members of the uniformed services who die in line of duty on or after March 19, 2003, of a cause incurred or aggravated while deployed in support of Operation Iraqi Freedom.

(d) CONSULTATION.—The President shall consult with the Secretary of Defense and the Secretary of Veterans Affairs in developing the assessments and recommendations required under subsection (c).

(e) FISCAL YEAR 2006 BUDGET SUBMISSION.—The budget for fiscal year 2006 that is transmitted to Congress under section 1105(a) of title 31, United States Code, shall include assessments and recommendations on legislation (other than draft appropriations) that includes provisions that, on the basis of the assumption that any draft legislation transmitted under subsection (c) would be enacted and would take effect in fiscal year 2006—

(1) would offset fully the increased outlays that would result from enactment of the provisions of any draft legislation transmitted under subsection (c), for fiscal year 2006 and each of the succeeding nine fiscal years;

(2) expressly state that they are proposed for the purpose of the offset described in paragraph (1); and

(3) are included in full in the estimates that are made by the Director of the Congressional Budget Office and the Director of the Office of Management and Budget under section 252(d) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902(d)) with respect to the fiscal years referred to in paragraph (1).

(f) EARLY SUBMISSION OF PROPOSAL FOR ADDITIONAL DEATH BENEFITS.—Congress urges the President to transmit any draft of legislation for the additional set of death benefits under paragraph (2) of subsection (c) before the time for submission required under that subsection and as soon as is practicable after the date of the enactment of this Act.

SEC. 644. PHASED ELIMINATION OF TWO-TIER ANNUITY COMPUTATION FOR SURVIVING SPOUSES UNDER SURVIVOR BENEFIT PLAN.

(a) PHASED INCREASE IN BASIC ANNUITY.—

(1) STANDARD ANNUITY.—

(A) INCREASE TO 55 PERCENT.—Clause (i) of subsection (a)(1)(B) of section 1451 of title 10, United States Code, is amended by striking "35 percent of the base amount." and inserting "the product of the base amount and the percent applicable to the month, as follows:

"(I) For a month before October 2005, the applicable percent is 35 percent.

"(II) For months after September 2005 and before April 2006, the applicable percent is 40 percent.

"(III) For months after March 2006 and before April 2007, the applicable percent is 45 percent.

"(IV) For months after March 2007 and before April 2008, the applicable percent is 50 percent.

"(V) For months after March 2008, the applicable percent is 55 percent.".

(B) COORDINATION WITH SAVINGS PROVISION UNDER PRIOR LAW.—Clause (ii) of such subsection is amended by striking ", at the time the beneficiary becomes entitled to the annuity,".

(2) RESERVE-COMPONENT ANNUITY.—Subsection (a)(2)(B)(i)(I) of such section is amended by striking "35 percent" and inserting "the percent specified under subsection (a)(1)(B)(i) as being applicable for the month".

(3) SURVIVORS OF ELIGIBLE PERSONS DYING ON ACTIVE DUTY, ETC.—

(A) INCREASE TO 55 PERCENT.—Clause (i) of subsection (c)(1)(B) of such section is amended—

(i) by striking "35 percent" and inserting "the applicable percent"; and

(ii) by adding at the end the following: "The percent applicable for a month under the preceding sentence is the percent specified under subsection (a)(1)(B)(i) as being applicable for that month.".

(B) COORDINATION WITH SAVINGS PROVISION UNDER PRIOR LAW.—Clause (ii) of such subsection is amended by striking ", at the time the beneficiary becomes entitled to the annuity,".

(4) CLERICAL AMENDMENT.—The heading for subsection (d)(2)(A) of such section is amended to read as follows: "COMPUTATION OF ANNUITY.—".

(b) CORRESPONDING PHASED ELIMINATION OF SUPPLEMENTAL ANNUITY.—

(1) PHASED REDUCTION OF SUPPLEMENTAL ANNUITY.—Section 1457(b) of title 10, United States Code, is amended—

(A) by striking "5, 10, 15, or 20 percent" and inserting "the applicable percent"; and

(B) by inserting after the first sentence the following: "The percent used for the computation shall be an even multiple of 5 percent and, whatever the percent specified in the election, may not exceed 20 percent for months before October 2005, 15 percent for months after September 2005 and before April 2006, 10 percent for months after March 2006 and before April 2007, and 5 percent for months after March 2007 and before April 2008.".

(2) REPEAL UPON IMPLEMENTATION OF 55 PERCENT SBP ANNUITY.—Effective on April 1, 2008, chapter 73 of such title is amended—

(A) by striking subchapter III; and

(B) by striking the item relating to subchapter III in the table of subchapters at the beginning of that chapter.

(c) RECOMPUTATION OF ANNUITIES.—

(1) PERIODIC RECOMPUTATION REQUIRED.—Effective on the first day of each month specified in paragraph (2)—

(A) each annuity under section 1450 of title 10, United States Code, that commenced before that month, is computed under a provision of section 1451 of that title amended by subsection (a), and is payable for that month shall be recomputed so as to be equal to the amount that would be in effect if the percent applicable for that month under that provision, as so amended, had been used for the initial computation of the annuity; and

(B) each supplemental survivor annuity under section 1457 of such title that commenced before that month and is payable for that month shall be recomputed so as to be equal to the amount that would be in effect if the percent applicable for that month under that section, as amended by this section, had been used for the initial computation of the supplemental survivor annuity.

(2) TIME FOR RECOMPUTATION.—The requirement under paragraph (1) for recomputation of certain annuities applies with respect to the following months:

(A) October 2005.

(B) April 2006.

(C) April 2007.

(D) April 2008.

(d) TERMINATION OF RETIRED PAY REDUCTIONS FOR SUPPLEMENTAL SURVIVOR ANNUITIES.—(1) Except as provided in paragraph (2), there shall be no reduction in retired pay under section 1460 of title 10, United States Code, for any month beginning after the date of the enactment of this Act.

(2) Reductions in retired pay under section 1460 of title 10, United States Code, shall be made for months after September 2005 in the case of coverage under subchapter III of chapter 73 of title 10, United States Code, that is provided (for new coverage or increased coverage) through an election under the open season provided by section 645. The Secretary of Defense shall take such actions as are necessitated by the amendments made by subsection (b) and the requirements of subsection (c)(1)(B) to ensure that reductions in retired pay under section 1460 of title 10, United States Code, pursuant to the preceding sentence are adjusted to achieve the objectives set forth in subsection (b) of that section.

SEC. 645. ONE-YEAR OPEN ENROLLMENT PERIOD FOR SURVIVOR BENEFIT PLAN COMMENCING OCTOBER 1, 2005.

(a) PERSONS NOT CURRENTLY PARTICIPATING IN SURVIVOR BENEFIT PLAN.—

(1) ELECTION OF SBP COVERAGE.—An eligible retired or former member may elect to participate in the Survivor Benefit Plan during the open enrollment period specified in subsection (f).

(2) ELECTION OF SUPPLEMENTAL ANNUITY COVERAGE.—An eligible retired or former member who elects under paragraph (1) to participate in the Survivor Benefit Plan at the maximum level may also elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan.

(3) ELIGIBLE RETIRED OR FORMER MEMBER.—For purposes of paragraphs (1) and (2), an eligible retired or former member is a member or former member of the uniformed services who on the day before the first day of the open enrollment period is not a participant in the Survivor Benefit Plan and—

(A) is entitled to retired pay; or

(B) would be entitled to retired pay under chapter 1223 of title 10, United States Code, but for the fact that such member or former member is under 60 years of age.

(4) STATUS UNDER SBP OF PERSONS MAKING ELECTIONS.—

(A) STANDARD ANNUITY.—A person making an election under paragraph (1) by reason of eligibility under paragraph (3)(A) shall be treated for all purposes as providing a standard annuity under the Survivor Benefit Plan.

(B) RESERVE-COMPONENT ANNUITY.—A person making an election under paragraph (1) by reason of eligibility under paragraph (3)(B) shall be treated for all purposes as providing a reserve-component annuity under the Survivor Benefit Plan.

(b) ELECTION TO INCREASE COVERAGE UNDER SBP.—A person who on the day before the first day of the open enrollment period is a participant in the Survivor Benefit Plan but is not participating at the maximum base amount or is providing coverage under the Plan for a dependent child and not for the person's spouse or former spouse may, during the open enrollment period, elect to—

(1) participate in the Plan at a higher base amount (not in excess of the participant's retired pay); or

(2) provide annuity coverage under the Plan for the person's spouse or former spouse at a base amount not less than the base amount provided for the dependent child.

(c) ELECTION FOR CURRENT SBP PARTICIPANTS TO PARTICIPATE IN SUPPLEMENTAL SBP.—

(1) ELECTION.—A person who is eligible to make an election under this paragraph may elect during the open enrollment period to participate in the Supplemental Survivor Benefit Plan.

(2) PERSONS ELIGIBLE.—Except as provided in paragraph (3), a person is eligible to make an election under paragraph (1) if on the day before the first day of the open enrollment period the person is a participant in the Survivor Benefit Plan at the maximum level, or during the open enrollment period the person increases the level of such participation to the maximum level under subsection (b) of this section, and under that Plan is providing annuity coverage for the person's spouse or a former spouse.

(3) LIMITATION ON ELIGIBILITY FOR CERTAIN SBP PARTICIPANTS NOT AFFECTED BY TWO-TIER ANNUITY COMPUTATION.—A person is not eligible to make an election under paragraph (1) if (as determined by the Secretary concerned) the annuity of a spouse or former spouse beneficiary of that person under the Survivor Benefit Plan is to be computed under section 1451(e) of title 10, United States Code. However, such a person may during the open enrollment period waive the right to have that annuity computed under such section 1451(e). Any such election is irrevocable. A person making such a waiver may make an election under paragraph (1) as in the case of any other participant in the Survivor Benefit Plan.

(d) MANNER OF MAKING ELECTIONS.—An election under this section shall be made in writing, signed by the person making the election, and received by the Secretary concerned before the end of the open enrollment period. Any such election shall be made subject to the same conditions, and with the same opportunities for designation of beneficiaries and specification of base amount, that apply under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be. A person making an election under subsection (a) to provide a reserve-component annuity shall make a designation described in section 1448(e) of title 10, United States Code.

(e) EFFECTIVE DATE FOR ELECTIONS.—Any such election shall be effective as of the first day of the first calendar month following the month in which the election is received by the Secretary concerned.

(f) OPEN ENROLLMENT PERIOD.—The open enrollment period under this section is the one-year period beginning on October 1, 2005.

(g) EFFECT OF DEATH OF PERSON MAKING ELECTION WITHIN TWO YEARS OF MAKING ELECTION.—If a person making an election under this section dies before the end of the two-year period beginning on the effective date of the election, the election is void and the amount of any reduction in retired pay of the person that is attributable to the election shall be paid in a lump sum to the person who would have been the deceased person's beneficiary under the voided election if the deceased person had died after the end of such two-year period.

(h) APPLICABILITY OF CERTAIN PROVISIONS OF LAW.—The provisions of sections 1449, 1453, and 1454 of title 10, United States Code, are applicable to a person making an election, and to an election, under this section in the same manner as if the election were made under the Survivor Benefit Plan or the Supplemental Survivor Benefit Plan, as the case may be.

(i) PREMIUM FOR OPEN ENROLLMENT ELECTION.—

(1) PREMIUMS TO BE CHARGED.—The Secretary of Defense shall prescribe in regulations premiums which a person electing under this section shall be required to pay for participating in the Survivor Benefit Plan pursuant to the election. The total amount of the premiums to be

paid by a person under the regulations shall be equal to the sum of—

(A) the total amount by which the retired pay of the person would have been reduced before the effective date of the election if the person had elected to participate in the Survivor Benefit Plan (for the same base amount specified in the election) at the first opportunity that was afforded the member to participate under chapter 73 of title 10, United States Code;

(B) interest on the amounts by which the retired pay of the person would have been so reduced, computed from the dates on which the retired pay would have been so reduced at such rate or rates and according to such methodology as the Secretary of Defense determines reasonable; and

(C) any additional amount that the Secretary determines necessary to protect the actuarial soundness of the Department of Defense Military Retirement Fund against any increased risk for the fund that is associated with the election.

(2) PREMIUMS TO BE CREDITED TO RETIREMENT FUND.—Premiums paid under the regulations under paragraph (1) shall be credited to the Department of Defense Military Retirement Fund.

(h) DEFINITIONS.—In this section:

(1) The term "Survivor Benefit Plan" means the program established under subchapter II of chapter 73 of title 10, United States Code.

(2) The term "Supplemental Survivor Benefit Plan" means the program established under subchapter III of chapter 73 of title 10, United States Code.

(3) The term "retired pay" includes retainer pay paid under section 6330 of title 10, United States Code.

(4) The terms "uniformed services" and "Secretary concerned" have the meanings given those terms in section 101 of title 37, United States Code.

(5) The term "Department of Defense Military Retirement Fund" means the Department of Defense Military Retirement Fund established under section 1461(a) of title 10, United States Code.

Subtitle E—Commissary and Nonappropriated Fund Instrumentality Benefits

SEC. 651. CONSOLIDATION AND REORGANIZATION OF LEGISLATIVE PROVISIONS REGARDING DEFENSE COMMISSARY SYSTEM AND EXCHANGES AND OTHER MORALE, WELFARE, AND RECREATION ACTIVITIES.

(a) PROVISIONS RELATED TO COMMISSARY STORES.—Chapter 147 of title 10, United States Code, is amended—

(1) by striking the table of sections at the beginning of the chapter and sections 2481, 2483, 2485, and 2487;

(2) by redesignating sections 2482, 2484, and 2486 as sections 2485, 2483 and 2484, respectively;

(3) by inserting after the chapter heading the following:

"Subchapter	Sec.
"I. Defense Commissary and Exchange Systems	2481
"II. Relationship, Continuation, and Common Policies of Defense Commissary and Exchange Systems	2487
"III. Morale, Welfare, and Recreation Programs and Nonappropriated Fund Instrumentalities	2491

"SUBCHAPTER I—DEFENSE COMMISSARY AND EXCHANGE SYSTEMS

"Sec.
"2481. Defense commissary and exchange systems: existence and purpose
"2482. Commissary stores: criteria for establishment or closure; store size.
"2483. Commissary stores: use of appropriated funds to cover operating expenses.
"2484. Commissary stores: merchandise that may be sold; uniform surcharges and pricing.
"2485. Commissary stores: operation.

"§2481. Defense commissary and exchange systems: existence and purpose

"(a) SEPARATE SYSTEMS.—The Secretary of Defense shall operate, in the manner provided by this chapter and other provisions of law, a world-wide system of commissary stores and a separate world-wide system of exchange stores. The stores of each system may sell, at reduced prices, food and other merchandise to members of the uniformed services on active duty, members of the uniformed services entitled to retired pay, dependents of such members, and persons authorized to use the system under chapter 54 of this title.

"(b) PURPOSE OF SYSTEMS.—The defense commissary system and the exchange system are intended to enhance the quality of life of members of the uniformed services, retired members, and dependents of such members, and to support military readiness, recruitment, and retention.

"(c) OVERSIGHT.—(1) The Secretary of Defense shall designate a senior official of the Department of Defense to oversee the operation of both the defense commissary system and the exchange system.

"(2) The Secretary of Defense shall establish an executive governing body to provide advice to the senior official designated under paragraph (1) regarding the operation of the defense commissary and exchange systems and to ensure the complementary operation of the systems.

"(d) REDUCED PRICES DEFINED.—In this section, the term 'reduced prices' means prices for food and other merchandise determined using the price setting process specified in section 2484 of this title.

"§2482. Commissary stores: criteria for establishment or closure; store size

"(a) PRIMARY CONSIDERATION FOR ESTABLISHMENT.—The needs of members of the armed forces on active duty and the needs of dependents of such members shall be the primary consideration whenever the Secretary of Defense—

"(1) assesses the need to establish a commissary store; and

"(2) selects the actual location for the store.

"(b) STORE SIZE.—In determining the size of a commissary store, the Secretary of Defense shall take into consideration the number of all authorized patrons of the defense commissary system who are likely to use the store.

"(c) CLOSURE CONSIDERATIONS.—(1) Whenever assessing whether to close a commissary store, the effect of the closure on the quality of life of members and dependents referred to in subsection (a) who use the store and on the welfare and security of the military community in which the commissary is located shall be a primary consideration.

"(2) Whenever assessing whether to close a commissary store, the Secretary of Defense shall also consider the effect of the closure on the quality of life of members of the reserve components of the armed forces.

"(d) CONGRESSIONAL NOTIFICATION.—(1) The closure of a commissary store shall not take effect until the end of the 90-day period beginning on the date on which the Secretary of Defense submits to Congress written notice of the reasons supporting the closure. The written notice shall include an assessment of the impact closure will have on the quality of life for military patrons and the welfare and security of the military community in which the commissary is located.

"(2) Paragraph (1) shall not apply in the case of the closure of a commissary store as part of the closure of a military installation under a base closure law.";

(4) by inserting sections 2483 and 2484, as redesignated by paragraph (2), after section 2482, as added by paragraph (3);

(5) in section 2484, as redesignated by paragraph (2)—

(A) by striking subsections (a), (b), (c), and (g);

(B) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively;

(C) by inserting before subsection (f), as so redesignated, the following new subsections:

"(a) IN GENERAL.—As provided in section 2481(a) of this title, commissary stores are intended to be similar to commercial grocery stores and may sell merchandise similar to that sold in commercial grocery stores.

"(b) AUTHORIZED COMMISSARY MERCHANDISE CATEGORIES.—Merchandise sold in, at, or by commissary stores may include items in the following categories:

"(1) Meat, poultry, seafood, and fresh-water fish.

"(2) Nonalcoholic beverages.

"(3) Produce.

"(4) Grocery food, whether stored chilled, frozen, or at room temperature.

"(5) Dairy products.

"(6) Bakery and delicatessen items.

"(7) Nonfood grocery items.

"(8) Tobacco products.

"(9) Health and beauty aids.

"(10) Magazines and periodicals.

"(c) INCLUSION OF OTHER MERCHANDISE ITEMS.—(1) The Secretary of Defense may authorize the sale in, at, or by commissary stores of merchandise not covered by a category specified in subsection (b). The Secretary shall notify Congress of all merchandise authorized for sale pursuant to this paragraph, as well as the removal of any such authorization.

"(2) Notwithstanding paragraph (1), the Department of Defense military resale system shall continue to maintain the exclusive right to operate convenience stores, shopettes, and troop stores, including such stores established to support contingency operations.

"(3) A military exchange shall be the vendor for the sale of tobacco products in commissary stores and may be the vendor for such merchandise as may be authorized for sale in commissary stores under paragraph (1). Subsections (d) and (e) shall not apply to the pricing of such an item when a military exchange serves as the vendor of the item. Commissary store and exchange prices shall be comparable for such an item.

"(d) UNIFORM SALES PRICE SURCHARGE.—The Secretary of Defense shall apply a uniform surcharge equal to five percent on the sales prices established under subsection (e) for each item of merchandise sold in, at, or by commissary stores.";

(D) in subsection (e), as so redesignated, by striking "(consistent with this section and section 2685 of this title)" in paragraph (1);

(E) in subsection (g), as so redesignated, by striking "Subsections (c) and (d)" and inserting "Subsections (d) and (e)"; and

(F) by adding at the end the following new subsection:

"(h) USE OF SURCHARGE FOR CONSTRUCTION, REPAIR, IMPROVEMENT, AND MAINTENANCE.—(1)(A) The Secretary of Defense may use the proceeds from the surcharges imposed under subsection (d) only—

"(i) to acquire (including acquisition by lease), construct, convert, expand, improve, repair, maintain, and equip the physical infrastructure of commissary stores and central product processing facilities of the defense commissary system; and

"(ii) to cover environmental evaluation and construction costs related to activities described in clause (i), including costs for surveys, administration, overhead, planning, and design.

"(B) In subparagraph (A), the term 'physical infrastructure' includes real property, utilities, and equipment (installed and free standing and including computer equipment), necessary to provide a complete and usable commissary store or central product processing facility.

"(2)(A) The Secretary of Defense may authorize a nonappropriated fund instrumentality of the United States to enter into a contract for construction of a shopping mall or similar facility for a commissary store and one or more nonappropriated fund instrumentality activities. The Secretary may use the proceeds of surcharges under subsection (d) to reimburse the nonappropriated fund instrumentality for the portion of the cost of the contract that is attributable to construction of the commissary store or to pay the contractor directly for that portion of such cost.

"(B) In subparagraph (A), the term 'construction', with respect to a facility, includes acquisition, conversion, expansion, installation, or other improvement of the facility.

"(3) The Secretary of Defense, with the approval of the Director of the Office of Management and Budget, may obligate anticipated proceeds from the surcharges under subsection (d) for any use specified in paragraph (1) or (2), without regard to fiscal year limitations, if the Secretary determines that such obligation is necessary to carry out any use of such adjustments or surcharges specified in such paragraph.

"(4) Revenues received by the Secretary of Defense from the following sources or activities of commissary store facilities shall be available for the purposes set forth in paragraphs (1), (2), and (3):

"(A) Sale of recyclable materials.

"(B) Sale of excess and surplus property.

"(C) License fees.

"(D) Royalties.

"(E) Fees paid by sources of products in order to obtain favorable display of the products for resale, known as business related management fees.";

(6) by inserting section 2485, as redesignated by paragraph (2), after section 2484, as amended by paragraph (5); and

(7) in section 2485, as redesignated by paragraph (2)—

(A) in subsection (b)(2), by striking "section 2484" and inserting "section 2483";

(B) in subsection (c)(2), by adding at the end the following new sentences: "The chairman of the governing board shall be a commissioned officer or member of the senior executive service who has demonstrated experience or knowledge relevant to the management of the defense commissary system. In selecting other members of the governing board, the Secretary shall give priority to persons with experience related to logistics, military personnel, military entitlements or other experiences of value of management of commissaries."; and

(C) by adding at the end the following new subsections:

"(d) ASSIGNMENT OF ACTIVE DUTY MEMBERS.—(1) Except as provided in paragraph (2), members of the armed forces on active duty may not be assigned to the operation of a commissary store.

"(2)(A) The Secretary of Defense may assign an officer on the active-duty list to serve as the Director of the Defense Commissary Agency.

"(B) Not more than 18 members (in addition to the officer referred to in subparagraph (A)) of the armed forces on active duty may be assigned to the Defense Commissary Agency. Members who may be assigned under this subparagraph to regional headquarters of the agency shall be limited to enlisted members assigned to duty as advisers in the regional headquarters responsible for overseas commissaries and to veterinary specialists.

"(e) REIMBURSEMENT FOR USE OF COMMISSARY FACILITIES BY MILITARY DEPARTMENTS.—(1) The Secretary of a military department shall pay the Defense Commissary Agency the amount determined under paragraph (2) for any use of a commissary facility by the military department for a purpose other than commissary sales or operations in support of commissary sales.

"(2) The amount payable under paragraph (1) for use of a commissary facility by a military department shall be equal to the share of depreciation of the facility that is attributable to that use, as determined under regulations prescribed by the Secretary of Defense.

"(3) The Director of the Defense Commissary Agency shall credit amounts paid under paragraph (1) for use of a facility to an appropriate account to which proceeds of a surcharge applied under section 2484(d) of this title are credited.

"(4) This subsection applies with respect to a commissary facility that is acquired, constructed, converted, expanded, installed, or otherwise improved (in whole or in part) with the proceeds of a surcharge applied under section 2484(d) of this title.

"(f) DONATION OF UNUSABLE FOOD.—(1) The Secretary of Defense may donate food described in paragraph (2) to any of the following entities:

"(A) A charitable nonprofit food bank that is designated by the Secretary of Defense or the Secretary of Health and Human Services as authorized to receive such donations.

"(B) A State or local agency that is designated by the Secretary of Defense or the Secretary of Health and Human Services as authorized to receive such donations.

"(C) A chapter or other local unit of a recognized national veterans organization that provides services to persons without adequate shelter and is designated by the Secretary of Veterans Affairs as authorized to receive such donations.

"(D) A not-for-profit organization that provides care for homeless veterans and is designated by the Secretary of Veterans Affairs as authorized to receive such donations.

"(2) Food that may be donated under this subsection is commissary store food, mess food, meals ready-to-eat (MREs), rations known as humanitarian daily rations (HDRs), and other food available to the Secretary of Defense that—

"(A) is certified as edible by appropriate food inspection technicians;

"(B) would otherwise be destroyed as unusable; and

"(C) in the case of commissary store food, is unmarketable and unsaleable.

"(3) In the case of commissary store food, a donation under this subsection shall take place at the site of the commissary store that is donating the food.

"(4) This subsection does not authorize any service (including transportation) to be provided in connection with a donation under this subsection.

"(g) COLLECTION OF DISHONORED CHECKS.—(1) The Secretary of Defense may impose a charge for the collection of a check accepted at a commissary store that is not honored by the financial institution on which the check is drawn. The imposition and amounts of charges shall be consistent with practices of commercial grocery stores regarding dishonored checks.

"(2)(A) The following persons are liable to the United States for the amount of a check referred to in paragraph (1) that is returned unpaid to the United States, together with any charge imposed under that paragraph:

"(i) The person who presented the check.

"(ii) Any person whose status and relationship to the person who presented the check provide the basis for that person's eligibility to make purchases at a commissary store.

"(B) Any amount for which a person is liable under subparagraph (A) may be collected by deducting and withholding such amount from any amounts payable to that person by the United States.

"(3) Amounts collected as charges imposed under paragraph (1) shall be credited to the commissary trust revolving fund.

"(4) Appropriated funds may be used to pay any costs incurred in the collection of checks and charges referred to in paragraph (1). An appropriation account charged a cost under the preceding sentence shall be reimbursed the amount of that cost out of funds in the commissary trust revolving fund.

"(5) In this subsection, the term 'commissary trust revolving fund' means the trust revolving fund maintained by the Department of Defense for surcharge collections and proceeds of sales of commissary stores.

"(h) RELEASE OF CERTAIN COMMERCIALLY VALUABLE INFORMATION TO PUBLIC.—(1) The Secretary of Defense may limit the release to the public of any information described in paragraph (2) if the Secretary determines that it is in the best interest of the Department of Defense to limit the release of such information. If the Secretary determines to limit the release of any such information, the Secretary may provide for limited release of such information in accordance with paragraph (3).

"(2) Paragraph (1) applies to the following:

"(A) Information contained in the computerized business systems of commissary stores or the Defense Commissary Agency that is collected through or in connection with the use of electronic scanners in commissary stores, including the following information:

"(i) Data relating to sales of goods or services.

"(ii) Demographic information on customers.

"(iii) Any other information pertaining to commissary transactions and operations.

"(B) Business programs, systems, and applications (including software) relating to commissary operations that were developed with funding derived from commissary surcharges.

"(3)(A) The Secretary of Defense may, using competitive procedures, enter into a contract to sell information described in paragraph (2).

"(B) The Secretary of Defense may release, without charge, information on an item sold in commissary stores to the manufacturer or producer of that item or an agent of the manufacturer or producer.

"(C) The Secretary of Defense shall establish performance benchmarks and shall submit information on customer satisfaction and performance data to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

"(D) The Secretary of Defense may, by contract entered into with a business, grant to the business a license to use business programs referred to in paragraph (2)(B), including software used in or comprising any such program. The fee charged for the license shall be based on the costs of similar programs developed and marketed by businesses in the private sector, determined by means of surveys.

"(E) Each contract entered into under this paragraph shall specify the amount to be paid for information released or a license granted under the contract, as the case may be.

"(4) Information described in paragraph (2) may not be released, under paragraph (3) or otherwise, in a form that identifies any customer or that provides information making it possible to identify any customer.

"(5) Amounts received by the Secretary under this section shall be credited to funds derived from commissary surcharges applied under section 2484(e) of this title, shall be merged with those funds, and shall be available for the same purposes as the funds with which merged.".

(b) RELATION BETWEEN DEFENSE COMMISSARY AND EXCHANGE SYSTEMS.—Chapter 147 of title 10, United States Code, is further amended—

(1) by inserting after section 2485, as amended by subsection (a)(7), the following:

"SUBCHAPTER II—RELATIONSHIP, CONTINUATION, AND COMMON POLICIES OF DEFENSE COMMISSARY AND EXCHANGE SYSTEMS

"Sec.
"2487. Relationship between defense commissary system and exchange stores system.
"2488. Combined exchange and commissary stores.
"2489. Overseas commissary and exchange stores: access and purchase restrictions.

"§2487. Relationship between defense commissary system and exchange stores system

"(a) SEPARATE OPERATION OF SYSTEMS.—(1) Except as provided in paragraph (2), the defense commissary system and the exchange stores system shall be operated as separate systems of the Department of Defense.

"(2) Paragraph (1) does not apply to the following:

"(A) Combined exchange and commissary stores operated under the authority provided by section 2489 of this title.

"(B) NEXMART stores of the Navy Exchange Service Command established before October 1, 2003.

"(b) CONSOLIDATION OR OTHER ORGANIZATIONAL CHANGES OF DEFENSE RETAIL SYSTEMS.—(1) The operation and administration of the defense retail systems may not be consolidated or otherwise merged unless the consolidation or merger is specifically authorized by an Act of Congress.

"(2) In this subsection, the term 'defense retail systems' means the defense commissary system and exchange stores system and other revenue-generating facilities operated by nonappropriated fund instrumentalities of the Department of Defense for the morale, welfare, and recreation of members of the armed forces.";

(2) by redesignating sections 2488, 2489, 2489a as sections 2495, 2495a, and 2495b, respectively; and

(3) by redesignating sections 2490a and 2492 as sections 2488 and 2489, respectively, and inserting such sections after section 2487, as added by paragraph (1).

(c) MWR PROGRAMS AND NONAPPROPRIATED FUND INSTRUMENTALITIES.—Chapter 147 of title 10, United States Code, is further amended—

(1) by inserting after section 2489, as redesignated and moved by subsection (b)(3), the following:

"SUBCHAPTER III—MORALE, WELFARE, AND RECREATION PROGRAMS AND NONAPPROPRIATED FUND INSTRUMENTALITIES

"Sec.
"2491. Uniform funding and management of morale, welfare, and recreation programs.
"2491a. Department of Defense golf courses: limitation on use of appropriated funds.
"2491b. Use of appropriated funds for operation of Armed Forces Recreation Center, Europe: limitation.
"2491c. Retention of morale, welfare, and recreation funds by military installations: limitation.
"2492. Nonappropriated fund instrumentalities: contracts with other agencies and instrumentalities to provide and obtain goods and services.
"2493. Fisher Houses: administration as nonappropriated fund instrumentality.
"2494. Nonappropriated fund instrumentalities: furnishing utility services for morale, welfare, and recreation purposes.
"2495. Nonappropriated fund instrumentalities: purchase of alcoholic beverages.
"2495a. Overseas package stores: treatment of United States wines.
"2495b. Sale or rental of sexually explicit material prohibited.";

(2) by redesignating section 2494 as section 2491 and inserting such section after the table of sections at the beginning of subchapter III, as added by paragraph (1);

(3) by redesignating section 2482a as section 2492 and inserting such section before section 2493;

(4) by inserting after section 2493 the following new section:

"§2494. Nonappropriated fund instrumentalities: furnishing utility services for morale, welfare, and recreation purposes

"Appropriations for the Department of Defense may be used to provide utility services for—

"(1) buildings on military installations authorized by regulation to be used for morale, welfare, and recreation purposes; and

"(2) other morale, welfare, and recreation activities for members of the armed forces."; and

(5) by inserting sections 2495, 2495a, and 2495b, as redesignated by subsection (b)(2), after section 2494, as added by paragraph (4).

(d) INCLUSION OF OTHER TITLE 10 PROVISIONS.—Sections 2246, 2247, and 2219 of title 10, United States Code, are—

(1) transferred to chapter 147 of such title;

(2) inserted after section 2491, as redesignated and moved by subsection (c)(2); and

(3) redesignated as sections 2491a, 2491b, and 2491c, respectively.

(e) CONFORMING AMENDMENTS.—(1) Section 977 of title 10, United States Code, is repealed.

(2) Section 2868 of such title is amended by striking "for—" and all that follows through the period at the end and inserting "for buildings constructed at private cost, as authorized by law.".

(3) Section 367 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 1987; 10 U.S.C. 2482 note) is repealed.

(f) CLERICAL AMENDMENTS.—(1) The table of sections at the beginning of chapter 49 of title 10, United States Code, is amended by striking the item relating to section 977.

(2) The table of sections at the beginning of chapter 131 of such title is amended by striking the item relating to section 2219.

(3) The table of sections at the beginning of subchapter I of chapter 134 of such title is amended by striking the items relating to sections 2246 and 2247.

(g) TEST PROGRAM OF SALE OF CERTAIN ITEMS IN COMMISSARY STORES.—(1) The Secretary of Defense may conduct a test program involving the sale of telephone cards, film, and one-time use cameras in not less than 10 commissary stores for a period selected by the Secretary, but not less than six months.

(2) Within 90 days after the completion of the first year of the test program or within 90 days after the completion of the test program, whichever occurs first, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing the results of the test program. The report shall include an analysis of the impact of the sale of such items on the exchange dividend and such recommendations as the Secretary considers appropriate regarding legislative changes necessary to expand the sale of such items in commissary stores.

(h) COMPTROLLER GENERAL STUDY.—(1) The Comptroller General shall conduct a study evaluating the impact that the expansion of the categories of merchandise authorized for sale in commissary stores has on the exchange dividend. The Comptroller General shall determine the amounts derived from exchange sales and allocated as exchange dividends during the five-year period ending on September 30, 2004, and the morale, welfare, and recreation programs supported using such dividends.

(2) The Secretary shall submit the results of the study to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives not later than March 31, 2006.

SEC. 652. CONSISTENT STATE TREATMENT OF DEPARTMENT OF DEFENSE NONAPPROPRIATED FUND HEALTH BENEFITS PROGRAM.

Section 349 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 10 U.S.C. 1587 note) is amended by adding at the end the following new subsection:

"(c) TREATMENT OF PROGRAM AS FEDERAL HEALTH BENEFIT PROGRAM.—(1) No State tax, fee, other monetary payment, or State health plan requirement, may be imposed, directly or indirectly, on the Nonappropriated Fund Uniform Health Benefits Program of the Department of Defense, or on a carrier or an underwriting or plan administration contractor of the Program, to the same extent as such prohibition applies to the health insurance program authorized by chapter 89 of title 5, United States Code, under section 8909(f) of such title.

"(2) Paragraph (1) shall not be construed to exempt the Nonappropriated Fund Uniform Health Benefits Program of the Department of Defense, or any carrier or underwriting or plan administration contractor of the Program from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to, or realized by, the Program or by such carrier or contractor from business conducted under the Program, so long as the tax, fee, or payment is applicable to a broad range of business activity.

"(3) In this subsection, the term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any political subdivision or other non-Federal authority thereof.".

Subtitle F—Other Matters

SEC. 661. ELIGIBILITY OF MEMBERS FOR REIMBURSEMENT OF EXPENSES INCURRED FOR ADOPTION PLACEMENTS MADE BY FOREIGN GOVERNMENTS.

Section 1052(g)(3) of title 10, United States Code, is amended by adding at the end the following new subparagraph:

"(D) A foreign government or an agency authorized by a foreign government to place children for adoption, in any case in which—

"(i) the adopted child is entitled to automatic citizenship under section 320 of the Immigration and Nationality Act (8 U.S.C. 1431); or

"(ii) a certificate of citizenship has been issued for such child under section 322 of that Act (8 U.S.C. 1433).".

SEC. 662. CLARIFICATION OF EDUCATION LOANS QUALIFYING FOR EDUCATION LOAN REPAYMENT PROGRAM FOR RESERVE COMPONENT HEALTH PROFESSIONS OFFICERS.

Section 16302(a)(5) of title 10, United States Code, is amended by inserting "a basic professional qualifying degree (as determined under regulations prescribed by the Secretary of Defense) or graduate education in" after "regarding".

SEC. 663. RECEIPT OF PAY BY RESERVISTS FROM CIVILIAN EMPLOYERS WHILE ON ACTIVE DUTY IN CONNECTION WITH A CONTINGENCY OPERATION.

Section 209 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(h) This section does not prohibit a member of the reserve components of the armed forces on active duty pursuant to a call or order to active duty under a provision of law referred to in section 101(a)(13) of title 10 from receiving from any person that employed such member before the call or order to active duty any payment of any part of the salary or wages that such person would have paid the member if the member's employment had not been interrupted by such call or order to active duty.".

SEC. 664. RELIEF FOR MOBILIZED RESERVISTS FROM CERTAIN FEDERAL AGRICULTURAL LOAN OBLIGATIONS.

The Consolidated Farm and Rural Development Act is amended by inserting after section 331F (7 U.S.C. 1981f) the following new section:

"SEC. 332. RELIEF FOR MOBILIZED MILITARY RESERVISTS FROM CERTAIN AGRICULTURAL LOAN OBLIGATIONS.

"(a) DEFINITION OF MOBILIZED MILITARY RESERVIST.—In this section, the term 'mobilized military reservist' means an individual who—

"(1) is on active duty under section 688, 12301(a), 12301(g), 12302, 12304, 12306, or 12406, or chapter 15 of title 10, United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress, regardless of the location at which the active duty service is performed; or

"(2) in the case of a member of the National Guard, is on full-time National Guard duty (as defined in section 101(d)(5) of title 10, United States Code) under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds.

"(b) FORGIVENESS OF INTEREST PAYMENTS DUE WHILE BORROWER IS A MOBILIZED MILITARY RESERVIST.—Any requirement that a borrower of a direct loan made under this title make any interest payment on the loan that would otherwise be required to be made while the borrower is a mobilized military reservist is rescinded.

"(c) DEFERRAL OF PRINCIPAL PAYMENTS DUE WHILE OR AFTER BORROWER IS A MOBILIZED MILITARY RESERVIST.—The due date of any payment of principal on a direct loan made to a borrower under this title that would otherwise be required to be made while or after the borrower is a mobilized military reservist is deferred for a period equal in length to the period for which the borrower is a mobilized military reservist.

"(d) NONACCRUAL OF INTEREST.—Interest on a direct loan made to a borrower described in this section shall not accrue during the period the borrower is a mobilized military reservist.

"(e) BORROWER NOT CONSIDERED TO BE DELINQUENT OR RECEIVING DEBT FORGIVENESS.—Notwithstanding section 373 or any other provision of this title, a borrower who receives assistance under this section shall not, as a result of the assistance, be considered to be delinquent or receiving debt forgiveness for purposes of receiving a direct or guaranteed loan under this title.".

SEC. 665. SURVEY AND ANALYSIS OF EFFECT OF EXTENDED AND FREQUENT MOBILIZATION OF RESERVISTS FOR ACTIVE DUTY SERVICE ON RESERVIST INCOME.

(a) SURVEY OF MOBILIZED RESERVISTS TO DETERMINE DIFFERENTIAL BETWEEN PRIVATE SECTOR INCOME AND MILITARY COMPENSATION.—(1) The Secretary of Defense shall conduct a survey involving members of the reserve components who serve, or have served, on active duty in support of a contingency operation at any time during the period beginning on September 11, 2001, and ending on September 30, 2005, to determine the extent to which such members sustained a reduction in monthly income during their period of active duty service compared to their average monthly civilian income during the 12 months preceding their mobilization.

(2) To the extent practicable, at least 50 percent of the total number of members of the reserve components who have served on active duty in support of a contingency operation at any time during the period specified in paragraph (1) should be included in the survey. To participate in the survey, a member shall agree to make available to the Secretary such information as the Secretary may require to accurately calculate the average monthly civilian income of the member.

(b) CALCULATION OF INCOME DIFFERENTIAL.—In the case of each member participating in the survey under subsection (a) whose total monthly military compensation during the active duty service of the member was less, or appeared to be less, than the average monthly civilian income of the member, the Secretary of Defense, in cooperation with the member, shall calculate the monthly active-duty income differential for the member.

(c) COLLECTION OF DEMOGRAPHIC DATA.—The Secretary of Defense shall collect demographic data regarding each member of a reserve component who participates in the survey under subsection (a), including, at a minimum, data on the following:

(1) Reserve component.

(2) Unit of assignment.

(3) Grade.

(4) Age.

(5) Years of service.

(6) Sex.

(7) Marital status.

(8) Number of dependents.

(9) General category of private-sector employment, as determined by the Secretary, but to include an employment category to cover members who are self-employed.

(10) Military occupational specialty, including specifying all surveyed members who are serving in a critical wartime specialty.

(11) Length of service on active duty during the most recent mobilization.

(12) Number of times mobilized since September 11, 2001.

(d) CONSIDERATION OF AVERAGE MONTHLY RESERVE SERVICE INCOME.—The Secretary of Defense shall collect data to calculate the average monthly reserve service income of members of the reserve components before their mobilization, and consider such data by grade, general category of military occupational specialty, and years of service. The Secretary shall also consider the effect that the receipt of average monthly reserve service income by reserve component members before mobilization should have on any obligation of the United States to eliminate or at least reduce the monthly active-duty income differential suffered by members serving on active duty in support of a contingency operation.

(e) EFFECT OF INCOME LOSS ON RETENTION.—The Secretary of Defense shall include in the survey under subsection (a) a question intended to solicit information from members of the reserve components participating in the survey regarding the likely effect that a reoccurring monthly active-duty income differential while serving on active duty would have on their decision to remain in Armed Forces.

(f) ANALYSIS OF SURVEY DATA.—(1) At a minimum, the Secretary of Defense shall determine, for each variable listed in paragraphs (2) through (12) of subsection (c), the number of members of the reserve components surveyed under subsection (a) who sustained a monthly active-duty income differential for any month during their active duty service and compare and contrast that number with the number of members who did not experience a monthly active-duty income differential.

(2) The Secretary shall also determine the average amount of the active-duty income differential by reserve component for each variable within the characteristics listed in paragraphs (2) through (12) of subsection (c).

(g) SUBMISSION OF SURVEY RESULTS AND RECOMMENDATIONS.—(1) Not later than January 31, 2006, the Secretary of Defense shall submit to Congress and the Comptroller General a report containing the results of the surveys conducted under subsection (a), including the results of the analysis of survey data required by subsection (f). The Secretary shall include such recommendations as the Secretary considers appropriate regarding alternatives for restoring income lost by members of the reserve components who sustained a monthly active-duty income differential during their active duty service.

(2) Not later than 90 days after receiving the report of the Secretary of Defense submitted under paragraph (1), the Comptroller General shall submit to Congress an assessment of the findings and recommendations of the Secretary contained in the report.

(h) DEFINITIONS USED IN CONDUCTING SURVEY AND CALCULATIONS.—In this section:

(1) The term "monthly active-duty income differential", with respect to a member of a reserve component who participates in the survey under subsection (a), means the difference between—

(A) the the average monthly civilian income of the member; and

(B) the total monthly military compensation of the member during the active duty service of the member.

(2) The term "total monthly military compensation", with respect to a member of a reserve component who participates in the survey, means the amount, computed on a monthly basis, of the sum of—

(A) the amount of the regular military compensation (RMC), as defined in section 101(25) of title 37, United States Code, of the member during the period specified in subsection (a)(1); and

(B) any amount of special pay or incentive pay and any allowance (other than an allowance included in regular military compensation) that is paid to the member on a monthly basis during the period specified in subsection (a)(1).

(3) The term "average monthly civilian income", with respect to a member of a reserve component who participates in the survey, means the amount, determined by the Secretary of Defense, of the earned income of the member for the 12 months preceding the first mobilization of the member for active duty service in support of a contingency operation during the period specified in subsection (a)(1), divided by 12.

(4) The term "average monthly reserve service income", with respect to a member of a reserve component who participates in the survey, means the amount, determined by the Secretary of Defense, of the regular military compensation, compensation under section 206 of title 37, United States Code, and any special pays and allowances referred to in paragraph (3)(B) received by the member during the 12 months preceding the first mobilization of the member for active duty service in support of a contingency operation during the period specified in subsection (a)(1), divided by 12.

SEC. 666. STUDY OF DISABILITY BENEFITS FOR VETERANS OF SERVICE IN THE ARMED FORCES WITH SERVICE-CONNECTED DISABILITIES.

(a) REQUIREMENT FOR STUDY.—(1) The Secretary of Defense shall conduct a study of the totality of all current and projected disability benefits that are available to disabled members and former members of the Armed Forces for service-connected disabilities and, on the basis of the results of such study, determine the adequacy of those benefits.

(2) In carrying out the study, the Secretary shall—

(A) compare the disability benefits for members of the Armed Forces with commercial and other private-sector disability benefits plans that are provided for other persons in the United States who are disabled by causes other than service in the Armed Forces; and

(B) identify and assess the changes to Department of Defense personnel policies needed to enhance the financial and nonfinancial benefits that are provided to members and former members of the Armed Forces for service-connected disabilities.

(b) COORDINATION.—In carrying out the study under subsection (a) and preparing the report under subsection (c), the Secretary of Defense shall—

(1) consult with the Secretary of Veterans Affairs and take into consideration the veterans disability benefits programs that are administered by the Secretary of Veterans Affairs; and

(2) consult with, and obtain the assistance of, the Veterans' Disability Benefits Commission established under title XV of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1676).

(c) REPORT.—Not later than 150 days after the date of the enactment of this Act, the Secretary of Defense shall submit a report on the results of the study under this section to the committees of Congress specified in subsection (e). The report shall include the following:

(1) The Secretary's assessments, analyses, and conclusions resulting from the study.

(2) Recommended legislation to address the deficiencies in the system of Federal Government disability benefits for disabled members and former members of the Armed Forces that are identified in the course of the study.

(3) An estimate of the costs of improvements in the system of disability benefits that are provided for in the recommended legislation.

(d) GAO STUDY.—(1) The Comptroller General shall conduct a study to identify the disability benefits that are payable under Federal, State, and local laws for employees of the Federal Government, State governments, and local governments. In carrying out the study, the Comptroller General shall, to the extent feasible, pay particular attention to the disability benefits that are provided for disabilities incurred in the performance of jobs in which employees perform tasks with risks that are analogous to the risks associated with the performance of military tasks by members of the Armed Forces.

(2) Not later than November 1, 2005, the Comptroller General shall submit a report on the results of the study under paragraph (1) to the committees of Congress specified in subsection (e).

(e) RECIPIENTS OF REPORT.—The committees of Congress to which the reports under subsections (d) and (e) are to be submitted are as follows:

(1) The Committee on Armed Services and the Committee on Veterans' Affairs of the Senate.

(2) The Committee on Armed Services and the Committee on Veterans' Affairs of the House of Representatives.

TITLE VII—HEALTH CARE PROVISIONS

Subtitle A—Enhanced Benefits for Reserves

Sec. 701. TRICARE coverage for members of reserve components who commit to continued service in the Selected Reserve after release from active duty.
Sec. 702. Comptroller General report on the cost and feasibility of providing private health insurance stipends for members of the Ready Reserves.
Sec. 703. Permanent earlier eligibility date for TRICARE benefits for members of reserve components and their dependents.
Sec. 704. Waiver of certain deductibles under TRICARE program for members on active duty for a period of more than 30 days.
Sec. 705. Authority for payment by United States of additional amounts billed by health care providers to activated Reserves.
Sec. 706. Permanent extension of transitional health care benefits and addition of requirement for preseparation physical examination.

Subtitle B—Other Benefits Improvements

Sec. 711. Opportunity for young child dependent of deceased member to become eligible for enrollment in a TRICARE dental plan.
Sec. 712. Comptroller General report on provision of health, education, and support services for Exceptional Family Member Program enrollees.
Sec. 713. Continuation of sub-acute care for transition period.
Sec. 714. Improvements to pharmacy benefits program
Sec. 715. Professional accreditation of military dentists.
Sec. 716. Temporary authority for waiver of collection of payments due for CHAMPUS benefits received by disabled persons unaware of loss of CHAMPUS eligibility.
Sec. 717. Services of marriage and family therapists.
Sec. 718. Chiropractic health care benefits advisory committee.

Subtitle C—Planning, Programming, and Management

Sec. 721. Pilot program for health care delivery.
Sec. 722. Study of provision of travel reimbursement to hospitals for certain military disability retirees.
Sec. 723. Study of mental health services.
Sec. 724. Policy for timely notification of next of kin of members seriously ill or injured in combat zones.
Sec. 725. Revised funding methodology for military retiree health care benefits.
Sec. 726. Grounds for presidential waiver of requirement for informed consent or option to refuse regarding administration of drugs not approved for general use.
Sec. 727. TRICARE program regional directors.

Subtitle D—Medical Readiness Tracking and Health Surveillance

Sec. 731. Medical readiness plan and Joint Medical Readiness Oversight Committee.
Sec. 732. Medical readiness of Reserves.
Sec. 733. Baseline Health Data Collection Program.
Sec. 734. Medical care and tracking and health surveillance in the theater of operations.
Sec. 735. Declassification of information on exposures to environmental hazards.
Sec. 736. Report on training on environmental hazards.
Sec. 737. Uniform policy for meeting mobilization-related medical care needs at military installations.
Sec. 738. Full implementation of Medical Readiness Tracking and Health Surveillance Program and Force Health Protection and Readiness Program.
Sec. 739. Reports and Internet accessibility relating to health matters.

Subtitle A—Enhanced Benefits for Reserves

SEC. 701. TRICARE COVERAGE FOR MEMBERS OF RESERVE COMPONENTS WHO COMMIT TO CONTINUED SERVICE IN THE SELECTED RESERVE AFTER RELEASE FROM ACTIVE DUTY.

(a) ELIGIBILITY.—(1) Chapter 55 of title 10, United States Code, is amended by inserting after section 1076c the following new section:

"§ 1076d. TRICARE program: coverage for members of reserve components who commit to continued service in the Selected Reserve after release from active duty

"(a) ELIGIBILITY.—A member of the Selected Reserve of the Ready Reserve of a reserve component of the armed forces is eligible for health benefits under TRICARE Standard as provided in this section after the member completes service on active duty to which the member was called or ordered for a period of more than 30 days on or after September 11, 2001, under a provision of law referred to in section 101(a)(13)(B), if the member—

"(1) served continuously on active duty for 90 or more days pursuant to such call or order; and

"(2) on or before the date of the release from such active-duty service, entered into an agreement with the Secretary concerned to serve continuously in the Selected Reserve for a period of one or more whole years following such date.

"(b) PERIOD OF COVERAGE.—(1) TRICARE Standard coverage of a member under this section, on the basis of active-duty service performed as described in subsection (a), begins upon the expiration of the member's entitlement to care and benefits under section 1145(a) of this title that is based on the same active-duty service.

"(2) Unless earlier terminated under paragraph (3), the period for TRICARE Standard coverage of a member under this section shall be equal to the lesser of—

"(A) one year, in the case of a member who is otherwise eligible but does not serve continuously on active duty for 90 days as described in subsection (a) because of an injury, illness, or disease incurred or aggravated while deployed;

"(B) one year for each consecutive period of 90 days of continuous active-duty service described in subsection (a); or

"(C) the number of whole years for which the member agrees under paragraph (2) of such subsection to continue to serve in the Selected Reserve after the coverage begins.

"(3) Eligibility for TRICARE Standard coverage of a member under this section shall terminate upon the termination of the member's service in the Selected Reserve.

"(c) FAMILY MEMBERS.—While a member of a reserve component is covered by TRICARE Standard under the section, the members of the immediate family of such member are eligible for TRICARE Standard coverage as dependents of the member.

"(d) PREMIUMS.—(1) A member of a reserve component covered by TRICARE Standard under this section shall pay a premium for that coverage.

"(2) The Secretary of Defense shall prescribe for the purposes of this section one premium for TRICARE Standard coverage of members without dependents and one premium for TRICARE

Standard coverage of members with dependents referred to in subsection (f)(1). The premium prescribed for a coverage shall apply uniformly to all covered members of the reserve components.

"(3) The monthly amount of the premium in effect for a month for TRICARE Standard coverage under this section shall be the amount equal to 28 percent of the total monthly amount that the Secretary determines on an appropriate actuarial basis as being reasonable for that coverage.

"(4) The premiums payable by a member of a reserve component under this subsection may be deducted and withheld from basic pay payable to the member under section 204 of title 37 or from compensation payable to the member under section 206 of such title. The Secretary shall prescribe the requirements and procedures applicable to the payment of premiums.

"(5) Amounts collected as premiums under this subsection shall be credited to the appropriation available for the Defense Health Program Account under section 1100 of this title, shall be merged with sums in such Account that are available for the fiscal year in which collected, and shall be available under subsection (b) of such section for such fiscal year.

"(e) RELATIONSHIP OF SERVICE AGREEMENT TO OTHER SERVICE COMMITMENTS.—The service agreement required of a member of a reserve component under subsection (a)(2) is separate from any other form of commitment of the member to a period of obligated service in that reserve component and may cover any part or all of the same period that is covered by another commitment of the member to a period of obligated service in that reserve component.

"(f) DEFINITIONS.—In this section:

"(1) The term 'immediate family', with respect to a member of a reserve component, means all of the member's dependents described in subparagraphs (A), (D), and (I) of section 1072(2) of this title.

"(2) The term 'TRICARE Standard' means the Civilian Health and Medical Program of the Uniformed Services option under the TRICARE program.

"(g) REGULATIONS.—The Secretary of Defense, in consultation with the other administering Secretaries, shall prescribe regulations for the administration of this section.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1076c the following new item:

"1076d. TRICARE program: coverage for members of reserve components who commit to continued service in the Selected Reserve after release from active duty.".

(b) IMPLEMENTATION.—(1) The Secretary of Defense shall implement section 1076d of title 10, United States Code, not later than 180 days after the date of the enactment of this Act.

(2)(A) A member of a reserve component of the Armed Forces who performed active-duty service described in subsection (a) of section 1076d of title 10, United States Code, for a period beginning on or after September 11, 2001, and was released from that active-duty service before the date of the enactment of this Act, or is released from that active-duty service on or within 180 days after the date of the enactment of this Act, may, for the purpose of paragraph (2) of such subsection, enter into an agreement described in such paragraph not later than one year after the date of the enactment of this Act. TRICARE Standard coverage (under such section 1076d) of a member who enters into such an agreement under this paragraph shall begin on the later of—

(i) the date applicable to the member under subsection (b) of such section; or

(ii) the date of the agreement.

(B) The Secretary of Defense shall take such action as is necessary to ensure, to the maximum extent practicable, that members of the reserve components eligible to enter into an agreement as provided in subparagraph (A) actually receive information on the opportunity and procedures for entering into such an agreement together with a clear explanation of the benefits that the members are eligible to receive as a result of entering into such an agreement under section 1076d of title 10, United States Code.

SEC. 702. COMPTROLLER GENERAL REPORT ON THE COST AND FEASIBILITY OF PROVIDING PRIVATE HEALTH INSURANCE STIPENDS FOR MEMBERS OF THE READY RESERVES.

(a) STUDY REQUIRED.—The Comptroller General shall conduct a study on the cost and feasibility of providing a stipend to members of the Ready Reserves to offset the cost of continuing private health insurance coverage for the members' dependents when the members are on active duty for periods of more than 30 days, with the dependents being ineligible to enroll in the TRICARE program and payment of the stipend ending when the members are no longer on active duty.

(b) MATTERS COVERED.—The study shall include the following matters:

(1) Recommendation for a benefit amount and cost to the Department of Defense.

(2) Potential effects on medical readiness, recruitment, and retention.

(3) The extent to which the Reserves and members of their families might participate under the stipend program.

(4) Administrative and management considerations for the Department of Defense.

(5) Impact of pre-existing conditions on continuity of care for dependents.

(6) Possible implications for employers.

(c) REPORT.—Not later than March 31, 2005, the Comptroller General shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing the results of the study under this section.

SEC. 703. PERMANENT EARLIER ELIGIBILITY DATE FOR TRICARE BENEFITS FOR MEMBERS OF RESERVE COMPONENTS AND THEIR DEPENDENTS.

Section 1074(d) of title 10, United States Code, is amended by striking paragraph (3).

SEC. 704. WAIVER OF CERTAIN DEDUCTIBLES UNDER TRICARE PROGRAM FOR MEMBERS ON ACTIVE DUTY FOR A PERIOD OF MORE THAN 30 DAYS.

Section 1095d(a) of title 10, United States Code, is amended by striking "less than one year" both places it appears and inserting "more than 30 days".

SEC. 705. AUTHORITY FOR PAYMENT BY UNITED STATES OF ADDITIONAL AMOUNTS BILLED BY HEALTH CARE PROVIDERS TO ACTIVATED RESERVES.

Section 1079(h) of title 10, United States Code, is amended by adding at the end of paragraph (4) the following new subparagraph:

"(C)(i) In the case of a dependent described in clause (ii), the regulations shall provide that, in addition to amounts otherwise payable by the United States, the Secretary may pay the amount referred to in subparagraph (B)(i).

"(ii) This subparagraph applies to a dependent referred to in subsection (a) of a member of a reserve component serving on active duty pursuant to a call or order to active duty for a period of more than 30 days in support of a contingency operation under a provision of law referred to in section 101(a)(13)(B) of this title.".

SEC. 706. PERMANENT EXTENSION OF TRANSITIONAL HEALTH CARE BENEFITS AND ADDITION OF REQUIREMENT FOR PRESEPARATION PHYSICAL EXAMINATION.

(a) PERMANENT REQUIREMENT.—(1) Paragraph (3) of section 1145(a) of title 10, United States Code, is amended to read as follows:

"(3) Transitional health care for a member under subsection (a) shall be available for 180 days beginning on the date on which the member is separated from active duty.".

(2) The following provisions of law are repealed:

(A) Section 704 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1527; 10 U.S.C. 1145 note).

(B) Section 1117 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108–106; 117 Stat. 1218; 10 U.S.C. 1145 note).

(3) Paragraph (1) of such section 1145(a) is amended by striking "applicable".

(b) REQUIREMENT FOR PHYSICAL EXAMINATION.—Such section 1145(a), as amended by subsection (a), is further amended by adding at the end the following new paragraph:

"(4)(A) The Secretary concerned shall require a member of the armed forces scheduled to be separated from active duty as described in paragraph (2) to undergo a physical examination immediately before that separation. The physical examination shall be conducted in accordance with regulations prescribed by the Secretary of Defense.

"(B) Notwithstanding subparagraph (A), if a member of the armed forces scheduled to be separated from active duty as described in paragraph (2) has otherwise undergone a physical examination within 12 months before the scheduled date of separation from active duty, the requirement for a physical examination under subparagraph (A) may be waived in accordance with regulations prescribed under this paragraph. Such regulations shall require that such a waiver may be granted only with the consent of the member and with the concurrence of the member's unit commander.".

Subtitle B—Other Benefits Improvements

SEC. 711. OPPORTUNITY FOR YOUNG CHILD DEPENDENT OF DECEASED MEMBER TO BECOME ELIGIBLE FOR ENROLLMENT IN A TRICARE DENTAL PLAN.

Section 1076a(k)(2) of title 10, United States Code, is amended—

(1) by striking "under subsection (a) or" and inserting "under subsection (a),"; and

(2) by inserting after "under subsection (f)," the following: "or is not enrolled because the dependent is a child under the minimum age for enrollment,".

SEC. 712. COMPTROLLER GENERAL REPORT ON PROVISION OF HEALTH, EDUCATION, AND SUPPORT SERVICES FOR EXCEPTIONAL FAMILY MEMBER PROGRAM ENROLLEES.

(a) EVALUATION REQUIREMENT.—The Comptroller General shall evaluate the effect of the Exceptional Family Member Program (in this section referred to as "EFMP") on health, education, and support services in selected civilian communities near military installations with a high concentration of EFMP enrollees.

(b) MATTERS COVERED.—The evaluation under subsection (a) shall include a discussion of the following:

(1) Communities that have high concentrations of EFMP enrollees that use State and local health, education, and support services.

(2) Needs of EFMP enrollees, if any, that are not met by State and local health, education, and support services.

(3) The burdens, financial and otherwise, placed on State and local health, education,

and support services by EFMP enrollees and their families.

(4) The ability of the TRICARE program to meet the needs of EFMP enrollees and their families.

(5) Reasons for any limitations of the TRICARE program, the EFMP, and State and local health, education, and support services in providing assistance to EFMP enrollees and their families.

(6) Recommendations for more effectively meeting the needs of EFMP enrollees and their families.

(c) COMMUNITIES COVERED.—The evaluation under subsection (a) shall examine no fewer than four civilian communities, as determined by the Comptroller General, that have high concentrations of EFMP enrollees and that are near several military installations, including at least two military installations with tenants from more than one of the Armed Forces.

(d) DEFINITIONS.—In this section:

(1) The term "health, education, and support services" means services provided to children and other dependents with special needs, including specialized day care, mental health day treatment services, respite services, counseling, early childhood intervention, special education, and other such services provided for children and other dependents with special needs.

(2) The term "TRICARE program" has the meaning given that term in section 1072(7) of title 10, United States Code.

(e) REPORT.—Not later than one year after the date of the enactment of this Act, the Comptroller General shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the results of the evaluation required under subsection (a), including findings and recommendations.

SEC. 713. CONTINUATION OF SUB-ACUTE CARE FOR TRANSITION PERIOD.

Section 1074j(b) of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(4) The Secretary of Defense may take such actions as are necessary to ensure that there is an effective transition in the furnishing of part-time or intermittent home health care benefits for covered beneficiaries who were receiving such benefits before the establishment of the program under this section. The actions taken under this paragraph may include the continuation of such benefits on an extended basis for such time as the Secretary determines appropriate.".

SEC. 714. IMPROVEMENTS TO PHARMACY BENEFITS PROGRAM.

(a) REQUIREMENT RELATING TO PRESCRIPTION DRUG BENEFITS FOR MEDICARE-ELIGIBLE ENROLLEES.—Section 1074g(a)(6) of title 10, United States Code, is amended—

(1) by inserting "(A)" after "(6)"; and

(2) by adding at the end the following:

"(B) For a medicare-eligible beneficiary, the cost-sharing requirements may not be in excess of the cost-sharing requirements applicable to all other beneficiaries covered by section 1086 of this title. For purposes of the preceding sentence, a medicare-eligible beneficiary is a beneficiary eligible for health benefits under section 1086 of this title pursuant to subsection (d)(2) of such section.".

(b) IMPROVEMENT TO UNIFORM FORMULARY PROCESS.—Section 1974g(a)(2)(E)(i) of such title is amended by inserting before the semicolon the following: "and additional determinations by the Pharmacy and Therapeutics Committee of the relative clinical and cost effectiveness of the agents".

SEC. 715. PROFESSIONAL ACCREDITATION OF MILITARY DENTISTS.

Section 1077(c) of title 10, United States Code, is amended—

(1) by striking "A" and inserting "(1) Except as specified in paragraph (2), a"; and

(2) by adding at the end the following new paragraph:

"(2)(A) Dependents who are 12 years of age or younger and are covered by a dental plan established under section 1076a of this title may be treated by postgraduate dental residents in a dental treatment facility of the uniformed services under a graduate dental education program accredited by the American Dental Association if—

"(i) treatment of pediatric dental patients is necessary in order to satisfy an accreditation standard of the American Dental Association that is applicable to such program, or training in pediatric dental care is necessary for the residents to be professionally qualified to provide dental care for dependent children accompanying members of the uniformed services outside the United States; and

"(ii) the number of pediatric patients at such facility is insufficient to support satisfaction of the accreditation or professional requirements in pediatric dental care that apply to such program or students.

"(B) The total number of dependents treated in all facilities of the uniformed services under subparagraph (A) in a fiscal year may not exceed 2,000.".

SEC. 716. TEMPORARY AUTHORITY FOR WAIVER OF COLLECTION OF PAYMENTS DUE FOR CHAMPUS BENEFITS RECEIVED BY DISABLED PERSONS UNAWARE OF LOSS OF CHAMPUS ELIGIBILITY.

(a) AUTHORITY TO WAIVE DEBT.—(1) The Secretary of Defense, in consultation with the other administering Secretaries, may waive (in whole or in part) the collection of payments otherwise due from a person described in subsection (b) for health benefits received by such person under section 1086 of title 10, United States Code, after the termination of that person's eligibility for such benefits.

(2) If the Secretary of Defense waives collection of payments from a person under paragraph (1), the Secretary may also authorize a continuation of benefits for such person under such section 1086 for a period ending not later than the end of the period specified in subsection (c) of this section.

(b) ELIGIBLE PERSONS.—A person is eligible for relief under subsection (a)(1) if—

(1) the person is described in paragraph (1) of subsection (d) of section 1086 of title 10, United States Code;

(2) except for such paragraph, the person would have been eligible for the health benefits under such section; and

(3) at the time of the receipt of such benefits—

(A) the person satisfied the criteria specified in paragraph (2)(B) of such subsection (d); and

(B) the person was unaware of the loss of eligibility to receive the health benefits.

(c) PERIOD OF APPLICABILITY.—The authority provided under this section to waive collection of payments and to continue benefits shall apply, under terms and conditions prescribed by the Secretary of Defense, to health benefits provided under section 1086 of title 10, United States Code, during the period beginning on July 1, 1999, and ending at the end of December 31, 2004.

(d) ADMINISTERING SECRETARIES.—In this subsection, the term "administering Secretaries" has the meaning given such term in section 1072(3) of title 10, United States Code.

SEC. 717. SERVICES OF MARRIAGE AND FAMILY THERAPISTS.

(a) AUTHORITY TO ENTER INTO PERSONAL SERVICES CONTRACTS.—Section 704(c)(2) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337; 108 Stat. 2799; 10 U.S.C. 1091 note) is amended by inserting "marriage and family therapists certified as such by a certification recognized by the Secretary of Defense," after "psychologists,".

(b) APPLICABILITY OF LICENSURE REQUIREMENT FOR HEALTH-CARE PROFESSIONALS.—Section 1094(e)(2) of title 10, United States Code, is amended by inserting "marriage and family therapist certified as such by a certification recognized by the Secretary of Defense," after "psychologist,".

SEC. 718. CHIROPRACTIC HEALTH CARE BENEFITS ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall establish an oversight advisory committee to provide the Secretary with advice and recommendations regarding the continued development and implementation of an effective program of chiropractic health care benefits for members of the uniformed services on active duty.

(b) MEMBERSHIP.—The advisory committee shall be composed of members selected from among persons who, by reason of education, training, and experience, are experts in chiropractic health care, as follows:

(1) Members appointed by the Secretary of Defense in such number as the Secretary determines appropriate for carrying out the duties of the advisory committee effectively, including not fewer than three practicing representatives of the chiropractic health care profession.

(2) A representative of each of the uniformed services, as designated by the administering Secretary concerned.

(c) CHAIRMAN.—The Secretary of Defense shall designate one member of the advisory committee to serve as the Chairman of the advisory committee.

(d) MEETINGS.—The advisory committee shall meet at the call of the Chairman, but not fewer than three times each fiscal year, beginning in fiscal year 2005.

(e) DUTIES.—The advisory committee shall have the following duties:

(1) Review and evaluate the program of chiropractic health care benefits provided to members of the uniformed services on active duty under chapter 55 of title 10, United States Code.

(2) Provide the Secretary of Defense with advice and recommendations as described in subsection (a).

(3) Upon the Secretary's determination that the program of chiropractic health care benefits referred to in paragraph (1) has been fully implemented, prepare and submit to the Secretary a report containing the advisory committee's evaluation of the implementation of such program.

(f) REPORT.—The Secretary of Defense, following receipt of the report by the advisory committee under subsection (e)(3), shall submit to the Committees on Armed Services of the Senate and of the House of Representatives a report containing the following:

(1) A copy of the advisory committee report, together with the Secretary's comments on the report.

(2) An explanation of the criteria and rationale that the Secretary used to determine that the program of chiropractic health care benefits was fully implemented.

(3) The Secretary's views with regard to the future implementation of the program of chiropractic health care benefits.

(g) APPLICABILITY OF TEMPORARY ORGANIZATIONS LAW.—(1) Section 3161 of title 5, United States Code, shall apply to the advisory committee under this section.

(2) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the oversight advisory committee under this section.

(h) TERMINATION.—The advisory committee shall terminate 90 days after the date on which the Secretary submits the report under subsection (f).

Subtitle C—Planning, Programming, and Management

SEC. 721. PILOT PROGRAM FOR HEALTH CARE DELIVERY.

(a) Pilot Program.—The Secretary of Defense may conduct a pilot program at two or more military installations for purposes of testing initiatives that build cooperative health care arrangements and agreements between military installations and local and regional non-military health care systems.

(b) Requirements of Pilot Program.—In conducting the pilot program, the Secretary of Defense shall—

(1) identify and analyze health care delivery options involving the private sector and health care services in military facilities located on the installation;

(2) determine the cost avoidance or savings resulting from innovative partnerships between the Department of Defense and the private sector;

(3) study the potential, viability, cost efficiency, and health care effectiveness of Department of Defense health care providers delivering health care in civilian community hospitals; and

(4) determine the opportunities for and barriers to coordinating and leveraging the use of existing health care resources, including Federal, State, local, and contractor assets.

(c) Consultation Requirements.—The Secretary of Defense shall develop the pilot program in consultation with the Secretaries of the military departments, representatives from the military installation selected for the pilot program, Federal, State, and local entities, and the TRICARE managed care support contractor with responsibility for that installation.

(d) Selection of Military Installation.—The pilot program may be implemented at two or more military installations selected by the Secretary of Defense. At least one of the selected military installations shall meet the following criteria:

(1) The military installation has members of the Armed Forces on active duty and members of reserve components of the Armed Forces that use the installation as a training and operational base, with members routinely deploying in support of the global war on terrorism.

(2) The number of members of the Armed Forces on active duty permanently assigned to the military installation is expected to increase over the next five years.

(3) One or more cooperative arrangements exist at the military installation with civilian health care entities in the form of specialty care services in the military medical treatment facility on the installation.

(4) There is a military treatment facility on the installation that does not have inpatient or trauma center care capabilities.

(5) There is a civilian community hospital near the military installation with—

(A) limited capability to expand inpatient care beds, intensive care, and specialty services; and

(B) limited or no capability to provide trauma care.

(e) Duration of Pilot Program.—Implementation of the pilot program developed under this section shall begin not later than May 1, 2005, and shall be conducted during fiscal years 2005, 2006, and 2007.

(f) Reports.—With respect to any pilot program conducted under this section, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and of the House of Representatives—

(1) an interim report on the program, not later than 60 days after commencement of the program; and

(2) a final report describing the results of the program with recommendations for a model health care delivery system for other military installations, not later than July 1, 2007.

SEC. 722. STUDY OF PROVISION OF TRAVEL REIMBURSEMENT TO HOSPITALS FOR CERTAIN MILITARY DISABILITY RETIREES.

(a) Study.—The Secretary of Defense shall conduct a study of the feasibility, and of the desirability, of providing that a member of the uniformed services retired under chapter 61 of title 10, United States Code, shall be provided reimbursement for the travel expenses of such member for travel, during the two-year period beginning on the date of the retirement of the member, to a military treatment facility for medical care. The Secretary shall include in that study consideration of whether reimbursement under such a plan should, as nearly as practicable, be under the same terms and conditions, and at the same rate, as apply to beneficiary travel reimbursement provided by the Secretary of Veterans Affairs under section 111 of title 38, United States Code.

(b) Report.—The Secretary of Defense shall submit to the congressional defense committees a report providing the results of the study under subsection (a). Such report shall be submitted not later than March 1, 2005.

SEC. 723. STUDY OF MENTAL HEALTH SERVICES.

(a) Study Required.—The Comptroller General shall conduct a study of mental health services available to members of the Armed Forces.

(b) Persons Covered.—The study shall evaluate the availability and effectiveness of existing mental health treatment and screening resources—

(1) for members of the Armed Forces during a deployment to a combat theater;

(2) for members of the Armed Forces returning from a deployment to a combat theater, both—

(A) in the short-term, post-deployment period; and

(B) in the long-term, following the post-deployment period;

(3) for the families of members of the Armed Forces who have been deployed to a combat theater during the time of the deployment;

(4) for the families of members of the Armed Forces who have been deployed to a combat theater after the member has returned from the deployment; and

(5) for members of the Armed Forces and their families described in this subsection who are members of reserve components.

(c) Assessment of Obstacles.—The study shall provide an assessment of existing obstacles that prevent members of the Armed Forces and military families in need of mental health services from obtaining these services, including—

(1) the extent to which existing confidentiality regulations, or lack thereof, inhibit members of the Armed Forces from seeking mental health treatment;

(2) the implications that a decision to seek mental health services can have on a military career;

(3) the extent to which a social stigma exists within the Armed Forces that prevents members of the Armed Forces and military families from seeking mental health treatment within the Department of Defense and the individual Armed Forces;

(4) the extent to which logistical obstacles, particularly with respect to members of the Armed Forces and families residing in rural areas, deter members in need of mental health services from obtaining them; and

(5) the extent to which members of the Armed Forces and their families are prevented or hampered from obtaining mental health treatment due to the cost of such services.

(d) Identification of Problems Unique to Reserves.—The study shall identify potential problems in obtaining mental health treatment that are unique to members of Reserve components.

(e) Report.—The Comptroller General shall submit to Congress a report on the study conducted under this section not later than March 31, 2005. The report shall contain the results of the study and make specific recommendations—

(1) for improving the effectiveness and accessibility of mental health services provided by Department of Defense to the persons listed in subsection (b), including recommendations to ensure appropriate referrals and a seamless transition to the care of the Department of Veterans Affairs following separation from the Armed Forces; and

(2) for removing or mitigating any obstacles identified under subsection (c) and problems identified under subsection (d).

SEC. 724. POLICY FOR TIMELY NOTIFICATION OF NEXT OF KIN OF MEMBERS SERIOUSLY ILL OR INJURED IN COMBAT ZONES.

(a) Policy Required.—The Secretary of Defense shall prescribe the policy of the Department of Defense for providing, in the case of the serious illness or injury of a member of the Armed Forces in a combat zone, timely notification to the next of kin of the member regarding the illness or injury, including information on the condition of the member and the location at which the member is receiving treatment. In prescribing the policy, the Secretary shall ensure respect for the expressed desires of individual members of the Armed Forces regarding the notification of next of kin and shall include standards of timeliness for both the initial notification of next of kin under the policy and subsequent updates regarding the condition and location of the member.

(b) Submission of Policy.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a copy of the policy.

SEC. 725. REVISED FUNDING METHODOLOGY FOR MILITARY RETIREE HEALTH CARE BENEFITS.

(a) Revision.—Section 1116 of title 10, United States Code, is amended to read as follows:

"§ 1116. Payments into the Fund

"(a) At the beginning of each fiscal year after September 30, 2005, the Secretary of the Treasury shall promptly pay into the Fund from the General Fund of the Treasury—

"(1) the amount certified to the Secretary by the Secretary of Defense under subsection (c), which shall be the contribution to the Fund for that fiscal year required by section 1115; and

"(2) the amount determined by each administering Secretary under section 1111(c) as the contribution to the Fund on behalf of the members of the uniformed services under the jurisdiction of that Secretary.

"(b) At the beginning of each fiscal year, the Secretary of Defense shall determine the sum of the following:

"(1) The amount of the payment for that year under the amortization schedule determined by the Board of Actuaries under section 1115(a) of this title for the amortization of the original unfunded liability of the Fund.

"(2) The amount (including any negative amount) of the Department of Defense contribution for that year as determined by the Secretary of Defense under section 1115(b) of this title.

"(3) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(2) of this title for the amortization of any cumulative unfunded liability (or any gain) to the Fund resulting from changes in benefits.

"(4) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(3) of this title

for the amortization of any cumulative actuarial gain or loss to the Fund resulting from actuarial assumption changes.

"(5) The amount (including any negative amount) for that year under the most recent amortization schedule determined by the Secretary of Defense under section 1115(c)(4) of this title for the amortization of any cumulative actuarial gain or loss to the Fund resulting from actuarial experience.

"(c) The Secretary of Defense shall promptly certify the amount determined under subsection (b) each year to the Secretary of the Treasury.

"(d) At the same time as the Secretary of Defense makes the certification under subsection (c), the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives the information provided to the Secretary of the Treasury under that subsection.".

(b) SENSE OF CONGRESS.—It is the sense of Congress that any unsubscribed discretionary budget authority that accrues within the national defense budget function as a result of the amendments made by this section shall be applied to cover the unbudgeted costs of—

(1) increases in Army end strengths and modularization;

(2) increases in Marine Corps end strengths and necessary equipment; and

(3) Navy shipbuilding requirements.

(c) CONFORMING AMENDMENTS.—(1) Section 1111(c) of title 10, United States Code, is amended in the last sentence by striking "1116" and all that follows through the end of the sentence and inserting "1115(b) of this title, and such contributions shall be paid into the Fund as provided in section 1116(a).".

(2) Section 1115(a) of such title is amended by striking "1116(c)" and inserting "1116".

(3) Section 1115(b) of such title is amended—

(A) by striking "(1) The Secretary of Defense" and all that follows through "of this title." and inserting "The Secretary of Defense shall determine, before the beginning of each fiscal year after September 30, 2005, the total amount of the Department of Defense contribution to be made to the Fund for that fiscal year for purposes of section 1116(b)(2).";

(B) by striking paragraph (2);

(C) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively;

(D) in each of paragraphs (1) and (2), as so redesignated, by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively; and

(E) in paragraph (2)(B), as so redesignated, by striking "subparagraph (A)(ii)" and inserting "paragraph (1)(B)".

(4) Section 1115(c)(1) of such title is amended by striking "and section 1116(a) of this title".

(5) Section 1115(c)(5) of such title is amended by striking "1116(c)" and inserting "1116".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2005.

SEC. 726. GROUNDS FOR PRESIDENTIAL WAIVER OF REQUIREMENT FOR INFORMED CONSENT OR OPTION TO REFUSE REGARDING ADMINISTRATION OF DRUGS NOT APPROVED FOR GENERAL USE.

(a) INVESTIGATIONAL NEW DRUGS.—Section 1107(f) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking "obtaining consent—" and all that follows through "(C) is" and inserting "obtaining consent is"; and

(2) by striking paragraph (2) and inserting the following new paragraph:

"(2) The waiver authority provided in paragraph (1) shall not be construed to apply to any case other than a case in which prior consent for administration of a particular drug is required by reason of a determination by the Secretary of Health and Human Services that such drug is subject to the investigational new drug requirements of section 505(i) of the Federal Food, Drug, and Cosmetic Act.".

(b) EMERGENCY USE DRUGS.—Section 1107a(a) of such title is amended—

(1) by inserting "(A)" after "PRESIDENT.—(1)";

(2) by striking "is not feasible," and all that follows through "members affected, or"; and

(3) by adding at the end the following new subparagraph:

"(B) The waiver authority provided in subparagraph (A) shall not be construed to apply to any case other than a case in which an individual is required to be informed of an option to accept or refuse administration of a particular product by reason of a determination by the Secretary of Health and Human Services that emergency use of such product is authorized under section 564 of the Federal Food, Drug, and Cosmetic Act.".

SEC. 727. TRICARE PROGRAM REGIONAL DIRECTORS.

(a) RECOMMENDATIONS FOR SELECTION PROCESS FOR TRICARE PROGRAM REGIONAL DIRECTORS.—(1) The Secretary of Defense shall develop recommendations for a process for the selection of regional directors for TRICARE program administrative regions from among nominees and applicants for the position in accordance with this section.

(2) The recommendations developed under paragraph (1) shall provide for a process for—

(A) the Secretary of each military department to nominate, for each regional director position, one commissioned officer in a grade above colonel, or, in the case of the Navy, captain, or member of the Senior Executive Service under the jurisdiction of that Secretary; and

(B) the Secretary of Defense to accept applications for assignment or appointment to each such position from any other qualified person.

(3) The recommendations developed under paragraph (1) shall also include recommendations with respect to—

(A) the qualifications for regional directors;

(B) the period of assignment of a commissioned officer as a regional director;

(C) procedures for ensuring that fair consideration is given to each nominee and each applicant; and

(D) such other requirements as considered appropriate by the Secretary.

(b) REPORT.—Not later than March 1, 2005, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report containing the recommendations developed by the Secretary under subsection (a).

Subtitle D—Medical Readiness Tracking and Health Surveillance

SEC. 731. MEDICAL READINESS PLAN AND JOINT MEDICAL READINESS OVERSIGHT COMMITTEE.

(a) REQUIREMENT FOR PLAN.—The Secretary of Defense shall develop a comprehensive plan to improve medical readiness, and Department of Defense tracking of the health status, of members of the Armed Forces throughout their service in the Armed Forces, and to strengthen medical readiness and tracking before, during, and after deployment of members of the Armed Forces overseas. The matters covered by the comprehensive plan shall include all elements that are described in this title and the amendments made by this title and shall comply with requirements in law.

(b) JOINT MEDICAL READINESS OVERSIGHT COMMITTEE.—

(1) ESTABLISHMENT.—The Secretary of Defense shall establish a Joint Medical Readiness Oversight Committee.

(2) COMPOSITION.—The members of the Committee are as follows:

(A) The Under Secretary of Defense for Personnel and Readiness, who shall chair the Committee.

(B) The Vice Chief of Staff of the Army, the Vice Chief of Naval Operations, the Vice Chief of Staff of the Air Force, and the Assistant Commandant of the Marine Corp.

(C) The Assistant Secretary of Defense for Health Affairs.

(D) The Assistant Secretary of Defense for Reserve Affairs.

(E) The Surgeon General of each of the Army, the Navy, and the Air Force.

(F) The Assistant Secretary of the Army for Manpower and Reserve Affairs.

(G) The Assistant Secretary of the Navy for Manpower and Reserve Affairs.

(H) The Assistant Secretary of the Air Force for Manpower, Reserve Affairs, Installations, and Environment.

(I) The Chief of the National Guard Bureau.

(J) The Chief of Army Reserve.

(K) The Chief of Naval Reserve.

(L) The Chief of Air Force Reserve.

(M) The Commander, Marine Corps Reserve.

(N) The Director of the Defense Manpower Data Center.

(O) A representative of the Department of Veterans Affairs designated by the Secretary of Veterans Affairs.

(3) DUTIES.—The duties of the Committee are as follows:

(A) To advise the Secretary of Defense on the medical readiness and health status of the members of the active and reserve components of the Armed Forces.

(B) To advise the Secretary of Defense on the compliance of the Armed Forces with the medical readiness tracking and health surveillance policies of the Department of Defense.

(C) To oversee the development and implementation of the comprehensive plan required by subsection (a) and the actions required by this title and the amendments made by this title, including with respect to matters relating to—

(i) the health status of the members of the reserve components of the Armed Forces;

(ii) accountability for medical readiness;

(iii) medical tracking and health surveillance;

(iv) declassification of information on environmental hazards;

(v) postdeployment health care for members of the Armed Forces; and

(vi) compliance with Department of Defense and other applicable policies on blood serum repositories.

(D) To ensure unity and integration of efforts across functional and organizational lines within the Department of Defense with regard to medical readiness tracking and health surveillance of members of the Armed Forces.

(E) To establish and monitor compliance with the medical readiness standards that are applicable to members and those that are applicable to units.

(F) To improve continuity of care in coordination with the Secretary of Veterans Affairs, for members of the Armed Forces separating from active service with service-connected medical conditions.

(4) FIRST MEETING.—The first meeting of the Committee shall be held not later than 120 days after the date of the enactment of this Act.

(c) ANNUAL REPORT.—

(1) IN GENERAL.—In addition to the duties described in subsection (b)(3), the Committee shall prepare and submit to the Secretary of Defense and to the Committees on Armed Services of the Senate and the House of Representatives, not later than February 1 of each year, a report on—

(A) the health status and medical readiness of the members of the Armed Forces, including the members of reserve components, based on the

comprehensive plan required under subsection (a) and the actions required by this title and the amendments made by this title; and

(B) compliance with Department of Defense policies on medical readiness tracking and health surveillance.

(2) OPPORTUNITY FOR COMMENT.—Each year, before the Committee submits to Congress the report required under paragraph (1), the Secretary of Defense shall provide an opportunity for representatives of veterans and military health advocacy organizations, and others the Secretary of Defense considers appropriate, to comment on the report. The report submitted to Congress shall include a summary of the comments received and the Secretary's response to them.

SEC. 732. MEDICAL READINESS OF RESERVES.

(a) COMPTROLLER GENERAL STUDY OF HEALTH OF RESERVES ORDERED TO ACTIVE DUTY FOR OPERATIONS ENDURING FREEDOM AND IRAQI FREEDOM.—

(1) REQUIREMENT FOR STUDY.—The Comptroller General shall carry out a study of the health of the members of the reserve components of the Armed Forces who have been called or ordered to active duty for a period of more than 30 days in support of Operation Enduring Freedom and Operation Iraqi Freedom. The Comptroller General shall commence the study not later than 180 days after the date of the enactment of this Act.

(2) PURPOSES.—The purposes of the study under this subsection are as follows:

(A) To review the health status and medical fitness of the activated Reserves when they were called or ordered to active duty.

(B) To review the effects, if any, on logistics planning and the deployment schedules for the operations referred to in paragraph (1) that resulted from deficiencies in the health or medical fitness of activated Reserves.

(C) To review compliance of military personnel with Department of Defense policies on medical and physical fitness examinations and assessments that are applicable to the reserve components of the Armed Forces.

(3) REPORT.—The Comptroller General shall, not later than one year after the date of the enactment of this Act, submit a report on the results of the study under this subsection to the Committees on Armed Services of the Senate and the House of Representatives. The report shall include the following matters:

(A) With respect to the matters reviewed under subparagraph (A) of paragraph (2)—

(i) the percentage of activated Reserves who were determined to be medically unfit for deployment, together with an analysis of the reasons why the member was unfit, including medical illnesses or conditions most commonly found among the activated Reserves that were grounds for determinations of medical unfitness for deployment; and

(ii) the percentage of the activated Reserves who, before being deployed, needed medical care for health conditions identified when called or ordered to active duty, together with an analysis of the types of care that were provided for such conditions and the reasons why such care was necessary.

(B) With respect to the matters reviewed under subparagraph (B) of paragraph (2)—

(i) the delays and other disruptions in deployment schedules that resulted from deficiencies in the health status or medical fitness of activated Reserves; and

(ii) an analysis of the extent to which it was necessary to merge units or otherwise alter the composition of units, and the extent to which it was necessary to merge or otherwise alter objectives, in order to compensate for limitations on the deployability of activated Reserves resulting from deficiencies in the health status or medical fitness of activated Reserves.

(C) With respect to the matters reviewed under subparagraph (C) of paragraph (2), an assessment of the extent of the compliance of reserve component personnel with Department of Defense policies on routine medical and physical fitness examinations that are applicable to the reserve components of the Armed Forces.

(D) An analysis of the extent to which the medical care, if any, provided to activated Reserves in each theater of operations referred to in paragraph (1) related to preexisting conditions that were not adequately addressed before the deployment of such personnel to the theater.

(4) DEFINITIONS.—In this subsection:

(A) The term "activated Reserves" means the members of the Armed Forces referred to in paragraph (1).

(B) The term "active duty for a period of more than 30 days" has the meaning given such term in section 101(d) of title 10, United States Code.

(C) The term "health condition" includes a mental health condition and a dental condition.

(D) The term "reserve components of the Armed Forces" means the reserve components listed in section 10101 of title 10, United States Code.

(b) ACCOUNTABILITY FOR MEDICAL READINESS OF INDIVIDUALS AND UNITS OF THE RESERVE COMPONENTS.—

(1) POLICY.—The Secretary of Defense shall take measures, in addition to those required by section 1074f of title 10, United States Code, to ensure that individual members and commanders of reserve component units fulfill their responsibilities and meet the requirements for medical and dental readiness of members of the units. Such measures may include—

(A) requiring more frequent health assessments of members than is required by section 1074f(b) of title 10, United States Code, with an objective of having every member of the Selected Reserve receive a health assessment as specified in section 1074f of such title not less frequently than once every two years; and

(B) providing additional support and information to commanders to assist them in improving the health status of members of their units.

(2) REVIEW AND FOLLOWUP CARE.—The measures under this subsection shall provide for review of the health assessments under paragraph (1) by a medical professional and for any followup care and treatment that is otherwise authorized for medical or dental readiness.

(3) MODIFICATION OF PREDEPLOYMENT HEALTH ASSESSMENT SURVEY.—In carrying out paragraph (1), the Secretary shall—

(A) to the extent practicable, modify the predeployment health assessment survey to bring such survey into conformity with the detailed postdeployment health assessment survey in use as of October 1, 2004; and

(B) ensure the use of the predeployment health assessment survey, as so modified, for predeployment health assessments after that date.

(c) UNIFORM POLICY ON DEFERRAL OF MEDICAL TREATMENT PENDING DEPLOYMENT TO THEATERS OF OPERATIONS.—

(1) REQUIREMENT FOR POLICY.—The Secretary of Defense shall prescribe, for uniform applicability throughout the Armed Forces, a policy on deferral of medical treatment of members pending deployment.

(2) CONTENT.—The policy prescribed under paragraph (1) may specify the following matters:

(A) The circumstances under which treatment for medical conditions may be deferred to be provided within a theater of operations in order to prevent delay or other disruption of a deployment to that theater.

(B) The circumstances under which medical conditions are to be treated before deployment to that theater.

SEC. 733. BASELINE HEALTH DATA COLLECTION PROGRAM.

(a) REQUIREMENT FOR PROGRAM.—

(1) IN GENERAL.—Chapter 55 of title 10, United States Code, is amended by inserting after section 1092 the following new section:

"§ 1092a. Persons entering the armed forces: baseline health data

"(a) PROGRAM REQUIRED.—The Secretary of Defense shall carry out a program—

"(1) to collect baseline health data from each person entering the armed forces, at the time of entry into the armed forces; and

"(2) to provide for computerized compilation and maintenance of the baseline health data.

"(b) PURPOSES.—The program under this section shall be designed to achieve the following purposes:

"(1) To facilitate understanding of how subsequent exposures related to service in the armed forces affect health.

"(2) To facilitate development of early intervention and prevention programs to protect health and readiness.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1092 the following new item:

"1092a. Persons entering the armed forces: baseline health data.".

(3) TIME FOR IMPLEMENTATION.—The Secretary of Defense shall implement the program required under section 1092a of title 10, United States Code (as added by paragraph (1)), not later than two years after the date of the enactment of this Act.

(b) INTERIM STANDARDS FOR BLOOD SAMPLING.—

(1) TIME REQUIREMENTS.—Subject to paragraph (2), the Secretary of Defense shall require that—

(A) the blood samples necessary for the predeployment medical examination of a member of the Armed Forces required under section 1074f(b) of title 10, United States Code, be drawn not earlier than 120 days before the date of the deployment; and

(B) the blood samples necessary for the postdeployment medical examination of a member of the Armed Forces required under such section 1074f(b) of such title be drawn not later than 30 days after the date on which the deployment ends.

(2) CONTINGENT APPLICABILITY.—The standards under paragraph (1) shall apply unless the Joint Medical Readiness Oversight Committee established by section 1301 recommends, and the Secretary approves, different standards for blood sampling.

SEC. 734. MEDICAL CARE AND TRACKING AND HEALTH SURVEILLANCE IN THE THEATER OF OPERATIONS.

(a) RECORDKEEPING POLICY.—The Secretary of Defense shall prescribe a policy that requires the records of all medical care provided to a member of the Armed Forces in a theater of operations to be maintained as part of a complete health record for the member.

(b) IN-THEATER MEDICAL TRACKING AND HEALTH SURVEILLANCE.—

(1) REQUIREMENT FOR EVALUATION.—The Secretary of Defense shall evaluate the system for the medical tracking and health surveillance of members of the Armed Forces in theaters of operations and take such actions as may be necessary to improve the medical tracking and health surveillance.

(2) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit a report on the actions taken under paragraph (1) to the Committees on Armed Services of the Senate and the House of Representatives. The report shall include the following matters:

(A) An analysis of the strengths and weaknesses of the medical tracking system administered under section 1074f of title 10, United States Code.

(B) An analysis of the efficacy of health surveillance systems as a means of detecting—

(i) any health problems (including mental health conditions) of members of the Armed Forces contemporaneous with the performance of the assessment under the system; and

(ii) exposures of the assessed members to environmental hazards that potentially lead to future health problems.

(C) An analysis of the strengths and weaknesses of such medical tracking and surveillance systems as a means for supporting future research on health issues.

(D) Recommended changes to such medical tracking and health surveillance systems.

(E) A summary of scientific literature on blood sampling procedures used for detecting and identifying exposures to environmental hazards.

(F) An assessment of whether there is a need for changes to regulations and standards for drawing blood samples for effective tracking and health surveillance of the medical conditions of personnel before deployment, upon the end of a deployment, and for a followup period of appropriate length.

(c) PLAN TO OBTAIN HEALTH CARE RECORDS FROM ALLIES.—The Secretary of Defense shall develop a plan for obtaining all records of medical treatment provided to members of the Armed Forces by allies of the United States in Operation Enduring Freedom and Operation Iraqi Freedom. The plan shall specify the actions that are to be taken to obtain all such records.

(d) POLICY ON IN-THEATER PERSONNEL LOCATOR DATA.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall prescribe a Department of Defense policy on the collection and dissemination of in-theater individual personnel location data.

SEC. 735. DECLASSIFICATION OF INFORMATION ON EXPOSURES TO ENVIRONMENTAL HAZARDS.

(a) REQUIREMENT FOR REVIEW.—The Secretary of Defense shall review and, as determined appropriate, revise the classification policies of the Department of Defense with a view to facilitating the declassification of data that is potentially useful for the monitoring and assessment of the health of members of the Armed Forces who have been exposed to environmental hazards during deployments overseas, including the following data:

(1) In-theater injury rates.

(2) Data derived from environmental surveillance.

(3) Health tracking and surveillance data.

(b) CONSULTATION WITH COMMANDERS OF THEATER COMBATANT COMMANDS.—The Secretary shall, to the extent that the Secretary considers appropriate, consult with the senior commanders of the in-theater forces of the combatant commands in carrying out the review and revising policies under subsection (a).

SEC. 736. REPORT ON TRAINING ON ENVIRONMENTAL HAZARDS.

(a) REQUIREMENT FOR REPORT ON TRAINING OF FIELD MEDICAL PERSONNEL.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the training on environmental hazards that is provided by the Armed Forces to medical personnel of the Armed Forces who are deployable to the field in direct support of combat personnel.

(b) CONTENT.—The report under subsection (a) shall include the following:

(1) An assessment of the adequacy of the training regarding—

(A) the identification of common environmental hazards and exposures to such hazards; and

(B) the prevention and treatment of adverse health effects of such exposures.

(2) A discussion of the actions taken and to be taken to improve such training.

SEC. 737. UNIFORM POLICY FOR MEETING MOBILIZATION-RELATED MEDICAL CARE NEEDS AT MILITARY INSTALLATIONS.

(a) HEALTH CARE AT MOBILIZATION INSTALLATIONS.—The Secretary of Defense shall take such steps as necessary, including through the uniform policy established under subsection (c), to ensure that anticipated health care needs of members of the Armed Forces at mobilization installations can be met at those installations. Such steps may, within authority otherwise available to the Secretary, include the following with respect to any such installation:

(1) Arrangements for health care to be provided by the Secretary of Veterans Affairs .

(2) Procurement of services from local health care providers.

(3) Temporary employment of health care personnel to provide services at such installation.

(b) MOBILIZATION INSTALLATIONS.—For purposes of this section, the term "mobilization installation" means a military installation at which members of the Armed Forces, in connection with a contingency operation or during a national emergency—

(1) are mobilized;

(2) are deployed; or

(3) are redeployed from a deployment location.

(c) REQUIREMENT FOR REGULATIONS.—

(1) POLICY ON IMPLEMENTATION.—The Secretary of Defense shall by regulation establish a policy for the implementation of subsection (a) throughout the Department of Defense.

(2) IDENTIFICATION AND ANALYSIS OF NEEDS.—As part of the policy prescribed under paragraph (1), the Secretary shall require the Secretary of each military department, with respect to each mobilization installation under the jurisdiction of that Secretary, to identify and analyze the anticipated health care needs at that installation with respect to members of the Armed Forces who may be expected to mobilize or deploy or redeploy at that installation as described in subsection (b)(1). Such identification and analysis shall be carried out so as to be completed before the arrival of such members at the installation.

(3) RESPONSE TO NEEDS.—The policy established by the Secretary of Defense under paragraph (1) shall require that, based on the results of the identification and analysis under paragraph (2), the Secretary of the military department concerned shall determine how to expeditiously and effectively respond to those anticipated health care needs that cannot be met within the resources otherwise available at that installation, in accordance with subsection (a).

(4) IMPLEMENTATION OF AUTHORITY.—In implementing the policy established under paragraph (1) at any installation, the Secretary of the military department concerned shall ensure that the commander of the installation, and the officers and other personnel superior to that commander in that commander's chain of command, have appropriate authority and responsibility for such implementation.

(d) POLICY.—The Secretary of Defense shall ensure—

(1) that the policy prescribed under subsection (c) is carried out with respect to any mobilization installation with the involvement of all agencies of the Department of Defense that have responsibility for management of the installation and all organizations of the Department that have command authority over any activity at the installation; and

(2) that such policy is implemented on a uniform basis throughout the Department of Defense.

SEC. 738. FULL IMPLEMENTATION OF MEDICAL READINESS TRACKING AND HEALTH SURVEILLANCE PROGRAM AND FORCE HEALTH PROTECTION AND READINESS PROGRAM.

(a) IMPLEMENTATION AT ALL LEVELS.—The Secretary of Defense, in conjunction with the Secretaries of the military departments, shall take such actions as are necessary to ensure that the Army, Navy, Air Force, and Marine Corps fully implement at all levels—

(1) the Medical Readiness Tracking and Health Surveillance Program under this title and the amendments made by this title; and

(2) the Force Health Protection and Readiness Program of the Department of Defense (relating to the prevention of injury and illness and the reduction of disease and noncombat injury threats).

(b) ACTION OFFICIAL.—The Secretary of Defense may act through the Under Secretary of Defense for Personnel and Readiness in carrying out subsection (a).

SEC. 739. REPORTS AND INTERNET ACCESSIBILITY RELATING TO HEALTH MATTERS.

(a) ANNUAL REPORTS.—

(1) REQUIREMENT FOR REPORTS.—Chapter 55 of title 10, United States Code, is amended by inserting after section 1073a the following new section:

"§ 1073b. Recurring reports

"(a) ANNUAL REPORT ON HEALTH PROTECTION QUALITY.—(1) The Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives each year a report on the Force Health Protection Quality Assurance Program of the Department of Defense. The report shall cover the calendar year preceding the year in which the report is submitted and include the following matters:

"(A) The results of an audit conducted during the calendar year covered by the report of the extent to which the blood samples required to be obtained as described in section 733(b) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 from members of the armed forces before and after a deployment are stored in the blood serum repository of the Department of Defense.

"(B) The results of an audit conducted during the calendar year covered by the report of the extent to which the records of the health assessments required under section 1074f of this title for members of the armed forces before and after a deployment are being maintained in the electronic database of the Defense Medical Surveillance System.

"(C) An analysis of the actions taken by Department of Defense personnel to respond to health concerns expressed by members of the armed forces upon return from a deployment.

"(D) An analysis of the actions taken by Department of Defense personnel to evaluate or treat members of the armed forces who are confirmed to have been exposed to occupational or environmental hazards deleterious to their health during a deployment.

"(2) The Secretary of Defense shall act through the Assistant Secretary of Defense for Health Affairs in carrying out this subsection.

"(b) ANNUAL REPORT ON RECORDING OF HEALTH ASSESSMENT DATA IN MILITARY HEALTH RECORDS.—The Secretary of Defense shall issue each year a report on the compliance by the military departments with applicable law and policies on the recording of health assessment data in military health records, including compliance with section 1074f(c) of this title. The report shall cover the calendar year preceding the year in which the report is submitted and include a discussion of the extent to which immunization status and predeployment and

postdeployment health care data are being recorded in such records.".

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1073a the following new item:

"1073b. Recurring reports.".

(3) INITIAL REPORTS.—The first reports under section 1073b of title 10, United States Code (as added by paragraph (1)), shall be completed not later than 180 days after the date of the enactment of this Act.

(b) INTERNET ACCESSIBILITY OF HEALTH ASSESSMENT INFORMATION FOR MEMBERS OF THE ARMED FORCES.—Not later than one year after the date of the enactment of this Act, the Chief Information Officer of each military department shall ensure that the online portal website of that military department includes the following information relating to health assessments:

(1) Information on the policies of the Department of Defense and the military department concerned regarding predeployment and postdeployment health assessments, including policies on the following matters:

(A) Health surveys.

(B) Physical examinations.

(C) Collection of blood samples and other tissue samples.

(2) Procedural information on compliance with such policies, including the following information:

(A) Information for determining whether a member is in compliance.

(B) Information on how to comply.

(3) Health assessment surveys that are either—

(A) web-based; or

(B) accessible (with instructions) in printer-ready form by download.

TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

Subtitle A—Acquisition Policy and Management

Sec. 801. Software-related program costs under major defense acquisition programs.
Sec. 802. Internal controls for Department of Defense procurements through GSA Client Support Centers.
Sec. 803. Defense commercial communications satellite services procurement process.
Sec. 804. Contractor performance of acquisition functions closely associated with inherently governmental functions.
Sec. 805. Sustainment plans for existing systems while replacement systems are under development.
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Subtitle D—Extensions of Temporary Program Authorities

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Sec. 842. Amendment to mentor-protege program.
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Subtitle E—Other Acquisition Matters

Sec. 851. Review and demonstration project relating to contractor employees.
Sec. 852. Inapplicability of certain fiscal laws to settlements under special temporary contract closeout authority.
Sec. 853. Contracting with employers of persons with disabilities.
Sec. 854. Defense procurements made through contracts of other agencies.
Sec. 855. Requirements relating to source selection for integrated support of aerial refueling aircraft fleet for the Air Force.

Subtitle A—Acquisition Policy and Management

SEC. 801. SOFTWARE-RELATED PROGRAM COSTS UNDER MAJOR DEFENSE ACQUISITION PROGRAMS.

(a) CONTENT OF QUARTERLY UNIT COST REPORT.—Subsection (b) of section 2433 of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(5) Any significant changes in the total program cost for development and procurement of the software component of the program, schedule milestones for the software component of the program, or expected performance for the software component of the program that are known, expected, or anticipated by the program manager.".

(b) CONTENT OF SELECTED ACQUISITION REPORT.—(1) Subsection (g)(1) of such section is amended by adding at the end the following new subparagraph:

"(Q) In any case in which one or more problems with the software component of the program significantly contributed to the increase in program unit costs, the action taken and proposed to be taken to solve such problems.".

(2) Section 2432(e) of title 10, United States Code, is amended—

(A) by redesignating paragraphs (7), (8), and (9) as paragraphs (8), (9), and (10), respectively; and

(B) by inserting after paragraph (6) the following new paragraph (7):

"(7) The reasons for any significant changes (from the previous Selected Acquisition Report) in the total program cost for development and procurement of the software component of the program, schedule milestones for the software component of the program, or expected performance for the software component of the program that are known, expected, or anticipated by the program manager.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date occurring 60 days after the date of the enactment of this Act, and shall apply with respect to reports due to be submitted to Congress on or after such date.

SEC. 802. INTERNAL CONTROLS FOR DEPARTMENT OF DEFENSE PROCUREMENTS THROUGH GSA CLIENT SUPPORT CENTERS.

(a) INITIAL INSPECTOR GENERAL REVIEW AND DETERMINATION.—(1) Not later than March 15, 2005, the Inspector General of the Department of Defense and the Inspector General of the General Services Administration shall jointly—

(A) review—

(i) the policies, procedures, and internal controls of each GSA Client Support Center; and

(ii) the administration of those policies, procedures, and internal controls; and

(B) for each such Center, determine in writing whether—

(i) the Center is compliant with defense procurement requirements;

(ii) the Center is not compliant with defense procurement requirements, but the Center made significant progress during 2004 toward becoming compliant with defense procurement requirements; or

(iii) neither of the conclusions stated in clauses (i) and (ii) is correct.

(2) If the Inspectors General determine under paragraph (1) that the conclusion stated in clause (ii) or (iii) of subparagraph (B) of such paragraph is correct in the case of a GSA Client Support Center, those Inspectors General shall, not later than March 15, 2006, jointly—

(A) conduct a second review regarding that GSA Client Support Center as described in paragraph (1)(A); and

(B) determine in writing whether that GSA Client Support Center is or is not compliant with defense procurement requirements.

(b) COMPLIANCE WITH DEFENSE PROCUREMENT REQUIREMENTS.—For the purposes of this section, a GSA Client Support Center is compliant with defense procurement requirements if the GSA Client Support Center's policies, procedures, and internal controls, and the manner in which they are administered, are adequate to ensure compliance of that Center with the requirements of laws and regulations that apply to procurements of property and services made directly by the Department of Defense.

(c) LIMITATIONS ON PROCUREMENTS THROUGH GSA CLIENT SUPPORT CENTERS.—(1) After March 15, 2005, and before March 16, 2006, no official of the Department of Defense may, except as provided in subsection (d) or (e), order, purchase, or otherwise procure property or services in an amount in excess of $100,000 through any GSA Client Support Center for which a determination described in paragraph (1)(B)(iii) of subsection (a) has been made under that subsection.

(2) After March 15, 2006, no official of the Department of Defense may, except as provided in

subsection (d) or (e), order, purchase, or otherwise procure property or services in an amount in excess of $100,000 through any GSA Client Support Center that has not been determined under this section as being compliant with defense procurement requirements.

(d) EXCEPTION FROM APPLICABILITY OF LIMITATIONS.—(1) No limitation applies under subsection (c) with respect to the procurement of property and services from a particular GSA Client Support Center during any period that there is in effect a determination of the Under Secretary of Defense for Acquisition, Technology, and Logistics, made in writing, that it is necessary in the interest of the Department of Defense to continue to procure property and services through that GSA Client Support Center.

(2) A written determination with respect to a GSA Client Support Center under paragraph (1) is in effect for the period, not in excess of one year, that the Under Secretary of Defense for Acquisition, Technology, and Logistics shall specify in the written determination. The Under Secretary may extend from time to time, for up to one year at a time, the period for which the written determination remains in effect.

(e) TERMINATION OF APPLICABILITY OF LIMITATIONS.—Subsection (c) shall cease to apply to a GSA Client Support Center on the date on which the Inspector General of the Department of Defense and the Inspector General of the General Services Administration jointly determine that such Center is compliant with defense procurement requirements and notify the Secretary of Defense of that determination.

(f) GSA CLIENT SUPPORT CENTER DEFINED.—In this section, the term "GSA Client Support Center" means a Client Support Center of the Federal Technology Service of the General Services Administration.

SEC. 803. DEFENSE COMMERCIAL COMMUNICATIONS SATELLITE SERVICES PROCUREMENT PROCESS.

(a) REQUIREMENT FOR DETERMINATION.—The Secretary of Defense shall review all potential mechanisms for procuring commercial communications satellite services and provide guidance to the Director of the Defense Information Systems Agency and the Secretaries of the military departments on how such procurements should be conducted. The alternative procurement mechanisms reviewed by the Secretary of Defense shall, at a minimum, include the following:

(1) Procurement under indefinite delivery, indefinite quantity contracts of other departments and agencies of the Federal Government, including the Federal Technology Service of the General Services Administration.

(2) Procurement directly from commercial sources that are qualified as described in subsection (b), using full and open competition (as defined in section 4(6) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(6))).

(3) Procurement by any other means that has been used by the Director of the Defense Information Systems Agency or the Secretary of a military department to enter into a contract for the procurement of commercial communications satellite services that is in force on the date of the enactment of this Act, including through commercial communications satellite service integrators and resellers.

(4) Procurement under the method used as of the date of the enactment of this Act, modified with streamlined processes to ensure increased efficiency and cost effectiveness.

(b) QUALIFIED SOURCES.—A source of commercial communications satellite services referred to in paragraph (2) of subsection (a) is a qualified source if the source is incorporated under the laws of a State of the United States and is either—

(1) a source of commercial communications satellite services under a Federal Technology Service contract for the procurement of commercial communications satellite services described in paragraph (1) of such subsection that is in force on the date of the enactment of this Act; or

(2) a source of commercial communications satellite services that meets qualification requirements (as defined in section 2319 of title 10, United States Code, and established in accordance with that section) to enter into a Federal Technology Service contract for the procurement of commercial communications satellite services.

(c) REPORT.—Not later than April 30, 2005, the Secretary of Defense shall submit to Congress a report setting forth the conclusions resulting from the Secretary's review under subsection (a). The report shall include—

(1) the guidance provided under such subsection; and

(2) a discussion of the rationale for that guidance and how the guidance will address each recommendation made in the December 2003 report of the General Accounting Office titled "Satellite Communications: Strategic Approach Needed for DOD's Procurement of Commercial Satellite BandWidth" (GAO-04-206).

(d) EFFECTIVE DATE.—(1) The Secretary may not enter into a contract for commercial communications satellite services (using any mechanism reviewed under subsection (a) or otherwise) until the expiration of 30 days after the date on which the report described in subsection (c) has been received by Congress, unless the Secretary determines that such a contract is required to meet urgent national security requirements.

(2) Notwithstanding paragraph (1), the Secretary may issue a task order or delivery order under a contract for commercial communications satellite services that was awarded before the date of the enactment of this Act.

SEC. 804. CONTRACTOR PERFORMANCE OF ACQUISITION FUNCTIONS CLOSELY ASSOCIATED WITH INHERENTLY GOVERNMENTAL FUNCTIONS.

(a) LIMITATION.—(1) Chapter 141 of title 10, United States Code, is amended by inserting after section 2382 the following new section:

"§2383. Contractor performance of acquisition functions closely associated with inherently governmental functions

"(a) LIMITATION.—The head of an agency may enter into a contract for the performance of acquisition functions closely associated with inherently governmental functions only if the contracting officer for the contract ensures that—

"(1) appropriate military or civilian personnel of the Department of Defense cannot reasonably be made available to perform the functions;

"(2) appropriate military or civilian personnel of the Department of Defense are—

"(A) to supervise contractor performance of the contract; and

"(B) to perform all inherently governmental functions associated with the functions to be performed under the contract; and

"(3) the agency addresses any potential organizational conflict of interest of the contractor in the performance of the functions under the contract, consistent with subpart 9.5 of part 9 of the Federal Acquisition Regulation and the best interests of the Department of Defense.

"(b) DEFINITIONS.—In this section:

"(1) The term 'head of an agency' has the meaning given such term in section 2302(1) of this title, except that such term does not include the Secretary of Homeland Security or the Administrator of the National Oceanic and Atmospheric Administration.

"(2) The term 'inherently governmental functions' has the meaning given such term in subpart 7.5 of part 7 of the Federal Acquisition Regulation.

"(3) The term 'functions closely associated with inherently governmental functions' means the functions described in section 7.503(d) of the Federal Acquisition Regulation.

"(4) The term 'organizational conflict of interest' has the meaning given such term in subpart 9.5 of part 9 of the Federal Acquisition Regulation.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2382 the following new item:

"2383. Contractor performance of acquisition functions closely associated with inherently governmental functions.".

(b) EFFECTIVE DATE.—Section 2383 of title 10, United States Code (as added by subsection (a)), shall apply to contracts entered into on or after the date of the enactment of this Act.

SEC. 805. SUSTAINMENT PLANS FOR EXISTING SYSTEMS WHILE REPLACEMENT SYSTEMS ARE UNDER DEVELOPMENT.

(a) EXISTING SYSTEMS TO BE MAINTAINED WHILE REPLACEMENT SYSTEMS ARE UNDER DEVELOPMENT.—(1) Chapter 144 of title 10, United States Code, is amended by inserting after section 2436 the following new section:

"§2437. Development of major defense acquisition programs: sustainment of system to be replaced

"(a) REQUIREMENT FOR SUSTAINING EXISTING FORCES.—(1) The Secretary of Defense shall require that, whenever a new major defense acquisition program begins development, the defense acquisition authority responsible for that program shall develop a plan (to be known as a 'sustainment plan') for the existing system that the system under development is intended to replace. Any such sustainment plan shall provide for an appropriate level of budgeting for sustaining the existing system until the replacement system to be developed under the major defense acquisition program is fielded and assumes the majority of responsibility for the mission of the existing system. This section does not apply to a major defense acquisition that reaches initial operational capability before October 1, 2008.

"(2) In this section, the term 'defense acquisition authority' means the Secretary of a military department or the commander of the United States Special Operations Command.

"(b) SUSTAINMENT PLAN.—The Secretary of Defense shall require that each sustainment plan under this section include, at a minimum, the following:

"(1) The milestone schedule for the development of the major defense acquisition program, including the scheduled dates for low-rate initial production, initial operational capability, full-rate production, and full operational capability and the date as of when the replacement system is scheduled to assume the majority of responsibility for the mission of the existing system.

"(2) An analysis of the existing system to assess the following:

"(A) Anticipated funding levels necessary to—

"(i) ensure acceptable reliability and availability rates for the existing system; and

"(ii) maintain mission capability of the existing system against the relevant threats.

"(B) The extent to which it is necessary and appropriate to—

"(i) transfer mature technologies from the new system or other systems to enhance the mission capability of the existing system against relevant threats; and

"(ii) provide interoperability with the new system during the period from initial fielding until the new system assumes the majority of responsibility for the mission of the existing system.

"(c) EXCEPTIONS.—Subsection (a) shall not apply to a major defense acquisition program if the Secretary of Defense determines that—

"(1) the existing system is no longer relevant to the mission;

"(2) the mission has been eliminated;

"(3) the mission has been consolidated with another mission in such a manner that another existing system can adequately meet the mission requirements; or

"(4) the duration of time until the new system assumes the majority of responsibility for the existing system's mission is sufficiently short so that mission availability, capability, interoperability, and force protection requirements are maintained.

"(d) WAIVER.—The Secretary of Defense may waive the applicability of subsection (a) to a major defense acquisition program if the Secretary determines that, but for such a waiver, the Department would be unable to meet national security objectives. Whenever the Secretary makes such a determination and authorizes such a waiver, the Secretary shall submit notice of such waiver and of the Secretary's determination and the reasons therefor in writing to the congressional defense committees.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2436 the following new item:

"2437. Development of major defense acquisition programs: sustainment of system to be replaced.".

(b) APPLICATION TO EXISTING PROGRAMS IN DEVELOPMENT.—Section 2437 of title 10, United States Code, as added by subsection (a), shall apply with respect to a major defense acquisition program for a system that is under development as of the date of the enactment of this Act and is not expected to reach initial operational capability before October 1, 2008. The Secretary of Defense shall require that a sustainment plan under that section be developed not later than one year after the date of the enactment of this Act for the existing system that the system under development is intended to replace.

SEC. 806. APPLICABILITY OF COMPETITION EXCEPTIONS TO ELIGIBILITY OF NATIONAL GUARD FOR FINANCIAL ASSISTANCE FOR PERFORMANCE OF ADDITIONAL DUTIES.

Section 113(b)(1)(B) of title 32, United States Code, is amended by inserting before the period at the end the following: ", subject to the exceptions provided in section 2304(c) of title 10".

SEC. 807. INFLATION ADJUSTMENT OF ACQUISITION-RELATED DOLLAR THRESHOLDS.

(a) INFLATION ADJUSTMENT AUTHORITY.—(1) The Office of Federal Procurement Policy Act (41 U.S.C. 403 et seq.) is amended by inserting after section 35 the following new section:

"SEC. 35A. INFLATION ADJUSTMENT OF ACQUISITION-RELATED DOLLAR THRESHOLDS.

"(a) REQUIREMENT FOR PERIODIC ADJUSTMENT.—(1) On October 1 of each year that is evenly divisible by five, the Federal Acquisition Regulatory Council shall adjust each acquisition-related dollar threshold provided by law, as described in subsection (c), to the baseline constant dollar value of that threshold.

"(2) For the purposes of paragraph (1), the baseline constant dollar value—

"(A) for a dollar threshold in effect on October 1, 2000, that was first specified in a law that took effect on or before such date shall be the October 1, 2000, constant dollar value of that dollar threshold; and

"(B) for a dollar threshold specified in a law that takes effect after October 1, 2000, shall be the constant dollar value of that threshold as of the effective date of that dollar threshold pursuant to such law.

"(b) ADJUSTMENTS EFFECTIVE UPON PUBLICATION.—The Federal Acquisition Regulatory Council shall publish a notice of the adjusted dollar thresholds under this section in the Federal Register. The adjusted dollar thresholds shall take effect on the date of publication.

"(c) ACQUISITION-RELATED DOLLAR THRESHOLDS.—Except as provided in subsection (d), the requirement for adjustment under subsection (a) applies to a dollar threshold that is specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of property or services by an executive agency, as determined by the Federal Acquisition Regulatory Council.

"(d) EXCLUDED THRESHOLDS.—Subsection (a) does not apply to—

"(1) dollar thresholds in sections 3141 through 3144, 3146, and 3147 of title 40, United States Code;

"(2) dollar thresholds in the Service Contract Act of 1965 (41 U.S.C. 351, et seq.); or

"(3) dollar thresholds established by the United States Trade Representative pursuant to title III of the Trade Agreements Act of 1979 (19 U.S.C. 2511 et seq.).

"(e) CALCULATION OF ADJUSTMENTS.—An adjustment under this section shall—

"(1) be calculated on the basis of changes in the Consumer Price Index for all-urban consumers published monthly by the Department of Labor; and

"(2) be rounded—

"(A) in the case of a dollar threshold that (as in effect on the day before the adjustment) is less than $10,000, to the nearest $500;

"(B) in the case of a dollar threshold that (as in effect on the day before the adjustment) is not less than $10,000, but is less than $100,000, to the nearest $5,000;

"(C) in the case of a dollar threshold that (as in effect on the day before the adjustment) is not less than $100,000, but is less than $1,000,000, to the nearest $50,000; and

"(D) in the case of a dollar threshold that (as in effect on the day before the adjustment) is $1,000,000 or more, to the nearest $500,000.

"(f) PETITION FOR INCLUSION OF OMITTED THRESHOLD.—(1) If a dollar threshold adjustable under this section is not included in a notice of adjustment published under subsection (b), any person may request adjustment of that dollar threshold by submitting a petition for adjustment to the Administrator for Federal Procurement Policy.

"(2) Upon receipt of a petition for adjustment of a dollar threshold under paragraph (1), the Administrator shall—

"(A) determine, in writing, whether that dollar threshold is required to be adjusted under this section; and

"(B) if so, shall publish in the Federal Register a revised notice of the adjusted dollar thresholds under this section that includes the adjustment of the dollar threshold covered by the petition.

"(3) The adjustment of a dollar threshold pursuant to a petition under this subsection shall take effect on the date of the publication of the revised notice adding the adjustment of that dollar threshold under paragraph (2)(B).".

(2) The table of contents in section 1(b) of such Act is amended by inserting after the item relating to section 35 the following new item:

"Sec. 35A. Inflation adjustment of acquisition-related dollar thresholds.".

(b) DEFINITION OF FEDERAL ACQUISITION REGULATORY COUNCIL.—Section 4 of such Act is amended by adding at the end the following new paragraph:

"(17) The term 'Federal Acquisition Regulatory Council' means the Federal Acquisition Regulatory Council established under section 25.".

(c) RELATIONSHIP TO OTHER INFLATION ADJUSTMENT AUTHORITIES.—(1) Section 35A of the Office of Federal Procurement Policy Act, as added by subsection (a), supersedes the applicability of any other provision of law that provides for the adjustment of a dollar threshold that is adjustable under such section.

(2) After the date of the enactment of this Act, a dollar threshold adjustable under section 35A of the Office of Federal Procurement Policy Act, as added by subsection (a), shall be adjusted only as provided under that section.

Subtitle B—Amendments to General Contracting Authorities, Procedures, and Limitations

SEC. 811. RAPID ACQUISITION AUTHORITY TO RESPOND TO COMBAT EMERGENCIES.

Section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (10 U.S.C. 2302 note) is amended—

(1) by redesignating subsections (c) and (d) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (b) the following new subsections (c) and (d):

"(c) RESPONSE TO COMBAT EMERGENCIES.—(1) In the case of any equipment that, as determined in writing by the Secretary of Defense without delegation, is urgently needed to eliminate a combat capability deficiency that has resulted in combat fatalities, the Secretary shall use the procedures developed under this section in order to accomplish the rapid acquisition and deployment of the needed equipment.

"(2)(A) Whenever the Secretary makes a determination under paragraph (1) that certain equipment is urgently needed to eliminate a combat capability deficiency that has resulted in combat fatalities, the Secretary shall designate a senior official of the Department of Defense to ensure that the needed equipment is acquired and deployed as quickly as possible, with a goal of awarding a contract for the acquisition of the equipment within 15 days.

"(B) Upon designation of a senior official under subparagraph (A), the Secretary shall authorize that official to waive any provision of law, policy, directive, or regulation described in subsection (d) that such official determines in writing would unnecessarily impede the rapid acquisition and deployment of the needed equipment. In a case in which the needed equipment cannot be acquired without an extensive delay, the senior official shall require that an interim solution be implemented and deployed using the procedures developed under this section to minimize the combat capability deficiency and combat fatalities.

"(3) The authority of this section may not be used to acquire equipment in an amount aggregating more than $100,000,000 during any fiscal year. For acquisitions of equipment under this section during the fiscal year in which the Secretary makes the determination described in paragraph (1) with respect to such equipment, the Secretary may use any funds available to the Department of Defense for that fiscal year.

"(4) The Secretary of Defense shall notify the congressional defense committees within 15 days after each determination made under paragraph (1). Each such notice shall identify—

"(A) the equipment to be acquired;

"(B) the amount anticipated to be expended for the acquisition; and

"(C) the source of funds for the acquisition.

"(5) Any acquisition initiated under this subsection shall transition to the normal acquisition system not later than two years after the date on which the Secretary makes the determination described in paragraph (1) with respect to that equipment.

"(d) WAIVER OF CERTAIN STATUES AND REGULATIONS.—(1) Upon a determination described in subsection (c)(1), the senior official designated in accordance with subsection (c)(2) with respect to that designation is authorized to waive any provision of law, policy, directive or regulation addressing—

"(A) the establishment of the requirement for the equipment;

"(B) the research, development, test, and evaluation of the equipment; or

"(C) the solicitation and selection of sources, and the award of the contract, for procurement of the equipment.

"(2) Nothing in this subsection authorizes the waiver of—

"(A) the requirements of this section or the regulations implementing this section; or

"(B) any provision of law imposing civil or criminal penalties.".

SEC. 812. DEFENSE ACQUISITION WORKFORCE IMPROVEMENTS.

(a) Selection Criteria for Acquisition Corps and for Critical Acquisition Positions.—(1) Section 1732(b) of title 10, United States Code, is amended by striking paragraph (1) and redesignating paragraphs (2), (3), and (4) as paragraphs (1), (2), and (3), respectively.

(2) Section 1733(b)(1) of title 10, United States Code, is amended in subparagraph (A) by striking "in a position within grade GS–14 or above of the General Schedule," and inserting "in a senior position in the National Security Personnel System, as determined in accordance with guidelines prescribed by the Secretary,".

(b) Scholarship Program Requirements.—Section 1742 of such title is amended—

(1) by inserting "(a) Programs.—" at the beginning of the text; and

(2) by adding at the end the following new subsection:

"(b) Scholarship Program Requirements.—Each recipient of a scholarship under a program conducted under subsection (a)(3) shall be required to sign a written agreement that sets forth the terms and conditions of the scholarship. The agreement shall be in a form prescribed by the Secretary and shall include terms and conditions, including terms and conditions addressing reimbursement in the event that a recipient fails to fulfill the requirements of the agreement, that are comparable to those set forth as a condition for providing advanced education assistance under section 2005. The obligation to reimburse the United States under an agreement under this subsection is, for all purposes, a debt owing the United States.".

(c) Authority to Establish Minimum Requirements.—(1) Section 1764(b) of such title is amended—

(A) by redesignating paragraph (5) as paragraph (6); and

(B) by inserting after paragraph (4) the following new paragraph (5):

"(5) Deputy program manager.".

(2) Paragraph (1) of such section is amended by striking "in paragraph (5)" and inserting "in paragraph (6)".

SEC. 813. PERIOD FOR MULTIYEAR TASK AND DELIVERY ORDER CONTRACTS.

(a) Revised Maximum Period.—Section 2304a(f) of title 10, United States Code, is amended by striking "a total period of not more than five years." and inserting "any period up to five years and may extend the contract period for one or more successive periods pursuant to an option provided in the contract or a modification of the contract. The total contract period as extended may not exceed 10 years unless such head of an agency determines in writing that exceptional circumstances necessitate a longer contract period.".

(b) Annual Report.—Not later than 60 days after the end of each of fiscal years 2005 through 2009, the Secretary of Defense shall submit to Congress a report setting forth each extension of a contract period to a total of more than 10 years that was granted for task and delivery order contracts of the Department of Defense during such fiscal year under section 2304a(f) of title 10, United States Code. The report shall include, with respect to each such contract period extension—

(1) a discussion of the exceptional circumstances on which the extension was based; and

(2) the justification for the determination of exceptional circumstances.

SEC. 814. FUNDING FOR CONTRACT CEILINGS FOR CERTAIN MULTIYEAR PROCUREMENT CONTRACTS.

(a) Multiyear Contracts Relating to Property.—Section 2306b(g) of title 10, United States Code, is amended—

(1) by inserting "(1)" before "Before any";

(2) by striking "Committee" through "House of Representatives" and inserting "congressional defense committees"; and

(3) by adding at the end the following new paragraph:

"(2) In the case of a contract described in subsection (a) with a cancellation ceiling described in paragraph (1), if the budget for the contract does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract, the head of the agency concerned shall, as part of the certification required by subsection (i)(1)(A), give written notification to the congressional defense committees of—

"(A) the cancellation ceiling amounts planned for each program year in the proposed multiyear procurement contract, together with the reasons for the amounts planned;

"(B) the extent to which costs of contract cancellation are not included in the budget for the contract; and

"(C) a financial risk assessment of not including budgeting for costs of contract cancellation.".

(b) Multiyear Contracts Relating to Services.—Section 2306c(d) of title 10, United States Code, is amended—

(1) in paragraphs (1), (3), and (4), by striking "committees of Congress named in paragraph (5)" and inserting "congressional defense committees" each place it appears; and

(2) by amending paragraph (5) to read as follows:

"(5) In the case of a contract described in subsection (a) with a cancellation ceiling described in paragraph (4), if the budget for the contract does not include proposed funding for the costs of contract cancellation up to the cancellation ceiling established in the contract, the head of the agency concerned shall give written notification to the congressional defense committees of—

"(A) the cancellation ceiling amounts planned for each program year in the proposed multiyear procurement contract, together with the reasons for the amounts planned;

"(B) the extent to which costs of contract cancellation are not included in the budget for the contract; and

"(C) a financial risk assessment of not including budgeting for costs of contract cancellation.".

SEC. 815. INCREASED THRESHOLD FOR SENIOR PROCUREMENT EXECUTIVE APPROVAL OF USE OF PROCEDURES OTHER THAN COMPETITIVE PROCEDURES.

Section 2304(f)(1)(B) of title 10, United States Code, is amended by striking "$50,000,000" both places it appears and inserting "$75,000,000".

SEC. 816. INCREASED THRESHOLD FOR APPLICABILITY OF REQUIREMENT FOR DEFENSE CONTRACTORS TO PROVIDE INFORMATION ON SUBCONTRACTING AUTHORITY OF CONTRACTOR PERSONNEL TO COOPERATIVE AGREEMENT HOLDERS.

Section 2416(d) of title 10, United States Code, is amended by striking "$500,000" and inserting "$1,000,000".

SEC. 817. EXTENSION OF AUTHORITY FOR USE OF SIMPLIFIED ACQUISITION PROCEDURES.

Section 4202(e) of the Clinger-Cohen Act (division D of Public Law 104–106; 110 Stat. 652; 10 U.S.C. 2304 note) is amended by striking "January 1, 2006" and inserting "January 1, 2008".

SEC. 818. SUBMISSION OF COST OR PRICING DATA ON NONCOMMERCIAL MODIFICATIONS OF COMMERCIAL ITEMS.

(a) Inapplicability of Commercial Items Exception to Noncommercial Modifications of Commercial Items.—Subsection (b) of section 2306a of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(3) Noncommercial Modifications of Commercial Items.—(A) The exception in paragraph (1)(B) does not apply to cost or pricing data on noncommercial modifications of a commercial item that are expected to cost, in the aggregate, more than $500,000 or 5 percent of the total price of the contract, whichever is greater.

"(B) In this paragraph, the term 'noncommercial modification', with respect to a commercial item, means a modification of such item that is not a modification described in section 4(12)(C)(i) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)(C)(i)).

"(C) Nothing in subparagraph (A) shall be construed—

"(i) to limit the applicability of the exception in subparagraph (A) or (C) of paragraph (1) to cost or pricing data on a noncommercial modification of a commercial item; or

"(ii) to require the submission of cost or pricing data on any aspect of an acquisition of a commercial item other than the cost and pricing of noncommercial modifications of such item.".

(b) Effective Date and Applicability.—Paragraph (3) of section 2306a of title 10, United States Code (as added by subsection (a)), shall take effect on June 1, 2005, and shall apply with respect to offers submitted, and to modifications of contracts or subcontracts made, on or after that date.

SEC. 819. DELEGATIONS OF AUTHORITY TO MAKE DETERMINATIONS RELATING TO PAYMENT OF DEFENSE CONTRACTORS FOR BUSINESS RESTRUCTURING COSTS.

Section 2325(a)(2) of title 10, United States Code, is amended—

(1) by striking "paragraph (1) to an official" and all that follows and inserting "paragraph (1), with respect to a business combination, to an official of the Department of Defense—"; and

(2) by adding at the end the following:

"(A) below the level of an Assistant Secretary of Defense for cases in which the amount of restructuring costs is expected to exceed $25,000,000 over a 5-year period; or

"(B) below the level of the Director of the Defense Contract Management Agency for all other cases.".

SEC. 820. AVAILABILITY OF FEDERAL SUPPLY SCHEDULE SUPPLIES AND SERVICES TO UNITED SERVICE ORGANIZATIONS, INCORPORATED.

Section 220107 of title 36, United States Code, is amended by inserting after "Department of Defense" the following: ", including access to General Services Administration supplies and services through the Federal Supply Schedule of the General Services Administration,".

SEC. 821. ADDITION OF LANDSCAPING AND PEST CONTROL SERVICES TO LIST OF DESIGNATED INDUSTRY GROUPS PARTICIPATING IN THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM.

(a) In General.—Subsection (a) of section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note) is amended—

(1) in paragraph (3), by striking "and" at the end;

(2) in paragraph (4), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(5) landscaping and pest control services.".

(b) LANDSCAPING AND PEST CONTROL SERVICES.—Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note) is amended—

(1) by redesignating subsection (e) as subsection (f), and

(2) by inserting after subsection (d) the following new subsection:

"(e) LANDSCAPING AND PEST CONTROL SERVICES.—Landscaping and pest control services shall include contract awards assigned to North American Industrial Classification Code 561710 (relating to exterminating and pest control services) or 561730 (relating to landscaping services).".

SEC. 822. INCREASED THRESHOLDS UNDER SPECIAL EMERGENCY PROCUREMENT AUTHORITY.

Section 32A(b) of the Office of Federal Procurement Policy Act (41 U.S.C. 428a(b)) is amended—

(1) by striking paragraph (1) and inserting the following:

"(1) the amount specified in subsections (c), (d), and (f) of section 32 shall be deemed to be—

"(A) $15,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and

"(B) $25,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States; and"; and

(2) in paragraph (2)(B), by striking "$500,000" and inserting "$1,000,000".

Subtitle C—United States Defense Industrial Base Provisions

SEC. 831. DEFENSE TRADE RECIPROCITY.

(a) POLICY.—It is the policy of Congress that procurement regulations used in the conduct of trade in defense articles and defense services should be based on the principle of fair trade and reciprocity consistent with United States national security, including the need to ensure comprehensive manufacturing capability in the United States defense industrial base.

(b) REQUIREMENT.—The Secretary of Defense shall make every effort to ensure that the policies and practices of the Department of Defense reflect the goal of establishing an equitable trading relationship between the United States and its foreign defense trade partners, including ensuring that United States firms and United States employment in the defense sector are not disadvantaged by unilateral procurement practices by foreign governments, such as the imposition of offset agreements in a manner that undermines the United States defense industrial base. In pursuing this goal, the Secretary shall—

(1) develop a comprehensive defense acquisition trade policy that provides the necessary guidance and incentives for the elimination of any adverse effects of offset agreements in defense trade; and

(2) review and make necessary modifications to existing acquisition policies and strategies, and review and seek to make necessary modifications to existing memoranda of understanding, cooperative project agreements, or related agreements with foreign defense trade partners, to reflect this goal.

(c) REGULATIONS.—The Secretary shall prescribe regulations to implement this section in the Department of Defense supplement to the Federal Acquisition Regulation.

(d) DEFINITIONS.—In this section:

(1) The term "foreign defense trade partner" means a foreign country with respect to which there is—

(A) a memorandum of understanding or related agreement described in section 2531(a) of title 10, United States Code; or

(B) a cooperative project agreement described in section 27 of the Arms Export Control Act (22 U.S.C. 2767).

(2) The term "offset agreement" has the meaning provided that term by section 36(e) of the Arms Export Control Act (22 U.S.C. 2776(e)).

(3) The terms "defense article" and "defense service" have the meanings provided those terms by section 47(7) of the Arms Export Control Act (22 U.S.C. 2794(7)).

SEC. 832. ASSESSMENT AND REPORT ON THE ACQUISITION OF POLYACRYLONITRILE (PAN) CARBON FIBER FROM FOREIGN SOURCES.

(a) REQUIREMENT.—The Secretary of Defense shall delay the phase-out of the restriction on acquisition of polyacrylonitrile (PAN) carbon fiber from foreign sources (described in subpart 225.7103 of the Department of Defense supplement to the Federal Acquisition Regulation) until an assessment of PAN carbon fiber industry is completed and 30 days have passed after submission of the report required under subsection (c).

(b) ASSESSMENT.—The Secretary of Defense shall perform a assessment of the domestic and international industrial structure that produces PAN carbon fibers, current and anticipated market trends for the product, and how the trends compare to the assessment as reported by the Secretary of Defense in January 2001.

(c) REPORT REQUIRED.—Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the assessment performed under subsection (b) and on any decision made to maintain or discontinue the phase-out of procurement restrictions on foreign acquisition of PAN carbon fibers in the Department of Defense supplement to the Federal Acquisition Regulation.

Subtitle D—Extensions of Temporary Program Authorities

SEC. 841. EXTENSION OF MENTOR-PROTEGE PROGRAM.

(a) EXTENSION OF PROGRAM.—Subsection (j) of section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2302 note) is amended—

(1) in paragraph (1), by striking "September 30, 2005" and inserting "September 30, 2010"; and

(2) in paragraph (2), by striking "September 30, 2008" and inserting "September 30, 2013".

(b) EXTENSION OF REQUIREMENT FOR ANNUAL REPORT.—Subsection (l)(3) of such section is amended by striking "2007" and inserting "2010".

(c) ADDITIONAL FEASIBILITY REVIEW OF TRANSITION TO OTHER FINANCING METHODS.—(1) The Secretary of Defense shall conduct an additional review of the Mentor-Protege Program under section 811(d)(2) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 708).

(2) Not later than September 30, 2005, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives—

(A) a report on the results of the review conducted under paragraph (1); and

(B) any recommendations of the Secretary for legislative action.

(d) ADDITIONAL STUDY OF PROGRAM IMPLEMENTATION.—(1) The Comptroller General shall conduct an additional study of the Mentor-Protege Program under section 811(d)(3) of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 113 Stat. 709).

(2) Not later than September 30, 2006, the Comptroller General shall submit a report on the results of the study conducted under paragraph (1) to the Committees on Armed Services of the Senate and the House of Representatives.

SEC. 842. AMENDMENT TO MENTOR-PROTEGE PROGRAM.

Section 831(m)(2) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2302 note) is amended—

(1) in subparagraph (D), by striking "or" at the end;

(2) in subparagraph (E), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(F) a small business concern owned and controlled by service-disabled veterans (as defined in section 8(d)(3) of the Small Business Act); and

"(G) a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act).".

SEC. 843. EXTENSION OF TEST PROGRAM FOR NEGOTIATION OF COMPREHENSIVE SMALL BUSINESS SUBCONTRACTING PLANS.

Section 834(e) of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 15 U.S.C. 637 note) is amended by striking "September 30, 2005" and inserting "September 30, 2010".

SEC. 844. EXTENSION OF PILOT PROGRAM ON SALES OF MANUFACTURED ARTICLES AND SERVICES OF CERTAIN ARMY INDUSTRIAL FACILITIES.

Section 141(a) of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85; 10 U.S.C. 4543 note) is amended by striking "through 2004" in the first sentence and inserting "through 2009".

Subtitle E—Other Acquisition Matters

SEC. 851. REVIEW AND DEMONSTRATION PROJECT RELATING TO CONTRACTOR EMPLOYEES.

(a) GENERAL REVIEW.—(1) The Secretary of Defense shall conduct a review of policies, procedures, practices, and penalties of the Department of Defense relating to employees of defense contractors for purposes of ensuring that the Department of Defense is in compliance with Executive Order No. 12989 (relating to a prohibition on entering into contracts with contractors that are not in compliance with the Immigration and Nationality Act).

(2) In conducting the review, the Secretary shall—

(A) identify potential weaknesses and areas for improvement in existing policies, procedures, practices, and penalties;

(B) develop and implement reforms to strengthen, upgrade, and improve policies, procedures, practices, and penalties of the Department of Defense and its contractors; and

(C) review and analyze reforms developed pursuant to this paragraph to identify for purposes of national implementation those which are most efficient and effective.

(3) The review under this subsection shall be completed not later than 180 days after the date of the enactment of this Act.

(b) DEMONSTRATION PROJECT.—The Secretary of Defense shall conduct a demonstration project in accordance with this section, in one or more regions selected by the Secretary, for purposes of promoting greater contracting opportunities for contractors offering effective, reliable staffing plans to perform defense contracts that ensure all contract personnel employed for such projects, including management employees, professional employees, craft labor personnel, and administrative personnel, are lawful residents or persons properly authorized to be employed in the United States and properly qualified to perform services required under the contract. The demonstration project shall focus on contracts for construction, renovation,

maintenance, and repair services for military installations.

(c) DEMONSTRATION PROJECT PROCUREMENT PROCEDURES.—As part of the demonstration project under subsection (b), the Secretary of Defense may conduct a competition in which there is a provision in contract solicitations and request for proposal documents to require significant weight or credit be allocated to—

(1) reliable, effective workforce programs offered by prospective contractors that provide background checks and other measures to ensure the contractor is in compliance with the Immigration and Nationality Act; and

(2) reliable, effective project staffing plans offered by prospective contractors that specify for all contract employees (including management employees, professionals, and craft labor personnel) the skills, training, and qualifications of such persons and the labor supply sources and hiring plans or procedures used for employing such persons.

(d) IMPLEMENTATION OF DEMONSTRATION PROJECT.—The Secretary of Defense shall begin operation of the demonstration project required under this section after completion of the review under subsection (a), but in no event later than 270 days after the date of the enactment of this Act.

(e) REPORT ON DEMONSTRATION PROJECT.—Not later than six months after award of a contract under the demonstration project, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report setting forth a review of the demonstration project and recommendations on the actions, if any, that can be implemented to ensure compliance by the Department of Defense with Executive Order No. 12989.

(f) DEFINITION.—In this section, the term "military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, or Guam. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

SEC. 852. INAPPLICABILITY OF CERTAIN FISCAL LAWS TO SETTLEMENTS UNDER SPECIAL TEMPORARY CONTRACT CLOSEOUT AUTHORITY.

Section 804(a) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1541) is amended—

(1) by inserting "(1)" after "(a) AUTHORITY.—"; and

(2) by adding at the end the following new paragraph:

"(2) Under regulations which the Secretary of Defense may prescribe, a settlement of a financial account for a contract for the procurement of property or services under paragraph (1) may be made without regard to—

"(A) section 1301 of title 31, United States Code; and

"(B) any other provision of law that would preclude the Secretary from charging payments under the contract—

"(i) to an unobligated balance in an appropriation available for funding that contract; or

"(ii) if and to the extent that the unobligated balance (if any) in such appropriation is insufficient for funding such payments, to any current appropriation that is available to the Department of Defense for funding contracts for the procurement of the same or similar property or services.".

SEC. 853. CONTRACTING WITH EMPLOYERS OF PERSONS WITH DISABILITIES.

(a) INAPPLICABILITY OF RANDOLPH-SHEPPARD ACT TO MESS HALL SERVICES UNDER EXISTING JAVITS-WAGNER-O'DAY ACT CONTRACTS.—(1) The Randolph-Sheppard Act (20 U.S.C. 107 et seq.) does not apply to any contract described in paragraph (2) for so long as the contract is in effect, including for any period for which the contract is extended pursuant to an option provided in the contract.

(2) Paragraph (1) applies to any contract for the operation of all or any part of a military mess hall, military troop dining facility, or any similar dining facility operated for the purpose of providing meals to members of the Armed Forces that—

(A) was entered into before September 30, 2005, with a qualified nonprofit agency for the blind or a qualified nonprofit agency for other severely handicapped in compliance with section 3 of the Javits-Wagner-O'Day Act (41 U.S.C. 48); and

(B) either—

(i) is in effect on such date; or

(ii) was in effect on November 24, 2003.

(b) INAPPLICABILITY OF JAVITS-WAGNER-O'DAY ACT TO MESS HALL SERVICES UNDER EXISTING RANDOLPH-SHEPPARD ACT CONTRACTS.—(1) The Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.) does not apply to any contract described in paragraph (2) for so long as the contract is in effect, including for any period for which the contract is extended pursuant to an option provided in the contract.

(2) Paragraph (1) applies to any contract for the operation of all or any part of a military mess hall, military troop dining facility, or any similar dining facility operated for the purpose of providing meals to members of the Armed Forces that—

(A) was entered into before September 30, 2005, with a State licensing agency under the Randolph-Sheppard Act (20 U.S.C. 107 et seq.); and

(B) either—

(i) is in effect on such date; or

(ii) was in effect on November 24, 2003.

(3) In this subsection, the term "State licensing agency" means an agency designated under section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107a(a)(5)).

(c) REPEAL OF SUPERSEDED LAW.—Subsections (a) and (b) of section 852 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1556) are repealed.

SEC. 854. DEFENSE PROCUREMENTS MADE THROUGH CONTRACTS OF OTHER AGENCIES.

(a) LIMITATION.—The head of an agency may not procure goods or services (under section 1535 of title 31, United States Code, pursuant to a designation under section 11302(e) of title 40, United States Code, or otherwise) through a contract entered into by an agency outside the Department of Defense for an amount greater than the simplified acquisition threshold referred to in section 2304(g) of title 10, United States Code, unless the procurement is done in accordance with procedures prescribed by that head of an agency for reviewing and approving the use of such contracts.

(b) EFFECTIVE DATE.—The limitation in subsection (a) shall apply only with respect to orders for goods or services that are issued by the head of an agency to an agency outside the Department of Defense on or after the date that is 180 days after the date of the enactment of this Act.

(c) INAPPLICABILITY TO CONTRACTS FOR CERTAIN SERVICES.—This section does not apply to procurements of the following services:

(1) Printing, binding, or blank-book work to which section 502 of title 44, United States Code, applies.

(2) Services available under programs pursuant to section 103 of the Library of Congress Fiscal Operations Improvement Act of 2000 (Public Law 106–481; 114 Stat. 2187; 2 U.S.C. 182c).

(d) ANNUAL REPORT.—(1) For each of fiscal years 2005 and 2006, each head of an agency shall submit to the Secretary of Defense a report on the service charges imposed on purchases made for an amount greater than the simplified acquisition threshold during such fiscal year through a contract entered into by an agency outside the Department of Defense.

(2) In the case of procurements made on orders issued by the head of a Defense Agency, Department of Defense Field Activity, or any other organization within the Department of Defense (other than a military department) under the authority of the Secretary of Defense as the head of an agency, the report under paragraph (1) shall be submitted by the head of that Defense Agency, Department of Defense Field Activity, or other organization, respectively.

(3) The report for a fiscal year under this subsection shall be submitted not later than December 31 of the calendar year in which such fiscal year ends.

(e) DEFINITIONS.—In this section:

(1) The term "head of an agency" means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force.

(2) The term "Defense Agency" has the meaning given such term in section 101(a)(11) of title 10, United States Code.

(3) The term "Department of Defense Field Activity" has the meaning given such term in section 101(a)(12) of such title.

SEC. 855. REQUIREMENTS RELATING TO SOURCE SELECTION FOR INTEGRATED SUPPORT OF AERIAL REFUELING AIRCRAFT FLEET FOR THE AIR FORCE.

For the selection of a provider of integrated support for the aerial refueling aircraft fleet in any acquisition of aerial refueling aircraft for the Air Force, the Secretary of the Air Force shall—

(1) before selecting the provider, perform all analyses required by law of—

(A) the costs and benefits of—

(i) the alternative of using Federal Government personnel to provide such support; and

(ii) the alternative of using contractor personnel to provide such support;

(B) the core logistics requirements;

(C) use of performance-based logistics; and

(D) the length of contract period; and

(2) select the provider in accordance with the procedures under the provisions of law referred to as the Competition in Contracting Act.

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

Subtitle A—Duties and Functions of Department of Defense

Sec. 901. Study of roles and authorities of the Director of Defense Research and Engineering.
Sec. 902. Change of membership of specified council.

Subtitle B—Space Activities

Sec. 911. Space posture review.
Sec. 912. Panel on the future of national security space launch.
Sec. 913. Operationally responsive national security satellites.
Sec. 914. Nondisclosure of certain products of commercial satellite operations.

Subtitle C—Intelligence-Related Matters

Sec. 921. Two-year extension of authority of the Secretary of Defense to engage in commercial activities as security for intelligence collection activities abroad.
Sec. 922. Pilot program on cryptologic service training.

Subtitle D—Other Matters

Sec. 931. Strategic plan for destruction of lethal chemical agents and munitions stockpile.

Sec. 932. Secretary of Defense criteria for and guidance on identification and internal transmission of critical information.

Subtitle A—Duties and Functions of Department of Defense

SEC. 901. STUDY OF ROLES AND AUTHORITIES OF THE DIRECTOR OF DEFENSE RESEARCH AND ENGINEERING.

(a) STUDY REQUIRED.—The Secretary of Defense shall carry out a study of the roles and authorities of the Director of Defense Research and Engineering.

(b) CONTENT OF STUDY.—The study under subsection (a) shall include the following:

(1) An examination of the past and current roles and authorities of the Director of Defense Research and Engineering.

(2) An analysis to determine appropriate future roles and authorities for the Director, including an analysis of the following matters:

(A) The relationship of the Director to other senior science and technology and acquisition officials of the military departments and the Defense Agencies

(B) The relationship of the Director to the performance of the following functions:

(i) The planning, programming, and budgeting of the science and technology programs of the Department of Defense, including those of the military departments and the Defense Agencies.

(ii) The management of Department of Defense laboratories and technical centers, including the management of the Federal Government scientific and technical workforce for such laboratories and centers.

(iii) The promotion of the rapid transition of technologies to acquisition programs within the Department of Defense.

(iv) The promotion of the transfer of technologies into and from the commercial sector.

(v) The coordination of Department of Defense science and technology activities with organizations outside the Department of Defense, including other Federal Government agencies, international research organizations, industry, and academia.

(vi) The technical review of Department of Defense acquisition programs and policies.

(vii) The training and educational activities for the national scientific and technical workforce.

(viii) The development of science and technology policies and programs relating to the maintenance of the national technology and industrial base.

(ix) The development of new technologies in support of the transformation of the Armed Forces.

(3) An examination of the duties of the Director as the Chief Technology Officer of the Department of Defense as prescribed by Department of Defense Directive 5134.3, dated November 3, 2003, especially in comparison to the duties of similar positions in the Federal Government and industry.

(4) An examination of any other matter that the Secretary considers appropriate for the study.

(c) REPORT.—(1) Not later than February 1, 2006, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the results of the study under this section.

(2) The report shall include recommendations regarding the appropriate roles and authorities that should be assigned and resources that should be provided to the Director of Defense Research and Engineering.

(d) ROLE OF DEFENSE SCIENCE BOARD IN STUDY AND REPORT.—The Secretary shall act through the Defense Science Board in carrying out the study under subsection (a) and in preparing the report under subsection (c).

SEC. 902. CHANGE OF MEMBERSHIP OF SPECIFIED COUNCIL.

(a) MEMBERSHIP OF COUNCIL UNDER SECTION 179.—Subsection (a) of section 179 of title 10, United States Code, is amended by adding at the end the following new paragraph:

"(4) The Under Secretary of Defense for Policy.".

(b) CONFORMING AND CLARIFYING AMENDMENTS.—Such subsection is further amended in the matter preceding paragraph (1)—

(1) by striking "Joint"; and

(2) by striking "composed of three members as follows:" and inserting "operated as a joint activity of the Department of Defense and the Department of Energy. The membership of the Council is comprised of the following officers of those departments:".

(c) OTHER TECHNICAL AND CLARIFYING AMENDMENTS.—Such section is further amended as follows:

(1) Subsection (c)(3)(B) is amended by striking "appointed" and inserting "designated".

(2) Subsection (e) is amended by striking "In addition" and all that follows through "also" and inserting "The Council shall".

(3) Subsection (f) is amended by striking "Committee on" the first place it appears and all that follows through "Representatives" and inserting "congressional defense committees".

(d) STYLISTIC AMENDMENTS.—Such section is further amended as follows:

(1) Subsection (a) is amended by inserting "ESTABLISHMENT; MEMBERSHIP.—" after "(a)".

(2) Subsection (b) is amended by inserting "CHAIRMAN; MEETINGS.—" after "(b)".

(3) Subsection (c) is amended by inserting "STAFF AND ADMINISTRATIVE SERVICES; STAFF DIRECTOR.—" after "(c)".

(4) Subsection (d) is amended by inserting "RESPONSIBILITIES.—" after "(d)".

(5) Subsection (e) is amended by inserting "REPORT ON DIFFICULTIES RELATING TO SAFETY OR RELIABILITY.—" after "(e)".

(6) Subsection (f) is amended by inserting "ANNUAL REPORT.—" after "(f)".

(e) FURTHER CONFORMING AMENDMENTS.—Section 3212(e) of the National Nuclear Security Administration Act (50 U.S.C. 2402(e)) is amended—

(1) by striking "JOINT" in the subsection heading; and

(2) by striking "Joint".

Subtitle B—Space Activities

SEC. 911. SPACE POSTURE REVIEW.

(a) REQUIREMENT FOR COMPREHENSIVE REVIEW.—In order to clarify the national security space policy and strategy of the United States for the near term, the Secretary of Defense shall conduct a comprehensive review of the space posture of the United States over the posture review period.

(b) ELEMENTS OF REVIEW.—The review conducted under subsection (a) shall include, for the posture review period, the following:

(1) The definition, policy, requirements, and objectives for each of the following:

(A) Space situational awareness.

(B) Space control.

(C) Space superiority, including defensive and offensive counterspace.

(D) Force enhancement and force application.

(E) Space-based intelligence, surveillance, and reconnaissance from space.

(F) Any other matter the Secretary considers relevant to understanding the United States space posture.

(2) Current and planned space acquisition programs that are in acquisition categories 1 and 2, including how each such program will address the policy, requirements, and objectives described under each of subparagraphs (A) through (F) of paragraph (1).

(3) Future space systems and technology development (other than those in development as of the date of the enactment of this Act) necessary to address the policy, requirements, and objectives described under each of subparagraphs (A) through (F) of paragraph (1).

(4) The relationship among—

(A) United States military space policy;

(B) national security space policy;

(C) national security space objectives; and

(D) arms control policy.

(5) Effect of United States military and national security space policy on the proliferation of weapons capable of targeting objects in space or objects on Earth from space.

(c) REPORTS.—(1) Not later than March 15, 2005, the Secretary of Defense shall submit to the congressional committees specified in paragraph (4) an interim report on the review conducted under subsection (a).

(2) Not later than December 31, 2005, the Secretary shall submit to those committees a final report on that review.

(3) Each report under this subsection shall be submitted in unclassified form, but may include a classified annex.

(4) The reports under this subsection shall be submitted to the Committee on Armed Services and the Select Committee on Intelligence of the Senate and the Committee on Armed Services and the Permanent Select Committee on Intelligence of the House of Representatives.

(d) JOINT UNDERTAKING WITH THE DIRECTOR OF CENTRAL INTELLIGENCE (OR SUCCESSOR).—The Secretary of Defense shall conduct the review under this section, and shall submit the reports under subsection (c), jointly with the Director of Central Intelligence (or any successor official who has responsibility for management of the intelligence community).

(e) POSTURE REVIEW PERIOD.—In this section, the term "posture review period" means the 10-year period beginning on the first day of the first month beginning more than one year after the date of the enactment of this Act.

SEC. 912. PANEL ON THE FUTURE OF NATIONAL SECURITY SPACE LAUNCH.

(a) IN GENERAL.—(1) The Secretary of Defense shall enter into a contract with a federally funded research and development center to establish a panel on the future national security space launch requirements of the United States, including means of meeting those requirements.

(2) The Secretary shall enter into the contract not later than 60 days after the date of the enactment of this Act.

(b) MEMBERSHIP AND ADMINISTRATION OF PANEL.—(1) The panel shall consist of individuals selected by the federally funded research and development center from among private citizens of the United States with knowledge and expertise in one or more of the following areas:

(A) Space launch operations.

(B) Space launch technologies.

(C) Satellite and satellite payloads.

(D) State and national launch complexes.

(E) Space launch economics.

(2) The federally funded research and development center shall establish appropriate procedures for the administration of the panel, including designation of the chairman of the panel from among its members.

(3) All panel members shall hold security clearances appropriate for the work of the panel.

(4) The panel shall convene its first meeting not later than 30 days after the date on which all members of the panel have been selected.

(c) DUTIES.—(1) The panel shall conduct a review and assessment of the future national security space launch requirements of the United States, including the means of meeting those requirements.

(2) The review and assessment shall take into account the following matters:

(A) Launch economics.

(B) Operational concepts and architectures.

(C) Launch technologies, including—

(i) reusable launch vehicles;

(ii) expendable launch vehicles;

(iii) low cost options; and

(iv) revolutionary approaches.

(D) Payloads, including the implications of payloads for launch requirements.

(E) Launch infrastructure.

(F) Launch industrial base.

(G) Relationships among military, civilian, and commercial launch requirements.

(3) The review and assessment shall address national security space launch requirements over each of the 5-year, 10-year, and 15-year periods beginning with 2005.

(d) INFORMATION FROM FEDERAL AND STATE AGENCIES.—(1) The panel may secure directly from the Department of Defense, from any other department or agency of the Federal Government, and any State government any information that the panel considers necessary to carry out its duties.

(2) The Secretary of Defense shall designate at least one senior civilian employee of the Department of Defense and at least one general or flag officer of an Armed Force to serve as liaison between the Department, the Armed Forces, and the panel.

(e) REPORT.—Not later than one year after the date of the first meeting of the panel under subsection (b)(4), the panel shall submit to the Secretary of Defense, the congressional defense committees, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives a report on the results of the review and assessment under subsection (c). The report shall include—

(1) the findings and conclusions of the panel on the future national security space launch requirements of the United States, including means of meeting such requirements;

(2) the assessment of panel, and any recommendations of the panel, on—

(A) launch operational concepts and architectures;

(B) launch technologies;

(C) launch enabling technologies; and

(D) priorities for funding; and

(3) the assessment of the panel as to the best means of meeting the future national security space launch requirements of the United States.

(f) TERMINATION.—The panel shall terminate 16 months after the date of the first meeting of the panel under subsection (b)(4).

(g) FUNDING.—Amounts authorized to be appropriated to the Department of Defense shall be available to the Secretary of Defense for purposes of the contract required by subsection (a).

SEC. 913. OPERATIONALLY RESPONSIVE NATIONAL SECURITY SATELLITES.

(a) PLANNING, PROGRAMMING, AND MANAGEMENT.—(1) Chapter 135 of title 10, United States Code, is amended by inserting after section 2273 the following new section:

"§2273a. Operationally responsive national security payloads and buses: separate program element required

"(a) REQUIREMENT FOR PROGRAM ELEMENT.—The Secretary of Defense shall ensure that, within budget program elements for space programs of the Department of Defense, there is a separate, dedicated program element for operationally responsive national security payloads and buses of the Department of Defense for space satellites and that programs and activities for such payloads and buses are planned, programmed, and budgeted for through that program element.

"(b) MANAGEMENT AUTHORITY.—The Secretary of Defense shall assign management authority for the program element required under subsection (a) to the Director of the Office of Force Transformation of the Department of Defense.

"(c) DEFINITION OF OPERATIONALLY RESPONSIVE.—In this section, the term 'operationally responsive', with respect to a national security payload and bus for a space satellite, means an experimental or operational payload and bus with a weight not in excess of 5,000 pounds that—

"(1) can be developed and acquired within 18 months after authority to proceed with development is granted; and

"(2) is responsive to requirements for capabilities at the operational and tactical levels of warfare.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2273 the following new item:

"2273a. Operationally responsive national security payloads and buses: separate program element required.".

(b) TIME FOR IMPLEMENTATION.—Subsection (a) of section 2273a of title 10, United States Code, as added by subsection (a), shall apply with respect to fiscal years after fiscal year 2005.

SEC. 914. NONDISCLOSURE OF CERTAIN PRODUCTS OF COMMERCIAL SATELLITE OPERATIONS.

(a) MANDATORY DISCLOSURE REQUIREMENTS INAPPLICABLE.—The requirements to make information available under section 552 of title 5, United States Code, shall not apply to land remote sensing information.

(b) LAND REMOTE SENSING INFORMATION DEFINED.—In this section, the term "land remote sensing information"—

(1) means any data that—

(A) are collected by land remote sensing; and

(B) are prohibited from sale to customers other than the United States Government and United States Government-approved customers for reasons of national security pursuant to the terms of an operating license issued pursuant to the Land Remote Sensing Policy Act of 1992 (15 U.S.C. 5601 et seq.); and

(2) includes any imagery and other product that is derived from such data and which is prohibited from sale to customers other than the United States Government and United States Government-approved customers for reasons of national security pursuant to the terms of an operating license described in paragraph (1)(B).

(c) STATE OR LOCAL GOVERNMENT DISCLOSURES.—Land remote sensing information provided by the head of a department or agency of the United States to a State, local, or tribal government may not be made available to the general public under any State, local, or tribal law relating to the disclosure of information or records.

(d) SAFEGUARDING INFORMATION.—The head of each department or agency of the United States having land remote sensing information within that department or agency or providing such information to a State, local, or tribal government shall take such actions, commensurate with the sensitivity of that information, as are necessary to protect that information from disclosure other than in accordance with this section and other applicable law.

(e) ADDITIONAL DEFINITION.—In this section, the term "land remote sensing" has the meaning given such term in section 3 of the Land Remote Sensing Policy Act of 1992 (15 U.S.C. 5602).

(f) DISCLOSURE TO CONGRESS.—Nothing in this section shall be construed to authorize the withholding of information from the appropriate committees of Congress.

Subtitle C—Intelligence-Related Matters

SEC. 921. TWO-YEAR EXTENSION OF AUTHORITY OF THE SECRETARY OF DEFENSE TO ENGAGE IN COMMERCIAL ACTIVITIES AS SECURITY FOR INTELLIGENCE COLLECTION ACTIVITIES ABROAD.

Section 431(a) of title 10, United States Code, is amended by striking "December 31, 2004" and inserting "December 31, 2006".

SEC. 922. PILOT PROGRAM ON CRYPTOLOGIC SERVICE TRAINING.

(a) PROGRAM AUTHORIZED.—The Director of the National Security Agency may carry out a pilot program on cryptologic service training for the intelligence community.

(b) OBJECTIVE OF PROGRAM.—The objective of the pilot program is to increase the number of qualified entry-level language analysts and intelligence analysts available to the National Security Agency and the other elements of the intelligence community through the directed preparation and recruitment of qualified entry-level language analysts and intelligence analysts who commit to a period of service or a career in the intelligence community.

(c) PROGRAM SCOPE.—The pilot program shall be national in scope.

(d) PROGRAM PARTICIPANTS.—(1) Subject to the provisions of this subsection, the Director shall select the participants in the pilot program from among individuals qualified to participate in the pilot program utilizing such procedures as the Director considers appropriate for purposes of the pilot program.

(2) Each individual who receives financial assistance under the pilot program shall perform one year of obligated service with the National Security Agency, or another element of the intelligence community approved by the Director, for each academic year for which such individual receives such financial assistance upon such individual's completion of post-secondary education.

(3) Each individual selected to participate in the pilot program shall be qualified for a security clearance appropriate for the individual under the pilot program.

(4) The total number of participants in the pilot program at any one time may not exceed 400 individuals.

(e) PROGRAM MANAGEMENT.—In carrying out the pilot program, the Director shall—

(1) identify individuals interested in working in the intelligence community, and committed to taking college-level courses that will better prepare them for a career in the intelligence community as a language analyst or intelligence analyst;

(2) provide each individual selected for participation in the pilot program—

(A) financial assistance for the pursuit of courses at institutions of higher education selected by the Director in fields of study that will qualify such individual for employment by an element of the intelligence community as a language analyst or intelligence analyst; and

(B) educational counseling on the selection of courses to be so pursued; and

(3) provide each individual so selected information on the opportunities available for employment in the intelligence community.

(f) DURATION OF PROGRAM.—(1) The Director shall terminate the pilot program not later than six years after the date of the enactment of this Act.

(2) The termination of the pilot program under paragraph (1) shall not prevent the Director from continuing to provide assistance, counseling, and information under subsection (e) to individuals who are participating in the pilot program on the date of termination of the pilot program throughout the academic year in progress as of that date.

Subtitle D—Other Matters

SEC. 931. STRATEGIC PLAN FOR DESTRUCTION OF LETHAL CHEMICAL AGENTS AND MUNITIONS STOCKPILE.

Subsection (d) of section 1412 of the Department of Defense Authorization Act, 1986 (50 U.S.C. 1521), is amended to read as follows:

"(d) REQUIREMENT FOR STRATEGIC PLAN.—(1) The Under Secretary of Defense for Acquisition, Technology, and Logistics and the Secretary of the Army shall jointly prepare, and from time to time shall update as appropriate, a strategic plan for future activities for destruction of the United States' stockpile of lethal chemical agents and munitions.

"(2) The plan shall include, at a minimum, the following considerations:

"(A) Realistic budgeting for stockpile destruction and related support programs.

"(B) Contingency planning for foreseeable or anticipated problems.

"(C) A management approach and associated actions that address compliance with the obligations of the United States under the Chemical Weapons Convention treaty and that take full advantage of opportunities to accelerate destruction of the stockpile.

"(3) The Secretary of Defense shall each year submit to the Committee on the Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the strategic plan as most recently prepared and updated under paragraph (1). Such submission shall be made each year at the time of the submission to the Congress that year of the President's budget for the next fiscal year.".

SEC. 932. SECRETARY OF DEFENSE CRITERIA FOR AND GUIDANCE ON IDENTIFICATION AND INTERNAL TRANSMISSION OF CRITICAL INFORMATION.

(a) CRITERIA FOR CRITICAL INFORMATION.—(1) The Secretary of Defense shall establish criteria for determining categories of critical information that should be made known expeditiously to senior civilian and military officials in the Department of Defense. Those categories should be limited to matters of extraordinary significance and strategic impact to which rapid access by those officials is essential to the successful accomplishment of the national security strategy or a major military mission. The Secretary may from time to time modify the list to suit the current strategic situation.

(2) The Secretary shall provide the criteria established under paragraph (1) to the Chairman of the Joint Chiefs of Staff, the Secretaries of the military departments, the commanders of the unified and specified commands, the commanders of deployed forces, and such other elements of the Department of Defense as the Secretary considers necessary.

(b) MATTERS TO BE INCLUDED.—The criteria established under subsection (a) shall include, at a minimum, requirement for identification of the following:

(1) Any incident that may result in a contingency operation, based on the incident's nature, gravity, or potential for significant adverse consequences to United States citizens, military personnel, interests, or assets, including an incident that could result in significant adverse publicity having a major strategic impact.

(2) Any event, development, or situation that could be reasonably assumed to escalate into an incident described in paragraph (1).

(3) Any deficiency or error in policy, standards, or training that could be reasonably assumed to have the effects described in paragraph (1).

(c) REQUIREMENTS FOR TRANSMISSION OF CRITICAL INFORMATION.—The criteria under subsection (a) shall include such requirements for transmission of such critical information to such senior civilian and military officials of the Department of Defense as the Secretary of Defense considers appropriate.

(d) TIME FOR ISSUANCE OF CRITERIA.—The Secretary of Defense shall establish the criteria required by subsection (a) not later than 120 days after the date of the enactment of this Act.

TITLE X—GENERAL PROVISIONS

Subtitle A—Financial Matters

Sec. 1001. Transfer authority.
Sec. 1002. United States contribution to NATO common-funded budgets in fiscal year 2005.
Sec. 1003. Budget justification documents for operation and maintenance.
Sec. 1004. Licensing of intellectual property.
Sec. 1005. Repeal of funding restrictions concerning development of medical countermeasures against biological warfare threats.
Sec. 1006. Report on budgeting for exchange rates for foreign currency fluctuations.
Sec. 1007. Fiscal year 2004 transfer authority.
Sec. 1008. Clarification of fiscal year 2004 funding level for a National Institute of Standards and Technology account.
Sec. 1009. Notification of fund transfers from working-capital funds.
Sec. 1010. Charges for Defense Logistics Information Services materials.

Subtitle B—Naval Vessels and Shipyards

Sec. 1011. Authority for award of contracts for ship dismantling on net-cost basis.
Sec. 1012. Use of proceeds from exchange and sale of obsolete navy service craft and boats.
Sec. 1013. Transfer of naval vessels to certain foreign recipients.
Sec. 1014. Independent study to assess cost effectiveness of the Navy ship construction program.
Sec. 1015. Limitation on disposal of obsolete naval vessel.

Subtitle C—Counterdrug Matters

Sec. 1021. Use of funds for unified counterdrug and coun ter terrorism campaign in Colombia.
Sec. 1022. Sense of Congress and report regarding counter-drug efforts in Afghanistan.

Subtitle D—Matters Relating to Museums and Commemorations

Sec. 1031. Recognition of the Liberty Memorial Museum, Kansas City, Missouri, as America's National World War I Museum.
Sec. 1032. Program to commemorate 60th anniversary of World War II.
Sec. 1033. Annual report on Department of Defense operation and financial support for military museums.

Subtitle E—Reports

Sec. 1041. Quarterly detailed accounting for operations conducted as part of the Global War on Terrorism.
Sec. 1042. Report on post-major combat operations phase of Operation Iraqi Freedom.
Sec. 1043. Report on training provided to members of the Armed Forces to prepare for post-conflict operations.
Sec. 1044. Report on establishing National Centers of Excellence for unmanned aerial and ground vehicles.
Sec. 1045. Study of continued requirement for two-crew manning for ballistic missile submarines.
Sec. 1046. Report on Department of Defense programs for prepositioning of materiel and equipment.
Sec. 1047. Report on al Quaeda and associated groups in Latin America and the Caribbean.

Subtitle F—Defense Against Terrorism and Other Domestic Security Matters

Sec. 1051. Acceptance of communications equipment provided by local public safety agencies.
Sec. 1052. Determination and report on full-time airlift support for homeland defense operations.
Sec. 1053. Survivability of critical systems exposed to chemical or biological contamination.

Subtitle G—Personnel Security Matters

Sec. 1061. Use of National Driver Register for personnel security investigations and determinations.
Sec. 1062. Standards for disqualification from eligibility for Department of Defense security clearance.

Subtitle H—Transportation-Related Matters

Sec. 1071. Use of military aircraft to transport mail to and from overseas locations.
Sec. 1072. Reorganization and clarification of certain provisions relating to control and supervision of transportation within the Department of Defense.
Sec. 1073. Evaluation of procurement practices relating to transportation of security-sensitive cargo.

Subtitle I—Other Matters

Sec. 1081. Liability protection for Department of Defense volunteers working in maritime environment.
Sec. 1082. Sense of Congress concerning media coverage of the return to the United States of the remains of deceased members of the Armed Forces from overseas.
Sec. 1083. Transfer of historic F3A-1 Brewster Corsair aircraft.
Sec. 1084. Technical and clerical amendments.
Sec. 1085. Preservation of search and rescue capabilities of the Federal Government.
Sec. 1086. Acquisition of aerial firefighting equipment for National Interagency Fire Center.
Sec. 1087. Revision to requirements for recognition of institutions of higher education as Hispanic-serving institutions for purposes of certain grants and contracts.
Sec. 1088. Military extraterritorial jurisdiction over contractors supporting defense missions overseas.
Sec. 1089. Definition of United States for purposes of Federal crime of torture.
Sec. 1090. Energy savings performance contracts.
Sec. 1091. Sense of Congress and policy concerning persons detained by the United States.
Sec. 1092. Actions to prevent the abuse of detainees.
Sec. 1093. Reporting requirements.
Sec. 1094. Findings and sense of Congress concerning Army Specialist Joseph Darby.

Subtitle A—Financial Matters

SEC. 1001. TRANSFER AUTHORITY.

(a) AUTHORITY TO TRANSFER AUTHORIZATIONS.—(1) Upon determination by the Secretary of Defense that such action is necessary in the national interest, the Secretary may transfer amounts of authorizations made available to the Department of Defense in this division for fiscal year 2005 between any such authorizations for that fiscal year (or any subdivisions thereof).

Amounts of authorizations so transferred shall be merged with and be available for the same purposes as the authorization to which transferred.

(2) The total amount of authorizations that the Secretary may transfer under the authority of this section may not exceed $3,500,000,000.

(b) LIMITATIONS.—The authority provided by this section to transfer authorizations—

(1) may only be used to provide authority for items that have a higher priority than the items from which authority is transferred; and

(2) may not be used to provide authority for an item that has been denied authorization by Congress.

(c) EFFECT ON AUTHORIZATION AMOUNTS.—A transfer made from one account to another under the authority of this section shall be deemed to increase the amount authorized for the account to which the amount is transferred by an amount equal to the amount transferred.

(d) NOTICE TO CONGRESS.—The Secretary shall promptly notify Congress of each transfer made under subsection (a).

SEC. 1002. UNITED STATES CONTRIBUTION TO NATO COMMON-FUNDED BUDGETS IN FISCAL YEAR 2005.

(a) FISCAL YEAR 2005 LIMITATION.—The total amount contributed by the Secretary of Defense in fiscal year 2005 for the common-funded budgets of NATO may be any amount up to, but not in excess of, the amount specified in subsection (b) (rather than the maximum amount that would otherwise be applicable to those contributions under the fiscal year 1998 baseline limitation).

(b) TOTAL AMOUNT.—The amount of the limitation applicable under subsection (a) is the sum of the following:

(1) The amounts of unexpended balances, as of the end of fiscal year 2004, of funds appropriated for fiscal years before fiscal year 2005 for payments for those budgets.

(2) The amount specified in subsection (c)(1).

(3) The amount specified in subsection (c)(2).

(4) The total amount of the contributions authorized to be made under section 2501.

(c) AUTHORIZED AMOUNTS.—Amounts authorized to be appropriated by titles II and III of this Act are available for contributions for the common-funded budgets of NATO as follows:

(1) Of the amount provided in section 201(1), $756,000 for the Civil Budget.

(2) Of the amount provided in section 301(1), $222,492,000 for the Military Budget.

(d) DEFINITIONS.—For purposes of this section:

(1) COMMON-FUNDED BUDGETS OF NATO.—The term "common-funded budgets of NATO" means the Military Budget, the Security Investment Program, and the Civil Budget of the North Atlantic Treaty Organization (and any successor or additional account or program of NATO).

(2) FISCAL YEAR 1998 BASELINE LIMITATION.—The term "fiscal year 1998 baseline limitation" means the maximum annual amount of Department of Defense contributions for common-funded budgets of NATO that is set forth as the annual limitation in section 3(2)(C)(ii) of the resolution of the Senate giving the advice and consent of the Senate to the ratification of the Protocols to the North Atlantic Treaty of 1949 on the Accession of Poland, Hungary, and the Czech Republic (as defined in section 4(7) of that resolution), approved by the Senate on April 30, 1998.

SEC. 1003. BUDGET JUSTIFICATION DOCUMENTS FOR OPERATION AND MAINTENANCE.

(a) IN GENERAL.—(1) Chapter 9 of title 10, United States Code, is amended by adding after section 232, as added by section 214(a), the following new section:

"§233. Operation and maintenance budget presentation

"(a) IDENTIFICATION OF BASELINE AMOUNTS IN O&M JUSTIFICATION DOCUMENTS.—In any case in which the amount requested in the President's budget for a fiscal year for a Department of Defense operation and maintenance program, project, or activity is different from the amount appropriated for that program, project, or activity for the current year, the O&M justification documents supporting that budget shall identify that appropriated amount and the difference between that amount and the amount requested in the budget, stated as an amount and as a percentage.

"(b) NAVY FOR SHIP DEPOT MAINTENANCE AND FOR INTERMEDIATE SHIP MAINTENANCE.—In the O&M justification documents for the Navy for any fiscal year, amounts requested for ship depot maintenance and amounts requested for intermediate ship maintenance shall be identified and distinguished.

"(c) DEFINITIONS.—In this section:

"(1) The term 'O&M justification documents' means Department of Defense budget justification documents with respect to accounts for operation and maintenance submitted to the congressional defense committees in support of the Department of Defense component of the President's budget for any fiscal year.

"(2) The term 'President's budget' means the budget of the President submitted to Congress under section 1105 of title 31 for any fiscal year.

"(3) The term 'current year' means the fiscal year during which the President's budget is submitted in any year.".

(2) The table of sections at the beginning of such chapter is amended by adding after the item relating to section 232, as added by section 214(b), the following new item:

"233. Operation and maintenance budget presentation.".

(b) COMPONENTS OF LINE ITEMS FOR OTHER COSTS AND OTHER CONTRACTS.—Not later than March 1, 2005, the Secretary of Defense shall submit to the congressional defense committees a report setting forth the component elements of the line items identified as "Other Costs" and "Other Contracts" in the exhibit identified as "Summary of Price and Program Changes" in the budget justification materials submitted to those committees in support of the budget for fiscal year 2006.

SEC. 1004. LICENSING OF INTELLECTUAL PROPERTY.

(a) AUTHORITY.—Subchapter II of chapter 134 of title 10, United States Code, is amended by adding at the end the following new section:

"§2260. Licensing of intellectual property: retention of fees

"(a) AUTHORITY.—Under regulations prescribed by the Secretary of Defense, the Secretary concerned may license trademarks, service marks, certification marks, and collective marks owned or controlled by the Secretary concerned and may retain and expend fees received from such licensing in accordance with this section.

"(b) DESIGNATED MARKS.—The Secretary concerned shall designate the trademarks, service marks, certification marks, and collective marks regarding which the Secretary will exercise the authority to retain licensing fees under this section.

"(c) USE OF FEES.—The Secretary concerned shall use fees retained under this section for the following purposes:

"(1) For payment of the following costs incurred by the Secretary:

"(A) Costs of securing trademark registrations.

"(B) Costs of operating the licensing program under this section.

"(2) For morale, welfare, and recreation activities under the jurisdiction of the Secretary, to the extent (if any) that the total amount of the licensing fees available under this section for a fiscal year exceed the total amount needed for such fiscal year under paragraph (1).

"(d) AVAILABILITY.—Fees received in a fiscal year and retained under this section shall be available for obligation in such fiscal year and the following two fiscal years.

"(e) DEFINITIONS.—In this section, the terms 'trademark', 'service mark', 'certification mark', and 'collective mark' have the meanings given such terms in section 45 of the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946; 15 U.S.C. 1127).".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

"2260. Licensing of intellectual property: retention of fees.".

SEC. 1005. REPEAL OF FUNDING RESTRICTIONS CONCERNING DEVELOPMENT OF MEDICAL COUNTERMEASURES AGAINST BIOLOGICAL WARFARE THREATS.

(a) REPEAL.—Section 2370a of title 10, United States Code, is repealed.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 139 of such title is amended by striking the item relating to that section.

SEC. 1006. REPORT ON BUDGETING FOR EXCHANGE RATES FOR FOREIGN CURRENCY FLUCTUATIONS.

(a) SECRETARY OF DEFENSE REPORT.—(1) Not later than December 1, 2004, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the foreign currency exchange rate projection used in annual Department of Defense budget presentations.

(2) In the report under paragraph (1), the Secretary shall—

(A) identify alternative approaches for selecting foreign currency exchange rates that would produce more realistic estimates of amounts required to be appropriated or otherwise made available for the Department of Defense to accommodate foreign currency exchange rate fluctuations;

(B) discuss the advantages and disadvantages of each approach identified pursuant to subparagraph (A); and

(C) identify the Secretary's preferred approach among the alternatives identified pursuant to subparagraph (A) and provide the Secretary's rationale for preferring that approach.

(3) In identifying alternative approaches pursuant to paragraph (2)(A), the Secretary shall examine—

(A) approaches used by other Federal departments and agencies; and

(B) the feasibility of using private economic forecasting.

(b) COMPTROLLER GENERAL REVIEW AND REPORT.—The Comptroller General shall review the report under subsection (a), including the basis for the Secretary's conclusions stated in the report, and shall submit, not later than January 15, 2005, to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing the results of that review.

SEC. 1007. FISCAL YEAR 2004 TRANSFER AUTHORITY.

Section 1001(a)(2) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1582) is amended by striking "$2,500,000,000" and inserting "$2,800,000,000".

SEC. 1008. CLARIFICATION OF FISCAL YEAR 2004 FUNDING LEVEL FOR A NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY ACCOUNT.

For the purposes of applying sections 201 and 605 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004 (division B of Public Law 108–199) to matters in title II of such Act under the heading "NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY" (118 Stat. 69), in the account under the heading "INDUSTRIAL TECHNOLOGY SERVICES", the Secretary of Commerce shall make all determinations based on the Industrial Technology Services funding level of $218,782,000 for reprogramming and transferring of funds for the Manufacturing Extension Partnership program and may submit such a reprogramming or transfer, as the case may be, to the appropriate committees within 30 days after the date of the enactment of this Act.

SEC. 1009. NOTIFICATION OF FUND TRANSFERS FROM WORKING-CAPITAL FUNDS.

Section 2208 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(r) NOTIFICATION OF TRANSFERS.—(1) Notwithstanding any authority provided in this section to transfer funds, the transfer of funds from a working-capital fund, including a transfer to another working-capital fund, shall not be made under such authority unless the Secretary of Defense submits, in advance, a notification of the proposed transfer to the congressional defense committees in accordance with customary procedures.

"(2) The amount of a transfer covered by a notification under paragraph (1) that is made in a fiscal year does not count toward any limitation on the total amount of transfers that may be made for that fiscal year under authority provided to the Secretary of Defense in a law authorizing appropriations for a fiscal year for military activities of the Department of Defense or a law making appropriations for the Department of Defense.".

SEC. 1010. CHARGES FOR DEFENSE LOGISTICS INFORMATION SERVICES MATERIALS.

(a) AUTHORITY.—Subchapter I of chapter 8 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 197. *Defense Logistics Agency: fees charged for logistics information*

"(a) AUTHORITY.—The Secretary of Defense may charge fees for providing information in the Federal Logistics Information System through Defense Logistics Information Services to a department or agency of the executive branch outside the Department of Defense, or to a State, a political subdivision of a State, or any person.

"(b) AMOUNT.—The fee or fees prescribed under subsection (a) shall be such amount or amounts as the Secretary of Defense determines appropriate for recovering the costs of providing information as described in such subsection.

"(c) RETENTION OF FEES.—Fees collected under this section shall be credited to the appropriation available for Defense Logistics Information Services for the fiscal year in which collected, shall be merged with other sums in such appropriation, and shall be available for the same purposes and period as the appropriation with which merged.

"(d) DEFENSE LOGISTICS INFORMATION SERVICES DEFINED.—In this section, the term 'Defense Logistics Information Services' means the organization within the Defense Logistics Agency that is known as Defense Logistics Information Services.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such subchapter is amended by adding at the end the following new item:

"197. Defense Logistics Agency: fees charged for logistics information.".

Subtitle B—Naval Vessels and Shipyards

SEC. 1011. AUTHORITY FOR AWARD OF CONTRACTS FOR SHIP DISMANTLING ON NET-COST BASIS.

(a) IN GENERAL.—Chapter 633 of title 10, United States Code, is amended by inserting after section 7305 the following new section:

"§ 7305a. *Vessels stricken from Naval Vessel Register: contracts for dismantling on net-cost basis*

"(a) AUTHORITY FOR NET-COST BASIS CONTRACTS.—When the Secretary of the Navy awards a contract for the dismantling of a vessel stricken from the Naval Vessel Register, the Secretary may award the contract on a net-cost basis.

"(b) RETENTION BY CONTRACTOR OF PROCEEDS OF SALE OF SCRAP AND REUSABLE ITEMS.—When the Secretary awards a contract on a net-cost basis under subsection (a), the Secretary shall provide in the contract that the contractor may retain the proceeds from the sale of scrap and reusable items removed from the vessel dismantled under the contract.

"(c) DEFINITIONS.—In this section:

"(1) The term 'net-cost basis', with respect to a contract for the dismantling of a vessel, means that the amount to be paid to the contractor under the contract for dismantling and for removal and disposal of hazardous waste material is discounted by the offeror's estimate of the value of scrap and reusable items that the contractor will remove from the vessel during performance of the contract.

"(2) The term 'scrap' means personal property that has no value except for its basic material content.

"(3) The term 'reusable item' means a demilitarized component or a removable portion of a vessel or equipment that the Secretary of the Navy has identified as excess to the needs of the Navy but which has potential resale value on the open market.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 7305 the following new item:

"7305a. Vessels stricken from Naval Vessel Register: contracts for dismantling on net-cost basis.".

SEC. 1012. USE OF PROCEEDS FROM EXCHANGE AND SALE OF OBSOLETE NAVY SERVICE CRAFT AND BOATS.

(a) COSTS OF PREPARATION FOR DISPOSAL.—(1) Chapter 633 of title 10, United States Code, is amended by inserting after section 7311 the following new section:

"§ 7312. *Service craft stricken from Naval Vessel Register; obsolete boats: use of proceeds from exchange or sale*

"(a) EXCHANGE OR SALE OF SIMILAR ITEMS.—When the Secretary of the Navy sells an obsolete service craft or an obsolete boat, or exchanges such a craft or boat in a transaction for which a similar craft or boat is acquired, the Secretary may retain the proceeds of the sale or the exchange allowance from the exchange, as the case may be, and apply the proceeds of sale or the exchange allowance for any of the following purposes:

"(1) For payment, in whole or in part, for a similar service craft or boat acquired as a replacement, as authorized by section 503 of title 40.

"(2) For reimbursement, to the extent practicable, of the appropriate accounts of the Navy for the full costs of preparation of such obsolete craft or boat for such sale or exchange.

"(3) For deposit to the special account established under subsection (b), to be available in accordance with that subsection.

"(b) SPECIAL ACCOUNT.—Amounts retained under subsection (a) that are not applied as provided in paragraph (1) or (2) of that subsection shall be deposited into a special account. Amounts in the account shall be available under subsection (c) without regard to fiscal year limitation. Amounts in the account that the Secretary of the Navy determines are not needed for the purpose stated in subsection (c) shall be transferred at least annually to the General Fund of the Treasury.

"(c) COSTS OF PREPARATION OF OBSOLETE SERVICE CRAFT AND BOATS FOR FUTURE SALE OR EXCHANGE.—The Secretary may use amounts in the account under subsection (b) for payment, in whole or in part, for the full costs of preparation of obsolete service craft and obsolete boats for future sale or exchange.

"(d) COSTS OF PREPARATION FOR SALE OR EXCHANGE.—In this section, the term 'full costs of preparation' means the full costs (direct and indirect) incurred by the Navy in preparing an obsolete service craft or an obsolete boat for exchange or sale, including the cost of the following:

"(1) Towing.

"(2) Storage.

"(3) Defueling.

"(4) Removal and disposal of hazardous wastes.

"(5) Environmental surveys to determine the presence of regulated materials containing polychlorinated biphenyl (PCB) and, if such materials are found, the removal and disposal of such materials.

"(6) Other costs related to such preparation.

"(e) OBSOLETE SERVICE CRAFT.—For purposes of this section, an obsolete service craft is a service craft that has been stricken from the Naval Vessel Register.

"(f) INAPPLICABILITY OF ADVERTISING REQUIREMENT.—Section 3709 of the Revised Statutes (41 U.S.C. 5) does not apply to sales of service craft and boats described in subsection (a).

"(g) REGULATIONS.—The Secretary of the Navy shall prescribe regulations for the purposes of this section.".

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 7311 the following new item:

"7312. Service craft stricken from Naval Vessel Register; obsolete boats: use of proceeds from exchange or sale.".

(b) APPLICABILITY.—Section 7312 of title 10, United States Code, as added by subsection (a), shall apply with respect to amounts received on or after the date of the enactment of this Act and to amounts received before the date of the enactment of this Act and not obligated as of that date.

SEC. 1013. TRANSFER OF NAVAL VESSELS TO CERTAIN FOREIGN RECIPIENTS.

(a) TRANSFERS BY GRANT.—The President is authorized to transfer vessels to foreign recipients on a grant basis under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j), as follows:

(1) CHILE.—To the Government of Chile, the SPRUANCE class destroyer USS O'BANNON (DD–987).

(2) PORTUGAL.—To the Government of Portugal, the OLIVER HAZARD PERRY class guided missile frigates GEORGE PHILIP (FFG–12) and SIDES (FFG–14).

(b) TRANSFERS BY SALE.—The President is authorized to transfer vessels to foreign recipients on a sale basis under section 21 of the Arms Export Control Act (22 U.S.C. 2761), as follows:

(1) CHILE.—To the Government of Chile, the SPRUANCE class destroyer FLETCHER (DD–992).

(2) TAIWAN.—To the Taipei Economic and Cultural Representative Office of the United States (which is the Taiwan instrumentality

designated pursuant to section 10(a) of the Taiwan Relations Act (22 U.S.C. 3309(a))), the ANCHORAGE class dock landing ship ANCHORAGE (LSD-36).

(c) GRANTS NOT COUNTED IN ANNUAL TOTAL OF TRANSFERRED EXCESS DEFENSE ARTICLES.—The value of a vessel transferred to another country on a grant basis pursuant to authority provided by subsection (a) shall not be counted against the aggregate value of excess defense articles transferred to countries in any fiscal year under section 516(g) of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j(g)).

(d) COSTS OF TRANSFERS.—Any expense incurred by the United States in connection with a transfer authorized under subsection (a) or (b) shall be charged to the recipient.

(e) REPAIR AND REFURBISHMENT IN UNITED STATES SHIPYARDS.—To the maximum extent practicable, the President shall require, as a condition of the transfer of a vessel under this section, that the country to which the vessel is transferred have such repair or refurbishment of the vessel as is needed, before the vessel joins the naval forces of that country, performed at a shipyard located in the United States, including a United States Navy shipyard.

(f) EXPIRATION OF AUTHORITY.—The authority to transfer a vessel under this section shall expire at the end of the two-year period beginning on the date of the enactment of this Act.

SEC. 1014. INDEPENDENT STUDY TO ASSESS COST EFFECTIVENESS OF THE NAVY SHIP CONSTRUCTION PROGRAM.

(a) STUDY.—The Secretary of Defense shall provide for a study of the cost effectiveness of the ship construction program of the Navy. The study shall be conducted by a group of industrial experts independent of the Department of Defense. The study shall examine both—

(1) a variety of approaches by which the Navy ship construction program could be made more efficient in the near term; and

(2) a variety of approaches by which, with a nationally integrated effort over the next decade, the United States shipbuilding industry might enhance its health and viability.

(b) NEAR-TERM IMPROVEMENTS IN EFFICIENCY.—With respect to the examination under subsection (a)(1) of approaches by which the Navy ship construction program could be made more efficient in the near term, the Secretary shall provide for the persons conducting the study to—

(1) determine the potential cost savings on an annual basis, with an estimate of return on investment, from implementation of each approach examined; and

(2) establish priorities for potential implementation of the approaches examined.

(c) UNITED STATES SHIPBUILDING INFRASTRUCTURE MODERNIZATION PLAN.—With respect to the examination under subsection (a)(2) of approaches by which the United States shipbuilding industry might enhance its health and viability through a nationally integrated effort over the next decade, the Secretary shall provide for the persons conducting the study to—

(1) propose a plan incorporating a variety of approaches that would modernize the United States shipbuilding infrastructure within the next decade, resulting in a healthier and more viable shipbuilding industrial base;

(2) establish priorities for potential implementation of the approaches examined; and

(3) estimate the resources required to implement each of the approaches examined.

(d) REPORT.—Not later than October 1, 2005, the Secretary of Defense shall submit a report to the congressional defense committees providing the results of the study under subsection (a). The report shall include the matters specified in subsections (b) and (c).

SEC. 1015. LIMITATION ON DISPOSAL OF OBSOLETE NAVAL VESSEL.

The Secretary of the Navy may not dispose of the decommissioned destroyer ex-Edson (DD-946) before October 1, 2007, to an entity that is not a nonprofit organization unless the Secretary first determines that there is no nonprofit organization that meets the criteria for donation of that vessel under section 7306(a)(3) of title 10, United States Code.

Subtitle C—Counterdrug Matters

SEC. 1021. USE OF FUNDS FOR UNIFIED COUNTERDRUG AND COUNTERTERRORISM CAMPAIGN IN COLOMBIA.

(a) AUTHORITY.—(1) In fiscal years 2005 and 2006, funds available to the Department of Defense to provide assistance to the Government of Colombia may be used by the Secretary of Defense to support a unified campaign by the Government of Colombia against narcotics trafficking and against activities by organizations designated as terrorist organizations, such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC).

(2) The authority to provide assistance for a campaign under this subsection includes authority to take actions to protect human health and welfare in emergency circumstances, including the undertaking of rescue operations.

(b) APPLICABILITY OF CERTAIN LAWS AND LIMITATIONS.—The use of funds pursuant to the authority in subsection (a) shall be subject to the following:

(1) Sections 556, 567, and 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115; 115 Stat. 2160, 2165, and 2166).

(2) Section 8076 of the Department of Defense Appropriations Act, 2005 (Public Law 108–287; 118 Stat. 988).

(c) NUMERICAL LIMITATION ON ASSIGNMENT OF UNITED STATES PERSONNEL.—Notwithstanding section 3204(b) of the Emergency Supplemental Act, 2000 (Division B of Public Law 106–246; 114 Stat. 575), as amended by the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115; 115 Stat. 2131), the number of United States personnel assigned to conduct activities in Colombia in connection with support of Plan Colombia under subsection (a) in fiscal years 2005 and 2006 shall be subject to the following limitations:

(1) The number of United States military personnel assigned for temporary or permanent duty in Colombia in connection with support of Plan Colombia may not exceed 800.

(2) The number of United States individual citizens retained as contractors in Colombia in connection with support of Plan Colombia who are funded by Federal funds may not exceed 600.

(d) LIMITATION ON PARTICIPATION OF UNITED STATES PERSONNEL.—No United States Armed Forces personnel, United States civilian employees, or United States civilian contractor personnel employed by the United States may participate in any combat operation in connection with assistance using funds pursuant to the authority in subsection (a), except for the purpose of acting in self defense or of rescuing any United States citizen, including any United States Armed Forces personnel, United States civilian employee, or civilian contractor employed by the United States.

(e) RELATION TO OTHER AUTHORITY.—The authority provided by subsection (a) is in addition to any other authority in law to provide assistance to the Government of Colombia.

(f) REPORT ON RELATIONSHIPS BETWEEN TERRORIST ORGANIZATIONS IN COLOMBIA AND FOREIGN GOVERNMENTS AND ORGANIZATIONS.—(1) Not later than 60 days after the date of the enactment of this Act, the Secretary of State, in consultation with the Secretary of Defense and the Director of Central Intelligence, shall submit to the congressional defense committees and the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives a report that describes—

(A) any relationships between foreign governments or organizations and organizations based in Colombia that have been designated as foreign terrorist organizations under United States law, including the provision of any direct or indirect assistance to such organizations; and

(B) United States policies that are designed to address such relationships.

(2) The report under paragraph (1) shall be submitted in unclassified form, but may include a classified annex.

SEC. 1022. SENSE OF CONGRESS AND REPORT REGARDING COUNTER-DRUG EFFORTS IN AFGHANISTAN.

(a) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the President should make the substantial reduction of illegal drug trafficking in Afghanistan a priority in the Global War on Terrorism;

(2) the Secretary of Defense, in coordination with the Secretary of State and the heads of other appropriate Federal agencies, should expand cooperation with the Government of Afghanistan and international organizations involved in counter-drug activities to assist in providing a secure environment for counter-drug personnel in Afghanistan; and

(3) the United States, in conjunction with the Government of Afghanistan and coalition partners, should undertake additional efforts to reduce illegal drug trafficking and related activities that provide financial support for terrorist organizations in Afghanistan and neighboring countries.

(b) REPORT REQUIRED.—(1) The Secretary of Defense and the Secretary of State shall jointly prepare a report that describes—

(A) the progress made towards substantially reducing poppy cultivation and heroin production capabilities in Afghanistan; and

(B) the extent to which profits from illegal drug activity in Afghanistan are used to financially support terrorist organizations and groups seeking to undermine the Government of Afghanistan.

(2) The report required by this subsection shall be submitted to Congress not later than 120 days after the date of the enactment of this Act.

Subtitle D—Matters Relating to Museums and Commemorations

SEC. 1031. RECOGNITION OF THE LIBERTY MEMORIAL MUSEUM, KANSAS CITY, MISSOURI, AS AMERICA'S NATIONAL WORLD WAR I MUSEUM.

(a) FINDINGS.—Congress makes the following findings:

(1) The Liberty Memorial Museum in Kansas City, Missouri, was built in honor of those individuals who served in World War I in defense of liberty and the United States.

(2) The Liberty Memorial Association, the nonprofit organization that originally built the Liberty Memorial Museum, is responsible for the finances, operations, and collections management of the Liberty Memorial Museum.

(3) The Liberty Memorial Museum is the only public museum in the United States that exists for the exclusive purpose of interpreting the experiences of the United States and its allies in the World War I years (1914–1918), both on the battlefield and on the home front.

(4) The Liberty Memorial Museum project began after the 1918 Armistice through the efforts of a large-scale, grass-roots civic and fundraising effort by the citizens of the Kansas City metropolitan area, including veterans of World

War I. After the conclusion of a national architectural design competition, ground was broken in 1921, construction began in 1923, and the Liberty Memorial Museum was opened to the public in 1926.

(5) In 1994, the Liberty Memorial Museum closed for a massive restoration and expansion project. The restored museum reopened to the public on Memorial Day in 2002 during a gala rededication ceremony.

(6) Exhibits prepared for the original museum buildings presaged the dramatic, underground expansion of core exhibition gallery space, with over 30,000 square feet of new interpretive and educational exhibits currently in development. The new exhibits, along with an expanded research library and archives, will more fully utilize the many thousands of historical objects, books, maps, posters, photographs, diaries, letters, and reminiscences of World War I participants that are preserved for posterity in the collections of the Liberty Memorial Museum. The new core exhibition is scheduled to open on Veterans Day in 2006.

(7) The City of Kansas City, the State of Missouri, and thousands of private donors and philanthropic foundations have contributed millions of dollars to first build and later restore the Liberty Memorial Museum. The Liberty Memorial Museum continues to receive the strong support of residents from the States of Missouri and Kansas and across the United States.

(8) Since its restoration and rededication in 2002, the Liberty Memorial Museum has attracted thousands of visitors from across the United States and many foreign countries.

(9) There remains a need to preserve in a museum setting evidence of the honor, courage, patriotism, and sacrifice of those Americans who offered their services and who gave their lives in defense of liberty during World War I, evidence of the roles of women and African Americans during World War I, and evidence of other relevant subjects.

(10) The Liberty Memorial Museum seeks to educate a diverse group of audiences through its comprehensive collection of historical materials, emphasizing eyewitness accounts of the participants on the battlefield and the home front and the impact of World War I on individuals, then and now. The Liberty Memorial Museum continues to actively acquire and preserve such materials.

(11) A great opportunity exists to use the invaluable resources of the Liberty Memorial Museum to teach the "Lessons of Liberty" to schoolchildren in the United States through onsite visits, classroom curriculum development, distance-learning activities, and other educational initiatives.

(12) The Liberty Memorial Museum should remain the foremost museum in the United States regarding the national experience in the World War I years, which people can visit to learn about World War I and where the history of this monumental struggle will be preserved so that current and future generations may understand the role played by the United States in the preservation and advancement of democracy, freedom, and liberty in the early 20th century.

(13) The work of the Liberty Memorial Museum to recognize and preserve the history of the Nation's sacrifices in World War I will take on added significance as the centennial observance of the war approaches.

(14) It is fitting and proper to refer to the Liberty Memorial Museum as "America's National World War I Museum".

(b) CONGRESSIONAL RECOGNITION.—Congress—

(1) recognizes the Liberty Memorial Museum in Kansas City, Missouri, including the museum's future and expanded exhibits, collections, library, archives, and educational programs, as "America's National World War I Museum";

(2) recognizes that the continuing collection, preservation, and interpretation of the historical objects and other historical materials held by the Liberty Memorial Museum will enhance the knowledge and understanding of the experiences of the United States and its allies in the World War I years (1914–1918), both on the battlefield and on the home front;

(3) commends the ongoing development and visibility of the "Lessons of Liberty" educational outreach programs prepared by the Liberty Memorial Museum for teachers and students throughout the United States; and

(4) encourages present generations of Americans to understand the magnitude of World War I, how it shaped the United States, other countries, and later world events, and how the sacrifices made by Americans then helped preserve liberty, democracy, and other founding principles of the United States for generations to come.

SEC. 1032. PROGRAM TO COMMEMORATE 60TH ANNIVERSARY OF WORLD WAR II.

(a) IN GENERAL.—For fiscal year 2005, the Secretary of Defense may conduct a program—

(1) to commemorate the 60th anniversary of World War II; and

(2) to coordinate, support, and facilitate other such commemoration programs and activities of the Federal Government, State and local governments, and other persons.

(b) PROGRAM ACTIVITIES.—The program referred to in subsection (a) may include activities and ceremonies—

(1) to provide the people of the United States with a clear understanding and appreciation of the lessons and history of World War II;

(2) to thank and honor veterans of World War II and their families;

(3) to pay tribute to the sacrifices and contributions made on the home front by the people of the United States;

(4) to foster an awareness in the people of the United States that World War II was the central event of the 20th century that defined the postwar world;

(5) to highlight advances in technology, science, and medicine related to military research conducted during World War II;

(6) to inform wartime and postwar generations of the contributions of the Armed Forces of the United States to the United States;

(7) to recognize the contributions and sacrifices made by World War II allies of the United States; and

(8) to highlight the role of the Armed Forces of the United States, then and now, in maintaining world peace through strength.

(c) ESTABLISHMENT OF ACCOUNT.—(1) There is established in the Treasury of the United States an account to be known as the "Department of Defense 60th Anniversary of World War II Commemoration Account" which shall be administered by the Secretary as a single account.

(2) There shall be deposited in the account, from amounts appropriated to the Department of Defense for operation and maintenance of Defense Agencies, such amounts as the Secretary considers appropriate to conduct the program referred to in subsection (a).

(3) The Secretary may use the funds in the account established in paragraph (1) only for the purpose of conducting the program referred to in subsection (a).

(4) Not later than 60 days after the termination of the authority of the Secretary to conduct the program referred to in subsection (a), the Secretary shall transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report containing an accounting of all the funds deposited into and expended from the account or otherwise expended under this section, and of any amount remaining in the account. Unobligated funds which remain in the account after termination of the authority of the Secretary under this section shall be held in the account until transferred by law after the Committees receive the report.

(d) ACCEPTANCE OF VOLUNTARY SERVICES.—(1) Notwithstanding section 1342 of title 31, United States Code, the Secretary may accept from any person voluntary services to be provided in furtherance of the program referred to in subsection (a).

(2) A person providing voluntary services under this subsection shall be considered to be an employee for the purposes of chapter 81 of title 5, United States Code, relating to compensation for work-related injuries. Such a person who is not otherwise employed by the Federal Government shall not be considered to be a Federal employee for any other purposes by reason of the provision of such service.

(3) The Secretary may reimburse a person providing voluntary services under this subsection for incidental expenses incurred by such person in providing such services. The Secretary shall determine which expenses are eligible for reimbursement under this paragraph.

SEC. 1033. ANNUAL REPORT ON DEPARTMENT OF DEFENSE OPERATION AND FINANCIAL SUPPORT FOR MILITARY MUSEUMS.

(a) REPORT REQUIRED.—Chapter 23 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 489. *Annual report on Department of Defense operation and financial support for military museums*

"(a) REPORT REQUIRED.—As part of the budget materials submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31, but in no case later than March 15 of each year, the Secretary of Defense shall submit a report identifying all military museums that, during the most recently completed fiscal year—

"(1) were operated by the Secretary of Defense or the Secretary of a military department;

"(2) were otherwise supported using funds appropriated to the Department of Defense; or

"(3) were located on property under the jurisdiction of the Department of Defense, although neither operated by the Department of Defense nor supported using funds appropriated to the Department of Defense.

"(b) INFORMATION ON INDIVIDUAL MUSEUMS.—For each museum identified in a report under this section, the Secretary of Defense shall include in the report the following:

"(1) The purpose and functions of the museum and the justification for the museum.

"(2) A description of the facilities dedicated to the museum, including the location, size, and type of facilities and whether the facilities are included or eligible for inclusion on the National Register of Historic Places.

"(3) An itemized listing of the funds appropriated to the Department of Defense that were obligated to support the museum during the fiscal year covered by the report and a description of the process used to determine the annual allocation of Department of Defense funds for the museum.

"(4) An itemized listing of any other Federal funds, funds from a nonappropriated fund instrumentality account of the Department of Defense, and non-Federal funds obligated to support the museum.

"(5) The management structure of the museum, including identification of the persons responsible for preparing the budget for the museum and for making acquisition and management decisions for the museum.

"(6) The number of civilian employees of the Department of Defense and members of the armed forces who served full-time or part-time

at the museum and their role in the management structure of the museum.

"(c) INFORMATION ON SUPPORT PRIORITIES.—Each report under this section shall also include a separate description of the procedures used by the Secretary of Defense, in the case of museums identified in the report that are operated or supported by the Secretary of Defense, and the Secretary of a military department, in the case of museums identified in the report that are operated or supported by that Secretary, to prioritize funding and personnel support to the museums. The Secretary of Defense shall include a description of any such procedures applicable to the entire Department of Defense.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"489. Annual report on Department of Defense operation and financial support for military museums.".

Subtitle E—Reports

SEC. 1041. QUARTERLY DETAILED ACCOUNTING FOR OPERATIONS CONDUCTED AS PART OF THE GLOBAL WAR ON TERRORISM.

(a) QUARTERLY ACCOUNTING.—Not later than 45 days after the end of each quarter of a year, the Secretary of Defense shall submit to the congressional defense committees, for each operation specified in subsection (b)—

(1) a full accounting of all costs incurred for such operation during such quarter and all amounts expended during such quarter for such operation; and

(2) a description of the purposes for which those costs were incurred and those amounts were expended.

(b) OPERATIONS COVERED.—The operations referred to in subsection (a) are the following:

(1) Operation Iraqi Freedom.

(2) Operation Enduring Freedom.

(3) Operation Noble Eagle.

(4) Any other operation that the President designates as being an operation of the Global War on Terrorism.

(c) REQUIREMENT FOR COMPREHENSIVENESS.—For the purpose of providing a full and complete accounting of the costs and expenditures under subsection (a) for an operation specified in subsection (b), the Secretary shall account in the quarterly submission under subsection (a) for all costs and expenditures that are reasonably attributable to that operation, including personnel costs.

SEC. 1042. REPORT ON POST-MAJOR COMBAT OPERATIONS PHASE OF OPERATION IRAQI FREEDOM.

(a) REPORT REQUIRED.—(1) Not later than June 1, 2005, the Secretary of Defense shall submit to the congressional defense committees a report on the conduct of military operations during the post-major combat operations phase of Operation Iraqi Freedom.

(2) The report shall be prepared in consultation with the Chairman of the Joint Chiefs of Staff, the commander of the United States Central Command, and such other officials as the Secretary considers appropriate.

(b) CONTENT.—(1) The report shall include a discussion of the matters described in paragraph (2), with a particular emphasis on accomplishments and shortcomings and on near-term and long-term corrective actions to address such shortcomings.

(2) The matters to be discussed in the report are as follows:

(A) The military and political objectives of the international coalition conducting the post-major combat operations phase of Operation Iraqi Freedom, and the military strategy selected to achieve such objectives, together with an assessment of the execution of the military strategy.

(B) The mobilization process for the reserve components of the Armed Forces, including the timeliness of notification, training and certification, and subsequent demobilization.

(C) The use and performance of major items of United States military equipment, weapon systems, and munitions (including non-lethal weapons and munitions, items classified under special access procedures, and items drawn from prepositioned stocks) and any expected effects of the experience with the use and performance of such items on the doctrinal and tactical employment of such items and on plans for continuing the acquisition of such items.

(D) Any additional requirements for military equipment, weapon systems, munitions, force structure, or other capability identified during the post-major combat operations phase of Operation Iraqi Freedom, including changes in type or quantity for future operations.

(E) The effectiveness of joint air operations, together with an assessment of the effectiveness of—

(i) the employment of close air support; and

(ii) attack helicopter operations.

(F) The use of special operations forces, including operational and intelligence uses.

(G) The scope of logistics support, including support to and from other nations and from international organizations and organizations and individuals from the private sector in Iraq.

(H) The incidents of accidental fratricide, including a discussion of the effectiveness of the tracking of friendly forces and the use of the combat identification systems in mitigating friendly fire incidents.

(I) The adequacy of spectrum and bandwidth to transmit information to operational forces and assets, including unmanned aerial vehicles, ground vehicles, and individual soldiers.

(J) The effectiveness of strategic, operational, and tactical information operations, including psychological operations and assets, organization, and doctrine related to civil affairs, in achieving established objectives, together with a description of technological and other restrictions on the use of information operations capabilities.

(K) The readiness of the reserve component forces used in the post-major combat operations phase of Operation Iraqi Freedom, including an assessment of the success of the reserve component forces in accomplishing their missions.

(L) The adequacy of intelligence support during the post-major combat operations phase of Operation Iraqi Freedom, including the adequacy of such support in searches for weapons of mass destruction.

(M) The rapid insertion and integration, if any, of developmental but mission-essential equipment, organizations, or procedures during the post-major combat operations phase of Operation Iraqi Freedom.

(N) A description of the coordination, communication, and unity of effort between the Armed Forces, the Coalition Provisional Authority, other United States government agencies and organizations, nongovernmental organizations, and political, security, and nongovernmental organizations of Iraq, including an assessment of the effectiveness of such efforts.

(O) The adequacy of training for military units once deployed to the area of operations of the United States Central Command, including training for changes in unit mission and continuation training for high-intensity conflict missions.

(P) An estimate of the funding required to return or replace equipment used through the period covered by the report in Operation Iraqi Freedom, including equipment in prepositioned stocks, to mission-ready condition.

(Q) A description of military civil affairs and reconstruction efforts, including efforts through the Commanders Emergency Response Program, and an assessment of the effectiveness of such efforts and programs.

(R) The adequacy of the requirements determination and acquisition processes, acquisition, and distribution of force protection equipment, including personal gear, vehicles, helicopters, and defense devices.

(S) The most critical lessons learned that could lead to long-term doctrinal, organizational, and technological changes, and the probable effects that an implementation of those changes would have on current visions, goals, and plans for transformation of the Armed Forces or the Department of Defense.

(T) The planning for and implementation of morale, welfare, and recreation programs for deployed forces and support to dependents, including rest and recuperation programs and personal communication benefits such as telephone, mail, and email services, including an assessment of the effectiveness of such programs.

(U) An analysis of force rotation plans, including individual personnel and unit rotations, differing deployment lengths, and in-theater equipment repair and leave behinds.

(V) The organization of United States Central Command to conduct post-conflict operations and lessons for other combatant commands to conduct other such operations in the future.

(c) FORM OF REPORT.—The report shall be submitted in unclassified form, but may include a classified annex.

(d) POST-MAJOR COMBAT OPERATIONS PHASE OF OPERATION IRAQI FREEDOM DEFINED.—In this section, the term "post-major combat operations phase of Operation Iraqi Freedom" means the period of Operation Iraqi Freedom beginning on May 2, 2003, and ending on December 31, 2004.

SEC. 1043. REPORT ON TRAINING PROVIDED TO MEMBERS OF THE ARMED FORCES TO PREPARE FOR POST-CONFLICT OPERATIONS.

(a) STUDY ON TRAINING.—The Secretary of Defense shall conduct a study to determine the extent to which members of the Armed Forces assigned to duty in support of contingency operations receive training in preparation for post-conflict operations and to evaluate the quality of such training.

(b) MATTERS TO BE INCLUDED IN STUDY.—As part of the study under subsection (a), the Secretary shall specifically evaluate the following:

(1) The doctrine, training, and leader-development system necessary to enable members of the Armed Forces to successfully operate in post-conflict operations.

(2) The adequacy of the curricula at military educational facilities to ensure that the Armed Forces has a cadre of members skilled in post-conflict duties, including a familiarity with applicable foreign languages and foreign cultures.

(3) The training time and resources available to members and units of the Armed Forces to develop awareness about ethnic backgrounds, religious beliefs, and political structures of the people living in areas in which the Armed Forces operate and areas in which post-conflict operations are likely to occur.

(4) The adequacy of training transformation to emphasize post-conflict operations, including interagency coordination in support of commanders of combatant commands.

(c) REPORT ON STUDY.—Not later than May 1, 2005, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on the result of the study conducted under this section.

SEC. 1044. REPORT ON ESTABLISHING NATIONAL CENTERS OF EXCELLENCE FOR UNMANNED AERIAL AND GROUND VEHICLES.

(a) REPORT REQUIRED.—Not later than 120 days after the date of the enactment of this Act, *the Secretary of Defense shall submit to the congressional defense committees a report on the need for one or more national centers of excellence for unmanned aerial and ground vehicles.*

(b) GOAL OF CENTERS.—The goal of the centers covered by the report is to promote interservice cooperation and coordination in the following areas:

(1) Development of joint doctrine for the organization, training, and use of unmanned aerial and ground vehicles.

(2) Joint research, development, test, and evaluation, and joint procurement of unmanned aerial and ground vehicles.

(3) Identification and coordination, in conjunction with the private sector and academia, of the future development of unmanned aerial and ground vehicles.

(4) Monitoring of the development and utilization of unmanned aerial and ground vehicles in other nations for both military and non-military purposes.

(5) The providing of joint training and professional development opportunities in the use and operation of unmanned aerial and ground vehicles to military personnel of all ranks and levels of responsibility.

(c) REPORT REQUIREMENTS.—The report shall include, at a minimum, the following:

(1) A list of facilities at which the Department of Defense currently conducts or plans to conduct research, development, and testing activities on unmanned aerial and ground vehicles.

(2) A list of facilities at which the Department of Defense currently deploys or has committed to deploying unmanned aerial or ground vehicles.

(3) The extent to which existing facilities described in paragraphs (1) and (2) have sufficient unused capacity and expertise to research, develop, test, and deploy the current and next generations of unmanned aerial and ground vehicles and to provide for the development of doctrine on the use and training of operators of such vehicles.

(4) The extent to which efficiencies with respect to research, development, testing, and deployment of existing or future unmanned aerial and ground vehicles can be achieved through consolidation at one or more national centers of excellence for unmanned aerial and ground vehicles.

(5) A list of potential locations for the national centers of excellence under this section.

(d) CONSIDERATIONS.—In determining the potential locations for the national centers of excellence under this section, the Secretary of Defense shall take into consideration existing military facilities that have—

(1) a workforce of skilled personnel;

(2) existing capacity of runways and other facilities to accommodate the research, development, testing, and deployment of current and future unmanned aerial vehicles; and

(3) minimal restrictions on the research, development, testing, and deployment of unmanned aerial vehicles resulting from proximity to large population centers or airspace heavily utilized by commercial flights.

SEC. 1045. STUDY OF CONTINUED REQUIREMENT FOR TWO-CREW MANNING FOR BALLISTIC MISSILE SUBMARINES.

(a) STUDY AND DETERMINATION.—The Secretary of Defense shall conduct a study of whether the practice of using two alternating crews (referred to as the "Gold Crew" and the "Blue Crew") for manning of ballistic missile submarines (SSBNs) continues to be justified under the changed circumstances since the end of the Cold War and, based on that study, shall make a determination of whether that two-crew manning practice should be continued or should be modified or terminated.

(b) REPORT.—Not later than six months after the date of the enactment of this Act, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report providing notice of the Secretary's determination under subsection (a) and the reasons for that determination.

SEC. 1046. REPORT ON DEPARTMENT OF DEFENSE PROGRAMS FOR PREPOSITIONING OF MATERIEL AND EQUIPMENT.

(a) SECRETARY OF DEFENSE ASSESSMENT AND REPORT.—(1) The Secretary of Defense shall conduct an assessment of the programs of the Armed Forces for the prepositioning of materiel and equipment. Such assessment shall focus on how those programs will support the goal of the Secretary to have the capability, from the onset of a contingency situation, to—

(A) deploy forces to a distant theater within 10 days;

(B) defeat an enemy within 30 days; and

(C) be ready for an additional conflict within another 30 days.

(2) The Secretary shall submit to Congress a report on such assessment not later than October 1, 2005.

(b) MATTERS TO BE INCLUDED.—The assessment under subsection (a) shall include the following:

(1) A review of the prepositioning of materiel and equipment used in Operation Iraqi Freedom and Operation Enduring Freedom, including identification of challenges and potential solutions.

(2) A description of changes to doctrine, strategy, and transportation plans that could be necessary to support the goal of the Secretary described in subsection (a).

(3) A description of modifications to prepositioning programs that could be required in order to incorporate modularity concepts, future force structure changes, and sea-basing concepts.

(4) A discussion of joint operations and training that support force projection requirements, including—

(A) theater opening requirements at potential aerial and sea ports of debarkation;

(B) joint force reception capabilities;

(C) joint theater distribution operations; and

(D) use of joint prepositioned stocks, materiel, and systems.

SEC. 1047 REPORT ON AL QAEDA AND ASSOCIATED GROUPS IN LATIN AMERICA AND THE CARIBBEAN.

(a) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall, in consultation with the Secretary of State, submit to the Committees on Armed Services of the Senate and House of Representatives a report on the activities of al Qaeda and associated groups in Latin America and the Caribbean, including—

(1) an assessment of the extent to which such groups have established a presence in the area;

(2) a description of the activities of such groups in the area, including fundraising, money laundering, narcotrafficking, and associations with criminal groups;

(3) an assessment of the threat posed by such groups to the peace and stability of the nations in the area and to United States interests; and

(4) a description of United States policies intended to deal with such a threat.

(b) FORM OF REPORT.—The report shall be submitted in unclassified form, but may include a classified annex.

Subtitle F—Defense Against Terrorism and Other Domestic Security Matters

SEC. 1051. ACCEPTANCE OF COMMUNICATIONS EQUIPMENT PROVIDED BY LOCAL PUBLIC SAFETY AGENCIES.

(a) AUTHORITY.—Chapter 155 of title 10, United States Code, is amended by adding at the end the following new section:

"§2613. Emergency communications equipment: acceptance from local public safety agencies for temporary use related to disasters

"(a) AUTHORITY TO ACCEPT EQUIPMENT.—(1) Subject to subsection (c), the Secretary concerned—

"(1) may accept communications equipment for use in coordinating joint response and recovery operations with public safety agencies in the event of a disaster; and

"(2) may accept services related to the operation and maintenance of such equipment.

"(b) REGULATIONS.—The authority under subsection (a) shall be exercised under regulations prescribed by the Secretary of Defense.

"(c) LIMITATIONS.—(1) Equipment may be accepted under subsection (a)(1) only to the extent that communications equipment under the control of the Secretary concerned at the potential disaster response site is inadequate to meet military requirements for communicating with public safety agencies during the period of response to the disaster.

"(2) Services may be accepted under subsection (a)(2) related to the operation and maintenance of communications equipment only to the extent that the necessary capabilities are not available to the military commander having custody of the equipment.

"(c) LIABILITY.—A person providing services accepted under this section may not be considered, by reason of the provision of such services, to be an officer, employee, or agent of the United States for any purpose.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"2613. Emergency communications equipment: acceptance from local public safety agencies for temporary use related to disasters.".

SEC. 1052. DETERMINATION AND REPORT ON FULL-TIME AIRLIFT SUPPORT FOR HOMELAND DEFENSE OPERATIONS.

(a) DETERMINATION REQUIRED.—(1) The Secretary of Defense shall determine the feasibility and advisability of dedicating an airlift capability of the Armed Forces to the support of homeland defense operations, including operations in support of contingent requirements for transportation of any of the following in response to a disaster:

(A) Weapons of Mass Destruction Civil Support Teams.

(B) National Guard Chemical, Biological, Radiological, Nuclear, High Explosive Enhanced Response Force Packages.

(C) Air Force expeditionary medical teams.

(D) Department of Energy emergency response teams.

(2) In making the determination under paragraph (1), the Secretary shall take into consideration the results of the study required under subsection (b).

(b) REQUIREMENT FOR STUDY AND PLAN.—(1) The Secretary of Defense shall conduct a study of the plans and capabilities of the Department of Defense for meeting contingent requirements for transporting teams and packages specified in subsection (a)(1) in response to disasters.

(2) The Secretary shall prepare a plan for resolving any deficiencies in the plans and capabilities for meeting the transportation requirements described in paragraph (1).

(3) The Secretary of Defense shall require the commander of the United States Northern Command and the commander of the United States Transportation Command to carry out jointly the study required under paragraph (1) and to prepare jointly the plan required under paragraph (2).

(c) REPORT.—Not later than April 1, 2005, the Secretary shall submit to the Committees on

Armed Services of the Senate and the House of Representatives a report on the results of the study under subsection (b). The report shall include the following matters:

(1) The Secretary's determination under subsection (a).

(2) An assessment and discussion of the adequacy of existing plans and capabilities of the Department of Defense for meeting the transportation requirements described in subsection (b)(1).

(3) The plan required under subsection (b)(2).

(d) DEFINITION.—In this section, the term "Weapons of Mass Destruction Civil Support Team" has the meaning given that term in section 305b(e) of title 37, United States Code.

SEC. 1053. SURVIVABILITY OF CRITICAL SYSTEMS EXPOSED TO CHEMICAL OR BIOLOGICAL CONTAMINATION.

(a) REQUIREMENT FOR IMPLEMENTATION PLAN.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a plan, for implementation by the Department of Defense, that sets forth a systematic approach for ensuring the survivability of defense critical systems upon contamination of any such system by chemical or biological agents.

(b) CONTENT.—At a minimum, the plan under subsection (a) shall include the following:

(1) Policies for ensuring that the survivability of defense critical systems in the event of contamination by chemical or biological agents is adequately addressed throughout the Department of Defense.

(2) A systematic process for identifying those systems which are defense critical systems.

(3) Specific testing procedures to be used during the design and development of new defense critical systems.

(4) A centralized database that—

(A) contains comprehensive information on the effects of chemical and biological agents and decontaminants on materials used in defense critical systems; and

(B) is easily accessible to personnel who have duties to ensure the survivability of defense critical systems upon contamination of such systems by chemical and biological agents.

(c) DEFENSE CRITICAL SYSTEM DEFINED.—In this section, the term "defense critical system" means a Department of Defense system that, as determined by the Secretary of Defense, is vital to an essential defense mission.

Subtitle G—Personnel Security Matters

SEC. 1061. USE OF NATIONAL DRIVER REGISTER FOR PERSONNEL SECURITY INVESTIGATIONS AND DETERMINATIONS.

Section 30305(b) of title 49, United States Code, is amended—

(1) by redesignating paragraphs (9) through (11) as paragraphs (10) through (12), respectively; and

(2) by inserting after paragraph (8) the following new paragraph:

"(9) An individual who has or is seeking access to national security information for purposes of Executive Order No. 12968, or any successor Executive order, or an individual who is being investigated for Federal employment under authority of Executive Order No. 10450, or any successor Executive order, may request the chief driver licensing official of a State to provide information about the individual pursuant to subsection (a) of this section to a Federal department or agency that is authorized to investigate the individual for the purpose of assisting in the determination of the eligibility of the individual for access to national security information or for Federal employment in a position requiring access to national security information. A Federal department or agency that receives information about an individual under the preceding sentence may use such information only for purposes of the authorized investigation and only in accordance with applicable law.".

SEC. 1062. STANDARDS FOR DISQUALIFICATION FROM ELIGIBILITY FOR DEPARTMENT OF DEFENSE SECURITY CLEARANCE.

(a) DISQUALIFIED PERSONS.—Subsection (c)(1) of section 986 of title 10, United States Code, is amended—

(1) by striking "and" and inserting ", was"; and

(2) by inserting before the period at the end the following: ", and was incarcerated as a result of that sentence for not less than one year".

(b) WAIVER AUTHORITY.—Subsection (d) of such section is amended to read as follows:

"(d) WAIVER AUTHORITY.—In a meritorious case, an exception to the prohibition in subsection (a) may be authorized for a person described in paragraph (1) or (4) of subsection (c) if there are mitigating factors. Any such waiver may be authorized only in accordance with standards and procedures prescribed by, or under the authority of, an Executive order or other guidance issued by the President.".

Subtitle H—Transportation-Related Matters

SEC. 1071. USE OF MILITARY AIRCRAFT TO TRANSPORT MAIL TO AND FROM OVERSEAS LOCATIONS.

(a) AUTHORITY FOR USE OF MILITARY AIRCRAFT.—Section 3401 of title 39, United States Code, is amended—

(1) in subsection (b)—

(A) in the matter preceding paragraph (1)(A), by striking "title 49," and inserting "title 49, or on military aircraft at rates not to exceed those so fixed and determined for scheduled United States air carriers,"; and

(B) in the sentence following paragraph (3), by striking "carriers" each place it appears and inserting "carriers and military aircraft"; and

(2) in subsection (c)—

(A) in the first sentence, by striking "title 49," and inserting "title 49, or on military aircraft at rates not to exceed those so fixed and determined for scheduled United States air carriers,"; and

(B) in the second sentence—

(i) by inserting "and military aircraft" after "carriers" the first place it appears; and

(ii) by striking "by air carriers other than scheduled United States air carriers" and inserting "by other than scheduled United States air carriers and military aircraft".

(b) DEFINITION.—Such section is further amended by adding at the end the following new subsection:

"(g) In this section:

"(1) The term 'military aircraft' means an aircraft owned, operated, or chartered by the Department of Defense.

"(2) The term 'United States air carrier' has the meaning given the term 'air carrier' in section 40102 of title 49.".

SEC. 1072. REORGANIZATION AND CLARIFICATION OF CERTAIN PROVISIONS RELATING TO CONTROL AND SUPERVISION OF TRANSPORTATION WITHIN THE DEPARTMENT OF DEFENSE.

(a) TRANSFER OF CERTAIN TRANSPORTATION AUTHORITIES.—Sections 4744, 4745, 4746, and 4747 of title 10, United States Code, are transferred to chapter 157 of such title, inserted (in that order) at the end of such chapter, and redesignated as sections 2648, 2649, 2650, and 2651, respectively.

(b) CLARIFICATION OF APPLICABILITY OF TRANSFERRED AUTHORITIES THROUGHOUT THE DEPARTMENT OF DEFENSE.—(1) Section 2648 of such title, as transferred and redesignated by subsection (a), is amended—

(A) by striking "Secretary of the Army" in the matter preceding paragraph (1) and inserting "Secretary of Defense";

(B) by striking "Army transport agencies" in the matter preceding paragraph (1) and all that follows through "military transport agency of";

(C) by striking paragraphs (1), (2), and (3);

(D) by redesignating paragraph (4), (5), (6), and (7) as paragraphs (1), (2), (3), and (4), respectively;

(E) by redesignating paragraph (8) as paragraph (5) and in that paragraph striking "persons described in clauses (1), (2), (4), (5), and (7)" and inserting "members of the armed forces, officers and employees of the Department of Defense or the Coast Guard, and persons described in paragraphs (1), (2), and (4)"; and

(F) by striking "clause (7) or (8)" in the last sentence and inserting "paragraph (4) or (5)".

(2) Section 2649 of such title, as transferred and redesignated by subsection (a), is amended—

(A) by striking the section heading and inserting the following:

***"§2649. Civilian passengers and commercial cargoes: transportation on Department of Defense vessels"**;*

(B) by striking "(1) on vessels" and all that follows through "Department of the Army";

(C) by striking "any transport agency of"; and

(D) by striking "Secretary of the Army" and all that follows through "be transported" and inserting "Secretary of Defense, be transported".

(3) Section 2650 of such title, as transferred and redesignated by subsection (a), is amended—

(A) in the matter preceding paragraph (1), by striking "Army transport agencies" and all that follows through "military transport agency of";

(B) in paragraph (1), by striking "Secretary of the Army" and inserting "Secretary of Defense"; and

(C) in paragraph (4), by striking "by air—" and all that follows through "the transportation cannot" and inserting "by air, the transportation cannot".

(4) Section 2651 of such title, as transferred and redesignated by subsection (a), is amended by striking "Army transport agencies" and all that follows and inserting "the Department of Defense, under regulations and at rates to be prescribed by the Secretary of Defense.".

(c) REPEAL OF SUPERSEDED AND OBSOLETE PROVISIONS.—The following sections of such title are repealed: sections 4741, 4743, 9741, 9743, and 9746.

(d) CLERICAL AMENDMENTS.—

(1) The table of sections at the beginning of chapter 157 of such title is amended by adding at the end the following new items:

"2648. Persons and supplies: sea transportation.
"2649. Civilian passengers and commercial cargoes: transportation on Department of Defense vessels.
"2650. Civilian personnel in Alaska.
"2651. Passengers and merchandise to Guam: sea transport.".

(2) The table of sections at the beginning of chapter 447 of such title is amended by striking the items relating to sections 4741, 4743, 4744, 4745, 4746, and 4747.

(3) The table of sections at the beginning of chapter 947 of such title is amended by striking the items relating to sections 9741, 9743, and 9746.

SEC. 1073. EVALUATION OF PROCUREMENT PRACTICES RELATING TO TRANSPORTATION OF SECURITY-SENSITIVE CARGO.

(a) EVALUATION REQUIREMENT.—The Secretary of Defense shall evaluate the procurement practices of the Department of Defense in

the award of service contracts for domestic freight transportation for security-sensitive cargo (such as arms, ammunitions, explosives, and classified material) to determine whether such practices are in the best interests of the Department of Defense.

(b) REPORT.—Not later than January 1, 2005, the Secretary of Defense shall submit to the Committees on Armed Services of the House of Representatives and the Senate a report on the results of the evaluation conducted under subsection (a).

Subtitle I—Other Matters

SEC. 1081. LIABILITY PROTECTION FOR DEPARTMENT OF DEFENSE VOLUNTEERS WORKING IN MARITIME ENVIRONMENT.

Section 1588(d)(1)(B) of title 10, United States Code, is amended by inserting before the period at the end the following: "and the Act of March 9, 1920, commonly known as the 'Suits in Admiralty Act' (41 Stat. 525; 46 U.S.C. App. 741 et seq.) and the Act of March 3, 1925, commonly known as the 'Public Vessels Act' (43 Stat. 1112; 46 U.S.C. App. 781 et seq.) (relating to claims for damages or loss on navigable waters)".

SEC. 1082. SENSE OF CONGRESS CONCERNING MEDIA COVERAGE OF THE RETURN TO THE UNITED STATES OF THE REMAINS OF DECEASED MEMBERS OF THE ARMED FORCES FROM OVERSEAS.

(a) FINDINGS.—Congress makes the following findings:

(1) The Department of Defense, since 1991, has relied on a policy of no media coverage of the transfers of the remains of deceased members of the Armed Forces—

(A) at Ramstein Air Force Base, Germany;

(B) at Dover Air Force Base, Delaware, and the Port Mortuary Facility at Dover Air Force Base; and

(C) at interim stops en route to the point of final destination in the transfer of the remains.

(2) The principal focus and purpose of the policy is to protect the wishes and the privacy of families of deceased members of the Armed Forces during their time of great loss and grief and to give families and friends of the dead the privilege to decide whether to allow media coverage at the member's duty or home station, at the interment site, or at or in connection with funeral and memorial services.

(3) In a 1991 legal challenge to the Department of Defense policy, as applied during Operation Desert Storm, the policy was upheld by the United States District Court for the District of Columbia, and on appeal, by the United States Court of Appeals for the District of Columbia in the case of JB Pictures, Inc. v. Department of Defense and Donald B. Rice, Secretary of the Air Force on the basis that denying the media the right to view the return of remains at Dover Air Force Base does not violate the first amendment guarantees of freedom of speech and of the press.

(4) The United States Court of Appeals for the District of Columbia in that case cited the following two key Government interests that are served by the Department of Defense policy:

(A) Reducing the hardship on the families and friends of the war dead, who may feel obligated to travel great distances to attend arrival ceremonies at Dover Air Force Base if such ceremonies were held.

(B) Protecting the privacy of families and friends of the dead, who may not want media coverage of the unloading of caskets at Dover Air Force Base.

(5) The Court also noted, in that case, that the bereaved may be upset at the public display of the caskets of their loved ones and that the policy gives the family the right to grant or deny access to the media at memorial or funeral services at the home base and that the policy is consistent in its concern for families.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Department of Defense policy regarding no media coverage of the transfer of the remains of deceased members of the Armed Forces—

(1) appropriately protects the privacy of the families and friends of the deceased; and

(2) is consistent with United States constitutional guarantees of freedom of speech and freedom of the press.

SEC. 1083. TRANSFER OF HISTORIC F3A-1 BREWSTER CORSAIR AIRCRAFT.

(a) AUTHORITY TO CONVEY.—The Secretary of the Navy may convey, without consideration, to Lex Cralley of Princeton Minnesota (in this section referred to as "transferee"), all right, title, and interest of the United States in and to a F3A-1 Brewster Corsair aircraft (Bureau Number 04634). The conveyance shall be made by means of a deed of gift.

(b) CONDITION OF AIRCRAFT.—The aircraft shall be conveyed under subsection (a) in its current unflyable, "as is" condition. The Secretary is not required to repair or alter the condition of the aircraft before conveying ownership of the aircraft.

(c) CONVEYANCE AT NO COST TO THE UNITED STATES.—The conveyance of the aircraft under subsection (a) shall be made at no cost to the United States. Any costs associated with the conveyance and costs of operation and maintenance of the aircraft conveyed shall be borne by the transferee.

(d) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with a conveyance under this section as the Secretary considers appropriate to protect the interests of the United States.

SEC. 1084. TECHNICAL AND CLERICAL AMENDMENTS.

(a) CLARIFICATION OF DEFINITION OF "OPERATIONAL RANGE".—Section 101(e)(3) of title 10, United States Code, is amended by striking "Secretary of Defense" and inserting "Secretary of a military department".

(b) AMENDMENTS RELATING TO DEFINITION OF CONGRESSIONAL DEFENSE COMMITTEES.—Title 10, United States Code, is amended as follows:

(1) Section 2215 is amended—

(A) by striking "(a) CERTIFICATION REQUIRED.—";

(B) by striking "congressional committees specified in subsection (b)" and inserting "congressional defense committees"; and

(C) by striking subsection (b).

(2) Section 2306b(g) is amended by striking "Committee on" the first place it appears and all that follows through "House of Representatives" and inserting "congressional defense committees".

(3) Section 2515(d) is amended—

(A) by striking "(1)" before "The Secretary";

(B) by striking "congressional committees specified in paragraph (2)" and inserting "congressional defense committees"; and

(C) by striking paragraph (2).

(4) Section 2676(d) is amended by striking "appropriate committees of Congress" at the end of the first sentence and inserting "congressional defense committees".

(c) AMENDMENTS RELATING TO CHANGE OF NAME OF GAO.—Title 10, United States Code, is amended as follows:

(1) Section 1084 is amended by striking "General Accounting Office" and inserting "Comptroller General".

(2) Section 1102(d)(2) is amended by striking "General Accounting Office" and inserting "Comptroller General".

(3) Section 2014(g) is amended by striking "General Accounting Office" and inserting "Government Accountability Office".

(d) MISCELLANEOUS AMENDMENTS TO TITLE 10, UNITED STATES CODE.—Title 10, United States Code, is amended as follows:

(1) The tables of chapters at the beginning of subtitle A, and at the beginning of part I of subtitle A, are amended by striking "481" in the item relating to chapter 23 and inserting "480".

(2) Section 130a is amended—

(A) by striking "Effective October 1, 2002, the" in subsection (a) and inserting "The";

(B) by striking "baseline number" in subsection (a) and all that follows through "means the" in subsection (c);

(C) by transferring subsection (e) so as to appear before subsection (d) and redesignating that subsection as subsection (b);

(D) by redesignating subsections (d) and (f) as subsection (c) and (d), respectively; and

(E) by striking subsection (g).

(3) Section 437(c) is amended by inserting "(50 U.S.C. 415b)" after "National Security Act of 1947".

(4) Section 487(d) is amended by striking "OTHER DEFINITIONS" and inserting "INAPPLICABILITY TO COAST GUARD".

(5) Section 503(c)(1)(B) is amended by striking "education" in the second sentence and inserting "educational".

(6) Section 632(c)(1) is amended—

(A) by striking "paragraph (2)" and inserting "paragraph (3)"; and

(B) by striking "under that paragraph" and inserting "under that subsection".

(7) The item relating to section 1076b in the table of sections at the beginning of chapter 55 is amended to read as follows:

"1076b. TRICARE program: coverage for members of the Ready Reserve.".

(8) Section 1108(e) is amended by striking "heath" and inserting "health".

(9) Section 1406(g) is amended—

(A) by striking "section 305" and inserting "section 245"; and

(B) by striking "Officers Act of 2002" and inserting "Officer Corps Act of 2002 (33 U.S.C. 3045)".

(10) Sections 1448(b)(1)(F), 1448(d)(2)(B), 1448(d)(6)(A), and 1458(j) are amended by striking "on or after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2004" and inserting "after November 23, 2003,".

(11) Sections 1463(a)(1), 1465(c)(1)(A), 1465(c)(1)(B), 1465(c)(4)(A), 1465(c)(4)(B), and 1466(b)(2)(D) are amended by striking "1413, 1413a," and inserting "1413a".

(12) Section 1557(b) is amended by striking "Effective October 1, 2002, final" and inserting "Final".

(13) Section 1566 is amended—

(A) in subsection (g)(2), by striking "the date that is 6 months after the date of the enactment of the Help America Vote Act of 2002" in the last sentence and inserting "April 29, 2003"; and

(B) in subsections (h), (i)(1), and (i)(3), by striking "Armed Forces" and inserting "armed forces".

(14) Sections 1724(d) and 1732(d)(1) are amended by striking "its decision" in the second sentence and inserting "the decision of the Secretary".

(15) Section 1761(b) is amended—

(A) in the matter preceding paragraph (1), by striking "provide for—" and inserting "provide for the following:";

(B) in paragraphs (1), (2), and (3), by capitalizing the first letter of the first word;

(C) at the end of paragraphs (1) and (2), by striking the semicolon and inserting a period;

(D) at the end of paragraph (3), by striking "; and" and inserting a period; and

(E) by striking paragraph (4).

(16) Section 2193b(c)(2) is amended by striking "the date of the enactment of this section" and inserting "October 5, 1999".

(17) Section 2224(c) is amended in the matter preceding paragraph (1) by striking "subtitle II

of chapter 35" and inserting "subchapter II of chapter 35".

(18) Section 2349(d) is amended by striking "section 2350a(i)(3)" and inserting "section 2350a(i)(2)".

(19) Section 2350b(g) is amended—

(A) in the matter preceding paragraph (1), by inserting "the Secretary of Defense" after "authorizing"; and

(B) in paragraph (1), by striking "the Secretary of Defense".

(20) Section 2474(f)(2) is amended by striking "section 2466(e)" and inserting "section 2466(d)".

(21) Section 2540(b)(2) is amended by inserting ", as in effect on that date" before the period at the end.

(22) Section 2662(a)(2) is amended—

(A) in the first sentence, by striking "must include a summarization" and inserting "shall include a summary"; and

(B) in the second sentence, by inserting "of paragraph (1)" after "in subparagraph (E)".

(23) Section 2672a(a) is amended—

(A) in the matter preceding paragraph (1), by inserting "in any case in which the Secretary determines" after "in land";

(B) in paragraph (1), by striking "the Secretary determines" and inserting "the acquisition"; and

(C) in paragraph (2), by inserting "the acquisition" after "(2)".

(24) Section 2701 is amended—

(A) in subsection (a)(2), by inserting "(42 U.S.C. 9620)" before the period at the end;

(B) in subsection (c)(2), by striking "of CERCLA (relating to settlements)" and inserting "(relating to settlements) of CERCLA (42 U.S.C. 9622)";

(C) in subsection (e), by inserting "(42 U.S.C. 9619)" after "CERCLA"; and

(D) in subsection (j)(2), by striking "the Comprehensive" and all the follows through "of 1980" and inserting "CERCLA".

(25) Section 2702 is amended by inserting "(42 U.S.C. 9660(a)(5))" in the second sentence of subsection (a) before the period at the end.

(26) Section 2703(b) is amended by striking "The terms" at the beginning of the second sentence and inserting "For purposes of the preceding sentence, the terms".

(27) Section 2704 is amended by inserting "(42 U.S.C. 9604(i))" in subsections (c), (e), and (f) after "CERCLA".

(28) The second section 3755, added by section 543(b)(1) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 116 Stat. 2549), is redesignated as section 3756, and the item relating to that section in the table of sections at the beginning of chapter 357 is revised to reflect such redesignation.

(29) Section 4689 is amended by striking "Building" after "Capitol".

(30) The second section 6257, added by section 543(c)(1) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 116 Stat. 2549), is redesignated as section 6258, and the item relating to that section in the table of sections at the beginning of chapter 567 is revised to reflect such redesignation.

(31) Section 7102 is amended—

(A) by striking "AUTHORITY" at the beginning of subsection (a) and inserting "MASTER OF MILITARY STUDIES";

(B) by striking "MARINE CORPS WAR COLLEGE" at the beginning of subsection (b) and inserting "MASTER OF STRATEGIC STUDIES";

(C) by striking "COMMAND AND STAFF COLLEGE OF THE MARINE CORPS UNIVERSITY" at the beginning of subsection (c) and inserting "MASTER OF OPERATIONAL STUDIES"; and

(D) by striking "subsections (a) and (b)" in subsection (d) and inserting "subsections (a), (b), and (c)".

(32) Section 8084 is amended by striking "capabilty" and inserting "capability".

(33) The second section 8755, added by section 543(d)(1) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 116 Stat. 2550), is redesignated as section 8756, and the item relating to that section in the table of sections at the beginning of chapter 857 is revised to reflect such redesignation.

(34) The table in section 12012(a) is amended by inserting a colon after "Air National Guard".

(e) TITLE 37, UNITED STATES CODE.—Title 37, United States Code, is amended as follows:

(1) Section 301a(b)(4) is amended by striking "section 301(a)(11)" and inserting "section 301(a)(13)".

(2) Section 323(h) is amended by striking "Secretary of Transportation" and inserting "Secretary of Homeland Security".

(f) PUBLIC LAW 108–136.—Effective as of November 24, 2003, and as if included therein as enacted, the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136) is amended as follows:

(1) Sections 832(a) and 834(a) (117 Stat. 1550) are each amended by striking "such title" and inserting "title 10, United States Code,".

(2) Section 931(a)(1) (117 Stat. 1580) is amended by striking "and donations" in the first quoted matter and inserting "or donations".

(3) Section 2204(b) (117 Stat. 1706) is amended by striking "section 2101(a)" each place it appears and inserting "section 2201(a)".

(g) PUBLIC LAW 107–314.—Effective as of December 2, 2002, and as if included therein as enacted, section 1064(a)(2) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 116 Stat. 2654) is amended by inserting "the item relating to" after "is amended by inserting after".

(h) PUBLIC LAW 107–107.—Effective as of December 28, 2001, and as if included therein as enacted, the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107) is amended as follows:

(1) Section 824(a)(1)(C) (115 Stat. 1183) is amended by striking "(3)(A)" and inserting "(3)(B)".

(2) Section 1048(e)(4) (115 Stat. 1227) is amended by striking "Subsection" and inserting "Section".

(3) Section 1111(c) (115 Stat. 1238) is amended by striking "This provision" and inserting "Section 5949 of title 5, United States Code, as added by subsection (a),".

(i) PUBLIC LAW 101–510.—Section 2902(e)(2)(B) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended—

(1) in clause (i), by striking "Subcommittee on Readiness, Sustainability, and Support" and inserting "Subcommittee on Readiness and Management Support"; and

(2) in clause (ii), by striking "Subcommittee on Military Installations and Facilities" and inserting "Subcommittee on Readiness".

(j) NATIONAL SECURITY ACT OF 1947.—Sections 702(a)(6)(B)(iv)(I), 703(a)(6)(B)(iv)(I), and 704(f)(2)(D)(i) of the National Security Act of 1947 are amended by striking "responsible records" and inserting "responsive records".

(k) CODIFICATION RELATING TO LEAVE FOR ATTENDANCE AT CERTAIN HEARINGS.—Subsection (b) of section 363 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (10 U.S.C. 704 note) is—

(1) transferred to section 704 of title 10, United States Code;

(2) inserted at the end of that section;

(3) redesignated as subsection (c); and

(4) amended—

(A) by striking "Armed Forces" each place it appears and inserting "armed forces";

(B) in paragraph (1)—

(i) by striking "Secretary of each" and all that follows through "in the Navy," and inserting "Secretary concerned"; and

(ii) by striking "(as defined in section 101 of title 10, United States Code)"; and

(C) in paragraph (3)—

(i) by striking "For purposes of this subsection—" and inserting "In this subsection:";

(ii) in subparagraph (A), by striking "title 10, United States Code" and inserting "this title"; and

(iii) in subparagraph (B), by striking "such term" and inserting "that term".

SEC. 1085. PRESERVATION OF SEARCH AND RESCUE CAPABILITIES OF THE FEDERAL GOVERNMENT.

The Secretary of Defense may not reduce or eliminate search and rescue capabilities at any military installation in the United States unless the Secretary first certifies to the Committees on Armed Services of the Senate and the House of Representatives that equivalent search and rescue capabilities will be provided, without interruption and consistent with the policies and objectives set forth in the United States National Search and Rescue Plan entered into force on January 1, 1999, by—

(1) the Department of Interior, the Department of Commerce, the Department of Homeland Security, the Department of Transportation, the Federal Communications Commission, or the National Aeronautics and Space Administration; or

(2) the Department of Defense, either directly or through a Department of Defense contract with an emergency medical service provider or other private entity to provide such capabilities.

SEC. 1086. ACQUISITION OF AERIAL FIREFIGHTING EQUIPMENT FOR NATIONAL INTERAGENCY FIRE CENTER.

(a) FINDINGS.—Congress makes the following findings:

(1) The National Interagency Fire Center does not possess an adequate number of aircraft for use in aerial firefighting, and personnel at the Center rely on military aircraft to provide such firefighting services.

(2) It is in the national security interest of the United States for the National Interagency Fire Center to acquire aircraft for use in aerial firefighting so that the military aircraft made available for aerial firefighting will instead be available for use by the Armed Forces.

(b) AUTHORITY TO PURCHASE AERIAL FIREFIGHTING EQUIPMENT.—(1) The Secretary of Agriculture is authorized to purchase 10 aircraft, as described in paragraph (2), for the National Interagency Fire Center for use in aerial firefighting.

(2) The aircraft referred to in paragraph (1) shall be aircraft that are—

(A) specifically designed and built for aerial firefighting;

(B) certified by the Chief of the Forest Service as suited for conditions commonly experienced in aerial firefighting operations carried out in the United States, including Alaska; and

(C) manufactured in a manner that is consistent with the recommendations for aircraft used in aerial firefighting contained in—

(i) the Blue Ribbon Panel Report to the Chief of the Forest Service and the Director of the Bureau of Land Management dated December 2002; and

(ii) the Safety Recommendation of the Chairman of the National Transportation Safety Board related to aircraft used in aerial firefighting dated April 23, 2004.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Agriculture for fiscal year 2005 such funds as may be necessary to purchase the 10 aircraft described in subsection (b).

SEC. 1087. REVISION TO REQUIREMENTS FOR RECOGNITION OF INSTITUTIONS OF HIGHER EDUCATION AS HISPANIC-SERVING INSTITUTIONS FOR PURPOSES OF CERTAIN GRANTS AND CONTRACTS.

Section 502(a)(5)(C) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a)(5)(C)) is amended by inserting before the period the following: ", which assurances—

"(i) may employ statistical extrapolation using appropriate data from the Bureau of the Census or other appropriate Federal or State sources; and

"(ii) the Secretary shall consider as meeting the requirements of this subparagraph, unless the Secretary determines, based on a preponderance of the evidence, that the assurances do not meet the requirements".

SEC. 1088. MILITARY EXTRATERRITORIAL JURISDICTION OVER CONTRACTORS SUPPORTING DEFENSE MISSIONS OVERSEAS.

Section 3267(1)(A) of title 18, United States Code, is amended to read as follows:

"(A) employed as—

"(i) a civilian employee of—

"(I) the Department of Defense (including a nonappropriated fund instrumentality of the Department); or

"(II) any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas;

"(ii) a contractor (including a subcontractor at any tier) of—

"(I) the Department of Defense (including a nonappropriated fund instrumentality of the Department); or

"(II) any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas; or

"(iii) an employee of a contractor (or subcontractor at any tier) of—

"(I) the Department of Defense (including a nonappropriated fund instrumentality of the Department); or

"(II) any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas;".

SEC. 1089. DEFINITION OF UNITED STATES FOR PURPOSES OF FEDERAL CRIME OF TORTURE.

Section 2340(3) of title 18, United States Code, is amended to read as follows:

"(3) 'United States' means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States.".

SEC..1090. ENERGY SAVINGS PERFORMANCE CONTRACTS.

(a) IN GENERAL.—Section 801(c) of the National Energy Conservation Policy Act (42 U.S.C. 8287(c)) is amended by striking "2003" and inserting "2006".

(b) PAYMENT OF COSTS.—Section 802 of the National Energy Conservation Policy Act (42 U.S.C. 8287a) is amended by inserting ", water, or wastewater treatment" after "payment of energy".

(c) ENERGY SAVINGS.—Section 804(2) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(2)) is amended to read as follows:

"(2) The term 'energy savings' means a reduction in the cost of energy, water, or wastewater treatment, from a base cost established through a methodology set forth in the contract, used in an existing federally owned building or buildings or other federally owned facilities as a result of—

"(A) the lease or purchase of operating equipment, improvements, altered operation and maintenance, or technical services;

"(B) the increased efficient use of existing energy sources by cogeneration or heat recovery, excluding any cogeneration process for other than a federally owned building or buildings or other federally owned facilities; or

"(C) the increased efficient use of existing water sources in either interior or exterior applications.".

(d) ENERGY SAVINGS CONTRACT.—Section 804(3) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(3)) is amended to read as follows:

"(3) The terms 'energy savings contract' and 'energy savings performance contract' mean a contract that provides for the performance of services for the design, acquisition, installation, testing, and, where appropriate, operation, maintenance, and repair, of an identified energy or water conservation measure or series of measures at 1 or more locations. Such contracts shall, with respect to an agency facility that is a public building (as such term is defined in section 3301 of title 40, United States Code), be in compliance with the prospectus requirements and procedures of section 3307 of title 40, United States Code.".

(e) ENERGY OR WATER CONSERVATION MEASURE.—Section 804(4) of the National Energy Conservation Policy Act (42 U.S.C. 8287c(4)) is amended to read as follows:

"(4) The term 'energy or water conservation measure' means—

"(A) an energy conservation measure, as defined in section 551; or

"(B) a water conservation measure that improves the efficiency of water use, is life-cycle cost-effective, and involves water conservation, water recycling or reuse, more efficient treatment of wastewater or stormwater, improvements in operation or maintenance efficiencies, retrofit activities, or other related activities, not at a Federal hydroelectric facility.".

(f) REVIEW.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Energy shall complete a review of the Energy Savings Performance Contract program to identify statutory, regulatory, and administrative obstacles that prevent Federal agencies from fully utilizing the program. In addition, this review shall identify all areas for increasing program flexibility and effectiveness, including audit and measurement verification requirements, accounting for energy use in determining savings, contracting requirements, including the identification of additional qualified contractors, and energy efficiency services covered. The Secretary shall report these findings to Congress and shall implement identified administrative and regulatory changes to increase program flexibility and effectiveness to the extent that such changes are consistent with statutory authority.

(g) EXTENSION OF AUTHORITY.—Any energy savings performance contract entered into under section 801 of the National Energy Conservation Policy Act (42 U.S.C. 8287) after October 1, 2003, and before the date of enactment of this Act, shall be deemed to have been entered into pursuant to such section 801 as amended by subsection (a) of this section.

SEC. 1091. SENSE OF CONGRESS AND POLICY CONCERNING PERSONS DETAINED BY THE UNITED STATES.

(a) SENSE OF CONGRESS.—It is the sense of Congress that —

(1) the abuses inflicted upon detainees at the Abu Ghraib prison in Baghdad, Iraq, are inconsistent with the professionalism, dedication, standards, and training required of individuals who serve in the United States Armed Forces;

(2) the vast majority of members of the Armed Forces have upheld the highest possible standards of professionalism and morality in the face of illegal tactics and terrorist attacks and attempts on their lives;

(3) the abuse of persons in United States custody in Iraq is appropriately condemned and deplored by the American people;

(4) the Armed Forces are moving swiftly and decisively to identify, try, and, if found guilty, punish persons who perpetrated such abuse;

(5) the Department of Defense and appropriate military authorities must continue to undertake corrective action, as appropriate, to address chain-of-command deficiencies and the systemic deficiencies identified in the incidents in question;

(6) the Constitution, laws, and treaties of the United States and the applicable guidance and regulations of the United States Government prohibit the torture or cruel, inhuman, or degrading treatment of foreign prisoners held in custody by the United States;

(7) the alleged crimes of a handful of individuals should not detract from the commendable sacrifices of over 300,000 members of the Armed Forces who have served, or who are serving, in Operation Iraqi Freedom; and

(8) no detainee shall be subject to torture or cruel, inhuman, or degrading treatment or punishment that is prohibited by the Constitution, laws, or treaties of United States.

(b) POLICY.—It is the policy of the United States to—

(1) ensure that no detainee shall be subject to torture or cruel, inhuman, or degrading treatment or punishment that is prohibited by the Constitution, laws, or treaties of the United States;

(2) investigate and prosecute, as appropriate, all alleged instances of unlawful treatment of detainees in a manner consistent with the international obligations, laws, or policies of the United States;

(3) ensure that all personnel of the United States Government understand their obligations in both wartime and peacetime to comply with the legal prohibitions against torture, cruel, inhuman, or degrading treatment of detainees in the custody of the United States;

(4) ensure that, in a case in which there is doubt as to whether a detainee is entitled to prisoner of war status under the Geneva Conventions, such detainee receives the protections accorded to prisoners of war until the detainee's status is determined by a competent tribunal; and

(5) expeditiously process and, if appropriate, prosecute detainees in the custody of the United States, including those in the custody of the United States Armed Forces at Guantanamo Bay, Cuba.

(c) DETAINEES.—For purposes of this section, the term "detainee" means a person in the custody or under the physical control of the United States as a result of armed conflict.

SEC. 1092. ACTIONS TO PREVENT THE ABUSE OF DETAINEES.

(a) POLICIES REQUIRED.—The Secretary of Defense shall ensure that policies are prescribed not later than 150 days after the date of the enactment of this Act regarding procedures for Department of Defense personnel and contractor personnel of the Department of Defense intended to ensure that members of the Armed Forces, and all persons acting on behalf of the Armed Forces or within facilities of the Armed Forces, treat persons detained by the United States Government in a humane manner consistent with the international obligations and laws of the United States and the policies set forth in section 1091(b).

(b) MATTERS TO BE INCLUDED.—In order to achieve the objective stated in subsection (a), the policies under that subsection shall specify, at a minimum, procedures for the following:

(1) Ensuring that each commander of a Department of Defense detention facility or interrogation facility—

(A) provides all assigned personnel with training, and documented acknowledgment of receiving training, regarding the law of war, including the Geneva Conventions; and

(B) establishes standard operating procedures for the treatment of detainees.

(2) Ensuring that each Department of Defense contract in which contract personnel in the course of their duties interact with individuals detained by the Department of Defense on behalf of the United States Government include a requirement that such contract personnel have received training, and documented acknowledgment of receiving training, regarding the international obligations and laws of the United States applicable to the detention of personnel.

(3) Providing all detainees with information, in their own language, of the applicable protections afforded under the Geneva Conventions.

(4) Conducting periodic unannounced and announced inspections of detention facilities in order to provide continued oversight of interrogation and detention operations.

(5) Ensuring that, to the maximum extent practicable, detainees and detention facility personnel of a different gender are not alone together.

(c) SECRETARY OF DEFENSE CERTIFICATION.—The Secretary of Defense shall certify that all Federal employees and civilian contractors engaged in the handling or interrogation of individuals detained by the Department of Defense on behalf of the United States Government have fulfilled an annual training requirement on the law of war, the Geneva Conventions, and the obligations of the United States under international law.

SEC. 1093. REPORTING REQUIREMENTS.

(a) TRANSMISSION OF REGULATIONS, ETC.—Not later than 30 days after the date on which regulations, policies, and orders are first prescribed under section 1092(a), the Secretary of Defense shall transmit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives copies of such regulations, policies, or orders, together with a report on steps taken to the date of the report to implement section 1092.

(b) ONE-YEAR IMPLEMENTATION REPORT.—Not later than one year after the date on which regulations, policies, and orders are first prescribed under section 1092(a), the Secretary shall submit to such committees a report on further steps taken to implement section 1092 to the date of such report.

(c) ANNUAL REPORT.—Nine months after the date of the enactment of this Act and annually thereafter, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report for the preceding 12-months containing the following:

(1) Notice of any investigation into any violation of international obligations or laws of the United States regarding the treatment of individuals detained by the United States Armed Forces or by a person providing services to the Department of Defense on a contractual basis, if the notice will not compromise any ongoing criminal or administrative investigation or prosecution.

(2) General information on the foreign national detainees in the custody of the Department of Defense during the 12-month period covered by the report, including the following:

(A) The best estimate of the Secretary of Defense of the total number of detainees in the custody of the Department as of the date of the report.

(B) The best estimate of the Secretary of Defense of the total number of detainees released from the custody of the Department during the period covered by the report.

(C) An aggregate summary of the number of persons detained as enemy prisoners of war, civilian internees, and unlawful combatants, including information regarding the average length of detention for persons in each category.

(D) An aggregate summary of the nationality of persons detained.

(E) Aggregate information as to the transfer of detainees to the jurisdiction of other countries, and the countries to which transferred.

(d) CLASSIFICATION OF REPORTS.—Reports submitted under this section shall be submitted, to the extent practicable, in unclassified form, but may include a classified annex as necessary to protect the national security of the United States.

(e) TERMINATION.—The requirements of this section shall cease to be in effect on December 31, 2007.

SEC. 1094. FINDINGS AND SENSE OF CONGRESS CONCERNING ARMY SPECIALIST JOSEPH DARBY.

(a) FINDINGS.—Congress makes the following findings:

(1) The need to act in accord with one's conscience, risking one's career and even the esteem of one's colleagues by pursuing what is right is especially important today.

(2) While the Department of Defense investigates the horrific abuses in American detention facilities in Iraq, the Nation should bear in mind that the abuses were only brought to light because of the courage of an American soldier.

(3) By alerting his superiors to abuses at Abu Ghraib prison in Iraq, Army Specialist Joseph Darby demonstrated the courage to speak out and do what is right for his country.

(4) Such an action is especially important in light of the many challenges facing the country.

(5) Specialist Darby deserves the Nation's thanks for speaking up and for standing up for what is right.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Secretary of Defense should make every protection available to Army Specialist Joseph Darby and others who demonstrate such courage; and

(2) Specialist Darby should be commended appropriately by the Secretary of the Army.

TITLE XI—CIVILIAN PERSONNEL MATTERS

Sec. 1101. Payment of Federal employee health benefit premiums for mobilized Federal employees.
Sec. 1102. Foreign language proficiency pay.
Sec. 1103. Pay and performance appraisal parity for civilian intelligence personnel.
Sec. 1104. Pay parity for senior executives in defense nonappropriated fund instrumentalities.
Sec. 1105. Science, mathematics, and research for transformation (SMART) defense scholarship pilot program.
Sec. 1106. Report on how to recruit and retain individuals with foreign language skills.
Sec. 1107. Plan on implementation and utilization of flexible personnel management authorities in Department of Defense laboratories.

SEC. 1101. PAYMENT OF FEDERAL EMPLOYEE HEALTH BENEFIT PREMIUMS FOR MOBILIZED FEDERAL EMPLOYEES.

(a) AUTHORITY TO CONTINUE BENEFIT COVERAGE.—Section 8905a of title 5, United States Code is amended—

(1) in subsection (a), by striking "paragraph (1) or (2) of";

(2) in subsection (b)—

(A) in paragraph (1)(B), by striking "and" at the end;

(B) in paragraph (2)(C), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following new paragraph:

"(3) any employee who—

"(A) is enrolled in a health benefits plan under this chapter;

"(B) is a member of a reserve component of the armed forces;

"(C) is called or ordered to active duty in support of a contingency operation (as defined in section 101(a)(13) of title 10);

"(D) is placed on leave without pay or separated from service to perform active duty; and

"(E) serves on active duty for a period of more than 30 consecutive days."; and

(4) in subsection (e)(1)—

(A) in subparagraph (A), by striking "or" at the end;

(B) in subparagraph (B), by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following new subparagraph:

"(C) in the case of an employee described in subsection (b)(3), the date which is 24 months after the employee is placed on leave without pay or separated from service to perform active duty.".

(b) AUTHORITY FOR AGENCIES TO PAY PREMIUMS.—Subparagraph (C) of section 8906(e)(3) of such title is amended by striking "18 months" and inserting "24 months".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to Federal employees called or ordered to active duty on or after September 14, 2001.

SEC. 1102. FOREIGN LANGUAGE PROFICIENCY PAY.

(a) ELIGIBILITY FOR SERVICE NOT RELATED TO CONTINGENCY OPERATIONS.—Section 1596a(a)(2) of title 10, United States Code, is amended by striking "during a contingency operation supported by the armed forces".

(b) EFFECTIVE DATE.—The amendment by this section shall take effect on the first day of the first month that begins after the date of the enactment of this Act.

SEC. 1103. PAY AND PERFORMANCE APPRAISAL PARITY FOR CIVILIAN INTELLIGENCE PERSONNEL.

(a) PAY RATES.—Section 1602 of title 10, United States Code, is amended—

(1) in subsection (a), by striking "in relation to the rates of pay provided in subpart D of part III of title 5 for positions subject to that subpart which have corresponding levels of duties and responsibilities" and inserting "in relation to the rates of pay provided for comparable positions in the Department of Defense and subject to the same limitations on maximum rates of pay established for employees of the Department of Defense by law or regulation";

(2) by striking subsection (b); and

(3) by redesignating subsection (c) as subsection (b).

(b) PERFORMANCE APPRAISAL SYSTEM.—Section 1606 of such title is amended by adding at the end the following new subsection:

"(d) PERFORMANCE APPRAISALS.—(1) The Defense Intelligence Senior Executive Service shall be subject to a performance appraisal system which, as designed and applied, is certified by the Secretary of Defense under section 5307 of title 5 as making meaningful distinctions based on relative performance.

"(2) The performance appraisal system applicable to the Defense Intelligence Senior Executive Service under paragraph (1) may be the same performance appraisal system that is established and implemented within the Department of Defense for members of the Senior Executive Service.".

SEC. 1104. PAY PARITY FOR SENIOR EXECUTIVES IN DEFENSE NONAPPROPRIATED FUND INSTRUMENTALITIES.

(a) AUTHORITY.—Chapter 81 of title 10, United States Code, is amended by inserting after section 1587 the following new section:

"§ 1587a. Employees of nonappropriated fund instrumentalities: senior executive pay levels

"(a) AUTHORITY.—To achieve the objective stated in subsection (b), the Secretary of Defense may regulate the amount of total compensation that is provided for senior executives of nonappropriated fund instrumentalities who, for the fixing of pay by administrative action, are under the jurisdiction of the Secretary of Defense or the Secretary of a military department.

"(b) PAY PARITY.—The objective of an action taken with respect to the compensation of senior executives under subsection (a) is to provide for parity between the total compensation provided for such senior executives and total compensation that is provided for Department of Defense employees in Senior Executive Service positions or other senior executive positions.

"(c) STANDARDS OF COMPARABILITY.—Subject to subsection (d), the Secretary of Defense shall prescribe the standards of comparison that are to apply in the making of the determinations necessary to achieve the objective stated in subsection (b).

"(d) ESTABLISHMENT OF PAY RATES.—The Secretary of Defense shall apply subsections (a) and (b) of section 5382 of title 5 in the regulation of compensation under this section.

"(e) RELATIONSHIP TO PAY LIMITATION.—The Secretary of Defense may exercise the authority provided in subsection (a) without regard to section 5373 of title 5.

"(f) DEFINITIONS.—In this section:

"(1) The term 'compensation' includes rate of basic pay.

"(2) The term 'Senior Executive Service position' has the meaning given such term in section 3132 of title 5.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1587 the following new item:

"1587a. Employees of nonappropriated fund instrumentalities: senior executive pay levels.".

SEC. 1105. *SCIENCE, MATHEMATICS, AND RESEARCH FOR TRANSFORMATION (SMART) DEFENSE SCHOLARSHIP PILOT PROGRAM.*

(a) REQUIREMENT FOR PROGRAM.—(1) The Secretary of Defense shall carry out a pilot program to provide financial assistance for education in science, mathematics, engineering, and technology skills and disciplines that, as determined by the Secretary, are critical to the national security functions of the Department of Defense and are needed in the Department of Defense workforce.

(2) The pilot program under this section shall be carried out for three years beginning on the date of the enactment of this Act.

(b) SCHOLARSHIPS.—(1) Under the pilot program, the Secretary of Defense may award a scholarship in accordance with this section to a person who—

(A) is a citizen of the United States;

(B) is pursuing an undergraduate or advanced degree in a critical skill or discipline described in subsection (a) at an institution of higher education; and

(C) enters into a service agreement with the Secretary of Defense as described in subsection (c).

(2) The amount of the financial assistance provided under a scholarship awarded to a person under this subsection shall be the amount determined by the Secretary of Defense as being necessary to pay all educational expenses incurred by that person, including tuition, fees, cost of books, laboratory expenses, and expenses of room and board. The expenses paid, however, shall be limited to those educational expenses normally incurred by students at the institution of higher education involved.

(c) SERVICE AGREEMENT FOR RECIPIENTS OF ASSISTANCE.—(1) To receive financial assistance under this section—

(A) in the case of an employee of the Department of Defense, the employee shall enter into a written agreement to continue in the employment of the department for the period of obligated service determined under paragraph (2); and

(B) in the case of a person not an employee of the Department of Defense, the person shall enter into a written agreement to accept and continue employment in the Department of Defense for the period of obligated service determined under paragraph (2).

(2) For the purposes of this subsection, the period of obligated service for a recipient of a scholarship under this section shall be the period determined by the Secretary of Defense as being appropriate to obtain adequate service in exchange for the financial assistance provided under the scholarship. In no event may the period of service required of a recipient be less than the total period of pursuit of a degree that is covered by the scholarship. The period of obligated service is in addition to any other period for which the recipient is obligated to serve in the civil service of the United States.

(3) An agreement entered into under this subsection by a person pursuing an academic degree shall include any terms and conditions that the Secretary of Defense determines necessary to protect the interests of the United States or otherwise appropriate for carrying out this section.

(d) REFUND FOR PERIOD OF UNSERVED OBLIGATED SERVICE.—(1) A person who voluntarily terminates service before the end of the period of obligated service required under an agreement entered into under subsection (c) shall refund to the United States an amount determined by the Secretary of Defense as being appropriate to obtain adequate service in exchange for financial assistance.

(2) An obligation to reimburse the United States imposed under paragraph (1) is for all purposes a debt owed to the United States.

(3) The Secretary of Defense may waive, in whole or in part, a refund required under paragraph (1) if the Secretary determines that recovery would be against equity and good conscience or would be contrary to the best interests of the United States.

(4) A discharge in bankruptcy under title 11, United States Code, that is entered less than five years after the termination of an agreement under this section does not discharge the person signing such agreement from a debt arising under such agreement or under this subsection.

(e) RELATIONSHIP TO OTHER PROGRAMS.—The pilot program under this section is in addition to the authorities provided in chapter 111 of title 10, United States Code. The Secretary of Defense shall coordinate the provision of financial assistance under the authority of this section with the provision of financial assistance under the authorities provided in such chapter in order to maximize the benefits derived by the Department of Defense from the exercise of all such authorities.

(f) RECOMMENDATION ON PILOT PROGRAM.—Not later than February 1, 2007, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Committee on Government Reform of the House of Representatives a plan for expanding and improving the national defense science and engineering workforce educational assistance pilot program carried out under this section as appropriate to improve recruitment and retention to meet the requirements of the Department of Defense for its science and engineering workforce on a short-term basis and on a long-term basis.

(g) CRITICAL HIRING NEED.—Section 3304(a)(3) of title 5, United States Code, is amended by striking subparagraph (B) and inserting the following:

"(B)(i) the Office of Personnel Management has determined that there exists a severe shortage of candidates or there is a critical hiring need; or

"(ii) the candidate is a participant in the Science, Mathematics, and Research for Transformation (SMART) Defense Scholarship Pilot Program under section 1105 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.".

(h) INSTITUTION OF HIGHER EDUCATION DEFINED.—In this section, the term "institution of higher education" has the meaning given such term in section 101 of the Higher Education Act of 1965 (21 U.S.C. 1001).

SEC. 1106. REPORT ON HOW TO RECRUIT AND RETAIN INDIVIDUALS WITH FOREIGN LANGUAGE SKILLS.

Not later than March 31, 2005, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives and the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives, a plan for expanding and improving the national security foreign language workforce of the Department of Defense as appropriate to improve recruitment and retention to meet the requirements of the Department for its foreign language workforce on a short-term basis and on a long-term basis.

SEC. 1107. PLAN ON IMPLEMENTATION AND UTILIZATION OF FLEXIBLE PERSONNEL MANAGEMENT AUTHORITIES IN DEPARTMENT OF DEFENSE LABORATORIES.

(a) PLAN REQUIRED.—The Under Secretary of Defense for Acquisition, Technology, and Logistics and the Under Secretary of Defense for Personnel and Readiness shall jointly develop a plan for the effective utilization of the personnel management authorities referred to in subsection (b) in order to increase the mission responsiveness, efficiency, and effectiveness of Department of Defense laboratories.

(b) COVERED AUTHORITIES.—The personnel management authorities referred to in this subsection are the personnel management authorities granted to the Secretary of Defense by the provisions of law as follows:

(1) Section 342(b) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2721), as amended by section 1114 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398 (114 Stat. 1654A–315)).

(2) Section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 5 U.S.C. 3104 note).

(3) Section 9902(c) of title 5, United States Code.

(4) Such other provisions of law as the Under Secretaries jointly consider appropriate for purposes of this section.

(c) PLAN ELEMENTS.—The plan under subsection (a) shall—

(1) include such elements as the Under Secretaries jointly consider appropriate to provide for the effective utilization of the personnel management authorities referred to in subsection (b) as described in subsection (a), including the recommendations of the Under Secretaries for such additional authorities, including authorities for demonstration programs or projects, as are necessary to achieve the effective utilization of such personnel management authorities; and

(2) include procedures, including a schedule for review and decisions, on proposals to modify

current demonstration programs or projects, or to initiate new demonstration programs or projects, on flexible personnel management at Department laboratories

(d) SUBMITTAL TO CONGRESS.—The Under Secretaries shall jointly submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the plan under subsection (a) not later than December 1, 2005.

TITLE XII—MATTERS RELATING TO OTHER NATIONS

Subtitle A—Matters Relating to Iraq, Afghanistan, and Global War on Terrorism

Sec. 1201. Commanders' Emergency Response Program.
Sec. 1202. Assistance to Iraq and Afghanistan military and security forces.
Sec. 1203. Redesignation and modification of authorities relating to Inspector General of the Coalition Provisional Authority.
Sec. 1204. Presidential report on strategy for stabilization of Iraq.
Sec. 1205. Guidance on contractors supporting deployed forces in Iraq.
Sec. 1206. Report on contractors supporting deployed forces and reconstruction efforts in Iraq.
Sec. 1207. United Nations Oil-for-Food Program.
Sec. 1208. Support of military operations to combat terrorism.

Subtitle B—Counterproliferation Matters

Sec. 1211. Defense international counterproliferation programs.
Sec. 1212. Policy and sense of Congress on nonproliferation of ballistic missiles.
Sec. 1213. Sense of Congress on the global partnership against the spread of weapons of mass destruction.
Sec. 1214. Report on collaborative measures to reduce the risks of a launch of Russian nuclear weapons.

Subtitle C—Other Matters

Sec. 1221. Authority for humanitarian assistance for the detection and clearance of landmines extended to include other explosive remnants of war.
Sec. 1222. Expansion of entities of the People's Republic of China subject to certain presidential authorities when operating in the United States.
Sec. 1223. Assignment of NATO naval personnel to submarine safety programs.
Sec. 1224. Availability of Warsaw Initiative Funds for new NATO members.
Sec. 1225. Bilateral exchanges and trade in defense articles and defense services between the United States and the United Kingdom and Australia.
Sec. 1226. Study on missile defense cooperation.

Subtitle A—Matters Relating to Iraq, Afghanistan, and Global War on Terrorism

SEC. 1201. COMMANDERS' EMERGENCY RESPONSE PROGRAM.

(a) FISCAL YEAR 2005 AUTHORITY.—During fiscal year 2005, from funds made available to the Department of Defense for operation and maintenance pursuant to title XV, not to exceed $300,000,000 may be used to provide funds—

(1) for the Commanders' Emergency Response Program, established by the Administrator of the Coalition Provisional Authority for the purpose of enabling United States military commanders in Iraq to respond to urgent humanitarian relief and reconstruction requirements within their areas of responsibility by carrying out programs that will immediately assist the Iraqi people; and

(2) for a similar program to assist the people of Afghanistan.

(b) QUARTERLY REPORTS.—Not later than 15 days after the end of each fiscal-year quarter (beginning with the first quarter of fiscal year 2005), the Secretary of Defense shall submit to the congressional defense committees a report regarding the source of funds and the allocation and use of funds during that quarter that were made available pursuant to the authority provided in this section or under any other provision of law for the purposes stated in subsection (a).

(c) WAIVER AUTHORITY.—For purposes of the exercise of the authority provided by this section or any other provision of law making funding available for the Commanders' Emergency Response Program referred to in subsection (a) (including a program referred to in paragraph (2) of that subsection), the Secretary may waive any provision of law not contained in this section that would (but for the waiver) prohibit, restrict, limit, or otherwise constrain the exercise of that authority.

(d) REVIEW OF LAWS.—Not later than 120 days after the date of the enactment of this Act, the Secretary shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report identifying all provisions of law that (if not waived) would prohibit, restrict, limit, or otherwise constrain the exercise of the authority provided in this section or any other provision of law using funds available for the purposes stated in subsection (a).

SEC. 1202. ASSISTANCE TO IRAQ AND AFGHANISTAN MILITARY AND SECURITY FORCES.

(a) AUTHORITY.—The Secretary of Defense may provide assistance under this section to Iraq and Afghanistan military and security forces. Such assistance shall be provided, subject to the provisions of this section, solely to enhance the ability of such forces to combat terrorism and support United States or coalition military operations in Iraq and Afghanistan, respectively.

(b) TYPE OF ASSISTANCE.—Assistance provided under subsection (a) may include equipment, supplies, services, and training.

(c) LIMITATIONS.—Assistance under this section or under any other provision of law for the purpose described in subsection (a) may be provided only from funds available to the Department of Defense for fiscal year 2005 for operation and maintenance under title XV. The total amount of such assistance may not exceed $500,000,000.

(d) CONGRESSIONAL NOTIFICATION.—Before any provision of assistance under this section or any other provision of law for the purpose described in subsection (a), the Secretary of Defense shall submit to the congressional defense committees a notification of the assistance proposed to be provided. Any such notification shall be submitted not less than 15 days before the provision of such assistance.

(e) MILITARY AND SECURITY FORCES DEFINED.—For purposes of this section, the term "military and security forces" means national armies, national guard forces, border security forces, civil defense forces, infrastructure protection forces, and police.

SEC. 1203. REDESIGNATION AND MODIFICATION OF AUTHORITIES RELATING TO INSPECTOR GENERAL OF THE COALITION PROVISIONAL AUTHORITY.

(a) REDESIGNATION.—(1) Subsections (b) and (c)(1) of section 3001 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108-106; 117 Stat. 1234; 5 U.S.C. App. 3 section 8G note) are each amended by striking "Office of the Inspector General of the Coalition Provisional Authority" and inserting "Office of the Special Inspector General for Iraq Reconstruction".

(2) Subsection (c)(1) of such section is further amended by striking "Inspector General of the Coalition Provisional Authority" and inserting "Special Inspector General for Iraq Reconstruction (in this section referred to as the 'Inspector General')".

(3)(A) The heading of such section is amended to read as follows:

"SEC. 3001. SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION.".

(B) The heading of title III of such Act is amended to read as follows:

"TITLE III—SPECIAL INSPECTOR GENERAL FOR IRAQ RECONSTRUCTION".

(b) CONTINUATION IN OFFICE.—The individual serving as the Inspector General of the Coalition Provisional Authority as of the date of the enactment of this Act may continue to serve in that position after that date without reappointment under paragraph (1) of section 3001(c) of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004, but remaining subject to removal as specified in paragraph (4) of that section.

(c) PURPOSES.—Subsection (a) of such section is amended—

(1) in paragraph (1), by striking "of the Coalition Provisional Authority (CPA)" and inserting "funded with amounts appropriated or otherwise made available to the Iraq Relief and Reconstruction Fund";

(2) in paragraph (2)(B), by striking "fraud" and inserting "waste, fraud,"; and

(3) in paragraph (3), by striking "the head of the Coalition Provisional Authority" and inserting "the Secretary of State and the Secretary of Defense".

(d) RESPONSIBILITIES OF ASSISTANT INSPECTOR GENERAL FOR AUDITING.—Subsection (d)(1) of such section is amended by striking "of the Coalition Provisional Authority" and inserting "supported by the Iraq Relief and Reconstruction Fund".

(e) SUPERVISION.—Such section is further amended—

(1) in subsection (e)—

(A) in paragraph (1), by striking "the head of the Coalition Provisional Authority" and inserting "the Secretary of State and the Secretary of Defense"; and

(B) in paragraph (2)—

(i) by striking "Neither the head of the Coalition Provisional Authority," and all that follows through "nor any other officer" and inserting "No officer"; and

(ii) by striking "investigation," and all that follows through "course of any" and inserting "investigation related to the Iraq Relief and Reconstruction Fund or from issuing any subpoena during the course of any such";

(2) in subsection (h)—

(A) in paragraphs (4)(B) and (5), by striking "head of the Coalition Provisional Authority" and inserting "Secretary of State or Secretary of Defense, as appropriate,"; and

(B) in paragraph (5), by striking "at the central and field locations of the Coalition Provisional Authority" and inserting "within the Department of Defense or at appropriate locations of the Department of State in Iraq";

(3) in subsection (j)—

(A) in paragraph (1), by striking "the head of the Coalition Provisional Authority" and inserting "the Secretary of State and the Secretary of Defense"; and

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) by striking "the head of the Coalition Provisional Authority" the first place it appears and inserting "the Secretary of State or the Secretary of Defense"; and

(i) by striking "the head of the Coalition Provisional Authority" the second place it appears and inserting "the Secretary of State or the Secretary of Defense, as the case may be,"; and

(ii) in subparagraph (B), by striking "the head of the Coalition Provisional Authority" and inserting "the Secretary of State or the Secretary of Defense, as the case may be,"; and

(4) in subsection (k), by striking "the head of the Coalition Provisional Authority shall" both places it appears and inserting "the Secretary of State and the Secretary of Defense shall jointly".

(f) DUTIES.—Subsection (f)(1) of such section is amended—

(1) in the matter preceding subparagraph (A), by striking "appropriated funds by the Coalition Provisional Authority in Iraq" and inserting "amounts appropriated or otherwise made available to the Iraq Relief and Reconstruction Fund"; and

(2) in subparagraph (D), by striking "the Coalition Provisional Authority," and all that follows through "Government, and" and inserting "departments, agencies, and entities of the United States and".

(g) INTERAGENCY COORDINATION.—Subsection (f) of such section is further amended by striking paragraphs (4) and (5) and inserting the following new paragraph (4):

"(4) In carrying out the duties, responsibilities, and authorities of the Inspector General under this section, the Inspector General shall coordinate with, and receive the cooperation of, each of the following:

"(A) The Inspector General of the Department of State.

"(B) The Inspector General of the Department of Defense.

"(C) The Inspector General of the United States Agency for International Development.".

(h) POWERS AND AUTHORITIES.—Subsection (g)(1) of such section is amended by inserting before the period the following: ", including the authorities under subsection (e) of such section".

(i) REPORTS.—Subsection (i) of such section is amended—

(1) in paragraph (1)—

(A) by striking the first sentence and inserting the following: "Not later than 30 days after the end of each fiscal-year quarter, the Inspector General shall submit to the appropriate committees of Congress a report summarizing, for the period of that quarter and, to the extent possible, the period from the end of such quarter to the time of the submission of the report, the activities during such period of the Inspector General and the activities under programs and operations funded with amounts appropriated or otherwise made available to the Iraq Relief and Reconstruction Fund.";

(B) in subparagraph (B), by striking "the Coalition Provisional Authority" and inserting "the Department of Defense, the Department of State, and the United States Agency for International Development, as applicable,";

(C) in subparagraph (E)—

(i) by striking "the Coalition Provisional Authority and of any other" ; and

(ii) by striking "appropriated funds" and inserting "amounts appropriated or otherwise made available to the Iraq Relief and Reconstruction Fund"; and

(D) in subparagraph (F)(iii), by striking "the Coalition Provisional Authority" and inserting "the contracting department or agency";

(2) in paragraph (2), by striking "by the Coalition Provisional Authority" and inserting "by any department or agency of the United States Government that involves the use of amounts appropriated or otherwise made available to the Iraq Relief and Reconstruction Fund";

(3) in paragraph (3)—

(A) by striking "Not later than June 30, 2004, and semiannually thereafter, the" and inserting "The";

(B) by striking "a report" and inserting "semiannual reports"; and

(C) and by adding at the end the following new sentence: "The first such report for a year, covering the first six months of the year, shall be submitted not later than July 31 of that year, and the second such report, covering the second six months of the year, shall be submitted not later than January 31 of the following year."; and

(4) in paragraph (4), by striking "of the Coalition Provisional Authority" and inserting "of the Department of State and of the Department of Defense".

(j) TERMINATION.—Subsection (o) of such section is amended to read as follows:

"(o) TERMINATION.—The Office of the Inspector General shall terminate on the date that is 10 months after the date, as determined by the Secretary of State and the Secretary of Defense, on which 80 percent of the amounts appropriated or otherwise made available to the Iraq Relief and Reconstruction Fund by chapter 2 of title II of this Act have been obligated.".

SEC. 1204. PRESIDENTIAL REPORT ON STRATEGY FOR STABILIZATION OF IRAQ.

(a) STAEILIZATION STRATEGY.—Not later than 120 days after the date of the enactment of this Act, the President shall submit to Congress an unclassified report (with classified annex, if necessary) on the strategy of the United States and coalition forces for stabilizing Iraq. The report shall contain a detailed explanation of the strategy, together with the following:

(1) A description of the efforts of the President to work with the United Nations to provide support for, and assistance to, the transitional government in Iraq and, in particular, the efforts of the President to negotiate and secure adoption by the United Nations Security Council of Resolution 1546.

(2) A description of the efforts of the President to continue to work with North Atlantic Treaty Organization (NATO) member states and non-NATO member states to provide support for and augment coalition forces, including—

(A) the current military forces of coalition countries deployed to Iraq;

(B) the current police forces of coalition countries deployed to Iraq;

(C) the current financial resources of coalition countries pledged and provided for the stabilization and reconstruction of Iraq; and

(D) a list of countries that have pledged to deploy military or police forces, including the schedule and level of such deployments.

(3) The strategic plan referred to in subsection (b) relating to Iraqi security forces.

(4) A description of the efforts of the United States and coalition forces to assist in the reconstruction of essential infrastructure of Iraq, including the oil industry, electricity generation, roads, schools, and hospitals.

(5) A description of the efforts of the United States, coalition partners, and relevant international agencies to assist in the development of political institutions and prepare for democratic elections in Iraq.

(6) A description of the obstacles, including financial, technical, logistic, personnel, political, and other obstacles, faced by NATO in generating and deploying military forces out of theater to locations such as Iraq.

(b) IRAQI SECURITY FORCES.—The President shall include in the report under subsection (a) a strategic plan setting forth the manner in which the coaltion will achieve the goal of establishing viable and professional Iraqi security forces able to provide for the long-term security of the Iraqi people. That strategic plan shall include at least the following:

(1) Recruiting and retention goals, shown for each service of the Iraqi security forces.

(2) Training plans for each service of the Iraqi security forces.

(3) A description of metrics by which progress toward the goal of Iraqi provision for its own security can be measured.

(4) A description of equipment needs, shown for each service of the Iraqi security forces.

(5) A resourcing plan for achieving the goals of the strategic plan.

(6) Personnel plans in terms of United States military and contractor personnel to be used in training each such service.

(7) A description of challenges faced and opportunities presented in particular regions of Iraq and a plan for addressing those challenges.

(8) A discussion of training and deployment successes and failures to the date of the report and how lessons from those successes and failures will be incorporated into the strategic plan.

(c) QUARTERLY REPORTS.—Not later than 30 days after the end of each quarter of calendar year 2005, the Secretary of Defense shall submit to the Congress a report on the actions taken under the strategic plan set forth pursuant to subsection (b) since the date of the enactment of this Act. Each such report shall be prepared in conjunction with the Secretary of State.

SEC. 1205. GUIDANCE ON CONTRACTORS SUPPORTING DEPLOYED FORCES IN IRAQ.

(a) GUIDANCE.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall issue guidance on how the Department of Defense shall manage contractor personnel who support deployed forces and shall direct the Secretaries of the military departments to develop procedures to ensure implementation of that guidance. The guidance shall—

(1) establish policies for the use of contractors to support deployed forces;

(2) delineate the roles and responsibilities of commanders regarding the management and oversight of contractor personnel who support deployed forces; and

(3) integrate into a single document other guidance and doctrine that may affect Department of Defense responsibilities to contractors in locations where members of the Armed Forces are deployed.

(b) ISSUES TO BE ADDRESSED.—The guidance issued under subsection (a) shall address at least the following matters:

(1) Warning contractor security personnel of potentially hazardous situations.

(2) Coordinating the movement of contractor security personnel, especially through areas of increased risk or planned or ongoing military operations.

(3) Rapidly identifying contractor security personnel by members of the Armed Forces.

(4) Sharing relevant threat information with contractor security personnel and receiving information gathered by contractor security personnel for use by United States and coalition forces.

(5) Providing appropriate assistance to contractor personnel who become engaged in hostile situations.

(6) Providing medical assistance for, and evacuation of, contractor personnel who become casualties as a result of enemy actions.

(7) Investigating background and qualifications of contractor security personnel and organizations.

(8) Establishing rules of engagement for armed contractor security personnel, and ensuring proper training and compliance with the rules of engagement.

(9) Establishing categories of security, intelligence, law enforcement, and criminal justice functions that are—

(A) inherently governmental functions under Subpart 7.5 of the Federal Acquisition Regulation; or

(B) although not inherently governmental functions, should not ordinarily be performed by contractors in areas of operations.

(10) Establishing procedures for making and documenting determinations about which security, intelligence, law enforcement, and criminal justice functions will be performed by military personnel and which will be performed by private companies.

(c) REPORT.—Not later than 30 days after issuing the guidance required under subsection (a), the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the guidance issued under subsection (a).

SEC. 1206. REPORT ON CONTRACTORS SUPPORTING DEPLOYED FORCES AND RECONSTRUCTION EFFORTS IN IRAQ.

(a) REPORT REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report on contractors supporting deployed forces and reconstruction efforts in Iraq.

(b) MATTERS TO BE INCLUDED.—The report required by subsection (a) shall include, at a minimum, the following matters with respect to contractors, and employees of contractors, described in subsection (a):

(1) A description of the overall chain of command and oversight mechanisms that are in place to ensure adequate command and supervision of such contractor employees in critical security roles.

(2) A description of sanctions that are available to be imposed on such a contractor employee who—

(A) fails to comply with a requirement of law or regulation that applies to such employee; or

(B) engages in other misconduct.

(3) A description of disciplinary and criminal actions brought against contractor employees during the period beginning on May 1, 2003, and ending on the date of the enactment of this Act.

(4) An explanation of the legal status of contractor employees engaged in the performance of security functions in Iraq after the transfer of sovereign power to Iraq on June 28, 2004.

(5) A specification of casualty and fatality figures for contractor employees supporting deployed forces and reconstruction efforts in Iraq, shown, to the extent practicable, in the following categories:

(A) Total casualties and total fatalities.

(B) Casualties and fatalities among—

(i) nationals of the United States;

(ii) nationals of Iraq; and

(iii) nationals of states other than the United States and Iraq.

(6) A description, to the maximum extent practicable, of incidents in which contractor employees supporting deployed forces and reconstruction efforts in Iraq have been engaged in hostile fire or other incidents of note during the period beginning on May 1, 2003, and ending on the date of the enactment of this Act.

(c) PLANS.—The Secretary shall include with the report under subsection (a) the following plans:

(1) A plan for establishing and implementing a process for collecting data on individual contractors, the value of the contracts, the number of casualties incurred, and the number of personnel in Iraq performing the following services for the Department of Defense and other Federal agencies:

(A) Personal security details.

(B) Nonmilitary site security.

(C) Nonmilitary convoy security.

(D) Interrogation services at interrogation centers operated by the Department of Defense.

(2) A plan for ensuring that military commanders in the theater of operations have accurate information on the number, types, and sources of weapons and other critical equipment (such as body armor, armored vehicles, secure communications and friend-foe identification) that contractor personnel performing services specified in paragraph (1) are authorized to possess.

(d) COORDINATION.—In the preparation of the report under this section (including the plans under subsection (c)), the Secretary of Defense shall coordinate, as appropriate, with the head of any Federal agency that is involved in the procurement of services from contractors supporting deployed forces and reconstruction efforts in Iraq. The head of any such agency shall provide to the Secretary of Defense such information as the Secretary may require about such contractors to complete the report.

SEC. 1207. UNITED NATIONS OIL-FOR-FOOD PROGRAM.

(a) ACCESS TO DOCUMENTS.—It is the sense of Congress that the Secretary of State should seek to conclude a memorandum of understanding with the Interim Government of Iraq to ensure that the United States will have access to all documents in the possession of that Government related to the United Nations Oil-for-Food Program.

(b) INFORMATION FROM THE UNITED NATIONS.—(1) The Secretary of State shall use the voice and vote of the United States in the United Nations to urge the Secretary General of the United Nations to provide to the United States copies of all audits and core documents related to the United Nations Oil-for-Food Program, including all audits, examinations, studies, reviews, or similar documents prepared by the United Nations Office of Internal Oversight Services and all responses to such documents.

(2) It is the sense of Congress that, pursuant to section 941(b)(6) of the United Nations Reform Act of 1999 (title IX of division A of H.R. 3427 of the 106th Congress, as enacted into law by section 1000(a)(7) of Public Law 106–113; 113 Stat. 1501A–483), the Comptroller General should have full and complete access to financial information relating to the United Nations, including information related to the financial transactions, organization, and activities of the United Nations Oil-for-Food Program.

(3) The Secretary of State shall facilitate access by the Comptroller General to the financial information described in paragraph (2).

(c) COOPERATION IN INVESTIGATIONS.—The head of any Executive agency (including the Secretary of State, the Secretary of Defense, the Secretary of the Treasury, and the Director of the Central Intelligence Agency) shall, upon a request in connection with an investigation of the United Nations Oil-for-Food Program made by a committee of jurisdiction of the Senate or House of Representatives, promptly provide to the chairman of that committee—

(1) access to any information or document described in subsection (a) or (b) that is under the control of such agency and responsive to the request; and

(2) cooperation in gaining access to information and documents described in subsections (a) and (b) that are not under the control of such agency, as appropriate.

(d) REVIEW OF OIL-FOR-FOOD PROGRAM BY COMPTROLLER GENERAL.—(1) The Comptroller General shall conduct a review of the United Nations Oil-for-Food Program, including the role of the United States in that program. The review—

(A) in accordance with generally accepted government auditing standards, should not interfere with any ongoing criminal investigation or inquiry related to that program; and

(B) may take into account the results of any investigation or inquiry related to that program.

(2) The head of each Executive agency shall fully cooperate with the review of the Comptroller General under paragraph (1).

(e) EXECUTIVE AGENCY DEFINED.—In this section, the term "Executive agency" has the meaning given that term in section 105 of title 5, United States Code.

SEC. 1208. SUPPORT OF MILITARY OPERATIONS TO COMBAT TERRORISM.

(a) AUTHORITY.—The Secretary of Defense may expend up to $25,000,000 during any fiscal year during which this subsection is in effect to provide support to foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating ongoing military operations by United States special operations forces to combat terrorism.

(b) PROCEDURES.—The Secretary of Defense shall establish procedures for the exercise of the authority under subsection (a). The Secretary shall notify the congressional defense committees of those procedures before any exercise of that authority.

(c) NOTIFICATION.—Upon using the authority provided in subsection (a) to make funds available for support of an approved military operation, the Secretary of Defense shall notify the congressional defense committees expeditiously, and in any event in not less than 48 hours, of the use of such authority with respect to that operation. Such a notification need be provided only once with respect to any such operation. Any such notification shall be in writing.

(d) LIMITATION ON DELEGATION.—The authority of the Secretary of Defense to make funds available under subsection (a) for support of a military operation may not be delegated.

(e) INTELLIGENCE ACTIVITIES.—This section does not constitute authority to conduct a covert action, as such term is defined in section 503(e) of the National Security Act of 1947 (50 U.S.C. 413b(e)).

(f) ANNUAL REPORT.—Not later than 30 days after the close of each fiscal year during which subsection (a) is in effect, the Secretary of Defense shall submit to the congressional defense committees a report on support provided under that subsection during that fiscal year. Each such report shall describe the support provided, including a statement of the recipient of the support and the amount obligated to provide the support.

(g) FISCAL YEAR 2005 LIMITATION.—Support may be provided under subsection (a) during fiscal year 2005 only from funds made available for operations and maintenance pursuant to title XV of this Act.

(h) PERIOD OF AUTHORITY.—The authority under subsection (a) is in effect during each of fiscal years 2005 through 2007.

Subtitle B—Counterproliferation Matters

SEC. 1211. DEFENSE INTERNATIONAL COUNTERPROLIFERATION PROGRAMS.

(a) INTERNATIONAL SECURITY PROGRAM TO PREVENT UNAUTHORIZED TRANSFER AND TRANSPORTATION OF WMDS.—Subsection (b) of section 1424 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2333) is amended to read as follows:

"(b) OTHER COUNTRIES.—The Secretary of Defense may carry out programs under subsection (a) in a country other than a country specified in that subsection if the Secretary determines that there exists in that country a significant threat of the unauthorized transfer and transportation of nuclear, biological, or chemical weapons or related materials.".

(b) INTERNATIONAL TRAINING PROGRAM TO DETER WMD PROLIFERATION.—Section 1504(e)(3)(A) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2918) is amended—

(1) by striking "The training program referred to in paragraph (1)(B) is a" and inserting "The Secretary of Defense may participate in a";

(2) by inserting "of" after "acquisition";

(3) by striking "and" after "countries,"; and

(4) by inserting before the period at the end the following: ", and in other countries in which, as determined by the Secretary of Defense, there exists a significant threat of such proliferation and acquisition".

SEC. 1212. POLICY AND SENSE OF CONGRESS ON NONPROLIFERATION OF BALLISTIC MISSILES.

(a) FINDINGS.—Congress makes the following findings:

(1) Certain countries are seeking to acquire ballistic missiles and related technologies that could be used to attack the United States or place at risk United States interests, deployed members of the Armed Forces, and allies of the United States and other friendly foreign countries.

(2) Certain countries continue to actively transfer or sell ballistic missile technologies in contravention of standards of behavior established by the United States and allies of the United States and other friendly foreign countries.

(3) The spread of ballistic missiles and related technologies worldwide has been slowed by a combination of national and international export controls, forward-looking diplomacy, and multilateral interdiction activities to restrict the development and transfer of such missiles and technologies.

(b) POLICY.—It is the policy of the United States to develop, support, and strengthen international accords and other cooperative efforts to curtail the proliferation of ballistic missiles and related technologies which could threaten the territory of the United States, allies of the United States and other friendly foreign countries, and deployed members of the Armed Forces of the United States with weapons of mass destruction.

(c) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the United States should vigorously pursue foreign policy initiatives aimed at eliminating, reducing, or retarding the proliferation of ballistic missiles and related technologies; and

(2) the United States and the international community should continue to support and strengthen established international accords and other cooperative efforts, including United Nations Security Council Resolution 1540 (April 28, 2004) and the Missile Technology Control Regime, that are designed to eliminate, reduce, or retard the proliferation of ballistic missiles and related technologies.

SEC. 1213. SENSE OF CONGRESS ON THE GLOBAL PARTNERSHIP AGAINST THE SPREAD OF WEAPONS OF MASS DESTRUCTION.

(a) COMMENDATION OF PRESIDENT.—Congress commends the President for the steps taken at the G-8 summit at Sea Island, Georgia, on June 8–10, 2004—

(1) to demonstrate continued support for the Global Partnership against the Spread of Nuclear Weapons and Materials of Mass Destruction; and

(2) to expand the Partnership (A) by welcoming new members, and (B) by using the Partnership to coordinate nonproliferation projects in Libya, Iraq, and other countries.

(b) FUTURE ACTIONS.—It is the sense of Congress that the President should seek to—

(1) expand the membership of donor nations to the Global Partnership against the Spread of Nuclear Weapons and Materials of Mass Destruction;

(2) ensure that the Russian Federation remains the primary focus of the Partnership, but also seek to fund, through the Partnership, efforts in other countries that need assistance to secure or dismantle their own potentially vulnerable weapons or materials;

(3) develop for the Partnership clear program goals;

(4) develop for the Partnership transparent project prioritization and planning;

(5) develop for the Partnership project implementation milestones under periodic review;

(6) develop under the Partnership agreements between partners for project implementation; and

(7) give high priority and senior-level attention to resolving disagreements on site access and worker liability under the Partnership.

SEC. 1214. REPORT ON COLLABORATIVE MEASURES TO REDUCE THE RISKS OF A LAUNCH OF RUSSIAN NUCLEAR WEAPONS.

Not later than November 1, 2005, the Secretary of Defense shall submit to Congress a report on collaborative measures between the United States and the Russian Federation to reduce the risks of a launch of a nuclear-armed ballistic missile as a result of accident, misinformation, miscalculation, or unauthorized use. The report shall provide—

(1) a description and assessment of the collaborative measures that are currently in effect;

(2) a description and assessment of other collaborative measures that could be pursued in the future;

(3) an assessment of the potential contributions of such collaborative measures to the national security of the United States;

(4) an assessment of the effect of such collaborative measures on relations between the United States and the Russian Federation;

(5) a description of the obstacles and opportunities associated with pursuing such collaborative measures; and

(6) an assessment of the future of the Joint Data Exchange Center.

Subtitle C—Other Matters

SEC. 1221. AUTHORITY FOR HUMANITARIAN ASSISTANCE FOR THE DETECTION AND CLEARANCE OF LANDMINES EXTENDED TO INCLUDE OTHER EXPLOSIVE REMNANTS OF WAR.

(a) EXTENSION OF AUTHORITY.—Subsection (e)(5) of section 401 of title 10, United States Code, is amended by inserting "and other explosive remnants of war" after "landmines" both places it appears.

(b) CONFORMING AMENDMENTS.—Such section is further amended—

(1) in subsection (a)(4)(A), by inserting "or other explosive remnants of war" after "landmines"; and

(2) in subsection (c)(2)(B), by striking "landmine clearing equipment or supplies" and inserting "equipment or supplies for clearing landmines or other explosive remnants of war".

SEC. 1222. EXPANSION OF ENTITIES OF THE PEOPLE'S REPUBLIC OF CHINA SUBJECT TO CERTAIN PRESIDENTIAL AUTHORITIES WHEN OPERATING IN THE UNITED STATES.

Section 1237(b)(4)(B)(i) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (50 U.S.C. 1701 note) is amended—

(1) by inserting ", or affiliated with," after "or controlled by"; and

(2) by inserting after "the People's Liberation Army" the following: "or a ministry of the government of the People's Republic of China or that is owned or controlled by an entity affiliated with the defense industrial base of the People's Republic of China".

SEC. 1223. ASSIGNMENT OF NATO NAVAL PERSONNEL TO SUBMARINE SAFETY PROGRAMS.

(a) IN GENERAL.—Chapter 631 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 7234. Submarine safety programs: participation of NATO naval personnel

"(a) ACCEPTANCE OF ASSIGNMENT OF FOREIGN NAVAL PERSONNEL.—In order to facilitate the development, standardization, and interoperability of submarine vessel safety and rescue systems and procedures, the Secretary of the Navy may conduct a program under which members of the naval service of any of the member nations of the North Atlantic Treaty Organization may be assigned to United States commands to work on such systems and procedures.

"(b) RECIPROCITY NOT REQUIRED.—The authority under subsection (a) is not an exchange program. Reciprocal assignments of members of the Navy to the naval service of a foreign country is not a condition for the exercise of such authority.

"(c) COSTS FOR FOREIGN PERSONNEL.—(1) The United States may not pay the following costs for a member of a foreign naval service sent to the United States under the program authorized by this section:

"(A) Salary.

"(B) Per diem.

"(C) Cost of living.

"(D) Travel costs.

"(E) Cost of language or other training.

"(F) Other costs.

"(2) Paragraph (1) does not apply to the following costs, which may be paid by the United States:

"(A) The cost of temporary duty directed by the Secretary of the Navy or an officer of the Navy authorized to do so.

"(B) The cost of training programs conducted to familiarize, orient, or certify members of foreign naval services regarding unique aspects of their assignments.

"(C) Costs incident to the use of the facilities of the Navy in the performance of assigned duties.

"(d) RELATIONSHIP TO OTHER AUTHORITY.—The provisions of this section shall apply in the exercise of any authority of the Secretary of the Navy to enter into an agreement with the government of a foreign country, subject to the concurrence of the Secretary of State, to provide for the assignment of members of the naval service of the foreign country to a Navy submarine safety program. The Secretary of the Navy may prescribe regulations for the application of this section in the exercise of such authority.

"(e) TERMINATION OF AUTHORITY.—The Secretary of the Navy may not accept the assignment of a member of the naval service of a foreign country under this section after September 30, 2008.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"7234. Submarine safety programs: participation of NATO naval personnel.".

SEC. 1224. AVAILABILITY OF WARSAW INITIATIVE FUNDS FOR NEW NATO MEMBERS.

(a) AVAILABILITY OF FUNDS.—Of the amount authorized to be appropriated by section 301(5) for operation and maintenance, defense-wide activities, and available for the Defense Security Cooperation Agency for the Warsaw Initiative Funds (WIF), $4,000,000 may be available only in fiscal year 2005 for the participation of the North Atlantic Treaty Organization (NATO) members set forth in subsection (b) in the exercises and programs of the Partnership for Peace program of the North Atlantic Treaty Organization.

(b) NATO MEMBERS.—The North Atlantic Treaty Organization members set forth in this subsection are as follows:

(1) Bulgaria.

(2) Estonia.

(3) Latvia.

(4) Lithuania.

(5) Romania.

(6) Slovakia.

(7) Slovenia.

SEC. 1225. BILATERAL EXCHANGES AND TRADE IN DEFENSE ARTICLES AND DEFENSE SERVICES BETWEEN THE UNITED STATES AND THE UNITED KINGDOM AND AUSTRALIA.

(a) POLICY.—It is the policy of Congress that bilateral exchanges and trade in defense articles and defense services between the United States and the United Kingdom and Australia are in the national security interest of the United States and that such exchanges and trade should be subjected to accelerated review and processing consistent with national security and the requirements of the Arms Export Control Act (22 U.S.C. 2751 et seq.).

(b) REQUIREMENT.—The Secretary of State shall ensure that any license application submitted for the export of defense articles or defense services to Australia or the United Kingdom is expeditiously processed by the Department of State, in consultation with the Department of Defense, without referral to any other Federal department or agency, except where the item is classified or exceptional circumstances apply.

(c) REGULATIONS.—The President shall ensure that regulations are prescribed to implement this section.

SEC. 1226. STUDY ON MISSILE DEFENSE COOPERATION.

(a) REQUIREMENT FOR STUDY.—The Secretary of Defense, in consultation with the Secretary of State, shall carry out a study to determine the advisability of authorizing or requiring—

(1) the Secretary of State to establish procedures for considering technical assistance agreements and related amendments and munitions license applications for the export of defense items related to missile defense not later than 30 days after receiving such agreements, amendments, and munitions license applications, except in cases in which the Secretary of State determines that additional time is required to complete a review of a technical assistance agreement or related amendment or a munitions license application for foreign policy or national security reasons, including concerns regarding the proliferation of ballistic missile technology; and

(2) the Secretary of Defense to establish procedures to increase the efficiency and transparency of the practices used by the Department of Defense to review technical assistance agreements and related amendments and munitions license applications related to international cooperation on missile defense that are referred to the Department.

(b) FEASIBILITY OF REQUIRING COMPREHENSIVE AUTHORIZATIONS FOR MISSILE DEFENSE.—In carrying out the study under subsection (a), the Secretary of Defense, in consultation with the Secretary of State, shall examine the feasibility of providing major project authorizations for programs related to missile defense similar to the comprehensive export authorization specified in section 126.14 of the International Traffic in Arms Regulations (section 126.14 of title 22, Code of Federal Regulations).

(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall, in consultation with the Secretary of State, submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on International Relations of the House of Representatives a report on the results of the study under subsection (a). The report shall include—

(1) the determinations resulting from the study, including a determination on the feasibility of providing the major project authorization for projects related to missile defense described in subsection (b); and

(2) a discussion of the justification for each such determination.

(d) DEFINITION OF DEFENSE ITEMS.—In this section, the term "defense items" has the meaning given that term in section 38(j)(4)(A) of the Arms Export Control Act (22 U.S.C. 2778(j)(4)(A)).

TITLE XIII—COOPERATIVE THREAT REDUCTION WITH STATES OF THE FORMER SOVIET UNION

Sec. 1301. Specification of Cooperative Threat Reduction programs and funds.
Sec. 1302. Funding allocations.
Sec. 1303. Temporary authority to waive limitation on funding for chemical weapons destruction facility in Russia.
Sec. 1304. Inclusion of descriptive summaries in annual Cooperative Threat Reduction reports and budget justification materials.

SEC. 1301. SPECIFICATION OF COOPERATIVE THREAT REDUCTION PROGRAMS AND FUNDS.

(a) SPECIFICATION OF CTR PROGRAMS.—For purposes of section 301 and other provisions of this Act, Cooperative Threat Reduction programs are the programs specified in section 1501(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2731; 50 U.S.C. 2362 note).

(b) FISCAL YEAR 2005 COOPERATIVE THREAT REDUCTION FUNDS DEFINED.—As used in this title, the term "fiscal year 2005 Cooperative Threat Reduction funds" means the funds appropriated pursuant to the authorization of appropriations in section 301 for Cooperative Threat Reduction programs.

(c) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to the authorization of appropriations in section 301 for Cooperative Threat Reduction programs shall be available for obligation for three fiscal years.

SEC. 1302. FUNDING ALLOCATIONS.

(a) FUNDING FOR SPECIFIC PURPOSES.—Of the $409,200,000 authorized to be appropriated to the Department of Defense for fiscal year 2005 in section 301(19) for Cooperative Threat Reduction programs, the following amounts may be obligated for the purposes specified:

(1) For strategic offensive arms elimination in Russia, $58,522,000.

(2) For nuclear weapons storage security in Russia, $48,672,000.

(3) For nuclear weapons transportation security in Russia, $26,300,000.

(4) For weapons of mass destruction proliferation prevention in the states of the former Soviet Union, $40,030,000.

(5) For chemical weapons destruction in Russia, $158,400,000.

(6) For biological weapons proliferation prevention in the former Soviet Union, $54,959,000.

(7) For defense and military contacts, $8,000,000.

(8) For activities designated as Other Assessments/Administrative Support, $14,317,000.

(b) REPORT ON OBLIGATION OR EXPENDITURE OF FUNDS FOR OTHER PURPOSES.—No fiscal year 2005 Cooperative Threat Reduction funds may be obligated or expended for a purpose other than a purpose listed in paragraphs (1) through (8) of subsection (a) until 30 days after the date that the Secretary of Defense submits to Congress a report on the purpose for which the funds will be obligated or expended and the amount of funds to be obligated or expended. Nothing in the preceding sentence shall be construed as authorizing the obligation or expenditure of fiscal year 2005 Cooperative Threat Reduction funds for a purpose for which the obligation or expenditure of such funds is specifically prohibited under this title or any other provision of law.

(c) LIMITED AUTHORITY TO VARY INDIVIDUAL AMOUNTS.—(1) Subject to paragraphs (2) and (3), in any case in which the Secretary of Defense determines that it is necessary to do so in the national interest, the Secretary may obligate amounts appropriated for fiscal year 2005 for a purpose listed in any of the paragraphs in subsection (a) in excess of the specific amount authorized for that purpose.

(2) An obligation of funds for a purpose stated in any of the paragraphs in subsection (a) in excess of the specific amount authorized for such purpose may be made using the authority provided in paragraph (1) only after—

(A) the Secretary submits to Congress notification of the intent to do so together with a complete discussion of the justification for doing so; and

(B) 15 days have elapsed following the date of the notification.

(3) The Secretary may not, under the authority provided in paragraph (1), obligate amounts for a purpose stated in any of paragraphs (5) through (8) of subsection (a) in excess of 125 percent of the specific amount authorized for such purpose.

SEC. 1303. TEMPORARY AUTHORITY TO WAIVE LIMITATION ON FUNDING FOR CHEMICAL WEAPONS DESTRUCTION FACILITY IN RUSSIA.

(a) TEMPORARY AUTHORITY.—Section 1305 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65; 22 U.S.C. 5952 note) shall not apply for a calendar year for which the President submits to Congress a written certification that includes—

(1) a statement as to why a waiver of the conditions described in such section 1305 is important to the national security interests of the United States;

(2) a full and complete justification for the waiver of the conditions; and

(3) a plan to promote a full and accurate disclosure by Russia regarding the size, content, status, and location of its chemical weapons stockpile.

(b) EXPIRATION.—The authority in subsection (a) shall expire on December 31, 2006, and no waiver shall remain in effect after that date.

SEC. 1304. INCLUSION OF DESCRIPTIVE SUMMARIES IN ANNUAL COOPERATIVE THREAT REDUCTION REPORTS AND BUDGET JUSTIFICATION MATERIALS.

Section 1307 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 112 Stat. 2165; 22 U.S.C. 5952 note) is amended—

(1) in subsection (a), by striking "as part of the Secretary's annual budget request to Congress" in the matter preceding paragraph (1) and inserting "in the materials and manner specified in subsection (c)"; and

(2) by adding at the end the following new subsection:

"(c) INCLUSION IN CERTAIN MATERIALS SUBMITTED TO CONGRESS.—The summary required to be submitted to Congress in a fiscal year under subsection (a) shall be set forth by project category, and by amounts specified in paragraphs (1) and (2) of that subsection in connection with such project category, in each of the following:

"(1) The annual report on activities and assistance under Cooperative Threat Reduction programs required in such fiscal year under section 1308 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398).

"(2) The budget justification materials submitted to Congress in support of the Department of Defense budget for the fiscal year succeeding such fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code).".

TITLE XIV—SUNKEN MILITARY CRAFT

Sec. 1401. Preservation of title to sunken military craft and associated contents.
Sec. 1402. Prohibitions.
Sec. 1403. Permits.
Sec. 1404. Penalties.
Sec. 1405. Liability for damages.
Sec. 1406. Relationship to other laws.
Sec. 1407. Encouragement of agreements with foreign countries.
Sec. 1408. Definitions.

SEC. 1401. PRESERVATION OF TITLE TO SUNKEN MILITARY CRAFT AND ASSOCIATED CONTENTS.

Right, title, and interest of the United States in and to any United States sunken military craft—

(1) shall not be extinguished except by an express divestiture of title by the United States; and

(2) shall not be extinguished by the passage of time, regardless of when the sunken military craft sank.

SEC. 1402. PROHIBITIONS.

(a) UNAUTHORIZED ACTIVITIES DIRECTED AT SUNKEN MILITARY CRAFT.—No person shall engage in or attempt to engage in any activity directed at a sunken military craft that disturbs, removes, or injures any sunken military craft, except—

(1) as authorized by a permit under this title;

(2) as authorized by regulations issued under this title; or

(3) as otherwise authorized by law.

(b) POSSESSION OF SUNKEN MILITARY CRAFT.—No person may possess, disturb, remove, or injure any sunken military craft in violation of—

(1) this section; or

(2) any prohibition, rule, regulation, ordinance, or permit that applies under any other applicable law.

(c) LIMITATIONS ON APPLICATION.—

(1) ACTIONS BY UNITED STATES.—This section shall not apply to actions taken by, or at the direction of, the United States.

(2) FOREIGN PERSONS.—This section shall not apply to any action by a person who is not a citizen, national, or resident alien of the United States, except in accordance with—

(A) generally recognized principles of international law;

(B) an agreement between the United States and the foreign country of which the person is a citizen; or

(C) in the case of an individual who is a crew member or other individual on a foreign vessel or foreign aircraft, an agreement between the United States and the flag State of the foreign vessel or aircraft that applies to the individual.

(3) LOAN OF SUNKEN MILITARY CRAFT.—This section does not prohibit the loan of United States sunken military craft in accordance with regulations issued by the Secretary concerned.

SEC. 1403. PERMITS.

(a) IN GENERAL.—The Secretary concerned may issue a permit authorizing a person to engage in an activity otherwise prohibited by section 1402 with respect to a United States sunken military craft, for archaeological, historical, or educational purposes, in accordance with regulations issued by such Secretary that implement this section.

(b) CONSISTENCY WITH OTHER LAWS.—The Secretary concerned shall require that any activity carried out under a permit issued by such Secretary under this section must be consistent with all requirements and restrictions that apply under any other provision of Federal law.

(c) CONSULTATION.—In carrying out this section (including the issuance after the date of the enactment of this Act of regulations implementing this section), the Secretary concerned shall consult with the head of each Federal agency having authority under Federal law with respect to activities directed at sunken military craft or the locations of such craft.

(d) APPLICATION TO FOREIGN CRAFT.—At the request of any foreign State, the Secretary of the Navy, in consultation with the Secretary of State, may carry out this section (including regulations promulgated pursuant to this section) with respect to any foreign sunken military craft of that foreign State located in United States waters.

SEC. 1404. PENALTIES.

(a) IN GENERAL.—Any person who violates this title, or any regulation or permit issued under this title, shall be liable to the United States for a civil penalty under this section.

(b) ASSESSMENT AND AMOUNT.—The Secretary concerned may assess a civil penalty under this section, after notice and an opportunity for a hearing, of not more than $100,000 for each violation.

(c) CONTINUING VIOLATIONS.—Each day of a continued violation of this title or a regulation or permit issued under this title shall constitute a separate violation for purposes of this section.

(d) IN REM LIABILITY.—A vessel used to violate this title shall be liable in rem for a penalty under this section for such violation.

(e) OTHER RELIEF.—If the Secretary concerned determines that there is an imminent risk of disturbance of, removal of, or injury to any sunken military craft, or that there has been actual disturbance of, removal of, or injury to a sunken military craft, the Attorney General, upon request of the Secretary concerned, may seek such relief as may be necessary to abate such risk or actual disturbance, removal, or injury and to return or restore the sunken military craft. The district courts of the United States shall have jurisdiction in such a case to order such relief as the public interest and the equities of the case may require.

(f) LIMITATIONS.—An action to enforce a violation of section 1402 or any regulation or permit issued under this title may not be brought more than 8 years after the date on which—

(1) all facts material to the right of action are known or should have been known by the Secretary concerned; and

(2) the defendant is subject to the jurisdiction of the appropriate district court of the United States or administrative forum.

SEC. 1405. LIABILITY FOR DAMAGES.

(a) IN GENERAL.—Any person who engages in an activity in violation of section 1402 or any regulation or permit issued under this title that disturbs, removes, or injures any United States sunken military craft shall pay the United States enforcement costs and damages resulting from such disturbance, removal, or injury.

(b) INCLUDED DAMAGES.—Damages referred to in subsection (a) may include—

(1) the reasonable costs incurred in storage, restoration, care, maintenance, conservation, and curation of any sunken military craft that is disturbed, removed, or injured in violation of section 1402 or any regulation or permit issued under this title; and

(2) the cost of retrieving, from the site where the sunken military craft was disturbed, removed, or injured, any information of an archaeological, historical, or cultural nature.

SEC. 1406. RELATIONSHIP TO OTHER LAWS.

(a) IN GENERAL.—Except to the extent that an activity is undertaken as a subterfuge for activities prohibited by this title, nothing in this title is intended to affect—

(1) any activity that is not directed at a sunken military craft; or

(2) the traditional high seas freedoms of navigation, including—

(A) the laying of submarine cables and pipelines;

(B) operation of vessels;

(C) fishing; or

(D) other internationally lawful uses of the sea related to such freedoms.

(b) INTERNATIONAL LAW.—This title and any regulations implementing this title shall be applied in accordance with generally recognized principles of international law and in accordance with the treaties, conventions, and other agreements to which the United States is a party.

(c) LAW OF FINDS.—The law of finds shall not apply to—

(1) any United States sunken military craft, wherever located; or

(2) any foreign sunken military craft located in United States waters.

(d) LAW OF SALVAGE.—No salvage rights or awards shall be granted with respect to—

(1) any United States sunken military craft without the express permission of the United States; or

(2) any foreign sunken military craft located in United States waters without the express permission of the relevant foreign state.

(e) LAW OF CAPTURE OR PRIZE.—Nothing in this title is intended to alter the international law of capture or prize with respect to sunken military craft.

(f) LIMITATION OF LIABILITY.—Nothing in sections 4281 through 4287 and 4289 of the Revised Statutes (46 U.S.C. App. 181 et seq.) or section 3 of the Act of February 13, 1893 (chapter 105; 27 Stat. 445; 46 U.S.C. App. 192), shall limit the liability of any person under this section.

(g) AUTHORITIES OF THE COMMANDANT OF THE COAST GUARD.—Nothing in this title is intended to preclude or limit the application of any other law enforcement authorities of the Commandant of the Coast Guard.

(h) PRIOR DELEGATIONS, AUTHORIZATIONS, AND RELATED REGULATIONS.—Nothing in this title shall invalidate any prior delegation, authorization, or related regulation that is consistent with this title.

(i) CRIMINAL LAW.—Nothing in this title is intended to prevent the United States from pursuing criminal sanctions for plundering of wrecks, larceny of Government property, or violation of any applicable criminal law.

SEC. 1407. ENCOURAGEMENT OF AGREEMENTS WITH FOREIGN COUNTRIES.

The Secretary of State, in consultation with the Secretary of Defense, is encouraged to negotiate and conclude bilateral and multilateral agreements with foreign countries with regard to sunken military craft consistent with this title.

SEC. 1408. DEFINITIONS.

In this title:

(1) ASSOCIATED CONTENTS.—The term "associated contents" means—

(A) the equipment, cargo, and contents of a sunken military craft that are within its debris field; and

(B) the remains and personal effects of the crew and passengers of a sunken military craft that are within its debris field.

(2) SECRETARY CONCERNED.—The term "Secretary concerned" means—

(A) subject to subparagraph (B), the Secretary of a military department; and

(B) in the case of a Coast Guard vessel, the Secretary of the Department in which the Coast Guard is operating.

(3) SUNKEN MILITARY CRAFT.—The term "sunken military craft" means all or any portion of—

(A) any sunken warship, naval auxiliary, or other vessel that was owned or operated by a government on military noncommercial service when it sank;

(B) any sunken military aircraft or military spacecraft that was owned or operated by a government when it sank; and

(C) the associated contents of a craft referred to in subparagraph (A) or (B),

if title thereto has not been abandoned or transferred by the government concerned.

(4) UNITED STATES CONTIGUOUS ZONE.—The term "United States contiguous zone" means the contiguous zone of the United States under Presidential Proclamation 7219, dated September 2, 1999.

(5) UNITED STATES INTERNAL WATERS.—The term "United States internal waters" means all waters of the United States on the landward side of the baseline from which the breadth of the United States territorial sea is measured.

(6) UNITED STATES TERRITORIAL SEA.—The term "United States territorial sea" means the waters of the United States territorial sea under Presidential Proclamation 5928, dated December 27, 1988.

(7) UNITED STATES WATERS.—The term "United States waters" means United States internal waters, the United States territorial sea, and the United States contiguous zone.

TITLE XV—AUTHORIZATION FOR INCREASED COSTS DUE TO OPERATION IRAQI FREEDOM AND OPERATION ENDURING FREEDOM

Sec. 1501. Purpose.
Sec. 1502. Army procurement.
Sec. 1503. Navy and Marine Corps procurement.
Sec. 1504. Defense-wide activities procurement.
Sec. 1505. Operation and maintenance.
Sec. 1506. Defense working capital funds.
Sec. 1507. Iraq Freedom Fund.
Sec. 1508. Defense health program.
Sec. 1509. Military personnel.
Sec. 1510. Treatment as additional authorizations.
Sec. 1511. Transfer authority.

SEC. 1501. PURPOSE.

The purpose of this title is to authorize emergency appropriations for the Department of Defense for fiscal year 2005 to provide funds for additional costs due to Operation Iraqi Freedom and Operation Enduring Freedom. Funds in this title are available upon the enactment of this Act.

SEC. 1502. ARMY PROCUREMENT.

Funds are hereby authorized to be appropriated for fiscal year 2005 for procurement accounts of the Army in amounts as follows:

(3) For weapons and tracked combat vehicles, $50,000,000.

(4) For ammunition, $110,000,000.

(5) For other procurement, $755,000,000.

(6) For National Guard and Reserve equipment, $50,000,000.

SEC. 1503. NAVY AND MARINE CORPS PROCUREMENT.

(a) MARINE CORPS.—Funds are hereby authorized to be appropriated for fiscal year 2005 for the procurement account for the Marine Corps in the amount of $150,000,000.

(b) NAVY AND MARINE CORPS AMMUNITION.—Funds are hereby authorized to be appropriated for fiscal year 2005 for the procurement account for ammunition for the Navy and the Marine Corps in the amount of $30,000,000.

SEC. 1504. DEFENSE-WIDE ACTIVITIES PROCUREMENT.

Funds are hereby authorized to be appropriated for fiscal year 2005 for the procurement account for Defense-wide procurement in the amount of $50,000,000.

SEC. 1505. OPERATION AND MAINTENANCE.

Funds are hereby authorized to be appropriated for fiscal year 2005 for the use of the Armed Forces for expenses, not otherwise provided for, operation and maintenance, in amounts as follows:

(1) For the Army, $13,550,000,000.

(2) For the Navy, $367,000,000.

(3) For the Marine Corps, $1,665,000,000.

(4) For the Air Force, $419,000,000.

(5) For Defense-wide, $404,000,000.

SEC. 1506. DEFENSE WORKING CAPITAL FUNDS.

Funds are hereby authorized to be appropriated for fiscal year 2005 for Defense Working Capital Program in the amount of $1,478,000,000.

SEC. 1507. IRAQ FREEDOM FUND.

(a) IN GENERAL.—Funds are hereby authorized to be appropriated for fiscal year 2005 for the account of the Iraq Freedom Fund in amount of $3,892,000,000, to remain available for transfer to other accounts in this title until September 30, 2006. Amounts of authorization so transferred shall be merged with and be made available for the same purposes as the authorization to which transferred. Of the amounts provided in this section $1,800,000,000 shall only be used for classified programs.

(b) NOTICE TO CONGRESS.—A transfer may be made from the Iraq Freedom Fund only after the Secretary of Defense notifies the congressional defense committees with respect to the proposed transfer in writing not less than five days before the transfer is made.

SEC. 1508. DEFENSE HEALTH PROGRAM.

Funds are hereby authorized to be appropriated for the Department of Defense for fiscal year 2005 for expenses, not otherwise provided for, the Defense Health Program, in the amount of $780,000,000, for Operation and Maintenance.

SEC. 1509. MILITARY PERSONNEL.

There is hereby authorized to be appropriated to the Department of Defense for military personnel accounts for fiscal year 2005 a total of $1,250,000,000.

SEC. 1510. TREATMENT AS ADDITIONAL AUTHORIZATIONS.

The amounts authorized to be appropriated by this title are in addition to amounts otherwise authorized to be appropriated by this Act.

SEC. 1511. TRANSFER AUTHORITY.

(a) AUTHORITY TO TRANSFER AUTHORIZATIONS.—(1) Upon determination by the Secretary of Defense that such action is necessary in the national interest, the Secretary may transfer amounts of authorizations made available to the Department of Defense in this title for fiscal year 2005 between any such authorizations for that fiscal year (or any subdivisions thereof). Amounts of authorizations so transferred shall be merged with and be available for the same purposes as the authorization to which transferred.

(2) The total amount of authorizations that the Secretary may transfer under the authority of this section may not exceed $1,500,000,000. The transfer authority provided in this section is in addition to any other transfer authority available to the Secretary of Defense.

(b) LIMITATIONS.—The authority provided by this section to transfer authorizations—

(1) may only be used to provide authority for items that have a higher priority than the items from which authority is transferred;

(2) may not be used to provide authority for an item that has been denied authorization by Congress; and

(3) may not be combined with the authority under section 1001.

(c) EFFECT ON AUTHORIZATION AMOUNTS.—A transfer made from one account to another under the authority of this section shall be deemed to increase the amount authorized for the account to which the amount is transferred by an amount equal to the amount transferred.

(d) NOTICE TO CONGRESS.—A transfer may be made under the authority of this section only after the Secretary of Defense—

(1) consults with the chairmen and ranking members of the congressional defense committees with respect to the proposed transfer; and

(2) after such consultation, notifies those committees in writing of the proposed transfer not less than five days before the transfer is made.

DIVISION B—MILITARY CONSTRUCTION AUTHORIZATIONS

SEC. 2001. SHORT TITLE.

This division may be cited as the "Military Construction Authorization Act for Fiscal Year 2005".

TITLE XXI—ARMY

Sec. 2101. Authorized Army construction and land acquisition projects.
Sec. 2102. Family housing.
Sec. 2103. Improvements to military family housing units.
Sec. 2104. Authorization of appropriations, Army.
Sec. 2105. Modification of authority to carry out certain fiscal year 2004 projects.
Sec. 2106. Modification of authority to carry out certain fiscal year 2003 project.

SEC. 2101. AUTHORIZED ARMY CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(1), the Secretary of the Army may acquire real property and carry out military construction projects for the installations or locations inside the United States, and in the amounts, set forth in the following table:

Army: Inside the United States

State	Installation or Location	Amount
Alabama	Anniston Army Depot	$23,690,000
	Fort Rucker	$16,000,000
Alaska	Fort Richardson	$24,300,000
	Fort Wainwright	$92,459,000
Arizona	Fort Huachuca	$18,000,000
California	Fort Irwin	$38,100,000
	Sierra Army Depot	$12,600,000
Colorado	Fort Carson	$59,508,000
Florida	Camp Rudder	$1,850,000
Georgia	Fort Benning	$71,777,000
	Fort Gillem	$5,800,000
	Fort McPherson	$4,900,000
	Fort Stewart/Hunter Army Air Field	$65,495,000
Hawaii	Helemano Military Reservation	$75,300,000
	Hickam Air Force Base	$11,200,000
	Schofield Barracks	$249,792,000
Kansas	Fort Riley	$59,550,000

Army: Inside the United States—Continued

State	Installation or Location	Amount
Kentucky	Fort Campbell	$89,600,000
	Fort Knox	$75,750,000
Louisiana	Fort Polk	$70,953,000
Maryland	Aberdeen Proving Ground	$13,000,000
	Fort Detrick	$4,000,000
Missouri	Fort Leonard Wood	$31,850,000
New Jersey	Picatinny Arsenal	$9,900,000
New Mexico	White Sands Missile Range	$33,000,000
New York	Fort Drum	$13,650,000
	Fort Hamilton	$7,600,000
	Hancock Field	$6,000,000
	Military Entrance Processing Station, Buffalo	$6,200,000
	United States Military Academy, West Point	$60,000,000
North Carolina	Fort Bragg	$111,687,000
Oklahoma	Fort Sill	$17,800,000
Pennsylvania	Letterkenny Depot	$5,400,000
Texas	Fort Bliss	$19,400,000
	Fort Hood	$85,188,000
	Fort Sam Houston	$11,400,000
Virginia	Fort A.P. Hill	$10,775,000
	Fort Lee	$4,250,000
	Fort Myer	$49,526,000
Washington	Fort Lewis	$56,200,000
	Total	$1,623,450,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(2), the Secretary of the Army may acquire real property and carry out military construction projects for the installations or locations outside the United States, and in the amounts, set forth in the following table:

Army: Outside the United States

Country	Installation or Location	Amount
Germany	Grafenwoehr	$77,200,000
Italy	Livorno	$26,000,000
Korea	Camp Humphreys	$12,000,000
	Total	$115,200,000

SEC. 2102. FAMILY HOUSING.

(a) CONSTRUCTION AND ACQUISITION.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(5)(A), the Secretary of the Army may construct or acquire family housing units (including land acquisition and supporting facilities) at the installations or locations, for the purposes, and in the amounts set forth in the following table:

Army: Family Housing

State	Installation or Location	Purpose	Amount
Alaska	Fort Richardson	92 Units	$42,000,000
	Fort Wainwright	246 Units	$124,000,000
Arizona	Fort Huachuca	205 Units	$41,000,000
	Yuma Proving Ground	55 Units	$14,900,000
Kansas	Fort Riley	126 Units	$33,000,000
New Mexico	White Sands Missile Range	156 Units	$31,000,000
Oklahoma	Fort Sill	247 Units	$47,000,000
Virginia	Fort Lee	218 Units	$46,000,000
	Fort Monroe	68 Units	$16,000,000
	Total		$394,900,000

(b) PLANNING AND DESIGN.—Using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(5)(A), the Secretary of the Army may carry out architectural and engineering services and construction design activities with respect to the construction or improvement of family housing units in an amount not to exceed $29,209,000.

SEC. 2103. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

Subject to section 2825 of title 10, United States Code, and using amounts appropriated pursuant to the authorization of appropriations in section 2104(a)(5)(A), the Secretary of the Army may improve existing military family housing units in an amount not to exceed $211,990,000.

SEC. 2104. AUTHORIZATION OF APPROPRIATIONS, ARMY.

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2004, for military construction, land acquisition, and military family housing functions of the Department of the Army in the total amount of $3,537,141,000, as follows:

(1) For military construction projects inside the United States authorized by section 2101(a), $1,453,950,000.

(2) For military construction projects outside the United States authorized by section 2101(b), $115,200,000.

(3) For unspecified minor military construction projects authorized by section 2805 of title 10, United States Code, $20,000,000.

(4) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $151,335,000.

(5) For military family housing functions:

(A) For construction and acquisition, planning and design, and improvement of military family housing and facilities, $636,099,000.

(B) For support of military family housing (including the functions described in section 2833 of title 10, United States Code), $926,507,000.

(6) For the construction of phase 2 of a barracks complex, 5th & 16th Street, at Fort Stewart/Hunter Army Air Field, Georgia, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1697), $32,950,000.

(7) For the construction of phase 3 of a barracks complex renewal, Capron Road, at Schofield Barracks, Hawaii, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1283), as amended by section 2105 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1697), $48,000,000.

(8) For the construction of phase 2 of the Lewis & Clark instructional facility at Fort Leavenworth, Kansas, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107–314; 116 Stat. 2681), $44,000,000.

(9) For the construction of phase 2 of a barracks complex at Wheeler Sack Army Air Field at Fort Drum, New York, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1697), $48,000,000.

(10) For the construction of phase 2 of a barracks complex, Bastogne Drive, Fort Bragg, North Carolina, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1697), $48,000,000.

(11) For the construction of phase 3 of a maintenance complex at Fort Sill, Oklahoma, authorized by section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107–314; 116 Stat. 2681), $13,100,000.

(b) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2101 of this Act may not exceed the sum of the following:

(1) The total amount authorized to be appropriated under paragraphs (1) and (2) of subsection (a).

(2) $41,000,000 (the balance of the amount authorized under section 2101(a) to upgrade Drum Road, Helemano Military Reservation, Hawaii).

(3) $25,000,000 (the balance of the amount authorized under section 2101(a) for construction of a vehicle maintenance facility, Schofield Barracks, Hawaii).

(4) $25,000,000 (the balance of the amount authorized under section 2101(a) for construction of a barracks complex, Fort Campbell, Kentucky).

(5) $22,000,000 (the balance of the amount authorized under section 2101(a) for construction of trainee barracks, Basic Training Complex 1, Fort Knox, Kentucky).

(6) $25,500,000 (the balance of the amount authorized under section 2101(a) for construction of a library and learning facility, United States Military Academy, West Point, New York).

(7) $31,000,000 (the balance of the amount authorized under section 2101(a) for a barracks complex renewal project, Fort Bragg, North Carolina).

(c) ADJUSTMENT.—The total amount authorized to be appropriated pursuant to paragraphs (1) through (11) of subsection (a) is the sum of the amounts authorized to be appropriated in such paragraphs, reduced by $5,550,000, which represents prior year savings.

SEC. 2105. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 2004 PROJECTS.

(a) MODIFICATION OF INSIDE THE UNITED STATES PROJECTS.—The table in section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1697) is amended—

(1) in the item relating to Fort Stewart/Hunter Army Air Field, Georgia, by striking "$113,500,000" in the amount column and inserting "$114,450,000";

(2) in the item relating to Fort Drum, New York, by striking "$130,700,000" in the amount column and inserting "$135,700,000"; and

(3) by striking the amount identified as the total in the amount column and inserting "$1,043,150,000".

(b) CONFORMING AMENDMENTS.—Section 2104(b) of that Act (117 Stat. 1700) is amended—

(1) in paragraph (2), by striking "$32,000,000" and inserting "$32,950,000"; and

(2) in paragraph (4), by striking "$43,000,000" and inserting "$48,000,000".

SEC. 2106. MODIFICATION OF AUTHORITY TO CARRY OUT CERTAIN FISCAL YEAR 2003 PROJECT.

(a) MODIFICATION OF INSIDE THE UNITED STATES PROJECT.—The table in section 2101(a) of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107–314; 116 Stat. 2681), as amended by section 2105(a) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1700), is further amended—

(1) in the item relating to Fort Sill, Oklahoma, by striking "$39,652,000" in the amount column and inserting "$40,752,000"; and

(2) by striking the amount identified as the total in the amount column and inserting "$1,157,267,000".

(b) CONFORMING AMENDMENT.—Section 2104(b)(6) of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107–314; 116 Stat. 2684) is amended by striking "$25,000,000" and inserting "$26,100,000".

Sec. 2201. Authorized Navy construction and land acquisition projects.
Sec. 2202. Family housing.
Sec. 2203. Improvements to military family housing units.
Sec. 2204. Authorization of appropriations, Navy.

SEC. 2201. AUTHORIZED NAVY CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2204(a)(1), the Secretary of the Navy may acquire real property and carry out military construction projects for the installations or locations inside the United States, and in the amounts, set forth in the following table:

Navy: Inside the United States

State	Installation or Location	Amount
Arizona	Marine Corps Air Station, Yuma	$26,670,000
California	Marine Corps Air-Ground Task Force Training Center, Twentynine Palms	$15,700,000
	Marine Corps Air Station, Camp Pendleton	$11,540,000
	Marine Corps Base, Camp Pendleton	$26,915,000
	Marine Corps Logistics Base, Barstow	$4,930,000
	Naval Air Facility, El Centro	$54,331,000
	Naval Air Station, North Island	$10,180,000
	Naval Surface Warfare Center, Division Corona	$9,850,000
	Recruit Depot San Diego	$8,110,000
Connecticut	Naval Submarine Base, New London	$50,302,000
District of Columbia	Naval Observatory, Washington	$3,239,000
Florida	Eglin Air Force Base	$2,060,000
	Naval Station, Mayport	$6,200,000
Georgia	Strategic Weapons Facility Atlantic, Kings Bay	$16,000,000
Hawaii	Naval Shipyard, Pearl Harbor	$5,100,000
Illinois	Naval Training Center, Great Lakes	$74,781,000
Indiana	Naval Surface Warfare Center, Crane	$12,600,000
Maine	Naval Air Station, Brunswick	$6,220,000
Maryland	Naval Surface Warfare Center, Indian Head	$23,000,000
North Carolina	Marine Corps Air Station, New River	$35,140,000
	Marine Corps Base, Camp Lejeune	$11,030,000
	Navy Outlying Landing Field, Washington County	$136,900,000
Nevada	Naval Air Station, Fallon	$4,980,000
Rhode Island	Naval Air Station, Newport	$5,490,000
South Carolina	Marine Corps Air Station, Beaufort	$5,480,000
	Naval Weapons Station, Charleston	$12,209,000
Virginia	Camp Elmore Marine Corps Detachment	$13,500,000
	Marine Corps Air Facility, Quantico	$73,838,000
	Marine Corps Combat Development Command, Quantico	$25,090,000
	Naval Air Station, Oceana	$2,770,000
	Naval Amphibious Base, Little Creek	$9,220,000
	Naval Station, Norfolk	$4,330,000
	Naval Weapons Station, Yorktown	$9,870,000
Washington	Naval Air Station, Whidbey Island	$1,990,000
	Naval Shipyard, Puget Sound	$20,305,000
	Naval Station, Bremerton	$74,125,000
	Strategic Weapons Facility Pacific, Bangor	$138,060,000
	Total	$952,055,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2204(a)(2), the Secretary of the Navy may acquire real property and carry out military construction projects for the installations or locations outside the United States, and in the amounts, set forth in the following table:

Navy: Outside the United States

Country	Installation or Location	Amount
Diego Garcia	Naval Support Facility, Diego Garcia	$17,500,000
Guam	Naval Public Works Center, Guam	$20,700,000
	Naval Station, Guam	$12,500,000
Italy	Sigonella	$22,550,000
Spain	Naval Station, Rota	$32,700,000
	Total	$105,950,000

(c) UNSPECIFIED WORLDWIDE.—Using the amounts appropriated pursuant to the authorization of appropriations in section 2204(a)(3), the Secretary of the Navy may acquire real property and carry out military construction projects for unspecified installations or locations in the amount set forth in the following table:

Navy: Unspecified Worldwide

Location	Installation or Location	Amount
	Unspecified Worldwide	$105,982,000
	Total	$105,982,000

SEC. 2202. FAMILY HOUSING.

Using amounts appropriated pursuant to the authorization of appropriations in section 2204(a)(6)(A), the Secretary of the Navy may construct or acquire family housing units (including land acquisition and supporting facilities) at the installation, for the purpose, and in the amount set forth in the following table:

Navy: Family Housing

State	Installation	Purpose	Amount
North Carolina	Marine Corps Air Station, Cherry Point	198 Units	$27,002,000
	Total		$27,002,000

SEC. 2203. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

Subject to section 2825 of title 10, United States Code, and using amounts appropriated pursuant to the authorization of appropriations in section 2201(a)(6)(A), the Secretary of the Navy may improve existing military family housing units in an amount not to exceed $112,105,000.

SEC. 2204. AUTHORIZATION OF APPROPRIATIONS, NAVY.

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2004, for military construction, land acquisition, and military family housing functions of the Department of the Navy in the total amount of $1,897,245,000, as follows:

(1) For military construction projects inside the United States authorized by section 2201(a), $712,927,000.

(2) For military construction projects outside the United States authorized by section 2201(b), $94,950,000.

(3) For the military construction projects at unspecified worldwide locations authorized by section 2201(c), $40,000,000.

(4) For unspecified minor military construction projects authorized by section 2805 of title 10, United States Code, $12,000,000.

(5) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $87,067,000.

(6) For military family housing functions:

(A) For construction and acquisition, planning and design, and improvement of military family housing and facilities, $139,107,000.

(B) For support of military family housing (including functions described in section 2833 of title 10, United States Code), $696,304,000.

(7) For the construction of increment 2 of the tertiary sewage treatment plant at Marine Corps Base, Camp Pendleton, California, authorized by section 2201(a) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1703), $25,690,000.

(8) For the construction of increment 2 of the general purpose berthing pier at Naval Weapons Station, Earle, New Jersey, authorized by section 2201(a) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1704), $49,200,000.

(9) For the construction of increment 2 of pier 11 replacement at Naval Station, Norfolk, Virginia, authorized by section 2201(a) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1701), $40,000,000.

(b) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2201 of this Act may not exceed the sum of the following:

(1) The total amount authorized to be appropriated under paragraphs (1), (2), and (3) of subsection (a).

(2) $21,000,000 (the balance of the amount authorized under section 2201(a) for apron and hangar recapitalization, Naval Air Facility, El Centro, California).

(3) $116,750,000 (the balance of the amount authorized under section 2201(a) for land acquisition for an outlying landing field in Washington County, North Carolina).

(4) $34,098,000 (the balance of the amount authorized under section 2201(a) for construction of a White Side complex, Marine Corps Air Facility, Quantico, Virginia).

(5) $40,000,000 (the balance of the amount authorized under section 2201(a) for construction of bachelor enlisted quarters, Naval Station, Bremerton, Washington).

(6) $95,320,000 (the balance of the amount authorized under section 2201(a) for construction of a limited area processing and storage complex, Strategic Weapons Facility Pacific, Bangor, Washington).

(7) $65,982,000 (the balance of the amount authorized under section 2201(c) for construction of a presidential helicopter programs support facility at an unspecified location).

(c) ADJUSTMENT.—The total amount authorized to be appropriated pursuant to paragraphs (1) through (9) of subsection (a) is the sum of the amounts authorized to be appropriated in such paragraphs, reduced by $5,549,000, which represents prior year savings.

Sec. 2301. Authorized Air Force construction and land acquisition projects.
Sec. 2302. Family housing.
Sec. 2303. Improvements to military family housing units.
Sec. 2304. Authorization of appropriations, Air Force.

SEC. 2301. AUTHORIZED AIR FORCE CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(1), the Secretary of the Air Force may acquire real property and carry out military construction projects for the installations or locations inside the United States, and in the amounts, set forth in the following table:

Air Force: Inside the United States

State	Installation or Location	Amount
Alaska	Elmendorf Air Force Base	$52,057,000
Arizona	Davis-Monthan Air Force Base	$17,029,000
	Luke Air Force Base	$17,900,000
Arkansas	Little Rock Air Force Base	$8,931,000
California	Beale Air Force Base	$10,186,000
	Edwards Air Force Base	$9,965,000
	Travis Air Force Base	$18,894,000
Colorado	Buckley Air Force Base	$12,247,000
Delaware	Dover Air Force Base	$9,500,000
Florida	Tyndall Air Force Base	$27,614,000
	Patrick Air Force Base	$8,800,000
Georgia	Moody Air Force Base	$9,600,000
	Robins Air Force Base	$21,900,000
Hawaii	Hickam Air Force Base	$30,900,000
	Maui Site	$7,500,000
Louisiana	Barksdale Air Force Base	$13,800,000
Maryland	Andrews Air Force Base	$17,100,000
Mississippi	Columbus Air Force Base	$7,700,000
Missouri	Whiteman Air Force Base	$7,600,000
Montana	Malmstrom Air Force Base	$5,600,000
Nebraska	Offutt Air Force Base	$6,221,000
New Mexico	Cannon Air Force Base	$9,500,000
	Kirtland Air Force Base	$9,200,000
North Carolina	Pope Air Force Base	$15,150,000

Air Force: Inside the United States—Continued

State	*Installation or Location*	*Amount*
North Dakota	*Minot Air Force Base*	*$8,900,000*
Ohio	*Wright-Patterson Air Force Base*	*$9,904,000*
Oklahoma	*Altus Air Force Base*	*$7,000,000*
	Tinker Air Force Base	*$8,000,000*
South Carolina	*Shaw Air Force Base*	*$7,000,000*
South Dakota	*Ellsworth Air Force Base*	*$9,867,000*
Tennessee	*Arnold Air Force Base*	*$24,500,000*
Texas	*Dyess Air Force Base*	*$14,300,000*
	Lackland Air Force Base	*$2,596,000*
	Laughlin Air Force Base	*$6,900,000*
	Sheppard Air Force Base	*$50,284,000*
Utah	*Hill Air Force Base*	*$25,713,000*
Wyoming	*F.E. Warren Air Force Base*	*$5,500,000*
	Total	*$535,358,000*

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(2), the Secretary of the Air Force may acquire real property and carry out military construction projects for the installations or locations outside the United States, and in the amounts, set forth in the following table:

Air Force: Outside the United States

Country	*Installation or Location*	*Amount*
Germany	*Ramstein Air Base*	*$25,404,000*
Greenland	*Thule Air Base*	*$19,800,000*
Guam	*Andersen Air Force Base*	*$19,593,000*
Italy	*Aviano Air Base*	*$6,760,000*
Korea	*Kunsan Air Base*	*$37,100,000*
	Osan Air Base	*$18,600,000*
Portugal	*Lajes Field, Azores*	*$5,689,000*
Spain	*Naval Station, Rota*	*$14,153,000*
United Kingdom	*Royal Air Force Lakenheath*	*$5,500,000*
	Total	*$152,599,000*

(c) UNSPECIFIED WORLDWIDE.—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(3), the Secretary of the Air Force may acquire real property and carry out military construction projects for the unspecified installations or locations, and in the amounts, set forth in the following table:

Air Force: Unspecified Worldwide

Location	*Installation or Location*	*Amount*
	Classified Locations	*$26,121,000*
	Unspecified Worldwide	*$28,090,000*
	Total	*$54,211,000*

SEC. 2302. FAMILY HOUSING.

(a) CONSTRUCTION AND ACQUISITION.—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(6)(A), the Secretary of the Air Force may construct or acquire family housing units (including land acquisition and supporting facilities) at the installations or locations, for the purposes, and in the amounts set forth in the following table:

Air Force: Family Housing

State	*Installation or Location*	*Purpose*	*Amount*
Arizona	*Davis-Monthan Air Force Base*	*250 Units*	*$48,500,000*
California	*Edwards Air Force Base*	*218 Units*	*$41,202,000*
	Vandenberg Air Force Base	*120 Units*	*$30,906,000*
Florida	*MacDill Air Force Base*	*61 Units*	*$21,723,000*
	MacDill Air Force Base	*Housing Maintenance Facility*	*$1,250,000*
Idaho	*Mountain Home Air Force Base*	*147 Units*	*$39,333,000*
Mississippi	*Columbus Air Force Base*	*Housing Management Facility*	*$711,000*
Missouri	*Whiteman Air Force Base*	*160 Units*	*$37,087,000*
Montana	*Malmstrom Air Force Base*	*115 Units*	*$29,910,000*
North Carolina	*Seymour Johnson Air Force Base*	*167 Units*	*$32,693,000*
North Dakota	*Grand Forks Air Force Base*	*90 Units*	*$26,169,000*
	Minot Air Force Base	*142 Units*	*$37,087,000*
South Carolina	*Charleston Air Force Base*	*Fire Station*	*$1,976,000*
South Dakota	*Ellsworth Air Force Base*	*75 Units*	*$21,482,000*
Texas	*Dyess Air Force Base*	*127 Units*	*$28,664,000*
	Goodfellow Air Force Base	*127 Units*	*$20,604,000*
Germany	*Ramstein Air Base*	*144 Units*	*$57,691,000*
Italy	*Aviano Air Base*	*Housing Office*	*$2,542,000*
Korea	*Osan Air Base*	*117 Units*	*$46,834,000*
United Kingdom	*Royal Air Force Lakenheath*	*154 Units*	*$43,976,000*
	Total		*$570,340,000*

(b) PLANNING AND DESIGN.—Using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(6)(A), the Secretary of the Air Force may carry out architectural and engineering services and construction design activities with respect to the construction or improvement of military family housing units in an amount not to exceed $38,266,000.

SEC. 2303. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

Subject to section 2825 of title 10, United States Code, and using amounts appropriated pursuant to the authorization of appropriations in section 2304(a)(6)(A), the Secretary of the Air Force may improve existing military family housing units in an amount not to exceed $238,353,000.

SEC. 2304. AUTHORIZATION OF APPROPRIATIONS, AIR FORCE.

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2004, for military construction, land acquisition, and military family housing functions of the Department of the Air Force in the total amount of $2,559,768,000, as follows:

(1) For military construction projects inside the United States authorized by section 2301(a), $525,358,000.

(2) For military construction projects outside the United States authorized by section 2301(b), $142,771,000.

(3) For military construction projects at unspecified worldwide locations authorized by section 2301(c), $54,211,000.

(4) For unspecified minor military construction projects authorized by section 2805 of title 10, United States Code, $13,000,000.

(5) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $124,085,000.

(6) For military family housing functions:

(A) For construction and acquisition, planning and design, and improvement of military family housing and facilities, $846,959,000.

(B) For support of military family housing (including functions described in section 2833 of title 10, United States Code), $853,384,000.

(b) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2301 of this Act may not exceed the sum of the following:

(1) The total amount authorized to be appropriated under paragraphs (1), (2), and (3) of subsection (a).

(2) $10,000,000 (the balance of the amount authorized under section 2301(a) for construction of a hanger for an aircraft maintenance unit, Tyndall Air Force Base, Florida).

(c) ADJUSTMENT.—The total amount authorized to be appropriated pursuant to paragraphs (1) through (6) of subsection (a) is the sum of the amounts authorized to be appropriated in such paragraphs, reduced by $5,550,000, which represents prior year savings.

Sec. 2401. Authorized Defense Agencies construction and land acquisition projects.

Sec. 2402. Improvements to military family housing units.

Sec. 2403. Energy conservation projects.

Sec. 2404. Authorization of appropriations, Defense Agencies.

SEC. 2401. AUTHORIZED DEFENSE AGENCIES CONSTRUCTION AND LAND ACQUISITION PROJECTS.

(a) INSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2404(a)(1), the Secretary of Defense may acquire real property and carry out military construction projects for the installations or locations inside the United States, and in the amounts, set forth in the following table:

Defense Agencies: Inside the United States

Agency	Installation or Location	Amount
Defense Intelligence Agency	Bolling Air Force Base, District of Columbia	$6,000,000
Defense Logistics Agency	Defense Distribution Depot, New Cumberland, Pennsylvania	$22,300,000
	Defense Distribution Depot, Richmond, Virginia	$10,100,000
	Defense Fuel Support Point, Naval Air Station, Oceana, Virginia	$3,589,000
	Marina Corps Air Station, Cherry Point, North Carolina	$22,700,000
	Naval Air Station, Kingsville, Texas	$3,900,000
	Naval Station, Pearl Harbor, Hawaii	$3,500,000
	Tinker Air Force Base, Oklahoma	$5,400,000
	Travis Air Force Base, California	$15,100,000
Missile Defense Agency	Redstone Arsenal, Alabama	$19,560,000
National Security Agency	Fort Meade, Maryland	$15,007,000
Special Operations Command	Corona, California	$13,600,000
	Fleet Combat Training Center, Dam Neck, Virginia	$5,700,000
	Fort A.P. Hill, Virginia	$1,500,000
	Fort Bragg, North Carolina	$42,888,000
	Fort Campbell, Kentucky	$3,500,000
	Fort Stewart/Hunter Army Air Field, Georgia	$17,600,000
	Hurlburt Field, Florida	$2,500,000
	Naval Amphibious Base, Little Creek, Virginia	$33,200,000
	Niland, California	$1,000,000
TRICARE Management Activity	Buckley Air Force Base, Colorado	$2,100,000
	Defense Language Institute, Presidio, Monterey	$6,700,000
	Fort Belvoir, Virginia	$100,000,000
	Fort Benning, Georgia	$7,100,000
	Langley Air Force Base, Virginia	$50,800,000
	Marine Corps Recruit Depot, Parris Island, South Carolina	$25,000,000
	Naval Air Station, Jacksonville, Florida	$28,438,000
	Total	$468,782,000

(b) OUTSIDE THE UNITED STATES.—Using amounts appropriated pursuant to the authorization of appropriations in section 2404(a)(2), the Secretary of Defense may acquire real property and carry out military construction projects for the installations or locations outside the United States, and in the amounts, set forth in the following table:

Defense Agencies: Outside the United States

Agency	Installation or Location	Amount
Defense Education Activity	Grafenwoehr, Germany	$36,247,000
	Naval Station, Guam	$26,964,000
	Vilseck, Germany	$9,011,000
Defense Logistics Agency	Defense Fuel Support Point, Lajes Field, Portugal	$19,113,000
Special Operations Command	Naval Station, Guam, Mariana Islands	$2,200,000
TRICARE Management Activity	Diego Garcia	$3,800,000
	Grafenwoehr, Germany	$13,000,000
	Total	$110,335,000

(c) UNSPECIFIED WORLDWIDE.—Using the amounts appropriated pursuant to the authorization of appropriations in section 2404(a)(3), the Secretary of Defense may acquire real property and carry out military construction projects for the installations or locations, and in the amounts, set forth in the following table:

Defense Agencies: Unspecified Worldwide

Location	Installation or Location	Amount
Special Operations Command	Classified Locations	$7,400,000
	Unspecified Worldwide	$2,900,000
	Total	$10,300,000

SEC. 2402. IMPROVEMENTS TO MILITARY FAMILY HOUSING UNITS.

Subject to section 2825 of title 10, United States Code, and using amounts appropriated pursuant to the authorization of appropriations in section 2404(a)(9)(A), the Secretary of Defense may improve existing military family housing units in an amount not to exceed $49,000.

SEC. 2403. ENERGY CONSERVATION PROJECTS.

Using amounts appropriated pursuant to the authorization of appropriations in section 2404(a)(7), the Secretary of Defense may carry out energy conservation projects under section 2865 of title 10, United States Code, in the amount of $50,000,000.

SEC. 2404. AUTHORIZATION OF APPROPRIATIONS, DEFENSE AGENCIES.

(a) IN GENERAL.—Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2004, for military construction, land acquisition, and military family housing functions of the Department of Defense (other than the military departments) in the total amount of $1,055,663,000, as follows:

(1) For military construction projects inside the United States authorized by section 2401(a), $411,782,000.

(2) For military construction projects outside the United States authorized by section 2401(b), $110,335,000.

(3) For the military construction projects at unspecified worldwide locations authorized by section 2401(c), $10,300,000.

(4) For unspecified minor military construction projects under section 2805 of title 10, United States Code, $20,938,000.

(5) For contingency construction projects of the Secretary of Defense under section 2804 of title 10, United States Code, $10,000,000.

(6) For architectural and engineering services and construction design under section 2807 of title 10, United States Code, $62,182,000.

(7) For energy conservation projects authorized by section 2403 of this Act, $50,000,000.

(8) For base closure and realignment activities as authorized by the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), $246,116,000.

(9) For military family housing functions:

(A) For improvement of military family housing and facilities, $49,000.

(B) For support of military family housing (including functions described in section 2833 of title 10, United States Code), $49,575,000.

(C) For credit to the Department of Defense Family Housing Improvement Fund established by section 2883(a)(1) of title 10, United States Code, $2,500,000.

(10) For the construction of phase 6 of an ammunition demilitarization facility at Pueblo Depot Activity, Colorado, authorized by section 2401(a) of the Military Construction Authorization Act for Fiscal Year 1997 (division B of Public Law 104–201; 110 Stat. 2775), as amended by section 2406 of the Military Construction Authorization Act for Fiscal Year 2000 (division B of Public Law 106–65; 113 Stat. 839) and section 2407 of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107–314; 116 Stat. 2698), $44,792,000.

(11) For the construction of phase 5 of an ammunition demilitarization facility at Blue Grass Army Depot, Kentucky, authorized by section 2401(a) of the Military Construction Authorization Act for Fiscal Year 2000 (division B of Public Law 106–65; 113 Stat. 835), as amended by section 2405 of the Military Construction Authorization Act of 2002 (division B of Public Law 107–107; 115 Stat. 1298) and section 2405 of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107–314; 116 Stat. 2698), $37,094,000.

(b) LIMITATION ON TOTAL COST OF CONSTRUCTION PROJECTS.—Notwithstanding the cost variations authorized by section 2853 of title 10, United States Code, and any other cost variation authorized by law, the total cost of all projects carried out under section 2401 of this Act may not exceed the sum of the following:

(1) The total amount authorized to be appropriated under paragraphs (1), (2) and (3) of subsection (a).

(2) $57,000,000 (the balance of the amount authorized under section 2401(a) for hospital replacement, Fort Belvoir, Virginia).

TITLE XXV—NORTH ATLANTIC TREATY ORGANIZATION SECURITY INVESTMENT PROGRAM

Sec. 2501. Authorized NATO construction and land acquisition projects.
Sec. 2502. Authorization of appropriations, NATO.

SEC. 2501. AUTHORIZED NATO CONSTRUCTION AND LAND ACQUISITION PROJECTS.

The Secretary of Defense may make contributions for the North Atlantic Treaty Organization Security Investment program as provided in section 2806 of title 10, United States Code, in an amount not to exceed the sum of the amount authorized to be appropriated for this purpose in section 2502 and the amount collected from the North Atlantic Treaty Organization as a result of construction previously financed by the United States.

SEC. 2502. AUTHORIZATION OF APPROPRIATIONS, NATO.

Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2004, for contributions by the Secretary of Defense under section 2806 of title 10, United States Code, for the share of the United States of the cost of projects for the North Atlantic Treaty Organization Security Investment program authorized by section 2501, in the amount of $160,800,000.

TITLE XXVI—GUARD AND RESERVE FORCES FACILITIES

Sec. 2601. Authorized Guard and Reserve construction and land acquisition projects.

SEC. 2601. AUTHORIZED GUARD AND RESERVE CONSTRUCTION AND LAND ACQUISITION PROJECTS.

Funds are hereby authorized to be appropriated for fiscal years beginning after September 30, 2004, for the costs of acquisition, architectural and engineering services, and construction of facilities for the Guard and Reserve Forces, and for contributions therefor, under chapter 1803 of title 10, United States Code (including the cost of acquisition of land for those facilities), the following amounts:

(1) For the Department of the Army—

(A) for the Army National Guard of the United States, $134,363,000; and

(B) for the Army Reserve, $90,310,000.

(2) For the Department of the Navy, for the Naval and Marine Corps Reserve, $18,185,000.

(3) For the Department of the Air Force—

(A) for the Air National Guard of the United States, $233,518,000; and

(B) for the Air Force Reserve, $122,756,000.

TITLE XXVII—EXPIRATION AND EXTENSION OF AUTHORIZATIONS

Sec. 2701. Expiration of authorizations and amounts required to be specified by law.
Sec. 2702. Extension of authorizations of certain fiscal year 2002 projects.
Sec. 2703. Extension and renewal of authorizations of certain fiscal year 2001 projects.

SEC. 2701. EXPIRATION OF AUTHORIZATIONS AND AMOUNTS REQUIRED TO BE SPECIFIED BY LAW.

(a) EXPIRATION OF AUTHORIZATIONS AFTER THREE YEARS.—Except as provided in subsection (b), all authorizations contained in titles XXI through XXVI for military construction projects, land acquisition, family housing projects and facilities, and contributions to the North Atlantic Treaty Organization Security Investment program (and authorizations of appropriations therefor) shall expire on the later of—

(1) October 1, 2007; or

(2) the date of the enactment of an Act authorizing funds for military construction for fiscal year 2008.

(b) EXCEPTION.—Subsection (a) shall not apply to authorizations for military construction projects, land acquisition, family housing projects and facilities, and contributions to the North Atlantic Treaty Organization Security Investment program (and authorizations of appropriations therefor), for which appropriated funds have been obligated before the later of—

(1) October 1, 2007; or

(2) the date of the enactment of an Act authorizing funds for fiscal year 2008 for military construction projects, land acquisition, family housing projects and facilities, or contributions to the North Atlantic Treaty Organization Security Investment program.

SEC. 2702. EXTENSION OF AUTHORIZATIONS OF CERTAIN FISCAL YEAR 2002 PROJECTS.

(a) EXTENSION.—Notwithstanding section 2701 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1301), authorizations set forth in the tables in subsection (b), as provided in section 2101, 2302, or 2601 of that Act, shall remain in effect until October 1, 2005, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2006, whichever is later.

(b) TABLES.—The tables referred to in subsection (a) are as follows:

Army: Extension of 2002 Project Authorizations

State	Installation or Location	Project	Amount
Alaska	Fort Wainwright	Power plant cooling tower	$23,000,000
Hawaii	Pohakuloa Training Facility	Parker Ranch land acquisition	$1,500,000

Air Force: Extension of 2002 Project Authorizations

State	Installation or Location	Project	Amount
Colorado	Buckley Air Force Base	Family housing (55 Units)	$11,400,000
Louisiana	Barksdale Air Force Base	Family housing (56 Units)	$7,300,000

Army National Guard: Extension of 2002 Project Authorization

State	Installation or Location	Project	Amount
California	Lancaster	Readiness Center	$4,530,000

SEC. 2703. EXTENSION AND RENEWAL OF AUTHORIZATIONS OF CERTAIN FISCAL YEAR 2001 PROJECTS.

(a) EXTENSION AND RENEWAL.—Notwithstanding section 2701 of the Military Construction Authorization Act for Fiscal Year 2001 (division B of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398; 114 Stat. 1654A–407)), authorizations set forth in the tables in subsection (b), as provided in section 2102 or 2401 of that Act and*, in the case of the*

authorization set forth in the first table in subsection (b), extended by section 2702 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1716), shall remain in effect until October 1, 2005, or the date of the enactment of an Act authorizing funds for military construction for fiscal year 2006, whichever is later.

(b) TABLES.—The tables referred to in subsection (a) are as follows:

Army: Extension of 2001 Project Authorization

State	Installation or Location	Project	Amount
South Carolina	Fort Jackson	Family housing (1 unit)	$250,000

Defense Agencies: Renewal of 2001 Project Authorization

Agency	Installation or Location	Project	Amount
Defense Education Activity	Osan Air Base, Korea	Osan Elementary School addition	$843,000

Subtitle A—Military Construction Program and Military Family Housing Changes

Sec. 2801. Modification of approval and notice requirements for facility repair projects.

Sec. 2802. Reporting requirements regarding military family housing requirements for general officers and flag officers.

Sec. 2803. Congressional notification of deviations from authorized cost variations for military construction projects and military family housing projects.

Sec. 2804. Assessment of vulnerability of military installations to terrorist attack and annual report on military construction requirements related to antiterrorism and force protection.

Sec. 2805. Repeal of limitations on use of alternative authority for acquisition and improvement of military housing.

Sec. 2806. Additional reporting requirements relating to alternative authority for acquisition and improvement of military housing.

Sec. 2807. Temporary authority to accelerate design efforts for military construction projects carried out using design-build selection procedures.

Sec. 2808. Notification thresholds and requirements for expenditures or contributions for acquisition of facilities for reserve components.

Sec. 2809. Authority to exchange reserve component facilities to acquire replacement facilities.

Sec. 2810. One-year extension of temporary, limited authority to use operation and maintenance funds for construction projects outside the United States.

Sec. 2811. Consideration of combination of military medical treatment facilities and health care facilities of Department of Veterans Affairs.

Subtitle B—Real Property and Facilities Administration

Sec. 2821. Reorganization of existing administrative provisions relating to real property transactions.

Sec. 2822. Development of Heritage Center for the National Museum of the United States Army.

Sec. 2823. Elimination of reversionary interests clouding United States title to property used as Navy homeports.

Subtitle C—Base Closure and Realignment

Sec. 2831. Establishment of specific deadline for submission of revisions to force-structure plan and infrastructure inventory.

Sec. 2832. Specification of final selection criteria for 2005 base closure round.

Sec. 2833. Repeal of authority of Secretary of Defense to recommend that installations be placed in inactive status.

Sec. 2834. Voting requirements for Defense Base Closure and Realignment Commission to add to or otherwise expand closure and realignment recommendations made by Secretary of Defense.

Subtitle D—Land Conveyances

PART I—ARMY CONVEYANCES

Sec. 2841. Land conveyance, Sunflower Army Ammunition Plant, Kansas.

Sec. 2842. Land exchange, Fort Campbell, Kentucky and Tennessee.

Sec. 2843. Land conveyance, Louisiana Army Ammunition Plant, Doyline, Louisiana.

Sec. 2844. Land conveyance, Fort Leonard Wood, Missouri.

Sec. 2845. Transfer of administrative jurisdiction, Defense Supply Center, Columbus, Ohio.

Sec. 2846. Jurisdiction and utilization of former public domain lands, Umatilla Chemical Depot, Oregon.

Sec. 2847. Modification of authority for land conveyance, equipment and storage yard, Charleston, South Carolina.

Sec. 2848. Land conveyance, Fort Hood, Texas.

Sec. 2849. Land conveyance, local training area for Browning Army Reserve Center, Utah.

Sec. 2850. Land conveyance, Army Reserve Center, Hampton, Virginia.

Sec. 2851. Land conveyance, Army National Guard Facility, Seattle, Washington.

Sec. 2852. Modification of land exchange and consolidation, Fort Lewis, Washington.

PART II—NAVY CONVEYANCES

Sec. 2861. Land exchange, former Richmond Naval Air Station, Florida.

Sec. 2862. Land conveyance, Honolulu, Hawaii.

Sec. 2863. Land conveyance, Navy property, former Fort Sheridan, Illinois.

Sec. 2864. Land exchange, Naval Air Station, Patuxent River, Maryland.

Sec. 2865. Modification of land acquisition authority, Perquimans County, North Carolina.

Sec. 2866. Land conveyance, Naval Weapons Station, Charleston, South Carolina.

Sec. 2867. Land conveyance, Navy YMCA building, Portsmouth, Virginia.

PART III—AIR FORCE CONVEYANCES

Sec. 2871. Land exchange, Maxwell Air Force Base, Alabama.

Sec. 2872. Land conveyance, March Air Force Base, California.

Sec. 2873. Land conveyance, former Griffiss Air Force Base, New York.

PART IV—OTHER CONVEYANCES

Sec. 2881. Land exchange, Arlington County, Virginia.

Subtitle E—Other Matters

Sec. 2891. One-year resumption of Department of Defense Laboratory Revitalization Demonstration Program.

Sec. 2892. Designation of Airmen Leadership School at Luke Air Force Base, Arizona, in honor of John J. Rhodes, a former minority leader of the House of Representatives.

Sec. 2893. Settlement of claim of Oakland Base Reuse Authority and Redevelopment Agency.

Sec. 2894. Report on establishment of mobilization station at Camp Ripley National Guard Training Center, Little Falls, Minnesota.

Sec. 2895. Report on feasibility of establishment of veterans memorial at Marine Corps Air Station, El Toro, California.

Sec. 2896. Sense of Congress regarding effect of military housing policies and force structure and basing changes on local educational agencies.

Sec. 2897. Sense of Congress and study regarding memorial honoring non-United States citizens killed in the line of duty while serving in the United States Armed Forces.

Subtitle A—Military Construction Program and Military Family Housing Changes

SEC. 2801. MODIFICATION OF APPROVAL AND NOTICE REQUIREMENTS FOR FACILITY REPAIR PROJECTS.

(a) INCREASE IN THRESHOLD FOR APPROVAL REQUIREMENT.—Subsection (b) of section 2811 of title 10, United States Code, is amended by striking "$5,000,000" and inserting "$7,500,000".

(b) DECREASE IN THRESHOLD FOR CONGRESSIONAL NOTIFICATION.—Subsection (d) of such section is amended by striking "$10,000,000" and inserting "$7,500,000".

(c) INFORMATION REQUIRED IN COST ESTIMATE FOR MULTI-YEAR PROJECTS.—Subsection (d)(1) of such section is amended by inserting before the semicolon the following: ", including, in the case of a multi-year repair project to a single facility, the total cost of all phases of the project".

SEC. 2802. REPORTING REQUIREMENTS REGARDING MILITARY FAMILY HOUSING REQUIREMENTS FOR GENERAL OFFICERS AND FLAG OFFICERS.

(a) REPORTS ON COST OF GENERAL AND FLAG OFFICERS QUARTERS.—Section 2831 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(e) REPORTS ON COST OF GENERAL OFFICERS AND FLAG OFFICERS QUARTERS.—(1) As part of the budget materials submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31, the Secretary of Defense shall submit a report—

"(A) identifying each family housing unit used, or intended for use, as quarters for a general officer or flag officer for which the total operation, maintenance, and repair costs for the unit are anticipated to exceed $35,000 in the next fiscal year; and

"(B) for each family housing unit so identified, specifying the total of such anticipated operation, maintenance, and repair costs for the unit.

"(2) Not later than 120 days after the end of each fiscal year, the Secretary of Defense shall submit to the congressional defense committees a report specifying, for each family housing unit used as quarters for a general officer or flag officer at any time during that fiscal year, the total expenditures for operation and maintenance, utilities, lease, and repairs of the unit during that fiscal year.".

(b) NOTICE AND WAIT REQUIREMENT.—Such section is further amended by inserting after subsection (e), as added by subsection (a), the following new subsection:

"(f) NOTICE AND WAIT REQUIREMENT.—(1) Except as provided in paragraphs (2) and (3), the Secretary concerned may not carry out a maintenance or repair project for a family housing unit used, or intended for use, as quarters for a general officer or flag officer if the project will or may result in the total operation, maintenance, and repair costs for the unit for the fiscal year to exceed $35,000, until—

"(A) the Secretary concerned submits to the congressional defense committees, in writing, a justification of the need for the maintenance or repair project and an estimate of the cost of the project; and

"(B) a period of 21 days has expired following the date on which the justification and estimate are received by the committees or, if over sooner, a period of 14 days has expired following the date on which a copy of the justification and estimate are provided in an electronic medium pursuant to section 480 of this title.

"(2) The project justification and cost estimate required by paragraph (1)(A) may be submitted after the commencement of a maintenance or repair project for a family housing unit used, or intended for use, as quarters for a general officer or flag officer if the project is a necessary enviromental remediation project for the unit or is necessary for occupant safety or security, and the need for the project arose after the submission of the most recent report under subsection (e).

"(3) Paragraph (1) shall not apply in the case of a family housing unit used, or intended for use, as quarters for a general officer or flag officer if the unit was identified in the most recent report submitted under subsection (e) and the cost of the maintenance or repair project was included in the total of anticipated operation, maintenance, and repair costs for the unit specified in the report.".

(c) REPORT ON NEED FOR GENERAL AND FLAG OFFICERS QUARTERS IN NATIONAL CAPITAL REGION.—Not later than March 30, 2005, the Secretary of Defense shall submit to the congressional defense committees a report containing an analysis of anticipated needs in the National Capital Region for family housing units for general officers and flag officers. In conducting the analysis, the Secretary shall consider the extent of available housing in the National Capital Region and the necessity of providing housing for general officers and flag officers in secure locations.

(d) REPORT ON CURRENT WORLD-WIDE INVENTORY OF GENERAL AND FLAG OFFICERS QUARTERS.—Not later than March 30, 2005, the Secretary of Defense shall submit to the congressional defense committees a report—

(1) containing a worldwide inventory of family housing units used, or intended for use, for general officers and flag officers; and

(2) identifying annual expenditures for fiscal years 2002, 2003, and 2004 for operation and maintenance, utilities, leases, and repairs of each unit.

(e) DEFINITIONS.—In this section:

(1) The terms "general officer" and "flag officer" have the meanings given such terms in section 101(b) of title 10, United States Code.

(2) The term "National Capital Region" has the meaning given such term in section 2674(f) of such title.

SEC. 2803. CONGRESSIONAL NOTIFICATION OF DEVIATIONS FROM AUTHORIZED COST VARIATIONS FOR MILITARY CONSTRUCTION PROJECTS AND MILITARY FAMILY HOUSING PROJECTS.

Section 2853(c)(3) of title 10, United States Code, is amended by inserting before the period at the end the following: "or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title".

SEC. 2804. ASSESSMENT OF VULNERABILITY OF MILITARY INSTALLATIONS TO TERRORIST ATTACK AND ANNUAL REPORT ON MILITARY CONSTRUCTION REQUIREMENTS RELATED TO ANTITERRORISM AND FORCE PROTECTION.

(a) ANNUAL ASSESSMENT AND REPORT.—(1) Chapter 169 of title 10, United States Code, is amended by inserting after section 2858 the following new section:

"§ 2859. Construction requirements related to antiterrorism and force protection

"(a) ANTITERRORISM AND FORCE PROTECTION GUIDANCE AND CRITERIA.—The Secretary of Defense shall develop common guidance and criteria to be used by each Secretary concerned—

"(1) to assess the vulnerability of military installations located inside and outside of the United States to terrorist attack;

"(2) to develop construction standards designed to reduce the vulnerability of structures to terrorist attack and improve the security of the occupants of such structures;

"(3) to prepare and carry out military construction projects, such as gate and fenceline construction, to improve the physical security of military installations; and

"(4) to assist in prioritizing such projects within the military construction budget of each of the armed forces.

"(b) VULNERABILITY ASSESSMENTS.—The Secretary of Defense shall require vulnerability assessments of military installations to be conducted, at regular intervals, using the criteria developed under subsection (a).

"(c) MILITARY CONSTRUCTION REQUIREMENTS.—As part of the budget materials submitted to Congress in connection with the submission of the budget for a fiscal year pursuant to section 1105 of title 31, but in no case later than March 15 of each year, the Secretary of Defense shall submit a report, in both classified and unclassified form, describing—

"(1) the location and results of the vulnerability assessments conducted under subsection (b) during the most recently completed fiscal year;

"(2) the military construction requirements anticipated to be necessary during the period covered by the then-current future-years defense plan under section 221 of this title to improve the physical security of military installations; and

"(3) the extent to which funds to meet those requirements are not requested in the Department of Defense budget for the fiscal year for which the budget is submitted.".

(2) The table of sections at the beginning of subchapter III of chapter 169 of such title is amended by inserting after the item relating to section 2858 the following new item:

"2859. Construction requirements related to antiterrorism and force protection.".

(b) SPECIAL REQUIREMENT FOR 2006 REPORT.—In the case of the report required to be submitted in 2006 under section 2859(c) of title 10, United States Code, as added by subsection (a), the Secretary of Defense shall include a certification by the Secretary that since September 11, 2001, assessments regarding the vulnerability of military installations to terrorist attack have been undertaken for all major military installations. The Secretary shall indicate the basis by which the Secretary differentiated between major and nonmajor military installations for purposes of making the certification.

SEC. 2805. REPEAL OF LIMITATIONS ON USE OF ALTERNATIVE AUTHORITY FOR ACQUISITION AND IMPROVEMENT OF MILITARY HOUSING.

(a) REPEAL OF BUDGET AUTHORITY LIMITATION ON USE OF AUTHORITY.—Section 2883 of title 10, United States Code, is amended by striking subsection (g).

(b) REPEAL OF TERMINATION DATE ON USE OF AUTHORITY.—(1) Section 2885 of such title is repealed.

(2) The table of sections at the beginning of subchapter IV of chapter 169 of such title is amended by striking the item relating to section 2885.

SEC. 2806. ADDITIONAL REPORTING REQUIREMENTS RELATING TO ALTERNATIVE AUTHORITY FOR ACQUISITION AND IMPROVEMENT OF MILITARY HOUSING.

(a) PROJECT REPORTS.—Paragraph (2) of subsection (a) of section 2884 of title 10, United States Code, is amended to read as follows:

"(2) For each proposed contract, conveyance, or lease described in paragraph (1), the report required by such paragraph shall include the following:

"(A) A description of the contract, conveyance, or lease, including a summary of the terms of the contract, conveyance, or lease.

"(B) A description of the authorities to be utilized in entering into the contract, conveyance, or lease and the intended method of participation of the United States in the contract, conveyance, or lease, including a justification of the intended method of participation.

"(C) A statement of the scored cost of the contract, conveyance, or lease, as determined by the Office of Management and Budget.

"(D) A statement of the United States funds required for the contract, conveyance, or lease and a description of the source of such funds.

"(E) An economic assessment of the life cycle costs of the contract, conveyance, or lease, including an estimate of the amount of United States funds that would be paid over the life of the contract, conveyance, or lease from amounts derived from payments of government allowances, including the basic allowance for housing under section 403 of title 37, if the housing affected by the project were fully occupied by military personnel over the life of the contract, conveyance, or lease.".

(b) ANNUAL REPORTS.—Subsection (b) of such section is amended—

(1) by redesignating paragraph (5) as paragraph (6); and

(2) by inserting after paragraph (4) the following new paragraph (5):

"(5) A report setting forth, by armed force—

"(A) an estimate of the amounts of basic allowance for housing under section 403 of title 37 that will be paid, during the current fiscal year and the fiscal year for which the budget is submitted, to members of the armed forces living in housing provided under the authorities in this subchapter; and

"(B) the number of units of military family housing and military unaccompanied housing *upon which the estimate under subparagraph (A) for the current fiscal year and the next fiscal year is based.''.*

SEC. 2807. TEMPORARY AUTHORITY TO ACCELERATE DESIGN EFFORTS FOR MILITARY CONSTRUCTION PROJECTS CARRIED OUT USING DESIGN-BUILD SELECTION PROCEDURES.

Section 2305a of title 10, United States Code, is amended by adding at the end the following new subsection:

''(j) SPECIAL AUTHORITY FOR MILITARY CONSTRUCTION PROJECTS.—(1) The Secretary of a military department may use funds available to the Secretary under section 2807(a) or 18233(e) of this title to accelerate the design effort in connection with a military construction project for which the two-phase selection procedures described in subsection (c) are used to select the contractor for both the design and construction portion of the project before the project is specifically authorized by law and before funds are appropriated for the construction portion of the project. Notwithstanding the limitations contained in such sections, use of such funds for the design portion of a military construction project may continue despite the subsequent authorization of the project. The advance notice requirement of section 2807(b) of this title shall continue to apply whenever the estimated cost of the design portion of the project exceeds the amount specified in such section.

''(2) Any military construction contract that provides for an accelerated design effort, as authorized by paragraph (1), shall include as a condition of the contract that the liability of the United States in a termination for convenience may not exceed the actual costs incurred as of the termination date.

''(3) For each fiscal year during which the authority provided by this subsection is in effect, the Secretary of a military department may select not more than two military construction projects to include the accelerated design effort authorized by paragraph (1) for each armed force under the jurisdiction of the Secretary. To be eligible for selection under this subsection, a request for the authorization of the project, and for the authorization of appropriations for the project, must have been included in the annual budget of the President for a fiscal year submitted to Congress under section 1105(a) of title 31.

''(4) Not later than March 1, 2007, the Secretary of Defense shall submit to the congressional defense committees a report evaluating the usefulness of the authority provided by this subsection in expediting the design and construction of military construction projects. The authority provided by this subsection expires September 30, 2007, except that, if the report required by this paragraph is not submitted by March 1, 2007, the authority shall expire on that date.''.

SEC. 2808. NOTIFICATION THRESHOLDS AND REQUIREMENTS FOR EXPENDITURES OR CONTRIBUTIONS FOR ACQUISITION OF FACILITIES FOR RESERVE COMPONENTS.

(a) AUTHORITY TO CARRY OUT SMALL PROJECTS.—Section 18233a of title 10, United States Code, is amended to read as follows:

''§ 18233a. Notice and wait requirements for certain projects

''(a) CONGRESSIONAL NOTIFICATION.—Except as provided in subsection (b), an expenditure or contribution in an amount in excess of $750,000 may not be made under section 18233 of this title for any facility until—

''(1) the Secretary of Defense has notified the congressional defense committees of the location, nature, and estimated cost of the facility; and

''(2) a period of 21 days has elapsed after the notification has been received by those committees or, if over sooner, a period of 14 days has elapsed after the date on which a copy of the notification is provided in an electronic medium pursuant to section 480 of this title.

''(b) CERTAIN EXPENDITURES OR CONTRIBUTIONS EXEMPTED.—Subsection (a) does not apply to expenditures or contributions for the following:

''(1) Facilities acquired by lease.

''(2) A project for a facility that has been authorized by Congress, if the location and purpose of the facility are the same as when authorized and if, based upon bids received—

''(A) the scope of work of the project, as approved by Congress, is not proposed to be reduced by more than 25 percent; and

''(B) the current working estimate of the cost of the project does not exceed the amount approved for the project by more than the lesser of the following:

''(i) 25 percent.

''(ii) 200 percent of the amount specified by section 2805(a)(2) of this title as the maximum amount for a minor military construction project.

''(3) A repair project (as that term is defined in section 2811(e) of this title) that costs less than $7,500,000.''.

(b) RECODIFICATION OF LIMITED AUTHORITY TO USE OPERATION AND MAINTENANCE FUNDS.—Chapter 1803 of such title is amended by inserting after section 18233a the following new section:

''§ 18233b. Authority to carry out small projects with operation and maintenance funds

''Under such regulations as the Secretary of Defense may prescribe, the Secretary may expend, from appropriations available for operation and maintenance, amounts necessary to carry out any project authorized under section 18233(a) of this title that costs not more than—

''(1) the amount specified in section 2805(c)(1)(A) of this title, in the case of a project intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening; or

''(2) the amount specified in section 2805(c)(1)(B) of this title, in the case of any other project.''.

(c) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 1803 of such title is amended by striking the item relating to section 18233a and inserting the following new items:

''18233a. Notice and wait requirements for certain projects.

''18233b. Authority to carry out small projects with operation and maintenance funds.''.

SEC. 2809. AUTHORITY TO EXCHANGE RESERVE COMPONENT FACILITIES TO ACQUIRE REPLACEMENT FACILITIES.

(a) EXCHANGE AUTHORITY.—(1) Chapter 1803 of title 10, United States Code, is amended by adding at the end the following new section:

''§ 18240. Acquisition of facilities by exchange

''(a) EXCHANGE AUTHORITY.—In addition to the acquisition authority provided by section 18233 of this title, the Secretary of Defense may authorize the Secretary of a military department to acquire a facility, or addition to an existing facility, needed to satisfy military requirements for a reserve component by carrying out an exchange of an existing facility under the control of that Secretary through an agreement with a State, local government, local authority, or private entity.

''(b) FACILITIES ELIGIBLE FOR EXCHANGE.—Only a facility of a reserve component that is not excess property (as defined in section 102(3) of title 40) may be exchanged using the authority provided by this section.

''(c) EQUAL VALUE EXCHANGE.—In any exchange carried out using the authority provided by this section, the value of the replacement facility, or addition to an existing facility, acquired by the United States shall be at least equal to the fair market value of the facility conveyed by the United States under the agreement. If the values are unequal, the values may not be equalized by any payment of cash consideration by either party to the agreement.

''(d) REQUIREMENTS FOR REPLACEMENT FACILITIES.—The Secretary of a military department may not accept a replacement facility, or addition to an existing facility, to be acquired by the United States in an exchange carried out using the authority provided by this section until that Secretary determines that the facility or addition—

''(1) is complete and usable, fully functional, and ready for occupancy;

''(2) satisfies all operational requirements; and

''(3) meets all applicable Federal, State, and local requirements relating to health, safety, fire, and the environment.

''(e) CONSULTATION REQUIREMENTS.—The Secretary of a military department authorized to enter into an agreement under subsection (a) to convey an existing facility under the control of that Secretary by exchange shall consult with representatives of other reserve components to evaluate—

''(1) the value of using the facility to meet the military requirements of another reserve component, instead of conveying the facility under this section; and

''(2) the feasibility of using the conveyance of the facility to acquire a facility, or an addition to an existing facility, that would be jointly used by more than one reserve component or unit.

''(f) ADVANCE NOTICE OF PROPOSED EXCHANGE.—(1) When a decision is made to enter into an agreement under subsection (a) to exchange a facility using the authority provided by this section, the Secretary of the military department authorized to enter into the agreement shall submit to the congressional defense committees a report on the proposed agreement. The report shall include the following:

''(A) A description of the agreement, including the terms and conditions of the agreement, the parties to be involved in the agreement, the origin of the proposal that lead to the agreement, the intended use of the facility to be conveyed by the United States under the agreement, and any costs to be incurred by the United States to make the exchange under the agreement.

''(B) A description of the facility to be conveyed by the United States under the agreement, including the current condition and fair market value of the facility, and a description of the method by which the fair market value of the facility was determined.

''(C) Information on the facility, or addition to an existing facility, to be acquired by the United States under the agreement and the intended use of the facility or addition, which shall meet requirements for information provided to Congress for military construction projects to obtain a similar facility or addition to an existing facility.

''(D) A certification that the Secretary complied with the consultation requirements under subsection (e).

''(E) A certification that the conveyance of the facility under the agreement is in the best interests of the United States and that the Secretary used competitive procedures to the maximum extent practicable to protect the interests of the United States.

''(2) The agreement described in a report prepared under paragraph (1) may be entered into, and the exchange covered by the agreement made, only after the end of the 30-day period

beginning on the date the report is received by the congressional defense committees or, if earlier, the end of the 21-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this title.

"(3) Section 2662 of this title shall not apply to an exchange carried out using the authority provided by this section.

"(g) RELATION TO OTHER MILITARY CONSTRUCTION REQUIREMENTS.—The acquisition of a facility, or an addition to an existing facility, using the authority provided by this section shall not be treated as a military construction project for which an authorization is required by section 2802 of this title.".

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"18240. Acquisition of facilities by exchange.".

(b) CONFORMING AMENDMENT.—Section 18233(f)(2) of such title is amended by striking "gift, exchange of Government-owned land, or otherwise" and inserting "or gift".

(c) TEMPORARY AUTHORITY TO INCLUDE CASH EQUALIZATION PAYMENTS IN EXCHANGE.—(1) Notwithstanding subsection (c) of section 18240 of title 10, United States Code, as added by subsection (a), the Secretary of Defense may authorize the Secretary of a military department, as part of an exchange agreement under such section, to make or accept a cash equalization payment if the value of the facility, or addition to an existing facility, to be acquired by the United States under the agreement is not equal to the fair market value of the facility to be conveyed by the United States under the agreement. All other requirements of such section shall continue to apply to the exchange.

(2) Cash equalization payments received by the Secretary of a military department under this subsection shall be deposited in a separate account in the Treasury. Amounts in the account shall be available to the Secretary of Defense, without further appropriation and until expended, for transfer to the Secretary of a military department—

(A) to make any cash equalization payments required to be made by the United States in connection with an exchange agreement covered by this subsection, and the account shall be the only source for such payments; and

(B) to cover costs associated with the maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of facilities, and additions to existing facilities, acquired using an exchange agreement covered by this subsection.

(3) Not more than 15 exchange agreements under section 18240 of title 10, United States Code, may include the exception for cash equalization payments authorized by this subsection. Of those 15 exchange agreements, not more than eight may be for the same reserve component.

(4) In this section the term "facility" has the meaning given that term in section 18232(2) of title 10, United States Code.

(5) No cash equalization payment may be made or accepted under the authority of this subsection after September 30, 2007. Except as otherwise specifically authorized by law, the authority provided by this subsection to make or accept cash equalization payments in connection with the acquisition or disposal of facilities of the reserve components is the sole authority available in law to the Secretary of Defense or the Secretary of a military department for that purpose.

(6) Not later than March 1, 2008, the Secretary of Defense shall submit to the congressional defense committees a report on the exercise of the authority provided by this subsection. The report shall include the following:

(A) A description of the exchange agreements under section 18240 of title 10, United States Code, that included the authority to make or accept cash equalization payments.

(B) A description of the analysis and criteria used to select such agreements for inclusion of the authority to make or accept cash equalization payments.

(C) An assessment of the utility to the Department of Defense of the authority, including recommendations for modifications of such authority in order to enhance the utility of such authority for the Department.

(D) An assessment of interest in the future use of the authority, in the event the authority is extended.

(E) An assessment of the advisability of making the authority, including any modifications of the authority recommended under subparagraph (C), permanent.

SEC. 2810. ONE-YEAR EXTENSION OF TEMPORARY, LIMITED AUTHORITY TO USE OPERATION AND MAINTENANCE FUNDS FOR CONSTRUCTION PROJECTS OUTSIDE THE UNITED STATES.

Section 2808 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136; 117 Stat. 1723) is amended—

(1) in subsection (a), by inserting "and, subject to subsection (d)(2), fiscal year 2005" after "During fiscal year 2004";

(2) in subsection (c)(1), by striking "in fiscal year 2004" and inserting "in a fiscal year"; and

(3) in subsection (d)—

(A) by inserting "(1)" before "Not later than";

(B) by striking "fiscal year 2004," and inserting "fiscal years 2004 and 2005,"; and

(C) by adding at the end the following new paragraph:

"(2) The ability to use this section as authority during fiscal year 2005 to obligate appropriated funds available for operation and maintenance to carry out construction projects outside the United States shall commence only after the date on which the Secretary of Defense submits to the congressional committees specified in subsection (f) all of the quarterly reports that were required under paragraph (1) for fiscal year 2004.".

SEC. 2811. CONSIDERATION OF COMBINATION OF MILITARY MEDICAL TREATMENT FACILITIES AND HEALTH CARE FACILITIES OF DEPARTMENT OF VETERANS AFFAIRS.

(a) DEPARTMENT OF DEFENSE CONSIDERATION OF JOINT CONSTRUCTION.—When considering any military construction project for the construction of a new military medical treatment facility in the United States or a territory or possession of the United States, the Secretary of Defense shall consult with the Secretary of Veterans Affairs regarding the feasibility of carrying out a joint project to construct a medical facility that—

(1) could serve as a facility for health-resources sharing between the Department of Defense and the Department of Veterans Affairs; and

(2) would be no more costly to each Department to construct and operate than separate facilities for each Department.

(b) DEPARTMENT OF VETERANS AFFAIRS CONSIDERATION OF JOINT CONSTRUCTION.—When considering the construction of a new or replacement medical facility for the Department of Veterans Affairs, the Secretary of Veterans Affairs shall consult with the Secretary of Defense regarding the feasibility of carrying out a joint project to construct a medical facility that—

(1) could serve as a facility for health-resources sharing between the Department of Veterans Affairs and the Department of Defense; and

(2) would be no more costly to each Department to construct and operate than separate facilities for each Department.

Subtitle B—Real Property and Facilities Administration

SEC. 2821. REORGANIZATION OF EXISTING ADMINISTRATIVE PROVISIONS RELATING TO REAL PROPERTY TRANSACTIONS.

(a) LIMITATION ON COMMISSIONS.—(1) Section 2661 of title 10, United States Code, is amended by adding at the end the following new subsection:

"(c) COMMISSIONS ON LAND PURCHASE CONTRACTS.—The maximum amount payable as a commission on a contract for the purchase of land from funds appropriated for the Department of Defense is two percent of the purchase price.".

(2) Section 2666 of such title is repealed.

(b) REPEAL OF OBSOLETE AUTHORITY TO ACQUIRE LAND FOR TIMBER PRODUCTION.—Section 2664 of such title is repealed.

(c) CONSOLIDATION OF CERTAIN PROVISIONS ON USE OF FACILITIES.—(1) Section 2670 of such title is amended by adding at the end the following new subsection:

"(c) USE OF SPACE AND EQUIPMENT BY VETERANS SERVICE ORGANIZATIONS.—(1) Upon certification to the Secretary concerned by the Secretary of Veterans Affairs, the Secretary concerned shall allow accredited, paid, full-time representatives of the organizations named in section 5902 of title 38, or of other organizations recognized by the Secretary of Veterans Affairs, to function on military installations under the jurisdiction of the Secretary concerned that are on land and from which persons are discharged or released from active duty.

"(2) The commanding officer of a military installation allowing representatives to function on the installation under paragraph (1) shall allow the representatives to use available space and equipment at the installation.

"(3) This subsection does not authorize the violation of measures of military security.".

(2) Section 2679 of such title is repealed.

(3) The regulations prescribed to carry out section 2679 of title 10, United States Code, as in effect on the day before the date of the enactment of this Act, shall remain in effect with regard to section 2670(c) of such title, as added by paragraph (1), until changed by joint action of the Secretary concerned (as defined in section 101(9) of such title) and the Secretary of Veterans Affairs.

(d) AVAILABILITY OF FUNDS FOR ACQUISITION OF CERTAIN INTERESTS IN REAL PROPERTY.—(1) Section 2672 of such title is amended by adding at the end the following new subsection:

"(d) AVAILABILITY OF FUNDS.—Appropriations available to the Department of Defense for operation and maintenance or construction may be used for the acquisition of land or interests in land under this section.".

(2) Section 2673 of such title is repealed.

(3) Section 2675 of such title is amended—

(A) by inserting "(a) LEASE AUTHORITY; DURATION.—" before "The Secretary"; and

(B) by adding at the end the following new subsection:

"(b) AVAILABILITY OF FUNDS.—Appropriations available to the Department of Defense for operation and maintenance or construction may be used for the acquisition of interests in land under this section.".

(e) STYLISTIC AND CLERICAL AMENDMENTS.—(1) Section 2661 of such title is further amended—

(A) in subsection (a), by inserting "AVAILABILITY OF OPERATION AND MAINTENANCE FUNDS.—" after "(a)"; and

(B) in subsection (b), by inserting "LEASING AND ROAD MAINTENANCE AUTHORITY.—" after "(b)".

(2) The heading of section 2670 of such title is amended to read as follows:

"§2670. Use of facilities by private organizations; use as polling places".

(3) The table of sections at the beginning of chapter 159 of such title is amended—

(A) by striking the items relating to sections 2664, 2666, 2673, and 2679; and

(B) by striking the item relating to section 2670 and inserting the following new item:

"2670. Use of facilities by private organizations; use as polling places.".

SEC. 2822. DEVELOPMENT OF HERITAGE CENTER FOR THE NATIONAL MUSEUM OF THE UNITED STATES ARMY.

(a) AUTHORITY TO ENTER INTO AGREEMENT FOR DEVELOPMENT OF CENTER.—Chapter 449 of title 10, United States Code, is amended by inserting after section 4771 the following new section:

"§4772. Heritage Center for the National Museum of the United States Army: development and operation

"(a) AGREEMENT FOR DEVELOPMENT OF CENTER.—The Secretary of the Army may enter into an agreement with the Army Historical Foundation, a nonprofit organization, for the design, construction, and operation of a facility or group of facilities at Fort Belvoir, Virginia, for the National Museum of the United States Army. The facility or group of facilities constructed pursuant to the agreement shall be known as the Heritage Center for the National Museum of the United States Army (in this section referred to as the 'Center').

"(b) PURPOSE OF CENTER.—The Center shall be used for the identification, curation, storage, and public viewing of artifacts and artwork of significance to the United States Army, as agreed to by the Secretary of the Army. The Center may also be used to support such education, training, research, and associated purposes as the Secretary considers appropriate.

"(c) DESIGN AND CONSTRUCTION.—(1) The design of the Center shall be subject to the approval of the Secretary of the Army.

"(2) For each phase of the development of the Center, the Secretary may—

"(A) accept funds from the Army Historical Foundation for the design and construction of such phase of the Center; or

"(B) permit the Army Historical Foundation to contract for the design and construction of such phase of the Center.

"(d) ACCEPTANCE BY SECRETARY.—Upon the satisfactory completion, as determined by the Secretary of the Army, of any phase of the Center, and upon the satisfaction of any financial obligations incident to such phase of the Center by the Army Historical Foundation, the Secretary shall accept such phase of the Center from the Army Historical Foundation, and all right, title, and interest in and to such phase of the Center shall vest in the United States. Upon becoming the property of the United States, the Secretary shall assume administrative jurisdiction over the Center.

"(e) USE OF CERTAIN GIFTS.—(1) Under regulations prescribed by the Secretary of the Army, the Commander of the United States Army Center of Military History may, without regard to section 2601 of this title, accept, hold, administer, invest, and spend any gift, devise, or bequest of personal property of a value of $250,000 or less made to the United States if such gift, devise, or bequest is for the benefit of the National Museum of the United States Army or the Center.

"(2) The Secretary may pay or authorize the payment of any reasonable and necessary expense in connection with the conveyance or transfer of a gift, devise, or bequest under this subsection.

"(f) LEASE OF FACILITY.—(1) Under such terms and conditions as the Secretary of the Army considers appropriate, the Secretary may lease portions of the Center to the Army Historical Foundation to be used by the Foundation, consistent with the purpose of the Center, for—

"(A) generating revenue for activities of the Center through rental use by the public, commercial and nonprofit entities, State and local governments, and other Federal agencies; and

"(B) such administrative purposes as may be necessary for the support of the Center.

"(2) The annual amount of consideration paid to the Secretary by the Army Historical Foundation for a lease under paragraph (1) may not exceed an amount equal to the actual cost, as determined by the Secretary, of the annual operations and maintenance of the Center.

"(3) Notwithstanding any other provision of law, the Secretary shall use amounts paid under paragraph (2) to cover the costs of operation of the Center.

"(g) ADDITIONAL TERMS AND CONDITIONS.—The Secretary of the Army may require such additional terms and conditions in connection with the agreement authorized by subsection (a) as the Secretary considers appropriate to protect the interests of the United States.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 4771 the following new item:

"4772. Heritage Center for the National Museum of the United States Army: development and operation.".

SEC. 2823. ELIMINATION OF REVERSIONARY INTERESTS CLOUDING UNITED STATES TITLE TO PROPERTY USED AS NAVY HOMEPORTS.

(a) AUTHORITY TO ACQUIRE COMPLETE TITLE.—If real property owned by the United States and used as a Navy homeport is subject to a reversionary interest of any kind, the Secretary of the Navy may enter into an agreement with the holder of the reversionary interest to acquire the reversionary interest and thereby secure for the United States all right, title, and interest in and to the property.

(b) AUTHORIZED CONSIDERATION.—(1) As consideration for the acquisition of a reversionary interest under subsection (a), the Secretary shall provide the holder of the reversionary interest with in-kind consideration, to be determined pursuant to negotiations between the Secretary and the holder of the reversionary interest.

(2) In determining the type and value of any in-kind consideration to be provided for the acquisition of a reversionary interest under subsection (a), the Secretary shall take into account the nature of the reversionary interest, including whether it would require the holder of the reversionary interest to pay for any improvements acquired by the holder as part of the reversion of the real property, and the long-term use and ultimate disposition of the real property if the United States were to acquire all right, title, and interest in and to the real property subject to the reversionary interest.

(c) PROHIBITED CONSIDERATION.—Cash payments are not authorized to be made as consideration for the acquisition of a reversionary interest under subsection (a).

Subtitle C—Base Closure and Realignment

SEC. 2831. ESTABLISHMENT OF SPECIFIC DEADLINE FOR SUBMISSION OF REVISIONS TO FORCE-STRUCTURE PLAN AND INFRASTRUCTURE INVENTORY.

Section 2912(a)(4) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended by striking "as part of the budget justification documents submitted to Congress for fiscal year 2006." and inserting the following: "not later than March 15, 2005. For purposes of selecting military installations for closure or realignment under this part in 2005, no revision of the force-structure plan or infrastructure inventory is authorized after that date.".

SEC. 2832. SPECIFICATION OF FINAL SELECTION CRITERIA FOR 2005 BASE CLOSURE ROUND.

Section 2913 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended to read as follows:

"SEC. 2913. FINAL SELECTION CRITERIA FOR ADDITIONAL ROUND OF BASE CLOSURES AND REALIGNMENTS.

"(a) FINAL SELECTION CRITERIA.—The final criteria to be used by the Secretary in making recommendations for the closure or realignment of military installations inside the United States under this part in 2005 shall be the military value and other criteria specified in subsections (b) and (c).

"(b) MILITARY VALUE CRITERIA.—The military value criteria are as follows:

"(1) The current and future mission capabilities and the impact on operational readiness of the total force of the Department of Defense, including the impact on joint warfighting, training, and readiness.

"(2) The availability and condition of land, facilities, and associated airspace (including training areas suitable for maneuver by ground, naval, or air forces throughout a diversity of climate and terrain areas and staging areas for the use of the Armed Forces in homeland defense missions) at both existing and potential receiving locations.

"(3) The ability to accommodate contingency, mobilization, surge, and future total force requirements at both existing and potential receiving locations to support operations and training.

"(4) The cost of operations and the manpower implications.

"(c) OTHER CRITERIA.—The other criteria that the Secretary shall use in making recommendations for the closure or realignment of military installations inside the United States under this part in 2005 are as follows:

"(1) The extent and timing of potential costs and savings, including the number of years, beginning with the date of completion of the closure or realignment, for the savings to exceed the costs.

"(2) The economic impact on existing communities in the vicinity of military installations.

"(3) The ability of the infrastructure of both the existing and potential receiving communities to support forces, missions, and personnel.

"(4) The environmental impact, including the impact of costs related to potential environmental restoration, waste management, and environmental compliance activities.

"(d) PRIORITY GIVEN TO MILITARY VALUE.—The Secretary shall give priority consideration to the military value criteria specified in subsection (b) in the making of recommendations for the closure or realignment of military installations.

"(e) EFFECT ON DEPARTMENT AND OTHER AGENCY COSTS.—The selection criteria relating to the cost savings or return on investment from the proposed closure or realignment of military installations shall take into account the effect of the proposed closure or realignment on the costs of any other activity of the Department of Defense or any other Federal agency that may be required to assume responsibility for activities at the military installations.

"(f) RELATION TO OTHER MATERIALS.—The final selection criteria specified in this section shall be the only criteria to be used, along with the force-structure plan and infrastructure inventory referred to in section 2912, in making recommendations for the closure or realignment of military installations inside the United States under this part in 2005.

"(g) RELATION TO CRITERIA FOR EARLIER ROUNDS.—Section 2903(b), and the selection criteria prepared under such section, shall not apply with respect to the process of making recommendations for the closure or realignment of military installations in 2005.".

(c) CONFORMING AMENDMENTS.—The Defense Base Closure and Realignment Act of 1990 is amended—

(1) in section 2912(c)(1)(A), by striking "criteria prepared under section 2913" and inserting "criteria specified in section 2913"; and

(2) in section 2914(a), by striking "criteria prepared by the Secretary under section 2913" and inserting "criteria specified in section 2913".

SEC. 2833. REPEAL OF AUTHORITY OF SECRETARY OF DEFENSE TO RECOMMEND THAT INSTALLATIONS BE PLACED IN INACTIVE STATUS.

Section 2914 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) is amended by striking subsection (c).

SEC. 2834. VOTING REQUIREMENTS FOR DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION TO ADD TO OR OTHERWISE EXPAND CLOSURE AND REALIGNMENT RECOMMENDATIONS MADE BY SECRETARY OF DEFENSE.

Subsection (d) of section 2914 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), as added by section 3003 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1346) and amended by section 2854 of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107–314; 116 Stat. 2728), is amended—

(1) in paragraph (3), by striking "TO ADD" and inserting "TO CONSIDER ADDITIONS"; and

(2) by striking paragraph (5) and inserting the following new paragraph:

"(5) REQUIREMENTS TO EXPAND CLOSURE OR REALIGNMENT RECOMMENDATIONS.—In the report required under section 2903(d)(2)(A) that is to be transmitted under paragraph (1), the Commission may not make a change in the recommendations of the Secretary that would close a military installation not recommended for closure by the Secretary, would realign a military installation not recommended for closure or realignment by the Secretary, or would expand the extent of the realignment of a military installation recommended for realignment by the Secretary unless—

"(A) at least two members of the Commission visit the military installation before the date of the transmittal of the report; and

"(B) the decision of the Commission to make the change to recommend the closure of the military installation, the realignment of the installation, or the expanded realignment of the installation is supported by at least seven members of the Commission.".

Subtitle D—Land Conveyances

PART I—ARMY CONVEYANCES

SEC. 2841. LAND CONVEYANCE, SUNFLOWER ARMY AMMUNITION PLANT, KANSAS.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Army, in consultation with the Administrator of General Services, may convey to an entity selected by the Board of Commissioners of Johnson County, Kansas (in this section referred to as the "entity" and the "Board", respectively), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 9,065 acres and containing the Sunflower Army Ammunition Plant. The purpose of the conveyance is to facilitate the re-use of the property for economic development and revitalization.

(b) CONSIDERATION.—(1) As consideration for the conveyance under subsection (a), the entity shall provide the United States, whether by cash payment, in-kind consideration, or a combination thereof, an amount that is not less than the fair market value of the conveyed property, as determined by an appraisal of the property acceptable to the Administrator and the Secretary. As a form of in-kind consideration for the conveyance of the property, the Secretary may authorize the entity to carry out environmental remediation activities for the conveyed property.

(2) Cash consideration received under paragraph (1) shall be deposited in the special account in the Treasury established under subsection (b) of section 572 of title 40, United States Code, and shall be available in accordance with paragraph (5)(B)(i) of such subsection.

(c) CONSTRUCTION WITH PREVIOUS LAND CONVEYANCE AUTHORITY.—The conveyance authority provided by subsection (a) is in addition to the conveyance authority provided by section 2823 of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107–314; 116 Stat. 2712) to convey a portion of the Sunflower Army Ammunition Plant to the Johnson County Park and Recreation District.

(d) AGREEMENTS CONCERNING ENVIRONMENTAL REMEDIATION AND EXPLOSIVES CLEANUP.—(1) The Secretary, in consultation with the Administrator, may enter into a multi-year cooperative agreement or contract with the entity for the environmental remediation and explosives cleanup of the conveyed property, and may utilize amounts authorized to be appropriated to the Secretary for purposes of environmental remediation and explosives cleanup under the agreement or contract.

(2) The cooperative agreement or contract may provide for advance payments on an annual basis or for payments on a performance basis. Payments may be made over a period of time agreed to by the Secretary and the entity or for such time as may be necessary to perform the environmental remediation and explosives cleanup of the property, including any long-term operation and maintenance requirements.

(e) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require the entity to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyance. If amounts are collected from the entity in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the entity.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(f) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary and the Administrator.

(g) ADDITIONAL TERMS AND CONDITIONS.—The Secretary and the Administrator may require such additional terms and conditions in connection with the conveyance of real property under subsection (a), and the environmental remediation and explosives cleanup under subsection (d), as the Secretary and the Administrator jointly consider appropriate to protect the interests of the United States.

SEC. 2842. LAND EXCHANGE, FORT CAMPBELL, KENTUCKY AND TENNESSEE.

(a) LAND EXCHANGE AUTHORIZED.—In exchange for the real property described in subsection (b), the Secretary of the Army may convey to Bi-County Solid Waste Management System, a local government agency (in this section referred to as "Bi-County"), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 358 acres located at Fort Campbell in Montgomery County, Tennessee, for the purpose of permitting Bi-County to expand a landfill facility.

(b) CONSIDERATION.—As consideration for the conveyance under subsection (a), Bi-County shall convey to the United States all right, title, and interest of Bi-County in and to a parcel of real property consisting of approximately 670 acres located adjacent to Fort Campbell in Trigg County, Kentucky, and Stewart County, Tennessee. The Secretary shall have jurisdiction over the real property received under this subsection.

(c) CONDITION OF CONVEYANCE.—The conveyance under subsection (a) shall be subject to the condition that Bi-County construct a fence, acceptable to the Secretary, consisting of at least six-foot high, nine-gauge chain-link and three-strand barbed wire along the boundary between Fort Campbell and the real property conveyed under subsection (a).

(d) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require Bi-County to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyances under this section, including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyances. If amounts are collected from Bi-County in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to Bi-County.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyances. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(e) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property to be conveyed under this section shall be determined by surveys satisfactory to the Secretary and Bi-County.

(f) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyances under this section as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2843. LAND CONVEYANCE, LOUISIANA ARMY AMMUNITION PLANT, DOYLINE, LOUISIANA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Army may convey, without consideration, to the State of Louisiana (in this section referred to as the "State") all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 14,949 acres located at the Louisiana Army Ammunition Plant, Doyline, Louisiana.

(b) CONDITIONS OF CONVEYANCE.—The conveyance under subsection (a) shall be subject to the following conditions:

(1) That at least 13,500 acres of the real property conveyed under such subsection is maintained by the State for the purpose of military training, unless the Secretary determines that fewer acres are required for such purpose.

(2) That the State ensure that any other uses made of the conveyed property do not adversely impact such military training.

(3) That the State accommodate the use of the conveyed property, at no cost or fee, for meeting the present and future training needs of units of the Armed Forces, including units of the Louisiana National Guard and the other active and reserve components of the Armed Forces.

(4) That the State assume the rights and responsibilities of the Department of the Army under the armaments retooling manufacturing support agreement between the Department of the Army and the facility use contractor with respect to the Louisiana Army Ammunition Plant, in accordance with the terms of such agreement in effect at the time of the conveyance.

(c) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require the State to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyance. If amounts are collected from the State in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the State.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the State.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2844. LAND CONVEYANCE, FORT LEONARD WOOD, MISSOURI.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Army may convey, without consideration, to the State of Missouri (in this section referred to as the "State") all right, title, and interest of the United States in and to a parcel of real property, including improvements thereon, consisting of approximately 227.7 acres at Fort Leonard Wood, Missouri, for the purpose of permitting the State to establish on the property a State-operated cemetery for veterans of the Armed Forces.

(b) REVERSIONARY INTEREST.—If the Secretary determines at any time that the real property conveyed under subsection (a) is not being used in accordance with the purpose of the conveyance specified in such subsection, all right, title, and interest in and to the property shall revert, at the option of the Secretary, to the United States, and the United States shall have the right of immediate entry onto the property. Any determination of the Secretary under this subsection shall be made on the record after an opportunity for a hearing.

(c) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require the State to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyance. If amounts are collected from the State in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the State to carry out the conveyance, the Secretary shall refund the excess amount to the State. The authority of the Secretary to require the State to cover administrative costs related to the conveyance does not include costs related to any environmental remediation required for the property.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2845. TRANSFER OF ADMINISTRATIVE JURISDICTION, DEFENSE SUPPLY CENTER, COLUMBUS, OHIO.

(a) TRANSFER AUTHORIZED.—The Secretary of the Army may transfer, without reimbursement, to the administrative jurisdiction of the Secretary of Veterans Affairs a parcel of real property consisting of approximately 20 acres and comprising a portion of the Defense Supply Center in Columbus, Ohio.

(b) USE OF PROPERTY.—The Secretary of Veterans Affairs may only use the property transferred under subsection (a) as the site for the construction of a new outpatient clinic for the provision of medical services to veterans.

(c) COSTS.—Any administrative costs in connection with the transfer of property under subsection (a), including the costs of the survey required by subsection (e), shall be borne by the Secretary of Veterans Affairs.

(d) RETURN OF JURISDICTION TO ARMY.—If construction of the outpatient clinic described in subsection (b) has not commenced on the property transferred under subsection (a) by the end of the three-year period beginning on the date on which the property is transferred, the Secretary of Veterans Affairs shall return, at the request of the Secretary of the Army, administrative jurisdiction over the property to the Secretary of the Army.

(e) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be transferred under subsection (a) shall be determined by a survey satisfactory to the Secretary of the Army.

SEC. 2846. JURISDICTION AND UTILIZATION OF FORMER PUBLIC DOMAIN LANDS, UMATILLA CHEMICAL DEPOT, OREGON.

(a) RETENTION OF JURISDICTION.—The various parcels of real property consisting of approximately 8,300 acres within the boundaries of Umatilla Chemical Depot, Oregon, that were previously withdrawn from the public domain are no longer suitable for return to the public domain and shall remain under the administrative jurisdiction of the Secretary of the Army.

(b) UTILIZATION.—The Secretary shall combine the real property described in subsection (a) with other real property comprising the Umatilla Chemical Depot for purposes of their management and disposal pursuant to title II of the Defense Authorization Amendments and Base Closure and Realignment Act of 1988 (Public Law 100–526; 10 U.S.C. 2687 note) and other applicable law.

SEC. 2847. MODIFICATION OF AUTHORITY FOR LAND CONVEYANCE, EQUIPMENT AND STORAGE YARD, CHARLESTON, SOUTH CAROLINA.

Subsection (h) of section 563 of the Water Resources Development Act of 1999 (Public Law 106–53; 113 Stat. 360) is amended to read as follows:

"(h) CHARLESTON, SOUTH CAROLINA.—

"(1) CONVEYANCE AUTHORIZED.—The Secretary may convey to the City of Charleston, South Carolina (in this subsection referred to as the 'City'), all right, title, and interest of the United States in and to a parcel of real property of the Corps of Engineers, including any improvements thereon, that is known as the Equipment and Storage Yard and consists of approximately 1.06 acres located on Meeting Street in Charleston, South Carolina. The property shall be conveyed in as-is condition.

"(2) CONSIDERATION.—As consideration for the conveyance under this subsection, the City shall provide the United States, whether by cash payment, in-kind consideration, or a combination thereof, an amount that is not less than the fair market value of the property conveyed, as determined by the Secretary.

"(3) USE OF PROCEEDS.—(A) Notwithstanding any requirements associated with the Plant Replacement and Improvement Program, amounts received as consideration under paragraph (2) may be used by the Corps of Engineers, Charleston District—

"(i) to lease, purchase, or construct an office facility within the boundaries of Charleston, Berkeley, or Dorchester County, South Carolina;

"(ii) to cover costs associated with the design and furnishing of such facility; and

"(iii) to satisfy any Plant Replacement and Improvement Program balances.

"(B) Any amounts received as consideration under paragraph (2) that are in excess of the fair market value of the real property conveyed under this subsection may be used for any authorized activities of the Corps of Engineers, Charleston District.

"(4) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under this subsection and any property transferred to the United States as consideration under paragraph (2) shall be determined by surveys satisfactory to the Secretary.

"(5) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under this subsection as the Secretary considers appropriate to protect the interests of the United States.".

SEC. 2848. LAND CONVEYANCE, FORT HOOD, TEXAS.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Army may convey to the Texas A&M University System of the State of Texas (in this section referred to as the "University System") all right, title, and interest of the United States in and to a parcel of real property, including improvements thereon, consisting of approximately 662 acres at Fort Hood, Texas, for the sole purpose of permitting the University System to establish on the property an upper level (junior, senior, and graduate) university that will be State-supported, separate from other universities of the University System, and designated as Texas A&M University, Central Texas.

(b) CONSIDERATION.—(1) As consideration for the conveyance under subsection (a), the University System shall pay to the United States an amount equal to the fair market value of the conveyed property, as determined pursuant to an appraisal acceptable to the Secretary.

(2) In lieu of all or a portion of the cash consideration required by paragraph (1), the Secretary may accept in-kind consideration, including the conveyance by the University System of real property acceptable to the Secretary.

(c) Condition of Conveyance.—The conveyance under subsection (a) shall be subject to the condition that the Secretary determine that the conveyance of the property and the establishment of a university on the property will not adversely impact the operation of Robert Grey Army Airfield, which is located on Fort Hood approximately one mile from the property authorized for conveyance.

(d) Description of Property.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the University System.

(e) Additional Terms and Conditions.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2849. LAND CONVEYANCE, LOCAL TRAINING AREA FOR BROWNING ARMY RESERVE CENTER, UTAH.

(a) Conveyance Authorized.—The Secretary of the Army may convey, without consideration, to the State of Utah (in this section referred to as the "State") all right, title, and interest of the United States in and to a parcel of unimproved real property consisting of approximately 10 acres of the Local Training Area for the Browning Army Reserve Center, Utah, for the purpose of facilitating the construction and operation of a nursing-care facility for veterans. The parcel to be conveyed under this subsection shall be selected by the Secretary in consultation with the State.

(b) Reversionary Interest.—If the Secretary determines at any time that the real property conveyed under subsection (a) is not being used in accordance with the purpose of the conveyance specified in such subsection, all right, title, and interest in and to the property shall revert, at the option of the Secretary, to the United States, and the United States shall have the right of immediate entry onto the property. Any determination of the Secretary under this subsection shall be made on the record after an opportunity for a hearing.

(c) Payment of Costs of Conveyance.—(1) The Secretary may require the State to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyance. If amounts paid to the Secretary in advance exceed the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the State.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) Description of Property.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(e) Additional Terms and Conditions.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2850. LAND CONVEYANCE, ARMY RESERVE CENTER, HAMPTON, VIRGINIA.

(a) Conveyance Authorized.—The Secretary of the Army may convey, without consideration, to the Hampton City School Board of Hampton, Virginia (in this section referred to as the "Board"), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, that consists of approximately 13.42 acres, is located on Downey Farm Road in Hampton, Virginia, and is known as the Butler Farm United States Army Reserve Center for the purpose of permitting the Board to use the property for public education purposes.

(b) Condition of Conveyance.—The conveyance under subsection (a) shall be subject to the condition that the Board accept the real property described in subsection (a) in its condition at the time of the conveyance, commonly known as conveyance "as is".

(c) Payment of Costs of Conveyance.—(1) The Secretary may require the Board to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyance. If amounts are collected from the Board in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the Board.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) Description of Property.—The exact acreage and legal description of the property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(e) Additional Terms and Conditions.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2851. LAND CONVEYANCE, ARMY NATIONAL GUARD FACILITY, SEATTLE, WASHINGTON.

(a) Conveyance Authorized.—The Secretary of the Army may convey, without consideration, to the State of Washington (in this section referred to as the "State") all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 9.747 acres in Seattle, Washington, and comprising a portion of the National Guard Facility, Pier 91, for the purpose of permitting the State to convey the facility unencumbered for economic development purposes.

(b) Condition of Conveyance.—The conveyance under subsection (a) shall be subject to the condition that the State accept the real property in its condition at the time of the conveyance, commonly known as conveyance "as is".

(c) Administrative Expenses.—(1) The State shall reimburse the Secretary for the administrative expenses incurred by the Secretary in carrying out the conveyance under subsection (a), including expenses related to surveys and legal descriptions, boundary monumentation, environmental surveys, necessary documentation, travel, and deed preparation.

(2) Section 2695(c) of title 10, United States Code, shall apply to any amounts received by the Secretary as reimbursement under this subsection.

(d) Description of Property.—The exact acreage and legal description of the property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the United States, subject to the requirement for reimbursement under subsection (c).

(e) Additional Terms and Conditions.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2852. MODIFICATION OF LAND EXCHANGE AND CONSOLIDATION, FORT LEWIS, WASHINGTON.

(a) Property To Be Transferred to Secretary of the Interior in Trust.—Subsection (a)(1) of section 2837 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1315) is amended—

(1) by striking "may convey to" and inserting "may transfer to the Secretary of the Interior, in trust for"; and

(2) by striking "Washington, in" and all that follows through the period and inserting "Washington. The Secretary of the Army may make the transfer under the preceding sentence, and the Secretary of the Interior may accept the property transferred in trust for the Nisqually Tribe under the preceding sentence, only in conjunction with the conveyance described in subsection (b)(2).".

(b) Increase in Acreage To Be Transferred.—Such subsection is further amended by striking "138 acres" and inserting "168 acres".

(c) Qualification on Property To Be Transferred.—Subsection (a)(2) of such section is amended—

(1) by striking "conveyance" and inserting "transfer"; and

(2) by striking "or the right of way described in subsection (c)" and inserting "located on the real property transferred under that paragraph".

(d) Consideration.—Subsection (b) of such section is amended—

(1) in the matter preceding paragraph (1), by striking "conveyance" and inserting "transfer"; and

(2) in paragraph (2), by striking "fee title over the acquired property to the Secretary" and inserting "to the United States fee title to the property acquired under paragraph (1), free from all liens, encumbrances or other interests other than those, if any, acceptable to the Secretary of the Army".

(e) Treatment of Existing Permit Rights; Grant of Easement.—Such section is further amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(2) by inserting after subsection (c) the following new subsection:

"(d) Treatment of Existing Permit Rights; Grant of Easement.—(1) The transfer under subsection (a) recognizes and preserves to the Bonneville Power Administration, in perpetuity and without the right of revocation except as provided in paragraph (2), rights in existence at the time of the conveyance under the permit dated February 1, 1949, as amended January 1, 1952, between the Department of the Army and the Bonneville Power Administration with respect to any portion of the property transferred under subsection (a) upon which the Bonneville Power Administration retains transmission facilities. The rights recognized and preserved include the right to upgrade those transmission facilities.

"(2) The permit rights recognized and preserved under paragraph (1) shall terminate only upon the Bonneville Power Administration's relocation of the transmission facilities referred to in paragraph (1), and then only with respect to that portion of those transmission facilities that are relocated.

"(3) The Secretary of the Interior, as trustee for the Nisqually Tribe, shall grant to the Bonneville Power Administration, without consideration and subject to the same rights recognized and preserved in paragraph (1), such additional easements across the property transferred under subsection (a) as the Bonneville Power Administration considers necessary to accommodate the relocation or reconnection of Bonneville Power Administration transmission facilities from property owned by the Tribe and held by the Secretary of the Interior in trust for the Tribe.".

(f) CONFORMING AMENDMENTS.—(1) Subsection (c) of such section is amended by inserting "of the Army" after "Secretary".

(2) Subsection (e) of such section (as redesignated by subsection (e)(1)) is amended—

(A) by striking "conveyed" and inserting "transferred";

(B) by inserting "of the Army" after "Secretary"; and

(C) by striking "the recipient of the property being surveyed" and inserting "the Tribe, in the case of the transfer under subsection (a), and the Secretary of the Army, in the case of the acquisition under subsection (b)".

(3) Subsection (f) of such section (as redesignated by subsection (e)(1)) is amended—

(A) by inserting "of the Army" after "Secretary" both place it appears; and

(B) by striking "conveyances under this section" and inserting "transfer under subsection (a) and conveyances under subsections (b)(2) and (c)".

PART II—NAVY CONVEYANCES

SEC. 2861. LAND EXCHANGE, FORMER RICHMOND NAVAL AIR STATION, FLORIDA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Army may convey to the University of Miami, Miami, Florida (in this section referred to as the "University"), all right, title, and interest of the United States in and to certain parcels of real property, together with any improvements thereon, consisting of approximately 11 acres and located in the vicinity of the former Richmond Naval Air Station, Florida, in order to facilitate force protection and security needs of Department of Defense facilities located on the former Richmond Naval Air Station.

(b) RELEASE OF EASEMENTS.—As part of the conveyance of property authorized by subsection (a), the Secretary may also—

(1) release and extinguish any interest of the United States in a clearance easement on the western portion of the property of the University; and

(2) release and extinguish any interest of the United States in a certain easement for ingress and egress extending southwest and south from Southwest 127th Street along the western property line of a certain portion of United States property referred to as "IE2" in the Agreement in Principle referred to in subsection (e)(2).

(c) CONSIDERATION.—As consideration for the conveyance of property authorized by subsection (a) and the release and extinguishment of interests authorized by subsection (b), the University shall—

(1) convey to the United States all right, title, and interest of the University in and to certain parcels of real property, together with any improvements thereon, consisting of approximately 12 acres;

(2) grant to the United States such easement over a parcel of real property located along the western boundary of the property of the University as the Secretary considers appropriate to permit the United States to exercise dominion and control over the portion of the western boundary of the property of the University that has been, or may be, designated as Natural Forest Community habitat;

(3) construct and install a berm and fence security system along the entirety of the new property line between the United States and the University;

(4) relocate the existing security gate and guard building, or establish a new security gate and guard building similar in design and size to the existing security gate and guard building, at a point where the property of the United States and the University intersect on the existing ingress-egress road; and

(5) construct a new two-lane access road from Southwest 152nd Street at the western boundary of the property of the University to a point that connects with the existing road on the property of the United States (commonly referred to as the "FAA Road").

(d) CONSTRUCTION WITH PREVIOUS CONVEYANCE.—Any restrictions on the use as an animal research facility of a certain parcel of real property, consisting of approximately 30 acres, conveyed by the Secretary of Health and Human Services to the University pursuant to section 617 of the Omnibus Consolidated Appropriations Act, 1997 (Public Law 104–208; 110 Stat. 3009–366) shall terminate upon the execution of the agreement of exchange required by subsection (e).

(e) TERMS OF EXCHANGE.—(1) The Secretary and the University shall carry out the conveyances and releases of interest authorized by this section pursuant to an agreement of exchange (to be known as the "Exchange Agreement") between the Secretary and the University.

(2) The agreement of exchange shall conform to, and develop with more particularity, the Agreement in Principle executed by the United States and the University on July 13 through 15, 2001.

(f) PAYMENT OF COSTS.—(1) The Secretary may require the University to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyances under this section and the release and grants of interests under this section, including survey costs, costs related to environmental documentation, and other administrative costs related to such activities. If amounts paid to the Secretary in advance exceed the costs actually incurred by the Secretary to carry out such activities, the Secretary shall refund the excess amount to the University.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(g) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property to be conveyed under this section, and of the interests to be released or granted under this section, shall be determined by surveys satisfactory to the Secretary.

(h) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyances under this section, and the release and grants of interests under this section, as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2862. LAND CONVEYANCE, HONOLULU, HAWAII.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Navy may convey, without consideration but subject to the conditions specified in subsection (b), to the City and County of Honolulu, Hawaii, all right, title, and interest of the United States in and to a parcel of real property, including improvements thereon, consisting of approximately 5.46 acres located at 890 Valkenberg Avenue, Honolulu, Hawaii, and currently used by the City and County of Honolulu as the site of a fire station and firefighting training facility. The purpose of the conveyance is to enhance the capability of the City and County of Honolulu to provide fire protection and firefighting services to the civilian and military properties in the area and to provide a location for firefighting training for civilian and military personnel.

(b) CONDITIONS OF CONVEYANCE.—The conveyance under subsection (a) shall be subject to the following conditions:

(1) That the City and County of Honolulu accept the real property in its condition at the time of the conveyance, commonly known as conveyance "as is".

(2) That the City and County of Honolulu make the firefighting training facility available to the fire protection and firefighting units of the military departments for training not less than two days per week on terms satisfactory to the Secretary.

(c) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary shall require the City and County of Honolulu to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyance. If amounts are collected from the City and County of Honolulu in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount, without interest, to the City and County of Honolulu.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2863. LAND CONVEYANCE, NAVY PROPERTY, FORMER FORT SHERIDAN, ILLINOIS.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Navy may convey, without consideration, to the State of Illinois, a political subdivision of the State, or a nonprofit land conservation organization (in this section referred to as the "grantee") all right, title, and interest of the United States in and to certain parcels of real property consisting of a total of approximately 25 acres of environmentally sensitive land at the former Fort Sheridan, Illinois, for the purpose of ensuring the permanent protection of the land.

(b) REVERSIONARY INTEREST.—If the Secretary determines at any time that the real property conveyed under subsection (a) is not being used or maintained in accordance with the purpose of the conveyance specified in such subsection, all right, title, and interest in and to the property shall revert, at the option of the Secretary, to the United States, and the United States shall *have the right of immediate entry onto the property. Any determination of the Secretary under this subsection shall be made on the record after an opportunity for a hearing.*

(c) RECONVEYANCE AUTHORIZED.—The Secretary may permit the grantee to convey the real property conveyed under subsection (a) to another eligible entity described in such subsection, subject to the same covenants and terms and conditions as provided in the deed from the United States.

(d) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary shall require the grantee to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyance. If amounts are collected from the grantee in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the grantee.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(e) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(f) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

(g) USE OF ALTERNATE CONVEYANCE AUTHORITY.—In lieu of using the authority provided by this section to convey the real property described in subsection (a), the Secretary may elect to include the property in a conveyance authorized by section 2878 of title 10, United States Code, subject to such terms, reservations, restrictions, and conditions as may be necessary to ensure the permanent protection of the property, if the Secretary determines that a conveyance under such section is advantageous to the interests of the United States.

SEC. 2864. LAND EXCHANGE, NAVAL AIR STATION, PATUXENT RIVER, MARYLAND.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Navy may convey to the State of Maryland (in this section referred to as "State") all right, title, and interest of the United States in and to a parcel of real property, including improvements thereon, consisting of approximately five acres at Naval Air Station, Patuxent River, Maryland, and containing the Point Lookout Lighthouse, other structures related to the lighthouse, and an archaeological site pertaining to the military hospital that was located on the property during the Civil War. The conveyance shall include artifacts pertaining to the military hospital recovered by the Navy and held at the installation.

(b) PROPERTY RECEIVED IN EXCHANGE.—As consideration for the conveyance of the real property under subsection (a), the State shall convey to the United States a parcel of real property at Point Lookout State Park, Maryland, consisting of approximately five acres, or a smaller parcel that the Secretary considers sufficient and such related property interests as the Secretary and the State may agree to.

(c) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require the State to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, relocation expenses incurred in connection with the acquisition of real property under subsection (b), and other administrative costs related to the conveyance. If amounts are collected from the State in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to State.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the properties to be conveyed under this section shall be determined by surveys satisfactory to the Secretary.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyances under this section as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2865. MODIFICATION OF LAND ACQUISITION AUTHORITY, PERQUIMANS COUNTY, NORTH CAROLINA.

Section 2846 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1320) is amended by striking "240 acres" and insert "840 acres".

SEC. 2866. LAND CONVEYANCE, NAVAL WEAPONS STATION, CHARLESTON, SOUTH CAROLINA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Navy may convey to the Berkeley County Sanitation Authority, South Carolina (in this section referred to as the "Authority"), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of not more than 38 acres and comprising a portion of the Naval Weapons Station, Charleston, South Carolina, for the purpose of allowing the Authority to expand an existing sewage treatment plant.

(b) CONSIDERATION.—(1) As consideration for the conveyance of the real property under subsection (a), the Authority shall provide the United States, whether by cash payment, in-kind services, or a combination thereof, an amount that is not less than the fair market value of the conveyed property.

(2) The fair market value of the real property conveyed under subsection (a) shall be determined by an appraisal acceptable to the Secretary.

(c) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require the Authority to cover costs incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyance. If amounts are collected from the Authority in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the Authority.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyance. Amounts so credited shall be merged with amounts in such fund or account, and shall be made available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2867. LAND CONVEYANCE, NAVY YMCA BUILDING, PORTSMOUTH, VIRGINIA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Navy may convey to the City of Portsmouth, Virginia (in this section referred to as the "City"), all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 0.49 acres located at 517 King Street in Portsmouth, Virginia, and known as the "Navy YMCA Building", for the purpose of permitting the City to use the property for economic revitalization purposes.

(b) CONSIDERATION.—As consideration for the conveyance under subsection (a), the City shall provide the United States, whether by cash payment, in-kind consideration, or a combination thereof, an amount equal to the costs related to the environmental remediation of the real property to be conveyed.

(c) PAYMENT OF OTHER COSTS OF CONVEYANCE.—(1) The Secretary may require the City to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyance under subsection (a), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyance. If amounts paid to the Secretary in advance exceed the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the City.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

PART III—AIR FORCE CONVEYANCES

SEC. 2871. LAND EXCHANGE, MAXWELL AIR FORCE BASE, ALABAMA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Air Force may convey to the City of Montgomery, Alabama (in this section referred to as the "City"), all right, title, and interest of the United States in and to a parcel of real property, including improvements thereon, consisting of approximately 28 acres and containing the Maxwell Heights Housing site at Maxwell Air Force Base, Alabama.

(b) CONSIDERATION.—(1) As consideration for the conveyance of the real property under subsection (a), the City shall convey to the United

States a parcel of real property, including any improvements thereon, located contiguous to Maxwell Air Force Base, consisting of approximately 35 acres, and designated as project AL 6–1, for the purpose of allowing the Secretary to incorporate the parcel into a project for the acquisition or improvement of military housing. The military housing project may consist of or include a project conducted under the authority of subchapter IV of chapter 169 of title 10, United States Code. The Secretary shall have jurisdiction over the real property received under this paragraph.

(2) If the fair market value of the real property received under paragraph (1) is less than the fair market value of the real property conveyed under subsection (a), the Secretary may require the City to make up the difference through the payment of cash, the provision of in-kind consideration, or a combination thereof, to be determined pursuant to negotiations between the Secretary and the City.

(3) The fair market values of the real property to be exchanged under this section shall be determined by appraisals acceptable to the Secretary and the City.

(c) PAYMENT OF COSTS OF CONVEYANCE.—(1) The Secretary may require the City to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyances under subsections (a) and (b), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyances. If amounts are collected from the City in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyances, the Secretary shall refund the excess amount to the City.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyances. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the properties to be conveyed under this section shall be determined by surveys satisfactory to the Secretary.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyances under this section as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2872. LAND CONVEYANCE, MARCH AIR FORCE BASE, CALIFORNIA.

(a) CONVEYANCE AUTHORIZED.—The Secretary of the Air Force may convey to the March Joint Powers Authority (in this section referred to as the "Authority") all right, title, and interest of the United States in and to a parcel of real property, including any improvements thereon, consisting of approximately 15 acres located in Riverside County, California, and containing the former Defense Reutilization and Marketing Office facility for March Air Force Base, which is also known as Parcel A–6, for the purpose of permitting the Authority to use the property for economic development and revitalization.

(b) CONSIDERATION.—As consideration for the conveyance of the real property under subsection (a), the Authority shall pay the United States an amount equal to the fair market value of the conveyed property, as determined by the Secretary. The payment shall be deposited in the special account in the Treasury referred to in paragraph (5) of section 572(b) of title 40, United States Code, and shall be available as provided in subparagraph (B)(ii) of such paragraph.

(c) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the Authority.

(d) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2873. LAND CONVEYANCE, FORMER GRIFFISS AIR FORCE BASE, NEW YORK.

(a) CONVEYANCE AUTHORIZED.—(1) The Secretary of the Air Force may convey to the Oneida County Industrial Development Agency, New York, the local reuse authority for the former Griffiss Air Force Base (in this section referred to as the "Authority"), all right, title and interest of the United States in and to two parcels of real property consisting of 7.897 acres and 1.742 acres and containing the four buildings specified in paragraph (2), which were vacated by the Air Force in conjunction with its relocation to the Consolidated Intelligence and Reconnaissance Laboratory at Air Force Research Laboratory—Rome Research Site, Rome, New York.

(2) The buildings referred to in paragraph (1) are the following:

(A) Building 240 (117,323 square feet).

(B) Building 247 (13,199 square feet).

(C) Building 248 (4,000 square feet).

(D) Building 302 (20,577 square feet).

(3) The purpose of the conveyance under this subsection is to permit the Authority to develop the parcels and buildings for economic purposes in a manner consistent with section 2905 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note).

(b) CONDITION OF CONVEYANCE.—The conveyance under subsection (a) shall be subject to the condition that the Authority accept the real property in its condition at the time of the conveyance, commonly known as conveyance "as is".

(c) CONSIDERATION.—As consideration for the conveyance under subsection (a), the Authority shall provide the United States, whether by cash payment, in-kind contribution, or a combination thereof, an amount equal to the fair market of value of the conveyed real property, as determined by the Secretary.

(d) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the Authority.

(e) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyance under subsection (a) as the Secretary considers appropriate to protect the interests of the United States.

PART IV—OTHER CONVEYANCES

SEC. 2881. LAND EXCHANGE, ARLINGTON COUNTY, VIRGINIA.

(a) EXCHANGE AUTHORIZED.—The Secretary of Defense may convey to Arlington County, Virginia (in this section referred to as the "County"), all right, title, and interest of the United States in and to a parcel of real property, together with any improvements thereon, that consists of not more than 4.5 acres and is located north of Columbia Pike on the Navy Annex property in Arlington County, Virginia, for the purpose of the construction of a freedmen heritage museum and an Arlington history museum.

(b) CONSIDERATION.—As consideration for the conveyance of the real property under subsection (a), the County shall convey to the United States all right, title, and interest of the County in and to a parcel of real property, together with any improvements thereon, that is of a size equivalent to the total acreage of the real property conveyed by the Secretary under subsection (a) and is located in the area known as the Southgate Road right-of-way between Arlington National Cemetery, Virginia, and the Navy Annex property.

(c) SELECTION OF PROPERTY FOR CONVEYANCE.—The Secretary, in consultation with the County, shall determine the acreage of the parcels of real property to be exchanged under this section, and such determination shall be final. In selecting the real property for conveyance to the County under subsection (a), the Secretary shall seek—

(1) to provide the County with sufficient property for museum construction that is compatible with, and honors, the history of the freedmen's village that was located in the area and the heritage of the County;

(2) to preserve the appropriate traditions of Arlington National Cemetery; and

(3) to maintain the amount of acreage currently available for potential grave sites at Arlington National Cemetery.

(d) PAYMENT OF COSTS OF CONVEYANCES.—(1) The Secretary may require the County to cover costs to be incurred by the Secretary, or to reimburse the Secretary for costs incurred by the Secretary, to carry out the conveyances under subsections (a) and (b), including survey costs, costs related to environmental documentation, and other administrative costs related to the conveyances. If amounts are collected from the County in advance of the Secretary incurring the actual costs, and the amount collected exceeds the costs actually incurred by the Secretary to carry out the conveyance, the Secretary shall refund the excess amount to the County.

(2) Amounts received as reimbursement under paragraph (1) shall be credited to the fund or account that was used to cover the costs incurred by the Secretary in carrying out the conveyances. Amounts so credited shall be merged with amounts in such fund or account, and shall be available for the same purposes, and subject to the same conditions and limitations, as amounts in such fund or account.

(e) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the real property to be conveyed under this section shall be determined by surveys satisfactory to the Secretary.

(f) REVERSIONARY INTEREST.—(1) If at any time the Secretary determines that the property conveyed to the County under subsection (a) is not being used for the purposes stated in that subsection, then, at the option of the Secretary, all right, title, and interest in and to the property, including any improvements thereon, shall revert to the United States, and the United States shall have the right of immediate entry onto the property.

(2) If the Secretary exercises the reversionary interest provided for in paragraph (1), the Secretary shall pay the County, from amounts available to the Secretary for military construction for the Defense Agencies, an amount equal to the fair market value of the property that reverts to the United States, as determined by the Secretary.

(g) INCLUSION OF SOUTHGATE ROAD RIGHT-OF-WAY PROPERTY IN TRANSFER OF NAVY ANNEX PROPERTY FOR ARLINGTON NATIONAL CEMETERY.—Subsection (a) of section 2881 of the Military Construction Authorization Act for Fiscal Year 2000 (division B of Public Law 106–65; 113 Stat. 879) is amended by striking "three parcels of real property consisting of approximately 36 acres" and inserting "four parcels of real property consisting of approximately 40 acres".

(h) TERMINATION OF RESERVATION OF CERTAIN NAVY ANNEX PROPERTY FOR MEMORIALS OR MUSEUMS.—(1) Subsection (b) of such section, as amended by section 2863(f) of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107; 115 Stat. 1332) and section 2851(a)(1) of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107–314; 116 Stat. 2726), is further amended—

(A) by striking "(1) Subject to paragraph (2), the Secretary" and inserting "The Secretary"; and

(B) by striking paragraph (2).

(2) Subsection (d)(2) of such section, as amended by section 2851(a)(2) of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107–314; 116 Stat. 2726), is further amended—

(A) by striking "(A)"; and

(B) by striking ", and (B)" and all that follows through "Museum." and inserting a period.

(2) Subsection (f) of such section is amended by striking "reserved under subsection (b)(2) and of the portion".

(i) ADDITIONAL TERMS AND CONDITIONS.—The Secretary may require such additional terms and conditions in connection with the conveyances under this section as the Secretary considers appropriate to protect the interests of the United States.

Subtitle E—Other Matters

SEC. 2891. ONE-YEAR RESUMPTION OF DEPARTMENT OF DEFENSE LABORATORY REVITALIZATION DEMONSTRATION PROGRAM.

Section 2892(g) of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106; 10 U.S.C. 2805 note) is amended by striking "September 30, 2003" and inserting "September 30, 2005".

SEC. 2892. DESIGNATION OF AIRMEN LEADERSHIP SCHOOL AT LUKE AIR FORCE BASE, ARIZONA, IN HONOR OF JOHN J. RHODES, A FORMER MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES.

The Airmen Leadership School at Luke Air Force Base, Arizona, building 156, shall be known and designated as the "John J. Rhodes Airmen Leadership School". Any reference to such facility in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the John J. Rhodes Airmen Leadership School.

SEC. 2893. SETTLEMENT OF CLAIM OF OAKLAND BASE REUSE AUTHORITY AND REDEVELOPMENT AGENCY.

(a) AUTHORITY TO SETTLE CLAIM.—The Secretary of the Navy may make a payment in the amount of $2,100,000 to the Oakland Base Reuse Authority and Redevelopment Agency of the City of Oakland, California, in settlement of Oakland Base Reuse Authority and Redevelopment Agency of the City of Oakland v. the United States, Case No. C02–4652 MHP, United States District Court, Northern District of California, including any appeal.

(b) RELEASE OF CLAIM.—The payment made under subsection (a) shall be in full satisfaction of all claims of the Oakland Base Reuse Authority and Redevelopment Agency against the United States related to the case referred to in subsection (a), and the Oakland Base Reuse Authority and Redevelopment Agency shall give to the Secretary a release of all claims to 18 officer housing units and related real property located at the former Naval Medical Center Oakland, California. The release shall be in a form that is satisfactory to the Secretary.

(c) SOURCE OF FUNDS FOR SETTLEMENT.—To make the payment authorized by subsection (a), the Secretary may use—

(1) funds in the Department of Defense Base Closure Account 1990; or

(2) the proceeds from the sale of the housing units and property described in subsection (b).

SEC. 2894. REPORT ON ESTABLISHMENT OF MOBILIZATION STATION AT CAMP RIPLEY NATIONAL GUARD TRAINING CENTER, LITTLE FALLS, MINNESOTA.

Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to Congress a report regarding the feasibility of using Camp Ripley National Guard Training Center in Little Falls, Minnesota, as a mobilization station for members of a reserve component ordered to active duty under any provision of law specified in section 101(a)(13)(B) of title 10, United States Code. The report shall include a discussion of the actions necessary to establish the center as a mobilization station.

SEC. 2895. REPORT ON FEASIBILITY OF ESTABLISHMENT OF VETERANS MEMORIAL AT MARINE CORPS AIR STATION, EL TORO, CALIFORNIA.

Not later than 30 days after the date of the enactment of this Act, the Secretary of the Navy shall submit to Congress a report on whether the anticipated future uses of the former Marine Corps Air Station, El Toro, California, by the City of Irvine, California, would permit the establishment and maintenance, at no cost to the United States, of a veterans memorial at the former installation.

SEC. 2896. SENSE OF CONGRESS REGARDING EFFECT OF MILITARY HOUSING POLICIES AND FORCE STRUCTURE AND BASING CHANGES ON LOCAL EDUCATIONAL AGENCIES.

(a) FINDINGS.—Congress finds the following:

(1) There are approximately 750,000 school-aged children of members of the active duty Armed Forces in the United States.

(2) Approximately 650,000 of those students are currently attending public elementary or secondary schools in the United States.

(3) Changes to the military family housing policies of the military departments affect both military housing requirements and the number of dependent children living on military installations in the United States.

(4) Proposed restationing of units of the Armed Forces worldwide, including the return of a significant number of members of the Armed Forces stationed overseas to the United States and the Army proposal to modify its force structure to establish so-called units of action, will increase military housing requirements at military installations in the United States and may result in the need for additional educational facilities at such installations and in the adjacent communities.

(5) To help provide sufficient housing for members of the Armed Forces and their families, the Secretaries of the military departments intend to continue to use the authorities provided in subchapter IV of chapter 169 of title 10, United States Code, to carry out privatization initiatives that will improve or replace an additional 120,000 military family housing units in the United States.

(6) The Secretaries of the military departments may include the construction of school facilities as one of the ancillary supporting facilities authorized as part of a privatization initiative carried out under such subchapter.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Department of Defense should—

(1) consider the effects that changes in force structure and overseas stationing arrangements will have on—

(A) military housing requirements at specific military installations in the United States;

(B) the number of school-aged military dependents at those installations; and

(C) the need for additional educational facilities to serve such dependents; and

(2) consult with local communities and local educational agencies about the best ways to address such changing housing requirements and satisfy the need for additional educational facilities, including using the authority of subchapter IV of chapter 169 of title 10, United States Code, to include the construction of educational facilities as one of the ancillary supporting facilities authorized as part of military privatization housing initiatives.

SEC. 2897. SENSE OF CONGRESS AND STUDY REGARDING MEMORIAL HONORING NON-UNITED STATES CITIZENS KILLED IN THE LINE OF DUTY WHILE SERVING IN THE UNITED STATES ARMED FORCES.

(a) SENSE OF CONGRESS.—It is the sense of Congress that a memorial marker or monument should be designed and placed in an appropriate location to honor the service and sacrifice of individuals who, although not United States citizens, served in the United States Armed Forces and were killed in the line of duty.

(b) STUDY.—The Secretary of the Army, in consultation with the Secretary of Veterans Affairs and the American Battle Monuments Commission, shall conduct a study examining the feasibility of placing in Arlington National Cemetery, or some other appropriate location, a memorial marker honoring the service and sacrifice of non-United States citizens killed in the line of duty while serving in the Armed Forces.

(c) CONTENT OF STUDY.—The study required by subsection (b) shall include the following:

(1) A discussion of the historical development of Arlington National Cemetery.

(2) Comprehensive information on the memorial markers presently located in Arlington National Cemetery.

(3) A description of any limitations affecting the ability to establish new monuments, markers, tributes, or plaques in Arlington National Cemetery.

(4) A discussion of alternative locations outside of Arlington National Cemetery that have been used for comparable memorial markers.

(5) Recommendations for appropriate locations for a memorial marker that may be considered.

(d) REPORT AND RECOMMENDATIONS.—Not later than April 1, 2005, the Secretary of the Army shall submit to the Committee on Armed Services and the Committee on Veterans' Affairs of the House of Representatives and the Committee on Armed Services and the Committee on Veterans' Affairs of the Senate a report containing the results of the study required by subsection (b), together with any recommendations for an appropriate plan to honor the service of non-United States citizens killed in the line of duty while serving in the Armed Forces.

DIVISION C—DEPARTMENT OF ENERGY NATIONAL SECURITY AUTHORIZATIONS AND OTHER AUTHORIZATIONS

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

Subtitle A—National Security Programs Authorizations

Sec. 3101. National Nuclear Security Administration.
Sec. 3102. Defense environmental management.
Sec. 3103. Other defense activities.
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Sec. 3112. Two-year extension of authority for appointment of certain scientific, engineering, and technical personnel.

Sec. 3113. Limited authority to carry out new projects under Facilities and Infrastructure Recapitalization Program after project selection deadline.
Sec. 3114. Modification of milestone and report requirements for National Ignition Facility.
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Sec. 3116. Defense site acceleration completion.
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Subtitle C—Proliferation Matters

Sec. 3131. Modification of authority to use International Nuclear Materials Protection and Cooperation Program funds outside the former Soviet Union.
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Sec. 3141. Indemnification of Department of Energy contractors.
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Sec. 3143. Report on efforts of National Nuclear Security Administration to understand plutonium aging.
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Subtitle E—Energy Employees Occupational Illness Compensation Program

Sec. 3161. Contractor employee compensation.
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Sec. 3164. Transfer of funds for fiscal year 2005.
Sec. 3165. Use of Energy Employees Occupational Illness Compensation Fund for certain payments to covered uranium employees.
Sec. 3166. Improvements to Subtitle B of Energy Employees Occupational Illness Compensation Program Act of 2000.
Sec. 3167. Emergency Special Exposure Cohort meeting and report.
Sec. 3168. Coverage of individuals employed at atomic weapons employer facilities during periods of residual contamination.
Sec. 3169. Update of report on residual contamination of facilities.
Sec. 3170. Sense of Congress on resource center for energy employees under Energy Employee Occupational Illness Compensation Program in western New York and western Pennsylvania region.

Subtitle A—National Security Programs Authorizations

SEC. 3101. NATIONAL NUCLEAR SECURITY ADMINISTRATION.

(a) AUTHORIZATION OF APPROPRIATIONS.—Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2005 for the activities of the National Nuclear Security Administration in carrying out programs necessary for national security in the amount of $9,082,300,000, to be allocated as follows:

(1) For weapons activities, $6,592,053,000.

(2) For defense nuclear nonproliferation activities, $1,348,647,000.

(3) For naval reactors, $797,900,000.

(4) For the Office of the Administrator for Nuclear Security, $343,700,000.

(b) AUTHORIZATION OF NEW PLANT PROJECTS.—From funds referred to in subsection (a) that are available for carrying out plant projects, the Secretary of Energy may carry out, for weapons activities, the following new plant projects:

Project 05–D–140, project engineering and design, various locations, $11,600,000.

Project 05–D–160, facilities and infrastructure recapitalization program, project engineering and design, various locations, $8,700,000.

Project 05–D–170, project engineering and design, safeguards and security, various locations, $17,000,000.

Project 05–D–401, production bays upgrade, Pantex Plant, Amarillo, Texas, $25,100,000.

Project 05–D–402, beryllium capability project, Y–12 national security complex, Oak Ridge, Tennessee, $3,627,000.

Project 05–D–601, compressed air upgrades project, Y–12 national security complex, Oak Ridge, Tennessee, $4,400,000.

Project 05–D–602, power grid infrastructure upgrade, Los Alamos National Laboratory, Los Alamos, New Mexico, $10,000,000.

Project 05–D–603, new master substation, Sandia National Laboratories, Albuquerque, New Mexico, $600,000.

Project 05–D–701, security perimeter, Los Alamos National Laboratory, Los Alamos, New Mexico, $20,000,000.

SEC. 3102. DEFENSE ENVIRONMENTAL MANAGEMENT.

Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2005 for defense environmental management activities in carrying out programs necessary for national security in the amount of $6,957,307,000, to be allocated as follows:

(1) For defense site acceleration completion, $5,970,837,000.

(2) For defense environmental services, $986,470,000.

SEC. 3103. OTHER DEFENSE ACTIVITIES.

Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2005 for other defense activities in carrying out programs necessary for national security in the amount of $636,036,000.

SEC. 3104. DEFENSE NUCLEAR WASTE DISPOSAL.

Funds are hereby authorized to be appropriated to the Department of Energy for fiscal year 2005 for defense nuclear waste disposal for payment to the Nuclear Waste Fund established in section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c)) in the amount of $120,000,000.

Subtitle B—Program Authorizations, Restrictions, and Limitations

SEC. 3111. REPORT ON REQUIREMENTS FOR MODERN PIT FACILITY.

(a) REPORT.—Not later than January 31, 2005, the Administrator for Nuclear Security shall submit to the congressional defense committees a report setting forth the validated pit production requirements for the Modern Pit Facility.

(b) VALIDATED PIT PRODUCTION REQUIREMENTS.—(1) The validated pit production requirements in the report under subsection (a) shall be established by the Administrator in conjunction with the Chairman of the Nuclear Weapons Council.

(2) The validated pit production requirements shall—

(A) include specifications regarding the total number of pits per year, and the number of pits to be produced per year for each weapon type, that will be required to be produced in order to support the weapons that will be retained in the nuclear weapons stockpile pursuant to the revised nuclear weapons stockpile plan submitted to the congressional defense committees as specified in the joint explanatory statement to accompany the report of the Committee on Conference on the bill H.R. 2754 of the 108th Congress;

(B) identify any surge capacity that may be included in the annual pit production requirements; and

(C) assume that the lifetime of any particular pit type is each of 40 years, 50 years, 60 years, and 70 years.

(c) FORM OF REPORT.—The report under subsection (a) shall be submitted in unclassified form and shall include a classified annex.

SEC. 3112. TWO-YEAR EXTENSION OF AUTHORITY FOR APPOINTMENT OF CERTAIN SCIENTIFIC, ENGINEERING, AND TECHNICAL PERSONNEL.

Section 4601(c)(1) of the Atomic Energy Defense Act (50 U.S.C. 2701(c)(1)) is amended by striking "September 30, 2004" and inserting "September 30, 2006".

SEC. 3113. LIMITED AUTHORITY TO CARRY OUT NEW PROJECTS UNDER FACILITIES AND INFRASTRUCTURE RECAPITALIZATION PROGRAM AFTER PROJECT SELECTION DEADLINE.

(a) LIMITED AUTHORITY TO CARRY OUT NEW PROJECTS.—Section 3114(a) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1744; 50 U.S.C. 2453 note) is amended—

(1) in the subsection caption, by striking "DEADLINE FOR";

(2) in paragraph (2), by striking "No project" and inserting "Except as provided in paragraph (3), no project"; and

(3) by adding at the end the following new paragraph:

"(3)(A) Subject to the provisions of this paragraph, a project described in subparagraph (B) may be carried out under the Facilities and Infrastructure Recapitalization Program after December 31, 2004, if the Administrator approves the project. The Administrator may not delegate the authority to approve projects under the preceding sentence.

"(B) A project described in this subparagraph is a project that consists of a specific building, facility, or other improvement (including fences, roads, or similar improvements).

"(C) Funds may not be obligated or expended for a project under this paragraph until 60 days after the date on which the Administrator submits to the congressional defense committees a notice on the project, including a description of the project and the nature of the project, a statement explaining why the project was not included in the Facilities and Infrastructure Recapitalization Program under paragraph (1), and a statement explaining why the project was not included in any other program under the jurisdiction of the Administrator.

"(D) The total number of projects that may be carried out under this paragraph in any fiscal year may not exceed five projects.

"(E) The Administrator may not utilize the authority in this paragraph until 60 days after the later of—

"(i) the date of the submittal to the congressional defense committees of a list of the projects selected for inclusion in the Facilities and Infrastructure Recapitalization Program under paragraph (1); or

"(ii) the date of the submittal to the congressional defense committees of the report required by subsection (c).

"(F) A project may not be carried out under this paragraph unless the project will be completed by September 30, 2011.".

(b) CONSTRUCTION OF AUTHORITY.—The amendments made by subsection (a) may not be construed to authorize any delay in either of the following:

(1) The selection of projects for inclusion in the Facilities and Infrastructure Recapitalization Program under subsection (a) of section 3114 of the National Defense Authorization Act for Fiscal Year 2004.

(2) The submittal of the report required by subsection (c) of such section.

SEC. 3114. MODIFICATION OF MILESTONE AND REPORT REQUIREMENTS FOR NATIONAL IGNITION FACILITY.

(a) NOTIFICATION ON MILESTONES TO ACHIEVE IGNITION.—Subsection (a) of section 3137 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1369) is amended by striking "each Level I milestone and Level II milestone for the National Ignition Facility." and inserting the following: "each milestone for the National Ignition Facility as follows:

"(1) Each Level I milestone.

"(2) Each Level II milestone.

"(3) Each milestone to achieve ignition.".

(b) REPORT ON FAILURE OF TIMELY ACHIEVEMENT OF MILESTONES.—Subsection (b) of such section is amended by striking "a Level I milestone or Level II milestone for the National Ignition Facility" and inserting "a milestone for the National Ignition Facility referred to in subsection (a)".

(c) MILESTONES TO ACHIEVE IGNITION.—Subsection (c) of such section is amended to read as follows:

"(c) MILESTONES.—For purposes of this section:

"(1) The Level I milestones and Level II milestones for the National Ignition Facility are as established in the August 2000 revised National Ignition Facility baseline document.

"(2) The milestones for the National Ignition Facility to achieve ignition are such milestones (other than the milestones referred to in paragraph (1)) as the Administrator shall establish on any activities at the National Ignition Facility that are required to enable the National Ignition Facility to achieve ignition and be a fully functioning user facility by December 31, 2011.".

(d) SUBMITTAL TO CONGRESS OF MILESTONES TO ACHIEVE IGNITION.—Not later than January 31, 2005, the Administrator for Nuclear Security shall submit to the congressional defense committees a report setting forth the milestones of the National Ignition Facility to achieve ignition as established by the Administration under subsection (c)(2) of section 3137 of the National Defense Authorization Act for Fiscal Year 2002, as amended by subsection (c) of this section. The report shall include—

(1) a description of each milestone established; and

(2) a proposal for the funding to be required to meet each such milestone.

(e) EXTENSION OF SUNSET.—Subsection (d) of section 3137 of such Act is amended by striking "September 30, 2004" and inserting "December 31, 2011".

SEC. 3115. MODIFICATION OF SUBMITTAL DATE OF ANNUAL PLAN FOR STEWARDSHIP, MANAGEMENT, AND CERTIFICATION OF WARHEADS IN THE NUCLEAR WEAPONS STOCKPILE.

Section 4203(c) of the Atomic Energy Defense Act (50 U.S.C. 2523(c)) is amended by striking "March 15 of each year thereafter" and inserting "May 1 of each year thereafter".

SEC. 3116. DEFENSE SITE ACCELERATION COMPLETION.

(a) IN GENERAL.—Notwithstanding the provisions of the Nuclear Waste Policy Act of 1982, the requirements of section 202 of the Energy Reorganization Act of 1974, and other laws that define classes of radioactive waste, with respect to material stored at a Department of Energy site at which activities are regulated by a covered State pursuant to approved closure plans or permits issued by the State, the term "high-level radioactive waste" does not include radioactive waste resulting from the reprocessing of spent nuclear fuel that the Secretary of Energy (in this section referred to as the "Secretary"), in consultation with the Nuclear Regulatory Commission (in this section referred to as the "Commission"), determines—

(1) does not require permanent isolation in a deep geologic repository for spent fuel or high-level radioactive waste;

(2) has had highly radioactive radionuclides removed to the maximum extent practical; and

(3)(A) does not exceed concentration limits for Class C low-level waste as set out in section 61.55 of title 10, Code of Federal Regulations, and will be disposed of—

(i) in compliance with the performance objectives set out in subpart C of part 61 of title 10, Code of Federal Regulations; and

(ii) pursuant to a State-approved closure plan or State-issued permit, authority for the approval or issuance of which is conferred on the State outside of this section; or

(B) exceeds concentration limits for Class C low-level waste as set out in section 61.55 of title 10, Code of Federal Regulations, but will be disposed of—

(i) in compliance with the performance objectives set out in subpart C of part 61 of title 10, Code of Federal Regulations;

(ii) pursuant to a State-approved closure plan or State-issued permit, authority for the approval or issuance of which is conferred on the State outside of this section; and

(iii) pursuant to plans developed by the Secretary in consultation with the Commission.

(b) MONITORING BY NUCLEAR REGULATORY COMMISSION.—(1) The Commission shall, in coordination with the covered State, monitor disposal actions taken by the Department of Energy pursuant to subparagraphs (A) and (B) of subsection (a)(3) for the purpose of assessing compliance with the performance objectives set out in subpart C of part 61 of title 10, Code of Federal Regulations.

(2) If the Commission considers any disposal actions taken by the Department of Energy pursuant to those subparagraphs to be not in compliance with those performance objectives, the Commission shall, as soon as practicable after discovery of the noncompliant conditions, inform the Department of Energy, the covered State, and the following congressional committees:

(A) The Committee on Armed Services, the Committee on Energy and Commerce, and the Committee on Appropriations of the House of Representatives.

(B) The Committee on Armed Services, the Committee on Energy and Natural Resources, the Committee on Environment and Public Works, and the Committee on Appropriations of the Senate.

(3) For fiscal year 2005, the Secretary shall, from amounts available for defense site acceleration completion, reimburse the Commission for all expenses, including salaries, that the Commission incurs as a result of performance under subsection (a) and this subsection for fiscal year 2005. The Department of Energy and the Commission may enter into an interagency agreement that specifies the method of reimbursement. Amounts received by the Commission for performance under subsection (a) and this subsection may be retained and used for salaries and expenses associated with those activities, notwithstanding section 3302 of title 31, United States Code, and shall remain available until expended.

(4) For fiscal years after 2005, the Commission shall include in the budget justification materials submitted to Congress in support of the Commission budget for that fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) the amounts required, not offset by revenues, for performance under subsection (a) and this subsection.

(c) INAPPLICABILITY TO CERTAIN MATERIALS.—Subsection (a) shall not apply to any material otherwise covered by that subsection that is transported from the covered State.

(d) COVERED STATES.—For purposes of this section, the following States are covered States:

(1) The State of South Carolina.

(2) The State of Idaho.

(e) CONSTRUCTION.—(1) Nothing in this section shall impair, alter, or modify the full implementation of any Federal Facility Agreement and Consent Order or other applicable consent decree for a Department of Energy site.

(2) Nothing in this section establishes any precedent or is binding on the State of Washington, the State of Oregon, or any other State not covered by subsection (d) for the management, storage, treatment, and disposition of radioactive and hazardous materials.

(3) Nothing in this section amends the definition of "transuranic waste" or regulations for repository disposal of transuranic waste pursuant to the Waste Isolation Pilot Plant Land Withdrawal Act or part 191 of title 40, Code of Federal Regulations.

(4) Nothing in this section shall be construed to affect in any way the obligations of the Department of Energy to comply with section 4306A of the Atomic Energy Defense Act (50 U.S.C. 2567).

(5) Nothing in this section amends the West Valley Demonstration Act (42 U.S.C. 2121a note).

(f) JUDICIAL REVIEW.—Judicial review shall be available in accordance with chapter 7 of title 5, United States Code, for the following:

(1) Any determination made by the Secretary or any other agency action taken by the Secretary pursuant to this section.

(2) Any failure of the Commission to carry out its responsibilities under subsection (b).

SEC. 3117. TREATMENT OF WASTE MATERIAL.

Of the amounts made available pursuant to the authorization of appropriations in section 3102(1) for environmental management for defense site acceleration completion for the High-Level Waste Proposal, $350,000,000 shall be available at specified sites for any defense site acceleration completion activities at those sites, as follows:

(1) The Idaho National Engineering and Environmental Laboratory, Idaho, $97,300,000.

(2) The Savannah River Site, Aiken, South Carolina, $188,600,000.

(3) The Hanford Site, Richland, Washington, $61,100,000.

SEC. 3118. LOCAL STAKEHOLDER ORGANIZATIONS FOR 2006 CLOSURE SITES.

(a) ESTABLISHMENT.—(1) The Secretary of Energy shall establish for each Department of Energy 2006 closure site a local stakeholder organization having the responsibilities set forth in subsection (c).

(2) The local stakeholder organization shall be established in consultation with interested elected officials of local governments in the vicinity of the closure site concerned.

(b) COMPOSITION.—A local stakeholder organization for a Department of Energy 2006 closure site under subsection (a) shall be composed of such elected officials of local governments in the vicinity of the closure site concerned as the Secretary considers appropriate to carry out the responsibilities set forth in subsection (c) who agree to serve on the organization, or the designees of such officials.

(c) RESPONSIBILITIES.—A local stakeholder organization for a Department of Energy 2006 closure site under subsection (a) shall—

(1) solicit and encourage public participation in appropriate activities relating to the closure and post-closure operations of the site;

(2) disseminate information on the closure and post-closure operations of the site to the State government of the State in which the site is located, local and tribal governments in the vicinity of the site, and persons and entities having a stake in the closure or post-closure operations of the site;

(3) transmit to appropriate officers and employees of the Department of Energy questions and concerns of governments, persons, and entities referred to paragraph (2) on the closure and post-closure operations of the site; and

(4) perform such other duties as the Secretary and the local stakeholder organization jointly determine appropriate to assist the Secretary in meeting post-closure obligations of the Department at the site.

(d) DEADLINE FOR ESTABLISHMENT.—The local stakeholder organization for a Department of Energy 2006 closure site shall be established not later than six months before the closure of the site.

(e) DEPARTMENT OF ENERGY 2006 CLOSURE SITE DEFINED.—In this section, the term "Department of Energy 2006 closure site" means the following:

(1) The Rocky Flats Environmental Technology Site, Colorado.

(2) The Fernald Plant, Ohio.

(3) The Mound Plant, Ohio.

SEC. 3119. REPORT TO CONGRESS ON ADVANCED NUCLEAR WEAPONS CONCEPTS INITIATIVE.

(a) REPORT REQUIRED.—Not later than March 1, 2005, the Administrator for Nuclear Security shall submit to the congressional defense committees a detailed report on the planned activities for studies under the Advanced Nuclear Weapons Concepts Initiative for fiscal year 2005.

(b) FORM OF REPORT.—The report under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

Subtitle C—Proliferation Matters

SEC. 3131. MODIFICATION OF AUTHORITY TO USE INTERNATIONAL NUCLEAR MATERIALS PROTECTION AND COOPERATION PROGRAM FUNDS OUTSIDE THE FORMER SOVIET UNION.

(a) APPLICABILITY OF AUTHORITY LIMITED TO PROJECTS NOT PREVIOUSLY AUTHORIZED.—Subsection (a) of section 3124 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1747) is amended by inserting "that has not previously been authorized by Congress" after "states of the former Soviet Union".

(b) REPEAL OF LIMITATION ON TOTAL AMOUNT OF OBLIGATION.—Such section is further amended—

(1) by striking subsection (c); and

(2) by redesignating subsections (d), (e), and (f) as subsections (c), (d), and (e), respectively.

(c) APPLICABILITY BEYOND FISCAL YEAR 2004.—Subsection (e) of such section (as redesignated by subsection (b)) is amended by striking "the funds appropriated pursuant to the authorization of appropriations in section 3101(a)(2) for such program" and inserting "the funds appropriated pursuant to an authorization of appropriations for the International Nuclear Materials Protection and Cooperation Program".

SEC. 3132. ACCELERATION OF REMOVAL OR SECURITY OF FISSILE MATERIALS, RADIOLOGICAL MATERIALS, AND RELATED EQUIPMENT AT VULNERABLE SITES WORLDWIDE.

(a) SENSE OF CONGRESS.—(1) It is the sense of Congress that the security, including the rapid removal or secure storage, of high-risk, proliferation-attractive fissile materials, radiological materials, and related equipment at vulnerable sites worldwide should be a top priority among the activities to achieve the national security of the United States.

(2) It is the sense of Congress that the President may establish in the Department of Energy a task force to be known as the Task Force on Nuclear Materials to carry out the program authorized by subsection (b).

(b) PROGRAM AUTHORIZED.—The Secretary of Energy may carry out a program to undertake an accelerated, comprehensive worldwide effort to mitigate the threats posed by high-risk, proliferation-attractive fissile materials, radiological materials, and related equipment located at sites potentially vulnerable to theft or diversion.

(c) PROGRAM ELEMENTS.—(1) Activities under the program under subsection (b) may include the following:

(A) Accelerated efforts to secure, remove, or eliminate proliferation-attractive fissile materials or radiological materials in research reactors, other reactors, and other facilities worldwide.

(B) Arrangements for the secure shipment of proliferation-attractive fissile materials, radiological materials, and related equipment to other countries willing to accept such materials and equipment, or to the United States if such countries cannot be identified, and the provision of secure storage or disposition of such materials and equipment following shipment.

(C) The transportation of proliferation-attractive fissile materials, radiological materials, and related equipment from sites identified as proliferation risks to secure facilities in other countries or in the United States.

(D) The processing and packaging of proliferation-attractive fissile materials, radiological materials, and related equipment in accordance with required standards for transport, storage, and disposition.

(E) The provision of interim security upgrades for vulnerable, proliferation-attractive fissile materials, radiological materials, and related equipment pending their removal from their current sites.

(F) The utilization of funds to upgrade security and accounting at sites where proliferation-attractive fissile materials or radiological materials will remain for an extended period of time in order to ensure that such materials are secure against plausible potential threats and will remain so in the future.

(G) The management of proliferation-attractive fissile materials, radiological materials, and related equipment at secure facilities.

(H) Actions to ensure that security, including security upgrades at sites and facilities for the storage or disposition of proliferation-attractive fissile materials, radiological materials, and related equipment, continues to function as intended.

(I) The provision of technical support to the International Atomic Energy Agency (IAEA), other countries, and other entities to facilitate removal of, and security upgrades to facilities that contain, proliferation-attractive fissile materials, radiological materials, and related equipment worldwide.

(J) The development of alternative fuels and irradiation targets based on low-enriched uranium to convert research or other reactors fueled by highly-enriched uranium to such alternative fuels, as well as the conversion of reactors and irradiation targets employing highly-enriched uranium to employment of such alternative fuels and targets.

(K) Accelerated actions for the blend down of highly-enriched uranium to low-enriched uranium.

(L) The provision of assistance in the closure and decommissioning of sites identified as presenting risks of proliferation of proliferation-attractive fissile materials, radiological materials, and related equipment.

(M) Programs to—

(i) assist in the placement of employees displaced as a result of actions pursuant to the program in enterprises not representing a proliferation threat; and

(ii) convert sites identified as presenting risks of proliferation regarding proliferation-attractive fissile materials, radiological materials, and related equipment to purposes not representing a proliferation threat to the extent necessary to eliminate the proliferation threat.

(2) The Secretary of Energy shall, in coordination with the Secretary of State, carry out the program in consultation with, and with the assistance of, appropriate departments, agencies, and other entities of the United States Government.

(3) The Secretary of Energy shall, with the concurrence of the Secretary of State, carry out activities under the program in collaboration with such foreign governments, non-governmental organizations, and other international entities as the Secretary of Energy considers appropriate for the program.

(d) REPORTS.—(1) Not later than March 15, 2005, the Secretary of Energy shall submit to Congress a classified interim report on the program under subsection (b).

(2) Not later than January 1, 2006, the Secretary shall submit to Congress a classified final report on the program under subsection (b) that includes the following:

(A) A survey by the Secretary of the facilities and sites worldwide that contain proliferation-attractive fissile materials, radiological materials, or related equipment.

(B) A list of sites determined by the Secretary to be of the highest priority, taking into account risk of theft from such sites, for removal or security of proliferation-attractive fissile materials, radiological materials, or related equipment, organized by level of priority.

(C) A plan, including activities under the program under this section, for the removal, security, or both of proliferation-attractive fissile materials, radiological materials, or related equipment at vulnerable facilities and sites worldwide, including measurable milestones, metrics, and estimated costs for the implementation of the plan.

(3) A summary of each report under this subsection shall also be submitted to Congress in unclassified form.

(e) FUNDING.—Amounts authorized to be appropriated to the Secretary of Energy for defense nuclear nonproliferation activities shall be available for purposes of the program under this section.

(f) DEFINITIONS.—In this section:

(1) The term "fissile materials" means plutonium, highly-enriched uranium, or other material capable of sustaining an explosive nuclear chain reaction, including irradiated items containing such materials if the radiation field from such items is not sufficient to prevent the theft or misuse of such items.

(2) The term "radiological materials" includes Americium-241, Californium-252, Cesium-137, Cobalt-60, Iridium-192, Plutonium-238, Radium-226, Strontium-90, Curium-244, and irradiated items containing such materials, or other materials designated by the Secretary of Energy for purposes of this paragraph.

(3) The term "related equipment" includes equipment useful for enrichment of uranium in the isotope 235 and for extraction of fissile materials from irradiated fuel rods and other equipment designated by the Secretary of Energy for purposes of this section.

(4) The term "highly-enriched uranium" means uranium enriched to or above 20 percent in the isotope 235.

(5) The term "low-enriched uranium" means uranium enriched below 20 percent in the isotope 235.

(6) The term "proliferation-attractive", in the case of fissile materials and radiological materials, means quantities and types of such materials that are determined by the Secretary of Energy to present a significant risk to the national security of the United States if diverted to a use relating to proliferation.

SEC. 3133. SILK ROAD INITIATIVE.

(a) PROGRAM AUTHORIZED.—(1) The Secretary of Energy may carry out a program, to be known as the Silk Road Initiative, to promote non-weapons-related employment opportunities for scientists, engineers, and technicians formerly engaged in activities to develop and produce weapons of mass destruction in Silk Road nations. The program should—

(A) incorporate best practices under the Initiatives for Proliferation Prevention program; and

(B) facilitate commercial partnerships between private entities in the United States and scientists, engineers, and technicians in the Silk Road nations.

(2) Before implementing the program with respect to multiple Silk Road nations, the Secretary of Energy shall carry out a pilot program with respect to one Silk Road nation selected by the Secretary. It is the sense of Congress that the Secretary should select the Republic of Georgia.

(b) SILK ROAD NATIONS DEFINED.—In this section, the Silk Road nations are Armenia, Azerbaijan, the Republic of Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan.

(c) FUNDING.—Of the funds authorized to be appropriated to the Department of Energy for nonproliferation and international security for fiscal year 2005, up to $10,000,000 may be used to carry out this section.

SEC. 3134. NUCLEAR NONPROLIFERATION FELLOWSHIPS FOR SCIENTISTS EMPLOYED BY UNITED STATES AND RUSSIAN FEDERATION.

(a) IN GENERAL.—(1) From amounts made available to carry out this section, the Administrator for Nuclear Security may carry out a program under which the Administrator awards, to scientists employed at nonproliferation research laboratories of the Russian Federation and the United States, international exchange fellowships, to be known as Nuclear Nonproliferation Fellowships, in the nuclear nonproliferation sciences.

(2) The purpose of the program shall be to provide opportunities for advancement in the nuclear nonproliferation sciences to scientists who, as demonstrated by their academic or professional achievements, show particular promise of making significant contributions in those sciences.

(3) A fellowship awarded to a scientist under the program shall be for collaborative study and training or advanced research at—

(A) a nonproliferation research laboratory of the Russian Federation, in the case of a scientist employed at a nonproliferation research laboratory of the United States; and

(B) a nonproliferation research laboratory of the United States, in the case of a scientist employed at a nonproliferation research laboratory of the Russian Federation.

(4) The duration of a fellowship under the program may not exceed two years, except that the Administrator may provide for a longer duration in an individual case to the extent warranted by extraordinary circumstances, as determined by the Administrator.

(5) In a calendar year, the Administrator may not award more than—

(A) one fellowship to a scientist employed at a nonproliferation research laboratory of the Russian Federation; and

(B) one fellowship to a scientist employed at a nonproliferation research laboratory of the United States.

(6) A fellowship under the program shall include—

(A) travel expenses; and

(B) any other expenses that the Administrator considers appropriate, such as room and board.

(b) DEFINITIONS.—In this section:

(1) The term "nonproliferation research laboratory" means, with respect to a country, a national laboratory of that country at which research in the nuclear nonproliferation sciences is carried out.

(2) The term "nuclear nonproliferation sciences" means bodies of scientific knowledge relevant to developing or advancing the means to prevent or impede the proliferation of nuclear weaponry.

(3) The term "scientist" means an individual who has a degree from an institution of higher education in a science that has practical application in the nuclear nonproliferation sciences.

(c) FUNDING.—Amounts available to the Department of Energy for defense nuclear nonproliferation activities shall be available for the fellowships authorized by subsection (a).

SEC. 3135. UTILIZATION OF INTERNATIONAL CONTRIBUTIONS TO THE ELIMINATION OF WEAPONS GRADE PLUTONIUM PRODUCTION PROGRAM.

Section 3151 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314; 116 Stat. 2736; 22 U.S.C. 5952 note) is amended by adding at the end the following new subsection:

"(e) INTERNATIONAL PARTICIPATION IN PROGRAM.—(1) In order to achieve international participation in the program referred to in subsection (a), the Secretary of Energy may, in consultation with the Secretary of State, enter into one or more agreements with any person, foreign government, or other international organization that the Secretary considers appropriate for the contribution of funds by such person, government, or organization for purposes of the program.

"(2) Notwithstanding section 3302 of title 31, United States Code, and subject to paragraphs (3) and (4), the Secretary may retain and utilize any amounts contributed by a person, government, or organization under an agreement under paragraph (1) for purposes of the program without further appropriation and without fiscal year limitation.

"(3) The Secretary may not utilize under paragraph (2) any amount contributed under an agreement under paragraph (1) until 30 days after the date on which the Secretary notifies the congressional defense committees of the intent to utilize such amount, including the source of such amount and the proposed purpose for which such amount will be utilized.

"(4) If any amount contributed under paragraph (1) has not been utilized within five years of receipt under that paragraph, the Secretary shall return such amount to the person, government, or organization contributing such amount under that paragraph.

"(5) Not later than 30 days after the receipt of any amount contributed under paragraph (1), the Secretary shall submit to the congressional defense committees a notice of the receipt of such amount.

"(6) Not later than October 31 each year, the Secretary shall submit to the congressional defense committees a report on the receipt and utilization of amounts under this subsection during the preceding fiscal year. Each report for a fiscal year shall set forth—

"(A) a statement of any amounts received under this subsection, including the source of each such amount; and

"(B) a statement of any amounts utilized under this subsection, including the purpose for which such amounts were utilized.

"(7) The authority of the Secretary to accept and utilize amounts under this subsection shall expire on December 31, 2011.".

Subtitle D—Other Matters

SEC. 3141. INDEMNIFICATION OF DEPARTMENT OF ENERGY CONTRACTORS.

Section 170 d.(1)(A) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended by striking "until December 31, 2004" and inserting "until December 31, 2006".

SEC. 3142. REPORT ON MAINTENANCE OF RETIREMENT BENEFITS FOR CERTAIN WORKERS AT 2006 CLOSURE SITES AFTER CLOSURE OF SITES.

(a) REPORT REQUIRED.—Not later than 60 days after the date of the enactment of this Act, the Assistant Secretary of Energy for Environmental Management shall submit to the Secretary of Energy a report on the maintenance of retirement benefits for workers at Department of Energy 2006 closure sites after closure of such sites.

(b) ELEMENTS.—The report under subsection (a) shall include the following:

(1) The number of workers at Department of Energy 2006 closure sites who would be eligible for regular or early retirement benefits if such sites close on or after their target completion dates, but who would not be eligible for regular or early retirement benefits if such sites close before their target completion dates (by calendar quarter).

(2) The cost of providing regular or full retirement benefits, after the closure of Department of Energy 2006 closure sites, to workers at such sites who would fail to qualify for regular or early retirement benefits because of the early closure of such sites (by calendar quarter).

(3) The impact on collective-bargaining agreements and any applicable retirement benefit plan documents covering workers at Department of Energy 2006 closure sites of providing regular or early retirement benefits as set forth herein.

(c) TRANSMITTAL TO CONGRESS.—Not later than 30 days after receiving the report under subsection (a), the Secretary shall transmit the report to Congress, together with such recommendations, including recommendations for legislative action, as the Secretary considers appropriate.

(d) DEFINITIONS.—In this section:

(1) The term "Department of Energy 2006 closure site" means the following:

(A) The Rocky Flats Environmental Technology Site, Colorado.

(B) The Fernald Plant, Ohio.

(C) The Mound Plant, Ohio.

(2) The term "worker" means any employee who is employed by contract or first or second tier subcontract to perform cleanup, security, or administrative duties or responsibilities at a Department of Energy 2006 closure site.

(3) The term "retirement benefits" means pension, health, and other similar post-retirement benefits.

(4) The term "target completion date", with respect to a Department of Energy 2006 closure site, means the physical completion date specified in the site contracts.

SEC. 3143. REPORT ON EFFORTS OF NATIONAL NUCLEAR SECURITY ADMINISTRATION TO UNDERSTAND PLUTONIUM AGING.

(a) STUDY.—(1) The Administrator for Nuclear Security shall enter into a contract with a Federally Funded Research and Development Center (FFRDC) providing for a study to assess the efforts of the National Nuclear Security Administration to understand the aging of plutonium in nuclear weapons.

(2) The Administrator shall make available to the FFRDC contractor under this subsection all information that is necessary for the contractor to successfully complete a meaningful study on a timely basis.

(b) REPORT REQUIRED.—(1) Not later than two years after the date of the enactment of this Act, the Administrator shall submit to Congress a report on the findings of the study required by subsection (a)(1).

(2) The report shall include the recommendations of the study for improving the knowledge, understanding, and application of the fundamental and applied sciences related to the study of plutonium aging.

(3) The report shall be submitted in unclassified form, but may include a classified annex.

SEC. 3144. SUPPORT FOR PUBLIC EDUCATION IN THE VICINITY OF LOS ALAMOS NATIONAL LABORATORY, NEW MEXICO.

The Secretary of Energy shall require that the primary management and operations contract for Los Alamos National Laboratory, New Mexico, that involves Laboratory operations after September 30, 2005, shall contain terms requiring the contractor under such contract to provide support to the Los Alamos Public School District, New Mexico, for the elementary and secondary education of students in the school district in the amount of $8,000,000 in each fiscal year.

SEC. 3145. REVIEW OF WASTE ISOLATION PILOT PLANT, NEW MEXICO, PURSUANT TO COMPETITIVE CONTRACT.

(a) CONTRACT REQUIREMENT.—The Secretary of Energy shall use competitive procedures to enter into a contract to conduct independent reviews and evaluations of the design, construction, and operations of the Waste Isolation Pilot Plant in New Mexico (in this section referred to as the "WIPP") as they relate to the protection of the public health and safety and the environment. The contract shall be for a period of one year, beginning on October 1, 2004, and shall be renewable for four additional one-year periods with the consent of the contractor and subject to the authorization and appropriation of funds for such purpose.

(b) CONTENT OF CONTRACT.—A contract entered into under subsection (a) shall require the following:

(1) The contractor shall appoint a Director and Deputy Director, who shall be scientists of national eminence in the field of nuclear waste disposal, shall be free from any biases related to the activities of the WIPP, and shall be widely known for their integrity and scientific expertise.

(2) The Director shall appoint staff. The professional staff shall consist of scientists and engineers of recognized integrity and scientific expertise who represent scientific and engineering disciplines needed for a thorough review of the WIPP, including disciplines such as geology, hydrology, health physics, environmental engineering, probability risk analysis, mining engineering, and radiation chemistry. The disciplines represented in the staff shall change as may be necessary to meet changed needs in carrying out the contract for expertise in any certain scientific or engineering discipline. Scientists and engineers employed under the contract shall have qualifications and experience equivalent to the qualifications and experience required for scientists and engineers employed by the Federal Government in grades GS–13 through GS–15.

(3) Scientists and engineers employed under the contract shall have an appropriate support staff.

(4) The Director and Deputy Director shall each be appointed for a term of 5 years, subject to contract renewal, and may be removed only for misconduct or incompetence. The staff shall be appointed for such terms as the Director considers appropriate.

(5) The rates of pay of professional staff and the procedures for increasing the rates of pay of professional staff shall be equivalent to those rates and procedures provided for the General Schedule pay system under chapter 53 of title 5, United States Code.

(6) The results of reviews and evaluations carried out under the contract shall be published.

(c) ADMINISTRATION.—The contractor shall establish general policies and guidelines to be used by the Director in carrying out the work under the contract.

SEC. 3146. NATIONAL ACADEMY OF SCIENCES STUDY ON MANAGEMENT BY DEPARTMENT OF ENERGY OF CERTAIN RADIOACTIVE WASTE STREAMS.

(a) STUDY REQUIRED.—The Secretary of Energy shall, as soon as practicable, enter into an arrangement with the National Research Council of the National Academy of Sciences to carry out a study of the plans of the Department of Energy to manage those waste streams specified in subsection (b) that—

(1) exceed the concentration limits for Class C low-level waste as set out in section 61.55 of title 10, Code of Federal Regulations; and

(2) the Department plans to dispose of on the sites specified in subsection (b)(3) rather than in a repository for spent nuclear fuel and high-level waste.

(b) COVERED WASTE STREAMS.—The waste streams referred to in subsection (a) are the streams of waste, from reprocessed spent nuclear fuel, that—

(1) exceed the concentration limits for Class C low-level waste as set out in section 61.55 of title 10, Code of Federal Regulations;

(2) the Department does not plan for disposal in a repository for spent nuclear fuel and high-level waste; and

(3) are stored in tanks at the following sites:

(A) The Savannah River Site, South Carolina.

(B) The Idaho National Engineering Laboratory, Idaho.

(C) The Hanford Reservation, Washington.

(c) MATTERS INCLUDED.—The study required by subsection (a) shall evaluate—

(1) the state of the Department's understanding of the physical, chemical, and radiological characteristics of the waste referred to in subsection (b), including an assessment of data uncertainties;

(2) any actions additional to those contained in current plans that the Department should consider to ensure that the plans referred to in subsection (a) will comply with the performance objectives of part 61 of title 10, Code of Federal Regulations;

(3) the adequacy of the Department's plans for monitoring disposal sites and the surrounding environment to verify compliance with those performance objectives;

(4) existing technology alternatives to the plans referred to in subsection (a) and, for each such alternative, an assessment of the cost, consequences for worker safety, and long-term consequences for environmental and human health;

(5) any technology gaps that exist to effect improved efficiency in removal and treatment of waste from the tanks referred to in subsection (b)(3); and

(6) any other matters that the National Research Council considers appropriate and directly related to the subject matter of the study.

(d) RECOMMENDATIONS.—In carrying out the study required by subsection (a), the National Research Council may develop recommendations it considers appropriate and directly related to the subject matter of the study. It is the sense of Congress that the National Research Council should develop recommendations on—

(1) improvements to the scientific and technical basis for managing the waste covered by the study, including the identification of technology alternatives and mitigation of technology gaps; and

(2) the best means of monitoring any on-site disposal sites from the waste streams referred to in subsection (b), to include soil, groundwater, and surface water monitoring.

(e) REPORTS.—(1) The National Research Council shall submit to the Secretary of Energy and the congressional committees described in paragraph (2)—

(A) not later than six months after entering into the arrangement required by subsection (a), an interim report on the study that, with respect to the requirements of subsection (c)(2), specifically addresses any additional actions the Department should consider to ensure that the Department's plans for the Savannah River Site, including plans for grouting of tanks, will comply with the performance objectives referred to in that subsection in a more effective manner; and

(B) not later than one year after entering into the arrangement required by subsection (a), a final report on the study that includes all findings, conclusions, and recommendations.

(2) The congressional committees referred to in paragraph (1) are as follows:

(A) The Committee on Appropriations, Committee on Armed Services, and Committee on Energy and Commerce of the House of Representatives.

(B) The Committee on Appropriations, Committee on Armed Services, Committee on Energy and Natural Resources, and Committee on Environment and Public Works of the Senate.

(f) PROVISION OF INFORMATION.—The Secretary of Energy shall, in a timely manner, make available to the National Research Council all information that the National Research Council considers necessary to carry out its responsibilities under this section.

(g) RULE OF CONSTRUCTION.—This section shall not be construed to affect section 3116.

(h) FUNDING.—Of the amounts made available to the Department of Energy pursuant to the authorization of appropriations in section 3102, $1,500,000 shall be available only for carrying out the study required by this section.

SEC. 3147. COMPENSATION OF PAJARITO PLATEAU, NEW MEXICO, HOMESTEADERS FOR ACQUISITION OF LANDS FOR MANHATTAN PROJECT IN WORLD WAR II.

(a) ESTABLISHMENT OF COMPENSATION FUND.—There is established in the Treasury of the United States a fund to be known as the Pajarito Plateau Homesteaders Compensation Fund (in this section referred to as the "Fund"). The Fund shall be dedicated to the settlement of the two lawsuits in the United States District Court for the District of New Mexico consolidated as Civ. No. 00-60.

(b) ELEMENTS OF FUND.—The Fund shall consist of the following:

(1) Amounts available for deposit in the Fund under subsection (j).

(2) Interest earned on amounts in the Fund under subsection (g).

(c) USE OF FUND.—The Fund shall be available for the settlement of the consolidated lawsuits in accordance with the following requirements:

(1) The settlement shall be subject to preliminary and final approval by the Court in accordance with rule 23(e) of the Federal Rules of Civil Procedure.

(2) The Court shall appoint a special master in accordance with rule 53 of the Federal Rules of Civil Procedure to—

(A) identify class members;

(B) receive claims from class members so identified;

(C) determine in accordance with subsection (d) eligible claimants from among class members so identified;

(D) resolve contests, if any, among claimants with respect to a particular eligible tract, regarding the disbursement of monies in the Fund with respect to that eligible tract; and

(E) address such other matters as the Court may order.

(3) Lead counsel for claimants shall provide evidence to the special master to assist the special master in the duties set forth in paragraph (2).

(4) If more than 10 percent of the class members object to the settlement, or the Court fails to approve the settlement—

(A) the Fund shall not serve as the basis for the settlement of the consolidated lawsuits and the provisions of this section shall have no further force or effect; and

(B) amounts in the Fund shall not be disbursed, but shall be retained in the Treasury as miscellaneous receipts.

(5) The Court may award compensation for the special master and attorney fees and expenses from the Fund pursuant to rule 23 of the Federal Rules of Civil Procedure, except that the award of attorney fees may not exceed 20 percent of the Fund and the award of expenses may not exceed 2 percent of the Fund. Any compensation and attorney fees and expenses so paid shall be paid from the Fund by the Court before distribution of the amount in the Fund to eligible claimants entitled thereto.

(6) The Fund shall be available to pay settlement awards in accordance with the following:

(A) The balance of the amount of the Fund that is available for disbursement after any award of attorney fees and expenses under paragraph (5) shall be allocated proportionally by eligible tract according to its acreage as compared with all eligible tracts.

(B) The allocation for each eligible tract shall be allocated pro rata among all eligible claimants having an interest in such eligible tract according to the extent of their interest in such eligible tract, as determined under the laws of the State of New Mexico.

(7) The special master shall disburse the allocated amounts from the Fund after approval by the Court.

(8) Any amounts available for disbursement with respect to an eligible tract that are not awarded to eligible claimants with respect to that tract shall be retained in the Treasury as miscellaneous receipts.

(d) ELIGIBLE CLAIMANTS.—(1) For purposes of this section, an eligible claimant is any class member determined by the Court, by a preponderance of evidence, to be a person or entity who held a fee simple ownership in an eligible tract at the time of its acquisition by the United States during World War II for use in the Manhattan Project, or the heir, successor in interest, assignee, or beneficiary of such a person or entity.

(2) The status of a person or entity as an heir, successor in interest, assignee, or beneficiary for purposes of this subsection shall be determined under the laws of the State of New Mexico, including the descent and distribution law of the State of New Mexico.

(e) FULL RESOLUTION OF CLAIMS AGAINST UNITED STATES.—(1) The acceptance of a disbursement from the Fund by an eligible claimant under this section shall constitute a final and complete release of the defendants in the consolidated lawsuits with respect to such eligible claimant, and shall be in full satisfaction of any and all claims of such eligible claimant against the United States arising out of acts described in the consolidated lawsuits.

(2) Upon the disbursement of the amount in the Fund to eligible claimants entitled thereto under this section, the Court shall, subject to the provisions of rule 23(e) of the Federal Rules of Civil Procedure, enter a final judgment dismissing with prejudice the consolidated lawsuits and all claims and potential claims on matters covered by the consolidated lawsuits.

(f) COMPENSATION LIMITED TO AMOUNTS IN FUND.—(1) An eligible claimant may be paid under this section only from amounts in the Fund.

(2) Nothing in this section shall authorize the payment to a class member by the United States Government of any amount authorized by this section from any source other than the Fund.

(g) INVESTMENT OF FUND.—(1) The Secretary of the Treasury shall, in accordance with the requirements of section 9702 of title 31, United States Code, and the provisions of this subsection, direct the form and manner by which the Fund shall be safeguarded and invested so as to maximize its safety while earning a return comparable to other common funds in which the United States Treasury is the source of payment.

(2) Interest on the amount deposited in the Fund shall accrue from the date of the enactment of the Act appropriating amounts for deposit in the Fund until the date on which the Secretary of the Treasury disburses the amount in the Fund to eligible claimants who are entitled thereto under subsection (c).

(h) PRESERVATION OF RECORDS.—(1) All documents, personal testimony, and other records created or received by the Court in the consolidated lawsuits shall be kept and maintained by the Archivist of the United States, who shall preserve such documents, testimony, and records in the National Archives of the United States.

(2) The Archivist shall make available to the public the materials kept and maintained under paragraph (1).

(i) DEFINITIONS.—In this section:

(1) The term "Court" means the United States District Court for the District of New Mexico having jurisdiction over the consolidated lawsuits.

(2) The term "consolidated lawsuits" means the two lawsuits in the United States District Court for the District of New Mexico consolidated as Civ. No. 00-60.

(3)(A) The term "eligible tract" means private real property located on the Pajarito Plateau of what is now Los Alamos County, New Mexico, that was acquired by the United States during World War II for use in the Manhattan Project and which is the subject of the consolidated lawsuits.

(B) The term does not include lands of the Los Alamos Ranch School and of the A.M. Ross Estate (doing business as Anchor Ranch).

(4) The term "class member" means the following:

(A) Any person or entity who claims to have held a fee simple ownership in an eligible tract at the time of its acquisition by the United States during World War II for use in the Manhattan Project.

(B) Any person or entity claiming to be the heir, successor in interest, assignee, or beneficiary of a person or entity who held a fee simple ownership in an eligible tract at the time of its acquisition by the United States during World War II for use in the Manhattan Project.

(j) FUNDING.—Of the amount authorized to be appropriated by section 3101(a)(4) for the National Nuclear Security Administration for the Office of the Administrator for Nuclear Security, $10,000,000 shall be available for deposit in the Fund under subsection (b)(1).

SEC. 3148. MODIFICATION OF REQUIREMENTS RELATING TO CONVEYANCES AND TRANSFER OF CERTAIN LAND AT LOS ALAMOS NATIONAL LABORATORY, NEW MEXICO.

Section 632(a) of Public Law 105–119 (111 Stat. 2523; 42 U.S.C. 2391 note) is amended—

(1) in paragraph (1)—

(A) by inserting "except as provided in paragraph (2)," before "convey"; and

(B) by striking "and" at the end;

(2) by redesignating paragraph (2) as paragraph (3); and

(3) by inserting after paragraph (1) the following new paragraph (2):

"(2) notwithstanding paragraph (1) and the agreement under subsection (e), convey, without consideration, to the Board of Education of the Los Alamos Public Schools, New Mexico, within the County, fee title to the parcels of land identified by the Department of Energy as Parcel A–8 and Parcel A–15–1 that are currently located in Technical Area 21 of Los Alamos National Laboratory upon the entry of Los Alamos Public Schools and the County into an agreement for the use of the parcel of land identified as Parcel A–8; and".

Subtitle E—Energy Employees Occupational Illness Compensation Program

SEC. 3161. CONTRACTOR EMPLOYEE COMPENSATION.

The Energy Employees Occupational Illness Compensation Program Act of 2000 (title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398)) is amended by adding after subtitle D (42 U.S.C. 7385o) the following new title:

"Subtitle E—Contractor Employee Compensation

"SEC. 3671. DEFINITIONS.

"In this subtitle:

"(1) The term 'covered DOE contractor employee' means any Department of Energy contractor employee determined under section 3675 to have contracted a covered illness through exposure at a Department of Energy facility.

"(2) The term 'covered illness' means an illness or death resulting from exposure to a toxic substance.

"(3) The term 'Secretary' means the Secretary of Labor.

"SEC. 3672. COMPENSATION TO BE PROVIDED.

"Subject to the other provisions of this subtitle:

"(1) CONTRACTOR EMPLOYEES.—A covered DOE contractor employee shall receive contractor employee compensation under this subtitle in accordance with section 3673.

"(2) SURVIVORS.—After the death of a covered DOE contractor employee, compensation referred to in paragraph (1) shall not be paid. Instead, the survivor of that employee shall receive compensation as follows:

"(A) Except as provided in subparagraph (B), the survivor of that employee shall receive contractor employee compensation under this subtitle in accordance with section 3674.

"(B) In a case in which the employee's death occurred after the employee applied under this subtitle and before compensation was paid

under paragraph (1), and the employee's death occurred from a cause other than the covered illness of the employee, the survivor of that employee may elect to receive, in lieu of compensation under subparagraph (A), the amount of contractor employee compensation that the employee would have received in accordance with section 3673 if the employee's death had not occurred before compensation was paid under paragraph (1).

"SEC. 3673. COMPENSATION SCHEDULE FOR CONTRACTOR EMPLOYEES.

"(a) COMPENSATION PROVIDED.—The amount of contractor employee compensation under this subtitle for a covered DOE contractor employee shall be the sum of the amounts determined under paragraphs (1) and (2), as follows:

"(1) IMPAIRMENT.—(A) The Secretary shall determine—

"(i) the minimum impairment rating of that employee, expressed as a number of percentage points; and

"(ii) the number of those points that are the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility.

"(B) The employee shall receive an amount under this paragraph equal to $2,500 multiplied by the number referred to in clause (ii) of subparagraph (A).

"(2) WAGE LOSS.—(A) The Secretary shall determine—

"(i) the calendar month during which the employee first experienced wage loss as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility;

"(ii) the average annual wage of the employee for the 36-month period immediately preceding the calendar month referred to in clause (i), excluding any portions of that period during which the employee was unemployed; and

"(iii) beginning with the calendar year that includes the calendar month referred to in clause (i), through and including the calendar year during which the employee attained normal retirement age (for purposes of the Social Security Act)—

"(I) the number of calendar years during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility, the employee's annual wage exceeded 50 percent of the average annual wage determined under clause (ii), but did not exceed 75 percent of the average annual wage determined under clause (ii); and

"(II) the number of calendar years during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility, the employee's annual wage did not exceed 50 percent of the average annual wage determined under clause (ii).

"(B) The employee shall receive an amount under this paragraph equal to the sum of—

"(i) $10,000 multiplied by the number referred to in clause (iii)(I) of subparagraph (A); and

"(ii) $15,000 multiplied by the number referred to in clause (iii)(II) of subparagraph (A).

"(b) DETERMINATION OF MINIMUM IMPAIRMENT RATING.—For purposes of subsection (a), a minimum impairment rating shall be determined in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment.

"SEC. 3674. COMPENSATION SCHEDULE FOR SURVIVORS.

"(a) CATEGORIES OF COMPENSATION.—The amount of contractor employee compensation under this subtitle for the survivor of a covered DOE contractor employee shall be determined as follows:

"(1) CATEGORY ONE.—The survivor shall receive the amount of $125,000, if the Secretary determines that—

"(A) the employee would have been entitled to compensation under section 3675 for a covered illness; and

"(B) it is at least as likely as not that exposure to a toxic substance at a Department of Energy facility was a significant factor in aggravating, contributing to, or causing the death of such employee.

"(2) CATEGORY TWO.—The survivor shall receive the amount of $150,000, if paragraph (1) applies to the employee and the Secretary also determines that there was an aggregate period of not less than 10 years, before the employee attained normal retirement age (for purposes of the Social Security Act), during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility, the employee's annual wage did not exceed 50 percent of the average annual wage of that employee, as determined under section 3673(a)(2)(A)(ii).

"(3) CATEGORY THREE.—The survivor shall receive the amount of $175,000, if paragraph (1) applies to the employee and the Secretary also determines that there was an aggregate period of not less than 20 years, before the employee attained normal retirement age (for purposes of the Social Security Act), during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility, the employee's annual wage did not exceed 50 percent of the average annual wage of that employee, as determined under section 3673(a)(2)(A)(ii).

"(b) ONE AMOUNT ONLY.—The survivor of a covered DOE contractor employee to whom more than one amount under subsection (a) applies shall receive only the highest such amount.

"(c) DETERMINATION AND ALLOCATION OF SHARES.—The amount under subsection (a) shall be paid only as follows:

"(1) If a covered spouse is alive at the time of payment, such payment shall be made to such surviving spouse.

"(2) If there is no covered spouse described in paragraph (1), such payment shall be made in equal shares to all covered children who are alive at the time of payment.

"(3) Notwithstanding the other provisions of this subsection, if there is—

"(A) a covered spouse described in paragraph (1); and

"(B) at least one covered child of the employee who is living at the time of payment and who is not a recognized natural child or adopted child of such covered spouse,

"then half of such payment shall be made to such covered spouse, and the other half of such payment shall be made in equal shares to each covered child of the employee who is living at the time of payment.

"(d) DEFINITIONS.—In this section:

"(1) The term 'covered spouse' means a spouse of the employee who was married to the employee for at least one year immediately before the employee's death.

"(2) The term 'covered child' means a child of the employee who, as of the employee's death—

"(A) had not attained the age of 18 years;

"(B) had not attained the age of 23 years and was a full-time student who had been continuously enrolled as a full-time student in one or more educational institutions since attaining the age of 18 years; or

"(C) had been incapable of self-support.

"(3) The term 'child' includes a recognized natural child, a stepchild who lived with an individual in a regular parent-child relationship, and an adopted child.

"SEC. 3675. DETERMINATIONS REGARDING CONTRACTION OF COVERED ILLNESSES.

"(a) CASES DETERMINED UNDER SUBTITLE B.—A determination under subtitle B that a Department of Energy contractor employee is entitled to compensation under that subtitle for an occupational illness shall be treated for purposes of this subtitle as a determination that the employee contracted that illness through exposure at a Department of Energy facility.

"(b) CASES DETERMINED UNDER FORMER SUBTITLE D.—In the case of a covered illness of an employee with respect to which a panel has made a positive determination under section 3661(d) and the Secretary of Energy has accepted that determination under section 3661(e)(2), or with respect to which a panel has made a negative determination under section 3661(d) and the Secretary of Energy has found significant evidence to the contrary under section 3661(e)(2), that determination shall be treated for purposes of this subtitle as a determination that the employee contracted the covered illness through exposure at a Department of Energy facility.

"(c) OTHER CASES.—(1) In any other case, a Department of Energy contractor employee shall be determined for purposes of this subtitle to have contracted a covered illness through exposure at a Department of Energy facility if—

"(A) it is at least as likely as not that exposure to a toxic substance at a Department of Energy facility was a significant factor in aggravating, contributing to, or causing the illness; and

"(B) it is at least as likely as not that the exposure to such toxic substance was related to employment at a Department of Energy facility.

"(2) A determination under paragraph (1) shall be made by the Secretary.

"(d) APPLICATIONS BY SPOUSES AND CHILDREN.—If a spouse or child of a Department of Energy contractor employee applies for benefits under this subtitle, the Secretary shall make a determination under this section with respect to that employee without regard to whether the spouse is a 'covered spouse', or the child is a 'covered child', under this subtitle.

"SEC. 3676. APPLICABILITY TO CERTAIN URANIUM EMPLOYEES.

"(a) IN GENERAL.—This subtitle shall apply to—

"(1) a section 5 payment recipient who contracted a section 5 illness through a section 5 exposure at a section 5 facility, or

"(2) a section 5 uranium worker determined under section 3675(c) to have contracted a covered illness through exposure to a toxic substance at a section 5 mine or mill,

"(or to the survivor of that employee, as applicable) on the same basis as it applies to a Department of Energy contractor employee determined under section 3675 to have contracted a covered illness through exposure to a toxic substance at a Department of Energy facility (or to the survivor of that employee, as applicable).

"(b) DEFINITIONS.—In this section:

"(1) The term 'section 5 payment recipient' means an individual who receives, or has received, $100,000 under section 5 of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) for a claim made under that Act.

"(2) The terms 'section 5 exposure', 'section 5 facility', and 'section 5 illness' mean the exposure, facility, and illness, respectively, to which an individual's status as a section 5 payment recipient relates.

"(3) The term 'section 5 uranium worker' means an individual to whom subsection (a)(1)(A)(i) of section 5 of the Radiation Exposure Compensation Act applies (whether directly or by reason of subsection (a)(2)).

"(4) The term 'section 5 mine or mill' means the mine or mill to which an individual's status as a section 5 uranium worker relates.

"SEC. 3677. ADMINISTRATIVE AND JUDICIAL REVIEW.

"(a) JUDICIAL REVIEW.—A person adversely affected or aggrieved by a final decision of the

Secretary under this subtitle may review that order in the United States district court in the district in which the injury was sustained, the employee lives, the survivor lives, or the District of Columbia, by filing in such court within 60 days after the date on which that final decision was issued a written petition praying that such decision be modified or set aside. The person shall also provide a copy of the petition to the Secretary. Upon such filing, the court shall have jurisdiction over the proceeding and shall have the power to affirm, modify, or set aside, in whole or in part, such decision. The court may modify or set aside such decision only if the court determines that such decision was arbitrary and capricious.

‘‘(b) ADMINISTRATIVE REVIEW.—The Secretary shall ensure that recommended decisions of the Secretary with respect to a claim under this subtitle are subject to administrative review. The Secretary shall prescribe regulations for carrying out such review or shall apply to this subtitle the regulations applicable to recommended decisions under subtitle B.

‘‘SEC. 3678. PHYSICIANS SERVICES.

‘‘(a) IN GENERAL.—The Secretary may utilize the services of physicians for purposes of making determinations under this subtitle.

‘‘(b) PHYSICIANS.—Any physicians whose services are utilized under subsection (a) of this section shall possess appropriate expertise and experience in the evaluation and determination of the extent of permanent physical impairments or in the evaluation and diagnosis of illnesses or deaths aggravated, contributed to, or caused by exposure to toxic substances.

‘‘(c) ARRANGEMENT.—The Secretary may secure the services of physicians utilized under subsection (a) of this section through the appointment of physicians or by contract.

‘‘SEC. 3679. MEDICAL BENEFITS.

‘‘A covered DOE contractor employee shall be furnished medical benefits specified in section 3629 for the covered illness to the same extent, and under the same conditions and limitations, as an individual eligible for medical benefits under that section is furnished medical benefits under that section.

‘‘SEC. 3680. ATTORNEY FEES.

‘‘Section 3648 shall apply to a payment under this subtitle to the same extent that it applies to a payment under subtitle B.

‘‘SEC. 3681. ADMINISTRATIVE MATTERS.

‘‘(a) IN GENERAL.—The Secretary shall administer this subtitle.

‘‘(b) CONTRACT AUTHORITY.—The Secretary may enter into contracts with appropriate persons and entities to administer this subtitle.

‘‘(c) RECORDS.—(1)(A) The Secretary of Energy shall provide to the Secretary all records, files, and other data, whether paper, electronic, imaged, or otherwise, developed by the Secretary of Energy that are applicable to the administration of this subtitle, including records, files, and data on facility industrial hygiene, employment of individuals or groups, exposure and medical records, and claims applications.

‘‘(B) In providing records, files, and other data under this paragraph, the Secretary of Energy shall preserve the current organization of such records, files, and other data, and shall provide such description and indexing of such records, files, and other data as the Secretary considers appropriate to facilitate their use by the Secretary.

‘‘(2) The Secretary of Energy and the Secretary shall jointly undertake such actions as are appropriate to retrieve records applicable to the claims of Department of Energy contractor employees for contractor employee compensation under this subtitle, including employment records, records of exposure to beryllium, radiation, silica, or other toxic substances, and records regarding medical treatment.

‘‘(d) INFORMATION.—At the request of the Secretary, the Secretary of Energy and any contractor who employed a Department of Energy contractor employee shall, within time periods specified by the Secretary, provide to the Secretary and to the employee information or documents in response to the request.

‘‘(e) REGULATIONS.—The Secretary shall prescribe regulations necessary for the administration of this subtitle. The initial regulations shall be prescribed not later than 210 days after the date of the enactment of this subtitle. The Secretary may prescribe interim final regulations necessary to meet the deadlines specified in this subtitle.

‘‘(f) TRANSITION PROVISIONS.—(1) The Secretary shall commence the administration of the provisions of this subtitle not later than 210 days after the date of the enactment of this subtitle.

‘‘(2) Until the commencement of the administration of this subtitle, the Department of Energy Physicians Panels appointed pursuant to subtitle D shall continue to consider and issue determinations concerning any cases pending before such Panels immediately before the date of the enactment of this subtitle.

‘‘(3) The Secretary shall take such actions as are appropriate to identify other activities under subtitle D that will continue until the commencement of the administration of subtitle E.

‘‘(g) PREVIOUS APPLICATIONS.—Upon the commencement of the administration of this subtitle, any application previously filed with the Secretary of Energy pursuant to subtitle D shall be considered to have been filed with the Secretary as a claim for benefits pursuant to this subtitle.

‘‘SEC. 3682. COORDINATION OF BENEFITS WITH RESPECT TO STATE WORKERS COMPENSATION.

‘‘(a) IN GENERAL.—An individual who has been awarded compensation under this subtitle, and who has also received benefits from a State workers compensation system by reason of the same covered illness, shall receive compensation specified in this subtitle reduced by the amount of any workers compensation benefits, other than medical benefits and benefits for vocational rehabilitation, that the individual has received under the State workers compensation system by reason of the covered illness, after deducting the reasonable costs, as determined by the Secretary, of obtaining those benefits under the State workers compensation system.

‘‘(b) WAIVER.—The Secretary may waive the provisions of subsection (a) if the Secretary determines that the administrative costs and burdens of implementing subsection (a) with respect to a particular case or class of cases justifies such a waiver.

‘‘(c) INFORMATION.—Notwithstanding any other provision of law, each State workers compensation authority shall, upon request of the Secretary, provide to the Secretary on a quarterly basis information concerning workers compensation benefits received by any covered DOE contractor employee entitled to compensation or benefits under this subtitle, which shall include the name, Social Security number, and nature and amount of workers compensation benefits for each such employee for which the request was made.

‘‘SEC. 3683. MAXIMUM AGGREGATE COMPENSATION.

‘‘For each individual whose illness or death serves as the basis for compensation or benefits under this subtitle, the total amount of compensation (other than medical benefits) paid under this subtitle, to all persons, in the aggregate, on the basis of that illness or death shall not exceed $250,000.

‘‘SEC. 3684. FUNDING OF ADMINISTRATIVE COSTS.

‘‘There is authorized and hereby appropriated to the Secretary for fiscal year 2005 and thereafter such sums as may be necessary to carry out this subtitle.

‘‘SEC. 3685. PAYMENT OF COMPENSATION AND BENEFITS FROM COMPENSATION FUND.

‘‘The compensation and benefits provided under this title, when authorized or approved by the President, shall be paid from the compensation fund established under section 3612.

‘‘SEC. 3686. OFFICE OF OMBUDSMAN.

‘‘(a) ESTABLISHMENT.—There is established in the Department of Labor an office to be known as the ‘Office of the Ombudsman’ (in this section referred to as the ‘Office’).

‘‘(b) HEAD.—The head of the Office shall be the Ombudsman. The individual serving as Ombudsman shall be either of the following:

‘‘(1) An officer or employee of the Department of Labor designated by the Secretary for purposes of this section from among officers and employees of the Department who have experience and expertise necessary to carry out the duties of the Office specified in subsection (c).

‘‘(2) An individual employed by the Secretary from the private sector from among individuals in the private sector who have experience and expertise necessary to carry out the duties of the Office specified in subsection (c).

‘‘(c) DUTIES.—The duties of the Office shall be as follows:

‘‘(1) To provide information on the benefits available under this subtitle and on the requirements and procedures applicable to the provision of such benefits.

‘‘(2) To make recommendations to the Secretary regarding the location of centers (to be known as ‘resource centers’) for the acceptance and development of claims for benefits under this subtitle.

‘‘(3) To carry out such other duties with respect to this subtitle as the Secretary shall specify for purposes of this section.

‘‘(d) INDEPENDENT OFFICE.—The Secretary shall take appropriate actions to ensure the independence of the Office within the Department of Labor, including independence from other officers and employees of the Department engaged in activities relating to the administration of the provisions of this subtitle.

‘‘(e) ANNUAL REPORT.—(1) Not later than February 15 each year, the Ombudsman shall submit to Congress a report on activities under this subtitle.

‘‘(2) Each report under paragraph (1) shall set forth the following:

‘‘(A) The number and types of complaints, grievances, and requests for assistance received by the Ombudsman under this subtitle during the preceding year.

‘‘(B) An assessment of the most common difficulties encountered by claimants and potential claimants under this subtitle during the preceding year.

‘‘(3) The first report under paragraph (1) shall be the report submitted in 2006.

‘‘(f) OUTREACH.—The Secretary of Labor and the Secretary of Health and Human Services shall each undertake outreach to advise the public of the existence and duties of the Office.

‘‘(g) SUNSET.—Effective on the date that is 3 years after the date of the enactment of this section, this section shall have no further force or effect.’’.

SEC. 3162. CONFORMING AMENDMENTS.

(a) OFFSET FOR CERTAIN PAYMENTS.—Section 3641 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385) is amended—

(1) by striking ‘‘subtitle B’’ and inserting ‘‘this title’’; and

(2) by striking ‘‘on account of’’ and all that follows through the period at the end and inserting ‘‘on account of the exposure for which compensation is payable under this title.’’.

(b) SUBROGATION OF THE UNITED STATES.—Section 3642 of such Act (42 U.S.C. 7385a) is amended by striking "subtitle B" and inserting "this title".

(c) PAYMENT IN FULL SETTLEMENT OF CLAIMS.—Section 3643 of such Act (42 U.S.C. 7385b) is amended by striking "The acceptance" and inserting "Except as provided in subtitle E, the acceptance".

(d) EXCLUSIVITY OF REMEDY.—Section 3644 of such Act (42 U.S.C. 7385c(a)) is amended by adding at the end the following new subsection:

"(d) APPLICABILITY TO SUBTITLE E.—This section applies with respect to subtitle E to the covered medical condition or covered illness or death of a covered DOE contractor employee on the same basis as it applies with respect to subtitle B to the cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death of a covered employee.".

(e) CERTIFICATION OF TREATMENT OF PAYMENTS UNDER OTHER LAWS.—Section 3646 of such Act (42 U.S.C. 7385e) is amended by striking "subtitle B" and inserting "this title".

(f) CLAIMS NOT ASSIGNABLE OR TRANSFERABLE.—Section 3647(a) of such Act (42 U.S.C. 7385f(a)) is amended by striking "subtitle B" and inserting "this title".

(g) CERTAIN CLAIMS NOT AFFECTED BY AWARDS OF DAMAGES.—Section 3649 of such Act (42 U.S.C. 7385h) is amended by striking "subtitle B" both places such term appears and inserting "this title".

(h) FORFEITURE OF BENEFITS BY CONVICTED FELONS.—Section 3650 of such Act (42 U.S.C. 7385i) is amended by striking "subtitle B" each place such term appears and inserting "this title".

(i) REPEAL OF SUBTITLE D.—Subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000 (title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398); 42 U.S.C. 7385o) is repealed.

SEC. 3163. TECHNICAL AMENDMENTS.

(a) SUBPOENAS.—Subtitle B of such Act is amended by adding after section 3631 (42 U.S.C. 7384v) the following new section:

"SEC. 3632. SUBPOENAS; OATHS; EXAMINATION OF WITNESSES.

"The Secretary of Labor, with respect to any matter under this subtitle, may—

"(1) issue subpoenas for and compel the attendance of witnesses;

"(2) administer oaths;

"(3) examine witnesses; and

"(4) require the production of books, papers, documents, and other evidence.".

(b) SOCIAL SECURITY EARNINGS INFORMATION.—Subtitle C of such Act is amended by adding after section 3651 (42 U.S.C. 7385j) the following new section:

"SEC. 3652. SOCIAL SECURITY EARNINGS INFORMATION.

"Notwithstanding the provision of section 552a of title 5, United States Code, or any other provision of Federal or State law, the Social Security Administration shall make available to the Secretary of Labor, upon written request, the Social Security earnings information of living or deceased employees who may have sustained an illness that is the subject of a claim under this title, which the Secretary of Labor may require to carry out the provisions of this title.".

(c) RECOVERY OF OVERPAYMENT.—Subtitle C of such Act is further amended by adding after section 3652 (as added by subsection (b)) the following new section:

"SEC. 3653. RECOVERY AND WAIVER OF OVERPAYMENTS.

"(a) IN GENERAL.—When an overpayment has been made to an individual under this title because of an error of fact or law, recovery shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled. If the individual dies before the recovery is completed, recovery shall be made by decreasing later benefits payable under this title with respect to the individual's death.

"(b) WAIVER.—Recovery by the United States under this section may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this title or would be against equity and good conscience.

"(c) LIABILITY.—A certifying or disbursing official is not liable for an amount certified or paid by him when recovery of the amount is waived under subsection (b) of this section, or when recovery under subsection (a) of this section is not completed before the death of all individuals against whose benefits deductions are authorized.".

SEC. 3164. TRANSFER OF FUNDS FOR FISCAL YEAR 2005.

Of the funds appropriated to the Secretary of Energy for fiscal year 2005 for the Energy Employees Occupational Illness Compensation Program, the Secretary of Energy shall transfer to the Secretary of Labor the amount of funds that the Secretary of Energy, in consultation with the Secretary of Labor, determine will be necessary for fiscal year 2005 to administer the provisions of subtitle E of the Energy Employees Occupational Illness Compensation Program Act of 2000, as added by this Act.

SEC. 3165. USE OF ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION FUND FOR CERTAIN PAYMENTS TO COVERED URANIUM EMPLOYEES.

(a) IN GENERAL.—Section 3630 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384u) is amended in subsection (d) by inserting after "The compensation provided under this section" the following: "and the compensation provided under section 5 of the Radiation Exposure Compensation Act".

(b) CONFORMING AMENDMENT.—Section 6(c)(1) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) is amended by inserting after "Fund" the following: "(or, in the case of a payment under section 5, from the Energy Employees Occupational Illness Compensation Fund, pursuant to section 3630(d) of the Energy Employees Occupational Illness Compensation Program Act of 2000)".

SEC. 3166. IMPROVEMENTS TO SUBTITLE B OF ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000.

(a) ADVISORY BOARD.—Section 3624 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384o) is amended by adding at the end the following new subsections:

"(e) SECURITY CLEARANCES.—(1) The Secretary of Energy shall ensure that the members and staff of the Board, and the contractors performing work in support of the Board, are afforded the opportunity to apply for a security clearance for any matter for which such a clearance is appropriate. The Secretary should, not later than 180 days after receiving a completed application, make a determination whether or not the individual concerned is eligible for the clearance.

"(2) For fiscal year 2007 and each fiscal year thereafter, the Secretary of Energy shall include in the budget justification materials submitted to Congress in support of the Department of Energy budget for that fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) a report specifying the number of applications for security clearances under this subsection, the number of such applications granted, and the number of such applications denied.

"(f) INFORMATION.—The Secretary of Energy shall, in accordance with law, provide to the Board and the contractors of the Board access to any information that the Board considers relevant to carry out its responsibilities under this title, including information such as Restricted Data (as defined in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y))) and information covered by the Privacy Act.".

(b) DEADLINES FOR SPECIAL EXPOSURE COHORT ACTIONS.—(1) Section 3626 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384q) is amended—

(A) by redesignating subsection (c) as subsection (d); and

(B) by inserting after subsection (b) the following new subsection:

"(c) DEADLINES.—(1) Not later than 180 days after the date on which the President receives a petition for designation as members of the Special Exposure Cohort, the Director of the National Institute for Occupational Safety and Health shall submit to the Advisory Board on Radiation and Worker Health a recommendation on that petition, including all supporting documentation.

"(2)(A) Upon receipt by the President of a recommendation of the Advisory Board on Radiation and Worker Health that the President should determine in the affirmative that paragraphs (1) and (2) of subsection (b) apply to a class, the President shall have a period of 30 days in which to determine whether such paragraphs apply to the class and to submit that determination (whether affirmative or negative) to Congress.

"(B) If the determination submitted by the President under subparagraph (A) is in the affirmative, the President shall also submit a report meeting the requirements of section 3621(14)(C)(ii).

"(C) If the President does not submit a determination required by subparagraph (A) within the period required by subparagraph (A), then upon the day following the expiration of that period, it shall be deemed for purposes of section 3621(14)(C)(ii) that the President submitted the report under that provision on that day.".

(2) Section 3621(14)(C)(ii) of that Act (42 U.S.C. 7384l(14)(C)(ii)) is amended by striking "180 days" and inserting "30 days".

(c) SITE PROFILES.—Subtitle B of that Act is amended by adding after section 3632 (as added by section 3163(a)) the following new section:

"SEC. 3633. COMPLETION OF SITE PROFILES.

"(a) IN GENERAL.—To the extent that the Secretary of Labor determines it useful and practicable, the Secretary of Labor shall direct the Director of the National Institute for Occupational Safety and Health to prepare site profiles for a Department of Energy facility based on the records, files, and other data provided by the Secretary of Energy and such other information as is available, including information available from the former worker medical screening programs of the Department of Energy.

"(b) INFORMATION.—The Secretary of Energy shall furnish to the Secretary of Labor any information that the Secretary of Labor finds necessary or useful for the production of such site profiles, including records from the Department of Energy former worker medical screening program.

"(c) DEFINITION.—In this section, the term 'site profile' means an exposure assessment of a facility that identifies the toxic substances or processes that were commonly used in each building or process of the facility, and the time frame during which the potential for exposure to toxic substances existed.

"(d) TIME FRAMES.—The Secretary of Health and Human Services shall establish time frames

for completing site profiles for those Department of Energy facilities for which a site profile has not been completed. Not later than March 1, 2005, the Secretary of Health and Human Services shall submit to Congress a report setting forth those time frames.".

SEC. 3167. EMERGENCY SPECIAL EXPOSURE COHORT MEETING AND REPORT.

(a) MEETING OF ADVISORY BOARD.—(1) For purposes of carrying out section 3626 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384q), the President shall require the Advisory Board on Radiation and Worker Health to convene a meeting of the Board at which the Board considers each petition for designation as members of the Special Exposure Cohort—

(A) that was filed not later than October 1, 2004; and

(B) the evaluation of which (by the Director of the National Institute of Occupational Safety and Health) was completed more than 10 days before a previously scheduled meeting of the Board.

(2) Effective March 1, 2005, this subsection shall have no further force or effect.

(b) REPORT TO CONGRESS.—Not later than March 15, 2005, the President shall submit to Congress a report on the status of the petitions referred to in subsection (a). The report shall include, for each petition, the estimated time to complete the consideration of that petition and any anticipated actions or circumstances that could preclude the Board from acting upon that petition before the end of fiscal year 2005.

SEC. 3168. COVERAGE OF INDIVIDUALS EMPLOYED AT ATOMIC WEAPONS EMPLOYER FACILITIES DURING PERIODS OF RESIDUAL CONTAMINATION.

(a) COVERAGE.—Paragraph (3) of section 3621 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398); 42 U.S.C. 7384l) is amended to read as follows:

"(3) The term 'atomic weapons employee' means any of the following:

"(A) An individual employed by an atomic weapons employer during a period when the employer was processing or producing, for the use by the United States, material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling.

"(B) An individual employed—

"(i) at a facility with respect to which the National Institute for Occupational Safety and Health, in its report dated October 2003 and titled 'Report on Residual Radioactive and Beryllium Contamination at Atomic Weapons Employer Facilities and Beryllium Vendor Facilities', or any update to that report, found that there is a potential for significant residual contamination outside of the period in which weapons-related production occurred;

"(ii) by an atomic weapons employer or subsequent owner or operators of a facility described in clause (i); and

"(iii) during a period, as specified in such report or any update to such report, of potential for significant residual radioactive contamination at such facility.".

(b) RADIATION DOSE FOR CERTAIN ATOMIC WEAPONS EMPLOYEES.—Section 3623 of that Act (42 U.S.C. 7384n) is amended by adding at the end of subsection (c) the following new paragraph:

"(4) In the case of an atomic weapons employee described in section 3621(3)(B), the following doses of radiation shall be treated, for purposes of paragraph (3)(A) of this subsection, as part of the radiation dose received by the employee at such facility:

"(A) Any dose of ionizing radiation received by that employee from facilities, materials, devices, or byproducts used or generated in the research, development, production, dismantlement, transportation, or testing of nuclear weapons, or from any activities to research, produce, process, store, remediate, or dispose of radioactive materials by or on behalf of the Department of Energy (except for activities covered by Executive Order No. 12344, dated February 1, 1982 (42 U.S.C. 7158 note) pertaining to the Naval Nuclear Propulsion Program).

"(B) Any dose of ionizing radiation received by that employee from a source not covered by subparagraph (A) that is not distinguishable through reliable documentation from a dose covered by subparagraph (A).".

SEC. 3169. UPDATE OF REPORT ON RESIDUAL CONTAMINATION OF FACILITIES.

(a) UPDATE OF REPORT.—Not later than December 31, 2006, the Director of the National Institute for Occupational Safety and Health shall submit to Congress an update to the report required by section 3151(b) of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 42 U.S.C. 7384 note).

(b) ELEMENTS.—The update shall—

(1) for each facility for which such report found that insufficient information was available to determine whether significant residual contamination was present, determine whether significant residual contamination was present;

(2) for each facility for which such report found that significant residual contamination remained present as of the date of the report, determine the date on which such contamination ceased to be present;

(3) for each facility for which such report found that significant residual contamination was present but for which the Director has been unable to determine the extent to which such contamination is attributable to atomic weapons-related activities, identify the specific dates of coverage attributable to such activities and, in so identifying, presume that such contamination is attributable to such activities until there is evidence of decontamination of residual contamination identified with atomic weapons-related activities;

(4) for each facility for which such report found significant residual contamination, determine whether it is at least as likely as not that such contamination could have caused an employee who was employed at such facility only during the residual contamination period to contract a cancer or beryllium illness compensable under subtitle B of the Energy Employees Occupational Illness Compensation Program Act of 2000; and

(5) if new information that pertains to the report has been made available to the Director since that report was submitted, identify and describe such information.

(c) PUBLICATION.—The Director shall ensure that the report referred to in subsection (a) is published in the Federal Register not later than 15 days after being released.

SEC. 3170. SENSE OF CONGRESS ON RESOURCE CENTER FOR ENERGY EMPLOYEES UNDER ENERGY EMPLOYEE OCCUPATIONAL ILLNESS COMPENSATION PROGRAM IN WESTERN NEW YORK AND WESTERN PENNSYLVANIA REGION.

(a) FINDINGS.—Congress makes the following findings:

(1) New York has 36 current or former Department of Energy facilities involved in nuclear weapons production-related activities statewide, mostly atomic weapons employer facilities, and 14 such facilities in western New York. Despite having one of the greatest concentrations of such facilities in the United States, western New York, and abutting areas of Pennsylvania, continue to be severely underserved by the Energy Employees Occupational Illness Compensation Program under the Energy Employees Occupational Illness Compensation Program Act of 2000 (title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by Public Law 106–398); 42 U.S.C. 7384 et seq.).

(2) The establishment of a permanent resource center in western New York would represent a substantial step toward improving services under the Energy Employees Occupational Illness Compensation Program for energy employees in this region.

(3) The number of claims submitted to the Department under subtitle B of the Energy Employees Occupational Illness Compensation Program Act of 2000 from the western New York region, including western Pennsylvania, exceeds the number of such claims filed at resource centers in Hanford, Washington, Portsmouth, Ohio, Los Alamos, New Mexico, the Nevada Test Site, Nevada, the Rocky Flats Environmental Technology Site, Colorado, the Idaho National Engineering Laboratory, Idaho, and the Amchitka Test Site, Alaska.

(4) Energy employees in the western New York region, including western Pennsylvania, deserve assistance under subtitle B of the Energy Employees Occupational Illness Compensation Program Act of 2000 commensurate with the assistance provided energy employees at other locations in the United States.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Labor should—

(1) review the availability of assistance under subtitle B of the Energy Employees Occupational Illness Compensation Program Act of 2000 for energy employees in the western New York region, including western Pennsylvania; and

(2) recommend a location in that region for a resource center to provide such assistance to such energy employees.

TITLE XXXII—DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sec. 3201. Authorization.

SEC. 3201. AUTHORIZATION.

There are authorized to be appropriated for fiscal year 2005, $21,268,000 for the operation of the Defense Nuclear Facilities Safety Board under chapter 21 of the Atomic Energy Act of 1954 (42 U.S.C. 2286 et seq.).

TITLE XXXIII—NATIONAL DEFENSE STOCKPILE

Sec. 3301. Authorized uses of National Defense Stockpile funds.
Sec. 3302. Revision of earlier authority to dispose of certain materials in National Defense Stockpile.
Sec. 3303. Disposal of ferromanganese.
Sec. 3304. Prohibition on storage of mercury at certain facilities.

SEC. 3301. AUTHORIZED USES OF NATIONAL DEFENSE STOCKPILE FUNDS.

(a) OBLIGATION OF STOCKPILE FUNDS.—During fiscal year 2005, the National Defense Stockpile Manager may obligate up to $59,700,000 of the funds in the National Defense Stockpile Transaction Fund established under subsection (a) of section 9 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h) for the authorized uses of such funds under subsection (b)(2) of such section, including the disposal of hazardous materials that are environmentally sensitive.

(b) ADDITIONAL OBLIGATIONS.—The National Defense Stockpile Manager may obligate amounts in excess of the amount specified in subsection (a) if the National Defense Stockpile Manager notifies Congress that extraordinary or emergency conditions necessitate the additional obligations. The National Defense Stockpile Manager may make the additional obligations described in the notification after the end of the

15-day period beginning on the date on which Congress receives the notification.

(c) LIMITATIONS.—The authorities provided by this section shall be subject to such limitations as may be provided in appropriations Acts.

SEC. 3302. REVISION OF EARLIER AUTHORITY TO DISPOSE OF CERTAIN MATERIALS IN NATIONAL DEFENSE STOCKPILE.

Section 3303(a) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261; 50 U.S.C. 98d note) is amended by striking paragraphs (4) and (5) and inserting the following new paragraphs:

"(4) $785,000,000 by the end of fiscal year 2005; and

"(5) $870,000,000 by the end of fiscal year 2009.".

SEC. 3303. DISPOSAL OF FERROMANGANESE.

(a) DISPOSAL AUTHORIZED.—The Secretary of Defense may dispose of up to 50,000 tons of ferromanganese from the National Defense Stockpile during fiscal year 2005.

(b) CONTINGENT AUTHORITY FOR ADDITIONAL DISPOSAL.—(1) If the Secretary of Defense completes the disposal of the total quantity of ferromanganese authorized for disposal by subsection (a) before September 30, 2005, the Secretary of Defense may dispose of up to an additional 25,000 tons of ferromanganese from the National Defense Stockpile before that date.

(2) If the Secretary completes the disposal of the total quantity of additional ferromanganese authorized for disposal by paragraph (1) before September 30, 2005, the Secretary may dispose of up to an additional 25,000 tons of ferromanganese from the National Defense Stockpile before that date.

(c) CERTIFICATION.—The Secretary of Defense may dispose of ferromanganese under the authority of paragraph (1) or (2) of subsection (b) only if the Secretary submits written certification to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives, not later than 30 days before the commencement of disposal under the applicable paragraph, that—

(1) the disposal of the additional ferromanganese from the National Defense Stockpile is in the interest of national defense;

(2) the disposal of the additional ferromanganese will not cause undue disruption to the usual markets of producers and processors of ferromanganese in the United States; and

(3) the disposal of the additional ferromanganese is consistent with the requirements and purpose of the National Defense Stockpile.

(d) DELEGATION OF RESPONSIBILITY.—The Secretary of Defense may delegate the responsibility of the Secretary under subsection (c) to an appropriate official within the Department of Defense.

(e) NATIONAL DEFENSE STOCKPILE DEFINED.—In this section, the term "National Defense Stockpile" means the stockpile provided for in section 4 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98c).

SEC. 3304. PROHIBITION ON STORAGE OF MERCURY AT CERTAIN FACILITIES.

(a) PROHIBITION.—During fiscal year 2005, the Secretary of Defense may not store mercury from the National Defense Stockpile at any facility that is not owned or leased by the United States.

(b) NATIONAL DEFENSE STOCKPILE DEFINED.—In this section, the term "National Defense Stockpile" means the stockpile provided for in section 4 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98c).

TITLE XXXIV—NAVAL PETROLEUM RESERVES

Sec. 3401. Authorization of appropriations.

SEC. 3401. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated to the Secretary of Energy $20,000,000 for fiscal year 2005 for the purpose of carrying out activities under chapter 641 of title 10, United States Code, relating to the naval petroleum reserves.

(b) PERIOD OF AVAILABILITY.—Funds appropriated pursuant to the authorization of appropriations in subsection (a) shall remain available until expended.

TITLE XXXV—MARITIME ADMINISTRATION

Sec. 3501. Authorization of appropriations for Maritime Administration.
Sec. 3502. Extension of authority to provide war risk insurance for merchant marine vessels.
Sec. 3503. Modification of priority afforded applications for national defense tank vessel construction assistance.

SEC. 3501. AUTHORIZATION OF APPROPRIATIONS FOR MARITIME ADMINISTRATION.

There are authorized to be appropriated to the Secretary of Transportation for the Maritime Administration for fiscal year 2005 (in lieu of amounts authorized for the same purposes by section 3511 of the National Defense Authorization Act for Fiscal Year 2004)—

(1) for expenses necessary for operations and training activities, $109,300,000;

(2) for administrative expenses under the loan guarantee program authorized by title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.), $4,764,000; and

(3) for ship disposal, $35,000,000, of which $2,000,000 shall be for decommissioning, removal, and disposal of the nuclear reactor and hazardous materials on board the vessel SAVANNAH.

SEC. 3502. EXTENSION OF AUTHORITY TO PROVIDE WAR RISK INSURANCE FOR MERCHANT MARINE VESSELS.

(a) EXTENSION.—Section 1214 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1294), is amended by striking "June 30, 2005" and inserting "December 31, 2010".

(b) INVESTMENT OF ASSETS IN INSURANCE FUND.—Section 1208(a) of such Act (46 U.S.C. App. 1288), is amended by striking the third sentence and inserting the following: "The Secretary of Transportation may request the Secretary of the Treasury to invest such portion of the Fund as is not, in the judgment of the Secretary of Transportation, required to meet the current needs of the fund. Such investments shall be made by the Secretary of the Treasury in public debt securities of the United States, with maturities suitable to the needs of the fund, and bearing interest rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.".

SEC. 3503. MODIFICATION OF PRIORITY AFFORDED APPLICATIONS FOR NATIONAL DEFENSE TANK VESSEL CONSTRUCTION ASSISTANCE.

Section 3542(d)(2) of the Maritime Security Act of 2003 (title XXXV of Public Law 108–136; 117 Stat. 1821; 46 U.S.C. 53101 note) is amended—

(1) in subparagraph (A), by striking "and" at the end;

(2) in subparagraph (B) by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(C) with respect to any proposal for financial assistance to be provided from amounts appropriated for a fiscal year after fiscal year 2005, acceptance of the vessel to be constructed with the assistance for participation in the Shipboard Technology Evaluation Program as outlined in Navigation and Vessel Inspection Circular 01–04, issued by the Commandant of the United States Coast Guard on January 2, 2004.".

TITLE XXXVI—ASSISTANCE TO FIREFIGHTERS

Sec. 3601. Short title.
Sec. 3602. Amendments to Federal Fire Prevention and Control Act of 1974.
Sec. 3603. Report on assistance to firefighters.

SEC. 3601. SHORT TITLE.

This title may be cited as the "Assistance to Firefighters Grant Program Reauthorization Act of 2004".

SEC. 3602. AMENDMENTS TO FEDERAL FIRE PREVENTION AND CONTROL ACT OF 1974.

Section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) is amended—

(1) in subsection (b)(1)(A)—

(A) by inserting "throughout the Nation" after "personnel"; and

(B) by striking "and" at the end;

(2) in subsection (b)(1)(B)—

(A) by inserting "and firefighter safety research and development" after "fire prevention"; and

(B) by striking the period and inserting "; and";

(3) by adding at the end of subsection (b)(1) the following new subparagraph:

"(C) provide assistance for nonaffiliated EMS organizations for the purpose of paragraph (3)(F).";

(4) in subsection (b)(3)(F), by inserting "and nonaffiliated EMS organizations" after "fire departments";

(5) in subsection (b)(4)—

(A) by inserting "AND FIREFIGHTER SAFETY RESEARCH AND DEVELOPMENT" after "PREVENTION" in the paragraph heading;

(B) in subparagraph (A)(ii)—

(i) by inserting "that are not fire departments and" after "community organizations";

(ii) by inserting "and firefighter research and development programs," after "fire safety programs and activities,"; and

(iii) by inserting "and research to improve firefighter health and life safety" after "fire prevention programs";

(C) in subparagraph (B), by striking "to children from fire" and inserting "to high risk groups from fire, as well as research programs that demonstrate the potential to improve firefighter safety"; and

(D) by adding at the end the following new subparagraph:

"(C) GRANT LIMITATION.—A grant under this paragraph shall not be greater than $1,000,000 for a fiscal year.";

(6) in subsection (b)(5)(B)—

(A) by redesignating clause (iv) as clause (v); and

(B) by inserting after clause (iii) the following new clause:

"(iv) OTHER FEDERAL SUPPORT.—A list of other sources of Federal funding received by the applicant. The Director, in coordination with the Secretary of Homeland Security, shall use such list to prevent unnecessary duplication of grant funds.".

(7) in subsection (b)(6), by striking subparagraphs (A) and (B) and inserting the following:

"(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the Director may provide assistance under this subsection only if the applicant for such assistance agrees to match 20 percent of such assistance for any fiscal year with an equal amount of non-Federal funds.

"(B) REQUIREMENT FOR SMALL COMMUNITY ORGANIZATIONS.—In the case of an applicant whose personnel—

"(i) serve jurisdictions of 50,000 or fewer residents, the percent applied under the matching requirement of subparagraph (A) shall be 10 percent; and

"(ii) serve jurisdictions of 20,000 or fewer residents, the percent applied under the matching requirement of subparagraph (A) shall be 5 percent.

"(C) FIRE PREVENTION AND FIREFIGHTER SAFETY GRANTS.—There shall be no matching requirement for a grant described in paragraph (4)(A)(ii).";

(8) in subsection (b)(10)—

(A) by amending subparagraph (A) to read as follows:

"(A) RECIPIENT LIMITATIONS.—A grant recipient under subsection (b)(1)(A)—

"(i) that serves a jurisdiction with 500,000 people or less may not receive grants in excess of $1,000,000 for any fiscal year;

"(ii) that serves a jurisdiction with more than 500,000 but not more than 1,000,000 people may not receive grants in excess of $1,750,000 for any fiscal year; and

"(iii) that serves a jurisdiction with more than 1,000,000 people may not receive grants in excess of $2,750,000 for any fiscal year.

The Director may award grants in excess of the limitations provided in clause (i) and (ii) if the Director determines that extraordinary need for assistance by a jurisdiction warrants a waiver.";

(B) by redesignating subparagraph (B) as subparagraph (C);

(C) by inserting after subparagraph (A) the following new subparagraph:

"(B) DISTRIBUTION.—Notwithstanding subparagraph (A), no single recipient may receive more than the lesser of $2,750,000 or one half of one percent of the funds appropriated under this section for a single fiscal year."; and

(D) by adding at the end the following new subparagraphs:

"(D) REQUIREMENTS FOR GRANTS FOR EMERGENCY MEDICAL SERVICES.—Subject to the restrictions in subparagraph (E), not less than 3.5 percent of the funds appropriated under this section for a fiscal year shall be awarded for purposes described in paragraph (3)(F).

"(E) NONAFFILIATED EMS LIMITATION.—Not more than 2 percent of the funds appropriated to provide grants under this section for a fiscal year shall be awarded to nonaffiliated EMS organizations.

"(F) APPLICATION OF SELECTION CRITERIA TO GRANT APPLICATIONS FROM NONAFFILIATED EMS ORGANIZATIONS.—In reviewing applications submitted by nonaffiliated EMS organizations, the Director shall consider the extent to which other sources of Federal funding are available to provide assistance requested in such grant applications.";

(9) in subsection (b), by adding at the end the following new paragraphs:

"(13) ANNUAL MEETING.—The Director shall convene an annual meeting of individuals who are members of national fire service organizations and are recognized for expertise in firefighting or emergency medical services provided by fire services, and who are not employees of the Federal Government, for the purpose of recommending criteria for awarding grants under this section for the next fiscal year and recommending any necessary administrative changes to the grant program.

"(14) GUIDELINES.—(A) Each year, prior to making any grants under this section, the Director shall publish in the Federal Register—

"(i) guidelines that describe the process for applying for grants and the criteria for awarding grants; and

"(ii) an explanation of any differences between the guidelines and the recommendations made pursuant to paragraph (13).

"(B) The criteria for awarding grants under subsection (b)(1)(A) shall include the extent to which the grant would enhance the daily operations of the applicant and the impact of such a grant on the protection of lives and property.

"(15) PEER REVIEW.—The Director shall, after consultation with national fire service organizations, appoint fire service personnel to conduct peer review of applications received under paragraph (5). In making grants under this section, the Director shall consider the results of such peer review evaluations.

"(16) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to activities under paragraphs (13) and (15).

"(17) ACCOUNTING DETERMINATION.—Notwithstanding any other provision of law, rule, regulation, or guidance, for purposes of receiving assistance under this section, equipment costs shall include, but not be limited to, all costs attributable to any design, purchase of components, assembly, manufacture, and transportation of equipment not otherwise commercially available.";

(10) by amending subsection (d) to read as follows:

"(d) DEFINITIONS.—In this section—

"(1) the term 'Director' means the Director, acting through the Administrator;

"(2) the term 'nonaffiliated EMS organization' means a public or private nonprofit emergency medical services organization that is not affiliated with a hospital and does not serve a geographic area in which the Director finds that emergency medical services are adequately provided by a fire department; and

"(3) the term 'State' includes the District of Columbia and the Commonwealth of Puerto Rico."; and

(11) in subsection (e)(1), by striking the first sentence and inserting "There are authorized to be appropriated for the purposes of this section $900,000,000 for fiscal year 2005, $950,000,000 for fiscal year 2006, and $1,000,000,000 for each of the fiscal years 2007 through 2009.".

SEC. 3603. REPORT ON ASSISTANCE TO FIREFIGHTERS.

(a) STUDY AND REPORT ON ASSISTANCE TO FIREFIGHTERS.—

(1) STUDY.—The Administrator of the United States Fire Administration, in conjunction with the National Fire Protection Association, shall conduct a study to—

(A) define the current roles and activities associated with the fire services on a national, State, regional, and local level;

(B) identify the equipment, staffing, and training required to fulfill the roles and activities defined under subparagraph (A);

(C) conduct an assessment to identify gaps between what fire departments currently possess and what they require to meet the equipment, staffing, and training needs identified under subparagraph (B) on a national and State-by-State basis; and

(D) measure the impact of the Assistance to Firefighters Grant program under section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229) in meeting the needs of the fire services identified in the report submitted to Congress under section 1701(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 and filling the gaps identified under subparagraph (C).

(2) REPORT.—Not later than 18 months after the date of enactment of this Act, the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science of the House of Representatives a report on the findings of the study described in paragraph (1).

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the United States Fire Administration $300,000 for fiscal year 2005 to carry out the study required by subsection (a).

And the Senate agree to the same.

From the Committee on Armed Services, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

DUNCAN HUNTER,
CURT WELDON,
JOEL HEFLEY,
JIM SAXTON,
JOHN M. MCHUGH,
TERRY EVERETT,
ROSCOE G. BARTLETT,
HOWARD P. "BUCK" MCKEON,
MAC THORNBERRY,
JOHN N. HOSTETTLER,
JIM RYUN,
JIM GIBBONS,
ROBIN HAYES,
KEN CALVERT,
ROB SIMMONS,
IKE SKELTON,
JOHN SPRATT,
SOLOMON P. ORTIZ,
LANE EVANS,
NEIL ABERCROMBIE,
MARTIN T. MEEHAN,
SILVESTRE REYES,
VIC SNYDER,
JIM TURNER,
ADAM SMITH,
LORETTA SANCHEZ,
BARON HILL,

From the Permanent Select Committee on Intelligence, for consideration of matters within the jurisdiction of that committee under clause 11 of rule X:

PETE HOEKSTRA,
RAY LAHOOD,
JANE HARMAN,

From the Committee on Agriculture, for consideration of sec. 1076 of the Senate amendment, and modifications committed to conference:

BOB GOODLATTE,
MAX BURNS,
CHARLES W. STENHOLM,

From the Committee on Education and the Workforce, for consideration of secs. 590, 595, 596, 904, and 3135 of the House bill, and secs. 351, 352, 532, 533, 707, 868, 1079, 3143, and 3151–3157 of the Senate amendment, and modifications committed to conference:

SAM JOHNSON,
TIMOTHY BISHOP,

From the Committee on Government Reform, for consideration of secs. 801, 806, 807, 825, 1061, 1101–1104, 2833, 2842, and 2843 of the House bill, and secs. 801, 805, 832, 851, 852, 869, 870, 1034, 1059B, 1091, 1101, 1103–1107, 1110, 2823, 2824, 2833, and 3121 of the Senate amendment, and modifications committed to conference:

TOM DAVIS,

From the Committee on House Administration, for consideration of secs. 572 and 1065 of the Senate amendment, and modifications committed to conference:

BOB NEY,
VERNON J. EHLERS,
JOHN B. LARSON,

From the Committee on International Relations, for consideration of secs. 811, 1013, 1031, 1212, 1215, Title XIII, secs. 1401–1405, 1411, 1412, 1421, and 1422 of the house bill, and secs. 1014, 1051–1053, 1058, 1059A, 1059B, 1070, Title XII, secs. 3131 and 3132 of the Senate amendment, and modifications committed to conference:

HARRY HYDE,
JAMES LEACH,

From the Committee on the Judiciary, for consideration of secs. 551, 573, 616, 652, 825, 1075, 1078, 1105, 2833, 2842, and 2843 of the House Bill, and secs. 620, 842, 1063, 1068, 1074, 1080–1082, 1101, 1106, 1107, 2821, 2823, 2824, 3143, 3146, 3151–3157, 3401–3410 of the Senate amendment, and modifications committed to conference:

F. JAMES SENSENBRENNER,
Jr.,
LAMAR SMITH,

From the Committee on Resources, for consideration of secs. 601 and 2834 of the House bill, and sec. 1076 of the Senate amendment, and modifications committed to conference:

GREG WALDEN,
JAY INSLEE,

From the Committee on Science, for consideration of sec. 596 of the House bill and secs. 1034, 1092, and Title XXXV of the Senate amendment, and modifications committed to conference:

SHERWOOD BOEHLERT,
NICK SMITH,
BART GORDON,

From the Committee on Small Business, for consideration of secs. 807 and 3601 of the House bill, and secs. 805, 822, 823, 912, and 1083 of the Senate amendment, and modifications committed to conference:

DONALD A. MANZULLO,
SUE KELLY,

From the Committee on Transportation and Infrastructure, for consideration of secs. 555, 558, 596, 601, 905, 1051, 1063, 1072, and 3502 of the House bill, and sec. 321, 323, 325, 717, 1066, 1076, 1091, 2828, 2833-2836, and Title XXXV of the Senate amendment, and modifications committed to conference:

DON YOUNG,
JOHN J. DUNCAN, Jr.,
MICHAEL E. CAPUANO,

From the Committee on Veterans' Affairs, for consideration of secs. 2810 and 2831 of the House bill, and secs. 642, 2821, and 2823 of the Senate amendment, and modifications committed to conference:

CHRISTOPHER H. SMITH,

From the Committee on Ways and Means, for consideration of sec. 585 of the House bill, and sec. 653 of the Senate amendment, and modifications committed to conference:

E. CLAY SHAW, Jr.,
DAVE CAMP,
Managers on the Part of the House.

JOHN W. WARNER,
JOHN MCCAIN,
PAT ROBERTS,
WAYNE ALLARD,
JEFF SESSIONS,
SUSAN M. COLLINS,
JOHN ENSIGN,
JIM TALENT,
SAXBY CHAMBLISS,
LINDSEY GRAHAM,
ELIZABETH DOLE,
JOHN CORNYN,
CARL LEVIN,
EDWARD M. KENNEDY,
ROBERT C. BYRD,
JOE LIEBERMAN,
JACK REED,
DANIEL K. AKAKA,
BILL NELSON,
E. BENJAMIN NELSON,
MARK DAYTON,
EVAN BAYH,
HILLARY RODHAM CLINTON,
MARK PRYOR,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4200), to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

SUMMARY STATEMENT OF CONFERENCE ACTIONS

The Conferees recommend authorization of appropriations for fiscal year 2005 for the Department of Defense for procurement; research and development; test and evaluation; operation and maintenance; working capital funds; military construction and family housing; and for weapons and environmental restoration programs of the Department of Energy; that have a budget authority implication of $445.6 billion for the national defense function.

Summary table of authorizations

The defense authorization act provides authorizations for appropriations but does not generally provide budget authority. Budget authority is provided in the appropriations act.

In order to relate the conference recommendations to the budget resolution, matters in addition to the dollar authorizations contained in this bill must be taken into account. A number of programs in the national defense function are authorized in other legislation.

The following table summarizes authorizations included in the bill for fiscal year 2005 and, in addition, summarizes the implications of the conference action for the budget authority totals for national defense (budget function 050).

SUMMARY OF NATIONAL DEFENSE AUTHORIZATION FOR FY 2005

(Dollars in Thousands)

	Authorizatior Request	House Authorized	Senate Authorized	Conference Change	Conference Agreement	Budget Authority Implication Request	Budget Authority Implication House	Budget Authority Implication Senate	Conference
DIVISION A									
Title I – PROCUREMENT									
Aircraft Procurement, Army	2,658,240	2,809,940	2,702,640	-46,700	2,611,540	2,658,240	2,809,940	2,702,640	2,611,540
Missile Procurement, Army	1,398,321	1,504,321	1,488,321	-91,321	1,307,000	1,398,321	1,504,321	1,488,321	1,307,000
Procurement of Weapons and Tracked Combat Vehicles, Army	1,639,695	1,739,695	1,698,595	63,000	1,702,695	1,639,695	1,739,695	1,698,595	1,702,695
Procurement of Ammunition, Army	1,556,902	1,729,402	1,598,302	-11,200	1,545,702	1,556,902	1,729,402	1,598,302	1,545,702
Other Procurement, Army	4,240,896	4,309,640	5,383,296	104,350	4,345,246	4,240,896	4,309,640	5,383,296	4,345,246
Aircraft Procurement, Navy	8,767,867	8,912,667	8,870,832	46,575	8,814,442	8,767,867	8,912,667	8,870,832	8,814,442
Weapons Procurement, Navy	2,101,529	2,253,454	2,183,829	-34,009	2,067,520	2,101,529	2,253,454	2,183,829	2,067,520
Procurement of Ammunition, Navy and Marine Corps	858,640	870,840	873,140	19,500	878,140	858,640	870,840	873,140	878,140
Shipbuilding and Conversion, Navy	9,962,027	10,120,027	10,127,027	154,800	10,116,827	9,962,027	10,120,027	10,127,027	10,116,827
Other Procurement, Navy	4,834,278	4,876,725	4,904,978	-200,392	4,633,886	4,834,278	4,876,725	4,904,978	4,633,886
Procurement, Marine Corps	1,190,103	1,315,103	1,302,703	78,350	1,268,453	1,190,103	1,315,103	1,302,703	1,268,453
Aircraft Procurement, Air Force	13,163,174	13,649,174	13,035,674	64,950	13,228,124	13,163,174	13,649,174	13,035,674	13,228,124
Procurement of Ammunition, Air Force	1,396,457	1,396,457	1,396,457	-77,498	1,318,959	1,396,457	1,396,457	1,396,457	1,318,959
Missile Procurement, Air Force	4,718,313	4,611,313	4,635,613	-169,800	4,548,513	4,718,313	4,611,313	4,635,613	4,548,513
Other Procurement, Air Force	13,283,557	13,229,257	13,298,257	-334,230	12,949,327	13,283,557	13,229,257	13,298,257	12,949,327
Procurement, Defense-wide	2,883,302	2,950,702	2,967,402	-36,719	2,846,583	2,883,302	2,950,702	2,967,402	2,846,583
National Guard and Reserve Equipment									
Defense Production Act Purchases						9,015	9,015	9,015	9,015
Total Procurement	**74,653,301**	**76,278,717**	**76,467,066**	**-470,344**	**74,182,957**	**74,662,316**	**76,287,732**	**76,476,081**	**74,191,972**
Title II – RESEARCH, DEVELOPMENT, TEST & EVALUATION									
Research, Development, Test & Evaluation, Army	9,266,258	9,478,164	9,690,458	40,990	9,307,248	9,266,258	9,495,164	9,707,458	9,324,248
Research, Development, Test & Evaluation, Navy	16,346,391	16,052,841	16,690,391	-145,800	16,200,591	16,346,391	16,052,841	16,690,391	16,200,591
Research, Development, Test & Evaluation, Air Force	21,114,667	21,532,967	21,264,267	-681,734	20,432,933	21,114,667	21,532,967	21,264,267	20,432,933
Research, Development, Test & Evaluation, Defense-wide	20,739,837	20,721,254	20,654,437	-486,986	20,252,851	20,739,837	20,721,254	20,654,437	20,252,851
Operational Test & Evaluation, Defense	305,135	305,135	309,135	-1,000	304,135	305,135	305,135	309,135	304,135
Total Research, Development, Test & Evaluation	**67,772,288**	**68,090,361**	**68,608,688**	**-1,274,530**	**66,497,758**	**67,772,288**	**68,107,361**	**68,625,688**	**66,514,758**

SUMMARY OF NATIONAL DEFENSE AUTHORIZATION FOR FY 2005

(Dollars in Thousands)

	Authorizatio	House	Senate	Conference	Conference	Budget Authority Implication			
	Request	Authorized	Authorized	Change	Agreement	Request	House	Senate	Conference
Title III – OPERATION AND MAINTENANCE & OTHER PROGAMS									
Operation and Maintenance									
Operation and Maintenance, Army	26,133,411	25,838,611	26,313,611	-35,000	26,098,411	26,133,411	25,838,611	26,313,611	26,098,411
Operation and Maintenance, Navy	29,789,190	29,523,490	29,702,790	-106,600	29,682,590	29,789,190	29,523,490	29,702,790	29,682,590
Operation and Maintenance, Marine Corps	3,632,115	3,637,615	3,682,727	16,000	3,648,115	3,632,115	3,637,615	3,682,727	3,648,115
Operation and Maintenance, Air Force	28,471,260	27,068,566	27,423,560	-172,600	28,298,660	28,471,260	27,068,566	27,423,560	28,298,660
Operation and Maintenance, Defense-wide	17,494,076	17,317,406	17,458,576	-168,800	17,325,276	17,494,076	17,317,406	17,458,576	17,325,276
Operation and Maintenance, Army Reserve	2,008,128	2,003,728	1,925,728		2,008,128	2,008,128	2,003,728	1,925,728	2,008,128
Operation and Maintenance, Navy Reserve	1,240,038	1,240,038	1,240,038		1,240,038	1,240,038	1,240,038	1,240,038	1,240,038
Operation and Maintenance, Marine Corps Reserve	188,696	188,696	197,496		188,696	188,696	188,696	197,496	188,696
Operation and Maintenance, Air Force Reserve	2,239,790	2,226,790	2,154,790		2,239,790	2,239,790	2,226,790	2,154,790	2,239,790
Operation and Maintenance, Army National Guard	4,440,686	4,425,686	4,227,236	12,100	4,452,786	4,440,686	4,425,686	4,227,236	4,452,786
Operation and Maintenance, Air National Guard	4,422,838	4,448,938	4,366,738	80,500	4,503,338	4,422,838	4,448,938	4,366,738	4,503,338
Transfer Accounts	1,305,336	1,305,336	1,349,986	40,000	1,345,336	1,305,336	1,305,336	1,349,986	1,345,336
Miscellaneous Appropriations	509,025	534,025	479,025	-20,000	489,025	509,025	534,025	479,025	489,025
Subtotal Operation and Maintenance	**121,874,589**	**119,758,925**	**120,522,301**	**-354,400**	**121,520,189**	**121,874,589**	**119,758,925**	**120,522,301**	**121,520,189**
Other Programs									
Drug Interdiction and Counter-Drug Activities, Defense	852,697	852,697	852,697	250	852,947	852,697	852,697	852,697	852,947
Defense Health Program	17,640,411	17,811,586	17,992,711	16,975	17,657,386	17,640,411	17,811,586	17,992,711	17,657,386
Office of the Inspector General	244,562	193,562	164,562	-40,000	204,562	244,562	193,562	164,562	204,562
Chemical Agents and Munitions Destruction, Army	1,371,990	1,371,990	1,518,990		1,371,990	1,371,990	1,371,990	1,518,990	1,371,990
Subtotal Other Programs	**20,109,660**	**20,229,835**	**20,528,960**	**-22,775**	**20,086,885**	**20,109,660**	**20,229,835**	**20,528,960**	**20,086,885**
Revolving and Management Funds									
Defense Working Capital Funds (Army, Navy, Air Force, and Def	510,886	372,886	450,686	-59,000	451,886	510,886	372,886	450,686	451,886
Defense Working Capital Funds - DeCA	1,175,000	1,175,000	1,175,000		1,175,000	1,175,000	1,175,000	1,175,000	1,175,000
National Defense Sealift Fund	1,269,252	1,219,252	1,269,252		1,269,252	1,269,252	1,219,252	1,269,252	1,269,252
Subtotal Revolving and Management Funds	**2,955,138**	**2,767,138**	**2,894,938**	**-59,000**	**2,896,138**	**2,955,138**	**2,767,138**	**2,894,938**	**2,896,138**
Total Operation and Maintenance & Other Programs	**144,939,387**	**142,755,898**	**143,946,199**	**-436,175**	**144,503,212**	**144,939,387**	**142,755,898**	**143,946,199**	**144,503,212**
MILITARY PERSONNEL	**104,811,558**	**104,647,558**	**104,477,958**	**1,731,424**	**106,542,982**	**104,811,558**	**104,647,558**	**104,477,958**	**106,542,982**

SUMMARY OF NATIONAL DEFENSE AUTHORIZATION FOR FY 2005

(Dollars in Thousands)

	Authorizatio	House	Senate	Conference	Conference	Budget Authority Implication			
	Request	Authorized	Authorized	Change	Agreement	Request	House	Senate	Conference
Title X -- GENERAL PROVISIONS									
General Transfer Authority (non-additive)	[4,000,000]	[3,000,000]	[3,000,000]	[-500,000]	[3,500,000]				
Inflation Savings			-1,670,000					-1,670,000	
Subtotal General Provisions			**-1,670,000**					**-1,670,000**	
DIVISION B									
MILITARY CONSTRUCTION									
Military Construction, Army	1,771,285	1,866,209	1,942,885	197,700	1,968,985	1,771,285	1,866,209	1,942,885	1,968,985
Military Construction, Navy	1,060,455	1,077,862	1,000,105	-4,170	1,056,285	1,060,455	1,077,862	1,000,105	1,056,285
Military Construction, Air Force	663,964	792,054	782,469	189,911	853,875	663,964	792,054	782,469	853,875
Military Construction, Defense-wide	699,437	708,937	682,337	-23,900	675,537	709,337	718,837	692,237	685,437
Military Construction, Army National Guard	295,657	393,225	361,072	138,706	434,363	295,657	393,225	361,072	434,363
Military Construction, Air National Guard	127,368	184,620	214,418	106,150	233,518	127,368	184,620	214,418	233,518
Military Construction, Army Reserve	87,070	116,955	63,047	3,240	90,310	87,070	116,955	63,047	90,310
Military Construction, Naval and Marine Corps Reserve	25,285	30,955	25,285	22,900	48,185	25,285	30,955	25,285	48,185
Military Construction, Air Force Reserve	84,556	114,090	99,206	38,200	122,756	84,556	114,090	99,206	122,756
Military Construction, Foreign Currency Fluctuations				-63,000	-63,000		63,000	63,000	
Base Realignment and Closure IV	246,116	246,116	246,116		246,116	246,116	246,116	246,116	246,116
NATO Security Investment Program	165,800	165,800	165,800	-5,000	160,800	165,800	165,800	165,800	160,800
Chem Agents and Munitions Destruction	81,886	81,886	81,886		81,886	81,886	81,886	81,886	81,886
Subtotal Military Construction	**5,308,879**	**5,778,709**	**5,664,626**	**600,737**	**5,909,616**	**5,318,779**	**5,851,609**	**5,737,526**	**5,982,516**

SUMMARY OF NATIONAL DEFENSE AUTHORIZATION FOR FY 2005

(Dollars in Thousands)

	Authorizatio Request	House Authorized	Senate Authorized	Conference Change	Conference Agreement	Budget Authority Implication			
						Request	House	Senate	Conference
FAMILY HOUSING									
Family Housing Construction, Army	636,099	636,099	636,099		636,099	636,099	636,099	636,099	636,099
Family Housing Support, Army	928,907	926,507	928,907	-2,400	926,507	928,907	926,507	928,907	926,507
Family Housing Construction, Navy and Marine Corps	139,107	139,107	139,107		139,107	139,107	139,107	139,107	139,107
Family Housing Support, Navy and Marine Corps	704,504	696,304	704,504	-8,200	696,304	704,504	696,304	704,504	696,304
Family Housing Construction, Air Force	846,959	846,959	846,959		846,959	846,959	846,959	846,959	846,959
Family Housing Support, Air Force	863,896	854,666	856,114	-10,512	853,384	863,896	854,666	856,114	853,384
Family Housing Construction, Defense-wide	49	49	49		49	49	49	49	49
Family Housing Support, Defense-wide	49,575	49,575	49,575		49,575	49,575	49,575	49,575	49,575
DoD Family Housing Improvement Fund	2,500	2,500	2,500		2,500	2,500	2,500	2,500	2,500
Subtotal Family Housing	**4,171,596**	**4,151,766**	**4,163,814**	**-21,112**	**4,150,484**	**4,171,596**	**4,151,766**	**4,163,814**	**4,150,484**
Prior Year Rescissions				-130,000	-130,000				-130,000
Total Military Construction and Family Housing	**9,480,475**	**9,930,475**	**9,828,440**	**449,625**	**9,930,100**	**9,490,375**	**10,003,375**	**9,901,340**	**10,003,000**
OTHER DoD MILITARY (Discretionary)									
Receipts from Travel and Purchase Card Refunds							44,000	44,000	44,000
Armed Forces Retirement Home Fund	61,195	61,195	61,195		61,195				
National Security Educational Trust Fund						8,000	8,000	8,000	8,000
Disposal of DoD Real Property						16,000	15,000	15,000	15,000
Lease of DoD Real Property						14,770	9,770	9,770	9,770
Overseas Facility Investment Recovery						1,300	1,300	1,300	1,300
National Science Center, Army						5	5	5	5
Total Other DoD Military Discretionary	**61,195**	**61,195**	**61,195**		**61,195**	**40,075**	**78,075**	**78,075**	**78,075**
Subfunction (051) Department of Defense Discretionary	**401,718,204**	**401,764,204**	**401,719,546**		**401,718,204**	**401,715,999**	**401,879,999**	**401,835,341**	**401,833,999**

SUMMARY OF NATIONAL DEFENSE AUTHORIZATION FOR FY 2005

(Dollars in Thousands)

	Authorizatior Request	House Authorized	Senate Authorized	Conference Change	Conference Agreement	Budget Authority Implication			
						Request	House	Senate	Conference
OTHER DoD MILITARY (Mandatory)									
Concurrent Receipt Accrual Payments to the Military Retirement F	1,534,200	1,534,200	1,534,200		1,534,200	1,534,200	1,374,200	1,374,200	1,374,200
Offsetting Receipts and Other	-1,386,000	-1,386,000	-1,386,000		-1,386,000	-1,386,000	-1,238,000	-1,238,000	-1,238,000
Revolving, Trust, and Other DoD Mandatory	273,000	273,000	273,000		273,000	883,010	762,010	762,010	762,010
National Defense Stockpile Transaction Fund, Public Enterprise Fund							-80,000	-80,000	-80,000
Sale of Certain Materials in the National Defense Stockpile Transa	-115,000	-130,000	-130,000		-115,000	-115,000	-115,000	-115,000	-115,000
Quantity Restrictions on Ferro Manganese Alloy Sales		-8,000	-8,000				-8,000	-8,000	-8,000
H. Sec 503 - Increase in Retirement Age Limit for Military Officers		250					250		
H. Sec. 504 - Flexibility for Voluntary Retirement for Military Officers		250					250		
H. Sec. 512 - Mandatory Retention of Active Duty to Qualify for Retired Pay		500					500		500
H. Sec. 555 - Disabilities Sustained During Accession Training		33					33		
H. Sec. 642 - Survivor Benefits Plan		-1,000					-1,000		-1,000
H. Sec. 1004 - Microclaim Waiver Authority		100					100		
H. Sec. 2806 - Modification of the Military Housing Privatization Initiative									1,286,000
H. Sec. 2834 - Modification of Land Exchange, Ft Lewis, Wa							3,000		3,000
S. Sec 641 - Disability Retirement and Survivor Annuities for Reservists								2,000	2,000
S. Sec 643 - Modification of Phase-In for Concurrent Receipt								176,000	176,000
S. Sec 644 - Survivor Benefit Plan								-3,000	
S. Sec 655 - Relief from Farm Loan Obligations for Reservists								2,000	2,000
S. Sec 871 - KC-767 Tanker Acquisition								-3,619,000	-3,619,000
S. Sec 1072 - Reimbursement for Soldier Protective Equipment									16,000
S. Sec 1091 - Energy Savings Performance Contracts								272,000	272,000
Enhanced Reserve Education Benefit									92,000
Total Other DoD Military Mandatory	**306,200**	**283,333**	**283,200**		**306,200**	**916,210**	**695,343**	**695,210**	**-1,075,290**
Subfunction (051) Department of Defense Mandatory	**306,200**	**283,333**	**283,200**		**306,200**	**916,210**	**698,343**	**-2,474,790**	**-1,075,290**
SUBFUNCTION (051) TOTAL DEPARTMENT OF DI	**402,024,404**	**402,047,537**	**402,002,746**		**402,024,404**	**402,632,209**	**402,578,342**	**399,360,551**	**400,758,709**

SUMMARY OF NATIONAL DEFENSE AUTHORIZATION FOR FY 2005

(Dollars in Thousands)

	Authorizatior	House	Senate	Conference	Conference	Budget Authority Implication			
	Request	Authorized	Authorized	Change	Agreement	Request	House	Senate	Conference
DIVISION C									
ATOMIC ENERGY DEFENSE ACTIVITIES (053)									
Weapons Activities	6,568,453	6,577,953	6,674,898	23,600	6,592,053	6,568,453	6,577,953	6,674,898	6,592,053
Defense Nuclear Nonproliferation	1,348,647	1,338,147	1,348,647		1,348,647	1,348,647	1,338,147	1,348,647	1,348,647
Naval Reactors	797,900	797,900	797,900		797,900	797,900	797,900	797,900	797,900
Office of the Administrator	333,700	333,700	343,700	10,000	343,700	333,700	333,700	343,700	343,700
Subtotal National Nuclear Security Administration	**9,048,700**	**9,047,700**	**9,165,145**	**33,600**	**9,082,300**	**9,048,700**	**9,047,700**	**9,165,145**	**9,082,300**
Defense Site Acceleration Completion	5,970,837	5,926,837	5,971,932		5,970,837	5,970,837	5,926,837	5,971,932	5,970,837
Defense Environmental Services	982,470	986,470	982,470	4,000	986,470	982,470	986,470	982,470	986,470
Other Defense Activities	663,636	657,636	568,096	-27,600	636,036	663,636	657,636	568,096	636,036
Defense Nuclear Waste Disposal	131,000	131,000	108,000	-11,000	120,000	131,000	131,000	108,000	120,000
Subtotal Environmental & Other Defense Activities	**7,747,943**	**7,701,943**	**7,630,498**	**-34,600**	**7,713,343**	**7,747,943**	**7,701,943**	**7,630,498**	**7,713,343**
Subtotal Department of Energy	**16,796,643**	**16,749,643**	**16,795,643**	**-1,000**	**16,795,643**	**16,796,643**	**16,749,643**	**16,795,643**	**16,795,643**
OTHER ATOMIC ENERGY DEFENSE ACTIVITIES (Discretionary)									
Defense Nuclear Facilities Safety Board	20,268	21,268	21,268	1,000	21,268	20,268	21,268	21,268	21,268
Corps of Engineers - Civil Works						140,000	140,000	140,000	140,000
Total Other Atomic Energy Defense Activities Discretion	**20,268**	**21,268**	**21,268**	**1,000**	**21,268**	**160,268**	**161,268**	**161,268**	**161,268**
Subfunction (053) Atomic Energy Defense Activities Dis	**16,816,911**	**16,770,911**	**16,816,911**		**16,816,911**	**16,956,911**	**16,910,911**	**16,956,911**	**16,956,911**
OTHER ATOMIC ENERGY DEFENSE ACTIVITIES (Mandatory)									
Energy Employees Occupational Illness Compensation Program (EEOICPA)						262,000	341,000	341,000	341,000
S. Secs. 3151-3157 - EEOICPA									249,000
Subfunction (053) Other Atomic Energy Defense Activit						**262,000**	**341,000**	**341,000**	**590,000**
SUBFUNCTION (053) TOTAL ATOMIC ENERGY D	**16,816,911**	**16,770,911**	**16,816,911**		**16,816,911**	**17,218,911**	**17,251,911**	**17,297,911**	**17,546,911**

SUMMARY OF NATIONAL DEFENSE AUTHORIZATION FOR FY 2005

(Dollars in Thousands)

	Authorizatior Request	House Authorized	Senate Authorized	Conference Change	Conference Agreement	Budget Authority Implication			
						Request	House	Senate	Conference
DEFENSE RELATED ACTIVITIES (054)									
Department of Homeland Security						937,000	937,000	937,000	937,000
Department of Justice						530,000	530,000	530,000	530,000
Department of Transportation - MARAD Maritime Security Program						99,000	99,000	99,000	99,000
Intelligence Community Management Account						269,000	269,000	269,000	269,000
National Science Foundation - Antarctic Research Activities						68,000	68,000	68,000	68,000
Radiation Exposure Compensation Trust Fund Transferred to Mandatory						72,000	72,000	72,000	72,000
Selective Service System - Salaries and Expenses						26,000	26,000	26,000	26,000
Subfunction (054) Defense Related Activities Discretionai						**2,001,000**	**2,001,000**	**2,001,000**	**2,001,000**
OTHER DEFENSE RELATED ACTIVITIES (Mandatory)									
CIA Retirement & Disability						239,000	239,000	239,000	239,000
Radiation Exposure Compensation Trust Fund						65,000	65,000	65,000	65,000
Proposed Legislation (outside DoD's Jurisdiction)						940,000			
Subfunction (054) Defense Related Activities Mandatory						**1,244,000**	**304,000**	**304,000**	**304,000**
SUBFUNCTION (054) TOTAL DEFENSE-RELATED						**3,245,000**	**2,305,000**	**2.305,000**	**2,305,000**
Total National Defense Function (050) Discretionary	**418,535,115**	**418,535,115**	**418,536,457**		**418,535,115**	**420,673,910**	**420,791,910**	**420,793,252**	**420,791,910**
Total National Defense Function (050) Mandatory	**306,200**	**283,333**	**283,200**		**306,200**	**2,422,210**	**1,343,343**	**-1,829,790**	**-181,290**
TOTAL NATIONAL DEFENSE FUNCTION (050)	**418,841,315**	**418,818,448**	**418,819,657**		**418,841,315**	**423,096,120**	**422,135,253**	**418,963,462**	**420,610,620**

TITLE I—PROCUREMENT

Procurement Overview

The budget request for fiscal year 2005 included an authorization of $74,653.3 million in Procurement for the Department of Defense.

The House bill would authorize $76,278.7 million.

The Senate amendment would authorize $76,467.1 million.

The conferees recommend an authorization of $74,183.0 million. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

NATIONAL DEFENSE AUTHORIZATION FOR FISCAL YEAR 2005

(Dollars in Thousands)

Title I -- PROCUREMENT	Authorization Request	House Authorization	Senate Authorization	Conference Change	Conference Authorization
Aircraft Procurement, Army	2,658,240	2,809,940	2,702,640	-46,700	2,611,540
Missile Procurement, Army	1,398,321	1,504,321	1,488,321	-91,321	1,307,000
Procurement of W&TCV, Army	1,639,695	1,739,695	1,698,595	63,000	1,702,695
Procurement of Ammunition, Army	1,556,902	1,729,402	1,598,302	-11,200	1,545,702
Other Procurement, Army	4,240,896	4,309,640	5,383,296	104,350	4,345,246
Aircraft Procurement, Navy	8,767,867	8,912,667	8,870,832	46,575	8,814,442
Weapons Procurement, Navy	2,101,529	2,253,454	2,183,829	-34,009	2,067,520
Procurement of Ammunition, Navy & Marine Corps	858,640	870,840	873,140	19,500	878,140
Shipbuilding and Conversion, Navy	9,962,027	10,120,027	10,127,027	154,800	10,116,827
Other Procurement, Navy	4,834,278	4,876,725	4,904,978	-200,392	4,633,886
Procurement, Marine Corps	1,190,103	1,315,103	1,302,703	78,350	1,268,453
Aircraft Procurement, Air Force	13,163,174	13,649,174	13,035,674	64,950	13,228,124
Procurement of Ammunition, Air Force	1,396,457	1,396,457	1,396,457	-77,498	1,318,959
Missile Procurement, Air Force	4,718,313	4,611,313	4,635,613	-169,800	4,548,513
Other Procurement, Air Force	13,283,557	13,229,257	13,298,257	-334,230	12,949,327
Procurement, Defense-Wide	2,883,302	2,950,702	2,967,402	-36,719	2,846,583
National Guard and Reserve Equipment					
Defense Production Act Purchases					
TOTAL PROCUREMENT	74,653,301	76,278,717	76,467,066	-470,344	74,182,957

Aircraft Procurement, Army Overview

The budget request for fiscal year 2005 included an authorization of $2,658.2 million in Aircraft Procurement, Army for the Department of Defense.

The House bill would authorize $2,809.9 million.

The Senate amendment would authorize $2,702.6 million.

The conferees recommend an authorization of $2,611.5 million. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Title I - Procurement

(Dollars in Thousands)

		FY 2005 Request		House Authorized		Senate Authorized		Conference Agreement Change		Conference Agreement Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Aircraft Procurement, Army										
	Aircraft										
	Fixed Wing										
1	UTILITY F/W AIRCRAFT	1	11,967	1	11,967	1	11,967			1	11,967
	Rotary Wing										
2	HELICOPTER, OBSERVATION, KW RPLCMNT		24,000		24,000		24,000		-12,000		12,000
	Funding ahead of need								[-12,000]		
3	HELICOPTER, LIGHT UTILITY		45,000		45,000		45,000		-22,000		23,000
	Funding ahead of need								[-22,000]		
4	COMANCHE										
5	UH-60 BLACKHAWK (MYP)	27	299,456	35	417,056	27	299,456			27	299,456
	HH-60M			[8]	[117,600]						
5	LESS: ADVANCE PROCUREMENT		-19,719		-19,719		-19,719				-19,719
6	ADVANCE PROCUREMENT (CY)		34,723		34,723		34,723				34,723
7	HELICOPTER NEW TRAINING		13,100		13,100		13,100				13,100
	Modification of Aircraft										
8	GUARDRAIL MODS (TIARA)		2,195		2,195		2,195				2,195
9	ARL MODS (TIARA)										
10	AH-64 MODS		37,201		58,801		37,201		1,900		39,101
	Modern Signal Processing Unit				[7,600]				[1,900]		
	Combo PAK Aux Fuel System				[10,000]						
	Aircraft wireless intercom (H Amdt 31)				[2,000]						
	Bladefold kits (H Amdt 31)				[2,000]						
11	CH-47 CARGO HELICOPTER MODS		723,813		730,313		723,813		-25,000		698,813
	Production efficiencies								[-25,000]		
	Crashworthy Crew Seats				[6,500]						

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
11	LESS: ADVANCE PROCUREMENT (PY)		-20,363		-20,363		-20,363				-20,363
12	ADVANCE PROCUREMENT (CY)		23,832		23,832		23,832				23,832
13	UTILITY/CARGO AIRPLANE MODS		10,093		10,093		10,093				10,093
14	OH-58 MODS										
15	AIRCRAFT LONG RANGE MODS		754		754		754				754
16	LONGBOW		668,559		668,559		673,559				668,559
	AH-64D Combo Pak acceleration						[5,000]				
16	LESS: ADVANCE PROCUREMENT (PY)		-14,099		-14,099		-14,099				-14,099
17	ADVANCE PROCUREMENT (CY)										
18	UH-60 MODS		156,389		156,389		166,389		1,000		157,389
	Crashworthy external fuel system for UH-60						[5,000]		[1,000]		
	UH-60 Blackhawk de-icing systems upgrade						[5,000]				
18	LESS: ADVANCE PROCUREMENT (PY)		-13,500		-13,500		-13,500				-13,500
19	ADVANCE PROCUREMENT (CY)		6,130		6,130		6,130				6,130
	De-icing System Upgrade (non-add)				[2,400]						
20	KIOWA WARRIOR		39,276		39,276		45,276				39,276
	OH-58D Safety Enhancement Program - GAU-19 gun						[6,000]				
21	AIRBORNE AVIONICS		49,091		49,091		49,091				49,091
22	GATM ROLLUP		61,259		61,259		61,259				61,259
23	AIRBORNE DIGITIZATION										
	Spares and Repair Parts										
24	SPARE PARTS (AIR)		10,857		10,857		10,857				10,857
	Support Equipment and Facilities										
	Ground Support Avionics										
25	AIRCRAFT SURVIVABILITY EQUIPMENT		7,319		7,319		17,319		5,000		12,319
	Additional AVR-2B						[10,000]		[5,000]		
26	ASE INFRARED CM		272,165		272,165		272,165				272,165

Title I - Procurement

(Dollars in Thousands)

		FY 2005 Request		House Authorized		Senate Authorized		Conference Agreement			
								Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Other Support										
27	AIRBORNE COMMAND & CONTROL		26,603		26,603		37,503		1,000		27,603
	A2C2S						[10,900]		[1,000]		
28	AVIONICS SUPPORT EQUIPMENT		5,140		5,140		5,140				5,140
29	COMMON GROUND EQUIPMENT		55,543		55,543		55,543				55,543
30	AIRCREW INTEGRATED SYSTEMS		28,609		28,609		31,109		1,200		29,809
	Cockpit Airbag System (CABS)						[2,500]		[1,200]		
31	AIR TRAFFIC CONTROL		55,449		55,449		55,449				55,449
32	INDUSTRIAL FACILITIES		45,216		45,216		45,216				45,216
33	LAUNCHER, 2.75 ROCKET		2,413		2,413		2,413				2,413
34	AIRBORNE COMMUNICATIONS		9,769		15,769		9,769		2,200		11,969
	AN/ARS-6 Personnel Locator				[6,000]				[2,200]		
35	CLOSED ACCOUNT ADJUSTMENT										
	Total - Aircraft Procurement, Army		**2,658,240**		**2,809,940**		**2,702,640**		**-46,700**		**2,611,540**

Missile Procurement, Army Overview

The budget request for fiscal year 2005 included an authorization of $1,398.3 million in Missile Procurement, Army for the Department of Defense.

The House bill would authorize $1,504.3 million.

The Senate amendment would authorize $1,488.3 million.

The conferees recommend an authorization of $1,307.0 million. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Missile Procurement, Army										
	Other Missiles										
	Surface-to-air Missile System										
1	PATRIOT SYSTEM SUMMARY	108	489,253	108	579,253	144	579,253			108	489,253
	PAC-3 missiles					[36]	[90,000]				
	Additional PAC-3 missiles (H. Amdt 10)				[90,000]						
2	STINGER SYSTEM SUMMARY										
3	SURFACE-LAUNCHED AMRAAM SYSTEM SUMM		2,449		2,449		2,449				2,449
	Air-to-surface Missile System										
4	HELLFIRE SYS SUMMARY		108,475		108,475		108,475				108,475
5	APKWS (ADVANCED PRECISION KILL WEAPON S		755		755		755				755
6	ADVANCE PROCUREMENT (CY)		6,124		6,124		6,124				6,124
	Anti-tank/Assault Missile System										
7	JAVELIN (AAWS-M) SYSTEM SUMMARY	1,038	125,403	1,038	141,403	1,038	125,403			1,038	125,403
	Additional Missiles- ARNG				[16,000]						
7	LESS: ADVANCE PROCUREMENT (PY)		-7,600		-7,600		-7,600				-7,600
8	ADVANCE PROCUREMENT (CY)										
9	LINE OF SIGHT ANTI-TANK (LOSAT) SYSTEM SU	158	86,321	158	86,321	158	86,321		-71,321	158	15,000
	Program termination								[-71,321]		
10	TOW 2 SYSTEM SUMMARY	500	25,813	500	25,813	500	25,813			500	25,813
10	LESS: ADVANCE PROCUREMENT (PY)		-12,946		-12,946		-12,946				-12,946
11	ADVANCE PROCUREMENT (CY)		13,375		13,375		13,375				13,375
12	GUIDED MLRS ROCKET (GMLRS)	1,026	112,302	1,026	112,302	1,026	112,302			1,026	112,302
13	MLRS REDUCED RANGE PRACTICE ROCKETS (R	822	6,627	822	6,627	822	6,627			822	6,627
14	MLRS LAUNCHER SYSTEMS		41,200		41,200		41,200		-20,000		21,200
	Fielding and delivery cost growth								[-20,000]		
15	HIGH MOBILITY ARTILLERY ROCKET SYSTEM (	37	169,249	37	169,249	37	169,249			37	169,249
16	ARMY TACTICAL MSL SYS (ATACMS) - SYS SUM	56	61,484	56	61,484	56	61,484			56	61,484

Title I - Procurement

(Dollars in Thousands)

Line	Program Title	FY 2005 Request Qty	FY 2005 Request Cost	House Authorized Qty	House Authorized Cost	Senate Authorized Qty	Senate Authorized Cost	Conference Agreement Change Qty	Conference Agreement Change Cost	Conference Agreement Authorized Qty	Conference Agreement Authorized Cost
	Modification of Missiles										
	Modifications										
17	PATRIOT MODS		87,948		87,948		87,948				87,948
18	STINGER MODS										
19	ITAS/TOW MODS		9,784		9,784		9,784				9,784
20	MLRS MODS		18,970		18,970		18,970				18,970
21	HIMARS MODIFICATIONS (NON AAO)		474		474		474				474
22	HELLFIRE MODIFICATIONS		9,770		9,770		9,770				9,770
	Spares and Repair Parts										
23	SPARES AND REPAIR PARTS		33,779		33,779		33,779				33,779
	Support Equipment and Facilities										
24	AIR DEFENSE TARGETS		5,843		5,843		5,843				5,843
25	ITEMS LESS THAN $5.0M (MISSILES)		10		10		10				10
26	MISSILE DEMILITARIZATION										
27	PRODUCTION BASE SUPPORT		3,459		3,459		3,459				3,459
28	CLOSED ACCOUNT ADJUSTMENTS										
	Total - Missile Procurement Army		**1,398,321**		**1,504,321**		**1,488,321**		**-91,321**		**1,307,000**

PROCUREMENT OF WEAPONS AND TRACKED COMBAT VEHICLES, ARMY OVERVIEW

The budget request for fiscal year 2005 included an authorization of $1,639.7 million in Procurement of Weapons and Tracked Combat Vehicles, Army for the Department of Defense.

The House bill would authorize $1,739.7 million.

The Senate amendment would authorize $1,698.6 million.

The conferees recommend an authorization of $1,702.7 million. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Procurement of Weapons and Tracked Combat Vehicl										
	Tracked Combat Vehicles										
1	ABRAMS TRNG DEV MOD		3,643		3,643		3,643				3,643
2	BRADLEY BASE SUSTAINMENT		71,378		71,378		71,378				71,378
2	LESS: ADVANCE PROCUREMENT (PY)										
3	BRADLEY FVS TRAINING DEVICES (MOD)		2,454		2,454		2,454				2,454
4	ABRAMS TANK TRAINING DEVICES		3,624		3,624		3,624				3,624
5	STRYKER		905,074		905,074		905,074				905,074
	Modification of Tracked Combat Vehicles										
6	CARRIER, MOD						15,000		10,500		10,500
	M113A2 OIF for Army prepositioned stocks						[15,000]		[10,500]		
7	FIST VEHICLE (MOD)		1		1		1				1
8	MOD OF IN-SVC EQUIP, FIST VEHICLE		670		670		670				670
9	BFVS SERIES (MOD)		55,424		120,424		55,424		51,500		106,924
	BFV Integrated Management				[40,000]				[34,000]		
	Reactive Armor Bradley FV				[25,000]				[17,500]		
10	HOWITZER, MED SP FT 155MM M109A6 (MOD)		18,350		18,350		18,350				18,350
11	FAASV PIP TO FLEET		7,294		7,294		12,294				7,294
	New production: FAASV or C2V (S. Amdt 3239)						[5,000]				
12	IMPROVED RECOVERY VEHICLE (M88 MOD)										
13	ARMORED VEH LAUNCH BRIDGE (AVLB) (MOD)										
14	M1 ABRAMS TANK (MOD)		116,917		116,917		116,917				116,917
15	SYSTEM ENHANCEMENT PGM: SEP M1A2	67	292,152	67	292,152	67	292,152			67	292,152
16	ABRAMS UPGRADE PROGRAM										
	Support Equipment and Facilities										
17	ITEMS LESS THAN $5.0M (TCV-WTCV)		407		407		407				407
18	PRODUCTION BASE SUPPORT (TCV-WTCV)		10,278		10,278		10,278				10,278

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Weapons and Other Combat Vehicles										
19	INTEGRATED AIR BURST WEAPON SYSTEM FAM		500		500		13,500				500
	XM-8 - additional LRIP after fielding to BCTs						[13,000]				
20	ARMOR MACHINE GUN, 7.62MM M240 SERIES	2,070	25,249	2,070	25,249	2,070	25,249			2,070	25,249
21	MACHINE GUN, 5.56MM (SAW)		80		80		8,480				80
	Rapid fielding initiative (Additional M249 SAWs)						[8,400]				
23	MORTAR SYSTEMS	577	5,258	577	5,258	577	5,258			577	5,258
24	M16 RIFLE										
25	XM107, CAL. 50, SNIPER RIFLE	600	8,871	600	8,871	600	8,871			600	8,871
26	5.56 CARBINE M4	8,255	9,376	8,255	9,376	8,255	9,376			8,255	9,376
27	HOWITZER LT WT 155MM (T)	18	37,209	18	72,209	18	37,209			18	37,209
	M777 LW 155 Howitzer- ARNG				[35,000]						
	Modification of Weapons and Other Combat Vehicles										
28	MARK-19 MODIFICATIONS		4,236		4,236		4,236				4,236
29	M4 CARBINE MODS		13,777		13,777		13,777				13,777
30	SQUAD AUTOMATIC WEAPON (MOD)		3,382		3,382		11,182				3,382
	Rapid fielding initiative (Additional SAW items)						[7,800]				
31	MEDIUM MACHINE GUNS (MODS)		3,409		3,409		3,409				3,409
32	HOWITZER, TOWED, 155MM, M198 (MODS)	13	779	13	779	13	779			13	779
33	M119 MODIFICATIONS										
34	M16 RIFLE MODS		2,345		2,345		2,345				2,345
35	MODIFICATIONS LESS THAN $5.0M (WOCV-WTCV		3,245		3,245		3,245				3,245
	Support Equipment and Facilities										
36	ITEMS LESS THAN $5.0M (WOCV-WTCV)		486		486		486				486
	SHOTGUNS (House entry, no funds)										
37	PRODUCTION BASE SUPPORT (WOCV-WTCV)		6,620		6,620		6,620				6,620

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
38	INDUSTRIAL PREPAREDNESS		2,629		2,629		2,629		1,000		3,629
	Rock Island Arsenal Upgrades (non-add)				[1,000]						
	Rock Island Arsenal Upgrades								[1,000]		
39	SMALL ARMS (SOLDIER ENH PROG)		3,492		3,492		13,192				3,492
	Rapid fielding initiative (mags, sights, wpn pks)						[9,700]				
40	REF SMALL ARMS		998		998		998				998
	Spares										
41	SPARES AND REPAIR PARTS (WTCV)		20,088		20,088		20,088				20,088
	Total - Procurement of WTCV, Army		1,639,695		1,739,695		1,698,595		63,000		1,702,695

Procurement of Ammunition, Army Overview

The budget request for fiscal year 2005 included an authorization of $1,556.9 million in Procurement of Ammunition, Army for the Department of Defense.

The House bill would authorize $1,729.4 million.

The Senate amendment would authorize $1,598.3 million.

The conferees recommend an authorization of $1,545.7 million. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Procurement of Ammunition, Army										
	Ammunition										
	Small/Medium Caliber Ammunition										
1	CTG, 5.56MM, ALL TYPES		173,550		173,550		173,550				173,550
2	CTG, 7.62MM, ALL TYPES		45,062		45,062		45,062				45,062
3	CTG, 9MM, ALL TYPES		5,078		5,078		5,078				5,078
4	CTG, .50 CAL, ALL TYPES		59,810		59,810		59,810				59,810
5	CTG, 25MM, ALL TYPES		21,600		21,600		21,600				21,600
6	CTG, 30MM, ALL TYPES		9,726		26,726		9,726				9,726
	30mm M789 HEDP				[17,000]						
7	CTG, 40MM, ALL TYPES		119,658		119,658		119,658				119,658
	Mortar Ammunition										
8	60MM MORTAR, ALL TYPES		38,436		43,436		38,436				38,436
	60mm M720A1 HE M734A1 Fuze				[5,000]						
9	81MM MORTAR, ALL TYPES		4,597		19,597		4,597				4,597
	81mm M821A2 HE				[15,000]						
10	CTG, MORTAR, 120MM, ALL TYPES		50,316		88,416		50,316				50,316
	120mm M931A1 FR Practice				[22,900]						
	120mm M933 HE				[15,200]						
	Tank Ammunition										
11	CTG TANK 105MM: ALL TYPES		27,419		27,419		27,419				27,419
12	120MM TANK TRAINING, ALL TYPES		139,718		139,718		139,718				139,718
13	CTG, TANK, 120MM TACTICAL, ALL TYPES		49,845		49,845		49,845				49,845
	Artillery Ammunition										
14	CTG, ARTY, 75MM: ALL TYPES										

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
15	CTG, ARTY, 105MM: ALL TYPES		33,286		45,286		33,286				33,286
	105mm M915 DPICM				[12,000]						
16	CTG, ARTY, 155MM, ALL TYPES		132,668		132,668		132,668		-24,000		108,668
	M864 program delay								[-24,000]		
17	PROJ 155MM EXTENDED RANGE XM982		16,960		16,960		16,960				16,960
18	MODULAR ARTILLERY CHARGE SYSTEM (MACS		65,807		65,807		65,807				65,807
	Artillery Fuzes										
19	ARTILLERY FUZES, ALL TYPES		40,796		46,796		40,796		600		41,396
	Electronic Fuze M762A1/M767A1				[6,000]				[600]		
	Mines										
20	MINE, TRAINING, ALL TYPES		527		527		527				527
21	MINES (CONVENTIONAL), ALL TYPES		4,242		4,242		4,242				4,242
22	MINE AT VOLCANO,. ALL TYPES										
23	MINE, CLEARING CHARGE, ALL TYPES		1,020		1,020		1,020				1,020
24	ANTIPERSONNEL LANDMINE ALTERNATIVES		15,222		15,222		15,222				15,222
	Rockets										
25	SHOULDER FIRED ROCKETS, ALL TYPES		15,414		25,414		15,414				15,414
	Bunker Defeat Munition-NE				[10,000]						
26	ROCKET, HYDRA 70, ALL TYPES		164,689		164,689		164,689		-43,000		121,689
	Training rounds--procuring ahead of need								[-43,000]		
	Other Ammunition										
27	DEMOLITION MUNITIONS, ALL TYPES		29,193		37,193		29,193				29,193
	M112 Demolition Charge				[8,000]						
28	GRENADES, ALL TYPES		52,857		52,857		52,857				52,857
29	SIGNALS, ALL TYPES		26,276		26,276		26,276				26,276
30	SIMULATORS, ALL TYPES		20,165		20,165		20,165				20,165
	Miscellaneous										
31	AMMO COMPONENTS, ALL TYPES		8,550		8,550		8,550				8,550

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
32	NON-LETHAL AMMUNITION, ALL TYPES		5,534		5,534		5,534				5,534
33	CAD/PAD ALL TYPES		3,884		3,884		3,884				3,884
34	ITEMS LESS THAN $5 MILLION		11,398		11,398		11,398				11,398
35	AMMUNITION PECULIAR EQUIPMENT		4,898		4,898		8,898				4,898
	Robotic dominated ammunition module						[3,000]				
	Desert optimized equipment						[1,000]				
36	FIRST DESTINATION TRANSPORTATION (AMMO)		10,700		10,700		10,700				10,700
37	CLOSEOUT LIABILITIES		80		80		80				80
	Ammunition Production Base Support										
	Production Base Support										
38	PROVISION OF INDUSTRIAL FACILITIES		40,746		100,146		70,746		50,900		91,646
	120mm ext range mortar ammo flexible load, assembly, and pack						[2,000]		[1,000]		
	RDX nitration facility reactivation						[2,000]		[2,000]		
	Acid plant modernization						[16,000]				
	Lake City AAP Modernization				[22,400]				[19,400]		
	Radford AAP Modernization				[16,000]				[16,000]		
	Lone Star AAP LAP upgrades				[6,000]				[6,000]		
	Kansas AAP LAP upgrades				[15,000]		[10,000]		[6,500]		
39	LAYAWAY OF INDUSTRIAL FACILITIES		2,315		2,315		2,315				2,315
40	MAINTENANCE OF INACTIVE FACILITIES		4,745		4,745		4,745				4,745

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
41	CONVENTIONAL MUNITIONS DEMILITARIZATIOI		95,372		97,372		102,772		4,300		99,672
	Conventional Ammunition Demilitarization						[4,400]		[2,200]		
	Missile recycling energetics processing module						[3,000]		[2,100]		
	Remote Weapon Decasing and Explosive Removal Kits				[1,500]						
	Rotary Furnace RF9 Upgrades				[500]						
42	ARMS INITIATIVE		4,743		4,743		4,743				4,743
	Total - Procurement of Ammunition, Army		**1,556,902**		**1,729,402**		**1,598,302**		**-11,200**		**1,545,702**

Other Procurement, Army Overview

The budget request for fiscal year 2005 included an authorization of $4,240.9 million in Other Procurement, Army for the Department of Defense.

The House bill would authorize $4,309.6 million.

The Senate amendment would authorize $5,383.3 million.

The conferees recommend an authorization of $4,345.2 million. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Title I - Procurement

(Dollars in Thousands)

Line	Program Title	FY 2005 Request Qty	FY 2005 Request Cost	House Authorized Qty	House Authorized Cost	Senate Authorized Qty	Senate Authorized Cost	Conference Agreement Change Qty	Conference Agreement Change Cost	Conference Agreement Authorized Qty	Conference Agreement Authorized Cost
	Other Procurement, Army										
	Tactical and Support Vehicles										
	Tactical Vehicles										
1	TACTICAL TRAILERS/DOLLY SETS		11,940		11,940		11,940		-1,500		10,440
	Unjustified cost growth								[-1,500]		
2	SEMITRAILERS, FLATBED:		9,242		9,242	55	11,742				9,242
	M871A3 semitrailers					[55]	[2,500]				
3	SEMITRAILERS, TANKERS		667		667		667				667
4	HI MOB MULTI-PURP WHLD VEH (HMMWV)		303,692		303,692		618,692				303,692
	Up-armored HMWWV production						[315,000]				
5	TRUCK, DUMP, 20T (CCE)										
6	FAMILY OF MEDIUM TACTICAL VEH (FMTV)		505,664		505,664		505,664				505,664
7	FIRETRUCKS & ASSOCIATED FIREFIGHTING EQU		2,198		2,198		2,198				2,198
8	FAMILY OF HEAVY TACTICAL VEHICLES (FHTV)		84,038		99,038		134,038		21,000		105,038
	Additional vehicles						[15,000]				
	Movement Tracking System				[15,000]		[35,000]		[21,000]		
8a	Wheeled Vehicle Ballistic Armor Protection						610,000				
	Up-armored HMMWVs or armor kits for trucks						[610,000]				
9	ARMORED SECURITY VEHICLES (ASV)										
10	TRUCK, TRACTOR, LINE HAUL, M915/M916		15,314		15,314		30,314		15,000		30,314
	M915A3 family of military vehicles						[15,000]		[15,000]		
11	TOWING DEVICE, 5TH WHEEL										
12	TRUCK, TRACTOR, YARD TYPE, M878 (C/S)										
13	HVY EXPANDED MOBILE TACTICAL TRUCK EXT		19,204		19,204		19,204				19,204
14	MODIFICATION OF IN SVC EQUIP		25,848		25,848		25,848				25,848
15	ITEMS LESS THAN $5.0M (TAC VEH)		247		247		247				247
16	TOWING DEVICE-FIFTH WHEEL		1,907		1,907		1,907				1,907

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Non-tactical Vehicles										
17	HEAVY ARMORED SEDAN		196		196		196				196
18	PASSENGER CARRYING VEHICLES		197		197		197				197
19	NONTACTICAL VEHICLES, OTHER		196		196		196				196
	Communications and Electronics Equipment										
	Comm-Joint Communications										
20	COMBAT IDENTIFICATION PROGRAM										
21	JCSE EQUIPMENT (USREDCOM)		4,550		4,550		4,550				4,550
	Comm-Satellite Communications										
22	DEFENSE SAT COMMUNICATIONS SYSTEM (SPAC		99,775		99,775		99,775				99,775
23	SHF TERM		30,621		30,621		30,621		-4,000		26,621
	Unjustified cost growth								[-4,000]		
24	SAT TERM, EMUT (SPACE)		3,371		3,371		3,371				3,371
25	NAVSTAR GLOBAL POSITIONING SYSTEM (SPAC		40,067		40,067		45,067		3,800		43,867
	Defense advanced GPS receiver						[5,000]		[3,800]		
26	SMART-T (SPACE)		73,354		73,354		73,354		-1,700		71,654
	Unjustified cost growth								[-1,700]		
27	SCAMP (SPACE)		600		600		600				600
28	MILSTAR COMPONENTS (SPACE)		25,282		25,282		25,282				25,282
29	GLOBAL BRDCST SVC - GBS		12,664		12,664		12,664				12,664
30	MOD OF IN-SVC EQUIP (TAC SAT)		198		198		198				198
	Comm-C3 System										
31	ARMY GLOBAL CMD & CONTROL SYS (AGCCS)		19,790		19,790		19,790				19,790

Title I - Procurement

(Dollars in Thousands)

			FY 2005		House		Senate		Conference Agreement		
			Request		Authorized		Authorized		Change		Authorized
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Comm-Combat Communications										
32	ARMY DATA DISTRIBUTION SYSTEM (DATA RAI		34,435		34,435		41,435		7,000		41,435
	Enhanced position location reporting system						[7,000]		[7,000]		
33	JTRS CLUSTER 1		121,452		121,452		121,452		-10,000		111,452
	Excessive management costs								[-10,000]		
34	RADIO TERMINAL SET, MIDS LVT(2)		3,223		3,223		3,223				3,223
35	SINCGARS FAMILY		48,614		48,614		61,114		5,000		53,614
	SINCGARS radios						[12,500]		[5,000]		
36	MULTI-PURPOSE INFORMATION OPERATIONS SY		7,776		7,776		7,776				7,776
37	JOINT TACTICAL AREA COMMAND SYSTEMS		843		8,843		843		1,800		2,643
	Open Architecture COTS Integration				[8,000]				[1,800]		
38	ACUS MOD PROGRAM		81,317		81,317		81,317				81,317
39	COMMS-ELEC EQUIP FIELDING		8,889		8,889		22,889				8,889
	Rapid fielding initiative (MBITR)						[14,000]				
40	SOLDIER ENHANCEMENT PROGRAM COMM/ELE		25,952		25,952		25,952				25,952
41	COMBAT SURVIVOR EVADER LOCATOR (CSEL)		28,767		28,767		28,767				28,767
42	RADIO, IMPROVED HF FAMILY		6,948		6,948		6,948				6,948
43	MEDICAL COMM FOR CBT CASUALTY CARE (MC		4,662		4,662		4,662				4,662
	Comm-Intelligence Communications										
44	CI AUTOMATION ARCHITECTURE		1,279		1,279		1,279				1,279
	Information Security										
45	TSEC - ARMY KEY MGT SYS (AKMS)		2,834		2,834		2,834				2,834
46	INFORMATION SYSTEM SECURITY PROGRAM-IS!		114,124		114,124		114,124				114,124
	Comm-Long Haul Communications										
47	TERRESTRIAL TRANSMISSION		23,421		23,421		23,421				23,421
48	BASE SUPPORT COMMUNICATIONS		40,564		40,564		40,564				40,564
49	ARMY DISN ROUTER		6,133		6,133		6,133				6,133
50	ELECTROMAG COMP PROG (EMCP)		469		469		469				469

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
51	WW TECH CON IMP PROG (WWTCIP)		2,698		2,698		2,698				2,698
	Comm-Base Communications										
52	INFORMATION SYSTEMS		268,940		268,940		268,940				268,940
53	DEFENSE MESSAGE SYSTEM (DMS)		12,296		12,296		12,296				12,296
54	LOCAL AREA NETWORK (LAN)		84,820		84,820		84,820				84,820
55	PENTAGON INFORMATION MGT AND TELECOM		14,671		14,671		14,671				14,671
	Elect Equip-Nat For Int Prog (NFIP)										
56	FOREIGN COUNTERINTELLIGENCE PROG (FCI)	[ ]	[ ]								
57	GENERAL DEFENSE INTELL PROG (GDIP)	[ ]	[ ]								
	Elect Equip-Tact Int Rel Act (TIARA)										
58	ALL SOURCE ANALYSIS SYS (ASAS) (TIARA)		15,979		15,979		15,979				15,979
59	JTT/CIBS-M (TIARA)		13,993		13,993		13,993				13,993
60	PROPHET GROUND (TIARA)		17,692		17,692		26,092		6,550		24,242
	Prophet Block I upgrades						[8,400]		[6,550]		
61	TUAV		100,456		116,456	2	131,056		17,700		118,156
	TUAV lifecycle maintenance program						[5,000]		[3,500]		
	Additional Shadow TUAVs					[2]	[25,600]		[12,800]		
	Shadow UAV Enhancements				[16,000]				[1,400]		
62	ARMY COMMON GROUND STATION (CGS) (TIAR										
63	DIGITAL TOPOGRAPHIC SPT SYS (DTSS) (TIARA)		9,138		9,138		9,138				9,138
64	DRUG INTERDICTION PROGRAM (DIP) (TIARA)										
65	TACTICAL EXPLOITATION SYSTEM (TIARA)		14,094		14,094		14,094				14,094
66	DCGS-A UNIT OF EMPLOYMENT (JMIP)		9,575		8,175		9,575				9,575
	Program decrease				[-1,400]						
67	TROJAN (TIARA)		5,840		5,840		5,840				5,840
68	MOD OF IN-SVC EQUIP (INTEL SPT) (TIARA)		2,594		2,594		2,594				2,594
69	CI HUMINT INFO MANAGEMENT SYS (CHIMS) (TI		2,924		8,924		2,924				2,924
	Digital Soldier Concept				[6,000]						

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
70	ITEMS LESS THAN $5.0M (TIARA)		4,287		4,287		4,287				4,287
	Elect Equip-Electronic Warfare (EW)										
71	SHORTSTOP				18,600						
	Program increase				[18,600]						
72	COUNTERINTELLIGENCE/SECURITY COUNTERM										
	Elect Equip-Tactical Surv. (TAC SURV)										
73	FAAD GBS										
74	SENTINEL MODS		7,487		7,487		7,487				7,487
75	NIGHT VISION DEVICES		102,325		102,325		116,325				102,325
	Night vision device PVS-14						[14,000]				
76	LONG RANGE ADVANCED SCOUT SURVEILLANC		49,176		49,176		49,176				49,176
77	LTWT VIDEO RECON SYSTEM (LWVRS)										
78	NIGHT VISION, THERMAL WPN SIGHT		54,809		54,809		54,809				54,809
79	ARTILLERY ACCURACY EQUIP										
80	MOD OF IN-SVC EQUIP (MMS)		461		461		461				461
81	MOD OF IN-SVC EQUIP (MVS)		280		280		280				280
82	PORTABLE INDUCTIVE ARTILLERY FUZE SETTEI		1,985		1,985		1,985				1,985
83	PROFILER		4,963		4,963		8,363		2,600		7,563
	Meteorological measuring set - Profiler						[3,400]		[2,600]		
84	MOD OF IN-SVC EQUIP (TAC SURV)		17,444		21,444		21,444		3,500		20,944
	AN/TPQ-36(V)8 radar processor replacement/upgrade				[4,000]		[4,000]		[3,500]		
85	FORCE XXI BATTLE CMD BRIGADE & BELOW (FI		120,073		120,073		120,073				120,073
86	LIGHTWEIGHT LASER DESIGNATOR/RANGEFIND		12,339		12,339		12,339				12,339
87	MORTAR FIRE CONTROL SYSTEM		14,633		14,633		14,633				14,633
88	INTEGRATED MET SYS SENSORS (IMETS) - TIARA		346		346		346				346
89	ENHANCED SENSOR & MONITORING SYSTEM		1,456				1,456				1,456
	Program decrease				[-1,456]						

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Elect Equip-Tactical C2 Systems										
90	TACTICAL OPERATIONS CENTERS		50,692		50,692		50,692				50,692
91	ADV FA TAC DATA SYS / EFF CTRL SYS (AFATDS		26,922		26,922		26,922				26,922
92	MOD OF IN-SVC EQUIP, AFATDS		3,990		3,990		3,990				3,990
93	LIGHT WEIGHT TECH FIRE DIRECTION SYS (LWT		2,018		2,018		2,018				2,018
94	BATTLE COMMAND SUSTAINMENT SUPPORT SY		11,909		11,909		11,909				11,909
95	FAAD C2		12,873		12,873		12,873				12,873
96	AIR & MSL DEFENSE PLANNING & CONTROL SYS		6,400		6,400		6,400				6,400
97	FORWARD ENTRY DEVICE / LIGHTWEIGHT FED (		2,045		2,045		2,045				2,045
98	KNIGHT FAMILY		2,236		2,236		2,236				2,236
99	LIFE CYCLE SOFTWARE SUPPORT (LCSS)		1,827		1,827		1,827				1,827
100	LOGTECH		24,416		24,416		24,416				24,416
101	TC AIMS II		16,376		16,376		16,376				16,376
102	GUN LAYING AND POS SYS (GLPS)										
103	ISYSCON EQUIPMENT										
104	JOINT NETWORK MANAGEMENT SYSTEM (JNMS		12,587		12,587		12,587				12,587
105	TACTICAL INTERNET MANAGER		11,363		11,363		11,363				11,363
106	MANEUVER CONTROL SYSTEM (MCS)		29,136		29,136		29,136				29,136
107	STAMIS TACTICAL COMPUTERS (STACOMP)		54,581		54,581		54,581				54,581
108	STANDARD INTEGRATED CMD POST SYSTEM										
	Elect Equip - Automation										
109	ARMY TRAINING MODERNIZATION		5,377		5,377		5,377				5,377

Title I - Procurement

(Dollars in Thousands)

		FY 2005 Request		House Authorized		Senate Authorized		Conference Agreement Change		Conference Agreement Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
110	AUTOMATED DATA PROCESSING EQUIP		146,184		146,184		152,984		1,000		147,184
	Active data-rich RFID for in-transit visibility						[6,800]		[1,000]		
111	RESERVE COMPONENT AUTOMATION SYS (RCA!		48,467		48,467		48,467				48,467
	Elect Equip-Audio Visual Sys (A/V)										
112	AFRTS		1,801		1,801		1,801				1,801
113	ITEMS LESS THAN $5 0M (A/V)		1,624		1,624		1,624				1,624
114	ITEMS LESS THAN $5M (SURVEYING EQUIPMEN1		2,298		2,298		2,298				2,298
	Elect Equip-Support										
115	PRODUCTION BASE SUPPORT (C-E)		434		434		434				434
	Other Support Equipment										
	Chemical Defensive Equipment										
116	SMOKE & OBSCURANT FAMILY: SOF (NON AAO I		3,863		3,863		3,863				3,863
	Bridging Equipment										
117	TACTICAL BRIDGING		34,137		34,137		34,137				34,137
118	TACTICAL BRIDGE, FLOAT-RIBBON		17,360		17,360		17,360				17,360
	Engineer (Non-construction) Equipment										
119	DISPENSER, MINE M139										
120	TOWED VOLCANO DELIVERY SYSTEM										
121	HANDHELD STANDOFF MINEFIELD DETECTION :		6,906		6,906		6,906				6,906
122	KIT, STANDARD TELEOPERATING		3,023		3,023		3,023				3,023
123	GRND STANDOFF MINE DETECTION SYSTEM (GS		2,001		2,001		7,301		4,500		6,501
	Buffalo landmine vehicles						[6,300]		[4,500]		
	Buffalo landmine vehicles (S. Amdt 3228)						[-1,000]				
124	ROBOTIC COMBAT SUPPORT SYSTEM (RCSS)		1,038		1,038		1,038				1,038
125	EXPLOSIVE ORDNANCE DISPOSAL EQPMT (EOD		12,670		12,670		12,670				12,670
126	ITEMS LESS THAN $5M, COUNTERMINE EQUIPM		680		680		680				680
	Combat Service Support Equipment										
127	HEATERS AND ECU'S		17,554		17,554		17,554				17,554

Title I - Procurement

(Dollars in Thousands)

		FY 2005 Request		House Authorized		Senate Authorized		Conference Agreement Change		Conference Agreement Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
128	LAUNDRIES, SHOWERS AND LATRINES		2,020		2,020		2,020				2,020
129	FLOODLIGHT SET, ELEC, TRL MTD, 3 LIGHTS										
130	SOLDIER ENHANCEMENT		7,275		7,275		7,275				7,275
131	LIGHTWEIGHT MAINTENANCE ENCLOSURE (LM		30		30		3,930		3,900		3,930
	Lightweight maintenance enclosure						[3,900]		[3,900]		
132	LAND WARRIOR		8,896		8,896		8,896				8,896
133	FORCE PROVIDER										
134	AUTHORIZED STOCKAGE LIST MOBILITY SYSTE										
135	FIELD FEEDING EQUIPMENT		20,063		20,063		20,063				20,063
136	AIR DROP PROGRAM		14,288		14,288		14,288				14,288
137	ITEMS LESS THAN $5.0M (ENG SPT EQ)		6,546		6,546		6,546				6,546
138	ITEMS LESS THAN $5.0M (CSS EQ)						2,500		2,500		2,500
	High-intensity handheld searchlights						[2,500]		[2,500]		
	Petroleum Equipment										
139	QUALITY SURVEILLANCE EQUIPMENT										
140	DISTRIBUTION SYSTEMS, PETROLEUM & WATER		38,091		38,091		38,091				38,091
141	INLAND PETROLEUM DISTRIBUTION SYSTEM										
	Water Equipment										
142	WATER PURIFICATION SYSTEMS		12,581		12,581		12,581				12,581
	Medical Equipment										
143	COMBAT SUPPORT MEDICAL		11,743		11,743		14,243		2,500		14,243
	Life support trauma and transport						[2,500]		[2,500]		
	Maintenance Equipment										
144	SHOP EQ CONTACT MAINTENANCE TRK MTD (M		9,427		9,427		9,427				9,427
145	WELDING SHOP, TRAILER MTD										
146	ITEMS LESS THAN $5.0M (MAINT EQ)		5,439		5,439		5,439				5,439
	Construction Equipment										
147	GRADER, ROAD MTZD, HVY, 6X4 (CCE)										

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
148	SCRAPERS, EARTHMOVING										
149	MISSION MODULES - ENGINEERING		5,863		5,863		5,863				5,863
150	COMPACTOR										
151	LOADERS		10,202		10,202		10,202				10,202
152	HYDRAULIC EXCAVATOR										
153	DEPLOYABLE UNIVERSAL COMBAT EARTH MO\										
154	TRACTOR, FULL TRACKED										
155	CRANES		3,812		3,812		3,812				3,812
156	CRUSHING/SCREENING PLANT, 150 TPH										
157	PLANT, ASPHALT MIXING										
158	HIGH MOBILITY ENGINEER EXCAVATOR (HMEE		8,675		8,675		8,675				8,675
159	CONST EQUIP ESP		5,310		5,310		5,310				5,310
160	ITEMS LESS THAN $5.0M (CONST EQUIP)		7,192		7,192		7,192				7,192
	Rail Float Containerization Equipment										
161	LOGISTIC SUPPORT VESSEL (LSV)				3,500				2,000		2,000
	Program increase				[3,500]				[2,000]		
162	THEATER SUPPORT VESSEL (TSV)				1,000				1,000		1,000
	Small Tugs				[1,000]				[1,000]		
163	CAUSEWAY SYSTEMS						25,000		4,500		4,500
	Modular Causeway System						[25.000]	25.000	[4,500]		
164	ITEMS LESS THAN $5.0M (FLOAT/RAIL)		3,465		3,465		3,465				3,465

Title I - Procurement

(Dollars in Thousands)

		FY 2005 Request		House Authorized		Senate Authorized		Conference Agreement Change		Conference Agreement Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Generators										
165	GENERATORS AND ASSOCIATED EQUIP		54,397		54,397		54,397				54,397
	Material Handling Equipment										
166	ROUGH TERRAIN CONTAINER HANDLER (RTCH)										
167	ALL TERRAIN LIFTING ARMY SYSTEM		1,315		1,315		1,315				1,315
168	MHE EXTENDED SERVICE PROGRAM (ESP)										
169	ITEMS LESS THAN $5.0M (MHE)										
	Training Equipment										
170	COMBAT TRAINING CENTERS (CTC) SUPPORT		86,421		86,421		86,421				86,421
171	TRAINING DEVICES, NONSYSTEM		241,946		242,446		269,346		15,700		257,646
	Call for fire trainer/joint fires and effects trainer						[10,000]		[5,000]		
	MOUT instrumentation						[2,400]		[1,700]		
	Laser marksmanship training system						[15,000]		[9,000]		
	Live Fire Range Targeting Equipment				[500]						
172	CLOSE COMBAT TACTICAL TRAINER		61,811		61,811		61,811				61,811
173	AVIATION COMBINED ARMS TACTICAL TRAINER		40,803		40,803		40,803				40,803
	Test Measure and Dig Equipment (TMD)										
174	CALIBRATION SETS EQUIPMENT										
175	INTEGRATED FAMILY OF TEST EQUIPMENT (IFTI		4,054		4,054		4,054				4,054
176	TEST EQUIPMENT MODERNIZATION (TEMOD)		5,214		5,214		5,214				5,214
177	ARMY DIAGNOSTICS IMPROVEMENT PGM (ADIP										
	Other Support Equipment										
178	RAPID EQUIPPING SOLDIER SUPPORT EQUIPMEN		13,510		13,510		13,510				13,510
179	PHYSICAL SECURITY SYSTEMS (OPA3)		68,044		71,044		68,044				68,044
	Gamma Ray Inspection Equipment				[3,000]						
180	BASE LEVEL COM'L EQUIPMENT		7,197		7,197		7,197				7,197
181	MODIFICATION OF IN-SVC EQUIPMENT (OPA-3)		10,457		10,457		10,457				10,457
182	PRODUCTION BASE SUPPORT (OTH)		2,655		2,655		2,655				2,655

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
183	SPECIAL EQUIPMENT FOR USER TESTING		9,905		9,905		9,905				9,905
184	MA8975		2,447		2,447		2,447				2,447
	Spares and Repair Parts										
	OPA2										
185	INITIAL SPARES - C&E		44,102		44,102		44,102				44,102
	OPA3										
186	INITIAL SPARES - OTHER SUPPORT EQUIP		1,260		1,260		1,260				1,260
999	CLASSIFIED PROGRAMS		9,354		9,354		9,354				9,354
	Financial information systems						-22,400				
	Information systems (H. Amdt 31)				-4,000						
	Total - Other Procurement, Army		**4,240,896**		**4,309,640**		**5,383,296**		**104,350**		**4,345,246**

Aircraft Procurement, Navy Overview

The budget request for fiscal year 2005 included an authorization of $8,767.9 million in Aircraft Procurement, Navy for the Department of Defense.

The House bill would authorize $8,912.7 million.

The Senate amendment would authorize $8,870.8 million.

The conferees recommend an authorization of $8,814.4 million. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Title I - Procurement

(Dollars in Thousands)

		FY 2005 Request		House Authorized		Senate Authorized		Conference Agreement Change		Conference Agreement Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Aircraft Procurement, Navy										
	Combat Aircraft										
1	AV-8B (V/STOL)HARRIER (MYP)		4,659		4,659		4,659				4,659
2	ADVANCE PROCUREMENT (CY)		8,243		8,243		8,243				8,243
3	F/A-18E/F (FIGHTER) HORNET (MYP)	42	2,991,592	45	3,015,592	42	2,991,592			42	2,991,592
3	LESS: ADVANCE PROCUREMENT (PY)		-84,136		-84,136		-84,136				-84,136
	SHARP			[3]	[24,000]						
4	ADVANCE PROCUREMENT (CY)		78,306		78,306		78,306				78,306
5	V-22 (MEDIUM LIFT)	8	885,339	8	885,339	8	885,339			8	885,339
5	LESS: ADVANCE PROCUREMENT (PY)		-38,768		-38,768		-38,768				-38,768
6	ADVANCE PROCUREMENT (CY)		71,490		71,490		71,490				71,490
7	UH-1Y/AH-1Z	9	241,792	9	241,792	9	241,792			9	241,792
8	MH-60S (MYP)	15	390,427	15	390,427	15	390,427			15	390,427
8	LESS: ADVANCE PROCUREMENT (PY)		-94,832		-94,832		-94,832				-94,832
9	ADVANCE PROCUREMENT (CY)		105,159		105,159		105,159				105,159
10	MH-60R	8	384,618	8	384,618	8	384,618		-44,000	8	340,618
	Align production ramp more closely to 2004 level								[-44,000]		
10	LESS: ADVANCE PROCUREMENT (PY)		-46,127		-46,127		-118,827				-46,127
	Reductions						[-72,700]				
11	ADVANCE PROCUREMENT (CY)		70,604		70,604		61,204				70,604
	Reductions						[-9,400]				
12	E-2C (EARLY WARNING) HAWKEYE (MYP)	2	226,132	2	226,132	2	226,132			2	226,132
12	LESS: ADVANCE PROCUREMENT (PY)		-14,595		-14,595		-14,595				-14,595
13	ADVANCE PROCUREMENT (CY)		36,413		36,413		36,413				36,413
	Airlift Aircraft										
14	LC-35										
15	C-40A	1	65,224	1	65,224	1	65,224			1	65,224

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
16	C-37	1	53,331	1	53,331	2	106,631	1	53,300	2	106,631
	Additional aircraft					[1]	[53,300]	[1]	[53,300]		
	Trainer Aircraft										
17	T-48 (T-39 REPLACEMENT)	1	52,435					-1	-52,435		
	Program postponed					[-1]	[-52,435]	[-1]	[-52,435]		
	T-48 Transfer			[-1]	[-52,435]						
18	T-45TS (TRAINER) GOSHAWK	8	253,589	10	306,024	10	305,989	2	52,435	10	306,024
	Additional T-45 aircraft					[2]	[52,400]	[2]	[52,435]		
	T-48 Transfer			[2]	[52,435]						
19	JPATS		2,534	6	37,534	4	26,534		15,000		17,534
	Additional aircraft			[6]	[35,000]	[4]	[24,000]		[15,000]		
	Other Aircraft										
20	KC-130J	4	320,389	4	320,389	4	320,389			4	320,389
20	LESS: ADVANCE PROCUREMENT (PY)		-41,703		-41,703		-41,703				-41,703
21	ADVANCE PROCUREMENT (CY)		45,531		45,531		45,531				45,531
22	F-5	9	4,487	9	4,487	9	4,487			9	4,487
	Modification of Aircraft										
23	EA-6 SERIES		165,702		165,702		185,702		-55,725		109,977
	EA-6B reliability/sustainment						[20,000]				
	ICAP III program								[-55,725]		
24	AV-8 SERIES		20,808		20,808		20,808				20,808
25	F-14 SERIES										
26	ADVERSARY		5,465		5,465		5,465				5,465

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
27	F-18 SERIES		412,495		412,495		432,495				412,495
	ATFLIR						[8,000]				
	Ancillary armament equipment						[4,000]				
	ECP-560						[8,000]				
28	H-46 SERIES		71,179		71,179		79,179				71,179
	CH-46 lightweight seats						[8,000]				
29	AH-1W SERIES		2,153		2,153		7,153		3,500		5,653
	Night Targeting System upgrade						[5,000]		[3,500]		
30	H-53 SERIES		9,835		9,835		9,835				9,835
31	SH-60 SERIES		11,655		11,655		16,655				11,655
	H-60 armed helo kits						[5,000]				
32	H-1 SERIES		3,488		17,488		3,488		5,000		8,488
	Night Thermal Imaging System				[14,000]				[5,000]		
33	EP-3 SERIES		28,339		28,339		33,339		5,000		33,339
	EP-3 JMOD common configuration						[5,000]		[5,000]		
34	P-3 SERIES		134,970		138,970		171,770		14,500		149,470
	P-3 AIP kits						[26,800]		[3,500]		
	Operational flight trainer for the P-3						[10,000]		[10,000]		
	Communications Upgrade Risk Reduction				[4,000]				[1,000]		
35	S-3 SERIES		1,861		1,861		1,861				1,861
36	E-2 SERIES		15,124		22,724		23,124				15,124
	Production navigation equipment						[8,000]				
	AN/USC-42 MIN-DAMA				[7,600]						
37	TRAINER A/C SERIES		14,040		14,040		14,040				14,040
38	C-2A		29,564		29,564		29,564				29,564
39	C-130 SERIES		15,419		15,419		15,419				15,419
40	FEWSG		579		579		579				579
41	CARGO/TRANSPORT A/C SERIES		8,285		8,285		8,285				8,285

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
42	E-6 SERIES		19,721		19,721		19,721				19,721
43	EXECUTIVE HELICOPTERS SERIES		21,800		21,800		21,800				21,800
44	SPECIAL PROJECT AIRCRAFT		12,415		12,415		12,415				12,415
45	T-45 SERIES		44,190		44,190		44,190				44,190
46	POWER PLANT CHANGES		24,409		24,409		24,409				24,409
47	JPATS SERIES		648		648		648				648
48	AVIATION LIFE SUPPORT MODS		7,364		7,364		7,364				7,364
49	COMMON ECM EQUIPMENT		43,163		43,163		43,163				43,163
50	COMMON AVIONICS CHANGES		167,504		167,504		167,504				167,504
51	ID SYSTEMS		1,575		1,575		1,575				1,575
52	V-22 (TILT/ROTOR ACFT) OSPREY		3,448		3,448		3,448				3,448
	Aircraft Spares and Repair Parts										
53	SPARES AND REPAIR PARTS		925,813		984,813		925,813		49,000		974,813
	Spare Engine Procurement Transfer From Title III WCF				[59,000]				[59,000]		
	MH-60 initial spares								[-10,000]		
	Aircraft Support Equipment and Facilities										
54	COMMON GROUND EQUIPMENT		474,521		474,521		474,521				474,521
55	AIRCRAFT INDUSTRIAL FACILITIES		16,115		17,315		16,115		1,000		17,115
	Metrology and Calibration Program				[1,200]				[1,000]		
56	WAR CONSUMABLES		9,070		9,070		9,070				9,070

Title I - Procurement

(Dollars in Thousands)

		FY 2005 Request		House Authorized		Senate Authorized		Conference Agreement			
								Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
57	OTHER PRODUCTION CHARGES		9,883		9,883		9,883				9,883
58	SPECIAL SUPPORT EQUIPMENT		61,553		61,553		61,553				61,553
59	FIRST DESTINATION TRANSPORTATION		1,581		1,581		1,581				1,581
60	JUDGMENT FUND										
61	CANCELLED ACCOUNT ADJUSTMENTS										
	Total - Aircraft Procurement, Navy		**8,767,867**		**8,912,667**		**8,870,832**		**46,575**		**8,814,442**

Weapons Procurement, Navy Overview

The budget request for fiscal year 2005 included an authorization of $2,101.5 million in Weapons Procurement, Navy for the Department of Defense.

The House bill would authorize $2,253.5 million.

The Senate amendment would authorize $2,183.8 million.

The conferees recommend an authorization of $2,067.5 million. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Weapons Procurement, Navy										
	Ballistic Missiles										
1	TRIDENT II	5	113,761	5	113,761	5	113,761			5	113,761
1	LESS: ADVANCE PROCUREMENT (PY)		-40,694		-40,694		-40,694				-40,694
	Modification of Missiles										
2	TRIDENT II MODS		695,555		695,555		695,555		-50,000		645,555
	Excess program growth								[-50,000]		
	Support Equipment and Facilities										
3	MISSILE INDUSTRIAL FACILITIES		1,334		1,334		1,334				1,334
	Other Missiles										
	Strategic Missiles										
4	TOMAHAWK	293	256,196	350	305,896	316	276,196	28	24,000	321	280,196
	Tactical Tomahawk missiles			[57]	[49,700]	[23]	[20,000]	[28]	[24,000]		
5	ESSM	71	80,313	95	102,313	81	91,613			71	80,313
	Additional missiles					[10]	[11,300]				
	Program increase			[24]	[22,000]						
	Tactical Missiles										
6	AMRAAM	46	33,914	46	33,914	46	33,914		-5,000	46	28,914
	Production support continuity with USAF								[-5,000]		
7	SIDEWINDER	157	35,177	157	35,177	157	35,177		-3,800	157	31,377
	Accounting/ pricing inconsistencies								[-3,800]		
8	JSOW	389	139,407	389	152,407	404	144,407		4,000	389	143,407
	Additional JSOW-C missiles				[13,000]	[15]	[5,000]		[4,000]		
9	SLAM-ER										
10	STANDARD MISSILE	75	150,098	75	150,098	75	150,098			75	150,098
10a	Hellfire				42,000						
11	RAM	90	47,412	90	47,412	90	47,412			90	47,412
12	AERIAL TARGETS		72,686		72,686		72,686				72,686

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
13	DRONES AND DECOYS										
14	OTHER MISSILE SUPPORT		10,385		10,385	190	26,385				10,385
	AGM-114 Hellfire					[190]	[16,000]				
	Modification of Missiles										
15	SIDEWINDER MODS										
16	HARM MODS										
17	STANDARD MISSILES MODS		51,790		51,790		51,790				51,790
	Support Equipment and Facilities										
18	WEAPONS INDUSTRIAL FACILITIES		4,037		4,037		24,037		20,000		24,037
	Allegany Ballistics Laboratory facility restoration						[20,000]		[20,000]		
	Ordnance Support Equipment										
19	ORDNANCE SUPPORT EQUIPMENT		56,073		56,073		56,073		-16,100		39,973
	Torpedoes and Related Equipment										
	Torpedoes and Related Equip.										
20	ASW TARGETS		23,973		23,973		23,973				23,973
	Mod of Torpedoes and Related Equipment										
21	MK-46 TORPEDO MODS		61,413		61,413		61,413				61,413
22	MK-48 TORPEDO ADCAP MODS		61,185		61,185		61,185				61,185
23	QUICKSTRIKE MINE		2,981		2,981		2,981				2,981
	Support Equipment										
24	TORPEDO SUPPORT EQUIPMENT		23,401		23,401		23,401				23,401
25	ASW RANGE SUPPORT		12,935		12,935		12,935				12,935
	Destination Transportation										
26	FIRST DESTINATION TRANSPORTATION		3,123		3,123		3,123				3,123
	Other Weapons										
	Guns and Gun Mounts										
27	SMALL ARMS AND WEAPONS		2,195		2,195		2,195				2,195

Title I - Procurement

(Dollars in Thousands)

		FY 2005 Request		House Authorized		Senate Authorized		Conference Agreement Change		Conference Agreement Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
28	COAST GUARD WEAPONS		5,349		5,349		5,349		-5,349		
	Lack of justification materials								[-5,349]		
29	AIRBORNE MINE NEUTRALIZATION SYSTEMS										
	Modification of Guns and Gun Mounts										
30	CIWS MODS		86,128		120,128		96,128		15,000		101,128
	Block 1B upgrade				[34,000]		[10,000]		[15,000]		
31	5/54 GUN MOUNT MODS										
32	GUN MOUNT MODS		25,858		25,858		25,858				25,858
	Other										
33	PIONEER		8,775				8,775				8,775
	Program decrease				[-8,775]						
34	CRUISER MODERNIZATION WEAPONS		8,760		8,760		8,760		-8,760		
	Program reduction								[-8,760]		
35	CANCELLED ACCOUNT ADJUSTMENTS										
	Spares and Repair Parts										
36	SPARES AND REPAIR PARTS		68,009		68,009		68,009		-8,000		60,009
	Unjustified growth								[-8,000]		
	Total - Weapons Procurement, Navy		**2,101,529**		**2,253,454**		**2,183,829**		**-34,009**		**2,067,520**

Procurement of Ammunition, Navy and Marine Corps Overview

The budget request for fiscal year 2005 included an authorization of $858.6 million in Procurement of Ammunition, Navy and Marine Corps for the Department of Defense.

The House bill would authorize $870.8 million.

The Senate amendment would authorize $873.1 million.

The conferees recommend an authorization of $878.1 million. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Procurement of Ammunition, Navy & Marine Corps										
	Proc Ammo, Navy										
	Navy Ammunition										
1	GENERAL PURPOSE BOMBS		181,452		181,452		181,452				181,452
2	JDAM	6,620	151,189	6,620	151,189	6,620	151,189			6,620	151,189
3	AIRBORNE ROCKETS, ALL TYPES		34,151		34,151		34,151				34,151
4	MACHINE GUN AMMUNITION		25,674		25,674		25,674				25,674
5	PRACTICE BOMBS		53,577		53,577		53,577				53,577
6	CARTRIDGES & CART ACTUATED DEVICES		26,182		26,182		26,182				26,182
7	AIRCRAFT ESCAPE ROCKETS		10,735		10,735		10,735				10,735
8	AIR EXPENDABLE COUNTERMEASURES		48,674		48,674		48,674				48,674
9	JATOS		4,502		4,502		4,502				4,502
10	5 INCH/54 GUN AMMUNITION		19,749		19,749		19,749				19,749
11	EXTENDED RANGE GUIDED MUNITIONS (ERGM)		500		500		500				500
12	76MM GUN AMMUNITION		1,153		1,153		1,153				1,153
13	OTHER SHIP GUN AMMUNITION		19,199		29,399		19,199		7,000		26,199
	20mm PGU-28A/B				[10,200]				[7,000]		
14	SMALL ARMS & LANDING PARTY AMMO		23,235		23,235		23,235				23,235
15	PYROTECHNIC AND DEMOLITION		10,133		10,133		10,133				10,133
16	MINE NEUTRALIZATION DEVICES										
17	JUDGMENT FUND										
18	AMMUNITION LESS THAN $5 MILLION		3,135		3,135		3,135				3,135
	Proc Ammo, MC										
	Marine Corps Ammunition										
19	5.56 MM, ALL TYPES		35,129		35,129		35,129				35,129
20	7.62 MM, ALL TYPES		8,708		8,708		8,708				8,708

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
21	LINEAR CHARGES, ALL TYPES		10,286		10,286		14,286		3,000		13,286
	M59A1 linear demolition charge						[2,000]		[1,500]		
	M58A4 HE linear demolition charge						[2,000]		[1,500]		
22	.50 CALIBER		1,898		1,898		1,898				1,898
23	40 MM, ALL TYPES		23,614		23,614		25,614		1,500		25,114
	40mm HEDP						[2,000]		[1,500]		
24	60MM, ALL TYPES		10,446		10,446		12,946		2,000		12,446
	60mm high-explosive cartridge						[2,500]		[2,000]		
25	81MM, ALL TYPES		24,319		24,319		25,319		1,000		25,319
	M853A1 illumination cartridge						[1,000]		[1,000]		
26	120MM, ALL TYPES		15,365		15,365		15,365				15,365
27	CTG 25MM, ALL TYPES		3,749		3,749		3,749				3,749
28	9 MM ALL TYPES		7,644		7,644		7,644				7,644
29	GRENADES, ALL TYPES		5,042		5,042		5,042				5,042
30	STINGER SLEP										
31	ROCKETS, ALL TYPES		14,050		16,050		19,050		5,000		19,050
	Shoulder launched, multi-purpose assault weapon						[3,000]		[3,000]		
	M72 improved light anti-armor weapon				[2,000]		[2,000]		[2,000]		
32	ARTILLERY, ALL TYPES		55,599		55,599		55,599				55,599
33	EXPEDITIONARY FIGHTING VEHICLE		2,474		2,474		2,474				2,474
34	DEMOLITION MUNITIONS, ALL TYPES		3,270		3,270		3,270				3,270
35	FUZE, ALL TYPES		13,816		13,816		13,816				13,816
36	NON LETHALS		1,145		1,145		1,145				1,145
37	AMMO MODERNIZATION		7,123		7,123		7,123				7,123
38	ITEMS LESS THAN $5 MILLION		1,723		1,723		1,723				1,723
	Total - Procurement of Ammunition, Navy & Marine Corps		**858,640**		**870,840**		**873,140**		**19,500**		**878,140**

Shipbuilding and Conversion, Navy Overview

The budget request for fiscal year 2005 included an authorization of $9,962.0 million in Shipbuilding and Conversion, Navy for the Department of Defense.

The House bill would authorize $10,120.0 million.

The Senate amendment would authorize $10,127.0 million.

The conferees recommend an authorization of $10,116.8 million. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Shipbuilding and Conversion, Navy										
	Other Warships										
1	CARRIER REPLACEMENT PROGRAM										
2	ADVANCE PROCUREMENT (CY)		626,084		626,084		626,084				626,084
3	SSN-21										
3	COMPLETION OF PY PROGRAMS										
4	VIRGINIA CLASS SUBMARINE	1	2,253,513	1	2,253,513	1	2,253,513			1	2,253,513
4	LESS: ADVANCE PROCUREMENT (PY)		-672,370		-672,370		-672,370				-672,370
5	ADVANCE PROCUREMENT (CY)		871,864		871,864		871,864				871,864
4	COMPLETION OF PY PROGRAMS										
6	SSGN CONVERSION	1	783,793	1	783,793	1	783,793			1	783,793
6	LESS: ADVANCE PROCUREMENT (PY)		-314,567		-314,567		-314,567				-314,567
7	ADVANCE PROCUREMENT (CY)		48,000		48,000		48,000				48,000
8	CRUISER CONVERSION										
8	LESS: ADVANCE PROCUREMENT (PY)										
9	ADVANCE PROCUREMENT (CY)		333,061		333,061		333,061				333,061
10	SSN ERO		90,699		90,699		90,699				90,699
10	LESS: ADVANCE PROCUREMENT (PY)		-90,699		-90,699		-90,699				-90,699
11	ADVANCE PROCUREMENT (CY)		19,368		19,368		19,368				19,368
12	SSBN ERO	1	292,450	1	292,450	1	292,450			1	292,450
12	LESS: ADVANCE PROCUREMENT (PY)		-30,221		-30,221		-30,221				-30,221
13	ADVANCE PROCUREMENT (CY)		72,171		72,171		72,171				72,171
14	DDG-51	3	3,504,970	3	3,504,970	3	3,504,970			3	3,504,970
14	LESS: ADVANCE PROCUREMENT (PY)		-60,020		-60,020		-60,020				-60,020
14	COMPLETION OF PY PROGRAMS				100,000				50,000		50,000
	DDG-51 In Service Modernization				[100,000]				[50,000]		
14a	DDG-51 ADVANCE PROCUREMENT - / - / 164/										

Title I - Procurement

(Dollars in Thousands)

		FY 2005 Request		House Authorized		Senate Authorized		Conference Agreement Change		Conference Agreement Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
14b	DDG-51 MODERNIZATION PROGRAM										
14c	DD(X) (AP)										
	Amphibious Ships										
15	LHD-1 AMPHIBIOUS ASSAULT SHIP		1,091,185		1,091,185		1,091,185				1,091,185
15	LESS: ADVANCE PROCUREMENT (PY)		-855,167		-705,167		-855,167				-855,167
	Advance Procurement (CY)				[150,000]						
16	LPD-17	1	1,103,620	1	1,103,620	1	1,103,620			1	1,103,620
16	LESS: ADVANCE PROCUREMENT (PY)		-137,061		-137,061		-137,061				-137,061
17	ADVANCE PROCUREMENT (CY)										
17A	LHA-R - acceleration and incremental funding						150,000		150,000		150,000
	Auxiliaries, Craft and Prior Yr Program Costs										
18	LCU(X)	1	25,048	1	25,048	1	25,048			1	25,048
19	OUTFITTING		399,327		299,327		399,327		-50,000		349,327
	Program decrease				[-100,000]				[-50,000]		
20	SERVICE CRAFT		32,099		40,099		32,099		4,800		36,899
	Aft Ramp Range Retriever Craft				[8,000]				[4,800]		
21	LCAC SLEP	5	90,490	5	90,490	5	90,490			5	90,490
21	COMPLETION OF PY PROGRAMS										
22	CANCELLED ACCOUNT ADJUSTMENTS										
23	MINE HUNTER										
24	COMPLETION OF PY SHIPBUILDING PROGRAMS		484,390		484,390		484,390				484,390
24A	Power unit assembly facility						15,000				
	Total - Shipbuilding and Conversion, Navy		9,962,027		10,120,027		10,127,027		154,800		10,116,827

Other Procurement, Navy Overview

The budget request for fiscal year 2005 included an authorization of $4,834.3 million in Other Procurement, Navy for the Department of Defense.

The House bill would authorize $4,876.7 million.

The Senate amendment would authorize $4,905.0 million.

The conferees recommend an authorization of $4,633.9 million. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Title I - Procurement

(Dollars in Thousands)

Line	Program Title	FY 2005 Request Qty	FY 2005 Request Cost	House Authorized Qty	House Authorized Cost	Senate Authorized Qty	Senate Authorized Cost	Conference Agreement Change Qty	Conference Agreement Change Cost	Conference Agreement Authorized Qty	Conference Agreement Authorized Cost
	Other Procurement, Navy										
	Ships Support Equipment										
	Ship Propulsion Equipment										
1	LM-2500 GAS TURBINE		9,009		9,009		9,009				9,009
2	ALLISON 501K GAS TURBINE		22,271		22,271		22,271				22,271
	Propellers										
3	SUBMARINE PROPELLERS				7,000				4,900		4,900
	CVN Propeller Replacement				[7,000]				[4,900]		
	Navigation Equipment										
4	OTHER NAVIGATION EQUIPMENT		16,180		16,180		16,180				16,180
	Underway Replenishment Equipment										
5	UNDERWAY REPLENISHMENT EQUIPMENT		1,530		1,530		1,530				1,530
	Periscopes										
6	SUB PERISCOPES & IMAGING EQUIP	5	62,050	5	62,050	5	62,050			5	62,050
	Other Shipboard Equipment										
7	FIREFIGHTING EQUIPMENT		24,731		24,731		24,731				24,731
8	COMMAND AND CONTROL SWITCHBOARD		3,768		3,768		3,768				3,768
9	POLLUTION CONTROL EQUIPMENT		42,612		42,612		42,612				42,612
10	SUBMARINE SUPPORT EQUIPMENT		21,181		21,181		26,181		3,500		24,681
	High Performance Brush Program						[5,000]		[3,500]		
11	VIRGINIA CLASS SUPPORT EQUIPMENT		56,051		56,051		56,051				56,051
12	SUBMARINE BATTERIES		26,077		26,077		26,077				26,077
13	STRATEGIC PLATFORM SUPPORT EQUIP		55,166		55,166		55,166				55,166
14	DSSP EQUIPMENT		21,131		21,131		21,131				21,131
15	CG-MODERNIZATION		114,139		114,139		114,139		-114,139		
	Cruiser modernization								[-114,139]		
16	LCAC		8,365		8,365		8,365				8,365
17	MINESWEEPING EQUIPMENT		8,046		8,046		8,046				8,046

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
18	ITEMS LESS THAN $5 MILLION		148,637		162,737		152,637		6,700		155,337
	Machinery Control Surveillance System						[4,000]		[2,000]		
	Integrated Condition Assessment				[11,800]				[2,400]		
	Weapons Elevator Automation				[2,300]				[2,300]		
19	CHEMICAL WARFARE DETECTORS		4,725		4,725		4,725				4,725
20	SUBMARINE LIFE SUPPORT SYSTEM		13,940		13,940		13,940				13,940
	Reactor Plant Equipment										
21	REACTOR POWER UNITS		356,372		356,372		356,372				356,372
22	REACTOR COMPONENTS		217,175		217,175		217,175				217,175
	Ocean Engineering										
23	DIVING AND SALVAGE EQUIPMENT		8,875		8,875		8,875				8,875
	Small Boats										
24	STANDARD BOATS		18,328		18,328		18,328				18,328
	Training Equipment										
25	OTHER SHIPS TRAINING EQUIPMENT		8,848		8,848		8,848				8,848
	Production Facilities and Equipment										
26	OPERATING FORCES IPE		22,384		22,384		22,384				22,384
	Other Ship Support										
27	NUCLEAR ALTERATIONS		133,999		133,999		133,999				133,999
	Drug Interdiction Support										
28	DRUG INTERDICTION SUPPORT										
	Communications and Electronics Equipment										
	Ship Radars										
29	SPQ-9B RADAR		3,584		9,584		10,584		8,000		11,584
	AN/SPQ-9B shipboard radar transmitter upgrade						[7,000]		[5,000]		
	Evolved Sea Sparrow: SPQ-9B				[6,000]				[3,000]		
30	RADAR SUPPORT										
31	TISS										

Title I - Procurement

(Dollars in Thousands)

Line	Program Title	FY 2005 Request Qty	FY 2005 Request Cost	House Authorized Qty	House Authorized Cost	Senate Authorized Qty	Senate Authorized Cost	Conference Agreement Change Qty	Conference Agreement Change Cost	Conference Agreement Authorized Qty	Conference Agreement Authorized Cost
	Ship Sonars										
32	AN/SQQ-89 SURF ASW COMBAT SYSTEM										
33	SSN ACOUSTICS		225,028		229,028		225,028				225,028
	Complementary Acoustic System				[4,000]						
34	UUV PROGRAM		61,253				61,253		-61,253		
	Program decrease				[-61,253]				[-61,253]		
35	UNDERSEA WARFARE SUPPORT EQUIPMENT		14,116		14,116		19,116		2,500		16,616
	Surface Sonar Dome Window prototype						[5,000]		[2,500]		
36	SONAR SWITCHES AND TRANSDUCERS		13,330		13,330		13,330				13,330
	ASW Electronic Equipment										
37	SUBMARINE ACOUSTIC WARFARE SYSTEM		20,857		20,857		20,857				20,857
38	SSTD		22,273		22,273		22,273				22,273
39	FIXED SURVEILLANCE SYSTEM		55,325		55,325		55,325				55,325
40	SURTASS		7,166		7,166		7,166				7,166
41	TACTICAL SUPPORT CENTER		5,100		5,100		5,100				5,100
	Electronic Warfare Equipment										
42	AN/SLQ-32		18,728		18,728		18,728				18,728
43	INFORMATION WARFARE SYSTEMS		4,034		4,034		4,034				4,034
	Reconnaissance Equipment										
44	SHIPBOARD IW EXPLOIT		69,194		69,194		69,194				69,194
	Submarine Surveillance Equipment										
45	SUBMARINE SUPPORT EQUIPMENT PROG		78,968		78,968		78,968				78,968
	Other Ship Electronic Equipment										
46	NAVY TACTICAL DATA SYSTEM										

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
47	COOPERATIVE ENGAGEMENT CAPABILITY		57,531		61,731		57,531				57,531
	Evolved Sea Sparrow: CEC				[4,200]						
48	GCCS-M EQUIPMENT		63,363		63,363		63,363				63,363
49	NAVAL TACTICAL COMMAND SUPPORT SYSTEM		26,208		26,208		26,208				26,208
50	ATDLS		2,386		2,386		2,386				2,386
51	MINESWEEPING SYSTEM REPLACEMENT	3	77,956	3	77,956	3	77,956		-26,300	3	51,656
	RMS - buying ahead of need								[-11,700]		
	MCM1 class engine replacement - change in acquisition strategy								[-14,600]		
52	NAVSTAR GPS RECEIVERS (SPACE)		11,650		11,650		11,650				11,650
53	ARMED FORCES RADIO AND TV		4,170		4,170		4,170				4,170
54	STRATEGIC PLATFORM SUPPORT EQUIP		5,265		5,265		5,265				5,265
	Training Equipment										
55	OTHER SPAWAR TRAINING EQUIPMENT										
56	OTHER TRAINING EQUIPMENT		42,913		42,913		42,913				42,913
	Aviation Electronic Equipment										
57	MATCALS		15,614		15,614		15,614				15,614
58	SHIPBOARD AIR TRAFFIC CONTROL		7,695		7,695		7,695				7,695
59	AUTOMATIC CARRIER LANDING SYSTEM		12,515		12,515		12,515				12,515
60	NATIONAL AIR SPACE SYSTEM		16,122		16,122		16,122		-3,000		13,122
	Digital Airport Surveillance Radar - program delay								[-3,000]		
61	AIR STATION SUPPORT EQUIPMENT		3,640		3,640		3,640				3,640
62	MICROWAVE LANDING SYSTEM		7,232		7,232		7,232				7,232
63	FACSFAC		3,712		3,712		3,712				3,712
64	ID SYSTEMS		18,296		18,296		18,296				18,296
65	TAC A/C MISSION PLANNING SYS(TAMPS)		9,098		9,098		9,098				9,098
	Other Shore Electronic Equipment										
66	DEPLOYABLE JOINT COMMAND AND CONT		32,469		32,469		32,469				32,469
67	NAVAL SPACE SURVEILLANCE SYSTEM										

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
68	DIMHRS										
69	COMMON IMAGERY GROUND SURFACE SYSTEM		53,173		45,173		53,173		-8,000		45,173
	Program decrease				[-8,000]				[-8,000]		
70	RADIAC		9,087		9,087		9,087				9,087
71	GPETE		7,010		7,010		7,010				7,010
72	INTEG COMBAT SYSTEM TEST FACILITY		4,662		4,662		4,662				4,662
73	EMI CONTROL INSTRUMENTATION		5,872		5,872		5,872				5,872
74	ITEMS LESS THAN $5 MILLION		12,058		12,058		12,058				12,058
	Shipboard Communications										
75	SHIPBOARD TACTICAL COMMUNICATIONS		14,077		16,077		14,077				14,077
	Programmable Integrated Communications Terminal				[2,000]						
76	SHIP COMMUNICATIONS AUTOMATION		159,718		159,718		159,718				159,718
77	COMMUNICATIONS ITEMS UNDER $5M		11,921		11,921		14,921		1,500		13,421
	Navy shipboard communications						[3,000]		[1,500]		
	Submarine Communications										
78	SUBMARINE BROADCAST SUPPORT		17,802		17,802		17,802				17,802
79	SUBMARINE COMMUNICATION EQUIPMENT		94,533		94,533		113,533		5,000		99,533
	Submarine high data rate						[19,000]		[5,000]		
	Satellite Communications										
80	SATELLITE COMMUNICATIONS SYSTEMS		130,564		130,564		130,564				130,564
	Shore Communications										
81	JCS COMMUNICATIONS EQUIPMENT		3,023		3,023		3,023				3,023
82	ELECTRICAL POWER SYSTEMS		1,291		1,291		1,291				1,291
83	NSIPS		289		289		289				289
84	JEDMICS										
85	NAVAL SHORE COMMUNICATIONS		57,066		57,066		57,066				57,066
	Cryptographic Equipment										
86	INFO SYSTEMS SECURITY PROGRAM (ISSP)		88,418		88,418		88,418				88,418

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Cryptologic Equipment										
87	CRYPTOLOGIC COMMUNICATIONS EQUIP		26,111		26,111		26,111				26,111
	Other Electronic Support										
88	COAST GUARD EQUIPMENT		7,638		7,638		7,638				7,638
	Drug Interdiction Support										
89	OTHER DRUG INTERDICTION SUPPORT										
	Aviation Support Equipment										
	Sonobuoys										
90	SONOBUOYS - ALL TYPES		50,081		50,081		50,081				50,081
	Aircraft Support Equipment										
91	WEAPONS RANGE SUPPORT EQUIPMENT		44,643		44,643		47,643		2,300		46,943
	Joint threat emitter						[3,000]		[2,300]		
92	EXPEDITIONARY AIRFIELDS		7,527		7,527		7,527				7,527
93	AIRCRAFT REARMING EQUIPMENT		11,667		11,667		11,667				11,667
94	AIRCRAFT LAUNCH & RECOVERY EQUIPMENT		21,275		21,275		21,275				21,275
95	METEOROLOGICAL EQUIPMENT		20,134		20,134		20,134				20,134
96	OTHER PHOTOGRAPHIC EQUIPMENT		1,438		1,438		1,438				1,438
97	AVIATION LIFE SUPPORT		19,040		27,040		19,040		3,500		22,540
	Multi Climate Protection Clothing System				[8,000]				[3,500]		
98	AIRBORNE MINE COUNTERMEASURES		73,081		73,081		73,081		-5,900		67,181
	AN-AQS-20A - buying ahead of need								[-5,900]		
99	LAMPS MK III SHIPBOARD EQUIPMENT		16,433		16,433		16,433				16,433
100	OTHER AVIATION SUPPORT EQUIPMENT		6,157		6,157		6,157				6,157

Title I - Procurement

(Dollars in Thousands)

		FY 2005 Request		House Authorized		Senate Authorized		Conference Agreement			
								Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Ordnance Support Equipment										
	Ship Gun System Equipment										
101	GUN FIRE CONTROL EQUIPMENT										
102	NAVAL FIRES CONTROL SYSTEM		7,610		7,610		7,610				7,610
103	GUN FIRE CONTROL EQUIPMENT		11,481		11,481		11,481				11,481
	Ship Missile System Equipment										
104	NATO SEASPARROW		25,453		34,153		25,453				25,453
	Evolved Sea Sparrow RNSSMS				[8,700]						
105	RAM GMLS		22,968		22,968		22,968				22,968
106	SHIP SELF DEFENSE SYSTEM		42,130		42,130		42,130				42,130
107	AEGIS SUPPORT EQUIPMENT		57,517		76,517		66,517		6,800		64,317
	Integrated Bridge System				[19,000]		[9,000]		[6,800]		
108	SURFACE TOMAHAWK SUPPORT EQUIPMENT		69,732		69,732		69,732				69,732
109	SUBMARINE TOMAHAWK SUPPORT EQUIP		5,469		5,469		5,469				5,469
110	VERTICAL LAUNCH SYSTEMS		9,829		9,829		9,829				9,829
	FBM Support Equipment										
111	STRATEGIC MISSILE SYSTEMS EQUIP		102,073		102,073		102,073				102,073
	ASW Support Equipment										
112	SSN COMBAT CONTROL SYSTEMS		147,481		147,481		147,481		-32,000		115,481
	Provide for six SSN installations								[-32,000]		
113	SUBMARINE ASW SUPPORT EQUIPMENT		4,849		4,849		4,849				4,849
114	SURFACE ASW SUPPORT EQUIPMENT		4,539		4,539		4,539				4,539
115	ASW RANGE SUPPORT EQUIPMENT		7,175		7,175		7,175				7,175
	Other Ordnance Support Equipment										
116	EXPLOSIVE ORDNANCE DISPOSAL EQUIP		25,058		35,458		25,058				25,058
	EOD Capability Requirement				[10,400]						
117	ITEMS LESS THAN $5 MILLION		4,037		4,037		4,037				4,037

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Other Expendable Ordnance										
118	ANTI-SHIP MISSILE DECOY SYSTEM		46,553		46,553		52,653		6,100		52,653
	NULKA decoys						[6,100]		[6,100]		
119	SURFACE TRAINING DEVICE MODS		6,347		6,347		6,347				6,347
120	SUBMARINE TRAINING DEVICE MODS		39,405		39,405		43,405				39,405
	Submarine mobile performance support systems						[4,000]				
	Civil Engineering Support Equipment										
121	ARMORED SEDANS										
122	PASSENGER CARRYING VEHICLES		1,507		1,507		1,507				1,507
123	GENERAL PURPOSE TRUCKS		2,321		2,321		2,321				2,321
124	CONSTRUCTION & MAINTENANCE EQUIP		19,197		19,197		19,197				19,197
125	FIRE FIGHTING EQUIPMENT		12,345		12,345		12,345				12,345
126	TACTICAL VEHICLES		30,926		30,926		30,926				30,926
127	AMPHIBIOUS EQUIPMENT		11,607		11,607		11,607				11,607
128	POLLUTION CONTROL EQUIPMENT		11,396		11,396		11,396				11,396
129	ITEMS UNDER $5 MILLION		13,686		13,686		13,686				13,686
130	PHYSICAL SECURITY VEHICLES		1,125		1,125		1,125				1,125
	Supply Support Equipment										
131	MATERIALS HANDLING EQUIPMENT		12,754		12,754		12,754				12,754
132	OTHER SUPPLY SUPPORT EQUIPMENT		11,523		19,523		26,023		6,000		17,523
	Serial Number Tracking System				[8,000]		[8,000]		[6,000]		
	Radio frequency identification						[6,500]				
133	FIRST DESTINATION TRANSPORTATION		5,578		5,578		5,578				5,578
134	SPECIAL PURPOSE SUPPLY SYSTEMS		82,158		82,158		82,158				82,158

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Personnel and Command Support Equipment										
	Training Devices										
135	TRAINING SUPPORT EQUIPMENT		18,756		23,756		18,756		5,000		23,756
	Laser Marksmanship Training System- Navy Reserve				[5,000]				[5,000]		
	Command Support Equipment										
136	COMMAND SUPPORT EQUIPMENT		20,658		31,558		30,658		7,000		27,658
	Man Overboard Identification System				[12,400]		[10,000]		[7,000]		
	Enterprise Resource Planning				[-1,500]						
137	EDUCATION SUPPORT EQUIPMENT		5,507		5,507		5,507				5,507
138	MEDICAL SUPPORT EQUIPMENT		8,459		8,459		8,459				8,459
139	INTELLIGENCE SUPPORT EQUIPMENT	[ ]	[ ]								
140	OPERATING FORCES SUPPORT EQUIPMENT		7,826		7,826		7,826				7,826
141	C4ISR EQUIPMENT		27,582		27,582		27,582				27,582
142	ENVIRONMENTAL SUPPORT EQUIPMENT		13,155		13,155		13,155				13,155
143	PHYSICAL SECURITY EQUIPMENT		194,214		194,214		194,214		-20,000		174,214
	Unjustified cost growth								[-20,000]		
144	CLASSIFIED PROGRAMS	[ ]	[ ]								
145	SPECIAL PROGRAM	[ ]	[ ]								
	Productivity Programs										
146	JUDGMENT FUND REIMBURSEMENT										
	Other										
147	CANCELLED ACCOUNT ADJUSTMENTS										

Title I - Procurement

(Dollars in Thousands)

		FY 2005 Request		House Authorized		Senate Authorized		Conference Agreement Change		Conference Agreement Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Spares and Repair Parts										
148	SPARES AND REPAIR PARTS		245,476		249,876		247,476		1,400		246,876
	Protective covers				[4,400]		[2,000]		[1,400]		
999	CLASSIFIED PROGRAMS		18,646		18,646		18,646				18,646
	Financial information systems						-20,900				
	Total - Other Procurement, Navy		**4,834,278**		**4,876,725**		**4,904,978**		**-200,392**		**4,633,886**

Procurement, Marine Corps Overview

The budget request for fiscal year 2005 included an authorization of $1,190.1 million in Procurement, Marine Corps for the Department of Defense.

The House bill would authorize $1,315.1 million.

The Senate amendment would authorize $1,302.7 million.

The conferees recommend an authorization of $1,268.5 million. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Procurement, Marine Corps										
	Weapons and Combat Vehicles										
	Tracked Combat Vehicles										
1	AAV7A1 PIP	60	58,596	60	104,996	60	81,796		46,400	60	104,996
	AAV RAM/RS upgrade				[46,400]		[23,200]		[46,400]		
2	EXPEDITIONARY FIGHTING VEHICLE		67,701		67,701		67,701		-15,000		52,701
	Production facility and execution delays								[-15,000]		
3	LAV PIP		41,588		41,588		41,588				41,588
4	IMPROVED RECOVERY VEHICLE (IRV)				8,500						
	Program increase				[8,500]						
5	MODIFICATION KITS (TRKD VEH)		11,844		11,844		11,844				11,844
6	M1A1 FIREPOWER ENHANCEMENTS		36,873		36,873		36,873				36,873
	Artillery and Other Weapons										
7	HIMARS	1	16,340	1	16,340	1	16,340			1	16,340
8	155MM LIGHTWEIGHT TOWED HOWITZER	97	175,445	97	175,445	97	175,445			97	175,445
9	MOD KITS (ARTILLERY)		3,248		3,248		3,248				3,248
10	MARINE ENHANCEMENT PROGRAM		4,024		4,024		4,024				4,024
11	WEAPONS AND COMBAT VEHICLES UNDER $5 M		4,888		4,888		10,688				4,888
	Rapid fielding initiative (Additional M249 Saws)						[5,800]				
	Weapons										
12	MODULAR WEAPON SYSTEM		10,051		10,051		10,051				10,051
	Other Support										
13	OPERATIONS OTHER THAN WAR		1,509		1,509		1,509				1,509
	Guided Missiles and Equipment										
	Guided Missiles										
14	EADS MOD		10,314		10,314		10,314				10,314

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
15	JAVELIN					200	9,800		4,000		4,000
	Additional Javelin anti-tank missiles					[200]	[9,800]		[4,000]		
16	PEDESTAL MOUNTED STINGER (PMS) (MYP)		10,004		10,004		10,004				10,004
17	HIMARS ROCKETS		1,325		1,325		1,325				1,325
18	PREDATOR (SRAW)										
	Other Support										
19	MODIFICATION KITS		595		595		595				595
	Communications and Electronics Equipment										
	Vehicle Mounted Radios and Equipment										
20	SMALL UNIT REMOTE SCOUTING SYSTEM		8,866		8,866		8,866				8,866
	Command and Control Systems										
21	UNIT OPERATIONS CENTER		35,933		35,933		37,933		-6,500		29,433
	USMC Baseline Combat Operations Center						[2,000]		[1,500]		
	Unjustified support costs								[-8,000]		
22	GLOBAL COMBAT SUPPORT SYSTEM		21,664		21,664		29,964		3,900		25,564
	Radio frequency identification						[8,300]		[3,900]		
23	MULTIPLE ROLE RADAR SYSTEM		2,283		2,283		2,283				2,283
24	JOINT TACTICAL RADIO SYSTEMS		26,009		40,209		40,209				26,009
	High frequency manpack radio AN/PRC-150						[14,200]				
	AN/PRC 150C				[14,200]						
25	TRANSITION SWITCH MODULE		9,245		9,245		9,245				9,245
26	COMPLIMENTARY LOW ALTITUDE WEAPON		4,412		4,412		4,412				4,412
	Repair and Test Equipment										
27	AUTO TEST EQUIP SYS		15,823		15,823		15,823				15,823
28	GENERAL PURPOSE ELECTRONIC TEST EQUIP		14,495		14,495		14,495				14,495
29	CALIBRATION FACILITIES		2,305		2,305		2,305				2,305
	Radar Equipment (Non-tel)										
30	RADAR SET AN/TPS-59		24,466		24,466		24,466				24,466

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Intell/Comm Equipment (Non-tel)										
31	TACTICAL REMOTE SENSOR SYSTEM		10,622		10,622		10,622				10,622
32	INTELLIGENCE SUPPORT EQUIPMENT		15,842		15,842		15,842				15,842
33	MOD KITS (INTEL)		9,551		14,051		9,551				9,551
	GCCS-17				[4,500]						
34	ITEMS UNDER $5 MILLION (INTELL)										
	Repair and Test Equipment (Non-tel)										
35	GENERAL PURPOSE MECHANICAL TMDE		1,790		1,790		1,790				1,790
	Other Comm/Elec Equipment (Non-tel)										
36	NIGHT VISION EQUIPMENT		26,100		49,000		36,000		14,700		40,800
	AN/PVS 14				[5,800]		[5,800]		[4,400]		
	AN/PVS 17				[4,100]		[4,100]		[4,000]		
	AN/PEQ-2A				[13,000]				[6,300]		
	Other Support (Non-tel)										
37	ITEMS UNDER $5 MILLION (COMM & ELEC)		461		461		461				461
38	COMMON COMPUTER RESOURCES		61,989		61,989		61,989				61,989
39	COMMAND POST SYSTEMS		8,144		8,144		8,144				8,144
40	RADIO SYSTEMS		14,476		27,676		26,476		12,000		26,476
	Lightweight Multiband Satellite Terminal				[12,000]		[12,000]		[12,000]		
	AN/TRC-170				[1,200]						
41	COMM SWITCHING & CONTROL SYSTEMS		26,145		26,145		26,145				26,145
42	COMM & ELEC INFRASTRUCTURE SUPPORT		24,778		24,778		24,778				24,778
43	MOD KITS MAGTF C41		984		984		13,984		3,300		4,284
	Communication emitter sensing and attacking system						[13,000]		[3,300]		
44	AIR OPERATIONS C2 SYSTEMS		10,290		10,290		10,290				10,290
45	INTELLIGENCE C2 SYSTEMS		1,211		1,211		1,211				1,211
46	FIRE SUPPORT SYSTEM		10,215		10,215		10,215				10,215

Title I - Procurement

(Dollars in Thousands)

Line	Program Title	FY 2005 Request		House Authorized		Senate Authorized		Conference Agreement Change		Conference Agreement Authorized	
		Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Support Vehicles										
	Administrative Vehicles										
47	COMMERCIAL PASSENGER VEHICLES	37	1,096	37	1,096	37	1,096			37	1,096
48	COMMERCIAL CARGO VEHICLES		11,563		11,563		11,563				11,563
	Tactical Vehicles										
49	5/4T TRUCK HMMWV (MYP)	1,830	131,276	1,830	131,276	1,830	131,276			1,830	131,276
50	MEDIUM TACTICAL VEHICLE REPLACEMENT										
51	LOGISTICS VEHICLE SYSTEM REP		3,343		3,343		3,343				3,343
52	FAMILY OF TACTICAL TRAILERS		942		942		942				942
	Other Support										
53	ITEMS LESS THAN $5 MILLION		3,598		3,598		3,598				3,598
	Engineer and Other Equipment										
54	ENVIRONMENTAL CONTROL EQUIP ASSORT		2,869		2,869		2,869				2,869
55	COMBAT BREACHER VEHICLE		4,621		16,621		4,621		3,500		8,121
	Program increase				[12,000]				[3,500]		
56	BULK LIQUID EQUIPMENT		11,524		11,524		11,524				11,524
57	TACTICAL FUEL SYSTEMS		5,219		8,519		5,219		3,300		8,519
	Nitrile Rubber Collapsible Storage Units				[3,300]				[3,300]		
58	DEMOLITION SUPPORT SYSTEMS		3,422		3,422		10,822		5,500		8,922
	Handheld Standoff Mine Detection System						[7,400]		[5,500]		
59	POWER EQUIPMENT ASSORTED		10,657		10,657		10,657				10,657
60	SHOP EQ CONTACT MAINTENANCE (SECM)										
61	FAMILY OF EOD EQUIPMENT		4,724		4,724		4,724				4,724
62	BRIDGE BOATS		5,307		5,307		5,307				5,307
	Materials Handling Equipment										
63	AMPHIBIOUS RAID EQUIPMENT		15,771		15,771		15,771				15,771
64	PHYSICAL SECURITY EQUIPMENT		4,979		4,979		4,979				4,979
65	GARRISON MOBILE ENGR EQUIP		10,927		10,927		10,927				10,927

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
66	MATERIAL HANDLING EQUIP		21,190		21,190		21,190				21,190
67	FIRST DESTINATION TRANSPORTATION		5,715		5,715		5,715				5,715
	General Property										
68	FIELD MEDICAL EQUIPMENT		6,027		6,027		13,027		3,250		9,277
	Combat casualty care equipment						[3,500]		[1,750]		
	Combat casualty care equipment (S. Amdt 3228)						[-500]				
	Rapid infusion pumps						[4,000]		[1,500]		
69	TRAINING DEVICES		24,214		24,214		24,214				24,214
70	CONTAINER FAMILY		5,244		5,244		5,244				5,244
71	FAMILY OF CONSTRUCTION EQUIPMENT		15,067		15,067		15,067				15,067
72	RAPID DEPLOYABLE KITCHEN										
	Other Support										
73	FAMILY OF INCIDENT RESPONSE		2,804		2,804		2,804				2,804
74	MODIFICATION KITS		2,901		2,901		2,901				2,901
75	ITEMS LESS THAN $5 MILLION		5,713		5,713		5,713				5,713
76	CANCELLED ACCOUNT ADJUSTMENT (M)										
	Spares and Repair Parts										
77	SPARES AND REPAIR PARTS		26,946		26,946		26,946				26,946
	Total - Procurement, Marine Corps		1,190,103		1,315,103		1,302,703		78,350		1,268,453

Aircraft Procurement, Air Force Overview

The budget request for fiscal year 2005 included an authorization of $13,163.2 million in Aircraft Procurement, Air Force for the Department of Defense.

The House bill would authorize $13,649.2 million.

The Senate amendment would authorize $13,035.7 million.

The conferees recommend an authorization of $13,228.1 million. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Aircraft Procurement, Air Force										
	Combat Aircraft										
	Tactical Forces										
1	F-22 RAPTOR	24	4,128,356	24	4,128,356	22	3,848,156		-30,000	24	4,098,356
	Production deliveries behind schedule					[-2]	[-280,200]				
	Program efficiencies								[-30,000]		
1	LESS: ADVANCE PROCUREMENT (PY)		-494,587		-494,587		-494,587				-494,587
2	ADVANCE PROCUREMENT (CY)		523,187		523,187		523,187				523,187
	Airlift Aircraft										
	Tactical Airlift										
3	C-17A (MYP)	14	2,941,532	14	2,941,532	14	2,941,532			14	2,941,532
3	LESS: ADVANCE PROCUREMENT (PY)		-429,053		-394,053		-429,053		34,000		-395,053
	Maintenance Training System				[35,000]				[34,000]		
4	ADVANCE PROCUREMENT (CY)		381,800		381,800		381,800				381,800
5	C-17 ICS		945,560		945,560		945,560				945,560
	Other Airlift										
6	C-130H										
7	C-130J	11	902,421	11	939,121	11	939,121		36,666	11	939,087
	C-130J (transfer from APAF, line 8)				[36,700]		[36,700]		[36,666]		
7	LESS: ADVANCE PROCUREMENT (PY)		-169,916		-169,916		-169,916				-169,916
8	ADVANCE PROCUREMENT (CY)		186,666		149,966		149,966		-36,666		150,000
	C-130J (transfer to APAF, line 7)				[-36,700]		[-36,700]		[-36,666]		
	Trainer Aircraft										
	Operational Trainers										
9	JPATS	53	307,072	53	307,072	53	307,072			53	307,072
	Other Aircraft										
	Helicopters										
10	V-22 OSPREY	3	320,619	3	320,619	3	320,619			3	320,619

Title I - Procurement

(Dollars in Thousands)

		FY 2005 Request		House Authorized		Senate Authorized		Conference Agreement Change		Conference Agreement Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
10	LESS: ADVANCE PROCUREMENT (PY)		-15,038		-15,038		-15,038				-15,038
11	ADVANCE PROCUREMENT (CY)		11,035		11,035		11,035				11,035
	Mission Support Aircraft										
12	CIVIL AIR PATROL A/C	27	2,271	27	2,271	27	2,271			27	2,271
	Other Aircraft										
13	TARGET DRONES		74,143		74,143		74,143				74,143
14	C-40 ANG										
15	EC130J										
16	E-8C										
16	LESS: ADVANCE PROCUREMENT (PY)										
17	HAEUAV	4	342,360	4	342,360	4	342,360			4	342,360
17	LESS: ADVANCE PROCUREMENT (PY)		-54,592		-54,592		-54,592				-54,592
18	ADVANCE PROCUREMENT (CY)		71,863		71,863		71,863				71,863
19	PREDATOR UAV	9	146,609	9	322,609	9	146,609		30,000	9	176,609
	Predator A				[132,000]						
	Predator B				[44,000]				[30,000]		
20	SMALL UAV'S										
20a	Tanker Replacement Transfer Fund				15,000				15,000		15,000
	Modification of In-service Aircraft										
	Strategic Aircraft										
21	B-2A		96,002		96,002		96,002				96,002
22	B-1B		8,825		104,625		8,825				8,825
	Program increase				[95,800]						
23	B-52		92,216		92,216		92,216				92,216
24	F-117		13,223		13,223		13,223				13,223

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Tactical Aircraft										
25	A-10		53,362		53,362		69,362		7,000		60,362
	Litening air targeting pod						[16,000]		[7,000]		
26	F-15		181,602		198,602		217,402		25,100		206,702
	IFF modernization						[5,800]		[4,100]		
	F100-PW-220E engines						[30,000]		[14,000]		
	ALQ 135				[17,000]				[7,000]		
27	F-16		336,289		358,289		383,289		21,500		357,789
	Block 42 engine upgrade						[30,000]		[21,000]		
	Litening air targeting pod						[17,000]		[10,500]		
	Advanced IFF Interrogator				[10,000]						
	TARS P3I				[12,000]						
	Budget growth/execution								[-10,000]		
28	F22 RAPTOR		70,087		70,087		70,087				70,087
29	T/AT-37		78		78		78				78
	Airlift Aircraft										
30	C-5		99,601		120,601		129,601		3,500		103,101
	AMP				[21,000]		[30,000]		[3,500]		
31	C-9										
32	C-17A		89,144		89,144		89,144				89,144
33	C-21		1,409		1,409		1,409				1,409
34	C-32A		187		187		187				187
35	C-37A		351		351		351				351
36	C-141										
	Trainer Aircraft										
37	T-6		3,850		3,850		3,850				3,850
38	T-38		153,677		173,677		153,677		17,000		170,677
	Escape System				[20,000]				[17,000]		

Title I - Procurement

(Dollars in Thousands)

		FY 2005 Request		House Authorized		Senate Authorized		Conference Agreement Change		Conference Agreement Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
39	T-41 AIRCRAFT		89		89		89				89
40	T-43		599		599		599				599
	Other Aircraft										
41	KC-10A (ATCA)		37,314		37,314		37,314				37,314
42	C-12		19,373		19,373		19,373				19,373
43	C-18										
44	C-20 MODS		449		449		449				449
45	VC-25A MOD		28,031		28,031		28,031				28,031
46	C-40		187		187		187				187
47	C-130		110,375		119,575		120,275		-8,200		102,175
	Scathe Chief						[7,900]				
	C-130E Engine Upgrades				[7,200]				[1,500]		
	Senior Scout				[2,000]		[2,000]		[2,000]		
	Link 16 development								[-11,700]		
48	C130J MODS		36,921		36,921		36,921				36,921
49	C-135		51,905		51,905		61,905				51,905
	GATM for KC-135						[10,000]				
50	C-29A MODS		15,953		15,953		15,953				15,953
51	DARP		101,233		101,233		101,233		-10,000		91,233
	RC-135 Rivet Joint baseline spares - premature request								[-10,000]		
52	E-3		36,025		36,025		36,025				36,025
53	E-4		101,818		101,818		101,818				101,818
54	E-8		45,302		55,302		45,302				45,302
	Blue Force Combat ID				[10,000]						
55	H-1		6,575		6,575		6,575				6,575
56	H-60		95,068		95,068		95,068				95,068
57	OTHER AIRCRAFT		76,701		76,701		76,701		-13,200		63,501
	ROBE Group B kits								[-13,200]		

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
58	PREDATOR MODS		31,872		31,872		31,872				31,872
59	CV-22 MODS		275		275		275				275
	Other Modifications										
60	CLASSIFIED PROJECTS		20,880		20,880		20,880				20,880
	Aircraft Spares and Repair Parts										
61	INITIAL SPARES/REPAIR PARTS		234,103		234,103		234,103				234,103
	Aircraft Support Equipment and Facilities										
	Common Support Equip										
62	COMMON SUPPORT EQUIPMENT		223,600		223,600		227,600		-16,750		206,850
	Aircraft de-icers						[4,000]		[3,250]		
	Program growth								[-20,000]		
	Post Production Support										
63	B-1		11,733		11,733		11,733				11,733
64	B-2A		6,801		6,801		6,801				6,801
65	B-2A		30,683		30,683		30,683				30,683
66	B-52		19,405		19,405		19,405				19,405
67	C-130		1,229		1,229		1,229				1,229
68	F-15		13,407		13,407		13,407				13,407
69	F-16		11,531		11,531		11,531				11,531
	Industrial Preparedness										
70	INDUSTRIAL RESPONSIVENESS		21,082		21,082		21,082				21,082
	War Consumables										
71	WAR CONSUMABLES		41,314		41,314		41,314				41,314
	Other Production Charges										
72	OTHER PRODUCTION CHARGES		309,725		374,725		309,725		-10,000		299,725
	Sniper XR Advanced Targeting Pod				[65,000]						
	STING (R7) pods								[-10,000]		
73	DEPOT MODERNIZATION		34,464		34,464		34,464				34,464

Title I - Procurement

(Dollars in Thousands)

		FY 2005 Request		House Authorized		Senate Authorized		Conference Agreement Change		Conference Agreement Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Classified Pgms										
74	CLASSIFIED PROGRAMS										
	Common ECM Equip										
75	COMMON ECM EQUIPMENT										
	Other Production Charges SOF										
76	CANCELED ACCT ADJUSTMENTS										
	DARP										
77	DARP		64,941		64,941		64,941				64,941
	Total - Aircraft Procurement, Air Force		13,163,174		13,649,174		13,035,674		64,950		13,228,124

F/A-22 aircraft

The budget request included $4.128 billion for the procurement of 24 F/A-22 aircraft.

The House bill would authorize the budget request.

The Senate amendment would authorize $3.848 billion for the procurement of 22 F/A-22 aircraft, a reduction of $280.2 million. The Senate amendment also included language that would allow the Air Force to procure more than 22 aircraft with the authorized funds if the Secretary of the Air Force certifies that the contractual delivery schedule is being met and that the program is fully funded.

The conferees agree to authorize $4.098 billion for the procurement of 24 F/A-22 aircraft, a reduction of $30.0 million. The conferees agree that the certification required in the Senate amendment is not required to procure more than 22 aircraft.

Procurement of Ammunition, Air Force Overview

The budget request for fiscal year 2005 included an authorization of $1,396.5 million in Procurement of Ammunition, Air Force for the Department of Defense.

The House bill would authorize $1,396.5 million.

The Senate amendment would authorize $1,396.5 million.

The conferees recommend an authorization of $1,319.0 million. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Title I - Procurement

(Dollars in Thousands)

		FY 2005 Request		House Authorized		Senate Authorized		Conference Agreement			
								Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Procurement of Ammunition, Air Force										
	Procurement of Ammo, Air Force										
	Rockets										
1	ROCKETS		34,557		34,557		34,557				34,557
	Cartridges										
2	CARTRIDGES		149,100		149,100		149,100		-20,000		129,100
	Execution								[-20,000]		
	Bombs										
3	PRACTICE BOMBS		46,918		46,918		46,918				46,918
4	GENERAL PURPOSE BOMBS		266,489		266,489		266,489		-39,900		226,589
	Program growth								[-35,000]		
	Incorrect justification								[-4,900]		
5	SENSOR FUZED WEAPON	315	117,023	315	117,023	315	117,023			315	117,023
6	JOINT DIRECT ATTACK MUNITION	23,137	521,782	23,137	521,782	23,137	521,782		-5,000	23,137	516,782
	Engineering change orders execution								[-5,000]		
7	WIND CORRECTED MUNITIONS DISP	2,507	58,670	2,507	58,670	2,507	58,670			2,507	58,670
	Flare, IR MJU-7B										
8	CAD/PAD		20,379		20,379		20,379				20,379
9	EXPLOSIVE ORDINANCE DISPOSAL		2,889		2,889		2,889				2,889
10	SPARES AND REPAIR PARTS		179		179		179				179
11	REPLENISHMENT SPARES		4,185		4,185		4,185				4,185
12	MODIFICATIONS <5M		202		202		202				202
13	ITEMS LESS THAN $5,000,000		2,798		2,798		2,798				2,798
	Fuzes										
14	FLARES		123,830		123,830		123,830		-4,300		119,530
	LUU-1 program delay								[-3,000]		
	MJU-39/40 unit cost savings								[-1,300]		

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
15	FUZES		36,507		36,507		36,507		-8,298		28,209
	FMU-139								[-8,298]		
	Weapons										
	Small Arms										
16	SMALL ARMS		10,949		10,949		10,949				10,949
	Total - Procurement of Ammunition, Air Force		1,396,457		1,396,457		1,396,457		-77,498		1,318,959

Missile Procurement, Air Force Overview

The budget request for fiscal year 2005 included an authorization of $4,718.3 million in Missile Procurement, Air Force for the Department of Defense.

The House bill would authorize $4,611.3 million.

The Senate amendment would authorize $4,635.6 million.

The conferees recommend an authorization of $4,548.5 million. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Missile Procurement, Air Force										
	Ballistic Missiles										
	Missile Replacement Equipment-Ballistic										
1	LGM-30F/G MINUTEMAN II/III		30,143		30,143		30,143		-6,500		23,643
	Miscellaneous equipment cost growth								[-6,500]		
2	PEACEKEEPER (M-X)										
	Other Missiles										
	Tactical										
3	JASSM	360	148,161	360	148,161	360	148,161		-8,300	360	139,861
	Operational suitability deficiencies								[-8,300]		
4	JOINT STANDOFF WEAPON										
5	SIDEWINDER (AIM-9X)	248	52,595	248	52,595	248	52,595			248	52,595
6	AMRAAM	202	107,354	202	107,354	202	107,354			202	107,354
7	PREDATOR HELLFIRE MISSILE	235	20,017	235	20,017	235	20,017			235	20,017
8	SMALL DIAMETER BOMB	158	29,257	158	29,257	158	29,257			158	29,257
	Industrial Facilities										
9	INDUSTR'L PREPAREDNS/POL PREVENTION		2,084		2,084		2,084				2,084
	Modification of In-service Missiles										
	Class IV										
10	ADVANCED CRUISE MISSILE		4,094		4,094		4,094				4,094
11	LGM-30F/G MINUTEMAN II/III										
12	MM III MODIFICATIONS		640,760		640,760		640,760				640,760
13	AGM-65D MAVERICK		222		222		222				222
14	AIR LAUNCH CRUISE MISSILE		21,154		21,154		21,154				21,154
15	PEACEKEEPER (M-X)										
	Spares and Repair Parts										
	Other Aircraft										
16	ADVANCED CRUISE MISSILE		8,020		8,020		8,020				8,020

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
17	AIM-7E SPARROW		1,898		1,898		1,898				1,898
18	AIM-9 SIDEWINDER		6,273		6,273		6,273				6,273
19	SIDEWINDER (AIM-9X)		1,759		1,759		1,759				1,759
20	AGM-130 POWERED GBU-15		368		368		368				368
21	LGM-30F/G MINUTEMAN II/III		10,016		10,016		10,016				10,016
22	MM III MODIFICATIONS		12,866		12,866		12,866				12,866
23	AGM-65D MAVERICK		1,423		1,423		1,423				1,423
24	AGM-88A HARM		2,868		2,868		2,868				2,868
25	AIR LAUNCH CRUISE MISSILE		4,609		4,609		4,609				4,609
26	AMRAAM		341		341		341				341
27	PEACEKEEPER (M-X)		11,669		11,669		11,669				11,669
	Other Support										
	Space Programs										
28	ADVANCED EHF		98,590		133,590		133,590				98,590
	Advanced EHF spare parts and long lead items						[35,000]				
	Advanced Extremely High Frequency Satellite				[35,000]						
29	WIDEBAND GAPFILLER SATELLITES		40,307		40,307		55,307				40,307
	Wideband gapfiller satellite						[15,000]				
29	LESS: ADVANCE PROCUREMENT (PY)										
30	SPACEBORNE EQUIP (COMSEC)		9,250		9,250		9,250				9,250
31	GLOBAL POSITIONING (SPACE)	3	332,763	3	332,763	3	332,763			3	332,763
31	LESS: ADVANCE PROCUREMENT (PY)		-31,991		-31,991		-31,991				-31,991
32	ADVANCE PROCUREMENT (CY)		29,758		29,758		29,758				29,758
33	DEF METEOROLOGICAL SAT PROG(S		74,201		74,201		74,201				74,201
34	DEFENSE SUPPORT PROGRAM(SPACE		116,468		101,468		116,468		-10,000		106,468
	Program decrease				[-15,000]						
	Excess funding for projected launch schedule								[-10,000]		
35	DEFENSE SATELLITE COMM SYSTEM		6,613		6,613		6,613				6,613

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
36	TITAN SPACE BOOSTERS(SPACE)		74,290		47,290		46,590		-25,000		49,290
	Titan excess funds						[-27,700]		[-25,000]		
	Titan excess funds (H. Amdt)				[-27,000]						
37	EVOLVED EXPENDABLE LAUNCH VEH	3	610,997	3	510,997	3	510,997		-100,000	3	510,997
	EELV launch delay				[-100,000]		[-100,000]		[-100,000]		
38	MEDIUM LAUNCH VEHICLE(SPACE)		102,872		102,872		97,872		-20,000		82,872
	MLV excess rate growth						[-5,000]		[-20,000]		
	Special Programs										
39	CANCELLED ACCOUNT										
40	DEFENSE SPACE RECONN PROGRAM		332,388		332,388		332,388				332,388
41	SPECIAL PROGRAMS	[ ]	[ ]								
42	SPECIAL ACTIVITIES	[ ]	[ ]								
43	CLASSIFIED PROGRAMS	[ ]	[ ]								
44	SPECIAL UPDATE PROGRAMS		130,809		130,809		130,809				130,809
999	CLASSIFIED PROGRAMS		1,673,047		1,673,047		1,673,047				1,673,047
	Total - Missile Procurement, Air Force		4,718,313		4,611,313		4,635,613		-169,800		4,548,513

Other Procurement, Air Force Overview

The budget request for fiscal year 2005 included an authorization of $13,283.6 million in Other Procurement, Air Force for the Department of Defense.

The House bill would authorize $13,229.3 million.

The Senate amendment would authorize $13,298.3 million.

The conferees recommend an authorization of $12,949.3 million. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Other Procurement, Air Force										
	Vehicular Equipment										
	Passenger Carrying Vehicles										
1	SEDAN, 4 DR 4X2										
2	STATION WAGON, 4X2										
3	BUSES										
4	AMBULANCES										
5	LAW ENFORCEMENT VEHICLE										
6	ARMORED VEHICLE	1	250	1	250	1	250			1	250
7	PASSENGER CARRYING VEHICLE	284	11,873	284	11,873	284	11,873			284	11,873
	Cargo and Utility Vehicles										
8	TRUCK, STAKE/PLATFORM		8,342		8,342		8,342				8,342
9	TRUCK, CARGO-UTILITY, 3/4T, 4		13,415		13,415		13,415				13,415
10	TRUCK, CARGO-UTILITY, 3/4T, 4		7,855		7,855		7,855				7,855
11	TRUCK MAINT/UTILITY/DELIVERY		9,062		9,062		9,062				9,062
12	TRUCK CARRYALL		4,166		4,166		4,166				4,166
13	FAMILY MEDIUM TACTICAL VEHICLE		15,332		15,332		15,332				15,332
14	HIGH MOBILITY VEHICLE (MYP)		7,555		7,555		7,555				7,555
15	TRUCK TRACTOR, OVER 5T		14,086		14,086		14,086				14,086
16	CAP VEHICLES		802		802		802				802
17	ITEMS LESS THAN $5,000,000		24,734		24,734		24,734				24,734
	Special Purpose Vehicles										
18	TRUCK, TANK, 1200 GAL		5,775		5,775		5,775				5,775
19	TRUCK TANK FUEL R-11		14,642		14,642		14,642				14,642
20	HMMWV, ARMORED		2,301		2,301		2,301				2,301
21	TRUCK, REFUSE		549		549		549				549
22	HMWWV, UP-ARMORED		6,953		6,953		6,953				6,953
23	TRACTOR, A/C TOW, MB-2										

Title I - Procurement

(Dollars in Thousands)

		FY 2005 Request		House Authorized		Senate Authorized		Conference Agreement			
								Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
24	TRACTOR, A/C TOW, MB-4		11,127		11,127		11,127				11,127
25	TRACTOR, TOW, FLIGHTLINE		6,820		6,820		6,820				6,820
26	TRUCK HYDRANT FUEL		45		45		45				45
27	ITEMS LESS THAN $5,000,000		38,839		38,839		38,839				38,839
	Fire Fighting Equipment										
28	TRUCK CRASH P-19		16,158		16,158		16,158				16,158
29	ITEMS LESS THAN $5,000,000		8,372		8,372		8,372				8,372
	Materials Handling Equipment										
30	TRUCK, F/L 6000 LB		7,408		7,408		7,408				7,408
31	TRUCK, F/L 10,000 LB		18,588		18,588		18,588				18,588
32	TUNNER LOADER										
33	HALVERSEN LOADER						6,400		6,400		6,400
	Halvorsen loaders						[6,400]		[6,400]		
34	ITEMS LESS THAN $5,000,000		18,184		18,184		18,184		-6,000		12,184
	Execution								[-6,000]		
	Base Maintenance Support										
35	LOADER, SCOOP		9,414		9,414		9,414				9,414
36	LOADER, SCOOP, W/BACKHOE		4,202		4,202		4,202				4,202
37	TRUCK, DUMP		10,609		10,609		10,609				10,609
38	RUNWAY SNOW REMOVAL & CLEANING		22,589		22,589		22,589				22,589
39	CRANE, 7-50 TON		5,827		5,827		5,827				5,827
40	MODIFICATIONS		4,474		4,474		4,474				4,474
41	ITEMS LESS THAN $5,000,000		34,013		34,013		34,013				34,013
	Cancelled Account Adjustment										
42	CANCELLED ACCOUNT ADJUSTMENT										
43	JUDGEMENT FUND										

Title I - Procurement

(Dollars in Thousands)

		FY 2005 Request		House Authorized		Senate Authorized		Conference Agreement Change		Conference Agreement Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Electronics and Telecommunications										
	Comm Security Equipment (COMSEC)										
44	COMSEC EQUIPMENT		46,867		46,867		46,867				46,867
	KIV-7M - unjustified request										
45	MODIFICATIONS (COMSEC)		462		462		462				462
	Intelligence Programs										
46	INTELLIGENCE TRAINING EQUIPMENT		2,902		2,902		2,902				2,902
47	INTELLIGENCE COMM EQUIP		1,695		1,695		1,695				1,695
	Electronics Programs										
48	AIR TRAFFIC CTRL/LAND SYS (AT		2,949		2,949		2,949				2,949
49	NATIONAL AIRSPACE SYSTEM		44,354		44,354		44,354				44,354
50	THEATER AIR CONTROL SYS IMPRO		67,471		67,471		67,471		-15,800		51,671
	BCS-M Block 20 upgrades								[-15,800]		
51	WEATHER OBSERVE/FORECAST		32,366		32,366		32,366		-4,130		28,236
	Digital Ionospheric Sounder System								[-4,130]		
52	STRATEGIC COMMAND AND CONTROL		49,300		49,300		49,300				49,300
53	CHEYENNE MOUNTAIN COMPLEX		17,672		17,672		17,672				17,672
54	TAC SIGINT SUPPORT		386		386		386				386
55	DRUG INTERDICTION PROGRAM		404		404		404				404
	Special Comm-Electronics Projects										
56	GENERAL INFORMATION TECHNOLOGY		99,862		114,862		99,862		6,400		106,262
	Science and Engineering Lab Data Integration				[8,000]				[4,900]		
	Eagle Scout				[7,000]				[1,500]		
57	AF GLOBAL COMMAND & CONTROL S		17,324		17,324		17,324				17,324
58	MOBILITY COMMAND AND CONTROL		8,982		8,982		8,982				8,982
59	AIR FORCE PHYSICAL SECURITY S		93,750		93,750		93,750				93,750

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
60	COMBAT TRAINING RANGES		38,142		43,142		38,142		-19,700		18,442
	Joint Threat Emitter				[5,000]						
	Joint Simulator Upgrades								[-19,700]		
61	MINIMUM ESSENTIAL EMERGENCY C										
62	C3 COUNTERMEASURES		11,812		11,812		11,812				11,812
63	GCSS-AF FOS		18,614		18,614		18,614				18,614
64	THEATER BATTLE MGT C2 SYS		44,669		44,669		44,669				44,669
65	AIR OPERATIONS CENTER (AOC)		43,269		43,269		43,269				43,269
	Air Force Communications										
66	BASE INFORMATION INFRASTRUCTURE		423,972		357,372		423,972		-60,000		363,972
	Combat Information Transport System				[-60,000]				[-60,000]		
	Joint Network Management System				[-6,600]						
67	USCENTCOM		30,430		30,430		30,430				30,430
68	DEFENSE MESSAGE SYSTEM (DMS)		8,297		8,297		8,297				8,297
	DISA Programs										
69	SPACE BASED IR SENSOR PROG SP										
70	NAVSTAR GPS SPACE		10,272		10,272		10,272				10,272
71	NUDET DETECTION SYS (NDS) SPA		7,554		7,554		7,554				7,554
72	AF SATELLITE CONTROL NETWORK		43,882		43,882		43,882				43,882
73	SPACELIFT RANGE SYSTEM SPACE		101,458		101,458		101,458				101,458
74	MILSATCOM SPACE		19,176		19,176		19,176		-4,100		15,076
	GBS receive suites								[-4,100]		
75	SPACE MODS SPACE		16,346		16,346		16,346				16,346
	Organization and Base										
76	TACTICAL C-E EQUIPMENT		141,883		141,883		141,883				141,883
77	COMBAT SURVIVOR EVADER LOCATE		13,936		13,936		13,936				13,936
78	RADIO EQUIPMENT		8,777		8,777		8,777				8,777
79	TV EQUIPMENT (AFRTV)		5,112		5,112		5,112				5,112

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
80	CCTV/AUDIOVISUAL EQUIPMENT		3,271		3,271		3,271				3,271
81	BASE COMM INFRASTRUCTURE		118,935		118,935		118,935				118,935
82	ITEMS LESS THAN $5,000,000		5,948		5,948		5,948				5,948
	Modifications										
83	COMM ELECT MODS		23,400		23,400		23,400				23,400
	Other Base Maintenance and Support Equipment										
	Test Equipment										
84	BASE/ALC CALIBRATION PACKAGE		15,306		15,306		15,306				15,306
85	PRIMARY STANDARDS LABORATORY		1,107		1,107		1,107				1,107
86	ITEMS LESS THAN $5,000,000		7,607		7,607		7,607				7,607
	Personal Safety and Rescue Equipment										
87	NIGHT VISION GOGGLES		17,349		17,349		17,349				17,349
88	ITEMS LESS THAN $5,000,000		12,997		17,797		25,797		5,700		18,697
	ACES II ejection seat leg restraint kits						[6,000]		[2,600]		
	Aircrew survival radio test sets						[4,000]				
	Fixed aircrew standardized seats				[4,800]		[2,800]		[3,100]		
	Depot Plant and Material Handling Equipment										
89	MECHANIZED MATERIAL HANDLING		16,155		32,155		22,155		6,000		22,155
	Point of Maintenance Initiative				[16,000]		[6,000]		[6,000]		
90	ITEMS LESS THAN $5,000,000		6,503		6,503		6,503				6,503
	Electrical Equipment										
91	FLOODLIGHTS		5,882		5,882		5,882				5,882
92	ITEMS LESS THAN $5,000,000		9,876		9,876		9,876				9,876
	Base Support Equipment										
93	BASE PROCURED EQUIPMENT		8,401		8,401		11,401		3,000		11,401
	Combat Arms Training System						[3,000]		[3,000]		
94	MEDICAL/DENTAL EQUIPMENT		14,019		14,019		14,019				14,019
95	ENVIRONMENTAL PROJECTS										

Title I - Procurement

(Dollars in Thousands)

		FY 2005 Request		House Authorized		Senate Authorized		Conference Agreement Change		Conference Agreement Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
96	AIR BASE OPERABILITY		5,432		5,432		5,432				5,432
97	PHOTOGRAPHIC EQUIPMENT		1,424		1,424		1,424				1,424
98	PRODUCTIVITY ENHANCING CAPITA		5,475		5,475		5,475				5,475
99	MOBILITY EQUIPMENT		320,116		320,116		320,116		-52,000		268,116
	Program Growth								[-52,000]		
100	AIR CONDITIONERS		1,452		1,452		1,452				1,452
101	ITEMS LESS THAN $5,000,000		18,811		18,811		18,811				18,811
	Special Support Projects										
102	PRODUCTION ACTIVITIES	[ ]	[ ]								
103	TECH SURV COUNTERMEASURES EQ		4,034		4,034		4,034				4,034
104	DARP RC135		18,726		18,726		18,726				18,726
105	DARP, MRIGS		320,218		291,718		320,218		-200,000		120,218
	Program decrease				[-28,500]						
	DCGS - ETP SATCOM ground stations								[-190,000]		
	DCGS - accelerated fielding of DCGS								[-10,000]		
106	SELECTED ACTIVITIES	[ ]	[ ]								
107	SPECIAL UPDATE PROGRAM		224,988		224,988		224,988				224,988
108	DEFENSE SPACE RECONNAISSANCE		14,264		14,264		14,264				14,264
109	MODIFICATIONS		195		195		195				195
110	FIRST DESTINATION TRANSPORTATION		5,767		5,767		5,767				5,767
	Spares and Repair Parts										
111	SPARES AND REPAIR PARTS		41,097		41,097		41,097				41,097
112	REPLENISHMENT SPARES		297		297		297				297
999	CLASSIFIED PROGRAMS		10,195,797		10,195,797		10,195,797				10,195,797
	Financial information systems						-13,500				
	Total - Other Procurement, Air Force		**13,283,557**		**13,229,257**		**13,298,257**		**-334,230**		**12,949,327**

Procurement, Defense-Wide Overview

The budget request for fiscal year 2005 included an authorization of $2,883.3 million in Procurement, Defense-wide for the Department of Defense.

The House bill would authorize $2,950.7 million.

The Senate amendment would authorize $2,967.4 million.

The conferees recommend an authorization of $2,846.6 million. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Procurement, Defense-Wide										
	Major Equipment										
	Major Equipment, OSD/WHS										
1	WHS MOTOR VEHICLES	1	40	1	40	1	40			1	40
2	PROCUREMENT DEFENSE WIDE		125,320		95,020		125,320		-30,248		95,072
	Strategic planning and budget domain architecture support				[-30,300]				[-30,248]		
3	MAJOR EQUIPMENT, WHS		23,324		14,724		23,324				23,324
	Horizontal Fusion				[-2,000]						
	OSD IT Programs				[-6,600]						
	Major Equipment, NSA										
4	CONSOLIDATED CRYPTOLOGIC PROGRAM	[ ]	[ ]								
5	INFORMATION SYSTEMS SECURITY PROGRAM (I		10,487		10,487		10,487				10,487
6	DEFENSE AIRBORNE RECONNAISSANCE PGM	[ ]	[ ]								
7	DEFENSE INTELLIGENCE COUNTERDRUG PROGF	[ ]	[ ]								
	Major Equipment, DISA										
8	ADNET										
9	INFORMATION SYSTEMS SECURITY		44,827		44,827		44,827				44,827
10	CONTINUITY OF OPERATIONS										
11	DEFENSE MESSAGE SYSTEM		4,261		4,261		4,261				4,261
12	GLOBAL COMMAND AND CONTROL SYS		5,187		5,187		5,187				5,187
13	GLOBAL COMBAT SUPPORT SYSTEM		2,639		2,639		2,639				2,639
14	TELEPORTS		42,710		42,710		42,710				42,710
15	GLOBAL INFORMATION GRID										
16	ITEMS LESS THAN $5 MILLION		38,217		38,217		38,217				38,217
	Major Equipment, DIA										
17	INTELLIGENCE AND COMMUNICATIONS	[ ]	[ ]								

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
18	INTELLIGENCE PLANNING AND REVIEW ACTIVI'	[ ]	[ ]								
19	INTEL SUPPORT TO OSD COUNTER-NARCOTICS	[ ]	[ ]								
20	MOBILE SURVEY GROUP	[ ]	[ ]								
21	DEFENSE HUMINT INTELLIGENCE (HUMINT) PR(	[ ]	[ ]								
	Major Equipment, DLA										
22	MAJOR EQUIPMENT		7,874		7,874		7,874				7,874
	Major Equipment, DCAA										
23	ITEMS LESS THAN $5 MILLION		1,496		1,496		1,496				1,496
	Major Equipment, TJS										
24	MAJOR EQUIPMENT, TJS		47,633		47,633		47,633				47,633
	Missile Defense Agency										
25	PATRIOT PAC-3										
	Major Equipment, DHRA										
26	PERSONNEL ADMINISTRATION		7,187		7,187		7,187				7,187
	National Geospacial Intelligence Agency										
27	MAJOR EQUIPMENT, NGA	[ ]	[ ]								
	Defense Threat Reduction Agency										
28	VEHICLES		80		80		80				80
29	OTHER MAJOR EQUIPMENT		23,772		23,772		23,772				23,772
	Defense Security Cooperation Agency										
30	OTHER MAJOR EQUIPMENT										
	Major Equipment, AFIS										
31	MAJOR EQUIPMENT, AFIS		6,977		6,977		6,977				6,977
	Major Equipment, DODDE										
32	AUTOMATION/EDUCATIONAL SUPPORT & LOGIS		2,965		2,965		2,965				2,965
	Major Equipment, DCMA										
33	MAJOR EQUIPMENT		18,945		9,945		18,945				18,945
	Standard Procurement System				[-9,000]						

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Major Equipment, DTSA										
34	MAJOR EQUIPMENT		628		628		628				628
	Major Equipment, CIFA										
35	TSCM EQUIPMENT	[ ]	[ ]								
	Major Equipment, NDU										
36	NATIONAL DEFENSE UNIVERSITY		348		348		348				348
	Special Operations Command										
	Aviation Programs										
37	ROTARY WING UPGRADES AND SUSTAINMENT		447,272		454,272		454,272		-6,000		441,272
	MH-47E/D IR suppression				[7,000]		[7,000]		[6,000]		
	NRE and publications								[-5,000]		
	Flight test and installation								[-7,000]		
38	SOF TRAINING SYSTEMS		49,192		49,192		49,192				49,192
39	MC-130H, COMBAT TALON II		82,079		82,079		82,079				82,079
40	CV-22 SOF MOD	3	126,083	3	126,083	3	126,083			3	126,083
41	AC-130U GUNSHIP ACQUISITION		10,243		10,243		10,243				10,243
42	C-130 MODIFICATIONS		110,666		110,666		110,666		-29,100		81,566
	Low band jammer								[-13,900]		
	Towed decoy								[-15,200]		
43	AIRCRAFT SUPPORT		387		387		387				387
	Shipbuilding										
44	ADVANCED SEAL DELIVERY SYSTEM (ASDS)		29,262		29,262		29,262				29,262
44	LESS: ADVANCE PROCUREMENT (PY)		-23,398		-23,398		-23,398				-23,398
45	ADVANCE PROCUREMENT (CY)		34,921		34,921		34,921		-34,921		
	Program restructure								[-34,921]		
46	MK8 MOD1 SEAL DELIVERY VEHICLE		1,768		1,768		1,768				1,768
	Ammunition Programs										
47	SOF ORDNANCE REPLENISHMENT		34,380		34,380		34,380				34,380

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qr	Cost
48	SOF ORDNANCE ACQUISITION		12,166		12,166		12,166		-500		11,666
	SLAM								[-500]		
	Other Procurement Programs										
49	COMMUNICATIONS EQUIPMENT AND ELECTRO		38,434		38,434		42,434		3,000		41,434
	Automatic equipment ID						[4,000]		[3,000]		
50	SOF INTELLIGENCE SYSTEMS		16,946		31,446		24,246		2,600		19,546
	Joint threat warning system				[14,500]		[7,300]		[2,600]		
51	SMALL ARMS AND WEAPONS		8,221		20,221		33,221		19,000		27,221
	AN/PVS 15 Goggles				[12,000]		[5,000]		[2,000]		
	UAV systems						[10,000]		[10,000]		
	MK-47 ALGL						[10,000]		[7,000]		
52	CLASSIFIED PROGRAMS	[ ]	[ ]								
53	CLASSIFIED PROGRAM GDIP	[ ]	[ ]								
54	MARITIME EQUIPMENT MODIFICATIONS		1,796		1,796		1,795				1,796
55	SPECIAL APPLICATIONS FOR CONTINGENCIES		16,184		16,184		16,184				16,184
56	SOF COMBATANT CRAFT SYSTEMS		7,297		7,297		7,297				7,297
57	SPARES AND REPAIR PARTS		8,369		8,369		8,369				8,369
58	SPECIAL PROGRAM	[ ]	[ ]								
59	TACTICAL VEHICLES		493		493		1,493		1,000		1,493
	Militarized lightweight tactical all terrain vehicles (LTATV)						[1,000]		[1,000]		
60	SOF MARITIME EQUIPMENT		3,449		3,449		3,449				3,449
61	DRUG INTERDICTION										
62	MISCELLANEOUS EQUIPMENT		16,830		16,830		16,830				16,830
63	SOF PLANNING AND REHEARSAL SYSTEM		192		192		192				192
64	SOF OPERATIONAL ENHANCEMENTS		233,632		233,632		238,632		1,000		234,632
	Tactical computer system						[5,000]		[1,000]		
65	PSYOP EQUIPMENT		18,388		18,388		18,388				18,388

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	Chemical/Biological Defense										
	CBDP										
66	INSTALLATION FORCE PROTECTION		104,935		104,935		104,935				104,935
67	INDIVIDUAL PROTECTION		131,926		153,426		132,426		1,000		132,926
	M45 Protective Mask				[3,000]		[500]		[500]		
	M40 Protective Mask (Rebuild)				[5,000]						
	M45 Protective Mask (Rebuild)				[500]						
	M40 Protective Mask				[2,000]				[500]		
	Aircrew CBD Respirator				[11,000]						
68	DECONTAMINATION		11,284		22,284		17,284				11,284
	M291/M295 decon kits						[6,000]				
	M12A1 Decontamination Apparatus (Rework)				[3,000]						
	M49 Fixed Installation Filters				[1,000]						
	M100 Sorbent Decontamination Kit				[2,000]						
	M291 Skin Protection Kit				[3,000]						
	M295 Equipment Decontamination Kit				[2,000]						
69	JOINT BIOLOGICAL DEFENSE PROGRAM		101,097		101,097		101,097				101,097
70	COLLECTIVE PROTECTION		18,394		37,394		29,394		17,750		36,144
	M49/M98 fixed installation filter						[1,000]				
	Chem-bio protective shelter						[10,000]		[3,500]		
	Protective Shelters				[19,000]				[14,250]		

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
71	CONTAMINATION AVOIDANCE		270,105		290,105		296,305		18,700		288,805
	M22 ACADA				[20,000]		[8,000]		[10,500]		
	JCAD Cancellation								[-10,000]		
	WMD-CST equipment						[18,200]		[18,200]		
999	CLASSIFIED PROGRAMS		545,392		555,692		545,392				545,392
	Program increase				[10,300]						
	Financial information systems						-8,900				
	Total - Procurement, Defense-Wide		2,883,302		2,950,702		2,967,402		-36,719		2,846,583

Title I - Procurement

(Dollars in Thousands)

		FY 2005		House		Senate		Conference Agreement			
		Request		Authorized		Authorized		Change		Authorized	
Line	Program Title	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost	Qty	Cost
	National Guard & Reserve Equipment										
	Reserve Equipment										
	ARMY RESERVE										
1	MISCELLANEOUS EQUIPMENT										
	NAVY RESERVE										
2	MISCELLANEOUS EQUIPMENT										
	MARINE CORPS RESERVE										
3	MISCELLANEOUS EQUIPMENT										
	AIR FORCE RESERVE										
4	MISCELLANEOUS EQUIPMENT										
	National Guard Equipment										
	ARMY NATIONAL GUARD										
5	MISCELLANEOUS EQUIPMENT										
	AIR NATIONAL GUARD										
6	MISCELLANEOUS EQUIPMENT										
	Total - National Guard & Reserve Equipment										
	Defense Production Act Purchases										
1	DEFENSE PRODUCTION ACT PURCHASES										
	Total - Defense Production Act Purchases										
	TOTAL PROCUREMENT		74,653,301		76,278,717		76,467,066		-470,344		74,182,957

ITEMS OF SPECIAL INTEREST

Joint surveillance and target attack radar system re-engining

The conference report accompanying the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136) included a requirement for the Secretary of Defense to submit a report to the congressional defense committees by February 13, 2004, that provides an economic analysis of options for maintaining engines for the E-8C joint surveillance and target attack radar system (JSTARS) aircraft. In the Senate report accompanying S. 2400 (S. Rept. 108-260), the committee noted that although the required report had not yet been received from the Department of Defense, the committee encouraged the Air Force to take into account the recommendations of the report when deciding what to do with the JSTARS fleet.

The congressional defense committees received the required report on July 8, 2004. The report states that there are both economic and operational advantages to acquiring new engines for the JSTARS aircraft, but the letter accompanying the report states that the Department's preferred solution is to maintain the current engines while carefully considering the need for JSTARS re-engining in the fiscal year 2006 budget request. Since the current engines have significant operational shortfalls and since maintaining the current engines would be more costly in terms of total life cycle costs than any option that would acquire new engines, the conferees encourage the Secretary to re-evaluate the decision to maintain the current engines in the JSTARS fleet of aircraft.

Halvorsen loaders

The conferees are aware that as a result of the global war on terrorism, the Air Force has been required to significantly expand its expeditionary logistics capability. The conferees note Halvorsen 25K loaders play a significant role in material handling and are currently in use around the world, including Iraq and Afghanistan.

The Commander, U.S. Transportation Command (USTRANSCOM) has a stated mobility requirement for 618 Halvorsen 25K loaders, of which 316 have been acquired between the fiscal years 2000-2004. Given the high operational tempo in air mobility missions and heavy use of the Air Force's mobility and material handling equipment (MHE) fleet, the Congress increased funding for this program in fiscal year 2004 and fiscal year 2005 to help meet the requirements for USTRANSCOM.

The conferees encourage the Air Force to continue its effort to modernize its MHE to include planning and funding for the Halvorsen 25K loader program.

LEGISLATIVE PROVISIONS ADOPTED

Subtitle A—Authorization of Appropriations

Authorization of appropriations (sec. 101-104)

The House bill contained provisions (sec. 101-104) that would authorize the recommended fiscal year 2005 funding levels for procurement Army, Navy, Marine Corps, Air Force, and Defense-wide activities.

The Senate amendment contained similar provisions (secs. 101-104).

The conference agreement includes these provisions.

Subtitle B—Army Programs

Multiyear procurement authority for the lightweight 155-millimeter howitzer program (sec. 111)

The House bill contained a provision (sec. 111) that would permit the Secretary of the Army and the Secretary of the Navy to enter into a joint service, multiyear contract for procurement of the lightweight 155 millimeter howitzer.

The Senate amendment contained a provision (sec. 122) that would authorize the Secretary of the Navy to enter into a multiyear contract for procurement of the lightweight 155 millimeter howitzer.

The Senate recedes.

Light utility helicopter program (sec. 112)

The Senate amendment contained a provision (sec. 111) that would preclude authorization of appropriations for the procurement of light utility helicopters until the Secretary of the Army provides a report to the congressional defense committees. The report will include: (1) The Secretary's certification that all required documentation for the acquisition of light utility helicopters has been completed and approved; (2) an updated Army Aviation modernization plan that contains detailed justification and information which affected the decision to terminate the Comanche helicopter program; and (3) a summary and copy of the results of the analysis of alternatives that the Secretary considered in the determination to procure light utility helicopters, including the analysis of alternatives of using light armed reconnaissance helicopters and UH-60 Black Hawk helicopters instead of light utility helicopters.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Subtitle C—Navy Programs

DDG-51 modernization program (sec. 121)

The House bill contained a provision (sec. 112) that would require the Secretary of the Navy to accelerate the modernization program for the DDG-51 *Arleigh Burke*-class of destroyers. The provision would also require the Secretary to place emphasis in this program on determining a means by which the crew size on this class of ships could be reduced from approximately 300 to about 200. The provision would also require the Secretary to submit a report to the congressional defense committees by March 31, 2005, on the steps taken in this program.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would modify the reporting requirement so that the report would include the elements of the modernization program, and specify those elements of the program that are expected to contribute to the goal of reducing the crew size on this class of ships by one-third and explain the basis for those expectations.

Repeal of authority for pilot program for flexible funding of cruiser conversions and overhauls (sec. 122)

The House bill contained a provision (sec. 113) that would repeal section 126 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136, 117 Stat. 1410, U.S.C. 7291 note).

The Senate amendment contained no similar provision.

The Senate recedes.

LHA(R) amphibious assault ship program (sec. 123)

The Senate amendment contained a provision (sec. 121) that would authorize the Secretary of the Navy to procure the first amphibious ship of the LHA(R) class. It would also authorize $150.0 million of shipbuilding and conversion funds, and authorize the Secretary of the Navy to enter into a contract or contracts for the advance procurement and advance construction of components for this ship with these funds.

The House bill contained no similar provision.

The House recedes.

Subtitle D—Air Force Programs

Prohibition of retirement of KC-135E aircraft (sec. 131)

The Senate amendment contained a provision (sec. 131) that would prohibit the Secretary of the Air Force from retiring any KC-135E aerial refueling aircraft in fiscal year 2005.

The House bill contained no similar provision.

The House recedes.

Prohibition of retirement of F-117 aircraft (sec. 132)

The Senate amendment contained a provision (sec. 132) that would prohibit any F-117 aircraft in use by the Air Force in fiscal year 2004 from being retired in fiscal year 2005.

The House bill contained no similar provision.

The House recedes.

Aerial refueling aircraft acquisition program (sec. 133)

The House bill contained a provision (sec. 116) that would authorize the Secretary of the Air Force to enter into a multiyear procurement contract for 80 tanker aerial refueling aircraft beginning in fiscal year 2005, for a period of up to eight years. The provision would also repeal section subsection (b) of 135 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136). The provision would prohibit this multiyear procurement from being executed under the authority of either section 135 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-36) or section 8159 of the Department of Defense Appropriations Act, 2002 (division A of Public Law 107-117).

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would amend section 135 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136) to: (1) provide that no tanker aircraft can be leased under the multiyear aircraft lease pilot program previously established under section 8159 of the Department of Defense Appropriation Act for Fiscal Year 2002; (2) authorize a multiyear procurement of up to 100 aerial refueling aircraft, for a period not to exceed ten program years; (3) prohibit the use of incremental funding for the multiyear contract; and (4) remove reference to leasing of aircraft throughout the provision.

Subtitle E—Other Matters

Development of deployable systems to include consideration of force protection in asymmetric threat environment (sec. 141)

The House Bill contained a provision (sec. 114) that would require that all manned ground systems, warfighter survivability systems, and certain manned airborne systems be assessed annually for adequacy in survivability and suitability against asymmetrical threats. The provision also requires the secretary of each military department to implement force protection and survivability enhancements for all assessed systems. Finally, the provision requires that the Secretary of Defense ensure that developmental military system designs account for survivability and suitability against asymmetrical threats.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would require the Secretary of Defense to revise defense regulations, directives, and guidance to account for survivability and suitability against asymmetric threats in developing any manned system and any equipment intended to enhance personnel survivability.

Allocation of equipment authorized by this title to units deployed, or to be deployed to Operation Iraqi Freedom or Operation Enduring Freedom (sec. 142)

The House bill contained a provision (sec. 115) that would require the Secretary of Defense to give priority to those operational units that are deployed to, or preparing to deploy to, Operation Iraqi Freedom or Operation Enduring Freedom, regardless of the status of those units as Active, Guard, or Reserve component units, when allocating equipment acquired using funds authorized to be appropriated by the National Defense Authorization Act for Fiscal Year 2005.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would require the Secretary to ensure that the allocation of equipment acquired using funds authorized to be appropriated by this title to operational units deployed, or scheduled to be deployed, to Operation Iraqi Freedom or Operation Enduring Freedom is made without regard to the status of the units as Active, Guard, or Reserve component.

Report on options for acquisition of precision-guided munitions (sec. 143)

The Senate amendment contained a provision (sec. 141) that would require the Secretary of Defense to provide a report on options for the acquisition of precision-guided weapons at various production rates, to include the cost for these options.

The House bill contained no similar provision.

The House recedes with a clarifying amendment that would require the report to identify the required costs for each precision-guided munition at the various production rates for each year in the future-years defense program.

LEGISLATIVE PROVISIONS NOT ADOPTED

Up-armored high mobility multi-purpose wheeled vehicles or wheeled vehicle ballistic add-on armor protection

The Senate amendment contained a provision (sec. 112) that would authorize an increase of $610.0 million in Other Procurement, Army (OPA), for the procurement of additional up-armored high mobility multi-purpose wheeled vehicles at a rate up to 450 per month or wheeled vehicle ballistic add-on armor protection, the amount of which to be determined and reported by the Secretary of the Army.

The House bill contained no similar provision.

The Senate recedes.

The conferees agree to authorize an increase of $572.0 million in OPA for the procurement of additional up-armored high mobility multi-purpose wheeled vehicles at a rate up to 450 per month, and an increase of $100.0 million for wheeled vehicle ballistic add-on armor protection.

Command and control vehicles or field artillery ammunition support vehicles

The Senate amendment contained a provision (sec. 113) that would authorize an increase of $5.0 million in Weapons and Tracked Combat Vehicles, Army, for the procurement of new production command and control vehicles or field artillery ammunition support vehicles.

The House bill contained no similar provision.

The Senate recedes.

Other matters relating to KC-767 tanker aircraft acquisition program

The House bill contained a provision (sec. 117) that would express a Sense of Congress about the criticality of the aerial refueling mission, the need to proceed with a program to replace the current fleet of aerial refueling aircraft, taking advantage of the U.S. commercial aircraft production base, and encouraging the investigation and prosecution of anyone suspected of improper or illegal activities. The provision would also require the Secretary of the Air Force to enter into one or more contracts for the multi-year tanker program no later than March 1, 2005. The provision would also require a review by an outside panel of any proposed contract for the multi-year tanker program, and required a report of this review be provided to the Secretary of the Air Force and the congressional defense committees.

The Senate amendment contained no similar provision.

The House recedes.

Additional amount for Patriot missile procurement

The House bill contained a provision (sec. 118) that would increase funds available for procurement of Patriot missiles by $90.0 million and offset the increase with reductions to several other accounts.

The Senate amendment contained no similar provision.

The House recedes.

Transfer of certain Army procurement funds

The House bill contained a provision (sec. 119) that would authorize an increase of $2.0 million for the Aircraft Wireless Intercom System and $2.0 million for bladefold kits for Apache helicopters, in Aircraft Procurement, Army, offset by a commensurate amount from funds for information systems in Other Procurement, Army.

The Senate amendment contained no similar provision.

The House recedes.

Pilot program for flexible funding of submarine engineered refueling overhaul and conversion

The Senate amendment contained a provision (sec. 123) that would authorize the Secretary of the Navy to carry out a pilot program of flexible funding of engineered refueling overhauls (EROs) and conversions of submarines. The provision would allow the transfer of authorization of appropriations to provide flexibility in the accomplishment of these EROs, and set certain limitations on these transfers.

The House bill contained no similar provision.

The Senate recedes.

Senior Scout mission bed-down initiative

The Senate amendment contained a provision (sec. 133) that would authorize an increase of $2.0 million in Aircraft Procurement, Air Force for a bed-down initiative to enable the C-130 aircraft of the Idaho Air National Guard to be the permanent carrier of the Senior Scout mission shelters of the 169th Intelligence Squadron of the Utah Air National Guard.

The House bill contained no similar provision.

The Senate recedes.

The conferees agree to authorize an increase of $1.4 million in Aircraft Procurement, Air Force for the bed-down initiative.

TITLE II—RESEARCH, DEVELOPMENT, TEST, AND EVALUATION

Research, Development, Test and Evaluation Overview

The budget request for fiscal year 2005 included an authorization of $67,772.3 million in Research and Development for the Department of Defense.

The House bill would authorize $68,090.4 million.

The Senate amendment would authorize $68,608.7 million.

The conferees recommend an authorization of $66,497.8 million. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

NATIONAL DEFENSE AUTHORIZATION FOR FISCAL YEAR 2005

(Dollars in Thousands)

Title II – RESEARCH, DEVELOPMENT, TEST & EVALUATION	Authorization Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Research, Development, Test & Evaluation, Army	9,266,258	9,478,164	9,690,458	40,990	9,307,248
Research, Development, Test & Evaluation, Navy	16,346,391	16,052,841	16,690,391	-145,800	16,200,591
Research, Development, Test & Evaluation, Air Force	21,114,667	21,532,967	21,264,267	-681,734	20,432,933
Research, Development, Test & Evaluation, Defense-wide	20,739,837	20,721,254	20,654,437	-486,986	20,252,851
Operational Test & Evaluation	305,135	305,135	309,135	-1,000	304,135
TOTAL RDT&E	67,772,288	68,090,361	68,608,688	-1,274,530	66,497,758

ARMY

Research, Development, Test and Evaluation, Army Overview

The budget request for fiscal year 2005 included an authorization of $9,266.3 million in Research, Development, Test and Evaluation, Army for the Department of Defense.

The House bill would authorize $9,478.2 million.

The Senate amendment would authorize $9,690.5 million.

The conferees recommend an authorization of $9,307.2 million. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
		RESEARCH, DEVELOPMENT, TEST & EVALUATION, ARMY					
0601101A	1	IN-HOUSE LABORATORY INDEPENDENT RESEARCH	23,971	23,971	23,971		23,971
0601102A	2	DEFENSE RESEARCH SCIENCES	131,206	137,206	142,706	9,300	140,506
		Reactive surface technology			[2,000]	[1,800]	
		Flexible substrates electronics			[3,000]		
		Desert terrain prediction			[2,500]	[2,500]	
		Low temperature research			[2,000]	[2,000]	
		Advanced deployable nanosensors			[2,000]	[1,000]	
		Carbon Nano Technology		[6,000]		[2,000]	
0601103A	3	UNIVERSITY RESEARCH INITIATIVES	75,133	79,133	77,133	3,500	78,633
		Anti terrorism building and construction research			[2,000]	[1,500]	
		Smart Responsive Nanocomposites		[4,000]		[2,000]	
0601104A	4	UNIVERSITY AND INDUSTRY RESEARCH CENTERS	77,658	80,658	83,658	6,950	84,608
		Nanocomposite materials research			[2,000]	[1,500]	
		Ferroelectric nanodevice research			[2,500]	[2,000]	
		Information assurance research			[1,500]	[1,200]	
		Centers of Excellence		[3,000]		[2,250]	
0601105A	5	FORCE HEALTH PROTECTION	9,538	9,538	9,538		9,538

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0602105A	6	MATERIALS TECHNOLOGY	15,385	23,685	22,885	11,500	26,885
		Advanced materials processing			[3,000]	[3,000]	
		Affordable multi-utility materials			[2,000]	[2,000]	
		Mine detection and blast mitigation			[2,500]	[2,500]	
		Titanium Alloy Powder		[5,000]		[2,000]	
		Ultrasonic Consolidation Matrix for Metal Composites		[2,300]		[1,000]	
		Ballistic Shields Technology		[1,000]		[1,000]	
0602120A	7	SENSORS AND ELECTRONIC SURVIVABILITY	25,629	25,629	27,129	1,500	27,129
		Army small airship program			[1,500]	[1,500]	
0602122A	8	TRACTOR HIP	6,627	6,627	6,627		6,627
0602211A	9	AVIATION TECHNOLOGY	41,629	58,629	46,629	8,500	50,129
		Silver Fox			[5,000]	[5,000]	
		National Full Scale Aerodynamic Complex		[10,000]			
		Center for Rotorcraft Innovation		[5,000]		[2,500]	
		Xenon Light Source for Non Lethal Deterrence from Small UAVs		[2,000]		[1,000]	
0602270A	10	ELECTRONIC WARFARE TECHNOLOGY	18,034	18,034	18,034		18,034
0602303A	11	MISSILE TECHNOLOGY	51,993	61,993	57,993	4,200	56,193
		Hypersonic engine research			[2,000]	[2,000]	
		Air defense science and technology			[2,000]	[1,400]	
		Army flight test			[2,000]	[1,500]	
		Unmanned Systems Initiative		[10,000]		[7,000]	
		National Aerospace Initiative				[-7,700]	

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0602307A	12	ADVANCED WEAPONS TECHNOLOGY	16,641	46,641	18,641	9,750	26,391
		Rapid target acquisition and tracking			[2,000]	[2,000]	
		Solid state lasers		[10,000]		[4,700]	
		Applied Weapons Technology		[20,000]		[3,050]	
0602308A	13	ADVANCED CONCEPTS AND SIMULATION	15,041	22,041	26,341	7,100	22,141
		Advanced modeling and simulation			[2,500]		
		Photonics research			[2,000]	[2,000]	
		Joint unmanned testing facility			[6,800]	[5,100]	
		Institute for Creative Technologies		[7,000]			
0602601A	14	COMBAT VEHICLE AND AUTOMOTIVE TECHNOLOGY	69,638	84,638	85,138	14,850	84,488
		Advanced electric drives			[3,000]	[1,500]	
		Clean battlefield fuel research			[3,000]	[3,000]	
		Advanced energy and manufacturing technology			[3,000]	[2,200]	
		Advanced high power rechargeable stored energy technology			[2,000]	[2,000]	
		Rapid prototyping			[2,000]	[2,000]	
		Unmanned vehicle control technologies			[2,500]	[1,900]	
		Hydrogen Proton Exchange Membrane		[10,000]			
		Light Utility Vehicle		[5,000]		[2,250]	
0602618A	15	BALLISTICS TECHNOLOGY	51,301	51,301	51,301		51,301
0602622A	16	CHEMICAL, SMOKE AND EQUIPMENT DEFEATING TECHNOLOGY	3,476	3,476	3,476		3,476
0602623A	17	JOINT SERVICE SMALL ARMS PROGRAM	5,739	5,739	5,739		5,739

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0602624A	18	WEAPONS AND MUNITIONS TECHNOLOGY	44,666	64,666	52,666	10,650	55,316
		Micro-laminate ceramic armor			[3,000]	[3,000]	
		Active coating technology		[2,000]	[4,000]	[3,000]	
		Active coating technology (S Amdt 3228)			[-1,000]		
		Gun recoil mitigation technologies			[2,000]	[1,000]	
		Strategic Materials Strategic Manufacturing Initiative		[6,000]		[2,250]	
		TEMPER		[12,000]		[1,400]	
0602705A	19	ELECTRONICS AND ELECTRONIC DEVICES	41,236	80,236	52,236	23,700	64,936
		Flexible display initiative		[13,500]	[8,000]	[5,600]	
		Software-defined radio research			[3,000]	[1,500]	
		Advanced Battery Technology Initiative		[20,000]		[15,600]	
		JP-8 Soldier Fuel Cell		[2,000]		[1,000]	
		Silicon Based Alternative Substrates for IR Images		[3,500]			
0602709A	20	NIGHT VISION TECHNOLOGY	22,617	27,617	22,617	2,000	24,617
		UAV Miniature Hyperspectral Coherent Imaging		[5,000]		[2,000]	
0602712A	21	COUNTERMINE SYSTEMS	20,547	22,047	24,547	5,000	25,547
		Landmine detection technology			[4,000]	[4,000]	
		Stoichemetric Explosive Detection Systems		[1,500]		[1,000]	
0602716A	22	HUMAN FACTORS ENGINEERING TECHNOLOGY	16,899	22,399	16,899	4,200	21,099
		Manpower and Personnel Integration (MANPRINT)		[5,500]		[4,200]	
0602720A	23	ENVIRONMENTAL QUALITY TECHNOLOGY	17,026	17,026	17,026		17,026
0602782A	24	COMMAND, CONTROL, COMMUNICATIONS TECHNOLOGY	18,604	18,604	18,604		18,604
0602783A	25	COMPUTER AND SOFTWARE TECHNOLOGY	3,982	3,982	3,982		3,982

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0602784A	26	MILITARY ENGINEERING TECHNOLOGY	47,152	52,152	50,152	2,800	49,952
		Geoscience and atmospheric research			[3,000]	[1,800]	
		Modeling and Anaylsis of Response of Structures		[5,000]		[1,000]	
0602785A	27	MANPOWER/PERSONNEL/TRAINING TECHNOLOGY	15,322	15,322	15,322		15,322
0602786A	28	WARFIGHTER TECHNOLOGY	21.131	31,131	35,631	10,550	31,681
		Smart combat suits			[2,000]	[1,000]	
		Chem/bio protective garment			[2,500]	[1,250]	
		Advanced structures and composites			[3,000]	[3,000]	
		Supplemental body armor research		[10,000]	[7,000]	[5,300]	
0602787A	29	MEDICAL TECHNOLOGY	60,877	95,877	74,077	26,600	87,477
		Fibrogen bandage development			[4,500]	[3,500]	
		Post traumatic stress disorder research			[2,000]	[1,000]	
		Non-defense research reduction			[-5,000]	[-5,000]	
		Walter Reed Army Medical Center amputee research			[8,700]	[7,800]	
		Expanded anthrax research			[3,000]	[2,250]	
		Amputee R&D		[10,000]		[10,000]	
		Applied Research Initiative		[25,000]		[7,050]	
0603001A	30	WARFIGHTER ADVANCED TECHNOLOGY	68,034	68.034	70,034	-4,000	64,034
		Technology for human systems integration			[2,000]	[1,000]	
		Land Warrior/Future Force Warrior consolidation				[-5,000]	

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0603002A	31	MEDICAL ADVANCED TECHNOLOGY	38,404	46,404	47,804	8,300	46,704
		Automatic records tracking			[2,000]	[2,000]	
		Wound decontamination			[3,000]	[1,400]	
		Electronic textiles		[3,000]	[3,000]	[2,000]	
		Digital imaging diagnosis			[1,000]	[1,000]	
		Non-defense research reduction			[-5,000]	[-5,000]	
		Elastin biomatrices			[4,000]	[4,000]	
		Leishmaniasis			[1,400]	[1,400]	
		Patient Monitor with Defibrillator		[5,000]		[1,500]	
0603003A	32	AVIATION ADVANCED TECHNOLOGY	69,549	71,549	77,549	8,000	77,549
		Unmanned tactical combat vehicle			[8,000]	[6,000]	
		VTDP Compound Helicopter Program		[2,000]		[2,000]	
0603004A	33	WEAPONS AND MUNITIONS ADVANCED TECHNOLOGY	67,622	83,622	69,622	2,000	69,622
		Advanced penetrator munitions			[2,000]	[2,000]	
		Silicon Power Light Sandwich Technology		[1,000]			
		ALACV Air Burst Munition		[15,000]			

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0603005A	34	COMBAT VEHICLE AND AUTOMOTIVE ADVANCED TECHNOLOGY	203,126	225,126	239,326	31,800	234,926
		Electrochromic materials research			[4,000]	[2,000]	
		Advanced thermal management controls			[3,500]	[2,600]	
		Fastening and joining research			[2,000]	[1,500]	
		Fuel cell ground support equipment demonstration			[6,100]	[4,600]	
		Next generation non-tactical vehicle propulsion			[3,500]	[2,600]	
		Tactical vehicle design tools			[2,000]	[1,500]	
		Armored composite cab development			[4,000]	[2,500]	
		Active protection system			[3,600]		
		Lightweight Structures Initiative		[9,000]	[7,500]	[7,900]	
		UAV Weaponization		[4,000]		[1,000]	
		Advanced Composite Bridge		[9,000]		[5,600]	
0603006A	35	COMMAND, CONTROL, COMMUNICATIONS ADVANCED TECHNOLOGY	9,946	9,946	9,946		9,946
0603007A	36	MANPOWER, PERSONNEL AND TRAINING ADVANCED TECHNOLOGY	7,288	7,288	10,288	1,000	8,288
		Coordinated training			[3,000]	[1,000]	
0603008A	37	ELECTRONIC WARFARE ADVANCED TECHNOLOGY	41,760	58,760	48,760	14,000	55,760
		Emergency response broadband system		[4,000]	[3,000]	[2,000]	
		C4 mobile service research			[2,000]	[2,000]	
		Missile intercept test bed			[2,000]		
		Applied Communications and Information Networking		[10,000]		[10,000]	
		GalaxyVue Compression Technology		[2,000]			
		Advanced Antenna Technologies		[1,000]			
0603009A	38	TRACTOR HIKE	8,035	8,035	8,035		8,035

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0603015A	39	NEXT GENERATION TRAINING & SIMULATION SYSTEMS	18,072	18,072	23,572	5,500	23,572
		ICT/joint fires and effects training system			[2,500]	[2,500]	
		Automatic virtual environment			[3,000]	[3,000]	
0603020A	40	TRACTOR ROSE	4,736	4,736	4,736		4,736
0603103A	41	EXPLOSIVES DEMILITARIZATION TECHNOLOGY	9,706	9,706	13,706	2,900	12,606
		Missile recycling			[2,000]	[1,400]	
		Munitions demilitarization			[2,000]	[1,500]	
0603105A	42	MILITARY HIV RESEARCH	6,641	6,641	6,641		6,641
0603125A	43	COMBATING TERRORISM, TECHNOLOGY DEVELOPMENT	3,383	3,383	3,383		3,383
0603238A	44	GLOBAL SURVEILLANCE/AIR DEFENSE/PRECISION STRIKE TECHNOLOGY	10,721	10,721	10,721		10,721
0603270A	45	ELECTRONIC WARFARE TECHNOLOGY	9,382	9,382	9,382		9,382
0603313A	46	MISSILE AND ROCKET ADVANCED TECHNOLOGY	92,800	92,800	100,300	5,300	98,100
		Close-in Active Protection System (CIAPS)			[7,500]	[5,300]	
0603322A	47	TRACTOR CAGE	13,312	13,312	13,312		13,312
0603606A	48	LANDMINE WARFARE AND BARRIER ADVANCED TECHNOLOGY	25,577	25,577	25,577		25,577
0603607A	49	JOINT SERVICE SMALL ARMS PROGRAM	5,968	5,968	5,968		5,968
0603654A	50	LINE-OF-SIGHT TECHNOLOGY DEMONSTRATION					
0603710A	51	NIGHT VISION ADVANCED TECHNOLOGY	50,071	61,571	54,871	10,400	60,471
		Cost Effective Targeting Systems - demo/integrate into Stryker			[4,800]	[2,400]	
		Night Vision Fusion Technology		[9,500]		[6,000]	
		Integrated Autonomous Situation Awareness Sensor		[2,000]		[2,000]	
0603728A	52	ENVIRONMENTAL QUALITY TECHNOLOGY DEMONSTRATIONS	14,666	14,666	14,666		14,666

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Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0603734A	53	MILITARY ENGINEERING ADVANCED TECHNOLOGY	3,865	3,865	10,065	6,200	10,065
		Advanced mobile microgrid			[6,200]	[6,200]	
0603772A	54	ADVANCED TACTICAL COMPUTER SCIENCE AND SENSOR TECHNOLOGY	31,951	38,951	31,951	1,000	32,951
		Digital Army radar technology development		[7,000]		[1,000]	
0603305A	55	ARMY MISSILE DEFENSE SYSTEMS INTEGRATION(NON SPACE)	53,509	63,509	84,509	16,100	69,609
		C4ISR visualization			[3,000]	[1,000]	
		Integrated composite missile structure			[7,000]	[2,500]	
		Interactive modeling and simulation			[3,000]	[2,100]	
		Remote sensor monitoring technology research program			[3,000]	[2,500]	
		Mobile tactical high energy laser			[15,000]	[8,000]	
		Joint and Combined Communications Test Tool		[10,000]			
0603308A	56	ARMY MISSILE DEFENSE SYSTEMS INTEGRATION (SPACE)	4,871	4,871	4,871		4,871
0603327A	57	AIR AND MISSILE DEFENSE SYSTEMS ENGINEERING	91,713	105,713	103,713	15,500	107,213
		Adaptive integrated fire control demo program			[2,000]		
		E-STRIKE			[10,000]	[5,000]	
		Space and Missile Defense Architecture Analysis Program		[7,000]		[5,200]	
		Geospatial Information Decision Support		[7,000]	-	[5,300]	
0603619A	58	LANDMINE WARFARE AND BARRIER - ADV DEV	11,634	11,634	11,634		11,634
0603627A	59	SMOKE, OBSCURANT AND TARGET DEFEATING SYS-ADV DEV	6,249	6,249	6,249		6,249
0603639A	60	TANK AND MEDIUM CALIBER AMMUNITION	39,697	39,697	39,697	-15,000	24,697
		Mid-range munition (MRM)				[-15,000]	
0603645A	61	ARMORED SYSTEM MODERNIZATION - ADV DEV					
0603653A	62	ADVANCED TANK ARMAMENT SYSTEM (ATAS)	51,892	51,892	51,892		51,892

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Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0603747A	63	SOLDIER SUPPORT AND SURVIVABILITY	13,810	13,810	13,810		13,810
0603766A	64	TACTICAL ELECTRONIC SURVEILLANCE SYSTEM - ADV DEV	15,441	15,441	15,441		15,441
0603774A	65	NIGHT VISION SYSTEMS ADVANCED DEVELOPMENT	14,047	14,047	14,047		14,047
0603779A	66	ENVIRONMENTAL QUALITY TECHNOLOGY	9,356	11,856	13,956	3,450	12,806
		Manganese Health Research Project			[4,600]	[2,250]	
		Aberdeen Proving Ground Asbestos Conversion Facility		[2,500]		[1,200]	
0603782A	67	WARFIGHTER INFORMATION NETWORK-TACTICAL	99,645	99,645	99,645		99,645
0603790A	68	NATO RESEARCH AND DEVELOPMENT	4,801	4,801	4,801		4,801
0603801A	69	AVIATION - ADV DEV	12,113	12,113	12,113		12,113
0603802A	70	WEAPONS AND MUNITIONS - ADV DEV	2,382	2,382	4,382		2,382
		120MM mortar family advance development			[2,000]		
0603804A	71	LOGISTICS AND ENGINEER EQUIPMENT - ADV DEV	10,485	10,485	16,485	4,500	14,985
		Mobile parts hospital - continue development			[6,000]	[4,500]	
0603805A	72	COMBAT SERVICE SUPPORT CONTROL SYSTEM EVALUATION AND ANAL	6,366	6,366	6,366		6,366
0603807A	73	MEDICAL SYSTEMS - ADV DEV	10,258	10,258	10,258		10,258
0603850A	74	INTEGRATED BROADCAST SERVICE (JMIP/DISTP)	4,356	4,356	4,356		4,356
0603854A	75	ARTILLERY SYSTEMS					
0603856A	76	SCAMP BLOCK II	10,221	10,221	10,221		10,221
0603869A	77	MEDIUM EXTENDED AIR DEFENSE SYSTEM (MEADS) CONCEPTS	264,527	264,527	328,705		264,527
		PAC-3/MEADS (transfer from 64865A, line 126)			[64,173]		
0604201A	78	AIRCRAFT AVIONICS	68,857	68,857	68,857		68,857
0604220A	79	ARMED, DEPLOYABLE OH-58D	20,000	20,000	20,000	-5,000	15,000
		Lack of justification				[-5,000]	

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Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0604223A	80	COMANCHE					
0604270A	81	ELECTRONIC WARFARE DEVELOPMENT	16,879	16,879	16,879		16,879
0604280A	82	JOINT TACTICAL RADIO	121,400	121,400	121,400		121,400
0604321A	83	ALL SOURCE ANALYSIS SYSTEM	5,346	5,346	5,346		5,346
0604328A	84	TRACTOR CAGE	14,149	14,149	14,149		14,149
0604329A	85	COMMON MISSILE	152,381	152,381	152,381	-35,000	117,381
		Funding ahead of need				[-35,000]	
0604601A	86	INFANTRY SUPPORT WEAPONS	28,187	30,687	40,687	4,000	32,187
		XM312 50 caliber advanced crew served weapon			[4,000]	[4,000]	
		XM-307 25mm advanced crew served weapon			[8,500]		
		Low Cost Course Correction M135 AT4		[2,500]			
0604604A	87	MEDIUM TACTICAL VEHICLES	2,854	12,554	5,854	9,700	12,554
		Medium Tactical Vehicle Development		[9,700]	[3,000]	[9,700]	
0604609A	88	SMOKE, OBSCURANT AND TARGET DEFEATING SYS-SDD	3,798	3,798	3,798		3,798
0604611A	89	JAVELIN	944	944	944		944
0604622A	90	FAMILY OF HEAVY TACTICAL VEHICLES	2,479	2,479	12,479	7,500	9,979
		Tactical wheeled vehicle development			[10,000]	[7,500]	
0604633A	91	AIR TRAFFIC CONTROL	2,088	2,088	2,088		2,088
0604641A	92	TACTICAL UNMANNED GROUND VEHICLE (TUGV)					
0604642A	93	LIGHT TACTICAL WHEELED VEHICLES			15,000	10,000	10,000
		HMMWV block improvement program - initiate development			[15,000]	[10,000]	
0604645A	94	ARMORED SYSTEMS MODERNIZATION (ASM)-SDD	2,700,455	1,737,401	2,700,455	-270,070	2,430,385
		Program decrease		[-963,054]		[-270,070]	

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(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
646XAA	94a	Reconnaissance and Sensors		35,300			
646XBA	94b	Unmanned Ground Vehicles		57,600			
646XCA	94c	MGVs		186,900			
646XDA	94d	UGS		15,700			
646XEA	94e	NLOS-LS		76,400			
0604647A	95	NON-LINE OF SIGHT CANNON	497,643	843,500	497,643		497,643
		Program increase		[345,857]			
0604649A	96	ENGINEER MOBILITY EQUIPMENT DEVELOPMENT					
0604710A	97	NIGHT VISION SYSTEMS - SDD	24,693	24,693	24,693		24,693
0604713A	98	COMBAT FEEDING, CLOTHING, AND EQUIPMENT	115,093	119,293	117,593	-12,200	102,893
		Integrated battle space combat situational awareness system			[2,500]		
		Mounted Warrior Nomad C2 HUD		[4,200]		[2,800]	
		Land Warrior/Future Force Warrior consolidation				[-15,000]	
0604715A	99	NON-SYSTEM TRAINING DEVICES - SDD	51,694	51,694	51,694		51,694
0604716A	100	TERRAIN INFORMATION - SDD	3,199	3,199	3,199		3,199
0604726A	101	INTEGRATED METEOROLOGICAL SUPPORT SYSTEM	2,485	2,485	2,485		2,485
0604738A	102	JSIMS CORE PROGRAM					
0604741A	103	AIR DEFENSE COMMAND, CONTROL AND INTELLIGENCE - SDD	27,376	27,376	27,376		27,376
0604742A	104	CONSTRUCTIVE SIMULATION SYSTEMS DEVELOPMENT	42,869	42,869	42,869		42,869
0604746A	105	AUTOMATIC TEST EQUIPMENT DEVELOPMENT	4,713	4,713	7,213	1,800	6,513
		Accelerate diagnostic and expert system development			[2,500]	[1,800]	
0604760A	106	DISTRIBUTIVE INTERACTIVE SIMULATIONS (DIS) - SDD	26,985	26,985	26,985		26,985
0604766A	107	TACTICAL SURVEILLANCE SYSTEMS - SDD	21,821	21,821	21,821		21,821

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Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0604768A	108	ARMY TACTICAL MISSILE SYSTEM (ATACMS)	21	21	5,021	1,800	1,821
		Viper Strike			[5,000]	[1,800]	
0604770A	109	JOINT SURVEILLANCE/TARGET ATTACK RADAR SYSTEM (JSTARS)					
0604778A	110	POSITIONING SYSTEMS DEVELOPMENT (SPACE)	2,048	2,048	2,048		2,048
0604780A	111	COMBINED ARMS TACTICAL TRAINER (CATT) CORE	23,849	23,849	23,849	-4,740	19,109
		Comanche IOT&E funding				[-4,740]	
0604783A	112	JOINT NETWORK MANAGEMENT SYSTEM	10,726	10,726	10,726		10,726
0604801A	113	AVIATION - SDD	2,378	2,378	2,378		2,378
0604802A	114	WEAPONS AND MUNITIONS - SDD	125,885	195,885	142,885	24,000	149,885
		APKWS - semi-active laser seeker production transition initiative			[7,000]	[3,500]	
		Precision guided mortar munitions - accelerate Block I			[10,000]	[8,500]	
		Common Remotely Operated Weapon System		[70,000]		[12,000]	
0604804A	115	LOGISTICS AND ENGINEER EQUIPMENT - SDD	89,151	89,151	89,151		89,151
0604805A	116	COMMAND, CONTROL, COMMUNICATIONS SYSTEMS - SDD	219,790	219,790	219,790		219,790
0604807A	117	MEDICAL MATERIEL/MEDICAL BIOLOGICAL DEFENSE EQUIPMENT - SDD	11,727	14,227	16,227	6,300	18,027
		LSTAT		[2,500]		[1,800]	
		Leishmaniasis topical treatment (S. Amdt 3329)			[4,500]	[4,500]	
0604808A	118	LANDMINE WARFARE/BARRIER - SDD	51,045	51,045	51,045		51,045
0604814A	119	ARTILLERY MUNITIONS	133,297	138,297	133,297	2,500	135,797
		BONUS Compliance Program		[5,000]		[2,500]	
0604817A	120	COMBAT IDENTIFICATION	6,994	6,994	6,994		6,994
0604818A	121	ARMY TACTICAL COMMAND & CONTROL HARDWARE & SOFTWARE	68,110	68,110	68,110		68,110
0604819A	122	LOSAT	22,628	22,628	22,628		22,628

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Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0604820A	123	RADAR DEVELOPMENT	6,107	6,107	6,107		6,107
0604823A	124	FIREFINDER	18,516	18,516	18,516		18,516
0604854A	125	ARTILLERY SYSTEMS	9,550	9,550	9,550		9,550
0604865A	126	PATRIOT PAC-3 THEATER MISSILE DEFENSE ACQUISITION	64,178	64,178			64,178
		PAC-3 (transfer to 63869A, line 77)			[-64,178]		
0605013A	127	INFORMATION TECHNOLOGY DEVELOPMENT	95,261	95,261	95,261		95,261
0604256A	128	THREAT SIMULATOR DEVELOPMENT	22,101	22,101	22,101		22,101
0604258A	129	TARGET SYSTEMS DEVELOPMENT	11,017	11,017	11,017		11,017
0604759A	130	MAJOR T&E INVESTMENT	57,987	57,987	57,987		57,987
0605103A	131	RAND ARROYO CENTER	20,012	20,012	20,012		20,012
0605301A	132	ARMY KWAJALEIN ATOLL	143,921	143,921	143,921		143,921
0605326A	133	CONCEPTS EXPERIMENTATION PROGRAM	22,727	22,727	22,727		22,727
0605502A	134	SMALL BUSINESS INNOVATIVE RESEARCH					
0605601A	135	ARMY TEST RANGES AND FACILITIES	181,114	181,114	181,114		181,114
0605602A	136	ARMY TECHNICAL TEST INSTRUMENTATION AND TARGETS	52,433	52,433	52,433		52,433
0605604A	137	SURVIVABILITY/LETHALITY ANALYSIS	44,648	44,648	44,648		44,648
0605605A	138	DOD HIGH ENERGY LASER TEST FACILITY	15,725	15,725	15,725		15,725
0605606A	139	AIRCRAFT CERTIFICATION	3,485	3,485	3,485		3,485
0605702A	140	METEOROLOGICAL SUPPORT TO RDT&E ACTIVITIES	8,711	8,711	8,711		8,711
0605706A	141	MATERIEL SYSTEMS ANALYSIS	18,000	18,000	18,000		18,000
0605709A	142	EXPLOITATION OF FOREIGN ITEMS	4,740	4,740	4,740		4,740
0605712A	143	SUPPORT OF OPERATIONAL TESTING	71,239	71,239	71,239		71,239
0605716A	144	ARMY EVALUATION CENTER	62,209	62,209	62,209		62,209

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Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0605718A	145	SIMULATION & MODELING FOR ACQ, RQTS, & TNG (SMART)	1,935	1,935	1,935		1,935
0605801A	146	PROGRAMWIDE ACTIVITIES	59,368	59,368	59,368		59,368
0605803A	147	TECHNICAL INFORMATION ACTIVITIES	27,713	27,713	30,713	1,500	29,213
		Supercomputing research			[3,000]	[1,500]	
0605805A	148	MUNITIONS STANDARDIZATION, EFFECTIVENESS AND SAFETY	14,611	17,111	15,111	3,000	17,611
		Battle effects simulator			[500]	[500]	
		MEMS/IMU Technology		[2,500]		[2,500]	
0605857A	149	ENVIRONMENTAL QUALITY TECHNOLOGY MGMT SUPPORT	4,527	4,527	4,527		4,527
0605898A	150	MANAGEMENT HQ - R&D	11,575	11,575	11,575		11,575
0909999A	151	FINANCING FOR CANCELLED ACCOUNT ADJUSTMENTS					
0102419A	152	JOINT LAND ATTACK CRUISE MISSILES DEFENSE (JLENS)	81,514	84,514	81,514		81,514
		Aerostat Joint Program Office		[3,000]			
0203610A	153	DOMESTIC PREPAREDNESS AGAINST WMD					
0203726A	154	ADV FIELD ARTILLERY TACTICAL DATA SYSTEM	17,994	17,994	17,994		17,994
0203735A	155	COMBAT VEHICLE IMPROVEMENT PROGRAMS	15,952	20,952	15,952	2,000	17,952
		Combat Vehicle Electronics		[5,000]		[2,000]	
0203740A	156	MANEUVER CONTROL SYSTEM	24,753	24,753	24,753		24,753
0203744A	157	AIRCRAFT MODIFICATIONS/PRODUCT IMPROVEMENT PROGRAMS	242,853	242,853	242,853	-20,000	222,853
		Contract award delay				[-20,000]	
0203752A	158	AIRCRAFT ENGINE COMPONENT IMPROVEMENT PROGRAM	2,427	5,927	12,427	5,000	7,427
		Full Authority Control (FADEC) for armed reconnaissance Helicopters			[10,000]	[5,000]	
		Electronic Flight Planning		[3,500]			
0203758A	159	DIGITIZATION	24,506	24,506	24,506		24,506

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Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0203759A	160	FORCE XXI BATTLE COMMAND, BRIGADE AND BELOW (FBCB2)	23,510	23,510	23,510		23,510
0203801A	161	MISSILE/AIR DEFENSE PRODUCT IMPROVEMENT PROGRAM	31,690	31,690	36,690	2,000	33,690
		Advanced composite radome			[5,000]	[2,000]	
0203802A	162	OTHER MISSILE PRODUCT IMPROVEMENT PROGRAMS	4,863	4,863	4,863		4,863
0203806A	163	TRACTOR RUT	3,321	3,321	3,321		3,321
0203808A	164	TRACTOR CARD	9,023	9,023	9,023		9,023
0208010A	165	JOINT TACTICAL COMMUNICATIONS PROGRAM (TRI-TAC)	18,177	18,177	18,177		18,177
0208053A	166	JOINT TACTICAL GROUND SYSTEM	9,967	9,967	9,967		9,967
0301359A	167	SPECIAL ARMY PROGRAM	5,213	5,213	5,213		5,213
0303028A	168	SECURITY AND INTELLIGENCE ACTIVITIES		4,000	16,000	11,000	11,000
		Document exploitation			[4,000]	[3,000]	
		Information Dominance Center		[4,000]	[8,000]	[8,000]	
		Pathfinder Data Analysis Tool			[4,000]		
0303140A	169	INFORMATION SYSTEMS SECURITY PROGRAM	24,725	24,725	24,725		24,725
0303141A	170	GLOBAL COMBAT SUPPORT SYSTEM	94,215	94,215	94,215		94,215
0303142A	171	SATCOM GROUND ENVIRONMENT (SPACE)	51,959	51,959	51,959		51,959
0303150A	172	WWMCCS/GLOBAL COMMAND AND CONTROL SYSTEM	19,204	19,204	19,204		19,204
0305114A	173	TRAFFIC CONTROL, APPROACH AND LANDING SYSTEM					
0305204A	174	TACTICAL UNMANNED AERIAL VEHICLES (JMIP)	45,627	49,127	45,627		45,627
		Shadow UAV Improvements		[3,500]			
0305206A	175	AIRBORNE RECONNAISSANCE SYSTEMS	5,128	8,628	11,328	3,100	8,228
		Hyperspectral Longwave Imager for the Tactical Environment (HYLITE)		[3,500]	[6,200]	[3,100]	
0305208A	176	DISTRIBUTED COMMON GROUND/SURFACE SYSTEMS	43,254	43,254	43,254		43,254

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Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0603778A	177	MLRS PRODUCT IMPROVEMENT PROGRAM	97,422	97,422	97,422		97,422
0702239A	178	AVIONICS COMPONENT IMPROVEMENT PROGRAM	997		997		997
		Program decrease		[-997]			
0708045A	179	END ITEM INDUSTRIAL PREPAREDNESS ACTIVITIES	67,236	70,236	75,736	8,200	75,436
		Packaging and interconnection technology			[3,000]	[2,500]	
		Virtual parts program			[3,000]	[2,300]	
		Lean manufacturing system demonstrations			[2,500]	[1,900]	
		LEAN Munitions		[3,000]		[1,500]	
1001018A	180	NATO JOINT STARS	595	595	595		595
XXXXXX	180A	Army Aviation Test Bed			48,000		
	180B	Defense Language Institute Foreign Learning Center		5,000		5,000	5,000
		Financial information systems			-18,200		
		Total, RDT&E Army	**9,266,258**	**9,478,164**	**9,690,458**	**40,990**	**9,307,248**

Advanced battery technology initiative

The budget request included $41.2 million in PE 62705A for applied research in electronics and electronic devices.

The House bill would authorize an increase of $20.0 million in PE 62705A for an advanced battery technology initiative.

The Senate amendment contained no similar authorization.

The conferees agree to authorize an increase of $15.6 million in PE 62705A for an advanced battery technology initiative, which would fund programs selected on the basis of technical merit, cost effectiveness, and potential to meet service requirements, including the following areas: alkaline cylindrical cells; cylindrical zinc air batteries; high capacity nickel/zinc rechargeable cells; lithium battery technologies; lithium carbon monoflouride cells; and proton exchange membrane fuel cells.

The conferees note that in a recent study, "Meeting the Energy Needs of Future Warriors," the National Research Council highlighted the importance of Army research on soldier power technologies, and indicated that "energy to power soldier systems, . . . must now be viewed on par with the other critical logistics commodities—ammunition, fuel, food, and water."

Medical technology applied research initiative

The budget request included $60.9 million in PE 62787A for medical technology.

The House bill would authorize an increase of $25.0 million in PE 62787A for a medical technology applied research initiative.

The Senate amendment contained no similar authorization.

The conferees agree to authorize an increase of $7.05 million for an applied initiative in medical technologies of specific military application and value, including: dermal phase meter; gene delivery technology; fibrin bandages from non-mammalian sources; nano-fabricated bioartificial kidney; and rapid bio-pathogen detection technology. Projects are to be selected on the basis of technical merit, cost effectiveness, and potential to meet service requirements.

Lightweight Structures Initiative

The budget request included $203.1 million in PE 63005A for combat vehicle and automotive technology.

The House bill would authorize an increase of $9.0 million in PE 63005A for the Lightweight Structures Initiative.

The Senate amendment would authorize an increase of $7.5 million for components of the Lightweight Structures Initiative including: $3.0 million for advanced titanium armor systems; $1.5 million for Future Combat System common chassis design; and $3.0 million for non-line of sight cannon structure design.

The conferees agree to authorize an increase of $7.9 million in PE 63005A for the Lightweight Structures Initiative.

Mobile tactical high energy laser

The budget request included $53.5 million in PE 63305A for Army missile defense systems integration, of which $39.0 million was for the mobile tactical high energy laser (MTHEL).

The House bill would authorize the budget request.

The Senate amendment would authorize an increase of $15.0 million for MTHEL.

The conferees agree to authorize an increase of $8.0 million in PE 63305A for MTHEL.

The conferees are aware of successful tests of the Army's heat capacity solid state laser and believe that laser weapons could play an important role in future missile, air, and counter-mortar defenses. The conferees direct that the increase be used to accelerate development of a 100 kilowatt solid state laser and to initiate a system demonstration using a solid state laser.

The conferees note that the Joint Technology Office (JTO) plays a key role in maturing a range of laser technologies. The JTO was established pursuant to subtitle E, title II, of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398) with the intent of establishing an office that would accelerate progress in high energy laser technology and provide incentives to services to invest in such technologies. The conferees are concerned that the JTO may not be effective in accomplishing the goals defined in subtitle E or transitioning laser technology to the services. The conferees direct the Secretary of Defense to provide a report to the congressional defense committees by January 15, 2005 on the effectiveness of the JTO in achieving the objectives of subtitle E, the impact of shifting funding responsibility for JTO efforts to the Air Force, and the effectiveness of the JTO structure in transitioning laser technologies to the warfighter. The conferees further direct the Comptroller General to review this assessment and to report the results of this review to congressional defense committees no later March 15, 2005.

NAVY

Research, Development, Test and Evaluation, Navy Overview

The budget request for fiscal year 2005 included an authorization of $16,346.4 million in Research, Development, Test and Evaluation, Navy for the Department of Defense.

The House bill would authorize $16,052.8 million.

The Senate amendment would authorize $16,690.4 million.

The conferees recommend an authorization of $16,200.6 million. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
		RESEARCH, DEVELOPMENT, TEST & EVALUATION, NAVY					
0601103N	1	UNIVERSITY RESEARCH INITIATIVES	83,508	83,508	100,508	6,600	90,108
		Nanoscience research			[3,000]	[1,500]	
		Nanoparticle materials research			[1,500]	[1,500]	
		Remote sensing research			[1,000]	[1,000]	
		Corrosion research			[5,000]		
		Neural engineering research			[1,500]	[1,000]	
		Multifunctional materials for naval structures			[5,000]	[1,600]	
0601152N	2	IN-HOUSE LABORATORY INDEPENDENT RESEARCH	17,664	17,664	20,164	1,900	19,564
		Navy S&T outreach			[2,500]	[1,900]	
0601153N	3	DEFENSE RESEARCH SCIENCES	375,812	378,812	375,812		375,812
		Nanoscience and Nanomaterials		[3,000]			
0602114N	4	POWER PROJECTION APPLIED RESEARCH	98,831	106,831	103,831	10,200	109,031
		Silver Fox			[5,000]	[5,000]	
		Integrated Personnel Protection System		[3,000]		[1,200]	
		Interrogator for High-Speed Retro-Reflective Communications		[3,000]		[2,000]	
		Terahertz for Photonics for Imaging		[2,000]		[2,000]	

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0602123N	5	FORCE PROTECTION APPLIED RESEARCH	96,269	103,269	111,269	15,400	111,669
		Hyperspectral data fusion			[4,000]	[3,400]	
		Unmanned systems battery development			[3,000]	[2,000]	
		Structural reliability composite research			[1,000]	[1,000]	
		Fire retardant resins			[1,000]		
		Theater support vessel hull material development			[4,000]	[2,000]	
		Polymer aircraft components			[2,000]	[2,000]	
		Hybrid POSS Composites		[2,000]			
		Center for Critical Infrastructure Protection		[5,000]		[5,000]	
0602131M	6	MARINE CORPS LANDING FORCE TECHNOLOGY	35,398	35,398	35,398		35,398
0602232N	7	COMMUNICATIONS, COMMAND AND CONTROL, INTELL, SURVEILLANCE					
0602233N	8	HUMAN SYSTEMS TECHNOLOGY		2,000		1,500	1,500
		Human Systems Integration		[2,000]		[1,500]	
0602234N	9	MATERIALS, ELECTRONICS AND COMPUTER TECHNOLOGY					
0602235N	10	COMMON PICTURE APPLIED RESEARCH	60,134	66,134	60,134	6,000	66,134
		Theater Undersea Warfare Initiative		[6,000]		[6,000]	

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0602236N	11	WARFIGHTER SUSTAINMENT APPLIED RESEARCH	63,726	80,926	86,726	24,200	87,926
		Aerospace alloy research			[2,000]	[1,400]	
		Microsystem fuze, safe & arm devices			[2,000]	[1,000]	
		Infectious disease analysis			[2,500]	[2,100]	
		Biowarfare detector			[2,500]	[2,100]	
		Sensornet			[12,000]	[12,000]	
		Titanium materials research			[2,000]	[1,600]	
		Formable Aligned Carbon Thermosets		[2,000]		[1,500]	
		Marine Mammal Research Program		[2,200]		[1,100]	
		Composite Ceramic UUV		[8,000]			
		Composite Ceramic Materials for Aerospace Fabrication		[5,000]		[1,400]	
0602271N	12	RF SYSTEMS APPLIED RESEARCH	49,151	66,151	52,651	9,300	58,451
		Wide bandgap semiconductor research		[4,000]	[1,500]	[2,700]	
		High brightness electronics			[2,000]	[1,500]	
		Vacuum Technology		[10,000]		[3,100]	
		Gallium Nitride RF Power Technology		[3,000]		[2,000]	
0602435N	13	OCEAN WARFIGHTING ENVIRONMENT APPLIED RESEARCH	48,482	48,482	50,482	1,000	49,482
		Integrated littoral sensor network			[2,000]	[1,000]	
0602747N	14	UNDERSEA WARFARE APPLIED RESEARCH	64,060	65,060	65,060		64,060
		Low Acoustic Signature Motor/Propulsor		[1,000]	[1,000]		
0602782N	15	MINE AND EXPEDITIONARY WARFARE APPLIED RESEARCH	48,016	48,016	48,016		48,016

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0603114N	16	POWER PROJECTION ADVANCED TECHNOLOGY	92,359	117,359	96,359	18,300	110,659
		Free electron laser			[9,000]	[2,200]	
		Unjustified growth			[-5,000]		
		DP-2 Thrust Vectoring System		[10,000]		[7,500]	
		Laser Radar Data Exploitation		[3,000]		[2,100]	
		Low-Cost Terminal Imaging Seeker		[5,000]		[4,500]	
		Low Power Mega Performance UAV Processing Engine		[7,000]		[2,000]	
0603123N	17	FORCE PROTECTION ADVANCED TECHNOLOGY	82,130	141,630	109,630	47,000	129,130
		High temp superconductor (HTS) synchronous Navy propulsion motor		[8,000]	[7,000]	[3,500]	
		Development of wide bandgap semiconductor materials			[6,000]	[4,500]	
		Wave Power Demonstration Project			[4,000]	[3,400]	
		Composite twisted rudder			[1,000]	[1,000]	
		Tactical aircraft directed IR countermeasures			[7,000]	[6,800]	
		Steel sandwich panel qualification			[2,500]	[2,500]	
		Littoral Support Craft Experimental		[25,800]		[11,100]	
		Superconducting DC Homopolar Motor		[9,200]		[5,500]	
		Project M		[4,000]		[2,500]	
		Technologies for Future Naval Capabilities		[2,000]		[1,300]	
		Electromagnetic Gun Program		[9,500]		[3,900]	
		High-Speed Power Node Switching Center		[1,000]		[1,000]	
0603235N	18	COMMON PICTURE ADVANCED TECHNOLOGY	79,521	83,521	82,521	3,400	82,921
		Consolidated undersea situational awareness		[4,000]	[3,000]	[3,400]	

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0603236N	19	WARFIGHTER SUSTAINMENT ADVANCED TECHNOLOGY	61,103	76,103	78,103	13,500	74,603
		Automatic container and cargo handling systems			[4,000]	[2,000]	
		Ultrasonic consolidation of matrix composites			[2,000]	[1,000]	
		Expeditionary logistics for the 21st Century			[6,000]	[3,000]	
		Defense Systems Modernization and Sustainment Initiative			[5,000]	[4,000]	
		Intermediate Modulus COTS Carbon Fiber Qualification		[4,000]		[1,000]	
		Emerging/Critical Interconnection Technology		[4,000]		[1,500]	
		Virtual, At Sea Training Initiative		[4,000]		[1,000]	
		Human Systems Integration		[3,000]		[1,500]	
		Program growth				[-1,500]	
0603271N	20	RF SYSTEMS ADVANCED TECHNOLOGY	44,046	65,546	47,046	5,000	49,046
		APY-6 Realtime Precision Targeting Radar		[10,000]	[3,000]	[2,500]	
		Vacuum Technology		[5,000]			
		Remote Ocean Surveillance System		[3,000]		[1,500]	
		SCOUT Radar		[2,000]			
		Spectral Beam Combining Fiber Lasers		[1,500]		[1,000]	
0603640M	21	USMC ADVANCED TECHNOLOGY DEMONSTRATION (ATD)	58,222	62,722	67,222	12,600	70,822
		Unmanned tactical combat vehicle			[1,000]	[1,000]	
		Water purification research			[8,000]	[8,000]	
		Advanced Mine Detection Program		[3,000]		[2,600]	
		Rapid Deployment Fortification Wall		[1,500]		[1,000]	
0603712N	22	ENVIRONMENTAL QUALITY AND LOGISTICS ADVANCED TECHNOLOGY					

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0603727N	23	NAVY TECHNICAL INFORMATION PRESENTATION SYSTEM	167,626		167,626		167,626
		Transfer PDW 81a		[-167,626]			
0603729N	24	WARFIGHTER PROTECTION ADVANCED TECHNOLOGY	16,719	27,719	19,319	3,600	20,319
		Anti-oxidant micronutrients research			[600]	[600]	
		Battlefield pharmaceutical test			[2,000]	[1,000]	
		Organ Transplant Technology		[4,000]		[2,000]	
		Biomedical Research Imaging		[5,000]			
		Oxygen Dressing		[2,000]			
0603747N	25	UNDERSEA WARFARE ADVANCED TECHNOLOGY	26,515	26,515	26,515		26,515
0603757N	26	JOINT WARFARE EXPERIMENTS	26		26		26
		Transfer PDW 81b		[-26]			
0603758N	27	NAVY WARFIGHTING EXPERIMENTS AND DEMONSTRATIONS	16,006	16,006	16,006		16,006
0603782N	28	MINE AND EXPEDITIONARY WARFARE ADVANCED TECHNOLOGY	32,899	32,899	32,899		32,899
0603792N	29	ADVANCED TECHNOLOGY TRANSITION					
0603207N	30	AIR/OCEAN TACTICAL APPLICATIONS	24,431	24,431	24,431		24,431
0603216N	31	AVIATION SURVIVABILITY	10,820	13,820	16,320	3,800	14,620
		Rotorcraft External Airbag System			[5,500]	[3,800]	
		Reduced Risk Ordnance		[3,000]			
0603237N	32	DEPLOYABLE JOINT COMMAND AND CONTROL	42,394	42,394	42,394		42,394
0603254N	33	ASW SYSTEMS DEVELOPMENT	4,541	15,541	9,541	7,900	12,441
		Claymore marine		[7,000]	[5,000]	[4,200]	
		Tactical E Field Buoy Development		[4,000]		[3,700]	

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0603261N	34	TACTICAL AIRBORNE RECONNAISSANCE	6,448	1,900	6,448		6,448
		UAV Concept of Operations		[-4,548]			
0603382N	35	ADVANCED COMBAT SYSTEMS TECHNOLOGY	67,605	67,605	67,605		67,605
0603502N	36	SURFACE AND SHALLOW WATER MINE COUNTERMEASURES	103,308	123,308	103,308	-3,500	99,808
		UUV		[20,000]		[1,500]	
		Long-Term Mine Reconnaissance System				[-5,000]	
0603506N	37	SURFACE SHIP TORPEDO DEFENSE	46,896	53,896	46,896	7,000	53,896
		Anti Torpedo Torpedo		[7,000]		[7,000]	
0603512N	38	CARRIER SYSTEMS DEVELOPMENT	157,479	167,479	166,479	3,700	161,179
		Aviation Ship Integration Center		[10,000]	[9,000]	[3,700]	
0603513N	39	SHIPBOARD SYSTEM COMPONENT DEVELOPMENT	18,993	25,493	21,993	2,900	21,893
		Amorphous metal permanent magnet generator set			[3,000]	[1,500]	
		DD(X) Ship System Component Development		[2,000]		[1,400]	
		Integrated-fight-through-power		[2,000]			
		Ultrasonic Detection Equipment		[2,500]			
0603525N	40	PILOT FISH	78,223	78,223	78,223		78,223
0603527N	41	RETRACT LARCH	82,532	82,532	82,532		82,532
0603536N	42	RETRACT JUNIPER	36,915	36,915	36,915		36,915
0603542N	43	RADIOLOGICAL CONTROL	946	946	946		946
0603553N	44	SURFACE ASW	17,633	34,233	23,433	2,400	20,033
		Surface ship combat systems warfare enhancements			[3,000]	[1,000]	
		Improved surface vessel torpedo launcher			[2,800]	[1,400]	
		Task Force Anti-Submarine Warfare		[16,600]			

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0603559N	45	SSGN CONVERSION	19,970	19,970	19,970		19,970
0603561N	46	ADVANCED SUBMARINE SYSTEM DEVELOPMENT	81,160	98,160	91,160	1,400	82,560
		Submarine payloads and sensors		[10,000]	[10,000]	[5,000]	
		Composite Structures		[7,000]		[1,400]	
		Development and demonstration of UUV in submarine operations				[-5,000]	
0603562N	47	SUBMARINE TACTICAL WARFARE SYSTEMS	5,957	5,957	5,957		5,957
0603563N	48	SHIP CONCEPT ADVANCED DESIGN	3,723	3,723	8,723	2,500	6,223
		Integrated Condition Assessment System			[5,000]	[2,500]	
0603564N	49	SHIP PRELIMINARY DESIGN & FEASIBILITY STUDIES					
0603570N	50	ADVANCED NUCLEAR POWER SYSTEMS	169,733	169,733	169,733		169,733
0603573N	51	ADVANCED SURFACE MACHINERY SYSTEMS					
0603576N	52	CHALK EAGLE	47,786	47,786	47,786		47,786
0603581N	53	LITTORAL COMBAT SHIP (LCS)	352,089	244,389	352,089	-2,000	350,089
		Program decrease		[-107,700]			
		Phase I Design for Flight I Ship				[-2,000]	
0603582N	54	COMBAT SYSTEM INTEGRATION	80,840	86,840	75,840	-6,000	74,840
		Context-adaptable autonomous and remote unmanned systems			[5,000]	[2,500]	
		Transfer to PE 64503N (RDN 108)			[-10,000]	[-10,000]	
		Laser Diode Arrays		[6,000]		[1,500]	
0603609N	55	CONVENTIONAL MUNITIONS	34,151	34,151	34,151		34,151
0603611M	56	MARINE CORPS ASSAULT VEHICLES	236,969	236,969	236,969		236,969
0603612M	57	USMC MINE COUNTERMEASURES SYSTEMS - ADV DEV	4,522	4,522	4,522		4,522

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0603635M	58	MARINE CORPS GROUND COMBAT/SUPPORT SYSTEM	22,440	22,440	39,140	10,300	32,740
		Urban operations environmental laboratory			[6,400]	[4,200]	
		Urban operations nonlethal and scalable weaponization			[2,900]	[1,900]	
		Clearing facilities with novel technology			[3,400]	[2,200]	
		Anti-Armor Weapon System - Heavy			[4,000]	[2,000]	
0603654N	59	JOINT SERVICE EXPLOSIVE ORDNANCE DEVELOPMENT	18,047	18,047	18,047		18,047
0603658N	60	COOPERATIVE ENGAGEMENT	103,452	103,452	103,452		103,452
0603713N	61	OCEAN ENGINEERING TECHNOLOGY DEVELOPMENT	26,232	26,232	26,232		26,232
0603721N	62	ENVIRONMENTAL PROTECTION	24,641	24,641	27,641	2,100	26,741
		Marine mammal detection and mitigation			[3,000]	[2,100]	
0603724N	63	NAVY ENERGY PROGRAM	1,494	7,494	4,494	6,300	7,794
		Proton exchange membrane (PEM) fuel cell trial			[3,000]	[2,800]	
		One Megawatt Molten Carbonate Fuel Cell		[6,000]		[3,500]	
0603725N	64	FACILITIES IMPROVEMENT	1,621	1,621	1,621		1,621
0603734N	65	CHALK CORAL	58,467	58,467	58,467		58,467
0603739N	66	NAVY LOGISTIC PRODUCTIVITY	7,421	7,421	7,421		7,421
0603746N	67	RETRACT MAPLE	275,407	275,407	275,407		275,407
0603748N	68	LINK PLUMERIA	112,997	112,997	112,997		112,997
0603751N	69	RETRACT ELM	48,130	48,130	48,130		48,130
0603755N	70	SHIP SELF DEFENSE	9,493	9,493	9,493		9,493
0603764N	71	LINK EVERGREEN	63,346	63,346	63,346		63,346
0603787N	72	SPECIAL PROCESSES	44,232	44,232	44,232		44,232
0603790N	73	NATO RESEARCH AND DEVELOPMENT	10,151	10,151	10,151		10,151

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0603795N	74	LAND ATTACK TECHNOLOGY	82,049	105,049	53,149	13,200	95,249
		Reduction - Affordable Weapons System			[-28,900]		
		Affordable Weapon System		[23,000]		[20,000]	
		Extended Range Guided Munition (ERGM)				[-6,800]	
0603851M	75	NONLETHAL WEAPONS	43,321	43,321	43,321		43,321
0603857N	76	ALL SERVICE COMBAT IDENTIFICATION EVALUATION TEAM (ASCIET)	13,626	13,626	13,626		13,626
0603860N	77	JOINT PRECISION APPROACH AND LANDING SYSTEMS	32,391	32,391	32,391		32,391
0603879N	78	SINGLE INTEGRATED AIR PICTURE (SIAP) SYSTEM ENGINEER (SE)	20,252	20,252	20,252		20,252
0603889N	79	COUNTERDRUG RDT&E PROJECTS					
0604272N	80	TACTICAL AIR DIRECTIONAL INFRARED COUNTERMEASURES (TADIRCM)					
0604707N	81	SPACE AND ELECTRONIC WARFARE (SEW) ARCHITECTURE/ENGINEERINC	25,943	25,943	25,943		25,943
0604787N	82	JOINT WARFARE TRANSFORMATION PROGRAMS	22,450		22,450		22,450
		Transfer PDW 81c		[-22,450]			
0604212N	83	OTHER HELO DEVELOPMENT	186,970	186,970	186,970		186,970
0604214N	84	AV-8B AIRCRAFT - ENG DEV	12,284	12,284	12,284		12,284
0604215N	85	STANDARDS DEVELOPMENT	57,675	57,675	57,675		57,675
0604216N	86	MULTI-MISSION HELICOPTER UPGRADE DEVELOPMENT	78,757	78,757	78,757		78,757
0604217N	87	S-3 WEAPON SYSTEM IMPROVEMENT					
0604218N	88	AIR/OCEAN EQUIPMENT ENGINEERING	4,506	4,506	4,506		4,506
0604221N	89	P-3 MODERNIZATION PROGRAM	9,554	9,554	9,554		9,554
0604230N	90	WARFARE SUPPORT SYSTEM	5,201	5,201	5,201		5,201
0604231N	91	TACTICAL COMMAND SYSTEM	49,180	49,180	49,180		49,180
0604234N	92	ADVANCED HAWKEYE	597,015	597,015	597,015		597,015

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY 2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0604245N	93	H-1 UPGRADES	90,389	90,389	132,389	42,000	132,389
		AH-1Z/UH-1Y upgrades - turned exhaust			[42,000]	[42,000]	
0604261N	94	ACOUSTIC SEARCH SENSORS	13,363	28,363	13,363		13,363
		Automatic Radar Periscope Detection Discrimination		[15,000]			
0604262N	95	V-22A	304,164	304,164	304,164	-42,000	262,164
		CV-22 flight test program delay				[-42,000]	
0604264N	96	AIR CREW SYSTEMS DEVELOPMENT	8,838	8,838	12,838	4,000	12,838
		Joint Helmet Mounted Cueing System Quad Eye			[4,000]	[4,000]	
0604269N	97	EA-18	357,502	357,502	357,502		357,502
0604270N	98	ELECTRONIC WARFARE DEVELOPMENT	48,956	48,956	48,956		48,956
0604273N	99	VHXX EXECUTIVE HELO DEVELOPMENT	777,398	557,398	632,398	-220,000	557,398
		VXX executive helicopter execution		[-220,000]	[-145,000]	[-220,000]	
0604280N	100	JOINT TACTICAL RADIO SYSTEM - NAVY (JTRS-NAVY)	78,624	93,624	78,624	2,000	80,624
		Digital Modular Radio		[15,000]		[2,000]	
0604300N	101	SC-21 TOTAL SHIP SYSTEM ENGINEERING	1,431,585	1,220,485	1,530,985	39,900	1,471,485
		For second DD(X)			[99,400]	[84,400]	
		Program decrease		[-221,100]			
		Advanced Gun System for DD(X)		[10,000]			
		Joint distance support and response and integrated fleet support				[-44,500]	
0604307N	102	SURFACE COMBATANT COMBAT SYSTEM ENGINEERING	146,463	168,263	146,463	4,300	150,763
		Open Architecture		[21,800]		[4,300]	
0604311N	103	LPD-17 CLASS SYSTEMS INTEGRATION	8,988	8,988	8,988		8,988
0604312N	104	TRI-SERVICE STANDOFF ATTACK MISSILE	27,047	27,047	27,047		27,047

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0604329N	105	SMALL DIAMETER BOMB (SDB)	9,961	9,961	9,961		9,961
0604366N	106	STANDARD MISSILE IMPROVEMENTS	99,022	99,022	109,022	8,500	107,522
		Standard missile insensitive munitions improvements			[5,000]	[5,000]	
		Advanced missile data link			[5,000]	[3,500]	
0604373N	107	AIRBORNE MCM	50,514	50,514	53,514		50,514
		Surface Navy integrated undersea tactical technology (SNIUTT) sim			[3,000]		
0604503N	108	SSN-688 AND TRIDENT MODERNIZATION	75,359	104,359	94,359	20,800	96,159
		Submarine expendable communication device			[4,000]		
		Transfer from PE 63582N (RDN 54)			[10,000]	[10,000]	
		Advanced Processor Build Integration		[20,000]		[4,000]	
		Affordable Towed Array Construction		[6,000]		[3,500]	
		AN/BLQ-10 Test and Support		[3,000]			
		Littoral array system (S. Amdt 3351)			[5,000]	[3,300]	
0604504N	109	AIR CONTROL	13,102	13,102	13,102		13,102
0604507N	110	ENHANCED MODULAR SIGNAL PROCESSOR	1,075	1,075	1,075		1,075
0604512N	111	SHIPBOARD AVIATION SYSTEMS	28,631	32,631	31,131	1,000	29,631
		Synthetic material arresting cable			[2,500]	[1,000]	
		Aviation Shipboard Information Technology Initiative		[4,000]			
0604518N	112	COMBAT INFORMATION CENTER CONVERSION	8,228	8,228	8,228		8,228

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0604558N	113	NEW DESIGN SSN	143,270	153,270	219,370	12,000	155,270
		Submarine information assurance			[2,000]	[1,500]	
		Multi-mission module		[10,000]	[56,000]	[20,000]	
		Large aperture bow array			[5,000]	[2,500]	
		Common submarine radio room			[13,100]	[8,000]	
		Re-align base funding to fiscal year 2004 level				[-20,000]	
0604561N	114	SSN-21 DEVELOPMENTS	3,020	3,020	3,020		3,020
0604562N	115	SUBMARINE TACTICAL WARFARE SYSTEM	43,404	43,404	49,404	4,600	48,004
		Submarine warfare system strike weapon status control			[6,000]	[4,600]	
0604567N	116	SHIP CONTRACT DESIGN/ LIVE FIRE T&E	130,908	130,908	130,908	-13,000	117,908
		Cruiser modernization				[-13,000]	
0604574N	117	NAVY TACTICAL COMPUTER RESOURCES	2,381	2,381	2,381		2,381
0604601N	118	MINE DEVELOPMENT	6,123	6,123	6,123		6,123
0604603N	119	UNGUIDED CONVENTIONAL AIR-LAUNCHED WEAPONS					
0604610N	120	LIGHTWEIGHT TORPEDO DEVELOPMENT	9,965	9,965	9,965	1,500	11,465
		MK-54 System PIP (non-add)		[2,000]			
		MK-54 System				[1,500]	
0604618N	121	JOINT DIRECT ATTACK MUNITION					
0604654N	122	JOINT SERVICE EXPLOSIVE ORDNANCE DEVELOPMENT	8,081	8,081	8,081		8,081
0604703N	123	PERSONNEL, TRAINING, SIMULATION, AND HUMAN FACTORS	3,005	3,005	3,005		3,005
0604710N	124	NAVY ENERGY PROGRAM					
0604721N	125	BATTLE GROUP PASSIVE HORIZON EXTENSION SYSTEM	17,981	17,981	20,981	1,100	19,081
		Anti-terrorism Tech Surveillance System			[3,000]	[1,100]	

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(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0604727N	126	JOINT STANDOFF WEAPON SYSTEMS	9,531	9,531	9,531		9,531
0604755N	127	SHIP SELF DEFENSE (DETECT & CONTROL)	48,154	88,754	53,154	9,400	57,554
		Directed energy user scrutiny equipment			[5,000]	[2,500]	
		Integrated Radar Optical Surveillance and Sighting System		[3,500]		[3,500]	
		Evolved Sea Sparrow		[15,300]			
		Open Architecture Warfare Systems		[21,800]		[3,400]	
0604756N	128	SHIP SELF DEFENSE (ENGAGE: HARD KILL)	51,213	51,213	51,213		51,213
0604757N	129	SHIP SELF DEFENSE (ENGAGE: SOFT KILL/EW)	28,233	28,233	33,233	1,500	29,733
		NULKA research to counter multi-mode RF and IR			[5,000]	[1,500]	
0604771N	130	MEDICAL DEVELOPMENT	6,942	21,942	9,942	11,500	18,442
		Sea rescue technology			[3,000]	[3,000]	
		Hemoglobin-based Oxygen Carrier		[13,000]		[7,000]	
		Pseudofolliculitus Barbae Research		[2,000]		[1,500]	
0604777N	131	NAVIGATION/ID SYSTEM	28,104	28,104	28,104		28,104
0604784N	132	DISTRIBUTED SURVEILLANCE SYSTEM	7,776	7,776	7,776		7,776
0604800N	133	JOINT STRIKE FIGHTER (JSF)	2,264,507	2,264,507	2,279,507	-126,000	2,138,507
		STOVL lift fan study			[15,000]	[8,000]	
		Align engine development with SDD schedule				[-49,000]	
		Fiscal year 2003/04 reprogramming activity				[-25,000]	
		Manufacturing, tooling materials				[-60,000]	
0604910N	134	SMART CARD	695	695	695		695
0605013M	135	INFORMATION TECHNOLOGY DEVELOPMENT	9,301	9,301	9,301		9,301

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0605013N	136	INFORMATION TECHNOLOGY DEVELOPMENT	109,543	29,543	109,543	-25,000	84,543
		Enterprise Resource Planning		[-83,000]		[-25,000]	
		Open Architecture Wireless Sensors		[3,000]			
0605014N	137	DEFENSE INTEGRATED MILITARY HUMAN RESOURCES SYSTEM (DIMHRS					
0605500N	138	MULTI-MISSION MARITIME AIRCRAFT (MMA)	496,029	496,029	496,029		496,029
0508713N	139	NAVY STANDARD INTEGRATED PERSONNEL SYSTEM (NSIPS)					
0604256N	140	THREAT SIMULATOR DEVELOPMENT	23,866	23,866	23,866		23,866
0604258N	141	TARGET SYSTEMS DEVELOPMENT	35,677	35,677	35,677		35,677
0604759N	142	MAJOR T&E INVESTMENT	39,787	39,787	39,787		39,787
0605152N	143	STUDIES AND ANALYSIS SUPPORT - NAVY	2,183	2,183	2,183		2,183
0605154N	144	CENTER FOR NAVAL ANALYSES	43,982	43,982	43,982		43,982
0605155N	145	FLEET TACTICAL DEVELOPMENT	2,338	2,338	2,338		2,338
0605502N	146	SMALL BUSINESS INNOVATIVE RESEARCH					
0605804N	147	TECHNICAL INFORMATION SERVICES	696	696	696		696
0605853N	148	MANAGEMENT, TECHNICAL & INTERNATIONAL SUPPORT	31,407	31,407	31,407		31,407
0605856N	149	STRATEGIC TECHNICAL SUPPORT	3,493	3,493	3,493		3,493
0605861N	150	RDT&E SCIENCE AND TECHNOLOGY MANAGEMENT	66,117	66,117	62,317	-3,800	62,317
		Unjustified growth			[-3,800]	[-3,800]	
0605862N	151	RDT&E INSTRUMENTATION MODERNIZATION	19,370	19,370	19,370		19,370
0605863N	152	RDT&E SHIP AND AIRCRAFT SUPPORT	81,308	81,308	81,308		81,308
0605864N	153	TEST AND EVALUATION SUPPORT	255,926	255,926	255,926		255,926
0605865N	154	OPERATIONAL TEST AND EVALUATION CAPABILITY	13,044	13,044	13,044		13,044
0605866N	155	NAVY SPACE AND ELECTRONIC WARFARE (SEW) SUPPORT	2,941	2,941	2,941		2,941

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0605867N	156	SEW SURVEILLANCE/RECONNAISSANCE SUPPORT	12,160	12,160	12,160		12,160
0605872M	157	MARINE CORPS PROGRAM WIDE SUPPORT	19,701	19,701	19,701		19,701
0909999N	158	FINANCING FOR CANCELLED ACCOUNT ADJUSTMENTS					
0603660N	159	ADVANCED DEVELOPMENT PROJECTS	[ ]				
0603661N	160	RETRACT VIOLET	[ ]				
0101221N	161	STRATEGIC SUB & WEAPONS SYSTEM SUPPORT	108,782	108,782	113,782	-18,100	90,682
		Thin-plate pure lead battery technology			[5,000]	[4,900]	
		Strategic propulsion applications				[-18,000]	
		Radiation hardened applications				[-5,000]	
0101224N	162	SSBN SECURITY TECHNOLOGY PROGRAM	43,408	43,408	43,408		43,408
0101226N	163	SUBMARINE ACOUSTIC WARFARE DEVELOPMENT	8,453	8,453	8,453		8,453
0101402N	164	NAVY STRATEGIC COMMUNICATIONS	31,391	31,391	31,391		31,391
0203761N	165	RAPID TECHNOLOGY TRANSITION (RTT)	14,630	14,630	14,630		14,630
0204136N	166	F/A-18 SQUADRONS	134,580	134,580	134,580		134,580
0204152N	167	E-2 SQUADRONS	6,055	6,055	6,055		6,055
0204163N	168	FLEET TELECOMMUNICATIONS (TACTICAL)	19,784	19,784	19,784		19,784
0204229N	169	TOMAHAWK AND TOMAHAWK MISSION PLANNING CENTER (TMPC)	28,776	28,776	33,776	4,000	32,776
		Precision Terrain Aided Navigation			[5,000]	[4,000]	
0204311N	170	INTEGRATED SURVEILLANCE SYSTEM	16,965	16,965	16,965		16,965
0204413N	171	AMPHIBIOUS TACTICAL SUPPORT UNITS (DISPLACEMENT CRAFT)	2,604	2,604	2,604		2,604
0204571N	172	CONSOLIDATED TRAINING SYSTEMS DEVELOPMENT	21,644	21,644	21,644		21,644
0204574N	173	CRYPTOLOGIC DIRECT SUPPORT	1,460	1,460	1,460		1,460
0204575N	174	ELECTRONIC WARFARE (EW) READINESS SUPPORT	12,139	12,139	12,139		12,139

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(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0205601N	175	HARM IMPROVEMENT	163,371	165,371	163,371	1,100	164,471
		Embedded National Tactical Receiver - AARGM		[2,000]		[1,100]	
0205604N	176	TACTICAL DATA LINKS	18,977	18,977	18,977		18,977
0205620N	177	SURFACE ASW COMBAT SYSTEM INTEGRATION	10,612	10,612	10,612		10,612
0205632N	178	MK-48 ADCAP	21,620	21,620	21,620		21,620
0205633N	179	AVIATION IMPROVEMENTS	62,635	67,635	66,635	3,700	66,335
		Corrosion inhibiting coatings			[4,000]	[1,400]	
		Nano-composite hard-coat for aircraft canopies (H. Amdt 10)		[5,000]		[2,300]	
0205658N	180	NAVY SCIENCE ASSISTANCE PROGRAM	3,821	3,821	3,821		3,821
0205675N	181	OPERATIONAL NUCLEAR POWER SYSTEMS	64,554	64,554	64,554		64,554
0206313M	182	MARINE CORPS COMMUNICATIONS SYSTEMS	268,638	268,638	278,438	-6,000	262,638
		Communication emitter sensing and attacking system			[3,800]		
		Infrastructure system security engineering development (S. Amdt 3228)			[3,000]	[1,500]	
		Advanced ferrite antenna (S. Amdt 3179)			[3,000]	[2,100]	
		Coastal battlefield reconnaissance and analysis				[-9,600]	
0206623M	183	MARINE CORPS GROUND COMBAT/SUPPORTING ARMS SYSTEMS	44,828	44,828	44,828		44,828
0206624M	184	MARINE CORPS COMBAT SERVICES SUPPORT	10,731	10,731	12,731	1,000	11,731
		Battlefield Management System			[2,000]	[1,000]	
0207161N	185	TACTICAL AIM MISSILES	4,061	4,061	4,061		4,061
0207163N	186	ADVANCED MEDIUM RANGE AIR-TO-AIR MISSILE (AMRAAM)	9,085	9,085	9,085		9,085
0301303N	187	MARITIME INTELLIGENCE	[ ]				
0301323N	188	COLLECTION MANAGEMENT	[ ]				
0301327N	189	TECHNICAL RECONNAISANCE AND SURVEILLANCE	[ ]				

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0303109N	190	SATELLITE COMMUNICATIONS (SPACE)	573,092	581,092	573,092	-105,100	467,992
		Joint Integrated Systems Technology for Digital Networking		[8,000]		[4,900]	
		MOUS - fund to CAIG estimate				[-110,000]	
0303140N	191	INFORMATION SYSTEMS SECURITY PROGRAM	18,676	36,376	18,676		18,676
		Common Submarine Radio Room		[17,700]			
0304111N	192	SPACE ACTIVITIES	[ ]				
0305149N	193	COBRA JUDY	80,694	80,694	93,694	13,000	93,694
		Cobra Judy replacement			[13,000]	[13,000]	
0305160N	194	NAVY METEOROLOGICAL AND OCEAN SENSORS-SPACE (METOC)	4,215	4,215	4,215		4,215
0305188N	195	JOINT C4ISR BATTLE CENTER (JBC)	43,569	43,569	43,569		43,569
0305192N	196	JOINT MILITARY INTELLIGENCE PROGRAMS	4,746	4,746	4,746		4,746
0305204N	197	TACTICAL UNMANNED AERIAL VEHICLES (JMIP)	53,439	53,439	53,439		53,439
0305205N	198	ENDURANCE UNMANNED AERIAL VEHICLES	113,438	113,438	113,438	-15,000	98,438
		Broad Area Maritime Development - schedule slip due to competition				[-15,000]	
0305206N	199	AIRBORNE RECONNAISSANCE SYSTEMS	10,191	13,191	10,191	1,000	11,191
		Passive Collision Avoidance and Reconnaissance		[3,000]		[1,000]	
0305207N	200	MANNED RECONNAISSANCE SYSTEMS (JMIP)	20,203	20,203	20,203		20,203
0305208N	201	DISTRIBUTED COMMON GROUND/SURFACE SYSTEMS	3,635	9,635	3,635	2,800	6,435
		Enterprise Targeting and Strike System		[6,000]		[2,800]	
0305927N	202	NAVAL SPACE SURVEILLANCE					
0307207N	203	AERIAL COMMON SENSOR (ACS) (JMIP)	24,909	24,909	24,909		24,909
0308601N	204	MODELING AND SIMULATION SUPPORT	7,262	7,262	16,262	6,000	13,262
		Modeling and simulation research			[9,000]	[6,000]	

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0702207N	205	DEPOT MAINTENANCE (NON-IF)					
0708011N	206	INDUSTRIAL PREPAREDNESS	56,565	56,565	56,565		56,565
0708730N	207	MARITIME TECHNOLOGY (MARITECH)	10,265	10,265	10,265		10,265
XXXXXXXX	999	CLASSIFIED PROGRAMS	1,003,485	1,003,485	1,003,485		1,003,485
		Financial information systems			-15,200		
		Total, RDT&E Navy	**16,346,391**	**16,052,841**	**16,690,391**	**-145,800**	**16,200,591**

Littoral Combat Ship

The budget request included $352.1 million in PE 63581N for the Littoral Combat Ship (LCS), including $244.4 million for LCS development and $107.7 million for construction.

The House bill would authorize $244.4 million in PE 63581N for LCS development, a decrease of $107.7 million, delaying construction of the first LCS until fiscal year 2006.

The Senate amendment would authorize the budget request.

The conferees agree to authorize $350.1 million, a decrease of $2.0 million for phase one design of the Flight One LCS design.

The conferees note the concerns expressed in the House report accompanying H.R. 4200 (H. Rept. 108-491) regarding whether the LCS program schedule provides sufficient time and opportunities for experimentation and evaluation of the operational concepts for LCS in Flight Zero before committing to major serial production of the ship with Flight One. The program plan provided with the fiscal year 2005 budget request had construction starting on Flight One ships before delivery and evaluation of Flight Zero ships. This concurrency could require expensive retrofit to Flight One ships after lessons have been learned from operating Flight Zero ships.

The conferees are concerned with a potential industrial impact induced by making fiscal year 2006 a gap year in LCS production, which could lead to increased ship costs or technology insertion challenges. However, the conferees agree with the rationale of section 8092 of the Department of Defense Appropriations Act for Fiscal Year 2005 (section A of Public Law 108-287), which directs that no funds be obligated for construction of a third vessel in the fiscal year 2006 budget request. The conferees expect that the Navy will include a plan that reduces the risk of concurrency in the LCS justification submitted as part of the fiscal year 2006 budget request.

Land attack technology

The budget request included $82.0 million in PE 63795N for land attack technology. This included $28.9 million for the affordable weapons system (AWS) and $11.3 million for the continued development of the extended range guided munition (ERGM).

The House bill would authorize $105.0 million in PE 63795N for land attack technology. This included $51.9 million for AWS, an increase of $23.0 million, and would authorize the budget request for ERGM.

The Senate amendment would authorize $53.1 million in PE 63795N for land attack technology. This would authorize no funding for AWS, and would authorize the budget request for ERGM.

The conferees agree to authorize $95.2 million in PE 63795N for land attack technology. This includes an authorization of $48.9 million for AWS, an increase of $20.0 million. This also includes an authorization of $4.5 million for ERGM, a decrease of $6.8 million.

The conferees are aware of past testing problems in the ERGM program, but have supported fielding of ERGM capability as soon as possible. The conferees are also aware that the Navy has issued a notice to industry stating that it will issue a solicitation for a capability to mirror that of ERGM. While supportive of this risk-reduction strategy, the conferees also expect that funds appropriated for the ERGM program be applied to continued developmental testing of ERGM.

Open architecture

The budget request included $146.5 million in PE 64307N for surface combatant combat system engineering and $48.2 million in PE 64755N for ship self-defense (detect and control).

The House bill would authorize an increase of $21.8 million in PE 64307N for open architecture systems and would also authorize an increase of $21.8 million in PE 64755N for open architecture warfare systems.

The Senate amendment would authorize the budget request.

The conferees agree to authorize an increase of $4.3 million in PE 64307N and an increase of $3.4 million in PE 64755N for open architecture warfare systems.

The conferees concur with the Navy's decision to move to open architecture (OA)-based warfare systems, and recognize OA as an enabling step to modernizing warfighting capabilities at an affordable cost. Similarly, given the rapid rate that commercial, off-the-shelf computing equipment and software is becoming obsolescent, delaying the implementation of OA will result in military systems falling further and further behind the commercial sector's capability. While an OA approach to development and fielding requires increased cooperation at all levels, it also creates interdependencies among programs as a result of design and development components that will be used in multiple systems. With this approach, the impact of a delay or funding cut in a program implementing OA could have impact on other programs.

The Navy identified the implementation of OA into Navy surface forces as its highest unfunded priority in fiscal year 2005. Under the Navy's plan, modernization of existing forces (cruiser modernization and DDG modernization) and recapitalization of the surface fleet (DD(X), CVN 21, and the Littoral Combat Ship) are all inextricably linked to the overall execution of the OA initiative. The conferees believe that there could be serious, cascading effects on these programs unless the Navy ensures that the OA initiative is fully funded, and urge the Navy to pursue any shortfalls through supplemental submissions for fiscal year 2005. The conferees also believe the Navy should consider grouping various OA efforts in a separate program element, so that: (1) the Navy can coordinate its efforts more efficiently; and (2) difficulties with individual platform programs do not jeopardize the entire effort.

AIR FORCE

Research, Development, Test and Evaluation, Air Force Overview

The budget request for fiscal year 2005 included an authorization of $21,114.7 million in Research Development, Test and Evaluation, Air Force for the Department of Defense.

The House bill would authorize $21,533.0 million.

The Senate amendment would authorize $21,264.3 million.

The conferees recommend an authorization of $20,432.9 million. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

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(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
		RESEARCH, DEVELOPMENT, TEST & EVALUATION, AIR FORCE					
0601102F	1	DEFENSE RESEARCH SCIENCES	217,304	219,304	227,304	7,800	225,104
		Information assurance research			[3,000]	[2,500]	
		Logistics research			[2,000]		
		Advanced research in quantum information technology			[2,000]	[1,000]	
		Nanomaterials research			[3,000]	[2,300]	
		Chabot Space and Science Center		[2,000]		[2,000]	
0601103F	2	UNIVERSITY RESEARCH INITIATIVES	115,865	115,865	132,465	6,700	122,565
		Photonics research			[1,600]	[1,600]	
		Nano- and micro-electromechanical research			[2,500]		
		Information security research			[2,500]	[1,600]	
		SMART Defense scholarship pilot program			[10,000]	[2,500]	
		Logistics research				[1,000]	
0601108F	3	HIGH ENERGY LASER RESEARCH INITIATIVES	12,331	12,331	12,331		12,331
0602102F	4	MATERIALS	73,660	73,660	77,060	2,900	76,560
		Composite materials research for unmanned structures			[1,500]	[1,000]	
		Blast resistant barriers			[1,900]	[1,900]	
0602201F	5	AEROSPACE VEHICLE TECHNOLOGIES	74,679	74,679	74,679		74,679
0602202F	6	HUMAN EFFECTIVENESS APPLIED RESEARCH	71,483	74,483	76,483	2,600	74,083
		Battlefield air operations technology			[5,000]	[1,100]	
		Improved Performance Research Integration Tool		[3,000]		[1,500]	

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(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0602203F	7	AEROSPACE PROPULSION	92,650	108,150	102,650	7,800	100,450
		Hypersonics research (X-43C)			[10,000]		
		Integrated Cooling and Power System Magnetic Bearing		[4,000]		[2,800]	
		Fuel Cell Technology-Proton Exchange Membrane		[2,000]			
		Advanced Vehicle and Propulsion Center		[8,500]		[4,000]	
		Engineering Research Lab Equipment Upgrade		[1,000]		[1,000]	
0602204F	8	AEROSPACE SENSORS	78,804	78,804	83,804	5,000	83,804
		Super-resolution Sensor System			[3,000]	[2,000]	
		Three-dimensional microelectronics development			[2,000]	[2,000]	
		Compact Optical Receiver for Smart Loitering Standoff Munitions (non-add)		[2,000]			
		Compact Optical Receiver for Smart Loitering Standoff Munitions				[1,000]	
0602500F	9	MULTI-DISCIPLINARY SPACE TECHNOLOGY	84,581	84,581	84,581		84,581
0602601F	10	SPACE TECHNOLOGY	88,909	96,909	99,909	1,500	90,409
		Elastic memory composite research			[3,000]	[2,000]	
		Foldable space structures			[3,000]	[1,500]	
		Hyperspectral technology			[5,000]		
		Integrated Control for Autonomous Space Systems		[4,000]		[2,000]	
		Satellite Tool Kit Technology Integration		[4,000]			
		Spacecraft vehicles technology, deployable structures for SBR				[-4,000]	
0602602F	11	CONVENTIONAL MUNITIONS	52,251	52,251	52,251		52,251
0602605F	12	DIRECTED ENERGY TECHNOLOGY	36,532	46,532	36,532	5,000	41,532
		Ultra Short Pulse Laser Technology		[10,000]		[5,000]	

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0602702F	13	COMMAND CONTROL AND COMMUNICATIONS	82,147	86,647	83,147	1,000	83,147
		Joint battlespace infosphere			[1,000]	[1,000]	
		Collaborative Information and Knowledge Management		[4,500]			
0602805F	14	DUAL USE SCIENCE AND TECHNOLOGY PROGRAM	5,151	5,151	5,151		5,151
0602890F	15	HIGH ENERGY LASER RESEARCH	45,333	45,333	45,333		45,333
0603112F	16	ADVANCED MATERIALS FOR WEAPON SYSTEMS	34,284	48,284	41,284	7,500	41,784
		Metals Affordability Initiative		[14,000]	[7,000]	[7,500]	
0603203F	17	ADVANCED AEROSPACE SENSORS	30,634	30,634	34,634	2,550	33,184
		Advanced sensors			[4,000]	[2,550]	
0603205F	18	FLIGHT VEHICLE TECHNOLOGY					
0603211F	19	AEROSPACE TECHNOLOGY DEV/DEMO	29,145	29,145	31,145		29,145
		Photonics technology			[2,000]		
0603216F	20	AEROSPACE PROPULSION AND POWER TECHNOLOGY	79,914	79,914	87,914	5,900	85,814
		Advanced turbine engine gas generators			[5,000]	[3,500]	
		Turbine engine program			[3,000]	[2,400]	
0603231F	21	CREW SYSTEMS AND PERSONNEL PROTECTION TECHNOLOGY	32,794	32,794	27,794		32,794
		Decision support and cognitive systems			[-5,000]		
0603270F	22	ELECTRONIC COMBAT TECHNOLOGY	28,282	40,282	28,282	5,600	33,882
		Day-Night Electro Optical Tracker Countermeasures		[6,000]			
		Light Weight Modular Support Jammer		[6,000]		[5,600]	
0603311F	23	BALLISTIC MISSILE TECHNOLOGY					
0603333F	24	UNMANNED AIR VEHICLE DEV/DEMO					

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0603401F	25	ADVANCED SPACECRAFT TECHNOLOGY	60,124	74,124	87,124	17,000	77,124
		AC coupled interconnect			[5,000]	[1,000]	
		Hardening technologies for satellites			[7,000]	[3,500]	
		Thin film amorphous solar arrays			[7,000]	[7,000]	
		Boron energy cell technology			[5,000]	[1,000]	
		Intelligent free space optical satellite communications node		[3,000]	[3,000]	[1,500]	
		Satellite Simulation Toolkit		[5,000]			
		Streaker Small Launch Vehicle		[6,000]		[3,000]	
0603444F	26	MAUI SPACE SURVEILLANCE SYSTEM (MSSS)	6,306	16,306	16,306	8,500	14,806
		High accuracy network determination system (HANDS)		[10,000]	[10,000]	[8,500]	
0603500F	27	MULTI-DISCIPLINARY ADVANCED DEVELOPMENT SPACE TECHNOLOGY	51,114	58,114	56,114		51,114
		Laser threat warning attack reporting for space			[5,000]		
		Upper Stage Engine Technology		[7,000]			
0603601F	28	CONVENTIONAL WEAPONS TECHNOLOGY	22,398	31,398	25,398	3,000	25,398
		Low Cost Autonomous Attack System			[3,000]		
		BLU-109H		[9,000]		[3,000]	
0603605F	29	ADVANCED WEAPONS TECHNOLOGY	31,103	31,103	31,103		31,103
0603723F	30	ENVIRONMENTAL ENGINEERING TECHNOLOGY					
0603789F	31	C3I ADVANCED DEVELOPMENT	28,524	33,524	28,524	1,500	30,024
		Identification of Time Critical Targets		[5,000]		[1,500]	
0603801F	32	SPECIAL PROGRAMS	320,503	320,503	320,503		320,503
0603850F	33	INTEGRATED BROADCAST SERVICE	2,294	2,294	2,294		2,294
0603924F	34	HIGH ENERGY LASER ADVANCED TECHNOLOGY PROGRAM	8,547	8,547	8,547		8,547

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0207423F	35	ADVANCED COMMUNICATIONS SYSTEMS	12,051	12,051	12,051		12,051
0401840F	36	AMC COMMAND AND CONTROL SYSTEM	6,038	6,038	6,038		6,038
0804757F	37	JOINT NATIONAL TRAINING CENTER	2,939	2,939	2,939		2,939
0603260F	38	INTELLIGENCE ADVANCED DEVELOPMENT	4,612	4,612	4,612		4,612
0603287F	39	PHYSICAL SECURITY EQUIPMENT	22,640	35,640	22,640	2,000	24,640
		Xray Base Protection System		[8,000]		[2,000]	
		Quick Reaction Perimeter Intrusion Detection		[5,000]			
0603421F	40	NAVSTAR GLOBAL POSITIONING SYSTEM III	40,568	40,568	40,568		40,568
0603430F	41	ADVANCED EHF MILSATCOM (SPACE)	612,049	612,049	612,049		612,049
0603432F	42	POLAR MILSATCOM (SPACE)	960	960	960		960
0603434F	43	NATIONAL POLAR-ORBITING OPERATIONAL ENVIRONMENTAL SATELLIT					
0603438F	44	SPACE CONTROL TECHNOLOGY	15,046	15,046	15,046		15,046
0603742F	45	COMBAT IDENTIFICATION TECHNOLOGY	19,582	19,582	19,582		19,582
0603790F	46	NATO RESEARCH AND DEVELOPMENT	3,930	3,930	3,930		3,930
0603791F	47	INTERNATIONAL SPACE COOPERATIVE R&D	552	552	552		552
0603845F	48	TRANSFORMATIONAL SATCOM (TSAT)	774,836	674,836	674,836	-300,000	474,836
		TSAT program risk		[-100,000]	[-100,000]	[-300,000]	
0603850F	49	INTEGRATED BROADCAST SERVICE	23,927	23,927	23,927		23,927
0603851F	50	INTERCONTINENTAL BALLISTIC MISSILE	72,503	72,503	72,503	-2,000	70,503
		Long range planning				[-2,000]	
0603854F	51	WIDEBAND GAPFILLER SYSTEM RDT&E (SPACE)	73,499	88,499	73,499		73,499
		Program increase		[15,000]			
0603856F	52	AIR FORCE/NATIONAL PROGRAM COOPERATION (AFNPC)					

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(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0603858F	53	SPACE-BASED RADAR	327,732	327,732	327,732	-252,732	75,000
		Technological risk reduction				[-252,732]	
0603859F	54	POLLUTION PREVENTION	2,692	2,692	2,692		2,692
0603860F	55	JOINT PRECISION APPROACH AND LANDING SYSTEMS	18,385	18,385	18,385		18,385
0604015F	56	NEXT GENERATION BOMBER		100,000		30,000	30,000
		Program increase		[100,000]		[30,000]	
0604327F	57	HARD AND DEEPLY BURIED TARGET DEFEAT SYSTEM (HDBTDS) PROGRA	6,383	6,383	6,383		6,383
0604731F	58	UNMANNED COMBAT AIR VEHICLE (UCAV)					
0604855F	59	OPERATIONALLY RESPONSIVE LAUNCH	35,362	45,362	42,862	-2,000	33,362
		Operationally responsive launch		[6,000]	[7,500]	[1,000]	
		Blue MAJIC		[4,000]		[2,000]	
		Program reduction				[-5,000]	
0604856F	60	COMMON AERO VEHICLE (CAV)	21,610	33,610	21,610	-5,000	16,610
		Program increase		[12,000]			
		Program reduction				[-5,000]	
0305178F	61	NATIONAL POLAR-ORBITING OPERATIONAL ENVIRONMENTAL SATELLIT	307,668	307,668	307,668		307,668
0603840F	62	GLOBAL BROADCAST SERVICE (GBS)	33,447	33,447	33,447	-7,000	26,447
		Reduce forward financing				[-7,000]	
0604012F	63	JOINT HELMET MOUNTED CUEING SYSTEM (JHMCS)	2,867	2,867	2,867		2,867
0604222F	64	NUCLEAR WEAPONS SUPPORT	13,301	13,301	13,301		13,301
0604226F	65	B-1B	59,462	59,462	79,462	20,000	79,462
		B-1 data link and FLIR upgrades			[20,000]	[20,000]	
0604233F	66	SPECIALIZED UNDERGRADUATE FLIGHT TRAINING	3,359	3,359	3,359		3,359

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0604239F	67	F-22	210,000	210,000	210,000		210,000
0604240F	68	B-2 ADVANCED TECHNOLOGY BOMBER	245,049	343,049	245,049	30,000	275,049
		Global Strike		[98,000]		[30,000]	
0604270F	69	ELECTRONIC WARFARE DEVELOPMENT	138,393	138,393	153,093	-32,000	106,393
		PLAID			[14,700]	[4,000]	
		AEA technology development				[-36,000]	
0604280F	70	JOINT TACTICAL RADIO	49,856	49,856	49,856	-10,000	39,856
		SDD contract award delay				[-10,000]	
0604287F	71	PHYSICAL SECURITY EQUIPMENT	9,744	9,744	9,744		9,744
0604329F	72	SMALL DIAMETER BOMB (SDB)	76,489	76,489	76,489		76,489
0604421F	73	COUNTERSPACE SYSTEMS	75,863	75,863	80,863	-49,500	26,363
		Space control test capabilities			[5,000]	[3,500]	
		Counter Surveillance Reconnaissance Sysytem				[-53,000]	
0604435F	74	ADVANCED POLAR MILSATCOM					
0604441F	75	SPACE BASED INFRARED SYSTEM (SBIRS) HIGH EMD	508,448	543,448	543,448	35,000	543,448
		SBIRS development		[35,000]	[35,000]	[35,000]	
0604479F	76	MILSTAR LDR/MDR SATELLITE COMMUNICATIONS (SPACE)	1,380	1,380	1,380		1,380
0604600F	77	MUNITIONS DISPENSER DEVELOPMENT	28,048	28,048	28,048		28,048
0604602F	78	ARMAMENT/ORDNANCE DEVELOPMENT	8,353	8,353	8,353		8,353
0604604F	79	SUBMUNITIONS	4,824	4,824	4,824		4,824
0604617F	80	AGILE COMBAT SUPPORT	10,053	10,053	10,053		10,053
0604618F	81	JOINT DIRECT ATTACK MUNITION					
0604706F	82	LIFE SUPPORT SYSTEMS	6,630	6,630	6,630		6,630

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0604731F	83	UNMANNED COMBAT AIR VEHICLE (UCAV)					
0604735F	84	COMBAT TRAINING RANGES	18,714	18,714	18,714		18,714
0604740F	85	INTEGRATED COMMAND & CONTROL APPLICATIONS (IC2A)	258	6,258	258	5,600	5,858
		Distributed Mission Interoperability Tool Kit		[6,000]		[5,600]	
0604750F	86	INTELLIGENCE EQUIPMENT	1,349	1,349	1,349		1,349
0604754F	87	TACTICAL DATA LINK INFRASTRUCTURE					
0604762F	88	COMMON LOW OBSERVABLES VERIFICATION SYSTEM (CLOVERS)	10,303	10,303	10,303		10,303
0604800F	89	JOINT STRIKE FIGHTER (JSF)	2,307,420	2,307,420	2,307,420	-134,000	2,173,420
		F135 engine development				[-49,000]	
		Reprogramming activity				[-25,000]	
		Manufacturing, tooling and materials				[-60,000]	
0604851F	90	INTERCONTINENTAL BALLISTIC MISSILE	91,687	91,687	91,687		91,687
0604853F	91	EVOLVED EXPENDABLE LAUNCH VEHICLE PROGRAM (SPACE)	27,000	27,000	27,000		27,000
0605011F	92	RDT&E FOR AGING AIRCRAFT	15,665	19,665	15,665	3,000	18,665
		Enterprise Availability and Cost Optimization System		[2,000]		[2,000]	
		Program increase		[2,000]		[1,000]	
0207131F	93	A-10 SQUADRONS					
0207256F	94	UNMANNED COMBAT AIR VEHICLE JOINT PROGRAM OFFICE	2,911	2,911	2,911		2,911
0207434F	95	LINK-16 SUPPORT AND SUSTAINMENT	141,012	141,012	141,012	-10,800	130,212
		Data Links Facility - fiscal year 2006 contract award				[-10,800]	
0207443F	96	FAMILY OF INTEROPERABLE OPERATIONAL PICTURES (FIOP)	44,947	49,947	44,947	-200	44,747
		Command-and-control service level management (H. Amdt 10)		[5,000]		[3,800]	
		Program growth				[-4,000]	

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(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0207450F	97	MULTI-SENSOR C2 AIRCRAFT (MC2A)	538,860	538,860	498,860	-40,000	498,860
		Reduction - MC2A (late delivery of test bed aircraft)			[-40,000]	[-40,000]	
0207701F	98	FULL COMBAT MISSION TRAINING	5,894	5,894	5,894		5,894
0305176F	99	COMBAT SURVIVOR EVADER LOCATOR					
0401318F	100	CV-22	16,439	16,439	16,439		16,439
XXXXXXX	100a	Tanker Replacement Transfer Fund		80,000		80,000	80,000
0604256F	101	THREAT SIMULATOR DEVELOPMENT	34,517	34,517	34,517		34,517
0604759F	102	MAJOR T&E INVESTMENT	58,933	58,933	58,933		58,933
0605101F	103	RAND PROJECT AIR FORCE	24,970	24,970	24,970		24,970
0605306F	104	RANCH HAND II EPIDEMIOLOGY STUDY	4,813	4,813	4,813		4,813
0605502F	105	SMALL BUSINESS INNOVATION RESEARCH					
0605712F	106	INITIAL OPERATIONAL TEST & EVALUATION	28,839	28,839	28,839		28,839
0605807F	107	TEST AND EVALUATION SUPPORT	356,266	356,266	356,266		356,266
0605860F	108	ROCKET SYSTEMS LAUNCH PROGRAM (SPACE)	7,984	7,984	30,484	15,000	22,984
		Ballistic missile range safety technology			[15,000]	[15,000]	
		Microsatellite launch capability			[7,500]		
0605864F	109	SPACE TEST PROGRAM (STP)	44,521	44,521	44,521		44,521
0605976F	110	FACILITIES RESTORATION AND MODERNIZATION - TEST AND EVALUATIC	58,936	58,936	58,936		58,936
0605978F	111	FACILITIES SUSTAINMENT - TEST AND EVALUATION SUPPORT	23,067	23,067	23,067		23,067
0804731F	112	GENERAL SKILL TRAINING	323	323	323		323
0909900F	113	FINANCING FOR EXPIRED ACCOUNT ADJUSTMENTS					
0909980F	114	JUDGMENT FUND REIMBURSEMENT	100,000	100,000	100,000		100,000
1001004F	115	INTERNATIONAL ACTIVITIES	3,945	3,945	3,945		3,945

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(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0605024F	116	ANTI-TAMPER TECHNOLOGY EXECUTIVE AGENCY	7,858	7,858	7,858		7,858
0101113F	117	B-52 SQUADRONS	25,766	25,766	25,766		25,766
0101120F	118	ADVANCED CRUISE MISSILE	7,740	7,740	7,740		7,740
0101122F	119	AIR-LAUNCHED CRUISE MISSILE (ALCM)	11,837	11,837	11,837		11,837
0101313F	120	STRAT WAR PLANNING SYSTEM - USSTRATCOM	23,391	23,391	23,391	-5,000	18,391
		ISPAN contractor costs				[-5,000]	
0101314F	121	NIGHT FIST - USSTRATCOM	4,987	4,987	4,987		4,987
0101815F	122	ADVANCED STRATEGIC PROGRAMS	8,393	8,393	8,393		8,393
0102326F	123	REGION/SECTOR OPERATION CONTROL CENTER MODERNIZATION PROG	19,047	19,047	19,047		19,047
0203761F	124	WARFIGHTER RAPID ACQUISITION PROCESS (WRAP) RAPID TRANSITION	24,935	24,935	24,935		24,935
0207028F	125	JOINT EXPEDITIONARY FORCE EXPERIMENT					
0207131F	126	A-10 SQUADRONS	22,590	22,590	32,590	5,000	27,590
		A-10 propulsion modernization			[10,000]	[5,000]	
0207133F	127	F-16 SQUADRONS	99,606	99,606	99,606		99,606
0207134F	128	F-15E SQUADRONS	115,246	132,446	132,446	14,600	129,846
		Active Electronically Scanned Array Radar		[17,200]	[17,200]	[14,600]	
0207136F	129	MANNED DESTRUCTIVE SUPPRESSION	16,976	16,976	16,976		16,976
0207138F	130	F/A-22 SQUADRONS	354,528	354,528	354,528	-10,000	344,528
		Execution				[-10,000]	
0207141F	131	F-117A SQUADRONS	29,661	29,661	29,661		29,661
0207161F	132	TACTICAL AIM MISSILES	5,558	5,558	5,558		5,558
0207163F	133	ADVANCED MEDIUM RANGE AIR-TO-AIR MISSILE (AMRAAM)	33,266	33,266	33,266		33,266
0207224F	134	COMBAT RESCUE AND RECOVERY	12,342	12,342	12,342		12,342

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(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0207247F	135	AF TENCAP	10,673	10,673	15,673	3,300	13,973
		GPS jammer detection and locator system			[5,000]	[3,300]	
0207248F	136	SPECIAL EVALUATION PROGRAM	199,040	199,040	199,040		199,040
0207253F	137	COMPASS CALL	3,990	3,990	3,990		3,990
0207268F	138	AIRCRAFT ENGINE COMPONENT IMPROVEMENT PROGRAM	165,609	165,609	165,609		165,609
0207277F	139	CSAF INNOVATION PROGRAM	1,879	1,879	1,879		1,879
0207325F	140	JOINT AIR-TO-SURFACE STANDOFF MISSILE (JASSM)	45,777	45,777	45,777		45,777
0207410F	141	AIR & SPACE OPERATIONS CENTER (AOC)	27,695	27,695	27,695		27,695
0207412F	142	CONTROL AND REPORTING CENTER (CRC)	11,634	11,634	11,634		11,634
0207417F	143	AIRBORNE WARNING AND CONTROL SYSTEM (AWACS)	288,787	288,787	288,787		288,787
0207423F	144	ADVANCED COMMUNICATIONS SYSTEMS	20,066	20,066	20,066		20,066
0207424F	145	EVALUATION AND ANALYSIS PROGRAM					
0207433F	146	ADVANCED PROGRAM TECHNOLOGY	249,391	249,391	249,391		249,391
0207438F	147	THEATER BATTLE MANAGEMENT (TBM) C4I	37,210	37,210	37,210		37,210
0207445F	148	FIGHTER TACTICAL DATA LINK	50,976	50,976	50,976		50,976
0207446F	149	BOMBER TACTICAL DATA LINK	120,256	120,256	120,256	-39,000	81,256
		B-52 program growth				[-39,000]	
0207448F	150	C2ISR TACTICAL DATA LINK	25,441	25,441	25,441		25,441
0207449F	151	COMMAND AND CONTROL (C2) CONSTELLATION	44,035	44,035	44,035		44,035
0207581F	152	JOINT SURVEILLANCE/TARGET ATTACK RADAR SYSTEM (JSTARS)	89,247	100,247	89,247		89,247
		Blue Force Combat ID Upgrades		[11,000]			
0207590F	153	SEEK EAGLE	23,159	23,159	23,159		23,159

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(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0207591F	154	ADVANCED PROGRAM EVALUATION	474,734	474,734	474,734	-40,000	434,734
		Classified program				[-40,000]	
0207601F	155	USAF MODELING AND SIMULATION	18,693	18,693	18,693		18,693
0207605F	156	WARGAMING AND SIMULATION CENTERS	6,377	6,377	6,377		6,377
0208006F	157	MISSION PLANNING SYSTEMS	136,701	136,701	136,701	-30,000	106,701
		Program growth				[-30,000]	
0208021F	158	INFORMATION WARFARE SUPPORT	7,230	7,230	7,230		7,230
0208160F	159	TECHNICAL EVALUATION SYSTEM					
0208161F	160	SPECIAL EVALUATION SYSTEM					
0301310F	161	NATIONAL AIR INTELLIGENCE CENTER	[ ]				
0301314F	162	COBRA BALL	[ ]				
0301315F	163	MISSILE AND SPACE TECHNICAL COLLECTION	[ ]				
0301324F	164	FOREST GREEN	[ ]				
0301398F	165	MANAGEMENT HEADQUARTERS GDIP	[ ]				
0302015F	166	E-4B NATIONAL AIRBORNE OPERATIONS CENTER (NAOC)	11,172	11,172	11,172		11,172
0303110F	167	DEFENSE SATELLITE COMMUNICATIONS SYSTEM (SPACE)					
0303131F	168	MINIMUM ESSENTIAL EMERGENCY COMMUNICATIONS NETWORK (MEEC	33,183	33,183	33,183		33,183
0303140F	169	INFORMATION SYSTEMS SECURITY PROGRAM	79,625	87,625	87,625	6,500	86,125
		Cyber security research			[5,000]	[2,500]	
		Info systems security research			[3,000]	[2,000]	
		Worldwide Infrastructure Security Environment		[8,000]		[2,000]	
0303141F	170	GLOBAL COMBAT SUPPORT SYSTEM	18,637	18,637	18,637		18,637

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(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0303150F	171	GLOBAL COMMAND AND CONTROL SYSTEM	3,611	5,611	11,611	1,800	5,411
		Global awareness presentation system			[8,000]		
		Applied Research in Computing Enterprise Services		[2,000]		[1,800]	
0303401F	172	COMMUNICATIONS SECURITY (COMSEC)					
0303601F	173	MILSATCOM TERMINALS	272,149	272,149	272,149		272,149
0304111F	174	SPECIAL ACTIVITIES	[ ]				
0304311F	175	SELECTED ACTIVITIES	[ ]				
0305099F	176	GLOBAL AIR TRAFFIC MANAGEMENT (GATM)	7,291	7,291	7,291		7,291
0305110F	177	SATELLITE CONTROL NETWORK (SPACE)	17,833	17,833	20,833	2,500	20,333
		Civil reserve space service			[3,000]	[2,500]	
0305111F	178	WEATHER SERVICE	16,526	16,526	16,526		16,526
0305114F	179	AIR TRAFFIC CONTROL, APPROACH, AND LANDING SYSTEM (ATCALS)	7,371	7,371	7,371		7,371
0305116F	180	AERIAL TARGETS	5,178	5,178	5,178		5,178
0305128F	181	SECURITY AND INVESTIGATIVE ACTIVITIES	484	484	484		484
0305142F	182	APPLIED TECHNOLOGY AND INTEGRATION	[ ]				
0305148F	183	AIR FORCE TACTICAL MEASUREMENT AND SIGNATURE INTELLIGENCE (!	7,905	7,905	7,905		7,905
0305159F	184	DEFENSE RECONNAISSANCE SUPPORT ACTIVITIES (SPACE)	219,345	219,345	219,345	-30,000	189,345
		Classified adjustment				[-30,000]	
0305160F	185	DEFENSE METEOROLOGICAL SATELLITE PROGRAM (SPACE)					
0305164F	186	NAVSTAR GLOBAL POSITIONING SYSTEM (USER EQUIPMENT) (SPACE)	104,114	104,114	104,114		104,114
0305165F	187	NAVSTAR GLOBAL POSITIONING SYSTEM (SPACE AND CONTROL SEGME!	148,344	148,344	148,344		148,344
0305172F	188	COMBINED ADVANCED APPLICATIONS	[ ]				
0305174F	189	SPACE WARFARE CENTER	411	411	411		411

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0305182F	190	SPACELIFT RANGE SYSTEM (SPACE)	47,253	47,253	47,253		47,253
0305191F	191	PERSONNEL SECURITY INVESTIGATIONS PROGRAM - AIR FORCE	118,787	118,787	118,787		118,787
0305193F	192	INTELLIGENCE SUPPORT TO INFORMATION OPERATIONS (IO)	1,097	1,097	1,097		1,097
0305202F	193	DRAGON U-2 (JMIP)	87,745	81,445	87,745		87,745
		ASIP Sensor Development		[-6,300]			
0305205F	194	ENDURANCE UNMANNED AERIAL VEHICLES		-2,000			
		Network Centric Collaborative Targeting		[-2,000]			
0305206F	195	AIRBORNE RECONNAISSANCE SYSTEMS	55,464	55,464	55,464		55,464
0305207F	196	MANNED RECONNAISSANCE SYSTEMS	13,283	24,783	13,283	3,200	16,483
		Geo Processor		[4,000]			
		COBRA BALL		[7,500]		[3,200]	
0305208F	197	DISTRIBUTED COMMON GROUND/SURFACE SYSTEMS	21,232	21,232	21,232		21,232
0305219F	198	PREDATOR UAV (JMIP)	81,346	81,346	81,346		81,346
0305220F	199	GLOBAL HAWK UAV (JMIP)	336,159	318,159	336,159		336,159
		Program decrease		[-18,000]			
0305887F	200	INTELLIGENCE SUPPORT TO INFORMATION WARFARE	963	963	963		963
		Program decrease					
0305906F	201	NCMC - TW/AA SYSTEM	64,822	64,822	64,822		64,822
0305910F	202	SPACETRACK (SPACE)	161,838	170,838	172,538	-21,600	140,238
		Air Force Space Surveillance System		[9,000]	[10,700]	[5,400]	
		Block 10 contract savings				[-7,000]	
		SBSS delay				[-20,000]	
0305911F	203	DEFENSE SUPPORT PROGRAM (SPACE)					

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0305913F	204	NUDET DETECTION SYSTEM (SPACE)	35,398	35,398	35,398		35,398
0305917F	205	SPACE ARCHITECT	12,907	12,907	12,907		12,907
0308601F	206	MODELING AND SIMULATION SUPPORT					
0308699F	207	SHARED EARLY WARNING (SEW)	3,345	3,345	3,345		3,345
0401115F	208	C-130 AIRLIFT SQUADRON	150,242	153,242	150,242	2,000	152,242
		Realtime Weight and Balance Measurement		[3,000]		[2,000]	
0401119F	209	C-5 AIRLIFT SQUADRONS (IF)	332,982	332,982	332,982		332,982
0401130F	210	C-17 AIRCRAFT (IF)	199,692	199,692	199,692		199,692
0401132F	211	C-130J PROGRAM	36,305	36,305	36,305		36,305
0401134F	212	LARGE AIRCRAFT IR COUNTERMEASURES (LAIRCM)	73,684	73,684	73,684		73,684
0401218F	213	KC-135S	1,079	1,079	1,079		1,079
0401219F	214	KC-10S	18,452	9,352	18,452	-18,452	
		KC-10 GATM		[-9,100]		[-18,452]	
0408011F	215	SPECIAL TACTICS / COMBAT CONTROL	1,067	1,067	1,067		1,067
0702207F	216	DEPOT MAINTENANCE (NON-IF)	1,431	1,431	1,431		1,431
0702806F	217	ACQUISITION AND MANAGEMENT SUPPORT	1,596	1,596	1,596		1,596
0708011F	218	INDUSTRIAL PREPAREDNESS	38,012	38,012	42,512	3,200	41,212
		Aircraft batteries			[2,000]	[1,300]	
		Advanced nanomaterials research			[2,500]	[1,900]	
0708012F	219	LOGISTICS SUPPORT ACTIVITIES					
0708026F	220	PRODUCTIVITY, RELIABILITY, AVAILABILITY, MAINTAIN. PROG OFC (PRA					

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0708611F	221	SUPPORT SYSTEMS DEVELOPMENT	50,238	50,238	57,238	3,000	53,238
		Modular fuel cell architecture development			[5,000]	[2,000]	
		Unmanned aging aircraft maintenance			[2,000]	[1,000]	
0708612F	222	COMPUTER RESOURCES SUPPORT IMPROVEMENT PROGRAM (CRSIP)					
0808716F	223	OTHER PERSONNEL ACTIVITIES	110	110	110		110
0901212F	224	SERVICE-WIDE SUPPORT (NOT OTHERWISE ACCOUNTED FOR)					
0901218F	225	CIVILIAN COMPENSATION PROGRAM	7,272	7,272	7,272		7,272
0901538F	226	FINANCIAL MANAGEMENT INFORMATION SYSTEMS DEVELOPMENT	15,732	15,732	15,732		15,732
XXXXXXXX	999	CLASSIFIED PROGRAMS	5,551,279	5,551,279	5,551,279		5,551,279
		Financial information systems			-11,500		
		Total, RDT&E Air Force	**21,114,667**	**21,532,967**	**21,264,267**	**-681,734**	**20,432,933**

Transformational satellite communications

The budget request included $674.8 million in PE 63845F for tranformational military satellite communications (TSAT).

The House bill would authorize a decrease of $100.0 million in PE 63845F.

The Senate amendment would authorize a decrease of $100.0 million in PE 63845F.

The conferees agree to authorize $374.8 million in PE 63845F, a decrease of $300.0 million.

The conferees strongly support the objectives of the TSAT program, including much higher communications capacity, assured connectivity for a much larger number of mobile and fixed forces, and the ability to protect these capabilities against emerging threats. The conferees, however, have had continuing concerns related to the risk of the current acquisition approach and potential program delays, which the conferees believe could elevate operational risks resulting from gaps in the military satellite communications (MILSATCOM) architecture.

The conferees are aware of program options that could leverage both current MILSATCOM program investments and TSAT development efforts. The conferees believe that such an approach could accelerate the deployment of advanced communications capabilities, provide the opportunity to incrementally demonstrate advanced satellite communications technology, and provide a lower risk path to meeting TSAT requirements. The conferees believe that such an approach is potentially more consistent with spiral development and capabilities-based acquisition.

The conferees direct the Secretary of Defense to evaluate modified TSAT acquisition strategies that streamline the program structure and leverage current MILSATCOM investment, and to provide a report to the congressional defense committees on that evaluation by March 1, 2005.

Space based radar

The budget request included $327.7 million in PE 63858F for space based radar (SBR).

The House bill would authorize the budget request.

The Senate amendment would authorize the budget request.

The conferees agree to authorize $75.0 million in PE 63858F for SBR, a decrease of $252.7 million.

The conferees believe that the United States must continue to improve its space-based and airborne intelligence, reconnaissance, and surveillance (ISR) systems; and believe that persistent surveillance will be critical to future U.S. military and intelligence capabilities. The conferees note that space based radar can make a significant contribution to persistent surveillance and that radars provide the only all weather, day/night ISR capabilities.

While strongly supportive of radar satellites, the conferees are concerned that the Air Force cost estimates for the notional SBR architecture that served as the basis for the fiscal year 2005 budget request were very high. If accurate, these estimates could render the system unaffordable.

The conferees believe that affordability will be critically dependent on the development and deployment of a single radar satellite system to meet both military and intelligence community needs and the thorough integration of space based radar ISR capabilities into a system of systems architecture that includes air assets, other national technical means, responsive space assets, and possibly near-space assets. Such an integration will have direct and significant implications for the capabilities needed in any one element of a system of systems. The conferees believe that an integrated architecture, that leverages and evolves existing architectures as well as innovative technologies, will provide greater capabilities earlier and at a more affordable cost.

Consequently, the conferees believe that the number of satellites and technical capabilities needed in an SBR system, and how an SBR system might evolve over time, is critically dependent on a more complete understanding of an integrated ISR system. The conferees direct that the SBR effort be restructured to focus on continued technology maturation (including satellite integration), architectural analysis, and system evolution. The conferees further direct the Secretary of Defense to submit a report to the congressional defense committees no later than March 1, 2005, outlining the key features and programmatic implications of an ISR system of systems architecture that includes national technical means and other space, air, responsive space, near-space and terrestrial systems.

Space based infrared system

The budget request included $508.4 million in PE 64441F for the space based infrared system (SBIRS).

The House bill would authorize the budget request.

The Senate amendment would authorize the budget request.

The conferees agree to authorize an increase of $35.0 million in PEG 4441F.

The conferees remain concerned with continued SBIRS cost increases, schedule delays, and technical problems. The conferees note that the initial 1996 cost estimate for SBIRS was $3.6 billion; that estimate has increased by nearly $4 billion in the last three years and is now $10.0 billion. While strongly supportive of the development of next generation early warning capabilities, the conferees do not believe that continuation of this program can be justified if such increases continue in the future. The conferees direct the Secretary of Defense to provide a report in classified and unclassified form to the congressional defense committees no later than February 1, 2005 on the cause of the most recent SBIRS cost increases, schedule delays, and technical problems; the most recent Defense Support Program gap analysis and any effect that further delays will have on U.S. early warning, technical intelligence, and missile defense capabilities; steps taken to address the most recent SBIRS technical difficulties; any adjustments in management and contract arrangements with the contractor to reflect the most recent program challenges; remaining risk areas; and an assessment of the confidence level in the SBIRS schedule and cost estimates current as of October 1, 2004.

DEFENSE-WIDE

Research, Development, Test and Evaluation, Defense-wide Overview

The budget request for fiscal year 2005 included an authorization of $20,739.8 million in Research, Development, Test and Evaluation, Defense-wide for the Department of Defense.

The House bill would authorize $20,721.3 million.

The Senate amendment would authorize $20,654.4 million.

The conferees recommend an authorization of $20,252.9 million. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
		RESEARCH, DEVELOPMENT, TEST & EVALUATION, DEFENSE-WIDE					
0601101D8Z	1	IN-HOUSE LABORATORY INDEPENDENT RESEARCH					
0601101E	2	DEFENSE RESEARCH SCIENCES	143,729	148,729	151,229	9,900	153,629
		Molecular electronics			[2,500]	[1,900]	
		Infectious disease research			[2,000]	[1,000]	
		Nanophotonics systems research			[2,000]	[2,000]	
		Novel energetic materials			[1,000]		
		Optoelectronics and Optical Communications		[3,000]		[3,000]	
		Super Lattice Nanotechnology		[2,000]		[2,000]	
0601103D8Z	3	UNIVERSITY RESEARCH INITIATIVES					
0601105D8Z	4	FORCE HEALTH PROTECTION					
0601108D8Z	5	HIGH ENERGY LASER RESEARCH INITIATIVES					
0601111D8Z	6	GOVERNMENT/INDUSTRY COSPONSORSHIP OF UNIVERSITY RESEARCH			7,000	7,000	7,000
		Focus center research program			[7,000]	[7,000]	
0601114D8Z	7	DEFENSE EXPERIMENTAL PROGRAM TO STIMULATE COMPETITIVE RESE.	9,590	9,590	9,590		9,590
0601384BP	8	CHEMICAL AND BIOLOGICAL DEFENSE PROGRAM	36,769	51,769	36,769	11,000	47,769
		Basic Research Initiative		[15,000]		[11,000]	
0602227D8Z	9	MEDICAL FREE ELECTRON LASER	9,668	19,668	17,668	9,000	18,668
		Medical free electron laser		[10,000]	[8,000]	[9,000]	
0602228D8Z	10	HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) SCIENCE	14,192	14,192	14,192		14,192
0602234D8Z	11	LINCOLN LABORATORY RESEARCH PROGRAM	25,441	25,441	25,441		25,441
0602301E	12	COMPUTING SYSTEMS AND COMMUNICATIONS TECHNOLOGY	342,614	322,614	342,614		342,614
0602302E	13	EMBEDDED SOFTWARE AND PERVASIVE COMPUTING					

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0602383E	14	BIOLOGICAL WARFARE DEFENSE	147,533	157,533	150,533	3,000	150,533
		Biodefense research			[3,000]	[1,000]	
		Asymmetric Protocols		[10,000]		[2,000]	
0602384BP	15	CHEMICAL AND BIOLOGICAL DEFENSE PROGRAM	104,385	129,385	114,285	33,350	137,735
		Mustard gas antidote			[3,000]	[3,000]	
		Bioinformatics			[2,000]	[2,000]	
		Chemical agent persistence models			[2,900]	[2,900]	
		Neurotoxin mitigation research (S. Amdt 3241)			[2,000]	[1,000]	
		Applied Research Initiative		[25,000]		[24,450]	
0602702E	16	TACTICAL TECHNOLOGY	339,175	300,175	314,175	-12,200	326,975
		Stimulated Isomer Energy Release		[-4,000]	[-4,000]	[-4,000]	
		Automated battle management			[-10,000]		
		Novel sensors			[-3,000]	[-3,200]	
		HEDlight			[-5,000]		
		Laser star			[-3,000]	[-3,000]	
		Walrus Hybrid Airlift Vehicle		[-10,000]			
		High-speed/Hypersonic reusable demonstration		[-15,000]			
		Program Reduction		[-10,000]			
		Combat zones that see				[-2,000]	

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0602712E	17	MATERIALS AND ELECTRONICS TECHNOLOGY	502,044	492,044	479,044	-3,500	498,544
		Bio-based nanosensors			[2,000]	[2,000]	
		Unjustified growth			[-25,000]		
		Program Reduction		[-10,000]			
		BioFabrication				[-5,500]	
0602716BR	18	WMD DEFEAT TECHNOLOGY	249,786	259,786	249,786		249,786
		Nuclear Weapons Effects		[10,000]			
0602717BR	19	WMD DEFENSE TECHNOLOGIES	116,113	116,113	116,113		116,113
0602787D8Z	20	MEDICAL TECHNOLOGY	10,084	10,084	10,184		10,084
		Pseudofolliculitis Barbae			[100]		
0602890D8Z	21	HIGH ENERGY LASER RESEARCH					
1160401BB	22	SPECIAL OPERATIONS TECHNOLOGY DEVELOPMENT	13,109	16,109	13,109	2,500	15,609
		Spike Missile Development and Production		[3,000]		[2,500]	
1160407BB	23	SOF MEDICAL TECHNOLOGY DEVELOPMENT	2,162	2,162	2,162		2,162
0603002D8Z	24	MEDICAL ADVANCED TECHNOLOGY	2,063	7,063	5,063	1,500	3,563
		Anti-radiation Drug and Trials Program		[5,000]		[1,500]	
		Radiation casualty research (S. Amdt 3157)			[3,000]		
0603104D8Z	25	EXPLOSIVES DEMILITARIZATION TECHNOLOGY					
0603121D8Z	26	SO/LIC ADVANCED DEVELOPMENT	32,682	32,682	32,682		32,682
0603122D8Z	27	COMBATING TERRORISM TECHNOLOGY SUPPORT	46,719	74,219	56,719	13,500	60,219
		Blast mitigation			[10,000]	[7,000]	
		SVS Collaborative and Virtual Reality Training Pilot		[2,500]		[1,500]	
		Advanced Combating Terrorism Technology		[25,000]		[5,000]	

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0603160BR	28	COUNTERPROLIFERATION INITIATIVES - PROLIFERATION PREVENTION A	74,456	74,456	79,456	5,000	79,456
		Portable radiation search tool			[5,000]	[5,000]	
0603175C	29	BALLISTIC MISSILE DEFENSE TECHNOLOGY	204,320	208,320	211,120	6,100	210,420
		Massively parallel optical interconnects		[4,000]	[4,000]	[3,400]	
		Radiation hardened CMOS			[3,300]	[2,700]	
		Radiation hardened CMOS (S Amdt 3228)			[-500]		
0603225D8Z	30	JOINT DOD-DOE MUNITIONS TECHNOLOGY DEVELOPMENT	23,319	23,319	23,319		23,319
0603232D8Z	31	AUTOMATIC TARGET RECOGNITION					
0603285E	32	ADVANCED AEROSPACE SYSTEMS	361,067	306,067	321,067	-37,500	323,567
		Unjustified growth			[-25,000]		
		Reduction - Orbital Express project			[-15,000]	[-10,000]	
		Program Reduction		[-20,000]			
		Walrus Hybrid Airlift Vehicle		[-10,000]		[-10,000]	
		Transfer to 63122D8Z		[-25,000]			
		RASCAL				[-5,000]	
		CAV				[-12,500]	
0603384BP	33	CHEMICAL AND BIOLOGICAL DEFENSE PROGRAM - ADVANCED DEVELOI	117,343	152,343	126,843	38,250	155,593
		Anthrax and plague oral vaccine development			[6,000]	[2,800]	
		Water quality sensors			[3,500]	[2,600]	
		Advanced Technology Development Initiative		[35,000]		[32,850]	
0603400D8Z	34	JOINT UNMANNED COMBAT AIR SYSTEMS (J-UCAS) ADVANCED TECHNOI	284,617	284,617	284,617		284,617
0603704D8Z	35	SPECIAL TECHNICAL SUPPORT					
0603711BR	36	ARMS CONTROL TECHNOLOGY					

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0603712S	37	GENERIC LOGISTICS R&D TECHNOLOGY DEMONSTRATIONS	27,542	29,542	47,042	18,150	45,692
		Ferrite technology			[2,500]	[2,500]	
		Support of legacy systems			[2,000]	[2,000]	
		Multi-purpose airframe support system			[2,500]	[1,400]	
		Vehicle fuel cell program			[7,000]	[5,250]	
		Supply chain surge/shortage			[2,500]	[2,500]	
		Microelectronics testing and technology			[3,000]	[3,000]	
		Connectory for Rapid ID of Tech Resources		[2,000]		[1,500]	
0603716D8Z	38	STRATEGIC ENVIRONMENTAL RESEARCH PROGRAM	56,936	56,936	56,936		56,936
0603727D8Z	39	JOINT WARFIGHTING PROGRAM	9,936	9,936	9,936		9,936
0603739E	40	ADVANCED ELECTRONICS TECHNOLOGIES	218,151	213,151	207,151		218,151
		Unjustified growth			[-11,000]		
		Program Reduction		[-5,000]			
0603750D8Z	41	ADVANCED CONCEPT TECHNOLOGY DEMONSTRATIONS	213,901	213,901	215,901	2,000	215,901
		Hardware encryption device			[2,000]	[2,000]	
0603755D8Z	42	HIGH PERFORMANCE COMPUTING MODERNIZATION PROGRAM	186,666	192,666	190,666	4,000	190,666
		High performance computing visualization			[2,000]	[2,000]	
		Simulation center upgrade		[6,000]	[2,000]	[2,000]	
0603760E	43	COMMAND, CONTROL AND COMMUNICATIONS SYSTEMS	225,784	205,784	214,784	-4,000	221,784
		Unjustified growth			[-11,000]		
		Program Reduction		[-20,000]			
		Space Based Networking				[-4,000]	

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0603762E	44	SENSOR AND GUIDANCE TECHNOLOGY	337,117	312,117	322,117	-3,000	334,117
		Unjustified growth			[-15,000]		
		Program Reduction		[-25,000]			
		ISIS				[-3,000]	
0603763E	45	MARINE TECHNOLOGY					
0603764E	46	LAND WARFARE TECHNOLOGY	63,121	63,121	63,121		63,121
0603765E	47	CLASSIFIED DARPA PROGRAMS	238,131	213,131	238,131		238,131
		Program Reduction		[-25,000]			
0603766E	48	NETWORK-CENTRIC WARFARE TECHNOLOGY	125,124	110,124	125,124		125,124
		Program Reduction		[-15,000]			
0603769SE	49	DISTRIBUTED LEARNING ADVANCED TECHNOLOGY DEVELOPMENT	13,756	13,756	13,756		13,756
0603781D8Z	50	SOFTWARE ENGINEERING INSTITUTE	21,599	21,599	21,599		21,599
0603805S	51	DUAL USE APPLICATION PROGRAMS					
0603826D8Z	52	QUICK REACTION SPECIAL PROJECTS	64,389	169,389	74,389	5,300	69,689
		IED Electronic Counter Measures and Jammers		[30,000]			
		Optical Surveillance Systems		[25,000]			
		Quick Reaction Counter Rocket and Mortar Capability		[50,000]			
		Combat casualty technologies (S Amdt 3264)			[10,000]	[5,300]	
0603832D8Z	53	JOINT WARGAMING SIMULATION MANAGEMENT OFFICE	46,017	46,017	46,017		46,017
0603924D8Z	54	HIGH ENERGY LASER ADVANCED TECHNOLOGY PROGRAM					
0603942D8Z	55	TECHNOLOGY LINK	1,934	1,934	1,934		1,934
0605160D8Z	56	COUNTERPROLIFERATION SUPPORT	1,958	1,958	7,958		1,958
		Nuclear physical security			[6,000]		

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
1160402BB	57	SPECIAL OPERATIONS ADVANCED TECHNOLOGY DEVELOPMENT	48,803	64,803	48,803	7,000	55,803
		Remote Sensor Power Source		[4,000]			
		Advanced ID Capability for AC-130U		[3,000]			
		ANGELFIRE Active Protection		[6,000]		[6,000]	
		Surveillance Augmentation Vehicle - Insertable on Request		[3,000]		[1,000]	
0603228D8Z	58	PHYSICAL SECURITY EQUIPMENT					
0603709D8Z	59	JOINT ROBOTICS PROGRAM	11,771	11,771	11,771		11,771
0603714D8Z	60	ADVANCED SENSOR APPLICATIONS PROGRAM	17,581	35,581	17,581	9,150	26,731
		Program increase		[10,000]		[5,550]	
		Multi-Wavelength Surface Scanning Biologics Sensor		[3,000]		[1,500]	
		Advanced Solid State Dye Laser		[5,000]		[2,100]	
0603736D8Z	61	CALS INITIATIVE					
0603851D8Z	62	ENVIRONMENTAL SECURITY TECHNICAL CERTIFICATION PROGRAM	32,546	32,546	40,246		32,546
		Unexploded ordnance detection using airborne GPR			[4,700]		
		Enhanced techniques for the detection of explosives (ETDE)			[3,000]		
0603869C	63	MEADS CONCEPTS					
0603879C	64	ADVANCED CONCEPTS, EVALUATIONS AND SYSTEMS	256,159	206,159	256,159	-25,000	231,159
		Reduce programmed growth		[-50,000]		[-25,000]	
0603880C	65	BALLISTIC MISSILE DEFENSE SYSTEM SEGMENT					
0603881C	66	BALLISTIC MISSILE DEFENSE TERMINAL DEFENSE SEGMENT	937,748	984,748	937,748		937,748
		Arrow coproduction (non-additive)			[80,000]	[68,000]	
		Program increase		[47,000]			

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0603882C	67	BALLISTIC MISSILE DEFENSE MIDCOURSE DEFENSE SEGMENT	4,384,775	4,414,775	4,424,775	62,000	4,446,775
		GMD enhancements			[75,000]	[75,000]	
		GMD long lead			[-35,000]		
		Solid State S Band Radar		[30,000]		[15,000]	
		Long lead materials for interceptors #31-40				[-28,000]	
0603883C	68	BALLISTIC MISSILE DEFENSE BOOST DEFENSE SEGMENT	492,614	492,614	492,614		492,614
0603884BP	69	CHEMICAL AND BIOLOGICAL DEFENSE PROGRAM	104,195	104,195	104,195		104,195
0603884C	70	BALLISTIC MISSILE DEFENSE SENSORS	591,957	540,957	611,957	9,000	600,957
		Airborne infrared system			[15,000]	[9,000]	
		E-2C infrared search and track (IRST)			[5,000]		
		Program decrease		[-56,000]			
		Post Ramos Project		[5,000]			
0603886C	71	BALLISTIC MISSILE DEFENSE SYSTEM INTERCEPTOR	511,262	396,262	311,262	-163,000	348,262
		Kinetic energy interceptor			[-200,000]		
		Program decrease		[-75,000]			
		BMD System Interceptor Program (H. Amdt 10)		[-48,000]			
		Boost Phase Hit-to-Kill		[8,000]			
		Reduce programmed growth				[-163,000]	
0603888C	72	BALLISTIC MISSILE DEFENSE TEST & TARGETS	713,658	713,658	713,658		713,658
0603889C	73	BALLISTIC MISSILE DEFENSE PRODUCTS	418,608	358,608	423,608	-13,500	405,108
		Joint National Integration Center			[5,000]	[2,500]	
		Program decrease		[-60,000]			
		Reduce programmed growth				[-16,000]	

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(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0603890C	74	BALLISTIC MISSILE DEFENSE SYSTEMS CORE	479,764	449,764	474,764	-74,000	405,764
		Corporate lethality program			[-5,000]		
		Program decrease		[-30,000]			
		Wide Bandwidth Technology (non-additive)		[4,000]		[1,000]	
		System engineering and integration national team unjustified growth				[-75,000]	
0603910D8Z	75	STRATEGIC CAPABILITY MODERNIZATION					
060xxxxD8Z	75A	Operationally responsive satellite payloads			25,000		
0603920D8Z	76	HUMANITARIAN DEMINING	13,747	13,747	13,747		13,747
0603923D8Z	77	COALITION WARFARE	5,886	5,886	5,886		5,886
0604400D8Z	78	JOINT UNMANNED COMBAT AIR SYSTEMS (J-UCAS) ADVANCED COMPON	422,873	422,873	422,873	-200,000	222,873
		Program restructure				[-200,000]	
0604722D8Z	79	JOINT SERVICE EDUCATION AND TRAINING SYSTEMS DEVELOPMENT					
0605017D8Z	80	REDUCTION OF TOTAL OWNERSHIP COST	27,351	27,351	27,351	-27,351	
		Lack of program justification				[-27,351]	
0303191D8Z	81	JOINT ELECTROMAGNETIC TECHNOLOGY (JET) PROGRAM	6,679	6,679	6,679		6,679
	81a	Joint Experimentation		167,626			
	81b	Joint Warfare Experiments		26			
	81c	Joint Warfare Transformation Programs		22,450			
0604384BP	82	CHEMICAL AND BIOLOGICAL DEFENSE PROGRAM	152,379	165,379	159,379	-11,500	140,879
		Joint Biological Point Detection System		[5,000]	[5,000]	[3,500]	
		JSLSCAD			[2,000]		
		Joint Service Lightweight Standoff Chemical Agent Detector		[8,000]			
		JCAD - Cancellation				[-15,000]	

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(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0604618D8Z	83	MANPADS DEFENSE PROGRAM	14,135		14,135	-6,500	7,635
		Program decrease		[-14,135]		[-6,500]	
0604709D8Z	84	JOINT ROBOTICS PROGRAM	13,845	13,845	13,845		13,845
0604764K	85	ADVANCED IT SERVICES JOINT PROGRAM OFFICE (AITS-JPO)	18,183	18,183	18,183		18,183
0604771D8Z	86	JOINT TACTICAL INFORMATION DISTRIBUTION SYSTEM (JTIDS)	18,515	18,515	18,515		18,515
0604861C	87	THEATER HIGH-ALTITUDE AREA DEFENSE SYSTEM - TMD					
0604865C	88	PATRIOT PAC-3 THEATER MISSILE DEFENSE ACQUISITION					
0605013BL	89	INFORMATION TECHNOLOGY DEVELOPMENT	10,683	10,683	10,683		10,683
0605013D8Z	90	PROTOTYPE ACCOUNTING SYSTEMS					
0605014SE	91	INFORMATION TECHNOLOGY DEVELOPMENT	52,407	52,407	52,407		52,407
0605015BL	92	INFORMATION TECHNOLOGY DEVELOPMENT-STANDARD PROCUREMEN	6,690	6,690	6,690		6,690
0605016D8Z	93	FINANCIAL MANAGEMENT SYSTEM IMPROVEMENTS	94,767	45,767	94,767	-45,000	49,767
		Program decrease		[-49,000]		[-45,000]	
0303129K	94	DEFENSE MESSAGE SYSTEM	6,623	6,623	6,623		6,623
0303140K	95	INFORMATION SYSTEMS SECURITY PROGRAM	2,493	2,493	2,493		2,493
0303141K	96	GLOBAL COMBAT SUPPORT SYSTEM	17,867	17,867	17,867		17,867
0303158K	97	JOINT COMMAND AND CONTROL PROGRAM (JC2)	3,000	3,000	3,000		3,000
0305840K	98	ELECTRONIC COMMERCE	3,466	3,466	3,466		3,466
0305840S	99	ELECTRONIC COMMERCE	2,345	2,345	2,345		2,345
0901200D8Z	100	BMMP DOMAIN MANAGEMENT AND SYSTEMS INTEGRATION	7,472	7,472	7,472		7,472
0603704D8Z	101	SPECIAL TECHNICAL SUPPORT	19,274	19,274	19,274	8,000	27,274
		Classified Adjustment				[8,000]	
0603757D8Z	102	TRAINING TRANSFORMATION (T2)					

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(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0603835D8Z	103	TRANSFORMATION INITIATIVES PROGRAM	9,977	9,977	9,977	-9,977	
		Program reduction				[-9,977]	
0603858D8Z	104	UNEXPLODED ORDNANCE DETECTION AND CLEARANCE					
0604774D8Z	105	DEFENSE READINESS REPORTING SYSTEM (DRRS)	19,691	19,691	19,691		19,691
0604875D8Z	106	JOINT SYSTEMS ARCHITECTURE DEVELOPMENT	4,989	4,989	4,989		4,989
0604943D8Z	107	THERMAL VICAR	7,263	7,263	7,263		7,263
0605104D8Z	108	TECHNICAL STUDIES, SUPPORT AND ANALYSIS	30,618	31,618	25,618	1,000	31,618
		Unjustified growth			[-5,000]		
		NDU Technology Pilot Program		[1,000]		[1,000]	
0605110BR	109	CRITICAL TECHNOLOGY SUPPORT	1,937	1,937	1,937		1,937
0605114D8Z	110	BLACK LIGHT	21,535	21,535	21,535		21,535
0605116D8Z	111	GENERAL SUPPORT TO C3I					
0605117D8Z	112	FOREIGN MATERIAL ACQUISITION AND EXPLOITATION	35,572	35,572	35,572		35,572
0605123D8Z	113	INTERAGENCY EXPORT LICENSE AUTOMATION	5,882	5,882	5,882		5,882
0605124D8Z	114	DEFENSE TRAVEL SYSTEM	28,508	28,508	28,508		28,508
0605126J	115	JOINT THEATER AIR AND MISSILE DEFENSE ORGANIZATION	86,409	86,409	86,409		86,409
0605128D8Z	116	CLASSIFIED PROGRAM USD(P)					
0605130D8Z	117	FOREIGN COMPARATIVE TESTING	35,633	37,183	35,633	1,000	36,633
		Weather SCOUT UAV		[1,550]		[1,000]	
0605170D8Z	118	SUPPORT TO NETWORKS AND INFORMATION INTEGRATION	11,490	11,490	13,690	1,100	12,590
		Command Information Superiority Architectures Program			[2,200]	[1,100]	
0605200D8Z	119	GENERAL SUPPORT TO USD (INTELLIGENCE)	4,830	4,830	4,830		4,830

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(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0605384BP	120	CHEMICAL AND BIOLOGICAL DEFENSE PROGRAM	42,652	42,652	42,652	-5,000	37,652
		Management support cost growth				[-5,000]	
0605502BR	121	SMALL BUSINESS INNOVATION RESEARCH					
0605502C	122	SMALL BUSINESS INNOVATIVE RESEARCH - MDA					
0605502D8Z	123	SMALL BUSINESS INNOVATIVE RESEARCH					
0605502E	124	SMALL BUSINESS INNOVATIVE RESEARCH					
0605710D8Z	125	CLASSIFIED PROGRAMS - C3I			10,000	3,000	3,000
		Foreign Supplier Assessment Center			[10,000]	[3,000]	
0605790D8Z	126	SMALL BUSINESS INNOVATION RESEARCH/CHALLENGE ADMINISTRATIO	1,999	1,999	1,999		1,999
0605798S	127	DEFENSE TECHNOLOGY ANALYSIS	7,279	7,279	8,279		7,279
		Global research watch			[1,000]		
0605799D8Z	128	FORCE TRANSFORMATION DIRECTORATE	19,591	44,591	19,591	20,000	39,591
		Operationally Responsive Satellite		[25,000]		[20,000]	
		Operationally Responsive Satellite (line 75A)					
0605801K	129	DEFENSE TECHNICAL INFORMATION SERVICES (DTIC)	45,203	45,203	45,203		45,203
0605803SE	130	R&D IN SUPPORT OF DOD ENLISTMENT, TESTING AND EVALUATION	10,598	10,598	10,598		10,598
0605804D8Z	131	DEVELOPMENT TEST AND EVALUATION	8,882	8,882	8,882		8,882
0605898E	132	MANAGEMENT HQ - R&D	46,689	46,689	46,689		46,689
0303169D8Z	133	INFORMATION TECHNOLOGY RAPID ACQUISITION	19,958	2,958	19,958	-14,958	5,000
		Rapid Acquisition Process		[-17,000]		[-14,958]	
0305193D8Z	134	INTELLIGENCE SUPPORT TO INFORMATION OPERATIONS (IO)	12,878	12,878	12,878		12,878
0305193G	135	INTELLIGENCE SUPPORT TO INFORMATION OPERATIONS (IO)	[ ]				
0901585C	136	PENTAGON RESERVATION	13,884	13,884	13,884		13,884

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0901598C	137	MANAGEMENT HQ - MDA	141,923	141,923	141,923	-25,000	116,923
		Reduce programmed growth				[-25,000]	
0901598D8W	138	IT SOFTWARE DEV INITIATIVES	1,700	1,700	1,700		1,700
0909999E	139	FINANCING FOR CANCELLED ACCOUNT ADJUSTMENTS					
XXXXXXXX	999	Classified Programs increase		20,400			
0604805D8Z	140	COMMERCIAL OPERATIONS AND SUPPORT SAVINGS INITIATIVE					
0605127T	141	PARTNERSHIP FOR PEACE (PFP) INFORMATION MANAGEMENT SYSTEM	6,995	6,995	6,995		6,995
0607384BP	142	CHEMICAL AND BIOLOGICAL DEFENSE (OPERATIONAL SYSTEMS DEVEL	2,178	2,178	2,178		2,178
0208043J	143	CLASSIFIED PROGRAMS	1,663	1,663	1,663		1,663
0208045K	144	C4I INTEROPERABILITY	41,074	41,074	41,074		41,074
0208052J	145	JOINT ANALYTICAL MODEL IMPROVEMENT PROGRAM	5,577	5,577	5,577		5,577
0300205R	146	INFORMATION TECHNOLOGY SYSTEMS					
0301011G	147	CRYPTOLOGIC ACTIVITIES	[ ]				
0301301L	148	GENERAL DEFENSE INTELLIGENCE PROGRAM	[ ]				
0301318BB	149	HUMINT (CONTROLLED)	[ ]				
0301398L	150	MANAGEMENT HEADQUARTERS GDIP, DIA	[ ]				
0301555BB	151	CLASSIFIED PROGRAMS	[ ]				
0301556BB	152	SPECIAL PROGRAM	[ ]				
0302016K	153	NATIONAL MILITARY COMMAND SYSTEM-WIDE SUPPORT	1,240	1,240	1,240		1,240
0302019K	154	DEFENSE INFO INFRASTRUCTURE ENGINEERING AND INTEGRATION	2,517	2,517	2,517		2,517
0303126K	155	LONG-HAUL COMMUNICATIONS - DCS	11,401	11,401	11,401		11,401
0303127K	156	SUPPORT OF THE NATIONAL COMMUNICATIONS SYSTEM					
0303131K	157	MINIMUM ESSENTIAL EMERGENCY COMMUNICATIONS NETWORK (MEEC	7,261	7,261	7,261		7,261

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(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0303140D8Z	158	INFORMATION SYSTEMS SECURITY PROGRAM	11,135	11,135	11,135		11,135
0303140G	159	INFORMATION SYSTEMS SECURITY PROGRAM	477,846	477,846	477,846		477,846
0303149J	160	C4I FOR THE WARRIOR	4,177	4,177	4,177		4,177
0303149K	161	C4I FOR THE WARRIOR	24,712	24,712	24,712		24,712
0303150K	162	GLOBAL COMMAND AND CONTROL SYSTEM	43,693	43,693	43,693		43,693
0303153K	163	JOINT SPECTRUM CENTER	18,941	18,941	18,941		18,941
0303165K	164	DEFENSE COLLABORATION TOOL SUITE (DCTS)	8,503	8,503	8,503		8,503
0303170K	165	NET-CENTRIC ENTERPRISE SERVICES (NCES)	52,059	52,059	52,059		52,059
0303610K	166	TELEPORT PROGRAM	10,272	10,272	10,272		10,272
0304210BB	167	SPECIAL APPLICATIONS FOR CONTINGENCIES	20,758	20,758	20,758		20,758
0304345BQ	168	NATIONAL IMAGERY AND MAPPING PROGRAM	[ ]				
0305102BQ	169	DEFENSE IMAGERY AND MAPPING PROGRAM	[ ]	-200			
		TPED of SYERS-2		[3,000]			
		National Geospatial-Intelligence Agency		[-3,200]			
0305125D8Z	170	CRITICAL INFRASTRUCTURE PROTECTION (CIP)	28,021	28,021	28,021		28,021
0305127BZ	171	FOREIGN COUNTERINTELLIGENCE ACTIVITIES	[ ]				
0305127V	172	FOREIGN COUNTERINTELLIGENCE ACTIVITIES					
0305146BZ	173	DEFENSE JOINT COUNTERINTELLIGENCE PROGRAM (JMIP)	32,939	32,939	32,939		32,939
0305146D8Z	174	DEFENSE JOINT COUNTERINTELLIGENCE PROGRAM (JMIP)					
0305183L	175	DEFENSE HUMINT PROGRAM (DHIP)	[ ]				
0305190D8Z	176	C3I INTELLIGENCE PROGRAMS					
0305191D8Z	177	TECHNOLOGY DEVELOPMENT					
0305193G	178	INTELLIGENCE SUPPORT TO INFORMATION OPERATIONS (IO)	[ ]				

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(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
0305193L	179	INTELLIGENCE SUPPORT TO INFORMATION OPERATIONS (IO)	[ ]				
0305199D8Z	180	NET CENTRICITY	214,222	144,222	214,222	-80,000	134,222
		Program decrease		[-70,000]			
		Horizontal Fusion program reduction				[-80,000]	
0305202G	181	DRAGON U-2 (JMIP)	[ ]				
0305206G	182	AIRBORNE RECONNAISSANCE SYSTEMS	[ ]				
0305207G	183	MANNED RECONNAISSANCE SYSTEMS	[ ]				
0305208BQ	184	DISTRIBUTED COMMON GROUND SYSTEMS	[ ]				
0305208G	185	DISTRIBUTED COMMON GROUND SYSTEMS	[ ]				
0305208L	186	DISTRIBUTED COMMON GROUND SYSTEMS	[ ]				
0305883L	187	HARD AND DEEPLY BURIED TARGET INTEL SUPPORT	[ ]		10,000		
		Enhanced ISR			[10,000]		
0305884L	188	INTELLIGENCE PLANNING AND REVIEW ACTIVITIES	[ ]	10,000			
		Measures and Signatures Intelligence Consortium		[10,000]			
0305885G	189	TACTICAL CRYPTOLOGIC ACTIVITIES	[ ]				
0305889G	190	COUNTERDRUG INTELLIGENCE SUPPORT	[ ]				
0305917D8Z	191	NATIONAL SECURITY SPACE ARCHITECT (NSSA)					
0708011S	192	INDUSTRIAL PREPAREDNESS	11,005	23,205	16,005	4,500	15,505
		Advanced manufacturing technologies			[3,000]	[4,500]	
		Advanced manufacturing technologies (S Amdt 3157)			[2,000]		
		Smart Machine Platform Initiative		[12,200]			
0708012S	193	LOGISTICS SUPPORT ACTIVITIES	11,389	11,389	11,389		11,389
0902298J	194	MANAGEMENT HEADQUARTERS (JCS)	22,421	22,421	22,421		22,421

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(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
1001018D8Z	195	NATO JOINT STARS	30,399	30,399	30,399		30,399
1160279BB	196	SMALL BUSINESS INNOVATIVE RESEARCH/SMALL BUS TECH TRANSFER I					
1160401BB	197	SPECIAL OPERATIONS TECHNOLOGY DEVELOPMENT					
1160402BB	198	SPECIAL OPERATIONS ADVANCED TECHNOLOGY DEVELOPMENT					
1160404BB	199	SPECIAL OPERATIONS TACTICAL SYSTEMS DEVELOPMENT	311,966	311,966	316,866	-28,500	283,466
		LAW confined space			[4,900]		
		Underexecution				[-10,000]	
		CAAP Program				[-18,500]	
1160405BB	200	SPECIAL OPERATIONS INTELLIGENCE SYSTEMS DEVELOPMENT	25,015	25,015	32,015	5,800	30,815
		Wireless management and control project			[5,000]	[3,800]	
		Joint Threat Warning System maritime variants (S. Amdt 3471)			[2,000]	[2,000]	
1160407BB	201	SOF MEDICAL TECHNOLOGY DEVELOPMENT					
1160408BB	202	SOF OPERATIONAL ENHANCEMENTS	57,643	57,643	61,643	1,400	59,043
		Tactical computer system development			[4,000]	[1,400]	
XXXXXXXX	999	CLASSIFIED PROGRAMS	3,578,082	3,583,082	3,578,082		3,578,082
		Program Increase		[5,000]			
		Financial information systems			-10,500		
		Total, RDT&E Defense-Wide	**20,739,837**	**20,721,254**	**20,654,437**	**-486,986**	**20,252,851**

Chemical and biological defense basic research program

The budget request included $36.8 million in PE 61384BP for chemical and biological defense program basic research.

The House bill would authorize an increase of $15.0 million in PE 61384BP for a chemical and biological defense basic research initiative.

The Senate amendment would authorize the budget request.

The conferees agree to authorize an increase of $11.0 million in PE 61384BP for a chemical and biological defense basic research initiative. The conferees note that projects and technologies to be considered for funding under the chemical and biological defense basic research initiative should be selected on the basis of technical merit and potential operational utility. The conferees recommend that the projects and technologies to be considered for funding under the chemical and biological defense basic research initiative should include, but not be limited to, the following: engineered pathogen identification and countermeasures, multipurpose biodefense immunoarrays and fluorescence activated sensing technologies.

Chemical and biological defense applied research program

The budget request included $104.4 million in PE 62384BP for chemical and biological defense program applied research.

The House bill would authorize an increase of $25.0 million in PE 62384BP for a chemical and biological defense applied research initiative.

The Senate amendment would authorize an increase of $8.9 million in PE 62384BP, including $3.0 million for mustard gas antidotes; $2.0 million for bioinformatics; $2.0 million for neurotoxin mitigation research; and $2.9 million for chemical agent persistence models.

The conferees agree to authorize an increase of $33.4 million in PE 62384BP for chemical and biological defense program applied research, including $3.0 million for mustard gas antidote; $2.0 million for bioinformatics; $1.0 million for neurotoxin mitigation research; $2.9 million chemical agent persistence models; and $24.5 million for a chemical and biological applied research initiative.

The conferees note that projects and technologies to be considered for funding under the chemical and biological defense program applied research initiative should be selected on the basis of technical merit and potential operational utility. The conferees recommend that the projects and technologies to be considered for funding under the chemical and biological defense applied research initiative should include, but not be limited to, the following: air contamination monitoring systems; hand-held detectors; heat shock protein vaccine creation processes; low-cost chemical-biological protective shelters; membrane research for next generation chemical-biological protective suits; rapid anti-body based biological countermeasures; and rapid decontamination systems for nerve agents.

Stimulated isomer energy release

The budget request included $339.2 million in PE 62702E for tactical technology applied research, including $4.0 million for the Defense Advanced Research Project Agency's (DARPA) stimulated isomer energy release (SIER) project.

The House bill and the Senate amendment would reduce the budget request for the SIER project by $4.0 million. The House bill also directed the Secretary of Defense to terminate the project.

The conferees agree to authorize no funds for continuation of the DARPA SIER project and direct that the DARPA project be terminated.

Combating terrorism technology support

The budget request included $46.7 million in PE 63122D8Z for combating terrorism technology support programs.

The House bill would authorize an increase of $27.5 million in PE 63122D8Z for combating terrorism technology support programs, including $25.0 million for advanced combating terrorism technology support.

The Senate amendment would authorize an increase of $10.0 million in PE 63122D8Z for blast mitigation research. The conferees agree to authorize an increase of $13.5 million in PE 63122D8Z for combating terrorism technology support, including $7.0 million for blast mitigation; $5.0 million for advanced combating terrorism technology support; and $1.5 million for combating terrorism intelligence, surveillance, and reconnaissance research.

Chemical and biological defense program advanced technology development

The budget request included $117.3 million in PE 63384BP for the chemical and biological defense program for advanced technology development.

The House bill would authorize an increase of $35.0 million in PE 63384BP for a chemical and biological defense program advanced technology initiative.

The Senate amendment would authorize an increase of $9.5 million for chemical and biological defense program advanced technology development, including $6.0 million for anthrax and plague oral vaccine development; and $3.5 million for water quality sensors.

The conferees agree to authorize an increase of $38.3 million for chemical and biological defense program for advanced technology development, including $32.9 million for an advanced technology development initiative; $2.8 million for anthrax and plague oral vaccine development; and $2.6 million for water quality sensors.

The conferees note that projects and technologies to be considered for funding under the chemical and biological defense advanced technology development initiative should be selected on the basis of technical merit and potential operational utility. The conferees recommend that the projects and technologies to be considered for funding under the chemical and biological defense basic research initiative should include, but not be limited to, the following: hand-held biological detection systems; immuno biological/chemical threat agent detectors; non-invasive vectored vaccine development; and recombinant protein vaccines.

Airborne laser

The budget request included $474.3 million in PE 63883C for the airborne laser (ABL).

The House bill would authorize the budget request.

The Senate amendment would authorize the budget request.

The conferees agree to authorize the budget request.

The conferees remain convinced of the importance of boost phase intercept in the ballistic missile defense architecture, and note that ABL has potentially revolutionary capabilities. The conferees also note that, in response to consistent cost overruns and schedule delays, the program has been restructured to reflect these difficulties and its developmental nature. The conferees applaud this restructuring and are aware of progress in recent months toward achieving key milestones in the ABL program, particularly first light from conjoined laser modules. The conferees note that demonstrated progress in these areas will be critical to the continuation of the ABL effort.

The conferees direct the Secretary of Defense to provide a report to the congressional defense committees by February 15, 2005 that provides the status of ABL laser tests and the beam control/fire control system and recommendations on the future of the ABL program.

Kinetic energy interceptor

The budget request included $511.3 million in PE 63886C for the kinetic energy interceptor (KEI) and associated boost phase intercept efforts.

The House bill authorized a decrease of $75.0 million in PE 63886C.

The Senate amendment authorized a decrease of $200.0 million in PE 63886C.

The conferees agree to authorize $348.3 million in PE 63886C, a decrease of $163.0 million.

The conferees remain convinced that the KEI could be an important aspect of the overall ballistic missile defense architecture, potentially contributing intercept capabilities in boost, midcourse, and terminal phases of the threat missile flight. The conferees are concerned, however, with the lack of progress in defining basing modes. The conferees note that:

(1) Recent justifications for the KEI ground-based variant suggest that it might serve as the basis for midcourse intercept capability in Europe. At the same time, however, the budget request included $35.0 million for additional ground-based interceptors (GBI) for the ground-based midcourse defense element that could be deployed in Europe; and

(2) Consideration of sea-based concepts of operations and platforms do not appear to be progressing.

The conferees direct the Director of the Missile Defense Agency to provide a report to the congressional defense committees by February 1, 2005 that includes planned ground- and sea-basing modes for KEI (including specific sea-based platforms) and the concept of operations for each basing mode; how KEI will enhance ballistic missile defense system capabilities; the role KEI may play in European missile defense and how that role relates to the fielding of additional GBIs; and a comparison of anticipated sea-based KEI capabilities with other sea-based missile defense options.

Operationally responsive space

The budget request included $19.6 million in PE 65799D8Z for the force transformation directorate, but no funds for operationally responsive satellite payloads and busses.

The House bill would authorize an increase of $25.0 million in PE 65799D8Z for operationally responsive satellite payloads.

The Senate amendment would authorize $25.0 million in a new program element for operationally responsive satellite payloads.

The conferees believe that smaller, less expensive satellites may provide a means of achieving more rapid and effective deployment of space-based military capabilities than is now possible. The conferees are encouraged by Air Force efforts to develop small, low-cost space launch vehicles as an essential step for enabling the launch of such satellites, but are concerned that the effort to develop viable payloads for these rockets is not adequately funded. The conferees note that the Office of Transformation is working with the Air Force Research Laboratory to develop lightweight, experimental tactical satellites (TACSATs), but that this effort lacks dedicated funding. The conferees also believe that the development of standards, protocols, and interfaces for common satellite bus components will be key to producing affordable small satellites. The conferees agree to authorize $39.6 million in PE 65799D8Z, an increase of $20.0 million, for further development of TACSATs and common small satellite bus components. The conferees expect, consistent with section 913 of this Act, that future funding requests for operationally responsive payloads will be forwarded in a separate and dedicated program element.

TEST AND EVALUATION

Operational Test and Evaluation, Defense Overview

The budget request for fiscal year 2005 included an authorization of $305.1 million in Operational Test and Evaluation, Defense for the Department of Defense.

The House bill would authorize $305.1 million.

The Senate amendment would authorize $309.1 million.

The conferees recommend an authorization of $304.1 million. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Title II-RDT and E

(Dollars in Thousands)

Account	Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
		OPERATIONAL TEST & EVALUATION, DEFENSE					
0603941D8Z	1	TEST & EVALUATION SCIENCE & TECHNOLOGY	16,295	16,295	16,295	-1,500	14,795
		Execution/delays				[-1,500]	
0604940D8Z	2	CENTRAL TEST AND EVALUATION INVESTMENT DEVELOPMENT (CTEIP)	123,562	123,562	126,562	1,500	125,062
		Autonomous unmanned surface vessel			[3,000]	[1,500]	
0605118D8Z	3	OPERATIONAL TEST AND EVALUATION	42,390	42,390	42,390		42,390
0605131D8Z	4	LIVE FIRE TESTING	10,209	10,209	11,209	1,000	11,209
		Joint Test and Training Rapid Advanced Capabilities			[1,000]	[1,000]	
0605804D8Z	5	DEVELOPMENT TEST AND EVALUATION	112,679	112,679	112,679	-2,000	110,679
		Threat systems				[-2,000]	
		Total, Operational Test & Evaluation, Defense	**305,135**	**305,135**	**309,135**	**-1,000**	**304,135**
		TOTAL RDT&E	**67,772,288**	**68;090,361**	**68,608,688**	**-1,274,530**	**66,497,758**

ITEMS OF SPECIAL INTEREST

Department of Defense—National Aeronautics and Space Administration coordination

The conferees note that in the areas of aeronautics and space research technology development, the Department of Defense and the National Aeronautics and Space Administration (NASA) must coordinate closely in order to ensure that the nation continues its global leadership in these technologies.

The conferees believe that as NASA evaluates its future plans for aeronautics, it is essential that the Department and NASA provide for the continued availability of unique wind tunnels and other research, test, and evaluation facilities and services critical to the development of military systems. The conferees direct the Under Secretary of Defense for Acquisition, Technology and Logistics to identify and analyze aeronautics facilities currently managed by NASA that are considered by the Department to be critical to the accomplishment of defense missions and to the maintenance of U.S. leadership in aeronautics.

The conferees also endorse the Secretary of Defense's emphasis on transformational technologies. One of the more promising technologies under development is hypersonic propulsion, which when further developed will provide significantly improved operational capabilities for both manned and unmanned flight, missile defense and a single-stage-to-flight capability that could provide rapid access to space. Unfortunately, due to changing priorities within both the Air Force and NASA, funding for such efforts has been reduced to insignificant levels.

The conferees direct the Secretary of Defense to submit a report to the congressional defense committees by March 15, 2005, which details the Department's plans to provide the required funding to pursue a development program for transition of hypersonic technologies to an integrated demonstration system that validates their affordability and effectiveness to support prompt global strike and assured space access missions. The report should analyze the results and technological advances enabled by the X-43 series of programs and other efforts to develop a detailed technology roadmap and investment strategy consistent with meeting future military needs in hypersonics. The conferees believe the capabilities to be realized through a successful hypersonic development program justify the sustained and full support of the Department and NASA.

Enterprise Resource Planning for Army Combat Logistics

The Army logistics systems arm, fuel, repair, move, and sustain combat forces. The Army's goals for modernization of its legacy logistics systems include improved sustainment of combat forces using fewer soldiers, increased readiness and operational availability, and significantly lowering cost. The Army plans to modernize its logistics systems using enterprise resource planning systems, which will provide essential information for timely decision making and accurate performance measurement. They use no custom software code and only commercial, off-the-shelf computer technology. They are also web-based with a robust telecommunications infrastructure and have been tested at thousands of sites outside the Army.

The conferees encourage the Army to leverage existing Army information technology assets and expertise to augment funds within the Global Combat Support System account to complete the blueprinting and accelerate fielding of the system, wherever feasible, to replace 20-year-old systems which are unable to fully support combat operations.

Patriot air and missile defense system

The conferees note that the Patriot air and missile defense system destroyed all nine theater ballistic missiles launched at coalition forces during Operation Iraqi Freedom (OIF) for which intercept was attempted. The conferees also note, however, that the Patriot was also involved in three "friendly fire" incidents during that conflict and that electromagnetic interference (EMI) between Patriot and other systems contributed to these incidents. Similar interference problems with the Patriot occurred during the Gulf War in 1991.

The conferees strongly support the Patriot system, note with approval that the Army has reprogrammed funding to fix the known "friendly-fire" problems associated with the Patriot, and are encouraged at the level of attention given to this problem since the OIF incidents. The conferees expect, however, that as more radars, communications systems, and other emitting systems are added to the battlefield in the future, EMI problems will continue to grow in complexity.

The conferees direct the Secretary of Defense to submit a report to the congressional defense committees by March 1, 2005 summarizing the tests, exercises, and changes to operational procedures and requirements that are planned or being implemented to prevent or reduce future EMI problems with the Patriot system. The conferees also direct the Director of Operational Test and Evaluation to include an assessment of the Department's plans to reduce EMI problems with the Patriot system in his Annual Report to Congress, required by section 139 of title 10, United States Code.

Russian-American missile defense cooperation

The conferees understand that the Secretary of Defense desires to explore opportunities for missile defense cooperative programs with the Russian Federation that build upon the experience gained in the Russian-American Observation Satellite (RAMOS) program that was terminated earlier this year. The conferees recognize the potential importance of such cooperative efforts, both to the technical success of the U.S. missile defense effort and to the establishment of a cooperative strategic relationship with the Russian Federation.

The conferees urge the Secretary to engage in serious negotiations with the Russian Federation as soon as possible on joint missile defense programs. The conferees believe that previous efforts under the RAMOS program, including Russian Presidential and Government decrees and the U.S.-Russian Federation technical agreement, should be leveraged to help ensure the successful initiation of such efforts.

LEGISLATIVE PROVISIONS ADOPTED

Subtitle A—Authorization of Appropriations

Authorization of appropriations (sec. 201)

The House bill contained a provision (sec. 201) that would authorize the recommended fiscal year 2005 funding levels for the Research, Development, Test and Evaluation accounts for the Army, Navy, Marine Corps, Air Force, Defense-wide activities and the Director of Operational Test and Evaluation.

The Senate amendment contained a similar provision (sec. 201).

The conference agreement includes this provision.

Amount for defense science and technology (sec. 202)

The budget request included $10,550.3 million for Department of Defense science and technology (S&T) programs.

The House bill would authorize $11,067.7 million for defense S&T programs.

The Senate amendment would authorize $11,012.4 million for defense S&T programs.

The conferees agree to authorize $11,191.6 million for S&T programs, an increase of $641.3 million over the request. The increase provided by the conferees brings the Department closer to 3 percent of total spending, the goal stated by the Department and outside experts as the desired investment for these programs. In recognition of the key role played by S&T in maintaining the best equipped, best protected fighting force in the world, the conferees have targeted increases to project areas which improve current capabilities, while focusing on basic research and long-term projects that ensure future innovation.

The conferees note that current operations in Iraq, Afghanistan, and elsewhere continue to demonstrate how technologies transitioned from the Department's S&T programs are enhancing the combat effectiveness of warfighters, reducing casualties, and improving the efficiency and flexibility of our military forces. The conferees commend the Department for mobilizing its technical capabilities in the science and technology community to support these current global operations.

The conferees expect to see an increased commitment by the Department to robustly fund S&T in the fiscal year 2006 budget, along with an appropriate balance within the accounts that acknowledges the importance of long-term research in an era of immediate and pressing needs.

Conferees also urge continued attention to a key component of ensuring the U.S. military's technological edge—development, recruitment and retention of skilled scientists and engineers.

Subtitle B—Program Requirements, Restrictions, and Limitations

Future Combat Systems program strategy (sec. 211)

The House bill contained a provision (sec. 211) that would direct the Secretary of the Army to establish and implement a program strategy for the Future Combat Systems (FCS) acquisition program. The provision limits authorization of appropriations for FCS in fiscal year 2005 to $2.2 billion until the Secretary of the Army certifies that elements of the program strategy includes certain technical and performance criteria before production facilitization and long lead items are placed on contract. The provision also requires the Under Secretary of Defense for Acquisition, Technology and Logistics (USD(AT&L)) to submit to the Congress: (1) an independent program cost estimate; (2) a report, prepared by an independent panel, on the maturity levels of critical technologies; (3) a report on the status of the network and command, control, communications, computers, intelligence, surveillance, and reconnaissance components; and (4) key performance parameters, prior to the Milestone B update required by the FCS acquisition decision memorandum.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that limits the authorization of appropriations for FCS in fiscal year 2005 to $2.2 billion until the Secretary of the Army certifies that elements of the program strategy includes certain technical and performance criteria before production facilitization and long lead items are placed on contract. The amendment requires the USD(AT&L) to submit to Congress: (1) a program cost estimate; (2) a report, prepared by an independent panel, on the maturity levels of critical technologies; (3) a report on the status of the network and command, control, communications, computers, intelligence, surveillance, and reconnaissance components; and (4) key performance parameters, prior to the Milestone B update required by the FCS acquisition decision memorandum. The amendment also requires the USD (AT&L) submit to Congress an independent cost estimate of the FCS program not later than March 1, 2005.

The conferees continue to support FCS and believe that the Army has made a sound decision to restructure the FCS program. With this restructure, the Army will reduce FCS program risk while providing increased capabilities for the current force.

Collaborative program for research and development of vacuum electronics technologies (sec. 212)

The House bill contained a provision (sec. 212) that would require the Secretary of Defense to establish a program for research and development in advanced vacuum electronics technology to meet Department of Defense requirements.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would require the Director, Defense Research and Engineering to submit a report on establishment of a collaborative vacuum electronics research and development program that: identifies a department lead to carry out the effort; assesses the role of investing in vacuum electronics technologies as part of the overall strategy of the Department's investments to meet electronic technology needs; provides a management plan and schedule for the program; identifies required funding and a list of program capability goals and objectives; outlines the role of basic and applied research in support of the program; and assesses global capabilities in the technology area.

The conferees note that vacuum electronics are utilized in a variety of the Department's systems, particularly many legacy systems. While there is a trend toward solid state electronics in most defense systems, the Department must ensure that systems which depend on the use of vacuum electronics will have access to the most advanced technologies available.

Annual Comptroller General report on Joint Strike Fighter program (sec. 213)

The House bill contained a provision (sec. 213) that would require the Comptroller General to conduct an annual review of the Joint Strike Fighter (JSF) aircraft program, and submit a report of that review to Congress by March 15 of each year from fiscal year 2005 through fiscal year 2009.

Senate amendment contained no similar provision.

The Senate recedes with an amendment that would require the annual report to be submitted to the congressional defense committees.

The conferees are aware of the recently conducted study by a senior independent review team on the JSF program, and believe that the first report submitted by March 15, 2005 should place emphasis on the degree to which the program office and contractor have incorporated the recommendations of that team.

Amounts for U.S. Joint Forces Command to be derived only from Defense-wide accounts (sec. 214)

The House bill contained a provision (sec. 214) that would transfer funding for the joint warfare experimentation programs of U.S. Joint Forces Command (JFCOM) from Research, Development, Test and Evaluation (RDT&E), Navy accounts to an RDT&E, Defense-wide account.

The Senate amendment contained a similar provision (sec. 216).

The Senate recedes with an amendment that would require, beginning in fiscal year 2007, all RDT&E funds for JFCOM be derived from Defense-wide RDT&E funds, and that this be clearly reflected in the budget request.

The conferees note that this provision does not take effect until fiscal year 2007. The conferees direct, however, that the amounts requested for JFCOM joint warfare experimentation programs be separately identified in the fiscal year 2006 budget request, and distinguished within any executive agent account in which they are included. The conferees also note that JFCOM is responsible for a number of critical efforts directly related to increasing the joint warfighting capability of the military services, and that funding those efforts through executive agents does not provide Congress with clear visibility into the amounts dedicated to those key joint initiatives. The practice of requesting funding through executive agents also distorts the amount of funding for military service activities that carry funding for joint initiatives. The conferees have strong interest not only in joint experimentation, which is addressed by this provision, but in JFCOM joint training initiatives as well. Therefore the conferees direct the Department of Defense, when submitting its fiscal year 2006 budget request, to clearly identify funding for joint training activities in Defense-wide and executive agent accounts to enhance congressional visibility into funding dedicated to joint training in future budgets.

The conferees further note the unique, important role that JFCOM plays in developing doctrine and capabilities for other combatant commanders, and in developing and monitoring joint training standards for elements of the Armed Forces and coalition partners. The conferees believe that the Department should consider the establishment of a major force program or similar consolidation of related budget activities for joint experimentation, procurement, and training activities.

Global Positioning System III satellite (sec. 215)

The Senate amendment contained a provision (sec. 212) that would prohibit the obligation or expenditure of any more than 80 percent of the funds authorized to be appropriated for the Global Positioning System III (GPS) until the Secretary of Defense completes an analysis of alternatives and submits a report on that analysis to the congressional defense committees.

The House bill contained no similar provision.

The House recedes.

The conferees expect the analysis of alternatives to include an assessment of architectures that take advantage of smaller, lighter weight, and potentially less expensive GPS satellites.

Initiation of concept demonstration of Global Hawk high altitude endurance unmanned aerial vehicle (sec. 216)

The Senate amendment contained a provision (sec. 213) that would amend section 221(c) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398) by changing the date by which the Secretary of Defense is to initiate the demonstration of the Global Hawk high altitude endurance unmanned aerial vehicle from March 1, 2001 to March 1, 2005.

The House bill contained no similar provision.

The House recedes.

Joint unmanned combat air systems program (sec. 217)

The Senate amendment contained a provision (sec. 214) that would require the Secretary of Defense to establish an executive committee, which would provide guidance and recommendations for the management of the joint unmanned combat air systems program to the Director of the Defense Advanced Research Projects Agency (DARPA) for as long as the program is managed by DARPA.

The House bill contained no similar provision.

The House recedes.

Subtitle C—Missile Defense Programs

Fielding of ballistic missile defense capabilities (sec. 231)

The House bill contained a provision (sec. 221) that would authorize the Department of Defense to use Research, Development, Test and Evaluation funds appropriated in fiscal years 2005 and 2006 for the Missile Defense Agency to develop and field ballistic missile defense capabilities.

The Senate amendment contained a similar provision (sec. 231) that would authorize the use of Research, Development, Test and Evaluation funds appropriated in fiscal year 2005 for the development and fielding of an initial set of missile defense capabilities.

The Senate recedes.

Integration of Patriot Advanced Capability-3 and Medium Extended Air Defense System into ballistic missile defense system (sec. 232)

The Senate amendment contained a provision (sec. 232) that would require the Secretary of the Army to obtain approval of the Director of the Missile Defense Agency (MDA) prior to making changes to system level specifications or establishing new system level specifications for the combined Patriot Advanced Capability-3 (PAC-3) and Medium Extended Air Defense System (MEADS) program. It would also require such approval prior to making any significant change in procurement quantities or the baseline schedule for the PAC-3/MEADS combined program.

The House bill contained no similar provision.

The House recedes with an amendment that would define the PAC-3/MEADS air and missile defense program as part of the integrated ballistic missile defense system (BMDS), and require that the Director of MDA, in consultation with the Secretary of the Army (acting through the Assistant Secretary of the Army for Acquisition, Logistics and Technology), ensure that any configuration change to the PAC-3/MEADS program is subject to MDA's configuration control processes. The amendment would also require that the Secretary of the Army (acting through the Assistant Secretary of the Army for Acquisition, Logistics and Technology) make significant changes to the baseline technical specifications and schedule for the PAC-3/MEADS program only with the concurrence of the Director of the Missile Defense Agency. The amendment would further require the Secretary of Defense to establish procedures to determine the effect of significant changes proposed by the Secretary of the Army to planned PAC 3/MEADS procurement quantities on BMDS capabilities; to provide for reviews of the proposed procurement changes by all relevant Department of Defense commands and agencies; to obtain the concurrence or nonconcurrence of those commands and agencies with the proposed procurement changes; and to submit a report to the congressional defense committees on the procedures the Secretary of Defense establishes.

Comptroller General assessments of ballistic missile defense programs (sec. 233)

The Senate amendment contained a provision (sec. 233) that would require assessments by the Comptroller General of the extent to which missile defense programs met their cost, schedule, test, and performance goals for the years 2004 through 2009. The provision also requires the Comptroller General to submit reports on those assessments to the congressional defense committees.

The House bill contained no similar provision.

The House recedes with an amendment that would require assessments by the Comptroller General of the extent to which missile defense programs met their cost, schedule, test, and performance goals for the years 2004 through 2006.

Baselines and operational test and evaluation for ballistic missile defense system (sec. 234)

The Senate amendment contained a provision (sec. 234) that would require: 1) the Secretary of Defense, in consultation with the Director of Operational Test and Evaluation (DOT&E), to prepare appropriate criteria for operationally realistic testing of the ballistic missile defense system (BMDS); 2) the conduct of a test consistent with those criteria not later than October 1, 2005; 3) the conduct of tests consistent with those criteria for each block configuration of the BMDS; 4) evaluation of those tests by the DOT&E; 4) the establishment of baselines for each block configuration of the BMDS; and 5) the Director of the Missile Defense Agency to report variances in program performance from those baselines to Congress and the reasons for any changes made to the baselines.

The House bill contained no similar provision.

The House recedes.

Subtitle D—Other Matters

Annual report on submarine technology insertion (sec. 241)

The Senate amendment contained a provision (sec. 241) that would require the Secretary of Defense to submit an annual report on available or potentially available technologies for insertion into submarines for each of fiscal years 2006, 2007, 2008, and 2009.

The House bill contained no similar provision.

The House recedes.

Sense of the Congress regarding funding of the Advanced Shipbuilding Enterprise under the National Shipbuilding Research Program of the Navy (sec. 212)

The Senate amendment contained a provision (sec. 242) that would express the sense of the Senate in support of continued funding for the Advanced Shipbuilding Enterprise under the National Shipbuilding Research Program of the Navy, citing it as a method for exploring and collaborating on innovation in shipbuilding and ship repair that collectively benefits all components of the industry.

The House bill contained no similar provision.

The House recedes with an amendment that would change the provision to a sense of the Congress.

LEGISLATIVE PROVISIONS NOT ADOPTED

Program increases

The House bill contained a provision (sec. 203) that would authorize an increase of $5.0 million in PE 25633N for Research, Development, Test and Evaluation, Navy, for nano composite hard-coat for aircraft canopies, and an increase of $5.0 million in PE 27443F for Research, Development, Test and Evaluation, Air Force, for command and control service-level management.

The Senate amendment contained no similar provision.

The House recedes.

The conferees agree to authorize an increase of $2.3 million in PE 25633N for nano composite hard-coat for aircraft canopies, and an increase of $3.8 million in PE 27443F for command and control service-level management. DD(X)-class destroyer program.

The Senate amendment contained a provision (sec. 211) that would authorize the Secretary of the Navy to fund the second destroyer of the DD(X)-class with Research, Development, Test and Evaluation, Navy funds, and would direct that $99.4 million be authorized for detail design of the second ship.

The House bill contained no similar provision.

The Senate recedes.

The conferees agree to authorize a total of $1,471.5 million in PE 64300N for the DD(X) destroyer, including $84.4 million to begin detail design of the second ship of the class.

The conferees have strongly supported both the DD(X) program and the Navy's acquisition strategy, which uses the construction and test of engineering development models (EDMs) to mitigate technical risk.

The conferees are aware of the assessment by the Government Accountability Office (GAO) of the maturity of 12 technologies critical to DD(X), as the program entered the system development and demonstration (SDD) phase, and the GAO's further assessment that DD(X) technology maturity and design stability will not be demonstrated before the Milestone B decision scheduled for March 2005. Many of the tests to demonstrate technical maturity will occur around the time of the critical design review (CDR) late in fiscal year 2005. Program officials acknowledge the risks associated with the advanced technologies, but the conferees believe that taking such risks is warranted to ensure that the DD(X) technologies are not obsolete, and that the Navy has taken adequate steps to mitigate the risks before ship construction begins. These steps include the identification of fall back options if new technologies are not available.

In particular, the conferees note the concerns expressed in the House report (H. Rept. 108-491) regarding the schedule for land-based testing of the integrated power system and advanced gun system EDMs. These two system EDMs are not scheduled to complete land-based testing until late in fiscal year 2005, coincident with the DD(X) CDR.

The conferees agree that the integrated power system and advanced gun system are key elements which drive much of the DD(X) design, and that land-based testing of these systems should be essentially complete prior to the DD(X) CDR. The conferees direct the Secretary of the Navy, in coordination with the Under Secretary of Defense for Acquisition, Technology and Logistics, to report to the congressional defense committees following completion of the DD(X) CDR. That report should include the results of the CDR and an assessment of the readiness of the program to proceed beyond the SDD phase of the program.

The conferees share the concerns raised in the Senate Report (S. Rept. 108-260) regarding maintaining the viability of a competitive industrial base for the design and construction of Navy surface combatants. As noted in that report, the Navy had originally planned to compete the construction phase of the DD(X), but made a decision to award that contract on a sole-source basis to the shipyard with lead design responsibility. The conferees expect the Navy to take all actions necessary to ensure the viability of the second shipyard in order to maintain a healthy and competitive industrial base for surface combatants.

Joint Strike Fighter aircraft program

The Senate amendment contained a provision (sec. 215) that would require the Secretary of Defense to have the Defense Science Board (DSB) conduct a study of the Joint Strike Fighter (JSF) aircraft program, which would be delivered to the congressional defense committees with the budget request for fiscal year 2006. This study would focus primarily on the issue of excess weight in the aircraft, the potential performance penalties that would be incurred, and the technical approaches to solve these issues.

The House bill amendment contained no similar provision.

The Senate recedes.

The conferees have been made aware of the results of a recently completed study by a senior-level independent review team which reviewed almost identical areas of the JSF program, and believe another study by the DSB would be redundant at this time.

Space based radar

The House bill contained a provision (sec. 215) that would prohibit the Department of Defense from proceeding to Milestone B in the Space Based Radar program until 30 days after meeting a requirement to provide the congressional defense committees and intelligence committees a report that includes independent cost and technology maturity and readiness assessments and the system design concept for the program.

The Senate amendment contained no similar provision.

The House recedes.

Mark-54 torpedo product improvement program

The House bill contained a provision (sec. 216) that would make available $2.0 million of the funds in PE 64610N for Research, Development, Test, and Evaluation, Navy for the Mark-54 torpedo product improvement program.

The Senate amendment contained no similar provision.

The House recedes.

The conferees agree to authorize an increase of $1.5 million in PE 64610N for the Mark-54 torpedo product improvement program.

Infrastructure system security engineering development for the Navy

The Senate amendment contained a provision (sec. 217) that would authorize an increase of $3.0 million in PE 26313M for Research, Development, Test and Evaluation, Navy, for infrastructure system security engineering development.

The House bill contained no similar provision.

The Senate recedes.

The conferees agree to authorize an increase of $1.5 million in PE 26313M for infrastructure system security engineering at the Critical Infrastructure Protection Center.

Neurotoxin Mitigation Research

The Senate amendment contained a provision (sec. 218) that would authorize an increase of $2.0 million in PE 62384BP for Research, Development, Test and Evaluation, Defense-wide activities for neurotoxin mitigation research.

The House bill contained no similar provision.

The Senate recedes.

The conferees agree to authorize an increase of $1.0 million in PE 62384BP for neurotoxin mitigation research.

Spiral development of Joint Threat Warning System maritime variants

The Senate amendment contained a provision (sec. 219) that would authorize an increase of $2.0 million in PE 116405BB for the development of maritime variants for the Joint Threat Warning System (JTWS), to be offset by a decrease of $2.0 million of the amount authorized to be appropriated for military personnel (sec. 421), with the amount of the reduction to be derived from excess amounts provided for military personnel of the Air Force.

The House bill contained no similar provision.

The Senate recedes.

The conferees agree to authorize an increase of $2.0 million in PE116405BB for spiral development of maritime variants for JTWS.

Advanced ferrite antenna

The Senate amendment contained a provision (sec. 220) that would authorize an increase of $3.0 million in PE 26313M for Research, Development, Test, and Evaluation, Navy, for advanced ferrite antenna development.

The House bill contained no similar provision.

The Senate recedes.

The conferees agree to authorize an increase of $2.1 million in PE 26313M for advanced ferrite antenna development.

Prototype littoral array system for operating submarines

The Senate amendment contained a provision (sec. 221) that would authorize an increase of $5.0 million in PE 64503N for Research, Development, Test and Evaluation, Navy for the design, development, and testing of a prototype littoral array system for operating submarines.

The House bill contained no similar provision.

The Senate recedes.

The conferees agree to authorize an increase of $3.3 million in PE 64503N for the design, development, and testing of a prototype littoral array system for operating submarines.

Advanced manufacturing technologies and radiation casualty research

The Senate amendment contained a provision (sec. 222) that would authorize an increase of $2.0 million in PE 78011S for advanced manufacturing technologies and $3.0 million in PE 63002D8Z for radiation casualty research.

The House bill contained no similar provision.

The Senate recedes.

The conferees agree to authorize an increase of $4.5 million in PE 78011S for advanced manufacturing technologies.

Research and development for improved prevention of leishmaniasis

The Senate amendment contained a provision (sec. 328) that would authorize an increase of $0.5 million in the Defense Health Program and $4.5 million in PE 64807A for research and development for improved prevention of leishmaniasis.

The House bill contained no similar provision.

The Senate recedes.

The conferees agree to authorize an increase of $0.5 million in the Defense Health Program, $1.4 million in PE 63002A, and $4.5 million in PE 64807A for research and development for the prevention and treatment of leishmaniasis.

TITLE III—OPERATION AND MAINTENANCE

Operation and Maintenance Overview

The budget request included an authorization of $121,874.6 million in Operation and Maintenance, $20,109.6 million in Other Programs, and $2,955.1 million in Working Capital Fund accounts for the Department for Defense.

The House bill would authorize $119,758.9 million in Operation and Maintenance, $20,229.8 million in Other Programs, and $2,767.1 million in Working Capital Fund accounts.

The Senate amendment would authorize $120,522.3 million in Operation and Maintenance, $20,529.0 million in Other Programs, and $2,894.9 million in Working Capital Fund accounts.

The conferees recommend an authorization of $121,520.2 million in Operation and Maintenance, $20,086.9 million in Other Programs, and $2,896.1 million in Working Capital Fund accounts. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

NATIONAL DEFENSE AUTHORIZATION FOR FISCAL YEAR 2005

(Dollars in Thousands)

	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Title III – OPERATION AND MAINTENANCE & OTHER PROGRAMS					
OPERATION AND MAINTENANCE					
Operation and Maintenance, Army	26,133,411	25,838,611	26,313,611	-35,000	26,098,411
Operation and Maintenance, Navy	29,789,190	29,523,490	29,702,790	-106,600	29,682,590
Operation and Maintenance, MC	3,632,115	3,637,615	3,682,727	16,000	3,648,115
Operation and Maintenance, AF	28,471,260	27,068,566	27,423,560	-172,600	28,298,660
Operation and Maintenance, Defense-wide	17,494,076	17,317,406	17,458,576	-168,800	17,325,276
Operation and Maintenance, Army Reserve	2,008,128	2,003,728	1,925,728		2,008,128
Operation and Maintenance, Navy Reserve	1,240,038	1,240,038	1,240,038		1,240,038
Operation and Maintenance, Marine Corps Reserve	188,696	188,696	197,496		188,696
Operation and Maintenance, Air Force Reserve	2,239,790	2,226,790	2,154,790		2,239,790
Operation and Maintenance, Army National Guard	4,440,686	4,425,686	4,227,236	12,100	4,452,786
Operation and Maintenance, Air National Guard	4,422,838	4,448,938	4,366,738	80,500	4,503,338
Transfer Accounts	1,305,336	1,305,336	1,349,986	40,000	1,345,336
Miscellaneous Appropriations	509,025	534,025	479,025	-20,000	489,025
SUBTOTAL OPERATION AND MAINTENANCE	**121,874,589**	**119,758,925**	**120,522,301**	**-354,400**	**121,520,189**

NATIONAL DEFENSE AUTHORIZATION FOR FISCAL YEAR 2005

(Dollars in Thousands)

	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
OTHER PROGRAMS					
DEFENSE HEALTH PROGRAM					
Defense Health Program, O&M	17,203,369	17,374,544	17,555,169	16,475	17,219,844
Reserve health benefits			[400,000]		
Retail pharmacy benefit			[-44,000]		
Walter Reed amputee care			[7,800]	[7,800]	
Traumatic brain injury			[2,000]		
Financial information systems			[-14,000]		
Information Technology Reduction		[-50,000]			
Earlier TRICARE Eligibility for RC Families and Members		[113,000]			
Waiver of TRICARE Deductibles for RC Families		[2,000]			
Protection against Balance Billing for Mobilized Reservists		[500]			
Enrollment of Certain Young Children in Dental Plan		[500]			
Improved Transition Assistance Program		[170,000]			
TRICARE Coverage of Certain Ready Reservists		[30,000]			
Additional TRICARE Prime Remote Beneficiaries		[1,000]			
Cooperative Education for Sexual Health Decision Making		[175]		[175]	
Sub-Acute Care Transition Program		[500]			
Marshall Islands Diabetes Program		[2,000]			
Landstuhl Medical Center		[10,000]		[8,500]	
DOD Cooperative Health Care Program		[5,000]			
GAO Estimate Annual DHP Unobligated Funds		[-113,500]			

NATIONAL DEFENSE AUTHORIZATION FOR FISCAL YEAR 2005

(Dollars in Thousands)

	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Defense Health Program, RDTE	72,407	72,407	72,907	500	72,907
Leishmaniasis diagnostics laboratory (S. Amdt 3329)			[500]	[500]	
Defense Health Program, Procurement	364,635	364,635	364,635		364,635
Subtotal Defense Health Program	**17,640,411**	**17,811,586**	**17,992,711**	**16,975**	**17,657,386**
DRUG INTERDICTION AND COUNTER-DRUG ACTIVITIES					
Demand Reduction	122,109	122,109	122,109		122,109
Domestic Support	207,998	207,998	207,998		207,998
Intelligence and Technology	111,085	111,085	111,085	1,750	112,835
Intelligence, surveillance, reconnaissance and tanker support		[-2,000]		[-1,000]	
Tethered Aerostat Radar System		[-5,000]		[-3,500]	
Southwest border fence		[5,000]		[5,000]	
Nothern Command counternarcotics support		[2,000]		[1,250]	
CENTCOM, PACOM, and EUCOM AOR Support	40,840	40,840	40,840		40,840
SOUTHCOM AOR Support	370,665	370,665	370,665	-1,500	369,165
LEA support/OCONUS ops support				[-1,500]	
Subtotal Drug Interdiction and Counter-Drug Activities	**852,697**	**852,697**	**852,697**	**250**	**852,947**
OFFICE OF THE INSPECTOR GENERAL					
Office of the Inspector General, O&M	242,362	191,362	162,362	-40,000	202,362
Mid Range Financial Improvement Program / Audits		[-51,000]	[-80,000]	[-40,000]	
Office of the Inspector General, RDTE	100	100	100		100
Office of the Inspector General, Procurement	2,100	2,100	2,100		2,100
Subtotal Office of the Inspection General	**244,562**	**193,562**	**164,562**	**-40,000**	**204,562**

NATIONAL DEFENSE AUTHORIZATION FOR FISCAL YEAR 2005

(Dollars in Thousands)

	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
CHEMICAL AGENTS AND MUNITIONS DESTRUCTION					
Chemical Agents and Munitions Destruction, O&M	1,138,801	1,138,801	1,138,801	-50,000	1,088,801
Unobligated balances				[-50,000]	
Chemical Agents and Munitions Destruction, RDTE	154,209	154,209	301,209	50,000	204,209
Chemical agent disposal facility-Pueblo, CO			[147,000]	[50,000]	
Chemical Agents and Munitions Destruction, Procurement	78,980	78,980	78,980		78,980
Subtotal Chemical Agents and Munitions Destruction	**1,371,990**	**1,371,990**	**1,518,990**		**1,371,990**
SUBTOTAL OTHER PROGRAMS	20,109,660	20,229,835	20,528,960	-22,775	20,086,885
REVOLVING AND MANAGEMENT FUNDS					
Defense Working Capital Funds	510,886	372,886	450,686	-59,000	451,886
Financial information systems			[-60,200]		
Army - Industrial mobilization capacity		[-67,000]			
Navy - Aviation spare engine procurement		[-59,000]		[-59,000]	
Air Force - Perishable medical and dental readiness material		[-12,000]			
Defense Working Capital Funds - DeCA	1,175,000	1,175,000	1,175,000		1,175,000
National Defense Sealift Fund	1,269,252	1,219,252	1,269,252		1,269,252
Program decrease		[-50,000]			
SUBTOTAL REVOLVING AND MANAGEMENT FUNDS	2,955,138	2,767,138	2,894,938	-59,000	2,896,138
TOTAL O&M AND OTHER PROGRAMS	144,939,387	142,755,898	143,946,199	-436,175	144,503,212

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	Operation and Maintenance, Army					
	BUDGET ACTIVITY 01: OPERATING FORCES					
	LAND FORCES					
1	DIVISIONS	1,520,706	1,520,706	1,520,706		1,520,706
2	CORPS COMBAT FORCES	472,692	472,692	472,692		472,692
3	CORPS SUPPORT FORCES	445,344	445,344	445,344		445,344
4	ECHELON ABOVE CORPS SUPPORT FORCES	515,730	496,730	515,730	-10,000	505,730
	Unjustified growth in modernized equipment support costs		[-10,000]		[-10,000]	
	Network Enterprise Technology Command		[-9,000]			
5	LAND FORCES OPERATIONS SUPPORT	1,197,822	1,187,822	1,198,822	-4,000	1,193,822
	Forward osmosis water filtration system			[1,000]	[1,000]	
	Unjustified growth in combat training centers		[-10,000]			
	Unjustified cost growth for rotational training				[-5,000]	
	LAND FORCES READINESS					
6	FORCE READINESS OPERATIONS SUPPORT	1,787,147	1,793,647	2,344,147		1,787,147
	Rapid fielding initiative (RFI)			[262,000]		
	Interceptor body armor			[295,000]		
	Hydration on the move		[3,000]			
	Vehicle batteries		[2,500]			
	Military Skills Engagement		[1,000]			

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
7	LAND FORCES SYSTEMS READINESS	537,567	533,567	545,567	-4,000	533,567
	Corrosion prevention and control			[8,000]		
	Tactical exploitation system		[-4,000]		[-4,000]	
8	LAND FORCES DEPOT MAINTENANCE	1,031,105	1,031,105	1,053,005	12,000	1,043,105
	M1A1 transmission maintenance			[21,900]	[12,000]	
	LAND FORCES READINESS SUPPORT					
9	BASE OPERATIONS SUPPORT	5,609,973	5,584,773	5,609,973	-14,000	5,595,973
	Visual information support		[-13,000]			
	Installation Management Activity		[-10,000]			
	DCSIM and DOIM staff operations		[-2,200]			
	Unjustified growth in base operating support				[-14,000]	
10	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION	1,956,128	1,956,128	1,956,128		1,956,128
11	MANAGEMENT & OPERATIONAL HEADQUARTERS	251,474	251,474	251,474		251,474
12	UNIFIED COMMANDS	94,850	94,850	94,850		94,850
13	MISCELLANEOUS ACTIVITIES	1,057,943	1,057,943	1,057,943		1,057,943
	TOTAL, BA 01: OPERATING FORCES	16,478,481	16,426,781	17,066,381	-20,000	16,458,481
	BUDGET ACTIVITY 02: MOBILIZATION					

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	MOBILITY OPERATIONS					
14	STRATEGIC MOBILIZATION	327,345	327,345	331,345	2,800	330,145
	Specialty containers			[4,000]	[2,800]	
15	ARMY PREPOSITIONED STOCKS	126,163	126,163	126,163		126,163
16	INDUSTRIAL PREPAREDNESS	8,491	8,491	8,491		8,491
17	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION					
	TOTAL, BA 02: MOBILIZATION	**461,999**	**461,999**	**465,999**	**2,800**	**464,799**
	BUDGET ACTIVITY 03: TRAINING AND RECRUITING					
	ACCESSION TRAINING					
18	OFFICER ACQUISITION	107,554	107,554	107,554		107,554
19	RECRUIT TRAINING	20,766	20,766	20,766		20,766
20	ONE STATION UNIT TRAINING	41,961	41,961	41,961		41,961
21	SENIOR RESERVE OFFICERS' TRAINING CORPS	234,308	234,308	234,308	-6,000	228,308
	Unjustified growth in ROTC cadre and support costs				[-6,000]	
22	BASE OPERATIONS SUPPORT					
23	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION					

Title III - Operation and Maintenance
(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	BASIC SKILL/ ADVANCE TRAINING					
24	SPECIALIZED SKILL TRAINING	506,557	509,557	510,157	3,000	509,557
	Army Defense Language Institute (SCOLA)		[3,000]	[5,600]	[3,000]	
	Army Defense Language Institute (SCOLA) (S. Amdt 3241)			[-2,000]		
25	FLIGHT TRAINING	575,406	575,406	575,406		575,406
26	PROFESSIONAL DEVELOPMENT EDUCATION	102,832	102,832	102,832		102,832
27	TRAINING SUPPORT	618,519	603,519	618,519	-20,000	598,519
	Unjustified growth in training support		[-15,000]		[-20,000]	
28	BASE OPERATIONS SUPPORT					
29	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION					
	RECRUITING/OTHER TRAINING					
30	RECRUITING AND ADVERTISING	461,157	447,157	461,157		461,157
	Recruiting Information Support System		[-4,000]			
	MEPCOM Management Information Reporting System		[-10,000]			
31	EXAMINING	131,206	131,206	131,206		131,206
32	OFF-DUTY AND VOLUNTARY EDUCATION	296,311	296,311	296,311		296,311
33	CIVILIAN EDUCATION AND TRAINING	111,003	111,003	111,003		111,003
34	JUNIOR RESERVE OFFICERS' TRAINING CORPS	137,331	137,331	137,331		137,331
35	BASE OPERATIONS SUPPORT					
	TOTAL, BA 03: TRAINING AND RECRUITING	3,344,911	3,318,911	3,348,511	-23,000	3,321,911

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	BUDGET ACTIVITY 04: ADMINISTRATION & SERVICEWIDE ACTIVITIES					
	SECURITY PROGRAMS					
36	SECURITY PROGRAMS	883,510	883,510	883,510		883,510
	LOGISTICS OPERATIONS					
37	SERVICEWIDE TRANSPORTATION	570,923	570,923	570,923		570,923
38	CENTRAL SUPPLY ACTIVITIES	490,261	490,261	491,261	1,000	491,261
	Management training			[1,000]	[1,000]	
39	LOGISTICS SUPPORT ACTIVITIES	439,466	439,466	440,866		439,466
	Radio frequency identification (RFID)			[1,400]		
40	AMMUNITION MANAGEMENT	356,607	356,607	356,607		356,607
	SERVICEWIDE SUPPORT					
41	ADMINISTRATION	702,719	683,219	702,719		702,719
	Unjustified growth in headquarters management		[-19,500]			

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
42	SERVICEWIDE COMMUNICATIONS	610,866	547,566	610,866		610,866
	Personnel transformation		[-13,000]			
	Army Knowledge enterprise architecture		[-4,000]			
	Management headquarters information management		[-13,000]			
	Defense Civilian Personnel Data System - sustainment		[-2,200]			
	Logistics Modernization Program		[-2,700]			
	Logistic post production software support		[-3,500]			
	Army Personnel Electronic Records Management System		[-7,000]			
	Army Human Resources Command core automation support		[-20,000]			
	Information Technology Agency		[-12,400]			
	Training instrumentation for air and missile defense units		[5,000]			
	National Guard's Enterprise Resource Planning Program		[3,500]			
	National Guard's nationwide dedicated fiber optic network		[6,000]			
43	MANPOWER MANAGEMENT	267,365	267,365	267,365		267,365
	Excessive growth in civilian personnel operations					
44	OTHER PERSONNEL SUPPORT	191,686	191,686	191,686		191,686
45	OTHER SERVICE SUPPORT	848,391	848,391	848,391		848,391
46	ARMY CLAIMS	115,453	115,453	115,453		115,453
47	REAL ESTATE MANAGEMENT	60,633	60,633	60,633		60,633
48	BASE OPERATIONS SUPPORT					
49	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION					
50	COMMISSARY OPERATIONS					

Title III - Operation and Maintenance
(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	SUPPORT OF OTHER NATIONS					
51	SUPPORT OF NATO OPERATIONS	250,026	250,026	250,026		250,026
52	MISC. SUPPORT OF OTHER NATIONS	60,114	60,114	60,114		60,114
53	EXPANSION OF NATO					
	TOTAL, BA 04: ADMINISTRATION & SERVICEWIDE ACTIVITIES	**5,848,020**	**5,765,220**	**5,850,420**	**1,000**	**5,849,020**
	Civilian personnel underexecution		-82,000	-81,900		
	Working Capital Fund excess balances			-250,000		
	Working Capital Fund excess carryover			-100,000		
	WMD-CSTs			4,200	4,200	4,200
	Excessive unobligated balances		-52,300			
	Family Readiness Program (S. Amdt 3234)			10,000		
	Total Operation and Maintenance, Army	**26,133,411**	**25,838,611**	**26,313,611**	**-35,000**	**26,098,411**

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	Operation and Maintenance, Navy					
	BUDGET ACTIVITY 01: OPERATING FORCES					
	AIR OPERATIONS					
1	MISSION AND OTHER FLIGHT OPERATIONS	3,002,769	3,002,769	3,002,769		3,002,769
2	FLEET AIR TRAINING	1,066,452	1,066,452	1,066,452		1,066,452
3	INTERMEDIATE MAINTENANCE	66,565	66,565	66,565		66,565
4	AIR OPERATIONS AND SAFETY SUPPORT	111,146	111,146	111,146		111,146
5	AIR SYSTEMS SUPPORT	498,508	458,508	498,508	-23,000	475,508
	Unjustified growth for technical publications		[-25,000]		[-15,000]	
	Navy air logistics data analysis		[-15,000]		[-8,000]	
6	AIRCRAFT DEPOT MAINTENANCE	995,596	980,096	995,596	-5,000	990,596
	Navy Converged Enterprise Resource Planning Program		[-15,500]		[-5,000]	
7	AIRCRAFT DEPOT OPERATIONS SUPPORT	67,980	67,980	67,980		67,980
	SHIP OPERATIONS					
8	MISSION AND OTHER SHIP OPERATIONS	2,604,963	2,589,963	2,604,963		2,604,963
	Fleet response plan efficiencies		[-15,000]			
9	SHIP OPERATIONAL SUPPORT AND TRAINING	622,119	622,119	624,119		622,119
	NULKA decoy cartridge			[2,000]		
10	INTERMEDIATE MAINTENANCE					

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
11	SHIP DEPOT MAINTENANCE	3,910,439	3,914,439	3,980,439	14,300	3,924,739
	Ship depot maintenance			[70,000]	[11,300]	
	Stainless steel sanitary spaces		[4,000]		[3,000]	
12	SHIP DEPOT OPERATIONS SUPPORT	1,113,910	1,113,910	1,113,910	-43,100	1,070,810
	Cruiser conversion				[-43,100]	
	COMBAT OPERATIONS/SUPPORT					
13	COMBAT COMMUNICATIONS	379,929	379,929	380,929	1,000	380,929
	Manufacturing Technical Assistance and Production Program			[1,000]	[1,000]	
14	ELECTRONIC WARFARE	16,946	16,946	16,946		16,946
15	SPACE SYSTEMS & SURVEILLANCE	136,231	136,231	136,231		136,231
16	WARFARE TACTICS	266,032	266,032	266,032		266,032
17	OPERATIONAL METEOROLOGY & OCEANOGRAPHY	256,003	256,003	256,003		256,003
18	COMBAT SUPPORT FORCES	1,362,179	1,322,179	1,362,179	-15,000	1,347,179
	Unjustified growth for JFCOM and PACOM		[-40,000]			
	Excessive growth for JFCOM				[-15,000]	
19	EQUIPMENT MAINTENANCE	186,658	186,658	186,658		186,658
20	DEPOT OPERATIONS SUPPORT	3,214	3,214	3,214		3,214
	WEAPONS SUPPORT					
21	CRUISE MISSILE	155,731	155,731	155,731		155,731
22	FLEET BALLISTIC MISSILE	830,393	830,393	830,393		830,393
23	IN-SERVICE WEAPONS SYSTEMS SUPPORT	51,043	51,043	51,043		51,043

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
24	WEAPONS MAINTENANCE	447,327	449,327	447,327		447,327
	NULKA - electronic decoy maintenance		[2,000]			
	WORKING CAPITAL FUND SUPPORT					
25	NWCF SUPPORT					
	BASE SUPPORT					
26	SUSTAINMENT, RESTORATION & MODERNIZATION	1,330,363	1,330,363	1,330,363		1,330,363
27	BASE OPERATIONS SUPPORT	3,195,350	3,168,350	3,195,350	-37,500	3,157,850
	Navy / USMC base level communications		[-27,000]			
	Annual savings from NSRR disestablishment				[-30,000]	
	Unjustified growth in base operating support				[-7,500]	
	TOTAL, BA 01: OPERATING FORCES	**22,677,846**	**22,546,346**	**22,750,846**	**-108,300**	**22,569,546**
	BUDGET ACTIVITY 02: MOBILIZATION					
	READY RESERVE AND PREPOSITIONING FORCES					
28	SHIP PREPOSITIONING AND SURGE	548,199	548,199	548,199		548,199
	ACTIVATIONS/INACTIVATIONS					
29	AIRCRAFT ACTIVATIONS/INACTIVATIONS	7,619	7,619	7,619		7,619
30	SHIP ACTIVATIONS/INACTIVATIONS	212,393	212,393	212,393		212,393

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	MOBILIZATION PREPAREDNESS					
31	FLEET HOSPITAL PROGRAM	26,119	26,119	26,119		26,119
32	INDUSTRIAL READINESS	1,523	1,523	1,523		1,523
33	COAST GUARD SUPPORT	17,185	17,185	17,185		17,185
	TOTAL, BA 02: MOBILIZATION	**813,038**	**813,038**	**813,038**		**813,038**
	BUDGET ACTIVITY 03: TRAINING AND RECRUITING					
	ACCESSION TRAINING					
34	OFFICER ACQUISITION	120,835	120,835	120,835		120,835
35	RECRUIT TRAINING	7,716	7,716	7,716		7,716
36	RESERVE OFFICERS TRAINING CORPS	102,336	102,336	102,336		102,336
	BASIC SKILLS AND ADVANCED TRAINING					
37	SPECIALIZED SKILL TRAINING	434,374	434,374	434,374		434,374
38	FLIGHT TRAINING	420,829	420,829	420,829		420,829
39	PROFESSIONAL DEVELOPMENT EDUCATION	116,770	116,770	116,770		116,770
40	TRAINING SUPPORT	238,246	238,246	238,246		238,246

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	RECRUITING, AND OTHER TRAINING AND EDUCATION					
41	RECRUITING AND ADVERTISING	282,526	272,526	282,526	1,700	284,226
	Naval Sea Cadets		[2,000]		[1,700]	
	Other Navy military personnel and readiness		[-12,000]			
42	OFF-DUTY AND VOLUNTARY EDUCATION	146,508	146,508	146,508		146,508
43	CIVILIAN EDUCATION AND TRAINING	67,556	67,556	67,556		67,556
44	JUNIOR ROTC	39,900	39,900	39,900		39,900
	BASE SUPPORT					
45	SUSTAINMENT, RESTORATION & MODERNIZATION					
46	BASE OPERATIONS SUPPORT					
	TOTAL, BA 03: TRAINING AND RECRUITING	1,977,596	1,967,596	1,977,596	1,700	1,979,296
	BUDGET ACTIVITY 04: ADMINISTRATION & SERVICEWIDE ACTIVITIES					
	SERVICEWIDE SUPPORT					
47	ADMINISTRATION	773,940	773,940	773,940		773,940
48	EXTERNAL RELATIONS	3,893	3,893	3,893		3,893
49	CIVILIAN MANPOWER & PERSONNEL MGT	110,614	110,614	110,614		110,614
50	MILITARY MANPOWER & PERSONNEL MGT	198,465	198,465	198,465		198,465
51	OTHER PERSONNEL SUPPORT	317,284	317,284	317,284		317,284

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
52	SERVICEWIDE COMMUNICATIONS	605,415	589,415	605,415		605,415
	Other Navy military personnel and readiness		[-16,000]			
53	MEDICAL ACTIVITIES					
	LOGISTICS OPERATIONS AND TECHNICAL SUPPORT					
54	SERVICEWIDE TRANSPORTATION	189,634	189,634	189,634		189,634
55	ENVIRONMENTAL PROGRAMS					
56	PLANNING, ENGINEERING & DESIGN	252,972	252,972	252,972		252,972
57	ACQUISITION AND PROGRAM MANAGEMENT	840,666	840,666	840,666		840,666
58	AIR SYSTEMS SUPPORT					
59	HULL, MECHANICAL & ELECTRICAL SUPPORT	55,505	55,505	55,505		55,505
60	COMBAT/WEAPONS SYSTEMS	51,683	51,683	51,683		51,683
61	SPACE & ELECTRONIC WARFARE SYSTEMS	70,166	70,166	70,166		70,166
61a	NAVAL CIS - Office of Naval Intelligence - small ship registry		1,500			
	SECURITY PROGRAMS					
62	SECURITY PROGRAMS	839,870	839,870	839,870		839,870
	SUPPORT OF OTHER NATIONS					
63	INTERNATIONAL HDQTRS & AGENCIES	10,603	10,603	10,603		10,603
	BASE SUPPORT					
64	CANCELLED ACCOUNT ADJUSTMENTS					

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
65	JUDGEMENT FUND					
	CANCELLED ACCOUNTS					
66	CANCELLED ACCOUNT					
	TOTAL, BA 04: ADMINISTRATION & SERVICEWIDE ACTIVITIES	4,320,710	4,306,210	4,320,710		4,320,710
	Civilian personnel underexecution		-12,000	-11,800		
	Working Capital Fund excess balances			-200,000		
	Additional Navy MWR funds			52,400		
	Excessive unobligated balances		-97,700			
	Total Operation and Maintenance, Navy	**29,789,190**	**29,523,490**	**29,702,790**	**-106,600**	**29,682,590**

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	Operation and Maintenance, Marine Corps					
	BUDGET ACTIVITY 01: OPERATING FORCES					
	EXPEDITIONARY FORCES					
1	OPERATIONAL FORCES	633,914	639,414	671,314	17,100	651,014
	Interceptor body armor			[14,400]		
	General property and support equipment			[9,000]	[4,600]	
	All-purpose environmental clothing system			[4,800]	[4,800]	
	Ultra-light camouflage net system			[9,200]	[3,800]	
	Hydration on the move		[1,000]			
	Vehicle batteries		[2,500]		[1,900]	
	Tent lighting system		[2,000]		[2,000]	
2	FIELD LOGISTICS	367,293	367,293	371,293	-100	367,193
	Corrosion prevention and control			[4,000]	[3,400]	
	Unjustified growth in life cycle sustainment software maintenance				[-1,500]	
	Unjustified growth in transportation CLS replacement and ammunition rework				[-2,000]	
3	DEPOT MAINTENANCE	102,085	102,085	102,085		102,085
	USMC PREPOSITIONING					
4	MARITIME PREPOSITIONING	72,128	72,128	72,128	-1,000	71,128
	Unjustified growth in contract maintenance and training exercises				[-1,000]	
5	NORWAY PREPOSITIONING	7,763	7,763	7,763		7,763

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	BASE SUPPORT					
6	SUSTAINMENT, RESTORATION & MODERNIZATION	451,012	451,012	451,012		451,012
7	BASE OPERATIONS SUPPORT	1,026,795	1,026,795	1,036,007		1,026,795
	Communications support for USMC NOC			[9,212]		
	TOTAL, BA 01: OPERATING FORCES	2,660,990	2,666,490	2,711,602	16,000	2,676,990
	BUDGET ACTIVITY 03: TRAINING AND RECRUITING					
	ACCESSION TRAINING					
8	RECRUIT TRAINING	10,539	10,539	10,539		10,539
9	OFFICER ACQUISITION	351	351	351		351
	BASIC SKILLS AND ADVANCED TRAINING					
10	SPECIALIZED SKILLS TRAINING	45,155	45,155	45,155		45,155
11	FLIGHT TRAINING	174	174	174		174
12	PROFESSIONAL DEVELOPMENT EDUCATION	8,972	8,972	8,972		8,972
13	TRAINING SUPPORT	134,241	134,241	134,241		134,241
	RECRUITING AND OTHER TRAINING EDUCATION					
14	RECRUITING AND ADVERTISING	113,988	113,988	113,988		113,988
15	OFF-DUTY AND VOLUNTARY EDUCATION	34,336	34,336	34,336		34,336

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
16	JUNIOR ROTC	13,270	13,270	13,270		13,270
	BASE SUPPORT					
17	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION	68,553	68,553	68,553		68,553
18	BASE OPERATIONS SUPPORT	162,579	162,579	162,579		162,579
	TOTAL, BA 03: TRAINING AND RECRUITING	**592,158**	**592,158**	**592,158**		**592,158**
	BUDGET ACTIVITY 04: ADMINISTRATION & SERVICEWIDE ACTIVITIES					
	SERVICEWIDE SUPPORT					
19	SPECIAL SUPPORT	274,508	274,508	274,508		274,508
20	SERVICEWIDE TRANSPORTATION	37,300	37,300	37,300		37,300
21	ADMINISTRATION	45,271	45,271	45,271		45,271
	CANCELLED ACCOUNT					
22	CANCELLED ACCOUNT					
	BASE SUPPORT					
23	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION	3,191	3,191	3,191		3,191

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
24	BASE OPERATIONS SUPPORT	18,697	18,697	18,697		18,697
	TOTAL, BA 04: ADMINISTRATION & SERVICEWIDE ACTIVITIES	**378,967**	**378,967**	**378,967**		**378,967**
	Total Operation and Maintenance, Marine Corps	**3,632,115**	**3,637,615**	**3,682,727**	**16,000**	**3,648,115**
	Operation and Maintenance, Air Force					
	BUDGET ACTIVITY 01: OPERATING FORCES					
	AIR OPERATIONS					
1	PRIMARY COMBAT FORCES	3,275,334	3,430,634	3,275,334	-9,000	3,266,334
	B-1A Lancer bomber support		[157,400]			
	KC-767 tanker support		[3,500]			
	Hydration on the move		[2,000]			
	Joint crew protection masks		[1,400]			
	Combat Air Systems activities, 480th Intel Squadron		[-9,000]		[-9,000]	
2	PRIMARY COMBAT WEAPONS	331,333	331,333	331,333		331,333
3	COMBAT ENHANCEMENT FORCES	346,322	346,322	346,322		346,322
4	AIR OPERATIONS TRAINING	1,274,599	1,274,599	1,274,599	-15,000	1,259,599
	Unjustified growth in JNTC distributed mission operations				[-15,000]	

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
5	COMBAT COMMUNICATIONS	1,318,159	1,278,859	1,318,159		1,318,159
	Depot maintenance program realignment to Air National Guard		[-39,300]			
6	DEPOT MAINTENANCE	2,085,761	2,085,761	2,046,461	-39,300	2,046,461
	Transfer to Air National Guard			[-39,300]	[-39,300]	
7	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION	1,017,301	948,917	1,017,901	-9,400	1,007,901
	Drop zone extension			[600]	[600]	
	Unjustified growth for foreign national indirect hires		[-10,484]			
	Base level communications infrastructure, Air Combat Command		[-8,000]			
	Base level communications infrastructure, Pacific		[-9,000]			
	Base level communications infrastructure, Europe		[-10,000]			
	Engineering & installation, Air Combat Command		[-5,600]			
	Engineering & installation, Space Command		[-4,000]			
	Engineering & installation, Air Mobility Command		[-6,300]			
	Engineering & installation, Pacific		[-5,000]			
	Engineering & installation, Europe		[-10,000]			
	Unjustified growth for air operations centers				[-10,000]	
8	BASE SUPPORT	1,995,494	1,995,494	1,995,494		1,995,494
	COMBAT RELATED OPERATIONS					
9	GLOBAL C3I & EARLY WARNING	1,147,163	1,147,163	1,147,163	-20,000	1,127,163
	Unjustified growth for C3I operations and sustainment				[-20,000]	
10	NAVIGATION/WEATHER SUPPORT	204,543	204,543	204,543		204,543

Title III - Operation and Maintenance
(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
11	OTHER COMBAT OPERATIONS SUPPORT PROGRAMS	622,524	592,312	622,524	-20,000	602,524
	Unjustified growth for service support to NORTHCOM		[-26,212]			
	Combatant Commanders Intelligence Capabilities		[-4,000]			
	Unjustified growth in engineering, installation - Space Operations School				[-20,000]	
12	JCS EXERCISES	32,756	32,756	32,756		32,756
13	MANAGEMENT/OPERATIONAL HEADQUARTERS	240,380	240,380	240,380		240,380
14	TACTICAL INTELLIGENCE AND SPECIAL ACTIVITIES	340,102	340,102	340,102		340,102
	SPACE OPERATIONS					
15	LAUNCH FACILITIES	343,565	343,565	343,565		343,565
16	LAUNCH VEHICLES	100,135	100,135	100,135		100,135
17	SPACE CONTROL SYSTEMS	237,995	237,995	237,995		237,995
18	SATELLITE SYSTEMS	68,655	68,655	68,655		68,655
19	OTHER SPACE OPERATIONS	258,376	258,376	258,376		258,376
20	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION	171,469	171,469	171,469		171,469
21	BASE SUPPORT	528,332	528,332	528,332		528,332
	TOTAL, BA 01: OPERATING FORCES	**15,940,298**	**15,957,702**	**15,901,598**	**-112,700**	**15,827,598**

Title III - Operation and Maintenance
(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	BUDGET ACTIVITY 02: MOBILIZATION					
	MOBILITY OPERATIONS					
22	AIRLIFT OPERATIONS	1,919,987	1,919,987	1,919,987		1,919,987
23	AIRLIFT OPERATIONS C3I	51,824	51,824	51,824		51,824
24	MOBILIZATION PREPAREDNESS	170,623	170,623	170,623		170,623
25	PAYMENTS TO TRANSPORTATION BUSINESS AREA					
26	DEPOT MAINTENANCE	410,679	371,179	431,779	-38,900	371,779
	Depot maintenance program realignment to Air National Guard		[-39,500]	[-39,500]	[-39,500]	
	Oxygen repair facility			[600]	[600]	
	Depot maintenance for KC-135			[60,000]		
27	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION	200,928	200,928	200,928		200,928
28	BASE SUPPORT	537,718	537,718	537,718		537,718
	TOTAL, BA 02: MOBILIZATION	**3,291,759**	**3,252,259**	**3,312,859**	**-38,900**	**3,252,859**
	BUDGET ACTIVITY 03: TRAINING AND RECRUITING					
	ACCESSION TRAINING					
29	OFFICER ACQUISITION	73,788	73,788	73,788		73,788
30	RECRUIT TRAINING	6,034	6,034	6,034		6,034
31	RESERVE OFFICER TRAINING CORPS (ROTC)	84,381	84,381	84,381		84,381
32	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION	85,892	85,892	85,892		85,892

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
33	BASE SUPPORT	71,777	71,777	71,777		71,777
	BASIC SKILLS AND ADVANCED TRAINING					
34	SPECIALIZED SKILL TRAINING	336,818	336,818	336,818		336,818
35	FLIGHT TRAINING	775,819	775,819	775,819		775,819
36	PROFESSIONAL DEVELOPMENT EDUCATION	158,967	158,967	158,967		158,967
37	TRAINING SUPPORT	108,450	108,450	108,450		108,450
38	DEPOT MAINTENANCE	12,914	12,914	12,914		12,914
39	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION	190,592	190,592	190,592		190,592
40	BASE SUPPORT	584,857	584,857	584,857		584,857
	RECRUITING, AND OTHER TRAINING AND EDUCATION					
41	RECRUITING AND ADVERTISING	143,369	143,369	143,369	-23,000	120,369
	Reduced recruiting goals				[-23,000]	
42	EXAMINING	3,281	3,281	3,281		3,281
43	OFF DUTY AND VOLUNTARY EDUCATION	159,129	159,129	159,129		159,129
44	CIVILIAN EDUCATION AND TRAINING	158,738	158,738	158,738		158,738
45	JUNIOR ROTC	50,108	50,108	50,108		50,108
	TOTAL, BA 03: TRAINING AND RECRUITING	**3,004,914**	**3,004,914**	**3,004,914**	**-23,000**	**2,981,914**

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	BUDGET ACTIVITY 04: ADMINISTRATION & SERVICEWIDE ACTIVITIES					
	LOGISTICS OPERATIONS					
46	LOGISTICS OPERATIONS	883,478	883,478	886,478		883,478
	Radio frequency identification (RFID)			[3,000]		
47	TECHNICAL SUPPORT ACTIVITIES	432,323	432,323	432,323		432,323
48	SERVICEWIDE TRANSPORTATION	171,501	171,501	171,501		171,501
49	DEPOT MAINTENANCE	105,158	105,158	105,158		105,158
50	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION	260,580	260,580	260,580		260,580
51	BASE SUPPORT	1,072,242	1,072,242	1,072,242		1,072,242
	SERVICEWIDE ACTIVITIES					
52	ADMINISTRATION	299,617	299,617	299,617		299,617
53	SERVICEWIDE COMMUNICATIONS	377,574	348,774	377,574		377,574
	Combat Information Transport System		[-6,400]			
	Military personnel data systems		[-2,400]			
	Pentagon Communications Agency		[-20,000]			
54	PERSONNEL PROGRAMS	262,281	252,781	262,281		262,281
	Central Civilian Career Permanent Change of Station Program		[-9,500]			
55	RESCUE AND RECOVERY SERVICES	129,437	129,437	129,437		129,437
56	ARMS CONTROL	41,645	41,645	41,645		41,645
57	OTHER SERVICEWIDE ACTIVITIES	728,942	728,942	728,942		728,942
58	OTHER PERSONNEL SUPPORT	39,457	39,457	39,457		39,457

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
59	CIVIL AIR PATROL CORPORATION	21,722	21,722	21,722		21,722
60	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION	12,848	12,848	12,848		12,848
61	BASE SUPPORT	345,170	314,770	345,170		345,170
	Unjustified growth		[-30,400]			
	SECURITY PROGRAMS					
62	SECURITY PROGRAMS	1,024,129	1,024,129	1,024,129		1,024,129
	SUPPORT TO OTHER NATIONS					
63	INTERNATIONAL SUPPORT	26,185	26,185	26,185		26,185
	TOTAL, BA 04: ADMINISTRATION & SERVICEWIDE ACTIVITIES	**6,234,289**	**6,165,589**	**6,237,289**		**6,234,289**
	NORTHCOM HS/HD education consortium			1,000	1,000	1,000
	Simulation training for WMD emergency response programs			2,500	1,000	1,000
	Civilian personnel underexecution		-29,500	-36,600		
	Working Capital Fund excess balances			-360,000		
	Civilian separation incentives		-40,798			
	Working Capital Fund, Transportation		-967,200	-640,000		
	Working Capital Fund, Transportation (H. Amdts 10,)		-75,000			

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	Working Capital Fund, Supply Management		-150,000			
	Excessive unobligated balances		-49,400			
	Total Operation and Maintenance, Air Force	**28,471,260**	**27,068,566**	**27,423,560**	**-172,600**	**28,298,660**
	Operation and Maintenance, Defense-wide					
	BUDGET ACTIVITY 1: OPERATING FORCES					
1	JOINT CHIEFS OF STAFF	243,062	204,162	231,262	-40,000	203,062
	Unjustified growth for JCS exercises			[-11,800]	[-40,000]	
	Unjustified growth for military air and sea lift cargo		[-27,100]			
	Unjustified growth for joint exercises		[-11,800]			
2	SPECIAL OPERATIONS COMMAND	1,992,613	1,993,613	1,993,613	-25,000	1,967,613
	Militarized lightweight tactical all terrain vehicles (LTATV)			[1,000]		
	Hydration on the move		[1,000]			
	Unjustified growth for SOCOM				[-15,000]	
	SOCOM - decreased airlift requirements				[-10,000]	
	TOTAL, BUDGET ACTIVITY 1:	2,235,675	2,197,775	2,224,875	-65,000	2,170,675

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	BUDGET ACTIVITY 2: MOBILIZATION					
3	DEFENSE LOGISTICS AGENCY	40,599	44,599	48,599	3,500	44,099
	Radio frequency identification (RFID)		[4,000]	[8,000]	[3,500]	
	TOTAL, BUDGET ACTIVITY 2:	40,599	44,599	48,599	3,500	44,099
	BUDGET ACTIVITY 3: TRAINING AND RECRUITING					
4	AMERICAN FORCES INFORMATION SERVICE	14,050	14,050	14,050		14,050
5	OTHER PROGRAMS					
6	DEFENSE ACQUISITION UNIVERSITY	103,532	103,532	103,532		103,532
7	DEFENSE CONTRACT AUDIT AGENCY	5,296	5,296	5,296		5,296
8	DEFENSE THREAT REDUCTION AGENCY	5,968	5,968	5,968		5,968
9	DEFENSE HUMAN RESOURCES ACTIVITY	56,067	66,067	56,067	5,000	61,067
	Joint Advertising and Market Research		[10,000]		[10,000]	
	DLAMP program growth				[-5,000]	
10	DEFENSE FINANCE AND ACCOUNTING SERVICE					
11	DEFENSE SECURITY SERVICE	7,343	7,343	7,343		7,343
12	NATIONAL DEFENSE UNIVERSITY	90,263	94,863	90,263	2,700	92,963
	Continuing education		[2,000]		[1,500]	
	Joint Forces Staff College infrastructure		[2,600]		[1,200]	
13	SPECIAL OPERATIONS COMMAND	96,244	96,244	96,244		96,244
	TOTAL, BUDGET ACTIVITY 3:	378,763	393,363	378,763	7,700	386,463

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	BUDGET ACTIVITY 4: ADMIN & SERVICEWIDE ACTIVITIES					
14	AMERICAN FORCES INFORMATION SERVICE	110,528	110,528	110,528		110,528
15	CIVIL MILITARY PROGRAMS	101,389	101,389	112,389	7,200	108,589
	National Guard Youth Challenge Program			[11,000]	[7,200]	
18	DEFENSE CONTRACT AUDIT AGENCY	368,119	368,119	368,119		368,119
20	DEFENSE LEGAL SERVICES AGENCY	25,484	25,484	25,484		25,484
21	DEFENSE LOGISTICS AGENCY	265,379	280,379	265,379	12,750	278,129
	Commercial technologies for maintenance activities		[15,000]		[12,750]	
22	DEFENSE POW /MIA OFFICE	15,964	15,964	15,964		15,964
23	DEFENSE TECHNOLOGY SECURITY AGENCY	20,456	21,456	20,456		20,456
	Program increase		[1,000]			
24	DEFENSE THREAT REDUCTION AGENCY	319,483	320,983	321,983		319,483
	UNWD testbeds			[2,500]		
	Program increase		[1,500]			
25	DEPARTMENT OF DEFENSE EDUCATION AGENCY	1,761,852	1,819,052	1,761,852	-10,000	1,751,852
	DOD supplemental impact aid		[50,000]			
	Joint Counterintelligence Training Academy		[7,200]			
	DoDEA unjustified certification program				[-10,000]	
26	DOD HUMAN RESOURCES ACTIVITY	318,940	318,940	318,940	-6,400	312,540
	Defense Business Fellows				[-4,400]	
	Business systems				[-2,000]	
27	DEFENSE CONTRACT MANAGEMENT AGENCY	1,029,592	1,029,592	1,029,592		1,029,592

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
28	DEFENSE FINANCE AND ACCOUNTING SERVICE	4,310	4,310	4,310		4,310
29	DEFENSE INFORMATION SERVICES AGENCY	1,090,558	1,090,558	1,090,558	-25,000	1,065,558
	Program growth				[-25,000]	
30	DEFENSE SECURITY COOPERATION AGENCY	83,922	83,922	83,922		83,922
31	DEFENSE SECURITY SERVICE	277,100	227,100	277,100	-25,000	252,100
	Program reduction to prevent transition to Working Capital Fund		[-50,000]			
	Unjustified program				[-25,000]	
32	JOINT CHIEFS OF STAFF	278,884	278,884	278,884		278,884
34	OFFICE OF ECONOMIC ADJUSTMENT	44,756	44,756	44,756		44,756
35	OFFICE OF THE SECRETARY OF DEFENSE	805,813	693,243	785,013	-103,550	702,263
	Information Assurance Scholarship Program			[3,000]	[2,250]	
	Command Information Superiority Architectures Program			[3,500]	[1,000]	
	Capital cost sharing-eliminate subsidy		[-27,300]	[-27,300]	[-27,300]	
	FEHB premiums for mobilized federal employees		[10,000]			
	USD(I)		[-20,000]			
	Environment readiness		[-10,000]		[-7,500]	
	Public affairs		[-11,500]			
	Secretary's analytical agenda		[-7,000]			
	Unjustified growth		[-20,000]			
	Persistent stratospheric vehicles		[4,230]			
	DJCC - research technology protection		[4,800]			
	Counterintelligence Law Enforcement Watch Center		[4,000]			
	Paralyzed Veterans Association		[1,000]			

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	Chief information officer programs		[-12,000]			
	Comptroller Business Management Modernization Program		[-25,400]			
	Horizontal Fusion		[-3,400]			
	Public affairs				[-11,500]	
	Business Management Modernization Program (BMMP)				[-7,000]	
	Net Assessment				[-4,000]	
	BMMP domains				[-15,000]	
	Logistics system modernization				[-4,000]	
	DOD CIO				[-2,500]	
	Training transformation				[-5,000]	
	Contract and support				[-5,000]	
	Study program				[-4,000]	
	Comptroller initiatives				[-6,500]	
	Defense procurement and acquisition policy				[-7,500]	
36	SPECIAL OPERATIONS COMMAND	142,457	142,457	142,457		142,457
37	WASHINGTON HEADQUARTERS SERVICE	447,166	437,166	447,166		447,166
	BRAC Commission		[-10,000]			
99	OTHER PROGRAMS	7,326,887	7,326,887	7,326,887		7,326,887
	TOTAL, BUDGET ACTIVITY 4:	**14,839,039**	**14,741,169**	**14,831,739**	**-150,000**	**14,689,039**
	Impact aid			30,000	30,000	30,000
	Impact aid for children with disabilities			5,000	5,000	5,000

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	Working Capital Fund excess balances			-60,700		
	Financial information systems			-4,700		
	Excessive unobligated balances		-59,500			
	One Source military counseling (S. Amdt 3289)			5,000		
	Total Operation and Maintenance, Defense-Wide	17,494,076	17,317,406	17,458,576	-168,800	17,325,276
	Operation and Maintenance, Army Reserve					
	BUDGET ACTIVITY 01: OPERATING FORCES					
	LAND FORCES					
1	DIVISION FORCES	7,640	7,640	7,640		7,640
2	CORPS COMBAT FORCES	34,607	34,607	34,607		34,607
3	CORPS SUPPORT FORCES	318,411	318,411	318,411		318,411
4	ECHELON ABOVE CORPS FORCES	150,421	150,421	150,421		150,421
5	LAND FORCES OPERATIONS SUPPORT	459,134	459,134	459,134		459,134
	LAND FORCES READINESS					
6	FORCES READINESS OPERATIONS SUPPORT	153,475	153,475	153,475		153,475
7	LAND FORCES SYSTEM READINESS	65,202	65,202	65,202		65,202
8	LAND FORCES DEPOT MAINTENANCE	71,548	71,548	71,548		71,548

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	LAND FORCES READINESS SUPPORT					
9	BASE OPERATIONS SUPPORT	379,112	384,712	379,112		379,112
	Family Support Programs		[5,600]			
10	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION	201,141	201,141	201,141		201,141
11	MISCELLANEOUS ACTIVITIES	7,627	7,627	7,627		7,627
	Tuition assistance		1,000			
	TOTAL, BA 01: OPERATING FORCES	**1,848,318**	**1,854,918**	**1,848,318**		**1,848,318**
	BUDGET ACTIVITY 04: ADMINISTRATION & SERVICEWIDE ACTIVITIES					
	ADMINISTRATION AND SERVICEWIDE ACTIVITIES					
12	ADMINISTRATION	52,180	52,180	52,180		52,180
13	SERVICEWIDE COMMUNICATIONS	9,116	9,116	9,116		9,116
14	MANPOWER MANAGEMENT	8,201	8,201	8,201		8,201
15	RECRUITING AND ADVERTISING	90,313	90,313	90,313		90,313
	TOTAL, BA 04: ADMINISTRATION & SERVICEWIDE ACTIVITIES	**159,810**	**159,810**	**159,810**		**159,810**
	Military technicians cost avoidance / underexecution		-11,000	-82,400		

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY 2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	Total Operation and Maintenance, Army Reserve	2,008,128	2,003,728	1,925,728		2,008,128
	Operation and Maintenance, Navy Reserve					
	BUDGET ACTIVITY 01: OPERATING FORCES					
	RESERVE AIR OPERATIONS					
1	MISSION AND OTHER FLIGHT OPERATIONS	483,526	483,526	483,526		483,526
2	INTERMEDIATE MAINTENANCE	16,494	16,494	16,494		16,494
3	AIR OPERATIONS AND SAFETY SUPPORT	1,592	1,592	1,592		1,592
4	AIRCRAFT DEPOT MAINTENANCE	131,607	131,607	131,607		131,607
5	AIRCRAFT DEPOT OPERATIONS SUPPORT	384	384	384		384
	RESERVE SHIP OPERATIONS					
6	MISSION AND OTHER SHIP OPERATIONS	59,127	59,127	59,127		59,127
7	SHIP OPERATIONAL SUPPORT AND TRAINING	531	531	531		531
8	INTERMEDIATE MAINTENANCE					
9	SHIP DEPOT MAINTENANCE	92,787	92,787	92,787		92,787
10	SHIP DEPOT OPERATIONS SUPPORT	3,596	3,596	3,596		3,596
	RESERVE COMBAT OPERATIONS SUPPORT					
11	COMBAT COMMUNICATIONS	6,732	6,732	6,732		6,732

Title III - Operation and Maintenance
(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
12	COMBAT SUPPORT FORCES	224,589	224,589	224,589		224,589
	RESERVE WEAPONS SUPPORT					
13	WEAPONS MAINTENANCE	5,548	5,548	5,548		5,548
	BASE SUPPORT					
14	SUSTAINMENT, RESTORATION AND MODERNIZATION	73,410	73,410	73,410		73,410
15	BASE OPERATIONS SUPPORT	108,863	108,863	108,863		108,863
	TOTAL, BA 01: OPERATING FORCES	**1,208,786**	**1,208,786**	**1,208,786**		**1,208,786**
	BUDGET ACTIVITY 04: ADMINISTRATION & SERVICEWIDE ACTIVITIES					
	ADMINISTRATION AND SERVICEWIDE ACTIVITIES					
16	ADMINISTRATION	6,930	6,930	6,930		6,930
17	CIVILIAN MANPOWER AND PERSONNEL MANAGEMENT					
18	MILITARY MANPOWER AND PERSONNEL MANAGEMENT	8,797	8,797	8,797		8,797
19	SERVICEWIDE COMMUNICATIONS	3,347	3,347	3,347		3,347
20	COMBAT/WEAPONS SYSTEMS	5,667	5,667	5,667		5,667
21	OTHER SERVICEWIDE SUPPORT	6,511	6,511	6,511		6,511

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	CANCELLED ACCOUNTS					
22	CANCELLED ACCOUNTS					
	TOTAL, BA 04: ADMINISTRATION & SERVICEWIDE ACTIVITIES	31,252	31,252	31,252		31,252
	Total Operation and Maintenance, Navy Reserve	1,240,038	1,240,038	1,240,038		1,240,038
	Operation and Maintenance, Marine Corps Reserve					
	BUDGET ACTIVITY 01: OPERATING FORCES					
	MISSION FORCES					
1	OPERATING FORCES	72,940	72,940	81,740		72,940
	Interceptor body armor			[2,200]		
	General property and support equipment			[3,000]		
	All-purpose environmental clothing system			[600]		
	Ultra-light camouflage net system			[3,000]		
2	DEPOT MAINTENANCE	12,132	12,132	12,132		12,132
3	BASE SUPPORT					
4	TRAINING SUPPORT	25,544	25,544	25,544		25,544
5	SUSTAINMENT, RESTORATION AND MODERNIZATION					

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	BASE SUPPORT					
6	SUSTAINMENT, RESTORATION AND MODERNIZATION	12,126	12,126	12,126		12,126
7	BASE OPERATING SUPPORT	33,370	33,370	33,370		33,370
	TOTAL, BA 01: OPERATING FORCES	**156,112**	**156,112**	**164,912**		**156,112**
	BUDGET ACTIVITY 04: ADMINISTRATION & SERVICEWIDE ACTIVITIES					
	ADMINISTRATION AND SERVICEWIDE ACTIVITIES					
8	SPECIAL SUPPORT	8,948	8,948	8,948		8,948
9	SERVICE-WIDE TRANSPORTATION	580	580	580		580
10	ADMINISTRATION	10,407	10,407	10,407		10,407
11	BASE SUPPORT					
12	RECRUITING AND ADVERTISING	8,013	8,013	8,013		8,013

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	BASE SUPPORT					
13	BASE SUPPORT	4,636	4,636	4,636		4,636
	TOTAL, BA 04: ADMINISTRATION & SERVICEWIDE ACTIVITIES	32,584	32,584	32,584		32,584
	Total Operation and Maintenance, Marine Corps Reserve	188,696	188,696	197,496		188,696
	Operation and Maintenance, Air Force Reserve					
	BUDGET ACTIVITY 01: OPERATING FORCES					
	AIR OPERATIONS					
1	PRIMARY COMBAT FORCES	1,329,717	1,329,717	1,329,717		1,329,717
2	MISSION SUPPORT OPERATIONS	74,077	74,077	74,077		74,077
3	DEPOT MAINTENANCE	410,893	410,893	410,893		410,893
4	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION	53,056	53,056	53,056		53,056
5	BASE SUPPORT	264,425	264,425	264,425		264,425
	TOTAL, BA 01: OPERATING FORCES	2,132,168	2,132,168	2,132,168		2,132,168

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	BUDGET ACTIVITY 04: ADMINISTRATION & SERVICEWIDE ACTIVITIES					
	ADMINISTRATION AND SERVICEWIDE ACTIVITIES					
6	ADMINISTRATION	60,270	60,270	60,270		60,270
7	RECRUITING AND ADVERTISING	14,516	14,516	14,516		14,516
8	MILITARY MANPOWER AND PERSONNEL MANAGEMENT	25,485	25,485	25,485		25,485
9	OTHER PERSONNEL SUPPORT (DISABILITY COMP)	6,707	6,707	6,707		6,707
10	AUDIOVISUAL	644	644	644		644
	TOTAL, BA 04: ADMINISTRATION & SERVICEWIDE ACTIVITIES	107,622	107,622	107,622		107,622
	Military technicians cost avoidance / underexecution		-13,000	-85,000		
	Total Operation and Maintenance, Air Force Reserve	2,239,790	2,226,790	2,154,790		2,239,790
	Operation and Maintenance, Army National Guard					
	BUDGET ACTIVITY 01: OPERATING FORCES					
	LAND FORCES					
1	DIVISIONS	558,168	558,168	558,168		558,168

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
2	CORPS COMBAT FORCES	629,062	629,062	629,062		629,062
3	CORPS SUPPORT FORCES	333,393	333,393	333,393		333,393
4	ECHELON ABOVE CORPS FORCES	615,838	615,838	615,838		615,838
5	LAND FORCES OPERATIONS SUPPORT	20,786	20,786	20,786		20,786
	LAND FORCES READINESS					
6	FORCE READINESS OPERATIONS SUPPORT	180,163	181,163	181,813	1,300	181,463
	Cannon bore cleaning			[1,650]	[1,300]	
	Hydration on the move		[1,000]			
7	LAND FORCES SYSTEMS READINESS	142,914	142,914	142,914		142,914
8	LAND FORCES DEPOT MAINTENANCE	230,567	230,567	230,567		230,567
	LAND FORCES READINESS SUPPORT					
9	BASE OPERATIONS SUPPORT	577,028	607,028	577,028		577,028
	Family Assistance Centers		[30,000]			
10	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION	384,044	384,044	384,044		384,044
11	MANAGEMENT AND OPERATIONAL HQ	451,167	451,167	451,167		451,167
12	MISCELLANEOUS ACTIVITIES	59,356	59,356	59,356		59,356
	TOTAL, BA 01: OPERATING FORCES	**4,182,486**	**4,213,486**	**4,184,136**	**1,300**	**4,183,786**

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	BUDGET ACTIVITY 04: ADMINISTRATION & SERVICEWIDE ACTIVITIES					
	ADMINISTRATION AND SERVICEWIDE ACTIVITIES					
13	ADMINISTRATION	110,669	110,669	110,669		110,669
14	SERVICEWIDE COMMUNICATIONS	26,341	26,341	26,341		26,341
15	MANPOWER MANAGEMENT	35,376	35,376	35,376		35,376
16	RECRUITING AND ADVERTISING	85,814	85,814	85,814		85,814
	TOTAL, BA 04: ADMINISTRATION & SERVICEWIDE ACTIVITIES	**258,200**	**258,200**	**258,200**		**258,200**
	CERFP			1,500		
	Military technicians cost avoidance / underexecution		-32,000	-227,400		
	WMD-CSTs			9,800	9,800	9,800
	CBRA			1,000	- 1,000	1,000
	Tuition assistance		- 500			
	Excessive unobligated balances		-14,500			
	Total Operation and Maintenance, Army National Guard	**4,440,686**	**4,425,686**	**4,227,236**	**12,100**	**4,452,786**

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	Operation and Maintenance, Air National Guard					
	BUDGET ACTIVITY 01: OPERATING FORCES					
	AIR OPERATIONS					
1	AIRCRAFT OPERATIONS	2,685,471	2,685,471	2,685,471		2,685,471
2	MISSION SUPPORT OPERATIONS	362,114	362,114	364,114	1,700	363,814
	Extended cold weather clothing system			[2,000]	[1,700]	
3	DEPOT MAINTENANCE	676,647	755,447	755,447	78,800	755,447
	ANG depot maintenance (transfer from AF DPEM BA1, BA2)		[78,800]	[78,800]	[78,800]	
4	FACILITIES SUSTAINMENT, RESTORATION & MODERNIZATION	230,642	230,642	230,642		230,642
5	BASE SUPPORT	431,076	431,076	431,076		431,076
	TOTAL, BA 01: OPERATING FORCES	**4,385,950**	**4,464,750**	**4,466,750**	**80,500**	**4,466,450**
	BUDGET ACTIVITY 04: ADMINISTRATION & SERVICEWIDE ACTIVITIES					
	SERVICEWIDE ACTIVITIES					
6	ADMINISTRATION	27,490	27,490	27,490		27,490
7	RECRUITING AND ADVERTISING	9,398	9,398	9,398		9,398
	TOTAL, BA 04: ADMINISTRATION & SERVICEWIDE ACTIVITIES	**36,888**	**36,888**	**36,888**		**36,888**

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
	Military technicians cost avoidance / underexecution		-19,000	-137,300		
	CERFP			400		
	Excessive unobligated balances		-33,700			
	Total Operation and Maintenance, Air National Guard	**4,422,838**	**4,448,938**	**4,366,738**	**80,500**	**4,503,338**
	TRANSFER ACCOUNTS					
1	ENVIRONMENTAL RESTORATION, ARMY	400,948	400,948	405,598		400,948
	Fort Hood offsite conservation program			[850]		
	Environmental compliance --Holston Army Ammo Plant			[3,800]		
2	ENVIRONMENTAL RESTORATION, NAVY	266,820	266,820	266,820		266,820
3	ENVIRONMENTAL RESTORATION, AIR FORCE	397,368	397,368	397,368		397,368
4	ENVIRONMENTAL RESTORATION, DEFENSE-WIDE	23,684	23,684	23,684		23,684
5	ENVIRONMENTAL RESTORATION, FORMERLY USED DEFENSE SITES	216,516	216,516	256,516	40,000	256,516
	TOTAL, O&M, TRANSFER ACCOUNTS	**1,305,336**	**1,305,336**	**1,349,986**	**40,000**	**1,345,336**
	MISCELLANEOUS APPROPRIATIONS					
6	U.S. COURT OF APPEALS FOR THE ARMED FORCES	10,825	10,825	10,825		10,825
7	SUPPORT OF INTERNATIONAL SPORTING COMPETITIONS					

Title III - Operation and Maintenance

(Dollars in Thousands)

Line	Program Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
8	OVERSEAS CONTINGENCIES OPERATIONS TRANSFER FUND	30,000	5,000		-20,000	10,000
	Program reduction		[-25,000]	[-30,000]	[-20,000]	
9	EMERGENCY RESPONSE FUND, DEFENSE					
10	EMERGENCY RESPONSE FUND, DEFENSE					
11	EMERGENCY RESPONSE FUND, DEFENSE					
12	EMERGENCY RESPONSE FUND, DEFENSE					
13	EMERGENCY RESPONSE FUND, DEFENSE					
14	EMERGENCY RESPONSE FUND, DEFENSE					
15	EMERGENCY RESPONSE FUND, DEFENSE					
16	EMERGENCY RESPONSE FUND, DEFENSE					
17	EMERGENCY RESPONSE FUND, DEFENSE					
18	IRAQ FREEDOM FUND, DEF					
19	OVERSEAS HUMANITARIAN, DISASTER, AND CIVIC AFFAIRS	59,000	59,000	59,000		59,000
20	KAHO'OLAWE					
21	CLAIMS, MT. PINATUBO, DEFENSE					
22	FORMER SOVIET UNION (FSU) THREAT REDUCTION	409,200	409,200	409,200		409,200
	Defense Industrial Base Capabilities Fund		50,000			
	TOTAL, MISCELLANEOUS	**509,025**	**534,025**	**479,025**	**-20,000**	**489,025**
	TOTAL OPERATION AND MAINTENANCE TITLE:	**121,874,589**	**119,758,925**	**120,522,301**	**-354,400**	**121,520,189**

ITEMS OF SPECIAL INTEREST

Navy Marine Corps Intranet

The conferees note that the Navy Marine Corps Intranet (NMCI) program is working to transfer legacy applications and networks into the NMCI environment. The conferees note that the scope of this process is large and the original goals relating to termination or migration of legacy applications have not been achieved. The conferees understand that there may be valid operational reasons for not migrating some legacy applications into the NMCI environment. The Secretary of the Navy should accelerate the migration or termination of legacy applications and networks, and the conferees direct the Secretary to report to the Congress on the progress in this area, as well as on a plan for the future funding of any legacy systems support by September 30, 2005. The conferees take no position on matters of NMCI contract administration and direct the Secretary to resolve any matters in contractual arrangements relating to legacy application termination, transition, and support in a manner consistent with established procedures and acquisition policies.

Transforming the Department of the Army's logistics maintenance information

The conferees support the Department of the Army's recent decision to allocate funds to reduce the cost, while increasing the speed of transforming its logistics maintenance information into modern and usable formats. The conferees urge the Army to continue these efforts as a means to improve maintenance support tools available to soldiers.

LEGISLATIVE PROVISIONS ADOPTED

Subtitle A—Authorization of Appropriations

Authorization of appropriations (secs. 301-303)

The House bill contained provisions (sec. 301-303) that would authorize fiscal year 2005 funding levels for all operation and maintenance accounts, working capital funds, and other Department of Defense programs, including the Defense Inspector General, the Chemical Demilitarization Program, Drug Interdiction and Counter-Drug Activities, and the Defense Health Program.

The Senate amendment contained similar provisions (secs. 301-303).

The conference agreement includes these provisions.

Chemical Agents and Munitions Destruction, Defense (sec. 303b)

The budget request included $1,372.0 million in Chemical Agents and Munitions Destruction, Army for the Department of Defense.

The House bill contained a provision (sec. 303(b)) that would provide a total of $1,372.0 million in Chemical Agents and Munitions Destruction, Defense (CAMD,D) for the Department of Defense.

The Senate amendment contained a provision (sec. 303(b)) that would provide a total of $1,519.0 million for CAMD,D, including an increase of $147.0 million to restore the funding for the chemical demilitarization research and development program at the Pueblo Chemical Agent Disposal Facility, Pueblo, Colorado, to the original estimates developed by the Department's Cost Analysis Improvement Group, which were provided in the Future Years Defense Program submitted with the fiscal year 2004 budget request.

The House recedes with an amendment that would authorize $1,372.0 million for CAMD,D, as follows: $1,088.8 million for Operation and Maintenance; $204.2 million for Research and Development, (an increase of $50.0 million to the budget request to be used for the chemical demilitarization research and development program at Pueblo); and $79.0 million for Procurement.

Elsewhere in this report the conferees recommend an authorization of $81.9 million for military construction for the Chemical Agents and Munitions Destruction program.

The conferees note the reduction in the fiscal year 2005 budget request from the fiscal year budget estimate for the chemical demilitarization program, particularly for the Pueblo facility, and concerns raised in the Senate report accompanying S.2400 (S. Rept. 108-260) regarding the need to provide sufficient funding in the program for the United States to meet its obligations under the Chemical Weapons Convention. The conferees also note the views expressed in the House report accompanying H.R. 4200 (H. Rept. 108-491) that the United States proceed as rapidly as possible in destroying the stockpile of bulk VX nerve agent stored at Newport Chemical Depot, Indiana, in order to ensure maximum safety and to meet international treaty commitments, while proceeding objectively and deliberately in ensuring that the disposal of the hydrolysate hazardous waste, which results from neutralization of the VX agent, in a commercial hazardous water treatment facility does not compromise the public health and safety of the citizens or the environment near such a facility.

Elsewhere in this report the conferees have recommended a provision that would require the Under Secretary of Defense for Acquisition, Technology and Logistics and the Secretary of the Army to jointly prepare and annually update a strategic report for future activities and funding of the chemical demilitarization program.

Section 1421 of the Department of Defense Authorization Act, 1986 (section 1521 of title 50, United States Code, Public Law 99-145) requires that funds for the chemical demilitarization program, including those for military construction, shall be set forth in the budget of the Department for any fiscal year as a separate account and shall not be included in the budget accounts for any military department. Section 141 of the National Defense Authorization Act for fiscal year 2003 (Public Law 107-314) requires that the Under Secretary of Defense (Comptroller) annually certify to the congressional defense committees that the budget request for the chemical agents and munition destruction program has been submitted in accordance with the requirements of section 1421. The Department submitted the fiscal year 2005 budget request for chemical demilitarization in an Army account, contrary to the law. The conferees expect the Department to comply with the law in future budget requests by submitting the budget request for chemical agents and munitions destruction in a Department of Defense account.

Subtitle B—Environmental Provisions

Satisfaction of Superfund audit requirements by the Inspector General of the Department of Defense (sec. 311)

The Senate amendment contained a provision (sec. 323) that would allow the Inspector General of the Department of Defense the discretion to audit Superfund financial transactions on a periodic basis.

The House bill contained no similar provision.

The House recedes with a technical amendment.

The conferees expect that a periodic review would result in an audit at least every three years.

Reimbursement of Environmental Protection Agency for certain costs in connection with Moses Lake Wellfield Superfund Site, Moses Lake, Washington (sec. 312)

The Senate amendment contained a provision (sec. 322) that would provide discretionary authority to the Secretary of Defense to transfer not more than $524,927 to the Moses Lake Wellfield Superfund Site (Moses Lake), 10-6J Special Account, formerly the home of Larson Air Force Base. This payment would be for reimbursement to the Environmental Protection Agency for costs and interest incurred to perform a remedial investigation and feasibility study at Moses Lake, where the groundwater is apparently contaminated with trichloroethylene.

The House bill contained no similar provision.

The House recedes.

Increase in authorized amount of environmental remediation, Front Royal, Virginia (sec. 313)

The Senate amendment contained a provision (sec. 325) that would amend section 591(a)(2) of the Water Resources Development Act of 1999 (Public Law 106-53) by increasing the authorized level by $10.0 million for environmental remediation in Front Royal, Virginia.

The House bill contained no similar provision.

The House recedes.

Small Boat Harbor, Unalaska, Alaska (sec. 314)

The conferees agree to include a provision that requires the Secretary of the Army to carry out the small boat harbor project in Unalaska, Alaska. The conferees note that the total estimated cost is $23.2 million, with an estimated federal cost of $11.5 million and an estimated non-federal cost of $11.7 million. The project shall be carried out in accordance with the plans and subject to the conditions recommended in a final report of the Chief of Engineers, if a favorable final report of the Chief for the project is completed not later than December 31, 2004.

Report regarding encroachment issues affecting Utah Test and Training Range, Utah (sec. 315)

The House bill included a provision (sec. 311) that would require the Secretary of the Air Force to submit a report to the Committees on Armed Services of the Senate and the House of Representatives that outlines current and anticipated encroachments on the use of the special use airspace of the Utah Test and Training Range (UTTR). The Senate amendment included a similar provision (sec. 329). The Senate amendment also confirmed a prohibition on ground military operations in the covered wilderness study area within UTTR. The Senate amendment further clarified that nothing in the provision would prevent required maintenance of existing communications, instrumentation, or electronic tracking systems necessary for effective testing and training to meet military requirements in UTTR.

The House recedes with a technical amendment.

Comptroller General Study and report on Alternative Technologies to decontaminate groundwater at Department of Defense installations (sec. 316)

The Senate amendment contained a provision (sec. 326) which would require the Comptroller General of the United States to conduct a study to determine whether or not cost-effective technologies are available to the Department of Defense for the cleanup of groundwater contamination at Department installations in lieu of traditional methods.

The House bill contained no similar provision.

The House recedes with an amendment clarifying the scope of the study.

Comptroller General study and report on drinking water contamination and related health effects at Camp Lejeune, North Carolina (sec. 317)

The Senate amendment contained a provision (sec. 324) that would require the Comptroller General of the U.S. to conduct a study of the history of drinking water contamination at the United States Marine Corps (USMC) base at Camp Lejeune, North Carolina.

The House bill contained no similar provision.

The House recedes with an amendment clarifying the scope of the study.

Sense of Congress regarding perchlorate contamination of ground and surface water from Department of Defense activities (sec. 318)

The Senate amendment contained a provision (sec. 327) that would express the sense of the Senate that the Department of Defense should develop a national plan to remediate perchlorate contamination specifically to: (1) ensure the Department is prepared to respond quickly and appropriately once a drinking water standard is established; (2) continue remediation at those sites where perchlorate contamination poses an imminent and substantial endangerment to public health; (3) develop a plan to remediate perchlorate contamination in cases in which such contamination from the Department's activities is present in ground or surface water at levels the Department determines pose a hazard to human health; and (4) continue the process of evaluating and prioritizing sites without waiting for the development of a federal standard.

The House bill contained no similar provision.

The House recedes with an amendment clarifying the scope of the sense of the Congress.

Subtitle C-Workplace and Depot Issues

Simplification of annual reporting requirements concerning funds expended for depot maintenance and repair workloads (sec. 321)

The House bill contained a provision (sec. 321) that would amend section 2466(d) of title 10, United States Code, to require the Secretary of Defense to submit to Congress a report on the percentage of funds expended or expected to be expended for depot maintenance and repair workloads in the public and private sectors.

The Senate amendment contained a similar provision (section 331) that would simplify and improve the two separate annual reports required by section 2466(d) of title 10, United States Code, that the Department of Defense prepares relating to the percentage of funds expended or projected to be expended for depot maintenance and repair workloads in the public and private sectors.

The House recedes with a technical amendment.

Repeal of annual reporting requirement concerning management of depot employees (sec. 322)

The House bill contained a provision (sec. 322) that would repeal section 2472(b) of title 10, United States Code, which currently requires the Secretary of Defense to report annually to the Committees on Armed Services of the Senate and the House of Representatives the number of Department of Defense employees employed and expected to be employed during that fiscal year to perform depot level maintenance and repair of materiel.

The Senate amendment contained a similar provision (sec. 332).

The Senate recedes.

Extension of special treatment for certain expenditures incurred in the operation of Centers of Industrial and Technical Excellence (sec. 323)

The Senate amendment contained a provision (sec. 333) that would extend for three years section 2474(f) of title 10, United States Code. Section 2474(f) excludes all work performed by non-federal personnel at designated Centers of Industrial and Technical Excellence from the 50 percent limitation on contracting for depot maintenance in section 2466(a) of title 10, United States Code, if the personnel are performing the work pursuant to a public-private partnership.

The House bill contained no similar provision.

The House recedes.

Temporary authority for contractor performance of security-guard functions (sec. 324)

The Senate amendment contained a provision (sec. 362) that would extend for two years the authority granted in section 332 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314) to hire contract security guards on a temporary basis to fill positions that would otherwise be filled by members of the Armed Forces.

The House bill contained no similar provision.

The House recedes with an amendment that would require the Secretary of Defense to submit a report on the use of this authority no later than December 1, 2005.

Pilot program for purchase of certain municipal services for Army installation (sec. 325)

The Senate amendment contained a provision (sec. 363) that would authorize a pilot program under which the secretary of a military department could provide for the purchase of local governmental services at a Department of Defense installation from the local government responsible for serving the area.

The House bill contained no similar provision.

The House recedes with an amendment that would limit the pilot program to two Department of Army installations located in the United States.

Bid protests by federal employees in actions under Office of Management and Budget Circular A-76 (sec. 326)

The House bill contained a provision (sec. 325) that would express the sense of Congress that Department of Defense civilian employees (or their representatives) and contractors (or their representatives) should receive comparable treatment regarding legal standing to challenge the way in which a public-private competition has been conducted before the Government Accountability Office (GAO) or in the U.S. Court of Federal Claims.

The Senate amendment contained a provision (sec. 1107) that would provide such legal standing, in GAO bid protests only, to both: (1) the official who submits an agency tender in a public-private competition (the Agency Tender Official (ATO)); and (2) a person representing a majority of the employees of the federal agency who are engaged in the performance of the activity or function that is subject to the competition. The Senate amendment also authorized the ATO or a person representing a majority of the employees to intervene in protests filed in the U.S. Court of Federal Claims.

The House recedes with an amendment providing the ATO legal standing in GAO bid protests of public-private competitions for functions performed by more than 65 full-time federal employees.

Under the conference agreement, the ATO would be required to file a protest at the request of a majority of the employees of the federal agency who are engaged in the performance of the activity or function that is subject to the competition unless the ATO determines that there is no reasonable basis for the protest. A determination by the ATO would not be subject to judicial or administrative appeal, but would be reported to the congressional defense committees. A person representing a majority of the employees would not have standing to file a protest, but would have the right to intervene in a protest filed by an interested party, including the ATO. The conference agreement would not address protests that are filed in the United States Court of Federal Claims.

Limitations on conversion of work performed by Department of Defense civilian employees to contractor performance (sec. 327)

The House bill contained a provision (sec. 323) that would: (1) codify the prohibition on converting an activity or function to private sector performance unless the conversion would result in savings of at least 10 percent or $10.0 million; (2) prohibit the Department from breaking up a function to avoid applicable thresholds for conducting a public competition; (3) ensure that a public competitor is not disadvantaged by the offer of a private competitor to reduce costs by reducing health care benefits for its employees; and (4) require the Department to conduct a competition, including an agency tender, a most efficient organization plan, and a formal cost comparison for any function performed by 10 or more civilian employees.

The Senate amendment contained a similar provision (sec. 851).

The Senate recedes with an amendment that would: (1) codify the prohibition on converting an activity or function to private sector performance unless the conversion would result in savings of at least 10 percent or $10.0 million when conducting a public-private competition under OMB circular A-76 dated May 29, 2003; and (2) prohibit the Department of Defense from breaking up a function to avoid applicable thresholds for conducting a public-private competition under A-76 Circular A-76, May 29, 2003.

The conferees agree to exclude the pilot program for best-value source selection authorized by section 336 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 103-136) from the requirement to apply a price differential of 10 percent or $10.0 million. The conferees expect the Secretary of Defense to utilize the price differential in the cost or price component of an evaluation under the pilot program, but understand that cost or price alone is not determinative in a best value competition.

The conferees note that the Department of Defense Appropriations Act for Fiscal Year 2005 (Public Law 108-257) includes a provision that would require the Department to ensure, in fiscal year 2005, that a public competitor is not disadvantaged by the offer of a private competitor to reduce costs by reducing health care benefits for its employees and that the Department must conduct a competition, including an agency tender, a most efficient organization plan, and a formal cost comparison for any function performed by 10 or more civilian employees.

The conferees direct the Comptroller General to review the implementation and impact of the Appropriations provision with regard to health care costs and competition of small agency functions. The Comptroller General's review should also address the full range of benefits provided by public and private sector employers, the manner in which these benefits are considered in a public-private competition, the impact of any benefit changes on employees who transition to private sector employment as a result of a public-private competition, and steps that could be taken to ameliorate any adverse impact of such a transition.

The conferees direct the Comptroller General to provide a preliminary report on this review to the congressional defense committees by no later than May 1, 2005, and a final report by no later than three months after the end of fiscal year 2005.

Competitive sourcing reporting requirement (sec. 328)

The House bill contained a provision (sec. 326) that would require the Inspector General of the Department of Defense to submit to Congress a report addressing whether the Department has implemented a comprehensive and reliable system to track and assess the results of public-private competitions. The House provision would establish a number of specific elements to be addressed in the tracking system.

The Senate amendment contained a compatible provision (sec. 853). The Senate provision would not establish the specific reporting elements to be addressed in the tracking system.

The House recedes.

The conferees note that section 354 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398) and section 385 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85) required the Department to maintain a system for tracking the results of public-private competitions and established the specific elements to be addressed in the tracking system.

Subtitle D—Information Technology

Preparation of Department of Defense plan for transition to Internet Protocol version 6 (sec. 331)

The House bill contained a provision (sec. 331) that would require the Secretary of Defense to prepare a transition plan to evaluate how the Department of Defense's information technology systems may be affected by the Department's decision to transition from the current protocols to Internet Protocol version 6 (IPv6). The provision would also direct the Secretary to conduct and manage tests of IPv6 and the global information grid to ensure the needs of the warfighter will continue to be met.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would require the Secretary to include cost estimates in the IPv6 transition plan.

The conferees expect that any testing will be performed under the direction and review of the Director of Operational Test and Evaluation, who shall identify the most appropriate facilities and organizations to perform the testing. The conferees direct the Director to provide an update on the ongoing test program and test results no later than September 30, 2005.

Defense business enterprise architecture, system accountability, and conditions for obligation of funds for defense business system modernization (sec. 332)

The House bill contained a provision (sec. 332) that would require the Department of Defense to develop a comprehensive architecture for all business systems of the Department. The provision would also prohibit significant investments in new business systems or upgrades to existing business systems that would be inconsistent with the new architecture.

The Senate amendment contained a similar provision (sec. 1004).

The Senate recedes with an amendment that would: (1) clarify the criteria for approving business system modernization expenditures; (2) provide that a covered expenditure for a business system that has not been approved is a violation of the Anti-Deficiency Act (31 U.S.C., section 1341); (3) provide additional detail on the composition of the enterprise architecture and transition plan; (4) clarify that domain managers have responsibility for the review, approval, and oversight of defense business system acquisition and operation, but not for the execution of such requirements; (5) clarify the budget justification material to be provided by the Secretary of Defense in support of the President's budget; (6) require the Secretary to appoint a Vice Chairman of the Defense Business System Management Committee; (7) clarify the responsibilities of the Committee; and (8) require the Comptroller General to assess the Department's compliance with the requirements of the provision.

Report on maturity and effectiveness of the Global Information Grid Bandwidth Expansion (GIG BE) (sec. 333)

The Senate amendment contained a provision (sec. 142) that would require the Secretary of Defense to submit a report to the congressional defense committees on a test program to demonstrate the maturity and effectiveness of the Global Information Grid-Bandwidth Expansion (GIG BE).

The House bill amendment contained no similar provision.

The House recedes with a technical amendment.

Subtitle E—Extensions of Program Authorities

Two-year extension of Department of Defense telecommunications benefit (sec. 341)

The Senate amendment contained a provision (sec. 341) that would extend until September 30, 2006 the Department of Defense telecommunications benefit authorized in section 344 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136).

The House bill contained no similar provision.

The House recedes.

The conferees are concerned that the Department has not competitively awarded a contract under this section, relying instead on an existing contract. The conferees expect that the Secretary of Defense will, as soon as possible, award a contract to a commercial firm for the purposes of this provision through competitive procedures.

Extension of Arsenal Support Program Initiative (sec. 342)

The House bill contained a provision (sec. 351) that would amend Section 343 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398), to authorize the Secretary of the Army to extend the Arsenal Support Initiative Program through fiscal year 2008. This section would also require the Secretary to report to the Committees on Armed Services of the Senate and the House of Representatives by March 1, 2007, the benefits of the program, the extent to which the program met its goals, and whether the program should be made permanent.

The Senate amendment contained a similar provision (sec. 342) that would extend the Arsenal Support Program Initiative through the end of fiscal year 2006.

The Senate recedes.

Two-year extension of warranty claims recovery pilot program (sec. 343)

The Senate amendment contained a provision (sec. 343) that would extend, through September 30, 2006, the warranty claims recovery pilot program authorized in section 391 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85).

The House bill contained no similar provision.

The House recedes with an amendment that would require the Secretary of Defense to submit a report on the commercial use of warranty recovery services, and to determine whether the pilot should be made permanent or extended beyond 2006.

Subtitle F—Other Matters

Reimbursement for certain protective, safety, or health equipment purchased by or for members of the Armed Forces deployed in contingency operations (sec. 351)

The House bill contained a provision (sec. 304) that would authorize the Secretary of Defense to reimburse service members who purchased protective body armor for use while deployed in connection with Operation Noble Eagle, Operation Enduring Freedom, or Operation Iraqi Freedom, if the service member did not receive the protective body armor before engaging in such operations where such body armor might be necessary. Reimbursement would be available to service members who purchased the body armor between September 1, 2003 and December 31, 2003.

The Senate amendment contained a provision (sec. 1072) that would direct the Secretary to reimburse service members, a relative of the service member, a nonprofit organization, or a community group, who purchased any protective, safety, or health equipment for use by such service member while deployed in connection with Operation Noble Eagle, Operation Enduring Freedom, or Operation Iraqi Freedom, provided that the unit commander of the service member certifies that such equipment was critical to the protection, safety, or health of the service member. The provision also stated that the type of protective, safety, or health equipment would include personal body armor, collective armor or protective equipment (including armor or protective equipment for high mobility multi-purpose wheeled vehicles), and items provided through the Rapid Fielding Initiative of the Army such as the advanced (on-the-move) hydration system, the advanced combat helmet, the close combat optics system, a Global Positioning System (GPS) receiver, and a solder intercommunication device. Non-military equipment would be treated as protective, safety, and health equipment only if such equipment provides protection, safety, or health benefits, as the case may be, such as would be provided by equipment meeting military specifications. Reimbursement would be available for armor or protective equipment purchased for high mobility multi-purpose wheeled vehicles between September 11, 2001 and July 31, 2004, and for any other protective, safety, and health equipment purchased between September 11, 2001 and December 31, 2003 or any date thereafter as determined by the Secretary. The provision would further establish a limit on the amount of reimbursement, and provide authority for the Secretary to assume title or ownership of any protective, safety, or health equipment for which a service member was reimbursed.

The House recedes with an amendment that would direct the Secretary to reimburse service members who purchased, or had another person purchase on their behalf, any protective, safety, or health equipment for use while deployed in connection with Operation Noble Eagle, Operation Enduring Freedom, or Operation Iraqi Freedom, provided that: (1) the Secretary certifies that the equipment was critical to the protection, safety, and health of the service member; (2) the equipment was not issued to the service member before the service member was on duty in an area in which the service member was in imminent danger of being exposed to hostile fire; and (3) the equipment was purchased between September 11, 2001 and July 31, 2004. The amendment would also limit the amount of reimbursement to $1,100 per item, establish a one-year period for the submission of claims for reimbursement, and direct the Secretary to establish rules not later than 120 days after date of enactment of this Act to expedite reimbursements, to include addressing circumstances under which the United States will assume title or ownership of any protective, safety, or health equipment for which a service member was reimbursed.

The conferees direct the Secretary to consult with the appropriate chain of command to ensure all criteria for reimbursement are attained. The conferees also note that the type of protective, safety, or health equipment for which a reimbursement is made may include personal body armor, collective armor or protective equipment (including armor or protective equipment for high mobility multi-purpose wheeled vehicles), and items provided through the Rapid Fielding Initiative of the Army such as the advanced (on-the-move) hydration system, the advanced combat helmet, the close combat optics system, a Global Positioning System (GPS) receiver, and a solder intercommunication device. Non-military equipment for which a reimbursement could be made should be treated as protective, safety, and health equipment only if such equipment provides protection, safety, or health benefits, as the case may be, such as would be provided by equipment meeting military specifications.

Limitation on preparation or implementation of Mid-Range Financial Improvement Plan pending report (sec. 352)

The House bill contained a provision (sec. 352) that would prohibit the Secretary of Defense from obligating operation and maintenance funds to implement the Mid-Range Financial Improvement Plan until the Secretary provides to the Committees on Armed Services of the Senate and the House of Representatives an explanation of how the operation and maintenance funds are to be utilized in fiscal year 2005 and the estimated cost for this plan in future years.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would also require the Secretary to provide a written determination that the Department has developed an enterprise architecture and transition plan for its business systems that meets the requirements of section 2222 of title 10, United States Code (as added by section 332.

Pilot program to authorize Army working-capital funded facilities to engage in cooperative activities with non-Army entities (sec. 353)

The Senate amendment contained a provision (sec. 364) that would authorize Army industrial activities that operate under the working capital fund to enter into public-private partnerships with non-Army entities, and allow the proceeds to be retained by the entity engaged in the partnership.

The House bill contained no similar provision.

The House recedes with an amendment that would authorize such contracts or cooperative arrangements, but would not direct that the facility involved retain the proceeds.

Transfer of excess Department of Defense personal property to assist firefighting agencies (sec. 354)

The House bill contained a provision (sec. 1079) that would amend section 2576b of title 10, United States Code, to modify the recipients of the Department of Defense excess personal property to assist rural firefighting agencies. The provision would require the Secretary of Defense to enter into an agreement with the Secretary of Agriculture to facilitate the reutilization of the Department's excess personal property by firefighting agencies in rural areas. The agreement between the Secretary of Defense and Secretary of Agriculture would include a prohibition on the transfer of the Department's aircraft until the end of a one-year period beginning on the date that the Secretary of Agriculture submits a report to the House Committee on Agriculture, the Senate Committee on Agriculture, Nutrition and Forestry, and the Committee on Armed Services of the Senate and the House of Representatives on the measures taken by the U.S. Forest Service in response to National Transportation Safety Board Recommendations A 04 29 through A 04 33. The provision would also require that personal property being transferred for reutilization by firefighting agencies in rural areas be afforded a property disposal priority at least equal to the priority given to the military departments and other entities within the United States.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would amend section 2576b of title 10, United States Code, to direct the Secretary of Defense to transfer to a firefighting agency in a State any personal property of the Department that the Secretary determines is excess to the needs of the Department and suitable for use in providing fire and emergency medical services, including personal protective equipment and equipment for communications and monitoring.

LEGISLATIVE PROVISIONS NOT ADOPTED

Amount for One Source military counseling and referral hotline

The Senate amendment contained a provision (sec. 304) that would authorize an increase of $5.0 million for the Department of Defense One Source counseling and referral hotline.

The House bill contained no similar provision.

The Senate recedes.

Reduction in authorization for Air Force operations and maintenance

The House bill contained a provision (sec. 305) that would reduce the amount authorized to be appropriated to the Air Force by $10.0 million, to be derived from the transportation working capital fund.

The Senate amendment contained no similar provision.

The House recedes.

Family Readiness Program of the National Guard

The Senate amendment contained a provision (sec. 313) that would increase the amount authorized to be appropriated in Operation and Maintenance, Army by $10.0 million for the Family Readiness Program of the National Guard.

The House bill contained no similar provision.

The Senate recedes.

Payment of certain private cleanup costs in connection with Defense Environmental Restoration Program

The Senate amendment contained a provision (sec. 321) that would allow the Secretary of Defense to execute environmental restoration agreements with owners of covenant properties.

The House bill contained no similar provision.

The Senate recedes.

Public-private competition pilot program

The House bill contained a provision (sec. 324) that would require the Secretary of Defense to establish a pilot program to examine the use of public-private competition process on new requirements and functions currently being performed by contractors that could be performed by civilian employees. Under the pilot program, the Secretary would be required to allow civilian employees to compete through the standard competitive process of Office of Management and Budget Circular A-76 for: (1) approximately one-tenth of the new requirements of the Department of Defense; and (2) functions currently being performed by a number of contractor employees that is approximately one-tenth of the number of civilian employees subject to public-private competition during the same period.

The Senate amendment contained a provision (sec. 852) that would require the Secretary to prescribe guidelines and procedures for ensuring that fair consideration is given to using federal government employees to perform new work and functions that are currently performed by contractors. The provision would provide that no public-private competition may be required before assigning government employees to perform new work or work that was previously performed by contractors.

The conference report does not include either provision.

The conferees believe that the Department's workforce of civilian employees is an important resource that the Department should fully utilize. The National Security Personnel System gives the Secretary broad authority to hire new civilian employees and to develop new competencies within the Department's civilian workforce. The conferees believe that Department of Defense managers must have flexibility not only to assign work to civilian employees, but also to build and structure the civilian workforce to perform appropriate tasks, free of artificial or unneeded regulatory constraints.

The conferees direct the Secretary to work with the Director of the Office of Management and Budget and other appropriate officials to ensure that the Department has the flexibility that it needs to assign work to its civilian workforce and to build needed capabilities in that workforce.

Establishment of joint program office to improve interoperability of battlefield management command and control systems

The House bill contained a provision (sec. 333) that would establish a joint program office to improve interoperability of battlefield management command and control systems.

The Senate amendment contained no similar provision.

The House recedes.

The conferees note that the Department of Defense has struggled for many years to develop and field command, control, communications, computers, and intelligence, surveillance, and reconnaissance systems that interoperate effectively across all of the military services and with coalition forces. The conferees note that there are a number of current efforts throughout the Department to develop portions of a "Family of Interoperable Operating Pictures", including the Single Integrated Air Picture, the Single Integrated Ground Picture, the Single Integrated Maritime Picture, the Special Operations Forces Picture, and the Single Integrated Space Picture. The conferees are concerned that without proper management, oversight, and coordination, as well as a single over-arching architecture that controls all systems, these efforts could become redundant and wasteful, and lack the interoperability required to effectively support joint warfighting missions.

Therefore, the conferees direct the Secretary of Defense to provide to the congressional defense committees a report no later than March 15, 2005 that identifies all funds for research and procurement activities related to the development of joint battlefield management command and control systems in the Department.

This report shall also include baselines for the Family of Interoperable Pictures, including a baseline for the Single Integrated Air Picture, the Single Integrated Ground Picture, the Single Integrated Maritime Picture, the Special Operations Forces Picture, and the Single Integrated Space Picture. The baselines shall be consistent with those required for major defense acquisition programs under Department regulations, and shall include a description of the overall systems architecture, specific milestones and performance measures for each developmental block, the schedule for achieving those performance goals, the estimated total and annual costs to meet that schedule, and a description of the management approach being used to achieve program goals.

Procurement of follow-on contracts for the operation of five Champion-class T-5 tank vessels

The House bill contained a provision (sec. 353) that would direct the Secretary of the Navy to consider proposals for the follow-on Department of the Navy contracts to operate five *Champion*-class T-5 tank vessels only from an entity that is a citizen under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802).

The Senate amendment contained no similar provision.

The House recedes.

Expansion of Department of Defense excess personal property disposal program to include health agencies

The House bill contained a provision (sec. 1080) that would amend section 2576b of title 10, United States Code, to authorize the Secretary of Defense to expand the Department of Defense excess personal property program to include State health agencies.

The Senate amendment contained no similar provision.

The House recedes.

TITLE IV—MILITARY PERSONNEL AUTHORIZATIONS

LEGISLATIVE PROVISIONS ADOPTED

Subtitle A—Active Forces

End strengths for active forces (sec. 401)

The House bill contained a provision (sec. 401) that would authorize the following end strengths for active forces as of September 30, 2005: Army, 482,400; Navy, 365,900; Marine Corps, 175,000; and Air Force, 359,700.

The Senate amendment contained a similar provision (sec. 401) that would authorize an active-duty end strength for the Army of 502,400, subject to the condition that costs of active-duty personnel of the Army in excess of 482,400 shall be paid out of funds authorized to be appropriated for fiscal year 2005 for a contingent emergency reserve fund or as an emergency supplemental appropriation.

The House recedes with an amendment that would authorize an end strength of 178,000 for the Marine Corps subject to the condition that costs in excess of 175,000 active-duty Marines shall be paid out of funds authorized to be appropriated for fiscal year 2005 for a contingent emergency reserve fund or as an emergency supplemental appropriation.

The conferees recommend end strength levels for active forces for fiscal year 2005 as set forth in the following table:

Service	FY 2004 authorized	FY 2005		Change from	
		Request	Conferee recommendation	FY 2005 request	FY 2004 authorized
Army	482,400	482,400	502,400	20,000	20,000
Navy	373,800	365,900	365,900	0	−7,900
Marine Corps	175,000	175,000	178,000	3,000	3,000
Air Force	359,300	359,700	359,700	0	400
DoD Total	1,390,500	1,383,000	1,406,000	23,000	15,500

Revision in permanent active duty end strength minimum levels (sec. 402)

The House bill contained a provision (sec. 402) that would establish new minimum active-duty end strengths for the Navy of 365,900 and Air Force of 359,700 as of October 1, 2004.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would establish new minimum active-duty end strengths for the Army of 502,400 and the Marine Corps of 178,000.

Additional authority for increases of Army and Marine Corps active duty personnel end strengths for fiscal years 2005 through 2009 (sec. 403)

The House bill contained provisions (sec. 1531 and 1532) that would increase the active Army and Marine Corps end strength authorized for fiscal year 2005 by 10,000 and 3,000 respectively above the authorization in section 401 of the National Defense Authorization Act for Fiscal Year 2004. These provisions would also authorize corresponding active-duty Army and Marine Corps end strengths for fiscal years 2006 and 2007 and prescribe corresponding minimum end strengths under section 691(b) of title 10, United States Code.

The Senate amendment contained a provision (sec. 402) that would authorize a temporary increase in the Army's active-duty end strength of up to 30,000 during fiscal years 2005 through 2009. The provision would require that if the Secretary of Defense plans to increase the Army active-duty end strength above the levels authorized for fiscal year 2004, then the budget for the Department for such fiscal years as submitted to Congress shall specify the amounts necessary for funding the active duty end strength of the Army in excess of 482,400.

The House recedes with an amendment that would authorize a temporary increase in the Marine Corps' active-duty end strength of up to 9,000 over 175,000, the level set forth in section 401 of the National Defense Authorization Act for Fiscal Year 2004 during fiscal years 2005 through 2009. The amendment would also require that if the Secretary of Defense plans to increase the Army or Marine Corps active-duty end strength for a fiscal year, then the budget for the Department for such fiscal years as submitted to Congress shall specify the amounts necessary for funding the active duty end strength of the Army or Marine Corps in excess of 482,400 and 175,000 respectively.

Exclusion of service academy permanent and career professors from a limitation on certain officer grade strengths (sec. 404)

The Senate amendment contained a provision (sec. 403) that would amend section 523(b) of title 10, United States Code, to exclude up to 50 permanent professors at both the U.S. Military Academy and U.S. Air Force Academy, and up to 50 career military professors at the U.S. Naval Academy from the determination of authorized strengths in prescribed officer grades.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Subtitle B—Reserve Forces

End strengths for Selected Reserve (sec. 411)

The House bill contained a provision (sec. 411) that would authorize the following end strengths for Selected Reserve personnel, including the end strengths for Reserves on active duty in support of the Reserves as of September 30, 2005: the Army National Guard of the United States, 350,000; the Army Reserve, 205,000; the Naval Reserve, 83,400; the Marine Corps Reserve, 39,600; the Air National Guard of the United States, 106,800; the Air Force Reserve, 76,100; and the Coast Guard Reserve, 10,000.

The Senate amendment contained an identical provision (sec. 411).

The conference agreement includes this provision.

The conferees recommend end strength levels for the Selected Reserve for fiscal year 2005 as set forth in the following table:

Service	FY 2004 authorized	FY 2005		Change from	
		Request	Conferee recommendation	FY 2005 request	FY 2004 authorized
Army National Guard	350,000	350,000	350,000	0	0
Army Reserve	205,000	205,000	205,000	0	0
Naval Reserve	85,900	83,400	83,400	0	−2,500
Marine Corps Reserve	39,600	39,600	39,600	0	0
Air National Guard	107,030	106,800	106,800	0	−230
Air Force Reserve	75,800	76,100	76,100	0	300
DoD Total	863,330	860,900	860,900	0	−2,430
Coast Guard Reserve	10,000	10,000	10,000	0	0

End strengths for Reserves on active duty in support of the Reserves (sec. 412)

The House bill contained a provision (sec. 412) that would authorize the following end strengths for Reserves on active duty in support of the Reserves as of September 30, 2005: the Army National Guard of the United States, 26,476; the Army Reserve, 14,970; the Naval Reserve, 14,152; the Marine Corps Reserve, 2,261; the Air National Guard of the United States, 12,225; and the Air Force Reserve, 1,900.

The Senate amendment contained a similar provision (sec. 412) that would authorize end strengths of 26,602 for the Army National Guard, 12,253 for the Air National Guard, and identical end strengths for the other services.

The House recedes.

The conferees recommend end strength levels for Reserves on active duty in support of the Reserves as set forth in the following table:

Service	FY 2004 authorized	FY 2005		Change from	
		Request	Conferee recommendation	FY 2005 request	FY 2004 authorized
Army National Guard	25,599	26,476	26,602	126	1003
Army Reserve	14,374	14,970	14,970	0	596
Naval Reserve	14,384	14,152	14,152	0	−232
Marine Corps Reserve	2,261	2,261	2,261	0	0
Air National Guard	12,191	12,225	12,263	28	62
Air Force Reserve	1,660	1,900	1,900	0	240
DoD Total	70,469	71,984	72,138	154	1669

End strengths for military technicians (dual status) (sec. 413)

The House bill contained a provision (sec. 413) that would authorize the following end strengths for military technicians (dual status) as of September 30, 2005: the Army National Guard of the United States, 25,076; the Army Reserve, 7,299; the Air National Guard of the United States, 22,956; and the Air Force Reserve, 9,954.

The Senate amendment contained an identical provision (sec. 413).

The conference agreement includes this provision.

The conferees recommend end strength levels for military technicians (dual status) as set forth in the following table:

Service	FY 2004 authorized	FY 2005		Change from	
		Request	Conferee recommendation	FY 2005 request	FY 2004 authorized
Army National Guard	24,589	25,076	25,076	0	487
Army Reserve	6,949	7,299	7,299	0	350
Air National Guard	22,806	22,956	22,956	0	150
Air Force Reserve	9,991	9,954	9,954	0	−37
DoD Total	64,335	65,285	65,285	0	950

Fiscal year 2005 limitation on number of non-dual status technicians (sec. 414)

The House bill contained a provision (sec. 414) that would establish the maximum end strengths for the Reserve components of the Army and Air Force for non-dual status technicians as of September 30, 2005.

The Senate amendment contained an identical provision (sec. 414).

The conference agreement includes this provision.

Maximum number of Reserve personnel authorized to be on active duty for operational support (sec. 415)

The House bill contained a provision (sec. 403) that would authorize the maximum number of Reserve component personnel who may be on active duty or full-time National Guard duty under section 115(b) of title 10, United States Code, during fiscal year 2005 to provide operational support.

The Senate amendment contained no similar provision.

The Senate recedes.

The conferees recommend maximum levels by service for Reserve component personnel on full-time, active duty who are providing operational support as set forth in the following table:

Service	FY 2005 conference recommendation
Army National Guard	10,300
Army Reserve	5,000
Naval Reserve	6,200
Marine Corps Reserve	2,500
Air National Guard	10,100
Air Force Reserve	3,600
DoD Total	37,700

Accounting and management of Reserve component personnel performing active duty or full-time National Guard duty for operational support (sec. 416)

The House bill contained a provision (sec. 404) that would establish the requirement for an annual congressional authorization of the maximum number of Reserve component personnel to be on active duty or full-time National Guard duty providing operational support. This provision would eliminate the current 180-day strength accounting metric that requires all reservists on active duty beyond that limit to count against Active component end strengths. In its place, the section would authorize Reserve component members who are voluntarily on active duty for up to three years, or a cumulative three years over a four-year period, to not be counted against Active component end strengths. The section would also exempt Reserve component personnel, authorized by this section, from certain officer and enlisted grade limits.

The Senate amendment contained no similar provision.

The Senate recedes with a technical amendment.

Subtitle C—Authorization of Appropriations

Military personnel (sec. 421)

The House bill contained a provision (sec. 421) that would authorize a total of $104,647.6 million for military personnel for the Department of Defense in fiscal year 2005.

The Senate amendment contained a similar provision (sec. 421) that would authorize a total of $104,535.5 million for military personnel for the Department of Defense in fiscal year 2005. The Senate amendment also contained $57.5 million in military personnel reductions in other titles of the amendment that were not reflected in the total contained in section 421. Therefore, the net amount authorized to be appropriated to the Department by the Senate amendment was $104,478.0 millions.

The House recedes with an amendment that would authorize $106,543.0 million for military personnel for the Department of Defense in fiscal year 2005, an increase of $1,731.4 million above the budget request.

The conferees note that in addition to the amounts shown below, $1,250.0 million was made available in title XV of this act for the additional costs of military personnel associated with ongoing operations in Iraq and Afghanistan. The conferees provide the following itemization of the increases from the budget request related to the military personnel accounts:

[Additions in millions]

Add AGR strength for WMD-CST teams	$ 14.7
Imminent Danger Pay	92.5
Family Separation Allowance	135.0
Eliminate SBP-Social Security Offset (Accrual Payment)	439.0
Enhanced Reserve Education Benefit (Accrual Payment)	222.0
Additional military personnel costs	828.2
Total	$1,731.4

Armed Forces Retirement Home (sec. 422)

The House bill contained a provision (sec. 422) that would authorize $61.2 million to be appropriated for the operation of the Armed Forces Retirement Home during fiscal year 2005.

The Senate amendment contained an identical provision (sec. 422).

The conference agreement includes this provision.

TITLE V—MILITARY PERSONNEL POLICY

Items of Special Interest

Space cadre

The conferees appreciate the submission by the Secretary of Defense of the human capital resources strategy for space personnel, as required in section 547 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–87). The conferees note, however, that the strategy lacks a detailed implementation plan and direct the Secretary to develop such an implementation plan. The conferees further direct the Secretary of Defense to submit this plan and the Secretary of the Air Force to submit the detailed career planning guidance for the Air Force space cadre, consistent with direction in the Senate report accompanying S. 2400 (S. Rept. 108–260).

The conferees believe that a comprehensive view of the military space community must also consider competencies and skills embodied in academia and industry. These institutions have valuable tools, expertise, and a skill base that contribute to the military space community, as well as unique organizational cultures with which the military space cadre must interact. The conferees are concerned that the human capital resources strategy lacks breadth and depth with respect to the relationship of academia and industry to the development, education, and training of the space cadre.

The conferees direct the Secretary of Defense to provide the Committees on Armed Services of the Senate and the House of Representatives an interim report by March 15, 2005, and a full report concurrent with the Department of Defense fiscal year 2007 budget submission that: (1) assess the ability in academia, industry, and government to educate and train a community of space professionals, and (2) recommend corrective actions to address any shortfalls identified in these education and training activities. The reports should also address the definition and development of key competencies and skill levels in the areas of systems engineering, program management, financial management, operations and tactics, and any other areas deemed necessary by the Secretary of Defense as they relate to military space systems.

Time for holding grade of general, admiral, lieutenant general, or vice admiral

The conferees are aware of the legislative proposal affecting senior military officers in the grades of admiral, general, vice admiral, and lieutenant general. This proposal would give authority to the Secretary of Defense to exempt senior officers in these grades who are on terminal leave from counting against applicable grade limits and would enable senior military officers, after Senate confirmation and upon the assumption of the duties of a position of importance and responsibility under section 601 of title 10, United States Code, to be promoted. It would repeal the authority to "frock" these officers, or allow them, in advance of their actual promotion to a higher grade, to wear the insignia of the higher rank of the position that they are assigned to. The conferees have long sought to limit the practice of frocking, but also have had concerns about continuing efforts by the Department to waive senior general and flag officer grade limits. The conferees believe this proposal would benefit from more time for consideration to better understand the implications of the changes in law contained in the informal legislative proposal. The conferees urge the Secretary of Defense to formally submit a legislative proposal for the conferees' consideration during the next defense authorization budget request.

Legislative Provisions Adopted

Subtitle A—Officer Personnel Policy

Transition of active-duty list officer force to a force of all regular officers (sec. 501)

The House bill contained a provision (sec. 511) that would authorize the Secretary of Defense to commission all new officer accessions as Regular officer and transition all officers on the active-duty list to regular status. The provision would implement the recommendation of the Defense Science Board Task Force on Human Resources Strategy that all new officers, regardless of their commissioning source, be given regular commissions in order to enhance professionalism, esprit de corps, and retention.

The Senate amendment contained a similar provision (sec. 511).

The House recedes with an amendment that would repeal the requirement that a member serve the last six years in a Reserve component before being eligible for nonregular service retirement.

Repeal of requirement that Deputy Chiefs and Assistant Chiefs of Naval Operations be selected from officers in the line of the Navy (sec. 502)

The House bill contained a provision (sec. 502) that would eliminate the requirement that officers serving in the positions of Deputy Chief of Naval Operations and Assistant Chief of Naval Operations be line officers. This provision would expand the pool of officers who may be considered for assignment in these highly responsible positions within the Office of the Chief of Naval Operations, to include officers of the Navy staff corps.

The Senate amendment contained an identical provision (sec. 512).

The conference agreement includes this provision.

Limitation on number of officers frocked to major general and rear admiral (sec. 503)

The Senate amendment contained a provision (sec. 514) that would provide that the total number of brigadier generals and rear admirals (lower half) on the active-duty list who are authorized to be frocked to the grade of major general or rear admiral (upper half) may not exceed 30.

The House bill contained no similar provision.

The House recedes.

Distribution in grade of Marine Corps Reserve officers in an active status in grades below brigadier general (sec. 504)

The House bill contained a provision (sec. 513) that would correct a technical discrepancy in the existing grade table for the Marine Corps Reserve that could unnecessarily limit the overall numbers of Marine Corps Reserve officers in an active status under section 12005 of title 10, United States Code.

The Senate amendment contained a similar provision (sec. 415).

The Senate recedes.

Authority for Federal recognition of National Guard commissioned officers appointed from former Coast Guard personnel (sec. 505)

The House bill contained a provision (sec. 588) that would make current and former officers and enlisted members of the U.S. Coast Guard, as well as graduates of the U.S. Coast Guard Academy, eligible for federal recognition after becoming commissioned officers of the National Guard.

The Senate amendment contained no similar provision.

The Senate recedes.

Study regarding promotion eligibility of retired officers recalled to active duty (sec. 506)

The Senate amendment contained a provision (sec. 515) that would require the Secretary of Defense to carry out a study to determine whether it would be equitable for retired warrant officers on active duty, but not on the active-duty list by reason of section 582(2) of title 10, United States Code, to be eligible for consideration for promotion under section 573 of such title. The Secretary would be required to submit a report on the results of the study not later than 180 days after the date of enactment of this Act.

The House bill contained no similar provision.

The House recedes with a clarifying amendment that would extend the scope of the study to include all retired officers.

Succession for office of Chief, National Guard Bureau (sec. 507)

The House bill contained a provision (sec. 507) that would establish a chain of succession when there is a vacancy in the Office of the Chief of the National Guard Bureau or in the event that the Chief is unable to perform the duties of the office. In such cases, the more senior officer of either the Army National Guard or of the Air National Guard on duty with the National Guard Bureau would assume responsibility as the Acting Chief.

The Senate amendment contained a similar provision (sec. 903).

The Senate recedes with a technical amendment.

Redesignation of Vice Chief of the National Guard Bureau as Director of the Joint Staff of the National Guard Bureau (sec. 508)

The House bill contained a provision (sec. 508) that would change the title of the Vice Chief of the National Guard Bureau to the Director of the Joint Staff of the National Guard Bureau.

The Senate amendment contained a similar provision (sec. 904).

The House recedes with a technical amendment.

Subtitle B—Reserve Component Policy Matters

Modification of stated purpose of the Reserve components (sec. 511)

The House bill contained a provision (sec. 521) that would clarify the purpose of the Reserve components. By eliminating statutory reference to planned mobilizations, the provision would more accurately reflect the operational mission, responsibilities, and contributions of National Guard and Reserve members and the manner in which Reserve forces will be employed in the future.

The Senate amendment contained a similar provision (sec. 901).

The Senate recedes with a technical amendment.

Homeland defense activities conducted by the National Guard under authority of title 32 (sec. 512)

The House bill contained a provision (sec. 529) that would amend title 32, United States Code, to authorize the Secretary of Defense to provide funds to the governor of a State to employ National Guard units and personnel to conduct operational activities that the Secretary determines to be in the national interest. This provision would also establish a process by which the governor of a State may request funding from the Secretary for the operational activities of that State's National Guard.

The Senate amendment contained a similar provision (sec. 906).

The Senate recedes with an amendment that would authorize the Secretary to provide funds to a governor of a State to employ National Guard units or members to conduct homeland defense activities. Homeland defense activities include those undertaken for the military protection of the territory or domestic population of the United States, or of infrastructure or other assets of the United States determined by the Secretary as being critical to national security, from a threat or aggression against the United States. National Guard personnel could perform homeland defense activities under this provision for up to 180 days, which could be extended for an additional 90 days to meet extraordinary circumstances.

Commission on the National Guard and Reserves (sec. 513)

The Senate amendment contained a provision (sec. 902) that would establish a Commission on the National Guard and Reserves. The commission would study the roles and missions of the National Guard and Reserve and the compensation and other benefits that are provided to members of the Reserve components. Among the issues the commission would be required to assess are the following: (1) the current and future roles and missions of the Reserve components; (2) the capabilities of the Reserve components and the manner in which the Reserve components may be best used to support the military operations of the Armed Forces and the achievement of national security objectives, including homeland defense; (3) the current and future organization and structure of the National Guard and Reserve; (4) the organization and funding of training for the Reserve; and (5) options for improving compensation and benefits. The provision would also require the establishment of an independent review board in 2006, following the termination of the commission, to annually review the roles and missions of the Reserve components and the compensation and other benefits provided for members of the Reserve components.

The House bill contained no similar provision.

The House recedes with an amendment that would require an annual review by the Secretary of Defense of the roles and missions of the Reserve components and the compensation and benefits provided for members of the Reserve components beginning in fiscal year 2006.

Repeal of exclusion of active duty for training from authority to order Reserves to active duty (sec. 514)

The House bill contained a provision (sec. 522) that would authorize units and members of the Reserve components to be involuntarily mobilized for the purpose of training. This would provide the Department of Defense with improved access to Reserve component personnel during war or national emergency for the purpose of individual or collective skill training required to meet deployment standards and timelines for emergent missions or contingencies. The provision would also require that the time spent in such training be counted against the mobilization timelines that are established in law.

The Senate amendment contained a similar provision (sec. 521).

The House recedes with a technical amendment.

Army program for assignment of Active component advisers to units of the Selected Reserve (sec. 515)

The House bill contained a provision (sec. 530) that would reduce from 5,000 to 3,500 the minimum number of Army Active component advisers that are required to be assigned to support the training and readiness of Selected Reserve units of the Army. This provision would prohibit the Secretary of the Army from making any reductions in the numbers of Active component advisers until the Secretary reports, as required by March 31, 2005, to the Committees on Armed Services of the Senate and the House of Representatives on the support by the Active component of the Army for training and readiness of the Army National Guard and Army Reserve.

The Senate amendment contained no similar provision.

The Senate recedes with a technical amendment.

Authority to accept certain voluntary services (sec. 516)

The House bill contained a provision (sec. 1078) that would authorize the secretaries concerned to accept voluntary services to support programs of the National Committee for Employer Support of the Guard and Reserve as authorized by the Secretary of Defense.

The Senate amendment contained no similar provision.

The Senate recedes.

Authority to redesignate the Naval Reserve as the Navy Reserve (sec. 517)

The Senate amendment contained a provision (sec. 905) that would authorize the Secretary of the Navy, with the approval of the President, to redesignate the Naval Reserve as the "Navy Reserve" effective 180 days after the date on which the Secretary submits recommended legislation.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Comptroller General assessment of integration of Active and Reserve components of the Navy (sec. 518)

The House bill contained a provision (sec. 528) that would require the Comptroller General to review the Navy's implementation plans for the integration of the service's Active and Reserve components. This provision would require the Comptroller General to submit a report on the results of that assessment to the Committees on Armed Services of the Senate and the House of Representatives by March 31, 2005.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that eliminates the provision that would prohibit appropriated funds being made available for the decommissioning of any Naval Reserve or Marine Corps Reserve aviation squadrons until the report required by this section is completed.

Limitation on number of STARBASE academies in a State (sec. 519)

The House bill contained a provision (sec. 527) that would authorize the Secretary of Defense to support the establishment of more than two STARBASE academies in a State under criteria to be established by the Secretary.

The Senate amendment contained no similar provision.

The Senate recedes with a clarifying amendment that would provide that waivers granted by the Secretary for the establishment and operation of additional STARBASE academies in a State should be based on the availability of appropriated funds for that purpose.

The conferees believe that limiting the number of STARBASE academies eligible for Department of Defense financial support to two per State could lead to inequities, particularly in states with several military installations located in separate communities. The conferees urge the Secretary to develop criteria for waivers that will appropriately balance increased program costs associated with establishment and operation of additional STARBASE academies with anticipated measurable gains in realizing the mission of the program.

Recognition items for certain Reserve component personnel (sec. 520)

The conferees agree to include a provision that would authorize the use of official funds by the Army National Guard, Air National Guard, and Army Reserve in order to recognize and retain Guardsmen and Reservists, family members, and other individuals who have served and supported members of the National Guard and Army Reserve. The provision would permit procurement of recognition items of nominal or modest value such as coins, medals, trophies, flags, posters, or other similar items that are valued at less than $50 per item. The authorization would be effective as of November 24, 2003, and would expire on December 31, 2005.

Subtitle C—Reserve Component Personnel Matters

Status under disability retirement system for Reserve members released from active duty due to inability to perform within 30 days of call to active duty (sec. 521)

The House bill contained a provision (sec. 523) that would clarify that mobilized Reserve members who, within 30 days of being called to active duty, are unable to serve the full period for which they were mobilized due to pre-existing medical conditions, which were not aggravated while on active duty, may be separated. Such members would be considered as serving under an order to active duty for a period of 30 days or less.

The Senate amendment contained no similar provision.

The Senate recedes with a technical amendment.

Requirement for retention of Reserves on active duty to qualify for retired pay not applicable to nonregular service retirement system (sec. 522)

The House bill contained a provision (sec. 512) that would clarify that section 12686 of title 10, United States Code, does not require that reservists serving on active duty with over 18 years of reserve service be retained on active duty for the purpose of qualifying the member for reserve retirement.

The Senate amendment contained a similar provision (sec. 522).

The Senate recedes with a technical amendment.

Federal civil service military leave for Reserve and National Guard civilian technicians (sec. 523)

The House bill contained a provision (sec. 524) that would eliminate the restriction on the use of military leave specified in section 6323 of title 5, United States Code, during a war or national emergency declared by the President, for Reserve and National Guard civilian technicians who are federal employees.

The Senate amendment contained no similar provision.

The Senate recedes.

Expanded educational assistance authority for officers commissioned through ROTC program at military junior colleges (sec. 524)

The House bill contained a provision (sec. 525(a), (b), and (d)), that would allow commissioned officers who graduate from military junior colleges to receive additional financial assistance to complete their baccalaureate degree requirements. Individuals who participate in this program would be attached to a Senior Reserve Officers' Training Corps unit to ensure that they maintain their military training, bearing, and education as they complete their post-secondary education.

The Senate amendment contained no similar provision.

The Senate recedes with a technical amendment.

Repeal of sunset provision for financial assistance program for students not eligible for advanced training (sec. 525)

The House bill contained a provision (sec. 525(c)) that would repeal section 2103a(d) of title 10, United States Code. This section provided that after December 31, 2006 contracts by members of the Senior Reserve Officers' Training Corps program, under the authority of section 2103a, could no longer be entered into force.

The Senate amendment contained no similar provision.

The Senate recedes.

Effect of appointment or commission as officer on eligibility for selected Reserve education loan repayment program for enlisted members (sec. 526)

The House bill contained a provision (sec. 526) that would authorize the Secretary of Defense to continue to repay educational loans for enlisted members in a Reserve component after they are commissioned as officers, if the members continue to serve the period specified in the original loan repayment agreement.

The Senate amendment contained no similar provision.

The Senate recedes with a technical amendment.

Educational assistance for certain Reserve component members who perform active service (sec. 527)

The conferees agree to include a provision that would authorize a new educational assistance benefit for members of the reserve components who have been ordered to active service in support of a contingency operation or in response to a war or national emergency. The provision would be effective on or after September 11, 2001, and would authorize: (1) payment of 40 percent of the amount of basic educational assistance provided under section 3015 of title 38 for a member whose entitlement is based on completion of an obligated period of active duty of three years for reservists who perform active service for a period of 90 days to one year; (2) payment of 60 percent of the amount of basic educational assistance in the case of a member who performed active service for one continuous year but less than two continuous years; and (3) payment of 80 percent of the amount of basic educational assistance for those members who serve for two continuous years or more. The maximum number of months of educational assistance that would be permitted under this provision would be 36, or the equivalent thereof in part-time educational assistance. Eligible reservists would remain entitled to educational assistance under this provision while serving in the Selected Reserve, in the case of members who were ordered to active duty while serving in the Selected Reserve, or in the Ready Reserve, in the case of a member who was ordered to active duty while serving in the Ready Reserve other than the Selected Reserve.

Sense of Congress on guidance concerning treatment of employer-provided compensation and other benefits voluntarily provided to employees who are activated reservists (sec. 528)

The Senate amendment contained a provision (sec. 1075) that would express the sense of the Senate that the Internal Revenue Service should provide guidance consistent with the goal of promoting and ensuring the validity of differential pay arrangements, benefits payments, and contributions to retirement savings plans made by employers of reservists who have been called to active duty.

The House bill contained no similar provision.

The House recedes with a technical amendment.

The conferees note that employers of reservists called up for active duty are required under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) to treat their reservist-employees as if they are on a leave of absence or furlough and are not required to pay their salaries. Many patriotic employers, however, have paid their reservist-employees who have been mobilized the difference between their military pay and their civilian salaries, and have allowed deductions from these differential payments for contributions to employer-provided retirement savings plans. The conferees believe that insufficient guidance exists for the tax status of these payments for both reservist-employees and employers under existing Internal Revenue Service regulations and that additional guidance should be provided.

Subtitle D—Joint Officer Management and Professional Military Education

Strategic plan to link joint officer development to overall missions and goals of Department of Defense (sec. 531)

The House bill contained a provision (sec. 531) that would require the Secretary of Defense, with the advice of the Chairman of the Joint Chiefs of Staff, to develop a strategic plan for joint officer management and joint professional military education. This strategic plan would link future requirements for Active and Reserve military personnel, who are trained and educated in joint matters, to the resources required to develop those persons in terms of manpower, formal education, practical experience, and other requirements. Additionally, the strategic plan would identify the methods the Secretary would use to fulfill those requirements.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that, among other data elements, would call for assessment of emerging issues related to joint officer management, including problems stemming from linkage of qualification as a joint specialty officer to eligibility for promotion, expected rates of promotion, and prescribed tour lengths.

Improvement to professional military education in the Department of Defense (sec. 532)

The House bill contained a provision (sec. 541) that would establish a new chapter 107 in title 10, United States Code, consisting of eight new sections that would consolidate sections of law related to joint professional military education. The provision would define the term "joint professional military education," as well as "intermediate" and "senior level" schools. It would require the secretaries of the military departments to use a written examination as a portion of the evaluation criteria in selecting officers for full-time attendance at intermediate level service schools and would require phasing of joint professional military education and student to faculty ratios. The provision would also require that the length of the principal course of instruction at the Joint Forces Staff College could not be less than 10 weeks.

The Senate amendment contained a provision (sec. 505) that would repeal the minimum period requirement for phase II joint professional military education in section 663 of title 10, United States Code.

The Senate recedes with an amendment that would reduce and consolidate the number of subjects that joint professional military education must include. The amendment would specify that the Chairman of the Joint Chiefs of Staff will advise and assist the Secretary of Defense in designating and certifying certain courses of instruction and would delete the requirement for a written examination as a portion of the evaluation criteria in selecting officers for full-time attendance at intermediate level service schools.

Although the conferees did not establish a statutory minimum length for the duration of the principal course of instruction offered at the primary resident campus of each intermediate level service school and each senior level service school, the conferees believe that such courses should consist of not less than 10 months of resident instruction, except in times of war or national emergency. The conferees will continue to review this matter with each of the military services as changes and modifications to such courses are proposed.

Joint requirements for promotion to flag or general officer grade (sec. 533)

The House bill contained a provision (sec. 532) that would extend from September 30, 2007 to September 30, 2008, the date after which an officer must be selected for the joint specialty before promotion to the grade of brigadier general or rear admiral (lower half). The provision would also eliminate the requirement that an officer serve in a joint assignment at least 180 days prior to the convening of a promotion board for selection to the grade of brigadier general or rear admiral (lower half).

The Senate amendment contained a provision (sec. 501) that would also eliminate the requirement for 180 days of service in a joint duty assignment before an officer may be considered for promotion to flag or general officer rank.

The Senate recedes.

Clarification of tours of duty qualifying as a joint duty assignment (sec. 534)

The House bill contained a provision (sec. 533) that would modify the definition of the term "tour of duty" in section 668(c) of title 10, United States Code, to allow officers to continue accumulating joint credit if they serve consecutive joint duty assignments, even if those assignments are not within the same organization.

The Senate amendment contained a similar provision (sec. 506).

The Senate recedes with an amendment that would insert the term "joint duty assignment list" in section 668 of title 10, United States Code.

Two-year extension of temporary standard for promotion policy objectives for joint officers (sec. 535)

The Senate amendment contained a provision (sec. 503) that would require the military departments to ensure that an adequate number of officers are eligible for promotion to brigadier general and rear admiral (lower half) to meet joint qualification requirements under section 619a of title 10, United States Code. The provision would also make permanent the temporary authority regarding promotion comparison standards for joint specialty officers under section 662 of title 10, United States Code.

The House bill contained no similar provision.

The House recedes with an amendment that would extend the temporary authority regarding promotion comparison standards for officers with the joint specialty under section 662 of title 10, United States Code, until December 27, 2006.

Two-year extension of authority to waive requirement that Reserve Chiefs and National Guard Directors have significant joint duty experience (sec. 536)

The House bill contained a provision (sec. 509) that would extend for two years, until December 31, 2006, the authority of the Secretary of Defense to waive the requirement that the chiefs of the Reserves and the directors of the Army and Air National Guard must have significant joint duty experience to be eligible for appointment. The provision would also require that the Secretary develop a plan to ensure that officers selected after December 31, 2006, to be the chiefs of the Reserves and the directors of the Army and Air National Guard, have significant joint duty experience in order to ensure a concerted effort to develop a system to eliminate the need for this waiver.

The Senate amendment contained a provision (sec. 513) that would extend the Secretary's waiver authority for one year.

The Senate recedes.

Subtitle E—Military Service Academies

Revision to conditions on service of officers as service academy superintendents (sec. 541)

The House bill contained a provision (sec. 557) that would repeal the requirement that the superintendents of the military service academies retire upon completion of their assignments. The provision would also require that an officer serve at least a three-year tour of duty as superintendent, and that if the officer is re-assigned before that period elapses, the secretary of the military department concerned must notify the Committees on Armed Services of the Senate and the House of Representatives of the reasons for the re-assignment.

The Senate amendment contained a provision (sec. 535) that would repeal the requirement under sections 8921 and 9333a of title 10, U.S. Code, that the Superintendent of the U.S. Air Force Academy retire upon termination of his or her assignment.

The Senate recedes with an amendment that would retain the requirement that the superintendents retire upon completion of their tours of duty. It would, however, authorize the Secretary of Defense to waive this requirement for good cause, and would require written notification to Congress of the President's intent to nominate a superintendent of a service academy for re-assignment.

Academic qualifications of the Dean of the Faculty of United States Air Force Academy (sec. 542)

The House bill contained a provision (sec. 559) that would require that a person selected to be the Dean of the Faculty at the U.S. Air Force Academy, who is not an officer on active duty, must be either a retired or former officer of the Armed Forces. Furthermore, the provision would prohibit the appointment or assignment of a person to be the Dean unless that person holds the highest academic degree in their academic field.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would delete the requirement that the Dean of the Faculty at the U.S. Air Force Academy must be either a retired or former officer of the Armed Forces.

Board of Visitors of United States Air Force Academy (sec. 543)

The House bill contained a provision (sec. 560A) that would modify section 9355 of title 10, United States Code, to change the composition of the Board of Visitors of the U.S. Air Force Academy. The provision would also prescribe: (1) procedures for when a member of the Board dies, resigns, or is absent from meetings; (2) four meetings of the Board and reports to Congress each year; and (3) candid and complete disclosure by the Secretary of the Air Force and the Superintendent of the Air Force Academy of all institutional problems.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would retain the current criteria in section 9355 of title 10, United States Code, for designation of U.S. Senators to serve on the Board of Visitors. The amendment would also modify the conditions for termination of board members who are members of Congress, assigning discretion to designating authorities to take appropriate action if Board of Visitors meetings are unattended without good cause. The amendment would further require semiannual reports from the Board of Visitors to Congress.

Appropriated funds for service academy athletic and recreational extracurricular programs to be treated in same manner as for military morale, welfare, and recreation programs (sec. 544)

The Senate amendment contained a provision (sec. 1005) that would authorize the service academies to treat funds appropriated for morale, welfare, and recreation athletics and extracurricular programs as non-appropriated funds in order to achieve uniform funding and management of those funds.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Codification of prohibition on imposition of certain charges and fees at the service academies (sec. 545)

The House bill contained a provision (sec. 558) that would codify section 553 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337). This provision would prohibit the imposition of charges or fees for tuition, room, or board for attendance by cadets and midshipmen at the service academies.

The Senate amendment contained no similar provision.

The Senate recedes with a technical amendment.

Subtitle F—Other Education and Training Matters

College First delayed enlistment program (sec. 551)

The House bill contained a provision (sec. 551) that would permanently authorize the Army College First Pilot Program, and extend the authority to implement the program to the other service secretaries.

The Senate amendment contained a provision (sec. 531) that would extend for one year the duration of the Army's College First Pilot Program.

The Senate recedes with a technical amendment.

Senior Reserve Officer Training Corps and recruiter access at institutions of higher education (sec. 552)

The House bill contained a provision (sec. 596) that would: (1) require that military recruiters be given access to campuses and students at institutions of higher education that is at least equal in quality and scope to the access provided to any other employer; (2) require the Secretary of Defense to obtain an annual verification from colleges and universities which already support the Senior Reserve Officers' Training Corps (ROTC) program that they will continue to do so in the upcoming academic year; (3) specify that federal funding that is provided to an institution of higher education, or to an individual, to be available solely for student financial assistance is exempt from the stricture of section 983 of title 10, United States Code; and (4) add additional defense-related funding sources to include: the Department of Homeland Security, the Central Intelligence Agency, and the National Nuclear Security Administration of the Department of Energy, and would restore the funds of the Department of Transportation to the list of covered funds that potentially could be terminated if an institution is determined to prevent recruiter access or maintains anti-ROTC policies.

The Senate amendment contained two provisions (sec. 532 and 533) that would require colleges and universities to give equal treatment to military recruiters, and specify that federal funding for student financial assistance may be used for the purpose for which the funding is provided.

The Senate recedes with an amendment that would delete the requirement for the Secretary to obtain an annual verification from colleges and universities that they would continue to support Senior ROTC.

Tuition assistance for officers (sec. 553)

The House bill contained a provision (sec. 514) that would authorize the secretaries of the military departments to waive for Reserve component officers the two-year Active-Duty service obligation required as a condition for receipt of tuition assistance while on active duty. The provision would also allow an increase in tuition assistance authorized for Army officers in the Selected Reserve.

The Senate amendment contained no similar provision.

The Senate recedes.

Increased maximum period for leave of absence for pursuit of a program of education in a health care profession (sec. 554)

The House bill contained a provision (sec. 554) that extends from two to three years the educational leave of absence authorized for members of the Armed Forces in section 708 of title 10, United States Code.

The Senate amendment contained a provision (sec. 651) that would extend from two to three years the period of time that a military member may take educational leave of absence for a health profession education program.

The House recedes.

Eligibility of cadets and midshipmen for medical and dental care and disability benefits (sec. 555)

The House bill contained a provision (sec. 555) that would provide the capability to effectively respond to injuries and illness sustained during accession training by cadets and midshipmen. The provision would authorize service academy cadets and midshipmen to be eligible for disability evaluation and retirement under chapter 61 of title 10, United States Code, and cadets and midshipmen participating in the Senior Reserve Officers' Training Corps (ROTC) to be eligible for medical and dental care for injuries and illness sustained in the line of duty and not due to gross negligence or misconduct.

The Senate amendment contained a similar provision (sec. 717).

The House recedes with a technical amendment.

The conferees were greatly assisted by the Department of Defense's report on health and disability benefits for pre-accession training and education programs required by section 546 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107). This report proved essential in gaining an understanding of the origins of current law and the steps that are needed to be taken to ensure equitable treatment of cadets and midshipmen and their families.

The conferees urge the Department to continue to identify ways to improve the treatment of Senior ROTC cadets and midshipmen who have experienced illness or injury and whose continued participation in ROTC is jeopardized as a result. The conferees, for example, are aware that under current service regulations cadets in Army ROTC and midshipmen in Naval ROTC who become ill or who are injured through no fault of their own are involuntarily being placed on "leave of absence" and denied scholarship payments and monthly stipends, even when it is apparent that these cadets and midshipmen will recover fully and they continue to attend classes and participate fully in ROTC activities. The conferees urge the Department and the services to act expeditiously, but no later than April 1, 2005, to revise Departmental regulations to achieve uniformity among the services in responding to medical conditions to avoid unnecessary hardships on ROTC cadets, midshipmen, and their families.

Transfer of authority to confer degrees upon graduates of the Community College of the Air Force (sec. 556)

The House bill contained a provision (sec. 552) that would authorize the Commander of the Air University to confer associate level academic degrees on graduates of the Community College of the Air Force. This change would align the Community College with all other Air University programs by ensuring that only the Commander of the Air University is responsible for conferring degrees.

The Senate amendment contained a similar provision (sec. 534).

The House recedes with a technical amendment.

Change in titles of leadership positions at the Naval Postgraduate School (sec. 557)

The House bill contained a provision (sec. 553) that would change the title of the Superintendent of the Naval Postgraduate School from Superintendent to President. This provision would also establish a new civilian position of Provost and Academic Dean, and revise the procedures to fill this position.

The Senate amendment contained a similar provision (sec. 913).

The House recedes with a technical amendment.

Subtitle G—Assistance to Local Educational Agencies for Defense Dependents Education

Continuation of impact aid assistance on behalf of dependents of certain members despite change in status of member (sec. 558)

The House bill contained a provision (sec. 590) that would temporarily adjust the process for computing the amount of funding provided by the Department of Education to certain local educational agencies heavily impacted by dependents of military personnel. The adjustment, limited to school year 2004-2005, would require that certain children continue to be counted as a child enrolled in school when computing the average daily attendance. Such children include those who attend the school but no longer live on a military base because both parents are deployed, or are children who temporarily reside in military base housing following the death of a military parent on active duty.

The Senate amendment contained no similar provision.

The Senate recedes with a technical amendment.

Assistance to local educational agencies that benefit dependents of members of the Armed Forces and Department of Defense civilian employees (sec. 559)

The House bill contained a provision (sec. 595) that would provide $50.0 million in Operation and Maintenance, Defense-wide activities, for assistance to local educational agencies that benefit dependents of members of the Armed Forces and Department of Defense civilian employees.

The Senate amendment contained a similar provision (sec. 351) that would authorize $30.0 million for assistance to local educational agencies.

The House recedes.

Impact aid for children with severe disabilities (sec. 560)

The Senate amendment contained a provision (sec. 352) that would authorize $5.0 million in Operation and Maintenance, Defense-wide, for impact aid payments for children with disabilities under section 8003(d) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(d)), using the formula set forth in section 363 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398), for continuation of the Department of Defense's assistance program to local educational agencies that benefit dependents with severe disabilities.

The House bill contained no similar provision.

The House recedes.

Subtitle H—Medals and Decorations and Special Promotions and Appointments

Award of medal of honor to individual interred in the Tomb of the Unknowns as representative of casualties of a war (sec. 561)

The Senate amendment contained a provision (sec. 541) that would clarify that the posthumous award of a medal of honor to the deceased member of the Armed Forces who is interred in the Tomb of the Unknowns at Arlington National Cemetery is awarded to that member as a representative of the unknown members of the Armed Forces who died in such war or other armed conflict, and not to the individual personally.

The House bill contained no similar provision.

The House recedes.

Plan for revised criteria and eligibility requirements for award of combat infantryman badge and combat medical badge for service in Korea after July 28, 1953 (sec. 562)

The House bill contained a provision (sec. 565) that would revise the criteria and eligibility requirements for award of the combat infantry badge and combat medical badge to Army personnel for service in the Republic of Korea after July 28, 1953.

The Senate amendment contained a provision (sec. 543) that would require the Secretary of the Army to submit a plan not later than 90 days after the date of enactment of this Act for the revision of the criteria and eligibility requirements for these badges for service in Korea.

The House recedes.

The conferees note that the mutual purpose of the House and Senate provisions is to ensure modification of the eligibility requirements, which over time have become inequitable for soldiers who are serving or have served in Korea. The Commander, U.S. Forces Korea, has expressed his support for this initiative. The conferees expect the Secretary to promptly and equitably revise the criteria for the award of the combat infantryman and combat medical badges, and act upon applications from veterans of Korea service who qualify for these awards.

Authority to appoint Brigadier General Charles E. Yeager, United States Air Force (retired), to the grade of major general on the retired list (sec. 563)

The House bill contained a provision (sec. 563) that would authorize the President, by and with the advice and consent of the Senate, to appoint Brigadier General Charles E. Yeager U. S. Air Force (retired), to the grade of major general on the retired list of the U.S. Air Force.

The Senate amendment contained no similar provision.

The Senate recedes.

Posthumous commission of William Mitchell in the grade of major general in the Army (sec. 564)

The House bill contained a provision (sec. 564) that would authorize the President, by and with the advice and consent of the Senate, to issue a posthumous commission in the grade of major general in the Army to William Mitchell, formerly a colonel in the U.S. Army. A commission issued under this authority would become effective as of the date of the death of William Mitchell on February 19, 1936.

The Senate amendment contained no similar provision.

The Senate recedes.

Subtitle I—Military Voting

Federal write-in ballots for absentee military voters located in the United States (sec. 566)

The Senate amendment contained a provision (sec. 572) that would amend section 1973ff of title 42, United States Code, to authorize military voters and their dependents, who are stationed in the United States but absent from their home states, to use federal write-in absentee ballots. Operational requirements and the mobility of military personnel may prevent them from receiving state-provided absentee ballots in the mail in time for an election. Allowing absentee military voters and their dependents to use the federal write-in ballots, even while stationed in the United States, would serve to remedy these problems.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Repeal of requirement to conduct electronic voting demonstration project for the federal election to be held in November 2004 (sec. 567)

The House bill contained a provision (sec. 592) that would repeal the requirement in section 1604 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107) for the Secretary of Defense to conduct a demonstration project to permit absentee uniformed service voters to cast their ballots through an electronic voting system.

The Senate amendment contained a provision (sec. 1065) that would authorize delay in carrying out an electronic voting demonstration project until November 2006.

The House recedes with an amendment that would delay the electronic voting demonstration project until the first regularly scheduled general election for federal office that occurs after the Election Assistance Commission notifies the Secretary that the commission has established electronic absentee voting guidelines and certifies that the commission will assist the Secretary in carrying out the project.

The conferees recognize the magnitude of the technical challenge associated with ensuring the security of electronic voting using the Internet. The Department of Defense's Secure Electronic Registration and Voting Experiment (SERVE) was an important prototype for electronic voting that should not be abandoned. The conferees encourage the Secretary to provide funding to the Election Assistance Commission and the National Institute of Standards and Technology to advance electronic absentee voting by U.S. voters located overseas and Uniformed Services voters.

Reports on operation of Federal Voting Assistance Program and military postal system (sec. 568)

The Senate amendment contained a provision (sec. 1026) that would require the Secretary of Defense to submit reports to Congress on: (1) the actions that the Secretary has taken to ensure that the Federal Voting Assistance Program functions effectively to support absentee voting; (2) the actions that the Secretary has taken to ensure that the military postal system functions effectively to support the morale of military members and their ability to vote by absentee ballot; and (3) the actions taken to implement the recommendations of the Military Postal Service Agency Task Force of August 28, 2000.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Subtitle J—Military Justice Matters

Review on how sexual offenses are covered by Uniform Code of Military Justice (sec. 571)

The House bill contained a provision (sec. 571) that would require the Secretary of Defense to review the Uniform Code of Military Justice and the Manual for Courts-Martial to determine what changes are required to improve the ability of the military justice system relating to sexual assault, and to conform the Code and the Manual more closely to other federal laws and regulations that address such issues. The Secretary is to report on the review to the Committees on Armed Services of the Senate and the House of Representatives by March 1, 2005. The report is to include the Secretary's recommendations for revisions to the Code.

The Senate amendment contained no similar provision.

The Senate recedes.

The conferees understand that the Department of Defense is already undertaking such a review. The conferees expect that the Department's legislative proposal for fiscal year 2006 will include any suggestions for revisions in the Code provisions dealing with sexual assault that are determined to be desirable.

Waiver of recoupment of time lost for confinement in connection with a trial (sec. 572)

The Senate amendment contained a provision (sec. 552) that would amend section 972 of title 10, United States Code, to require the Secretary concerned to waive time lost when a member is confined by military or civilian authorities for more than one day in connection with a trial, if the charge is thereafter dismissed, the trial results in an acquittal, a conviction is thereafter set aside (other than for clemency), or a judgment of acquittal or dismissal is entered upon a reversal of the conviction of on appeal.

The House bill contained a similar provision.

The House recedes.

Processing of forensic evidence collection kits and acquisition of sufficient stocks of such kits (sec. 573)

The House bill contained a provision (sec. 306) that would require the Secretary of Defense to take steps to eliminate the current backlog in the processing of forensic evidence collection kits, to shorten the time period between the use of such kits and their processing, and to ensure that there is an adequate supply of rape kits for all domestic and overseas U.S. military installations.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would require the Secretary to ensure that the United States Army Criminal Investigation Laboratory has the personnel and resources to effectively process forensic evidence used by the Department of Defense within 60 days of its receipt, and that military personnel are properly trained in the use of forensic evidence collection kits and in procedures to ensure protection of the chain of custody of the kits once used.

Authorities of the Judge Advocates General (sec. 574)

The Senate amendment contained a provision (sec. 915) that would amend the title 10, United States Code, provisions relating to the Judge Advocates General (TJAG) of the services and the General Counsels (GC) of the military departments to make the TJAGs the legal advisers of the service secretaries, the service chiefs and their staffs, and the offices and agencies of the military departments, provide for TJAG direction and supervision of judge advocates and of civilian attorneys outside the offices of the service general counsels, provide for the responsibilities of the TJAGs under the Uniform Code of Military Justice (UCMJ), provide for other duties as may be directed by the service secretaries, and provide that the TJAGs shall be appointed in the grade of lieutenant general or vice admiral, as appropriate.

The House bill contained no similar provision.

The House recedes with an amendment that would prohibit any officer or employee of the Department of Defense from interfering with the ability of the TJAGs to provide independent legal advice to their service secretaries and service chiefs, or of judge advocates assigned, attached, or performing duty with military units to provide such advice to commanders. The provision would also require the Secretary of Defense to appoint an independent panel to conduct a study of the relationships between the legal elements of each service and transmit the panel's recommendations as to statutory, regulatory, and policy changes which it believes to be desirable, together with the Secretary's comments, to the Committees on Armed Services by May 1, 2005. The conferees expect that this panel will be truly independent, expert, and disinterested. They will examine the panel's findings and recommendations with care in the fiscal year 2006 authorization process.

The conferees note that this is the second time in 12 years that attempts to consolidate legal services in the Department of Defense have led to congressional action. In 1992, the Deputy Secretary of Defense issued a memorandum that would have moved substantially in the direction of centralization under the General Counsel of the Department of Defense. In response, the Senate version of the National Defense Authorization Act for Fiscal Year 1993 contained a provision directing that the memorandum be rescinded. After the memorandum was rescinded, the provision was dropped in conference.

In May 2003, the Secretary of the Air Force issued an order subordinating the Judge Advocate General to the General Counsel of the Department of the Air Force as her military deputy. The order also stated that the General Counsel had "full legal authority to . . . become involved in . . . any particular case or matter within the Department." Thereafter the General Counsel issued a draft operating instruction in which she asserted the right to exercise legal oversight and review over virtually every legal issue arising in the Department of the Air Force, including the field of military justice which is statutorily reserved to the TJAGs. The Air Force situation, while the most aggravated, is not unique.

Consistent with the legislative provision included in the conference report, the conferees direct the Secretary of the Air Force to rescind his order of May 15, 2003, "Functions and Duties of the General Counsel and the Judge Advocate General." The conferees further direct the General Counsel of the Department of the Air Force to rescind all internal operating instructions and memoranda issued in reliance on the Secretary's May 15, 2003, order.

Subtitle K—Sexual Assault in the Armed Forces

Examination of sexual assault in the Armed Forces by the defense task force established to examine sexual harassment and violence at the military service academies (sec. 576)

The House bill contained a provision (sec. 593) that would require the Secretary of Defense to expand the mission of the Task Force on Sexual Harassment and Violence at the Military Service Academies that was established in the National Defense Authorization Act for Fiscal year 2004 (Public Law 108-136). Upon completion of its current work, the task force would be renamed the Defense Task Force on Sexual Assault in the Military Services and would be extended for at least 18 months. It would examine matters relating to sexual assault in the Armed Forces and would be required to report its findings and recommendations to the Secretary of Defense within 12 months of its initial meeting. The Secretary of Defense would be required to provide the report, together with an evaluation of it, to the Committees on Armed Services of the Senate and the House of Representatives, along with an assessment of the effectiveness of the corrective actions being taken by the Department of Defense and the military services as a result of various investigations and reviews into matters involving sexual assault.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment to expand the scope of the task force report to include: a report on the use of data relating to sexual assault by senior military and civilian leaders; development of measures of effectiveness for responding to victim needs by sexual assault programs; progress in developing means to investigate and prosecute assailants who are foreign nationals; the adequacy of Department resources supporting sexual assault prevention and victim advocacy programs, particularly for deployed units and personnel; training of military and civilian personnel responsible for implementation of sexual assault polices; and programs and policies, including those related to confidentiality, designed to encourage victims to seek services and report offenses.

The Senate amendment also would authorize the Secretary to change the composition of the Defense Task Force on Sexual Assault in the Military Services as appropriate, but remaining consistent with the qualifications required by section 526(f) of Public Law 108-136, and not before the task force established to examine sexual harassment and violence at the service military academies has completed its statutorily mandated functions.

The conferees intend to closely monitor the development and implementation of uniform policies and programs on sexual assault required elsewhere in this Act. Given the urgency of the need for effective action to prevent and resolve sexual assault offenses against military members, the conferees expect that the task force, re-designated as the Task Force on Sexual Assault in the Military Services, will provide an independent assessment of the effectiveness of policies and programs developed by the Department, as well as the success of the military services at all levels in achieving their implementation.

Department of Defense policy and procedures on prevention and response to sexual assaults involving members of the Armed Forces (sec. 577)

The House bill contained a provision (sec. 598) that would require the Department of Defense to promulgate a uniform Department of Defense policy for the prevention of and response to sexual assaults involving members of the Armed Forces, and would require service secretaries to prescribe regulations on policies and procedures to prevent and respond to sexual assaults involving members of the Armed Forces. The provision would also require the secretaries of the military departments to prescribe programs throughout each service designated for victim advocacy and intervention, both at home and in deployed locations, and provide an annual assessment of the implementation of sexual assault prevention policies and procedures during the preceding year. Additionally, the provision would require the Secretary to develop a definition of sexual assault that is uniform for all the Armed Forces. The provision would require an annual report to Congress by the Secretary of Defense on the number of sexual assaults, rapes, and other sexual offenses involving military personnel; a synopsis of disciplinary action taken in substantiated cases; the policies and programs implemented by the Secretary to respond to sexual assault and violence against military members; and a plan for future actions to be taken.

The Senate amendment contained a similar provision (sec. 553).

The Senate recedes with an amendment that would clarify reporting requirements by the Secretary and service secretaries, and would require a definition of sexual assault that is uniform for all the Armed Forces.

Subtitle L—Management and Administrative Matters

Three-year extension of limitation on reductions of personnel of agencies responsible for review and correction of military records (sec. 581)

The House bill contained a provision (sec. 581) that would extend through September 30, 2008 the prohibition precluding the secretaries of the military departments from reducing the number of military and civilian personnel assigned to duty within the boards for correction of military records until 90 days after the secretary of the military department concerned submits a report to Congress that describes the proposed reduction, provides the rationale for the reduction, and specifies the number of personnel that will be assigned to the board after the reduction is complete.

The Senate amendment contained no similar provision.

The Senate recedes.

Staffing for Defense Prisoner of War/Missing Personnel Office (DPMO) (sec. 582)

The House bill contained a provision (sec. 582) that would establish specific, permanent minimum levels of military and civilian personnel assigned to the Defense Prisoner of War/Missing Personnel Office (DPMO). The provision would require that the number of permanent positions and full-time Department of Defense personnel permanently assigned or detailed to the DPMO would not be less than 46 military members and 69 civilian employees of the Department.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would modify section 1501(a)(5) of title 10, United States Code, to provide that the number of military and civilian personnel, whether temporary or permanent, who are assigned or detailed to the DPMO may not be less than the number requested in the President's budget for fiscal year 2003. The conferees note that the budget request for fiscal year 2003 provided for 46 military personnel and 69 civilian personnel and included a budget request for $16.0 million.

The Senate amendment would also require a study by the Government Accountability Office in order to provide a comprehensive examination of trends in staffing and funding levels of the DPMO compared to mission requirements and the Comptroller General's assessment of the adequacy of current manning and funding levels of the DPMO in light of current mission requirements.

Permanent ID cards for retiree dependents age 75 and older (sec. 583)

The House bill contained a provision (sec. 583) that would require the service secretaries to issue permanent identification cards to dependents of military retirees and survivors of military retirees eligible for benefits for periods after the dependent or survivor attains age 75.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would establish the age for issuance of permanent military identification cards to dependents and survivors of military retirees at 75 years of age.

Authority to provide civilian clothing to members traveling in connection with medical evacuation (sec. 584)

The House bill contained a provision (sec. 584) that would authorize the secretaries of the military departments to furnish members, who have been medically evacuated, civilian clothing at a cost not to exceed $250 or to reimburse the member for the purchase of civilian clothing in an amount not to exceed $250.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would require the Secretary of Defense to provide civilian clothing to members traveling in connection with medical evacuation. This authority is a continuation of the authority provided in section 1319 of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108-11) and later in section 1103 of the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108-106).

Authority to accept donation of frequent traveler miles, credits, and tickets to facilitate rest and recuperation travel of deployed members of the Armed Forces and their families (sec. 585)

The House bill contained a provision (sec. 585) that would authorize the Secretary of Defense to accept the donation of frequent traveler miles, credits, and tickets for the purpose of facilitating the travel of members of the Armed Forces who are deployed away from their permanent duty station and are granted leave, to include rest and recuperative leave, emergency leave, convalescent leave, or another form of leave authorized for the member, and for facilitating the travel of family members to be reunited with such a member.

The Senate amendment contained a similar provision (sec. 653) that, in addition, would authorize the Secretary, in an exceptional case, to permit a person who is not a family member to use frequent traveler miles, credits, and tickets, if that person has a notably close relationship with the member. The Senate amendment also contained a provision that would authorize the Secretary to enter into an agreement with a nonprofit organization to assist in administering the collection, distribution, and use of donated frequent traveler miles, credits, and tickets.

The House recedes with an amendment that would eliminate a requirement that the Secretary encourage air and surface carriers to participate in the donation of frequent traveler miles, credits, and tickets. The amendment would also amend section 134 of the Internal Revenue Code of 1986 to exempt recipients of frequent traveler miles, credits, and tickets authorized in this Act from tax liability for receipt of such frequent traveler miles, credits, or tickets.

Annual report identifying reasons for discharges from the Armed Forces during preceding fiscal year (sec. 586)

The House bill contained a provision (sec. 587) that would require the Secretary of Defense to report annually to the Committees on Armed Services of the Senate and the House of Representatives detailed information regarding the numbers of persons discharged from each of the military services in the preceding fiscal year.

The Senate amendment contained no similar provision.

The Senate recedes with a clarifying amendment that would authorize the use of generic interservice separation codes providing similar, consistent data across the services in this report, and that would terminate the authority for this report after 1 March 2011.

Study of blended wing concept for the Air Force (sec. 587)

The House bill contained a provision (sec. 589) that would require the Secretary of the Air Force to submit by March 1, 2005 a report on matters related to the Air Force's current implementation of and future plans for blended wings to the Committees on Armed Services of the Senate and the House of Representatives.

The Senate amendment contained no similar provision.

The Senate recedes.

In describing the manner in which current blended wings are functioning, the conferees request the Secretary of the Air Force to comment on the efficacy of the provisions of section 516 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136). The Secretary should include recommendations for legislative changes, if needed, to ensure the ability of officers of the Army or Air National Guard, called to active duty for the purpose of commanding a unit composed of both active and Reserve component personnel, to successfully perform their duties.

Sense of Congress regarding return of members to active-duty service upon rehabilitation from service-related injuries (sec. 588)

The Senate amendment contained a provision (sec. 575) that would find that in cases involving combat-related injuries or other service-related injuries, it is possible, as a result of advances in technology and extensive rehabilitative services, to restore to members of the Armed Forces sustaining such injuries the capability to resume active military service, including, in a few cases, the capability to participate directly in the performance of combat missions.

The provision would express the sense of the Senate that members of the Armed Forces who, on their own initiative, are highly motivated to return to active-duty service following rehabilitation from injuries incurred in service of the Armed Forces should, after appropriate medical review and physical disability evaluation, be given the opportunity to present their case for continuing service on active duty in varied military capacities. Additionally, the provision would express the sense of the Senate that there should be no barrier in policy or law to members having the option to return to military service on active duty, and that the Secretary of Defense should develop specific protocols that include options for such members to return to active-duty service and to be retrained to perform military missions for which they are fully capable.

The House bill contained no similar provision.

The House recedes with an amendment that would express a sense of Congress.

Subtitle M—Other Matters

Protection of Armed Forces personnel from retaliatory actions for communications made through the chain of command (sec. 591)

The Senate amendment contained a provision (sec. 1069) that would amend section 1034 of title 10, United States Code, to allow a protected communication to be made to any person in the chain of command of a member of the Armed Forces making such a communication, as well as any other person or organization designated by regulations or other procedures for such communications.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Implementation plan for accession of persons with specialized skills (sec. 592)

The Senate amendment contained a provision (sec. 571) that would authorize the service secretaries to establish an alternate minimum military service obligation for accession of persons into the Armed Forces who have unique skills. The provision would also authorize establishment of expedited basic training requirements for certain individuals in order to allow the Department of Defense to meet exigent mission requirements.

The House bill contained no similar provision.

The House recedes with an amendment that would require the Secretary of Defense, not later than 180 days after the date of enactment of this Act, to submit a plan for implementation of authority, if subsequently provided by law, to allow for accession into the Armed Forces of persons with specialized skills for duty involving the use of such skills. The Secretary would also be required to include a comparison of the plan submitted with an alternative plan of using civilian contractor personnel to meet the specialized skills required by the Armed Forces.

The conferees believe that there may be a valid requirement for an alternate minimum military service obligation for certain individuals and for expedited basic training that would justify exceptions under sections 651 and 671 of title 10, United States Code. The Department has not sufficiently explained, however, the manner in which such new authorities would be used and the potential effects such exceptional treatment of new accessions could have on other special or lateral entry programs. The conferees expect the Department to use the report to address these concerns.

The provision would also require the Secretary to conduct a feasibility study of how to implement a system that would make civilian volunteers, with skills determined by the Secretary to be critical, rapidly available for use in, or in support of, units of the Armed Forces on a temporary basis to meet no-notice or short-notice operational requirements. The requirement to conduct this feasibility study was included in the House bill (sec. 597) and is appropriately submitted in the context of better evaluating expedited, short-term manpower needs of the military services.

The conferees suggest that coordinating the foregoing feasibility study with the separate report required elsewhere in this Act on acceptance of voluntary services under section 1588 of title 10, United States Code, could be useful.

Enhanced screening methods and process improvements for recruitment of home schooled and National Guard Challenge program GED recipients (sec. 593)

The House bill contained a provision (sec. 594) that would reestablish the pilot program under section 571 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261). This pilot program permitted participants in a National Guard Challenge Program who received a general education development (GED) certificate, and those who completed their high school requirements through a home schooling program to enlist in the Armed Forces as if they had received a high school diploma.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would require the Secretary of the Army to carry out an initiative aimed at developing screening methods and process improvements for recruiting specified GED recipients. The purpose would be to achieve attrition patterns among the recruited recipients of a GED that match those of Army recruits who are high school diploma graduates and, following review by the Secretary of Defense, to implement such screening methods and process improvements on a test basis.

Redesignation of National Guard Challenge Program as National Guard Youth Challenge Program (sec. 594)

The Senate amendment contained a provision (sec. 573) that would change the name of the National Guard Challenge Program to the National Guard Youth Challenge Program. Additionally, the provision would phase in over three years an increase in the matching funds ratio to increase the amount of federal funds that may be provided to a State program.

The House bill contained no similar provision. The House recedes with an amendment that would redesignate the National Guard Challenge Program as the National Guard Youth Challenge Program.

The conferees were disappointed that the Secretary of Defense, in the report required by section 587 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136), did not provide alternatives to the current matching funds structure for the National Guard Youth Challenge Program. The conferees believe that such alternatives would provide greater flexibility in the management of the program to better respond to temporary fiscal conditions.

The conferees direct the Comptroller General to conduct a study of the National Guard Youth Challenge program to determine the effects of current fiscal constraints at the State level on the operation of individual programs. The study should assess the Department of Defense's oversight of the program, the efforts of both the Department and the States to secure alternative and supplemental funding support for the programs, and the impact of changes to the existing 60-40 DOD-to-State matching funds ratio.

Reports on certain milestones relating to Department of Defense transformation (sec. 595)

The House bill contained a provision (sec. 597) that would require the Secretary of Defense to submit reports to the Committees on Armed Services of the Senate and the House of Representatives on implementation of transformational milestones identified by the Department of Defense.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment to remove the requirement for a feasibility study on a civilian skill corps.

The conferees expect that a study on the feasibility of a civilian skill corps will be conducted under authority provided elsewhere in this Act concerning accession of persons with specialized skills.

With respect to military-to-civilian conversions in Navy medical and dental fields that are proposed for fiscal year 2005, the conferees are concerned that the specialties targeted for conversion are those most needed by military families, including pediatrics, family practice, and pharmacy. The conferees urge not only the Secretary of the Navy but also the secretaries of the other military departments to ensure that plans for military-to-civilian conversions do not adversely affect the quality and access of military health care required by military families. The conferees direct the Secretary of Defense to provide a report to the Committees on Armed Services of the Senate and the House of Representatives not later than 90 days following enactment of this Act that describes the plans of each military department for military-to-civilian conversions of medical and dental personnel in fiscal year 2006.

Report on issues relating to removal of remains of persons interred in United States military cemeteries overseas (sec. 596)

The House bill contained a provision (sec. 599) that would authorize the Secretary of Defense, upon application of a qualifying survivor, to authorize disinterment and removal of the remains of military personnel interred in overseas military cemeteries.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would require the Secretary of the Army, in consultation with the American Battle Monuments Commission (ABMC), to examine the history of the overseas cemeteries and the processes used to ensure that the initial disposition decision was carried out, together with a review and explanation of the existing policy and procedures regarding requests for disinterment and any exceptions that have been made. Additionally, the examination should include an analysis of potential reasons for justifying disinterment or remains from overseas cemeteries and the potential impact on the operation of U.S. overseas military cemeteries of permitting disinterment of remains from those cemeteries. Not later than September 30, 2005, the Secretary would be required to submit a report to the Committees on Armed Services of the Senate and the House of Representatives on the results of the examination, a description of the changes to policy that would be necessary to support a system for requesting and authorizing disinterment of remains, and the recommendations of the Secretary and the ABMC with respect to changes in policy and procedures with respect to such disinterments.

The conferees believe that a comprehensive examination and report on the history of the overseas military cemeteries and the reasons for the policy prohibiting disinterments is needed. Survivors of military veterans buried in the overseas military cemeteries must be assisted in every way possible in understanding the history of the overseas cemeteries and the reasons justifying the policy barring disinterments. The conferees express no opinion about this policy, however, to the extent that exceptions to the policy have been made or may be deemed warranted by the Secretary and the ABMC, survivors should have a clear understanding through the report that would be required by this provision of what burden of proof must be satisfied.

Comptroller General reports on closure of Department of Defense Dependent Elementary and Secondary Schools and commissary stores (sec. 597)

The Senate amendment contained a provision (sec. 2845) that would require the Comptroller General of the United States to submit a report to the appropriate committees of Congress which includes an assessment of the policy and criteria utilized by the Department of Defense regarding the closure of schools and commissary stores, including whether or not such policy and criteria are consistent with policies and procedures on the preservation of the quality of life of members of the Armed Forces.

The House bill contained no similar provision.

The House recedes with a clarifying amendment.

Comptroller General report on transition assistance programs for members separating from the Armed Forces (sec. 598)

The Senate amendment contained a provision (sec. 1029A) that would require the Comptroller General to carry out a study of the programs of the Department of Defense and other departments and agencies of the Federal Government, including the Department of Veterans Affairs, under which transition assistance is provided to personnel who are separating from active-duty service in the Armed Forces. The report would include an analysis of the extent to which transition assistance programs authorized under sections 1142 and 1144 of title 10, United States Code, are adequate to meet the needs of the Reserve components, as well as recommendations by the Comptroller General to improve the content and uniformity of pre-separation counseling. The provision would also include an analysis of pre- and post-deployment health screening, and programs that are in place to identify and treat post-traumatic stress disorder and related health conditions.

The House bill contained no similar provision.

The House recedes with an amendment to clarify that the Comptroller General report will include an assessment of the quality and thoroughness of information being provided during the pre-separation briefings conducted by the Department of Veterans Affairs.

Study on coordination of job training standards with certification standards for military occupational specialties (sec. 599)

The Senate amendment contained a provision (sec. 1029B) that would require the Secretary of Defense and the Secretary of Labor to jointly carry out a study on ways to coordinate the standards applied by the Armed Forces for the training and certification of members of the Armed Forces in military occupational specialties with the standards that are applied to corresponding civilian occupations by governmental and private sector certification agencies.

The House bill contained no similar provision.

The House recedes with a technical amendment.

LEGISLATIVE PROVISIONS NOT ADOPTED

Length of service for service chiefs

The House bill contained a provision (sec. 501) that would authorize the President to extend the term of service of an officer serving as the Chief of Staff of the Army, the Chief of Naval Operations, the Commandant of the Marine Corps, or the Chief of Staff of the Air Force for a period of up to two years beyond the initial four-year appointment.

The Senate amendment contained no similar provision.

The House recedes.

Modification of conditions of eligibility for waiver of joint duty credit requirement for promotion to general or flag officer

The Senate amendment contained a provision (sec. 501) that would allow waivers of certain tour length requirements in cases in which an officer's proposed selection for promotion is based primarily upon a career field specialty, vice scientific and technical qualification, for which joint requirements do not exist. The provision would also eliminate the requirement that an officer serve in a joint duty assignment at least 180 days prior to the convening of a selection board for that officer to qualify for promotion to the rank of brigadier general or rear admiral (lower half).

The House bill had no similar provision regarding waivers of tour length requirements but a provision (sec. 532) that also repealed the requirement for 180 days service in a joint duty assignment before an officer may be considered for promotion to flag or general officer rank.

The Senate recedes.

Management of joint specialty officers

The Senate amendment contained a provision (sec. 502) that would provide that officers shall be designated as joint specialty officers upon successfully completing, in any sequence, a program accredited by the Chairman of the Joint Chiefs of Staff that is offered by a joint professional military education institution and a full tour of duty in a joint duty assignment, or after completing two full tours of duty in joint duty assignments. This provision would also specify that general and flag officer positions identified as joint duty assignments must be filled by officers with joint specialty unless the Secretary of Defense determines that the assignment of officers without the joint specialty is necessary and waives the requirement.

The House bill contained no similar provision.

The Senate recedes.

Increase in age limit for deferral of mandatory retirement for up to 10 senior general and flag officers

The House bill contained a provision (sec. 503) that would increase from 64 to 66 the mandatory retirement age for senior general and flag officers whom the President had previously retained on active duty beyond the statutory limits on either time-in-grade or age.

The Senate amendment contained no similar provision.

The House recedes.

Increased flexibility for voluntary retirement for military officers

The House bill contained a provision (sec. 504) that would require officers serving in grades above colonel or captain in the Navy to serve a minimum of one year time-in-grade before being allowed to retire in that grade. Additionally, the provision would modify existing law to give the authority to the secretary of the military department concerned to approve retirement of officers in grades above major general or rear admiral in the Navy with the concurrence of the Secretary of Defense.

The Senate amendment contained no similar provision.

The House recedes.

Length of joint duty assignments

The Senate amendment contained a provision (sec. 504) that would prescribe certain conditions under which officers would qualify to receive full credit for joint duty. The provision would also allow the Secretary of Defense to waive the applicability of section 664 of title 10, United States Code, if the Secretary determines that it is in the national security interests of the United States to do so.

The House bill contained no similar provision.

The Senate recedes.

Repeal of requirement that no more than 50 percent of active duty general and flag officers be in grades above brigadier general and rear admiral (lower half)

The House bill contained a provision (sec. 505) that would repeal the limitation in section 525 of title 10, United States Code, that no more than 50 percent of general and flag officers in a military service on active duty can be in grades above brigadier general and rear admiral (lower half).

The Senate amendment contained no similar provision.

The House recedes.

Revision to terms for assistants to the Chairman of the Joint Chiefs of Staff for National Guard and Reserve matters

The House bill contained a provision (sec. 506) that would authorize the assistants to the Chairman of the Joint Chiefs of Staff for National Guard and Reserve matters to serve an initial term of four years.

The Senate amendment contained no similar provision.

The House recedes.

Repeal of distribution requirements for Naval Reserve flag officers

The House bill contained a provision (sec. 510) that would amend section 12004(c) of title 10, United States Code, and repeal the existing distribution of flag officer billets for staff corps officers in the U.S. Naval Reserve.

The Senate amendment contained no similar provision.

The House recedes.

The conferees note that the allocations for flag officer billets in section 12004(c) apply to the Medical Corps, Nurse Corps, Dental Corps, Judge Advocate General's Corps, Civil Engineer Corps, Supply Corps, Chaplain Corps, and Medical Service Corps of the U.S. Naval Reserve. At a time when the Naval Reserve is engaged in an ongoing zero-based review of Reserve component force structure and development of initiatives to improve the integration of the Active and Reserve components of the Navy, the conferees question the Department of Defense's position that flag officer allocations for these vital Naval Reserve staff corps communities should be totally eliminated in order to establish additional line and restricted line Naval Reserve flag officer billets. The conferees expect the Navy to provide the Committees on Armed Services of the Senate and the House of Representatives with additional information justifying modifications to existing allocations in section 12004(c) based on the results of its zero-based review.

Authority for Reserve officers to qualify as joint specialty officers

The House bill contained a provision (sec. 534) that would authorize the Secretary of Defense to award the joint specialty officer designation to Reserve officers who have met the prescribed requirements for such designation.

The Senate amendment contained no similar provision.

The House recedes.

The conferees strongly support the inclusion of Reserve officers in the Department of Defense planning and policies regarding designation, career development, and management of officers skilled in joint matters. The conferees anticipate that the report on the applicability of the term "joint specialty officer" to qualified reservists, required by the Senate report accompanying S. 2400 (S. Rept. 108-260), will be useful in identifying legislative and regulatory changes needed to accomplish this goal. Additionally, the conferees expect the strategic plan linking joint officer development to overall missions and goals of the Department to fully address Reserve officer matters.

Ribbons to recognize completion of joint professional military education

The House bill contained a provision (sec. 542) that would authorize the Secretary of Defense to award a military decoration to persons who have successfully completed joint professional military education phase I and to subsequently award a device to affix to the ribbon when a person has successfully completed joint professional military education phase II.

The Senate amendment contained no similar provision.

The House recedes.

Increase in number of private-sector civilians who may be enrolled for instruction at National Defense University

The House bill contained a provision (sec. 543) that would increase the maximum number of eligible private-sector employees who may receive instruction at the National Defense University from 10 to 20.

The Senate amendment contained no similar provision.

The House recedes.

Requirement for completion of phase I joint professional military education before promotion to colonel or Navy captain

The House bill contained a provision (sec. 544) that, with certain exceptions, would require that after September 30, 2007 officers on the active-duty list must complete joint professional military education phase I or phase II before being appointed to the grade of colonel or captain in the Navy.

The Senate amendment contained no similar provision.

The House recedes.

Reduced blood alcohol content limit for offense of drunken operation of a vehicle, aircraft, or vessel

The Senate amendment contained a provision (sec. 551) that would amend Article 111 of the Uniform Code of Military Justice (10 U.S.C. 911) to lower the permissible blood alcohol concentration for the offense of drunken operation of a vehicle, aircraft, or vessel from the lesser of 0.10 grams or the limit prescribed in the State in which the offense occurred to the lesser of 0.08 grams or the limit prescribed in the State in which the offense occurred.

The House bill contained no similar provision.

The Senate recedes.

Prayer at military service academy activities

The House bill contained a provision (sec. 556) that would authorize the superintendent of a service academy to establish a policy with respect to the offering of a voluntary, nondenominational prayer at an authorized activity of the academy.

The Senate amendment contained no similar provision.

The House recedes.

Establishment of college financial assistance program for District of Columbia National Guard

The House bill contained a provision (sec. 560B) that would authorize the Department of Defense to provide financial assistance for college expenses, not to exceed $2,500 for any academic year, to eligible members of the National Guard of the District of Columbia.

The Senate amendment contained no similar provision.

The House recedes.

Separate military campaign medals to recognize service in Operation Enduring Freedom and service in Operation Iraqi Freedom

The House bill contained a provision (sec. 561) that would require the President to establish separate campaign medals to recognize the service of members during Operation Enduring Freedom and Operation Iraqi Freedom.

The Senate amendment contained a similar provision (sec. 542).

This provision is not included in the conference report because it is unnecessary. On May 28, 2004, H.R. 3104, an Act to provide for the establishment of separate campaign medals to be awarded to members of the uniformed services who participate in Operation Enduring Freedom and Operation Iraqi Freedom, was enacted as Public Law 108-234.

Redesignation of inactive-duty training to encompass operational and other duties performed by Reserves while in inactive duty status

The Senate amendment contained a provision (sec. 561) that would redesignate the duty status applicable to members of the Reserve components of the Armed Forces known as "inactive duty training" as "inactive duty."

The House bill contained no similar provision.

The Senate recedes.

The conferees acknowledge that the intent of the Department of Defense in requesting this statutory change is to more accurately reflect the current mission, capabilities, and actual utilization of the modern Reserve component. The conferees are concerned, however, that the full implications of this extensive change on the requirement for training and the priority to be given to training are not sufficiently defined or understood. The conferees urge the Department to demonstrate in its Reserve continuum of service and corresponding proposals for legislative change, its commitment to preserving periods of training in order to maintain readiness and core capabilities.

Eligibility of all uniformed services personnel for National Defense Service Medal

The House bill contained a provision (sec. 562) that would require the President to authorize the award of the National Defense Service Medal to members of the uniformed services.

The Senate amendment contained no similar provision.

The House recedes.

Repeal of unnecessary duty status distinction for funeral honors duty

The Senate amendment contained a provision (sec. 562) that would repeal section 12503 of title 10, United States Code, relating to funeral honors duty. Section 12503, which authorizes treatment of funeral honors duty as inactive duty training, would have been unnecessary in conjunction with renaming of "inactive duty training" as "inactive duty."

The House bill contained no similar provision.

The Senate recedes.

Conforming amendments to other laws referring to inactive-duty training

The Senate amendment contained a provision (sec. 563) that would conform certain provision in titles 5 and 38, United States Code, with the proposed change of the term "inactive duty training" to "inactive duty."

The House bill contained no similar provision.

The Senate recedes.

Conforming amendments to other laws referring to funeral honors duty

The Senate amendment contained a provision (sec. 564) that would conform certain provisions in titles 5 and 38, United States Code, with the proposed change of the term "inactive duty training" to "inactive duty" as it would apply to funeral honors duty.

The House bill contained no similar provision.

The Senate recedes.

Army combat recognition ribbon

The House bill contained a provision (sec. 566) that would require the Secretary of the Army to establish a combat recognition ribbon to recognize participation by members of the Army in combat.

The Senate amendment contained no similar provision.

The House recedes.

Clarification of authority of military legal assistance counsel to provide military legal assistance without regard to licensing requirements

The House bill contained a provision (sec. 573) that would amend section 1044 of title 10, United States Code, to provide that a judge advocate or a civilian attorney authorized to provide military legal assistance may provide such assistance in any jurisdiction, notwithstanding any law regarding the licensing of attorneys and subject to regulations to be prescribed by the Secretary concerned.

The Senate amendment contained no similar provision.

The House recedes.

The conferees note that differing responses were received from the Department of Defense and the services as to the need for and advisability of such a change in law. Concerns were expressed as to the possible effect on judge advocates and federal civilian attorneys practicing outside the legal assistance area, if such a proposal is adopted. The conferees urge the Department to develop a unified position with regard to the need for such a statutory change, and to submit a legislative proposal, if necessary.

Appearance of veterans service organizations at pre-separation counseling provided by the Department of Defense

The Senate amendment contained a provision (sec. 574) that would authorize the service secretaries to permit a representative from a veterans service organization to appear at and participate in pre-separation counseling for military members, authorized in section 1142 of title 10, United States Code. The provision would also authorize Reserve component units to meet with a veterans service organization upon release from active duty for the purpose of obtaining information and assistance.

The House bill contained no similar provision.

The Senate recedes.

The conferees expect that the matter of participation by representatives from veterans service organizations in pre-separation counseling for members in both Active and Reserve components will be addressed in the Comptroller General's report on transition assistance programs for members separating from the Armed Forces required elsewhere in this Act.

Limitation on amendment or cancellation of Department of Defense directive relating to reasonable access to military installations for certain personal commercial solicitation

The House bill contained a provision (sec. 586) that would prohibit the Secretary of Defense from cancelling or amending Department of Defense (DOD) Directive 1344.7, "Personal Commercial Solicitation on DOD Installations," for a period of one year after the Government Accountability Office (GAO) reports to Congress on the findings of an ongoing review of the financial allotment system and the treatment of insurance agents by military finance offices and local managers and commanders at Department of Defense installations.

The Senate amendment contained no similar provision.

The House recedes.

The conferees note that the Statement of Managers accompanying the Department of Defense Appropriations Act for Fiscal Year 2005 (Public Law 108-287) prohibits the use of appropriated funds to amend or cancel DOD Directive 1344.7 until 90 days after the report of the results of the investigation regarding insurance premiums allotment processing is submitted.

In the statement of managers accompanying the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136), the conferees stated that the Department has taken appropriate steps to thoroughly consider and evaluate potential changes to personal commercial solicitation policies. The conferees believe sufficient time has elapsed for the Department to complete its evaluation. The Secretary is directed to submit a report on the status of its plans to effect changes to personal commercial solicitation policies, including any recommended changes or revisions to DOD Directive 1344.7, to the Committees on Armed Services of the Senate and the House of Representatives by May 1, 2005.

Employment preferences for spouses of certain Department of Defense civilian employees subject to relocation agreements

The House bill contained a provision (sec. 591) that would expand the employment preference for spouses of Department of Defense civilian employees who have been assigned under a mandatory mobility agreement or similar mandatory mobility program. The authority would place spouses of civilian employees in an equivalent position to spouses of military members who already receive employment preferences.

The Senate amendment contained no similar provision.

The House recedes.

Demonstration program on expanded use of Reserves to perform developmental testing, new equipment training, and related activities

The Senate amendment contained a provision (sec. 862) that would authorize the Secretary of the Army to carry out a demonstration program through September 2009 on the assignment of members of Reserve components to perform test, evaluation, and related activities for acquisition programs.

The House bill contained no similar provision.

The Senate recedes.

Content of pre-separation counseling for personnel separating from active-duty service

The Senate amendment contained a provision (sec. 1029C) that would require that information on participation in Federal Government procurement opportunities be included in pre-separation counseling authorized by section 1142 of title 10, United States Code. The provision would also authorize the secretary concerned to provide pre-separation counseling at medical centers of the Department of Veterans Affairs and the Department of Defense with the consent of the member.

The House bill contained no similar provision.

The Senate recedes.

The conferees expect that this requirement will be included in the Comptroller General report on transition assistance programs for members separating from the Armed Forces required elsewhere in this Act.

TITLE VI—COMPENSATION AND OTHER PERSONNEL BENEFITS

LEGISLATIVE PROVISIONS ADOPTED

Subtitle A—Pay and Allowances

Increase in basic pay for fiscal year 2005 (sec. 601)

The House bill contained a provision (sec. 601) that would specify the requirement for increased pay for members of the Armed Forces by 3.5 percent effective January 1, 2005, and waiver of the adjustment required by section 1009 of title 37, United States Code.

The Senate amendment contained no similar provision in view of the requirement regarding annual pay adjustment under section 1009(c)(2) of title 37, United States Code.

The Senate recedes.

Relationship between eligibility to receive supplemental subsistence allowance and eligibility to receive imminent danger pay, family separation allowance, and certain federal assistance (sec. 602)

The Senate amendment contained a provision (sec. 621) that would exclude the family separation allowance and special pay relating to duty subject to hostile fire or imminent danger from the calculation of household income for eligibility to receive the family supplemental subsistence allowance (FSSA). The provision would also exclude the amount of FSSA received by service members in determining the eligibility of their spouses and children for certain low income assistance programs, and require a report on the accessibility by members of the Armed Forces and their families to social services.

The House bill contained no similar provision.

The House recedes with a technical amendment that would eliminate the reporting requirement.

Authority to provide family separation basic allowance for housing (sec. 603)

The House bill contained a provision (sec. 602) that would extend permissive authority to service secretaries to decline to pay family separation housing allowances when, in the secretaries' discretion, members' circumstances do not justify such payments.

The Senate amendment contained no similar provision.

The Senate recedes.

The conferees caution that it is not their intent that the service secretaries use the discretion provided in this provision to deny appropriate housing allowances to deserving service members and their families. The conferees intend that service members stationed worldwide should receive a family separation housing allowance in all cases when their families are prohibited from joining them at their current duty station and government-provided quarters are unavailable to the service members at their duty locations.

Geographic basis for housing allowance during short-assignment permanent changes of station for education or training (sec. 604)

The House bill contained a provision (sec. 603) that would authorize service members who attend professional military education or training lasting 12 months or less to elect to leave their families at their previous duty station and receive basic allowance for housing based on the area where their dependents reside.

The Senate amendment contained a similar provision (sec. 601).

The House recedes with a technical amendment.

Immediate lump-sum reimbursement for unusual nonrecurring expenses incurred for duty outside the continental United States (sec. 605)

The House bill contained a provision (sec. 604) that would authorize the service secretary concerned to pay service members serving outside the continental United States for certain unusual nonrecurring expenses.

The Senate amendment contained a similar provision (sec. 602).

The House recedes with a technical amendment.

Authority for certain members deployed in combat zones to receive limited advances on future basic pay (sec. 606)

The House bill contained a provision (sec. 606) that would authorize the secretary concerned to pay advances on future basic pay for service members assigned to locations where they would receive imminent danger pay and their assignment is pursuant to orders specifying an assignment of one year or more or the assignment is extended beyond one year.

The Senate amendment contained no similar provision.

The Senate recedes with a clarifying amendment that would require the service member to repay the advance in equal monthly installments over a one-year period beginning the month after the advance is received.

Repeal of requirement that members entitled to basic allowance for subsistence pay subsistence charges while hospitalized (sec. 607)

The House bill contained a provision (sec. 661) that would repeal the requirement for officers and certain enlisted members to pay subsistence charges when they are hospitalized.

The Senate amendment contained a similar provision (sec. 711).

The Senate recedes with a technical amendment.

Subtitle B—Bonuses and Special and Incentive Pays

One-year extension of certain bonus and special pay authorities for Reserve forces (sec. 611)

The House bill contained a provision (sec. 611) that would extend the authority for various bonuses and special pays for Active and Reserve members.

The Senate amendment contained a provision (sec. 611) that would extend for one year the authority to pay the Selected Reserve reenlistment bonus, the Selected Reserve enlistment bonus, the special pay for enlisted members assigned to certain high priority units in the Selected Reserve, the Selected Reserve affiliation bonus, the Ready Reserve enlistment and reenlistment bonus, and the prior service enlistment bonus.

The House recedes.

One-year extension of certain bonus and special pay authorities for certain health care professionals (sec. 612)

The House bill contained a provision (sec. 611) that would extend the authority for various bonuses and special pays for Active and Reserve members, including certain health care professionals.

The Senate amendment contained a provision (sec. 612) that would extend for one year the authority to pay the nurse officer candidate accession bonus, the accession bonus for registered nurses, incentive special pay for nurse anesthetists, special pay for Selected Reserve health professionals in critically short wartime specialties, the accession bonus for dental officers, and to repay education loans for certain Selected Reserve health professionals.

The House recedes with an amendment that would also extend the authority to pay the accession bonus for pharmacy officers until December 31, 2005.

One-year extension of special pay and bonus authorities for nuclear officers (sec. 613)

The House bill contained a provision (sec. 611) that would extend the authority for various bonuses and special pays for Active and Reserve members, including nuclear officers.

The Senate amendment contained a provision (sec. 613) that would extend for one year the authority to pay the special pay for nuclear-qualified officers extending their period of active service, the nuclear career accession bonus, and the nuclear career annual incentive bonus.

The House recedes.

One-year extension of other bonus and special pay authorities (sec. 614)

The House bill contained a provision (sec. 611) that would extend the authority for various bonuses and special pays for Active and Reserve members.

The Senate amendment contained a provision (sec. 614) that would extend for one year the authority to pay the aviation officer retention bonus, assignment incentive pay, the reenlistment bonus for Active members, the enlistment bonus for Active members, the retention bonus for members with critical military skills, and the accession bonus for new officers in critical military skills.

The House recedes.

Authority to provide hazardous duty incentive pay to military firefighters (sec. 615)

The House bill contained a provision (sec. 620) that would authorize a new hazardous duty incentive pay of $150 per month for members of the uniformed services who regularly perform duty as a member of a firefighting crew.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would modify section 301 of title 37, United States Code, to authorize incentive pay at a monthly rate not to exceed $150 per month for any month during which a member performs duty involving regular participation as a firefighting crew member, as determined by the secretary concerned.

Reduced service obligation for nurses receiving nurse accession bonus (sec. 616)

The House bill contained a provision (sec. 612) that would reduce the service commitment required for the nurse accession bonus from four to three years of service.

The Senate amendment contained a similar amendment (sec. 615).

The House recedes with an amendment that the authority shall apply on or after the date of enactment of this Act.

Assignment incentive pay (sec. 617)

The House bill contained a provision (sec. 614) that would require termination of assignment incentive pay when the member is placed on terminal leave and will not be returning to the assignment location.

The Senate amendment contained a similar provision (sec. 616) that would also delete the requirement for a written agreement between the secretary concerned and the member.

The House recedes with a technical amendment.

The conferees believe that assignment incentive pay should be a highly flexible means of providing an incentive to members to volunteer for challenging assignments. In this regard, the conferees approve of the actions of the Department of Defense and the Department of the Army in supporting the Commander, U.S. Forces Korea, in aggressively using assignment incentive pay to provide stability and enhanced readiness for soldiers and units in the Republic of Korea.

The conferees also view assignment incentive pay as a responsive means for service secretaries, on a discretionary basis when mission accomplishment so requires, to appropriately compensate members who are called on to extend their service or tours of duty or otherwise serve in demanding assignments. The requirement for a written agreement under these circumstances is not required and should not be mandatory in all cases.

Modification of active and Reserve component reenlistment and enlistment bonus authorities (sec. 618)

The House bill contained a provision (sec. 615) that would consolidate Active and Reserve Component reenlistment and enlistment bonus authorities. The provision would repeal certain special pay provisions and also extend eligibility for the reenlistment bonus through 17 years of service and authorize the use of the reenlistment bonus during war and national emergency to address unit specific retention problems without regard to critical skill eligibility requirements.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would authorize payment of an active-duty or Selected Reserve reenlistment bonus up to 16, vice 14, years of service and increase the maximum amount of the Selected Reserve reenlistment bonus from $5,000 to $15,000 for a reenlistment or extension of six years, from $2500 to $7,500 for a reenlistment or extension of three years, and from $2,000 to $6,000 for a reenlistment or extension of three years when the member has received a bonus for a previous three year enlistment. The amendment would also authorize lump sum payments of the foregoing bonuses.

The amendment would increase the maximum amount of the Selected Reserve enlistment bonus from $8,000 to $10,000; increase the Ready Reserve enlistment bonus for persons without prior service from $1,000 to $3,000; and increase the maximum amount of the prior service Ready Reserve bonus from

$15,00 to $3,000 for a six year enlistment and from $750 to $1,500 for a three year enlistment. The amendment would authorize payment of the prior service enlistment bonus for the Selected Reserve for members who have not more than 16 years of total service. It would increase the maximum amount of the bonus from $8,000 to $15,000 for a six year enlistment, from $4,000 to $7,500 for a three year enlistment, and from $3,500 to $6,000 for a three year reenlistment or extension when the member has received a bonus for a previous three year enlistment.

Bonus for certain initial service of officers in the Selected Reserve (sec. 619)

The House bill contained a provision (sec. 618) that would modify section 324 of title 37, United States Code, to authorize Reserve component officers to be paid an accession of affiliation bonus using the same authority used to pay active-duty officers.

The Senate amendment contained a provision (sec. 620) that would authorize an affiliation or accession bonus of up to $6,000 for certain commissioned officers in the Selected Reserve. The provision would help to access and affiliate officers in the Selected Reserve who possess or would train to acquire designated critical skills.

The House recedes with an amendment that would specify that a member entitled to a bonus under this provision who is called or ordered to active duty shall be paid, during that period of active duty, any amount of the bonus that becomes payable to the member during that period of active duty.

Revision of authority to provide foreign language proficiency pay (sec. 620)

The House bill contained a provision (sec. 616) that would authorize the service secretary concerned to pay an annual bonus of up to $12,000 to members of the uniformed services who maintain proficiency in a foreign language.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would authorize the monthly rate for foreign language proficiency pay under section 316 of title 37, United States Code, to be determined by the secretary concerned but not to exceed $1,000. Additionally, the amendment would authorize payment of a bonus of up to $6,000 payable in a lump sum or installments for members of the Reserve component. The amendment would require that if a member of a Reserve component serving on active duty receives foreign language monthly special pay during any month for which the member receives a lump sum payment, the amount of the special pay paid to the member for the month shall be reduced by an amount equal to one-twelfth of the bonus amount.

Eligibility of enlisted members to qualify for critical skills retention bonus while serving on indefinite reenlistment (sec. 621)

The House bill contained a provision (sec. 617) that would allow Reserve component members to be paid the critical skills retention bonus under the authority of section 323 of title 37, United States Code. The provision would also extend eligibility for the bonus through 17 years of service and, clarify that enlisted members serving pursuant to an indefinite enlistment would be eligible under certain conditions for receipt of the bonus.

The Senate amendment contained a provision (sec. 618) that would authorize enlisted personnel serving on indefinite reenlistments in designated critical military skills to receive a critical skills retention bonus on the condition that they enter into a written agreement to remain on active duty for at least one year under such enlistments.

The House recedes with a technical amendment.

The conferees believe that initiatives to consolidate or extend bonus authorities in the absence of Department of Defense legislative proposals are premature. The Department has indicated that a Defense Advisory Committee on Military Compensation will be appointed by the Secretary of Defense to conduct a comprehensive review of military compensation from the perspective of both the Active and Reserve forces. This Advisory Committee on Military Compensation will perform a comprehensive review and strategic assessment of military pay and benefits with a view towards simplifying and balancing pays to maintain a competitive edge in recruiting and retention. Upon completion of its work, which is anticipated in the late summer of 2005, the advisory committee will publish its conclusions and recommendations and transmit those to the Secretary of Defense. The conferees also expect that the Commission on National Guard and Reserves will contribute to a better informed resolution of questions about potential reform to title 37, United States Code.

Eligibility of Reserve component members for incentive bonus for conversion to military occupational specialty to ease personnel shortage (sec. 622)

The House bill contained a provision (sec. 619) that would allow Reserve component members to be paid bonuses for converting to, and serving for a period of not less than three years, in military occupational specialties for which there is a shortage of trained and qualified personnel.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would provide that a bonus under this provision may not exceed $2,000.

Permanent increase in authorized amounts for imminent danger special pay and family separation allowance (sec. 623)

The House bill contained a provision (sec. 1533) that would make permanent the increase in the rate of imminent danger pay from $150 per month to $225 per month and the increase in the rate of family separation allowance from $100 per month to $250 per month.

The Senate amendment contained similar provisions (sec. 603 and 617).

The Senate recedes with a technical amendment.

Subtitle C—Travel and Transportation Allowances

Travel and transportation allowances for family members to attend burial ceremony or memorial service of member who dies on duty (sec. 631)

The House bill contained a provision (sec. 631) that would clarify that family members are authorized to travel at government expense to the burial site of a member who dies while on duty, and that the member's parents are always eligible to travel at government expense to attend the burial ceremony. The House bill included a $2.0 million ceiling on expenditures in fiscal year 2005 for this purpose.

The Senate amendment included a similar provision (sec. 631), but did not include a ceiling on expenditures in fiscal year 2005.

The House recedes with a clarifying amendment.

Transportation of family members incident to serious illness or injury of members of the uniformed services (sec. 632)

The House bill contained a provision (sec. 632) that would expand the number and categories of family members and other people that would be entitled to transportation at government expense, and would authorize such persons to receive a per diem or be reimbursed for travel expenses.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would limit the number of family members authorized transportation and travel expenses to three, and would provide authority for the Secretary concerned to waive the limitation on the number of family members in circumstances determined to be appropriate.

Reimbursement for certain lodging costs incurred in connection with dependent student travel (sec. 633)

The House bill contained a provision (sec. 633) that would authorize the secretary concerned to reimburse a service member for lodging costs incurred by a dependent child traveling between the child's school and the member's overseas duty station when the lodging expenses are incurred for reasons beyond the control of the dependent child.

The Senate amendment contained a similar provision (sec. 632).

The House recedes with a technical amendment.

Subtitle D—Retired Pay and Survivor Benefits

Computation of high-36 month average for Reserve component members retired for disability while on active duty or dying while on active duty (sec. 641)

The Senate amendment contained a provision (sec. 641) that would modify the rules controlling the computation of retirement pay and survivor annuities for Reserve component members who are entitled to retired pay for physical disability under sections 1201 and 1202 of title 10, United States Code. The provision would permit more equitable treatment of these Reserve component members by calculating the average of monthly basic pay for purposes of pay and annuity payments as if they had been entitled to basic pay for the 36 months preceding their retirement, regardless of whether the member served the entire period on active duty.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Repeal of phase-in of concurrent receipt of retired pay and veterans' disability compensation for military retirees with service-connected disabilities rated as 100 percent (sec. 642)

The Senate amendment contained a provision (sec. 643) that would modify section 1414 of title 10, United States Code, to repeal the requirement for phase-in of concurrent receipt of retired pay and veterans' disability compensation for military retirees with service-connected disabilities rated as 100 percent.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Death benefits enhancement (sec. 643)

The Senate amendment contained a provision (sec. 642) that would index the amount of the death gratuity payable under section 1478 of title 10, United States Code, to the average percentage of the increase in rates of basic pay taking effect each year. Additionally, the amendment would require the President to submit draft legislation to Congress that would increase the maximum benefit provided under Servicemembers' Group Life Insurance (SGLI) to $350,000 and allow a minimum SGLI benefit of $100,000 at no cost for members who elect the maximum coverage. The amendment would also establish an additional set of death benefits, retroactive to October 7, 2001, for survivors of members who die in the line of duty or as a result of hostile action consisting of the total amount of basic pay, allowances, and special pays a member would have received for one or two years respectively. The amendment would also require the budget for fiscal year 2006 to include funds for the implementation of the foregoing enhanced benefits.

The House bill contained no similar provision.

The House recedes with an amendment that would require the President, at the same time he transmits to Congress the budget for fiscal year 2006, to submit assessments and recommendations on legislation, including budgetary implications for the legislation described in the Senate amendment.

Phased elimination of two-tier annuity computation for surviving spouses under Survivor Benefit Plan (sec. 644)

The House bill contained a provision (sec. 641) that would phase in from October 2005 to March 2008 elimination of the Social Security offset under the Survivor Benefit Plan (SBP), and increase the annuities paid to survivors of military retirees who are 62 or older. The provision would also make corresponding adjustments to the SBP supplemental annuity program and require SBP annuities to be recalculated during October 2005, April 2006, April 2007, and April 2008.

The Senate amendment contained a similar provision (sec. 644) that would phase in from October 2005 to October 2014 elimination of the Social Security offset under the SBP.

The Senate recedes with an amendment that would eliminate the requirement that participating retirees continue to pay premiums for supplemental SBP coverage effective on the date of enactment of this Act. Retired members who choose supplemental SBP coverage during the open enrollment period, which would begin on October 1, 2005, would have their additional premium phased out from 2005 through 2008.

One-year open enrollment period for Survivor Benefit Plan commencing October 1, 2005 (sec. 645)

The House bill contained a provision (sec. 642) that would authorize an open enrollment period for retired members to participate in the Survivor Benefit Plan (SBP) or to increase the level of their participation if they were previously participating below the maximum allowed level. The provision would authorize the Secretary of Defense to require retirees who enroll to pay an additional premium not to exceed 4.5 percent of the retiree's base amount.

The Senate amendment contained a similar provision (sec. 645) that would authorize an open enrollment period similar to that authorized by section 642 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261). The open enrollment period under the Senate amendment would last for one year beginning on October 1, 2005. The premium would be calculated based on the total amount of the premiums, plus interest, by which members' retired pay would have been reduced if they had elected to participate in the SBP at the first opportunity that they had been afforded.

The House recedes with a clarifying amendment that would give eligible retirees during the open enrollment period the option of purchasing temporary supplemental SBP coverage that would be phased out by 2008 when the two-tier SBP system is terminated.

Subtitle E—Commissary and Nonappropriated Fund Instrumentality Benefits

Consolidation and reorganization of legislative provisions regarding defense commissary system and exchanges and other morale, welfare, and recreation activities (sec. 651)

The House bill contained a provision (sec. 651) that would consolidate and reorganize a wide range of sections from title 10, United States Code, and related laws concerning commissaries, exchanges and other morale, welfare, and recreation activities. The provision would define the commissary benefit; specify criteria for establishment, sizing, and closure of commissaries; and address other commissary management matters.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would define commissary and exchange systems, and clarify that the purpose of the systems is to enhance the quality of life of members of the uniformed services, retired members, and dependents of such members; and to support military readiness, recruitment, and retention. The amendment would require the designation of a senior official to oversee both systems and an executive governing body to ensure complimentary operations of both systems. The amendment would authorize the Secretary of Defense to consider the quality of life of the Reserve components whenever assessing whether to close a commissary store, and would clarify that the closure of a commissary store at an installation not closing under a base closure law would not take effect until 90 days after the Secretary notifies Congress of the reasons for such closure.

The amendment would authorize the Secretary to conduct a test program on the sale of telephone cards, film, and one-time use cameras. Within 90 days of the completion of one year of testing, the Secretary would report findings and recommendations to the Committees on Armed Services of the Senate and the House of Representatives. The amendment would require the report to include an analysis of the actual impact of the sale of such items on the exchange dividend and any recommendations for changes in legislation that may be necessary. The amendment would require the Comptroller General to conduct a study to evaluate the impact of the expansion of categories of merchandise authorized for sale in commissary stores and its impact on the exchange dividend.

The conferees expect that the oversight body established by this Act will include military members. The conferees also expect that for items procured from the exchange, any revenue above the commissary purchase price of other merchandise items, shall be accounted for and allocated as if it were a uniform sales price surcharge. Finally, the conferees expect the Secretary to maintain the decor, format, and product selection in military commissaries consistent with modern grocery store norms.

Consistent State treatment of Department of Defense Nonappropriated Fund Health Benefits Program (sec. 652)

The House bill contained a provision (sec. 652) that would clarify that the Nonappropriated Fund Uniform Health Benefits Program of the Department of Defense is not subject to State, local and territorial taxes, fees, other monetary payment, or health plan mandates.

The Senate amendment contained a similar provision (sec. 1106).

The Senate recedes with a technical amendment.

Subtitle F—Other Matters

Eligibility of members for reimbursement of expenses incurred for adoption placements made by foreign governments (sec. 661)

The Senate amendment contained a provision (sec. 652) that would amend section 1052(g) of title 10, United States Code, to include within the definition of "qualified adoption agency" a foreign government or an agency authorized by a foreign government to place children for adoption. Section 1052 authorizes reimbursement of expenses for certain members of the Armed Forces who adopt children. Although that statute includes intercountry adoptions, the definition of qualified adoption agency does not include either foreign governments or agencies authorized by such governments to place children. Otherwise eligible members who adopt children while on duty outside the United States have been forced to re-adopt them through a domestic agency upon their return to the United States in order to be reimbursed. The provision would authorize reimbursement of expenses for such intercountry adoptions, if the child is either eligible for automatic United States citizenship or has been issued a certificate of citizenship under the Immigration and Nationality Act.

The House bill contained no similar provision.

The House recedes.

The conferees expect that the Secretary of Defense will make the necessary adjustments, including extending the period allowed under regulations for filing for reimbursement, to accommodate members who are outside the United States on military orders.

Clarification of education loans qualifying for education loan repayment program for Reserve component health professions officers (sec. 662)

The House bill contained a provision (sec. 662) that would clarify that college loans involving both a basic professional degree and graduate education would qualify for repayment under section 16302 of title 10, United States Code.

The Senate amendment contained a similar provision (sec. 619).

The Senate recedes.

Receipt of pay by reservists from civilian employers while on active duty in connection with a contingency operation (sec. 663)

The Senate amendment contained a provision (sec. 1068) that would modify section 209 of title 18, United States Code, to permit a member of the Reserves on active duty pursuant to a call or order to active duty to receive payment of any part of the salary or wages that a civilian employer would have paid if the reservist's employment had not been interrupted by the order to active duty.

The House bill contained no similar provision.

The House recedes.

Relief for mobilized reservists from certain federal agricultural loan obligations (sec. 664)

The Senate amendment contained a provision (sec. 655) that would authorize forgiveness of interest payments due under section 1981f of title 7, United States Code, while borrowers are mobilized military reservists. The provision would also authorize deferral of principal payments due while or after borrowers are mobilized reservists, and direct that borrowers who receive assistance under this provision would not be considered to be delinquent or receiving debt forgiveness for purpose of receiving direct or guaranteed loans under title 7, United States Code.

The House bill contained no similar provision.

The House recedes.

Survey and analysis of effect of extended and frequent mobilization of reservists for active-duty service on reservist income (sec. 665)

The House bill contained a provision (sec. 663) that would require the Secretary of Defense to conduct a detailed study of the loss of income by mobilized reservists who have served on active-duty in support of a contingency operation following September 11, 2001.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment to ensure that all sources of income are reported by the member in response to the survey.

The conferees believe that accurate information regarding loss of income is an important prerequisite to future congressional action, and acknowledge the need to better understand the impact of any such loss of income on members with skills in high demand for deployments.

Study of disability benefits for veterans of service in the Armed Forces with service-connected disabilities (sec. 666)

The conferees agree to a provision that would require the Secretary of Defense to conduct a study of the totality of all current and projected disability benefits that are available to disabled members and former members of the Armed Forces for service-connected disabilities. The study would compare the disability benefits for members of the Armed Forces with commercial and other private sector disability benefits plans, and identify the Department of Defense personnel policy changes needed to enhance the financial and nonfinancial benefits that are provided to members and former members of the Armed Forces for service-connected disabilities. The Secretary's report would include conclusions resulting from the study and recommended legislation to address the deficiencies in the system of Federal Government disability benefits for disabled members and former members of the Armed Forces.

The provision would require the Comptroller General to study the disability benefits that are available for employees of the Federal, State and local governments, especially those provided for disabilities incurred in the performance of jobs in which employees perform tasks with risks that are similar to the risks associated with military service.

LEGISLATIVE PROVISIONS NOT ADOPTED

Income replacement payments for Reserves experiencing extended mobilization for active-duty service

The House bill contained a provision (sec. 605) that would require the Secretary of Defense to pay involuntarily mobilized Reserve members on a monthly basis the amount necessary to replace the difference in income between their regular military compensation plus special pays and allowances and the average monthly income received by the member during the 12 months preceding the month in which the member was mobilized. Payments would be limited to a minimum of $50 each month and a maximum of $3,000 each month.

The Senate amendment contained a provision (sec. 1110) that would amend chapter 55 of title 5, United States Code, to require federal agencies to pay any difference between military and civilian compensation for federal employees who, as members of the uniformed services or National Guard, were called to active-duty service in support of a national emergency since October 11, 2002.

These provisions were not included in the conference report because funding was not appropriated for Reserve income replacement payments to either Reserve members or federal government agencies.

Increase in maximum monthly rate authorized for hardship duty pay

The House bill contained a provision (sec. 613) that would increase from $300 to $750 the maximum amount of special pay that may be paid to members performing duty designated by the Secretary of Defense as hardship duty under section 305 of title 37, United States Code.

The Senate amendment contained no similar provision.

The House recedes.

Source of funds for Survivor Benefit Plan annuities for Department of Defense beneficiaries over age 62

The House bill contained a provision (sec. 643) that would direct that the payments made into the Department of Defense Military Retirement Fund, which is funding the increases in this Act, to the cost of the Survivor Benefit Plan would be made directly by the Secretary of the Treasury.

The Senate amendment contained no similar provision.

The House recedes.

Cooperation and assistance for qualified scouting organizations serving dependents of members of the Armed Forces and civilian employees overseas

The House bill contained a provision (sec. 653) that would require that professional staff supporting both the Boy Scouts of America and the Girl Scouts of the United States of America in overseas areas be made non-appropriated fund employees of the United States and would clarify that appropriated funds may be used to pay the costs of the employees.

The Senate amendment contained no similar provision.

The House recedes.

Child care for children of members of Armed Forces on active duty for Operation Enduring Freedom or Operation Iraqi Freedom

The Senate amendment (sec. 654) would authorize the Secretary of Defense to provide funds, to the extent that funds are available for such purpose, to secure access to child care at State licensed child care and development programs in the private sector for members serving in Operation Enduring Freedom and Operation Iraqi Freedom, who are geographically disbursed and do not have practical access to a military child development center.

The House bill contained no similar provision.

The Senate recedes.

The conferees acknowledge that the Department of Defense has authority under section 1798 of title 10, United States Code, to subsidize the cost of child and youth services in the private sector, and has initiated programs to provide affordable, quality child care and youth service options for families of activated Guard and Reserve members. Such initiatives include partnerships with civilian child care referral agencies, and the Department of Defense Military One Source referral services available to all members.

TITLE VII—HEALTH CARE PROVISIONS

Subtitle A—Enhanced Benefits for Reserves

TRICARE coverage for members of Reserve components who commit to continued service in the Selected Reserve after release from active duty (sec. 701)

The Senate amendment contained a provision (sec. 706) that would authorize TRICARE coverage for each member of the Ready Reserve while in a non-active duty status. The provision would authorize the same benefits for members of the Reserve components as a member on active duty or a dependent of an active-duty member, based on a premium payment by the member. The amount of the monthly premium required of the member would be 28 percent of the total amount determined by the Secretary of Defense as being reasonable for the TRICARE coverage. TRICARE coverage for Reserves in a non-active duty status would commence following expiration of transitional health care benefits authorized in section 1145, title 10, United States Code. The amendment would not extend TRICARE eligibility to federal employees entitled to Federal Employee Health Benefits Plan coverage under chapter 89 of title 5, United States Code.

The House bill contained no similar provision.

The House recedes with an amendment to authorize TRICARE coverage for Reserves in a non-active duty status for members of Reserve components called or ordered to active duty on or after September 11, 2001 in support of a contingency operation, and who commit to continued service in the Selected Reserve after release from active duty. For each period of 90 consecutive days of extended active-duty service, the Reserve member would be entitled to one year of TRICARE coverage while in a non-active duty status under the TRICARE Standard option. The amendment would authorize one year of coverage for a member who is otherwise eligible but does not serve continuously on active duty for 90 days because of an injury, illness, or disease incurred or aggravated while deployed. The amendment would also require payment of a premium by the Reserve member equal to 28 percent of the total amount determined by the Secretary as being reasonable for TRICARE coverage, and execution by the member of a service agreement. The amendment would be in effect within 180 days of enactment of this Act, and would require the Secretary to take all necessary actions to ensure that members eligible for TRICARE coverage receive information on the opportunity to enter into such an agreement.

Comptroller General report on the cost and feasibility of providing private health insurance stipends for members of the Ready Reserves (sec. 702)

The House bill contained a provision (sec. 702) that would require the Comptroller General to conduct a study on the cost and feasibility of providing a stipend to members of the Ready Reserves to offset the cost of continuing private health insurance when the member is on active duty for more than 30 days.

The Senate amendment contained no similar provision.

The Senate recedes.

Permanent earlier eligibility date for TRICARE benefits for members of Reserve components and their dependents (sec. 703)

The House bill contained a provision (sec. 703) that would make permanent the temporary authority for dependents of Reserve component members to obtain TRICARE benefits up to 90 days before the date on which the member's period of active duty is to begin.

The Senate amendment contained a similar provision (sec. 702).

The House recedes with a technical amendment.

Waiver of certain deductibles under TRICARE program for members on active duty for a period of more than 30 days (sec. 704)

The House bill contained a provision (sec. 704) that would authorize the waiver of certain deductibles required by certain TRICARE programs for dependents of certain Reserve component members who are called or ordered to active duty for a period of more than 30 days.

The Senate amendment contained a similar provision (sec. 703).

The House recedes with a technical amendment.

Authority for payment by United States of additional amounts billed by health care providers to activated Reserves (sec. 705)

The House bill contained a provision (sec. 705) that would protect a dependent of a member of a Reserve component who is ordered to active duty for a period of more than 30 days in support of a contingency operation from paying a health care provider any amount above the TRICARE maximum allowable charge.

The Senate amendment contained a similar provision (sec. 704).

The House recedes with a technical amendment.

Permanent extension of transitional health care benefits and addition of requirement for preseparation physical examination (sec. 706)

The House bill contained a provision (sec. 706) that would make permanent the authority to provide Transition Assistance Medical Program benefits to service members and their dependents for up to 180 days following separation from active duty. The provision would require that eligibility for transition benefits would cease prior to the 180-day limit if the beneficiaries acquire employer-provided insurance. The provision would also limit outlays provided after January 1, 2005, to not more than $170.0 million.

The Senate amendment included a provision (sec. 705) that would make permanent the authority to provide transition benefits for 180 days following separation from active duty for certain Active and Reserve members. The provision would require that as part of such transitional health care coverage, each member shall undergo a comprehensive physical examination before separating from active-duty service.

The House recedes with an amendment that would authorize the Secretary of Defense to prescribe in regulations the content of the physical provided to each member immediately before separation. The amendment would also authorize a waiver of the requirement for a physical examination if a member has undergone a physical examination within 12 months before the scheduled date of separation, and would require that a waiver may be granted only with the consent of the member and the member's unit commander.

Subtitle B—Other Benefits Improvements

Opportunity for young child dependent of deceased member to become eligible for enrollment in a TRICARE dental plan (sec. 711)

The House bill contained a provision (sec. 711) that would permit certain young children, who are dependents of service members who die while on active duty, to enroll in the TRICARE dental insurance program, regardless of the dependent's dental plan enrollment status on the date of the service member's death. Many young children, due to their age, are not enrolled in the TRICARE dental plan.

The Senate amendment contained a similar provision (sec. 712).

The House recedes.

Comptroller General report on provision of health, education, and support services for Exceptional Family Member Program enrollees (sec. 712)

The House bill contained a provision (sec. 712) that would require the Comptroller General to evaluate the effect of the Exceptional Family Member Program on health and support services in selected civilian communities near military installations with a high concentration of Exceptional Family Member Program enrollees, and to submit a report to the Committees on Armed Services of the Senate and the House of Representatives no later than March 31, 2005.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would include in the Comptroller General's assessment an evaluation of education services, including early childhood intervention and special education services required by Exceptional Family Member Program enrollees. The amendment would also require the report to be submitted no later than one year after the date of enactment of this Act. The conferees specifically request that the report include an assessment of the services available for family members with autism.

Continuation of sub-acute care for transition period (sec. 713)

The House bill contained a provision (sec. 714) that would allow the Secretary of Defense to extend previous benefits for part-time or intermittent home health care after the transition to new managed care contracts that result in a change of benefits.

The Senate amendment contained a similar provision (sec. 718).

The House recedes.

Improvements to pharmacy benefits program (sec. 714)

The House bill contained a provision (sec. 715) that would prohibit the prescription drug cost-sharing requirements for Medicare-eligible TRICARE beneficiaries from being in excess of the cost-sharing requirements applicable to non-Medicare-eligible beneficiaries.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would authorize the Secretary of Defense to consider additional determinations by the Department of Defense Pharmacy and Therapeutics Committee of the relative clinical and cost-effectiveness of the agents for a preferred formulary status at military treatment facilities.

Professional accreditation of military dentists (sec. 715)

The House bill contained a provision (sec. 716) that would allow the secretaries of the military departments to authorize the treatment of no more than 2,000 children under the age of 13 per year at certain military facilities offering residency training programs in oral and maxillofacial surgery and orthodontics.

The Senate amendment contained a similar provision (sec. 713).

The House recedes with a technical amendment.

Temporary authority for waiver of collection of payments due for CHAMPUS benefits received by disabled persons unaware of loss of CHAMPUS eligibility (sec. 716)

The House bill contained a provision (sec. 718) that would allow the Secretary of Defense to waive the collection of certain payments for health care services provided during a period of ineligibility between July 1, 1999 and December 31, 2004 for beneficiaries under age 65 entitled to Medicare on the basis of disability or end stage renal disease. The waiver would apply to those beneficiaries who were unaware of their loss of eligibility to receive health benefits at the time they were received. The provision also required a quarterly report to Congress on efforts to identify such individuals and actions taken when individuals are determined to be ineligible.

The Senate amendment contained a similar provision (sec. 719) with no reporting requirement.

The House recedes with a technical amendment.

Services of marriage and family therapists (sec. 717)

The Senate amendment contained a provision (sec. 714) that would clarify that certified marriage and family therapists can serve as health care professionals under sections 1091 and 1094 of title 10, United States Code.

The House bill contained no similar provision.

The House recedes.

The conferees clarify that the term "marriage and family therapist" includes masters-level prepared psychologists who are licensed in marriage and family therapy.

Chiropractic health care benefits advisory committee (sec. 718)

The Senate amendment contained a provision (sec. 715) that would require the Secretary of Defense to establish a Chiropractic Health Care Benefits Advisory Committee to provide advice regarding the implementation of chiropractic benefits for active-duty members, and would require the Committee to meet no fewer than three times in each fiscal year beginning in 2005.

The House bill contained no similar provision.

The House recedes with an amendment that would clarify that not less than three committee members appointed by the Secretary must be practicing representatives of the chiropractic health care profession. The amendment would also require that the Secretary submit a copy of the advisory committee report to the Committee on Armed Services of the Senate and the House of Representatives, including an explanation of the criteria used to determine full implementation of the current program, and views with regard to future implementation of chiropractic health care benefits.

Subtitle C—Planning, Programming, and Management

Pilot program for health care delivery (sec. 721)

The House bill contained a provision (sec. 721) that would authorize the Secretary of Defense to conduct a pilot program for health care delivery to test a model for future health care delivery systems at one or more military installations where the military population is expected to expand. The model would focus on coordinating and leveraging the use of existing health care resources, to include federal, state, local, and contractor assets, to meet increased health care requirements.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would authorize the Secretary to conduct a health care delivery pilot program at two or more military installations for the purpose of testing a model of health care delivery that builds cooperative health care arrangements between military installations and local and regional civilian health care systems.

The conferees find that with increasing requirements to repair or replace aging military treatment facilities and potential realignment of forces, the Department of Defense will be challenged to find new ways of providing enhanced health care for beneficiaries entitled to military health care.

Study of provision of travel reimbursement to hospitals for certain military disability retirees (sec. 722)

The House bill contained a provision (sec. 722) that would require the Secretary of Defense to conduct a study of the feasibility and desirability of providing retirees with combat-related disabilities travel and transportation benefits to receive medical treatment at military hospitals for two years after their retirement. The provision would also require the Secretary to report the results of the study to the congressional defense committees by March 1, 2005.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would include all military disability retirees in the study.

Study of mental health services (sec. 723)

The House bill contained a provision (sec. 723) that would require the Secretary of Defense to conduct a study of mental health services available to members of the Armed Forces, to include an evaluation of the availability and effectiveness of mental health treatment and screening resources for members before and after deployment, and for the families of deployed members. The provision would also require an assessment of obstacles that prevent members of the Armed Forces and their families from obtaining mental health services, as well as identification of mental health problems unique to members of the Reserve component.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would require the Comptroller General to conduct the study and submit a report to Congress by March 31, 2005. The amendment would also require the report to include recommendations for removing any obstacles to obtaining mental health services for members of the Reserve component.

The conferees support the recommendations made by the Army's Mental Health Advisory Team and direct the Secretary of the Army to provide a report by March 1, 2005, on the implementation of recommendations for providing mental health assistance to soldiers wanting help and educating soldiers on how to obtain help from forward-deployed mental health units.

Policy for timely notification of next of kin of members seriously ill or injured in combat zones (sec. 724)

The Senate amendment contained a provision (sec. 367) that would require the Secretary of Defense, not later than 120 days after the date of enactment of this Act, to prescribe the policy for providing timely notification to the next of kin of the status, including health and location of members of the Armed Forces who are seriously ill or injured in a combat zone. The provision also authorized an increase of $10.0 million in research, development, test and evaluation funding for medical equipment and combat casualty care technologies.

The House bill contained no similar provision.

The House recedes with a clarifying amendment.

The conferees honor the sacrifice of the members of the Armed Forces who have been killed or wounded while bravely serving in ongoing military operations and the heroic efforts of the medical personnel of the Armed Forces in treating wounded military personnel and civilians under combat conditions. In view of modern communications capabilities, the conferees believe the Department of Defense's current policies relating to notification of next of kin about service members who have been seriously wounded or are gravely ill must be revised to include appropriate standards aimed at ensuring timely and ongoing communication, consistent with the desires of individual service members.

The conferees agree to an increase of $5.3 million for combat casualty care technologies, which is reflected in the tables for title II of this Act.

Revised funding methodology for military retiree health care benefits (sec. 725)

The House bill contained a provision (sec. 1541) that would revise the process for funding the annual payments that are required to be paid into the Department of Defense Medicare-Eligible Retiree Health Care Accrual Fund. Beginning in fiscal year 2006, the Secretary of the Treasury would make the annual payments from the general fund of the Treasury.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would require the Secretary of Defense to transmit certifications required under this Act to the Committees on Armed Services of the Senate and the House of Representatives immediately upon transmission to the Secretary of the Treasury.

The conferees expect that the transmission of funding certifications will include all determinations by the Secretary of Defense concerning the amounts required for deposit into the Medicare-Eligible Retiree Health Care Accrual Fund beginning in fiscal year 2006.

Grounds for presidential waiver of requirement for informed consent or option to refuse regarding administration of drugs not approved for general use (sec. 726)

The Senate amendment contained a provision (sec. 716) that would limit to national security interests the grounds on which the President could deny a service member the right to refuse an investigational new drug or product not approved for general use.

The House bill contained no similar provision.

The House recedes.

TRICARE program regional directors (sec. 727)

The conferees agree to include a provision which would require the Secretary of Defense to develop and report to the Committees on Armed Services of the Senate and the House of Representatives by March 1, 2005 recommendations for a formal TRICARE Regional Director selection process. The selection process would require the Secretary of each military department to nominate one commissioned officer in a grade above colonel or, for the Navy in a grade above the grade of captain, or a member of the Senior Executive Service. The provision would require that the recommendations of the Secretary include the qualifications for Regional Directors, the period of assignment of a commissioned officer as a Regional Director and other requirements as prescribed by the Secretary.

The conferees expect that, among other duties as prescribed by the Secretary, the TRICARE Regional Director will be responsible for ensuring the adequacy of the number and types of civilian TRICARE providers, both in civilian networks and those who participate in the TRICARE Standard program. The conferees expect that the Regional Director will consider the requirement for the availability of TRICARE Standard providers to support members of the Reserve components and their families who are eligible to participate in TRICARE Standard, as authorized elsewhere in this Act.

Subtitle D—Medical Readiness Tracking and Health Surveillance

Medical readiness plan and Joint Medical Readiness Oversight Committee (sec. 731)

The Senate amendment contained a provision (sec. 1301) that would require the Secretary of Defense to develop a comprehensive plan to improve medical readiness, and Department of Defense tracking of the health status of members of the Armed Forces; and to strengthen medical readiness tracking before, during, and after deployment of members of the Armed Forces overseas. The provision would also require the establishment by the Secretary of a Joint Medical Readiness Oversight Committee to advise the Secretary of Defense on medical readiness and health status of the members of the Active and Reserve components of the Armed Forces and to oversee the development of the comprehensive medical readiness plan required elsewhere in this Act.

The House bill contained no similar provision.

The House recedes with an amendment to include the Vice Chiefs of the military services as members of the committee, and a requirement that each year, before the committee submits its report to Congress, that the Secretary shall provide an opportunity for representatives of veterans and military health advocacy organizations, and others the Secretary of Defense considers appropriate, to comment on the report. The amendment requires that the report submitted to Congress shall include a summary of the comments received and the Secretary's response to them.

The conferees are concerned that a report published by the Comptroller General in September 2004, entitled "DoD Needs to Address Long-term Reserve Force Availability and Related Mobilization and Demobilization Issues," continues to identify problems in the management of the health status of Reserve forces by the Department of Defense. The report finds that, "DoD's ability to effectively manage the health status of its reserve forces is limited because its centralized database has missing and incomplete health records and it has not maintained full visibility over reserve component members with medical problems." The conferees expect the committee and the comprehensive plan authorized in this Act to promptly address the ongoing issues identified by the Comptroller General for the Reserve component, as well as all those matters concerning medical readiness, health surveillance, and force health protection for both active-duty and Reserve components delineated in this Act.

Medical readiness of Reserves (sec. 732)

The Senate amendment contained a provision (sec. 1302) that would require the Comptroller General to conduct a study of the health of members of the Reserve components who have been ordered to active duty in support of Operation Enduring Freedom and Operation Iraqi Freedom. The study would review the health and medical fitness of Reserves when they were ordered to active duty, the effects of their health status on planning and deployment schedules, and compliance by military personnel with Department of Defense policies on medical and physical fitness applicable to the reserve components. The provision would also require health assessments not less frequently than once every two years, using the pre-deployment health assessments required under section 1074f of title 10, United States Code, as the minimum standard. The provision would require the review of pre-deployment health assessments by a medical professional and any follow-up care that is required by the member. The Senate provision would further require improvement to the pre-deployment assessment form currently in use by the Department, and development of a uniform policy on deferral of medical treatment pending deployment to theaters of operations.

The House bill contained no similar provision.

The House recedes with an amendment to clarify that follow-up care and treatment provided to Reserve members is care that is otherwise authorized for medical and dental readiness.

Baseline health data collection program (sec. 733)

The Senate amendment contained a provision (sec. 1303) that would require the Secretary of Defense to collect baseline health data from each person entering the Armed Forces, and to provide for the computerized compilation and maintenance of the data. The provision would also establish interim standards for blood sampling, not less than 60 days prior to deployment and not later than 30 days after the date on which the deployment ends.

The House bill contained no similar provision.

The House recedes with an amendment to require that blood samples be drawn not earlier than 120 days before the date of deployment. The amendment would require the application of interim standards for blood sampling unless the Joint Medical Readiness Oversight Committee established elsewhere in this Act recommends, and the Secretary approves, a different standard.

The conferees expect that in the development of the health baseline data collection program required by this title, the Department of Defense will work jointly with the Department of Veterans Affairs to examine coding and terminology for all computerized medical data systems to ensure compatibility with those computerized medical data systems of the Department of Veterans Affairs. The conferees acknowledge that much progress has been made in achieving compatibility of medical information systems, both in the clinical setting, such as the Federal Health Information Exchange, and in support of field operational units, such as the Special Operations Forces Medics system. The conferees urge the Department of Defense to continue such efforts with the Department of Veterans Affairs, which are necessary to improve continuity of care.

Medical care and tracking and health surveillance in the theater of operations (sec. 734)

The Senate amendment contained a provision (sec. 1304) that would require the Secretary of Defense to establish a policy on health record keeping in the theater of operations, and to evaluate and report to Congress on the strengths and weaknesses and recommend changes to mandatory record keeping systems for military personnel in the theater. The report would also include a summary of scientific literature on blood sampling, and a recommendation for changes to regulations and standards for blood sampling. The provision would require that the Secretary develop a plan for obtaining all records of medical treatment provided to members of the Armed Forces by allies of the United States in Operation Enduring Freedom and Operation Iraqi Freedom. The provision would also require the Secretary to prescribe a policy on the collection and dissemination of in-theater individual personnel location data.

The House bill contained no similar provision.

The House recedes.

Declassification of information on exposures to environmental hazards (sec. 735)

The Senate amendment contained a provision (sec. 1305) that would require the Secretary of Defense to review and revise as appropriate the classification policies of the Department of Defense to facilitate the declassification of data that is potentially useful for monitoring and assessing the health of members of the Armed Forces who have been exposed to environmental hazards during overseas deployments.

The House bill contained no similar provision.

The House recedes.

Report on training on environmental hazards (sec. 736)

The Senate amendment contained a provision (sec. 1306) that would require a report by the Secretary of Defense to the Committees on Armed Services of the Senate and the House of Representatives on the training on environmental hazards that is provided by the Armed Forces to medical personnel who are deployed to the field in support of combat personnel. The provision would also require a report to congressional defense committees on actions taken by Department of Defense officials in response to health concerns expressed by members of the Armed Forces during post-deployment health assessments.

The House recedes with an amendment to remove the reporting requirement on actions taken by Department officials in response to health concerns expressed by members of the Armed Forces during post-deployment health assessments from this provision.

The conferees intend that the report required by this provision on actions taken by Department officials to health concerns expressed by members of the Armed Forces during post- deployment health assessments will be addressed by a reporting requirement elsewhere in this Act.

Uniform policy for meeting mobilization-related medical care needs at military installations (sec. 737)

The Senate amendment contained a provision (sec. 1307) that would require the Secretary of Defense to prescribe through regulations a policy to ensure that anticipated health needs of members of the Armed Forces at mobilization installations can be met at those installations. The policy would include procedures for arrangements for health care provided by the Secretary of Veterans Affairs, services of local health care providers, and temporary employment of health care personnel at such installations.

The House bill contains no similar amendment.

The House recedes with an amendment to clarify the definition of the term military installation, and to require the Secretary of Defense to establish a uniform policy through the secretaries concerned and military command structure for meeting anticipated health needs at mobilization installations.

Full implementation of Medical Readiness Tracking and Health Surveillance Program and Force Health Protection and Readiness Program (sec. 738)

The Senate amendment contained a provision (sec. 1308) that would require the Secretary of Defense, acting through the Under Secretary of Defense for Personnel and Readiness and in conjunction with the secretaries of the military departments, to fully implement at all levels the Medical Readiness Tracking and Health Surveillance Program under this title, and the Force Health Protection and Readiness Program of the Department of Defense.

The House recedes.

Reports and Internet accessibility relating to health matters (sec. 739)

The Senate amendment contained a provision (sec. 1309) that would require the Secretary of Defense to submit annually to the Committees on Armed Services of the Senate and the House of Representatives a report on the Force Health Protection Quality Assurance Program. The provision would require that the report include an audit of the extent to which the serum samples required to be obtained from members of the Armed Forces before and after deployment are stored in the serum repository of the Department of Defense, and an audit of the extent to which health assessments required before and after deployment are being maintained in the electronic database of the Defense Medical Surveillance System.

The provision would also require that the annual report to the congressional defense committees include an analysis of actions taken by the Department to respond to health concerns expressed by members of the Armed Forces upon return from a deployment, and an analysis of actions taken by Department personnel to evaluate or treat members of the Armed Forces who are confirmed to have been exposed to occupational or environmental hazards deleterious to their health during a deployment.

The provision would include a requirement for an annual report on compliance by the military departments with Department policy on recording of health assessment data in military health records. The provision would also require that the Chief Information Officer of each military department ensure that information on Department policies regarding pre-deployment and post-deployment health policies are available through an online portal website of that military department.

The House bill contains no similar amendment.

The House recedes with an amendment to remove the requirement for a report on actions taken by the Department to evaluate or treat former members of the Armed

Forces who are confirmed to have been exposed to occupational or environmental hazards during deployment. The amendment would also clarify that health assessment data required in section 1074(f) of title 10, United States Code, would be recorded in military health records.

LEGISLATIVE PROVISIONS NOT ADOPTED

Demonstration project on health benefits for Reserves

The House bill contained a provision (sec. 701) that would require the Secretary of Defense to conduct a three-year demonstration project to provide TRICARE coverage for Ready Reserve members not on active duty who are ineligible for employer-sponsored health benefits. The purpose of the demonstration would be to determine whether such coverage enhances medical readiness, recruiting, and retention of Reserve component members.

The Senate amendment contained a provision (sec. 701) that would direct the Secretary to carry out a demonstration project under section 1092 of title 10, United States Code, to determine the need for, and feasibility of, providing benefits under TRICARE to members of the Ready Reserve who are eligible for unemployment compensation, continuously unemployed after the expiration of such compensation, or ineligible for employer-provided health care coverage.

The conference agreement does not include these provisions.

The conferees acknowledge the preference of the Secretary to conduct a demonstration project and expect the Secretary to proceed with a demonstration project to assess the feasibility and effectiveness of providing TRICARE benefits to Reserve members without employer-provided health insurance coverage using existing authority in section 1092 of title 10, United States Code. The conferees request that the Comptroller General include in the evaluation of the needs of Reserves for health care required by section 705 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136) a report on actions taken by the Department to prepare for a demonstration project on the feasibility of providing TRICARE benefits to Reserve members without employer-provided health insurance.

Continuation of non-TRICARE health benefits plan coverage for certain Reserves called or ordered to active duty and their dependents

The Senate amendment contained a provision (sec. 707) that would direct the Secretary of Defense to pay private health insurance premiums for the dependents of a Reserve member ordered to extended active duty and who would then not be eligible for TRICARE.

The House bill contained no similar provision.

The Senate recedes.

Exceptional eligibility for TRICARE Prime Remote

The House bill contained a provision (sec. 713) that would authorize the Secretary of Defense to waive all restrictions with regard to TRICARE Prime Remote medical coverage for active-duty family members that reside at a remote location without regard to the sponsor's current or past assignment. Such a waiver would occur if the Secretary determines that exceptional circumstances warrant such coverage.

The Senate amendment contained no similar provision.

The House recedes.

The conferees believe that there exist today situations of extreme hardship for beneficiaries, particularly minor children, caused by exceptional circumstances through no fault of their own and beyond their control. The conferees urge the Secretary to look within existing authorities for means to remedy these extreme circumstances. If existing authorities do not allow for such remedy, the Secretary shall submit to Congress recommendations to address such exceptional situations.

Addition of certain unremarried former spouses to persons eligible for dental insurance plan of retirees of the uniformed services

The House bill contained a provision (sec. 717) that would permit certain unremarried former spouses of a member or former member to participate in the TRICARE Retiree Dental Program, if they do not have dental coverage under an employer-sponsored health plan.

The Senate amendment contained no similar provision.

The House recedes.

Vaccine Healthcare Centers Network

The Senate amendment contained a provision (sec. 720) that would require the Secretary of Defense to establish the Vaccine Healthcare Centers Network for the purpose of monitoring adverse reactions of members of the Armed Forces to vaccines and, in addition, to improve the safety and quality of vaccine administration for members of the Armed Forces.

The House bill contained no similar provision.

The Senate recedes.

The conferees acknowledge that the Vaccine Healthcare Centers in existence today have made contributions to the quality monitoring system for adverse reactions to anthrax and smallpox immunization programs conducted by the Department of Defense. The Secretary should examine the feasibility and necessity of the establishment of an expanded Vaccine Healthcare Centers Network in the context of a review of the adequacy of existing clinical immunization safety, educational, training and research programs for military members and providers involved in immunization of military service members. The Secretary should also make recommendations on improvements as necessary in submission of data to the Vaccine-related Events Reporting System, and access to clinical management services for members who experience vaccine adverse events.

The conferees strongly encourage each of the military departments to continue to provide funds required by the existing Vaccine Healthcare Centers based on each service's share of the total force vaccinated.

Use of Department of Defense funds for abortion

The Senate amendment contained a provision (sec. 721) that would authorize the use of Department of Defense funds for abortions in cases in which a pregnancy occurred as a result of an act of rape or incest.

The House bill contained no similar provision.

The Senate recedes.

United States Military Cancer Institute

The Senate amendment contained a provision (sec. 914) that would establish a United States Military Cancer Institute within the Uniformed Services University of the Health Sciences. The institute would conduct research on the causes, prevention, and early detection of cancer, including epidemiological features of cancer and impact of genetic and environmental factors and disparities in health among populations of various ethnic origins. The research would also include research on oncologic nursing.

The House bill contained no similar provision.

The Senate recedes.

The conferees acknowledge that the United States Military Cancer Institute continues to operate under the auspices of the Uniformed Services University of the Health Sciences, and has received appropriations since fiscal year 2002. The conferees commend the United States Military Cancer Institute for its worthy contributions to cancer research, prevention, and treatment.

Use of civilian experts as consultants

The Senate amendment contained a provision (sec. 1310) that would clarify that nothing contained in amendments to this title should be construed to limit the authority of the Secretary of Defense to procure the services of experts outside the Federal Government for performing any function to comply with requirements for readiness tracking and health surveillance.

The House bill contained no similar provision.

The Senate recedes.

The conferees expect that the Secretary will use existing authority to procure the services of outside experts as needed for any of the requirements of this title.

TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS

LEGISLATIVE PROVISIONS ADOPTED

Subtitle A—Acquisition Policy and Management

Software-related program costs under major defense acquisition programs (sec. 801)

The Senate amendment contained a provision (sec. 802) that would modify existing quarterly acquisition reports submitted to Congress by the Secretary of Defense to include information on significant changes in the cost, schedule, or performance of the computer software component of each major defense acquisition program.

The House bill contained no similar provision.

The House recedes with an amendment that would delay the effective date of the provision.

Internal controls for Department of Defense procurements through General Services Administration Client Support Centers (sec. 802)

The Senate amendment contained a provision (sec. 803) that would prohibit Department of Defense officials from placing orders in excess of $100,000 through a Client Support Center (CSC) of the Federal Technology Service of the General Services Administration (GSA) until the Department Inspector General, in consultation with the GSA Inspector General, determines that the CSC has in place the policies, procedures, and internal controls necessary to ensure compliance with requirements of law and regulation.

The House bill contained no similar provision.

The House recedes with an amendment that would: (1) extend the time frame for Inspector General review of the policies, procedures, and internal controls of the GSA Client Support Centers; (2) permit the Department to continue contracting for an additional year with any CSC that is making significant progress toward implementing effective policies, procedures, and internal controls; (3) require a second Inspector General review and determination at the end of the additional year; and (4) authorize the Under Secretary of Defense for Acquisition, Technology and Logistics to continue contracting through a CSC that has failed to implement appropriate policies, procedures, and internal controls, if he determines that it is necessary to do so in the interest of the Department.

Defense commercial communications satellite services procurement process (sec. 803)

The Senate amendment contained a provision (sec. 804) that would require the Secretary of Defense to review alternative mechanisms for procuring commercial satellite services, and provide guidance to the Director of the Defense Information Services Agency and the secretaries of the military departments on how such procurements should be conducted.

The House bill contained no similar provision.

The House recedes with an amendment that would modify the reporting requirement, and require a 30 day waiting period after the submission of the report during which the Secretary could not enter into a new contract for commercial satellite services unless the Secretary determines that such a contract is required to meet urgent national security requirements.

Contractor performance of acquisition functions closely associated with inherently governmental functions (sec. 804)

The Senate amendment contained a provision (sec. 867) that would limit contracting for functions closely associated with inherently governmental functions unless the Secretary of Defense determines that: (1) appropriate military or civilian personnel are not available to perform such function; (2) appropriate military or civilian personnel are able to supervise and perform all inherently governmental functions; and (3) the contractor to perform the function does not have an organizational conflict of interest or the appearance of an organizational conflict of interest.

The House bill contained no similar provision.

The House recedes with an amendment that would clarify the applicability of the provision, and require the agency to address any potential contractor organizational conflict of interest consistent with subpart 9.5 of part 9 of the Federal Acquisition Regulation and the best interest of the Department of Defense.

Sustainment plans for existing systems while replacement systems are under development (sec. 805)

The House bill contained a provision (sec. 821) that would require the Department of Defense to plan and budget for the sustainment and modernization of current military systems until such time that the replacement system under development is fielded and assumes responsibility for the mission.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would clarify the requirements of the provision and delete annual review and reporting requirements.

Applicability of competition exceptions to eligibility of National Guard for financial assistance for performance of additional duties (sec. 806)

The Senate amendment contained a provision (sec. 863) that would clarify that exceptions to competition requirements provided in the Competition in Contracting Act (10 U.S.C. 2304), apply to support activities provided by the Army National Guard under the authority of section 113(b) of title 32, United States Code.

The House bill contained no similar provision.

The House recedes.

Inflation adjustment of acquisition-related dollar thresholds (sec. 807)

The House bill contained a provision (sec. 807) that would authorize the Federal Acquisition Regulatory Council to amend the dollar threshold of procurement statutes in accordance with inflationary rates in order to maintain the constant dollar value of the threshold. This section would not authorize adjustments to the Davis-Bacon Act (40 U.S.C. 276(a)), the Service Contract Act of 1965 (Public Law 89-286), or title III of the Trade Agreements Act of 1979 (Public Law 96-39).

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would: (1) codify the provision in the Office of Federal Procurement Policy Act; (2) make adjustment to acquisition thresholds mandatory rather than discretionary to ensure that all thresholds are adjusted in the same way; (3) establish a petition process for thresholds omitted by the Federal Acquisition Regulatory Council; (4) supercede other inflation adjustment statutes to ensure there is no conflicting authority; and (5) address procurement thresholds enacted in law after October 1, 2000.

Subtitle B—Amendments to General Contracting Authorities, Procedures, and Limitations

Rapid acquisition authority to respond to combat emergencies (sec. 811)

The House bill contained a provision (sec. 801) that would authorize the Secretary of Defense to establish a streamlined acquisition process for use when combat fatalities have occurred, the combatant commander has an urgent need of equipment, and delay would cause a continuation of combat fatalities. This process is to be used as a 'quick start' bridge to the normal acquisition process.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would incorporate the new authority into section 806 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Public Law 107-314), provide for waivers to be made on a case-by-case basis, and clarify that a program initiated under this authority must transition to the traditional acquisition process within two years.

Defense acquisition workforce improvements (sec. 812)

The House bill contained a provision (sec. 802) that would amend various sections of the Defense Acquisition Workforce Improvement Act, chapter 87 of title 10, United States Code.

The Senate amendment contained a similar provision (sec. 842).

The House recedes with an amendment that would: (1) clarify the selection criteria for the acquisition corps and for critical acquisition positions; and (2) streamline the provision addressing scholarship program requirements.

Period for multiyear task and delivery order contracts (sec. 813)

The House bill contained a provision (sec. 803) that would amend section 2304(a) of title 10, United States Code, to clarify time limitations for options in task and delivery order contracts.

The Senate amendment contained a similar provision (sec. 812).

The House recedes with an amendment to limit the base period of a task and delivery order contract to five years, with options for up to an additional five years, for a total period of not more than ten years. Task and delivery order contracts may have more than five option years, if the head of an agency determines in writing that exceptional circumstances necessitate a longer contract period.

Funding for contract ceilings for certain multiyear procurement contracts (sec. 814)

The House bill contained a provision (sec. 804) that would amend section 2306b(g) and section 2306c(d) of title 10, United States Code, to require the head of the agency concerned to provide written notification to the congressional defense committees in those instances when cancellation costs that are above $100.0 million are not fully funded. The written notification would include a financial risk assessment for not fully funding the cancellation ceiling.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would not require the head of the agency to identify up-front funding sources for potential contract cancellation.

Increased threshold for senior procurement executive approval of use of procedures other than competitive procedures (sec. 815)

The Senate amendment contained a provision (sec. 811(a)) that would raise from $50.0 million to $75.0 million the threshold in section 2304(f)(1)(B)(iii) of title 10, United States Code, for requiring approval of the senior procurement executive of an agency to award contracts under other than competitive procedures.

The House bill contained no similar provision.

The House recedes.

Section 811(b) of the Senate amendment is addressed elsewhere in this conference report.

Increased threshold for applicability of requirement for defense contractors to provide information on subcontracting authority of contractor personnel to cooperative agreement holders (sec. 816)

The House bill contained a provision (sec. 805) that would increase from $500,000 to $1.0 million the threshold in section 2416(d) of title 10, United States Code, at which contractors must provide to cooperative agreement holders a listing of the names and contact information of each contractor employee who has authority to enter into contracts, including subcontracts.

The Senate amendment contained a similar provision (sec. 811(b)).

The Senate recedes.

Section 811(a) of the Senate amendment is addressed elsewhere in this conference report.

Extension of authority for use of simplified acquisition procedures (sec. 817)

The House bill contained a provision (sec. 806) that would amend section 4202(e) of the Clinger-Cohen Act of 1996 (Public Law 104-106) by extending until October 1, 2009, the time frame in which the secretary of an executive agency may use simplified procedures to purchase commercial items that have a value of $5.0 million or less.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would extend this authority for two years.

Submission of cost or pricing data on noncommercial modifications of commercial items (sec. 818)

The Senate amendment contained a provision (sec. 813) that would require contractors for Department of Defense contracts to submit cost or pricing data on noncommercial modifications to commercial items, if the modifications are expected to cost in excess of $500,000.

The House bill contained no similar provision.

The House recedes with an amendment that would modify the requirement to apply to noncommercial modifications that are expected to cost in excess of $500,000 or five percent of the total price of the contract, whichever is greater.

Delegations of authority to make determinations relating to payment of defense contractors for business restructuring costs (sec. 819)

The Senate amendment contained a provision (sec. 814) that would permit the Secretary of Defense to delegate below the level of an Assistant Secretary of Defense the authority to pay defense contractors for restructuring costs associated with business combinations in cases where the amount of restructuring costs over a five year period is expected to be under $25.0 million. In no case could this authority be delegated below the Director of the Defense Contract Management Agency.

The House bill contained no similar provision.

The House recedes.

Availability of Federal supply schedule supplies and services to United Service Organizations, Incorporated (sec. 820)

The Senate amendment contained a provision (sec. 870) that would clarify that the Secretary of Defense may provide the United Service Organizations access to the Federal Supply Schedule of the General Services Administration.

The House bill contained no similar provision.

The House recedes.

Addition of landscaping and pest control services to list of designated industry groups participating in the small business competitiveness demonstration program (sec. 821)

The House bill contained a provision (sec. 3601) that would add landscaping and pest control services to the list of designated industry groups participating in the small business competitiveness demonstration program.

The Senate amendment contained no similar provision.

The Senate recedes.

Increased thresholds under special emergency procurement authority (sec. 822)

The conferees agree to include a provision that would increase the dollar thresholds below which the Department of Defense may use streamlined acquisition procedures for purchases outside the United States in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack against the United States. The provision included in the conference report would raise the simplified acquisition threshold for such purchases from $500,000 to $1,000,000 and it would raise the micropurchase threshold for such purchases from $15,000 to $25,000.

Subtitle C—United States Defense Industrial Base Provisions

Defense trade reciprocity (sec. 831)

The House bill contained a provision (sec. 811) that would limit the ability of the Secretary of Defense to purchase defense items from countries that impose offset regulations or policies on purchases of defense items from the United States.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would require the Secretary of Defense to develop a defense acquisition trade policy designed to eliminate any adverse impact of offset agreements in defense trade.

Assessment and report on the acquisition of polyacrylonitrile (PAN) carbon fiber from foreign sources (sec. 832)

The House bill contained a provision (sec. 813) that would require the Secretary of Defense to delay phasing out of the restriction of acquisition of polyacrylonitrile (PAN) carbon fiber from foreign sources for three years.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would delay the phase out of the domestic source restriction for PAN carbon fibers for 30 days after the Secretary of Defense provides to the Committees on Armed Service of the Senate and the House of Representatives a report on an assessment of the domestic and international industrial structure that produces PAN carbon fibers and market trends for the product.

Subtitle D—Extensions of Temporary Program Authorities

Extension of mentor-protege program (sec. 841)

The Senate amendment contained a provision (sec. 822) that would extend for five years the pilot Mentor-Protege program established by section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510).

The House amendment contained no similar provision.

The House recedes with an amendment requiring a review of the implementation and effectiveness of the Mentor-Protege program.

Amendment to mentor-protege program (Sec. 842)

The Senate amendment contained a provision (sec. 1083) that would permit HUBZone small business concerns and small business concerns owned and controlled by service-disabled veterans to participate in the Department of Defense's Mentor-Protege program.

The House bill contained no similar provision.

The House recedes.

Extension of test program for negotiation of comprehensive small business subcontracting plans (sec. 843)

The Senate amendment contained a provision (sec. 823) that would extend for five years the test program for negotiation of comprehensive small business subcontracting plans established by section 834 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101-189). Under the test program, prime contractors may submit a plan designed to provide the maximum subcontracting opportunity for small, disadvantaged, and women-owned small business concerns that covers all anticipated contracts on a plant, division, or corporate basis, rather than for each Federal contract and subcontract of more than $500,000 (or $1.0 million in the case of construction contracts) awarded as required under section 8(d) of the Small Business Act (Public Law 85-536, as amended).

The House bill contained no similar provision.

The House recedes.

Extension of pilot program on sales of manufactured articles and services of certain Army industrial facilities (sec. 844)

The Senate amendment contained a provision (sec. 824) that would extend for five years the pilot program for the sale of manufactured articles and services from Army industrial facilities enacted in the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105-85). This program tests the efficiency and appropriateness of selling manufactured articles and services at Army facilities under the authority of section 4543 of title 10, United States Code, without regard to the availability of the articles and services from U.S. commercial sources.

The House bill contained no similar provision.

The House recedes.

Subtitle E—Other Acquisition Matters

Review and demonstration project relating to contractor employees (Sec. 851)

The House bill contained a provision (sec. 822) that would require the Secretary of Defense to conduct a review of Department of Defense policies, procedures, and practices relating to employees of defense contractors and their subcontractors. The provision also require the Secretary to conduct a demonstration program for the procurement of military construction, renovation, maintenance or repair service on military installations to ensure employees are properly authorized to be employed in the United States and properly qualified to perform the services required under the contract.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would give the Secretary of Defense general discretion over the types of procurement procedures used in the demonstration project.

Inapplicability of certain fiscal laws to settlements under special temporary contract closeout authority (sec. 852)

The Senate amendment contained a provision (sec. 861) that would clarify the authority to settle financial accounts for old contracts that have unreconciled balances of less than $100,000 under section 804 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136).

The House bill contained no similar provision.

The House recedes.

Contracting with employers of persons with disabilities (sec. 853)

The Senate amendment contained a provision (sec. 868) that would provide for the continuation and completion of existing contracts (including any options) awarded to the blind and severely disabled for the operation of military troop dining facilities, military mess halls, and other similar military dining facilities.

The House bill contained no similar provision.

The House recedes with an amendment that would cover contracts awarded under the Randolph-Sheppard Act (28 U.S.C. 107).

Defense procurements made through contracts of other agencies (sec. 854)

The Senate amendment contained a provision (sec. 815) that would prohibit the Department of Defense from paying more than a 1 percent service charge for using other agency contracts to purchase goods and services.

The House bill contained no similar provision.

The House recedes with an amendment that would delete the prohibition on paying fees in excess of 1 percent of the amount charged by the contractor and substitute: (1) a requirement that the procurement is done in accordance with military department or defense agency procedures for reviewing and approving the use of non-Department contracts; and (2) a reporting requirement for all service charges imposed on purchases in amounts greater than the simplified acquisition threshold in fiscal years 2005 and 2006. Approvals of inter-agency transactions under this provision should be in writing, with supporting rationale, and retained in an official file.

The conferees expect the Department's review and approval procedures to ensure that any fees are reasonable in relation to the work actually performed by the contracting agency. The conferees do not believe that the Department should pay fees in excess of 1 percent to an outside agency that merely acts as a conduit for Department requirements. The conferees are particularly concerned that in some instances, the Department's orders appear to have been awarded to contractors who charge their own fees for directing the work to preferred subcontractors without providing any value added.

The conferees also expect the Department's review and approval procedures to ensure that the goods or services to be procured are within the scope of the non-Department contract vehicle, and that the supplies or services to be acquired are consistent with the appropriated funding to be utilized. In addition, the Department's review and approval procedures should ensure that orders placed against non-Department contracts are in compliance with all applicable Department-unique statutes, regulations, directives, and other requirements prior to approval. The use of multiple award contracts must be consistent with the requirements of section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107 (Competition Requirements for Purchase of Services Pursuant to Multiple Award Contracts)); Part 8.002 of the Federal Acquisition Regulation (Priorities for Use of Government Supply Sources); Part 17.5 of the Federal Acquisition Regulation (Interagency Acquisitions under the Economy Act); and the Department of Defense Instruction 4000.19 (Interservice and Intergovernmental Support). Purchases of information technology should also be consistent with Department information security requirements and the requirements of the Department business system enterprise architecture and transition plan. Officials should be familiar with the requirements of the basic contract and should provide to the assisting agency any Department-unique requirements associated with the acquisition.

Requirements relating to source selection for integrated support of aerial refueling aircraft fleet for the Air Force (sec. 855)

The Senate amendment contained a provision (sec. 871) that would require the Secretary of Defense to prevent the Secretary of the Air Force from proceeding with the acquisition of aerial refueling aircraft, by lease or other contract, either with full and open competition or under section 135 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136) until 60 days after the Secretary of Defense has reviewed applicable documentation and submitted a determination to the congressional defense committees that the acquisition is in compliance with all currently applicable laws, Office of Management and Budget circulars, and regulations. The provision would also require an independent review of the acquisition by the Comptroller General and the Inspector General of the Department of Defense. The provision would also require operational testing prior to proceeding beyond low-rate initial production of the aircraft. The provision would also require a competition for the integrated support of the aircraft, and require pricing information with respect to commercial items covered by the lease or contract. The provision would also require the Secretary of the Air Force to contact the Inspector General of the Department of Defense to review and approve any Air Force use of non-Federal audit services for any lease or other contract for the acquisition of aerial refueling aircraft.

The House bill contained no similar provision.

The House recedes with an amendment to require the Department to review the costs and benefits of using federal employees or contractors for the logistics support of any new tanker aircraft and, if the Air Force chooses to use a contractor for this support, that any such contract be conducted under the procedures of the Competition in Contracting Act.

The conferees understand that the Department is working on a new aerial refueling validated capabilities document in accordance with applicable Chairman of Joint Chiefs Instructions. The conferees also note that on February 24, 2004, the Acting Undersecretary of Defense for Acquisition, Technology and Logistics directed the Secretary of the Air Force to conduct an analysis of alternatives (AOA) for recapitalizing the KC-135 fleet as required by section 134(b) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136), and that the Secretary of Defense has directed that this analysis, along with a completed aerial refueling portion of the mobility capabilities study be accelerated. In addition, at the direction of the Secretary, the National Defense University, the Defense Science Board and the Department of Defense Inspector General prepared independent evaluations on various aspects of the aerial tanker refueling issue. The conferees expect that the Secretary of Defense will fully consider all of the recommendations from these studies and reports prior to proceeding with the acquisition of aerial refueling aircraft for the Air Force.

LEGISLATIVE PROVISIONS NOT ADOPTED

Responsibilities of acquisition executives and chief information officers under the Clinger-Cohen Act

The Senate amendment contained a provision (sec. 801) that would require that the Clinger-Cohen Act requirements as applied to weapons and weapon systems be administered by senior acquisition executives of the three military services and overseen by a board of senior acquisition officials.

The House bill contained no similar provision.

The Senate recedes.

The Clinger-Cohen Act (40 U.S.C. 113) establishes requirements for capital planning, investment control, and performance and results-based management processes in the acquisition of information technology. While the Clinger-Cohen Act designates that the Chief Information Officer (CIO) is responsible for information technology in general, the Act does not specify who within the Department of Defense is responsible for administering these requirements for information technology embedded in major weapon systems. The Department's current practice is to administer the requirements of the Clinger-Cohen Act through the Department's CIO, even for information technology embedded in major weapon systems that are acquired by senior acquisition executives of the military departments. This approach raises the possibility of overlapping responsibilities and inefficient and/or duplicative procedures for the acquisition of information technology embedded in major weapon systems.

Therefore, the conferees direct the Secretary of Defense to review the Department's current approach to implementing the requirements of the Clinger-Cohen Act with respect to information technology embedded in major weapon systems; the conferees also direct the Secretary to identify any overlapping responsibilities and inefficient and/or duplicative procedures arising from possible dual responsibilities of the CIO and senior acquisition executives for the acquisition of such information systems. The conferees further direct the Secretary to report to the congressional defense committees and the Committee on Governmental Affairs of the Senate and the Committee on Governmental Reform of the House of Representatives no later than June 15, 2005, on the Department's strategy for addressing any such overlapping responsibilities and inefficient and/or duplicative procedures, including any legislative changes that the Secretary may choose to recommend.

Revision and extension of authority for advisory panel on review of government procurement laws and regulations

The Senate amendment contained a provision (sec. 805) that would revise and extend the authority for the advisory panel on the review of government procurement laws and regulations established by section 1423 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136).

The House bill contained no similar provision.

The Senate recedes.

Amendments to domestic source requirements

The House bill contained a provision (sec. 812) that would amend section 2533a of title 10, United States Code, also known as the Berry Amendment, to require the Secretary of Defense to notify Congress and the public when the Secretary exercises a waiver and describe certain covered items as clothing.

The Senate amendment contained no similar provision.

The House recedes.

Grant program for defense contractors to implement strategies to avoid outsourcing of jobs

The House bill contained a provision (sec. 814) that would authorize the Secretary of Defense to award grants to qualified defense contractors in order to assist the contractor in avoiding the outsourcing of jobs.

The Senate amendment contained no similar provision.

The House recedes.

The conferees recognize that improving competitiveness in the defense industrial base is an effective method of retaining domestic defense jobs and reducing the pressure to outsource jobs.

The conferees recommend that the Secretary of Defense establish a program to encourage qualified defense contractors to implement cost reduction strategies that would improve competitiveness to avoid the outsourcing of jobs. Examples of such strategies could include retraining employees, plant upgrades, technology development, and other production cost-cutting measures.

Preference for domestic freight forwarding services

The House bill contained a provision (sec. 815) that would require the Secretary of Defense to grant preferences to freight forwarder companies owned and controlled by U.S. citizens that offer fair and reasonable rates in the award of transportation service contracts for transportation services to, from, or within Iraq or Afghanistan.

The Senate amendment contained no similar provision.

The House recedes.

Sense of the Senate of effects of cost inflation on the value of the contracts to which a small business contract reservation applies

The Senate amendment contained a provision (sec. 816) that would express the sense of the Senate that the thresholds for the requirement for the reservation of contracts for small businesses and the use of simplified acquisition procedures should be adjusted in the same amount when adjusting these thresholds for inflation.

The House bill contained no similar provision.

The Senate recedes.

Extension of contract goal for small disadvantaged businesses and certain institutions of higher education

The Senate amendment contained a provision (sec. 821) that would extend section 2323 of title 10, United States Code, for three years.

The House bill contained no similar provision.

The Senate recedes.

The conferees note that section 2323, which establishes a 5 percent goal for Department of Defense contracting with small disadvantaged businesses and certain institutions of higher education, would continue to be effective until September 2006, and that a decision on whether to extend this authority will be deferred to later legislation.

Defense acquisition workforce limitations

The House bill contained a provision (sec. 823) that would require a 5 percent reduction in the number of defense acquisition and support personnel in the Department of Defense on or before October 1, 2005.

The Senate amendment contained a provision (sec. 841) that would require a 15 percent increase in the defense acquisition and support workforce during fiscal years 2005 through 2007.

The conference report does not include either provision.

Provision of information to Congress to enhance transparency in contracting

The House bill contained a provision (sec. 824) that would require the Secretary of Defense to provide information on contracts and task or delivery orders to the chairmen or ranking members of the Committees on Armed Services of the Senate and the House of Representatives, within 14 days of the request.

The Senate amendment contained no similar provision.

The House recedes.

Requirement to treat sureties in same manner as financing institutions when contractors default

The House bill contained a provision (sec. 825) that would require that sureties be treated in the same manner as financing institutions in cases of contractor default.

The Senate amendment contained no similar provision.

The House recedes.

Provisions relating to creation of jobs in the United States by defense contractors

The House bill contained a provision (sec. 826) that would require that the creation of jobs in the United States be used as an evaluation factor in defense procurements.

The Senate amendment contained no similar provision.

The House recedes.

Commission on the future of the national technology and industrial base

The Senate amendment contained a provision (sec. 831) that would require the President to establish a commission to assess the future of the national technology and industrial base as defined by section 2500 of title 10, United States Code.

The House bill contained no similar provision.

The Senate recedes.

Waiver authority for domestic source or content requirements

The Senate amendment contained a provision (sec. 832) that would provide the Secretary of Defense the authority to waive the application of statutory domestic source requirements and domestic content requirements for those countries who have signed a Declaration of Principles on defense trade with the United States.

The House bill contained no similar provision.

The Senate recedes.

Consistency with United States obligations under trade agreements

The Senate amendment contained a provision (sec. 833) that would require that no provision of this Act, or any amendment made by this Act, shall apply if the Secretary of Defense, in consultation with the Secretary of Commerce, the U.S. Trade Representative, and the Secretary of State determines that the application of the provision would be inconsistent with international trade agreements of the United States.

The House bill contained no similar provision.

The Senate recedes.

Repeal of certain requirements and limitations relating to the defense industrial base

The Senate amendment contained a provision (sec. 834) that would repeal sections 812, 813, 814, and 821 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136).

The House bill contained no similar provision.

The Senate recedes.

Report on contractor performance of security, intelligence, law enforcement, and criminal justice functions in Iraq

The Senate amendment contained a provision (sec. 865) that would require the Secretary of Defense to report to the congressional defense committees on contractor performance of security, intelligence, law enforcement, and criminal justice functions in Iraq.

The House bill contained no similar provision.

The Senate recedes.

The conferees agree to include the intent of this provision in a related provision in this conference report.

Accreditation study of commercial, off-the-shelf processes for evaluating information technology products and services

The Senate amendment contained a provision (sec. 866) that would require the Secretary of Defense to carry out a study of commercial, off-the-shelf processes available to measure the quality of information technology, and to determine whether to accredit such a process for use in procurement of information technology and related services throughout the Department of Defense.

The House bill contained no similar provision.

The Senate recedes.

Energy savings performance contracts

The Senate amendment contained a provision (sec. 869) that would require the Secretary of Defense to exercise existing authority to introduce life-cycle, cost-effective upgrades to federal assets through shared, energy savings contracting; demand management programs; and utility incentive programs.

The House bill contained no similar provision.

The Senate recedes.

Comptroller General analysis of use of transitional benefit corporations in connection with competitive sourcing of performance of Department of Defense activities and functions

The Senate amendment contained a provision (sec. 1029) that would require the Comptroller General to review the potential for use of transitional benefit corporations in connection with competitive sourcing of the performance of activities and functions of the Department of Defense.

The House amendment contained no similar provision.

The Senate recedes. The manner in which employee benefits are addressed in public-private competitions is addressed in a separate section of the conference report.

Study of effect on defense industrial base of elimination of United States domestic firearms manufacturing base

The House bill contained a provision (sec. 1042) that would require the Secretary of Defense to submit to the congressional defense committees, within 60 days of enactment of this Act, a report detailing the impact on military readiness and the defense industrial infrastructure of the elimination of the U.S. domestic firearms manufacturing base as a result of ongoing civil litigation.

The Senate amendment contained no similar provision.

The House recedes.

Determination of whether private air carriers are controlled by United States citizens for purposes of eligibility for government contracts for transportation of passengers or supplies

The House bill contained a provision (sec. 1063) that would amend section 2710 of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108-11), to clarify that the Secretary of Transportation is responsible for certifying whether an air carrier is effectively controlled by citizens of the United States.

The Senate amendment contained no similar provision.

The House recedes.

Report on offset requirements under certain contracts

The Senate amendment contained a provision (sec. 1093) that would add additional reporting requirements to the report required under section 8138(b) of the Department of Defense Appropriations Act for Fiscal Year 2004 (Public Law 108-199).

The House bill contained no similar provision.

The Senate recedes.

TITLE IX—DEPARTMENT OF DEFENSE ORGANIZATION AND MANAGEMENT

LEGISLATIVE PROVISIONS ADOPTED

Subtitle A—Duties and Functions of Department of Defense

Study of roles and authorities of the Director of Defense Research and Engineering (sec. 901)

The Senate amendment contained a provision (sec. 911) that would require the Secretary of Defense, through the Defense Science Board, to carry out a study of the roles and authorities of the Director, Defense Research and Engineering.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Change of membership of specified council (sec. 902)

The House bill contained a provision (sec. 905) that would amend sections 171 and 179, title 10, United States Code, to include the Commandant of the Coast Guard as a member of the Armed Forces Policy Council (AFPC) and include the Under Secretary of Defense for Policy (USD,P) on the Nuclear Weapons Council (NWC).

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would include the USD,P on the NWC, but would leave the membership of the AFPC unchanged.

The conferees believe that the addition of the USD,P should allow the other members of the NWC to become more closely involved with nuclear related policy decisions. Additionally, the change will make the decisions that flow from the NWC more responsive to policy direction. The conferees note that this is the first time an additional member has been added to the NWC since its inception in 1987. The conferees expect the next two annual reports of the NWC required by subparagraph (f) of section 179 of title 10, United States Code, will discuss implementation of this provision.

Subtitle B—Space Activities

Space posture review (sec. 911)

The Senate amendment contained a provision (sec. 1031) that would require the Secretary of Defense, jointly with the Director of Central Intelligence, to conduct a comprehensive review of the space posture of the United States for the period of the next 10 years. The provision also would require the Secretary and Director to provide an interim report on that review to congressional defense and intelligence committees by March 15, 2005 and a final report by December 31, 2005.

The House bill amendment contained no similar provision.

The House recedes with a clarifying amendment.

Panel on the future of national security space launch (sec. 912)

The Senate amendment contained a provision (sec. 1032) that would establish a panel to examine the future military space launch requirements of the United States and the means of meeting such requirements.

The House bill contained no similar provision.

The House recedes with an amendment that would establish a panel to examine the future national security space launch requirements of the United States and the means of meeting such requirements.

The conferees expect that the panel will consider the full range of national security space launch requirements.

Operationally responsive national security satellites (sec. 913)

The Senate amendment contained a provision (sec. 1033) that would establish a separate program element for operationally responsive satellite payloads managed by the Office of Force Transformation of the Office of the Secretary of Defense. The provision would also authorize $25.0 million for the new program element.

The House bill contained no similar provision.

The House recedes with a clarifying amendment.

The conferees agree to authorize an increase of $20.0 million in PE 65799D8Z for operationally responsive payloads.

Nondisclosure of certain products of commercial satellite operations (sec. 914)

The Senate amendment contained a provision (sec. 1034) that would exempt from disclosure under the Freedom of Information Act (FOIA), section 552 of title 5, United States Code, data that are collected by land remote sensing and are prohibited from sale to customers other than the United States and its affiliated users under the Land Remote Sensing Policy Act of 1992, section 5601 et seq. of title 15, United States Code. The exemption would also include any imagery and other product that is derived from such data. State and local laws mandating disclosure would be preempted.

The House bill contained no similar provision.

The House recedes with an amendment that would clarify that the restrictions imposed on such data or imagery are imposed for reasons of national security pursuant to the terms of operating licenses issued pursuant to the Land Remote Sensing Policy Act, and that would extend the preemption to include tribal law. The amendment would also provide that nothing in this section shall be construed to authorize the withholding of information from Congress.

Subtitle C—Intelligence-Related Matters

Two-year extension of authority of the Secretary of Defense to engage in commercial activities as security for intelligence collection activities abroad (sec. 921)

The House bill contained a provision (sec. 1071) that would amend section 431(a) of title 10, United States Code, to extend by two years, to December 31, 2006, the authority of the Secretary of Defense to engage in commercial activities necessary to provide security for authorized intelligence collection activities abroad.

The Senate amendment contained an identical provision (sec. 1062).

The conference agreement includes this provision.

Pilot program on cryptologic service training (sec. 922)

The Senate amendment contained a provision (sec. 1090) that would allow the Director of the National Security Agency (NSA) to establish a pilot program for cryptologic service training by way of scholarships for college study in order to increase the number of qualified language analysts and intelligence analysts available to work at NSA or other elements of the intelligence community.

The House bill contained no similar provision.

The House recedes.

Subtitle D—Other Matters

Strategic plan for destruction of lethal Chemical Agents and Munitions Stockpile (sec. 931)

The conferees agree to include a provision that would require the Under Secretary of Defense for Acquisition, Technology and Logistics and the Secretary of the Army, who is responsible for executing the Chemical Agents and Munitions Destruction program, to jointly prepare a strategic plan for the future activities of the Chemical Demilitarization program. The plan shall include, at a minimum, consideration of realistic budgeting for stockpile destruction and related support programs; contingency planning for foreseeable or anticipated problems; and a management approach and associated actions that are designed to ensure full compliance with U.S. obligations under the Chemical Weapons Convention, and that take full advantage of opportunities to accelerate destruction of the chemical stockpile. The plan shall be updated yearly, and submitted each year by the Secretary of Defense to the Committees on Armed Services of the Senate and the House of Representatives with the President's budget submission for the next fiscal year.

Secretary of Defense criteria for and guidance on identification and internal transmission of critical information (sec. 932)

The House bill contained a provision (sec. 908) that would require the Secretary of Defense to establish criteria for determining the types of critical information required to be made known expeditiously to senior decision makers in the Department of Defense. The Secretary should provide guidance for the purpose of identifying such information to the secretaries of the military departments, the commanders of deployed forces, and other elements of the Department. The provision would also establish minimum criteria for such information, and would require the Secretary to establish a policy for the expeditious transmission of any report or evaluation at any level of the Department that results in the identification of any such information to the Secretary and the Joint Chiefs of Staff. The guidance is to be issued by the Secretary not later than 90 days after enactment.

The Senate amendment contained no similar provision.

The Senate recedes with a clarifying amendment.

LEGISLATIVE PROVISIONS NOT ADOPTED

Change in title of Secretary of the Navy to Secretary of the Navy and Marine Corps

The House bill contained a provision (sec. 901) that would change the title of the Secretary of the Navy to the Secretary of the Navy and Marine Corps.

The Senate amendment contained no similar provision.

The House recedes.

Transfer of Center for the Study of Chinese Military Affairs from the National Defense University to United States-China Economic and Security Review Commission

The House bill contained a provision (sec. 902) that would transfer the Center for the Study of Chinese Military Affairs at the National Defense University, established in the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65) to the United States-China Economic and Security Review Commission, established in the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398).

The Senate amendment contained no similar provision.

The House recedes.

The conferees note their strong support for having a Center for the Study of Chinese Military Affairs at the National Defense University, and urge the Secretary of Defense to provide the Institute for National Strategic Studies at the National Defense University with sufficient resources to support a fully operational China Center.

Transfer to Secretary of the Army responsibility for Assembled Chemical Weapons Alternatives program.

The House bill contained a provision (sec. 903) that would transfer oversight of the Assembled Chemical Weapons Alternatives program from the Under Secretary of Defense for Acquisition, Technology and Logistics to the Secretary of the Army, and would require the Army to fully implement the alternative technologies previously selected for destruction of lethal chemical munitions at Pueblo Chemical Depot, Colorado, and Blue Grass Army Depot, Kentucky.

The Senate amendment contained no similar provision.

The House recedes.

Modification of obligated service requirements under National Security Education Program

The House bill contained a provision (sec. 904) that would amend section 802 of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902) to modify service requirements, allow service to be conducted in additional agencies of government, establish time frames for commencement of service, and clarify minimum length of service.

The Senate Amendment contained no similar provision.

The House recedes.

Responses to congressional inquiries

The House bill contained a provision (sec. 907) that would require the Secretary of Defense and other Department of Defense officials to respond to questions for the record from hearings of the Committees on Armed Services of the Senate and the House of Representatives within 21 days of receiving such questions.

The Senate amendment contained no similar provision.

The House recedes.

The conferees note that Department officials frequently take months to respond to questions for the record.

The two committees conduct hearings to inform Congress and the public on significant issues regarding the operations of the Department. These hearings often serve as the basis for legislative, budget, and policy positions of the two committees. Because officials of the Department are not always prepared to respond to the full range of questions at such hearings, questions for the record form an important part of the record of such hearings.

Lengthy delays in responding to questions for the record are contrary to the public interest because they delay the availability of critical information to Congress and the public. In many cases, responses are not made available until after the committees have made decisions on legislative, budget, and policy matters to which the information relates. This is not in the interest of either the Congress or the Department.

The conferees recognize that questions for the record for some hearings are extensive and that, in some instances, the compilation of answers and responses can and does require detailed research and discussion prior to their transmission to the Congress. For this reason, the conferees have determined that it would not be practical to establish a single, uniform deadline for all responses to questions for the record.

Overall, however, the Department must do a far better job of responding to questions for the record than it has in the recent past. Accordingly, the conferees direct the Secretary of Defense and other officials of the Department to respond to questions for the record within 21 days of receiving such questions, unless the Secretary or other official has informed the committee concerned in writing that he or she will be unable to meet the 21-day deadline and stated the date by which the questions will be answered.

The conferees note that the Members of the congressional defense committees frequently request information from the Department through letters, meetings, and other mechanisms. The conferees expect that officials of the Department will respond promptly to such inquiries as well.

Directors of Small Business Programs

The Senate amendment contained a provision (sec. 912) that would change the title of the Department of Defense's Office of Small and Disadvantaged Business Utilization to the Office of Small Business Programs.

The House bill contained no similar provision.

The Senate recedes.

TITLE X—GENERAL PROVISIONS

ITEMS OF SPECIAL INTEREST

Coordination of Department of Defense Homeland Defense/Homeland Security Initiative in Support of First Responders

The conferees remain concerned about the level of planning and coordination between the Department of Defense and other federal departments and agencies that the Department might be called upon to assist in cases of natural or man-made disasters.

Therefore, the conferees direct the Secretary of Defense to provide the Committees on Armed Services of the Senate and the House of Representatives a report by March 5, 2005, detailing the Department's strategy and plans to coordinate with the Department of Homeland Security (DHS), the Department of Justice (DoJ), and state, local and tribal governments on command, control and communication problems encountered during man-made and natural disasters. Additionally, the report shall address technology developments and interoperability issues that exist or may exist between the Department and other federal departments, and state, local and tribal first responders, as well as possible solutions to resolve such issues. The conferees encourage the Department to continue its efforts to identify technologies that may serve homeland security purposes, and to make such technologies available to DHS, DoJ and the first responder community.

LEGISLATIVE PROVISIONS ADOPTED

Subtitle A—Financial Matters

Transfer Authority (sec. 1001)

The House bill contained a provision (sec. 1001) that would provide $3.0 billion in transfer authority among accounts in division A of this Act for fiscal year 2005.

The Senate amendment contained a similar provision (sec. 1001).

The conferees agree to a provision that provides $3.5 billion in transfer authority.

United States contribution to NATO common-funded budgets in fiscal year 2005 (sec. 1002)

The Senate amendment contained a provision (sec. 1002) that would authorize the U.S. contribution to North Atlantic Treaty Organization (NATO) common-funded budgets for fiscal year 2005, including the use of unexpended balances. The resolution of ratification for the Protocol to the North Atlantic Treaty of 1949 on the Accession of Poland, Hungary, and the Czech Republic contained a provision (section 3(2)(c)(ii)requiring a specific authorization for U.S. payments to the common-funded budgets of NATO for each fiscal year, beginning in fiscal year 1999, that payments exceed the fiscal year 1998 total.

The House bill contained no similar provision.

The House recedes.

Budget justification documents for operation and maintenance (sec. 1003)

The House bill contained a provision (sec. 1002) that would amend section 232 of title 10, United States Code, to require additional information be provided with the annual Department of Defense operation and maintenance (O&M) budget presentation, including: the baseline costs for programs in which there is an identified program increase or decrease; the amount of funds requested for personal service contracts and the number of personal service contractors expected to be compensated at an annual rate in excess of the annual rate of pay for the Vice President; identification by the Department of the Navy of funding requested for ship depot maintenance and funding requested for intermediate depot maintenance; and the average civilian salary cost by sub-activity group as a component of the personnel summary. The provision would also require the Secretary of Defense to submit a report to the Committees on Armed Services of the Senate and the House of Representatives by March 1, 2005 that catalogues the elements of "other costs" and "other contracts" which are currently used in the O&M justification materials of the budget request.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would amend section 232 of title 10, United States Code, to require additional information be provided with the Department of Defense annual O&M budget presentation, including: the baseline costs for programs in which there is an identified program increase or decrease; and identification by the Department of the Navy of funding requested for ship depot maintenance and funding requested for intermediate depot maintenance. The amendment would also require the Secretary of Defense to submit a report to the Committees on Armed Services of the Senate and the House of Representatives by March 1, 2005 that catalogues the elements of other costs and other contracts which are currently used in justification materials of the budget request.

The conferees note that the Committees on Armed Services of the Senate and the House of Representatives will continue to work with the Department and the services to improve the information included in the annual O&B budget submissions.

Licensing of intellectual property (sec. 1004)

The House bill contained a provision (sec. 1003) that would authorize the Secretary concerned, under regulations prescribed by the Secretary of Defense, to license trademarks, service marks, certification marks, and collective marks owned by a military department, and to retain and expend fees received from such licensing. Fees received in excess of the costs of registration and licensing could be expended for recruiting and retention and morale, welfare, and recreation activities of the military department.

The Senate amendment contained a provision (sec. 1064) that would provide similar authority, but would limit the use of excess fees to morale, welfare, and recreation activities of the military department.

The House recedes with a technical amendment.

Repeal of funding restrictions concerning development of medical countermeasures against biological warfare threats (sec. 1005)

The House bill contained a provision (sec. 1005) which would repeal Section 2370a of title 10, United States Code that set statutory limits on funding concerning the development of medical countermeasures against biological warfare threats.

The Senate amendment contained no similar provision.

The Senate recedes.

The conferees intend to monitor the expenditure of funds in this account and expect the Department of Defense to provide briefings to the congressional defense committees on this issue. Although the statutory limits are being lifted, the conferees remain concerned that sufficient funding is not being requested or expended in the various categories for medical countermeasures against biological warfare threats. The conferees urge the Department to program more robust funding for biological defense programs consistent with the needs and objectives of these programs, and expect the Department to use the money authorized to develop medical countermeasures against biological warfare threats.

Report on budgeting for exchange rates for foreign currency fluctuations (sec. 1006)

The House bill contained a provision (sec. 1006) that would require the Secretary of Defense to submit to the Committees on Armed Services of the Senate and House of Representatives a report on the foreign currency exchange rate projection used in annual Department of Defense budget presentations.

The Senate amendment contained no similar provision.

The Senate recedes with a technical amendment.

Fiscal year 2004 transfer authority (sec. 1007)

The House bill contained a provision (sec. 1007) that would provide $3.0 billion in transfer authority among accounts in division A of this Act for fiscal year 2004.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would provide $2.8 billion in transfer authority.

Clarification of fiscal year 2004 funding level for a National Institute of Standards and Technology account (sec. 1008)

The Senate amendment contained a provision (sec. 1092) that would clarify fiscal year 2004 funding for programs under the National Institute of Standards and Technology Industrial Technology Services account.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Notification of fund transfers from working capital funds (sec. 1009)

The Senate amendment contained a provision (sec. 312) that would limit the transfer of funds out of, or among, working capital funds. The provision requires the Secretary of Defense to notify the Congress when such transfers are made. The Department of Defense should submit prior approval reprogramming requests, DD Forms 1415–1, to the congressional defense committees in accordance with established procedures.

The House bill contained no similar provision.

The House recedes.

Charges for Defense Logistics Information Services materials (sec. 1010)

The Senate amendment contained a provision (sec. 361) that would permit the Defense Logistics Information Services, a division of the Defense Logistics Agency, to develop a fee schedule for charging public and private entities for copies of materials from the Federal Logistics Information System (FLIS). The FLIS is a management system designed to collect, store, process, and provide item-related logistics information. This information often is used by private entities doing or seeking business with the Department of Defense.

The House bill contained no similar provision.

The House recedes.

Subtitle B—Naval Vessels and Shipyards

Authority for award of contracts for ship dismantling on net-cost basis (sec. 1011)

The House bill contained a provision (sec. 1011) that would allow the Secretary of the Navy to award contracts for the dismantling of vessels stricken from the Naval Vessel Register on a net-cost basis.

The Senate amendment contained a similar provision (sec. 1013).

The Senate recedes.

Use of proceeds from exchange and sale of obsolete Navy service craft and boats (sec. 1012)

The Senate amendment contained a provision (sec. 1011) that would allow the Secretary of the Navy to retain the proceeds of the sale, or exchange allowance from the exchange, of obsolete service craft and obsolete boats. The Secretary would be allowed to use these proceeds or exchange allowances for specified purposes.

The House bill contained no similar provision.

The House recedes with a clarifying amendment that restructures the items within the provision.

Transfer of Naval vessels to certain foreign recipients (sec. 1013)

The House bill contained a provision (sec. 1013) that would authorize the President: (1) to transfer on a grant basis to the government of Chile, the Spruance-class destroyer *O'Bannon* (DD 987) and (b) to the government of Portugal, the Oliver Hazard Perry-class frigate *George Phillip* (FFG 12); and (2) to transfer on a sale basis to the Taipei Economic and Cultural Office of the United States, the Anchorage-class dock landing ship *Anchorage* (LSD–36). The provision would also direct that: (1) any expense incurred by the United States in connection with a transfer on a grant basis shall be charged to the recipient; and (2) to the maximum extent possible, the President shall require, as a condition of transfer, the repair and refurbishment associated with the transfer be accomplished in a shipyard located in the United States.

The Senate amendment contained a similar provision (sec. 1014) that would authorize the Secretary of the Navy: (1) to transfer on a grant basis to the government of Chile, the Spruance-class destroyer *O'Bannon* (DD 987) and to the government of Portugal, the Oliver Hazard Perry-class frigates *George Phillip* (FFG 12) and *Sides* (FFG 14); and (2) to transfer on a sale basis to the Taipei Economic and Cultural Office of the United States, the Anchorage-class dock landing ship *Anchorage* (LSD–36) and (b) to the government of Chile, the Spruance-class destroyer *Fletcher* (DD 992). The provision would also direct that any expense incurred by the United States in connection with a transfer authorized by this provision be charged to the recipient.

The House recedes with an amendment that would authorize the President: (1) to transfer on a grant basis to the government of Chile, the Spruance-class destroyer *O'Bannon* (DD 987) and to the government of Portugal, the Oliver Hazard Perry-class frigates *George Phillip* (FFG 12) and *Sides* (FFG 14); and (2) to transfer on a sale basis to the Taipei Economic and Cultural Office of the United States, the Anchorage-class dock landing ship *Anchorage* (LSD–36) and to the government of Chile, the Spruance-class destroyer *Fletcher* (DD 992). The amendment would also direct that any expense incurred by the United States in connection with a transfer authorized by this provision be charged to the recipient.

Independent study to assess cost-effectiveness of the Navy ship construction program (sec. 1014)

The House bill contained a provision (sec. 1012) that would require the Secretary of Defense to have a study conducted by an entity independent of the Department of Defense on the cost-effectiveness of the ship construction program of the Navy. The study would examine various approaches for how the Navy ship construction program could be made more cost-effective in the near-term, and how the United States shipbuilding industry might be made globally competitive through a nationally integrated effort over the next decade.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would require the Secretary of Defense to provide for a group of industrial experts to assess priorities for potential implementation of the various approaches in the near-term study, with an assessment of the return on investment. It would also require an assessment of priorities for potential implementation of the various approaches for the nationally, integrated effort, with the objective being to create a healthier and more viable U.S. shipbuilding industrial base.

The conferees believe the group chosen for this study should be five to ten industrial experts who represent an array of industrial sectors, not just the shipbuilding industry. Many sectors of the U.S. industrial base have had to retool processes and equipment to become more competitive. Since the rate of shipbuilding is much lower, competitiveness has not provided the same incentive for this sector. The conferees are aware of and support the work of the National Shipbuilding Research Program-Advanced Shipbuilding Enterprise (NSRP–ASE), including its lean shipbuilding initiative. The conferees would expect the group of industrial experts chosen for this study to become familiar with this work, and to consider the potential for using the NSRP–ASE to implement some of the various approaches.

Limitation on disposal of obsolete naval vessel (sec. 1015)

The Senate amendment contained a provision (sec. 1012) that would not allow the Secretary of the Navy to dispose of the decommissioned destroyer ex-*Edson* (DD–946) to a nonprofit organization before October 1, 2007, unless the Secretary first determines that there is no nonprofit organization that meets the criteria for donation of that vessel under section 7306(a)(3) of title 10, United States Code.

The House bill contained no similar provision.

The House recedes.

Subtitle C–Counterdrug Matters

Use of funds for unified counterdrug and counterterrorism campaign in Colombia (sec. 1021)

The Senate amendment contained a provision (sec. 1052) that would extend through fiscal year 2006, the expanded authority for the Department of Defense to use counterdrug funds to support the Government of Colombia's unified campaign against narcotics cultivation and trafficking, and against the terrorist organizations involved in such drug trafficking activities. The provision would also change the limitation on the number of U.S. military personnel assigned to Colombia in support of Plan Colombia to 800 personnel, and the number of federally funded contractor personnel employed in support of Plan Colombia to 600 personnel.

The House bill contained similar provisions (sec. 1031 and 1032) that would extend the expanded authority through fiscal year 2006 and would increase the number of U.S. military personnel in Colombia to 500.

The House recedes.

Sense of Congress and report regarding counterdrug efforts in Afghanistan (Sec. 1022)

The Senate amendment contained a provision (sec. 1056) that would express the sense of the Senate that: (1) the President should make the substantial reduction of drug trafficking in Afghanistan a priority in the war on terror; (2) the Secretary of Defense should, in coordination with the Secretary of State, work to a greater extent with the Government of Afghanistan and international organizations involved in counterdrug activities to provide a secure environment for counter-drug personnel in Afghanistan; and (3) additional efforts should be made by the Armed Forces of the United States, with coalition forces, to significantly reduce narcotics trafficking in Afghanistan, with particular focus on those traffickers with the closest links to known terrorist organizations. The provision also directed the Secretary of Defense to submit a report to Congress on progress made towards substantially reducing the poppy cultivation and heroin production capabilities in Afghanistan, and the extent to which profits from illegal drug activity in Afghanistan fund terrorist organizations and support groups that seek to undermine the Government of Afghanistan.

The House bill contained no similar provision.

The House recedes with an amendment that would express the sense of the Congress that: (1) the President should make the substantial reduction of illegal drug trafficking in Afghanistan a priority in the global war on terrorism; (2) the Secretary of Defense, in coordination with the Secretary of State and the heads of other appropriate federal agencies, should expand cooperation with the Government of Afghanistan and international organizations involved in the counter-drug activities to assist in providing a secure environment for counter-drug personnel in Afghanistan; and (3) the United States, in conjunction with the Government of Afghanistan and coalition partners, should undertake additional efforts to reduce illegal drug trafficking and related activities that provide financial support for terrorist organizations in Afghanistan and neighboring countries. The conferees further agree that the Secretary of Defense and the Secretary of State will jointly submit the aforementioned report.

The conferees note that there are strong, direct connections between terrorism and drug trafficking, and that the elimination of this funding source is critical to making significant progress in the global war on terror. It is clear that the military action against the Taliban in Afghanistan was designed, in part, to disrupt the activities of and financial support for terrorists. While progress in disrupting the financial links has been made, it is clear that some of the profits associated with opium harvested in Afghanistan continue to fund terrorists and terrorist organizations, including Al Qaeda, that seek to attack the United States and its interests. Additionally, the President of Afghanistan, Hamad Karzai, has stated that opium production poses a significant threat to the future of Afghanistan, and has established a plan of action to deal with this threat. It is for these and other reasons that the conferees believe that the United States, in conjunction with the Government of Afghanistan and coalition partners, should undertake additional efforts to reduce illegal drug trafficking and related activities that provide financial support for terrorist organizations in Afghanistan and neighboring countries. The conferees believe that the Department of Defense, in conjunction with other U.S. agencies and coalition partners, must have a comprehensive strategy that provides consistent funding from year to year to achieve significant progress in reducing drug cultivation, trafficking, and related activities in Afghanistan.

Subtitle D—Matters Relating to Museums and Commemorations

Recognition of the Liberty Memorial Museum, Kansas City, Missouri, as America's National World War I Museum (sec. 1031)

The House bill contained a provision (sec. 354) that would express the sense of Congress that the Liberty Memorial Museum in Kansas City, Missouri, is recognized as "America's National World War I Museum."

The Senate amendment contained a similar provision (sec. 1078).

The Senate recedes with technical amendments.

Program to Commemorate 60th Anniversary of World War II (sec. 1032)

The Senate amendment contained a provision (sec. 365) that would authorize the Secretary of Defense to conduct a program to commemorate the 60th anniversary of World War II and to coordinate, support, and facilitate other such commemoration programs and activities of the Federal, State, and local governments, and other persons.

The House bill contained no similar amendment.

The House recedes.

Annual report on Department of Defense operation and financial support for military museums (sec. 1033)

The House bill contained a provision (sec. 341) that would amend chapter 23 of title 10, United States Code, to require the Secretary of Defense to include in the annual budget justification materials a complete inventory of military museums operated with funds appropriated to the Department of Defense or the military services.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would add a reporting requirement for the Secretary to describe the management structure of each museum. The amendment would also add a reporting requirement for the Secretary to provide information on the prioritization process within the Department and within each military department for funds allocation and personnel support for museums.

While the conferees agree that military museums serve an important role in the preservation of the history and heritage of the U.S. military, the conferees are concerned that the proliferation of military museums nationwide may be draining fiscal resources needed for other requirements. The conferees expect that the information to be provided by the Secretary will be used as a database for future discussions with the Department about the effective management of military museums.

Subtitle E—Reports [Not Provided for Elsewhere]

Quarterly detailed accounting for operations conducted as part of the global war on terrorism (sec. 1041)

The Senate amendment contained a provision (sec. 1029D) that would require the Secretary of Defense to provide to the congressional defense committees quarterly reports on the costs incurred by the Department of Defense for all operations in the global war on terrorism. In addition to the reports required by this provision, the conferees expect the Department to continue to provide to the legislative branch timely access to monthly contingency cost reports.

The House bill amendment contained no similar provision.

The House recedes with a technical amendment.

Report on post-major combat operations phase of Operation Iraqi Freedom (sec. 1042)

The Senate amendment contained a provision (sec. 1028) that would require a report on aspects of the post-major combat operations phase of Operation Iraqi Freedom.

The House bill contained no similar provision.

The House recedes with an amendment that would change the due date of the report to June 1, 2005, and would include an assessment of the organization of U.S Central Command to conduct post-conflict operations and related lessons learned.

Report on training provided to members of the Armed Forces to prepare for post-conflict operations (sec. 1043)

The Senate amendment contained a provision (sec. 1024) that would direct the Secretary of Defense to conduct a study to determine the extent to which members of the Armed Forces assigned to duty in support of contingency operations receive training in preparation for post-conflict operations and to evaluate the quality of such training. The provision would direct the Secretary to submit a report to Congress on the assessment not later than May 1, 2005.

The House bill contained a similar provision (sec. 1043).

The House recedes with a clarifying amendment.

Report on establishing national centers of excellence for unmanned aerial and ground vehicles (sec. 1044)

The Senate amendment contained a provision (sec. 1027) that would require the Secretary of Defense to submit a report to the congressional defense committees on the need for one or more national centers of excellence for unmanned aerial and ground vehicles. The provision also defines the goals of the centers and other considerations to be included in the preparation of this report.

The House bill contained no similar provision.

The House recedes with a technical amendment to clarify certain elements of the provision.

Study of continued requirement for two-crew manning for ballistic missile submarines (sec. 1045)

The House bill contained a provision (sec. 1041) that would require the Secretary of Defense to submit to the congressional defense committees a report on whether the requirement for two-crew manning of fleet ballistic missile submarines should be continued, modified, or terminated.

The Senate amendment contained no similar provision.

The Senate recedes.

Report on Department of Defense programs for prepositioning of materiel and equipment (sec. 1046)

The House bill contained a provision (sec. 342) that would direct the Secretary of Defense to conduct an assessment of the programs of the Department of Defense for the prepositioning of materiel and equipment. The provision would direct the Secretary to submit a report to Congress on the assessment not later than October 1, 2005.

The Senate amendment contained no similar amendment.

The Senate recedes with a clarifying amendment.

Report on al Qaeda activity in the Western Hemisphere (sec. 1047)

The conferees agree to include a provision that would direct the Secretary of State, in consultation with the Secretary of Defense and the Director of Central Intelligence, to submit to the appropriate committees of Congress a report on any al Qaeda activity in the Western Hemisphere, including fundraising, affiliations with other groups in the region, and possible targets for attack; and on United States policies that are designed to address such activities. The provision would require that an unclassified report, with a classified annex as necessary, be submitted no later that 180 days after the date of the enactment of this Act. The conferees note their concern about potential al Qaeda activity in the Western Hemisphere, and the indirect and direct threat to United States national security that such activity represents.

Subtitle F—Defense Against Terrorism [and Other Domestic Security Matters]

Acceptance of communications equipment provided by local public safety agencies (sec. 1051)

The Senate amendment contained a provision (sec. 1041) that would allow military installations that have Memoranda of Understanding or Memoranda of Agreement with state and local first responders to accept ham radios or communication equipment on an interim basis until interoperability of communications has been established.

The House bill contained no similar provision.

The House recedes with a clarifying amendment.

Determination and report on full-time airlift support for homeland defense operations (sec. 1052)

The Senate amendment contained a provision (sec. 1042) that would instruct the Secretary of Defense to determine the feasibility and advisability of dedicating a full-time airlift capability to support homeland defense operations.

The House bill contained no similar provision.

The House recedes with an amendment that would instruct the Secretary to also consider the transportation requirements of the newly established National Guard Chemical, Biological, Radiological, Nuclear and High Explosive Enhanced Response Force Packages.

Survivability of critical systems exposed to chemical or biological contamination (sec. 1053)

The Senate amendment contained a provision (sec. 1043) that would direct the Secretary of Defense to submit a plan to the Committees on Armed Services of the Senate and the House of Representatives that describes the Department of Defense's systematic approach for ensuring the survivability of defense critical systems exposed to chemical or biological contamination.

The House bill contained no similar provision.

The House recedes with a clarifying amendment.

Subtitle G—Personnel Security Matters

Use of National Driver Register for personnel security investigations and determinations (sec. 1061)

The House bill contained a provision (sec. 1051) that would amend title 49, United States Code, to authorize access to the National Driver Register by federal departments and agencies for use in personnel security investigations and for use in personnel investigations with regard to federal employment.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would clarify that the federal employment contemplated in the provision is employment requiring access to national security information, and that the department or agency receiving such information may use that information only for the purpose of the authorized investigation, in accordance with applicable law.

Standards for disqualification from eligibility for Department of Defense security clearance (sec. 1062)

The House bill contained a provision (sec. 1052) that would amend section 986 of title 10, United States Code, to clarify a standard for disqualification and would allow delegation of waiver authority, in accordance with standards and procedures establish by Executive order or other Presidential guidance.

The Senate amendment contained no similar provision.

The Senate recedes.

Subtitle H—Transportation-Related Matters

Use of military aircraft to transport mail to and from overseas locations (sec. 1071)

The House bill contained a provision (sec. 1061) that would provide the Secretary of Defense the authority to use military aircraft to transport mail and parcels to, from, and between overseas locations. This authority, however, would be limited to the following circumstances:

(1) There is excess space on a scheduled military flight;

(2) There is no overall cost increase to the Department of Defense or the U.S. Postal Service;

(3) The U.S. Transportation Command would pay the cost of transporting mail from U.S. Postal Service to customs clearance facilities and military debarkation locations at rates not to exceed Department of Transportation rates for commercial airlines;

(4) There is no degradation of mail service; and

(5) There is no diversion of such military aircraft during contingencies or other events.

The Senate amendment contained no similar provision.

The Senate recedes.

Reorganization and clarification of certain provisions relating to control and supervision of transportation within the Department of Defense (sec. 1072)

The House bill contained a provision (sec. 1062) that would amend sections 4744 through 4747 of title 10, United States Code, by moving these sections from chapter 47 to chapter 26. This section would also repeal sections 9741, 9743, and 9746 of title 10, United States Code. These changes reflect the Secretary of Defense's role in transportation versus the individual role of the service secretaries.

The Senate amendment contained no similar provision.

The Senate recedes.

Evaluation of procurement practices relating to transportation of security-sensitive cargo (sec. 1073)

The House bill contained a provision (sec. 1064) that would require the Secretary of Defense to evaluate whether, and under what conditions, in the award of service contracts for domestic freight transportation for security-sensitive cargo, the Secretary should not consider an offer or tender from more than one motor carrier that is a part of a group of motor carriers under common financial or administrative control. The provision would also direct the Secretary to submit a report to the Committees on Armed Services of the Senate and the House of Representatives with the results of the evaluation not later than January 1, 2005.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would direct the Secretary to evaluate the award of service contracts for domestic freight transportation for security-sensitive cargo (such as arms, ammunition, explosive, and classified material) to determine whether such practices are in the best interest of the Department of Defense, and would direct the Secretary to submit a report to the Committees on Armed Services of the Senate and the House of Representatives with the results of the evaluation not later than January 1, 2005.

Subtitle I—Other Matters

Liability protection for Department of Defense volunteers working in maritime environment (sec. 1081)

The House bill contained a provision (sec. 1075) that would modify section 1588 of title 10, United States Code, to add the training of cadets and midshipmen at the service academies to the voluntary services that may be accepted, and include chapters 20 and 22 of title 46 to the laws covered by this provision.

The Senate amendment contained a provision (sec. 1063) that would extend to volunteers working in the maritime training environment the same status and legal protections, for purposes of claims and loss, presently available to volunteers working in support of land-based programs.

The House recedes with an amendment that would modify section 1588 of title 10, United States Code, to add chapters 20 and 22 of title 46 Appendix to the provisions of law listed in subparagraph (d) with the intent of not limiting the liability protection afforded volunteers in the maritime environment only to the service academies.

The conferees appreciate the importance of voluntary services provided by individuals for the benefit of soldiers, sailors, airmen, and marines and their families. As reflected in section 1588 of title 10, United States Code, voluntary services are received in connection with a wide variety of programs and activities. Under many circumstances, the ability of the services to offer protection from personal liability is a necessary condition for the acceptance of voluntary services. This is not always the case; however, and the criteria for identifying those functions and voluntary services appropriate for inclusion in section 1588 are not evident.

The conferees direct the Secretary of Defense to submit a report by June 1, 2005, to the Committees on Armed Services of the Senate and the House of Representatives describing the manner in which the Department of Defense currently determines what voluntary services to accept, which of the accepted services warrant liability protection, and how the Department oversees their delivery under section 1588. The Secretary should prescribe the policy of the Department of Defense regarding the acceptance of voluntary services and, in consultation with the Department of Justice, submit proposals for legislative changes, if needed. The conferees urge the Department of Defense to develop policies and procedures that will enable commands and activities to appropriately accept and supervise voluntary services and, when called for, afford immunity from personal liability.

Sense of the Congress concerning media coverage of the return to the United States of the remains of deceased members of the Armed Forces from overseas (sec. 1082)

The Senate amendment contained a provision (sec. 366) that would state the sense of the Congress that the Department of Defense policy regarding no media coverage of the transfer of the remains of deceased members of the Armed Forces appropriately protects the privacy of the families and friends of the deceased, and is consistent with constitutional guarantees of freedom of speech and freedom of the press.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Transfer of historic F3A-1 Brewster Corsair aircraft (sec. 1083)

The House bill contained a provision (sec. 1076) that would authorize the Secretary of the Navy to convey by means of a gift, without consideration, to Mr. Lex Cralley, of Princeton, Minnesota, all right, title, and interest of the United States in and to a F3A-1 Brewster Corsair aircraft.

The Senate amendment contained no similar amendment.

The Senate recedes.

The conferees note that this transfer should not be considered as a precedent for future transfers of aircraft or other property of the U.S. government to individuals.

Technical and clerical amendments (sec. 1084)

The House bill contained a provision (sec. 1073) that would make technical and clerical amendments to various provisions of law. The Senate amendment contained similar provisions (sec. 1022 and 1061).

The Senate recedes with an amendment that would incorporate the provisions of sections 1022 and 1061 of the Senate amendment, strike certain portions of section 1073 of the House bill, and make certain additional technical and clerical amendments.

Preservation of search and rescue capabilities of the Federal Government (sec. 1085)

The Senate amendment contained a provision (sec. 1073) that would prevent the Secretary of Defense for reducing or eliminating the search and rescue capabilities at any military installation in the United States until the Secretary certifies that equivalent services will be provided without interruption and consistent with the policies and objectives established in the United States National Search and Rescue Plan of January 1, 1999.

The House bill contained no similar provision.

The House recedes.

Acquisition of aerial firefighting equipment for National Interagency Fire Center (sec. 1086)

The Senate amendment contained a provision (sec. 1076) that would authorize the Secretary of Agriculture to purchase 10 aerial firefighting aircraft to be used by the National Interagency Fire Center.

The House bill contained no similar provision.

The House recedes with an amendment that would require that the aircraft be certified by the Chief of the Forest Service as suited for conditions commonly carried out in the United States, including Alaska.

Revision to requirements for recognition of institutions of higher education as Hispanic-serving institutions for purposes of certain grants and contracts (sec. 1087)

The Senate amendment contained a provision (sec. 1079) that would allow universities to qualify as Hispanic-serving institutions, as defined by the Higher Education Act (Public Law 89-329, as amended), by providing assurances that 50 percent of the Hispanic student population is low-income by employing statistical extrapolation from Census Bureau data.

The House bill contained no similar provision.

The House recedes.

Military extraterritorial jurisdiction over contractors supporting defense missions overseas (sec. 1088)

The Senate amendment contained a provision (sec. 1081) that would amend the definitional section of the Military Extraterritorial Jurisdiction Act of 2000, section 3267 of title 18, United States Code (Public Law 106-523), to expand jurisdiction over civilian employees and contractor personnel of the United States to include personnel not employed by or contracting with the Department of Defense whose employment relates to supporting the mission of the Department of Defense overseas.

The House bill contained no similar provision.

The House recedes.

Definition of United States for purposes of Federal crime of torture (sec. 1089)

The Senate amendment contained a provision (sec. 1082) that would amend section 2340 of title 18, United States Code, to define "United States" for the purposes of chapter 113C of that title as the States, the District of Columbia, and the commonwealths, territories, and possessions of the United States.

The House bill contained no similar provision.

The House recedes.

Energy savings performance contracts (sec. 1090)

The Senate amendment contained a provision (sec. 1091) that would reauthorize energy savings performance contract authority under section 802 of the National Energy Policy Act (42 U.S.C. 8287a) for the Department of Defense and other federal agencies until October 1, 2006. The provision would also authorize water or wastewater treatment projects to be conducted under an energy savings performance contract.

The House bill contained no similar provision.

The House recedes with an amendment to reauthorize this authority until October 1, 2006.

Sense of Congress and policy concerning persons detained by the United States (sec. 1091–1093)

The House bill contained a provision (sec. 906) that would require the Secretary of Defense to prescribe policies to prevent the abuse of detainees held by the United States as part of the Global War on Terrorism, and would require that the policies be transmitted, and a report on implementation be submitted, to the Committees on Armed Services of the Senate and the House of Representatives. It also contained a provision (sec. 1207) expressing the sense of Congress concerning the abuse of persons in United States custody in Iraq.

The Senate amendment contained a provision (sec. 1029F) that would require detailed reports on foreign national detainees in the custody of the Department of Defense, and the detention facilities and practices of the Department. It also contained a provision (sec. 1057) that would make findings on United States adherence to international conventions on torture and cruel or inhuman treatment or punishment; prohibit torture or cruel, inhuman, or degrading treatment or punishment that is prohibited by the Constitution, laws, or treaties of the United States; require the Secretary of Defense to prescribe regulations to ensure compliance with the prohibition; and report twice a year on investigations of possible violations of the prohibition. The Senate amendment also contained a provision (sec. 1059C) that would set out the policy of the United States concerning torture and inhumane treatment; require reports on detainees, military commissions, and interrogation techniques; require the submission of certain reports prepared by the International Committee of the Red Cross; and require the Secretary to certify that federal and contractor personnel engaged in the handling of detainees have been trained in U.S. international obligations and the law of war.

The House recedes with an amendment that would state the sense of Congress with regard to misconduct by certain U.S. personnel at the Abu Ghraib prison in Iraq; the professionalism and morality of the vast majority of American servicemembers serving there; the law governing the treatment of detainees; and the prohibition of torture or cruel and inhumane treatment contained in applicable domestic and international law. The amendment further sets out the policy of the United States with respect to the proper treatment of detainees; the need for thorough investigation and prosecution, as appropriate, of unlawful treatment of detainees; the need to ensure that all personnel of the United States Government understand their obligations to comply with the prohibitions against torture and inhumane treatment; the need to ensure the proper status of detained persons while a determination is made as to their prisoner of war status under the applicable Geneva Convention; and the need for expeditious prosecution of detainees in U.S. custody who are alleged to have committed terrorist acts or other crimes.

The amendment would further require the Secretary of Defense to ensure that policies are prescribed, within 150 days of enactment, to ensure that detainees are treated in a humane manner consistent with the international obligations of the United States and the aforementioned policies on the treatment of detainees; would set out minimum criteria for these policies; and would require that the Secretary certify that federal employees and contractor personnel involved with handling or interrogation of detainees have fulfilled annual training requirements on the law of war and U.S. obligations under international law.

Finally, the amendment contains several reporting requirements, including a requirement that the policies prescribed be forwarded by the Secretary to the Committees on Armed Services of the Senate and the House of Representatives within 30 days. The Secretary is to report to the committees within one year after prescribing the policies on further steps taken to implement them. Nine months after enactment and annually thereafter, the Secretary would be required to submit to the committees a report giving notice of any investigations into violations of international or U.S. law regarding the treatment of detainees; and aggregate data on foreign national detainees in the custody of the Department of Defense during the prior year. The reporting provisions of this provision expire on December 31, 2007.

Findings and sense of Congress concerning Army Specialist Joseph Darby (sec. 1091)

The House bill contained a provision (sec. 1206) that would recognize and thank U.S. Army Specialist Joseph Darby for his courageous actions in alerting his superiors to misconduct by American soldiers at Abu Ghraib prison in Iraq, and express the sense of Congress that Specialist Darby should be afforded appropriate protection and recognition by the Department of Defense.

The Senate amendment contained no similar provision.

The Senate recedes.

Legislative Provisions Not Adopted

Reduction in overall authorization due to inflation savings

The Senate amendment contained a provision (sec. 1003) that would reduce the amount authorized to be appropriated to the Department of Defense by $1.7 billion to reflect the reduced inflation estimates in the Congressional Budget Office's annual review of the budget.

The House bill contained no similar provision.

The Senate recedes.

Authority to waive claims of the United States when amounts recoverable are less than costs of collection

The House bill contained a provision (sec. 1004) that would authorize the Secretary of Defense or his designee to waive indebtedness when the cost of processing the transaction exceeds the amounts recoverable. The maximum amount that may be waived under this statue would be the micro-purchase threshold, currently $2,500.

The Senate amendment contained no similar provision.

The House recedes.

The conferees request that the Department of Defense provide the following information: (1) proposed regulations for the purposes of this section; (2) how this authority will be used with the existing law related to claims or debt collection, including the Debt Collection Improvement Act; (3) the number of estimated transactions that will be used with this authority regarding amounts owed by members of the Armed Forces and Department civilian personnel; (4) the number of estimated transactions that will be used with this authority regarding amounts owed by contractors; and (5) the procedures that will be implemented to track debts waived for members of the Armed Forces and Department civilian personnel for tax implications.

Report on amounts remitted and reimbursed during fiscal year 2004 under section 1007 of Public Law 108–136

The House bill contained a provision (sec. 1008) that would require the Secretary of Defense to submit a report not later than 30 days after the end of fiscal year 2004 on amounts remitted and reimbursed during fiscal year 2004 under section 1007 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1585; 10 U.S.C. 2241 note).

The Senate amendment contained no similar provision.

The House recedes.

The conferees note that section 1007 of the National Defense Authorization Act for Fiscal Year 2004 permits funds appropriated to the Department of Defense to be transferred to the Department of State as payment for a fee charged by the Department of State for maintenance, upgrade, or construction of U.S. diplomatic facilities only to the extent that the amount charged in any given year exceeds the total amount of unreimbursed costs incurred by the Department of Defense during that year in providing goods and services to the Department of State. Section 8067 of the Defense Appropriations Act for Fiscal Year 2005 permits funds appropriated to the Department of Defense to be transferred to the Department of State as remittance for a fee charged by the Department of State for fiscal year 2005 for maintenance, upgrade, or construction of U.S. diplomatic facilities only to the extent that the amount of the fee so charged exceeds the total amount of the unreimbursed costs incurred by the Department of Defense during that fiscal year in providing goods and services to the Department of State.

The conferees further note that the capital security cost sharing program has not been authorized by the Congress. While the conferees recognize the need to upgrade and construct new U.S. diplomatic facilities, the conferees oppose the use of a capital cost sharing program as a means of accomplishing this goal. As currently described by the administration, the capital cost sharing program does not take into account the goods and services that other departments and agencies provide to the Department of State at no cost. The conferees urge the administration to request sufficient funds for the Department of State in future year budget requests to provide for the costs of upgrading or constructing U.S. diplomatic facilities.

Limitation on leasing of foreign-built vessels

The House bill contained a provision (sec. 1014) that would restrict the secretary of a military department from entering into a contract for a lease or charter of a vessel for a term of more than 12 months, including all options to renew or extend the contract, if the hull, a major component of the hull, or superstructure of the vessel is constructed in a foreign shipyard. This provision includes a clause by which the President could make an exception to this limitation if the President determines it is in the national security interest of the United States to do so.

The Senate amendment contained no similar provision.

The House recedes.

Report on availability of potential overland ballistic missile defense test ranges

The Senate amendment contained a provision (sec. 1025) that would require the Secretary of Defense to submit a report to Congress assessing the availability of potential ballistic missile defense test ranges for overland intercept flight tests of defenses against ballistic missiles with a range of 750–1500 kilometers.

The House bill amendment contained no similar provision.

The Senate recedes.

The conferees direct the Secretary of Defense to submit a report to the congressional defense committees by February 1, 2005, that assesses the availability of potential ballistic missile defense test ranges for overland intercept flight tests of defenses against ballistic missiles with a range of 750–1500 kilometers.

Sense of Congress on space launch ranges

The Senate amendment contained a provision (sec. 1035) that would express the sense of Congress that the Secretary of Defense should provide support for and continue the development of range safety systems to reduce costs and enhance technical capabilities and operational safety at U.S. space launch ranges.

The House bill contained no similar provision.

The Senate recedes.

The conferees continue to believe that safe, effective, and efficient space launch ranges are key to assured access to space. The conferees are aware of ongoing efforts to develop, test, and certify launch range technology based on Global Positioning System signals and inertial navigation that holds promise to improve down-range reentry support, increase launch support capability, lower range support costs, and improve range safety. The conferees encourage the Department of Air Force to support these efforts.

Compensation for former prisoners of war

The Senate amendment contained a provision (sec. 1055) that would require that any plan of the Secretary of Defense to provide compensation to an individual who was injured in a military prison under the control of the United States in Iraq shall include a provision to address the injuries suffered by the citizens of the United States who were held as prisoners of war by the regime of Saddam Hussein during the First Gulf War.

The House bill contained no similar provision.

The Senate recedes.

Phased implementation of new program for transporting household goods of members of the Armed Forces

The House bill contained a provision (sec. 1065) that would prohibit the Secretary of Defense from implementing the new program, "Families First" for the transportation of household goods of members of the Armed Forces and their dependents beyond phase I of the program until the Secretary submits to Congress a report evaluating whether phase I met its objectives and whether it is in the best interest of the Department of Defense and members of the Armed Forces to move forward to phase II of the program.

The Senate amendment contained no similar provision.

The House recedes.

Repeal of quarterly reporting requirement concerning payments for District of Columbia water and sewer services and establishment of annual report by Treasury

The Senate amendment contained a provision (sec. 1067) that would amend the District of Columbia Public Works Act of 1954, as amended, to repeal the requirement that the Inspector General of each federal department or agency receiving water or sewer services from the District of Columbia submit quarterly reports, analyzing the promptness of payments for such services. These reports would be replaced by an annual report on payments for these services submitted by the Secretary of the Treasury to the Committees on Appropriations of the Senate and the House and Representatives, the Committee on Governmental Affairs of the Senate, and the Committee on Government Reform of the House of Representatives.

The House bill contained no similar provision.

The Senate recedes. The conferees anticipate that this issue will be addressed in other legislation.

Assistance for study of feasibility of biennial international air trade show in the United States and for initial implementation

The House bill contained a provision (sec. 1072) that would require the Secretary of Defense to select and provide assistance to a community in conducting a joint study to determine the feasibility of establishing an international air trade show in that community.

The Senate amendment contained no similar provision.

The House recedes.

Commission on the long-term implementation of the new strategic posture of the United States

The House bill contained a provision (sec. 1074) that would establish a new commission to review the long-term implementation of Nuclear Posture Review recommendations.

The Senate amendment contained no similar provision.

The House recedes.

Grant of federal charter to Korean War Veterans Association, Incorporated

The Senate amendment contained a provision (sec. 1074) that would modify title 36, United States Code, to grant a federal charter to the Korean War Veterans Association, Incorporated.

The House bill contained no similar provision.

The Senate recedes.

Assignment of members to assist Bureau of Border Security and Bureau of Citizenship and Immigration Services of the Department of Homeland Security

The House bill contained a provision (sec. 1077) that would authorize the Secretary of Defense to assign members of the Army, Navy, Air Force, and Marine Corps to assist the Bureau of Border Security and the U.S. Customs Service of the Department of Homeland Security in preventing the entry of terrorists, drug traffickers, and illegal aliens into the United States; and to aid in the inspection of cargo, vehicles, and aircraft at points of entry into the United States to prevent the entry of weapons of mass destruction, prohibited narcotics or drugs, or other terrorist or drug trafficking items.

The Senate amendment contained no similar provision.

The House recedes.

Sense of the Senate on American Forces Radio and Television Service

The Senate amendment contained a provision (sec. 1077) that would express the sense of the Senate that the mission statement and policies of the American Forces Radio and Television Service appropriately state the goal of maintaining equal opportunity balance with respect to political programming and that the Secretary of Defense should ensure that these policies are fully being implemented.

The House bill contained no similar provision.

The Senate recedes.

Extension of scope and jurisdiction for current fraud offenses

The Senate amendment contained a provision (sec. 1080) that would provide for extraterritorial jurisdiction under the provisions of section 1001 of title 18, United States Code, dealing with false statements or entries and section 1031 of that title, dealing with major fraud against the United States.

The House bill contained no similar provision.

The Senate recedes.

The conferees believe that existing law adequately addresses the situation.

Broadcast Decency Enforcement Act of 2004

The Senate amendment contained several provisions (sec. 1084–1089) that would (1) amend the Communications Act of 1934 (47 U.S.C. 151 et seq.) to increase the penalties for broadcasting obscene, indecent, or profane language; (2) provide mitigating factors for such penalties; (3) make findings on media concentration and suspend the media concentration rules adopted by the Federal Communications Commission in June, 2003; and (4) prohibit the distribution of violent video programming not blockable by electronic means.

The House bill contained no similar provision.

The Senate recedes.

Local Law Enforcement Enhancement Act of 2004

The Senate amendment contained several provisions (sec. 3401–3410) that would constitute the "Local Law Enforcement Enhancement Act of 2004." The Attorney General, at the request of a State or tribal law enforcement official, could provide assistance in the investigation or prosecution of certain hate crimes. The Attorney General could also award grants to State, local, and tribal law enforcement officials to assist with the investigation and prosecution of such crimes. Chapter 13 of title 18, United States Code, would be amended to establish a substantive federal prohibition of certain specific hate crime acts. No prosecution could be undertaken under this section without certification from the Attorney General or certain other officials of the Department of Justice.

The House bill contained no similar provision.

The Senate recedes.

TITLE XI—CIVILIAN PERSONNEL MATTERS

Items of Special Interest

Fort Meade—work related illnesses

The conferees are concerned with continued reports of work related illnesses among the National Security Agency (NSA) employees at Fort Meade, Maryland. The conferees direct the Secretary of Defense to undertake an epidemiological study and health hazard evaluation related to NSA buildings at Fort Meade. The conferees believe the National Institute for Occupational Safety and Health of the Department of Health and Human Services is an appropriate federal government organization to perform such a study. The conferees expect the study to be completed by March 2006.

Legislative Provisions Adopted

Payment of Federal employee health benefit premiums for mobilized Federal employees (sec. 1101)

The House bill contained a provision (sec. 1101) that would authorize a federal government employee, who is a member of a Reserve component ordered to active-duty in support of a contingency operation and placed on leave without pay, to continue to receive coverage under the Federal Employee Health Benefit Program for 24 months. The provision would also authorize the agency to pay both the employee's share and the agency's share of the premiums for continued coverage up to 24 months.

The Senate amendment contained no similar provision.

The Senate recedes.

Foreign language proficiency pay (sec. 1102)

The House bill contained a provision (sec. 1102) that would eliminate the restriction in current law that foreign language proficiency pay may be paid only to those civilian employees working in support of contingency operations.

The Senate amendment contained a similar provision (sec. 1102).

The House recedes with an amendment to require that the authority for foreign language proficiency pay will take effect on the first day of the first month that begins after the date of enactment of this Act.

Pay and performance appraisal parity for civilian intelligence personnel (sec. 1103)

The House bill contained a provision (sec. 1103) that would require the Secretary of Defense to fix the rates of basic pay for employees within the Department's Civilian Intelligence Personnel System in relation to rates of pay provided for their counterparts elsewhere within the Department of Defense. The provision would repeal maximum rates of pay and outline the performance appraisal system for senior executive service personnel.

The Senate amendment contained a similar provision (sec. 1103) that would also require the implementation of an appraisal system for Defense Intelligence Senior Executive Service personnel comparable to that provided for other senior executive service personnel in the Department of Defense that would make meaningful distinctions based on performance.

The House recedes with an amendment to clarify that pay rates for defense civilian intelligence personnel would be established in relation to the rates of pay provided for comparable positions in the Department of Defense, and subject to the same limitations on maximum rates of pay established for employees of Defense by law or regulation. The amendment would recede to the Senate's version of the performance appraisal system for senior executive service personnel in the Defense Intelligence Personnel System.

Pay parity for senior executives in defense nonappropriated fund instrumentalities (sec. 1104)

The House bill contained a provision (sec. 1104) that would authorize the Secretary of Defense to adjust the pay cap for Department of Defense nonappropriated fund executives to ensure that the compensation paid to such employees remains consistent with the Senior Executive Service employees.

The Senate amendment contained a similar provision (sec. 1105).

The House recedes with a technical amendment.

The conferees intend that in order to qualify for higher pay, the nonappropriated fund executives would meet performance standards established in a rigorous performance management system as required for federal civil service employees under section 5382 of title 5, United States Code.

Science, mathematics and research for transformation (SMART) defense scholarship pilot program (sec. 1105)

The Senate amendment contained a provision (sec. 1101) that would establish a pilot program within the Department of Defense to provide targeted educational assistance to individuals seeking a baccalaureate or an advanced degree in science and engineering disciplines that are critical to national security. This provision would allow individuals to acquire such education in exchange for a period of employment with the Department in the areas specified.

The House bill contained no similar provision.

The House recedes.

Report on how to recruit and retain individuals with foreign language skills (sec. 1106)

The Senate amendment contained a provision (sec. 1108) that would require the Secretary of Defense to submit a plan to the congressional defense and intelligence committees with the fiscal year 2006 budget request for expanding and improving the national security foreign language workforce of the Department of Defense, on both a near-term and a long-term basis.

The House bill contained no similar provision.

The House recedes with a technical amendment that would require the Secretary to submit the required plan to the congressional defense and intelligence committees no later than March 31, 2005, and incorporate the findings of the Senate's provision into this statement of managers.

The conferees agree that strengthening the foreign language workforce of the Department is a critical step in winning the global war on terrorism and improving the national security of the United States. The conferees find that: (1) The Federal Government has a requirement to ensure that the employees of its departments and agencies with national security responsibilities are prepared to meet the challenges of the current and future international environment; (2) According to a 2002 General Accounting Office report, federal agencies have shortages in translators and interpreters and an overall shortfall in the language proficiency levels needed to carry our their missions, which has adversely affected agency operations and hindered U.S. military, law enforcement, intelligence, counterterrorism, and diplomatic efforts; (3) Foreign language skills and area expertise are integral to, or directly support, every foreign intelligence discipline and are essential factors in national security readiness, information superiority, and coalition peacekeeping or warfighting missions; (4) Communicating in languages other than English and understanding and accepting cultural and societal differences are vital to the success of peacetime and wartime military and intelligence activities; (5) Proficiency levels required for foreign language support to national security functions have been raised, and what was once considered proficiency is no longer the case; (6) According to the Joint Intelligence Committee Inquiry into the 9/11 Terrorist Attacks, the U.S. intelligence community had insufficient linguists prior to September 11, 2001, to handle the challenge it faced in translating the volumes of foreign language counterterrorism intelligence it collected, including a readiness level of only 30 percent in the most critical languages that are used by terrorists; and (7) Because of this shortage, the Federal Government has had to enter into private contracts to procure linguist and translator services, including some positions that would be more appropriately filled by permanent federal employees or members of the U.S. Armed Forces.

The conferees expect the Secretary to formulate a comprehensive, achievable plan for improving the foreign language workforce of the Department, both military and civilian, and to work closely with other agencies of the Federal Government to ensure that the foreign language requirements of the United States are met.

Plan on implementation and utilization of flexible personnel management authorities in Department of Defense laboratories (sec. 1107)

The Senate amendment contained a provision (sec. 1109) that would require the Under Secretary of Defense for Acquisition, Technology and Logistics and the Under Secretary of Defense for Personnel and Readiness to jointly develop and submit to the Committees on Armed Services in the Senate and the House of Representatives a plan for the effective utilization of specific personnel management authorities designed to increase the mission responsiveness, efficiency, and effectiveness of Department of Defense laboratories.

The House bill contained no similar provision.

The House recedes with an amendment that would change the reporting requirements associated with the plan.

The conferees note that Secretary of the Navy Gordon England's letter to the Committee on Government Reform of the House of Representatives, dated April 26, 2004, stated that the Department "will not impose Best Practices in those laboratories that are temporarily exempt" from the National Security Personnel System. The Secretary further stated that the Department's laboratories "should be able to continue individually to refine and evolve their 'successfully tailored systems' over the next several years if they determine that such adjustments are beneficial and not disruptive to their workforce."

LEGISLATIVE PROVISIONS NOT ADOPTED

Accumulation of annual leave by intelligence senior-level employees

The Senate amendment contained a provision (sec. 1104) that would permit intelligence senior-level employees of the Department of Defense to accumulate annual leave in a manner identical to the Department's Senior Executive Service.

The House bill contained no similar provision.

The Senate recedes.

Prohibition of unauthorized wearing or use of civilian medals or decorations

The House bill contained a provision (sec. 1105) that would prohibit any person from merchandising or wearing a Department of Defense civilian medal or decoration without the written permission of the Secretary of Defense. The provision would also authorize the Attorney General to initiate a civil proceeding in a U.S. district court to enjoin the prohibited practice.

The Senate amendment contained no similar provision.

The House recedes.

TITLE XII—MATTERS RELATING TO OTHER NATIONS

LEGISLATIVE PROVISIONS ADOPTED

Subtitle A—Matters Relating to Iraq, Afghanistan, and Global War on Terrorism

Commanders' Emergency Response Program (sec. 1201)

The House bill contained a provision (sec. 1203) that would authorize the Secretary of Defense to use, notwithstanding any other provision of law, up to $300.0 million in operations and maintenance funding for additional costs due to Operation Iraqi Freedom and Operation Enduring Freedom for the Commanders' Emergency Response Program (CERP), under which commanders in Iraq and Afghanistan receive funds for use in small humanitarian and reconstruction projects in their areas of responsibility. The provision would require quarterly reports on the source and use of funds pursuant to this program.

The Senate amendment contained a similar provision (sec. 311), but did not include the phrase "notwithstanding any other provision of law."

The Senate recedes with an amendment that would provide the Secretary authority to waive any provision of law that would prohibit, restrict, limit or otherwise constrain implementation of the CERP program in Iraq and Afghanistan. The provision would also require the Secretary to submit a report within 120 days to the Committees on Armed Services of the Senate and the House of Representatives identifying all provisions of law that, if not waived, would prohibit, restrict, limit or otherwise constrain implementation of the CERP program in Iraq and Afghanistan. In the event that the Secretary identifies additional such provisions of law after the report is submitted to the Committees on Armed Services of the Senate and the House of Representatives, the conferees expect the Secretary to send supplemental reports with the requested information to those committees.

Assistance to Iraq and Afghanistan military and security forces (sec. 1202)

The Senate amendment contained a provision (sec. 1053) that would authorize the Secretary of Defense, with the concurrence of the Secretary of State, to use up to $250.0 million in operations and maintenance funding to provide assistance in fiscal year 2005 to Iraq and Afghanistan military or security forces solely to enhance their ability to combat terrorism and support United States or coalition military operations in Iraq and Afghanistan, respectively.

The House bill contained no similar provision.

The House recedes with an amendment that would authorize the Secretary of Defense to use up to $500.0 million in operations and maintenance funding for additional costs due to Operation Iraqi Freedom and Operation Enduring Freedom to provide assistance in fiscal year 2005 to Iraq and Afghanistan military or security forces solely to enhance their ability to combat terrorism and support United States or coalition military operations in Iraq and Afghanistan, respectively. The provision defines "military and security forces" to mean national armies, national guard forces, border security forces, civil defense forces, infrastructure protection forces, and police.

The conferees note that the authority provided by this provision would not permit the provision of assistance to nongovernmental or irregular forces such as private militias. The conferees expect the prior notifications to the congressional defense committees to include detailed information regarding the proposed amounts of funds to be spent, recipients of the funds, and the specific purposes for which the funds would be used.

Redesignation and modification of authorities relating to Inspector General of the Coalition Provisional Authority (sec. 1203)

The Senate amendment contained a provision (sec. 1059B) that would amend the Emergency Supplemental Appropriations Act for Defense and Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108-106), to establish the Office of Special Inspector General for Iraq Reconstruction; to provide for the continuation in office of the individual presently serving as Inspector General of the Coalition Provisional Authority; to provide that the Inspector General shall be responsible to the Secretaries of State and Defense;

to provide for support of the Inspector General at appropriate locations of the Department of State in Iraq; to provide for reporting by the Inspector General to the Secretaries of State and Defense; to provide for jurisdiction of the Inspector General over sums appropriated to the Iraq Relief and Reconstruction Fund; to provide for coordination by the Inspector General with the Inspectors General of the Departments of State and Defense and the Agency for International Development; to allow personnel of the Inspector General to carry firearms and make arrests in the line of duty with the permission of the Attorney General; and to provide for the termination of the Office of the Special Inspector General.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Presidential report on strategy for the stabilization of Iraq (sec. 1204)

The House bill contained a provision (sec. 1204) that would require the Secretary of Defense to submit a strategic plan on how the United States will achieve the goal of establishing capable Iraqi security forces to provide for the long-term security of the Iraqi people.

The Senate amendment contained a similar provision (sec. 1029E) that would require the President to submit a report on the strategy of the United States and coalition partners to stabilize Iraq, including the training and deployment of Iraqi security forces, as well as the participation of other international police and military forces.

The House recedes with an amendment that would incorporate the House provision into the Senate provision and require a single Presidential report, followed by quarterly updates from the Secretary of Defense, in conjunction with the Secretary of State, during calendar year 2005. Each quarterly report shall address the following: the number of forces recruited, currently serving, and that have left (along with a breakdown of the reasons for leaving) by service over the period in question; progress in meeting training goals; progress in achieving other metrics as identified in the strategic plan; and a description and analysis of any training incidents and deployment successes and failures, with a discussion of how those incidents and successes will affect future efforts to achieve the goals of the strategic plan.

Guidance on contractors supporting deployed forces in Iraq (sec. 1205)

The House bill contained a provision (sec. 1205) that would require the Secretary of Defense to issue guidance and a report on contractors supporting deployed forces in Iraq.

The Senate amendment contained a similar provision (sec. 864). In addition, the Senate amendment contained a provision (sec. 865) that would require a report on contractor performance of security, intelligence, law enforcement, and criminal justice functions in Iraq.

The Senate recedes with an amendment that would provide additional detail on the guidance to be issued. The amendment would require that the Secretary's guidance address the issue of contractor performance of security, intelligence, law enforcement, and criminal justice functions. The conferees expect the guidance to address the full range of security, intelligence, law enforcement, and criminal justice functions that are being performed by contractors in support of current military operations or are anticipated to be performed by contractors in support of future military operations.

The amendment would also require that the guidance address: (1) investigating background and qualifications of contractor security personnel and organizations; and (2) ensuring proper training and compliance with rules of engagement by armed contractor security personnel. The conferees take no position as to whether such investigations and training should be conducted by Department of Defense personnel or by contractor personnel subject to Department oversight.

The conferees expect the Secretary to coordinate, as appropriate, with the heads of other departments and agencies of the Federal Government that would be affected by the implementation of the guidance.

In addition, the conferees expect the Secretary, in preparing the guidance required by this section, to address options for enhancing contractor security and reducing contractor security costs in current and future armed conflicts. The options considered should include: (1) temporary commissioning of contractor security personnel as Reserve component officers in order to subject such personnel to the military chain of command; (2) requiring contractor security personnel to obtain security clearances to facilitate the communication of critical threat information; (3) establishing a contract schedule for companies furnishing contractor security personnel to provide a more orderly process for the selection, training, and compensation of such personnel; (4) establishing a contract schedule for companies to provide more cost-effective insurance for contractor security personnel; and (5) providing for U.S. indemnification of contractors to reduce the costs of insuring contractor security personnel. The report required by subsection (c) should explain the rationale for the Secretary's decision to implement or not to implement these options.

Report on contractors supporting deployed forces and reconstruction efforts in Iraq (sec. 1206)

The Senate amendment contained a provision (sec. 1021) that would require a report on contractor security in Iraq.

The House bill contained no similar provision.

The House recedes with an amendment that would clarify the reporting requirements.

With regard to contractor casualties and fatalities, the report would include: (1) a plan for establishing and implementing a process for collecting data on casualties and fatalities; and (2) a requirement for data on casualties and fatalities that have occurred since the conclusion of major combat operations in Iraq. The conferees understand that the Department of Defense has not yet established a comprehensive system for collecting data on contractor casualties and fatalities and do not believe that the requirement to provide retrospective data should be, or needs to be, implemented in a manner that would become burdensome on the combatant command or on combat units, but should be done in a manner and to an extent that does not undermine military operations. The conferees believe that the Department should be able to collect this information accurately and comprehensively from the contractors themselves. The requirement to establish a plan for collecting contractor casualty and fatality data in the future should ensure that such data is collected routinely and uniformly.

With regard to the requirement to establish a plan for establishing and implementing a process for collecting data on contractors performing security functions in Iraq, the conferees understand that the categories of security functions performed by contractors are not mutually exclusive and expect the Department to indicate any overlap to the best of its ability.

United Nations Oil-for-Food Program (sec. 1207)

The Senate amendment contained a provision (sec. 1058) that would: (1) require the Inspector General of the Department of Defense to ensure, not later than June 30, 2004, the security of all documents relevant to the United Nations Oil-for-Food Program that are in the possession or control of the Coalition Provisional Authority; (2) require executive agencies to provide to the Senate committees of jurisdiction access to documents and information relevant to the Oil-for-Food Program; (3) call on the Secretary of State to urge the Secretary General of the United Nations to provide the United States copies of all audits and core documents related to the Oil-for-Food Program; and (4) require the Comptroller General to conduct a review of United States oversight of the Oil-for-Food Program.

The House bill contained no similar provision.

The House recedes with an amendment that would: (1) express the sense of Congress that the Secretary of State should seek to conclude a Memorandum of Understanding with the Iraq Interim Government to ensure that the United States will have access to all documents in the possession of the Iraq Interim Government related to the United Nations Oil-for-Food Program; (2) require executive agencies to provide to congressional committees of jurisdiction access to documents and information relevant to the Oil-for-Food Program; (3) call on the Secretary of State to urge the Secretary General of the United Nations to provide the United States copies of all audits and core documents related to the Oil-for-Food Program; and (4) require the Comptroller General to conduct a review of the Oil-for-Food Program, including the role of the United States.

The conferees note their understanding that the phrase "committee of jurisdiction" includes, but is not limited to, the Committees on Armed Services of the Senate and House of Representatives, and the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs of the Senate.

Support of military operations to combat terrorism (sec. 1208)

The House bill contained a provision (sec. 1202) that would authorize the Secretary of Defense to expend up to $25.0 million during fiscal years 2005 to 2007 to provide support to foreign forces, irregular forces, groups, or individuals engaged in supporting or facilitating ongoing military operations by the U.S. Special Operations Forces to combat terrorism. The provision would not, however, constitute authority to conduct a covert action. The Secretary would be required to submit a report on the support provided under this section within 30 days of the close of each fiscal year.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would require the Secretary to establish procedures for the exercise of such authority and to notify the congressional defense committees of these procedures prior to the exercise of authority contained in the provision. Additionally, the amendment would require the Secretary to notify the congressional defense committees expeditiously, and in any event, within 48 hours, of the use of such authority as part of an approved military operation, and would prohibit the Secretary from delegating this authority.

The conferees intend that nothing in this provision shall constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution (Public Law 93-148) or to supersede any requirement of the War Powers Resolution.

Report on al Qaeda activity in the Western Hemisphere (sec. 1209)

The conferees agree to include a provision that would direct the Secretary of Defense, in consultation with the Secretary of State to submit to the committees on Armed Services of the Senate and House of Representatives of Congress a report on the activities of al Qaeda and associated groups in Latin America and Caribbean, including (1) an assessment of the extent to which such groups have established a presence in the area; (2) a description of activities of such groups in the area, including fund-raising, money laundering, narcotrafficking, and association with criminal groups; (3) an assessment or the threat posed by such groups to the peace and stability of nations in the area and to United States interests; and (4) a description of the United States policies intended to deal with such a threat. The provision would require that an unclassified report, with a classified annex as necessary, be submitted no later that 180 days after the date of enactment of this Act. The conferees note their concern about potential al Qaeda activity in the Western Hemisphere, and the indirect and direct threat to United States national security that such activity represents.

Subtitle B—Counterproliferation Matters

Defense international counterproliferation programs (sec. 1211)

The House bill contained a provision (sec. 1411) that would authorize the Secretary of Defense to expand existing programs to train foreign border and law enforcement officials in preventing the illicit transfer of weapons of mass destruction in the states of the former Soviet Union, Eastern Europe, and the Baltic States, by granting the Secretary authority to conduct those programs in any other country in which the Secretary determines a significant threat exists.

The Senate amendment contained no similar provision.

The Senate recedes.

Policy and sense of Congress on nonproliferation of ballistic missiles (sec. 1212)

The Senate amendment contained a provision (sec. 1071) that would establish the policy of the United States to develop, support, and strengthen efforts to curtail the proliferation of ballistic missiles and related technology. The provision would also express the sense of Congress that ballistic missile proliferation represents a threat to the United States and its allies and friends which has been slowed by variety of means, and that steps to prevent such proliferation should be vigorously pursued.

The House bill contained no similar provision.

The House recedes with a clarifying amendment.

Sense of Congress on the Global Partnership against the Spread of Weapons of Mass Destruction (sec. 1213)

The Senate amendment contained a provision (sec. 1059) that would express the sense of Congress that the President should be commended for the steps taken at the G-8 summit at Sea Island, Georgia, on June 8-10, 2004, to demonstrate continued support for the Global Partnership against the Spread of Nuclear Weapons and Materials of Mass Destruction, and to expand the Global Partnership by welcoming new members and using the partnership to coordinate nonproliferation projects in Libya, Iraq, and other countries. The provision would also call on the President to take a number of specific steps to strengthen the partnership.

The House bill contained no similar provision.

The House recedes with a clarifying amendment.

Report on collaboration to reduce the risks of a launch of Russian nuclear weapons (sec. 1214)

The House bill contained a provision (sec. 1423) that makes certain findings and would require the Secretary of Defense to submit a report to Congress by November 1, 2005 on steps that might be taken to reduce the danger of unauthorized or accidental ballistic missile launches.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would require the Secretary to submit a report to Congress by November 1, 2005 on current and future collaborative efforts to reduce the risk of unauthorized or accidental launches of nuclear armed ballistic missiles.

The conferees recognize that a number of factors related to Russian Federation nuclear forces contribute to the risk of unauthorized or accidental launch of Russian ballistic missiles. These factors include: the high state of readiness of the Russian Federation intercontinental ballistic missile force; the remote location of many of these forces; shortcomings in the Russian Federation's early warning system; the short decision time available to the Russian Federation President after being informed of a possible nuclear attack; the possibility that the Russian Federation, because of concerns that its nuclear forces would not survive a nuclear attack, may have a nuclear deterrence posture that relies on launching a retaliatory strike on warning of nuclear attack; deficiencies in the security and control of Russian Federation nuclear forces; and the susceptibility of nuclear strategic command and control systems and early warning systems to an intrusion or accident that could create the false impression that a nuclear ballistic missile attack is underway. The conferees believe that collaborative measures between the United States and the Russian Federation and continued high-level discussions between U.S. and Russian Federation military leaders could be useful in reducing these risks.

Subtitle C—Other Matters

Authority for humanitarian assistance for the detection and clearance of landmines extended to include other explosive remnants of war (sec. 1221)

The Senate amendment contained a provision (sec. 1051) that would add a new section to chapter 20 of title 10, United States Code, to authorize the Secretary of Defense to provide military training, education, and technical assistance to foreign nations for the purpose of detecting and clearing landmines or other explosive remnants of war. The provision would clarify existing law by separating authority to conduct humanitarian mine clearing actions from the authority to conduct humanitarian and civic assistance, and recognize the requirement to detect and clear other explosive remnants of war, in addition to landmines.

The House bill contained no similar provision.

The House recedes with an amendment that would amend section 401 of title 10, United States Code, to include explosive remnants of war, but would not establish a new category for humanitarian activity.

Expansion of entities of the People's Republic of China subject to certain Presidential authorities when operating in the United States (sec. 1222)

The House bill contained a provision (sec. 1212) that would expand the definition of a "Communist Chinese military company" as defined in the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261) to include Chinese firms owned or operated by a ministry of the People's Republic of China or an entity affiliated with the defense industrial base of the People's Republic of China.

The Senate amendment contained no similar provision.

The Senate recedes with a clarifying amendment.

Assignment of NATO naval personnel to submarine safety programs (sec. 1223)

The House bill contained a provision (sec. 1211) that would authorize the Secretary of Defense to assign military personnel from NATO countries and specified other countries to U.S. commands for the purpose of working on the standardization, development, and interoperability of submarine safety and rescue systems and procedures.

The Senate amendment contained a similar provision (sec. 1054).

The Senate recedes with an amendment that would: (1) limit the authority of the Secretary of the Navy to the assignment of members of the naval services of NATO nations in connection with this program; and (2) terminate this authority after September 30, 2008.

Availability of Warsaw Initiative Funds for new NATO Members (sec. 1224)

The conferees agree to include a provision that would make available up to $4.0 million of Warsaw Initiative Funds in fiscal year 2005 for the participation of new North Atlantic Treaty Organization (NATO) Members (Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia) in the exercises and programs of the Partnership for Peace program. This authority would be available only in fiscal year 2005.

The conferees note that Warsaw Initiative Funds are authorized for the participation of Partnership for Peace nations in the exercises and programs of NATO's Partnership for Peace program.

In a letter to the Committees on Armed Services of the Senate and the House of Representatives, the Deputy Secretary of Defense requested that $4.0 million of these funds be available in fiscal year 2005 to new NATO members, specifically to work with remaining Partnership for Peace nations as they seek closer cooperation with NATO. The Deputy Secretary noted in his letter that in 1999, when Poland, Hungary, and the Czech Republic became NATO Members, a limited amount of Warsaw Initiative Funds continued into fiscal year 2000 for exercises and programs that had begun in fiscal year 1999, as well as for funding completion of program audits by local-hire administrative personnel in each of these countries.

The conferees expect that the use of Warsaw Initiative Funds in fiscal year 2005 for new NATO Members will similarly be used for the purposes of completing exercises and programs that began in fiscal year 2004 and, as necessary, completing program audits in those countries.

Bilateral exchanges and trade in defense articles and defense services between the United States and the United Kingdom and Australia (sec. 1225)

The Senate amendment contained a provision (sec. 1059A) that would provide an exception from the certain requirements of subsection (j) of section 38 of the Arms Export Control Act related to bilateral agreement requirements for the transfers of defense items for the Governments of Australia and the United Kingdom.

The House contained no similar provision.

The House recedes with an amendment that would require the Secretary of State, in consultation with the Secretary of Defense, to expeditiously process any application for the export of defense items to the Governments of Australia and the United Kingdom without referral to any other Federal department of agency, except where the item is classified or exceptional circumstances apply.

Study on Missile Defense Cooperation (sec. 1226)

The Senate amendment contained a provision (sec. 1070) that would require the Secretary of State and the Secretary of Defense to establish procedures for streamlining the export licensing review process for missile defense items and examine the feasibility of providing major project authorizations for programs related to missile defense similar to those established under section 126.14 of the International Traffic in Arms Regulations.

The House bill contained no similar provision.

The House recedes with an amendment that would require the Secretary of Defense, in consultation with the Secretary of State, to study the advisability and feasibility of establishing procedures for streamlining the export licensing review process for missile defense items and providing major project authorizations for programs related to missile defense.

LEGISLATIVE PROVISIONS NOT ADOPTED

Documentation of conditions in Iraq under former dictatorial government as part of transition to post-dictatorial government

The House bill contained a provision (sec. 1201) that would require the Secretary of Defense to establish a process for transferring to Iraqi entities documentation on the nature of the Saddam Hussein regime, including any documents or records that have been captured by U.S. military forces in Iraq regarding the activities of the Saddam Hussein government and individuals within that government.

The Senate amendment contained no similar provision.

The House recedes.

The conferees note that the Secretary has already transferred most of the noteworthy documentation and is sharing relevant information with the Iraqi government.

Sense of Congress regarding limitation on use of funds for the reconstruction of Iraq

The House bill contained a provision (sec. 1208) that would express the sense of Congress that no U.S. funds may be used for reconstruction activities in Iraq until the President certifies that the Government of Iraq has agreed to expend a significant portion of its oil production revenues on reconstruction activities.

The Senate amendment contained no similar provision.

The House recedes.

Sense of Congress on destruction of Abu Ghraib prison in Iraq

The House bill contained a provision (sec. 1209) that would express the sense of Congress that the Secretary of Defense should assist the Government of Iraq in destroying the Abu Ghraib prison and replacing it with a modern detention facility.

The Senate amendment contained no similar provision.

The House recedes.

The conferees note that Abu Ghraib prison was one of the world's most notorious prisons during the rule of Saddam Hussein, and that recent misconduct at that prison by members of the U.S. Armed Forces have further highlighted the horrible memories associated with Abu Ghraib. The conferees further note the progress made in improving conditions at Abu Ghraib prison in recent months, combined with the limited options available to the Government of Iraq for adequate detention facilities, suggest that continued operation of the prison may be a necessity in the near-term. The conferees believe that the fate of Abu Ghraib prison is a decision for the sovereign Government of Iraq.

Report on Global Peace Operations Initiative

The House bill contained a provision (sec. 1213) that would require the President to report to Congress on the Global Peace Operations Initiative (GPOI), a new program announced by the administration after the submission of the budget request.

The Senate amendment contained no similar provision.

The House recedes.

The conferees note that, traditionally, the training of foreign peacekeeping forces has been conducted by the Department of State under title 22 of the United States Code. The conferees further note that the administration has the necessary authority under title 22 to conduct GPOI as a foreign assistance program.

Procurement sanctions against certain foreign persons that transfer certain defense articles and services to the People's Republic of China

The House bill contained a provision (sec. 1214) that would make it the policy of the United States to prevent destabilizing arms transfers to the People's Republic of China by denying Department of Defense procurement contracts to foreign companies that sell to China items similar to those found on the U.S. Munitions List. The provision would also require the Secretary of Defense to publish a list of such companies in the Federal Register.

The Senate amendment contained no similar provision.

The House recedes.

Military educational exchanges between senior officers and officials of the United States and Taiwan

The House bill contained a provision (sec. 1215) that would require the Secretary of Defense to undertake a program of senior military officer and senior official exchanges with Taiwan designed to improve Taiwan's defenses against the People's Liberation Army of the People's Republic of China.

The Senate amendment contained no similar provision.

The House recedes.

Definitions under Arms Export Control Act

The House bill contained a provision (sec. 1401) that would amend the Arms Export Control Act (22 U.S.C. 2794) to clarify the definitions of "license," "agent," and "exporting agent."

The Senate amendment contained no similar provision.

The House recedes.

Exemption from licensing requirements for export of significant military equipment

The House bill contained a provision (sec. 1402) that would amend the Arms Export Control Act (22 U.S.C. 2778(b)(2)) to prohibit the President from creating regulatory exemptions for significant military equipment that would otherwise require an export license.

The Senate amendment contained no similar provision.

The House recedes.

Cooperative projects with friendly foreign countries

The House bill contained a provision (sec. 1403) that would amend the Arms Export Control Act (22 U.S.C. 2767) to: (1) permit the Congress to block a cooperative project agreement with a friendly foreign country; and (2) require a license for the export of defense articles or defense services relating to a cooperative project.

The Senate amendment contained no similar provision.

The House recedes.

Control of exports of United States weapons technology to the People's Republic of China

The House bill contained a provision (sec. 1404) that would require the President to require exporters of militarily critical technologies to obtain an export license for the export or re-export of any item on the Militarily Critical Technologies List published by the Department of Defense.

The Senate amendment contained no similar provision.

The House recedes.

Licensing requirement for export of militarily critical technologies

The House bill contained a provision (sec. 1405) that would prohibit the export of certain technologies to individuals or countries engaged in the sale of such items to the security services of the People's Republic of China unless certain conditions are met. Such conditions would require that: a license be approved for that export; the Secretary of Defense concurs in the export; and the foreign person or country agrees in writing not to transfer title, possession of, or otherwise provide access to that item without prior written consent by the President.

The Senate amendment contained no similar provision.

The House recedes.

Strengthening international export controls

The House bill contained a provision (sec. 1406) that would make it the policy of the United States to seek continued negotiations to strengthen the international export control system for sales of arms and militarily-sensitive goods and technologies to countries of concern. The provision would require a Presidential report on progress made in strengthening international controls 180 days after enactment of this Act and every six months thereafter.

The Senate amendment contained no similar provision.

The House recedes.

Defense counterproliferation fellowship program

The House bill contained a provision (sec. 1412) that would direct the Secretary of Defense to establish a fellowship program to train and educate foreign defense policy-makers and military officers in identifying and using counterproliferation tools to combat the spread of weapons of mass destruction.

The Senate amendment contained no similar provision.

The House recedes.

TITLE XIII—COOPERATIVE THREAT REDUCTION WITH STATES OF THE FORMER SOVIET UNION

LEGISLATIVE PROVISIONS ADOPTED

Specification of Cooperative Threat Reduction programs and funds (sec. 1301)

The House bill contained a provision (sec. 1301) that would define the programs and funds that are Cooperative Threat Reduction (CTR) programs and funds, define the funds as those authorized to be appropriated in section 301 of this Act, and specify that CTR funds shall remain available for obligation for three fiscal years.

The Senate amendment contained an identical provision (sec. 1201).

The conferees agree to include this provision.

Funding allocations (sec. 1302)

The House bill contained a provision (sec. 1302) that would authorize $409.2 million for the Cooperative Threat Reduction (CTR) program. The provision would also authorize specific amounts for each CTR program element, require notification to Congress 30 days before the Secretary of Defense obligates and expends fiscal year 2005 funds for purposes other than those specifically authorized, and provide limited authority to obligate amounts for a CTR program element in excess of the amount specifically authorized for that purpose.

The Senate amendment contained a similar provision (sec. 1202).

The House recedes.

Temporary authority to waive limitation on funding for chemical weapons destruction facility in Russia (sec. 1303)

The House bill contained a provision (sec. 1303) that would provide the President authority for fiscal year 2005 to waive existing certification requirements before obligating funds for the construction of the Shchuch'ye chemical weapons destruction facility in Russia.

The Senate amendment contained a provision (sec. 1203) that would provide the President permanent authority to waive, on an annual basis for each fiscal year, existing certification requirements before obligating funds for the construction of the Shchuch'ye chemical weapons destruction facility in Russia. The Senate amendment would also clarify that funds obligated, but not expended, prior to lapse of a previously executed waiver could be expended.

The Senate recedes with an amendment that would provide the President authority through December 31, 2006, to waive, on an annual basis for each calendar year, existing certification requirements before obligating or expending funds for the construction of the Shchuch'ye chemical weapons destruction facility in Russia. This authority would expire on December 31, 2006, and no waiver would remain in effect after that date.

The conferees agree that providing waiver authority on a calendar year basis, rather than on a fiscal year basis, will minimize the risk of unintended interruptions in the program that could occur when fiscal year waiver authority is not renewed before the end of a fiscal year.

Inclusion of descriptive summaries in annual Cooperative Threat Reduction reports and budget justification materials (sec. 1304).

The Senate amendment contained a provision (sec. 1204) that would clarify that the Secretary of Defense should provide the specified Cooperative Threat Reduction (CTR) budgetary and programmatic information both in the CTR annual report, and in the budget justification materials that the Department of Defense provides each year as part of the President's annual budget request to Congress.

The House bill contained no similar provision.

The House recedes.

TITLE XIV—SUNKEN MILITARY CRAFT

LEGISLATIVE PROVISIONS ADOPTED

Sunken military craft (sec. 1401–1408)

The House bill contained several provisions (sec. 1021–1028) that would protect sunken U.S. military vessels, aircraft, and spacecraft, as well as the remains and personal effects of their crews from salvage, recovery, or other disturbance without authorization from the secretary of the military department concerned.

These provisions would clarify the circumstances under which such sunken craft, entitled to sovereign immunity when they sank, remain the property of the flag state until officially abandoned. They would also encourage the negotiation of international agreements to protect sunken military craft.

Finally, the provisions would authorize the secretary of the military department concerned to issue and enforce permits for activities directed at sunken U.S. military craft, including contract salvage. This system would not invalidate any permitting system currently in place nor affect any prior lawful transfer or express abandonment of title to any sunken military craft.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would authorize the Secretary of the Navy, in consultation with the Secretary of State, to apply the permitting system established by these provisions to any foreign sunken military craft located in United States waters, if requested by the flag state of that craft. It would also authorize in rem liability against a vessel involved in a violation of these provisions, and would authorize the Secretary concerned to request the Attorney General to seek other relief in certain cases. It would establish an eight-year statute of limitations for actions to enforce violations of these provisions or any permit issued thereunder. It would also extend the prohibition on applying the law of finds to sunken military craft to foreign craft located in U.S. waters. Finally, it makes technical changes to the definitional section.

TITLE XV—AUTHORIZATION FOR INCREASED COSTS DUE TO OPERATION IRAQI FREEDOM AND OPERATION ENDURING FREEDOM

Overview

The House bill contained a title (title XV) that would provide new authorizations of appropriations of $25.0 billion for ongoing operations in Iraq and Afghanistan. The title also contains reporting requirements and general provisions.

The Senate amendment contained a provision (sec. 1006) that would authorize $25.0 billion for ongoing operations in Iraq and Afghanistan. The provision also contained reporting requirements.

The Senate recedes with an amendment that would create a title that provides new authorization of appropriations of $25.0 billion for ongoing operations in Iraq and Afghanistan. The title also contains reporting requirements and general provisions.

Summary table of authorizations

The following table summarizes authorizations included in the bill for ongoing operations in Iraq and Afghanistan for fiscal year 2005.

Title 15-Additional War-Related Appropriations

(Dollars in Thousands)

PROGRAM TITLE	Request[1]	House Authorized	Senate Authorized	Conference Agreement
PROCUREMENT				
Aircraft Procurement, Army		498,300		
Missile Procurement, Army		42,800		
Weapons and Tracked Combat Vehicles Procurement, Army		201,900		50,000
Ammunition Procurement, Army		78,750		110,000
Other Procurement, Army		1,567,410		755,000
National Guard and Reserve Equipment, Army		50,000		50,000
Subtotal, Procurement, Army		**2,439,160**		**965,000**
Ammunition Procurement, Marine Corps		38,402		30,000
Other Procurement, Marine Corps		98,190		150,000
Subtotal, Procurement, Navy and Marine Corps		**136,592**		**180,000**
Aircraft Procurement, Air Force		99,000		
Subtotal, Procurement, Air Force		**99,000**		
Procurement, Defense-wide		720,000		50,000
Subtotal, Procurement, Defense-wide		**720,000**		**50,000**
Total Procurement		**3,394,752**		**1,195,000**
OPERATIONS AND MAINTENANCE				
Operation and Maintenance, Army	[14,000,000]	9,607,113	14,500,000	13,550,000
Operation and Maintenance, Navy	[1,000,000]	256,500	1,000,000	367,000
Operation and Maintenance, Marine Corps	[2,000,000]	2,398,735	2,000,000	1,665,000

Title 15-Additional War-Related Appropriations

(Dollars in Thousands)

PROGRAM TITLE	Request[1]	House Authorized	Senate Authorized	Conference Agreement
Operation and Maintenance, Air Force	[1,000,000]	1,635,000	1,000,000	419,000
Operation and Maintenance, Defense-wide	[2,000,000]	2,327,900	2,000,000	404,000
Total Operations and Maintenance		**16,225,248**	**20,500,000**	**16,405,000**
OTHER PROGRAMS				
Defense Working Capital Funds (Fuel price increase) /a				1,478,000
Defense Health Program		75,000		780,000
Total Other Programs		**75,000**		**2,258,000**
MILITARY PERSONNEL				
Total Military Personnel		**5,305,000**	**2,000,000**	**1,250,000**
Iraq Freedom Fund	25,000,000		2,500,000	3,892,000
Classified Programs /a,c				[1,800,000]
Transfer Authority /a		[2,500,000]		[1,500,000]
Total	**25,000,000**	**25,000,000**	**25,000,000**	**25,000,000**

1/ President's Request amounts for O&M are notional allocations - the full $25 billion was requested as a contingent emergency reserve fund

a/ Values in brackets are non-additive

b/ Values in italics were originally in base SASC Authorization Bill

c/ Of the funds available in the Iraq Freedom Fund and only for classified activities

Title XV-Additional War-Related Appropriations

(Dollars in Thousands)

PROGRAM TITLE	Request[1]	House Authorized	Senate Authorized	Conference Agreement
PROCUREMENT				
Aircraft Procurement, Army				
Aviation combat loss replacement		498,300		
Total Aircraft Procurement, Army		**498,300**		
Missile Procurement, Army				
Javelin, modularity		42,800		
Total Missile Procurement, Army		**42,800**		
Weapons and Tracked Combat Vehicles Procurement, Army				
XM-8 assault weapon, modularity /b		25,900	*13,000*	10,000
XM-8 - additional LRIP after fielding to BCTs /a,b			*[13,000]*	
Rapid fielding initiative /b		166,600	*25,900*	40,000
Rapid fielding initiative (Additional M249 SAWs) /a,b			*[8,400]*	
Rapid fielding initiative (Additional SAW items) /a,b			*[7,800]*	
Rapid fielding initiative (mags, sights, wpn pks) /a,b			*[9,700]*	
Weapons and Tracked Vehicles Procurement, modularity		9,400		
Total WTCV , Army		**201,900**		**50,000**
Ammunition Procurement, Army				
Incremental wartime costs				31,250
Small arms ammunition, modularity		78,750		78,750
Total Ammunition Procurement, Army		**78,750**		**110,000**

Title XV-Additional War-Related Appropriations

(Dollars in Thousands)

PROGRAM TITLE	Request[1]	House Authorized	Senate Authorized	Conference Agreement
Other Procurement, Army				
Incremental wartime costs				18,000
Shadow TUAV, force protection		125,200		
M1114 Up-Armor HMMWV, force protection / Armored HMMWVs /b		704,700	*315,000*	572,000
Up-armored HMWWV production /a,b			*[315,000]*	
Vehicle bolt-on armor and emerging requirements /b		332,400	*610,000*	100,000
Up-armored HMMWVs or armor kits for trucks /a,b			*[610,000]*	
Rapid Fielding Initiative /b		130,800	*14,000*	65,000
Rapid fielding initiative (MBITR) /a,b			*[14,000]*	
Other Procurement, modularity		249,200		
Trucks combat loss replacement		25,110		
Total Other Procurement, Army		**1,567,410**		**755,000**
National Guard and Reserve Equipment, Army				
Equipment for deployment to OIF/OEF		50,000		50,000
Total for NGRE, Army		**50,000**		**50,000**
Total, Procurement, Army		**2,439,160**		**965,000**
Ammunition Procurement, Marine Corps				
Incremental wartime costs				
Unfunded requirements		38,402		30,000
Total Ammunition Procurement, Marine Corps		**38,402**		**30,000**

Title XV-Additional War-Related Appropriations

(Dollars in Thousands)

PROGRAM TITLE	Request[1]	House Authorized	Senate Authorized	Conference Agreement
Other Procurement, Marine Corps				
Shadow TUAV		46,680		
Silver Fox UAV		6,110		
Unfunded requirements		45,400		
Bolt-on Armor Kits / Vehicle hardening				150,000
Total Other Procurement, Marine Corps		**98,190**		**150,000**
Total, Procurement, Navy and Marine Corps		**136,592**		**180,000**
Aircraft Procurement, Air Force				
Predator A, force protection		99,000		
Total Aircraft Procurement, Air Force		**99,000**		
Total, Procurement, Air Force		**99,000**		
Procurement, Defense-wide				
SOCOM unfunded requirements		60,000		50,000
Other programs		660,000		
Total Procurement, Defense-wide		**720,000**		**50,000**
Total Procurement		**3,394,752**		**1,195,000**

Title XV-Additional War-Related Appropriations

(Dollars in Thousands)

PROGRAM TITLE	Request[1]	House Authorized	Senate Authorized	Conference Agreement
OPERATIONS AND MAINTENANCE				
Operation and Maintenance, Army				
Incremental wartime costs		8,505,763	14,500,000	12,088,750
Costs associated with active end strength increase		260,000		390,000
Depot maintenance		205,250		205,250
Rapid fielding initiative /b		219,700	*262,000*	500,000
Rapid fielding initiative for the Army /a,b			*[262,000]*	
Interceptor body armor /b		295,000	*295,000*	295,000
Interceptor body armor for the Army /a,b			*[295,000]*	
Interceptor body armor deltoid & auxiliary protection		90,000		39,600
Modularity (OPTEMPO)		31,400		31,400
Total Operations and Maintenance, Army /a	[14,000,000]	9,607,113	**14,500,000**	**13,550,000**
Operation and Maintenance, Navy				
Incremental wartime costs		180,500	1,000,000	242,300
Depot maintenance		76,000		66,000
Ship depot maintenance /b			*58,700*	58,700
CVN 73, SSN708, SSN 709 /a,b			*[58,700]*	
Total Operations and Maintenance, Navy /a	[1,000,000]	**256,500**	**1,000,000**	**367,000**
Operation and Maintenance, Marine Corps				
Incremental wartime costs		2,301,860	2,000,000	1,529,000
Marine Corps active end strength increase (3,000 personnel)		30,000		15,000
Depot maintenance		26,875		26,875
Initial issue		40,000		40,000

Title XV-Additional War-Related Appropriations

(Dollars in Thousands)

PROGRAM TITLE	Request[1]	House Authorized	Senate Authorized	Conference Agreement
Interceptor body armor /b			*16,600*	54,125
Interceptor body armor for the Marine Corps /a,b			*[14,400]*	
Interceptor body armor for the Marine Corps Reserve /a,b			*[2,200]*	
Total Operations and Maintenance, Marine Corps /a	[2,000,000]	2,398,735	2,000,000	1,665,000
Operation and Maintenance, Air Force				
Incremental wartime costs		1,515,000	1,000,000	275,000
Depot maintenance		76,000		
Interceptor body armor		44,000		144,000
Total Operations and Maintenance, Air Force /a	[1,000,000]	1,635,000	1,000,000	419,000
Operation and Maintenance, Defense-wide				
Incremental wartime costs		663,900	2,000,000	335,000
Army active end strength increase		44,000		66,000
Marine Corps active end strength increase (3,000 personnel)		5,000		3,000
Technical Support Working Group		75,000		
Other Programs		1,540,000		
Total Operations and Maintenance, Defense-wide /a	[2,000,000]	2,327,900	2,000,000	404,000
Total Operations and Maintenance		16,225,248	20,500,000	16,405,000
OTHER PROGRAMS				
Defense Working Capital Funds (Fuel price increase) /a				1,478,000

Title XV-Additional War-Related Appropriations

(Dollars in Thousands)

PROGRAM TITLE	Request[1]	House Authorized	Senate Authorized	Conference Agreement
Defense Health Program				
Army active end strength increase		59,000		89,000
Marine Corps active end strength increase (3,000 personnel)		16,000		8,000
Increased Medical Costs for TRICARE including Ready Reserve				683,000
Total Defense Health Program		**75,000**		**780,000**
Total Other Programs		**75,000**		**2,258,000**
MILITARY PERSONNEL				
Incremental wartime costs		4,400,000	2,000,000	182,500
Army active end strength increase		605,000		908,000
Marine Corps active end strength increase (3,000 personnel)		159,000		80,000
Marine Corps additional manpower costs				
Extension of imminent danger pay		86,000		24,500
Extension of family separation allowance		55,000		55,000
Total Military Personnel		**5,305,000**	**2,000,000**	**1,250,000**
Iraq Freedom Fund	25,000,000		2,500,000	3,892,000
Classified Programs /a,c				[1,800,000]
Transfer Authority /a		[2,500,000]		[1,500,000]
Total	**25,000,000**	**25,000,000**	**25,000,000**	**25,000,000**

1/ President's Request amounts for O&M are notional allocations - the full $25 billion was requested as a contingent emergency reserve fund

a/ Values in brackets are non-additive

b/ Values in italics were originally in base SASC Authorization Bill

c/ Of the funds available in the Iraq Freedom Fund and only for classified activities

LEGISLATIVE PROVISIONS ADOPTED

Purpose (sec. 1501)

The House bill contained a provision (sec. 1501) that would establish a title as an authorization of appropriations for the Department of Defense for fiscal year 2005, in addition to amounts otherwise authorized in this Act, to provide funds for additional costs due to Operation Iraqi Freedom and Operation Enduring Freedom.

The Senate amendment contained a similar provision (sec. 1006) that would authorize a contingent emergency reserve fund for ongoing operations in Iraq and Afghanistan.

The Senate recedes with an amendment that would establish this title to provide additional funds for ongoing operations in Iraq and Afghanistan.

Army Procurement (sec. 1502)

The House bill contained a provision (sec. 1511) that would authorize an additional $2,439.2 million for fiscal year 2005 in Procurement, Army.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would authorize $965.0 million for fiscal year 2005 in Procurement, Army. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Navy and Marine Corps Procurement (sec. 1503)

The House bill contained a provision (sec. 1512) that would authorize an additional $136.6 million for fiscal year 2005 in Procurement, Navy and Marine Corps.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would authorize $180.0 million for fiscal year 2005 in Procurement, Navy and Marine Corps. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Defense-wide activities procurement (sec. 1504)

The House bill contained a provision (sec. 1514) that would authorize an additional $720.0 million for fiscal year 2005 in Procurement, Defense-wide.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would authorize $50.0 million for fiscal year 2005 in Procurement, Defense-wide. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Operation and maintenance (sec. 1505)

The House bill contained a provision (sec. 1515) that would authorize an additional $16,225.2 million for fiscal year 2005 operation and maintenance programs.

The Senate amendment contained a similar provision (sec. 1006) that would authorize an additional $20,500.0 million for operation and maintenance programs within a contingent emergency response fund.

The Senate recedes with an amendment that would authorize $16,405.0 million for fiscal year 2005 for operation and maintenance programs. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Defense working capital funds (sec. 1506)

The Senate amendment contained a provision (sec. 1006) that would authorize $2,500.0 million within a contingent emergency response fund transfer account to be available for the costs of ongoing military operations in Iraq and Afghanistan.

The House bill contained no similar provision.

The House recedes with an amendment that would authorize $1,478.0 million for the Defense Working Capital Fund Program.

Iraq Freedom Fund (sec. 1507)

The Senate amendment contained a provision (sec. 1006) that would authorize $2,500.0 million within a contingent emergency response fund transfer account to be available for the costs of ongoing military operations in Iraq and Afghanistan.

The House bill contained no similar provision.

The House recedes with an amendment that would authorize a $3,892.0 million for the Iraq Freedom Fund to remain available for transfer until September 30, 2006, of which $1,800.0 million shall be available for classified programs.

Defense health program (sec. 1508)

The House bill contained a provision (sec. 1516) that would authorize an additional $75.0 million for fiscal year 2005 Defense Health Program activities.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would authorize $780.0 million for fiscal year 2005 for Defense Health Program activities. Unless noted explicitly in the statement of managers, all changes are made without prejudice.

Military personnel (sec. 1509)

The House bill contained a provision (sec. 1517) that would authorize an additional $5,305.0 million for fiscal year 2005 military personnel accounts.

The Senate amendment contained a similar provision (sec. 1006) that would authorize an additional $2,000.0 million for fiscal year 2005 military personnel accounts within a contingent emergency response fund.

The Senate recedes with an amendment that would authorize $1,250.0 million for fiscal year 2005 military personnel accounts. Unless noted explicitly in statement of managers, all changes are made without prejudice.

Treatment as additional authorizations (sec. 1510)

The House bill contained a provision (sec. 1518) that would provide that the $25.0 billion authorized for emergency contingency operations related to Operation Iraqi Freedom and Operation Enduring Freedom are in addition to the amounts otherwise authorized in this Act.

The Senate amendment contained a similar provision (sec. 1006).

The Senate recedes.

Transfer authority (sec. 1511)

The House bill contained a provision (sec. 1519) that would provide fiscal year 2005 transfer authority of $2.5 billion to the Department of Defense for the authorizations contained in title XV of their bill.

The Senate amendment contained a similar provision (sec. 1006).

The Senate recedes with an amendment that would provide fiscal year 2005 transfer authority of $1.5 billion to the Department for the authorizations contained in this title.

LEGISLATIVE PROVISIONS NOT ADOPTED

Procurement, Air Force

The House bill contained a provision (sec. 1513) that would authorize an additional $99.0 million for fiscal year 2005 in Procurement, Air Force.

The Senate amendment contained no similar provision.

The House recedes.

Designation of Emergency Authorization

The House bill contained a provision (sec. 1520) that would authorize $25.0 billion for fiscal year 2005 to support emergency contingency operations related to the global war on terrorism.

The Senate amendment contained no similar provision.

The House recedes.

Three-year increase in active Army strength levels

The House bill contained provisions (sec. 1531 and 1532) that would increase the active Army and Marine Corps end strength authorized for fiscal year 2005 by 10,000 and 3,000 respectively above the authorization in section 401 of the National Defense Authorization Act for Fiscal Year 2004. These provisions would also authorize corresponding active-duty Army and Marine Corps end strengths for fiscal years 2006 and 2007 and prescribe corresponding minimum end strengths under section 691(b) of title 10, United States Code.

The Senate amendment contained a provision (sec. 402) that would authorize a temporary increase in the Army's active-duty end strength of up to 30,000 during fiscal years 2005 through 2009. The provision would require that if the Secretary of Defense plans to increase the Army active-duty end strength above the levels authorized for fiscal year 2004, then the budget for the Department for such fiscal years as submitted to Congress shall specify the amounts necessary for funding the active duty end strength of the Army in excess of 482,400.

The House recedes with an amendment that would authorize a temporary increase in the Marine Corps' active-duty end strength of up to 9,000 over 175,000, the level set forth in section 401 of the National Defense Authorization Act for Fiscal Year 2004 during fiscal years 2005 through 2009. The amendment would also require that if the Secretary of Defense plans to increase the Army or Marine Corps active-duty end strength for a fiscal year, then the budget for the Department for such fiscal years as submitted to Congress shall specify the amounts necessary for funding the active duty end strength of the Army or Marine Corps in excess of 482,400 and 175,000 respectively.

DIVISION B MILITARY CONSTRUCTION AUTHORIZATIONS

Overview

The administration originally requested authorization of appropriations in fiscal year 2005 for military construction and housing programs totaling $9,450,475,000. The administration's amended budget for authorization of appropriations totaled $9,480,475,000, after adding certain military construction projects for the Army National Guard totaling $30.0 million.

The House bill would authorize appropriations totaling $9,930.5 million for military construction and family housing programs.

The Senate amendment would authorize appropriations totaling $9.822.9 million for military construction and family housing programs.

The conferees recommend authorization of appropriations of $9,930.1 million for the military construction and family housing accounts of the Department of Defense for fiscal year 2005. The authorization of appropriations includes the use of $130.0 million from prior-year rescissions. The conference agreement is consistent with a budget authority level of $10,003.0 million for military construction and family housing programs.

The following tables provide the project-level authorizations for the military construction funding authorized in Division B of this Act and summarize that funding by account. The tables also note as "Budget

Amend" the projects contained in a fiscal year 2005 amended budget request submitted by the administration on March 5, 2004.

NATIONAL DEFENSE AUTHORIZATIONS FOR FISCAL YEAR 2005
(Dollars in Thousands)

Military Construction	Authorization Request	House Authorized	Senate Authorized	Conference Change	Conference Agreement
Military Construction, Army	1,771,285	1,866,209	1,942,885	197,700	1,968,985
Military Construction, Navy	1,060,455	1,077,862	1,000,105	(4,170)	1,056,285
Military Construction, Air Force	663,964	798,624	782,469	189,911	853,875
Military Construction, Defense-Wide	699,437	708,937	682,337	(23,900)	675,537
Chemical Demilitarization Construction	81,886	81,886	81,886	0	81,886
NATO Security Investment Program	165,800	165,800	165,800	(5,000)	160,800
Foreign Currency Fluctuation				(63,000)	(63,000)
BRAC IV	246,116	246,116	246,116	0	246,116
Military Construction, Army National Guard	295,657	393,225	361,072	138,706	434,363
Military Construction, Air National Guard	127,368	184,620	214,418	106,150	233,518
Military Construction, Army Reserve	87,070	116,955	63,047	3,240	90,310
Military Construction, Naval and Marine Corps Reserve	25,285	30,955	25,285	22,900	48,185
Military Construction, Air Force Reserve	84,556	107,520	99,206	38,200	122,756
Total Military Construction	**5,308,879**	**5,778,709**	**5,664,626**	**600,737**	**5,909,616**
Family Housing					
Family Housing Construction, Army	636,099	636,099	636,099	0	636,099
Family Housing Support, Army	928,907	926,507	928,907	(2,400)	926,507
Family Housing Construction, Navy	139,107	139,107	139,107	0	139,107
Family Housing Support, Navy	704,504	696,304	704,504	(8,200)	696,304
Family Housing Construction, Air Force	846,959	846,959	846,959	0	846,959
Family Housing Support, Air Force	863,896	854,666	856,114	(10,512)	853,384
Family Housing Construction, Defense-Wide	49	49	49	0	49
Family Housing Support, Defense-Wide	49,575	49,575	49,575	0	49,575
Family Housing Improvement Fund	2,500	2,500	2,500	0	2,500
Total Family Housing	**4,171,596**	**4,151,766**	**4,163,814**	**(21,112)**	**4,150,484**
Total Military Construction and Family Housing	**9,480,475**	**9,930,475**	**9,828,440**	**579,625**	**10,060,100**
Prior Year Rescissions				**(130,000)**	**(130,000)**
Total Authorization of Appropriations	**9,480,475**	**9,930,475**	**9,828,440**	**449,625**	**9,930,100**

Military Construction Authorizations for FY2005
(Dollars in Thousands)

Location	Service/Agency/ Program	Installation	Project Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Alabama	Army	Anniston AD	Powertrain Component Rebuilding Facility	23,690	23,690	23,690		23,690
Alabama	Army	Ft Rucker	Aircraft Maintenance Hangar		-	16,500	16,000	16,000
Alabama	MDA	Huntsville	MDA Center, Von Braun Complex, Phase 2	19,560	19,560	19,560		19,560
Alabama	Army National Guard	Centreville	Add/Alter Readiness Center (ADRS)	5,537	5,537	5,537		5,537
Alabama	Army National Guard	Clanton	Add/Alter Readiness Center (ADRS)	3,649	3,649	3,649		3,649
Alabama	Army National Guard	Oneonta	Add/Alter Readiness Center (ADRS)	4,527	4,527	4,527		4,527
Alabama	Army National Guard	Haleyville	Joint Armed Forces Reserve Center		13,849	-	13,849	13,849
Alaska	Army	Ft Richardson	Barracks Complex	7,600	7,600	7,600		7,600
Alaska	Army	Ft Richardson	Digital Multipurpose Training Range	13,600	13,600	13,600		13,600
Alaska	Army	Ft Richardson	Sniper Field Fire Range	3,100	3,100	3,100		3,100
Alaska	Army	Ft Wainwright	Barracks Complex - Lorraine Road	39,815	39,815	39,815		39,815
Alaska	Army	Ft Wainwright	Barracks Complex Renewal-Santiago Road	30,912	30,912	30,912		30,912
Alaska	Army	Ft Wainwright	Combined Arms Collective Training Facility	21,732	21,732	21,732		21,732
Alaska	Air Force	Elmendorf AFB	C-17 Flight Simulator Facility	7,700	7,700	7,700		7,700
Alaska	Air Force	Elmendorf AFB	C-17 Support Utilities	6,400	6,400	6,400		6,400
Alaska	Air Force	Elmendorf AFB	Fitness Center	11,957	11,957	11,957		11,957
Alaska	Air Force	Elmendorf AFB	Large Aircraft Maintenance Hangar	-	-	28,000	26,000	26,000
Alaska	TMA	Ft Wainwright	Hospital Replacement, Phase 6	-	-	-		-
Arizona	Army	Ft Huachuca	Army Global Information Center		-	18,000	18,000	18,000
Arizona	Navy	MCAS Yuma	Bachelor Enlisted Quarters	18,740	18,740	18,740		18,740
Arizona	Navy	MCAS Yuma	Station Ordnance Area	7,930	7,930	7,930		7,930
Arizona	Air Force	Davis-Monthan AFB	Airfield Obstruction-Hazardous Cargo Pad	4,243	4,243	4,243		4,243
Arizona	Air Force	Davis-Monthan AFB	CSAR C-130 Squadron Operations	5,786	5,786	5,786		5,786
Arizona	Air Force	Davis-Monthan AFB	EC-130 Squadron Operations Facility	-	7,000	-	7,000	7,000
Arizona	Air Force	Luke AFB	Replace Litchfield Rd Underpass & Entry		7,900	-	7,900	7,900
Arizona	Air Force	Luke AFB	Construct Dormitory (120 Rm)	10,000	10,000	10,000		10,000
Arizona	Army National Guard	Camp Navajo	Qualification Training Range	3,000	3,000	3,000		3,000
Arkansas	Air Force	Little Rock AFB	C-130J ADAL Simulator Facility	5,031	5,031	5,031		5,031
Arkansas	Air Force	Little Rock AFB	Child Development Center		3,900	-	3,900	3,900
Arkansas	Army National Guard	Camp Robinson	Army Aviation Support Facility	33,020	33,020	33,020		33,020
Arkansas	Army National Guard	Ft Chaffee	Ammunition Supply Point	13,798	13,798	13,798		13,798
Arkansas	Air National Guard	Ft Smith	Vehicle Maintenance & Aerospace Complex		-	6,000	6,000	6,000
California	Army	Ft Irwin	CIDC Field Operations Building	2,600	2,600	2,600		2,600
California	Army	Ft Irwin	Command and Control Facility	21,000	21,000	21,000		21,000

Military Construction Authorizations for FY2005
(Dollars in Thousands)

Location	Service/Agency/ Program	Installation	Project Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
California	Army	Ft Irwin	Land Acquisition, Phase 2	14,500	14,500	14,500		14,500
California	Army	Sierra Army Depot	Extend Runway		-	13,600	12,600	12,600
California	Navy	MAGTFTC Twentynine Palms	Operational Training Center		15,700	-	15,700	15,700
California	Navy	MCB Camp Pendleton	Bachelor Enlisted Quarters,	19,975	19,975	19,975		19,975
California	Navy	MCB Camp Pendleton	Close Combat Battle Course	6,940	6,940	6,940		6,940
California	Navy	MCAS Camp Pendleton	Consolidated Operations Center	4,910	4,910	4,910		4,910
California	Navy	MCB Camp Pendleton	Tertiary Sewage Treatment Plant, Increment 2	25,690	25,690	25,690		25,690
California	Navy	MCAS Camp Pendleton	Weight Handling Shop	6,630	6,630	6,630		6,630
California	Navy	MLB Barstow	Blasting Facility		4,930	-	4,930	4,930
California	Navy	NAF El Centro	Hangar Recapitalization, West Apron, Incr 1	33,331	33,331	33,331		33,331
California	Navy	NAS North Island	Base Main Gate and Entrance Street		10,180	-	10,180	10,180
California	Navy	NSWC Division Corona	Warfare Assessment Laboratory Addition		9,850	-	9,850	9,850
California	Navy	Recruit Depot, San Diego	Replace General Warehouse		-	8,110	8,110	8,110
California	Air Force	Beale AFB	Add to Age Facility, Global Hawk	1,866	1,866	1,866		1,866
California	Air Force	Beale AFB	Upgrade Dock 2, Global Hawk	8,320	8,320	8,320		8,320
California	Air Force	Edwards AFB	Addition/Renovate JSF Complex, Phase 2	9,965	9,965	9,965		9,965
California	Air Force	Travis AFB	Add C-17 Engine Storage Facility	2,400	2,400	2,400		2,400
California	Air Force	Travis AFB	C-17 Utilities/Road	12,844	12,844	12,844		12,844
California	Air Force	Travis AFB	Security Forces Armory/Combat Arms Campus		3,650	-	3,650	3,650
California	DLA	Travis AFB	Replace Hydrant Fuel System	15,100	15,100	15,100		15,100
California	Spec Ops	Corona	SOF MOUT Training Complex	13,600	13,600	13,600		13,600
California	Spec Ops	Niland****	SOF Ground Mobility Support Building	1,000	1,000	1,000		1,000
California	TMA	DLI (Presidio)	Dental Clinic		6,700	-	6,700	6,700
California	Army National Guard	Camp Parks	Readiness Center (ADRS)	11,318	11,318	11,318		11,318
California	Air National Guard	Fresno-Yosemite	Medical Training & Security Forces Complex		-	4,700		-
California	Air Force Reserve	March ARB	Alter C-17 Hangar Tower	2,089	2,089	2,089		2,089
California	Air Force Reserve	March ARB	C-17 Maintenance Hangar, Phase 2	7,400	7,400	7,400		7,400
Colorado	Army	Ft Carson	Arrival Departure Air Control Group - Ph 1a		12,400	12,400	12,400	12,400
Colorado	Army	Ft Carson	Barracks Complex - Hospital Area	14,108	14,108	14,108		14,108
Colorado	Army	Ft Carson	Digital Multipurpose Training Range	33,000	33,000	33,000		33,000
Colorado	Army	Ft Carson	Multipurpose Machine Gun Range		-	3,650		-
Colorado	Air Force	Buckley AFB	Chapel Center	6,147	6,147	6,147		6,147
Colorado	Air Force	Buckley AFB	Child Development Center	6,100	6,100	6,100		6,100
Colorado	Army National Guard	Denver	Army Aviation Support Facility	34,000	34,000	34,000		34,000

Military Construction Authorizations for FY2005
(Dollars in Thousands)

Location	Service/Agency/ Program	Installation	Project Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Colorado	Army National Guard	Ft Carson	Automated Qualification/Training Range	3,205	3,205	3,205		3,205
Colorado	Army Reserve	Aurora	Add/Alter Military Equipment Parking	1,758	1,758	1,758		1,758
Colorado	Chem DeMil	Pueblo AD	Ammunitions Demilitarization Facility, Ph 5	44,792	44,792	44,792		44,792
Colorado	TMA	Buckley AFB	Add/Alter Aeromedical Clinic	2,100	2,100	2,100		2,100
Connecticut	Navy	NSB New London	Gates 3 and 5 Security Improvements		4,420	4,420	4,420	4,420
Connecticut	Navy	NSB New London	MK-10 Submarine Escape Trainer	17,100	17,100	17,100		17,100
Connecticut	Navy	NSB New London	Pier 6 Replacement	28,782	28,782	28,762		28,782
Connecticut	Army National Guard	Southington	Add/Alter Readiness Center		4,087	-	4,087	4,087
Delaware	Air Force	Dover AFB	Control Tower		-	9,500	9,500	9,500
Distr Columbia	Navy	Naval Observatory	Atomic Clock Vault	3,239	3,239	3,239		3,239
Distr Columbia	DIA	Bolling AFB	Upgrade HVAC to DIAC	6,000	6,000	6,000		6,000
Florida	Army	Camp Rudder	Revitalize Ranger Barracks 6012		-	-	1,850	1,850
Florida	Navy	Eglin AFB	Base Road Construction	2,060	2,060	2,060		2,060
Florida	Navy	NS Mayport	Airfield Control Tower	6,200	6,200	6,200		6,200
Florida	Air Force	Patrick AFB	Security Forces Operations Facility		-	8,800	8,800	8,800
Florida	Air Force	Tyndall AFB	1 AF Headquarters / AFFOR Center Ph 1		10,200	-	10,200	10,200
Florida	Air Force	Tyndall AFB	Addition F-22 Operations Facility	1,548	1,548	-	(1,548)	
Florida	Spec Ops	Tyndall AFB	F-22 Squadron Ops/Aircraft Maint Unit/Hangar	17,414	17,414	-	(10,000)	7,414
Florida	TMA	Hurlburt Field	SOF Operations Training Facility		2,500	-	2,500	2,500
Florida	Army National Guard	Jacksonville	Add/Alter Hospital	28,438	28,438	28,436		28,438
Florida	Air National Guard	Camp Blanding	Regional Training Institute, Phase 1		12,000	-	12,000	12,000
Florida	Navy Reserve	Jacksonville Int Airport	F-15 Corrosion Control Facility		4,000	-	4,000	4,000
Florida	Air Force Reserve	Jacksonville	New Reserve Training Center	9,300	9,300	9,300		9,300
Georgia	Army	Homestead ARB	Visitor's Quarters, Ph 1		6,570	-		-
Georgia	Army	Ft Benning	Barracks Complex - Kelly Hill/Main Post	49,565	49,565	49,565		49,565
Georgia	Army	Ft Benning	Hazardous Cargo Loading Apron	3,850	3,850	3,850		3,850
Georgia	Army	Ft Benning	Physical Fitness Training Center	18,362	18,362	18,362		18,362
Georgia	Army	Ft Benning	Revitalize Ranger Barracks 6012***		1,850	-		-
Georgia	Army	Ft Gillem	Recruiting Brigade Operations Building	5,800	5,800	5,800		5,800
Georgia	Army	Ft McPherson	Child Development Center	4,900	4,900	4,900		4,900
Georgia	Army	Ft Stewart/Hunter AAF	Aircraft Maintenance Hanger (SOF)	21,100	21,100	21,100		21,100
Georgia	Army	Ft Stewart/Hunter AAF	Barracks Complex-5th & 16th St, Phase 2	32,950	32,950	32,950		32,950
Georgia	Army	Ft Stewart/Hunter AAF	Chapel	9,500	9,500	9,500		9,500
Georgia	Army	Ft Stewart/Hunter AAF	Command and Control Facility	24,695	24,695	24,695		24,695

Military Construction Authorizations for FY2005
(Dollars in Thousands)

Location	Service/Agency/ Program	Installation	Project Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Georgia	Army	Ft Stewart/Hunter AAF	Tactical Equipment Complex	10,200	10,200	10,200		10,200
Georgia	Navy	SWFLANT Kings Bay	Enclave Fencing and Parking	16,000	16,000	16,000		16,000
Georgia	Air Force	Moody AFB	Consolidated Base Support Center		9,600	9,600	9,600	9,600
Georgia	Air Force	Robins AFB	Aircraft Ramp	15,000	15,000	15,000		15,000
Georgia	Air Force	Robins AFB	Fire/Crash Rescue Station		6,570	-	6,900	6,900
Georgia	Spec Ops	Ft Stewart/Hunter AAF	SOF Battalion Operations Complex	17,600	17,600	17,600		17,600
Georgia	TMA	Ft Benning	Consolidated Health Clinic	7,100	7,100	7,100		7,100
Georgia	Army National Guard	Savannah	Army Aviation Support Facility	16,554	16,554	16,554		16,554
Georgia	Air Force Reserve	Dobbins ARB	Upgrade Maintenance Bays		10,000	-	10,000	10,000
Hawaii	Army	Helemano Mil. Res	Drum Road Upgrade, Phase 1	27,000	27,000	27,000		27,000
Hawaii	Army	Helemano Mil Res	Tank Trails - Helemano	7,300	7,300	7,300		7,300
Hawaii	Army	Hickam AFB	Hot Cargo Pad Expansion	11,200	11,200	11,200		11,200
Hawaii	Army	Pohakuloa	West PTA Modifications	30,000	30,000	30,000		30,000
Hawaii	Army	Pohakuloa	Access Road (Saddle Road)		-	10,000	8,000	8,000
Hawaii	Army	Schofield Barracks	Barracks Complex Renewal - Quad E, Ph 2	36,000	36,000	36,000		36,000
Hawaii	Army	Schofield Barracks	Barracks Complex Renewal-Capron Ave, Ph 3	48,000	48,000	48,000		48,000
Hawaii	Army	Schofield Barracks	Battle Area Live Fire Complex	32,000	32,000	32,000		32,000
Hawaii	Army	Schofield Barracks	Combined Arms Collective Training Facility	32,542	32,542	32,542		32,542
Hawaii	Army	Schofield Barracks	Fire Station	4,800	4,800	4,800		4,800
Hawaii	Army	Schofield Barracks	Qualification Training Range	4,850	4,950	4,950		4,950
Hawaii	Army	Schofield Barracks	Tactical Vehicle Wash Facility	3,500	3,500	3,500		3,500
Hawaii	Army	Schofield Barracks	Vehicle Maintenance Facility, Phase 1	49,000	49,000	49,000		49,000
Hawaii	Army	Wheeler AAF	Deployment Facility	24,000	24,000	24,000		24,000
Hawaii	Navy	NAVSHIPYD Pearl Harbor	Drydock 4 Shorepower Improvements		5,100	-	5,100	5,100
Hawaii	Air Force	Hickam AFB	Alter C-17 Maintenance/Supply Areas	9,000	9,000	9,000		9,000
Hawaii	Air Force	Hickam AFB	C-17 Clear Water Rinse	4,300	4,300	4,300		4,300
Hawaii	Air Force	Hickam AFB	C-17 Maintenance Shop Facility	8,200	8,200	8,200		8,200
Hawaii	Air Force	Hickam AFB	C-17 Munitions Storage	1,950	1,950	1,950		1,950
Hawaii	Air Force	Hickam AFB	C-17 Support Utilities, Phase 2	2,450	2,450	2,450		2,450
Hawaii	Air Force	Hickam AFB	Upgrade Electrical Distribution System, Ph 2		-	8,500	5,000	5,000
Hawaii	Air Force	Maui Site	AEOS Primary Mirror Coating Facility		-	7,500	7,500	7,500
Hawaii	DLA	NS Pearl Harbor	Multi-Product Interface Tank	3,500	3,500	3,500		3,500
Idaho	Air National Guard	Gowen Field	ADAL Base Supply Complex		-	3,500	3,500	3,500
Illinois	Navy	NSTC Great Lakes	Battle Stations Training Facility, Increment 2	58,200	58,200	58,200		58,200

Military Construction Authorizations for FY2005
(Dollars in Thousands)

Location	Service/Agency/ Program	Installation	Project Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Illinois	Navy	NSTC Great Lakes	RTC Barracks	38,851	38,851	38,851		38,851
Illinois	Navy	NSTC Great Lakes	RTC Barracks	35,920	35,920	35,920		35,920
Illinois	Army National Guard	Galesburg	Readiness Center (ADRS) Phase 2		4,400	-	4,400	4,400
Illinois	Army National Guard	Galesburg	Readiness Center		-	4,000		-
Illinois	Army National Guard	Springfield	Total Army School System	13,596	13,596	13,596		13,596
Indiana	Navy	NSWC Crane	COTS Product Assurance & Tech Mgmt Facility		10,580	-	12,600	12,600
Indiana	Army National Guard	Remington	Add/Alter Readiness Center (ADRS)	1,458	1,458	1,458		1,458
Indiana	Army National Guard	Gary	Armed Forces Reserve Center		-	9,380	9,380	9,380
Iowa	Army National Guard	Camp Dodge	Company Grade BOQ		3,485	3,485	3,485	3,485
Kansas	Army	Ft Leavenworth	Lewis & Clark Instructional Facility, Phase 2	44,000	44,000	44,000		44,000
Kansas	Army	Ft Riley	AFS Technical Maintenance Facility		-	15,500	15,500	15,500
Kansas	Army	Ft Riley	Barracks Complex Renewal	41,000	41,000	41,000		41,000
Kansas	Army	Ft Riley	Communications Center	3,050	3,050	3,050		3,050
Kansas	Army National Guard	Topeka	Add/Alter Readiness Center (ADRS)	3,086	3,086	3,086		3,086
Kansas	Air National Guard	Forbes Field	Replace Operations and Training Complex		9,800	-	9,800	9,800
Kansas	Army Reserve	ARC Hays	Army Reserve Center/Organization Maint Spt	7,451	7,451	7,451		7,451
Kansas	Army Reserve	New Century	AR Ctr / OMS / AMSA / Unheated Storage		8,723	-	8,723	8,723
Kentucky	Army	Ft Campbell	Airfield Vehicle Support Facility		-	2,400		-
Kentucky	Army	Ft Campbell	Barracks Complex - 42nd St/Indiana Ave, Ph 1	30,000	30,000	30,000		30,000
Kentucky	Army	Ft Campbell	Command and Control Facility	33,000	33,000	33,000		33,000
Kentucky	Army	Ft Campbell	Shoot House	1,600	1,600	1,600		1,600
Kentucky	Army	Ft Knox	Construct Urban Assault Course		-	1,900	1,900	1,900
Kentucky	Army	Ft Knox	Shoot House		1,850	1,850	1,850	1,850
Kentucky	Army	Ft Knox	Trainee Barracks Basic Training Cplx 1, Ph 1	50,000	50,000	50,000		50,000
Kentucky	Spec Ops	Ft Campbell	Aquatic Training Facility, SOAR		-	3,500	3,500	3,500
Kentucky	Chem DeMil	Blue Grass AD	Ammunition Demilitarization Facility, Phase 5	37,094	37,094	37,094		37,094
Louisiana	Army	Ft Polk	Ammunition Supply Point Upgrade	7,500	7,500	7,500		7,500
Louisiana	Army	Ft Polk	Fixed Wing Aircraft Parking Apron	25,000	25,000	25,000		25,000
Louisiana	Army	Ft Polk	Hazard Cargo Loading Apron	14,503	14,503	14,503		14,503
Louisiana	Army	Ft Polk	Pallet Processing Facility	8,800	8,800	8,800		8,800
Louisiana	Army	Ft Polk	Passenger Processing Facility	11,700	11,700	11,700		11,700
Louisiana	Army	Ft Polk	Urban Assault Course	3,450	3,450	3,450		3,450
Louisiana	Navy	JRB NAS New Orleans	Child Development Center		3,450	-		-
Louisiana	Navy	JRB NAS New Orleans	Indoor Small Arms Range		2,580	-		-

Military Construction Authorizations for FY2005
(Dollars in Thousands)

Location	Service/Agency/ Program	Installation	Project Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Louisiana	Air Force	Barksdale AFB	Dormitory (168 Rm)	13,800	13,800	13,800		13,800
Louisiana	Army National Guard	Camp Beauregard	Add/Alter Army Aviation Support Facility	15,738	15,738	15,738		15,738
Louisiana	Navy Reserve	NAS JRB New Orleans	Child Development Center		-	-	3,450	3,450
Louisiana	Navy Reserve	NAS JRB New Orleans	Indoor Small Arms Range		-	-	2,580	2,580
Louisiana	Air Force Reserve	Barksdale AFB	Operations Facility, 93rd Squadron		-	5,300	4,800	4,800
Maine	Navy	NAS Brunswick	Replace Weapons Magazine		-	4,690	6,220	6,220
Maine	Navy	Portsmouth NS	Acoustic Test and Calibration Facility		-	7,860		-
Maryland	Army	Aberdeen PG	Chemical and Bio Sample Reception Facility		-	13,000	13,000	13,000
Maryland	Army	Ft Detrick	Remote Truck Inspection Station		4,000	-	4,000	4,000
Maryland	Navy	NSWC Indian Head	AGILE Chemical Facility	13,900	13,900	13,900		13,900
Maryland	Navy	NSWC Indian Head	Joint Aircrew Escape Component Center		9,100	-	9,100	9,100
Maryland	Air Force	Andrews AFB	ASA-Alter Aircraft Support Facilities	5,000	5,000	5,000		5,000
Maryland	Air Force	Andrews AFB	ASA-Fighter Aircraft Alert Complex	11,000	11,000	11,000		11,000
Maryland	Air Force	Andrews AFB	ASA-Munitions Storage Igloo	1,100	1,100	1,100		1,100
Maryland	NSA	Ft Meade	Critical Communication Path	3,450	3,450	3,450		3,450
Maryland	NSA	Ft Meade	NSA Deep Wells	8,140	8,140	8,140		8,140
Maryland	NSA	Ft Meade	Reconfigured Chilled Water, Phase 2	3,417	3,417	3,417		3,417
Maryland	Army Reserve	Ft Meade	Army Reserve Ctr/OMS/Unheat Storage, Ph 2	14,642	14,642	14,642		14,642
Massachusetts	Air National Guard	Otis ANG Base	Eliminate Airfield Obstructions	4,000	4,000	4,000		4,000
Massachusetts	Air National Guard	Otis ANG Base	Replace Control Tower		7,000	-	7,000	7,000
Massachusetts	Air Force Reserve	Westover ARB	Base Operations Facility		-	4,400	4,400	4,400
Michigan	Army National Guard	Grand Ledge	Army Aviation Support Facility	27,600	27,600	27,600		27,600
Michigan	Air National Guard	Alpena	Squadron Operations Training Facility		-	8,500		-
Michigan	Air National Guard	Kellogg Field	Fire Crash Rescue Station		-	5,100		-
Michigan	Air National Guard	Selfridge ANG Base	Joint Security Forces Facility		-	9,700	9,700	9,700
Michigan	Air National Guard	Selfridge ANG Base	Visitors Center and ID Complex		4,000	-	4,000	4,000
Michigan	Air National Guard	W.K. Kellogg	Fire Crash/Rescue Station		5,100	-	5,100	5,100
Minnesota	Air National Guard	Duluth IAP (ANG)	ASA - Alert Crew Quarters	3,000	3,000	3,000		3,000
Minnesota	Air National Guard	Duluth IAP (ANG)	ASA- Arm. Dearm Apron and Taxiway	4,000	4,000	4,000		4,000
Minnesota	Air National Guard	Duluth IAP (ANG)	ASA- Relocate Base Entrance Road	3,500	3,500	3,500		3,500
Minnesota	Air National Guard	Minneapolis St Paul ARS	Add/Alter Joint Use Physical Fitness Center		4,400	-		-
Minnesota	Air Force Reserve	Minneapolis St Paul ARS	Add/Alter Joint Use Physical Fitness Center		-	-	4,400	4,400
Minnesota	Air Force Reserve	Minneapolis St Paul ARS	Joint Security Forces Building		-	4,950	4,950	4,950
Mississippi	Navy	Gulfport	Vehicle Maintenance Facility		-	4,350		

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Location	Service/Agency/ Program	Installation	Project Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Mississippi	Air Force	Columbus AFB	Fire Crash Rescue Station		7,700	7,700	7,700	7,700
Mississippi	Army National Guard	Camp Shelby	MOUT Collective Training Facility (Small)		5,300	-	5,300	5,300
Mississippi	Army National Guard	Camp Shelby	Wastewater Treatment Facility				2,700	2,700
Mississippi	Army National Guard	Gulfport	Organizational Maintenance Shop		-	4,650	4,650	4,650
Mississippi	Spec Ops	Stennis Space Center	Combatant Craft Operations Facility		-	6,000		-
Mississippi	Navy Reserve	Gulfport	Vehicle Maintenance Facility				4,350	4,350
Missouri	Army	Ft Leonard Wood	Countermine Training Complex, Phase 1		-	10,400	10,400	10,400
Missouri	Army	Ft Leonard Wood	Mine Detection Dog Kennel		3,700	-	3,700	3,700
Missouri	Army	Ft Leonard Wood	Construct Range	2,750	2,750	2,750		2,750
Missouri	Army	Ft Leonard Wood	WMD Respond Training Facility	15,000	15,000	15,000		15,000
Missouri	Air Force	Whiteman AFB	Child Development Center		7,600	-	7,600	7,600
Montana	Air Force	Malmstrom AFB	Construct Corrosion Control/AGE Facility		-	5,600	5,600	5,600
Montana	Army National Guard	Dillon	Readiness Center		-	4,786	4,786	4,786
Montana	Army National Guard	Havre	Add/Alter Readiness Center (ADRS)	2,398	2,398	2,398		2,398
Montana	Army National Guard	Helena	Add/Alter Army Aviation Support Facility, Ph 1	7,600	7,600	7,600		7,600
Nebraska	Air Force	Offutt AFB	Replace Control Tower		-	6,721	6,221	6,221
Nebraska	Army National Guard	Hastings	Modified Record Fire Range	1,487	1,487	1,487		1,487
Nevada	Navy	NAS Fallon	High Explosives Magazine		4,980	4,980	4,980	4,980
Nevada	Army National Guard	Henderson	Readiness Center		-	12,853	12,853	12,853
New Hampshire	Air National Guard	Pease Intml Port ANGB	Upgrade Aircraft Parking Apron Phase 2		4,900	-	4,900	4,900
New Hampshire	Air National Guard	Pease ANGB	Repair Aircraft Parking Ramp		-	4,900		-
New Jersey	Army	Picatinny Arsenal	Pyrotechnics Facility		9,900	-	9,900	9,900
New Jersey	Navy	LANTORDCOM DET Earle	General Purpose Berthing Pier, Increment 2	49,200	49,200	49,200		49,200
New Jersey	Air National Guard	Atlantic City IAP (ANG)	ASA - Replace Alert Complex	10,400	10,400	10,400		10,400
New Jersey	Air National Guard	Atlantic City IAP (ANG)	Replace Alert 2 Shelters		2,300	-	2,300	2,300
New Jersey	Army Reserve	Ft Dix	Controlled Humidity Storage, Ph 1		9,502	-	9,502	9,502
New Mexico	Army	White Sands Missile Range	Electromagnetic Vulnerability Assessment	33,000	33,000	33,000		33,000
New Mexico	Air Force	Cannon AFB	Dining Facility		-	9,500	9,500	9,500
New Mexico	Air Force	Kirtland AFB	Corrosion Control Facility		9,200	-	9,200	9,200
New York	Army	Ft Drum	Airfield Arrival/Departure Facility	4,950	4,950	4,950		4,950
New York	Army	Ft Drum	Barracks Complex-Wheeler Sack AAF, Ph 2	48,000	48,000	48,000		48,000
New York	Army	Ft Drum	Defensive Live Fire Range		3,000	3,000	3,000	3,000
New York	Army	Ft Drum	Upgrade Educational Transitional Facilities		5,700	-	5,700	5,700
New York	Army	Ft Hamilton	Military Police Station	7,600	7,600	7,600		7,600

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Location	Service/Agency/ Program	Installation	Project Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
New York	Army	Hancock Field	Military Entrance Processing Station		6,000	-	6,000	6,000
New York	Army	MEPS Buffalo	Military Entrance Processing Station	6,200	6,200	6,200		6,200
New York	Army	USMA West Point	Library & Learning Center, Phase 1	34,500	34,500	34,500		34,500
New York	Army National Guard	Utica	Addition Readiness Center (ADRS)	5,704	5,704	5,704		5,704
New York	Army National Guard	Auburn	Addition Readiness Center (ADRS)	4,406	4,406	4,406		4,406
New York	Army National Guard	Auburn	Organizational Maintenance Shop (ADRS)	2,472	2,472	2,472		2,472
New York	Army National Guard	Kingston	Organizational Maintenance Shop (ADRS)	3,827	3,827	3,827		3,827
New York	Army National Guard	Ft Drum	Readiness Center (ADRS)	6,489	6,489	6,489		6,489
New York	Air National Guard	Hancock Field	Replace Mobility Processing Center		2,300	-	2,300	2,300
New York	Air Force Reserve	Niagara ARS	Fire & Crash Rescue Station		7,800	-	7,800	7,800
North Carolina	Army	Ft Bragg	Air Traffic Control Tower	2,500	2,500	2,500		2,500
North Carolina	Army	Ft Bragg	Barracks Complex - Armistead St. Ph 2		10,000	-	10,000	10,000
North Carolina	Army	Ft Bragg	Barracks Complex - Donovan Street, Phase 5	15,500	15,500	15,500		15,500
North Carolina	Army	Ft Bragg	Barracks Complex Renewal Blackjack St. Ph 1	49,000	49,000	49,000		49,000
North Carolina	Army	Ft Bragg	Barracks Complex - Bastogene Dr. Phase 2	48,000	48,000	48,000		48,000
North Carolina	Army	Ft Bragg	Shoot House	1,650	1,650	1,650		1,650
North Carolina	Army	Ft Bragg	Shoot House	2,037	2,037	2,037		2,037
North Carolina	Navy	MCAS New River	Aircraft Maintenance Training Facility	12,090	12,090	12,090		12,090
North Carolina	Navy	MCAS New River	Bachelor Enlisted Quarters	20,780	20,780	20,780		20,780
North Carolina	Navy	MCAS New River	Simulator Building Addition	2,270	2,270	2,270		2,270
North Carolina	Navy	MCB Camp Lejeune	Armory, Camp Geiger	4,010	4,010	4,010		4,010
North Carolina	Navy	MCB Camp Lejeune	Combat Training Pool	2,410	2,410	2,410		2,410
North Carolina	Navy	MCB Camp Lejeune	Explosive Ordnance Disposal Ops Facility		4,610	-	4,610	4,610
North Carolina	Navy	MCB Camp Lejeune	Reserve Training Center		-	7,000		-
North Carolina	Navy	Washington County	Outlying Landing Field (OLF) Facilities, Incr 2	33,900	-	33,900	(18,900)	15,000
North Carolina	Navy	Washington County	Outlying Landing Field Land Acquisition, Incr 1	61,750	-	61,750	(46,750)	15,000
North Carolina	Air Force	Pope AFB	Combat Control School Expansion	12,950	12,950	12,950		12,950
North Carolina	Air Force	Pope AFB	Indoor Firing Range Combat Controlled School	2,200	2,200	2,200		2,200
North Carolina	DLA	MCAS Cherry Point	Replace Hydrant Fuel System	22,700	22,700	22,700		22,700
North Carolina	Spec Ops	Ft Bragg	Kennedy Hall Renovation	11,988	11,988	11,988		11,988
North Carolina	Spec Ops	Ft Bragg	SOF Company Operations Building	4,600	4,600	4,600		4,600
North Carolina	Spec Ops	Ft Bragg	SOF Company Operations Complex	12,000	12,000	12,000		12,000
North Carolina	Spec Ops	Ft Bragg	SOF Company Operations Facility	4,500	4,500	4,500		4,500
North Carolina	Spec Ops	Ft Bragg	SOF Isolation Unit Training Facility	8,300	8,300	8,300		8,300

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North Carolina	Spec Ops	Ft Bragg	SOF Resistance Training Facility	1,500	1,500	1,500		1,500
North Carolina	Army National Guard	Burlington	Add/Alter Readiness Center (ADRS)	1,360	1,360	1,360		1,360
North Carolina	Army National Guard	Windsor	Organizational Maintenance Shop (ADRS)	2,409	2,409	2,409		2,409
North Carolina	Army National Guard	Ft Bragg	Regional Training Institute, Phase 3	6,319	6,319	6,319		6,319
North Carolina	Army National Guard	Lenoir	Organizational Maintenance Shop		-	3,000		-
North Carolina	Navy Reserve	NRC Asheville	Reserve Center	3,492	3,492	3,492		3,492
North Carolina	Navy Reserve	Wilmington	Reserve Training Center		-	-	7,000	7,000
North Carolina	Air Force Reserve	Seymour Johnson AFB	Reserve Security Forces Operations	2,300	2,300	2,300		2,300
North Dakota	Air Force	Minot AFB	Add/Alter Dock 1 Hangar		-	9,900	8,900	8,900
Ohio	Air Force	Wright-Patterson AFB	Replace Steam Lines/Tunnels, Area B, Ph 1A		9,200	9,200	9,200	9,200
Ohio	Air Force	Wright-Patterson AFB	Special Tactical Unit Detachment Facility		-	-		704
Ohio	DLA	Columbus	Replace Physical Fitness Facility	5,500	5,500	-	(5,500)	-
Ohio	Army National Guard	Columbus	Combined Spt Maintenance Shop Phase 1		9,980	-	9,980	9,980
Ohio	Army National Guard	Columbus	Organizational Maintenance Shop (ADRS) add/alt	2,225	2,225	2,225		2,225
Ohio	Air National Guard	Toledo Express Airport	Replace Logistics Complex		6,900	-	6,900	6,900
Ohio	Air Force Reserve	Wright-Patterson AFB	C-5 Airfield Pavements, Phase 1	4,300	4,300	4,300		4,300
Ohio	Air Force Reserve	Wright-Patterson AFB	C-5 Multi-Purpose Hangar	16,821	16,821	16,821		16,821
Oklahoma	Army	Ft Sill	CIDC Field Operations Building		3,400	-	3,400	3,400
Oklahoma	Army	Ft Sill	Consolidated Maintenance Complex, Phase 3	13,100	13,100	13,100		13,100
Oklahoma	Army	Ft Sill	Vehicle Maintenance Facility	14,400	14,400	14,400		14,400
Oklahoma	Air Force	Altus AFB	Base Civil Engineering Complex, Phase 2		-	10,500	7,000	7,000
Oklahoma	Air Force	Tinker AFB	Add to Integration Support Facility		-	8,000	8,000	8,000
Oklahoma	DLA	Tinker AFB	Add/Alter Hydrant Fuel System	5,400	5,400	5,400		5,400
Oklahoma	Army National Guard	Camp Gruber Training Ctr	Multi-purpose Machine Gun Range		3,201	-	3,201	3,201
Oregon	Army National Guard	AFRC Eugene	Armed Forces Reserve Center, Phase 2	12,635	12,635	12,635		12,635
Oregon	Army National Guard	Salem	Army Aviation Support Facility		4,917	-	4,917	4,917
Oregon	Air Force Reserve	Portland IAP	Add/Alter Bldg 315 For PJ Squadron Operations	1,640	1,640	1,640		1,640
Oregon	Air Force Reserve	Portland IAP	Consolidated Training, Phase 2	3,800	3,800	3,800		3,800
Oregon	Air Force Reserve	Portland IAP	Maintenance Hangar & Pavements	12,400	12,400	12,400		12,400
Pennsylvania	Army	Letterkenny Depot	Upgrade Igloos, Phase 1		-	11,400	5,400	5,400
Pennsylvania	DLA	DDSP New Cumberland	Consolidated Maintenance Facility	22,300	22,300	22,300		22,300
Pennsylvania	Army National Guard	Ft Indiantown Gap	Unit Equipment Training Site		20,387	-	20,387	20,387
Pennsylvania	Army Reserve	Ft Indiantown Gap	Army Reserve Center/Org Maint Support	13,156	13,156	13,156		13,156
Pennsylvania	Navy Reserve	NAS Willow Grove	Fitness Center	7,700	7,700	7,700		7,700

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Location	Service/Agency/ Program	Installation	Project Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Rhode Island	Navy	NAS Newport	Add/Alter Naval Justice School		-	3,590		-
Rhode Island	Navy	NAS Newport	Construct Fuel Oil Storage System		-	5,490	5 490	5,490
South Carolina	Navy	MCAS Beaufort	Aircraft Fire and Rescue Facility		5,480	-	5,480	5,480
South Carolina	Navy	NWS Charleston	Consolidated Electronic Integration Spt Fac		-	18,140	12,209	12,209
South Carolina	Air Force	Shaw AFB	Base Library		3,700	-	3 700	3,700
South Carolina	Air Force	Shaw AFB	Sewer Outfall Line to Wateree River	3,300	3,300	3,300		3,300
South Carolina	TMA	MCRD Parris Island	Replace Medical/Dental Clinic	25,000	25,000	25,000		25,000
South Dakota	Air Force	Ellsworth AFB	Base Operations Center		-	11,800	9 867	9,867
South Dakota	Army National Guard	Mobridge	Readiness Center	2,944	2,944	2,944		2,944
South Dakota	Air National Guard	Joe Foss Field	Squadron Operations Facility		-	7,000	7 000	7,000
Tennessee	Air Force	Arnold AFB	Add/Alter Wingo Inn Visiting Quarters		2,500	-	2 500	2,500
Tennessee	Air Force	Arnold AFB	Upgrade Jet Engine Induction Sys. Phase 5	22,000	22,000	22,000		22,000
Tennessee	Army National Guard	Nashville	Readiness Center, Phase 1		-	9,142	9 142	9,142
Tennessee	Army National Guard	Smyrna	Joint Forces Reserve Center		-	13,589	13 589	13,589
Tennessee	Air National Guard	Memphis IAP	C 5 Aircraft Apron & Hydrant Refuel Station	15,500	15,500	15,500		15,500
Tennessee	Air National Guard	Memphis IAP	C-5 Corrosion Control Hangar	26,000	26,000	26,000		26,000
Texas	Army	Camp Bullis	Vehicle Maintenance Facility		5,300	-		-
Texas	Army	Ft Bliss	CIDC Field Operations Building		-	3,600		-
Texas	Army	Ft Sam Houston	Construct General Instruction Building		-	11,400	11 400	11,400
Texas	Army	Ft Bliss	Missile Defense Instruction Facility	16,500	16,500	16,500'		16,500
Texas	Army	Ft Bliss	Tac Equip Shop-AAMDC		2,900	-	2 900	2,900
Texas	Army	Ft Hood	Barracks Complex	49,888	49,888	49,888		49,888
Texas	Army	Ft Hood	Command & Control Facility Ph 2		7,100	-	7 100	7,100
Texas	Army	Ft Hood	Digital Multipurpose Range	28,200	28,200	28,200		28,200
Texas	Army	Ft Hood	Training Area Tank Trails		3,700	-		-
Texas	Air Force	Dyess AFB	Refueling Vehicle Maintenance Shop		3,300	-	3 300	3,300
Texas	Air Force	Dyess AFB	Construct Fire/Crash Rescue Station		-	11,000	11,000	11,000
Texas	Air Force	Lackland AFB	Security Forces Training Expansion	2,596	2,596	2,596		2,596
Texas	Air Force	Laughlin AFB	T-1 Squadron Operations Facility		6,900	-	6 900	6,900
Texas	Air Force	Sheppard AFB	F-22 Technical Training Facility	21,284	21,284	21,284		21,284
Texas	Air Force	Sheppard AFB	Student Dormitory (300 Rm)	29,000	29,000	29,000		29,000
Texas	DLA	NAS Kingsville	Replace Jet Fuel Storage Tank	3,900	3,900	3,900		3,900
Texas	Army Reserve	Corpus Christi Storage Cplx	Controlled Humidity Storage Ph 1		9,038	-	9 038	9,038
Texas	Navy Reserve	NAS JRB Fort Worth	Combined Reserve Training Admin Building		5,520	-	5 520	5,520

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Location	Service/Agency/ Program	Installation	Project Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Texas	Air Force Reserve	Lackland AFB	Add/Alter C-5 Aircraft Generation Facility	1,200	1,200	1,200		1,200
Texas	Air Force Reserve	Lackland AFB	C-5 Training Schoolhouse Complex	20,000	20,000	20,000		20,000
Texas	Air Force Reserve	Lackland AFB	C-5 Training Load Assembly Facility	1,850	1,850	1,850		1,850
Texas	Air Force Reserve	NAS JRB Fort Worth	Aircraft Parts Store		1,850	-	1,850	1,850
Utah	Air Force	Hill AFB	729th ACS Operations / Maintenance Facility		4,900	-	4,900	4,900
Utah	Air Force	Hill AFB	Fitness Center	13,113	13,113	13,113		13,113
Utah	Air Force	Hill AFB	ICBM Propellant Analysis Complex		-	7,700	7,700	7,700
Utah	Army Reserve	ARC Ogden	Add/Alter Army Reserve Center	7,932	7,932	7,932		7,932
Vermont	Air National Guard	Burlington	Composite Deployment Training Facility		-	6,000	6,000	6,000
Virginia	Army	Ft A.P. Hill	MOUT Facility, Ph 1		-	10,800	6,800	6,800
Virginia	Army	Ft A.P. Hill	Shoot House	3,975	3,975	3,975		3,975
Virginia	Army	Ft Lee	Fire and Emergency Services Center Ph 3		4,250	-	4,250	4,250
Virginia	Army	Ft Myer	Barracks Complex-Sheridan Ave, Phase 1	49,526	49,526	49,526		49,526
Virginia	Navy	Camp Elmore USMC Det	Command Operations Facility	13,500	13,500	13,500		13,500
Virginia	Navy	MCAF Quantico	Green Side Hangar Complex	21,180	21,180	21,180		21,180
Virginia	Navy	MCAF Quantico	White Side Complex		-	-		18,560
Virginia	Navy	MCCDC Quantico	Armory (The Basic School)	4,580	4,580	4,580		4,580
Virginia	Navy	MCCDC Quantico	Bachelor Enlisted Quarters	15,090	15,090	15,090		15,090
Virginia	Navy	MCCDC Quantico	Heritage Center Road Improvements	950	-	950		950
Virginia	Navy	MCCDC Quantico	HQ and Service BN / TBS		4,470	-	4,470	4,470
Virginia	Navy	NAB Little Creek	Gate 5 Security Improvements	2,850	2,850	2,850		2,850
Virginia	Navy	NAB Little Creek	Police & Security Ops Facility		6,700	-	6,370	6,370
Virginia	Navy	NAS Oceana	Post 2 Security Improvements	2,770	2,770	2,770		2,770
Virginia	Navy	NS Norfolk	Gate 5 Security Improvements	4,330	4,330	4,330		4,330
Virginia	Navy	NS Norfolk	Pier 11 Replacement, Increment 2	40,000	40,000	40,000		40,000
Virginia	Navy	LANTORDCOM Yorktown	Ordnance Handling Vehicle Maint Shop	9,870	9,870	9,870		9,870
Virginia	Navy	Quantico	Basic School Headquarters		-	4,470		-
Virginia	DLA	Def Dist Depot Richmond	Conference Center	3,600	3,600	3,600		3,600
Virginia	DLA	Def Dist Depot Richmond	Security Enhancements	6,500	6,500	6,500		6,500
Virginia	DLA	DFSP NAS Oceana	Bulk Fuel Storage Tank	3,589	3,589	3,589		3,589
Virginia	Spec Ops	FCTC Dam Neck	Addition SOF Operational Trainer Support Facility	4,300	4,300	4,300		4,300
Virginia	Spec Ops	FCTC Dam Neck	SOF High Explosives Magazine	1,400	1,400	1,400		1,400
Virginia	Spec Ops	Ft A.P. Hill	SOF Ground Mobility Support Building	1,500	1,500	1,500		1,500
Virginia	Spec Ops	NAB Little Creek	Boat Support Facility	10,500	10,500	10,500		10,500

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Virginia	Spec Ops	NAB Little Creek	SEAL Team Operations Facility		9,000	9,000	9,000	9,000
Virginia	Spec Ops	NAB Little Creek	SOF Combat Skills Compound	12,700	12,700	12,700		12,700
Virginia	Spec Ops	NAB Little Creek	SOF Ground Mobility Maintenance Facility	1,000	1,000	1,000		1,000
Virginia	Army National Guard	Ft Pickett	Infantry Platoon Battle Course (SBCT)	5,170	5,170	5,170		5,170
Virginia	Army National Guard	Ft Pickett	MOUT Assault Course (SBCT)	1,409	1,409	1,409		1,409
Virginia	Navy Reserve	NMCRC Norfolk	Vehicle Maintenance Facility	3,290	3,290	3,290		3,290
Virginia	TMA	Ft Belvoir	Hospital Replacement, Phase I	43,000	43,000	43,000		43,000
Virginia	TMA	Langley AFB	Add/Alter Hospital	50,800	50,800	50,800		50,800
Washington	Army	Ft Lewis	Barracks Complex-41st Div Dr/B St, Phase 2	48,000	48,000	48,000		48,000
Washington	Army	Ft Lewis	Construct Chapel, North Fort		-	9,200	8,200	8,200
Washington	Navy	NAS Whidbey Island	Hazardous Materials Storehouse		1,990	-	1,990	1,990
Washington	Navy	NS Bremerton	Bachelor Enlisted Quarters-Homeport Ashore	34,125	34,125	34,125		34,125
Washington	Navy	NSY Puget Sound	CVN Maintenance Complex	20,305	20,305	20,305		20,305
Washington	Navy	NSY Puget Sound	Ocean Engineering Support Facility		3,150	-		-
Washington	Navy	SWFPAC Bangor	Limited Area Production & Storage Complex	35,770	35,770	35,770		35,770
Washington	Navy	NSWCCD DET, Bangor	Lab Consolidation, Phase 1		-		6,970	6,970
Washington	Army National Guard	Camp Murray	Alter Readiness Center (ADRS)	1,400	1,400	1,400		1,400
Washington	Army Reserve	Vancouver	Land Acquisition	2,500	2,500	-	(2,500)	-
West Virginia	Air National Guard	Martinsburg ANG	C-5 Maintenance Hangar and Shops	36,000	36,000	36,000		36,000
West Virginia	Air National Guard	Martinsburg ANG	Construct C-5 Apron/Fuel Hydr Sys, Ph 2		-	17,000	13,000	13,000
West Virginia	Air National Guard	Martinsburg ANG	Flight Simulator Facility (C-5)		-	4,150	4,150	4,150
West Virginia	Air National Guard	Yeager	Fire Crash Rescue Station		-	6,000	6,000	6,000
Wisconsin	Air National Guard	Truax Field	ASA - Munitions Maint & Storage Complex	5,900	5,900	5,900		5,900
Wisconsin	Air National Guard	Volk Field	Replace Joint Squadron Ops Facility		-	4,500	4,500	4,500
Wisconsin	Army Reserve	Ft McCoy	Infantry Platoon Battle Course	2,712	2,712	2,712		2,712
Wisconsin	Army Reserve	Ft McCoy	Squad Defense Range	1,248	1,248	1,248		1,248
Wyoming	Air Force	F.E. Warren AFB	Upgrade Storm Water Drainage System Ph 1		5,500	5,500	5,500	5,500
Bahamas	Navy	NUWC Andros Island	Bachelor Quarters	20,750	20,750	-	(20,750)	-
Diego Garcia	Navy	NAVSUPPFAC Diego Garcia	Solid Waste Management Center	17,500	17,500	17,500		17,500
Diego Garcia	TMA	Diego Garcia	Dental Clinic Replacement	3,800	3,800	3,800		3,800
Germany	Army	Grafenwoehr	Barracks Complex	28,500	28,500	28,500		28,500
Germany	Army	Grafenwoehr	Barracks Complex - Brigade	34,000	34,000	34,000		34,000
Germany	Army	Grafenwoehr	Brigade Support Complex	14,700	14,700	14,700		14,700

Military Construction Authorizations for FY2005
(Dollars in Thousands)

Location	Service/Agency/ Program	Installation	Project Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Germany	Air Force	Ramstein AB	Small Diameter Bomb Facilities	1,200	1,200	1,200		1,200
Germany	Air Force	Ramstein AB	USAFE Theater Aerospace Operations Spt Ctr	24,204	24,204	24,204		24,204
Germany	DODEA	Grafenwoehr	New Elementary/Middle School	36,247	36,247	36,247		36,247
Germany	DODEA	Vilseck	High School Renovation/Addition	9,011	9,011	9,011		9,011
Germany	TMA	Grafenwoehr	Add/Alter Dispensary/Dental Clinic	13,000	13,000	13,000		13,000
Greenland	Air Force	Thule AB	Dormitory (72 Rm)	19,800	19,800	19,800		19,800
Guam	Navy	NPWC Guam	FENA Water Treatment Plant Upgrade	20,700	20,700	20,700		20,700
Guam	Navy	COMNAVMARIANAS Guam	Kilo Wharf Improvements	12,500	12,500	12,500		12,500
Guam	Air Force	Andersen AFB	War Reserve Storage Facility	19,593	19,593	19,593		19,593
Guam	Spec Ops	NS Guam	SOF Ground Mobility Support Building	2,200	2,200	2,200		2,200
Guam	DODEA	NS Guam	High School Replacement	26,964	26,964	26,964		26,964
Italy	Army	Livorno	Warehouse Operations Facility	26,000	26,000	26,000		26,000
Italy	Navy	NAS Sigonella	Access Improvements	7,430	7,430	7,430		7,430
Italy	Navy	NAS Sigonella	Base Operations Support Facility, Phase 2	15,120	15,120	15,120		15,120
Italy	Air Force	Aviano AB	Add/Alt Weapons Load/Maint Training Facility	2,300	2,300	2,300		2,300
Italy	Air Force	Aviano AB	Expand North Ramp, Phase 2	1,626	1,626	1,626		1,626
Italy	Air Force	Aviano AB	Flight Simulator	2,834	2,834	2,834		2,834
Japan	Air Force	Misawa AB	Expand Strategic Airlift Ramp	6,700	6,700		(6,700)	-
Japan	DLA	Misawa AB	Hydrant Fuel System	19,900	19,900	-	(19,900)	-
Korea	Army	Camp Humphreys	Sanitary Sewer System	12,000	12,000	12,000		12,000
Korea	Air Force	Kunsan AB	Dorm (144 Rm)	18,550	18,550	18,550		18,550
Korea	Air Force	Kunsan AB	Dorm (144 Rm)	18,550	18,550	18,550		18,550
Korea	Air Force	Osan AB	Dormitory (156 Rm)	18,600	18,600	18,600		18,600
Portugal	Air Force	Lajes Field	Add/Alter Fitness Center, Phase 2	5,689	5,689	5,689		5,689
Portugal	DLA	DFSP Lajes Field	Replace Hydrant Fuel System	19,113	19,113	19,113		19,113
Puerto Rico	Army Reserve	ARC Aguadilla	Army Reserve Center	21,523	21,523	-	(21,523)	-
Spain	Navy	NS Rota	Consolidate Command Ops & Support Facility	32,700	32,700	-	(11,000)	21,700
Spain	Air Force	NS Rota	Aircraft Parking Apron, Phase 2	14,153	14,153	-	(9,828)	4,325
United Kingdom	Air Force	RAF Lakenheath	4-Bay Mission Training Center	5,500	5,500	5,500		5,500
United Kingdom	Spec Ops	RAF Mildenhall	SOF Operations/Intelligence Facility	10,200	10,200	-	(10,200)	-
Worldwide	Air Force	Classified Location	Classified	28,090	28,090	28,090		28,090
Worldwide	Air Force	Classified Location	Special Tactical Unit Det Facility*	704	704	704		-
Worldwide	Spec Ops	Classified Location	SOF Building Addition	2,600	2,600	2,600		2,600

Military Construction Authorizations for FY2005
(Dollars in Thousands)

Location	Service/Agency/ Program	Installation	Project Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Worldwide	Spec Ops	Classified Location	SOF Information Operations Facility Addition	4,800	4,800	4,800		4,800
Unspecified	Navy	Unspecified Worldwide	White Side Complex**	18,560	18,560	18,560		-
Unspecified	Navy	Unspecified Worldwide	Presidential Helicopter Program Support Fac	80,000	80,000	-	(40,000)	40,000
Unspecified	Air Force	Unspecified Worldwide	Predator B Beddown	26,121	26,121	26,121		26,121
Unspecified	Spec Ops	Unspecified Worldwide	Training Facility	2,900	2,900	2,900		2,900
Unspecified	Army	Unspecified Worldwide	Unspecified Minor Construction	20,000	20,000	20,000		20,000
Unspecified	Army	Unspecified Worldwide	Planning and Design	130,335	140,209	133,335		130,335
Unspecified	Army	Unspecified Worldwide	Host Nation Support	21,000	21,000	21,000		21,000
Unspecified	Navy	Unspecified Worldwide	Unspecified Minor Construction	12,000	12,000	12,000		12,000
Unspecified	Navy	Unspecified Worldwide	Planning and Design	87,067	93,804	87,067		87,067
Unspecified	Air Force	Unspecified Worldwide	Unspecified Minor Construction	13,000	13,000	13,000		13,000
Unspecified	Air Force	Unspecified Worldwide	Planning and Design	140,786	166,126	124,085	(16,701)	124,085
Unspecified	Spec Ops	Unspecified Worldwide	Unspecified Minor Construction	2,710	2,710	2,710		2,710
Unspecified	Spec Ops	Unspecified Worldwide	Planning and Design	10,566	11,866	10,566		10,566
Unspecified	MDA	Unspecified Worldwide	Unspecified Minor Construction	2,769	2,769	2,769		2,769
Unspecified	Army National Guard	Unspecified Worldwide	Planning and Design	30,845	44,107	31,375		30,845
Unspecified	Army National Guard	Unspecified Worldwide	Unspecified Minor Construction	4,472	7,172	4,472		4,472
Unspecified	Air National Guard	Unspecified Worldwide	Unspecified Minor Construction	5,500	5,500	5,500		5,500
Unspecified	Air National Guard	Unspecified Worldwide	Planning and Design	11,764	18,316	11,764		11,764
Unspecified	Air National Guard	Unspecified Worldwide	Planning and Design	1,804	1,804	1,804		1,804
Unspecified	Army Reserve	Unspecified Worldwide	Unspecified Minor Construction	2,923	2,923	2,923		2,923
Unspecified	Army Reserve	Unspecified Worldwide	Planning and Design	11,225	13,847	11,225		11,225
Unspecified	Navy Reserve	Unspecified Worldwide	Planning and Design	1,503	1,653	1,503		1,503
Unspecified	Air Force Reserve	Unspecified Worldwide	Planning and Design	5,493	8,807	5,493		5,493
Unspecified	Air Force Reserve	Unspecified Worldwide	Unspecified Minor Construction	5,263	5,263	5,263		5,263
Unspecified	Air Force Reserve	Unspecified Worldwide	General Reduction		(6,570)	-		-
Unspecified	DFAS	Unspecified Worldwide	Unspecified Minor Construction	1,497	1,497	1,497		1,497
Unspecified	TJS	Unspecified Worldwide	Unspecified Minor Construction	7,214	7,214	7,214		7,214
Unspecified	Other	Unspecified Worldwide	Unspecified Minor Construction	3,000	3,000	3,000		3,000
Unspecified	Other	Unspecified Worldwide	Planning and Design	22,216	22,216	22,216		22,216
Unspecified	DODEA	Unspecified Worldwide	Unspecified Minor Construction	746	746	746		746
Unspecified	TMA	Unspecified Worldwide	Unspecified Minor Construction	3,002	3,002	3,002		3,002
Unspecified	TMA	Unspecified Worldwide	Planning and Design	29,400	29,400	29,400		29,400

Military Construction Authorizations for FY2005
(Dollars in Thousands)

Location	Service/Agency/ Program	Installation	Project Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Unspecified	Other	Unspecified Worldwide	Energy Conservation Improvement Program	60,000	50,000	60,000	(10,000)	50,000
Unspecified	Other	Unspecified Worldwide	Contingency Construction	10,000	10,000	10,000		10,000
Unspecified	Other	Unspecified Worldwide	NATO Security Investment Program	165,800	165,800	165,800	(5,000)	160,800
Unspecified	BRAC IV	BRAC IV	Base Realignment & Closure	246,116	246,116	246,116		246,116
Unspecified	Army	Unspecified Worldwide	Reduction (prior year savings)				(5,550)	(5,550)
Unspecified	Navy	Unspecified Worldwide	Reduction (prior year savings)				(5,549)	(5,549)
Unspecified	Air Force	Unspecified Worldwide	Reduction (prior year savings)				(5,550)	(5,550)
Alaska	Army	Ft Richardson	Family Housing Replacement Construction	42,000	42,000	42,000		42,000
Alaska	Army	Ft Wainwright	Family Housing New Construction	41,000	41,000	41,000		41,000
Alaska	Army	Ft Wainwright	Family Housing Replacement Construction	37,000	37,000	37,000		37,000
Alaska	Army	Ft Wainwright	Family Housing Replacement Construction	46,000	46,000	46,000		46,000
Arizona	Army	Ft Huachuca	Family Housing Replacement Construction	41,000	41,000	41,000		41,000
Arizona	Army	Yuma PG	Family Housing Replacement Construction	14,900	14,900	14,900		14,900
Arizona	Air Force	Davis-Monthan AFB	Replace Family Housing, Phase 6	48,500	48,500	48,500		48,500
California	Air Force	Edwards AFB	Replace Family Housing	41,202	41,202	41,202		41,202
California	Air Force	Vandenberg AFB	Replace Family Housing, Phase 8	30,906	30,906	30,906		30,906
Florida	Air Force	MacDill AFB	Construct Housing Maintenance Facility	1,250	1,250	1,250		1,250
Florida	Air Force	MacDill AFB	Replace Family Housing, Phase 6	21,723	21,723	21,723		21,723
Idaho	Air Force	Mountain Home AFB	Replace Family Housing, Phase 6	39,333	39,333	39,333		39,333
Kansas	Army	Ft Riley	Family Housing Replacement Construction	33,000	33,000	33,000		33,000
Mississippi	Air Force	Columbus AFB	Family Housing Management Facility	711	711	711		711
Missouri	Air Force	Whiteman AFB	Replace Family Housing, Phase 6	37,087	37,087	37,087		37,087
Montana	Air Force	Malmstrom AFB	Replace Family Housing	29,910	29,910	29,910		29,910
New Mexico	Army	White Sands Missile Range	Family Housing Replacement Construction	31,000	31,000	31,000		31,000
North Carolina	Navy	MCAS Cherry Point	Replace SLOCUM Village, Phase 3	27,002	27,002	27,002		27,002
North Carolina	Air Force	Seymour Johnson AFB	Replace Family Housing, Phase 8	32,693	32,693	32,693		32,693
North Dakota	Air Force	Grand Forks AFB	Replace Family Housing, Phase H	26,169	26,169	26,169		26,169
North Dakota	Air Force	Minot AFB	Replace Family Housing, Phase 11	37,087	37,087	37,087		37,087
Oklahoma	Army	Ft Sill	Family Housing Replacement Construction	47,000	47,000	47,000		47,000
South Carolina	Air Force	Charleston AFB	Construct Huntley Park Fire Station	1,976	1,976	1,976		1,976
South Dakota	Air Force	Ellsworth AFB	Replace Family Housing, Phase 4	21,482	21,482	21,482		21,482
Texas	Air Force	Dyess AFB	Replace Family Housing, Phase 5	28,664	28,664	28,664		28,664
Texas	Air Force	Goodfellow AFB	Construct Military Family Housing, Phase 1	20,604	20,604	20,604		20,604

Military Construction Authorizations for FY2005
(Dollars in Thousands)

Location	Service/Agency/ Program	Installation	Project Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Virginia	Army	Ft Lee	Family Housing Replacement Construction	46,000	46,000	46,000		46,000
Virginia	Army	Ft Monroe	Family Housing Replacement Construction	16,000	16,000	16,000		16,000
Germany	Air Force	Ramstein AB	Replace Family Housing	57,691	57,691	57,691		57,691
Italy	Air Force	Aviano AB	Replace Housing Office	2,542	2,542	2,542		2,542
Korea	Air Force	Osan AB	Construct Family Housing, Phase 3	46,834	46,834	46,834		46,834
United Kingdom	Air Force	RAF Lakenheath	Replace Family Housing	43,976	43,976	43,976		43,976
Unspecified	Army	Unspecified Worldwide	Services Account	36,174	36,174	36,174		36,174
Unspecified	Army	Unspecified Worldwide	Maintenance of Real Property	402,060	399,660	402,060	(2,400)	399,660
Unspecified	Army	Unspecified Worldwide	Construction Improvements	211,990	211,990	211,990		211,990
Unspecified	Army	Unspecified Worldwide	Furnishings Account	37,411	37,411	37,411		37,411
Unspecified	Army	Unspecified Worldwide	Management Account	74,895	74,895	74,895		74,895
Unspecified	Army	Unspecified Worldwide	Privatization Support	26,644	26,644	26,644		26,644
Unspecified	Army	Unspecified Worldwide	Utilities Account	132,356	132,356	132,356		132,356
Unspecified	Army	Unspecified Worldwide	Miscellaneous Account	1,333	1,333	1,333		1,333
Unspecified	Army	Unspecified Worldwide	Leasing Account	218,033	218,033	218,033		218,033
Unspecified	Army	Unspecified Worldwide	Interest Payments	1	1	1		1
Unspecified	Army	Unspecified Worldwide	Planning and Design	29,209	29,209	29,209		29,209
Unspecified	Navy	Unspecified Worldwide	Utilities Account	137,226	137,226	137,226		137,226
Unspecified	Navy	Unspecified Worldwide	Services Account	57,691	57,691	57,691		57,691
Unspecified	Navy	Unspecified Worldwide	Leasing Account	136,883	136,883	136,883		136,883
Unspecified	Navy	Unspecified Worldwide	Miscellaneous Account	654	654	654		654
Unspecified	Navy	Unspecified Worldwide	Management Account	81,859	81,859	81,859		81,859
Unspecified	Navy	Unspecified Worldwide	Furnishings Account	20,756	20,756	20,756		20,756
Unspecified	Navy	Unspecified Worldwide	Privatization Support	16,991	16,991	16,991		16,991
Unspecified	Navy	Unspecified Worldwide	Interest Payments	61	61	61		61
Unspecified	Navy	Unspecified Worldwide	Construction Improvements	112,105	112,105	112,105		112,105
Unspecified	Navy	Unspecified Worldwide	Maintenance of Real Property	252,383	244,183	252,383	(8,200)	244,183
Unspecified	Air Force	Unspecified Worldwide	Interest Payments	38	38	38		38
Unspecified	Air Force	Unspecified Worldwide	Leasing Account	119,908	119,908	119,908		119,908
Unspecified	Air Force	Unspecified Worldwide	Planning and Design	38,266	38,266	38,266		38,266
Unspecified	Air Force	Unspecified Worldwide	Furnishings Account	44,459	41,959	44,459	(2,500)	41,959
Unspecified	Air Force	Unspecified Worldwide	Services Account	26,070	26,070	26,070		26,070
Unspecified	Air Force	Unspecified Worldwide	Miscellaneous Account	2,396	2,396	2,396		2,396

Military Construction Authorizations for FY2005
(Dollars in Thousands)

Location	Service/Agency/ Program	Installation	Project Title	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Unspecified	Air Force	Unspecified Worldwide	Privatization Support	39,104	39,104	39,104		39,104
Unspecified	Air Force	Unspecified Worldwide	Maintenance of Real Property	435,782	435,552	435,782	(230)	435,552
Unspecified	Air Force	Unspecified Worldwide	Utilities Account	125,459	125,459	125,459		125,459
Unspecified	Air Force	Unspecified Worldwide	Construction Improvements	238,353	238,353	238,353		238,353
Unspecified	Air Force	Unspecified Worldwide	Management Account	70,680	64,180	62,898	(7,782)	62,898
Unspecified	DLA	Unspecified Worldwide	Maintenance of Real Property	397	397	397		397
Unspecified	DLA	Unspecified Worldwide	Management Account	293	293	293		293
Unspecified	DLA	Unspecified Worldwide	Services Account	76	76	76		76
Unspecified	DLA	Unspecified Worldwide	Furnishings Account	36	36	36		36
Unspecified	DLA	Unspecified Worldwide	Utilities Account	419	419	419		419
Unspecified	NSA	Unspecified Worldwide	Leasing Account	11,257	11,257	11,257		11,257
Unspecified	NSA	Unspecified Worldwide	Miscellaneous Account	53	53	53		53
Unspecified	NSA	Unspecified Worldwide	Utilities Account	471	471	471		471
Unspecified	NSA	Unspecified Worldwide	Management Account	13	13	13		13
Unspecified	NSA	Unspecified Worldwide	Maintenance of Real Property	1,939	1,939	1,939		1,939
Unspecified	NSA	Unspecified Worldwide	Services Account	381	381	381		381
Unspecified	NSA	Unspecified Worldwide	Furnishings Account	116	116	116		116
Unspecified	NSA	Unspecified Worldwide	Construction Improvements	49	49	49		49
Unspecified	DIA	Unspecified Worldwide	Leasing Account	30,199	30,199	30,199		30,199
Unspecified	DIA	Unspecified Worldwide	Furnishings Account	3,925	3,925	3,925		3,925
Unspecified	Other	Unspecified Worldwide	Family Housing Improvement Fund	2,500	2,500	2,500		2,500
			Rescission:				(130,000)	(130,000)
			Foreign Currency Fluctuation				(63,000)	(63,000)
			Total Authorization of Appropriations	9,480,475	9,930,475	9,828,440	449,625	9,930,100

*Location Declassified - See Wright-Patterson AFB, Ohio

**DOD Requested Installation Change - See MCAF Quantico, Virginia

***DOD Requested Installation Clarification - See Camp Rudder, Florida

****DOD Requested Installation Change - Original Installation was NAS North Island, California

Short title (sec. 2001)

The House bill contained a provision (sec. 2001) that would cite Division B of this Act as the Military Construction Authorization Act for Fiscal Year 2005.

The Senate amendment contained an identical provision (sec. 2001).

The conference agreement includes this provision.

TITLE XXI—ARMY

Overview

The House bill would authorize appropriations for the Army of $1,866.2 million for military construction and $1,562.6 million for family housing for fiscal year 2005.

The Senate amendment would authorize appropriations for the Army of $1,942.9 million for military construction and $1,565.0 million for family housing for fiscal year 2005.

The conferees recommend authorization of appropriation for the Army of $1,969.0 million for military construction and $1,562.6 million for family housing for fiscal year 2005.

LEGISLATIVE PROVISIONS ADOPTED

Authorized Army construction and land acquisition projects (sec. 2101)

The House bill contained a provision (sec. 2101) that would authorize Army military construction projects in fiscal year 2005.

The Senate amendment contained a similar provision (sec. 2101).

The conference agreement includes this provision.

The amounts authorized are listed in this provision on an installation-by-installation basis. A State list of projects contained in the table at the beginning of division B of this conference report entitled "Military Construction Authorization for FY2005" provides the binding list of specific construction projects authorized at each location.

Family housing (sec. 2102)

The House bill contained a provision (sec. 2102) that would authorize new construction and planning and design of family housing units for the Army in fiscal year 2005.

The Senate amendment contained an identical provision (sec. 2102).

The conference agreement includes this provision.

The amounts authorized are listed in this provision on an installation-by-installation basis. A State list of projects contained in the table at the beginning of division B of this conference report entitled "Military Construction Authorization for FY2005" provides the binding list of specific construction projects authorized at each location.

Improvements to military family housing units (sec. 2103)

The House bill contained a provision (sec. 2103) that would authorize improvements to existing units of Army family housing in fiscal year 2005.

The Senate amendment contained an identical provision (sec. 2103).

The conference agreement includes this provision.

Authorization of appropriations, Army (sec. 2104)

The House bill contained a provision (sec. 2104) that would authorize specific appropriations for each line item contained in the Army's military construction budget in fiscal year 2005. This provision would also provide an overall limit on the amount the Army is authorized to spend on military construction projects in fiscal year 2005.

The Senate amendment contained a similar provision (sec. 2104).

The conference agreement includes this provision.

Modification of authority to carry out certain fiscal year 2004 project (sec. 2105)

The House bill contained a provision (sec. 2105) that would amend section 2101 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136) to increase project authorizations for Fort Stewart, Georgia and Fort Drum, New York.

The Senate amendment contained a similar provision (sec. 2105).

The Senate recedes.

Modification of authority to carry out certain fiscal year 2003 projects (sec. 2106)

The House bill contained a provision (sec. 2106) that would amend section 2101 of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107–314) as further amended by section 2105(a)(2) of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136) to adjust a project authorization for Fort Sill, Oklahoma.

The Senate amendment contained a similar provision (sec. 2106).

The Senate recedes.

TITLE XXII—NAVY

Overview

The House bill would authorize appropriations for the Navy of $1,077.9 million for military construction and $835.4 million for family housing for fiscal year 2005.

The Senate amendment would authorize appropriations for the Navy of $100.1 million for military construction and $843.6 million for family housing for fiscal year 2005.

The conferees recommend authorization of appropriations for the Navy of $1,056.3 million for military construction and $835.4 million for family housing for fiscal year 2005.

LEGISLATIVE PROVISIONS ADOPTED

Authorized Navy construction and land acquisition projects (sec. 2201)

The House bill contained a provision (sec. 2201) that would authorize Navy military construction projects in fiscal year 2005.

The Senate amendment contained a similar provision (sec. 2201).

The conference agreement includes this provision.

The amounts authorized are listed in this provision on an installation-by-installation basis. A State list of projects contained in the table at the beginning of division B of this conference report entitled "Military Construction Authorization for FY2005" provides the binding list of specific construction projects authorized at each location.

Family housing (sec. 2202)

The House bill contained a provision (sec. 2202) that would authorize new construction and planning and design of family housing units for the Navy in fiscal year 2005.

The Senate amendment contained an identical provision (sec. 2202).

The conference agreement includes this provision.

The amounts authorized are listed in this provision on an installation-by-installation basis. A State list of projects contained in the table at the beginning of division B of this conference report entitled "Military Construction Authorizations for FY2005" provides the binding list of specific construction projects authorized at each location.

Improvements to military family housing units (sec. 2203)

The House bill contained a provision (sec. 2203) that would authorize improvements to existing units of Navy family housing in fiscal year 2005.

The Senate amendment contained an identical provision (sec. 2203).

The conference agreement includes this provision.

Authorization of appropriations, Navy (sec. 2204)

The House bill contained a provision (sec. 2204) that would authorize specific appropriations for each line item contained in the Navy's military construction budget in fiscal year 2005. This provision would also provide an overall limit on the amount the Navy is authorized to spend on military construction projects in fiscal year 2005.

The Senate amendment contained a similar provision (sec. 2204).

The conference agreement includes this provision.

LEGISLATIVE PROVISIONS NOT ADOPTED

Modification of authority to carry out a certain fiscal year 2004 project

The Senate amendment contained a provision (sec. 2205) that would amend section 2201 of the Military Construction Authorization Act for Fiscal Year 2004 (division B of Public Law 108–136) to increase a project authorization amount at Various Locations, CONUS.

The House bill contained no similar provision.

The Senate recedes.

TITLE XXIII—AIR FORCE

Overview

The House bill would authorize appropriations for the Air Force of $789.6 million for military construction and $1,701.9 million for family housing for fiscal year 2005.

The Senate amendment would authorize appropriations for the Air Force of $782.5 million for military construction and $1,703.1 million for family housing for fiscal year 2005.

The conferees recommend authorization of appropriation for the Air Force of $853.9 million for military construction and $1,700.3 million for family housing for fiscal year 2005.

LEGISLATIVE PROVISIONS ADOPTED

Authorized Air Force construction and land acquisition projects (sec. 2301)

The House bill contained a provision (sec. 2301) that would authorize Air Force military construction projects in fiscal year 2005.

The Senate amendment contained a similar provision (sec. 2301).

The conference agreement includes this provision.

The amounts authorized are listed in this provision on an installation-by-installation basis. A State list of projects contained in the table at the beginning of Division B of this conference report entitled "Military Construction Authorization for FY2005" provides the binding list of specific construction projects authorized at each location.

Family housing (sec. 2302)

The House bill contained a provision (sec. 2302) that would authorize new construction and planning and design of family housing units for the Air Force in fiscal year 2005.

The Senate amendment contained a similar provision (sec. 2302).

The conference agreement includes this provision.

The amounts authorized are listed in this provision on an installation-by-installation basis. A State list of projects contained in the table at the beginning of division B of this conference report entitled "Military Construction Authorization for FY2005" provides the binding list of specific construction projects authorized at each location.

Improvements to military family housing units (sec. 2303)

The House bill contained a provision (sec. 2303) that would authorize improvements to existing units of Air Force family housing in fiscal year 2005.

The Senate amendment contained an identical provision (sec. 2303).

The conference agreement includes this provision.

Authorization of appropriations, Air Force (sec. 2304)

The House bill contained a provision (sec. 2304) that would authorize specific appropriations for each line item contained in the Air Force's military construction budget in fiscal year 2005. This provision would also provide an overall limit on the amount the Air Force is authorized to spend on military construction projects in fiscal year 2005.

The Senate amendment contained a similar provision (sec. 2304).

The conference agreement includes this provision.

TITLE XXIV—DEFENSE AGENCIES

Overview

The House bill would authorize appropriations for the defense agencies of $790.8 million for military construction and $49.6 million for family housing for fiscal year 2005.

The Senate amendment would authorize appropriations for the defense family housing for fiscal year 2005.

The conferees recommend authorization of appropriations for the defense agencies of $675.5 million for military construction and $49.6 million for family housing for fiscal year 2005.

Legislative Provisions Adopted

Authorized defense agencies construction and land acquisition projects (sec. 2401)

The House bill contained a provision (sec. 2401) that would authorize defense agencies military construction projects in fiscal year 2005.

The Senate amendment contained a similar provision (sec. 2401).

The conference agreement includes this provision.

The amounts authorized are listed in this provision on an installation-by-installation basis. A State list of projects contained in the table at the beginning of division B of this conference report entitled "Military Construction Authorization for FY2005" provides the binding list of specific construction projects authorized at each location.

Improvements to military family housing units (sec. 2402)

The House bill contained a provision (sec. 2402) that would authorize improvements to existing units of the defense agencies' family housing in fiscal year 2005.

The Senate amendment contained an identical provision (sec. 2402).

The conference agreement includes this provision.

Energy conservation projects (sec. 2403)

The House bill contained a provision (sec. 2403) that would authorize the Secretary of Defense to carry out energy conservation projects.

The Senate amendment contained a similar provision (sec. 2403).

The conference agreement includes this provision.

Authorization of appropriations, defense agencies (sec. 2404)

The House bill contained a provision (sec. 2404) that would authorize specific appropriations for each line item contained in the defense agencies' military construction budget in fiscal year 2005. This provision would also provide an overall limit on the amount the defense agencies are authorized to spend on military construction projects in fiscal year 2005.

The Senate amendment contained a similar provision (sec. 2404).

The conference agreement includes this provision.

TITLE XXV—NORTH ATLANTIC TREATY ORGANIZATION SECURITY INVESTMENT PROGRAM

Legislative Provisions Adopted

Authorized NATO construction and land acquisition projects (sec. 2501)

The House bill contained a provision (sec. 2501) that would authorize the Secretary of Defense to make contributions to the North Atlantic Treaty Organization Security Investment program in an amount equal to the sum of the amount specifically authorized elsewhere in this conference report, and the amount of recoupment due to the United States for construction previously financed by the United States.

The Senate amendment contained an identical provision (sec. 2501).

The conference agreement includes this provision.

Authorization of appropriations, NATO (sec. 2502)

The House bill contained a provision (sec. 2502) that would authorize appropriations of $165.8 million for the U.S. contribution to the North Atlantic Treaty Organization Security Investment program.

The Senate amendment contained an identical provision (sec. 2502).

The conference agreement reduces the authorization of appropriations by $5.0 million.

TITLE XXVI—GUARD AND RESERVE FORCES FACILITIES

Overview

The House bill would authorize appropriations of $839.8 million for military construction and land acquisition for fiscal year 2005 for the Guard and Reserve components.

The Senate amendment would authorize appropriations of $768.7 million for military construction and land acquisition for fiscal year 2005 for the Guard and Reserve components.

The conferees recommend authorization of appropriations of $929.2 million for military construction and land acquisition for fiscal year 2005 for the Guard and Reserve components. This authorization would be distributed as follows:

Army National Guard	$434.4
Air National Guard	233.5
Army Reserve	90.3
Naval and Marine Corps Reserve	48.2
Air Force Reserve	122.8
Total	929.2

Legislative Provisions Adopted

Authorized Guard and Reserve construction and land acquisition projects (sec. 2601)

The House bill contained a provision (sec. 2601) that would authorize appropriations for military construction for the Guard and Reserve by service component in fiscal year 2005.

The Senate amendment contained a similar provision (sec. 2601).

The conference agreement includes this provision.

A State list of projects contained in the table at the beginning of division B of this conference report entitled "Military Construction Authorization for FY2005" provides the binding list of specific construction projects authorized at each location.

Item of Special Interest

Change in title of military construction project previously authorized

The conferees agree to make a technical clarification to the table, entitled "Military Construction Authorization for FY2004," contained within division B of the statement of managers accompanying the National Defense Authorization Act for Fiscal Year 2004 (Conf. Rept. 108-354) by changing the title for a project authorized for the Air National Guard at the Memphis International Airport, Tennessee from "C-5 Upgrade Shops" to "C-5 Site Improvements and Utilities".

TITLE XXVII—EXPIRATION AND EXTENSION OF AUTHORIZATIONS

Legislative Provisions Adopted

Expiration of authorizations and amounts required to be specified by law (sec. 2701)

The House bill contained a provision (sec. 2701) that would provide that authorizations for military construction projects, repair of real property, land acquisition, family housing projects and facilities, contributions to the North Atlantic Treaty Organization investment program, and Guard and Reserve projects will expire on October 1, 2007, or the date of enactment of an act authorizing funds for military construction for fiscal year 2008, whichever is later. This requirement would not apply to funds obligated prior to the expiration date.

The Senate amendment contained an identical provision (sec. 2701).

The conference agreement includes this provision.

Extension of authorizations of certain fiscal year 2002 projects (sec. 2702)

The House bill contained a provision (sec. 2702) that would provide for the extension of certain fiscal year 2002 military construction project authorizations until October 1, 2005, or the date of enactment of an act authorizing funds for military construction for fiscal year 2006, whichever is later.

The Senate amendment contained a similar provision (sec. 2702).

The Senate recedes with an amendment that would amend the list of fiscal year 2002 military construction project authorizations to be extended.

Extension and renewal of authorizations of certain fiscal year 2001 projects (sec. 2703)

The House bill contained a provision (sec. 2703) that would provide for the extension of certain fiscal year 2001 military construction project authorizations until October 1, 2005 or the date of enactment of an act authorizing funds for military construction for fiscal year 2006, whichever is later.

The Senate amendment contained a similar provision (sec. 2703).

The conference agreement includes this provision.

Legislative Provisions Not Adopted

Effective date

The House bill contained a provision (sec. 2704) that would provide that titles XXI, XXII, XXIII, XXIV, XXV, and XXVI of this Act shall take effect on October 1, 2004, or the date of enactment of this Act, whichever is later.

The Senate amendment contained an identical provision (sec. 2704).

Because the conference report was not adopted prior to October 1, 2004, this provision is no longer required and was not included in the conference agreement.

TITLE XXVIII—GENERAL PROVISIONS

Items of Special Interest

Acceleration of environmental clean-up activities related to public lands, West Wendover, Nevada

Section 2843 of the Military Construction Authorization Act for Fiscal Year 2003 (division B of Public Law 107 314) authorized the Secretary of the Interior and the Secretary of the Air Force to convey certain parcels of real property totaling 14,000 acres at Wendover Air Force Base Auxiliary Field, Nevada to the City of West Wendover, Nevada and Tooele County, Utah. The purpose of the conveyance is to protect and benefit the local community by establishing aircraft accident prevention zones and developing 3,000 acres for an industrial park.

In order for the Secretary of the Interior to carry out the conveyance, the Secretary of the Air Force must identify the extent of environmental contamination on the lands and the measures to ensure the protection of the public. Currently, the Air Force has planned, based on a risk assessment and available funding, for a preliminary environmental assessment in 2006 and, if needed, subsequent environmental actions for these lands in 2011.

Establishing aircraft accident prevention zones are critical to mitigating the risk of loss of life for local residents in the vicinity of airports. The industrial park planned by the local community is vital to the economic development and the growth of commercial investment in the areas surrounding Wendover airport. Delays in the conveyance of the lands are having a detrimental impact on the safety of residents and the vitality of the local economy.

Therefore, the conferees direct the Secretary of the Air Force to give appropriate consideration to the completion of environmental remediation activities for lands at Wendover Air Force Base Auxiliary Field, Nevada so that the lands may be transferred to the Bureau of Land Management as quickly as possible.

Consideration of proposal for leased facilities supporting Headquarters, United States Southern Command, Miami, Florida

The conferees are aware of a proposal from the State of Florida to construct a building for Southern Command occupancy once the current lease expires in 2008. The conferees urge the Secretary of Defense to consider the State's proposal and update the congressional defense committees on the status of this proposal by February 1, 2005.

Legislative Provisions Adopted

Subtitle A—Military Construction Program and Military Family Housing Changes

Modification of approval and notice requirements for facility repair projects (sec. 2801)

The Senate amendment contained a provision (sec. 2802) that would amend section 2811(b) of title 10, United States Code, by raising the threshold of the cost of a construction project requiring approval in advance by a service secretary from $5.0 million to $7.5 million.

The House bill contained a provision (sec. 2803) that would amend section 2811(d) of title 10, United States Code, to lower the threshold at which congressional notification is required for facility repairs using operation and maintenance funds from $10.0 million to $7.5 million.

The House recedes with an amendment that would include in the conference agreement both amendments to section 2811 of title 10, United States Code.

Reporting requirements regarding military family housing requirements for general officers and flag officers (sec. 2802)

The House bill contained a provision (sec. 2804) that would require the Department of Defense to conduct an analysis of general and flag officer housing requirements in the national capital region by March 30, 2005. This section would also require the Department to report to Congress, by March 30, 2005, on its inventory of general and flag officer housing, including annual expenditures of each house for operations, utilities, and maintenance and repair over the past five years. Finally, this section would require the Department to provide, as part of its annual budget justification documents, by March 30 of each year a detailed list of each general and flag officer quarters for which operations, utilities, and maintenance and repair costs, in sum, are anticipated to exceed $20,000 in the coming year.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would require the Department to provide, as part of its annual budget justification documents, a list of general and flag officer quarters for which operations, maintenance and repair costs are anticipated to exceed $35,000 in the budget year. The amendment would also add a reporting requirement for each dwelling unit where operations, maintenance and repair actions would exceed an annual cost of $35,000, not included in the annual President's budget request, but required for environmental remediation or to protect the safety or security of the occupants.

In annual cost calculations, the conferees define "operations activities" to include the prorated share of costs for management of family housing, services, and furnishings. Utilities, leases, and costs related to historical preservation should not be included in the analysis of the $35,000 threshold, but should be included in all reports.

Congressional notification of deviations from authorized cost variations for military construction projects and military family housing projects (sec. 2803)

The House bill contained a provision (sec. 2805) that would amend section 2853(c)(3) of title 10, United States Code, to shorten the notice and wait period for significant project cost increases or scope decreases from 21 days to 14 days, if notification is provided in an electronic format to Congress.

The Senate amendment contained no similar provision.

The Senate recedes.

Assessment of vulnerability of military installations to terrorist attack and annual report on military construction requirements related to antiterrorism and force protection (sec. 2804)

The House bill contained a provision (sec. 2802) that would require the Secretary of Defense to establish guidance on appropriate levels of antiterrorism and force protection requirements for facilities construction and perimeter defenses, and to certify that all major Department of Defense installations have been assessed for vulnerabilities to terrorist attack since September 11, 2001. This section also would require the Department to provide an annual list of unfunded antiterrorism and force-protection military construction requirements.

The Senate amendment contained no similar provision.

The Senate recedes with a clarifying amendment.

Repeal of limitations on use of alternative authority for acquisition and improvement of military housing (sec. 2805)

The House bill contained a provision (sec. 2806) that would amend section 2883 of title 10, United States Code, to repeal the limitation on budget authority for contracts and investments in military housing privatization projects, effective October 1, 2005.

The Senate amendment contained a provision (sec. 2804) that would amend section 2874 of title 10, United States Code, and would repeal sections 2876, 2877, and 2882 of title 10, United States Code.

The Senate recedes with an amendment that would repeal the limitation on budgetary authority for contracts and investments for the acquisition or construction of military family housing and military unaccompanied housing. These limitations would be repealed as of the date of enactment of this Act. The amendment would also repeal section 2885 of title 10, United State Code.

Additional reporting requirements relating to alternative authority for acquisition and improvement of military housing (sec. 2806)

The Senate amendment contained a provision (sec. 2803) that would amend section 2884 of title 10, United States Code, to add additional requirements for reports provided by the Secretary of Defense to congressional defense committees.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Temporary authority to accelerate design efforts for military construction projects carried out using design-build selection procedures (sec. 2807)

The House bill contained a provision (sec. 2807) that would establish a demonstration program to allow the Department of Defense to enter into a design-build construction contract using design funds made available under sections 2807 and 18233 of title 10, United States Code, prior to the authorization of the project. This section would permit the Department to enter into 36 contracts through September 30, 2008, and would require a report to Congress on the value of the program by March 1, 2007.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would limit the demonstration program to 18 projects that are included in the annual President's budget request to Congress.

The conferees intend that in the case of a design-build project carried out under this authority for which construction funds are not subsequently authorized and appropriated by Congress, the design completed at the time of the government's termination for convenience would become the property of the United States Government.

Notification thresholds and requirements for expenditures or contributions for acquisition of facilities for Reserve components (sec. 2808)

The Senate amendment contained a provision (sec. 2812) that would amend sections 18231, 18232, 18233, and 18233a of title 10, United States Code, to modify and enhance definitions and authorities available to the Secretary of Defense, and to provide for the acquisition of facilities and land interests necessary for the proper development, training, operation, and maintenance of the Reserve components of the Armed Forces.

The House bill contained no similar provision.

The House recedes with an amendment that would clarify the modifications to notification thresholds and requirements contained in section 18233a of title 10, United States Code. The conferees note that additional modifications to section 18233 of title 10, United States Code, contained in the Senate amendment have been addressed in another conference provision (sec. 2809).

Authority to exchange Reserve component facilities to acquire replacement facilities (sec. 2809)

The House bill contained a provision (sec. 2808) that would amend section 18233 of title 10, United States Code, to provide the Secretary of Defense the authority to receive facilities, cash, or a combination of facilities and cash for existing Reserve component facilities.

The Senate amendment contained a provision (sec. 2813) that would authorize the Secretary of Defense to carry out projects to assess the feasibility and advisability of obtaining new facilities for the Reserve components through the exchange or sale of existing facilities of such components.

The Senate recedes with an amendment that would amend chapter 1803 of title 10, United States Code, to clarify the authority of the secretary of a military department to acquire facilities through exchanges of equal value facilities with a State, local government, local authority, or private entity, and would provide temporary authority to the secretary concerned to include cash equalization payments in the terms of the exchange.

The amendment would establish requirements for the terms of the agreement and would require the secretary of a military department to certify to the congressional defense committees, prior to carrying out an agreement, that certain conditions have been satisfied before an agreement is signed.

The amendment would also provide temporary authority to the secretary of a military department to make or accept cash payments as a part of an exchange agreement for facilities. The cash payments would be deposited in a special account and available to the Secretary concerned to be used in agreements to equalize the equitable exchange of facilities, or to cover costs related to operations, maintenance, and improvements to facilities acquired using an exchange agreement. The amendment would limit the use of the temporary authority, establish an expiration date, and require the Secretary of Defense to submit a report to the congressional defense committees on the usefulness of the temporary authority.

The conferees acknowledge that ambiguous definitions in chapter 1803, United States Code, have been interpreted by the military departments to authorize these exchange agreements. While the conferees recognize the benefit to the Department of Defense of certain transactions that would exchange sub-optimized land or deteriorated facilities for new facilities for the Reserve components, these unique agreements must be carried out with oversight from Congress.

It is the intent of the conferees that the use of this authority will satisfy, to the maximum extent possible, military construction requirements included in the Future Years Defense Plan for each Reserve component. The conferees expect that the exchange agreements will not result in additional military construction or operations and maintenance requirements imposed upon the Reserve component and that impact on current readiness and missions will be minimized during the exchange. The conferees expect that the Reserve components will consider the feasibility of addressing joint facility and land requirements within the land exchange agreements. The conferees expect the interests of the government will be protected by the use of competitive procedures, to the maximum extent practicable, in order to obtain a realistic value for the facilities to be exchanged.

The conferees expect that the military departments will use the temporary authority to use equalizing cash payments as a condition to facilitate the exchange of facilities in order to expedite agreements to replace or improve deficient Reserve facilities, and not as an opportunity to maximize the accumulation of cash proceeds. The conferees expect the military departments to be able to provide Congress with audit information to account for cash receipts and expenditures in order to retain oversight on the use of funds.

One-year extension of temporary, limited authority to use operation and maintenance funds for construction projects outside the United States (sec. 2810)

The House bill contained a provision (sec. 2809) that would extend for one year the authority provided by section 2808 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136), to permit the Secretary of Defense to utilize operation and maintenance funds to construct facilities necessary for temporary operational requirements related to a declaration of war, national emergency, or contingency.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would make the extension of the authority contingent upon receipt by Congress of all required reports contained in the original provision.

The conferees direct the Department of Defense to determine whether they require permanent authority to utilize operation and maintenance funds to construct facilities in lieu of continuing a temporary extension.

Consideration of combination of military medical treatment facilities and health care facilities of Department of Veterans Affairs (sec. 2811)

The House bill contained a provision (sec. 2810) that would direct the Secretary of Defense and the Secretary of Veterans Affairs to certify that each project to construct medical treatment facilities, included in the annual President's budget request to Congress, had been evaluated for the feasibility of carrying out a project for a combined medical facility.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would eliminate the certification requirement, but continue to require the Secretary of Defense and the Secretary of Veterans Affairs, when proposing construction of a medical facility, to consult on the feasibility of accomplishing a joint project.

Subtitle B—Real Property and Facilities Administration

Reorganization of existing administrative provisions relating to real property transactions (sec. 2821)

The Senate amendment contained a provision (sec. 2811) that would amend sections 2661 and 2679 of title 10, United States Code, to consolidate and clarify authorities available for real property administration. This provision would also repeal sections 2666, 2670, and 2673 of title 10, United States Code, that would be superceded as a result of the consolidations.

The House bill contained a similar provision (sec. 2812).

The House recedes with an amendment that would also repeal section 2664 of title 10, United States Code.

Development of Heritage Center for the National Museum of the United States Army (sec. 2822)

The Senate amendment contained a provision (sec. 2843) that would authorize the Secretary of the Army to enter into an agreement with the Army Historical Foundation for the design, construction, and operation of a facility, or group of facilities, at Fort Belvoir, Virginia for the National Museum of the United States Army.

The House bill contained no similar provision.

The House recedes with an amendment that would clarify the extent of lease payments to be received by the Secretary.

Elimination of reversionary interests clouding United States title to property used as Navy homeports (sec. 2823)

The House bill contained a provision (sec. 2817) that would authorize the Secretary of the Navy to enter into agreements with holders of reversionary interests at Navy homeports to secure permanent title to the properties for the Navy. In exchange, the Navy may provide in-kind consideration, including modification of existing agreements that require payment to the Navy for real property improvements.

The Senate amendment contained no similar provision.

The Senate recedes.

Subtitle C—Base Closure and Realignment

Establishment of specific deadline for submission of revisions to force-structure plan and infrastructure inventory (sec. 2831)

The House bill contained a provision (sec. 2822) that would amend section 2912(a)(4) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510, as amended) to establish March 15 of the base closure round year as the final deadline for revision of the force structure plan or infrastructure inventory.

The Senate amendment contained no similar amendment.

The Senate recedes.

Specification of final selection criteria for 2005 base closure round (sec. 2832)

The House bill contained a provision (sec. 2823) that would amend and codify the criteria that will be used by the Secretary of Defense in making recommendations for the closure or realignment of military installations inside the United States during the next base closure round.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would codify, with an amendment, the final selection criteria published by the Secretary in the Federal Register (Volume 69, Number 29) on February 12, 2004. The conferees expect that the Secretary shall adhere, to the maximum extent possible, to responses in the analysis of comments to the draft selection criteria, as published in the Federal Register on February 12, 2004, including the incorporation of elements of military value, such as research, development, test, evaluation, maintenance, and repair facilities for weapon systems; and the interaction with a highly skilled local work force and local industrial and academic institutions.

Repeal of authority of Secretary of Defense to recommend that installations be placed in inactive status (sec. 2833)

The Senate amendment contained a provision (sec. 2814) that would repeal subsection (c) of section 2914 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510, as amended).

The House bill contained no similar amendment.

The House recedes.

Voting requirements for Defense Base Closure and Realignment Commission to add to or otherwise expand closure and realignment recommendations made by Secretary of Defense (sec. 2834)

The House bill contained a provision (sec. 2824) that would amend section 2914(d) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510, as amended) to require a unanimous vote of the base closure commission to recommend closure, realignment, or expanded realignment of an installation not recommended for closure or realignment by the Secretary of Defense.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would amend section 2914(d) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510, as amended) to require the consent of at least seven commissioners to recommend closure, realignment, or expanded realignment of an installation not recommended for closure or realignment by the Secretary.

Subtitle D—Land Conveyances

PART I—ARMY CONVEYANCES

Land conveyance, Sunflower Army Ammunition Plant, Kansas (sec. 2841)

The Senate amendment contained a provision (sec. 2833) that would authorize the Secretary of the Army, in consultation with the Administrator of General Services, to convey, with consideration, to an entity selected by the Board of Commissioners of Johnson County, Kansas a parcel of property consisting of approximately 9,065 acres for the purpose of facilitating economic development and revitalization of the property.

The House bill contained no similar provision.

The House recedes with an amendment that would clarify the authorization for consideration to be received by the Secretary.

The conferees expect the Secretary of the Army to work with local, state, and federal environmental agencies to develop an agreement in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 U.S.C. 9601 et seq.), that will lead to an accelerated cleanup and enhanced early transfer of the property. Nothing in this section shall waive any obligation of the Secretary under section 120(h) of CERCLA.

Land exchange, Fort Campbell, Kentucky and Tennessee (sec. 2842)

The conferees agree to a provision that would authorize the Secretary of the Army to convey to Bi-County Solid Waste Management System, a local government agency, a parcel of real property consisting of approximately 358 acres located at Fort Campbell in Montgomery County, Tennessee for the purpose of permitting Bi-County to expand a landfill. In exchange, the Secretary would receive a parcel of property consisting of approximately 670 acres located adjacent to Fort Campbell in Trigg County, Kentucky and Stewart County, Tennessee.

Land conveyance, Louisiana Army Ammunition Plant, Doyline, Louisiana (sec. 2843)

The Senate amendment contained a provision (sec. 2835) that would authorize the Secretary of the Army to convey, with consideration, to the State of Louisiana a parcel of property including any improvements thereon, consisting of approximately 14,949 acres located at the Louisiana Army Ammunition Plant, Doyline, Louisiana.

The House bill contained no similar provision.

The House recedes with a technical amendment.

The conferees encourage the Secretary to work with local, state, and federal environmental agencies to develop a condition of the land conveyance agreement that eventually transfers to the State the responsibility for monitoring, sampling, or reporting requirements that are associated with the environmental restoration activities of the Louisiana Army Ammunition Plant, while maintaining the government's compliance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

Land conveyance, Fort Leonard Wood, Missouri (sec. 2844)

The conferees agree to a provision that would authorize the Secretary of the Army to convey, without consideration, to the State of Missouri a parcel of real property consisting of approximately 227.7 acres located at Fort Leonard Wood, Missouri for the purpose of permitting the State to establish a cemetery for veterans of the Armed Forces.

Transfer of administrative jurisdiction, Defense Supply Center, Columbus, Ohio (sec. 2845)

The Senate amendment contained a provision (sec. 2821) that would authorize the Secretary of the Army to transfer, without reimbursement, to the administrative jurisdiction of the Secretary of Veterans Affairs a parcel of real property consisting of approximately 20 acres at the Defense Supply Center, Columbus, Ohio, for the sole purpose of constructing a new outpatient clinic for veterans' medical services.

The House bill contained a similar provision (sec. 2831)

The House recedes with a technical amendment.

Jurisdiction and utilization of former public domain lands, Umatilla Chemical Depot, Oregon (sec. 2846)

The Senate amendment contained a provision (sec. 2842) that would transfer jurisdiction to the Secretary of the Army of various parcels of property, consisting of approximately 8,300 acres located at Umatilla Army Depot, Oregon, that are withdrawn from the public domain. The Secretary would combine the transferred real property with other land interests at the Depot for purposes of management and disposal under title II of the Defense Authorization Amendment and Base Closure and Realignment Act of 1988 (Public Law 100-526) and other applicable law.

The House bill contained no similar provision.

The House recedes with a clarifying amendment.

Modification of authority for land conveyance, equipment and storage yard, Charleston, South Carolina (sec. 2847)

The Senate amendment contained a provision (sec. 2836) that would amend section 563(h) of the Water Resources Development Act of 1999 (Public Law 106-53) to amend the authorized use of proceeds received as consideration by the Secretary of the Army for a parcel of property conveyed to the City of Charleston, South Carolina.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Land conveyance, Fort Hood, Texas (sec.2848)

The House bill contained a provision (sec. 2832) that would authorize the Secretary of the Army to convey approximately 662 acres at Fort Hood, Texas, to the Texas A&M University system of the State of Texas for the purpose of establishing the Texas A&M University, Central Texas. In exchange, the Army would receive fair market value in cash or in-kind consideration for the property.

The Senate amendment contained no similar amendment.

The Senate recedes.

The conferees anticipate that the terms and conditions for any consideration other than cash provided by the Texas A&M University system for the land received will directly enhance the educational opportunities for military personnel and their families at Fort Hood, Texas. The conferees encourage the parties to explore the possibility of providing consideration in the form of reduced tuition rates for military personnel.

Land conveyance, local training area for Browning Army Reserve Center, Utah (sec. 2849)

The Senate amendment contained a provision (sec. 2822) that would authorize the Secretary of the Army to convey, without consideration, to the State of Utah a parcel of real property consisting of approximately 10 acres located at the Browning Army Reserve Center, Utah for the purpose of constructing a nursing care facility for veterans.

The House bill contained no similar provision.

The House recedes with an amendment that would add a reversionary interest, if the Secretary of the Army determines that the property is not being used for the purpose expressed in the legislation.

Land conveyance, Army Reserve Center, Hampton, Virginia (sec. 2850)

The Senate amendment contained a provision (sec. 2824) that would authorize the Secretary of the Army to convey, without consideration, to the Hampton City School Board, Hampton, Virginia, a parcel of real property consisting of approximately 29.8 acres, known as the Butler Farm United States Army Reserve Center, for public education purposes.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Land conveyance, Army National Guard Facility, Seattle, Washington (sec. 2851)

The Senate amendment contained a provision (sec. 2825) that would authorize the Secretary of the Army to convey, without consideration, to the State of Washington a parcel of real property consisting of approximately 9.8 acres in Seattle, Washington and comprising a portion of a National Guard Facility, Pier 91, for the purpose of permitting the State to convey the facility unencumbered for economic redevelopment purposes.

The House bill contained a similar provision (sec. 2833).

The House recedes with a technical amendment.

Modification of land exchange and consolidation, Fort Lewis, Washington (sec. 2852)

The House bill contained a provision (sec. 2834) that would amend the section 2837 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107) to increase the acreage authorized to be conveyed and to clarify the treatment of easements.

The Senate amendment contained no similar provision.

The Senate recedes.

PART II—NAVY CONVEYANCES

Land exchange, former Richmond Naval Air Station, Florida (sec. 2861)

The conferees agree to a provision that would authorize the Secretary of the Army to convey to the University of Miami, Miami, Florida, a parcel of real property and easements consisting of approximately 14 acres at the former Richmond Naval Air Station, Miami, Florida for the purpose of expansion of university facilities. In exchange, the Secretary would be authorized to receive a parcel of real property consisting of approximately 12 acres, and related easements and construction to provide security and access to the parcel.

Land conveyance, Honolulu, Hawaii (sec. 2862)

The Senate amendment included a provision (sec. 2827) that would authorize the Secretary of the Navy to convey to the City and County of Honolulu, Hawaii, a parcel of real property consisting of approximately 5.16 acres for the purpose of continuing fire protection and training for civilian and military personnel.

The House bill contained no similar provision.

The House recedes.

Land conveyance, Navy property, former Fort Sheridan, Illinois (sec. 2863)

The House bill contained a provision (sec. 2842) that would authorize the Secretary of the Navy to convey, without consideration, a parcel of environmentally-sensitive property to a nonprofit land conservation organization, for the purpose of ensuring permanent protection of the lands.

The Senate amendment contained no similar provision.

The Senate recedes with a technical amendment.

Land exchange, Naval Air Station, Paturent River, Maryland (sec. 2864)

The House bill contained a provision (sec. 2843) that would authorize the Secretary of the Navy to convey approximately 5 acres of real property at Naval Air Station, Patuxent River, Maryland, to the state of Maryland. In exchange, the Navy shall receive approximately 5 acres of property of an equal value to the conveyance.

The Senate amendment contained a similar provision (sec. 2831).

The House recedes with a technical amendment.

Modification of land acquisition authority, Perquimans County, North Carolina (sec. 2865)

The conferees agree to a provision that would amend section 2846 of the Military Construction Authorization Act for Fiscal Year 2002 (division B of Public Law 107–107) to increase the amount of acreage that the Secretary of the Navy is authorized to acquire.

Land conveyance, Naval Weapons Station, Charleston, South Carolina (sec. 2866)

The Senate amendment contained a provision (sec. 2834) that would authorize the Secretary of the Navy to convey, with fair market value consideration, to the Berkeley County Sanitation Authority, South Carolina, a parcel of property consisting of not more than 38 acres at the Naval Weapons Station, Charleston, South Carolina, for the purpose of allowing the Authority to expand an existing sewage treatment plant.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Land conveyance, Navy YMCA building, Portsmouth, Virginia (sec. 2867)

The Senate amendment contained a provision (sec. 2828) that would authorize the Secretary of the Navy to convey, without consideration, to the City of Portsmouth, Virginia, a parcel of real property consisting of approximately ½ acre, known as the Navy YMCA building, for economic revitalization purposes.

The House bill contained no similar provision.

The House recedes with a technical amendment that would require the city to provide consideration equal to the costs related to the environmental remediation in exchange for the property.

PART III—AIR FORCE CONVEYANCES

Land exchange, Maxwell Air Force Base, Alabama (sec. 2871)

The House bill contained a provision (sec. 2851) that would authorize the Secretary of the Air Force to convey approximately 28 acres comprising the Maxwell Heights Housing site at Maxwell Air Force Base, Alabama, to the city of Montgomery, Alabama. In exchange, the Air Force shall receive approximately 35 acres of land contiguous to Maxwell Air Force Base.

The Senate amendment contained a similar provision (sec. 2830).

The Senate recedes with an amendment that would state the use of the land to be received by the Air Force, and would permit the Air Force to seek reimbursement for the costs of the exchange.

Land conveyance, March Air Force Base, California (sec. 2872)

The Senate amendment contained a provision (sec. 2832) that would authorize the Secretary of the Air Force to convey, with consideration, to the March Joint Powers Authority a parcel of property consisting of approximately 15 acres located in Riverside County, California and containing the former Defense Reutilization and Marketing Office facility for March Air Force Base. The purpose of the conveyance would be for economic development and revitalization.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Land conveyance, former Griffiss Air Force Base, New York (sec. 2873)

The Senate amendment contained a provision (sec. 2829) that would authorize the Secretary of the Air Force to convey, at fair market value, to the Oneida County Industrial Development Agency, New York, a parcel of property at the former Griffiss Air Force Base, New York, consisting of 9.369 acres, including four buildings, for economic development purposes.

The House bill contained no similar provision.

The House recedes with a clarifying amendment.

PART IV—OTHER CONVEYANCES

Land exchange, Arlington County, Virginia (sec. 2881)

The Senate amendment contained provision (sec. 2823) that would authorize the Secretary of Defense to exchange a parcel of real property consisting of not more than 4.5 acres at the Navy Annex property, Virginia to Arlington County, Virginia for a parcel of approximately equal acreage known as the Southgate Road right-of-way between Arlington National Cemetery and the Navy Annex property.

The House bill contained no similar provision.

The House recedes with an amendment that would clarify the location of the land to be conveyed and would provide conditions to the Secretary for the land conveyance.

Subtitle E—Other Matters

One-year resumption of Department of Defense Laboratory Revitalization Demonstration Program (sec. 2891)

The Senate amendment contained a provision (sec. 2841) that would authorize the Secretary of Defense to carry out a follow-on program for the revitalization of laboratories operated by the Department of Defense.

The House bill contained no similar provision.

The House recedes with an amendment that establishes an authorization expiration date of September 30, 2005.

Designation of Airmen Leadership School at Luke Air Force Base, Arizona, in honor of John J. Rhodes, a former minority leader of the House of Representatives (sec. 2892)

The House bill contained a provision (sec. 2816) that would designate the Airmen Leadership School at Luke Air Force Base, Arizona, as the John J. Rhodes Airmen Leadership School in honor of the former minority leader of the House of Representatives, Congressman John J. Rhodes.

The Senate amendment contained no similar provision.

The Senate recedes.

Settlement of claim of Oakland Base Reuse Authority and Redevelopment Agency (sec. 2893)

The Senate amendment contained a provision (sec. 2844) that would authorize the Secretary of the Navy to pay $2.1 million to the Oakland Base Reuse Authority and Redevelopment Agency of the City of Oakland, California, as settlement from a court case.

The House bill contained no similar amendment.

The House recedes with amendment that would clarify the release of claims against the United States.

Report on establishment of mobilization station at Camp Ripley National Guard Training Center, Little Falls, Minnesota (sec. 2894)

The Senate amendment contained a provision (sec. 1023) that would direct the Secretary of Defense to carry out a study on the feasibility of the use of Camp Ripley National Guard Training Center, Little Falls, Minnesota, as a mobilization center for Reserve components ordered to active duty.

The House bill contained no similar provision.

The House recedes with a clarifying amendment.

Report on feasibility of establishment of veterans memorial at Marine Corps Air Station, El Toro, California (sec. 2895)

The House bill contained a provision (sec. 2818) that would require the Secretary of the Navy, within 30 days of enactment of this Act, to report to Congress on whether the anticipated future uses of the former Marine Corps Air Station, El Toro, California, by the City of Irvine, California, would permit the establishment of a veterans memorial at the former installation.

The Senate amendment contained no similar provision.

The Senate recedes with a technical amendment.

Sense of Congress regarding effect of military housing policies and force structure basing changes on local education agencies (sec. 2896)

The Senate amendment contained a provision (sec. 353) that would express the sense of the Senate that the Department of Defense should support the construction of schools in housing privatization agreements that severely impact school populations.

The House bill contained no similar provision.

The conferees agree to express the sense of Congress that the Department of Defense should consider the effects that the analyses used to determine military housing requirements, changes in force structure due to transformation, and overseas basing realignments will have on the number of school-aged military dependents and the need for additional educational facilities to serve such dependents. In many cases, local school districts do not have the resources or flexibility to respond quickly to changes in requirements, resulting in budget shortfalls and the use of inadequate, temporary facilities affecting the quality of education. The Department should address such effects by closely coordinating changes in requirements with local education agencies. The Department should also consider using existing authority under subchapter IV of chapter 169 of title 10, United States Code, to include the construction of educational facilities in military housing privatization initiatives.

Sense of Congress and study regarding memorial honoring non-United States citizens killed in the line of duty while serving in the United States Armed Forces (sec. 2897)

The House bill contained a provision (sec. 1081) that would require the Secretary of the Army to place in Arlington National Cemetery a memorial marker honoring the service and sacrifice of noncitizens killed in the line of duty while serving in the Armed Forces of the United States.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would express the sense of the Congress that a memorial marker or monument honoring the service and sacrifice of noncitizen service members killed in the line of duty should be designed and placed in an appropriate location. The amendment would require the Secretary of the Army, in consultation with the Secretary of Veterans Affairs and the American Battle Monuments Commission, to conduct a study examining the feasibility of placing such a memorial marker in the Arlington National Cemetery, or some other suitable location. It would require the Secretary of the Army to submit a report on this study and any recommendations by April 1, 2005.

LEGISLATIVE PROVISIONS NOT ADOPTED

Increase in thresholds for unspecified minor military construction projects

The Senate amendment contained a provision (sec. 2801) that would amend section 2805(a)(1) of title 10, United States Code, by raising the threshold of the cost of a construction project authorized by this section from $1.5 million to $2.5 million. This provision would also raise the threshold of the cost of a construction project intended solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening from $3.0 million to $4.0 million.

The House bill contained no similar provision.

The Senate recedes.

Increase in certain thresholds for carrying out unspecified minor military construction projects

The House bill contained a provision (sec. 2801) that would amend section 2805(b) of title 10, United States Code, to increase from $750,000 to $1.0 million the threshold at which service secretaries must approve the use of operation and maintenance funds for unspecified minor construction projects. This section would also amend section 2805(c) to establish a single limit of $1.5 million at which operation and maintenance funds may be used for unspecified minor construction projects.

The Senate amendment contained no similar amendment.

The House recedes.

Increase in certain thresholds for reporting real property transactions

The House bill contained a provision (sec. 2811) that would amend section 2662 of title 10, United States Code, to increase from $750,000 to $1.5 million the thresholds at which the military services must report to Congress real property transactions. This section would also change the threshold amounts in annual reporting requirements for minor real property transactions.

The Senate amendment contained no similar provision.

The House recedes.

Treatment of money rentals from golf course at Rock Island Arsenal, Illinois

The House bill contained a provision (sec. 2813) that would amend section 2667 of title 10, United States Code, to allow 50 percent of lease receipts from the Rock Island Arsenal Golf Club, a community club that leases and operates the arsenal's golf course for the general public and local military personnel, to be placed into the Rock Island Arsenal morale, welfare, and recreation fund.

The Senate amendment contained no similar position.

The House recedes.

Number of contracts authorized department-wide under demonstration program on reduction in long-term facility maintenance costs

The House bill contained a provision (sec. 2814) that would amend section 2814 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107), to adjust the number of contracts permitted under the building commissioning program.

The Senate amendment contained no similar provision.

The House recedes.

Repeal of Commission on Review of Overseas Military Facility Structure of the United States

The House bill contained a provision (sec. 2815) that would repeal section 128 of the Military Construction Appropriations Act, 2004 (Public Law 108-132), which established the Commission on the Review of Overseas Military Facility Structure of the United States.

The Senate amendment contained no similar provision.

The House recedes.

Two-year postponement of 2005 base closure and realignment round and submission of reports regarding future infrastructure requirements for the Armed Forces

The House bill contained a provision (sec. 2821) that would amend current base realignment and closure law to postpone the 2005 base closure and realignment round until 2007, pending receipt of several reports on significant infrastructure issues.

The Senate amendment contained no similar amendment.

The House recedes.

Adherence to certain authorities on preservation of military depot capabilities during any subsequent round of base closures and realignments

The House bill contained a provision (sec. 2825) that would amend the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510, as amended) to require that base closure and realignment actions comply with provisions of title 10, United States Code, that address government-owned, government-operated depot-level maintenance, repair, and logistics capabilities within the Department of Defense.

The Senate amendment contained no similar provision.

The House recedes.

The conferees acknowledge that section 2464 of title 10, United States Code, requires the Department of Defense to maintain government-owned and operated logistics capabilities to include work force and facilities, to ensure a ready and controlled source of technical competence and resources necessary to support an effective and timely response to a mobilization, a national defense contingency situation, and other emergency requirements. Section 2466 of the same title requires that no more than 50 percent of each military department's annual funding for depot level maintenance and repair activities be performed in the private sector. While these sections are intended to preserve a certain level of depot and logistics capabilities in the Department, these sections also authorize the Secretary of Defense to waive these provisions for reasons of national security.

The conferees believe that military base realignment and closure actions undertaken by the Department under authority provided in the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510), as amended by the National Defense Authorization Act for 2002 (division B of Public Law 107-107), must be consistent with the provisions in title 10, United States Code, pertaining to the preservation of depot logistics capabilities.

Therefore, the conferees direct the Secretary of Defense to ensure that the recommendations submitted to the Commission, pursuant to the Base Closure and Realignment Act, adhere to sections 2464 and 2466 of title 10, United States Code. The conferees further direct the Secretary to ensure that the same recommendations will not result in the requirement to perpetually waive the provisions of sections 2464 and 2466 of title 10, United States Code.

Transfer of jurisdiction, Nebraska Avenue Naval Complex, District of Columbia

The House bill contained a provision (sec. 2841) that would transfer jurisdiction of the Nebraska Avenue Naval Complex in Washington, D.C., from the Navy to the Administrator of General Services for the purpose of accommodating the Department of Homeland Security.

The Senate amendment contained a similar provision (sec. 2826).

The authority for the Secretary of the Navy to transfer jurisdiction of the Nebraska Avenue Naval Complex to the Administrator of General Services for use by the Department of Homeland Security was provided by

Congress in Public Law 108-268, signed on July 2, 2004. Therefore, this provision is not adopted by the conferees.

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY PROGRAMS

Overview

Title XXXI authorizes appropriations for atomic energy defense activities of the Department of Energy (DOE) for fiscal year 2005, including: the purchase, construction, and acquisition of plant and capital equipment; research and development; nuclear weapons activities; defense nuclear nonproliferation; naval nuclear propulsion; environmental restoration and waste management; operating expenses; and other expenses necessary to carry out the purposes of the Department of Energy Organization Act (Public Law 95-91). The title would authorize appropriations in four categories: National Nuclear Security Administration (NNSA); defense environmental management; other defense activities; and defense nuclear waste disposal.

The budget request for atomic energy defense activities at DOE totaled $16.8 billion, a $483.2 million increase above the fiscal year 2004 level. Of the total amount requested, $9.0 billion would be for NNSA, of which $6.6 billion would be for weapons activities; $1.3 billion would be for defense nuclear nonproliferation activities; $797.9 million would be for naval reactors; $333.7 million would be for the Office of the Administrator; $7.0 billion would be for defense environmental management, of which $6.0 billion would be for defense site acceleration completion and $982.5 million would be for defense environmental services; $663.6 million would be for other defense activities; and $131.0 million would be for defense nuclear waste disposal.

The conferees agree to authorize $16.8 billion for atomic energy defense activities at DOE, an increase of $483.2 million above the fiscal year 2004 level. The conferees agree to authorize $9.1 billion for the NNSA, an increase of $33.6 million above the budget request. Of the amounts authorized for the NNSA, $6.6 billion would be for weapons activities, an increase of $23.6 million; $1.3 billion would be for defense nuclear nonproliferation activities; $797.9 million would be for naval reactors; and $343.7 million would be for the Office of the Administrator, an increase of $10.0 million above the budget request. The conferees agree to authorize $7.0 billion for defense environmental management, an increase of $4.0 million above the budget request. Of the amounts authorized for defense environmental management, $6.0 billion would be for defense site acceleration completion and $986.5 million for defense environmental services. The conferees agree to authorize $636.0 million for other defense activities, a decrease of $27.6 million below the budget request. The conferees agree to authorize $120.0 million for defense nuclear waste disposal, a decrease of $11.0 million below the budget request.

The following table summarizes the budget request and the authorizations:

Department of Energy National Security Programs
(Dollars in Thousands)

	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Atomic Energy Defense Activities (053)					
National Nuclear Security Administration:					
Weapons activities	6,568,453	6,577,953	6,674,898	23,600	6,592,053
Defense nuclear nonproliferation	1,348,647	1,338,147	1,348,647		1,348,647
Naval reactors	797,900	797,900	797,900		797,900
Office of the administrator	333,700	333,700	343,700	10,000	343,700
Total, National Nuclear Security Administration	**9,048,700**	**9,047,700**	**9,165,145**	**33,600**	**9,082,300**
Environmental and other defense activities:					
Defense site acceleration completion	5,970,837	5,926,837	5,971,932		5,970,837
Defense environmental services	982,470	986,470	982,470	4,000	986,470
Other defense activities	663,636	657,636	568,096	-27,600	636,036
Defense nuclear waste disposal	131,000	131,000	108,000	-11,000	120,000
Total, Environmental & other defense activities	**7,747,943**	**7,701,943**	**7,630,498**	**-34,600**	**7,713,343**
Total, Department of Energy	**16,796,643**	**16,749,643**	**16,795,643**	**-1,000**	**16,795,643**
Defense Nuclear Facilites Safety Board	20,268	21,268	21,268	1,000	21,268
Formerly Utilized Sites Remedial Action Program - Corps of Engineers	[140,000]				[140,000]
Total, Atomic Energy Defense Activities (053)	**16,816,911**	**16,770,911**	**16,816,911**		**16,816,911**

Department of Energy National Security Programs
(Dollars in Thousands)

	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Weapons Activities					
Directed stockpile work (DSW)					
B61 life extension program	117,927	117,927	117,927		117,927
W76 life extension program	213,111	213,111	213,111		213,111
W80 life extension program	146,400	146,400	146,400		146,400
B61 stockpile systems	91,256	91,256	91,256		91,256
W62 stockpile systems	18,401	18,401	18,401		18,401
W76 stockpile systems	137,527	137,527	137,527		137,527
W78 stockpile systems	44,313	44,313	44,313		44,313
W80 stockpile systems	49,507	49,507	49,507		49,507
B83 stockpile systems	44,995	44,995	44,995		44,995
W84 stockpile systems	6,119	6,119	6,119		6,119
W87 stockpile systems	94,884	94,884	94,884		94,884
W88 stockpile systems	49,093	49,093	49,093		49,093
Retired warheads stockpile systems	65,258	65,258	65,258		65,258
Stockpile services research & development certification and safety	157,986	157,986	157,986		157,986
Stockpile services management, technology and production	133,101	133,101	133,101		133,101
Stockpile services advanced concepts	9,000	9,000	9,000		9,000
Stockpile services robust nuclear earth penetrator	27,557	27,557	27,557		27,557
Reduction for individual warhead life extension programs		-39,000		-21,500	-21,500
Total, Directed stockpile work	**1,406,435**	**1,367,435**	**1,406,435**	**-21,500**	**1,384,935**

Department of Energy National Security Programs
(Dollars in Thousands)

	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Campaigns					
Science campaigns					
Primary assesment technology	81,473	81,473	81,473		81,473
Dynamic materials properties	91,521	91,521	91,521		91,521
Advanced radiography	62,371	62,371	62,371		62,371
Secondary assessment technologies	65,597	65,597	65,597		65,597
Program decrease		-19,500		-19,500	-19,500
Total, Science campaigns	**300,962**	**281,462**	**300,962**	**-19,500**	**281,462**
Engineering campaign					
Operations and maintenace					
Enhanced surety	38,121	38,121	38,121		38,121
Weapons system engineering assessment technology	27,270	27,270	27,270		27,270
Nuclear survivability	24,460	24,460	24,460		24,460
Enhanced surveillance	99,879	99,879	99,879		99,879
Microsystems and engineering sciences (MESA) other project costs (OPC)	4,600	4,600	4,600		4,600
Application (MESA) construction	48,654	68,654	48,654	10,000	58,654
Program increase		[20,000]		[10,000]	
Total, Engineering campaign	**242,984**	**262,984**	**242,984**	**10,000**	**252,984**
Inertial confinement fusion ignition and high yield campaign					
Ignition	76,437	76,437	76,437		76,437
Support of stockpile program	38,987	38,987	38,987		38,987

Department of Energy National Security Programs
(Dollars in Thousands)

	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
NIF diagnostics, cryogenics and experiment support	44,023	44,023	44,023		44,023
Pulsed power inertial confinement fusion	10,080	10,080	10,080		10,080
Univerisry grants/other support	7,776	7,776	7,776		7,776
Facility operations and target production	63,056	63,056	63,056		63,056
Inertial fusion technology					
NIF demonstration program	113,700	113,700	113,700		113,700
High-energy petawatt laser development	7,975	7,975	7,975		7,975
NIF other project costs (OPC)					
NIF construction	130,000	130,000	130,000		130,000
Total, Inertial confinement fusion ignition and high yield campaign	**492,034**	**492,034**	**492,034**		**492,034**
Advanced simulation and computing campaign					
Advanced application development	150,793	150,793	150,793		150,793
Verification and walidation	49,780	49,780	49,780		49,780
Materials and physics modeling	72,062	72,062	72,062		72,062
Problem solving environment (PSE)	45,072	45,072	45,072		45,072
Distance computing (DisCom)	17,068	17,068	17,068		17,068
Pathforward	18,000	18,000	18,000		18,000
Visual interactive environment for weapons simulation (VIEWS)	61,635	61,635	61,635		61,635
Physical infrastructure & platforms	140,000	140,000	140,000		140,000
Computational systems	64,081	64,081	64,081		64,081
Simulation support	59,413	59,413	59,413		59,413
Advanced architecture	3,000	3,000	3,000		3,000

Department of Energy National Security Programs
(Dollars in Thousands)

	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
University partnerships	47,980	47,980	47,980		47,980
ASCI integration	9,148	9,148	9,148		9,148
Subtotal, Advanced simulation and computing	**738,032**		**738,032**		**738,032**
Construction projects	3,228	3,228	3,228		3,228
Reduction for cost growth		-20,000		-10,000	-10,000
Total, Advanced simulation and computing campaign	**741,260**	**721,260**	**741,260**	**-10,000**	**731,260**
Pit manufacturing and certification campaign					
W88 pit manufacturing	132,005	132,005	132,005		132,005
W88 pit certification	101,470	101,470	101,470		101,470
Pit manufacturing capability	20,992	20,992	20,992		20,992
Modern pit facility	29,800	29,800	29,800		29,800
Pit campaign support activities at NTS	52,206	52,206	52,206		52,206
Total, Pit manufacturing and certification campaign	**336,473**	**336,473**	**336,473**		**336,473**
Readiness Campaign					
Stockpile readiness	45,812	45,812	45,812		45,812
High explosives and weapon operations	34,220	34,220	34,220		34,220
Non-nuclear readiness	35,457	35,457	35,457		35,457
Tritium readiness	58,850	58,850	58,850		58,850
Tritium readiness construction	21,000	21,000	21,000		21,000
Advanced design & production technologies	84,788	84,788	84,788		84,788
Total, Readiness campaign	**280,127**	**280,127**	**280,127**		**280,127**

Department of Energy National Security Programs
(Dollars in Thousands)

	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Readiness in technical base and facilities (RTBF)					
Operations of facilities					
Kansas City Plant	101,775	106,775	122,375	12,600	114,375
Program increase		[5,000]	[20,600]	[12,600]	
LLNL	54,765	62,765	54,765	6,000	60,765
Program increase		[8,000]		[6,000]	
LANL	318,913	318,913	318,913		318,913
Nevada Test Site	70,180	70,180	70,180		70,180
Pantex Plant	97,741	116,741	116,841	19,000	116,741
Program increase		[19,000]	[19,100]	[19,000]	
Sandia National Laboratories	150,710	168,710	150,710	9,000	159,710
Program increase		[18,000]		[9,000]	
Savannah River Site	95,173	95,173	95,173		95,173
Y-12 National Security Complex	98,194	116,194	98,194	9,000	107,194
Program increase		[18,000]		[9,000]	
Institutional site support	30,106	30,106	30,106		30,106
Operation of facilities, RTBF			11,745		
Program readiness	106,204	106,204	106,204		106,204
Special projects	20,534	20,534	20,534		20,534
Material recycle and recovery	86,965	86,965	86,965		86,965
Containers	17,910	17,910	17,910		17,910
Storage	18,982	18,982	18,982		18,982
Total, operations & maintenance	**1,268,152**	**1,336,152**	**1,319,597**	**55,600**	**1,323,752**

Department of Energy National Security Programs
(Dollars in Thousands)

	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Construction:					
05-D-140 Project engineering design various locations	11,600	11,600	11,600		11,600
05-D-401 Building 12-64 production bays upgrades Pantex Plant, Amarillo, TX	25,100	25,100	25,100		25,100
05-D-402 Berylium capability (BEC) project, Y-12 National Security Complex, Oakridge, TN	3,627	3,627	3,627		3,627
04-D-103 Project engineering and design, (PED) various locations	1,500	1,500	1,500		1,500
04-D-125 Chemistry and metallurgy facility replacement project, Los Alamos National Laboratory, Los Alamos, NM	24,000	24,000	24,000		24,000
04-D-126 Building 12-44 production cellsupgrade, Pantex plant, Amarillo, TX	2,600	2,600	2,600		2,600
04-D-128 TA-18 mission relocation project, Los Alamos National Laboratory, Los Alamos, NM					
03-D-102 LANL Administration Building (LANL)	37,348	37,348	37,348		37,348
03-D-103 Project engineering and design (PED) various locations	15,275	15,275	15,275		15,275
03-D-123 Special nuclear materials component requalification facility, Pantex plant, Amarillo, TX	4,602	4,602	4,602		4,602
02-D-103 Project engineering and design, various locations	5,250	5,250	5,250		5,250
02-D-105 Engineering technology complex upgrade (ETCU), LLNL, Livermore, CA	5,400	5,400	5,400		5,400

Department of Energy National Security Programs
(Dollars in Thousands)

	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
01-D-103 Project engineering and design (PED) various locations	6,000	6,000	6,000		6,000
01-D-124 HEU materials facility, Y-12 plant, Oak Ridge, TN	64,000	64,000	64,000		64,000
Total, Construction	**206,302**	**206,302**	**206,302**		**206,302**
Total, Readiness in technical base and facilities	**1,474,454**	**1,542,454**	**1,525,899**	**55,600**	**1,530,054**
Secure transportation asset					
Operations and equipment	143,873	143,873	143,873		143,873
Program direction	57,427	57,427	57,427		57,427
Subtotal, Secure transportation asset	**201,300**	**201,300**	**201,300**		**201,300**
Use of prior year balances					
Total, Secure transportation asset	**201,300**	**201,300**	**201,300**		**201,300**
Nuclear weapons incident response					
Emergency response	93,119	93,119	93,119		93,119
Emergency management	6,090	6,090	6,090		6,090
Total, nuclear weapons incident response	**99,209**	**99,209**	**99,209**		**99,209**
Facilities and infrastructure recapitalization program					
Operation and maintenance	291,543	291,543	311,543		291,543
Program increase			[20,000]		

Department of Energy National Security Programs
(Dollars in Thousands)

	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Construction:					
05-D-160 Facilities and infrastructure recapitalization program (FIRP), project engineering and design (PED), various locations	8,700	8,700	8,700		8,700
05-D-601Compressed air upgrades project (CAUP), Y-12, National security complex, Oakridge, TN	4,400	4,400	4,400		4,400
05-D-602 Power grid infrastructure upgrade (PGIU), Los Alamos National Laboratory, Los Alamos, NM	10,000	10,000	10,000		10,000
05-D-603 New master substation (NMSU) SNL	600	600	600		600
04-D-203 Facilities and infrastructure recapitalization program (FIRP), project engineering design (PED), various locations	981	981	981		981
Total, Construction	**24,681**	**24,681**	**24,681**		**24,681**
Total, Facilities and infrastructure recapitalization program	**316,224**	**316,224**	**336,224**		**316,224**
Safeguards and security					
Operations and maintenace					
Physical security	589,491	589,491	589,491		589,491
Cyber Security	80,500	80,500	80,500		80,500
Design basis threat requirements			10,000		
Operation and maintenance, Y-12			25,000	9,000	9,000
Total, operations and maintanence	**669,991**	**669,991**	**704,991**	**9,000**	**678,991**

Department of Energy National Security Programs
(Dollars in Thousands)

	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Construction:					
05-D-170 Project engineering and design, various locations	17,000	17,000	17,000		17,000
05-D-701 Security perimeter project, Los Alamos, National Laboratory, Los Alamos, NM	20,000	20,000	20,000		20,000
Total, construction	**37,000**	**37,000**	**37,000**		**37,000**
Total, Safeguards and security	**706,991**	**706,991**	**741,991**	**9,000**	**715,991**
Subtotal, Weapons Activities	**6,598,453**	**6,607,953**	**6,704,898**	**23,600**	**6,622,053**
Adjustments					
Use of prior year balances					
Less security charge for reimbursable work	-30,000	-30,000	-30,000		-30,000
Total, Adjustments	**-30,000**	**-30,000**	**-30,000**		**-30,000**
Total, Weapons Activities	**6,568,453**	**6,577,953**	**6,674,898**	**23,600**	**6,592,053**
Defense Nuclear Nonproliferation					
Nonproliferation and verification R&D					
Operation and maintenance	220,000	220,000	245,000	25,000	245,000
Program increase			[25,000]	[25,000]	
Nonproliferation and international security	124,000	124,000	124,000		124,000
Nonproliferation programs with Russia					
International nuclear materials protection and cooperation	238,000	227,500	238,000		238,000
Program decrease		[-10,500]			

Department of Energy National Security Programs
(Dollars in Thousands)

	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Russian transition initiatives	41,000	41,000	41,000		41,000
HEU transparency implementation	20,950	20,950	20,950		20,950
Elimination of weapons-grade plutonium production program	50,097	50,097	50,097		50,097
Fissile materials disposition					
U S surplus materials disposition	184,700	184,700	184,700		184,700
Russian surplus materials disposition	64,000	64,000	64,000		64,000
Total, Fissile materials disposition	248,700	248,700	248,700		
Construction:					
99-D-141 Pit disassembly and conversion facility, Savannah River, SC	32,300	32,300	32,300		32,300
99-D-143 Mixed oxide fuel fabrication facility, Savannah River, SC	368,000	368,000	368,000		368,000
Total, Construction	400,300	400,300	400,300		400,300
Reduction due to delay in program			-25,000	-25,000	-25,000
Total, Fissile materials disposition	649,000	649,000	624,000	-25,000	624,000
Total, Nonproliferation programs with Russia	999,047	988,547	974,047	-25,000	974,047
Offsight source recovery project	5,600	5,600	5,600		5,600
Subtotal, Defense Nuclear Nonproliferation	1,348,647	1,338,147	1,348,647		1,348,647
Adjustments:					
Use of prior year balances					
Total, Adjustments					
Total, Defense Nuclear Nonproliferation	1,348,647	1,338,147	1,348,647		1,348,647

Department of Energy National Security Programs

(Dollars in Thousands)

	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Naval Reactors					
Naval reactors development					
Operation and maintenance	761,211	761,211	761,211		761,211
Construction:					
05-N-900 Materials development facility building, Schenectady, NY	6,200	6,200	6,200		6,200
90-N-102 Expended core facility dry cell project, Naval Reactors Facility, ID	989	989	989		989
Total, Construction	**7,189**	**7,189**	**7,189**		**7,189**
Total, Naval reactors development	**768,400**	**768,400**	**768,400**		**768,400**
Program direction	29,500	29,500	29,500		29,500
Subtotal, Naval Reactors	**797,900**	**797,900**	**797,900**		**797,900**
Total, Naval Reactors	**797,900**	**797,900**	**797,900**		**797,900**
Office Of The Administrator					
Office of the Administrator	333,700	333,700	333,700		333,700
Pajarito Plateau Homesteaders			10,000	10,000	10,000
Total, Office of the Administrator	**333,700**	**333,700**	**343,700**	**10,000**	**343,700**

Department of Energy National Security Programs
(Dollars in Thousands)

	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Defense Site Acceleration Completion *(Defense Facilities Closure Projects)*					
2006 Accelerated completions					
Operation and maintenance	1,251,799	1,251,799	1,252,894		1,251,799
Program increase			[1,095]		
2012 Accelerated Completions					
Operation and maintenance	1,437,001	1,437,001	1,437,001		1,437,001
Construction:					
04-D-414 Project engineering and design, various locations	3,000	3,000	3,000		3,000
04-D-423 3013 container surveillance capability in 235-F, SR	20,640	20,640	20,640		20,640
01-D-416 Waste treatment and immobilization plant, RL	690,000	690,000	690,000		690,000
Total, Construction	**713,640**	**713,640**	**713,640**		**713,640**
Total, 2012 Accelerated Completions	**2,150,641**	**2,150,641**	**2,150,641**		**2,150,641**
2035 Accelerated Completions					
Operation and maintenance	1,849,512	1,849,512	1,849,512		1,849,512
Construction:					
04-D-408 Glass waste storage building #2, SR	43,827	43,827	43,827		43,827
Total, Construction	**43,827**	**43,827**	**43,827**		**43,827**
Total, 2035 Accelerated Completions	**1,893,339**	**1,893,339**	**1,893,339**		**1,893,339**

Department of Energy National Security Programs
(Dollars in Thousands)

	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Safeguards and security	265,059	265,059	265,059		265,059
High level waste (WIR) legislative proposal					
Operation and maintenance	249,442	249,442	249,442		249,442
Construction					
05-D-401 Salt waste processing facility, Savannah River	52,000	52,000	52,000		52,000
04-D-414 04-02 PED: Sodium bearing waste treatment, Idaho	24,900	24,900	24,900		24,900
03-D-414 PED: salt waste processing facility alternative, Savannah River	23,658	23,658	23,658		23,658
Total, Construction	**100,558**	**100,558**	**100,558**		**100,558**
Program decrease		-100,000			
Program increase (H. Amdt)		50,000			
Total, High level waste legislative proposal	**350,000**	**300,000**	**350,000**		**350,000**
Technology development and deployment	60,142	66,142	60,142		60,142
Hammer		[6,000]			
Hammer (non-additive)				[6,000]	
Subtotal, Defense Site Acceleration Completion	**5,970,980**	**5,926,980**	**5,972,075**		**5,970,980**
Use of prior year balances					
Less security charge for reimbursable work	-143	-143	-143		-143
Total, Defense Site Acceleration Completion	**5,970,837**	**5,926,837**	**5,971,932**		**5,970,837**

Department of Energy National Security Programs
(Dollars in Thousands)

	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Defense Environmental Services					
Community and regulatory support	60,547	60,547	60,547		60,547
Federal contribution to the uranium enrichment	463,000	467,000	463,000	4,000	467,000
Non-closure environmental activities		[4,000]		[4,000]	
Operation and maintenance	187,864	187,864	187,864		187,864
Spent nuclear fuel management					
Program direction	271,059	271,059	271,059		271,059
Subtotal, Defense Environmental Services	**982,470**	**986,470**	**982,470**	**4,000**	**986,470**
Use of prior year balances					
Total, Defense Environmental Services	**982,470**	**986,470**	**982,470**	**4,000**	**986,470**
Other Defense Activities					
Energy security and assurance					
Energy security	6,100	6,100		-6,100	
Program decrease			[-6,100]	[-6,100]	
Program direction	4,500	4,500		-4,500	
Program decrease			[-4,500]	[-4,500]	
Total, Energy security and assurance	**10,600**	**10,600**		**-10,600**	
Office of Security					
Nuclear safeguards and security	143,197	143,197	143,197		143,197
Security investigations	53,554	53,554	53,554		53,554
International nuclear analysis			1,500	1,500	1,500
Program direction	58,350	58,350	58,350		58,350
Total, Office of Security	**255,101**	**255,101**	**256,601**	**1,500**	**256,601**

Department of Energy National Security Programs
(Dollars in Thousands)

	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Independent oversight and performance assurance	24,669	24,669	24,669		24,669
Civilian radioactive waste management					
Spent nuclear fuel management	21,190	21,190	21,190		21,190
Program direction	1,060	1,060	1,060		1,060
Total, Civilian radioactive waste management	**22,250**	**22,250**	**22,250**		**22,250**
Environment, safety & health					
Environment, safety and health (defense)	99,105	99,105	99,105		99,105
Program direction	20,414	20,414	20,414		20,414
Total, Environment, safety and health	**119,519**	**119,519**	**119,519**		**119,519**
Office of Legacy Management					
Legacy management	19,194	19,194	19,694	500	19,694
Program increase			[500]	[500]	
Worker and community transition	2,500		6,000	500	3,000
Program increase			[3,500]	[500]	
Program decrease		[-2,500]			
Program direction	13,201	13,201	13,201		13,201
Total, Office of Legacy Management	**34,895**	**32,395**	**38,895**	**1,000**	**35,895**

Department of Energy National Security Programs
(Dollars in Thousands)

	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Nuclear energy					
Infrastructure	20,886	22,386	20,886	1,500	22,386
Lynchburg repackaging		[1,500]		[1,500]	
Idaho sitewide safeguards and security	58,103	58,103	58,103		58,103
Total, Infrastructure	**78,989**	**80,489**	**78,989**	**1,500**	**80,489**
Program direction	33,858	33,858	33,858		33,858
Total, Nuclear energy	**112,847**	**114,347**	**112,847**	**1,500**	**114,347**
Defense related administrative support	92,440	92,440		-21,000	71,440
Program decrease			[-92,440]	[-21,000]	
Office of hearings and appeals	4,318	4,318	4,318		4,318
Office of Future Liabilities					
Future Liabilities	5,000			-5,000	
Program decrease		[-5,000]	[-5,000]	[-5,000]	
Office of engineering and construction management			7,000	5,000	5,000
Subtotal, Other defense activities	**681,639**	**675,639**	**586,099**	**-27,600**	**654,039**

Department of Energy National Security Programs
(Dollars in Thousands)

	FY2005 Request	House Authorized	Senate Authorized	Conference Change	Conference Authorized
Adjustments:					
Use of prior year balances	-15,000	-15,000	-15,000		-15,000
Less security charge for reimbursable work (SO)					
Less security charge for reimbursable work (NE)	-3,003	-3,003	-3,003		-3,003
Total, Adjustments	**-18,003**	**-18,003**	**-18,003**		**-18,003**
Total, Other Defense Activities	**663,636**	**657,636**	**568,096**	**-27,600**	**636,036**
Defense Nuclear Waste Disposal					
Defense nuclear waste disposal	131,000	131,000	108,000	-11,000	120,000
Program decrease			[-23,000]	[-11,000]	
Total, Department of Energy	**16,796,643**	**16,749,643**	**16,795,643**	**-1,000**	**16,795,643**
Defense Nuclear Facilites Safety Board	20,268	21,268	21,268	1,000	21,268
Formerly Utilized Sites Remedial Action Program - Corps of Engineers	[140,000]				[140,000]
Program increase		[1,000]	[1,000]	[1,000]	
Total, Atomic Energy Defense Activities (053)	**16,816,911**	**16,770,911**	**16,816,911**		**16,816,911**

Legislative Provisions Adopted

Subtitle A—National Security Programs Authorizations

National Nuclear Security Administration (sec. 3101)

The House bill contained a provision (sec. 3101) that would authorize $9.0 billion for the National Nuclear Security Administration (NNSA), including funds for weapons activities, defense nuclear nonproliferation programs, naval reactor programs, and the Office of the Administrator.

The Senate amendment contained a similar provision that would authorize $9.2 billion (sec. 3101).

The conferees agree to include a provision that would authorize $9.1 billion for NNSA.

The budget request included $1.4 billion for directed stockpile work. The conferees agree to authorize $1.4 billion for directed stockpile work, a decrease of $21.5 million to be taken out of individual warhead life extension programs. The conferees note that this is a $44.6 million increase over the amount appropriated for directed stockpile work in fiscal year 2004.

The budget request included $301.0 million in science campaigns. The conferees agree to authorize $281.5 million for science campaigns, a decrease of $19.5 million. The conferees note that the reduction is without prejudice and should be taken from carry over due to the shutdown at the national laboratories in July and August.

The budget request included $243.0 million for the engineering campaign. The conferees agree to authorize $253.0 million for the engineering campaign, an increase of $10.0 million, to support the microsystems and engineering sciences applications (MESA) construction project.

The budget request included $741.3 million for the advanced simulation and computing (ASC) campaign. The conferees agree to authorize $731.3 million for the advanced simulation and computing campaign, a decrease of $10.0 million. The conferees note that the ASC campaign has experienced cost growth and schedule slippage.

The budget request included $1.5 billion for readiness in technical base and facilities. The conferees agree to authorize $1.5 billion, an increase of $55.6 million for readiness in technical base and facilities for replacement of aging equipment, correction of deferred maintenance, and disposition of legacy materials consistent with the National Nuclear Security Administration approved 10 year comprehensive plan as follows: $12.6 million at the Kansas City Plant in Missouri, $6.0 million for the Lawrence Livermore National Laboratory in California, $19.0 million for the Pantex Plant in Texas, $9.0 million for Sandia National Laboratory in New Mexico, and $9.0 million for the Y–12 National Security Complex in Tennessee.

The budget request included $707.0 for safeguards and security. The conferees agree to authorize $716.0 million for safeguards and security, a $9.0 million increase for security upgrades at the Y–12 National Security Complex in Tennessee.

The budget request included $1.3 billion for defense nuclear nonproliferation. The conferees agree to authorize $1.3 billion for defense nuclear nonproliferation, the amount of the budget request. The conferees further agree to a $25.0 million increase for nonproliferation and verification research and development, and a $25.0 million reduction for fissile materials disposition. The conferees note that continued delays in the commencement of construction activities under the fissile materials disposition program make it unlikely that the Department will be able to fully obligate the budget request for that program in fiscal year 2005. The conferees believe that the nonproliferation and verification research and development program is doing valuable work on proliferation detection and other technologies that would benefit from additional resources.

The budget request included $333.7 million for the Office of the Administrator. The conferees agree to authorize $343.7 million, an increase of $10.0 million to settle claims of Pajarito homesteaders. This account includes program direction funding for all elements of NNSA, with the exception of the Naval Reactors Program and the Secure Transportation Asset.

The conferees note that security lapses at the Los Alamos National Laboratory (LANL) concerning classified removable electronic media (CREM) this past year have been very disruptive to the nuclear weapons program. The conferees encourage the Administrator to become more involved in making sure these types of incidents are avoided in the future. The contractor has the primary day-to-day accountability for maintaining security of the laboratory, including the security of classified information. The contractor must ensure that a culture exists across the laboratory which maintains classified information in a very secure manner. However, the National Nuclear Security Administration also must be held accountable, and the Administrator must ensure the federal workforce is applying an appropriate level of oversight to avoid security lapses to the maximum extent possible.

Defense environmental management (sec. 3102)

The House bill contained a provision (sec. 3102) that would authorize $6.9 billion for the Department of Energy for defense environmental management (EM) activities for fiscal year 2005, including funds for defense site acceleration completion and defense environmental services.

The Senate amendment contained a similar provision (sec. 3102) that would authorize $7.0 billion for defense environmental activities.

The conferees agree to authorize $7.0 billion for defense environmental management, the amounts of the budget request, including $6.0 billion for defense site acceleration completion and $986.5 million for defense environmental services, an increase of $4.0 million. The conferees agree to authorize this $4.0 million increase in defense environmental services for newly generated waste requirements and ground water cleanup activities at the Lawrence Livermore National Laboratory in California (Project HQ SW 0013Y).

Of the amounts authorized to be appropriated in the defense site acceleration completion program, $6.0 million may be available for the Hazardous Materials Management and Emergency Response (HAMMER) Training Center. While the conferees recognize that HAMMER is an important facility for the training of emergency response personnel, the conferees note that HAMMER may be more appropriately funded and managed by the Department of Homeland Security.

Other defense activities (sec. 3103)

The House bill contained a provision (sec. 3103) that would authorize $657.6 million for the Department of Energy (DOE) for other defense activities for fiscal year 2005.

The Senate amendment contained a similar provision (sec. 3103) that would authorize $568.1 million for DOE for other defense activities.

The conferees agree to include a provision that would authorize $636.0 million, a reduction of $27.6 million below the budget request.

The budget request included $10.6 million for energy security and assurance. The conferees recommend no funds for these activities. The operational component for this office was transferred to the Department of Homeland Security in fiscal year 2003. The conferees do not support using Atomic Energy Act funds for nondefense activities.

The budget request included $255.1 million for the Office of Security. The conferees agree to authorize $256.6 million for the Office of Security, an increase of $1.5 million above the budget request for International Nuclear Analysis.

The budget request included $34.9 million for the Office of Legacy Management. The conferees agree to authorize $35.9 million for the Office of Legacy Management, an increase of $1.0 million above the budget request. The conferees direct $500,000 of this increase be added to the $2.5 million provided for worker and community transition, for a total authorization of $3.0 million. The remaining $500,000 shall be used for Local Stakeholder Organizations.

The budget request included $112.9 million for nuclear energy. The conferees agree to authorize $114.3 million for nuclear energy, an increase of $1.5 million over the budget request for the Lynchburg Technology Center in Virginia to inspect and repackage the spent nuclear fuel stored in aluminum canisters. The Senate amendment would authorize $1.1 million for these activities within defense site acceleration completion. The conferees note that these activities should be addressed by the Office of Nuclear Energy, the office with primary responsibility for these materials.

The budget request included $92.4 million for defense related administrative support (DRAS). The conferees recommend $71.4 million for DRAS, a reduction of $21.0 million below the budget request. The conferees are concerned that the activities conducted by DRAS are not defense activities, but instead support the general administrative responsibilities of the Department of Energy. There are many activities conducted by the defense funded programs at DOE which are paid for entirely by the defense programs that support the Department of Energy broadly. The conferees prefer not to use Atomic Energy Defense funds for nondefense activities. The conferees encourage the Department of Energy to restrict future budget requests for Atomic Energy Defense funds to defense activities.

The budget request included $5.0 million for the Office of Future Liabilities (FL). The conferees recommend no funds for these activities. The conferees are concerned that DOE is creating this new office to conduct essentially the same type of work being conducted by the Office of Environmental Management (EM). The conferees strongly encourage DOE to include this function in the EM program to avoid the cost and inefficiency of creating a new office.

Defense nuclear waste disposal (sec. 3104)

The House bill contained a provision (sec. 3104) that would authorize $131.0 million for defense nuclear waste disposal (DNWD).

The Senate amendment contained a similar provision (sec. 3104) that would authorize $108.0 million for DNWD.

The conferees agree to include a provision that would authorize $120.0 million, a reduction of $11.0 million below the budget request.

Subtitle B—Program Authorizations, Restrictions, and Limitations

Report on requirements for Modern Pit Facility (sec. 3111)

The Senate amendment contained a provision (sec. 3111) that would prohibit the Secretary of Energy from obligating or expending more than half of the funds available for the Modern Pit Facility (MPF) until 30 days after the Administrator of the National Nuclear Security Administrator (NNSA) submits a report to congressional defense committees setting forth the validated pit production requirements for the MPF, and one additional report on the stockpile required by the Energy and Water Development Appropriations Act, 2004 (Public Law 108-137). The requirement shall be developed in consultation with the Department of Defense.

The House bill contained no similar provision.

The House recedes with an amendment that would require the Administrator of the NNSA to submit a report to congressional defense committees setting forth the validated pit production requirements for the MPF not later than January 31, 2005 based on certain assumptions for pit lifetimes. In addition, the provision does not restrict the Secretary's authority to obligate and expend the funds available for the MPF pursuant to section 3101.

Two-year extension of authority for appointment of certain scientific, engineering, and technical personnel (sec. 3112)

The House bill contained a provision (sec. 3111) that would extend the authority of the Secretary of Energy to appoint certain scientific, engineering, and technical personnel until September 30, 2006.

The Senate amendment contained an identical provision (sec. 3142).

The conference agreement includes this provision.

Limited authority to carry out new projects under Facilities and Infrastructure Recapitalization Program after project selection deadline (sec. 3113)

The House bill contained a provision (sec. 3112) that would amend section 3114 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136) to give the Administrator of the National Nuclear Security Administration (NNSA) greater flexibility in adding projects or updating priorities to projects within the Facilities and Infrastructure Recapitalization Program (FIRP).

The Senate amendment contained a similar provision (sec. 3113) that would amend section 3114 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136) to permit the Administrator of the NNSA to make no more than five modifications per fiscal year, and would limit each modification to a specific building, facility, or other improvement at an NNSA site. The provision would also prohibit any modifications until 60 days after the congressional defense committees receive both the report required in section 3114(c), setting forth the guidelines on the conduct of the readiness in technical base and facilities (RTBF) program, and a list of projects selected for inclusion in the FIRP program as required by section 3114(a). Nothing should delay the completion of the section 3114(c) report or the completion of the section 3114(a) project section required by the Act.

The House recedes.

Modification of milestone and report requirements for National Ignition Facility (sec. 3114)

The Senate amendment contained a provision (sec. 3114) that would modify and extend current reporting requirements for the National Ignition Facility (NIF), section 3137 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107), to review all program elements necessary for both achieving ignition and enabling NIF to be a fully functioning facility.

The House bill contained no similar provision.

The House recedes.

The conferees strongly support NIF and are encouraged by the recent progress in constructing NIF, and the initiation of experiments on NIF in support of the science-based stockpile stewardship program. The purpose of this provision is to ensure there is better internal and external oversight of the project by requiring milestones on construction, ignition, and the scientific experiments.

Modification of submittal date of annual plan for stewardship, management, and certification of warheads in the nuclear weapons stockpile (sec. 3115)

The Senate amendment contained a provision (sec. 3115) that would change the due date of the annual reporting requirement for the stockpile stewardship program from March 15 to May 1.

The House bill contained no similar provision.

The House recedes.

The conferees believe that changing the due date for the report will allow the Department of Energy to submit a complete and timely report.

Defense site acceleration completion (sec. 3116)

The Senate amendment contained a provision (sec. 3116) that would authorize the Secretary of Energy to determine that, notwithstanding any other provision of law, high-level radioactive waste does not include radioactive material resulting from the reprocessing of spent nuclear fuel if (a) the radioactive material does not require permanent isolation in a deep geologic repository for spent fuel or highly radioactive waste pursuant to criteria promulgated by the Secretary in consultation with the Nuclear Regulatory Commission (NRC); (b) to the maximum extent practical, that the highly radioactive radionuclides were removed in accordance with NRC approved criteria; and (c) that materials from storage tanks are disposed of in a facility pursuant to a State-approved closure plan, or a State issued permit, authority for the approval or issuance of which is conferred on the State outside of this Act. This provision would apply to the material stored at the Savannah River Site in South Carolina.

The House bill contained no similar provision.

The House recedes with an amendment that would authorize the Secretary of Energy to determine, in consultation with the Nuclear Regulatory Commission (NRC), that notwithstanding the provisions of the Nuclear Waste Policy Act of 1982, the requirements of section 202 of the Energy Reorganization Act of 1974 and other laws that define classes of radioactive waste, the term "high-level radioactive waste" does not include radioactive waste resulting from the reprocessing of spent nuclear fuel if: (1) the waste does not require permanent isolation in a deep geologic repository for spent fuel or high-level radioactive waste, (2) the waste has had highly radioactive radionuclides removed to the maximum extent practical and (3) the waste either does not exceed concentration limits for Class C low-level waste as set out in section 61.55 of title 10, Code of Federal Regulations (CFR), and will be disposed of in compliance with the performance objectives set out in subpart C of part 61 of title 10, CFR, pursuant to a State-approved closure plan or State-issued permit, authority for the approval or issuance of which is conferred on the State outside of this section or, if the waste does exceed concentration limits for Class C low-level waste, the waste will be disposed of in compliance with the performance objectives set out in subpart C of part 61 of title 10, CFR, pursuant to a State-approved closure plan or State-issued permit, authority for the approval or issuance of which is conferred on the State outside of this section, and pursuant to plans developed by the Secretary in consultation with the NRC. Any modification to the performance objectives in subpart C of part 61 of title 10, CFR, shall apply to actions under this section.

Section 3116 applies to material stored at a Department of Energy site at which activities are regulated by a covered State pursuant to approved closure plans or permits issued by the State. For purposes of this section, covered states are the States of South Carolina and the State of Idaho.

The NRC shall, in coordination with the covered State, monitor the disposal actions taken by the Department of Energy (DOE). If the NRC considers any disposal actions by DOE to not be in compliance with the requirements set out in this section, the NRC shall inform DOE, the covered State, and the appropriate congressional committees. The Secretary of Energy shall reimburse the NRC for all expenses that the NRC incurs for performance under this section during fiscal year 2005. In subsequent fiscal years, the NRC shall include in the budget justification materials submitted to Congress the amounts required, not offset by revenues, for performance under subsections (a) and (b).

Section 3116, as passed by the Senate, applied "notwithstanding any other provision of law." The conferees substitute this broad application with specific laws that are within the ambit of the "notwithstanding" clause; those laws that define classes of radioactive waste, including, but not limited to, the Nuclear Waste Policy Act, section 202 of the Energy Reorganization Act of 1974, section 2(10) of the Waste Isolation Pilot Plant Land Withdrawal Act and section 11dd. of the Atomic Energy Act of 1954, which cross-reference section 2(12) of the NWPA's definition of "high-level waste," section 2(9) of the Low-Level Waste Policy Act which defines low-level radioactive waste with reference to high-level radioactive waste, and the authorities stemming from the Atomic Energy Act for establishing radiation protection standards for disposal of radioactive waste that were transferred to the EPA by Reorganization Plan No. 3 of 1970. Laws like the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Public Law 96-510) and the Resource Conservation and Recover Act of 1976 (Public Law 94-580) which do not specify or establish disposal standards based on these kinds of classifications of radioactive waste, would be unaffected, as would general environmental laws such as National Environmental Policy Act, and laws regulating radioactive waste for purposes other than disposal.

The conferees note that nothing in section 3116 shall impair, alter, or modify the full implementation of any Federal Facility Agreement and Consent Order or other applicable consent decree for a Department of Energy site. In that connection, the conferees understand that pursuant to the settlement agreement entered into by the United States with the State of Idaho in the actions captioned *Public Service Co. of Colorado* v. *Batt*, Civil No. 91-0035-S-EJL, and *United States* v. *Batt*, Civil No. 91-0054-S-EJL, in the United States District Court for the District of Idaho, and the consent order of the United States District Court for the District of Idaho dated October 17, 1995 that effectuates this settlement agreement, the Department of Energy has committed to complete solidification of the sodium-bearing waste retrieved from tanks in the Tank Farm Facility at the Idaho Nuclear Engineering and Technology Center at the Idaho National Engineering and Environmental Laboratory (INEEL) by December 31, 2012 and to treat this material so that it is ready to be moved out of Idaho for disposal by a target date of 2035, regardless of any ultimate decision on the classification of this waste. The conferees urge the Department to accelerate the final out-of-state disposal of this waste. Furthermore, the conferees direct the Secretary of Energy to submit a report to the congressional defense committees by March 1, 2005 describing the Department's plans for the final disposal of the sodium bearing waste at INEEL. Section 3116 does not establish any precedent for and is not binding on the States of Washington, Oregon or any other state that is not a covered state for the management, storage, treatment, and disposition of radioactive and hazardous material.

The conferees note that the Defense Nuclear Facilities Safety Board (DNFSB) has statutory responsibilities associated with the Department's defense site acceleration completion activities. Although this provision establishes new responsibilities for the NRC, nothing in this section is intended to alter the existing statutory authority of the DNFSB in any area.

The conferees note that subsection (c) of this provision states that subsection (a) does not apply to any material transported from the state and subsection (e)(3) states that nothing in this section amends the definition of "transuranic waste". The conferees' intent is that nothing in this statute changes the disposal requirements for waste that will ultimately be disposed of at the Waste Isolation Pilot Plant. In addition, subsection (e)(5) states that nothing in this provision amends the West Valley Demonstration Project Act.

The conferees note that subsection (f) provides for judicial review of any determination or agency action by the Secretary of Energy under this section consistent with the Administrative Procedure Act's provisions for judicial review as set out in chapter 7 of title 5 of the United States Code. Failure by the Nuclear Regulatory Commission to perform its monitoring responsibilities under subsection (b) is also subject to judicial review in accordance with those provisions. The conferees intend that the Secretary of Energy's actions under section 3116 are fully subject to judicial review notwithstanding any action by the Nuclear Regulatory Commission.

The conferees note that section 3155 of the National Defense Authorization for Fiscal Year 2002 sets forth the obligations of the Department to manage and dispose of surplus plutonium shipped to the Savannah River Site. The authority granted to the Department under section 3116 to reclassify radioactive material does not extend to this plutonium nor does it relieve the Department of its obligations under Section 3155 of the 2002 Act. Subsection (e)(4) was included to clarify this limitation.

Treatment of waste material (sec. 3117)

The Senate amendment contained a provision (sec. 3120) that would authorize $350.0 million out of defense site acceleration completion and defense environmental services to be expended for activities at the Hanford Site in Washington, the Idaho National Engineering and Environmental Laboratory in Idaho, and the Savannah River Site in South Carolina for the safe management, treatment, storage, consolidation, and emptying and cleaning of tanks or tank farms used to store waste from reprocessing activities.

The House bill would authorize $300.0 million for defense site acceleration completion to address waste incidental to reprocessing.

The House recedes with an amendment that would authorize $350.0 million for defense site acceleration completion activities at the Idaho National Engineering and Environmental Laboratory in Idaho, the Savannah River Site in South Carolina, and the Hanford Site in Washington.

Local stakeholder organizations for 2006 closure sites (sec. 3118)

The Senate amendment contained a provision (sec. 3121) that would direct the Secretary of Energy to establish local stakeholder organizations (LSOs) to operate in consultation with local elected officials at Department of Energy Environmental Management 2006 closure sites. This would include the Rocky Flats Environmental Technology Site, the Fernald Environmental Management Project, and the Miamisburg Environmental Management Project Mound Site.

The House bill contained no similar provision.

The House recedes with an amendment that would strike the portion of the provision which stated that the Federal Advisory Committee Act (FACA) (5 U.S.C. App.) does not apply to LSOs.

The conferees note that as the community reuse organizations comply with FACA, LSOs will also have to comply with FACA. The conferees also encourage the LSOs to work with other community organizations and groups to allow a broad view to be considered.

Report to Congress on Advanced Nuclear Weapons Concepts Initiative (sec. 3119)

The Senate amendment contained a provision (sec. 3112) that would prohibit the Secretary of Energy from obligating or expending the funds available for advanced nuclear concepts initiative (ACI) until 30 days after the Administrator of the National Nuclear Security Administration submits a report on the planned activities for fiscal year 2005 under this initiative.

The House bill contained no similar provision.

The House recedes with an amendment that would require the Administrator of the NNSA to submit a report setting forth the planned ACI activities in fiscal year 2005 by March 1, 2005. The Secretary may fully obligate or expend the funds available for ACI.

Subtitle C—Proliferation Matters

Modification of authority to use International Nuclear Materials Protection and Cooperation Program funds outside the former Soviet Union (sec. 3131)

The Senate amendment contained a provision (sec. 3131) that would amend section 3124 of the National Defense Authorization Act for Fiscal Year 2004, to remove the $50.0 million limitation on the authority to use International Nuclear Materials Protection and Cooperation Program funds for projects and activities outside of the former Soviet Union to meet emerging proliferation threats. The provision would also clarify that this authority applies only to projects or activities that have not previously been authorized by Congress.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Acceleration of removal or security of fissile materials, radiological materials, and related equipment at vulnerable sites worldwide (sec. 3132)

The Senate amendment contained a provision (sec. 3132) that would express the sense of Congress that the security of high-risk, proliferation-attractive fissile materials, radiological materials, and related equipment at vulnerable sites worldwide should be a top U.S. national security priority. The provision would also express the sense of Congress that the President may establish a Department of Energy Task Force on Nuclear Materials to carry out a program to undertake an accelerated, comprehensive worldwide effort to mitigate threats posed by high-risk, proliferation-attractive fissile materials, radiological materials, and related equipment located at sites potentially vulnerable to theft or diversion. The provision would include a list of specific activities that would be authorized under such a program.

The House bill contained no similar provision.

The House recedes with a technical amendment.

Silk Road Initiative (sec. 3133)

The House bill contained a provision (sec. 1421) that would authorize the Secretary of Energy to carry out a program known as the Silk Road Initiative to promote non-weapons-related employment opportunities for scientists, engineers, and technicians formerly engaged in activities to develop and produce weapons of mass destruction in nations of the former Soviet Union in the Caucasus and Central Asia. The provision would encourage the Secretary to begin a pilot program in the Republic of Georgia, and would authorize the Secretary to spend up to $10.0 million on the program from funds available for nonproliferation and international security for fiscal year 2005.

The Senate amendment contained no similar provision.

The Senate recedes with technical amendments.

The conferees note that a number of independent states of the former Soviet Union have been helpful to the United States in the war on terrorism. Such states are new and struggling democracies and would benefit considerably from assistance to create sustainable jobs for their underemployed or unemployed scientists, engineers, and technicians who were formerly engaged in activities to develop and produce weapons of mass destruction. The conferees further note that it is the policy of the United States to seek to establish and promote programs to prevent the proliferation of scientific and technical expertise to develop and produce weapons of mass destruction from states of the former Soviet Union to countries of proliferation concern; and to assist independent states of the former Soviet Union that have been helpful to the United States in the war on terrorism so as to promote the creation of jobs that foster economic stability and democracy.

Nuclear Nonproliferation Fellowships for scientists employed by United States and Russian Federation (sec. 3134)

The House bill contained a provision (sec. 1422) that would authorize the Administrator for Nuclear Security to carry out a program under which the Administrator would award international exchange fellowships in the nuclear nonproliferation sciences to scientists employed at the Kurchatov Institute of the Russian Federation and the Lawrence Livermore National Laboratory of the United States. The fellowships would be known as Teller-Kurchatov Nonproliferation Fellowships. The provision would authorize the Administrator to spend up to $10.0 million on the program from funds available for nonproliferation and international security in fiscal year 2005.

The Senate amendment contained no similar provision.

The Senate recedes with an amendment that would authorize the Administrator for Nuclear Security to carry out a program under which the Administrator would award international exchange fellowships in the nuclear nonproliferation sciences to scientists employed at nonproliferation research laboratories of the Russian Federation and the United States. The fellowships would be known as Nuclear Nonproliferation Fellowships. The provision would authorize the Administrator to use funds available for nonproliferation and international security in fiscal year 2005 for this fellowship program.

Utilization of international contributions to the Elimination of Weapons Grade Plutonium Production Program (sec. 3135)

The conferees agree to include a provision that would provide the Secretary of Energy authority to accept international contributions to the Elimination of Weapons Grade Plutonium Production Program. The provision would permit the Secretary of Energy to: (1) enter into agreements, in consultation with the Secretary of State, with a person, foreign government, or international organization for this purpose; and (2) use such contributions without further authorization or appropriation. The provision would require the Secretary to notify the congressional defense committees: (1) of the receipt of any international contributions for this program within 30 days of their receipt; and (2) of the intended use of any funds received 30 days before they may be utilized. The provision would also require the Secretary to submit an annual report to the congressional defense committees on the receipt and utilization of amounts received pursuant to this authority for each fiscal year. The provision would require that any funds not used within five years be returned to the contributor. The authority provided by this provision would expire on December 31, 2011.

Subtitle D—Other Matters

Indemnification of Department of Energy contractors (sec. 3141)

The Senate amendment contained a provision (sec. 3141) that would amend section 170d(1)(A) of the Atomic Energy Act of 1954 to allow the Department of Energy to continue to enter into contracts for indemnification for an additional two years, through December 31, 2006.

The House bill contained no similar provision.

The House recedes.

Report on maintenance of retirement benefits for certain workers at 2006 closure sites after closure of sites (sec. 3142)

The Senate amendment contained a provision (sec. 3122) that would require the Assistant Secretary of Energy for Environmental Management to submit a report to the Secretary of Energy on maintenance of retirement benefits for workers at 2006 closure sites shortly before closure of those sites. The report would include the number of workers at the closure sites which would not receive retirement benefits if the site where they work is closed early; the cost to provide benefits to these workers; and the impact on collective bargaining agreements due to the workers' loss of benefits. The Secretary of Energy would be required to send the report to the congressional defense committees.

The House bill contained no similar provision.

The House recedes with an amendment that would clarify the scope of the report.

The conferees direct the Department of Energy to use the contracts that were in effect on September 30, 2003 as the contracts for determining the target completion date.

Report on efforts of National Nuclear Security Administration to understand plutonium aging (sec. 3143)

The Senate amendment contained a provision (sec. 3123) that would require the Administrator of the National Nuclear Security Administration (NNSA) to enter into a contract with a Federally Funded Research and Development Center for a study to assess the efforts of the NNSA to understand the aging of plutonium used in nuclear weapons.

The House bill contained no similar provision.

The House recedes.

Support for public education in the vicinity of Los Alamos National Laboratory, New Mexico (sec. 3144)

The Senate amendment contained a provision (sec. 3144) that would require the Secretary of Energy (DOE) to include in all the management and operating contracts for the Los Alamos National Laboratory (LANL), entered into after September 30, 2005, a provision that would require the contractor to provide $8.0 million per year for support for public secondary and elementary education to the Los Alamos Public School District.

The House bill contained no similar provision.

The House recedes.

Review of Waste Isolation Pilot Plant, New Mexico, pursuant to competitive contract (sec. 3145)

The House bill contains a provision (sec. 3133) that would direct the Secretary of Energy to enter into a new contract for independent reviews of the design, construction, and operations of the Waste Isolation Pilot Plant in New Mexico (WIPP).

The Senate amendment contained a similar provision (sec. 3145) that would direct the Secretary of Energy to use competitive procedures in future contracts for independent reviews of the design, construction, and operations of WIPP.

The House recedes.

National Academy of Sciences study on management by Department of Energy of certain radioactive waste streams (sec. 3146)

The House bill contains a provision (sec. 3132) that would require the Secretary of Energy to enter into an agreement with the National Research Council of the National Academy of Sciences to complete a study of the plans of the Department of Energy (DOE) to manage certain waste streams that are not planned for disposal in a high-level repository. These streams are located at the Savannah River site, South Carolina, the Idaho National Engineering and Environmental Laboratory, Idaho, and the Hanford Reservation, Washington.

The provision would require the National Research Council to submit an interim report no later than six months after entering into the agreement with the Secretary and a final report no later than one year after entering such agreement.

The Senate amendment contained a similar provision (sec. 3117) that would authorize $750,000 for a similar study.

The Senate recedes with an amendment which would require the Secretary of Energy to enter into an arrangement with the National Research Council of the National Academy of Sciences (NAS) to carry out a study of the plans of the Department of Energy to manage waste, from reprocessed spent nuclear fuel, which exceeds the concentration limits for Class C low-level waste set out in section 61.55 of title 10, Code of Federal Regulations (CFR). The waste that is the subject of the study is stored in tanks at the Savannah River Site, in South Carolina, the Idaho National Engineering and Environmental Laboratory (INEEL), in Idaho, and the Hanford Reservation, in Washington, and it is waste which DOE does not plan to dispose of in a repository for spent nuclear fuel and high-level waste.

The conferees note that the study shall evaluate the state of the Department's understanding of the physical, chemical, and radiological characteristics of the waste. Additionally, the study should evaluate any actions, in addition to those contained in the Department's current plans, which should be considered to ensure the plan's compliance with the performance objectives of part 61 of title 10, Code of Federal Regulations. In addition, the study shall evaluate the adequacy of the Department's plans for monitoring disposal sites to verify compliance with the performance objectives in part 61 of title 10, Code of Federal Regulations, any existing technology alternatives to these plans, and any existing technology gaps.

The National Research Council may develop recommendations it considers appropriate and directly related to the subject matter of the study. The National Research Council shall submit the reports to the Secretary of Energy and the appropriate congressional committees. Of the amounts authorized for the Department of Energy, $1.5 million shall be available for carrying out this study.

Compensation of Pajarito Plateau, New Mexico, homesteaders for acquisition of lands for Manhattan Project in World War II (sec. 3147)

The Senate amendment contained a provision (sec. 3146) that would establish a fund to settle outstanding claims derived from the acquisition of land used in the Manhattan Project. The provision would authorize $10.0 million to settle claims for compensation by Pajarito Plateau homesteaders.

The House bill contained no similar provision.

The House recedes with an amendment that would require the United States District Court for the District of New Mexico to appoint a special master to identify class members, receive claims, resolve contests, and address such other matters the Court may order. The claims to be settled from the fund are the claims pending before the court as Civil Number 00-60. In addition, the provision would establish guidelines for settling claims using the fund. Following all determinations, the Special Master would be directed to award the allocated amounts from the fund after approval by the Court. The conferees intend this fund and the payments made from it constitute full and complete settlement of these claims.

Modification of requirements relating to conveyances and transfer of certain land at Los Alamos National Laboratory, New Mexico (sec. 3148)

The conferees agree to include a provision that would authorize the Department of Energy to transfer certain parcels of land at the Los Alamos National Laboratory in New Mexico to the Los Alamos County Public Schools in New Mexico. The conferees note the financial benefits realized through this land transfer will be used to facilitate economic development for the Los Alamos County Public Schools.

Subtitle E—Energy Employees Occupational Illness Compensation Program

Improvements to the Energy Employees Occupational Illness Compensation Program Act (sec. 3161-3170)

The Senate amendment contained a series of provisions (sec. 3151-3157) that would amend section 3621 of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 (Public Law 106-398). The primary changes that the provisions would make to the EEOICPA program would transfer claims processing under Part D of EEOICPA from the Department of Energy (DOE) to the Department of Labor (DOL), direct DOL to compute compensation payments and require DOL to make such compensation payments to the employees.

The Senate amendment would allow covered DOE contractor employees to elect to proceed under State workers' compensation systems or choose to receive compensation under EEOICPA Part D.

The Senate amendment allowed covered DOE contractor employees who have been determined to be entitled to compensation and benefits for an occupational illness contracted in the performance of duty at a DOE facility under subtitle B of EEOICPA, to be treated as having contracted the occupational illness through exposure at DOE facilities for purposes of subtitle D. Employees not previously covered under subtitle B of EEOICPA would be determined to have contracted an illness through exposure at a DOE facility for purposes of subtitle D if (1) it is at least as likely as not that exposure to a toxic substance was a significant factor in aggravating, contributing to, or causing the illnesses; and (2) it is at least as likely as not that the exposure to such toxic substance was related to employment at a DOE facility. The Secretary of Labor would make such determinations. In making these determinations, the Secretary of Labor would be allowed to use physicians to assist in making such determinations.

The amount of workers' compensation to which covered DOE contractor employees or eligible survivors would be entitled would be determined under the appropriate State workers' compensation system. Covered DOE contractor employees determined to be eligible for compensation for an occupational illness or covered illness under these provisions would also be furnished medical benefits. Covered DOE contractor employees would also be able to seek review by the Secretary of Labor of determinations concerning eligibility and levels of compensation decided against the employees.

Attorney fees for assistance on a claim under this subtitle would be available for covered DOE contractor employees to the same extent that they are currently available under Subtitle B.

The Senate amendment would transfer administration of subtitle D of EEOICPA to the Secretary of Labor, and direct the Secretary to work with the Secretary of Energy to transfer all applicable records, files and other data from DOE to DOL.

The Senate amendment would also expand the coverage of individuals employed by atomic weapons employers (AWE) who were exposed to residual radiation after DOE related work at the AWE facility stopped. Additionally, the Director of the National Institute of Occupational Safety and Health (NIOSH) would update the 2000 report on residual contamination of AWE facilities.

The Senate amendment would establish in DOL a new Office of the Ombudsman to assist individuals in making claims under subtitle D of EEOICPA and direct the Secretary of Labor to prescribe regulations necessary to carry out these provisions. The provisions would also set forth a Sense of Congress that the Secretary of Energy should adopt a policy not to oppose any final positive determinations with respect to injured workers at DOE facilities and AWE facilities under a State workers' compensation adjudication system unless such determinations are frivolous. The Senate amendment would also set forth findings that DOL establish a resource center in western New York to provide assistance to energy employees making claims under Subtitle B of EEOICPA, and set forth the sense of the Senate that the Ombudsman should evaluate current assistance and recommend a site for a resource center.

The Senate amendment also included provisions that would designate under specified circumstances certain former nuclear weapons program workers as members of the Special Exposure Cohort (SEC) under section 3621 of EEOICPA. Funding for all programs created, modified or expanded under these provisions would be subject to appropriations.

The House bill contained no similar provision.

The House recedes with an amendment.

The conferees agree to repeal subtitle D of EEOICPA, establish a new compensation scheme and direct the Department of Labor (DOL) to administer the program. The new program would be established as subtitle E of EEOICPA.

Under the new subtitle E of EEOICPA, covered DOE contractor employees would be compensated based on any impairment from a covered illness resulting from exposure to a toxic substance at a DOE facility. The employee would receive additional compensation if the impairment resulted in significant wage losses. The primary goal of the conferees was to create a simple, fair and uniform workers compensation system and avoid chronic delays and inefficiencies that workers currently encounter.

Specifically, employees would receive $2,500 for every degree of impairment, resulting from a covered illness contracted by that employee through exposure to a toxic substance at a DOE facility. Additionally, the covered employee would be compensated for annual wage loss, defined as the average salary for the 36 months preceding the month the wage loss began, as follows: (1) $10,000 for each calendar year where the employee's annual wage exceeded 50 percent of the employee's average annual wage at the DOE facility but did not exceed 75 percent of their average annual wage; or $15,000 for each calendar year where the employee's annual wage did not exceed 50 percent of the employee's average annual wage at the DOE facility. The wage losses must result from the covered illness as determined by DOL.

The American Medical Association's Guides to the Evaluation of Permanent Impairment should be used in making these determinations. On the other hand, as the Guides state "Impairment assessment is a necessary *first step* for determining disability." [Emphasis in original] The new compensation regime that would be established in subtitle E of EEOICPA establishes a two part award—one for impairment and one for work loss as a result of disability. As structured in subtitle E the two part award is a unique way to compensate employees for impairments as well as compensation based upon past and present earnings losses from disability. In some cases, particularly in cases involving illnesses to long exposure to toxic substances, there may be an illness for which the AMA Guides do not provide an impairment rating. As a result, each individual employee should be evaluated individually and the determination of impairment and work disability should be through a combination of the Guides and by physicians suitably trained and qualified. Because of the unique nature of the compensation under subtitle E, the conferees do not intend the use of the Guides in this context to establish a precedent for other federal compensation programs.

The conferees also include a provision that would provide three categories of compensation for survivors of a covered DOE contractor employee. Under category one, the survivor would receive $125,000, if the Secretary of Labor determines that the employee would have been entitled to compensation under part E of EEOICPA and it is at least as likely as not that exposure to a toxic substance at a DOE facility was a significant factor in aggravating, contributing to, or causing death. Under category two, the survivor would receive $150,000, if he or she meets the criteria under category one, and the Secretary of Labor also determines that there was an aggregate period of not less than 10 years, before the employee attained normal retirement age, during which, as a result of any covered illness contracted by the employee through exposure of a toxic substance at a DOE facility, the employee's annual wage did not exceed 50 percent of the average annual wage of the employee. Under category three, the survivor would receive $175,000, if he or she meets the criteria under category one, plus the Secretary of Labor also determines that there was an aggregate period of not less than 20 years, before the employee attained normal retirement age, during which, as a result of any covered illness contracted by the employee through exposure of a toxic substance at a DOE facility, the employee's annual wage did not exceed 50 percent of the average annual wage of the employee. The survivor would be entitled to receive the highest category for which the survivor qualifies. The maximum aggregate benefit available under subtitle E of EEOICPA is $250,000.

Radiation Exposure Compensation Act

The conferees also agree to make compensation under subtitle E applicable to certain uranium employees under section 5 of the Radiation Exposure Compensation Act (RECA) (42 U.S.C. 2210 note). Compensation for these employees would be determined on the same basis as it applies to a DOE contractor employee under section 3675 of subtitle E of EEOICPA.

Office of the Ombudsman

The conferees agree to include a provision similar to the Senate amendment to create an Office of the Ombudsman. The authority for the Office of the Ombudsman would expire three years after enactment. The conferees expect the Ombudsman to work with the Secretary of Labor to ensure the Ombudsman is technically proficient on subtitle E of EEOICPA to the maximum extent practicable before they begin conducting covered DOE contractor employee outreach. The conferees also expect the Ombudsman to make recommendations the Ombudsman considers appropriate for the improvement of the practices of DOL in administering subtitle E of EEOICPA. The conferees urge the Secretary to hire a director of the Office of the Ombudsman within 120 days of enactment.

Administrative Provisions

The conferees have included a series of provisions that deal with administrative and judicial review, physician services, medical benefits, attorneys fees, offsets, subrogation, exclusivity of remedy, treatment of payments, and administrative matters between DOL and DOE concerning records, files and other data.

Compensation under subtitle E would be offset by any benefits an individual receives for the same covered illness through a State workers' compensation system. The aggregate amount of compensation received on behalf of a covered employee under subtitle E, other than medical benefits, shall not exceed $250,000.

The conferees believe the benefits available under subtitle E of EEOICPA are a fair and equitable alternative to the complexities and uncertainties that employees and their survivors may face in State workers' compensation programs. If an election is made to proceed under subtitle E of EEOICPA, the covered DOE contractor employer and survivor will not be able to bring additional actions against the United States or the DOE contractor for covered illnesses. A covered DOE contractor employee or their survivor may choose to forego benefits under subtitle E of EEOICPA and instead seek compensation through a state workers compensation system, litigation or any other available compensation mechanisms.

The benefits paid under subtitle E and the administrative costs of subtitle E will be treated for budget and accounting purposes as mandatory spending.

The Secretary is required to establish a process for administrative appeals. In developing this process, the conferees urge the Secretary to consider other administrative appeals processes for similar programs. Determining whether an illness was caused by exposure to toxic substances can be complex. Therefore, the conferees urge the Secretary to consider an appeal process whereby claimants have an opportunity to have an adverse determination reviewed by an independent physician or physician panel. The conferees note that the Secretary has the authority to hire physician panels, and urge the Secretary to hire physicians with experience and competency in diagnosing illnesses caused by exposure to toxic substances in exercising this authority.

The conferees note that included in the administrative provisions is a provision that would direct the Social Security Administration to make available to the Secretary of Labor earnings information necessary to carry out the requirements of subtitle E. The conferees expect that protections will be in place at DOL that will protect this information from unauthorized disclosure to the same extent the information was protected before being transferred to DOL.

The conferees urge the Secretary, in consultation and coordination with the Secretary of Energy, to notify all applicants of the changes in the management of this program. The conferees recommend that the Secretary, through or in coordination with the Office of the Ombudsman, explain program changes, provide guidance on changes in the processing of claims, and provide a toll free "hotline" which claimants can call for assistance.

Special Exposure Cohort

The conferees are concerned that the administrative process for designating additional special exposure cohorts (SEC) is too slow and should be accelerated. Covered DOE contractor employees from the 1940s, 50s, 60s, and 70s whose occupational illness was caused through exposure to toxic substances while working in DOE contractor facilities should receive compensation under subtitle B of EEOICPA. Unfortunately many of the records or other data has been lost or destroyed. As a result of these delays, the conferees have included several provisions that would make improvements to subtitle B of EEOICPA in an effort to accelerate the process for designating additional SECs. First, the Secretary of Energy is directed to ensure that members and staff of the NIOSH Advisory Board have an opportunity to apply for necessary security clearances. The Secretary of Energy should process these applications within 180 days after receiving a completed application. In addition, the Secretary of Energy is directed, in accordance with law, to provide the Advisory Board access to any information that the Board considers relevant to carry out its responsibilities under EEOICPA, including Restricted Data.

To ensure that applications to be a SEC member are processed promptly, new timelines have been included. Within 180 days of receipt of a petition for designation as members of a SEC, the Director of NIOSH must submit to the Advisory Board a recommendation on that petition, including all supporting documentation. During the 180 period when NIOSH is preparing the petition for review by the Advisory Board, NIOSH should identify all deficiencies in the petition within the first 30 days. When the President receives an affirmative recommendation from the Advisory Board to designate a class to the SEC, the President shall have a period of 30 days in which to accept or reject the recommendation and notify Congress. If the President does not send a determination notice within 30 days, and if there is an affirmative Board recommendation, the class recommended to be a SEC will automatically become a SEC, subject to a 30 day notification period in Congress.

In an effort to prevent further delays for petitions already filed, the Board would be directed to convene an emergency meeting if NIOSH completes the evaluation of a petition more than ten days before a regularly scheduled Board Meeting. This emergency authority shall expire on March 1, 2005. In addition, the President is directed to submit a report to Congress by March 15, 2005 providing a status update on all petitioners who filed by October 1, 2004. The report should include, for each petition, the estimated time to complete consideration of the petition and any anticipated actions or circumstances that could preclude the Board from acting upon that petition before the end of fiscal year 2005. The conferees expect NIOSH to respond promptly throughout the process to ensure the petition and all supporting documentation is filed and processed correctly.

The conferees are concerned that auditors hired to conduct an audit of NIOSH and the Advisory Board are having a difficult time getting information and maintaining an appropriate degree of independence. The conferees expect NIOSH to work to ensure these issues are addressed in future audits.

Pursuant to a recommendation of the Comptroller General, in the September, 2004 Report (GAO-04958), to the extent the Secretary of Labor determines it useful and practicable, the Secretary of Labor shall direct the Director of NIOSH to prepare site profiles for a DOE facility based on records, files and other data provided by the Secretary of Energy.

The conferees urge the Director of NIOSH to consult with DOE contract workers and their representatives in developing these site profiles, and to update site profiles as information becomes available. The conferees have also included a provision that would direct the Secretary of Health and Human Services to submit to Congress a report setting forth the time frames for completing the site profiles.

Residual Radiation Exposure

The conferees include the provisions from the Senate amendment that expand coverage under subtitle B to include workers exposed to residual radiation contamination. In addition, the provision would add a definition of the term radiation dose applicable to employees exposed to residual radiation.

The conferees have also agreed to include a provision that would direct the director of NIOSH to update the 2003 residual radiation report.

LEGISLATIVE PROVISIONS NOT ADOPTED

Annual report on expenditures for safeguards and security

The Senate amendment contained a provision (sec. 3118) that would require the Secretary of Energy to submit an annual report describing the activities and costs of the safeguards and security program at the defense nuclear facilities across the Department of Energy (DOE). The Senate was concerned that the DOE was considering a change in budgeting for safeguards and security that would include these costs as part of the cost of each DOE program. The Senate was concerned that such an approach to budgeting, particularly during the two-year effort to comply with the new design basis threat, would mask the cost of these important requirements.

The House bill contained no similar provision.

The Senate recedes.

The conferees are satisfied that the DOE will continue to include sufficient transparency in their budget request for safeguards and security in fiscal year 2006.

Authority to consolidate counterintelligence offices of Department of Energy and National Nuclear Security Administration within the National Nuclear Security Administration

The Senate amendment contained a provision (sec. 3119) that would authorize the Secretary of Energy to consolidate the counterintelligence offices of the Department of Energy (DOE) and the National Nuclear Security Administration (NNSA) within NNSA.

The House bill contained no similar provision.

The Senate recedes.

The conferees note that the NNSA was originally set up as a semi-autonomous agency, in large part, to ensure that there would be adequate focus and priority placed on counterintelligence activities. The conferees urge the counterintelligence offices at DOE and NNSA to work together to ensure security of both DOE and NNSA programs and facilities.

Transfers and reprogrammings of National Nuclear Security Administration funds

The House bill contains a provision (sec. 3131) that would direct the Administrator of the National Nuclear Security Administration (NNSA) to specifically submit notifications and requests for reprogramming directly to the congressional defense committees, with the only role of the Department of Energy (DOE) being for the Chief Financial Officer (CFO) to certify whether funds covered by the notice or request are available.

The Senate amendment contained no similar provision.

The House recedes.

The conferees believe that there is a present need for better coordination between the Administrator of the NNSA and the CFO of DOE regarding budgetary actions.

The National Defense Authorization Act for Fiscal Year 2000 established the National Nuclear Security Administration (50 U.S.C. 2401, otherwise known as the "NNSA Act"). In passing this Act, Congress created the National Nuclear Security Administration as a semi-autonomous agency within the DOE. The mission of the NNSA is to enhance the national security through the military application of nuclear energy, to reduce global danger from weapons of mass destruction, and to promote international nuclear safety. The cornerstone of this Act is to provide significant autonomy to the NNSA.

Among the various functions assigned in the Act, the NNSA Administrator has authority over, and is responsible for, all programs and activities of the NNSA, including budget formulation, guidance and execution, and other financial matters (50 U.S.C. 2402). The NNSA Act also provides for separate treatment of NNSA's budget request in the President's budget (50 U.S.C. 2451) and for the Administrator to establish procedures for planning, programming, budgeting, and financial activities (50 U.S.C. 2452). Congress' intent was to provide autonomy for the NNSA in numerous functions, including all those functions associated with budget formulation and execution.

The conferees are deeply concerned that the overall management of the NNSA budget process may not be carried out in accordance with the full intent of the NNSA Act and that current processes have caused unnecessary delays in budget actions. Accordingly, the Secretary of Energy and the Administrator are directed, within 60 days of enactment of this Act, to develop a process that streamlines all NNSA-related budgetary actions including, but not limited to reprogramming requests to Congress, and that is in full compliance with the NNSA Act. This process should establish realistic deadlines for DOE and NNSA to complete budget-related actions, such as reprogrammings. The Secretary and the Administrator shall submit a report to the congressional defense committees by March 1, 2005 outlining the deadlines for budget-related actions that were established. Commencing on March 1, 2006, and annually thereafter on March 1, the Secretary and the Administrator shall submit a report to the congressional defense committees assessing the Department's and National Nuclear Security Administration's performance in meeting these deadlines, and if applicable, the reasons for failing to meet the established deadlines.

Additional amount for defense site acceleration completion

The House bill contained a provision (sec. 3134) that would authorize $50.0 million for defense site acceleration completion.

The Senate amendment contained no similar provision.

The House recedes.

Improvements to Energy Employees Occupational Illness Compensation Program

The House bill contained a provision (sec. 3135) that would amend section 3661 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 785) by requiring the Secretary of Health and Human Services to select individuals to serve as panel members based on experience and competency in diagnosing occupational illness.

The Senate amendment contained a similar provision (sec. 3143) that would amend section 3661 of the National Defense Authorization Act for Fiscal Year 2001 (Public Law 106-398), part D of the Energy Employees Occupational Illness Program Act (EEOICPA). The provision would eliminate the following three restrictions: (1) the pay cap on physicians serving on part D physicians panels; (2) the requirement that the part D physicians work only on a temporary or intermittent basis; and (3) the requirement for agreements between DOE and States.

The conferees agree not to adopt either provision.

TITLE XXXII—DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Legislative Provisions Adopted

Defense Nuclear Facilities Safety Board (sec. 3201)

The House bill contained a provision (sec. 3201) that would authorize $21.3 million for the Defense Nuclear Facilities Safety Board for fiscal year 2005, an increase of $1.0 million to fund cost-of-living pay increases for permanent staff and to hire outside consultants as needed for technical oversight of new Department of Energy projects.

The Senate amendment contained an identical provision (sec. 3201).

The conference agreement includes this provision.

TITLE XXXIII—NATIONAL DEFENSE STOCKPILE

Legislative Provisions Adopted

Authorized Uses of National Defense Stockpile Funds (sec. 3301)

The House bill contained a provision (sec. 3301) that would authorize $59.7 million from the National Defense Stockpile Transaction Fund for the operation and maintenance of the National Defense Stockpile for fiscal year 2005. The provision would also permit the use of additional funds for extraordinary or emergency conditions 45 days after a notification to the Congress.

The Senate amendment contained no similar provision.

The Senate recedes.

Revision of earlier authority to dispose of certain materials in National Defense Stockpile (sec. 3302)

The Senate amendment included a provision (sec. 3302) relative to revenue requirements for certain previously authorized disposals from the National Defense Stockpile to establish a new requirement of $870.0 million by the end of fiscal year 2014.

The House bill included a similar provision (sec. 3303) that would set revenue requirements for those same disposals of at least $785.0 million by the end of fiscal year 2005 and $870.0 million by the end of fiscal year 2009.

The Senate recedes.

Disposal of ferromanganese (sec. 3303)

The House bill contained a provision (sec. 3302) that would amend section 3306 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107), to authorize the Secretary of Defense to dispose of 100,000 short tons of high carbon ferromanganese of the highest grade during fiscal year 2005.

The Senate amendment contained a similar provision (sec. 3301) that would authorize the Secretary to dispose of up to 50,000 tons of high carbon ferromanganese during fiscal year 2005. The provision would also authorize the disposal of an additional 50,000 tons of high carbon ferromanganese during fiscal year 2005, at 25,000 ton increments, subject to the Secretary, in consultation with the Secretary of Commerce, providing certifications to the congressional defense committees 30 days before the release of each increment.

The House recedes with an amendment that would authorize the Secretary of Defense to dispose of up to 50,000 tons of high carbon ferromanganese during fiscal year 2005. The provision would also authorize the disposal of an additional 50,000 tons of high carbon ferromanganese during fiscal year 2005, at 25,000 ton increments, subject to the Secretary of Defense certifying to the Committees on Armed Services of the Senate and the House of Representatives not later than 30 days before commencement of disposal of a 25,000 ton increment the following: the disposal of ferromanganese is in the interest of national defense; the disposal of ferromanganese under such paragraph will not cause undue disruption to the usual markets of ferromanganese producers or processors of the United States; and the disposal of ferromanganese is consistent with the requirements of the National Defense Stockpile under the Strategic and Critical Material Stock Piling Act (50 U.S.C. et seq.).

Prohibition on storage of mercury at certain facilities (sec. 3304)

The Senate amendment contained a provision (sec. 3303) that would prohibit the Secretary of Defense from storing mercury from the National Defense Stockpile at any facility that is not owned or leased by the United States.

The House bill contained no similar provision.

The House recedes with an amendment that would prohibit the Secretary from storing mercury from the National Defense Stockpile at any facility that is not owned or leased by the United States in fiscal year 2005.

TITLE XXXIV—NAVAL PETROLEUM RESERVES

Legislative Provisions Adopted

Authorization of appropriations (sec. 3401)

The House bill contained a provision (sec. 3401) that would authorize $20.0 million for the operation and maintenance of the Naval Petroleum and Oil Shale Reserves.

The Senate amendment contained no similar provision.

The Senate recedes.

TITLE XXXV—MARITIME ADMINISTRATION

Legislative Provisions Adopted

Authorization of appropriations for Maritime Administration (sec. 3501)

The House bill contained a provision (sec. 3501) that would authorize funds to be appropriated for the Maritime Administration for expenses necessary for operations and training activities, for administrative activities under the loan guarantee program, and for ship disposal.

The Senate amendment contained no similar provision.

The Senate recedes.

Extension of authority to provide war risk insurance for Merchant Marine vessels (sec. 3502)

The House bill contained a provision (sec. 3502) that would amend Section 1214 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1294) to extend the authority to provide war risk insurance for Merchant Marine vessels from June 30, 2005 to December 31, 2010. The provision would also amend section 1208(a) of the same Act (46 U.S.C. App. 1288), allowing the Secretary of Transportation to request the Secretary of the Treasury to invest such portion of the fund that is not, in the judgement of the Secretary of Transportation, required to meet the current needs of the fund.

The Senate amendment contained a similar provision (sec. 1066), which would have extended the authority to provide war risk insurance to December 31, 2008, and would have allowed similar investments of a portion of the fund.

The Senate recedes.

Modification of priority afforded applications for national defense tank vessel construction assistance (sec. 3503)

The Senate amendment contained a provision (sec. 2901) that would amend section 3542(d)(2) of the Maritime Security Act of 2003 (title XXXV of Public Law 108–136). The amendment would require the Secretary of Transportation to give priority consideration to a proposal for national defense tank vessels if they had been accepted for participation in the Shipboard Technology Evaluation Program (STEP) as outlined in Navigation and Vessel Inspection Circular 01–04, issued by the Commandant of the U.S. Coast Guard on January 2, 2004.

The House bill contained no similar provision.

The House recedes with an amendment that would allow the Secretary of Transportation to give priority to subsidy proposals received after fiscal year 2005 if the vessels, which are to be constructed, have been selected to participate in the STEP.

TITLE XXXVI—ASSISTANCE TO FIREFIGHTERS

LEGISLATIVE PROVISIONS ADOPTED

Assistance to Firefighters (secs. 3601–3603)

The Senate amendment contained several provisions (sec. 3501–3513) that would reauthorize the Department of Homeland Security's Assistance to Firefighters Grant Program for fiscal years 2005 through 2010. The provision would also authorize the Secretary of Homeland Security, in consultation with the U.S. Fire Administrator, to administer the grant program; expand eligibility for the Assistance to Firefighters Grant Program to volunteer emergency medical service (EMS) organizations; reduce the matching requirements for jurisdictions with populations less than 20,000; set caps on assistance to jurisdictions based on population; and authorize $900.0 million for the program in fiscal year 2005; $950.0 million for fiscal year 2006; and $1.0 billion for each of fiscal years 2007 through 2010.

The House bill contained no similar provision.

The House recedes with an amendment that would place the Director of the Federal Emergency Management Agency, acting through the U.S. Fire Administrator, in charge of administration of the program. Further, the amendment would create a funding floor for grants to EMS organizations, but set a funding ceiling for EMS organizations that are not affiliated with fire departments. The amendment would include reduced matching requirements for jurisdictions with populations less than 50,000, and modify the caps on assistance to jurisdictions based on population. The amendment would authorize $900.0 million for fiscal year 2005; $950.0 million for fiscal year 2006; and $1.0 billion for each of fiscal years 2007 through 2009.

The conferees are concerned about the number of firefighters suffering fatal heart attacks each year while on duty. The conferees direct the director to work to reduce the number of on-duty firefighter fatalities by promoting life-saving policies, training, and equipment, including Automated External Defibrillator devices. As a part of this effort, the director is encouraged to examine the feasibility of prioritizing life-saving training and equipment in grant evaluation criteria.

From the Committee on Armed Services, for consideration of the HOuse bill and the Senate amendment, and modifications committed to conference:

Duncan Hunter,
Curt Weldon,
Joel Hefley,
Jim Saxton,
John M. McHugh,
Terry Everett,
Roscoe G. Bartlett,
Howard P. "Buck" McKeon,
Mac Thornberry,
John N. Hostettler,
Jim Ryun,
Jim Gibbons,
Robin Hayes,
Ken Calvert,
Rob Simmons,
Ike Skelton,
John M. Spratt, Jr.
Solomon P. Ortiz,
Lane Evans,
Neil Abercrombie,
Martin T. Meehan,
Silvestre Reyes,
Vic Snyder,
Jim Turner,
Adam Smith,
Loretta Sanchez,
Baron P. Hill,

From the Permanent Select Committee on Intelligence, for consideration of matters within the jurisdiction of that committee under clause 11 of rule X:

Pete Hoekstra,
Ray LaHood,
Jane Harman,

From the Committee on Agriculture, for consideration of sec. 1076 of the Senate amendment, and modifications committed to conference:

Bob Goodlatte,
Max Burns,
Charles W. Stenholm,

From the Committee on Education and the Workforce, for consideration of secs. 590, 595, 596, 904, and 3135 of the House bill, and secs. 351, 352, 532, 533, 707, 868, 1079, 3143, and 3151–3157 of the Senate amendment, and modifications committed to conference:

Sam Johnson,
Timothy H. Bishop,

From the Committee on Government Reform, for consideration of secs. 801, 806, 807, 825, 1061, 1101–1104, 2833, 2842, and 2843 of the House bill, and secs. 801, 805, 832, 851, 852, 869, 870, 1034, 1059B, 1091, 1101, 1103–1107, 1110, 2823, 2824, 2833, and 3121 of the Senate amendment, and modifications committed to conference:

Tom Davis,

From the Committee on House Administration, for consideration of secs. 572 and 1065 of the Senate amendment, and modifications committed to conference:

Robert W. Ney,
Vernon J. Ehlers,
John B. Larson,

From the Committee on International Relations, for consideration of secs. 811, 1013, 1031, 1212, 1215, Title XIII, secs. 1401–1405, 1411, 1412, 1421, and 1422 of the House bill, and secs. 1014, 1051–1053, 1058, 1059A, 1059B, 1070, Title XII, secs. 3131 and 3132 of the Senate amendment, and modifications committed to conference:

Henry J. Hyde,
James A. Leach,

From the Committee on the Judiciary, for consideration of secs. 551, 573, 616, 652, 825, 1075, 1078, 1105, 2833, 2842, and 2843 of the House bill, and secs. 620, 842, 1063, 1068, 1074, 1080–1082, 1101, 1106, 1107, 2821, 2823, 2824, 3143, 3146, 3151–3157, 3401–3410 of the Senate amendment, and modifications committed to conference:

F. James Sensenbrenner, Jr.,
Lamar S. Smith,

From the Committee on Resources, for consideration of secs. 601 and 2834 of the House bill, and sec. 1076 of the Senate amendment, and modifications committed to conference:

Greg Walden,
Jay Inslee,

From the Committee on Science, for consideration of sec. 596 of the House bill and secs. 1034, 1092, and Title XXXV of the Senate amendment, and modifications committed to conference:

Sherwood Boehlert,
Nick Smith,
Bart Gordon,

From the Committee on Small Business, for consideration of secs. 807 and 3601 of the House bill, and secs. 805, 822, 823, 912, and 1083 of the Senate amendment, and modifications committed to conference:

Donald A. Manzullo,
Sue W. Kelly,

From the Committee on Transportation and Infrastructure, for consideration of secs. 555, 558, 596, 601, 905, 1051, 1063, 1072, and 3502 of the House bill, and sec. 321, 323, 325, 717, 1066, 1076, 1091, 2828, 2833–2836, and Title XXXV of the Senate amendment, and modifications committed to conference:

Don Young,
John J. Duncan, Jr.,
Michael E. Capuano,

From the Committee on Veterans' Affairs, for consideration of secs. 2810 and 2831 of the House bill, and secs. 642, 2821, and 2823 of the Senate amendment, and modifications committed to conference:

Christopher H. Smith,

From the Committee on Ways and Means, for consideration of sec. 585 of the House bill, and sec. 653 of the Senate amendment, and modifications committed to conference:

E. Clay Shaw, Jr.,
Dave Camp,
Managers on the Part of the House.

John W. Warner,
John McCain,
Pat Roberts,
Wayne Allard,
Jeff Sessions,
Susan M. Collins,
John Ensign,
James M. Talent,
Saxby Chambliss,
Lindsey O. Graham,
Elizabeth Dole,
John Cornyn,
Carl Levin,
Edward M. Kennedy,

ROBERT C. BYRD,
JOSEPH I. LIEBERMAN,
JACK REED,
DANIEL K. AKAKA,
BILL NELSON,
BEN NELSON,
MARK DAYTON,
EVAN BAYH,
HILLARY RODHAM CLINTON,
MARK PRYOR,
Managers on the Part of the Senate.

CONFERENCE REPORT ON H.R. 1047, MISCELLANEOUS TRADE AND TECHNICAL CORRECTIONS ACT OF 2004

Mr. THOMAS submitted the following conference report and statement on the bill (H.R. 1047) to amend the Harmonized Tariff Schedule of the United States to modify temporarily certain rates of duty, to make other technical amendments to the trade laws, and for other purposes:

CONFERENCE REPORT (H. REPT. 108–771)

[To accompany H.R. 1047]

The committee on conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1047), to amend the Harmonized Tariff Schedule of the United States to modify temporarily certain rates of duty, to make other technical amendments to the trade laws, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

This Act may be cited as the "Miscellaneous Trade and Technical Corrections Act of 2004".

Sec. 1. Short title; table of contents.

TITLE I—TARIFF PROVISIONS

Sec. 1101. Reference; expired provisions.

Subtitle A—Temporary Duty Suspensions and Reductions

CHAPTER 1—NEW DUTY SUSPENSIONS AND REDUCTIONS

Sec. 1111. Bitolylene diisocyanate (TODI).
Sec. 1112. 2-methylimidazole.
Sec. 1113. Hydroxylamine free base.
Sec. 1114. Prenol.
Sec. 1115. 1-methylimadazole.
Sec. 1116. Formamide.
Sec. 1117. Michler's ethyl ketone.
Sec. 1118. Vinyl imidazole.
Sec. 1119. Disperse blue 27.
Sec. 1120. Acid black 244.
Sec. 1121. Reactive orange 132.
Sec. 1122. Mixtures of acid red 337, acid red 266, and acid red 361.
Sec. 1123. Vat red 13.
Sec. 1124. 5-methylpyridine-2,3-dicarboxylic acid.
Sec. 1125. 5-methylpyridine-2,3-dicarboxylic acid diethylester.
Sec. 1126. 5-ethylpyridine dicarboxylic acid.
Sec. 1127. (e)-o(2,5-dimethylphenoxy methyl)-2-methoxy-imino-n-methylphenylacetamide.
Sec. 1128. 2-chloro-n-(4'chlorobiphenyl-2-yl) nicotinamide.
Sec. 1129. Vinclozolin.
Sec. 1130. Dazomet.
Sec. 1131. Pyraclostrobin.
Sec. 1132. 1,3-benzenedicarboxylic acid, 5-sulfo-1,3-dimethyl ester sodium salt.
Sec. 1133. Saccharose.
Sec. 1134. (2-benzothiazolythio) butanedioic acid.
Sec. 1135. 60–70 percent amine salt of 2-benzothiazolythio succinic acid in solvent.
Sec. 1136. 4-methyl-g-oxo-benzenebutanoic acid compounded with 4-ethylmorpholine (2:1).
Sec. 1137. Mixtures of rimsulfuron, nicosulfuron, and application adjuvants.
Sec. 1138. Mixtures of thifensulfuron methyl, tribenuron methyl and application adjuvants.
Sec. 1139. Mixtures of thifensulfuron methyl and application adjuvants.
Sec. 1140. Mixtures of tribenuron methyl and application adjuvants.
Sec. 1141. Mixtures of rimsulfuron, thifensulfuron methyl and application adjuvants.
Sec. 1142. Vat black 25.
Sec. 1143. Cyclohexanepropanoic acid, 2-propenyl ester.
Sec. 1144. Neoheliopan hydro (2-phenylbenzimidazole-5-sulfonic acid).
Sec. 1145. Sodium methylate powder (na methylate powder).
Sec. 1146. Globanone (cyclohexadec-8-en-1-one).
Sec. 1147. Methyl acetophenone-para (melilot).
Sec. 1148. Majantol (2,2-dimethyl-3-(3-methylphenyl)propanol).
Sec. 1149. Neoheliopan MA (menthyl anthranilate).
Sec. 1150. Allyl isosulfocyanate.
Sec. 1151. Frescolat.
Sec. 1152. Thymol (alpha-cymophenol).
Sec. 1153. Benzyl carbazate.
Sec. 1154. Esfenvalerate technical.
Sec. 1155. Avaunt and steward.
Sec. 1156. Helium.
Sec. 1157. Ethyl pyruvate.
Sec. 1158. Deltamethrin.
Sec. 1159. Asulam sodium salt.
Sec. 1160. Tralomethrin.
Sec. 1161. N-phenyl-n'-(1,2,3-thiadiazol-5-yl)-urea.
Sec. 1162. Benzenepropanoic acid, alpha-2-dichloro-5-{4 (difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1h-1,2,4-triazol-1-yl}-4-fluoro-ethyl ester.
Sec. 1163. (z)-(1rs, 3rs)-3-(2-chloro-3,3,3 triflouro-1-propenyl)-2,2-dimethyl-cyclopropane carboxylic acid.
Sec. 1164. 2-chlorobenzyl chloride.
Sec. 1165. (s)-alpha-hydroxy-3-phenoxybenzeneacetonitrile.
Sec. 1166. 4-pentenoic acid, 3,3-dimethyl-, methyl ester.
Sec. 1167. Terrazole.
Sec. 1168. 2-mercaptoethanol.
Sec. 1169. Bifenazate.
Sec. 1170. A certain polymer.
Sec. 1171. Para ethylphenol.
Sec. 1172. Ezetimibe.
Sec. 1173. P-cresidinesulfonic acid.
Sec. 1174. 2,4 disulfobenzaldehyde.
Sec. 1175. M-hydroxybenzaldehyde.
Sec. 1176. N-ethyl-n-(3-sulfobenzyl)aniline, benzenesulfonic acid, 3[(ethylphenylamino)methyl].
Sec. 1177. Acrylic fiber tow.
Sec. 1178. oxides.
Sec. 1179. Hexanedioic acid, polymer with 1,3-benzenedimethanamine.
Sec. 1180. N1-[(6-chloro-3-pyridyl)methyl]-n2-cyano-n1-methylacetamidine.
Sec. 1181. Aluminum tris (o-ethyl phosphonate).
Sec. 1182. Mixture of disperse blue 77 and disperse blue 56.
Sec. 1183. Acid black 194.
Sec. 1184. Mixture of 9,10-anthracenedione, 1,5-dihydroxy-4-nitro-8-(phenylamino)-and disperse blue 77.
Sec. 1185. Copper phthalocyanine substituted with 15 or 16 groups which comprise 8-15 thioaryl and 1-8 arylamino groups.
Sec. 1186. Bags for certain toys.
Sec. 1187. Certain children's products.
Sec. 1188. Certain optical instruments used in children's products.
Sec. 1189. Cases for certain children's products.
Sec. 1190. 2,4-dichloroaniline.
Sec. 1191. Ethoprop.
Sec. 1192. Foramsulfuron.
Sec. 1193. Certain epoxy molding compounds.
Sec. 1194. Dimethyldicyane.
Sec. 1195. Triacetone diamine.
Sec. 1196. Triethylene glycol bis[3-(3-tert-butyl-4-hydroxy-5-methylphenyl) propionate.
Sec. 1197. Certain power weaving textile machinery.
Sec. 1198. Certain filament yarns.
Sec. 1199. Certain other filament yarns.
Sec. 1200. Certain ink-jet textile printing machinery.
Sec. 1201. Certain other textile printing machinery.
Sec. 1203. D-mannose.
Sec. 1204. Benzamide, N-methyl-2-[[3-[(1E)-2-(2-pyridinyl)-ethenyl]-1H-indazol-6-yl)thio]-.
Sec. 1205. 1(2h)-quinolinecarboxylic acid, 4-[[[3,5-bis-(trifluoromethyl)phenyl] methyl](methoxycarbonyl)amino]-2-ethyl- 3,4-dihydro-6-(trifluoromethyl)-, ethyl ester, (2R,4S)-(9CI).
Sec. 1206. Disulfide,bis(3,5-dichlorophenyl)(9C1).
Sec. 1207. Pyridine, 4-[[4-(1-methylethyl)-2-[(phenylmethoxy)methyl]-1H-midazol-1-yl] methyl]-ethanedioate (1:2).
Sec. 1208. Paclobutrazole technical.
Sec. 1209. Paclobutrazole 2SC.
Sec. 1210. Methidathion technical.
Sec. 1211. Vanguard 75 WDG.
Sec. 1212. Wakil XL.
Sec. 1213. Mucochloric acid.
Sec. 1214. Azoxystrobin technical.
Sec. 1215. Flumetralin technical.
Sec. 1216. Cyprodinil technical.
Sec. 1217. Mixtures of lambda-cyhalothrin.
Sec. 1218. Primisulfuron methyl.
Sec. 1219. 1,2-cyclohexanedione.
Sec. 1220. Difenoconazole.
Sec. 1221. Certain refracting and reflecting telescopes.
Sec. 1222. Phenylisocyanate.
Sec. 1223. Bayowet FT-248.
Sec. 1224. P-phenylphenol.
Sec. 1225. Certain rubber riding boots.
Sec. 1226. Chemical RH water-based.
Sec. 1227. Chemical NR ethanol-based.
Sec. 1228. Tantalum capacitor ink.
Sec. 1229. Certain sawing machines.
Sec. 1230. Certain sector mold press manufacturing equipment.
Sec. 1231. Certain manufacturing equipment used for molding.
Sec. 1232. Certain extruders.
Sec. 1233. Certain shearing machines.
Sec. 1234. Thermal release plastic film.
Sec. 1235. Certain silver paints and pastes.
Sec. 1236. Polymer masking material for aluminum capacitors (upicoat).
Sec. 1237. OBPA.

Sec. 1238. Macroporous ion-exchange resin.
Sec. 1239. Copper 8-quinolinolate.
Sec. 1240. Ion-exchange resin.
Sec. 1241. Ion-exchange resin crosslinked with ethenylbenzene, aminophosponic acid.
Sec. 1242. Ion-exchange resin crosslinked with divinylbenzene, sulphonic acid.
Sec. 1243. 3-[(4 amino-3-methoxyphenyl) azo]-benzene sulfonic acid.
Sec. 1244. 2-methyl-5-nitrobenzenesulfonic acid.
Sec. 1245. 2-amino-6-nitro-phenol-4-sulfonic acid.
Sec. 1246. 2-amino-5-sulfobenzoic acid.
Sec. 1247. 2,5 bis [(1,3 dioxobutyl) amino] benzene sulfonic acid.
Sec. 1248. P-aminoazobenzene 4 sulfonic acid, monosodium salt.
Sec. 1249. P-aminoazobenzene 4 sulfonic acid.
Sec. 1250. 3-[(4 amino-3-methoxyphenyl) azo]-benzene sulfonic acid, monosodium salt.
Sec. 1251. ET-743 (ecteinascidin).
Sec. 1252. 2,7-naphthalenedisulfonic acid, 5-[[4-chloro-6-[[2-[[4-fluoro-6-[[5-hydroxy-6-[(4-methoxy-2-sulfophenyl)azo]-7-sulfo-2-naphthalenyl]amino]-1,3,5-triazin-2-yl] amino]-1-methylethyl]amino]-1,3,5-triazin-2-yl]amino]-3-[[4-(ethenylsulfonyl)phenyl]azo]-4-hydrox'-, sodium salt.
Sec. 1253. 1,5-naphthalenedisulfonic acid, 3-[[2-(acetylamino)-4-[[4-[[2-[2-(ethenylsulfonyl)ethoxy]ethyl] amino]-6-fluoro-1,3,5-triazin-2-yl]amino]phenyl]azo]-, disodium salt.
Sec. 1254. 7,7'-[1,3-propanediylbis[imino(6-fluoro-1,3,5-triazine-4,2-diyl)imino[2-[(aminocarbonyl)amino]-4,1-phenylene]azo]]bis-, sodium salt.
Sec. 1255. Cuprate(3-), [2-[[[[3-[[4-[[2-[2-(ethenylsulfonyl)ethoxy]ethyl]amino]-6-fluoro-1,3,5-triazin-2-yl]amino]-2-(hydroxy-.kappa.o)-5-sulfophenyl]azo-.kappa.n2]phenylmethyl]azo-.kappa.n1]-4-sulfobenzoato(5-)-.kappa.o], trisodium.
Sec. 1256. 1,5-naphthalenedisulfonic acid, 2-[[8-[[4-[[3-[[[2-(ethenylsulfonyl) ethyl]amino]carbonyl]phenyl] amino]-6-fluoro-1,3,5-triazin-2-yl]amino]-1-hydroxy-3,6-disulfo-2-naphthalenyl]azo]-, tetrasodium salt.
Sec. 1257. PTFMBA.
Sec. 1258. Benzoic acid, 2-amino-4-[[(2,5-dichlorophenyl)amino]carbonyl]-, methyl ester.
Sec. 1259. Imidacloprid pesticides.
Sec. 1260. Beta-cyfluthrin.
Sec. 1261. Imidacloprid technical.
Sec. 1262. bayleton technical.
Sec. 1263. Propoxur technical.
Sec. 1264. MKH 6561 isocyanate.
Sec. 1265. Propoxy methyl triazolone.
Sec. 1266. Nemacur VL.
Sec. 1267. Methoxy methyl triazolone.
Sec. 1268. Levafix golden yellow E-G.
Sec. 1269. Levafix blue CA/remazol blue CA.
Sec. 1270. Remazol yellow RR gran.
Sec. 1271. Indanthren blue CLF.
Sec. 1272. Indanthren yellow F3GC.
Sec. 1273. Acetyl chloride.
Sec. 1274. 4-methoxy-phenacychloride.
Sec. 1275. 3-methoxy-thiophenol.
Sec. 1276. Levafix brilliant red E-6BA.
Sec. 1277. Remazol BR. Blue BB 133 percent.
Sec. 1278. Fast navy salt RA.
Sec. 1279. Levafix royal blue E-FR.
Sec. 1280. P-chloroaniline.
Sec. 1281. Esters and sodium esters of parahydroxybenzoic acid.
Sec. 1282. Santolink EP 560.
Sec. 1283. Phenodur VPW 1942.
Sec. 1284. Phenodur PR 612.
Sec. 1285. Phenodur PR 263.
Sec. 1286. Macrynal SM 510 and 516.
Sec. 1287. Alftalat AN 725.
Sec. 1288. RWJ 241947.
Sec. 1289. RWJ 394718.
Sec. 1290. RWJ 394720.
Sec. 1291. 3,4-DCBN.
Sec. 1292. Cyhalofop.
Sec. 1293. Asulam.
Sec. 1294. Florasulam.
Sec. 1295. Propanil.
Sec. 1296. Halofenozide.
Sec. 1297. Ortho-phthalaldehyde.
Sec. 1298. Trans 1,3-dichloropentene.
Sec. 1299. Methacrylamide.
Sec. 1300. Cation exchange resin.
Sec. 1301. Gallery.
Sec. 1302. Necks used in cathode ray tubes.
Sec. 1303. Polytetramethylene ether glycol.
Sec. 1304. Leaf alcohol.
Sec. 1305. Combed cashmere and camel hair yarn.
Sec. 1306. Certain carded cashmere yarn.
Sec. 1307. Sulfur black 1.
Sec. 1308. Reduced vat blue 43.
Sec. 1309. Fluorobenzene.
Sec. 1310. Certain rayon filament yarn.
Sec. 1311. Certain tire cord fabric.
Sec. 1312. Direct black 184.
Sec. 1313. Black 263 stage.
Sec. 1314. Magenta 364.
Sec. 1315. Thiamethoxam technical.
Sec. 1316. Cyan 485 stage.
Sec. 1317. Direct blue 307.
Sec. 1318. Direct violet 107.
Sec. 1319. Fast black 286 stage.
Sec. 1320. Mixtures of fluazinam.
Sec. 1321. Prodiamine technical.
Sec. 1322. Carbon dioxide cartridges.
Sec. 1323. 12-hydroxyoctadecanoic acid, reaction product with N,N-dimethyl, 1,3-propanediamine, dimethyl sulfate, quaternized.
Sec. 1324. 40 percent polymer acid salt/polymer amide, 60 percent butyl acetate.
Sec. 1325. 12-hydroxyoctadecanoic acid, reaction product with N,N-dimethyl-1,3-propanediamine, dimethyl sulfate, quaternized, 60 percent solution in toluene.
Sec. 1326. Polymer acid salt/polymer amide.
Sec. 1327. 50 percent amine neutralized phosphated polyester polymer, 50 percent solvesso 100.
Sec. 1328. 1-octadecanaminium, N,N-di-methyl-N-octadecyl-, (SP-4-2)-[29H,31H-phtha- locyanine-2- sulfonato(3-)-.kappa.n29,.kappa.n30,. Kappa.n31,.kappa.n32]cuprate(1-).
Sec. 1329. Chromate(1-)-bis{1-{(5-chloro-2-hydroxyphenyl)azoγ-2-napthal enolato(2-)γ-,hydrogen.
Sec. 1330. Bronate advanced.
Sec. 1331. N-cyclohexylthiophthalimide.
Sec. 1332. Certain high-performance loudspeakers.
Sec. 1333. Bio-set injection RCC.
Sec. 1334. Penta amino aceto nitrate cobalt III (coflake 2).
Sec. 1335. Oxasulfuron technical.
Sec. 1336. Certain manufacturing equipment.
Sec. 1337. 4-aminobenzamide.
Sec. 1338. FOE hydroxy.
Sec. 1339. Magenta 364 liquid feed.
Sec. 1340. Tetrakis.
Sec. 1341. Palmitic acid.
Sec. 1342. Phytol.
Sec. 1343. Chloridazon.
Sec. 1344. Disperse orange 30, disperse blue 79:1, disperse red 167:1, disperse yellow 64, disperse red 60, disperse blue 60, disperse blue 77, disperse yellow 42, disperse red 86, and disperse red 86:1.
Sec. 1345. Disperse blue 321.
Sec. 1346. Direct black 175.
Sec. 1347. Disperse red 73 and disperse blue 56.
Sec. 1348. Acid black 132.
Sec. 1349. Acid black 132 and acid black 172.
Sec. 1350. Acid black 107.
Sec. 1351. Acid yellow 219, acid orange 152, acid red 278, acid orange 116, acid orange 156, and acid blue 113.
Sec. 1352. Europium oxides.
Sec. 1353. Luganil brown NGT powder.
Sec. 1354. Thiophanate-methyl.
Sec. 1355. Mixtures of thiophanate-methyl and application adjuvants.
Sec. 1356. Hydrated hydroxypropyl methylcellulose.
Sec. 1357. C 12-18 alkenes, polymers with 4-methyl-1-pentene.
Sec. 1358. Certain 12-volt batteries.
Sec. 1359. Certain prepared or preserved artichokes.
Sec. 1360. Certain other prepared or preserved artichokes.
Sec. 1361. Ethylene/tetrafluoroethylene copolymer (ETFE).
Sec. 1362. Acetamiprid.
Sec. 1363. Certain manufacturing equipment.
Sec. 1364. Triticonazole.
Sec. 1365. Certain textile machinery.
Sec. 1366. 3-sulfinobenzoic acid.
Sec. 1367. Polydimethylsiloxane.
Sec. 1368. Baysilone fluid.
Sec. 1369. Ethanediamide, N- (2-ethoxyphenyl)-N'- (4-isodecylphenyl)-.
Sec. 1370. 1-acetyl-4-(3-dodecyl-2, 5-dioxo-1-pyrrolidinyl)-2,2,6,6-tetramethyl-piperidine.
Sec. 1371. Aryl phosphonite.
Sec. 1372. Mono octyl malionate.
Sec. 1373. 9-trioxaundecanedioic acid.
Sec. 1374. Crotonic acid.
Sec. 1375. 1,3-benzenedicarboxamide, N, N'-bis-(2,2,6,6-tetramethyl-4-piperidinyl)-.
Sec. 1376. 3-dodecyl-1-(2,2,6,6-tetramethyl-4-piperidinyl)-2,5-pyrrolidinedione.
Sec. 1377. Oxalic anilide.
Sec. 1378. N-methyl diisopropanolamine.
Sec. 1379. 50 percent homopolymer, 3-(dimethylamino) propyl amide, dimethyl sulfate-quaternized 50 percent polyricinoleic acid.
Sec. 1380. Black CPW stage.
Sec. 1381. Fast black 287 NA paste.
Sec. 1382. Fast black 287 NA liquid feed.
Sec. 1383. Fast yellow 2 stage.
Sec. 1384. Cyan 1 stage.
Sec. 1385. Yellow 1 stage.
Sec. 1386. Yellow 746 stage.
Sec. 1387. Black SCR stage.
Sec. 1388. Magenta 3B-OA stage.
Sec. 1389. Yellow 577 stage.
Sec. 1390. Cyan 485/4 stage.
Sec. 1391. Low expansion laboratory glass.
Sec. 1392. Stoppers, lids, and other closures.
Sec. 1393. Triflusulfuron methyl formulated product.
Sec. 1394. Agrumex (o-t-butyl cyclohexanol).
Sec. 1395. Trimethyl cyclo hexanol (1-methyl-3,3-dimethylcyclohexanol-5).
Sec. 1396. Myclobutanil.
Sec. 1397. Methyl cinnamate (methyl-3-phenylpropenoate).
Sec. 1398. Acetanisole (anisyl methyl ketone).
Sec. 1399. Alkylketone.
Sec. 1400. Iprodione 3-(3-5, dicholorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide.

Sec. 1401. Dichlorobenzidine dihydrochloride.
Sec. 1402. Kresoxim-methyl.
Sec. 1403. MKH 6562 isocyanate.
Sec. 1404. Certain rayon filament yarn.
Sec. 1405. Benzenepropanal, 4-(1,1-dimethylethyl)-alpha-methyl.
Sec. 1406. Chloro-8-quinoline carboxylic acid.
Sec. 1407. 3-(1-methylethyl)-1h-2,1,3-benzothiadiazin-4(3h)-one 2,2 dioxide, sodium salt.
Sec. 1408. 3,3′,4-4′-biphenyltetracarboxylic dianhydride, oda, odpa, pmda, and 1,3-bis(4-aminophenoxy)benzene.
Sec. 1409. Oryzalin.
Sec. 1410. Tebufenozide.
Sec. 1411. Endosulfan.
Sec. 1412. Ethofumesate.
Sec. 1413. Night vision monoculars.
Sec. 1414. Solvent yellow 163.
Sec. 1415. Railway car body shells for EMU's.
Sec. 1416. Certain educational devices.
Sec. 1417. Railway electric multiple unit (EMU) gallery commuter coaches of stainless steel.
Sec. 1418. Snowboard boots.
Sec. 1419. Hand-held radio scanners.
Sec. 1420. Mobile and base radio scanners that are combined with a clock.
Sec. 1421. Mobile and base radio scanners that are not combined with a clock.
Sec. 1422. Certain fine animal hair of kashmir (cashmere) goats not processed.
Sec. 1423. Certain fine animal hair of kashmir (cashmere) goats.
Sec. 1424. Certain r-core transformers.
Sec. 1425. Decorative plates.
Sec. 1426. Bispyribac sodium.
Sec. 1427. Fenpropathrin.
Sec. 1428. Pyriproxyfen.
Sec. 1429. Uniconazole-P.
Sec. 1430. Flumioxazin.
Sec. 1431. Night vision monoculars.
Sec. 1432. 2,4-xylidine.
Sec. 1433. R118118 salt.
Sec. 1434. NMSBA.
Sec. 1435. Certain satellite radio broadcasting apparatus.
Sec. 1436. Acephate.
Sec. 1437. Magnesium aluminum hydroxide carbonate hydrate.
Sec. 1438. Certain footwear.
Sec. 1439. Pigment Red 176.
Sec. 1440. Pigment Yellow 214.
Sec. 1441. Pigment Yellow 180.

CHAPTER 2—EXISTING DUTY SUSPENSIONS AND REDUCTIONS

Sec. 1451. Extension of certain existing duty suspensions.
Sec. 1452. Pigment Yellow 154.
Sec. 1453. Pigment Yellow 175.
Sec. 1454. Pigment Red 208.
Sec. 1455. Pigment Red 187.
Sec. 1456. Pigment Red 185.
Sec. 1457. Effective date.

Subtitle B—Other Tariff Provisions

CHAPTER 1—LIQUIDATION OR RELIQUIDATION OF CERTAIN ENTRIES

Sec. 1501. Certain tramway cars.
Sec. 1502. Liberty Bell replica.
Sec. 1503. Certain entries of cotton gloves.
Sec. 1504. Certain entries of posters.
Sec. 1505. Certain entries of posters entered in 1999 and 2000.
Sec. 1506. Certain entries of 13-inch televisions.
Sec. 1507. Neoprene synchronous timing belts.
Sec. 1508. Certain entries of roller chain.
Sec. 1509. Drawback claim relating to juices entered in April 1993.
Sec. 1510. Drawback claim relating to juices entered in March 1994.
Sec. 1511. Certain entries prematurely liquidated in error.
Sec. 1512. Certain posters entered during 2000 and 2001.
Sec. 1513. Certain other entries.
Sec. 1514. Certain railway passenger coaches.
Sec. 1515. Certain entries of vanadium carbides and vanadium carbonitride.
Sec. 1516. Steel wire rope entries.
Sec. 1517. Certain tomato sauce preparation entered between April 10, 1989, and August 20, 1993.
Sec. 1518. Certain tomato sauce preparation entered between April 5, 1991, and May 9, 1992.
Sec. 1519. Certain tomato sauce preparation entered between May 9, 1992, and September 18, 1993.
Sec. 1520. Certain tomato sauce preparation entered between September 18, 1993, and July 25, 1994.
Sec. 1521. Certain tomato sauce preparation entered between November 22, 1989, and March 7, 1990.
Sec. 1522. Certain tomato sauce preparation entered between March 14, 1990, and September 29, 1990.
Sec. 1523. Certain tomato sauce preparation entered between October 6, 1990, and November 1, 1990.
Sec. 1524. Certain tomato sauce preparation entered between November 3, 1990, and December 15, 1990.
Sec. 1525. Certain tomato sauce preparation entered between December 28, 1990, and February 9, 1991.
Sec. 1526. Certain tomato sauce preparation entered between February 14, 1991, and April 21, 1991.
Sec. 1527. Certain tomato sauce preparation entered between April 26, 1991, and June 16, 1991.
Sec. 1528. Certain tomato sauce preparation entered between October 7, 1991, and November 24, 1991.
Sec. 1529. Certain tomato sauce preparation entered between November 30, 1991, and November 26, 1992.
Sec. 1530. Certain tomato sauce preparation entered between December 9, 1992, and May 9, 1993.
Sec. 1531. Certain tomato sauce preparation entered between May 14, 1993, and October 23, 1993.
Sec. 1532. Certain tomato sauce preparation entered between May 16, 1990, and April 20, 1996.
Sec. 1533. Certain tomato sauce preparation entered between August 28, 1991, and July 8, 1996.
Sec. 1534. Certain tomato sauce preparation entered between April 4, 1995, and July 22, 1996.
Sec. 1535. Certain tomato sauce preparation entered between October 11, 1994, and May 16, 1995.
Sec. 1536. Certain tomato sauce preparation entered between June 17, 1991, and October 3, 1991.

CHAPTER 2—MISCELLANEOUS PROVISIONS

Sec. 1551. Hair clippers.
Sec. 1552. Tractor body parts.
Sec. 1553. Flexible magnets and composite goods containing flexible magnets.
Sec. 1554. Vessel repair duties.
Sec. 1555. Duty-free treatment for hand-knotted or hand-woven carpets.
Sec. 1556. Duty drawback for certain articles.
Sec. 1557. Unused merchandise drawback.
Sec. 1558. Treatment of certain footwear under Caribbean Basin Economic Recovery Act.
Sec. 1559. Designation of San Antonio International Airport for customs processing of certain private aircraft arriving in the United States.
Sec. 1560. Authority for the establishment of integrated border inspection areas at the United States-Canada border.
Sec. 1561. Designation of foreign law enforcement officers.
Sec. 1562. Amendments to United States insular possession program.
Sec. 1563. Modification of provisions relating to drawback claims.

Subtitle C—Effective Date

Sec. 1571. Effective date.

TITLE II—OTHER TRADE PROVISIONS

Subtitle A—Miscellaneous Provisions

Sec. 2001. Termination of application of title IV of the Trade Act of 1974 to Armenia.
Sec. 2002. Modification to cellar treatment of natural wine.
Sec. 2003. Articles eligible for preferential treatment under the Andean Trade Preference Act.
Sec. 2004. Technical amendments.
Sec. 2005. Extension of normal trade relations to Laos.
Sec. 2006. Repeal of antidumping provision of Revenue Act of 1916.

Subtitle B—Technical Amendments Relating to Entry and Protest

Sec. 2101. Entry of merchandise.
Sec. 2102. Limitation on liquidations.
Sec. 2103. Protests.
Sec. 2104. Review of protests.
Sec. 2105. Refunds and errors.
Sec. 2106. Definitions and miscellaneous provisions.
Sec. 2107. Voluntary reliquidations.
Sec. 2108. Effective date.

Subtitle C—Protection of Intellectual Property Rights

Sec. 2201. USTR determinations in TRIPS Agreement investigations.

TITLE III—IRAQI CULTURAL ANTIQUITIES

Sec. 3001. Short title.
Sec. 3002. Emergency implementation of import restrictions.
Sec. 3003. Termination of authority.

TITLE IV—WOOL TRUST FUND

Sec. 4001. Short title.
Sec. 4002. Extension and modification of duty suspension on wool products, wool research fund, wool duty refunds.

TITLE V—REFERENCE TO CUSTOMS SERVICE

Sec. 5001. Reference to Customs Service.

TITLE I—TARIFF PROVISIONS

SEC. 1101. REFERENCE; EXPIRED PROVISIONS.

(a) REFERENCE.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a chapter, subchapter, note, additional U.S. note, heading, subheading, or other provision, the reference shall be considered to be made to a chapter, subchapter, note, additional U.S. note, heading, subheading, or other provision of the Harmonized Tariff Schedule of the United States (19 U.S.C. 3007).

(b) EXPIRED PROVISIONS.—(1) Subchapter II of chapter 99 is amended by striking the following headings:

9902.29.09
9902.29.11
9902.29.12
9902.29.15
9902.29.18
9902.29.19
09902.30.64
09902.30.65
09902.30.91
09902.30.92
09902.31.12
09902.31.21
09902.33.06
09902.33.07
09902.33.08
09902.33.09
09902.33.10
09902.33.11

9902.29.20
9902.29.21
9902.29.24
9902.29.28
9902.29.29
9902.29.32
9902.29.36
9902.29.43
9902.29.44
9902.29.45
9902.29.50
09902.32.01
09902.32.08
09902.32.11
09902.32.13
09902.32.29
09902.32.31
09902.32.33
09902.32.34
09902.32.35
09902.32.36
09902.32.37
09902.33.12
09902.33.16
09902.33.19
09902.33.66
09902.33.90
09902.34.02
09902.38.08
09902.38.11
09902.38.12
09902.38.25
09902.38.26
9902.29.51
9902.29.52
9902.29.53
9902.29.54
9902.29.57
9902.29.60
9902.29.65
9902.29.66
9902.29.67
9902.29.72
9902.29.74
09902.32.38
09902.32.39
09902.32.40
09902.32.41
09902.32.42
09902.32.43
09902.32.45
09902.32.51
09902.32.54
09902.32.56
09902.32.70
09902.38.28
09902.39.04
09902.39.12
09902.61.00
09902.64.05
09902.84.10
09902.84.12
09902.84.20
09902.84.43
09902.84.46
09902.84.77
9902.29.95
9902.30.04
9902.30.17
9902.30.18
9902.30.19
9902.30.58
9902.30.63
09902.32.94
09902.32.95
09902.33.01
09902.33.02
09902.33.03
09902.33.04
09902.33.05
09902.84.79
09902.84.87
09902.85.21
09902.98.03
09902.98.04
09902.98.05
09902.98.08

(2) Subchapter II of chapter 99 is amended by striking heading 9902.29.35 (relating to Gamma acid).

Subtitle A—Temporary Duty Suspensions and Reductions

Chapter 1—New Duty Suspensions and Reductions

SEC. 1111. BITOLYLENE DIISOCYANATE (TODI).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.01	Bitolylene diisocyanate (TODI) (CAS No. 91–97–4) (provided for in subheading 2929.10.20)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1112. 2-METHYLIMIDAZOLE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.02	2-Methylimidazole (CAS No. 693–98–1) (provided for in subheading 2933.29.90)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1113. HYDROXYLAMINE FREE BASE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.03	Hydroxylamine (CAS No. 7803–49–8) (provided for in subheading 2825.10.00)	0.6%	No change	No change	On or before 12/31/2006	".

SEC. 1114. PRENOL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.04	3-Methyl-2-buten-1-ol (CAS No. 556–82–1) (provided for in subheading 2905.29.90)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1115. 1-METHYLIMADAZOLE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.05	1-Methylimidazole (CAS No. 616–47–7) (provided for in subheading 2933.29.90)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1116. FORMAMIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.06	Formamide (CAS No. 75–12–7) (provided for in subheading 2924.19.10)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1117. MICHLER'S ETHYL KETONE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.07	4,4′-Bis-(diethylamino)-benzophenone (CAS No. 90–93–7) (provided for in subheading 2922.39.45)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1118. VINYL IMIDAZOLE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.08	1-Ethenyl-1H-imidazole (CAS No. 1072–63–5) (provided for in subheading 2933.29.90)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1119. DISPERSE BLUE 27.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.09	Disperse blue 27 (9,10-anthracenedione, 1,8-dihydroxy-4-[[4-(2-hydroxyethyl)phenyl]amino]-5-nitro-) (CAS No. 15791–78–3) (provided for in subheading 3204.11.50)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1120. ACID BLACK 244.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.10	Acid black 244 (chromate(2-), [3-(hydroxy-.kappa.O)-4-[[2-(hydroxy-.kappa.O)-1-naphthalenyl]azo-.kappa.N2]-1-naphthalenesulfonato(3-)] [1-[[2-(hydroxy-.kappa.O)-5-[4-methoxyphenyl)-azo]phenyl]azo-.kappa.N2]-2-naphthalenesulfonato(2-)-.kappa.O]-, disodium) (CAS No. 30785–74–1) (provided for in subheading 3204.12.45)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1121. REACTIVE ORANGE 132.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.11	Reactive orange 132 (benzenesulfonic acid, 2,2′-[(1-methyl-1,2-ethanediyl)-bis[imino(6-fluoro-1,3,5-triazine-4,2-diyl)imino[2-[(aminocarbonyl)- amino]-4,1-phenylene]azo]]bis[5-[(4-sulfophenyl)azo]-, sodium salt) (CAS No. 149850-31-7) (provided for in subheading 3204.16.30)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1122. MIXTURES OF ACID RED 337, ACID RED 266, AND ACID RED 361.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.12	Mixtures of acid red 337 (2-naphthalenesulfonic acid, 6-amino-5-[[2-[(cyclohexylmethylamino)-sulfonyl]phenyl]azo]-4-hydroxy-, monosodium salt) (CAS No. 32846-21-2), acid red 266 (2-naphthalenesulfonic acid, 6-amino-5-[[4-chloro-2-(trifluoromethyl)phenyl]azo]-4-hydroxy-, monosodium salt) (CAS No. 57741-47-6), and acid red 361 (2-naphthalenesulfonic acid, 6-amino-4-hydroxy-5-[[2-(trifluoromethyl)phenyl]azo]-, monosodium salt) (CAS No. 67786-14-5) (provided for in subheading 3204.12.45)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1123. VAT RED 13.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.13	Vat red 13 ([3,3′-bianthra[1,9-cd]pyrazole]-6,6′(1H,1′H)-dione, 1,1′-diethyl-) (CAS No. 4203-77-4) (provided for in subheading 3204.15.80)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1124. 5-METHYLPYRIDINE-2,3-DICARBOXYLIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.14	5-Methylpyridine-2,3-dicarboxylic acid (CAS No. 53636-65-0) (provided for in subheading 2933.39.61)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1125. 5-METHYLPYRIDINE-2,3-DICARBOXYLIC ACID DIETHYLESTER.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.15	5-Methylpyridine-2,3-dicarboxylic acid, diethyl ester (CAS No. 112110-16-4) (provided for in subheading 2933.39.61)	1.8%	No change	No change	On or before 12/31/2006	".

SEC. 1126. 5-ETHYLPYRIDINE DICARBOXYLIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.16	5-Ethylpyridine-2,3-dicarboxylic acid (CAS No. 102268-15-5) (provided for in subheading 2933.39.61)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1127. (E)-O(2,5-DIMETHYLPHENOXY METHYL)-2-METHOXY-IMINO-N-METHYLPHENYLACETAMIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.17	(E)-O-(2,5-Dimethylphenoxy- methyl)-2-methoxyimino-N-methylphenylacet-amide (dimoxystrobin) (CAS No. 145451-07-6) (provided for in subheading 2928.00.25)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1128. 2-CHLORO-N-(4′CHLOROBIPHENYL-2-YL) NICOTINAMIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.18	2-Chloro-N-(4′-chloro-[1,1′-biphenyl]-2-yl)- nicotinamide (nicobifen) (CAS No. 188425-85-6) (provided for in subheading 2933.39.21)	4.4%	No change	No change	On or before 12/31/2006	".

SEC. 1129. VINCLOZOLIN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.19	3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione (vinclozolin) (CAS No. 50471-44-8) (provided for in subheading 2934.99.12)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1130. DAZOMET.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.20	Tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione (CAS No. 533-74-4) (dazomet) (provided for in subheading 2934.99.90)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1131. PYRACLOSTROBIN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.21	Methyl N-(2-[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxymethyl]-phenyl) N-methoxycarbanose (pyra- clostrobin) (CAS No. 175013-18-0) (provided for in subheading 2933.19.23)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1132. 1,3-BENZENEDICARBOXYLIC ACID, 5-SULFO-1,3-DIMETHYL ESTER SODIUM SALT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.22	1,3-Benzenedicarboxylic acid, 5-sulfo-1,3-dimethyl ester, sodium salt (CAS No. 3965-55-7) (provided for in subheading 2917.39.30)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1133. SACCHAROSE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.23	Saccharose to be used other than in food for human consumption and not for nutritional purposes (provided for in subheading 1701.99.50)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1134. (2-BENZOTHIAZOLYTHIO) BUTANEDIOIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:heading:

"	9902.01.25	(Benzothiazol-2-ylthio)succinic acid (CAS No. 95154-01-1) (provided for in subheading 2934.20.40)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1135. 60-70 PERCENT AMINE SALT OF 2-BENZO-THIAZOLYTHIO SUCCINIC ACID IN SOLVENT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.26	(Benzothiazol-2-ylthio)succinic acid (60-70 percent) in solvent (provided for in subheading 3824.90.28)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1136. 4-METHYL-G-OXO-BENZENEBUTANOIC ACID COMPOUNDED WITH 4-ETHYLMORPHOLINE (2:1).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.27	4-Methyl-g-oxo-benzenebutanoic acid compounded with 4-ethylmorpholine (2:1) (CAS No. 171054-89-0) (provided for in subheading 2934.99.39)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1137. MIXTURES OF RIMSULFURON, NICOSULFURON, AND APPLICATION ADJUVANTS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.28	Mixtures of rimsulfuron (N-[[(4,6-dimethoxypyrimidin-2-yl)- amino]carbonyl]-3-(ethylsulfonyl)-2-pyridinesulfonamide (CAS No. 122931-48-0), nicosulfuron (2-((((4,6-dimethoxypyrimidin-2-yl)- amino)carbonyl)-amino)sulfonyl)-N,N-dimethyl-3-pyridinecarboxamide (CAS No. 111991-09-4), and application adjuvants (provided for in subheading 3808.30.15)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1138. MIXTURES OF THIFENSULFURON METHYL, TRIBENURON METHYL AND APPLICATION ADJUVANTS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.29	Mixtures of thifensulfuron methyl (methyl 3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)- amino]carbonyl]- amino]sulfonyl]- 2-thiophenecar- boxylate (CAS No. 79277-27-3), tribenuron methyl (methyl 2-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)- methylamino]-carbonyl]- amino]sulfonyl]- benzoate) (CAS No. 101200-48-0) and application adjuvants (provided for in subheading 3808.30.15)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1139. MIXTURES OF THIFENSULFURON METHYL AND APPLICATION ADJUVANTS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.30	Mixtures of thifensulfuron methyl (methyl 3-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)- amino]carbonyl]- amino]sulfonyl]-2-thiophenecarboxylate) (CAS No. 79277-27-3) and application adjuvants (provided for in subheading 3808.30.15)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1140. MIXTURES OF TRIBENURON METHYL AND APPLICATION ADJUVANTS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.31	Mixtures of tribenuron methyl (methyl 2-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)methylamino]- carbonyl]amino]- sulfonyl]-benzoate) (CAS No. 101200-48-0) and application adjuvants (provided for in subheading 3808.30.15)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1141. MIXTURES OF RIMSULFURON, THIFENSULFURON METHYL AND APPLICATION ADJUVANTS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.32	Mixtures of rimsulfuron (N-[(4,6-dimethoxypyrimidin-2-yl)- aminocarbonyl]-3-(ethylsulfonyl)-2-pyridinesulfonamide) (CAS No. 122931-48-0); thifensulfuron methyl (methyl 3-[[[[(4-methoxy-6-methyl-1,3,5- triazin-2-yl)- amino]carbonyl]-amino]sulfonyl]-2-thiophenecarboxylate) (CAS No. 79277-27-3); and application adjuvants (provided for in subheading 3808.30.15)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1142. VAT BLACK 25.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.33	Anthra[2,1,9-mna]naphth[2,3-h]acridine-5,10,15(16H)-trione, 3-[(9,10-dihydro-9,10-dioxo-1-anthracenyl)- amino]- (Vat black 25) (CAS No. 4395-53-3) (provided for in subheading 3204.15.80)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1143. CYCLOHEXANEPROPANOIC ACID, 2-PROPENYL ESTER.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.34	Cyclohexanepro-panoic acid, 2-propenyl ester (CAS No. 2705-87-5) (provided for in subheading 2916.20.50)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1144. NEOHELIOPAN HYDRO (2-PHENYLBENZIMIDAZOLE-5-SULFONIC ACID).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.35	2-Phenylbenzimidazole-5-sulfonic acid) (CAS No. 27503-81-7) (provided for in subheading 2933.99.79)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1145. SODIUM METHYLATE POWDER (NA METHYLATE POWDER).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.36	Methanol, sodium salt (CAS No. 124-41-4) (provided for in subheading 2905.19.00)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1146. GLOBANONE (CYCLOHEXADEC-8-EN-1-ONE).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.37	Cyclohexadec-8-en-1-one (CAS No. 3100-36-5) (provided for in subheading 2914.29.50)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1147. METHYL ACETOPHENONE-PARA (MELILOT).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.38	p-Methyl acetophenone (CAS No. 122-00-9) (provided for in subheading 2914.39.90)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1148. MAJANTOL (2,2-DIMETHYL-3-(3-METHYLPHENYL)PROPANOL).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.39	2,2-Dimethyl-3-(3-methylphenyl)-propanol (CAS No. 103694-68-4) (provided for in subheading 2906.29.20)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1149. NEOHELIOPAN MA (MENTHYL ANTHRANILATE).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.40	Menthyl anthranilate (CAS No. 134-09-8) (provided for in subheading 2922.49.37)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1150. ALLYL ISOSULFOCYANATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.41	Allyl isothiocyanate (CAS No. 57-06-7) (provided for in subheading 2930.90.90)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1151. FRESCOLAT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.42	5-Methyl-2-(1-methylethyl)-cyclohexyl-2-hydroxypropanoate (lactic acid, menthyl ester) (Frescolat) (CAS No. 59259-38-0) (provided for in subheading 2918.11.50)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1152. THYMOL (ALPHA-CYMOPHENOL).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.43	Thymol (CAS No. 89-83-8) (provided for in subheading 2907.19.40)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1153. BENZYL CARBAZATE.

Subchapter II of chapter 99 is amended by inserting in the numerical sequence the following new heading:

"	9902.01.44	Benzyl carbazate (Hydrazine- carboxylic acid, phenylmethyl ester (CAS No. 5331-43-1) (provided for in subheading 2928.00.25)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1154. ESFENVALERATE TECHNICAL.

Subchapter II of chapter 99 is amended by inserting in the numerical sequence the following new heading:

"	9902.01.45	(S)-Cyano(3-phenoxyphenyl)-methyl (S)-4-chloro-α-(1-methylethyl)- benzeneacetate (Esfenvalerate) (CAS No. 66230-04-4) (provided for in subheading 2926.90.30)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1155. AVAUNT AND STEWARD.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.46	Mixtures of indoxacarb ((S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy)-phenyl]amino]car-bonyl]indeno- [1,2-e][1,3,4]- oxadiazine-4a-(3H)carboxylate) (CAS No. 173584-44-6) and application adjuvants (provided for in subheading 3808.10.25)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1156. HELIUM.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.47	Helium (provided for in subheading 2804.29.00)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1157. ETHYL PYRUVATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.48	Ethyl pyruvate (CAS No. 617-35-6) (provided for in subheading 2918.30.90)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1158. DELTAMETHRIN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“		*(S)-α-Cyano-3-phenoxybenzyl (1R,3R)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate (Deltamethrin) (CAS No. 52918-63-5) in bulk or unmixed in forms or packings for retail sale (provided for in subheading 2926.90.30 or 3808.10.25)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1159. ASULAM SODIUM SALT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.01.50*	*Mixtures of methyl sulfanilylcarbamate, sodium salt (Asulam sodium salt) (CAS No. 2302-17-2) and application adjuvants (provided for in subheading 3808.30.15)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1160. TRALOMETHRIN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.01.52*	*Tralomethrin (1R,3S)3[(1'RS)- (1',2',2',2'-tetrabromoethyl)]-2,2-dimethylcyclopropanecarboxylic acid, (S)-alpha-cyano-3-phenoxybenzyl ester (CAS No. 66841-25-6) in bulk or in forms or packages for retail sale (provided for in subheading 2926.90.30 or 3808.10.25)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1161. N-PHENYL-N'-(1,2,3-THIADIAZOL-5-YL)-UREA.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.01.53*	*N-Phenyl-N'-1,2,3-thiadiazol-5-ylurea (thidiazuron) in bulk or in forms or packages for retail sale (CAS No. 51707-55-2) (provided for in subheading 2934.99.15 or 3808.30.15)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1162. BENZENEPROPANOIC ACID, ALPHA-2- DICHLORO-5-[4 (DIFLUOROMETHYL)- 4,5-DIHYDRO-3-METHYL-5-OXO-1H-1,2,4-TRIAZOL-1-YL]-4-FLUORO-ETHYL ESTER.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.01.54*	*alpha-2- Dichloro-5-[4- (difluoromethyl)- 4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid, ethyl ester (carfentazone-ethyl) (CAS No. 128639-02-1) (provided for in subheading 2933.99.22)*	*4.9%*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1163. (Z)-(1RS, 3RS)-3-(2-CHLORO-3,3,3 TRIFLOURO-1-PROPENYL)-2,2-DIMETHYL-CYCLOPROPANE CARBOXYLIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.01.55*	*(Z)-(1RS,3RS)-3-(2-Chloro-3,3,3-trifluro-1-pro- penyl)-2,2-dimethylcyclopropanecarboxylic acid (CAS No. 68127-59-3) (provided for in subheading 2916.20.50)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1164. 2-CHLOROBENZYL CHLORIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.01.56*	*2-Chlorobenzyl chloride (CAS No. 611-19-8) (provided for in subheading 2903.69.70)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1165. (S)-ALPHA-HYDROXY-3-PHENOXYBENZENEACETONITRILE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.01.57*	*(S)-alpha-Hydroxy-3-phenoxybenzeneacetonitrile (CAS No. 61826-76-4) (provided for in subheading 2926.90.43)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1166. 4-PENTENOIC ACID, 3,3-DIMETHYL-, METHYL ESTER.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.01.58*	*4-Pentenoic acid, 3,3-dimethyl-, methyl ester (CAS No. 63721-05-1) (provided for in subheading 2916.19.50)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1167. TERRAZOLE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.01.59*	*Etridiazole [5-ethoxy-3- (trichloromethyl)-1,2,4-thiadiazole] (CAS No. 2593-15-9) (provided for in subheading 2934.99.90) and any mixtures (preparations) containing Etridiazole as the active ingredient (provided for in subheading 3808.20.50)*	*Free*	*Free*	*No change*	*On or before 12/31/2006*	”.

SEC. 1168. 2-MERCAPTOETHANOL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.01.60*	*2-Mercaptoethanol (CAS No. 60-24-2) (provided for in subheading 2930.90.90)*	*Free*	*Free*	*No change*	*On or before 12/31/2006*	”.

SEC. 1169. BIFENAZATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.01.61*	*Bifenazate (Hydrazinecarb- oxylic acid, 2-(4-methoxy-[1,1- biphenyl]-3-yl)-1-methylethyl ester (CAS No. 149877-41-8) (provided for in subheading 2928.00.25)*	*Free*	*Free*	*No change*	*On or before 12/31/2006*	”.

SEC. 1170. A CERTAIN POLYMER.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.62	Fluoropolymers containing 95 percent or more by weight of the monomer units tetrafluoroethylene, hexafluoropropylene, and vinylidene fluoride (provided for in subheading 3901.69.50)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1171. PARA ETHYLPHENOL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.63	p-Ethylphenol (CAS No. 123-07-9) (provided for in subheading 2907.19.20)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1172. EZETIMIBE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.64	2-Azetidinone, 1-(4-fluorophenyl)-3-[(3S)-3-(4-fluorophenyl)-3-hydroxypropyl]-4-(4-hydroxyphenyl)-, (3R,4S)-(Ezetimibe) (CAS No. 163222-33-1) (provided for in subheading 2933.79.08)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1173. P-CRESIDINESULFONIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.65	p-Cresidinesulfonic acid (4-amino-5-methoxy-2-methylbenzene- sulfonic acid) (CAS No. 6471-78-9) (provided for in subheading 2922.29.80)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1174. 2,4 DISULFOBENZALDEHYDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.66	2,4- Disulfobenzaldehyde (CAS No. 88-39-1) (provided for in subheading 2913.00.40)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1175. M-HYDROXYBENZALDEHYDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.67	m-Hydroxybenzaldehyde (CAS No. 100-83-4) (provided for in subheading 2912.49.25)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1176. N-ETHYL-N-(3-SULFOBENZYL)ANILINE, BENZENESULFONIC ACID, 3[(ETHYLPHENYLAMINO)METHYL].

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.68	N-Ethyl-N-(3-sulfobenzyl)aniline (benzenesulfonic acid, 3-[(ethyl- phenylamino)-methyl]-) (CAS No. 101-11-1) (provided for in subheading 2921.12.90)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1177. ACRYLIC FIBER TOW.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.69	Acrylic fiber tow (polyacrylonitrile tow) consisting of 6 sub-bundles crimped together, each containing 45,000 filaments (plus or minus 0.06) and 2-8 percent water, such acrylic fiber containing by weight a minimum of 92 percent acrylonitrile, not more than 0.1 percent zinc and average filament denier of either 1.48 decitex (plus or minus 0.08) or 1.32 decitex (plus or minus 0.089) (provided for in subheading 5501.30.00)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1178. YTTRIUM OXIDES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.21	Yttrium oxides having a purity of at least 99.9 percent (CAS No. 1314-36-9) (provided for in subheading 2846.90.80)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1179. HEXANEDIOIC ACID, POLYMER WITH 1,3-BENZENEDIMETHANAMINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.71	Hexanedioic acid, polymer with 1,3-benzene-dimethanamine (CAS No. 25718-70-1) (provided for in subheading 3908.10.00)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1180. N1-[(6-CHLORO-3-PYRIDYL)METHYL]-N2-CYANO-N1-METHYLACETAMIDINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.72	(E)-N1-[(6-Chloro-3-pyridyl)methyl]-N2-cyano-N1-methylacetamidine (Acetamiprid) (CAS No. 135410-20-7) whether or not mixed with application adjuvants (provided for in subheading 2933.39.27 or 3808.10.25)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1181. ALUMINUM TRIS (O-ETHYL PHOSPHONATE).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.73	Aluminum tris- (O-ethylphosphonate) (CAS No. 39148-24-8) (provided for in subheading 2920.90.50)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1182. MIXTURE OF DISPERSE BLUE 77 AND DISPERSE BLUE 56.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.74	Mixtures of disperse blue 77 (9,10-anthracenedione, 1,8-dihydroxy-4-nitro-5-(phenylamino)-) (CAS No. 20241-76-3) and disperse blue 56 (9,10-anthracenedione, 1,5-diaminochloro-4,8-dihydroxy-) (CAS No. 12217-79-7) (provided for in subheading 3204.11.35)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1183. ACID BLACK 194.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.75	Acid black 194 (chromate(3-), bis[3-(hydroxy-.kappa.O)-4-[[2-(hydroxy.kappa.O)-1- naphthalenyl]azo- .kappa. N1]-7-nitro-1- naphthalenesulfonato(3-)]-, trisodium) (CAS No. 57693-14-8) (provided for in subheading 3204.12.20)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1184. MIXTURE OF 9,10-ANTHRACENEDIONE, 1,5-DIHYDROXY-4-NITRO-8-(PHENYLAMINO)-AND DISPERSE BLUE 77.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.76	Mixtures of 9,10-anthracenedione, 1,5-dihydroxy-4-nitro-8-(phenylamino)- (CAS No. 3065-87-0) and 9,10-anthracenedione, 1,8-dihydroxy-4-nitro-5-(phenylamino)-(Disperse blue 77) (CAS No. 20241-76-3) (provided for in subheading 3204.11.35)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1185. COPPER PHTHALOCYANINE SUBSTITUTED WITH 15 OR 16 GROUPS WHICH COMPRISE 8-15 THIOARYL AND 1-8 ARYLAMINO GROUPS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.77	A copper phthalocyanine substituted with 15 or 16 groups which comprise 8-15 thioaryl and 1-8 arylamino groups (provided for in subheading 3204.19.40)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1186. BAGS FOR CERTAIN TOYS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.78	Bags (provided for in subheading 4202.92.45) for transporting, storing, or protecting goods of headings 9502-9504, inclusive, imported and sold with such articles therein	Free	No change	No change	On or before 12/31/2006	".

SEC. 1187. CERTAIN CHILDREN'S PRODUCTS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.79	Image projectors (provided for in subheading 9008.30.00) capable of projecting images from circular mounted sets of stereoscopic photographic transparencies, such mounts measuring approximately 8.99 cm in diameter	Free	No change	No change	On or before 12/31/2006	".

SEC. 1188. CERTAIN OPTICAL INSTRUMENTS USED IN CHILDREN'S PRODUCTS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.80	Optical instruments (provided for in subheading 9013.80.90) designed for the viewing of circular mounted sets of stereoscopic photographic transparencies, such mounts measuring approximately 8.99 cm in diameter	Free	No change	No change	On or before 12/31/2006	".

SEC. 1189. CASES FOR CERTAIN CHILDREN'S PRODUCTS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.81	Cases or containers (provided for in subheading 4202.92.90) specially shaped or fitted for circular mounts for sets of stereoscopic photographic transparencies, such mounts measuring approximately 8.99 cm in diameter	Free	No change	No change	On or before 12/31/2006	".

SEC. 1190. 2,4-DICHLOROANILINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.82	2,4-Dichloroaniline (CAS No. 554-00-7) (provided for in subheading 2921.42.18)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1191. ETHOPROP.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.83	O-Ethyl S,S-dipropyl- phosphorodithioate (Ethoprop) (CAS No. 13194-48-4) (provided for in subheading 2930.90.44)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1192. FORAMSULFURON.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.84	Mixtures of benzamide, 2-[[[[(4,6-dimethoxy-2-pyrimidinyl)- amino]carbonyl]-amino]sulfonyl]-4-(formylamino)- N,N-methyl- (foramsulfuron) (CAS No. 173159-57-4) and application adjuvants (provided for in subheading 3808.30.15)	3%	No change	No change	On or before 12/31/2006	".

SEC. 1193. CERTAIN EPOXY MOLDING COMPOUNDS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.85	Epoxy molding compounds, of a kind used for encapsulating integrated circuits (provided for in subheading 3907.30.00)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1194. DIMETHYLDICYANE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.86	Dimethyldicyane (2,2'-dimethyl-4,4'-methylenebis- (cyclohexylamine)) (CAS No. 6864–37–5) (provided for in subheading 2921.30.30)	Free	Free	No change	On or before 12/31/2006	".

SEC. 1195. TRIACETONE DIAMINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.87	2,2,6,6-Tetra-methyl-4-pip-eridinamine (Triacetone diamine) (CAS No. 36768–62–4) (provided for in subheading 2933.39.61)	Free	Free	No change	On or before 12/31/2006	".

SEC. 1196. TRIETHYLENE GLYCOL BIS[3-(3-TERT-BUTYL-4-HYDROXY-5-METHYLPHENYL) PROPIONATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new subheading:

"	9902.01.88	Triethylene glycol bis[3-(3-tert-butyl-4-hydroxy-5-methylphenyl)propionate] (CAS No. 36443–68–2) (provided for in subheading 2918.90.43)	Free	No change	No change	On or before 12/31/2006	".

SEC CERTAIN POWER WEAVING TEXTILE MACHINERY.

S pter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	1.89	Power weaving machines (looms), shuttle type, for weaving fabrics of a width exceeding 30 cm but not exceeding 4.9 m, entered without off-loom or large loom take-ups, drop wires, heddles, reeds, harness frames, or beams (provided for in subheading 8446.21.50)	Free	No change	No change	On or before 12/31/2006	".

SEC. 11 RTAIN FILAMENT YARNS.

Subc r II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	990. 90	Synthetic filament yarn (other than sewing thread) not put up for retail sale, single, of decitex sizes of 23 to 850, with between 4 and 68 filaments, with a twist of 100 to 300 turns/m, of nylon or other polyamides, containing 10 percent or more by weight of nylon 12 (provided for in subheading 5402.51.00)	Free	Free	No change	On or before 12/31/2006	".

SEC. 1199. CERTAIN OTHER FILAMENT YARNS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.91	Synthetic filament yarn (other than sewing thread) not put up for retail sale, single, of decitex sizes of 23 to 850, with between 4 and 68 filaments, untwisted, of nylon or other polyamides, containing 10 percent or more by weight of nylon 12 (provided for in subheading 5402.41.90)	Free	Free	No change	On or before 12/31/2006	".

SEC. 1200. CERTAIN INK-JET TEXTILE PRINTING MACHINERY.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.92	Ink-jet textile printing machinery (provided for in subheading 8443.51.10)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1201. CERTAIN OTHER TEXTILE PRINTING MACHINERY.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.93	Textile printing machinery (provided for in subheading 8443.59.10)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1203. D-MANNOSE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following heading:

"	9902.01.94	D-Mannose (CAS No. 3458–28–4) (provided for in subheading 2940.00.60)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1204. BENZAMIDE, N-METHYL-2-[[3-[(1E)-2-(2-PYRIDINYL)-ETHENYL]-1H-INDAZOL-6-YL]THIO]-.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.95	Benzamide, N-methyl-2-[[3-[(1E)-2-(2-pyridinyl)-ethenyl]-1H-indazol-6-yl]thio]-(CAS No. 319460–85–0) (provided for in subheading 2933.99.79)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1205. 1(2H)-QUINOLINECARBOXYLIC ACID, 4-[[[3,5-BIS-(TRIFLUOROMETHYL)PHENYL] METHYL] (METHOXYCARBONYL) AMINO]-2-ETHYL- 3,4-DIHYDRO-6-(TRIFLUOROMETHYL)-, ETHYL ESTER, (2R,4S)-(9CI).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.96	1(2H)-Quinolinecarboxylic acid, 4-[[[3,5-bis-(trifluoromethyl)- phenyl]methyl]-(methoxycarbonyl)amino]-2-ethyl-3,4-dihydro-6-(trifluoromethyl)- ethyl ester, (2R,4S)- (CAS No. 262352–17–0) (provided for in subheading 2933.49.26)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1206. DISULFIDE,BIS(3,5-DICHLOROPHENYL)(9C1).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.97	Bis(3,5-dichlorophenyl) disulfide (CAS No. 137897–99–5) (provided for in subheading 2930.90.29)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1207. PYRIDINE, 4-[[4-(1-METHYLETHYL)-2-[(PHENYLMETHOXY)METHYL]-1H- MIDAZOL-1-YL] METHYL]- ETHANEDIOATE (1:2).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.98	Pyridine, 4-[[4-(1-methylethyl)-2-[(phenylmethoxy)- methyl]-1H-imidazol-1-yl]-methyl]-ethanedioate (1:2) (CAS No. 280129–82–0) (provided for in subheading 2933.39.61)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1208. PACLOBUTRAZOLE TECHNICAL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.01.99	(RS,3RS)-1-(4-Chlorophenyl)-4,4-dimethyl-2-(1H-1,2,4-triazol-1-yl)pentan-3-ol (paclobutrazol) (CAS No. 76738-62-0) (provided for in subheading 2933.99.22)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1209. PACLOBUTRAZOLE 2SC.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.01	Mixtures of (RS,3RS)-1-(4-chlorophenyl)-4,4-dimethyl-2-(1H-1,2,4-triazol-1-yl)pentan-3-ol (paclobutrazol) (CAS No. 76738-62-0) and application adjuvants (provided for in subheading 3808.30.15)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1210. METHIDATHION TECHNICAL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.02	S-[(5-Methoxy-2-oxo-1,3,4-thiadiazol-3(2H)-yl)methyl] O,O-dimethyl phosphorodithioate (CAS No. 950-37-8) (provided for in subheading 2934.99.90)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1211. VANGUARD 75 WDG.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.03	Mixtures of 2-pyrimidinamine, 4-cyclopropyl-6-methyl-N-phenyl- (cyprodinil) (CAS No. 121552-61-2) and application adjuvants (provided for in subheading 3808.20.15)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1212. WAKIL XL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.04	Mixtures of (R)-2-[(2,6-dimethylphenyl-methoxyacetyl-amino]propionic acid, methyl ester (mefenoxam) (CAS No. 70630-17-0); 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile (fludioxonil) (CAS No. 131341-86-1), and 2-cyano-2-methoxyimino-N-(ethylcarbam-oyl)acetamide (cymoxanil) (CAS No. 57966-95-7) with application adjuvants (the foregoing mixtures provided for in subheading 3808.20.15)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1213. MUCOCHLORIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.05	2-Butenoic acid, 2,3-dichloro-4-oxo- (mucochloric acid) (CAS No. 87-56-9) (provided for in subheading 2918.30.90)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1214. AZOXYSTROBIN TECHNICAL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.06	Benzeneacetic acid, (E)-2-[[6-(2-cyanophenoxy)-4-pyrimidinyl]oxy]-alpha-(methoxymethyl- ene)-, methyl ester (pyroxystrobin) (CAS No. 131860-33-8) (provided for in subheading 2933.59.15)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1215. FLUMETRALIN TECHNICAL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.07	2-Chloro-N-[2,6-dinitro-4-(tri-fluoromethyl)-phenyl]-N-ethyl-6-fluorobenzene-methanamine (flumetralin) (CAS No. 62924-70-3) (provided for in subheading 2921.49.45)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1216. CYPRODINIL TECHNICAL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.08	2-Pyrimidinamine, 4-cyclopropyl-6-methyl-N-phenyl- (cyprodinil) (CAS No. 121552-61-2) (provided for in subheading 2933.59.15)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1217. MIXTURES OF LAMBDA-CYHALOTHRIN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.09	Mixtures of cyhalothrin (cyclopropanecarboxylic acid, 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethyl-, cyano(3-phenoxyphenyl)-methyl ester, [1 alpha. (S*),3 alpha. (Z)]-(+-,)-) (CAS No. 91465-08-6) and application adjuvants (provided for in subheading 3808.10.25)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1218. PRIMISULFURON METHYL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.10	Benzoic acid, 2-[[[[[4,6-bis- (difluoromethoxy)-2-pyrimidinyl]- amino]carbonyl]-amino]sulfonyl]-, methyl ester (primisulfuron methyl) (CAS No. 86209-51-0) (provided for in subheading 2935.00.75)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1219. 1,2-CYCLOHEXANEDIONE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.11	1,2-Cyclohexanedione (CAS No. 765-87-7) (provided for in subheading 2914.29.50)	Free	No change	No change	On or before 12/31/2006 ".

SEC. 1220. DIFENOCONAZOLE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.12	1H-1,2,4-Triazole, 1-[[2-[2-chloro-4-(4-chlorophenoxy)-phenyl]-4-methyl-1,3-dioxolan-2-yl]methyl]- (difenoconazole) (CAS No. 119446-68-3) (provided for in subheading 2934.99.12)	Free	No change	No change	On or before 12/31/2006 ".

SEC. 1221. CERTAIN REFRACTING AND REFLECTING TELESCOPES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.13	Refracting telescopes with 50 mm or smaller lenses and reflecting telescopes with 76 mm or smaller lenses (provided for in subheading 9005.80.40)	Free	No change	No change	On or before 12/31/2006 ".

SEC. 1222. PHENYLISOCYANATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.14	Phenylisocyanate (CAS No. 103-71-9) (provided for in subheading 2929.10.80)	Free	No change	No change	On or before 12/31/2006 ".

SEC. 1223. BAYOWET FT-248.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.15	Tetraethylammonium perfluorooctane- sulfonate (CAS No. 56773-42-3) (provided for in subheading 2923.90.00)	Free	No change	No change	On or before 12/31/2006 ".

SEC. 1224. P-PHENYLPHENOL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.16	p-Phenylphenol (CAS No. 92-69-3) (provided for in subheading 2907.19.80)	Free	No change	No change	On or before 12/31/2006 ".

SEC. 1225. CERTAIN RUBBER RIDING BOOTS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.17	Horseback riding boots with soles and uppers of rubber, such boots extending above the ankle and below the knee, specifically designed for horseback riding, and having a spur rest on the heel counter (provided for in subheading 6401.92)	Free	No change	No change	On or before 12/31/2006 ".

SEC. 1226. CHEMICAL RH WATER-BASED.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.18	Chemical RH water-based (iron toluene sulfonate) (comprising 75 percent water, 25 percent p-toluenesulfonic acid (CAS No. 6192-52-5) and 5 percent ferric oxide (CAS No. 1309-37-1)) (provided for in subheading 2904.10.10)	Free	No change	No change	On or before 12/31/2006 ".

SEC. 1227. CHEMICAL NR ETHANOL-BASED.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.19	Chemical NR ethanol based (iron toluene sulfonate) (comprising 60 percent ethanol (CAS No. 64-17-5), 33 percent p-toluenesulfonic acid (CAS No. 6192-52-5), and 7 percent ferric oxide (CAS No. 1309-37-1)) (provided for in subheading 2912.12.00 or 3824.90.28)	Free	No change	No change	On or before 12/31/2006 ".

SEC. 1228. TANTALUM CAPACITOR INK.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.20	Tantalum capacitor ink: graphite ink P7300 of 85 percent butyl acetate, 8 percent graphite, and the remaining balance of non-hazardous resins; and graphite paste P5900 of 92-96 percent water, 1-3 percent graphite (CAS No. 7782-42-5), 0.5-2 percent ammonia (CAS No. 7664-41-7), and less than 1 percent acrylic resin (CAS No. 9003-32-1) (provided for in subheading 3207.30.00)	Free	No change	No change	On or before 12/31/2006 ".

SEC. 1229. CERTAIN SAWING MACHINES.

Subchapter II of chapter 99 is amended by striking heading 9902.84.91 and inserting the following:

"	9902.84.91	Sawing machines certified for use in production of radial tires, designed for off-the-highway use, and for use on a rim measuring 63.5 cm or more in diameter (provided for in subheading 4011.20.10, 4011.61.00, 4011.63.00, 4011.69.00, 4011.92.00, 4011.94.40, or 4011.99.45), numerically controlled, or parts thereof (provided for in subheading 8465.91.00 or 8466.92.50)	Free	No change	No change	On or before 12/31/2006 ".

SEC. 1230. CERTAIN SECTOR MOLD PRESS MANUFACTURING EQUIPMENT.

Subchapter II of chapter 99 is amended by striking heading 9902.84.89 and inserting the following:

"	9902.84.89	Sector mold press machines to be used in production of radial tires designed for off-the-highway use with a rim measuring 63.5 cm or more in diameter (provided for in subheading 4011.20.10, 4011.61.00, 4011.63.00, 4011.69.00, 4011.92.00, 4011.94.40, or 4011.99.45), numerically controlled, or parts thereof (provided for in subheading 8477.51.00 or 8477.90.85)	Free	No change	No change	On or before 12/31/2006 ".

SEC. 1231. CERTAIN MANUFACTURING EQUIPMENT USED FOR MOLDING.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	*9902.84.88*	*Machinery for molding, or otherwise forming uncured, unvulcanized rubber to be used in production of radial tires designed for off-the-highway use with a rim measuring 63.5 cm or more in diameter (provided for in subheading 4011.20.10, 4011.61.00, 4011.63.00, 4011.69.00, 4011.92.00, 4011.94.40, or 4011.99.45), numerically controlled, or parts thereof (provided for in subheading 8477.51.00 or 8477.90.85)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	".

SEC. 1232. CERTAIN EXTRUDERS.

Subchapter II of chapter 99 is amended by striking heading 9902.84.85 and inserting the following:

"	*9902.84.85*	*Extruders to be used in production of radial tires designed for off-the-highway use with a rim measuring 63.5 cm or more in diameter (provided for in subheading 4011.20.10, 4011.61.00, 4011.63.00, 4011.69.00, 4011.92.00, 4011.94.40, or 4011.99.45), numerically controlled, or parts thereof (provided for in subheading 8477.20.00 or 8477.90.85)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	".

SEC. 1233. CERTAIN SHEARING MACHINES.

Subchapter II of chapter 99 is amended by striking heading 9902.84.81 and inserting the following:

"	*9902.84.81*	*Shearing machines used to cut metallic tissue certified for use in production of radial tires designed for off-the highway use with a rim measuring 63.5 cm or more in diameter (provided for in subheading 4011.20.10, 4011.61.00, 4011.63.00, 4011.69.00, 4011.92.00, 4011.94.40, or 4011.99.45), numerically controlled, or parts thereof (provided for in subheading 8462.31.00 or 8466.94.85)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	".

SEC. 1234. THERMAL RELEASE PLASTIC FILM.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	*9902.02.26*	*Thermal release plastic film (with a substrate of polyolefin-based PET/conductive acrylic polymer, release liner of polyethylene terephthalate PET/polysiloxane, pressure sensitive adhesive of acrylic ester-based copolymer, and core of acrylonitrile-butadiene-styrene copolymer) (provided for in subheading 3919.10.20)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	".

SEC. 1235. CERTAIN SILVER PAINTS AND PASTES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	*9902.02.27*	*Mixtures comprising 42 to 52 percent by weight of silver metal, 7.5 to 15 percent by weight of epoxy resin, and solvent (butyl 2-ethoxyethanol acetate); mixtures comprising 53 percent by weight of silver metal, 7 percent by weight of viton resin, and solvent (isoamyl acetate); and paste adhesive preparations comprising 62 percent by weight of silver metal, 8.4 percent by weight of viton resin, and solvent (composed of 1 part butyl 2-ethoxyethanol acetate and 9 parts isoamyl acetate); (all the foregoing provided for in subheading 7115.90.40)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	".

SEC. 1236. POLYMER MASKING MATERIAL FOR ALUMINUM CAPACITORS (UPICOAT).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	*9902.02.28*	*Dispersions (60 percent) of polymide resins in 2,2′-oxydiethanol, dimethyl ether (provided for in subheading 3911.90.35 or 3911.90.90)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	".

SEC. 1237. OBPA.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	*9902.02.29*	*10, 10′- Oxybisphenoxarsine (CAS No. 58–36–6) (provided for in subheading 2934.99.18)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	".

SEC. 1238. MACROPOROUS ION-EXCHANGE RESIN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	*9902.02.30*	*Macroporous ion-exchange resin comprising a copolymer of styrene crosslinked with divinylbenzene, thiol functionalized (CAS No. 113834–91–6) (provided for in subheading 3914.00.60)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	".

SEC. 1239. COPPER 8-QUINOLINOLATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	*9902.02.31*	*Copper 8-quinolinolate (oxine-copper) (CAS No. 10380–28–6) (provided for in subheading 2933.49.30)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	".

SEC. 1240. ION-EXCHANGE RESIN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	*9902.02.32*	*Ion-exchange resin comprising a copolymer of styrene crosslinked with divinylbenzene, iminodiacetic acid, sodium form (CAS No. 244203–30–3) (provided for in subheading 3914.00.60)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	".

SEC. 1241. ION-EXCHANGE RESIN CROSSLINKED WITH ETHENYLBENZENE, AMINOPHOSPONIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.02.33*	*Ion-exchange resin comprising a copolymer of styrene crosslinked with ethenylbenzene, aminophosphonic acid, sodium form (CAS No. 125935-42-4) (provided for in subheading 3914.00.60)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1242. ION-EXCHANGE RESIN CROSSLINKED WITH DIVINYLBENZENE, SULPHONIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.02.34*	*Ion-exchange resin comprising a copolymer of styrene crosslinked with divinylbenzene, sulfonic acid, sodium form (CAS No. 63182-08-1) (provided for in subheading 3914.00.60)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1243. 3-[(4 AMINO-3-METHOXYPHENYL) AZO]-BENZENE SULFONIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.02.35*	*3-[(Amino-3-methoxyphenyl)-azo]-benzenesulfonic acid (CAS No. 138-28-3) (provided for in subheading 2927.00.50)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1244. 2-METHYL-5-NITROBENZENESULFONIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.02.36*	*2-Methyl-5-nitrobenzenesulfonic acid (CAS No. 121-03-9) (provided for in subheading 2904.90.20)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1245. 2-AMINO-6-NITRO-PHENOL-4-SULFONIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.02.37*	*2-Amino-6-nitro- phenol-4-sulfonic acid (CAS No. 96-93-5) (provided for in subheading 2922.29.60)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1246. 2-AMINO-5-SULFOBENZOIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.02.38*	*2-Amino-5- sulfobenzoic acid (CAS No. 3577-63-7) (provided for in subheading 2922.49.30)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1247. 2,5 BIS [(1,3 DIOXOBUTYL) AMINO] BENZENE SULFONIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.02.39*	*2,5-Bis[(1,3- dioxobutyl)- amino]benzene- sulfonic acid (CAS No. 70185-87-4) (provided for in subheading 2924.29.71)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1248. P-AMINOAZOBENZENE 4 SULFONIC ACID, MONOSODIUM SALT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.02.40*	*4-[(4-Amino- phenyl)azo]- benezenesulfonic acid, monosodium salt (CAS No. 2491-71-6) (provided for in subheading 2927.00.50)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1249. P-AMINOAZOBENZENE 4 SULFONIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.02.41*	*4-[(4-Amino- phenyl)azo]- benzenesulfonic acid (CAS No. 104-23-4) (provided for in subheading 2927.00.50)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1250. 3-[(4 AMINO-3-METHOXYPHENYL) AZO]-BENZENE SULFONIC ACID, MONOSODIUM SALT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.02.42*	*3-[(4-Amino-3- methoxyphenyl)- azo]benzenesul- fonic acid, monosodium salt (CAS No. 6300-07-8) (provided for in subheading 2927.00.50)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1251. ET-743 (ECTEINASCIDIN).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.02.43*	*[6R-(6a,6ab,7b, 13b,14b,16a, 20R*)]-5- Acetyloxy-3′,4′, 6,6a,7,13,14,16-octahydro-6′,8,14-trihydroxy-7′,9-dimethoxy- 4,10,23-trimethylspiro[6, 16-b][3]benzazocine-20,1′(2H)-isoquinolin-19-one (ecteinascidin) (CAS No. 114899-77-3) (provided for in subheading 2934.99.30)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1252. 2,7-NAPHTHALENEDISULFONIC ACID, 5-[[4-CHLORO-6-[[2-[[4-FLUORO-6-[[5-HYDROXY-6-[(4-METHOXY-2-SULFOPHENYL)AZO]-7-SULFO-2-NAPHTHALENYL]AMINO]-1,3,5-TRIAZIN-2-YL] AMINO]-1-METHYLETHYL]AMINO]-1,3,5-TRIAZIN-2-YL]AMINO]-3-[[4-(ETHENYLSULFONYL)PHENYL]AZO]-4-HYDROX'-, SODIUM SALT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.02.44*	*2,7-Naphthalene- disulfonic acid, 5-[[4-chloro-6-[[2-[[4-fluoro-6-[[5-hydroxy-6-[(4-methoxy-2-sulfophenyl)azo]-7-sulfo-2-naphthalenyl]-amino]-1,3,5-triazin-2-yl]- amino]-1-methylethyl]-amino]-1,3,5-triazin-2-yl]-amino]-3-[[4-(ethenylsulfonyl)-phenyl]azo]-4-hydroxy, sodium salt (CAS No. 168113-78-8) (provided for in subheading 3204.16.30)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1253. 1,5-NAPHTHALENEDISULFONIC ACID, 3-[[2-(ACETYLAMINO)-4-[[4-[[2-[2- (ETHENYLSULFONYL)ETHOXY] ETHYL] AMINO]-6-FLUORO-1,3,5- TRIAZIN-2-YL]AMINO]PHENYL]AZO]-, DISODIUM SALT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.45	1,5-Naphthalenedi- sulfonic acid, 3-[[2-(acetylamno)-4-[[4-[[2-[2-(ethenylsulfonyl)- ethoxy]-ethyl]amino]-6-fluoro-1,3,5-triazin-2-yl]- amino]- phenyl]azo]-, disodium salt (CAS No. 98635–31–5) (provided for in subheading 3204.16.30)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1254. 7,7-[1,3-PROPANEDIYLBIS[IMINO(6-FLUORO-1,3,5-TRIAZINE-4,2-DIYL)IMINO[2-[(AMINOCARBONYL)AMINO]-4,1-PHENYLENE]AZO]]BIS-, SODIUM SALT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.46	7,7-[1,3-Propanediylbis- [imino(6-fluoro-1,3,5-triazine-4,2-diyl)imino[2-[(aminocarbonyl)-amino]-4,1-phenylene]azo]]bis-, sodium salt (CAS No. 143683–24–3) (provided for in subheading 3204.16.30)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1255. CUPRATE(3-), [2-[[[[3-[[4-[[2-[2- (ETHENYLSULFONYL)ETHOXY] ETHYL]AMINO]-6-FLUORO-1,3,5-TRIAZIN-2-YL] AMINO]-2-(HYDROXY-.KAPPA.O)-5-SULFOPHENYL]AZO-.KAPPA.N2]PHENYLMETHYL]AZO- .KAPPA.N1]-4-SULFOBENZOATO(5-)-.KAPPA.O], TRISODIUM.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.47	Cuprate(3-), [2-[[[[3-[[4-[[2-[2- (ethenylsulfonyl)- ethoxy]-ethyl]amino]-6-fluoro-1,3,5-triazin-2-yl]-amino]-2-(hydroxy-.kappa.O)-5-sulfophenyl]azo-.kappa.N2]- phenylmethyl]azo-.kappa.N1]-4-sulfobenzoato(5-)-.kappa.O], trisodium (CAS No. 106404–06–2) (provided for in subheading 3204.16.30)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1256. 1,5-NAPHTHALENEDISULFONIC ACID, 2-[[8-[[4-[[3-[[[2-(ETHENYLSULFONYL) ETHYL]AMINO]CARBONYL]PHENYL] AMINO]-6-FLUORO-1,3,5-TRIAZIN-2-YL]AMINO]-1-HYDROXY-3,6-DISULFO-2- NAPHTHALENYL]AZO]-, TETRASODIUM SALT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.48	1,5-Naphthalenedi- sulfonic acid, 2-[[8-[[4-[[3-[[[2- (ethenylsulfonyl)- ethyl]-amino]carbonyl]- phenyl]amino]-6-fluoro-1,3,5-triazin-2-yl]amino]-1-hydroxy-3,6-disulfo-2-naphthalenyl]-azo]-, tetrasodium salt (CAS No. 116912-36-8) (provided for in subheading 3204.16.30)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1257. PTFMBA.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.49	p-(Trifluoro-methyl)benzaldehyde (CAS No. 455–19–6) (provided for in subheading 2913.00.40)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1258. BENZOIC ACID, 2-AMINO-4-[[(2,5-DICHLOROPHENYL)AMINO] CARBONYL]-, METHYL ESTER.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.51	Benzoic acid, 2-amino-4-[[(2,5- dichlorophenyl)- amino]carbonyl]-, methyl ester (CAS No. 59673–82–4) (provided for in subheading 2924.29.71)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1259. IMIDACLOPRID PESTICIDES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.52	Mixtures of imidacloprid (1-[(6-Chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidini- mine) (CAS No. 138261–41–3) with application adjuvants (provided for in subheading 3808.10.25)	5.7%	No change	No change	On or before 12/31/2006	".

SEC. 1260. BETA-CYFLUTHRIN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.54	beta-Cyfluthrin (CAS No. 68359–37–5) (provided for in subheading 2926.90.30)	4.3%	No change	No change	On or before 12/31/2006	".

SEC. 1261. IMIDACLOPRID TECHNICAL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.55	Imidacloprid (1-[(6-Chloro-3-pyridinyl)methyl]-N-nitro-2-imidazolidini- mine) (CAS No. 138261–41–3) (provided for in subheading 2933.39.27)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1262. BAYLETON TECHNICAL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.56	Triadimefon (1-(4-chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-2-butanone) (CAS No. 43121–43–3) (provided for in subheading 2933.99.22)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1263. PROPOXUR TECHNICAL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.57	Propoxur (2-(1-methylethoxy)-phenol methyl-carbamate) (CAS No. 114–26–1) (provided for in subheading 2924.29.47)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1264. MKH 6561 ISOCYANATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.58	A mixture of 30 percent 2-(carbomethoxy)- benzenesulfonyl isocyanate (CAS No. 13330-20-7) and 70 percent xylenes (provided for in subheading 3824.90.28)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1265. PROPOXY METHYL TRIAZOLONE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.59	A mixture of 20 percent propoxy- methyltriazolone (3H-1,2,4-triazol-3-one, 2,4-dihydro-4-methyl-5-propoxy-) (CAS No. 1330-20-7) and triazolone (3H-1,2,4-triazol-3-one, 2,4- dihydro-4-methyl-5-propoxy-) (CAS No. 1330-2-7) (provided for in subheading 3824.90.28)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1266. NEMACUR VL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.60	Fenamiphos (ethyl 4-(methylthio)-m-tolyl- isospropylphos- phoramidate) (CAS No. 22224-92-6) (provided for in subheading 2930.90.10)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1267. METHOXY METHYL TRIAZOLONE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.61	2,4-Dihydro-5-methoxy-4-methyl-3H-1,2,4-triazol-3-one (CAS No. 135302-13-5) (provided for in subheading 2933.99.97)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1268. LEVAFIX GOLDEN YELLOW E-G.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.62	Reactive yellow 27 (1H-Pyrazole-3-carboxylic acid, 4-[[4-[[(2,3-dichloro-6-quinoxalinyl)carbonyl]amino]-2- sulfophenyl]- azo]-4,5- dihydro-5-oxo-1- (4-sulfophenyl)-, trisodium salt) (CAS No. 75199-00-7) (provided for in subheading 3204.16.20)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1269. LEVAFIX BLUE CA/REMAZOL BLUE CA.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.63	Cuprate(4-), [2-[[3-[[sub-stituted]-1,3,5-triazin-2-yl]amino]-2-hy-droxy-5-sulfophenyl]- (substituted)azo], sodium salt (CAS No. 156830-72-7) (provided for in subheading 3204.16.30)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1270. REMAZOL YELLOW RR GRAN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.64	Benzenesulfonic- acid, 2-amino-4- (cyanoamino)-6-[(3-sulfo- phenyl)amino]- 1,3,5-triazin-2-yl]amino]-5-[[4-[[2-(sulfoxy)- ethyl]sulfonyl]- phenyl]azo]-, lithium/sodium salt (CAS No. 189574-45-6) (provided for in subheading 3204.16.30)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1271. INDANTHREN BLUE CLF.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.65	Vat blue 66 (9,10-Anthra- cenedione, 1,1′-[(6-phenyl-1,3,5- triazine-2,4-diyl)diimino]- bis[3-acetyl-4- amino-) (CAS No. 32220-82-9) (provided for in subheading 3204.15.30)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1272. INDANTHREN YELLOW F3GC.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.66	Vat yellow 33 ([1,1′-Biphenyl]- 4-carboxamide, 4′,4‴-azobis[N- (9,10-dihydro- 9,10-dioxo-1- anthracenyl)-) (CAS No. 12227-50-8) (provided for in subheading 3204.15.80)	Free	No change	No change	On or before 12/31/2006	".

SEC. ACETYL CHLORIDE.

Su ter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	67	Acetyl chloride (CAS No. 75-36-5) (provided for in subheading 2915.90.50)	Free	No change	No change	On or before 12/31/2006	".

SEC. METHOXY-PHENACYCHLORIDE.

Su r II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"		4-Methoxyphena- cyl chloride (CAS No. 2196-99-8) (provided for in subheading 2914.70.40)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1275. 3-METHOXY-THIOPHENOL.

Subchapter I of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.69	3-Methoxy-thiophenol (CAS No. 15570-12-4) (provided for in subheading 2930.90.90)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1276 IX BRILLIANT RED E-6BA.

Subcha, .I of chapter 99 is amende .serting in numerical sequence the following new heading:

"	9902.02.70	Reactive red 159 (2,7-naphthalenedisulfonic acid, 5-(benzoylamino)-3-[[5-[[(5-chloro-2,6-difluoro-4-pyrimidinyl)-amino]methyl]-1-sulfo-2-naphthalenyl]-azo]-4-hydroxy-, lithium sodium salt) (CAS No. 83400-12-8) (provided for in subheading 3204.16.20)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1277. REMAZOL BR. BLUE BB 133 PERCENT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.71	Reactive blue 220 (cuprate(4-), [4,5-dihydro-4-[[8-hydroxy-7-[[2-hydroxy-5-methoxy-4-[[2-(sulfooxy)ethyl]-sulfonyl]-phenyl]azo]-6-sulfo-2-naphthalenyl]azo]-5-oxo-1-(4-sulfophenyl)-1H-pyrazole-3-carboxylato(6-)]-, sodium) (CAS No. 90341-71-2) (provided for in subheading 3204.16.30)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1278. FAST NAVY SALT RA.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.72	Benzenediazonium, 4-[(2,6-dichloro-4-nitrophenyl)azo]-2,5-dimethoxy-, (T-4)-tetra-chlorozincate(2-) (2:1) (CAS No. 63224-47-5) (provided for in subheading 2927.00.30)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1279. LEVAFIX ROYAL BLUE E-FR.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.73	Reactive blue 224 (ethanol, 2,2'-[[6,13-dichloro-3,10-bis[[2-sulfoxy)-ethyl]amino]-triphenodioxazinediyl]bis(sulfonyl)]bis-, bis(hydrogen sulfate) ester, potassium sodium salt (CAS No. 108692-09-7) (provided for in subheading 3204.16.30)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1280. P-CHLOROANILINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.74	p-Chloroaniline (CAS No. 106-47-8) (provided for in subheading 2921.42.90)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1281. ESTERS AND SODIUM ESTERS OF PARAHYDROXYBENZOIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.75	Methyl 4-hydroxybenzoate (CAS No. 99-76-3); propyl 4-hydroxybenzoate (CAS No. 94-13-3); ethyl 4-hydroxybenzoate (CAS No. 120-47-8); butyl 4-hydroxybenzoate (CAS No. 94-26-8); benzyl 4-hydroxybenzoate (CAS No. 94-18-8); methyl 4-hydroxybenzoate, sodium salt (CAS No. 5026-62-0); propyl 4-hydroxybenzoate, sodium salt (CAS No. 35285-69-9); ethyl 4-hydroxybenzoate, sodium salt (CAS No. 35285-68-8); and butyl 4-hydroxybenzoate, sodium salt (CAS No. 36457-20-2) (all the foregoing provided for in subheading 2918.29.65 or 2918.29.75)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1282. SANTOLINK EP 560.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.76	Phenol-formaldehyde polymer, butylated (CAS No. 96446-41-2) (provided for in subheading 3909.40.00)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1283. PHENODUR VPW 1942.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.77	Phenol, 4,4'-(1-methylethylidene)bis-, polymer with (chloromethyl)oxirane and phenol polymer with formaldehyde modified with chloroacetic acid (provided for in subheading 3909.40.00)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1284. PHENODUR PR 612.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.78	Formaldehyde, polymer with 2-methylphenol, butylated (CAS No. 118685-25-9) (provided for in subheading 3909.40.00)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1285. PHENODUR PR 263.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.79	Phenol, polymer with formaldehyde (CAS No. 126191-57-9) and urea, polymer with formaldehyde (CAS No. 68002-18-6) dissolved in a mixture of isobutanol and n-butanol (provided for in subheading 3909.40.00)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1286. MACRYNAL SM 510 AND 516.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.80	Neodecanoic acid, oxiranylmethyl ester, polymer with ethenylbenzene, 2-hydroxyethyl 2-methyl-2-propenoate, methyl 2-methyl-2-propenoate and 2-propenoic acid (CAS No. 98613-27-5) (provided for in subheading 3906.90.50)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1287. ALFTALAT AN 725.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

9902.02.81	1,3-Benzenedicarboxylic acid, polymer with 1,4-benzenedicarboxylic acid and 2,2-dimethyl-1,3-propanediol (CAS No. 25214-38-4) (provided for in subheading 3907.99.00)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1288. RWJ 241947.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“9902.02.82	(+)-5-[[6-[(2-Fluorophenyl)-methoxy]-2-naphthalenyl]-methyl]-2,4-thiazolidinedione (CAS No. 161600-01-7) (provided for in subheading 2934.10.10)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1289. RWJ 394718.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“9902.02.83	1-Propanone, 3-(5-benzofuranyl)-1-[2-hydroxy-6-[[6-O-(methoxycarbonyl)-beta-D-glucopyranosyl]oxy]-4-methylphenyl]- (CAS No. 209746-59-8) (provided for in subheading 2932.99.61)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1290. RWJ 394720.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“9902.02.84	3-(5-Benzofuranyl)-1-[2-β-D-glucopyranosyloxy-6-hydroxy-4-methylphenyl]-1-propanone (CAS No. 209746-56-5) (provided for in subheading 2932.99.61)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1291. 3,4-DCBN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“9902.02.85	3,4-Dichlorobenzonitrile (CAS No. 6574-99-8) (provided for in subheading 2926.90.12)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1292. CYHALOFOP.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“9902.02.86	Propanoic acid, 2-[4-(4-cyano-2-fluorophenoxy)-phenoxy]butyl ester(2R) (CAS No. 122008-85-9) (provided for in subheading 2926.90.25)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1293. ASULAM.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“9902.02.87	Methyl sulfanilylcarbamate, sodium salt (asulam sodium salt) (CAS No. 2302-17-2) imported in bulk form (provided for in subheading 2935.00.75) or imported in forms or packings for retail sale or mixed with application adjuvants (provided for in subheading 3808.30.15)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1294. FLORASULAM.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“9902.02.88	Mixtures of florasulam ([1,2,4]-triazolo[1,5-c]-pyrimidine-2-sulfonamide, N-(2,6-difluorophenyl)-8-fluoro-5-methoxy-) (CAS No. 145701-23-1) and application adjuvants (provided for in subheading 3808.30.15)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1295. PROPANIL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“9902.02.89	Propanamide, N-(3,4-dichlorophenyl)- (CAS No. 709-98-8) (provided for in subheading 2924.29.47)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1296. HALOFENOZIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“9902.02.90	Benzoic acid, 4-chloro-2-benzoyl-2-(1,1-dimethylethyl)- hydrazide (halofenozide) (CAS No. 112226-61-6) (provided for in subheading 2928.00.25)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1297. ORTHO-PHTHALALDEHYDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“9902.02.92	1,2-Benzenedicarboxaldehyde (CAS No. 643-79-8) (provided for in subheading 2912.29.60)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1298. TRANS 1,3-DICHLOROPENTENE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new subheading:

“9902.02.93	Mixed cis and trans isomers of 1,3-dichloro-propene (CAS No. 10061-02-6) (provided for in subheading 2903.29.00)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1299. METHACRYLAMIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“9902.02.94	Methacrylamide (CAS No. 79-39-0) (provided for in subheading 2924.19.10)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1300. CATION EXCHANGE RESIN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.95	2-Propenoic acid, polymer with diethenylbenzene (CAS No. 9052-45-3) (provided for in subheading 3914.00.60)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1301. GALLERY.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.96	N-[3-(1-Ethyl-1-methylpropyl)-5-isoxazolyl]-2,6-dimethoxybenzamide (isoxaben) (CAS No. 82558-50-7) (provided for in subheading 2934.99.15)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1302. NECKS USED IN CATHODE RAY TUBES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.97	Necks of a kind used in cathode ray tubes (provided for in subheading 7011.20.80)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1303. POLYTETRAMETHYLENE ETHER GLYCOL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new subheading:

"	9902.02.98	Polytetramethylene ether glycol (tetrahydro-3-methylfuran, polymer with tetrahydrofuran) (CAS No. 38640-26-5) (provided for in subheading 3907.20.00)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1304. LEAF ALCOHOL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new subheading:

"	9902.02.99	cis-3-Hexen-1-ol (CAS No. 928-96-1) (provided for in subheading 2905.29.90)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1305. COMBED CASHMERE AND CAMEL HAIR YARN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.01	Yarn of combed cashmere or yarn of camel hair (provided for in subheading 5108.20.60)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1306. CERTAIN CARDED CASHMERE YARN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.02	Yarn of carded cashmere of 6 run or finer (equivalent to 19.35 metric yarn system) (provided for in subheading 5108.10.60)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1307. SULFUR BLACK 1.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.03	Sulfur black 1 (CAS No. 1326-82-5) (provided for in subheading 3204.19.30)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1308. REDUCED VAT BLUE 43.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.04	Reduced vat blue 43 (CAS No. 85737-02-6) (provided for in subheading 3204.15.40)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1309. FLUOROBENZENE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.05	Fluorobenzene (CAS No. 462-06-6) (provided for in subheading 2903.69.70)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1310. CERTAIN RAYON FILAMENT YARN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.06	High tenacity multiple (folded) or cabled yarn of viscose rayon (provided for in subheading 5403.10.60)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1311. CERTAIN TIRE CORD FABRIC.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.07	Tire cord fabric of high tenacity yarn of viscose rayon (provided for in subheading 5902.90.00)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1312. DIRECT BLACK 184.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.08	Direct black 184 (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1313. BLACK 263 STAGE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.09	5-[4-(7-Amino-1-hydroxy-3-sulfo-naphthalen-2-ylazo)-2,5-bis(2-hydroxyethoxy)phenylazo]isophthalic acid, lithium salt (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1314. MAGENTA 364.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.10	5-[4-(4,5-Dimethyl-2-sulfo-phenylamino)-6-hydroxy-[1,3,5]triazin-2-ylamino]-4-hydroxy-3-(1-sulfonaphthalen-2-ylazo)naph- thalene-2,7-disulfonic acid, sodium salt (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1315. THIAMETHOXAM TECHNICAL.

(a) CALENDAR YEAR 2004.—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.11	Thiamethoxam (3-[(2-chloro-5-thiazolyl)methyl)- tetrahydro-5-methyl-N-nitro-1,3,5-oxadiazin-4-imine) (CAS No. 153719–23–4) (provided for in subheading 2934.10.90)	2.6%	No change	No change	On or before 12/31/2004	".

(b) CALENDAR YEAR 2005.—

(1) IN GENERAL.—Heading 9902.03.11, as added by subsection (a), is amended—

(A) by striking "2.6%" and inserting "2.54%"; and

(B) by striking "On or before 12/31/2004" and inserting "On or before 12/31/2005".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on January 1, 2005.

(c) CALENDAR YEAR 2006.—

(1) IN GENERAL.—Heading 9902.03.11, as added by subsection (a) and amended by this section, is further amended—

(A) by striking "2.54%" and inserting "3.2%"; and

(B) by striking "On or before 12/31/2005" and inserting "On or before 12/31/2006".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on January 1, 2006.

SEC. 1316. CYAN 485 STAGE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.12	2-[(Hydroxyethyl- sulfamoyl)-sulfophthalo- cyaninato] copper (II), mixed isomers (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1317. DIRECT BLUE 307.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.14	Direct blue 307 (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1318. DIRECT VIOLET 107.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.16	Direct violet 107 (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1319. FAST BLACK 286 STAGE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.17	1,3-Benzenedicarboxylic acid, 5-[[4-[(7-amino-1-hydroxy-3-sulfo-2- naphthalenyl)-azo]-6-sulfo-1-naphthalenyl]-azo]-, sodium salt (CAS No. 201932–24–3) (provided for in subheading 3204.14.30) ..	Free	No change	No change	On or before 12/31/2006	".

SEC. 1320. MIXTURES OF FLUAZINAM.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.18	Mixtures of fluazinam (3-chloro-N-(3-chloro-2,6- dinitro-4-(trifluoromethyl)-phenyl-5-(trifluoromethyl)-2-pyridinamine) (CAS No. 79622–59–6) and application adjuvants (provided for in subheading 3808.20.15)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1321. PRODIAMINE TECHNICAL.

(a) CALENDAR YEAR 2004.—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.19	Prodiamine (2,6-dinitro-N1,N1-dipropyl-4-(trifluoromethyl)-1,3-benzene-diamine (CAS No. 29091–21–2) (provided for in subheading 2921.59.80)	0.53%	No change	No change	On or before 12/31/2004	".

(b) CALENDAR YEARS 2005 AND 2006.—

(1) IN GENERAL.—Heading 9902.03.19, as added by subsection (a), is amended—

(A) by striking "0.53%" and inserting "Free"; and

(B) by striking "On or before 12/31/2004" and inserting "On or before 12/31/2006".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on January 1, 2005.

SEC. 1322. CARBON DIOXIDE CARTRIDGES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.20	Carbon dioxide in threaded 12-, 16-, and 25-gram non-refillable cartridges (provided for in subheading 2811.21.00)	Free	Free	No change	On or before 12/31/2006	".

SEC. 1323. 12-HYDROXYOCTADECANOIC ACID, REACTION PRODUCT WITH N,N-DIMETHYL, 1,3-PROPANEDIAMINE, DIMETHYL SULFATE, QUATERNIZED.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.21	12-Hydroxyoctadecanoic acid, reaction product with N,N-dimethyl- 1,3-propanediamine, dimethyl sulfate, quaternized (CAS No. 70879–66–2) (provided for in subheading 3824.90.40)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1324. 40 PERCENT POLYMER ACID SALT/POLYMER AMIDE, 60 PERCENT BUTYL ACETATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.22	2-Oxepanone, polymer with aziridine and tetrahydro-2H-pyran-2-one, dodecanoate ester, 40 percent solution in N-butyl acetate (provided for in subheading 3208.90.00)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1325. 12-HYDROXYOCTADECANOIC ACID, REACTION PRODUCT WITH N,N-DIMETHYL- 1,3-PROPANEDIAMINE, DIMETHYL SULFATE, QUATERNIZED, 60 PERCENT SOLUTION IN TOLUENE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.23	12-Hydroxyoctadecanoic acid, reaction product with N,N-dimethyl- 1,3-propanediamine, dimethyl sulfate, quaternized (CAS No. 70879-66-2), 60 percent solution in toluene (provided for in subheading 3824.90.28)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1326. POLYMER ACID SALT/POLYMER AMIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.24	2-Oxepanone, polymer with aziridine and tetrahydro-2H-pyran-2-one, dodecanoate ester (provided for in subheading 3824.90.91)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1327. 50 PERCENT AMINE NEUTRALIZED PHOSPHATED POLYESTER POLYMER, 50 PERCENT SOLVESSO 100.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.25	50 percent amine neutralized phosphated polyester polymer, 50 percent solvesso 100 (CAS Nos. P-99-1218, 64742-95-6, 95-63-6, 108-67-8, 98-82-8, and 1330-20-7) (provided for in subheading 3907.99.00)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1328. 1-OCTADECANAMINIUM, N,N-DI-METHYL-N-OCTADECYL-, (SP-4-2)-[29H,31H-PHTHA- LOCYANINE-2- SULFONATO(3-)-.KAPPA.N29,.KAPPA.N30,.KAPPA.N31,.KAPPA.N32]CUPRATE(1-).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.26	1-Octa- decanaminium, N,N-dimethyl-N-octadecyl-, (Sp-4-2)-[29H,31H-phthalocyanine-2-sulfonato(3-)-.kappa.N29, .kappa.N30, .kappa.N31, .kappa.N32] cuprate(1-) (CAS No. 70750-63-9) (provided for in subheading 3824.90.28)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1329. CHROMATE(1-)-BIS[1-[(5-CHLORO-2-HYDROXYPHENYL)AZO]-2-NAPTHAL ENOLATO(2-)]-,HYDROGEN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.27	Chromate(1-)-bis[1-[(5-chloro-2-hydroxy-phenyl)azo]-2-naphthalenolato- (2-)]-, hydrogen (CAS No. 31714-55-3) (provided for in subheading 2942.00.10)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1330. BRONATE ADVANCED.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.29	Mixtures of bromoxynil octanoate (3,5-dibromo-4-hydroxybenzo-nitrile octanoate (CAS No. 1689-99-2) with application adjuvants (provided for in subheading 3808.30.15)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1331. N-CYCLOHEXYLTHIOPHTHALIMIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.30	N-Cyclohexylthiophthalimide (CAS No. 17796-82-6) (provided for in subheading 2930.90.24)	3%	No change	No change	On or before 12/31/2006	".

SEC. 1332. CERTAIN HIGH-PERFORMANCE LOUDSPEAKERS.

Subchapter II of chapter 99 is amended by striking heading 9902.85.20 and inserting the following:

"	9902.85.20	Loudspeakers not mounted in their enclosures (provided for in subheading 8518.29.80), the foregoing which meet a performance standard of not more than 1.5 dB for the average level of 3 or more octave bands, when such loudspeakers are tested in a reverberant chamber	Free	No change	No change	On or before 12/31/2006	".

SEC. 1333. BIO-SET INJECTION RCC.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following heading:

"	9902.03.33	Polymeric apparatus, comprising a removable cap, an injection port attached to an air vent filter and a fixed needle of plastics and a base for attaching the whole to a vial with a 13 mm or 20 mm flange, of a kind used for transferring diluent from a prefilled syringe (without needle) to a vial containing a powdered or lyophilized medicament and, after mixing, transferring the medicament back to the syringe for subsequent administration to the patient (provided for in subheading 3923.50.00)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1334. PENTA AMINO ACETO NITRATE COBALT III (COFLAKE 2).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.34	Mixtures of (acetato)pent-ammine cobalt dinitrate (CAS No. 14854-63-8) with a polymeric or paraffinic carrier (provided for in subheading 3815.90.50)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1335. OXASULFURON TECHNICAL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.35	*Benzoic acid, 2-[[[[(4,6-dimethyl-2-pyrimidinyl)- amino]carbonyl]-amino]sulfonyl]-, 3-oxetanyl ester (CAS No. 144651-06-9) (provided for in subheading 2935.00.75)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	".

SEC. 1336. CERTAIN MANUFACTURING EQUIPMENT.

Subchapter II of chapter 99 is amended by striking heading 9902.84.83 and inserting the following:

"	9902.84.83	*Machine tools for working wire of iron or steel, certified for use in production of radial tires designed for off-the-highway use and for use on a rim measuring 63.5 cm or more in diameter (provided for in subheading 4011.20.10, 4011.61.00, 4011.63.00, 4011.69.00, 4011.92.00, 4011.94.40, or 4011.99.45), numerically controlled, or parts thereof (provided for in subheading 8463.30.00 or 8466.94.85)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	".

SEC. 1337. 4-AMINOBENZAMIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.37	*4-Aminobenzamide (CAS No. 2835-68-9) (provided for in subheading 2924.29.76)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	".

SEC. 1338. FOE HYDROXY.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.38	*N-(4-Fluorophenyl)-2-hydroxy-N-(1-methylethyl)-acetamide (CAS No. 54041-17-7) (provided for in subheading 2924.29.71)*	*5.2%*	*No change*	*No change*	*On or before 12/31/2006*	".

SEC. 1339. MAGENTA 364 LIQUID FEED.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.39	*5-[4-(4,5-Dimethyl-2-sulfo- phenylamino)-6-hydroxy-[1,3,5]triazin-2-ylamino]-4-hydroxy-3-(1-sulfonaphthalen-2-ylazo)naph-thalene-2,7-disulfonic acid, sodium ammonium salt (provided for in subheading 3204.14.30)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	".

SEC. 1340. TETRAKIS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.40	*Tetrakis ((2,4-di-tert-butylphenyl)-4,4-biphenylene diphosphonite) (CAS No. 38613-77-3) (provided for in subheading 2835.29.50)*	*Free*	*Free*	*No change*	*On or before 12/31/2006*	".

SEC. 1341. PALMITIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.41	*Palmitic acid, with a purity of 90 percent or more (CAS No. 57-10-3) (provided for in subheading 2915.70.00)*	*Free*	*Free*	*No change*	*On or before 12/31/2006*	".

SEC. 1342. PHYTOL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.42	*3,7,11,15-Tetramethylhexadec-2-en-1-ol (CAS No. 7541-49-3) (provided for in subheading 2905.22.50)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	".

SEC. 1343. CHLORIDAZON.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.43	*Chloridazon (5-Amino-4-chloro-2- phenyl-3(2H)-pyridazinone) (CAS No. 1698-60-8) put up in forms or packings for retail sale or mixed with application adjuvants (provided for in subheading 3808.30.15)*	*Free*	*Free*	*No change*	*On or before 12/31/2006*	".

SEC. 1344. DISPERSE ORANGE 30, DISPERSE BLUE 79:1, DISPERSE RED 167:1, DISPERSE YELLOW 64, DISPERSE RED 60, DISPERSE BLUE 60, DISPERSE BLUE 77, DISPERSE YELLOW 42, DISPERSE RED 86, AND DISPERSE RED 86:1.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.45	*Propanenitrile, 3-[[2-(acetyloxy)- ethyl]-[4-[(2,6-dichloro-4-nitro- phenyl)azo]-phenyl]amino]- (disperse orange 30) (CAS No. 5261-31-4) (provided for in subheading 3204.11.50)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*
"	9902.03.46	*Acetamide, N-[5-[bis[2-(acetyloxy)- ethyl]amino]-2-[(2-bromo-4,6-dinitrophenyl)-azo]-4-methoxyphenyl]- (disperse blue 79:1) (CAS No. 3618-72-2) (provided for in subheading 3204.11.50)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*
"	9902.03.47	*Acetamide, N-[5-[bis[2-(acetyloxy)- ethyl]amino]-2-[(2-chloro-4-nitrophenyl)-azo]phenyl]- (disperse red 167:1) (CAS No. 1533-78-4) (provided for in subheading 3204.11.50)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*
"	9902.03.48	*1H-Indene-1,3(2H)-dione, 2-(4-bromo-3-hydroxy-2-quinol-inyl)- (disperse yellow 64) (CAS No. 10319-14-9) (provided for in subheading 3204.11.50)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*
"	9902.03.49	*9,10-Anthra- cenedione, 1-amino-4-hydroxy-2-phenoxy- (disperse red 60) (CAS No. 17418-58-5) (provided for in subheading 3204.11.50)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*
"	9902.03.50	*1H-Naphth[2,3-f]isoindole-1,3,5,10(2H)-tetrone, 4,11-diamino-2-(3-methoxypropyl)- (disperse blue 60) (CAS No. 12217-80-0) (provided for in subheading 3204.11.50)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*
"	9902.03.51	*9,10-Anthracenedione, 1,8-dihydroxy-4-nitro-5-(phenylamino)- (disperse blue 77) (CAS No. 20241-76-3) (provided for in subheading 3204.11.50)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*
"	9902.03.52	*Benzenesulfonamide, 3-nitro-N-phenyl-4-(phenylamino)- (disperse yellow 42) (CAS No. 5124-25-4) (provided for in subheading 3204.11.50)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*
"	9902.03.53	*Benzenesulfonamide, N-(4-amino-9,10-dihydro-3-methoxy-9,10-dioxo-1-anthracenyl)-4-methyl- (disperse red 86) (CAS No. 81-68-5) (provided for in subheading 3204.11.50)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*

“	*9902.03.54*	*Benzenesulfonamide, N-(4-amino-9,10-dihydro-3-methoxy-9,10-dioxo-1-anthracenyl)- (disperse red 86:1) (CAS No. 69563-51-5) (provided for in subheading 3204.11.50)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1345. DISPERSE BLUE 321.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.03.55*	*1-Naphthalenamine, 4-[(2-bromo-4,6- dinitrophenyl)- azo]-N-(3-meth- oxypropyl)- (disperse blue 321) (CAS No. 70660-55-8) (provided for in subheading 3204.11.35)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1346. DIRECT BLACK 175.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.03.56*	*Cuprate(4-), [m-[5-[(4,5-dihydro-3-methyl-5-oxo- 1-phenyl-1H-pyrazol-4-yl)azo]-3-[[4'-[[3,6-disulfo-2-hydroxy.kappa.O-1-naphthal- enyl]azo-.kappa.N1]-3,3'-di(hydroxy-.kappa.O)[1,1'-biphenyl]-4-yl]azo-.kappa.N1]-4-(hydroxy-.kappa.O)-2,7-naphtha- lenedisulf-onato(8-)]]di-, tetrasodium (direct black 175) (CAS No. 66256-76-6) (provided for in subheading 3204.12.50)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1347. DISPERSE RED 73 AND DISPERSE BLUE 56.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new headings:

“	*9902.03.57*	*Benzonitrile, 2-[[4-[(2-cyanoethyl)- ethylamino]- phenyl]azo]-5-nitro- (disperse red 73) (CAS No. 16889-10-4) (provided for in subheading 3204.11.10)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	
	9902.03.58	*9,10-Anthra- cenedione, 1,5-diaminochloro-4,8-dihydroxy- (disperse blue 56) (CAS No. 12217-79-7) (provided for in subheading 3204.11.10)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1348. ACID BLACK 132.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.03.59*	*[3-(Hydroxy-.kappa.O)-4-[[2-(hydroxy-.kappa.O)-1-naphthalenyl]azo-.kappa.N1]-1-naphthal-enesulfonato (3-)]-[1-[[2-(hydroxy-.kappa.O)-5-[(2-methoxyphenyl]-azophenyl]-azo-.kappa.N1]-2-naphthalenolato (2-).kappa.O]-, disodium (acid black 132) (CAS No. 27425-58-7) (provided for in subheading 3204.12.20)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1349. ACID BLACK 132 AND ACID BLACK 172.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new headings:

“	*9902.03.36*	*[3-(Hydroxy- kO)-4- [[2-(hydroxy- .kappa.O)-1-naphthalenyl]azo-.kappa.N1]-1-naphthal-enesulfonato (3)]-[1-[[2-(hydroxy-.kappa.O)-5-[(2-methoxyphenyl)-azo]phenyl]-azo-kappa.N1]-2-naphthalenolato (2-)-.kappa.O]-, disodium (acid black 132) (CAS No. 57693-14-8) (provided for in subheading 3204.12.45)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	
	9902.03.60	*Chromate(3-), bis[3-(hydroxy- .kappa.O)-4-[[2-(hydroxy-.kappa.O)-1-naphthalenyl]azo-.kappa.N1]-7-nitro-1-naphthal-enesulfonato(3-)]-, trisodium (acid black 172) (CAS No. 57693-14-8) (provided for in subheading 3204.12.45)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1350. ACID BLACK 107.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.03.61*	*Chromate(2-), [1-[[2-(hydroxy-.kappa.O)-3,5-dinitro- phenyl]azo-.kappa.N1]-2-naphthal- enolato(2-)-.kappa.O][3-(hydroxy.kappa.O)-4-[[2 (hydroxy-.kappa.O)-1-naphthalenyl]azo-.kappa.N1]-7- nitro-1-naphthalenesulfonato(3-)]-, sodium hydrogen (acid black 107) (CAS No. 12218-96-1) (provided for in subheading 3204.12.45)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1351. ACID YELLOW 219, ACID ORANGE 152, ACID RED 278, ACID ORANGE 116, ACID ORANGE 156, AND ACID BLUE 113.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	*9902.03.62*	*Benzenesulfonic acid, 3-[[3-methoxy-4-[(4-methoxyphenyl)- azo]phenyl]azo]-, sodium salt (acid yellow 219) (CAS No. 71819-57-3) (provided for in subheading 3204.12.50)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.
“	*9902.03.63*	*Benzenesulfonic acid, 3-[[4-[[4-(2-hydroxybutoxy)phenyl]azo]-5-methoxy-2-methyl- phenyl]azo]-, monolithium salt (acid orange 152) (CAS No. 71838-37-4) (provided for in subheading 3204.12.50)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.
“	*9902.03.64*	*Chromate(1-), bis[3-[4-[[5-chloro-2-(hydroxy.kappa.O)- phenyl]azo-.kappa.N1]-4,5-dihydro-3-methyl-5-(oxo-.kappa.O)-1H-pyrazol-1-yl]benzenesul- fonamidato(2-)]-, sodium (acid red 278) (CAS No. 71819-56-2) (provided for in subheading 3204.12.50)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.
“	*9902.03.65*	*Benzenesulfonic acid, 3-[[4-[(2-ethoxy-5-methylphenyl)- azo]-1-naphthal-enyl]azo]-, sodium salt (acid orange 116) (CAS No. 12220-10-9) (provided for in subheading 3204.12.50)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.
“	*9902.03.66*	*Benzenesulfonic acid, 4-[[5-meth- oxy-4-[(4-methoxy- phenyl)azo]-2-methyl-phenyl]azo]-, sodium salt (acid orange 156) (CAS No. 68555-86-2) (provided for in subheading 3204.12.50)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

"9902.03.67	1-Naphthalene- sulfonic acid, 8-(phenylamino)-5-[[4-[(3- sulfophenyl)- azo]-1- naphthalenyl]-azo]-, disodium salt (acid blue 113) (CAS No. 3351-05-1) (provided for in subheading 3204.12.50)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1352. EUROPIUM OXIDES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.02.22	Europium oxides having a purity of at least 99.99 percent (CAS No. 1308-96-7) (provided for in subheading 2846.90.80)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1353. LUGANIL BROWN NGT POWDER.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.03.76	Acid brown 290 (CAS No. 12234-74-1) (provided for in subheading 3204.12.20)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1354. THIOPHANATE-METHYL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.03.77	1,1'-o-Phenylenebis-(3-thioallophanic acid), dimethyl ester (thiophanate-methyl) (CAS No. 23564-05-8) (provided for in subheading 2930.90.10)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1355. MIXTURES OF THIOPHANATE-METHYL AND APPLICATION ADJUVANTS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new subheading:

"9902.03.79	Mixtures of 1,1'-o-Phenylenebis-(3-thioallophanic acid), dimethyl ester (Thiophanate-methyl) (CAS No. 23564-05-8) and application adjuvants (provided for in subheading 3808.20.15)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1356. HYDRATED HYDROXYPROPYL METHYLCELLULOSE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.03.80	2-Hydroxypropyl methyl cellulose (CAS No. 9004-65-3)(provided for in subheading 3912.39.00)	0.4%	No change	No change	On or before 12/31/2006	".

SEC. 1357. C 12-18 ALKENES, POLYMERS WITH 4-METHYL-1-PENTENE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.03.86	C 12-18 alkenes, polymers with 4-methyl-1-pentene (CAS No. 68413-03-6) (provided for in subheading 3902.90.00)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1358. CERTAIN 12-VOLT BATTERIES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.03.87	12V Lead-acid storage batteries, of a kind used for the auxiliary source of power for burglar or fire alarms and similar apparatus of subheading 8531.10.00 (provided for in subheading 8507.20.80)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1359. CERTAIN PREPARED OR PRESERVED ARTICHOKES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.03.89	Artichokes, prepared or preserved otherwise than by vinegar or acetic acid, not frozen (provided for in subheading 2005.90.80)	11.8%	No change	No change	On or before 12/31/2006	".

SEC. 1360. CERTAIN OTHER PREPARED OR PRESERVED ARTICHOKES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.03.90	Artichokes, prepared or preserved by vinegar or acetic acid (provided for in subheading 2001.90.25)	7.5%	No change	No change	On or before 12/31/2006	".

SEC. 1361. ETHYLENE/TETRAFLUOROETHYLENE COPOLYMER (ETFE).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.03.91	Ethylene-tetra- fluoroethylene copolymers (ETFE) (provided for in subheading 3904.69.50)	4.9%	No change	No change	On or before 12/31/2006	".

SEC. 1362. ACETAMIPRID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"9902.03.92	N1-[(6-Chloro-3-pyridyl)methyl]-N2-cyano-N1-methylacetamidine (CAS No. 135410-20-7) (provided for in subheading 2933.39.27)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1363. CERTAIN MANUFACTURING EQUIPMENT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new headings:

"9902.84.94	Extruders, screw type, suitable for processing polyester thermoplastics in a cast film production line (provided for in subheading 8477.20.00)	Free	No change	No change	On or before 12/31/2006
9902.84.95	Casting machinery suitable for processing polyester thermoplastics into a sheet in a cast film production line (provided for in subheading 8477.80.00)	Free	No change	No change	On or before 12/31/2006
9902.84.96	Transverse direction orientation tenter machinery, suitable for processing polyester film in a cast film production line (provided for in subheading 8477.80.00)	Free	No change	No change	On or before 12/31/2006

	9902.84.97	*Winder machinery suitable for processing polyester film in a cast film production line (provided for in subheading 8477.80.00)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	
	9902.84.98	*Slitting machinery suitable for processing polyester film in a cast film production line (provided for in subheading 8477.80.00)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1364. TRITICONAZOLE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.99	*E-5-(4-Chlorobenzylidene)-2,2-dimethyl-1-(1H-1,2,4-triazol-1-ylmethyl)cyclopentanol. (CAS No.131983-72-7) (provided for in subheading 2933.99.12)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1365. CERTAIN TEXTILE MACHINERY.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.03.88	*Weaving machines (looms), shuttleless type, for weaving fabrics of a width exceeding 30 cm but not exceeding 4.9 m, entered without off-loom or large loom take-ups, drop wires, heddles, reeds, harness frames, or beams (provided for in subheading 8446.30.50)*	*2.7%*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1366. 3-SULFINOBENZOIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.01	*3-Sulfinobenzoic acid (CAS No. 15451-00-0) (provided for in subheading 2930.90.29)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1367. POLYDIMETHYLSILOXANE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.02	*Polydimethylsiloxane (CAS No. 63148-62-9) (provided for in subheading 3910.00.00)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1368. BAYSILONE FLUID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.03	*An alkyl modified polydimethylsiloxane (CAS No. 102782-93-4) (provided for in subheading 3910.00.00)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1369. ETHANEDIAMIDE, N- (2-ETHOXYPHENYL)-N'- (4-ISODECYLPHENYL)-.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.05	*Preparations based on ethanediamide, N-(2-ethoxyphenyl)-N'-(4-isodecylphenyl)- (CAS No. 82493-14-9) (provided for in subheading 3812.30.60)*	*Free*	*Free*	*No change*	*On or before 12/31/2006*	”.

SEC. 1370. 1-ACETYL-4-(3-DODECYL-2, 5-DIOXO-1-PYRROLIDINYL)-2,2,6,6-TETRAMETHYL-PIPERIDINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.06	*1-Acetyl-4-(3-dodecyl-2,5-dioxo-1-pyrrolidinyl)-2,2,6,6-tetramethylpiperidine (CAS No. 106917-31-1) (provided for in subheading 2933.39.61)*	*Free*	*Free*	*No change*	*On or before 12/31/2006*	”.

SEC. 1371. ARYL PHOSPHONITE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.07	*Reaction products of phosphorus trichloride with 1,1'-biphenyl and 2,4-bis(1,1-dimethylethyl)phenol (CAS No. 119345-01-6) (provided for in subheading 3812.30.60)*	*Free*	*Free*	*No change*	*On or before 12/31/2006*	”.

SEC. 1372. MONO OCTYL MALIONATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.08	*mono-2-Ethylhexyl maleate (CAS No. 7423-42-9) (provided for in subheading 2917.19.20)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1373. 3,6,9-TRIOXAUNDECANEDIOIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.09	*3,6,9-Trioxaundecanedioic acid (CAS No. 13887-98-4) (provided for in subheading 2918.90.50)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1374. CROTONIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.10	*(E)-2-Butenoic acid (Crotonic acid) (CAS No. 107-93-7) (provided for in subheading 2916.19.30)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1375. 1,3-BENZENEDICARBOXAMIDE, N, N'-BIS-(2,2,6,6-TETRAMETHYL-4-PIPERIDINYL)-.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.11	*1,3-Benzenedicarboxamide, N,N'-bis-(2,2,6,6-tetramethyl-4-piperidinyl)- (CAS No. 42774-15-2) (provided for in subheading 2933.39.61)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*	”.

SEC. 1376. 3-DODECYL-1-(2,2,6,6-TETRAMETHYL-4-PIPERIDINYL)-2,5-PYRROLIDINEDIONE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.12	3-Dodecyl-1-(2,2,6,6-tetramethyl-4-piperidinyl)-2,5-pyrrolidinedione (CAS No. 79720–19–7) (provided for in subheading 2933.39.61)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1377. OXALIC ANILIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.13	Ethanediamide, N-(2-ethoxyphenyl)-N′-(2-ethylphenyl)- (CAS No. 23949–66–8) (provided for in subheading 2924.29.76)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1378. N-METHYL DIISOPROPANOLAMINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.14	1,1′-(Methylamino)dipropan-2-ol (CAS No. 1402–30–6) (provided for in subheading 2922.19.95)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1379. 50 PERCENT HOMOPOLYMER, 3-(DIMETHYLAMINO) PROPYL AMIDE, DIMETHYL SULFATE-QUATERNIZED 50 PERCENT POLYRICINOLEIC ACID.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.15	Mixture (1:1) of polyricinoleic acid homopolymer, 3-(dimethylamino) propylamide, dimethyl sulfate, quaternized and polyricinoleic acid (provided for in subheading 3824.90.40)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1380. BLACK CPW STAGE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.16	2,7-Naphthalenedisulfonic acid, 4-amino-3-[[4-[[-4-[(2- or 4-amino-4 or 2-hydroxyphenyl)azo]phenyl]amino]-3-sulfophenyl]azo]-5-hydroxy-6-(phenylazo), trisodium salt) (CAS No. 85631–88–5) (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1381. FAST BLACK 287 NA PASTE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.17	1,3-Benzenedicarboxylic acid, 5-[[4-[(7-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo]-1-naphthalenyl]azo]-, trisodium salt, in paste form (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1382. FAST BLACK 287 NA LIQUID FEED.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.18	1,3-Benzenedicarboxylic acid, 5-[[4-[(7-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo]-1-naphthalenyl]azo]-, trisodium salt, in liquid form (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1383. FAST YELLOW 2 STAGE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.19	1,3-Benzenedicarboxylic acid, 5,5′- [[6-(4-morpholinyl)-1,3,5-triazine-2,4-diyl]bis(imino-4,1-phenyleneazo)]bis-, ammonium sodium hydrogen salt (direct yellow 173) (provided for in either subheading 3204.14.30 or 3215.19.00.)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1384. CYAN 1 STAGE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.21	Copper [29H,31H-phthalo- cyaninato(2-)-N29,N30,N31,N32]-, aminosulfonylsulfo derivatives, tetramethylammonium salts (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1385. YELLOW 1 STAGE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.24	1,5-Naphthalenedisulfonic acid, 3,3′- [[6-[(2-hydroxyethyl)amino]-1,3,5-triazine-2,4-diyl]bis[imino(2-methyl-4,1-phenylene)azo]]bis-, tetrasodium salt (CAS No. 50925–42–3) (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1386. YELLOW 746 STAGE.

Subchapter II of chapter 99 of is amended by inserting in numerical sequence the following new heading:

“	9902.04.26	1,3-Bipyridirium, 3-carboxy-5′-[(2-carboxy-4-sulfophenyl)azo]-1′,2′-dihydro-6′-hydroxy-4′-methyl-2′-oxo-, inner salt, lithium/sodium salt (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1387. BLACK SCR STAGE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.27	2,7-Naphthalenedi- sulfonic acid, 4-amino-3-[[4-[[-4-[(2 or 4-amino-4 or 2-hydroxyphenyl)- azo]- phenyl]amino]-3-sulfophenyl]- azo]-5-hydroxy-6-(phenylazo)-, trisodium salt (CAS No. 85631–88–5) (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1388. MAGENTA 3B-OA STAGE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.28	2-[[4-Chloro-6-[[8-hydroxy-3,6-disulfonate-7-[(1-sulfo-2-naphthalenyl)azo]-1-naphthalenyl]amino]-1,3,5-triazin-2-yl]amino]-5-sulfobenzoic acid, sodium/lithium salts (CAS No. 12237-00-2) (provided for in subheading 3204.16.30)	Free	No change	No change	On or before 12/31/2006	.”.

SEC. 1389. YELLOW 577 STAGE.

(a) Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.29	5-[4-[4-[4-(4,8-Disulfonaphthalen-2-ylazo)-phenylamino]-6-(2-sulfoethylamino)-1,3,5-triazin-2-ylamino]- phenylazo-[isophthalic acid, sodium salt (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	.”.

SEC. 1390. CYAN 485/4 STAGE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.30	Copper, [29H,31H-phthalo-cyaninato(2-)-xN29,xN30,xN31,xN32]-aminosulfonyl-[(2-hydroxyethyl)amino]-sulfonylsulfo derivatives, sodium salt (provided for in subheading 3204.14.30)	Free	No change	No change	On or before 12/31/2006	.”.

SEC. 1391. LOW EXPANSION LABORATORY GLASS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.32	Laboratory, hygienic, or pharmaceutical glassware, whether or not graduated or calibrated, of low expansion borosilicate glass or alumino-borosilicate glass, having a linear coefficient of expansion not exceeding 3.3 x 10^{-7} per Kelvin within a temperature range of 0 to 300°C (provided for in subheadings 7017.20.00 and 7020.00.60).	Free	No change	No change	On or before 12/31/2006	.”.

SEC. 1392. STOPPERS, LIDS, AND OTHER CLOSURES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.33	Stoppers, lids, and other closures of low expansion borosilicate glass or alumino-borosilicate glass, having a linear coefficient of expansion not exceeding 3.3 x 10^{-7} per Kelvin within a temperature range of 0 to 300°C, produced by automatic machine (provided for in subheading 7010.20.20) or produced by hand (provided for in subheading 7010.20.30).	Free	No change	No change	On or before 12/31/2006	.”.

SEC. 1393. TRIFLUSULFURON METHYL FORMULATED PRODUCT.

(a) CALENDAR YEARS 2004 AND 2005.—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.01	Mixtures of methyl 2-[[[[[4-(dimethylamino)- 6-(2,2,2-trifluoroethoxy)-1,3,5-triazin-2-yl]-amino]carbonyl]- amino]sulfonyl]-3-methylbenzoate (CAS No. 126535-15-7) and application adjuvants (provided for in subheading 3808.30.15)	1%	No change	No change	On or before 12/31/2005	.”.

(b) CALENDAR YEAR 2006.—

(1) IN GENERAL.—Heading 9902.05.01, as added by subsection (a), is amended—

(A) by striking “1%” and inserting “Free”; and

(B) by striking “On or before 12/31/2005” and inserting “On or before 12/31/2007”.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on January 1, 2006.

SEC. 1394. AGRUMEX (O-T-BUTYL CYCLOHEXANOL).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.02	o-tert-Butyl-cyclohexanol (CAS No. 13491-79-7) (provided for in subheading 2915.39.45)	Free	No change	No change	On or before 12/31/2006	.”.

SEC. 1395. TRIMETHYL CYCLO HEXANOL (1-METHYL-3,3-DIMETHYLCYCLOHEXANOL-5).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.03	3,3,5-Trimethyl-cyclohexan-1-ol (CAS No. 116-02-9) (provided for in subheading 2906.19.50)	Free	No change	No change	On or before 12/31/2006	.”.

SEC. 1396. MYCLOBUTANIL.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.91	alpha-Butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (myclobutanil) (CAS No. 88671-89-0) (provided for in subheading 2933.99.06)	1.9%	No change	No change	On or before 12/31/2006	.”.

SEC. 1397. METHYL CINNAMATE (METHYL-3-PHENYLPROPENOATE).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.04	Methyl cinnamate (methyl-3-phenylpropenoate) (CAS No. 103-26-4) (provided for in subheading 2916.39.20)	Free	No change	No change	On or before 12/31/2006	.”.

SEC. 1398. ACETANISOLE (ANISYL METHYL KETONE).

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.05	p-Acetanisole (CAS No. 100-06-1) (provided for in subheading 2914.50.30)	Free	No change	No change	On or before 12/31/2006	.”.

SEC. 1399. ALKYLKETONE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.02.53	1-(4-Chlorophenyl)- 4,4-dimethyl-3-pentanone (CAS No. 66346-01-8) (provided for in subheading 2914.70.40)	3.5%	No change	No change	On or before 12/31/2006	".

SEC. 1400. IPRODIONE 3-(3-5, DICHOLOROPHENYL)-N-(1-METHYLETHYL)-2,4-DIOXO-1-IMIDAZOLIDINECARBOXAMIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.01.51	Iprodione (3-(3,5-dicholorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide) (CAS No. 36734-19-7) (provided for in subheading 2933.21.00)	4.1%	No change	No change	On or before 12/31/2006	".

SEC. 1401. DICHLOROBENZIDINE DIHYDROCHLORIDE.

(a) CALENDAR YEAR 2004.—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.28	3,3'-Dichlorobenzi-dine dihydrochloride (CAS No. 612-83-9) (provided for in subheading 2921.59.80)	6.3% + 0.2 cents/kg	No change	No change	On or before 12/31/2004	".

(b) CALENDAR YEARS 2005 AND 2006.—

(1) IN GENERAL.—Heading 9902.03.28, as added by subsection (a), is amended—

(A) by striking "6.3% + 0.2 cents/kg" and inserting "5.1%"; and

(B) by striking "On or before 12/31/2004" and inserting "On or before 12/31/2006".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on January 1, 2005.

SEC. 1402. KRESOXIM-METHYL.

(a) CALENDAR YEAR 2004.—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.03.78	Methyl (E)- methoxyimino- [alpha-(o-tolyloxy)-o-tolyl]- acetate (kresoxim methyl) (CAS No. 143390-89-0) (provided for in subheading 2925.20.60)	3.3%	No change	Free	On or before 12/31/2004	".

(b) CALENDAR YEARS 2005 AND 2006.—

(1) IN GENERAL.—Heading 9902.03.78, as added by subsection (a), is amended—

(A) by striking "3.3%" and inserting "2.4%"; and

(B) by striking "On or before 12/31/2004" and inserting "On or before 12/31/2006".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on January 1, 2005.

SEC. 1403. MKH 6562 ISOCYANATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.05.06	2-(Trifluoro- methoxy)-benzenesulfonyl isocyanate (CAS No. 99722-81-3) (provided for in subheading 2930.90.29)	0.7%	No change	No change	On or before 12/31/2006	".

SEC. 1404. CERTAIN RAYON FILAMENT YARN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.05.07	High tenacity single yarn of viscose rayon (provided for in subheading 5403.10.30) with a decitex equal to or greater than 1,000	Free	No change	No change	On or before 12/31/2006	".

SEC. 1405. BENZENEPROPANAL, 4-(1,1-DIMETHYLETHYL)-ALPHA-METHYL.

(a) CALENDAR YEAR 2004.—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.05.08	Benzenepropanal, 4-(1,1-dimethylethyl)-alpha-methyl- (CAS No. 80-54-6) (provided for in subheading 2912.29.60)	2.3%	No change	Free	On or before 12/31/2004	".

(b) CALENDAR YEARS 2005 AND 2006.—

(1) IN GENERAL.—Heading 9902.05.08, as added by subsection (a), is amended—

(A) by striking "2.3%" and inserting "1.7%"; and

(B) by striking "On or before 12/31/2004" and inserting "On or before 12/31/2006".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on January 1, 2005.

SEC. 1406. 3,7-DICHLORO-8-QUINOLINE CARBOXYLIC ACID.

(a) CALENDAR YEAR 2004.—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.05.09	3,7-Dichloro-8-quinolinecarb-oxylic acid (quinclorac) (CAS No. 84087-01-4) (provided for in subheading 2933.49.30)	3.9%	No change	Free	On or before 12/31/2004	".

(b) CALENDAR YEARS 2005 AND 2006.—

(1) IN GENERAL.—Heading 9902.05.09, as added by subsection (a), is amended—

(A) by striking "3.9%" and inserting "3.3%"; and

(B) by striking "On or before 12/31/2004" and inserting "On or before 12/31/2006".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on January 1, 2005.

SEC. 1407. 3-(1-METHYLETHYL)-1H-2,1,3-BENZOTHIADIAZIN-4(3H)-ONE 2,2 DIOXIDE, SODIUM SALT.

(a) CALENDAR YEAR 2004.—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.05.10	3-(1-Methyl- ethyl)-1H-2,1,3-benzothiadiazin-4(3H)-one-2,2-dioxide, sodium salt (bentazon, sodium salt) (CAS No. 50723-80-3) (provided for in subheading 2934.99.15)	1.8%	No change	Free	On or before 12/31/2004	".

(b) CALENDAR YEARS 2005 AND 2006.—

(1) IN GENERAL.—Heading 9902.05.10, as added by subsection (a), is amended—

(A) by striking "1.8%" and inserting "2.6%"; and

(B) by striking "On or before 12/31/2004" and inserting "On or before 12/31/2006".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on January 1, 2005.

SEC. 1408. 3,3′,4-4′-BIPHENYLTETRACARBOXYLIC DIANHYDRIDE, ODA, ODPA, PMDA, AND 1,3-BIS(4-AMINOPHENOXY)BENZENE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new headings:

“ 9902.05.11	3,3′,4,4′-Biphenyltetracarboxylic dianhydride (CAS No. 2420-87-3) (provided for in subheading 2917.39.30)	Free	No change	No change	On or before 12/31/2006	
“ 9902.05.12	4,4′-Oxydianiline (CAS No. 101-80-4) (provided for in subheading 2922.29.80)	1.5%	No change	No change	On or before 12/31/2006	
“ 9902.05.13	4,4′-Oxydiphthalic anhydride (CAS No. 1823-59-2) (provided for in subheading 2918.90.43)	Free	No change	No change	On or before 12/31/2006	
“ 9902.05.14	Pyromellitic dianhydride (CAS No. 89-32-7) (provided for in subheading 2917.39.70)	Free	No change	No change	On or before 12/31/2006	
“ 9902.05.15	1,3-Bis(4-aminophenoxy)- benzene (CAS No. 2479-46-1) (provided for in subheading 2922.29.29 or 2922.29.60)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1409. ORYZALIN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“ 9902.05.16	Oryzalin (benzenesulfonamide, 4-(dipropylamino)-3,5-dinitro-) (CAS No. 19044-88-3) (provided for in subheading 2935.00.95)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1410. TEBUFENOZIDE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“ 9902.05.17	N-tert-Butyl-N′-(4-ethylbenzoyl)-3,5- dimethylbenzoylhydrazide (tebufenozide) (CAS No. 112410-23-8) (provided for in subheading 2928.00.25)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1411. ENDOSULFAN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“ 9902.05.18	6,7,8,9,10,10-Hexachloro-1,5,5a,6,9,9a-hexahydro-6,9-methano-2,4,3-benzodioxathiepin-3-oxide (thiosulfan) (CAS No. 115-29-7) (provided for in subheading 2920.90.10)	Free	Free	No change	On or before 12/31/2006	”.

SEC. 1412. ETHOFUMESATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“ 9902.05.19	2-Ethoxy-2,3-dihydro-3,3-di-methyl-5-benzofuranyl-methanesulfonate (ethofumesate) (CAS No. 26225-79-6) in bulk or mixed with application adjuvants (provided for in subheading 2932.99.08 or 3808.30.15)	Free	Free	No change	On or before 12/31/2006	”.

SEC. 1413. NIGHT VISION MONOCULARS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“ 9902.05.21	Hand-held night vision monoculars, other than those containing a micro-channel plate to amplify electrons or having a photocathode containing gallium arsenide (provided for in subheading 9005.80.60)	Free	Free	No change	On or before 12/31/2006	”.

SEC. 1414. SOLVENT YELLOW 163.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“ 9902.05.27	Solvent yellow 163 (CAS No. 13676-91-0) (provided for in subheading 3204.19.20)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1415. RAILWAY CAR BODY SHELLS FOR EMU'S.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following heading:

“ 9902.86.09	Railway car body shells for electric multiple unit (EMU) commuter coaches of stainless steel, the foregoing which are designed for passenger coaches each having an aggregate passenger seating capacity up to 156 (including flip-up seating and wheelchair spaces) on two levels (provided for in subheading 8607.99.50)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1416. CERTAIN EDUCATIONAL DEVICES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“ 9902.85.43	Educational devices (provided for in subheading 8543.89.96)	1.67%	No change	No change	On or before 12/31/2006	”.

SEC. 1417. RAILWAY ELECTRIC MULTIPLE UNIT (EMU) GALLERY COMMUTER COACHES OF STAINLESS STEEL.

Subchapter II of chapter 99 is amended by inserting in the numerical sequence the following new heading:

“ 9902.86.11	Railway electric multiple unit (EMU) commuter coaches of stainless steel, the foregoing consisting of two finished EMU gallery-type coaches manufactured to contract specifications each, having an aggregate seating capacity of up to 156 seats (including flip-up seats and wheelchair spaces) on two levels. (provided for in subheading 8603.10.00)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1418. SNOWBOARD BOOTS.

Subchapter II of chapter 99 is amended by striking heading 9902.61.01 and inserting the following:

“	9902.61.01	Snowboard boots with uppers of textile materials (provided for in subheading 6404.11.90)	4%	No change	No change	On or before 12/31/2006	”.

SEC. 1419. HAND-HELD RADIO SCANNERS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.23	Electrical radiobroadcast receivers, intended to be hand-held, valued over $40 each, the foregoing designed to receive and monitor publicly transmitted radio communications (provided for in subheading 8527.19.50)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1420. MOBILE AND BASE RADIO SCANNERS THAT ARE COMBINED WITH A CLOCK.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.24	Electrical radiobroadcast receivers designed to receive and monitor publicly transmitted radio communications, valued at over $40 each, that are combined with a clock, and that are either mounted on a base or designed for use in an automobile or boat (provided for in subheading 8527.32.50)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1421. MOBILE AND BASE RADIO SCANNERS THAT ARE NOT COMBINED WITH A CLOCK.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.02.25	Electrical radiobroadcast receivers designed to receive and monitor publicly transmitted radio communications, valued at over $40 each, that are not combined with a clock, and that are either mounted on a base or designed for use in an automobile or boat (provided for in subheading 8527.39.00)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1422. CERTAIN FINE ANIMAL HAIR OF KASHMIR (CASHMERE) GOATS, NOT PROCESSED.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.51.15	Fine animal hair of Kashmir (cashmere) goats; not processed in any manner beyond the degreased or carbonized condition (provided for in subheading 5102.11.10)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1423. CERTAIN FINE ANIMAL HAIR OF KASHMIR (CASHMERE) GOATS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.51.16	Fine animal hair of Kashmir (cashmere) goats (provided for in subheading 5102.11.90)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1424. CERTAIN R-CORE TRANSFORMERS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.85.04	120 volt/60 Hz electrical transformers (the foregoing and parts thereof provided for in subheading 8504.31.40 or 8504.90.95), with dimensions not exceeding 88 mm by 88 mm by 72 mm but at least 82 mm by 69 mm by 43 mm and each containing a layered and uncut round core with two balanced bobbins, the foregoing rated as less than 40 VA but greater than 32.2 VA with a rating number of R25	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1425. DECORATIVE PLATES.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.04.99	Decorative plates, whether or not with decorative rim or attached sculpture; decorative sculptures, each with plate or plaque attached; decorative plaques each not over 7.65 cm in thickness; architectural miniatures, whether or not put up in sets; all the foregoing of resin materials and containing agglomerated stone, put up for mail order retail sale, whether for wall or tabletop display and each weighing not over 1.36 kg together with their retail packaging (provided for in subheading 3926.40.00)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1426. BISPYRIBAC SODIUM.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.20	Sodium 2,6-bis[(4,6-dimethoxypyrimidin-2-yl)oxy]benzoate (Bispyribac-sodium) (CAS No. 125401–92–5) (provided for in subheading 2933.59.10)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1427. FENPROPATHRIN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.22	α-Cyano-3-phenoxybenzyl 2,2,3,3-tetra- methylcycloprop- anecarboxylate (fenpropathrin) (CAS No. 39515–41–8) (provided for in subheading 2926.90.30)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1428. PYRIPROXYFEN.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

“	9902.05.23	2-[1-Methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine (Pyriproxyfen) (CAS No. 95737–68–1) (provided for in subheading 2933.39.27)	Free	No change	No change	On or before 12/31/2006	”.

SEC. 1429. UNICONAZOLE-P.

Subchapter II is amended by inserting in numerical sequence the following new heading:

"	9902.05.24	(E)-(+)-(S)-1-(4-Chlorophenyl)-4,4-dimethyl-2-(1,2,4-triazol-1-yl)-pent-1-ene-3-ol (Uniconazole) (CAS No. 83657-22-1), mixed with application adjuvants (provided for in subheading 3808.30.15)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1430. FLUMIOXAZIN.

Subchapter II is amended by inserting in numerical sequence the following new heading:

"	9902.05.25	2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynl)-2H-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1H-isoindole-1,3-(2H)-dione (Flumioxazin) (CAS No. 103361-09-7) (provided for in subheading 2934.99.15)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1431. NIGHT VISION MONOCULARS.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.05.26	Hand-held night vision monoculars, other than those containing a micro-channel plate to amplify electrons or having a photocathode containing gallium arsenide (provided for in subheading 9005.80.40)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1432. 2,4-XYLIDINE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.05.28	2,4-Xylidine (CAS No. 95-68-1) (provided for in subheading 2921.49.10)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1433. R118118 SALT.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.05.29	R118118 Salt - benzoic acid, 3-[2-chloro-4-(trifluoromethyl) phenoxy]-(CAS No. 63734-62-3) (provided in subheading 2918.90.20)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1434. NMSBA.

(a) CALENDAR YEAR 2004.—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.05.30	4-(Methylsulfonyl)-2-nitrobenzoic acid (CAS No. 110964-79-9) (provided for in subheading 2916.39.45)	0.28%	No change	No change	On or before 12/31/2004	".

(b) CALENDAR YEAR 2005.—

(1) IN GENERAL.—Heading 9902.29.82, as added by subsection (a), is amended—

(A) by striking "0.28%" and inserting "0.16%"; and

(B) by striking "On or before 12/31/2004" and inserting "On or before 12/31/2005".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on January 1, 2005.

(c) CALENDAR YEARS 2006 THROUGH 2008.—

(1) IN GENERAL.—Heading 9902.29.82, as added by subsection (a) and amended by subsection (b), is further amended—

(A) by striking "0.16%" and inserting "1.1%"; and

(B) by striking "On or before 12/31/2005" and inserting "On or before 12/31/2008".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on January 1, 2006.

SEC. 1435. CERTAIN SATELLITE RADIO BROADCASTING APPARATUS.

(a) CALENDAR YEAR 2004.—Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.04.35	Reception apparatus for satellite radio broadcasting, other than satellite radio broadcast receivers described in subheading 8527.21.40 (provided in subheading 8527.90.95)	5.2%	No change	No change	On or before 12/31/2004	".

(b) CALENDAR YEAR 2005.—

(1) IN GENERAL.—Heading 9902.04.35, as added by subsection (a), is amended—

(A) by striking "5.2%" and inserting "5.4%"; and

(B) by striking "On or before 12/31/2004" and inserting "On or before 12/31/2005".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on January 1, 2005.

(c) CALENDAR YEAR 2006.—

(1) IN GENERAL.—Heading 9902.04.35, as added by subsection (a) and amended by this section, is further amended—

(A) by striking "5.4%" and inserting "5.5%"; and

(B) by striking "On or before 12/31/2905" and inserting "On or before 12/31/2006".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on January 1, 2006.

SEC. 1436. ACEPHATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new heading:

"	9902.05.31	O,S-Dimethyl acetylphosphoramidothioate (Acephate) (CAS No. 30560-19-1) (provided for in subheading 2930.90.44)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1437. MAGNESIUM ALUMINUM HYDROXIDE CARBONATE HYDRATE.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new subheading:

"	9902.05.32	Magnesium aluminum hydroxide carbonate hydrate (CAS No. 11097-59-9) (provided for in subheading 2842.90.00); magnesium aluminum hydroxide carbonate hydrate coated with an organic fatty acid (provided for in subheading 3812.30.90)	Free	No change	No change	On or before 12/31/2006	".

SEC. 1438. CERTAIN FOOTWEAR.

Subchapter II of chapter 99 is amended by inserting in numerical sequence the following new subheading:

"	9902.05.35	Footwear consisting of an outer sole affixed to an incomplete or unfinished upper to which additional upper parts or material must be affixed to permit the footwear to be held to the foot, such footwear having a bottom of vulcanized rubber and produced by the hand-laid assembly process or hand made, the foregoing footwear of a type that is not designed to be worn over other footwear (provided for in subheadings 6401.99.30 and 6401.99.60	Free	Free	No change	On or before 12/31/2006	".

CHAPTER 2—EXISTING DUTY SUSPENSIONS AND REDUCTIONS

SEC. 1451. EXTENSION OF CERTAIN EXISTING DUTY SUSPENSIONS.

(a) EXISTING DUTY SUSPENSIONS.—Each of the following headings is amended by striking out the date in the effective period column and inserting "12/31/2006":

(1) Heading 9902.30.90 (relating to 3-amino-2′-(sulfato-ethyl sulfonyl) ethyl benzamide).
(2) Heading 9902.32.91 (relating to MUB 738 INT).
(3) Heading 9902.30.31 (relating to 5-amino-N-(2-hydroxyethyl)-2,3-xylenesulfonamide).
(4) Heading 9902.29.46 (relating to 2-amino-5-nitrothiazole).
(5) Heading 9902.32.14 (relating to 2-methyl-4,6-bis[(octylthio) methyl]phenol).
(6) Heading 9902.32.30 (relating to 4-[[4,6-bis(octylthio)-1,3,5-triazin-2-yl]amino]-2,6-bis(1,1-dimethylethyl)phenol).
(7) Heading 9902.32.16 (relating to calcium bis[monoethyl(3,5-di-tert-butyl-4-hydroxybenzyl) phosphonate]).
(8) Heading 9902.38.69 (relating to nicosulfuron formulated product ("Accent")).
(9) Heading 9902.33.63 (relating to DPX–E9260).
(10) Heading 9902.33.59 (relating to DPX–E6758).
(11) Heading 9902.33.61 (relating to carbamic acid (U-9069)).
(12) Heading 9902.29.35 (relating to IN–N5297).
(13) Heading 9902.28.19 (relating to an ultraviolet dye).
(14) Heading 9902.32.07 (relating to certain organic pigments and dyes).
(15) Heading 9902.29.07 (relating to 4-hexylresorcinol).
(16) Heading 9902.29.37 (relating to certain sensitizing dyes).
(17) Heading 9902.85.42 (relating to certain cathode-ray tubes).
(18) Heading 9902.30.14 (relating to a fluorinated compound)
(19) Heading 9902.29.55 (relating to a certain light absorbing photo dye).
(20) Heading 9902.32.55 (relating to methyl thioglycolate).
(21) Heading 9902.29.62 (relating to chloro amino toluene).
(22) Headings 9902.28.08, 9902.28.09, and 9902.28.10 (relating to bromine-containing compounds).
(23) Heading 9902.32.62 (relating to filter blue green photo dye).
(24) Heading 9902.32.99 (relating to 5-[(3,5-dichlorophenyl)-thio]-4-(1-methylethyl-1)-(4-pyridin lmethyl)-1H-imidazole-2-methanol carbamate).
(25) Heading 9902.32.97 (relating to (2E,4S)-4-(((2R,5S)-2-((4-fluorophenyl)-methyl)-6-methyl-5-((5-methyl-3-isoxazolyl)-carbonyl y)amino)-1,4-dioroheptyl)-amino)-5-((3S)-2-oxo-3-pyrrolidinyl)-2-pentenoic acid, ethyl ester).
(26) Heading 9902.29.87 (relating to Baytron M).
(27) Heading 9902.39.15 (relating to Baytron P).
(28) Heading 9902.39.30 (relating to certain ion-exchange resins).
(29) Heading 9902.28.01 (relating to thionyl chloride).
(30) Heading 9902.32.12 (relating to DEMT).
(31) Heading 9902.29.03 (relating to p-hydroxybenzoic acid).
(32) Headings 9902.29.83 and 9902.38.10 (relating to iminodisuccinate).
(33) Heading 9902.38.11 (relating to mesamoll).
(34) Heading 9902.38.15 (relating to Baytron C-R).
(35) Heading 9902.29.25 (relating to ortho-phenylphenol (OPP)).
(36) Heading 9902.38.31 (relating to Vulkalent E/C).
(37) Heading 9902.31.14 (relating to desmedipham).
(38) Heading 9902.31.13 (relating to phenmedipham).
(39) Heading 9902.30.16 (relating to diclofop methyl).
(40) Heading 9902.33.40 (relating to R115777).
(41) Heading 9902.29.10 (relating to imazalil).
(42) Heading 9902.29.22 (relating to Norbloc 7966).
(43) Heading 9902.38.09 (relating to Fungaflor 500 EC).
(44) Heading 9902.32.73 (relating to Solvent Blue 124).
(45) Heading 9902.29.73 (relating to 4-amino-2,5-dimethoxy-N-phenylbenzene sulfonamide).
(46) Heading 9902.32.72 (relating to Solvent Blue 104).
(47) Heading 9902.34.01 (relating to sodium petroleum sulfonate).
(48) Heading 9902.29.71 (relating to isobornyl acetate).
(49) Heading 9902.29.70 (relating to certain TAED chemicals).
(50) Heading 9902.29.58 (relating to diethyl phosphorochidothioate).
(51) Heading 9902.29.17 (relating to 2,6-dichloroaniline).
(52) Heading 9902.29.59 (relating to benfluralin).
(53) Heading 9902.29.26 (relating to 1,3-diethyl-2-imidazolidinone).
(54) Heading 9902.29.06 (relating to diphenyl sulfide).
(55) Heading 9902.32.93 (relating to methoxyfenozide).
(56) Heading 9902.32.89 (relating to triazamate).
(57) Heading 9902.29.80 (relating to propiconazole).
(58) Heading 9902.32.92 (relating to β-Bromo-β-nitrostyrene).
(59) Heading 9902.29.61 (relating to quinoline).
(60) Heading 9902.29.25 (relating to 2-phenylphenol).
(61) Heading 9902.29.08 (relating to 3-amino-5-mercapto-1,2,4-triazole).
(62) Heading 9902.29.16 (relating to 4,4-dimethoxy-2-butanone).
(63) Heading 9902.32.87 (relating to fenbuconazole).
(64) Heading 9902.32.90 (relating to diiodomethyl-p-tolylsulfone).
(65) Heading 9902.28.16 (relating to propiophenone).
(66) Heading 9902.28.17 (relating to meta-chlorobenzaldehyde).
(67) Heading 9902.28.15 (relating to 4-bromo-2-fluoroacetanilide).
(68) Heading 9902.32.82 (relating to 2,6, dichlorotoluene).
(69) Heading 9902.80.05 (relating to cobalt boron).
(70) Heading 9902.72.02 (relating to ferroboron).
(71) Heading 9902.32.85 (relating to 4,4′ difluorobenzophenone).
(72) Heading 9902.29.34 (relating to certain light absorbing photo dyes).

(73) Heading 9902.29.38 (relating to certain imaging chemicals).

(74) Heading 9902.28.18 (relating to 3,5-dibromo-4-hydoxybenzonitril).

(75) Heading 9902.29.64 (relating to cyclanilide technical).

(76) Heading 9902.29.98 (relating to fipronil technical).

(77) Heading 9902.38.04 (relating to 3,5-dibromo-4-hydoxybenzonitril ester and inerts).

(78) Heading 9902.29.23 (relating to P-nitro toluene-o-sulfonic acid).

(79) Heading 9902.28.20 (relating to ammonium bifluoride).

(80) Heading 9902.39.01 (relating to poly(vinyl chloride) (PVC) self-adhesive sheets.

(81) Heading 9902.32.49 (relating to 11-aminoundecanoic acid).

(82) Heading 9902.69.01 (relating to certain high-end ceramic cutlery).

(b) OTHER MODIFICATIONS.—

(1) CERTAIN CATHODE-RAY TUBES.—Heading 9902.85.41 is amended—

(A) by striking "1%" and inserting "Free"; and

(B) in the effective period column, by striking the date contained therein and inserting "12/31/2006".

(2) ETHALFLURALIN.—Heading 9902.30.49 is amended—

(A) by striking "3.5%" and inserting "Free"; and

(B) in the effective period column, by striking the date contained therein and inserting "12/31/2006".

(3) DMDS.—Heading 9902.33.92 is amended—

(A) by striking "2933.59.80" and inserting "2933.59.95"; and

(B) in the effective period column, by striking the date contained therein and inserting "12/31/2006".

(4) CERTAIN POLYAMIDES.—Heading 9902.39.08 is amended—

(A) by striking "forms of polyamide-6, polyamide-12, and polyamide-6,12 powders (CAS Nos. 25038-54-4, 25038-74-8, and 25191-04-1) (provided for in subheading 3908.10.00)" and inserting "ORGASOL® polyamide powders (provided for in subheading 3908.10.00 or 3908.90.70)"; and

(B) in the effective period column, by striking the date contained therein and inserting "12/31/2006".

(5) BUTRALIN.—Heading 9902.38.00 is amended by striking "3808.31.15" and inserting "3808.30.15".

(6) PRO-JET CYAN 1 RO FEED; PRO-JET FAST BLACK 287 NA PASTE/LIQUID FEED.—

(A) IN GENERAL.—Paragraph (2) in each of sections 1222(c) and 1223(c) of the Tariff Suspension and Trade Act of 2000 are amended by striking "January 1, 2001" and inserting "January 1, 2002".

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect as if such amendments had been enacted immediately after the enactment of the Tariff Suspension and Trade Act of 2000.

(7) 2-METHYL-4-CHLOROPHENOXYACETIC ACID.—Heading 9902.29.81 is amended—

(A) in the general rate of duty column, by striking "2.6%" and inserting "1.8%"; and

(B) in the effective period column, by striking the date contained therein and inserting "12/31/2006".

(8) STARANE F.—Heading 9902.29.77 is amended—

(A) in the general rate of duty column, by striking "Free" and inserting "1.5%"; and

(B) in the effective period column, by striking the date contained therein and inserting "12/31/2006".

(9) TRIFLURALIN.—Heading 9902.29.02 is amended—

(A) by striking "3.3%" and inserting "Free"; and

(B) in the effective period column, by striking the date contained therein and inserting "12/31/2006".

(10) CERTAIN REDESIGNATIONS.—(A) The second heading 9902.29.02 (as added by section 1144 of the Tariff Suspension and Trade Act of 2000) is amended by redesignating such heading as heading 9902.05.33 and placing such heading in numerical sequence.

(B) The second heading 9902.39.07 (as added by section 1248 of the Tariff Suspension and Trade Act of 2000) by redesignating such heading as heading 9902.05.34 and placing such heading in numerical sequence.

(11) CERTAIN RAILWAY CAR BODY SHELLS.—(A) Heading 9902.86.07 is amended—

(i) in the article description, by striking "138" and inserting "up to 150"; and

(ii) in the effective period column, by striking the date contained therein and inserting "12/31/2006".

(B) Heading 9902.86.08 is amended—

(i) in the article description, by striking "148" and inserting "140"; and

(ii) in the effective period column, by striking the date contained therein and inserting "12/31/2006".

SEC. 1452. PIGMENT YELLOW 154.

Heading 9902.32.18 of the Harmonized Tariff Schedule of the United States is amended by striking "12/31/2002" and inserting "12/31/2006".

SEC. 1453. PIGMENT YELLOW 175.

Heading 9902.32.19 of the Harmonized Tariff Schedule of the United States is amended by striking "12/31/2002" and inserting "12/31/2006".

SEC. 1454. PIGMENT RED 208.

Heading 9902.32.27 of the Harmonized Tariff Schedule of the United States is amended by striking "12/31/2002" and inserting "12/31/2006".

SEC. 1455. PIGMENT RED 187.

Heading 9902.32.22 of the Harmonized Tariff Schedule of the United States is amended by striking "12/31/2002" and inserting "12/31/2006".

SEC. 1456. PIGMENT RED 185.

Heading 9902.32.26 of the Harmonized Tariff Schedule of the United States is amended by striking "12/31/2002" and inserting "12/31/2006".

SEC. 1457. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided in this chapter, the amendments made by this chapter apply to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2004.

(b) RETROACTIVE APPLICATION.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, upon proper request filed with the Bureau of Customs and Border Protection before the 90th day after the date of the enactment of this Act, any entry, or withdrawal from warehouse for consumption, of any good—

(1) that was made on or after January 1, 2004, and before the date of the enactment of this Act, and

(2) with respect to which there would have been no duty or a lower rate of duty if an amendment made by this chapter applied to such entry or withdrawal,

shall be liquidated or reliquidated as if such amendment applied to such entry or withdrawal.

Subtitle B—Other Tariff Provisions

CHAPTER 1—LIQUIDATION OR RELIQUIDATION OF CERTAIN ENTRIES

SEC. 1501. CERTAIN TRAMWAY CARS.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, upon proper request filed with the United States Customs Service within 180 days after the date of the enactment of this Act, the Customs Service shall liquidate or reliquidate the entry described in subsection (c) as free of duty.

(b) REFUND OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to a request for a liquidation or reliquidation of the entry under subsection (a) shall be refunded with interest within 180 days after the date on which request is made.

(c) AFFECTED ENTRY.—The entry referred to in subsection (a) is the entry on July 5, 2002, of 2 tramway cars (provided for in subheading 8603.10.00) manufactured in Plzen, Czech Republic, for the use of the city of Portland, Oregon (Entry number 529-0032191-1).

SEC. 1502. LIBERTY BELL REPLICA.

The Secretary of the Treasury shall admit free of duty a replica of the Liberty Bell imported from the Whitechapel Bell Foundry of London, England, by the Liberty Memorial Association of Green Bay and Brown County, Wisconsin, for use by the city of Green Bay, Wisconsin and Brown County, Wisconsin.

SEC. 1503. CERTAIN ENTRIES OF COTTON GLOVES.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, upon proper request filed with the United States Customs Service within 180 days after the date of the enactment of this Act, the Customs Service—

(1) shall reliquidate each entry described in subsection (c) containing any merchandise which, at the time of original liquidation, had been classified under subheading 6116.92.64 or subheading 6116.92.74; and

(2) shall reliquidate such merchandise under subheading 6116.92.88 at the rate of duty then applicable under such subheading.

(b) REFUND OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to a request for the reliquidation of an entry under subsection (a) shall be refunded with interest within 180 days after the date on which request is made.

(c) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
0397329-2	02/02/00
0395844-2	12/15/99
0394509-2	09/27/99
0393293-4	08/11/99
0391942-8	06/21/99
0389842-4	04/01/99
0387094-4	12/21/98
0386845-0	12/16/98
0385488-0	10/28/98
0384053-3	09/01/98
0382090-7	06/04/98
0381125-5	04/11/98
0289673-4	01/26/98
0288778-2	12/10/97
0288085-2	11/07/97
0386624-0	08/02/97
0284468-4	04/29/97
0283060-0	03/10/97
0281394-5	11/27/96
0274823-2	01/10/96
0274523-8	12/22/95
0274113-8	11/30/95
0273038-8	10/13/95
0272524-8	09/14/95
0272128-8	08/23/95
0271540-5	07/27/95
0270995-2	07/03/95
0270695-8	06/09/95
0269959-1	05/09/95
0269276-0	04/04/95
0265832-4	11/02/94
0264841-6	09/08/94

SEC. 1504. CERTAIN ENTRIES OF POSTERS.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 4911.91.20 at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 4911.91.40 on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (c) only if a request therefor is filed with the Customs Service within 90 days after the date of the enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry number	**Date of entry**
F1126496605	09/24/00
F1117735656	10/18/00
90100999235	02/14/01
90101010321	04/23/01
90101001700	02/28/01
28100674408	04/25/01
28100671081	04/09/01
28100670398	04/06/01
F1126187352	06/19/00
F1126530833	10/05/00
28100678433	05/18/01
90100999235	04/14/01
90101001700	02/28/01

SEC. 1505. CERTAIN ENTRIES OF POSTERS ENTERED IN 1999 AND 2000.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall—

(1) not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (c) containing any merchandise which, at the time of the original liquidation, was classified under subheading 4911.91.20 at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 4911.91.40 on the date of entry; and

(2) within 90 days after such liquidation or reliquidation—

(A) refund any excess duties paid with respect to such entries, including interest from the date of entry; or

(B) relieve the importer of record of any excess duties, penalties, or fines associated with the excess duties.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to any entry described in subsection (c) only if a request therefor is filed with the Customs Service within 90 days after the date of the enactment of this Act.

(c) ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry number	**Date of entry**
582-0002495-7	September 2, 1999
582-00938479	November 19, 1999
582-8905213-4	March 8, 1999
582-2250697-3	February 21, 2000
582-0197509-0	February 18, 2000
582-1296965-2	February 20, 2000
582-0212609-9	March 1, 2000
582-0215607-0	March 3, 2000
582-0242091-4	March 24, 2000
582-0046610-9	October 12, 1999
582-0251198-5	March 31, 2000
582-0002495-7	September 2, 1999
528-0088559-7	November 16, 1999
582-0093847-9	November 19, 1999
582-0068164-0	October 29, 1999
582-0163876-3	January 20, 2000
582-0136646-4	December 22, 1999
582-0126598-9	December 15, 1999
582-0111417-9	December 3, 1999
445-2163068-9	November 14, 1999
445-2161190-3	September 6, 1999
445-2163176-0	November 18, 1999
445-2164563-8	January 13, 2000
445-2166869-7	April 12, 2000
445-2162118-3	October 10, 1999
U16-0101858-7	May 2, 2000
182-0167758-2	November 1, 2000
445-21574465	April 8, 1999
445-21576098	April 19, 1999
445-21570216	March 22, 1999
445-21612422	September 7, 1999
445-21622611	October 17, 1999
445-21637700	December 12, 1999
445-21687804	June 22, 2000
445 21596443	July 6, 1999
ma704011174	February 21, 2001
ma704011232	February 20, 2001
ma704014616	March 13, 2001
ma704025497	May 11, 2001
445-03667865	June 23, 2000
445-03668798	June 28, 2000

SEC. 1506. CERTAIN ENTRIES OF 13-INCH TELEVISIONS.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 180 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under the following subheadings with respect to which there would have been no duty or a lesser duty if the amendments made by section 1003 of the Miscellaneous Trade and Technical Corrections Act of 1999 had applied to such entry or withdrawal:

(1) Subheading 8528.12.12.
(2) Subheading 8528.12.20.
(3) Subheading 8528.12.62.
(4) Subheading 8528.12.68.
(5) Subheading 8528.12.76.
(6) Subheading 8528.12.84.
(7) Subheading 8528.21.16.
(8) Subheading 8528.21.24.
(9) Subheading 8528.21.55.
(10) Subheading 8528.21.65.
(11) Subheading 8528.21.75.
(12) Subheading 8528.21.85.
(13) Subheading 8528.30.62.
(14) Subheading 8528.30.66.
(15) Subheading 8540.11.24.
(16) Subheading 8540.11.44.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefor is filed with the Customs Service within 90 days after the date of the enactment of this Act, and the request contains sufficient information to enable the Customs Service to locate the entry or reconstruct the entry if it cannot be located.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 180 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a), are as follows:

Entry number	**Date of entry**	**Date of liquidation**
110-17072538	11/03/98	09/17/99
110-17091314	11/23/98	10/08/99
110-17091322	11/23/98	10/08/99
110-17216804	12/31/98	11/12/99
110-20748215	04/20/99	03/03/00
110-20762802	04/28/99	03/10/00
110-20848544	05/12/99	03/31/00
110-20848569	05/18/99	03/31/00
110-20988456	06/22/99	05/04/00
110-20993563	06/22/99	05/15/00
110-20997705	06/22/99	05/05/00
110-63822017	06/09/97	05/05/00
110-63822041	06/09/97	
110-63822082	06/09/97	
110-68575370	07/11/97	05/22/98
110-68575610	07/11/97	05/22/98
110-15093163	10/05/98	08/20/99
110-15173551	11/02/98	09/17/99
110-17091132	11/07/98	09/24/99
110-17217265	12/05/98	10/15/99
110-20762364	04/12/99	02/18/00
110-63822025	06/09/97	
110-75485118	02/12/98	12/28/98
110-75492643	02/12/98	12/28/98
110-75793447	07/07/98	05/21/99
110-20993704	06/20/99	05/05/00
110-66600972	06/07/97	04/17/98
110-66603414	06/14/97	
110-66603448	06/07/97	04/17/98
110-66617810	06/21/97	05/01/98
110-66618099	06/23/97	05/08/98
110-68156429	07/12/97	05/22/98
110-68165818	07/19/97	05/29/98
110-68165826	07/19/97	05/29/98
110-68171576	07/26/97	06/05/98
110-68175767	08/02/97	06/12/98
110-68177029	08/02/97	06/12/98
110-68217833	08/16/97	06/26/98
110-68220167	08/16/97	07/06/98
110-68220183	08/19/97	07/06/98
110-68233418	08/24/97	07/10/98
110-68234424	08/25/97	07/10/98
110-70008550	09/20/97	07/31/98
110-70014707	09/20/97	07/31/98
110-70014723	09/20/97	07/31/98
110-70014731	09/30/97	07/31/98
110-70014756	09/20/97	07/31/98
110-70014798	09/20/97	07/31/98
110-70100464	10/11/97	08/21/98
110-70106651	10/19/97	09/04/98
110-70106669	10/19/97	09/04/98
110-70112584	10/25/97	09/04/98
110-70113970	10/25/97	09/04/98
110-70113996	10/25/97	09/04/98
110-70115199	10/25/97	09/04/98
110-70190978	11/08/97	09/18/98
110-70192990	11/08/97	09/18/98
110-70198906	11/15/97	09/25/98
110-70198914	11/15/97	09/25/98
110-70204233	11/29/97	10/09/98
110-70204266	11/22/97	10/02/98
110-75399046	12/19/97	10/30/98
110-75399103	01/04/98	11/20/98
110-75481455	01/24/98	12/04/98
110-75485563	01/24/98	12/04/98
110-75494953	02/07/98	12/18/98
110-04901383	07/11/97	05/22/98
110-33326985	07/07/97	05/22/98
110-63019333	07/11/97	05/22/98
110-63821993	06/07/97	04/17/98
110-66600378	06/20/97	05/01/98
110-66601004	06/20/97	05/01/98
110-66603380	06/20/97	05/01/98
110-66625441	07/07/97	05/22/98
110-66626951	07/07/97	05/22/98
110-68175825	08/04/97	06/19/98
110-68182938	08/11/97	06/26/98
110-68184140	08/11/97	06/26/98
110-68184918	08/11/97	06/26/98
110-68184926	08/11/97	06/26/98
110-68184934	08/11/97	06/26/98
110-68184942	08/11/97	06/26/98
110-68229994	09/08/97	07/24/98
110-68230000	09/08/97	07/24/98
110-68230232	09/03/97	07/17/98
110-70009715	09/22/97	08/07/98
110-70024698	10/07/98	08/21/98
110-70028764	10/13/97	08/28/98
110-70028772	10/13/97	08/28/98
110-70103625	10/30/98	09/11/98
110-70186810	11/13/97	09/25/98
110-70190937	11/26/97	10/09/98
110-70192362	11/19/97	10/02/98
110-70199151	11/26/97	10/09/98
110-70204555	12/04/97	10/16/98
110-70204563	12/04/97	10/16/98
110-70206360	12/06/97	10/23/98
110-75399079	01/07/98	11/20/98
110-75492627	02/11/98	12/28/98

Entry number	Date of entry	Date of liquidation
110-75492635	02/11/98	12/28/98
110-14975204	09/15/98	07/30/99
110-20848643	05/19/99	05/31/00
110-20988472	06/20/99	05/05/00
110-20993589	06/20/99	05/05/00
110-75485126	02/11/98	12/28/98
110-75793405	07/16/98	05/28/99
110-75793611	08/04/98	06/18/99
110-75931278	08/16/98	07/02/99
110-75938893	08/16/98	07/23/99

SEC. 1507. NEOPRENE SYNCHRONOUS TIMING BELTS.

(a) IN GENERAL.—Notwithstanding sections 514 and 520 of the Tariff Act of 1930 (19 U.S.C. 1514 and 1520), or any other provision of law, the United States Customs Service shall, not later than 90 days after the date of the enactment of this Act, liquidate or reliquidate the entries described in subsection (c).

(b) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of the entries under subsection (a), with interest accrued from the date of entry, shall be paid by the Customs Service within 90 days after such liquidation or reliquidation.

(c) ENTRIES.—The entries referred to in subsection (a) are the following:

Entry number	Date of entry	Date of liquidation
469/00133193	07/06/89	11/22/91
469/00136022	07/28/89	11/22/91
469/00143135	09/26/89	02/09/90
469/00148969	11/08/89	03/02/90
469/00152565	12/06/89	03/30/90
469/00154785	12/28/89	11/29/91
469/00159461	02/01/90	11/22/91
469/00161921	02/26/90	11/22/91
469/00170237	04/24/90	11/22/91
469/00173546	05/21/90	11/22/91
469/00176218	06/06/90	03/13/92
469/00137038	08/08/89	11/29/91
469/00152599	12/06/89	03/30/90
469/00152607	12/06/89	04/06/90
469/00159610	02/06/90	11/29/91
469/00169205	04/17/90	08/10/90

SEC. 1508. CERTAIN ENTRIES OF ROLLER CHAIN.

(a) LIQUIDATION OR RELIQUIDATION OF ENTRIES.—Notwithstanding sections 514 and 520 of the Tariff Act of 1930 (19 U.S.C. 1514 and 1520) or any other provision of law, the United States Customs Service shall, not later than 90 days after the date of enactment of this Act, liquidate or reliquidate the entries listed in subsection (b) without assessment of antidumping duties or interest and shall refund any antidumping duties or interest which were previously paid.

(b) AFFECTED ENTRIES.—The entries referred to in subsections (a) and (b) are the following:

Entry number	Date of entry	Port
12606577	05/04/89	Columbia-Snake River (Portland, Oregon)
12606593	05/08/89	Columbia-Snake River (Portland, Oregon)
12607492	05/30/89	Columbia-Snake River (Portland, Oregon)
12608680	06/09/89	Columbia-Snake River (Portland, Oregon)
00054863	07/28/89	Columbia-Snake River (Portland, Oregon)
00056181	08/21/89	Columbia-Snake River (Portland, Oregon)
00057973	09/25/89	Columbia-Snake River (Portland, Oregon)
25761120	11/20/89	Columbia-Snake River (Portland, Oregon)
25767150	03/12/90	Columbia-Snake River (Portland, Oregon)
25767762	03/22/90	Columbia-Snake River (Portland, Oregon)
85-4232312	04/09/85	Columbia-Snake River (Portland, Oregon)
85-4237582	07/18/85	Columbia-Snake River (Portland, Oregon)
85-4238086	07/25/85	Columbia-Snake River (Portland, Oregon)
85-4238976	08/19/85	Columbia-Snake River (Portland, Oregon)
85-4464818	09/11/85	Columbia-Snake River (Portland, Oregon)
85-4466722	09/27/85	Columbia-Snake River (Portland, Oregon)
86-4307787	10/30/85	Columbia-Snake River (Portland, Oregon)
86-4310389	11/21/85	Columbia-Snake River (Portland, Oregon)
86-4311715	12/31/85	Columbia-Snake River (Portland, Oregon)
86-4312109	01/10/86	Columbia-Snake River (Portland, Oregon)
86-4317078	02/28/86	Columbia-Snake River (Portland, Oregon)
86-4318349	03/17/86	Columbia-Snake River (Portland, Oregon)
85-4235937	06/15/85	Columbia-Snake River (Portland, Oregon)
36074057	09/12/96	Columbia-Snake River (Portland, Oregon)
36071137	05/08/96	Columbia-Snake River (Portland, Oregon)
36078074	03/26/97	Columbia-Snake River (Portland, Oregon)
85-4464177	08/26/85	Columbia-Snake River (Portland, Oregon)
36077688	03/11/97	Columbia-Snake River (Portland, Oregon)
36072788	07/18/96	Columbia-Snake River (Portland, Oregon)
36074990	11/06/96	Columbia-Snake River (Portland, Oregon)
81-4139170	06/30/81	Columbia-Snake River (Portland, Oregon)
81-4139992	07/23/81	Columbia-Snake River (Portland, Oregon)
81-4140868	08/06/81	Columbia-Snake River (Portland, Oregon)
81-4140871	08/07/81	Columbia-Snake River (Portland, Oregon)
81-4141469	08/28/81	Columbia-Snake River (Portland, Oregon)
81-4142219	09/23/81	Columbia-Snake River (Portland, Oregon)
82-4139364	11/03/81	Columbia-Snake River (Portland, Oregon)
82-4140939	12/02/81	Columbia-Snake River (Portland, Oregon)
82-4141598	12/15/81	Columbia-Snake River (Portland, Oregon)
82-4142571	01/14/82	Columbia-Snake River (Portland, Oregon)
82-4143499	03/02/82	Columbia-Snake River (Portland, Oregon)
82-4145390	04/01/82	Columbia-Snake River (Portland, Oregon)
82-4146179	04/22/82	Columbia-Snake River (Portland, Oregon)
82-4147932	06/02/82	Columbia-Snake River (Portland, Oregon)
82-4148601	06/22/82	Columbia-Snake River (Portland, Oregon)
82-4149626	07/29/82	Columbia-Snake River (Portland, Oregon)
82-4150291	08/10/82	Columbia-Snake River (Portland, Oregon)
82-4151203	09/14/82	Columbia-Snake River (Portland, Oregon)
83-4124149	10/07/82	Columbia-Snake River (Portland, Oregon)
83-4124547	10/14/82	Columbia-Snake River (Portland, Oregon)
83-4125342	11/08/82	Columbia-Snake River (Portland, Oregon)
83-4125407	11/15/82	Columbia-Snake River (Portland, Oregon)
83-4126011	12/08/82	Columbia-Snake River (Portland, Oregon)
83-4126448	12/21/82	Columbia-Snake River (Portland, Oregon)
83-4126927	12/29/82	Columbia-Snake River (Portland, Oregon)
83-4127191	01/10/83	Columbia-Snake River (Portland, Oregon)
83-4129050	02/28/83	Columbia-Snake River (Portland, Oregon)
83-4129678	03/17/83	Columbia-Snake River (Portland, Oregon)
83-4129937	03/30/83	Columbia-Snake River (Portland, Oregon)
83-4131491	04/29/83	Columbia-Snake River (Portland, Oregon)
83-4133460	06/15/83	Columbia-Snake River (Portland, Oregon)
84-4154743	11/29/83	Columbia-Snake River (Portland, Oregon)
84-4161972	04/18/84	Columbia-Snake River (Portland, Oregon)
84-4163543	05/22/84	Columbia-Snake River (Portland, Oregon)
84-4164568	06/13/84	Columbia-Snake River (Portland, Oregon)
84-4161972	06/18/84	Columbia-Snake River (Portland, Oregon)
84-4165758	07/06/84	Columbia-Snake River (Portland, Oregon)
84-4421214	07/30/84	Columbia-Snake River (Portland, Oregon)
84-4421366	08/06/84	Columbia-Snake River (Portland, Oregon)
84-4421418	08/22/84	Columbia-Snake River (Portland, Oregon)
84-4424389	09/21/84	Columbia-Snake River (Portland, Oregon)

Entry number	Date of entry	Port
85-4220094	10/03/84	Columbia-Snake River (Portland, Oregon)
85-4220816	10/11/84	Columbia-Snake River (Portland, Oregon)
85-4221527	10/25/84	Columbia-Snake River (Portland, Oregon)
85-4222199	11/07/84	Columbia-Snake River (Portland, Oregon)
85-4222856	11/15/84	Columbia-Snake River (Portland, Oregon)
85-4224126	12/10/84	Columbia-Snake River (Portland, Oregon)
85-4225413	01/15/85	Columbia-Snake River (Portland, Oregon)
85-4230071	02/28/85	Columbia-Snake River (Portland, Oregon)
85-4231070	03/18/85	Columbia-Snake River (Portland, Oregon)
85-4234828	05/21/85	Columbia-Snake River (Portland, Oregon)
85-4237524	07/15/85	Columbia-Snake River (Portland, Oregon)
12561053	05/13/87	Columbia-Snake River (Portland, Oregon)
12563349	06/20/87	Columbia-Snake River (Portland, Oregon)
12564826	07/19/87	Columbia-Snake River (Portland, Oregon)
12567126	08/20/87	Columbia-Snake River (Portland, Oregon)
12568835	09/18/87	Columbia-Snake River (Portland, Oregon)
12570963	10/21/87	Columbia-Snake River (Portland, Oregon)
12574346	12/15/87	Columbia-Snake River (Portland, Oregon)
12574619	12/23/87	Columbia-Snake River (Portland, Oregon)
12577752	02/03/88	Columbia-Snake River (Portland, Oregon)
25768422	04/09/90	Columbia-Snake River (Portland, Oregon)
25768752	04/16/90	Columbia-Snake River (Portland, Oregon)
25770750	05/15/90	Columbia-Snake River (Portland, Oregon)
25770758	05/22/90	Columbia-Snake River (Portland, Oregon)
25772333	06/26/90	Columbia-Snake River (Portland, Oregon)
25773828	07/25/90	Columbia-Snake River (Portland, Oregon)
20281783	08/22/90	Columbia-Snake River (Portland, Oregon)
20281809	08/24/90	Columbia-Snake River (Portland, Oregon)
20288762	10/08/90	Columbia-Snake River (Portland, Oregon)
20291360	11/01/90	Columbia-Snake River (Portland, Oregon)
20296245	11/29/90	Columbia-Snake River (Portland, Oregon)
20300369	01/04/91	Columbia-Snake River (Portland, Oregon)
20305772	02/19/91	Columbia-Snake River (Portland, Oregon)
83-4130751	04/18/83	Columbia-Snake River (Portland, Oregon)
83-4131365	05/01/83	Columbia-Snake River (Portland, Oregon)
83-4132649	06/02/83	Columbia-Snake River (Portland, Oregon)
83-4133486	06/23/83	Columbia-Snake River (Portland, Oregon)
83-4134935	07/27/83	Columbia-Snake River (Portland, Oregon)
83-4135617	08/15/83	Columbia-Snake River (Portland, Oregon)
83-4136056	08/30/83	Columbia-Snake River (Portland, Oregon)
83-4137178	09/23/83	Columbia-Snake River (Portland, Oregon)
84-4152253	10/12/83	Columbia-Snake River (Portland, Oregon)
84-4153689	11/04/83	Columbia-Snake River (Portland, Oregon)
84-4154662	11/29/83	Columbia-Snake River (Portland, Oregon)
84-4156110	12/29/83	Columbia-Snake River (Portland, Oregon)
84-4156709	01/13/84	Columbia-Snake River (Portland, Oregon)
84-4157245	01/25/84	Columbia-Snake River (Portland, Oregon)
84-4158419	02/13/84	Columbia-Snake River (Portland, Oregon)
84-4158956	02/27/84	Columbia-Snake River (Portland, Oregon)
84-4160672	03/29/84	Columbia-Snake River (Portland, Oregon)
85-4236596	06/28/85	Columbia-Snake River (Portland, Oregon)
12581978	04/06/88	Columbia-Snake River (Portland, Oregon)
12586944	06/22/88	Columbia-Snake River (Portland, Oregon)
12588411	07/14/88	Columbia-Snake River (Portland, Oregon)
12590052	08/10/88	Columbia-Snake River (Portland, Oregon)
12591464	08/31/88	Columbia-Snake River (Portland, Oregon)
12592843	09/21/88	Columbia-Snake River (Portland, Oregon)
12594153	10/06/88	Columbia-Snake River (Portland, Oregon)
12594526	10/12/88	Columbia-Snake River (Portland, Oregon)
12595051	10/21/88	Columbia-Snake River (Portland, Oregon)
12600166	01/11/89	Columbia-Snake River (Portland, Oregon)
12601259	03/25/89	Columbia-Snake River (Portland, Oregon)
85-4221705	10/29/84	Columbia-Snake River (Portland, Oregon)
85-4122876	05/25/85	Los Angeles, California
81-1328861		Honolulu, Hawaii
85-1340139	11/19/84	Honolulu, Hawaii
83-1310040	10/21/82	Honolulu, Hawaii
84-1326082	11/16/83	Honolulu, Hawaii
86-1129340	10/17/85	Honolulu, Hawaii
86-1135525	03/11/86	Honolulu, Hawaii
85-2326987	04/22/85	San Francisco, California
31585289	04/02/96	San Francisco, California
31594950	12/02/96	San Francisco, California
82-1627918	04/27/82	San Francisco, California
83-1668145	10/19/82	San Francisco, California
83-1671640	11/05/82	San Francisco, California
83-1689496	12/23/82	San Francisco, California
07202257	05/23/90	San Francisco, California
07204287	09/05/90	San Francisco, California
84-2390622	07/12/84	Seattle, Washington

SEC. 1509. DRAWBACK CLAIM RELATING TO JUICES ENTERED IN APRIL 1993.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, the United States Customs Service shall, not later than 90 days after the date of the enactment of this Act, reliquidate the entry described in subsection (c) at the full amount claimed in such entry.

(b) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the reliquidation under subsection (a) shall be paid by the Customs Service within 90 days after such reliquidation.

(c) AFFECTED ENTRY.—The entry referred to in subsection (a) is as follows:

Entry Number	Date of Entry	Date of Liquidation
032 0001141 3	04/28/93	06/25/99

SEC. 1510. DRAWBACK CLAIM RELATING TO JUICES ENTERED IN MARCH 1994.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, the United States Customs Service shall, not later than 90 days after the date of the enactment of this Act, reliquidate the entry described in subsection (c) at the full amount claimed in such entry.

(b) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the reliquidation under subsection (a) shall be paid by the Customs Service within 90 days after such reliquidation.

(c) AFFECTED ENTRY.—The entry referred to in subsection (a) is as follows:

Entry Number	Date of Entry	Date of Liquidation
032 0001138 9	03/30/94	06/25/99

SEC. 1511. CERTAIN ENTRIES PREMATURELY LIQUIDATED IN ERROR.

(a) IN GENERAL.—Notwithstanding sections 514 and 520 of the Tariff Act of 1930 (19 U.S.C. 1514 and 1520), or any other provision of law, the United States Customs Service shall, not later than 90 days after the date of the enactment of this Act, reliquidate those entries described in subsection (c), in accordance with the *final decision of the International Trade Administration of the Department of Commerce, and the final results of the administrative reviews, for entries made on or after December 1, 1993, and before April 1, 2001.*

(b) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid by the Customs Service within 90 days after such liquidation or reliquidation.

(c) ENTRY LIST.—The entries referred to in subsection (a), are as follows:

Entry number	Date of entry	Date of liquidation
669-26046013	02/09/94	07/12/96
112-62707166	02/12/94	05/14/99
669-26046716	03/05/94	07/12/96
669-26046997	03/16/94	07/12/96
669-26047094	03/22/94	07/12/96
669-26047508	04/03/94	07/12/96
225-41000430	04/11/94	07/29/94
669-26047862	04/19/94	07/12/96
669-26048027	04/22/94	07/12/96
669-26048050	04/22/94	07/12/96
669-26048068	04/22/94	07/12/96
669-26049199	06/05/94	07/12/96
051-01380045	06/14/94	06/21/96
225-21019541	07/02/94	Unknown
669-26050742	07/20/94	07/12/96
669-26051294	08/16/94	07/19/96
669-26051377	08/17/94	07/12/96
669-26051401	08/23/94	07/19/96
051-01378452	09/01/94	08/16/96
669-26051906	09/06/94	07/19/96
669-26052714	10/05/94	07/19/96
669-26054629	01/02/95	07/12/96
669-26054918	01/21/95	07/12/96
669-00985582	02/17/95	09/17/99
225-41030148	05/01/95	01/20/95
112-85106669	06/07/95	02/25/00
112-80968196	08/03/95	11/17/95
669-26059347	09/02/95	07/12/96
112-79650961	09/27/95	12/29/95
669-28017335	10/06/95	06/14/96
112-05038720	05/01/96	08/02/96
112-17629326	01/06/97	04/18/97
112-17629326	03/12/97	04/18/97
669-01225053	06/12/97	10/15/99
669-01223637	06/25/97	10/08/99
669-01225418	06/25/97	10/08/99
669-01225913	06/27/97	10/08/99
669-01227380	07/03/97	10/08/99
669-01232166	07/07/97	10/08/99
669-01230533	07/09/97	10/08/99
669-01236357	07/30/97	10/08/99
100-47966294	08/08/97	08/26/99
669-01241811	08/13/97	10/08/99
669-01245838	08/27/97	10/08/99
669-01247933	09/04/97	10/15/99
669-01251448	09/21/97	10/08/99
669-01254020	09/24/97	10/08/99
669-01256801	10/01/97	10/08/99
669-01259466	10/15/97	10/08/99
669-01260753	10/15/97	10/08/99
669-01261363	10/16/97	10/08/99
669-01262650	10/22/97	10/08/99
669-01263856	10/24/97	10/08/99
669-01267337	11/06/97	10/08/99
669-01269200	11/12/97	10/08/99
669-01271784	11/20/97	10/08/99
669-01271800	11/23/97	10/08/99
669-01272907	11/30/97	10/08/99
669-01273673	11/30/97	10/08/99
669-01274119	11/30/97	10/08/99
669-01276585	12/04/97	10/08/99
669-01278763	12/14/97	10/15/99
669-01283441	12/30/97	10/08/99
669-01286948	01/09/98	10/08/99
669-01292186	01/22/98	10/08/99
669-01291964	01/23/98	10/08/99
112-14206987	01/23/98	02/22/99
669-01295130	02/01/98	10/08/99
669-01296955	02/05/98	10/08/99
669-01297649	02/12/98	10/08/99
669-01298530	02/12/98	10/08/99
669-01302126	02/21/98	10/08/99
669-01302134	02/21/98	10/08/99
669-01302530	02/21/98	10/08/99
669-01303546	02/21/98	10/08/99
669-01304569	02/27/98	10/08/99
669-01305947	03/05/98	10/08/99
669-01306978	03/07/98	10/08/99
669-01306986	03/07/98	10/08/99
669-01307554	03/12/98	10/08/99
669-01312711	03/14/98	10/08/99
669-28050047	03/20/98	04/02/99
669-01312703	03/21/98	10/08/99
669-01318072	04/07/98	10/08/99
669-01324781	04/24/98	10/08/99
669-01325218	04/25/98	10/08/99
669-01327586	04/30/98	10/08/99
669-01330283	May 98	10/08/99
669-01332081	May 98	10/08/99
112-35098876	05/08/98	04/02/99
669-01332081	05/16/98	10/08/99
669-01335357	05/26/98	10/08/99
700-07050910	05/30/98	03/24/00
110-54366892	06/03/98	04/16/99
112-38590861	09/09/98	07/23/99
112-01742119	04/20/99	08/09/96
110-64694523	10/07/99	10/01/99

SEC. 1512. CERTAIN POSTERS ENTERED DURING 2000 AND 2001.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 4911.91.20 of the Harmonized Tariff Schedule of the United States at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 4911.91.40 of the Harmonized Tariff Schedule of the United States on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefor is filed with the Customs Service within 90 days after the date of the enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
F1126496605	09-24-00
F1117735656	10-18-00
90100999235	02-14-01
90101010321	04-23-01
90101001700	02-28-01
28100674408	04-25-01
28100671081	04-09-01
28100670398	04-06-01
F1126187352	06-19-00
F1126530833	10-05-00
28100678433	05-18-01
90100999235	04-14-01
90101001700	02-28-01

SEC. 1513. CERTAIN OTHER ENTRIES.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, and subject to subsection (b), the United States Customs Service shall, not later than 180 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) by applying the column 1 general rate of duty of the Harmonized Tariff Schedule of the United States to each entry that is liquidated or reliquidated, regardless of whether the entry was made under the column 1 special rate of duty of such schedule.

(b) REQUESTS.—Liquidation or reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only upon a request therefor is filed with the Customs Service.

(c) PAYMENT OF AMOUNTS DUE.—Any amounts due to the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 180 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a), filed at the ports of Laredo, Texas (designated as port of entry 2304), Hidalgo, Texas (designated as port of entry 2305), and Wilmington, Delaware (designated as port of entry 1103), are as follows:

Entry number	Port of Entry	Date of Entry
95300618568	2305	02/22/95
95300618576	2305	02/22/95
95300619236	2305	02/27/95
95300619277	2305	02/27/95
95300619806	2305	03/02/95
95300619871	2305	03/02/95
95300620142	2305	03/07/95
95300620176	2305	03/03/95
95300620184	2305	03/03/95
95300620911	2305	03/07/95
95300635133	2305	04/07/95
95300635141	2305	04/07/95
95300635950	2305	04/12/95
95300635968	2305	04/12/95
95300636370	2305	04/14/95
95300636388	2305	04/14/95
95300640554	2305	05/09/95
95300640653	2305	05/10/95
95300656592	2304	11/05/95
95300657665	2304	11/29/95
95300657756	2304	12/02/95
95300658358	2304	12/16/95
95300658408	2304	12/17/95
95300658572	2304	12/19/95
95300658648	2304	12/22/95
95300658754	2304	12/22/95
95300658945	2304	12/27/95
95300659018	2304	12/28/95
95300659117	2304	12/29/95
95300659208	2304	01/02/96
95300659398	2304	01/05/96
95300659513	2304	01/08/96
95300659547	2304	01/09/96
95300659679	2304	01/11/96
95300659737	2304	01/14/96
95300659794	2304	01/13/96
95300659810	2304	01/14/96
95300659844	2304	01/15/96
95300659851	2304	01/15/96
95300659901	2304	01/16/96
95300659919	2304	01/16/96
95300659935	2304	01/17/96
95300660065	2304	01/18/96
95300660107	2304	01/19/96
95300660172	2304	01/22/96
95300660180	2304	01/22/96
95300660248	2304	01/22/96
95300660362	2304	01/23/96
95300660388	2304	01/24/96
95300660560	2304	01/25/96
95300660743	2304	01/27/96
95300660818	2304	01/29/96
95300660826	2304	01/29/96
95300704053	2305	05/16/95
95300704061	2305	05/16/95
95300704889	2305	05/22/95
95300704897	2305	05/22/95
95300705886	2305	05/31/95
95300705969	2305	05/30/95
95300706900	2305	06/09/95
95300706926	2305	06/09/95
95300752656	2305	02/02/96
95300752698	2305	02/04/96
95300752805	2305	02/05/96
95300752813	2305	02/05/96
95300752870	2305	02/06/96
95300752904	2305	02/06/96
95300753001	2305	02/07/96
95300753076	2305	02/09/96
R7410350736	1103	11/29/95
R7410350769	1103	11/29/95
R7410350801	1103	11/29/95
R7410350835	1103	11/29/95
T8500081575	2305	06/16/95
T8500081591	2305	06/16/95
T8500081716	2305	06/20/95
T8500081724	2305	06/20/95

Entry number	Port of Entry	Date of Entry
T8500081815	2305	06/27/95
T8500081823	2305	06/28/95
T8500081922	2305	06/27/95
T8500081930	2305	06/27/95
T8500082052	2305	07/01/95
T8500082060	2305	07/01/95
T8500082326	2305	07/14/95
T8500082342	2305	07/14/95
T8500082458	2305	07/22/95
T8500082482	2305	07/22/95
T8500082508	2305	07/24/95
T8500082516	2305	07/24/95
T8500082581	2305	07/30/95
T8500082599	2305	07/30/95
T8500082656	2305	08/03/95
T8500082664	2305	08/03/95
T8500082748	2305	08/09/95
T8500082797	2305	08/10/95
T8500082839	2305	08/14/95
T8500082847	2305	08/14/95
T8500084462	2305	10/22/95

SEC. 1514. CERTAIN RAILWAY PASSENGER COACHES.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, upon proper request filed with the United States Customs Service within 180 days after the date of the enactment of this Act, the Customs Service shall liquidate or reliquidate the entry described in subsection (c) as free of duty.

(b) REFUND OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to a request for a liquidation or reliquidation of the entry under subsection (a) shall be refunded with interest within 180 days after the date on which request is made.

(c) AFFECTED ENTRY.—The entry referred to in subsection (a) is the entry on July 12, 2002, of railway passenger coaches (provided for in subheading 8605.00.00) (Entry number 2210888343-4).

SEC. 1515. CERTAIN ENTRIES OF VANADIUM CARBIDES AND VANADIUM CARBONITRIDE.

(a) IN GENERAL.—Notwithstanding sections 514 and 520 of the Tariff Act of 1930 (19 U.S.C. 1514 and 1520) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service, shall, not later than 180 days after receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of its entry or release from warehouse for consumption, was classified under subheading 2849.90.50 of the Harmonized Tariff Schedule of the United States, at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated at the Special rate of duty for such subheading 2849.90.50 on the date of entry without regard to the country of origin of such merchandise.

(b) REQUESTS.—Liquidation or reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefor is filed with the Customs Service within 90 days after the date of enactment of this Act and the request contains sufficient information to enable the Customs Service to locate the entry or reconstruct the entry if it cannot be located.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of any entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a), filed at the port of Baltimore, are as follows:

Entry date	Entry number	Estimated liquidation date
08/07/98	788-3827590-3	06/20/99
08/07/98	788-3827650-5	06/20/99
08/21/98	788-3830120-4	07/01/99
09/18/98	788-3838000-0	07/25/99
09/26/98	788-3842300-8	08/08/99
10/02/98	788-3842310-7	08/16/99
09/26/98	320-6	08/08/99
10/08/98	788-3844370-9	08/16/99
10/22/98	788-3850440-1	09/01/99
10/22/98	788-3850450-0	09/01/99
11/06/98	788-3853680-9	09/22/99
11/06/98	788-3853690-8	09/22/99
11/13/98	788-3853730-2	10/02/99
11/12/98	788-3855290-5	09/22/99
11/19/98	788-3855300-2	09/27/99
12/27/98	788-3868050-8	11/09/99
02/09/99	788-3877120-8	11/09/99
02/09/99	788-3877130-7	11/09/99
03/05/99	788-3883260-4	12/09/99
03/02/99	788-3883270-3	11/22/99
03/26/99	788-3888540-1	11/26/99
04/01/99	788-3888550-3	12/06/99
04/11/99	788-3889130-2	12/16/99
04/16/99	788-3896360-7	12/26/99
04/30/99	788-3897150-1	01/10/00
04/30/99	788-3897160-0	01/10/00
04/25/99	788-3897170-9	01/18/00
06/11/99	788-3913450-5	02/20/00
06/18/99	788-3915060-0	02/22/00
07/09/99	788-3921190-7	03/08/00
07/12/99	788-3923420-6	03/08/00
07/23/99	788-3925480-8	03/18/00
07/30/99	788-3929180-0	03/28/00
07/30/99	788-3929190-9	03/28/00
08/06/99	788-3929200-6	04/10/00
08/06/99	788-3929210-5	04/10/00
08/13/99	788-3931300-0	04/20/00
08/13/99	788-3931310-9	04/20/00
08/28/99	788-3936980-4	04/28/00
08/20/99	788-3936990-3	04/28/00
09/10/99	788-3938010-5	05/06/00
10/08/99	788-3948100-5	05/22/00
10/08/99	788-3948110-4	05/22/00
10/08/99	788-3948120-3	05/22/00
10/15/99	788-3951910-1	05/28/00
10/15/99	788-3951920-0	05/28/00
10/15/99	788-3951930-9	05/28/00
10/29/99	788-3957960-1	06/01/00
10/29/99	788-3957950-0	06/01/00
11/10/99	788-3959830-3	06/15/00
11/13/99	788-3961730-1	06/18/00
11/13/99	788-3961740-0	06/18/00
12/02/99	788-3966670-4	07/05/00
12/02/99	788-3966680-3	07/05/00
12/13/99	788-3971200-3	07/12/00
12/13/99	788-3971210-2	07/12/00

SEC. 1516. STEEL WIRE ROPE ENTRIES.

(a) IN GENERAL.—Notwithstanding sections 514 and 520 of the Tariff Act of 1930 (19 U.S.C. 1514 and 1520), or any other provision of law, the United States Customs Service shall, not later than 90 days after the date of the enactment of this Act, liquidate or reliquidate the entries made at various ports, which are listed in subsection (c) in accordance with the final results of the administrative reviews covering the period from March 1, 1996, through February 29, 1997, undertaken by the International Trade Administration of the Department of Commerce with respect to such entries (Case Number A-580-811).

(b) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a), with interest provided for by law on the liquidation or reliquidation of the entries, shall be paid by the Customs Service not later than 90 days after such liquidation or reliquidation.

(c) ENTRIES.—The entries referred to in subsection (a) are the following:

Entry Number	Entry Date
FB30161863-0	08/04/98
FB30162418-2	08/24/98
FB30163470-2	09/15/98
AK50021515-2	11/09/98
GL50600293-7	11/19/98
K800849688-8	09/18/98
AK50022148-1	01/25/99
AK50022311-5	02/08/99

SEC. 1517. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN APRIL 10, 1989, AND AUGUST 20, 1993.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 180 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 of the Harmonized Tariff Schedule of the United States (relating to tomato sauce preparation) on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefor is filed with the Customs Service within 90 days after the date of the enactment of this Act and the request contains sufficient information to enable the Customs Service to locate the entry or reconstruct the entry if it cannot be located and to confirm that the entry consists of tomato sauce preparations properly classifiable under subheading 2103.90.60 of the Harmonized Tariff Schedule of the United States.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 180 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry number	Date of entry
084-0520091-9	04-10-89
084-0520094-3	04-10-89
084-052031-2	11-27-89
084-0520681-7	05-25-89
084-0520983-7	06-12-89
084-0520984-5	06-12-89
084-0521156-9	07-04-89
084-0521157-7	07-04-89
084-0521401-9	07-31-89
084-0521935-6	09-29-89
084-0521937-2	09-12-89
084-0521938-0	10-05-89
084-0522166-7	10-17-89
084-0522167-5	10-17-89
084-0522169-1	10-17-89
084-0522292-1	10-25-89
084-0522293-9	10-25-89
084-0522405-9	11-08-89
084-0522406-7	11-08-89
084-0522407-5	11-08-89
084-0522456-2	11-08-89
084-0522457-0	11-16-89
084-0522458-8	11-16-89
084-0522567-6	11-13-89
084-0522568-4	11-13-89
084-0522644-3	11-16-89
084-0523018-9	11-16-89
084-0523029-6	11-27-89
084-0523030-4	11-27-89
084-0523031-2	11-27-89
084-0522931-4	12-07-89
084-0522932-2	12-07-89
084-0522933-0	12-07-89
614-2718812-5	01-10-90
614-2718814-1	01-16-90
614-2119422-2	01-18-90
614-2718813-3	01-22-90
614-2718811-7	01-23-90
614-2719578-1	01-29-90
614-2719579-9	03-01-90
602-0147021-2	03-02-90
602-0147023-8	03-02-90
602-0147277-0	03-12-90
602-0147116-0	03-20-90
084-0524420-6	03-21-90
084-0524687-0	04-19-90
084-0524689-6	04-19-90
084-0524690-4	04-10-90

Entry number	*Date of entry*
084-0528252-9	04-05-91
084-0521688-8	04-19-90
084-0532277-0	04-15-92
084-0532278-8	04-15-92
084-0532279-6	04-15-92
084-0532280-4	04-15-92
084-0532281-2	04-15-92
084-0528346-9	04-18-91
084-0537712-1	08-20-93
084-0537713-9	08-20-93
084-0537714-7	08-20-93

SEC. 1518. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN APRIL 5, 1991, AND MAY 9, 1992.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 180 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 of the Harmonized Tariff Schedule of the United States (relating to tomato sauce preparation) on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefor is filed with the Customs Service within 90 days after the date of enactment of this Act and the request contains sufficient information to enable the Customs Service to locate the entry or reconstruct the entry if it cannot be located and to confirm that the entry consists of tomato sauce preparations properly classifiable under subheading 2103.90.60 of the Harmonized Tariff Schedule of the United States.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 180 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry number	*Date of entry*
084-0528252-9	04-05-91
084-0528511-8	05-03-91
084-0528512-6	05-03-91
084-0528682-7	05-22-91
084-0528767-6	05-22-91
084-0528906-0	06-05-91
084-0529135-5	07-05-91
084-0529343-5	07-21-91
084-0529344-3	07-21-91
084-0529345-0	07-21-91
084-0529490-4	08-08-91
084-0529491-2	08-08-91
084-0529694-1	08-29-91
084-0529724-6	08-23-91
084-0529725-3	08-23-91
084-0529894-7	09-24-91
084-0529939-0	09-24-91
084-0529940-8	09-24-91
084-0530235-0	10-15-91
084-0530236-8	10-15-91
084-0530380-4	10-29-91
084-0530381-2	10-29-91
084-0530525-4	11-08-91
084-0530526-2	11-08-91
084-0530642-7	11-15-91
084-0530643-5	11-15-91
084-0531008-0	12-10-91
084-0531009-8	12-10-91
084-0531193-0	12-30-91
084-0531194-8	12-30-91
084-0531570-9	02-06-92
084-0531571-7	02-06-92
084-0531696-2	02-12-92
084-0531697-0	02-12-92
084-0531698-8	02-12-92
084-0531699-6	02-12-92
084-0531781-2	02-22-92
084-0531782-0	02-22-92
084-0531927-1	03-11-92
084-0531928-9	03-11-92
084-0531961-0	03-11-92
084-0531962-8	03-11-92
084-0532034-5	03-18-92
084-0532035-2	03-18-92
084-0532036-0	03-18-92
084-0532037-8	03-18-92
084-0532211-9	04-04-92
084-0532212-7	04-04-92
084-0532213-5	04-04-92
084-0532215-0	04-04-92
084-0537004-3	06-18-93
084-0537413-6	07-17-93
084-0537414-4	07-17-93
084-0532432-1	05-02-92
084-0532433-9	05-02-92
084-0532434-7	05-02-92
084-0532435-4	05-02-92
084-0532436-2	05-02-92
084-0532526-0	05-09-92

SEC. 1519. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN MAY 9, 1992, AND SEPTEMBER 18, 1993.

(a) IN GENERAL..—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 180 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 of the Harmonized Tariff Schedule of the United States (relating to tomato sauce preparation) on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefor is filed with the Customs Service within 90 days after the date of enactment of this Act and the request contains sufficient information to enable the Customs Service to locate the entry or reconstruct the entry if it cannot be located and to confirm that the entry consists of tomato sauce preparations properly classifiable under subheading 2103.90.60 of the Harmonized Tariff Schedule of the United States.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 180 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry number	*Date of entry*
084-0532527-8	05-09-92
084-0532938-7	06-13-92
084-0532939-5	06-13-92
084-0533381-9	07-29-92
084-0533382-7	07-29-92
084-0533383-5	07-29-92
084-0533384-3	07-29-92
084-0533732-3	09-01-92
084-0533823-0	09-01-92
084-0533824-8	09-01-92
084-0534010-3	09-19-92
084-0534052-5	09-26-92
084-0534199-4	10-06-92
084-0534205-9	10-14-92
084-0534206-7	10-14-92
084-0534207-5	10-14-92
084-0534669-6	11-18-92
084-0534670-4	11-18-92
084-0534930-2	11-28-92
084-0535157-1	12-23-92
084-0535311-4	01-09-93
084-0535312-2	01-02-93
084-0535441-9	01-09-93
084-0535578-8	01-27-93
084-0535694-3	02-07-93
084-0535695-0	02-07-93
084-0535854-3	02-24-93
084-0535855-0	02-24-93
084-0535857-6	02-24-93
084-0535858-4	02-24-93
084-0535859-2	02-24-93
084-0536160-4	03-28-93
084-0536291-7	04-07-93
084-0536292-5	04-07-93
084-0536357-6	04-11-93
084-0536361-8	04-11-93
084-0536362-6	04-11-93
084-0536424-4	05-02-93
084-0536518-3	05-02-93
084-0536519-1	05-02-93
084-0536727-0	05-23-93
084-0536839-3	05-29-93
084-0536840-1	05-29-93
084-0536841-9	05-29-93
084-0536842-7	05-29-93
084-0537443-3	07-31-93
084-0537444-1	07-31-93
084-0538038-0	09-18-93
084-0538039-8	09-18-93
084-0538040-6	09-18-93

SEC. 1520. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN SEPTEMBER 18, 1993, AND JULY 25, 1994.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 180 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 of the Harmonized Tariff Schedule of the United States (relating to tomato sauce preparation) on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefor is filed with the Customs Service within 90 days after the date of enactment of this Act and the request contains sufficient information to enable the Customs Service to locate the entry or reconstruct the entry if it cannot be located and to confirm that the entry consists of tomato sauce preparations properly classifiable under subheading 2103.90.60 of the Harmonized Tariff Schedule of the United States.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 180 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry number	*Date of entry*
084-0538041-4	09-18-93
084-0538311-1	10-17-93
084-0538312-9	10-17-93
084-0538314-5	10-17-93
084-0538345-9	10-23-93
084-0538346-7	10-23-93
084-0538347-5	10-23-93
084-0538628-8	11-06-93
084-0538797-1	11-27-93
084-0538798-9	11-27-93
084-0538800-3	12-05-93
084-0538801-1	11-27-93
084-0538818-5	12-05-93
084-0538979-5	12-11-93
084-0539185-8	01-02-94
084-0539310-2	01-16-94
084-0539554-5	02-06-94
084-0539555-2	02-06-94
084-0539556-0	02-06-94
084-0539557-8	02-06-94
084-0539599-0	02-11-94
084-0539600-6	02-11-94
084-0539664-2	02-22-94
084-0539665-9	02-22-94
084-0539666-7	02-22-94
084-0539791-3	03-06-94
084-0539793-9	03-06-94
084-0539794-7	03-06-94
084-0539876-2	03-13-94

Entry number	Date of entry
084-0540033-7	03-27-94
084-0540034-5	03-28-94
084-0540142-6	04-11-94
084-0540143-4	04-11-94
084-0540144-2	04-11-94
084-0540145-9	04-11-94
084-0540224-2	04-17-94
084-0540368-7	05-01-94
084-0540369-5	05-01-94
084-0540370-3	05-01-94
084-0540372-9	05-01-94
084-0540737-3	06-05-94
084-0540966-8	06-26-94
084-0541257-1	07-25-94
084-0541258-9	07-25-94

SEC. 1521. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN NOVEMBER 22, 1989, AND MARCH 7, 1990.

(a) In General.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) Requests.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) Payment of Amounts Owed.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) Affected Entries.—The entries referred to in subsection (a) are as follows:

Entry Number	Entry Date
01401-788-1003829-5	11/22/89
01401-788-1004108-3	02/01/90
01401-788-1004162-0	02/15/90
01401-788-1004246-1	03/07/90

SEC. 1522. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN MARCH 14, 1990, AND SEPTEMBER 29, 1990.

(a) In General.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) Requests.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) Payment of Amounts Owed.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) Affected Entries.—The entries referred to in subsection (a) are as follows:

Entry Number	Entry Date
01401-788-1004263-6	3/14/90
01401-788-1004300-6	3/19/90
24601-237-0043486-5	9/04/90
24601-237-0043490-7	9/06/90
24601-237-0043489-9	9/06/90
24601-237-0043532-6	9/09/90
24601-237-0043533-4	9/09/90
24601-237-0043534-2	9/09/90
24601-237-0043535-9	9/09/90
24601-237-0043536-7	9/09/90
24601-237-0043537-5	9/09/90
24601-237-0043538-3	9/09/90
24601-237-0043539-1	9/09/90
24601-237-0043531-8	9/10/90
24601-237-0043557-3	9/13/90
24601-237-0043558-1	9/13/90
24601-237-0043559-9	9/13/90
24601-237-0043562-3	9/13/90
24601-237-0043563-1	9/13/90
24601-237-0043565-6	9/13/90
24601-237-0043566-4	9/13/90
24601-237-0043567-2	9/13/90
24601-237-0043564-9	9/13/90
24601-237-0043573-0	9/18/90
24601-237-0043581-3	9/18/90
24601-237-0043582-1	9/18/90
24601-237-0043583-9	9/18/90
24601-237-0043584-7	9/18/90
24601-237-0043585-4	9/18/90
24601-237-0043629-0	9/27/90
24601-237-0043630-8	9/27/90
24601-237-0043631-6	9/27/90
24601-237-0043632-4	9/27/90
24601-237-0043633-2	9/27/90
24601-237-0043634-0	9/27/90
24601-237-0043635-7	9/27/90
24601-237-0043636-5	9/27/90
24601-237-0043637-3	9/27/90
24601-237-0043638-1	9/29/90
24601-237-0043639-9	9/29/90
24601-237-0043640-7	9/29/90
24601-237-0043648-0	9/29/90
24601-237-0043641-5	9/29/90

SEC. 1523. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN OCTOBER 6, 1990, AND NOVEMBER 1, 1990.

(a) In General.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) Requests.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) Payment of Amounts Owed.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) Affected Entries.—The entries referred to in subsection (a) are as follows:

Entry Number	Entry Date
24601-237-0043690-2	10/06/90
24601-237-0043691-0	10/06/90
24601-237-0043692-8	10/06/90
24601-237-0043693-6	10/06/90
24601-237-0043694-4	10/06/90
24601-237-0043695-1	10/06/90
24601-237-0043696-9	10/06/90
24601-237-0043698-5	10/06/90
72809-442-0321942-1	10/10/90
72809-442-0322201-1	10/12/90
24601-237-0043751-2	10/13/90
24601-237-0043756-1	10/13/90
24601-237-0043772-8	10/13/90
24601-237-0043754-6	10/13/90
24601-237-0043762-9	10/13/90
24601-237-0043755-3	10/13/90
24601-237-0043709-0	10/14/90
24601-237-0043710-8	10/14/90
24601-237-0043711-6	10/14/90
24601-237-0043712-4	10/14/90
24601-237-0043713-2	10/14/90
45201-815-0141984-0	10/18/90
24601-237-0043796-7	10/19/90
24601-237-0043798-3	10/19/90
24601-237-0043800-7	10/19/90
24601-237-0043801-5	10/19/90
24601-237-0043802-3	10/19/90
24601-237-0043797-5	10/19/90
24601-237-0043799-1	10/19/90
72704-442-1163101-3	10/22/90
24601-237-0043818-9	10/24/90
24601-237-0043834-6	10/25/90
24601-237-0043835-3	10/25/90
24601-237-0043836-1	10/25/90
24601-237-0043841-1	10/25/90
24601-237-0043842-9	10/25/90
24601-237-0043843-7	10/25/90
24601-237-0043838-7	10/25/90
24601-237-0043839-5	10/25/90
24601-237-0043837-9	10/25/90
24601-237-0043840-3	10/25/90
72704-442-1161274-7	11/01/90

SEC. 1524. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN NOVEMBER 3, 1990, AND DECEMBER 15, 1990.

(a) In General.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) Requests.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) Payment of Amounts Owed.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) Affected Entries.—The entries referred to in subsection (a) are as follows:

Entry Number	Entry Date
24601-237-0043907-0	11/03/90
24601-237-0043914-6	11/03/90
24601-237-0043916-1	11/03/90
24601-237-0043917-9	11/03/90
24601-237-0043918-7	11/03/90

24601-237-0043905-4	11/03/90
24601-237-0043906-2	11/03/90
24601-237-0043915-3	11/03/90
24601-237-0043950-0	11/11/90
24601-237-0043951-8	11/11/90
24601-237-0043957-5	11/11/90
24601-237-0043952-6	11/11/90
72704-442-1166912-0	11/11/90
72704-442-1166913-8	11/14/90
24601-237-0044003-7	11/17/90
24601-237-0044005-2	11/17/90
24601-237-0044007-8	11/17/90
24601-237-0044002-9	11/17/90
24601-237-0044006-0	11/17/90
24601-237-0043991-4	11/18/90
24601-237-0043993-0	11/18/90
24601-237-0043995-5	11/18/90
24601-237-0043994-8	11/18/90
72809-442-0322517-0	11/19/90
24601-237-0043992-2	11/27/90
24601-237-0044119-1	11/29/90
24601-237-0044145-6	12/02/90
24601-237-0044144-9	12/02/90
24601-237-0044146-4	12/02/90
24601-237-0044147-2	12/02/90
24601-237-0044170-4	12/04/90
24601-237-0044171-2	12/04/90
24601-237-0044172-0	12/04/90
24601-237-0044173-8	12/04/90
24601-237-0044169-6	12/04/90
24601-237-0044168-8	12/04/90
24601-237-0044221-5	12/08/90
24601-237-0044222-3	12/08/90
24601-237-0044223-1	12/08/90
24601-237-0044224-9	12/08/90
24601-237-0044220-7	12/08/90
24601-237-0044205-8	12/09/90
24601-237-0044207-4	12/09/90
24601-237-0044206-6	12/09/90
41703-815-0044549-9	12/13/90
24601-237-0044256-1	12/15/90
24601-237-0044260-3	12/15/90
24601-237-0044261-1	12/15/90
24601-237-0044262-9	12/15/90
24601-237-0044257-9	12/15/90

SEC. 1525. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN DECEMBER 28, 1990, AND FEBRUARY 9, 1991.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry Number	Entry Date
24601-237-0044368-4	12/28/90
24601-237-0044367-6	12/28/90
24601-237-0044369-2	12/29/90
24601-237-0044370-0	12/29/90
24601-237-0044371-8	12/29/90
24601-237-0044372-6	12/29/90
24601-237-0044373-4	12/29/90
24601-237-0044374-2	12/29/90
24601-237-0044375-9	12/29/90
24601-237-0044366-8	12/29/90
24601-237-0044411-2	01/03/91
24601-237-0044412-0	01/03/91
24601-237-0044414-6	01/03/91
24601-237-0044415-3	01/03/91
24601-237-0044416-1	01/03/91
24601-237-0044417-9	01/03/91
24601-237-0044413-8	01/03/91
24601-237-0044410-4	01/03/91
72704-442-1173199-5	01/15/91
24601-237-0044513-5	01/18/91
24601-237-0044512-7	01/18/91
24601-237-0044514-3	01/19/91
24601-237-0044515-0	01/19/91
24601-237-0044518-4	01/19/91
24601-237-0044519-2	01/19/91
24601-237-0044524-2	01/19/91
24601-237-0044533-3	01/19/91
24601-237-0044523-4	01/19/91
24601-237-0044522-6	01/19/91
24601-237-0044516-8	01/19/91
24601-237-0044520-0	01/19/91
24601-237-0044521-8	01/19/91
24601-237-0044517-6	01/19/91
24601-237-0044525-9	01/19/91
24601-237-0044564-8	02/01/91
24601-237-0044665-3	02/08/91
24601-237-0044672-9	02/08/91
24601-237-0044673-7	02/08/91
24601-237-0044674-5	02/08/91
24601-237-0044677-8	02/08/91
24601-237-0044660-4	02/08/91
24601-237-0044682-8	02/08/91
24601-237-0044669-5	02/09/91
24601-237-0044676-0	02/09/91
24601-237-0044678-6	02/09/91
24601-237-0044681-0	02/09/91
24601-237-0044683-6	02/09/91
24601-237-0044668-7	02/09/91
24601-237-0044680-2	02/09/91

SEC. 1526. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN FEBRUARY 14, 1991, AND APRIL 24, 1991.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry Number	Entry Date
24601-237-0044710-7	02/14/91
24601-237-0044715-6	02/14/91
24601-237-0044780-0	02/25/91
24601-237-0044775-0	02/25/91
24601-237-0044776-8	02/25/91
24601-237-0044778-4	02/25/91
24601-237-0044779-2	02/25/91
24601-237-0044777-6	02/25/91
24601-237-0044774-3	02/25/91
45201-815-1070377-0	02/27/91
72704-442-1177395-5	03/03/91
24601-237-0044818-8	03/08/91
24601-237-0044852-7	03/09/91
24601-237-0044853-5	03/09/91
24601-237-0044879-0	03/12/91
24601-237-0044880-8	03/12/91
72704-442-1178551-2	03/12/91
24601-237-0044892-3	03/12/91
24601-237-0044958-2	03/23/91
24601-237-0044993-9	03/23/91
24601-237-0044981-4	03/23/91
24601-237-0044982-2	03/23/91
24601-237-0044983-0	03/23/91
24601-237-0044957-4	03/23/91
24601-237-0044992-1	03/23/91
24601-237-0044959-0	03/23/91
24601-237-0045073-9	04/01/91
24601-237-0045095-2	04/03/91
24601-237-0045094-5	04/03/91
24601-237-0045108-3	04/06/91
24601-237-0045109-1	04/06/91
24601-237-0045111-7	04/06/91
24601-237-0045110-9	04/06/91
24601-237-0045107-5	04/06/91
45201-815-1070614-6	04/08/91
24601-237-0045176-0	04/16/91
24601-237-0045177-8	04/16/91
24601-237-0045175-2	04/16/91
24601-237-0045178-6	04/18/91
24601-237-0045181-0	04/18/91
24601-237-0045179-4	04/18/91
24601-237-0045180-2	04/18/91
24601-237-0045250-3	04/22/91
24601-237-0045252-9	04/22/91
24601-237-0045253-7	04/22/91
24601-237-0045255-2	04/22/91
24601-237-0045260-2	04/23/91
24601-237-0045285-9	04/24/91

SEC. 1527. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN APRIL 26, 1991, AND JUNE 16, 1991.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry Number	Entry Date
24601-237-0045286-7	04/26/91
24601-237-0045340-2	05/02/91

24601-237-0045342-8	05/02/91
24601-237-0045344-4	05/02/91
24601-237-0045343-6	05/02/91
24601-237-0045345-1	05/02/91
24601-237-0045341-0	05/02/91
24601-237-0045305-5	05/02/91
24601-237-0045357-6	05/04/91
24601-237-0045358-4	05/04/91
24601-237-0045354-3	05/04/91
24601-237-0045356-8	05/04/91
24601-237-0045359-2	05/04/91
24601-237-0045353-5	05/04/91
24601-237-0045355-0	05/08/91
24601-237-0045352-7	05/09/91
24601-237-0045384-0	05/10/91
24601-237-0045385-7	05/10/91
72809-442-0326878-2	05/11/91
24601-237-0045462-4	05/18/91
24601-237-0045464-0	05/18/91
24601-237-0045465-7	05/18/91
24601-237-0045466-5	05/18/91
24601-237-0045467-3	05/18/91
24601-237-0045468-1	05/18/91
24601-237-0045469-9	05/18/91
24601-237-0045463-2	05/18/91
24601-237-0045459-0	05/22/91
24601-237-0045479-8	05/22/91
24601-237-0045480-6	05/22/91
24601-237-0045555-5	05/30/91
24601-237-0045556-3	05/30/91
24601-237-0045558-9	05/30/91
24601-237-0045559-7	05/30/91
24601-237-0045561-3	05/30/91
24601-237-0045557-1	05/30/91
24601-237-0045610-8	06/01/91
24601-237-0045611-6	06/01/91
24601-237-0045612-4	06/01/91
24601-237-0045613-2	06/01/91
24601-237-0045615-7	06/01/91
24601-237-0045616-5	06/01/91
24601-237-0045617-3	06/01/91
24601-237-0045618-1	06/01/91
24601-237-0045614-0	06/01/91
24601-237-0045562-1	06/04/91
24601-237-0045580-3	06/04/91
24601-237-0045581-1	06/04/91
24601-237-0045662-9	06/08/91
24601-237-0045675-1	06/08/91
45201-815-1071138-5	06/12/91
24601-237-0045703-1	06/15/91
24601-237-0045702-3	06/15/91
24601-237-0045704-9	06/15/91
24601-237-0045705-6	06/15/91
24601-237-0045701-5	06/15/91
24601-237-0045706-4	06/16/91
24601-237-0045732-0	06/16/91

SEC. 1528. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN OCTOBER 7, 1991, AND NOVEMBER 24, 1991.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry Number	**Entry Date**
10901-551-2400823-0	10/07/91
10901-551-2400824-8	10/07/91
10901-551-2400825-5	10/07/91
10901-551-2400827-1	10/07/91
10901-551-2401490-7	10/07/91
33802-551-1986406-8	10/08/91
33802-551-1986407-6	10/08/91
10901-551-2400867-7	10/10/91
10901-551-2400871-9	10/10/91
10901-551-2400875-0	10/10/91
10901-551-2401642-3	10/10/91
10901-551-2400869-3	10/10/91
10901-551-2400872-7	10/10/91
10901-551-2400873-5	10/10/91
10901-551-2400870-1	10/10/91
10901-551-2400874-3	10/10/91
10901-551-2401609-2	10/10/91
10901-551-2401623-3	10/10/91
10901-551-2401639-9	10/10/91
10901-551-2401640-7	10/10/91
10901-551-2401641-5	10/10/91
10901-551-2400896-6	10/15/91
10901-551-2400915-4	10/15/91
24601-237-0046718-8	10/16/91
24601-237-0046719-6	10/16/91
24601-237-0046720-4	10/16/91
24601-237-0046722-0	10/16/91
24601-237-0046723-8	10/16/91
24601-237-0046724-6	10/16/91
24601-237-0046721-2	10/16/91
24601-237-0046752-7	10/18/91
24601-237-0046754-3	10/18/91
24601-237-0046755-0	10/18/91
24601-237-0046756-8	10/18/91
24601-237-0046757-6	10/18/91
24601-237-0046758-4	10/18/91
24601-237-0046759-2	10/18/91
24601-237-0046760-0	10/18/91
24601-237-0046775-8	10/22/91
24601-237-0046776-6	10/22/91
24601-237-0046745-1	10/22/91
10901-551-2400895-8	10/22/91
10901-551-2400958-4	10/22/91
10901-551-2400959-2	10/22/91
24601-237-0046791-5	10/23/91
24601-237-0046813-7	11/02/91
24601-237-0046814-5	11/02/91
24601-237-0046815-2	11/02/91
24601-237-0046817-8	11/02/91
24601-237-0046818-6	11/02/91
24601-237-0046819-4	11/02/91
24601-237-0046816-0	11/02/91
24601-237-0046860-8	11/04/91
24601-237-0046862-4	11/04/91
24601-237-0046922-6	11/11/91
24601-237-0046923-4	11/11/91
24601-237-0046924-2	11/11/91
24601-237-0046925-9	11/11/91
24601-237-0046960-6	11/16/91
24601-237-0046961-4	11/16/91
24601-237-0046962-2	11/16/91
24601-237-0046965-5	11/16/91
24601-237-0046966-3	11/16/91
24601-237-0046967-1	11/16/91
24601-237-0046968-9	11/16/91
24601-237-0046969-7	11/16/91
24601-237-0046970-5	11/16/91
41803-922-0022870-5	11/18/91
24601-237-0046964-8	11/19/91
24601-237-0047038-0	11/22/91
24601-237-0047039-8	11/22/91
24601-237-0047040-6	11/22/91
24601-237-0047013-3	11/24/91
24601-237-0047014-1	11/24/91
24601-237-0047015-8	11/24/91
24601-237-0047016-6	11/24/91
24601-237-0047017-4	11/24/91
24601-237-0047018-2	11/24/91
24601-237-0047020-8	11/24/91
24601-237-0047021-6	11/24/91
24601-237-0047022-4	11/24/91

SEC. 1529. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN NOVEMBER 30, 1991, AND NOVEMBER 26, 1992.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry Number	**Entry Date**
24601-237-0047081-0	11/30/91
24601-237-0047083-6	11/30/91
24601-237-0047084-4	11/30/91
24601-237-0047085-1	11/30/91
24601-237-0047086-9	11/30/91
24601-237-0047087-7	11/30/91
24601-237-0047088-5	11/30/91
24601-237-0047089-3	11/30/91
24601-237-0047090-1	11/30/91
24601-237-0047091-9	11/30/91
24601-237-0047092-7	11/30/91
24601-237-0047093-5	11/30/91
24601-237-0047094-3	11/30/91
24601-237-0047095-0	11/30/91
24601-237-0047082-8	11/30/91
24601-237-0047131-3	12/04/91
24601-237-0047133-9	12/04/91
24601-237-0047135-4	12/04/91
24601-237-0047143-8	12/05/91
24601-237-0047142-0	12/06/91
24601-237-0047198-2	12/11/91
24601-237-0047200-6	12/11/91
24601-237-0047201-4	12/11/91
24601-237-0047202-2	12/11/91
24601-237-0047199-0	12/11/91
24601-237-0047209-7	12/13/91
24601-237-0047210-5	12/13/91
24601-237-0047211-3	12/13/91
24601-237-0047213-9	12/13/91
24601-237-0047215-4	12/13/91
24601-237-0047216-2	12/13/91
24601-237-0047217-0	12/13/91
24601-237-0047218-8	12/13/91
24601-237-0047219-6	12/13/91
24601-237-0047220-4	12/13/91
24601-237-0047221-2	12/13/91
24601-237-0047222-0	12/13/91
24601-237-0047224-6	12/13/91
24601-237-0047225-3	12/13/91
24601-237-0047226-1	12/13/91
24601-237-0047227-9	12/13/91
24601-237-0047228-7	12/13/91
24601-237-0047229-5	12/13/91

24601-237-0047214-7	12/13/91
24601-237-0047212-1	12/13/91
45201-57-0017369-2	12/26/91
24601-237-0047258-4	01/22/92
24601-237-0047259-2	01/22/92
24601-237-0047260-0	01/22/92
24601-237-0047261-8	01/22/92
24601-237-0047262-6	01/22/92
24601-237-0047263-4	01/22/92
24601-237-0047264-2	01/22/92
24601-237-0047265-9	01/22/92
24601-237-0047266-7	01/22/92
24601-237-0049136-0	08/14/92
24601-237-0049137-8	08/14/92
24601-237-0049226-9	08/22/92
24601-237-0049329-1	09/22/92
24601-237-0049330-9	09/22/92
24601-237-0049443-0	10/05/92
24601-938-0009748-2	10/26/92
24601-938-0009749-0	10/26/92
24601-938-0009750-8	10/26/92
24601-938-0009813-4	11/08/92
24601-938-0009815-9	11/08/92
24601-938-0009816-7	11/08/92
24601-938-0009838-1	11/14/92
24601-938-0009839-9	11/14/92
24601-938-0009868-8	11/21/92
24601-938-0009869-6	11/21/92
24601-938-0009870-4	11/21/92
24601-938-0009871-2	11/26/92
24601-938-0009872-0	11/26/92
24601-938-0009873-8	11/26/92
24601-938-0009874-6	11/26/92
24601-938-0009875-3	11/26/92

SEC. 1530. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN DECEMBER 9, 1992, AND MAY 9, 1993.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry Number	**Entry Date**
24601-938-0009935-5	12/09/92
24601-938-0009936-3	12/09/92
24601-938-0009937-1	12/09/92
24601-938-0009938-9	12/09/92
24601-938-0009939-7	12/09/92
24601-938-0009940-5	12/09/92
24601-938-0009989-2	12/20/92
24601-938-0009992-6	12/20/92
24601-938-0009995-9	12/20/92
24601-938-0009991-8	12/20/92
24601-938-0009993-4	12/20/92
24601-938-0009994-2	12/20/92
24601-938-0009990-0	12/20/92
24601-938-0010002-1	12/21/92
24601-938-0010003-9	12/21/92
24601-938-0010004-7	12/21/92
24601-938-0010005-4	12/21/92
24601-938-0010006-2	12/21/92
24601-938-0010007-0	12/21/92
24601-938-0010029-4	12/29/92
24601-938-0010030-2	12/29/92
24601-938-0010031-0	12/29/92
24601-938-0010098-9	01/22/93
24601-938-0010099-7	01/22/93
24601-938-0010100-3	01/22/93
24601-938-0010101-1	01/22/93
24601-938-0010102-9	01/22/93
24601-938-0010103-7	01/22/93
24601-938-0010105-2	01/24/93
24601-938-0010129-2	01/29/93
24601-938-0010130-0	01/29/93
24601-938-0010131-8	01/29/93
24601-938-0010132-6	01/29/93
24601-938-0010133-4	01/29/93
24601-938-0010134-2	01/29/93
24601-938-0010135-9	01/29/93
24601-938-0010136-7	01/29/93
24601-938-0010137-5	01/29/93
24601-938-0010138-3	01/29/93
24601-938-0010159-9	02/05/93
24601-938-0010160-7	02/05/93
24601-938-0010162-3	02/05/93
24601-938-0010163-1	02/05/93
24601-938-0010164-9	02/05/93
24601-938-0010165-6	02/05/93
24601-938-0010166-4	02/05/93
24601-938-0010167-2	02/05/93
24601-938-0010161-5	02/05/93
24601-938-0010179-7	02/06/93
24601-938-0010180-5	02/06/93
24601-938-0010181-3	02/06/93
24601-938-0010182-1	02/06/93
24601-938-0010183-9	02/06/93
24601-938-0010184-7	02/06/93
24601-938-0010185-4	02/06/93
24601-938-0010186-2	02/06/93
24601-938-0010235-7	02/22/93
24601-938-0010236-5	02/22/93
24601-938-0010237-3	02/22/93
24601-938-0010238-1	02/22/93
24601-938-0010252-2	02/24/93
24601-938-0010253-0	02/24/93
24601-938-0010254-8	02/24/93
24601-938-0010255-5	02/24/93
24601-938-0010256-3	02/24/93
24601-938-0010257-1	02/24/93
24601-938-0010258-9	02/24/93
24601-938-0010260-5	02/24/93
24601-938-0010261-3	02/24/93
24601-938-0010262-1	02/24/93
24601-938-0010259-7	02/24/93
24601-938-0010316-5	03/05/93
24601-938-0010318-1	03/05/93
24601-938-0010316-5	03/05/93
24601-938-0010317-3	03/05/93
24601-938-0010317-3	03/05/93
24601-938-0010332-2	03/13/93
24601-938-0010333-0	03/13/93
24601-938-0010334-8	03/13/93
24601-938-0010373-6	03/20/93
24601-938-0010374-4	03/20/93
24601-938-0010375-1	03/20/93
24601-938-0010376-9	03/20/93
24601-938-0010377-7	03/20/93
24601-938-0010378-5	03/20/93
24601-938-0010422-1	03/30/93
24601-938-0010450-2	04/02/93
24601-938-0010451-0	04/02/93
24601-938-0010452-8	04/02/93
24601-938-0010453-6	04/02/93
24601-938-0010454-4	04/02/93
24601-938-0010455-1	04/02/93
24601-938-0010517-8	04/17/93
24601-938-0010518-6	04/17/93
24601-938-0010519-4	04/17/93
24601-938-0010520-2	04/17/93
24601-938-0010549-1	04/24/93
24601-938-0010550-9	04/24/93
24601-938-0010619-2	05/09/93

SEC. 1531. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN MAY 14, 1993, AND OCTOBER 23, 1993.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry Number	**Entry Date**
24601-938-0010645-7	05/14/93
24601-938-0010646-5	05/14/93
24601-938-0010647-3	05/14/93
24601-938-0010648-1	05/14/93
24601-938-0010649-9	05/14/93
24601-938-0010605-1	05/21/93
24601-938-0010604-4	05/24/93
24601-938-0010720-8	06/07/93
24601-938-0010735-6	06/11/93
24601-938-0010772-9	06/17/93
24601-938-0010800-8	06/25/93
24601-938-0010801-6	06/25/93
24601-938-0010802-4	06/25/93
45201-438-0919317-0	06/28/93
45201-438-0919412-9	09/05/93
24601-938-0011256-2	10/23/93

SEC. 1532. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN MAY 16, 1990, AND APRIL 20, 1996.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than

90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry Number	Entry Date
1601-237-0012701-8	05/16/90
1601-237-0012702-6	05/16/90
1601-237-0012730-7	05/17/90
1601-237-0012731-5	05/17/90
1601-237-0012863-6	06/01/90
1601-237-0012877-6	06/15/90
1601-237-0013039-2	06/20/90
1601-237-0013195-2	07/18/90
1601-237-0013253-9	07/27/90
1601-237-0015011-6	03/27/91
1601-237-0015288-3	04/30/91
1601-237-0015618-8	06/08/91
1601-237-0015811-6	06/29/91
1601-237-0015956-5	07/15/91
1601-241-3054100-0	10/22/92
1601-241-3063782-0	09/24/93
1601-241-3065196-1	11/10/93
1601-241-3066943-5	01/25/94
1601-241-3069703-0	04/20/94
1601-241-3073069-0	08/04/94
1601-241-3073130-0	08/05/94
1601-241-3073131-8	08/05/94
1601-241-3073178-3	08/17/94
1601-241-3074656-3	09/21/94
1601-241-3076657-9	11/21/94
1601-241-3076659-5	11/21/94
1601-241-3076660-3	11/21/94
1601-241-3076675-1	11/24/94
1601-241-3076736-1	11/25/94
1601-241-3078296-4	01/12/95
1601-241-3078297-2	01/12/95
0901-112-7829964-6	01/24/95
0901-112-7829965-3	01/25/95
0901-112-7831096-3	01/30/95
1601-241-3078964-7	02/07/95
1601-241-3079146-0	02/14/95
1601-241-3079621-2	03/04/95
1601-241-3080014-7	03/15/95
1601-241-3080151-7	03/23/95
1601-241-3080153-3	03/23/95
1601-241-3080310-9	03/23/95
1601-241-3080798-5	04/05/95
1601-241-3080937-9	04/07/95
1601-241-3080957-7	04/10/95
1601-241-3080963-5	04/10/95
1601-241-3080863-7	04/13/95
1601-241-3081214-2	04/18/95
1601-241-3081215-9	04/18/95
1601-241-3082436-0	05/30/95
1601-241-3082437-8	05/31/95
1601-241-3083317-1	06/27/95
1601-241-3083318-9	06/27/95
1601-241-3083320-5	06/27/95
1601-241-3083321-3	06/27/95
1601-241-3084127-7	07/29/95
1601-241-3084128-5	07/29/95
1601-241-3084129-3	07/29/95
1601-241-3084130-1	07/29/95
1601-241-3084131-9	07/29/95
1601-241-3084132-7	07/29/95
1601-241-3085734-5	09/08/95
1601-241-3085735-2	09/08/95
1601-241-3085736-0	09/08/95
1601-241-3085737-8	09/08/95
1601-241-3085738-6	09/08/95
1601-241-3085739-4	09/08/95
1601-241-3085740-2	09/08/95
1601-241-3086662-7	10/05/95
1601-241-3086663-5	10/05/95
1601-241-3087492-8	11/02/95
1601-241-3087499-3	11/02/95
1601-241-3087500-8	11/02/95
1601-241-3087501-6	11/02/95
1601-241-3088399-4	12/01/95
1601-241-3088400-0	12/01/95
1601-241-3088398-6	12/02/95
1601-241-3088770-6	12/15/95
1601-241-3088771-4	12/15/95
1601-241-3088772-2	12/15/95
1601-241-3088773-0	12/15/95
1601-241-1189193-3	12/29/95
1601-241-1189194-1	12/29/95
1601-241-1189195-8	12/29/95
1601-241-1190103-9	01/31/96
1601-241-1190242-5	02/17/96
1601-241-1190741-6	03/07/96
1601-241-1191920-5	04/20/96
1601-241-1191921-3	04/20/96
1601-241-1191922-1	04/20/96
1601-241-1191923-9	04/20/96

SEC. 1533. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN AUGUST 28, 1991, AND JULY 8, 1996.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry Number	Entry Date
1601-241-3043101-8	08/28/91
1601-237-0046898-8	11/12/91
1601-237-0046899-6	11/12/91
1601-237-0047037-2	11/22/91
1601-237-0047080-2	11/30/91
1601-241-3045837-5	12/03/91
1601-241-3046070-2	12/11/91
1601-241-3046234-4	12/18/91
1601-241-3046903-4	01/17/92
1601-241-1192827-1	05/30/96
1601-241-1192828-9	05/30/96
1601-241-1192829-7	05/30/96
1601-241-1192826-3	05/30/96
1601-241-1193242-2	06/11/96
1601-241-1193243-0	06/11/96
1601-241-1193244-8	06/11/96
1601-241-1193245-5	06/11/96
1601-241-1193246-3	06/11/96
1601-241-1193939-3	07/08/96
1601-241-1193940-1	07/08/96
1601-241-1193942-7	07/08/96
1601-241-1193943-5	07/08/96

SEC. 1534. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN APRIL 4, 1995, AND JULY 22, 1996.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) with respect to an entry described in subsection (c) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry Number	Entry Date
1601-076-0264618-9	04/04/95
5201-406-0209309-4	04/04/95
1601-076-0143541-0	04/07/95
1601-076-0143550-1	04/10/95
5201-406-0210067-5	04/13/95
1601-076-0143671-5	04/24/95
1601-076-0143667-3	04/25/95
1601-076-0143668-1	04/25/95
1601-076-0143669-9	04/25/95
1601-076-0143670-7	04/25/95
1601-076-0143688-9	04/26/95
1601-076-0143689-7	04/26/95
1601-076-0143737-4	05/01/95
1601-076-0143746-5	05/02/95
1601-076-0143747-3	05/02/95
1601-076-0143748-1	05/02/95
1601-076-0143751-5	05/02/95
1601-076-0143759-8	05/03/95
1601-076-0143791-1	05/08/95
1601-076-0143796-0	05/08/95
1601-076-0143815-8	05/10/95
1601-076-0143819-0	05/10/95
1601-076-0143821-6	05/10/95
1601-076-0143862-0	05/15/95
1601-076-0144059-2	06/06/95
1601-076-0144060-0	06/06/95
1601-076-0144061-8	06/06/95
1601-076-0143916-4	06/19/95
1601-076-0144194-7	06/21/95
1601-076-0144298-6	06/29/95
1601-076-0144366-1	07/07/95
1601-076-0144367-9	07/07/95
1601-076-0144612-8	07/31/95
1601-076-0144626-8	07/31/95
1601-076-0144628-4	07/31/95
1601-076-0144629-2	08/01/95
1601-076-0144681-3	08/04/95
3901-551-3493444-1	08/09/95
1601-076-0144968-4	09/06/95
1601-076-0144969-2	09/06/95
1601-076-0145018-7	09/11/95
1601-076-0145027-8	09/12/95
1601-076-0145023-7	09/13/95
1601-076-0145074-0	09/15/95
1601-076-0145075-7	09/15/95
5201-406-0215201-5	09/15/95
1601-076-0145113-6	09/21/95
1601-076-0145213-4	10/02/95
1601-076-0145215-9	10/03/95
1601-076-0145310-8	10/17/95
1601-076-0145336-3	10/19/95
1601-076-0145370-2	10/24/95
1601-076-0145403-1	10/27/95
1601-076-0145451-0	11/03/95
1601-076-0145487-4	11/07/95
1601-076-0145521-0	11/09/95
1601-076-0145612-7	11/21/95
1601-076-0145711-7	12/01/95
1601-076-0145734-9	12/06/95
1601-076-0145737-2	12/06/95
1601-076-0145763-8	12/07/95
1601-076-0145764-6	12/07/95

4601-076-0146032-7	01/10/96
4601-076-0146033-5	01/10/96
4601-076-0146217-4	02/05/96
4601-076-0146367-7	02/27/96
4601-076-0146464-2	03/11/96
4601-076-0146469-1	03/12/96
4601-076-0146520-1	03/20/96
4601-076-0146562-3	03/26/96
4601-076-0146612-6	04/04/96
4601-076-0146614-2	04/08/96
4601-076-0146683-7	04/15/96
4601-076-0146722-3	04/22/96
4601-076-0146766-0	04/25/96
4601-076-0147059-9	06/04/96
4601-076-0147248-8	07/01/96
4601-076-0147377-5	07/22/96

SEC. 1535. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN OCTOBER 11, 1994, AND MAY 16, 1995.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 or 2103.90.90 of the Harmonized Tariff Schedule of the United States, whichever is applicable, on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) with respect to an entry described in subsection (c) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry Number	**Entry Date**
0712-112-6947293-9	10/11/94
0712-112-6947294-7	10/14/94
0712-112-6947295-4	10/14/94
0712-112-7277897-5	10/14/94
0712-112-7278028-6	10/14/94
0712-112-7279272-9	11/07/94
0712-112-7292558-4	11/22/94
0712-112-7292647-5	11/22/94
0712-112-7292648-3	11/28/94
0712-112-7293042-8	11/28/94
0712-112-7293140-0	12/06/94
0712-112-7293435-4	12/07/94
0712-112-7293436-2	12/07/94
0712-112-7293515-3	12/07/94
0712-112-7293619-3	12/07/94
0712-112-7293620-1	12/07/94
0712-112-7293521-1	12/13/94
0712-112-7294412-2	12/21/94
0712-112-7294142-5	12/22/94
0712-112-7294143-3	12/22/94
0712-112-7294144-1	12/22/94
0712-112-7295546-6	01/18/95
0712-112-7295994-8	01/27/95
0712-112-7295998-9	01/27/95
0712-112-7296581-2	01/27/95
0712-112-7296677-8	02/01/95
0712-112-7298503-4	03/06/95
0712-112-7324623-8	05/08/95
0712-112-7325069-3	05/16/95

SEC. 1536. CERTAIN TOMATO SAUCE PREPARATION ENTERED BETWEEN JUNE 17, 1991, AND OCTOBER 3, 1991.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 90 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 of the Harmonized Tariff Schedule of the United States (relating to tomato sauce preparation) on the date of entry. United States (relating to tomato sauce preparation) on the date of entry.

(b) REQUESTS.—Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefore is filed with the Customs Service within 90 days after the date of enactment of this Act.

(c) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 90 days after the date of such liquidation or reliquidation.

(d) AFFECTED ENTRIES.—The entries referred to in subsection (a) are as follows:

Entry Number	**Entry Date**
72704-442-1186614-8	06/17/91
72704-442-1186615-5	06/17/91
24601-237-0045741-1	06/25/91
24601-237-0045787-4	06/25/91
24601-237-0045740-3	06/25/91
24601-237-0045791-6	06/29/91
24601-237-0045850-0	06/29/91
24601-237-0045852-6	06/29/91
24601-237-0045853-4	06/29/91
24601-237-0045855-9	06/29/91
24601-237-0045856-7	06/29/91
24601-237-0045857-5	06/29/91
24601-237-0045858-3	06/29/91
24601-237-0045851-8	07/01/91
24601-237-0045854-2	07/02/91
24601-237-0045888-0	07/05/91
24601-237-0045945-8	07/13/91
24601-237-0045955-7	07/13/91
24601-237-0045953-2	07/15/91
24601-237-0045954-0	07/15/91
24601-237-0045952-4	07/15/91
24601-237-0046033-2	07/27/91
24601-237-0046055-5	07/27/91
24601-237-0046056-3	07/27/91
24601-237-0046059-7	07/27/91
24601-237-0046061-3	07/27/91
24601-237-0046060-5	07/27/91
24601-237-0046058-9	07/27/91
24601-237-0046054-8	07/27/91
24601-237-0046057-1	07/27/91
24601-237-0046062-1	07/27/91
24601-237-0046196-7	08/10/91
24601-237-0046197-5	08/10/91
24601-237-0046198-3	08/12/91
24601-237-0046194-2	08/12/91
24601-237-0046195-9	08/12/91
24601-237-0046369-0	08/27/91
24601-237-0046120-1	09/07/91
24601-237-0046121-9	09/07/91
24601-237-0046123-5	09/07/91
24601-237-0046124-3	09/07/91
24601-237-0046125-0	09/07/91
24601-237-0046126-8	09/07/91
24601-237-0046127-6	09/07/91
24601-237-0046129-2	09/07/91
10901-551-2401127-5	09/19/91
10901-551-2401128-3	09/19/91
24601-237-0046467-2	09/21/91
10901-551-2401210-9	09/25/91
10901-551-2401400-6	09/30/91
10901-551-2400795-0	10/02/91
10901-551-2400796-8	10/02/91
10901-551-2400797-6	10/02/91
10901-551-2400800-8	10/02/91
10901-551-2400809-9	10/02/91
10901-551-2400810-7	10/02/91
10901-551-2400811-5	10/02/91
10901-551-2401366-9	10/02/91
10901-551-2401364-4	10/02/91
10901-551-1819256-0	10/03/91

CHAPTER 2—MISCELLANEOUS PROVISIONS

SEC. 1551. HAIR CLIPPERS.

(a) IN GENERAL.—Heading 8510 of chapter 85 is amended—

(1) by striking subheading 8510.20.00 and inserting the following, with the article description for subheading 8510.20 having the same degree of indentation as the article description for subheading 8510.10.00, and with the article descriptions for subheadings 8510.20.10 and 8510.20.90 having the same degree of indentation as the article description for subheading 8510.90.55:

"	*8510.20* *8510.20.10*	*Hair clippers:* *Hair clippers to be used for agricultural or horticultural purposes*	*4%*	*Free (A, CA, E, IL, J, JO, MX)*	*45%*	
	8510.20.90	*Other*	*4%*	*Free (A, CA, E, IL, J, JO, MX)*	*45%*	";

and

(2) by striking subheading 8510.90.30 and inserting the following subheadings and superior

"		*Parts of hair clippers:*				
	8510.90.30	*Parts of hair clippers to be used for agricultural or horticultural purposes*	*4%*	*Free (A, CA, E, IL, J, JO, MX)*	*45%*	
	8510.90.40	*Other parts of hair clippers*	*4%*	*Free (A, CA, E, IL, J, JO, MX)*	*45%*	".

(b) STAGED RATE REDUCTIONS.—Any staged reduction of a rate of duty proclaimed by the President before the date of the enactment of this Act, that—

(1) would take effect on or after such date of enactment, and

(2) would, but for the amendments made by subsection (a), apply to subheading 8510.20.00 or subheading 8510.90.30 of the Harmonized Tariff Schedule of the United States,

applies to the corresponding rate of duty set forth in subheading 8510.20.10, 8510.20.90, or 8510.90.40 of such Schedule (as added by subsection (a)).

SEC. 1552. TRACTOR BODY PARTS.

(a) CERTAIN TRACTOR PARTS.—Heading 8708 is amended by striking subheading 8708.29.20 and inserting the following subheadings and superior text thereto, with such superior text having the same degree of indentation as the article description for subheading 8708.29.15:

"	Body stampings:			
8708.29.21	For tractors suitable for agricultural use	Free		Free
8708.29.25	Other	2.5%	Free (A, B, CA, E, IL, J, JO, MX)	25%".

(b) STAGED RATE REDUCTIONS.—Any staged reduction of a rate of duty proclaimed by the President before the date of the enactment of this Act, that—

(1) would take effect on or after such date of enactment, and

(2) would, but for the amendment made by subsection (a), apply to subheading 8708.29.20 of the Harmonized Tariff Schedule of the United States,

applies to the corresponding rate of duty set forth in subheading 8708.29.25 of such Schedule (as added by subsection (a)).

SEC. 1553. FLEXIBLE MAGNETS AND COMPOSITE GOODS CONTAINING FLEXIBLE MAGNETS.

Heading 8505 is amended—

(1) by striking subheading 8505.19.00 and inserting the following new subheadings, with the article description for subheadings 8505.19.10, 8505.19.20, and 8505.19.30 having the same degree of indentation as the article description for subheading 8505.11.00:

"8505.19.10	Flexible magnet	1.9%	Free (A, CA, E, IL, J, JO, MX)	45%
8505.19.20	Composite goods containing flexible magnet	1.9%	Free (A, CA, E, IL, J, JO, MX)	45%
8505.19.30	Other	1.9%	Free (A, CA, E, IL, J, MX)	45%".

(b) STAGED RATE REDUCTIONS.—Any staged reduction of a rate of duty proclaimed by the President before the date of the enactment of this Act, that—

(1) would take effect on or after such date of enactment, and

(2) would, but for the amendment made by subsection (a), apply to subheading 8505.19.00 of the Harmonized Tariff Schedule of the United States,

applies to the corresponding rate of duty set forth in subheadings 8505.19.10, 8505.19.20, and 8505.19.30 of such Schedule (as added by subsection (a)).

SEC. 1554. VESSEL REPAIR DUTIES.

(a) EXEMPTION.—Section 466(h) of the Tariff Act of 1930 (19 U.S.C. 1466(h)) is amended—

(1) in paragraph (1), by striking the comma at the end and inserting a semicolon;

(2) in paragraph (2), by striking ", or" at the end and inserting a semicolon;

(3) in paragraph (3), by striking the period at the end and inserting "; or"; and

(4) by adding at the end the following:

"(4) the cost of equipment, repair parts, and materials that are installed on a vessel documented under the laws of the United States and engaged in the foreign or coasting trade, if the installation is done by members of the regular crew of such vessel while the vessel is on the high seas.

Declaration and entry shall not be required with respect to the installation, equipment, parts, and materials described in paragraph (4).".

(b) AMENDMENT TO HTS.—Subchapter XVIII of chapter 98 of the Harmonized Tariff Schedule of the United States is amended by striking "U.S. Note" and inserting "U.S. Notes" and by adding after U.S. note 1 the following new note:

"2. Notwithstanding the provisions of subheadings 9818.00.03 through 9818.00.07, no duty shall apply to the cost of equipment, repair parts, and materials that are installed in a vessel documented under the laws of the United States and engaged in the foreign or coasting trade, if the installation is done by members of the regular crew of such vessel while the vessel is on the high seas, and declaration and entry shall not be required with respect to such installation, equipment, parts, and materials.".

(c) EFFECTIVE DATE.—The amendments made by this section apply to vessel equipment, repair parts, and materials installed on or after April 25, 2001.

SEC. 1555. DUTY-FREE TREATMENT FOR HAND-KNOTTED OR HAND-WOVEN CARPETS.

(a) AMENDMENT OF THE TRADE ACT OF 1974.—Section 503(b) of the Trade Act of 1974 (19 U.S.C. 2463(b)) is amended by adding at the end the following new paragraph:

"(4) CERTAIN HAND-KNOTTED OR HAND-WOVEN CARPETS.—Notwithstanding paragraph (1)(A), the President may designate as an eligible article or articles under subsection (a) carpets or rugs which are hand-loomed, hand-woven, hand-hooked, hand-tufted, or hand-knotted, and classifiable under subheading 5701.10.16, 5701.10.40, 5701.90.10, 5701.90.20, 5702.10.90, 5702.42.20, 5702.49.10, 5702.51.20, 5702.91.30, 5702.92.00, 5702.99.10, 5703.10.00, 5703.20.10, or 5703.30.00 of the Harmonized Tariff Schedule of the United States.".

(b) CONFORMING AMENDMENT.—Section 503(b)(1)(A) of the Trade Act of 1974 (19 U.S.C. 2463(b)(1)(A)) is amended by striking "Textile" and inserting "Except as provided in paragraph (4), textile".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to any article entered, or withdrawn from warehouse for consumption, on or after the date on which the President makes a designation with respect to the article under section 503(b)(4) of the Trade Act of 1974, as added by subsection (a).

SEC. 1556. DUTY DRAWBACK FOR CERTAIN ARTICLES.

Section 313 of the Tariff Act of 1930 (19 U.S.C. 1313) is amended by adding at the end the following new subsection:

"(y) ARTICLES SHIPPED TO THE UNITED STATES INSULAR POSSESSIONS.—Articles described in subsection (j)(1) shall be eligible for drawback under this section if duty was paid on the merchandise upon importation into the United States and the person claiming the drawback demonstrates that the merchandise has entered the customs territory of the United States Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.".

SEC. 1557. UNUSED MERCHANDISE DRAWBACK.

(a) IN GENERAL.—Section 313(j) of the Tariff Act of 1930 (19 U.S.C. 1313(j)) is amended—

(1) in paragraph (1), by striking "because of its" and inserting "upon entry or"; and

(2) in paragraph (2)—

(A) in the matter preceding subparagraph (A), by striking "because of its" and inserting "upon entry or"; and

(B) in the matter following subparagraph (C)(ii)(II)—

(i) by striking "then upon" and inserting "then, notwithstanding any other provision of law, upon"; and

(ii) by striking "shall be refunded as drawback" and inserting "shall be refunded as drawback under this subsection".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, and shall apply to any drawback claim filed on or after that date and to any drawback entry filed before that date if the liquidation of the entry is not final on that date.

SEC. 1558. TREATMENT OF CERTAIN FOOTWEAR UNDER CARIBBEAN BASIN ECONOMIC RECOVERY ACT.

Section 213(b) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)) is amended as follows:

(1) By amending paragraph (1)(B) to read as follows:

"(B) footwear provided for in any of subheadings 6401.10.00, 6401.91.00, 6401.92.90, 6401.99.30, 6401.99.60, 6401.99.90, 6402.30.50, 6402.30.70, 6402.30.80, 6402.91.50, 6402.91.80, 6402.91.90, 6402.99.20, 6402.99.80, 6402.99.90, 6403.59.60, 6403.91.30, 6403.99.60, 6403.99.90, 6404.11.90, and 6404.19.20 of the HTS that was not designated at the time of the effective date of this title as eligible articles for the purpose of the generalized system of preferences under title V of the Trade Act of 1974;".

(2) In paragraph (3)(A)—

(A) in clause (i), by striking "Subject to clause (ii)" and inserting "Subject to clauses (ii) and (iii)"; and

(B) by adding at the end the following:

"(iii) CERTAIN FOOTWEAR.—Notwithstanding paragraph (1)(B) and clause (i) of this subparagraph, footwear provided for in any of subheadings 6403.59.60, 6403.91.30, 6403.99.60, and

6403.99.90 of the HTS shall be eligible for the duty-free treatment provided for under this title if—

"(I) the article of footwear is the growth, product, or manufacture of a CBTPA beneficiary country; and

"(II) the article otherwise meets the requirements of subsection (a), except that in applying such subsection, 'CBTPA beneficiary country' shall be substituted for 'beneficiary country' each place it appears.".

SEC. 1559. DESIGNATION OF SAN ANTONIO INTERNATIONAL AIRPORT FOR CUSTOMS PROCESSING OF CERTAIN PRIVATE AIRCRAFT ARRIVING IN THE UNITED STATES.

(a) IN GENERAL.—Section 1153(a) of the Tariff Suspension and Trade Act of 2000 is amended by striking "2-year period" and inserting "6-year period".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective as of November 9, 2002.

SEC. 1560. AUTHORITY FOR THE ESTABLISHMENT OF INTEGRATED BORDER INSPECTION AREAS AT THE UNITED STATES-CANADA BORDER.

(a) FINDINGS.—Congress makes the following findings:

(1) The increased security and safety concerns that developed in the aftermath of the terrorist attacks in the United States on September 11, 2001, need to be addressed.

(2) One concern that has come to light is the vulnerability of the international bridges and tunnels along the United States borders.

(3) It is necessary to ensure that potentially dangerous vehicles are inspected prior to crossing these bridges and tunnels, however, currently these vehicles are not inspected until after they have crossed into the United States.

(4) Establishing Integrated Border Inspection Areas (IBIAs) would address these concerns by inspecting vehicles before they gained access to the infrastructure of international bridges and tunnels joining the United States and Canada.

(b) CREATION OF INTEGRATED BORDER INSPECTION AREAS.—

(1) IN GENERAL.—The Commissioner of the Customs Service, in consultation with the Canadian Customs and Revenue Agency (CCRA), shall seek to establish Integrated Border Inspection Areas (IBIAs), such as areas on either side of the United States-Canada border, in which United States Customs officers can inspect vehicles entering the United States from Canada before they enter the United States, or Canadian Customs officers can inspect vehicles entering Canada from the United States before they enter Canada. Such inspections may include, where appropriate, employment of reverse inspection techniques.

(2) ADDITIONAL REQUIREMENT.—The Commissioner of Customs, in consultation with the Administrator of the General Services Administration when appropriate, shall seek to carry out paragraph (1) in a manner that minimizes adverse impacts on the surrounding community.

(3) ELEMENTS OF THE PROGRAM.—Using the authority granted by this section and under section 629 of the Tariff Act of 1930, the Commissioner of Customs, in consultation with the Canadian Customs and Revenue Agency, shall seek to—

(A) locate Integrated Border Inspection Areas in areas with bridges or tunnels with high traffic volume, significant commercial activity, and that have experienced backups and delays since September 11, 2001;

(B) ensure that United States Customs officers stationed in any such IBIA on the Canadian side of the border are vested with the maximum authority to carry out their duties and enforce United States law;

(C) ensure that United States Customs officers stationed in any such IBIA on the Canadian side of the border shall possess the same immunity that they would possess if they were stationed in the United States; and

(D) encourage appropriate officials of the United States to enter into an agreement with Canada permitting Canadian Customs officers stationed in any such IBIA on the United States side of the border to enjoy such immunities as permitted in Canada.

SEC. 1561. DESIGNATION OF FOREIGN LAW ENFORCEMENT OFFICERS.

(a) MISCELLANEOUS PROVISIONS.—Section 401(i) of the Tariff Act of 1930 (19 U.S.C. 1401(i)) is amended by inserting ", including foreign law enforcement officers," after "or other person".

(b) INSPECTIONS AND PRECLEARANCE IN FOREIGN COUNTRIES.—Section 629 of the Tariff Act of 1930 (19 U.S.C. 1629) is amended—

(1) in subsection (a), by inserting ", or subsequent to their exit from," after "prior to their arrival in";

(2) in subsection (c)—

(A) by inserting "or exportation" after "relating to the importation"; and

(B) by inserting "or exit" after "port of entry";

(3) by amending subsection (e) to read as follows:

"(e) STATIONING OF FOREIGN CUSTOMS AND AGRICULTURE INSPECTION OFFICERS IN THE UNITED STATES.—The Secretary of State, in coordination with the Secretary and the Secretary of Agriculture, may enter into agreements with any foreign country authorizing the stationing in the United States of customs and agriculture inspection officials of that country (if similar privileges are extended by that country to United States officials) for the purpose of insuring that persons and merchandise going directly to that country from the United States, or that have gone directly from that country to the United States, comply with the customs and other laws of that country governing the importation or exportation of merchandise. Any foreign customs or agriculture inspection official stationed in the United States under this subsection may exercise such functions, perform such duties, and enjoy such privileges and immunities as United States officials may be authorized to perform or are afforded in that foreign country by treaty, agreement, or law."; and

(4) by adding at the end the following:

"(g) PRIVILEGES AND IMMUNITIES.—Any person designated to perform the duties of an officer of the Customs Service pursuant to section 401(i) of this Act shall be entitled to the same privileges and immunities as an officer of the Customs Service with respect to any actions taken by the designated person in the performance of such duties.".

(c) CONFORMING AMENDMENT.—Section 127 of the Treasury Department Appropriations Act, 2003, is hereby repealed.

(d) EFFECTIVE DATE.—This section, and the amendments made by this section, take effect on the date of the enactment of this Act.

SEC. 1562. AMENDMENTS TO UNITED STATES INSULAR POSSESSION PROGRAM.

(a) PRODUCTION CERTIFICATES.—Additional U.S. Note 5(h) to chapter 91 is amended—

(1) by amending subparagraphs (i) and (ii) to read as follows:

"(i) In the case of each of calendar years 2003 through 2015, the Secretaries jointly, shall—

"(A) verify—

"(1) the wages paid by each producer to permanent residents of the insular possessions during the preceding calendar year (including the value of usual and customary health insurance, life insurance, and pension benefits); and

"(2) the total quantity and value of watches and watch movements produced in the insular possessions by that producer and imported free of duty into the customs territory of the United States; and

"(B) issue to each producer (not later than 60 days after the end of the preceding calendar year) a certificate for the applicable amount.

"(ii) For purposes of subparagraph (i), except as provided in subparagraphs (iii) and (iv), the term 'applicable amount' means an amount equal to the sum of—

"(A) 90 percent of the producer's creditable wages (including the value of usual and customary health insurance, life insurance, and pension benefits) on the assembly during the preceding calendar year of the first 300,000 units, plus

"(B) the applicable graduated declining percentage (determined each year by the Secretaries) of the producer's creditable wages (including the value of usual and customary health insurance, life insurance, and pension benefits) on the assembly during the preceding calendar year of units in excess of 300,000 but not in excess of 750,000, plus

"(C) the difference between the duties that would have been due on each producer's watches and watch movements (excluding digital watches and excluding units in excess of the 750,000 limitation of this subparagraph) imported into the customs territory of the United States free of duty during the preceding calendar year if the watches and watch movements had been subject to duty at the rates set forth in column 1 under this chapter that were in effect on January 1, 2001, and the duties that would have been due on the watches and watch movements if the watches and watch movements had been subject to duty at the rates set forth in column 1 under this chapter that were in effect for such preceding calendar year."; and

(2) by amending subparagraph (v) to read as follows:

"(v) Any certificate issued under subparagraph (i) shall entitle the certificate holder to secure a refund of duties equal to the face value of the certificate on any articles that are imported into the customs territory of the United States by the certificate holder. Such refunds shall be made under regulations issued by the Treasury Department. Not more than 5 percent of such refunds may be retained as a reimbursement to the Customs Service for the administrative costs of making the refunds.".

(b) JEWELRY.—Additional U.S. Note 3 to chapter 71 is amended—

(1) by redesignating paragraphs (b), (c), (d), and (e) as paragraphs (c), (d), (e), and (f), respectively;

(2) by inserting after paragraph (a) the following new paragraph:

"(b) Notwithstanding additional U.S. Note 5(h)(ii)(B) to chapter 91, articles of jewelry subject to this note shall be subject to a limitation of 10,000,000 units."; and

(3) by striking paragraph (f), as so redesignated, and inserting the following:

"(f) Notwithstanding any other provision of law, any article of jewelry provided for in heading 7113 that is assembled in the Virgin Islands, Guam, or American Samoa by a jewelry manufacturer or jewelry assembler that commenced jewelry manufacturing or jewelry assembly operations in the Virgin Islands, Guam, or American Samoa after August 9, 2001, shall be treated as a product of the Virgin Islands, Guam, or American Samoa for purposes of this note and General Note 3(a)(iv) of this Schedule if such article is entered no later than 18 months after such jewelry manufacturer or jewelry assembler commenced jewelry manufacturing or jewelry assembly operations in the Virgin Islands, Guam, or American Samoa.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to goods imported into the customs territory of the United States on or after January 1, 2003.

SEC. 1563. MODIFICATION OF PROVISIONS RELATING TO DRAWBACK CLAIMS.

(a) MERCHANDISE NOT CONFORMING TO SAMPLE OR SPECIFICATIONS.—Section 313(c) of the Tariff Act of 1930 (19 U.S.C. 1313(c)) is amended to read as follows:

"(c) MERCHANDISE NOT CONFORMING TO SAMPLE OR SPECIFICATIONS.—

"(1) CONDITIONS FOR DRAWBACK.—Upon the exportation or destruction under the supervision of the Customs Service of articles or merchandise—

"(A) upon which the duties have been paid,

"(B) which has been entered or withdrawn for consumption,

"(C) which is—

"(i) not conforming to sample or specifications, shipped without the consent of the consignee, or determined to be defective as of the time of importation, or

"(ii) ultimately sold at retail by the importer, or the person who received the merchandise from the importer under a certificate of delivery, and for any reason returned to and accepted by the importer, or the person who received the merchandise from the importer under a certificate of delivery, and

"(D) which, within 3 years after the date of importation or withdrawal, as applicable, has been exported or destroyed under the supervision of the Customs Service,

the full amount of the duties paid upon such merchandise, less 1 percent, shall be refunded as drawback.

"(2) DESIGNATION OF IMPORT ENTRIES.—For purposes of paragraph (1)(C)(ii), drawback may be claimed by designating an entry of merchandise that was imported within 1 year before the date of exportation or destruction of the merchandise described in paragraph (1) (A) and (B) under the supervision of the Customs Service. The merchandise designated for drawback must be identified in the import documentation with the same eight digit classification number and specific product identifier (such as part number, SKU, or product code) as the returned merchandise.

"(3) WHEN DRAWBACK CERTIFICATES NOT REQUIRED.—For purposes of this subsection, drawback certificates are not required if the drawback claimant and the importer are the same party, or if the drawback claimant is a drawback successor to the importer as defined in subsection (s)(3).".

(b) TIME LIMITATION ON EXPORTATION OR DESTRUCTION.—Section 313(i) of the Tariff Act of 1930 (19 U.S.C. 1313(i)), is amended—

(1) by striking "No" and inserting "Unless otherwise provided for in this section, no"; and

(2) by inserting ", or destroyed under the supervision of the Customs Service," after "exported".

(c) USE OF DOMESTIC MERCHANDISE ACQUIRED IN EXCHANGE FOR IMPORTED MERCHANDISE OF SAME KIND AND QUALITY.—Section 313(k) of the Tariff Act of 1930 (19 U.S.C. 1313(k)), is amended—

(1) by striking "(k)" and inserting "(k)(1)"; and

(2) by adding at the end the following new paragraph:

"(2) For purposes of subsections (a) and (b), the use of any domestic merchandise acquired in exchange for a drawback product of the same kind and quality shall be treated as the use of such drawback product if no certificate of delivery or certificate of manufacture and delivery pertaining to such drawback product is issued, other than that which documents the product's manufacture and delivery. As used in this paragraph, the term 'drawback product' means any domestically produced product, manufactured with imported merchandise or any other merchandise (whether imported or domestic) of the same kind and quality, that is subject to drawback.".

(d) PACKAGING MATERIAL.—Section 313(q) of the Tariff Act of 1930 (19 U.S.C. 1313(q)), is amended to read as follows:

"(q) PACKAGING MATERIAL.—

"(1) PACKAGING MATERIAL UNDER SUBSECTIONS (c) AND (j).—Packaging material, whether imported and duty paid, and claimed for drawback under either subsection (c) or (j)(1), or imported and duty paid, or substituted, and claimed for drawback under subsection (j)(2), shall be eligible for drawback, upon exportation, of 99 percent of any duty, tax, or fee imposed under Federal law on such imported material.

"(2) PACKAGING MATERIAL UNDER SUBSECTIONS (a) AND (b).—Packaging material that is manufactured or produced under subsection (a) or (b) shall be eligible for drawback, upon exportation, of 99 percent of any duty, tax, or fee imposed under Federal law on the imported or substituted merchandise used to manufacture or produce such material.

"(3) CONTENTS.—Packaging material described in paragraphs (1) and (2) shall be eligible for drawback whether or not they contain articles or merchandise, and whether or not any articles or merchandise they contain are eligible for drawback.

"(4) EMPLOYING PACKAGING MATERIAL FOR ITS INTENDED PURPOSE PRIOR TO EXPORTATION.—The use of any packaging material for its intended purpose prior to exportation shall not be treated as a use of such material prior to exportation for purposes of applying subsection (a), (b), or (c), or paragraph (1)(B) or (2)(C)(i) of subsection (j).".

(e) LIMITATION ON LIQUIDATION.—Section 504 of the Tariff Act of 1930 (19 U.S.C. 1504) is amended—

(1) by striking subsections (a) and (b) and inserting the following:

"(a) LIQUIDATION.—

"(1) ENTRIES FOR CONSUMPTION.—Unless an entry of merchandise for consumption is extended under subsection (b) of this section or suspended as required by statute or court order, except as provided in section 751(a)(3), an entry of merchandise for consumption not liquidated within 1 year from—

"(A) the date of entry of such merchandise,

"(B) the date of the final withdrawal of all such merchandise covered by a warehouse entry,

"(C) the date of withdrawal from warehouse of such merchandise for consumption if, pursuant to regulations issued under section 505(a), duties may be deposited after the filing of any entry or withdrawal from warehouse, or

"(D) if a reconciliation is filed, or should have been filed, the date of the filing under section 484 or the date the reconciliation should have been filed,

shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer of record. Notwithstanding section 500(e), notice of liquidation need not be given of an entry deemed liquidated.

"(2) ENTRIES OR CLAIMS FOR DRAWBACK.—

"(A) IN GENERAL.—Except as provided in subparagraph (B) or (C), unless an entry or claim for drawback is extended under subsection (b) or suspended as required by statute or court order, an entry or claim for drawback not liquidated within 1 year from the date of entry or claim shall be deemed liquidated at the drawback amount asserted by the claimant at the time of entry or claim. Notwithstanding section 500(e), notice of liquidation need not be given of an entry deemed liquidated.

"(B) UNLIQUIDATED IMPORTS.—An entry or claim for drawback whose designated or identified import entries have not been liquidated and become final within the 1-year period described in subparagraph (A), or within the 1-year period described in subparagraph (C), shall be deemed liquidated upon the deposit of estimated duties on the unliquidated imported merchandise, and upon the filing with the Customs Service of a written request for the liquidation of the drawback entry or claim. Such a request must include a waiver of any right to payment or refund under other provisions of law. The Secretary of the Treasury shall prescribe any necessary regulations for the purpose of administering this subparagraph.

"(C) EXCEPTION.—An entry or claim for drawback filed before the date of the enactment of this paragraph, the liquidation of which is not final as of the date of the enactment of this paragraph, shall be deemed liquidated on the date that is 1 year after the date of the enactment of this paragraph at the drawback amount asserted by the claimant at the time of the entry or claim.

"(3) PAYMENTS OR REFUNDS.—Payment or refund of duties owed pursuant to paragraph (1) or (2) shall be made to the importer of record or drawback claimant, as the case may be, not later than 90 days after liquidation.

"(b) EXTENSION.—The Secretary of the Treasury may extend the period in which to liquidate an entry if—

"(1) the information needed for the proper appraisement or classification of the imported or withdrawn merchandise, or for determining the correct drawback amount, or for ensuring compliance with applicable law, is not available to the Customs Service; or

"(2) the importer of record or drawback claimant, as the case may be, requests such extension and shows good cause therefor.

The Secretary shall give notice of an extension under this subsection to the importer of record or drawback claimant, as the case may be, and the surety of such importer of record or drawback claimant. Notice shall be in such form and manner (which may include electronic transmittal) as the Secretary shall by regulation prescribe. Any entry the liquidation of which is extended under this subsection shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record, or the drawback amount asserted at the time of entry by the drawback claimant, at the expiration of 4 years from the applicable date specified in subsection (a).";

(2) in subsection (c)—

(A) by inserting "or drawback claimant, as the case may be," after "to the importer of record"; and

(B) by inserting "or drawback claimant" after "of such importer of record"; and

(3) in subsection (d), by striking the period at the end and inserting "or (in the case of a drawback entry or claim) at the drawback amount asserted at the time of entry by the drawback claimant.".

(f) PENALTIES FOR FALSE DRAWBACK CLAIMS.—Section 593A(h) of the Tariff Act of 1930 (19 U.S.C. 1593a(h)) is amended by striking "subsection (g)" and inserting "subsections (c) and (g)".

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsections (a), (b), (c), (d), and (f) shall take effect on the date of the enactment of this Act, and shall apply to—

(A) any drawback entry filed on and after such date of enactment; and

(B) any drawback entry filed before such date of enactment if the liquidation of the entry is not final on such date of enactment.

(2) SUBSECTION (e).—The amendments made by subsection (e) shall take effect on the date of the enactment of this Act, and shall apply to—

(A) any entry of merchandise for consumption or entry or claim for drawback filed on and after such date of enactment; and

(B) any entry or claim for drawback filed before such date of enactment if the liquidation of the entry or claim is not final on such date of enactment.

Subtitle C—Effective Date

SEC. 1571. EFFECTIVE DATE.

Except as otherwise provided in this title, the amendments made by this title shall apply with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

TITLE II—OTHER TRADE PROVISIONS

Subtitle A—Miscellaneous Provisions

SEC. 2001. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO ARMENIA.

(a) FINDINGS.—Congress makes the following findings:

(1) Armenia has been found to be in full compliance with the freedom of emigration requirements under title IV of the Trade Act of 1974.

(2) Armenia acceded to the World Trade Organization on February 5, 2003.

(3) Since declaring its independence from the Soviet Union in 1991, Armenia has made considerable progress in enacting free-market reforms.

(4) Armenia has demonstrated a strong desire to build a friendly and cooperative relationship with the United States and has concluded many bilateral treaties and agreements with the United States.

(5) Total United States-Armenia bilateral trade for 2002 amounted to more than $134,200,000.

(b) PRESIDENTIAL DETERMINATIONS AND EXTENSIONS OF NONDISCRIMINATORY TREATMENT.—Notwithstanding any provision of title IV of the Trade Act of 1974 (19 U.S.C. 2431 et seq.), the President may—

(1) determine that such title should no longer apply to Armenia; and

(2) after making a determination under paragraph (1) with respect to Armenia, proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of that country.

(c) TERMINATION OF APPLICATION OF TITLE IV.—On and after the effective date of the extension under subsection (b)(2) of nondiscriminatory treatment to the products of Armenia, title IV of the Trade Act of 1974 shall cease to apply to that country.

SEC. 2002. MODIFICATION TO CELLAR TREATMENT OF NATURAL WINE.

(a) IN GENERAL.—Subsection (a) of section 5382 of the Internal Revenue Code of 1986 (relating to cellar treatment of natural wine) is amended to read as follows:

"(a) PROPER CELLAR TREATMENT.—

"(1) IN GENERAL.—Proper cellar treatment of natural wine constitutes—

"(A) subject to paragraph (2), those practices and procedures in the United States, whether historical or newly developed, of using various methods and materials to stabilize the wine, or the fruit juice from which it is made, so as to produce a finished product acceptable in good commercial practice in accordance with regulations prescribed by the Secretary; and

"(B) subject to paragraph (3), in the case of wine produced and imported subject to an international agreement or treaty, those practices and procedures acceptable to the United States under such agreement or treaty.

"(2) RECOGNITION OF CONTINUING TREATMENT.—For purposes of paragraph (1)(A), where a particular treatment has been used in customary commercial practice in the United States, it shall continue to be recognized as a proper cellar treatment in the absence of regulations prescribed by the Secretary finding such treatment not to be proper cellar treatment within the meaning of this subsection.

"(3) CERTIFICATION OF PRACTICES AND PROCEDURES FOR IMPORTED WINE.—

"(A) IN GENERAL.—In the case of imported wine produced after December 31, 2004, the Secretary shall accept the practices and procedures used to produce such wine, if, at the time of importation—

"(i) the Secretary has on file or is provided with a certification from the government of the producing country, accompanied by an affirmed laboratory analysis, that the practices and procedures used to produce the wine constitute proper cellar treatment under paragraph (1)(A),

"(ii) the Secretary has on file or is provided with such certification, if any, as may be required by an international agreement or treaty under paragraph (1)(B), or

"(iii) in the case of an importer that owns or controls or that has an affiliate that owns or controls a winery operating under a basic permit issued by the Secretary, the importer certifies that the practices and procedures used to produce the wine constitute proper cellar treatment under paragraph (1)(A).

"(B) AFFILIATE DEFINED.—For purposes of this paragraph, the term 'affiliate' has the meaning given such term by section 117(a)(4) of the Federal Alcohol Administration Act (27 U.S.C. 211(a)(4)) and includes a winery's parent or subsidiary or any other entity in which the winery's parent or subsidiary has an ownership interest.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on January 1, 2005.

SEC. 2003. ARTICLES ELIGIBLE FOR PREFERENTIAL TREATMENT UNDER THE ANDEAN TRADE PREFERENCE ACT.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, and subject to subsection (c)—

(1) with respect to any article described in section 204(b)(1)(D) of the Andean Trade Preference Act (as amended by section 3103(a)(2) of the Trade Act of 2002) for which the President proclaims duty free treatment pursuant to section 204(b)(1) of the Andean Trade Preference Act, the entry of any such article on or after August 6, 2002, and before the date on which the President so proclaims duty free treatment for such article shall be subject to the rate of duty applicable on August 5, 2002; and

(2) such entries shall be liquidated or reliquidated as if the reduced duty preferential treatment applied, and the Secretary of the Treasury shall refund any excess duties paid with respect to such entry.

(b) ENTRY.—As used in this subsection, the term "entry" includes a withdrawal from warehouse for consumption.

(c) REQUESTS.—Liquidation or reliquidation may be made under paragraph (1) with respect to an entry only if a request therefor is filed with the Customs Service, within 180 days after the date of the enactment of this Act, and such request contains sufficient information to enable the Customs Service—

(1) to locate the entry; or

(2) to reconstruct the entry if it cannot be located.

SEC. 2004. TECHNICAL AMENDMENTS.

(a) TRADE ACT of 2002.—(1) Section 2(a)(4) of the Trade Act of 2002 is amended by striking "and Other Provisions".

(2) The table of contents of the Trade Act of 2002 is amended—

(A) in the item relating to section 342, by striking "customs service" and inserting "Customs Service"; and

(B) by amending the item relating to section 3107 to read as follows:

"3107. Trade benefits under the Caribbean Basin Economic Recovery Act.".

(3) The amendment made by section 111(b) of the Trade Act of 2002 shall be deemed never to have been enacted.

(4) Section 221(a)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2271(a)(2)(A)) is amended by striking "assistance, and appropriate" and inserting "assistance and appropriate".

(5) Section 222(b) of the Trade Act of 1974 (19 U.S.C. 2272(b)) is amended—

(A) by striking the subsection heading and inserting the following: "ADVERSELY AFFECTED SECONDARY WORKERS"; and

(B) in the matter preceding paragraph (1), by inserting "pursuant to a petition filed under section 221" after "under this chapter".

(6) Section 238(b)(1) of the Trade Act of 1974 is amended by striking "Secretary," and inserting "Secretary)".

(7) Section 246 of the Trade Act of 1974 is amended—

(A) in subsection (a)(3)(B)(iii), by striking "and" after the semicolon;

(B) in subsection (a)(5), by striking "section 238(a)(2)(B)" and inserting "paragraph (2)(B)"; and

(C) in subsection (b)(2), by striking "provided that" and inserting "if".

(8) The table of contents of the Trade Act of 1974 is amended by striking

"Sec. 246. Supplemental wage allowances demonstration projects.".

(9) Section 296 of the Trade Act of 1974 is amended—

(A) in subsection (a)(1)—

(i) in the matter preceding subparagraph (A)—

(I) by striking "trade adjustment allowance" and inserting "adjustment assistance under this chapter"; and

(II) by striking "such allowance" and inserting "such assistance"; and

(ii) in subparagraph (A), by striking "subsection (a)" and inserting "this subsection"; and

(B) in subsection (b)(2), by striking "paragraph (1) except" and inserting "paragraph (1), except".

(10) Section 141(b) of the Trade Act of 2002 is amended by striking "title" and inserting "subtitle".

(11) Section 142 of the Trade Act of 2002 is amended—

(A) in subsection (a)(1)—

(i) by striking "284(a)" and "2395(a)" and inserting "284" and "2395", respectively; and

(ii) in subparagraph (A), by inserting "in subsection (a)," after "(A)"; and

(B) in subsection (b), by striking ", as amended by subparagraph (A),".

(12) Section 583(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1583(c)(1)) is amended by moving the matter preceding subparagraph (A) and subparagraphs (A) through (K) 2 ems to the right.

(13) Section 371(b) of the Trade Act of 2002 is amended by striking "1330(e)(2)" and inserting "1330(e)".

(14) Section 336 of the Trade Act of 2002 is amended to read as follows:

"SEC. 336. STUDY AND REPORT RELATING TO CUSTOMS USER FEES.

"(a) STUDY.—The Comptroller General shall conduct a study on the extent to which the amount of each customs user fee imposed under section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)) approximates the cost of services provided by the Customs Service relating to the fee so imposed.

"(b) REPORT.—Not later than 180 days after the date of the enactment of the Miscellaneous Trade and Technical Corrections Act of 2004, the Comptroller General shall submit to the

Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report containing—

"(1) the results of the study conducted under subsection (a); and

"(2) recommendations for the appropriate amount of the customs user fees if such results indicate that the fees are not commensurate with the level of services provided by the Customs Service.

Notwithstanding any other provision of law, the report or its contents may only be disclosed by the Comptroller General to the committees or Members of Congress and the Customs Service and shall not be disclosed to the public.".

(15) Section 141(b)(2) of the Trade Act of 1974 (19 U.S.C. 2171(b)(2)) is amended by moving the paragraph 2 ems to the left.

(16) Section 2102(c) of the Trade Act of 2002 is amended—

(A) in paragraph (8), by striking "this Act" and inserting "this title"; and

(B) in paragraph (12), by striking "government engaged" and inserting "government is engaged".

(17) Section 2103 of the Trade Act of 2002 is amended—

(A) in subsection (a)(1)(A), by striking "June 1" each place it appears and inserting "July 1";

(B) in subsection (b)(1)(C), by striking "June 1" each place it appears and inserting "July 1" and

(C) in subsection (c)—

(i) in paragraph (1)(B)(ii), by striking "June 1" and inserting "July 1";

(ii) in paragraph (2), by striking "March 1" and inserting "April 1"; and

(iii) in paragraph (3), by striking "May 1" each place it appears and inserting "June 1".

(18) Section 2105(c) of the Trade Act of 2002 is amended by striking "aand" and inserting "and".

(19) Section 2113 of the Trade Act of 2002 is amended—

(A) in the first paragraph designated "(2)", by striking "101(d)(12)" and "3511(d)(12)" and inserting "101(d)(13)" and "3511(d)(13)", respectively; and

(B) in the second paragraph designated "(2)"—

(i) by redesignating such paragraph as paragraph (3); and

(ii) by striking "101(d)(13)" and "3511(d)(13)" and inserting "101(d)(12)" and "3511(d)(12)", respectively.

(20) Section 1101(b)(1) of the Trade Act of 2002 is amended—

(A) in the matter preceding subparagraph (A), by striking "entry—" and inserting "entry of any article—"; and

(B) in subparagraph (A), by striking "of any article".

(21) Section 151(a) of the Trade Act of 2002 is amended by striking "and 141(b)" and inserting ", 141(b), 201(d), and 202(e)".

(22) Paragraph (4) of section 6103(p) of the Internal Revenue Code of 1986, as amended by section 202(b)(2)(B) of the Trade Act of 2002 (Public Law 107-210; 116 Stat. 961), is amended by striking "or (17)" after "any other person described in subsection (l)(16)" each place it appears and inserting "or (18)".

(b) APPAREL ARTICLES UNDER CARIBBEAN BASIN ECONOMIC RECOVERY ACT.—(1) Section 213(b)(2)(A) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)(2)(A)) is amended—

(A) in clause (i), by striking "(including" and inserting "or both (including";

(B) in clause (v), by striking ", from fabrics or yarn that is not formed in the United States or in one or more CBTPA beneficiary countries"; and

(C) in clause (vii)(IV), by striking "(i) or (ii)" and inserting "(i), (ii), or (ix)".

(2) Section 3107(a)(1)(B) of the Trade Act of 2002 is amended by striking "(B) by adding at the end the following:" and inserting "(B) by amending the last two sentences to read as follows:".

(c) TARIFF ACT OF 1930.—Section 505(a) of the Tariff Act of 1930 is amended—

(1) in the first sentence—

(A) by inserting "referred to in this subsection" after "periodic payment"; and

(B) by striking "10 working days" and inserting "12 working days"; and

(2) in the second sentence, by striking "a participating" and all that follows through the end of the sentence and inserting the following: "the Secretary shall promulgate regulations, after testing the module, permitting a participating importer of record to deposit estimated duties and fees for entries of merchandise, other than merchandise entered for warehouse, transportation, or under bond, no later than the 15 working days following the month in which the merchandise is entered or released, whichever comes first.".

(d) ADDITIONAL TECHNICAL AMENDMENTS.—(1) The second and third U.S. notes 6 to subchapter XVII 14 of chapter 98 of the Harmonized Tariff Schedule of the United States (as added by sections 1433(b) and 1456(b) of the Tariff Suspension and Trade Act of 2000, respectively) are redesignated as U.S. notes 7 and 8 to subchapter XVII of such chapter 98, respectively.

(2) U.S. notes 4 and 12 to subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States are hereby repealed.

(3) Section 421(b) of the Trade Act of 1974 (19 U.S.C. 2451(b)) is amended by striking "subtitle" each place it appears and inserting "chapter".

(4) Section 422(j) of the Trade Act of 1974 (19 U.S.C. 2451a(j)) is amended by striking "(1)".

(5) Section 337(a) of the Tariff Act of 1930 (19 U.S.C. 1337) is amended—

(A) in paragraph (1), by aligning the text of subparagraph (E) with the text of subparagraph (D); and

(B) in paragraph (2), by striking "and (D)" and inserting "(D), and (E)".

(6) Section 313(n)(1)(B) of the Tariff Act of 1930 (19 U.S.C. 1313(n)(1)(B)) is amended by adding a semicolon after "Act".

(7) Section 202(d)(1) of the United States-Chile Free Trade Agreement Implementation Act (19 U.S.C. 3805 note) is amended by striking "subsection (a)(2)" and inserting "subsection (a)(1)(B)".

(8)(A) Subheading 9804.00.70 of the Harmonized Tariff Schedule of the United States is amended in the article description column—

(i) by striking "$1200" and inserting "$1600";

(ii) by striking "$400" and inserting "$800"; and

(iii) by striking "or up to $600 of which have been acquired in one or more beneficiary countries".

(B) Subheading 9804.00.72 of the Harmonized Tariff Schedule of the United States is amended in the article description column—

(i) by striking "$600" and inserting "$800"; and

(ii) by striking "not more than $400 of which shall have been acquired elsewhere than in beneficiary countries".

(e) UNITED STATES VESSELS.—Section 204(b)(4)(B)(i) of the Andean Trade Preference Act is amended to read as follows:

"(i) UNITED STATES VESSEL.—A 'United States vessel' is—

"(I) a vessel that has a certificate of documentation with a fishery endorsement under chapter 121 of title 46, United States Code; or

"(II) in the case of a vessel without a fishery endorsement, a vessel that is documented under the laws of the United States and for which a license has been issued pursuant to section 9 of the South Pacific Tuna Act of 1988 (16 U.S.C. 973g).".

(f) CUSTOMS USER FEES.—(1) Section 13031(b)(9)(A) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(9)(A)) is amended by striking "less than $2,000" and inserting "$2,000 or less".

(2) Section 13031(b)(9)(A)(ii) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(9)(A)(ii)) is amended to read as follows:

"(ii) Notwithstanding subsection (e)(6) and subject to the provisions of subparagraph (B), in the case of an express consignment carrier facility or centralized hub facility—

"(I) $.66 per individual airway bill or bill of lading; and

"(II) if the merchandise is formally entered, the fee provided for in subsection (a)(9), if applicable.".

(3) Section 13031(b)(9)(B) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(9)(B)) is amended—

(A) by moving the margins for subparagraph (B) 4 ems to the left; and

(B) in clause (ii), by striking "subparagraph (A)(ii)" and inserting "subparagraph (A)(ii) (I) or (II)".

(4) Section 13031(f)(1)(B) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(1)(B)) is amended by moving the subparagraph 2 ems to the left.

(g) ENTRIES OF CERTAIN APPAREL ARTICLES PURSUANT TO THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT.—

(1) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, the Customs Service shall liquidate or reliquidate as free of duty and free of any quantitative restrictions, limitations, or consultation levels entries of articles described in paragraph (4) made on or after October 1, 2000.

(2) REQUESTS.—Liquidation or reliquidation may be made under paragraph (1) with respect to an entry described in paragraph (4) only if a request therefor is filed with the Customs Service within 90 days after the date of the enactment of this Act and the request contains sufficient information to enable the Customs Service to locate the entry or reconstruct the entry if it cannot be located.

(3) PAYMENT OF AMOUNTS OWED.—Any amounts owed by the United States pursuant to the liquidation or reliquidation of any entry under paragraph (1) shall be paid not later than 180 days after the date of such liquidation or reliquidation.

(4) ENTRIES.—The entries referred to in paragraph (1) are entries of apparel articles (other than socks provided for in heading 6115 of the Harmonized Tariff Schedule of the United States) that meet the requirements of section 213(b)(2)(A) of the Caribbean Basin Economic Recovery Act (as amended by section 3107(a) of the Trade Act of 2002 and subsection (b) of this section).

(h) LABELING REQUIREMENTS.—

(1) IN GENERAL.—Section 4 of the Textile Fiber Products Identification Act (15 U.S.C. 70b) is amended by adding at the end the following new subsection:

"(k) MARKING OF CERTAIN SOCK PRODUCTS.—

"(1) Notwithstanding any other provision of law, socks provided for in subheading 6115.92.90, 6115.93.90, 6115.99.18, 6111.20.60, 6111.30.50, or 6111.90.50 of the Harmonized Tariff Schedule of the United States, as in effect on September 1, 2003, shall be marked as legibly, indelibly, and permanently as the nature of the article or package will permit in such a manner as to indicate to the ultimate consumer in the United States the English name of the country of origin of the article. The marking required by this subsection shall be on the front of the package, adjacent to the size designation of the product,

and shall be set forth in such a manner as to be clearly legible, conspicuous, and readily accessible to the ultimate consumer.

''(2) EXCEPTIONS.—Any package that contains several different types of goods and includes socks classified under subheading 6115.92.90, 6115.93.90, 6115.99.18, 6111.20.60, 6111.30.50, or 6111.90.50 of the Harmonized Tariff Schedule of the United States, as in effect on September 1, 2003, shall not be subject to the requirements of paragraph (1).''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date that is 15 months after the date of enactment of this Act, and on and after the date that is 15 months after such date of enactment, any provision of part 303 of title 16, Code of Federal Regulations, that is inconsistent with such amendment shall not apply.

(i) EXTENSION OF INDUSTRY TRADE ADVISORY COMMITTEES.—

(1) IN GENERAL.—Section 135(f)(2) of the Trade Act of 1974 (19 U.S.C. 2155(f)(2)) is amended to read as follows:

''(2) to all other advisory committees which may be established under subsection (c) of this section, except that—

''(A) the meetings of advisory committees established under subsections (b) and (c) of this section shall be exempt from the requirements of subsections (a) and (b) of sections 10 and 11 of the Federal Advisory Committee Act (relating to open meetings, public notice, public participation, and public availability of documents), whenever and to the extent it is determined by the President or the President's designee that such meetings will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives, or bargaining positions with respect to matters referred to in subsection (a) of this section, and that meetings may be called of such special task forces, plenary meetings of chairmen, or other such groups made up of members of the committees established under subsections (b) and (c) of this section; and

''(B) notwithstanding subsection (a)(2) of section 14 of the Federal Advisory Committee Act, any committee established under subsection (b) or (c) may, in the discretion of the President or the President's designee, terminate not later than the expiration of the 4-year period beginning on the date of their establishment.''.

(2) CONFORMING AMENDMENT.—Section 135(b)(1) of the Trade Act of 1974 (19 U.S.C. 2155(b)(1)) is amended by striking ''2 years'' and inserting ''4 years or until the committee is scheduled to expire''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on February 1, 2006.

(j) RETROACTIVITY FOR CERTAIN AGOA PROVISIONS.—

(1) IN GENERAL.—Section 8(d) of the AGOA Acceleration Act of 2004 (Public Law 108–274) is amended by striking ''section 112(b)'' and inserting ''section 112''.

(2) APPLICABILITY.—

(A) IN GENERAL.—The amendment made by paragraph (1) shall take effect as if included in the enactment of section 8 of the AGOA Acceleration Act of 2004.

(B) REQUESTS FOR RETROACTIVE APPLICATION.—Section 8(b) of the AGOA Acceleration Act of 2004 shall be applied with respect to the amendment made by paragraph (1) by substituting ''90 days after the date of the enactment of the Miscellaneous Trade and Technical Corrections Act of 2004'' for ''90 days after the date of the enactment of this Act''.

(k) MAURITIUS.—

(1) IN GENERAL.—Section 112(b)(3)(B) of the African Growth and Opportunity Act (19 U.S.C. 3721(b)(3)(B)) is amended by adding at the end the following new clause:

''(iv) SEPARATE LIMITATION FOR MAURITIUS.—For the 1-year period beginning October 1, 2004—

''(I) the term 'lesser developed beneficiary sub-Saharan African country' includes Mauritius; and

''(II) the applicable percentage with respect to Mauritius shall be 5 percent of the applicable percentage described in clause (ii)(II).''.

(2) RETROACTIVE APPLICATION.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, upon proper request filed with the Bureau of Customs and Border Protection before the 90th day after the date of the enactment of this Act, any entry, or withdrawal from warehouse for consumption, of any good—

(A) that was made on or after October 1, 2004, and before the date of the enactment of this Act, and

(B) with respect to which there would have been no duty if the amendment made by this subsection applied to such entry or withdrawal,

shall be liquidated or reliquidated as if such amendment applied to such entry or withdrawal.

SEC. 2005. EXTENSION OF NORMAL TRADE RELATIONS TO LAOS.

(a) FINDINGS.—Congress finds that—

(1) the Lao People's Democratic Republic is pursuing a broad policy of adopting market-based reforms to enhance its economic competitiveness and achieve an attractive climate for investment;

(2) extension of normal trade relations treatment would assist the Lao People's Democratic Republic in developing its economy based on free market principles and becoming competitive in the global marketplace;

(3) establishing normal commercial relations on a reciprocal basis with the Lao People's Democratic Republic will promote United States exports to the rapidly growing southeast Asian region and expand opportunities for United States business and investment in the Lao People's Democratic Republic economy;

(4) United States and Laotian commercial interests would benefit from the bilateral trade agreement between the United States and the Lao People's Democratic Republic, signed in 2003, providing for market access and the protection of intellectual property rights;

(5) the Lao People's Democratic Republic has taken cooperative steps with the United States in the global war on terrorism, combating the trafficking of narcotics, and the accounting for American servicemen and civilians still missing from the Vietnam war; and

(6) expanding bilateral trade relations that include a commercial agreement may promote further progress by the Lao People's Democratic Republic on human rights, religious tolerance, democratic rule, and transparency, and assist that country in adopting regional and world trading rules and principles.

(b) EXTENSION OF NONDISCRIMINATORY TREATMENT TO THE PRODUCTS OF THE LAO PEOPLE'S DEMOCRATIC REPUBLIC.—

(1) Harmonized tariff schedule amendment.—General note 3(b) of the Harmonized Tariff Schedule of the United States is amended by striking ''Laos''.

(2) Effective date.—The amendment made by paragraph (1) applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the effective date of a notice published in the Federal Register by the United States Trade Representative that a trade agreement obligating reciprocal most-favored-nation treatment between the Lao People's Democratic Republic and the United States has entered into force.

SEC. 2006. REPEAL OF ANTIDUMPING PROVISION OF REVENUE ACT OF 1916.

(a) REPEAL.—Section 801 of the Act entitled ''An Act to increase the revenue, and for other purposes'', approved September 8, 1916 (15 U.S.C. 72), is repealed.

(b) EFFECT OF REPEAL.—The repeal made by subsection (a) shall not affect any action under section 801 of the Act referred to in subsection (a) that was commenced before the date of the enactment of this Act and is pending on such date.

Subtitle B—Technical Amendments Relating to Entry and Protest

SEC. 2101. ENTRY OF MERCHANDISE.

(a) IN GENERAL.—Subsection (a) of section 484 of the Tariff Act of 1930 (19 U.S.C. 1484) is amended—

(1) in paragraph (1)(B), by inserting after ''entry'' the following: '', or substitute 1 or more reconfigured entries on an import activity summary statement,''; and

(2) in paragraph (2)(A)—

(A) in the second sentence, by inserting after ''statements,'' the following: ''and permit the filing of reconfigured entries,''; and

(B) by adding at the end the following: ''Entries filed under paragraph (1)(A) shall not be liquidated if covered by an import activity summary statement, but instead each reconfigured entry in the import activity summary statement shall be subject to liquidation or reliquidation pursuant to section 500, 501, or 504.''.

(b) RECONCILIATION.—Subsection (b)(1) of such section is amended in the fourth sentence by striking ''15 months'' and inserting ''21 months''.

SEC. 2102. LIMITATION ON LIQUIDATIONS.

Section 504 of the Tariff Act of 1930 (19 U.S.C. 1504) is amended—

(1) in subsection (a)—

(A) by striking ''or'' at the end of paragraph (3);

(B) in paragraph (4), by striking ''filed;'' and inserting ''filed, whichever is earlier; or''; and

(C) by inserting after paragraph (4) the following:

''(5) if a reconfigured entry is filed under an import activity summary statement, the date the import activity summary statement is filed or should have been filed, whichever is earlier;''; and

(2) by striking ''at the time of entry'' each place it appears.

SEC. 2103. PROTESTS.

Section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking ''(relating to refunds and errors) of this Act'' and inserting ''(relating to refunds), any clerical error, mistake of fact, or other inadvertence, whether or not resulting from or contained in an electronic transmission, adverse to the importer, in any entry, liquidation, or reliquidation, and'';

(B) in paragraph (5), by inserting '', including the liquidation of an entry, pursuant to either section 500 or section 504'' after ''thereof''; and

(C) in paragraph (7), by striking ''(c) or''; and

(2) in subsection (c)—

(A) in paragraph (1), in the sixth sentence, by striking ''A protest may be amended,'' and inserting ''Unless a request for accelerated disposition is filed under section 515(b), a protest may be amended,''; and

(B) in paragraph (3)—

(i) in the matter preceding subparagraph (A), by striking ''ninety days'' and inserting ''180 days'';

(ii) in subparagraph (A), by striking ''notice of'' and inserting ''date of''; and

(iii) in the second sentence, by striking ''90 days'' and inserting ''180 days''.

SEC. 2104. REVIEW OF PROTESTS.

Section 515(b) of the Tariff Act of 1930 (19 U.S.C. 1515(b)) is amended in the first sentence by striking "after ninety days" and inserting "concurrent with or".

SEC. 2105. REFUNDS AND ERRORS.

Section 520(c) of the Tariff Act of 1930 (19 U.S.C. 1520(c)) is repealed.

SEC. 2106. DEFINITIONS AND MISCELLANEOUS PROVISIONS.

Section 401 of the Tariff Act of 1930 (19 U.S.C. 1401) is amended by adding at the end the following:

"(t) RECONFIGURED ENTRY.—The term 'reconfigured entry' means an entry filed on an import activity summary statement which substitutes for all or part of 1 or more entries filed under section 484(a)(1)(A) or filed on a reconciliation entry that aggregates the entry elements to be reconciled under section 484(b) for purposes of liquidation, reliquidation, or protest.".

SEC. 2107. VOLUNTARY RELIQUIDATIONS.

Section 501 of the Tariff Act of 1930 (19 U.S.C. 1501) is amended in the first sentence by inserting "or 504" after "section 500".

SEC. 2108. EFFECTIVE DATE.

The amendments made by this subtitle shall apply to merchandise entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

Subtitle C—Protection of Intellectual Property Rights

SEC. 2201. USTR DETERMINATIONS IN TRIPS AGREEMENT INVESTIGATIONS.

(a) IN GENERAL.—Section 301(a)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2411(a)(2)(A)) is amended by inserting after "agreement," the following: "except an investigation initiated pursuant to section 302(b)(2)(A) involving rights under the Agreement on Trade-Related Aspects of Intellectual Property Rights (referred to in section 101(d)(15) of the Uruguay Round Agreements Act) or the GATT 1994 (as defined in section 2(1)(B) of that Act) relating to products subject to intellectual property protection,".

(b) TIMEFRAME FOR TRIPS AGREEMENT DETERMINATIONS.—Section 304(a)(3)(A) of the Trade Act of 1974 is amended to read as follows:

"(3)(A) If an investigation is initiated under this chapter by reason of section 302(b)(2) and—

"(i) the Trade Representative considers that rights under the Agreement on Trade-Related Aspects of Intellectual Property Rights or the GATT 1994 relating to products subject to intellectual property protection are involved, the Trade Representative shall make the determination required under paragraph (1) not later than 30 days after the date on which the dispute settlement procedure is concluded; or

"(ii) the Trade Representative does not consider that a trade agreement, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, is involved or does not make a determination described in subparagraph (B) with respect to such investigation, the Trade Representative shall make the determinations required under paragraph (1) with respect to such investigation not later than the date that is 6 months after the date on which such investigation is initiated.".

(c) CONFORMING AMENDMENT.—Section 305(a)(2)(B) of the Trade Act of 1974 is amended by striking "section 304(a)(3)(A)" and inserting "section 304(a)(3)(A)(ii)".

TITLE III—IRAQI CULTURAL ANTIQUITIES

SEC. 3001. SHORT TITLE.

This title may be cited as the "Emergency Protection for Iraqi Cultural Antiquities Act of 2004".

SEC. 3002. EMERGENCY IMPLEMENTATION OF IMPORT RESTRICTIONS.

(a) AUTHORITY.—The President may exercise the authority of the President under section 304 of the Convention on Cultural Property Implementation Act (19 U.S.C. 2603) with respect to any archaeological or ethnological material of Iraq without regard to whether Iraq is a State Party under that Act, except that, in exercising such authority, subsection (c) of such section shall not apply.

(b) DEFINITION.—In this section, the term "archaeological or ethnological material of Iraq" means cultural property of Iraq and other items of archaeological, historical, cultural, rare scientific, or religious importance illegally removed from the Iraq National Museum, the National Library of Iraq, and other locations in Iraq, since the adoption of United Nations Security Council Resolution 661 of 1990.

SEC. 3003. TERMINATION OF AUTHORITY.

The authority of the President under section 3002(a) shall terminate on September 30, 2009.

TITLE IV—WOOL TRUST FUND

SEC. 4001. SHORT TITLE.

This title may be cited as the "Wool Suit and Textile Trade Extension Act of 2004".

SEC. 4002. EXTENSION AND MODIFICATION OF DUTY SUSPENSION ON WOOL PRODUCTS, WOOL RESEARCH FUND, WOOL DUTY REFUNDS.

(a) EXTENSION OF TEMPORARY DUTY REDUCTIONS.—

(1) HEADING 9902.51.11.—Heading 9902.51.11 of the Harmonized Tariff Schedule of the United States is amended—

(A) in the article description, by striking "all the foregoing" through the end and inserting "(provided for in subheading 5112.11.60 or 5112.19.95)";

(B) by striking "2005" and inserting "2007"; and

(C) by striking "17.5%" and inserting "10%".

(2) HEADING 9902.51.12.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by striking heading 9902.51.12.

(3) HEADING 9902.51.13.—Heading 9902.51.13 of the Harmonized Tariff Schedule of the United States is amended by striking "2005" and inserting "2007".

(4) HEADING 9902.51.14.—Heading 9902.51.14 of the Harmonized Tariff Schedule of the United States is amended—

(A) in the article description, by inserting "the foregoing" after "top,"; and

(B) by striking "2005" and inserting "2007".

(5) FABRICS OF COMBED WOOL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following:

9902.51.15	*Fabrics of combed wool, containing 85 percent or more by weight of wool, with wool yarns of average fiber diameters of 18.5 micron or less, under the terms of U.S. note 16(b) to this subchapter (provided for in subheading 5112.11.30 or 5112.19.60)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*
9902.51.16	*Fabrics of combed wool, containing 85 percent or more by weight of wool, with wool yarns of average fiber diameters of 18.5 micron or less, under the terms of U.S. note 17 to this subchapter (provided for in subheading 5112.11.30 or 5112.19.60)*	*Free*	*No change*	*No change*	*On or before 12/31/2006*

(b) MODIFICATION OF LIMITATION ON QUANTITY OF IMPORTS.—

(1) NOTE 15.—U.S. Note 15 to subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended—

(A) by striking "The aggregate" and inserting

"(a) The aggregate";

(B) in subdivision (a), as redesignated by subparagraph (A)—

(i) by striking the comma after "9902.51.11";

(ii) by striking "and" after "2002,"; and

(iii) by striking "year 2003" and all that follows through the end period and inserting the following: "years 2003 and 2004, and 5,500,000 square meter equivalents in calendar year 2005 and each calendar year thereafter for the benefit of persons who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers in the United States, allocated as required by section 501(e) of the Trade and Development Act of 2000."; and

(C) by adding at the end the following new division:

"(b) For purposes of heading 9902.51.11, all fabrics entered under such heading must be certified by the importer as suitable for use in making men's and boys' suits (as defined in U.S. note 13 to this subchapter), suit-type jackets, or trousers and must be imported for the benefit of persons who cut and sew such clothing in the United States.".

(2) NOTE 16.—U.S. Note 16 to subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended—

(A) by striking "The aggregate" and inserting "(a) The aggregate";

(B) in subdivision (a), as redesignated by subparagraph (A)—

(i) by striking "9902.51.12," and inserting "9902.51.15";

(ii) by striking "and" after "2002,"; and

(iii) by striking "year 2003" and all that follows through the end period and inserting the following: "years 2003 and 2004, 5,000,000 square meter equivalents in calendar year 2005 and each calendar year thereafter, allocated as required by section 501(e) of the Trade and Development Act of 2000 for the benefit of persons who cut and sew such clothing in the United States."; and

(C) by adding at the end the following new subdivision:

"(b) For purposes of heading 9902.51.15, all fabrics entered under such heading must be certified by the importer as suitable for use in making men's and boys' suits (as defined in U.S. note 13 to this subchapter), suit-type jackets, or trousers and must be imported for the benefit of persons who cut and sew such clothing in the United States.".

(3) NOTE 17.—The U.S. Notes for subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States are amended by adding at the end the following new Note:

"17. (a) The aggregate quantity of worsted wool fabric entered under subheading 9902.51.16 shall be limited to 2,000,000 square meter equivalents in calendar year 2005 and each calendar year thereafter, allocated in accordance with section 501(e) of the Trade and Development Act of 2000 for the benefit of persons who weave worsted wool fabric suitable for use in men's and boys' suits.

"(b) For purposes of heading 9902.51.16, all fabrics entered under such heading must be certified by the importer as suitable for use in making men's and boys' suits (as defined in U.S. note 13 to this subchapter), suit-type jackets, or trousers and must be imported for the benefit of persons who weave in the United States worsted wool fabric suitable for use in such clothing.".

(1) CONFORMING AMENDMENTS.—

(A) SUNSET STAGED REDUCTION REQUIREMENT.—Section 501(a)(2) of the Trade and Development Act of 2000 (Public Law 106–200; 114 Stat. 299) is amended by inserting before the period "for goods entered, or withdrawn from warehouse for consumption, before January 1, 2005".

(B) ALLOCATION OF TARIFF-RATE QUOTAS.—Subsection (e) of section 501 of the Trade and Development Act of 2000 (Public Law 106–200; 114 Stat. 200) is amended—

(i) by striking "9902.51.12" and inserting "9902.51.15";

(ii) by inserting "for manufacturers of men's and boys' suits" after "implementing the limitation"; and

(iii) by inserting at the end the following new sentence: "In implementing the limitation for manufacturers of worsted wool fabric with respect to the quantity of worsted wool fabrics under heading 9902.51.16 of the Harmonized Tariff Schedule of the United States, as required by U.S. Note 17 of subchapter II of chapter 99 of such Schedule, the Secretary of Commerce shall prescribe regulations to allocate fairly the quantity of worsted wool fabrics required under U.S. Note 17 of such Schedule to manufacturers who weave worsted wool fabric in the United States.".

(C) SUNSET AUTHORITY TO MODIFY LIMITATION ON QUANTITY.—Section 504(b) of the Trade and Development Act of 2000 (Public Law 106–200; 114 Stat. 301) is repealed, effective January 1, 2005.

(c) EXTENSION OF DUTY REFUNDS AND WOOL RESEARCH TRUST FUND.—

(1) ESTABLISHMENT OF TRUST FUND.—There is hereby established within the Treasury of the United States a trust fund to be known as the Wool Apparel Manufacturers Trust Fund (in this subsection referred to as the "Trust Fund"), consisting of such amounts as may be transferred to the Trust Fund under paragraph (2).

(2) TRANSFER OF AMOUNTS.—

(A) IN GENERAL.—The Secretary of the Treasury shall transfer to the Trust Fund, out of the general fund of the Treasury of the United States, amounts determined by the Secretary of the Treasury to be equivalent to the amounts received in the general fund that are attributable to the duty received on articles classified under chapter 51 of the Harmonized Tariff Schedule of the United States, subject to the limitation in subparagraph (B).

(B) LIMITATION.—In any fiscal year, the Secretary shall not transfer more than the amount determined by the Secretary necessary for the Bureau of Customs and Border Protection to make payments authorized under paragraph (3) and the Secretary of Commerce to make grants under paragraph (6).

(3) AVAILABILITY OF AMOUNTS FROM TRUST FUND.—From amounts in the Trust Fund, the Bureau of Customs and Border Protection shall pay to each manufacturer that receives a payment during calendar year 2005 under section 505 of the Trade and Development Act of 2000 (Public Law 106–200; 114 Stat. 303), as amended by section 5101 of the Trade Act of 2002 (116 Stat. 1041), and that provides an affidavit, no later than March 1 of the year of the payment, that it remains a manufacturer in the United States as of January 1 of the year of the payment, 2 additional payments, each payment equal to the payment received for calendar year 2005 as follows:

(A) The first payment to be made after January 1, 2006, but on or before April 15, 2006.

(B) The second payment to be made after January 1, 2007, but on or before April 15, 2007.

(4) SUCCESSOR-IN-INTEREST.—Any manufacturer that becomes a successor-in-interest to a claimant of a payment under section 505 of the Trade and Development Act of 2000, as amended by section 5101 of the Trade Act of 2002, because of—

(A) an assignment of the claim,

(B) an assignment of the original claimant's right to manufacture under the same trade name, or

(C) a reorganization,

or otherwise, shall be eligible to claim the payment as if the successor manufacturer were the original claimant, without regard to section 3727 of title 31, United States Code. Such right to claim payment as a successor shall be effective as if the right were included in section 505 of the Trade and Development Act of 2000.

(5) EXTENSION OF WOOL RESEARCH, DEVELOPMENT, AND PROMOTION TRUST FUND.—Section 506(f) of the Trade and Development Act of 2000 (Public Law 106–200; 114 Stat. 303), as amended by section 5102(c)(2) of the Trade Act of 2002 (116 Stat. 1047), is amended by striking "2006" and inserting "2008".

(6) COMMERCE AUTHORITY TO PROMOTE DOMESTIC EMPLOYMENT.—

(A) GRANTS TO MANUFACTURERS OF WORSTED WOOL FABRICS.—The Secretary of Commerce shall provide to—

(i) persons who were, during calendar years 1999, 2000, and 2001, manufacturers of worsted wool fabric of the kind described in heading 9902.51.12 of the Harmonized Tariff Schedule of the United States (as in effect on the day before the date of the enactment of this Act), and

(ii) persons who were, during such calendar years, manufacturers of worsted wool fabric of the kind described in heading 9902.51.11 of the Harmonized Tariff Schedule of the United States,

grants in each of calendar years 2005 through 2007 in the amounts determined under subparagraph (B).

(B) AMOUNTS.—(i) The total amount of grants to manufacturers under subparagraph (A)(i) shall be $2,666,000 each calendar year, allocated among such manufacturers on the basis of the percentage of each manufacturer's production of the fabric described in heading 9902.51.12 of the Harmonized Tariff Schedule of the United States (as in effect on the day before the date of the enactment of this Act) for calendar years 1999, 2000, and 2001, compared to the production of such fabric by all such manufacturers who qualify under subparagraph (A)(i) for such grants.

(ii) The total amount of grants to manufacturers under subparagraph (A)(ii) shall be $2,666,000 each calendar year, allocated among such manufacturers on the basis of the percentage of each manufacturer's production of the fabric described in heading 9902.51.11 of the Harmonized Tariff Schedule of the United States for calendar years 1999, 2000, and 2001, compared to the production of such fabric by all manufacturers who qualify under subparagraph (A)(ii) for such grants.

(iii) Any grant awarded by the Secretary under this paragraph shall be final and not subject to appeal or protest.

(d) EFFECTIVE DATE FOR DUTY REDUCTION.—The amendment made by subsection (a)(1)(B) shall apply to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2005.

TITLE V—REFERENCE TO CUSTOMS SERVICE

SEC. 5001. REFERENCE TO CUSTOMS SERVICE.

Except as otherwise expressly provided, any reference in this Act to the "United States Customs Service" or the "Customs Service" shall be considered to be a reference to the "Bureau of Customs and Border Protection" of the Department of Homeland Security.

And the Senate agree to the same.

From the Committee on Ways and Means, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

WILLIAM THOMAS,
PHILIP M. CRANE,
E. CLAY SHAW, Jr.,
CHARLES B. RANGEL,
SANDER M. LEVIN,
Managers on the Part of the House.

CHUCK GRASSLEY,
BILL FRIST,
MAX BAUCUS,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1047), to amend the Harmonized Tariff Schedule of the United States to modify temporarily certain rates of duty, to make other technical amendments to the trade laws, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

SECTION 1.—SHORT TITLE; TABLE OF CONTENTS

TITLE I—TARIFF PROVISIONS

SECTION 1101.—REFERENCE; EXPIRED PROVISIONS

Present law

Subchapter II of Chapter 99 of the Harmonized Tariff Schedule of the United States provides rates of duty for certain items.

House bill

The House bill strikes certain subheadings in subchapter II of Chapter 99.

Senate amendment

The Senate amendment is the same as the House bill with minor technical changes.

Conference agreement

The conference agreement follows the House bill and the Senate amendment with minor technical changes.

Subtitle A—Temporary Duty Suspensions and Reductions

CHAPTER 1—NEW DUTY SUSPENSIONS AND REDUCTIONS

SECTIONS 1111 THROUGH 1441

Present law

Imports of the goods described in sections 1111 through 1441 enter under the specified

Harmonized Tariff Schedule subheading with the associated tariff rate.

House bill

The House bill provides for the suspension or reduction of duties of 306 products identified in section 1101 through 1406 of H.R. 1047.

Senate amendment

The Senate amendment struck all House provisions and substituted provisions that in most cases were identical or had only minor technical changes. There are exceptions as follows. The Senate amendment added additional duty suspensions at Sections 1399-1419 of the Senate amendment. The Senate amendment deleted House Section 1124 (Buctril) because of opposition from a domestic maker of the product. The Senate amendment inadvertently did not include House Sections 1176, 1338, 1403, and 1414.

Conference agreement

After consideration of the technical and policy differences between the two bills, Conferees agreed to the following.

The House recedes to the following Senate amendments: Sections 1109, 1111, 1144, 1145, 1148, 1161, 1166, 1205, 1215, 1223, 1124, 1231, 1245, 1290, 1312, 1317, 1322, 1324, 1336, 1340, 1341, 1343, 1363, 1365, 1376, 1381, 1386, 1399-1419. The Senate recedes to the following House provisions: Sections 1101-1108, 1110, 1112-1113, 1125-1144, 1147-1148, 1150-1161, 1163-1166, 1168-1206, 1208-1216, 1218-1224, 1227-1232, 1234-1246, 1248-1291, 1293-1313, 1315-1318, 1320-1323, 1325, 1327-1337, 1338-1342, 1345, 1347-1365, 1367, 1369-1371, 1372-1378, 1380-1383, 1385-1388, 1390-1401, and 1406. The provisions expire on December 31, 2006.

The House further recedes to the Senate in dropping Section 1124 (Buctril) of the House bill. Conferees agree to make technical changes to Section 1420 of the Senate amendment (Bags for certain toys). The Senate recedes to the House with respect to certain footwear with the exception that the duty is reduced to 0. Conferees further agree to include additional duty suspensions.

CHAPTER 2—EXISTING DUTY SUSPENSIONS AND REDUCTIONS

SECTIONS 1451 THROUGH 1456—EXTENSION OF CERTAIN EXISTING DUTY SUSPENSIONS

Present law

Imports of the goods described in section 1451 through 1456 enter under the specified Harmonized Tariff Schedule subheading with the associated tariff rate.

House bill

The House bill extends the existing duty suspensions for products identified in Sections 1451 through 1456 until 12/31/2005.

Senate amendment

The Senate amendment made no changes to the House bill except for extending the existing duty suspensions for the products identified until 12/31/2006.

Conference agreement

The House recedes to the Senate. The conference agreement includes two additional extensions of duty suspensions for polyvinyl chloride and ceramic knives.

SECTION 1457—EFFECTIVE DATE

Present law

No provision.

House bill

Except as otherwise provided, the House bill makes the extension of duty suspensions provided in Sections 1451 through 1456 effective as of January 1, 2003.

Senate amendment

Except as otherwise provided, the Senate amendment makes the extension of duty suspensions provided in Sections 1451 through 1456 effective as of January 1, 2004.

Conference agreement

The House recedes to the Senate.

Subtitle B—Other Tariff Provisions

CHAPTER 1—LIQUIDATION OR RELIQUIDATION OF CERTAIN ENTRIES

Statement of Conferees regarding provisions to reliquidate certain entries. Conferees noted with great concern the large number of requests for reliquidation of imported entries. The standard for including reliquidations is clear government error. In this instance, some of the requests for reliquidation of imported products arose out of the fact that importers of like products were forgiven their debt in prior miscellaneous trade legislation. Conferees concluded that it was only fair to put all importers of like products on an equal footing. For this and other reasons conferees chose to be broadly inclusive in accepting reliquidation provisions in this conference report. In future legislation, however, conferees believe it is important that Congress authorize reliquidation of import entries only when there is clear government error, and sponsors of such legislation should be mindful of whether there is equal treatment for all importers of like products. Conferees intend that the test for "clear government error" for future reliquidations be strictly construed. Conferees further do not view inclusion of any particular reliquidation in this conference report as precedent that similar request should be included in future legislation.

SECTION 1501—CERTAIN TRAMWAY CARS

Present law

Imports of the goods described in section 1501 were liquidated.

House bill

The House bill provides for the liquidation or reliquidation of certain tramway car entries as duty free.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

SECTION 1502—LIBERTY BELL REPLICA

Present law

Liberty Bell replicas are currently liquidated at a rate of 5.8% ad valorem.

House bill

The House bill provides for the liquidation or reliquidation of a replica of the Liberty Bell, imported from the Whitechapel Bell Foundry of London, England, as duty-free.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

SECTION 1503—CERTAIN ENTRIES OF COTTON GLOVES

Present law

Certain identified entries of cotton gloves entered during the period from September 8, 1994 to February 2, 2000 were liquidated.

House bill

The House bill provides for the liquidation or reliquidation of certain identified entries of cotton gloves entered during the period from September 8, 1994 to February 2, 2000.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

SECTION 1504—CERTAIN ENTRIES OF POSTERS

Present law

Certain identified entries of posters entered during the period from June 19, 2000 to May 18, 2001 were liquidated.

House bill

The House bill provides for the liquidation or reliquidation of certain identified entries of posters entered during the period from June 19, 2000 to May 18, 2001.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

SECTION 1505—CERTAIN ENTRIES OF POSTERS ENTERED IN 1999 AND 2000

Present law

Certain identified entries of posters entered in 1999 and 2001 entered during the period from March 8, 1999 to November 1, 2000, were liquidated.

House bill

The House bill provides for the liquidation or reliquidation of certain identified entries of posters entered during the period from March 8, 1999 to November 1, 2000.

Senate amendment

The Senate amendment is the same as the House bill with additional items.

Conference agreement

The House recedes to the Senate.

SECTION 1506—CERTAIN ENTRIES OF 13-INCH TELEVISIONS

Present law

Certain identified entries of 13-inch televisions entered during the period from April 17, 1999 to May 31, 2000 were liquidated.

House bill

The House bill provides for the liquidation or reliquidation of certain identified entries of 13-inch televisions entered during the period from April 17, 1999 to May 31, 2000.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

SECTION 1507—NEOPRENE SYNCHRONOUS TIMING BELTS

Present law

Certain identified entries of neoprene synchronous timing belts were liquidated during the period from July 6, 1989 to April 17, 1990.

House bill

The House bill provides for the liquidation or reliquidation of certain identified entries of neoprene synchronous timing belts entered during the period from July 6, 1989 to April 17, 1990.

Senate amendment

No provision.

Conference agreement

The Senate recedes to the House.

SECTION 1508—CERTAIN ENTRIES OF ROLLER CHAIN

Present Law

Certain identified entries of roller chain subject to antidumping duties, entered during the period from June 30, 1981, to December 2, 1986, were liquidated.

House bill

No provision.

Senate amendment

The Senate amendment provides for the liquidation or reliquidation of certain identified entries of roller chain entered during the period from June 30, 1981 to December 2, 1996.

Conference agreement

The House recedes to the Senate.

SECTION 1509—JUICES ENTERED IN APRIL 1993

Present law

Section 313(j) of the Tariff Act of 1930 (19 U.S.C. section 1313(j)) allows exporters to claim drawback under certain circumstances.

House bill

No provision.

Senate amendment

The Senate amendment provides for the liquidation or reliquidation of certain identified drawback claims, of juices entered in April of 1993.

Conference agreement

The House recedes to the Senate.

SECTION 1510—JUICES ENTERED IN MARCH 1994

Present law

Section 313(j) of the Tariff Act of 1930 (19 U.S.C. section 1313(j)) allows exporters to claim drawback under certain circumstances.

House bill

No provision.

Senate amendment

The Senate amendment provides for the liquidation or reliquidation of certain identified drawback claims on entries of juices entered in March of 1994.

Conference agreement

The House recedes to the Senate.

SECTION 1511—CERTAIN ENTRIES PREMATURELY LIQUIDATED IN ERROR

Present Law

Certain identified entries of aramid fibers entered during the period from July 29, 1994 to March 24, 2000 were prematurely liquidated in error.

House bill

The House bill provides for the liquidation or reliquidation of certain entries of aramid fibers, which were entered under the incorrect duty rate and prematurely liquidated in error, during the period from September 8, 1994 to March 24, 2000.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

SECTION 1512—CERTAIN POSTERS ENTERED DURING 2000 AND 2001

Present law

Certain identified entries of posters entered during the period from September 24, 2000, to February 28, 2001, were liquidated.

House bill

No provision.

Senate amendment

The House bill provides for the liquidation or reliquidation of certain identified entries of posters entered during the period from September 24, 2000, to February 28, 2001.

Conference agreement

The House recedes to the Senate.

SECTION 1513—CERTAIN OTHER ENTRIES

Present law

Certain entries entered during the period from February 22, 1995, to February 9, 1996, were liquidated by U.S. Customs.

House bill

No provision.

Senate Amendment

This provision would provide for the reliquidation of certain entries and allow importers to claim drawback claims for the reexport of such goods.

Conference Agreement

The House recedes to the Senate.

SECTION 1514—CERTAIN RAILWAY PASSENGER COACHES

Present law

Certain identified entries of railway passenger coaches were liquidated.

House bill

No provision.

Senate amendment

The Senate amendment provides for the liquidation or reliquidation of certain identified entries of railway passenger coaches.

Conference agreement

The House recedes to the Senate.

SECTION 1515—CERTAIN VANADIUM CARBIDES

Present law

Certain identified entries of certain entries of vanadium carbides and vanadium carbonitride entered during the period from June 20, 1999 to July 12, 2000, were liquidated.

House bill

No provision.

Senate amendment

The Senate amendment provides for the liquidation or reliquidation of certain identified entries of vanadium carbides and vanadium carbonitride entered during the period from June 20, 1999 to July 12, 2000.

Conference agreement

The House recedes to the Senate.

SECTION 1516—STEEL WIRE ROPE ENTRIES

Present law

Certain identified entries of steel wire rope entered during the period from August 4, 1998 to February 8, 1999 were liquidated.

House bill

No provision.

Senate amendment

The Senate amendment provides for the liquidation or reliquidation of certain identified entries of steel wire rope entered during the period from August 4, 1998 to February 8, 1999.

Conference agreement

The House recedes to the Senate.

SECTIONS 1517 THROUGH 1536—CERTAIN ENTRIES OF TOMATO SAUCE PREPARATION

Present law

Certain identified entries of tomato sauce preparation were liquidated.

House bill

No provision.

Senate amendment

The Senate amendment provides for the liquidation or reliquidation of certain identified entries of tomato sauce preparation.

Conference agreement

The House recedes to the Senate.

CHAPTER 2—MISCELLANEOUS PROVISIONS

SECTIONS 1551 THROUGH 1559

Present law

See description of present law in Senate Report 108-28.

House bill

See description of provisions and reasons for change in Senate Report 108-28.

Senate amendment

The Senate amendment made no changes to the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

SECTION 1560—AUTHORITY FOR THE ESTABLISHMENT OF INTEGRATED BORDER INSPECTION AREAS AT THE UNITED STATES–CANADA BORDER

Present law

Section 127 of the Treasury Department Appropriations Act of 2003 (P.L. 108-7) contains this provision.

House bill

The House bill requires the Commissioner of Customs to seek to establish Integrated Border Inspection Areas on either side of the United States-Canada border in which U.S. Customs officers can inspect vehicles entering the United States from Canada before they enter the United States, or Canadian Customs officers can inspect vehicles entering Canada from the United States before they enter Canada.

Senate amendment

No provision.

Conference agreement

The Senate recedes to the House.

SECTION 1561—DESIGNATION OF FOREIGN LAW ENFORCEMENT OFFICERS

Present law

Section 127 of the Treasury Department Appropriations Act of 2003 (P.L. 108-7) contains this provision.

House bill

The House bill amends Section 401(i) of the Tariff Act of 1930 to provide for inspections and pre-clearance in foreign countries and to authorize the Secretary of State to enter into agreements with foreign countries for the stationing of foreign customs and agriculture inspection officers in the United States.

Senate amendment

No provision.

Conference agreement

The Senate recedes to the House.

SECTION 1562—AMENDMENTS TO THE UNITED STATES INSULAR POSSESSION PROGRAM

Present law

Additional U.S. Note 5 to HTS Chapter 91 provides for the duty-free entry of defined quantities of watches and watch movements produced in the U.S. insular possessions. This provision requires the Secretaries of Commerce and the Interior (the 'Secretaries') to allocate such duty exemptions among the insular possessions and issue appropriate licenses for such duty exemptions. Note 5 also requires the Secretaries to issue duty-refund certificates (known as Production Incentive Certificates, or PICs) to each insular possession watch and watch movement producer based on the producer's duty-free shipments and creditable wages during the previous calendar year. Additional U.S. Note 3 to Chapter 71, which was added to the HTS in 1999, provides that a producer of any article of jewelry that is provided for in heading 7113 and that is the product of the insular possessions is also eligible for PIC benefits provided for in Additional U.S. Note 5(h) to Chapter 91. In addition, Additional U.S. Note 3 to Chapter 71 provided that, for a two-year transition period, any article of jewelry provided for in heading 7113 that was assembled in the insular possessions would be treated as a product of the insular possessions for purposes of General Note 3(a)(iv), which provides duty-free treatment for insular possession products.

House bill

The House bill amends Additional U.S. Note 5(h) to HTS Chapter 91 to: (1) remove current restrictions on the use of Production Incentive Certificates by permitting the use of such certificates for refunds of duties on any articles imported into the United States; (2) extend the PIC program through 2015; and (3) increase the value of PICs to correspond to the loss of any comparative duty advantage for insular watches, contingent upon future eliminations or reductions in worldwide watch duties.

The House bill further amends Additional U.S. Note 3 to HTS Chapter 71 of the Harmonized Tariff Schedule of the United States to: (1) add a separate 10,000,000 unit cap for jewelry to account for the fact that jewelry is generally produced at higher volumes than watches; and (2) provide a transition rule under which jewelry assembled by a new insular jewelry producer would receive duty-free treatment for 18 months after the producer's commencement of operations.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

SECTION 1563. MODIFICATION OF PROVISIONS RELATED TO DRAWBACK CLAIMS

Present law

See description of present law in Senate Report 108-28.

House bill

See description of provisions and reasons for change in Senate Report 108-28.

Senate amendment

The Senate amendment made no changes to the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

Subtitle C—Effective Date

SECTION 1571. EFFECTIVE DATE

Present law

No provision.

House bill

The House bill makes the amendments in this title applicable on or after the 15th day after the date of the enactment of the Act.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

TITLE II—OTHER TRADE PROVISIONS

Subtitle A—Miscellaneous Provisions

SECTION 2001. TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO ARMENIA

Present law

Armenia's NTR status is currently governed by Title IV of the Trade Act of 1974, as amended by the Customs and Trade Act of 1990 (title IV). Section 402 of title IV (also known as the Jackson-Vanik amendment) sets forth requirements relating to freedom of emigration, which must be met or waived by the President in order for the President to grant nondiscriminatory normal trade relations (NTR) status to a non-market economy country. Armenia, which was granted NTR in 1992, was found to be in full compliance with the Jackson-Vanik freedom of emigration requirements on June 3, 1997. NTR has continuously been renewed for Armenia, subject to semiannual review by the President. Armenia became a member of the World Trade Organization on February 5, 2003.

House bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement grants the President the authority to: (1) determine that Title IV of the Trade Act of 1974 should no longer apply to Armenia; and (2) proclaim the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Armenia.

SECTION 2002. MODIFICATION TO CELLAR TREATMENT OF NATURAL WINE

Present law

The United States allows the importation of wine produced in other countries without requiring either testing or certification in order to confirm that the wine has been produced in accordance with U.S. regulations. U.S. authorities simply require a certification that the wine has been produced in accordance with the regulations of the country of export, even though such foreign regulations may not be comparable to U.S. law. In contrast, a large number of U.S. trading partners require testing and laboratory analysis of U.S. wines imported for consumption to determine whether the wine conforms to their particular winemaking regulations and practices. Such foreign regulations can constitute a non-tariff trade barrier for U.S. goods.

In an effort to facilitate trade in wine, in December 2001, the United States along with other signatories signed a plurilateral agreement establishing a Mutual Acceptance Agreement on Winemaking Practices (MAA), also known as the Wine Accord. The primary focus of the MAA is to eliminate testing of wine for reasons other than health or safety. It is the first multilateral agreement to embrace the concept of equivalency in the Technical Barriers to Trade Agreement of the WTO.

House bill

The House bill provision conforms to the requirements of the MAA and establishes procedures to assure that countries not party to the MAA meet minimum requirements.

Senate amendment

No provision.

Conference agreement

The Senate recedes to the House.

SECTION 2003. ARTICLES ELIGIBLE FOR PREFERENTIAL TREATMENT UNDER THE ANDEAN TRADE PREFERENCE ACT

Present law

See description of present law in Senate Report 108-28.

House bill

See description of provisions and reasons for change in Senate Report 108-28.

Senate amendment

The Senate amendment made technical corrections to the House bill.

Conference agreement

The House recedes to the Senate.

SECTION 2004. TECHNICAL AMENDMENTS

Present law

No provision.

House bill

The House bill makes technical corrections to the Trade Act of 2002 (P.L. 107-210). The House bill also amends Section 112(b) of the African Growth and Opportunity Act (AGOA) (19 U.S.C. 3721(b)) and Section 213(b) of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2703(b)) to permit the use of U.S. formed fabrics or U.S. formed components, whether cut to shape or knit to shape, using U.S. formed yarns, in garments that are otherwise produced from fabrics formed in the region. The House bill also amends Section 112(b) of the African Growth and Opportunity Act (19 U.S.C. 3721(b)) to ensure that a garment entered under short supply is not disqualified because the fabric is made in sub-Saharan Africa.

Senate amendment

The Senate amendment is the same as the House bill with certain additional provisions, including a limitation on customs user fees, labeling requirements for certain sock products, and a provision to extend industry trade advisory committees.

Conference agreement

The conference agreement follows the Senate amendment except that conferees agreed to remove provisions related to the African Growth and Opportunity Act, which were included in the AGOA Acceleration Act of 2004 and became P.L. 108-274.

SECTION 2004(1). RETROACTIVITY FOR CERTAIN AGOA PROVISIONS

Present Law

Pursuant to subsection 8(d) of the African Growth and Opportunity Acceleration (AGOA) Act of 2004 (Pub. L. 108-274), the entries referred to in subsection 8(a) of the AGOA Act of 2004 are limited to entries of apparel articles that meet the requirements of subsection 112(b) of the Trade and Development Act of 2000 (Pub. L. 106-200) as amended by section 3108 of the Trade Act of 2002 (Pub. L. 107-210) and the AGOA Act of 2004.

House bill

No provision.

Senate Amendment

The Senate amendment clarifies subsection 8(d) of the AGOA Act of 2004 (Public Law 108-274) by adding the articles provided for in subsection 112(d)(3)(A) of the Trade and Development Act of 2000 (Pub. L. 106-200) as amended (collars and cuffs), to the entries referred to in subsection 8(a) of the AGOA Act of 2004. As a result, entries of collars and cuffs made on or after October 1, 2000 shall be liquidated or reliquidated as free of duty and free of any quantitative restriction or limitation, pursuant to subsection 8(a) of the AGOA Act of 2004.

Conference agreement

The House recedes to the Senate.

SECTION 2006. EXTENSION OF NORMAL TRADE RELATIONS TO LAOS

Present law

"Laos" is listed in General note 3(b) of the HTS among the countries whose products are denied Normal Trade Relations (NTR) tariff treatment.

House bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement amends General note 3(b) of the HTS by striking "Laos."

SECTION 2006—REPEAL OF ANTIDUMPING PROVISION OF REVENUE ACT OF 1916

Present law

See House Report 108-415 for an explanation of present law and need for repeal.

House bill

No provision.

Senate amendment

No provision.

Conference agreement

Conferees agreed to include a provision to repeal the antidumping provision of the Revenue Act of 1916. The basis for the legislative language is H.R. 1073 from the 108th Congress. This legislation is necessary in order to bring the United States into compliance with its World Trade Organization obligations.

Subtitle B—Technical Amendments Relating to Entry and Protest

SECTIONS 2101 THROUGH 2108

Present Law

In the past, importers paid duties on each entry as the entry was processed. Under the recently implemented periodic payment system, CBP allows participating importers to pay off duties on a monthly basis.

House bill

No provision.

Senate amendment

The Senate amendment includes technical amendments dealing with reconfigured entries. The reconfigured entry process would allow importers to separate individual shipments from a larger entry if there are disputes about the individual shipments.

Conference agreement

The House recedes to the Senate with minor technical modifications.

Subtitle C—Protection of Intellectual Property Rights

SECTION 2201—USTR DETERMINATIONS IN TRIPS AGREEMENT INVESTIGATIONS

Present law

Under current law, Section 301 of the Trade Act of 1974 (19 U.S.C. 2414), as amended, requires, when a country is designated a "Priority Foreign Country" under the Special 301 provisions of Section 182 of the Trade Act of 1974 (19 U.S.C. 2414) for its failure to provide adequate and effective protection to U.S. Intellectual property rights, and if the failure in question also violated a provision of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement in the World Trade Organization (WTO), the United States Trade Representative (USTR) to initiate a Section 301 investigation within 30 days of such designation. Under Section 304, the USTR is required to conclude the Section 301 investigation no later than 18 months after the investigation is initiated. Section 303(a)(2) requires the USTR to request consultations with the Priority Foreign Country and, if the issue is not resolved, to initiate WTO dispute settlement proceedings against the Priority Foreign Country within 150 days after consultations are commenced. Under this timetable, the USTR is required to make a Section 301 determination prior to the conclusion of the WTO dispute settlement process.

House bill

No provision.

Senate amendment

The Senate amendment conforms the timetable in Section 304 to the WTO dispute settlement timetable. It requires the USTR to make its Section 301 determination not later than 30 days after the WTO dispute settlement proceeding is concluded.

Conference agreement

The House recedes to the Senate.

TITLE III—IRAQI CULTURAL ANTIQUITIES

Present Law

No provision.

House bill

No provision.

Senate amendment

The Senate amendment provides that the President may exercise the authority of the President under section 304 of the Convention on Cultural Property Implementation Act (CCPIA) (19 U.S.C. 2603) until September 30, 2009, with respect to any archeological or ethnological material of Iraq and without regard to whether Iraq is a State Party under the CCPIA. In exercising such authority, subsection 304(c) of the CCPIA shall not apply.

Conference agreement

The House recedes to the Senate with certain technical changes.

TITLE IV—WOOL TRUST FUND

Present Law

Section 5101 of the Trade Act of 2002 (Pub. L. No. 107-210) sets out three special refund pools for importers of wool fabric, wool yarn, and wool fiber and top, and identifies all persons eligible for the refunds. This law simplifies the process for refunding to these eligible parties first established by section 505 of the Trade and Development Act of 2000. Section 5102 of the Trade Act of 2002 extends temporary duty reductions, first established by the Trade and Development Act of 2000, on fabrics of worsted wool from 2003 to 2005. Section 5101 also increases the limitation on the quantity of imports of eligible worsted wool fabrics. Section 5102 also extends the payments made to manufacturers, first established by the Trade and Development Act of 2000, and extends the Wool Research Trust Fund through 2006.

House amendment

No provision.

Senate amendment

The Senate proposal would extend current programs, including the payments to manufacturers and the Wool Research Trust Fund by five years, while making further temporary reductions to duties on eligible products. The Senate proposal would also make grants to eligible manufacturers of worsted wool fabric. The programs are based on the funding structure established by the Trade and Development Act of 2000.

Conference agreement

The House recedes to the Senate proposal with changes so that all programs are extended by two years beyond the current date of expiration of the current programs.

TITLE V—REFERENCE TO CUSTOMS SERVICE

Present law

On November 25, 2002, the President signed into law legislation (P.L. 107-296) creating a new Department of Homeland Security (DHS). This law transferred the U.S. Customs Service to the Department of Homeland Security under the authority of the Under Secretary for Border and Transportation Security.

House bill

No provision.

Senate amendment

No provision.

Conference agreement

The conference agreement provides that any reference in this Act to the "United States Customs Service" or the "Customs Service" shall be considered to be a reference to the "Bureau of Customs and Border Protection" of the Department of Homeland Security.

From the Committee on Ways and Means, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

WILLIAM M. THOMAS,
PHILIP M. CRANE,
E. CLAY SHAW, Jr.,
CHARLES B. RANGEL,
SANDER M. LEVIN,
Managers on the Part of the House.

CHARLES E. GRASSLEY,
BILL FRIST,
MAX BAUCUS,
Managers on the Part of the Senate.

REQUESTING THE SENATE TO RETURN TO THE HOUSE OF REPRESENTATIVES S. 1301

Mr. HUNTER. Mr. Speaker, I offer a privileged resolution (H. Res. 842) requesting return of official papers on S. 1301, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 842

Resolved, That the Clerk of the House of Representatives request the Senate to return to the House the bill (S. 1301), an Act to amend title 18, United States Code, to prohibit video voyeurism in the special maritime and territorial jurisdiction of the United States, and for other purposes.

The resolution was agreed to.

A motion to reconsider was laid on the table.

9/11 RECOMMENDATIONS IMPLEMENTATION ACT

The SPEAKER pro tempore. Pursuant to House Resolution 827 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 10.

□ 1222

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 10) to provide for reform of the intelligence community, terrorism prevention and prosecution, border security, and international cooperation and coordination, and for other purposes, with Mr. ADERHOLT (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. When the Committee of the Whole rose earlier today, the amendment numbered 12 printed in House Report 108-751 by the gentleman from Wisconsin (Mr. GREEN) had been disposed of.

It is now in order to consider amendment No. 14 printed in House Report 108-751.

AMENDMENT NO. 14 OFFERED BY MR. SMITH OF NEW JERSEY

Mr. SMITH of New Jersey. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 14 offered by Mr. SMITH of New Jersey:

Strike section 3006 (page 242, line 18 through page 244, line 9) and redesignate provisions and conform the table of contents accordingly.

The CHAIRMAN pro tempore. Pursuant to House Resolution 827, the gentleman from New Jersey (Mr. SMITH) and the gentleman from Wisconsin (Mr. SENSENBRENNER) each will control 5 minutes.

The Chair recognizes the gentleman from New Jersey (Mr. SMITH).

Mr. SMITH of New Jersey. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, section 3006 would make one of the most sweeping, unfair changes in immigration policy in the last decade and, if enacted, would pose life-threatening consequences for asylum seekers, trafficking victims, men, women and children. Section 3006 would radically alter existing law with respect to expedited removal, and it would mandate that any noncitizen found in the U.S. be summarily deported if an immigration officer determined that the person had not been inspected upon entry to the country and could not prove to the immigration officer that he or she had been living in the U.S. for more than 5 years.

This mandate, Mr. Chairman, effectively transforms what was a discretionary program managed by Homeland Security and requires them to impose this procedure anywhere, including in the interior of the U.S.

Section 3006 would be especially harmful for women and children who are escaping a range of gender-related persecutions such as rape, sexual slavery, trafficking and honor killings since persons scarred by such trauma often require time before they can step forward to express their claims.

Mr. Chairman, section 3006 would provide for a super-expedited process of removing these people from the United States, with virtually no right of review, thus eviscerating protections that Congress has provided over the last several years for such victims in the Victims of Trafficking and Violence Protection Act which I was the prime sponsor of and is the law of the land.

Mr. Chairman, I want all of my colleagues to know that President Bush, in his SAP which came out yesterday, made it very clear that he is against this provision. The Bush administration wants this out. I call on Members on both sides of the aisle, Democrats and Republicans, to vote for my amendment which would strip it. Also, there are some 40 organizations, the U.S. Catholic Conference of Bishops; National Association of Evangelicals; Refugees International; and Human Rights First—a whole array from the left, right, middle, and everywhere else, who say this is an unwarranted change, an unfair change in our immigration policy. It does not belong in here. The 9/11 Commission did not ask for it.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this is not an issue of humanitarian application of our immigration refugee laws. It is an issue of securing our borders. None of the people the gentleman from New Jersey described would be subject to this if they have come to the United States and entered legally with a claim of persecution under the Refugee Act or a claim of asylum because of what is going on in their home country.

Simply stated, the amendment of the gentleman from New Jersey would strike the expedited removal provisions of this bill. The expedited removal provisions say that the provision of existing law shall be used when the INS picks up somebody who is illegally in this country and who has not been here for 5 years or more.

What is going on is that there are a lot of non-Mexicans that are coming across the southern border. Many of these people come from the Middle East. Without having the expedited removal procedures that are contained in this law, we are stuck with these people. This is a tremendous security threat to the United States. And what the provision that the gentleman from New Jersey seeks to strike is a provision that says that you do not have to jump through all kinds of legal hoops to get these people who have illegally entered the United States out of our country or who have entered legally and have overstayed their visas. It is as simple as that. This is a question of border security. It is not a question of persecuting all of the list of people that the gentleman from New Jersey talked about.

If you want secure borders in this country, the only vote on the Smith amendment is "no."

Mr. Chairman, I reserve the balance of my time.

Mr. SMITH of New Jersey. Mr. Chairman, I yield 2 minutes to my good friend and colleague, the gentleman from California (Mr. BERMAN).

Mr. BERMAN. Mr. Chairman, my friend, the chairman of the Committee on the Judiciary, says this is a matter of security. The Bush administration and George Bush say this is a massively overbroad expedited removal expansion. The President of the United States in January of this year gave a speech where he said the vast majority of these people "bring to America the values of faith in God, love of family, hard work and self-reliance."

If this amendment does not pass, this bill, because a group of people in the majority party in a caucus led by the gentleman from Colorado (Mr. TANCREDO) wants to glom their anti-immigration ideas onto a terrorism and intelligence reform bill, that these people will be deported, up to a million, without due process, without an administrative hearing, without a balancing process that deals with earned adjustment or with guest workers or with anything else. It is the forcing of an anti-immigration agenda onto an intelligence and homeland security reform bill.

We are talking here about victims of trafficking, Cubans fleeing Castro, battered women eligible for VAWA protection. We are talking about people who are classic refugees who will be picked up in this process; they will never have a chance to assert their asylum claims, people who will be subject to torture. You can say you adhere to every convention in the world on refugees and on torture, but if you summarily allow low-level enforcement officers in the Immigration and Customs Enforcement agency or in the Border Patrol to pick people up, take them out of the country, not let them tell their families they are being deported, insisting that they prove their credentials by the documents they have on their body at that time, that means either legal citizenship or legal residents or being here more than 5 years, you are subject to deportation, immediately, summarily, without any chance for judicial review and administrative hearing, any process whatsoever.

Please support the Smith amendment. It is very important.

□ 1230

Mr. SMITH of New Jersey. Mr. Chairman, I yield the balance of my time to the distinguished gentleman from Florida (Mr. LINCOLN DIAZ-BALART).

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Chairman, it is really unfortunate that this provision is in the base bill. It lumps the base bill, as written, all immigrants who may be accused of being undocumented who have been here for 5 years or less, with terrorists.

The current law says, if they are a terrorist, there is no limitation on time. They are picked up, and if they are not arrested, they are thrown out without a hearing. It also says, if they are an undocumented immigrant, within 2 years they can be picked up and sent out without a hearing. That is current.

This expands it to 5 years even though the 2 years of current law is not being used.

There is a border initiative that has been announced. Many other initiatives can be announced under current law. But, no, we want to expand it to 5 years and say that folks who are working in restaurants or folks that are cutting the grass or folks that are doing something that is very honorable and has nothing to do with terrorism are now going to be lumped together to say, even if they have a claim to stay in this country, they do not even have a hearing. They cannot even have a hearing and they are going to be thrown out.

And, by the way, it is not even "may." It is "shall." That is what we are talking about. And it is most unfortunate that in the context of a terrorism bill we have this language.

Vote for the Smith amendment.

Mr. SENSENBRENNER. Mr. Chairman, parliamentary inquiry. Has the time of the gentleman from New Jersey expired?

The CHAIRMAN pro tempore (Mr. ADERHOLT). The gentleman from New Jersey's (Mr. SMITH) time has expired.

Mr. SENSENBRENNER. Mr. Chairman, I yield the balance of my time to the gentleman from Indiana (Mr. HOSTETTLER), chairman of the Immigration, Border Security, and Claims Subcommittee.

Mr. HOSTETTLER. Mr. Chairman, I thank the chairman of the full committee for yielding me this time.

I join the gentleman from Wisconsin (Chairman SENSENBRENNER) in opposing this amendment, which would take a vital tool out of the hands of our Border Patrol in keeping foreign terrorists out of the United States.

As it is distressingly easy for aliens to illegally cross our borders, it would also be relatively easy for terrorists to enter. The Border Patrol recently released data that in just the period from last October through this June, over 44,000 non-Mexican aliens were caught trying to cross the northern or southern borders, including eight from Afghanistan, six from Algeria, 13 from Egypt, 20 from Indonesia, 10 from Iran, 55 from Israel, 122 from Pakistan, six from Saudi Arabia, six from Syria, 22 from Turkey, and two from Yemen. A South African woman alleged to be a terrorist on the terrorist watch list recently indicated that she had crossed the border illegally from Mexico.

What happens to these aliens when they are intercepted? They go through a "revolving door" when we release them because of a lack of detention space. Then we hold out some desperate hope that they will appear for their immigration court hearings months afterward. However, the Department of Justice's Office of the Inspector General found that the INS was not able to remove 87 percent of aliens with final orders of removal who were not detained. And, worse yet, 94 percent of nondetained aliens from state sponsors of terrorism who had final removal orders could not be located for their deportation. In an age of terrorism, this is just unacceptable.

There is no good reason not to subject illegal aliens who have crossed the border illegally to immediate deportation. These aliens, if they have been in the U.S. less than 10 years, have no right to seek cancellation of removal unless they are making a claim of asylum. Once again, unless they are making a claim of asylum and can show a credible fear of persecution, there is no reason not to subject them to expedited removal.

And, in fact, the amendment that just recently passed in the House, previously, removes the 1-year limitation in the base bill for convention against torture and asylum relief. So those who seek relief from convention against torture and for asylum will not be harmed by the bill.

So the amendment must be rejected so that we can allow for the expedited removal of individuals who would do us harm. I urge my colleagues to vote against the amendment.

Ms. JACKSON LEE of Texas. Mr. Chairman, I rise in favor of Mr. SMITH's amendment. This amendment would eliminate section 3006, which contains the expedited removal provisions of H.R. 10. Expedited removal proceedings are conducted by immigration officers who are not even attorneys. There is no hearing before an immigration judge, no right to counsel, and no appeal. Nevertheless, despite this complete absence of due process, someone removed from the United States in expedited removal proceedings is barred for 5 years from returning.

In fact, section 3006 would make expedited removal proceedings even harsher than they already are. When aliens are placed in expedited removal proceedings now, they have been in the United States for less than a year and can apply for asylum if they are able to establish a credible fear of persecution. Section 3006 would place undocumented aliens in expedited removal proceedings who have been in the United States for up to 5 years, and it would deprive them of the right to apply for asylum if they have been here for more than a year and have not filed an asylum application yet, even if they can establish a credible fear of persecution.

It is true that aliens in full due process removal proceedings before an Immigration Judge also are barred from applying for asylum if they have been in the United States for a year and have not already filed an asylum application, but it is not an absolute bar. The alien may still apply for asylum if he can demonstrate the existence of changed circumstances which materially affect his eligibility for asylum, or he can show extraordinary circumstances relating to the delay in filing the application within the one-year period. If people who have been in the United States for more than a year are going to be subjected to expedited removal proceedings, the same exceptions should be available to them for filing an asylum application after the 1-year period.

The fact that section 3006 would apply the 1-year time limit without the exception that was enacted with it is a clear indication of the intention of that section, which is to move people out of the country as quickly as possible without regard to the consequences. It is a certainty that this will result in sending people to countries where they will be persecuted.

I urge you to vote for this amendment to remove section 3006 from H.R. 10.

The CHAIRMAN pro tempore (Mr. LINDER). The question is on the amendment offered by the gentleman from New Jersey (Mr. SMITH).

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

Mr. SENSENBRENNER. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) will be postponed.

It is now in order to consider amendment No. 15 printed in House report 108–751.

AMENDMENT NO. 15 OFFERED BY MR. SMITH OF NEW JERSEY

Mr. SMITH of New Jersey. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 15 offered by Mr. SMITH of New Jersey:

Strike section 3007 (page 244, line 10 through page 247, line 18) and redesignate provisions and conform the table of contents accordingly.

The CHAIRMAN pro tempore. Pursuant to House Resolution 827, the gentleman from New Jersey (Mr. SMITH) and the gentleman from Wisconsin (Mr. SENSENBRENNER) each will control 5 minutes.

The Chair recognizes the gentleman from New Jersey (Mr. SMITH).

Mr. SMITH of New Jersey. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, section 3007 would make sweeping changes, again, to our asylum law that the drafters erroneously contend would stop terrorists from being granted asylum. I think Members should remember that under the Immigration and Nationality Act, terrorists are ineligible for asylum. Worse than being unnecessary, Mr. Chairman, this section would erect a number of brand-new barriers to winning asylum claims that are likely to prevent bona fide refugees from receiving the protection of asylum in the United States, and they will result in bona fide refugees being returned to their persecutors. This stacks the deck against refugees.

Let me just point out to my colleagues that in section 3007, asylum officers and immigration judges would be encouraged to deny an asylum claim simply because the applicant was unable to recall or recount information later in the process that she did not mention when she initially encountered an immigration officer. Asylum applicants, particularly survivors of torture, rape, forced abortion or sterilization may not be comfortable telling this information to a uniformed male inspection officer at an airport. Asylum applicants in that setting may not be provided with appropriate interpreters and may be understandably fearful of discussing their problems about their home countries in detail. They are frightened people, especially trafficking victims.

In section 3007 there is also, amazingly, a demeanor standard which flies in the face of our American standards. If somebody looks down during the asylum interview and does not somehow convey honesty, when one has been tortured, when they have been a victim of trafficking, when they have been hurt emotionally, psychologically, and physically, they could be denied asylum. Sometimes, talking to somebody who is a uniformed member of our service, they may be intimidated.

Also, and this is the central problem with this language, Mr. Chairman, it changes what is in the Refugee convention. There are five reasons why people can get asylum: race, nationality, religion, the Members know what they are. This changes it so that the applicant must prove it is the central reason. Asking asylum seekers to read the minds of their persecutors is absurd on its face. This will mean many people who are true asylum seekers, that should get it, will not get it.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I want to quote from the 9/11 Commission staff report entitled 9/11 and Terrorist Travel. The staff found that a number of terrorists have abused the asylum system and that once terrorists have entered the United States, their next challenge was to find a way to remain here. The primary method was immigration fraud, concocting bogus political asylum stories when they arrive.

This amendment strikes a good-faith effort to try to prevent these people from gaming the system.

The 9th Circuit Court of Appeals, which deals with the border States of Arizona and California, has made it difficult for immigration judges to deny fraudulent asylum application by terrorists and simply by scam artists. In their recent decisions, the 9th Circuit has failed to give deference to the adverse credibility determination of immigration judges in asylum cases, and as a result, many fraudulent applications have been approved.

The role of an appeals court is not to make a judgment on the credibility of the witnesses. That is done by the trial court. And here the immigration judges have determined that some of these applicants have no credibility, and yet the 9th Circuit says their determination really does not mean anything.

Even worse, the 9th Circuit has created a disturbing precedent that has made it easier for suspected terrorists to receive asylum. The Circuit has held that punishment inflicted on account of perceived membership in a terrorist group may constitute persecution on account of the political opinion of that terrorist group. Aliens who have been arrested in the United States on suspicion of being members of terrorist organizations have received asylum because of alleged fear of persecution if returned because of an affiliation with these groups. Talk about circular reasoning.

A member of the Board of Immigration Appeals complains that if a terrorist organization arose in this country aimed at the violent overthrow of the Federal Government through a program of murder of government and law enforcement officials and federal judges, it would appear that government suppression of this organization would be an act of persecution in the 9th Circuit. Being a guerilla is not a form of political opinion. Being a guerrilla means being engaged in acts of violence and illegality.

All the bill does is overturn the precedent of the 9th Circuit and provide a list of factors that an immigration judge can consider in assessing the credibility of the applicant, such as the demeanor, candor, and consistency of the witness.

What the gentleman from New Jersey is proposing to do is to say that if the witness has bad demeanor, no candor, and no consistency, they have got to grant the petition for asylum. And that is wrong and the amendment should be defeated.

Mr. Chairman, I reserve the balance of my time.

Mr. SMITH of New Jersey. Mr. Chairman, I yield 1 minute to the gentleman from Florida (Mr. Lincoln Diaz-Balart).

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Chairman, with all due respect to the chairman of the Committee on the Judiciary, whom I have great respect for, that is not what the effect of the Smith amendment would be.

There is a long tradition, based on international and domestic law and jurisprudence, that establishes the right to seek political asylum when there is a well-founded fear of persecution. In addition, our laws are clear that membership in any terrorist organization or activity in a terrorist organization automatically bars them even if they have a well-founded fear of persecution.

So what this legislation, the base bill, does is go much farther than what the opponents of the Smith amendment have portrayed up to now. And the reality of the matter is that when the law is as clear with regard to terrorism, and certainly as it has been in recent years, it is unfortunate to diminish the rights of people who are legitimately fearing for their lives and seeking political asylum.

That is why the Smith amendment is so necessary. So I would ask my colleagues to support it.

Mr. SMITH of New Jersey. Mr. Chairman, I yield 30 seconds to the distinguished gentleman from Hawaii (Mr. Abercrombie).

Mr. ABERCROMBIE. Mr. Chairman, I only have 30 seconds here, and this is all I ask of all the Members: Let us not confuse trafficking with terrorism. I understand how they can be concerned about that and why they are trying to do their best. Nobody gainsays them that. But in the process, we are destroying the opportunity or standing the chance of destroying the opportunity to make the necessary differentiations, especially where trafficking is concerned.

There are over 50,000, by the State Department's estimation, people who are essentially made slaves today in the United States, who are trafficked, and they could display exactly the same sense of demeanor and the other characteristics that the gentleman from New Jersey (Mr. Smith) has been discussing, and the other persons who are opposed to it.

Please give the gentleman from New Jersey (Mr. Smith) an opportunity with this amendment so we can make certain that we do not make that confusion.

Mr. SMITH of New Jersey. Mr. Chairman, because I have so many requests for time and will not get to all of them, I ask unanimous consent to extend this debate by 5 minutes equally divided between the proponent and opponent.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from New Jersey?

Mr. SENSENBRENNER. I object, Mr. Chairman.

The CHAIRMAN pro tempore. Objection is heard.

Mr. SMITH of New Jersey. Mr. Chairman, I yield 45 seconds to the gentleman from Maryland (Mr. Cardin), who is the vice chairman of the Helsinki Commission, on which I serve as well.

Mr. CARDIN. Mr. Chairman, first, I thank the gentleman from New Jersey (Mr. Smith) for bringing forth this amendment.

Mr. Chairman, let me point out that the adoption of this amendment is very much consistent with the 9/11 Commission's report. They talk about the United States winning the battle of ideas. The United States has stood against persecution of individuals because of race, nationality, or religion. If we do not adopt this amendment, the underlying bill will make it much more difficult for people who are legitimately being persecuted to be able to claim asylum in the United States.

☐ 1245

That is not what this Nation is about. Our Nation is about helping people and individuals who are being persecuted. This amendment is very important. I urge my colleagues to support it.

Mr. SMITH of New Jersey. Mr. Chairman, I yield the balance of my time to the gentleman from California (Mr. BERMAN).

The CHAIRMAN pro tempore (Mr. LINDER). The gentleman from California is recognized for 45 seconds.

Mr. BERMAN. Mr. Chairman, it is already law that terrorists cannot assert asylum. That is the law. A balanced and sensible proposal to fix our broken immigration system involves better border security, it involves the U.S. Visit Program, it involves sensible reforms in the procedures, it involves combining watch lists. It does not require the gaming of the asylum hearing process in a way that would cause us to depart from the fundamental precepts this country has always had, that we are a refuge for true refugees fleeing persecution in other countries.

The "fixes" in this process, in this bill, that the gentleman from New Jersey (Mr. SMITH) seeks to strike, games the system against people who are true refugees. Please pass the Smith amendment.

Mr. SENSENBRENNER. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, what this amendment does is it allows liars to get asylum, because under the Smith amendment, somebody that an immigration judge determines is lying through his teeth and has no candor cannot take into consideration in determining the decision the fact that the judge has determined that the applicant has lied.

That is wrong. An "aye" vote protects liars. A "no" vote allows the judge to make a determination on candor.

Mr. Chairman, I yield the balance of the time to the gentleman from Indiana (Mr. HOSTETTLER).

The CHAIRMAN pro tempore. The gentleman from Indiana is recognized for 1½ minutes.

Mr. HOSTETTLER. Mr. Chairman, I join the gentleman from Wisconsin (Chairman SENSENBRENNER) in opposing this amendment. We must remember that terrorists continually try to abuse our asylum system. For example, in 1993, Mir Aimal Kansi murdered two CIA employees at CIA headquarters and Ramzi Yousef masterminded the first World Trade Center attack after they were free after applying for asylum. Just weeks ago, Shahawar Matin Siraj was arrested in New York City for plotting to bomb a subway station. Siraj was freed after applying for asylum.

As the gentleman from Wisconsin (Chairman SENSENBRENNER) stated, the Ninth Circuit has adopted a body of circuit law that is essentially preventing immigration judges from finding that asylum applicants are lying by severely limiting the factors, such as their inconsistencies and demeanor, that the immigration judge can consider in finding aliens untruthful.

Given that government attorneys are not allowed to ask the foreign government about the facts regarding the asylum claimants, about the only evidence available to the government on which to deny an asylum application is the perceived truthfulness of the applicant's testimony.

If a criminal jury can sentence a United States citizen who is a criminal defendant to life imprisonment or execution based on their not believing the American citizen's defendant's story, certainly an immigration judge can deny an alien asylum on the same basis.

The bill would overturn this ridiculous precedent used by the Ninth Circuit. The bill provides a list of factors that an immigration judge can consider in determining truthfulness.

Oppose the Smith amendment.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I rise in favor of Mr. SMITH's amendment. Mr. SMITH's amendment would eliminate section 3007. Section 3007 would create a special eligibility standard for asylum applicants who claim persecution on account of an accusation of involvement with a guerilla, militant, or terrorist organization; or on account of an accusation of engaging in or supporting guerilla, militant, or terrorist activities. They must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be the central motive for their persecution.

Frankly, this puzzles me. The burden of proof in the Immigration and Nationality Act now provides that the person must establish that he has been persecuted or has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. It seems to me that if the persecution is on account of one of those enumerated grounds, it necessarily would be the central motive for the persecution.

Section 3007 also would require Immigration Judges to deny applicants asylum because they fail to provide corroborating evidence if it is reasonable to expect corroborating evidence. This is not necessary either. My immigration counsel, Nolan Rappaport, wrote decisions for the Board of Immigration Appeals before he left the Justice Department. In 1989, he wrote Matter of Dass, 20 I&N Dec. 120 (BIA 1989), in which the Board held that corroborating evidence should be presented in asylum cases if it is available. That was 15 years ago, and it is still the rule that immigration judges follow in asylum proceedings. The thing that is new is the provision in section 3007 which states that, "No court shall reverse a determination made by an adjudicator with respect to the availability of corroborating evidence . . . unless the court finds that a reasonable adjudicator is compelled to conclude that such corroborating evidence is unavailable." That is punitive and unnecessary. Immigration Judges do not need statutory guidance in making credibility determinations, and Federal circuit court judges should not be so severely restricted in their review of credibility determinations.

I urge you to vote for Mr. SMITH's amendment to eliminate section 3007.

PARLIAMENTARY INQUIRY

Mr. BERMAN. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN pro tempore. The gentleman will state it.

Mr. BERMAN. Mr. Chairman, what is the procedure by which one can point out that none of the gentlemen from Indiana received asylum?

The CHAIRMAN pro tempore. The gentleman has not stated a proper parliamentary inquiry.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from New Jersey (Mr. SMITH).

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

Mr. SENSENBRENNER. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from New Jersey (Mr. SMITH) will be postponed.

The CHAIRMAN pro tempore. It is now in order to consider amendment No. 17 printed in House Report 108-751.

AMENDMENT NO. 17 OFFERED BY MR. OSE

Mr. OSE. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 17 offered by Mr. OSE:

At the end of title III of the bill, insert the following:

Subtitle F—Security Barriers

SEC. 3121. EXPEDITED COMPLETION OF SECURITY BARRIERS.

(a) IN GENERAL.—In order to construct the physical barriers and roads described in section 102 of the Omnibus Consolidated Appropriations Act, 1997 (Public Law 104-208, div. C), the tracts of land described in subsection (b) shall be exempt from the requirements of the provisions listed in subsection (c).

(b) LEGAL DESCRIPTION.—The tracts of land referred to in subsection (a) are as follows:

(1) ZONE WEST.—A tract of land situated within Section 2, 3, 4, 5, 7, 8, 9, 10, and 11, Township 19 South, Range 2 West of the San Bernadino Meridian, within the County of San Diego, State of California, more particularly described as follows: Beginning at the Southwest corner of Fractional Section 7, T19S, R2W; said Point-of-Beginning being on the United States/Mexico International Boundary Line and also being a point of

mean sea level of the Pacific Ocean (at Borderfield State Park); thence, N 02°31′00″ W, a distance of approximately 800.00 feet to a point. Thence, N 84°44′08″ E, a distance of approximately 1,845.12 feet to a point. Said point being on the Section line common to Section 7 and 8, T19S, R2W. Thence, S 01°05′10″ W, along said Section line, a distance of approximately 270.62 feet to a point. Thence, S 89°49′43″ E, a distance of approximately 1,356.50 feet to a point. Thence, N 45°34′58″ E, a distance of approximately 1,901.75 feet to a point. Said point being on the Section line common to Sections 5 and 8, T19S, R2W. Thence, N 00°00′00″ E, a distance of approximately 300.00 feet to a point. Thence, S 89°54′53″ E, a distance of approximately 1,322.05 feet to a point. Thence, S 00°25′27″ W, a distance of approximately 300.00 feet to a point. Said point being on the Section line common to Sections 5 and 8, T19S, R2W. Thence, S 89°37′09″ E, along the Section line common to Section 4, 5, 8, and 9, T19S, R2W, a distance of approximately 5,361.32 feet to a point. Thence, N 00°12′59″ E, a distance of approximately 400.00 feet to a point. Thence, N 90°00′00″ E, a distance of approximately 1,349.81 feet to a point. Said point being on the Section line common to Sections 3 and 4, T19S, R2W. Thence, S 00°30′02″ W, a distance of approximately 410.37 feet to a point. Said point being the Section corner common to Sections 3, 4, 9, and 10, T19S, R2W. Thence, S 89°36′11″ E, along the Section line common to Sections 2, 3, 10, and 11, T19S, R2W, a distance of approximately 6,129.36 feet to a point. Thence, along the arc of a curve to the left, having a radius of 518.88 feet, and a distance of 204.96 feet to a point. Thence, S 89°59′41″ E, a distance of approximately 258.66 feet to a point. Thence, S 00°00′00″ E, a distance of approximately 111.74 feet to a point. Said point being within the NW ¼ of fractional section 11, T19S, R2W, on the United States/Mexico International Boundary. Thence, S 84°41′20″ W, along said United States/Mexico International Boundary, a distance of approximately 19,210.48 feet to the Point-of-Beginning. Said tract of land containing an area of 396.61 acre, more or less.

(2) ZONE EAST.—A tract of land situated within Section 32 and 33, Township 18 South, Range 1 East of the San Bernadino Meridian, County of San Diego, State of California, and being described as follows: Beginning at the ¼ Section line of Section 32, T18S, R1E. Said Point-of-Beginning being on the United States/Mexico International Boundary Line and having a coordinate value of X = 6360877.25 Y = 1781730.88. Thence, N 00°32′02″ W, a distance of approximately 163.56 feet to a point. Thence, N 78°33′17″ E, a distance of approximately 1,388.23 feet to a point. Thence, N 81°37′31″ E, a distance of approximately 1,340.20 feet to a point. Thence, N 75°00′00″ E, a distance of approximately 1,000.00 feet to a point. Thence, S 88°06′07″ E, a distance of approximately 1,806.81 feet to a point. Thence, N 80°00′00″ E, a distance of approximately 1,050.00 feet to a point. Thence, N 87°00′00″ E, a distance of approximately 1,100.00 feet to a point. Thence, S 00°00′00″ W, a distance of approximately 300.00 feet to a point. Said point being on the United States/Mexico International boundary. Thence, S 84°44′09″ W, along said boundary, a distance of approximately 7,629.63 to the Point-of-Beginning. Said tract of land having an area of approximately 56.60 acres more or less.

(c) EXEMPTION FROM CERTAIN REQUIREMENTS.—The provisions referred to in subsection (a) areas as follows:

(1) Noise Control Act of 1972 (42 U.S.C. 4901 et seq.), as amended by Quiet Communities of 1978 (P.L. 95-609).

(2) Clean Air Act and amendments of 1990 (42 U.S.C. 7401-7671q).

(3) Clean Water Act of 1977 (33 U.S.C. 1342).

(4) Executive Order 11988 (Floodplain Management), as amended by Executive Order 12608.

(5) Executive Order 11990 (Protection of Wetlands), as amended by Executive Order 12608.

(6) Coastal Zone Management Act of 1972 (16 U.S.C. 1456(c)).

(7) Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901-6992k) as amended by Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616; 98 Stat. 3221).

(8) Comprehensive, Environmental Response, Compensation, Liability Act of 1980 (42 U.S.C. 9601-9675), as amended by Emergency Planning and Community Right-To-Know-Act of 1986 (42 U.S.C. 11001 et seq.).

(9) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq.).

(10) Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544).

(11) Migratory Bird Treaty Act of 1918 (16 U.S.C. 703-712).

(12) Bald and Golden Eagle Act of 1940, as amended (16 U.S.C. 688-688d).

(13) National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), as amended Executive Order 13007—Sacred Sites Presidential Memorandum regarding government to Government Relations (April 29, 1994).

(14) Native American Graves Protection and Repatriation Act (43 CFR Part 10).

(15) Archeological Resources Protection Act of 1979 (16 U.S.C. 470aa-470ii).

(16) Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) of 1994.

REQUEST FOR MODIFICATION TO AMENDMENT NO. 17 OFFERED BY MR. OSE

Mr. OSE. Mr. Chairman, I ask unanimous consent that my amendment be modified in the form at the desk.

The CHAIRMAN pro tempore. The Clerk will report the modification.

The Clerk read as follows:

Modification to amendment No. 17 offered by Mr. OSE:

On page 5, line 4, strike "areas as" and insert "are as".

Add at the end of subsection (c) the following new paragraph:

"(17) Any other laws or requirements that delay construction of the barriers and roads described in this section.".

PARLIAMENTARY INQUIRY

Mr. FARR. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN pro tempore. The gentleman will state it.

Mr. FARR. Mr. Chairman, on the definition of "any other laws or requirements," does that broaden it to every law in America?

The CHAIRMAN pro tempore. That is not a proper parliamentary inquiry. That is a matter for debate on the amendment.

The CHAIRMAN pro tempore. Is there objection to the modification?

Mr. FARR. Mr. Chairman, I reserve the right to object.

The CHAIRMAN pro tempore. The gentleman is recognized under his reservation.

Mr. OSE. Mr. Chairman, will the gentleman yield?

Mr. FARR. I yield to the gentleman from California.

Mr. OSE. Perhaps I can elucidate. The point of adding that particular provision is that, given the crush of time, I am a little bit concerned that we did not cover everything. There is no purpose here to include Davis-Bacon or employment or employee things. This is strictly an effort to remove impediments to the construction of this security fence.

Mr. FARR. Mr. Chairman, reclaiming my time, it will not go to legislative intent. It will go to what you have stated in words here, and it says "any other laws or requirements." Any.

Mr. OSE. If the gentleman will yield further, as they relate to the fence, that is my intention.

Mr. FARR. Mr. Chairman, reclaiming my time, that delay the construction of barriers, there could be all kinds of other reasons that are unrelated to just your waiving the environmental requirements.

Mr. DREIER. Mr. Chairman, will the gentleman yield?

Mr. FARR. I yield to the gentleman from California.

Mr. DREIER. Mr. Chairman, I thank my friend for yielding. Let me state, I know the intent of our colleague, the gentleman from California (Mr. OSE), is to ensure that there may not be other environmental regulations which in any way impinge on the construction of this fence. I think one of the things that could take place is at least there would be clear legislative intent established through this debate process indicating that it would not move into other areas about which my friend has mentioned as areas of concern for him.

Mr. FARR. Mr. Chairman, reclaiming my time, I think the intent here is to waive a lot of laws so you can get this done in an expeditious manner. I think you are opening up a Pandora's Box. It is going to give you so many lawsuits that you are never going to get the project done.

The CHAIRMAN pro tempore. Does the gentleman from California (Mr. FARR) object to the modification?

Mr. FARR. I object.

The CHAIRMAN pro tempore. Objection is heard.

Pursuant to House Resolution 827, the gentleman from California (Mr. OSE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from California (Mr. OSE).

Mr. OSE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the purpose of this amendment is to secure our southern border immediately south of San Diego by completing the security fence that this Congress authorized and that President Clinton signed back in September of 1996. The rationale for this is very straightforward. Construction of this fence reduces illegal immigration. The Border Patrol has told us that the construction of the fence to date has reduced illegal immigration in that area by 80 percent.

The gentleman from California (Mr. BERMAN) just 5 minutes ago talked about an integrated border security system that accomplishes just that, and this fence is part of that. Construction of the fence serves to protect our country from potential terrorist activity.

I have a letter from the Secretary of the Navy here to our good friend, the gentleman from California (Mr. HUNTER), that I will enter into the RECORD that highlights exactly that point relative to the naval base 4 miles north of the site in question.

Construction of this fence is part of an integrated border security system identified in the 9/11 Commission report as a priority. I am not making this stuff up. This is part of an integrated border security system that this country has previously authorized that has been bogged down for 8 years in getting completed.

I regret, I truly do regret, the impact this may have on environmental or cultural resources, but we need to make a choice. The votes we post will be clear: Are we for protecting this country by completing this fence, or are we not?

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN pro tempore. Who seeks time in opposition?

Mr. FARR. Mr. Chairman, I claim the time in opposition to this amendment.

The CHAIRMAN pro tempore. The gentleman from California (Mr. FARR) is recognized for 5 minutes in opposition to the amendment.

Mr. FARR. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, there is no problem that is broken that needs to be fixed. There is nobody opposed to the process of getting this fence built. The problem with this amendment is you create a whole ability to have more lawsuits filed and you give a message that the environmental laws are not necessary.

The process is working. In 2 weeks, the Homeland Security Office is meeting with the California Coastal Commission where they have laid out all of the road map for how to get it done. The fact of the letter that was just submitted for the RECORD, the Navy never asked that any of these environmental laws be waived. We built a fence around the Naval Postgraduate School in Monterey by abiding by all the laws, including the Coastal Commission laws.

So this is a made-up issue to try to get a recorded vote to show that, if you support the environment, you are for terrorism. Nothing in the 9/11 Commission report recommended this amendment. It is totally unnecessary.

I would just tell you that the process is working and what you see in this amendment is trying to subvert it.

Mr. OSE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, before I yield to my good friend from San Diego, I want to make a point that the exemptions offered in section C of my amendment shall also incorporate section 102(c) of title I, subtitle A of the 1997 Omnibus Appropriations Act, that is Public Law 104-208, in its entirety.

I will say there is a meeting that is going to take place in 2 weeks. It will be the sixteenth meeting this year alone trying to move this project forward. I think the meetings now take place so they can schedule more meetings. We need to get this finished.

Mr. Chairman, I yield 90 seconds to my friend, the gentleman from San Diego, California (Mr. HUNTER).

Mr. HUNTER. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, this is the last piece of the border fence. We have 14 miles of the most extensive smugglers' corridor in the United States. That is where more smugglers move cocaine, undocumented workers and potentially terrorists through this corridor that lies between San Diego and Tijuana.

In a bill signed by President Clinton, in fact giving the Attorney General the right to waive the Endangered Species Act, it was considered to be so important. We have built now of this 14-mile stretch, 11 miles. Only 3 miles remain. The Secretary of the Navy has sent us a letter saying that there are security reasons to have that last piece of the border fence constructed.

Let me just tell you what is happening in the 6 years that these slow-roll negotiations have gone on and on and on, and the California Coastal Commission and other agencies never go along with this thing. While that has happened, we have had North Koreans coming in the smugglers' corridor, as documented by the Border Patrol. We have had Iraqis coming in through that corridor. We have had Iranians coming in through that corridor.

If you want to come in as a terrorist into the United States, do not come in through LAX. Come in on the land border between Mexico and the U.S. If you come through the gap in the fence that we are talking about, you are right there at one of the most sophisticated American naval bases in the world.

We need to build this fence. It is in line with national security, in line with President Clinton's law. Let us get it done.

Mr. FARR. Mr. Chairman, I yield 1 minute to the gentleman from Michigan (Mr. KILDEE).

Mr. KILDEE. Mr. Chairman, I strongly urge my colleagues to oppose the Ose amendment which will exempt the construction of the proposed security barrier in the San Diego area from most Federal environmental laws, regulations and executive orders, including four that specifically and directly impact Indian tribes.

The Ose amendment would waive the requirements of the National Historic Preservation Act of 1966, the Native American Graves Protection and Repatriation Act of 1990, the 1996 Executive Order 13007 on sacred sites and the Archeological Resources Protection Act of 1979.

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These Federal requirements were enacted by Congress and implemented by Democratic and Republican administrations to fulfill promises we made to native Americans that their places of worship, resting places for the deceased, and religious freedom will not be disturbed or intruded upon again and, instead, will be protected and preserved.

This amendment undermines those laws by precluding tribal consultations on Native American burial grounds, religious shrines, and cultural and historical sites located in the construction area.

I urge my colleagues to vote "no" on the Ose amendment.

Mr. Chairman, I include for the RECORD the following letter:

NATIONAL CONGRESS OF AMERICAN INDIANS,
Washington, DC, October 7, 2004.

Hon. CHAIRMAN SENSENBRENNER,
House Judiciary Chairman.

HONORABLE JAMES SENSENBRENNER: We have become aware that a proposed amendment to H.R. 10, "The 9/11 Recommendations Implementation Act", would undermine two federal statutes designed to preserve and protect Native American cultural heritage.

NCAI is extremely sensitive to the issues of protecting our homeland. Tribes play a vital role in protecting our borders with over 200 miles of United States border located on tribal lands and with 38 tribes on or near international borders. Additionally, significant numbers of tribes are located near critical infrastructure, including missile silos, chemical depots, dams and nuclear power plants.

Native peoples have proven their unwavering commitment to protecting this country. Currently, 19,761 American Indians and Alaskan Natives are serving in the military, and as noted by many members of Congress, Native Americans serve in the United States military at higher rates than any other ethnic group.

The Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), P.L. 101-601, 24 U.S.C. 3002), was enacted to protect fragile tribal cultures from exploitation. It was designed to address the flagrant violation of the "civil rights of America's first citizens" 136 C.R. § 17174.

Furthermore, Congress has expressly stated in statue that it viewed NAGPRA as part part of its trust responsibility to Indian tribes and people, specifically stating that it "reflects the unique relationship between the Federal Government and Indian tribes" 25 U.S.C.A. §3010.

The destruction of culturally sensitive sites is irreversible and unconscionable. The proposed amendment of Representative Ose would undermine the very foundation of NAGPRA and the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.). At the very least we would expect that a consultation process be considered in any legislation that would affect cultural sites. We urge you oppose any amendments that would undermine our rights to protect and preserve our cultural heritage.

Sincerely,

TEX G. HALL.

Mr. OSE. Mr. Chairman, I yield myself 10 seconds.

The original authorization to build this fence gave the Attorney General the opportunity to waive all of these things the previous speaker voted for. You cannot have it both ways. You are either for protecting this country or you are not.

Mr. FARR. Mr. Chairman, I yield 1 minute to the gentlewoman from California (Ms. SOLIS).

Ms. SOLIS. Mr. Chairman, I rise in opposition to the Ose amendment to H.R. 10, and I refuse to play environmental politics with our national security.

This amendment is nothing more than an extreme and unnecessary attempt to circumvent the ongoing approval and construction process and exempt construction of the fence from 16 public health, cultural heritage, and environmental regulations.

The U.S. Bureau of Customs and Border Protection and the California Coastal Commission are currently in negotiations now over the completion of this security barrier. In fact, they are scheduled to meet again October 26 of this year.

According to the California Coastal Commission: "Feasible alternatives are available that would significantly lessen adverse impacts to coastal zone resources and still will enable the California Border Patrol to meet its border patrol needs."

Supporters of this amendment have shown no evidence to prove that each of the 16 cultural heritage, public health, and environmental regulations it seeks to undermine is blocking completion of the security barrier.

How is the executive order on environmental justice blocking completion of this security barrier?

Mr. FARR. Mr. Chairman, I yield 1 minute to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Chairman, there are all sorts of problems along the United States-Mexican border, but to take a sensitive area that, as my friend, the gentleman from Michigan (Mr. KILDEE), has pointed out, where there are serious issues relating to native Americans. We are working on areas here, in terms of the massive amount of fill that would be involved, twice the size of the Hoover Dam, is something that people need to take a pause, a deep breath, and take a careful look. There is a lot of environmental damage that can be done.

We cannot keep people, illegal aliens, from crossing the border. It is porous, we know it. To move forward with this massive project now, suspending environmental regulations, extends a precedent that I think is chilling.

Our Capitol is a monument to our inability to get things right in terms of things that all of us know are not going to retard terrorists but make our Capitol into sort of a fortress. We are spending money, trying to make people feel good. Suspending environmental regulations in a way that is not going to have any long-term impact. I urge its rejection.

Mr. FARR. Mr. Chairman, I yield myself the remaining time.

Look, you have been able to build almost this entire fence without the waiving of any environmental laws. The record that the gentleman showed there just a moment ago gave the Attorney General the authority to waive NEPA and ESEA. You are now going into a whole complicated series of laws, including the protection of Bald Eagles, Indian rights and things like that, Superfund issues.

I have been involved with these issues for a long, long time, living on the coast. And I will tell the gentleman that what he is opening up is a can of worms for lawsuits and complaints and so on.

This is not the wise way to go with this amendment, and I object to the amendment and will ask for a recorded vote on it.

Mr. OSE. Mr. Chairman, I yield myself such time as I may consume.

Two speakers go, we had someone on that side talking about negotiations, that there are negotiations pending. The fact of the matter is negotiations have been going on for 6 years, and we are no closer to a solution. We had a speaker just previous from Oregon stand up and make an argument for doing nothing. I am sorry, I do not understand that.

Mr. Chairman, I ask unanimous consent to extend the debate time on each side for 1 minute.

The CHAIRMAN pro tempore (Mr. LINDER). Is there objection to the request of the gentleman from California?

There was no objection.

Mr. OSE. Mr. Chairman, I yield 1 minute to the gentleman from San Diego, California (Mr. CUNNINGHAM).

Mr. CUNNINGHAM. Mr. Chairman, the gentleman from California (Mr. HUNTER) and I have been fighting this for the last 20 years. Many of the same people that tried to stop us from putting up the fence when there were rapes and murders, there was a single line of barbed wire and people were coming right and left into the United States with truck loads of marijuana and cocaine. I resent saying this is a made-up issue.

I have operated out of that Navy base. Gordon England, Secretary of the Navy, states that it is imperative, that it is dangerous to leave that hole open. Bald Eagles in a 4-mile stretch? Give me a break.

We are at war. I sit on the Permanent Select Committee on Intelligence, and I cannot go into specifics, but do my colleagues know where these guys are coming up? In Mexico. And do my colleagues know what? We are vulnerable. We have a base that has nuclear ships right next door that could blow up the whole waterfront.

It is wrong to oppose this. We need to close the hole in the dike.

Mr. FARR. Mr. Chairman, I yield 50 seconds to the gentleman from Washington (Mr. INSLEE).

Mr. INSLEE. Mr. Chairman, well, I have some bad news. After this 3 miles is done, there is about another 4,000 miles unfortunately that remains at risk.

I would just ask Members to consider what we just did on this floor. We just extended the time a little bit to get this debate right, and I appreciate the gentleman's courtesy in doing that.

Do we know why Americans have accepted the Endangered Species Act? Because they recognize you can take just a bit more time and do it right.

On October 26, when they have this meeting to get this resolved, we hope that is going to happen. We have built bridges, we have built highways, we built the most powerful military machine in world history with the Endangered Species Act. This is not endangering us. We should not go back to the days of ignoring this problem. Defeat this amendment.

Mr. FARR. Mr. Chairman, I yield myself the remaining time.

Let me say it straight. Nobody is against building this fence. It is just, why waive all of these rules? We have built 14 miles of this fence without having to waive any rules. I do not think it is necessary. I think it is a guise and a political maneuver.

Mr. OSE. Mr. Chairman, I yield the remainder of my time to the gentleman from California (Mr. DREIER), the chairman of the Committee on Rules and the champion in California on immigration issues and protecting our country.

Mr. DREIER. Mr. Chairman, we have heard the eloquence of my friends, the gentleman from San Diego, California (Mr. CUNNINGHAM) and the gentleman from California (Mr. HUNTER) and the gentleman from California (Mr. OSE), obviously, focusing on the national security, the homeland security, the drug interdiction aspect of this, which is very important.

Let us talk about the environmental side of not constructing this fence. The Tijuana Estuary happens to be a very environmentally sensitive area. The fact that this fence is not being constructed is jeopardizing the environmental quality in the San Diego sector right now with the trash and the other disposal that is taking place, really exacerbating a serious problem.

The pro-environment vote and pro-national security and homeland security vote is to vote "yes" for the Ose amendment.

Mrs. DAVIS of California. Mr. Chairman, I must regretfully rise in opposition to the Ose amendment, which has been sprung on us this afternoon without any notice or prior opportunity to discuss the issues.

As a member of the Armed Services Committee, I have spent hundreds of hours devoted to the issues surrounding Homeland Security. Situated as my district is in San Diego, I am concerned to secure not only our border but also our busy port and ship-building facilities located on San Diego Bay, which is crossed by a dramatic bridge, our international airport, and our numerous military installations which are the home bases for nuclear carriers and nuclear submarine. We have much to be proud of—and much to protect.

It is challenging to us all to prioritize actions that we can take with our Homeland Security dollars to provide increased security against past and likely focal points for terrorists. It is important that we assure that scarce resources are devoted to the kinds of actions that will in fact keep our borders safe from known entry points for terrorists.

The measure before us to expedite the long-proposed triple border fence overturns years of effort on the part of the local communities along the border, civic groups, and elected representatives to come to consensus with the Border Patrol about appropriate means to enhance and strengthen the existing fence.

Fortunately, during the past ten years since the inauguration of Operation Gatekeeper, the numbers of illegal border crossers in the area under consideration has dropped 80 percent.

Nonetheless, I agree that the present quality of the single fence needs updating at least to the highest quality of fence construction proposed and already implemented along adjacent border areas. Moreover, I have been assured by local high tech companies which provide sophisticated technology for other homeland security needs that much more could be done with electronic surveillance and detection.

Similar views have been officially expressed by the California Coastal Commission, which has jurisdiction in this area, and by the California Coastal Conservancy which has a $6 million road and access improvement project in this area.

In the past, the California Border Patrol has been unwilling to pursue any alternative proposals other than the one which has been so thoroughly rejected by state and local interest groups. Their view has been "my way, and it's a highway."

However, since its February vote to object to the proposal, the California Coastal Commission has been working with the Department of Homeland Security's office of Homeland Security, Customs and Border Protection in charge of construction to resolve this issue. I understand the parties met in April to discuss their views and that both parties expected and have planned to continue this effort at a meeting on October 26, 2004, to continue the ongoing negotiations. Perhaps the author was unaware of this plan. I believe we must support this effort.

It is no surprise that the Ose amendment waives all powers of the Clean Air Act; the Clean Water Act, the Protection of Wetlands; the Floodplain Management; the Coastal Zone Management Act; the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation, Liability Act as amended by Emergency Planning and Community Right-To-Know Act; the Farmland Protection Policy Act; the Endangered Species Act; the Migratory Bird Treaty Act; the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, and the Archeological Resources Protection Act.

That is because this proposal is so overwhelmingly threatening to the sensitive lands that would be destroyed as to offend all of these acts.

Above all, this wholesale destruction is unnecessary. I would welcome continued work with the affected parties, most particularly with the Immigration and Naturalization Service, to find a solution to their staffing needs that does not destroy millions of dollars of prior investment by California in these sensitive areas. We must use our scarce Homeland Security dollars in projects that are focused on major areas where there are large numbers of border crossers who might become a threat from terrorists.

San Diego deserves to be protected, but we have many areas in need of new programs and technology that will address likely targets.

I urge your defeat of this proposal at this time and your willingness to work together toward a reasoned proposal.

The CHAIRMAN pro tempore. All time having expired, the question is on the amendment offered by the gentleman from California (Mr. OSE).

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

Mr. FARR. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from California (Mr. OSE) will be postponed.

It is now in order to consider amendment No. 19 printed in House Report 108-751.

AMENDMENT NO. 19 OFFERED BY MR. WELDON OF PENNSYLVANIA

Mr. WELDON of Pennsylvania. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 19 offered by Mr. WELDON of Pennsylvania:

At the end of chapter 2 of subtitle H of title V (page 602, after line 16), add the following:

SEC. ____. EMERGENCY PREPAREDNESS COMPACTS.

Section 611(h) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196(h)) is amended—

(1) by redesignating paragraphs (1), (2), and (3) as paragraphs (2), (3), and (4), respectively;

(2) by indenting paragraph (2) (as so redesignated); and

(3) by striking the subsection designation and heading and inserting the following:

"(h) EMERGENCY PREPAREDNESS COMPACTS.—(1) The Director shall establish a program supporting the development of emergency preparedness compacts for acts of terrorism, disasters, and emergencies throughout the Nation, by—

"(A) identifying and cataloging existing emergency preparedness compacts for acts of terrorism, disasters, and emergencies at the State and local levels of government;

"(B) disseminating to State and local governments examples of best practices in the development of emergency preparedness compacts and models of existing emergency preparedness compacts, including agreements involving interstate jurisdictions; and

"(C) completing an inventory of Federal response capabilities for acts of terrorism, disasters, and emergencies, making such inventory available to appropriate Federal, State, and local government officials, and ensuring that such inventory is as current and accurate as practicable.".

The CHAIRMAN pro tempore. Pursuant to House Resolution 827, the gentleman from Pennsylvania (Mr. WELDON) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Pennsylvania (Mr. WELDON.)

Mr. WELDON of Pennsylvania. Mr. Chairman, I yield myself such time as I may consume.

I thank my good friend from New Jersey (Mr. ANDREWS) for cosponsoring this amendment. The gentleman has been a leader on homeland security and emergency response issues long before 9/11. In fact, we first met when he was the solicitor for the Camden County Firefighters Association and I was county commissioner across the river. We have worked together on first responder issues since then.

This amendment is critically important, Mr. Chairman, because it requires the Federal Government to establish what should have been established years ago, and that is a process of identifying emergency preparedness compacts. Many of our regions like the Washington area region have already established multistate, multicounty jurisdictional plans to respond to natural and manmade disasters; but that is not the case around the country.

This bill requires us to inventory those plans that are in place and do work to encourage and establish models that other jurisdictions can use. But it goes beyond that, Mr. Chairman, because this bill also requires an inventory of assets and resources that local emergency responders can call upon if and when a disaster occurs.

I can recall, Mr. Chairman, during the tenure of my time in Congress, I have been on site at most disasters personally. I was walking the freeways of the San Francisco and Oakland area after the earthquake 10 years ago with the chiefs of the San Francisco and Oakland Fire Departments, and they were looking for people who were allegedly still trapped in vehicles sandwiched in-between those two levels of the freeway that had come down on top of each other. I said to the chiefs, why are you not using thermal imagers, and they said to me, what are thermal imagers? They had no idea that the Defense Department had developed that technology 10 years earlier. They could have used that to very quickly identify people who were still alive.

This bill requires a computerized inventory of those kinds of assets that are available that are not easily identified.

I think Chief Morris in Oklahoma City, another good friend of mine, who responded to the terrorist attack on the Federal Building in Oklahoma City, when the chief arrived he needed structural engineers. He had children at day care that were trapped. He needed specialized advice on how to deal with the potential of chemical and biological agents. He had none of that available to him.

Through this amendment, not only will we do the regional preplanning and require these compacts to be established, but we will also have an inventory of the available technologies that first responders can use that chief officers on the scenes of situations like Oklahoma City or the World Trade Center or any other incident in America can make available to them from the Federal or State governments.

It is a good amendment. I think it makes common sense, and I hope all of our colleagues will support it.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN pro tempore. There being no Member claiming the time in opposition to the amendment, without objection, the gentleman from New Jersey (Mr. ANDREWS) is recognized for 5 minutes.

There was no objection.

Mr. ANDREWS. Mr. Chairman, I yield myself such time as I may consume.

I thank the gentleman from Pennsylvania (Mr. WELDON) for offering this amendment. His wealth of experience on the front lines in the first responder community shows, once again; and I am honored to join with him in this amendment.

□ 1315

I thank the gentleman for his years of dedication to first responders in this country, long before Members talked about them on this floor.

The gentleman from Pennsylvania and I share a geographic area. Our districts are separated only by a river. If, God forbid, there were a terrorist attack, a mass crime, a natural disaster, his constituents and mine would be responsible for responding to it. We are proud of the fact that locally in our area there is cooperation. But the fact of the matter is cooperation now happens by accident, not by design; and our amendment is to change that. It requires that the director of FEMA do three things: first, that the director of FEMA catalog examples of cooperative agreements and compacts around the country.

Second, it requires that the FEMA director issue guidance on best practices, what is working. We are going to hear from the gentlewoman from the District of Columbia (Ms. NORTON) talk about the capital area plan that is working very, very well.

Thirdly, it requires an up-to-date accessible inventory of Federal resources that would be available. In the golden hour that takes place after such an attack or disaster, we do not have weeks or months to study a problem. The chiefs on the ground have to decide right there and then what to do. By making this resource available to them, I think we will save lives and minimize disaster. I thank the gentleman for offering this amendment, and I hope Members on both sides of the aisle will vote a resounding "yes."

Mr. Chairman, I reserve the balance of my time.

Mr. WELDON of Pennsylvania. Mr. Chairman, I yield myself the balance of my time.

In closing, I thank the gentleman from New Jersey (Mr. ANDREWS). This is a bipartisan amendment. I would just say to Members I am going to ask for a recorded vote here because I introduced legislation almost a dozen years ago to require our FEMA agency to establish a computerized inventory. Twelve years later, it is still not done. As a reinforcement of this part of the bill, I am going to ask for a show of support from my colleagues.

Mr. Chairman, I yield back the balance of my time.

Mr. ANDREWS. Mr. Chairman, I yield such time as she may consume to the gentlewoman from the District of Columbia (Ms. NORTON), whose capital area response plan has set the model for how to go about this regional planning and serves as an example to others.

Ms. NORTON. Mr. Chairman, I thank the gentleman for yielding me this time, and I thank the gentleman from New Jersey (Mr. ANDREWS) and the gentleman from Pennsylvania (Mr. WELDON) for this amendment.

I have an amendment pending in a package we have not gotten to. My pending amendment would in fact have relevant regions across the United States, whether within the same State or not, engage functionally in what I think this amendment would do. I would have a coordinator and the coordinator could be chosen by whoever were the various officials, whether across State lines or within a State.

Yes, it is true that the national capital region is the model for how it should be done. Here we have three States: Maryland, Virginia and the District of Columbia. The portions of those States closest to where the security is of greatest need and where the Federal presence is, because the Federal presence is as much in Virginia, Maryland and the District of Columbia, and in some cases more so, witness the Pentagon. This region has a long history of cooperating.

But after 9/11, even that long history of cooperation was not enough. Because of the uniqueness of the national capital region, Congress has said there has to be a paid coordinator for this region. Other regions, of course, would almost surely not have the Federal Government paying for the coordinator. The reason that the coordinator is paid for here is because virtually the entire Federal presence is located here.

But I have worried that what a coordinator would do is not being done in these regions. I appreciate what these Members have done. They have leaped over the title and essentially said do it, or at least do some of it, such as information-sharing. Other areas of their amendment make it clear that what Congress wants is coordination across State lines if necessary and certainly across regional lines.

I think minimally what this amendment wants is what the country needs, and I hope because this is a bipartisan amendment that it will pass; it will pave the way for the next step which would be of course coordinators for the various regions. Again, I thank the gentleman from Pennsylvania (Mr. WELDON) and the gentleman from New Jersey (Mr. ANDREWS) for their amendment.

Mr. ANDREWS. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I thank the gentleman from Pennsylvania (Mr. WELDON) for his efforts. I also thank Mr. Dozor from the gentleman's staff, and Mr. Knotts from mine for their great effort.

Mr. COX. Mr. Chairman, I rise in strong support of the Weldon-Andrews amendment on emergency preparedness compacts.

The terrorist attacks of September 2001 stretched the response capabilities of our local, State, and Federal emergency agencies to the breaking point. The attacks caused an unprecedented number of deaths, unprecedented physical destruction, and, at times, utter chaos. The attacks also presented planning, operational, and logistical problems of new and different dimensions.

Both the Bush administration and 9/11 Commission have recognized that no one community can cope with such an unparalleled catastrophe by itself. Indeed, the President's Homeland Security Directive 5 and the 9/11 Commission's report both stressed the vital importance of ensuring that all levels of government across the Nation have the capability to work together efficiently and effectively.

This is precisely why emergency preparedness compacts are so important. They enable emergency managers from different jurisdictions and agencies to provide personnel and equipment in the event of acts of terrorism, disasters, and emergencies. They ensure that no community is overwhelmed.

And this is also precisely why I urge you to support the Weldon-Andrews amendment.

Their amendment would require the Director of the Federal Emergency Management Agency, FEMA, to establish a program supporting the development of emergency preparedness compacts across the Nation.

This program will identify and catalog all existing emergency preparedness compacts.

This program also will encourage jurisdictions without compacts to enter into them by disseminating the best examples of such compacts.

Finally, this program will create, and update as necessary, an inventory of Federal response capabilities and make it available to State and local government officials.

I commend Representatives WELDON and ANDREWS for their bipartisan leadership and vision in offering this important amendment.

As chairman of the Select Committee on Homeland Security, I strongly encourage my colleagues to support this amendment.

Mr. ANDREWS. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore (Mr. LINDER). The question is on the amendment offered by the gentleman from Pennsylvania (Mr. WELDON).

The question was taken; and the Chairman pro tempore announced that the ayes appeared to have it.

Mr. WELDON of Pennsylvania. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Pennsylvania (Mr. WELDON) will be postponed.

It is now in order to consider amendment No. 21 printed in House Report 108-751.

AMENDMENT NO. 21 OFFERED BY MR. BARTLETT OF MARYLAND

Mr. BARTLETT of Maryland. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 21 offered by Mr. BARTLETT of Maryland:

Page 478, insert after line 15 the following:

SECTION 5010. STUDY OF EXPANSION OF AREA OF JURISDICTION OF OFFICE OF NATIONAL CAPITAL REGION COORDINATION.

(a) STUDY.—The Secretary of Homeland Security, acting through the Director of the Office of National Capital Region Coordination, shall conduct a study of the feasibility and desirability of modifying the definition of "National Capital Region" applicable under section 882 of the Homeland Security Act of 2002 to expand the geographic area under the jurisdiction of the Office of National Capital Region Coordination.

(b) FACTORS.—In conducting the study under subsection (a), the Secretary shall analyze whether expanding the geographic area under the jurisdiction of the Office of National Region Coordination will—

(1) promote coordination among State and local governments within the Region, including regional governing bodies, and coordination of the efforts of first responders; and

(2) enhance the ability of such State and local governments and the Federal Government to prevent and respond to a terrorist attack within the Region.

(c) REPORT.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall submit a report to Congress on the study conducted under subsection (a), and shall include in the report such recommendations (including recommendations for legislation to amend section 882 of the Homeland Security Act of 2002) as the Secretary considers appropriate.

The CHAIRMAN pro tempore. Pursuant to House Resolution 827, the gentleman from Maryland (Mr. BARTLETT) and the gentlewoman from the District of Columbia (Ms. NORTON) each will control 5 minutes.

The Chair recognizes the gentleman from Maryland (Mr. BARTLETT).

Mr. BARTLETT of Maryland. Mr. Chairman, I yield myself 2 minutes.

This amendment, which is the text of H.R. 3583, will establish a study to provide an objective analysis of whether the current capabilities of the infrastructure in the region around our Nation's capital are adequate in the event of a mass casualty disaster.

I have worked closely with the gentleman from Maryland (Mr. CARDIN), the gentlewoman from Virginia (Mrs. JO ANN DAVIS), and I have worked closely on this legislation; and we are very pleased by the wide bipartisan support of our colleagues in Maryland, Washington, and Virginia.

This amendment calls upon the Secretary of Homeland Security to create a commission to report to Congress its findings. In particular, I have looked forward to working with the gentlewoman from the District of Columbia (Ms. NORTON) to address her concerns concerning the implementation of this amendment. I will commit to the gentlewoman to ensure that the GSA will have major input into the study, that it will not predispose an alteration of the definition of the national capital region, and that it will assess existing emergency response capabilities among the public and private sectors in the District of Columbia, Maryland and Virginia, what capabilities would be necessary in the event of a mass casualty incident and recommendations to correct any shortfalls.

This commission will specifically study the major Federal interstate highways out of America's capital. Normal rush hour traffic around our Nation's capital can last as long as 4 hours. In the event of a terrorist attack or other emergency in Washington, D.C., millions of people would be unable to evacuate and get home to their families.

In June 2003, the Metropolitan Washington Council of Governments Board urged Congress to analyze whether the current definition of the national capital region meets current needs. I am pleased that they support this amendment.

I would also like to recognize an important local health care provider, Adventist HealthCare. Adventist HealthCare has two hospitals, Washington Adventist Hospital in Takoma Park and Shady Grove Adventist in Rockville, along two of the designated evacuation routes developed by the D.C. Division of Transportation. Adventist HealthCare has independently committed to invest over $360 million to develop and begin implementing a comprehensive plan to ensure that they are prepared for the potential of a mass casualty event.

Cooperation and coordination between relevant Federal Government agencies, such as the Department of Homeland Security, Health and Human Services, and private sectors, are very important.

Mr. Chairman, I reserve the balance of my time.

Ms. NORTON. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I oppose this amendment with regret. I believe every Member of the national capital region and everyone who cares about the security of the national capital region should oppose this amendment as well.

Normally, I would have absolutely no problem with a study. This study and this amendment, both the original bill and the amendment are called study of an expansion of area of jurisdiction of Office of National Capital Region Coordination. That is the special coordinator I just spoke about in the last amendment.

The amendment itself suggests the conclusion: expansion. This is not the time to even think about diluting the area defined by law as the national capital region. It has not happened haphazardly. I did offer to work with my colleagues from the greater region. I think an objective study that was done by the region, the agencies that have the expertise, and the gentleman has indicated that he knows that the GSA has it, yes homeland security might be useful. I am a member of both committees. The last thing I want to do is give the Committee on Homeland Security, which has existing mandates to report back to Congress, something else to do, something which I think is absolutely unnecessary.

The expertise exists within the government, and this is something that does not require legislation at all. The resources that protect the national capital region we need to expand, not think about diluting. When we talk about this region, understand what we are talking about. We are talking about the Pentagon, the CIA, NIH, Arlington Cemetery, Andrews, Fort Belvoir, the FBI Academy, Goddard Space Center, the FDA. We are not talking about the District of Columbia. It goes without saying that is going to be protected. The greater Federal presence is found in nearby Maryland, Northern Virginia, and Montgomery and Prince George's counties.

What expense we have to go through just to protect this region I do not want to even talk about, but it includes the flyover, the guards we have to send out. We have to send them out if there were an agency somewhere out in the region.

The GSA and the National Capital Planning Commission have consistently been against sprawl of government agencies. It is already 6,000 square miles. We are talking way out into Maryland and Virginia, Loudoun, Prince William, Fairfax. They have opposed it because of security, commuting, taxpayer cost-saving reasons. They have consistently said we have to keep as many agencies as possible within this region. It is much harder to protect Federal facilities; and therefore they say, whether you are talking about embassies or Federal agencies, they ought to be within this region.

When there is an alert, they have to send them wherever the facility is. For economies of scale, we want to in fact keep agencies concentrated. If Members want a study, I am willing to study; but they do not need to come before this Congress and ask for an expensive study to be done, distracting the Department of Homeland Security from what it has already on its plate.

I am willing to work with the gentleman, but I think we do not need a new study at taxpayers' expense beyond what we already have the ability to do. The agencies that are within the national capital area, the coordination that we do now needs far greater focus and far greater resources. It is clear what the gentleman wants. I oppose this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. BARTLETT of Maryland. Mr. Chairman, I yield 1 minute to the gentleman from Maryland (Mr. CARDIN).

Mr. CARDIN. Mr. Chairman, the national capital region was established in 1952 during the 82nd Congress. It includes not only the District of Columbia; it includes in Maryland, Prince George's and Montgomery counties. In Virginia, it is Arlington, Fairfax, Loudoun, and Prince William counties.

□ 1330

In the south, Mr. Chairman, the region goes about 30 miles. In the north, it goes about 10 miles. If it went 30 miles to the north, it would include Baltimore, where I happen to live.

When we adopted the Homeland Security Act in 2002, we made reference to the national capital region. What we are asking, and I applaud my friend from Maryland (Mr. BARTLETT) is to let the Department of Homeland Security study the security issues of this region.

If we have a problem in the Nation's capital and people try to leave this region, they are going to want to be able to get to Crofton and Annapolis and to Frederick, and there is going to be gridlock if we do not have a plan that includes beyond that short distance in Maryland. All this does is ask for a study. It does not diminish resources at all. In fact, it will allow us to provide a more reasonable plan for the Nation's capital.

Mr. BARTLETT of Maryland. Mr. Chairman, I yield 1 minute to the gentlewoman from Virginia (Mrs. JO ANN DAVIS).

Mrs. JO ANN DAVIS of Virginia. Mr. Chairman, I am glad my colleague from D.C. talked about protecting the FBI Academy in the national capital region because that, in fact, is located in what the gentlewoman calls "way out there in Virginia" which is my area.

I rise today in strong support of the Bartlett amendment, which directs the Department of Homeland Security to conduct a study to see if there is a need to expand the national capital region.

The terrorist attacks of 2001 demonstrated firsthand the need for the national capital region to be expanded. The I 95 corridor, which includes the Fredericksburg/Stafford area that I represent, served as one of the major evacuation routes for D.C. Anybody who drove down that 95 corridor on September 11, 2001, would agree that, as one of the main evacuation routes, it is necessary to secure sufficient infrastructure along I 95 to handle any mass evacuation.

The current definition of the national capital region should be expanded as a result of the new threats to homeland security. I urge all of my colleagues to support the Bartlett amendment. I urge my colleague from D.C. to look at where those areas that she says need to be protected, where they are located.

Ms. NORTON. Mr. Chairman, how much time do I have remaining?

The CHAIRMAN pro tempore (Mr. LINDER). The gentlewoman from the District of Columbia (Ms. NORTON) has 30 seconds remaining.

Ms. NORTON. Mr. Chairman, I yield 30 seconds to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Chairman, I could take much longer than 30 seconds just to list the highest priority targets that are within the national capital region.

The reality of what this is going to lead to is that you are going to have to substantially expand the amount of money available for homeland security or draw from other parts of the country to adequately protect the Capitol, the White House, the CIA, the Pentagon and the immediate suburbs of Northern Virginia, Maryland and, particularly, the District of Columbia; you have got to provide adequate resources. This is where the terrorists are going to target. This is ground zero. This is where the money needs to be concentrated.

If we had enough money, we would love to go beyond that area. I do not think we can afford to.

Mr. BARTLETT of Maryland. Mr. Chairman, I yield 30 seconds to the gentleman from Michigan (Mr. HOEKSTRA), the chairman of the Permanent Select Committee on Intelligence.

Mr. HOEKSTRA. Mr. Chairman, I think this is a good amendment. I support the amendment. This is an amendment we would like to have in the en bloc amendment. But having this study available for the national capital region is helpful. I think it is the right thing to do, but it is also helpful in determining and developing a case study which could be used in other areas.

I support the amendment.

Mr. BARTLETT of Maryland. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, on 9/11, our world changed. What used to be adequate for the greater metropolitan area of Washington, which is defined by the national capital region, generally, what was adequate then may not be adequate now.

This is a very simple amendment. It simply asks for a commission to study; we need to look at what the national capital area represents, and is the infrastructure here adequate to meet the kind of a terrorist attack that we might anticipate in the future? It is a very simple amendment, sir.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Maryland (Mr. BARTLETT).

The amendment was agreed to.

The CHAIRMAN pro tempore. It is now in order to consider amendment No. 23 printed in House Report 108 751.

AMENDMENT NO. 23 OFFERED BY MR. PORTER

Mr. PORTER. Mr. Chairman, I offer an amendment.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 23 offered by Mr. PORTER:

At the end of subtitle C of title V (page 493, after the item after line 21) add the following:

SEC. ___. UNDER SECRETARY FOR THE PRIVATE SECTOR AND TOURISM.

(a) ESTABLISHMENT OF UNDER SECRETARY FOR THE PRIVATE SECTOR AND TOURISM.—Section 103(a) of the Homeland Security Act of 2002 (6 U.S.C. 113(a)) is further amended by redesignating paragraphs (2) through (10) in order as paragraphs (3) through (11), and by inserting after paragraph (1) the following:

"(2) An Under Secretary for the Private Sector and Tourism.".

(b) FUNCTIONS.—Section 102(f) of such Act (6 U.S.C. 112(f)) is further amended—

(1) by striking so much as precedes paragraph (1) and inserting the following:

"(f) UNDER SECRETARY FOR THE PRIVATE SECTOR AND TOURISM.—The Undersecretary for the Private Sector and Tourism shall be responsible for—"; and

(2) by striking "and" after the semicolon at the end of paragraph (7), by striking the period at the end of paragraph (8) and inserting a semicolon, and by adding at the end the following:

"(9) employing an analytic and economic staff who shall report directly to the Under Secretary on the commercial and economic impact of Department polices;

"(10) coordinating with the Office of State and Local Government on all matters of concern to the private sector, including the tourism industry; and

"(11) coordinating with the Assistant Secretary for Trade Development of the Department of Commerce on means of promoting tourism and travel to the United States.".

The CHAIRMAN pro tempore. Pursuant to House Resolution 827, the gentleman from Nevada (Mr. PORTER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Nevada (Mr. PORTER).

Mr. PORTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I offer an amendment to H.R. 10 that will recognize the importance of the private sector and the tourism industry in particular in our Nation's homeland security.

I, like many Members here today in this great body, have read the 9/11 report and am anxious to act on its findings.

I would like to quote from that report: "The mandate of the Homeland Security Department does not end with the government. The Department is also responsible for working with the private sector to ensure preparedness."

It also says, the "private sector preparedness is not a luxury. It is a cost of doing business in the post 9/11 world."

Mr. Chairman, we currently have a Special Assistant to the Secretary for the Private Sector, before the report was published, and unfortunately, the report says we still are not helping the private sector enough.

As an example, the Las Vegas community in the great State of Nevada, we had applied for the Urban Area Security Initiatives Grants and determined that, initially, we did not qualify because we are a small State of approximately 2 million people. With further research, they realized that we have 38 million tourists that visit the great State of Nevada annually. That is an example where there are some challenges with the current law.

We need to promote this position to give it the weight, to make sure private industry is helped and encouraged in its effort to enhance homeland security while staying in business, protecting their employees and their customers.

Again, as I read the 9/11 report, it mentioned how easily the terrorists mingled with the 500 million people who travel across our borders every year and with the hundreds of millions more who travel internally in this country. As I said, Nevada has close to 38 million visitors a year.

The report has some excellent ideas on how to improve transportation and border security, and I look forward to passing those suggestions. But the travel and tourism industry is the number one, number two and number three industry in every State of the union. It is the common element of the private sector in every community. Domestic travellers spend close to $500 billion annually in this country. Foreign tourism contributes $80 billion to our economy. Tourism generates close to $95 billion in taxes, and tourism in our country supports 7.2 million jobs, generating $158 billion in payroll.

As a matter of fact, Las Vegas is the bellwether for an ever-changing and improving economy, creating close to 40,000 new jobs alone in the last year.

Mr. Chairman, my amendment ensures that the DHS has a senior official that recognizes the importance of this industry and all industry and provides liaison with other Federal agencies active on this very important issues.

Our small businesses, their employees, their customers deserve to have their needs count when homeland security decisions are made.

It is important to note that this amendment does not cost the Federal Government in additional dollars or disrupt the operation of any agencies. Mr. Chairman, I urge the House to pass my amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. TURNER of Texas. Mr. Chairman, I claim the time in opposition to the amendment.

Mr. Chairman, the gentleman from Nevada (Mr. PORTER) offers an amendment that points to the very important relationships between our homeland security and what goes on in our private sector.

The 9/11 Commission recognized the critical role that the private sector plays in protecting our citizens from harm. The commission did not make the recommendations contained in the gentleman's amendment, but rather, one of the core recommendations of the 9/11 Commission did deal with the subject matter of the gentleman's amendment; and that is the recommendation to enhance preparedness for all disasters and emergencies, including acts of terrorism in the private sector.

They specifically recommended that the Department of Homeland Security promote the adoption of private sector preparedness standards that have been developed by the American National Standards Institute.

Once again, like many of the other recommendations of the 9/11 Commission, H.R. 10 includes no provisions to deal with the need for standards for private sector preparedness. In the aftermath of the 9/11 attacks, the commission found that many of the tenants of the World Trade Center were unprepared for the catastrophic events that occurred. Many businesses did not regularly practice evacuation drills. Few had alternative communication systems, and many firms lacked the ability to identify who was working on that particular day.

The Democratic substitute offered by the gentleman from New Jersey (Mr. MENENDEZ), like the Private Sector Preparedness Act which I introduced back in July, establishes a program to ensure the safety and security of citizens while they are at work. It would provide businesses with the guidance they need to develop evacuation plans to account for all of their employees and to get back in business as soon as possible following a disaster.

We understand that 85 percent of all critical infrastructure in our country is owned and operated by the private sector. It is, therefore, clear that a national standard is necessary to guarantee the safety of the American people. Yet, despite this very apparent and critical need, H.R. 10 fails to adopt in this 9/11 Commission's recommendations and, therefore, leaves a glaring gap in our Nation's security.

I commend the gentleman for his amendment. I think that it is one that the department could, under existing law in the Homeland Security Act, carry out, but the effect of the amendment will be to urge the department to recognize the critical role of the private sector in our preparedness for terrorist instances. And it will also, I think, point out to the department that we must make an even greater effort to ensure that, as we impose security, we do not jeopardize the movement of commerce, the movement of trade; we do not jeopardize tourism, which is so vitally important to this country, particularly to the district and the State represented by the gentleman who offered the amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. PORTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I appreciate the comments from my colleague. I will conclude by stating the importance of this is for the safety first of those visiting and traveling to our communities, providing the expertise from those individuals that deal with, on a daily basis, the handling of millions and millions of visitors to our great State and to our country and to the businesses that do the same.

Mr. Chairman, I yield the balance of my time to the gentleman from Illinois (Mr. HASTERT).

Mr. HASTERT. Mr. Chairman, I rise in support of the 9/11 Recommendations Implementation Act. I urge all of my colleagues on both sides of the aisle to support it. I want to thank those who brought good ideas to the process to make this country safer.

I want to thank the 9/11 Commission for their recommendations and the stellar work of both the chairman and the vice chairman of that committee over a long period of time to take the interest of this Nation at heart, to try to craft recommendations that make this country safer against terrorists.

I want to thank the chairmen and ranking members of the committees of jurisdiction in this House of Representatives. They have done an incredible job. They have come together. They have worked hard and, by and large, on a bipartisan basis to find good answers to tough problems. They have worked hard to provide us with their best ideas on how to implement these recommendations.

Some of my colleagues on the other side of the aisle complained about the process, and I must admit that I am baffled by those complaints. We had countless hearings during the August recess in every committee of jurisdiction. We had 20-some hearings on this issue in the last couple of months. We have had an open amendment process at the committee level, and we carefully considered the ideas of the commission and of the committees' chairmen, and we came up with a response that will make this country safer.

Some have complained that we are going too slow. Some have complained that we are going too fast. Some said our bill was too strong. Others said this bill is too weak. Some have complained because it is simply their nature to complain. Despite the complaints, I am proud of this work product.

This legislation will make this country safer. It will make our families safer. It will ensure the safety of our children and our parents. It is comprehensive. It reforms the government to make it more effective in battling terrorists that want to do harm to this country. It creates a National Intelligence Director. The new position will have full budget authority. It creates the National Counterterrorism Center and a Joint Intelligence Community Council. It improves terrorism prevention and prosecution so that we can get the terrorists and those who help them before they get us.

☐ 1345

It improves border security. It makes it harder for terrorists to travel to America.

One provision that has drawn quite a bit of attention deals with the convention against torture. We do not condone torture in this country or any other country, but we do not want known terrorists and criminals living among us either.

The courts have said criminal aliens and terrorists cannot be held indefinitely in the United States, but the convention against torture says we cannot deport some people back to their own country if they ask for political asylum because of torture.

In 500 cases, the Justice Department has been forced to release alien terrorists and other international criminals whom they cannot detain and they cannot deport. I do not think that makes any sense. If you find a rattlesnake in your backyard, you should not be forced to release it in your front yard.

We have reached a common sense solution to this problem by giving the Justice Department the power to continue to hold those terrorists and those alien criminals.

These are the kinds of solutions that my colleagues will find in our bill. They will not find it in the minority's alternative.

Why is this type of provision so controversial? To me, it just makes sense.

Yes, we disagree with the other body when it comes to making our intelligence budget public. We believe that telling our enemies how much we spend on certain intelligence programs diminishes our national security. Why should we give those who want to do us harm any information that might help them?

Yesterday, I met with three women who lost loved ones in the 9/11 attacks. I can only imagine the pain that they feel every day, and I know the passion that they bring to this debate today. We share their sense of loss. We share their commitment to making this country, this Nation, safer.

I have a simple message for them. We will get this job done. The process will work. We will pass a bill today that implements the 9/11 Commission recommendations. We will appoint conferees that will hammer out a good conference report that will be signed by the President of the United States.

Yes, at the end of the day, we will enact a law that will make our country safer, this America, the United States of America, and the people that live in it proud.

The CHAIRMAN pro tempore (Mr. LINDER). All time for the majority side has expired.

Mr. TURNER of Texas. Mr. Chairman, I yield myself such time as I may consume.

The distinguished Speaker said he is baffled by some of the complaints that were heard by those of us who supported the Menendez substitute. I think our complaints are easy to understand.

We feel very strongly that the 9/11 Commission presented us with a package of 41 recommendations that the Commission and their cochairs all said are important. H.R. 10 only fully implements 11 of those recommendations. The Republican bill only implements 15 of them partially, and the Republican bill ignores or only mentions in passing the other 15 recommendations.

The substitute that we offered on this floor implements all of the recommendations. It does it in an effective way, and it makes the kind of commitment that Democrats have argued for the last 2 years must be made to make America safe.

We are investing today $20 billion more on homeland security than we did prior to 9/11, but in the last fiscal year, when we were investing that additional $20 billion, we were investing four times that in tax cuts for American families who make over $1 million a year. That is the wrong choice, it is the wrong priority, and our bill moves faster, it moves stronger in protecting the homeland than H.R. 10 offered by the Republican leadership.

For that reason, we believe that the Senate bill, which passed yesterday, which reflects the contents of the Menendez substitute that was on this floor yesterday, is the superior alternative to helping America stay safe; and we hope that when this bill goes to conference that the provisions of the Senate bill that are absent in H.R. 10 will be added to the final product and come back to this floor with a conference committee report that clearly reflects the wisdom and the intent of the bipartisan 9/11 Commission and the work that they did so well.

Ms. BORDALLO. Mr. Chairman, I rise in support of the Porter amendment.

Throughout this important debate, emphasis has been placed on the need to ensure information is shared within the intelligence community. As we conclude this debate, we now have before us an amendment that would ensure information on the private sector is also made a part of the process and taken into consideration in the formulation of homeland security policy.

The facts speak for themselves. The travel and tourism industry has a considerable impact on the U.S. economy—adding nearly 5 percent to the GDP, generating more than half a billion dollars in revenues, supporting more than 17 million jobs, and providing a $14 million trade surplus for our country. Mr. Chairman, an overwhelming number of the businesses in travel and tourism are small- to medium-sized enterprises. Therefore, I believe DHS should be especially cognizant of its policy and regulatory impact on the travel and tourism industry.

Whether it is our aviation industry, the aircraft designers or the airline employees on the flight line, the hotel industry, or our amusement parks, we need homeland security policy that will effectively provide for the safety of our citizens and the economic vitality of our most important industries. We should not put ourselves in a position where in an effort to protect our infrastructure, we shut down the very use of transportation services we are trying to protect.

In my district, Guam, like Nevada, tourism is a leading industry in the private sector. Post-September 11 policies have already shown a major impact on businesses in my district. What this amendment does, is ensure this impact is assessed and considered inside DHS when developing policy.

If you believe economic security ultimately underpins our national security, then you should vote for the Porter amendment.

The vitality and sustainability of the travel and tourism industry is a national economic necessity. Consumer confidence in travel and in the economy is needed. Safety and security in travel is key to this consumer confidence.

By elevating the Special Assistant to an Under Secretary and by encouraging coordination with local governments and the Commerce Department, the Porter amendment gives DHS the authority it needs to craft and execute policy to achieve these goals.

I thank the gentleman from Nevada (Mr. PORTER) for his leadership, I urge adoption of his amendment, and I yield back the balance of my time.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. The question is on the amendment offered by the gentleman from Nevada (Mr. PORTER).

The amendment was agreed to.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The CHAIRMAN pro tempore. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments on which further proceedings were postponed in the following order: amendment No. 14 offered by Mr. SMITH of New Jersey, amendment No. 15 offered by Mr. SMITH of New Jersey, amendment No. 17 offered by Mr. OSE of California, amendment No. 19 offered by Mr. WELDON of Pennsylvania.

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

AMENDMENT NO. 14 OFFERED BY MR. SMITH OF NEW JERSEY

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from New Jersey (Mr. SMITH) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 212, noes 203, not voting 17, as follows:

[Roll No. 517]

AYES—212

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Bartlett (MD)
Becerra
Bell
Berkley
Berman
Berry
Biggert
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Clay
Clyburn
Conyers
Cooper
Costello
Cox
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Tom
DeGette
Delahunt
DeLauro
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Emanuel
Eshoo
Etheridge
Evans
Farr
Fattah
Foley
Ford
Fossella
Frank (MA)
Frost
Gerlach
Gilchrest
Gonzalez
Gordon
Green (TX)
Greenwood
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Hill
Hinchey
Hoeffel
Holt
Honda
Hooley (OR)
Houghton
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (OH)
Kanjorski
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (NY)
Kirk
Kleczka
Kolbe
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
LaTourette
Leach
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Lucas (KY)
Lynch
Maloney
Markey
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Northup
Oberstar
Obey
Olver
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Petri
Pomeroy
Porter
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Shays
Sherman
Simmons
Skelton
Smith (NJ)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Terry
Thompson (CA)
Thompson (MS)
Tierney
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Walsh
Waters
Watson
Watt
Waxman
Weiner
Weldon (PA)
Wexler
Wilson (NM)
Wolf
Woolsey
Wu
Wynn

NOES—203

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Barton (TX)
Bass
Beauprez
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Coble
Cole
Collins
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (TN)
Davis, Jo Ann
Deal (GA)
DeFazio
DeLay
DeMint
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Forbes
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gibbons
Gillmor
Gingrey
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Holden
Hostettler
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
Kingston
Kline
Knollenberg
LaHood
Latham
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
Manzullo
Marshall
Matheson
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Pearce
Pence
Peterson (PA)
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shuster
Simpson
Smith (MI)
Smith (TX)
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Wamp
Weldon (FL)
Weller
Whitfield
Wicker
Wilson (SC)
Young (AK)
Young (FL)

NOT VOTING—17

Ballenger
Boehlert
Engel
Filner
Gephardt
Hinojosa
Kaptur
Lipinski
Majette
Matsui
Meek (FL)
Norwood
Ortiz
Paul
Slaughter
Tauzin
Towns

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (Mr. LINDER) (during the vote). There are 2 minutes remaining in this vote.

□ 1416

Messrs. GARRETT of New Jersey, WAMP, PICKERING, DEFAZIO, MARSHALL, and COLE changed their vote from "aye" to "no."

Messrs. KIRK, VAN HOLLEN, and LUCAS of Kentucky changed their vote from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Stated for:

Mr. FILNER. Mr. Chairman, on rollcall No. 517, I was in my Congressional District on official business. Had I been present, I would have voted "aye."

Stated against:

Ms. NORTHUP. Mr. Chairman, on rollcall No. 517, I inadvertently voted incorrectly. I had every intention of voting "no" on the amendment but mistakenly pushed the green button. I did not realize my mistake until the vote was closed.

AMENDMENT NO. 15 OFFERED BY MR. SMITH OF NEW JERSEY

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from New Jersey (Mr. SMITH) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 197, noes 219, not voting 16, as follows:

[Roll No. 518]

AYES—197

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Brady (PA)
Brown (OH)
Brown, Corrine
Burr
Butterfield
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Castle
Clay
Clyburn
Conyers
Cooper
Costello
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Tom
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Ehlers
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Ford
Frank (MA)
Frost
Gerlach
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Hinchey
Hoeffel
Holt
Honda
Hooley (OR)
Houghton
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (OH)
Kanjorski
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (NY)
Kleczka
Kolbe
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Lynch
Maloney
Markey
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McNulty
Meehan
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Porter
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Shays
Sherman
Simmons
Skelton
Smith (NJ)
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Terry
Thompson (CA)
Thompson (MS)
Tierney
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Walsh
Waters
Watson
Watt
Waxman
Weiner
Weldon (PA)
Wexler
Wilson (NM)
Woolsey
Wu
Wynn

NOES—219

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carson (OK)
Carter
Case
Chabot
Chandler
Chocola
Coble
Cole
Collins
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (TN)
Davis, Jo Ann
Deal (GA)
DeLay
DeMint
Doolittle
Dreier
Duncan
Dunn
Edwards
Emerson
English
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hobson
Hoekstra
Holden
Hostettler
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
Kingston
Kirk
Kline
Knollenberg
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Marshall
Matheson
McCotter
McCrery
McHugh
McInnis
McIntyre
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moore
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Royce
Ruppersberger
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shuster
Simpson
Smith (MI)
Smith (TX)
Souder
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Wamp
Weldon (FL)
Weller
Whitfield
Wicker
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—16

Ballenger
Boehlert
Filner
Gephardt
Hinojosa
Kaptur
Lipinski
Majette
Matsui
Meek (FL)
Norwood
Ortiz
Paul
Slaughter
Tauzin
Towns

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (Mr. LINDER) (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1423

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated for:

Mr. FILNER. Mr. Chairman, on rollcall No. 518, I was in my Congressional District on official business. Had I been present, I would have voted "aye."

AMENDMENT NO. 17 OFFERED BY MR. OSE

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from California (Mr. OSE) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 256, noes 160, not voting 16, as follows:

[Roll No. 519]

AYES—256

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boucher
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Cardoza
Carson (OK)
Carter
Castle
Chabot
Chandler
Chocola
Coble
Cole
Collins
Cooper
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
English
Etheridge
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Ford
Fossella
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gingrey
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hobson
Hoekstra
Holden
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Israel
Issa
Istook
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Kanjorski
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Lampson
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Lynch
Manzullo
Marshall
Matheson
McCotter
McCrery
McHugh
McInnis
McIntyre
McKeon
Mica
Michaud
Miller (FL)
Miller (MI)
Miller, Gary
Moore
Moran (KS)
Murphy
Murtha
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Royce
Ryan (WI)
Ryun (KS)
Sandlin
Saxton
Schrock
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Souder
Spratt
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Tanner
Taylor (MS)

Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Turner (TX)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOES—160

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Becerra
Bell
Berkley
Berman
Blumenauer
Boswell
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Capps
Capuano
Cardin
Carson (IN)
Case
Clay
Clyburn
Conyers
Costello
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Emanuel
Engel
Eshoo
Evans
Farr
Fattah
Frank (MA)
Gillmor
Gonzalez
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Hinchey
Hoeffel
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Maloney
Markey
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McNulty
Meehan
Meeks (NY)
Menendez
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moran (VA)
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Rodriguez
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Scott (VA)
Serrano
Shays
Sherman
Snyder
Solis
Stark
Strickland
Stupak
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Wilson (NM)
Woolsey
Wu
Wynn

NOT VOTING—16

Ballenger
Boehlert
Filner
Gephardt
Hinojosa
Kaptur
Lipinski
Majette
Matsui
Meek (FL)
Norwood
Ortiz
Paul
Slaughter
Tauzin
Towns

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (during the vote). Members are advised that 2 minutes remain in this vote.

☐ 1432

Mr. SHAYS changed his vote from "aye" to "no."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Stated against:

Mr. FILNER. Mr. Chairman, on rollcall No. 519, I was in my Congressional District on official business. Had I been present, I would have voted "nay."

AMENDMENT NO. 19 OFFERED BY MR. WELDON OF PENNSYLVANIA

The CHAIRMAN pro tempore. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Pennsylvania (Mr. WELDON) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN pro tempore. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 415, noes 0, not voting 17, as follows:

[Roll No. 520]

AYES—415

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Becerra
Bell
Berkley
Berman
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole
Collins
Conyers
Cooper
Costello
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emanuel
Emerson
Engel
English
Eshoo
Etheridge
Evans
Everett
Farr
Fattah
Feeney
Ferguson
Flake
Foley
Forbes
Ford
Fossella
Frank (MA)
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (TX)
Green (WI)
Greenwood
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hill
Hinchey
Hobson
Hoeffel
Hoekstra
Holden
Holt
Honda
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Kleczka
Kline
Knollenberg
Kolbe
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
LoBiondo
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Lynch
Maloney
Manzullo
Markey
Marshall
Matheson
McCarthy (MO)
McCarthy (NY)
McCollum
McCotter
McCrery
McDermott
McGovern
McHugh
McInnis
McIntyre
McKeon
McNulty
Meehan
Meeks (NY)
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Oberstar
Obey
Olver
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Sabo
Sanchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Saxton
Schakowsky
Schiff
Schrock
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Strickland
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Toomey
Turner (OH)
Turner (TX)
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Vitter
Walden (OR)
Walsh
Wamp
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—17

Ballenger
Boehlert
Filner
Gephardt
Hinojosa
Kaptur
Lipinski
Majette
Matsui
Meek (FL)
Norwood
Ortiz
Paul
Pombo
Slaughter
Tauzin
Towns

ANNOUNCEMENT BY THE CHAIRMAN PRO TEMPORE

The CHAIRMAN pro tempore (Mr. LINDER) (during the vote). Members are advised there are 2 minutes remaining in this vote.

☐ 1441

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Stated for:

Mr. FILNER. Mr. Speaker, on rollcall No. 520, I was in my Congressional District on official business. Had I been present, I would have voted "aye."

Ms. MCCARTHY of Missouri. Mr. Chairman, the 9/11 Commission in July presented its report to the Congress and to the American people. The five Republicans and five Democrats on the panel put aside their partisan differences and made 41 recommendations, which if made law, would make this country safer. The Senate on Wednesday embraced these recommendations with the 96–2 passage of the Collins/Lieberman National Intelligence Reform Act.

I encourage the House to act in the same bipartisan manner as the Senate. H.R. 10, the 9/11 Recommendations Implementation Act, was written behind closed doors and fails to fully implement 30 of the 41 Commission recommendations.

The job of Congress is to work with the Executive Branch to keep America safe, and work with our allies to make the world safe. H.R. 10 fails to do this, and places the House on a collision course with the Senate.

Upon passage of the Senate bill, 9/11 Commission Chairman Thomas Kean and Vice Chairman Lee Hamilton praised the outstanding leadership of Senators SUSAN COLLINS and JOSEPH LIEBERMAN for their progress in implementing the Commission's recommendations. They, along with families of 9/11 victims, expressed their desire for the House to pass a counterpart measure.

It is disappointing that the House failed to do its job today. I urge the Conferees to adopt the 9/11 Commission recommendations. We owe it to the American people and the families of victims of 9/11.

Mr. HEFLEY. Mr. Chairman, I rise today in support of H.R. 10, the 9/11 Recommendations Implementation Act. This legislation is vitally important to overhaul the nation's intelligence system, which has been in place since World War II.

There are five majors areas of reform in this legislation that will dramatically alter the way our country approaches national security.

First, this bill establishes a National Director of Intelligence who will have full budget authority over the nation's intelligence agencies. For the first time in our Nation's history, we will have one person whose sole job is to coordinate the activities and information from all of our Nation's intelligence services.

Second, this bill restructures terrorism prevention and prosecution. It gives law enforcement agencies and the Department of Justice new tools to prevent and prosecute potential terrorists and acts of terrorism. Whether it is strengthening our money laundering laws to combat terrorists' financial networks or adding additional security measures to our printed currency, this legislation will make it more difficult for terrorists to have access to financing and make it more difficult for those who want to finance terrorist activities.

Third, this legislation dramatically strengthens the security of our Nation's borders and restricts the ability of terrorists to travel. I think we can all agree the best way to keep our country safe is keep the terrorists out of our country. If terrorists do manage to get into the country, this legislation gives law enforcement officers the tools they need to make it easier to deport them. also, this legislation makes sure that our federal air marshals have anonymity on all flights, both domestic and foreign. We will add more federal air marshals to foreign flights coming into this country on both U.S. and foreign carriers. We will add a second layer of protection in cockpits, and require the use of biometrically-protected crew badges for airline employees.

Fourth, this bill reaches out to other nations to join us in combating terrorism. We will require machine-readable passports for tourists entering our country and also require that all names on passports be translated and printed in Roman alphabet for international travel documents and placed into watchlist systems. Also, this bill makes it a federal crime to give a false claim of citizenship or nationality.

Finally, this legislation restructures the government in many important ways. It provides the authorization for the intelligence community reorganization plans, it restructures the Department of Homeland Security for faster and smarter funding for first responders, and it modifies the homeland security advisory system.

Mr. Chairman, this legislation contains many important and necessary changes to our Nation's laws. I would like to thank all the members who have worked so hard on a bi-partisan basis to produce such a comprehensive piece of legislation. This is a positive step in improving the nation's intelligence system and our national security.

Mr. RYUN of Kansas. Mr. Chairman, Benjamin Franklin once said: The way to be safe is never to be secure. We must never be content in the ways things have always been, but consistently look for new ways to achieve security in our homeland. For this, I am pleased to support H.R. 10, the 9/11 Recommendations Implementation Act. I believe this legislation will provide for the much needed reorganization and new tools to help our Nation prepare and defend against further terrorist attacks.

After the horrific attacks of September 11th, it was evident that our Government needed to be transformed to meet the new challenges of this dangerous world. Soon after 9/11, and under the leadership of President Bush, various agencies with homeland security roles throughout the government were brought under the control and vision of a single Department, with the creation of the Department of Homeland Security. The hope was to break down the existing barriers and create more cooperation and communication in this critical field.

Congress is continuing this effort to improve our homeland security with the passage of H.R. 10. This legislation clearly recognizes that the United States can no longer afford to think of defending the homeland as being the responsibility of just one Department—be it Homeland Security, Justice or Defense. Many aspects of our government and society, from the FBI, to DOD's Northern Command, the Intelligence Community, the Treasury Department, Immigration, local law enforcement, our corporate partners, and the academic community all have important roles to play. All of these players must work together, in concert, to achieve the real results worthy of this great nation.

The 9/11 Commission, which is the basis of this legislation, found that government institutions failed to adapt to the threat of terrorism for more than a decade, enabling the terrorists failed to exploit deep institutional failings within our government. These failures, in part, stemmed from a strict stove-piped structure.

Our enemy is asymmetrical and unconcerned about such things as the internal structural uneasiness of sharing information inside the Intelligence Community and between other organizations. However, our enemies will certainly do everything they can to benefit from this ingrained culture—to the detriment of our society.

The 9/11 Commission concluded that: "the September 11th attacks fell into the void between the foreign and domestic threats."

The Report continues: "Information was not shared, sometimes inadvertently or because of legal misunderstandings. Analysis was not pooled. Effective operations were not launched. Often the handoffs of information were lost across the divide separating the foreign and domestic agencies of the government. . . . Action officers should have drawn on all available knowledge in the government. This management should have ensured that information was shared and duties were clearly assigned across agencies, and across the foreign-domestic divide."

Although people have levied fault on the CIA and FBI, I believe we must not single out individual agencies. Instead, we should use our energies to focus on the culture and structure of our government. As the 9/11 Commission report continues:

> The problem is nearly intractable because of the way the government is currently structured. Lines of operational authority run to the expanding executive departments, and they are guarded for understandable reasons: the DCI commands the CIA's personnel overseas; the secretary of defense will not yield to others in conveying commands to military forces; the Justice Department will not give up the responsibility of deciding whether to seek arrest warrants. But the result is that each agency or department needs its own intelligence apparatus to support the performance of its duties. It is hard to break down stovepipes when there are so many stoves that are legally and political entitled to have cast-iron pipes of their own.

The problem is clear: stove-piping of resources and responsibilities, along with not sharing the information or analysis collected is hindering our Nation's ability to remain secure. Instead of stove-piping, we must increase the flow of information inside and between government agencies while still protecting vital sources. If we are going to achieve a greater level of security in this nation, we need to break down the barriers to homeland security. We must not be bogged down in a need-to-know mentality, but most rise to a need-to-share focus.

The 9/11 Commission Recommendations bears out this solution. Repeatedly, the Commission calls for unity and the unifying of efforts across the government. It calls for unifying strategic intelligence and operational planning against Islamist terrorists across the foreign-domestic divide with a new National Counterterrorism Center. Unifying the intelligence community with a new National Intelligence Director. And, unifying the many participants in the counterterrorism efforts.

The old ways of thinking about and organizing our government have failed us. We have been confined by a vision of the past. Of local vs. federal, of domestic vs. foreign intelligence, of national security vs. law enforcement.

We instead need to focus on unity of purpose and on communication, collaboration and coordination that transcends our old structure. Only by working together, as a single unit, can we be secure. And I believe that H.R. 10 is the right step forward in doing just that.

Ms. KILPATRICK. Mr. Chairman, I rise in opposition to H.R. 10, the 9/11 Recommendations Implementation Act. I do so not because I disagree on the urgent need to reform our intelligence infrastructure. On the contrary, the 9/11 Commission clearly, articulately and convincingly makes a compelling case that the U.S. intelligence network is in great need of overhauling.

My reasons for voting against the measure deal less with the concept of intelligence reform and more with the substance of the bill we are considering today. The measure before us today is improperly titled. The "9/11 Recommendations Implementation Act" should really be re-titled as the "Immigration Reform Act of 2004."

I am particularly sensitive to issues of homeland security and intelligence capabilities. My district encompasses the majority of the City of Detroit, which borders our northern neighbor—Canada. Detroit is the Motor City capital of the world, and as such, we are economically dependent on the cross-border auto trade transported through the Port of Detroit. Securing the critical infrastructure such as the Ambassador Bridge, the Detroit-Windsor Tunnel, and the Port of Detroit is vital to the economic wellbeing of our city, region, state, and nation. Protecting the rights of way of these thoroughfares is critical to the health of the American automobile industry, the largest industry in the manufacturing sector. Protecting these assets against terrorist attack is so important that the City of Detroit is one of the few major cities in the United States that has created an Office of Homeland Security. Matters of homeland security and enhanced intelligence capabilities are urgent concerns to my district and they should not be trivialized. The Republican Leadership in this chamber had the opportunity to stitch together a bill that would strengthen the nation's intelligence apparatus, but frankly it has "pooched" the job. The Leadership has confused the 9/11 Commission's urging to enhance America's security apparatus with its predilection to crack-down on the nation's immigrants.

The only area where the bill makes its mark on strengthening the intelligence community is the establishment of a National Intelligence Director (NID). But all progress at intelligence reform ends there—with the creation of NID. We create a position but gives the person occupying it no powers and no authority to implement any significant changes in the intelligence bureaucracy. For example, the NID has no budget authority, no hiring authority, and on reprogramming authority. By establishing a position of power without authority to hire or fire or to control the budget, we are in fact creating a paper tiger, a position with a lot of roar and no bite. The members of the 9/11 Commission have expressed their support for a strong NID, but the bill crafted by the Republican leadership fails to meet their expectations.

This bill does very little in the way of strengthening the intelligence community. It goes a long way in turning the U.S. immigration system upside down. I support immigration reform, but we should not be enacting such sweeping changes under a bill whose purpose is to reform and reorganize the intelligence community. The Republican Leadership is confused. It took its eye off the goal of intelligence reform and moved forward with a bill that cracks down on immigrants.

Let me highlight some of the more egregious provisions of this bill. The "Lone Wolf" provision would remove the requirement that non-citizen targets of secret intelligence surveillance be connected to a foreign power. The bill would permit the deportation of individuals to countries lacking a functioning government—an issue that is currently before the U.S. Supreme Court. The bill makes asylum claims more restrictive. The bill restricts the use of internationally accepted consular identification cards. Immigrants are being used as a wedge issue in this presidential election year. The bill is designed to mobilize the base vote of neo-isolationists and not the legitimate security concerns confronting our country and our countrymen and women.

By using immigration as a wedge issue, we are distracted from taking a thoughtful approach to improving our intelligence capability. We are undermining our efforts to combat terrorism. Many on my side of the aisle will be voting to support this bill in order to move the process forward in the hope that a final product will be closer to the bill that was approved in the other chamber. My vote today is based on the substance and the merit of the provisions contained in this bill before us today. If a conference agreement can produce a bill that truly strengthens our intelligence community, it will have my support. Today, I must cast my vote against the passage of H.R. 10.

Mr. PAUL. Mr. Chairman, the 9/11 Recommendations Implementation Act (H.R. 10) is yet another attempt to address the threat of terrorism by giving more money and power to the federal bureaucracy. Most of the reforms contained in this bill will not make America safer, though they definitely will make us less free. H.R. 10 also wastes American taxpayer money on unconstitutional and ineffective foreign aid programs. Congress should make America safer by expanding liberty and refocusing our foreign policy on defending this nation's vital interests, rather than expanding the welfare state and wasting American blood and treasure on quixotic crusades to "democratize" the world.

Disturbingly, H.R. 10 creates a de facto national ID card by mandating new federal requirements that standardize state-issued drivers licenses and birth certificates and even require including biometric identifiers in such documents. State drivers license information will be stored in a national database, which will include information about an individual's driving record!

Nationalizing standards for drivers licenses and birth certificates, and linking them together via a national database, creates a national ID system pure and simple. Proponents of the national ID understand that the public remains wary of the scheme, so they attempt to claim they're merely creating new standards for existing state IDs. Nonsense! This legislation imposes federal standards in a federal bill, and it creates a federalized ID regardless of whether the ID itself is still stamped with the name of your state. It is just a matter of time until those who refuse to carry the new licenses will be denied the ability to drive or board an airplane. Domestic travel restrictions are the hallmark of authoritarian states, not free republics.

The national ID will be used to track the movements of American citizens, not just terrorists. Subjecting every citizen to surveillance actually diverts resources away from tracking and apprehending terrorist in favor of needless snooping on innocent Americans. This is what happened with "suspicious activity reports" required by the Bank Secrecy Act. Thanks to BSA mandates, federal officials are forced to waste countless hours snooping through the private financial transactions of innocent Americans merely because those transactions exceeded $10,000.

Furthermore, the Federal Government has no constitutional authority to require law-abiding Americans to present any form of identification before engaging in private transactions (e.g. getting a job, opening a bank account, or seeking medical assistance). Nothing in our Constitution can reasonably be construed to allow government officials to demand identification from individuals who are not suspected of any crime.

H.R. 10 also broadens the definition of terrorism contained in the PATRIOT Act. H.R. 10 characterizes terrorism as acts intended "to influence the policy of a government by intimidation or coercion." Under this broad definition, a scuffle at an otherwise peaceful pro-life demonstration might allow the federal government to label the sponsoring organization and its members as terrorists. Before dismissing these concerns, my colleagues should remember the abuse of Internal Revenue Service power by both Democratic and Republican administrations to punish political opponents, or the use of the Racketeer Influenced and Corrupt Organizations (RICO) Act on anti-abortion activists. It is entirely possible that a future administration will use the new surveillance powers granted in this bill to harm people holding unpopular political views.

Congress could promote both liberty and security by encouraging private property owners to take more responsibility to protect themselves and their property. Congress could enhance safety by removing the roadblocks thrown up by the misnamed Transportation Security Agency that prevent the full implementation of the armed pilots program. I cosponsored an amendment with my colleague from Virginia, Mr. Goode, to do just that, and I am disappointed it was ruled out of order.

I am also disappointed the Financial Services Committee rejected my amendment to conform the regulations governing the filing of suspicious activities reports with the requirements of the U.S. Constitution. This amendment not only would have ensured greater privacy protection, but it also would have enabled law enforcement to better focus on people who truly pose a threat to our safety.

Immediately after the attack on September 11, 2001, I introduced several pieces of legislation designed to help fight terrorism and secure the United States, including a bill to allow airline pilots to carry firearms and a bill that would have expedited the hiring of Federal Bureau of Investigation (FBI) translators to support counterterrorism investigations and operations. I also introduced a bill to authorize the president to issue letters of marque and reprisal to bring to justice those who committed the attacks of September 11, 2001, and other similar acts of war planned for the future.

The foreign policy provisions of H.R. 10 are similarly objectionable and should be strongly opposed. I have spoken before about the serious shortcomings of the 9/11 Commission, upon whose report this legislation is based. I find it incredible that in the 500-plus page report there is not one mention of how our interventionist foreign policy creates enemies abroad who then seek to harm us. Until we consider the root causes of terrorism, beyond the jingoistic explanations offered thus far, we will not defeat terrorism and we will not be safer.

Among the most ill-considered foreign policy components of H.R. 10 is a section providing for the United States to increase support for an expansion of the United Nations "Democracy Caucus." Worse still, the bill encourages further integration of that United Nations body into our State department. The last thing we should do if we hope to make our country safer from terrorism is expand our involvement in the United Nations.

This bill contains a provision to train American diplomats to be more sensitive and attuned to the United Nations, the Organization for Security and Cooperation in Europe (OSCE)—which will be in the U.S. to monitor our elections next month—and other international non-governmental organizations (NGOs). even worse, this legislation actually will create an "ambassador-at-large" position solely to work with non-governmental organizations overseas. It hardly promotes democracy abroad to accord equal status to NGOs, which, after all, are un-elected foreign pressure groups that, therefore, have no popular legitimacy whatsoever. Once again, we are saying one thing and doing the opposite.

This bill also increases our counterproductive practice of sending United States' taxpayer money abroad to prop up selected foreign media, which inexplicably are referred to as "independent media." This is an unconstitutional misuse of tax money. Additionally does anyone believe that citizens of countries where the U.S. subsidizes certain media outlets take kindly to, or take seriously, such media? How would Americans feel if they knew that publications taking a certain editorial line were financed by foreign governments? We cannot refer to foreign media funded by the U.S. government as "independent media." The U.S. government should never be in the business of funding the media, either at home or abroad.

Finally, I am skeptical about the reorganization of the intelligence community in this legislation. In creating an entire new bureaucracy, the National Intelligence Director, we are adding yet another layer of bureaucracy to our already bloated federal government. Yet, we are supposed to believe that even more of the same kind of government that failed us on September 11, 2001 will make us safer. At best, this is wishful thinking. The constitutional function of our intelligence community is to protect the United States from foreign attack. Ever since its creation by the National Security Act of 1947, the Central Intelligence Agency (CIA) has been meddling in affairs that have nothing to do with the security of the United States. Considering the CIA's overthrow of Iranian leader Mohammed Mossadeq in the 1950s, and the CIA's training of the Muhajadin jihadists in Afghanistan in the 1980s, it is entirely possible the actions of the CIA abroad have actually made us less safe and more vulnerable to foreign attack. It would be best to confine our intelligence community to the defense of our territory from foreign attack. This may well mean turning intelligence functions over to the Department of Defense, where they belong.

For all of these reasons, Mr. Chairman, I vigorously oppose H.R. 10. It represents the worst approach to combating terrorism—more federal bureaucracy, more foreign intervention, and less liberty for the American people.

Mr. DEFAZIO. Mr. Chairman, I rise today to discuss H.R. 10, the legislation that ostensibly implements the recommendations made by the independent commission that investigated the federal government's failure to prevent the terrorist attacks of September 11, 2001.

Let me say at the outset that this bill is certainly not perfect. But, I am pleased it includes a number of critical aviation security improvements I have pushed for.

It also includes the core recommendation made by the 9/11 Commission to create a National Intelligence Director to centralize coordination and oversight of the disparate branches of our intelligence community.

Therefore, despite some flaws, I will vote for H.R. 10, with the hope that its shortcomings can be resolved in the conference with the Senate.

I want to expand on my comments about the aviation security provisions in H.R. 10. I am pleased that this bill provides $60 million over two years for the deployment of checkpoint explosive detection equipment. The bill also directs the Transportation Security Administration (TSA) to give priority to developing, testing, improving, and deploying equipment at screening checkpoints that will be able to detect nonmetallic weapons and explosives on individuals and in their baggage.

This bill would implement the 9/11 Commission recommendation that TSA not wait until the issues surrounding a successor to the CAPPS program are resolved before utilizing all available government terrorist watch lists to prescreen passengers boarding an aircraft. The air carriers currently manage the "no-fly" and "automatic selectee" lists that they receive from TSA. Because the airlines have access to these lists, some government agencies are unwilling to give their watch lists to TSA because they are reluctant to share intelligence information with private firms. This problem will be resolved when TSA takes over the passenger pre-screening function, as mandated by this bill.

Perimeter security is still a weak link in aviation security as evidenced by the recent events at the Orlando airport in which workers were charged with sneaking drugs and guns aboard commercial aircraft. Importantly, the bill requires TSA to submit a study to Congress on airport perimeter security to determine the feasibility of access control technologies and procedures, as well as an assessment of the feasibility of physically screening all individuals prior to entry into secure areas of an airport.

With regard to strategic planning, the bill requires the Department of Homeland Security to develop a risk-based strategic plan to protect transportation assets in general, and aviation assets in particular. The bill would also require the TSA to develop a threat matrix that outlines each threat to the civil aviation system, and the layers of security to respond to that threat. A strong strategic planning process may avert any future "failures of imagination" as cited by the Commission.

The bill also incorporates H.R. 4914, the Aviation Biometic Technology Utilization Act, which I introduced with Chairman MICA. Biometric technologies can improve aviation security, and the TSA must act quickly to promulgate guidelines and standards for biometrics so that airports can equip with biometric access control technology.

In addition, the bill incorporates H.R. 4056, the Commercial Aviation MANPADS Defense Act of 2004, which I also introduced with Chairman MICA. MANPADS have been used against commercial airplanes and we must do what we can to reduce the threat of MANPADS by working to reduce their availability and developing plans to secure airports and the aircrafts arriving and departing from airports against MANPADS attacks.

The bill contains several other important provisions including a pilot program to determine whether federal flight deck officers can be permitted to carry weapons on their persons, as well as directing TSA to: conduct a pilot program for the use of blast resistant cargo containers; continue its efforts to develop technology to screen cargo; conduct a study on the viability of technologies that would provide discreet methods of communication for flight cabin crew to notify pilots in the event of a security breach, and a study on the costs and benefits associated with the use of secondary flight deck barriers. In addition, I am pleased a provision was included to require the Director of the Federal Air Marshal Service to develop operational procedures that ensure the anonymity of Federal air marshals.

I am also pleased that this legislation implements the core recommendation of the 9/11 Commission—creation of a National Intelligence Director. While the bill may not create quite as robust an NID as the Senate legislation, it does represent a useful step in bringing accountability to the intelligence community and improving coordination.

Despite the aviation security provisions I mentioned previously, there are shortcomings in the transportation security provisions of H.R. 10. For example, there is no money to deploy explosive detection systems to screen checked baggage. In the security bill approved by the House Transportation and Infrastructure Committee, on which I sit, we included an additional $250 million in mandatory spending to deploy these critical devices. Unfortunately, this provision was stripped out of the version of H.R. 10 on the floor today. Further, H.R. 10 does next to nothing to improve rail, mass transit, or port security. These shortcomings need to be addressed in the conference with the Senate.

I am also concerned that H.R. 10 is weak on combating the proliferation of weapons of mass destruction. The bill just requires a study of how to strengthen our non-proliferation programs. We don't need another study. We already know what needs to be done. In 2001, a bipartisan commission recommended tripling funding to $3 billion a year for programs to help secure nuclear materials around the world from terrorists. The non-proliferation programs under Nunn-Lugar should also be expanded beyond the states of the former Soviet Union in order to secure nuclear materials in other countries, notably Pakistan. The non-proliferation provisions of H.R. 10 should be strengthened in conference.

I am opposed to a provision in H.R. 10 that would violate U.S. obligations under the Convention on Torture by allowing the U.S. to deport suspects to countries that might torture them. While I supported an amendment that was adopted during consideration of H.R. 10 to slightly improve the provision in H.R. 10 authorizing deportation of suspects to countries with atrocious human rights records so it wasn't quite as objectionable, I would rather see the provision removed all together during the conference with the Senate.

I am concerned that the civil liberties protections in H.R. 10 are too weak. H.R. 10 creates a Civil Liberties Protection Officer that is appointed by and reports to the NID, which means he or she is not independent. Under these circumstances, the officer is unlikely to provide robust protection for civil liberties. By contrast, the 9/11 Commission and the Senate legislation propose an independent Privacy and Civil Liberties Oversight Board. The Senate legislation also includes an Office for Civil Rights and Civil Liberties as well as a Privacy Officer within the National Intelligence Authority. The Board would continually review legislation, regulations and policies for their impact on privacy and civil liberties. The Board would be required to issue reports to Congress at least twice a year and to make the reports available to the public. I hope that the Senate provisions on civil liberties oversight will be included in any final legislation that emerges from conference.

Finally, I have serious concerns about a number of provisions in H.R. 10 that will expand the law enforcement powers of the federal government. As one who voted against the so-called USA PATRIOT Act because of my concerns about its impact on the civil liberties of average American citizens, I am concerned that H.R. 10 will unnecessarily expand the reach of the federal government in ways that are not necessary to defeat terrorists, but will pose a lasting threat to the rights we are guaranteed under the U.S. Constitution. I would rather that these provisions be considered carefully by Congress next year during the debate over whether to renew the PATRIOT Act rather than having them slipped into H.R. 10 with little debate.

Ms. MILLENDER-McDONALD. Mr. Chairman, I rise to express my concern on the course our Congress has taken.

We had a clear choice before us to have passed the Menendez substitute, a bipartisan approach that followed the recommendations of the 9/11 Commission—a Commission that for three years studied the vulnerabilities of our national intelligence community and homeland security and then provided thoughtful, nonpartisan recommendations.

Or pass a partisan House Republican bill that was slapped together in a matter of months to address immediate political measures.

Unfortunately, this Republican led Congress chose the quick fix.

It is important to note that the Senate took these same nonpartisan recommendations to heart and passed a bipartisan bill overwhelmingly 96–2.

As legislators and as leaders of this country, our job is incomplete. We will be revisiting these measures again—and again—until we get it right.

Because, Mr. Chairman, we cannot afford to get this wrong. At stake is the safety and security of the American people and the future of our children.

H.R. 10 implements only eleven of the forty-one 9/11 Commission recommendations. However, included in this legislation are more than fifty extraneous provisions not recommended by the 9/11 Commission.

As a senior member on the House Transportation and Infrastructure Committee, I am appalled that this legislation has not done more to protect our ports, our national transit systems and our overall transportation infrastructure.

These are obvious vulnerabilities that are not being addressed! Think about the not so obvious vulnerabilities that are being overlooked!

It was our transportation vulnerabilities that the 9/11 terrorists used to attack us on that fateful day and it is likely that it will be transportation that these terrorists will target again.

Aside from the Aviation Subcommittee, our Full Committee was not consulted on the drafting of this bill and I believe that some of the aviation provisions do not go far enough.

For example, H.R. 10 simply states that priority be given to improved explosive detection. This is disingenuous. As the Menendez substitute clearly states all high-risk passengers must be screened for explosives until the explosive detection technology is improved. We must be clear and we must be direct when we address the security of the American people.

On that note, I would like to commend one provision that is in this bill. H.R. 10 took the Commission's recommendation on blast resistant containers and language that I recently introduced to create a blast resistant container pilot program that integrates this technology with our aviation system. This is an important step and one that is long over due.

Since 9/11, the Transportation and Infrastructure has embraced a bipartisan approach in reviewing and addressing the transportation vulnerabilities that face our Nation.

We have accomplished much.

Last week our Committee unanimously reported a bipartisan transit security bill last week that would provide critically needed funding for security improvements for our public transit systems.

Unfortunately, these measures will not be included or addressed in H.R. 10.

Mr. Chairman, it is because of these reasons that we will return to this Chamber and revisit these vital issues again and again until we get it right.

Mr. ROGERS of Michigan. Mr. Chairman, our antiquated federal pay system does not adequately account for the unique needs of federal law enforcement officers.

For example, the current salary, including all overtime payments, for a FBI Special Agent in San Francisco is $56,453. But even a "low-income home" within a 60 to 90 minute commute from San Francisco costs $300,000, requiring a mandatory income of $86,000. As a result, agents commonly face four hour daily commutes on top of their regular ten hour plus shifts. Because staffing decisions are based on the needs of the nation, today many federal law enforcement officers are being asked to live beyond their means in order to serve their country.

Mr. Chairman, the 9/11 Commission Report's specific policy recommendations are underpinned by two important general conclusions. First, that the FBI is central to the war on terrorism and second, the need to provide adequate resources to FBI Agents. In fact, on pages 425–426 of their report, the 9/11 Commission says:

> A specialized and integrated national security workforce should be established at the FBI consisting of agents, analysts, linguist, and surveillance specialists who are recruited, trained, rewarded, and retained to ensure the development of an institutional culture imbued with a deep expertise in intelligence and national security.

Mr. Chairman, developing and maintaining an "institutional culture imbued with deep expertise" is severely undermined by the Bureau's inability to retain highly skilled agents in high-cost of living areas. Often, agents will seek to transfer out of high-cost of living areas, like New York, San Francisco, and Los Angeles, to name a few. The disincentive to stay in high-cost of living areas makes it more difficult for the FBI to recruit the best agents to serve in supervisory positions, and thus creates an obstacle to creating the type of institutional culture the Report calls for. If the high-cost of living in certain areas was mitigated, this disincentive could be removed, and it would be easier to create a more healthy seniority system that would allow a strong intelligence culture to flourish.

Also on page 426, the 9/11 Commission says "The FBI should fully implement a recruiting, hiring, and selection process for agents and analysts that enhances its ability to target and attract individuals with educational and professional backgrounds in intelligence, international relations, language, technology, and other relevant skills."

Mr. Chairman, the status quo's inability to fairly compensate FBI agents in high-cost areas is undermining the Bureau's ability to recruit and retain highly skilled individuals in crucial locations. For instance, cities such as New

York, Los Angeles, and San Francisco are uniquely vulnerable to terrorist threats. The Report makes it clear that Congress must undertake efforts to ensure that the FBI is able to attract and retain employees possessing high-level skills. These employees must be fairly compensated with consideration of the cost of living in these areas in order for the Bureau to retain their services.

Mr. Chairman, H.R. 10 takes a positive first step by providing recruitment and retention bonuses to federal law enforcement, particularly the FBI. However, it is imperative that this Congress act on fundamental pay reform in an expeditious manner.

Mr. LEVIN. Mr. Chairman, the bill before the House today is intelligence reform more in name than in reality. In fact, the Republican Leadership's bill, H.R. 10, ignores most of the recommendations made by the 9/11 Commission. Of the 41 recommendations made by the Commission, H.R. 10 fully implements only 11 of them.

On October 2, the Family Steering Committee, which is made up of the families of 9/11 victims, issued a statement that said, "House of Representatives bill H.R. 10, drafted in response to the 9/11 Commission recommendations, is flawed because it does not provide for a strong National Intelligence Director. It also contains controversial, divisive provisions which may have merit but warrant separate debate." The Family Steering Committee's statement called on the House to adopt the bipartisan Senate bill, which has been championed in the House by Representatives SHAYS, MALONEY and MENENDEZ.

It should come as a surprise to no one that the Republican Leadership, which long opposed the creation of the 9/11 Commission, turned a deaf ear to the views of the Commission and the 9/11 families. The more than 50 extraneous provisions that were not recommended by the 9/11 Commission remain in the bill. Some of these provisions are very controversial. To add insult to injury, the House Leadership restricted the opportunity of Members to amend and strengthen the bill.

There have been two distinctly different approaches followed in the House and Senate on the critical issue of implementing the recommendations of the 9/11 Commission. In the Senate, there has been an open and bipartisan process used to develop a bill that truly reflects the recommendations of the Commission. The Collins-Lieberman legislation in the Senate has been endorsed by the 9/11 Commission, the 9/11 Family Steering Committee, and even the White House. The Senate bill, which was adopted on a vote of 96 to 2, was the product of extensive deliberation and bipartisan cooperation.

The Republican Leadership in the House took a different road. They introduced a bill that was developed in secret with no meaningful input from Democrats. This partisan process has produced a weak bill that does not reflect the recommendations of the 9/11 Commission. For all these reasons, I voted for the Menendez substitute, which is based on the bipartisan Senate bill and fully implements the reforms recommended by the 9/11 Commission. The Menendez substitute is supported by the 9/11 families. I regret that the House narrowly defeated this proposal last night.

By supporting the Menendez substitute, and opposing the flawed and wholly insufficient underlying bill, I hope we can send a clear message that we stand with the 9/11 Commission and the 9/11 families in supporting genuine, meaningful intelligence reform. I hope this message will be heard by the House and Senate conferees as they work to reconcile the House and Senate bills.

Ms. SCHAKOWSKY. Mr. Chairman, I rise today in opposition to H.R. 10, the so-called 9/11 Recommendations Implementation Act. At a time when our national security is at risk and our brave troops are fighting overseas, it is shameful that the Republican leadership has chosen to present a partisan bill that does not effectively implement the recommendations of the bipartisan 9/11 Commission. In fact, of the Commission's 41 recommendations, H.R. 10 only fully implemented eleven. Fifteen are not implemented at all, and another 15 are incomplete.

On the other hand, many of the provisions in H.R. 10 go far beyond the recommendations of the September 11th Commission. This is obviously an attempt by the Republican leadership to insert previously rejected proposals into this important bill at the final hour. In fact, the 9/11 Commission's Republican Chairman, Thomas Kean, said that the contentious provisions were being promoted by "people who don't want the intelligence legislation to pass." Former Representative Lee Hamilton, the Commission's vice chairman, said, "Consideration of controversial provisions at this late hour can harm our shared purpose." The Family Steering Committee of the victims of September 11th is concerned that if H.R. 10 is passed by the House, "the hard work of the Commission and the dedication of the 9/11 families will be undermined, as will the safety of our nation."

Many of the controversial and mean-spirited measures included in this bill are extremely harmful to immigrants, asylum-seekers, and refugees. These measures have been included although they do not make our nation any safer. H.R. 10 allows immigration officials to deport foreign nationals for whatever reason they see fit, devoid of judicial review, to countries that openly use torture when interrogating prisoners.

Unbelievably, H.R. 10 places an extreme burden of proof on asylum-seekers, many of whom have been victims of brutality in their native lands, requiring them to provide evidence that he or she would be tortured if returned to his or her point of origin. This violates the current standards established under the U.N. Convention Against Torture already in place. And what kind of message does it send to our troops engaged in combat? If the United States is seen by the world as being willing to outsource torture, how can we be sure that our military men and women captured overseas will be treated decently?

In addition, H.R. 10 would further undermine the right to basic due process protections for non-citizens by prohibiting habeas corpus review of many immigration decisions and by prohibiting federal courts from granting stays of deportation while cases are pending.

This bill even includes language blocking use of matricula consular cards, for identification purposes, even though the House voted to allow their use. This provision has nothing to do with the 9/11 Commission and protecting national security. It is simply an irrelevant action.

Furthermore, this legislation does not properly refocus our intelligence efforts on Afghanistan, the nation which harbored the terrorists who attacked us on September 11, as the 9/11 Commission recommended. H.R. 10 also does not include Commission recommendations to provide strong budgetary authority for the newly-created National Intelligence Director, protect civil liberties through the creation of an effective and independent civil liberties board, or address the need for Congressional reform. That is simply unacceptable.

I supported the Menendez amendment which institutes the recommendations of the 9/11 Commission, is a closer reflection of the bipartisan legislation passed in the Senate, and does not include the dangerous and extraneous provisions in H.R. 10. Unfortunately, that amendment was not successful; but fortunately those conferees will have one more opportunity to get it right. We should now support the Senate bill and move to protect our nation's safety while preserving the beliefs and traditions of liberty and freedom we cherish. H.R. 10 does not make the United States as safe as it can be. I urge my colleagues to vote no on H.R. 10.

Mr. NETHERCUTT. Mr. Chairman, it is clear that our current intelligence system has failed us in recent years.

I do not doubt the capacities of individual analysts within our intelligence agencies and know them to be talented and capable individuals. But the configuration of the present intelligence system has denied our leaders the information we need to adequately warn of and respond to terrorist threat.

Our current intelligence structure dates to the National Security Act of 1947. It is a structure directed to a threat that no longer exists, the Soviet Union. We won the Cold War and it is time to reconfigure our intelligence capabilities to fight the next major threat of our generation, the threat of international terrorism.

The bill before us, H.R. 10, responds substantively to the broad range of recommendations offered by the 9/11 Commission. It creates a strong National Intelligence Director with strengthened budget authorities and new flexibility to redirect funding to urgent needs. All management of tasking, collection, analysis and dissemination of intelligence will be centralized within the office of the NID.

At the same time, the legislation acknowledges the very real requirements of the largest user of national intelligence products, the Department of Defense. H.R. 10 maintains full support for DOD during a time of war—efforts to integrate our national intelligence effort should not come at the expense of the requirements of warfighters. Indeed the 9/11 Report recommended that DOD military intelligence programs should remain part of that Department's responsibility.

We should reject the criticisms we have heard today about the scope of the House bill. The House shouldn't be a rubber stamp for legislation considered by the other body, any more than the other body should be the rubber stamp for the broad recommendations of the 9/11 Commission. Passage of this bill today will allow both chambers to move to conference to reconcile the differences between the two pieces of legislation.

Similarly, I disagree with the notion argued here today that because opponents consider certain provisions to somehow be "extraneous," we should refuse to consider them. The preface to the 9/11 Report succinctly describes the mandate of the Commission: "How did this happen, and how can we avoid such a tragedy again?" Such also is our mandate—and we should not consider our work done with a retooling of our intelligence apparatus.

The scope of Public Law 107–306, establishing the 9/11 Commission, was far broader than an examination of the intelligence agencies. It directed an investigation of the "facts and circumstances relating to the terrorists attacks of September 11, 2001, including those relating to intelligence agencies, law enforcement agencies, diplomacy, immigration issues and border control, the flow of assets to terrorist organizations, commercial aviation, the role of congressional oversight and resource allocation, and other areas determined relevant by the Commission."

Improvements to our border security, restrictions on terrorist travel and enhanced authorities to deport illegal aliens all respond to the concerns raised in the 9/11 Report and all provide substantive improvements to the security of our nation.

Intelligence reform only matters if we are able to do something with the information our agencies gather. A strong and effective National Intelligence Director is only relevant if we give other agencies of the government the tools they need to act on that improved intelligence.

It would be irresponsible for Congress to take a pass on acting on the clear security deficiencies described in the 9/11 Report and H.R. 10 answers that challenge.

In my decade of service in this institution, I have taken seriously my responsibility to cautiously weigh the consequences of our action on the Constitutional rights of citizens and to carefully evaluate the expansion of federal powers. I reflect on the perspective of that service as I consider H.R. 10.

H.R. 10 takes a significant step forward in recognizing this inherent tension in a democracy by requiring the National Intelligence Director to appoint a Civil Liberties Protection Officer to be responsible for ensuring that privacy and civil liberties are protected. All proposed and final rules would also be subject to an assessment of privacy rights. I believe this legislation achieves the necessary balance between protecting our society and protecting individuals.

There will still be more to do—both bodies have a responsibility to reorganize internally to consolidate congressional oversight. I am concerned that the other body has adopted a process that is a hollow semblance of the recommendations of the 9/11 Commission. Far from consolidating oversight, amendments adopted by the other body will have the effect of pretending at consolidation while continuing business as usual. This should not stand and the House must take the lead in demonstrating the resolve to actually act upon the call of the Commission to streamline oversight by the legislative branch.

I encourage my colleagues to support this measure so that we may take the next step of moving this legislation to conference with the other body and producing a final product that will comprehensively address the range of recommendations presented by the 9/11 Commission.

Mr. ANDREWS. Mr. Chairman, I rise today in strong support of efforts that have been taken to address the concerns of the private security industry in the 9/11 Recommendations Implementation Act. Under the wise guidance of the Judiciary Committee leadership, provisions have been included in this bill that will have a positive effect on the overall dependability of private security services. While I would contend that these provisions do not go far enough, they are a clear improvement, and I urge my colleagues to support their inclusion in the law.

The relevant provisions, which were included in H.R. 10 with industry-wide support, allow private security guard companies to have access to federal background checks unless prohibited by their home state, and also provide for the creation of a national clearinghouse to be used in processing these requests. Federal background checks will ensure a safer, more secure private security industry, and will allow private security companies to protect themselves against the increased liability that could come with hiring an individual with a relevant criminal history. In addition, the realization of the national clearinghouse is absolutely essential, given the excessive delays that are often incurred within the varied state systems that are currently used in processing these background check requests.

While allowing private security companies to receive criminal background information on prospective employees through a streamlined process is certainly a positive development, I contend that more should be done to secure this vital industry. Background checks should be required for all private security guards, to ensure that dangerous criminals and terrorists are never employed in positions of such power and responsibility.

Again, I thank the Chairman and Ranking Member of the Judiciary Committee for their efforts in addressing this important issue, and I hope to continue working with them in the future to ensure that all of our nation's assets are adequately secured.

Mr. STARK. Mr. Chairman, I rise in opposition to H.R. 10, the Republican's so-called 9/11 Recommendations Implementation Act.

The 9/11 Commission has worked for months in a thoughtful, thorough and bipartisan manner to recommend concrete ways to reorganize and restructure Federal counterterrorism efforts to ensure we are better able to prevent future attacks. Congress should have immediately adopted those recommendations, but Republicans have blocked that effort today.

Americans should not be fooled by the House Republicans' cynical exercise today. They are circumventing real reform of our Nation's intelligence community. Republicans may say they have listened to the 9/11 Commission. But, make no mistake, the bill before us does not fully implement the Commission's recommendations—it doesn't even come close. Instead, it flies in the face of the Commission's sound and deliberative efforts.

I urge my colleagues to vote "no" on this bill. House Republicans are simply trying to score political points by passing a bill with the same title as the 9/11 Commission hoping no one reads the fine print. If the Republican leadership were serious about reform, they would have gotten their caucus in line and come forth with a bipartisan bill that mirrors the Commission recommendations like the bill the Senate has passed. Republicans chose not to do so.

Let's stand with the families of September 11 and pass real intelligence reform. Let's put the Republican's election politics aside and get on with the business of protecting the American people.

The CHAIRMAN pro tempore. The question is on the amendment in the nature of a substitute, as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN pro tempore. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. HASTINGS of Washington) having assumed the chair, Mr. LINDER, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 10) to provide for reform of the intelligence community, terrorism prevention and prosecution, border security, and international cooperation and coordination, and for other purposes, pursuant to House Resolution 827, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the amendment in the nature of a substitute adopted by the Committee of the Whole?

Mr. SENSENBRENNER. Mr. Speaker, I demand a separate vote on amendment No. 14 offered by the gentleman from New Jersey (Mr. SMITH).

The SPEAKER pro tempore. Is a separate vote demanded on any other amendment?

The Clerk will designate the amendment on which a separate vote has been demanded.

The text of the amendment is as follows:

Amendment:

Strike section 3006 (page 242, line 18 through page 244, line 9) and redesignate provisions and conform the table of contents accordingly.

The SPEAKER pro tempore. The question is on the amendment.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. SMITH of New Jersey. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 203, noes 210, not voting 19, as follows:

[Roll No. 521]

AYES—203

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Bartlett (MD)
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Clay
Clyburn
Conyers
Cooper
Costello
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Tom
DeGette
Delahunt
DeLauro
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Ford
Frank (MA)
Frost
Gerlach
Gonzalez
Gordon
Green (TX)
Greenwood
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Hill
Hinchey
Hoeffel
Holt
Honda
Hooley (OR)
Houghton
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Jones (OH)
Kanjorski
Kennedy (RI)
Kildee
Kilpatrick
Kind
King (NY)
Kirk
Kleczka
Kolbe
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
LaTourette
Leach
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Lucas (KY)
Lynch
Maloney
Markey
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McNulty
Meehan
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Petri
Pomeroy
Porter
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Shays
Sherman
Simmons
Skelton
Smith (NJ)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Strickland
Stupak
Tanner
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Walsh
Waters
Watson
Watt
Waxman
Weiner
Weldon (PA)
Wexler
Wilson (NM)
Wolf
Woolsey
Wu
Wynn

NOES—210

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Coble
Cole
Collins
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Davis (TN)
Davis, Jo Ann
Deal (GA)
DeFazio
DeLay
DeMint
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Garrett (NJ)
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Holden
Hostettler
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson, Sam
Keller
Kelly
Kennedy (MN)
King (IA)
Kingston
Kline
Knollenberg
LaHood
Latham
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
Manzullo
Marshall
Matheson
McCotter
McCrery
McHugh
McInnis
McIntyre
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moore
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Pearce
Pence
Peterson (MN)
Peterson (PA)
Pickering
Pitts
Platts
Pombo
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shuster
Simpson
Smith (MI)
Smith (TX)
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Wamp
Weldon (FL)
Weller
Whitfield
Wicker
Wilson (SC)
Young (AK)
Young (FL)

NOT VOTING—19

Ballenger
Boehlert
Cunningham
Filner
Franks (AZ)
Gephardt
Hinojosa
Jones (NC)
Kaptur
Lipinski
Majette
Matsui
Meek (FL)
Norwood
Ortiz
Paul
Slaughter
Tauzin
Towns

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. HASTINGS of Washington) (during the vote). Members are advised 2 minutes remain in this vote.

☐ 1500

Mr. GILCHREST changed his vote from "aye" to "no."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated for:

Mr. FILNER. Mr. Speaker, on rollcall No 521, I was in my Congressional District on official business. Had I been present, I would have voted "aye."

The SPEAKER pro tempore. The question is on the amendment in the nature of a substitute, as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

The SPEAKER pro tempore. The question is on engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MRS. MALONEY

Mrs. MALONEY. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentlewoman opposed to the bill?

Mrs. MALONEY. I am, Mr. Speaker, in its current form.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mrs. Maloney moves to recommit the bill H.R. 10 to the Permanent Select Committee on Intelligence with instructions to report the same back to the House forthwith with the following amendment:

Strike all after the enacting clause and insert Attachment 1, as modified by the additional attachments:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "National Intelligence Reform Act of 2004".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—NATIONAL INTELLIGENCE AUTHORITY

Subtitle A—National Intelligence Authority

Sec. 101. National Intelligence Authority.
Sec. 102. National Intelligence Director.

Subtitle B—Responsibilities and Authorities of National Intelligence Director

Sec. 111. Provision of national intelligence.
Sec. 112. Responsibilities of National Intelligence Director.
Sec. 113. Authorities of National Intelligence Director.
Sec. 114. Enhanced personnel management.
Sec. 115. Security clearances.
Sec. 116. National Intelligence Reserve Corps.
Sec. 117. Appointment and termination of certain officials responsible for intelligence-related activities.
Sec. 118. Reserve for Contingencies of the National Intelligence Director.

Subtitle C—Office of the National Intelligence Director

Sec. 121. Office of the National Intelligence Director.
Sec. 122. Deputy national intelligence directors.
Sec. 123. National Intelligence Council.
Sec. 124. General Counsel of the National Intelligence Authority.
Sec. 125. Intelligence Comptroller.
Sec. 126. Officer for Civil Rights and Civil Liberties of the National Intelligence Authority.
Sec. 127. Privacy Officer of the National Intelligence Authority.
Sec. 128. Chief Information Officer of the National Intelligence Authority.
Sec. 129. Chief Human Capital Officer of the National Intelligence Authority.
Sec. 130. Chief Financial Officer of the National Intelligence Authority.
Sec. 131. National Counterintelligence Executive.

Subtitle D—Additional Elements of National Intelligence Authority

Sec. 141. Inspector General of the National Intelligence Authority.

Sec. 142. Ombudsman of the National Intelligence Authority.
Sec. 143. National Counterterrorism Center.
Sec. 144. National intelligence centers.

Subtitle E—Education and Training of Intelligence Community Personnel

Sec. 151. Framework for cross-disciplinary education and training.
Sec. 152. Intelligence Community Scholarship Program.

Subtitle F—Additional Authorities of National Intelligence Authority

Sec. 161. Use of appropriated funds.
Sec. 162. Acquisition and fiscal authorities.
Sec. 163. Personnel matters.
Sec. 164. Ethics matters.

TITLE II—OTHER IMPROVEMENTS OF INTELLIGENCE ACTIVITIES

Subtitle A—Improvements of Intelligence Activities

Sec. 201. Availability to public of certain intelligence funding information.
Sec. 202. Merger of Homeland Security Council into National Security Council.
Sec. 203. Joint Intelligence Community Council.
Sec. 204. Improvement of intelligence capabilities of the Federal Bureau of Investigation.
Sec. 205. Federal Bureau of Investigation Intelligence Career Service.
Sec. 206. Information sharing.

Subtitle B—Privacy and Civil Liberties

Sec. 211. Privacy and Civil Liberties Oversight Board.
Sec. 212. Privacy and civil liberties officers.

Subtitle C—Independence of Intelligence Agencies

Sec. 221. Independence of National Intelligence Director.
Sec. 222. Independence of intelligence.
Sec. 223. Independence of National Counterterrorism Center.
Sec. 224. Access of congressional committees to national intelligence.
Sec. 225. Communications with Congress.

TITLE III—MODIFICATIONS OF LAWS RELATING TO INTELLIGENCE COMMUNITY MANAGEMENT

Subtitle A—Conforming and Other Amendments

Sec. 301. Restatement and modification of basic authority on the Central Intelligence Agency.
Sec. 302. Conforming amendments relating to roles of National Intelligence Director and Director of the Central Intelligence Agency.
Sec. 303. Other conforming amendments
Sec. 304. Modifications of foreign intelligence and counterintelligence under National Security Act of 1947.
Sec. 305. Elements of intelligence community under National Security Act of 1947.
Sec. 306. Redesignation of National Foreign Intelligence Program as National Intelligence Program.
Sec. 307. Conforming amendment on coordination of budgets of elements of the intelligence community within the Department of Defense.
Sec. 308. Repeal of superseded authorities.
Sec. 309. Clerical amendments to National Security Act of 1947.
Sec. 310. Modification of authorities relating to National Counterintelligence Executive.
Sec. 311. Conforming amendment to Inspector General Act of 1978.
Sec. 312. Conforming amendment relating to Chief Financial Officer of the National Intelligence Authority.

Subtitle B—Transfers and Terminations

Sec. 321. Transfer of Office of Deputy Director of Central Intelligence for Community Management.
Sec. 322. Transfer of National Counterterrorism Executive.
Sec. 323. Transfer of Terrorist Threat Integration Center.
Sec. 324. Termination of certain positions within the Central Intelligence Agency.

Subtitle C—Other Transition Matters

Sec. 331. Executive Schedule matters.
Sec. 332. Preservation of intelligence capabilities.
Sec. 333. Reorganization.
Sec. 334. National Intelligence Director report on implementation of intelligence community reform.
Sec. 335. Comptroller General reports on implementation of intelligence community reform.
Sec. 336. General references.

Subtitle D—Effective Date

Sec. 341. Effective date.

Subtitle E—Other Matters

Sec. 351. Severability.
Sec. 352. Authorization of appropriations.

SEC. 2. DEFINITIONS.

In this Act:

(1) The term "intelligence" includes foreign intelligence and counterintelligence.

(2) The term "foreign intelligence" means information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists.

(3) The term "counterintelligence" means information gathered, and activities conducted, to protect against espionage, other intelligence activities, sabotage, or assassinations conducted by or on behalf of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists.

(4) The term "intelligence community" includes the following:

(A) The National Intelligence Authority.

(B) The Central Intelligence Agency.

(C) The National Security Agency.

(D) The Defense Intelligence Agency.

(E) The National Geospatial-Intelligence Agency.

(F) The National Reconnaissance Office.

(G) Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs.

(H) The intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, and the Department of Energy.

(I) The Bureau of Intelligence and Research of the Department of State.

(J) The Office of Intelligence and Analysis of the Department of the Treasury.

(K) The elements of the Department of Homeland Security concerned with the analysis of intelligence information, including the Office of Intelligence of the Coast Guard.

(L) Such other elements of any department or agency as may be designated by the President, or designated jointly by the National Intelligence Director and the head of the department or agency concerned, as an element of the intelligence community.

(5) The terms "national intelligence" and "intelligence related to the national security"—

(A) each refer to intelligence which pertains to the interests of more than one department or agency of the Government; and

(B) do not refer to counterintelligence or law enforcement activities conducted by the Federal Bureau of Investigation except to the extent provided for in procedures agreed to by the National Intelligence Director and the Attorney General, or otherwise as expressly provided for in this title.

(6) The term "National Intelligence Program"—

(A)(i) refers to all national intelligence programs, projects, and activities of the elements of the intelligence community;

(ii) includes all programs, projects, and activities (whether or not pertaining to national intelligence) of the National Intelligence Authority, the Central Intelligence Agency, the National Security Agency, the National Geospatial-Intelligence Agency, the National Reconnaissance Office, the Office of Intelligence of the Federal Bureau of Investigation, and the Office of Information Analysis of the Department of Homeland Security; and

(iii) includes any other program, project, or activity of a department, agency, or element of the United States Government relating to national intelligence unless the National Intelligence Director and the head of the department, agency, or element concerned determine otherwise; but

(B) except as provided in subparagraph (A)(ii), does not refer to any program, project, or activity of the military departments, including any program, project, or activity of the Defense Intelligence Agency that is not part of the National Foreign Intelligence Program as of the date of the enactment of this Act, to acquire intelligence principally for the planning and conduct of joint or tactical military operations by the United States Armed Forces.

(7) The term "congressional intelligence committees" means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

TITLE I—NATIONAL INTELLIGENCE AUTHORITY

Subtitle A—National Intelligence Authority

SEC. 101. NATIONAL INTELLIGENCE AUTHORITY.

(a) INDEPENDENT ESTABLISHMENT.—There is hereby established as an independent establishment in the executive branch of government the National Intelligence Authority.

(b) COMPOSITION.—The National Intelligence Authority is composed of the following:

(1) The Office of the National Intelligence Director.

(2) The elements specified in subtitle D.

(3) Such other elements, offices, agencies, and activities as may be established by law or by the President or the National Intelligence Director.

(c) PRIMARY MISSIONS.—The primary missions of the National Intelligence Authority are as follows:

(1) To unify and strengthen the efforts of the intelligence community of the United States Government.

(2) To ensure the organization of the efforts of the intelligence community of the United States Government in a joint manner relating to intelligence missions rather than through intelligence collection disciplines.

(3) To provide for the operation of the National Counterterrorism Center and national intelligence centers under subtitle D.

(4) To eliminate barriers that impede coordination of the counterterrorism activities of the United States Government between foreign intelligence activities located abroad and foreign intelligence activities located domestically while ensuring the protection of civil liberties.

(5) To establish clear responsibility and accountability for counterterrorism and other intelligence matters relating to the national security of the United States.

(d) SEAL.—The National Intelligence Director shall have a seal for the National Intelligence Authority. The design of the seal is subject to the approval of the President. Judicial notice shall be taken of the seal.

SEC. 102. NATIONAL INTELLIGENCE DIRECTOR.

(a) NATIONAL INTELLIGENCE DIRECTOR.—There is a National Intelligence Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) INDIVIDUALS ELIGIBLE FOR NOMINATION.—Any individual nominated for appointment as National Intelligence Director shall have extensive national security expertise.

(c) PROHIBITION ON SIMULTANEOUS SERVICE IN OTHER CAPACITY IN INTELLIGENCE COMMUNITY.—The individual serving as National Intelligence Director may not, while so serving, serve in any capacity in any other element of the intelligence community, except to the extent that the individual serving as National Intelligence Director does so in an acting capacity.

(d) PRINCIPAL DUTIES AND RESPONSIBILITIES.—The National Intelligence Director shall—

(1) serve as head of the intelligence community in accordance with the provisions of this Act, the National Security Act of 1947 (50 U.S.C. 401 et seq.), and other applicable provisions of law;

(2) act as a principal adviser to the President for intelligence related to the national security;

(3) serve as the head of the National Intelligence Authority; and

(4) direct and oversee the National Intelligence Program.

(e) GENERAL RESPONSIBILITIES AND AUTHORITIES.—In carrying out the duties and responsibilities set forth in subsection (c), the National Intelligence Director shall have the responsibilities set forth in section 112 and the authorities set forth in section 113 and other applicable provisions of law.

Subtitle B—Responsibilities and Authorities of National Intelligence Director

SEC. 111. PROVISION OF NATIONAL INTELLIGENCE.

(a) IN GENERAL.—The National Intelligence Director shall be responsible for providing national intelligence—

(1) to the President;

(2) to the heads of other departments and agencies of the executive branch;

(3) to the Chairman of the Joint Chiefs of Staff and senior military commanders;

(4) to the Senate and House of Representatives and the committees thereof; and

(5) to such other persons or entities as the President shall direct.

(b) NATIONAL INTELLIGENCE.—Such national intelligence shall be timely, objective, independent of political considerations, and based upon all sources available to the intelligence community.

SEC. 112. RESPONSIBILITIES OF NATIONAL INTELLIGENCE DIRECTOR.

(a) IN GENERAL.—The National Intelligence Director shall—

(1) determine the annual budget for the intelligence and intelligence-related activities of the United States by—

(A) providing to the heads of the departments containing agencies or elements within the intelligence community and that have one or more programs, projects, or activities within the National Intelligence program, and to the heads of such agencies and elements, guidance for development the National Intelligence Program budget pertaining to such agencies or elements;

(B) developing and presenting to the President an annual budget for the National Intelligence Program after consultation with the heads of agencies or elements, and the heads of their respective departments, under subparagraph (A);

(C) providing budget guidance to each element of the intelligence community that does not have one or more program, project, or activity within the National Intelligence Program regarding the intelligence and intelligence-related activities of such element; and

(D) participating in the development by the Secretary of Defense of the annual budgets for the military intelligence programs, projects, and activities not included in the National Intelligence Program;

(2) manage and oversee the National Intelligence Program, including—

(A) the execution of funds within the National Intelligence Program;

(B) the reprogramming of funds appropriated or otherwise made available to the National Intelligence Program; and

(C) the transfer of funds and personnel under the National Intelligence Program;

(3) establish the requirements and priorities to govern the collection, analysis, and dissemination of national intelligence by elements of the intelligence community;

(4) establish collection and analysis requirements for the intelligence community, determine collection and analysis priorities, issue and manage collection and analysis tasking, and resolve conflicts in the tasking of elements of the intelligence community within the National Intelligence Program, except as otherwise agreed with the Secretary of Defense pursuant to the direction of the President;

(5) provide advisory tasking on the collection of intelligence to elements of the United States Government having information collection capabilities that are not elements of the intelligence community;

(6) manage and oversee the National Counterterrorism Center under section 143, and establish, manage, and oversee national intelligence centers under section 144;

(7) establish requirements and priorities for foreign intelligence information to be collected under the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.), and provide assistance to the Attorney General to ensure that information derived from electronic surveillance or physical searches under that Act is disseminated so it may be used efficiently and effectively for foreign intelligence purposes, except that the Director shall have no authority to direct, manage, or undertake electronic surveillance or physical search operations pursuant to that Act unless otherwise authorized by statute or Executive order;

(8) develop and implement, in consultation with the heads of other agencies or elements of the intelligence community, and the heads of their respective departments, personnel policies and programs applicable to the intelligence community that—

(A) encourage and facilitate assignments and details of personnel to the National Counterterrorism Center under section 143, to national intelligence centers under section 144, and between elements of the intelligence community;

(B) set standards for education, training, and career development of personnel of the intelligence community;

(C) encourage and facilitate the recruitment and retention by the intelligence community of highly qualified individuals for the effective conduct of intelligence activities;

(D) ensure that the personnel of the intelligence community is sufficiently diverse for purposes of the collection and analysis of intelligence through the recruitment and training of women, minorities, and individuals with diverse ethnic, cultural, and linguistic backgrounds;

(E) make service in more than one element of the intelligence community a condition of promotion to such positions within the intelligence community as the Director shall specify;

(F) ensure the effective management of intelligence community personnel who are responsible for intelligence community-wide matters;

(G) provide for the effective management of human capital within the intelligence community, including—

(i) the alignment of human resource policies and programs of the elements of the intelligence community with the missions, goals, and organizational objectives of such elements and of the intelligence community overall;

(ii) the assessment of workforce characteristics and future needs and the establishment of workforce development strategies to meet those needs based on relevant organizational missions and strategic plans;

(iii) the sustainment of a culture that encourages and allows for the development of a high performing workforce; and

(iv) the alignment of expectations for personnel performance with relevant organizational missions and strategic plans;

(H) are consistent with the public employment principles of merit and fitness set forth under section 2301 of title 5, United States Code; and

(I) include the enhancements required under section 114;

(9) promote and evaluate the utility of national intelligence to consumers within the United States Government;

(10) ensure that appropriate officials of the United States Government and other appropriate individuals have access to a variety of intelligence assessments and analytical views;

(11) protect intelligence sources and methods from unauthorized disclosure;

(12) establish requirements and procedures for the classification of intelligence information and for access to classified intelligence information;

(13) establish requirements and procedures for the dissemination of classified information by elements of the intelligence community;

(14) establish intelligence reporting guidelines that maximize the dissemination of information while protecting intelligence sources and methods;

(15) develop, in consultation with the heads of appropriate departments and agencies of

the United States Government, an integrated communications network that provides interoperable communications capabilities among all elements of the intelligence community and such other entities and persons as the Director considers appropriate;

(16) establish standards for information technology and communications for the intelligence community;

(17) ensure that the intelligence community makes efficient and effective use of open-source information and analysis;

(18) ensure compliance by elements of the intelligence community with the Constitution and all laws, regulations, Executive orders, and implementing guidelines of the United States applicable to the intelligence and intelligence-related activities of the United States Government, including the provisions of the Constitution and all laws, regulations, Executive orders, and implementing guidelines of the United States applicable to the protection of the privacy and civil liberties of United States persons;

(19) eliminate waste and unnecessary duplication within the intelligence community; and

(20) perform such other functions as the President may direct.

(b) UNIFORM PROCEDURES FOR SENSITIVE COMPARTMENTED INFORMATION.—The President, acting through the National Intelligence Director, shall establish uniform standards and procedures for the grant to sensitive compartmented information in accordance with section 115.

(c) PERFORMANCE OF COMMON SERVICES.—(1) The National Intelligence Director shall, in consultation with the heads of departments and agencies of the United States Government containing elements within the intelligence community and with the Director of the Central Intelligence Agency, direct and coordinate the performance by the elements of the intelligence community within the National Intelligence Program of such services as are of common concern to the intelligence community, which services the National Intelligence Director determines can be more efficiently accomplished in a consolidated manner.

(2) The services performed under paragraph (1) shall include research and development on technology for use in national intelligence missions.

(d) REGULATIONS.—The National Intelligence Director may prescribe regulations relating to the discharge and enforcement of the responsibilities of the Director under this section.

SEC. 113. AUTHORITIES OF NATIONAL INTELLIGENCE DIRECTOR.

(a) ACCESS TO INTELLIGENCE.—Unless otherwise directed by the President, the National Intelligence Director shall have access to all intelligence related to the national security which is collected by any department, agency, or other element of the United States Government.

(b) DETERMINATION OF BUDGETS FOR NIP AND OTHER INTELLIGENCE ACTIVITIES.—The National Intelligence Director shall determine the annual budget for the intelligence and intelligence-related activities of the United States Government under section 112(a)(1) by—

(1) providing to the heads of the departments containing agencies or elements within the intelligence community and that have one or more programs, projects, or activities within the National Intelligence program, and to the heads of such agencies and elements, guidance for development the National Intelligence Program budget pertaining to such agencies or elements;

(2) developing and presenting to the President an annual budget for the National Intelligence Program after consultation with the heads of agencies or elements, and the heads of their respective departments, under paragraph (1), including, in furtherance of such budget, the review, modification, and approval of budgets of the agencies or elements of the intelligence community with one or more programs, projects, or activities within the National Intelligence Program utilizing the budget authorities in subsection (c)(1);

(3) providing guidance on the development of annual budgets for each element of the intelligence community that does not have any program, project, or activity within the National Intelligence Program utilizing the budget authorities in subsection (c)(2);

(4) participating in the development by the Secretary of Defense of the annual budget for military intelligence programs and activities outside the National Intelligence Program;

(4) receiving the appropriations for the National Intelligence Program as specified in subsection (d) and allotting and allocating funds to agencies and elements of the intelligence community; and

(5) managing and overseeing the execution by the agencies or elements of the intelligence community, and, if necessary, the modification of the annual budget for the National Intelligence Program, including directing the reprogramming and transfer of funds, and the transfer of personnel, among and between elements of the intelligence community within the National Intelligence Program utilizing the authorities in subsections (f) and (g).

(c) BUDGET AUTHORITIES.—(1)(A) In developing and presenting an annual budget for the elements of the intelligence community within the National Intelligence Program under subsection (b)(1), the National Intelligence Director shall coordinate, prepare, and present to the President the annual budgets of those elements, in consultation with the heads of those elements.

(B) If any portion of the budget for an element of the intelligence community within the National Intelligence Program is prepared outside the Office of the National Intelligence Director, the Director—

(i) shall approve such budget before submission to the President; and

(ii) may require modifications of such budget to meet the requirements and priorities of the Director before approving such budget under clause (i).

(C) The budget of an agency or element of the intelligence community with one or more programs, projects, or activities within the National Intelligence Program may not be provided to the President unless the Director has first approved such budget.

(2)(A) The Director shall provide guidance for the development of the annual budgets for each agency or element of the intelligence community that does not have any program, project, or activity within the National Intelligence Program.

(B) The heads of the agencies or elements of the intelligence community, and the heads of their respective departments, referred to in subparagraph (A) shall coordinate closely with the Director in the development of the budgets of such agencies or elements, before the submission of their recommendations on such budgets to the President.

(d) JURISDICTION OF FUNDS UNDER NIP.—(1) Notwithstanding any other provision of law and consistent with section 504 of the National Security Act of 1947 (50 U.S.C. 414), any amounts appropriated or otherwise made available for the National Intelligence Program shall be appropriated to the National Intelligence Authority and, pursuant to subsection (e), under the direct jurisdiction of the National Intelligence Director.

(2) The Director shall manage and oversee the execution by each element of the intelligence community of any amounts appropriated or otherwise made available to such element under the National Intelligence Program.

(e) ACCOUNTS FOR ADMINISTRATION OF NIP FUNDS.—(1) The Secretary of the Treasury shall, in consultation with the National Intelligence Director, establish accounts for the funds under the jurisdiction of the Director under subsection (d) for purposes of carrying out the responsibilities and authorities of the Director under this Act with respect to the National Intelligence Program.

(2) The National Intelligence Director shall—

(A) control and manage the accounts established under paragraph (1); and

(B) with the concurrence of the Director of the Office of Management and Budget, establish procedures governing the use (including transfers and reprogrammings) of funds in such accounts.

(3)(A) To the extent authorized by law, a certifying official shall follow the procedures established under paragraph (2)(B) with regard to each account established under paragraph (1). Disbursements from any such account shall only be made against a valid obligation of such account.

(B) In this paragraph, the term "certifying official', with respect to an element of the intelligence community, means an employee of the element who has responsibilities specified in section 3528(a) of title 31, United States Code.

(4) The National Intelligence Director shall allot funds deposited in an account established under paragraph (1) directly to the head of the elements of the intelligence community concerned in accordance with the procedures established under paragraph (2)(B).

(5) Each account established under paragraph (1) shall be subject to chapters 13 and 15 of title 31, United States Code, other than sections 1503 and 1556 of that title.

(6) Nothing in this subsection shall be construed to impair or otherwise affect the authority granted by subsection (g)(3) or by section 5 or 8 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f, 403j).

(f) ROLE IN REPROGRAMMING OR TRANSFER OF NIP FUNDS BY ELEMENTS OF INTELLIGENCE COMMUNITY.—(1) No funds made available under the National Intelligence Program may be reprogrammed or transferred by any agency or element of the intelligence community without the prior approval of the National Intelligence Director except in accordance with procedures issued by the Director.

(2) The head of the department concerned shall consult with the Director before reprogramming or transferring funds appropriated or otherwise made available to an agency or element of the intelligence community that does not have any program, project, or activity within the National Intelligence Program.

(3) The Director shall, before reprogramming funds appropriated or otherwise made available for an element of the intelligence community within the National Intelligence Program, consult with the head of the department or agency having jurisdiction over such element regarding such reprogramming.

(4)(A) The Director shall consult with the appropriate committees of Congress regarding modifications of existing procedures to expedite the reprogramming of funds within the National Intelligence Program.

(B) Any modification of procedures under subparagraph (A) shall include procedures for the notification of the appropriate committees of Congress of any objection raised by the head of a department or agency to a reprogramming proposed by the Director as a result of consultations under paragraph (3).

(g) TRANSFER OR REPROGRAMMING OF FUNDS AND TRANSFER OF PERSONNEL WITHIN NIP.—(1) In addition to any other authorities available under law for such purposes, the National Intelligence Director, with the approval of the Director of the Office of Management and Budget and after consultation with the heads of the departments containing agencies or elements within the intelligence community to the extent their subordinate agencies or elements are affected, with the heads of such subordinate agencies or elements, and with the Director of the Central Intelligence Agency to the extent the Central Intelligence Agency is affected, may—

(A) transfer or reprogram funds appropriated for a program within the National Intelligence Program to another such program;

(B) review, and approve or disapprove, any proposal to transfer or reprogram funds from appropriations that are not for the National Intelligence Program to appropriations for the National Intelligence Program;

(C) in accordance with procedures to be developed by the National Intelligence Director, transfer personnel of the intelligence community funded through the National Intelligence Program from one element of the intelligence community to another element of the intelligence community; and

(D) in accordance with procedures to be developed by the National Intelligence Director and the heads of the departments and agencies concerned, transfer personnel of the intelligence community not funded through the National Intelligence Program from one element of the intelligence community to another element of the intelligence community.

(2) A transfer of funds or personnel may be made under this subsection only if—

(A) the funds or personnel are being transferred to an activity that is a higher priority intelligence activity;

(B) the transfer does not involve a transfer of funds to the Reserve for Contingencies of the National Intelligence Director; or

(C) the transfer does not exceed applicable ceilings established in law for such transfers.

(3) Funds transferred under this subsection shall remain available for the same period as the appropriations account to which transferred.

(4) Any transfer of funds under this subsection shall be carried out in accordance with existing procedures applicable to reprogramming notifications for the appropriate congressional committees. Any proposed transfer for which notice is given to the appropriate congressional committees shall be accompanied by a report explaining the nature of the proposed transfer and how it satisfies the requirements of this subsection. In addition, the congressional intelligence committees shall be promptly notified of any transfer of funds made pursuant to this subsection in any case in which the transfer would not have otherwise required reprogramming notification under procedures in effect as of October 24, 1992.

(5)(A) The National Intelligence Director shall promptly submit to the appropriate committees of Congress a report on any transfer of personnel made pursuant to this subsection. The Director shall include in any such report an explanation of the nature of the transfer and how it satisfies the requirements of this subsection.

(B) In this paragraph, the term "appropriate committees of Congress" means—

(i)(I) the Committee on Appropriations and the Select Committee on Intelligence of the Senate; and

(II) the Committee on Appropriations and the Permanent Select Committee on Intelligence of the House of Representatives;

(ii) in the case of a transfer of personnel to or from the Department of Defense—

(I) the committees and select committees referred to in clause (i);

(II) the Committee on Armed Services of the Senate; and

(III) the Committee on Armed Services of the House of Representatives;

(iii) in the case of a transfer of personnel to or from the Federal Bureau of Investigation—

(I) the committees and select committees referred to in clause (i);

(II) the Committee on the Judiciary of the Senate; and

(III) the Committee on the Judiciary of the House of Representatives; and

(iv) in the case of a transfer of personnel to or from the Department of Homeland Security—

(I) the committees and select committees referred to in clause (i);

(II) the Committee on Governmental Affairs of the Senate; and

(III) the Select Committee on Homeland Security of the House of Representatives.

(h) INFORMATION TECHNOLOGY AND COMMUNICATIONS.—(1) In conforming with section 205, in carrying out section 112(a)(16), the National Intelligence Director shall—

(A) establish standards for information technology and communications across the intelligence community;

(B) develop an integrated information technology network and enterprise architecture for the intelligence community, including interface standards for interoperability to enable automated information-sharing among elements of the intelligence community;

(C) maintain an inventory of critical information technology and communications systems, and eliminate unnecessary or duplicative systems;

(D) establish contingency plans for the intelligence community regarding information technology and communications; and

(E) establish policies, doctrine, training, and other measures necessary to ensure that the intelligence community develops an integrated information technology and communications network that ensures information-sharing.

(2) Consistent with section 205, the Director shall take any action necessary, including the setting of standards for information technology and communications across the intelligence community, to develop an integrated information technology and communications network that ensures information-sharing across the intelligence community.

(i) COORDINATION WITH FOREIGN GOVERNMENTS.—In a manner consistent with section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927), the National Intelligence Director shall oversee and direct the Director of the Central Intelligence Agency in coordinating, under section 103(f) of the National Security Act of 1947, the relationships between elements of the intelligence community and the intelligence or security services of foreign governments on all matters involving intelligence related to the national security or involving intelligence acquired through clandestine means.

(j) OPEN SOURCE INFORMATION COLLECTION.—The National Intelligence Director shall establish and maintain within the intelligence community an effective and efficient open-source information collection capability.

(k) ACCESS TO INFORMATION.—Except as otherwise directed by the President, the head of each element of the intelligence community shall promptly provide the National Intelligence Director such information in the possession or under the control of such element as the Director may request in order to facilitate the exercise of the authorities and responsibilities of the Director under this Act.

SEC. 114. ENHANCED PERSONNEL MANAGEMENT.

(a) REWARDS FOR SERVICE IN CERTAIN POSITIONS.—(1) The National Intelligence Director shall prescribe regulations to provide incentives for service on the staff of the national intelligence centers, on the staff of the National Counterterrorism Center, and in other positions in support of the intelligence community management functions of the Director.

(2) Incentives under paragraph (1) may include financial incentives, bonuses, and such other awards and incentives as the Director considers appropriate.

(b) ENHANCED PROMOTION FOR SERVICE UNDER NID.—Notwithstanding any other provision of law, the National Intelligence Director shall ensure that personnel of an element of the intelligence community who are assigned or detailed to service under the National Intelligence Director shall be promoted at rates equivalent to or better than personnel of such element who are not so assigned or detailed.

(c) JOINT CAREER MATTERS.—(1) In carrying out section 112(a)(8), the National Intelligence Director shall prescribe mechanisms to facilitate the rotation of personnel of the intelligence community through various elements of the intelligence community in the course of their careers in order to facilitate the widest possible understanding by such personnel of the variety of intelligence requirements, methods, and disciplines.

(2) The mechanisms prescribed under paragraph (1) may include the following:

(A) The establishment of special occupational categories involving service, over the course of a career, in more than one element of the intelligence community.

(B) The provision of rewards for service in positions undertaking analysis and planning of operations involving two or more elements of the intelligence community.

(C) The establishment of requirements for education, training, service, and evaluation that involve service in more than one element of the intelligence community.

(3) It is the sense of Congress that the mechanisms prescribed under this subsection should, to the extent practical, seek to duplicate within the intelligence community the joint officer management policies established by the Goldwater-Nichols Department of Defense Reorganization Act of 1986 (Public Law 99-433) and the amendments on joint officer management made by that Act.

SEC. 115. SECURITY CLEARANCES.

(a) IN GENERAL.—The President, in consultation with the National Intelligence Director, the department, agency, or element selected under (b), and other appropriate officials shall—

(1) establish uniform standards and procedures for the grant of access to classified information for employees and contractor personnel of the United States Government who require access to such information;

(2) ensure the consistent implementation of the standards and procedures established under paragraph (1) throughout the departments, agencies, and elements of the United States Government and under contracts entered into by such departments, agencies, and elements;

(3) ensure that an individual who is granted or continued eligibility for access to classified information is treated by each department, agency, or element of the executive branch as eligible for access to classified information at that level for all purposes of each such department, agency, or element, regardless of which department, agency, or element of the executive branch granted or continued the eligibility of such individual for access to classified information;

(4) establish uniform requirements and standards, including for security questionnaires, financial disclosure requirements, and standards for administering polygraph examinations, to be utilized for the performance of security clearance investigations, including by the contractors conducting such investigations; and

(5) ensure that the database established under subsection (b)(2)(B) meets the needs of the intelligence community.

(b) Performance of Security Clearance Investigations.—(1) Not later than 45 days after the date of the enactment of this Act, the President shall select a single department, agency, or element of the executive branch to conduct all security clearance investigations of employees and contractor personnel of the United States Government who require access to classified information and to provide and maintain all security clearances of such employees and contractor personnel.

(2) The department, agency, or element selected under paragraph (1) shall—

(A) take all necessary actions to carry out the requirements of this section, including entering into a memorandum of understanding with any agency carrying out responsibilities relating to security clearances or security clearance investigations before the date of the enactment of this Act;

(B) as soon as practicable, establish and maintain a single database for tracking security clearance applications, security clearance investigations, and determinations of eligibility for security clearances, which database shall incorporate applicable elements of similar databases in existence on the date of the enactment of this Act; and

(C) ensure that security clearance investigations are conducted in accordance with uniform standards and requirements established under subsection (a)(4), including uniform security questionnaires and financial disclosure requirements.

(c) Adjudication and Grant of Security Clearances.—(1) Each agency that adjudicates and grants security clearances as of the date of the enactment of this Act may continue to adjudicate and grant security clearances after that date.

(2) Each agency that adjudicates and grants security clearances shall specify to the department, agency, or element selected under subsection (b) the level of security clearance investigation required for an individual under its jurisdiction.

(3) Upon granting or continuing eligibility for access to classified information to an individual under its jurisdiction, an agency that adjudicates and grants security clearances shall submit to the department, agency, or element selected under subsection (b) notice of that action, including the level of access to classified information granted.

(d) Utilization of Personnel.—There shall be transferred to the department, agency, or element selected under subsection (b) any personnel of any executive agency whose sole function as of the date of the enactment of this Act is the performance of security clearance investigations.

(e) Transition.—The President shall take appropriate actions to ensure that the performance of security clearance investigations under this section commences not later than one year after the date of the enactment of this Act.

SEC. 116. NATIONAL INTELLIGENCE RESERVE CORPS.

(a) Establishment.—The National Intelligence Director may provide for the establishment and training of a National Intelligence Reserve Corps (in this section referred to as "National Intelligence Reserve Corps") for the temporary reemployment on a voluntary basis of former employees of elements of the intelligence community during periods of emergency, as determined by the Director.

(b) Eligible Individuals.—An individual may participate in the National Intelligence Reserve Corps only if the individual previously served as a full time employee of an element of the intelligence community.

(c) Limitation on Membership.—The total number of individuals who are members of the National Intelligence Reserve Corps at any given time may not exceed 200 individuals.

(d) Terms of Participation.—The National Intelligence Director shall prescribe the terms and conditions under which eligible individuals may participate in the National Intelligence Reserve Corps.

(e) Expenses.—The National Intelligence Director may provide members of the National Intelligence Reserve Corps transportation and per diem in lieu of subsistence for purposes of participating in any training that relates to service as a member of the Reserve Corps.

(f) Treatment of Annuitants.—(1) If an annuitant receiving an annuity from the Civil Service Retirement and Disability Fund becomes temporarily reemployed pursuant to this section, such annuity shall not be discontinued thereby.

(2) An annuitant so reemployed shall not be considered an employee for the purposes of chapter 83 or 84 of title 5, United States Code.

(g) Treatment Under National Intelligence Authority Personnel Ceiling.—A member of the National Intelligence Reserve Corps who is reemployed on a temporary basis pursuant to this section shall not count against any personnel ceiling applicable to the National Intelligence Authority.

SEC. 117. APPOINTMENT AND TERMINATION OF CERTAIN OFFICIALS RESPONSIBLE FOR INTELLIGENCE-RELATED ACTIVITIES.

(a) Recommendation of NID in Certain Appointment.—In the event of a vacancy in the position of Director of the Central Intelligence Agency, the National Intelligence Director shall recommend to the President an individual for nomination to fill the vacancy.

(b) Concurrence of Secretary of Defense in Certain Appointments Recommended by NID.—(1) In the event of a vacancy in a position referred to in paragraph (2), the National Intelligence Director shall obtain the concurrence of the Secretary of Defense before recommending to the President an individual for nomination to fill such vacancy. If the Secretary does not concur in the recommendation, the Director may make the recommendation to the President without the concurrence of the Secretary, but shall include in the recommendation a statement that the Secretary does not concur in the recommendation.

(2) Paragraph (1) applies to the following positions:

(A) The Director of the National Security Agency.

(B) The Director of the National Reconnaissance Office.

(C) The Director of the National Geospatial-Intelligence Agency.

(c) Concurrence of NID in Certain Appointments.—(1) In the event of a vacancy in a position referred to in paragraph (2), the head of the department or agency having jurisdiction over the position shall obtain the concurrence of the National Intelligence Director before appointing an individual to fill the vacancy or recommending to the President an individual to be nominated to fill the vacancy. If the Director does not concur in the recommendation, the head of the department or agency concerned may fill the vacancy or make the recommendation to the President (as the case may be) without the concurrence of the Director, but shall notify the President that the Director does not concur in appointment or recommendation (as the case may be).

(2) Paragraph (1) applies to the following positions:

(A) The Under Secretary of Defense for Intelligence.

(B) The Assistant Secretary of Homeland Security for Information Analysis.

(C) The Director of the Defense Intelligence Agency.

(D) The Executive Assistant Director for Intelligence of the Federal Bureau of Investigation.

(d) Recommendation of NID on Termination of Service.—(1) The National Intelligence Director may recommend to the President or the head of the department or agency concerned the termination of service of any individual serving in any position covered by this section.

(2) In the event the Director intends to recommend to the President the termination of service of an individual under paragraph (1), the Director shall seek the concurrence of the head of the department or agency concerned. If the head of the department or agency concerned does not concur in the recommendation, the Director may make the recommendation to the President without the concurrence of the head of the department or agency concerned, but shall notify the President that the head of the department or agency concerned does not concur in the recommendation.

SEC. 118. RESERVE FOR CONTINGENCIES OF THE NATIONAL INTELLIGENCE DIRECTOR.

(a) Establishment.—There is hereby established on the books of the Treasury an account to be known as the Reserve for Contingencies of the National Intelligence Director.

(b) Elements.—The Reserve shall consist of the following elements:

(1) Amounts authorized to be appropriated to the Reserve.

(2) Any amounts authorized to be transferred to or deposited in the Reserve by law.

(c) AVAILABILITY.—Amounts in the Reserve shall be available for such purposes as are provided by law.

(d) TRANSFER OF FUNDS OF RESERVE FOR CONTINGENCIES OF CIA.—There shall be transferred to the Reserve for Contingencies of the National Intelligence Director all unobligated balances of the Reserve for Contingencies of the Central Intelligence Agency as of the date of the enactment of this Act.

Subtitle C—Office of the National Intelligence Director

SEC. 121. OFFICE OF THE NATIONAL INTELLIGENCE DIRECTOR.

(a) OFFICE OF NATIONAL INTELLIGENCE DIRECTOR.—There is within the National Intelligence Authority an Office of the National Intelligence Director.

(b) FUNCTION.—The function of the Office of the National Intelligence Director is to assist the National Intelligence Director in carrying out the duties and responsibilities of the Director under this Act, the National Security Act of 1947 (50 U.S.C. 401 et seq.), and other applicable provisions of law, and to carry out such other duties as may be prescribed by the President or by law.

(c) COMPOSITION.—The Office of the National Intelligence Director is composed of the following:

(1) The Principal Deputy National Intelligence Director.

(2) Any Deputy National Intelligence Director appointed under section 122(b).

(3) The National Intelligence Council.

(4) The General Counsel of the National Intelligence Authority.

(5) The Intelligence Comptroller.

(6) The Officer for Civil Rights and Civil Liberties of the National Intelligence Authority.

(7) The Privacy Officer of the National Intelligence Authority.

(8) The Chief Information Officer of the National Intelligence Authority.

(9) The Chief Human Capital Officer of the National Intelligence Authority.

(10) The Chief Financial Officer of the National Intelligence Authority.

(11) The National Counterintelligence Executive (including the Office of the National Counterintelligence Executive).

(12) Such other offices and officials as may be established by law or the Director may establish or designate in the Office.

(d) STAFF.—(1) To assist the National Intelligence Director in fulfilling the duties and responsibilities of the Director, the Director shall employ and utilize in the Office of the National Intelligence Director a professional staff having an expertise in matters relating to such duties and responsibilities, and may establish permanent positions and appropriate rates of pay with respect to that staff.

(2) The staff of the Office of the National Intelligence Director under paragraph (1) shall include the staff of the Office of the Deputy Director of Central Intelligence for Community Management that is transferred to the Office of the National Intelligence Director under section 321.

(e) PROHIBITION ON CO-LOCATION WITH OTHER ELEMENTS OF INTELLIGENCE COMMUNITY.—Commencing as of October 1, 2006, the Office of the National Intelligence Director may not be co-located with any other element of the intelligence community.

SEC. 122. DEPUTY NATIONAL INTELLIGENCE DIRECTORS.

(a) PRINCIPAL DEPUTY NATIONAL INTELLIGENCE DIRECTOR.—(1) There is a Principal Deputy National Intelligence Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) In the event of a vacancy in the position of Principal Deputy National Intelligence Director, the National Intelligence Director shall recommend to the President an individual for appointment as Principal Deputy National Intelligence Director.

(3) Any individual nominated for appointment as Principal Deputy National Intelligence Director shall have extensive national security experience and management expertise.

(4) The individual serving as Principal Deputy National Intelligence Director may not, while so serving, serve in any capacity in any other element of the intelligence community, except to the extent that the individual serving as Principal Deputy National Intelligence Director is doing so in an acting capacity.

(5) The Principal Deputy National Intelligence Director shall assist the National Intelligence Director in carrying out the duties and responsibilities of the Director.

(6) The Principal Deputy National Intelligence Director shall act for, and exercise the powers of, the National Intelligence Director during the absence or disability of the National Intelligence Director or during a vacancy in the position of National Director of Intelligence.

(b) DEPUTY NATIONAL INTELLIGENCE DIRECTORS.—(1) There may be not more than four Deputy National Intelligence Directors who shall be appointed by the President.

(2) In the event of a vacancy in any position of Deputy National Intelligence Director established under this subsection, the National Intelligence Director shall recommend to the President an individual for appointment to such position.

(3) Each Deputy National Intelligence Director appointed under this subsection shall have such duties, responsibilities, and authorities as the National Intelligence Director may assign or are specified by law.

SEC. 123. NATIONAL INTELLIGENCE COUNCIL.

(a) NATIONAL INTELLIGENCE COUNCIL.—There is a National Intelligence Council.

(b) COMPOSITION.—(1) The National Intelligence Council shall be composed of senior analysts within the intelligence community and substantive experts from the public and private sector, who shall be appointed by, report to, and serve at the pleasure of, the National Intelligence Director.

(2) The Director shall prescribe appropriate security requirements for personnel appointed from the private sector as a condition of service on the Council, or as contractors of the Council or employees of such contractors, to ensure the protection of intelligence sources and methods while avoiding, wherever possible, unduly intrusive requirements which the Director considers to be unnecessary for this purpose.

(c) DUTIES AND RESPONSIBILITIES.—(1) The National Intelligence Council shall—

(A) produce national intelligence estimates for the United States Government, including alternative views held by elements of the intelligence community and other information as specified in paragraph (2);

(B) evaluate community-wide collection and production of intelligence by the intelligence community and the requirements and resources of such collection and production; and

(C) otherwise assist the National Intelligence Director in carrying out the responsibilities of the Director under section 111.

(2) The National Intelligence Director shall ensure that the Council satisfies the needs of policymakers and other consumers of intelligence by ensuring that each national intelligence estimate under paragraph (1)—

(A) states separately, and distinguishes between, the intelligence underlying such estimate and the assumptions and judgments of analysts with respect to such intelligence and such estimate;

(B) describes the quality and reliability of the intelligence underlying such estimate;

(C) presents and explains alternative conclusions, if any, with respect to the intelligence underlying such estimate and such estimate; and

(D) characterizes the uncertainties, if any, and confidence in such estimate.

(d) SERVICE AS SENIOR INTELLIGENCE ADVISERS.—Within their respective areas of expertise and under the direction of the National Intelligence Director, the members of the National Intelligence Council shall constitute the senior intelligence advisers of the intelligence community for purposes of representing the views of the intelligence community within the United States Government.

(e) AUTHORITY TO CONTRACT.—Subject to the direction and control of the National Intelligence Director, the National Intelligence Council may carry out its responsibilities under this section by contract, including contracts for substantive experts necessary to assist the Council with particular assessments under this section.

(f) STAFF.—The National Intelligence Director shall make available to the National Intelligence Council such staff as may be necessary to permit the Council to carry out its responsibilities under this section.

(g) AVAILABILITY OF COUNCIL AND STAFF.—(1) The National Intelligence Director shall take appropriate measures to ensure that the National Intelligence Council and its staff satisfy the needs of policymaking officials and other consumers of intelligence.

(2) The Council shall be readily accessible to policymaking officials and other appropriate individuals not otherwise associated with the intelligence community.

(h) SUPPORT.—The heads of the elements of the intelligence community shall, as appropriate, furnish such support to the National Intelligence Council, including the preparation of intelligence analyses, as may be required by the National Intelligence Director.

SEC. 124. GENERAL COUNSEL OF THE NATIONAL INTELLIGENCE AUTHORITY.

(a) GENERAL COUNSEL OF NATIONAL INTELLIGENCE AUTHORITY.—There is a General Counsel of the National Intelligence Authority who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

(b) PROHIBITION ON DUAL SERVICE AS GENERAL COUNSEL OF ANOTHER AGENCY.—The individual serving in the position of General Counsel of the National Intelligence Authority may not, while so serving, also serve as the General Counsel of any other department, agency, or element of the United States Government.

(c) SCOPE OF POSITION.—The General Counsel of the National Intelligence Authority is the chief legal officer of the National Intelligence Authority.

(d) FUNCTIONS.—The General Counsel of the National Intelligence Authority shall perform such functions as the National Intelligence Director may prescribe.

SEC. 125. INTELLIGENCE COMPTROLLER.

(a) INTELLIGENCE COMPTROLLER.—There is an Intelligence Comptroller who shall be appointed from civilian life by the National Intelligence Director.

(b) SUPERVISION.—The Intelligence Comptroller shall report directly to the National Intelligence Director.

(c) DUTIES.—The Intelligence Comptroller shall—

(1) assist the National Intelligence Director in the preparation and execution of the budget of the elements of the intelligence community within the National Intelligence Program;

(2) assist the Director in participating in the development by the Secretary of Defense of the annual budget for military intelligence programs and activities outside the National Intelligence Program;

(3) provide unfettered access to the Director to financial information under the National Intelligence Program;

(4) perform such other duties as may be prescribed by the Director or specified by law.

SEC. 126. OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES OF THE NATIONAL INTELLIGENCE AUTHORITY.

(a) OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES OF NATIONAL INTELLIGENCE AUTHORITY.—There is an Officer for Civil Rights and Civil Liberties of the National Intelligence Authority who shall be appointed by the President.

(b) SUPERVISION.—The Officer for Civil Rights and Civil Liberties of the National Intelligence Authority shall report directly to the National Intelligence Director.

(c) DUTIES.—The Officer for Civil Rights and Civil Liberties of the National Intelligence Authority shall—

(1) assist the National Intelligence Director in ensuring that the protection of civil rights and civil liberties, as provided in the Constitution, laws, regulations, and Executive orders of the United States, is appropriately incorporated in—

(A) the policies and procedures developed for and implemented by the National Intelligence Authority;

(B) the policies and procedures regarding the relationships among the elements of the intelligence community within the National Intelligence Program; and

(C) the policies and procedures regarding the relationships between the elements of the intelligence community within the National Intelligence Program and the other elements of the intelligence community;

(2) oversee compliance by the Authority, and in the relationships described in paragraph (1), with requirements under the Constitution and all laws, regulations, Executive orders, and implementing guidelines relating to civil rights and civil liberties;

(3) review, investigate, and assess complaints and other information indicating possible abuses of civil rights or civil liberties, as provided in the Constitution, laws, regulations, and Executive orders of the United States, in the administration of the programs and operations of the Authority, and in the relationships described in paragraph (1), unless, in the determination of the Inspector General of the National Intelligence Authority, the review, investigation, or assessment of a particular complaint or information can better be conducted by the Inspector General;

(4) coordinate with the Privacy Officer of the National Intelligence Authority to ensure that programs, policies, and procedures involving civil rights, civil liberties, and privacy considerations are addressed in an integrated and comprehensive manner; and

(5) perform such other duties as may be prescribed by the Director or specified by law.

SEC. 127. PRIVACY OFFICER OF THE NATIONAL INTELLIGENCE AUTHORITY.

(a) PRIVACY OFFICER OF NATIONAL INTELLIGENCE AUTHORITY.—There is a Privacy Officer of the National Intelligence Authority who shall be appointed by the National Intelligence Director.

(b) DUTIES.—(1) The Privacy Officer of the National Intelligence Authority shall have primary responsibility for the privacy policy of the National Intelligence Authority (including in the relationships among the elements of the intelligence community within the National Intelligence Program and the relationships between the elements of the intelligence community within the National Intelligence Program and the other elements of the intelligence community).

(2) In discharging the responsibility under paragraph (1), the Privacy Officer shall—

(A) assure that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;

(B) assure that personal information contained in Privacy Act systems of records is handled in full compliance with fair information practices as set out in the Privacy Act of 1974;

(C) conduct privacy impact assessments when appropriate or as required by law; and

(D) coordinate with the Officer for Civil Rights and Civil Liberties of the National Intelligence Authority to ensure that programs, policies, and procedures involving civil rights, civil liberties, and privacy considerations are addressed in an integrated and comprehensive manner.

SEC. 128. CHIEF INFORMATION OFFICER OF THE NATIONAL INTELLIGENCE AUTHORITY.

(a) CHIEF INFORMATION OFFICER OF NATIONAL INTELLIGENCE AUTHORITY.—There is a Chief Information Officer of the National Intelligence Authority who shall be appointed by the National Intelligence Director.

(b) DUTIES.—The Chief Information Officer of the National Intelligence Authority shall—

(1) assist the National Intelligence Director in implementing the responsibilities and executing the authorities related to information technology under paragraphs (15) and (16) of section 112(a) and section 113(h); and

(2) perform such other duties as may be prescribed by the Director or specified by law.

SEC. 129. CHIEF HUMAN CAPITAL OFFICER OF THE NATIONAL INTELLIGENCE AUTHORITY.

(a) CHIEF HUMAN CAPITAL OFFICER OF NATIONAL INTELLIGENCE AUTHORITY.—There is a Chief Human Capital Officer of the National Intelligence Authority who shall be appointed by the National Intelligence Director.

(b) DUTIES.—The Chief Human Capital Officer of the National Intelligence Authority shall—

(1) have the functions and authorities provided for Chief Human Capital Officers under sections 1401 and 1402 of title 5, United States Code, with respect to the National Intelligence Authority; and

(2) advise and assist the National Intelligence Director in exercising the authorities and responsibilities of the Director with respect to the workforce of the intelligence community as a whole.

SEC. 130. CHIEF FINANCIAL OFFICER OF THE NATIONAL INTELLIGENCE AUTHORITY.

(a) CHIEF FINANCIAL OFFICER OF NATIONAL INTELLIGENCE AUTHORITY.—There is a Chief Financial Officer of the National Intelligence Authority who shall be designated by the President, in consultation with the National Intelligence Director.

(b) DESIGNATION REQUIREMENTS.—The designation of an individual as Chief Financial Officer of the National Intelligence Authority shall be subject to applicable provisions of section 901(a) of title 31, United States Code.

(c) AUTHORITIES AND FUNCTIONS.—The Chief Financial Officer of the National Intelligence Authority shall have such authorities, and carry out such functions, with respect to the National Intelligence Authority as are provided for an agency Chief Financial Officer by section 902 of title 31, United States Code, and other applicable provisions of law.

(d) COORDINATION WITH NIA COMPTROLLER.—(1) The Chief Financial Officer of the National Intelligence Authority shall coordinate with the Comptroller of the National Intelligence Authority in exercising the authorities and performing the functions provided for the Chief Financial Officer under this section.

(2) The National Intelligence Director shall take such actions as are necessary to prevent duplication of effort by the Chief Financial Officer of the National Intelligence Authority and the Comptroller of the National Intelligence Authority.

(e) INTEGRATION OF FINANCIAL SYSTEMS.—Subject to the supervision, direction, and control of the National Intelligence Director, the Chief Financial Officer of the National Intelligence Authority shall take appropriate actions to ensure the timely and effective integration of the financial systems of the National Intelligence Authority (including any elements or components transferred to the Authority by this Act), and of the financial systems of the Authority with applicable portions of the financial systems of the other elements of the intelligence community, as soon as possible after the date of the enactment of this Act.

(f) PROTECTION OF ANNUAL FINANCIAL STATEMENT FROM DISCLOSURE.—The annual financial statement of the National Intelligence Authority required under section 3515 of title 31, United States Code—

(1) shall be submitted in classified form; and

(2) notwithstanding any other provision of law, shall be withheld from public disclosure.

SEC. 131. NATIONAL COUNTERINTELLIGENCE EXECUTIVE.

(a) NATIONAL COUNTERINTELLIGENCE EXECUTIVE.—The National Counterintelligence Executive under section 902 of the Counterintelligence Enhancement Act of 2002 (title IX of Public Law 107–306; 50 U.S.C. 402b et seq.), as amended by section 309 of this Act, is a component of the Office of the National Intelligence Director.

(b) DUTIES.—The National Counterintelligence Executive shall perform the duties provided in the Counterintelligence Enhancement Act of 2002, as so amended, and such other duties as may be prescribed by the National Intelligence Director or specified by law.

Subtitle D—Additional Elements of National Intelligence Authority

SEC. 141. INSPECTOR GENERAL OF THE NATIONAL INTELLIGENCE AUTHORITY.

(a) OFFICE OF INSPECTOR GENERAL OF NATIONAL INTELLIGENCE AUTHORITY.—There is within the National Intelligence Authority an Office of the Inspector General of the National Intelligence Authority.

(b) PURPOSE.—The purpose of the Office of the Inspector General of the National Intelligence Authority is to—

(1) create an objective and effective office, appropriately accountable to Congress, to initiate and conduct independently investigations, inspections, and audits relating to—

(A) the programs and operations of the National Intelligence Authority;

(B) the relationships among the elements of the intelligence community within the National Intelligence Program; and

(C) the relationships between the elements of the intelligence community within the National Intelligence Program and the other elements of the intelligence community;

(2) recommend policies designed—

(A) to promote economy, efficiency, and effectiveness in the administration of such programs and operations, and in such relationships; and

(B) to prevent and detect fraud and abuse in such programs, operations, and relationships;

(3) provide a means for keeping the National Intelligence Director fully and currently informed about—

(A) problems and deficiencies relating to the administration of such programs and operations, and to such relationships; and

(C) the necessity for, and the progress of, corrective actions; and

(4) in the manner prescribed by this section, ensure that the congressional intelligence committees are kept similarly informed of—

(A) significant problems and deficiencies relating to the administration of such programs and operations, and to such relationships; and

(B) the necessity for, and the progress of, corrective actions.

(c) INSPECTOR GENERAL OF NATIONAL INTELLIGENCE AUTHORITY.—(1) There is an Inspector General of the National Intelligence Authority, who shall be the head of the Office of the Inspector General of the National Intelligence Authority, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The nomination of an individual for appointment as Inspector General shall be made—

(A) without regard to political affiliation;

(B) solely on the basis of integrity, compliance with the security standards of the National Intelligence Authority, and prior experience in the field of intelligence or national security; and

(C) on the basis of demonstrated ability in accounting, financial analysis, law, management analysis, public administration, or auditing.

(3) The Inspector General shall report directly to and be under the general supervision of the National Intelligence Director.

(4) The Inspector General may be removed from office only by the President. The President shall immediately communicate in writing to the congressional intelligence committees the reasons for the removal of any individual from the position of Inspector General.

(d) DUTIES AND RESPONSIBILITIES.—It shall be the duty and responsibility of the Inspector General of the National Intelligence Authority—

(1) to provide policy direction for, and to plan, conduct, supervise, and coordinate independently, the investigations, inspections, and audits relating to the programs and operations of the National Intelligence Authority, the relationships among the elements of the intelligence community within the National Intelligence Program, and the relationships between the elements of the intelligence community within the National Intelligence Program and the other elements of the intelligence community to ensure they are conducted efficiently and in accordance with applicable law and regulations;

(2) to keep the National Intelligence Director fully and currently informed concerning violations of law and regulations, violations of civil liberties and privacy, and fraud and other serious problems, abuses, and deficiencies that may occur in such programs and operations, and in such relationships, and to report the progress made in implementing corrective action;

(3) to take due regard for the protection of intelligence sources and methods in the preparation of all reports issued by the Inspector General, and, to the extent consistent with the purpose and objective of such reports, take such measures as may be appropriate to minimize the disclosure of intelligence sources and methods described in such reports; and

(4) in the execution of the duties and responsibilities under this section, to comply with generally accepted government auditing standards.

(e) LIMITATIONS ON ACTIVITIES.—(1) The National Intelligence Director may prohibit the Inspector General of the National Intelligence Authority from initiating, carrying out, or completing any investigation, inspection, or audit if the Director determines that such prohibition is necessary to protect vital national security interests of the United States.

(2) If the Director exercises the authority under paragraph (1), the Director shall submit an appropriately classified statement of the reasons for the exercise of such authority within seven days to the congressional intelligence committees.

(3) The Director shall advise the Inspector General at the time a report under paragraph (1) is submitted, and, to the extent consistent with the protection of intelligence sources and methods, provide the Inspector General with a copy of such report.

(4) The Inspector General may submit to the congressional intelligence committees any comments on a report of which the Inspector General has notice under paragraph (3) that the Inspector General considers appropriate.

(f) AUTHORITIES.—(1) The Inspector General of the National Intelligence Authority shall have direct and prompt access to the National Intelligence Director when necessary for any purpose pertaining to the performance of the duties of the Inspector General.

(2)(A) The Inspector General shall have access to any employee, or any employee of a contractor, of the National Intelligence Authority, and of any other element of the intelligence community within the National Intelligence Program, whose testimony is needed for the performance of the duties of the Inspector General.

(B) The Inspector General shall have direct access to all records, reports, audits, reviews, documents, papers, recommendations, or other material which relate to the programs and operations with respect to which the Inspector General has responsibilities under this section.

(C) The level of classification or compartmentation of information shall not, in and of itself, provide a sufficient rationale for denying the Inspector General access to any materials under subparagraph (B).

(D) Failure on the part of any employee or contractor of the National Intelligence Authority to cooperate with the Inspector General shall be grounds for appropriate administrative actions by the Director, including loss of employment or the termination of an existing contractual relationship.

(3) The Inspector General is authorized to receive and investigate complaints or information from any person concerning the existence of an activity constituting a violation of laws, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety. Once such complaint or information has been received from an employee of the Federal government—

(A) the Inspector General shall not disclose the identity of the employee without the consent of the employee, unless the Inspector General determines that such disclosure is unavoidable during the course of the investigation or the disclosure is made to an official of the Department of Justice responsible for determining whether a prosecution should be undertaken; and

(B) no action constituting a reprisal, or threat of reprisal, for making such complaint may be taken by any employee in a position to take such actions, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

(4) The Inspector General shall have authority to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the duties of the Inspector General, which oath, affirmation, or affidavit when administered or taken by or before an employee of the Office of the Inspector General of the National Intelligence Authority designated by the Inspector General shall have the same force and effect as if administered or taken by or before an officer having a seal.

(5)(A) Except as provided in subparagraph (B), the Inspector General is authorized to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the duties and responsibilities of the Inspector General.

(B) In the case of departments, agencies, and other elements of the United States Government, the Inspector General shall obtain information, documents, reports, answers, records, accounts, papers, and other data and evidence for the purpose specified in subparagraph (A) using procedures other than by subpoenas.

(C) The Inspector General may not issue a subpoena for or on behalf of any other element or component of the Authority.

(D) In the case of contumacy or refusal to obey a subpoena issued under this paragraph, the subpoena shall be enforceable by order of any appropriate district court of the United States.

(g) STAFF AND OTHER SUPPORT.—(1) The Inspector General of the National Intelligence Authority shall be provided with appropriate and adequate office space at central and field office locations, together with such equipment, office supplies, maintenance services, and communications facilities and services as may be necessary for the operation of such offices.

(2)(A) Subject to applicable law and the policies of the National Intelligence Director, the Inspector General shall select, appoint and employ such officers and employees as may be necessary to carry out the functions of the Inspector General.

(B) In making selections under subparagraph (A), the Inspector General shall ensure that such officers and employees have the requisite training and experience to enable the Inspector General to carry out the duties of the Inspector General effectively.

(C) In meeting the requirements of this paragraph, the Inspector General shall create within the Office of the Inspector General of the National Intelligence Authority a career cadre of sufficient size to provide appropriate continuity and objectivity needed for the effective performance of the duties of the Inspector General.

(3)(A) Subject to the concurrence of the Director, the Inspector General may request such information or assistance as may be necessary for carrying out the duties and responsibilities of the Inspector General from any department, agency, or other element of the United States Government.

(B) Upon request of the Inspector General for information or assistance under subparagraph (A), the head of the department, agency, or element concerned shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the department, agency, or element, furnish to the Inspector General, or to an authorized designee, such information or assistance.

(h) REPORTS.—(1)(A) The Inspector General of the National Intelligence Authority shall, not later than January 31 and July 31 of each year, prepare and submit to the National Intelligence Director a classified semiannual report summarizing the activities of the Office of the Inspector General of the National Intelligence Authority during the immediately preceding six-month periods ending December 31 (of the preceding year) and June 30, respectively.

(B) Each report under this paragraph shall include, at a minimum, the following:

(i) A list of the title or subject of each investigation, inspection, or audit conducted during the period covered by such report.

(ii) A description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of the National Intelligence Authority identified by the Inspector General during the period covered by such report.

(iii) A description of the recommendations for corrective action made by the Inspector General during the period covered by such report with respect to significant problems, abuses, or deficiencies identified in clause (ii).

(iv) A statement whether or not corrective action has been completed on each significant recommendation described in previous semiannual reports, and, in a case where corrective action has been completed, a description of such corrective action.

(v) An assessment of the effectiveness of all measures in place in the Authority for the protection of civil liberties and privacy of United States persons.

(vi) A certification whether or not the Inspector General has had full and direct access to all information relevant to the performance of the functions of the Inspector General.

(vii) A description of the exercise of the subpoena authority under subsection (f)(5) by the Inspector General during the period covered by such report.

(viii) Such recommendations as the Inspector General considers appropriate for legislation to promote economy and efficiency in the administration of programs and operations undertaken by the Authority, and to detect and eliminate fraud and abuse in such programs and operations.

(C) Not later than the 30 days after the date of receipt of a report under subparagraph (A), the Director shall transmit the report to the congressional intelligence committees together with any comments the Director considers appropriate.

(2)(A) The Inspector General shall report immediately to the Director whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs or operations of the Authority, a relationship between the elements of the intelligence community within the National Intelligence Program, or a relationship between an element of the intelligence community within the National Intelligence Program and another element of the intelligence community.

(B) The Director shall transmit to the congressional intelligence committees each report under subparagraph (A) within seven calendar days of receipt of such report, together with such comments as the Director considers appropriate.

(3) In the event that—

(A) the Inspector General is unable to resolve any differences with the Director affecting the execution of the duties or responsibilities of the Inspector General;

(B) an investigation, inspection, or audit carried out by the Inspector General should focus on any current or former Authority official who holds or held a position in the Authority that is subject to appointment by the President, by and with the advice and consent of the Senate, including such a position held on an acting basis;

(C) a matter requires a report by the Inspector General to the Department of Justice on possible criminal conduct by a current or former official described in subparagraph (B);

(D) the Inspector General receives notice from the Department of Justice declining or approving prosecution of possible criminal conduct of any current or former official described in subparagraph (B); or

(E) the Inspector General, after exhausting all possible alternatives, is unable to obtain significant documentary information in the course of an investigation, inspection, or audit,

the Inspector General shall immediately notify and submit a report on such matter to the congressional intelligence committees.

(4) Pursuant to title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), the Director shall submit to the congressional intelligence committees any report or findings and recommendations of an investigation, inspection, or audit conducted by the office which has been requested by the Chairman or Ranking Minority Member of either committee.

(5)(A) An employee of the Authority, an employee of an entity other than the Authority who is assigned or detailed to the Authority, or an employee of a contractor to the Authority who intends to report to Congress a complaint or information with respect to an urgent concern may report such complaint or information to the Inspector General.

(B) Not later than the end of the 14-calendar day period beginning on the date of receipt from an employee of a complaint or information under subparagraph (A), the Inspector General shall determine whether the complaint or information appears credible. Upon making such a determination, the Inspector General shall transmit to the Director a notice of that determination, together with the complaint or information.

(C) Upon receipt of a transmittal from the Inspector General under subparagraph (B), the Director shall, within seven calendar days of such receipt, forward such transmittal to the congressional intelligence committees, together with any comments the Director considers appropriate.

(D)(i) If the Inspector General does not find credible under subparagraph (B) a complaint or information submitted under subparagraph (A), or does not transmit the complaint or information to the Director in accurate form under subparagraph (B), the employee (subject to clause (ii)) may submit the complaint or information to Congress by contacting either or both of the congressional intelligence committees directly.

(ii) An employee may contact the intelligence committees directly as described in clause (i) only if the employee—

(I) before making such a contact, furnishes to the Director, through the Inspector General, a statement of the employee's complaint or information and notice of the employee's intent to contact the congressional intelligence committees directly; and

(II) obtains and follows from the Director, through the Inspector General, direction on how to contact the intelligence committees in accordance with appropriate security practices.

(iii) A member or employee of one of the congressional intelligence committees who receives a complaint or information under clause (i) does so in that member or employee's official capacity as a member or employee of such committee.

(E) The Inspector General shall notify an employee who reports a complaint or information to the Inspector General under this paragraph of each action taken under this paragraph with respect to the complaint or information. Such notice shall be provided not later than three days after any such action is taken.

(F) An action taken by the Director or the Inspector General under this paragraph shall not be subject to judicial review.

(G) In this paragraph, the term "urgent concern" means any of the following:

(i) A serious or flagrant problem, abuse, violation of law or Executive order, or deficiency relating to the funding, administration, or operations of an intelligence activity involving classified information, but does not include differences of opinions concerning public policy matters.

(ii) A false statement to Congress, or a willful withholding from Congress, on an issue of material fact relating to the funding, administration, or operation of an intelligence activity.

(iii) An action, including a personnel action described in section 2302(a)(2)(A) of title 5, United States Code, constituting reprisal or threat of reprisal prohibited under subsection (f)(3)(B) of this section in response to an employee's reporting an urgent concern in accordance with this paragraph.

(H) In support of this paragraph, Congress makes the findings set forth in paragraphs (1) through (6) of section 701(b) of the Intelligence Community Whistleblower Protection Act of 1998 (title VII of Public Law 105-272; 5 U.S.C. App. 8H note).

(6) In accordance with section 535 of title 28, United States Code, the Inspector General shall report to the Attorney General any information, allegation, or complaint received by the Inspector General relating to violations of Federal criminal law that involve a program or operation of the Authority, consistent with such guidelines as may be issued by the Attorney General pursuant to subsection (b)(2) of such section. A copy of each such report shall be furnished to the Director.

(i) SEPARATE BUDGET ACCOUNT.—The National Intelligence Director shall, in accordance with procedures to be issued by the Director in consultation with the congressional intelligence committees, include in the National Intelligence Program budget a separate account for the Office of Inspector General of the National Intelligence Authority.

SEC. 142. OMBUDSMAN OF THE NATIONAL INTELLIGENCE AUTHORITY.

(a) OMBUDSMAN OF NATIONAL INTELLIGENCE AUTHORITY.—There is within the National Intelligence Authority an Ombudsman of the National Intelligence Authority who shall be appointed by the National Intelligence Director.

(b) DUTIES.—The Ombudsman of the National Intelligence Authority shall—

(1) counsel, arbitrate, or offer recommendations on, and have the authority to initiate inquiries into, real or perceived problems of politicization, biased reporting, or lack of objective analysis within the National Intelligence Authority, or any element of the intelligence community within the National Intelligence Program, or regarding any analysis of national intelligence by any element of the intelligence community;

(2) monitor the effectiveness of measures taken to deal with real or perceived politicization, biased reporting, or lack of objective analysis within the Authority, or any element of the intelligence community within the National Intelligence Program, or regarding any analysis of national intelligence by any element of the intelligence community; and

(3) conduct reviews of the analytic product or products of the Authority, or any element of the intelligence community within the National Intelligence Program, or of any analysis of national intelligence by any element of the intelligence community, with such reviews to be conducted so as to ensure that analysis is timely, objective, independent of political considerations, and based upon all sources available to the intelligence community.

(c) ANALYTIC REVIEW UNIT.—(1) There is within the Office of the Ombudsman of the National Intelligence Authority an Analytic Review Unit.

(2) The Analytic Review Unit shall assist the Ombudsman of the National Intelligence Authority in performing the duties and responsibilities of the Ombudsman set forth in subsection (b)(3).

(3) The Ombudsman shall provide the Analytic Review Unit a staff who possess expertise in intelligence analysis that is appropriate for the function of the Unit.

(4) In assisting the Ombudsman, the Analytic Review Unit shall, subject to the direction and control of the Ombudsman, conduct detailed evaluations of intelligence analysis by the following:

(A) The National Intelligence Council.

(B) The elements of the intelligence community within the National Intelligence Program.

(C) To the extent involving the analysis of national intelligence, other elements of the intelligence community.

(D) The divisions, offices, programs, officers, and employees of the elements specified in subparagraphs (B) and (C).

(5) The results of the evaluations under paragraph (4) shall be provided to the congressional intelligence committees and, upon request, to appropriate heads of other departments, agencies, and elements of the executive branch.

(d) ACCESS TO INFORMATION.—In order to carry out the duties specified in subsection (c), the Ombudsman of the National Intelligence Authority shall, unless otherwise directed by the President, have access to all analytic products, field reports, and raw intelligence of any element of the intelligence community, and to any reports or other material of an Inspector General, that might be pertinent to a matter under consideration by the Ombudsman.

(e) ANNUAL REPORTS.—The Ombudsman of the National Intelligence Authority shall submit to the National Intelligence Director and the congressional intelligence committees on an annual basis a report that includes—

(1) the assessment of the Ombudsman of the current level of politicization, biased reporting, or lack of objective analysis within the National Intelligence Authority, or any element of the intelligence community within the National Intelligence Program, or regarding any analysis of national intelligence by any element of the intelligence community;

(2) such recommendations for remedial measures as the Ombudsman considers appropriate; and

(3) an assessment of the effectiveness of remedial measures previously taken within the intelligence community on matters addressed by the Ombudsman.

(f) REFERRAL OF CERTAIN MATTERS FOR INVESTIGATION.—In addition to carrying out activities under this section, the Ombudsman of the National Intelligence Authority may refer serious cases of misconduct related to politicization of intelligence information, biased reporting, or lack of objective analysis within the intelligence community to the Inspector General of the National Intelligence Authority for investigation.

SEC. 143. NATIONAL COUNTERTERRORISM CENTER.

(a) NATIONAL COUNTERTERRORISM CENTER.—There is within the National Intelligence Authority a National Counterterrorism Center.

(b) DIRECTOR OF NATIONAL COUNTERTERRORISM CENTER.—(1) There is a Director of the National Counterterrorism Center, who shall be the head of the National Counterterrorism Center, and who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Any individual nominated for appointment as the Director of the National Counterterrorism Center shall have significant expertise in matters relating to the national security of the United States and matters relating to terrorism that threatens the national security of the United States.

(3) The individual serving as the Director of the National Counterterrorism Center may not, while so serving, serve in any capacity in any other element of the intelligence community, except to the extent that the individual serving as Director of the National Counterterrorism Center is doing so in an acting capacity.

(c) SUPERVISION.—(1) The Director of the National Counterterrorism Center shall report to the National Intelligence Director on—

(A) the budget and programs of the National Counterterrorism Center; and

(B) the activities of the Directorate of Intelligence of the National Counterterrorism Center under subsection (g).

(2) The Director of the National Counterterrorism Center shall report to the President and the National Intelligence Director on the planning and progress of joint counterterrorism operations.

(d) PRIMARY MISSIONS.—The primary missions of the National Counterterrorism Center shall be as follows:

(1) To develop and unify strategy for the civilian and military counterterrorism efforts of the United States Government.

(2) To integrate counterterrorism intelligence activities of the United States Government, both inside and outside the United States.

(3) To develop interagency counterterrorism plans, which plans shall—

(A) involve more than one department, agency, or element of the executive branch (unless otherwise directed by the President); and

(B) include the mission, objectives to be achieved, courses of action, parameters for such courses of action, coordination of agency operational activities, recommendations for operational plans, and assignment of departmental or agency responsibilities.

(4) To ensure that the collection of counterterrorism intelligence, and the conduct of counterterrorism operations, by the United States Government are informed by the analysis of all-source intelligence.

(e) DUTIES AND RESPONSIBILITIES OF DIRECTOR OF NATIONAL COUNTERTERRORISM CENTER.—Notwithstanding any other provision of law, at the direction of the President, the National Security Council, and the National Intelligence Director, the Director of the National Counterterrorism Center shall—

(1) serve as the principal adviser to the President and the National Intelligence Director on joint operations relating to counterterrorism;

(2) provide unified strategic direction for the civilian and military counterterrorism efforts of the United States Government and for the effective integration and deconfliction of counterterrorism intelligence and operations across agency boundaries, both inside and outside the United States;

(3) advise the President and the National Intelligence Director on the extent to which the counterterrorism program recommendations and budget proposals of the departments, agencies, and elements of the United States Government conform to the priorities established by the President and the National Security Council;

(4) in accordance with subsection (f), concur in, or advise the President on, the selections of personnel to head the operating entities of the United States Government with principal missions relating to counterterrorism; and

(5) perform such other duties as the National Intelligence Director may prescribe or are prescribed by law.

(f) ROLE OF DIRECTOR OF NATIONAL COUNTERTERRORISM CENTER IN CERTAIN APPOINTMENTS.—(1) In the event of a vacancy in a position referred to in paragraph (2), the head of the department or agency having jurisdiction over the position shall obtain the concurrence of the Director of the National Counterterrorism Center before appointing an individual to fill the vacancy or recommending to the President an individual for nomination to fill the vacancy. If the Director does not concur in the recommendation, the head of the department or agency concerned may fill the vacancy or make the recommendation to the President (as the case may be) without the concurrence of the Director, but shall notify the President that the Director does not concur in the appointment or recommendation (as the case may be).

(2) Paragraph (1) applies to the following positions:

(A) The Director of the Central Intelligence Agency's Counterterrorist Center.

(B) The Assistant Director of the Federal Bureau of Investigation in charge of the Counterterrorism Division.

(C) The Coordinator for Counterterrorism of the Department of State.

(D) The head of such other operating entities of the United States Government having principal missions relating to counterterrorism as the President may designate for purposes of this subsection.

(3) The President shall notify Congress of the designation of an operating entity of the United States Government under paragraph (2)(D) not later than 30 days after the date of such designation.

(g) DIRECTORATE OF INTELLIGENCE.—(1) The Director of the National Counterterrorism Center shall establish and maintain within the National Counterterrorism Center a Directorate of Intelligence.

(2) The Directorate shall utilize the capabilities of the Terrorist Threat Integration Center (TTIC) transferred to the Directorate by section 323 and such other capabilities as the Director of the National Counterterrorism Center considers appropriate.

(3) The Directorate shall have primary responsibility within the United States Government for analysis of terrorism and terrorist organizations from all sources of intelligence, whether collected inside or outside the United States.

(4) The Directorate shall—

(A) be the principal repository within the United States Government for all-source information on suspected terrorists, their organizations, and their capabilities;

(B) propose intelligence collection requirements for action by elements of the intelligence community inside and outside the United States;

(C) have primary responsibility within the United States Government for net assessments and warnings about terrorist threats, which assessments and warnings shall be based on a comparison of terrorist intentions and capabilities with assessed national vulnerabilities and countermeasures; and

(D) perform such other duties and functions as the Director of the National Counterterrorism Center may prescribe.

(h) DIRECTORATE OF PLANNING.—(1) The Director of the National Counterterrorism Center shall establish and maintain within the National Counterterrorism Center a Directorate of Planning.

(2) The Directorate shall have primary responsibility for developing interagency counterterrorism plans, as described in subsection (d)(3).

(3) The Directorate shall—

(A) provide guidance, and develop strategy and interagency plans, to counter terrorist activities based on policy objectives and priorities established by the National Security Council;

(B) develop interagency plans under subparagraph (A) utilizing input from personnel in other departments, agencies, and elements of the United States Government who have expertise in the priorities, functions, assets, programs, capabilities, and operations of such departments, agencies, and elements with respect to counterterrorism;

(C) assign responsibilities for counterterrorism operations to the departments and agencies of the United States Government (including the Department of Defense, the Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Homeland Security, and other departments and agencies of the United States Government), consistent with the authorities of such departments and agencies;

(D) monitor the implementation of operations assigned under subparagraph (C) and update interagency plans for such operations as necessary;

(E) report to the President and the National Intelligence Director on the compliance of the departments, agencies, and elements of the United States with the plans developed under subparagraph (A); and

(F) perform such other duties and functions as the Director of the National Counterterrorism Center may prescribe.

(4) The Directorate may not direct the execution of operations assigned under paragraph (3).

(i) STAFF.—(1) The National Intelligence Director may appoint deputy directors of the National Counterterrorism Center to oversee such portions of the operations of the Center as the National Intelligence Director considers appropriate.

(2) To assist the Director of the National Counterterrorism Center in fulfilling the duties and responsibilities of the Director of the National Counterterrorism Center under this section, the National Intelligence Director shall employ in the National Counterterrorism Center a professional staff having an expertise in matters relating to such duties and responsibilities.

(3) In providing for a professional staff for the National Counterterrorism Center under paragraph (2), the National Intelligence Director may establish as positions in the excepted service such positions in the Center as the National Intelligence Director considers appropriate.

(4) The National Intelligence Director shall ensure that the analytical staff of the National Counterterrorism Center is comprised primarily of experts from elements in the intelligence community and from such other personnel in the United States Government as the National Intelligence Director considers appropriate.

(5)(A) In order to meet the requirements in paragraph (4), the National Intelligence Director shall, from time to time—

(i) specify the transfers, assignments, and details of personnel funded within the National Intelligence Program to the National Counterterrorism Center from any other element of the intelligence community that the National Intelligence Director considers appropriate; and

(ii) in the case of personnel from a department, agency, or element of the United States Government and not funded within the National Intelligence Program, request the transfer, assignment, or detail of such personnel from the department, agency, or other element concerned.

(B)(i) The head of an element of the intelligence community shall promptly effect any transfer, assignment, or detail of personnel specified by the National Intelligence Director under subparagraph (A)(i).

(ii) The head of a department, agency, or element of the United States Government receiving a request for transfer, assignment, or detail of personnel under subparagraph (A)(ii) shall, to the extent practicable, approve the request.

(6) Personnel employed in or assigned or detailed to the National Counterterrorism Center under this subsection shall be under the authority, direction, and control of the Director of the National Counterterrorism Center on all matters for which the Center has been assigned responsibility and for all matters related to the accomplishment of the missions of the Center.

(7) Performance evaluations of personnel assigned or detailed to the National Counterterrorism Center under this subsection shall be undertaken by the supervisors of such personnel at the Center.

(8) The supervisors of the staff of the National Counterterrorism Center may, with the approval of the National Intelligence Director, reward the staff of the Center for meritorious performance by the provision of such performance awards as the National Intelligence Director shall prescribe.

(9) The National Intelligence Director may delegate to the Director of the National Counterterrorism Center any responsibility, power, or authority of the National Intelligence Director under paragraphs (1) through (8).

(10) The National Intelligence Director shall ensure that the staff of the National Counterterrorism Center has access to all databases maintained by the elements of the intelligence community that are relevant to the duties of the Center.

(j) SUPPORT AND COOPERATION OF OTHER AGENCIES.—(1) The elements of the intelligence community and the other departments, agencies, and elements of the United States Government shall support, assist, and cooperate with the National Counterterrorism Center in carrying out its missions under this section.

(2) The support, assistance, and cooperation of a department, agency, or element of the United States Government under this subsection shall include, but not be limited to—

(A) the implementation of interagency plans for operations, whether foreign or domestic, that are developed by the National Counterterrorism Center in a manner consistent with the laws and regulations of the United States and consistent with the limitation in subsection (h)(4);

(B) cooperative work with the Director of the National Counterterrorism Center to ensure that ongoing operations of such department, agency, or element do not conflict with joint operations planned by the Center;

(C) reports, upon request, to the Director of the National Counterterrorism Center on the progress of such department, agency, or element in implementing responsibilities assigned to such department, agency, or element through joint operations plans, and

(D) the provision to the analysts of the National Counterterrorism Center electronic access in real time to information and intelligence collected by such department, agency, or element that is relevant to the missions of the Center.

(3) In the event of a disagreement between the National Intelligence Director and the head of a department, agency, or element of the United States Government on a plan developed or responsibility assigned by the National Counterterrorism Center under this subsection, the National Intelligence Director may either accede to the head of the department, agency, or element concerned or notify the President of the necessity of resolving the disagreement.

SEC. 144. NATIONAL INTELLIGENCE CENTERS.

(a) NATIONAL INTELLIGENCE CENTERS.—(1) The National Intelligence Director may establish within the National Intelligence Authority one or more centers (to be known as "national intelligence centers") to address intelligence priorities established by the National Security Council.

(2) Each national intelligence center established under this section shall be assigned an area of intelligence responsibility.

(3) National intelligence centers shall be established at the direction of the President, as prescribed by law, or upon the initiative of the National Intelligence Director.

(b) ESTABLISHMENT OF CENTERS.—(1) In establishing a national intelligence center, the

National Intelligence Director shall assign lead responsibility for administrative support for such center to an element of the intelligence community selected by the Director for that purpose.

(2) The Director shall determine the structure and size of each national intelligence center.

(3) The Director shall notify Congress of the establishment of each national intelligence center before the date of the establishment of such center.

(c) DIRECTORS OF CENTERS. (1) Each national intelligence center shall have as its head a Director who shall be appointed by the National Intelligence Director for that purpose.

(2) The Director of a national intelligence center shall serve as the principal adviser to the National Intelligence Director on intelligence matters with respect to the area of intelligence responsibility assigned to the center.

(3) In carrying out duties under paragraph (2), the Director of a national intelligence center shall

(A) manage the operations of the center;

(B) coordinate the provision of administration and support by the element of the intelligence community with lead responsibility for the center under subsection (b)(1);

(C) submit budget and personnel requests for the center to the National Intelligence Director;

(D) seek such assistance from other departments, agencies, and elements of the United States Government as is needed to fulfill the mission of the center; and

(E) advise the National Intelligence Director of the information technology, personnel, and other requirements of the center for the performance of its mission.

(4) The National Intelligence Director shall ensure that the Director of a national intelligence center has sufficient authority, direction, and control to effectively accomplish the mission of the center.

(d) MISSION OF CENTERS. Pursuant to the direction of the National Intelligence Director, each national intelligence center shall, in the area of intelligence responsibility assigned to the center by the Director pursuant to intelligence priorities established by the National Security Council

(1) have primary responsibility for providing all-source analysis of intelligence based upon foreign intelligence gathered both abroad and domestically;

(2) have primary responsibility for identifying and proposing to the National Intelligence Director intelligence collection and analysis requirements;

(3) have primary responsibility for net assessments and warnings;

(4) ensure that appropriate officials of the United States Government and other appropriate officials have access to a variety of intelligence assessments and analytical views; and

(5) perform such other duties as the National Intelligence Director shall specify.

(e) INFORMATION SHARING. (1) The National Intelligence Director shall ensure that the Directors of the national intelligence centers and the other elements of the intelligence community undertake appropriate sharing of intelligence analysis and plans for operations in order to facilitate the activities of the centers.

(2) In order to facilitate information sharing under paragraph (1), the Directors of the national intelligence centers shall

(A) report directly to the National Intelligence Director regarding their activities under this section; and

(B) coordinate with the Principal Deputy National Intelligence Director regarding such activities.

(f) STAFF. (1) In providing for a professional staff for a national intelligence center, the National Intelligence Director may establish as positions in the excepted service such positions in the center as the National Intelligence Director considers appropriate.

(2)(A) The National Intelligence Director shall, from time to time

(i) specify the transfers, assignments, and details of personnel funded within the National Intelligence Program to a national intelligence center from any other element of the intelligence community that the National Intelligence Director considers appropriate; and

(ii) in the case of personnel from a department, agency, or element of the United States Government not funded within the National Intelligence Program, request the transfer, assignment, or detail of such personnel from the department, agency, or other element concerned.

(B)(i) The head of an element of the intelligence community shall promptly effect any transfer, assignment, or detail of personnel specified by the National Intelligence Director under subparagraph (A)(i).

(ii) The head of a department, agency, or element of the United States Government receiving a request for transfer, assignment, or detail of personnel under subparagraph (A)(ii) shall, to the extent practicable, approve the request.

(3) Personnel employed in or assigned or detailed to a national intelligence center under this subsection shall be under the authority, direction, and control of the Director of the center on all matters for which the center has been assigned responsibility and for all matters related to the accomplishment of the mission of the center.

(4) Performance evaluations of personnel assigned or detailed to a national intelligence center under this subsection shall be undertaken by the supervisors of such personnel at the center.

(5) The supervisors of the staff of a national center may, with the approval of the National Intelligence Director, reward the staff of the center for meritorious performance by the provision of such performance awards as the National Intelligence Director shall prescribe.

(6) The National Intelligence Director may delegate to the Director of a national intelligence center any responsibility, power, or authority of the National Intelligence Director under paragraphs (1) through (6).

(7) The Director of a national intelligence center may recommend to the National Intelligence Director the reassignment to the home element concerned of any personnel previously assigned or detailed to the center from another element of the intelligence community.

(g) TERMINATION. (1) The National Intelligence Director may terminate a national intelligence center if the National Intelligence Director determines that the center is no longer required to meet an intelligence priority established by the National Security Council.

(2) The National Intelligence Director shall notify Congress of any determination made under paragraph (1) before carrying out such determination.

Subtitle E—Education and Training of Intelligence Community Personnel

SEC. 151. FRAMEWORK FOR CROSS-DISCIPLINARY EDUCATION AND TRAINING.

The National Intelligence Director shall establish an integrated framework that brings together the educational components of the intelligence community in order to promote a more effective and productive intelligence community through cross-disciplinary education and joint training.

SEC. 152. INTELLIGENCE COMMUNITY SCHOLARSHIP PROGRAM.

(a) DEFINITIONS. In this section:

(1) AGENCY. The term "agency" means each element of the intelligence community as determined by the National Intelligence Director.

(2) INSTITUTION OF HIGHER EDUCATION. The term "institution of higher education" has the meaning given that term under section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(3) PROGRAM. The term "Program" means the Intelligence Community Scholarship Program established under subsection (b).

(b) ESTABLISHMENT.

(1) IN GENERAL. The National Intelligence Director, in consultation with the head of each agency, shall establish a scholarship program (to be known as the "Intelligence Community Scholarship Program") to award scholarships to individuals that is designed to recruit and prepare students for civilian careers in the intelligence community to meet the critical needs of the intelligence community agencies.

(2) SELECTION OF RECIPIENTS.

(A) MERIT AND AGENCY NEEDS. Individuals shall be selected to receive scholarships under this section through a competitive process primarily on the basis of academic merit and the needs of the agency.

(B) DEMONSTRATED COMMITMENT. Individuals selected under this section shall have a demonstrated commitment to the field of study for which the scholarship is awarded.

(3) CONTRACTUAL AGREEMENTS. To carry out the Program the head of each agency shall enter into contractual agreements with individuals selected under paragraph (2) under which the individuals agree to serve as full-time employees of the agency, for the period described in subsection (h)(1), in positions needed by the agency and for which the individuals are qualified, in exchange for receiving a scholarship.

(c) ELIGIBILITY. In order to be eligible to participate in the Program, an individual shall

(1) be enrolled or accepted for enrollment as a full-time student at an institution of higher education and be pursuing or intend to pursue undergraduate or graduate education in an academic field or discipline described in the list made available under subsection (e);

(2) be a United States citizen; and

(3) at the time of the initial scholarship award, not be an employee (as defined under section 2105 of title 5, United States Code).

(d) APPLICATION. An individual seeking a scholarship under this section shall submit an application to the National Intelligence Director at such time, in such manner, and containing such information, agreements, or assurances as the Director may require.

(e) PROGRAMS AND FIELDS OF STUDY. The National Intelligence Director shall

(1) make publicly available a list of academic programs and fields of study for which scholarships under the Program may be used; and

(2) update the list as necessary.

(f) SCHOLARSHIPS.

(1) IN GENERAL. The National Intelligence Director may provide a scholarship under the Program for an academic year if the individual applying for the scholarship has submitted to the Director, as part of the application required under subsection (d), a

proposed academic program leading to a degree in a program or field of study on the list made available under subsection (e).

(2) LIMITATION ON YEARS.—An individual may not receive a scholarship under this section for more than 4 academic years, unless the National Intelligence Director grants a waiver.

(3) STUDENT RESPONSIBILITIES.—Scholarship recipients shall maintain satisfactory academic progress.

(4) AMOUNT.—The dollar amount of a scholarship under this section for an academic year shall be determined under regulations issued by the National Intelligence Director, but shall in no case exceed the cost of tuition, fees, and other authorized expenses as established by the Director.

(5) USE OF SCHOLARSHIPS.—A scholarship provided under this section may be expended for tuition, fees, and other authorized expenses as established by the National Intelligence Director by regulation.

(6) PAYMENT TO INSTITUTION OF HIGHER EDUCATION.—The National Intelligence Director may enter into a contractual agreement with an institution of higher education under which the amounts provided for a scholarship under this section for tuition, fees, and other authorized expenses are paid directly to the institution with respect to which the scholarship is provided.

(g) SPECIAL CONSIDERATION FOR CURRENT EMPLOYEES.—

(1) SET ASIDE OF SCHOLARSHIPS.—Notwithstanding paragraphs (1) and (3) of subsection (c), 10 percent of the scholarships awarded under this section shall be set aside for individuals who are employees of agencies on the date of enactment of this section to enhance the education of such employees in areas of critical needs of agencies.

(2) FULL- OR PART-TIME EDUCATION.—Employees who are awarded scholarships under paragraph (1) shall be permitted to pursue undergraduate or graduate education under the scholarship on a full-time or part-time basis.

(h) EMPLOYEE SERVICE.—

(1) PERIOD OF SERVICE.—Except as provided in subsection (j)(2), the period of service for which an individual shall be obligated to serve as an employee of the agency is 24 months for each academic year for which a scholarship under this section is provided. Under no circumstances shall the total period of obligated service be more than 8 years.

(2) BEGINNING OF SERVICE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), obligated service under paragraph (1) shall begin not later than 60 days after the individual obtains the educational degree for which the scholarship was provided.

(B) DEFERRAL.—In accordance with regulations established by the National Intelligence Director, the Director or designee may defer the obligation of an individual to provide a period of service under paragraph (1) if the Director or designee determines that such a deferral is appropriate.

(i) REPAYMENT.—

(1) IN GENERAL.—Scholarship recipients who fail to maintain a high level of academic standing, as defined by the National Intelligence Director, who are dismissed from their educational institutions for disciplinary reasons, or who voluntarily terminate academic training before graduation from the educational program for which the scholarship was awarded, shall be in breach of their contractual agreement and, in lieu of any service obligation arising under such agreement, shall be liable to the United States for repayment within 1 year after the date of default of all scholarship funds paid to them and to the institution of higher education on their behalf under the agreement, except as provided in subsection (j)(2). The repayment period may be extended by the Director when determined to be necessary, as established by regulation.

(2) LIABILITY.—Scholarship recipients who, for any reason, fail to begin or complete their service obligation after completion of academic training, or fail to comply with the terms and conditions of deferment established by the National Intelligence Director under subsection (h)(2)(B), shall be in breach of their contractual agreement. When recipients breach their agreements for the reasons stated in the preceding sentence, the recipient shall be liable to the United States for an amount equal to—

(A) the total amount of scholarships received by such individual under this section; and

(B) the interest on the amounts of such awards which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States, multiplied by 3.

(j) CANCELLATION, WAIVER, OR SUSPENSION OF OBLIGATION.—

(1) CANCELLATION.—Any obligation of an individual incurred under the Program (or a contractual agreement thereunder) for service or payment shall be canceled upon the death of the individual.

(2) WAIVER OR SUSPENSION.—The National Intelligence Director shall prescribe regulations to provide for the partial or total waiver or suspension of any obligation of service or payment incurred by an individual under the Program (or a contractual agreement thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be contrary to the best interests of the Government.

(k) REGULATIONS.—The National Intelligence Director shall prescribe regulations necessary to carry out this section.

Subtitle F—Additional Authorities of National Intelligence Authority

SEC. 161. USE OF APPROPRIATED FUNDS.

(a) DISPOSAL OF PROPERTY.—(1) If specifically authorized to dispose of real property of the National Intelligence Authority under any law enacted after the date of the enactment of this Act, the National Intelligence Director shall, subject to paragraph (2), exercise such authority in strict compliance with subchapter IV of chapter 5 of title 40, United States Code.

(2) The Director shall deposit the proceeds of any disposal of property of the National Intelligence Authority into the miscellaneous receipts of the Treasury in accordance with section 3302(b) of title 31, United States Code.

(b) GIFTS.—Gifts or donations of services or property of or for the National Intelligence Authority may not be accepted, used, or disposed of unless specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

SEC. 162. ACQUISITION AND FISCAL AUTHORITIES.

(a) ACQUISITIONS OF MAJOR SYSTEMS.—(1) For each intelligence program for the acquisition of a major system, the National Intelligence Director shall—

(A) require the development and implementation of a program management plan that includes cost, schedule, and performance goals and program milestone criteria;

(B) subject to paragraph (4), serve as the exclusive milestone decision authority; and

(C) periodically—

(i) review and assess the progress made toward the achievement of the goals and milestones established in such plan; and

(ii) submit to Congress a report on the results of such review and assessment.

(2) The National Intelligence Director shall prescribe guidance for the development and implementation of program management plans under this subsection. In prescribing such guidance, the Director shall review Department of Defense guidance on program management plans for Department of Defense programs for the acquisition of major systems and, to the extent feasible, incorporate the principles of the Department of Defense guidance into the Director's guidance under this subsection.

(3) Nothing in this subsection may be construed to limit the authority of the National Intelligence Director to delegate to any other official any authority to perform the responsibilities of the Director under this subsection.

(4)(A) The authority conferred by paragraph (1)(B) shall not apply to Department of Defense programs until the National Intelligence Director, in consultation with the Secretary of Defense, determines that the National Intelligence Authority has the personnel and capability to fully and effectively carry out such authority.

(B) The National Intelligence Director may assign any authority under this subsection to the Secretary of Defense. The assignment of such authority shall be made pursuant to a memorandum of understanding between the Director and the Secretary.

(5) In this subsection:

(A) The term "intelligence program", with respect to the acquisition of a major system, means a program that—

(i) is carried out to acquire such major system for an element of the intelligence community; and

(ii) is funded in whole out of amounts available for the National Intelligence Program.

(B) The term "major system" has the meaning given such term in section 4(9) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 403(9)).

(b) AVAILABILITY OF FUNDS.—Notwithstanding any other provision of law (other than the provisions of this Act), sums appropriated or otherwise made available to the National Intelligence Authority may be expended for purposes necessary to carry out its functions, including any function performed by the National Intelligence Authority that is described in section 8(a) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403j(a)).

(c) RELATIONSHIP OF DIRECTOR'S AUTHORITY TO OTHER LAWS ON ACQUISITION AND MANAGEMENT OF PROPERTY AND SERVICES.—Section 113(e) of title 40, United States Code, is amended—

(A) by striking "or" at the end of paragraph (18);

(B) by striking the period at the end of paragraph (19) and inserting "; or"; and

(C) by adding at the end the following new paragraph:

"(20) the National Intelligence Director.".

(d) NATIONAL INTELLIGENCE DIRECTOR REPORT ON ENHANCEMENT OF NSA AND NGIA ACQUISITION AUTHORITIES.—Not later than one year after the date of the enactment of this Act, the National Intelligence Director shall—

(1) review—

(A) the acquisition authority of the Director of the National Security Agency; and

(B) the acquisition authority of the Director of the National Geospatial-Intelligence Agency; and

(2) submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives a report setting forth any recommended enhancements of the acquisition authorities of the Director of the National Security Agency and the Director of the National Geospatial-Intelligence Agency that the National Intelligence Director considers necessary.

(e) COMPTROLLER GENERAL REPORT ON ACQUISITION POLICIES AND PROCEDURES.—Not later than two years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the extent to which the policies and procedures adopted for managing the acquisition of major systems for national intelligence purposes, as identified by the National Intelligence Director, are likely to result in successful cost, schedule, and performance outcomes.

SEC. 163. PERSONNEL MATTERS.

(a) IN GENERAL.—In addition to the authorities provided in section 114, the National Intelligence Director may exercise with respect to the personnel of the National Intelligence Authority any authority of the Director of the Central Intelligence Agency with respect to the personnel of the Central Intelligence Agency under the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.), and other applicable provisions of law, as of the date of the enactment of this Act to the same extent, and subject to the same conditions and limitations, that the Director of the Central Intelligence Agency may exercise such authority with respect to personnel of the Central Intelligence Agency.

(b) RIGHTS AND PROTECTIONS OF EMPLOYEES AND APPLICANTS.—Employees and applicants for employment of the National Intelligence Authority shall have the same rights and protections under the Authority as employees of the Central Intelligence Agency have under the Central Intelligence Agency Act of 1949, and other applicable provisions of law, as of the date of the enactment of this Act.

SEC. 164. ETHICS MATTERS.

(a) POLITICAL SERVICE OF PERSONNEL.—Section 7323(b)(2)(B)(i) of title 5, United States Code, is amended—

(1) in subclause (XII), by striking "or" at the end; and

(2) by inserting after subclause (XIII) the following new subclause:

"(XIV) the National Intelligence Authority; or".

(b) DELETION OF INFORMATION ABOUT FOREIGN GIFTS.—Section 7342(f)(4) of title 5, United States Code, is amended—

(1) by inserting "(A)" after "(4)";

(2) in subparagraph (A), as so designated, by striking "the Director of Central Intelligence" and inserting "the Director of the Central Intelligence Agency"; and

(3) by adding at the end the following new subparagraph:

"(B) In transmitting such listings for the National Intelligence Authority, the National Intelligence Director may delete the information described in subparagraphs (A) and (C) of paragraphs (2) and (3) if the Director certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources.".

(c) EXEMPTION FROM FINANCIAL DISCLOSURES.—Section 105(a)(1) of the Ethics in Government Act (5 U.S.C. App.) is amended by inserting "the National Intelligence Authority," before "the Central Intelligence Agency".

TITLE II—OTHER IMPROVEMENTS OF INTELLIGENCE ACTIVITIES

Subtitle A—Improvements of Intelligence Activities

SEC. 201. AVAILABILITY TO PUBLIC OF CERTAIN INTELLIGENCE FUNDING INFORMATION.

(a) AMOUNTS REQUESTED EACH FISCAL YEAR.—The President shall disclose to the public for each fiscal year after fiscal year 2005 the aggregate amount of appropriations requested in the budget of the President for such fiscal year for the National Intelligence Program.

(b) AMOUNTS AUTHORIZED AND APPROPRIATED EACH FISCAL YEAR.—Congress shall disclose to the public for each fiscal year after fiscal year 2005 the aggregate amount of funds authorized to be appropriated, and the aggregate amount of funds appropriated, by Congress for such fiscal year for the National Intelligence Program.

(c) STUDY OF DISCLOSURE OF ADDITIONAL INFORMATION.—(1) The National Intelligence Director shall conduct a study to assess the advisability of disclosing to the public amounts as follows:

(A) The aggregate amount of appropriations requested in the budget of the President for each fiscal year for each element of the intelligence community.

(B) The aggregate amount of funds authorized to be appropriated, and the aggregate amount of funds appropriated, by Congress for each fiscal year for each element of the intelligence community.

(2) The study under paragraph (1) shall—

(A) address whether or not the disclosure to the public of the information referred to in that paragraph would harm the national security of the United States; and

(B) take into specific account concerns relating to the disclosure of such information for each element of the intelligence community.

(3) Not later than 180 days after the effective date of this section, the Director shall submit to Congress a report on the study under paragraph (1).

SEC. 202. MERGER OF HOMELAND SECURITY COUNCIL INTO NATIONAL SECURITY COUNCIL.

(a) MERGER OF HOMELAND SECURITY COUNCIL INTO NATIONAL SECURITY COUNCIL.—Section 101 of the National Security Act of 1947 (50 U.S.C. 402) is amended—

(1) in the fourth undesignated paragraph of subsection (a), by striking clauses (5) and (6) and inserting the following new clauses:

"(5) the Attorney General;

"(6) the Secretary of Homeland Security;", and

(2) in subsection (b)—

(A) in paragraph (1), by striking "and" at the end;

(B) in paragraph (2), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following new paragraphs:

"(3) assess the objectives, commitments, and risks of the United States in the interests of homeland security and make recommendations to the President based on such assessments;

"(4) oversee and review the homeland security policies of the Federal Government and make recommendations to the President based on such oversight and review; and

"(5) perform such other functions as the President may direct.".

(c) REPEAL OF SUPERSEDED AUTHORITY.—(1) Title IX of the Homeland Security Act of 2002 (6 U.S.C. 491 et seq.) is repealed.

(2) The table of contents for that Act is amended by striking the items relating to title IX.

SEC. 203. JOINT INTELLIGENCE COMMUNITY COUNCIL.

Title I of the National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by inserting after section 101 the following new section:

"JOINT INTELLIGENCE COMMUNITY COUNCIL

"SEC. 101A. (a) JOINT INTELLIGENCE COMMUNITY COUNCIL.—There is a Joint Intelligence Community Council.

"(b) MEMBERSHIP.—The Joint Intelligence Community Council shall consist of the following:

"(1) The National Intelligence Director, who shall chair the Council.

"(2) The Secretary of State.

"(3) The Secretary of the Treasury.

"(4) The Secretary of Defense.

"(5) The Attorney General.

"(6) The Secretary of Energy.

"(7) The Secretary of Homeland Security.

"(8) Such other officers of the United States Government as the President may designate from time to time.

"(c) FUNCTIONS.—The Joint Intelligence Community Council shall assist the National Intelligence Director to in developing and implementing a joint, unified national intelligence effort to protect national security by—

"(1) advising the Director on establishing requirements, developing budgets, financial management, and monitoring and evaluating the performance of the intelligence community, and on such other matters as the Director may request; and

"(2) ensuring the timely execution of programs, policies, and directives established or developed by the Director.

"(d) MEETINGS.—The Joint Intelligence Community Council shall meet upon the request of the National Intelligence Director.".

SEC. 204. IMPROVEMENT OF INTELLIGENCE CAPABILITIES OF THE FEDERAL BUREAU OF INVESTIGATION.

(a) FINDINGS.—Congress makes the following findings:

(1) The National Commission on Terrorist Attacks Upon the United States in its final report stated that, under Director Robert Mueller, the Federal Bureau of Investigation has made significant progress in improving its intelligence capabilities.

(2) In the report, the members of the Commission also urged that the Federal Bureau of Investigation fully institutionalize the shift of the Bureau to a preventive counterterrorism posture.

(b) IMPROVEMENT OF INTELLIGENCE CAPABILITIES.—The Director of the Federal Bureau of Investigation shall continue efforts to improve the intelligence capabilities of the Federal Bureau of Investigation and to develop and maintain within the Bureau a national intelligence workforce.

(c) NATIONAL INTELLIGENCE WORKFORCE.—(1) In developing and maintaining a national intelligence workforce under subsection (b), the Director of the Federal Bureau of Investigation shall, subject to the direction and control of the President, develop and maintain a specialized and integrated national intelligence workforce consisting of agents, analysts, linguists, and surveillance specialists who are recruited, trained, and rewarded in a manner which ensures the existence within the Federal Bureau of Investigation an institutional culture with substantial expertise in, and commitment to, the intelligence mission of the Bureau.

(2) Each agent employed by the Bureau after the date of the enactment of this Act shall receive basic training in both criminal justice matters and national intelligence matters.

(3) Each agent employed by the Bureau after the date of the enactment of this Act shall, to the maximum extent practicable, be given the opportunity to undergo, during such agent's early service with the Bureau, meaningful assignments in criminal justice matters and in national intelligence matters.

(4) The Director shall—

(A) establish career positions in national intelligence matters for agents and analysts of the Bureau; and

(B) in furtherance of the requirement under subparagraph (A) and to the maximum extent practicable, afford agents and analysts of the Bureau the opportunity to work in the career specialty selected by such agents and analysts over their entire career with the Bureau.

(5) The Director shall carry out a program to enhance the capacity of the Bureau to recruit and retain individuals with backgrounds in intelligence, international relations, language, technology, and other skills relevant to the intelligence mission of the Bureau.

(6) The Director shall, to the maximum extent practicable, afford the analysts of the Bureau training and career opportunities commensurate with the training and career opportunities afforded analysts in other elements of the intelligence community.

(7) Commencing as soon as practicable after the date of the enactment of this Act, each direct supervisor of a Field Intelligence Group, and each Bureau Operational Manager at the Section Chief and Assistant Special Agent in Charge (ASAC) level and above, shall be a certified intelligence officer.

(8) The Director shall, to the maximum extent practicable, ensure that the successful discharge of advanced training courses, and of one or more assignments to another element of the intelligence community, is a precondition to advancement to higher level intelligence assignments within the Bureau.

(d) FIELD OFFICE MATTERS.—(1) In improving the intelligence capabilities of the Federal Bureau of Investigation under subsection (b), the Director of the Federal Bureau of Investigation shall ensure that each Field Intelligence Group reports directly to a field office senior manager responsible for intelligence matters.

(2) The Director shall provide for such expansion of the secure facilities in the field offices of the Bureau as is necessary to ensure the discharge by the field offices of the intelligence mission of the Bureau.

(3) The Director shall require that each Field Intelligence Group manager ensures the integration of analysts, agents, linguists, and surveillance personnel in the field.

(e) BUDGET MATTERS.—The Director of the Federal Bureau of Investigation shall, in consultation with the Director of the Office of Management and Budget, modify the budget structure of the Federal Bureau of Investigation in order to organize the budget according to the four principal missions of the Bureau as follows:

(1) Intelligence.

(2) Counterterrorism and counterintelligence.

(3) Criminal Enterprises/Federal Crimes.

(4) Criminal justice services.

(f) REPORTS.—(1) Not later than 180 days after the date of the enactment of this Act, the Director of the Federal Bureau of Investigation shall submit to Congress a report on the progress made as of the date of such report in carrying out the requirements of this section.

(2) The Director shall include in each annual program review of the Federal Bureau of Investigation that is submitted to Congress a report on the progress made by each field office of the Bureau during the period covered by such review in addressing Bureau and national program priorities.

(3) Not later than 180 days after the date of the enactment of this Act, and every 12 months thereafter, the Director shall submit to Congress a report assessing the qualifications, status, and roles of analysts at Bureau headquarters and in the field offices of the Bureau.

(4) Not later than 180 days after the date of the enactment of this Act, and every 12 months thereafter, the Director shall submit to Congress a report on the progress of the Bureau in implementing information-sharing principles.

SEC. 205. FEDERAL BUREAU OF INVESTIGATION INTELLIGENCE CAREER SERVICE.

(a) SHORT TITLE.—This section may be cited as the "Federal Bureau of Investigation Intelligence Career Service Authorization Act of 2005".

(b) ESTABLISHMENT OF FEDERAL BUREAU OF INVESTIGATION INTELLIGENCE CAREER SERVICE.—

(1) IN GENERAL.—The Director of the Federal Bureau of Investigation, in consultation with the Director of the Office of Personnel Management—

(A) may establish positions for intelligence analysts, without regard to chapter 51 of title 5, United States Code;

(B) shall prescribe standards and procedures for establishing and classifying such positions; and

(C) may fix the rate of basic pay for such positions, without regard to subchapter III of chapter 53 of title 5, United States Code, if the rate of pay is not greater than the rate of basic pay payable for level IV of the Executive Schedule.

(2) LEVELS OF PERFORMANCE.—Any performance management system established for intelligence analysts shall have at least 1 level of performance above a retention standard.

(c) REPORTING REQUIREMENT.—Not less than 60 days before the date of the implementation of authorities authorized under this section, the Director of the Federal Bureau of Investigation shall submit an operating plan describing the Director's intended use of the authorities under this section to—

(1) the Committees on Appropriations of the Senate and the House of Representatives;

(2) the Committee on Governmental Affairs of the Senate;

(3) the Committee on Government Reform of the House of Representatives;

(4) the congressional intelligence committees; and

(5) the Committees on the Judiciary of the Senate and the House of Representatives.

(d) ANNUAL REPORT.—Not later than December 31, 2005, and annually thereafter for 4 years, the Director of the Federal Bureau of Investigation shall submit an annual report of the use of the permanent authorities provided under this section during the preceding fiscal year to—

(1) the Committees on Appropriations of the Senate and the House of Representatives;

(2) the Committee on Governmental Affairs of the Senate;

(3) the Committee on Government Reform of the House of Representatives;

(4) the congressional intelligence committees; and

(5) the Committees on the Judiciary of the Senate and the House of Representatives.

SEC. 206. INFORMATION SHARING.

(a) DEFINITIONS.—In this section:

(1) ADVISORY BOARD.—The term "Advisory Board" means the Advisory Board on Information Sharing established under subsection (i).

(2) EXECUTIVE COUNCIL.—The term "Executive Council" means the Executive Council on Information Sharing established under subsection (h).

(3) HOMELAND SECURITY INFORMATION.—The term "homeland security information" means all information, whether collected, produced, or distributed by intelligence, law enforcement, military, homeland security, or other activities relating to—

(A) the existence, organization, capabilities, plans, intentions, vulnerabilities, means of finance or material support, or activities of foreign or international terrorist groups or individuals, or of domestic groups or individuals involved in transnational terrorism;

(B) threats posed by such groups or individuals to the United States, United States persons, or United States interests, or to those of other nations;

(C) communications of or by such groups or individuals; or

(D) groups or individuals reasonably believed to be assisting or associated with such groups or individuals.

(4) NETWORK.—The term "Network" means the Information Sharing Network described under subsection (c).

(b) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks upon the United States, Congress makes the following findings:

(1) The effective use of information, from all available sources, is essential to the fight against terror and the protection of our homeland. The biggest impediment to all-source analysis, and to a greater likelihood of "connecting the dots", is resistance to sharing information.

(2) The United States Government has access to a vast amount of information, including not only traditional intelligence but also other government databases, such as those containing customs or immigration information. However, the United States Government has a weak system for processing and using the information it has.

(3) In the period preceding September 11, 2001, there were instances of potentially helpful information that was available but that no person knew to ask for; information that was distributed only in compartmented channels, and information that was requested but could not be shared.

(4) Current security requirements nurture over-classification and excessive compartmentalization of information among agencies. Each agency's incentive structure opposes sharing, with risks, including criminal, civil, and administrative sanctions, but few rewards for sharing information.

(5) The current system, in which each intelligence agency has its own security practices, requires a demonstrated "need to know" before sharing. This approach assumes that it is possible to know, in advance, who will need to use the information. An outgrowth of the cold war, such a system implicitly assumes that the risk of inadvertent disclosure outweighs the benefits of wider sharing. Such assumptions are no longer appropriate. Although counterintelligence concerns are still real, the costs of

not sharing information are also substantial. The current "need to know" culture of information protection needs to be replaced with a "need to share" culture of integration.

(6) A new approach to the sharing of intelligence and homeland security information is urgently needed. An important conceptual model for a new "trusted information network" is the Systemwide Homeland Analysis and Resource Exchange (SHARE) Network proposed by a task force of leading professionals assembled by the Markle Foundation and described in reports issued in October 2002 and December 2003.

(7) No single agency can create a meaningful information sharing system on its own. Alone, each agency can only modernize stovepipes, not replace them. Presidential leadership is required to bring about governmentwide change.

(c) INFORMATION SHARING NETWORK.—

(1) ESTABLISHMENT.—The President shall establish a trusted information network and secure information sharing environment to promote sharing of intelligence and homeland security information in a manner consistent with national security and the protection of privacy and civil liberties, and based on clearly defined and consistently applied policies and procedures, and valid investigative, analytical or operational requirements.

(2) ATTRIBUTES.—The Network shall promote coordination, communication and collaboration of people and information among all relevant Federal departments and agencies, State, tribal, and local authorities, and relevant private sector entities, including owners and operators of critical infrastructure, by using policy guidelines and technologies that support—

(A) a decentralized, distributed, and coordinated environment that connects existing systems where appropriate and allows users to share information among agencies, between levels of government, and, as appropriate, with the private sector;

(B) the sharing of information in a form and manner that facilitates its use in analysis, investigations and operations;

(C) building upon existing systems capabilities currently in use across the Government;

(D) utilizing industry best practices, including minimizing the centralization of data and seeking to use common tools and capabilities whenever possible;

(E) employing an information access management approach that controls access to data rather than to just networks;

(F) facilitating the sharing of information at and across all levels of security by using policy guidelines and technologies that support writing information that can be broadly shared;

(G) providing directory services for locating people and information;

(H) incorporating protections for individuals' privacy and civil liberties;

(I) incorporating strong mechanisms for information security and privacy and civil liberties guideline enforcement in order to enhance accountability and facilitate oversight, including—

(i) multifactor authentication and access control;

(ii) strong encryption and data protection;

(iii) immutable audit capabilities;

(iv) automated policy enforcement;

(v) perpetual, automated screening for abuses of network and intrusions; and

(vi) uniform classification and handling procedures;

(J) compliance with requirements of applicable law and guidance with regard to the planning, design, acquisition, operation, and management of information systems; and

(K) permitting continuous system upgrades to benefit from advances in technology while preserving the integrity of stored data.

(d) IMMEDIATE ACTIONS.—Not later than 90 days after the date of the enactment of this Act, the Director of the Office of Management and Budget, in consultation with the Executive Council, shall—

(1) submit to the President and to Congress a description of the technological, legal, and policy issues presented by the creation of the Network described in subsection (c), and the way in which these issues will be addressed;

(2) establish electronic directory services to assist in locating in the Federal Government intelligence and homeland security information and people with relevant knowledge about intelligence and homeland security information; and

(3) conduct a review of relevant current Federal agency capabilities, including—

(A) a baseline inventory of current Federal systems that contain intelligence or homeland security information;

(B) the money currently spent to maintain those systems; and

(C) identification of other information that should be included in the Network.

(e) GUIDELINES AND REQUIREMENTS.—As soon as possible, but in no event later than 180 days after the date of the enactment of this Act, the President shall—

(1) in consultation with the Executive Council—

(A) issue guidelines for acquiring, accessing, sharing, and using information, including guidelines to ensure that information is provided in its most shareable form, such as by separating out data from the sources and methods by which that data are obtained; and

(B) on classification policy and handling procedures across Federal agencies, including commonly accepted processing and access controls;

(2) in consultation with the Privacy and Civil Liberties Oversight Board established under section 211, issue guidelines that—

(A) protect privacy and civil liberties in the development and use of the Network; and

(B) shall be made public, unless, and only to the extent that, nondisclosure is clearly necessary to protect national security; and

(3) require the heads of Federal departments and agencies to promote a culture of information sharing by—

(A) reducing disincentives to information sharing, including overclassification of information and unnecessary requirements for originator approval; and

(B) providing affirmative incentives for information sharing, such as the incorporation of information sharing performance measures into agency and managerial evaluations, and employee awards for promoting innovative information sharing practices.

(f) ENTERPRISE ARCHITECTURE AND IMPLEMENTATION PLAN.—Not later than 270 days after the date of the enactment of this Act, the Director of Management and Budget shall submit to the President and to Congress an enterprise architecture and implementation plan for the Network. The enterprise architecture and implementation plan shall be prepared by the Director of Management and Budget, in consultation with the Executive Council, and shall include—

(1) a description of the parameters of the proposed Network, including functions, capabilities, and resources;

(2) a delineation of the roles of the Federal departments and agencies that will participate in the development of the Network, including identification of any agency that will build the infrastructure needed to operate and manage the Network (as distinct from the individual agency components that are to be part of the Network), with the delineation of roles to be consistent with—

(A) the authority of the National Intelligence Director under this Act to set standards for information sharing and information technology throughout the intelligence community; and

(B) the authority of the Secretary of Homeland Security and the role of the Department of Homeland Security in coordinating with State, tribal, and local officials and the private sector;

(3) a description of the technological requirements to appropriately link and enhance existing networks and a description of the system design that will meet these requirements;

(4) an enterprise architecture that—

(A) is consistent with applicable laws and guidance with regard to planning, design, acquisition, operation, and management of information systems;

(B) will be used to guide and define the development and implementation of the Network; and

(C) addresses the existing and planned enterprise architectures of the departments and agencies participating in the Network;

(5) a description of how privacy and civil liberties will be protected throughout the design and implementation of the Network;

(6) objective, systemwide performance measures to enable the assessment of progress toward achieving full implementation of the Network;

(7) a plan, including a time line, for the development and phased implementation of the Network;

(8) total budget requirements to develop and implement the Network, including the estimated annual cost for each of the 5 years following the date of the enactment of this Act; and

(9) proposals for any legislation that the Director of Management and Budget determines necessary to implement the Network.

(g) DIRECTOR OF MANAGEMENT AND BUDGET RESPONSIBLE FOR INFORMATION SHARING ACROSS THE FEDERAL GOVERNMENT.—

(1) ADDITIONAL DUTIES AND RESPONSIBILITIES.—

(A) IN GENERAL.—The Director of Management and Budget, in consultation with the Executive Council, shall—

(i) implement and manage the Network;

(ii) develop and implement policies, procedures, guidelines, rules, and standards as appropriate to foster the development and proper operation of the Network; and

(iii) assist, monitor, and assess the implementation of the Network by Federal departments and agencies to ensure adequate progress, technological consistency and policy compliance; and regularly report the findings to the President and to Congress.

(B) CONTENT OF POLICIES, PROCEDURES, GUIDELINES, RULES, AND STANDARDS.—The policies, procedures, guidelines, rules, and standards under subparagraph (A)(ii) shall—

(i) take into account the varying missions and security requirements of agencies participating in the Network;

(ii) address development, implementation, and oversight of technical standards and requirements;

(iii) address and facilitate information sharing between and among departments and agencies of the intelligence community, the

Department of Defense, the Homeland Security community and the law enforcement community;

(iv) address and facilitate information sharing between Federal departments and agencies and State, tribal and local governments;

(v) address and facilitate, as appropriate, information sharing between Federal departments and agencies and the private sector;

(vi) address and facilitate, as appropriate, information sharing between Federal departments and agencies with foreign partners and allies; and

(vii) ensure the protection of privacy and civil liberties.

(2) APPOINTMENT OF PRINCIPAL OFFICER.—Not later than 30 days after the date of the enactment of this Act, the Director of Management and Budget shall appoint, with approval of the President, a principal officer in the Office of Management and Budget whose primary responsibility shall be to carry out the day-to-day duties of the Director specified in this section. The officer shall report directly to the Director of Management and Budget, have the rank of a Deputy Director and shall be paid at the rate of pay payable for a position at level III of the Executive Schedule under section 5314 of title 5, United States Code.

(h) EXECUTIVE COUNCIL ON INFORMATION SHARING.—

(1) ESTABLISHMENT.—There is established an Executive Council on Information Sharing that shall assist the Director of Management and Budget in the execution of the Director's duties under this Act concerning information sharing.

(2) MEMBERSHIP.—The members of the Executive Council shall be—

(A) the Director of Management and Budget, who shall serve as Chairman of the Executive Council;

(B) the Secretary of Homeland Security or his designee;

(C) the Secretary of Defense or his designee;

(D) the Attorney General or his designee;

(E) the Secretary of State or his designee;

(F) the Director of the Federal Bureau of Investigation or his designee;

(G) the National Intelligence Director or his designee;

(H) such other Federal officials as the President shall designate;

(I) representatives of State, tribal, and local governments, to be appointed by the President; and

(J) individuals who are employed in private businesses or nonprofit organizations that own or operate critical infrastructure, to be appointed by the President.

(3) RESPONSIBILITIES.—The Executive Council shall assist the Director of Management and Budget in—

(A) implementing and managing the Network;

(B) developing policies, procedures, guidelines, rules, and standards necessary to establish and implement the Network;

(C) ensuring there is coordination among departments and agencies participating in the Network in the development and implementation of the Network;

(D) reviewing, on an ongoing basis, policies, procedures, guidelines, rules, and standards related to the implementation of the Network;

(E) establishing a dispute resolution process to resolve disagreements among departments and agencies about whether particular information should be shared and in what manner; and

(F) considering such reports as are submitted by the Advisory Board on Information Sharing under subsection (i)(2).

(4) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Council shall not be subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App.).

(5) REPORTS.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Director of Management and Budget, in the capacity of Chair of the Executive Council, shall submit a report to the President and to Congress that shall include—

(A) a description of the activities and accomplishments of the Council in the preceding year; and

(B) the number and dates of the meetings held by the Council and a list of attendees at each meeting.

(6) INFORMING THE PUBLIC.—The Executive Council shall—

(A) make its reports to Congress available to the public to the greatest extent that is consistent with the protection of classified information and applicable law; and

(B) otherwise inform the public of its activities, as appropriate and in a manner consistent with the protection of classified information and applicable law.

(i) ADVISORY BOARD ON INFORMATION SHARING.—

(1) ESTABLISHMENT.—There is established an Advisory Board on Information Sharing to advise the President and the Executive Council on policy, technical, and management issues related to the design and operation of the Network.

(2) RESPONSIBILITIES.—The Advisory Board shall advise the Executive Council on policy, technical, and management issues related to the design and operation of the Network. At the request of the Executive Council, or the Director of Management and Budget in the capacity as Chair of the Executive Council, or on its own initiative, the Advisory Board shall submit reports to the Executive Council concerning the findings and recommendations of the Advisory Board regarding the design and operation of the Network.

(3) MEMBERSHIP AND QUALIFICATIONS.—The Advisory Board shall be composed of no more than 15 members, to be appointed by the President from outside the Federal Government. The members of the Advisory Board shall have significant experience or expertise in policy, technical and operational matters, including issues of security, privacy, or civil liberties, and shall be selected solely on the basis of their professional qualifications, achievements, public stature and relevant experience.

(4) CHAIR.—The President shall designate one of the members of the Advisory Board to act as chair of the Advisory Board.

(5) ADMINISTRATIVE SUPPORT.—The Office of Management and Budget shall provide administrative support for the Advisory Board.

(j) REPORTS.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, and semiannually thereafter, the President through the Director of Management and Budget shall submit a report to Congress on the state of the Network and of information sharing across the Federal Government.

(2) CONTENT.—Each report under this subsection shall include—

(A) a progress report on the extent to which the Network has been implemented, including how the Network has fared on the government-wide and agency-specific performance measures and whether the performance goals set in the preceding year have been met;

(B) objective systemwide performance goals for the following year;

(C) an accounting of how much was spent on the Network in the preceding year;

(D) actions taken to ensure that agencies procure new technology that is consistent with the Network and information on whether new systems and technology are consistent with the Network;

(E) the extent to which, in appropriate circumstances, all terrorism watch lists are available for combined searching in real time through the Network and whether there are consistent standards for placing individuals on, and removing individuals from, the watch lists, including the availability of processes for correcting errors;

(F) the extent to which unnecessary roadblocks, impediments, or disincentives to information sharing, including the inappropriate use of paper-only intelligence products and requirements for originator approval, have been eliminated;

(G) the extent to which positive incentives for information sharing have been implemented;

(H) the extent to which classified information is also made available through the Network, in whole or in part, in unclassified form;

(I) the extent to which State, tribal, and local officials—

(i) are participating in the Network;

(ii) have systems which have become integrated into the Network;

(iii) are providing as well as receiving information; and

(iv) are using the Network to communicate with each other;

(J) the extent to which—

(i) private sector data, including information from owners and operators of critical infrastructure, is incorporated in the Network; and

(ii) the private sector is both providing and receiving information;

(K) where private sector data has been used by the Government or has been incorporated into the Network—

(i) the measures taken to protect sensitive business information; and

(ii) where the data involves information about individuals, the measures taken to ensure the accuracy of such data;

(L) the measures taken by the Federal Government to ensure the accuracy of other information on the Network and, in particular, the accuracy of information about individuals;

(M) an assessment of the Network's privacy and civil liberties protections, including actions taken in the preceding year to implement or enforce privacy and civil liberties protections and a report of complaints received about interference with an individual's privacy or civil liberties; and

(N) an assessment of the security protections of the Network.

(k) AGENCY RESPONSIBILITIES.—The head of each department or agency possessing or using intelligence or homeland security information or otherwise participating in the Network shall—

(1) ensure full department or agency compliance with information sharing policies, procedures, guidelines, rules, and standards established for the Network under subsections (c) and (g);

(2) ensure the provision of adequate resources for systems and activities supporting operation of and participation in the Network; and

(3) ensure full agency or department cooperation in the development of the Network

and associated enterprise architecture to implement governmentwide information sharing, and in the management and acquisition of information technology consistent with applicable law.

(l) Agency Plans and Reports.—Each Federal department or agency that possesses or uses intelligence and homeland security information, operates a system in the Network or otherwise participates, or expects to participate, in the Network, shall submit to the Director of Management and Budget—

(1) not later than 1 year after the date of the enactment of this Act, a report including—

(A) a strategic plan for implementation of the Network's requirements within the department or agency;

(B) objective performance measures to assess the progress and adequacy of the department or agency's information sharing efforts; and

(C) budgetary requirements to integrate the agency into the Network, including projected annual expenditures for each of the following 5 years following the submission of the report; and

(2) annually thereafter, reports including—

(A) an assessment of the progress of the department or agency in complying with the Network's requirements, including how well the agency has performed on the objective measures developed under paragraph (1)(B);

(B) the agency's expenditures to implement and comply with the Network's requirements in the preceding year; and

(C) the agency's or department's plans for further implementation of the Network in the year following the submission of the report.

(m) Periodic Assessments.—

(1) COMPTROLLER GENERAL.—

(A) In general.—Not later than 1 year after the date of the enactment of this Act, and periodically thereafter, the Comptroller General shall evaluate the implementation of the Network, both generally and, at the discretion of the Comptroller General, within specific departments and agencies, to determine the extent of compliance with the Network's requirements and to assess the effectiveness of the Network in improving information sharing and collaboration and in protecting privacy and civil liberties, and shall report to Congress on the findings of the Comptroller General.

(B) Information available to the Comptroller General.—Upon request by the Comptroller General, information relevant to an evaluation under subsection (a) shall be made available to the Comptroller General under section 716 of title 31, United States Code.

(C) Consultation with congressional committees.—If a record is not made available to the Comptroller General within a reasonable time, before the Comptroller General files a report under section 716(b)(1) of title 31, United States Code, the Comptroller General shall consult with the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Committee on Government Reform of the House of Representatives concerning the Comptroller's intent to file a report.

(2) Inspectors general.—The Inspector General in any Federal department or agency that possesses or uses intelligence or homeland security information or that otherwise participates in the Network shall, at the discretion of the Inspector General—

(A) conduct audits or investigations to—

(i) determine the compliance of that department or agency with the Network's requirements; and

(ii) assess the effectiveness of that department or agency in improving information sharing and collaboration and in protecting privacy and civil liberties; and

(B) issue reports on such audits and investigations.

(n) Authorization of Appropriations.—There are authorized to be appropriated—

(1) $50,000,000 to the Director of Management and Budget to carry out this section for fiscal year 2005; and

(2) such sums as are necessary to carry out this section in each fiscal year thereafter, to be disbursed and allocated in accordance with the Network implementation plan required by subsection (f).

Subtitle B—Privacy and Civil Liberties

SEC. 211. PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD.

(a) In General.—There is established within the Executive Office of the President a Privacy and Civil Liberties Oversight Board (referred to in this subtitle as the "Board").

(b) Findings.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) In conducting the war on terrorism, the Government may need additional powers and may need to enhance the use of its existing powers.

(2) This shift of power and authority to the Government calls for an enhanced system of checks and balances to protect the precious liberties that are vital to our way of life and to ensure that the Government uses its powers for the purposes for which the powers were given.

(c) Purpose.—The Board shall—

(1) analyze and review actions the executive branch takes to protect the Nation from terrorism; and

(2) ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the Nation against terrorism.

(d) Functions.—

(1) Advice and counsel on policy development and implementation.—The Board shall—

(A) review proposed legislation, regulations, and policies related to efforts to protect the Nation from terrorism, including the development and adoption of information sharing guidelines under section 205(g);

(B) review the implementation of new and existing legislation, regulations, and policies related to efforts to protect the Nation from terrorism, including the implementation of information sharing guidelines under section 205(g);

(C) advise the President and the departments, agencies, and elements of the executive branch to ensure that privacy and civil liberties are appropriately considered in the development and implementation of such legislation, regulations, policies, and guidelines; and

(D) in providing advice on proposals to retain or enhance a particular governmental power, consider whether the department, agency, or element of the executive branch has explained—

(i) that the power actually materially enhances security;

(ii) that there is adequate supervision of the use by the executive branch of the power to ensure protection of privacy and civil liberties; and

(iii) that there are adequate guidelines and oversight to properly confine its use.

(2) Oversight.—The Board shall continually review—

(A) the regulations, policies, and procedures, and the implementation of the regulations, policies, and procedures, of the departments, agencies, and elements of the executive branch to ensure that privacy and civil liberties are protected;

(B) the information sharing practices of the departments, agencies, and elements of the executive branch to determine whether they appropriately protect privacy and civil liberties and adhere to the information sharing guidelines prescribed under section 205(g) and to other governing laws, regulations, and policies regarding privacy and civil liberties; and

(C) other actions by the executive branch related to efforts to protect the Nation from terrorism to determine whether such actions—

(i) appropriately protect privacy and civil liberties; and

(ii) are consistent with governing laws, regulations, and policies regarding privacy and civil liberties.

(3) Relationship with privacy and civil liberties officers.—The Board shall—

(A) review and assess reports and other information from privacy officers and civil liberties officers described in section 212;

(B) when appropriate, make recommendations to such privacy officers and civil liberties officers regarding their activities; and

(C) when appropriate, coordinate the activities of such privacy officers and civil liberties officers on relevant interagency matters.

(4) Testimony.—The Members of the Board shall appear and testify before Congress upon request.

(e) Reports.—

(1) In general.—The Board shall—

(A) receive and review reports from privacy officers and civil liberties officers described in section 212; and

(B) periodically submit, not less than semiannually, reports—

(i)(I) to the appropriate committees of Congress, including the Committees on the Judiciary of the Senate and the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives; and

(II) to the President; and

(ii) which shall be in unclassified form to the greatest extent possible, with a classified annex where necessary.

(2) Contents.—Not less than 2 reports submitted each year under paragraph (1)(B) shall include—

(A) a description of the major activities of the Board during the preceding period; and

(B) information on the findings, conclusions, and recommendations of the Board resulting from its advice and oversight functions under subsection (d).

(f) Informing the Public.—The Board shall—

(1) make its reports, including its reports to Congress, available to the public to the greatest extent that is consistent with the protection of classified information and applicable law; and

(2) hold public hearings and otherwise inform the public of its activities, as appropriate and in a manner consistent with the protection of classified information and applicable law.

(g) ACCESS TO INFORMATION.—

(1) AUTHORIZATION.—If determined by the Board to be necessary to carry out its responsibilities under this section, the Board is authorized to—

(A) have access from any department, agency, or element of the executive branch, or any Federal officer or employee, to all relevant records, reports, audits, reviews, documents, papers, recommendations, or other relevant material, including classified information consistent with applicable law;

(B) interview, take statements from, or take public testimony from personnel of any department, agency, or element of the executive branch, or any Federal officer or employee;

(C) request information or assistance from any State, tribal, or local government; and

(D) require, by subpoena issued at the direction of a majority of the members of the Board, persons (other than departments, agencies, and elements of the executive branch) to produce any relevant information, documents, reports, answers, records, accounts, papers, and other documentary or testimonial evidence.

(2) ENFORCEMENT OF SUBPOENA.—In the case of contumacy or failure to obey a subpoena issued under paragraph (1)(D), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found may issue an order requiring such person to produce the evidence required by such subpoena.

(3) AGENCY COOPERATION.—Whenever information or assistance requested under subparagraph (A) or (B) of paragraph (1) is, in the judgment of the Board, unreasonably refused or not provided, the Board shall report the circumstances to the head of the department, agency, or element concerned without delay. The head of the department, agency, or element concerned shall ensure that the Board is given access to the information, assistance, material, or personnel the Board determines to be necessary to carry out its functions.

(h) MEMBERSHIP.—

(1) MEMBERS.—The Board shall be composed of a full-time chairman and 4 additional members, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) QUALIFICATIONS.—Members of the Board shall be selected solely on the basis of their professional qualifications, achievements, public stature, expertise in civil liberties and privacy, and relevant experience, and without regard to political affiliation, but in no event shall more than 3 members of the Board be members of the same political party.

(3) INCOMPATIBLE OFFICE.—An individual appointed to the Board may not, while serving on the Board, be an elected official, officer, or employee of the Federal Government, other than in the capacity as a member of the Board.

(4) TERM.—Each member of the Board shall serve a term of six years, except that—

(A) a member appointed to a term of office after the commencement of such term may serve under such appointment only for the remainder of such term;

(B) upon the expiration of the term of office of a member, the member shall continue to serve until the member's successor has been appointed and qualified, except that no member may serve under this subparagraph—

(i) for more than 60 days when Congress is in session unless a nomination to fill the vacancy shall have been submitted to the Senate; or

(ii) after the adjournment sine die of the session of the Senate in which such nomination is submitted; and

(C) the members initially appointed under this subsection shall serve terms of two, three, four, five, and six years, respectively, from the effective date of this Act, with the term of each such member to be designated by the President.

(5) QUORUM AND MEETINGS.—After its initial meeting, the Board shall meet upon the call of the chairman or a majority of its members. Three members of the Board shall constitute a quorum.

(i) COMPENSATION AND TRAVEL EXPENSES.—

(1) COMPENSATION.—

(A) CHAIRMAN.—The chairman shall be compensated at the rate of pay payable for a position at level III of the Executive Schedule under section 5314 of title 5, United States Code.

(B) MEMBERS.—Each member of the Board shall be compensated at a rate of pay payable for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Board.

(2) TRAVEL EXPENSES.—Members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for persons employed intermittently by the Government under section 5703(b) of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.

(j) STAFF.—

(1) APPOINTMENT AND COMPENSATION.—The Chairman, in accordance with rules agreed upon by the Board, shall appoint and fix the compensation of a full-time executive director and such other personnel as may be necessary to enable the Board to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) DETAILEES.—Any Federal employee may be detailed to the Board without reimbursement from the Board, and such detailee shall retain the rights, status, and privileges of the detailee's regular employment without interruption.

(3) CONSULTANT SERVICES.—The Board may procure the temporary or intermittent services of experts and consultants in accordance with section 3109 of title 5, United States Code, at rates that do not exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of such title.

(k) SECURITY CLEARANCES.—The appropriate departments, agencies, and elements of the executive branch shall cooperate with the Board to expeditiously provide the Board members and staff with appropriate security clearances to the extent possible under existing procedures and requirements.

(l) TREATMENT AS AGENCY, NOT AS ADVISORY COMMITTEE.—The Board—

(1) is an agency (as defined in section 551(1) of title 5, United States Code); and

(2) is not an advisory committee (as defined in section 3(2) of the Federal Advisory Committee Act (5 U.S.C. App.)).

SEC. 212. PRIVACY AND CIVIL LIBERTIES OFFICERS.

(a) DESIGNATION AND FUNCTIONS.—The Attorney General, the Secretary of Defense, the Secretary of State, the Secretary of the Treasury, the Secretary of Health and Human Services, the Secretary of Homeland Security, the National Intelligence Director, the Director of the Central Intelligence Agency, and the head of any other department, agency, or element of the executive branch designated by the Privacy and Civil Liberties Oversight Board to be appropriate for coverage under this section shall designate not less than 1 senior officer to—

(1) assist the head of such department, agency, or element and other officials of such department, agency, or element in appropriately considering privacy and civil liberties concerns when such officials are proposing, developing, or implementing laws, regulations, policies, procedures, or guidelines related to efforts to protect the Nation against terrorism;

(2) periodically investigate and review department, agency, or element actions, policies, procedures, guidelines, and related laws and their implementation to ensure that such department, agency, or element is adequately considering privacy and civil liberties in its actions;

(3) ensure that such department, agency, or element has adequate procedures to receive, investigate, respond to, and redress complaints from individuals who allege such department, agency, or element has violated their privacy or civil liberties; and

(4) in providing advice on proposals to retain or enhance a particular governmental power the officer shall consider whether such department, agency, or element has explained—

(i) that the power actually materially enhances security;

(ii) that there is adequate supervision of the use by such department, agency, or element of the power to ensure protection of privacy and civil liberties; and

(iii) that there are adequate guidelines and oversight to properly confine its use.

(b) EXCEPTION TO DESIGNATION AUTHORITY.—

(1) PRIVACY OFFICERS.—In any department, agency, or element referred to in subsection (a) or designated by the Board, which has a statutorily created privacy officer, such officer shall perform the functions specified in subsection (a) with respect to privacy.

(2) CIVIL LIBERTIES OFFICERS.—In any department, agency, or element referred to in subsection (a) or designated by the Board, which has a statutorily created civil liberties officer, such officer shall perform the functions specified in subsection (a) with respect to civil liberties.

(c) SUPERVISION AND COORDINATION.—Each privacy officer or civil liberties officer described in subsection (a) or (b) shall—

(1) report directly to the head of the department, agency, or element concerned; and

(2) coordinate their activities with the Inspector General of such department, agency, or element to avoid duplication of effort.

(d) AGENCY COOPERATION.—The head of each department, agency, or element shall ensure that each privacy officer and civil liberties officer—

(1) has the information, material, and resources necessary to fulfill the functions of such officer;

(2) is advised of proposed policy changes;

(3) is consulted by decision makers; and

(4) is given access to material and personnel the officer determines to be necessary to carry out the functions of such officer.

(e) REPRISAL FOR MAKING COMPLAINT.—No action constituting a reprisal, or threat of reprisal, for making a complaint or for disclosing information to a privacy officer or civil liberties officer described in subsection (a) or (b), or to the Privacy and Civil Liberties Oversight Board, that indicates a possible violation of privacy protections or civil liberties in the administration of the programs and operations of the Federal Government relating to efforts to protect the Nation from terrorism shall be taken by any Federal employee in a position to take such action, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

(f) PERIODIC REPORTS.—

(1) IN GENERAL.—The privacy officers and civil liberties officers of each department, agency, or element referred to or described in subsection (a) or (b) shall periodically, but not less than quarterly, submit a report on the activities of such officers—

(A)(i) to the appropriate committees of Congress, including the Committees on the Judiciary of the Senate and the House of Representatives, the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives;

(ii) to the head of such department, agency, or element; and

(iii) to the Privacy and Civil Liberties Oversight Board; and

(B) which shall be in unclassified form to the greatest extent possible, with a classified annex where necessary.

(2) CONTENTS.—Each report submitted under paragraph (1) shall include information on the discharge of each of the functions of the officer concerned, including—

(A) information on the number and types of reviews undertaken;

(B) the type of advice provided and the response given to such advice;

(C) the number and nature of the complaints received by the department, agency, or element concerned for alleged violations; and

(D) a summary of the disposition of such complaints, the reviews and inquiries conducted, and the impact of the activities of such officer.

(g) INFORMING THE PUBLIC.—Each privacy officer and civil liberties officer shall—

(1) make the reports of such officer, including reports to Congress, available to the public to the greatest extent that is consistent with the protection of classified information and applicable law; and

(2) otherwise inform the public of the activities of such officer, as appropriate and in a manner consistent with the protection of classified information and applicable law.

(h) SAVINGS CLAUSE.—Nothing in this section shall be construed to limit or otherwise supplant any other authorities or responsibilities provided by law to privacy officers or civil liberties officers.

Subtitle C—Independence of Intelligence Agencies

SEC. 221. INDEPENDENCE OF NATIONAL INTELLIGENCE DIRECTOR.

(a) LOCATION OUTSIDE EXECUTIVE OFFICE OF THE PRESIDENT.—The National Intelligence Director shall not be located within the Executive Office of the President.

(b) PROVISION OF NATIONAL INTELLIGENCE.—The National Intelligence Director shall provide to the President and Congress national intelligence that is timely, objective, and independent of political considerations, and has not been shaped to serve policy goals.

SEC. 222. INDEPENDENCE OF INTELLIGENCE.

(a) DIRECTOR OF NATIONAL COUNTERTERRORISM CENTER.—The Director of the National Counterterrorism Center shall provide to the President, Congress, and the National Intelligence Director national intelligence related to counterterrorism that is timely, objective, and independent of political considerations, and has not been shaped to serve policy goals.

(b) DIRECTORS OF NATIONAL INTELLIGENCE CENTERS.—Each Director of a national intelligence center established under section 144 shall provide to the President, Congress, and the National Intelligence Director intelligence information that is timely, objective, and independent of political considerations, and has not been shaped to serve policy goals.

(c) DIRECTOR OF CENTRAL INTELLIGENCE AGENCY.—The Director of the Central Intelligence Agency shall ensure that intelligence produced by the Central Intelligence Agency is objective and independent of political considerations, and has not been shaped to serve policy goals.

(d) NATIONAL INTELLIGENCE COUNCIL.—The National Intelligence Council shall produce national intelligence estimates for the United States Government that are timely, objective, and independent of political considerations, and have not been shaped to serve policy goals.

SEC. 223. INDEPENDENCE OF NATIONAL COUNTERTERRORISM CENTER.

No officer, department, agency, or element of the executive branch shall have any authority to require the Director of the National Counterterrorism Center—

(1) to receive permission to testify before Congress; or

(2) to submit testimony, legislative recommendations, or comments to any officer or agency of the United States for approval, comments, or review prior to the submission of such recommendations, testimony, or comments to Congress if such recommendations, testimony, or comments include a statement indicating that the views expressed therein are those of the agency submitting them and do not necessarily represent the views of the Administration.

SEC. 224. ACCESS OF CONGRESSIONAL COMMITTEES TO NATIONAL INTELLIGENCE.

(a) DOCUMENTS REQUIRED TO BE PROVIDED TO CONGRESSIONAL COMMITTEES.—The National Intelligence Director, the Director of the National Counterterrorism Center, and the Director of a national intelligence center shall provide to the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, and any other committee of Congress with jurisdiction over the subject matter to which the information relates, all intelligence assessments, intelligence estimates, sense of intelligence community memoranda, and daily senior executive intelligence briefs, other than the Presidential Daily Brief and those reports prepared exclusively for the President.

(b) RESPONSE TO REQUESTS FROM CONGRESS REQUIRED.—

(1) IN GENERAL.—Except as provided in paragraph (2), in addition to providing material under subsection (a), the National Intelligence Director, the Director of the National Counterterrorism Center, or the Director of a national intelligence center shall, not later than 15 days after receiving a request for any intelligence assessment, report, or estimate or other intelligence information from the Select Committee on Intelligence of the Senate, the Permanent Select Committee on Intelligence of the House of Representatives, or any other committee of Congress with jurisdiction over the subject matter to which the information relates, make available to such committee such intelligence assessment, report, or estimate or other intelligence information.

(2) CERTAIN MEMBERS.—In addition to requests described in paragraph (1), the National Intelligence Director shall respond to requests from the Chairman and Vice Chairman of the Select Committee on Intelligence of the Senate and the Chairman and Ranking Member of the Permanent Select Committee on Intelligence of the House of Representatives. Upon making a request covered by this paragraph, the Chairman, Vice Chairman, or Ranking Member, as the case may be, of such committee shall notify the other of the Chairman, Vice Chairman, or Ranking Member, as the case may be, of such committee of such request.

(3) ASSERTIONS OF PRIVILEGE.—In response to requests described under paragraph (1) or (2), the National Intelligence Director, the Director of the National Counterterrorism Center, or the Director of a national intelligence center shall provide information, unless the President certifies that such information is not being provided because the President is asserting a privilege pursuant to the United States Constitution.

SEC. 225. COMMUNICATIONS WITH CONGRESS.

(a) DISCLOSURE OF CERTAIN INFORMATION AUTHORIZED.—

(1) IN GENERAL.—Employees of covered agencies and employees of contractors carrying out activities under classified contracts with covered agencies may disclose information described in paragraph (2) to the individuals referred to in paragraph (3) without first reporting such information to the appropriate Inspector General.

(2) COVERED INFORMATION.—Paragraph (1) applies to information, including classified information, that an employee reasonably believes provides direct and specific evidence of a false or inaccurate statement to Congress contained in, or withheld from Congress, any intelligence information material to, any intelligence assessment, report, or estimate, but does not apply to information the disclosure of which is prohibited by rule 6(e) of the Federal Rules of Criminal Procedure.

(3) COVERED INDIVIDUALS.—

(A) IN GENERAL.—The individuals to whom information in paragraph (2) may be disclosed are—

(i) a Member of a committee of Congress having primary responsibility for oversight of a department, agency, or element of the United States Government to which the disclosed information relates and who is authorized to receive information of the type disclosed;

(ii) any other Member of Congress who is authorized to receive information of the type disclosed; and

(iii) an employee of Congress who has the appropriate security clearance and is authorized to receive information of the type disclosed.

(B) PRESUMPTION OF NEED FOR INFORMATION.—An individual described in subparagraph (A) to whom information is disclosed under paragraph (2) shall be presumed to have a need to know such information.

(b) CONSTRUCTION WITH OTHER REPORTING REQUIREMENTS.—Nothing in this section may be construed to modify, alter, or otherwise affect—

(1) any reporting requirement relating to intelligence activities that arises under this Act, the National Security Act of 1947 (50 U.S.C. 401 et seq.), or any other provision of law; or

(2) the right of any employee of the United States Government to disclose to Congress in accordance with applicable law information not described in this section.

(c) COVERED AGENCIES DEFINED.—In this section, the term "covered agencies" means the following:

(1) The National Intelligence Authority, including the National Counterterrorism Center.

(2) The Central Intelligence Agency.

(3) The Defense Intelligence Agency.

(4) The National Geospatial-Intelligence Agency.

(5) The National Security Agency.

(6) The Federal Bureau of Investigation.

(7) Any other Executive agency, or element or unit thereof, determined by the President under section 2302(a)(2)(C)(ii) of title 5, United States Code, to have as its principal function the conduct of foreign intelligence or counterintelligence activities.

TITLE III—MODIFICATIONS OF LAWS RELATING TO INTELLIGENCE COMMUNITY MANAGEMENT

Subtitle A—Conforming and Other Amendments

SEC. 301. RESTATEMENT AND MODIFICATION OF BASIC AUTHORITY ON THE CENTRAL INTELLIGENCE AGENCY.

(a) IN GENERAL.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by striking sections 102 through 104 and inserting the following new sections:

"CENTRAL INTELLIGENCE AGENCY

"SEC. 102. (a) CENTRAL INTELLIGENCE AGENCY.—There is a Central Intelligence Agency.

"(b) FUNCTION.—The function of the Central Intelligence Agency is to assist the Director of the Central Intelligence Agency in carrying out the responsibilities specified in section 103(d).

"DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY

"SEC. 103. (a) DIRECTOR OF CENTRAL INTELLIGENCE AGENCY.—There is a Director of the Central Intelligence Agency who shall be appointed by the President, by and with the advice and consent of the Senate.

"(b) SUPERVISION.—The Director of the Central Intelligence Agency shall report to the National Intelligence Director regarding the activities of the Director of the Central Intelligence Agency.

"(c) DUTIES.—The Director of the Central Intelligence Agency shall—

"(1) serve as the head of the Central Intelligence Agency; and

"(2) carry out the responsibilities specified in subsection (d).

"(d) RESPONSIBILITIES.—The Director of the Central Intelligence Agency shall—

"(1) collect intelligence through human sources and by other appropriate means, except that the Director of the Central Intelligence Agency shall have no police, subpoena, or law enforcement powers or internal security functions;

"(2) correlate and evaluate intelligence related to the national security and provide appropriate dissemination of such intelligence;

"(3) provide overall direction for and coordination of the collection of national intelligence outside the United States through human sources by elements of the intelligence community authorized to undertake such collection and, in coordination with other departments, agencies, or elements of the United States Government which are authorized to undertake such collection, ensure that the most effective use is made of resources and that appropriate account is taken of the risks to the United States and those involved in such collection; and

"(4) perform such other functions and duties pertaining to intelligence relating to the national security as the President or the National Intelligence Director may direct.

"(e) TERMINATION OF EMPLOYMENT OF CIA EMPLOYEES.—(1) Notwithstanding the provisions of any other law, the Director of the Central Intelligence Agency may, in the discretion of the Director, terminate the employment of any officer or employee of the Central Intelligence Agency whenever the Director considers the termination of employment of such officer or employee necessary or advisable in the interests of the United States.

"(2) Any termination of employment of an officer or employee under paragraph (1) shall not affect the right of the officer or employee to seek or accept employment in any other department, agency, or element of the United States Government if declared eligible for such employment by the Office of Personnel Management.

"(f) COORDINATION WITH FOREIGN GOVERNMENTS.—Under the direction of the National Intelligence Director and in a manner consistent with section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927), the Director of the Central Intelligence Agency shall coordinate the relationships between elements of the intelligence community and the intelligence or security services of foreign governments on all matters involving intelligence related to the national security or involving intelligence acquired through clandestine means.".

(b) TRANSFORMATION OF CENTRAL INTELLIGENCE AGENCY.—The Director of the Central Intelligence Agency shall, in accordance with standards developed by the Director in consultation with the National Intelligence Director—

(1) enhance the analytic, human intelligence, and other capabilities of the Central Intelligence Agency;

(2) develop and maintain an effective language program within the Agency;

(3) emphasize the hiring of personnel of diverse backgrounds for purposes of improving the capabilities of the Agency;

(4) establish and maintain effective relationships between human intelligence and signals intelligence within the Agency at the operational level; and

(5) achieve a more effective balance within the Agency with respect to unilateral operations and liaison operations.

(c) REPORTS.—(1) Not later than 180 days after the effective date of this section, and annually thereafter, the Director of the Central Intelligence Agency shall submit to the National Intelligence Director and the congressional intelligence committees a report setting forth the following:

(A) A strategy for improving the conduct of analysis (including strategic analysis) by the Central Intelligence Agency, and the progress of the Agency in implementing the strategy.

(B) A strategy for improving the human intelligence and other capabilities of the Agency, and the progress of the Agency in implementing the strategy, including—

(i) the recruitment, training, equipping, and deployment of personnel required to address the current and projected threats to the national security of the United States during each of the 2-year, 5-year, and 10-year periods beginning on the date of such report, including personnel with the backgrounds, education, and experience necessary for ensuring a human intelligence capability adequate for such projected threats;

(ii) the achievement of a proper balance between unilateral operations and liaison operations;

(iii) the development of language capabilities (including the achievement of high standards in such capabilities by the use of financial incentives and other mechanisms);

(iv) the sound financial management of the Directorate of Operations; and

(v) the identification of other capabilities required to address the current and projected threats to the national security of the United States during each of the 2-year, 5-year, and 10-year periods beginning on the date of such report.

(C) In conjunction with the Director of the National Security Agency, a strategy for achieving integration between signals and human intelligence capabilities, and the progress in implementing the strategy.

(D) Metrics and milestones for measuring progress in the implementation of each such strategy.

(2)(A) The information in each report under paragraph (1) on the element of the strategy referred to in paragraph (1)(B)(i) shall identify the number and types of personnel required to implement the strategy during each period addressed in such report, include a plan for the recruitment, training, equipping, and deployment of such personal, and set forth an estimate of the costs of such activities.

(B) If as of the date of a report under paragraph (1), a proper balance does not exist between unilateral operations and liaison operations, such report shall set forth the steps to be taken to achieve such balance.

(C) The information in each report under paragraph (1) on the element of the strategy referred to in paragraph (1)(B)(v) shall identify the other capabilities required to implement the strategy during each period addressed in such report, include a plan for developing such capabilities, and set forth an estimate of the costs of such activities.

SEC. 302. CONFORMING AMENDMENTS RELATING TO ROLES OF NATIONAL INTELLIGENCE DIRECTOR AND DIRECTOR OF THE CENTRAL INTELLIGENCE AGENCY.

(a) NATIONAL SECURITY ACT OF 1947.—(1) The National Security Act of 1947 (50 U.S.C. 401 et seq.) is amended by striking "Director of Central Intelligence" each place it appears in the following provisions and inserting "National Intelligence Director":

(A) Section 3(5)(B) (50 U.S.C. 401a(5)(B)).

(B) Section 101(h)(2)(A) (50 U.S.C. 402(h)(2)(A)).

(C) Section 101(h)(5) (50 U.S.C. 402(h)(5)).

(D) Section 101(i)(2)(A) (50 U.S.C. 402(i)(2)(A)).

(E) Section 101(j) (50 U.S.C. 402(j)).

(F) Section 105(a) (50 U.S.C. 403-5(a)).

(G) Section 105(b)(6)(A) (50 U.S.C. 403-5(b)(6)(A)).

(H) Section 105B(a)(1) (50 U.S.C. 403-5b(a)(1)).

(I) Section 105B(b) (50 U.S.C. 403-5b(b)).

(J) Section 110(b) (50 U.S.C. 404e(b)).

(K) Section 110(c) (50 U.S.C. 404e(c)).

(L) Section 112(a)(1) (50 U.S.C. 404g(a)(1)).

(M) Section 112(d)(1) (50 U.S.C. 404g(d)(1)).

(N) Section 113(b)(2)(A) (50 U.S.C. 404h(b)(2)(A)).

(O) Section 114(a)(1) (50 U.S.C. 404i(a)(1)).

(P) Section 114(b)(1) (50 U.S.C. 404i(b)(1)).

(R) Section 115(a)(1) (50 U.S.C. 404j(a)(1)).

(S) Section 115(b) (50 U.S.C. 404j(b)).

(T) Section 115(c)(1)(B) (50 U.S.C. 404j(c)(1)(B)).

(U) Section 116(a) (50 U.S.C. 404k(a)).

(V) Section 117(a)(1) (50 U.S.C. 404l(a)(1)).

(W) Section 303(a) (50 U.S.C. 405(a)), both places it appears.

(X) Section 501(d) (50 U.S.C. 413(d)).

(Y) Section 502(a) (50 U.S.C. 413a(a)).

(Z) Section 502(c) (50 U.S.C. 413a(c)).

(AA) Section 503(b) (50 U.S.C. 413b(b)).

(BB) Section 504(a)(2) (50 U.S.C. 414(a)(2)).

(CC) Section 504(a)(3)(C) (50 U.S.C. 414(a)(3)(C)).

(DD) Section 504(d)(2) (50 U.S.C. 414(d)(2)).

(EE) Section 506A(a)(1) (50 U.S.C. 415a-1(a)(1)).

(FF) Section 603(a) (50 U.S.C. 423(a)).

(GG) Section 702(a)(1) (50 U.S.C. 432(a)(1)).

(HH) Section 702(a)(6)(B)(viii) (50 U.S.C. 432(a)(6)(B)(viii)).

(II) Section 702(b)(1) (50 U.S.C. 432(b)(1)), both places it appears.

(JJ) Section 703(a)(1) (50 U.S.C. 432a(a)(1)).

(KK) Section 703(a)(6)(B)(viii) (50 U.S.C. 432a(a)(6)(B)(viii)).

(LL) Section 703(b)(1) (50 U.S.C. 432a(b)(1)), both places it appears.

(MM) Section 704(a)(1) (50 U.S.C. 432b(a)(1)).

(NN) Section 704(f)(2)(H) (50 U.S.C. 432b(f)(2)(H)).

(OO) Section 704(g)(1)) (50 U.S.C. 432b(g)(1)), both places it appears.

(PP) Section 1001(a) (50 U.S.C. 441g(a)).

(QQ) Section 1102(a)(1) (50 U.S.C. 442a(a)(1)).

(RR) Section 1102(b)(1) (50 U.S.C. 442a(b)(1)).

(SS) Section 1102(c)(1) (50 U.S.C. 442a(c)(1)).

(TT) Section 1102(d) (50 U.S.C. 442a(d)).

(2) That Act is further amended by striking "of Central Intelligence" each place it appears in the following provisions:

(A) Section 105(a)(2) (50 U.S.C. 403-5(a)(2)).

(B) Section 105B(a)(2) (50 U.S.C. 403-5b(a)(2)).

(C) Section 105B(b) (50 U.S.C. 403-5b(b)), the second place it appears.

(3) That Act is further amended by striking "Director" each place it appears in the following provisions and inserting "National Intelligence Director":

(A) Section 114(c) (50 U.S.C. 404i(c)).

(B) Section 116(b) (50 U.S.C. 404k(b)).

(C) Section 1001(b) (50 U.S.C. 441g(b)).

(C) Section 1001(c) (50 U.S.C. 441g(c)), the first place it appears.

(D) Section 1001(d)(1)(B) (50 U.S.C. 441g(d)(1)(B)).

(E) Section 1001(e) (50 U.S.C. 441g(e)), the first place it appears.

(4) Section 114A of that Act (50 U.S.C. 404i-1) is amended by striking "Director of Central Intelligence" and inserting "National Intelligence Director, the Director of the Central Intelligence Agency"

(5) Section 701 of that Act (50 U.S.C. 431) is amended—

(A) in subsection (a), by striking "Operational files of the Central Intelligence Agency may be exempted by the Director of Central Intelligence" and inserting "The Director of the Central Intelligence Agency, with the coordination of the National Intelligence Director, may exempt operational files of the Central Intelligence Agency"; and

(B) in subsection (g)(1), by striking "Director of Central Intelligence" and inserting "Director of the Central Intelligence Agency and the National Intelligence Director".

(6) The heading for section 114 of that Act (50 U.S.C. 404i) is amended to read as follows:

"ADDITIONAL ANNUAL REPORTS FROM THE NATIONAL INTELLIGENCE DIRECTOR".

(b) CENTRAL INTELLIGENCE AGENCY ACT OF 1949.—(1) Section 1 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a) is amended—

(A) by redesignating paragraphs (a), (b), and (c) as paragraphs (1), (2), and (3), respectively; and

(B) by striking paragraph (2), as so redesignated, and inserting the following new paragraph (2):

"(2) 'Director' means the Director of the Central Intelligence Agency; and".

(2) That Act (50 U.S.C. 403a et seq.) is further amended by striking "Director of Central Intelligence" each place it appears in the following provisions and inserting "National Intelligence Director":

(A) Section 6 (50 U.S.C. 403g).

(B) Section 17(f) (50 U.S.C. 403q(f)), both places it appears.

(3) That Act is further amended by striking "of Central Intelligence" in each of the following provisions:

(A) Section 2 (50 U.S.C. 403b).

(B) Section 16(c)(1)(B) (50 U.S.C. 403p(c)(1)(B)).

(C) Section 17(d)(1) (50 U.S.C. 403q(d)(1)).

(D) Section 20(c) (50 U.S.C. 403t(c)).

(4) That Act is further amended by striking "Director of Central Intelligence" each place it appears in the following provisions and inserting "Director of the Central Intelligence Agency":

(A) Section 14(b) (50 U.S.C. 403n(b)).

(B) Section 16(b)(2) (50 U.S.C. 403p(b)(2)).

(C) Section 16(b)(3) (50 U.S.C. 403p(b)(3)), both places it appears.

(D) Section 21(g)(1) (50 U.S.C. 403u(g)(1)).

(E) Section 21(g)(2) (50 U.S.C. 403u(g)(2)).

(c) CENTRAL INTELLIGENCE AGENCY RETIREMENT ACT.—Section 101 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2001) is amended by striking paragraph (2) and inserting the following new paragraph (2):

"(2) DIRECTOR.—The term 'Director' means the Director of the Central Intelligence Agency.".

(d) CIA VOLUNTARY SEPARATION PAY ACT.—Subsection (a)(1) of section 2 of the Central Intelligence Agency Voluntary Separation Pay Act (50 U.S.C. 2001 note) is amended to read as follows:

"(1) the term 'Director' means the Director of the Central Intelligence Agency;".

(e) FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978.—(1) The Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.) is amended by striking "Director of Central Intelligence" each place it appears and inserting "National Intelligence Director".

(f) CLASSIFIED INFORMATION PROCEDURES ACT.—Section 9(a) of the Classified Information Procedures Act (5 U.S.C. App.) is amended by striking "Director of Central Intelligence" and inserting "National Intelligence Director".

(g) INTELLIGENCE AUTHORIZATION ACTS.—

(1) PUBLIC LAW 103-359.—Section 811(c)(6)(C) of the Counterintelligence and Security Enhancements Act of 1994 (title VIII of Public Law 103-359) is amended by striking "Director of Central Intelligence" and inserting "National Intelligence Director".

(2) PUBLIC LAW 107-306.—(A) The Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107-306) is amended by striking "Director of Central Intelligence, acting as the head of the intelligence community," each place it appears in the following provisions and inserting "National Intelligence Director":

(i) Section 313(a) (50 U.S.C. 404n(a)).

(ii) Section 343(a)(1) (50 U.S.C. 404n-2(a)(1))

(B) Section 341 of that Act (50 U.S.C. 404n-1) is amended by striking "Director of Central Intelligence, acting as the head of the intelligence community, shall establish in the Central Intelligence Agency" and inserting "National Intelligence Director shall establish within the Central Intelligence Agency".

(C) Section 352(b) of that Act (50 U.S.C. 404-3 note) is amended by striking "Director" and inserting "National Intelligence Director".

(3) PUBLIC LAW 108-177.—(A) The Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108-177) is amended by striking "Director of Central Intelligence" each place it appears in the following provisions and inserting "National Intelligence Director":

(i) Section 317(a) (50 U.S.C. 403-3 note).

(ii) Section 317(h)(1).

(iii) Section 318(a) (50 U.S.C. 441g note).

(iv) Section 319(b) (50 U.S.C. 403 note).

(v) Section 341(b) (28 U.S.C. 519 note).

(vi) Section 357(a) (50 U.S.C. 403 note).

(vii) Section 504(a) (117 Stat. 2634), both places it appears.

(B) Section 319(f)(2) of that Act (50 U.S.C. 403 note) is amended by striking "Director" the first place it appears and inserting "National Intelligence Director".

(C) Section 404 of that Act (18 U.S.C. 4124 note) is amended by striking "Director of Central Intelligence" and inserting "Director of the Central Intelligence Agency".

SEC. 303. OTHER CONFORMING AMENDMENTS

(a) NATIONAL SECURITY ACT OF 1947.—(1) Section 101(j) of the National Security Act of 1947 (50 U.S.C. 402(j)) is amended by striking "Deputy Director of Central Intelligence" and inserting "Principal Deputy National Intelligence Director".

(2) Section 112(d)(1) of that Act (50 U.S.C. 404g(d)(1)) is amended by striking "section 103(c)(6) of this Act" and inserting "section 112(a)(11) of the National Intelligence Reform Act of 2004".

(3) Section 116(b) of that Act (50 U.S.C. 404k(b)) is amended by striking "to the Deputy Director of Central Intelligence, or with respect to employees of the Central Intelligence Agency, the Director may delegate such authority to the Deputy Director for Operations" and inserting "to the Principal Deputy National Intelligence Director, or, with respect to employees of the Central Intelligence Agency, to the Director of the Central Intelligence Agency".

(4) Section 504(a)(2) of that Act (50 U.S.C. 414(a)(2)) is amended by striking "Reserve for Contingencies of the Central Intelligence Agency" and inserting "Reserve for Contingencies of the National Intelligence Director".

(5) Section 506A(b)(1) of that Act (50 U.S.C. 415a-1(b)(1)) is amended by striking "Office of the Deputy Director of Central Intelligence" and inserting "Office of the National Intelligence Director".

(6) Section 701(c)(3) of that Act (50 U.S.C. 431(c)(3)) is amended by striking "or the Office of the Director of Central Intelligence" and inserting "the Office of the Director of the Central Intelligence Agency, or the Office of the National Intelligence Director".

(7) Section 1001(b) of that Act (50 U.S.C. 441g(b)) is amended by striking "Assistant Director of Central Intelligence for Administration" and inserting "Office of the National Intelligence Director".

(b) CENTRAL INTELLIGENCE AGENCY ACT OF 1949.—Section 6 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403g) is amended by striking "section 103(c)(7) of the National Security Act of 1947 (50 U.S.C. 403-

3(c)(7))" and inserting "section 112(a)(11) of the National Intelligence Reform Act of 2004".

(c) CENTRAL INTELLIGENCE AGENCY RETIREMENT ACT.—Section 201(c) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2011(c)) is amended by striking "paragraph (6) of section 103(c) of the National Security Act of 1947 (50 U.S.C. 403-3(c)) that the Director of Central Intelligence" and inserting "section 112(a)(11) of the National Intelligence Reform Act of 2004 that the National Intelligence Director".

(d) INTELLIGENCE AUTHORIZATION ACTS.—

(1) PUBLIC LAW 107-306.—Section 343(c) of the Intelligence Authorization Act for Fiscal Year 2003 (Public Law 107-306; 50 U.S.C. 404n-2(c)) is amended by striking "section 103(c)(6) of the National Security Act of 1947 (50 U.S.C. 403-3((c)(6))" and inserting "section 112(a)(11) of the National Intelligence Reform Act of 2004".

(2) PUBLIC LAW 108-177.—Section 317 of the Intelligence Authorization Act for Fiscal Year 2004 (Public Law 108-177; 50 U.S.C. 403-3 note) is amended—

(A) in subsection (g), by striking "Assistant Director of Central Intelligence for Analysis and Production" and inserting "Principal Deputy National Intelligence Director"; and

(B) in subsection (h)(2)(C), by striking "Assistant Director" and inserting "Principal Deputy National Intelligence Director".

SEC. 304. MODIFICATIONS OF FOREIGN INTELLIGENCE AND COUNTERINTELLIGENCE UNDER NATIONAL SECURITY ACT OF 1947.

Section 3 of the National Security Act of 1947 (50 U.S.C. 401a) is amended—

(1) in paragraph (2), by striking "or foreign persons, or international terrorist activities" and inserting "foreign persons, or international terrorists"; and

(2) in paragraph (3), by striking "or foreign persons, or international terrorist activities" and inserting "foreign persons, or international terrorists".

SEC. 305. ELEMENTS OF INTELLIGENCE COMMUNITY UNDER NATIONAL SECURITY ACT OF 1947.

Paragraph (4) of section 3 of the National Security Act of 1947 (50 U.S.C. 401a) is amended to read as follows:

"(4) The term 'intelligence community' includes the following:

"(A) The National Intelligence Authority.

"(B) The Central Intelligence Agency.

"(C) The National Security Agency.

"(D) The Defense Intelligence Agency.

"(E) The National Geospatial-Intelligence Agency.

"(F) The National Reconnaissance Office.

"(G) Other offices within the Department of Defense for the collection of specialized national intelligence through reconnaissance programs.

"(H) The intelligence elements of the Army, the Navy, the Air Force, the Marine Corps, the Federal Bureau of Investigation, and the Department of Energy.

"(I) The Bureau of Intelligence and Research of the Department of State.

"(J) The Office of Intelligence and Analysis of the Department of the Treasury.

"(K) The elements of the Department of Homeland Security concerned with the analysis of intelligence information, including the Office of Intelligence of the Coast Guard.

"(L) Such other elements of any department or agency as may be designated by the President, or designated jointly by the National Intelligence Director and the head of the department or agency concerned, as an element of the intelligence community.".

SEC. 306. REDESIGNATION OF NATIONAL FOREIGN INTELLIGENCE PROGRAM AS NATIONAL INTELLIGENCE PROGRAM.

(a) REDESIGNATION.—Section 3 of the National Security Act of 1947 (50 U.S.C. 401a), as amended by this Act, is further amended—

(1) by striking paragraph (6); and

(2) by redesignating paragraph (7) as paragraph (6).

(b) CONFORMING AMENDMENTS.—(1) The National Security Act of 1947, as amended by this Act, is further amended by striking "National Foreign Intelligence Program" each place it appears in the following provisions and inserting "National Intelligence Program":

(A) Section 105(a)(2) (50 U.S.C. 403-5(a)(2)).

(B) Section 105(a)(3) (50 U.S.C. 403-5(a)(3)).

(C) Section 506(a) (50 U.S.C. 415a(a)).

(2) Section 17(f) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(f)) is amended by striking "National Foreign Intelligence Program" and inserting "National Intelligence Program".

(c) HEADING AMENDMENTS.—(1) The heading of section 105 of that Act is amended to read as follows:

"RESPONSIBILITIES OF THE SECRETARY OF DEFENSE PERTAINING TO THE NATIONAL INTELLIGENCE PROGRAM".

(2) The heading of section 506 of that Act is amended to read as follows:

"SPECIFICITY OF NATIONAL INTELLIGENCE PROGRAM BUDGET AMOUNTS FOR COUNTERTERRORISM, COUNTERPROLIFERATION, COUNTERNARCOTICS, AND COUNTERINTELLIGENCE".

SEC. 307. CONFORMING AMENDMENT ON COORDINATION OF BUDGETS OF ELEMENTS OF THE INTELLIGENCE COMMUNITY WITHIN THE DEPARTMENT OF DEFENSE.

Section 105(a)(1) of the National Security Act of 1947 (50 U.S.C. 403-5(a)(1)) is amended by striking "ensure" and inserting "assist the Director in ensuring".

SEC. 308. REPEAL OF SUPERSEDED AUTHORITIES.

(a) APPOINTMENT OF CERTAIN INTELLIGENCE OFFICIALS.—Section 106 of the National Security Act of 1947 (50 U.S.C. 403-6) is repealed.

(b) COLLECTION TASKING AUTHORITY.—Section 111 of the National Security Act of 1947 (50 U.S.C. 404f) is repealed.

SEC. 309. CLERICAL AMENDMENTS TO NATIONAL SECURITY ACT OF 1947.

The table of contents for the National Security Act of 1947 is amended—

(1) by inserting after the item relating to section 101 the following new item:

"Sec. 101A. Joint Intelligence Community Council.";

(2) by striking the items relating to sections 102 through 104 and inserting the following new items:

"Sec. 102. Central Intelligence Agency.
"Sec. 103. Director of the Central Intelligence Agency.";

(3) by striking the item relating to section 105 and inserting the following new item:

"Sec 105. Responsibilities of the Secretary of Defense pertaining to the National Intelligence Program.";

(4) by striking the item relating to section 114 and inserting the following new item:

"Sec. 114. Additional annual reports from the National Intelligence Director.";

and

(5) by striking the item relating to section 506 and inserting the following new item:

"Sec. 506. Specificity of National Intelligence Program budget amounts for counterterrorism, counterproliferation, counternarcotics, and counterintelligence".

SEC. 310. MODIFICATION OF AUTHORITIES RELATING TO NATIONAL COUNTERINTELLIGENCE EXECUTIVE.

(a) APPOINTMENT OF NATIONAL COUNTERINTELLIGENCE EXECUTIVE.—Subsection (a)(2) of section 902 of the Counterintelligence Enhancement Act of 2002 (title IX of Public Law 107-306; 116 Stat. 2432; 50 U.S.C. 402b) is amended by striking "Director of Central Intelligence" and inserting "National Intelligence Director, and Director of the Central Intelligence Agency".

(b) COMPONENT OF OFFICE OF NATIONAL INTELLIGENCE DIRECTOR.—Such section is further amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following new subsection (b):

"(b) COMPONENT OF OFFICE OF NATIONAL INTELLIGENCE DIRECTOR.—The National Counterintelligence Executive is a component of the Office of the National Intelligence Director under subtitle C of the National Intelligence Reform Act of 2004.".

(c) DUTIES.—Subsection (d) of such section, as redesignated by subsection (a)(1) of this section, is amended by adding at the end the following new paragraph:

"(5) To perform such other duties as may be provided under section 131(b) of the National Intelligence Reform Act of 2004.".

(d) OFFICE OF NATIONAL COUNTERINTELLIGENCE EXECUTIVE.—Section 904 of the Counterintelligence Enhancement Act of 2002 (116 Stat. 2434; 50 U.S.C. 402c) is amended—

(1) by striking "Office of the Director of Central Intelligence" each place it appears in subsections (c) and (l)(1) and inserting "Office of the National Intelligence Director";

(2) by striking "Director of Central Intelligence" each place it appears in subsections (e)(4), (e)(5), (h)(1), and (h)(2) and inserting "National Intelligence Director"; and

(3) in subsection (m), by striking "Director of Central Intelligence" and inserting "National Intelligence Director, the Director of the Central Intelligence Agency".

SEC. 311. CONFORMING AMENDMENT TO INSPECTOR GENERAL ACT OF 1978.

Section 8H(a)(1) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following new subparagraph:

"(D) An employee of the National Intelligence Authority, an employee of an entity other than the Authority who is assigned or detailed to the Authority, or of a contractor of the Authority, who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the Inspector General of the National Intelligence Authority in accordance with section 141(h)(5) of the National Intelligence Reform Act of 2004.".

SEC. 312. CONFORMING AMENDMENT RELATING TO CHIEF FINANCIAL OFFICER OF THE NATIONAL INTELLIGENCE AUTHORITY.

Section 901(b)(1) of title 31, United States Code, is amended by adding at the end the following new subparagraph:

"(Q) The National Intelligence Authority.".

Subtitle B—Transfers and Terminations

SEC. 321. TRANSFER OF OFFICE OF DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE FOR COMMUNITY MANAGEMENT.

(a) TRANSFER.—There shall be transferred to the Office of the National Intelligence Director the staff of the Office of the Deputy Director of Central Intelligence for Community Management as of the date of the enactment of this Act, including all functions and activities discharged by the Office of the Deputy Director of Central Intelligence for Community Management as of that date.

(b) ADMINISTRATION.—The National Intelligence Director shall administer the staff of the Office of the Deputy Director of Central Intelligence for Community Management after the date of the enactment of this Act as a component of the Office of the National Intelligence Director under section 121(d).

SEC. 322. TRANSFER OF NATIONAL COUNTERTERRORISM EXECUTIVE.

(a) TRANSFER.—There shall be transferred to the Office of the National Intelligence Director the National Counterintelligence Executive and the Office of the National Counterintelligence Executive under the Counterintelligence Enhancement Act of 2002 (title IX of Public Law 107–306; 50 U.S.C. 402b et seq.), as amended by section 309 of this Act, including all functions and activities discharged by the National Counterintelligence Executive and the Office of the National Counterintelligence Executive as of the date of the enactment of this Act.

(b) ADMINISTRATION.—The National Intelligence Director shall treat the National Counterintelligence Executive, and administer the Office of the National Counterintelligence Executive, after the date of the enactment of this Act as components of the Office of the National Intelligence Director under section 121(c).

SEC. 323. TRANSFER OF TERRORIST THREAT INTEGRATION CENTER.

(a) TRANSFER.—There shall be transferred to the National Counterterrorism Center the Terrorist Threat Integration Center (TTIC), including all functions and activities discharged by the Terrorist Threat Integration Center as of the date of the enactment of this Act.

(b) ADMINISTRATION.—The Director of the National Counterterrorism Center shall administer the Terrorist Threat Integration Center after the date of the enactment of this Act as a component of the Directorate of Intelligence of the National Counterterrorism Center under section 143(g)(2).

SEC. 324. TERMINATION OF CERTAIN POSITIONS WITHIN THE CENTRAL INTELLIGENCE AGENCY.

(a) TERMINATION.—The positions within the Central Intelligence Agency referred to in subsection (b) are hereby abolished.

(b) COVERED POSITIONS.—The positions within the Central Intelligence Agency referred to in this subsection are as follows:

(1) The Deputy Director of Central Intelligence for Community Management.

(2) The Assistant Director of Central Intelligence for Collection.

(3) The Assistant Director of Central Intelligence for Analysis and Production.

(4) The Assistant Director of Central Intelligence for Administration.

Subtitle C—Other Transition Matters

SEC. 331. EXECUTIVE SCHEDULE MATTERS.

(a) EXECUTIVE SCHEDULE LEVEL I.—Section 5312 of title 5, United States Code, is amended by adding the end the following new item:

"National Intelligence Director.".

(b) EXECUTIVE SCHEDULE LEVEL II.—Section 5313 of title 5, United States Code, is amended—

(1) by striking the item relating to the Director of Central Intelligence; and

(2) by adding at the end the following new items:

"Deputy National Intelligence Directors (5).

"Director of the National Counterterrorism Center.".

(c) EXECUTIVE SCHEDULE LEVEL III.—Section 5314 of title 5, United States Code, is amended by striking the item relating to the Deputy Directors of Central Intelligence and inserting the following new item:

"Director of the Central Intelligence Agency.".

(d) EXECUTIVE SCHEDULE LEVEL IV.—Section 5315 of title 5, United States Code, is amended by striking the item relating to the Assistant Directors of Central Intelligence.

SEC. 332. PRESERVATION OF INTELLIGENCE CAPABILITIES.

The National Intelligence Director, the Director of the Central Intelligence Agency, and the Secretary of Defense shall jointly take such actions as are appropriate to preserve the intelligence capabilities of the United States during the establishment of the National Intelligence Authority under this Act.

SEC. 333. REORGANIZATION.

(a) REORGANIZATION.—The National Intelligence Director may, with the approval of the President and after consultation with the department, agency, or element concerned, allocate or reallocate functions among the officers of the National Intelligence Program, and may establish, consolidate, alter, or discontinue organizational units within the Program, but only after providing notice of such action to Congress, which shall include an explanation of the rationale for the action.

(b) LIMITATION.—The authority under subsection (a) does not extend to any action inconsistent with law.

(c) CONGRESSIONAL REVIEW.—An action may be taken under the authority under subsection (a) only with the approval of the following:

(1) Each of the congressional intelligence committees.

(2) Each of the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

SEC. 334. NATIONAL INTELLIGENCE DIRECTOR REPORT ON IMPLEMENTATION OF INTELLIGENCE COMMUNITY REFORM.

Not later than one year after the date of the enactment of this Act, the National Intelligence Director shall submit to Congress a report on the progress made in the implementation of this Act, including the amendments made by this Act. The report shall include a comprehensive description of the progress made, and may include such recommendations for additional legislative or administrative action as the Director considers appropriate.

SEC. 335. COMPTROLLER GENERAL REPORTS ON IMPLEMENTATION OF INTELLIGENCE COMMUNITY REFORM.

(a) REPORTS.—(1) Not later than two years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a comprehensive report on the implementation of this Act and the amendments made by this Act.

(2) The Comptroller General may submit to Congress at any time during the two-year period beginning on the date of the enactment of this Act, such reports on the progress made in the implementation of this Act and the amendments made by this Act as the Comptroller General considers appropriate.

(b) REPORT ELEMENTS.—Each report under subsection (a) shall include the following:

(1) The assessment of the Comptroller General of the progress made in the implementation of this Act (and the amendments made by this Act) as of the date of such report.

(2) A description of any delays or other shortfalls in the implementation of this Act that have been identified by the Comptroller General.

(3) Any recommendations for additional legislative or administrative action that the Comptroller General considers appropriate.

(c) AGENCY COOPERATION.—Each department, agency, and element of the United States Government shall cooperate with the Comptroller General in the assessment of the implementation of this Act, and shall provide the Comptroller General timely and complete access to relevant documents in accordance with section 716 of title 31, United States Code.

SEC. 336. GENERAL REFERENCES.

(a) DIRECTOR OF CENTRAL INTELLIGENCE AS HEAD OF INTELLIGENCE COMMUNITY.—Any reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the intelligence community in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the National Intelligence Director.

(b) DIRECTOR OF CENTRAL INTELLIGENCE AS HEAD OF CIA.—Any reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director's capacity as the head of the Central Intelligence Agency in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the Director of the Central Intelligence Agency.

(c) OFFICE OF THE DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE FOR COMMUNITY MANAGEMENT.—Any reference to the Office of the Deputy Director of Central Intelligence for Community Management in any law, regulation, document, paper, or other record of the United States shall be deemed to be a reference to the staff of such office within the Office of the National Intelligence Director under section 121.

Subtitle D—Effective Date

SEC. 341. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this Act, and the amendments made by this Act, shall take effect 180 days after the date of the enactment of this Act.

(b) EARLIER EFFECTIVE DATE.—In order to ensure the rapid implementation of this Act while simultaneously ensuring a smooth transition that will safeguard the national security of the United States, the President may provide that this Act (including the amendments made by this Act), or one or more particular provisions of this Act (including the amendments made by such provision or provisions), shall take effect on such date that is earlier than the date otherwise provided under subsection (a) as the President shall specify.

(c) NOTIFICATION OF EFFECTIVE DATES.—If the President exercises the authority in subsection (b), the President shall—

(1) notify Congress of the exercise of such authority; and

(2) publish in the Federal Register notice of the earlier effective date or dates involved, including each provision (and amendment) covered by such earlier effective date.

Subtitle E—Other Matters

SEC. 351. SEVERABILITY.

If any provision of this Act, or an amendment made by this Act, or the application of such provision to any person or circumstance is held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those to which such provision is held invalid, shall not be affected thereby.

SEC. 352. AUTHORIZATION OF APPROPRIATIONS.

There are specifically authorized to be appropriated for fiscal year 2005 such sums as may be necessary to carry out this title and titles I and II and the amendments made by those titles.

TITLE IV—IMPLEMENTATION OF RECOMMENDATIONS OF NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

SEC. 401. SHORT TITLE.

This title may be cited as the "9/11 Commission Report Implementation Act of 2004".

Subtitle A—The Role of Diplomacy, Foreign Aid, and the Military in the War on Terrorism

SEC. 411. FINDINGS.

Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Long-term success in the war on terrorism demands the use of all elements of national power, including diplomacy, military action, intelligence, covert action, law enforcement, economic policy, foreign aid, public diplomacy, and homeland defense.

(2) To win the war on terrorism, the United States must assign to economic and diplomatic capabilities the same strategic priority that is assigned to military capabilities.

(3) The legislative and executive branches of the Government of the United States must commit to robust, long-term investments in all of the tools necessary for the foreign policy of the United States to successfully accomplish the goals of the United States.

(4) The investments referred to in paragraph (3) will require increased funding to United States foreign affairs programs in general, and to priority areas as described in this subtitle in particular.

SEC. 412. TERRORIST SANCTUARIES.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Complex terrorist operations require locations that provide such operations sanctuary from interference by government or law enforcement personnel.

(2) A terrorist sanctuary existed in Afghanistan before September 11, 2001.

(3) The terrorist sanctuary in Afghanistan provided direct and indirect value to members of al Qaeda who participated in the terrorist attacks on the United States on September 11, 2001, and in other terrorist operations.

(4) Terrorist organizations have fled to some of the least governed and most lawless places in the world to find sanctuary.

(5) During the 21st century, terrorists are focusing on remote regions and failing states as locations to seek sanctuary.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the United States Government should identify and prioritize locations that are or that could be used as terrorist sanctuaries;

(2) the United States Government should have a realistic strategy that includes the use of all elements of national power to keep possible terrorists from using a location as a sanctuary; and

(3) the United States Government should reach out, listen to, and work with countries in bilateral and multilateral fora to prevent locations from becoming sanctuaries and to prevent terrorists from using locations as sanctuaries.

SEC. 413. ROLE OF PAKISTAN IN COUNTERING TERRORISM.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) The Government of Pakistan has a critical role to perform in the struggle against Islamist terrorism.

(2) The endemic poverty, widespread corruption, and frequent ineffectiveness of government in Pakistan create opportunities for Islamist recruitment.

(3) The poor quality of education in Pakistan is particularly worrying, as millions of families send their children to madrassahs, some of which have been used as incubators for violent extremism.

(4) The vast unpoliced regions in Pakistan make the country attractive to extremists seeking refuge and recruits and also provide a base for operations against coalition forces in Afghanistan.

(5) A stable Pakistan, with a moderate, responsible government that serves as a voice of tolerance in the Muslim world, is critical to stability in the region.

(6) There is a widespread belief among the people of Pakistan that the United States has long treated them as allies of convenience.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the United States should make a long-term commitment to fostering a stable and secure future in Pakistan, as long as its leaders remain committed to combatting extremists and extremism, ending the proliferation of weapons of mass destruction, securing its borders, and gaining internal control of all its territory while pursuing policies that strengthen civil society, promote moderation and advance socio-economic progress;

(2) Pakistan should make sincere efforts to transition to democracy, enhanced rule of law, and robust civil institutions, and United States policy toward Pakistan should promote such a transition;

(3) the United States assistance to Pakistan should be maintained at the overall levels requested by the President for fiscal year 2005;

(4) the United States should support the Government of Pakistan with a comprehensive effort that extends from military aid to support for better education;

(5) the United States Government should devote particular attention and resources to assisting in the improvement of the quality of education in Pakistan; and

(6) the Government of Pakistan should devote additional resources of such Government to expanding and improving modern public education in Pakistan.

SEC. 414. AID TO AFGHANISTAN.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) The United States and its allies in the international community have made progress in promoting economic and political reform within Afghanistan, including the establishment of a central government with a democratic constitution, a new currency, and a new army, the increase of personal freedom, and the elevation of the standard of living of many Afghans.

(2) A number of significant obstacles must be overcome if Afghanistan is to become a secure and prosperous democracy, and such a transition depends in particular upon—

(A) improving security throughout the country;

(B) disarming and demobilizing militias;

(C) curtailing the rule of the warlords;

(D) promoting equitable economic development;

(E) protecting the human rights of the people of Afghanistan;

(F) holding elections for public office; and

(G) ending the cultivation and trafficking of narcotics.

(3) The United States and the international community must make a long-term commitment to addressing the deteriorating security situation in Afghanistan and the burgeoning narcotics trade, endemic poverty, and other serious problems in Afghanistan in order to prevent that country from relapsing into a sanctuary for international terrorism.

(b) SENSE OF CONGRESS.—

(1) ACTIONS FOR AFGHANISTAN.—It is the sense of Congress that the Government of the United States should take, with respect to Afghanistan, the following actions:

(A) Working with other nations to obtain long-term security, political, and financial commitments and fulfillment of pledges to the Government of Afghanistan to accomplish the objectives of the Afghanistan Freedom Support Act of 2002 (22 U.S.C. 7501 et seq.), especially to ensure a secure, democratic, and prosperous Afghanistan that respects the rights of its citizens and is free of international terrorist organizations.

(B) Using the voice and vote of the United States in relevant international organizations, including the North Atlantic Treaty Organization and the United Nations Security Council, to strengthen international commitments to assist the Government of Afghanistan in enhancing security, building national police and military forces, increasing counter-narcotics efforts, and expanding infrastructure and public services throughout the country.

(C) Taking appropriate steps to increase the assistance provided under programs of the Department of State and the United States Agency for International Development throughout Afghanistan and to increase the number of personnel of those agencies in Afghanistan as necessary to support the increased assistance.

(2) REVISION OF AFGHANISTAN FREEDOM SUPPORT ACT OF 2002.—It is the sense of Congress that Congress should, in consultation with the President, update and revise, as appropriate, the Afghanistan Freedom Support Act of 2002.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the President for each of the fiscal years 2005 through 2009 such sums as may be necessary to provide assistance for Afghanistan, unless otherwise authorized by Congress, for the following purposes:

(A) For development assistance under sections 103, 105, and 106 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151a, 2151c, and 2151d).

(B) For children's health programs under the Child Survival and Health Program Fund under section 104 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b).

(C) For economic assistance under the Economic Support Fund under chapter 4 of part

II of the Foreign Assistance Act of 1961 (22 U.S.C. 2346 et seq.).

(D) For international narcotics and law enforcement under section 481 of the Foreign Assistance Act of 1961 (22 U.S.C. 2291).

(E) For nonproliferation, anti-terrorism, demining, and related programs.

(F) For international military education and training under section 541 of the Foreign Assistance Act of 1961 (22 U.S.C. 2347).

(G) For Foreign Military Financing Program grants under section 23 of the Arms Export Control Act (22 U.S.C. 2763).

(H) For peacekeeping operations under section 551 of the Foreign Assistance Act of 1961 (22 U.S.C. 2348).

(2) CONDITIONS FOR ASSISTANCE.—Assistance provided by the President under this subsection—

(A) shall be consistent with the Afghanistan Freedom Support Act of 2002; and

(B) shall be provided with reference to the "Securing Afghanistan's Future" document published by the Government of Afghanistan.

SEC. 415. THE UNITED STATES-SAUDI ARABIA RELATIONSHIP.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Despite a long history of friendly relations with the United States, Saudi Arabia has been a problematic ally in combating Islamist extremism.

(2) Cooperation between the Governments of the United States and Saudi Arabia has traditionally been carried out in private.

(3) Counterterrorism cooperation between the Governments of the United States and Saudi Arabia has improved significantly since the terrorist bombing attacks in Riyadh, Saudi Arabia, on May 12, 2003, especially cooperation to combat terror groups operating inside Saudi Arabia.

(4) The Government of Saudi Arabia is now pursuing al Qaeda within Saudi Arabia and has begun to take some modest steps toward internal reform.

(5) Nonetheless, the Government of Saudi Arabia has been at times unresponsive to United States requests for assistance in the global war on Islamist terrorism.

(6) The Government of Saudi Arabia has not done all it can to prevent nationals of Saudi Arabia from funding and supporting extremist organizations in Saudi Arabia and other countries.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the problems in the relationship between the United States and Saudi Arabia must be confronted openly, and the opportunities for cooperation between the countries must be pursued openly by those governments;

(2) both governments must build a relationship that they can publicly defend and that is based on other national interests in addition to their national interests in oil;

(3) this relationship should include a shared commitment to political and economic reform in Saudi Arabia;

(4) this relationship should also include a shared interest in greater tolerance and respect for other cultures in Saudi Arabia and a commitment to fight the violent extremists who foment hatred in the Middle East; and

(5) the Government of Saudi Arabia must do all it can to prevent nationals of Saudi Arabia from funding and supporting extremist organizations in Saudi Arabia and other countries.

SEC. 416. EFFORTS TO COMBAT ISLAMIST TERRORISM.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) While support for the United States has plummeted in the Islamic world, many negative views are uninformed, at best, and, at worst, are informed by coarse stereotypes and caricatures.

(2) Local newspapers in Islamic countries and influential broadcasters who reach Islamic audiences through satellite television often reinforce the idea that the people and Government of the United States are anti-Muslim.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Government of the United States should offer an example of moral leadership in the world that includes a commitment to treat all people humanely, abide by the rule of law, and be generous to the people and governments of other countries;

(2) the United States should cooperate with governments of Islamic countries to foster agreement on respect for human dignity and opportunity, and to offer a vision of a better future that includes stressing life over death, individual educational and economic opportunity, widespread political participation, contempt for indiscriminate violence, respect for the rule of law, openness in discussing differences, and tolerance for opposing points of view;

(3) the United States should encourage reform, freedom, democracy, and opportunity for Arabs and Muslims and promote moderation in the Islamic world; and

(4) the United States should work to defeat extremist ideology in the Islamic world by providing assistance to moderate Arabs and Muslims to combat extremist ideas.

SEC. 417. UNITED STATES POLICY TOWARD DICTATORSHIPS.

(a) FINDING.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress finds that short-term gains enjoyed by the United States through cooperation with repressive dictatorships have often been outweighed by long-term setbacks for the stature and interests of the United States.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) United States foreign policy should promote the value of life and the importance of individual educational and economic opportunity, encourage widespread political participation, condemn indiscriminate violence, and promote respect for the rule of law, openness in discussing differences among people, and tolerance for opposing points of view; and

(2) the United States Government must prevail upon the governments of all predominantly Muslim countries, including those that are friends and allies of the United States, to condemn indiscriminate violence, promote the value of life, respect and promote the principles of individual education and economic opportunity, encourage widespread political participation, and promote the rule of law, openness in discussing differences among people, and tolerance for opposing points of view.

SEC. 418. PROMOTION OF UNITED STATES VALUES THROUGH BROADCAST MEDIA.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Although the United States has demonstrated and promoted its values in defending Muslims against tyrants and criminals in Somalia, Bosnia, Kosovo, Afghanistan, and Iraq, this message is not always clearly presented and understood in the Islamic world.

(2) If the United States does not act to vigorously define its message in the Islamic world, the image of the United States will be defined by Islamic extremists who seek to demonize the United States.

(3) Recognizing that many Arab and Muslim audiences rely on satellite television and radio, the United States Government has launched promising initiatives in television and radio broadcasting to the Arab world, Iran, and Afghanistan.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the United States must do more to defend and promote its values and ideals to the broadest possible audience in the Islamic world;

(2) United States efforts to defend and promote these values and ideals are beginning to ensure that accurate expressions of these values reach large audiences in the Islamic world and should be robustly supported;

(3) the United States Government could and should do more to engage the Muslim world in the struggle of ideas; and

(4) the United States Government should more intensively employ existing broadcast media in the Islamic world as part of this engagement.

(c) AUTHORIZATIONS OF APPROPRIATIONS.—There are authorized to be appropriated to the President for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out United States Government broadcasting activities under the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1431 et seq.), the United States International Broadcasting Act of 1994 (22 U.S.C. 6201 et seq.), and the Foreign Affairs Reform and Restructuring Act of 1998 (22 U.S.C. 6501 et seq.), and to carry out other activities under this section consistent with the purposes of such Acts, unless otherwise authorized by Congress.

SEC. 419. EXPANSION OF UNITED STATES SCHOLARSHIP AND EXCHANGE PROGRAMS IN THE ISLAMIC WORLD.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Exchange, scholarship, and library programs are effective ways for the United States Government to promote internationally the values and ideals of the United States.

(2) Exchange, scholarship, and library programs can expose young people from other countries to United States values and offer them knowledge and hope.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the United States should expand its exchange, scholarship, and library programs, especially those that benefit people in the Arab and Muslim worlds.

(c) AUTHORITY TO EXPAND EDUCATIONAL AND CULTURAL EXCHANGES.—The President is authorized to substantially expand the exchange, scholarship, and library programs of the United States, especially such programs that benefit people in the Arab and Muslim worlds.

(d) AVAILABILITY OF FUNDS.—Of the amounts authorized to be appropriated for educational and cultural exchange programs in each of the fiscal years 2005 through 2009, there is authorized to be made available to the Secretary of State such sums as may be necessary to carry out programs under this section, unless otherwise authorized by Congress.

SEC. 420. INTERNATIONAL YOUTH OPPORTUNITY FUND.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Education that teaches tolerance, the dignity and value of each individual, and respect for different beliefs is a key element in any global strategy to eliminate Islamist terrorism.

(2) Education in the Middle East about the world outside that region is weak.

(3) The United Nations has rightly equated literacy with freedom.

(4) The international community is moving toward setting a concrete goal of reducing by half the illiteracy rate in the Middle East by 2010, through the implementation of education programs targeting women and girls and programs for adult literacy, and by other means.

(5) To be effective, efforts to improve education in the Middle East must also include—

(A) support for the provision of basic education tools, such as textbooks that translate more of the world's knowledge into local languages and local libraries to house such materials; and

(B) more vocational education in trades and business skills.

(6) The Middle East can benefit from some of the same programs to bridge the digital divide that already have been developed for other regions of the world.

(b) INTERNATIONAL YOUTH OPPORTUNITY FUND.—

(1) ESTABLISHMENT.—The President shall establish an International Youth Opportunity Fund to provide financial assistance for the improvement of public education in the Middle East.

(2) INTERNATIONAL PARTICIPATION.—The President shall seek the cooperation of the international community in establishing and generously supporting the Fund.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the President for the establishment of the International Youth Opportunity Fund, in addition to any amounts otherwise available for such purpose, such sums as may be necessary for each of the fiscal years 2005 through 2009, unless otherwise authorized by Congress.

SEC. 421. THE USE OF ECONOMIC POLICIES TO COMBAT TERRORISM.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) While terrorism is not caused by poverty, breeding grounds for terrorism are created by backward economic policies and repressive political regimes.

(2) Policies that support economic development and reform also have political implications, as economic and political liberties are often linked.

(3) The United States is working toward creating a Middle East Free Trade Area by 2013 and implementing a free trade agreement with Bahrain, and free trade agreements exist between the United States and Israel and the United States and Jordan.

(4) Existing and proposed free trade agreements between the United States and Islamic countries are drawing interest from other countries in the Middle East region, and Islamic countries can become full participants in the rules-based global trading system, as the United States considers lowering its barriers to trade with the poorest Arab countries.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) a comprehensive United States strategy to counter terrorism should include economic policies that encourage development, open societies, and opportunities for people to improve the lives of their families and to enhance prospects for their children's future;

(2) one element of such a strategy should encompass the lowering of trade barriers with the poorest countries that have a significant population of Arab or Muslim individuals;

(3) another element of such a strategy should encompass United States efforts to promote economic reform in countries that have a significant population of Arab or Muslim individuals, including efforts to integrate such countries into the global trading system; and

(4) given the importance of the rule of law in promoting economic development and attracting investment, the United States should devote an increased proportion of its assistance to countries in the Middle East to the promotion of the rule of law.

SEC. 422. MIDDLE EAST PARTNERSHIP INITIATIVE.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for each of the fiscal years 2005 through 2009 such sums as may be necessary for the Middle East Partnership Initiative, unless otherwise authorized by Congress.

(b) SENSE OF CONGRESS.—It is the sense of Congress that, given the importance of the rule of law and economic reform to development in the Middle East, a significant portion of the funds authorized to be appropriated under subsection (a) should be made available to promote the rule of law in the Middle East.

SEC. 423. COMPREHENSIVE COALITION STRATEGY FOR FIGHTING TERRORISM.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Almost every aspect of the counterterrorism strategy of the United States relies on international cooperation.

(2) Since September 11, 2001, the number and scope of United States Government contacts with foreign governments concerning counterterrorism have expanded significantly, but such contacts have often been ad hoc and not integrated as a comprehensive and unified approach.

(b) INTERNATIONAL CONTACT GROUP ON COUNTERTERRORISM.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that the President—

(A) should seek to engage the leaders of the governments of other countries in a process of advancing beyond separate and uncoordinated national counterterrorism strategies to develop with those other governments a comprehensive coalition strategy to fight Islamist terrorism; and

(B) to that end, should seek to establish an international counterterrorism policy contact group with the leaders of governments providing leadership in global counterterrorism efforts and governments of countries with sizable Muslim populations, to be used as a ready and flexible international means for discussing and coordinating the development of important counterterrorism policies by the participating governments.

(2) AUTHORITY.—The President is authorized to establish an international counterterrorism policy contact group with the leaders of governments referred to in paragraph (1) for purposes as follows:

(A) To develop in common with such other countries important policies and a strategy that address the various components of international prosecution of the war on terrorism, including policies and a strategy that address military issues, law enforcement, the collection, analysis, and dissemination of intelligence, issues relating to interdiction of travel by terrorists, counterterrorism-related customs issues, financial issues, and issues relating to terrorist sanctuaries.

(B) To address, to the extent (if any) that the President and leaders of other participating governments determine appropriate, such long-term issues as economic and political reforms that can contribute to strengthening stability and security in the Middle East.

SEC. 424. TREATMENT OF FOREIGN PRISONERS.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Carrying out the global war on terrorism requires the development of policies with respect to the detention and treatment of captured international terrorists that are adhered to by all coalition forces.

(2) Article 3 of the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316) was specifically designed for cases in which the usual rules of war do not apply, and the minimum standards of treatment pursuant to such Article are generally accepted throughout the world as customary international law.

(b) POLICY.—The policy of the United States is as follows:

(1) It is the policy of the United States to treat all foreign persons captured, detained, interned or otherwise held in the custody of the United States (hereinafter "prisoners") humanely and in accordance with standards that the United States would consider legal if perpetrated by the enemy against an American prisoner.

(2) It is the policy of the United States that all officials of the United States are bound both in wartime and in peacetime by the legal prohibition against torture, cruel, inhuman or degrading treatment.

(3) If there is any doubt as to whether prisoners are entitled to the protections afforded by the Geneva Conventions, such prisoners shall enjoy the protections of the Geneva Conventions until such time as their status can be determined pursuant to the procedures authorized by Army Regulation 190-8, Section 1-6.

(4) It is the policy of the United States to expeditiously prosecute cases of terrorism or other criminal acts alleged to have been committed by prisoners in the custody of the United States Armed Forces at Guantanamo Bay, Cuba, in order to avoid the indefinite detention of prisoners, which is contrary to the legal principles and security interests of the United States.

(c) REPORTING.—The Department of Defense shall submit to the appropriate congressional committees:

(1) A quarterly report providing the number of prisoners who were denied Prisoner of War (POW) status under the Geneva Conventions and the basis for denying POW status to each such prisoner.

(2) A report setting forth—

(A) the proposed schedule for military commissions to be held at Guantanamo Bay, Cuba; and

(B) the number of individuals currently held at Guantanamo Bay, Cuba, the number of such individuals who are unlikely to face a military commission in the next six months, and each reason for not bringing such individuals before a military commission.

(3) All International Committee of the Red Cross reports, completed prior to the enactment of this Act, concerning the treatment of prisoners in United States custody at Guantanamo Bay, Cuba, Iraq, and Afghanistan. Such ICRC reports should be provided, in classified form, not later than 15 days after enactment of this Act.

(4) A report setting forth all prisoner interrogation techniques approved by officials of the United States.

(d) Annual Training Requirement.—The Department of Defense shall certify that all Federal employees and civilian contractors engaged in the handling or interrogating of prisoners have fulfilled an annual training requirement on the laws of war, the Geneva Conventions and the obligations of the United States under international humanitarian law.

(e) Prohibition on Torture or Cruel, Inhumane, or Degrading Treatment or Punishment.—

(1) In general.—No prisoner shall be subject to torture or cruel, inhumane, or degrading treatment or punishment that is prohibited by the Constitution, laws, or treaties of the United States.

(2) Relationship to Geneva Conventions.—Nothing in this section shall affect the status of any person under the Geneva Conventions or whether any person is entitled to the protections of the Geneva Conventions.

(f) Rules, Regulations, and Guidelines.—

(1) Requirement.—Not later than 180 days after the date of the enactment of this Act, the Secretary and the Director shall prescribe the rules, regulations, or guidelines necessary to ensure compliance with the prohibition in subsection (e)(1) by all personnel of the United States Government and by any person providing services to the United States Government on a contract basis.

(2) Report to congress.—The Secretary and the Director shall submit to Congress the rules, regulations, or guidelines prescribed under paragraph (1), and any modifications to such rules, regulations, or guidelines—

(A) not later than 30 days after the effective date of such rules, regulations, guidelines, or modifications; and

(B) in a manner and form that will protect the national security interests of the United States.

(g) Reports on Possible Violations.—

(1) Requirement.—The Secretary and the Director shall each submit, on a timely basis and not less than twice each year, a report to Congress on the circumstances surrounding any investigation of a possible violation of the prohibition in subsection (e)(1) by United States Government personnel or by a person providing services to the United States Government on a contract basis.

(2) Form of report.—A report required under paragraph (1) shall be submitted in a manner and form that—

(A) will protect the national security interests of the United States; and

(B) will not prejudice any prosecution of an individual involved in, or responsible for, a violation of the prohibition in subsection (e)(1).

(h) Report on a Coalition Approach Toward the Detention and Humane Treatment of Captured Terrorists.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to Congress a report describing the efforts of the United States Government to develop an approach toward the detention and humane treatment of captured international terrorists that will be adhered to by all countries that are members of the coalition against terrorism.

(i) Definitions.—In this section:

(1) Cruel, inhumane, or degrading treatment or punishment.—The term "cruel, inhumane, or degrading treatment or punishment" means the cruel, unusual, and inhumane treatment or punishment prohibited by the fifth amendment, eighth amendment, or fourteenth amendment to the Constitution.

(2) Director.—The term "Director" means the National Intelligence Director.

(3) Geneva conventions.—The term "Geneva Conventions" means—

(A) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3114);

(B) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(C) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(D) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

(4) Secretary.—The term "Secretary" means the Secretary of Defense.

(5) Torture.—The term "torture" has the meaning given that term in section 2340 of title 18, United States Code.

SEC. 425. PROLIFERATION OF WEAPONS OF MASS DESTRUCTION.

(a) Findings.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Al Qaeda and other terror groups have tried to acquire or make weapons of mass destruction since 1994 or earlier.

(2) The United States doubtless would be a prime target for use of any such weapon by al Qaeda.

(3) Although the United States Government has supported the Cooperative Threat Reduction, Global Threat Reduction Initiative, and other nonproliferation assistance programs, nonproliferation experts continue to express deep concern about the adequacy of such efforts to secure weapons of mass destruction and related materials that still exist in Russia other countries of the former Soviet Union, and around the world.

(4) The cost of increased investment in the prevention of proliferation of weapons of mass destruction and related materials is greatly outweighed by the potentially catastrophic cost to the United States of the use of such weapons by terrorists.

(5) The Cooperative Threat Reduction, Global Threat Reduction Initiative, and other nonproliferation assistance programs are the United States primary method of preventing the proliferation of weapons of mass destruction and related materials from Russia and the states of the former Soviet Union, but require further expansion, improvement, and resources.

(6) Better coordination is needed within the executive branch of government for the budget development, oversight, and implementation of the Cooperative Threat Reduction, Global Threat Reduction Initiative, and other nonproliferation assistance programs, and critical elements of such programs are operated by the Departments of Defense, Energy, and State.

(7) The effective implementation of the Cooperative Threat Reduction, Global Threat Reduction Initiative, and other nonproliferation assistance programs in the countries of the former Soviet Union is hampered by Russian behavior and conditions on the provision of assistance under such programs that are unrelated to bilateral cooperation on weapons dismantlement.

(b) Sense of Congress.—It is the sense of Congress that—

(1) maximum effort to prevent the proliferation of weapons of mass destruction and related materials, wherever such proliferation may occur, is warranted;

(2) the Cooperative Threat Reduction, Global Threat Reduction Initiative, and other nonproliferation assistance programs should be expanded, improved, accelerated, and better funded to address the global dimensions of the proliferation threat; and

(3) the Proliferation Security Initiative is an important counterproliferation program that should be expanded to include additional partners.

(c) Cooperative Threat Reduction, Global Threat Reduction Initiative, and other nonproliferation assistance programs.—In this section, the term "Cooperative Threat Reduction, Global Threat Reduction Initiative, and other nonproliferation assistance programs" includes—

(1) the programs specified in section 1501(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 50 U.S.C. 2362 note);

(2) the activities for which appropriations are authorized by section 3101(a)(2) of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136; 117 Stat. 1742);

(3) the Department of State program of assistance to science centers;

(4) the Global Threat Reduction Initiative of the Department of Energy; and

(5) a program of any agency of the Federal Government having the purpose of assisting any foreign government in preventing nuclear weapons, plutonium, highly enriched uranium, or other materials capable of sustaining an explosive nuclear chain reaction, or nuclear weapons technology from becoming available to terrorist organizations.

(d) Strategy and Plan.—

(1) Strategy.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to Congress—

(A) a comprehensive strategy for expanding and strengthening the Cooperative Threat Reduction, Global Threat Reduction Initiative, and other nonproliferation assistance programs; and

(B) an estimate of the funding necessary to execute such strategy.

(2) Plan.—The strategy required by paragraph (1) shall include a plan for securing the nuclear weapons and related materials that are the most likely to be acquired or sought by, and susceptible to becoming available to, terrorist organizations, including—

(A) a prioritized list of the most dangerous and vulnerable sites;

(B) measurable milestones for improving United States nonproliferation assistance programs;

(C) a schedule for achieving such milestones; and

(D) initial estimates of the resources necessary to achieve such milestones under such schedule.

SEC. 426. FINANCING OF TERRORISM.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) While efforts to designate and freeze the assets of terrorist financiers have been relatively unsuccessful, efforts to target the relatively small number of al Qaeda financial facilitators have been valuable and successful.

(2) The death or capture of several important financial facilitators has decreased the amount of money available to al Qaeda, and has made it more difficult for al Qaeda to raise and move money.

(3) The capture of al Qaeda financial facilitators has provided a windfall of intelligence that can be used to continue the cycle of disruption.

(4) The United States Government has rightly recognized that information about terrorist money helps in understanding terror networks, searching them out, and disrupting their operations.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) a critical weapon in the effort to stop terrorist financing should be the targeting of terrorist financial facilitators by intelligence and law enforcement agencies; and

(2) efforts to track terrorist financing must be paramount in United States counter-terrorism efforts.

(c) REPORT ON TERRORIST FINANCING.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to Congress a report evaluating the effectiveness of United States efforts to curtail the international financing of terrorism.

(2) CONTENTS.—The report required by paragraph (1) shall evaluate and make recommendations on—

(A) the effectiveness of efforts and methods to the identification and tracking of terrorist financing;

(B) ways to improve multinational and international governmental cooperation in this effort;

(C) ways to improve the effectiveness of financial institutions in this effort;

(D) the adequacy of agency coordination, nationally and internationally, including international treaties and compacts, in this effort and ways to improve that coordination; and

(E) recommendations for changes in law and additional resources required to improve this effort.

SEC. 427. REPORT TO CONGRESS.

(a) REQUIREMENT FOR REPORT.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to Congress a report on the activities of the Government of the United States to carry out the provisions of this subtitle.

(b) CONTENT.—The report required under this section shall include the following:

(1) TERRORIST SANCTUARIES.—A description of the strategy of the United States to address and, where possible, eliminate terrorist sanctuaries, including—

(A) a description of actual and potential terrorist sanctuaries, together with an assessment of the priorities of addressing and eliminating such sanctuaries;

(B) an outline of strategies for disrupting or eliminating the security provided to terrorists by such sanctuaries;

(C) a description of efforts by the United States Government to work with other countries in bilateral and multilateral fora to address or eliminate actual or potential terrorist sanctuaries and disrupt or eliminate the security provided to terrorists by such sanctuaries; and

(D) a description of long-term goals and actions designed to reduce the conditions that allow the formation of terrorist sanctuaries, such as supporting and strengthening host governments, reducing poverty, increasing economic development, strengthening civil society, securing borders, strengthening internal security forces, and disrupting logistics and communications networks of terrorist groups.

(2) SUPPORT FOR PAKISTAN.—A description of the efforts of the United States Government to support Pakistan and encourage moderation in that country, including—

(A) an examination of the desirability of establishing a Pakistan Education Fund to direct resources toward improving the quality of secondary schools in Pakistan, and an examination of the efforts of the Government of Pakistan to fund modern public education;

(B) recommendations on the funding necessary to provide various levels of educational support;

(C) an examination of the current composition and levels of United States military aid to Pakistan, together with any recommendations for changes in such levels and composition that the President considers appropriate; and

(D) an examination of other major types of United States financial support to Pakistan, together with any recommendations for changes in the levels and composition of such support that the President considers appropriate.

(3) SUPPORT FOR AFGHANISTAN.—

(A) SPECIFIC OBJECTIVES.—A description of the strategy of the United States to provide aid to Afghanistan during the 5-year period beginning on the date of enactment of this Act, including a description of the resources necessary during the next 5 years to achieve specific objectives in Afghanistan in the following areas:

(i) Fostering economic development.

(ii) Curtailing the cultivation of opium.

(iii) Achieving internal security and stability.

(iv) Eliminating terrorist sanctuaries.

(v) Increasing governmental capabilities.

(vi) Improving essential infrastructure and public services.

(vii) Improving public health services.

(viii) Establishing a broad-based educational system.

(ix) Promoting democracy and the rule of law.

(x) Building national police and military forces.

(B) PROGRESS.—A description of—

(i) the progress made toward achieving the objectives described in clauses (i) through (x) of subparagraph (A); and

(ii) any shortfalls in meeting such objectives and the resources needed to fully achieve such objectives.

(4) COLLABORATION WITH SAUDI ARABIA.—A description of the strategy of the United States for expanding collaboration with the Government of Saudi Arabia on subjects of mutual interest and of importance to the United States, including a description of—

(A) the utility of the President undertaking a periodic, formal, and visible high-level dialogue between senior United States Government officials of cabinet level or higher rank and their counterparts in the Government of Saudi Arabia to address challenges in the relationship between the two governments and to identify areas and mechanisms for cooperation;

(B) intelligence and security cooperation between the United States and Saudi Arabia in the fight against Islamist terrorism;

(C) ways to advance Saudi Arabia's contribution to the Middle East peace process;

(D) political and economic reform in Saudi Arabia and throughout the Middle East;

(E) ways to promote greater tolerance and respect for cultural and religious diversity in Saudi Arabia and throughout the Middle East; and

(F) ways to assist the Government of Saudi Arabia in preventing nationals of Saudi Arabia from funding and supporting extremist groups in Saudi Arabia and other countries.

(5) STRUGGLE OF IDEAS IN THE ISLAMIC WORLD.—A description of a cohesive, long-term strategy of the United States to help win the struggle of ideas in the Islamic world, including the following:

(A) A description of specific goals related to winning this struggle of ideas.

(B) A description of the range of tools available to the United States Government to accomplish such goals and the manner in which such tools will be employed.

(C) A list of benchmarks for measuring success and a plan for linking resources to the accomplishment of such goals.

(D) A description of any additional resources that may be necessary to help win this struggle of ideas.

(E) Any recommendations for the creation of, and United States participation in, international institutions for the promotion of democracy and economic diversification in the Islamic world, and intraregional trade in the Middle East.

(F) An estimate of the level of United States financial assistance that would be sufficient to convince United States allies and people in the Islamic world that engaging in the struggle of ideas in the Islamic world is a top priority of the United States and that the United States intends to make a substantial and sustained commitment toward winning this struggle.

(6) OUTREACH THROUGH BROADCAST MEDIA.—A description of a cohesive, long-term strategy of the United States to expand its outreach to foreign Muslim audiences through broadcast media, including the following:

(A) The initiatives of the Broadcasting Board of Governors with respect to outreach to foreign Muslim audiences.

(B) An outline of recommended actions that the United States Government should take to more regularly and comprehensively present a United States point of view through indigenous broadcast media in countries with sizable Muslim populations, including increasing appearances by United States Government officials, experts, and citizens.

(C) An assessment of potential incentives for, and costs associated with, encouraging United States broadcasters to dub or subtitle into Arabic and other relevant languages their news and public affairs programs broadcast in the Muslim world in order to present those programs to a much broader Muslim audience than is currently reached.

(D) Any recommendations the President may have for additional funding and legislation necessary to achieve the objectives of the strategy.

(7) VISAS FOR PARTICIPANTS IN UNITED STATES PROGRAMS.—A description of—

(A) any recommendations for expediting the issuance of visas to individuals who are entering the United States for the purpose of participating in a scholarship, exchange, or visitor program described in subsection (c) of section ____09 without compromising the security of the United States; and

(B) a proposed schedule for implementing any recommendations described in subparagraph (A).

(8) BASIC EDUCATION IN MUSLIM COUNTRIES.—A description of a strategy, that was developed after consultation with nongovernmental organizations and individuals involved in education assistance programs in developing countries, to promote free universal basic education in the countries of the Middle East and in other countries with significant Muslim populations designated by the President. The strategy shall include the following elements:

(A) A description of the manner in which the resources of the United States and the international community shall be used to help achieve free universal basic education in such countries, including—

(i) efforts of the United states to coordinate an international effort;

(ii) activities of the United States to leverage contributions from members of the Group of Eight or other donors; and

(iii) assistance provided by the United States to leverage contributions from the private sector and civil society organizations.

(B) A description of the efforts of the United States to coordinate with other donors to reduce duplication and waste at the global and country levels and to ensure efficient coordination among all relevant departments and agencies of the Government of the United States.

(C) A description of the strategy of the United States to assist efforts to overcome challenges to achieving free universal basic education in such countries, including strategies to target hard to reach populations to promote education.

(D) A listing of countries that the President determines are eligible for assistance under the International Youth Opportunity Fund described in section 420 and related programs.

(E) A description of the efforts of the United States to encourage countries in the Middle East and other countries with significant Muslim populations designated by the President to develop and implement a national education plan.

(F) A description of activities carried out as part of the International Youth Opportunity Fund to help close the digital divide and expand vocational and business skills in such countries.

(G) An estimate of the funds needed to achieve free universal basic education by 2015 in each country described in subparagraph (D), and an estimate of the amount that has been expended by the United States and by each such country during the previous fiscal year.

(H) A description of the United States strategy for garnering programmatic and financial support from countries in the Middle East and other countries with significant Muslim populations designated by the President, international organizations, and other countries that share the objectives of the International Youth and Opportunity Fund.

(9) ECONOMIC REFORM.—A description of the efforts of the United States Government to encourage development and promote economic reform in countries that have a significant population of Arab or Muslim individuals, including a description of—

(A) efforts to integrate countries with significant populations of Arab or Muslim individuals into the global trading system; and

(B) actions that the United States Government, acting alone and in partnership with governments in the Middle East, can take to promote intraregional trade and the rule of law in the region.

SEC. 428. EFFECTIVE DATE.

Notwithstanding section 341 or any other provision of this Act, this subtitle shall take effect on the date of the enactment of this Act.

Subtitle B—Terrorist Travel and Effective Screening

SEC. 431. COUNTERTERRORIST TRAVEL INTELLIGENCE.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Travel documents are as important to terrorists as weapons since terrorists must travel clandestinely to meet, train, plan, case targets, and gain access to attack sites.

(2) International travel is dangerous for terrorists because they must surface to pass through regulated channels, present themselves to border security officials, or attempt to circumvent inspection points.

(3) Terrorists use evasive, but detectable, methods to travel, such as altered and counterfeit passports and visas, specific travel methods and routes, liaisons with corrupt government officials, human smuggling networks, supportive travel agencies, and immigration and identity fraud.

(4) Before September 11, 2001, no Federal agency systematically analyzed terrorist travel strategies. If an agency had done so, the agency could have discovered the ways in which the terrorist predecessors to al Qaeda had been systematically, but detectably, exploiting weaknesses in our border security since the early 1990s.

(5) Many of the hijackers were potentially vulnerable to interception by border authorities. Analyzing their characteristic travel documents and travel patterns could have allowed authorities to intercept some of the hijackers and a more effective use of information available in Government databases could have identified some of the hijackers.

(6) The routine operations of our immigration laws and the aspects of those laws not specifically aimed at protecting against terrorism inevitably shaped al Qaeda's planning and opportunities.

(7) New insights into terrorist travel gained since September 11, 2001, have not been adequately integrated into the front lines of border security.

(8) The small classified terrorist travel intelligence collection and analysis program currently in place has produced useful results and should be expanded.

(b) STRATEGY.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Homeland Security shall submit to Congress unclassified and classified versions of a strategy for combining terrorist travel intelligence, operations, and law enforcement into a cohesive effort to intercept terrorists, find terrorist travel facilitators, and constrain terrorist mobility domestically and internationally. The report to Congress should include a description of the actions taken to implement the strategy.

(2) ACCOUNTABILITY.—The strategy submitted under paragraph (1) shall—

(A) describe a program for collecting, analyzing, disseminating, and utilizing information and intelligence regarding terrorist travel tactics and methods; and

(B) outline which Federal intelligence, diplomatic, and law enforcement agencies will be held accountable for implementing each element of the strategy.

(3) COORDINATION.—The strategy shall be developed in coordination with all relevant Federal agencies, including—

(A) the National Counterterrorism Center;

(B) the Department of Transportation;

(C) the Department of State;

(D) the Department of the Treasury;

(E) the Department of Justice;

(F) the Department of Defense;

(G) the Federal Bureau of Investigation;

(H) the Drug Enforcement Agency; and

(I) the agencies that comprise the intelligence community.

(4) CONTENTS.—The strategy shall address—

(A) the intelligence and law enforcement collection, analysis, operations, and reporting required to identify and disrupt terrorist travel practices and trends, and the terrorist travel facilitators, document forgers, human smugglers, travel agencies, and corrupt border and transportation officials who assist terrorists;

(B) the initial and ongoing training and training materials required by consular, border, and immigration officials to effectively detect and disrupt terrorist travel described under subsection (c)(3);

(C) the new procedures required and actions to be taken to integrate existing counterterrorist travel and mobility intelligence into border security processes, including consular, port of entry, border patrol, maritime, immigration benefits, and related law enforcement activities;

(D) the actions required to integrate current terrorist mobility intelligence into military force protection measures;

(E) the additional assistance to be given to the interagency Human Smuggling and Trafficking Center for purposes of combatting terrorist travel, including further developing and expanding enforcement and operational capabilities that address terrorist travel;

(F) the additional resources to be given to the Department of Homeland Security to aid in the sharing of information between the frontline border agencies of the Department of Homeland Security, the Department of State, and classified and unclassified sources of counterterrorist travel intelligence and information elsewhere in the Federal Government, including the Human Smuggling and Trafficking Center;

(G) the development and implementation of procedures to enable the Human Smuggling and Trafficking Center to timely receive terrorist travel intelligence and documentation obtained at consulates and ports of entry, and by law enforcement officers and military personnel;

(H) the use of foreign and technical assistance to advance border security measures and law enforcement operations against terrorist travel facilitators;

(I) the development of a program to provide each consular, port of entry, and immigration benefits office with a counterterrorist travel expert trained and authorized to use the relevant authentication technologies and cleared to access all appropriate immigration, law enforcement, and intelligence databases;

(J) the feasibility of digitally transmitting passport information to a central cadre of specialists until such time as experts described under subparagraph (I) are available at consular, port of entry, and immigration benefits offices; and

(K) granting consular officers and immigration adjudicators, as appropriate, the security clearances necessary to access law enforcement sensitive and intelligence databases.

(c) FRONTLINE COUNTERTERRORIST TRAVEL TECHNOLOGY AND TRAINING.—

(1) TECHNOLOGY ACQUISITION AND DISSEMINATION PLAN.—Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security, in conjunction with the Secretary of State, shall submit to Congress a plan describing how the Department of Homeland Security and the Department of State can acquire and deploy, to all consulates, ports of entry, and immigration benefits offices, technologies that facilitate document authentication and the detection of potential terrorist indicators on travel documents.

(2) CONTENTS OF PLAN.—The plan submitted under paragraph (1) shall—

(A) outline the timetable needed to acquire and deploy the authentication technologies;

(B) identify the resources required to—

(i) fully disseminate these technologies; and

(ii) train personnel on use of these technologies; and

(C) address the feasibility of using these technologies to screen every passport or other documentation described in section 04(b) submitted for identification purposes to a United States consular, border, or immigration official.

(3) TRAINING PROGRAM.—

(A) IN GENERAL.—The Secretary of Homeland Security and the Secretary of State shall develop and implement initial and ongoing annual training programs for consular, border, and immigration officials who encounter or work with travel or immigration documents as part of their duties to teach such officials how to effectively detect and disrupt terrorist travel.

(B) TERRORIST TRAVEL INTELLIGENCE.—The Secretary may assist State, local, and tribal governments, and private industry, in establishing training programs related to terrorist travel intelligence.

(C) TRAINING TOPICS.—The training developed under this paragraph shall include training in—

(i) methods for identifying fraudulent documents;

(ii) detecting terrorist indicators on travel documents;

(iii) recognizing travel patterns, tactics, and behaviors exhibited by terrorists;

(iv) the use of information contained in available databases and data systems and procedures to maintain the accuracy and integrity of such systems; and

(v) other topics determined necessary by the Secretary of Homeland Security and the Secretary of State.

(D) CERTIFICATION.—Not later than 1 year after the date of enactment of this Act—

(i) the Secretary of Homeland Security shall certify to Congress that all border and immigration officials who encounter or work with travel or immigration documents as part of their duties have received training under this paragraph; and

(ii) the Secretary of State shall certify to Congress that all consular officers who encounter or work with travel or immigration documents as part of their duties have received training under this paragraph.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out the provisions of this subsection.

(d) ENHANCING CLASSIFIED COUNTERTERRORIST TRAVEL EFFORTS.—

(1) IN GENERAL.—The National Intelligence Director shall significantly increase resources and personnel to the small classified program that collects and analyzes intelligence on terrorist travel.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out this subsection.

SEC. 432. INTEGRATED SCREENING SYSTEM.

(a) IN GENERAL.—The Secretary of Homeland Security shall develop a plan for a comprehensive integrated screening system.

(b) DESIGN.—The system planned under subsection (a) shall be designed to—

(1) encompass an integrated network of screening points that includes the Nation's border security system, transportation system, and critical infrastructure or facilities that the Secretary determines need to be protected against terrorist attack;

(2) build upon existing border enforcement and security activities, and to the extent practicable, private sector security initiatives, in a manner that will enable the utilization of a range of security check points in a continuous and consistent manner throughout the Nation's screening system;

(3) allow access to government databases to detect terrorists; and

(4) utilize biometric identifiers that the Secretary determines to be appropriate, feasible, and if practicable, compatible with the biometric entry and exit data system described in section 433.

(c) STANDARDS FOR SCREENING PROCEDURES.—

(1) AUTHORIZATION.—The Secretary may promulgate standards for screening procedures for—

(A) entering and leaving the United States;

(B) accessing Federal facilities that the Secretary determines need to be protected against terrorist attack;

(C) accessing critical infrastructure that the Secretary determines need to be protected against terrorist attack; and

(D) accessing modes of transportation that the Secretary determines need to be protected against terrorist attack.

(2) SCOPE.—Standards prescribed under this subsection may address a range of factors, including technologies required to be used in screening and requirements for secure identification.

(3) REQUIREMENTS.—In promulgating standards for screening procedures, the Secretary shall—

(A) consider and incorporate appropriate civil liberties and privacy protections;

(B) comply with the Administrative Procedure Act; and

(C) consult with other Federal, State, local, and tribal governments, private parties, and other interested parties, as appropriate.

(4) LIMITATION.—This section does not confer to the Secretary new statutory authority, or alter existing authorities, over systems, critical infrastructure, and facilities.

(5) NOTIFICATION.—If the Secretary determines that additional regulatory authority is needed to fully implement the plan for an integrated screening system, the Secretary shall immediately notify Congress.

(d) COMPLIANCE.—The Secretary may issue regulations to ensure compliance with the standards promulgated under this section.

(e) CONSULTATION.—For those systems, critical infrastructure, and facilities that the Secretary determines need to be protected against terrorist attack, the Secretary shall consult with other Federal agencies, State, local, and tribal governments, and the private sector to ensure the development of consistent standards and consistent implementation of the integrated screening system.

(f) BIOMETRIC IDENTIFIERS.—In carrying out this section, the Secretary shall continue to review biometric technologies and existing Federal and State programs using biometric identifiers. Such review shall consider the accuracy rate of available technologies.

(g) MAINTAINING ACCURACY AND INTEGRITY OF THE INTEGRATED SCREENING SYSTEM.—

(1) IN GENERAL.—The Secretary shall establish rules, guidelines, policies, and operating and auditing procedures for collecting, removing, and updating data maintained in, and adding information to, the integrated screening system that ensure the accuracy and integrity of the data.

(2) DATA MAINTENANCE PROCEDURES.—Each head of a Federal agency that has databases and data systems linked to the integrated screening system shall establish rules, guidelines, policies, and operating and auditing procedures for collecting, removing, and updating data maintained in, and adding information to, such databases or data systems that ensure the accuracy and integrity of the data.

(3) REQUIREMENTS.—The rules, guidelines, policies, and procedures established under this subsection shall—

(A) incorporate a simple and timely method for—

(i) correcting errors;

(ii) determining which government agency or entity provided data so that the accuracy of the data can be ascertained; and

(iii) clarifying information known to cause false hits or misidentification errors; and

(B) include procedures for individuals to—

(i) seek corrections of data contained in the databases or data systems; and

(ii) appeal decisions concerning data contained in the databases or data systems.

(h) IMPLEMENTATION.—

(1) PHASE I.—The Secretary shall—

(A) develop plans for, and begin implementation of, a single program for registered travelers to expedite travel across the border, as required under section 433(g);

(B) continue the implementation of a biometric exit and entry data system that links to relevant databases and data systems, as required by subsections (c) through (f) of section 433 and other existing authorities;

(C) centralize the "no-fly" and "automatic-selectee" lists, making use of improved terrorists watch lists, as required by section 433;

(D) develop plans, in consultation with other relevant agencies, for the sharing of terrorist information with trusted governments, as required by section 435;

(E) initiate any other action determined appropriate by the Secretary to facilitate the implementation of this paragraph; and

(F) report to Congress on the implementation of phase I, including—

(i) the effectiveness of actions taken, the efficacy of resources expended, compliance with statutory provisions, and safeguards for privacy and civil liberties; and

(ii) plans for the development and implementation of phases II and III.

(2) PHASE II.—The Secretary shall—

(A) complete the implementation of a single program for registered travelers to expedite travel across the border, as required by section 433(g);

(B) complete the implementation of a biometric entry and exit data system that links to relevant databases and data systems, as required by subsections (c) through (f) of section 433, and other existing authorities;

(C) in cooperation with other relevant agencies, engage in dialogue with foreign governments to develop plans for the use of common screening standards;

(D) initiate any other action determined appropriate by the Secretary to facilitate the implementation of this paragraph; and

(E) report to Congress on the implementation of phase II, including—

(i) the effectiveness of actions taken, the efficacy of resources expended, compliance with statutory provisions, and safeguards for privacy and civil liberties; and

(ii) the plans for the development and implementation of phase III.

(3) PHASE III.—The Secretary shall—

(A) finalize and deploy the integrated screening system required by subsection (a);

(B) in cooperation with other relevant agencies, promote the implementation of common screening standards by foreign governments; and

(C) report to Congress on the implementation of Phase III, including—

(i) the effectiveness of actions taken, the efficacy of resources expended, compliance with statutory provisions, and safeguards for privacy and civil liberties; and

(ii) the plans for the ongoing operation of the integrated screening system.

(i) REPORT.—After phase III has been implemented, the Secretary shall submit a report to Congress every 3 years that describes the ongoing operation of the integrated screening system, including its effectiveness, efficient use of resources, compliance with statutory provisions, and safeguards for privacy and civil liberties.

(j) AUTHORIZATIONS.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2005 through 2009, such sums as may be necessary to carry out the provisions of this section.

SEC. 433. BIOMETRIC ENTRY AND EXIT DATA SYSTEM.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress finds that completing a biometric entry and exit data system as expeditiously as possible is an essential investment in efforts to protect the United States by preventing the entry of terrorists.

(b) DEFINITION.—In this section, the term "entry and exit data system" means the entry and exit system required by applicable sections of—

(1) the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208);

(2) the Immigration and Naturalization Service Data Management Improvement Act of 2000 (Public Law 106-205);

(3) the Visa Waiver Permanent Program Act (Public Law 106-396);

(4) the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107-173); and

(5) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107-56).

(c) PLAN AND REPORT.—

(1) DEVELOPMENT OF PLAN.—The Secretary of Homeland Security shall develop a plan to accelerate the full implementation of an automated biometric entry and exit data system.

(2) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit a report to Congress on the plan developed under paragraph (1), which shall contain—

(A) a description of the current functionality of the entry and exit data system, including—

(i) a listing of ports of entry and other Department of Homeland Security and Department of State locations with biometric entry data systems in use and whether such screening systems are located at primary or secondary inspection areas;

(ii) a listing of ports of entry and other Department of Homeland Security and Department of State locations with biometric exit data systems in use;

(iii) a listing of databases and data systems with which the entry and exit data system are interoperable;

(iv) a description of—

(I) identified deficiencies concerning the accuracy or integrity of the information contained in the entry and exit data system;

(II) identified deficiencies concerning technology associated with processing individuals through the system; and

(III) programs or policies planned or implemented to correct problems identified in subclause (I) or (II); and

(v) an assessment of the effectiveness of the entry and exit data system in fulfilling its intended purposes, including preventing terrorists from entering the United States;

(B) a description of factors relevant to the accelerated implementation of the biometric entry and exit data system, including—

(i) the earliest date on which the Secretary estimates that full implementation of the biometric entry and exit data system can be completed;

(ii) the actions the Secretary will take to accelerate the full implementation of the biometric entry and exit data system at all ports of entry through which all aliens must pass that are legally required to do so; and

(iii) the resources and authorities required to enable the Secretary to meet the implementation date described in clause (i);

(C) a description of any improvements needed in the information technology employed for the biometric entry and exit data system;

(D) a description of plans for improved or added interoperability with any other databases or data systems; and

(E) a description of the manner in which the Department of Homeland Security's US-VISIT program—

(i) meets the goals of a comprehensive entry and exit screening system, including both entry and exit biometric; and

(ii) fulfills the statutory obligations under subsection (b).

(d) COLLECTION OF BIOMETRIC EXIT DATA.—The entry and exit data system shall include a requirement for the collection of biometric exit data for all categories of individuals who are required to provide biometric entry data, regardless of the port of entry where such categories of individuals entered the United States.

(e) INTEGRATION AND INTEROPERABILITY.—

(1) INTEGRATION OF DATA SYSTEM.—Not later than 2 years after the date of enactment of this Act, the Secretary shall fully integrate all databases and data systems that process or contain information on aliens, which are maintained by—

(A) the Department of Homeland Security, at—

(i) the United States Immigration and Customs Enforcement;

(ii) the United States Customs and Border Protection; and

(iii) the United States Citizenship and Immigration Services;

(B) the Department of Justice, at the Executive Office for Immigration Review; and

(C) the Department of State, at the Bureau of Consular Affairs.

(2) INTEROPERABLE COMPONENT.—The fully integrated data system under paragraph (1) shall be an interoperable component of the entry and exit data system.

(3) INTEROPERABLE DATA SYSTEM.—Not later than 2 years after the date of enactment of this Act, the Secretary shall fully implement an interoperable electronic data system, as required by section 202 of the Enhanced Border Security and Visa Entry Reform Act (8 U.S.C. 1722) to provide current and immediate access to information in the databases of Federal law enforcement agencies and the intelligence community that is relevant to determine—

(A) whether to issue a visa; or

(B) the admissibility or deportability of an alien.

(f) MAINTAINING ACCURACY AND INTEGRITY OF ENTRY AND EXIT DATA SYSTEM.—

(1) IN GENERAL.—The Secretary shall establish rules, guidelines, policies, and operating and auditing procedures for collecting, removing, and updating data maintained in, and adding information to, the entry and exit data system that ensure the accuracy and integrity of the data.

(2) DATA MAINTENANCE PROCEDURES.—Heads of agencies that have databases or data systems linked to the entry and exit data system shall establish rules, guidelines, policies, and operating and auditing procedures for collecting, removing, and updating data maintained in, and adding information to, such databases or data systems that ensure the accuracy and integrity of the data.

(3) REQUIREMENTS.—The rules, guidelines, policies, and procedures established under this subsection shall—

(A) incorporate a simple and timely method for—

(i) correcting errors;

(ii) determining which government agency or entity provided data so that the accuracy of the data can be ascertained; and

(iii) clarifying information known to cause false hits or misidentification errors; and

(B) include procedures for individuals to—

(i) seek corrections of data contained in the databases or data systems; and

(ii) appeal decisions concerning data contained in the databases or data systems.

(g) EXPEDITING REGISTERED TRAVELERS ACROSS INTERNATIONAL BORDERS.—

(1) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress finds that—

(A) expediting the travel of previously screened and known travelers across the borders of the United States should be a high priority; and

(B) the process of expediting known travelers across the borders of the United States can permit inspectors to better focus on identifying terrorists attempting to enter the United States.

(2) DEFINITION.—In this subsection, the term "registered traveler program" means any program designed to expedite the travel of previously screened and known travelers across the borders of the United States.

(3) REGISTERED TRAVEL PROGRAM.—

(A) IN GENERAL.—As soon as is practicable, the Secretary shall develop and implement a registered traveler program to expedite the processing of registered travelers who enter and exit the United States.

(B) PARTICIPATION.—The registered traveler program shall include as many participants as practicable by—

(i) minimizing the cost of enrollment;

(ii) making program enrollment convenient and easily accessible; and

(iii) providing applicants with clear and consistent eligibility guidelines.

(C) INTEGRATION.—The registered traveler program shall be integrated into the automated biometric entry and exit data system described in this section.

(D) REVIEW AND EVALUATION.—In developing the registered traveler program, the Secretary shall—

(i) review existing programs or pilot projects designed to expedite the travel of registered travelers across the borders of the United States;

(ii) evaluate the effectiveness of the programs described in clause (i), the costs associated with such programs, and the costs to travelers to join such programs;

(iii) increase research and development efforts to accelerate the development and implementation of a single registered traveler program; and

(iv) review the feasibility of allowing participants to enroll in the registered traveler program at consular offices.

(4) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report describing the Department's progress on the development and implementation of the registered traveler program.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary, for each of the fiscal years 2005 through 2009, such sums as may be necessary to carry out the provisions of this section.

SEC. 434. TRAVEL DOCUMENTS.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress finds that—

(1) existing procedures allow many individuals to enter the United States by showing minimal identification or without showing any identification;

(2) the planning for the terrorist attacks of September 11, 2001, demonstrates that terrorists study and exploit United States vulnerabilities; and

(3) additional safeguards are needed to ensure that terrorists cannot enter the United States.

(b) BIOMETRIC PASSPORTS.—

(1) DEVELOPMENT OF PLAN.—The Secretary of State, in consultation with the Secretary of Homeland Security, shall develop and implement a plan as expeditiously as possible to require biometric passports or other identification deemed by the Secretary of State to be at least as secure as a biometric passport, for all travel into the United States by United States citizens and by categories of individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(4)(B)).

(2) REQUIREMENT TO PRODUCE DOCUMENTATION.—The plan developed under paragraph (1) shall require all United States citizens, and categories of individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of such Act, to carry and produce the documentation described in paragraph (1) when traveling from foreign countries into the United States.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—After the complete implementation of the plan described in subsection (b)—

(1) neither the Secretary of State nor the Secretary of Homeland Security may exercise discretion under section 212(d)(4)(B) of such Act to waive documentary requirements for travel into the United States; and

(2) the President may not exercise discretion under section 215(b) of such Act (8 U.S.C. 1185(b)) to waive documentary requirements for United States citizens departing from or entering, or attempting to depart from or enter, the United States except—

(A) where the Secretary of State, in consultation with the Secretary of Homeland Security, determines that the alternative documentation that is the basis for the waiver of the documentary requirement is at least as secure as a biometric passport;

(B) in the case of an unforeseen emergency in individual cases; or

(C) in the case of humanitarian or national interest reasons in individual cases.

(d) TRANSIT WITHOUT VISA PROGRAM.—The Secretary of State shall not use any authorities granted under section 212(d)(4)(C) of such Act until the Secretary, in conjunction with the Secretary of Homeland Security, completely implements a security plan to fully ensure secure transit passage areas to prevent aliens proceeding in immediate and continuous transit through the United States from illegally entering the United States.

SEC. 435. EXCHANGE OF TERRORIST INFORMATION AND INCREASED PREINSPECTION AT FOREIGN AIRPORTS.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress finds that—

(1) the exchange of terrorist information with other countries, consistent with privacy requirements, along with listings of lost and stolen passports, will have immediate security benefits; and

(2) the further away from the borders of the United States that screening occurs, the more security benefits the United States will gain.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the United States Government should exchange terrorist information with trusted allies;

(2) the United States Government should move toward real-time verification of passports with issuing authorities;

(3) where practicable the United States Government should conduct screening before a passenger departs on a flight destined for the United States;

(4) the United States Government should work with other countries to ensure effective inspection regimes at all airports;

(5) the United States Government should work with other countries to improve passport standards and provide foreign assistance to countries that need help making the transition to the global standard for identification; and

(6) the Department of Homeland Security, in coordination with the Department of State and other agencies, should implement the initiatives called for in this subsection.

(c) REPORT REGARDING THE EXCHANGE OF TERRORIST INFORMATION.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of State and the Secretary of Homeland Security, working with other agencies, shall submit to the appropriate committees of Congress a report on Federal efforts to collaborate with allies of the United States in the exchange of terrorist information.

(2) CONTENTS.—The report shall outline—

(A) strategies for increasing such collaboration and cooperation;

(B) progress made in screening passengers before their departure to the United States; and

(C) efforts to work with other countries to accomplish the goals described under this section.

(d) PREINSPECTION AT FOREIGN AIRPORTS.—

(1) IN GENERAL.—Section 235A(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225a(a)(4)) is amended to read as follows:

"(4) Subject to paragraph (5), not later than January 1, 2008, the Secretary of Homeland Security, in consultation with the Secretary of State, shall establish preinspection stations in at least 25 additional foreign airports, which the Secretary of Homeland Security, in consultation with the Secretary of State, determines, based on the data compiled under paragraph (3) and such other information as may be available, would most effectively facilitate the travel of admissible aliens and reduce the number of inadmissible aliens, especially aliens who are potential terrorists, who arrive from abroad by air at points of entry within the United States. Such preinspection stations shall be in addition to those established prior to September 30, 1996, or pursuant to paragraph (1).".

(2) REPORT.—Not later than June 30, 2006, the Secretary of Homeland Security and the Secretary of State shall submit a report on the progress being made in implementing the amendment made by paragraph (1) to—

(A) the Committee on the Judiciary of the Senate;

(B) the Committee on the Judiciary of the House of Representatives;

(C) the Committee on Foreign Relations of the Senate; and

(D) the Committee on International Relations of the House of Representatives.

SEC. 436. MINIMUM STANDARDS FOR BIRTH CERTIFICATES.

(a) DEFINITION.—In this section, the term 'birth certificate' means a certificate of birth—

(1) for an individual (regardless of where born)—

(A) who is a citizen or national of the United States at birth; and

(B) whose birth is registered in the United States; and

(2) that—

(A) is issued by a Federal, State, or local government agency or authorized custodian of record and produced from birth records maintained by such agency or custodian of record; or

(B) is an authenticated copy, issued by a Federal, State, or local government agency or authorized custodian of record, of an original certificate of birth issued by such agency or custodian of record.

(b) STANDARDS FOR ACCEPTANCE BY FEDERAL AGENCIES.—

(1) IN GENERAL.—Beginning 2 years after the promulgation of minimum standards under paragraph (3), no Federal agency may accept a birth certificate for any official purpose unless the certificate conforms to such standards.

(2) STATE CERTIFICATION.—

(A) IN GENERAL.—Each State shall certify to the Secretary of Health and Human Services that the State is in compliance with the requirements of this section.

(B) FREQUENCY.—Certifications under subparagraph (A) shall be made at such intervals and in such a manner as the Secretary of Health and Human Services, with the concurrence of the Secretary of Homeland Security and the Commissioner of Social Security, may prescribe by regulation.

(C) COMPLIANCE.—Each State shall ensure that units of local government and other authorized custodians of records in the State comply with this section.

(D) AUDITS.—The Secretary of Health and Human Services may conduct periodic audits of each State's compliance with the requirements of this section.

(3) MINIMUM STANDARDS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services shall by regulation establish minimum standards for birth certificates for use by Federal agencies for official purposes that—

(A) at a minimum, shall require certification of the birth certificate by the State or local government custodian of record that issued the certificate, and shall require the use of safety paper or an alternative, equally secure medium, the seal of the issuing custodian of record, and other features designed to prevent tampering, counterfeiting, or otherwise duplicating the birth certificate for fraudulent purposes;

(B) shall establish requirements for proof and verification of identity as a condition of issuance of a birth certificate, with additional security measures for the issuance of a birth certificate for a person who is not the applicant;

(C) shall establish standards for the processing of birth certificate applications to prevent fraud;

(D) may not require a single design to which birth certificates issued by all States must conform; and

(E) shall accommodate the differences between the States in the manner and form in which birth records are stored and birth certificates are produced from such records.

(4) CONSULTATION WITH GOVERNMENT AGENCIES.—In promulgating the standards required under paragraph (3), the Secretary of Health and Human Services shall consult with—

(A) the Secretary of Homeland Security;

(B) the Commissioner of Social Security;

(C) State vital statistics offices; and

(D) other appropriate Federal agencies.

(5) EXTENSION OF EFFECTIVE DATE.—The Secretary of Health and Human Services may extend the date specified under paragraph (1) for up to 2 years for birth certificates issued by a State if the Secretary determines that the State made reasonable efforts to comply with the date under paragraph (1) but was unable to do so.

(c) GRANTS TO STATES.—

(1) ASSISTANCE IN MEETING FEDERAL STANDARDS.—

(A) IN GENERAL.—Beginning on the date a final regulation is promulgated under subsection (b)(3), the Secretary of Health and Human Services shall award grants to States to assist them in conforming to the minimum standards for birth certificates set forth in the regulation.

(B) ALLOCATION OF GRANTS.—The Secretary shall award grants to States under this paragraph based on the proportion that the estimated average annual number of birth certificates issued by a State applying for a grant bears to the estimated average annual number of birth certificates issued by all States.

(C) MINIMUM ALLOCATION.—Notwithstanding subparagraph (B), each State shall receive not less than 0.5 percent of the grant funds made available under this paragraph.

(2) ASSISTANCE IN MATCHING BIRTH AND DEATH RECORDS.—

(A) IN GENERAL.—The Secretary of Health and Human Services, in coordination with the Commissioner of Social Security and other appropriate Federal agencies, shall award grants to States, under criteria established by the Secretary, to assist States in—

(i) computerizing their birth and death records;

(ii) developing the capability to match birth and death records within each State and among the States; and

(iii) noting the fact of death on the birth certificates of deceased persons.

(B) ALLOCATION OF GRANTS.—The Secretary shall award grants to qualifying States under this paragraph based on the proportion that the estimated annual average number of birth and death records created by a State applying for a grant bears to the estimated annual average number of birth and death records originated by all States.

(C) MINIMUM ALLOCATION.—Notwithstanding subparagraph (B), each State shall receive not less than 0.5 percent of the grant funds made available under this paragraph.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out this section.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—Section 656 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (5 U.S.C. 301 note) is repealed.

SEC. 437. DRIVER'S LICENSES AND PERSONAL IDENTIFICATION CARDS.

(a) DEFINITIONS.—In this section:

(1) DRIVER'S LICENSE.—The term 'driver's license' means a motor vehicle operator's license as defined in section 30301(5) of title 49, United States Code.

(2) PERSONAL IDENTIFICATION CARD.—The term 'personal identification card' means an identification document (as defined in section 1028(d)(3) of title 18, United States Code) issued by a State.

(b) STANDARDS FOR ACCEPTANCE BY FEDERAL AGENCIES.—

(1) IN GENERAL.—

(A) LIMITATION ON ACCEPTANCE.—No Federal agency may accept, for any official purpose, a driver's license or personal identification card newly issued by a State more than 2 years after the promulgation of the minimum standards under paragraph (2) unless the driver's license or personal identification card conforms to such minimum standards.

(B) DATE FOR CONFORMANCE.—The Secretary of Transportation, in consultation with the Secretary of Homeland Security, shall establish a date after which no driver's license or personal identification card shall be accepted by a Federal agency for any official purpose unless such driver's license or personal identification card conforms to the minimum standards established under paragraph (2). The date shall be as early as the Secretary determines it is practicable for the States to comply with such date with reasonable efforts.

(C) STATE CERTIFICATION.—

(i) IN GENERAL.—Each State shall certify to the Secretary of Transportation that the State is in compliance with the requirements of this section.

(ii) FREQUENCY.—Certifications under clause (i) shall be made at such intervals and in such a manner as the Secretary of Transportation, with the concurrence of the Secretary of Homeland Security, may prescribe by regulation.

(iii) AUDITS.—The Secretary of Transportation may conduct periodic audits of each State's compliance with the requirements of this section.

(2) MINIMUM STANDARDS.—Not later than 18 months after the date of enactment of this Act, the Secretary of Transportation, in consultation with the Secretary of Homeland Security, shall by regulation, establish minimum standards for driver's licenses or personal identification cards issued by a State for use by Federal agencies for identification purposes that shall include—

(A) standards for documentation required as proof of identity of an applicant for a driver's license or personal identification card;

(B) standards for the verifiability of documents used to obtain a driver's license or personal identification card;

(C) standards for the processing of applications for driver's licenses and personal identification cards to prevent fraud;

(D) security standards to ensure that driver's licenses and personal identification cards are—

(i) resistant to tampering, alteration, or counterfeiting; and

(ii) capable of accommodating and ensuring the security of a digital photograph or other unique identifier; and

(E) a requirement that a State confiscate a driver's license or personal identification card if any component or security feature of the license or identification card is compromised.

(3) CONTENT OF REGULATIONS.—The regulations required by paragraph (2)—

(A) shall facilitate communication between the chief driver licensing official of a State, an appropriate official of a Federal agency and other relevant officials, to verify the authenticity of documents, as appropriate, issued by such Federal agency or entity and presented to prove the identity of an individual;

(B) may not infringe on a State's power to set criteria concerning what categories of individuals are eligible to obtain a driver's license or personal identification card from that State;

(C) may not require a State to comply with any such regulation that conflicts with or otherwise interferes with the full enforcement of State criteria concerning the categories of individuals that are eligible to obtain a driver's license or personal identification card from that State;

(D) may not require a single design to which driver's licenses or personal identification cards issued by all States must conform; and

(E) shall include procedures and requirements to protect the privacy and civil and due process rights of individuals who apply for and hold driver's licenses and personal identification cards.

(4) NEGOTIATED RULEMAKING.—

(A) IN GENERAL.—Before publishing the proposed regulations required by paragraph (2) to carry out this subtitle, the Secretary of Transportation shall establish a negotiated rulemaking process pursuant to subchapter IV of chapter 5 of title 5, United States Code (5 U.S.C. 581 et seq.).

(B) REPRESENTATION ON NEGOTIATED RULEMAKING COMMITTEE.—Any negotiated rulemaking committee established by the Secretary of Transportation pursuant to subparagraph (A) shall include representatives from—

(i) among State offices that issue driver's licenses or personal identification cards;

(ii) among State elected officials;

(iii) the Department of Homeland Security; and

(iv) among interested parties, including organizations with technological and operational expertise in document security and organizations that represent the interests of applicants for such licenses or identification cards.

(C) TIME REQUIREMENT.—The process described in subparagraph (A) shall be conducted in a timely manner to ensure that—

(i) any recommendation for a proposed rule or report is provided to the Secretary of Transportation not later than 9 months after the date of enactment of this Act; and

(ii) a final rule is promulgated not later than 18 months after the date of enactment of this Act.

(c) GRANTS TO STATES.—

(1) ASSISTANCE IN MEETING FEDERAL STANDARDS.—Beginning on the date a final regulation is promulgated under subsection (b)(2), the Secretary of Transportation shall award grants to States to assist them in conforming to the minimum standards for driver's licenses and personal identification cards set forth in the regulation.

(2) ALLOCATION OF GRANTS.—The Secretary of Transportation shall award grants to States under this subsection based on the proportion that the estimated average annual number of driver's licenses and personal identification cards issued by a State applying for a grant bears to the average annual number of such documents issued by all States.

(3) MINIMUM ALLOCATION.—Notwithstanding paragraph (2), each State shall receive not less than 0.5 percent of the grant funds made available under this subsection.

(d) EXTENSION OF EFFECTIVE DATE.—The Secretary of Transportation may extend the date specified under subsection (b)(1)(A) for up to 2 years for driver's licenses issued by a State if the Secretary determines that the State made reasonable efforts to comply with the date under such subsection but was unable to do so.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation for each of the fiscal years 2005 through 2009, such sums as may be necessary to carry out this section.

SEC. 438. SOCIAL SECURITY CARDS.

(a) SECURITY ENHANCEMENTS.—The Commissioner of Social Security shall—

(1) not later than 180 days after the date of enactment of this section, issue regulations to restrict the issuance of multiple replacement social security cards to any individual to minimize fraud;

(2) within 1 year after the date of enactment of this section, require independent verification of all records provided by an applicant for an original social security card, other than for purposes of enumeration at birth; and

(3) within 18 months after the date of enactment of this section, add death, fraud, and work authorization indicators to the social security number verification system.

(b) INTERAGENCY SECURITY TASK FORCE.—The Commissioner of Social Security, in consultation with the Secretary of Homeland Security, shall form an interagency task force for the purpose of further improving the security of social security cards and numbers. Not later than 1 year after the date of enactment of this section, the task force shall establish security requirements, including—

(1) standards for safeguarding social security cards from counterfeiting, tampering, alteration, and theft;

(2) requirements for verifying documents submitted for the issuance of replacement cards; and

(3) actions to increase enforcement against the fraudulent use or issuance of social security numbers and cards.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commissioner of Social Security for each of the fiscal years 2005 through 2009, such sums as may be necessary to carry out this section.

SEC. 439. EFFECTIVE DATE.

Notwithstanding any other provision of this Act, this subtitle shall take effect on the date of enactment of this Act.

Subtitle C—Transportation Security

SEC. 441. DEFINITIONS.

In this subtitle, the terms "air carrier", "air transportation", "aircraft", "airport", "cargo", "foreign air carrier", and "intrastate air transportation" have the meanings given such terms in section 40102 of title 49, United States Code.

SEC. 442. NATIONAL STRATEGY FOR TRANSPORTATION SECURITY.

(a) REQUIREMENT FOR STRATEGY.—

(1) RESPONSIBILITIES OF SECRETARY OF HOMELAND SECURITY.—The Secretary of Homeland Security shall—

(A) develop and implement a National Strategy for Transportation Security; and

(B) revise such strategy whenever necessary to improve or to maintain the currency of the strategy or whenever the Secretary otherwise considers it appropriate to do so.

(2) CONSULTATION WITH SECRETARY OF TRANSPORTATION.—The Secretary of Homeland Security shall consult with the Secretary of Transportation in developing and revising the National Strategy for Transportation Security under this section.

(b) CONTENT.—The National Strategy for Transportation Security shall include the following matters:

(1) An identification and evaluation of the transportation assets within the United States that, in the interests of national security, must be protected from attack or disruption by terrorist or other hostile forces, including aviation, bridge and tunnel, commuter rail and ferry, highway, maritime, pipeline, rail, urban mass transit, and other public transportation infrastructure assets that could be at risk of such an attack or disruption.

(2) The development of the risk-based priorities, and realistic deadlines, for addressing security needs associated with those assets.

(3) The most practical and cost-effective means of defending those assets against threats to their security.

(4) A forward-looking strategic plan that assigns transportation security roles and missions to departments and agencies of the Federal Government (including the Armed Forces), State governments (including the Army National Guard and Air National Guard), local governments, and public utilities, and establishes mechanisms for encouraging private sector cooperation and participation in the implementation of such plan.

(5) A comprehensive delineation of response and recovery responsibilities and issues regarding threatened and executed acts of terrorism within the United States.

(6) A prioritization of research and development objectives that support transportation security needs, giving a higher priority to research and development directed toward protecting vital assets.

(7) A budget and recommendations for appropriate levels and sources of funding to meet the objectives set forth in the strategy.

(c) SUBMISSIONS TO CONGRESS.—

(1) THE NATIONAL STRATEGY.—

(A) INITIAL STRATEGY.—The Secretary of Homeland Security shall submit the National Strategy for Transportation Security developed under this section to Congress not later than April 1, 2005.

(B) SUBSEQUENT VERSIONS.—After 2005, the Secretary of Homeland Security shall submit the National Strategy for Transportation Security, including any revisions, to Congress not less frequently than April 1 of each even-numbered year.

(2) PERIODIC PROGRESS REPORT.—

(A) REQUIREMENT FOR REPORT.—Each year, in conjunction with the submission of the budget to Congress under section 1105(a) of title 31, United States Code, the Secretary of Homeland Security shall submit to Congress an assessment of the progress made on implementing the National Strategy for Transportation Security.

(B) CONTENT.—Each progress report under this paragraph shall include, at a minimum, the following matters:

(i) An assessment of the adequacy of the resources committed to meeting the objectives of the National Strategy for Transportation Security.

(ii) Any recommendations for improving and implementing that strategy that the Secretary, in consultation with the Secretary of Transportation, considers appropriate.

(3) CLASSIFIED MATERIAL.—Any part of the National Strategy for Transportation Security that involves information that is properly classified under criteria established by Executive order shall be submitted to Congress separately in classified form.

(d) PRIORITY STATUS.—

(1) IN GENERAL.—The National Strategy for Transportation Security shall be the governing document for Federal transportation security efforts.

(2) OTHER PLANS AND REPORTS.—The National Strategy for Transportation Security shall include, as an integral part or as an appendix—

(A) the current National Maritime Transportation Security Plan under section 70103 of title 46, United States Code;

(B) the report required by section 44938 of title 49, United States Code; and

(C) any other transportation security plan or report that the Secretary of Homeland Security determines appropriate for inclusion.

SEC. 443. USE OF WATCHLISTS FOR PASSENGER AIR TRANSPORTATION SCREENING.

(a) IN GENERAL.—The Secretary of Homeland Security, acting through the Transportation Security Administration, as soon as practicable after the date of the enactment of this Act but in no event later than 180 days after that date, shall—

(1) implement a procedure under which the Transportation Security Administration compares information about passengers who are to be carried aboard a passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation for flights and flight segments originating in the United States with a comprehensive, consolidated database containing information about known or suspected terrorists and their associates; and

(2) use the information obtained by comparing the passenger information with the information in the database to prevent known or suspected terrorists and their associates from boarding such flights or flight segments or to subject them to specific additional security scrutiny, through the use of "no fly" and "automatic selectee" lists or other means.

(b) AIR CARRIER COOPERATION.—The Secretary of Homeland Security, in coordination with the Secretary of Transportation, shall by order require air carriers to provide the passenger information necessary to implement the procedure required by subsection (a).

(c) MAINTAINING THE ACCURACY AND INTEGRITY OF THE "NO FLY" AND "AUTOMATIC SELECTEE" LISTS.—

(1) WATCHLIST DATABASE.—The Secretary of Homeland Security, in consultation with the Director of the Federal Bureau of Investigation, shall design guidelines, policies, and operating procedures for the collection, removal, and updating of data maintained, or to be maintained, in the watchlist database described in subsection (a)(1) that are designed to ensure the accuracy and integrity of the database.

(2) ACCURACY OF ENTRIES.—In developing the "no fly" and "automatic selectee" lists under subsection (a)(2), the Secretary of Homeland Security shall establish a simple and timely method for correcting erroneous entries, for clarifying information known to cause false hits or misidentification errors, and for updating relevant information that is dispositive in the passenger screening process. The Secretary shall also establish a process to provide individuals whose names are confused with, or similar to, names in the database with a means of demonstrating that they are not a person named in the database.

SEC. 444. ENHANCED PASSENGER AND CARGO SCREENING.

(a) AIRCRAFT PASSENGER SCREENING AT CHECKPOINTS.—

(1) DETECTION OF EXPLOSIVES.—

(A) IMPROVEMENT OF CAPABILITIES.—As soon as practicable after the date of the enactment of this Act, the Secretary of Homeland Security shall take such action as is necessary to improve the capabilities at passenger screening checkpoints, especially at commercial airports, to detect explosives carried aboard aircraft by passengers or placed aboard aircraft by passengers.

(B) INTERIM ACTION.—Until measures are implemented that enable the screening of all passengers for explosives, the Secretary shall take immediate measures to require Transportation Security Administration or other screeners to screen for explosives any individual identified for additional screening before that individual may board an aircraft.

(2) IMPLEMENTATION REPORT.—

(A) REQUIREMENT FOR REPORT.—Within 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall transmit to the Senate and the House of Representatives a report on how the Secretary intends to achieve the objectives of the actions required under paragraph (1). The report shall include an implementation schedule.

(B) CLASSIFIED INFORMATION.—The Secretary may submit separately in classified form any information in the report under subparagraph (A) that involves information that is properly classified under criteria established by Executive order.

(b) ACCELERATION OF RESEARCH AND DEVELOPMENT ON, AND DEPLOYMENT OF, DETECTION OF EXPLOSIVES.—

(1) REQUIRED ACTION.—The Secretary of Homeland Security, in consultation with the Secretary of Transportation, shall take such action as may be necessary to accelerate research and development and deployment of technology for screening aircraft passengers for explosives during or before the aircraft boarding process.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as are necessary to carry out this subsection for each of fiscal years 2005 through 2009.

(c) IMPROVEMENT OF SCREENER JOB PERFORMANCE.—

(1) REQUIRED ACTION.—The Secretary of Homeland Security shall take such action as may be necessary to improve the job performance of airport screening personnel.

(2) HUMAN FACTORS STUDY.—In carrying out this subsection, the Secretary shall, not later than 180 days after the date of the enactment of this Act, conduct a human factors study in order better to understand problems in screener performance and to set attainable objectives for individual screeners and screening checkpoints.

(d) CHECKED BAGGAGE AND CARGO.—

(1) IN-LINE BAGGAGE SCREENING.—The Secretary of Homeland Security shall take such action as may be necessary to expedite the installation and use of advanced in-line baggage screening equipment at commercial airports.

(2) CARGO SECURITY.—The Secretary shall take such action as may be necessary to ensure that the Transportation Security Administration increases and improves its efforts to screen potentially dangerous cargo.

(e) BLAST-RESISTANT CARGO AND BAGGAGE CONTAINERS.—

(1) IN GENERAL.—The Secretary of Homeland Security, in coordination with the Secretary of Transportation—

(A) shall assess the feasibility of requiring the use of blast-resistant containers for cargo and baggage on passenger aircraft to minimize the potential effects of detonation of an explosive device; and

(B) may require their use on some or all flights on aircraft for which such containers are available.

(2) PILOT PROGRAM.—Before requiring the use of such containers on any such flights, the Secretary of Homeland Security shall conduct a pilot program to evaluate the use of currently available blast-resistant containers for cargo and baggage on passenger aircraft. In conducting the pilot program the Secretary—

(A) shall test the feasibility of using the containers by deploying them on participating air carrier flights; but

(B) may not disclose to the public the number of blast-resistant containers being used in the program or publicly identify the flights on which the containers are used.

(3) ASSISTANCE FOR PARTICIPATION IN PILOT PROGRAM.—

(A) IN GENERAL.—As part of the pilot program, the Secretary may provide assistance to air carriers to volunteer to test the use of blast-resistant containers for cargo and baggage on passenger aircraft.

(B) APPLICATIONS.—To volunteer to participate in the incentive program, an air carrier shall submit to the Secretary an application that is in such form and contains such information as the Secretary requires.

(C) TYPES OF ASSISTANCE.—Assistance provided by the Secretary to air carriers that volunteer to participate in the pilot program may include the use of blast-resistant containers and financial assistance to cover increased costs to the carriers associated with the use and maintenance of the containers, including increased fuel costs.

(4) TECHNOLOGICAL IMPROVEMENTS.—The Secretary of Homeland Security, in cooperation with the Secretary of Transportation, shall—

(A) support efforts to further the development and improvement of blast-resistant containers for potential use on aircraft, including designs that—

(i) will work on a variety of aircraft, including narrow body aircraft; and

(ii) minimize the weight of such containers without compromising their effectiveness; and

(B) explore alternative technologies for minimizing the potential effects of detonation of an explosive device on cargo and passenger aircraft.

(5) REPORT.—Not later than one year after the date of enactment of this Act, the Secretary shall submit a report to the Congress on the results of the pilot program and on progress made in developing improved containers and equivalent technologies. The report may be submitted in classified and redacted formats.

(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security such sums as are necessary to carry out this section. Such sums shall remain available until expended.

(f) COST-SHARING.—Not later than 45 days after the date of the enactment of this Act, the Secretary of Homeland Security, in consultation with representatives of air carriers, airport operators, and other interested parties, shall submit to the Senate and the House of Representatives—

(1) a proposed formula for cost-sharing, for the advanced in-line baggage screening equipment required by this subtitle, between and among the Federal Government, State and local governments, and the private sector that reflects proportionate national security benefits and private sector benefits for such enhancement; and

(2) recommendations, including recommended legislation, for an equitable, feasible, and expeditious system for defraying the costs of the advanced in-line baggage screening equipment required by this subtitle, which may be based on the formula proposed under paragraph (1).

SEC. 445. EFFECTIVE DATE.

Notwithstanding section 341, this subtitle takes effect on the date of the enactment of this Act.

Subtitle D—National Preparedness

SEC. 451. THE INCIDENT COMMAND SYSTEM.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) The attacks on September 11, 2001, demonstrated that even the most robust emergency response capabilities can be overwhelmed if an attack is large enough.

(2) Teamwork, collaboration, and cooperation at an incident site are critical to a successful response to a terrorist attack.

(3) Key decision makers who are represented at the incident command level help to ensure an effective response, the efficient use of resources, and responder safety.

(4) Regular joint training at all levels is essential to ensuring close coordination during an actual incident.

(5) Beginning with fiscal year 2005, the Department of Homeland Security is requiring that entities adopt the Incident Command System and other concepts of the National Incident Management System in order to qualify for funds distributed by the Office of State and Local Government Coordination and Preparedness.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) emergency response agencies nationwide should adopt the Incident Command System;

(2) when multiple agencies or multiple jurisdictions are involved, they should follow a unified command system; and

(3) the Secretary of Homeland Security should require, as a further condition of receiving homeland security preparedness funds from the Office of State and Local Government Coordination and Preparedness, that grant applicants document measures taken to fully and aggressively implement the Incident Command System and unified command procedures.

SEC. 452. NATIONAL CAPITAL REGION MUTUAL AID.

(a) DEFINITIONS.—In this section:

(1) AUTHORIZED REPRESENTATIVE OF THE FEDERAL GOVERNMENT.—The term "authorized representative of the Federal Government" means any individual or individuals designated by the President with respect to the executive branch, the Chief Justice with respect to the Federal judiciary, or the President of the Senate and Speaker of the House of Representatives with respect to Congress, or their designees, to request assistance under a Mutual Aid Agreement for an emergency or public service event.

(2) CHIEF OPERATING OFFICER.—The term "chief operating officer" means the official designated by law to declare an emergency in and for the locality of that chief operating officer.

(3) EMERGENCY.—The term "emergency" means a major disaster or emergency declared by the President, or a state of emergency declared by the Mayor of the District of Columbia, the Governor of the State of Maryland or the Commonwealth of Virginia, or the declaration of a local emergency by the chief operating officer of a locality, or their designees, that triggers mutual aid under the terms of a Mutual Aid Agreement.

(4) EMPLOYEE.—The term "employee" means the employees of the party, including its agents or authorized volunteers, who are committed in a Mutual Aid Agreement to prepare for or who respond to an emergency or public service event.

(5) LOCALITY.—The term "locality" means a county, city, or town within the State of Maryland or the Commonwealth of Virginia and within the National Capital Region.

(6) MUTUAL AID AGREEMENT.—The term "Mutual Aid Agreement" means an agreement, authorized under subsection (b) for the provision of police, fire, rescue and other public safety and health or medical services to any party to the agreement during a public service event, an emergency, or preplanned training event.

(7) NATIONAL CAPITAL REGION OR REGION.—The term "National Capital Region" or "Region" means the area defined under section 2674(f)(2) of title 10, United States Code, and those counties with a border abutting that area and any municipalities therein.

(8) PARTY.—The term "party" means the State of Maryland, the Commonwealth of Virginia, the District of Columbia, and any of the localities duly executing a Mutual Aid Agreement under this section.

(9) PUBLIC SERVICE EVENT.—The term "public service event"—

(A) means any undeclared emergency, incident or situation in preparation for or response to which the Mayor of the District of Columbia, an authorized representative of the Federal Government, the Governor of the State of Maryland, the Governor of the Commonwealth of Virginia, or the chief operating officer of a locality in the National Capital Region, or their designees, requests or provides assistance under a Mutual Aid Agreement within the National Capital Region; and

(B) includes Presidential inaugurations, public gatherings, demonstrations and protests, and law enforcement, fire, rescue, emergency health and medical services, transportation, communications, public works and engineering, mass care, and other support that require human resources, equipment, facilities or services supplemental to or greater than the requesting jurisdiction can provide.

(10) STATE.—The term "State" means the State of Maryland, the Commonwealth of Virginia, and the District of Columbia.

(11) TRAINING.—The term "training" means emergency and public service event-related exercises, testing, or other activities using equipment and personnel to simulate performance of any aspect of the giving or receiving of aid by National Capital Region jurisdictions during emergencies or public service events, such actions occurring outside actual emergency or public service event periods.

(b) MUTUAL AID AUTHORIZED.—

(1) IN GENERAL.—The Mayor of the District of Columbia, any authorized representative of the Federal Government, the Governor of the State of Maryland, the Governor of the Commonwealth of Virginia, or the chief operating officer of a locality, or their designees, acting within his or her jurisdictional purview, may, subject to State law, enter into, request or provide assistance under Mutual Aid Agreements with localities, the Washington Metropolitan Area Transit Authority, the Metropolitan Washington Airports Authority, and any other governmental agency or authority for—

(A) law enforcement, fire, rescue, emergency health and medical services, transportation, communications, public works and engineering, mass care, and resource support in an emergency or public service event;

(B) preparing for, mitigating, managing, responding to or recovering from any emergency or public service event; and

(C) training for any of the activities described under subparagraphs (A) and (B).

(2) FACILITATING LOCALITIES.—The State of Maryland and the Commonwealth of Virginia are encouraged to facilitate the ability of localities to enter into interstate Mutual Aid Agreements in the National Capital Region under this section.

(3) APPLICATION AND EFFECT.—This section—

(A) does not apply to law enforcement security operations at special events of national significance under section 3056(e) of title 18, United States Code, or other law enforcement functions of the United States Secret Service;

(B) does not diminish any authorities, express or implied, of Federal agencies to enter into Mutual Aid Agreements in furtherance of their Federal missions; and

(C) does not—

(i) preclude any party from entering into supplementary Mutual Aid Agreements with fewer than all the parties, or with another party; or

(ii) affect any other agreement in effect before the date of enactment of this Act among the States and localities, including the Emergency Management Assistance Compact.

(4) RIGHTS DESCRIBED.—Other than as described in this section, the rights and responsibilities of the parties to a Mutual Aid Agreement entered into under this section shall be as described in the Mutual Aid Agreement.

(c) DISTRICT OF COLUMBIA.—

(1) IN GENERAL.—The District of Columbia may purchase liability and indemnification insurance or become self insured against claims arising under a Mutual Aid Agreement authorized under this section.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out paragraph (1).

(d) LIABILITY AND ACTIONS AT LAW.—

(1) IN GENERAL.—Any responding party or its officers or employees rendering aid or failing to render aid to the District of Columbia, the Federal Government, the State of Maryland, the Commonwealth of Virginia, or a locality, under a Mutual Aid Agreement authorized under this section, and any party or its officers or employees engaged in training activities with another party under such a Mutual Aid Agreement, shall be liable on account of any act or omission of its officers or employees while so engaged or on account of the maintenance or use of any related equipment, facilities, or supplies, but only to the extent permitted under the laws and procedures of the State of the party rendering aid.

(2) ACTIONS.—Any action brought against a party or its officers or employees on account of an act or omission in the rendering of aid to the District of Columbia, the Federal Government, the State of Maryland, the Commonwealth of Virginia, or a locality, or failure to render such aid or on account of the maintenance or use of any related equipment, facilities, or supplies may be brought only under the laws and procedures of the State of the party rendering aid and only in the Federal or State courts located therein. Actions against the United States under this section may be brought only in Federal courts.

(3) GOOD FAITH EXCEPTION.—

(A) DEFINITION.—In this paragraph, the term "good faith" shall not include willful misconduct, gross negligence, or recklessness.

(B) EXCEPTION.—No State or locality, or its officers or employees, rendering aid to another party, or engaging in training, under a Mutual Aid Agreement shall be liable under Federal law on account of any act or omission performed in good faith while so engaged, or on account of the maintenance or use of any related equipment, facilities, or supplies performed in good faith.

(4) IMMUNITIES.—This section shall not abrogate any other immunities from liability that any party has under any other Federal or State law.

(d) WORKERS COMPENSATION.—

(1) COMPENSATION.—Each party shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that party and representatives of deceased members of such forces if such members sustain injuries or are killed while rendering aid to the District of Columbia, the Federal Government, the State of Maryland, the Commonwealth of Virginia, or a locality, under a Mutual Aid Agreement, or engaged in training activities under a Mutual Aid Agreement, in the same manner and on the same terms as if the injury or death were sustained within their own jurisdiction.

(2) OTHER STATE LAW.—No party shall be liable under the law of any State other than its own for providing for the payment of compensation and death benefits to injured members of the emergency forces of that party and representatives of deceased members of such forces if such members sustain injuries or are killed while rendering aid to the District of Columbia, the Federal Government, the State of Maryland, the Commonwealth of Virginia, or a locality, under a

Mutual Aid Agreement or engaged in training activities under a Mutual Aid Agreement.

(e) LICENSES AND PERMITS.—If any person holds a license, certificate, or other permit issued by any responding party evidencing the meeting of qualifications for professional, mechanical, or other skills and assistance is requested by a receiving jurisdiction, such person will be deemed licensed, certified, or permitted by the receiving jurisdiction to render aid involving such skill to meet a public service event, emergency or training for any such events.

SEC. 453. URBAN AREA COMMUNICATIONS CAPABILITIES.

(a) IN GENERAL.—Title V of the Homeland Security Act of 2002 (6 U.S.C. 311 et seq.) is amended by adding at the end the following:

"SEC. 510. HIGH RISK URBAN AREA COMMUNICATIONS CAPABILITIES.

"The Secretary, in consultation with the Federal Communications Commission and the Secretary of Defense, and with appropriate governors, mayors, and other State and local government officials, shall encourage and support the establishment of consistent and effective communications capabilities in the event of an emergency in urban areas determined by the Secretary to be at consistently high levels of risk from terrorist attack. Such communications capabilities shall ensure the ability of all levels of government agencies, including military authorities, and of first responders, hospitals, and other organizations with emergency response capabilities to communicate with each other in the event of an emergency. Additionally, the Secretary, in conjunction with the Secretary of Defense, shall develop plans to provide back-up and additional communications support in the event of an emergency.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 1(b) of that Act is amended by inserting after the item relating to section 509 the following:

"Sec. 510. High risk urban area communications capabilities.".

SEC. 454. PRIVATE SECTOR PREPAREDNESS.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) Private sector organizations own 85 percent of the Nation's critical infrastructure and employ the vast majority of the Nation's workers.

(2) Unless a terrorist attack targets a military or other secure government facility, the first people called upon to respond will likely be civilians.

(3) Despite the exemplary efforts of some private entities, the private sector remains largely unprepared for a terrorist attack, due in part to the lack of a widely accepted standard for private sector preparedness.

(4) Preparedness in the private sector and public sector for rescue, restart and recovery of operations should include—

(A) a plan for evacuation;

(B) adequate communications capabilities; and

(C) a plan for continuity of operations.

(5) The American National Standards Institute recommends a voluntary national preparedness standard for the private sector based on the existing American National Standard on Disaster/Emergency Management and Business Continuity Programs (NFPA 1600), with appropriate modifications. This standard would establish a common set of criteria and terminology for preparedness, disaster management, emergency management, and business continuity programs.

(6) The mandate of the Department of Homeland Security extends to working with the private sector, as well as government entities.

(b) PRIVATE SECTOR PREPAREDNESS PROGRAM.—

(1) IN GENERAL.—Title V of the Homeland Security Act of 2002 (6 U.S.C. 311 et seq.), as amended by section 453, is amended by adding at the end the following:

"SEC. 511. PRIVATE SECTOR PREPAREDNESS PROGRAM.

"The Secretary shall establish a program to promote private sector preparedness for terrorism and other emergencies, including promoting the adoption of a voluntary national preparedness standard such as the private sector preparedness standard developed by the American National Standards Institute and based on the National Fire Protection Association' 1600 Standard on Disaster/Emergency Management and Business Continuity Programs.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 1(b) of that Act, as amended by section 453, is amended by inserting after the item relating to section 510 the following:

"Sec. 511. Private sector preparedness program.".

(c) SENSE OF CONGRESS.—It is the sense of Congress that insurance and credit-rating industries should consider compliance with the voluntary national preparedness standard, the adoption of which is promoted by the Secretary of Homeland Security under section 511 of the Homeland Security Act of 2002, as added by subsection (b), in assessing insurability and credit worthiness.

SEC. 455. CRITICAL INFRASTRUCTURE AND READINESS ASSESSMENTS.

(a) FINDINGS.—Congress finds the following:

(1) Under section 201 of the Homeland Security Act of 2002 (6 U.S.C 121), the Department of Homeland Security, through the Under Secretary for Information Analysis and Infrastructure Protection, has the responsibility—

(A) to carry out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States, including the performance of risk assessments to determine the risks posed by particular types of terrorist attacks within the United States;

(B) to identify priorities for protective and supportive measures; and

(C) to develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States.

(2) Under Homeland Security Presidential Directive 7, issued on December 17, 2003, the Secretary of Homeland Security was given 1 year to develop a comprehensive plan to identify, prioritize, and coordinate the protection of critical infrastructure and key resources.

(3) Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, the Secretary of Homeland Security should—

(A) identify those elements of the United States' transportation, energy, communications, financial, and other institutions that need to be protected;

(B) develop plans to protect that infrastructure; and

(C) exercise mechanisms to enhance preparedness.

(b) REPORTS ON RISK ASSESSMENT AND READINESS.—Not later than 180 days after the date of enactment of this Act and annually thereafter, the Secretary of Homeland Security shall submit a report to Congress on—

(1) the Department of Homeland Security's progress in completing vulnerability and risk assessments of the Nation's critical infrastructure;

(2) the adequacy of the Government's plans to protect such infrastructure; and

(3) the readiness of the Government to respond to threats against the United States.

SEC. 456. REPORT ON NORTHERN COMMAND AND DEFENSE OF THE UNITED STATES HOMELAND.

(a) FINDINGS.—Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1) The Department of Defense has primary responsibility for the military defense of the United States.

(2) Prior to September 11, 2001, the North American Aerospace Defense Command (NORAD), which had responsibility for defending United States airspace, focused on threats coming from outside the borders of the United States.

(3) The United States Northern Command has been established to assume responsibility for the military defense of the United States, as well as to provide military support to civil authorities.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Defense should regularly assess the adequacy of the plans and strategies of the United States Northern Command with a view to ensuring that the United States Northern Command is prepared to respond effectively to all threats within the United States, should it be called upon to do so by the President.

(c) ANNUAL REPORT.—

(1) REQUIREMENT FOR REPORT.—The Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives an annual report describing the plans and strategies of the United States Northern Command to defend the United States against all threats within the United States, in the case that it is called upon to do so by the President.

(2) SUBMISSION OF REPORT.—The annual report required by paragraph (1) shall be submitted in conjunction with the submission of the President's budget request to Congress.

SEC. 457. EFFECTIVE DATE.

Notwithstanding section 341 or any other provision of this Act, this subtitle takes effect on the date of the enactment of this Act.

Subtitle E—Privacy and Passenger Identification Verification

SEC. 461. PRIVACY AND PASSENGER IDENTIFICATION VERIFICATION TECHNOLOGIES.

(a) IN GENERAL.—The Secretary of Homeland Security shall consult with the Privacy and Civil Liberties Oversight Board in the development of any program to use passenger identification verification technologies.

(b) DELAY OF PROGRAM FOR REPORT.—

(1) IN GENERAL.—Notwithstanding any other provision of law, no Federal program for passenger verification identification technologies shall begin until after the Secretary of Homeland Security has submitted a report to Congress and to the Privacy and Civil Liberties Oversight Board about the program.

(2) REPORT CONTENTS.—The report shall address the privacy and civil liberty implications of the program, including the accuracy and reliability of the technologies used, and

whether the program incorporates the necessary architectural, operational, technological, and procedural safeguards to protect privacy and civil liberties.

Subtitle F—Homeland Security Grants

SEC. 461. SHORT TITLE.

This subtitle may be cited as the "Homeland Security Grant Enhancement Act of 2004".

SEC. 462. DEFINITIONS.

In this subtitle, the following definitions shall apply:

(1) INSULAR AREA.—The term "insular area" means American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(2) LARGE HIGH-THREAT STATE FUND.—The term "Large High-Threat State Fund" means the fund containing amounts authorized to be appropriated for States that elect to receive Federal financial assistance through a per capita share of 38.625 percent of the amount appropriated for the State Homeland Security Grant Program.

(3) LOCAL GOVERNMENT.—The term "local government" has the same meaning given that term in section 2 of the Homeland Security Act of 2002 (6 U.S.C. 101).

(4) STATE.—The term "State" means each of the several States of the United States and the District of Columbia.

(5) STATE HOMELAND SECURITY GRANT PROGRAM.—The term "State Homeland Security Grant Program" means the program receiving 75 percent of the amount appropriated for the Threat-Based Homeland Security Grant Program.

(6) THREAT-BASED HOMELAND SECURITY GRANT PROGRAM.—The term "Threat-Based Homeland Security Grant Program" means the program authorized under section 6.

(7) URBAN AREA SECURITY INITIATIVE GRANT PROGRAM.—The term "Urban Area Security Initiative Grant Program" means the program receiving 25 percent of the amount appropriated for the Threat-Based Homeland Security Grant Program.

SEC. 463. PRESERVATION OF PRE-9/11 GRANT PROGRAMS FOR TRADITIONAL FIRST RESPONDER MISSIONS.

(a) IN GENERAL.—This subtitle shall not be construed to affect any authority to award grants under any Federal grant program listed under subsection (b), which existed on September 10, 2001, to enhance traditional missions of State and local law enforcement, firefighters, ports, emergency medical services, or public health missions.

(b) PROGRAMS INCLUDED.—The programs referred to in subsection (a) are the following:

(1) The Firefighter Assistance Program authorized under section 33 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229).

(2) The Emergency Management Performance Grant Program and the Urban Search and Rescue Grant program authorized under—

(A) title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 et seq.);

(B) the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 (Public Law 106-74; 113 Stat. 1047 et seq.); and

(C) the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.).

(4) The Edward Byrne Memorial State and Local Law Enforcement Assistance Programs authorized under part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.).

(5) The Public Safety and Community Policing (COPS ON THE BEAT) Grant Program authorized under part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd et seq.).

(6) Grant programs under the Public Health Service Act regarding preparedness for bioterrorism and other public health emergencies and the Emergency Response Assistance Program authorized under section 1412 of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2312).

SEC. 464. INTERAGENCY COMMITTEE TO COORDINATE AND STREAMLINE HOMELAND SECURITY GRANT PROGRAMS.

(a) IN GENERAL.—The Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended by inserting after section 801 the following:

"SEC. 802. INTERAGENCY COMMITTEE TO COORDINATE AND STREAMLINE HOMELAND SECURITY GRANT PROGRAMS.

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—The Secretary, in coordination with the Attorney General, the Secretary of Health and Human Services, the Secretary of Transportation, the Administrator of the Environmental Protection Agency, and other agencies providing assistance for first responder preparedness, as identified by the President, shall establish the Interagency Committee to Coordinate and Streamline Homeland Security Grant Programs (referred to in this subtitle as the 'Interagency Committee').

"(2) COMPOSITION.—The Interagency Committee shall be composed of—

"(A) a representative of the Department;

"(B) a representative of the Department of Health and Human Services;

"(C) a representative of the Department of Transportation;

"(D) a representative of the Department of Justice;

"(E) a representative of the Environmental Protection Agency; and

"(F) a representative of any other department or agency determined to be necessary by the President.

"(3) RESPONSIBILITIES.—The Interagency Committee shall—

"(A) report on findings to the Information Clearinghouse established under section 801(d);

"(B) consult with State and local governments and emergency response providers regarding their homeland security needs and capabilities;

"(C) advise the Secretary on the development of performance measures for homeland security grant programs and the national strategy for homeland security;

"(D) compile a list of homeland security assistance programs;

"(E) not later than 1 year after the effective date of the Homeland Security Grant Enhancement Act of 2004—

"(i) develop a proposal to coordinate, to the maximum extent practicable, the planning, reporting, application, and other guidance documents contained in homeland security assistance programs to eliminate all redundant and duplicative requirements; and

"(ii) submit the proposal developed under clause (i) to Congress and the President.

"(b) ADMINISTRATION.—The Department shall provide administrative support to the Interagency Committee, which shall include—

"(1) scheduling meetings;

"(2) preparing agenda;

"(3) maintaining minutes and records; and

"(4) producing reports.

"(c) CHAIRPERSON.—The Secretary shall designate a chairperson of the Interagency Committee.

"(d) MEETINGS.—The Interagency Committee shall meet—

"(1) at the call of the Secretary; or

"(2) not less frequently than once every 1 month.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents for the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended by inserting after the item relating to section 801 the following:

"Sec. 802. Interagency Committee to Coordinate and Streamline Homeland Security Grant Programs.".

SEC. 465. STREAMLINING FEDERAL HOMELAND SECURITY GRANTS.

(a) DIRECTOR OF STATE AND LOCAL GOVERNMENT COORDINATION AND PREPAREDNESS.—Section 801(a) of the Homeland Security Act of 2002 (6 U.S.C. 361(a)) is amended to read as follows:

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—There is established within the Office of the Secretary the Office for State and Local Government Coordination and Preparedness, which shall oversee and coordinate departmental programs for, and relationships with, State and local governments.

"(2) EXECUTIVE DIRECTOR.—The Office established under paragraph (1) shall be headed by the Executive Director of State and Local Government Coordination and Preparedness, who shall be appointed by the President, by and with the advice and consent of the Senate.".

(b) OFFICE FOR DOMESTIC PREPAREDNESS.—The Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended—

(1) by redesignating section 430 as section 803 and transferring that section to the end of subtitle A of title VIII, as amended by section 4; and

(2) in section 803, as redesignated by paragraph (1)—

(A) in subsection (a), by striking "the Directorate of Border and Transportation Security" and inserting "the Office for State and Local Government Coordination and Preparedness";

(B) in subsection (b), by striking "who shall be appointed by the President" and all that follows and inserting "who shall report directly to the Executive Director of State and Local Government Coordination and Preparedness.";

(C) in subsection (c)—

(i) in paragraph (7)—

(I) by striking "other" and inserting "the";

(II) by striking "consistent with the mission and functions of the Directorate"; and

(III) by striking "and" at the end; and

(ii) in paragraph (8)—

(I) by inserting "carrying out" before "those elements";

(II) by striking the period at the end and inserting "; and" ; and

(III) by adding at the end the following:

"(9) managing the Homeland Security Information Clearinghouse established under section 801(d).";

(D) by redesignating subsection (d) as subsection (e); and

(E) by inserting after subsection (c) the following:

"(d) TRAINING AND EXERCISES OFFICE WITHIN THE OFFICE FOR DOMESTIC PREPAREDNESS.—

"(1) IN GENERAL.—The Secretary shall create within the Office for Domestic Preparedness an internal office that shall be the proponent for all national domestic preparedness, training, education, and exercises within the Office for State and Local Government Coordination.

"(2) OFFICE HEAD.—The Secretary shall select an individual with recognized expertise in first-responder training and exercises to head the office, and such person shall report directly to the Director of the Office of Domestic Preparedness.".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—The table of contents for the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended—

(1) by striking the item relating to section 430;

(2) by amending section 801 to read as follows:

"Sec. 801. Office of State and Local Government Coordination and Preparedness."; and

(3) by inserting after the item relating to section 802, as added by this Act, the following:

"Sec. 803. Office for Domestic Preparedness.".

(d) ESTABLISHMENT OF HOMELAND SECURITY INFORMATION CLEARINGHOUSE.—Section 801 of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.), as amended by subsection (a), is further amended by adding at the end the following:

"(d) HOMELAND SECURITY INFORMATION CLEARINGHOUSE.—

"(1) ESTABLISHMENT.—There is established within the Office for State and Local Government Coordination a Homeland Security Information Clearinghouse (referred to in this section as the 'Clearinghouse'), which shall assist States, local governments, and first responders in accordance with paragraphs (2) through (5).

"(2) HOMELAND SECURITY GRANT INFORMATION.—The Clearinghouse shall create a new website or enhance an existing website, establish a toll-free number, and produce a single publication that each contain information regarding the homeland security grant programs identified under section 802(a)(4).

"(3) TECHNICAL ASSISTANCE.—The Clearinghouse, in consultation with the Interagency Committee established under section 802, shall provide information regarding—

"(A) technical assistance provided by any Federal agency to States and local governments to conduct threat analyses and vulnerability assessments; and

"(B) templates for conducting threat analyses and vulnerability assessments.

"(4) BEST PRACTICES.—The Clearinghouse shall work with States, local governments, emergency response providers and the National Domestic Preparedness Consortium, and private organizations to gather, validate, and disseminate information regarding successful State and local homeland security programs and practices.

"(5) USE OF FEDERAL FUNDS.—The Clearinghouse shall compile information regarding equipment, training, and other services purchased with Federal funds provided under the homeland security grant programs identified under section 802(a)(4), and make such information, and information regarding voluntary standards of training, equipment, and exercises, available to States, local governments, and first responders.

"(6) OTHER INFORMATION.—The Clearinghouse shall provide States, local governments, and first responders with any other information that the Secretary determines necessary.".

SEC. 466. THREAT-BASED HOMELAND SECURITY GRANT PROGRAM.

(a) GRANTS AUTHORIZED.—The Secretary of Homeland Security (referred to in this section as the "Secretary") may award grants to States and local governments to enhance homeland security.

(b) USE OF FUNDS.—

(1) IN GENERAL.—Grants awarded under subsection (a)—

(A) shall be used to address homeland security matters related to acts of terrorism or major disasters and related capacity building; and

(B) shall not be used to supplant ongoing first responder expenses or general protective measures.

(2) ALLOWABLE USES.—Grants awarded under subsection (a) may be used to—

(A) develop State plans or risk assessments (including the development of the homeland security plan) to respond to terrorist attacks and strengthen all hazards emergency planning and communitywide plans for responding to terrorist or all hazards emergency events that are coordinated with the capacities of applicable Federal, State, and local governments, first responders, and State and local government health agencies;

(B) develop State, regional, or local mutual aid agreements;

(C) purchase or upgrade equipment based on State and local needs as identified under a State homeland security plan;

(D) conduct exercises to strengthen emergency preparedness of State and local first responders including law enforcement, firefighting personnel, and emergency medical service workers, and other emergency responders identified in a State homeland security plan;

(E) pay for overtime expenses relating to—

(i) training activities consistent with the goals outlined in a State homeland security plan;

(ii) as determined by the Secretary, activities relating to an increase in the threat level under the Homeland Security Advisory System; and

(iii) any other activity relating to the State Homeland Security Strategy, and approved by the Secretary;

(F) promote training regarding homeland security preparedness including—

(i) emergency preparedness responses to a use or threatened use of a weapon of mass destruction; and

(ii) training in the use of equipment, including detection, monitoring, and decontamination equipment, and personal protective gear; and

(G) conduct any activity permitted under the Law Enforcement Terrorism Prevention Grant Program.

(3) PROHIBITED USES.—

(A) CONSTRUCTION.—Grants awarded under subsection (a) may not be used to construct buildings or other physical facilities, except those described in section 611 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196) and approved by the Secretary in the homeland security plan certified under subsection (d), or to acquire land.

(B) COST SHARING.—Grant funds provided under this section shall not be used for any State or local government cost sharing contribution request under this section.

(c) APPLICATION.—

(1) SUBMISSION.—A State may apply for a grant under this section by submitting to the Secretary an application at such time, and in such manner, and containing such information the Secretary may reasonably require.

(2) REVISIONS.—A State may revise a homeland security plan certified under subsection (d) at the time an application is submitted under paragraph (1) after receiving approval from the Secretary.

(3) APPROVAL.—The Secretary shall not award a grant under this section unless the application submitted by the State includes a homeland security plan meeting the requirements of subsection (d).

(4) RELEASE OF FUNDS.—The Secretary shall release grant funds to States with approved plans after the approval of an application submitted under this subsection.

(d) HOMELAND SECURITY PLAN.—

(1) IN GENERAL.—An application submitted under subsection (c) shall include a certification that the State has prepared a 3-year State homeland security plan (referred to in this subsection as the "plan") to respond to terrorist attacks and strengthen all hazards emergency planning that has been approved by the Secretary.

(2) CONTENTS.—The plan shall contain measurable goals and objectives that—

(A) establish a 3-year strategy to set priorities for the allocation of funding to political subdivisions based on the risk, capabilities, and needs described under paragraph (3)(C);

(B) provide for interoperable communications;

(C) provide for local coordination of response and recovery efforts, including procedures for effective incident command in conformance with the National Incident Management System;

(D) ensure that first responders and other emergency personnel have adequate training and appropriate equipment for the threats that may occur;

(E) provide for improved coordination and collaboration among police, fire, and public health authorities at State and local levels;

(F) coordinate emergency response and public health plans;

(G) mitigate risks to critical infrastructure that may be vulnerable to terrorist attacks;

(H) promote regional coordination among contiguous local governments;

(I) identify necessary protective measures by private owners of critical infrastructure;

(J) promote orderly evacuation procedures when necessary;

(K) ensure support from the public health community for measures needed to prevent, detect and treat bioterrorism, and radiological and chemical incidents;

(L) increase the number of local jurisdictions participating in local and statewide exercises;

(M) meet preparedness goals as determined by the Secretary; and

(N) include a report from the relevant advisory committee established under paragraph (3)(D) that documents the areas of support, disagreement, or recommended changes to the plan before its submission to the Secretary.

(3) DEVELOPMENT PROCESS.—

(A) IN GENERAL.—In preparing the plan under this section, a State shall—

(i) provide for the consideration of all homeland security needs;

(ii) follow a process that is continuing, inclusive, cooperative, and comprehensive, as appropriate; and

(iii) coordinate the development of the plan with the homeland security planning activities of local governments.

(B) COORDINATION WITH LOCAL PLANNING ACTIVITIES.—The coordination under subparagraph (A)(iii) shall contain input from local stakeholders, including—

(i) local officials, including representatives of rural, high-population, and high-threat jurisdictions;

(ii) first responders and emergency response providers; and

(iii) private sector companies, such as railroads and chemical manufacturers.

(C) SCOPE OF PLANNING.—Each State preparing a plan under this section shall, in conjunction with the local stakeholders under subparagraph (B), address all the information requested by the Secretary, and complete a comprehensive assessment of—

(i) risk, including a—

(I) vulnerability assessment;

(II) threat assessment; and

(III) public health assessment, in coordination with the State bioterrorism plan; and

(ii) capabilities and needs, including—

(I) an evaluation of current preparedness, mitigation, and response capabilities based on such assessment mechanisms as shall be determined by the Secretary;

(II) an evaluation of capabilities needed to address the risks described under clause (i); and

(III) an assessment of the shortfall between the capabilities described under subclause (I) and the required capabilities described under subclause (II).

(D) ADVISORY COMMITTEE.—

(i) IN GENERAL.—Each State preparing a plan under this section shall establish an advisory committee to receive comments from the public and the local stakeholders identified under subparagraph (B).

(ii) COMPOSITION.—The Advisory Committee shall include local officials, local first responders, and emergency response providers that are representative of the counties, cities, and towns within the State, and which shall include representatives of rural, high-population, and high-threat jurisdictions.

(4) PLAN APPROVAL.—The Secretary shall approve a plan upon finding that the plan meets the requirements of—

(A) paragraphs (2) and (3);

(B) the interim performance measurements under subsection (g)(1), or the national performance standards under subsection (g)(2); and

(C) any other criteria the Secretary determines necessary to the approval of a State plan.

(5) REVIEW OF ADVISORY COMMITTEE REPORT.—The Secretary shall review the recommendations of the advisory committee report incorporated into a plan under subsection (d)(2)(N), including any dissenting views submitted by advisory committee members, to ensure cooperation and coordination between local and State jurisdictions in planning the use of grant funds under this section.

(e) TENTATIVE ALLOCATION.—

(1) URBAN AREA SECURITY INITIATIVE GRANT PROGRAM.—

(A) IN GENERAL.—The Secretary shall allocate 25 percent of the funds appropriated under the Threat-Based Homeland Security Grant Program for discretionary grants to be provided directly to local governments, including multistate entities established by a compact between 2 or more States, in high threat areas, as determined by the Secretary based on the criteria under subparagraph (B).

(B) CRITERIA.—The Secretary shall ensure that each local government receiving a grant under this paragraph—

(i) has a large population or high population density;

(ii) has a high degree of threat, risk, and vulnerability related to critical infrastructure or not less than 1 key asset identified by the Secretary or State homeland security plan;

(iii) has an international border with Canada or Mexico, or coastline bordering international waters of Canada, Mexico, or bordering the Atlantic Ocean, the Pacific Ocean, or the Gulf of Mexico; or

(iv) are subject to other threat factors specified in writing by the Secretary.

(C) CONSISTENCY.—Any grant awarded under this paragraph shall be used to supplement and support, in a consistent and coordinated manner, those activities and objectives described under subsection (b) or a State homeland security plan.

(D) COORDINATION.—The Secretary shall ensure that any grants made under this paragraph encourage multiple contiguous units of local government and mutual aid partners to coordinate any homeland security activities.

(2) STATE HOMELAND SECURITY GRANT PROGRAM.—

(A) STATES.—Each State whose application is approved under subsection (c) shall receive, for each fiscal year, the greater of—

(i) 0.75 percent of the amounts appropriated for the State Homeland Security Grant Program; or

(ii) the State's per capita share, as defined by the 2002 census population estimate, of 38.625 percent of the State Homeland Security Grant Program.

(B) INSULAR AREAS.—Each insular area shall receive, for each fiscal year, the greater of—

(i) 0.075 percent of the amounts appropriated for the State Homeland Security Grant Program; or

(ii) the insular area's per capita share, as defined by the 2002 census population estimate, of 38.625 percent of the State Homeland Security Grant Program.

(3) SECONDARY DISTRIBUTION.—After the distribution of funds under paragraph (2), the Secretary shall, from the remaining funds for the State Homeland Security Grant Program and 10.8 percent of the amount appropriated for the Threat-Based Homeland Security Grant Program pursuant to subsection (j)(1), distribute amounts to each State that—

(A) has a substantial percentage of its population residing in Metropolitan Statistical Areas, as defined by the Office of Management and Budget;

(B) has a high degree of threat, risk, and vulnerability related to critical infrastructure or not less than 1 key asset identified by the Secretary or State homeland security plan;

(C) has an international border with Canada or Mexico, or coastline bordering international waters of Canada, Mexico, or bordering the Atlantic Ocean, the Pacific Ocean, or the Gulf of Mexico; or

(D) are subject to other threat factors specified in writing by the Secretary.

(4) DISTRIBUTION OF FUNDS.—If the amounts tentatively allocated under paragraphs (1) through (3) equal the sum of the amounts appropriated pursuant to subsection (j), the Secretary shall distribute the appropriated amounts based on the tentative allocation.

(5) PROPORTIONAL REDUCTION.—If the amount appropriated for the Large High-Threat State Fund pursuant to subsection (j)(2) is less than 10.8 percent of the amount appropriated for the Threat-Based Homeland Security Grant Program pursuant to subsection (j)(1), the Secretary shall proportionately reduce the amounts tentatively allocated under paragraphs (1) through (3) so that the amount distributed is equal to the sum of the amounts appropriated for such programs.

(6) FUNDING FOR LOCAL ENTITIES AND FIRST RESPONDERS.—The Secretary shall require recipients of the State Homeland Security Grant to provide local governments and first responders, consistent with the applicable State homeland security plan, with not less than 80 percent of the grant funds, the resources purchased with such grant funds, or a combination thereof, not later than 60 days after receiving grant funding.

(7) SUPPLEMENT NOT SUPPLANT.—Amounts appropriated for grants under this subsection shall be used to supplement and not supplant other State and local public funds obligated for the purposes provided under this Act.

(8) LAW ENFORCEMENT TERRORISM PREVENTION PROGRAM.—

(A) IN GENERAL.—The Secretary shall designate not more than 25 percent of the amounts allocated through the State Homeland Security Grant Program to be used for the Law Enforcement Terrorism Prevention Program to provide grants to law enforcement agencies to enhance capabilities for terrorism prevention.

(B) USE OF FUNDS.—Grants awarded under this paragraph may be used for—

(i) information sharing to preempt terrorist attacks;

(ii) target hardening to reduce the vulnerability of selected high value targets;

(iii) threat recognition to recognize the potential or development of a threat;

(iv) intervention activities to interdict terrorists before they can execute a threat;

(v) interoperable communication systems;

(vi) overtime expenses related to the State Homeland Security Strategy approved by the Secretary; and

(vii) any other terrorism prevention activity authorized by the Secretary.

(f) REPORT ON HOMELAND SECURITY SPENDING.—Each recipient of a grant under this section shall annually submit a report to the Secretary that contains—

(A) an accounting of the amount of State and local funds spent on homeland security activities under the applicable State homeland security plan; and

(B) information regarding the use of grant funds by units of local government as required by the Secretary.

(g) ACCOUNTABILITY.—

(1) INTERIM PERFORMANCE MEASURES.—

(A) IN GENERAL.—Before establishing performance standards under paragraph (2), the Secretary shall assist each State in establishing interim performance measures based upon—

(i) the goals and objectives under subsection (d)(2); and

(ii) any other factors determined by the Secretary.

(B) ANNUAL REPORT.—Before establishing performance measures under paragraph (2), each State with an approved State plan shall submit to the Secretary a report detailing the progress the State has made in meeting the interim performance measures established under subparagraph (A).

(2) NATIONAL PERFORMANCE STANDARDS.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall set national performance standards based in part on the goals and objectives under subsection (d)(2) and any other factors the Secretary determines relevant.

(B) COMPLIANCE.—The Secretary shall ensure that State plans are in conformance with the standards set under subparagraph (A).

(C) ANNUAL REPORT.—After the establishment of performance standards under subparagraph (A), each State with an approved State homeland security plan shall submit to the Secretary a report on the progress the State has made in meeting such standards.

(3) GENERAL ACCOUNTING OFFICE ACCESS TO INFORMATION.—Each recipient of a grant under this section and the Department of Homeland Security shall provide the General Accounting Office with full access to information regarding the activities carried out under this section.

(4) AUDIT.—Grant recipients that expend $500,000 or more in Federal funds during any fiscal year shall submit to the Secretary an organization wide financial and compliance audit report in conformance with the requirements of chapter 75 of title 31, United States Code.

(h) REMEDIES FOR NON-COMPLIANCE.—

(1) IN GENERAL.—If the Secretary finds, after reasonable notice and an opportunity for a hearing, that a recipient of a grant under this section has failed to substantially comply with any provision of this section, the Secretary shall—

(A) terminate any payment of grant funds to be made to the recipient under this section;

(B) reduce the amount of payment of grant funds to the recipient by an amount equal to the amount of grants funds that were not expended by the recipient in accordance with this section; or

(C) limit the use of grant funds received under this section to programs, projects, or activities not affected by the failure to comply.

(2) DURATION OF PENALTY.—The Secretary shall apply an appropriate penalty under paragraph (1) until such time as the Secretary determines that the grant recipient is in full compliance with this section.

(3) DIRECT FUNDING.—If a State fails to substantially comply with any provision of this section, including failing to provide local governments with grant funds or resources purchased with grant funds in a timely fashion, a local government entitled to receive such grant funds or resources may petition the Secretary, at such time and in such manner as determined by the Secretary, to request that grant funds or resources be provided directly to the local government.

(i) REPORTS TO CONGRESS.—The Secretary shall submit an annual report to Congress that provides—

(1) findings relating to the performance standards established under subsection (g);

(2) the status of preparedness goals and objectives;

(3) an evaluation of how States and local governments are meeting preparedness goals and objectives;

(4) the total amount of resources provided to the States;

(5) the total amount of resources provided to units of local government; and

(6) a list of how these resources were expended.

(j) AUTHORIZATION OF APPROPRIATIONS.—

(1) THREAT-BASED HOMELAND SECURITY GRANT PROGRAM.—There are authorized to be appropriated such sums as are necessary to carry out this section.

(2) LARGE HIGH-THREAT STATE FUND.—There are authorized to be appropriated 10.8 percent of the funds appropriated in any fiscal year pursuant to paragraph (1), which shall be used to carry out the Large High-Threat State Fund.

SEC. 467. ELIMINATING HOMELAND SECURITY FRAUD, WASTE, AND ABUSE.

(a) ANNUAL GENERAL ACCOUNTING OFFICE AUDIT AND REPORT.—

(1) AUDIT.—The Comptroller General shall conduct an annual audit of the Threat Based Homeland Security Grant Program.

(2) REPORT.—The Comptroller General shall provide a report to Congress on the results of the audit conducted under paragraph (1), which includes—

(A) an analysis of whether the grant recipients allocated funding consistent with the State homeland security plan and the guidelines established by the Department of Homeland Security; and

(B) the amount of funding devoted to overtime and administrative expenses.

(b) REVIEWS OF THREAT-BASED HOMELAND SECURITY FUNDING.—The Secretary, through the appropriate agency, shall conduct periodic reviews of grants made through the Threat Based Homeland Security Grant Program to ensure that recipients allocate funds consistent with the guidelines established by the Department of Homeland Security.

(c) REMEDIES FOR NON-COMPLIANCE.—If the Secretary determines, after reasonable notice and an opportunity for a hearing, that a recipient of a Threat Based Homeland Security Grant has failed to substantially comply with any regulations or guidelines issues by the Department regarding eligible expenditures, the Secretary shall—

(1) terminate any payment of grant funds scheduled to be made to the recipient;

(2) reduce the amount of payment of grant finds to the recipient by an amount equal to the amount of grant funds that were not expended by the recipient in accordance with such guidelines; or

(3) limit the use of grant funds received under the Threat Based Homeland Security Grant Program to programs, projects, or activities not affected by the failure to comply.

(d) DURATION OF PENALTY.—The Secretary shall apply an appropriate penalty under subsection (c) until such time as the Secretary determines that the grant recipient is in full compliance with the guidelines established by the Department of Homeland Security.

SEC. 468. FLEXIBILITY IN UNSPENT HOMELAND SECURITY FUNDS.

(a) REALLOCATION OF FUNDS.—The Director of the Office for Domestic Preparedness, Department of Homeland Security, shall allow any State to request approval to reallocate funds received pursuant to appropriations for the State Homeland Security Grant Program under Public Laws 105–277 (112 Stat. 2681 et seq.), 106–113 (113 Stat. 1501A–3 et seq.), 106–553 (114 Stat. 2762A–3 et seq.), 107–77 (115 Stat. 78 et seq.), or the Consolidated Appropriations Resolution of 2003 (Public Law 108–7), among the 4 categories of equipment, training, exercises, and planning.

(b) APPROVAL OF REALLOCATION REQUESTS.—The Director shall approve reallocation requests under subsection (a) in accordance with the State plan and any other relevant factors that the Secretary of Homeland Security determines to be necessary.

(c) LIMITATION.—A waiver under this section shall not affect the obligation of a State to pass through 80 percent of the amount appropriated for equipment to units of local government.

SEC. 469. CERTIFICATION RELATIVE TO THE SCREENING OF MUNICIPAL SOLID WASTE TRANSPORTED INTO THE UNITED STATES.

(a) IN GENERAL.—The Secretary of Homeland Security shall deny entry into the United States of any commercial motor vehicle (as defined in section 31101(1) of title 49, United States Code) carrying municipal solid waste unless and until the Secretary certifies to Congress that the methodologies and technologies used by the Bureau of Customs and Border Protection of the Department of Homeland Security to screen for and detect the presence of chemical, nuclear, biological, and radiological weapons in such waste are as effective as the methodologies and technologies used by the Bureau to screen for such materials in other items of commerce entering into the United States by commercial motor vehicle transport.

(b) DEFINED TERM.—In this section, the term "municipal solid waste" includes sludge (as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903)).

Subtitle G—Public Safety Spectrum

SEC. 471. SHORT TITLE.

This subtitle may be cited as the "Spectrum Availability for Emergency-Response and Law-Enforcement To Improve Vital Emergency Services Act" or the "SAVE LIVES Act".

SEC. 472. FINDINGS.

The Congress finds the following:

(1) In its final report, the 9-11 Commission advocated that Congress pass legislation providing for the expedited and increased assignment of radio spectrum for public safety purposes. The 9-11 Commission stated that this spectrum was necessary to improve communications between local, State and Federal public safety organizations and public safety organizations operating in neighboring jurisdictions that may respond to an emergency in unison.

(2) Specifically, the 9-11 Commission report stated "The inability to communicate was a critical element at the World Trade Center, Pentagon and Somerset County, Pennsylvania, crash sites, where multiple agencies and multiple jurisdictions responded. The occurrence of this problem at three very different sites is strong evidence that compatible and adequate communications among public safety organizations at the local, State, and Federal levels remains an important problem.".

(3) In the Balanced Budget Act of 1997, the Congress directed the FCC to allocate spectrum currently being used by television broadcasters to public safety agencies to use for emergency communications. This spectrum has specific characteristics that make it an outstanding choice for emergency communications because signals sent over these frequencies are able to penetrate walls and travel great distances, and can assist multiple jurisdictions in deploying interoperable communications systems.

(4) This spectrum will not be fully available to public safety agencies until the completion of the digital television transition. The need for this spectrum is greater than ever. The nation cannot risk further loss of life due to public safety agencies' first responders' inability to communicate effectively in the event of another terrorist act or other crisis, such as a hurricane, tornado, flood, or earthquake.

(5) In the Balanced Budget Act of 1997, Congress set a date of December 31, 2006, for the termination of the digital television transition. Under current law, however, the deadline will be extended if fewer than 85 percent of the television households in a market are able to continue receiving local television broadcast signals.

(6) Federal Communications Commission Chairman Michael K. Powell testified at a hearing before the Senate Commerce, Science, and Transportation Committee on September 8, 2004, that, absent government action, this extension may allow the digital television transition to continue for "decades" or "multiples of decades".

(7) The Nation's public safety and welfare cannot be put off for "decades" or "multiples of decades". The Federal government should ensure that this spectrum is available for use by public safety organizations by January 1, 2009.

(8) Any plan to end the digital television transition would be incomplete if it did not ensure that consumers would be able to continue to enjoy over-the-air broadcast television with minimal disruption. If broadcasters air only a digital signal, some consumers may be unable to view digital transmissions using their analog-only television set. Local broadcasters are truly an important part of our homeland security and often an important communications vehicle in the event of a national emergency. Therefore, consumers who rely on over-the-air television, particularly those of limited economic means, should be assisted.

(9) The New America Foundation has testified before Congress that the cost to assist these 17.4 million exclusively over-the-air households to continue to view television is less than $1 billion dollars for equipment, which equates to roughly 3 percent of the Federal revenue likely from the auction of the analog television spectrum.

(10) Specifically, the New America Foundation has estimated that the Federal Government's auction of this spectrum could yield $30-to-$40 billion in revenue to the Treasury. Chairman Powell stated at the September 8, 2004, hearing that "estimates of the value of that spectrum run anywhere from $30 billion to $70 billion".

(11) Additionally, there will be societal benefits with the return of the analog broadcast spectrum. Former FCC Chairman Reed F. Hundt, at an April 28, 2004, hearing before the Senate Commerce, Science, and Transportation Committee, testified that this spectrum "should be the fit and proper home of wireless broadband". Mr. Hundt continued, "Quite literally, [with this spectrum] the more millions of people in rural America will be able to afford Big Broadband Internet access, the more hundreds of millions of people in the world will be able to afford joining the Internet community.".

(12) Due to the benefits that would flow to the Nation's citizens from the Federal Government reclaiming this analog television spectrum—including the safety of our Nation's first responders and those protected by first responders, additional revenues to the Federal treasury, millions of new jobs in the telecommunications sector of the economy, and increased wireless broadband availability to our Nation's rural citizens—Congress finds it necessary to set January 1, 2009, as a firm date for the return of this analog television spectrum.

SEC. 473. SETTING A SPECIFIC DATE FOR THE AVAILABILITY OF SPECTRUM FOR PUBLIC SAFETY ORGANIZATIONS AND CREATING A DEADLINE FOR THE TRANSITION TO DIGITAL TELEVISION.

(a) IN GENERAL.—Section 309(j)(14) of the Communications Act of 1934 (47 U.S.C. 309(j)(14)) is amended—

(1) by striking "2006." in subparagraph (A) and inserting "2008.";

(2) by striking subparagraph (B) and redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C);

(3) by striking "subparagraph (A) or (B)," in subparagraph (B), as redesignated, and inserting "subparagraph (A),";

(4) by striking "subparagraph (C)(i)," in subparagraph (C), as redesignated, and inserting "subparagraph (B)(i),"; and

(5) by adding at the end the following:

"(D) ACCELERATION OF DEADLINE FOR PUBLIC SAFETY USE.—

"(i) Notwithstanding subparagraph (A), the Commission shall take all action necessary to complete by December 31, 2007—

"(I) the return of television station licenses operating on channels between 764 and 776 megaHertz and between 794 and 806 megaHertz; and

"(II) assignment of the electromagnetic spectrum between 764 and 776 megahertz, and between 794 and 806 megahertz, for public safety services.

"(ii) Notwithstanding subparagraph (A), the Commission may modify, reassign, or require the return of, the television station licenses assigned to frequencies between 758 and 764 megahertz, 776 and 782 megahertz, and 788 and 794 megahertz as necessary to permit operations by public safety services on frequencies between 764 and 776 megahertz and between 794 and 806 megahertz, after the date of enactment of the SAVES LIVES Act, but such modifications, reassignments, or returns may not take effect until after December 31, 2007.".

(b) CERTAIN COMMERCIAL USE SPECTRUM.—The Commission shall assign the spectrum described in section 337(a)(2) of the Communications Act of 1934 (47 U.S.C. 337(a)(2)) allocated for commercial use by competitive bidding pursuant to section 309(j) of that Act (47 U.S.C. 309(j)) no later than 1 year after the Commission transmits the report required by section 474(a) to the Congress.

SEC. 474. STUDIES OF COMMUNICATIONS CAPABILITIES AND NEEDS.

(a) IN GENERAL.—The Commission, in consultation with the Secretary of Homeland Security, shall conduct a study to assess strategies that may be used to meet public safety communications needs, including—

(1) the short-term and long-term need for additional spectrum allocation for Federal, State, and local first responders, including an additional allocation of spectrum in the 700 megaHertz band;

(2) the need for a nationwide interoperable broadband mobile communications network;

(3) the ability of public safety entities to utilize wireless broadband applications; and

(4) the communications capabilities of first receivers such as hospitals and health care workers, and current efforts to promote communications coordination and training among the first responders and the first receivers.

(b) REALLOCATION STUDY.—The Commission shall conduct a study to assess the advisability of reallocating any amount of spectrum in the 700 megaHertz band for unlicensed broadband uses. In the study, the Commission shall consider all other possible users of this spectrum, including public safety.

(c) REPORT.—The Commission shall report the results of the studies, together with any recommendations it may have, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce within 1 year after the date of enactment of this Act.

SEC. 475. STATUTORY AUTHORITY FOR THE DEPARTMENT OF HOMELAND SECURITY'S "SAFECOM" PROGRAM.

Section 302 of the Homeland Security Act of 2002 (6 U.S.C. 182) is amended—

(1) by inserting "(a) IN GENERAL.—" before "The"; and

(2) by adding at the end the following:

"(b) SAFECOM AUTHORIZED.—

"(1) IN GENERAL.—In carrying out subsection (a), the Under Secretary shall establish a program to address the interoperability of communications devices used by Federal, State, tribal, and local first responders, to be known as the Wireless Public Safety Interoperability Communications Program, or 'SAFECOM'. The Under Secretary shall coordinate the program with the Director of the Department of Justice's Office of Science and Technology and all other Federal programs engaging in communications interoperability research, development, and funding activities to ensure that the program takes into account, and does not duplicate, those programs or activities.

"(2) COMPONENTS.—The program established under paragraph (1) shall be designed—

"(A) to provide research on the development of a communications system architecture that would ensure the interoperability of communications devices among Federal, State, tribal, and local officials that would enhance the potential for a coordinated response to a national emergency;

"(B) to support the completion and promote the adoption of mutually compatible voluntary consensus standards developed by a standards development organization accredited by the American National Standards Institute to ensure such interoperability; and

"(C) to provide for the development of a model strategic plan that could be used by any State or region in developing its communications interoperability plan.

"(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this subsection—

"(A) $22,105,000 for fiscal year 2005;

"(B) $22,768,000 for fiscal year 2006;

"(C) $23,451,000 for fiscal year 2007;

"(D) $24,155,000 for fiscal year 2008; and

"(E) $24,879,000 for fiscal year 2009.

"(c) NATIONAL BASELINE STUDY OF PUBLIC SAFETY COMMUNICATIONS INTEROPERABILITY.—By December 31, 2005, the Under Secretary of Homeland Security for Science and Technology shall complete a study to develop a national baseline for communications interoperability and develop common grant guidance for all Federal grant programs that provide communications-related resources or assistance to State and local agencies, any Federal programs conducting demonstration projects, providing technical assistance, providing outreach services, providing standards development assistance, or conducting research and development with the public safety community with respect to wireless communications. The Under Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce containing the Under Secretary's findings, conclusions, and recommendations from the study.".

SEC. 476. GRANT PROGRAM TO PROVIDE ENHANCED INTEROPERABILITY OF COMMUNICATIONS FOR FIRST RESPONDERS.

(a) IN GENERAL.—The Secretary of Homeland Security shall establish a program to help State, local, tribal, and regional first responders acquire and deploy interoperable communications equipment, purchase such equipment, and train personnel in the use of such equipment. The Secretary, in cooperation with the heads of other Federal departments and agencies who administer programs that provide communications-related assistance programs to State, local, and tribal public safety organizations, shall develop and implement common standards to the greatest extent practicable.

(b) APPLICATIONS.—To be eligible for assistance under the program, a State, local, tribal, or regional first responder agency shall submit an application, at such time, in such form, and containing such information as the Under Secretary of Homeland Security for Science and Technology may require, including—

(1) a detailed explanation of how assistance received under the program would be used to improve local communications interoperability and ensure interoperability with other appropriate Federal, State, local, tribal, and regional agencies in a regional or national emergency;

(2) assurance that the equipment and system would—

(A) not be incompatible with the communications architecture developed under section 302(b)(2)(A) of the Homeland Security Act of 2002;

(B) would meet any voluntary consensus standards developed under section 302(b)(2)(B) of that Act; and

(C) be consistent with the common grant guidance established under section 302(b)(3) of the Homeland Security Act of 2002.

(c) GRANTS.—The Under Secretary shall review applications submitted under subsection (b). The Secretary, pursuant to an application approved by the Under Secretary, may make the assistance provided under the program available in the form of a single grant for a period of not more than 3 years.

SEC. 477. DIGITAL TRANSITION PUBLIC SAFETY COMMUNICATIONS GRANT AND CONSUMER ASSISTANCE FUND.

(a) IN GENERAL.—There is established on the books of the Treasury a separate fund to be known as the "Digital Transition Consumer Assistance Fund", which shall be administered by the Secretary, in consultation with the Assistant Secretary of Commerce for Communications and Information.

(b) CREDITING OF RECEIPTS.—The Fund shall be credited with the amount specified in section 309(j)(8)(D) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(D)).

(c) FUND AVAILABILITY.—

(1) APPROPRIATIONS.—

(A) CONSUMER ASSISTANCE PROGRAM.—There are appropriated to the Secretary from the Fund such sums, not to exceed $1,000,000,000, as are required to carry out the program established under section 478.

(B) PSO GRANT PROGRAM.—To the extent that amounts available in the Fund exceed the amount required to carry out that program, there are authorized to be appropriated to the Secretary of Homeland Security, such sums as are required to carry out the program established under section 476, not to exceed an amount, determined by the Director of the Office of Management and Budget, on the basis of the findings of the National Baseline Interoperability study conducted by the SAFECOM Office of the Department of Homeland Security.

(2) REVERSION OF UNUSED FUNDS.—Any auction proceeds in the Fund that are remaining after the date on which the programs under section 476 and 478 terminate, as determined by the Secretary of Homeland Security and the Secretary of Commerce respectively, shall revert to and be deposited in the general fund of the Treasury.

(d) DEPOSIT OF AUCTION PROCEEDS.—Paragraph (8) of section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) is amended—

(1) by inserting "or subparagraph (D)" in subparagraph (A) after "subparagraph (B)"; and

(2) by adding at the end the following new subparagraph:

"(D) DISPOSITION OF CASH PROCEEDS FROM AUCTION OF CHANNELS 52 THROUGH 69.—Cash proceeds attributable to the auction of any eligible frequencies between 698 and 806 megaHertz on the electromagnetic spectrum conducted after the date of enactment of the SAVE LIVES Act shall be deposited in the Digital Transition Consumer Assistance Fund established under section 477 of that Act.".

SEC. 478. DIGITAL TRANSITION PROGRAM.

(a) IN GENERAL.—The Secretary, in consultation with the Commission and the Director of the Office of Management and Budget, shall establish a program to assist households—

(1) in the purchase or other acquisition of digital-to-analog converter devices that will enable television sets that operate only with analog signal processing to continue to operate when receiving a digital signal;

(2) in the payment of a one-time installation fee (not in excess of the industry average fee for the date, locale, and structure involved, as determined by the Secretary) for installing the equipment required for residential reception of services provided by a multichannel video programming distributor (as defined in section 602(13) of the Communications Act of 1934 (47 U.S.C. 602(13)); or

(3) in the purchase of any other device that will enable the household to receive over-the-air digital television broadcast signals, but in an amount not in excess of the average per-household assistance provided under paragraphs (1) and (2).

(b) PROGRAM CRITERIA.—The Secretary shall ensure that the program established under subsection (a)—

(1) becomes publicly available no later than January 1, 2008;

(2) gives first priority to assisting lower income households (as determined by the Director of the Bureau of the Census for statistical reporting purposes) who rely exclusively on over-the-air television broadcasts;

(3) gives second priority to assisting other households who rely exclusively on over-the-air television broadcasts;

(4) is technologically neutral; and

(5) is conducted at the lowest feasible administrative cost.

SEC. 479. LABEL REQUIREMENT FOR ANALOG TELEVISION SETS.

(a) IN GENERAL.—Section 303 of the Communications Act of 1934 (47 U.S.C. 303) is amended by adding at the end the following:

"(z) Require that any apparatus described in paragraph (s) sold or offered for sale in or affecting interstate commerce after September 30, 2005, that is incapable of receiving and displaying a digital television broadcast signal without the use of an external device that translates digital television broadcast signals into analog television broadcast signals have affixed to it and, if it is sold or offered for sale in a container, affixed to that container, a label that states that the apparatus will be incapable of displaying over-the-air television broadcast signals received after December 31, 2008, without the purchase of additional equipment.".

(b) SHIPMENT PROHIBITED.—Section 330 of the Communications Act of 1934 (47 U.S.C. 330) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

"(d) SHIPMENT OF UNLABELED OBSOLESCENT TELEVISION SETS.—No person shall ship in interstate commerce or manufacture in the United States any apparatus described in section 303(s) of this Act except in accordance with rules prescribed by the Commission under section 303(z) of this Act.".

(c) POINT OF SALE WARNING.—The Commission, in consultation with the Federal Trade Commission, shall require the display at, or in close proximity to, any commercial retail sales display of television sets described in section 303(z) of the Communications Act of 1934 (47 U.S.C. 303(z)) sold or offered for sale in or affecting interstate commerce after September 30, 2005, of a printed notice that clearly and conspicuously states that the sets will be incapable of displaying over-the-air television broadcast signals received after December 31, 2008, without the purchase or lease of additional equipment.

SEC. 480. REPORT ON CONSUMER EDUCATION PROGRAM REQUIREMENTS.

Within 1 year after the date of enactment of this Act, the Assistant Secretary of Commerce for Communications and Information, after consultation with the Commission, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce containing recommendations with respect to—

(1) an effective program to educate consumers about the transition to digital television broadcast signals and the impact of that transition on consumers' choices of equipment to receive such signals;

(2) the need, if any, for Federal funding for such a program;

(3) the date of commencement and duration of such a program; and

(4) what department or agency should have the lead responsibility for conducting such a program.

SEC. 481. FCC TO ISSUE DECISION IN CERTAIN PROCEEDINGS.

The Commission shall issue a final decision before—

(1) January 1, 2005, in the Matter of Carriage of Digital Television Broadcast Signals; Amendments to Part 76 of the Commission's Rules, CS Docket No. 98-120;

(2) January 1, 2005, in the Matter of Public Interest Obligations of TV Broadcast Licensees, MM Docket No. 99-360; and

(3) January 1, 2006, in the Implementation of the Satellite Home Viewer Improvement Act of 1999; Local Broadcast Signal Carriage Issues, CS Docket No. 00-96.

SEC. 482. DEFINITIONS.

In this subtitle:

(1) COMMISSION.—The term "Commission" means the Federal Communications Commission.

(2) FUND.—The term "Fund" means the Digital Transition Consumer Assistance Fund established by section 477.

(3) SECRETARY.—Except where otherwise expressly provided, the term "Secretary" means the Secretary of Commerce.

SEC. 483. EFFECTIVE DATE.

Notwithstanding section 341, this subtitle takes effect on the date of enactment of this Act.

On page 134, line 14, insert "issue guidelines" before "on classification"

On page 134, strike lines 16 and 17 and insert the following:

commonly accepted processing and access controls, in the course of which review, the President may consider any comments submitted by the Select Committee on Intelligence, the Committee on Armed Services, the Committee on Foreign Relations of the Senate, and the Permanent Select Committee on Intelligence, the Committee on Armed Services, and the Committee on

International Relations of the House of Representatives regarding—

(i) the scope of the review the President should undertake in formulating the guidelines under this subparagraph; and

(ii) the substance of what guidelines should be issued.

On page 177, after line 17, add the following:

SEC. 226. CONGRESSIONAL APPEALS OF CLASSIFICATION DECISIONS.

(a) REDESIGNATION OF PUBLIC INTEREST DECLASSIFICATION BOARD AS INDEPENDENT NATIONAL SECURITY CLASSIFICATION BOARD.—(1) Subsection (a) of section 703 of the Public Interest Declassification Act of 2000 (title VII of Public Law 10-567; 50 U.S.C. 435 note) is amended by striking "'Public Interest Declassification Board'" and inserting "'Independent National Security Classification Board'".

(2) The heading of such section is amended to read as follows:

"SEC. 703. INDEPENDENT NATIONAL SECURITY CLASSIFICATION BOARD.".

(b) REVIEW OF CLASSIFICATION DECISIONS.—

(1) IN GENERAL.—The Independent National Security Classification Board shall, pursuant to a request under paragraph (3), review any classification decision made by an executive agency with respect to national security information.

(2) ACCESS.—The Board shall have access to all documents or other materials that are classified on the basis of containing national security information.

(3) REQUESTS FOR REVIEW.—The Board shall review, in a timely manner, the existing or proposed classification of any document or other material the review of which is requested by the chairman or ranking member of—

(A) the Committee on Armed Services, the Committee on Foreign Relations, or the Select Committee on Intelligence of the Senate; or

(B) the Committee on Armed Services, the Committee on International Relations, or the Permanent Select Committee on Intelligence of the House of Representatives.

(4) RECOMMENDATIONS.—

(A) IN GENERAL.—The Board may make recommendations to the President regarding decisions to classify all or portions of documents or other material for national security purposes or to declassify all or portions of documents or other material classified for such purposes.

(B) IMPLEMENTATION.—Upon receiving a recommendation from the Board under subparagraph (A), the President shall either—

(i) accept and implement such recommendation; or

(ii) not later than 60 days after receiving the recommendation if the President does not accept and implement such recommendation, transmit in writing to Congress justification for the President's decision not to implement such recommendation.

(5) REGULATIONS.—The Board shall prescribe regulations to carry out this subsection.

(6) EXECUTIVE AGENCY DEFINED.—In this section, the term "Executive agency" has the meaning given that term in section 105 of title 5, United States Code .

On page 39, strike lines 8 through 11 and insert the following:

(c) PERSONNEL STRENGTH LEVEL.—Congress shall authorize the personnel strength level for the National Intelligence Reserve Corps for each fiscal year.

At the end of subtitle A of title II, add the following:

SEC. ___. USE OF UNITED STATES COMMERCIAL REMOTE SENSING SPACE CAPABILITIES FOR IMAGERY AND GEOSPATIAL INFORMATION REQUIREMENTS.

(a) IN GENERAL.—The National Intelligence Director shall take actions to ensure, to the extent practicable, the utilization of United States commercial remote sensing space capabilities to fulfill the imagery and geospatial information requirements of the intelligence community.

(b) PROCEDURES FOR UTILIZATION.—The National Intelligence Director may prescribe procedures for the purpose of meeting the requirement in subsection (a).

(c) DEFINITIONS.—In this section, the terms "imagery" and "geospatial information" have the meanings given such terms in section 467 of title 10, United States Code.

On page 9, line 13, strike "counterterrorism" and insert "intelligence, including counterterrorism,".

On page 23, line 1, strike "may require modifications" and insert "may modify, or may require modifications,".

On page 28, line 17, strike "or" and insert "and".

On page 112, beginning on line 12, strike "Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives" and insert "Select Committee on Intelligence and the Committee on Governmental Affairs of the Senate and the Permanent Select Committee on Intelligence and the Committee on Government Reform of the House of Representatives".

On page 200, strike lines 5 through 11 and insert the following:

SEC. 307. CONFORMING AMENDMENTS ON RESPONSIBILITIES OF SECRETARY OF DEFENSE PERTAINING TO NATIONAL INTELLIGENCE PROGRAM.

Section 105(a) of the National Security Act of 1947 (50 U.S.C. 403-5(a)) is amended—

(1) in paragraph (1), by striking "ensure" and inserting "assist the Director in ensuring"; and

(2) in paragraph (2), by striking "appropriate".

On page 78, line 19, insert "regular and detailed" before "reviews".

On page 79, strike lines 1 and 2 and insert the following political considerations, based upon all sources available to the intelligence community, and performed in a manner consistent with sound analytic methods and tradecraft, including reviews for purposes of determining whether or not—

(A) such product or products state separately, and distinguish between, the intelligence underlying such product or products and the assumptions and judgments of analysts with respect to the intelligence and such product or products;

(B) such product or products describe the quality and reliability of the intelligence underlying such product or products;

(C) such product or products present and explain alternative conclusions, if any, with respect to the intelligence underlying such product or products;

(D) such product or products characterizes the uncertainties, if any, and the confidence in such product or products; and

(E) the analyst or analysts responsible for such product or products had appropriate access to intelligence information from all sources, regardless of the source of the information, the method of collection of the information, the elements of the intelligence community that collected the information, or the location of such collection.

On page 80, line 1, insert "(A)" after "(5)".

On page 80, line 3, strike ", upon request,".

On page 80, between lines 5 and 6, insert the following:

(B) The results of the evaluations under paragraph (4) shall also be distributed as appropriate throughout the intelligence community as a method for training intelligence community analysts and promoting the development of sound analytic methods and tradecraft. To ensure the widest possible distribution of the evaluations, the Analytic Review Unit shall, when appropriate, produce evaluations at multiple classification levels.

(6) Upon completion of the evaluations under paragraph (4), the Analytic Review Unit may make such recommendations to the National Intelligence Director and to appropriate heads of the elements of the intelligence community for awards, commendations, additional training, or disciplinary or other actions concerning personnel as the Analytic Review Unit considers appropriate in light of such evaluations. Any recommendation of the Analytic Review Unit under this paragraph shall not be considered binding on the official receiving such recommendation.

On page 80, line 6, strike "INFORMATION.—" and insert "INFORMATION AND PERSONNEL.—(1)".

On page 80, line 8, insert ", the Analytic Review Unit, and other staff of the Office of the Ombudsman of the National Intelligence Authority" after "Authority".

On page 80 line 10, insert "operational and" before "field reports".

On page 80, between lines 13 and 14, insert the following:

(2) The Ombudsman, the Analytic Review Unit, and other staff of the Office shall have access to any employee, or any employee of a contractor, of the intelligence community whose testimony is needed for the performance of the duties of the Ombudsman.

On page 108, between lines 8 and 9, insert the following:

SEC. 153. ADDITIONAL EDUCATION AND TRAINING REQUIREMENTS.

(a) FINDINGS.—Congress makes the following findings:

(1) Foreign language education is essential for the development of a highly-skilled workforce for the intelligence community.

(2) Since September 11, 2001, the need for language proficiency levels to meet required national security functions has been raised, and the ability to comprehend and articulate technical and scientific information in foreign languages has become critical.

(b) LINGUISTIC REQUIREMENTS.—(1) The National Intelligence Director shall—

(A) identify the linguistic requirements for the National Intelligence Authority;

(B) identify specific requirements for the range of linguistic skills necessary for the intelligence community, including proficiency in scientific and technical vocabularies of critical foreign languages; and

(C) develop a comprehensive plan for the Authority to meet such requirements through the education, recruitment, and training of linguists.

(2) In carrying out activities under paragraph (1), the Director shall take into account education grant programs of the Department of Defense and the Department of Education that are in existence as of the date of the enactment of this Act.

(3) Not later than one year after the date of the enactment of this Act, and annually thereafter, the Director shall submit to Congress a report on the requirements identified under paragraph (1), including the success of

the Authority in meeting such requirements. Each report shall notify Congress of any additional resources determined by the Director to be required to meet such requirements.

(4) Each report under paragraph (3) shall be in unclassified form, but may include a classified annex.

(c) PROFESSIONAL INTELLIGENCE TRAINING.—The National Intelligence Director shall require the head of each element and component within the National Intelligence Authority who has responsibility for professional intelligence training to periodically review and revise the curriculum for the professional intelligence training of the senior and intermediate level personnel of such element or component in order to—

(1) strengthen the focus of such curriculum on the integration of intelligence collection and analysis throughout the Authority; and

(2) prepare such personnel for duty with other departments, agencies, and element of the intelligence community.

On page 97, line 10, insert before the period the following: ", including through the establishment of mechanisms for the sharing of information and analysis among and between national intelligence centers having adjacent or significantly interrelated geographic regions or functional areas of intelligence responsibility".

On page 91, between lines 12 and 13, insert the following:

(C) Employees of Federally Funded Research and Development Centers (as that term is defined in part 2 of the Federal Acquisition Regulation), including employees of the Department of Energy national laboratories who are associated with field intelligence elements of the Department of Energy, shall be eligible to serve under contract or other mechanism with the National Counterterrorism Center under this paragraph.

On page 98, between lines 21 and 22, insert the following:

(C) employees of Federally Funded Research and Development Centers (as that term is defined in part 2 of the Federal Acquisition Regulation), including employees of the Department of Energy national laboratories who are associated with field intelligence elements of the Department of Energy, shall be eligible to serve under contract or other mechanism with a national intelligence center under this paragraph.

On page 45, between lines 10 and 11, insert the following:

(11) The Chief Scientist of the National Intelligence Authority.

On page 45, line 11, strike "(11)" and insert "(12)".

On page 45, line 14, strike "(12)" and insert "(13)".

On page 59, between lines 14 and 15, insert the following:

SEC. 131. CHIEF SCIENTIST OF THE NATIONAL INTELLIGENCE AUTHORITY.

(a) CHIEF SCIENTIST OF NATIONAL INTELLIGENCE AUTHORITY.—There is a Chief Scientist of the National Intelligence Authority who shall be appointed by the National Intelligence Director.

(b) REQUIREMENT RELATING TO APPOINTMENT.—An individual appointed as Chief Scientist of the National Intelligence Authority shall have a professional background and experience appropriate for the duties of the Chief Scientist.

(c) DUTIES.—The Chief Scientist of the National Intelligence Authority shall—

(1) act as the chief representative of the National Intelligence Director for science and technology;

(2) chair the National Intelligence Authority Science and Technology Committee under subsection (d);

(3) assist the Director in formulating a long-term strategy for scientific advances in the field of intelligence;

(4) assist the Director on the science and technology elements of the budget of the National Intelligence Authority; and

(5) perform other such duties as may be prescribed by Director or by law.

(d) NATIONAL INTELLIGENCE AUTHORITY SCIENCE AND TECHNOLOGY COMMITTEE.—(1) There is within the Office of the Chief Scientist of the National Intelligence Authority a National Intelligence Authority Science and Technology Committee.

(2) The Committee shall be composed of composed of the principal science officers of the National Intelligence Program.

(3) The Committee shall—

(A) coordinate advances in research and development related to intelligence; and

(B) perform such other functions as the Chief Scientist of the National Intelligence Authority shall prescribe.

On page 59, line 15, strike "131." and insert "132.".

On page 202, line 16, strike "131(b)" and insert "132(b)".

On page 113, between lines 17 and 18, insert the following:

(b) TERMINATION OF EMPLOYEES.—(1) Notwithstanding any other provision of law, the National Intelligence Director may, in the discretion of the Director, terminate the employment of any officer or employee of the National Intelligence Authority whenever the Director considers the termination of employment of such officer or employee necessary or advisable in the interests of the United States.

(2) Any termination of employment of an officer or employee under paragraph (1) shall not affect the right of the officer or employee to seek or accept employment in any other department, agency, or element of the United States Government if declared eligible for such employment by the Office of Personnel Management.

On page 113, line 18, strike "(b) RIGHTS AND PROTECTIONS" and insert "(c) OTHER RIGHTS AND PROTECTIONS".

On page 113, after line 24, add the following:

At the appropriate place, insert the follows:

(d) REGULATIONS.—The National Intelligence Director shall prescribe regulations on the application of the authorities, rights, and protections in and made applicable by subsection (a), (b), and (c), to the personnel of the National Intelligence Authority.

On page 119, strike lines 16 through 18 and insert: "The National Intelligence Director shall convene regular meetings of the Joint Intelligence Community Council."

"(e) ADVICE AND OPINIONS OF MEMBERS OTHER THAN CHAIRMAN.—(1) A member of the Joint Intelligence Community Council (other than the Chairman) may submit to the Chairman advice or an opinion in disagreement with, or advice or an opinion in addition to, the advice presented by the National Intelligence Director to the President or the National Security Council, in the role of the Chairman as Chairman of the Joint Intelligence Community Council. If a member submits such advice or opinion, the Chairman shall present the advice or opinion of such member at the same time the Chairman presents the advice of the Chairman to the President or the National Security Council, as the case may be.

"(2) The Chairman shall establish procedures to ensure that the presentation of the advice of the Chairman to the President or the National Security Council is not unduly delayed by reason of the submission of the individual advice or opinion of another member of the Council.

"(f) RECOMMENDATIONS TO CONGRESS.—Any member of the Joint Intelligence Community Council may make such recommendations to Congress relating to the intelligence community as such member considers appropriate.".

On page 84, beginning on line 8, strike "joint operations relating to counterterrorism" and insert "interagency counterterrorism planning and activities".

On page 126, strike lines 23 through 25.

On page 127, line 1, strike "(2)" and insert "(1)".

On page 127, line 4, strike "(3)" and insert "(2)".

On page 128, strike lines 1 through 3 and insert following:

(3) ENVIRONMENT.—The term "Environment" means the Information Sharing Environment as described under subsection (c).

On page 130, strike line 10 and insert the following:

(c) INFORMATION SHARING ENVIRONMENT.—

On page 130, line 20, strike "Network" and insert "Environment".

On page 133, lines 5 and 6, delete. "Director of the Office of Management and Budget" and insert "principal officer as designated in subsection 206(g)"

On page 133, line 10, strike "Network" and insert "Environment".

On page 134, line 2, strike "Network" and insert "Environment".

On page 134, line 22, strike "Network" and insert "Environment".

On page 135, beginning on line 16, strike "the Director of Management and Budget shall submit to the President and" and insert "the President shall submit".

On page 135 strike lines 19 through 22 and insert "Environment. The enterprise architecture and implementation plan shall be prepared by the principal officer in consultation with the Executive council and shall include—"

On page 135, line 24, strike "Network" and insert "Environment".

On page 136, line 3, strike "Network" and insert "Environment".

On page 136, line 5, strike "Network" and insert "Environment".

On page 136, line 7, strike "Network" and insert "Environment".

On page 137, beginning on line 4, strike "Network" and insert "Environment".

On page 137, line 8, strike "Network" and insert "Environment".

On page 137, line 11, strike "Network" and insert "Environment".

On page 137, line 14, strike "Network" and insert "Environment".

On page 137, line 16, strike "Network;" and insert "Environment; and".

On page 137, line 18, strike "Network" and insert "Environment".

On page 137, line 21, strike "that the Director of Management and Budget determines" and insert "determined" and insert a period.

On page 138, strike lines 1 through 3 and insert the following:

(g) RESPONSIBILITIES OF EXECUTIVE COUNCIL FOR INFORMATION SHARING ENVIRONMENT.—

On page 138, beginning on line 4, insert "(1) Not later than 120 days after the date of enactment with notification to Congress, the President shall designate an individual as the principal officer responsible for information sharing across the Federal government.

That individual shall have and exercise government wide authority and have management expertise in enterprise architecture, information sharing and interoperability.

On page 138, beginning on line 6, strike “The Director of Management and Budget” and insert “The principal officer designated under this subsection”

On page 138, beginning on line 9, strike “Network” and insert “Environment”.

On page 138, line 14, strike “Network” and insert “Environment”.

On page 138, line 17, strike “Network” and insert “Environment”.

On page 138, line 21, strike “to the President and”.

On page 139, line 5, strike “Network” and insert “Environment”.

On page 140, strike lines 5 through 17.

On page 140, strike lines 18 and 19 and insert the following:

(h) ESTABLISHMENT OF EXECUTIVE COUNCIL.—

On page 140, beginning on line 22, strike “line 20 through line 24” and insert “There is established an Executive Council on information sharing that shall assist the principal officer as designated under subsection 206(g) in the execution of the duties under this Act concerning information sharing.”.

On page 141, line 1, insert “The Executive Council shall be chaired by the principal officer designated in subsection 206(g).

On page 141, beginning on line 4, strike “, who shall serve as the Chairman of the Executive Council”.

On page 142, beginning on line 2, strike “assist the Director of Management and Budget in—” and insert “assist the President in—”.

On page 142, beginning on line 4, strike “Network” and insert “Environment”.

On page 142, line 8, strike “Network” and insert “Environment”.

On page 142, line 11, strike “Network” and insert “Environment”.

On page 142, line 12, strike “Network” and insert “Environment”.

On page 142, beginning on line 15, strike “Network;” and insert “Environment; and”.

On page 142, strike lines 22 through 24, and insert (F) considering input provided by persons from outside the federal government with significant experience and expertise in policy technical, and operational matters, including issues of security, privacy, or civil liberties.

On page 143, beginning on line 7, strike “the Director of Management and Budget, in the capacity as Chair of the Executive Council,” and insert “the principal officer as designated in section 206(g)”.

On page 144, strike line 3 and all that follows through page 145, line 10.

On page 145 line 11, strike “(j)” and insert “(i)”.

On page 145, beginning on line 14, strike “through the Director of Management and Budget” and insert “principal officer as designated in section 206(g).”

On page 145, line 16, strike “Network” and insert “Environment”.

On page 145, line 21, strike “Network” and insert “Environment”.

On page 145, line 22, strike “Network” and insert “Environment”.

On page 146, line 4, strike “Network” and insert “Environment”.

On page 146, line 7, strike “Network” and insert “Environment”.

On page 146, line 9, strike “Network” and insert “Environment”.

On page 146, line 13, strike “Network” and insert “Environment”.

On page 147, line 2, strike “Network” and insert “Environment”.

On page 147, line 6, strike “Network” and insert “Environment”.

On page 147, line 8, strike “Network” and insert “Environment”.

On page 147, line 11, strike “Network” and insert “Environment”.

On page 147, line 17, strike “Network” and insert “Environment”.

On page 147, line 22, strike “Network” and insert “Environment”.

On page 148, line 6, strike “Network” and insert “Environment”.

On page 148, line 8, strike “Network” and insert “Environment”.

On page 148, line 16, strike “Network” and insert “Environment”.

On page 148, line 17, strike “(k)” and insert “(j)”.

On page 148, line 20, strike “Network” and insert “Environment”.

On page 148, line 24, strike “Network” and insert “Environment”.

On page 149, line 3, strike “Network” and insert “Environment”.

On page 149, line 5, strike “Network” and insert “Environment”.

On page 149, line 10, strike “(l)” and insert “(k)”.

On page 149, line 13, strike “Network” and insert “Environment”.

On page 149, line 14, strike “Network” and insert “Environment”.

On page 149, beginning on line 14, strike “the Director of Management and Budget” and insert “the principal officer as designated in section 206(g)”.

On page 149, line 19, strike “Network” and insert “Environment”.

On page 150, line 2, strike “Network” and insert “Environment”.

On page 150, line 9, strike “Network” and insert “Environment”.

On page 150, line 13, strike “Network” and insert “Environment”.

On page 150, line 16, strike “Network” and insert “Environment”.

On page 150, line 18, strike “(m)” and insert “(l)”.

On page 150, beginning on line 23, strike “Network” and insert “Environment”.

On page 151, line 2, strike “Network” and insert “Environment”.

On page 151, line 3, strike “Network” and insert “Environment”.

On page 152, line 7, strike “Network” and insert “Environment”.

On page 152, line 11, strike “Network” and insert “Environment”.

On page 152, line 19, strike “(n)” and insert “(m)”.

On page 152, beginning on line 21, strike “to the Director of Management and Budget”.

On page 153, line 1, strike “Network” and insert “Environment”.

On page 133, line 4, strike “90 days” and insert “180 days”.

On page 134, line 4, strike “180 days” and insert “270 days”.

On page 135, line 15, strike “270 days” and insert “1 year”.

On page 140, line 6, strike “30 days” and insert “90 days”.

On page 145, line 12, strike “1 year” and insert “15 months”.

On page 149, line 16, strike “1 year” and insert “15 months”.

On page 150, line 20, strike “1 year” and insert “15 months”.

On page 212, beginning on line 3, strike “subsection (b), this Act, and the amendments made by this Act,” and insert “subsections (b), (c), and (d), titles I through III of this Act, and the amendments made by such titles,”

On page 212, between lines 6 and 7, insert the following:

(b) SPECIFIED EFFECTIVE DATES.—(1) The provisions of section 206 shall take effect as provided in such provisions.

(2) The provisions of sections 211 and 212 shall take effect 90 days after the date of the enactment of this Act.

On page 212, line 7, strike “(b)” and all that follows through “United States” on line 10 and insert “(c) EARLIER EFFECTIVE DATE.—In order to safeguard the national security of the United States through rapid implementation of titles I through III of this Act while also ensuring a smooth transition in the implementation of such titles,”.

On page 212, beginning on line 11, strike “Act (including the amendments made by this Act), or one or more particular provisions of this Act” and insert “titles I through III of this Act (including the amendments made by such titles), or one or more particular provisions of such titles”.

On page 212, between lines 16 and 17, insert the following:

(d) DELAYED EFFECTIVE DATE.—(1) Except with respect to a provision specified in subsection (b), the President may extend the effective date of a provision of titles I through III of this Act (including the amendments made by such provision) for any period up to 180 days after the effective date otherwise provided by this section for such provision.

(2) The President may extend the effective date of a provision under paragraph (1) only if the President determines that the extension is necessary to safeguard the national security of the United States and after balancing the need for a smooth transition in the implementation of titles I through III of this Act against the need for a rapid implementation of such titles.

On page 212, line 17, strike “(c)” and insert “(e)”.

On page 212, line 18, strike “(b)” and insert “(c) or (d)”.

On page 212, line 23, strike “earlier” and insert “earlier or delayed”.

On page 212, line 25, strike “earlier” and insert “earlier or delayed”.

On page 28, beginning on line 16, strike “of the National Intelligence Director”.

On page 43, beginning on line 1, strike “**OF THE NATIONAL INTELLIGENCE DIRECTOR**”.

On page 43, beginning on line 5, strike “of the National Intelligence Director” and insert “for the National Intelligence Director and the Director of the Central Intelligence Agency”.

On page 43, line 14, add at the end the following: “Any use of funds from the Reserve shall be subject to the direction and approval of the National Intelligence Director and in accordance with procedures issued by the Director.”.

On page 43, beginning on line 17, strike “of the National Intelligence Director”.

On page 141, between lines 15 and 16, insert the following:

(H) the Director of the Central Intelligence Agency or his designee;

On page 141, line 16, strike “(H)” and insert “(I)”.

On page 141, line 18, strike “(I)” and insert “(J)”.

On page 141, line 21, strike “(J)” and insert “(K)”.

On page 194, beginning on line 23, strike “of the National Intelligence Director”.

On page 153, between lines 2 and 3, insert the following:

SEC. 207. REPORT ON IMPLEMENTATION OF RECOMMENDATIONS OF DEFENSE SCIENCE BOARD ON PREVENTING AND DEFENDING AGAINST CLANDESTINE NUCLEAR ATTACK.

(a) FINDING.—Congress finds that the June 2004 report of the Defense Science Board Task Force on Preventing and Defending Against Clandestine Nuclear Attack—

(1) found that it would be easy for adversaries to introduce and detonate a nuclear explosive clandestinely in the United States;

(2) found that clandestine nuclear attack and defense against such attack should be treated as an emerging aspect of strategic warfare and that those matters warrant national and Department of Defense attention; and

(3) called for a serious national commitment to a multidepartment program to create a multi-element, layered, global, civil/military complex of systems and capabilities that can greatly reduce the likelihood of a successful clandestine attack, achieving levels of protection effective enough to warrant the effort.

(b) REPORT.—Not later than 6 months after the date of the enactment of this Act, the Secretary of Defense shall, in consultation with the Secretary of Energy, submit to the Committees on Armed Services of the Senate and the House of Representatives a report on the actions proposed to be taken to address the recommendations of the Defense Science Board Task Force on Preventing and Defending Against Clandestine Nuclear Attack.

On page 109, line 6, insert the words "within the National Intelligence Program" after the words "for each intelligence program"

On page 109, strike lines 12 and 13 and insert the following:

(B) serve as exclusive milestone decision authority, except that with respect to Department of Defense programs the Director shall serve as milestone decision authority jointly with the Secretary of Defense or the designee of the Secretary; and

On page 110, strike lines 8 through 18 and insert the following:

(4) If the National Intelligence Director and the Secretary of Defense are unable to reach agreement on a milestone decision under this subsection, the Director shall assume milestone decision authority subject to review by the President at the request of the Secretary.

On page 94, between lines 14 and 15, insert the following:

(3) There may be established under this subsection one or more national intelligence centers having intelligence responsibility for the following:

(A) The nuclear terrorism threats confronting the United States.

(B) The chemical terrorism threats confronting the United States.

(C) The biological terrorism threats confronting the United States.

On page 94, line 15, strike "(3)" and insert "(4)".

At the appropriate place, insert the following:

SEC. ___. INTELLIGENCE COMMUNITY USE OF NISAC CAPABILITIES.

The National Intelligence Director shall establish a formal relationship, including information sharing, between the intelligence community and the National Infrastructure Simulation and Analysis Center. Through this relationship, the intelligence community shall take full advantage of the capabilities of the National Infrastructure Simulation and Analysis Center, particularly vulnerability and consequence analysis, for real time response to reported threats and long term planning for projected threats.

On page 60, strike line 5 and all that follows through page 77, line 18, and insert the following:

SEC. 141. INSPECTOR GENERAL OF THE NATIONAL INTELLIGENCE AUTHORITY.

(a) INSPECTOR GENERAL OF NATIONAL INTELLIGENCE AUTHORITY.—There is an Inspector General of the National Intelligence Authority. The Inspector General of the National Intelligence Authority and the Office of the Inspector General of the National Intelligence Authority shall be subject to the provisions of the Inspector General Act of 1978 (5 U.S.C. App.).

(b) AMENDMENTS TO INSPECTOR GENERAL ACT OF 1978 RELATING TO INSPECTOR GENERAL OF NATIONAL INTELLIGENCE AUTHORITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) by redesignating section 8J as section 8K; and

(2) by inserting after section 8I the following new section:

"SPECIAL PROVISIONS CONCERNING THE NATIONAL INTELLIGENCE AUTHORITY

"SEC. 8J. (a)(1) Notwithstanding the last 2 sentences of section 3(a), the Inspector General of the National Intelligence Authority (in this section referred to as the 'Inspector General') shall be under the authority, direction, and control of the National Intelligence Director (in this section referred to as the 'Director') with respect to audits or investigations, or the issuance of subpoenas, which require access to information concerning intelligence or counterintelligence matters the disclosure of which would constitute a serious threat to national security.

"(2) With respect to information described in paragraph (1), the Director may prohibit the Inspector General from initiating, carrying out, or completing any investigation, inspection, or audit, or from issuing any subpoena, if the Director determines that such prohibition is necessary to preserve the vital national security interests of the United States.

"(3) If the Director exercises the authority under paragraph (1) or (2), the Director shall submit to the congressional intelligence committees an appropriately classified statement of the reasons for the exercise of such authority within 7 days.

"(4) The Director shall advise the Inspector General at the time a report under paragraph (3) is submitted, and, to the extent consistent with the protection of intelligence sources and methods, provide the Inspector General with a copy of such report.

"(5) The Inspector General may submit to the congressional intelligence committees any comments on a report of which the Inspector General has notice under paragraph (4) that the Inspector General considers appropriate.

"(b) In addition to the qualifications for the appointment of the Inspector General under section 3(a), the Inspector General shall be appointed on the basis of prior experience in the field of intelligence or national security.

"(c)(1)(A) In addition to the duties and responsibilities of the Inspector General specified elsewhere in this Act, the Inspector General shall, for the purpose stated in subparagraph (B), provide policy direction for, and conduct, supervise, and coordinate audits and investigations relating to—

"(i) the coordination and collaboration among elements of the intelligence community within the National Intelligence Program; and

"(ii) the coordination and collaboration between elements of the intelligence community within the National Intelligence Program and other elements of the intelligence community.

"(B) The Inspector General shall conduct the activities described in subparagraph (A) to ensure that the coordination and collaboration referred to in that paragraph is conducted efficiently and in accordance with applicable law and regulation.

"(C) Before undertaking any investigation, inspection, or audit under subparagraph (A), the Inspector General shall consult with any other inspector general having responsibilities regarding an element of the intelligence community whose activities are involved in the investigation, inspection, or audit for the purpose of avoiding duplication of effort and ensuring effective coordination and cooperation.

"(2) In addition to the matters of which the Inspector General is required to keep the Director and Congress fully and currently informed under section 4(a), the Inspector General shall—

"(A) keep the Director and Congress fully and currently informed concerning—

"(i) violations of civil liberties and privacy that may occur in the programs and operations of the National Intelligence Authority; and

"(ii) violations of law and regulations, violations of civil liberties and privacy, and fraud and other serious problems, abuses, and deficiencies that may occur in the coordination and collaboration referred to in clauses (i) and (ii) of paragraph (1)(A); and

"(B) report the progress made in implementing corrective action with respect to the matters referred to in subparagraph (A).

"(3) To enable the Inspector General to fully and effectively carry out the duties and responsibilities specified in this Act, the Inspector General and the inspectors general of the other elements of the intelligence community shall coordinate their internal audit, inspection, and investigative activities to avoid duplication and ensure effective coordination and cooperation.

"(4) The Inspector General shall take due regard for the protection of intelligence sources and methods in the preparation of all reports issued by the Inspector General, and, to the extent consistent with the purpose and objective of such reports, take such measures as may be appropriate to minimize the disclosure of intelligence sources and methods described in such reports.

"(d)(1) Each semiannual report prepared by the Inspector General under section 5(a) shall—

"(A) include an assessment of the effectiveness of all measures in place in the National Intelligence Authority for the protection of civil liberties and privacy of United States persons; and

"(B) be transmitted by the Director to the congressional intelligence committees.

"(2) In addition the duties of the Inspector General and the Director under section 5(d)—

"(A) the Inspector General shall report immediately to the Director whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to—

"(i) the coordination and collaboration among elements of the intelligence community within the National Intelligence Program; and

"(ii) the coordination and collaboration between elements of the intelligence community within the National Intelligence Program and other elements of the intelligence community; and

"(B) the Director shall transmit to the congressional intelligence committees each report under subparagraph (A) within 7 calendar days of receipt of such report, together with such comments as the Director considers appropriate.

"(3) Any report required to be transmitted by the Director to the appropriate committees or subcommittees of Congress under section 5(d) shall also be transmitted, within the 7-day period specified in that section, to the congressional intelligence committees.

"(4) In the event that—

"(A) the Inspector General is unable to resolve any differences with the Director affecting the execution of the duties or responsibilities of the Inspector General;

"(B) an investigation, inspection, or audit carried out by the Inspector General should focus on any current or former National Intelligence Authority official who holds or held a position in the Authority that is subject to appointment by the President, by and with the advice and consent of the Senate, including such a position held on an acting basis;

"(C) a matter requires a report by the Inspector General to the Department of Justice on possible criminal conduct by a current or former official described in subparagraph (B);

"(D) the Inspector General receives notice from the Department of Justice declining or approving prosecution of possible criminal conduct of any current or former official described in subparagraph (B); or

"(E) the Inspector General, after exhausting all possible alternatives, is unable to obtain significant documentary information in the course of an investigation, inspection, or audit,

the Inspector General shall immediately notify and submit a report on such matter to the congressional intelligence committees.

"(5) Pursuant to title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), the Director shall submit to the congressional intelligence committees any report or findings and recommendations of an investigation, inspection, or audit conducted by the office which has been requested by the Chairman or Ranking Minority Member of either committee.

"(e)(1) In addition to the other authorities of the Inspector General under this Act, the Inspector General shall have access to any personnel of the National Intelligence Authority, or any employee of a contractor of the Authority, whose testimony is needed for the performance of the duties of the Inspector General. Whenever such access is, in the judgment of the Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the Director without delay.

"(2) Failure on the part of any employee or contractor of the National Intelligence Authority to cooperate with the Inspector General shall be grounds for appropriate administrative actions by the Director, including loss of employment or termination of an existing contractual relationship.

"(3) Whenever, in the judgment of the Director, an element of the intelligence community that is part of the National Intelligence Program has unreasonably refused or not provided information or assistance requested by the Inspector General under paragraph (1) or (3) of section 6(a), the Director shall so inform the head of the element, who shall promptly provide such information or assistance to the Inspector General.

"(4) The level of classification or compartmentalization of information shall not, in and of itself, provide a sufficient rationale for denying the Inspector General access to any materials under section 6(a).

"(f) In addition to the authorities and requirements in section 7 regarding the receipt of complaints by the Inspector General—

"(1) the Inspector General is authorized to receive and investigate complaints or information from any person concerning the existence of an activity constituting a violation of laws, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety; and

"(2) once such complaint or information has been received from an employee of the Federal Government—

"(A) the Inspector General shall not disclose the identity of the employee without the consent of the employee, unless the Inspector General determines that such disclosure is unavoidable during the course of the investigation or the disclosure is made to an official of the Department of Justice responsible for determining whether a prosecution should be undertaken; and

"(B) no action constituting a reprisal, or threat of reprisal, for making such complaint may be taken by any employee in a position to take such actions, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

"(g) In this section, the terms 'congressional intelligence committees', 'intelligence community', and 'National Intelligence Program' have the meanings given such terms in section 2 of the National Intelligence Reform Act of 2004.".

(c) Technical and Conforming Amendments to Inspector General Act of 1978.—(1)(A) Section 8H(a)(1) of the Inspector General Act of 1978 (5 U.S.C. App.) is further amended—

(i) by redesignating subparagraph (C) as subparagraph (D); and

(ii) by inserting after subparagraph (B) the following new subparagraph (C):

"(C) An employee of the National Intelligence Authority, of an entity other than the Authority who is assigned or detailed to the Authority, or of a contractor of the Authority who intends to report to Congress a complaint or information with respect to an urgent concern may report the complaint or information to the Inspector General of the National Intelligence Authority.".

(B) In support of this paragraph, Congress makes the findings set forth in paragraphs (1) through (6) of section 701(b) of the Intelligence Community Whistleblower Protection Act of 1998 (title VII of Public Law 105-272; 5 U.S.C. App. 8H note).

(2) The Inspector General Act of 1978 is further amended—

(A) in section 8K, as redesignated by subsection (b)(1) of this section, by striking "8F or 8H" and inserting "8F, 8H, 8I, or 8J"; and

(B) in section 11—

(i) in paragraph (1), by inserting "the National Intelligence Director;" after "the Attorney General;"; and

(ii) in paragraph (2), by inserting "the National Intelligence Authority," after "the National Aeronautics and Space Administration,".

(d) Separate Budget Account.—The National Intelligence Director shall, in accordance with procedures to be issued by the Director in consultation with congressional intelligence committees, include in the National Intelligence Program budget a separate account for the Office of Inspector General of the National Intelligence Authority.

(e) Sense of Congress on Adoption of Standards of Review.—It is the sense of Congress that the Inspector General of the National Intelligence Authority, in consultation with other Inspectors General of the intelligence community and the President's Council on Integrity and Efficiency, should adopt standards for review and related precedent that are generally used by the intelligence community for reviewing whistleblower reprisal complaints made under sections 7 and 8J(f) of the Inspector General Act of 1978.

On page 203, strike lines 9 through 22.

On page 203, line 1, strike "**312.**" and insert "**311.**".

On page 210, between lines 22 and 23, insert the following:

SEC. 336. NATIONAL INTELLIGENCE COUNCIL REPORT ON METHODOLOGIES UTILIZED FOR NATIONAL INTELLIGENCE ESTIMATES.

(a) Report.—Not later than 180 days after the date of the enactment of this Act, the National Intelligence Council shall submit to Congress a report that includes the following:

(1) The methodologies utilized for the initiation, drafting, publication, coordination, and dissemination of the results of National Intelligence Estimates (NIEs).

(2) Such recommendations as the Council considers appropriate regarding improvements of the methodologies utilized for National Intelligence Estimates in order to ensure the timeliness of such Estimates and ensure that such Estimates address the national security and intelligence priorities and objectives of the President and the National Intelligence Director.

(b) Form.—The report under subsection (a) shall be submitted in an unclassified form, but may include a classified annex.

On page 210, line 23, strike "**336.**" and insert "**337.**".

On page 210, between lines 22 and 23, insert the following:

SEC. 336. NATIONAL INTELLIGENCE DIRECTOR REPORT ON NATIONAL COUNTERTERRORISM CENTER.

(a) Report.—Not later than one year after the date of the establishment of the National Counterterrorism Center under section 143, the NATIONAL INTELLIGENCE DIRECTOR shall submit to Congress a report evaluating the effectiveness of the Center in achieving its primary missions under subsection (d) of that section.

(b) Elements.—The report under subsection (a) shall include the following:

(1) An assessment of the effectiveness of the National Counterterrorism Center in achieving its primary missions.

(2) An assessment of the effectiveness of the authorities of the Center in contributing to the achievement of its primary missions, including authorities relating to personnel and staffing, funding, information sharing, and technology.

(3) An assessment of the relationships between the Center and the other elements and components of the intelligence community.

(4) An assessment of the extent to which the Center provides an appropriate model for the establishment of national intelligence centers under section 144.

(c) Form.—The report under subsection (a) shall be submitted in an unclassified form, but may include a classified annex.

On page 153, between lines 2 and 3, insert the following:

SEC. 207. ALTERNATIVE ANALYSES OF INTELLIGENCE BY THE INTELLIGENCE COMMUNITY.

(a) Sense of Congress.—It is the sense of Congress that the National Intelligence Director should consider the advisability of establishing for each element of the intelligence community an element, office, or component whose purpose is the alternative analysis (commonly referred to as a "red-team analysis") of the information and conclusions in the intelligence products of such element of the intelligence community.

(b) Report.—(1) Not later than one year after the date of the enactment of this Act, the National Intelligence Director shall submit to Congress a report on the actions taken to establish for each element of the intelligence community an element, office, or component described in subsection (a).

(2) The report shall be submitted in an unclassified form, but may include a classified annex.

At the appropriate place, insert the following:

SEC. ___. BIOMETRIC STANDARD FOR VISA APPLICATIONS.

(a) Short Title.—This section may be cited as the "Biometric Visa Standard Distant Borders Act".

(b) Technology Standard for Visa Waiver Participants.—Section 303(c) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1732(c)) is amended to read as follows:

"(c) Technology Standard for Visa Waiver Participants.—

"(1) In General.—Not later than October 26, 2006, the Secretary of State shall certify to Congress which of the countries designated to participate in the visa waiver program established under section 217 of the Immigration and Nationality Act (8 U.S.C. 1187) are developing a program to issue to individuals seeking to enter that country pursuant to a visa issued by that country, a machine readable visa document that is tamper-resistant and incorporates biometric identification information that is verifiable at its port of entry.

"(2) Savings Clause.—This subsection shall not be construed to rescind the requirement of section 217(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1187(a)(3)).".

On page 121, line 13, strike "and analysts" and insert ", analysts, and related personnel".

On page 121, line 17, strike "and analysts" and insert ", analysts, and related personnel".

On page 121, line 19, strike "and analysts" and insert ", analysts, and related personnel".

On page 123, beginning on line 8, strike ", in consultation with the Director of the Office of Management and Budget, modify the" and insert "establish a".

On page 123, line 11, strike "in order to organize the budget according to" and insert "to reflect".

On page 5, beginning on line 15, strike "and the Department of Energy" and insert "the Department of Energy, and the Coast Guard".

On page 5, beginning on line 23, strike "including the Office of Intelligence of the Coast Guard".

On page 6, line 10, insert ", as determined consistent with any guidelines issued by the President," before "to the interests".

On page 9, beginning on line 13, strike "counterterrorism" and all that follows through "foreign intelligence" on line 15 and insert "counterterrorism activities of the United States Government between intelligence activities located abroad and intelligence".

On page 10, line 23, strike "a principal" and insert "the principal".

On page 12, line 18, insert "of" before "the National Intelligence Program".

On page 13, line 12, insert "appropriations for" after "oversee".

On page 20, beginning on line 12, strike "related to the national security which is".

On page 21, line 23, strike "(4)" and insert "(5)".

On page 22, line 3, strike "(5)" and insert "(6)".

On page 25, line 10, strike "head of the".

On page 28, line 17, strike "or" and insert "and".

On page 30, line 24, strike "205" and insert "206".

On page 31, line 23, strike "205" and insert "206 and the Clinger Cohen Act (divisions D and E of Public Law 104 106; 110 Stat. 642)".

On page 32, beginning on line 13, strike "on all matters" and all that follows through line 15 and insert "or international organizations on all matters involving intelligence related to the national security.".

On page 32, beginning on line 21, strike "head of each element of the intelligence community" and insert "head of any department, agency, or other element of the United States Government".

On page 59, line 20, strike "309" and insert "310".

On page 87, line 8, insert "and analytic" after "intelligence collection".

On page 93, line 17, insert "of" before "electronic access".

On page 96, beginning on line 13, strike "National Security Council" and insert "President".

On page 99, line 25, strike "National Security Council" and insert "President".

On page 134, strike lines 6 through 9 and insert the following:

(1) in consultation with the Executive Council, issue guidelines—

(A) for acquiring, accessing, sharing, and using information, including

On page 153, between lines 2 and 3, insert the following:

SEC. 207. PERMANENT AUTHORITY FOR PUBLIC INTEREST DECLASSIFICATION BOARD.

(a) In General.—Section 710 of the Public Interest Declassification Act of 2000 (title VII of Public Law 106-567; 50 U.S.C. 435 note) is amended—

(1) by striking "(a) Effective Date.—"; and

(2) by striking subsection (b).

(b) Conforming Amendment.—The head of such section is amended by striking "; **SUNSET**".

On page 154, line 16, strike "section 205(g)" and insert "subsections (e) and (g) of section 205".

On page 154, line 21, strike "section 205(g)" and insert "subsections (e) and (g) of section 205".

On page 156, line 4, strike "section 205(g)" and insert "subsections (e) and (g) of section 205".

On page 170, line 19, strike "and independent" and insert "independent".

On page 171, beginning on line 1, strike "and independent" and insert "independent".

On page 171, beginning on line 8, strike "and independent" and insert "independent".

On page 171, line 14, strike "objective and independent" and insert "timely, objective, independent".

On page 171, line 20, strike "and independent" and insert "independent".

On page 175, strike lines 8 through 17 and insert the following:

(2) Covered Information.—

(A) In General.—Except as provided in subparagraph (B), paragraph (1) applies to information, including classified information, that an employee reasonably believes provides direct and specific evidence of—

(i) a false or inaccurate statement to Congress contained in any intelligence assessment, report, or estimate; or

(ii) the withholding from Congress of any intelligence information material to any intelligence assessment, report, or estimate.

(B) Exception.—Paragraph (1) does not apply to information the disclosure of which is prohibited by rule 6(e) of the Federal Rules of Criminal Procedure.

On page 177, after line 17, add the following:

Subtitle D—Homeland Security Civil Rights and Civil Liberties Protection

SEC. 231. SHORT TITLE.

This title may be cited as the "Homeland Security Civil Rights and Civil Liberties Protection Act of 2004".

SEC. 232. MISSION OF DEPARTMENT OF HOMELAND SECURITY.

Section 101(b)(1) of the Homeland Security Act of 2002 (6 U.S.C. 111(b)(1)) is amended—

(1) in subparagraph (F), by striking "and" after the semicolon;

(2) by redesignating subparagraph (G) as subparagraph (H); and

(3) by inserting after subparagraph (F) the following:

"(G) ensure that the civil rights and civil liberties of persons are not diminished by efforts, activities, and programs aimed at securing the homeland; and".

SEC. 233. OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES.

Section 705(a) of the Homeland Security Act of 2002 (6 U.S.C. 345(a)) is amended—

(1) by amending the matter preceding paragraph (1) to read as follows:

"(a) In General.—The Officer for Civil Rights and Civil Liberties, who shall report directly to the Secretary, shall—";

(2) by amending paragraph (1) to read as follows:

"(1) review and assess information concerning abuses of civil rights, civil liberties, and profiling on the basis of race, ethnicity, or religion, by employees and officials of the Department;";

(3) in paragraph (2), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

"(3) assist the Secretary, directorates, and offices of the Department to develop, implement, and periodically review Department policies and procedures to ensure that the protection of civil rights and civil liberties is appropriately incorporated into Department programs and activities;

"(4) oversee compliance with constitutional, statutory, regulatory, policy, and other requirements relating to the civil rights and civil liberties of individuals affected by the programs and activities of the Department;

"(5) coordinate with the Privacy Officer to ensure that—

"(A) programs, policies, and procedures involving civil rights, civil liberties, and privacy considerations are addressed in an integrated and comprehensive manner; and

"(B) Congress receives appropriate reports regarding such programs, policies, and procedures; and

"(6) investigate complaints and information indicating possible abuses of civil rights or civil liberties, unless the Inspector General of the Department determines that any such complaint or information should be investigated by the Inspector General.''.

SEC. 234. PROTECTION OF CIVIL RIGHTS AND CIVIL LIBERTIES BY OFFICE OF INSPECTOR GENERAL.

Section 8I of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following:

''(f)(1) The Inspector General of the Department of Homeland Security shall designate a senior official within the Office of Inspector General, who shall be a career member of the civil service at the equivalent to the GS–15 level or a career member of the Senior Executive Service, to perform the functions described in paragraph (2).

''(2) The senior official designated under paragraph (1) shall—

''(A) coordinate the activities of the Office of Inspector General with respect to investigations of abuses of civil rights or civil liberties;

''(B) receive and review complaints and information from any source alleging abuses of civil rights and civil liberties by employees or officials of the Department and employees or officials of independent contractors or grantees of the Department;

''(C) initiate investigations of alleged abuses of civil rights or civil liberties by employees or officials of the Department and employees or officials of independent contractors or grantees of the Department;

''(D) ensure that personnel within the Office of Inspector General receive sufficient training to conduct effective civil rights and civil liberties investigations;

''(E) consult with the Officer for Civil Rights and Civil Liberties regarding—

''(i) alleged abuses of civil rights or civil liberties; and

''(ii) any policy recommendations regarding civil rights and civil liberties that may be founded upon an investigation by the Office of Inspector General;

''(F) provide the Officer for Civil Rights and Civil Liberties with information regarding the outcome of investigations of alleged abuses of civil rights and civil liberties;

''(G) refe, civil rights and civil liberties matters that the Inspector General decides not to investigate to the Officer for Civil Rights and Civil Liberties;

''(H) ensure that the Office of the Inspector General publicizes and provides convenient public access to information regarding—

''(i) the procedure to file complaints or comments concerning civil rights and civil liberties matters; and

''(ii) the status of corrective actions taken by the Department in response to Office of the Inspector General reports; and

''(I) inform the Officer for Civil Rights and Civil Liberties of any weaknesses, problems, and deficiencies within the Department relating to civil rights or civil liberties.''.

SEC. 235. PRIVACY OFFICER.

Section 222 of the Homeland Security Act of 2002 (6 U.S.C. 142) is amended—

(1) in the matter preceding paragraph (1), by inserting '', who shall report directly to the Secretary,'' after ''in the Department'';

(2) in paragraph (4), by striking ''and'' at the end;

(3) by redesignating paragraph (5) as paragraph (6); and

(4) by inserting after paragraph (4) the following:

''(5) coordinating with the Officer for Civil Rights and Civil Liberties to ensure that—

''(A) programs, policies, and procedures involving civil rights, civil liberties, and privacy considerations are addressed in an integrated and comprehensive manner; and

''(B) Congress receives appropriate reports on such programs, policies, and procedures; and''.

On page 180, line 8, strike ''pertaining to intelligence relating to'' and insert ''related to intelligence affecting''.

On page 181, beginning on line 8, strike ''on all matters'' and all that follows through line 10 and insert ''or international organizations on all matters involving intelligence related to the national security.'.''.

On page 201, strike line 14 through 20 and insert the following:

(a) APPOINTMENT OF NATIONAL COUNTERINTELLIGENCE EXECUTIVE.—Section 902(a) of the Counterintelligence Enhancement Act of 2002 (title IX of Public Law 107–306; 116 Stat. 2432; 50 U.S.C. 402b) is amended—

(1) by striking ''President'' and inserting ''National Intelligence Director''; and

(2) by striking ''Director of Central Intelligence'' and inserting ''Director of the Central Intelligence Agency''.

On page 205, line 1, strike ''**COUNTERTERRORISM**'' and insert ''**COUNTERINTELLIGENCE**''.

On page 207, between lines 13 and 14, insert the following:

''The Director of the Central Intelligence Agency.

On page 207, line 21, insert ''Deputy'' before ''Director''.

At the appropriate place, insert the following:

SEC. ___. COMMUNICATIONS INTEROPERABILITY.

(a) DEFINITION.—As used in this section, the term ''equipment interoperability'' means the devices that support the ability of public safety service and support providers to talk with each other via voice and data on demand, in real time, when needed, and when authorized.

(b) NATIONAL GUIDELINES FOR EQUIPMENT INTEROPERABILITY.—Not later than one year after the date of enactment of this Act, the Secretary of Homeland Security, after consultation with the Federal Communications Commission and the National Telecommunications and Information Administration, and other appropriate representatives of Federal, Sate, and local government and first responders, shall adopt, by regulation, national goals and guidelined for equipment interoperability and related issues that—

(1) set short-term, mid-term, and long-term means and minimum equipment performance guidelines for Federal agencies, Sates, and local governments;

(2) recognize—

(A) the value, life cycle, and technical capabilities of existing communications infrastructure;

(B) the need for cross-border interoperability between States and nations;

(C) the unique needs of small, rural communities; and

(D) the interoperability needs for daily operations and catastrophic events.

(c) NATIONAL EQUIPMENT INTEROPERABILITY IMPLEMENTATION PLAN.—

(1) DEVELOPMENT.—Not later than 180 days of the completion of the development of goals and guidelines under subsection (b), the Secretary of Homeland Security shall develop an implementation plan that—

(A) outlines the responsibilities of the Department of Homeland Security; and

(B) focuses on providing technical and financial assistance to States and local governments for interoperability planning and implementation.

(2) EXECUTION.—The Secretary shall execute the plan developed under this subsection as soon as practicable.

(3) REPORTS.—

(A) Initial Report.—Upon the completion of the plan under subsection (c), the Secretary shall submit a report that describes such plan to—

(i) the Committee on Governmental Affairs of the Senate;

(ii) the Committee on Environment and Public Works of the Senate;

(iii) the Committee on Commerce, Science, and Transportation of the Senate;

(iv) the Select Committee on Homeland Security of the House of Representatives; and

(v) the Committee on Energy and Commerce of the House of Representatives.

(B) ANNUAL REPORT.—Not later than 1 year after the submission of the report under subparagraph (A), and annually thereafter, the Secretary shall submit a report to the committees referred to in subparagraph (A) that describes the progress made in implementing the plan developed under this subsection.

(d) INTERNATIONAL INTEROPERABILITY.—Not later than 1 year after the date of enactment of this Act, the President shall establish a mechanism for coordinating cross-border interoperability issues between—

(1) the United States and Canada; and

(2) the United States and Mexico.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each of the fiscal years 2005 through 2009—

(1) such sums as may be necessary to carry out subsection (c);

(2) such sums as may be necessary to carry out subsection (c); and

(3) such sums as may be necessary to carry out subsection (d).

On page 44, strike line 24.

On page 45, line 1, strike ''(6)'' and insert ''(5)''.

On page 45, line 3, strike ''(7)'' and insert ''(6)''.

On page 45, line 5, strike ''(8)'' and insert ''(7)''.

On page 45, line 7, strike ''(9)'' and insert ''(8)''.

On page 45, line 9, strike ''(10)'' and insert ''(9)''.

On page 45, line 11, strike ''(11)'' and insert ''(10)''.

On page 45, line 14, strike ''(12)'' and insert ''(11)''.

On page 52, strike lines 1 through 20.

On page 52, line 21, strike ''**126.**'' and insert ''**125.**''.

On page 55, line 1, strike ''**127.**'' and insert ''**126.**''.

On page 56, line 9, strike ''**128.**'' and insert ''**127.**''.

On page 57, line 1, strike ''**129.**'' and insert ''**128.**''.

On page 57, line 17, strike ''**130.**'' and insert ''**129.**''.

On page 58, strike lines 3 through 9 and insert the following:

(c) AUTHORITIES AND FUNCTIONS.—The Chief Financial Officer of the National Intelligence Authority shall—

(1) have such authorities, and carry out such functions, with respect to the National Intelligence Authority as are provided for an agency Chief Financial Officer by section 902 of title 31, United States Code, and other applicable provisions of law;

(2) assist the National Intelligence Director in the preparation and execution of the budget of the elements of the intelligence community within the National Intelligence Program;

(3) assist the Director in participating in the development by the Secretary of Defense

of the annual budget for military intelligence programs and activities outside the National Intelligence Program;

(4) provide unfettered access to the Director to financial information under the National Intelligence Program; and

(5) perform such other duties as may be prescribed by the Director or specified by law.

On page 59, line 15, strike "**131.**" and insert "**130.**".

On page 202, line 16, strike "131(b)" and insert "130(b)".

On page 19, line 12, insert "of access" after "grant".

On page 20, line 25, insert "of" after "development".

On page 53, line 2 strike "President" and insert "National Intelligence Director".

On page 173, line 11, strike "2" and insert "3".

At the appropriate place, insert the following:

SEC. ——. DEADLINE FOR COMPLETION OF CERTAIN PLANS, REPORTS, AND ASSESSMENTS.

(a) STRATEGIC PLAN REPORTS.—Within 90 days after the date of enactment of this Act, the Secretary of Homeland Security shall transmit to the Congress—

(1) a report on the status of the National Maritime Transportation Security Plan required by section 70103(a) of title 46, United States Code, which may be submitted in classified and redacted format;

(2) a comprehensive program management plan that identifies specific tasks to be completed and deadlines for completion for the transportation security card program under section 70105 of title 46, United States Code that incorporates best practices for communicating, coordinating, and collaborating with the relevant stakeholders to resolve relevant issues, such as background checks;

(3) a report on the status of negotiations under section 103 of the Maritime Transportation Security Act of 2002 (46 U.S.C. 70111 note);

(4) the report required by section 107(b) of the Maritime Transportation Security Act of 2002 (33 U.S.C. 1226 note); and

(5) a report on the status of the development of the system and program mandated by section 111 of the Maritime Transportation Security Act of 2002 (46 U.S.C. 70116 note).

(b) OTHER REPORTS.—Within 90 days after the date of enactment of this Act—

(1) the Secretary of Homeland Security shall transmit to the Congress—

(A) a report on the establishment of the National Maritime Security Advisory Committee appointed under section 70112 of title 46, United States Code; and

(B) a report on the status of the program established under section 70116 of title 46, United States Code, to evaluate and certify secure systems of international intermodal transportation;

(2) the Secretary of Transportation shall transmit to the Congress the annual report required by section 905 of the International Maritime and Port Security Act (46 U.S.C. App. 1802) that includes information that should have been included in the last preceding annual report that was due under that section; and

(3) the Commandant of the United States Coast Guard shall transmit to Congress the report required by section 110(b) of the Maritime Transportation Security Act of 2002 (46 U.S.C. 70101 note).

(d) EFFECTIVE DATE.—Notwithstanding any other provision of this Act, this section takes effect on the date of enactment of this Act.

At the appropriate place, insert the following:

SEC. ——. TSA FIELD OFFICE INFORMATION TECHNOLOGY AND TELECOMMUNICATIONS REPORT.

Within 90 days after the date of enactment of this Act, the Secretary of Homeland Security shall transmit a report to the Congress, which may be transmitted in classified and redacted formats, setting forth—

(1) a descriptive list of each administrative and airport site of the Transportation Security Administration, including its location, staffing, and facilities;

(2) an analysis of the information technology and telecommunications capabilities, equipment, and support available at each such site, including—

(A) whether the site has access to broadband telecommunications;

(B) whether the site has the ability to access Transportation Security Administration databases directly;

(C) the means available to the site for communicating and sharing information and other data on a real time basis with the Transportation Security Administration's national, regional, and State offices as well as with other Transportation Security Administration sites;

(D) the means available to the site for communicating with other Federal, State, and local government sites with transportation security related responsibilities; and

(E) whether and to what extent computers in the site are linked through a local area network or otherwise, and whether the information technology resources available to the site are adequate to enable it to carry out its functions and purposes; and

(3) an assessment of current and future needs of the Transportation Security Administration to provide adequate information technology and telecommunications facilities, equipment, and support to its sites, and an estimate of the costs of meeting those needs.

At the appropriate place, insert the following:

TITLE —AVIATION SECURITY

SEC. —01. IMPROVED PILOT LICENSES.

(a) IN GENERAL.—Within 90 days after the date of enactment of this Act, the Federal Aviation Administrator may develop a system for the issuance of any pilot's license issued more than 180 days after the date of enactment of this Act that—

(1) are resistant to tampering, alteration, and counterfeiting;

(2) include a photograph of the individual to whom the license is issued; and

(3) are capable of accommodating a digital photograph, a biometric measure, or other unique identifier that provides a means of—

(A) ensuring its validity; and

(B) revealing whether any component or security feature of the license has been compromised.

(b) USE OF DESIGNEES.—The Administrator of the Federal Aviation Administration may use designees to carry out subsection (a) to the extent feasible in order to minimize the burden of such requirements on pilots.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator for fiscal year 2005, $50,000,000 to carry out subsection (a).

SEC. —02. AIRCRAFT CHARTER CUSTOMER PRESCREENING.

(a) IN GENERAL.—Within 1 year after the date of enactment of this Act, or as soon as practicable thereafter, the Secretary of Homeland Security shall establish a process by which operators of charter aircraft with a maximum takeoff weight of greater than 12,500 pounds may—

(1) request the Transportation Security Administration to compare information about any individual seeking to charter an aircraft, and any passengers proposed to be transported aboard the aircraft, with a comprehensive, consolidated database or watchlist containing information about known or suspected terrorists and their associates; and

(2) refuse to charter an aircraft to or transport aboard such aircraft any persons identified on such database or watchlist.

(b) PRIVACY SAFEGUARDS.—The Secretary shall take appropriate measures to ensure that—

(1) the Transportation Security Administration does not disclose information to any person engaged in the business of chartering aircraft other than whether an individual compared against government watchlists constitutes a flight security or terrorism risk; and

(2) an individual denied access to an aircraft is given an opportunity to consult the Transportation Security Administration for the purpose of correcting mis-identification errors, resolve confusion resulting from names that are the same as or similar to names on available government watchlists, and address other information that is alleged to be erroneous, that may have resulted in the denial.

(c) TRANSFER.—The Secretary shall assess procedures to transfer responsibility for conducting reviews of any appropriate government watchlists under this section from persons engaged in the business of chartering air carriers to the public to the Secretary.

(d) AUTHORITY OF THE SECRETARY.—Nothing in this section precludes the Secretary from requiring operators of charter aircraft to comply with security procedures, including those established under subsection (a), if the Secretary determines that such a requirement is necessary based on threat conditions.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out the provisions of this section.

SEC. —03. AIRCRAFT RENTAL CUSTOMER PRESCREENING.

(a) IN GENERAL.—Within 1 year after the date of enactment of this Act, or as soon as practicable thereafter, the Secretary of Homeland Security shall establish a process by which operators of rental aircraft with a maximum takeoff weight of greater than 12,500 pounds may—

(1) request the Transportation Security Administration to compare information about any individual seeking to rent an aircraft, and any passengers proposed to be transported aboard the aircraft, with a comprehensive, consolidated database or watchlist containing information about known or suspected terrorists and their associates; and

(2) refuse to rent an aircraft to or transport aboard such aircraft any persons identified on such database or watchlist.

(b) PRIVACY SAFEGUARDS.—The Secretary shall take appropriate measures to ensure that—

(1) the Transportation Security Administration does not disclose information to any person engaged in the business of renting aircraft other than whether an individual compared against government watchlists

constitutes a flight security or terrorism risk; and

(2) an individual denied access to an aircraft is given an opportunity to consult the Transportation Security Administration for the purpose of correcting mis-identification errors, resolve confusion resulting from names that are the same as or similar to names on available government watchlists, and address other information that is alleged to be erroneous, that may have resulted in the denial.

(c) TRANSFER.—The Secretary shall assess procedures to transfer responsibility for conducting reviews of any appropriate government watchlists under this section from persons engaged in the business of renting aircraft to the public to the Secretary.

(d) AUTHORITY OF THE SECRETARY.—Nothing in this section precludes the Secretary from requiring operators of rental aircraft to comply with security procedures, including those established under subsection (a), if the Secretary determines that such a requirement is necessary based on threat conditions.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out the provisions of this section.

SEC. —04. REPORT ON RENTAL AND CHARTER CUSTOMER PRESCREENING PROCEDURES.

(a) IN GENERAL.—Within 12 months after the date of enactment of this Act, the Secretary of Homeland Security shall transmit a report to Congress on the feasibility of extending the requirements of section —02, section —03, or both sections to apply to aircraft with a maximum certificated takeoff weight of 12,500 pounds or less.

(b) ISSUES ADDRESSED.—The report shall—

(1) examine the technology and communications systems needed to carry out such procedures;

(2) provide an analysis of the risks posed by such aircraft; and

(3) examine the operational impact of proposed procedures on the commercial viability of that segment of charter and rental aviation operations.

SEC. —05. AVIATION SECURITY STAFFING.

(a) STAFFING LEVEL STANDARDS.—

(1) DEVELOPMENT OF STANDARDS.—Within 90 days after the date of enactment of this Act, the Secretary of Homeland Security, in consultation with the Secretary of Transportation and Federal Security Directors, shall develop standards for determining the appropriate aviation security staffing standards for all commercial airports in the United States necessary—

(A) to provide necessary levels of aviation security; and

(B) to ensure that the average aviation security-related delay experienced by airline passengers is minimized.

(2) GAO ANALYSIS.—The Comptroller General shall, as soon as practicable after the date on which the Secretary of Homeland Security has developed standards under paragraph (1), conduct an expedited analysis of the standards for effectiveness, administrability, ease of compliance, and consistency with the requirements of existing law.

(3) REPORT TO CONGRESS.—Within 120 days after the date of enactment of this Act, the Secretary of Homeland Security and the Comptroller General shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the standards developed under paragraph (1), together with recommendations for further improving the efficiency and effectiveness of the screening process, including the use of maximum time delay goals of no more than 10 minutes on the average.

(b) INTEGRATION OF FEDERAL AIRPORT WORKFORCE AND AVIATION SECURITY.—The Secretary of Homeland Security shall conduct a study of the feasibility of combining operations of Federal employees involved in screening at commercial airports and aviation security related functions under the aegis of the Department of Homeland Security in order to coordinate security-related activities, increase the efficiency and effectiveness of those activities, and increase commercial air transportation security.

SEC. —06. IMPROVED AIR CARGO AND AIRPORT SECURITY.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Homeland Security for the use of the Transportation Security Administration, in addition to any amounts otherwise authorized by law, for the purpose of improving aviation security related to the transportation of cargo on both passenger aircraft and all-cargo aircraft—

(1) $200,000,000 for fiscal year 2005;

(2) $200,000,000 for fiscal year 2006; and

(3) $200,000,000 for fiscal year 2007.

(b) NEXT-GENERATION CARGO SECURITY GRANT PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish and carry out a grant program to facilitate the development, testing, purchase, and deployment of next-generation air cargo security technology. The Secretary shall establish such eligibility criteria, establish such application and administrative procedures, and provide for such matching funding requirements, if any, as may be necessary and appropriate to ensure that the technology is deployed as fully and as rapidly as practicable.

(2) RESEARCH AND DEVELOPMENT; DEPLOYMENT.—To carry out paragraph (1), there are authorized to be appropriated to the Secretary for research and development related to next-generation air cargo security technology as well as for deployment and installation of next-generation air cargo security technology, such sums are to remain available until expended—

(A) $100,000,000 for fiscal year 2005;

(B) $100,000,000 for fiscal year 2006; and

(C) $100,000,000 for fiscal year 2007.

(c) AUTHORIZATION FOR EXPIRING AND NEW LOIS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary $150,000,000 for each of fiscal years 2005 through 2007 to fund projects and activities for which letters of intent are issued under section 44923 of title 49, United States Code, after the date of enactment of this Act.

(2) PERIOD OF REIMBURSEMENT.—Notwithstanding any other provision of law, the Secretary may provide that the period of reimbursement under any letter of intent may extend for a period not to exceed 10 years after the date that the Secretary issues such letter, subject to the availability of appropriations. This paragraph applies to letters of intent issued under section 44923 of title 49, United States Code, or section 367 of the Department of Transportation and Related Agencies Appropriation Act, 2003 (49 U.S.C. 47110 note).

(d) REPORTS.—The Secretary shall transmit an annual report for fiscal year 2005, fiscal year 2006, and fiscal year 2007 to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on—

(1) the progress being made toward, and the status of, deployment and installation of next-generation air cargo security technology under subsection (b); and

(2) the amount and purpose of grants under subsection (b) and the locations of projects funded by such grants.

SEC. —07. AIR CARGO SECURITY MEASURES.

(a) ENHANCEMENT OF AIR CARGO SECURITY.—The Secretary of Homeland Security, in consultation with the Secretary of Transportation, shall develop and implement a plan to enhance air cargo security at airports for commercial passenger and cargo aircraft that incorporates the recommendations made by the Cargo Security Working Group of the Aviation Security Advisory Committee.

(b) SUPPLY CHAIN SECURITY.—The Administrator of the Transportation Security Administration shall—

(1) promulgate regulations requiring the evaluation of indirect air carriers and ground handling agents, including background checks and checks against all Administration watch lists; and

(2) evaluate the potential efficacy of increased use of canine detection teams to inspect air cargo on passenger and all-cargo aircraft, including targeted inspections of high risk items.

(c) INCREASED CARGO INSPECTIONS.—Within 1 year after the date of enactment of this Act, the Secretary of Homeland Security shall require that the percentage of cargo screened or inspected is at least two-fold the percentage that is screened or inspected as of September 30, 2004.

(c) ALL-CARGO AIRCRAFT SECURITY.—Subchapter I of chapter 449, United States Code, is amended by adding at the end the following:

"§ 44925. All-cargo aircraft security

"(a) ACCESS TO FLIGHT DECK.—Within 180 days after the date of enactment of this Act, the Administrator of the Transportation Security Administration, in coordination with the Federal Aviation Administrator, shall—

"(1) issue an order (without regard to the provisions of chapter 5 of title 5)—

"(A) requiring, to the extent consistent with engineering and safety standards, that all-cargo aircraft operators engaged in air transportation or intrastate air transportation maintain a barrier, which may include the use of a hardened cockpit door, between the aircraft flight deck and the aircraft cargo compartment sufficient to prevent unauthorized access to the flight deck from the cargo compartment, in accordance with the terms of a plan presented to and accepted by the Administrator of the Transportation Security Administration in consultation with the Federal Aviation Administrator; and

"(B) prohibiting the possession of a key to a flight deck door by any member of the flight crew who is not assigned to the flight deck; and

"(2) take such other action, including modification of safety and security procedures and flight deck redesign, as may be necessary to ensure the safety and security of the flight deck.

"(b) SCREENING AND OTHER MEASURES.—Within 1 year after the date of enactment of this Act, the Administrator of the Transportation Security Administration, in coordination with the Federal Aviation Administrator, shall issue an order (without regard to the provisions of chapter 5 of title 5) requiring—

"(1) all-cargo aircraft operators engaged in air transportation or intrastate air transportation to physically screen each person, and that person's baggage and personal effects, to be transported on an all-cargo aircraft engaged in air transportation or intrastate air transportation;

"(2) each such aircraft to be physically searched before the first leg of the first flight of the aircraft each day, or, for inbound international operations, at aircraft operator's option prior to the departure of any such flight for a point in the United States; and

"(3) each such aircraft that is unattended overnight to be secured or sealed or to have access stairs, if any, removed from the aircraft.

"(c) ALTERNATIVE MEASURES.—The Administrator of the Transportation Security Administration, in coordination with the Federal Aviation Administrator, may authorize alternative means of compliance with any requirement imposed under this section.".

(d) CONFORMING AMENDMENT.—The subchapter analysis for subchapter I of chapter 449, United States Code, is amended by adding at the end the following:

"44925. All-cargo aircraft security.".

SEC. —08. EXPLOSIVE DETECTION SYSTEMS.

(a) IN-LINE PLACEMENT OF EXPLOSIVE-DETECTION EQUIPMENT.—Within 180 days after the date of enactment of this Act, the Secretary of Homeland Security shall establish a schedule for replacing trace-detection equipment used for in-line baggage screening purposes as soon as practicable where appropriate with explosive detection system equipment. The Secretary shall notify the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure of the schedule and provide an estimate of the impact of replacing such equipment, facility modification and baggage conveyor placement, on aviation security-related staffing needs and levels.

(b) NEXT GENERATION EDS.—There are authorized to be appropriated to the Secretary of Homeland Security for the use of the Transportation Security Administration $100,000,000, in addition to any amounts otherwise authorized by law, for the purpose of research and development of next generation explosive detection systems for aviation security under section 44913 of title 49, United States Code. The Secretary shall develop a plan and guidelines for implementing improved explosive detection system equipment.

(c) PORTAL DETECTION SYSTEMS.—There are authorized to be appropriated to the Secretary of Homeland Security for the use of the Transportation Security Administration $250,000,000, in addition to any amounts otherwise authorized by law, for research and development and installation of portal detection systems or similar devices for the detection of biological, radiological, and explosive materials. The Secretary of Homeland Security shall establish a pilot program at not more than 10 commercial service airports to evaluate the use of such systems.

(d) REPORTS.—The Secretary shall transmit an annual report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on research and development projects funded under subsection (b) or (c), and the pilot program established under subsection (c), including cost estimates for each phase of such projects and total project costs.

SEC. —09. AIR MARSHAL PROGRAM.

(a) CROSS-TRAINING.—The Secretary of Homeland Security shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report on the potential for cross-training of individuals who serve as air marshals and on the need for providing contingency funding for air marshal operations.

(b) AUTHORIZATION OF ADDITIONAL APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security for the use of Inspections and Customs Enforcement, in addition to any amounts otherwise authorized by law, for the deployment of Federal Air Marshals under section 44917 of title 49, United States Code, $83,000,000 for the 3 fiscal year period beginning with fiscal year 2005, such sums to remain available until expended.

SEC. —10. TSA-RELATED BAGGAGE CLAIM ISSUES STUDY.

Within 90 days after the date of enactment of this Act, the Secretary of Homeland Security, in consultation with the Secretary of Transportation, shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report on the present system for addressing lost, stolen, damaged, or pilfered baggage claims relating to air transportation security screening procedures. The report shall include—

(1) information concerning the time it takes to settle such claims under the present system;

(2) a comparison and analysis of the number, frequency, and nature of such claims before and after enactment of the Aviation and Transportation Security Act using data provided by the major United States airlines; and

(3) recommendations on how to improve the involvement and participation of the airlines in the baggage screening and handling processes and better coordinate the activities of Federal baggage screeners with airline operations.

SEC. —11. REPORT ON IMPLEMENTATION OF GAO HOMELAND SECURITY INFORMATION SHARING RECOMMENDATIONS.

Within 30 days after the date of enactment of this Act, the Secretary of Homeland Security, after consultation with the heads of Federal departments and agencies concerned, shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report on implementation of recommendations contained in the General Accounting Office's report titled "Homeland Security: Efforts To Improve Information Sharing Need To Be Strengthened" (GAO-03-760), August, 2003.

SEC. —12. AVIATION SECURITY RESEARCH AND DEVELOPMENT.

(a) BIOMETRICS.—There are authorized to be appropriated to the Secretary of Homeland Security for the use of the Transportation Security Administration $20,000,000, in addition to any amounts otherwise authorized by law, for research and development of biometric technology applications to aviation security.

(b) BIOMETRICS CENTERS OF EXCELLENCE.—There are authorized to be appropriated to the Secretary of Homeland Security for the use of the Transportation Security Administration $1,000,000, in addition to any amounts otherwise authorized by law, for the establishment of competitive centers of excellence at the national laboratories.

SEC. —13. PERIMETER ACCESS TECHNOLOGY.

There are authorized to be appropriated to the Secretary of Homeland Security $100,000,000 for airport perimeter security technology, fencing, security contracts, vehicle tagging, and other perimeter security related operations, facilities, and equipment, such sums to remain available until expended.

SEC. —14. BEREAVEMENT FARES.

(a) IN GENERAL.—Chapter 415 of title 49, United States Code, is amended by adding at the end the following:

"§ 41512. Bereavement fares

"Air carriers shall offer, with appropriate documentation, bereavement fares to the public for air transportation in connection with the death of a relative or other relationship (as determined by the air carrier) and shall make such fares available, to the greatest extent practicable, at the lowest fare offered by the air carrier for the flight for which the bereavement fare is requested.".

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 415 is amended by inserting after the item relating to section 41511 the following:

"41512. Bereavement fares".

SEC. —15. REVIEW AND REVISION OF PROHIBITED ITEMS LIST.

Not later than 60 days after the date of enactment of this Act, the Transportation Security Administration shall complete a review of its Prohibited Items List, set forth in 49 C.F.R. 1540, and release a revised list that—

(1) prohibits passengers from carrying butane lighters onboard passenger aircraft; and

(2) modifies the Prohibited Items List in such other ways as the agency may deem appropriate.

SEC. —16. REPORT ON PROTECTING COMMERCIAL AIRCRAFT FROM THE THREAT OF MAN-PORTABLE AIR DEFENSE SYSTEMS.

(a) REQUIREMENT.—The Secretary of Homeland Security, in coordination with the head of the Transportation Security Administration and the Under Secretary for Science and Technology, shall prepare a report on protecting commercial aircraft from the threat of man-portable air defense systems (referred to in this section as "MANPADS").

(b) CONTENT.—The report required by subsection (a) shall include the following:

(1) An estimate of the number of organizations, including terrorist organizations, that have access to MANPADS and a description of the risk posed by each organization.

(2) A description of the programs carried out by the Secretary of Homeland Security to protect commercial aircraft from the threat posed by MANPADS.

(3) An assessment of the effectiveness and feasibility of the systems to protect commercial aircraft under consideration by the Under Secretary for Science and Technology for use in phase II of the counter-MANPADS development and demonstration program.

(4) A justification for the schedule of the implementation of phase II of the counter-MANPADS development and demonstration program.

(5) An assessment of the effectiveness of other technology that could be employed on commercial aircraft to address the threat posed by MANPADS, including such technology that is—

(A) either active or passive;

(B) employed by the Armed Forces; or

(C) being assessed or employed by other countries.

(6) An assessment of alternate technological approaches to address such threat, including ground-based systems.

(7) A discussion of issues related to any contractor liability associated with the installation or use of technology or systems on commercial aircraft to address such threat.

(8) A description of the strategies that the Secretary may employ to acquire any technology or systems selected for use on commercial aircraft at the conclusion of phase II of the counter-MANPADS development and demonstration program, including—

(A) a schedule for purchasing and installing such technology or systems on commercial aircraft; and

(B) a description of—

(i) the priority in which commercial aircraft will be equipped with such technology or systems;

(ii) any efforts to coordinate the schedules for installing such technology or system with private airlines;

(iii) any efforts to ensure that aircraft manufacturers integrate such technology or systems into new aircraft; and

(iv) the cost to operate and support such technology or systems on a commercial aircraft.

(9) A description of the plan to expedite the use of technology or systems on commercial aircraft to address the threat posed by MANPADS if intelligence or events indicate that the schedule for the use of such technology or systems, including the schedule for carrying out development and demonstration programs by the Secretary, should be expedited.

(10) A description of the efforts of the Secretary to survey and identify the areas at domestic and foreign airports where commercial aircraft are most vulnerable to attack by MANPADS.

(11) A description of the cooperation between the Secretary and the Administrator of the Federal Aviation Administration to certify the airworthiness and safety of technology and systems to protect commercial aircraft from the risk posed by MANPADS in an expeditious manner.

(c) TRANSMISSION TO CONGRESS.—The report required by subsection (a) shall be transmitted to Congress along with the budget for fiscal year 2006 submitted by the President pursuant to section 1105(a) of title 31, United States Code.

SEC. —17. SCREENING DEVICES TO DETECT CHEMICAL AND PLASTIC EXPLOSIVES.

Not later than 90 days after the date of enactment of this Act, the Secretary of Homeland Security shall provide to the Senate Committee on Commerce, Science, and Transportation a report on the current status of efforts, and the additional needs, regarding passenger and carry-on baggage screening equipment at United States airports to detect explosives, including in chemical and plastic forms. The report shall include the cost of and timetable for installing such equipment and any recommended legislative actions.

SEC. —18. REPORTS ON THE FEDERAL AIR MARSHALS PROGRAM.

Not later than 90 days after the date of enactment of this Act, and every 90 days thereafter, the Secretary of Homeland Security shall provide to the Senate Committee on Commerce, Science, and Transportation a classified report on the number of individuals serving only as sworn Federal air marshals. Such report shall include the number of Federal air marshals who are women, minorities, or employees of departments or agencies of the United States Government other than the Department of Homeland Security, the percentage of domestic and international flights that have a Federal air marshal aboard, and the rate at which individuals are leaving service as Federal air marshals.

SEC. —19. SECURITY OF AIR MARSHAL IDENTITY.

(a) IN GENERAL.—The Secretary of the Department of Homeland Security shall designate individuals and parties to whom Federal air marshals shall be required to identify themselves.

(b) PROHIBITION.—Notwithstanding any other provision of law, no procedure, guideline, rule, regulation, or other policy shall expose the identity of an air marshal to anyone other than those designated by the Secretary under subsection (a).

SEC. —20. SECURITY MONITORING CAMERAS FOR AIRPORT BAGGAGE HANDLING AREAS.

(a) IN GENERAL.—The Under Secretary of Homeland Security for Border Transportation and Security shall provide assistance, subject to the availability of funds, to public airports that have baggage handling areas that are not open to public view in the acquisition and installation of security monitoring cameras for surveillance of such areas in order to deter theft from checked baggage and to aid in the speedy resolution of liability claims against the Transportation Security Administration.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security for fiscal year 2005 such sums as may be necessary to carry out this section, such sums to remain available until expended.

SEC. —21. EFFECTIVE DATE.

Notwithstanding any other provision of this act, this title takes effect on the date of enactment of this Act.

At the end, add the following:

TITLE —PUBLIC SAFETY SPECTRUM

SEC. —01. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Spectrum Availability for Emergency-Response and Law-Enforcement To Improve Vital Emergency Services Act" or the "SAVE LIVES Act".

(b) TABLE OF CONTENTS.—The table of contents for this title is as follows:

Sec. —01, Short title; table of contents.
Sec. —02. Findings.
Sec. —03. Setting a specific date for the availability of spectrum for public safety organizations and creating a deadline for the transition to digital television.
Sec. —04. Studies of communications capabilities and needs.
Sec. —05. Statutory, authority for the Department of Homeland Security's "SAFECOM" program.
Sec. —06. Grant program to provide enhanced interoperability of communications for first responders.
Sec. —07. Digital transition public safety conunuunications grant and consumer assistance fund.
Sec. —08. Digital transition program.
Sec. —09. FCC authority to require label requirement for analog television sets.
Sec. —10. Report on consumer education program requirements.
Sec. —11. FCC to issue decision in certain proceedings.
Sec. —12. Definitions.
Sec. —13. Effective date.

SEC. —02. FINDINGS.

The Congress finds the following:

(1) In its final report, the 9-11 Commission advocated that Congress pass legislation providing for the expedited and increased assignment of radio spectrum for public safety purposes. The 9-11 Commission stated that this spectrum was necessary to improve communications between local, State and Federal public safety organizations and public safety organizations operating in neighboring jurisdictions that, may respond to an emergency in unison.

(2) Specifically, the 9-11 Commission report stated "The inability to communicate was a critical element at the World Trade Center, Pentagon and Somerset County, Pennsylvania, crash sites, where multiple agencies and multiple jurisdictions responded. The occurrence of this problem at three very different sites is strong evidence that, compatible and adequate communications among public safety organizations at the local, State, and Federal levels remains an important problem.".

(3) In the Balanced Budget Act of 1997, the Congress directed the FCC to allocate spectrum currently being used by television broadcasters to public safety agencies to use for emergency communications. This spectrum has specific characteristics that make it an outstanding choice for emergency communications because signals sent over these frequencies are able to penetrate walls and travel great distances, and can assist multiple jurisdictions in deploying interoperable communications systems.

(4) This spectrum will not be fully available to public safety agencies until the completion of the digital television transition. The need for this spectrum is greater than ever. The nation cannot risk further loss of life due to public safety agencies' first, responders' inability to communicate effectively in the event of another terrorist act or other crisis, such as a hurricane, tornado, flood, or earthquake.

(5) In the Balanced Budget Act of 1997, Congress set a date of December 31, 2006, for the termination of the digital television transition. Under current, law, however, the deadline will be extended if fewer than 85 percent of the television households in a market are able to continue receiving local television broadcast signals.

(6) Federal Communications Commission Chairman Michael K. Powell testified at a hearing before the Senate Commerce, Science, and Transportation Committee on September 8, 2004, that, absent government action, this extension may allow the digital television transition to continue for "decades" or "multiples of decades".

(7) The Nation's public safety and welfare cannot be put, off for "decades" or "multiples of decades". The Federal government should ensure that this spectrum is available for use by public safety organizations by January 1, 2009.

(8) Any plan to end the digital television transition would be incomplete if it did not ensure that consumers would be able to continue to enjoy over-the-air broadcast television with minimal disruption. If broadcasters air only a digital signal, some consumers may be unable to view digital transmissions using their analog-only television set. Local broad-casters are truly an important part of our homeland security and often an important communications vehicle in the event of a national emergency. Therefore, consumers who rely on over-the-air television, particularly those of limited economic means, should be assisted.

(9) The New America Foundation has testified before Congress that the cost to assist

these 17.4 million exclusively over-the-air households to continue to view television is less than $1 billion dollars for equipment, which equates to roughly 3 percent of the Federal revenue likely from the auction of the analog television spectrum.

(10) Specifically, the New America Foundation as estimated that the Federal Government's auction of this spectrum could yield $30-to-$40 billion in revenue to the Treasury. Chairman Powell stated at the September 8, 2004, hearing that "estimates of the value of that spectrum run anywhere from $30 billion to $70 billion".

(11) Additionally, there will be societal benefits with the return of the analog broadcast spectrum. Former FCC Chairman Reed F. Hundt, at an April 28, 2004, hearing before the Senate Commerce, Science, and Transportation Committee, testified that this spectrum "should be the fit and proper home of wireless broadband". Mr. Hundt continued, "Quite literally, [with this spectrum] the more millions of people in rural America, will be able to afford Big Broadband Internet access, the more hundreds of millions of people in the world will be able to afford joining the Internet community.".

(12) Due to the benefits that would flow to the Nation's citizens from the Federal Government reclaiming this analog television spectrum—including the safety of our Nation's first responders and those protected by first responders, additional revenues to the Federal treasury, millions of new jobs in the telecommunications sector of the economy, and increased wireless broadband availability to our Nation's rural citizens—Congress finds it necessary to set January 1, 2009, as a firm date for the return of this analog television spectrum.

SEC. —03. SETTING A SPECIFIC DATE FOR THE AVAILABILITY OF SPECTRUM FOR PUBLIC SAFETY ORGANIZATIONS AND CREATING A DEADLINE FOR THE TRANSITION TO DIGITAL TELEVISION.

(a) IN GENERAL.—Section 3090(j)(14) of the Communications Act of 1934 (47 U.S.C. 309)(j)(14)) is amended by adding at the end the following:

"(E) ACCELERATION OF DEADLINE FOR PUBLIC SAFETY USE.—

"(i) Notwithstanding subparagraph (A) and (B), the Commission shall take all action necessary to complete by December 31, 2007—

"(I) the return of television station licenses operating on channels between 764 and 776 megaHertz and between 794 and 806 megaHertz; and

"(II) assignment of the electro-magnetic spectrum between 764 and 776 megahertz, and between 794 and 806 megahertz, for public safety services.

. "(ii) Notwithstanding subparagraph (A) and (B), the Commission shall have the authority to modify, reassign, or require the return of, the television station licenses assigned to frequencies between 758 and 764 megahertz, 776 and 782 megahertz, and 788 and 794 megahertz as necessary to permit operations by public safety services on frequencies between 764 and 776 megahertz and between 794 and 806 megahertz, after the date of enactment of this section, but such modifications, reassignments, or returns may not take effect until after December 31, 2007.".

(b) The FCC may waive the requirements of sections (i) and (ii) and such other rules as necessary:

(A) in the absence of a bona fide request from relevant first responders in the affected designated market area, and;

(B) to the extent necessary to avoid consumer disruption but only if all relevant public safety entities are able to use such frequencies free of interference by December 31, 2004 or are otherwise able to resolve interference issues with relevant broadcast licensee by mutual agreement."

SEC. —04. STUDIES OF COMMUNICATIONS CAPABILITIES AND NEEDS.

(a) IN GENERAL.—The Commission, in consultation with the Secretary of Homeland Security, shall conduct a study to assess strategies that may be used to meet public safety communications needs, including—

(1) the short-term and long-term need for additional spectrum allocation for Federal, State, and local first responders, including an additional allocation of spectrum in the 700 megaHertz band;

(2) the need for a nationwide interoperable broadband mobile communications network;

(3) the ability of public safety entities to utilize wireless broadband applications; and

(4) the communications capabilities of first receivers such as hospitals and health care workers, and current, efforts to promote communications co ordination and training among the first responders and the first receivers.

(b) REALLOCATION STUDY.—The Commission shall conduct a study to assess the advisability of reallocating my amount of spectrum in the 700 megaHertz band for inlieensed broadband uses. In the study, the Commission shall consider all other possible users of this spectrum, including public safety.

(c) REPORT.—The Commission shall report the results of the studies, together with any recommendations may have, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce within 1 year after the date of enactment of this Act.

SEC. —05. STATUTORY AUTHORITY FOR THE DEPARTMENT OF HOMELAND SECURITY'S "SAFECOM" PROGRAM.

Section 302 of the Homeland Security Act of 2002 (6 U.S.C. 182) is amended—

(1) by inserting "(a.) IN GENERAL.-" before "The"; and

(2) by adding at the end the following:

"(b) SAFECOM AUTHORIZED.—

"(1) IN GENERAL.—In carrying out subsection (a), the Under Secretary shall establish a program to address the interoperability of communications devices used by Federal, State, tribal, and local first responders, to be known as the Wireless Public Safety Interoperability Communications Program, or 'SAFECOM'. The Under Secretary shall coordinate the program with the Director of the Department of Justice's Office of Science and Technology and all other Federal programs engaging in communications interoperability research, development, and funding activities to ensure that the program takes into account, and does not duplicate, those programs or activities.

"(2) COMPONENTS.—The program established under paragraph (1) shall be designed—

"(A) to provide research on the development of a communications system architecture that would ensure the interoperability of communications devices among Federal, State, tribal, and local officials that would enhance the potential for a coordinated response to a national emergency;

"(B) to support the completion and promote the adoption of mutually compatible voluntary consensus standards developed by a standards development organization accredited by the American National Standards Institute to ensure such interoperability; and

"(C) to provide for the development of a model strategic plan that could be used by any State or region in developing its communications interoperability plan.

"(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this subsection—

"(A) $22,105,000 for fiscal year 2005;
"(B) $22,768,000 for fiscal year 2006;
"(C) $23,451,000 for fiscal year 2007;
"(D) $24,155,000 for fiscal year 2008; and
"(E) $24,879,000 for fiscal year 2009.

"(c) NATIONAL BASELINE STUDY OF PUBLIC SAFETY COMMUNICATIONS INTEROPERABILITY.—By December 31, 2005, the Under Secretary of Homeland Security for Science and Technology shall complete a study to develop a national baseline for communications interoperability and develop common grant guidance for all Federal grant programs that provide communications related resources or assistance to State and local agencies, any Federal programs conducting demonstration projects, providing technical assistance, providing outreach services, providing standards development assistance, or conducting research and development with the public safety community with respect to wireless communications. The Under Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce containing the Under Secretary's findings, conclusions, and recommendations from the study.".

SEC. —06. GRANT PROGRAM TO PROVIDE ENHANCED INTEROPERABILITY OF COMMUNICATIONS FOR FIRST RESPONDERS.

(a) IN GENERAL.—The Secretary of Homeland Security shall establish a program to help State, local, tribal, and regional first responders acquire and deploy interoperable communications equipment, purchase such equipment, and train personnel in the use of such equipment. The Secretary, in cooperation with the heads of other Federal departments and agencies who administer programs that provide communications-related assistance programs to State, local, and tribal public safety organizations, shall develop and implement common standards to the greatest extent practicable.

(b) APPLICATIONS.—To be eligible for assistance under the program, a State, local, tribal, or regional first responder agency shall submit an application, at such time, in such form, and containing such information as the Under Secretary of Homeland Security for Science and Technology may require, including—

(1) a detailed explanation of how assistance received under the program would be used to improve local communications interoperability and ensure interoperability with other appropriate Federal, State, local, tribal, and regional agencies in a regional or national emergency;

(2) assurance that the equipment and system would—

(A) not be incompatible with the communications architecture developed under section 302(b)(2)(A) of the Homeland Security Act of 2002;

(B) would meet any voluntary consensus standards developed under section 302(b) (2) (B) of that Act; and

(C) be consistent with the common grant guidance established under section 302(b)(3) of the Homeland Security Act of 2002.

(c) GRANTS.—The Under Secretary shall review applications submitted under subsection (b). The Secretary, pursuant to an application approved by the Under Secretary, may make the assistance provided under the program available in the form of a single grant for a period of not more than 3 years.

SEC. —07. DIGITAL TRANSITION PUBLIC SAFETY COMMUNICATIONS GRANT AND CONSUMER ASSISTANCE FUND.

(a) IN GENERAL.—There is established on the books of the Treasury a separate fiend to be known as the "Digital Transition Consumer Assistance Fund", which shall be administered by the Secretary, in consultation with the Assistant Secretary of Commerce for Communications and Information.

(b) CREDITING OF RECEIPTS.—The Fund shall be credited with the amount specified in section 309(j)(8)(D) of the Communications Act of 1934 (47 U.S.C. 309(j)(8)(D)(j).

(c) FUND AVAILABILITY.—

(1) APPROPRIATIONS.—

(A) CONSUMER ASSISTANCE PROGRAM.—There are appropriated to the Secretary from the Fund such sums, not to exceed $1,000,000,000, as are required to carry out the program established under section 8 of this Act.

(B) PSO GRANT PROGRAM.—To the extent that amounts available in the Fund exceed the amount required to carry out that program, there are authorized to be appropriated to the Secretary of Homeland Security, such sums as are required to carry out the program established under section 6 of this Act, not to exceed an amount, determined by the Director of the Office of Management and Budget, on the basis of the findings of the National Baseline Interoperability study conducted by the SAFECOM Office of the Department of Homeland Security.

(2) REVERSION OF UNUSED FUNDS.—Any auction proceeds in the Fund that are remaining after the date on which the programs under section 6 and 8 of this Act terminate, as determined by the Secretary of Homeland Security and the Secretary of Commerce respectively, shall revert, to and be deposited in the general fund of the Treasury.

(d) DEPOSIT OF AUCTION PROCEEDS.—Paragraph (8) of section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) is amended—

(1) by inserting "or subparagraph (D)" in subparagraph (A) after "subparagraph (B)"; and

(2) by adding at the end the following new subparagraph:

"(D) DISPOSITION OF CASH PROCEEDS FROM AUCTION OF CHANNELS 52 THROUGH 69.—Cash proceeds attributable to the auction of any eligible frequencies between 698 and 806 megaHertz on the electromagnetic spectrum conducted after the date of enactment of the SAVE LIVES Act shall be deposited in the Digital Transition Consumer Assistance Fund established under section 7 of that Act.".

SEC. —08. DIGITAL TRANSITION PROGRAM.

(a) IN GENERAL.—The Secretary, in consultation with the Commission and the Director of the Office of Management and Budget, shall establish a program to assist households—

(1) in the purchase or other acquisition of digital-to-analog converter devices that will enable television sets that operate only with analog signal processing to continue to operate when receiving a digital signal;

(2) in the payment of a one-time installation fee (not in excess of the industry average fee for the date, locale, and structure involved, as determined by the Secretary) for installing the equipment required for residential reception of services provided by a multichannel video programming distributor (as defined in section 602(13) of the Communications Act of 1934 (47 U.S.C. 602(13)); or

(3) in the purchase of any other device that will enable the household to receive over-the-air digital television broadcast signals, but in an amount not in excess of the average per-household assistance provided under paragraphs (1) and (2).

(b) PROGRAM CRITERIA.—The Secretary shall ensure that the program established under subsection (a)—

(1) becomes publicly available no later than January 1, 2003;

(2) gives first priority to assisting lower income households (as determined by the Director of the Bureau of the Census for statistical reporting purposes) who rely exclusively on over-the-air television broadcasts;

(3) gives second priority to assisting other households who rely exclusively on over-the-air television broadcasts;

(4) is technologically neutral; and

(5) is conducted at the lowest feasible administrative cost.

SEC. —09. FCC AUTHORITY TO REQUIRE LABEL REQUIREMENT FOR ANALOG TELEVISION SETS.

(a) IN GENERAL.—Section 303 of the Communications, Act of 1934 (47 U.S.C. 303) is amended by adding end the following.

"(z) The Commission acts to set a hard deadline for the return of analog spectrum pursuant to section 309(j)(14), it shall have the authority to require that any apparatus described in paragraph (s) sold or offered for sale in or affecting interstate commerce, that is incapable of receiving and displaying a digital television broadcast signal without the use of an external device that translates digital television broadcast signals into analog television broadcast signals have affixed to it, and, if it is sold or offered for sale in a container, affixed to that container, a label that states that the apparatus will be incapable of displaying over-the-air television broadcast signals received after a date determined by the FCC, without the purchase of additional equipment.".

(c) POINT OF SALE WARNING.— If the Commission acts to set a hard deadline for the return of analog spectrum pursuant to section 309(j)(14), then the Commission in consultation with the Federal Trade Commission, shall require the display at, or in close proximity to, any commercial retail sales display of television sets described in section 303(z) of the Communications Act of 1934 (47 U.S.C. 303(z) sold or offered for sale in or affecting interstate commerce after a date determined by the Commission, of a printed notice that, clearly and conspicuously states that the sets will be incapable of displaying over-the-air telvision broadcast signals received after the hard deadline established by the Commission, without the purchase or lease of additional equipment.

SEC. —10. REPORT ON CONSUMER EDUCATION PROGRAM REQUIREMENTS.

Within 1 year after the date of enactment of this Act, the Assistant Secretary of Commerce for Communications and Information, after consultation with the Commission, shall transmit a report to the the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce containing recommendations with respect to—

(1) an effective program to educate consumers about the transition to digital television broadcast signals and the impact of that transition on consumers' choices of equipment to receive such signals;

(2) the need, if any, for Federal funding for such a program;

(3) the date of commencement and duration of such a program; and

(4) what department or agency should have the lead responsibility for conducting such a program.

SEC. —11. FCC TO ISSUE DECISION IN CERTAIN PROCEEDINGS.

The Commission shall issue a final decision before—

(1) January 1, 2005, in the Matter of Carriage of Digital Television Broadcast Signals; Amendments to Part 76 of the Commission's Rules, CS Docket, No. 98-120;

(2) January 1, 2005, in the Matter of Public Interest Obligations of TV Broadcast Licensees, MM Docket No. 99-360; and

(3) January 1, 2006, in the Implementation of the Satellite Home Viewer Improvement Act of 1999; Local Broadcast Signal Carriage Issues, CS Docket No. 00-96.

SEC. —12. DEFINITIONS.

In this title:

(1) COMMISSION.—The term "Commission" means the Federal Communications Commission.

(2) FUND.—The term "Fund" means the Digital Transition Consumer Assistance Fund established by section 7.

(3) SECRETARY.—Except where otherwise expressly pro-rided, the term "Secretary" means the Secretary of Commerce.

SEC. —13. EFFECTIVE DATE.

This title takes effect on the date of enactment of this Act.

On page 170, between lines 8 and 9, insert the following:

(i) PROTECTIONS FOR HUMAN RESEARCH SUBJECTS.—The Secretary of Homeland Security shall ensure that the Department of Homeland Security complies with the protections for human research subjects, as described in part 46 of title 45, Code of Federal Regulations, or in equivalent regulations as promulgated by such Secretary, with respect to research that is conducted or supported by such Department.

On page 154, strike lines 1 through 3 and insert the following:

(1) analyze and review actions the executive branch takes to protect the Nation from terrorism, ensuring that the need for such actions is balanced with the need to protect privacy and civil liberties; and

On page 155, line 6 strike beginning with "has" through line 9 and insert the following: "has established—

"(i) that the need for the power is balanced with the need to protect privacy and civil liberties;".

On page 166, strike lines 4 through 6 and insert the following: "element has established—

"(i) that the need for the power is balanced with the need to protect privacy and civil liberties;".

On page 132, line 23, strike "and".

On page 133, line 3, strike the period and insert "; and".

On page 133, between lines 3 and 4, insert the following:

(L) utilizing privacy-enhancing technologies that minimize the inappropriate dissemination and disclosure of personally identifiable information.

On page 153, between lines 2 and 3, insert the following:

(o) LIMITATION ON FUNDS.—Notwithstanding any other provision of this section, none of the funds provided pursuant to subsection (n) may be obligated for deployment or implementation of the Network unless the guidelines and requirements under subsection (e) are submitted to Congress;

At the appropriate place, insert the following:

SEC. ___. TERRORIST WATCH LISTS.

(a) Criteria for Watch List.—The National Intelligence Director of the United States, in consultation with the Secretary of Homeland Security, the Secretary of State, and the Attorney General, shall report to Congress on the criteria for placing individuals on the Terrorist Screening Center consolidated screening watch list, including minimum standards for reliability and accuracy of identifying information, the degree of information certainty and the range of threat levels that the individual poses, and the range of applicable consequences that apply to the person if located. To the greatest extent consistent with the protection of law enforcement sensitive information, classified information and applicable law, the report shall be in unclassified form and available to the public, with a classified annex where necessary.

(b) Safeguards Against Erroneous Listings.—The Secretary of Homeland Security shall establish a process for individuals to challenge "Automatic Selectee" or "No Fly" designations on the applicable lists as maintain by the Transportation Security Administration and have their names removed from such lists, if erroneously present.

(c) Report.—Not later than 180 days after the date of enactment of this Act, the Department of Homeland Security Privacy Officer shall submit a report assessing the impact of the "No Fly" and "Automatic Selectee" lists on privacy and civil liberties to the Committee on the Judiciary, the Committee on Governmental Affairs, and the Committee on Commerce, Science and Transportation of the Senate, and the Committee on the Judiciary, the Committee on Government Reform, the Committee on Transportation and Infrastructure, and the Select Committee on Homeland Security of the House of Representatives. The report shall include any recommendations for practices, procedures, regulations, or legislation to eliminate or minimize adverse effects of such lists on privacy, discrimination, due process and other civil liberties, as well as the implications of applying those lists to other modes of transportation. In its analysis, the report shall also consider the effect these recommendations would have on the ability of such lists to protect the United States against terrorist attacks. To the greatest extent consistent with the protection of law enforcement sensitive information, classified information and applicable law, the report shall be in unclassified form and available to the public, with a classified annex where necessary.

(d) Effective Date.—Notwithstanding section 341 or any other provision of this Act, this section shall become effective on the date of enactment of this Act.

At the appropriate place, insert the following:

SEC. ___. REPORT ON INTERNATIONAL AIR CARGO THREATS.

(a) Report.—Within 180 days after the date of enactment of this Act, the Secretary of Homeland Security, in coordination with the Secretary of Defense and the Administrator of the Federal Aviation Administration, shall submit a report to the Committee on Commerce, Science, and Transportation and the Committee on Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure and the Select Committee on Homeland Security of the House of Representatives that contains the following:

(1) A description of the current procedures in place to address the threat of an inbound all-cargo aircraft from outside the United States that intelligence sources indicate could carry explosive, incendiary, chemical, biological or nuclear devices.

(2) An analysis of the potential for establishing secure facilities along established international aviation routes for the purposes of diverting and securing aircraft described in paragraph (1).

(b) Report Format.—The Secretary may submit all, or part, of the report required by this section in classified and redacted form if the Secretary determines that it is appropriate or necessary.

At the appropriate place, insert the following:

SEC. ___. TERRORISM FINANCING.

(a) Report on Terrorist Financing.—

(1) In general.—Not later than 180 days after the date of enactment of this Act, the President, acting through the Secretary of the Treasury, shall submit to Congress a report evaluating the current state of United States efforts to curtail the international financing of terrorism.

(2) Contents.—The report required by paragraph (1) shall evaluate and make recommendations on—

(A) the effectiveness and efficiency of current United States governmental efforts and methods to detect, track, disrupt, and stop terrorist financing;

(B) the relationship between terrorist financing and money laundering, including how the laundering of proceeds related to illegal narcotics or foreign political corruption may contribute to terrorism or terrorist financing;

(C) the nature, effectiveness, and efficiency of current efforts to coordinate intelligence and agency operations within the United States Government to detect, track, disrupt, and stop terrorist financing, including identifying who, if anyone, has primary responsibility for developing priorities, assigning tasks to agencies, and monitoring the implementation of policy and operations;

(D) the effectiveness and efficiency of efforts to protect the critical infrastructure of the United States financial system, and ways to improve the effectiveness of financial institutions;

(E) ways to improve multilateral and international governmental cooperation on terrorist financing, including the adequacy of agency coordination within the United States related to participating in international cooperative efforts and implementing international treaties and compacts; and

(F) ways to improve the setting of priorities and coordination of United States efforts to detect, track, disrupt, and stop terrorist financing, including recommendations for changes in executive branch organization or procedures, legislative reforms, additional resources, or use of appropriated funds.

(b) Postemployment Restriction for Certain Bank and Thrift Examiners.—Section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820) is amended by adding at the end the following:

"(k) One-Year Restrictions on Federal Examiners of Financial Institutions.—

"(1) In general.—In addition to other applicable restrictions set forth in title 18, United States Code, the penalties set forth in paragraph (6) of this subsection shall apply to any person who—

"(A) was an officer or employee (including any special Government employee) of a Federal banking agency or a Federal reserve bank;

"(B) served 2 or more months during the final 12 months of his or her employment with such agency or entity as the senior examiner (or a functionally equivalent position) of a depository institution or depository institution holding company with continuing, broad responsibility for the examination (or inspection) of that depository institution or depository institution holding company on behalf of the relevant agency or Federal reserve bank; and

"(C) within 1 year after the termination date of his or her service or employment with such agency or entity, knowingly accepts compensation as an employee, officer, director, or consultant from—

"(i) such depository institution, any depository institution holding company that controls such depository institution, or any other company that controls such depository institution; or

"(ii) such depository institution holding company or any depository institution that is controlled by such depository institution holding company.

"(2) Definitions.—For purposes of this subsection—

"(A) the term 'depository institution' includes an uninsured branch or agency of a foreign bank, if such branch or agency is located in any State; and

"(B) the term 'depository institution holding company' includes any foreign bank or company described in section 8(a) of the International Banking Act of 1978.

"(3) Rules of construction.—For purposes of this subsection, a foreign bank shall be deemed to control any branch or agency of the foreign bank, and a person shall be deemed to act as a consultant for a depository institution, depository institution holding company, or other company, only if such person directly works on matters for, or on behalf of, such depository institution, depository institution holding company, or other company.

"(4) Regulations.—

"(A) In general.—Each Federal banking agency shall prescribe rules or regulations to administer and carry out this subsection, including rules, regulations, or guidelines to define the scope of persons referred to in paragraph (1)(B).

"(B) Consultation required.—The Federal banking agencies shall consult with each other for the purpose of assuring that the rules and regulations issued by the agencies under subparagraph (A) are, to the extent possible, consistent and comparable and practicable, taking into account any differences in the supervisory programs utilized by the agencies for the supervision of depository institutions and depository institution holding companies.

"(5) Waiver.—

"(A) Agency authority.—A Federal banking agency may grant a waiver, on a case by case basis, of the restriction imposed by this subsection to any officer or employee (including any special Government employee) of that agency, and the Board of Governors of the Federal Reserve System may grant a waiver of the restriction imposed by this subsection to any officer or employee of a Federal reserve bank, if the head of such agency certifies in writing that granting the waiver would not affect the integrity of the supervisory program of the relevant Federal banking agency.

"(B) Definition.—For purposes of this paragraph, the head of an agency is—

"(i) the Comptroller of the Currency, in the case of the Office of the Comptroller of the Currency;

"(ii) the Chairman of the Board of Governors of the Federal Reserve System, in the case of the Board of Governors of the Federal Reserve System;

"(iii) the Chairperson of the Board of Directors, in the case of the Corporation; and

"(iv) the Director of the Office of Thrift Supervision, in the case of the Office of Thrift Supervision.

"(6) PENALTIES.—

"(A) IN GENERAL.—In addition to any other administrative, civil, or criminal remedy or penalty that may otherwise apply, whenever a Federal banking agency determines that a person subject to paragraph (1) has become associated, in the manner described in paragraph (1)(C), with a depository institution, depository institution holding company, or other company for which such agency serves as the appropriate Federal banking agency, the agency shall impose upon such person one or more of the following penalties:

"(i) INDUSTRY-WIDE PROHIBITION ORDER.—The Federal banking agency shall serve a written notice or order in accordance with and subject to the provisions of section 8(e)(4) for written notices or orders under paragraphs (1) or (2) of section 8(e), upon such person of the intention of the agency—

"(I) to remove such person from office or to prohibit such person from further participation in the conduct of the affairs of the depository institution, depository institution holding company, or other company for a period of up to 5 years; and

"(II) to prohibit any further participation by such person, in any manner, in the conduct of the affairs of any insured depository institution for a period of up to 5 years.

"(ii) CIVIL MONETARY FINE.—The Federal banking agency may, in an administrative proceeding or civil action in an appropriate United States district court, impose on such person a civil monetary penalty of not more than $250,000. In lieu of an action by the Federal banking agency under this clause, the Attorney General of the United States may bring a civil action under this clause in the appropriate United States district court. Any administrative proceeding under this clause shall be conducted in accordance with section 8(i).

"(B) SCOPE OF PROHIBITION ORDER.—Any person subject to an order issued under subparagraph (A)(i) shall be subject to paragraphs (6) and (7) of section 8(e) in the same manner and to the same extent as a person subject to an order issued under such section.

"(C) DEFINITIONS.—Solely for purposes of this paragraph, the 'appropriate Federal banking agency' for a company that is not a depository institution or depository institution holding company shall be the Federal banking agency on whose behalf the person described in paragraph (1) performed the functions described in paragraph (1)(B).".

(c) POSTEMPLOYMENT RESTRICTION FOR CERTAIN CREDIT UNION EXAMINERS.—Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by adding at the end the following:

"(w) ONE-YEAR RESTRICTIONS ON FEDERAL EXAMINERS OF INSURED CREDIT UNIONS.—

"(1) IN GENERAL.—In addition to other applicable restrictions set forth in title 18, United States Code, the penalties set forth in paragraph (5) of this subsection shall apply to any person who—

"(A) was an officer or employee (including any special Government employee) of the Administration;

"(B) served 2 or more months during the final 12 months of his or her employment with the Administration as the senior examiner (or a functionally equivalent position) of an insured credit union with continuing, broad responsibility for the examination (or inspection) of that insured credit union on behalf of the Administration; and

"(C) within 1 year after the termination date of his or her service or employment with the Administration, knowingly accepts compensation as an employee, officer, director, or consultant from such insured credit union.

"(2) RULE OF CONSTRUCTION.—For purposes of this subsection, a person shall be deemed to act as a consultant for an insured credit union only if such person directly works on matters for, or on behalf of, such insured credit union.

"(3) REGULATIONS.—

"(A) IN GENERAL.—The Board shall prescribe rules or regulations to administer and carry out this subsection, including rules, regulations, or guidelines to define the scope of persons referred to in paragraph (1)(B).

"(B) CONSULTATION.—In prescribing rules or regulations under this paragraph, the Board shall, to the extent it deems necessary, consult with the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act) on regulations issued by such agencies in carrying out section 10(k) of the Federal Deposit Insurance Act.

"(4) WAIVER.—

"(A) AGENCY AUTHORITY.—The Board may grant a waiver, on a case by case basis, of the restriction imposed by this subsection to any officer or employee (including any special Government employee) of the Administration if the Chairman certifies in writing that granting the waiver would not affect the integrity of the supervisory program of the Administration.

"(5) PENALTIES.—

"(A) IN GENERAL.—In addition to any other administrative, civil, or criminal remedy or penalty that may otherwise apply, whenever the Board determines that a person subject to paragraph (1) has become associated, in the manner described in paragraph (1)(C), with an insured credit union, the Board shall impose upon such person one or more of the following penalties:

"(i) INDUSTRY-WIDE PROHIBITION ORDER.—The Board shall serve a written notice or order in accordance with and subject to the provisions of subsection (g)(4) for written notices or orders under paragraphs (1) or (2) of subsection (g), upon such person of the intention of the Board—

"(I) to remove such person from office or to prohibit such person from further participation in the conduct of the affairs of the insured credit union for a period of up to 5 years; and

"(II) to prohibit any further participation by such person, in any manner, in the conduct of the affairs of any insured credit union for a period of up to 5 years.

"(ii) CIVIL MONETARY FINE.—The Board may, in an administrative proceeding or civil action in an appropriate United States district court, impose on such person a civil monetary penalty of not more than $250,000. In lieu of an action by the Board under this clause, the Attorney General of the United States may bring a civil action under this clause in the appropriate United States district court. Any administrative proceeding under this clause shall be conducted in accordance with subsection (k).

"(B) SCOPE OF PROHIBITION ORDER.—Any person subject to an order issued under this subparagraph (A)(i) shall be subject to paragraphs (5) and (7) of subsection (g) in the same manner and to the same extent as a person subject to an order issued under subsection (g).".

(d) EFFECTIVE DATE.—Notwithstanding section 341, subsection (a) shall become effective on the date of enactment of this Act, and the amendments made by subsections (b) and (c) shall become effective at the end of the 12-month period beginning on the date of enactment of this Act, whether or not final regulations are issued in accordance with the amendments made by this section as of that date of enactment.

(e) REPEAL OF DUPLICATIVE PROVISION.—Section ____16(c) of this Act, entitled "REPORT ON TERRORIST FINANCING" is repealed, and shall have no force or effect, effective on the date of enactment of this Act.

At the end, insert the following new title:

TITLE IV—TRANSPORTATION SECURITY

SEC. 401. WATCHLISTS FOR PASSENGERS ABOARD VESSELS.

(a) IN GENERAL.—As soon as practicable but not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall—

(1) implement a procedure under which the Department of Homeland Security compares information about passengers and crew who are to be carried aboard a cruise ship with a comprehensive, consolidated database containing information about known or suspected terrorists and their associates; and

(2) use the information obtained by comparing the passenger and crew information with the information in the database to prevent known or suspected terrorists and their associates from boarding such vessels or to subject them to specific additional security scrutiny, through the use of "no transport" and "automatic selectee" lists or other means.

* * * * * *

(b) COOPERATION FROM OPERATORS OF PASSENGER VESSELS.—The Secretary of Homeland Security shall by rulemaking require operators of cruise ships to provide the passenger and crew information necessary to. implement the procedure required by subsection (a).

(c) MAINTAINING THE ACCURACY AND INTEGRITY OF THE "NO TRANSPORT" AND "AUTOMATIC SELECTEE" LISTS.—

(1) WATCHLIST DATABASE.—The Secretary of Homeland Security, in consultation with the Director of the Federal Bureau of Investigations, shall design guidelines, policies, and operating procedures for the collection, removal, and updating of data maintained, or to be maintained, in the watchlist database described in subsection (a)(1) that are designed to ensure the accuracy and integrity of the databases.

(2) ACCURACY OF ENTRIES.—In developing the "no transport" and "automatic selectee" lists under subsection (a)(1), the Secretary of Homeland Security shall establish a simple and timely method for correcting erroneous entries, for clarifying information known to cause false hits or misidentification errors, and for updating relevant information that is dispositive in the passenger and crew screening process. The Secretary shall also establish a process to provide an individual whose name is confused with, or similar to, a name in the watchlist database with a means of demonstrating that such individual is not the person named in the database.

(d) CRUISE SHIP DEFINED.—In this section, the term "cruise ship" shall be as defined in 33 CFR 104.105(a)(5) and (6) on the date of enactment of this act.

At the appropriate place, insert the following:

SEC. ___. COMMUNICATION SYSTEM GRANTS.

(a) IN GENERAL.—The Secretary of Homeland Security may award grants, on a competitive basis, to States, local governments, local law enforcement agencies, and local fire departments to—

(1) improve communication systems to allow for real time, interoperable communication between State and local first responders; or

(2) purchase communication systems that allow for real time, interoperable communication between State and local first responders.

(b) APPLICATION.—Any State, local government, local law enforcement agency, or local fire department desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as necessary for each of the fiscal years 2005 through 2009 to carry out the provisions of this section.

On page 158, between lines 9 and 10 insert the following:

(C) the minority views on any findings, conclusions, and recommendations of the Board resulting from its advice and oversight functions under subsection (d).

At the appropriate place, insert the following:

SEC. ___. PRIVATE SECURITY OFFICER EMPLOYMENT AUTHORIZATION ACT OF 2004.

(a) SHORT TITLE.—This section may be cited as the "Private Security Officer Employment Authorization Act of 2004".

(b) FINDINGS.—Congress finds that—

(1) employment of private security officers in the United States is growing rapidly;

(2) private security officers function as an adjunct to, but not a replacement for, public law enforcement by, among other things, helping to protect critical infrastructure, including hospitals, manufacturing facilities, defense and aerospace contractors, nuclear power plants, chemical companies, oil and gas refineries, airports, communication facilities and operations, and others;

(3) the 9-11 Commission Report says that "Private sector preparedness is not a luxury; it is a cost of doing business in the post-9/11 world. It is ignored at a tremendous potential cost in lives, money, and national security" and endorsed adoption of the American National Standards Institute's standard for private preparedness;

(4) part of improving private sector preparedness is mitigating the risks of terrorist attack on critical infrastructure by ensuring that private security officers who protect those facilities are properly screened to determine their suitability;

(5) the American public deserves the employment of qualified, well-trained private security personnel as an adjunct to sworn law enforcement officers; and

(6) private security officers and applicants for private security officer positions should be thoroughly screened and trained.

(c) DEFINITIONS.—In this section:

(1) EMPLOYEE.—The term "employee" includes both a current employee and an applicant for employment as a private security officer.

(2) AUTHORIZED EMPLOYER.—The term "authorized employer" means any person that—

(A) employs private security officers; and

(B) is authorized by regulations promulgated by the Attorney General to request a criminal history record information search of an employee through a State identification bureau pursuant to this section.

(3) PRIVATE SECURITY OFFICER.—The term "private security officer"—

(A) means an individual other than an employee of a Federal, State, or local government, whose primary duty is to perform security services, full- or part-time, for consideration, whether armed or unarmed and in uniform or plain clothes (except for services excluded from coverage under this section if the Attorney General determines by regulation that such exclusion would serve the public interest); but

(B) does not include—

(i) employees whose duties are primarily internal audit or credit functions;

(ii) employees of electronic security system companies acting as technicians or monitors; or

(iii) employees whose duties primarily involve the secure movement of prisoners.

(4) SECURITY SERVICES.—The term "security services" means acts to protect people or property as defined by regulations promulgated by the Attorney General.

(5) STATE IDENTIFICATION BUREAU.—The term "State identification bureau" means the State entity designated by the Attorney General for the submission and receipt of criminal history record information.

(d) CRIMINAL HISTORY RECORD INFORMATION SEARCH.—

(1) IN GENERAL.—

(A) SUBMISSION OF FINGERPRINTS.—An authorized employer may submit to the State identification bureau of a participating State, fingerprints or other means of positive identification, as determined by the Attorney General, of an employee of such employer for purposes of a criminal history record information search pursuant to this section.

(B) EMPLOYEE RIGHTS.—

(i) PERMISSION.—An authorized employer shall obtain written consent from an employee to submit to the State identification bureau of a participating State the request to search the criminal history record information of the employee under this section.

(ii) ACCESS.—An authorized employer shall provide to the employee confidential access to any information relating to the employee received by the authorized employer pursuant to this section.

(C) PROVIDING INFORMATION TO THE STATE IDENTIFICATION BUREAU.—Upon receipt of a request for a criminal history record information search from an authorized employer pursuant to this section, submitted through the State identification bureau of a participating State, the Attorney General shall—

(i) search the appropriate records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation; and

(ii) promptly provide any resulting identification and criminal history record information to the submitting State identification bureau requesting the information.

(D) USE OF INFORMATION.—

(i) IN GENERAL.—Upon receipt of the criminal history record information from the Attorney General by the State identification bureau, the information shall be used only as provided in clause (ii).

(ii) TERMS.—In the case of—

(I) a participating State that has no State standards for qualification to be a private security officer, the State shall notify an authorized employer as to the fact of whether an employee has been—

(aa) convicted of a felony, an offense involving dishonesty or a false statement if the conviction occurred during the previous 10 years, or an offense involving the use or attempted use of physical force against the person of another if the conviction occurred during the previous 10 years; or

(bb) charged with a criminal felony for which there has been no resolution during the preceding 365 days; or

(II) a participating State that has State standards for qualification to be a private security officer, the State shall use the information received pursuant to this section in applying the State standards and shall only notify the employer of the results of the application of the State standards.

(E) FREQUENCY OF REQUESTS.—An authorized employer may request a criminal history record information search for an employee only once every 12 months of continuous employment by that employee unless the authorized employer has good cause to submit additional requests.

(2) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall issue such final or interim final regulations as may be necessary to carry out this section, including—

(A) measures relating to the security, confidentiality, accuracy, use, submission, dissemination, destruction of information and audits, and recordkeeping;

(B) standards for qualification as an authorized employer; and

(C) the imposition of reasonable fees necessary for conducting the background checks.

(3) CRIMINAL PENALTIES FOR USE OF INFORMATION.—Whoever knowingly and intentionally uses any information obtained pursuant to this section other than for the purpose of determining the suitability of an individual for employment as a private security officer shall be fined under title 18, United States Code, or imprisoned for not more than 2 years, or both.

(4) USER FEES.—

(A) IN GENERAL.—The Director of the Federal Bureau of Investigation may—

(i) collect fees to process background checks provided for by this section; and

(ii) establish such fees at a level to include an additional amount to defray expenses for the automation of fingerprint identification and criminal justice information services and associated costs.

(B) LIMITATIONS.—Any fee collected under this subsection—

(i) shall, consistent with Public Law 101-515 and Public Law 104-99, be credited to the appropriation to be used for salaries and other expenses incurred through providing the services described in such Public Laws and in subparagraph (A);

(ii) shall be available for expenditure only to pay the costs of such activities and services; and

(iii) shall remain available until expended.

(C) STATE COSTS.—Nothing in this section shall be construed as restricting the right of a State to assess a reasonable fee on an authorized employer for the costs to the State of administering this section.

(5) STATE OPT OUT.—A State may decline to participate in the background check system authorized by this section by enacting a law or issuing an order by the Governor (if consistent with State law) providing that the State is declining to participate pursuant to this paragraph.

On page 4, after line 12, of the agreed to language of amendment No. 3942, insert the following:

(4) regions of specific concern where United States foreign assistance should be targeted to assist governments in efforts to prevent the use of such regions as terrorist sanctuaries are South Asia, Southeast Asia, West

Africa, the Horn of Africa, North and North Central Africa, the Arabian peninsula, Central and Eastern Europe, and South America;

At the appropriate place insert the following:

(1) The United States needs to implement the recommendations of the National Commission on Terrorist Attacks Upon the United States to adopt a unified incident command system and significantly enhance communications connectivity between and among civilian authorities, local first responders, and the National Guard. The unified incident command system should enable emergency managers and first responders to manage, generate, receive, evaluate, share, and use information in the event of a terrorist attack or a significant national disaster.

At the appropriate place, insert the following:

SEC. ___. LIQUEFIED NATURAL GAS MARINE TERMINALS.

Congress finds that plans developed by the Department of Homeland Security to protect critical energy infrastructure should include risk assessments and protective measures for existing and proposed liquefied natural gas marine terminals.

At the appropriate place, insert the following:

SEC. ___. URBAN AREA COMMUNICATIONS CAPABILITIES.

Section 510 of the Homeland Security Act of 2002, as added by this Act, is amended by inserting ", and shall have appropriate and timely access to the Information Sharing Network described in section 206(c) of the National Intelligence Reform Act of 2004" after "each other in the event of an emergency".

On page 137, line 20, strike "and" and all that follows through "(9)" on line 21, and insert the following:

(9) an estimate of training requirements needed to ensure that the Network will be adequately implemented and property utilized;

(10) an analysis of the cost to State, tribal, and local governments and private sector entities for equipment and training needed to effectively utilize the Network; and

(11)

At the appropriate place, insert the following new section:

SEC. ___. ANNUAL REPORT ON THE ALLOCATION OF RESOURCES WITHIN THE OFFICE OF FOREIGN ASSETS CONTROL.

(a) REQUIREMENT FOR ANNUAL REPORT.—Not later than 180 days after the date of enactment of this Act, and annually thereafter, the Secretary of the Treasury shall submit to Congress a report on the allocation of resources within the Office of Foreign Assets Control.

(b) CONTENT OF ANNUAL REPORT.—An annual report required by subsection (a) shall include—

(1) a description of—

(A) the allocation of resources within the Office of Foreign Assets Control to enforce the economic and trade sanctions of the United States against terrorist organizations and targeted foreign countries during the fiscal year prior to the fiscal year in which such report is submitted; and

(B) the criteria on which such allocation is based;

(2) a description of any proposed modifications to such allocation; and

(3) an explanation for any such allocation that is not based on prioritization of threats determined using appropriate criteria, including the likelihood that—

(A) a terrorist organization or targeted foreign country—

(i) will sponsor or plan a direct attack against the United States or the interests of the United States; or

(ii) is participating in or maintaining a nuclear, biological, or chemical weapons development program; or

(B) a targeted foreign country—

(i) is financing, or allowing the financing, of a terrorist organization within such country; or

(ii) is providing safe haven to a terrorist organization within such country.

(c) EFFECTIVE DATE.—Notwithstanding section 341 or any other provision of this Act, this section shall take effect on the date of the enactment of this Act.

At the appropriate place, insert the following:

SEC. ___. HOMELAND SECURITY GEOGRAPHIC INFORMATION.

(a) FINDINGS.—Congress finds that—

(1) geographic technologies and geographic data improve government capabilities to detect, plan, prepare, and respond to disasters in order to save lives and protect property;

(2) geographic data improves the ability of information technology applications and systems to enhance public security in a cost-effective manner; and

(3) geographic information preparedness in the United States, and specifically in the Department of Homeland Security, is insufficient because of—

(A) inadequate geographic data compatibility;

(B) insufficient geographic data sharing; and

(C) technology interoperability barriers.

(b) HOMELAND SECURITY GEOGRAPHIC INFORMATION.—Section 703 of the Homeland Security Act of 2002 (6 U.S.C. 343) is amended—

(1) by inserting "(a) IN GENERAL.—" before "The Chief Information"; and

(2) by adding at the end the following:

"(b) GEOGRAPHIC INFORMATION FUNCTIONS.—

"(1) DEFINITION.—In this subsection, the term 'geographic information' means the information systems that involve locational data, such as maps or other geospatial information resources.

"(2) OFFICE OF GEOSPATIAL MANAGEMENT.—

"(A) ESTABLISHMENT.—The Office of Geospatial Management is established within the Office of the Chief Information Officer.

"(B) GEOSPATIAL INFORMATION OFFICER.—

"(i) APPOINTMENT.—The Office of Geospatial Management shall be administered by the Geospatial Information Officer, who shall be appointed by the Secretary and serve under the direction of the Chief Information Officer.

"(ii) FUNCTIONS.—The Geospatial Information Officer shall assist the Chief Information Officer in carrying out all functions under this section and in coordinating the geographic information needs of the Department.

"(C) COORDINATION OF GEOGRAPHIC INFORMATION.—The Chief Information Officer shall establish and carry out a program to provide for the efficient use of geographic information, which shall include—

"(i) providing such geographic information as may be necessary to implement the critical infrastructure protection programs;

"(ii) providing leadership and coordination in meeting the geographic information requirements of those responsible for planning, prevention, mitigation, assessment and response to emergencies, critical infrastructure protection, and other functions of the Department; and

"(iii) coordinating with users of geographic information within the Department to assure interoperability and prevent unnecessary duplication.

"(D) RESPONSIBILITIES.—In carrying out this subsection, the responsibilities of the Chief Information Officer shall include—

"(i) coordinating the geographic information needs and activities of the Department;

"(ii) implementing standards, as adopted by the Director of the Office of Management and Budget under the processes established under section 216 of the E-Government Act of 2002 (44 U.S.C. 3501 note), to facilitate the interoperability of geographic information pertaining to homeland security among all users of such information within—

"(I) the Department;

"(II) State and local government; and

"(III) the private sector;

"(iii) coordinating with the Federal Geographic Data Committee and carrying out the responsibilities of the Department pursuant to Office of Management and Budget Circular A-16 and Executive Order 12906; and

"(iv) making recommendations to the Secretary and the Executive Director of the Office for State and Local Government Coordination and Preparedness on awarding grants to—

"(I) fund the creation of geographic data; and

"(II) execute information sharing agreements regarding geographic data with State, local, and tribal governments.

"(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection for each fiscal year.".

At the appropriate place, insert the following:

SEC. 409. CERTIFICATION RELATIVE TO THE SCREENING OF MUNICIPAL SOLID WASTE TRANSPORTED INTO THE UNITED STATES.

(a) DEFINED TERM.—In this section, the term "municipal solid waste" includes sludge (as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903)).

(b) REPORTS TO CONGRESS.—Not later than 90 days after the date of enactment of this Act, the Bureau of Customs and Border Protection of the Department of Homeland Security shall submit a report to Congress that—

(1) indicates whether the methodologies and technologies used by the Bureau to screen for and detect the presence of chemical, nuclear, biological, and radiological weapons in municipal solid waste are as effective as the methodologies and technologies used by the Bureau to screen for such materials in other items of commerce entering into the United States by commercial motor vehicle transport; and

(2) if the methodologies and technologies used to screen solid waste are less effective than those used to screen other commercial items, identifies the actions that the Bureau will take to achieve the same level of effectiveness in the screening of solid waste, including the need for additional screening technologies.

(c) IMPACT ON COMMERCIAL MOTOR VEHICLES.—If the Bureau of Customs and Border Protection fails to fully implement the actions described in subsection (b)(2) before the earlier of 6 months after the date on which the report is due under subsection (b) or 6 months after the date on which such report is submitted, the Secretary of Homeland Security shall deny entry into the United States of any commercial motor vehicle (as defined in section 31101(1) of title 49, United States Code) carrying municipal solid waste until the Secretary certifies to Congress that the methodologies and technologies used by the Bureau to screen for and detect the presence of chemical, nuclear, biological, and radiological weapons in such waste are as effective as the methodologies and technologies used by the Bureau to screen for such materials in other items of commerce entering into the United States by commercial motor vehicle transport.

(d) EFFECTIVE DATE.—Notwithstanding section 341, this section shall take effect on the date of enactment of this Act.

At the appropriate place, insert the following:

(i) PARTICIPATION OF UNDER SECRETARY FOR EMERGENCY PREPAREDNESS AND RESPONSE.—

(1) PARTICIPATION.—The Under Secretary for Emergency Preparedness and Response shall participate in the grantmaking process for the Threat-Based Homeland Security Grant Program for nonlaw enforcement-related grants in order to ensure that preparedness grants, where appropriate, are consistent, and are not in conflict, with the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(2) REPORTS.—The Under Secretary for Emergency Preparedness and Response shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives an annual report that describes—

(A) the status of the Threat-Based Homeland Security Grant Program; and

(B) the impact of that program on programs authorized under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

SEC. ___. NATIONAL INTEROPERABLE COMMUNICATIONS NETWORK.

(a) IN GENERAL.—Within one year of enactment, the Secretary of Homeland Security, in coordination with the Federal Communications Commission and the National Telecommunications and Information Administration, shall complete a study assessing potential technical and operational standards and protocols for a nationwide interoperable communications network (referred to in this section as the "Network") that may be used by Federal, State, and local governmental and non-governmental public safety, homeland security, and other first responder personnel. The assessment shall be consistent with the SAFECOM national strategy as developed by the public safety community in cooperation with SAFECOM and the DHS Interoperability Office. The Secretary shall report the results of the study to the Senate Committee on Commerce, Science, and Transportation, the Senate Committee on Governmental Affairs, the House of Representatives Committee on Energy and Commerce, and the House of Representatives Select Committee on Homeland Security.

(b) CONSULTATION AND USE OF COMMERCIAL TECHNOLOGIES.—In assessing standards and protocols pursuant to paragraph (a), the Secretary of Homeland Security shall—

(1) seek input from representatives of the user communities regarding the operation and administration of the Network; and

(2) consider use of commercial wireless technologies to the greatest extent practicable.

At the appropriate place insert the following:

Section 145(c) of the Aviation and Transportation Security Act (49 U.S.C. 40101 note) is amended by striking "more than" and all that follows through "after" and inserting "More than 48 months after".

Mrs. MALONEY (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from New York?

There was no objection.

The SPEAKER pro tempore. The gentlewoman from New York (Mrs. MALONEY) is recognized for 5 minutes.

Mrs. MALONEY. Mr. Speaker, this is a very simple motion to recommit. It replaces the House language with the language that passed the Senate on an overwhelming vote of 96 to 2.

PARLIAMENTARY INQUIRY

Mr. HOEKSTRA. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). The gentleman will state it.

Mr. HOEKSTRA. Mr. Speaker, is there a motion, or is there a copy of the motion available at the desk?

Mrs. MALONEY. Yes, there is.

Mr. HOEKSTRA. Could we have a copy, please?

Mrs. MALONEY. Yes. It is at the desk.

The SPEAKER pro tempore. The gentlewoman from New York (Mrs. MALONEY) may proceed.

Mrs. MALONEY. Mr. Speaker, this motion to recommit replaces the House language with the language that passed the Senate in an overwhelming vote of 96 to 2.

As we have debated the merits of H.R. 10, it has become clear that the bill is fundamentally flawed, and it will certainly take a conference to work out major differences. We do not need to take that path.

After the attacks of September 11, Congress created a bipartisan commission to examine the causes of the attack and make recommendations for reform. This commission put aside partisan differences to make 41 unanimous recommendations for making our country safer. The other body acted, largely in a bipartisan manner, and the bipartisan 9/11 Commission Caucus in the House has been working with the 9/11 families and the commission since the recommendations were released.

Our job should be to enact these recommendations. The only question we should ask is what can we do to make America safer, and the only answer is to enact the recommendations of the 9/11 Commission.

Unfortunately, H.R. 10 does not do this. There are 41 recommendations made by the 9/11 Commission. H.R. 10 fully implements only 11 of the 41 recommendations.

At the Presidential debates last week, President Bush and Senator KERRY were asked what was the greatest threat facing the Nation. They gave the same answer: nuclear proliferation. Yet, incredibly, H.R. 10 does not implement the 9/11 Commission's recommendations for stopping nuclear proliferation; and the bill falls short in other key areas, such as border security, aviation security, and emergency response.

It is not hard to see what is going on. Some say that the real goal of the Republican leadership is to pass a bill that cannot be reconciled with the Senate bill before the election. The Republican leadership knows that after the elections, when the political pressure is off, the prospects for reform will vanish.

This is our moment. We need to act now. We have this window of opportunity and we must take it; and that is exactly what this motion to recommit does. It is the same language that passed the Senate 96 to 2. Every single Republican Senator voted for the bill and virtually every single Democratic Senator. The motion implements all of the recommendations of the 9/11 Commission, and it includes no poison pills.

If we pass this motion, there will be no difference between the House and the Senate language. This legislation can go right to the President's desk for signature. We can be in the Rose Garden tomorrow for a signing ceremony.

If there are other provisions that the House wants to enact, they will have every opportunity they want to put them on separate pieces of legislation before this House.

This past week, our offices have all been visited by the 9/11 families. The 9/11 families have been through a terrible ordeal, but they have turned their grief into action and their personal tragedy into public service. More than 3 years after 9/11, it is time to honor their commitment to ensuring that other American families never have to walk in their shoes.

This motion to recommit is our best hope for a solution right now. All we have to do is vote "yes" and vote to make our Nation safer. Vote to support the motion to recommit.

Mr. Speaker, I yield the remaining time to my distinguished colleague, the gentlewoman from California (Ms. HARMAN).

Ms. HARMAN. Mr. Speaker, I thank the gentlewoman for yielding me this time to say how proud New Yorkers, two of whom are my children, are of her leadership and her service to New York City.

This has been a long and difficult debate. Last night, in my view, was not our finest hour in this House, and the re-vote on the Smith amendment just moments ago was an unnecessary rebuke to a bipartisan group who tried to make this bill better.

I urge an "aye" vote on this motion to recommit, not to polarize us, but to unite us. The goal is to make us safer; and to do so, we need to change the way our intelligence community is organized.

Good people who try their best to protect us need better tools. A good organization cannot assure success, but a bad organization makes success much more difficult. Every Republican Senator voted for this bill, and eight Republicans voted for it in the House last night. I urge an "aye" vote on this motion to recommit.

Mr. HOEKSTRA. Mr. Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore. The gentleman from Michigan (Mr. HOEKSTRA) is recognized for 5 minutes.

Mr. HOEKSTRA. Mr. Speaker, I rise in opposition to the motion to recommit with instructions to strike the text of H.R. 10, as amended, and insert the text of the Maloney substitute.

We have heard much about the efforts in the other body which resulted in the passage of the National Intelligence Reform Act of 2004 by a vote of 96 to 2. I have congratulated the sponsors of the bill, Senator COLLINS, the Chair of the Committee on Government Affairs, and Senator JOE LIEBERMAN, the committee's ranking Democrat member, for their accomplishments.

Over 6 days of debate, the other body placed its mark on the Collins-Lieberman bill. As I predicted, that bill has grown in size with the inclusion of scores of amendments becoming more like H.R. 10, not in just title I, but throughout the bill. The House has now spent the better part of 2 days considering H.R. 10. We have put our imprint on the recommendations of the 9/11 Commission. We will soon have the opportunity to reconcile the two bills in conference.

Lee Hamilton, the 9/11 Commission's vice chairman and a former distinguished chairman of both the House Permanent Select Committee on Intelligence and the Committee on International Relations, also stated what should be obvious: that as the Senate and House conduct the normal legislative process, each body would refine and put their imprint on the commission's recommendations. He said that at the September 28 press conference, and it is what he is reported to have said on other occasions. The commission's recommendations are not set in stone. That is what the other body has done during its many days of consideration of S. 2845, and it is exactly what the House has done.

The motion to recommit represents another attempt to legislate by playing "follow the other body." This process began weeks ago when some said the House should pass the Collins-Lieberman bill, as introduced. Then it was, the House should pass the Collins-Lieberman bill as reported by committee. Yesterday it was, the House should pass a little bit of Collins-Lieberman and a little bit of Lieberman-McCain. And today, what the House should pass is what may be the Senate bill, but this is what it looks like: 300 pages, 400 pages of stuff that has been blacked out, hand-written in, with Senators' names on it. Will those be part of the bill?

The House is better than that. While some may have been busy watching the other body, our committees and Members have methodically held hearings, introduced legislation, and amended and improved H.R. 10.

Mr. Speaker, H.R. 10 is a comprehensive bill. H.R. 10 effectively implements the framework of recommendations contained in the report of the 9/11 Commission, especially its core recommendations regarding restructuring the intelligence community. H.R. 10 is the work of the House, not following the other body.

Mr. Speaker, for these reasons, for the integrity of the House, I urge my colleagues to join me in opposing the motion to recommit and pass H.R. 10.

The SPEAKER pro tempore. All time has expired.

Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mrs. MALONEY. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for any electronic vote on the question of passage.

The vote was taken by electronic device, and there were—ayes 193, noes 223, not voting 17, as follows:

[Roll No. 522]

AYES—193

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Carson (OK)
Case
Castle
Chandler
Clay
Clyburn
Conyers
Cooper
Costello
Cramer
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Ford
Frank (MA)
Frost
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Hill
Hinchey
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Leach
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Lucas (KY)
Lynch
Maloney
Markey
Matheson
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Meeks (NY)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Moran (VA)
Nadler
Napolitano
Neal (MA)
Oberstar
Olver
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—223

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Chabot
Chocola
Coble
Cole
Collins
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Dunn
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
Manzullo
Marshall
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Murtha
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Obey
Osborne
Ose
Otter
Oxley
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen

Royce
Ryan (WI)
Ryun (KS)
Sabo
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—17

Ballenger
Boehlert
Filner
Gephardt
Hinojosa
Jones (NC)
Kaptur
Lipinski
Majette
Matsui
Meek (FL)
Norwood
Ortiz
Paul
Slaughter
Tauzin
Towns

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. HASTINGS of Washington) (during the vote). Members are advised 2 minutes remain in this vote.

☐ 1532

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

Stated for:

Mr. FILNER. Mr. Speaker, on rollcall No. 522, I was in my Congressional District on official business. Had I been present, I would have voted "aye."

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. HOEKSTRA. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 282, noes 134, not voting 17, as follows:

[Roll No. 523]

AYES—282

Aderholt
Akin
Alexander
Andrews
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bell
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burns
Burr
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Cardin
Cardoza
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole
Collins
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (AL)
Davis (FL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeLay
DeMint
Deutsch
Dooley (CA)
Doolittle
Dreier
Dunn
Edwards
Ehlers
Emerson
English
Etheridge
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Frost
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Hill
Hobson
Hoeffel
Hoekstra
Holden
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Isakson
Israel
Issa
Istook
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Lampson
Langevin
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lowey
Lucas (KY)
Lucas (OK)
Manzullo
Marshall
Matheson
McCarthy (MO)
McCarthy (NY)
McCotter
McCrery
McHugh
McInnis
McIntyre
McKeon
Mica
Michaud
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Moore
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ross
Rothman
Royce
Ruppersberger
Ryan (WI)
Ryun (KS)
Sandlin
Saxton
Schiff
Schrock
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Snyder
Souder
Spratt
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Turner (TX)
Udall (CO)
Upton
Vitter
Walden (OR)
Walsh
Weldon (FL)
Weldon (PA)
Weller
Wexler
Whitfield
Wicker
Wilson (SC)
Wolf
Wu
Young (FL)

NOES—134

Abercrombie
Ackerman
Allen
Baca
Baird
Baldwin
Becerra
Berkley
Berman
Blumenauer
Brady (PA)
Brown (OH)
Capps
Capuano
Carson (IN)
Conyers
Cooper
Costello
Crowley
Cummings
Davis (CA)
Davis (IL)
DeGette
Delahunt
DeLauro
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doyle
Duncan
Emanuel
Engel
Eshoo
Evans
Farr
Fattah
Ford
Frank (MA)
Gonzalez
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Hinchey
Holt
Honda
Inslee
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kildee
Kilpatrick
Kleczka
Kucinich
LaHood
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lynch
Maloney
Markey
McCollum
McDermott
McGovern
McNulty
Meehan
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mollohan
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Rahall
Rangel
Reyes
Rodriguez
Ros-Lehtinen
Roybal-Allard
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Scott (VA)
Serrano
Sherman
Smith (WA)
Solis
Stark
Strickland
Stupak
Tanner
Tauscher
Thompson (CA)
Tierney
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wamp
Waters
Watson
Watt
Waxman
Weiner
Wilson (NM)
Woolsey
Wynn
Young (AK)

NOT VOTING—17

Ballenger
Boehlert
Filner
Gephardt
Hinojosa
Jones (NC)
Kaptur
Lipinski
Majette
Matsui
Meek (FL)
Norwood
Ortiz
Paul
Slaughter
Tauzin
Towns

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. HASTINGS of Washington) (during the vote). Members are advised that 2 minutes remain in the vote.

☐ 1551

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated against:

Mr. FILNER. Mr. Speaker, on rollcall No. 523, I was in my congressional district on official business. Had I been present, I would have voted "nay."

GENERAL LEAVE

Mr. THORNBERRY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 10.

The SPEAKER pro tempore (Mr. HASTINGS of Washington). Is there objection to the request of the gentleman from Texas?

There was no objection.

AUTHORIZING THE CLERK TO MAKE TECHNICAL AND CONFORMING CHANGES IN ENGROSSMENT OF H.R. 10, 9/11 RECOMMENDATIONS IMPLEMENTATION ACT

Mr. THORNBERRY. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, H.R. 10, the Clerk be authorized to make technical changes and conforming changes to the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

PERMISSION FOR COMMITTEE ON THE JUDICIARY TO HAVE UNTIL NOVEMBER 19, 2004, TO FILE SUPPLEMENTAL REPORT ON H.R. 10, 9/11 RECOMMENDATIONS IMPLEMENTATION ACT

Mr. HOSTETTLER. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary have until November 19, 2004, to file a supplemental report on H.R. 10.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

MOTION TO INSTRUCT CONFEREES ON S. 2845, NATIONAL INTELLIGENCE REFORM ACT OF 2004

Mr. GUTIERREZ. Mr. Speaker, I offer a motion to instruct.

The SPEAKER pro tempore. The Clerk will report the motion.

The Clerk read as follows:

Mr. Gutierrez moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the House amendment to the bill S. 2845 be instructed to recede from its amendment to the bill (particularly sections 3005, 3006, 3007, 3008, 3009, 3032, 3051, 3052, 3053, 3054, 3055, and 3056 of its amendment) and concur therein.

The SPEAKER pro tempore. Pursuant to clause 7 of rule XXII, the gentleman from Illinois (Mr. GUTIERREZ) and the gentleman from Indiana (Mr. HOSTETTLER) each will control 30 minutes.

The Chair recognizes the gentleman from Illinois (Mr. GUTIERREZ).

Mr. GUTIERREZ. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise to offer a motion to instruct the conferees on H.R. 10 with instructions that the House recede to the Senate and strike provisions 3005, 3007, 3009 and 3032 from the bill. These provisions are poison pills that will slow the process of reforming our Nation's intelligence agencies and do nothing to make us safer.

My motion further instructs House conferees to recede to the Senate by striking sections 3051 through 3056 from H.R. 10 relating to driver's licenses, identification cards and accepting the corresponding driver's licenses provisions from the Senate-passed bill.

Mr. Speaker, instead of making us safer, enactment of these provisions would impose severe hardship on aliens by subjecting at least 1 million immigrants to deportation without any administrative hearing or due process, no review; permit the United States to outsource torture by sending an individual to a country where he or she is likely to be tortured; install a number of new barriers to winning asylum claims that are likely to prevent bona fide refugees from receiving the protection of asylum in the United States; and prohibit habeas corpus review.

Mr. Speaker, once again, let me remind my colleagues of the very relevant details. None of these provisions were included in the recommendations made by the bipartisan 9/11 Commission, and they are extremely divisive. Insistence on these provisions could greatly complicate the task of conferencing with the Senate and producing a bill implementing the 9/11 Commission recommendations. I urge my colleagues to support this motion to instruct.

Speaking on section 3005, it is very problematic, Mr. Speaker. Among other things, it would bar the use of matricula consular identification cards, a policy that the Bush administration has opposed. Not only would this affect undocumented immigrants, it would also affect Canadians. Section 3005 makes it impossible for Canadians, who currently do not have a passport to be legally in the United States, to establish their identity when encountered by Federal employees.

Last month, this Chamber, Mr. Speaker, overwhelmingly rejected an attempt to overturn the Department of Treasury regulations that permit matricula consular identification cards to be used in banking transactions. The House stripped the provision from the bill by adopting an amendment to H.R. 5025 that was offered by the gentleman from Ohio (Mr. OXLEY), the House Committee on Financial Services chairman. The House adopted the Oxley amendment on September 14 by a vote of 222 to 177. Clearly, we should not revisit this. It has been visited not once, but at least on three occasions.

Section 3006. This section greatly expands the use of expedited removal in the United States. It would be especially harmful for women and children who are escaping a range of gender-related persecutions such as rape, sexual slavery, trafficking, honor killings, since persons scarred by such trauma often require time before they can step forward to express their claim.

I would like to think that most people in this Chamber would agree that this would cause untold grief to women and children who will no longer be able to obtain the relief to which Congress believes they are entitled, victimizing them once they are raped, victimizing them once again. This amendment in the Committee of the Whole was carried on the Smith amendment, and then we unfortunately had to revisit it for political purposes where it was defeated or it would not even be in my motion.

Furthermore, this section would reverse several decades of policy with respect to persons fleeing the tyranny in Cuba, eviscerating protections that currently are available to Cubans arriving in the United States. Section 3006 would mean that any Cuban who sets foot on United States soil would have to be placed in expedited removal. Like all others, they would be subject to mandatory detention and swift removal from the United States. This will mean that many Cubans would be returned to the dictatorship of Fidel Castro without so much as a hearing.

Section 3007 is nothing short of an assault on asylum. It would make sweeping changes to asylum law that the drafters erroneously contend would stop terrorists from being granted asylum. Section 3007 would create new barriers to winning asylum claims that are likely to prevent bona fide refugees from receiving the protection of asylum in the United States. This, in turn, would result in bona fide refugees being returned to their persecutors.

It ignores the fact that asylum applicants, particularly survivors of torture, rape or forced abortion or sterilization, may not be comfortable telling this information to a uniformed male inspector officer at an airport.

Section 3009 is particularly disturbing, Mr. Speaker. If this section is enacted, the constitutionally compelled remedy of habeas corpus will be eliminated, and a plainly inadequate court of appeals review will be substituted that will leave many noncitizens without any forum to raise legitimate claims of governmental error and misconduct. At the same time, the section creates an extremely high burden for obtaining a stay of deportation, inviting government to race to deport noncitizens before a Federal court can rule on the merits of the case.

Section 3032. Supporters of section 3032 falsely contend that it would prevent the United States from deporting persons to countries where they are likely to be tortured. However, nothing could be further from the truth. In fact, under this section, as it was amended in the Committee of the Whole by the Hostettler amendment, the United States still could outsource torture by sending individuals to countries where they are likely to be tortured.

It merely provides that in order to do so the United States Government would be required to seek what amounts to a note from the torturing government, that torturing government to promise us that they will not torture that individual anymore before we send them back.

Who among our colleagues will be willing to stake their lives or the lives of their loved ones on the promise of the Government of Sudan or the Government of Syria or the People's Republic of China or North Korea or Cuba or Saudi Arabia that they will not torture someone if we send them back after they try to get asylum here?

Mr. Speaker, our country is far better than this. This provision is unacceptable. The administration expressed the President's opposition to permitting the government to outsource torture to foreign governments in the administration's statement of administration policy on H.R. 10. The President of the United States is against this provision. Members should know that a vote against this motion to instruct would be a vote against the very wishes of the President of the United States.

Mr. Speaker, I, at this point, would like to end my comments.

Mr. Speaker, I reserve the balance of my time.

Mr. HOSTETTLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, there has been much discussion on H.R. 10, the legislation that has been considered by the House over the last several days, and this motion to instruct would strike several provisions in the legislation that are vitally important to securing the American people. But, Mr. Speaker, I would offer into the RECORD a letter by a group called the 9/11 Families for a Secure America.

The letter was written to the gentleman from Wisconsin (Chairman SENSENBRENNER) of the Committee on the Judiciary, and it is made up of a group of families who lost loved ones or were victimized on September 11 as a result of the attacks on our country. No one could speak more eloquently than they about the need for change to our immigration policy in that they write:

"We are writing to express the support and thanks of 9/11 Families for a Secure America for the provisions in title 3 of H.R. 10, the 9/11 Recommendations Implementation Act," and those are the provisions that this motion to instruct would seek to eliminate.

Reading further, "These provisions would go a long way toward closing the loopholes that allowed 19 terrorists, all of whom had violated our immigration laws in one way or another, to enter and move freely around our country while they honed their plot to murder our loved ones.

"We are heartened by the inclusion in the bill of provisions that require both U.S. citizens and aliens to prove their identity upon entry with secure, verifiable documents, preclude acceptance by Federal employees of consular ID cards, insist that DHS, Department of Homeland Security, expand its use of expedited removal and prevent illegal aliens from abusing our judicial process to delay deportation and increase the number of the Border Patrol and ICE, or Immigrations and Customs Enforcement, agents.

☐ 1600

"All of these provisions fall well within the scope of the 9/11 Commission's recommendations and so should be enacted and implemented as quickly as possible.

"Our efforts over the past 3 years to get elected officials to recognize and address the current immigration crisis have taught us that even the most reasonable and sensible immigration reform proposals languish in Congress because our elected leaders are either blinded by special interests or afraid of being vilified by them. We commend you and the House Republican leadership for your willingness to address immigration reform in H.R. 10 while the sponsors of every other so-called 9/11 bill completely ignored it.

"It is incomprehensible to us that any reasonable person could believe that immigration reform plays no legitimate role in our response to the attacks. We are outraged that terrorists and murderers are able to frustrate efforts to deport them by claiming that they will be tortured upon being returned home. Even worse, when they have committed their heinous crimes overseas and are thus not easily prosecutable here in America, their use of the Convention Against Torture allows them to escape justice.

"We are strongly supportive of section 3031 and section 3032 of H.R. 10, which would end this intolerable abuse of our immigration laws. Members of Congress have promised us repeatedly over the last 3 years that they would honor our loved ones who were murdered 3 years ago by enacting reforms to ensure that Americans will never again face the same horror. We hope you will honor those promises by supporting the immigration provisions already in the bill and by opposing any efforts to protect a status quo that aided the murderers who tore apart our families on September 11, 2001.

"Sincerely, the Board of Directors of 9/11 Families For a Secure America."

Mr. Speaker, I do not know of anyone who can more eloquently speak to the importance of maintaining these provisions in the House bill in H.R. 10, when in other proposals, as the families would say themselves, that every other so-called 9/11 bill has completely ignored the central focus of the 9/11 tragedy, which is that individuals from outside our country came into our country, abused the process, and murdered our citizens.

Mr. Speaker, I submit the letter I read earlier for the RECORD.

9/11 FAMILIES FOR A
SECURE AMERICA,
New York, NY, September 28, 2001.

Hon. JAMES SENSENBRENNER,
Chairman, Judiciary Committee, House of Representatives, Washington, DC.

DEAR CHAIRMAN SENSENBRENNER: We are writing to express the support and thanks of 9/11 Families for a Secure America for the provisions in Title III of H.R. 10, the 9/11 Recommendations Implementation Act. These provisions would go a long way toward closing the loopholes that allowed 19 terrorists—all of whom had violated our immigration laws in one way or another—to enter and move freely around our country while they honed their plot to murder our loved ones.

We strongly urge the Members of the Judiciary Committee to retain the immigration provisions included in H.R. 10. We believe that implementation of Title III would improve homeland security dramatically and help to ensure that no other American families have to experience the devastating grief, the debilitating loss, and the overwhelming rage that we have known every day for more than three years now.

We are heartened by the inclusion in the bill of provisions that: require both U.S. citizens and aliens to prove their identity upon entry with secure, verifiable documents; preclude acceptance by Federal employees of consular ID cards; insist that DHS expand its use of expedited removal and prevent illegal aliens from abusing our judicial process to delay deportation; and increase the numbers of Border Patrol and ICE agents.

All of these provisions fall well within the scope of the 9/11 Commission's recommendations, and so should be enacted and implemented as quickly as possible. Our efforts over the past three years to get elected officials to recognize and address the current immigration crisis have taught us that even the most reasonable and sensible immigration reform proposals languish in Congress because our elected leaders are either blinded by special interests or afraid of being vilified by them. We commend you and the House Republican Leadership for your willingness to address immigration reform in H.R. 10, while the sponsors of every other so-called "9/11 bill" completely ignored it. It is incomprehensible to us that any reasonable person could believe that immigration reform plays no legitimate role in our response to the attacks.

We are outraged that terrorists and murderers are able to frustrate efforts to deport them by claiming that they will be tortured upon being returned home. Even worse, when they have committed their heinous crimes overseas and are thus not easily prosecutable here in America, their use of the Convention Against Torture allows them to escape justice. We are strongly supportive of sections 3031 and sections 3032 of H.R. 10, which would end this intolerable abuse of our immigration laws.

There is, however, one glaring omission in H.R. 10. The 9/11 Commission specifically recommended enhanced cooperation with and training of state and local law enforcement officers on immigration law, yet H.R. 10 includes no mention of this recommendation. We hope you will bring up the CLEAR Act, H.R. 2671, for a full committee markup as soon as possible in order to complete the 9/11 Commission's work.

Members of Congress have promised us repeatedly over the last three years that they would honor our loved ones who were murdered three years ago by enacting reforms to ensure that Americans will never again face the same horror. We hope you will honor those promises by supporting the immigration provisions already in the bill and by opposing any effort to protect a status quo that aided the murderers who tore apart our families on September 11, 2001.

Sincerely,
BOARD OF DIRECTORS,
9/11 Families for a Secure America.

Peter Gadiel & Jan Gadiel, Kent, CT, Parents of James, age 23, WTC, North Tower, 103rd Floor.

Monica Gabrielle, North Haven, CT, Wife of Rich Gabrielle, WTC, South Tower.

Will Sekzer, Detective Sergeant (retired) NYPD, Sunnyside, NY, Father of Jason, age 31, WTC, North Tower, 105th Floor.

Diana Stewart, New Jersey, only wife of Michael Stewart.

Bill Doyle, Staten Island, NY, Father of Joseph.

Sally Regenhard, Al Regenhard (Detective Sergeant, NYPD, Retired), Parents of Firefighter Christian Regenhard, Bronx, NY.

Bruce DeCell, Staten Island, NY, Father in law of Mark Petrocelli, age 29, WTC, North Tower, 105th Floor.

Grace Godshalk, Yardley, PA, Mother of William R. Godshalk, age 35, WTC, South Tower, 89th Floor.

April D. Gallop, Virginia, Pentagon Survivor.

Lynn Faulkner, Ohio, Husband of Wendy Faulkner, South Tower.

Joan Molinaro, Staten Island, NY, Mother of Firefighter Carl Molinaro.

Colette Lafuente, Poughkeepsie, NY, Wife of Juan LaFuente, WTC visitor.

Mr. Speaker, I reserve the balance of my time.

Mr. GUTIERREZ. Mr. Speaker, how much time do the proponents have?

The SPEAKER pro tempore (Mr. HASTINGS of Washington). The gentleman from Illinois has 22½ minutes remaining.

Mr. GUTIERREZ. Mr. Speaker, I yield 6 minutes to the gentlewoman from California (Ms. HARMAN).

Ms. HARMAN. Mr. Speaker, instead of passing one strong bill to make our country safer, the House bill has two divergent parts: the first part is the core bill, which includes a watered-down version of the intelligence reform provisions in the 9/11 Commission report. The second part is a campaign bill, which has some useful features, but also contains partisan controversial provisions, such as expanded deportation, unlimited detention, unnecessary environmental waivers, and unchecked databases designed to paint Democrats as weak on terrorism in the weeks before an election.

Several of these egregious provisions were eliminated on the House floor, but the re-vote on the Smith amendment persuaded me that the bill's sponsors were not seeking common ground, but were making 30-second attack ads. I voted in committee to report the bill in order to move the process forward, and I will work my heart out in conference to strengthen the intelligence reform provisions and conform the other provisions to what the 9/11 Commission recommended.

Let me focus on what strengthening the intelligence provisions means. Our first priority in the conference report should be to strengthen the National Intelligence Director, called the NID. I agree with the statement of administration policy on H.R. 10 that "H.R. 10 does not provide the NID sufficient authorities to manage the intelligence community effectively."

H.R. 10's budget authorities are weaker than S. 2845; and, stunningly, they are weaker than current statutes and executive orders which allow for the transfer and reprogramming of funds by the Director of Central Intelligence. Under H.R. 10, money is simply passed through the NID to the various intelligence agencies. Unless the NID has the power to manage and control the budgets of these agencies, he or she will not be able to integrate our intelligence capabilities effectively.

Moreover, the President is not the NID's only customer. We must ensure that the NID addresses the needs of the Departments of Defense, State, Homeland Security, and the war fighters when budgets are built and executed. Our efforts must not lead to the dismemberment of the National Foreign Intelligence Program, the NFIP, or we will end up with less integration than we presently have.

To be crystal clear, Mr. Speaker, neither bill, let me underscore this, neither bill includes the budgets for tactical intelligence. And no one is recommending that they be included. To repeat: no one has recommended that the budgets of our tactical intelligence agencies be included in the structure we are building under this legislation.

The NID also needs greater personnel management authorities. S. 2845 provides this authority, but H.R. 10 does not. The leaders of the intelligence community must believe they work for the NID in addition to their Department Secretaries. Consultation on appointments, which is what H.R. 10 includes, is insufficient. The NID must at least have the power to concur in key appointments. To enable the NID to create a joint culture, he or she must also be able to transfer people to centers and other multidisciplinary teams.

Congress solved the problem of a weak Chairman of the Joint Chiefs of Staff 20 years ago by mandating joint assignments for promotion and creating a joint career track. The same must be done for the NID. After all, the NID is our attempt to create Goldwater-Nichols jointness for the intelligence community, just as we have done for the military.

Third, the director of the NCTC, the National Counterterrorism Center, must have significant stature. Presidential appointment and Senate confirmation of the NCTC director is critical to give that post the stature and accountability that it requires. The President and the Senate overwhelmingly support this.

Fourth, the conference report should include the provision of S. 2845 to create a trusted information-sharing network so government agencies can connect the dots about the terrorists. Simply declaring the need, as H.R. 10 does, is woefully insufficient.

And finally, it is imperative to develop mechanisms to ensure that actions of the NID and NCTC do not encroach upon our civil liberties. We must create an independent privacy and civil liberties board, which was supported on a bipartisan basis in the House Permanent Select Committee on Intelligence and then stripped in the Committee on Rules, recommended by the 9/11 Commission and included in S. 2845. These intelligence provisions began here in the House with H.R. 4104, but they stalled here because our leadership pursued a partisan path and because the President's endorsement of S. 2845 was not followed up with constructive effort in the House.

We know how to do this right, Mr. Speaker, and we must. We can never replace the loved ones we lost on September 11, but we can honor them and the bravery of those who came to their rescue by uniting in this conference in the next several weeks to enact real reform. I pledge to do my part.

Mr. HOSTETTLER. Mr. Speaker, I yield 3 minutes to the gentleman from Missouri (Mr. BLUNT), the majority whip of the House.

Mr. BLUNT. Mr. Speaker, I thank the gentleman from Indiana for yielding me this time. I also want to thank all my colleagues, many of whom voted for this bill just moments ago on both sides of the aisle, for the work they put into this, to the time they have spent on this, to the important discussion of how we secure our borders more carefully, how we maintain our security in a greater way, and how we look at intelligence-gathering and -sharing differently than we needed two generations ago, in the late 1940s, when this was done the last time. This makes our work very important as we move forward.

The work of the conferees will be challenging. We have given them a strong product with a strong vote. I think this motion to reinstruct in several areas just simply reaches too far. I spoke earlier today about the importance of what do we do, what do we do with people who come to this country and have criminal backgrounds from another country.

These are not people we think are criminals or might have been criminals. These are people who we know are criminals or we know are terrorists. These people may come from countries that are not very great countries. What we did today was change the bill so that we would not be forced to send them back to that country, if in fact we can figure out how to detain them in an appropriate way here.

I gave the example this morning of a person, and this is an absolute case of someone who, in Jordan, was convicted of conspiring to bomb an American school. That person came to America. He then sought sanctuary on the basis that he should not be sent back to Jordan because they use punishments we would find inappropriate. And we all agree on that. But under our current law, the only thing to do was to let him then go to an American community to live.

Well, an American community is full of American schools. So here we have someone who is guilty of conspiring to kill American kids in a school in Jordan, and our only current remedy appears to be, according to the courts, to send him to a community in America to live, which is full of schools that have American kids.

This motion to instruct says we should eliminate that language and go back to the current environment, where the only choice is for that person to go into the American community. In this case, that was a terrorist, Mr. Speaker. In other cases we know of someone who was a murderer, or a pedophile, or a rapist. We need better ways to deal with people who abuse the open arms that America has traditionally had.

That is just one area of many that this motion to instruct specifically addresses. So if in fact you vote for this motion, you are voting to maintain the status quo. And I think my friends would almost all agree the status quo, in that instance, as I described it, is not an acceptable alternative for us to have.

We are searching for alternatives here that work better. I hope we let this process go on. I hope we let our conferees work on this hard job in the best way they can. I hope we defeat this motion to instruct.

Mr. GUTIERREZ. Mr. Speaker, I yield 5 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, I first want to thank the distinguished gentleman from Illinois for yielding me this time and for his leadership.

I am delighted the majority whip was just on the floor, because I really want to make the point that when we look at the questions of immigration, and I think a lot of these points on the motion to instruct the gentleman has offered refer to immigration issues, but they also refer to issues of asylum and refugees. When we sit with our constituents and we explain what America has stood for over the years, its principles based upon not only immigration but the questions of allowing people to come and seek refuge and allowing people to seek asylum in the course of running away from persecution and torture and the devastation of a despotic government, you find commonality.

That is, I think, what we are trying to do with the motion to instruct as the conferees move forward. We are trying to find the kind of commonality that, frankly, the White House has asked us to find, and I might be very straightforward and say the families of the 9/11 victims have asked us to state and to find. We know that immigration concerns raise their ugly head all the time. H.R. 10 is, frankly, not the vehicle to engage in that discussion without the proper hearings and understanding what would work best.

I just want to refer again to the administration's position on H.R. 10. It clearly says that the administration strongly opposes the overbroad expansion of expedited removal authorities. The administration has concerns with the overbroad alien identification standards that are proposed by the bill and believes they are unrelated to security concerns.

□ 1615

This is the same administration that signed into law the Department of Homeland Security and has as its head Secretary Tommy Ridge. The President goes on to say, signed by my good friend Alberto Gonzalez, the counsel to the President as relates to the issue of torture. Unfortunately, the two Smith amendments did not succeed. And so I think it is important for the conferees to hear again what the President said and the President said in this letter by way of his counsel, "The President did not propose and does not support this provision and a provision that would permit the deportation of certain foreign nationals to countries where they are likely to be tortured."

Some would say that that has been corrected. It has not. Because what the Hostettler language says, with all due respect to my good friend, is that we will ask the countries not to torture this individual, but it is to be asked by the Secretary of State when, in fact, that is not a true protection because we know that we have asked many things, and we have received none.

I frankly believe that we are losing the focus that the 9/11 families would offer to us. As I look at the language in the 9/11 Commission report on the immigration and law enforcement issues, they have indicated that this is an important concept and that we should begin looking at securing identification in the United States. But the fundamental question that was asked by the families on H.R. 10 to be adopted by this commission, by a bipartisan commission, Chairman Kean and Vice Chairman Hamilton, was to fix the intelligence system to give us one director of intelligence with budgetary authority.

I would only say that some of the provisions that the gentleman is asking us to consider striking or a motion to instruct in order for intelligent decisions to be made really go to the full understanding of the American public, their compassion, their sensitivity, their belief in the Statue of Liberty's principles of people coming over. This is not to say that we do not deport terrorists. It is not to say that we do not detain them. It simply suggests that we should not water down the protections that we have that undermine the values of this particular Nation as well as the legal principles that we have of judicial review and as well as the protections we have had for those seeking asylum and those who are seeking to be a refugee.

The expedited procedures, Mr. Speaker, are not procedures that provide any security. I will say this as I close. All of these provisions are subject to mistake, a mistake that can cost someone their liberty, can cost someone their possible life, and certainly mistaken identity is rampant as we try to fix this security system. I need not speak about Yusuf Islam, Cat Stevens, who came to this country just a few months ago and met with White House officials on the faith-based initiative. Lo and behold, he was deplaned in Maine, his daughter sent on, he was sent back because of a mistake.

I would ask my colleagues to look seriously at this motion to instruct. It will not undermine the conferees. It will give them guidance for what may be a consensus position on H.R. 10 for all of us to vote on.

Mr. HOSTETTLER. Mr. Speaker, I yield myself such time as I may consume to talk specifically about one of the sections that are being considered for removal as a result of the motion to instruct, section 3005, which addresses the importance of verifiable documentation for aliens and their identification.

First of all, we need to understand what the section does not do. It does not prevent aliens from presenting other foreign documents to open bank accounts in this country. And it does not prevent aliens from presenting other documents in addition to the documents listed. Thus, an alien could also present a driver's license so long as the alien presents a designated document.

What the section does do, however, it requires aliens to present secure documents. It prevents the aliens from using consular identification cards, as we have heard about earlier, issued by foreign agents to aliens present in the United States.

Mr. Speaker, I would like to say that those foreign agents in the United States issue them only to their nationals, but we will learn later that that is in fact not the case, and that they will issue them for purposes of getting into the secure sections of airports or onto Federal facilities. Those documents should be secure, and they should be safe from fraud.

The FBI has told our Subcommittee on Immigration, Border Security, and Claims that the most commonly issued of those documents is the Mexican matricula consular. The matricula consular has been accepted in this country for over 100 years, documentation that would allow a Mexican citizen while legally present in the United States to have contact information with their government, namely, a consular office in the United States. That has happened for, as I said, a long time in this country.

But the concern that we have is the newly issued Mexican matricula consular is not reliable. It is vulnerable to forgery and, most significantly, poses a terrorist threat. We had then Assistant Director of the FBI's Office of Intelligence Steve McCraw testify before our committee. He concluded that domestic acceptance of the matricula cards in the United States poses a law enforcement and national security risk. He stated that the criminal threat stems from the fact that the matriculas can be a perfect breeder document for establishing a false identity which can facilitate a wide range of crimes, including money laundering. He told of individuals who were arrested with multiple matriculas, each with the same photo but different names, and some of whom had matching driver's licenses to go with the identities proposed on the matricula cards. He concluded that the terrorist threat posed by these cards is the "most worrisome" to the FBI.

He went on to say, "The ability of foreign nationals to use foreign cards to create a well-documented but fictitious identity in the United States provides an opportunity for terrorists to move freely within the United States without triggering name-based watch lists, those watch lists that we think are going to save us from the next round of 9/11 attacks. But these kind of cards will actually keep individuals from being cross-referenced on these lists. These lists are disseminated to local police officers." Nor is the danger posed by those documents only as breeder documents. For other documentation, notwithstanding their vulnerability to fraud and abuse, consular ID cards can be presented to board an airliner. We know of cases like that.

I said earlier, Mr. Speaker, that it is suggested that these cards, especially the matricula consular, they are the most prevalent of the consular ID cards, but quite honestly, there are several foreign governments who are witnessing, observing the success of the issuance and acceptance of these consular identification cards by Mexico, the matricula consular, and they seek to follow them in issuing their own. They are supposed to go to individuals who are nationals of these particular respective foreign governments. But we know that these cards have been issued to non-Mexican nationals in the United States, including at least one Iranian.

Mr. Speaker, at the U.S. Air Force Academy, during a particular set of arrests, employees with matricula cards were found to be employees of the Air Force Academy, but they were not Mexican nationals. They were Guatemalans. The Mexican government had either issued a matricula consular to a non-national or these cards had been so easily created by fraudulent means that they were able to obtain cards very similar to the real cards.

It is critical, Mr. Speaker, that these insecure documents not be accepted for identification purposes to enter secure areas, such as boarding an airplane. That is why we cannot strip out any of the provisions in title III and especially section 3005.

Mr. Speaker, I reserve the balance of my time.

Mr. GUTIERREZ. Mr. Speaker, I yield 1 minute to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, I heard the distinguished gentleman reading and listing a litany of speculative uses of the matricula card that he is speaking of. Let me just say that one of the things that he also said is that the card has been used for 100 years, and there has been no evidence over the 100 years of that kind of use.

But we are not in disagreement over the underlying principle that we can ultimately provide ways of securing and standardizing any card. I have spoken to law enforcement officers in my own community that have not seen any abuse of the use of such cards, and I think the opposition of the White House for these extraneous immigration provisions is just that. We have seen no evidence, we have had no hearings and we have no standards that can be set by adding these provisions on without more study.

I would just simply ask my colleagues to support the motion to instruct.

Mr. GUTIERREZ. Mr. Speaker, I yield myself such time as I may consume.

Let me, first of all, read from the 9/11 Commission because I think it is pertinent at this point. In section 3051 through 3056, in paragraph 3, it says, "Far from calling for sweeping anti-immigration legislation, the commission understood that we should reach out to immigrant communities. Good immigration services are one way of doing so that is valuable in every way, including intelligence-gathering. Congress needs to pass meaningful reforms proposed by the 9/11 Commission and not insist," and I hope the gentleman from Indiana read the 9/11 report; it says "not insist on a divisive anti-immigrant agenda that the commission rejected and has nothing to do with preventing another attack."

Not one of those individuals that committed the heinous act on 9/11 had a matricula consular. As a matter of fact, they were issued by the government of the United States of America, and they either entered this country illegally through borders, not south of here but through the Canadian border, and through other means, legally and illegally, into this country. So let us stop trying to confuse one thing with the other.

Anyone listening to the gentleman from Indiana would think that the government of Mexico issues a matricula consular, and all of a sudden you skip and jump and you are in the United States of America, and you get a Social Security card, you get all of the benefits of being here, and you have got a passport, and you are free. If an INS agent, and I would like the gentleman from Indiana to answer that, if an INS agent stops someone with a matricula consular and says, I want identification from you, prove you are legally here in the United States of America, and gives them a matricula consular, answer the question, will that person not or will that person be deported? He knows that person will be immediately deported from the United States of America because we do not recognize that as a legal means of staying in the United States. It is not a passport. It is not a visa. It does not entitle that person to legally be in the United States of America, and the gentleman from Indiana knows that. He is too smart. He knows too much about this issue to be fuzzy or wary on this issue. You cannot stay in this country with a matricula consular.

What does it allow us to do? It allows an immigrant to open up a bank account so they can send money back, hopefully in a good way, back to their loved ones in their countries. That is what it allows them to do. It allows them to take their American citizen children and enroll them in school. It allows them to communicate.

Anybody listening to the gentleman from Indiana would think the Los Angeles Police Department have lost their minds, the New York Police Department have lost their minds, the Chicago Police Department have lost their minds. They like the matricula consular, as do hundreds of police departments across this country, because it ensures the safety and allows them to gather intelligence and information and allows people to cooperate with them. That is safety on our streets and intelligence-gathering. Let me just say, because this matricula consular, anybody thinks you get one, and it is magic. I go to a job, I say: Here, I have got my matricula consular, give me a job. You know, you cannot get a job with a matricula consular.

Lastly, let me say this. He skips over one important part. You have got to be in the United States of America to have a matricula consular, so you must have evaded something. Why do you want a matricula consular if you are already legally in the United States of America? To open up a banking account. That is the purpose. Let me just say that people, hundreds, and the gentleman knows this, hundreds of people die crossing the border between Mexico and the United States. They drown in the Rio Grande, or they die in the desert. The terrorists know, come through Canada. If we put 90 percent of our resources, that is why they are not going to come through. They are going to find other means. We should look for every possible way to stop them, but this is not going to stop them.

As the commission says in their own report, don't use a divisive, anti-immigrant agenda the commission rejected and has nothing to do with preventing. This is the 9/11 Commission report. We should not do that, because it has nothing to do with preventing.

Lastly, you want to deal with the issue of undocumented workers. You and I will both agree and sign on a piece of paper, and we will have the Justice Department notarize it. There are 10 million undocumented workers in the United States of America. This Congress has not shown the political will nor has it put forward the requisite resources to deport them, nor will it ever.

☐ 1630

This country needs and thrives on their work, and we all know it. So if we really want to deal with the immigration problem, then let us get an immigration bill, at least start with what the President, George Bush, said on January 7. Let us begin a national debate and an honest discussion of the undocumented workers that live in this country and let us integrate them so that the FBI, the CIA, our police departments have their fingerprints where they work, where they bank. And then, after we have eliminated those 10 million, because we know who they are and where they work and where they bank and where their children go to school and where they live, then we can reduce the number of people down to maybe the real terrorists that hide among them.

Let us do that honestly. But let us not use another anti-immigrant attack within a bill, H.R. 10, which does such a disservice to the families of the lost ones of 9/11.

Mr. Speaker, I reserve the balance of my time.

Mr. HOSTETTLER. Mr. Speaker, I yield myself such time as I may consume.

If I can just speak briefly about the gentleman's comments with regard to an individual who is in this country that presents only a matricula consular card for identification, according to former intelligence director for the FBI, Steve McCraw, his testimony before our subcommittee said that really the only people that need to use a matricula consular exclusively for identification purposes are illegal aliens, simply because those that are in the country, that are present in the country legally, have other forms of secured documentation such as a passport or a visa or the like.

But the gentleman suggested in his comments that if a person supplies exclusively a matricula consular card to a law enforcement agent that they will be immediately deported. Mr. Speaker, they will not be immediately deported if the gentleman's other provisions in this motion to instruct are taken out, and that is portion 3006, which calls for expedited removal.

If the gentleman is saying that he wants those people immediately deported that only supply a matricula consular card for identification, I would accept, under unanimous consent, to have section 3006 stripped out of his motion to instruct. I do not think that is going to happen because the gentleman does wish to remove expedited removal provision from the bill.

Mr. Speaker, I yield such time as he may consume to the gentleman from Wisconsin (Mr. GREEN), a member of the Committee on the Judiciary.

Mr. GREEN of Wisconsin. Mr. Speaker, I thank the gentleman for yielding me this time.

I would like to step back for a moment and just talk briefly about the situation we find ourselves in. In the months after 9/11, in fact, in the days after 9/11, we instantly heard certain names of terrorists, Osama bin Laden, obviously, and a few others. And I think we were misled into believing that somehow these were the only problems that we had, that these individuals were the extent of our terrorist problem.

What we have learned in the months since then and what we have learned through the 9/11 Commission's work and its predecessor, the Joint Committee of Inquiry here in Congress, is that any terrorist operation is built upon a network. It is not one individual or even a couple of individuals, but there is a whole network of individuals who each plays a specific role, has a specific job, whether it be identity documents or scoping out buildings or providing training or providing intelligence or recruiting or whatever it may be.

What we have learned, I think, in these months since the tragic days of September 11 is that if we are going to be successful in protecting this Nation, we cannot focus solely on the trigger man or the guy who plants the bomb or the guy who drives that rigged truck, because we can remove those individuals and more may pop up.

Instead, we have to go over every link in the chain. We have to go after those who provide material support, who provide the shadows in which terrorists hide, who scope out the building and provide the intelligence and the diagrams, who provide the transportation, who provide the forged documents, who put the trigger men in place to do their terrible deeds.

The 9/11 Commission was very clear in saying that its report was not legislation. It understood that its report would need to go through the legislative process, and it has. And I believe the legislation that this body produced, H.R. 10, not only carries the spirit and concepts of the 9/11 report, but based upon the experience that we have all had and all that we have learned, I think it adds a lot to it.

It is only the House version of this bill that goes after every part in that network. It is only the House version of the bill and, in particular, the provisions that came out of the Committee on the Judiciary that are aimed at breaking each of the links in making sure that we go after the recruiters of terrorists, those who provide the military training, those who recruit and, as well, the ranks of terrorist organizations.

We have to go after them as surely as we go after those who have placed that bomb. If we do not, we cannot win.

And I think we also recognize that by the very nature of terrorist operations, we cannot wait until after the terrible act has occurred. We have to disrupt it. We have to prevent it. We have to break that chain. We have to disrupt that network. We have to find those who give material support to terrorism, whether it be the military training or the logistics. We have to remove them. Unless we remove those individuals, we cannot succeed.

So the question I think we have before us today with this motion to instruct is whether or not we are going to take a very narrow approach, which is what some would suggest, and I would argue the Senate bill would do, which is incomplete, which does not get after every link in the chain, which does not really go after the network, which does not have the material support provisions in it; or whether or not we are going to be serious, whether or not we are going to take that comprehensive approach that I can, as a young father, be proud of because I know that it makes this country a safer place for my kids to grow up in.

Make no mistake, when this legislation is signed by the President, there will be some time that passes before we are able to take up some of the new steps that the other side would have us remove. The clock is ticking. We have heard a number of terrorism experts refer to this as a race against time. I agree, it is. We have to get this right. We have to be bold. We have to go after that network. We have to go after every link in the chain. We have to remove them. We have to prevent them from coming into place.

We have to send a signal to those who would recruit terrorists. We have to send a signal to those who would become recruits. They are our enemy just as surely as the man or the woman that pulls the trigger. That is the experience, I think, that this world has had in the sad months since September 11.

I urge my colleagues to avoid the motion to instruct because it falls short. It does not do the job. It does not go after the network. It will not break the links in the chain.

I have said it before. I think, as we all look back on the years leading up to 9/11, I think we have to agree that a storm was gathering in the terrorist world and too many of our leaders, and this is not a partisan comment, too many of our leaders looked the other way. The question is now whether, 10 years from now, 15 years from now, whether or not our successors will look back at this Congress and say either they did the right thing, they took a bold comprehensive approach, or, let us hope not, they looked the other way and they fell short.

I urge my colleagues to vote against this motion to instruct.

Mr. HOSTETTLER. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Tennessee (Mrs. BLACKBURN).

Mrs. BLACKBURN. Mr. Speaker, I want to thank our chairman for the excellent work he has done this session as we have looked at immigration issues and have worked hard to be certain that we address the things that are of great concern to the American people and to our constituents.

And it is of concern that we have this motion to instruct to strip apart H.R. 10. And, of course, our opponents of H.R. 10 and our colleagues across the aisle are using impassioned talk to generate emotion on this issue, but what we have contained in H.R. 10 and in the provisions that they are wanting to lift out of that bill, wanting to move away, are just good, solid, commonsense legislation.

I disagree with my colleague across the aisle. He was talking about law enforcement officials and asking if they had lost their minds. I do not think they have. The ones in my district definitely have not.

They are very concerned about this, and I have been working with them since my days in the Tennessee Senate, working to address the driver's license issue and how that affects the American people. And they would choose to remove that from H.R. 10, and it is important.

We have got to be certain, as we look at our Nation's security, that we take very careful steps not to reward individuals who are going to choose to break the law to get here. We have to have great respect for the rule of law and be certain that we continue to have policies that require and reward those that respect the law.

Section 3052 that they are wanting to pull out does address the driver's license situation, having legal documents for driver's licenses. It is not a mandate. It does not set up a national database, and this section has been worked on very carefully. The gentleman from Virginia (Mr. TOM DAVIS) out of the Committee on Government Reform, and the gentlewoman from Michigan (Mrs. MILLER), who was secretary of state, have worked diligently on this issue to be certain that we know that the people who are getting a driver's license, a valid government I.D., are here in this country lawfully, that they have an official passport to be here lawfully. And it gives guidance to our States so that States can continue to have reciprocity for the use of those driver's licenses.

The provisions that are contained in 3052 are good, solid, common-sense provisions. It is something that our States, every single State in this great Nation, will know that they can depend on, that other citizens will know that they can depend on, that the individuals that work the TSA, that are looking at driver's licenses, that are allowing people to get on planes, they will know that this is a valid document and that the person who holds that document in their hand is who they say they are and that they are here and having presence in this country legally.

I would encourage my colleagues to oppose the motion to instruct. I would encourage my colleagues to support H.R. 10, the provisions that have been worked on, the provisions we have worked on with our State legislators so that we help them, help them to have the assurance that the documentation that is before them is real, it is valid; and so that the immigrant community knows that we are honoring those that choose to obey our laws, to work hard and to come here seeking hope, opportunity, and freedom.

Mr. GUTIERREZ. Mr. Speaker, I yield myself 2 minutes.

First of all, I will insert into the RECORD, since obviously the majority has not read it, a statement of administration policy dated October 7, 2004, from the White House, George Bush's White House. In it, it says on page 2, paragraph 3: "The administration strongly opposes the overbroad expansion of expedited removal . . . The administration has concerns with the overbroad alien identification standards proposed by the bill that are unrelated to security concerns."

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This is the President of the United States of America, the leader of your party that you went to New York and nominated, who is going to debate Senator JOHN KERRY tonight.

So if you are right, Senator JOHN KERRY could say tonight to President Bush. You have standards that are less secure because you believe that people should be expedited and should not be expedited.

You believe they should not be, that the matricula consular somehow allows illegal criminals, murderers, rapists and others to roam around our country; that you oppose their quick and immediate deportation; that you are giving harbor to terrorists in the United States of America.

If we are to believe what the Republican majority has just said, and President Bush has contradicted your position in his letter of official policy, then somebody is wrong and somebody is right here. But I do not think your colleague, the President of the United States, is weak on national defense. I do not think the Republican majority is saying to the President of the United States that he thinks it is a good idea to have murderers and rapists and other criminal elements freely being able to roam the United States of America. Yet, indeed, if you are right, that is what the President supports, because we have his official document of the administration policy, and he says remove this kind of language from the document, that we support it.

Mr. HOSTETTLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I appreciate the gentleman's comments from Illinois with regard to his support of the President. It looks like Illinois this year may be in fact in play, the electoral college.

But I do want to remind the gentleman that we do have three branches of government, and we have all been sent here to represent our various constituencies with regard to these very important issues of national security.

Going back to the letter that I have submitted for the RECORD from the 9/11 Families for a Secure America, I know that the gentleman is very impassioned about his support for immigration, and I very much appreciate it. We are a Nation of immigrants. But I think it is important for us to refocus on what actually took place on 9/11 and what the American people are asking us to do.

The 9/11 Families for a Secure America said, "Our efforts over the past 3 years to get elected officials to recognize and to address the current immigration crisis have taught us that even the most reasonable and sensible immigration reform proposals languish in Congress." They do not languish in the House of Representatives, after we defeat this motion to instruct "because our elected leaders are either blinded by special interests or afraid of being vilified by them."

Mr. Speaker, if 9/11 repeats itself, and I have said this to our neighbors to the north in Canada who have had representatives from their government, from their legislative bodies, come and speak to us about issues important to immigration, issues important to both of our countries, if the tragedy of 9/11 repeats itself in this country, then my colleague from Illinois and others from Canada and Mexico will long for, will yearn for, the good-old-days when we considered what will then be considered minimalist reforms to our immigration policy.

To not require that anyone receive relief under the Convention Against Torture, the gentleman talks about expedited removal and the concern that he has with regard for that. Our amendment changed the underlying bill to allow for Convention Against Torture and asylum claims to go ahead unimpeded by the new provision that calls for expedited removal. So we will not be sending individuals who have a very reasonable fear of being tortured and abused in their home countries if they are returned. Those that really do have a reason to fear for their safety in another country and for their abuse there will be able to obtain relief in this country.

But for those that abuse the immigration process, as the 19 did who perpetrated 9/11, we must maintain these immigration provisions in the bill so that we deal with that very important problem and we do not allow 9/11 to repeat itself and do not come to a point in the future where the American people require us to do much more difficult things, make much more difficult decisions, and cause us to greatly restrict the influx of immigrants into our country.

In the words of families affected most directly by 9/11, these are reasonable and sensible immigration reform proposals. They should not be stripped out. I beg my colleagues not to vote for the motion to instruct, but in fact vote against the motion to instruct.

Mr. Speaker, I yield back the balance of my time.

Mr. GUTIERREZ. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, let me just say the following. In the same letter from the George Bush administration, it states: "The administration has concerns with overbroad alien identification standards proposed by the bill and unrelated security concerns, and believes that the States, as in the Senate bill, should work these things out." So there are provisions for securing driver's licenses and making sure that they are secure. We have that in the Senate bill.

The gentleman keeps speaking about the 9/11 families. I have an open letter from the 9/11 families, the same families that came to testify before the Congress of the United States, in which they say "recommendations." "We have heard that the House bill to implement 9/11 Commission recommendations also includes provisions to expand the U.S. PATRIOT Act and reform immigration law in ways not recommended by the commission and which we are against." This is the 9/11 families.

Look, anybody listening to this debate would think that if tomorrow somebody who works in Washington State picking apples, and I think the gentleman from Indiana and I would agree that most of the workers in the field of agriculture in Washington State are undocumented here in this country, without legal documentation, picking our apples, let us use that as one example, do you think if you do not give them a driver's license, they are going to stop coming? Do you think if you take away the matricula consular and they cannot get a bank account, they are not coming? Do you think if we pass every other kind of ID requirement, they will stop coming?

They are going to keep coming, as long as in this country there are apple growers who need their work and Americans like you and I that were born here who will not do the work. So let us face it, these are obscuring the real issues we have before us.

I would suggest to the gentleman that he says that maybe the State of Illinois is in play in the electoral college. We just elected a Democratic Governor in the State of Illinois and the former Republican, how ironic, the former Republican Governor of the State of Illinois is currently under indictment by the Federal Government. Do you want to know why? For issuing bogus driver's licenses and taking bribes for them. That is a fact.

Unfortunately, let us have a debate on immigration policy that is really about immigration and security concerns that are really about security.

Mr. Speaker, for the RECORD I include the statement of administration policy.

Statement of Administration Policy

The Administration supports House passage of H.R. 10 and appreciates the efforts of the House Leadership and Committees to bring this legislation quickly to the Floor. The Administration looks forward to working with the House and Senate in conference as they resolve their differences on intelligence reform legislation so that it can be enacted as soon as possible The Administration looks forward to working with Congress to address its concerns with the bill, including those described below, and to ensure prompt enactment of necessary legislation to create a strong National Intelligence Director (NID) with full budget authority and other authorities to manage the Intelligence Community, and to provide statutory authority for the newly created National Counterterrorism Center (NCTC).

The Administration appreciates that H.R. 10 has been revised to clarify the authorities of the NCTC and the definition of national intelligence. The Administration is also pleased that H.R. 10 would prevent disclosure of sensitive information about the intelligence budget. Disclosing to the Nation's enemies, especially during wartime, the amounts requested by the President, and provide by the Congress, for the conduct of the Nation's intelligence activities would be a mistake.

Legislation proposed by the President provides the NID with full budget authority, including clear authority to determine the national intelligence budget, strong transfer and reprogramming authorities, explicit authority to allocate appropriations, and the ability to influence the execution of funds by national intelligence agencies. The Administration is concerned that H.R. 10 does not provide the NID sufficient authorities to manage the Intelligence Community effectively.

The Administration looks forward to working with the House to improve a number of provisions relating to appointments. In particular, the Director of the NCTC should be appointed by the President, and the appointment of certain other officers as proposed in H.R. 10 may raise constitutional issues.

The Administration remains concerned about other provisions that create new bureaucratic structures and layers in the office of the NID and elsewhere that would hinder, not help, the effort to strengthen U.S. intelligence capabilities and preserve constitutional rights.

The Administration commends and supports provisions of H.R. 10 that promote the development of a secure information sharing environment under the direction of the NID while also providing flexibility concerning its design and implementation. We look forward to working with Congress to address some concerns with the degree of specificity of provisions concerning interoperable law enforcement and intelligence data systems.

In addition to provisions concerning the NID, the NCTC, and other core issues responsive to the Administration's proposal, H.R. 10 contains a number of additional provisions, some of which are discussed below.

The Administration strongly supports those provisions of Title II that ensure the Intelligence Community and others in the war on terror have all the necessary tools to prevent terrorist attacks—including provisions to prevent attack by "lone wolf" terrorists and enhanced provisions to deny material support to terrorists, prevent attacks using weapons of mass destruction, and further dry up sources of terrorist financing. These and other additional antiterrorism tools would help keep America safer.

The Administration also supports those provisions of Titles II and III that will better protect our borders from terrorists, while still maintaining our traditions as a welcoming Nation. In particular, the Administration supports efforts to allow visa revocations as a basis for deportation and provisions concerning the judicial review of immigration orders, as in Section 3009. The Administration strongly opposes the overbroad expansion of expedited removal authorities. The Administration has concerns with the overboard alien identification standards proposed by the bill that are unrelated to security concerns. The Administration welcomes efforts in Congress to address the 9/11 Commission's recommendations concerning uniform standards for preventing counterfeiting of and tampering with drivers licenses and birth certificates, but believes that additional consultation with the States is necessary to address important concerns about flexibility, privacy, and unfunded mandates.

Section 3001 acts to close a security gap by eliminating the Western Hemisphere exception for U.S. citizens. The Administration intends to work with the Congress to ensure that these new requirements are implemented in a way that does not create unintended, adverse consequences.

The Administration strongly opposes section 3032 of the bill. The Administration remains committed to upholding the United States' obligations under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Consistent with that treaty, the United States does not expel, return, or extradite individuals to countries where the United States believes it is more likely than not they will be tortured. The Administration is willing to work with the Congress on ways to address the Supreme Court's decision in *Zadvydas* v. *Davis*, 533 U.S. 678 (2001), insofar as it may constrain the detention of criminal aliens, while they are awaiting removal, or limit the government's authority to detain dangerous aliens who would be removed from the United States but for the fact that they are afforded protection under the Convention Against Torture.

Title IV contains a number of provisions that purport to establish the policy of the United States on foreign policy issues, require the Executive branch to negotiate certain international agreements, direct how the President will use the voice and vote of the United States in international institutions, direct the content of diplomatic communications with foreign governments, direct the make-up of U.S. delegations to multilateral meetings and negotiations, and require that plans and strategies to achieve specified foreign policy objectives be submitted to the Congress. These provisions are inconsistent with the President's constitutional authority with respect to foreign relations, diplomacy, and international negotiations. Therefore, these provisions should be eliminated or cast in precatory rather than mandatory terms.

In Title V, the Administration commends the provisions that add to the Secretary of Homeland Security's flexibility in providing first responder grant funds to certain high-risk areas, but has concerns about border state funding mandates which reduce that flexibility. The Administration opposes provisions in Title V that would create inequities in personnel policy between the FBI and other law enforcement agencies, and looks forward to working with the Congress on a separate and comprehensive reform of law enforcement pay and benefits. The Administration also opposes provisions that would encumber the Federal rulemaking process with duplicative and burdensome new requirements.

The Administration opposes Section 5043 of the bill, which would eliminate the level playing field established for all three branches of government by the Government-Wide Ethics Reform Act of 1989, creating a new regime of non-uniform ethics laws. The financial disclosure process should be modernized to reflect changed circumstances. The Administration urges Congress to adopt the bill to modernize government-wide financial disclosure submitted by the Office of Government Ethics to the Speaker on July 16, 2003.

The Administration is also very concerned about the dozens of new reporting requirements contained in the bill. The Administration will continue to work with the Congress to eliminate or reduce the burden created by unnecessary or duplicative statutory reporting requirements, while respecting the responsibilities of the Congress.

The Administration is also concerned about provisions in Title V that would, taken together, construct a cumbersome new bureaucracy, duplicate existing legal requirements, and risk unnecessary litigation. The Administration urges the House to delete or significantly revise these problematic provisions.

The Administration notes that the Committee bill did not include Section 6 ("Preservation of Authority and Accountability") of the Administration's proposal; the Administration strongly supports inclusion of this provision in the House bill. The Administration's proposal also provides necessary additional authorities for the NID to be able to effectively operate the Office of NID; however, H.R. 10 does not provide the NID with these additional authorities. The legislation should also recognize that its provisions would be executed to the extent consistent with the constitutional authority of the President: to conduct the foreign affairs of the United States; to withhold information the disclosure of which could impair the foreign relations, the national security, deliberative processes of the Executive, or the performance of the Executive's constitutional duties; to recommend for congressional consideration such measures as the President may judge necessary or expedient; and to supervise the unitary executive.

Finally, the Administration has concerns with a number of other provisions in the bill and looks forward to working with Congress to address them as the bill proceeds.

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I rise today to speak about Representative GUTIERREZ's motion to instruct on H.R. 10, I must oppose this motion to instruct.

This motion specifically instructs the conferees to remove sections 3005, 3006, 3007, 3008, 3009, 3032, 3051, 3052, 3053, 3054, 3055, and 3056, something I agree with. However, his motion to instruct also calls conferees to recede from the entire House amendment and thus accept Senate bill, S. 2845, which has some very unacceptable provisions. One such provision exposes the funds we spend on the intelligence community.

Even though he references immigration provisions, which forced me to vote against the House bill, his motion to instruct has the purpose of accepting the entire Senate bill. This is something I cannot agree to.

The SPEAKER pro tempore (Mr. SIMPSON). Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

The question is on the motion to instruct offered by the gentleman from Illinois (Mr. GUTIERREZ).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. GUTIERREZ. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 6 of rule XVIII, further proceedings on this motion are postponed.

REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 4200, RONALD W. REAGAN NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

Mrs. MYRICK, from the Committee on Rules, submitted a privileged report (Rept. No. 108–769) on the resolution (H. Res. 843) waiving points of order against the conference report to accompany the bill (H.R. 4200) to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, which was referred to the House Calendar and ordered to be printed.

WAIVING REQUIREMENT OF CLAUSE 6(a) OF RULE XIII WITH RESPECT TO CONSIDERATION OF CERTAIN RESOLUTIONS

Mrs. MYRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 831 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 831

Resolved, That the requirement of clause 6(a) of rule XIII for a two-thirds vote to consider a report from the Committee on Rules on the same day it is presented to the House is waived with respect to any resolution reported on the legislative day of October 8, 2004, providing for consideration or disposition of a conference report to accompany the bill (H.R. 4200) to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

The SPEAKER pro tempore. The gentlewoman from North Carolina (Mrs. MYRICK) is recognized for 1 hour.

Mrs. MYRICK. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Texas (Mr. FROST), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, last night the Committee on Rules met and passed this resolution waiving clause 6(a) of rule XIII requiring a two-thirds vote to consider a rule on the same day it is reported from the Committee on Rules against certain resolutions reported from the Committee on Rules.

The waiver authorized by this resolution applies to any special rule reported on the legislative day of Friday, October 8, 2004, providing for the consideration or disposition of a conference report to accompany the bill H.R. 4200, the Defense authorization conference report for fiscal year 2005. I would advise my colleagues that adoption of this resolution is made necessary because the work of the conferees on the Defense authorization conference report has taken longer than anticipated.

I believe it is imperative that the House considers the proposed conference report on Defense authorization as soon as possible. The last thing we would ever want would be for the necessary armor and weaponry needed by our Armed Forces to be held up or delayed in any way.

My friend from Texas has always been a strong supporter of our military. I trust he, too, would prefer to rapidly approve the Defense authorization conference report; and to that end, I urge my colleagues to support this rule.

Mr. Speaker, I reserve the balance of my time.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I have always been proud to support the Defense authorization bill in the House, and this year is no exception. The conference report on the Department of Defense Authorization Act helps ensure the safety of our fighting men and women around the world. It provides them with the tools they need to fight the war on terror, and it provides much-needed benefits that will improve the quality of life for them and their families.

Mr. Speaker, I strongly support moving the conference agreement forward because of its importance to our national security and to our troops in the field.

While I will not oppose this martial law rule which will allow the House to consider the conference report before we adjourn for the elections, I must take a moment to note there are Members on this side of the aisle who are concerned about rushing to adopt the conference report before Members who were not on the conference committee have an opportunity to study its provisions. It has been the habit of the Republican leadership during this Congress to effectively deny Members the right to know what we are voting for or against.

I cannot oppose this martial law rule, but I think it is long past time when the Republican leadership of this body stops depending on party loyalty to pass bills and instead moves towards ensuring that legislation is considered in a bipartisan manner. That is the best thing for the country and, in the end, best for both political parties.

Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. STRICKLAND).

Mr. STRICKLAND. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I rise to express my strong support for provisions in the Department of Defense conference report which reform the Energy Employees Occupation Illness Compensation Program Act of 2000.

First, I would like to thank my friend, the gentleman from Missouri (Mr. SKELTON), the ranking member of the committee, for his leadership. I also would like to say a special thanks to Hugh Brady of the Committee on Armed Services staff, Cindy Blackston of the Committee on the Judiciary staff, and Peter Rutledge of the Committee on Education and the Workforce staff.

In addition, I would like to commend the hard work of the gentleman from Kentucky (Mr. WHITFIELD), along with a bipartisan group of Senators, including Senators BUNNING, BINGAMAN, KENNEDY, VOINOVICH, DEWINE, CLINTON, CANTWELL and others.

Despite opposition from the administration, Members in both Chambers rolled up their sleeves and on a bipartisan basis did the hard work and included an amendment in this conference report which makes significant and greatly needed reforms to the Energy Employees Occupation Illness Compensation Program.

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Now, in the year 2000, we passed landmark legislation establishing a program to compensate our nuclear workers made sick while toiling in the Nation's atomic weapons factories. For the first time, the Federal Government acknowledged that it placed its cold war veterans in harm's way.

Unfortunately, the Department of Energy has fallen down on the job to run its part of the compensation program. With more than $90 million appropriated to DOE for administering the compensation program, a mere 31 claims of over 25,000 have been paid in the last 4 years. That track record is not acceptable.

The Department of Labor, on the other hand, has successfully processed 95 percent of its more than 55,000 claims.

The amendment included in today's Defense conference report will shift DOE's responsibilities to the Department of Labor, provide for a Federal willing payer, establish guaranteed funding for payment of claims, and create a Federal benefit structure for all of those workers injured and made ill due to the exposure to hazardous materials and toxic substances while working in our nuclear arsenal. We promised to compensate these injured veterans, and now we are fulfilling that promise.

Although I wish we could have passed such an amendment years ago, I am very pleased that today we are doing the right thing and we are honoring a national commitment to assist these veterans of the cold war.

Mr. FROST. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. WOOLSEY).

Ms. WOOLSEY. Mr. Speaker, I rise in opposition to this rule and to speak on the Defense Authorization Conference Report because, Mr. Speaker, when it comes to nuclear weapons, President Bush and the House Republican leadership just do not get it. Instead of investing in programs that will truly secure America, like nonproliferation initiatives and vigorous inspection regimes whenever possible, these Republicans spend America's money on more and bigger weapons.

This Defense Authorization bill authorizes billions of dollars for nuclear weapons research and testing, and there has to be a better way of doing things. We have to do it differently.

Investing in new nuclear weapons does not prevent America from being attacked. In fact, it encourages nuclear proliferation, because such investments incite our enemies and encourage other nations like Iran to develop nuclear weapons of their very own.

Instead of engaging in a nuclear arms race for the 21st century, the United States must engage in a smart security strategy for the 21st century. Being smart about national security requires the United States to set an example for young democracies, and we can set that example by renouncing the first use of nuclear weapons and the development of new nuclear weapons. We can also set that example by engaging in aggressive diplomacy, a commitment to nuclear nonproliferation, strong regional security arrangements, and inspection regimes.

If we truly want to keep our country safe for years to come, then we must promote and pursue a smart security strategy for America's future.

Mr. FROST. Mr. Speaker, I yield 2 minutes to the gentleman from Colorado (Mr. UDALL).

Mr. UDALL of Colorado. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, it would be better if we did not have to be considering this special rule, but I will support it because I support the conference report and hope it can be passed as soon as possible. There are things in the conference report that I do not like, and there are some things I hoped that would be included that have been left out, but my concerns are outweighed by my strong approval of several provisions that are included.

One is the renewal of the Energy Savings Performance Contracts program. This is the best tool we have to encourage energy efficiency in the Federal Government, but its authorization ended a year ago; and since then, it has been in limbo. So this is a very important provision.

The conference report also makes many improvements in the compensation program for people injured while working in the nuclear weapons program. My colleague, the gentleman from Ohio (Mr. STRICKLAND), was just discussing these important provisions. It is also important for Colorado because we are the home of the Rocky Flats Nuclear Waste complex, a former nuclear weapons site. And with the rest of our delegation, I have been pressing to make sure that the people who work there are properly treated. That is the purpose of this compensation program. Right now, the program has serious problems; but this conference report, as I have suggested, goes a long way towards solving them.

The report consolidates the responsibility for handling claims in the Labor Department, which can help untangle red tape for thousands of claims; and it provides that the Federal Government, not the States, will pay claims and provide medical benefits, something that is vital because otherwise many people will not be paid, even though they have valid claims. Further, it makes sure that people will be paid by making payments an entitlement. These are all great steps forward and long overdue.

Mr. Speaker, I congratulate the gentleman from California (Chairman HUNTER) and the gentleman from Missouri (Ranking Member SKELTON) and all of the other conferees, as well as the Committee on Armed Services staff and the staff of the other committees involved. Their task was not easy because the administration has not been particularly helpful, but we can all be proud of this outcome. They deserve our thanks, Mr. Speaker, and the conference report deserves our approval.

Mr. FROST. Mr. Speaker, I yield 3 minutes to the gentlewoman from New York (Mrs. MALONEY).

Mrs. MALONEY. Mr. Speaker, I thank the gentleman for yielding me this time, and I congratulate him on his fine service in this body on the Committee on Rules and in so many other areas.

I rise in support of this rule, but also to speak in strong support of the National Defense Authorization Act which will be before this body later on tonight. I am also pleased, and I thank the chairman and ranking member, that an amendment that I offered to the House version of this bill has been included in the conference report.

My amendment directs the Secretary of Defense to eliminate the backlog in rape and sexual assault evidence collection kits, reduce the processing time of those kits, and provide an adequate supply of the kits at all domestic and overseas U.S. military installations and military academies. The provisions in this legislation also direct the Secretary to ensure that personnel are trained in the use of these kits.

This marks the second time this week that the House has passed legislation recognizing the importance of DNA evidence. It is better than a fingerprint. DNA never forgets and can never be intimidated.

I am glad to see that the military will be addressing this issue, and I hope that civilian victims and survivors of rape will soon get similar justice with the passage of the comprehensive DNA legislation that has been bottled up in the other body.

I would like particularly to thank the gentleman from California (Chairman HUNTER) and the gentleman from Missouri (Ranking Member SKELTON) for their leadership, and I urge my colleagues to support the underlying bill.

I will say that my DNA collection bill grew out of the scandal, really, in the military of rapes at military academies and in Iraq and Afghanistan. The bipartisan Women's Conference and Caucus here in Congress held hearings, meetings, and issued a report. As one of the victims said, the best thing you can do is just convict the rapist. DNA evidence will help us to protect the innocent and protect women from rape in the future and place rapists behind bars.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON). The Chair would remind Members to refrain from improper references to the Senate.

Mr. FROST. Mr. Speaker, I yield 3 minutes to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Speaker, I appreciate the gentleman's courtesy in permitting me to speak on this rule and the underlying bill. I think there is much that is desirable to be found in it. Certainly it is important to meet the needs of our Armed Forces in this difficult time, especially in Iraq.

However, the bill continues to spend too much money on the wrong things. One of the most graphic examples is an 11 percent increase for missile defense, over $10 billion, that is critically needed now in areas of homeland security and defense activities.

There are also important elements for protecting our communities that are underserved in this legislation. With almost $446 billion, we ought to be able to have the Department of Defense clean up after itself. What this bill does not address is literally a ticking time bomb.

I have come to the floor in the past talking about the millions of acres around the country that are contaminated with military contamination, unexploded ordnance, or UXO, the military waste and unexploded bombs left over from former military sites. The estimates range from 10 million to 40 million contaminated acres. I noted a moment ago my colleague, the gentleman from Colorado, was here. They are having subdivisions creeping out to the Lowry Air Force Base, a former bombing range, where soon people will be living near areas where we fear there are unexploded ordnance. I note the gentleman from Texas is here. He is near an area in Arlington where there were people out Rototilling their backyards in a new subdivision literally turning up an unexploded bomb.

The Department of Defense estimates that identifying, assessing, and cleaning up contamination from military munitions will cost in the area of $8 billion to $35 billion, but most experts say it is going to cost far more. But we are spending at a rate of only $106 million annually. According to GAO, it will take 75 to 330 years to clean up these unexploded ordnance on already closed sites, and it does not include all the new contamination that we are creating.

Leaving this toxic legacy does no favor to the Department of Defense. In the long run it is going to cost more to clean it up, because clean it up we must. It is going to threaten the environment, and we have seen situations like the Massachusetts military reservation that is creating serious ground water pollution; it endangers our military and their families.

I sincerely hope this is the last such piece of legislation that does not appropriately address the problem of unexploded ordnance and military contamination.

Mr. FROST. Mr. Speaker, I do not have any additional requests for time. I urge adoption of the rule, and I yield back the balance of my time.

Mrs. MYRICK. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 4200, RONALD W. REAGAN NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

Mrs. MYRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 843 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 843

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 4200) to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes. All points of order against the conference report and against its consideration are waived. The conference report shall be considerd as read.

The SPEAKER pro tempore. The gentlewoman from North Carolina (Mrs. MYRICK) is recognized for 1 hour.

Mrs. MYRICK. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Texas (Mr. FROST), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, today the Committee on Rules met and granted a normal conference report rule for H.R. 4200, the Defense Authorization Act for Fiscal Year 2005. The rule waives all points of order against the conference report and against its consideration. In addition, it provides for 1 hour of debate, equally divided and controlled between the chairman and ranking minority member of the House Committee on Armed Services.

This should not be a controversial rule; it is the type of rule we grant for every conference report that comes through the House. This legislation firmly shows our commitment to restoring the strength of our Nation's military. The conferees authorized $447.2 billion in budget authority for the Department of Defense, DOD, and the national security programs of the Department of Energy, DOE.

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I want to thank the gentleman from California (Chairman HUNTER) and the gentleman from Missouri (Mr. SKELTON), the ranking member, for all of the work they have done in their tireless support for our brave sons and daughters in uniform. The safety and security of our troops and our Nation can be attributed to the contributions they have made.

This legislation authorizes the funding necessary to defend the Nation and our interests around the globe. More than 200,000 soldiers, sailors, airmen and Marines have served in the global war on terrorism. We owe them our gratitude for defending our freedom.

Their success in Iraq and Afghanistan is a testament to their bravery, training and equipment, and their commitment to defend our freedom.

On the battlefield, we provide critical force protection resources, including countermeasures for improvised explosive devices, improved surveillance and reconnaissance capabilities and the latest infantry equipment.

H.R. 4200 adds more than $2 billion for force protection measures, including armor, munitions, communications and surveillance programs. The legislation contains provisions to eliminate procurement obstacles and field commercially available technology on an expedited basis, something that is much needed. At home, this legislation meets the needs of our military personnel with numerous quality-of-life improvements.

Among the many initiatives are a 3.5 percent across-the-board pay raise, special pay and bonuses, and improved housing, as well as the complete phaseout of out-of-pocket housing expenses.

This conference report makes great strides in addressing the disparity by which disabled military retirees have their pension benefits reduced, dollar by dollar, by the amount of disability benefits they receive from the Department of Veterans Affairs. The fiscal year 2004 act authorized full concurrent receipt to be phased in over 10 years.

The conference report continues to build on this improvement by removing disabled retirees who are rated 100 percent disabled from the 10-year phase-in period. These retirees are authorized for full, concurrent receipt effective January 2005. Our veterans have given deeply and heroically, and it is only fair that we recognize their service.

So let us pass the rule and pass the underlying Defense Authorization Conference Report. At the end of the day, we are going to make our homeland safer and we will be supporting our sons and daughters serving in the military. We will be preparing for war, thereby ensuring victory. At this crucial time in our history, this bill is most important.

Mr. Speaker, I reserve the balance of my time.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the gentlewoman for yielding me the customary 30 minutes.

The annual defense authorization bill is one of the most important bills the Congress considers. During my 26 years in Congress, I have been dedicated to and I have worked to ensure that the United States has the strongest national defense of any nation on earth. This year is no exception; in fact, the defense authorization bill is more important than ever.

This past December, I spent several days in Iraq where I had the distinct honor and privilege to meet with our rank-and-file soldiers on our front lines and to thank them personally for their brave and distinguished service and personal sacrifices. And I was reminded of this enormous sacrifice upon my return. The cargo plane we flew out of Baghdad on carried the coffins of two American soldiers who had been killed just 3 days before Christmas.

It seems like almost every night Americans turn on the news at home and see reports of violence in Iraq. But when I turn on my television, I cannot help but recall the selflessness and courage I saw while in Iraq, and the mix of pride and sorrow I felt on the flight home.

America's sons and daughters in Iraq represent our country well, but their job continues to be very difficult and very dangerous. And that is why the bill before us is so important.

Before anything else, the defense authorization bill is a bill to support our troops. This bill will help keep our service men and women in Iraq and around the world safe, will provide them with the tools they need to fight the war on terror, and will give them and their families the better quality of life that they so richly deserve.

First and foremost, this conference report provides $25 billion in supplemental funding for the wars in Iraq and Afghanistan to ensure that our troops have everything they need to successfully accomplish their mission and return home to their families safely. The conference report authorizes new funding for armored Humvees and body armor. We help ensure the strength of our military by putting 39,000 more Army and Marine Corps personnel on the ground. We give our troops a 3.5 percent pay raise, and we help ensure that all of our fighting men and women receive health care by expanding TRICARE coverage to Reservists and their dependents.

The conference reports also helps those who have served our country so honorably over the years by making sure that those who are left behind when a soldier falls receive the full benefits that they deserve through the Survivor Benefit Plan.

Mr. Speaker, I want to thank the conferees on both sides of the aisle who worked so hard to complete this important bill before we return home for the election. There has never been any doubt that this House, this Nation, and its people stand 100 percent behind our men and women in uniform, fighting to secure peace the world over. Let us pass this bill and this rule to keep our troops safe and give them the tools they need to do their jobs.

Mr. Speaker, I reserve the balance of my time.

Mrs. MYRICK. Mr. Speaker, I reserve the balance of my time.

Mr. FROST. Mr. Speaker, I yield 4 minutes to the gentleman from New York (Mr. HINCHEY).

Mr. HINCHEY. Mr. Speaker, I thank the gentleman for yielding me this time.

I want to raise some issues today with regard to certain aspects of this conference report and certain authorizations, particularly those dealing with the Defense Intelligence Agency and the responsibility of this Congress to oversee ways in which intelligence is used by the executive branch.

There are very disturbing aspects of the way in which intelligence is used. We know that most of the expenditures for intelligence in our country are spent by the Defense Intelligence Agency. I am interested in why the majority party has not exercised its oversight responsibilities with the way in which intelligence has been misused in ways that are misleading. That goes all of the way back to a time prior to the attack of September 11, 2001.

We know, for example, that all during the spring and summer of that year we were getting intelligence information talking about an impending attack on the United States. In fact, at one point, George Tenet, the Director of the Central Intelligence Agency, pointed out that the lights were flashing red. Others indicated that something very, very, very big was about to happen.

Then on August 6 of that year, the President received his daily briefing and in the context of that daily briefing, which was entitled "bin Laden Determined to Attack the United States," there were substantial amounts of information about how it was discerned that an attack upon the United States in various ways was imminent, and there was even discussion about the potential use of airplanes, but no actions were taken, not during the spring and summer when the first information came, not after the President's daily briefing of August 6. Nothing was done. And then the attack occurred.

Mr. Speaker, why are we not looking into the way in which the intelligence operation is having an effect on the executive branch? Why are we not overseeing those kinds of activities?

Then, of course, we had the report just yesterday from the United States weapons inspector in Iraq, Mr. Duefler, which again said very, very clearly that there was no evidence of weapons of mass destruction in Iraq. Prior to that we had the report of the Senate Intelligence Committee, the 9/11 Commission Report, all of which said, no connection between Iraq and the attack, and also no weapons of mass destruction.

It just seems to me that as we make these authorizations, the majority party here, which sets the agenda and has the responsibility of oversight through the committee system of the way in which the executive branch is operating, ought to have paid much more attention to this and ought to be paying much more attention to it now.

We are spending tens of billions of dollars. I am not sure what the exact number is at this particular point, soon it will be $200 billion, but at least it is $140–150 billion being spent in Iraq. All of the loss of life, all of the injuries, and all of the destruction of our image around the world, why are we not in this Congress, in this House of Representatives, living up to our obligations and responsibilities for oversight when so much of the intelligence that we have paid for has been ignored, so much of the other intelligence that we are paying for has been misused to mislead this Congress and to mislead the American people?

This is an issue that has not been addressed and must be addressed by this House. The sooner it is done, the better off everyone is going to be.

Mr. FROST. Mr. Speaker, I yield 5 minutes to the gentleman from Mississippi (Mr. TAYLOR).

Mr. TAYLOR of Mississippi. Mr. Speaker, probably one of the least known things about the President's budget request over the year is that in June 2001 President Bush presented his defense budget to Congress and in it asked for the authority to conduct a round of base closures in 2003 called the Effective Facilities Initiative.

In September of that year, after the House had refused to act on it, the other body passed by a very small margin the authority for two rounds of base closure. Later, the House conferees worked that down to one round, but in the year 2005. But this May, knowing how close we were coming to it and the fact that our Nation was at war not only in Iraq and Afghanistan, in a much smaller war, but still a war, in Colombia, this body by almost a 100-vote margin voted to delay BRAC for 2 years. There were a lot of good reasons for that.

The President asked for this in June 2001. Our Nation was at peace. We had no troops in Afghanistan or Iraq. We were talking about shrinking the military.

In this bill we are going to vote on shortly, we expand the ranks of the Army by 20,000. We expand the ranks of the Marine Corps by 2,000. Those are both good things.

The President is talking about bringing troops home from Korea and Europe. Where is he going to put them because, by the administration's own admission, they are not talking about closing one base or two bases, they are talking about closing 25 percent of all of the bases in America, not overseas. This base closure commission is about closing bases in America, not Europe or Korea. That is one base out of four.

What further complicates this and what I found interesting is, when I expressed my opposition to this and when I asked the different service secretaries who have come before the House Committee on Armed Services, who tell us repeatedly we have 25 percent overcapacity, name one base you would like to see closed, the Secretary of the Army would not name one base; the Secretary of the Navy could not name one base; the Secretary of the Air Force could not name one base. They cannot name one, yet they keep insisting that they want to close one base out of four.

Mr. Speaker, what happens when a base is closed? Number one, we lose that capability that the taxpayers have paid for forever. America is not getting less populated, it is more populated. It is not less crowded, it is more crowded. When you lose that land, you lose the ability to train there. Every single weapon we have requires more of a stand-off in order to train, not less. Things that used to shoot for yards now shoot for miles. Things that used to shoot for miles now shoot across a continent. We need more land to train. We are talking about bringing troops home, and yet they want to shut down bases.

And there are other unintended consequences. Half of our military retirees, those people who have given our Nation 20 years of their blood, sweat and tears, 20 years away from their families, over half of our Nation's military retirees intentionally chose to retire near a military facility so they could use the base hospital, because they were promised use of that base hospital for the rest of their lives.

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They intentionally retired near a commissary because they were promised the use of the commissary for the rest of their life. You know what? They spent 20 years away from their families, being called chief or sergeant or colonel or captain, and they like going back to the base and being called chief or sergeant, colonel or captain.

When you close the base, you close the commissary. When you close the base, much more importantly, you close the base hospital. You have broken the promise of lifetime health care for these military retirees.

So why, when we are at war in Afghanistan, when we are in a war in Iraq? I happen to, unfortunately, have been on the same flight with the gentleman from Texas (Mr. FROST) when those two young GI's came home in a coffin from Iraq. Why, when we are asking young Americans to enlist to serve because we want to give them good things?

This body is given the constitutional authority to provide for an Army or a Navy, turn around and give that authority to some handpicked bureaucrats who have already been told, close one base out of four.

In particular, to my friends from Florida, I come from hurricane country. I know what it is like to see houses destroyed. I know what it is like to go to funerals of people who have died in hurricanes. We got lucky this time in Mississippi. You did not. You have had four hurricanes this year.

Why would the President of the United States as Commander in Chief tell the people of Florida he is going to go there and close one base out of four knowing that their economy has already been devastated. Why would he tell his military retirees, who intentionally bought houses in Florida so they could use the hospital, so they could use the commissary: We are sorry. We are going to close the base. We are going to close the hospital. We will close the commissary. You are out of luck.

In a little while, I will offer a motion to defeat the previous question, and it will be very sweet and simple. It will instruct the clerk to put back the language that passed this House by very close to 100 votes, including the vote by the chairman of this committee, that says we are going to delay BRAC. If we are growing the force, which we are, if we are bringing troops home from Europe, if we are bringing them home from Asia, we will need a place to put them. Let us not close bases now and not have a place for them.

Mr. Speaker, there are so many reasons to be against BRAC. The biggest of all is the false notion that it saves the taxpayers money. They predicted great savings. Let me tell you what they did. They shut down bases, and threw Americans out of work. They deprived military retirees of their basic health care. They deprived them of their commissary. But, most importantly of all, we did not sell the bases; we gave them away. Before we gave away bases, this Nation spent $13 billion, with a B, $13 billion cleaning up facilities just to give them away. And then you never get them back.

Go to Cecil Field in Florida. Right now, our Nation is spending tens of millions of dollars buying land in North Carolina. Why? So we can build a runway. What do we need a runway for? For the F-18s to land when they come off the ships. Why did we not send them to another base? Well, we had another base. It was called Cecil Field. It had three 8,000-foot runways. It had a fourth 10,000-foot runway. It had a hospital. It had a commissary. It had places for the troops to live. It had places for the family to live. It had mess halls. It had all the things that a base is supposed to have, but a previous round of BRAC shut it down. So when the F-18s need a place to land when they come off the carriers, we have got to go buy land to make up for what was already given away.

It is very rare in this body where we get a chance to prevent a long-term mistake. Another round of base closures is a long-term mistake. I am giving you the opportunity to do the right thing for your country. In a few minutes, I will offer that.

Mrs. MYRICK. Mr. Speaker, I yield 2 minutes to the gentleman from California (Mr. HUNTER), the distinguished chairman of this committee.

Mr. HUNTER. Mr. Speaker, I thank the gentlewoman for yielding me time.

I will say, I have the highest respect for the gentleman from Mississippi (Mr. TAYLOR) who is a very valuable member of our committee, and we have done great work over the last many months putting this bill together. And I would hope that the members of the House, rather than focusing on what this bill does not do in terms of stopping the BRAC process or other issues that were of concern to members, to focus on what it does do.

I just remind my colleagues that, in this bill, we have a 3.5 percent across-the-board increase for the men and women who wear the uniform of the United States.

For the first time in our history, we have what is known as a survivor benefits program. We are doing away with the so-called widow's tax. And that is where the surviving spouse of a military retiree will no longer have to offset their survivors' benefits against their Social Security check.

We increase what is known as concurrent receipt for our veterans. That means that a disabled veteran will no longer have to offset to the degree that he did before his disability check against his retirement check. We have over $700 million for up-armoring our Humvees. Those are the vehicles that will be driven by young men and women in theaters like Iraq and Afghanistan. We have, across the board, enough personnel benefits to really justify calling this bill the bill that represents the year of the soldier and marine.

We have this increase of some 20,000 and some 3,000 Marines. A hard increase and a permissive increase of the Army and Marine Corps of an additional 10,000 soldiers and an additional 6,000 Marines. We have this increase in imminent-danger pay and an increase in family-separation pay. And the 24,000 housing units, which the presumed paralysis of that housing program, where we thought we would actually have 24,000 family housing units hanging this year because of a funding glitch and a scoring glitch; we fixed that in this conference. And that means that the families of the men and women who wear the uniform of the United States will have family housing much quicker than we thought they would have it.

So, for all those reasons, I just hope and would ask my colleagues, Democrat and Republican, to support this rule and to vote for the previous question when the gentleman from Mississippi (Mr. TAYLOR) raises it.

I tell the gentleman that I understand his concern and that he and I both know that it is tough to retrieve these bases with the maze of environmental regulations that will face any administration in the future who wants to reach in and retrieve a base that has been closed, but that, nonetheless, I think that with the good judgment of the Members of this House overseeing this and watching this process and the members of Blue Ribbon Panel watching this process, and all the good things that are in this bill, it is appropriate for us to move forward. I hope that we pass this bill.

Mr. FROST. Mr. Speaker, I yield 4 minutes to the gentleman from Mississippi (Mr. TAYLOR) to close the debate.

Mr. TAYLOR of Mississippi. Mr. Speaker, let me begin by complimenting my chairman on the very genteel way he is handling this. He has done a good job with the bill, with one glaring exception. And some mistakes are so bad that they cannot be retrieved, and we need to retrieve this now while we have a chance.

Mr. Speaker, I will be calling for a "no" vote on the previous question. If the previous question is defeated, I will offer an amendment to instruct the enrolling clerk to amend the conference report to reinsert language that was in the House-passed bill that would postpone the 2005 round of base closures and realignments until 2007.

As we know, this legislation was included in the original version of the defense authorization bill that passed in this House in May. However, it, like several other provisions, mysteriously disappeared when the bill was in conference.

Mr. Speaker, this is just one of many examples where good legislation and amendments that passed this House just seemed to vaporize behind closed doors. That is a bad way to do business. Tonight, we have a chance to stop that.

Let us do the right thing today. Let us reinsert the provision that passed by very close to 100 votes right now. I think the Members of this House must decide for themselves whether or not they want another round of base closures. As I have said before, when given the opportunity, the service secretaries could not name and would not name one single installation they want closed. Read the Constitution, article I, section 8 says that Congress shall provide for an Army and a Navy. Not the bureaucrats. We decide.

We are going to leave here and go beg for the opportunity to represent a sliver of America. We are going to beg for the opportunity to fulfill congressional obligations. How many of you are going to go out there and say, Please elect me congressman so I can let some bureaucrat make the tough decisions for me. I am not. I want to do my job. I do not trust bureaucrats with my job. I will not vote to allow a group of bureaucrats to shut down bases at a time when we are at war and we are getting ready to bring troops home and we are growing the Army and we are growing the Marines. This does not make sense.

So let me make it perfectly clear. A "no" vote on the previous question will not, will not stop consideration of this conference report. A "no" vote will allow the House to vote to reinsert the provision that passed this House by almost a 100-vote margin. However, a "yes" vote on the previous question will prevent the House from delaying the closing of one base out of every four in America, one base out of every four. I urge a "no" vote on the previous question.

Mr. Speaker, I ask unanimous consent that the text of this amendment be printed in the RECORD immediately before the vote on the previous question.

The SPEAKER pro tempore (Mr. SIMPSON). Is there objection to the request of the gentleman from Mississippi?

There was no objection.

Mr. FROST. Mr. Speaker, how much time remains?

The SPEAKER pro tempore. The gentleman from Texas (Mr. FROST) has 13 minutes remaining. The gentlewoman from North Carolina has 23½ minutes remaining.

Mr. FROST. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Missouri (Mr. SKELTON), the ranking member of the Committee on Armed Services.

Mr. SKELTON. Mr. Speaker, I urge my colleagues to defeat the previous question so my colleague, the gentleman from Mississippi (Mr. TAYLOR) can bring to the floor legislation that would delay the Base Realignment and Closure process better known as BRAC.

Mr. Speaker, at war in Afghanistan and Iraq, the Army is restructuring itself. We are assessing our base structure overseas and plan to bring two divisions home from Europe and to reduce our troop strength over a period of time from South Korea by at least 12,000 troops. We are increasing the end strength in this bill to relieve the stress on our troops. We are still developing the Pentagon's role in homeland security. The division of labor between active duty forces and the Reserve component is still being evaluated and is a question mark. This is really a heck of a time to be conducting BRAC.

Voting "no" on the previous question will allow the gentleman from Mississippi (Mr. TAYLOR) to bring up legislation that would delay BRAC 2 years. I think a 2-year delay is prudent. Given the turbulent times facing our military, the legislation will not kill BRAC; it will just delay it. The House voted decisively several months ago to delay the base closures, but this provision was dropped by the conference. The House deserves a serious, serious debate on this issue. I support the gentleman from Mississippi (Mr. TAYLOR) on a "no" vote.

Mr. FROST. Mr. Speaker, we do not have any additional requests for time.

I would note that the gentleman from Mississippi (Mr. TAYLOR) will oppose the previous question, and if he is successful, then he will have the opportunity to offer his amendment to the conference report.

Mr. Speaker, I yield back the balance of my time.

The material previously referred to by Mr. TAYLOR of Mississippi is as follows:

At the end of the resolution add the following new section:

SEC. 2. (a) A concurrent resolution specified in subsection (b) is hereby adopted.

(b) The concurrent resolution referred to in subsection (a) is a concurrent resolution—

(1) which has no preamble;

(2) the title of which is as follows: "Concurrent resolution directing the Clerk of the House of Representatives to make certain corrections in the enrollment of the bill (H.R. 4200) to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes."; and

(3) the text of which is as follows: "That in the enrollment of the bill (H.R. 4200) to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, the Clerk of the House of Representatives shall add at the end of subtitle C of title XXVIII the following new section:

SEC. 2835. TWO-YEAR POSTPONEMENT OF 2005 BASE CLOSURE AND REALIGNMENT ROUND.

(a) POSTPONEMENT UNTIL 2007.—Notwithstanding any other provision of law, the Secretary of Defense shall not publish in the Federal Register or transmit to the congressional defense committees and the Defense Base Closure and Realignment Commission any list of military installations inside the United States that the Secretary recommends for closure or realignment under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) before May 16, 2007.

(b) CONFORMING AMENDMENTS.—(1) Section 2914 of the Defense Base Closure and Realignment Act of 1990 is amended—

(A) in the section heading, by striking "2005" and inserting "2007"; and

(B) in subsection (a), by striking "May 16, 2005," and inserting "May 16, 2007,".

(2) Subsection (d) of section 2914 of the Defense Base Closure and Realignment Act of 1990 is amended—

(A) in paragraphs (1) and (2), by striking "September 8, 2005" both places it appears and inserting "September 8, 2007"; and

(B) in paragraph (6)—

(i) by striking "in 2005" and inserting "under this section"; and

(ii) by striking "July 1, 2005" and inserting "July 1, 2007".

(3) Subsection (e) of section 2914 of the Defense Base Closure and Realignment Act of 1990 is amended—

(A) in paragraph (1)—

(i) by striking "in 2005" and inserting "under this section"; and

(ii) by striking "September 23, 2005" and inserting "September 23, 2007";

(B) in paragraph (2), by striking "October 20, 2005" and inserting "October 20, 2007"; and

(C) in paragraph (3)—

(i) by striking "November 7, 2005" and inserting "November 7, 2007"; and

(ii) by striking "in 2005" and inserting "in 2007".

(4) Section 2912 of the Defense Base Closure and Realignment Act of 1990 is amended—

(A) in the section heading, by striking "2005" and inserting "2007";

(B) by striking "fiscal year 2005" each place it appears and inserting "fiscal year 2007";

(C) in subsection (b)(1), by inserting "for fiscal year 2007" after "subsection (a)";

(D) in subsections (b)(2) and (d), by striking "in 2005" each place it appears and inserting "under section 2914";

(E) in subsection (d), by striking "March 15, 2005" both places it appears and inserting "March 15, 2007";

(F) in subsection (d)(4), by striking "calendar year 2005 and shall terminate on April 15, 2006" and inserting "calendar year 2007 and shall terminate on April 15, 2008"; and

(G) in subsection (d)(5), by striking "second session of the 108th Congress for the activities of the Commission in 2005" and inserting "second session of the 109th Congress for the activities of the Commission under section 2914".

(5) Section 2904(a)(3) of the Defense Base Closure and Realignment Act of 1990 is amended by striking "in the 2005 report" and inserting "in a report submitted after 2001".

(6) Section 2906(e) of the Defense Base Closure and Realignment Act of 1990 is amended by striking "2005" and inserting "2007".

(7) Section 2906A of the Defense Base Closure and Realignment Act of 1990 is amended—

(A) in the section heading, by striking "2005" and inserting "2007"; and

(B) by striking "2005" each place it appears and inserting "2007".

(8) Section 2909(a) of the Defense Base Closure and Realignment Act of 1990 is amended by striking "2006" and inserting "2008".

Mrs. MYRICK. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. TAYLOR of Mississippi. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The SPEAKER pro tempore. Pursuant to clauses 8 and 9 of rule XX, this 15-minute vote on ordering the previous question on House Resolution 843 may be followed by 5-minute votes on adoption of House Resolution 843, if ordered, and on the motion to instruct on S. 2845.

The vote was taken by electronic device, and there were—yeas 225, nays 175, not voting 32, as follows:

[Roll No. 524]

YEAS—225

Aderholt
Akin
Alexander
Andrews
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Cardin
Carter
Case
Castle
Chabot
Chandler
Chocola
Coble
Cole
Cooper
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Doggett
Dooley (CA)
Doolittle
Dreier
Duncan
Dunn
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Houghton
Hulshof
Hunter
Hyde
Inslee
Isakson
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
Manzullo
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Moran (KS)
Moran (VA)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter

Portman
Pryce (OH)
Putnam
Quinn
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Sánchez, Linda T.
Sanchez, Loretta
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Spratt
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—175

Abercrombie
Ackerman
Allen
Baca
Baird
Baldwin
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Boswell
Boucher
Boyd
Bradley (NH)
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardoza
Carson (IN)
Carson (OK)
Clyburn
Conyers
Costello
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
Davis, Jo Ann
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dingell
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Frost
Gonzalez
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Hill
Hinchey
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hostettler
Hoyer
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Lucas (KY)
Lynch
Maloney
Marshall
Matheson
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Sherman
Shimkus
Skelton
Solis
Stark
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Wilson (NM)
Woolsey
Wu
Wynn

NOT VOTING—32

Ballenger
Bass
Boehlert
Burton (IN)
Clay
Collins
Filner
Ford
Frank (MA)
Gallegly
Gephardt
Greenwood
Hinojosa
Issa
Jones (NC)
Kaptur
Leach
Lipinski
Majette
Markey
Matsui
Meek (FL)
Meeks (NY)
Miller, Gary
Murtha
Norwood
Ortiz
Paul
Radanovich
Slaughter
Tauzin
Towns

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON (during the vote). Members are advised there are 2 minutes remaining in this vote.

☐ 1809

Messrs. THOMPSON of Mississippi, ABERCROMBIE, DEFAZIO, and DINGELL changed their vote from "yea" to "nay."

Mr. COLE, Mr. DOOLEY of California, Ms. LINDA T. SÁNCHEZ of California, and Mr. SAM JOHNSON of Texas changed their vote from "nay" to "yea."

So the previous question was ordered.

The result of the vote was announced as above recorded.

Stated against:

Mr. FILNER. Mr. Speaker, on rollcall No. 524, I was in my Congressional District on official business. Had I been present, I would have voted "nay."

Mr. BASS. Mr. Speaker, on Friday, October 8, 2004, I regrettably missed recorded vote numbered 524. Had I been present, I would have voted "nay."

The SPEAKER pro tempore (Mr. SIMPSON). The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

MOTION TO INSTRUCT CONFEREES ON S. 2845, NATIONAL INTELLIGENCE REFORM ACT OF 2004

The SPEAKER pro tempore. The pending business is the question on the motion to instruct conferees on S. 2845, on which further proceedings were postponed earlier today.

The Clerk will designate the motion.

The Clerk designated the motion.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Illinois (Mr. GUTIERREZ) on which the yeas and nays are ordered.

This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 169, nays 229, not voting 34, as follows:

[Roll No. 525]

YEAS—169

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Clyburn
Conyers
Cooper
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Dooley (CA)
Doyle
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Frost
Gonzalez
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Hinchey
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Kolbe
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Leach
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Lynch
Maloney
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McNulty
Meehan
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Stupak
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Watson
Watt
Waxman
Weiner
Wexler
Wilson (NM)
Woolsey
Wu
Wynn

NAYS—229

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boucher
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carson (OK)
Carter
Case
Castle
Chabot
Chandler
Chocola
Coble
Cole
Costello
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hill
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Istook
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Marshall
Matheson
McCotter
McCrery
McHugh
McInnis
McIntyre
McKeon
Mica
Miller (FL)
Miller (MI)
Moore
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri

Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Quinn
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stenholm
Sullivan
Sweeney
Tancredo
Tanner
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Turner (TX)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—34

Ballenger
Bass
Boehlert
Burton (IN)
Clay
Collins
DeFazio
Diaz-Balart, L.
Filner
Ford
Frank (MA)
Gallegly
Gephardt
Greenwood
Hinojosa
Issa
Jones (NC)
Kaptur
LaHood
Lipinski
Majette
Markey
Matsui
Meek (FL)
Meeks (NY)
Miller, Gary
Norwood
Ortiz
Paul
Radanovich
Slaughter
Tauzin
Towns
Waters

☐ 1835

So the motion to instruct was rejected.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. FILNER. Mr. Speaker, on rollcall No. 525, I was in my congressional district on official business. Had I been present, I would have voted "yea."

Stated against:

Mr. BASS. Mr. Speaker, on Friday, October 8, 2004, I regrettably missed recorded vote numbered 525, Had I been present, I would have voted "nay."

PRIVILEGES OF THE HOUSE—SPECIAL COUNSEL TO INVESTIGATE ACTIONS OF REPUBLICAN MAJORITY LEADER

Ms. PELOSI. Mr. Speaker, pursuant to rule IX, I rise to a question of the privileges of the House, and I offer a privileged resolution (H. Res. 845) for a special counsel to investigate the actions of the Republican majority leader and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 845

Whereas, in May of 1999, the Committee on Standards of Official Conduct, by letter, admonished Representative Tom DeLay for his conduct in connection with a threat of retribution against an organization for hiring a person connected to the Democratic Party;

Whereas, on September 30, 2004, the Committee on Standards of Official Conduct publicly admonished Mr. DeLay for improperly linking support for the personal interests of another Member as part of a quid pro quo to achieve a legislative goal;

Whereas, on October 6, 2004, the Committee on Standards of Official Conduct publicly admonished Mr. DeLay for his participation in a fundraiser that created an appearance that donors were being provided special access to him regarding then pending energy legislation;

Whereas, on October 6, 2004, the Committee on Standards of Official Conduct publicly admonished Mr. DeLay for intervening in a partisan conflict in the Texas House of Representatives using the resources of a Federal agency;

Whereas, on October 6, 2004, the Committee on Standards of Official Conduct, in a letter to Mr. DeLay, noted that it had found it necessary to comment on his conduct in a number of instances and reminded Mr. DeLay the "House Code of Official Conduct provides the Committee with authority to deal with any given act or accumulation of acts which, in the judgment of the Committee, are severe enough to reflect discredit on the House";

Whereas, on October 6, 2004, the Committee on Standards of Official Conduct noted that a complaint before it alleged that Mr. DeLay used TRMPAC, the Texans for a Republican Majority PAC, to funnel corporate funds to Texas state campaigns in 2002 in violation of the Texas election code, and, based on the information then in its possession, deferred action on the matter pending action by the Texas Grand Jury and the Texas District Attorney of TRMPAC's activities;

Whereas, on October 7, 2004, a Texas newspaper reported that a newly obtained memo indicates that Mr. DeLay had personal involvement in directing some of the fund-raising activities of TRMPAC for which three of Mr. DeLay's associates have been indicted by a Texas Grand Jury;

Whereas, in responding to the admonishments issued by the Committee on Standards of Conduct, Mr. DeLay displayed contempt for that Committee, for appropriate ethical standards, and for the House of Representatives by the public statements he made and which were made on his behalf: Now be it

Resolved, That the Committee on Standards of Official Conduct is authorized and directed to establish an Investigative Subcommittee to determine if there is substantial reason to believe that by his past and continuing conduct Mr. DeLay has violated the Code of Official conduct or other relevant laws, rules or regulation; and be it further

Resolved, That the Committee on Standards of Official Conduct retain a Special Counsel to assist in its investigation.

The SPEAKER pro tempore (Mr. SIMPSON). In the opinion of the Chair, the resolution constitutes a question of the privileges of the House.

MOTION TO TABLE OFFERED BY MR. BLUNT

Mr. BLUNT. Mr. Speaker, the minority leader did not extend the normal courtesy of notifying the majority of her resolution, and I move to table the resolution so we can go back to the business of debating the defense conference report.

The SPEAKER pro tempore. The motion that the resolution be laid on the table is not debatable.

The question is on the motion to table offered by the gentleman from Missouri (Mr. BLUNT).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Ms. PELOSI. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 210, noes 182, answered "present" 5, not voting 36, as follows:

[Roll No. 526]

AYES—210

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burns
Burr
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Dunn
Ehlers
Emerson
English
Everett
Feeney
Ferguson
Flake
Foley
Forbes
Fossella
Franks (AZ)
Frelinghuysen
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Keller
Kelly
Kennedy (MN)
King (IA)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Latham
LaTourette
Leach
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
Manzullo
McCotter
McCrery
McHugh
McInnis
McKeon
Mica
Miller (FL)
Miller (MI)
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Porter
Portman
Pryce (OH)
Putnam
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOES—182

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Becerra
Bell
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carson (IN)

Carson (OK)
Case
Chandler
Clyburn
Conyers
Cooper
Costello
Cramer
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
DeLauro
Deutsch
Dicks
Dingell
Doggett
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Frost
Gonzalez
Gordon
Green (TX)
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Hill
Hinchey
Hoeffel
Holden
Holt
Honda
Hooley (OR)
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Kanjorski
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kucinich
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Lucas (KY)
Lynch
Maloney
Marshall
Matheson
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNulty
Meehan
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ross
Rothman
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Sandlin
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Turner (TX)
Udall (CO)
Udall (NM)
Van Hollen
Velazquez
Visclosky
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

ANSWERED "PRESENT"—5

Delahunt
Doyle
Jones (OH)
Mollohan
Roybal-Allard

NOT VOTING—36

Ballenger
Bass
Boehlert
Burton (IN)
Clay
Dooley (CA)
Filner
Ford
Frank (MA)
Gallegly
Gephardt
Greenwood
Hinojosa
Issa
Johnson, E. B.
Jones (NC)
Kaptur
King (NY)
Kleczka
LaHood
Lewis (CA)
Lipinski
Majette
Markey
Matsui
Meek (FL)
Meeks (NY)
Miller, Gary
Norwood
Ortiz
Paul
Quinn
Radanovich
Slaughter
Tauzin
Towns

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON) (during the vote). Members are advised 2 minutes remain in this vote.

□ 1858

Messrs. PORTMAN, KNOLLENBERG and WHITFIELD changed their vote from "no" to "aye."

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. BASS. Mr. Speaker, on Friday, October 8, 2004, I regrettably missed recorded vote numbered 526. Had I been present, I would have voted "aye".

Stated against:

Mr. FILNER. Mr. Speaker, on rollcall No. 526, I was in my congressional district on official business. Had I been present, I would have voted "no."

PERSONAL EXPLANATION

Mr. HINOJOSA. Mr. Speaker, I regret that I had to return to my district. Had I been present, I would have voted yes on rollcalls 512, 513, 514, 515, 517, 518, 520, 521, 522, 523, and 525. I would have voted no on rollcalls 516, 519, 524 and 526.

CONFERENCE REPORT ON H.R. 4200, RONALD W. REAGAN NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

Mr. HUNTER. Mr. Speaker, pursuant to House Resolution 843, I call up the conference report on the bill (H.R. 4200) to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 843, the conference report is considered read.

(For conference report and statement, see prior proceedings of the House of today.)

The SPEAKER pro tempore. The gentleman from California (Mr. HUNTER) and the gentleman from Missouri (Mr. SKELTON) each will control 30 minutes.

The Chair recognizes the gentleman from California (Mr. HUNTER).

Mr. HUNTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, it is a privilege to come with my partner, the gentleman from Missouri (Mr. SKELTON), and offer for the consideration of the Members the Ronald Reagan National Defense Authorization Act for Fiscal Year 2005, in simple terms, a defense bill for the troops of the United States who are serving in dangerous theaters around the world and troops and Guard together numbering over 2.5 million personnel.

This is a bill, Mr. Speaker, that is a joint effort, Democrats and Republicans have come together to put together this legislation, which I think is really a soldiers' bill, a people's bill, in large measure.

We have a 3.5 percent pay raise across the board. We have extension of new TRICARE benefits to Guard and Reserve. We have the new survivor's benefits, something we have never had before in our history, that allows a phasing out now of the offset that used to take place between a survivor of a military retiree, where they had to weigh that against their Social Security check. We have an increase in the receipt that disabled veterans will receive on the so-called concurrent receipt of their disability and their retired pay.

We have over $700 million worth of armor for Humvees and over $100 million worth of armor for trucks. We have a bill that has freed up the 24,000 housing units that were hanging in limbo for construction starts this year.

This bill, very simply, Mr. Speaker, is a great bill, and I hope that we can move the conference report through quickly for the consideration and approval of the Members and move it quickly to the President's desk.

I want to compliment my colleague, the gentleman from Missouri (Mr. SKELTON), for working in a bipartisan manner in putting this bill together, as well as all the Members and all our great subcommittee chairmen who did such a wonderful job, and our ranking members and membership of the full committee.

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Mr. Speaker, I reserve the balance of my time.

Mr. SKELTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I join the gentleman from California (Mr. HUNTER) in strong support of this Defense Authorization Act. More than anything, it is a bill for the troops at a time when we are at war, the war in Iraq and the war against the terrorists in Afghanistan.

Let me commend my chairman, the gentleman from California (Mr. HUNTER), for his leadership in bringing the bill to completion. It was a lot of difficult, hard work, late nights; but it got done, and we are here. And I also want to applaud all the Members, Democrats and Republicans on the Committee on Armed Services, for their tireless effort on this bill.

I want to mention a couple of items of concern, however. The disappointments of course are in the process. I spoke strongly last May of our desire to delay the upcoming round of base closings; yet we were unable to obtain everything, and I am also disappointed with the conference outcome in the Colombia troop cap when our troops are so very thinly stretched across the globe.

But this very bill has at stake during wartime $446 in defense. It is very, very important that we pass this this evening. This is probably the best piece of legislation that we have had for the troops, their families, and for military retirees in a long, long time. And at the end of the day, those who wear uniforms and their families who support them so well will be the ones who benefit from our efforts.

It eliminates the cap on privatized housing for military families, something so many of us have been calling for. This program allows private contractors to build housing on or near military bases, who then recoup their investment through rental payments. That has been a long, involved effort. It also involves additional health benefits for our troops who serve us proudly and with so much distinction. We extend TRICARE benefits to the nonactive duty Reservists and Guard members who have been called and ordered to active duty on or after September 11, 2001.

We also provide for additional benefits for the survivors of those who have served. The bill eliminates the Social Security offset to survivor benefit payment plans, phasing it in over 4 years as opposed to what the Senate wanted to do. I have to give our friend, the gentleman from Texas (Mr. EDWARDS), special credit for his effort to have a discharge petition on this particular issue.

Finally, the conference report includes a series of provisions relating to Iraq that will require the administration to explain its policies and allow Congress to conduct better oversight of what is going on there. A strategic plan is required on the stabilization of Iraq. Policies and reports are required on the subjects of preventing the abuse of detainees in American custody and a new guidance mandated on the use of contractors for security functions. These are very, very important.

In summary, Mr. Speaker, this is not a perfect bill, but it is a very, very good bill. When we say we support the troops, when we put the bumper sticker on the back of our truck or car, this is saying it loudly and clearly: we support the troops to the tune of $446 billion. All that they need, all that we can do is in here.

I applaud members of the Committee on Armed Services; and I thank the chairman, the gentleman from California (Mr. HUNTER). I think this is an excellent piece of legislation to move forward at this very, very dire and difficult junction in American history.

Mr. Speaker, I reserve the balance of my time.

Mr. HUNTER. Mr. Speaker, I yield 3 minutes to the vice chairman of the committee, the gentleman from Pennsylvania (Mr. WELDON).

Mr. WELDON of Pennsylvania. Mr. Speaker, let me, first of all, congratulate the chairman and the ranking member for an outstanding job in getting a bill before us. The gentleman from California (Chairman HUNTER) is tireless in his work on behalf of the troops, as is the gentleman from Missouri (Ranking Member SKELTON). I want to thank my ranking member, the gentleman from Hawaii (Mr. ABERCROMBIE), for his outstanding cooperation on air-land issues.

I am not going to talk about the specifics of the bill, because my colleagues will, and I urge everyone to vote for it; but I am going to talk about an add-on provision in this bill that absolutely is outrageous to me.

I want my colleagues to listen, because it affects every one of their districts. Those Members in the other body added on a provision to our bill to reauthorize the Assistance to Firefighters Grants program. This has become the most popular program for Members of Congress and their districts. Through this program, over 3 years, we have distributed $2.1 billion directly to fire departments; large, paid departments and small, volunteer departments, and that was done with bipartisan support. It was done without party politics.

For the reauthorization this year, when the other body put a provision in, we met, Democrats and Republicans, the distinguished minority whip, the gentleman from Maryland (Mr. HOYER), the distinguished gentleman from New Jersey (Mr. PASCRELL), the distinguished gentleman from New Jersey (Mr. ANDREWS), and the gentleman from California (Chairman HUNTER) was involved, the gentleman from New York (Mr. BOEHLERT) was involved, and the gentleman from Michigan (Mr. SMITH). And we reached a compromise to reauthorize this very important program, and we put in a nondiscrimination clause that would prevent volunteer firefighters from being discriminated against. Who can be against that? Even the paid firefighters in our cities, like those in the district of the gentleman from Maryland (Mr. HOYER), they want to go home as a volunteer to be a part of their community. The Members of the other body stripped that provision out of the bill.

So I urge my colleagues to tell their constituents across America that the other body does not care about volunteers. It was a carefully crafted provision that ended the discrimination against volunteers, that the paid firefighters in our cities want it removed so they could volunteer in our hometowns. And the other body took it out.

So I hope that every one of the 32,000 fire departments understands that this body, in a bipartisan way, delivered a solution that was fair, that allowed cities to have paid firefighters, but stripped out the provision to protect the volunteers. When the gentleman from California (Chairman HUNTER) went back to Ranking Member LEVIN, he said, tell CURT not to get his hopes up.

Well, let me tell you, Ranking Member LEVIN, every firefighter in Michigan is going to know what you did. Let me tell my other Senate friends. I am going to do a mailing to all 32,000 fire departments in this country, and I am going to thank the gentleman from Maryland (Mr. HOYER) and the gentleman from New Jersey (Mr. PASCRELL) and the gentleman from New Jersey (Mr. ANDREWS) and the rest of the Republicans. But I am going to let the American firefighters know who put the screws to them in this bill.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON). The Chair would advise Members that it is not in order to cast reflections on the Senate or its Members individually or collectively, and the Chair will enforce the rule.

Mr. SKELTON. Mr. Speaker, I yield 3 minutes to the minority whip, the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. Mr. Speaker, I thank my friend, the gentleman from Missouri (Mr. SKELTON), and I want to thank my friend, the gentleman from Pennsylvania (Mr. WELDON). There is nobody in this Congress, there is nobody in this country who has fought any more vigorously for firefighters, paid and volunteer, than the gentleman from Pennsylvania (Mr. WELDON). It is an honor to work with him on these issues. I understand his passion, and I thank him for his work on behalf of the fire service of this country.

Mr. Speaker, I rise in support of this conference agreement which supports our men and women in the Armed Forces and provides for the security of this Nation. It also specifically, of course, provides for the training and equipping of our troops engaged in the war on terrorism.

I am also pleased that this legislation contains a provision to reauthorize the assistance to the firefighters grant program. I want to thank the gentleman from California (Mr. HUNTER), and I want to thank the gentleman from Missouri (Mr. SKELTON) on the fire service provisions in this bill for their support of that and for their leadership on this effort.

I also want to wish the gentleman from New York (Mr. BOEHLERT), who has been such a fighter on behalf of the fire services, a speedy recovery from his heart surgery. The gentleman from Pennsylvania (Mr. WELDON), the gentleman from Michigan (Mr. SMITH), the gentleman from New Jersey (Mr. PASCRELL), and the gentleman from New Jersey (Mr. ANDREWS), all mentioned by my friend, the gentleman from Pennsylvania (Mr. WELDON) and their staffs have worked hard on this measure and their leadership for our Nation's fire and emergency service personnel and is appreciated by all.

I also want to thank my own staffer, Geoff Plague, who sits here with me, for his untiring and focused work on behalf of firefighters.

I am particularly pleased that this measure returns jurisdiction over the grant programs to the U.S. Fire Administration, which was widely praised for the effective manner in which it administered the program during its first 3 years. Last year, over the objections of many in this Congress, the program was moved and is now being returned, and I think that is to the benefit of the program. Again, I want to thank the gentleman from California (Chairman

HUNTER) and the gentleman from Missouri (Ranking Member SKELTON) for their support in this effort.

While this is one of the most critical challenges our government faces today and one for which we have consistently sought increased levels of funding, it is not the objective of the Fire Grant program itself.

I also want to thank the gentleman from Missouri (Mr. SKELTON) for his untiring efforts on behalf of our men and women in uniform, not only those who are on the front lines at the point of the spear, but also those who are here at home ready, willing, and able to go to support our efforts, to defeat terrorists, and to bring international security. The gentleman's work on behalf of those men and women has been extraordinary and appreciated by them. Again, Mr. Speaker, I intend to support this conference report, and I thank the chairman and the ranking member for their work to bring it to the floor before we leave and recess or adjourn for the elections.

Mr. HUNTER. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. TURNER), a very distinguished member of the committee.

Mr. TURNER of Ohio. Mr. Speaker, I want to congratulate my chairman, the gentleman from California (Mr. HUNTER), on his leadership and efforts in making certain that this bill, as he deemed it to be, is indeed the "year of the troops," supporting our men and women in uniform, making certain that we support our men and women in uniform with a pay increase, and making sure that they have the resources that they need.

The bill includes $728 million in uparmor for our Humvees and protection against IADs, $100 million for vehicle add-on armor kits. But also I am excited about the provisions that expand the health care to our Reservists and Guard. As the gentleman knows, I have introduced H.R. 2176, which would extend TRICARE health care benefits to our Reservists and members of our Guard. The GAO indicates that approximately 21 percent of all of our Reservists and Guard go without health care insurance.

This bill includes a TRICARE standard coverage for Reservists and Guard and their families who have been activated for more than 30 days since September 11, 2001, in support of a contingency operation; and then for every 90 days of consecutive active duty service, the member and their family are eligible for 1 year of TRICARE coverage with a nonactive duty status.

Mr. Speaker, I appreciate the leadership and dedication of the gentleman from California (Mr. HUNTER) to our men and women in uniform.

Mr. SKELTON. Mr. Speaker, I yield 3 minutes to the ranking member on the Committee on the Budget, the gentleman from South Carolina (Mr. SPRATT).

Mr. SPRATT. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in support of H.R. 4200 and commend my colleagues, the gentleman from California (Mr. HUNTER) and the gentleman from Missouri (Mr. SKELTON), for bringing this conference to a very successful conclusion.

Mr. Speaker, I would like to engage the chairman in a colloquy.

Mr. Speaker, the Conferees' Report in section 3303 contains a provision on the release of ferromanganese from the strategic stockpile, which is critical to steel production in the United States. Section 3303 contains a requirement that to release more than 50,000 tons of ferromanganese, the Secretary of Defense, among other requirements, must certify that the disposal will not cause undue disruption to the usual markets of producers and processors of ferromanganese in the United States. This could be considered a certification about future events regarding markets, and one could question whether the certification of future events is possible.

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I ask the chairman if the conferees' intent in the meaning of this provision is that certification in this instance is the Secretary's best judgment about future market conditions and events.

Mr. HUNTER. Mr. Speaker, will the gentleman yield?

Mr. SPRATT. I yield to the gentleman from California.

Mr. HUNTER. Yes, we understand how important ferromanganese is for steel production in the U.S. We certainly do not intend to ask the Secretary to perform the impossible by forecasting the future with absolute certainty. We are just asking for his best judgment.

Mr. SPRATT. I thank the gentleman for that clarification.

Mr. Speaker, I rise in support of H.R. 4200 and commend my good friends, Chairman HUNTER and Mr. SKELTON, for concluding this conference report.

Everyday our armed forces make great sacrifices to ensure that we are safe, secure, and free. In return, this bill provides a 3.5 percent across-the-board pay raise. It stops short of targeted pay raises for NCOs and warrant officers, which I supported, but it helps bridge the gap with the civilian workforce; makes permanent increases in imminent danger pay from $150 to $225 and family separation pay from $100 to $250 per month (these are initiatives I championed a year ago—I'm glad to see them finally be adopted); provides $10 billion in military construction funds—keeping the Military Housing Privatization Program on track, and eliminating the program's funding ceiling.

The reserve component is being used in an unprecedented way and at an unprecedented rate. The Guard and Reserve make up approximately 40 percent of the force in Iraq, and others are stationed in Afghanistan and other critical locations at home and abroad. More than 173,000 have been mobilized for active duty service. Their service must be matched with meaningful benefits.

This bill provides enhanced TRICARE for reservists. It is not the full measure recommended by the Senate, but it is an improvement over current law. We can and should build on this beginning.

This bill also offers improved tuition assistance benefits.

In addition, this bill ends an injustice to the survivors of military retirees. H.R. 4200 phases out from October 2005 to March 2008 the current offset under the Survivor Benefit Plan, and increases the annuities paid to survivors of military retirees who are 62 years or older.

Recognizing the good efforts of my colleagues, Mr. SKELTON and Ms. TAUSCHER, this bill increases active Army and Marine Corps troop levels by 30,000 and 9,000 respectively. The Pentagon fought us every step of the way on this end-strength increase, but this is the minimum we can do to reduce the stress on our forces and ensure that we can meet military commitments in the future.

This bill also provides $25 billion for the war in Iraq—enough to get through March of next year. We expect another supplemental request early next year of $50 billion—taking the total cost of the Iraq war well over $200 billion.

The bill is not without shortcomings. The President, Senator KERRY and the 9/11 commission all agree that the gravest threat facing the Nation is nuclear terror. H.R. 4200 continues the Administration's pattern of under funding CTR programs. This bill authorizes $10 billion for missile defense, but only $409 million to help combat the gravest threat facing our country. How can we justify spending $10 billion on an unproven system developed to combat a relatively non-existent threat and only spend 4 percent of that amount on consensus greatest threat to the security of the American people.

The Conference Report does impose some welcome disciplines on that ballistic missile defense (BMD) program. The Pentagon's Office of Testing and Evaluation regains an oversight role. It is tasked with devising a realistic test regimen for BMD. In addition, each block of BMD will be subject to Selected Acquisition Report requirements. This means that each block will have baselines for cost, schedule, and performance, against which actual results can be measured. These are steps forward, and steps long overdue in a program of this magnitude.

Mr. HUNTER. Mr. Speaker, I yield 3½ minutes to the gentleman from Colorado (Mr. HEFLEY), who chairs a very important committee on readiness.

Mr. HEFLEY. Mr. Speaker, I rise today in strong support of H.R. 4200, the National Defense Authorization Act. I too would like to thank the chairman and the ranking member for their leadership on this committee. These are two people who really have their heart with the troops, who are out there doing the job for us as Americans, and they lead the committee greatly. I am so appreciative of the efforts of the gentleman from California

(Mr. HUNTER) and the gentleman from Missouri (Mr. SKELTON).

This Spring the gentleman from California (Mr. HUNTER) declared that 2004 would be the year of the troops, and he instructed us as committee chairman to focus what we did on the troops. What do they need? What will make them the best equipped and best trained fighting force in the history of the world. And that is what we tried to do in this bill.

The conference report before us today is crafted in that spirit, and I urge my colleagues to join me in supporting the troops by saying yes on the conference report today.

There are several items in the conference reports to which I would like to call attention, and I will do the one I am disappointed in first, and that is the BRAC provisions in here. We overwhelmingly in the committee voted, and have for the last couple of years, voted to delay the BRAC process for 2 years, and the reason for that is not parochial. It is because we do not think with the transition that we are going through in the armed services right now, in the war, that we have enough information to really make the decision that we will not be sorry for later. So we overwhelmingly in the House and in the committee voted to delay it. But that did not stay in the bill.

The one BRAC provision which I am very pleased with the gentleman from New York (Mr. MCHUGH) put forward it is a very thoughtful provision and it will make the process work much better.

Second, this bill repeals the cap on the military housing privatization program effective immediately, ensuring that this extraordinarily successful program will continue to improve homes in which our service members and their families live. The House cast an overwhelming vote in support of the program this summer, and I could not be more pleased that we have found a way to allow it to continue. It would have been a tragedy if we had not done this.

Third, the bill authorizes more than $10 billion, an increase of approximately $450 million for military construction and family housing programs of the Department of Defense. By carefully applying these resources, the conference report provides for new facilities that will improve military readiness and enhance the quality of living for America's service members.

I would like to express my deep appreciation to the gentleman from Michigan (Mr. KNOLLENBERG) and the ranking member, the gentleman from Texas (Mr. EDWARDS), of the Military Construction Appropriations Subcommittee and their staffs for their hard work this year in what was often a very frustrating process. But they worked with the authorizing committee like the Appropriations Committee, and authorizing committees should work around this House, and have completed the military construction bill working together.

This bill also recognizes and rewards the equally patriotic and committed civilian workforce. Passage of the bill signifies America's continued and unwavering support for all of our military troops, active, Reserve, Guard, airmen, sailors, Marines. I ask you to support the troops. Vote "yes" on the Ronald Reagan National Defense Authorization Act for Fiscal Year 2005. It is an act that you can be proud of.

Mr. SKELTON. Mr. Speaker, I yield 2 minutes to the gentleman from Arkansas (Mr. SNYDER), the ranking member on the Subcommittee on Total Force.

Mr. SNYDER. Mr. Speaker, I want to thank the gentleman from California (Mr. HUNTER) and the gentleman from Missouri (Mr. SKELTON) and also the gentleman from New York (Mr. MCHUGH), the chairman of the Subcommittee on Total Force. I think this is an excellent bill, and I encourage everyone to support it.

Mr. Speaker, one of the issues in the bill I also want to talk about is health care. One of the issues we face as a Nation is health care and the growing number of uninsured. We have 45 million uninsured, and it is growing. This is uninsured people for an entire calendar year. In the 2-year period, the Commonwealth Fund says that over 80 million people have part of this time without health insurance. Since early 2001, we have had almost 4 million people lose their employer-provided health insurance.

I am from Arkansas. We have had several thousand people activated for deployment in our military forces. This occurred about a year ago. About 20 percent of them were not medically fit for military service. Think about it. The richest country of the world and 20 percent of our folks were not medically fit when they were activated.

Well, this also relates to health insurance because a lot of them do not have health insurance. People without health insurance do not keep up nearly as well with their health problems. Two years ago, the Congress and this country put a provision in TRICARE to help with this problem. And we said, and this is the current law, 90 days before an activation, a person who is activated goes on TRICARE with their family. It will extend 180 days after their activation deployment ends. That law is unchanged.

Importantly, what is in this bill is this: After the person returns, after 180 days at the end of their deployment, they are on TRICARE. They can make the decision to elect to sign up for TRICARE for themselves and their family as long as they are staying in the Guard or Reserve forces. For every 3 months of their deployment, they can sign up for a period of 1 year on TRICARE insurance if they want to pay 28 percent like all Federal employees do.

What does all that mean? It means, if you were deployed for a year, you come back, get your 180 days of free TRICARE. You can sign up and pay the 28 percent premium and get 4 years of health insurance for yourself and your family. I think this is a great incentive.

I rise in support of the defense authorization conference report. As the Ranking Member of the Total Force Subcommittee, I am proud of the accomplishments that we have achieved on behalf of device members, retirees and their families.

The bill includes a number of provisions that improve and increase benefits for military personnel, including the Reserves and National Guard. all of our men and women in uniform are making extraordinary sacrifices in support of the war against terrorism, and we need to recognize their contributions by providing benefits that will enable them to support a quality of life for themselves and their families.

I want to recognize the chairman of the Total Force Subcommittee, JOHN MCHUGH, and the Chairman of the committee, DUNCAN HUNTER, and the Ranking Member of the full committee, IKE SKELTON, for their efforts to complete conference before we adjourn this year.

Mr. Speaker, I want to share with my colleagues why it is important that we pass this conference report for the Armed Forces.

We increased end strength for the Army by 20,000 and the Marine Corps by 3,000 in fiscal year 2005; we provide a pay raise of 3.5 percent to all uniformed service members; we protect the commissary and exchange benefit; we include a number of provisions that seek to ensure that the Department and the Services are providing adequate monitoring, tracking, prevention, treatment and improved medical readiness for the forces; and we required the Secretary of Defense to develop policies and procedures on the prevention and response to sexual assault in the military.

Given the steadily growing demands on the Guard and Reserve, the bill includes a number of benefit enhancements that seek to recognize their contribution and provides incentives for them to stay in uniform.

We expanded duty health care coverage to non-active duty reservists and Guardsmen who were called or ordered to duty for more than 30 days since September 11, 2001, and who commit to continued service in the Selective Reserves after their releases from active duty; we made permanent several of the demonstration authorities that were implemented by the Department of Defense to address the health care needs of the reserves and Guard, such as transitional pre and post-health care coverage for activated reservists; we increased a number of bonuses and special pays available for the reserve and Guard; and we clarified that operational activities in the interests of national security can be conducted under Title 32, which allows Governors to address potential terrorist threats against our country.

The bill also addresses the highest priority for our military retirees and their survivors. We phase out the Widow's Tax over the next four years. No longer will survivors of military retirees have their benefits reduced when they reach age 65; and, we also provide immediate concurrent receipt to retirees who are also rated at 100 percent service connected disabilities.

Mr. Speaker, this is an important bill for our military personnel and it is imperative for those currently serving on the front lines in combat that we pass this bill before Congress adjourns.

I urge my colleagues to support this bill.

Mr. HUNTER. Mr. Speaker, I yield 3½ minutes to the gentleman from New Jersey (Mr. SAXTON), the chair of the Subcommittee on Terrorism, Unconventional Threats and Capabilities and oversees our special operators.

Mr. SAXTON. Mr. Speaker, let me thank the chairman and the ranking member, the gentleman from Missouri (Mr. SKELTON), for the great leadership that has brought us to the floor now for the second time: first, to, of course, approve the bill; and now, to approve the conference report.

I rise in strong support of the conference report on H.R. 4200, the National Defense Authorization Act for Fiscal Year 2005. I am pleased to report to my colleagues that the conferees have produced an outstanding bill. I thank our distinguished chairman, my good friend, the gentleman from California (Mr. HUNTER), for dedicating this year, as has been said before, as the year of the troops. Under his leadership and Senator WARNER's leadership, the conferees crafted legislation replete with initiatives to make significant improvements that will help our troops.

The bill will provide the resources and direction to better protect our men and women who are selflessly serving in dangerous conditions overseas, and we have not forgotten our valiant warriors in the Special Operations Command. For example, we authorized funds for several items on the SOCOM commander's unfunded requirements priority list and have authorized additional funding that would provide some necessary operational additional flexibility.

Second, the bill provides increased funding for technologies to help in combating terrorism, extremely important items.

Third, we continue to expand our successful initiative of last year to develop chemical and biological defenses, countermeasures and have provided additional funding for procurement of chemical and biological defense equipment.

The bill recommended by the conferees recognizes that we are, in fact, at war. American lives are at risk each day, and in fact, too many have already paid the ultimate sacrifice. This is an excellent bill, and I urge everybody to support it.

Let me bring up one other subject, Mr. Chairman, under the leadership of the Subcommittee on Projection Forces, the gentleman from Maryland (Mr. BARTLETT), we have included language which speaks to a need going forward. Obviously, we have got great men and women in the armed services, but we have to be sure we can get them to the fight in a timely fashion.

The follow-on to the C-141 aircraft, our old workhorse, the C-17, has proven to be a marvelous weapons system. Initially, we committed to buy 110. We saw the need for additional ones, and in the meantime, we have increased the buy by 70 aircraft, making it total, by 2008, of 180 which will come off the line.

Since the beginning of this program we have known that we would need at least 220. And there is language in this bill, in report language, to encourage the Air Force for an additional buy of at least 57 aircraft, bringing the total to 222.

Mr. Speaker, let me just ask the chairman, this provision, I believe, is very important, and we have had this conversation before. We need to get to the fight in a timely fashion, and I believe, as does the chairman, that this additional buy is necessary to accomplish that goal.

Mr. HUNTER. Mr. Speaker, will the gentleman yield?

Mr. SAXTON. I yield to the gentleman from California.

Mr. HUNTER. Mr. Speaker, I would answer the gentleman that this aircraft has proved to be a superb performer and lift. We are behind on air lift. We need more air lift, and it is the perfect candidate for this job of expanding our air lift to the point where we can project power around the world in the way that we have planned and are today somewhat deficient.

Mr. Speaker, I would like to say that I have had numerous conversations with high level Air Force officials on this matter, and we want them to know that the language that is in the subcommittee chairman's language, the gentleman from Maryland (Mr. BARTLETT), as well as in the Senate language in the bill passed in the other house is serious. This is a serious matter. And we hope that they will fully take it into consideration as they make decisions about how to move forward on this matter.

Mr. SKELTON. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. LORETTA SANCHEZ), the distinguished member of the Committee on Armed Services.

Ms. LORETTA SANCHEZ of California. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I rise today in strong support of the Department of Defense Authorization Conference Report. And I am pleased that the report includes a number of provisions that I have worked hard on in this committee. For example, it requires the Department of Defense to make recommendations about how to alleviate the financial burden that we have placed on many of our Guard and Reserve families. It calls for establishing joint training programs of military and civilian personnel for post-conflict reconstruction operations.

It expands the mission of the Task Force on Sexual Harassment and Violence at the service academies to look at sexual assault across all of our military services, and it requires the Department of Defense to analyze the legal codes that are currently being used to prosecute sexual assaults. We have to make sure that the morale of our soldiers, in particular our women soldiers, is not undermined by mistreatment within our own military.

There are elements missing from the bill that would have made this legislation even stronger. I am disappointed that we were not able to close the pay gap between the Guard and Reserves even more because our Guard and Reserves now comprise over 43 percent of our forces in Iraq.

I also wish that we could have done more to expand child care and family services for our service members. And I am also disappointed that we are going to go ahead with the development of a new nuclear weapon, the robust nuclear Earth perpetrator. This is particularly troubling at a time when we are asking other nations around the world to stop their emphasis on pursuing nuclear weapons. I think that we are sending a very mixed message here.

Overall, I think this is a great bill, and I thank the chairman, and I thank the ranking member for putting it together and for supporting some of the initiatives that I have been championing in the committee. In particular, I thank my ranking member.

Mr. HUNTER. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. MCHUGH), the gentleman who has the responsibility of overseeing this 2.5 million person force wearing the uniform of the United States, a gentleman who oversees all of our personnel operations.

Mr. MCHUGH. Mr. Speaker, I thank the chairman for his gracious comments.

Like every other Member that has risen here today, I certainly want to extend both my appreciation and my admiration to the distinguished chairman of this full committee and his partner in this, the gentleman from Missouri (Mr. SKELTON), the distinguished ranking member, for the terrific work they did. The challenge in bringing this bill together is not disagreeing as to what needs to be done; it is deciding, of all those important steps we can and probably should take, which ones should we take now as we begin to work on a new agenda, almost immediately.

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I think the committees in both bodies have done a terrific job in doing that.

I also want to thank the gentleman from Arkansas (Mr. SNYDER), our ranking member, who is my partner in our endeavor to try to provide those programs that are usually most associated with the welfare, the morale of our troops, of our brave men and women in uniform. It is so important at all times, but certainly in this period of great conflict and turmoil across the planet.

We have many good things in this bill, much of which has been discussed, and all of us are flattered on the subcommittee that members of the committee are deservedly, understandably, taking a great deal of pride in those.

There are a couple of things that may not have been mentioned as succinctly as they might have. One is the increase in end strength, Mr. Speaker, something that many of us have been working on for a good number of years, in our opinion, a key to alleviating the stress and the operations and the personnel tempo that our Guard and Reserve and our active components have been under;

A 23,000 total in the next fiscal year increase to the Army and to the Marine Corps, a 3.5 percent increase in basic pay for members of the Armed Forces, a continuation of the year-by-year commitment that this committee has made to making life in the military a little bit more livable;

Permanent increases in imminent danger pay and family separation allowance;

Those very modest but very important kinds of pays that recognize that when a member is away at war, he or she is paying a price, but of course, so are the families back home who miss their loved ones as they are out doing the hard work of freedom.

We have talked about the increased health care benefits that are so important that play into readiness but also are critical to the fairness as we are in an era of increased utilization of the Reserve component and, as the gentlewoman from California said so correctly, are playing such a vital role, such a high percentage of our war on terror, and on and on and on.

Lastly, I would like to mention a $7 billion program, a program that we will, in 4 years, reverse years and years of inequities and injustice. The Social Security survivor benefit plan offset will be corrected, something that the veterans service organizations have made their number one priority in this bill, and this Congress and this committee did it.

So I urge all my colleagues to join in support of what is a terrific bill in critically important times.

Mr. SKELTON. Mr. Speaker, I take pleasure in yielding 1 minute to the gentlewoman from Missouri (Ms. McCARTHY).

Ms. McCARTHY of Missouri. Mr. Speaker, I rise today in support of H.R. 4200.

I also rise to thank the gentleman from Missouri for his efforts on behalf of the men and women who serve our country now and in remembrance of those who have served our country in the past. The gentleman from Missouri made it possible to put within the National Defense Authorization Act a provision to recognize those who served our country in World War I.

The Liberty Memorial is that landmark which is designated as America's foremost World War I memorial in this legislation. It is a powerful tribute to those who served and gave their lives for freedom.

By recognizing America's foremost World War I memorial, the Liberty Memorial in Kansas City, world leaders from the war have come repeatedly to Kansas City, to dedicate it 78 years ago and to renew it currently, and generations for the future will come to the memorial and understand better the war that was fought and why it was important.

I thank the gentleman.

I rise in support of H.R. 4200. The Liberty Memorial in Kansas City, MO, is the Nation's only museum devoted exclusively to preserving the memory and teaching the lessons of World War I. A provision in the National Defense Authorization Act would bestow upon one of the city's most historic landmarks, recognition as America's foremost World War I memorial.

When the site for the Liberty Memorial was dedicated on November 1, 1921, the main Allied military leaders spoke to a crowd of close to 200,000 people. It was the only time in history that these leaders were together at one place. In attendance were LTG Baron Jacques of Belgium; GEN Armando Diaz of Italy; Marshal Ferdinand Foch of France; GEN John J. Pershing of the United States; and ADM Lord Earl Beatty of Great Britain.

The city of Kansas City, the State of Missouri, and thousands of private donors and philanthropic foundations have contributed, and continue to contribute, millions of dollars to build and restore this national treasure.

The Liberty Memorial has been a landmark in Kansas City for 78 years. It is a powerful tribute to those who served, and those who gave their lives for freedom. I was proud to work with Representative IKE SKELTON, the distinguished ranking member of the Armed Service Committee, to include this provision in the National Defense Authorization Act, to reaffirm our Nation's commitment to educating current and future generations about the lessons of World War I.

I thank the gentleman from Missouri.

Mr. HUNTER. Mr. Speaker, I yield 3 minutes to the gentleman from Alabama (Mr. EVERETT), who oversees our strategic forces in the Subcommittee on Strategic Forces.

Mr. EVERETT. Mr. Speaker, I want to also start by recognizing the gentleman from California (Mr. HUNTER), our chairman, an old-time friend of mine and I think probably the most patient chairman I have ever served with in my 12 years in Congress. His skill in leading this committee has been outstanding.

And we have the contributions also of the gentleman from Missouri (Mr. SKELTON).

I rise in support of the conference report to accompany the fiscal year 2005 National Defense Authorization Act. This legislation supports the administration's objective while making significant improvements to the budget request. The gentleman from California's (Chairman HUNTER) theme of supporting the warfighter is retained throughout the entire measure. Moreover, our national security investment must continue the development of transformational capabilities of future systems, and this conference report meets that goal.

In the area of military space, the Department of Defense has embraced the benefits space provides to our warfighter. Unfortunately, DOD has experienced significant trouble on several high-priority programs. I look forward to working with DOD to correct areas of concern and ensure their success for the future.

However, I am equally concerned over our congressional actions that have cut Space-Based Radar and Transformational Communication Satellites to anemic levels. This cannot continue if we are to be serious about moving to the future and continuing the transformation of our combat operations.

Within Atomic Energy Defense Activities, the bill funds the National Nuclear Security Administration at the budget request. The conference report includes reductions for directed stockpile work, while adding $50 million for infrastructure upgrades, much needed I might add.

The conferees have fully funded cleanup activities at $6 billion for defense site cleanup. We have taken a significant step towards resolving the waste incidental to reprocessing matter, which will allow for further cleanup to go forward at several sites across the country.

The conference report also makes substantial changes to the Energy Employees Occupational Illness Compensation Program administered by the Department of Energy. Specifically, this program, designed to help sick former atomic weapons workers, has been shifted from the Department of Energy to the Department of Labor. In addition, the conference report establishes Federal compensation payments to resolve long-standing problems with the lack of a willing payer under existing State Workers' Compensation.

Finally, Mr. Speaker, I would be remiss if I did not recognize my ranking member, the gentleman from Texas (Mr. REYES) for his contribution, and the remainder of my Members on both sides of the aisle, staffs. I think we faced some of the most difficult policy decisions in the House Committee on Armed Services, and I want to express my appreciation for their hard work in protecting this Nation's security.

Mr. SKELTON. Mr. Speaker, I take pleasure in yielding 4 minutes to the gentleman from Washington (Mr. DICKS), a senior member of the Committee on Appropriations.

Mr. DICKS. Mr. Speaker, I thank the gentleman from Missouri for yielding the time, and I would like to talk about tankers, a subject that has been very important to me, and I want to compliment the conferees for the agreement that was reached on this important issue.

I would like to engage the chairman, if I could, just in a discussion. It is my understanding that we have in this bill an authorization for the procurement, no leasing, but the procurement of 100 tankers; is that not correct?

Mr. HUNTER. Mr. Speaker, will the gentleman yield?

Mr. DICKS. I yield to the gentleman from California.

Mr. HUNTER. Mr. Speaker, the gentleman is correct. There is $100 million that authorizes SECDEF to procure 100 tankers on a multiyear basis.

Mr. DICKS. Right, and it is my understanding that on the question of support work that that will be recompeted; is that not correct?

Mr. HUNTER. Any support work, since we are not doing a lease, support work obviously is entirely appropriate that that be competed, and I know that there are organic depots, as well as private sector, that look forward to engaging in that.

Mr. DICKS. Mr. Speaker, there are a number of studies that the Secretary of Defense has ordered. Those studies have to be completed, and then the Secretary will make a decision based on the information, especially the analysis of alternative study; is that not correct?

Mr. HUNTER. Mr. Speaker, the gentleman is absolutely right, and the language that was in from the other body that had very large barriers to early production, that is, requiring that we go with the totally new production activity, that we not engage in a low-rate initial production, that LRIP be done away with, and a provision requiring bringing in outside competitors, which to me means bringing in a foreign bird which is manufactured by Airbus, all of that language was stricken. So what we are left with in this conference report is an authorization for the Secretary to utilize $100 million, which presently exists, for the multiyear procurement of 100 tanker aircraft.

Let me tell the gentleman, we need those tanker aircraft. The old Eisenhower aircraft are not going to last us much longer, and the projection of American air power requires that we have a fleet of new birds ready to carry American force projection around the world.

Mr. DICKS. Mr. Speaker, I certainly agree with everything that the chairman said. The most important point is that we do not have to go back and have another procurement, because if we did that, it would take years and years before we would start getting the tankers; and I believe it is the position of this Congress that this is going to be built by an American company. So I want to commend the gentleman.

I also want to say that every plane that bombed in Iraq and Afghanistan had to be refueled multiple times, and what I worry about is a shutdown, if we had a failure.

Mr. SAXTON. Mr. Speaker, will the gentleman yield?

Mr. DICKS. I yield to the gentleman from New Jersey.

Mr. SAXTON. Mr. Speaker, I would just like to make one point, and I talked about the C-141s wearing out a little while ago. We replaced them. We are in the middle of the buy to replace the C-141 with a C-17.

When the average person looks up in the air and sees a military aircraft, they do not very often think about these planes wearing out. Well, these planes are over 40 years old, and as a matter of fact, the Air Mobility Command was just forced to put down or take out of service almost 30 of these KC-135 aircrafts, the aircraft that we are trying to replace, because they are worn out, they are corroded, they are old, and we are unable to use them safely.

Mr. DICKS. Mr. Speaker, this is one of the most important systems we have for projecting U.S. power around the world, and tankers and EA6Bs, we just cannot go to war without those two things, and that is why this is so important.

I rise today in support of this conference report. I would like to commend Chairman HUNTER and Ranking Member SKELTON on reaching a final agreement with the Senate on this complex and vital legislation. I would also like to express my personal thanks to both of you, and to the rest of the conferees, for working out a fair compromise on the issue of aerial refueling tanker aircraft.

The conferees on the Defense Authorization bill have given the green light to a 100 aircraft tanker program using multi-year procurement authority. The agreement would not allow the leasing of these aircraft, but it would get the tanker procurement program started in FY05 and ensures the costs savings to the taxpayer of entering into a newly negotiated multi-year contract for 100 aircraft. The agreement also requires that maintenance of these aircraft be competed, with government workers being given a chance to perform the work. I strongly support this compromise.

The provisions in this bill, when combined with the $100 million Tanker Replacement Fund established in the FY05 Defense Appropriations bill, ensure that the Secretary of Defense will have the money and the authority to begin a tanker program next year. Although this is later than the Air Force, and this Member, preferred, it is still important progress, because the Air Force desperately needs to begin replacing these aircraft.

All of the KC–135 refueling aircraft that the Air Force flies today were produced between 1957 and 1963. The youngest of these planes are now over 40 years old. They are riddled with corrosion and 29 of them were recently grounded due to problems with their engine struts. At the same time, our aerial refueling capability is an increasingly important part of our military capability. These aircraft are what make this country a superpower, capable of projecting power around the world. Every aircraft that flew into both Iraq and Afghanistan for air strikes had to be refueled multiple times. The danger if we don't begin to replace these planes is that we could have a block failure, which could ground over 900 of our refueling aircraft. That would cripple the military of this country, and ground our Armed Forces at a time when they are deployed around the world. That outcome is simply unacceptable.

I also want to take note of the excellent work the Armed Services Committee has done in this bill by raising the cap on the Military Housing Privatization Initiative. This program is essential to the quality of life of the Armed Forces. By raising the cap on this program, we will ensure that it can continue through fiscal year 2005 and beyond. As we meet here today, this program is building hundreds of new homes for soldiers at Ft. Lewis in Washington. I've visited these new homes. They are very attractive well-built homes, and the soldiers and their spouses are very excited about this program.

I would also like to thank the chairman and ranking member for authorizing a military construction project in my district to relocate the Fox Island Naval Laboratory. The conference report authorizes an $18 million project to relocate this facility, a move which will substantially improve the security and capability of this facility. The first phase of the project, nearly $7 million, was approved by the House earlier this year.

I urge every Member to vote for this conference report.

Mr. HUNTER. Mr. Speaker, I think it is appropriate we follow this discussion with the gentleman who chairs the Subcommittee on Projection Forces, which oversees the projection of aerial forces as well as naval forces around the world. I yield 2 minutes to the distinguished gentleman from Maryland (Mr. BARTLETT).

Mr. BARTLETT of Maryland. Mr. Speaker, many thanks to our great chairman and ranking member for a job well done.

Our subcommittee portion of H.R. 4200 will provide the men and women in the Navy, Marine Corps and Air Force with better tools now and in the future to meet the challenges to win the war on terrorism and ensure continued U.S. Naval superiority.

One reason for that is the dedication of the gentleman from Mississippi (Mr.

TAYLOR). I am grateful for our strong and cooperative relationship. I am also very pleased by the hard work of all of our colleagues on the Subcommittee on Projection Forces. I want to add a very special thanks to our very good and hardworking staff.

One of the most important provisions in this bill is a shipbuilding initiative to strengthen the ability of America's shipyards to compete in the global marketplace.

The LHA(R) amphibious assault ship program initiative will ensure that the Navy and Marines will benefit from improved capabilities while stabilizing America's industrial base capacity. It would not have been possible without the leadership of the gentleman from Mississippi (Mr. TAYLOR) and Secretary Young.

Other shipbuilding initiatives include commencement of the LCS, Littoral Combat Ship, and the DD(X) advanced destroyer programs and a modernization program for the DDG-51 Aegis destroyer.

The bill supports modernization of the B-2 bomber and the development of the JSF, Joint Strike Fighter.

This bill is critical to meet the challenges and demands placed upon our armed services to prevail in the global war on terrorism. It strikes a fine balance between modernization of existing weapons programs and platforms and the development of new systems. This is an extraordinary challenge.

The surest path to peace is to prepare for war. With H.R. 4200, we take important steps to equip our forces for the future. I urge all of my colleagues to support H.R. 4200.

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Mr. SKELTON. Mr. Speaker, I take pleasure in yielding 3 minutes to the gentleman from Texas (Mr. REYES), who is the ranking member on the Subcommittee on Strategic Forces.

Mr. REYES. Mr. Speaker, I thank the ranking member for yielding me this time, and I congratulate him and my good friend, the chairman, and the great staff on both sides of the aisle for a great job on this bill.

Mr. Speaker, as ranking member of the Subcommittee on Strategic Forces, I rise in support of this bill. The chairman of our subcommittee, the gentleman from Alabama (Mr. EVERETT), and I agreed on most of the issues that came before our subcommittee, but on those few issues that we did not agree on, the debate was always cordial and respectful. And I want to thank my good friend and colleague, Chairman EVERETT, for his leadership and for his friendship. I thank him so much for working to get this done.

In conference, our subcommittee had jurisdiction over legislation that will greatly improve the lives of tens of thousands of Cold War heroes and their families. In 2000, Congress enacted the Energy Employee Occupational Illness Compensation Program Act, which set up two different programs, one administered by the Department of Labor and one by the Department of Energy. To eliminate many flaws in the DOE program, this conference report transfers the DOE program to the Department of Labor, establishes a clear compensation system, and ensures that workers will receive their medical benefits and compensation for lost wages by making it a mandatory spending program.

These workers may not have worn military uniforms, but they built the weapons that deterred the Soviet Union throughout the Cold War, and they were literally poisoned while doing this. I thank my colleagues on both sides of the aisle and in both Chambers for working to fix these important programs.

I also want to speak to another very important issue to all of us that was handled by the Subcommittee on Military Readiness on which I also serve. Almost half of our military family housing units are rated today in very poor condition. Our conference report tackles this shameful problem by saving the military housing privatization initiative. This program was nearly killed by budget resolutions in both Chambers, which neglected to make budgetary headroom that needed to be lifted so that the statutory cap on spending would provide that growing room.

A number of us have been fighting to rescue this program all year long. I am proud to say we finally prevailed, and tonight the program is saved and military families will have their housing renovated and, in some cases, rebuilt. If we had not eliminated the limit, however, the privatization housing program would have reached the cap within a couple of months and our efforts to eliminate substandard military family housing, which we all very much care about within the United States, within the next 5 years would have been derailed.

Mr. Speaker, this bill contains many, many items. I support most of it. And while I disagree with a few, the fact that we are finally and fairly compensating our sick Cold War workers and the fact we are rescuing the privatized housing program, and thus helping 50,000 military families over the next 2 years alone, makes this bill worth supporting.

Mr. Speaker, I urge all my colleagues to support this bill.

Mr. Speaker, as Ranking Member of the Strategic Forces Subcommittee, I rise in support of this bill. Chairman EVERETT and I agreed on most of the issues that came before our subcommittee, but on those few issues where we did disagree, the debate was cordial and respectful. I thank my friend and colleague, Chairman EVERETT, for his leadership.

In conference, our subcommittee had jurisdiction over legislation that will greatly improve the lives of tends of thousands of Cold War heroes and their families. In 2000, Congress enacted the Energy Employee Occupational Illness Compensation Program Act, which set up two different programs—one administered by the Department of Labor and one by the Department of Energy (DOE). The Labor program focused on DOE employees with three specific diseases: chronic beryllium disease, silicosis, or cancer caused by radiation. The DOE program was for workers who suffered from illnesses other than those three diseases. The DOE was charged with helping these workers recover lost wages through their state workers' compensation system.

By all accounts, the Labor Department has efficiently covered medical costs and provided compensation to those affected workers or their survivors under their charge. Unfortunately, the DOE program was conceptually flawed and wrought with incompetence and mismanagement. To date, 25,000 workers have filed claims with the DOE, but relatively few have had their claims processed—and even fewer have received any compensation.

To eliminate the many flaws in the DOE program, this conference report transfers the DOE program to the Department of Labor, establishes a clear compensation system, and ensures that workers will receive their medical benefits and compensation for lost wages by making it a mandatory spending program. These workers may not have worn military uniforms, but they built the weapons that deterred the Soviet Union throughout the Cold War, and they were literally poisoned while doing so. I thank my colleagues on both sides of the aisle and in both chambers for working to fix these programs.

I want to speak to another important program handled by the Readiness Subcommittee, on which I also serve. Almost half of our military family housing units are rated in poor condition. Our conference report tackles this shameful problem by saving the Military Housing Privatization Initiative (MHPI). This program was nearly killed by budget resolutions in both chambers which neglected to make budgetary headroom needed to lift the statutory cap on spending. A number of us including SOLOMON ORTIZ, JOEL HEFLEY, CHET EDWARDS, and IKE SKELTON, among others, have been fighting to rescue this program all year long. I am proud to say that we finally prevailed. If we had not eliminated the limit, the privatized housing program would have reached the cap within a month or two and our efforts to eliminate substandard military family housing in the United States within the next five years would have been derailed.

Mr. Speaker, this bill contains many items. I support most, and I disagree with a few. But the fact that we are finally and fairly compensating our sick Cold War workers and the fact that we are rescuing the privatized housing program—helping 50,000 military families over the next two years alone—make this bill deserving of bipartisan support.

Mr. HUNTER. Mr. Speaker, I yield myself such time as I may consume to thank the gentleman from Texas (Mr. REYES) for his outstanding work and for going time and again to the warfighting theaters in Afghanistan and Iraq, and all our Members who did that throughout the year to get information to help put this bill together.

Mr. Speaker, I yield 1½ minutes to the gentleman from Michigan (Mr. SMITH), who was a very distinguished outside conferee from the Committee on Science.

Mr. SMITH of Michigan. Mr. Speaker, I thank the chairman for yielding me this time, and I thank the ranking member, the staff, and the rest of the members for doing a good job on this bill. I am an outside member because my Subcommittee on Research on the Committee on Science overseas the U.S. Fire Administration, and this legislation reauthorizes the Fire Grant program.

By the end of this year, we will have 25,000 fire grants awarded in the United States, and I understand that every congressional district will have had a grant to a fire department in their district or operating for their district.

Volunteers in the United States cover most of the fire protection for areas of the United States. One concern in this fire grant bill reauthorization was that the Senate rejected an offer by the House to encourage volunteers. Let me tell you what happened. In the language in our House bill we had a bipartisan provision that said you cannot discriminate against full-time firefighters volunteering when they go back to their home districts. We were told that the IAFF opposed and that it would be thrown out and the Senate conferees would rather have no fire grant program than have that language in the bill. So sadly for volunteers that language is not in the bill.

But everybody should understand that volunteer firefighters are incredibly selfless, putting their lives at risk for usually no reward greater than the knowledge that they are making their community a safer place. Many career firefighters actually get their start as volunteers, only joining the paid department after they have attained a basic level of training and experience. The fire grant program is an excellent program. Volunteers in the United States add enormously to our first-line home protection and volunteerism should be encouraged.

Passage of this legislation will extend the Assistance to Firefighters Grant Program through 2009. The fire grant program was started 5 years ago in this bill. It has dramatically improved public safety in this country. Through fiscal year 2003, nearly 17,000 fire departments have received assistance to purchase vital equipment, vehicles, and training, and it is estimated that an additional 8,000 will receive grants this year.

The fire grant program is extremely effective for our homeland defense. Grants are distributed based on the recommendations of panels of nonbiased firefighters, who rank grant applications based on merit. The funding goes straight to the departments that need it most without being held up by political considerations, complex formulas or bureaucratic red tape.

Unfortunately, the reauthorization will do nothing to protect career firefighters from being discriminated against for volunteering during off-duty hours. Many career firefighters who volunteer in their home communities when they aren't at work are actually harassed for doing so. In some career fire departments, volunteering can even be grounds for termination. The House bill to reauthorize the fire grant program, H.R. 4107, included important language prohibiting a fire department that receives grant funds from discriminating against, or prohibiting its members from engaging in volunteer activities during off-duty hours.

A provision was unanimously supported by the bipartisan leaders of the House Congressional Fire Services Caucus. Unfortunately, we ran into a brick wall when we got to conference. The Senate conferees were prepared to forgo reauthorizing the fire grant program altogether if the volunteer nondiscrimination language was included. Their position didn't even budge when we offered to compromise by simply calling for a study on the issue.

Volunteer fire departments are vital in protecting small communities, especially in rural areas like my hometown of Addison, Michigan. Volunteer firefighters are incredibly selfless, putting their lives at risk for no reward greater than the knowledge that they are making their community a safer place to live. Many career firefighters actually get their start as volunteers, only joining a paid department after they have attained a basic level of training and experience.

It is unfair that any volunteer would be told that he or she must choose between a job and volunteering to protecting their friends and neighbors. They should be able to provide their invaluable skills, knowledge and expertise to their hometown departments without harassment and retribution from employers. Eliminating volunteer firefighters would compromise safety in thousands of communities across the country like my own that simply do not have the resources to maintain anything but a volunteer or combination fire department.

And yet a provision that would have protected these noble public servants was unacceptable to our counterparts on the other side of the Capitol. What compelling argument was it that convinced them to risk reauthorizing the fire grant program? How did they become so intractable as to be willing to turn their backs on a program that they have a strong history of supporting, even over a study?

The International Association of Fire Fighters, IAFF, established the position that the Senate conferees ended up adopting. The IAFF opposed passage of H.R. 4107 because of the volunteer nondiscrimination provision. This isn't surprising seeing as their own constitution prohibits members from volunteering. I think they figure that if you get rid of all the volunteers, municipalities will be forced to hire new full time union members. Maybe this makes sense to union lobbyists in Washington, but it doesn't seem fair to the thousands of career firefighters that choose to volunteer out of a sense of civic duty, and it reflects poorly on the Senate conferees who sided with the IAFF over rank and file firefighters and the interests of public safety.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON). Once again the Chair would admonish Members that it is not in order to cast reflections on the Senate or its Members individually or collectively.

Mr. SKELTON. Mr. Speaker, I reserve the balance of my time.

Mr. HUNTER. Mr. Speaker, I yield 2 minutes and 20 seconds to the distinguished gentleman from Florida (Mr. MILLER), a great member of the committee who is considered to be the godfather of the survivor benefit program that we have manifested in this bill.

Mr. MILLER of Florida. Mr. Speaker, I thank the gentleman for yielding me this time. I have never been godfather of anything, so I thank him very much; and, Mr. Speaker, I do rise to express my overwhelming support of this conference report.

With the passage of this conference report tonight, the "widows' tax" will die. It will die a year and a half more quickly than any other SBP bill that has ever been proposed because this amendment was vigorously supported by our chairman, the gentleman from California (Mr. HUNTER), chairman of the Subcommittee on Total Force, the gentleman from New York (Mr. McHUGH), and defended amidst the Senate provisions with the House conferees.

This is an authorization measure of which this body can be proud. In less than 4 years from now, we will have fully restored SBP to what was promised from the beginning to America's surviving spouses. Since coming to this body, I have been working this issue, and so have many others. It has been nothing if not a team effort, and the time is right for this reform.

There are hundreds, if not thousands, of people who deserve to be recognized and thanked for their efforts. Nearly 80 percent of this body has cosponsored one of my two SBP bills in this Congress. The House Armed Services staff has worked at times literally around the clock to see this effort through. My colleagues on the Committee on Armed Services and on the Committee on Veterans' Affairs, and a host of others have all participated in Special Order hours, press conferences, letters of support, and in town hall meetings in districts across our country.

And, Mr. Speaker, I want to thank our Republican leadership for hearing our call on the urgency and the need for this reform. And I thank our President for meeting twice with VSOs on this issue, once in the oval office and once aboard Air Force 1.

To my constituents, whose letters, calls, faxes, e-mails, and personal comments over the last 3 years have kept us motivated to realize this goal, I am proud to represent northwest Florida here in the Nation's capital, and I am thankful in the aftermath of Hurricane Ivan's devastation throughout the State of Florida, I am able to bring this victory home to the Emerald Coast.

But it is not just the 3,200 survivors in my district who are one step away from seeing an increase in their monthly checks next year, Mr. Speaker. A quarter of a million military widows nationwide are part of this victory. This has been a grass-roots campaign in the truest sense, and I thank every American who has been a part of that.

Mr. Speaker, this Republican-controlled Congress has exceeded even my expectations. This is the kind of wrong we came to Washington to right, and I am proud to stand here with my chairman in full support of this measure and urge all my colleagues to vote in favor of this resolution.

Mr. SKELTON. Mr. Speaker, I continue to reserve the balance of my time.

Mr. HUNTER. Mr. Speaker, I yield 2 minutes to the very distinguished gentleman from Georgia (Mr. GINGREY), who has done great work on the Committee on Armed Services.

Mr. GINGREY. Mr. Speaker, I rise in strong support of the fiscal year 2005 Defense authorization conference report, and I would like to thank and commend the gentleman from California (Mr. HUNTER), our chairman, and the ranking member, the gentleman from Missouri (Mr. SKELETON), and the staff of the Committee on Armed Services for their tireless efforts in support of our soldiers, our sailors, airmen and Marines who are bravely defending us at home and abroad.

Mr. Speaker, this is the year of the soldier, and this "soldiers' bill," as the chairman describes it, does a remarkable job of covering a wide scope of issues that are vitally important to our armed services. From improving the Survivor Benefit Program to a 3.5 percent across-the-board pay raise, this conference report addresses the most pressing needs of our troops in a very trying time for America.

For our Reservists who have been activated, this bill will provide TRICARE standard coverage for them and their families while they are working to get their feet back on the ground when they return home. For every 90 days consecutive active duty service, the Reservists and their families are eligible for 1 year of TRICARE coverage while on nonactive duty status.

For our deployed soldiers, this conference report contains $728 million for new up-armored Humvees, $100 million for vehicle armor kits, and countless other provisions to protect our troops on the ground.

I am also grateful for the work the House Committee on Armed Services has done to fund the F/A-22 program this year. The funding for 24 planes will go a long way towards providing stability for the program and ensuring that America maintains air dominance for the foreseeable future.

Again, Mr. Speaker, I would like to thank the chairman and the ranking member of the committee for their hard work on this bill.

Mr. HUNTER. Mr. Speaker, how much time do I have remaining?

The SPEAKER pro tempore. The gentleman from California has 2 minutes and 40 seconds remaining; the gentleman from Missouri (Mr. SKELTON) has 7½ minutes remaining.

Mr. HUNTER. Mr. Speaker, I yield 1 minute to the gentleman from South Carolina (Mr. BARRETT).

Mr. BARRETT of South Carolina. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise today to thank our chairman, the gentleman from California (Mr. HUNTER), and the chairman of the Subcommittee on Strategic Forces, the gentleman from Alabama (Mr. EVERETT), for their strong leadership and hard work to ensure our national defense continues to be second to none in the world.

I would like to particularly thank and acknowledge their invaluable assistance, as well as that of the conferees and their staffs, including Bill Ostendorf and Hugh Brady, for their efforts and long hours to finalize the important details in section 3116 of the conference report to H.R. 4200.

This section allows the Department of Energy to fully process harmful nuclear waste currently being stored in aging tanks at DOE sites in Idaho and South Carolina in a timely and cost-effective manner that protects the environment.

I have no doubt that section 3116 provides the necessary and proper protections for my constituents in South Carolina because it requires the DOE to follow objective performance criteria and to continue to work with State authorities to ensure cleanup standards are strictly followed.

Again, I wish to thank the distinguished chairman for working with members of the South Carolina delegation, including Senator LINDSEY GRAHAM, the gentleman from South Carolina (Mr. DEMINT), the gentleman from South Carolina (Mr. CLYBURN), and particularly my colleagues on the Committee on Armed Services, the gentleman from South Carolina (Mr. WILSON) and the gentleman from South Carolina (Mr. SPRATT), to provide a safe and cost-effective means to protect our environment and communities from dangerous nuclear wastes. I urge my colleagues to support the conference report to H.R. 4200.

Mr. SKELTON. Mr. Speaker, I continue to reserve the balance of my time.

Mr. HUNTER. Mr. Speaker, I yield the balance of my time to the gentleman from California (Mr. CUNNINGHAM), my seat mate from San Diego, the great Top Gun.

Mr. CUNNINGHAM. Mr. Speaker, who are the men that support our military? It is the gentleman from Missouri (Mr. SKELTON), it is the gentleman from California (Mr. HUNTER), it is the men and women on this committee.

And who are they? Mr. HUNTER's dad, R. O. Hunter, was a Marine. DUNCAN fought in combat. His son just got back last weekend to greet a wife and his children.

□ 2000

I saw mothers march in a protest at the Republican convention that had lost their sons. I was not angry. I felt remorse and hurt for those people that we lost.

I rode on an airplane with a young man named Eddie Wright. He is a Marine that lost both his arms. Eddie Wright, when I fastened his seat belt, he would not let me help him eat. He said, Duke, one thing a Marine learns how to do is eat, and he was trying to do that with his prosthetic arm. He felt guilty about not being able to go back to his troops.

Supporting defense is more than just this bill. It is people like IKE SKELTON, SILVESTRE REYES, DUNCAN HUNTER, the men and women in both bodies that care. This is a good bill. It is more than a bill. It means life, and it means death. Thank you to both of you.

Mr. SKELTON. Mr. Speaker, I yield myself the balance of my time.

The remarks of my friend from California (Mr. CUNNINGHAM), who is a distinguished war hero in his own right, cause me to wish to say a word or two about those who wear the uniform and about those who wore the uniform.

Mr. Speaker, every Sunday morning, I have the pleasure of being with a group of men from my hometown of Lexington, Missouri, most of whom are veterans of wars of yesteryear, heroes in their own right, Marines of Vietnam, Army, Navy, my friend Vic Cosner who saw the very worst of battles in Europe during the Second World War.

We owe it in this Congress under the Constitution that charges our committee and charges this body with raising and maintaining the military to produce and care for and train young men and young women who can take the place of those who so nobly served our country in the past. That is what we are doing today.

A special thanks to our chairman, DUNCAN HUNTER, who worked tirelessly with us well into the evening to produce this bill and got it to the floor. A special thanks to every member of the Committee on Armed Services, Democrat and Republican, and the unsung heroes of all of this is the tireless effort of the staff of the Committee on Armed Services. We could not do it without them. We thank them so very much.

Mr. Speaker, I had a rare privilege 3 weeks ago of being able to address the new sailors who had just graduated, were graduating, from the Great Lakes Naval Training Station, Great Lakes, Illinois. MARK KIRK, our fellow Member of Congress, invited me for such an event. I spoke to them, and I thanked them, and I also read a letter to the graduates that my father had written his mother in 1918 from that very same Great Lakes before he proceeded on to serve aboard the USS *Missouri* of the day. I want everybody to know that those young sailors, men and women, stood so tall, and you could see the pride in their faces, but even more proud were the parents and the families, thousands of them, to see the some 900 brand new American sailors become part of the fleet.

So what we do in our own way here is to legally provide and maintain, but more than that, I think this effort and what we have done for those in uniform and the families, major steps to help them along the way. Cicero, the great Greek orator, said that gratitude was the greatest of all virtues. I hope that the efforts that we do today will show a bit of gratitude from this body to all of those young men and women who wear the uniform of the United States of America.

Ms. LEE. Mr. Speaker, I rise today disappointed but not surprised by the Bush Administration's escalating lack of interest in housing, and the rising affordable housing crisis impacting millions of families nationwide.

As we all know, housing is not only a basic human right but it serves as an economic engine for the market, and the foundation for intergenerational wealth building in many of our families.

Mr. Speaker, this Administration has put inconsequential energy into homeownership for the few; while people on the cusp of becoming homeowners, lifetime renters, and many in public housing are deliberately left behind.

The Department of Housing and Urban Development's budget has severe proposed cuts for 2005; and it's sad when housing advocates hope Congress passes a Continuing Resolution to keep funding level, instead of hoping for a better, bigger budget.

The Administration cut pubic housing funding dramatically. By HUD's own admission, the President's proposed budget cuts at least $1.63 billion from baseline programs.

For example, the Community Development Block Grant program's funding has fallen by some 9 percent in real terms since the Bush Administration took office.

The Bush FY'05 budget for HUD zeroed out several programs, including: the Brownfields program, the Rural Housing and Economic Development program, and the Empowerment Zones programs.

The Bush budget also rescinds $675 million in funding for Section 236 projects; a program that supports elder housing services; and cuts in public housing lead paint eradication grants by $35 million.

And what is most concerning is the Bush Administration's efforts to cut and block grant the Section 8 program.

The Bush Budget for 2005 would cut $1.633 billion from the level needed just to renew all expiring Section 8 vouchers. This is the equivalent of funding for 231,260 voucher holders, families, veterans, and our elderly.

Block granting and cutting funding for Section 8 has a series of ripple effects.

The Bush proposal forces housing authorities to reduce the level of subsidy provided to voucher holders, by eliminating the requirement that the subsidy be based on a family paying no more than 30 percent of their net income for a fair market rental unit in their community.

The Bush proposal eliminates the "targeting" of scarce voucher resources to those in need—by dropping the requirement that 75 percent of new vouchers go to "extremely low income families", including those below 30 percent of local area median income.

The immediate consequence of the "Section 8 Dismantlement" proposal is the disruption of families' lives.

The Bush budget cuts and block granting will lead housing agencies to reduce desperately needed assistance, increase family rent burdens, stop helping families on waiting lists, and revoking previously-awarded vouchers to families who are still searching for a home.

A serious, longer-term consequence of the Section 8 block granting is the erosion of hard-won landlord and lender confidence in the program. This results in more and more landlords renting at fair market values that are guaranteed instead of extending a helping hand to those who are most in need.

Our failure to respond to local housing circumstances and costs has already led to some local agencies' inability to continue voucher assistance for currently-assisted families. Loss of assistance for these families can easily translate into homelessness, a condition that the Bush Administration and countless cities across the country have vowed to eradicate.

The continued dismantling of basic and necessary programs which provide affordable housing for average people must be stopped.

We must stop allowing the Administration to get away with making housing only a privilege for the few, because we all recognize it should be a basic and fundamental right for all.

Mr. Speaker, let's pass a real housing budget that reflects our commitment to providing affordable, quality housing for all and reverse the trend of the BAD Bush Budgets of the past.

Mr. BUTTERFIELD. Mr. Speaker, while I support the many strides forward the Department of Defense Authorization will represent, I must rise to note my great concern about a provision regarding the Outlying Landing Field OLF proposed for Washington and Beaufort counties in North Carolina.

I share the concerns of the community that the proposed OLF would displace 74 property owners, take 30,000 acres off the local property tax rolls, and could have a negative impact on the quality of life in the area. I also share the concern that the project could reduce the potential for tourism and economic development.

The funding was removed by the House, but the Conference Committee elected to retain the funding language. Washington and Beaufort Counties, along with environmental groups, are in litigation to avoid the OLF development. They were successful and the federal courts have ordered the Navy to cease all OLF development activity, pending the outcome of legal challenges to the Washington County site. More recently, the federal district court rejected a plea by the Navy to reverse or narrow the scope of the injunction.

The Washington County OLF site is strongly opposed by many elected officials, citizens groups and by major North Carolina agricultural, property rights and conservation organizations. I stand with them in opposing this site.

While I oppose the inclusion of this funding, I cannot vote against fulfilling the needs of our brave fighting men and women. Under the bill we finally eliminate the social security offsets to the Survivor Benefit Plan payments for the spouses of military retirees; increase the number of troops for the Army and Marines; improve housing for our military men and women; and, create a reimbursement program for soldiers who were forced to buy their own body armor. These are just a few examples of the many accomplishments attributed to the bill.

Mr. UDALL of New Mexico. Mr. Speaker, I rise today to support the reforms to the Energy Employees Occupational Illness Compensation Program, EEOICPA, included in H.R. 4200, the FY05 Defense Authorization Act.

When EEOICPA was enacted in 2000, hopes were high. My constituents who became ill as a result of their work with radioactive materials felt that help was finally on the way. Four years later, the snail's pace of claims processing at the Department of Energy has only further hurt these workers.

Today, however, Congress will enact crucial EEOICPA reforms. All valid claims will be paid by the Department of Labor, thereby eliminating the need for claimants to go to state workers compensation systems. This also eliminates the need for a willing payer, which until now has been a significant roadblock for rewarding meritorious claims. Most importantly, funding the medical and workers' compensation benefits in this program will be mandatory. This ensures that the fate of our nuclear workers will not be subject to the whims of the annual budget.

These veterans of the Cold War have waited long enough to be compensated for the illnesses they incurred while serving their nation. I applaud these reforms, and I will continue to monitor the program closely to ensure that it works as intended.

Another significant change to the EEOICPA in this bill is that former uranium workers who were compensated under the Radiation Exposure Compensation Act will now be eligible for payments under EEOICPA, and will now receive assured payments rather than relying on discretionary appropriations. This is a promising step in the right direction for uranium workers, and I look forward to continuing work on the RECA program to address the needs of other qualifying groups, such as the downwinders.

I would like to thank the numerous people who worked incessantly on these reforms. It is my hope that these reforms help get this program back on track.

Mr. MEEHAN. Mr. Speaker, I rise today in support of the National Defense Authorization Act for fiscal year 2005. As the Ranking Member of the Terrorism and Unconventional Threats Subcommittee, I believe that the product before us today is, on the whole, a solid bill.

The House Armed Services Committee pledged to make this year the "Year of the Soldier." Our soldiers are performing heroically despite the worsening conditions in Iraq. This Administration failed to get them the equipment they needed, the international support to relieve the burden on them, and the clear plan to win the peace.

After a year in which our military has been strained and overstretched like never before, I'm pleased that this legislation takes important strides toward honoring our heroes and strengthening our forces.

I'm pleased that this legislation authorizes critical force protection resources, including an additional $572 million in funding for Up-Armored Humvees and $250 million for add-on armor kits. It also includes a provision that would allow the Secretary of Defense to cut through red tape and rapidly field in-demand equipment when our troops need it.

Additionally, I'm pleased that my colleagues recognized the need to address the gaping holes in oversight of civilian contractors. The prisoner abuses at Abu Ghraib prison were an ugly example of what can happen without proper oversight.

This conference report includes the Contractor Accountability Act, which I introduced in May to ensure that non-Defense Department contractors are covered by the Military Extraterritoral Jurisdiction Act.

Finally, the bill makes many important quality of life improvements for our troops and veterans.

It phases out the Survivor Benefit Penalty over a four-year period and includes a 3.5 percent across the board pay raise for military personnel.

It also authorizes a much-needed increase in active-duty endstrength of 30,000 soldiers and 9,000 Marines. This administration has over-stretched our military to the breaking point. We need to increase the size of our volunteer military.

With respect to the Terrorism Subcommittee's mark, several provisions in this portion of the bill deserve praise.

First, I'm pleased we included a number of recommendations to streamline and accelerate the development and acquisition of technologies to combat terrorism.

Additional resources are provided in a number of areas: including chemical and biological research and detection.

The conference report also includes a provision I offered with Mr. TURNER of Texas to improve the manner in which we develop and acquire medical countermeasures against biological warfare agents.

I do not support every provision in the authorization bill.

I remain concerned about cuts to DARPA and several information technology programs.

I'm also very disappointed that the Hate Crimes Language was dropped. The Local Law Enforcement Enhancement Act will strengthen the ability of Federal, State and local governments to investigate and prosecute these vicious crimes. It is supported by more than 175 law enforcement, civil rights, civic and religious organizations as well as many bipartisan members of this Congress.

The bill also is silent on providing TRICARE benefits to non-active duty Reservists. I strongly supported the Senate provision that would have ensured that all Reserve Component members receive access to health care: Unfortunately, this language was also dropped.

We will be back fighting for these priorities. But for now, I urge my colleagues to join in me passing this bill.

Mr. HYDE. Mr. Speaker, I rise in strong support of this conference report. I believe that this important legislation provides the necessary resources and policy guidance to protect America's national security. I congratulate the gentleman from California, the Chairman of the Armed Services Committee, Mr. HUNTER, for his usual outstanding work in putting this important legislation together.

I want to address one provision in particular, section 1225, regarding commercial exports of defense articles and services to the United Kingdom and Australia.

For the first time, we will give our two closest allies in the war on terror preferential treatment in the U.S. licensing process. By requiring regulations to accelerate export licenses for these countries—rather than eliminating licenses as some had proposed—this provision establishes exactly the right balance: we will wisely maintain control and supervision over weapons shipped through commercial channels while the war on terrorism continues. But we require the State Department to do it rapidly, and ensure that longstanding allies who fight alongside our armed forces are always at the head of the line.

I would note that section 1225 allows other Federal departments or agencies to seek referral of licenses when the defense article or service being exported involves classified information or when exceptional circumstances apply. As a conferee on this section, I expect that referrals to other departments or agencies would be granted under the "exceptional circumstances" clause, among other reasons, when the proposed export involves items related to the war on terror or affects U.S. nonproliferation policy. Additionally, it should be absolutely clear that the "exceptional circumstances" clause does not prejudice referrals to those departments or agencies seeking referrals on law enforcement grounds.

Mr. ORTIZ. Mr. Speaker, I rise in support of the National Defense Authorization Act for Fiscal Year 2005. We are all proud of the tremendous sacrifice our military members make for the defense of our country. Our 1.4 million active duty service members, and an additional 875,000 citizen soldiers—National Guardsmen and reservists—are serving the nation under the most arduous of conditions in Iraq and Afghanistan. We owe these Soldiers, Sailors, Airmen and Marines a tremendous debt of gratitude for the service they provide in our defense. Their sacrifice is an honor to our nation; it is our responsibility to provide for their readiness.

I would also like to take time to recognize the thousands of government service civilians and private individuals who support the readiness of our service members and our military. Their sacrifice is sometimes overlooked but their jobs are vital to the continued success of our armored forces in this time of war. We could not fight and win without them and I thank them for their dedicated service to our national defense.

This act provides for the immediate needs of our Armed Forces and we have proactively considered their future needs as well. In this global war, we must not lose sight of the challenges we face in maintaining our readiness in the future. Our military has been engaged in combat for nearly three years. The equipment and weapons systems our service members fight with has taken a tremendous beating in the harsh conditions of Iraq and Afghanistan. As this conflict drags on we must remain steadfast in our resolution to fully man and equip our maintenance and support activities to deal with battle damaged and worn out vehicles and weapons systems while at the same time we begin to transform our forces to new weapons and mobility systems.

I am very pleased that we were able to eliminate the cap on the privatized housing program. I was a co-author of the original provisions to establish the privatized housing program in the 1996 Defense Authorization bill. This is a "win-win" program that builds quality family housing for our troops and their families much more quickly than we could through the regular family housing construction process. The Budget Committees put this program in grave jeopardy by refusing to include any way to eliminate the cap in the budget resolution, but I am proud that our committee, on a bipartisan basis, was able to save the program. If we had not found a way to eliminate the cap, new housing for almost 50,000 families over the next two years would have been delayed indefinitely.

Mr. Speaker, I am disappointed that the House did not stick to its position, validated by a bipartisan majority on the House floor, to delay BRAC for two years. The Army is in the midst of restructuring itself. We are bringing two divisions home from Europe. We are revising our warplans to support new strategies and are still reviewing the division of labor between our active duty forces and our reserve components. Last but not least, we are still at war in Iraq.

With this many unknowns, I think it is irresponsible to push forward with BRAC. The House position to delay it for two years was the more prudent and responsible approach, and I am sorely disappointed that this provision was dropped in conference.

Mr. Speaker, we have done our best to provide for the Readiness of our Armed Forces who so selflessly serve in the defense of our Nation. I commend our Soldiers, Sailors, Airmen, Marines and civilians and thank them for their service.

Mr. Speaker, I urge my colleagues to support this act and I yield the balance of my time.

Mr. ORTIZ. Mr. Speaker, I am so disappointed in the result of the conference report, whereby they caved into the Senate language on BRAC, when the House made a significant statement to delay BRAC for 2 years.

We passed that matter by nearly 100 votes in the full House. Yet the conference ignored that. I am deeply disappointed. Since we conceived BRAC in 1989, the United States has sent troops abroad 24 times . . . to nearly every continent on the planet.

Our interests in democracy, in protecting other democracies and allies, in our own self-defense, as in Afghanistan . . . or building democracies as in Iraq . . . are global. That means our military forces stand on the wall far and wide in a dangerous world . . . and our interests are everywhere danger can gather.

We are at war . . . and there is a lot of uncertainty over the resources we need. Congress cannot fly blind, we need to fully evaluate our global posture situation . . . and we must hear the analysis on that before we allow BRAC to proceed. The war in Iraq—and the war in Afghanistan—are not the only unknowns we face. As Chairman HUNTER advocated and I supported—this bill increases our troop levels by 39,000.

We are also considering major movement of troops from South Korea and Europe back to the U.S. . . . So, where will we put them? You do not close major components of your military infrastructure while you are still unsure if you need it . . . and world events yet to happen over the next few years will dictate that need. The most-often heard arguments in favor of BRAC are that there is excess space we do not need, and it will save us money. I respectfully disagree with both prospects.

As for excess space . . . that could be a possibility in peacetime . . . maybe . . . but not now . . . not when the nation is at war. It's not entirely accurate to say we have excess space—does anybody know the current workload for our maintenance and repair? There is no excess space at the depot in my district. That will likely not change if the operations tempo continues at the present pace.

While I know we hear about cost savings associated with BRAC, I profoundly disagree with DoD estimates . . . mostly because they are not all-inclusive. For instance, in a recent GAO Report, the opening letter notes that DoD calculates net savings based on eliminating/reducing personnel and base ops . . . and the cancellation of mil con projects. That's it. Really? So the math doesn't include the astronomical cost to clean up the surrounding environment? The cost of clean up continually streaks upward.

I suppose if you leave out all the costs, it would appear to save money. But Congress should insist the Pentagon include all those costs if we are serious about understanding any savings in this. A GAO report presented to my Readiness Subcommittee says: "BRAC rounds have generated substantial net savings . . . for the Department. We have . . . viewed these savings estimates as imprecise for a variety of reasons, such as weaknesses in DOD's financial management systems that limit its ability to fully account for the costs of its operations; the fact that DOD's accounting systems . . . are oriented to tracking expenses and disbursements, not savings; the exclusion of BRAC-related costs incurred by other agencies; and inadequate periodic updating of the savings estimates that are developed."

As a member of this Congress, I'm more interested in the savings TO THE TAXPAYER than to the Department. So while the math provided by the Pentagon certainly shows on paper what they think will be savings, that math is only as solid as ALL the information on which they base decisions.

Another consideration in this discussion is the fact that the Department of Homeland Security has not nearly grown up into what it needs to be. It is a brand new, major reorganization of all the national assets that protect our families and the country. DHS may need to use some elements of the current military infrastructure as they determine future needs. It will be much harder to reacquire a property for the government if we dispose of it through BRAC.

At the end of the day, we'll be OK in this war—but we need ask the question: are we going to need additional training facilities? Training has been a concern in Iraq . . . we may need facilities a BRAC could close to use for training. When Congress designed a BRAC for 2005, we were at peace. Now we are at war, and near a BRAC that could very well dispose of military assets we will need again—either for a growing military or for DHS.

We didn't have to be tied to this schedule . . . we should not be sheep. This is the most bipartisan of matters. After many years in politics, I've discovered when friends on both sides disagree with you . . . you've hit the middle.

On another matter, I am pleased that the conference did restore funding for Military housing. The idea for public-private military housing was born in Kingsville Texas—after BRAC 95. The community wanted quality low-cost housing for area Naval bases. The idea was this: private developers would build quality homes for sailors and their families—and sailors would pay rent through their housing vouchers.

The program was so wildly successful; in 1996 Sec. Perry implemented it service-wide. The need is still enormous—service members and their families are still often in condemned or insufficient housing. It is a shame we had to beg and beg to get the conference to include this provision to keep our brave soldiers—and the families they leave to fight in wars beyond our shores—in housing that is not condemned.

I reluctantly signed the conference report, because it's too important not to. But I remain deeply offended that the House position on the matter of delaying BRAC was ignored by the conference.

Mr. LARSON of Connecticut. Mr. Speaker, as the Ranking minority member of the Committee on House Administration, I rise today in support of the two provisions in the DoD Authorization Conference Report for FY05 that are under the jurisdiction of my committee. The first provision addresses an innovative electronic voting project and the other highlights the need to support absentee voting.

Earlier this year, the Department of Defense cancelled the Secure Electronic Registration and Voting Experiment SERVE project. SERVE is a $22 million pilot program that was designed to test the reliability of Internet voting for 100,000 military personnel and civilians living overseas. Some academics have questioned the security of the system. I agree that any problems should be addressed before we move forward with Internet voting, but this is a very worthy project. If the military can send coded information to installations and battlefields around the world, we should be able to send votes across a secure, private system.

Fortunately, the Election Assistance Commission EAC is now charged with moving the SERVE project forward. Formed by the Help America Vote Act to serve as the clearinghouse for matters relating to elections and the voting process, the EAC is certainly the body best suited for this task. Specifically, it is responsible for establishing guidelines and helping the Secretary of Defense in carrying out the project.

Historically, it is our military that has led the way for our country. Not only in times of trouble, but it has also led the way in technological advances. The military has the opportunity to lead the way again in technology, but this time, in the voting booth. It deserves the opportunity to participate in this landmark electronic voting program.

I encourage the Secretary of Defense to provide the EAC with the additional funding needed to carry out this directive. I also encourage the National Institute of Standards and Technology (NIST) to continue working with the EAC on electronic absentee voting by absent uniformed service and overseas voters casting ballots abroad and others areas where they may have expertise.

The second provision will expand the use of the federal write-in absentee ballot to absent uniformed service voters that have not received voting materials from their state within the deadline prescribed by their state. This will give the absent uniformed service voter the opportunity to participate in the democratic process that they are defending.

Mr. Speaker, I support the inclusion of these provisions in the Conference Report.

Mr. ISRAEL. Mr. Speaker, I rise today in strong support of H.R. 4200, the FY 2005 Department of Defense Authorization Conference Report. I commend our Chairman and Ranking Member and all of the conferees for their leadership and hard work.

This is an important bill for troubling times. As I have said often, thank God we live in a nation, which gives us the right to agree with a decision to go to war, the right to disagree with that decision, even the right to remain silent. But no one has any right at all to forget the courageous men and women who answered the call when summoned, who sacrificed by serving.

What is our obligation to them, Mr. Speaker? It is to make them a priority in our hearts as well as our budgets.

We also have an obligation to give them all the tools and resources they need. Not just hardware, but software. Not just situational awareness that tells them where an enemy is and what the enemy's firepower is, but the cultural awareness that tells our troops who the enemy is and what its will power is.

That is why I am especially proud that the conference report included two amendments that I offered.

While the brilliant speed with which our forces toppled the Taliban and the regime of Saddam Hussein demonstrates the unrivaled technological and professional superiority of our military, the current situation on the ground would seem to suggest that we haven't given enough attention to the "full spectrum" of operations that they will face.

My amendment will look at how U.S. military's education and training program is preparing soldiers to meet the challenges of an era when our enemy is just as likely to be a tribal warload as a trained infantryman and how we deal with the battlefield after the battle.

A second amendment, Mr. Speaker, formally recognizes the courageous actions of Army Specialist Joseph Darby, who was brave enough to notify his superiors about the abuses at Abu Grayb when no one else was. He is a true American hero.

These are truly dangerous times. We are involved in a struggle that we cannot lose. On behalf of our men and women in uniform and all they are doing to keep America safe, I strongly support passage of this conference report.

Mr. CASTLE. Mr. Speaker, I rise today in support of H.R. 4200, the "National Defense Authorization Act of 2005." I am pleased that Congress was able to complete work on this important bill prior to recess. As an outside Conferee to H.R. 4200, I am particularly supportive of the education provisions in the bill before us today.

There are a number of provisions in H.R. 4200 that will help local schools better serve students in military families. For example, we ensure that school districts can continue to count federally-connected students who reside on the military base as on-base students for the purposes of calculating Impact Aid payments in cases when federally-connected students temporarily move off-base to live with a relative or family friend and when both of their military parents are deployed for active duty. The provision will also ensure that school districts continue to count federally-connected students who reside on-base as on-base students for the purpose of calculating Impact Aid payments for six months after the death of a military parent.

In addition, we have increased the amount of aid local schools will receive that are impacted by the presence of military installations, as well to increase funding to help school districts provide special education services to certain dependent children with severe disabilities.

Finally, with respect to the education provisions, we were able to establish the National Security Education Program to provide resources for scholarships, fellowships, and institutional grants in higher education. The program's mission is to lead in the development of the national capacity to educate U.S. citizens, understand foreign cultures, strengthen U.S. economic competitiveness, and enhance international cooperation and security. In our ever growing world economy, I believe these provisions are imperative to ensure that U.S. citizens have a solid understanding of other nations.

Mr. Speaker, Congress recognizes the sacrifices and contributions our courageous soldiers have made in the war against terrorism. Hopefully, the "National Defense Authorization Act of 2005" will go far in supporting our military efforts and protecting the freedoms that we all enjoy.

Mr. SKELTON. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. SIMPSON). Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. HUNTER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

GENERAL LEAVE

Mr. HUNTER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the conference report on H.R. 4200.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

DIRECTING THE CLERK TO MAKE TECHNICAL CORRECTIONS IN ENROLLMENT OF H.R. 4200, RONALD W. REAGAN NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005

Mr. HUNTER. Mr. Speaker, I offer a concurrent resolution (H. Con. Res. 514) directing the Clerk of the House of Representatives to make a technical correction in the enrollment of the bill H.R. 4200, and ask unanimous consent for its immediate consideration in the House.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 514

Resolved by the House of Representatives (the Senate concurring), That in the enrollment of the bill (H.R. 4200) to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, the Clerk of the House of Representatives shall make the following correction: in section 714(b), strike "Section 1974g(a)(2)(E)(i)" and insert "Section 1074g(a)(2)(E)(i)".

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

WAIVING REQUIREMENT OF CLAUSE 6(a) OF RULE XIII WITH RESPECT TO CONSIDERATION OF CERTAIN RESOLUTIONS

Mrs. MYRICK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 832 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 832

Resolved, That the requirement of clause 6(a) of rule XIII for a two-thirds vote to consider a report from the Committee on Rules on the same day it is presented to the House is waived with respect to any resolution reported on the legislative day of October 8, 2004, providing for consideration of disposition of a conference report to accompany the bill (H.R. 4837) making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2005, and for other purposes.

The SPEAKER pro tempore. The gentlewoman from North Carolina (Mrs. MYRICK) is recognized for 1 hour.

Mrs. MYRICK. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Texas (Mr. FROST), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, last night the Committee on Rules met and passed this resolution, waiving clause 6(a) of rule XIII (requiring a two-thirds vote to consider a rule on the same day it is reported from the Rules Committee) against certain resolutions reported from the Rules Committee. The waiver authorized by this resolution applies to any special rule reported on the legislative day of Friday, October 8, 2004, providing for the consideration or disposition of a conference report to accompany the bill, H.R. 4837, making appropriations for military construction, family housing and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2005, and for other purposes.

Mr. Speaker, I would advise my colleagues that adoption of this resolution is made necessary because the work of the conferees has taken longer than anticipated. To that end, I urge my colleagues to support the rule.

Mr. Speaker, I reserve the balance of my time.

Mr. FROST. I thank the gentlewoman from North Carolina for yielding me time, and I yield myself such time as may consume.

Mr. Speaker, in our rush to finish our legislative work in Washington and return to our districts before the election, I fear we are jumping the gun by taking up this rule. While I realize that time is running short and that the

House is likely to adjourn today or tomorrow, it is premature for the House to consider a martial law rule for a bill that has not even been completed. Why we are passing a rule to expedite passage of a bill for which we do not even have the final language, I cannot understand.

I am fully aware of the importance of sending as many of the 13 appropriations bills as possible to the President before we adjourn. But it is only reasonable to wait to bring up a martial law rule to expedite the consideration of a conference report, that may or may not be ready today, until we actually have that conference report filed and in hand.

However, given the magnitude and importance of this appropriation for military construction funding, I am not going to oppose this rule. I simply think that it would serve regular order to bring it up when we actually have a final conference report to read.

Mr. Speaker, I yield back the balance of my time.

Mrs. MYRICK. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 8 o'clock and 14 minutes p.m.), the House stood in recess subject to the call of the Chair.

☐ 2242

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. SIMPSON) at 10 o'clock and 42 minutes p.m.

AUTHORIZING ILLUMINATION OF GATEWAY ARCH IN HONOR OF BREAST CANCER AWARENESS MONTH

Mr. CANNON. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2895) to authorize the Gateway Arch in St. Louis, Missouri, to be illuminated by pink lights in honor of breast cancer awareness month, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2895

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ILLUMINATION OF GATEWAY ARCH IN HONOR OF BREAST CANCER AWARENESS MONTH.

In honor of breast cancer awareness month, the Secretary of the Interior shall authorize the Gateway Arch in St. Louis, Missouri, to be illuminated by pink lights for a certain period of time in October, to be designated by the Secretary of the Interior.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

FORT DONELSON NATIONAL BATTLEFIELD EXPANSION ACT OF 2004

Mr. CANNON. Mr. Speaker, I ask unanimous consent that the Committee on Resources be discharged from further consideration of the Senate bill (S. 524) to expand the boundaries of the Fort Donelson National Battlefield to authorize the acquisition and interpretation of lands associated with the campaign that resulted in the capture of the fort in 1862, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

The Clerk read the Senate bill as follows:

S. 524

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fort Donelson National Battlefield Expansion Act of 2004".

SEC. 2. FORT DONELSON NATIONAL BATTLEFIELD.

(a) DESIGNATION; PURPOSE.—There exists as a unit of the National Park System the Fort Donelson National Battlefield to commemorate—

(1) the Battle of Fort Donelson in February 1862; and

(2) the campaign conducted by General Ulysses S. Grant and Admiral Andrew H. Foote that resulted in the capture of Fort Donelson by Union forces.

(b) BOUNDARIES.—The boundary of the Fort Donelson National Battlefield is revised to include the site of Fort Donelson and associated land that has been acquired by the Secretary of the Interior for administration by the National Park Service, including Fort Donelson National Cemetery, in Stewart County, Tennessee and the site of Fort Heiman and associated land in Calloway County, Kentucky, as generally depicted on the map entitled "Fort Donelson National Battlefield Boundary Adjustment" numbered 328/80024, and dated September 2003. The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(c) EXPANSION OF BOUNDARIES.—The Fort Donelson National Battlefield shall also include any land acquired pursuant to section 3.

SEC. 3. LAND ACQUISITION RELATED TO FORT DONELSON NATIONAL BATTLEFIELD.

(a) ACQUISITION AUTHORITY.—Subject to subsections (b) and (c), the Secretary of the Interior may acquire land, interests in land, and improvements thereon for inclusion in the Fort Donelson National Battlefield. Such land, interests in land, and improvements may be acquired by the Secretary only by purchase from willing sellers with appropriated or donated funds, by donation, or by exchange with willing owners.

(b) LAND ELIGIBLE FOR ACQUISITION.—The Secretary of the Interior may acquire land, interests in land, and improvements thereon under subsection (a)—

(1) within the boundaries of the Fort Donelson National Battlefield described in section 2(b); and

(2) outside such boundaries if the land has been identified by the American Battlefield Protection Program as part of the battlefield associated with Fort Donelson or if the Secretary otherwise determines that acquisition under subsection (a) will protect critical resources associated with the Battle of Fort Donelson in 1862 and the Union campaign that resulted in the capture of Fort Donelson.

(c) BOUNDARY REVISION.—Upon acquisition of land or interests in land described in subsection (b)(2), the Secretary of the Interior shall revise the boundaries of the Fort Donelson National Battlefield to include the acquired property.

(d) LIMITATION ON TOTAL ACREAGE OF PARK.—The total area encompassed by the Fort Donelson National Battlefield may not exceed 2,000 acres.

SEC. 4. ADMINISTRATION OF FORT DONELSON NATIONAL BATTLEFIELD.

The Secretary of the Interior shall administer the Fort Donelson National Battlefield in accordance with this Act and the laws generally applicable to units of the National Park System, including the Act of August 25, 1916 (commonly known as the National Park Service Organic Act; 16 U.S.C. 1 et seq.), and the Act of August 21, 1935 (commonly known as the Historic Sites, Buildings, and Antiquities Act; 16 U.S.C. 461 et seq.).

SEC. 5. RELATION TO LAND BETWEEN THE LAKES NATIONAL RECREATION AREA.

The Secretary of Agriculture and the Secretary of the Interior shall enter into a memorandum of understanding to facilitate cooperatively protecting and interpreting the remaining vestige of Fort Henry and other remaining Civil War resources in the Land Between the Lakes National Recreation Area affiliated with the Fort Donelson campaign.

SEC. 6. CONFORMING AMENDMENT.

The first section of Public Law 86–738 (16 U.S.C. 428k) is amended by striking "Tennessee" and all that follows through the period at the end and inserting "Tennessee.".

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

STATE JUSTICE INSTITUTE REAUTHORIZATION ACT OF 2004

Mr. CANNON. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2714) to reauthorize the State Justice Institute, with a Senate amendment thereto and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Senate amendment: Page 3, after line 5, insert:

SEC. 4. LAW ENFORCEMENT ARMOR VESTS.

Section 1001(a)(23) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)(23)) is amended by striking "2004" and inserting "2007".

Mr. LoBIONDO. Mr. Speaker, I rise today in support of the Bulletproof Vest Partnership Grant Act included in the State Justice Institute Reauthorization Act of 2004. This legislation reauthorizes the Grant program until 2007. The current authorization expired on September 30, 2004. Congress has overwhelmingly approved this program twice, both in the 105th Congress and the 106th Congress. The Bulletproof Vest Partnership Grant program has directly benefited every U.S. state and territory.

A bulletproof vest is one of the most important pieces of equipment an officer can have. Many times the vest can mean the difference between life and death. Every day, law enforcement officers are confronted by violent criminals armed with deadly weapons. While many officers wear vests to protect themselves, an alarming number of officers across the United States are not afforded this same protection because of local budget constraints. The Bulletproof Vest Partnership Grant program has helped state and local law enforcement to purchase vests. These funds have saved countless lives across the nation.

We must protect those who risk their lives every day protecting our communities. This program has provided more than 1 million of these life saving vests since its inception. In 2004 alone, the Bulletproof Vest Partnership Grant program provided $25 million to state and local law enforcement agencies across America. In turn, this funding helped provide more than 175,000 new bulletproof vests giving vital protection to thousands of law enforcement officer nationwide.

Due to the success of this program, grant applications have steadily increased annually since the program's enactment, yet many municipalities are denied grants due to a lack of funding for the program. This reauthorization will provide an additional three years to work toward full funding for this program, enabling more law enforcement officers to have access to these lifesaving vests.

Please join me as we work together to save more lives, and give our law enforcement officers the necessary tools they need to help them keep our communities safe.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. CANNON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 2714.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

□ 2245

PREVENTION OF CHILD ABDUCTION PARTNERSHIP ACT

Mr. CANNON. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2883) to amend the International Child Abduction Remedies Act to limit the tort liability of private entities or organizations that carry out responsibilities of the United States Central Authority under that Act, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore (Mr. SIMPSON). Is there objection to the request of the gentleman from Utah?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2883

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Prevention of Child Abduction Partnership Act".

SEC. 2. LIMITATION ON LIABILITY.

Section 7 of the International Child Abduction Remedies Act (42 U.S.C. 11606) is amended by adding at the end the following new subsection:

"(f) LIMITED LIABILITY OF PRIVATE ENTITIES ACTING UNDER THE DIRECTION OF THE UNITED STATES CENTRAL AUTHORITY.—

"(1) LIMITATION ON LIABILITY. Except as provided in paragraphs (2) and (3), a private entity or organization that receives a grant from or enters into a contract or agreement with the United States Central Authority under subsection (e) of this section for purposes of assisting the United States Central Authority in carrying out its responsibilities and functions under the Convention and this Act, including any director, officer, employee, or agent of such entity or organization, shall not be liable in any civil action sounding in tort for damages directly related to the performance of such responsibilities and functions as defined by the regulations issued under subsection (c) of this section that are in effect on October 1, 2004.

"(2) EXCEPTION FOR INTENTIONAL, RECKLESS, OR OTHER MISCONDUCT. The limitation on liability under paragraph (1) shall not apply in any action in which the plaintiff proves that the private entity, organization, officer, employee, or agent described in paragraph (1), as the case may be, engaged in intentional misconduct or acted, or failed to act, with actual malice, with reckless disregard to a substantial risk of causing injury without legal justification, or for a purpose unrelated to the performance of responsibilities or functions under this Act.

"(3) EXCEPTION FOR ORDINARY BUSINESS ACTIVITIES.—The limitation on liability under paragraph (1) shall not apply to any alleged act or omission related to an ordinary business activity, such as an activity involving general administration or operations, the use of motor vehicles, or personnel management.".

Mr. HYDE. Mr. Speaker, I rise today in support of S. 2883, the Prevention of Child Abduction Partnership Act.

The Hague Convention on the Civil Aspects of International Child Abduction is the diplomatic tool which creates a civil cause of action for the return of an abducted child to his or her habitual residence. Under this international treaty, the U.S. Department of State is the central authority responsible for discharging the duties as outlined by the Convention. For the past 9 years, pursuant to a cooperative agreement between the National Center for Missing and Exploited Children, NCMEC, and the Departments of State and Justice, NCMEC has played a vital role by assisting the Department of State in performing certain obligations under the Convention, thereby helping the United States fulfill its international treaty obligations under the Convention.

In sum, NCMEC helps parents seeking the return of or access to a child in the United States to process an application under the Convention and to pursue remedies as provided by statute. Secretary of State Colin Powell has written to NCMEC that

> its expertise and national networks make NCMEC uniquely effective in helping us give force to the Hague Abduction Convention in the United States. NCMEC's credibility and the success of our work together also give us a decided advantage when we press other governments for changes of practice, policy, legislation, and resource allocation to deter international parental child abduction and send abducted children home to the United States.

In May, I introduced H.R. 4347, the International Assistance for Missing and Exploited Children Act of 2004. Among many other important issues, this legislation provides a mechanism for granting NCMEC employees, who are working on Hague Convention cases under the direction of the State Department, the same limited immunity enjoyed by those employed by the Department of State. This legislation is currently being negotiated with the administration and other congressional committees, and I intend to reintroduce it again in the 109th session of Congress. As a product of this negotiation, an agreement has been reached on language which would provide NCMEC with the limited immunity necessary to be able to continue performing its obligations under the Hague Convention, which is the substance in S. 2883.

This measure has the support of the relevant House and Senate Committees and the Departments of State and Justice. If this measure is not enacted into law, NCMEC may not be able to continue its operations on behalf of the Federal Government since its resources would be lost in the defense of frivolous lawsuits. Left-behind parents would suffer the prolonged loss of their children, and our Nation potentially would lose its advantage in pressing other nations to return abducted children.

I wish to extend my personal gratitude to the National Center for Missing and Exploited Children for its critical work on reuniting families, to Chairman JIM SENSENBRENNER of the House Judiciary Committee, and to Senators

HATCH and LEAHY of the Senate Judiciary Committee and to Senators LUGAR and BIDEN of the Senate Foreign Relations Committee, for working tirelessly to implement this measure.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. CANNON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 2883.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

ANABOLIC STEROID CONTROL ACT OF 2004

Mr. CANNON. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2195) to amend the Controlled Substances Act to clarify the definition of anabolic steroids and to provide for research and education activities relating to steroids and steroid precursors, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2195

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Anabolic Steroid Control Act of 2004".

SEC. 2. AMENDMENTS TO THE CONTROLLED SUBSTANCES ACT.

(a) DEFINITIONS.—Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(1) in paragraph (41)—

(A) by realigning the margin so as to align with paragraph (40); and

(B) by striking subparagraph (A) and inserting the following:

"(A) The term 'anabolic steroid' means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone), and includes—

"(i) androstanediol—

"(I) 3β,17β-dihydroxy-5α-androstane; and

"(II) 3α,17β-dihydroxy-5α-androstane;

"(ii) androstanedione (5α-androstan-3,17-dione);

"(iii) androstenediol—

"(I) 1-androstenediol (3β,17β-dihydroxy-5α-androst-1-ene);

"(II) 1-androstenediol (3α,17β-dihydroxy-5α-androst-1-ene);

"(III) 4-androstenediol (3β,17β-dihydroxy-androst-4-ene); and

"(IV) 5-androstenediol (3β,17β-dihydroxy-androst-5-ene);

"(iv) androstenedione—

"(I) 1-androstenedione ([5α]-androst-1-en-3,17-dione);

"(II) 4-androstenedione (androst-4-en-3,17-dione); and

"(III) 5-androstenedione (androst-5-en-3,17-dione);

"(v) bolasterone (7α,17α-dimethyl-17β-hydroxyandrost-4-en-3-one);

"(vi) boldenone (17β-hydroxyandrost-1,4,-diene-3-one);

"(vii) calusterone (7β,17α-dimethyl-17β-hydroxyandrost-4-en-3-one);

"(viii) clostebol (4-chloro-17β-hydroxyandrost-4-en-3-one);

"(ix) dehydrochloromethyltestosterone (4-chloro-17β-hydroxy-17α-methyl-androst-1,4-dien-3-one);

"(x) △1-dihydrotestosterone (a.k.a. '1-testosterone') (17β-hydroxy-5α-androst-1-en-3-one);

"(xi) 4-dihydrotestosterone (17β-hydroxy-androstan-3-one);

"(xii) drostanolone (17β-hydroxy-2α-methyl-5α-androstan-3-one);

"(xiii) ethylestrenol (17α-ethyl-17β-hydroxyestr-4-ene);

"(xiv) fluoxymesterone (9-fluoro-17α-methyl-11β,17β-dihydroxyandrost-4-en-3-one);

"(xv) formebolone (2-formyl-17α-methyl-11α,17β-dihydroxyandrost-1,4-dien-3-one);

"(xvi) furazabol (17α-methyl-17β-hydroxyandrostano[2,3-c]-furazan);

"(xvii) 13β-ethyl-17α-hydroxygon-4-en-3-one;

"(xviii) 4-hydroxytestosterone (4,17β-dihydroxy-androst-4-en-3-one);

"(xix) 4-hydroxy-19-nortestosterone (4,17β-dihydroxy-estr-4-en-3-one);

"(xx) mestanolone (17α-methyl-17β-hydroxy-5α-androstan-3-one);

"(xxi) mesterolone (1α-methyl-17β-hydroxy-[5α]-androstan-3-one);

"(xxii) methandienone (17α-methyl-17β-hydroxyandrost-1,4-dien-3-one);

"(xxiii) methandriol (17α-methyl-3β,17β-dihydroxyandrost-5-ene);

"(xxiv) methenolone (1-methyl-17β-hydroxy-5α-androst-1-en-3-one);

"(xxv) 17α-methyl-3β, 17β-dihydroxy-5α-androstane;

"(xxvi) 17α-methyl-3α,17β-dihydroxy-5α-androstane;

"(xxvii) 17α-methyl-3β,17β-dihydroxy-androst-4-ene.

"(xxviii) 17α-methyl-4-hydroxynandrolone (17α-methyl-4-hydroxy-17β-hydroxyestr-4-en-3-one);

"(xxix) methyldienolone (17α-methyl-17β-hydroxyestra-4,9(10)-dien-3-one);

"(xxx) methyltrienolone (17α-methyl-17β-hydroxyestra-4,9-11-trien-3-one);

"(xxxi) methyltestosterone (17α-methyl-17β-hydroxyandrost-4-en-3-one);

"(xxxii) mibolerone (7α,17α-dimethyl-17β-hydroxyestr-4-en-3-one);

"(xxxiii) 17α-methyl-△1-dihydrotestosterone (17β-hydroxy-17α-methyl-5α-androst-1-en-3-one) (a.k.a. '17-α-methyl-1-testosterone');

"(xxxiv) nandrolone (17β-hydroxyestr-4-en-3-one);

"(xxxv) norandrostenediol—

"(I) 19-nor-4-androstenediol (3β, 17β-dihydroxyestr-4-ene);

"(II) 19-nor-4-androstenediol (3α, 17β-dihydroxyestr-4-ene);

"(III) 19-nor-5-androstenediol (3β, 17β-dihydroxyestr-5-ene); and

"(IV) 19-nor-5-androstenediol (3α, 17β-dihydroxyestr-5-ene);

"(xxxvi) norandrostenedione—

"(I) 19-nor-4-androstenedione (estr-4-en-3,17-dione); and

"(II) 19-nor-5-androstenedione (estr-5-en-3,17-dione;

"(xxxvii) norbolethone (13β,17α-diethyl-17β-hydroxygon-4-en-3-one);

"(xxxviii) norclostebol (4-chloro-17β-hydroxyestr-4-en-3-one);

"(xxxix) norethandrolone (17α-ethyl-17β-hydroxyestr-4-en-3-one);

"(xl) normethandrolone (17α-methyl-17β-hydroxyestr-4-en-3-one);

"(xli) oxandrolone (17α-methyl-17β-hydroxy-2-oxa-[5α]-androstan-3-one);

"(xlii) oxymesterone (17α-methyl-4,17β-dihydroxyandrost-4-en-3-one);

"(xliii) oxymetholone (17α-methyl-2-hydroxymethylene-17β-hydroxy-[5α]-androstan-3-one);

"(xliv) stanozolol (17α-methyl-17α-hydroxy-[5α]-androst-2-eno[3,2-c]-pyrazole);

"(xlv) stenbolone (17β-hydroxy-2-methyl-[5α]-androst-1-en-3-one);

"(xlvi) testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);

"(xlvii) testosterone (17β-hydroxyandrost-4-en-3-one);

"(xlviii) tetrahydrogestrinone (13β,17α-diethyl-17β-hydroxygon-4,9,11-trien-3-one);

"(xlix) trenbolone (17β-hydroxyestr-4,9,11-trien-3-one); and

"(xlx) any salt, ester, or ether of a drug or substance described in this paragraph.

The substances excluded under this subparagraph may at any time be scheduled by the Attorney General in accordance with the authority and requirements of subsections (a) through (c) of section 201."; and

(2) in paragraph (44), by inserting "anabolic steroids," after "marihuana,".

(b) AUTHORITY AND CRITERIA FOR CLASSIFICATION.—Section 201(g) of the Controlled Substances Act (21 U.S.C. 811(g)) is amended—

(1) in paragraph (1), by striking "substance from a schedule if such substance" and inserting "drug which contains a controlled substance from the application of titles II and III of the Comprehensive Drug Abuse Prevention and Control Act (21 U.S.C. 802 et seq.) if such drug"; and

(2) in paragraph (3), by adding at the end the following:

"(C) Upon the recommendation of the Secretary of Health and Human Services, a compound, mixture, or preparation which contains any anabolic steroid, which is intended for administration to a human being or an animal, and which, because of its concentration, preparation, formulation or delivery system, does not present any significant potential for abuse.".

(c) ANABOLIC STEROIDS CONTROL ACT.—Section 1903 of the Anabolic Steroids Control Act of 1990 (Public Law 101-647) is amended—

(1) by striking subsection (a); and

(2) by redesignating subsections (b) and (c) as subsections (a) and (b), respectively.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 90 days after the date of enactment of this Act.

SEC. 3. SENTENCING COMMISSION GUIDELINES.

The United States Sentencing Commission shall—

(1) review the Federal sentencing guidelines with respect to offenses involving anabolic steroids;

(2) consider amending the Federal sentencing guidelines to provide for increased penalties with respect to offenses involving anabolic steroids in a manner that reflects the seriousness of such offenses and the need

to deter anabolic steroid trafficking and use; and

(3) take such other action that the Commission considers necessary to carry out this section.

SEC. 4. PREVENTION AND EDUCATION PROGRAMS.

(a) IN GENERAL.—The Secretary of Health and Human Services (referred to in this Act as the "Secretary") shall award grants to public and nonprofit private entities to enable such entities to carry out science-based education programs in elementary and secondary schools to highlight the harmful effects of anabolic steroids.

(b) ELIGIBILITY.—

(1) APPLICATION.—To be eligible for grants under subsection (a), an entity shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

(2) PREFERENCE.—In awarding grants under subsection (a), the Secretary shall give preference to applicants that intend to use grant funds to carry out programs based on—

(A) the Athletes Training and Learning to Avoid Steroids program;

(B) The Athletes Targeting Healthy Exercise and Nutrition Alternatives program; and

(C) other programs determined to be effective by the National Institute on Drug Abuse.

(c) USE OF FUNDS.—Amounts received under a grant under subsection (a) shall be used for education programs that will directly communicate with teachers, principals, coaches, as well as elementary and secondary school children concerning the harmful effects of anabolic steroids.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $15,000,000 for each of fiscal years 2005 through 2010.

SEC. 5. NATIONAL SURVEY ON DRUG USE AND HEALTH.

(a) IN GENERAL.—The Secretary of Health and Human Services shall ensure that the National Survey on Drug Use and Health includes questions concerning the use of anabolic steroids.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section, $1,000,000 for each of fiscal years 2005 through 2010.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. CANNON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 2195.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

FEDERAL REGULATORY IMPROVEMENT ACT OF 2004

Mr. CANNON. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of the bill (H.R. 4917) to amend title 5, United States Code, to authorize appropriations for the Administrative Conference of the United States for fiscal years 2005, 2006, and 2007, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

The Clerk read the bill, as follows:

H.R. 4917

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Regulatory Improvement Act of 2004".

SEC. 2. PURPOSES.

(a) PURPOSES.—Section 591 of title 5, United States Code, is amended to read as follows:

"§ 591 Purposes

"The purposes of this subchapter are—

"(1) to provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest;

"(2) to promote more effective public participation and efficiency in the rulemaking process;

"(3) to reduce unnecessary litigation in the regulatory process;

"(4) to improve the use of science in the regulatory process; and

"(5) to improve the effectiveness of laws applicable to the regulatory process.".

(b) CONFORMING AMENDMENTS.—Title 5 of the United States Code is amended—

(1) in section 594 by striking "purpose" and inserting "purposes"; and

(2) in the table of sections of chapter 5 of part I by amending the item relating to section 591 to read as follows:

"591. Purposes".

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

Section 596 of title 5, United States Code, is amended to read as follows:

"§ 596. Authorization of appropriations

"There are authorized to be appropriated to carry out this subchapter not more than $3,000,000 for fiscal year 2005, $3,100,000 for fiscal year 2006, and $3,200,000 for fiscal year 2007. Of any amounts appropriated under this section, not more than $2,500 may be made available in each fiscal year for official representation and entertainment expenses for foreign dignitaries.".

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. CANNON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 4917.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

FAMILY FARMER BANKRUPTCY RELIEF ACT OF 2004

Mr. CANNON. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of the Senate bill (S. 2864) to extend for eighteen months the period for which chapter 12 of title 11, United States Code, is reenacted, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2864

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Family Farmer Bankruptcy Relief Act of 2004".

SEC. 2. EIGHTEEN-MONTH EXTENSION OF PERIOD FOR WHICH CHAPTER 12 OF TITLE 11, UNITED STATES CODE, IS REENACTED.

(a) AMENDMENTS.—Section 149 of title I of division C of Public Law 105-277 (11 U.S.C. 1201 note) is amended—

(1) by striking "January 1, 2004" each place that term appears and inserting "July 1, 2005"; and

(2) in subsection (a)—

(A) by striking "June 30, 2003" and inserting "December 31, 2003"; and

(B) by striking "July 1, 2003" and inserting "January 1, 2004".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) are deemed to have taken effect on January 1, 2004.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. CANNON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 2864.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Utah?

There was no objection.

ASSISTIVE TECHNOLOGY ACT OF 2004

Mr. MCKEON. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4278) to amend the Assistive Technology Act of 1998 to support programs of grants to

States to address the assistive technology needs of individuals with disabilities, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Assistive Technology Act of 2004".

SEC. 2. AMENDMENT TO THE ASSISTIVE TECHNOLOGY ACT OF 1998.

The Assistive Technology Act of 1998 (29 U.S.C. 3001 et seq.) is amended to read as follows:

"SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

"(a) SHORT TITLE.—This Act may be cited as the 'Assistive Technology Act of 1998'.

"(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

"Sec. 1. Short title; table of contents.
"Sec. 2. Findings and purposes.
"Sec. 3. Definitions.
"Sec. 4. State grants for assistive technology.
"Sec. 5. State grants for protection and advocacy services related to assistive technology.
"Sec. 6. National activities.
"Sec. 7. Administrative provisions.
"Sec. 8. Authorization of appropriations.

"SEC. 2. FINDINGS AND PURPOSES.

"(a) FINDINGS.—Congress finds the following:

"(1) Over 54,000,000 individuals in the United States have disabilities, with almost half experiencing severe disabilities that affect their ability to see, hear, communicate, reason, walk, or perform other basic life functions.

"(2) Disability is a natural part of the human experience and in no way diminishes the right of individuals to—

"(A) live independently;

"(B) enjoy self-determination and make choices;

"(C) benefit from an education;

"(D) pursue meaningful careers; and

"(E) enjoy full inclusion and integration in the economic, political, social, cultural, and educational mainstream of society in the United States.

"(3) Technology is one of the primary engines for economic activity, education, and innovation in the Nation, and throughout the world. The commitment of the United States to the development and utilization of technology is one of the main factors underlying the strength and vibrancy of the economy of the United States.

"(4) As technology has come to play an increasingly important role in the lives of all persons in the United States, in the conduct of business, in the functioning of government, in the fostering of communication, in the conduct of commerce, and in the provision of education, its impact upon the lives of individuals with disabilities in the United States has been comparable to its impact upon the remainder of the citizens of the United States. Any development in mainstream technology will have profound implications for individuals with disabilities in the United States.

"(5) Substantial progress has been made in the development of assistive technology devices, including adaptations to existing devices that facilitate activities of daily living that significantly benefit individuals with disabilities of all ages. These devices, including adaptations, increase involvement in, and reduce expenditures associated with, programs and activities that facilitate communication, ensure independent functioning, enable early childhood development, support educational achievement, provide and enhance employment options, and enable full participation in community living for individuals with disabilities. Access to such devices can also reduce expenditures associated with early childhood intervention, education, rehabilitation and training, health care, employment, residential living, independent living, recreation opportunities, and other aspects of daily living.

"(6) Over the last 15 years, the Federal Government has invested in the development of comprehensive statewide programs of technology-related assistance, which have proven effective in assisting individuals with disabilities in accessing assistive technology devices and assistive technology services. This partnership between the Federal Government and the States provided an important service to individuals with disabilities by strengthening the capacity of each State to assist individuals with disabilities of all ages meet their assistive technology needs.

"(7) Despite the success of the Federal-State partnership in providing access to assistive technology devices and assistive technology services, there is a continued need to provide information about the availability of assistive technology, advances in improving accessibility and functionality of assistive technology, and appropriate methods to secure and utilize assistive technology in order to maximize the independence and participation of individuals with disabilities in society.

"(8) The combination of significant recent changes in Federal policy (including changes to section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), accessibility provisions of the Help America Vote Act of 2002 (42 U.S.C. 15301 et seq.), and the amendments made to the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) by the No Child Left Behind Act of 2001) and the rapid and unending evolution of technology require a Federal-State investment in State assistive technology systems to continue to ensure that individuals with disabilities reap the benefits of the technological revolution and participate fully in life in their communities.

"(b) PURPOSES.—The purposes of this Act are—

"(1) to support State efforts to improve the provision of assistive technology to individuals with disabilities through comprehensive statewide programs of technology-related assistance, for individuals with disabilities of all ages, that are designed to—

"(A) increase the availability of, funding for, access to, provision of, and training about assistive technology devices and assistive technology services;

"(B) increase the ability of individuals with disabilities of all ages to secure and maintain possession of assistive technology devices as such individuals make the transition between services offered by educational or human service agencies or between settings of daily living (for example, between home and work);

"(C) increase the capacity of public agencies and private entities to provide and pay for assistive technology devices and assistive technology services on a statewide basis for individuals with disabilities of all ages;

"(D) increase the involvement of individuals with disabilities and, if appropriate, their family members, guardians, advocates, and authorized representatives, in decisions related to the provision of assistive technology devices and assistive technology services;

"(E) increase and promote coordination among State agencies, between State and local agencies, among local agencies, and between State and local agencies and private entities (such as managed care providers), that are involved or are eligible to be involved in carrying out activities under this Act;

"(F) increase the awareness and facilitate the change of laws, regulations, policies, practices, procedures, and organizational structures, that facilitate the availability or provision of assistive technology devices and assistive technology services; and

"(G) increase awareness and knowledge of the benefits of assistive technology devices and assistive technology services among targeted individuals and entities and the general population; and

"(2) to provide States with financial assistance that supports programs designed to maximize the ability of individuals with disabilities and their family members, guardians, advocates, and authorized representatives to obtain assistive technology devices and assistive technology services.

"SEC. 3. DEFINITIONS.

"In this Act:

"(1) ADULT SERVICE PROGRAM.—The term 'adult service program' means a program that provides services to, or is otherwise substantially involved with the major life functions of, individuals with disabilities. Such term includes—

"(A) a program providing residential, supportive, or employment services, or employment-related services, to individuals with disabilities;

"(B) a program carried out by a center for independent living, such as a center described in part C of title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796f et seq.);

"(C) a program carried out by an employment support agency connected to adult vocational rehabilitation, such as a one-stop partner, as defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801); and

"(D) a program carried out by another organization or vender licensed or registered by the designated State agency, as defined in section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705).

"(2) AMERICAN INDIAN CONSORTIUM.—The term 'American Indian consortium' means an entity that is an American Indian Consortium (as defined in section 102 of Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002)), and that is established to provide protection and advocacy services for purposes of receiving funding under subtitle C of title I of such Act (42 U.S.C. 15041 et seq.).

"(3) ASSISTIVE TECHNOLOGY.—The term 'assistive technology' means technology designed to be utilized in an assistive technology device or assistive technology service.

"(4) ASSISTIVE TECHNOLOGY DEVICE.—The term 'assistive technology device' means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

"(5) ASSISTIVE TECHNOLOGY SERVICE.—The term 'assistive technology service' means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes—

"(A) the evaluation of the assistive technology needs of an individual with a disability, including a functional evaluation of the impact of the provision of appropriate assistive technology and appropriate services to the individual in the customary environment of the individual;

"(B) a service consisting of purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;

"(C) a service consisting of selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, replacing, or donating assistive technology devices;

“(D) coordination and use of necessary therapies, interventions, or services with assistive technology devices, such as therapies, interventions, or services associated with education and rehabilitation plans and programs;

“(E) training or technical assistance for an individual with a disability or, where appropriate, the family members, guardians, advocates, or authorized representatives of such an individual;

“(F) training or technical assistance for professionals (including individuals providing education and rehabilitation services and entities that manufacture or sell assistive technology devices), employers, providers of employment and training services, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities; and

“(G) a service consisting of expanding the availability of access to technology, including electronic and information technology, to individuals with disabilities.

“(6) CAPACITY BUILDING AND ADVOCACY ACTIVITIES.—The term ‘capacity building and advocacy activities’ means efforts that—

“(A) result in laws, regulations, policies, practices, procedures, or organizational structures that promote consumer-responsive programs or entities; and

“(B) facilitate and increase access to, provision of, and funding for, assistive technology devices and assistive technology services, in order to empower individuals with disabilities to achieve greater independence, productivity, and integration and inclusion within the community and the workforce.

“(7) COMPREHENSIVE STATEWIDE PROGRAM OF TECHNOLOGY-RELATED ASSISTANCE.—The term ‘comprehensive statewide program of technology-related assistance’ means a consumer-responsive program of technology-related assistance for individuals with disabilities, implemented by a State, and equally available to all individuals with disabilities residing in the State, regardless of their type of disability, age, income level, or location of residence in the State, or the type of assistive technology device or assistive technology service required.

“(8) CONSUMER-RESPONSIVE.—The term ‘consumer-responsive’—

“(A) with regard to policies, means that the policies are consistent with the principles of—

“(i) respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, based on informed choice, of individuals with disabilities;

“(ii) respect for the privacy, rights, and equal access (including the use of accessible formats) of such individuals;

“(iii) inclusion, integration, and full participation of such individuals in society;

“(iv) support for the involvement in decisions of a family member, a guardian, an advocate, or an authorized representative, if an individual with a disability requests, desires, or needs such involvement; and

“(v) support for individual and systems advocacy and community involvement; and

“(B) with respect to an entity, program, or activity, means that the entity, program, or activity—

“(i) is easily accessible to, and usable by, individuals with disabilities and, when appropriate, their family members, guardians, advocates, or authorized representatives;

“(ii) responds to the needs of individuals with disabilities in a timely and appropriate manner; and

“(iii) facilitates the full and meaningful participation of individuals with disabilities (including individuals from underrepresented populations and rural populations) and their family members, guardians, advocates, and authorized representatives, in—

“(I) decisions relating to the provision of assistive technology devices and assistive technology services to such individuals; and

“(II) decisions related to the maintenance, improvement, and evaluation of the comprehensive statewide program of technology-related assistance, including decisions that affect capacity building and advocacy activities.

“(9) DISABILITY.—The term ‘disability’ means a condition of an individual that is considered to be a disability or handicap for the purposes of any Federal law other than this Act or for the purposes of the law of the State in which the individual resides.

“(10) INDIVIDUAL WITH A DISABILITY; INDIVIDUALS WITH DISABILITIES.—

“(A) INDIVIDUAL WITH A DISABILITY.—The term ‘individual with a disability’ means any individual of any age, race, or ethnicity—

“(i) who has a disability; and

“(ii) who is or would be enabled by an assistive technology device or an assistive technology service to minimize deterioration in functioning, to maintain a level of functioning, or to achieve a greater level of functioning in any major life activity.

“(B) INDIVIDUALS WITH DISABILITIES.—The term ‘individuals with disabilities’ means more than 1 individual with a disability.

“(11) INSTITUTION OF HIGHER EDUCATION.—The term ‘institution of higher education’ has the meaning given such term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)), and includes a community college receiving funding under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 et seq.).

“(12) PROTECTION AND ADVOCACY SERVICES.—The term ‘protection and advocacy services’ means services that—

“(A) are described in subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.), the Protection and Advocacy for Individuals with Mental Illness Act (42 U.S.C. 10801 et seq.), or section 509 of the Rehabilitation Act of 1973 (29 U.S.C. 794e); and

“(B) assist individuals with disabilities with respect to assistive technology devices and assistive technology services.

“(13) SECRETARY.—The term ‘Secretary’ means the Secretary of Education.

“(14) STATE.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘State’ means each of the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

“(B) OUTLYING AREAS.—In section 4(b):

“(i) OUTLYING AREA.—The term ‘outlying area’ means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

“(ii) STATE.—The term ‘State’ does not include the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

“(15) STATE ASSISTIVE TECHNOLOGY PROGRAM.—The term ‘State assistive technology program’ means a program authorized under section 4.

“(16) TARGETED INDIVIDUALS AND ENTITIES.—The term ‘targeted individuals and entities’ means—

“(A) individuals with disabilities of all ages and their family members, guardians, advocates, and authorized representatives;

“(B) underrepresented populations, including the aging workforce;

“(C) individuals who work for public or private entities (including centers for independent living described in part C of title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796f et seq.), insurers, or managed care providers) that have contact, or provide services to, with individuals with disabilities;

“(D) educators at all levels (including providers of early intervention services, elementary schools, secondary schools, community colleges, and vocational and other institutions of higher education) and related services personnel;

“(E) technology experts (including web designers and procurement officials);

“(F) health, allied health, and rehabilitation professionals and hospital employees (including discharge planners);

“(G) employers, especially small business employers, and providers of employment and training services;

“(H) entities that manufacture or sell assistive technology devices;

“(I) entities that carry out community programs designed to develop essential community services in rural and urban areas; and

“(J) other appropriate individuals and entities, as determined for a State by the State.

“(17) TECHNOLOGY-RELATED ASSISTANCE.—The term ‘technology-related assistance’ means assistance provided through capacity building and advocacy activities that accomplish the purposes described in section 2(b).

“(18) UNDERREPRESENTED POPULATION.—The term ‘underrepresented population’ means a population that is typically underrepresented in service provision, and includes populations such as persons who have low-incidence disabilities, persons who are minorities, poor persons, persons with limited English proficiency, older individuals, or persons from rural areas.

“(19) UNIVERSAL DESIGN.—The term ‘universal design’ means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly accessible (without requiring assistive technologies) and products and services that are interoperable with assistive technologies.

“SEC. 4. STATE GRANTS FOR ASSISTIVE TECHNOLOGY.

“(a) GRANTS TO STATES.—The Secretary shall award grants under subsection (b) to States to maintain comprehensive statewide programs of technology-related assistance to support programs that are designed to maximize the ability of individuals with disabilities across the human lifespan and across the wide array of disabilities, and their family members, guardians, advocates, and authorized representatives, to obtain assistive technology, and that are designed to increase access to assistive technology.

“(b) AMOUNT OF FINANCIAL ASSISTANCE.—

“(1) IN GENERAL.—From funds made available to carry out this section, the Secretary shall award a grant to each eligible State and eligible outlying area from an allotment determined in accordance with paragraph (2).

“(2) CALCULATION OF STATE GRANTS.—

“(A) BASE YEAR.—Except as provided in subparagraphs (B) and (C), the Secretary shall allot to each State and outlying area for a fiscal year an amount that is not less than the amount the State or outlying area received under the grants provided under section 101 of this Act (as in effect on the day before the date of enactment of the Assistive Technology Act of 2004) for fiscal year 2004.

“(B) RATABLE REDUCTION.—

“(i) IN GENERAL.—If funds made available to carry out this section for any fiscal year are insufficient to make the allotments required for each State and outlying area under subparagraph (A) for such fiscal year, the Secretary shall ratably reduce the allotments for such fiscal year.

“(ii) ADDITIONAL FUNDS.—If, after the Secretary makes the reductions described in clause

(i), additional funds become available to carry out this section for the fiscal year, the Secretary shall ratably increase the allotments, until the Secretary has allotted the entire base year amount.

"(C) HIGHER APPROPRIATION YEARS.—Except as provided in subparagraph (D), for a fiscal year for which the amount of funds made available to carry out this section is greater than the base year amount, the Secretary shall—

"(i) make the allotments described in subparagraph (A);

"(ii) from a portion of the remainder of the funds after the Secretary makes the allotments described in clause (i), the Secretary shall—

"(I) from 50 percent of the portion, allot to each State or outlying area an equal amount; and

"(II) from 50 percent of the portion, allot to each State or outlying area an amount that bears the same relationship to such 50 percent as the population of the State or outlying area bears to the population of all States and outlying areas,

until each State has received an allotment of not less than $410,000 and each outlying area has received an allotment of $125,000 under clause (i) and this clause;

"(iii) from the remainder of the funds after the Secretary makes the allotments described in clause (ii), the Secretary shall—

"(I) from 80 percent of the remainder allot to each State an amount that bears the same relationship to such 80 percent as the population of the State bears to the population of all States; and

"(II) from 20 percent of the remainder, allot to each State an equal amount.

"(D) SPECIAL RULE FOR FISCAL YEAR 2005.—Notwithstanding subparagraph (C), if the amount of funds made available to carry out this section for fiscal year 2005 is greater than the base year amount, the Secretary may award grants on a competitive basis for periods of 1 year to States or outlying areas in accordance with the requirements of title III of this Act (as in effect on the day before the date of enactment of the Assistive Technology Act of 2004) to develop, support, expand, or administer an alternative financing program.

"(E) BASE YEAR AMOUNT.—In this paragraph, the term 'base year amount' means the total amount received by all States and outlying areas under the grants described in subparagraph (A) for fiscal year 2004.

"(c) LEAD AGENCY, IMPLEMENTING ENTITY, AND ADVISORY COUNCIL.—

"(1) LEAD AGENCY AND IMPLEMENTING ENTITY.—

"(A) LEAD AGENCY.—

"(i) IN GENERAL.—The Governor of a State shall designate a public agency as a lead agency—

"(I) to control and administer the funds made available through the grant awarded to the State under this section; and

"(II) to submit the application described in subsection (d) on behalf of the State, to ensure conformance with Federal and State accounting requirements.

"(ii) DUTIES.—The duties of the lead agency shall include—

"(I) preparing the application described in subsection (d) and carrying out State activities described in that application, including making programmatic and resource allocation decisions necessary to implement the comprehensive statewide program of technology-related assistance;

"(II) coordinating the activities of the comprehensive statewide program of technology-related assistance among public and private entities, including coordinating efforts related to entering into interagency agreements, and maintaining and evaluating the program; and

"(III) coordinating efforts related to the active, timely, and meaningful participation by individuals with disabilities and their family members, guardians, advocates, or authorized representatives, and other appropriate individuals, with respect to activities carried out through the grant.

"(B) IMPLEMENTING ENTITY.—The Governor may designate an agency, office, or other entity to carry out State activities under this section (referred to in this section as the 'implementing entity'), if such implementing entity is different from the lead agency. The implementing agency shall carry out responsibilities under this Act through a subcontract or another administrative agreement with the lead agency.

"(C) CHANGE IN AGENCY OR ENTITY.—

"(i) IN GENERAL.—On obtaining the approval of the Secretary, the Governor may redesignate the lead agency, or the implementing entity, if the Governor shows to the Secretary good cause why the entity designated as the lead agency, or the implementing entity, respectively, should not serve as that agency or entity, respectively. The Governor shall make the showing in the application described in subsection (d).

"(ii) CONSTRUCTION.—Nothing in this paragraph shall be construed to require the Governor of a State to change the lead agency or implementing entity of the State to an agency other than the lead agency or implementing entity of such State as of the date of enactment of the Assistive Technology Act of 2004.

"(2) ADVISORY COUNCIL.—

"(A) IN GENERAL.—There shall be established an advisory council to provide consumer-responsive, consumer-driven advice to the State for, planning of, implementation of, and evaluation of the activities carried out through the grant, including setting the measurable goals described in subsection (d)(3).

"(B) COMPOSITION AND REPRESENTATION.—

"(i) COMPOSITION.—The advisory council shall be composed of—

"(I) individuals with disabilities that use assistive technology or the family members or guardians of the individuals;

"(II) a representative of the designated State agency, as defined in section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705) and the State agency for individuals who are blind (within the meaning of section 101 of that Act (29 U.S.C. 721)), if such agency is separate;

"(III) a representative of a State center for independent living described in part C of title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796f et seq.);

"(IV) a representative of the State workforce investment board established under section 111 of the Workforce Investment Act of 1998 (29 U.S.C. 2821);

"(V) a representative of the State educational agency, as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801); and

"(VI) representatives of other State agencies, public agencies, or private organizations, as determined by the State.

"(ii) MAJORITY.—

"(I) IN GENERAL.—A majority, not less than 51 percent, of the members of the advisory council, shall be members appointed under clause (i)(I).

"(II) REPRESENTATIVES OF AGENCIES.—Members appointed under subclauses (II) through (VI) of clause (i) shall not count toward the majority membership requirement established in subclause (I).

"(iii) REPRESENTATION.—The advisory council shall be geographically representative of the State and reflect the diversity of the State with respect to race, ethnicity, types of disabilities across the age span, and users of types of services that an individual with a disability may receive.

"(C) EXPENSES.—The members of the advisory council shall receive no compensation for their service on the advisory council, but shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of official duties for the advisory council.

"(D) PERIOD.—The members of the State advisory council shall be appointed not later than 120 days after the date of enactment of the Assistive Technology Act of 2004.

"(E) IMPACT ON EXISTING STATUTES, RULES, OR POLICIES.—Nothing in this paragraph shall be construed to affect State statutes, rules, or official policies relating to advisory bodies for State assistive technology programs or require changes to governing bodies of incorporated agencies who carry out State assistive technology programs.

"(d) APPLICATION.—

"(1) IN GENERAL.—Any State that desires to receive a grant under this section shall submit an application to the Secretary, at such time, in such manner, and containing such information as the Secretary may require.

"(2) LEAD AGENCY AND IMPLEMENTING ENTITY.—The application shall contain information identifying and describing the lead agency referred to in subsection (c)(1)(A). The application shall contain information identifying and describing the implementing entity referred to in subsection (c)(1)(B), if the Governor of the State designates such an entity.

"(3) MEASURABLE GOALS.—The application shall include—

"(A) measurable goals, and a timeline for meeting the goals, that the State has set for addressing the assistive technology needs of individuals with disabilities in the State related to—

"(i) education, including goals involving the provision of assistive technology to individuals with disabilities who receive services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.);

"(ii) employment, including goals involving the State vocational rehabilitation program carried out under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.);

"(iii) telecommunication and information technology; and

"(iv) community living; and

"(B) information describing how the State will quantifiably measure the goals to determine whether the goals have been achieved.

"(4) INVOLVEMENT OF PUBLIC AND PRIVATE ENTITIES.—The application shall describe how various public and private entities were involved in the development of the application and will be involved in the implementation of the activities to be carried out through the grant, including—

"(A) in cases determined to be appropriate by the State, a description of the nature and extent of resources that will be committed by public and private collaborators to assist in accomplishing identified goals; and

"(B) a description of the mechanisms established to ensure coordination of activities and collaboration between the implementing entity, if any, and the State.

"(5) IMPLEMENTATION.—The application shall include a description of—

"(A) how the State will implement each of the required activities described in subsection (e), except as provided in subsection (e)(6)(A); and

"(B) how the State will allocate and utilize grant funds to implement the activities, including describing proposed budget allocations and planned procedures for tracking expenditures for activities described in paragraphs (2) and (3) of subsection (e).

"(6) ASSURANCES.—The application shall include assurances that—

"(A) the State will annually collect data related to the required activities implemented by the State under this section in order to prepare

the progress reports required under subsection (f);

"(B) funds received through the grant—

"(i) will be expended in accordance with this section; and

"(ii) will be used to supplement, and not supplant, funds available from other sources for technology-related assistance, including the provision of assistive technology devices and assistive technology services;

"(C) the lead agency will control and administer the funds received through the grant;

"(D) the State will adopt such fiscal control and accounting procedures as may be necessary to ensure proper disbursement of and accounting for the funds received through the grant;

"(E) the physical facility of the lead agency and implementing entity, if any, meets the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) regarding accessibility for individuals with disabilities;

"(F) a public agency or an individual with a disability holds title to any property purchased with funds received under the grant and administers that property;

"(G) activities carried out in the State that are authorized under this Act, and supported by Federal funds received under this Act, will comply with the standards established by the Architectural and Transportation Barriers Compliance Board under section 508 of the Rehabilitation Act of 1973 (20 U.S.C. 794d); and

"(H) the State will—

"(i) prepare reports to the Secretary in such form and containing such information as the Secretary may require to carry out the Secretary's functions under this Act; and

"(ii) keep such records and allow access to such records as the Secretary may require to ensure the correctness and verification of information provided to the Secretary under this subparagraph.

"(7) STATE SUPPORT.—The application shall include a description of the activities described in paragraphs (2) and (3) of subsection (e) that the State will support with State funds.

"(e) USE OF FUNDS.—

"(1) IN GENERAL.—

"(A) REQUIRED ACTIVITIES.—Except as provided in subparagraph (B) and paragraph (6), any State that receives a grant under this section shall use a portion of the funds made available through the grant to carry out activities described in paragraphs (2) and (3).

"(B) STATE OR NON-FEDERAL FINANCIAL SUPPORT.—A State shall not be required to use a portion of the funds made available through the grant to carry out the category of activities described in subparagraph (A), (B), (C), or (D) of paragraph (2) if, in that State—

"(i) financial support is provided from State or other non-Federal resources or entities for that category of activities; and

"(ii) the amount of the financial support is comparable to, or greater than, the amount of the portion of the funds made available through the grant that the State would have expended for that category of activities, in the absence of this subparagraph.

"(2) STATE-LEVEL ACTIVITIES.—

"(A) STATE FINANCING ACTIVITIES.—The State shall support State financing activities to increase access to, and funding for, assistive technology devices and assistive technology services (which shall not include direct payment for such a device or service for an individual with a disability but may include support and administration of a program to provide such payment), including development of systems to provide and pay for such devices and services, for targeted individuals and entities described in section 3(16)(A), including—

"(i) support for the development of systems for the purchase, lease, or other acquisition of, or payment for, assistive technology devices and assistive technology services; or

"(ii) support for the development of State-financed or privately financed alternative financing systems of subsidies (which may include conducting an initial 1-year feasibility study of, improving, administering, operating, providing capital for, or collaborating with an entity with respect to, such a system) for the provision of assistive technology devices, such as—

"(I) a low-interest loan fund;

"(II) an interest buy-down program;

"(III) a revolving loan fund;

"(IV) a loan guarantee or insurance program;

"(V) a program providing for the purchase, lease, or other acquisition of assistive technology devices or assistive technology services; or

"(VI) another mechanism that is approved by the Secretary.

"(B) DEVICE REUTILIZATION PROGRAMS.—The State shall directly, or in collaboration with public or private entities, carry out assistive technology device reutilization programs that provide for the exchange, repair, recycling, or other reutilization of assistive technology devices, which may include redistribution through device sales, loans, rentals, or donations.

"(C) DEVICE LOAN PROGRAMS.—The State shall directly, or in collaboration with public or private entities, carry out device loan programs that provide short-term loans of assistive technology devices to individuals, employers, public agencies, or others seeking to meet the needs of targeted individuals and entities, including others seeking to comply with the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

"(D) DEVICE DEMONSTRATIONS.—

"(i) IN GENERAL.—The State shall directly, or in collaboration with public and private entities, such as one-stop partners, as defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801), demonstrate a variety of assistive technology devices and assistive technology services (including assisting individuals in making informed choices regarding, and providing experiences with, the devices and services), using personnel who are familiar with such devices and services and their applications.

"(ii) COMPREHENSIVE INFORMATION.—The State shall directly, or through referrals, provide to individuals, to the extent practicable, comprehensive information about State and local assistive technology venders, providers, and repair services.

"(3) STATE LEADERSHIP ACTIVITIES.—

"(A) IN GENERAL.—A State that receives a grant under this section shall use a portion of not more than 40 percent of the funds made available through the grant to carry out the activities described in subparagraph (B). From that portion, the State shall use at least 5 percent of the portion for activities described in subparagraph (B)(i)(III).

"(B) REQUIRED ACTIVITIES.—

"(i) TRAINING AND TECHNICAL ASSISTANCE.—

"(I) IN GENERAL.—The State shall directly, or provide support to public or private entities with demonstrated expertise in collaborating with public or private agencies that serve individuals with disabilities, to develop and disseminate training materials, conduct training, and provide technical assistance, for individuals from local settings statewide, including representatives of State and local educational agencies, other State and local agencies, early intervention programs, adult service programs, hospitals and other health care facilities, institutions of higher education, and businesses.

"(II) AUTHORIZED ACTIVITIES.—In carrying out activities under subclause (I), the State shall carry out activities that enhance the knowledge, skills, and competencies of individuals from local settings described in subclause (I), which may include—

"(aa) general awareness training on the benefits of assistive technology and the Federal, State, and private funding sources available to assist targeted individuals and entities in acquiring assistive technology;

"(bb) skills-development training in assessing the need for assistive technology devices and assistive technology services;

"(cc) training to ensure the appropriate application and use of assistive technology devices, assistive technology services, and accessible technology for e-government functions;

"(dd) training in the importance of multiple approaches to assessment and implementation necessary to meet the individualized needs of individuals with disabilities; and

"(ee) technical training on integrating assistive technology into the development and implementation of service plans, including any education, health, discharge, Olmstead, employment, or other plan required under Federal or State law.

"(III) TRANSITION ASSISTANCE TO INDIVIDUALS WITH DISABILITIES.—The State shall directly, or provide support to public or private entities to, develop and disseminate training materials, conduct training, facilitate access to assistive technology, and provide technical assistance, to assist—

"(aa) students with disabilities, within the meaning of the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), that receive transition services; and

"(bb) adults who are individuals with disabilities maintaining or transitioning to community living.

"(ii) PUBLIC-AWARENESS ACTIVITIES.—

"(I) IN GENERAL.—The State shall conduct public-awareness activities designed to provide information to targeted individuals and entities relating to the availability, benefits, appropriateness, and costs of assistive technology devices and assistive technology services, including—

"(aa) the development of procedures for providing direct communication between providers of assistive technology and targeted individuals and entities, which may include partnerships with entities in the statewide and local workforce investment systems established under the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.), State vocational rehabilitation centers, public and private employers, or elementary and secondary public schools;

"(bb) the development and dissemination, to targeted individuals and entities, of information about State efforts related to assistive technology; and

"(cc) the distribution of materials to appropriate public and private agencies that provide social, medical, educational, employment, and transportation services to individuals with disabilities.

"(II) COLLABORATION.—The State shall collaborate with entities that receive awards under paragraphs (1) and (3) of section 6(b) to carry out public-awareness activities focusing on infants, toddlers, children, transition-age youth, employment-age adults, seniors, and employers.

"(III) STATEWIDE INFORMATION AND REFERRAL SYSTEM.—

"(aa) IN GENERAL.—The State shall directly, or in collaboration with public or private (such as nonprofit) entities, provide for the continuation and enhancement of a statewide information and referral system designed to meet the needs of targeted individuals and entities.

"(bb) CONTENT.—The system shall deliver information on assistive technology devices, assistive technology services (with specific data regarding provider availability within the State),

and the availability of resources, including funding through public and private sources, to obtain assistive technology devices and assistive technology services. The system shall also deliver information on the benefits of assistive technology devices and assistive technology services with respect to enhancing the capacity of individuals with disabilities of all ages to perform activities of daily living.

"(iii) COORDINATION AND COLLABORATION.—The State shall coordinate activities described in paragraph (2) and this paragraph, among public and private entities that are responsible for policies, procedures, or funding for the provision of assistive technology devices and assistive technology services to individuals with disabilities, service providers, and others to improve access to assistive technology devices and assistive technology services for individuals with disabilities of all ages in the State.

"(4) INDIRECT COSTS.—Not more than 10 percent of the funds made available through a grant to a State under this section may be used for indirect costs.

"(5) PROHIBITION.—Funds made available through a grant to a State under this section shall not be used for direct payment for an assistive technology device for an individual with a disability.

"(6) STATE FLEXIBILITY.—

"(A) IN GENERAL.—Notwithstanding paragraph (1)(A) and subject to subparagraph (B), a State may use funds that the State receives under a grant awarded under this section to carry out any 2 or more of the activities described in paragraph (2).

"(B) SPECIAL RULE.—Notwithstanding paragraph (3)(A), any State that exercises its authority under subparagraph (A)—

"(i) shall carry out each of the required activities described in paragraph (3)(B); and

"(ii) shall use not more than 30 percent of the funds made available through the grant to carry out the activities described in paragraph (3)(B).

"(f) ANNUAL PROGRESS REPORTS.—

"(1) DATA COLLECTION.—States shall participate in data collection as required by law, including data collection required for preparation of the reports described in paragraph (2).

"(2) REPORTS.—

"(A) IN GENERAL.—Each State shall prepare and submit to the Secretary an annual progress report on the activities funded under this Act, at such time, and in such manner, as the Secretary may require.

"(B) CONTENTS.—The report shall include data collected pursuant to this section. The report shall document, with respect to activities carried out under this section in the State—

"(i) the type of State financing activities described in subsection (e)(2)(A) used by the State;

"(ii) the amount and type of assistance given to consumers of the State financing activities described in subsection (e)(2)(A) (who shall be classified by type of assistive technology device or assistive technology service financed through the State financing activities, and geographic distribution within the State), including—

"(I) the number of applications for assistance received;

"(II) the number of applications approved and rejected;

"(III) the default rate for the financing activities;

"(IV) the range and average interest rate for the financing activities;

"(V) the range and average income of approved applicants for the financing activities; and

"(VI) the types and dollar amounts of assistive technology financed;

"(iii) the number, type, and length of time of loans of assistive technology devices provided to individuals with disabilities, employers, public agencies, or public accommodations through the device loan program described in subsection (e)(2)(C), and an analysis of the individuals with disabilities who have benefited from the device loan program;

"(iv) the number, type, estimated value, and scope of assistive technology devices exchanged, repaired, recycled, or reutilized (including redistributed through device sales, loans, rentals, or donations) through the device reutilization program described in subsection (e)(2)(B), and an analysis of the individuals with disabilities that have benefited from the device reutilization program;

"(v) the number and type of device demonstrations and referrals provided under subsection (e)(2)(D), and an analysis of individuals with disabilities who have benefited from the demonstrations and referrals;

"(vi)(I) the number and general characteristics of individuals who participated in training under subsection (e)(3)(B)(i) (such as individuals with disabilities, parents, educators, employers, providers of employment services, health care workers, counselors, other service providers, or vendors) and the topics of such training; and

"(II) to the extent practicable, the geographic distribution of individuals who participated in the training;

"(vii) the frequency of provision and nature of technical assistance provided to State and local agencies and other entities;

"(viii) the number of individuals assisted through the public-awareness activities and statewide information and referral system described in subsection (e)(3)(B)(ii);

"(ix) the outcomes of any improvement initiatives carried out by the State as a result of activities funded under this section, including a description of any written policies, practices, and procedures that the State has developed and implemented regarding access to, provision of, and funding for, assistive technology devices, and assistive technology services, in the contexts of education, health care, employment, community living, and information technology and telecommunications, including e-government;

"(x) the source of leveraged funding or other contributed resources, including resources provided through subcontracts or other collaborative resource-sharing agreements, from and with public and private entities to carry out State activities described in subsection (e)(3)(B)(iii), the number of individuals served with the contributed resources for which information is not reported under clauses (i) through (ix) or clause (xi) or (xii), and other outcomes accomplished as a result of such activities carried out with the contributed resources; and

"(xi) the level of customer satisfaction with the services provided.

"SEC. 5. STATE GRANTS FOR PROTECTION AND ADVOCACY SERVICES RELATED TO ASSISTIVE TECHNOLOGY.

"(a) GRANTS.—

"(1) IN GENERAL.—The Secretary shall make grants under subsection (b) to protection and advocacy systems in each State for the purpose of enabling such systems to assist in the acquisition, utilization, or maintenance of assistive technology devices or assistive technology services for individuals with disabilities.

"(2) GENERAL AUTHORITIES.—In providing such assistance, protection and advocacy systems shall have the same general authorities as the systems are afforded under subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.), as determined by the Secretary.

"(b) GRANTS.—

"(1) RESERVATION.—For each fiscal year, the Secretary shall reserve such sums as may be necessary to carry out paragraph (4).

"(2) POPULATION BASIS.—From the funds appropriated under section 8(b) for a fiscal year and remaining after the reservation required by paragraph (1) has been made, the Secretary shall make a grant to a protection and advocacy system within each State in an amount bearing the same ratio to the remaining funds as the population of the State bears to the population of all States.

"(3) MINIMUMS.—Subject to the availability of appropriations, the amount of a grant to a protection and advocacy system under paragraph (2) for a fiscal year shall—

"(A) in the case of a protection and advocacy system located in American Samoa, Guam, the United States Virgin Islands, or the Commonwealth of the Northern Mariana Islands, not be less than $30,000; and

"(B) in the case of a protection and advocacy system located in a State not described in subparagraph (A), not be less than $50,000.

"(4) PAYMENT TO THE SYSTEM SERVING THE AMERICAN INDIAN CONSORTIUM.—

"(A) IN GENERAL.—The Secretary shall make grants to the protection and advocacy system serving the American Indian Consortium to provide services in accordance with this section.

"(B) AMOUNT OF GRANTS.—The amount of such grants shall be the same as the amount provided under paragraph (3)(A).

"(c) DIRECT PAYMENT.—Notwithstanding any other provision of law, the Secretary shall pay directly to any protection and advocacy system that complies with this section, the total amount of the grant made for such system under this section, unless the system provides otherwise for payment of the grant amount.

"(d) CERTAIN STATES.—

"(1) GRANT TO LEAD AGENCY.—Notwithstanding any other provision of this section, with respect to a State that, on November 12, 1998, was described in section 102(f)(1) of the Technology-Related Assistance for Individuals With Disabilities Act of 1988, the Secretary shall pay the amount of the grant described in subsection (a), and made under subsection (b), to the lead agency designated under section 4(c)(1) for the State.

"(2) DISTRIBUTION OF FUNDS.—A lead agency to which a grant amount is paid under paragraph (1) shall determine the manner in which funds made available through the grant will be allocated among the entities that were providing protection and advocacy services in that State on the date described in such paragraph, and shall distribute funds to such entities. In distributing such funds, the lead agency shall not establish any additional eligibility or procedural requirements for an entity in the State that supports protection and advocacy services through a protection and advocacy system. Such an entity shall comply with the same requirements (including reporting and enforcement requirements) as any other entity that receives funding under this section.

"(3) APPLICATION OF PROVISIONS.—Except as provided in this subsection, the provisions of this section shall apply to the grant in the same manner, and to the same extent, as the provisions apply to a grant to a system.

"(e) CARRYOVER.—Any amount paid to an eligible system for a fiscal year under this section that remains unobligated at the end of such fiscal year shall remain available to such system for obligation during the subsequent fiscal year. Program income generated from such amount shall remain available for 2 additional fiscal years after the year in which such amount was paid to an eligible system and may only be used to improve the awareness of individuals with disabilities about the accessibility of assistive technology and assist such individuals in the acquisition, utilization, or maintenance of assistive technology devices or assistive technology services.

"(f) REPORT TO SECRETARY.—An entity that receives a grant under this section shall annually prepare and submit to the Secretary a report that contains such information as the Secretary may require, including documentation of the progress of the entity in—

"(1) conducting consumer-responsive activities, including activities that will lead to increased access, for individuals with disabilities, to funding for assistive technology devices and assistive technology services;

"(2) engaging in informal advocacy to assist in securing assistive technology devices and assistive technology services for individuals with disabilities;

"(3) engaging in formal representation for individuals with disabilities to secure systems change, and in advocacy activities to secure assistive technology devices and assistive technology services for individuals with disabilities;

"(4) developing and implementing strategies to enhance the long-term abilities of individuals with disabilities and their family members, guardians, advocates, and authorized representatives to advocate the provision of assistive technology devices and assistive technology services to which the individuals with disabilities are entitled under law other than this Act;

"(5) coordinating activities with protection and advocacy services funded through sources other than this Act, and coordinating activities with the capacity building and advocacy activities carried out by the lead agency; and

"(6) effectively allocating funds made available under this section to improve the awareness of individuals with disabilities about the accessibility of assistive technology and assist such individuals in the acquisition, utilization, or maintenance of assistive technology devices or assistive technology services.

"(g) REPORTS AND UPDATES TO STATE AGENCIES.—An entity that receives a grant under this section shall prepare and submit to the lead agency of the State designated under section 4(c)(1) the report described in subsection (f) and quarterly updates concerning the activities described in subsection (f).

"(h) COORDINATION.—On making a grant under this section to an entity in a State, the Secretary shall solicit and consider the opinions of the lead agency of the State with respect to efforts at coordination of activities, collaboration, and promoting outcomes between the lead agency and the entity that receives the grant under this section.

"SEC. 6. NATIONAL ACTIVITIES.

"(a) IN GENERAL.—In order to support activities designed to improve the administration of this Act, the Secretary, under subsection (b)—

"(1) may award, on a competitive basis, grants, contracts, and cooperative agreements to entities to support activities described in paragraphs (1) and (2) of subsection (b); and

"(2) shall award, on a competitive basis, grants, contracts, and cooperative agreements to entities to support activities described in paragraphs (3), (4), and (5) of subsection (b).

"(b) AUTHORIZED ACTIVITIES.—

"(1) NATIONAL PUBLIC-AWARENESS TOOLKIT.—

"(A) NATIONAL PUBLIC-AWARENESS TOOLKIT.—The Secretary may award a 1-time grant, contract, or cooperative agreement to an eligible entity to support a training and technical assistance program that—

"(i) expands public-awareness efforts to reach targeted individuals and entities;

"(ii) contains appropriate accessible multimedia materials to reach targeted individuals and entities, for dissemination to State assistive technology programs; and

"(iii) in coordination with State assistive technology programs, provides meaningful and up-to-date information to targeted individuals and entities about the availability of assistive technology devices and assistive technology services.

"(B) ELIGIBLE ENTITY.—To be eligible to receive the grant, contract, or cooperative agreement, an entity shall develop a partnership that—

"(i) shall consist of—

"(I) a lead agency or implementing entity for a State assistive technology program or an organization or association that represents implementing entities for State assistive technology programs;

"(II) a private or public entity from the media industry;

"(III) a private entity from the assistive technology industry; and

"(IV) a private employer or an organization or association that represents private employers;

"(ii) may include other entities determined by the Secretary to be necessary; and

"(iii) may include other entities determined by the applicant to be appropriate.

"(2) RESEARCH AND DEVELOPMENT.—

"(A) IN GENERAL.—The Secretary may award grants, contracts, or cooperative agreements to eligible entities to carry out research and development of assistive technology that consists of—

"(i) developing standards for reliability and accessibility of assistive technology, and standards for interoperability (including open standards) of assistive technology with information technology, telecommunications products, and other assistive technology; or

"(ii) developing assistive technology that benefits individuals with disabilities or developing technologies or practices that result in the adaptation, maintenance, servicing, or improvement of assistive technology devices.

"(B) ELIGIBLE ENTITIES.—Entities eligible to receive a grant, contract, or cooperative agreement under this paragraph shall include—

"(i) providers of assistive technology services and assistive technology devices;

"(ii) institutions of higher education, including University Centers for Excellence in Developmental Disabilities Education, Research, and Service authorized under subtitle D of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15061 et seq.), or such institutions offering rehabilitation engineering programs, computer science programs, or information technology programs;

"(iii) manufacturers of assistive technology devices; and

"(iv) professionals, individuals, organizations, and agencies providing services or employment to individuals with disabilities.

"(C) COLLABORATION.—An entity that receives a grant, contract, or cooperative agreement under this paragraph shall, in developing and implementing the project carried out through the grant, contract, or cooperative agreement coordinate activities with the lead agency for the State assistive technology program (or a national organization that represents such programs) and the State advisory council described in section 4(c)(2) (or a national organization that represents such councils).

"(3) STATE TRAINING AND TECHNICAL ASSISTANCE.—

"(A) TRAINING AND TECHNICAL ASSISTANCE EFFORTS.—The Secretary shall award a grant, contract, or cooperative agreement to an entity to support a training and technical assistance program that—

"(i) addresses State-specific information requests concerning assistive technology from entities funded under this Act and public entities not funded under this Act, including—

"(I) requests for information on effective approaches to Federal-State coordination of programs for individuals with disabilities, related to improving funding for or access to assistive technology devices and assistive technology services for individuals with disabilities of all ages;

"(II) requests for state-of-the-art, or model, Federal, State, and local laws, regulations, policies, practices, procedures, and organizational structures, that facilitate, and overcome barriers to, funding for, and access to, assistive technology devices and assistive technology services;

"(III) requests for information on effective approaches to developing, implementing, evaluating, and sustaining activities described in sections 4 and 5 and related to improving funding for or access to assistive technology devices and assistive technology services for individuals with disabilities of all ages, and requests for assistance in developing corrective action plans;

"(IV) requests for examples of policies, practices, procedures, regulations, or judicial decisions that have enhanced or may enhance access to funding for assistive technology devices and assistive technology services for individuals with disabilities;

"(V) requests for information on effective approaches to the development of consumer-controlled systems that increase access to, funding for, and awareness of, assistive technology devices and assistive technology services; and

"(VI) other requests for training and technical assistance from entities funded under this Act and public and private entities not funded under this Act;

"(ii) assists targeted individuals and entities by disseminating information about—

"(I) Federal, State, and local laws, regulations, policies, practices, procedures, and organizational structures, that facilitate, and overcome barriers to, funding for, and access to, assistive technology devices and assistive technology services, to promote fuller independence, productivity, and inclusion in society for individuals with disabilities of all ages; and

"(II) technical assistance activities undertaken under clause (i);

"(iii) provides State-specific, regional, and national training and technical assistance concerning assistive technology to entities funded under this Act, other entities funded under this Act, and public and private entities not funded under this Act, including—

"(I) annually providing a forum for exchanging information concerning, and promoting program and policy improvements in, required activities of the State assistive technology programs;

"(II) facilitating onsite and electronic information sharing using state-of-the-art Internet technologies such as real-time online discussions, multipoint video conferencing, and web-based audio/video broadcasts, on emerging topics that affect State assistive technology programs;

"(III) convening experts from State assistive technology programs to discuss and make recommendations with regard to national emerging issues of importance to individuals with assistive technology needs;

"(IV) sharing best practice and evidence-based practices among State assistive technology programs;

"(V) maintaining an accessible website that includes a link to State assistive technology programs, appropriate Federal departments and agencies, and private associations and developing a national toll-free number that links callers from a State with the State assistive technology program in their State;

"(VI) developing or utilizing existing (as of the date of the award involved) model cooperative volume-purchasing mechanisms designed to reduce the financial costs of purchasing assistive technology for required and discretionary activities identified in section 4, and reducing duplication of activities among State assistive technology programs; and

"(VII) providing access to experts in the areas of banking, microlending, and finance, for entities funded under this Act, through site visits,

teleconferences, and other means, to ensure access to information for entities that are carrying out new programs or programs that are not making progress in achieving the objectives of the programs; and

"(iv) includes such other activities as the Secretary may require.

"(B) ELIGIBLE ENTITIES.—To be eligible to receive a grant, contract, or cooperative agreement under this paragraph, an entity shall have (directly or through grant or contract)—

"(i) experience and expertise in administering programs, including developing, implementing, and administering the required and discretionary activities described in sections 4 and 5, and providing technical assistance; and

"(ii) documented experience in and knowledge about banking, finance, and microlending.

"(C) COLLABORATION.—In developing and providing training and technical assistance under this paragraph, including activities identified as priorities, a recipient of a grant, contract, or cooperative agreement under this paragraph shall collaborate with other organizations, in particular—

"(i) organizations representing individuals with disabilities;

"(ii) national organizations representing State assistive technology programs;

"(iii) organizations representing State officials and agencies engaged in the delivery of assistive technology;

"(iv) the data-collection and reporting providers described in paragraph (5); and

"(v) other providers of national programs or programs of national significance funded under this Act.

"(4) NATIONAL INFORMATION INTERNET SYSTEM.—

"(A) IN GENERAL.—The Secretary shall award a grant, contract, or cooperative agreement to an entity to renovate, update, and maintain the National Public Internet Site established under this Act (as in effect on the day before the date of enactment of the Assistive Technology Act of 2004).

"(B) FEATURES OF INTERNET SITE.—The National Public Internet Site shall contain the following features:

"(i) AVAILABILITY OF INFORMATION AT ANY TIME.—The site shall be designed so that any member of the public may obtain information posted on the site at any time.

"(ii) INNOVATIVE AUTOMATED INTELLIGENT AGENT.—The site shall be constructed with an innovative automated intelligent agent that is a diagnostic tool for assisting users in problem definition and the selection of appropriate assistive technology devices and assistive technology services resources.

"(iii) RESOURCES.—

"(I) LIBRARY ON ASSISTIVE TECHNOLOGY.—The site shall include access to a comprehensive working library on assistive technology for all environments, including home, workplace, transportation, and other environments.

"(II) INFORMATION ON ACCOMMODATING INDIVIDUALS WITH DISABILITIES.—The site shall include access to evidence-based research and best practices concerning how assistive technology can be used to accommodate individuals with disabilities in the areas of education, employment, health care, community living, and telecommunications and information technology.

"(III) RESOURCES FOR A NUMBER OF DISABILITIES.—The site shall include resources relating to the largest possible number of disabilities, including resources relating to low-level reading skills.

"(iv) LINKS TO PRIVATE-SECTOR RESOURCES AND INFORMATION.—To the extent feasible, the site shall be linked to relevant private-sector resources and information, under agreements developed between the recipient of the grant, contract, or cooperative agreement and cooperating private-sector entities.

"(v) LINKS TO PUBLIC-SECTOR RESOURCES AND INFORMATION.—To the extent feasible, the site shall be linked to relevant public-sector resources and information, such as the Internet sites of the Office of Special Education and Rehabilitation Services of the Department of Education, the Office of Disability Employment Policy of the Department of Labor, the Small Business Administration, the Architectural and Transportation Barriers Compliance Board, the Technology Administration of the Department of Commerce, the Jobs Accommodation Network funded by the Office of Disability Employment Policy of the Department of Labor, and other relevant sites.

"(vi) MINIMUM LIBRARY COMPONENTS.—At a minimum, the site shall maintain updated information on—

"(I) State assistive technology program demonstration sites where individuals may try out assistive technology devices;

"(II) State assistive technology program device loan program sites where individuals may borrow assistive technology devices;

"(III) State assistive technology program device reutilization program sites;

"(IV) alternative financing programs or State financing systems operated through, or independently of, State assistive technology programs, and other sources of funding for assistive technology devices; and

"(V) various programs, including programs with tax credits, available to employers for hiring or accommodating employees who are individuals with disabilities.

"(C) ELIGIBLE ENTITY.—To be eligible to receive a grant, contract, or cooperative agreement under this paragraph, an entity shall be a nonprofit organization, for-profit organization, or institution of higher education, that—

"(i) emphasizes research and engineering;

"(ii) has a multidisciplinary research center; and

"(iii) has demonstrated expertise in—

"(I) working with assistive technology and intelligent agent interactive information dissemination systems;

"(II) managing libraries of assistive technology and disability-related resources;

"(III) delivering to individuals with disabilities education, information, and referral services, including technology-based curriculum-development services for adults with low-level reading skills;

"(IV) developing cooperative partnerships with the private sector, particularly with private-sector computer software, hardware, and Internet services entities; and

"(V) developing and designing advanced Internet sites.

"(5) DATA-COLLECTION AND REPORTING ASSISTANCE.—

"(A) IN GENERAL.—The Secretary shall award grants, contracts, and cooperative agreements to entities to assist the entities in carrying out State assistive technology programs in developing and implementing effective data-collection and reporting systems that—

"(i) focus on quantitative and qualitative data elements;

"(ii) measure the outcomes of the required activities described in section 4 that are implemented by the States and the progress of the States toward achieving the measurable goals described in section 4(d)(3);

"(iii) provide States with the necessary information required under this Act or by the Secretary for reports described in section 4(f)(2); and

"(iv) help measure the accrued benefits of the activities to individuals who need assistive technology.

"(B) ELIGIBLE ENTITIES.—To be eligible to receive a grant, contract, or cooperative agreement under this paragraph, an entity shall have personnel with—

"(i) documented experience and expertise in administering State assistive technology programs;

"(ii) experience in collecting and analyzing data associated with implementing required and discretionary activities;

"(iii) expertise necessary to identify additional data elements needed to provide comprehensive reporting of State activities and outcomes; and

"(iv) experience in utilizing data to provide annual reports to State policymakers.

"(c) APPLICATION.—To be eligible to receive a grant, contract, or cooperative agreement under this section, an entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

"(d) INPUT.—With respect to the activities described in subsection (b) to be funded under this section, including the national and regionally based training and technical assistance efforts carried out through the activities, in designing the activities the Secretary shall consider, and in providing the activities providers shall include, input of the directors of comprehensive statewide programs of technology-related assistance, directors of alternative financing programs, and other individuals the Secretary determines to be appropriate, especially—

"(1) individuals with disabilities who use assistive technology and understand the barriers to the acquisition of such technology and assistive technology services;

"(2) family members, guardians, advocates, and authorized representatives of such individuals;

"(3) individuals employed by protection and advocacy systems funded under section 5;

"(4) relevant employees from Federal departments and agencies, other than the Department of Education;

"(5) representatives of businesses; and

"(6) venders and public and private researchers and developers.

"SEC. 7. ADMINISTRATIVE PROVISIONS.

"(a) GENERAL ADMINISTRATION.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, the Assistant Secretary for Special Education and Rehabilitative Services of the Department of Education, acting through the Rehabilitation Services Administration, shall be responsible for the administration of this Act.

"(2) COLLABORATION.—The Assistant Secretary for Special Education and Rehabilitative Services shall consult with the Office of Special Education Programs, the Rehabilitation Services Administration, and the National Institute on Disability and Rehabilitation Research in the Office of Special Education and Rehabilitative Services, and appropriate Federal entities in the administration of this Act.

"(3) ADMINISTRATION.—In administering this Act, the Rehabilitation Services Administration shall ensure that programs funded under this Act will address the needs of individuals with disabilities of all ages, whether the individuals will use the assistive technology to obtain or maintain employment, to obtain education, or for other reasons.

"(4) ORDERLY TRANSITION.—

"(A) IN GENERAL.—The Secretary shall take such steps as the Secretary determines to be appropriate to provide for the orderly transition to, and implementation of, programs authorized by this Act, from programs authorized by the Assistive Technology Act of 1998, as in effect on the day before the date of enactment of the Assistive Technology Act of 2004.

"(B) CESSATION OF EFFECTIVENESS.—Subparagraph (A) ceases to be effective on the date that is 6 months after the date of enactment of the Assistive Technology Act of 2004.

"(b) REVIEW OF PARTICIPATING ENTITIES.—

"(1) IN GENERAL.—The Secretary shall assess the extent to which entities that receive grants under this Act are complying with the applicable requirements of this Act and achieving measurable goals that are consistent with the requirements of the grant programs under which the entities received the grants.

"(2) PROVISION OF INFORMATION.—To assist the Secretary in carrying out the responsibilities of the Secretary under this section, the Secretary may require States to provide relevant information, including the information required under subsection (d).

"(c) CORRECTIVE ACTION AND SANCTIONS.—

"(1) CORRECTIVE ACTION.—If the Secretary determines that an entity that receives a grant under this Act fails to substantially comply with the applicable requirements of this Act, or to make substantial progress toward achieving the measurable goals described in subsection (b)(1) with respect to the grant program, the Secretary shall assist the entity, through technical assistance funded under section 6 or other means, within 90 days after such determination, to develop a corrective action plan.

"(2) SANCTIONS.—If the entity fails to develop and comply with a corrective action plan described in paragraph (1) during a fiscal year, the entity shall be subject to 1 of the following corrective actions selected by the Secretary:

"(A) Partial or complete termination of funding under the grant program, until the entity develops and complies with such a plan.

"(B) Ineligibility to participate in the grant program in the following year.

"(C) Reduction in the amount of funding that may be used for indirect costs under section 4 for the following year.

"(D) Required redesignation of the lead agency designated under section 4(c)(1) or an entity responsible for administering the grant program.

"(3) APPEALS PROCEDURES.—The Secretary shall establish appeals procedures for entities that are determined to be in noncompliance with the applicable requirements of this Act, or have not made substantial progress toward achieving the measurable goals described in subsection (b)(1).

"(4) SECRETARIAL ACTION.—As part of the annual report required under subsection (d), the Secretary shall describe each such action taken under paragraph (1) or (2) and the outcomes of each such action.

"(5) PUBLIC NOTIFICATION.—The Secretary shall notify the public, by posting on the Internet website of the Department of Education, of each action taken by the Secretary under paragraph (1) or (2). As a part of such notification, the Secretary shall describe each such action taken under paragraph (1) or (2) and the outcomes of each such action.

"(d) ANNUAL REPORT TO CONGRESS.—

"(1) IN GENERAL.—Not later than December 31 of each year, the Secretary shall prepare, and submit to the President and to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate, a report on the activities funded under this Act to improve the access of individuals with disabilities to assistive technology devices and assistive technology services.

"(2) CONTENTS.—Such report shall include—

"(A) a compilation and summary of the information provided by the States in annual progress reports submitted under section 4(f); and

"(B) a summary of the State applications described in section 4(d) and an analysis of the progress of the States in meeting the measurable goals established in State applications under section 4(d)(3).

"(e) CONSTRUCTION.—Nothing in this section shall be construed to affect the enforcement authority of the Secretary, another Federal officer, or a court under part D of the General Education Provisions Act (20 U.S.C. 1234 et seq.) or other applicable law.

"(f) EFFECT ON OTHER ASSISTANCE.—This Act may not be construed as authorizing a Federal or State agency to reduce medical or other assistance available, or to alter eligibility for a benefit or service, under any other Federal law.

"(g) RULE.—The Assistive Technology Act of 1998 (as in effect on the day before the date of enactment of the Assistive Technology Act of 2004) shall apply to funds appropriated under the Assistive Technology Act of 1998 for fiscal year 2004.

"SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

"(a) STATE GRANTS FOR ASSISTIVE TECHNOLOGY AND NATIONAL ACTIVITIES.—

"(1) IN GENERAL.—There are authorized to be appropriated to carry out sections 4 and 6 such sums as may be necessary for each of fiscal years 2005 through 2010.

"(2) RESERVATION.—

"(A) DEFINITION.—In this paragraph, the term 'higher appropriation year' means a fiscal year for which the amount appropriated under paragraph (1) and made available to carry out section 4 is at least $665,000 greater than the amount that—

"(i) was appropriated under section 105 of this Act (as in effect on October 1, 2003) for fiscal year 2004; and

"(ii) was not reserved for grants under section 102 or 104 of this Act (as in effect on such date) for fiscal year 2004.

"(B) AMOUNT RESERVED FOR NATIONAL ACTIVITIES.—Of the amount appropriated under paragraph (1) for a fiscal year—

"(i) not more than $1,235,000 may be reserved to carry out section 6, except as provided in clause (ii); and

"(ii) for a higher appropriation year—

"(I) not more than $1,900,000 may be reserved to carry out section 6; and

"(II) of the amount so reserved, the portion exceeding $1,235,000 shall be used to carry out paragraphs (1) and (2) of section 6(b).

"(b) STATE GRANTS FOR PROTECTION AND ADVOCACY SERVICES RELATED TO ASSISTIVE TECHNOLOGY.—There are authorized to be appropriated to carry out section 5 $4,419,000 for fiscal year 2005 and such sums as may be necessary for each of fiscal years 2006 through 2010.".

SEC. 3. CONFORMING AMENDMENTS.

(a) DEVELOPMENTAL DISABILITIES ASSISTANCE AND BILL OF RIGHTS ACT OF 2000.—The Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.) is amended—

(1) in section 124(c)(3)(B), by striking "section 101 or 102 of the Assistive Technology Act of 1998 (29 U.S.C. 3011, 3012)" and inserting "section 4 or 5 of the Assistive Technology Act of 1998";

(2) in section 125(c)(5)(G)(i), by striking "section 101 or 102 of the Assistive Technology Act of 1998 (29 U.S.C. 3011, 3012)" and inserting "section 4 or 5 of the Assistive Technology Act of 1998";

(3) in section 143(a)(2)(D)(ii), by striking "section 101 or 102 of the Assistive Technology Act of 1998 (29 U.S.C. 3011, 3012)" and inserting "section 4 or 5 of the Assistive Technology Act of 1998"; and

(4) in section 154(a)(3)(E)(ii)(VI), by striking "section 101 or 102 of the Assistive Technology Act of 1998 (29 U.S.C. 3011, 3012)" and inserting "section 4 or 5 of the Assistive Technology Act of 1998".

(b) REHABILITATION ACT OF 1973.—The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) is amended—

(1) in section 203, by striking subsection (e) and inserting the following:

"(e) In this section—

"(1) the terms 'assistive technology' and 'universal design' have the meanings given the terms in section 3 of the Assistive Technology Act of 1998; and

"(2) the term 'targeted individuals' has the meaning given the term 'targeted individuals and entities' in section 3 of the Assistive Technology Act of 1998.";

(2) in section 401(c)(2), by striking "targeted individuals" and inserting "targeted individuals and entities"; and

(3) in section 502(d), by striking "targeted individuals" and inserting "targeted individuals and entities".

Mr. MCKEON (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. KILDEE. Mr. Speaker, I rise in strong support of H.R. 4278. The bill is the culmination of many months of bipartisan and bicameral efforts to reauthorize the Assistive Technology Act. This law is an important component in ensuring that individuals with disabilities can access assistive technology to attend school, maintain employment, and live independently.

As Members know, this bill is critically needed. This legislation finally ensures that State grant programs can count on a stable source of Federal funds to support their operations. The last reauthorization of the Assistive Technology Act in 1998 sunset the State grant program. For the past 3 years, many States have wondered whether a certain year would be their last year of Federal funding. This bill erases this doubt by ensuring that all States will be eligible for funding through 2010.

I want to mention the inclusion of the American Indian consortium as a funded protection and advocacy system under this legislation. Individuals with disabilities in Indian country are some of the most disadvantaged when it comes to the ability to access assistive technology. This bill will provide resources to this consortium to ensure the needs of Native Americans seeking assistive technology are represented. This provision alone will have a tremendously positive impact on Indian country.

The momentum behind this bill would not have been possible without a real bipartisan effort to move this bill. I want to thank Chairman BOEHNER and MCKEON and their staff for working closely with myself and my staff. I also want to thank Senators KENNEDY and GREGG and their staff for their hard work on this bill. We have truly created a bill that will improve the ability of individuals with disabilities to access assistive technology. This legislation is an excellent example of what we can accomplish if we put our efforts into working together.

Mr. MCKEON. Mr. Speaker, I rise today in support of H.R. 4278, the "Improving Access to Assistive Technology for Individuals with Disabilities Act of 2004." This legislation reauthorizes and reforms the Assistive Technology Act, which was recrated in 1988.

By providing seed money to establish statewide systems, the Federal Government has played an important role in helping States develop systems to provide access to assistive technology devices and services for individuals with disabilities. Since enactment, all 50 States, the District of Columbia, Puerto Rico, and the outlying areas have established systems of some design and scope. In 1998, we added the alternative financing program as a competitive grant program, and we have seen many States make wonderful progress in expanding the opportunities made available to individuals with disabilities.

The original law contained a sunset provision in which the funding for these activities would expire after 10 years. However, the program has continued to receive funds for the past 6 years, even though the initial 10 years were completed. It is necessary to reauthorize this act to ensure that these programs continue to meet the needs of individuals with disabilities. The Federal funds distributed to States over the last 16 years have allowed States to set up the needed infrastructure to support assistive technology systems. To continue the success of the assistive technology programs and to ensure that Federal money is used to best provide services to individuals with disabilities, significant reform of the Assistive Technology Act is needed.

This bill shifts the focus of the program to provide greater direct benefit to individuals with disabilities. Our goal is to help States get more assistive technology directly into the hands of individuals with disabilities. This new focus expands the reach of the State programs by moving away from support of administrative activities and emphasizing the importance of getting the technology itself to the individuals with disabilities that need it. I know that this will help States continue to make progress in their efforts to expand access to assistive technology, and that increasing numbers of individuals with disabilities will be able to participate in society more fully every day.

Although we are refocusing the program, we certainly recognize the importance of State flexibility, and our bill maintains that important element of the program. We direct States to focus their efforts on putting technology into the hands of individuals with disabilities, but allow them the freedom to decide how they would go about that and which efforts will work best in their State to accomplish that goal.

States have two options in regards to their expenditures of Federal funds. In one option, States could allocate 70 percent of the resources to State level activities and spend no more than 30 percent on State leadership activities. State level activities are more focused on directly giving individuals with disabilities assistive technology access and services, while State leadership activities are more administrative. Under this option, the States would have full flexibility to select the activities in each category that they would support.

In the other option, States could choose to spend 60 percent of the resources on State level activities and no more than 40 percent on State leadership activities. However, the State would be required to support two particular State level activities, the alternative financing program and the device loan program. I believe that the increased focus on State level activities coupled with the State flexibility will drastically improve the program and the assistance and services it provides to individuals with disabilities.

I am pleased with the changes that H.R. 4278 makes to the Assistive Technology Act, and I believe that they will greatly improve the lives of those affected by a disability. In crafting this legislation, we worked with our friends across the aisle, our friends in the disability community, and our State directors. I believe we have come up with a creative proposal that will give States significant flexiblity while also ensuring that the focus of the program does shift in the right direction. The reforms we have crafted in this bill respond to the concerns of the critics of this program, and will place the program on solid footing for continued and future success.

I would like to thank Mr. KILDEE and his staff, for the long hours that have gone into this process so far. I would also like to thank JIM RAMSTAD and JIM LANGEVIN for their support for this important legislation. As cochairs of the Disability Caucus, they know the importance of this legislation and I am glad to have their support today. I am very pleased with this bill, and I am glad to say we have been able to come together in a bipartisan way to improve this important program. I would also like to thank our friends in the disability community for working with us so diligently throughout this process. Your support for this legislation is valued and it is important that this has been such an open and deliberative process.

I strongly support H.R. 4278, the "Improving Access to Assistive Technology for Individuals with Disabilities Act of 2004," and I urge my colleagues to do the same.

The SPEAKER pro tempore. Is there objection to the original request of the gentleman from California?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MCKEON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 4278.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

APPOINTMENT OF CONFEREES ON H.R. 1350, IMPROVING EDUCATION RESULTS FOR CHILDREN WITH DISABILITIES ACT OF 2003

Mr. MCKEON. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 1350) reauthorize the Individuals with Disabilities Education Act, with a Senate amendment thereto, disagree to the Senate amendment and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California? The Chair hears none and, without objection, appoints the following conferees:

From the Committee on Education and the Workforce, for consideration of the House bill and the Senate amendment, and modifications committed to conference: Messrs. BOEHNER, CASTLE, EHLERS, KELLER, WILSON of South Carolina, GEORGE MILLER of California, Ms. WOOLSEY, and Mr. OWENS.

From the Committee on Energy and Commerce, for consideration of section 101 and title V of the Senate amendment, and modifications committed to conference: Messrs. BARTON of Texas, BILIRAKIS, and DINGELL.

From the Committee on the Judiciary, for consideration of section 205 of the House bill, and section 101 of the Senate amendment, and modifications committed to conference: Messrs. SENSENBRENNER, SMITH of Texas, and CONYERS.

There was no objection.

EXTENDING LIABILITY INDEMNIFICATION REGIME FOR COMMERCIAL SPACE TRANSPORTATION INDUSTRY

Mr. SMITH of Michigan. Mr. Speaker, I ask unanimous consent that the Committee on Science be discharged from further consideration of the bill (H.R. 5245) to extend the liability indemnification regime for the commercial space transportation industry, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The Clerk read the bill, as follows:

H.R. 5245

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. INDEMNIFICATION EXTENSION.

Section 70113(f) of title 49, United States Code, is amended by striking "December 31, 2004." and inserting "December 31, 2009.".

SEC. 2. STUDY.

Not later than 60 days after the date of enactment of this Act, the Secretary of Transportation shall enter into an arrangement with a nonprofit entity for the conduct of an independent comprehensive study of the liability risk sharing regime in the United States for commercial space transportation under section 70113 of title 49, United States Code. To ensure that Congress has a full analysis of the liability risk sharing regime, the study shall assess methods by which the current system could be eliminated, including an estimate of the time required to implement each of the methods assessed. The study shall assess whether any alternative steps would be needed to maintain a viable and competitive United States space transportation industry if the current regime were eliminated. In conducting the assessment under this section, input from commercial space transportation insurance experts shall be sought. The study also shall examine liability risk sharing in other nations with commercial launch capability and evaluate the direct and indirect impact that ending this regime would have on the competitiveness of the United States commercial space launch industry in relation to foreign commercial launch providers and on United States assured access to space.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SMITH of Michigan. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 5245.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

NATIONAL EARTHQUAKE HAZARDS REDUCTION PROGRAM REAUTHORIZATION ACT OF 2004

Mr. SMITH of Michigan. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2608) to reauthorize the National Earthquake Hazards Reduction Program, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I—EARTHQUAKE HAZARD REDUCTION
Sec. 101. Short title.
Sec. 102. Definitions.
Sec. 103. National earthquake hazards reduction program.
Sec. 104. Authorization of appropriations.
TITLE II—WINDSTORM IMPACT REDUCTION
Sec. 201. Short title.
Sec. 202. Findings.
Sec. 203. Definitions.
Sec. 204. National windstorm impact reduction program.
Sec. 205. National advisory committee on windstorm impact reduction.
Sec. 206. Savings clause.
Sec. 207. Authorization of appropriations.
Sec. 208. Biennial report.
Sec. 209. Coordination.
TITLE III—COMMERCIAL SPACE TRANSPORTATION
Sec. 301. Authorization of appropriations.

TITLE I—EARTHQUAKE HAZARD REDUCTION

SEC. 101. SHORT TITLE.

This title may be cited as the "National Earthquake Hazards Reduction Program Reauthorization Act of 2004".

SEC. 102. DEFINITIONS.

Section 4 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.) is amended by adding at the end the following new paragraphs:

"(8) The term 'Interagency Coordinating Committee' means the Interagency Coordinating Committee on Earthquake Hazards Reduction established under section 5(a).

"(9) The term 'Advisory Committee' means the Advisory Committee established under section 5(a)(5).".

SEC. 103. NATIONAL EARTHQUAKE HAZARDS REDUCTION PROGRAM.

Section 5 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7704(b)) is amended—

(1) by amending subsection (a) to read as follows:

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—There is established the National Earthquake Hazards Reduction Program.

"(2) PROGRAM ACTIVITIES.—The activities of the Program shall be designed to—

"(A) develop effective measures for earthquake hazards reduction;

"(B) promote the adoption of earthquake hazards reduction measures by Federal, State, and local governments, national standards and model code organizations, architects and engineers, building owners, and others with a role in planning and constructing buildings, structures, and lifelines through—

"(i) grants, contracts, cooperative agreements, and technical assistance;

"(ii) development of standards, guidelines, and voluntary consensus codes for earthquake hazards reduction for buildings, structures, and lifelines;

"(iii) development and maintenance of a repository of information, including technical data, on seismic risk and hazards reduction; and

"(C) improve the understanding of earthquakes and their effects on communities, buildings, structures, and lifelines, through interdisciplinary research that involves engineering, natural sciences, and social, economic, and decisions sciences; and

"(D) develop, operate, and maintain an Advanced National Seismic Research and Monitoring System established under section 13 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7707), the George E. Brown, Jr. Network for Earthquake Engineering Simulation established under section 14 of that Act (42 U.S.C. 7708), and the Global Seismographic Network.

"(3) INTERAGENCY COORDINATING COMMITTEE ON EARTHQUAKE HAZARDS REDUCTION.—

"(A) IN GENERAL.—There is established an Interagency Coordinating Committee on Earthquake Hazards Reduction chaired by the Director of the National Institute of Standards and Technology (referred to in this subsection as the 'Director').

"(B) MEMBERSHIP.—The committee shall be composed of the directors of—

"(i) the Federal Emergency Management Agency;

"(ii) the United States Geological Survey;

"(iii) the National Science Foundation;

"(iv) the Office of Science and Technology Policy; and

"(v) the Office of Management and Budget.

"(C) MEETINGS.—The Committee shall meet not less than 3 times a year at the call of the Director.

"(D) PURPOSE AND DUTIES.—The Interagency Coordinating Committee shall oversee the planning, management, and coordination of the Program. The Interagency Coordinating Committee shall—

"(i) develop, not later than 6 months after the date of enactment of the National Earthquake Hazards Reduction Program Reauthorization Act of 2004 and update periodically—

"(I) a strategic plan that establishes goals and priorities for the Program activities described under subsection (a)(2); and

"(II) a detailed management plan to implement such strategic plan; and

"(ii) develop a coordinated interagency budget for the Program that will ensure appropriate balance among the Program activities described under subsection (a)(2), and, in accordance with the plans developed under clause (i), submit such budget to the Director of the Office of Management and Budget at the time designated by that office for agencies to submit annual budgets.

"(4) ANNUAL REPORT.—The Interagency Coordinating Committee shall transmit, at the time of the President's budget request to Congress, an annual report to the Committee on Science and the Committee on Resources of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate. Such report shall include—

"(A) the Program budget for the current fiscal year for each agency that participates in the Program, and for each major goal established for the Program activities under subparagraph (3)(A);

"(B) the proposed Program budget for the next fiscal year for each agency that participates in the Program, and for each major goal established for the Program activities under subparagraph (3)(A);

"(C) a description of the activities and results of the Program during the previous year, including an assessment of the effectiveness of the Program in furthering the goals established in the strategic plan under (3)(A);

"(D) a description of the extent to which the Program has incorporated the recommendations of the Advisory Committee;

"(E) a description of activities, including budgets for the current fiscal year and proposed budgets for the next fiscal year, that are carried out by Program agencies and contribute to the Program, but are not included in the Program; and

"(F) a description of the activities, including budgets for the current fiscal year and proposed budgets for the following fiscal year, related to the grant program carried out under subsection (b)(2)(A)(i).

"(5) ADVISORY COMMITTEE.—

"(A) IN GENERAL.—The Director shall establish an Advisory Committee on Earthquake Hazards Reduction of at least 11 members, none of whom may be an employee (as defined in subparagraphs (A) through (F) of section 7342(a)(1) of title 5, United States Code, including representatives of research and academic institutions, industry standards development organizations, State and local government, and financial communities who are qualified to provide advice on earthquake hazards reduction and represent all related scientific, architectural, and engineering disciplines. The recommendations of the Advisory Committee shall be considered by Federal agencies in implementing the Program.

"(B) ASSESSMENT.—The Advisory Committee shall assess—

"(i) trends and developments in the science and engineering of earthquake hazards reduction;

"(ii) effectiveness of the Program in carrying out the activities under (a)(2);

"(iii) the need to revise the Program; and

"(iv) the management, coordination, implementation, and activities of the Program.

"(C) REPORT.—Not later than 1 year after the date of enactment of the National Earthquake Hazards Reduction Program Reauthorization Act of 2004 and at least once every 2 years thereafter, the Advisory Committee shall report to the Director on its findings of the assessment carried out under subparagraph (B) and its recommendations for ways to improve the Program. In developing recommendations, the Committee shall consider the recommendations of the United States Geological Survey Scientific Earthquake Studies Advisory Committee.

"(D) FEDERAL ADVISORY COMMITTEE ACT APPLICATION.—Section 14 of the Federal Advisory Committee Act (5 App. U.S.C. 14) shall not apply to the Advisory Committee.";

(2) in subsection (b)—

(A) in paragraph (1)—

(i) by striking "Federal Emergency Management Agency" and all that follows through "of the Agency" and inserting "National Institute of Standards and Technology shall have the primary responsibility for planning and coordinating the Program. In carrying out this paragraph, the Director of the Institute";

(ii) by striking subparagraphs (B) and (C) and redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively;

(iii) by inserting after subparagraph (A) the following:

"(B) support the development of performance-based seismic engineering tools, and work with appropriate groups to promote the commercial application of such tools, through earthquake-related building codes, standards, and construction practices;";

(iv) by striking "The principal official carrying out the responsibilities described in this paragraph shall be at a level no lower than that of Associate Director."; and

(v) in subparagraph (D), as redesignated by clause (ii), by striking "National Science Foundation, the National Institutes of Standards and Technology" and inserting "Federal Emergency Management Agency, the National Science Foundation";

(B) by striking so much of paragraph (2) as precedes subparagraph (B) and inserting the following:

"(2) DEPARTMENT OF HOMELAND SECURITY; FEDERAL EMERGENCY MANAGEMENT AGENCY.—

"(A) PROGRAM RESPONSIBILITIES.—The Under Secretary of Homeland Security for Emergency Preparedness and Response (the Director of the Federal Emergency Management Agency)—

"(i) shall work closely with national standards and model building code organizations, in conjunction with the National Institute of Standards and Technology, to promote the implementation of research results;

"(ii) shall promote better building practices within the building design and construction industry including architects, engineers, contractors, builders, and inspectors;

"(iii) shall operate a program of grants and assistance to enable States to develop mitigation, preparedness, and response plans, prepare inventories and conduct seismic safety inspections of critical structures and lifelines, update building and zoning codes and ordinances to enhance seismic safety, increase earthquake awareness and education, and encourage the development of multi-State groups for such purposes;

"(iv) shall support the implementation of a comprehensive earthquake education and public awareness program, including development of materials and their wide dissemination to all appropriate audiences and support public access to locality-specific information that may assist the public in preparing for, mitigating against, responding to and recovering from earthquakes and related disasters;

"(v) shall assist the National Institute of Standards and Technology, other Federal agencies, and private sector groups, in the preparation, maintenance, and wide dissemination of seismic resistant design guidance and related information on building codes, standards, and practices for new and existing buildings, structures, and lifelines, and aid in the development of performance-based design guidelines and methodologies supporting model codes for buildings, structures, and lifelines that are cost effective and affordable;

"(vi) shall develop, coordinate, and execute the National Response Plan when required following an earthquake, and support the development of specific State and local plans for each high risk area to ensure the availability of adequate emergency medical resources, search and rescue personnel and equipment, and emergency broadcast capability;

"(vii) shall develop approaches to combine measures for earthquake hazards reduction with measures for reduction of other natural and technological hazards including performance-based design approaches;

"(viii) shall provide preparedness, response, and mitigation recommendations to communities after an earthquake prediction has been made under paragraph (3)(D); and

"(ix) may enter into cooperative agreements or contracts with States and local jurisdictions and other Federal agencies to establish demonstration projects on earthquake hazard mitigation, to link earthquake research and mitigation efforts with emergency management programs, or to prepare educational materials for national distribution.";

(C) in paragraph (3)—

(i) by inserting "and other activities" after "shall conduct research";

(ii) in subparagraph (C), by striking "the Agency" and inserting "the Director of the Federal Emergency Management Agency and the Director of the National Institute of Standards and Technology";

(iii) in subparagraph (D), by striking "the Director of the Agency" and inserting "the Director of the Federal Emergency Management Agency and the Director of the National Institute of Standards and Technology";

(iv) in subparagraph (E), by striking "establish, using existing facilities, a Center for the International Exchange of Earthquake Information" and inserting "operate, using the National Earthquake Information Center, a forum for the international exchange of earthquake information";

(v) in subparagraph (F), by striking "Network" and inserting "System"; and

(vi) by inserting after subparagraph (H) the following new subparagraphs:

"(I) work with other Program agencies to coordinate Program activities with similar earthquake hazards reduction efforts in other countries, to ensure that the Program benefits from relevant information and advances in those countries; and

"(J) maintain suitable seismic hazard maps in support of building codes for structures and lifelines, including additional maps needed for performance-based design approaches.";

(D) in paragraph (4)—

(i) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (E), (F), and (H), respectively;

(ii) by inserting after subparagraph (C) the following:

"(D) support research that improves the safety and performance of buildings, structures, and lifeline systems using large-scale experimental and computational facilities of the George E. Brown Jr. Network for Earthquake Engineering Simulation and other institutions engaged in research and the implementation of the National Earthquake Hazards Reduction Program;";

(iii) in subparagraph (F) (as so redesignated), by striking "; and" and inserting a semicolon; and

(iv) by inserting after subparagraph (F) (as so redesignated) the following:

"(G) include to the maximum extent practicable diverse institutions, including Historically Black Colleges and Universities and those serving large proportions of Hispanics, Native Americans, Asian-Pacific Americans, and other underrepresented populations; and";

(E) in paragraph (5), by striking "The National" and inserting "In addition to the lead agency responsibilities described under paragraph (1), the National"; and

(F) in paragraph (5)—

(i) by striking "and" after the semicolon in subparagraph (C);

(ii) by redesignating subparagraph (D) as subparagraph (E); and

(iii) by inserting after subparagraph (C) the following:

"(D) support the development and commercial application of cost effective and affordable performance-based seismic engineering by providing technical support for seismic engineering practices and related building code, standards, and practices development; and"; and

(3) in subsection (c)(1), by striking "Agency" and inserting "Interagency Coordinating Committee".

SEC. 104. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 12 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7706) is amended—

(1) by adding at the end of subsection (a) the following:

"(8) There are authorized to be appropriated to the Federal Emergency Management Agency for carrying out this title—

"(A) $21,000,000 for fiscal year 2005,

"(B) $21,630,000 for fiscal year 2006,

"(C) $22,280,000 for fiscal year 2007,

"(D) $22,950,000 for fiscal year 2008, and

"(E) $23,640,000 for fiscal year 2009,

of which not less than 10 percent of available program funds actually appropriated shall be made available each such fiscal year for supporting the development of performance-based, cost-effective, and affordable design guidelines and methodologies in codes for buildings, structures, and lifelines.";

(2) by inserting "(1)" before "There" in subsection (b);

(3) by striking "subsection" in the last sentence and inserting "paragraph";

(4) by redesignating paragraphs (1) through (5) of subsection (b) as subparagraphs (A) through (E), respectively;

(5) by adding at the end of subsection (b) the following:

"(2) There are authorized to be appropriated to the United States Geological Survey for carrying out this title—

"(A) $77,000,000 for fiscal year 2005, of which not less than $30,000,000 shall be made available for completion of the Advanced National Seismic Research and Monitoring System established under section 13;

"(B) $84,410,000 for fiscal year 2006, of which not less than $36,000,000 shall be made available for completion of the Advanced National Seismic Research and Monitoring System established under section 13;

"(C) $85,860,000 for fiscal year 2007, of which not less than $36,000,000 shall be made available for completion of the Advanced National Seismic Research and Monitoring System established under section 13;

"(D) $87,360,000 for fiscal year 2008, of which not less than $36,000,000 shall be made available for completion of the Advanced National Seismic Research and Monitoring System established under section 13; and

"(E) $88,900,000 for fiscal year 2009, of which not less than $36,000,000 shall be made available for completion of the Advanced National Seismic Research and Monitoring System established under section 13.";

(6) by inserting "(1)" before "To" in subsection (c);

(7) by adding at the end of subsection (c) the following:

"(2) There are authorized to be appropriated to the National Science Foundation for carrying out this title—

"(A) $38,000,000 for fiscal year 2005;

"(B) $39,140,000 for fiscal year 2006;

"(C) $40,310,000 for fiscal year 2007;

"(D) $41,520,000 for fiscal year 2008; and

"(E) $42,770,000 for fiscal year 2009.";

(8) by inserting "(1)" before "To" in subsection (d); and

(9) by adding at the end of subsection (d) the following:

"(2) There are authorized to be appropriated to the National Institute of Standards and Technology for carrying out this title—

"(A) $10,000,000 for fiscal year 2005,

"(B) $11,000,000 for fiscal year 2006,

"(C) $12,100,000 for fiscal year 2007,

"(D) $13,310,000 for fiscal year 2008, and

"(E) $14,640,000 for fiscal year 2009,

of which $2,000,000 shall be made available each such fiscal year for supporting the development of performance-based, cost-effective, and affordable codes for buildings, structures, and lifelines.".

(b) SEPARATE AUTHORIZATION FOR THE ADVANCED NATIONAL SEISMIC RESEARCH AND MONITORING SYSTEM.—Section 13 of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7707) is amended by striking subsection (c).

(c) SEPARATE AUTHORIZATION FOR THE NETWORK FOR EARTHQUAKE ENGINEERING SIMULATION.—Section 14(b) of the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7708(b)) is amended—

(1) by striking "and" after the semicolon in paragraph (3);

(2) by striking "2004." in paragraph (4) and inserting "2004;";

(3) by adding at the end the following:

"(5) $20,000,000 for fiscal year 2005, all of which shall be available for operations and maintenance;

"(6) $20,400,000 for fiscal year 2006, all of which shall be available for operations and maintenance;

"(7) $20,870,000 for fiscal year 2007, all of which shall be available for operations and maintenance;

"(8) $21,390,000 for fiscal year 2008, all of which shall be available for operations and maintenance; and

"(9) $21,930,000 for fiscal year 2009, all of which shall be available for operations and maintenance.".

TITLE II—WINDSTORM IMPACT REDUCTION

SEC. 201. SHORT TITLE.

This Act may be cited as the "National Windstorm Impact Reduction Act of 2004".

SEC. 202. FINDINGS.

The Congress finds the following:

(1) Hurricanes, tropical storms, tornadoes, and thunderstorms can cause significant loss of life, injury, destruction of property, and economic and social disruption. All States and regions are vulnerable to these hazards.

(2) The United States currently sustains several billion dollars in economic damages each year due to these windstorms. In recent decades, rapid development and population growth in high-risk areas has greatly increased overall vulnerability to windstorms.

(3) Improved windstorm impact reduction measures have the potential to reduce these losses through—

(A) cost-effective and affordable design and construction methods and practices;

(B) effective mitigation programs at the local, State, and national level;

(C) improved data collection and analysis and impact prediction methodologies;

(D) engineering research on improving new structures and retrofitting existing ones to better withstand windstorms, atmospheric-related research to better understand the behavior and impact of windstorms on the built environment, and subsequent application of those research results; and

(E) public education and outreach.

(4) There is an appropriate role for the Federal Government in supporting windstorm impact reduction. An effective Federal program in windstorm impact reduction will require interagency coordination, and input from individuals, academia, the private sector, and other interested non-Federal entities.

SEC. 203. DEFINITIONS.

In this title:

(1) DIRECTOR.—The term "Director" means the Director of the Office of Science and Technology Policy.

(2) PROGRAM.—The term "Program" means the National Windstorm Impact Reduction Program established by section 204(a).

(3) STATE.—The term "State" means each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

(4) WINDSTORM.—The term "windstorm" means any storm with a damaging or destructive wind component, such as a hurricane, tropical storm, tornado, or thunderstorm.

SEC. 204. NATIONAL WINDSTORM IMPACT REDUCTION PROGRAM.

(a) ESTABLISHMENT.—There is established the National Windstorm Impact Reduction Program.

(b) OBJECTIVE.—The objective of the Program is the achievement of major measurable reductions in losses of life and property from windstorms. The objective is to be achieved through a coordinated Federal effort, in cooperation with other levels of government, academia, and the private sector, aimed at improving the understanding of windstorms and their impacts and developing and encouraging implementation of cost-effective mitigation measures to reduce those impacts.

(c) INTERAGENCY WORKING GROUP.—Not later than 90 days after the date of enactment of this Act, the Director shall establish an Interagency Working Group consisting of representatives of the National Science Foundation, the National Oceanic and Atmospheric Administration, the National Institute of Standards and Technology, the Federal Emergency Management Agency, and other Federal agencies as appropriate. The Director shall designate an agency to serve as Chair of the Working Group and be responsible for the planning, management, and coordination of the Program, including budget coordination. Specific agency roles and responsibilities under the Program shall be defined in the implementation plan required under subsection (e). General agency responsibilities shall include the following:

(1) The National Institute of Standards and Technology shall support research and development to improve building codes and standards and practices for design and construction of buildings, structures, and lifelines.

(2) The National Science Foundation shall support research in engineering and the atmospheric sciences to improve the understanding of the behavior of windstorms and their impact on buildings, structures, and lifelines.

(3) The National Oceanic and Atmospheric Administration shall support atmospheric sciences research to improve the understanding of the behavior of windstorms and their impact on buildings, structures, and lifelines.

(4) The Federal Emergency Management Agency shall support the development of risk assessment tools and effective mitigation techniques, windstorm-related data collection and analysis, public outreach, information dissemination, and implementation of mitigation measures consistent with the Agency's all-hazards approach.

(d) PROGRAM COMPONENTS.—

(1) IN GENERAL.—The Program shall consist of three primary mitigation components: improved understanding of windstorms, windstorm impact assessment, and windstorm impact reduction. The components shall be implemented through activities such as data collection and analysis, risk assessment, outreach, technology transfer, and research and development. To the extent practicable, research activities authorized under this title shall be peer-reviewed, and the components shall be designed to be complementary to, and avoid duplication of, other public and private hazard reduction efforts.

(2) UNDERSTANDING OF WINDSTORMS.—Activities to enhance the understanding of windstorms shall include research to improve knowledge of and data collection on the impact of severe wind on buildings, structures, and infrastructure.

(3) WINDSTORM IMPACT ASSESSMENT.—Activities to improve windstorm impact assessment shall include—

(A) development of mechanisms for collecting and inventorying information on the performance of buildings, structures, and infrastructure in windstorms and improved collection of pertinent information from sources, including the design and construction industry, insurance companies, and building officials;

(B) research, development, and technology transfer to improve loss estimation and risk assessment systems; and

(C) research, development, and technology transfer to improve simulation and computational modeling of windstorm impacts.

(4) WINDSTORM IMPACT REDUCTION.—Activities to reduce windstorm impacts shall include—

(A) development of improved outreach and implementation mechanisms to translate existing information and research findings into cost-effective and affordable practices for design and construction professionals, and State and local officials;

(B) development of cost-effective and affordable windstorm-resistant systems, structures, and materials for use in new construction and retrofit of existing construction; and

(C) outreach and information dissemination related to cost-effective and affordable construction techniques, loss estimation and risk assessment methodologies, and other pertinent information regarding windstorm phenomena to Federal, State, and local officials, the construction industry, and the general public.

(e) IMPLEMENTATION PLAN.—Not later than 1 year after date of enactment of this title, the Interagency Working Group shall develop and transmit to the Congress an implementation plan for achieving the objectives of the Program. The plan shall include—

(1) an assessment of past and current public and private efforts to reduce windstorm impacts, including a comprehensive review and analysis of windstorm mitigation activities supported by the Federal Government;

(2) a description of plans for technology transfer and coordination with natural hazard mitigation activities supported by the Federal Government;

(3) a statement of strategic goals and priorities for each Program component area;

(4) a description of how the Program will achieve such goals, including detailed responsibilities for each agency; and

(5) a description of plans for cooperation and coordination with interested public and private sector entities in each program component area.

(f) BIENNIAL REPORT.—The Interagency Working Group shall, on a biennial basis, and not later than 180 days after the end of the preceding 2 fiscal years, transmit a report to the Congress describing the status of the windstorm impact reduction program, including progress achieved during the preceding two fiscal years.

Each such report shall include any recommendations for legislative and other action the Interagency Working Group considers necessary and appropriate. In developing the biennial report, the Interagency Working Group shall consider the recommendations of the Advisory Committee established under section 205.

SEC. 205. NATIONAL ADVISORY COMMITTEE ON WINDSTORM IMPACT REDUCTION.

(a) ESTABLISHMENT.—The Director shall establish a National Advisory Committee on Windstorm Impact Reduction, consisting of not less than 11 and not more than 15 non-Federal members representing a broad cross section of interests such as the research, technology transfer, design and construction, and financial communities; materials and systems suppliers; State, county, and local governments; the insurance industry; and other representatives as designated by the Director.

(b) ASSESSMENT.—The Advisory Committee shall assess—

(1) trends and developments in the science and engineering of windstorm impact reduction;

(2) the effectiveness of the Program in carrying out the activities under section 204(d);

(3) the need to revise the Program; and

(4) the management, coordination, implementation, and activities of the Program.

(c) BIENNIAL REPORT.—At least once every two years, the Advisory Committee shall report to Congress and the Interagency Working Group on the assessment carried out under subsection (b).

(d) SUNSET EXEMPTION.—Section 14 of the Federal Advisory Committee Act shall not apply to the Advisory Committee established under this section.

SEC. 206. SAVINGS CLAUSE.

Nothing in this title supersedes any provision of the National Manufactured Housing Construction and Safety Standards Act of 1974. No design, construction method, practice, technology, material, mitigation methodology, or hazard reduction measure of any kind developed under this title shall be required for a home certified under section 616 of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5415), pursuant to standards issued under such Act, without being subject to the consensus development process and rulemaking procedures of that Act.

SEC. 207. AUTHORIZATION OF APPROPRIATIONS.

(a) FEDERAL EMERGENCY MANAGEMENT AGENCY.—There are authorized to be appropriated to the Federal Emergency Management Agency for carrying out this title—

(1) $8,700,000 for fiscal year 2006;

(2) $9,400,000 for fiscal year 2007; and

(3) $9,400,000 for fiscal year 2008.

(b) NATIONAL SCIENCE FOUNDATION.—There are authorized to be appropriated to the National Science Foundation for carrying out this title—

(1) $8,700,000 for fiscal year 2006;

(2) $9,400,000 for fiscal year 2007; and

(3) $9,400,000 for fiscal year 2008.

(c) NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—There are authorized to be appropriated to the National Institute of Standards and Technology for carrying out this title—

(1) $3,000,000 for fiscal year 2006;

(2) $4,000,000 for fiscal year 2007; and

(3) $4,000,000 for fiscal year 2008.

(d) NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.—There are authorized to be appropriated to the National Oceanic and Atmospheric Administration for carrying out this title—

(1) $2,100,000 for fiscal year 2006;

(2) $2,200,000 for fiscal year 2007; and

(3) $2,200,000 for fiscal year 2008.

SEC. 208. BIENNIAL REPORT.

Section 37(a) of the Science and Engineering Equal Opportunities Act (42 U.S.C. 1885d(a)) is amended by striking "By January 30, 1982, and biennially thereafter" and inserting "By January 30 of each odd-numbered year".

SEC. 209. COORDINATION.

The Secretary of Commerce, the Director of the National Institute of Standards and Technology, the Director of the Office of Science and Technology Policy and the heads of other Federal departments and agencies carrying out activities under this title and the statutes amended by this title shall work together to ensure that research, technologies, and response techniques are shared among the programs authorized in this title in order to coordinate the Nation's efforts to reduce vulnerability to the hazards described in this title.

TITLE III—COMMERCIAL SPACE TRANSPORTATION

SEC. 301. AUTHORIZATION OF APPROPRIATIONS.

Section 70119 of title 49, United States Code, is amended by striking paragraphs (1) and (2) and inserting the following:

"(1) $11,941,000 for fiscal year 2005;

"(2) $12,299,000 for fiscal year 2006;

"(3) $12,668,000 for fiscal year 2007;

"(4) $13,048,000 for fiscal year 2008; and

"(5) $13,440,000 for fiscal year 2009.".

Mr. SMITH of Michigan (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. SMITH of Michigan. Mr. Speaker, H.R. 2608 authorizes two important interagency programs to coordinate the federal government's efforts to mitigate the loss of life and property from earthquakes and windstorms. I'd like to thank Congressman NEUGEBAUER for all of his hard work and effort as the author and driving force behind the National Windstorm Impact Reduction Program. I'd also like to thank Congressman LOFGREN for helping me craft the National Earthquake Hazards Reduction Program reauthorization and shepherding it through the legislative process.

Damaging earthquakes are inevitable, however infrequent they may be. Total annualized damages from earthquakes in the United States are estimated to be about $4.4 billion in direct financial losses. The 1994 Northridge earthquake in California (magnitude 6.7) was the most costly in U.S. history, causing over $40 billion in damages.

Further, all or parts of 39 states are within zones where the probability of an earthquake occurring is great. Recent research indicates that areas in the eastern and central United States are at greater risk of earthquake occurrence than earlier evidence indicated. The threat from earthquakes is constant and far reaching. Indeed, earthquakes are clearly not just a state or regional problem, but a nationwide problem, demanding nationwide mitigation. Accordingly, the federal government mitigates earthquakes through the comprehensive National Earthquake Hazards Reduction Program, also known as "NEHRP".

Over the past week, significant earthquake events in California and Washington have garnered our attention and concern. NEHRP-supported monitoring equipment managed by the U.S. Geological Survey and the national Science Foundation have resulted in an unprecedented harvest of data from both the Mr. St. Helens volcanic activity as well as the 6.0 Parkfield Earthquake on the San Andreas Fault. This information will undoubtedly lead to important advances in our understanding of earthquakes, and ultimately in our ability to prepare for and respond to them.

But much room for improvement still exists. Our vulnerability to earthquakes continues to increase. Widespread developments still occurs unabated in areas of high seismic risk. Despite the existence of new knowledge and tools produced by the program, development, adoption, and enforcement of pertinent building codes have been incremental and slower than expected. The private sector has not had adequate incentives, and state and local governments have generally not had adequate budgets, to adopt NEHRP innovations.

It is clear that NEHRP needs to be strengthened. Several aspects of program leadership and coordination continue to be an ongoing problem. Knowledge and awareness of these needs within the Office of Management and Budget, relevant appropriators—and even to some degree NEHRP agencies—has been too low. Many outside of the small community of earthquake interests are unaware that this coordinated effort even exists. These factors are addressed in the legislation before us today.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON SCIENCE,
Washington, DC, October 8, 2004.

Hon. DON YOUNG,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I appreciate your support for the Senate amendment to H.R. 2608, the National Earthquake Hazards Reduction Program Reauthorization Act of 2004. As your letter indicates, the Senate amendment includes provisions from both the House version of H.R. 2608 and H.R. 3980, the National Windstorm Impact Reduction Act of 2004.

I agree that by permitting this bill to be brought before the House and not objecting to its passage by unanimous consent, the Committee on Transportation and Infrastructure does not waive its jurisdiction over certain provisions of H.R. 2608, as amended by the Senate.

Thank you for your consideration regarding this matter.

Sincerely,
SHERWOOD L. BOEHLERT,
Chairman.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC, October 8, 2004.

Hon. SHERWOOD BOEHLERT,
Chairman, Committee on Science,
House of Representatives,
Washington, DC.

DEAR CHAIRMAN BOEHLERT: I understand that H.R. 2608, the National Earthquake Reduction Program Reauthorization Act of 2004 has just passed the Senate and incorporates provisions contained in H.R. 3980, the National Windstorm Impact Reduction Act of 2004.

I note that in Title I of H.R. 2608, as amended by the Senate, the Director of the Federal Emergency Management Agency is directed to: "operate a program of grants and assistance which would enable States to develop preparedness and response plans, prepare inventories and conduct seismic safety inspections of critical structures and lifelines, update building and zoning codes and ordinances to enhance seismic safety, increase earthquake awareness and education, and encourage the development of multi-State groups for such purposes."

As you know, both of these measures contain provisions within the jurisdiction of the Transportation and Infrastructure Committee. I recognize your desire to bring these important matters before the House in an expeditious manner and I, therefore, do not object to passing them by unanimous consent. By agreeing to this, however, the Committee on Transportation and Infrastructure does not waive its jurisdiction over H.R. 2608, as amended by the Senate.

I would appreciate it if you would place a copy of this letter and your response in the CONGRESSIONAL RECORD when the bill is considered on the House Floor. I would also like to incorporate into this letter, by reference, the letter included in the RECORD when the House of Representatives considered H.R. 3980 on July 7th and 8th, 2004.

Thank you for your cooperation in this matter.

Sincerely,

DON YOUNG,
Chairman.

The SPEAKER pro tempore. Is there objection to the original request of the gentleman from Michigan?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SMITH of Michigan. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 2608.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

AMENDING THE SECURITIES LAWS TO PERMIT CHURCH PENSION PLANS TO BE INVESTED IN COLLECTIVE TRUSTS

Mr. LATOURETTE. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 1533) to amend the securities laws to permit church pension plans to be invested in collective trusts, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Senate amendment:

Page 2, strike lines 17 through 22 and insert:

(2) by striking "other than any plan described in clause (A), (B), or (C)" and inserting the following: "or (D) a church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, other than any plan described in subparagraph (A), (B), (C), or (D)".

Mr. LATOURETTE (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The SPEAKER pro tempore. Is there objection to the original request of the gentleman from Ohio?

There was no objection.

A motion to reconsider was laid on the table.

AWARDING CONGRESSIONAL GOLD MEDAL TO REVEREND DOCTOR MARTIN LUTHER KING, JR.

Mr. LATOURETTE. Mr. Speaker, I ask unanimous consent that the Committee on Financial Services be discharged from further consideration of the Senate bill (S. 1368) to authorize the President to award a gold medal on behalf of the Congress to Reverend Doctor Martin Luther King, Jr. (posthumously) and his widow Coretta Scott King in recognition of their contributions to the Nation on behalf of the civil rights movement, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1368

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

Congress finds that—

(1) Reverend Doctor Martin Luther King, Jr. and his widow Coretta Scott King, as the first family of the civil rights movement, have distinguished records of public service to the American people and the international community;

(2) Dr. King preached a doctrine of nonviolent civil disobedience to combat segregation, discrimination, and racial injustice;

(3) Dr. King led the Montgomery bus boycott for 381 days to protest the arrest of Mrs. Rosa Parks and the segregation of the bus system of Montgomery, Alabama;

(4) in 1963, Dr. King led the march on Washington, D.C., that was followed by his famous address, the "I Have a Dream" speech;

(5) through his work and reliance on nonviolent protest, Dr. King was instrumental in the passage of the Civil Rights Act of 1964, and the Voting Rights Act of 1965;

(6) despite efforts to derail his mission, Dr. King acted on his dream of America and succeeded in making the United States a better place;

(7) Dr. King was assassinated for his beliefs on April 4, 1968, in Memphis, Tennessee;

(8) Mrs. King stepped into the civil rights movement in 1955 during the Montgomery bus boycott, and played an important role as a leading participant in the American civil rights movement;

(9) while raising 4 children, Mrs. King devoted herself to working alongside her husband for nonviolent social change and full civil rights for African Americans;

(10) with a strong educational background in music, Mrs. King established and performed several Freedom Concerts, which were well received, and which combined prose and poetry narration with musical selections to increase awareness and understanding of the Southern Christian Leadership Conference (of which Dr. King served as the first president);

(11) Mrs. King demonstrated composure in deep sorrow, as she led the Nation in mourning her husband after his brutal assassination;

(12) after the assassination, Mrs. King devoted all of her time and energy to developing and building the Atlanta-based Martin Luther King Jr. Center for Nonviolent Social Change (hereafter referred to as the "Center") as an enduring memorial to her husband's life and his dream of nonviolent social change and full civil rights for all Americans;

(13) under Mrs. King's guidance and direction, the Center has flourished;

(14) the Center was the first institution built in honor of an African American leader;

(15) the Center provides local, national, and international programs that have trained tens of thousands of people in Dr. King's philosophy and methods, and claims the largest archive of the civil rights movement; and

(16) Mrs. King led the massive campaign to establish Dr. King's birthday as a national holiday, and the holiday is now celebrated in more than 100 countries.

SEC. 2. CONGRESSIONAL GOLD MEDAL.

(a) PRESENTATION AUTHORIZED.—The President is authorized to present, on behalf of the Congress, a gold medal of appropriate design to Reverend Doctor Martin Luther King, Jr. (posthumously) and his widow Coretta Scott King, in recognition of their service to the Nation.

(b) DESIGN AND STRIKING.—For the purpose of the presentations referred to in subsection (a), the Secretary of the Treasury shall strike a gold medal with suitable emblems, devices, and inscriptions, to be determined by the Secretary.

SEC. 3. DUPLICATE MEDALS.

The Secretary of the Treasury shall strike and sell duplicates in bronze of the gold medal struck pursuant to section 2, under such regulations as the Secretary may prescribe, at a price sufficient to cover the costs of the duplicate medals and the gold medal (including labor, materials, dies, use of machinery, and overhead expenses).

SEC. 4. NATIONAL MEDALS.

The medals struck under this Act are national medals for purposes of chapter 51 of title 31, United States Code.

SEC. 5. FUNDING AND PROCEEDS OF SALE.

(a) AUTHORIZATION.—There is authorized to be charged against the United States Mint Public Enterprise Fund an amount not to exceed $30,000 to pay for the cost of the medals authorized by this Act.

(b) PROCEEDS OF SALE.—Amounts received from the sale of duplicate bronze medals under section 3 shall be deposited in the United States Mint Public Enterprise Fund.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LATOURETTE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 1533 and S. 1368.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

PRIVILEGED REPORT REQUESTING THE PRESIDENT AND THE SECRETARY OF HEALTH AND HUMAN SERVICES PROVIDE CERTAIN DOCUMENTS RELATING TO THE MEDICARE PRESCRIPTION DRUG LEGISLATION

Mr. BARTON of Texas from the Committee on Energy and Commerce, submitted a privileged report (Rept. No. 108–754, Part II) on the resolution (H. Res. 776) of inquiry requesting the President and directing the Secretary of Health and Human Services provide certain documents to the House of Representatives relating to estimates and analyses of the cost of the Medicare prescription drug legislation, which was referred to the House Calendar and ordered to be printed.

MODIFYING AND EXTENDING CERTAIN PRIVATIZATION REQUIREMENTS OF THE COMMUNICATIONS SATELLITE ACT OF 1962

Mr. BARTON of Texas. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 2896) to modify and extend certain privatization requirements of the Communications Satellite Act of 1962, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2896

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PRIVATIZATION REQUIREMENTS MODIFIED AND EXTENDED.

Section 621(5) of the Communications Satellite Act of 1962 (47 U.S.C. 763) is amended—

(1) in subparagraph (A)(ii), by striking "June 30, 2004" and inserting "June 30, 2005"; and

(2) by adding at the end the following new subparagraph:

"(F) Notwithstanding subparagraphs (A) and (B), a successor entity may be deemed a national corporation and may forgo an initial public offering and public securities listing and still achieve the purposes of this section if—

"(i) the successor entity certifies to the Commission that—

"(I) the successor entity has achieved substantial dilution of the aggregate amount of signatory or former signatory financial interest in such entity;

"(II) any signatories and former signatories that retain a financial interest in such successor entity do not possess, together or individually, effective control of such successor entity; and

"(III) no intergovernmental organization has any ownership interest in a successor entity of INTELSAT or more than a minimal ownership interest in a successor entity of Inmarsat;

"(ii) the successor entity provides such financial and other information to the Commission as the Commission may require to verify such certification; and

"(iii) the Commission determines, after notice and comment, that the successor entity is in compliance with such certification.

"(G) For purposes of subparagraph (F), the term 'substantial dilution' means that a majority of the financial interests in the successor entity is no longer held or controlled, directly or indirectly, by signatories or former signatories.".

Mr. BARTON of Texas. Mr. Speaker, I rise today in support of S. 2896 and urge swift passage of this noncontroversial legislation. Earlier this week, the Senate passed S. 2896, to extend the deadline by which INTELSAT and Inmarsat are required to conduct an initial public offering (IPO) under the ORBIT Act and to further broaden the options available to these companies to divest their government shareholders. I commend my colleagues in the Senate for expeditiously addressing this important issue.

The ORBIT Act was enacted in March 2000 to promote a competitive market for satellite communications through the privatization of inter-governmental organizations. To achieve that competitive satellite marketplace, the ORBIT Act called on Inmarsat and INTELSAT to conduct an initial public offering (IPO) by a date certain—December 31, 2001. The purpose of this IPO requirement was to ensure independence by substantially diluting the ownership of these privatized companies by their former owners, many of which were foreign governmental entities. Such dilution would facilitate a more competitive satellite marketplace devoid of the perverse influences associated with government ownership and control.

However, due to volatility in the financial markets, and the telecommunications sector specifically, Congress has repeatedly been forced to grant additional time for these companies to conduct their statutorily mandated IPOs. Unfortunately, the market conditions have not improved. Today, these companies, instead of going to the public equity markets, have opted to use private equity deals to divest themselves of government ownership.

I fully supported the goal of independence and competition when we enacted the ORBIT Act, and I still do today. Indeed, the action we take today is fully consistent with this policy objective.

This bill, while it does not eliminate the IPO requirement, allows other methods, which are currently being used in the marketplace to show "substantial dilution." This bill makes the ORBIT Act consistent with what is happening today in the real world.

There are certainly other issues in the ORBIT Act that deserve to be explored and I intend to ask Telecommunications and Internet Subcommittee Chairman UPTON to hold a hearing on the Act early next year to examine what further needs to be accomplished. But today, I fully support S. 2896 and I urge my colleagues to support it as well.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BARTON of Texas. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 2896.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

JOHN F. KENNEDY CENTER REAUTHORIZATION ACT OF 2004

Mr. LATOURETTE. Mr. Speaker, I ask unanimous consent that the Committee on Transportation and Infrastructure be discharged from further consideration of the bill (H.R. 5294) to amend the John F. Kennedy Center Act to authorize appropriations for the John F. Kennedy Center for the Performing Arts, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

Mr. OBERSTAR. Mr. Speaker, reserving the right to object, I yield to the chairman of the subcommittee for an explanation of the measure before us.

Mr. LATOURETTE. I thank the gentleman from Minnesota (Mr. OBERSTAR) for yielding under his reservation.

Mr. Speaker, H.R. 5294 is virtually identical to H.R. 3198, the John F. Kennedy Center Reauthorization Act of 2003, which passed the House of Representatives on November 17, 2003.

The legislation reauthorizes the programs of the Kennedy Center for 4 years. This is a bipartisan bill. I urge our colleagues to support the bill.

I want to thank the gentleman from Minnesota (Mr. OBERSTAR), the distinguished ranking member of the full Committee on Transportation and Infrastructure, for his work; also the gentlewoman from the District of Columbia (Ms. NORTON), the ranking member of our subcommittee, for the outstanding work on this bill and so many others during the 108th Congress.

Mr. OBERSTAR. Further reserving the right to object, Mr. Speaker, I compliment the chairman of the subcommittee for his diligent work in shepherding this bill through this historic moment.

He has been a dedicated and informed and forthright leader of the subcommittee and on the issues under its jurisdiction, particularly those relating to the John F. Kennedy Center for the Performing Arts.

For the last decade, as a member of the Board of Trustees, I have watched firsthand the center undertake major capital projects, renovating the theaters, creating state-of-the-art concert halls, the Opera House, replacing a badly deteriorated roof.

Throughout all these major capital maintenance renovation construction projects, the center opened every day of the year and welcomed over 5 million visitors and has stayed true to its mission as a national cultural arts center and a living memorial to our 35th President.

The chairman has described the principal features of the bill. What I want to emphasize, however, is the great difficulty of running this incredible living memorial and arts center while managing the major construction initiatives. The Kennedy Center, in doing so, and the chairman I know agrees with this position, must improve its construction management.

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The General Accounting Office reviewed the Kennedy Center's operation and found that the Center needs, one, to develop policy and procedures to guide the plans and management of its construction projects; two, ensure that its construction contractors provide schedule and cost information in a timely fashion; and three, invest in the key human capital resources and the expertise to manage better its construction projects.

The Center has made progress. The chairman has held hearings on this matter, and we greatly appreciate those hearings. They reveal that the Center needs to do much better.

Just last month, GAO reported that the Center has not updated its building plan each year as the law requires. The building plan does not explain how the Kennedy Center prioritizes its capital projects. It fails to provide adequate information on project-specific status, updates and budgets so that we in the Congress and the board of trustees will have the information necessary to ensure that the Center's capital projects are well managed.

I think this legislation, by requiring further steps to strengthen the construction management process, will move the Kennedy Center forward in directions that we feel are important, and for that, I thank the chairman for his vigilance and greatly appreciate the partnership.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. SIMPSON). Is there objection to the request of the gentleman from Ohio?

There was no objection.

The Clerk read the bill, as follows:

H.R. 5294

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "John F. Kennedy Center Reauthorization Act of 2004".

SEC. 2. AUTHORIZATIONS OF APPROPRIATIONS.

Section 13 of the John F. Kennedy Center Act (20 U.S.C. 76r) is amended by striking subsections (a) and (b) and inserting the following:

"(a) MAINTENANCE, REPAIR, AND SECURITY.—There are authorized to be appropriated to the Board to carry out section 4(a)(1)(H)—

"(1) $17,000,000 for fiscal year 2004; and

"(2) $18,000,000 for each of fiscal years 2005, 2006, and 2007.

"(b) CAPITAL PROJECTS.—There are authorized to be appropriated to the Board to carry out subparagraphs (F) and (G) of section 4(a)(1)—

"(1) $16,000,000 for fiscal year 2004; and

"(2) $18,000,000 for each of fiscal years 2005, 2006, and 2007.".

SEC. 3. JOHN F. KENNEDY CENTER PLAZA.

(a) RESPONSIBILITIES OF THE SECRETARY.—Section 12(b) of the John F. Kennedy Center Act (20 U.S.C. 76q-1(b)) is amended by adding at the end the following:

"(6) PROJECT TEAM.—

"(A) ESTABLISHMENT.—To further construction of the Project, the Secretary shall establish a Project Team.

"(B) MEMBERSHIP.—The Project Team shall be composed of the following members:

"(i) The Secretary (or the Secretary's designee).

"(ii) The Administrator of General Services (or the Administrator's designee).

"(iii) The Chairman of the Board (or the Chairman's designee).

"(iv) Such other individuals as the Project Team considers appropriate.

"(C) PROJECT DIRECTOR.—The Project Team shall have a Project Director who shall be appointed by the Secretary, in consultation with the Administrator of General Services and the Chairman of the Board. The Project Director shall report directly to the Project Team.".

(b) RESPONSIBILITIES OF THE BOARD.—

(1) IN GENERAL.—Section 12(c)(1) of such Act (20 U.S.C. 76q-1(c)(1)) is amended by inserting ", in consultation with the Project Team," after "The Board".

(2) CONSTRUCTION OF BUILDINGS.—Section 12(c)(3) of such Act (20 U.S.C. 76q-1(c)(3)) is amended by inserting ", in consultation with the Project Team," after "The Board".

(3) APPROVAL BY PROJECT TEAM.—Section 12(c) of such Act (20 U.S.C. 76q-1(c)) is amended by adding at the end the following:

"(5) APPROVAL BY PROJECT TEAM.—Notwithstanding section 5(e), any decision by the Board that will significantly affect, as determined by the Project Team in consultation with the Board, the scope, cost, schedule, or engineering feasibility of any element of the Project, other than buildings to be constructed on the Plaza, shall be subject to the approval of the Project Team.".

(c) GAO REVIEW.—Section 12 of such Act (20 U.S.C. 76q-1) is amended by adding at the end the following:

"(g) GAO REVIEW.—Until completion of the Project, the Comptroller General shall review the management and oversight of construction of the Project by the Board and report periodically on the results of the review to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate.".

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

VETERANS' COMPENSATION COST-OF-LIVING ADJUSTMENT ACT OF 2004

Mr. SMITH of New Jersey. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4175) to increase, effective as of December 1, 2004, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Senate amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Veterans' Compensation Cost-of-Living Adjustment Act of 2004".

SEC. 2. INCREASE IN RATES OF DISABILITY COMPENSATION AND DEPENDENCY AND INDEMNITY COMPENSATION.

(a) RATE ADJUSTMENT.—The Secretary of Veterans Affairs shall, effective on December 1, 2004, increase the dollar amounts in effect for the payment of disability compensation and dependency and indemnity compensation by the Secretary, as specified in subsection (b).

(b) AMOUNTS TO BE INCREASED.—The dollar amounts to be increased pursuant to subsection (a) are the following:

(1) COMPENSATION.—Each of the dollar amounts in effect under section 1114 of title 38, United States Code.

(2) ADDITIONAL COMPENSATION FOR DEPENDENTS.—Each of the dollar amounts in effect under sections 1115(1) of such title.

(3) CLOTHING ALLOWANCE.—The dollar amount in effect under section 1162 of such title.

(4) NEW DIC RATES.—The dollar amounts in effect under paragraphs (1) and (2) of section 1311(a) of such title.

(5) OLD DIC RATES.—Each of the dollar amounts in effect under section 1311(a)(3) of such title.

(6) ADDITIONAL DIC FOR SURVIVING SPOUSES WITH MINOR CHILDREN.—The dollar amount in effect under section 1311(b) of such title.

(7) ADDITIONAL DIC FOR DISABILITY.—The dollar amounts in effect under sections 1311(c) and 1311(d) of such title.

(8) DIC FOR DEPENDENT CHILDREN.—The dollar amounts in effect under sections 1313(a) and 1314 of such title.

(c) DETERMINATION OF INCREASE.—(1) The increase under subsection (a) shall be made in the dollar amounts specified in subsection (b) as in effect on November 30, 2004.

(2) Except as provided in paragraph (3), each such amount shall be increased by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 2004, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).

(3) Each dollar amount increased pursuant to paragraph (2) shall, if not a whole dollar amount, be rounded down to the next lower whole dollar amount.

(d) SPECIAL RULE.—The Secretary may adjust administratively, consistent with the increases made under subsection (a), the rates of disability compensation payable to persons within the purview of section 10 of Public Law 85-857 (72 Stat. 1263) who are not in receipt of compensation payable pursuant to chapter 11 of title 38, United States Code.

SEC. 3. PUBLICATION OF ADJUSTED RATES.

At the same time as the matters specified in section 215(i)(2)(D) of the Social Security Act (42 U.S.C. 415(i)(2)(D)) are required to be published by reason of a determination made under section 215(i) of such Act during fiscal year 2005, the Secretary of Veterans Affairs shall publish in the Federal Register the amounts specified in subsection (b) of section 2, as increased pursuant to that section.

Mr. SMITH of New Jersey (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. SMITH of New Jersey. Mr. Speaker, H.R. 4175, as amended, would provide a cost-of-living adjustment (COLA), in the same amount as given to Social Security recipients, to disabled veterans and surviving spouses. All veterans and qualified survivors of veterans who receive disability compensation would receive a full COLA beginning on December 1 of this year.

More than 2.5 million veterans were receiving service-connected disability compensation as of April 2004. The basic purpose of the disability compensation program is to provide a measure of relief from the impaired earning capacity of veterans disabled as a result of their military service. These benefits are paid monthly, and range from $106 for a 10 percent disability to $2,239 for a 100 percent disability. Additional monetary benefits are available for our most severely disabled veterans, as well as those with dependents.

Spouses of veterans who died on active duty or as the result of a service-connected disability likewise are entitled to monetary compensation, as the Nation assumes, in part, the legal and moral obligation of the veteran to support the spouse and children. Depending on their spouse's rank or grade in service, a spouse receives between $967 and $2,063 monthly. Currently, there are more than 300,000 surviving spouses and more than 29,000 children receiving dependency and indemnity compensation (DIC).

I urge my colleagues to support this bipartisan measure.

Mr. EVANS. Mr. Speaker, I would like to thank CHRIS SMITH, Chairman of the Full Committee, the Benefits Subcommittee Chairman, HENRY BROWN and Ranking Member of the Benefits Subcommittee, MICHAEL MICHAUD, for working together to assure that the spending power of our Nation's disabled veterans and their survivors will not be eroded by the passage of time. Once again the Committee on Veterans Affairs had demonstrated the meaning of bipartisanship. Your work is strongly supported by Members from both sides of the aisle.

H.R. 4175, the Veterans' Compensation Cost-of-Living Adjustment Act of 2004 will help our service-disabled veterans and their survivors to maintain the value of their compensation benefits despite any increase in the cost-of-living. Although we will not know the exact amount of the increase until computations of the Social Security cost-of-living increase are completed later this month, we can rest assured that benefits will be increased in 2005.

The Nation's veterans and survivors have earned these benefits. H.R. 4175 is a bill which deserves the support of all Members of this House and I urge all Members to support it.

The SPEAKER pro tempore. Is there objection to the original request of the gentleman from New Jersey?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SMITH of New Jersey. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 4175, as amended.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

GLOBAL ANTI-SEMITISM REVIEW ACT OF 2004

Mr. SMITH of Michigan. Mr. Speaker, I ask unanimous consent that the Committee on International Relations be discharged from further consideration of the Senate bill (S. 2292) to require a report on acts of anti-Semitism around the world, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 2292

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Global Anti-Semitism Review Act of 2004".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Acts of anti-Semitism in countries throughout the world, including some of the world's strongest democracies, have increased significantly in frequency and scope over the last several years.

(2) During the first 3 months of 2004, there were numerous instances of anti-Semitic violence around the world, including the following incidents:

(A) In Australia on January 5, 2004, poison was used to ignite, and burn anti-Semitic slogans into, the lawns of the Parliament House in the state of Tasmania.

(B) In St. Petersburg, Russia, on February 15, 2004, vandals desecrated approximately 50 gravestones in a Jewish cemetery, painting the stones with swastikas and anti-Semitic graffiti.

(C) In Toronto, Canada, over the weekend of March 19 through March 21, 2004, vandals attacked a Jewish school, a Jewish cemetery, and area synagogues, painting swastikas and anti-Semitic slogans on the walls of a synagogue and on residential property in a nearby, predominantly Jewish, neighborhood.

(D) In Toulon, France, on March 23, 2004, a Jewish synagogue and community center were set on fire.

(3) Anti-Semitism in old and new forms is also increasingly emanating from the Arab and Muslim world on a sustained basis, including through books published by government-owned publishing houses in Egypt and other Arab countries.

(4) In November 2002, state-run television in Egypt broadcast the anti-Semitic series entitled "Horseman Without a Horse," which is based upon the fictitious "Protocols of the Learned Elders of Zion". The Protocols have been used throughout the last century by despots such as Adolf Hitler to justify violence against Jews.

(5) In November 2003, Arab television featured an anti-Semitic series, entitled "Ash-Shatat" (or "The Diaspora"), which depicts Jewish people hatching a plot for Jewish control of the world.

(6) The sharp rise in anti-Semitic violence has caused international organizations such as the Organization for Security and Cooperation in Europe (OSCE) to elevate, and bring renewed focus to, the issue, including the convening by the OSCE in June 2003 of a conference in Vienna dedicated solely to the issue of anti-Semitism.

(7) The OSCE will again convene a conference dedicated to addressing the problem of anti-Semitism on April 28-29, 2004, in Berlin, with the United States delegation to be led by former Mayor of New York City Ed Koch.

(8) The United States Government has strongly supported efforts to address anti-Semitism through bilateral relationships and interaction with international organizations such as the OSCE, the European Union, and the United Nations.

(9) Congress has consistently supported efforts to address the rise in anti-Semitic violence. During the 107th Congress, both the Senate and the House of Representatives passed resolutions expressing strong concern with the sharp escalation of anti-Semitic violence in Europe and calling on the Department of State to thoroughly document the phenomenon.

SEC. 3. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the United States Government should continue to strongly support efforts to combat anti-Semitism worldwide through bilateral relationships and interaction with international organizations such as the OSCE; and

(2) the Department of State should thoroughly document acts of anti-Semitism that occur around the world.

SEC. 4. REPORTS.

(a) ONE-TIME REPORT.—Not later than November 15, 2004, the Secretary of State shall submit to the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives a report on acts of anti-Semitism around the world, including a description of—

(1) acts of physical violence against, or harassment of, Jewish people, and acts of violence against, or vandalism of, Jewish community institutions, such as schools, synagogues, or cemeteries, that occurred in each country;

(2) the responses of the governments of those countries to such actions;

(3) the actions taken by such governments to enact and enforce laws relating to the protection of the right to religious freedom of Jewish people; and

(4) the efforts by such governments to promote anti-bias and tolerance education.

(b) INFORMATION REQUIRED IN ANNUAL DEPARTMENT OF STATE REPORTS.—The Secretary of State shall include the information required under subsection (a) in the annual reports of the Department of State known as the Annual Report on International Religious Freedom and the Annual Human Rights Report.

AMENDMENT OFFERED BY MR. SMITH OF MICHIGAN

Mr. SMITH of Michigan. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SMITH of Michigan:

Page 2, line 7, after "During" insert the following: "the last 3 months of 2003 and".

Page 2, after line 9, insert the following new subparagraphs:

(A) In Putrajaya, Malaysia, on October 16, 2003, former Prime Minister Mahatir Mohammad told the 57 national leaders assembled for the Organization of the Islamic Conference that Jews "rule the world by proxy", and called for a "final victory" by the world's 1.3 billion Muslims, who, he said, "cannot be defeated by a few million Jews.".

(B) In Istanbul, Turkey, on November 15, 2003, simultaneous car bombs exploded outside two synagogues filled with worshippers, killing 24 people and wounding more than 250 people.

Page 2, line 10, redesignate subparagraph (A) as subparagraph (C).

Page 2, line 14, redesignate subparagraph (B) as subparagraph (D).

Page 2, line 19, redesignate subparagraph (C) as subparagraph (E).

Page 3, line 1, redesignate subparagraph (D) as subparagraph (F).

Page 3, beginning line 9, paragraph (4) is amended to read as follows:

(4) In November 2002, state-run television in Egypt broadcast the anti-Semitic series entitled "Horseman Without a Horse", which is based upon the fictitious conspiracy theory known as the Protocols of the Elders of Zion. The Protocols have been used throughout the last century by despots such as Adolf Hitler to justify violence against Jews.

Page 4, beginning line 3, paragraph (7) is amended to read as follows:

(7) The OSCE convened a conference again on April 28–29, 2004, in Berlin, to address the problem of anti-Semitism with the United States delegation led by former Mayor of New York City, Ed Koch.

Page 4, after line 20, insert the following new paragraph:

(10) Anti-Semitism has at times taken the form of vilification of Zionism, the Jewish national movement, and incitement against Israel.

Page 5, line 2, insert after "OSCE" the following: ", the European Union, and the United Nations".

Page 5, line 7, strike "(a) ONE-TIME REPORT.—".

Page 5, line 11, insert "one-time" before "report".

Page 5, line 22, strike "and" at the end.

Page 5, line 24, strike the period at the end and insert "; and".

Page 5, after line 24, insert the following new paragraph:

(5) instances of propaganda in government and nongovernment media that attempt to justify or promote racial hatred or incite acts of violence against Jewish people.

Page 6, beginning line 1, strike subsection (b) and insert the following new sections:

SEC. 5. AUTHORIZATION FOR ESTABLISHMENT OF OFFICE TO MONITOR AND COMBAT ANTI-SEMITISM.

The State Department Basic Authorities Act of 1956 is amended by adding after section 58 (22 U.S.C. 2730) the following new section:

"SEC. 59. MONITORING AND COMBATING ANTI-SEMITISM.

"(a) OFFICE TO MONITOR AND COMBAT ANTI-SEMITISM.—

"(1) ESTABLISHMENT OF OFFICE.—The Secretary shall establish within the Department of State an Office to Monitor and Combat anti-Semitism (in this section referred to as the 'Office') .

"(2) HEAD OF OFFICE.—

"(A) SPECIAL ENVOY FOR MONITORING AND COMBATING ANTI-SEMITISM.—The head of the Office shall be the Special Envoy for Monitoring and Combating anti-Semitism (in this section referred to as the 'Special Envoy').

"(B) APPOINTMENT OF HEAD OF OFFICE.—The Secretary shall appoint the Special Envoy. If the Secretary determines that such is appropriate, the Secretary may appoint the Special Envoy from among officers and employees of the Department. The Secretary may allow such officer or employee to retain the position (and the responsibilities associated with such position) held by such officer or employee prior to the appointment of such officer or employee to the position of Special Envoy under this paragraph.

"(b) PURPOSE OF OFFICE.—Upon establishment, the Office shall assume the primary responsibility for—

"(1) monitoring and combatting acts of anti-Semitism and anti-Semitic incitement that occur in foreign countries;

"(2) coordinating and assisting in the preparation of that portion of the report required by sections 116(d)(7) and 502B(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d)(7) and 2304(b)) relating to an assessment and description of the nature and extent of acts of anti-Semitism and anti-Semitic incitement for inclusion in the annual Country Reports on Human Rights Practices; and

"(3) coordinating and assisting in the preparation of that portion of the report required by section 102(b)(1)(A)(iv) of the International Religious Freedom Act of 1998 (22 U.S.C. 6412(b)(1)(A)(iv)) relating to an assessment and description of the nature and extent of acts of anti-Semitism and anti-Semitic incitement for inclusion in the Annual Report on International Religious Freedom.

"(c) CONSULTATIONS.—The Special Envoy shall consult with domestic and international nongovernmental organizations and multilateral organizations and institutions, as the Special Envoy considers appropriate to fulfill the purposes of this section.".

SEC. 6. INCLUSION IN DEPARTMENT OF STATE ANNUAL REPORTS OF INFORMATION CONCERNING ACTS OF ANTI-SEMITISM IN FOREIGN COUNTRIES.

(a) INCLUSION IN COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES.—The Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) is amended—

(1) in section 116(d) (22 U.S.C. 2151n(d))—

(A) by redesignating paragraphs (8), (9), and (10), as paragraphs (9), (10), and (11), respectively; and

(B) by inserting after paragraph (7) the following new paragraph:

"(8) wherever applicable, a description of the nature and extent of acts of anti-Semitism and anti-Semitic incitement that occur during the preceding year, including descriptions of—

"(A) acts of physical violence against, or harassment of Jewish people, and acts of violence against, or vandalism of Jewish community institutions, including schools, synagogues, and cemeteries;

"(B) instances of propaganda in government and nongovernment media that attempt to justify or promote racial hatred or incite acts of violence against Jewish people;

"(C) the actions, if any, taken by the government of the country to respond to such violence and attacks or to eliminate such propaganda or incitement;

"(D) the actions taken by such government to enact and enforce laws relating to the protection of the right to religious freedom of Jewish people; and

"(E) the efforts of such government to promote anti-bias and tolerance education;"; and

(2) after the fourth sentence of section 502B(b) (22 U.S.C. 2304(b)), by inserting the following new sentence: "Wherever applicable, a description of the nature and extent of acts of anti-Semitism and anti-Semitic incitement that occur, including the descriptions of such acts required under section 116(d)(8).".

(b) INCLUSION IN ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM.—Section 102(b)(1)(A) of the International Religious Freedom Act of 1998 (22 U.S.C. 6412(b)(1)(A)) is amended—

(1) in clause (ii), by striking "and" at the end;

(2) in clause (iii), by striking the period at the end and inserting "; and"; and

(3) by adding after clause (iii) the following new clause:

"(iv) wherever applicable, an assessment and description of the nature and extent of acts of anti-Semitism and anti-Semitic incitement that occur in that country during the preceding year, including—

"(I) acts of physical violence against, or harassment of, Jewish people, acts of violence against, or vandalism of, Jewish community institutions, and instances of propaganda in government and nongovernment media that incite such acts; and

"(II) the actions taken by the government of that country to respond to such violence and attacks or to eliminate such propaganda or incitement, to enact and enforce laws relating to the protection of the right to religious freedom of Jewish people, and to promote anti-bias and tolerance education.".

(c) EFFECTIVE DATE OF INCLUSIONS.—The amendments made by subsections (a) and (b) shall apply beginning with the first report under sections 116(d) and 502B(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d) and 2304(b)) and section 102(b) of the International Religious Freedom Act of 1998 (22 U.S.C. 6312(b)) submitted more than 180 days after the date of the enactment of this Act.

Mr. SMITH of Michigan (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The amendment was agreed to.

Mr. SMITH of New Jersey. Mr. Speaker, I am very pleased that today our amended version of S. 2292, the Global Anti-Semitism Review Act of 2004, is on the floor of the House for consideration. Senator VOINOVICH is to be commended for introducing and securing successful passage of S. 2292, as he is a tireless ally in our efforts to eradicate anti-Semitism. In support of his efforts, I introduced the House version, H.R. 4214, in April.

Realizing now is the time to act, Senator VOINOVICH, Congressman LANTOS and myself have since discussed ways to further strengthen the Global Anti-Semitism Review Act. Working in concert, we amended the text to add mechanisms to improve and strengthen the ability of our government to combat the evil of anti-Semitism.

The amended version, Mr. Speaker, maintains the State Department report on global anti-Semitism envisioned by Senator VOINOVICH. This report will set a benchmark as to the individual records of countries around the globe. The report, due for release no later than November 15, 2004, will examine the number of acts of physical violence against Jews or vandalism of Jewish community institutions and government responses to such actions. In addition, the report will detail steps taken by governments to protect the religious freedoms of Jewish people and describe governmental efforts to promote anti-bias and tolerance education.

Recognizing the role of media in encouraging anti-Semitic acts, the amended version also adds coverage of propaganda in government and nongovernment media that attempt to incite acts of violence against Jews. The importance of this issue was hammered home by James Tisch, Chairman of the Conference of Presidents of Major American Jewish Organizations, at a Helsinki Commission hearing on governmental responses to anti-Semitism in the OSCE region. He said: "[T]he Arab man in the street . . . doesn't stand a chance of being anything but [fiercely anti-Semitic], considering the barrage of hatred and venom about Jews to which he is constantly exposed. This river of lies flows from his leaders, his newspapers and his television set. The Arab media and the governments that sponsor and tolerate this flood of poison are to blame. This isn't about politics; it's about an ocean of hatred."

Mr. Speaker, we must push all governments to ensure their media are not adding fuel to the fire of anti-Semitism. By including coverage of domestic media, we make the one time global report on anti-Semitism more complete by exposing the source of an enormous amount of anti-Semitic vitriol.

The amended version of S. 2292 is stronger in other ways, foremost by mandating the creation of the Office to Monitor and Combat Anti-Semitism in the State Department and creating the position of Special Envoy for Monitoring and Combating Anti-Semitism. A point person specifically tasked with focusing on anti-Semitism will increase our ability to respond quickly and effectively when incidents arise. In addition, the Special Envoy can be double-hatted with another position, thereby giving the Department flexibility in its appointment. The office will also be involved in the drafting of the appropriate sections of the human rights and religious freedom reports. Considering anti-Semitism plagues all regions of the world, this special office will ensure that the United States resolutely denounces acts of anti-Semitism whenever and wherever they occur.

Concerning State Department reports, our amended version of S. 2292 will establish standards for the reporting on anti-Semitism when appropriate in the human rights and religious freedom reports. While our embassy staff labor tirelessly to ensure the human rights and religious freedom reports accurately cover the issue of anti-Semitism, I was concerned with the unevenness of reporting. The amendment will standardize coverage in the two reports, requiring the examination of: physical violence against Jews or vandalism of Jewish community institutions; propaganda in government and nongovernment media that attempt to incite acts of violence against Jews; governmental responses to violence or propaganda; governmental actions to enact and enforce laws relating to the protection of religious freedom of Jews; and governmental efforts to promote anti-bias and tolerance education.

By setting forth criteria for the Department, it will aid our embassies in more thoroughly covering the issue of anti-Semitism and ensure it receives the attention it deserves.

Again, I want to thank our leadership for making passage of this bill a priority. Their steadfast support, as well as the unwavering support from the Bush Administration, has greatly aided our efforts to fight anti-Semitism across the globe.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

RESOLUTION OF THE ETHIOPIA-ERITREA BORDER DISPUTE ACT OF 2003

Mr. SMITH of Michigan. Mr. Speaker, I ask unanimous consent that the Committee on International Relations be discharged from further consideration of the bill (H.R. 2760) to limit United States assistance for Ethiopia and Eritrea if those countries are not in compliance with the terms and conditions of agreements entered into by the two countries to end hostilities and provide for a demarcation of the border between the two countries, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The Clerk read the bill, as follows:

H.R. 2760

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Resolution of the Ethiopia-Eritrea Border Dispute Act of 2003".

SEC. 2. DEFINITIONS.

In this Act:

(1) ALGIERS AGREEMENTS.—The term "Algiers Agreements" means the Cessation of Hostilities Agreements and the Comprehensive Peace Agreement.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate.

(3) CESSATION OF HOSTILITIES AGREEMENT.—The term "Cessation of Hostilities Agreement" means the Agreement on the Cessation of Hostilities signed on June 18, 2000, in Algiers, Algeria, by the Government of Ethiopia and the Government of Eritrea that established a temporary demilitarized security zone within Eritrea to be enforced by the United Nations Peacekeeping Mission in Ethiopia and Eritrea (UNMEE).

(4) COMPREHENSIVE PEACE AGREEMENT.—The term "Comprehensive Peace Agreement" means the agreement signed on December 12, 2000, in Algiers, Algeria, by the Government of Ethiopia and the Government of Eritrea, under the auspices of the Organization of African Unity (OAU), that provided for an end to military hostilities between the two countries, assurances by the countries to refrain from the threat or use of force against each other, and established a neutral Boundary Commission to delimit and demarcate the border between the two countries.

(5) ECONOMIC ASSISTANCE.—The term "economic assistance" means—

(A) assistance under chapter 1 of part I of the Foreign Assistance Act of 1961 (relating to development assistance); and

(B) assistance under chapter 4 of part II of the Foreign Assistance Act of 1961 (relating to economic support fund assistance).

(6) MILITARY ASSISTANCE AND ARMS TRANSFERS.—The term "military assistance and arms transfers" means—

(A) assistance under chapter 2 of part II of the Foreign Assistance Act of 1961 (relating to military assistance), including the transfer of excess defense articles under section 516 of that Act;

(B) assistance under chapter 5 of part II of the Foreign Assistance Act of 1961 (relating to international military education and training or "IMET"), including military education and training for civilian personnel under section 541 of that Act (commonly referred to as "Expanded IMET"); and

(C) assistance under the "Foreign Military Financing" Program under section 23 of the Arms Export Control Act and the transfer of defense articles, defense services, design and construction services, or any other defense-related training under that Act.

SEC. 3. FINDINGS.

Congress makes the following findings:

(1) On May 6, 1998, a conflict erupted between Ethiopia and Eritrea, two of the world's poorest countries.

(2) The two-year war claimed 100,000 lives, displaced more than 1,000,000 people, cost Ethiopia more than $2,900,000,000, and caused a 62 percent decline in food production in Eritrea.

(3) Millions of dollars were diverted from much needed development projects into military activities and weapons procurements at a time when severe drought threatened a famine in both Ethiopia and Eritrea, as bad as the famine in 1984 in those countries, putting more than 13,000,000 lives at risk.

(4) On June 18, 2000, Prime Minister Meles Zenawi of the Federal Democratic Republic of Ethiopia and President Issaias Afewerki of

the State of Eritrea signed the Cessation of Hostilities Agreement in Algiers, Algeria. On December 12, 2000, the two countries also signed the Comprehensive Peace Agreement in Algiers under the auspices of the Organization of African Unity (OAU) and in the presence of United Nations Secretary General Kofi Annan and President Abdel-Aziz Boutheflika of Algeria.

(5) Article 4.2 of the Comprehensive Peace Agreement states the following: "The parties agree that a neutral Boundary Commission composed of five members shall be established with a mandate to delimit and demarcate the colonial treaty border [between the two countries] based on pertinent colonial treaties (1900, 1902 and 1908) and applicable international law.".

(6) Article 4.15 of the Comprehensive Peace Agreement states the following: "The parties agree that the delimitation and demarcation determinations of the Commission shall be final and binding. Each party shall respect the border so determined, as well as territorial integrity and sovereignty of the other party.".

(7)(A) The President of the United Nations Security Council, on behalf of the Security Council, confirmed the Security Council's endorsement of the terms and conditions of the Algiers Agreements, with special reference to the neutral Boundary Commission described in Article 4.2 of the Comprehensive Peace Agreement and its mandate.

(B) In addition, the Security Council reaffirmed its support for the Algiers Agreements in United Nations Security Council Resolution 1308 (July 17, 2000), 1312 (July 31, 2000), 1320 (September 15, 2000), 1344 (March 15, 2001), 1369 (September 14, 2001), 1398 (March 15, 2002), 1430 (August 14, 2002), 1434 (September 6, 2002), and 1466 (March 14, 2003).

(8) On April 13, 2002, the neutral Boundary Commission announced its "Delimitation Decision", reiterating that both parties had agreed that it would be "final and binding".

(9) Following the decision of the Boundary Commission that the heavily disputed town of Badme would be zoned to the Eritrean side of the new border, Foreign Minister Seyoum Mesfin of Ethiopia announced on April 15, 2003, that "[n]o-one expects the [G]overnment of Ethiopia to accept these mistakes committed by the Commission". Further, the Ethiopian Ministry of Information released a statement accusing the Boundary Commission of an "unfair tendency" in implementing the border ruling and "misinterpreting" the Algiers Agreements.

(10) In his March 6, 2003, "Progress Report" to the United Nations Security Council, Secretary General Kofi Annan reported that Prime Minister Zenawi of Ethiopia had expressed to his Special Representative, Legwaila Joseph Legwaila, that "if its concerns were not adequately addressed Ethiopia might eventually reject the demarcation-related decisions of the Commission".

(11) The independent Boundary Commission has investigated, reviewed, and rejected Ethiopia's claims with respect to the village of Badme, and in a report issued on March 12, 2003, stated that, based on the boundary line from the 1902 treaty between the two countries that was used as the reference under the terms of the Algiers Agreements, the evidence submitted by the Government of Ethiopia to support its claim was "inadequate and inconsistent" and the Commission "cannot allow one party to claim a territorial right, to insist on adjustments of parts of the boundary with that party finds disadvantageous".

SEC. 4. SENSE OF CONGRESS.

It is the sense of Congress that both Ethiopia and Eritrea should take all appropriate actions to implement the Algiers Agreements, including by accepting the "Delimitation Decision" issued by the neutral Boundary Commission on April 13, 2002, with respect to the boundary between the two countries.

SEC. 5. DECLARATIONS OF POLICY.

Congress makes the following declarations:

(1) Congress expresses its support for the Boundary Commission established by the Comprehensive Peace Agreement and calls on the international community to continue to support the United Nations trust fund established to facilitate the process of demarcation between Ethiopia and Eritrea and the economic and social transition of affected communities to new borders determined by the Commission.

(2) Congress further declares that it shall be the policy of the United States to limit United States assistance for Ethiopia or Eritrea if either such country is not in compliance with, or is not taking significant steps to comply with, the terms and conditions of the Algiers Agreements.

(3) Congress strongly condemns recent statements by senior Ethiopian officials criticizing the Boundary Commission's decision and calls on the Government of Ethiopia to immediately end its intransigence and fully cooperate with the Commission.

SEC. 6. LIMITATIONS ON UNITED STATES ASSISTANCE.

(a) LIMITATION ON ECONOMIC ASSISTANCE.—Economic assistance may only be provided for Ethiopia or Eritrea for any period of time for which the President determines that Ethiopia or Eritrea (as the case may be) is in compliance with, or is taking significant steps to comply with, the terms and conditions of the Algiers Agreements.

(b) LIMITATION ON MILITARY ASSISTANCE AND ARMS TRANSFERS.—Military assistance and arms transfers may only be provided for Ethiopia or Eritrea for any period of time for which the President determines that Ethiopia or Eritrea (as the case may be) is in compliance with, or is taking significant steps to comply with, the terms and conditions of the Algiers Agreements.

(c) EXCEPTIONS.—The limitation on assistance under subsections (a) and (b) shall not apply with respect to humanitarian assistance (such as food or medical assistance), peacekeeping assistance, counterterrorism initiatives, assistance to protect or promote human rights, and assistance to prevent, treat, and control HIV/AIDS.

(d) WAIVER.—The President may waive the application of subsection (a) or (b) with respect to Ethiopia or Eritrea if the President determines that it is in the national security interests of the United States to do so.

SEC. 7. REPORTS.

Until the date on which the border demarcation between Ethiopia and Eritrea is finalized, the President shall prepare and transmit on a regular basis to the appropriate congressional committees a report that contains a description of progress being made toward such demarcation, including the extent to which Ethiopia and Eritrea are in compliance with, or are taking significant steps to comply with, the terms and conditions of the Algiers Agreements.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. SMITH OF MICHIGAN

Mr. SMITH of Michigan. Mr. Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. SMITH of Michigan:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Resolution of the Ethiopia-Eritrea Border Dispute Act of 2004".

SEC. 2. DEFINITIONS.

In this Act:

(1) ALGIERS AGREEMENTS.—The term "Algiers Agreements" means the Cessation of Hostilities Agreement and the Comprehensive Peace Agreement.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate.

(3) CESSATION OF HOSTILITIES AGREEMENT.—The term "Cessation of Hostilities Agreement" means the Agreement on the Cessation of Hostilities signed on June 18, 2000, in Algiers, Algeria, by the Government of Ethiopia and the Government of Eritrea that established a temporary demilitarized security zone within Eritrea to be enforced by the United Nations Peacekeeping Mission in Ethiopia and Eritrea (UNMEE).

(4) COMPREHENSIVE PEACE AGREEMENT.—The term "Comprehensive Peace Agreement" means the agreement signed on December 12, 2000, in Algiers, Algeria, by the Government of Ethiopia and the Government of Eritrea, under the auspices of the Organization of African Unity (OAU), that provided for an end to military hostilities between the two countries, assurances by the countries to refrain from the threat or use of force against each other, and established a neutral Boundary Commission to delimit and demarcate the border between the two countries.

(5) ECONOMIC ASSISTANCE.—The term "economic assistance" means—

(A) assistance under chapter 1 of part I of the Foreign Assistance Act of 1961 (relating to development assistance); and

(B) assistance under chapter 4 of part II of the Foreign Assistance Act of 1961 (relating to economic support fund assistance).

(6) MILITARY ASSISTANCE AND ARMS TRANSFERS.—The term "military assistance and arms transfers" means—

(A) assistance under chapter 2 of part II of the Foreign Assistance Act of 1961 (relating to military assistance), including the transfer of excess defense articles under section 516 of that Act;

(B) assistance under chapter 5 of part II of the Foreign Assistance Act of 1961 (relating to international military education and training or "IMET"), including military education and training for civilian personnel under section 541 of that Act (commonly referred to as "Expanded IMET"); and

(C) assistance under the "Foreign Military Financing" Program under section 23 of the Arms Export Control Act and the transfer of defense articles, defense services, design and construction services, or any other defense-related training under that Act.

SEC. 3. FINDINGS.

Congress makes the following findings:

(1) On May 6, 1998, a conflict erupted between Ethiopia and Eritrea, two of the world's poorest countries.

(2) The two-year war claimed 100,000 lives, displaced more than 1,000,000 people, cost Ethiopia more than $2,900,000,000, and caused a 62 percent decline in food production in Eritrea.

(3) Millions of dollars were diverted from much needed development projects into military activities and weapons procurements at

a time when severe drought threatened a famine in both Ethiopia and Eritrea, as bad as the famine in 1984 in those countries, putting more than 13,000,000 lives at risk.

(4) On June 18, 2000, Prime Minister Meles Zenawi of the Federal Democratic Republic of Ethiopia and President Isaias Afewerki of the State of Eritrea signed the Cessation of Hostilities Agreement in Algiers, Algeria. On December 12, 2000, the two countries also signed the Comprehensive Peace Agreement in Algiers under the auspices of the Organization of African Unity (OAU) and in the presence of United Nations Secretary General Kofi Annan and President Abdel-Aziz Boutheflika of Algeria.

(5) Article 4.2 of the Comprehensive Peace Agreement states the following: "The parties agree that a neutral Boundary Commission composed of five members shall be established with a mandate to delimit and demarcate the colonial treaty border [between the two countries] based on pertinent colonial treaties (1900, 1902 and 1908) and applicable international law.".

(6) Article 4.15 of the Comprehensive Peace Agreement states the following: "The parties agree that the delimitation and demarcation determinations of the Commission shall be final and binding. Each party shall respect the border so determined, as well as territorial integrity and sovereignty of the other party.".

(7)(A) The President of the United Nations Security Council, on behalf of the Security Council, confirmed the Security Council's endorsement of the terms and conditions of the Algiers Agreements, with special reference to the neutral Boundary Commission described in Article 4.2 of the Comprehensive Peace Agreement and its mandate.

(B) In addition, the Security Council reaffirmed its support for the Algiers Agreements in United Nations Security Council Resolutions 1312 (July 31, 2000), 1320 (September 15, 2000), 1344 (March 15, 2001), 1369 (September 14, 2001), 1398 (March 15, 2002), 1430 (August 14, 2002), 1434 (September 6, 2002), 1466 (March 14, 2003), 1507 (September 12, 2003), 1531 (March 12, 2004), and 1560 (September 14, 2004).

(8) On April 13, 2002, the neutral Boundary Commission announced its "Delimitation Decision", reiterating that both parties had agreed that it would be "final and binding".

(9) Following the decision of the Boundary Commission that the heavily disputed town of Badme would be zoned to the Eritrean side of the new border, Foreign Minister Seyoum Mesfin of Ethiopia announced on April 15, 2003, that "[n]o-one expects the [G]overnment of Ethiopia to accept these mistakes committed by the Commission". Further, the Ethiopian Ministry of Information released a statement accusing the Boundary Commission of an "unfair tendency" in implementing the border ruling and "misinterpreting" the Algiers Agreements.

(10) In his March 6, 2003, "Progress Report" to the United Nations Security Council, Secretary General Kofi Annan reported that Prime Minister Zenawi of Ethiopia had expressed to his Special Representative, Legwaila Joseph Legwaila, that "if its concerns were not properly addressed Ethiopia might eventually reject the demarcation-related decisions of the Commission".

(11) On September 19, 2003, Prime Minister Zenawi wrote to United Nations Secretary General Kofi Annan and stated: "As the Commission's decisions could inevitably lead the two countries into another round of fratricidal war, the Security Council has an obligation, arising out of the UN Charter, to avert such a threat to regional peace and stability.".

(12) On October 3, 2003, the United Nations Security Council wrote to Prime Minister Zenawi and stated: "The members of the Security Council therefore wish to convey to you their deep regret at the intention of the government of Ethiopia not to accept the entirety of the delimitation and demarcation decision as decided by the boundary commission. They note in particular, that Ethiopia has committed itself under the Algiers Agreements to accept the boundary decision as final and binding.".

(13)(A) In an attempt to resolve the continued impasse, United Nations Secretary General Kofi Annan offered his good offices to the two parties and appointed Mr. Lloyd Axworthy, former Minister for Foreign Affairs of Canada, to serve as his Special Envoy for Ethiopia and Eritrea on January 29, 2004.

(B) Despite the assurances of the United Nations Secretary General, including in his Progress Reports of March 6, 2004, and July 7, 2004, that the appointment of the Special Envoy was "not intended to establish an alternative mechanism to the Boundary Commission or to renegotiate its final and binding decision", President Isaias of Eritrea has refused to meet with the Special Envoy or otherwise engage in political dialogue aimed at resolving the current impasse.

(14) In his July 7, 2004, "Progress Report" to the United Nations Security Council, Secretary General Kofi Annan reported that the Ethiopian Ministry of Foreign Affairs continues to reiterate its position that "the current demarcation line would disrupt the lives of border communities and lead to future conflict".

(15) In that same report, Secretary General Annan reminded both governments that they themselves "entrusted the Boundary Commission with the entire demarcation process, drew up its mandate and selected its Commissioners" and called upon the Government of Ethiopia to "unequivocally restate its acceptance of the Boundary Commission's decision, appoint field liaison officers, and pay its dues to and otherwise cooperate fully and expeditiously with the Commission".

SEC. 4. SENSE OF CONGRESS.

It is the sense of Congress that Ethiopia and Eritrea—

(1) should take all appropriate actions to implement the Algiers Agreements, including by accepting the "Delimitation Decision" issued by the neutral Boundary Commission on April 13, 2002, with respect to the boundary between the two countries; and

(2) should fully cooperate with the United Nations Special Envoy for Ethiopia-Eritrea, Lloyd Axworthy, whose mandate is the implementation of the Algiers Agreements, the Delimitation Decision of the Boundary Commission, and the relevant resolutions and decisions of the United Nations Security Council.

SEC. 5. DECLARATIONS OF POLICY.

Congress makes the following declarations:

(1) Congress expresses its support for the Boundary Commission established by the Comprehensive Peace Agreement and calls on the international community to continue to support the United Nations trust fund established to facilitate the process of demarcation between Ethiopia and Eritrea and the economic and social transition of affected communities to new borders determined by the Commission.

(2) Congress further declares that it shall be the policy of the United States to limit United States assistance for Ethiopia or Eritrea if either such country is not in compliance with, or is not taking significant steps to comply with, the terms and conditions of the Algiers Agreements.

(3) Congress strongly condemns statements by senior Ethiopian officials criticizing the Boundary Commission's decision and calls on the Government of Ethiopia to immediately and unconditionally fulfill its commitments under the Algiers Agreements, publicly accept the Boundary Commission's decision, and fully cooperate with the implementation of such decision.

(4) Congress recognizes the acceptance by the Government of Eritrea of the Boundary Commission's decision as final and binding, but condemns the Government of Eritrea's continued refusal to take advantage of the good offices offered by the United Nations Secretary General, to work with Special Envoy Lloyd Axworthy, or to otherwise engage in dialogue aimed at resolving the current impasse, and calls on the President of Eritrea to do so without further delay.

SEC. 6. LIMITATIONS ON UNITED STATES ASSISTANCE.

(a) LIMITATION ON ECONOMIC ASSISTANCE.—Economic assistance may only be provided for Ethiopia or Eritrea for any period of time for which the President determines that Ethiopia or Eritrea (as the case may be) is in compliance with, or is taking significant steps to comply with, the terms and conditions of the Algiers Agreements.

(b) LIMITATION ON MILITARY ASSISTANCE AND ARMS TRANSFERS.—Military assistance and arms transfers may only be provided for Ethiopia or Eritrea for any period of time for which the President determines that Ethiopia or Eritrea (as the case may be) is in compliance with, or is taking significant steps to comply with, the terms and conditions of the Algiers Agreements.

(c) EXCEPTIONS.—The limitation on assistance under subsections (a) and (b) shall not apply with respect to humanitarian assistance (such as food or medical assistance), assistance to protect or promote human rights, and assistance to prevent, treat, and control HIV/AIDS.

(d) WAIVER.—The President may waive the application of subsection (a) or (b) with respect to Ethiopia or Eritrea, particularly for the provision of peacekeeping assistance or counterterrorism assistance, if the President determines and certifies to the appropriate congressional committees that it is in the national interests of the United States to do so.

SEC. 7. INTEGRATION AND BORDER DEVELOPMENT INITIATIVE.

(a) ASSISTANCE.—After the date on which the border demarcation between Ethiopia and Eritrea is finalized (consistent with the decision of the Boundary Commission established by the Comprehensive Peace Agreement), the President shall establish and carry out an initiative in conjunction with the Governments of Ethiopia and Eritrea under which assistance is provided to reduce the adverse humanitarian impacts on the populations of the border region, prevent conflict which might result from the demarcation process, and further social and economic development projects that are identified and evaluated by local authorities to establish sustainable integration, development, and trade at the border region.

(b) PROJECT EXAMPLES.—Examples of development projects referred to in subsection (a) are—

(1) startup initiatives, including farming projects, to promote community economic development and the free flow of trade across the border between the two countries;

(2) generous compensation packages for families displaced by the border demarcation and support for relocation;

(3) effective mechanisms for managing movement of persons across the border between the two countries;

(4) an increase in the supply of basic services in the border region, including water, sanitation, housing, health care, and education; and

(5) support for local efforts to reinforce peace and reconciliation in the border region.

SEC. 8. REPORT.

Until the date on which the border demarcation between Ethiopia and Eritrea is finalized, the President shall prepare and transmit on a regular basis to the appropriate congressional committees a report that contains a description of progress being made toward such demarcation, including the extent to which Ethiopia and Eritrea are in compliance with, or are taking significant steps to comply with, the terms and conditions of the Algiers Agreements, and are otherwise cooperating with internationally-sanctioned efforts to resolve the current impasse.

Mr. SMITH of Michigan (during the reading). Mr. Speaker, I ask unanimous consent that the amendment in the nature of a substitute be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

The amendment in the nature of a substitute was agreed to.

Mr. LANTOS. Mr. Speaker, I want to thank the Chairman of the Committee on International Relations, my good friend from Illinois, for agreeing to move this important legislation forward. With passage of this legislation, Congress will further encourage the end to a long, protracted dispute between these two desperately poor nations.

In July 2003, after considerable deliberation, I introduced this legislation to let the Eritrean and Ethiopian governments know that the international community's patience with this costly border dispute could not go on forever. Mr. Speaker, Ethiopia and Eritrea fought an unnecessary and bloody two-year war beginning in May 1998, which claimed 100,000 lives and displaced more than 1,000,000 people. The damage of the war was exacerbated by a preventable food crisis that left nearly 12 million people at risk of starvation.

Today, 20 years after the 1984 Ethiopian famine, both Ethiopians and Eritreans rely increasingly on food aid abroad while their governments spend hundreds of millions of dollars on weapons. In 2000, Ethiopia and Eritrea signed a comprehensive peace agreement in Algiers. The agreement established a neutral Boundary Commission and the parties agreed that the decision of the Commission is final and binding.

In April 2002, the Boundary Commission announced its Delimitation Decision, placing the heavily disputed town of Badme in Eritrea. Both nations initially accepted the ruling, although Ethiopia later rejected the Commission's ruling. Ethiopia's refusal to accept the decision of the Boundary Commission has delayed demarcation of the boundary and is costing the international community millions of dollars because of the delay.

To date, more than $600 million have been spent to keep U.N. peacekeeping troops in a 25-kilometer-wide temporary security zone between the two countries. Meanwhile, the people of both nations are starving. In Eritrea, the 2004 donor appeal included a request for nearly $150 million to meet their food requirements for this year alone. Meanwhile, 13 million Ethiopians will meet none of their food needs in the 2004–05 production year, increasing to 14 million in 2005–06 and reaching an estimated 17.3 million by 2007–2008.

Mr. Speaker, over the past decade, the United States has provided $1.8 billion in foreign assistance to Ethiopia and another $333 million to Eritrea. So, why is the international community being asked to spend one-half a billion dollars to keep Ethiopia and Eritrea from attacking each other while their people starve? Mr. Speaker, what is wrong with this picture? And why, after agreeing to the Boundary Commission's decision, has Ethiopia continued its refusal to comply with its own binding commitment?

U.N. Secretary General Kofi Anan appointed Lloyd Axworthy, the former Canadian foreign minister, as his Special Envoy and charged him with reinforcing international efforts to settle the dispute and move the process forward. While I deeply disagree with the position taken by President Meles of Ethiopia, I want to commend him for extending the courtesy of meeting with the Special Envoy during his visit to Ethiopia.

On the other hand, I cannot express the extent of my dismay and disappointment that President Issaias of Eritrea refused to meet the Special Envoy, illustrating his own inflexibility and disdain for international efforts. There were no preconditions for meeting Mr. Axworthy, and only a diplomatic courtesy was expected.

Mr. Speaker, it is an outrage that these two countries whose citizens live on the very edge of survival cannot end their belligerent relationship, settle their dispute, and get on with addressing the critical economic, social, and political needs of their people. Instead of developing the great agricultural potential of Ethiopia and exploiting Eritrea's strategic port, these two countries find themselves permanently locked in a dispute and ultimately, appealing again to the international community for humanitarian help.

Mr. Speaker, H.R. 2760 sends a very clear message to both countries—abide by the Algiers Agreement and respect international diplomatic efforts and the United States will work to build economic prosperity and peace in the border areas. However, if either country fails to abide by the Algiers Agreement or refuses to cooperate with the Special Envoy, there should be consequences.

The amendment offered by the gentleman from Michigan, Mr. SMITH, and myself updates the resolution and has been agreed by both sides of the aisle. I want to thank my good friend from Michigan for assistance in this matter.

Mr. Speaker, I urge all of my colleagues to vote in support of this bill.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SMITH of Michigan. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 2760.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

CONFERENCE REPORT ON H.R. 1047, MISCELLANEOUS TRADE AND TECHNICAL CORRECTIONS ACT OF 2004

Mr. THOMAS submitted the following conference report and statement on the bill (H.R. 1047) to amend the Harmonized Tariff Schedule of the United States to modify temporarily certain rates of duty, to make other technical amendments to the trade laws, and for other purposes:

Mr. THOMAS. Mr. Speaker, I ask unanimous consent for the immediate consideration of the conference report to accompany the bill (H.R. 1047) to amend the Harmonized Tariff Schedule of the United States to modify temporarily certain rates of duty, to make other technical amendments to the trade laws, and for other purposes, and that the conference report be considered as having been read.

The Clerk read the title of the conference report.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

(For conference report and statement, see immediately prior proceedings of the House of today.)

The SPEAKER pro tempore. Without objection, the conference report is agreed to.

There was no objection.

A motion to reconsider was laid on the table.

FEDERAL EMPLOYEES DENTAL AND VISION BENEFITS ENHANCEMENT ACT OF 2004

Mr. MURPHY. Mr. Speaker, I ask unanimous consent that the Committee on Government Reform be discharged from further consideration of the bill (H.R. 5295) to amend part III of title 5, United States Code, to provide for the establishment of programs under which supplemental dental and vision benefits are made available to Federal employees, retirees, and their dependents, to expand the contracting authority of the Office of Personnel Management, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Clerk read the bill, as follows:

H.R. 5295

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Employees Dental and Vision Benefits Enhancement Act of 2004".

SEC. 2. ENHANCED DENTAL BENEFITS.

Subpart G of part III of title 5, United States Code, is amended by inserting after chapter 89 the following:

"CHAPTER 89A—ENHANCED DENTAL BENEFITS

"Sec.
"8921. Definitions.
"8922. Availability of dental benefits.
"8923. Contracting authority.
"8924. Benefits.
"8925. Information to individuals eligible to enroll.
"8926. Election of coverage.
"8927. Coverage of restored survivor or disability annuitants.
"8928. Premiums.
"8929. Preemption.
"8930. Studies, reports, and audits.
"8931. Jurisdiction of courts.
"8932. Administrative functions.

"§ 8921. Definitions

"In this chapter:

"(1) The term 'employee' means an employee, as defined by section 8901(1).

"(2) The terms 'annuitant', 'member of family', and 'dependent' have the meanings given such terms by section 8901.

"(3) The term 'eligible individual' refers to an individual described in paragraph (1) or (2), without regard to whether the individual is enrolled in a health benefits plan under chapter 89.

"(4) The term 'Office' means the Office of Personnel Management.

"(5) The term 'qualified company' means a company (or consortium of companies) that offers indemnity, preferred provider organization, health maintenance organization, or discount dental programs, and, if required, is licensed to issue applicable coverage in any number of States, taking any subsidiaries of such a company into account (and, in the case of a consortium, considering the member companies and any subsidiaries thereof, collectively).

"(6) The term 'employee organization' means an association or other organization of employees which is national in scope, or in which membership is open to all employees of a Government agency who are eligible to enroll in a health benefits plan under chapter 89.

"(7) The term 'State' includes the District of Columbia.

"§ 8922. Availability of dental benefits

"(a) The Office shall establish and administer a program through which an eligible individual may obtain dental coverage to supplement coverage available through chapter 89.

"(b) The Office shall determine, in the exercise of its reasonable discretion, the financial requirements for qualified companies to participate in the program.

"(c) Nothing in this chapter shall be construed to prohibit the availability of dental benefits provided by health benefits plans under chapter 89.

"§ 8923. Contracting authority

"(a)(1) The Office shall contract with a reasonable number of qualified companies for a policy or policies of benefits described under section 8924, without regard to section 5 of title 41 or any other statute requiring competitive bidding. An employee organization may contract with a qualified company for the purpose of participating with that qualified company in any contract between the Office and that qualified company.

"(2) The Office shall ensure that each resulting contract is awarded on the basis of contractor qualifications, price, and reasonable competition.

"(b) Each contract under this section shall contain—

"(1) the requirements under section 8902 (d), (f), and (i) made applicable to contracts under this section by regulations prescribed by the Office;

"(2) the terms of the enrollment period; and

"(3) such other terms and conditions as may be mutually agreed to by the Office and the qualified company involved, consistent with the requirements of this chapter and regulations prescribed by the Office.

"(c) Nothing in this chapter shall, in the case of an individual electing dental supplemental benefit coverage under this chapter after the expiration of such individual's first opportunity to enroll, preclude the application of waiting periods more stringent than those that would have applied if that opportunity had not yet expired.

"(d)(1) Each contract under this chapter shall require the qualified company to agree—

"(A) to provide payments or benefits to an eligible individual if such individual is entitled thereto under the terms of the contract; and

"(B) with respect to disputes regarding claims for payments or benefits under the terms of the contract—

"(i) to establish internal procedures designed to expeditiously resolve such disputes; and

"(ii) to establish, for disputes not resolved through procedures under clause (i), procedures for 1 or more alternative means of dispute resolution involving independent third-party review under appropriate circumstances by entities mutually acceptable to the Office and the qualified company.

"(2) A determination by a qualified company as to whether or not a particular individual is eligible to obtain coverage under this chapter shall be subject to review only to the extent and in the manner provided in the applicable contract.

"(3) For purposes of applying the Contract Disputes Act of 1978 to disputes arising under this chapter between a qualified company and the Office—

"(A) the agency board having jurisdiction to decide an appeal relative to such a dispute shall be such board of contract appeals as the Director of the Office of Personnel Management shall specify in writing (after appropriate arrangements, as described in section 8(c) of such Act); and

"(B) the district courts of the United States shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of any action described in section 10(a)(1) of such Act relative to such a dispute.

"(e) Nothing in this section shall be considered to grant authority for the Office or third-party reviewer to change the terms of any contract under this chapter.

"(f) Contracts under this chapter shall be for a uniform term of 7 years and may not be renewed automatically.

"§ 8924. Benefits

"(a) The Office may prescribe reasonable minimum standards for enhanced dental benefits plans offered under this chapter and for qualified companies offering the plans.

"(b) Each contract may include more than 1 level of benefits that shall be made available to all eligible individuals.

"(c) The benefits to be provided under enhanced dental benefits plans under this chapter may be of the following types:

"(1) Diagnostic.
"(2) Preventive.
"(3) Emergency care.
"(4) Restorative.
"(5) Oral and maxillofacial surgery.
"(6) Endodontics.
"(7) Periodontics.
"(8) Prosthodontics.
"(9) Orthodontics.

"(d) A contract approved under this chapter shall require the qualified company to cover the geographic service delivery specified by the Office. The Office shall require qualified companies to include underserved areas (with respect to dental services) in their service delivery areas.

"(e) If an individual has dental coverage under a health benefits plan under chapter 89 and also has coverage under a plan under this chapter, the health benefits plan under chapter 89 shall be the first payor of any benefit payments.

"§ 8925. Information to individuals eligible to enroll

"(a) The qualified companies, at the direction and with the approval of the Office, shall make available to each individual eligible to enroll in a dental benefits plan information on services and benefits (including maximums, limitations, and exclusions) that the Office considers necessary to enable the individual to make an informed decision about electing coverage.

"(b) The Office shall make available to each individual eligible to enroll in a dental benefits plan, information on services and benefits provided by qualified companies participating under chapter 89.

"§ 8926. Election of coverage

"(a) An eligible individual may enroll in a dental benefits plan for self-only, self plus one, or for self and family. If an eligible individual has a spouse who is also eligible to enroll, either spouse, but not both, may enroll for self plus one or self and family. An individual may not be enrolled both as an employee, annuitant, or other individual eligible to enroll and as a member of the family.

"(b) The Office shall prescribe regulations under which—

"(1) an eligible individual may enroll in a dental benefits plan; and

"(2) an enrolled individual may change the self-only, self plus one, or self and family coverage of that individual.

"(c)(1) Regulations under subsection (b) shall permit an eligible individual to cancel or transfer the enrollment of that individual to another dental benefits plan—

"(A) before the start of any contract term in which there is a change in rates charged or benefits provided, in which a new plan is offered, or in which an existing plan is terminated; or

"(B) during other times and under other circumstances specified by the Office.

"(2) A transfer under paragraph (1) shall be subject to waiting periods provided under a new plan.

“§ 8927. Coverage of restored survivor or disability annuitants

“A surviving spouse, disability annuitant, or surviving child whose annuity is terminated and later restored may continue enrollment in a dental benefits plan, subject to the terms and conditions prescribed in regulations issued by the Office.

“§ 8928. Premiums

“(a) Each eligible individual obtaining supplemental dental coverage under this chapter shall be responsible for 100 percent of the premiums for such coverage.

“(b) The Office shall prescribe regulations specifying the terms and conditions under which individuals are required to pay the premiums for enrollment.

“(c) The amount necessary to pay the premiums for enrollment may—

“(1) in the case of an employee, be withheld from the pay of such an employee; and

“(2) in the case of an annuitant, be withheld from the annuity of such an annuitant.

“(d) All amounts withheld under this section shall be paid directly to the qualified company.

“(e) Each participating qualified company shall maintain accounting records that contain such information and reports as the Office may require.

“(f)(1) The Employees Health Benefits Fund is available, without fiscal year limitation, for reasonable expenses incurred by the Office in administering this chapter before the first day of the first contract period, including reasonable implementation costs.

“(2)(A) There is established in the Employees Health Benefits Fund a Dental Benefits Administrative Account, which shall be available to the Office, without fiscal year limitation, to defray reasonable expenses incurred by the Office in administering this chapter after the start of the first contract year.

“(B) A contract under this chapter shall include appropriate provisions under which the qualified company involved shall, during each year, make such periodic contributions to the Dental Benefits Administrative Account as necessary to ensure that the reasonable anticipated expenses of the Office in administering this chapter during such year are defrayed.

“§ 8929. Preemption

“The terms of any contract that relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law, or any regulation issued thereunder, which relates to dental benefits, insurance, plans, or contracts.

“§ 8930. Studies, reports, and audits

“(a) Each contract shall contain provisions requiring the qualified company—

“(1) to furnish such reasonable reports as the Office determines to be necessary to enable it to carry out its functions under this chapter; and

“(2) to permit the Office and representatives of the Government Accountability Office to examine such records of the qualified company as may be necessary to carry out the purposes of this chapter.

“(b) Each Government agency shall keep such records, make such certifications, and furnish the Office, the qualified company, or both, with such information and reports as the Office may require.

“(c) The Office shall conduct periodic reviews of plans under this chapter, including a comparison of the dental benefits available under chapter 89, to ensure the competitiveness of plans under this chapter. The Office shall cooperate with the Government Accountability Office to provide periodic evaluations of the program.

“§ 8931. Jurisdiction of courts

“The district courts of the United States have original jurisdiction, concurrent with the United States Court of Federal Claims, of a civil action or claim against the United States under this chapter after such administrative remedies as required under section 8923(d) have been exhausted, but only to the extent judicial review is not precluded by any dispute resolution or other remedy under this chapter.

“§ 8932. Administrative functions

“(a) The Office shall prescribe regulations to carry out this chapter. The regulations may exclude an employee on the basis of the nature and type of employment or conditions pertaining to it.

“(b) The Office shall, as appropriate, provide for coordinated enrollment, promotion, and education efforts as appropriate in consultation with each qualified company. The information under this subsection shall include information relating to the dental benefits available under chapter 89, including the advantages and disadvantages of obtaining additional coverage under this chapter.”.

SEC. 3. ENHANCED VISION BENEFITS.

Subpart G of part III of title 5, United States Code, is amended by inserting after chapter 89A (as added by section 2) the following:

“CHAPTER 89B—ENHANCED VISION BENEFITS

“Sec.
“8941. Definitions.
“8942. Availability of vision benefits.
“8943. Contracting authority.
“8944. Benefits.
“8945. Information to individuals eligible to enroll.
“8946. Election of coverage.
“8947. Coverage of restored survivor or disability annuitants.
“8948. Premiums.
“8949. Preemption.
“8950. Studies, reports, and audits.
“8951. Jurisdiction of courts.
“8952. Administrative functions.

“§ 8941. Definitions

“In this chapter:

“(1) The term ‘employee’ means an employee, as defined by section 8901(1).

“(2) The terms ‘annuitant’, ‘member of family’, and ‘dependent’ have the meanings given such terms by section 8901.

“(3) The term ‘eligible individual’ refers to an individual described in paragraph (1) or (2), without regard to whether the individual is enrolled in a health benefits plan under chapter 89.

“(4) The term ‘Office’ means the Office of Personnel Management.

“(5) The term ‘qualified company’ means a company (or consortium of companies) that offers indemnity, preferred provider organization, health maintenance organization, or discount vision programs, and, if required, is licensed to issue applicable coverage in any number of States, taking any subsidiaries of such a company into account (and, in the case of a consortium, considering the member companies and any subsidiaries thereof, collectively).

“(6) The term ‘employee organization’ means an association or other organization of employees which is national in scope, or in which membership is open to all employees of a Government agency who are eligible to enroll in a health benefits plan under chapter 89.

“(7) The term ‘State’ includes the District of Columbia.

“§ 8942. Availability of vision benefits

“(a) The Office shall establish and administer a program through which an eligible individual may obtain vision coverage to supplement coverage available through chapter 89.

“(b) The Office shall determine, in the exercise of its reasonable discretion, the financial requirements for qualified companies to participate in the program.

“(c) Nothing in this chapter shall be construed to prohibit the availability of vision benefits provided by health benefits plans under chapter 89.

“§ 8943. Contracting authority

“(a)(1) The Office shall contract with a reasonable number of qualified companies for a policy or policies of benefits described under section 8944, without regard to section 5 of title 41 or any other statute requiring competitive bidding. An employee organization may contract with a qualified company for the purpose of participating with that qualified company in any contract between the Office and that qualified company.

“(2) The Office shall ensure that each resulting contract is awarded on the basis of contractor qualifications, price, and reasonable competition.

“(b) Each contract under this section shall contain—

“(1) the requirements under section 8902 (d), (f), and (i) made applicable to contracts under this section by regulations prescribed by the Office;

“(2) the terms of the enrollment period; and

“(3) such other terms and conditions as may be mutually agreed to by the Office and the qualified company involved, consistent with the requirements of this chapter and regulations prescribed by the Office.

“(c) Nothing in this chapter shall, in the case of an individual electing vision supplemental benefit coverage under this chapter after the expiration of such individual’s first opportunity to enroll, preclude the application of waiting periods more stringent than those that would have applied if that opportunity had not yet expired.

“(d)(1) Each contract under this chapter shall require the qualified company to agree—

“(A) to provide payments or benefits to an eligible individual if such individual is entitled thereto under the terms of the contract; and

“(B) with respect to disputes regarding claims for payments or benefits under the terms of the contract—

“(i) to establish internal procedures designed to expeditiously resolve such disputes; and

“(ii) to establish, for disputes not resolved through procedures under clause (i), procedures for 1 or more alternative means of dispute resolution involving independent third-party review under appropriate circumstances by entities mutually acceptable to the Office and the qualified company.

“(2) A determination by a qualified company as to whether or not a particular individual is eligible to obtain coverage under this chapter shall be subject to review only to the extent and in the manner provided in the applicable contract.

“(3) For purposes of applying the Contract Disputes Act of 1978 to disputes arising under this chapter between a qualified company and the Office—

“(A) the agency board having jurisdiction to decide an appeal relative to such a dispute shall be such board of contract appeals as the Director of the Office of Personnel Management shall specify in writing (after appropriate arrangements, as described in section 8(c) of such Act); and

"(B) the district courts of the United States shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of any action described in section 10(a)(1) of such Act relative to such a dispute.

"(e) Nothing in this section shall be considered to grant authority for the Office or third-party reviewer to change the terms of any contract under this chapter.

"(f) Contracts under this chapter shall be for a uniform term of 7 years and may not be renewed automatically.

"§ 8944. Benefits

"(a) The Office may prescribe reasonable minimum standards for enhanced vision benefits plans offered under this chapter and for qualified companies offering the plans.

"(b) Each contract may include more than 1 level of benefits that shall be made available to all eligible individuals.

"(c) The benefits to be provided under enhanced vision benefits plans under this chapter may be of the following types:

"(1) Diagnostic (to include refractive services).

"(2) Preventive.

"(3) Eyewear.

"(d) A contract approved under this chapter shall require the qualified company to cover the geographic service delivery specified by the Office. The Office shall require qualified companies to include underserved areas (with respect to vision services) in their service delivery areas.

"(e) If an individual has vision coverage under a health benefits plan under chapter 89 and also has coverage under a plan under this chapter, the health benefits plan under chapter 89 shall be the first payor of any benefit payments.

"§ 8945. Information to individuals eligible to enroll

"(a) The qualified companies, at the direction and with the approval of the Office, shall make available to each individual eligible to enroll in a vision benefits plan information on services and benefits (including maximums, limitations, and exclusions) that the Office considers necessary to enable the individual to make an informed decision about electing coverage.

"(b) The Office shall make available to each individual eligible to enroll in a vision benefits plan, information on services and benefits provided by qualified companies participating under chapter 89.

"§ 8946. Election of coverage

"(a) An eligible individual may enroll in a vision benefits plan for self-only, self plus one, or for self and family. If an eligible individual has a spouse who is also eligible to enroll, either spouse, but not both, may enroll for self plus one or self and family. An individual may not be enrolled both as an employee, annuitant, or other individual eligible to enroll and as a member of the family.

"(b) The Office shall prescribe regulations under which—

"(1) an eligible individual may enroll in a vision benefits plan; and

"(2) an enrolled individual may change the self-only, self plus one, or self and family coverage of that individual.

"(c)(1) Regulations under subsection (b) shall permit an eligible individual to cancel or transfer the enrollment of that individual to another vision benefits plan—

"(A) before the start of any contract term in which there is a change in rates charged or benefits provided, in which a new plan is offered, or in which an existing plan is terminated; or

"(B) during other times and under other circumstances specified by the Office.

"(2) A transfer under paragraph (1) shall be subject to waiting periods provided under a new plan.

"§ 8947. Coverage of restored survivor or disability annuitants

"A surviving spouse, disability annuitant, or surviving child whose annuity is terminated and later restored may continue enrollment in a vision benefits plan, subject to the terms and conditions prescribed in regulations issued by the Office.

"§ 8948. Premiums

"(a) Each eligible individual obtaining supplemental vision coverage under this chapter shall be responsible for 100 percent of the premiums for such coverage.

"(b) The Office shall prescribe regulations specifying the terms and conditions under which individuals are required to pay the premiums for enrollment.

"(c) The amount necessary to pay the premiums for enrollment may—

"(1) in the case of an employee, be withheld from the pay of such an employee; and

"(2) in the case of an annuitant, be withheld from the annuity of such an annuitant.

"(d) All amounts withheld under this section shall be paid directly to the qualified company.

"(e) Each participating qualified company shall maintain accounting records that contain such information and reports as the Office may require.

"(f)(1) The Employees Health Benefits Fund is available, without fiscal year limitation, for reasonable expenses incurred by the Office in administering this chapter before the first day of the first contract period, including reasonable implementation costs.

"(2)(A) There is established in the Employees Health Benefits Fund a Vision Benefits Administrative Account, which shall be available to the Office, without fiscal year limitation, to defray reasonable expenses incurred by the Office in administering this chapter after the start of the first contract year.

"(B) A contract under this chapter shall include appropriate provisions under which the qualified company involved shall, during each year, make such periodic contributions to the Vision Benefits Administrative Account as necessary to ensure that the reasonable anticipated expenses of the Office in administering this chapter during such year are defrayed.

"§ 8949. Preemption

"The terms of any contract that relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law, or any regulation issued thereunder, which relates to vision benefits, insurance, plans, or contracts.

"§ 8950. Studies, reports, and audits

"(a) Each contract shall contain provisions requiring the qualified company—

"(1) to furnish such reasonable reports as the Office determines to be necessary to enable it to carry out its functions under this chapter; and

"(2) to permit the Office and representatives of the Government Accountability Office to examine such records of the qualified company as may be necessary to carry out the purposes of this chapter.

"(b) Each Government agency shall keep such records, make such certifications, and furnish the Office, the qualified company, or both, with such information and reports as the Office may require.

"(c) The Office shall conduct periodic reviews of plans under this chapter, including a comparison of the vision benefits available under chapter 89, to ensure the competitiveness of plans under this chapter. The Office shall cooperate with the Government Accountability Office to provide periodic evaluations of the program.

"§ 8951. Jurisdiction of courts

"The district courts of the United States have original jurisdiction, concurrent with the United States Court of Federal Claims, of a civil action or claim against the United States under this chapter after such administrative remedies as required under section 8943(d) have been exhausted, but only to the extent judicial review is not precluded by any dispute resolution or other remedy under this chapter.

"§ 8952. Administrative functions

"(a) The Office shall prescribe regulations to carry out this chapter. The regulations may exclude an employee on the basis of the nature and type of employment or conditions pertaining to it.

"(b) The Office shall, as appropriate, provide for coordinated enrollment, promotion, and education efforts as appropriate in consultation with each qualified company. The information under this subsection shall include information relating to the vision benefits available under chapter 89, including the advantages and disadvantages of obtaining additional coverage under this chapter.".

SEC. 4. TECHNICAL AND CONFORMING AMENDMENT.

The table of chapters for part III of title 5, United States Code, is amended by inserting after the item relating to chapter 89 the following:

"89A. Enhanced Dental Benefits 8921
"89B. Enhanced Vision Benefits .... 8941".

SEC. 5. APPLICATION TO POSTAL SERVICE EMPLOYEES.

Section 1005(f) of title 39, United States Code, is amended in the second sentence by striking "chapters 87 and 89" and inserting "chapters 87, 89, 89A, and 89B".

SEC. 6. SENSE OF CONGRESS.

(a) FINDINGS.—Congress finds that—

(1) oral and vision health and general health and well-being are inseparable, and access to dental and vision services is an essential factor in maintaining good health;

(2) Federal employees and their families deserve and desire additional coverage options and place value on maintaining good oral and vision health; and

(3) it is in the interest of the Federal Government to remain competitive in attracting and retaining highly skilled employees and taking reasonable steps to ensure the health and well-being of its employees.

(b) SENSE OF CONGRESS.—It is the sense of Congress that health insurance benefits available to Federal employees should be sufficient to promote the health and productivity of all Federal workers and to support the recruitment and retention of a highly qualified workforce. To help achieve these goals, Congress should evaluate the supplemental plans established under the this Act to determine the options for and feasibility of providing an employer contribution.

SEC. 7. REQUIREMENT TO STUDY HEALTH BENEFITS COVERAGE FOR DEPENDENT CHILDREN WHO ARE FULL-TIME STUDENTS.

Not later than 6 months after the date of enactment of this Act, the Office of Personnel Management shall submit to Congress a report describing and evaluating options whereby benefits under chapter 89 of title 5, United States Code, could be made available to an unmarried dependent child under 25 years of age who is enrolled as a full-time student at an institution of higher education, as defined under section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

SEC. 8. HEARING BENEFITS REPORTING REQUIREMENT.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Office of Personnel Management shall submit to Congress a report describing and evaluating options whereby additional hearing benefits could be made available to—

(1) Federal employees and annuitants;

(2) qualified relatives of Federal employees and annuitants; and

(3) other appropriate classes of individuals.

(b) REQUIRED CONTENT.—The report shall include—

(1) a description of the hearing benefits currently available under the Federal employees health benefits program;

(2) a description of any hearing plans currently offered by carriers participating in the Federal employees health benefits program;

(3) a description of specific hearing benefits that could be offered in addition to those described in paragraphs (1) and (2), including any maximums, limitations, exclusions, and definitions that might be relevant;

(4) a description of the specific classes of individuals (as referred to generally in paragraphs (1) through (3) of subsection (a)) to whom those additional benefits should be made available, including any definitions and other terms or conditions that might be relevant;

(5) a description and assessment of the various contracting arrangements by which the Government could make those additional benefits available, including whether such benefits should be contracted for on a regional or national basis;

(6) the estimated cost of those additional benefits, including an analysis relating to whether any regular Government contributions or allocation for start-up costs might be necessary or appropriate;

(7) a description of how those additional benefits could be made available through—

(A) the Federal employees health benefits program;

(B) one or more plans outside the Federal employees health benefits program, including supplemental plans referred to in paragraph (2);

(C) the program described in subparagraph (A) in combination with one or more of the plans described in subparagraph (B); and

(D) any other hearing coverage delivery method;

(8) an analysis of the advantages and disadvantages associated with the alternatives described under paragraph (7), including—

(A) the relative cost effectiveness and efficiency of each;

(B) the likely impact of each alternative on the overall attractiveness of the Federal employees health benefits program to individuals eligible to enroll, particularly Federal employees and annuitants; and

(C) the extent to which each alternative might affect the relative competitiveness of the various carriers and plans currently participating in the Federal employees health benefits program (including as a provider of supplemental benefits);

(9) a recommendation from the Office as to its preferred method or methods for providing those additional benefits; and

(10) any proposed legislation or other measures the Office considers necessary in order to implement any of the foregoing.

SEC. 9. EFFECTIVE DATE.

The amendments made by this Act shall take effect on the date of enactment of this Act and shall apply to contracts that take effect in any year beginning after December 31, 2005.

Mr. TOM DAVIS of Virginia. Mr. Speaker, I rise in strong support of H.R. 5295.

Earlier this year, the House passed H.R. 3751, legislation authored by Representative JO ANN DAVIS, instructing the Office of Personnel Management (OPM) to conduct a study to determine how best to include dental vision and hearing benefits in the Federal Employees Health Benefits Program, the FEHBP. The bill now before us takes an important step forward in this effort to establish a voluntary program under which federal employees and annuitants may purchase dental and vision insurance as part of the FEHBP.

It was expertly crafted by the Senator from Maine, Ms. COLLINS, and follows the design of the current Long-Term Care Insurance Program. In addition, this legislation also includes an important provision from H.R. 3751. This provision, offered by Ranking Member of the Civil Service Subcommittee, Mr. DAVIS, retains the direction to OPM to conduct a study on how best to provide hearing benefits in the FEHBP.

The FEHBP is one of the Federal Government's most important tools as we seek to recruit and retain the best federal workforce that this country has to offer. It covers over 8.6 million individuals, including 2.2 million federal and postal employees, 1.9 million federal annuitants, and 4.5 million dependents; and offers the widest selection of health plans in the country, enabling enrollees to compare the costs, benefits, and features of different plans. However, this program will not remain a model for excellence in employer-provided healthcare coverage unless we continue to explore avenues to enhance the care and choice provided.

Minimal dental and vision benefits are available in the FEHBP because over 15 years ago, OPM stopped allowing plans to add new dental and vision packages or to increase packages they already had in place. The fact is that the FEHBP has not kept pace in these areas, as an overwhelming majority of private-sector plans provide dental and vision coverage. In addition, there has been a groundswell among federal employees and annuitants through numerous surveys and focus groups on this issue—more than any other benefit, they want better coverage for dental and vision care. That will change with the passage of this important legislation.

I commend the sponsor of this legislation, Mr. MURPHY, for his dedication on issues important to our Nation's civil servants. I look forward to working with him and all members as we provide comprehensive, high-quality, affordable healthcare through the FEHBP, and serve as a model for improving the performance of the U.S. health system as a whole.

Mr. MORAN of Virginia. Mr. Speaker, I rise in strong support of H.R. 5295, the Federal Employees Dental and Vision Benefits Enhancement Act of 2004 and am proud to be a co-sponsor of this bill.

As ranking member of the Legislative Branch Appropriations Subcommittee, I was pleased to initiate efforts to establish a similar benefit for Members and congressional staff with House passage of the Fiscal 2005 Legislative Branch Appropriations Act (H.R. 4755).

Combined, these two initiatives represent one of the most significant changes to health benefits under the Federal Employees Health Benefits Plan in recent years.

The Federal Employees Dental and Vision Benefits Enhancement Act would establish a voluntary program under which Federal employees, retirees and annuitants may purchase supplemental dental and vision coverage.

The legislation grants the Office of Personnel Management (OPM) the authority to select the appropriate combination of nationwide and regional companies and a variety of benefit packages to meet the diverse needs of our Federal employee, retiree, and annuitant population.

Greater access to dental and vision care is an area where major improvement is needed and should be an essential component to any comprehensive health care strategy. Many Federal employees whom I hear from tell me that their greatest health care expenditures go towards dental and vision care. Federal employees need and deserve increased access to dental and vision benefits.

FEHBP has long been regarded as a model health care program. I am confident that with the addition of a supplementary dental and vision coverage program, the Federal government will set an example for other employers to expand their health care offerings to include dental and vision coverage for their employees.

Additionally, I believe this new benefit will serve as a recruitment tool for the Federal government in attracting and keeping the best and the brightest in the government.

Mr. Speaker, I thank Chairman DAVIS on the Government Reform Committee for moving this important legislation and strongly support its adoption.

Mr. WOLF. Mr. Speaker, I rise today as a co-sponsor and in strong support for this legislation offered by Representative MURPHY. I have often heard from my constitutents who are federal employees that while they are pleased with their health benefits, they are frustrated that coverage for dental and vision are lacking.

This legislation would change this, by making dental and vision benefits available to federal employees. It is necessary to make sure that our federal employees have access to these two vital benefits.

Dental and vision related expenses can be very costly. Today we have the chance to help our federal employees, who serve their nation everyday, manage these expenses.

Additionally, this bill would require the Office of Personnel Management to report to Congress about making benefits available for hearing aids and services.

In order to recruit and retain federal employees, it is necessary to provide them with a first class health care system. Many health plans for employees in the private sector include dental, vision, and hearing coverage. This bill will help federal employees enjoy a health care system that is on par with the private sector.

This bill is important to improve and expand the current health care available to federal employees, and will send an important signal that Congress and the American people continue to value the hard work and the health of those serving our government.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 11 o'clock and 7 minutes p.m.), the House stood in recess subject to the call of the Chair.

☐ 0210

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. RYAN of Wisconsin) at 2 o'clock and 10 minutes a.m.

HOUR OF MEETING ON SATURDAY, OCTOBER 9, 2004

Mr. CANTOR. Mr. Speaker, I ask unanimous consent that when the House adjourns on this legislative day, it adjourn to meet at noon on Saturday, October 9, 2004.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 2 o'clock and 11 minutes a.m.), the House stood in recess subject to the call of the Chair.

☐ 0936

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. PETRI) at 9 o'clock and 36 minutes a.m.

REPORT ON RESOLUTION WAIVING A REQUIREMENT OF CLAUSE 6(A) OF RULE XIII WITH RESPECT TO THE SAME DAY CONSIDERATION OF CERTAIN RESOLUTIONS

Mr. SESSIONS, from the Committee on Rules, submitted a privileged report (Rept. No. 108-772) on the resolution (H. Res. 846) waiving a requirement of clause 6(a) of Rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules, which was referred to the House Calendar and ordered to be printed.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Ms. KILPATRICK (at the request of Ms. PELOSI) for today after 7:00 p.m. and the balance of the week on account of personal reasons.

Mr. TAUZIN (at the request of Mr. DELAY) for October 7 and the balance of the week on account of medical reasons.

ENROLLED BILLS SIGNED

Mr. Trandahl, Clerk of the House, reported and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 854. An act to provide for the promotion of democracy, human rights, and rule of law in the Republic of Belarus and for the consolidation and strengthening of Belarus sovereignty and independence.

H.R. 2828. An act to authorize the Secretary of the Interior to implement water supply technology and infrastructure programs aimed at increasing and diversifying domestic water resources.

H.R. 5122. An act to amend the Congressional Accountability Act of 1995 to permit members of the Board of Directors of the Office of Compliance to serve for 2 terms.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 33.—An act to authorize the Secretary of Agriculture to sell or exchange all or part of certain administrative sites and other land in the Ozark-St. Francis and Ouachita National Forests and to use funds derived from the sale or exchange to acquire, construct, or improve administrative sites.

S. 1791.—An act to amend the Lease Lot Conveyance Act of 2002 to provide that the amounts received by the United States under that Act shall be deposited in the reclamation fund, and for other purposes.

S. 2178.—An act to make technical corrections to laws relating to certain units of the National Park System and to National Park programs.

S. 2415.—An act to designate the facility of the United States Postal Service located at 4141 Postmark Drive, Anchorage, Alaska, as the "Robert J. Opinsky Post Office Building".

S. 2511.—An act to direct the Secretary of the Interior to conduct a feasibility study of a Chimayo water supply system, to provide for the planning, design, and construction of a water supply, reclamation, and filtration facility for Espanola, New Mexico, and for other purposes.

S. 2742.—An act to extend certain authority of the Supreme Court Police, modify the venue of prosecutions relating to the Supreme Court building and grounds, and authorize the acceptance of gifts to the United States Supreme Court.

BILLS PRESENTED TO THE PRESIDENT

Jeff Trandahl, Clerk of the House reports that on October 7, 2004, he presented to the President of the United States, for his approval, the following bills:

H.R. 4011. To promote human rights and freedom in the Democratic People's Republic of Korea, and for other purposes.

H.R. 4850. Making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 2005, and for other purposes.

ADJOURNMENT

Mr. SESSIONS. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 9 o'clock and 37 minutes a.m.), under its previous order, the House adjourned until today at noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

10260. A letter from the Executive Director, Commoditity Futures Trading Commission, transmitting the Commission's final rule — Foreign Futures and Foreign Options Transactions (RIN: 3038-AB45) received September 21, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10261. A letter from the Executive Director, Commoditity Futures Trading Commission, transmitting the Commission's final rule — Collection of Claims Owed the United States Arising From Activities Under the Commission's Jurisdiction (RIN: 3038-AC03) received September 21, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10262. A letter from the Executive Director, Commoditity Futures Trading Commission, transmitting the Department's final rule — Correction to Regional Office Information, Reference to Section 4D(2) and Criteria for CPO Registration Exemption — received July 23, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10263. A letter from the Congressional Review Coordinator, APHIS, Department of Agriculture, transmitting the Department's final rule — Importation of Wood Packaging Material [Docket No. 02-032-3] (RIN: 0579-AB48) received September 22, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10264. A letter from the Congressional Review Coordinator, APHIS, Department of Agriculture, transmitting the Department's final rule — Tuberculosis in Cattle; Import Requirements [Docket No. 03-081-2] received August 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10265. A letter from the Congressional Review Coordinator, APHIS, Department of Agriculture, transmitting the Department's final rule — Oriental Fruit Fly; Removal of Quarantined Area [Docket No. 02-130-3] received August 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10266. A letter from the Congressional Review Coordinator, APHIS, Department of Agriculture, transmitting the Department's final rule — Karnal Bunt; Regulated Areas [Docket No. 03-047-2] received August 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10267. A letter from the Congressional Review Coordinator, APHIS, Department of Agriculture, transmitting the Department's final rule — Pine Shoot Beetle; Additions to Quarantined Areas [Docket No. 04-036-2] received September 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10268. A letter from the Congressional Review Coordinator, APHIS, Department of Agriculture, transmitting the Department's final rule — Citrus Canker; Quarantined Areas [Docket No. 04-045-1] received September 16, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10269. A letter from the Congressional Review Coordinator, APHIS, Department of Agriculture, transmitting the Department's final rule — Gypsy Moth Generally Infested Areas [Docket No. 04-025-2] received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10270. A letter from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting the Department's final rule — Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Exemption for Shipments of Tree Run Citrus [Docket No. FV04-905-2 IFR] received August 17, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10271. A letter from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting the Department's final rule — Mango Promotion, Research, and Information Order [Doc. No. FV-02-707-FR] (RIN: 0581-AC05) received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10272. A letter from the Administrator, Agricultural Marketing Service, Fruit and Vegatable Programs, Department of Agriculture, transmitting the Department's final rule — Decreased Assessment Rates for Specified Marketing Orders [Docket No. FV04-922-1 IFR] received August 16, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10273. A letter from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting the Department's final rule — Winter Pears Grown in Oregon and Washington; Decrease of a Continuing Supplemental Assessment Rate for the Beurre d'Anjou Variety of Pears Grown in Oregon and Washington [Docket No. FV04-927-2 FR] received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10274. A letter from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting the Department's final rule — Dried Prunes Produced in California; Increased Assessment Rate [Docket No. FV04-993-2 FR] received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10275. A letter from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Program, Department of Agriculture, transmitting the Department's final rule — Nectarines and Peaches Grown in California; Decreased Assessment Rates [Docket No. FV04-916/917-4 IFR] received August 17, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10276. A letter from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting the Department's final rule — Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Modifying the Procedures Used To Limit the Volume of Small Red Seedless Grapefruit Grown in Florida [Docket No. FV04-905-5 IFR] received August 17, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10277. A letter from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting the Department's final rule — Kiwifruit Grown in California; Decreased Assessment Rates [Docket No. FV04-920-2 IFR] received September 22, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10278. A letter from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting the Department's final rule — Nectarines and Peaches Grown in California; Revision of Reporting Requirements for Fresh Nectarines and Peaches [Docket No. FV04-916/917-03 FR] received September 13, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10279. A letter from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting the Department's final rule — Fresh Prunes Grown in Designated Counties in Washington and in Umatilla County, OR; Increased Assessment Rate [Docket No. FV04-924-1 FR] received September 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10280. A letter from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting the Department's final rule — Kiwifruit Grown in California; Relaxation of Pack and Container Requirements [Docket No. FV04-920-1 FR] received September 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10281. A letter from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting the Department's final rule — Onions Grown in Certain Designated Counties in Idaho, and Malheur County Oregon; Increased Assessment Rate [Docket No. FV04-958-02 FR] received July 22, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10282. A letter from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting the Department's final rule — Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches [Docket No. FV04-916/917-02 FIR] received July 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10283. A letter from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting the Department's final rule — Pistachios Grown in California; Delay of the Effective Date for Aflatoxin, Size and Quality Requirements [Docket No. FV02-983-1 FR] received July 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10284. A letter from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting the Department's final rule — Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Decreased Assessment Rate [Docket No. FV04-906-2 IFR] received July 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10285. A letter from the Administrator, Agricultural Marketing Service, Livestock and Seed Program, Department of Agriculture, transmitting the Department's final rule — Mandatory Country of Origin Labeling of Fish and Shellfish [No. LS-03-04] (RIN: 0581-AC26) received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10286. A letter from the Administrator, Agricultural Marketing Service, Livestock and Seed Program, Department of Agriculture, transmitting the Department's final rule — Livestock Mandatory Reporting; Amendment To Revise Lamb Reporting Definitions [Docket No. LS-01-08] (RIN: 0581-AB98) received September 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10287. A letter from the Administrator, Agricultural Marketing Service, Poultry Programs, Department of Agriculture, transmitting the Department's final rule — Regulations Governing the Inspection of Eggs [Docket No. PY-04-002] (RIN: 0581-AB74) received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10288. A letter from the Director, Faith Based and Community Initiatives, Department of Agriculture, transmitting the Department's final rule — Equal Opportunity for Religious Organizations (RIN: 0503-AA27) received July 22, 2004, pursuant to 5 U.S.C. 80[illegible]1)(A); to the Committee on Agriculture.

10289. A letter from the Acting Administrator, FSIS, Department of Agriculture, transmitting the Department's final rule — Beef or Pork with Barbeque Sauce; Revision of Standard [Docket No. 96-006F] (RIN: 0583-AC09) received July 27, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10290. A letter from the Administrator, Rural Utilities Service, Department of Agriculture, transmitting the Department's final rule — Broadband Grant Program (RIN: 0572-AB94) received August 17, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10291. A letter from the RMA, Administrator, Department of Agriculture, transmitting the Department's final rule — Commom Crop Insurance Regulations; Processing Tomato Crop Insurance Provisions (RIN: 0563-AB90) received August 17, 2004, pursuant to 5

U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10292. A letter from the RMA, Administrator, Department of Agriculture, transmitting the Department's final rule — Common Crop Insurance Regulations; Blueberry Crop Insurance Provisions (RIN: 0563-AB76) received August 31, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10293. A letter from the RMA, Administrator, Department of Agriculture, transmitting the Department's final rule — Common Crop Insurance Regulations, Pecan Revenue Crop Insurance Provisions (RIN: 0563-AB91) received August 31, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10294. A letter from the RMA, Administrator, Department of Agriculture, transmitting the Department's final rule — Common Crop Insurance Regulations; Apple Crop Insurance Provisions (RIN: 0563-AB92) received August 31, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10295. A letter from the RMA, Administrator, Department of Agriculture, transmitting the Department's final rule — General Administrative Regulations, Catastrophic Risk Protection Endorsement; Group Risk Plan of Insurance Regulations for the 2004 and Succeeding Crop Years; and the Common Crop Insurance Regulations, Basic Provisions (RIN: 0563-AB94) received August 17, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10296. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Dimethenamid; Pesticide Tolerance [OPP-2004-0315; FRL-7680-1] received September 22, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10297. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Penoxsulam, 2-(2,2-difluoroethoxy) -N- (5, 8-dimethoxy[1,2,4] triazolo [1,5-c] pyrimdin-2-yl) -6- (trifluoromethyl) benzenesulfonamide; Pesticide Tolerance [OPP-2004-0286; FRL-7678-6] received September 22, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10298. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Citrate Esters; Exemption from the Requirement of a Tolerance [OPP-2004-0300; FRL-7677-6] received September 22, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10299. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Carfentrazone-ethyl; Pesticide Tolerance [OPP-2004-0256; FRL-7678-9] received September 22, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10300. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Lactofen; Pesticide Tolerance [OPP-2004-0293; FRL-7680-2] received September 22, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10301. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Tebufenozide; Pesticide Tolerance [OPP-2004-0209; FRL-7680-9] received September 22, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10302. A letter from the Chariman and Chief Executive Officer, Farm Credit Administration, transmitting the Administration's final rule — Eligibility and Scope of Financing; Loan Policies and Operations; General Provisions; Credit and Related Services (RIN: 3052-AC06) received July 27, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10303. A letter from the Comptroller, Department of Defense, transmitting a report of a violation of the Antideficiency Act by the Department of the Army, Case Number 03-05, pursuant to 31 U.S.C. 1517(b); to the Committee on Appropriations.

10304. A letter from the Comptroller, Department of Defense, transmitting a report of a violation of the Antideficiency Act by the Department of the Navy, Case Number 03-02, pursuant to 31 U.S.C. 1517(b); to the Committee on Appropriations.

10305. A letter from the Comptroller, Department of Defense, transmitting a report of a violation of the Antideficiency Act by the Department of the Army, Case Number 98-05, pursuant to 31 U.S.C. 1517(b); to the Committee on Appropriations.

10306. A letter from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting the Department's final rule — Defense Federal Acquisition Regulation Supplement; Personal Services Contracts [DFARS Case 2003-D103] received September 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

10307. A letter from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting the Department's final rule — Defense Federal Acquisition Regulation Supplement; Acquisition Plans — Corrosion Prevention and Mitigation [DFARS Case 2004-D004] received September 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

10308. A letter from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting the Department's final rule — Defense Federal Acquisition Regulation Supplement; Definition of Terrorist Country [DFARS Case 2003-D098] received September 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

10309. A letter from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting the Department's final rule — Defense Federal Acquisition Regulation Supplement; Berry Amendment Changes [DFARS Case 2003-D099] received September 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

10310. A letter from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting the Department's final rule — Defense Federal Acquisition Regulation Supplement; Quality Control of Aviation Critical Safety Items and Related Services [DFARS Case 2003-D101] received September 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

10311. A letter from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting the Department's final rule — Defense Federal Acquisition Regulation Supplement; Indian Incentive Program [DFARS Case 2002-D033] received September 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

10312. A letter from the Alternate OSD FRLO, Department of Defense, transmitting the Department's final rule — TRICARE; Individual Case Management Program; Program for Persons with Disbilities; Extended Benefits for Disabled Family Members of Active Duty Service Members; Custodial Care (RIN: 0720-AA78) received August 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

10313. A letter from the Secretary, Department of Defense, transmitting a letter on the approved retirement of General James T. Hill, United States Army, and his advancement to the grade of general on the retired list; to the Committee on Armed Services.

10314. A letter from the Under Secretary for Personnel and Readiness, Department of Defense, transmitting Authorization of Captain Bruce E. MacDonald, United States Navy, to wear the insignia of the grade of rear admiral in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

10315. A letter from the Under Secretary for Personnel and Readiness, Department of Defense, transmitting a letter on the approved retirement of Vice Admiral Alfred G. Harms, Jr., United States Navy, and his advancement to the grade of vice admiral on the retired list; to the Committee on Armed Services.

10316. A letter from the Principal Deputy Under Secretary for Personnel and Readiness, Department of Defense, transmitting Authorization of Major General David F. Melcher, United States Army, to wear the insignia of the grade of lieutenant general in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

10317. A letter from the Principal Deputy Under Secretary for Personnel and Readiness, Department of Defense, transmitting Authorization of Rear Admiral Lewis W. Crenshaw, Jr., United States Navy, to wear the insignia of vice admiral in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

10318. A letter from the Principal Deputy Under Secretary for Personnel and Readiness, Department of Defense, transmitting Authorization of Major General Stepehen G. Wood, United States Air Force, to wear the insignia of the grade of lieutenant general in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

10319. A letter from the Principal Deputy Under Secretary for Personnel and Readiness, Department of Defense, transmitting Authorization of Major General R. Steven Whitcomb, United States Army, to wear the insignia of the grade of lieutenant general in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

10320. A letter from the Principal Deputy Under Secretary for Personnel and Readiness, Department of Defense, transmitting Authorization of Rear Admiral James K. Moran, United States Navy, to wear the insignia of the grade of vice admiral in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

10321. A letter from the Principal Deputy Under Secretary for Personnel and Readiness, Department of Defense, transmitting Authorization of Major General James N. Mattis, United States Marine Corps, to wear the insignia of the grade of lieutenant general in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

10322. A letter from the Principapl Deputy Under Secretary for Personnel and Readiness, Department of Defense, transmitting

Authorization of Major General Dennis R. Larsen, United States Air Force, to wear the insignia of the grade of lieutenant general in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

10323. A letter from the Principal Deputy Under Secretary for Personnel and Readiness, Department of Defense, transmitting Authorization of Major General Kevin C. Kiley, United States Army, to wear the insignia of the grade of lieutenant general in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

10324. A letter from the Principal Deputy Under Secretary for Personnel and Readiness, Department of Defense, transmitting Authorization of Lieutenant General Benjamin S. Griffin, United States Army, to wear the insignia of the grade of general in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

10325. A letter from the Principal Deputy Under Secretary for Personnel and Readiness, Department of Defense, transmitting Authorization of Major General William M. Fraser III, United States Air Force, to wear the insignia of the grade of lieutenant general in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

10326. A letter from the Principal Deputy Under Secretary for Personnel and Readiness, Department of Defense, transmitting Authorization of Major General James M. Dubik, United States Army, to wear the insignia of the grade of lieutenant general in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

10327. A letter from the Principal Deputy Under Secretary for Personnel and Readiness, Department of Defense, transmitting Authorization of Major General Robert T. Dail, United States Army, to wear the insignia of the grade of lieutenant general in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

10328. A letter from the Principal Deputy Under Secretary for Personnel and Readiness, Department of Defense, transmitting Authorization of Lieutenant General Bruce A. Carlson, United States Air Force, to wear the insignia of the grade of general in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

10329. A letter from the Principal Deputy Under Secretary for Personnel and Readiness, Department of Defense, transmitting Authorization of Vice Admiral Kirkland H. Donald, United States Navy, to wear the insignia of the grade of admiral in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

10330. A letter from the Principal Deputy Under Secretary for Personnel and Readiness, Department of Defense, transmitting authorization of the enclosed list of officers to wear the insignia of the next higher grade in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

10331. A letter from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting the Department's final rule — Defense Federal Acquisition Regulation Supplement; Extension of Partnership Agreement — 8(a) Program [DFARS Case 2004-D015] received October 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

10332. A letter from the Principal Deputy Under Secretary for Personnel and Readiness, Department of Defense, transmitting authorization of the enclosed list of eight officers to wear the insignia of the grade of rear admiral (lower half) in accordance with title 10, United States Code, section 777; to the Committee on Armed Services.

10333. A letter from the Secretary, Department of Defense, transmitting a letter on the approved retirement of Lieutenant General Gary H. Hughey, United States Marine Corps, and his advancement to the grade of lieutenant general on the retired list; to the Committee on Armed Services.

10334. A letter from the Army Federal Register Liaison Officer, Department of Defense, transmitting the Department's final rule — Publication of Rules Affecting the Public (RIN: 0702-AA40-U) received September 24, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

10335. A letter from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting the Department's final rule — Defense Federal Acquisition Regulation Supplement; Consolidation of Contract Requirements [DFARS Case 2003-D109] received September 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

10336. A letter from the Attorney-Advisor, Maritime Administration, Department of Transportation, transmitting the Department's final rule — Electronic Options for Transitting Certain Information Collection Responses to MARAD [Docket Number: MARAD-2003-16238] (RIN: 2133-AB64) received September 10, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

10337. A letter from the Assistant to the Board, Board of Governors of the Federal Reserve System, transmitting the Board's final rule — Truth in Lending [Regulation Z; Docket No. R-1208] received August 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10338. A letter from the Assistant to the Board, Board of Governors of the Federal Reserve System, transmitting the Board's final rule — Rules of Practice for Hearings [Docket No. OP-1211] received September 24, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10339. A letter from the Assistant to the Board, Board of Governors of the Federal Reserve System, transmitting the Board's final rule — Availibility of Funds and Collection of Checks [Regulation CC; Docket No. R-1176] received July 29, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10340. A letter from the Assistant to the Board, Board of Governors of the Federal Reserve System, transmitting the Board's final rule — Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Consolidation of Asset-Backed Commercial Paper Program Assets and Other Related Issues [No. 2004-36] (RIN: 1550-AB79); Department of the Treasury, Office of the Comptroller of the Currency [Docket No. 04-19] (RIN: 1557-AC76); Federal Reserve System [Regulations H and Y; Docket No. R-1162]; Federal Deposit Insurance Corporation (RIN: 3064-AC75) received July 22, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10341. A letter from the Legal Counsel, Community Development Financial Institutions Fund, Department of the Treasury, transmitting the Department's final rule — Community Development Financial Institutions Program (RIN: 1505-AA92) received July 7, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10342. A letter from the Assistant General Counsel (Banking and Finance), Department of the Treasury, transmitting the Department's final rule — Terrorism Risk Insurance Program; Litigation Management (RIN: 1505-AB08) received July 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10343. A letter from the Senior Paralegal (Regulations), Department of the Treasury, transmitting the Department's final rule — Community Reinvestment Act Regulations [No. 2004-42] (RIN: 1550-AB48) received September 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10344. A letter from the Director, Legislative and Regulatory Activities Division, Department of the Treasury, transmitting the Department's final rule — Fundamental Change in Asset Composition of a Bank [Docket No. 04-20] (RIN: 1557-AC11) received August 15, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10345. A letter from the Director, Legislative and Regulatory Activites Division, Department of the Treasury, transmitting the Department's final rule — Lending Limits Pilot Program [Docket No. 04-21] (RIN: 1557-AC83) received August 19, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10346. A letter from the Senior Paralegal, Office of Thrift Supervision, Department of the Treasury, transmitting the Department's final rule — Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Consolidation of Asset-Backed Commercial Paper Program Assets and Other Related Issues [No. 2004-36] (RIN: 1550-AB79); Department of the Treasury, Office of the Comptroller of the Currency [Docket No. 04-19] (RIN: 1557-AC76); Federal Reserve System [Regulations H and Y; Docket No. R-1162]; Federal Deposit Insurance Corporation (RIN: 3064-AC75) received September 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10347. A letter from the Acting General Counsel/FEMA, Department of Homeland Security, transmitting the Department's final rule — Changes in Flood Elevation Determinations [Docket No. FEMA-D-7559] received September 14, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10348. A letter from the Acting General Counsel/FEMA, Department of Homeland Security, transmitting the Department's final rule — Changes in Flood Elevation Determinations — received September 14, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10349. A letter from the Acting General Counsel/FEMA, Department of Homeland Security, transmitting the Department's final rule — Final Flood Elevation Determinations — received September 14, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10350. A letter from the Acting General Counsel/FEMA, Department of Homeland Security, transmitting the Department's final rule — Final Flood Elevation Determinations — received September 14, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10351. A letter from the Acting General Counsel/FEMA, Department of Homeland Security, transmitting the Department's final rule—Changes in Flood Elevation Determinations—received September 14, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10352. A letter from the Acting General Counsel/FEMA, Department of Homeland Security, transmitting the Department's final rule—Suspension of Community Eligibility [Docket No. FEMA-7843] received September 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10353. A letter from the Acting General Counsel/FEMA, Department of Homeland Security, transmitting the Department's final rule—Suspension of Community Eligibility [Docket No. FEMA-7835] received July 27, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10354. A letter from the Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, transmitting the Department's final rule—Equal Participation of Faith-Based Organizations [Docket No. FR-4881-F-02] (RIN: 2501-AD03) received July 22, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10355. A letter from the Assistant General Counsel for Regulations, Department of Housing and Urban Development, transmitting the Department's final rule—Suspension, Debarment, Limited Denial of Participation [Docket No. FR-4692-F-04] (RIN: 2501-AC81) received September 17, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10356. A letter from the Assistant General Counsel for Regulations, Department of Housing and Urban Development, transmitting the Department's final rule—Retention of Excess Income in the Section 236 Program [Docket No. FR-4689-F-02] (RIN: 2502-AH68) received September 15, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10357. A letter from the Chairman and President, Export-Import Bank, transmitting a report on transactions involving U.S. exports to Singapore pursuant to Section 2(b)(3) of the Export-Import Bank Act of 1945, as amended; to the Committee on Financial Services.

10358. A letter from the Director, FDIC Office of Legislative Affairs, Federal Deposit Insurance Corporation, transmitting the Corporation's final rule—Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Consolidation of Asset-Backed Commercial Paper Program Assets and Other Related Issues [Docket No. 2004-36] (RIN: 1550-AB79); Department of the Treasury, Office of the Comptroller of the Currency [Docket No. 04-19] (RIN: 1557-AC76); Federal Reserve System [Regulations H and Y; Docket No. R- 1162]; Federal Deposit Insurance Corporation (RIN: 3064-AC75) received August 31, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10359. A letter from the General Counsel, Federal Housing Finance Board, transmitting the Board's final rule—Registration of Federal Home Loan Bank Equity Securities [No. 2004-07] (RIN: 3069-AB22) received August 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10360. A letter from the Acting General Counsel, National Credit Union Administration, transmitting the Administration's final rule—Health Savings Accounts—received August 17, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10361. A letter from the General Counsel, National Credit Union Administration, transmitting the Administration's final rule—Investment in Exchangeable Collateralized Mortgage Obligations—received July 12, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10362. A letter from the Assistant Secretary, Securities and Exchange Commission, transmitting the Commission's final rule—Prohibition on the Use of Brokerage Commisisons to Finance Distribution [Release No. IC-26591; File No.S7-09-04] (RIN: 3235-AJ07) received September 7, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10363. A letter from the Deputy Secretary, Securities and Exchange Commission, transmitting the Commission's final rule—Investment Company Governance [Release No.IC-26520; File No.S7-03-04] (RIN: 3235-AJ05) received July 27, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10364. A letter from the Assistant Secretary, Securities and Exchange Commission, transmitting the Commission's final rule—Short Sales [Release No. 34-50103; File No.S7-23-03] (RIN: 3235-AJ00) received July 29, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10365. A letter from the Deputy Secretary, Securities and Exchange Commission, transmitting the Commission's final rule—Proposed Rule Changes of Self-Regulatory Organizations [Release No. 34-50486; File No. S7-18-04] (RIN: 3235-AJ20) received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10366. A letter from the Deputy Secretary, Securities and Exchange Commission, transmitting the Commission's final rule—Rule 15c3-3 Reserve Requirements for Margin Related to Security Futures Products [Release No. 34-50295; File No. S7-34-02] (RIN: 3235-AI61) received August 31, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10367. A letter from the Assistant General Counsel for Regulations, Office of the General Counsel, Department of Education, transmitting the Department's final rule—National Institute on Disability and Rehabilitation Research (RIN: 1820-ZA26) received August 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

10368. A letter from the Assistant General Counsel for Regulations, Office of the General Counsel, Department of Education, transmitting the Department's final rule—National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers (RIN: 1820-ZA33) received August 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

10369. A letter from the Assistant General Counsel for Regulations, Office of the General Counsel, Department of Education, transmitting the Department's final rule—National Institute on Disability and Rehabilitation Research (RIN: 1820-ZA34) received August 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

10370. A letter from the Assistant General Counsel for Regulations, Office of the General Counsel, Department of Education, transmitting the Department's final rule—National Institute on Disability and Rehabilitation Research; Grants and Cooperative Agreements; Availability, etc.: Special Education and Rehabilitative Services—Rehabilitation Research and Training Centers Program (RIN: 1820-ZA-37) received August 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

10371. A letter from the Assistant General Counsel for Regulations, Office of the General Counsel, Department of Education, transmitting the Department's final rule—Special Demonstration Programs—Model Demonstration Projects—Positive Psychology (RIN: 1820-ZA35) received August 16, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

10372. A letter from the Assistant Secretary, Office of Vocational and Adult Education, Department of Education, transmitting the Department's final rule—Native American Vocational and Technical Education Program—received July 23, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

10373. A letter from the Assistant Secretary, Office of Special Education and Rehabilitative Services, Department of Education, transmitting the Department's final rule—Special Demonstration Programs—Model Demonstration Projects—Positive Psychology (RIN: 1820-ZA35) received August 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

10374. A letter from the Assistant Secretary, ESBA, Department of Labor, transmitting the Department's final rule—Fiduciary Responsibility Under the Employee Retirement Income Security Act of 1974 Automatic Rollover Safe Harbor (RIN: 1210-AA92) received September 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

10375. A letter from the Director, OSHA Standards and Guidance, Department of Labor, transmitting the Department's final rule—Controlled Negative Pressure REDON Fit Testing Protocol [Docket No. H-049D] (RIN: 1218-AC05) received August 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

10376. A letter from the Director, OSHA Standards and Guidance, Department of Labor, transmitting the Department's final rule—Fire Protection in Shipyard Employment [Docket No. S-051] (RIN: 1218-AB51) received September 17, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

10377. A letter from the Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation, transmitting the Corporation's final rule—Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits—received September 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

10378. A letter from the Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation, transmitting the Corporation's final rule—Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits—received August 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

10379. A letter from the Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation, transmitting the Corporation's final rule—Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits—received September 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

10380. A letter from the Director, Regulations Policy and Mgmt. Staff, Department of Health and Human Services, transmitting the Department's final rule — Change of Names and Addresses; Technical Amendment [Docket No. 2004N-0287] received September 14, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10381. A letter from the Director, Regulations Policy and Mgmt. Staff, Department of Health and Human Services, transmitting the Department's final rule — Medical Devices; Immunology and Microbiology Devices; Classification of the Beta-Glucan Serological Assay [Docket No. 2004N-0370] received October 7, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10382. A letter from the Trial Attorney, NHTSA, Department of Transportation, transmitting the Department's final rule — Reporting of Information and Documents About Potential Defects [Docket No. NHTSA 2001-8677; Notice 12] (RIN: 2127-AJ41) received October 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10383. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Connecticut: Final Authorization of State Hazardous Waste Management Program Revisions [FRL-7817-9] received September 22, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10384. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — National Priorities List for Uncontrolled Hazardous Waste Sites [FRL-7817-6] received September 22, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10385. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Delaware: Final Authorization of State Hazardous Waste Management Program Revisions [FRL-7825-5] received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10386. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Florida: Final Authorization of State Hazardous Waste Management Program Revision [FRL-7825-8] received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10387. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks [OGC-2004-0004; FRL-7826-2] received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10388. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of State Plans for Designated Facilities; New Jersey [Region II Docket No. R02-OAR-2004-NJ-0003, FRL-7818-4] received September 22, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10389. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgaton of Air Quality Implementation Plans; Iowa Update to Materials Incorporated by Reference [IA-191-1191; FRL-7812-5] received September 22, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10390. A letter from the Legal Advisor to Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Jamestown, North Dakota) [MM Docket No. 00-127; RM-9894] received October 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10391. A letter from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Gunnison, Crawford, and Olathe, Breckenridge, Eagle, Fort Morgan, Greenwood Village, Loveland, and Strasburg, Colorado, and Laramie, Wyoming) [MB Docket No.03-144; RM-10733; RM-10788; RM-10789] received October 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10392. A letter from the Legal Adv./Chief, Wireless Telecom. Bureau, Federal Communications Commission, transmitting the Commission's final rule — Extending Wireless Telecommunications Services to Tribal Lands [WT Docket No. 99-266] received October 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10393. A letter from the Legal Adv./Chief, Wireless Telecom. Bureau, Federal Communications Commission, transmitting the Commission's final rule — Public Mobile Services [WT Docket No. 97-112, CC Docket No. 90-6; FCC 03-130] received October 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10394. A letter from the Legal Advisor, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television [MB Docket No.03-15; RM-9832] received October 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10395. A letter from the Deputy Bureau Chief, CGB, Federal Communications Commission, transmitting the Commission's final rule — 2000 Biennial Review — Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers [CC Docket No. 00-257] Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 [CC Docket No. 94-129] Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers — received October 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10396. A letter from the Legal Advisor, WTB, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Part 101 of the Commission's Rules to Streamline Processing of Microwave Applications in the Wireless Telecommunications Services [WT Docket No. 00-19] Telecommunications Industry Association Petition for Rulemaking [RM-9418] received October 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10397. A letter from the Deputy Bureau Chief, CGB, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Part 1, Subpart N of the Commission's Rules Concerning Non-Discrimination on the Basis of Disability in the Commission's Programs and Activities — received October 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10398. A letter from the Attorney, Wireline Competition Bureau, Federal Communications Commission, transmitting the Commission's final rule — Implementation of the Telecommunications Act of 1996 [CC Docket No. 96-115]; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information — received October 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10399. A letter from the Attorney Advisor, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission [GC Docket No. 02-37] received October 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10400. A letter from the Senior Legal Advisor, International Bureau, Federal Communications Commission, transmitting the Commission's final rule — The Establishment of Policies and Service Rules for the Non-Geostationary Satellite Orbit, Fixed Satellite Service in the Ka-Band [IB Docket No. 02-19] received October 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10401. A letter from the Deputy Director, Defense Security Cooperation Agency, transmitting notification concerning the Department of the Navy's Proposed Letter(s) of Offer and Acceptance (LOA) to Turkey for defense articles and services (Transmittal No. 05-11), pursuant to 22 U.S.C. 2776(b); to the Committee on International Relations.

10402. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting the President's determination and certification for Fiscal Year 2005 concerning Argentina's and Brazil's Ineligibility Under Section 102 (a)(2) of the Arms Export Control Act, pursuant to 22 U.S.C. 2799aa—2; to the Committee on International Relations.

10403. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to The United Kingdom, France, Morocco, Spain, Sweden, Belgium, Canada, The Czech Republic, Denmark, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, The Netherlands, Norway, Poland, Portugal, Turkey, Australia, and Ireland (Transmittal No. DDTC 042-04), pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

10404. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b(a); to the Committee on International Relations.

10405. A letter from the Director, Defense Security Cooperation Agency, transmitting pursuant to the reporting requirements of Section 62(a) of the Arms Export Control Act (AECA), Transmittal No. 06-04, concerning the Office of the Assistant Secretary of Defense's proposed lease of defense articles to the Government of Armenia; to the Committee on International Relations.

10406. A letter from the Deputy Director, Defense Security Cooperation Agency, transmitting pursuant to the reporting requirements of Section 62(a) of the Arms Export

Control Act (AECA), Transmittal No. 07-04, concnering the Office of the Assistant Secretary of Defense's proposed lease of defense articles to the Government of Azerbaijan; to the Committee on International Relations.

10407. A letter from the Chief Counsel (Foreign Assets Control), Department of the Treasury, transmitting the Department's final rule — Zimbabwe Sanctions Regulations — received July 27, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on International Relations.

10408. A letter from the Acting Chief Counsel (Foreign Assets Control), Department of the Treasury, transmitting the Department's final rule — Implementation of Executive Order 13315 with Respect to Iraq; General License No. 1 — received July 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on International Relations.

10409. A letter from the Deputy Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, transmitting the Department's final rule — Rough Diamonds Control Regulations — received September 20, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on International Relations.

10410. A letter from the Assistant Secretary for Export Administration, Department of Commerce, transmitting the Department's final rule — Revocation of General Order No. 3 which imposed license requirements on Shaykh Hamad bin Ali bin Jaber Al-Thani and entities related to or controlled by him [Docket No. 040618189] (RIN: 0694-AD21) received July 12, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on International Relations.

10411. A letter from the Assistant Secretary for Export Administration, Department of Commerce, transmitting the Department's final rule — Revisions of Export Licensing Jurisdiction of Certain Types of Energetic Material and Other Chemicals Based on Review of the United States Munitions List [Docket No. 031202303-3303-01] (RIN: 0694-AC75) received July 27, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on International Relations.

10412. A letter from the Assistant Secretary For Export Administration, Department of Commerce, transmitting the Department's final rule — Nomenclature Change: References to Another Agency [Docket No. 040920270-4270-01] (RIN: 0694-AD13) received October 7, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on International Relations.

10413. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report entitled "Report of U.S. Citizen Expropriation Claims and Certain Other Commercial and Investment Disputes," pursuant to Public Law 103—236, section 527(f); to the Committee on International Relations.

10414. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting the Department's final rule — Schedule of Fees for Consular Services; Exemption from the Nonimmigrant Visa Application Processing Fee for Family Members of Individuals Killed or Critically Injured While Serving the United States (RIN: 1400-AB95) received August 31, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on International Relations.

10415. A letter from the Director of Finance and Administration, Delta Regional Authority, transmitting in compliance with the Accountability for Tax Dollars Act of 2002 (ATDA), a copy of the Authority's Audited Financial Statements for FY 2003, as well as the non-audited financial statements for 2004, prepared as requested using the guidance published in the OMB Bulletin No. 01-09, pursuant to Public Law 106—554, section 382L (114 Stat. 2763A-280); to the Committee on Government Reform.

10416. A letter from the Director, U.S. Census Bureau, Department of Commerce, transmitting the Department's final rule — Amendment to the Age Search Fee Structure [Docket No. 040408109-4209-02] (RIN: 0607-AA41) received August 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Government Reform.

10417. A letter from the Acting Under Secretary for Acquisition, Technology and Logistics, Department of Defense, transmitting the Department's annual implementation report required by the Federal Financial Assistance Management Improvement Act of 1999, pursuant to Public Law 106-107, section 5 (113 Stat. 1488); to the Committee on Government Reform.

10418. A letter from the Secretary, Department of Education, transmitting the Department's Annual Report on Grants Streamlining, pursuant to Public Law 106-107, section 5 (113 Stat. 1488); to the Committee on Government Reform.

10419. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting the Department's Annual Report on the Implementation of the Federal Financial Assistance Management Improvement Act of 1999, pursuant to Public Law 106-107, section 5 (113 Stat. 1488); to the Committee on Government Reform.

10420. A letter from the Office of the District of Columbia Auditor, transmitting a report entitled, "Audit of Advisory Neighborhood Commission 7B for Fiscal Years 2001 Through 2004, as of June 30, 2004"; to the Committee on Government Reform.

10421. A letter from the Office of the District of Columbia Auditor, transmitting a report entitled, "Effectiveness of the Special Nutrition and Commodities Distribution Program Was Hindered by Lax Management and Inadequate Oversight by Other Agencies"; to the Committee on Government Reform.

10422. A letter from the Acting Director, Office of Governmental Ethics, transmitting the Office's final rule — Revisions to the Certificates of Divestiture Regulation (RIN: 3209-AA00) received August 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Government Reform.

10423. A letter from the Director, Office of Personnel Management, transmitting the Office's final rule — Premium Pay Limitations (RIN: 3206-AJ56) received September 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Government Reform.

10424. A letter from the Director, Office of Personnel Management, transmitting the Office's final rule — Federal Employees Health Benefits Children's Equity (RIN: 3206-AJ34) received September 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Government Reform.

10425. A letter from the Director, Office of Personnel Management, transmitting the Office's final rule — Locality-Based Comparability Payments (RIN: 3206-AK56) received August 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Government Reform.

10426. A letter from the Director, Office of Personnel Management, transmitting the Office's final rule — Executive Performance and Accountability (RIN: 3206-AJ86) received August 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Government Reform.

10427. A letter from the Vice Chair, Election Assistance Commission, transmitting the Commission's final rule — Statement of Policy Regarding National Mail Voter Registration Form — received September 7, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on House Administration.

10428. A letter from the Coordinator, Forms Committee, Federal Election Commission, transmitting the new FEC Form 13, Report of Donations Accepted for Inaugural Committee, Instructions for new FEC Form 13 and their Explanation and Justification; to the Committee on House Administration.

10429. A letter from the Chairman, Federal Election Commission, transmitting the Commission's final rule — Presidential Inaugural Committee Reporting and Prohibition on Accepting Donations from Foreign Nationals [Notice 2004-13] received October 1, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on House Administration.

10430. A letter from the Coordinator, Forms Committee, Federal Election Committee, transmitting the new FEC Form 13, Report of Donations Accepted for Inaugural Committee, Instructions for new FEC Form 13 and their Explanation and Justification; to the Committee on House Administration.

10431. A letter from the Deputy Director, Fish and Wildlife Service, Department of the Interior, transmitting the Department's final rule — Endangered and Threatened Wildlife and Plants; Final Rule to Remove the Tinian Monarch from the Federal List of Endangered and Threatened Wildlife (RIN: 1018-AI14) received September 24, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10432. A letter from the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting the Department's final rule — Migratory Bird Hunting; Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2004-05 Late Season (RIN: 1018-AT53) received September 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10433. A letter from the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting the Department's final rule — Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds (RIN: 1018-AT53) received September 24, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10434. A letter from the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting the Department's final rule — Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations (RIN: 1018-AT53) received September 24, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10435. A letter from the Assistant Secretary for Land and Minerals Management, Department of the Interior, transmitting the Department's final rule — Accounting and Auditing Relief for Marginal Properties (RIN: 1010-AC30) received September 10, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10436. A letter from the Director, Office of Surface Mining, Department of the Interior, transmitting the Department's final rule — Ohio Regulatory Program [OH-248-FOR] received September 21, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10437. A letter from the Secretary, Fish and Wildlife Service, Department of the Interior, transmitting the Department's final rule —

Subsistence Management Regulations for Public Lands in Alaska (RIN: 1018-AT58) received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10438. A letter from the Deputy Assistant Secretary, Department of the Interior, transmitting the Department's final rule — Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Klamath River and Columbia River Populations of Bull Trout (RIN: 1018-AI52) received October 7, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10439. A letter from the Acting Assistant Director, Directives and Regulations Branch, Office of Regulatory and Management Services, Department of Agriculture, transmitting the Department's final rule — Sawtooth National Recreation Area — Private Lands; Increasing Presidential Outbuilding Size (RIN: 0596-AC00) received September 17, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10440. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries of the Exclusive Economic Zone Off Alaska; "Other Rockfish" in the Western Regulatory Area of the Gulf of Alaska [Docket No. 031125292-4061-02; I.D. 072104A] received August 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10441. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of the Directed Fishery for Illex Squid [Docket No. 031104274-4011-02; I.D. 091404I] received September 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10442. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackeral in the Central Aleutian District of the Bering Sea and Aleutian Islands [Docket No. 031124287-4060-02; I.D. 092204A] received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10443. A letter from the Office of the Independent Counsel, transmitting the annual report on Audit and Investigative Activities and Management Control Systems, pursuant to 28 U.S.C. 595(a)(2); to the Committee on Government Reform.

10444. A letter from the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Department of Justice, transmitting the Department's final rule — Exemption from Import/Export Requirements for Personal Medical Use [Docket No.DEA-192F] (RIN: 1117-AA56) received September 20, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

10445. A letter from the Executive Director, Commodity Futures Trading Commission, transmitting the Commission's final rule — Adjustment of Civil Monetary Penalties for Inflation (RIN: 3038-AC13) received September 21, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

10446. A letter from the Under Secretary and Director, Patent and Trademark Office, Department of Commerce, transmitting the Department's final rule — Revision of Patent Fees for Fiscal Year 2005 [Docket No.2003-C-027] (RIN: 0651-AB70) received August 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

10447. A letter from the Acting Under Secretary and Acting Director, Patent and Trademark Office, Department of Commerce, transmitting the Department's final rule — Rules of Practice before the Board of Patenet Appeals and Interferences (RIN: 0651-AB32) received August 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

10448. A letter from the Acting Under Secretary and Acting Director, Patent and Trademark Office, Department of Commerce, transmitting the Department's final rule — Elimination of Credit Cards as Payment for Replenishing Deposit Accounts [Docket No.2004-C-032] (RIN: 0651-AB74) received July 22, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

10449. A letter from the Under Secretary and Director, Patent and Trademark Office, Department of Commerce, transmitting the Department's final rule — New Mailing Addresses for Paper Submissions of Trademark-Related Correspondance and Madrid Protocol Rules Change [Docket No.2004-T-037] (RIN: 0651-AB78) received September 28, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

10450. A letter from the Under Secretary and Director, Patent and Trademark Office, Department of Commerce, transmitting the Department's final rule — Changes to Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan [Docket No.: 2003-P-020] (RIN: 0651-AB64) received September 21, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

10451. A letter from the Federal Liaison Officer, Patent and Trademark Office, Department of Commerce, transmitting the Department's final rule — Waiver of Pixel Requirement for Drawings Filed Electronically [Docket No. 2004-T-046] (RIN: 0651-AB82) received October 7, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

10452. A letter from the Director, Regulations Policy and Management Staff, Food and Drug Administration, Department of Health and Human Services, transmitting the Department's final rule — Civil Money Penalties Hearings; Maximum Penalty Amounts and Compliance With the Federal Civil Penalties Inflation Adjustment Act [Docket No. 2003N-0308] received July 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

10453. A letter from the Director, Regulations Policy and Management Staff, FDA, Department of Health and Human Services, transmitting the Department's final rule — Civil Money Penalties Hearings; Maximum Penalty Amounts and Compliance With the Federal Civil Penalties Inflation Adjustment Act; Correction [Docket No. 2003N-0308] received August 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

10454. A letter from the Director, Regulations and Forms Services, Department of Homeland Security, transmitting the Department's final rule — Extension of the Deadline for Certain Health Care Workers Required To Obtain Certain Certificates [CIS No.2320-04] (RIN:1615-AB28) received July 23, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

10455. A letter from the Chief, Regulations Branch, Customs and Border Protection, Department of Homeland Security, transmitting the Department's final rule — Extension of Time Limit on Admission of Certain Mexican Nationals (RIN: 1651-AA60) received August 13, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

10456. A letter from the Rules Administrator, Federal Bureau of Prisons, Department of Justice, transmitting the Department's final rule — Inmate Commissary Account Deposit Procedures [BOP Docket No. 1091-F] (RIN: 1120-AA86) received July 14, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

10457. A letter from the Rules Administrator, Federal Bureau of Prisons, Department of Justice, transmitting the Department's final rule — Over-the-Counter (OTC) Medications: Technical Correction [BOP-1129-I] (RIN: 1120-AB29) received September 17, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

10458. A letter from the Deputy Assistant Attorney General, Office of Legal Policy, Department of Justice, transmitting the Department's final rule — National Instant Criminal Background Check System Regulation (RIN: 1110-AA07) received July 21, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

10459. A letter from the General Counsel, Department of Justice, transmitting the Department's final rule — Executive Office for Immigration Review; Definitions; Fees; Powers and Authority of DHS Officers and Employees in Removal Proceedings [EOIR No. 139I; AG Order No. 2728-2004] (RIN: 1125-AA43) received August 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

10460. A letter from the Trial Attorney, National Highway Traffic Safety Administration, Department of Transportation, transmitting the Department's final rule — Civil Penalties [Docket No.NHTSA-04-17571; Notice 2] (RIN: 2127-AJ32) received September 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

10461. A letter from the Secretary, Department of Transportation, transmitting the National Plan of Integrated Airport Systems (NPIAS), 2005-09, pursuant to 49 U.S.C. app. 2203(b)(1); to the Committee on Transportation and Infrastructure.

10462. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Delaware River [CGD05-04-191] (RIN: 1625-AA00) received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10463. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Drawbridge Operation Regulations: Connecticut River, CT [CGD01-04-123] received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10464. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Special Local Regulations for Marine Events; Sunset Lake, Wildwood Crest, NJ [CGD05-04-160] (RIN: 1625-AA08) received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10465. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Atlantic Ocean, Chesapeake & Delaware Canal, Delaware Bay, Delaware River and its tributaries [CGD05-04-047] (RIN: 1625-AA00) received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10466. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Mandatory Ballast Water Management Program for U.S. Waters [USCG-2002-14273] (RIN: 1625-AA52) received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10467. A letter from the Chief, Regulations and Adminsitrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Shipping and Transportation; Technical, Organizational and Conforming Amendments [USCG-2004-18884] (RIN: 1625-ZA03) received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10468. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Security Zone; Suisun Bay, Concord, California [COTP San Francisco Bay 04-022] (RIN: 1625-AA87) received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10469. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Upper Chesapeake bay, Patapsco and Severn Rivers, MD [CGD05-04-135] (RIN: 1625-AA00) received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10470. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; St. Johns River, Jacksonville, FL [COTP Jacksonville 04-093] (RIN: 1625-AA00) received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10471. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; San Francisco Bay, CA [COTP San Francisco Bay 04-025] (RIN: 1625-AA00) received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10472. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone: Port Canaveral, FL [COTP Jacksonville 04-112] (RIN: 1625-AA00) received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10473. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Special Local Regulations for Marine Events, Strait Thunder Hydroplane Races, Port Angeles, WA [CGD13-04-039] (RIN: 1625-AA08) received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10474. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Special Local Regulations for Marine Events; Choptank River, Cambridge, MD [CGD05-04-182] (RIN: 1625-AA08) received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10475. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Special Local Regulations for Marine Events; Willoughby Bay, Norfolk, VA [CGD05-04-184] (RIN: 1625-AA08) received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10476. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Special Local Regulations for Marine Events; John H. Kerr Reservoir, Clarksville, VA [CGD05-04-190] (RIN: 1625-AA08) received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10477. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Drawbridge Operation Regulations: Connecticut River, CT [CGD01-04-116] received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A): to the Committee on Transportation and Infrastructure.

10478. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Drawbridge Operation Regulations: Merrimack River, MA [CGD01-04-122] received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10479. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Drawbridge Operation Regulations: Annisquam River and Blynman Canal, MA [CGD01-04-121] received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10480. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Drawbridge Operation Regulations; Delaware River, NJ [CGD05-04-166] (RIN: 1625-AA09) received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10481. A letter from the Attorney-Advisor, Maritime Administration, Department of Transportation, transmitting the Department's final rule — Trading Restrictions on Vessels Transferred To A Foreign Registry: Amendment of List of Prohibited Countries [Docket No. MARAD 2004-19030] (RIN: 2133-AB55) received September 10, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10482. A letter from the Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Revised Allotment Formula for Interstate Monies Appropriated Under Section 106 of the Clean Water Act [OW-2004-0034; FRL-7825-2] received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10483. A letter from the Chief Scientist, National Aeronautics and Space Administration, transmitting the Administration's final rule — Investigation of Research Misconduct (RIN: 2700-AC50) received July 23, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Science.

10484. A letter from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting the Administration's final rule — Removal of MidRange Procurement Procedures (RIN: 2700-AD02) received September 15, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Science.

10485. A letter from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting the Administration's final rule — Re-Issuance of NASA FAR Supplement Subchapter G (RIN: 2700-AC87) received August 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Science.

10486. A letter from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting the Administration's final rule — Representations and Certifications — Other Than Commercial Items (RIN: 2700-AC97) received August 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Science.

10487. A letter from the Chief, Reg. Development Ofc. of Regulations Policy & Mgt, VA, Department of Veterans Affairs, transmitting the Department's final rule — Presumptions of Service Connection for Diseases Associated with Service Involving Dentention or Internment as a Prisoner of War (RIN: 2900-AM09) received Actober 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Veterans' Affairs.

10488. A letter from the Chief Counsel, Bureau of the Public Debt, Department of the Treasury, transmitting the Department's final rule — Sale and Issue of Marketable Treasury Bills, Notes, and Bonds: Six-Decimal Pricing, Negative-Yield Bidding, Zero-Filling, and Noncompetitive Bidding and Award Limit Increase [Department of the Treasury Circular, Public Debt Series No. 1-93] received August 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10489. A letter from the Chief Counsel, Bureau of the Public Debt, Department of the Treasury, transmitting the Department's final rule — Regulations Governing Treasury Securities, New Treasury Direct System — received August 12, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10490. A letter from the Assistant Chief, Regulations and Procedures Division, TTB, Department of the Treasury, transmitting the Department's final rule — Establishment of the Red Hills Lake County Viticultural Area (2001R-330P) [T.D. TTB-15; Re: ATF Notice No. 961] (RIN: 1513-AA33) received July 27, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10491. A letter from the Acting Director Statutory Import Programs Staff, Department of Commerce, transmitting the Department's final rule — Changes in the Insular Possessions Watch, Watch Movement and Jewelry Programs [Docket No. 040609177-4224-02] (RIN: 0625-AA65) received September 24, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10492. A letter from the Secretary, Department of Health and Human Services, transmitting the Department's report entitled, "Assets for Independence Demonstration Program: Status at the Conclusion of the Third and Fourth Years," pursuant to Public Law 105—285, section 414(d)(1); to the Committee on Ways and Means.

10493. A letter from the Regulations Coordinator, Department of Health and Human Services, transmitting the Department's final rule — Medicare Program; Continuation of Medicare Entitlement When Disability Benefit Entitlement Ends Because of

Substantial Gainful Activity [CMS-4018-F] (RIN: 0938-AK94) received September 24, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10494. A letter from the Chief, Regulations Branch, Customs and Border Protection, Department of Homeland Security, transmitting the Department's final rule — Customs Broker License Examination Dates [C.B.P. Dec. No. 04-30] (RIN: 1651-AA46) received August 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10495. A letter from the Chief, Regulations Branch, Customs and Border Protection, Department of Homeland Security, transmitting the Department's final rule — Merchandise Processing Fees Eligible to be Claimed as Certain Types of Drawback Based on Substitution of Finished Petroleum Derivatives [CBP Dec. 04-33] (RIN: 1505-AB44) received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10496. A letter from the Chief, Regulations Branch, Customs and Border Protection, Department of Homeland Security, transmitting the Department's final rule — Extension of Port Limits of Chicago, Illinois [CPB Dec. 04-24] received August 16, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10497. A letter from the Chief, Regulations Branch, Customs and Border Protection, Department of Homeland Security, transmitting the Department's final rule — Technical Corrections to Customs and Border Protection Regulations [CBP Dec. 04-28] received August 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10498. A letter from the Chief, Regulations Branch, Customs and Border Protection, Department of Homeland Security, transmitting the Department's final rule — Patent Surveys [CBP Decision 04-29] (RIN: 1651-AA36) received August 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10499. A letter from the Administrator, Office of Workforce Security, Department of Labor, transmitting the Department's final rule — Unemployment Insurance Program Letter No.30-04 SUTA Dumping-Amendments to Federal Law affecting the Federal-State Unemployment Compensation Program — received September 15, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10500. A letter from the Assistant Secretary for Employment and Training, Department of Labor, transmitting the Department's final rule — North American Free Trade Agreement — Transitional Adjustment Assistance Program: General Administration Letter Interpreting Federal Law — received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10501. A letter from the Assistant Secretary for Employment and Training, Department of Labor, transmitting the Department's final rule — Alternative Trade Adjustment Assistance Program: Training and Employment Guidance Letter Interpreting Federal Law — received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10502. A letter from the Assistant Secretary for Employment and Training, Department of Labor, transmitting the Department's final rule — Trade Adjustment Assistance Program: Training and Employment Guidance Letter Interpreting Federal Law — received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10503. A letter from the Administrator, General Services Administratino, transmitting informational copies of additional prospectuses in support of the General Services Administration's Fiscal Year 2005 Capital Investment and Leasing Program, pursuant to 19 U.S.C. 2213(b); to the Committee on Transportation and Infrastructure.

10504. A letter from the Administrator, General Services Administration, transmitting informational copies of additional prospectuses in support of the General Services Administration's Fiscal Year 2005 Capital Investment and Leasing Program, pursuant to 19 U.S.C. 2213(b); to the Committee on Transportation and Infrastructure.

10505. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Rules and Regulations (Rev. Proc. 2004-61) received October 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10506. A letter from the Acting Chief, Publications and Regulations, Internal Revenue Service, transmitting the Service's final rule — Classification of Certain Foreign Entities [Notice 2004-68] received October 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10507. A letter from the Acting Chief, Publications and Regulations Br., Internal Revenue Service, transmitting the Service's final rule — Weighted Average Interest Rates Update [Notice 2004-69] received October 7, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10508. A letter from the Acting Chief, Publications and Regulations Br., Internal Revenue Service, transmitting the Department's final rule — United States Internal Revenue Service v. Donald Snyder, 343 F.3d 1171 (9th Cir. 2003) received October 7, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10509. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Certain Reinsurance Arrangements [Notice 2004-65] received September 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10510. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Modification of exemption from tax for small property and casualty insurance companies [Notice 2004-64] received September 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10511. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Offer to resolve issues arising from certain tax, withholding, and reporting obligations of U.S. withholding agents with respect to payments to foreign persons (Rev. Proc. 2004-59) received October 1, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10512. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Deduction of Contributions to I.R.C. 401(k) Plans Attributable to Compensation Paid After Year End Under I.R.C. 404(a)(6) (Rev. Rul. 2002-46) received October 1, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10513. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Section 1256 contracts marked to market (Rev. Rul. 2004-95) received September 22, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10514. A letter from the Acting Chief, Publications and Regulations, Internal Revenue Service, transmitting the Service's final rule — Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability (Rev. Proc. 2004-55) received August 16, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10515. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Section 1256 contracts marked to market (Rev. Rul. 204-94) received September 22, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10516. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Low-Income Housing Credit (Rev. Rul. 2004-89) received August 20, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10517. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Guidance Concerning Use of 2001 CSO Tables Under Section 7702 (Notice 2004-61) received September 15, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10518. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability (Rev. Proc. 2004-52) received August 20, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10519. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Treatment of Certain Nuclear Decommissioning Funds for Purpose of Allocating Purchase Price in Certain Deemed and Actual Asset Acquisitions [TD 9158] (RIN: 1545-BD59) received September 17, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10520. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Electronic Filing of Duplicate Forms 5472 [TD 9161] (RIN: 1545-BD03) received September 17, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10521. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Administrative, Procedural, and Miscellaneous [Notice 2004-62] received September 20, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10522. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Place for Filing [TD 9156] (RIN: 1545-BB00) received September 20, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10523. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Settlement Guidelines Taxation of Universal Service Fees—received August 19, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10524. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule—Request for Comments on Revenue Procedure for the Staggered Remedial Amendment Period System (Announcement 2004-71) received September 15, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10525. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule—Taxation of fringe benefits (Rev. Rul. 2004-70) received September 15, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10526. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule—Interest rates; underpayments and overpayments (Rev. Rul. 2004-92) received August 31, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10527. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Department's final rule—Last-in, first-out inventories (Rev. Rul. 2004-93) received August 30, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10528. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule—Returns Relating to Interest Payments on Qualified Education Loans (Notice 2004-63) received September 21, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10529. A letter from the Acting Chief, Publications and Regulations, Internal Revenue Service, transmitting the Service's final rule—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property (Rev. Rul. 2004-96) received September 21, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10530. A letter from the Regulations Officer, Social Security Administration, transmitting the Administrator's final rule—Federal Old-Age, Survivors and Disability Insurance; Coverage of Residents in the Commonwealth of the Northern Mariana Islands (CNMI); Coverage of Ministers, Members of the Clergy and Christian Science Practitioners [Regulation No. 4] (RIN: 0960-AG01) received August 17, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10531. A letter from the Regulations Officer, Social Security Administration, transmitting the Administration's final rule—Filing Claims Under the Federal Tort Claims Act and the Military Personnel and Civilian Employees Claims Act (RIN: 0960-AF39) received August 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10532. A letter from the United States Trade Representative, transmitting consistent with section 2105(a)(1)(B) of the Trade Act of 2002, a description of the changes to existing laws that would be required to bring the United States into compliance with the trade agreements between the United States and five countries of Central America and the Dominican Republic; to the Committee on Ways and Means.

10533. A letter from the Regulations Coordinator, Department of Health and Human Services, transmitting the Department's final rule—Medicare Program; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships (Phase II); Correcting Amendment [CMS-1810-IFC2] (RIN: 0938-AK67) received September 21, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); jointly to the Committees on Energy and Commerce and Ways and Means.

10534. A letter from the Regulations Coordinator, Department of Health and Human Services, transmitting the Department's final rule—Medicare Program; Manufacturer Submission of Manufacturer's Average Sales Price (ASP) Data for Medicare Part B Drugs and Biologicals [CMS-1380-F] (RIN: 0938-AN05) received September 15, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); jointly to the Committees on Energy and Commerce and Ways and Means.

10535. A letter from the Administrator, General Services Administration, transmitting a draft bill "To amend 40 U.S.C. 590 relative to child care services for Federal employees in Federal buildings"; jointly to the Committees on Government Reform and Transportation and Infrastructure.

10536. A letter from the Secretary, Department of Health and Human Services, transmitting the final report entitled, "Evaluation of Medicare's Competitive Bidding Demonstration for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies," pursuant to Public Law 105-33, section 4319; jointly to the Committees on Ways and Means and Energy and Commerce.

10537. A letter from the Regulations Coordinator, CMS, Department of Health and Human Services, transmitting the Department's final rule—Medicare Program; Interest Calculation [CMS-6014-F] (RIN: 0938-AL14) received October 6, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); jointly to the Committees on Ways and Means and Energy and Commerce.

10538. A letter from the Secretary, Department of Energy, transmitting a draft bill "To implement the Convention on Supplementary Compensation for Nuclear Damage, and for other purposes"; jointly to the Committees on Energy and Commerce, Science, Armed Services, and the Judiciary.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. BARTON: Committee on Energy and Commerce. House Resolution 776. Resolution of inquiry requesting the President and directing the Secretary of Health and Human Services provide certain documents to the House of Representatives relating to estimates and analyses of the cost of the Medicare prescription drug legislation; adversely (Rept. 108-754, Pt. 2). Referred to the House Calendar.

Mr. HUNTER: Committee of Conference. Report on H.R. 4200. A bill to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 2005, and for other purposes (Rept. 108-767). Ordered to be printed.

Mr. TOM DAVIS of Virginia: Committee on Government Reform. H.R. 3826. A bill to require the review of Government programs at least once every 5 years for purposes of evaluating their performance; with an amendment (Rept. 108-768). Referred to the Committee of the Whole House on the State of the Union.

Mrs. MYRICK: Committee on Rules. House Resolution 843. Resolution waiving points of order against the conference report to accompany the bill (H.R. 4200) to authorize appropriations for fiscal year 2005 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes (Rept. 108-769). Referred to the House Calendar.

Mr. BARTON: Committee on Energy and Commerce. H.R. 2699. A bill to amend the Federal Food, Drug, and Cosmetic Act to provide for uniform food safety warning notification requirements, and for other purposes; with an amendment (Rept. 108-770). Referred to the Committee of the Whole House on the State of the Union.

Mr. THOMAS: Committee of Conference. Conference report on H.R. 1047. A bill to amend the Harmonized Tariff Schedule of the United States to modify temporarily certain rates of duty, to make other technical amendments to the trade laws, and for other purposes (Rept. 108-771). Ordered to be printed.

Mr. KNOLLENBERG: Committee of Conference. Conference report on H.R. 4837. A bill making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2005, and for other purposes (Rept. 108-773). Ordered to be printed.

[October 9 (legislative day, October 8), 2004]

Mr. SESSIONS: Committee on Rules. House Resolution 846. Resolution waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules (Rept. 108-772). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. SAM JOHNSON of Texas (for himself, Mr. BOEHNER, Mr. GEORGE MILLER of California, Mr. PORTMAN, and Mr. ANDREWS):

H.R. 5290. A bill to amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide a reasonable correction period for certain security and commodity transactions under the prohibited transaction rules; to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. TURNER of Texas (for himself, Ms. LORETTA SANCHEZ of California, Ms. NORTON, Ms. MCCARTHY of Missouri, Ms. JACKSON-LEE of Texas, Mrs. CHRISTENSEN, and Mr. LANGEVIN):

H.R. 5291. A bill to win the war on terror; to the Committee on Transportation and Infrastructure, and in addition to the Committees on Armed Services, International Relations, the Judiciary, Ways and Means, Intelligence (Permanent Select), Energy and Commerce, Government Reform, Science, and Homeland Security (Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. GEORGE MILLER of California (for himself, Mr. Hoeffel, Mr. Payne, Mr. Grijalva, Mr. Owens, Mrs. McCarthy of New York, Mr. Doggett, Mr. Bishop of New York, Mr. Davis of Illinois, Mr. Van Hollen, Mr. Andrews, Mr. Kucinich, and Mr. Tierney):

H.R. 5292. A bill to amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to limit the availability of benefits under an employer's nonqualified deferred compensation plans in the event that any of the employer's defined pension plans are subjected to a distress or PBGC termination in connection with bankruptcy reorganization or a conversion to a cash balance plan; to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. JACKSON of Illinois:

H.R. 5293. A bill to require States to conduct general elections for Federal office using an instant runoff voting system, to direct the Election Assistance Commission to make grants to States to defray the costs of administering such systems, and for other purposes; to the Committee on House Administration.

By Mr. YOUNG of Alaska (for himself, Mr. Oberstar, Mr. LaTourette, and Ms. Norton):

H.R. 5294. A bill to amend the John F. Kennedy Center Act to authorize appropriations for the John F. Kennedy Center for the Performing Arts, and for other purposes; to the Committee on Transportation and Infrastructure, considered and passed.

By Mr. MURPHY (for himself, Mr. Tom Davis of Virginia, Mrs. Jo Ann Davis of Virginia, Mr. Davis of Illinois, Mr. Hoyer, Mr. Moran of Virginia, and Mr. Wolf):

H.R. 5295. A bill to amend part III of title 5, United States Code, to provide for the establishment of programs under which supplemental dental and vision benefits are made available to Federal employees, retirees, and their dependents, to expand the contracting authority of the Office of Personnel Management, and for other purposes; to the Committee on Government Reform. considered and passed.

By Mr. MARKEY (for himself, Mr. Evans, Mr. Baca, Mr. McDermott, Mr. Hoeffel, Mr. Delahunt, Mr. McGovern, Mr. Filner, Mr. Kildee, Ms. Majette, Mr. Tierney, Mrs. Maloney, Mr. Gutierrez, Mr. Van Hollen, Mr. Frank of Massachusetts, Mr. Larsen of Washington, and Mr. Wexler):

H.R. 5296. A bill to amend title 37, United States Code, to ensure that a member of the Armed Forces who is wounded or otherwise injured while serving in a combat zone will continue to receive certain special pays and allowances associated with such service, and will continue to receive the benefit of the combat zone tax exclusion associated with the pay and allowances of the member, while the member recovers from the wound or injury, and for other purposes; to the Committee on Armed Services, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. NEUGEBAUER:

H.R. 5297. A bill for the relief of the Big Spring Independent School District; to the Committee on Education and the Workforce.

By Mr. CANNON:

H.R. 5298. A bill to amend title 4, United States Code, to clarify the treatment of self-employment for purposes of the limitation on State taxation of retirement income; to the Committee on the Judiciary.

By Mr. BERMAN (for himself and Mr. Boucher):

H.R. 5299. A bill to amend title 35, United States Code, to modify certain procedures relating to patents; to the Committee on the Judiciary.

By Mr. GRAVES:

H.R. 5300. A bill to establish requirements with respect to the terms of consumer credit extended by a creditor to a servicemember or the dependent of a servicemember, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. BARTLETT of Maryland:

H.R. 5301. A bill to ensure that the right of an individual to display the flag of the United States on residential property not be abridged; to the Committee on Financial Services.

By Mr. BASS (for himself, Mr. Upton, and Mr. Bradley of New Hampshire):

H.R. 5302. A bill to promote the purchase of renewable energy systems, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. BURNS:

H.R. 5303. A bill to provide for the establishment of a Department of Veterans Affairs Community-Based Outpatient Clinic (CBOC) for veterans on the grounds of the Navy Supply Corps School in Athens, Georgia; to the Committee on Veterans' Affairs.

By Mrs. CAPITO:

H.R. 5304. A bill to establish a memorial for 40 fallen American servicemen who perished in the tragic air crash during World War II at Bakers Creek, Australia on June 14, 1943; to the Committee on Veterans' Affairs, and in addition to the Committees on Armed Services, and Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. CAPUANO (for himself and Mrs. Bono):

H.R. 5305. A bill to require automobile dealers to disclose to consumers the presence of Event Data Recorders, or "black boxes" on new automobiles, and to require manufacturers to provide the consumer with the option to enable and disable such devices on future automobiles; to the Committee on Energy and Commerce.

By Mr. CARTER:

H.R. 5306. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to market exclusivity for cancer drugs, and to amend title 35, United States Code, to provide for the extension of the patent term on such drugs equal to the regulatory review period for such drugs; to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. COSTELLO (for himself, Mr. Shimkus, Mrs. Emerson, and Mr. Gephardt):

H.R. 5307. A bill to authorize the Gateway Arch in St. Louis, Missouri, to be illuminated by pink lights in honor of breast cancer awareness month; to the Committee on Resources.

By Mr. COSTELLO (for himself, Mr. Shimkus, Mr. Rahall, Mr. Whitfield, Mrs. Capito, Ms. Hart, Mr. Boucher, Mr. Holden, and Mr. LaHood):

H.R. 5308. A bill to amend the Surface Mining Control and Reclamation Act of 1977 to modify requirements relating to transfers from the Abandoned Mine Reclamation Fund, and for other purposes; to the Committee on Resources.

By Mr. COSTELLO:

H.R. 5309. A bill to extend the filing deadline for certain Medicare claims to account for a delay in processing adjustments from secondary payor status to primary payor status; to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. CRENSHAW:

H.R. 5310. A bill to establish a National Commission on the Quincentennial of the discovery of Florida by Ponce de Leon; to the Committee on Government Reform.

By Mr. CUMMINGS:

H.R. 5311. A bill to amend title XVIII of the Social Security Act to provide whistleblower protection to employees of clinical laboratories who furnish services under the Medicare Program, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. ESHOO (for herself, Mr. Ackerman, Mr. Andrews, Ms. Baldwin, Ms. Berkley, Mr. Berman, Mr. Bishop of New York, Ms. Corrine Brown of Florida, Mr. Brown of Ohio, Mrs. Capps, Mr. Capuano, Mr. Cardin, Ms. Carson of Indiana, Mrs. Christensen, Mr. Clay, Mr. Clyburn, Mr. Conyers, Mr. Cooper, Mr. Crowley, Mr. Cummings, Mr. Davis of Illinois, Mrs. Davis of California, Mr. Delahunt, Ms. DeLauro, Mr. Deutsch, Mr. Emanuel, Mr. Engel, Mr. Evans, Mr. Fattah, Mr. Filner, Mr. Ford, Mr. Frank of Massachusetts, Mr. Gonzalez, Mr. Grijalva, Mr. Gutierrez, Mr. Hastings of Florida, Mr. Hinchey, Mr. Hoeffel, Mr. Holt, Mr. Honda, Mr. Israel, Mr. Jackson of Illinois, Ms. Jackson-Lee of Texas, Mr. Jefferson, Ms. Eddie Bernice Johnson of Texas, Mr. Kennedy of Rhode Island, Mr. Kleczka, Mr. Kucinich, Mr. Lampson, Mr. Langevin, Mr. Lantos, Mr. Larson of Connecticut, Ms. Lee, Mr. Lewis of Georgia, Mrs. Lowey, Mr. Lynch, Mrs. Maloney, Mr. Markey, Mrs. McCarthy of New York, Ms. McCarthy of Missouri, Ms. McCollum, Mr. McDermott, Mr. McGovern, Mr. Meehan, Mr. Meeks of New York, Mr. Menendez, Ms. Millender-McDonald, Mr. George Miller of California, Mr. Moore, Mr. Moran of Virginia, Mr. Nadler, Mrs. Napolitano, Mr. Neal of Massachusetts, Ms. Norton, Mr. Olver, Mr. Pallone, Mr. Pascrell, Mr. Payne, Mr. Rangel, Mr. ROTHMAN, Mr. RUSH, Mr. SANDERS, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SERRANO, Mr. SHAYS, Mr. SHERMAN, Ms. SLAUGHTER, Ms. SOLIS, Mr. STARK, Mrs. TAUSCHER, Mr. THOMPSON of Mississippi, Mr. TIERNEY, Mr. TOWNS, Ms. WATERS, Mr. WATT, Mr. WAXMAN, Mr. WEINER, Mr. WEXLER, Ms. WOOLSEY, and Mr. WYNN):

H.R. 5312. A bill to amend the Forest and Rangeland Renewable Resources Planning Act of 1974 and related laws to strengthen the protection of native biodiversity and ban clearcutting on Federal land, and to designate certain Federal land as Ancient forests, roadless areas, watershed protection areas, and special areas where logging and other intrusive activities are prohibited; to the Committee on Agriculture, and in addition to the Committee on Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. EVERETT:

H.R. 5313. A bill to require the advance disclosure to shareholders of certain executive pension plans; to the Committee on Financial Services.

By Mr. FILNER (for himself, Ms. MILLENDER-MCDONALD, Ms. CARSON of Indiana, and Mr. SANDLIN):

H.R. 5314. A bill to amend title 49, United States Code, to require motor carriers to comply with vehicle emission performance standards established by the Environmental Protection Agency, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mr. GUTIERREZ (for himself, Mr. FRANK of Massachusetts, Mr. MENENDEZ, Mr. HINOJOSA, Mr. RODRIGUEZ, Ms. WATERS, Ms. LEE, Mrs. MALONEY, Mr. GONZALEZ, Mr. ACEVEDO-VILÁ, Mr. GRIJALVA, Mr. SERRANO, Ms. ROYBAL-ALLARD, Ms. SOLIS, Mrs. NAPOLITANO, Mr. TOWNS, Mr. BELL, and Mr. MEEKS of New York):

H.R. 5315. A bill to amend the Electronic Fund Transfer Act to extend certain consumer protections to international remittance transfers of funds originating in the United States, and for other purposes; to the Committee on Financial Services, and in addition to the Committee on International Relations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. HASTINGS of Florida (for himself, Mr. LINCOLN DIAZ-BALART of Florida, Mr. RUSH, Mr. TOWNS, Mrs. CHRISTENSEN, and Mr. DEUTSCH):

H.R. 5316. A bill to designate Haiti, Grenada, and the Cayman Islands under section 244 of the Immigration and Nationality Act in order to make nationals of those countries eligible for temporary protected status under such section; to the Committee on the Judiciary.

By Mr. HASTINGS of Florida:

H.R. 5317. A bill to amend the Internal Revenue Code of 1986 to allow a deduction from gross income for the donation of blood; to the Committee on Ways and Means.

By Ms. HERSETH (for herself and Mr. RENZI):

H.R. 5318. A bill to grant a Federal charter to the National American Indian Veterans, Incorporated; to the Committee on the Judiciary.

By Ms. HERSETH:

H.R. 5319. A bill to provide incentives for investment in renewable energy facilities; to the Committee on Ways and Means.

By Mr. HOLT (for himself, Mr. SAXTON, Mr. PAYNE, Mr. FERGUSON, Mr. FROST, and Mr. PALLONE):

H.R. 5320. A bill to amend title XIX of the Social Security Act to require staff working with developmentally disabled individuals to call emergency services in the event of a life-threatening situation; to the Committee on Energy and Commerce.

By Mr. HONDA (for himself, Mr. PAYNE, and Mr. ROYCE):

H.R. 5321. A bill to urge the Government of Ethiopia to hold orderly, peaceful, and free and fair national elections in May 2005 and to authorize United States assistance for elections-related activities to monitor the Ethiopian national elections; to the Committee on International Relations.

By Mr. KENNEDY of Rhode Island (for himself, Ms. ROYBAL-ALLARD, Mr. FARR, and Mrs. MCCARTHY of New York):

H.R. 5322. A bill to amend title IV of the Public Health Service Act to establish a loan repayment program for nurse practitioners and physician assistants serving in underserved nursing homes, to establish a mentoring program for training nursing home administrators, to encourage high family involvement in nursing homes, and to amend title XIX of the Social Security Act to restore payment levels for health care institutions and to increase the Federal medical assistance percentage; to the Committee on Energy and Commerce.

By Mr. LEWIS of Kentucky.

H.R. 5323. A bill to amend the Internal Revenue Code of 1986 to provide for a nonrefundable tax credit against income tax for individuals who purchase a residential safe storage device for the safe storage of firearms; to the Committee on Ways and Means.

By Mrs. LOWEY (for herself and Mrs. CAPPS):

H.R. 5324. A bill to amend the Public Health Service Act to authorize capitation grants to increase the number of nursing faculty and students, and for other purposes; to the Committee on Energy and Commerce.

By Mrs. LOWEY:

H.R. 5325. A bill to amend title 49, United States Code, to establish a deadline for the screening of all individuals, goods, property, vehicles, and other equipment entering a secure area of an airport, and for other purposes; to the Committee on Transportation and Infrastructure.

By Mrs. LOWEY:

H.R. 5326. A bill to provide additional security for nuclear facilities under certain circumstances; to the Committee on Transportation and Infrastructure.

By Mrs. LOWEY:

H.R. 5327. A bill to amend the Internal Revenue Code of 1986 to provide an increased exclusion of gain from the sale of a principal residence by certain widows and widowers; to the Committee on Ways and Means.

By Mrs. MALONEY (for herself, Mrs. TAUSCHER, Ms. WATSON, and Mr. TOWNS):

H.R. 5328. A bill to provide additional funding to prevent sexual assaults in the military; to the Committee on Armed Services.

By Mrs. MALONEY (for herself, Mr. BISHOP of New York, Mr. SHAYS, Mr. SERRANO, Mr. MCINTYRE, Mr. MCDERMOTT, and Ms. SCHAKOWSKY):

H.R. 5329. A bill to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to authorize the President to carry out a program for the protection of the health and safety of residents, workers, volunteers, and others in a disaster area; to the Committee on Transportation and Infrastructure, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. MATHESON (for himself and Mr. CANNON):

H.R. 5330. A bill to authorize and direct the exchange of lands in Grand and Uintah Counties, Utah, and for other purposes; to the Committee on Resources.

By Mrs. MCCARTHY of New York:

H.R. 5331. A bill to amend part B of title XVIII of the Social Security Act to repeal the reduction in Medicare payment through competitive bidding for certain items of durable medical equipment; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. MEEHAN:

H.R. 5332. A bill to provide improved benefits and procedures for the transition of members of the Armed Forces from combat zones to noncombat zones and for the transition of veterans from service in the Armed Forces to civilian life; to the Committee on Veterans' Affairs, and in addition to the Committees on Armed Services, and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. MILLER of Florida:

H.R. 5333. A bill to replace a Coastal Barrier Resources System map relating to Coastal Barrier Resources System Grayton Beach Unit FL-95P in Walton County, Florida; to the Committee on Resources.

By Mr. GARY G. MILLER of California:

H.R. 5334. A bill to suspend temporarily the duty on Dichloroethyl Ether; to the Committee on Ways and Means.

By Ms. PELOSI (for herself, Mrs. JONES of Ohio, Ms. SLAUGHTER, Mr. BROWN of Ohio, Mr. GEORGE MILLER of California, Mr. MARKEY, Ms. SCHAKOWSKY, Ms. SOLIS, Ms. MCCARTHY of Missouri, Mr. CLYBURN, Ms. DELAURO, Mr. KENNEDY of Rhode Island, Ms. ROYBAL-ALLARD, Mr. SERRANO, Mrs. MALONEY, Mr. VAN HOLLEN, Mr. CROWLEY, Mr. KUCINICH, Ms. MCCOLLUM, Mr. KILDEE, Ms. BALDWIN, Mr. OWENS, Mrs. CHRISTENSEN, Mr. MORAN of Virginia, Mr. GRIJALVA, Mr. ISRAEL, Mr. JACKSON of Illinois, Mr. GONZALEZ, and Mr. TIERNEY):

H.R. 5335. A bill to amend the Public Health Service Act to establish a Coordinated Environmental Health Network, and for other purposes; to the Committee on Energy and Commerce.

By Mr. ROHRABACHER:

H.R. 5336. A bill to provide for a prize program to encourage development of space and aeronautics technologies and establish an endowment to further educate and inspire the public's interest in space and aeronautics; to the Committee on Science.

By Ms. ROS-LEHTINEN:

H.R. 5337. A bill to amend title 18, United States Code, to prohibit members of Congress from entering into any agreement with any foreign person or any commercial entity for the purpose of influencing or seeking a change in a law or regulation of the United States that would ease any restriction on a state sponsor of terrorism, and for other purposes; to the Committee on the Judiciary, and in addition to the Committee on International Relations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. RUSH:

H.R. 5338. A bill to reduce health care disparities and improve health care quality, to improve the collection of racial, ethnic, primary language, and socio-economic determination data for use by healthcare researchers and policymakers, to provide performance incentives for high performing hospitals and community health centers, and to expand current Federal programs seeking to eliminate health disparities; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. LINDA T. SÁNCHEZ of California (for herself, Mr. MENENDEZ, Ms. LORETTA SANCHEZ of California, Mr. ACEVEDO-VILÁ, Mr. REYES, Mr. GRIJALVA, Mr. SERRANO, Mrs. NAPOLITANO, Mr. RODRIGUEZ, Mr. HINOJOSA, Mr. PASTOR, and Ms. ROYBAL-ALLARD):

H.R. 5339. A bill to authorize increased funding for research at the National Institutes of Health relating to Alzheimer's disease, to amend the Public Health Service Act to authorize an education and outreach program to promote public awareness and risk reduction with respect to Alzheimer's disease (with particular emphasis on education and outreach in Hispanic populations), and for other purposes; to the Committee on Energy and Commerce.

By Ms. SCHAKOWSKY:

H.R. 5340. A bill to provide additional protections for recipients of the earned income tax credit; to the Committee on Ways and Means, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SHADEGG (for himself and Mr. NETHERCUTT):

H.R. 5341. A bill to amend title XXVII of the Public Health Service Act to extend Federal funding for the establishment and operation of State high risk health insurance pools; to the Committee on Energy and Commerce.

By Mr. SHERMAN (for himself, Mr. ENGEL, and Mr. CARDOZA):

H.R. 5342. A bill to establish a grant program to fund eligible joint ventures between United States and Israeli businesses and academic persons, to establish the International Energy Advisory Board, and for other purposes; to the Committee on Energy and Commerce.

By Mr. SIMPSON:

H.R. 5343. A bill to promote the economic development and recreational use of National Forest System lands and other public lands in central Idaho, to designate certain lands in the Challis National Forest, the Sawtooth National Recreation Area, and the Challis District of the Bureau of Land Management as the Boulder-White Cloud Management Area to ensure the continued management of these lands for recreational use as well as for conservation and resource protection, to add certain National Forest System lands and Bureau of Land Management lands in central Idaho to the National Wilderness Preservation System, and for other purposes; to the Committee on Resources.

By Ms. SOLIS (for herself, Mr. STUPAK, Mr. DINGELL, and Mrs. CAPPS):

H.R. 5344. A bill to amend the Safe Drinking Water Act to require a national primary drinking water regulation for perchlorate; to the Committee on Energy and Commerce.

By Mr. SOUDER (for himself, Mr. WAMP, Mr. OSE, and Mr. CASE):

H.R. 5345. A bill to authorize "Meth Watch" program grants; to the Committee on the Judiciary.

By Mr. SOUDER (for himself, Mr. SHADEGG, Mr. SESSIONS, Mr. NETHERCUTT, Mr. TOM DAVIS of Virginia, and Mr. MCHUGH):

H.R. 5346. A bill to direct the Secretary of Homeland Security to transfer to the Bureau of Immigration and Customs Enforcement all functions of the Customs Patrol Officers unit of the Bureau of Customs and Border Protection operating on the Tohono O'odham Indian reservation (commonly known as the "Shadow Wolves" unit), and for other purposes; to the Committee on Ways and Means.

By Mr. SOUDER (for himself, Mr. WAMP, Mr. CALVERT, and Mr. OSE):

H.R. 5347. A bill to eliminate the safe-harbor exception for certain packaged pseudoephedrine products used in the manufacture of methamphetamine, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. TAUZIN (for himself, Mr. VITTER, Mr. ALEXANDER, Mr. JOHN, Mr. BAKER, Mr. MCCRERY, and Mr. JEFFERSON):

H.R. 5348. A bill to establish the Atchafalaya National Heritage Area, Louisiana, and for other purposes; to the Committee on Resources.

By Mr. TERRY:

H.R. 5349. A bill to provide certain enhancements to the Montgomery GI Bill Program for certain individuals who serve as members of the Armed Forces after the September 11, 2001, terrorist attacks, and for other purposes; to the Committee on Veterans' Affairs, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. UDALL of New Mexico:

H.R. 5350. A bill to amend the Public Health Service Act to authorize grants for the integration of innovative curricula on nutrition in medical education, and for other purposes; to the Committee on Energy and Commerce.

By Ms. WATSON:

H.R. 5351. A bill to establish the Office of Intellectual Property and Competition Policy in the Department of State; to the Committee on International Relations.

By Ms. WOOLSEY:

H.R. 5352. A bill to expand the boundaries of the Gulf of the Farallones National Marine Sanctuary and the Cordell Bank National Marine Sanctuary; to the Committee on Resources.

By Mr. JACKSON of Illinois (for himself, Mr. CUMMINGS, and Mr. CONYERS):

H.J. Res. 109. A joint resolution proposing an amendment to the Constitution of the United States to provide for the direct election of the President and Vice President by the popular vote of all citizens of the United States regardless of place of residence; to the Committee on the Judiciary.

By Mr. HASTERT:

H.J. Res. 110. A joint resolution recognizing the 60th anniversary of the Battle of the Bulge during World War II; to the Committee on International Relations.

By Mr. HUNTER;

H. Con. Res. 514. A concurrent resolution directing the Clerk of the House of Representatives to make a technical correction in the enrollment of the bill H.R. 4200; considered and agreed to.

By Ms. CORRINE BROWN of Florida (for herself, Mr. FATTAH, Mr. PAYNE, Mr. CONYERS, Ms. LEE, Ms. EDDIE BERNICE JOHNSON of Texas, and Ms. WATERS):

H. Con. Res. 515. Concurrent resolution expressing the sense of the Congress to support an increase in funds allocated to the Republic of Haiti and to expedite the delivery of emergency aid to the island nation because of the terrible destruction brought on by Hurricane Jeanne; to the Committee on International Relations.

By Ms. MILLENDER-MCDONALD:

H. Con. Res. 516. Concurrent resolution congratulating Jimmy Haywood and Kenny Roy for setting world records in civil aviation history and commending youth aviation programs that encourage young minorities to enter the field of civil aviation; to the Committee on Transportation and Infrastructure.

By Mr. STENHOLM:

H. Con. Res. 517. Concurrent resolution recognizing the continuing legacy of the Buffalo Soldiers and expressing the sense of the Congress regarding the establishment of a Buffalo Soldiers Heritage Month; to the Committee on Armed Services.

By Mr. HUNTER:

H. Res. 842. A resolution requesting return of official papers on S. 1301; considered and agreed to.

By Ms. HARRIS (for herself, Mr. BALLENGER, and Mr. CONYERS):

H. Res. 844. A resolution commending the people and the Government of the Republic of Guatemala for progress toward peace, democratization, and political and economic liberalization, and expressing the hope and support of the House of Representatives for the continuation of this progress; to the Committee on International Relations.

By Ms. PELOSI:

H. Res. 845. A resolution relating to a question of the privileges of the House; which was laid on the table.

By Mr. BALLENGER (for himself, Mr. ISTOOK, and Mr. ROHRABACHER):

H. Res. 847. A resolution honoring the life of astronaut Leroy Gordon Cooper, Jr; to the Committee on Science.

By Mr. LARSON of Connecticut:

H. Res. 848. A resolution amending the Rules of the House of Representatives to make a technical correction on limitations on the use of the frank; to the Committee on Rules.

By Mr. MEEKS of New York (for himself, Mr. ALLEN, Mr. KUCINICH, Mr. HONDA, Mrs. JONES of Ohio, Ms. SLAUGHTER, Mr. BLUMENAUER, Ms. MCCARTHY of Missouri, Mr. MCDERMOTT, Mr. MARKEY, Mr. FARR, and Ms. LEE):

H. Res. 849. A resolution congratulating Wangari Maathai for winning the Nobel

Peace Prize and commending her for her tireless work to promote sustainable development, democracy, peace, and women's rights in Africa; to the Committee on International Relations.

By Mr. ROSS:

H. Res. 850. A resolution to express the sense of the House that the Federal Communications Commission should not enact rules authorizing Broadband Over Power Line Systems without a more comprehensive evaluation of the interference potential to Public Safety services and other licensed radio services; to the Committee on Energy and Commerce.

By Mr. SHERMAN (for himself and Mrs. MALONEY):

H. Res. 851. A resolution amending the Rules of the House of Representatives to prohibit any committee from sending more than 999 copies of any mass mailing to addresses within the same Congressional district, from sending any mass mailing to an address within a Congressional district if the mailing is postmarked fewer than 90 days immediately before the date of a House election in the district, and from sending any mass mailing as franked mail which does not meet the standards applicable to franked mail sent by elected officers of the House; to the Committee on Rules.

MEMORIALS

Under clause 3 of rule XII, memorials were presented and referred as follows:

454. The SPEAKER presented a memorial of the Legislature of the State of California, relative to Assembly Joint Resolution No. 65 expressing support for the resolutoin of the ongoing negotiations between the Soboba Band of Luiseno Indians, the Eastern Municipal Water District and the Lake Hemet Municipal Water District, the Metropolitan Water District of Southern California, and the United States Department of the Interior to reach a water and land settlement that is consistent with federal law, memorializing the United States Department of the Interior to give its full support to the settlement legislation, and memorializing the United States to the Committee on Resources.

455. Also, a memorial of the Legislature of the Commonwealth of Puerto Rico, relative to Senate Concurrent Resolution No. 107 consigning the public policy of the Legislature of Puerto Rico in facing and attending to the urgent need to review the political relations between Puerto Rico and the United States through a Constitutional Assembly on Status elected by the people in the exercise of the national right to self-determination and sovereignty, and to initiate its organizational process; to the Committee on Resources.

456. Also, a memorial of the Legislature of the State of California, relative to Assembly Joint Resolution No. 63 memorializing the President and Congress of the United States to enact legislation to include State Highway Route 99 in the interstate highway system; to the Committee on Transportation and Infrastructure.

457. Also, a memorial of the Legislature of the State of California, relative to Assembly Joint Resolution No. 36 memorializing the President and Congress of the United States to support legislative action to immediately remove the discriminatory portion of Section 143(l)(4) of the Internal Revenue Code so that today's veterans and their families might enjoy the same benefits as their earlier counterparts; to the Committee on Ways and Means.

458. Also, a memorial of the Legislature of the State of California, relative to Assembly Joint Resolution No. 62 memorializing the California delegation of the United States Senate and House of Representatives to sponsor and support legislation to repeal any Medicare provision that would prohibit the federal government from negotiating fair drug prices as contained in a section of the federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108-173); jointly to the Committees on Energy and Commerce and Ways and Means.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 107:.Mr. FILNER.

H.R. 236: Ms. BORDALLO, Mr. LARSEN of Washington, Ms. HERSETH, and Mr. BUTTERFIELD.

H.R. 290: Mr. WATT.

H.R. 610: Mr. RUPPERSBERGER.

H.R. 677: Mr. BOUCHER, Mr. CRANE, and Ms. HOOLEY of Oregon.

H.R. 814: Mr. FOSSELLA and Mr. BOEHLERT.

H.R. 839: Mr. STRICKLAND.

H.R. 997: Mr. ROYCE.

H.R. 1118: Mr. MCCOTTER.

H.R. 1268: Mr. HINCHEY.

H.R. 1305: Mr. TAYLOR of North Carolina.

H.R. 1459: Mr. ANDREWS.

H.R. 1500: Mr. HASTINGS of Washington.

H.R. 1555: Mr. FATTAH.

H.R. 1556: Mr. FATTAH.

H.R. 1563: Mr. PALLONE.

H.R. 1886: Mr. CHANDLER and Ms. KILPATRICK.

H.R. 2032: Mr. MICHAUD, Mr. SABO, and Ms. SOLIS.

H.R. 2101: Mrs. MCCARTHY of New York.

H.R. 2184: Mr. MEEHAN.

H.R. 2239: Mr. GORDON.

H.R. 2268: Mr. BOSWELL.

H.R. 2426: Ms. PELOSI.

H.R. 2490: Ms. HOOLEY of Oregon and Mr. KLECZKA.

H.R. 2699: Mr. GIBBONS and Mr. LIPINSKI.

H.R. 2726: Mr. EVANS.

H.R. 2823: Mr. ALEXANDER and Mr. SOUDER.

H.R. 2897: Mr. FATTAH and Ms. BORDALLO.

H.R. 2959: Mrs. CHRISTENSEN and Mr. LANGEVIN.

H.R. 2963: Mr. HERGER.

H.R. 3005: Mr. FATTAH and Mr. HOEFFEL.

H.R. 3069: Mr. BEAUPREZ.

H.R. 3111: Ms. LINDA T. SÁNCHEZ of California and Ms. BALDWIN.

H.R. 3115: Mr. WILSON of South Carolina.

H.R. 3142: Mr. UDALL of New Mexico.

H.R. 3148: Mr. DAVIS of Alabama, Mr. PUTNAM, and Mr. TIBERI.

H.R. 3178: Mrs. JONES of Ohio.

H.R. 3180: Mr. MEEHAN and Mr. LARSEN of Washington.

H.R. 3194: Ms. WOOLSEY.

H.R. 3243: Mr. WOLF.

H.R. 3352: Mrs. LOWEY.

H.R. 3361: Mr. STARK.

H.R. 3447: Mr. FARR and Mr. MCGOVERN.

H.R. 3459: Mr. RUPPERSBERGER, Ms. BALDWIN, Mr. GREEN of Texas, Mr. BLUMENAUER, Mr. BELL, Mr. EVANS, and Mr. GEORGE MILLER of California.

H.R. 3473: Mr. VITTER.

H.R. 3558: Mr. LIPINSKI and Mr. FRANK of Massachusetts.

H.R. 3729: Mr. LEACH, Mr. GEPHARDT, and Mrs. JONES of Ohio.

H.R. 3758: Ms. WOOLSEY, Mr. HINCHEY, Mr. GREEN of Texas, Mr. GONZALEZ, and Mr. ABERCROMBIE.

H.R. 3859: Mr. GONZALEZ.

H.R. 3968: Mr. PETERSON of Minnesota.

H.R. 4031: Mr. MOORE, Mr. SNYDER, MR. THOMPSON of Mississippi, and Mr. MCDERMOTT.

H.R. 4057: Mr. BRADLEY of New Hampshire.

H.R. 4149: Mr. HINOJOSA.

H.R. 4192: Mr. MOORE.

H.R. 4230: Mr. PASCRELL.

H.R. 4249: Mr. DELAHUNT, Mr. DINGELL, Mr. LANGEVIN, Ms. BERKLEY, Mr. MATSUI, Mr. ACKERMAN, Mr. CLAY, Mr. ROSS, and Ms. MAJETTE.

H.R. 4256: Mr. LANTOS.

H.R. 4263: Mr. CARDOZA.

H.R. 4343: Mr. GARY G. MILLER of California.

H.R. 4365: Mr. LEWIS of Georgia.

H.R. 4420: Mr. SCHROCK.

H.R. 4433: Mr. SCOTT of Virginia, Mr. RUSH, Mr. ABERCROMBIE, and Mr. NADLER.

H.R. 4434: Ms. LEE.

H.R. 4479: Mr. GRIJALVA and Mr. LEWIS of Georgia.

H.R. 4491: Mr. ISAKSON, Mr. CRENSHAW, Ms. WOOLSEY, Mrs. DAVIS of California, Mr. NETHERCUTT, Mr. MCKEON, Mr. HOUGHTON, Mr. RUPPERSBERGER, Mr. BURR, Mr. TURNER of Ohio, Mr. NADLER, and Mr. LEWIS of Georgia.

H.R. 4493: Mr. KENNEDY of Rhode Island and Ms. LINDA T. SÁNCHEZ of California.

H.R. 4578: Mr. DEAL of Georgia, Mr. RODRIGUEZ, and Ms. LINDA T. SÁNCHEZ of California.

H.R. 4585: Mr. WEXLER, Mr. WAXMAN, Ms. ESCHOO, Ms. MCCARTHY of Missouri, and Mr. WYNN.

H.R. 4595: Ms. BORDALLO.

H.R. 4622: Mr. NADLER.

H.R. 4628: Mr. CLAY and Mr. VAN HOLLEN.

H.R. 4669: Mr. LIPINSKI, Mr. BERMAN, Mr. BACHUS, Mr. GARY G. MILLER of California, and Mr. SOUDER.

H.R. 4682: Mr. WATT.

H.R. 4689: Mr. JOHN.

H.R. 4706: Mr. SCHAKOWSKY, Mr. SHAYS, Mr. HEFLEY, Mr. PASCRELL, Mr. DEUTSCH, and Mr. WYNN.

H.R. 4776: Mr. FARR.

H.R. 4785: Mr. KLINE and Mr. EMANUEL.

H.R. 4799: Mr. MCDERMOTT, Mr. UPTON, Mr. LAMPSON, and Mr. CAPUANO.

H.R. 4820: Mr. PASCRELL.

H.R. 4849: Mr. JEFFERSON.

H.R. 4856: Mr. PETERSON of Minnesota.

H.R. 4860: Mr. TERRY.

H.R. 4866: Mrs. DAVIS of California and Mr. UPTON.

H.R. 4895: Mr. CANNON.

H.R. 4910: Mr. BOUCHER, MS. WOOLSEY, Ms. BALDWIN, and Mr. PASCRELL.

H.R. 4911: Mr. BRADY of Texas.

H.R. 4927: Mr. LARSEN of Washington and Ms. LINDA T. SÁNCHEZ of California.

H.R. 4936: Mrs. MCCARTHY of New York, Mr. HALL, Mr. KENNEDY of Rhode Island, Mr. BOSWELL, Mr. LEVIN, Mr. PICKERING, Mr. CLAY, Mr. MOORE, Mr. KUCINICH, Ms. LOFGREN, and Mr. ISRAEL.

H.R. 4948: Ms. BORDALLO.

H.R. 4961: Mrs. KELLY, Mr. DINGELL, Mr. WAXMAN, Mrs. LOWEY, Mr. SCHIFF, Mr. PRICE of North Carolina, Ms. SLAUGHTER, Mr. UDALL of Colorado, Mr. MILLER of North Carolina, Mr. WEXLER, Mr. MCINTYRE, Ms. SCHAKOWSKY, Mr. BOUCHER, Mr. ISRAEL, Mr. SANDERS, and Mr. MCDERMOTT.

H.R. 4967: Mr. DEUTSCH.

H.R. 5001: Mr. MARKEY and Mr. MCINTYRE.

H.R. 5057: Mr. JEFFERSON, Mr. BERRY, Ms. CARSON of Indiana, Mr. CALVERT, Mr. MEEHAN, Mrs. EMERSON, and Mr. BRADY of Pennsylvania.

H.R. 5071: Mr. LoBIONDO, Mr. CALVERT, and Mr. VAN HOLLEN.

H.R. 5111: Mr. SMITH of Texas.

H.R. 5119: Ms. CARSON of Indiana, Mr. FILNER, and Mr. REYES.

H.R. 5144: Mr. GREEN of Texas, Mr. DAVIS of Alabama, and Mr. LARSEN of Washington.

H.R. 5150: Mr. CUMMINGS.

H.R. 5166: Mr. KUCINICH.

H.R. 5173: Mr. SOUDER.

H.R. 5174: Mr. TIERNEY.

H.R. 5182: Mr. RANGEL and Mr. BERMAN.

H.R. 5188: Mr. UPTON, Mr. AKIN, Mr. ENGLISH, Mr. LARSEN of Washington, Mr. DAVIS of Tennessee, and Mr. SOUDER.

H.R. 5190: Mrs. CAPITO.

H.R. 5191: Mr. STARK.

H.R. 5193: Mr. ACKERMAN, Mr. ENGEL, Mr. SMITH of New Jersey, Mr. WEXLER, Mr. GREEN of Wisconsin, Mr. ROHRABACHER, Mr. CHANDLER, Mr. LINCOLN DIAZ-BALART of Florida, Mr. NADLER, Ms. BERKLEY, Mr. KIRK, and Mr. WELLER.

H.R. 5196: Mr. DELAY, Mr. BONILLA, Mr. CULBERSON, Mr. SMITH of Texas, Mr. SESSIONS, Mr. PAUL, and Ms. GRANGER.

H.R. 5197: Mr. MCNULTY, Mr. PASTOR, and Mr. FILNER.

H.R. 5210: Ms. MILLENDER-MCDONALD, Mr. LYNCH, Mr. RYAN of Ohio, and Mr. MCGOVERN.

H.R. 5211: Mr. HOLDEN, Mr. VITTER, and Ms. HERSETH.

H.R. 5225: Ms. SCHAKOWSKY.

H.R. 5242: Mr. MARKEY.

H.R. 5245: Mr. GORDON.

H.R. 5246: Mr. THOMPSON of Mississippi, Ms. MILLENDER-MCDONALD, Mr. KILDEE, Ms. NORTON, Mr. JACKSON of Illinois, Ms. SCHAKOWSKY, and Mrs. JONES of Ohio.

H.R. 5251: Mr. TOWNS and Mr. DEFAZIO.

H.R. 5254: Mr. CROWLEY.

H.R. 5255: Mr. CROWLEY.

H.R. 5259: Ms. MCCOLLUM.

H.R. 5273: Mr. ABERCROMBIE, Mrs. EMERSON, Mr. DOOLEY of California, Mr. ISSA, and Mr. TIAHRT.

H.R. 5274: Mr. DOOLEY of California.

H.J. Res. 22: Mr. FROST.

H.J. Res. 45: Mr. PASTOR.

H.J. Res. 101: Mr. FALEOMAVAEGA and Ms. BORDALLO.

H. Con. Res. 165: Mr. MEEHAN.

H. Con. Res. 441: Mrs. BIGGERT and Mr. BAKER.

H. Con. Res. 468: Mr. BROWN of Ohio.

H. Con. Res. 502: Mr. CALVERT.

H. Con. Res. 503: Mr. HINCHEY, Mr. FILNER, and Mr. FRANK of Massachusetts.

H. Con. Res. 507: Mr. GRIJALVA, Mrs. JO ANN DAVIS of Virginia, Mr. PASCRELL, Mr. ROGERS of Kentucky, Mr. CARDOZA, and Ms. BORDALLO.

H. Res. 28: Mr. GRIJALVA.

H. Res. 570: Mr. FORD, Mr. JACKSON of Illinois, Ms. MILLENDER-MCDONALD, and Ms. CORRINE BROWN of Florida.

H. Res. 746: Mr. UPTON and Mr. GONZALEZ.

H. Res. 750: Ms. BORDALLO.

H. Res. 793: Mr. NADLER.

H. Res. 799: Mr. MCGOVERN.

H. Res. 810: Mr. DEUTSCH, Mr. RUSH, Mrs. JONES of Ohio, Mr. FATTAH, Mr. MEEKS of New York, and Ms. KILPATRICK.

H. Res. 812: Mr. STARK, Mr. PASCRELL, and Mr. FROST.

H. Res. 837: Mr. HOEFFEL.

H. Res. 840: Mr. WHITFIELD, Mr. DUNCAN, Mr. PETERSON of Pennsylvania, Mr. COBLE, Mr. PETERSON of Minnesota, Mr. GILLMOR, and Mr. GIBBONS.

H. Res. 841: Mr. YOUNG of Alaska.

PETITIONS, ETC.

Under clause 3 of rule XII,

119. The SPEAKER presented a petition of the City Council of Hamtramck, Michigan, relative to a resolution expressing concern that portions of the USA PATRIOT and Homeland Securities Act pose a direct threat to liberties and civil rights; which was referred to the Committee on the Judiciary.

EXTENSIONS OF REMARKS

CRS LETTER CLARIFYING EFFECTS OF H.R. 4571, THE LAWSUIT ABUSE REDUCTION ACT

HON. LAMAR S. SMITH

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. SMITH of Texas. Mr. Speaker, September 14 2004, the House debated and passed H.R. 4571, the Lawsuit Abuse Reduction Act, a bill I authored to help prevent frivolous lawsuits and the notorious practice of forum shopping from ruining America's small businesses.

In the midst of floor debate on H.R. 4571 the Congressional Research Service issued a self-described "rush memorandum" dated September 14, 2004, to the minority staff of the House Judiciary Committee, which stated "H.R. 4571 does provide an option for filing [a lawsuit] where a business has a principal place of business . . . However, if a defendant's principal place of business was not in the United States, then this option could not be exercised in a United States court. Consequently, it would appear that in certain circumstances, a United States citizen or resident injured in this country would not have a judicial forum in the United States in which to seek relief."

This statement left the misleading impression that H.R. 4571, were it to become law, would somehow make it more difficult to bring some personal injury lawsuits in the United States. Not surprisingly, the misleading impression left by the CRS memorandum was exploited by those on the opposite side of the aisle in the midst of debate on H.R. 4571, and later by the press. For example, a report in CongressDaily/A.M. describing debate on H.R. 4571 stated "Many Democrats . . . cited a Congressional Research Service memorandum advising lawmakers that the bill could prevent U.S. citizens from having their cases heard in a U.S. court if the defendant's main place of business is located in a foreign country. Rep. Jay Inslee, D-Wash., sarcastically called the legislation 'the Foreign Corporation Protection Act.'"

Those statements are deeply misleading, and here's why. In fact, nothing in H.R. 4571 would prevent cases from being brought against foreign defendants that are not already precluded under current law. I wrote to CRS requesting a clarification of current law, and I received the following response: "[U]nder the Due Process Clause, a foreign corporation that had its principal place of business overseas, engaged in little or no economic activity in the United States, and did not otherwise subject itself to the jurisdiction of the United States, could not be subject to the jurisdiction of the various state courts. If such a corporation engaged in a tortious activity such as manufacturing a defective product, then a plaintiff would be unable to bring an action in a state court forum for such tortious activity, even if the product caused an injury in the United States. In such a case, an injured party would be required to seek compensation in the courts of another country."

This makes clear that while some Members on the other side of the aisle claimed that H.R. 4571, if enacted, would preclude certain lawsuits from being brought that could be brought under current law, the Due Process Clause of the Constitution has precluded under current law, and would continue to preclude under H.R. 4571, some plaintiffs from bringing an action in a state court forum against a foreign defendant for tortious activity in certain circumstances, even if the product caused an injury in the United States. The bottom line is that H.R. 4571 would do nothing to change current law in that regard. Indeed, no legislation could change current law in that regard since the constitutional requirements of the Due Process Clause cannot be changed by legislation.

In fact, the venue statute of the gentleman from Washington Mr. Inslee's own state provides that "An action . . . for the recovery of damages for injuries to the person or for injury to personal property may be brought, at the plaintiffs option, either in the district in which the cause of action, or some part thereof, arose, or in the district in which the defendant, or, if there be more than one defendant, where some one of the defendants, resides at the time the complaint is filed." That venue standard is for all practical purposes the same as that provided in H.R. 4571. H.R. 4571 provides that a personal injury lawsuit could be brought in any state where the person bringing the claim resides at the time of filing or resided at the time of the alleged injury, any state where the alleged injury or circumstances giving rise to the personal injury claim allegedly occurred, or where the defendant's principal place of business is located. Insofar as opponents of H.R. 4571 have a complaint regarding the inability to bring certain lawsuits against foreign corporations in the United States, their complaint is with the Constitution's Due Process Clause, and not with H.R. 4571, which simply reflects the same standard that prevails among the state's venue laws, subject of course to the Due Process Clause of the Constitution. If a foreign corporation's contacts with the United States are so minimal as to make it unconstitutional under the Constitution's Due Process Clause to subject them to suit in the United States regardless of whether the venue criteria of H.R. 4571—or of any State venue statute—are met, there is nothing a legislature can do by statute to remedy that situation.

To help set the record straight, I am submitting for the record both my letter to CRS requesting a clarification, and the CRS memorandum I received in response.

HOUSE OF REPRESENTATIVES,
Washington, DC, September 16, 2004.

KENNETH R. THOMAS,
Legislative Attorney, American Law Division, Congressional Research Service, Washington, DC.

DEAR MR. THOMAS, It is my understanding that, under each State's venue statutes, there might occur circumstances in which a foreign corporation with its principal place of business outside the United States causes personal injury to a person within the State, yet a tort lawsuit brought by such injured person against such foreign corporation would be precluded in the United States.

I am writing to request that the Congressional Research Service provide me with the following information:

Under each State's venue laws, are there any circumstances in which a foreign corporation with its principal place of business outside the United States would not be subject to suit in such State (or elsewhere in the United States) by a person within the State who alleges such foreign corporation caused such person personal injury within the State?

I would greatly appreciate this information by September 27, 2004.

Sincerely,

LAMAR SMITH,
Member of Congress.

CONGRESSIONAL RESEARCH SERVICE,
Washington, DC, October 4, 2004.

MEMORANDUM

To: Honorable Lamar Smith.

From: Kenneth R. Thomas, Legislative Attorney, American Law Division.

Subject: Preclusion of Tort Suits Against Foreign Corporations Under State Law.

The revised memorandum is to respond to your request to evaluate whether a state long-arm statute could allow plaintiffs to bring suits against a foreign corporation in a state where a tortious injury occurred based solely on the fact that injury occurred in that state. You also requested a determination as to whether, if a foreign corporation had its principal place of business outside of the United States, whether state statutes could allow law suits to be brought in all instances against such corporations based solely on the fact that such injury occurred in this country. As discussed below, because of constitutional and statutory concerns, a foreign corporation could in some instances be beyond the reach of United States' state courts.

In order, to sue a tortfeasor in a court, a plaintiff must generally establish that such court has personal jurisdiction over the defendant. At the state level, such jurisdiction is generally established by state long-arm statutes, which specify what level of contact must exist between a defendant and a state in order for a plaintiff to sue in that state. For instance, Tennessee law provides that a Tennessee state court may exercise personal jurisdiction over a defendant based on conduct outside the state for causing tortuous injury inside the: state. However, to do so, the defendant must "regularly * * * solicit[] business, or engage[] in any other persistent course of conduct, or derive[] substantial

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

revenue from goods used or consumed or services rendered, in this state." So, a corporation that manufactures a defective product but does not meet the above stated criteria, would not be subject to the jurisdiction of the Tennessee courts, even if it manufactured a product which caused an injury to a plaintiff in Tennessee.

These types of statutory limitations are generally related to a need for a state's assertion of personal jurisdiction to be consistent with the United States Constitution. Under the Due Process Clause of the 14th Amendment, a state court must find that there are minimum contacts between the jurisdiction of a court and the defendant in a law suit in order to establish jurisdiction. As with the Tennessee statute cited above, the fact that an injury occurred in that forum would not generally be a sufficient basis to establish jurisdiction, but there must also be sufficient contacts between the defendant and the judicial forum.

Thus, under the Due Process Clause, a foreign corporation that had its principal place of business overseas, engaged in little or no economic activity in the United States and did not otherwise subject itself to the jurisdiction of the United States, could not be subject to the jurisdiction of the various state courts. If such a corporation engaged in a tortious activity such as manufacturing a defective product, then a plaintiff would be unable to bring an action in a state court forum for such tortious activity, even if the product caused an injury in the United States. In such a case, an injured party would be required to seek compensation in the courts of another country.

PAYING TRIBUTE TO RAY KOESTER

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. McINNIS. Mr. Speaker, it is with a heavy heart that I rise to mourn the passing of Ray Koester from Pueblo, Colorado. Ray, recently passed away at the age of 78 after a battling a lengthy illness. He was known for his energetic commitment, and straightforward personality that impressed everyone that he encountered. As his family and friends mourn this loss, I believe it is appropriate to remember Ray and pay tribute to him for his contributions to the State of Colorado.

Ray earned his engineering degree in 1950 from the University of Denver and spent the next five decades as an engineer in the Pueblo community. He was extremely dedicated to all his projects and continued to work on them despite the limitations of his illness. Some of the biggest projects that he worked on included the Belmont subdivision, the Historic Arkansas Riverwalk, and the Levee Mural. Ray was also the longtime administrator and consulting engineer for the Conservancy District and worked with other organizations such as the HARP program, the Pueblo Board of Water Works, and the Colorado Outdoor Performing Arts Project.

He was truly an engaged citizen who taught Sunday school for over 40 years, and served as the chairman of the local Republican party at the age of 74, in addition to being active in civic organizations like the Salvation Army, the Lion's Club, the Kiwanis Club and the Greater Pueblo Chamber of Commerce.

Mr. Speaker, we are all terribly saddened by the loss of Ray Koester, though take comfort in the knowledge that our grief is overshadowed only by the legacy of dedication that Ray has left with us. I am honored to pay tribute to such a devoted public servant, one who has so effectively served the state of Colorado. I know that many throughout our State who had the chance to benefit from his experience and dedication will miss Ray Koester. My thoughts and prayers go out to his family during this time of bereavement.

CONGRATULATION TO THE U.S. MEN'S ELITE EIGHT ROWING TEAM

HON. JOHN N. HOSTETTLER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. HOSTETTLER. Mr. Speaker, forty years is a long time to wait for anything But sometimes a dream deferred is all the sweeter when it finally comes true.

Nobody knows that better than Dan Beery, a native of Oaktown, Indiana and a member of the U.S. Men's Elite Eight rowing team. It was Dan and his teammates who won the gold medal at the Olympic Games in Athens on Aug. 22. They set a world record when they did it. It had been 40 years since the U.S. won that Olympic event.

Dan's story is an inspiration. He grew up in a small town in Indiana. He played football and basketball at North Knox High School. He began his college career at Vincennes University and eventually transferred to the University of Tennessee-Chattanooga, where his life would be changed by a providential meeting. In 1997, Dan was playing a game of pickup basketball when the coach of the crew team walked by. The coach stopped and asked the six-foot-seven Hoosier to try out for the rowing team. Dan did and quickly showed potential. And while he became a good college rower, he failed to make the national team 5 years in a row.

But Dan would not give up. He devoted himself to his training. He had the ardent support of his parents, Jim and Merry Beery, who still live in Oaktown, and his sisters, Meredith and Marsha. And the whole community rallied behind Dan with support and fundraisers.

This small-town unity of spirit made a difference. When he returned to Knox County with his gold medal, Dan told a local newspaper that the one question people ask him the most is how he became an Olympic champion considering most in the sport are from Ivy League universities.

"My answer is how could I not?," Beery said. "I came from a place with warm and loving people who supported me no matter what."

Dan's determination paid off. He made the national team and in the 2002 World Championships won silver in the men's pair with coxswain event. At the 2003 World Championships, he won gold.

Earlier this year, Dan was a member of the four-man crew that won gold at the 2004 World Cup in Lucerne, Switzerland. Following that success, he was moved into the eight for the Olympic games in Greece. It was that crew that surged early and won the first gold for the United States in four decades.

His crew also included Jason Read, a volunteer firefighter who was at ground zero after the terrorist attacks of Sept. 11, 2001.

Mr. Speaker, Dan Beery is an inspiration to young people who dare to dream big dreams. He is the pride of his community. Dan embodies the American dream, where hard work and perseverence, combined with the encouragement and support of family and community, great things can be achieved.

Dan himself says it best: "Just because you're from a little town in Indiana doesn't mean you can't make it to the Olympics and win."

CONGRATULATIONS TO ST. GEORGE'S GREEK ORTHODOX CHURCH ON THEIR 75TH ANNIVERSARY

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. VISCLOSKY. Mr. Speaker, it is with great honor and enthusiasm that I congratulate St. George Greek Orthodox Church as they join together in celebration of their 75th anniversary. They will be celebrating this very momentous and special occasion October 14–17, 2004.

From their modest beginnings, St. George's has emerged as a cornerstone of the community. St. George was founded by Greek immigrants in October, 1929 in East Chicago, Indiana. In 1982, the parish moved to Schererville and held church services in a chapel. In March 1992, the parish celebrated a "new beginning" when a brand new building was constructed and the first services were held in the new church. A community which first started with 25 members has grown to over 500 members. The church stewards reside all across Lake County and the country.

The spiritual Father Reverend Constantine Aliferakis has been St. Georges's leader for the past 16 years. Under Father Aliferakis's guidance, St. George continues to thrive, both in terms of spiritual growth as well as practical improvements. An integral part of the community is the St. George Ladies Philoptochos Society, which spearheads charitable works in and around the community.

The celebration weekend begins on Thursday, October 14, 2004 with church services and the veneration of an actual relic of the body of St. George. On Friday, October 15, 2004 the church will hold a reunion basketball game and homecoming dance at Grimmer Middle School. Saturday, October 16 there will be an Anniversary golf outing at Scherwood Golf Center followed by the Anniversary Gala at the Grand Hall of St. George Greek Orthodox church. The celebration banquet will conclude the festivities on Sunday, October 17, when the church welcomes His Eminence

Metropolitan Iakovos, leader of the Greek Orthodox Church of Chicago, for a Hierarchical Service followed by an Anniversary luncheon.

Mr. Speaker, I ask that you and my other distinguished colleagues join me in honoring and congratulating St. George Greek Orthodox Church on their 75th anniversary. Throughout many hardships and trials, the members of St. George have dedicated themselves to providing a spiritual and guiding light through the protection of the Greek Orthodox faith and traditions for all of Northwest Indiana. Their constant dedication and commitment is worthy of the highest commendation.

APPLAUDING THE ADMINISTRATION FOR FIGHTING FOR AMERICAN COMPANIES AND WORKERS

HON. W. TODD AKIN

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wedneday, October 6, 2004

Mr. AKIN. I rise to applaud President Bush and U.S. Trade Representative Bob Zoellick for today initiating a World Trade Organization case against market-disruptive subsidies received by Europe's Airbus Industry.

This bold move, coupled with withdrawal from the 1992 United States-European Agreement on Trade in Large Civil Aircraft, demonstrates a seriousness of purpose on behalf of the President and the Administration to protect the interests of American companies from unfair competition.

Boeing and its suppliers in the aerospace sector employ some of the most highly-skilled and best-paid workers in the U.S. Due in large part to European subsidization of Airbus, we have seen Boeing's share of the worldwide commercial airplane market slide from more than two-thirds to less than 50 Percent.

Why has this occurred? The answer has nothing to do with a lack of ingenuity or determination on the part of American firms or their capable employees. Instead, Airbus' rise to market leadership has been driven largely by the "launch aid" provided by European governments.

Launch aid is upfront government money provided to Airbus to finance the development of new airplane models—more than $3.7 billion in the case of the new super-jumbo Airbus A380. Over the years, Airbus has received more than $15 billion in such subsidies.

Airbus calls this launch aid a "loan," but the terms are such that repayment may not be required if the airplane does not attract sufficient orders from airlines. Imagine getting a loan to start a business, with the bank agreeing that you need not repay if the business fails.

By contrast, Boeing is putting up several billion dollars of its own money to finance its latest airplane, the ultra-fuel-efficient 7E7. Boeing, its employees and its shareholders bear the full risk of the airplane's ultimate success or failure, unlike the protection afforded to Airbus by the government launch aid.

American workers like those at Boeing and its supplier companies aren't asking for a handout, or a leg up. They are asking for a chance at fair competition.

So again, let me thank the President and our distinguished Trade Representative, Bob Zoellick, for taking a bold stand in fighting for American companies and their workers and for a principle all Americans support—a fair playing field for everyone.

PAYING TRIBUTE TO THOMAS MADDALONE

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. McINNIS. Mr. Speaker, it is with a heavy heart that I rise to mourn the passing of Thomas Maddalone from my home state of Colorado. Thomas, recently passed away at the age of eighty after a sudden heart attack. He was known for his great sense of humor, incredible wit and a personable nature that impressed everyone that he encountered. As his family and friends mourn this loss, I believe it is appropriate to remember Thomas and pay tribute to him for his contributions to the state of Colorado.

Thomas lived most of his life in Aspen, Colorado where he graduated from Aspen High School and went on to work for Mountain Utilities at the local hydroelectric plant. He was a devoted patriot who served his country valiantly in World War II with the U.S. Army specializing in the electronics on bomber planes such as the B–24 Liberators. After the war Thomas came back to Aspen and worked both as a lineman for the local electrical system and a firefighter for the Aspen Fire Protection District. He has spent the last ten years living in Grand Junction and was an active member of the both the Elks and Eagles clubs and the American Legion. He was preceded in death by his first wife, Gwendolyn Raider, second wife, Ailene Grunberg, and his daughter Judith. He is remembered by the love of his son Anthony, brother Jess, sisters, Angie and Ida, grandsons, Ronald, Thomas, and David, and his great grandchildren Brett, Mathew, and Nikki.

Mr. Speaker, we are all terribly saddened by the loss of Thomas Maddalone, though take comfort in the knowledge that our grief is overshadowed only by the legacy of dedication that Thomas has left with us. I am honored to pay tribute to such a devoted public servant, one who has so effectively served the state of Colorado. I know that many throughout our state who had the chance to benefit from his experience and dedication will miss Thomas Maddalone. My thoughts and prayers go out to his family during this time of bereavement.

HONORING THE SERVICE OF U.S. MARINE LANCE CORPORAL AARON BOYLES

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. STARK. Mr. Speaker, I rise today to honor Lance Corporal Aaron Boyles, a courageous young U.S. Marine from the East Bay, who was killed in action in the Al Anbar Province of Iraq on September 24, 2004.

Lance Corporal Boyles is a graduate of Newark Memorial High School. He enlisted in the Marine Corps where he served in the Headquarters and Service Company, 7th Marine Regiment, 1st Marine Division, 1st Marine Expeditionary Force.

Lance Corporal Boyles performed his duties with distinction and valor. He was awarded the Purple Heart, a second Purple Heart is being recommended. He was also awarded the National Defense Service Medal, the Sea Service Deployment Ribbon and the War on Terrorism Expeditionary Medal.

Today, friends and family from our community are gathering in Hayward to warmly remember Lance Corporal Boyles, who will be laid to rest at Golden Gate National Cemetery. I join them in this remembrance.

I know all of my colleagues here in the United States Congress share in offering condolences to Lance Corporal Boyles' wife Prabha, who is expecting their first child this month, his mother Wanda Kealaiki, his father Robert Boyles and the rest of his family and loved ones. We mourn Aaron's loss with them today.

We are grateful to Lance Corporal Boyles for his selfless sacrifice and courageous service to our country. He no doubt served valiantly through circumstances we here can only imagine. I commend his bravery and am grateful for the contribution Lance Corporal Aaron Boyles has made to our nation.

TRIBUTE TO THE HONORABLE DONALD GLENN BROTZMAN

HON. JOEL HEFLEY

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. HEFLEY. Mr. Speaker, I rise today to recognize and remember the life of former Republican Congressman Donald Brotzman of Colorado, who recently passed away at the age of 82. Congressman Brotzman honorably represented Colorado's second Congressional District from 1962 through 1975, during some of this great nation's most tumultuous and trying times.

He was born June 28, 1922 on a farm in Logan County, on Colorado's eastern plains. Both a musician and three-sport athlete at Sterling High School, Don Brotzman won a football scholarship in 1939 to the University of Colorado in Boulder where he was an all-conference center and varsity letter-winner in shot put and discus.

As war continued to rage on the other side of the world, Don Brotzman delayed his education and served as an Army officer in Yokohama, Japan, and the Philippines through World War II. Following the end of the war, he returned to Boulder to complete degrees in business and law in 1949.

Mr. Brotzman began working as a lawyer in Boulder in 1950, and was elected to the Colorado House of Representatives in 1952 and later the State Senate. Local media named him the outstanding freshman member in both chambers.

By 1959, he was appointed United States Attorney for Colorado by President Eisenhower and served as such until he was elected to the U.S. House of Representatives in

1962, where he was voted president of his freshman class.

Congressman Brotzman served five terms and helped to shape laws such as the Clean Air Act and the Public Broadcasting Act. He reached across the aisle to champion causes such as the Indian Peaks Wilderness Area west of Boulder, a national program to help runaway youth and a tax credit for higher-education expenses. Despite serving on the minority side of the aisle, he successfully found the funds to complete the Chatfield Dam and Reservoir, and sponsored the bill authorizing the building of Bear Creek Dam and Reservoir in Colorado.

Furthermore, he persuaded the Johnson Administration to sponsor a study that eventually changed the Army's environmental practices at the Rocky Mountain Arsenal in Adams County, Colorado, and he was one of the first members of Congress to call for an all-volunteer military.

Colorado lost a great friend and a tremendous leader when it lost Donald Brotzman. His strong western values and commitment to always do what was right, despite partisan interests and outside persuasion, has continued to serve as a great example.

HONORING THE LIFE AND CONTRIBUTIONS OF SERGEANT MAJOR JAMES PETTAWAY JR.

HON. TIMOTHY H. BISHOP

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. BISHOP of New York. Mr. Speaker, I rise to honor the life and contributions of my neighbor and constituent Sergeant Major James Pettaway, Jr. who gave his life in service to his country. SGM Pettaway died this week as a result of wounds he suffered in August during his second tour of duty in the war in Iraq. Only a few weeks after his deployment to Iraq, the convoy jeep he was riding in struck a roadside bomb outside of Fallujah. The explosion killed one man and seriously injured SGM Pettaway, covering 80 percent of his body with burns. After a long fight, he died Sunday at the Brook Medical Burn Center in San Antonio, Texas.

I honor SGM Pettaway for the valiant sacrifice he made for his country. I also honor him for the kind of man he was. SGM Pettaway grew up in the army, enlisting after his high school graduation in 1988. The army changed him, made him stronger, gave him a sense of purpose and fulfillment. Because he was the kind of man he was, he wanted to give back some of what he had been given. He wanted to pass along the life lessons he had learned to others. His supervisor said the army "changed him from a scatterbrained kid to a caring man."

After 10 years of active duty, James Pettaway, this caring man and father of an 11-year-old son Brandon, joined a guard unit at the Herman Toulson Correctional Camp in Maryland. He was part of an 88-member guard contingent at the boot camp that houses adult felons. Because he was a caring man, SGM Pettaway took a genuine interest in the inmates' lives and tried to help them benefit from the things he learned in the army. He volunteered for extra duty, took a special interest in their accomplishments and tried to help them lead better lives.

In 2002, SGM Pettaway's reserve unit, the 223rd Transportation Company of Morristown, PA, was called to active duty. He served a year in Kuwait before returning to the United States. Then in May his reserve unit was called again to active duty. This time, his family and friends say, the 37-year-old sergeant did not have a positive feeling about returning to war. But he dutifully answered his country's call one more time. He would not live to see his hometown of Southampton, New York again.

Several of SGM Pettaway's cousins attended Southampton public schools and played on sports teams with my children. His Uncle works with my brother in the landscaping business. His son Brandon played on a Little League team last season with my friend's son. We all mourn his death. He is the first U.S. service member from our town to be killed in the Iraq war.

We cannot ask more of a man than we did of SGM Pettaway. He gave his all. Iraq forced him to learn some of life's most difficult lessons. I honor him for his bravery, his goodness, his service to others, and for the sacrifice he made for his country. I honor his son Brandon, and I pray that the lessons his father learned will not have been learned in vain but will be carried on in the lives of his family and friends.

HONORING DR. EDGAR WAYBURN

HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Ms. WOOLSEY. Mr. Speaker, I rise today to honor Dr. Edgar Wayburn of San Francisco and Marin County, California, on the occasion of the recognition of Tomales Bay as a Ramsar site. Designated by the U. S. government, the Ramsar Bureau in Switzerland maintains a list of Wetlands of International Importance under the Convention on Wetlands. Ed Wayburn's support for this nomination was crucial in securing the Ramsar listing.

With a long history of environmental activism, Ed Wayburn has promoted understanding of the importance of the land/marine interface and, in 1998, successfully nominated Bolinas Lagoon as a Ramsar site, the only other such designation in California. Now 97, he has a record as one of the most successful environmental leaders in the country. Locally, Ed and his late wife Peggy are known for their roles in the expansion of Mount Tamalpais State Park and the creation of Pt. Reyes National Seashore and the Golden Gate National Recreation Area. Nationally, they spent 13 years fighting to protect 104 million acres of Alaskan wilderness, an achievement that doubled the size of the national park system when President Carter signed the Alaska National Interest Conservation Act, which added substantially to six parks, in 1980.

A family doctor born in Georgia, Ed Wayburn came to California in 1927. The natural landscape awed him at the time, and the post-World War II boom that saw much of the Bay area paved over turned him into an activist. Five times president of the Sierra Club, he worked in a different style from his legendary colleague David Brower, the Club's executive director during the 1950s and 1960s. Skilled at working persistently behind the scenes, Wayburn could negotiate the halls of Congress and the offices of Interior Secretaries as comfortably as the wilderness trails he loved. In 1995, he won the Albert Schweitzer Prize for Humanitarianism, and, in 1999, he won the Presidential Medal of Freedom, the Nation's highest civilian award, for his exceptional service on behalf of environmental preservation.

Mr. Speaker, Dr. Edgar Wayburn is principally responsible for saving more open space than any other living American. Although not the hiker he used to be, he is still awed and inspired by the natural world. "Wilderness is enjoyed not only by the young and hardy," he says. "Sometimes it is simply enough to know it exists—to remember and to dream." We share the dream of Ed Wayburn for a world in which mankind honors and preserves our natural heritage.

CONGRATULATING THE BRUDERHOF COMMUNITY

HON. BILL SHUSTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. SHUSTER. Mr. Speaker, I rise today to congratulate the Bruderhof Community in their recent efforts to spread peace. The "community of brothers" is pursuing its goal of acceptance through construction of the "Peace Barn," a sanctuary for those who need silence and a gathering place for those who seek progress.

In the wake of September 11, 2001, a shadow of grief was cast over America. Nearly every citizen felt the reins of instability tugging at the society we once thought to be impregnable. With the strength and ambition that typifies the character of Americans, however, the Bruderhof Community turned devastation into promise by contributing to the Flight 93 Memorial and building a "Peace Barn."

Just two days after the terrorist attacks, the Bruderhof Community mobilized to realize its goals. In an effort to contribute to the Flight 93 memorial in Shanksville, Pennsylvania, the community children have produced handmade benches with the names of those who lost their lives engraved into the backs upon the request of the families. To date, the group has produced 27 benches and has no plan to stop. Additionally, by merging its resources and gathering its members, the Bruderhof children have created a refuge for reflection and a hall for meetings out of an old, neglected, and weathered barn. Now, the Peace Barn functions as a place of encouragement, healing and sharing.

Since its inception, the barn has welcomed scores of visitors seeking peace. Grieving families are comforted by the photograph-adorned walls that inspire memories of the lives that were lost on Flight 93. Holocaust survivors are heartened by the optimism and goodness that pervade the atmosphere in the barn. Curious travelers are impelled to spread the message of peace throughout their relative communities.

In a world wrought with terror, the achievement of world peace is a formidable task. The Bruderhof Community has espoused the idea that the pursuit of peace needs to start small and diffuse gradually. With every welcoming hand that is extended to visitors and every memory that is triggered through the photos on the wall, hopefully the Bruderhof vision for the future will materialize.

On September 11, 2001, our Nation lost the ability to take peace for granted. With the construction of the Peace Barn, the Bruderhof has initiated a trend that all of America should follow.

HONORING THE LIFE OF JEANNETTE DAVIS AND HER WORK ON BEHALF OF CHILDHOOD AUTISM

HON. JAMES C. GREENWOOD

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. GREENWOOD Mr. Speaker, I rise today in honor of Jeannette M. Davis, who passed away a year ago on October 8, 2003, at 45 years of age.

A resident of Lancaster, Pennsylvania, Jeannette was recognized nationally for her advocacy on childhood autism. She was a homemaker and the mother of an autistic son, Christopher, whom I got to know over the past few years.

Jeannette traveled the nation to help create programs to assist autistic children and their parents. To obtain more funding for autism programs across our home state of Pennsylvania, Jeannette spent many hours visiting members of the Pennsylvania General Assembly and Senate.

Her advocacy helped lead to undergraduate programs for the autistic at Franklin and Marshall College, Millersville University, and The Pennsylvania State University. In addition, Jeannette's valuable work created an in-home autism-help program at Rutgers University.

I am saddened that a year ago this week, we lost Jeannette after an illness of several months. Despite her condition, she lobbied on behalf of the autistic community until her untimely passing.

Jeannette is one of Pennsylvania's great heroes, who while taking care of a son and daughter, used her voice and powers of persuasion to create new hope for children with autism and their families. While we continue to mourn her passing, today I rise to celebrate the life and accomplishments of Jeannette M. Davis.

THE UNIVERSAL NATIONAL SERVICE ACT OF 2003

SPEECH OF

HON. JOHN KLINE

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 5, 2004

Mr. KLINE. Mr. Speaker, I rise today in strong opposition to H.R. 163 and urge my colleagues to overwhelmingly reject not only this election year "scare tactic" but the increasingly archaic policy of universal conscription.

Since the founding of our nation over two hundred years ago, the U.S. military has reluctantly used conscription to rapidly fill the ranks of an often undermanned and under funded military force in the face of grave national threats. Today, we live in a nation united under a single representative government that has faced and defeated the global threats of fascism and communism. A vital component of these victories was the evolution of the U.S. military from a garrison force, reinforced by conscripts in times of national emergency, to the present-day, all-volunteer military which now ably defends our nation from the deadly violence of international terrorism.

Like a large portion of our population, I am old enough to recall America's last attempt at conscription. More significantly, as a junior officer in the Marine Corps near the end of the Vietnam conflict, I witnessed first-hand many of the unfortunate repercussions of the military draft policy—the migration of a drug culture into the ranks, race riots, and the lack of unit camaraderie that leads to mission success.

I am proud to say that when I finished my 25-year career in the Marine Corps, those problems had completely disappeared or been reduced to statistical insignificance. Today's all-volunteer military, forged in the tragic "lessons learned" of Vietnam, has repeatedly demonstrated its professionalism and ability to defend America's national interests. The men and women of this well-educated and well-trained force serve our nation because they choose to do so. Today, we honor their service and ensure their continued success by voting to maintain the best-equipped, best-trained, and all-volunteer, Armed Forces.

THE GUARD AND RESERVE EDUCATION AND TRAINING (GREAT) ACT OF 2004

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. SMITH of New Jersey. Mr. Speaker, I am pleased to introduce today the Guard and Reserve Education and Training Act of 2004. GREAT would bring VA educational assistance opportunities for Guard and Reserve members—often referred to as the Selected Reserve—more in line with those of their active duty counterparts. In the post-9/11 environment, active duty and Guard/Reserve members often serve side-by-side as part of our Total Force concept. I believe it's an issue the Veterans' Affairs and Armed Services Committee can work on together because the Department of Veterans Affairs administers the program determining eligibility and pays educational assistance allowances.

This year America celebrates the 60th Anniversary of the original World War II GI Bill. Due to the GI Bill, college enrollment grew dramatically. In 1947, GI Bill enrollees accounted for almost half of the total college population. In the decade following World War II, more than 2 million eligible men and women attended college using GI Bill educational benefits. The result was an American workforce enriched by 450,000 engineers, 238,000 teachers, 91,000 scientists, 67,000 doctors, 22,000 dentists and another million college-educated men and women. Indeed, the GI Bill is arguably our most successful program ever due to its profound effect on our economy and our workforce.

In 1985, under the visionary leadership of our former Veterans' Affairs Committee Chairman, G.V. "Sonny" Montgomery, Congress designed the modern version of the GI Bill, fittingly now called the Montgomery GI Bill (MGIB). In Public Law 107–103, the Veterans Education and Benefits Expansion Act of 2001, Congress significantly increased MGIB purchasing power for veterans and servicemembers. I was privileged to author this legislation which increased the MGIB basic benefit from $672 to $800 per month in January 2002, to $900 in October 2002 and to $985 in October 2003—a 46 percent increase. These increases are the largest in the MGIB's remarkable history. With the annual cost of living increase for fiscal year 2005, the MGIB now pays $1,004 per month.

GREAT would continue the progression of improvements to the MGIB by providing a greater benefit to our Guard and Reserve members.

First, this legislation would increase the VA monthly educational assistance allowance rate for Guard/Reserve members from $288 to $400. When Congress first created the Montgomery GI Bill (MGIB)-Selected Reserve educational assistance program in 1985, it established the monthly benefit level at about 47 percent of the active duty rate. However, the education benefit rate for Selected Reservists has lagged significantly behind the original 47 percent figure. Today, the $288 per month that members of the Selected Reserve receive under chapter 1606 of title 10, United States Code, is only about 28 percent of the $1,004 per month that regular active-duty servicemembers receive under chapter 30 of title 38, United States Code. My proposed increase to $400 per month would be a first step to bring the Selected Reserve education benefit closer to the amount Congress envisioned when it initially created the MGIB.

Second, GREAT would establish a new, higher benefit for Guard and Reserve members who have accumulated 180 days within a 5-year period of active duty service in a contingency operation since September 11, 2001. This new benefit would be equal to the benefit for servicemembers who enlist for 2 years of active duty and 4 years of Reserve duty—$816 per month. These Reservists and Guards members would not incur a $1,200 pay reduction to be eligible for the new benefit. In my view, the current pay reduction simply represents a kind of tax. The House did not originally contemplate such a pay reduction for either active duty or Selected Reserve members. In fact, the 1999 report of the bipartisan Congressional Commission on Servicemembers and Veterans Transition Assistance recommended that Congress repeal the $1,200 pay reduction.

Third, to establish greater equity in the Selected Reserve and active duty educational assistance programs, my bill would allow beneficiaries to use entitlement during a 14-year period that would begin on the date of their last day of active duty, the same as the policy currently in effect for active duty servicemembers. This new, 14-year delimiting date would be available to members of the Selected Reserve on or after September 30, 2004. Currently, Selected Reserve members may use VA educational assistance benefits under the MGIB only while still serving in the Reserves.

Finally, GREAT would give service branch secretaries the discretionary authority to allow Selected Reserve members to transfer any unused VA educational entitlement to dependents if the member has completed at least 20 years in the Reserves. Many Reservists are married and have families. My bill would furnish them an additional tool to finance a child or spouse's education or training to compete in the workforce. The Congressional Commission on Servicemembers and Veterans Transition Assistance also made this recommendation.

I urge my colleagues to support this legislation. The role of Guard and Reserve members in our national defense has changed dramatically under the Total Force concept. Guard and Reserve members can be mobilized for up to 2 years. They often experience some of the same types of issues in transitioning from military to civilian life as do their active duty counterparts. My bill would help facilitate that transition through increased training opportunities in a highly competitive civilian economy. Further, my bill fundamentally acknowledges that Reserve component servicemembers who incur the same risks as other servicemembers in protecting our everyday freedoms indeed have earned a more comparable benefits package.

UNIVERSAL NATIONAL SERVICE ACT OF 2003

SPEECH OF

HON. JANICE D. SCHAKOWSKY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 5, 2004

Ms. SCHAKOWSKY. Mr. Speaker, I rise today to oppose H.R. 163, a bill to reinstate the draft. Rumors of a military draft have been flying around the Internet and the possibility has been discussed at millions of lunch and dinner tables all over the country. Constituents, especially those with kids and grandkids, have called me to ask, "Is this true?" The answer is no. We will defeat this bill today. But that doesn't mean that American families don't have to worry about a draft—a backdoor draft.

In the Army alone, over 20,000 soldiers have had their tours of duty extended. Seven thousand active duty soldiers and 3,000 National Guardsmen and Reservists will be forced into extended deployments by President Bush's "stop loss" orders that prevent them from leaving the service after their contract expires. Those orders hurt our brave men and women and they hurt their families. Extended deployments over-seas have been correlated to increased rates of alcoholism, domestic violence and divorce. The biggest tragedy of the current situation in Iraq is that the lives of brave military men and women are being disrupted—and in some cases changed forever—because of wrong foreign policies.

More appropriate foreign policies that do not call on our troops to attack foreign countries on a unilateral preemptive basis would allow us to meet our defense and national security needs with a volunteer force. Our young men and women have seen the impact of our current policy in Iraq. They have seen over 1,000 lose their lives in a war of choice, and, even worse, they have seen our troops sent into battle without modern protective equipment. As a result, military men and women are not re-enlisting. For the first time since 1994, the Army National Guard came up short on its recruiting goals. The Army has nearly tripled its previous top enlistment bonus to certain recruits, lowered its standards for new recruits and added hundreds of new recruiters in what looks to be a long-shot effort to meet next year's goal. The way to fill our security needs is not to reinstate a draft. The answer is to change our policies and to make sure that we are taking care of the troops we have.

Our troops are stretched thin and getting thinner. We are losing what little support from the international community we had in Iraq. Poland, our third largest ally in Iraq just announced they will soon fix a date for the withdrawal of its 2,500 troops. We launched a unilateral, preemptive war against a country that did not have weapons of mass destruction or a link to al Qaeda. We now know that not only did Iraq not have nuclear weapons, but that virtually every U.S. expert—and international expert—questioned the claim before we went to war, but those views were kept secret.

Either President Bush knew that his own experts disagreed and refused to acknowledge the fact, or he went to war without knowing that his justification for war was being challenged within his own Administration. In either case, it is tragic that it is the military men and women and their families who are now paying the price and facing the backdoor draft. They deserve much better.

THE RETIREMENT OF U.S. REPRESENTATIVE BILL LIPINSKI

HON. NICK J. RAHALL II

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. RAHALL. Mr. Speaker, as we draw to the end of this, 108th Congress, we are about to lose BILL LIPINSKI to retirement. A valued friend, a highly respected colleague, and a great representative for his constituents in the Third District of Illinois, the southwest side of Chicago and suburban communities, BILL's presence will be missed around here.

But our loss will turn out to be the gain of his lovely wife, Rose Marie, his two children and their spouses, and his two grandchildren, as he heads home to spend more time with his family and to reportedly lend his efforts to worthy causes around his lifelong home, southwest Chicago.

In additions to his duties as a longtime congressman and ward committeeman, BILL has been my close colleague on the House Transportation and Infrastructure Committee where I've personally been able to work with him and see him, up close, and in action.

Over the course of the 108th Congress, he has served the Transportation Committee in the critical role of Ranking Member to the important Subcommittee on Highways and Transit, which has crafted the major, bipartisan, surface transportation and jobs bill, H.R. 3550, the Transportation Equity Act: A Legacy for Users.

BILL's contributions, along with those of my colleagues DON YOUNG of Alaska, JIM OBERSTAR of Minnesota, and TOM PETRI of Wisconsin, have been invaluable in getting us a bill that the House passed with overwhelming support from both sides of the political aisle, and that currently is being considered in conference by members of the House and the Senate.

In the past, he has effectively used his skills to deliver millions of federal dollars to build the Chicago Transit Authority's Orange Line, and to provide for improvements to both Midway and O'Hare airports.

Over the last 22 years, the time during which BILL has served both his constituents and this House so capably, he has won respect from his peers and established strong relationships with members on both sides of the aisle. The statements, here, of his colleagues in regard to his retirement provide testament to just how warmly he is regarded.

Now, he will have more time to devote to his family. But, even if he's planning on getting away from this House, I don't really think BILL will be totally detaching himself from the political profession in which he has made such an indelible mark. Politics is in the family blood; his wife, Rose Marie, has served as a presidential elector for their home state of Illinois, and his son Dan is the Democrat nominee to succeed BILL in the Illinois Third District. So, BILL will have no option but to remain connected, even if only to keep up with the rest of his family.

BILL, I salute you, and I will miss you, both personally and professionally, but I sincerely wish you well in your future endeavors.

PATIENT NAVIGATOR OUTREACH AND CHRONIC DISEASE PREVENTION ACT OF 2003

SPEECH OF

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 5, 2004

Mr. MENENDEZ. Mr. Speaker I would like to thank the following supporters of H.R. 918:

American Cancer Society

National Council of La Raza

National Association of Community Health Centers

American Diabetes Association

National Rural Health Association

Intercultural Cancer Council

Intercultural Cancer Council Caucus

100 Black Men of America

National Alliance for Hispanic Health

National Hispanic Medical Association

Dean and Betty Gallo Prostate Cancer Center

MHz Networks

Asian & Pacific Islander American Health Forum

Dia De La Mujer Latina, Inc.

National Congress for American Indians

National Indian Health Board

Navajo Nation

National Patient Advocate Foundation

National Health Council

I would also like to thank the following additional individuals who worked to make this bill a reality: Ellen Heier, Patrick Fritz, Elizabeth Cameron, Colleen Chapman, Kelly Green Kahn, and Wendy Selig.

ARUBA

HON. TRENT FRANKS

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. FRANKS of Arizona. Mr. Speaker, one of the core principles on which our nation is founded is the belief in an individual's God-given right to pursue happiness without government interference. Traditionally this has been understood as an endorsement of the quintessential entrepreneurial spirit and of free-market economics. The great, late president Ronald Reagan liked to talk about America as a city on a hill, a light that offers guidance to the nations of the world.

I rise today to pay tribute to a small island nation that has been a shining example in a sometimes troubled region of the world. Under the capable leadership of Prime Minister Nelson Oduber, the government of Aruba has led the way in exemplifying stable and democratic good governance and in creating an ownership society with a growing, prospering private sector. Most of us understand the vital role a lively private sector plays in a nation's success.

During Mr. Oduber's terms in office, a long list of government owned companies were either fully or partially privatized. Among them were water production facilities and power plants, the public transportation company, the seaport and the airport, the national telecommunications company and the postal services. Many of these former government agencies today are 100 per cent privately owned. The government has demonstrated that its belief in a free market with a plethora of empowered stakeholders is much more than lip service.

The companies on their part showed that they were well able to get the capital from the financial markets without help from the government. Today, not one of these companies' employees is on the taxpayer funded government payroll. In addition, the companies can quickly and proactively respond to market forces without any government interference.

While it sometimes seems easier to criticize countries that are doing things wrong, I thank you, Mr. Speaker, for the opportunity to pay tribute to a small nation, a stable ally of the United States, that has put into practice the principles we believe are essential in creating a better, freer, more prosperous and more secure world.

HONORING LOUISVILLE STUNNERS GIRLS SOFTBALL TEAM

HON. RON LEWIS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. LEWIS of Kentucky. Mr. Speaker, I rise today to recognize the Louisville Stunners 16 and under girls fastpitch softball team for their remarkable season and recent participation in the USSSA World Series in Columbus, Indiana. The Stunners were the only team to represent the State of Kentucky at the championship tournament, finishing with an impressive 4th place standing among 54 participating teams. They also brought home the distinguished sportsmanship award, representing competitive values that make Kentucky proud.

The hours of extra practice under the leadership of Head Coach Kevin Johnson and Assistant Coach Keith Roller brought this impressive distinction to the State of Kentucky and City of Louisville. I want my colleagues in the House of Representatives to know of the pride that I have in representing these athletes and their families: Whitney Atcher, Alicia Ewen, Jennifer Young, Jodi Pence, Jennifer Kisselbaugh, Tiffany Dean, Kasey Graham, Krystle Johnson, Holly Goemmer, Jessica McGohon, and Courtney Roller.

I would like to commend the Stunners for their magnificent season—an effort that epitomized team work, sportsmanship, and persistence. I ask my colleagues in the U.S. House of Representatives to join me in congratulating these young athletes for their achievement and wish them continued success in seasons to come.

TRIBUTE TO CHRISTINE OSBURN JACKSON

HON. JAMES E. CLYBURN

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. CLYBURN. Mr. Speaker, I rise today to pay tribute to a woman who has unselfishly served the women and girls of the Greater Charleston YWCA and all citizens of the Charleston, South Carolina area for most of her career. Ms. Christine Osburn Jackson is retiring after 36 years as the Executive Director of YWCA of Greater Charleston, and a lifetime of service to her community and fellow human beings.

My friend, Christine, has parlayed her position into a platform to promote racial justice and help shape public policy. This was a natural role stemming from her leadership of the organization during the turbulent 1960s when Charleston's YWCA sought to remain segregated. Her tenacity led the all-black branch of the organization to be designated the YWCA's national affiliate in Charleston, and carry on its mission of equality and empowerment.

Her leadership was sought during the preeminent civil rights struggles of the time. She was one of only three women to share the stage with Martin Luther King, Jr. during his only visit to Charleston with the Southern Christain Leadership Conference. She also hosted meetings at the YWCA for black hospital workers during the infamous 1969 Charleston Hospital Strike.

It was Christine Jackson's strength and steadfastness during these difficult times that built the foundation for the YWCA's continuing success. Under her leadership, this organization has actively registered voters, taught parenting to teenage mothers, provided after school programs for local students, and honored women in industry for their contributions with the Tribute to Women in Industry (TWIN) awards. She has carried on the work of Martin Luther King, Jr. by organizing community events throughout the month of January to inspire others to promote social justice.

Many organizations have sought out her extraordinary talents. She holds membership on many governing boards including the Interfaith Crisis Ministry, the League of Women Voters, and the Foster Care Review Board. Ms. Jackson has also been the recipient of numerous awards including those bestowed by five different national sororities and fraternities, the Trident United Way, the Committee on Better Racial Assurance, and the Charleston County Baptist Association.

Mr. Speaker, I ask you and my colleagues to join me in applauding Christine Osburn Jackson's lifetime of achievements. Although her daily presence at the Greater Charleston YWCA will be missed, I know her guiding hand will still be felt throughout the community.

MARKING THE REPUBLIC OF CHINA'S NATIONAL DAY

HON. DAN BURTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 6, 2004

Mr. BURTON of Indiana. Mr. Speaker, I rise today to pay tribute to the people of Taiwan on the occasion of their National Day, celebrated on October 10th.

Despite the lack of formal diplomatic relations between the United States and Taiwan for the last 25 years, Taiwan has been one of our most important and loyal allies in the World. Today, Taiwan and the United States are friends and partners, not merely allies, and our relationship has continued to flourish in terms of economics, politics, security, culture, education, science and technology.

Moreover, we share with the people of Taiwan many core values, particularly the values of democracy, freedom and human rights. In recent years, Taiwan has proven to be a consistent champion of human rights, environmental responsibility, and democracy. These democratic and humanitarian values bind our two great Nations together more powerfully than any treaty or international agreement ever could.

I have been to Taiwan on several occasions and Taiwan's accomplishments are numerous, and its successes are directly attributed to its people whose goodwill and generosity have always been most apparent. On the anniversary of their National Day, I wish for my friends the good people of Taiwan a long future of continued prosperity, peace, and freedom, a future which they so deeply deserve.